

# **CITY COMMISSION MEETING AGENDA**

City Hall Commission Chambers

Monday, March 20, 2023

7:00 p.m.

MEETING #5243

**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**

## **PLEDGE OF ALLEGIANCE**

## **PUBLIC HEARING**

Tommy's Express Car Wash Community Incentive District (CID)

## **APPROVAL OF AGENDA**

## **PETITIONS & PROCLAMATIONS**

Child Abuse Proclamation

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

Recognition: Guatemalan Consulate

## **CONSENT CALENDAR**

1. Approval of City Commission Work Session Minutes, March 6, 2023.
2. Approval of City Commission Meeting Minutes, March 6, 2023.
3. Approval of City Joint City/County/USD 443/DCCC Meeting Minutes.
4. Appropriation Ordinance No.6, March 20, 2023.
5. Cereal Malt Beverage License:
  - a. El Korita Restaurant, 2001 W. Wyatt Earp Blvd.
  - b. Tacos Jalisco, 412 E. Wyatt Earp Blvd.
  - c. Dodge City A's, San Jose Drive.
  - d. Kwik Shop Store, 1500 W. Wyatt Earp Blvd.
  - e. Kwik Shop Store, 1811 Central Avenue.
6. Approval of Appointments for Community Facilities Advisory Board.
7. Approval of Estimate for New Pad Mount Transformer at the South Wastewater Treatment Plant.

## **ORDINANCES & RESOLUTIONS**

**Ordinance No. 3791:** An Ordinance Authorizing the Creation of the Tommy's Express Car Wash Community Improvement District in the City of Dodge City, Kansas; Authorizing the Imposition of a Community Improvement District Sales Tax to be Collected Within Such District; and Approving and Authorizing Certain Other Actions in Connection Therewith (Tommy's Express Car Wash CID). Report by Nicole May, Finance Director.

**Ordinance No. 3792:** An Ordinance of the City of Dodge City, Kansas, Approving the Termination of the Scooters-Wyatt Earp CID; and Authorizing Actions Relating Thereto. Report by Nicole May, Finance Director.

**Resolution No. 2023-10:** An Ordinance of the Governing body of the City of Dodge City, Kansas Establishing a Rural Housing Incentive District Within the City and Adopting a Plan for the Development of Housing and Public Facilities in Such Proposed District, Establishing the Date and Time of a Public Hearing on Such Matter, and Providing for the Giving of Notice of Such Public Hearing (United Village). Report by Assistant Director of Economic Development, Mollea Wainscott.

**Resolution No. 2023-11:** A Resolution Authorizing Filing of Application with the Kansas Department of Health and Environment for a Loan Under the Kansas Water Pollution Control Revolving Fund Act (K.S.A. 1988 Supp. 65-3321 through 65-3329). Report by Nicole May, Finance Director.

**Resolution No. 2023-12:** A Resolution Determining the Advisability of the Making Certain Internal Improvements in the City of Dodge City, Kansas; Making Certain Finding with Respect Thereto; and Authorizing and Providing for the Making of the Improvements in Accordance with Such Findings (Various Internal Improvements/Iron Flats, Phase I). Report by Nicole May, Finance Director.

## **UNFINISHED BUSINESS**

1. Approval of Lease Agreement with Catholic Charities of Southwest Kansas (CCSK). Report by Nick Hernandez, City Manager.

## **NEW BUSINESS**

1. Approval of Consulting Agreement for the Gunsmoke Trail Extension Along Comanche Street. Report by Director of Engineering, Ray Slattery.
2. Approval of Cost Share for Jayhawk Drive Repairs. Report by Director of Engineering, Ray Slattery.
3. Approval of Contract for City Attorney Services with the City of Dodge City. Report by City Manager, Nick Hernandez.

## **OTHER BUSINESS**

## **STAFF REPORTS**

## **ADJOURNMENT**

## Child Abuse Prevention Month 2023 Proclamation

Whereas we can build healthier, safer, and thriving communities if we take the same approach to raising families that we do to tending a community garden on a shared piece of land; and

Whereas, children are locally grown and have a right to be safe and to be provided an opportunity to thrive, learn and grow; and

Whereas, hope and commitment are powerful fertilizers that strengthen and support Kansas' families thus preventing the far-reaching effects of maltreatment, providing the opportunity for children to develop healthy, trusting family bonds; and

Whereas, we must come together as partners to nurture, heal and grow together because prevention happens in partnership; and

Whereas, by growing a better tomorrow for all children, together, we can ensure that Kansas children will grow to their full potential as the next generation of leaders, helping to secure the future of this state and nation;

Therefore, I do hereby proclaim April 2023 as Child Abuse Prevention Month.

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Signed

# **CITY COMMISSION WORK SESSION MINUTES**

City Hall Commission Chambers

Monday, March 6, 2023

6:30 p.m.

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## **CALL TO ORDER**

**ROLL CALL:** Mayor Michael Burns reported absent, Vice Mayor Joseph Nuci, Commissioners Rick Sowers, Chuck Taylor, Kent Smoll.

## **WORK SESSION**

Corey Keller, Public Works Director discussed the option of an ( EAS) Alternative Essential Air Service program for the City of Dodge City's air service. This allows the city to administer the program. The city would then apply for a grant through the Department of Transportation. Through that grant process the city would receive the subsidy and pay the airline carriers for each flight to a major hub airport. There are 10 cities currently apart of the alternate EAS program.

## **ADJOURNMENT**

Commissioner Kent Smoll moved to adjourn the meeting. Commissioner Chuck Taylor seconded the motion. The motion carried 4 – 0.

ATTEST:

\_\_\_\_\_  
Mayor

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

# **CITY COMMISSION MEETING MINUTES**

City Hall Commission Chambers

Monday, March 6, 2023

7:00 p.m.

MEETING #5241

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The meeting will be archived on both sites to be viewed after the live video has ended.

## **CALL TO ORDER**

**ROLL CALL** Mayor Michael Burns reported absent. Vice Mayor Joseph Nuci, Commissioners Rick Sowers, Chuck Taylor, Kent Smoll present.

## **INVOCATION by**

## **PLEDGE OF ALLEGIANCE**

## **PUBLIC HEARING**

Vice Mayor Joseph Nuci opened the public hearing on the state revolving loan fund funding for the wastewater treatment plant improvements. Nicole May, Finance Director spoke on the funds. There were no public comments. Vice Mayor closed the public hearing.

## **APPROVAL OF AGENDA**

Commissioner Kent Smoll moved to approve the agenda as presented. Commissioner Chuck Taylor seconded the motion. The motion carried 4 -0.

## **PETITIONS & PROCLAMATIONS**

Vice Mayor, Joseph Nuci read the 2023 Youth Art Month Proclamation and proclaimed the month of March 2023 as Youth Art Month.

Jose Garcia a board member of the Carnegie Center of Dodge City spoke on art work.

**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).**

Employees Connie Marquez, City Clerk and Eliel Marin, Airport Manager were both recognized for their accomplishments. Connie for achieving Certified Municipal Clerk (CMC), by the International Institute of Municipal Clerks (IIMC), Inc. and Eliel for achieving his US Citizenship. Congratulations to both.

**CONSENT CALENDAR**

1. Approval of Work Session Meeting Minutes, February 20, 2023.
2. Approval of City Commission Meeting Minutes, February 20, 2023.
3. Appropriation Ordinance No.5, March 6, 2023.
4. Cereal Malt Beverage License:
  - a. Corner Market Store, 609 S. 2<sup>nd</sup> Avenue.
  - b. Corner Market Store, 2615 E. Trail Street.
  - c. Provecho, LLC., 202 E. Frontview.
5. Approval of Hennessey Hall Space Lease with Arrowhead West Inc.

Commissioner Chuck Taylor moved to approve the agenda as presented. Commissioner Kent Smoll seconded the motion. The motion carried 4 – 0.

**ORDINANCES & RESOLUTIONS**

Commissioner Joseph Nuci recused himself from voting on Ordinance No. 3789.

**Ordinance No. 3789:** An Ordinance of the City of Dodge City, Kansas amending the official zoning map of the City, changing the property located lots 5,6,7,8,10,13 of Youngs Place Addition and lots 6-A, 6-B, 6-C of Youngs Place Replat, from R-2 Residential Medium Density and C-2 Commercial Highway to C-2 Commercial Highway and R-2 Residential Medium Density was approved on a motion by Commissioner Chuck Taylor. Commissioner Rick Sowers seconded the motion. The motion carried 3 – 0.

**Ordinance No. 3790:** An Ordinance authorizing the City of Dodge City, Kansas, to enter into a lease purchase agreement, the proceeds of which will be used to pay the costs of purchasing two (2) trash trucks; and to approve the execution of certain documents in connection therewith was approved on a motion by Commissioner Kent Smoll. Commissioner Chuck Taylor seconded the motion. The motion carried 3 – 0.

**Resolution No. 2023-06:** A Resolution establishing fees and rates for water utility services for the City of Dodge City was approved on a motion by Commissioner Chuck Taylor. Commissioner Kent Smoll seconded the motion. The motion carried 4 -0.

**Resolution No. 2023-07:** A Resolution Establishing Fees and Rates for Sanitary Sewer Service for the City of Dodge City was approved on a motion by Commissioner Chuck Taylor. Commissioner Kent Smoll seconded the motion. The motion carried 4 -0.

**Resolution No. 2023-08:** A Resolution establishing fees and rates for Solid Waste Collection Service in the City of Dodge City was approved on a motion by Commissioner Chuck Taylor. Commissioner Kent Smoll seconded the motion. The motion carried 4 -0.

**Resolution No. 2023-09:** A Resolution establishing fees and rates for Storm Water Utility Service for the City of Dodge City was approved on a motion by Commissioner Chuck Taylor. Commissioner Kent Smoll seconded the motion. The motion carried 4 -0.

**UNFINISHED BUSINESS**

**NEW BUSINESS**

1. Commissioner Kent Smoll moved to approve the Homewood Acres Addition Replat. Commissioner Chuck Taylor seconded the motion. The motion carried 4 – 0.
2. Commissioner Kent Smoll moved to approve the scope of services for categorical exclusion with Burns & McDonnell in the amount of \$ 49,275.89 for the Dodge City Regional Airport terminal building. Commissioner Chuck Taylor seconded the motion. The motion carried 4 – 0.

**OTHER BUSINESS**

**STAFF REPORTS**

**ADJOURNMENT**

Commissioner Rick Sowers moved to adjourn the meeting. Commissioner Chuck Taylor seconded the motion. The motion carried 4 – 0.

ATTEST:

\_\_\_\_\_  
Mayor

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

**JOINT MEETING MINUTES**  
**DODGE CITY/ FORD COUNTY/USD #443/DC COMMUNITY COLLEGE**  
**6:30pm, Thursday, March 9, 2023,**  
**USD 443 Administration Building**  
**City of Dodge City Meeting # 5242**

**CALL TO ORDER**

Fred Dierksen, Superintendent of Dodge City Public Schools opened the meeting

**ROLL CALL**

**USD #443:** President Lisa Killion, Vice President Tammy West, Ryan Ausmus, Jerad Goertzen, Jamey Lewis-Gonzales present. Jeff Hiers, Traci Rankin absent

**City of Dodge City:** Mayor Michael Burns, Commissioners Joseph Nuci, Rick Sowers, City Manager, Nick Hernandez

**DCCC:** President, Jerry Nolte, Chair, Gary Hershberger, Vice President, Kathy Ramsour, Trustees Kelly Henrichs, Jammie Phillips, Bill Turley.

**Ford County:** Chairman Shawn Tasset, Commissioners Chris Boys, Ken Snook, Administrator JD Gilbert

**BUSINESS: US 50 & Loretta Ave. Intersection Improvements**

There was a presentation and discussion regarding the improvements for US HWY 50 and Loretta Avenue Intersection. The plans presented are preliminary findings for the discovery phase of the potential improvements. This is not a final design. It can be changed in the future.

Ray Slattery, Director of Engineering, spoke and explained how this project got to the point it is at today. In 2017 the city requested a traffic study on Highway 50 from city limits to city limits from KDOT through their Traffic Engineering Assistants Program. As a result of that study and the desire of having a second entrance into the high school KDOT initiated another study and at that time they hired Trans-Systems to complete the study. The study was completed, and they found that it was feasible to have a second entrance from the highway on to US 50 with some additional design work that would have to be done and cooperation between KDOT, the City, the school district, DC3 and Ford County who all have properties at that intersection that needs to be improved to make that intersection work.

Ray Slattery, Director of Engineering, City of Dodge City introduced the design team: Brett Letkowski, Principal Senior Vice President and Brandon Stevens of Transystem. Also present was Kurt Lancaster of SMH Consultants.

Brandon Stevens of Trans-Systems gave an overview of the recommended and future scheduled improvements (access roads, roundabouts, ect.). He also went over the estimated breakout costs for the recommended and future improvements.

Kurt Lancaster of SMH talked about the recommended and future landscaping for the project.

Floor was open for questions and comments. No action was taken.

ATTEST:

\_\_\_\_\_  
Mayor

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



# Memorandum

**To:** Ford County Commission and City of Dodge City Commission

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

**Date:** March 20, 2023

**Subject:** CFAB Board Member Appointments

**Agenda Item:** Consent Calendar

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**Recommendation:** The CFAB Board Chair, City and County Administration recommend the following appointments to the Community Facility Advisory Board:

- The appointment of Josh Roesener to fill a board vacancy.
- The appointment of Kristen Winter to fill a board vacancy.

**Background:**

The Committee consists of six at-large members, the Chairperson of the Board of Directors of the Dodge City / Ford County Development Corporation or his/her designee and ex-officio representation from the City and County Commissions. Josh Roesener will be filling the vacancy for an at large position left by Michael Brakey. Kristen Winter will be filling the vacancy for an at large position left by Hugo Rodela. Both Mr. Brakey and Mr. Rodela had completed their second three-year terms. The City published a media release and did social media postings for open advisory board positions including CFAB. Three candidates submitted applications for the CFAB board. The CFAB Chair, City Manager and County Administrator reviewed the applications and support the recommendation.

**Justification:**

Mr. Roesener and Ms. Winter bring diverse work backgrounds to the board.

They are also committed to supporting the City and County by serving on the CFAB Board.

**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:** Per the Inter-local agreement at-large members shall be appointed for an initial term of three years. Any at-large member may be nominated and re-appointed to serve a second three-year term, except after two consecutive terms there must be at least a one-year interval before an additional nomination and appointments.



# Memorandum

**To:** Nick Hernandez, City Manager and City Commissioners  
**From:** Ray Slattery, PE, Director of Engineering  
**Date:** March 20, 2023  
**Subject:** Approval of Estimate for new Pad Mount Transformer at the North Irrigation Pump Station of the South WWTP, SS 2101  
**Agenda Item:** Consent Calendar

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**Recommendation:** Approve the Estimate from Victory Electric to install a new pad mount transformer at the North Irrigation Pump Station (NIPS) at the South WWTP for \$32,213.64.

**Background:** As part of the South WWTP Expansion, upgrades will be made to the NIPS. One item that we would like to change is the location of the transformer for the NIPS. Currently, the transformer is in the air on an "H" structure. Therefore, anytime we need to work on the NIPS using a boom truck, Victory Electric shuts off power to the transformers. These transformers are original to the project and are nearly 40 years old along with the "H" structure. By having a pad mount transformer, maintenance on the NIPS can be done safer.

**City Commission Options:**

1. Approve
2. Disapprove
3. Table for further discussion

**Financial Considerations:** Money has been allotted in the UCI GMP for improvements to the NIPS. Some of this will be used to fund the pad mount transformer.

Amount \$: \$32,213.64

Fund:

Budgeted Expense       Grant       Bonds       Other      SRLF (State Revolving Loan Fund)

**Legal Considerations:** The City will be required to make payment to Victory Electric for the cost of the pad mount transformer.

**Mission/Values:** This project aligns with the City's Core Value of Ongoing Improvements.

**Attachments:** Estimate from Victory Electric for the pad mount transformer.

**Approved for the Agenda by:**

*Ray Slattery, PE*

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**Ray Slattery, PE, Dir. of Engineering Services**

# The Victory Electric Cooperative Assn., Inc.

# Estimate

3230 N 14th Ave.  
Dodge City, KS 67801  
Phone: 620-227-2139

**DATE** February 16, 2023  
**Estimate project** S. WWTP North Irrigation  
**Member Name** OH to URD Conversion  
City of Dodge City

**Bill To:**

*Estimate valid until:* May 17, 2023

Ray Slattery  
City of Dodge City

*Prepared by:* Jeff Hubbell

**Comments or special instructions:**

Description	AMOUNT
Replace overhead line & transformer bank with underground.	\$ 32,213.64
<i>Labor and Equipment built into estimate</i>	
<b>TOTAL</b>	<b>\$ 32,213.64</b>

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





# Memorandum

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

**From:** Nicole May, Finance Director

**Date:** March 14, 2023

**Subject:** Public Hearing – Advisability of Creating a Community Improvement District

Ordinance No. 3791 – Making Certain Findings on the Advisability of Creating a Community Improvement District

**Agenda Item:** Public Hearing and Ordinances and Resolutions

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**Purpose:** The Community Improvement District is an economic development tool authorized by the State of Kansas that allows eligible construction costs to be reimbursed to the developer. The additional sales tax collected in the improvement district is the only amount reimbursed to the developer.

**Recommendation:** I recommend the City Commission open the Public Hearing and hear any comments from the public regarding the Tommy's Express Car Wash CID. If after the public hearing, the Commission finds it advisable to create the Community Improvement District, adopt Ordinance No. 3791.

**Background:** A petition was filed for the establishment of a community improvement district for Tommy's Express Car Wash, located at 2209 N. 14<sup>th</sup> Avenue. The petition was filed in February 2023, by Tamara Davis, co-owner to establish a CID. The car wash has been constructed and opened in February 2023. The cost of the improvements to be financed with the CID is \$1,000,000 of the total cost of \$6,365,000.

The City Commission adopted Resolution No. 2023-05, on February 20, 2023, that directed a public hearing to be held to consider the advisability of creating a community improvement district and required the City Clerk to give notice of such public hearing. A notice was published in the Dodge City Daily Globe for 2 consecutive weeks, at least 7 days prior to the March 20 meeting notifying the public of consideration of the CID.

Later in the meeting after the public hearing is complete, the Commission will consider the Ordinance. This ordinance states that the governing body of the City of Dodge City finds and determines it to be advisable to create the proposed community improvement district, authorizes the project, approves the estimated cost of the project, sets forth the boundaries of the district, levies the community improvement district sales tax, and approves the method of financing.

## City Commission Options:

1. Approve Ordinance
2. Disapprove Ordinance
3. Table for further discussion

## Financial Considerations:

Amount \$: 0

Fund:

Dept:

Expense Code:

Budgeted Expense     Grant     Bonds     Other

**Legal Considerations:** All legal considerations are being met with the public hearing and adoption of the ordinance. The ordinance will be forwarded to the Director of Taxation for the State of Kansas

**Mission/Values:** We value progress and business growth for the community.

**Attachments:** Ordinance No. 3791 and Development Agreement

**Approved for the Agenda by:**



**Nicole May, Finance Director**

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**ORDINANCE NO. 3791**

**AN ORDINANCE AUTHORIZING THE CREATION OF THE TOMMY’S EXPRESS CAR WASH COMMUNITY IMPROVEMENT DISTRICT IN THE CITY OF DODGE CITY, KANSAS; AUTHORIZING THE IMPOSITION OF A COMMUNITY IMPROVEMENT DISTRICT SALES TAX TO BE COLLECTED WITHIN SUCH DISTRICT; AND APPROVING AND AUTHORIZING CERTAIN OTHER ACTIONS IN CONNECTION THEREWITH (TOMMY’S EXPRESS CAR WASH CID).**

**WHEREAS**, pursuant to K.S.A. 12-6a26 *et seq.*, as amended (the “Act”), municipalities are authorized to create community improvement districts for economic development purposes and any other purpose for which public money may be expended; and

**WHEREAS**, the City of Dodge City, Kansas (the “City”), is a municipality within the meaning of the Act; and

**WHEREAS**, on February 14, 2023, a petition (the “Petition”) was filed with the City Clerk requesting (a) that the community improvement district described therein (the “CID”) be created; (b) that the City levy a community improvement district sales tax on the selling of tangible personal property at retail or rendering or furnishing services taxable pursuant to the provisions of the Kansas retailer’s sales tax act, within the CID in the amount of one percent (1%) (the “CID Sales Tax”); and (c) that certain community improvement district project costs to be incurred within the CID be financed with pay-as-you-go financing from such CID Sales Tax, all in accordance with the Act; and

**WHEREAS**, said Petition was signed by all [more than 55%] of the owners of the land area within the proposed CID, exclusive of right of way; and

**WHEREAS**, the Act provides that prior to creating any community improvement district and imposing a community improvement district sales tax, a governing body shall, by resolution, direct and order a public hearing on the advisability of creating such community improvement district and the construction of such community improvement district project therein, and provide for notice of the hearing by publication at least once each week for two consecutive weeks in the official city newspaper, with the second publication occurring at least seven days prior to the hearing, and by certified mail to all property owners within the proposed community improvement district, with such certified mail sent at least ten days prior to such hearing; and

**WHEREAS**, on February 20, 2023, the Governing Body of the City adopted Resolution No. 2023-05 directing a public hearing on the proposed CID be held and declaring its intent to levy the CID Sales Tax in the proposed CID; and

**WHEREAS**, on March 20, 2023, following proper notice as provided in the Act, the Governing Body of the City held a public hearing on the proposed CID, the proposed community improvement district project and the imposition of the CID Sales Tax in the proposed CID; and

**WHEREAS**, the Governing Body hereby finds and determines that it is in the best interests of the City and in furtherance of the purposes of the Act to create the CID and impose the CID Sales Tax.

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

**Section 1. Creation of District; Boundaries.** The Governing Body of the City hereby creates the CID within the boundaries legally described on *Exhibit A* attached hereto and are depicted on the map attached hereto as *Exhibit B*, which CID shall generally be referred to as the "Tommy's Express Car Wash CID."

**Section 2. Authorization of District Project; Estimated Costs.** The Governing Body of the City hereby authorizes the project within the Tommy's Express Car Wash CID described in *Exhibit C* attached hereto (the "Project") and approves the estimated cost of the Project which may be financed with CID Sales Tax as one million dollars (\$1,000,000). Notwithstanding the approval of the Project by this Ordinance, the Project and owner or owners of all property comprising the Project must comply with all applicable zoning, planning permit and other laws and regulations applicable to the Project.

**Section 3. Method of Financing.** The Project within the Tommy's Express Car Wash CID will be financed on a pay-as-you-go basis payable from revenues received from the imposition of the CID Sales Tax. No special assessments shall be implemented under the Act to pay for the Project, and no special obligation notes or bonds will be issued for the Project.

**Section 4. Levy of Sales Tax.** In accordance with the Act and to provide funds to pay costs of the Project, the Governing Body of the City hereby levies a CID Sales Tax on the selling of tangible personal property at retail or rendering or furnishing services taxable pursuant to the provisions of the Kansas retailer's sales tax act, within the Tommy's Express Car Wash CID in the amount of one percent (1%). The collection of the CID Sales Tax shall commence on July 1, 2023, or any other effective date the City may approve by ordinance if a change in the effective date outlined herein is requested in writing by all owners of record, exclusive of right of way, in the Tommy's Express Car Wash CID.

**Section 5. Segregation of CID Sales Tax.** All revenues derived from the collection of the CID Sales Tax shall be deposited into a special fund of the City to be designated as the Tommy's Express Car Wash Community Improvement District Revenue Fund. Such revenues shall be used to pay the costs of the Project on a pay-as-you-go basis, including the City's administrative fee of two percent (2%).

**Section 6. Further Action.** The Mayor, City Manager, City Clerk and other officials and employees of the City, including the City Attorney and City consultants, are hereby further authorized and directed to take such other actions as may be appropriate or desirable to accomplish the purposes of this Ordinance.

**Section 7. Effective Date.** This Ordinance shall be in force and take effect from and after its passage, approval and publication once in the official City newspaper. When this Ordinance becomes effective in accordance with this Section, the City Clerk shall provide a certified copy of the same to the State Director of Taxation pursuant to K.S.A. 12-189. The City Clerk is hereby further authorized to submit this Ordinance to the Ford County Register of Deeds, for recording.

**ADOPTED** by the Governing Body of the City of Dodge City, Kansas on this \_\_\_\_ day of \_\_\_\_\_, 2022.

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

ATTEST:

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

City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney

**EXHIBIT A to CID Ordinance**

**Legal Description**

LOT TWO (2), FINAL PLAT 14TH AND SOULE SUBDIVISION, UNIT TWO (2), AN ADDITION TO THE CITY OF DODGE CITY, FORD COUNTY, KANSAS, ACCORDING TO THE RECORDED PLAT THEREOF.

**EXHIBIT B to CID Ordinance**

(Map)

**EXHIBIT C to CID Ordinance**

Proposed Project

The general nature of the CID Project is to acquire, construct, equip, develop and otherwise procure certain improvements known collectively as Tommy's Express Car Wash within the CID, including, but not limited to, land acquisition, infrastructure related items, parking lots, buildings, equipment, tenant improvements, utilities, landscaping, lighting, signage, soft costs of the CID Project, and the City and petitioner's administrative costs in establishing and maintaining the CID, and any other items permitted to be financed within the CID under the Act.

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**DEVELOPMENT AGREEMENT**

**BETWEEN**

**THE CITY OF DODGE CITY, KANSAS**

**AND**

**WILD PINES WASHES – DODGE CITY, LLC**

**FOR IMPLEMENTATION OF THE**

**TOMMY’S EXPRESS CAR WASH  
COMMUNITY IMPROVEMENT DISTRICT**

**DATED AS OF [MARCH 20, 2023]**

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## DEVELOPMENT AGREEMENT

### DODGE CITY, KANSAS TOMMY'S EXPRESS CAR WASH COMMUNITY IMPROVEMENT DISTRICT

This Development Agreement for implementation of the Tommy's Express Car Wash Community Improvement District (the "Agreement") is entered into by and between the **CITY OF DODGE CITY, KANSAS**, a municipal corporation (the "City") and **WILD PINES WASHES – DODGE CITY, LLC**, a Kansas limited liability company (the "Developer," and collectively with the City, the "Parties"), is dated as of the Dated Date and effective as of the Effective Date. Larry L. Noller and Tamara L. Davis, as Co-Trustees of the Larry L. Noller Irrevocable Trust, under Agreement dated October 19, 2021 (the "Trust") and Wash Partners, LLC, a North Dakota limited liability company ("Wash Partners") join in and consent to the terms of this Agreement.

### RECITALS

**WHEREAS**, the Parties desire to memorialize their intent with respect to their obligations and responsibilities for the acquisition, improvement, construction, installation, furnishing and equipping of the Project; and

**WHEREAS**, the Trust is the title owner of the real property and improvements located within the District, and Wash Partners is the ground lessee of the real property and improvements located within the District.

**WHEREAS**, Developer is the subtenant and occupant of all real property and improvements located within the District and holds an option to purchase the Project from Wash Partners.

**WHEREAS**, the Parties, the Trust and Wash Partners desire to enter into this Agreement and to complete the responsibilities set forth herein.

### AGREEMENT

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the Parties agree, and the Trust and Wash Partners acknowledge and consent, as follows:

**Section 1. Definitions of Words and Terms.** In addition to words and terms defined elsewhere herein, capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the hereinafter defined Act. Unless the context shall otherwise indicate, words importing the singular number shall include the plural and vice versa, and words importing persons shall include firms, associations and corporations, including public bodies, as well as natural persons.

**"Act"** means the Constitution and statutes of the State including K.S.A. 12-6a26 *et seq.*, as amended and supplemented from time to time.

**"Agreement"** means this Development Agreement, as such may be amended or supplemented from time to time in accordance with its provisions.

**"CID"** means Community Improvement District.

**"CID Sales Tax"** means the one percent (1%) special Community Improvement District Sales Tax levied within the District and collected pursuant to K.S.A. 12-6a31, as amended.

“**CID Sales Tax Fund**” means the Tommy’s Express Car Wash Community Improvement District Sales Tax Fund created pursuant to *Section 4.C.* hereof.

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

“**City Administrative Fee**” means an amount equal to 2% of the proceeds of the CID Sales Tax collected by the City pursuant to the terms of this Agreement.

“**City Manager**” means the duly appointed City Manager, or in the City Manager's absence, the duly appointed Acting City Manager of the City.

“**City Attorney**” means the duly appointed City Attorney, or in the City Attorney's absence, the duly appointed Acting City Attorney of the City.

“**City Clerk**” means the duly appointed City Clerk or, in the Clerk's absence, the duly appointed Deputy City Clerk or Acting Clerk of the City.

“**Dated Date**” means [March 20, 2023].

“**Department of Revenue**” means the Department of Revenue of the State.

“**Developer**” means Wild Pines Washes – Dodge City, LLC, a Kansas limited liability company duly qualified to do business in the State of Kansas, and its successors and assigns.

“**Developer Representative**” means Tamara L. Davis, Manager.

“**Developer’s Counsel**” means Matthew S. Gough, Esq., Barber Emerson, L.C., Lawrence, Kansas.

“**District**” means the Tommy’s Express Car Wash Community Improvement District established by the City pursuant to the Ordinance which contains within its boundaries the real property legally described in *Exhibit A* attached hereto and the boundaries of which are contained in a map of the District attached hereto as *Exhibit B*.

“**Effective Date**” means the last date on which all of the Parties have executed this Agreement, as reflected on the signature page(s) hereof.

“**Eligible Costs**” means Project Costs which eligible to be paid or reimbursed pursuant to the Act and the terms of this Agreement, as generally set forth on *Exhibit C*.

“**Facility**” means the Tommy’s Express Car Wash facility to be located within the District.

“**Governing Body**” means the City Commission of the City.

“**Invoice Schedule**” means list of Project Costs included with a Voucher for which the Developer seeks reimbursement from the CID Sales Tax Fund.

“**Mayor**” means the duly elected and acting Mayor, or in the Mayor's absence, the duly appointed and/or elected Vice Mayor or Acting Mayor of the City.

“**Notice Address**” means with respect to the following entities:

(a) To the City at:

City of Dodge City, Kansas  
City Hall  
806 2nd Avenue, P.O. Box 880  
Dodge City, Kansas 67801  
Attn: City Manager  
Email: [nickh@dodgecity.org](mailto:nickh@dodgecity.org)

(b) To the Developer at:

Wild Pines Washes – Dodge City, LLC  
107 Layton Street, Suite A  
Dodge City, Kansas 67801  
Attn: Tamara L. Davis  
Email: [tdavis@wildpinesventures.com](mailto:tdavis@wildpinesventures.com)

With a copy to Developer’s Counsel:

Barber Emerson, L.C.  
1211 Massachusetts Street  
P.O. Box 667  
Lawrence, Kansas 66044  
Attn: Matthew S. Gough, Esq.  
Email: [mgough@barberemerson.com](mailto:mgough@barberemerson.com)

“**Notice Representative**” means:

- (a) With respect to the City, the City Manager with a copy to the City Clerk and City Attorney.
- (b) With respect to the Developer, the Developer Representative, with a copy to Developer’s Counsel.

“**Ordinance**” means Ordinance No. [\_\_\_\_] passed by the Governing Body of the City authorizing the creation of the District, as amended from time to time.

“**Parties**” means, collectively, the City and the Developer.

“**Petition**” means the Petition for the Creation of a Community Improvement District, signed by the Developer and filed with the City Clerk on February 14, 2023.

“**Project**” means the project generally described on *Exhibit C* hereto, as may be modified from time to time by the Parties.

“**Project Costs**” means the costs and expenses of the Project, to the extent the same are “costs,” as described in K.S.A. 12-6a27(f), as amended, and as generally set forth on *Exhibit C*.

“**Reimbursable Project Costs Cap**” means \$1,000,000.00.

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

“**Voucher**” means a request for payment in substantially the form attached to this Agreement as *Exhibit D*.

**Section 2. District Formation and Purpose.** The Developer has filed the Petition with the City Clerk requesting the creation of the District. The Developer certified therein that on the date of the Petition the Developer, the Trust and Wash Partners were, collectively, the owners of all of the land area proposed to be within the boundaries of the District. The Governing Body has, in accordance with the provisions of the Act, adopted a resolution calling and providing for notice of a public hearing on the advisability of creating the District. The City Clerk has provided for publication of such resolution and dissemination of notice of such public hearing in accordance with provisions of the Act. At the conclusion of the public hearing, the Governing Body will consider passage of the Ordinance creating the District, the passage and publication thereof to be a prerequisite to the execution of this Agreement.

The purpose of creating the District is to provide the Developer with an economic incentive to undertake the Project and to provide for further economic development of the City. The purpose of this Agreement is to outline the rights, duties and obligations of the Parties as they relate to the District and to provide for the reimbursement to the Developer of the Eligible Costs, but solely from the proceeds of the CID Sales Tax.

**Section 3. Representations of the Parties.**

A. The City is a municipal corporation and a city of the third class organized under the laws of the State. The City is authorized pursuant to the Act to create the District, levy the CID Sales Tax, to enter into this Agreement and to perform the duties and obligations of the City contained herein. The Governing Body has taken all requisite action to pass the Ordinance, which authorizes the execution of this Agreement, creates the District and levies the CID Sales Tax. The Agreement constitutes a valid and binding obligation of the City in accordance with its terms.

B. The Developer is a Kansas limited liability company, duly qualified to do business in the State. Throughout the term of this Agreement, the Developer agrees to maintain its status as such an entity, in good standing and authorized to do business in the State. The Developer has taken all requisite action under its organizational documents to authorize the execution of this Agreement and to perform the duties and obligations of the Developer contained herein. The Agreement constitutes a valid and binding obligation of the Developer in accordance with its terms.

**Section 4. Project Costs, City Expenses and Administration of CID Sales Tax.**

A. **Project Costs.** A description of the scope of the Project and Project Costs, as estimated and submitted by the Developer, are set forth on *Exhibit C* attached hereto. The Developer represents that each of such costs is an Eligible Cost, and City agrees that such costs are Eligible Costs to the furthest extent permitted by the Act. The City expressly agrees that the Project Costs set forth on *Exhibit C* have been incurred prior to the date that the Petition was filed. In no event shall legal fees incurred by the Developer be considered for payment or reimbursement pursuant to this Agreement. The Parties agree that the amounts of the Project Costs and Eligible Costs may be adjusted among any of the stated categories, except as provided herein, and additional Project Costs not specifically listed on *Exhibit C* may be eligible for payment or reimbursement, provided the total Eligible Costs reimbursed to the Developer under this Agreement do not exceed the Reimbursable Project Costs Cap.

The Project Costs will be paid by or on behalf of the Developer as a Pay-As-You-Go-Financing under the Act. The City will not use any City funds (other than proceeds of the CID Sales Tax) for the payment of any Project Costs and will not provide any financing therefor, including the issuance of any bonds. Project Costs incurred by the Developer, and eligible for reimbursement hereunder, will be paid

by the City to the Developer solely and only from proceeds of CID Sales Tax actually received by the City from the Department of Revenue, in accordance with *Section 4.C* of this Agreement.

**B. *City Expenses for CID Establishment.***

1. The City shall retain outside administrative and professional staff, outside counsel and consultants, and incur expenses which it, in its reasonable discretion, deems necessary to:

a. Consider the establishment of a CID in accordance with the provisions of the CID Act, give all notices, make all publications, hold all hearings as required by the CID Act and prepare any required resolutions or ordinances to establish the CID; and

b. Prepare this Agreement.

2. The Developer shall be responsible for and pay the reasonable City out-of-pocket expenses in connection with the establishment of the CID and preparation of this Agreement, including (a) all charges for the City Attorney, the City's outside counsel and consultants; and (b) all other out-of-pocket expenses incurred by the City, including, but not limited to, publication and notice expenses. Such expenses shall be due and payable within 30 days after receipt of notice of such expense is received by the Developer, along with reasonably supportive documentation evidencing the same. The amount of such expenses paid by the Developer shall be deducted from the initial Administrative Fee paid to the City pursuant to the provisions of *Section 4.C.3* of this Agreement; provided however, that notwithstanding any provision herein to the contrary, any such expenses not timely paid by the Developer shall, upon notice to the Developer, be paid from CID Sales Tax prior to disbursement of CID Sales Tax to the Developer pursuant to *Section 5* of this Agreement.

**C. *Administration of CID Sales Tax.***

1. Subject to and as specified by the terms and conditions of this Agreement and the Act, the City agrees to perform or provide for the performance of the administration of the financing of the Eligible Costs pursuant to the Act and this Agreement. The City shall provide notification to the Department of Revenue to commence the collection and reporting of the CID Sales Tax within the District in accordance with the provisions of the Act. The City shall instruct the Department of Revenue to commence the imposition of the CID Sales Tax upon the written request of the Developer. The Parties acknowledge that the CID Sales Tax may only commence on January 1, April 1, July 1 or October 1 of any year, and that 90 days' notice must be given to the Department of Revenue before the CID Sales Tax may commence. The CID Sales Tax shall expire upon the earlier of (1) twenty-two (22) years from its commencement, or (2) upon receipt of sufficient CID Sales Tax revenues to pay all Project Costs, subject to the Reimbursable Project Costs Cap, the City Administrative Fee and any City expenses not paid by the Developer as provided in *Section 4.B.2* above.

2. Pursuant to the Act, the City shall establish the CID Sales Tax Fund as a segregated fund within the treasury of the City, which shall be held and administered by the City in trust for the benefit of the District in accordance with this Agreement. Revenues collected from the CID Sales Tax received by the City from the Department of Revenue shall be deposited in the CID Sales Tax Fund and shall not be commingled with any other funds of the City.

3. The City shall be entitled to withdraw the City Administrative Fee (i.e. an amount equal to 2% of the proceeds of CID Sales Tax) from each distribution of CID Sales Tax

received by the City from the Department of Revenue, as payment for the City's cost of administering the District, subject to the provisions of **Section 4.B.2** of this Agreement.

4. The Developer agrees to make reasonable effort to cause all assignees, purchasers, tenants, subtenants or any other entity acquiring property or occupancy rights in the District to provide to the City a consent to release information regarding aggregate CID Sales Tax generated within the District to the Developer, any trustee or escrow agent appointed by the City with respect to the CID Sales Tax revenues, and the City's accountants, financial advisors and legal counsel.

5. Except as provided in this Agreement and to the extent it may legally do so, information obtained pursuant to this Section shall be kept confidential by the City in accordance with K.S.A. 79-3234 and 79-3657. In furtherance of maintaining the confidentiality of the information provided in this section, the City shall take all reasonable steps necessary to ensure that such information is kept confidential.

**Section 5. Reimbursement Procedures.** Reimbursement of Project Costs is conditioned upon the following:

A. The Developer shall submit to the City Manager a voucher and invoice schedule (in substantially the form attached to this Agreement as **Exhibit D**, each a "Voucher" and "Invoice Schedule," respectively) signed by an officer of the Developer, with supporting documentation identifying the Project Costs for which the Developer seeks reimbursement. The supporting documentation shall be a description of the item billed, a reference to which type of Project Cost the expense applies to under the Act, copies of invoices reflecting amounts billed, copies of checks, evidence of wire transfer or other payment of cash by the Developer for the Project Costs, lien waivers or other evidence that no mechanic's liens exist with respect to the construction of the Project for which reimbursement is sought, and such other documentation as the City shall reasonably request.

B. Each request for reimbursement shall be accompanied by a Voucher and Invoice Schedule, as contemplated above, certified by an officer of the Developer that (1) each Project Cost submitted for reimbursement is an Eligible Cost, (2) such expense has been incurred by the Developer, and (3) such expense has not been previously submitted for reimbursement hereunder.

C. The City Manager shall determine whether the Project Cost submitted for reimbursement is an Eligible Cost within thirty (30) days of the date the Voucher and Invoice Schedule is received by the City. If the City Manager needs additional information or clarification to determine if an invoice reflected on the Invoice Schedule is an Eligible Cost, the City Manager shall notify the Developer Representative within such thirty-day period and specify the additional information needed while approving any other costs set forth on the Invoice Schedule as Eligible Costs subject to reimbursement hereunder. The procedures and time period for responding to any additional information received by the City shall be the same as the procedures and time period for responding to original requests for reimbursement. If the City Manager reasonably determines that any such cost is not an Eligible Cost, the City Manager shall notify the Developer Representative of such determination in writing within the 30-day review period, setting forth in detail the basis for such denial. The Developer may appeal such denial to the Governing Body by filing a written request with the City Clerk within ten (10) business days of the receipt of the written denial. The Governing Body shall consider the appeal and render a decision thereon within thirty (30) days of receipt of the appeal.

D. Subject to the further terms of this Agreement, if money is available in the CID Sales Tax Fund, after payment of the City Administrative Fee, the requested reimbursement shall be paid to the Developer within ten (10) business days of the approval by the City Manager or the Governing Body, if required.

E. Subject to the further terms of this Agreement, if the approved Voucher and Invoice Schedule for Eligible Costs reimbursement exceeds the amount then available in the CID Sales Tax Fund after payment of the City Administrative Fee, such Voucher or balance thereof shall be paid within ten (10) business days of receipt of sufficient CID Sales Tax revenues for deposit into the CID Sales Tax Fund. The City shall have no obligation to make any reimbursement payments to the Developer under this Agreement (1) so long as the Developer is in material default of any provision of this Agreement (subject, however, to any applicable cure period) or (2) after termination of this Agreement (but with such termination being subject to extension under *Section 14* below).

F. Notwithstanding any provision herein to the contrary, requests for disbursements from the CID Sales Tax Fund shall be made by the Developer no more frequently than quarterly and, except for the final disbursement, only if the amount to be disbursed to the Developer is in excess of \$5,000.

G. The Parties agree and acknowledge that the Project may be undertaken and completed by Developer in various phases and stages over time. Developer may request reimbursement of Eligible Costs at any time hereafter and during the course of each phase or stage of the Project, until termination of this Agreement.

H. As a condition precedent to disbursement of monies from the CID Sales Tax Fund, the Developer must be current on the payment of ad valorem property taxes within the City.

I. The Trust and Wash Partners acknowledge, consent and agree that all CID Sales Tax shall be paid to Developer pursuant to this Agreement, and waive any right to receive CID Sales Tax under this Agreement. The Trust and Wash Partners further assign to Developer all right to seek reimbursement for Eligible Costs incurred at any time by the Trust or Wash Partners, and City acknowledges and agrees that Eligible Costs incurred by the Trust or Wash Partners shall be attributable to and considered as expenses incurred by Developer for all purposes under this Agreement, to the fullest extent permitted by the Act and applicable law.

**Section 6. City and Other Governmental Permits.** Before beginning construction of any aspect of the Project, the Developer shall, at its expense, obtain or cause to be obtained any necessary permits or licenses which may be required by the City, Ford County or any other governmental agency having jurisdiction over the Project. The City agrees to provide all customary assistance and reasonable cooperation to the Developer in obtaining construction or other permits or licenses issued by the City.

**Section 7. Rights of Access.** For purposes of insuring compliance with this Agreement, representatives of the City, at the City's risk, shall have rights of access to the Facility, without charges or fees therefor, during normal business hours during the period of Project construction and upon reasonable advance notice, to inspect work performed or being performed in the construction of the Project. City representatives exercising City's right hereunder shall carry proper identification, insure their own safety, comply with any reasonable safety or other measures required by the Developer or its contractor, and shall not interfere with construction activity unless such activity is apparently in violation of this Agreement, City codes, state or federal regulations, statutes or other law. The right of access granted by this Section shall be in addition to the City's rights to access the Facility in the exercise of its proper authority to regulate for and provide for public safety.

**Section 8. Construction of Facility; Completion of Project.** The City acknowledges and agrees that construction of the Project is complete in all material respects.

**Section 9. Local, State and Federal Laws.** The Developer agrees to abide by, and the Facility and Project shall be completed in conformity with, all applicable federal, state and local laws and regulations.

**Section 10. Default and Remedies.**

A. The failure or delay by either of the Parties to this Agreement to perform any term or provision of this Agreement required of such Party, shall constitute an event of default under this Agreement, subject to notice thereof and rights of cure, as specified below.

B. Notice of an event of default shall be given by the Party claiming such default to the other Party and shall contain the basis of the claimed default.

C. No legal proceedings against the claimed defaulting Party shall be instituted nor shall the claiming Party be entitled to damages or any other remedy if, within thirty (30) days from the receipt of a notice of claimed default, the claimed defaulting Party undertakes acts to cure, correct or remedy such claimed default, proceeds with due diligence to complete such cure, correction or remedy and such cure correction or remedy is completed within thirty (30) days of the date such claimed defaulting Party received a notice of default. If the Party claimed to be in default cannot reasonably cure such claimed default within thirty (30) days, the claimed defaulting Party shall notify the other Party of such assertion with a proposed date to complete the cure; and default shall be suspended if the claimed defaulting Party commences curing the default within thirty (30) days after receipt of written notice thereof and diligently prosecutes the cure to completion within the time period set forth in notice to the Party claiming the default.

D. In the event the defaulting Party does not cure the event of default as set forth in this Section, the non-defaulting Party shall have the right to:

1. by mandamus or other suit, action or proceedings at law or in equity to enforce the rights of the non-defaulting Party against the defaulting Party and to require and compel duties and obligations required by the provisions of the Agreement or by the laws of the State;
2. by suit, action or other proceedings in equity or at law to enjoin any acts or things which may be a default hereunder, unlawful or in violation of the rights of the non-defaulting Party;
3. terminate this Agreement, upon written notice; or
4. take such other action as may be permitted under the laws of the State, including without limitation, seeking damages.

E. In addition to the remedies set forth in *Section 10.D* above and to the extent lawful, the substantially prevailing Party in any legal action taken under said *Section 10.D* shall be entitled to recover from the other Party its reasonable attorneys' fees and costs incurred in any such legal action.

**Section 11. Governing Law, Jurisdiction.** This Agreement shall be governed by, interpreted and enforced pursuant to the laws of the State. The Parties agree that any legal actions arising out of this Agreement will be instituted in the District Court of Ford County, Kansas or, in the case of federal jurisdiction, in the Federal District Court for the District of Kansas.

**Section 12. Rights and Remedies Cumulative, Waivers.** Except as otherwise expressly provided in this Agreement, the rights and remedies of the Parties shall be cumulative, and the exercise by one party of one or more such rights shall not preclude the exercise by it, at the same or different times, of any other rights or remedies specified herein. Any failure or delay by either party in asserting any of its rights and remedies as to any default hereunder shall not operate as a waiver of such default or of any

rights or remedies specified hereunder, or deprive either party of its right to assert and enforce any such right or remedy.

**Section 13. Amendments.** The Developer and the City agree to cooperate and consider reasonable requests for amendments to this Agreement, provided that, any such amendments must be approved by the Governing Body and the Developer, shall be in writing signed by both Parties, and shall not cause the Agreement to be in violation of the Act.

**Section 14. Term.** This Agreement shall commence on the Effective Date and, unless terminated sooner as provided herein, shall terminate at such time as the CID Sales Tax is no longer in effect; provided the termination date shall be extended until such time as the City has paid all Eligible Cost reimbursements to the Developer from funds on deposit or to be deposited in the CID Sales Tax Fund; and provided further that in no event shall the Agreement extend beyond 22 years after the commencement of the collection of the CID Sales Tax.

**Section 15. Transfer and Assignment.** The Developer may assign this Agreement and the rights, duties and obligations hereunder with the prior written consent of the City. The Developer may assign or pledge its rights to payments due to the Developer pursuant to *Section 5* of this Agreement upon written notice to the City, including a copy of any agreement evidencing such assignment or pledge to such third party.

Any assignment of the right to receive payments shall include a provision that the assigned right is limited solely to the right to receive uncontested reimbursements under the Agreement and does not include an assignment of any other rights under the Agreement including, but not limited to, the right to contest the determination of the City of the eligibility of Project Costs submitted to the City for reimbursement pursuant to *Section 5* of this Agreement or the right of the City to terminate this Agreement pursuant to *Section 10* of this Agreement.

**Section 16. Notices, Demands, Communications Among Parties.** Any notice, request, complaint, demand or other communication required or desired to be given or filed under this Agreement shall be in writing, given to the Notice Representative at the Notice Address and shall be deemed duly given or filed if the same shall be: (a) duly mailed by registered or certified mail, postage prepaid; or (b) communicated via fax, with electronic or telephonic confirmation of receipt. The Parties may from time to time designate, by notice given hereunder to the others of such Parties, such other address to which subsequent notices, certificates or other communications shall be sent. All notices given by: (1) certified or registered mail as aforesaid shall be deemed duly given three (3) business days after the date they are so mailed; and (2) fax as aforesaid shall be deemed duly given as of the date of confirmation of receipt.

**Section 17. Entire Agreement.** This Agreement shall be executed in duplicate originals, each of which shall be considered an original. This Agreement, including the Exhibits hereto constitutes the entire agreement and understanding of the Parties in regard to the subject matter hereof. This Agreement supersedes all negotiations or previous agreements between the Parties or their predecessors in interest with respect to all of any part of the subject matter of this Agreement.

**Section 18. Electronic Transactions.** The transactions related hereto and described herein may be conducted and documents may be stored and executed by electronic means.

**Section 19. Severability.** The invalidity or inability to enforce any one or more phrases, sentences, clauses or sections of this Agreement shall not affect the validity or enforceability of the remaining portions of this Agreement.

**Section 20. No Liability of City or Developer Officials or Employees.** All liabilities under this Agreement on the part of the City or the Developer are solely corporate liabilities of the City or the Developer, as applicable, and no officer, shareholder, employee, or agent of the City or the Developer shall have any personal or individual liability under this Agreement for anything done or omitted to be done by the City or the Developer hereunder.

[BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK]

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed as the dates set forth opposite the signatures and represent that the individuals executing this Agreement on behalf of the Parties have the express authority to do so.

**CITY OF DODGE CITY, KANSAS**

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

(SEAL)

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Clerk

**WILD PINES WASHES – DODGE CITY, LLC,**  
a Kansas limited liability company

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK]

**IN WITNESS WHEREOF**, the Trust and Wash Partners do hereby join in and consent to the terms of this Agreement, have caused this Agreement to be executed as the dates set forth opposite the signatures and represent that the individuals executing this Agreement on behalf of the Parties have the express authority to do so.

**WASH PARTNERS, LLC,**  
a North Dakota limited liability company

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**THE LARRY L. NOLLER IRREVOCABLE TRUST**  
under Agreement dated October 19, 2021

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

By: \_\_\_\_\_  
Name: Larry L. Noller  
Title: Co-Trustee

By: \_\_\_\_\_  
Name: Tamara L. Davis  
Title: Co-Trustee

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## **INDEX OF EXHIBITS**

<i>Exhibit A</i>	<b>Legal Description of the District</b>
<i>Exhibit B</i>	<b>Map of the District</b>
<i>Exhibit C</i>	<b>Project Description, Budget and List of Eligible Reimbursable Expenses</b>
<i>Exhibit D</i>	<b>Form of Reimbursement Voucher and Invoice Schedule</b>

***EXHIBIT A***

**LEGAL DESCRIPTION OF DISTRICT**

LOT TWO (2), FINAL PLAT 14<sup>TH</sup> AND SOULE SUBDIVISION, UNIT TWO (2), AN ADDITION TO THE CITY OF DODGE CITY, FORD COUNTY, KANSAS, ACCORDING TO THE RECORDED PLAT THEREOF.

***EXHIBIT B***  
**MAP OF DISTRICT**



**EXHIBIT C**

**PROJECT DESCRIPTION, PROJECT BUDGET AND  
LIST OF ELIGIBLE REIMBURSABLE EXPENSES**

**Project Description:** The general nature of the CID Project is to acquire, construct, equip, develop and otherwise procure certain improvements known collectively as Tommy's Express Car Wash within the District, including, but not limited to, land acquisition, infrastructure related items, parking lots, buildings, equipment, tenant improvements, utilities, landscaping, lighting, signage, soft costs of the District Project, and the City and petitioner's administrative costs in establishing and maintaining the CID, and any other items permitted to be financed within the District under the Act

**Project Budget:**

<i>Category</i>	<i>Estimated Cost*</i>
Site Design/Entitlements	\$92,339.42
Architectural Drawings	\$50,000.00
Land Cost**	n/a**
Building and Site Work Cost	\$4,030,533.69
Construction Management	\$355,000.00
Equipment Costs	<u>\$1,611,963.93</u>
<b>Total</b>	<b><u>\$6,139,837.04</u></b>

\* Note that the City shall not reimburse Eligible Costs in an amount greater than \$1,000,000.00.

\*\* If any of the Eligible Costs described above are determined to be ineligible pursuant to the Act, Developer may certify for reimbursement Developer's actual cost to purchase or acquire title to the Project (including land, improvements, fixtures, machinery and equipment located in the District), from the Trust or Wash Partners, and such costs shall be Eligible Costs under this Agreement, unless such expenses are duplicative to Eligible Costs previously approved and eligible for reimbursement under this Agreement.

**EXHIBIT D**

**VOUCHER FOR REIMBURSEMENT OF ELIGIBLE PROJECT COSTS**

City of Dodge City, Kansas  
Attention: City Manager

You are hereby requested by the undersigned, as Manager of Wild Pines Washes, LLC, a Kansas limited liability company (the “Developer”), acting on behalf of the Developer, to disburse funds held by the City in the Tommy’s Express Car Wash Community Improvement District Sales Tax Fund created pursuant the authority in K.S.A. 12-6a26 *et seq.* and set forth in the Development Agreement Between the City of Dodge City, Kansas and the Developer dated [March 20, 2023] (the “Agreement”) to reimburse expenditures made by the Developer for Project Costs (as defined in the Agreement) as described on and in the amounts set forth in the schedules attached to this Voucher and incorporated herein by this reference (the “Schedules”).

I hereby certify that the amounts requested in the attached Schedules have been paid by the Developer in payment of Project Costs that are Eligible Costs, as defined in the Agreement.

I further certify that no part of the amounts set forth in the Schedules have been the basis for any previous withdrawal of any moneys from the Tommy’s Express Car Wash Community Improvement District Sales Tax Fund.

Attached hereto is a description of the nature of the item billed, a reference to which type of Project Cost the expense applies to under the Act, and a copy of the contract, invoice or other billing for the Project Costs for which Developer seeks reimbursement, along with copies of checks, evidence of wire transfers or other evidence of payment by the Developer of such Project Costs, all of which are originals or true and accurate copies of the original documents.

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

**WILD PINES WASHES – DODGE CITY, LLC,**  
a Kansas limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Invoice Reimbursement Schedule**

Pursuant *Section 5* of the Agreement, I hereby request reimbursement of the amounts specified below and I certify that the description of the purchase or nature of each payment is reasonable, accurate and complete and that Developer has previously paid such Project Costs:

	<b>Payee Name</b>	<b>Date of Payment</b>	<b>Purpose or Nature of Payment</b>	<b>Amount</b>
1.	_____	____/____/20____	_____	\$_____
2.	_____	____/____/20____	_____	\$_____
3.	_____	____/____/20____	_____	\$_____
4.	_____	____/____/20____	_____	\$_____
5.	_____	____/____/20____	_____	\$_____
6.	_____	____/____/20____	_____	\$_____
7.	_____	____/____/20____	_____	\$_____
8.	_____	____/____/20____	_____	\$_____
9.	_____	____/____/20____	_____	\$_____
10.	_____	____/____/20____	_____	\$_____

Total Expenses \$\_\_\_\_\_

\_\_\_\_\_  
Developer Representative Signature

*Note: Copies of bills, contracts, checks and other evidence reflecting the amounts shown above (as described in **Section 5** of the Agreement) should be attached to this Schedule.*



# Memorandum

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

**From:** Nicole May, Finance Director

**Date:** March 14, 2023

**Subject:** Ordinance No. 3792 – Approving the Termination of the Scooters-Wyatt Earp CID

**Agenda Item:** Ordinances and Resolutions

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**Purpose:** The Scooters location located within the Scooters-Wyatt Earp CID has sold and the owner does not wish to continue the CID.

**Recommendation:** I recommend the City Commission adopt Ordinance No. 3792 approving the Termination of the Scooters-Wyatt Earp CID.

**Background:** Resolution 2020-01 was adopted on February 17, 2020 directing a public hearing be held regarding establishing the Scooters-Wyatt Earp CID. Ordinance 3729 was passed on March 16, 2020 creating the District and authorizing the levy of a 2% CID sales tax which began on July 1, 2020. The property has been sold and the new owner does not wish to continue the CID. By adopting Ordinance 3792, the CID will be terminated and the additional 2% sales tax will cease to be collected from this District.

**City Commission Options:**

1. Approve Ordinance
2. Disapprove Ordinance
3. Table for further discussion

**Financial Considerations:**

Amount \$: 0

Fund:                      Dept:                      Expense Code:

Budgeted Expense     Grant             Bonds             Other

**Legal Considerations:** All legal considerations are being met with the adoption of the ordinance. The ordinance will be forwarded to the Director of Taxation for the State of Kansas

**Mission/Values:** We value progress and business growth for the community.

**Attachments:** Ordinance No. 3792

**Approved for the Agenda by:**

Nicole May

**Nicole May, Finance Director**

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(Published in the *Dodge City Daily Globe* on March \_\_\_\_, 2023)

**ORDINANCE NO. 3792**

**AN ORDINANCE OF THE CITY OF DODGE CITY, KANSAS, APPROVING  
THE TERMINATION OF THE SCOOTERS-WYATT EARP CID; AND  
AUTHORIZING ACTIONS RELATING THERETO.**

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**WHEREAS**, the City of Dodge City, Kansas (the “City”) is a municipal corporation duly organized and validly existing under the laws of the State of Kansas (the “State”) as a city of the first class; and

**WHEREAS**, on January 21, 2020, pursuant to K.S.A. 12-6a26 *et seq.* (the “Act”), a petition (the “Petition”) was filed with the City Clerk requesting (a) that the community improvement district described therein and known as the “Scooters-Wyatt Earp CID” (the “District”) be created; (b) that the City levy a community improvement district sales tax on the selling of tangible personal property at retail or rendering or furnishing services taxable pursuant to the provisions of the Kansas retailer's sales tax act, within the District in the amount of two percent (2%) (the “CID Sales Tax”); and (c) that certain community improvement district project costs to be incurred within the District be financed with pay-as-you-go financing from such CID Sales Tax, all in accordance-with the Act; and

**WHEREAS**, on February 17, 2020, the City adopted Resolution No. 2020-01 directing a public hearing on the proposed District be held and declaring its intent to levy the CID Sales Tax in the proposed District, and following proper notice as provided in the Act, the City held a public hearing on the proposed District, the proposed community improvement district project and the imposition of the CID Sales Tax in the proposed District; and

**WHEREAS**, following the conclusion of the public hearing, on March 16, 2020, the City passed Ordinance No. 3729 which created the requested District and authorized the levy of the CID Sales Tax in the amount of two percent (2%), the collection of which began on July 1, 2020; and

**WHEREAS**, the property constituting the District has sold, and the new owner thereof (the “Owner”), who owns 100% of both the land area within the District and the assessed value of the land area within the District, has requested the termination of the District and the collection of the CID Sales Tax, effective July 1, 2023 or as soon thereafter as permitted by law; and

**WHEREAS**, the City desires to terminate the District and the collection of the CID Sales Tax.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF DODGE CITY, KANSAS, AS FOLLOWS:**

**Section 1. Termination of the District.** The governing body of the City hereby finds and determines that based upon the request of the Owner, the District and the collection of the CID Sales Tax are terminated effective as of July 1, 2023, or as soon thereafter as permitted by law. City officials are hereby directed to take such action and give notice to the Kansas Department of Revenue in connection with such termination prior to April 1, 2023. A legal description of the property within the District is set forth in *Exhibit A* attached hereto and incorporated by reference. A map generally outlining the boundaries of the District is attached hereto as *Exhibit B* and incorporated herein by reference.

**Section 2. Further Authority.** The City shall, and the officers, employees and agents of the City, including Gilmore & Bell, P.C., the City's bond counsel, are hereby authorized and directed to, take such action, expend such funds and execute such other documents, certificates and instruments, as may be necessary or desirable to carry out and comply with the intent of this Ordinance and to carry out, comply with and perform the duties of the City with respect thereto.

**Section 3. Effective Date.** This Ordinance shall take effect from and after its passage by the City, and its publication once in the official newspaper of the City.

[BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK]

**PASSED** by the City Commission on March 20, 2023, and **SIGNED** by the Mayor.

(SEAL)

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Mayor

ATTEST:

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Clerk

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**CERTIFICATE**

I hereby certify that the foregoing is a true and correct copy of the original ordinance; that said Ordinance was passed on March 20, 2023; that the record of the final vote on its passage is found on page \_\_\_\_ of journal \_\_\_\_; and that the Ordinance or a summary thereof was published in the *Dodge City Daily Globe* on March \_\_\_\_, 2023.

DATED: March \_\_\_\_, 2023.

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Clerk

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***EXHIBIT A***

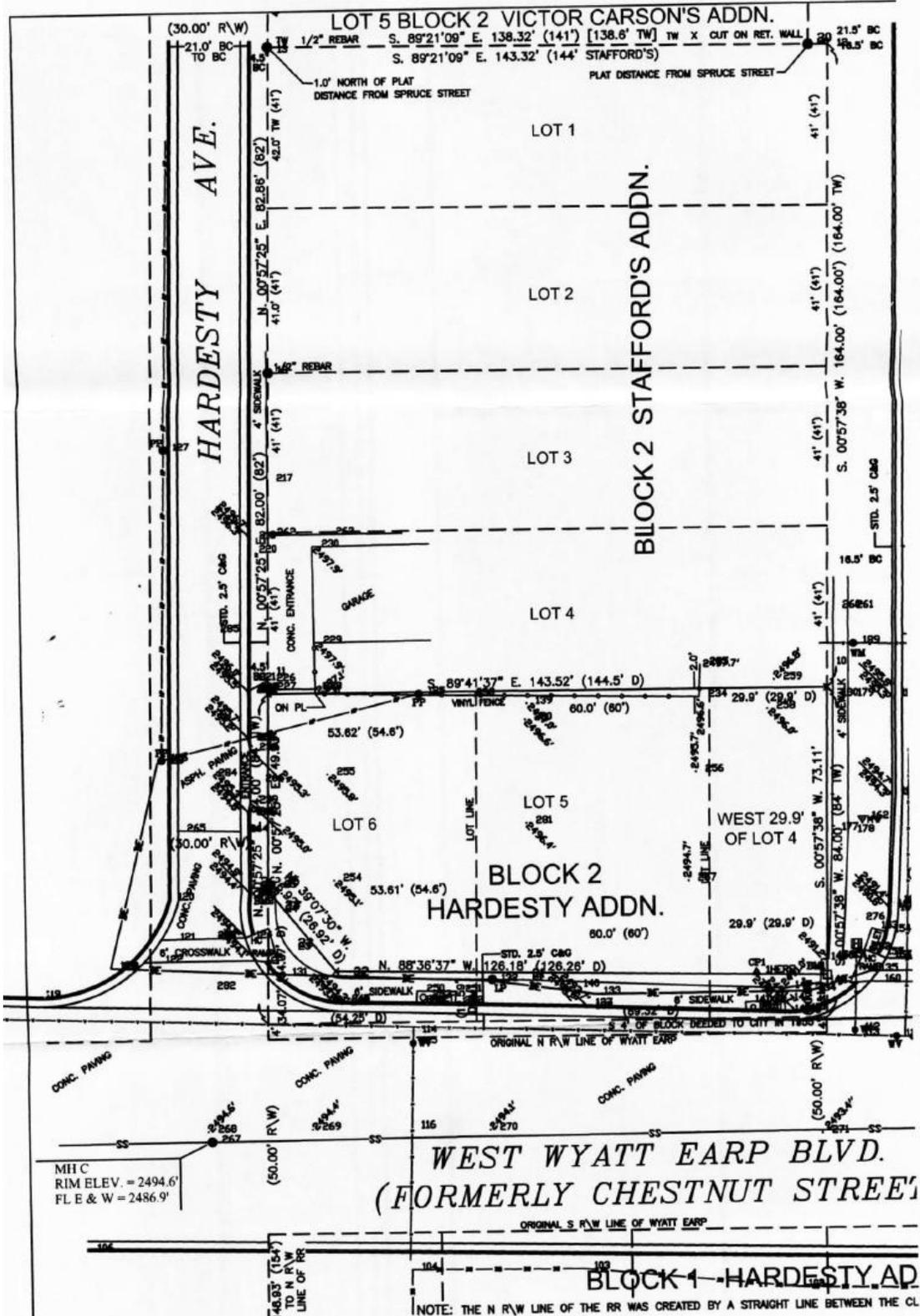
**LEGAL DESCRIPTION OF THE DISTRICT**

***904 West Wyatt Earp Blvd.***

The West 29.9' of Lot 4, All of Lot 5 and Lot 6, Block 2, Hardesty Addn., Dodge City, Kansas except additional R/W for Wyatt Earp Blvd.

EXHIBIT B

MAP OF THE DISTRICT





# Memorandum

**To:** City Manager, City Commissioners  
**From:** Mollea Wainscott, Assistant Director of Economic Development  
**Date:** 03/20/2023  
**Subject:** RHID  
**Agenda Item:** Resolution 2023-10

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**Purpose:** To establish a date and time for a public hearing to approve a Development Plan for United Village.

**Recommendation:** Staff recommends adoption of Resolution 2023-10, which establishes a date and time for a public hearing as required by Kansas statute.

**Background:** In 2008, the City commissioned a Housing Needs Analysis, which reflected a critical shortage of housing available in the community. In 2009, the City Commission adopted a Resolution providing for several incentive programs in order to encourage housing development in the City. The Rural Housing Incentive District (RHID) was identified as one of those programs. The RHID has captured the attention of several developers, locally and statewide. In 2022, the City commissioned another Housing Needs Analysis taking into consideration the progress that had developed since the 2008 Analysis. The latest Analysis continued to reflect a major shortage of housing. The establishment of this RHID will provide an incentive needed to entice developers to and in our community.

**City Commission Options:**

1. Approve
2. Disapprove
3. Table for further discussion

**Financial Considerations:** None at this time. However, if utilized, the financial consideration would be dependent upon each independent development agreement.

**Legal Considerations:** None

**Mission/Values:** To provide adequate housing in order for the City to accommodate present and future growth.

**Attachments:** Resolution No. 2023-10

**Approved for the Agenda by:**

---

Name, Title

**RESOLUTION NO. 2023-10**

**A RESOLUTION OF THE GOVERNING BODY OF THE CITY OF DODGE CITY, KANSAS DETERMINING THAT THE CITY IS CONSIDERING ESTABLISHING A RURAL HOUSING INCENTIVE DISTRICT WITHIN THE CITY AND ADOPTING A PLAN FOR THE DEVELOPMENT OF HOUSING AND PUBLIC FACILITIES IN SUCH PROPOSED DISTRICT, ESTABLISHING THE DATE AND TIME OF A PUBLIC HEARING ON SUCH MATTER, AND PROVIDING FOR THE GIVING OF NOTICE OF SUCH PUBLIC HEARING. (UNITED VILLAGE)**

**WHEREAS**, K.S.A. 12-5241 et seq. (the “Act”) authorizes any city incorporated in accordance with the laws of the state of Kansas (the “State”) with a population of less than 60,000 located in a county with a population of less than 80,000, to designate rural housing incentive districts within such city; and

**WHEREAS**, prior to such designation the governing body of such city shall conduct a housing needs analysis to determine what, if any, housing needs exist within its community; and

**WHEREAS**, after conducting such analysis, the governing body of such city may adopt a resolution making certain findings regarding the establishment of a rural housing incentive district and providing the legal description of property to be contained therein; and

**WHEREAS**, after publishing such resolution, the governing body of such city shall send a copy thereof to the Secretary of Commerce of the State (the “Secretary”) requesting that the Secretary agree with the finding contained in such resolution; and

**WHEREAS**, if the Secretary agrees with such findings, such city may proceed with the establishment of a rural housing incentive district within such city and adopt a plan for the development or redevelopment of housing and public facilities in the proposed district; and

**WHEREAS**, the City of Dodge City, Kansas (the “City”) has an estimated population of 27,340, is located in Ford County, Kansas, which has an estimated population of 33,848, and therefore constitutes a city as said term is defined in the Act; and

**WHEREAS**, the Governing Body of the City has performed a Housing Needs Analysis dated 2022 (the “Needs Analysis”), a copy of which is on file in the office of the City Clerk; and

**WHEREAS**, the Governing Body of the City has heretofore adopted Resolution No. 2022-20 which made certain findings relating to the need for financial incentives relating to the construction of quality housing within the City, declared it advisable to establish a Rural Housing Incentive District pursuant to the Act and authorized the submission of such Resolution and a Housing Needs Analysis to the Kansas Department of Commerce in accordance with the provisions of the Act; and

**WHEREAS**, the City has caused to be prepared a plan for the development or redevelopment of housing and public facilities in the District in accordance with the provisions of the Act (the “Plan”); and

**WHEREAS**, the Plan includes:

1. The legal description and map required by subsection (a) of K.S.A. 12-5245;
2. The existing assessed valuation of the real estate in the proposed District listing the land and improvement values separately;
3. A list of the names and addresses of the owners of record of all real estate parcels within the proposed District;
4. A description of the housing and public facilities project or projects that are proposed to be constructed or improved in the proposed District, and the location thereof;
5. A listing of the names, addresses and specific interests in real estate in the proposed District of the developers responsible for development of the housing and public facilities in the proposed District;
6. The contractual assurances, if any, the Governing Body has received from such developer or developers, guaranteeing the financial feasibility of specific housing tax incentive projects in the proposed District;
7. A comprehensive analysis of the feasibility of providing housing tax incentives in the proposed District as provided in the Act, which shows the public benefits derived from such District will exceed the costs and that the income therefrom, together with all public and private sources of funding, will be sufficient to pay for the public improvements that may be undertaken in such District; and

**WHEREAS**, the Governing Body of the City proposes to continue proceedings necessary to create a Rural Housing Incentive District, in accordance with the provisions of the Act, and adopt the Plan, by the calling of a public hearing on such matters.

**THEREFORE, BE IT RESOLVED** by the Governing Body of the City of Dodge City, Kansas as follows:

**Section 1. Proposed Rural Housing Incentive District.** The Governing Body hereby declares an intent to establish within the City a Rural Housing Incentive District. The District is proposed to be formed within the boundaries of the real estate legally described in *Exhibit A* attached hereto, and shown on the map depicting the existing parcels of land attached hereto as *Exhibit B*. A list of the names and addresses of the owners of record of all real estate parcels within the proposed District and the existing assessed valuation of said real estate, listing the land and improvement values separately, is attached hereto as *Exhibit C*.

**Section 2. Proposed Plan.** The Governing Body hereby further declares an intent to adopt the Plan in substantially the form presented to the Governing Body that date. A copy of the Plan shall be filed in the office of the City Clerk and be available for public inspection during normal business hours. A description of the housing and public facilities projects that are proposed to be constructed or improved in the proposed District, and the location thereof are described in *Exhibit D* attached hereto. A summary of the contractual assurances by the developer and the comprehensive feasibility analysis is contained in *Exhibit E* attached hereto.

**Section 3. Public Hearing.** Notice is hereby given that a public hearing will be held by the Governing Body of the City to consider the establishment of the District and adoption of the Plan on May 1<sup>st</sup> 2023 at the City Commission Meeting Room, City Hall, 806 N. Second Avenue, Dodge City, Kansas 67801; the public hearing to commence at 7:00 p.m. or as soon thereafter as the Governing Body can hear the matter. At the public hearing, the Governing Body will receive public comment on such matters, and may, after the conclusion of such public hearing, consider the findings necessary for establishment of the District and adoption of the Plan, all pursuant to the Act.

**Section 4. Notice of Public Hearing.** The City Clerk is hereby authorized and directed to provide for notice of the public hearing by taking the following actions;

- a) A certified copy of this resolution shall be delivered to:
  - i) the Board of County Commissioners of Ford County, Kansas;
  - ii) the Board of Education of U.S.D. No. 443; and
  - iii) the Planning Commission of the City.
- b) This Resolution, specifically including *Exhibits A* thru *E* attached hereto, shall be published at least once in the official newspaper of the City not less than one week nor more than two weeks preceding the date of the public hearing.

**Section 5. Further Action.** The Mayor, City Manager, City Clerk and the officials and employees of the City, including the City Attorney, are hereby further authorized and directed to take such other actions as may be appropriate or desirable to accomplish the purposes of this Resolution.

**Section 6. Effective Date.** This Resolution shall take effect after its adoption by the Governing Body.

**ADOPTED** by the Governing Body of the City of Dodge City, Kansas, on March 20, 2023.

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Mayor

ATTEST:

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City Clerk

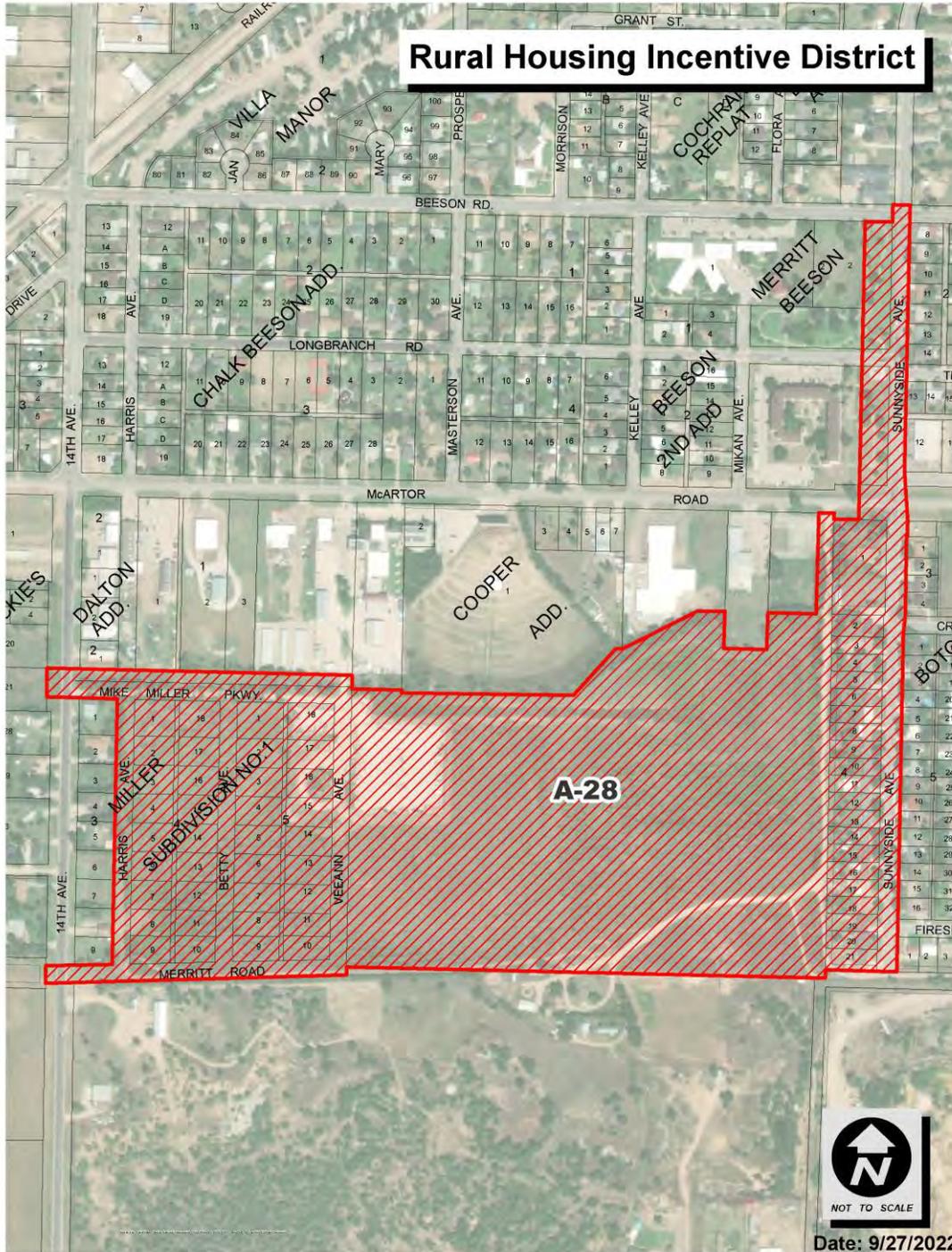
## ***EXHIBIT A***

### **LEGAL DESCRIPTION OF PROPOSED RURAL HOUSING IMPROVEMENT DISTRICT BOUNDARIES FOR UNITED VILLAGE PROJECT**

Beginning at the Northwest corner of Block 4, Boto Addition to the City of Dodge City, Kansas; Thence on an assumed bearing of N 0° 13' 56" W, on the extension of the West Line of Boto Addition, a distance of 20.25 feet to the South Right-of-way Line of McArtor Road; Thence on a bearing of S 89° 58' 18" W, along the South Line of McArtor Road, 52.54 feet; Thence on a bearing of S 0° 30' 43" W, 351.17 feet; Thence on a bearing of S 89° 58' 18" W, a distance of 165.50 feet; Thence on a bearing of S 0° 20' 49" W, a distance of 128.00 feet; Thence on a bearing of S 89° 58' 18" W, a distance of 150.00 feet; Thence on a bearing of N 0° 20' 49" E, a distance of 128.00 feet along; Thence on a bearing of S 89° 58' 18" W, a distance of 93.30 feet; Thence on a bearing of S 61° 37' 24" W, a distance of 292.71 feet; Thence on a bearing of N 0° 20' 49" E, a distance of 1.00 feet, said point being the Southeast Corner of Cooper Addition to the City of Dodge City, Ford County, Kansas; Thence on a bearing of N 89° 56' 11" W, a distance of 23.00 feet along the Southerly Line of said Cooper Addition; Thence on a bearing of S 40° 28' 43" W, a distance of 217.60 feet along the Southerly Line of said Cooper Addition; Thence on a bearing of S 89° 19' 04" W, a distance of 594.80 feet along the South Line of Cooper Addition to the Southwest Corner of said Cooper Addition; Thence on a bearing of N 0° 17' 31" E, a distance of 9.92 feet along the West Line of said Cooper Addition; Thence on a bearing of S 89° 56' 47" W, a distance of 167.07 feet to the East Line of Veeann Avenue, said line of Veeann Avenue being the East Line of Miller Subdivision No.1 to the City of Dodge City, Ford County, Kansas; Thence north along the East Line of Miller Subdivision No.1 to the North of platted drainage ditch; Thence west along the North Line of said drainage ditch extended to the West Right-of-way line of 14th Avenue; Thence south along the West Right-of-way of 14th Avenue to the extended South Right-of-way Line of Mike Miller Parkway; Thence east along the extended South Right-of-way Line of Mike Miller Parkway to Northeast corner of Block 3 Miller Subdivision No.1; Thence south along the East Line of Block 3 Miller Subdivision No.1 to the Southeast Corner thereof, being the North Right-of-way Line of Merritt Road; Thence west along the North Right-of-way Line of Merritt Road extended to the West Right-of-way Line of 14th Avenue; Thence south along the West Right-of-way Line of 14th Avenue to the extended South Right-of-way Line of Merritt Road; Thence east along the extended South Right-of-way Line of Merritt Road to the Southeast Corner of Miller Subdivision No.1; Thence north along the East Line Of Miller Subdivision No.1 to the South Line of the Northwest Quarter of Section 2, Township 27 South, Range 25 West; Thence east along the South Line of said Northwest Quarter of Section 2 to the West Line of Boto Addition; Thence north along the West Line of Boto Addition to the Southwest Corner of Block 4, Boto Addition; Thence east along the South Line of said Block 4, Boto Addition extended to the East Right-of-way Line of Sunnyside Avenue; Thence Northerly along the East Right-of-way Line of Sunnyside Avenue to the intersection of the East Right-of-way Line of Sunnyside Avenue and the North Right-of-way Line of Beeson Road; Thence west along the North Right-of-way Line of Beeson Road to the intersection of the North Right-of-way Line of Beeson Road and the West Right-of-way Line Sunnyside Avenue; Thence south along the West Right-of-way Sunnyside Avenue to the South Right-of-way Line of Beeson Road, being the Northeast Corner of Merritt Beeson Subdivision; Thence west along the North Line of Merritt Beeson Subdivision a distance of 95 feet to the Northeast Corner of Lot 2, Block 2, Merritt Beeson Subdivision; Thence south along the East Line of said Lot 2 to the Southeast Corner thereof; Thence continuing south parallel to the West Right-of-way Line of Sunnyside Avenue to the North Right-of-way Line of McArtor Road, being the North Line of Boto Addition; Thence west along the North Line of Boto Addition to the Northwest Corner thereof, and Point of Beginning.

**EXHIBIT B**

**MAP OF PROPOSED  
RURAL HOUSING IMPROVEMENT DISTRICT BOUNDARIES  
FOR UNITED VILLAGE PROJECT**



***EXHIBIT C***

**NAMES AND ADDRESSES OF THE OWNERS OF RECORD OF ALL REAL ESTATE PARCELS WITHIN THE PROPOSED RURAL HOUSING INCENTIVE DISTRICT AND THE EXISTING ASSESSED VALUATION OF SAID REAL ESTATE PARCELS**

Owner of Record:

Capital Development , LLC  
200 W. Beeson Road  
Dodge City, KS 67801

2022 Assessed Valuation:

Land: \$149,650  
Improvements: \$0 (vacant land)

## ***EXHIBIT D***

### **DESCRIPTION OF THE HOUSING AND PUBLIC FACILITIES PROJECT OR PROJECTS THAT ARE PROPOSED TO BE CONSTRUCTED OR IMPROVED IN THE PROPOSED RURAL HOUSING INCENTIVE DISTRICT**

#### ***Housing Facilities***

The housing facilities will be composed of one hundred and five (105) residences.

#### ***Public Facilities***

Public improvements will include the extension of water, sewer, gas, and electric distribution lines along the boundaries of the development. Public improvements will also include construction of infrastructure improvements located within the boundaries of the development, including water, sanitary sewer, storm sewer, storm water detention, streets and street lighting. The public improvements will be constructed as necessary to serve the Project as described above.

***EXHIBIT E***

**SUMMARY OF THE CONTRACTUAL ASSURANCES BY THE DEVELOPER  
AND OF THE COMPREHENSIVE FEASIBILITY ANALYSIS**

Contractual Assurances.

The Governing Body of the City of Dodge City will entered into a development agreement with Capital Development, LLC. This agreement, as supplemented and amended, includes the project construction schedule, a description of projects to be constructed, financial obligations of the developer and financial and administrative support from the City of Dodge City.

Feasibility Study.

The City will conducted a study to determine whether the public benefits derived from the District will exceed the costs and that the income from the District, together with other sources of revenue provided by the developer, would be sufficient to pay for the public improvements to be undertaken in the District prior to the approval of the Development Agreement. The analysis will estimate the property tax revenues that will be generated from the development, less existing property taxes to determine the revenue stream available to support the costs of the public infrastructure.



# Memorandum

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

**From:** Nicole May, Finance Director

**Date:** March 14, 2023

**Subject:** Resolution 2023-11

**Agenda Item:** Ordinances and Resolutions

---

**Purpose:** This Resolution is required to authorize the filing of an application for a Loan under the Kansas Water Pollution Control Revolving Fund Act.

**Recommendation:** I recommend the approval of Resolution No. 2023-01.

**Background:** At the February 20, 2023 Commission meeting a Public Meeting was held to present and discuss the wastewater treatment plant improvements. At the March 6, 2023 Commission meeting a Public Hearing was held regarding the funding of the wastewater treatment plant improvements with a low interest State Revolving Loan. There was no one from the public present at either the Public Meeting or the Public Hearing to discuss the improvements or funding. The improvements at the South Wastewater Treatment Plant will consist of the design, inspection and construction of an anerobic and aerobic lagoon along with two facultative lagoons. There will also be 3 large sewage pump stations constructed and approximately 10 miles of 16" force main to convey wastewater from the City and an Industrial Development to the existing wastewater treatment plan. Improvements to the existing biogas facility are also planned as part of the expansion. The estimated amount of the improvements is \$62,045,000.

**City Commission Options:**

1. Approve Resolution
2. Disapprove Resolution
3. Table for further discussion

**Financial Considerations:**

Amount \$: N/A

Fund: \_\_\_\_\_ Dept: \_\_\_\_\_ Expense Code: \_\_\_\_\_  
\_\_\_ Budgeted Expense \_\_\_ Grant \_\_\_ Bonds \_\_\_ Other

**Legal Considerations:** None

**Mission/Values:** To promote growth

**Attachments:** Resolution 2023-11 and Loan Application

**Approved for the Agenda by:**

\_\_\_\_\_  
**Nicole May, Finance Director**

**RESOLUTION NO. 2023-11**

Resolution authorizing filing of application with the Kansas Department of Health and Environment for a Loan under the Kansas Water Pollution Control Revolving Fund Act (K.S.A. 1988 Supp. 65-3321 through 65-3329).

**WHEREAS** under the terms of the Kansas Water Pollution Control Revolving Fund Act (K.S.A. 1988 Supp. 65-3321 through 65-3329), the State of Kansas has authorized the making of the loans to authorize applicants to aid in the construction of specific public projects,

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

**Section 1. Loan Application.** The Mayor and City Clerk of the City are hereby authorized to cause to be prepared and to execute a Loan Application, including all attachments thereto (jointly, the "Application"); in substantially the form presented to the Governing Body this date, in order to provide financing for the Project. The Application shall be forwarded to KDHE as soon as possible.

**Section 2. Further Proceedings.** The Mayor, City Clerk and the other officers and representatives of the City are hereby authorized and directed to take such other action as may be necessary to complete the Application and to coordinate processing of a loan agreement for the Loan (the "Loan Agreement"); provided that the authorization to execute the Loan Agreement shall be subject to further resolution of the Governing Body.

**Section 3. Further Authority.** This Resolution shall be in full force and effect from and after its adoption.

Adopted by the Governing Body of the City of Dodge City, Kansas on March 20, 2023.

(SEAL)

\_\_\_\_\_  
Mayor

ATTEST:

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



# Kansas Water Pollution Control Revolving Fund

## Loan Application

### Applicant Information

Municipality Name: City of Dodge City

Address: 806 N. 2nd Ave Dodge City KS 67801  
*Street City State Zip*

Contact Person Ray Slattery Director of Engineering Services  
*Name Title*

Contact Info 620-225-8106 rays@dodgecity.org  
*Phone No. Email*

DUNS No. 073316721 Congressional District of Municipality 1

Tax ID No. 48-6008416 Engineering Consultant Firm Professional Engineering Consultants (PEC)

Engineering Contact Name Nicole Franken

Engineering Contact Phone No. (316) 206-1343

Engineering Contact Email nicole.franken@pec1.com

Project Title: Dodge City South WWTP System Improvements for Industrial Flows

Project Description:

Upgrade the sanitary sewer pumping and treatment system serving the South Wastewater Treatment Plant to address aging infrastructure and serve new domestic and industrial wastewater from the Hilmar Cheese Factory (expected to being operations in 2024) and existing flows from Nation Beef Packing Company (NBP).

Specific Improvements:

- New primary lift station dedicated to NBP flows
- New intermediate lift station dedicated to domestic and industrial flows from NBP and Hilmar
- New lift station and force main infrastructure dedicated to Hilmar’s domestic and industrial wastes
- Expansion of the existing South Wastewater Treatment Plant (WWTP)
- Repair, replace, and modify existing components at the WWTP to address aging infrastructure

**Project Details**

**Estimated Project Costs**

Construction Cost	\$ 55,048,280.0000000000	Contingencies	\$ 1,618,620
Engineering Planning & Design	\$ 3,178,100	Administrative & Legal Costs	\$ 200,000
Construction Engineering & Inspection	\$ 2,000,000	Other	\$
		Total Project Cost	\$ 62,045,000

**List all anticipated funding sources which are intended to be utilized to complete this project:**

KDHE SRF Loan	\$ 62,045,000
Cash on Hand	\$ 0
Community Development Block Grant (CDBG)	\$ 0
USDA Rural Development Grant**	\$ 0
Other (U.S. Economic Development Administration (EDA) grant)	\$ 2,500,000
Total	\$ 59,545,000

Check if SRF loan will be interim financing (paid off when project is complete)

\*\* Do not include USDA Rural Development loan amounts if the SRF loan will be interim financing for the Rural Development loan

**Anticipated Project Schedule:**

	Date (month/year)
Notice of Public Meeting Issued	2/4/2023
Public Meeting Held	2/20/2023
Notice of Public Hearing Issued	2/4/2023
Public Hearing Held	3/6/2023
Environmental Review Letters Sent	12/30/2022 - 1/4/2023
Final Plans and Specifications submitted to KDHE	3/3/2023
Duration of Construction (in months)	580

**Number of Customers (connections) for the previous 3 years:**

Year	Residential	Commercial	Other	Total
2021	102,408.00	7,860	2,724	112,992
2020	102,276	8,136	2,772	113,184
2019	100,104	7,992	2,784	110,880

**If sewer charges are based (even in part) on volume of drinking water, complete the table for the Previous 3 Years**

Year	Total Gallons Billed for Calculating Sewer Rate
2021	476,490,600
2020	486,023,400
2019	450,475,800

**Valuations for Previous 3 Years (for Cities Only)**

Year	Assessed Valuation of Taxable Tangible Property (within City Limits)	Tangible Valuation of Motor Vehicles (within City Limits)	Total for Year
2021	\$ 172,244,092	\$ 1,128,086	\$ 173,372,178
2020	\$ 171,235,577	\$ 689,732	\$ 171,925,309
2019	\$ 167,035,530	\$ 671,728	\$ 167,707,258

**Attachments**

The following documents must be submitted for the application to be considered complete.

Document	Attached	Will be Submitted Separately
Preliminary Engineering Report/Facilities Plan	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Cost and Effectiveness Certification	<input checked="" type="checkbox"/>	<input type="checkbox"/>
List of Outstanding Debt Paid by Sewer Utility and Repayment Schedules	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Assurance of Public Participation Form	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Copy of Resolution Authorizing Application	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Copy of Outgoing Environmental Review Letters	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Copy of Environmental Review Responses	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**Attachments Continued**

The following documents must be submitted for the application to be considered complete.

Document	Attached	Will be Submitted Separately
EPA Form 6600-06(Certification Regarding Lobbying)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Copy of Sewer Use Ordinance	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Copy of User Charge System	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Copy of Capital Improvement Financing Plan	<input checked="" type="checkbox"/>	<input type="checkbox"/>
NPDES Permit Application (if applicable)	<input type="checkbox"/>	<input type="checkbox"/>

**Financial Capability Certification**

The application signature below will also certify that the municipality has the financial capability to repay a Kansas Water Pollution Control Reviving Fund loan and also has the capacity to cover the costs of operation and maintenance of the entire system of which the proposed project is an integral part.

**Signature**

I certify that I am authorized to sign this application on behalf of the governing body. To the best of my knowledge and belief, the data in this application is true and accurate.

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

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

Submit this application and all required attachments to:

KDHE/BOW  
 Attn: Kansas SRF Program  
 1000 SW Jackson St., Suite 420  
 Topeka, KS 66612-1367

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# PER Amendment Memorandum

Date: February 21, 2023  
To: Ryan Eldredge, P.E. and Cara C. Hendricks, P.E.  
From: Nicole Franken, P.E.  
Re: Dodge City Wastewater System Expansion  
PEC Project No. 35-210263-001-1009

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## 1. Background

A preliminary engineering report (PER) was prepared by Professional Engineering Consultants P.A. (PEC) for the City of Dodge City, Kansas (the City) in December 2021 for expansion of the wastewater collection and treatment system. The purpose of this memorandum is to modify the previously submitted PER to reflect updated design information. Since the City is planning to apply for a State Revolving Fund (SRF) loan, an updated PER and cost estimates are required to be submitted with the application packet.

The PER was submitted to the Kansas Department of Health and Environment (KDHE) on December 6, 2021 and supplemental information on the facultative cell loading rate was submitted on January 17, 2022. The KDHE responded with comments in a letter dated February 2, 2022. The City, PEC, and KDHE further discussed the proposed facultative cell loading rate and supplemental information was sent to the KDHE on February 15, 2022 as a follow up to the discussion. The supplemental information addressed revised surface area calculations to evaluate modified loading rates and included potential layouts for new facultative cells that would fit within property currently owned by the City and avoided existing irrigation water mains to ensure continued reuse of effluent from the South wastewater treatment plant (WWTP).

Based on the additional discussion and information submitted, the KDHE agreed to consider a maximum loading rate of 50 pounds (lbs) biological oxygen demand (BOD)/acre/day for the project. This consideration was contingent on efforts to maximize the space available on the City-owned property to the south of Facultative Cells 3 and 4 with efforts to achieve a loading rate less than 50 lbs BOD/acre/day. The KDHE specified that a formal variance request must be submitted to initiate a formal variance waiver process for approval. All correspondence and documentation regarding the modified loading rate is included in Attachment A.

The City is currently working with Burns & McDonnell (B&M) to determine the feasibility of, establish the framework for, and determine a basis for design of an aquifer recharge project. The City intends to move forward with an aquifer recharge project that will include a mechanical plant to further treat a

portion of the domestic and industrial wastewater and a lift station and forcemain to send the treated flow to the Arkansas River for discharge. Since the wastewater will be diverted to the mechanical plant prior to the facultative cells, the BOD loading into the facultative cells will be less than 50 lbs BOD/acre/day after the mechanical plant is in full operation. Further modeling is required to verify the long-term loading rate.

The SRF loan application and this PER amendment will exclude the aquifer recharge project since it is still in the conceptual design stage. An additional PER amendment will be prepared with the loan application for the aquifer recharge project.

## **2. Design Criteria Modifications**

During the interim operation prior to startup of the aquifer recharge mechanical plant, two new facultative cells (Cells 5 and 6) with a total of 89 water surface acres will be operational. Flow will also be sent to Facultative Cells 1 and 2 from Aerobic Cell 3 to maximize the amount of water surface acres utilized within the WWTP. The resulting loading will be approximately 49 lbs BOD/acre/day. To minimize construction costs for these temporary cells and to allow for the land to return to agricultural after the mechanical plant is constructed, the new facultative cells will be constructed at a lower elevation than the existing cells, will be a minimum of 13 feet deep (total depth), will have constructed clay liners on both the cell bottom and sidewalls, and will have pumps sending flow from Cell 6 to Cell 4 for irrigation.

Since the new facultative cells will be located adjacent to existing Facultative Cells 3 and 4 and flow will be pumped from proposed Cell 6 into Cell 4, no new permanent irrigation pump station or modifications to the existing pump station are anticipated. Additionally, since the number of irrigation pivots will not be expanded like originally anticipated, pressure issues are not expected to drive pumping modifications.

Facultative Cells 5 and 6 are anticipated to have approximately 175 million gallons (MG) and 230 MG of storage capacity, respectively, based on a minimum of 10-foot water depth at approximately 89 water surface acres. The combined storage capacity of all six facultative cells will exceed the six-month requirement mentioned in the PER.

The blowers in existing Gas Handling Buildings (GHB) 1 and 2 will be replaced and new rotary lobe blowers will be included in the new GHB 3. New blowers were required to achieve the increased output pressure needed (4-6 psi) to meet the required inlet pressure of the biogas treatment system and to accommodate pressure losses through a new chiller that will be installed as part of the project, a future hydrogen sulfide treatment system, and other minor losses within the system. Existing biogas piping from GHB 2 to the biogas treatment facility will be upsized to accommodate the higher flow rates.

### **3. Modifications to the Recommended Improvements**

Instead of modifying existing Control Structure 301 (inlet to Anerobic Cell 3), the new Hilmar forcemain and sidestream alkalinity feed forcemain from the sidestream pump station will be directly piped into the cell and terminate at approximately the same location with the flow directions crossing to facilitate mixing. As previously discussed, the new facultative cells will be a minimum of 13 feet deep (total depth) with a clay liner for both the bottom and sidewalls instead of concrete sidewalls like the current facultative cells. Seepage testing will be completed to ensure the clay liner meets the required 1/10 inch per day maximum seepage limit.

The new blowers will be similar to the existing rotary lobe blowers. Both existing GHB structures will be expanded to accommodate the footprint of the new blowers. A chiller and heat exchanger will be installed after GHB 3 to cool the industrial biogas to approximately 100 degree F. The existing flare will continue to serve GHB 2 in the event the biogas treatment system shuts down, and a new flare will be installed to serve GHB 3. New generators will be provided to serve GHB 2 and GHB 3.

Flow meters will be installed to measure the biogas flow prior to the blowers. Flow meters will be provided to measure the amount of biogas sent to the new flare, to measure the amount of biogas sent from GHB 2 to GHB 3, and the combined biogas flow from GHB 3 to the biogas treatment facility to be able to verify the amount of biogas sent to the flare for biogas credit reporting purposes.

The erosion behind Facultative Cell 1 sidewalls noted in the PER was addressed as part of a separate project that was completed in 2022.

### **4. Updated Cost Estimates**

The project has been divided into three design packages – Package 1 is the earthwork, Package 2 is the Hilmar forcemain, and Package 3 is the WWTP improvements including the lift stations. Originally the City planned to use a design-bid-build approach for Packages 1 and 2 but due to timing and the previously mentioned scope changes, Package 1 and Package 3 will both be completed using a design-build approach. The City approved a design-build contract with UCI for the Package 3 improvements with a guaranteed maximum price (GMP) total of \$37,303,500 including project allowances and alternates. The GMP included \$130,000 for pricing escalation allowance and a \$1,100,000 for contingency items.

The GMP did not include the chiller unit, heat exchanger, or the earthwork package (Package 1) including the facultative lagoon cells and associated piping and valving. These scope items will be added to the GMP after costing is completed. Additionally, the City would like to include the costs for engineering design and property/easement acquisition for all design packages in the loan application. Table 1 summarizes the anticipated costs for all three packages.

**Table 1 – Total Estimated Project Costs**

Design Package	Subtotal
Package 1 – Earthwork	\$6,000,000
Package 2 – Forcemains	\$11,805,400
Package 3 – WWTP/Lift Stations (GMP)	\$37,303,500
Package 3 - Additional Scope Items	\$1,558,000
Land Acquisition	\$200,000
Engineering Design	\$3,037,000
Inspection and Testing Services	\$1,800,000
<b>TOTAL PROJECT COSTS</b>	<b>\$61,703,900</b>

The Package 1 estimate includes the piping to the new cells and in between the cells, as well as isolation valves on each line. The costs shown for Land Acquisition are based on acquiring 50 acres at a cost of \$2,500 per acre. Additionally, the City hired a property acquisition consultant with a contract amount of \$75,000 which is included in this line item. The Engineering Design line item include PEC's total contracted amount to date for the design of the outlined improvements. The Package 3 Additional Scope items include the chiller and heat exchanger and the temporary pump setup at the facultative cells.

## 5. Updated Schedule

Design of Packages 1 and 3 is anticipated to be complete in February 2023. While the design of Package 2 was complete in November 2022, PEC is currently addressing KDHE comments and updating a portion of the alignment to avoid multiple crossing of the current Kansas Department of Transportation Highway 112 project. The earthwork construction is anticipated to start the beginning of March 2023. UCI anticipates starting construction on the Package 3 improvements in April 2023. Since land acquisition is required prior to bidding the Package 2 (forcemain) as a requirement of the Economic Development Grant covering a portion of the costs of the forcemain package, construction is not anticipated to begin on Package 2 until September 2023.

Hilmar has updated their construction schedule since the project started as well. Minimal testing water will be sent to the Hilmar lift station starting in January 2024. In order for the City to accept the testing water the Hilmar lift station and cross connection piping to send the flow to the WWTP through existing piping will need to be completed. Hilmar will start sending a portion of their process effluent in October 2024 and will ramp up to the full expected flow in January 2025. UCI is striving to have the National Beef wastewater switched over to the new treatment train by the end of 2023 to allow time for the improvements to the existing GHB 2 and Anaerobic Cell 3 which will require Anaerobic Cell 3 to be taken out of service.

# **Appendix A**

**KDHE Correspondence**

# Dodge City South Wastewater Treatment Facility (WWTF) Expansion

Date: January 7, 2022  
To: Mr. Ryan Eldridge, Water Permitting & Compliance Section – Municipal Programs  
Kansas Department of Health and Environment  
From: Nicole Franken, P.E., Professional Engineering Consultants, P.A.  
Re: Facultative Lagoon Loading Rate  
PEC Project No. 35-190768-001

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The City of Dodge City is expanding their South WWTF to accommodate domestic and process wastewater from a new industrial facility (Hilmar's cheese plant). The anticipated improvements for the expansion are outlined in a Preliminary Engineering Report (PER) that was submitted to KDHE on 12/6/2021. The PER includes a discussion regarding the facultative lagoon cells BOD loading rate that was approved for the 2003 expansion compared to the current KDHE Minimum Design Standards. The approved loading rate for the 2003 project was 42 lbs BOD/acre/day. The KDHE Minimum Design Standard specifies a maximum of 34 lbs BOD/acre/day.

As a result of increased flow from National Beef over time and modifications to the operating strategy of the WWTF to account for the domestic and industrial biogas separately, the current loading rate for Facultative Cells 3 and 4 is estimated to be 86 lbs BOD/acre/day, though City staff indicated that the actual loading rate may be closer to 113 lbs BOD/acre/day. The estimated and actual loadings are based on the assumption that no flow is diverted from the Facultative Cell 3 influent to Facultative Cell 1. The City does divert flow to Facultative Cell 1 for roughly one quarter of each year. The City has not observed any operational or treatment issues with the cells at this loading rate. The significant wave action on the cells, the amount of storage capacity based on evaporation and seepage rates, and the impact of pretreatment using anaerobic and aerobic processes prior to entering the facultative cells differentiates the treatment efficiency of these lagoon cells from typical facultative cells.

All process and domestic wastewater from the National Beef and Hilmar industrial facilities will flow from Aerobic Cells 3 and 4 into five facultative cells operating in series. Effluent from Aerobic Cells 3 and 4 will be combined in the existing Facultative Cell 3, then it will flow into Facultative Cell 4 prior to entering the new facultative cells. There is also existing piping that allows flow to be diverted from Facultative Cell 3 to Facultative Cell 1 (domestic treatment cell) for additional treatment and storage

capacity, which the City uses for a portion of the year. The loading and volume calculations for various scenarios are summarized in the tables presented below.

**Industrial Facultative Cell Loading Calculations (Cells 3 through 7)**

Parameter	BOD Loading (lbs/ac/day)		
	42	65	90
Hilmar Influent BOD (mg/L)	226		
National Beef Influent BOD (mg/L)	197		
Hilmar BOD loading (lbs/day)	2,833		
National Beef BOD loading (lbs/day)	8,209		
Facultative Total BOD loading (lbs/day)	11,042		
Acres Required (lbs BOD/ac/day)	263	170	123
Current Facultative Cell Surface Area (Acres)	94.4		
New Water Surface Area Required (Acres)	169	75	28

**Industrial Facultative Cell Volume Calculations (Cells 5 through 7)**

Parameter	BOD Loading (lbs/ac/day)		
	42	65	90
Total Flow (gpd)	6,500,000		
Evaporation (in)	66		
Rainfall (in)	21		
Total Flow less Net Evaporation (gpd)	5,619,885	5,931,311	6,089,280
Surface Area per New Cell w/ 3 Cells per Loading Calc (ft <sup>2</sup> )	2,446,803	1,095,998	410,808
Length and Width, Assuming Square Cell (ft)	1,564	1,047	641
Side Slopes	3:1		
Total Depth (ft)	19.5		
Water Operating Depth (ft)	16.5		
Volume per Cell -New Cells Only (MG)	277	119	41
Total Facultative Cell Volume (MG)*	1,304	830	596
Operating Storage Time (days)	232	140	98

\*Includes 474 MG storage in Cells 3 and 4

**Industrial Facultative Cell Loading Calculations (Cells 1 through 7)**

Parameter	BOD Loading (lbs/ac/day)		
	42	65	90
Hilmar Influent BOD (mg/L)	226		
National Beef Influent BOD (mg/L)	197		
Domestic Influent BOD (mg/L)	130		
Hilmar BOD loading (lbs/day)	2,833		
National Beef BOD loading (lbs/day)	8,209		
Domestic BOD Loading (lbs/day)	2,162		
Facultative Total BOD loading (lbs/day)	13,204		
Acres Required (lbs BOD/ac/day)	314	203	147
Current Facultative Cell Surface Area (Acres)	181		
New Water Surface Area Required (Acres)	133	22	0

**Industrial Facultative Cell Volume Calculations (Cells 1 through 7)**

Parameter	BOD Loading (lbs/ac/day)		
	42	65	90
Total Flow (gpd)	8,500,000		
Evaporation (in)	66		
Rainfall (in)	21		
Total Flow less Net Evaporation (gpd)	7,447,588	7,819,980	8,008,874
Surface Area per New Cell w/ 3 Cells per Loading Calc (ft <sup>2</sup> )	1,936,711	321,463	0
Length and Width, Assuming Square Cell (ft)	1,392	567	0
Side Slopes	3:1		
Total Depth (ft)	19.5		
Water Operating Depth (ft)	16.5		
Volume per Cell (MG)	217	31	0
Total Volume (MG)*	1,664	1,107	1,014
Operating Storage Time (days)	223	142	127

\*Includes 1,014 MG storage in Cells 1 through 4

It is estimated that approximately 140 acres of water surface area is available on the City-owned property proposed for the facultative cells once existing utility easements, setbacks, grading requirements, and access roads are addressed. The property that the new facultative cells will be located on is currently irrigated with the treated effluent using a full irrigation circle, and the City would like to try to maintain at least half of the irrigation circle if possible.

The City would request a loading rate of at least 65 lbs BOD/ac/day for the proposed expansion project to minimize the total facultative cell footprint and meet treatment goals. The storage time provided at this loading rate exceeds the KDHE design standards minimum of 120 days, excluding the additional storage that can be provided through diversion of flow to the domestic facultative cells.

February 2, 2022

Nicole Franken, P.E.  
Professional Engineering Consultants, P.A.  
303 South Topeka  
Wichita, KS 67202

Re: Dodge City South Wastewater Treatment Facility (WWTF) Expansion  
Facultative Lagoon Loading Rate – Variance Request  
Preliminary Engineering Report

Dear Ms. Franken:

On Jan. 7, 2022, KDHE received a design memorandum from PEC regarding the Dodge City South Wastewater Treatment Facility (WWTF) Expansion. The memo referenced the City's South WWTF expansion project being completed to accommodate the new Hilmar cheese plant, as well as the Preliminary Engineering Report (PER) that was submitted to KDHE on 12/6/2021 for the project. Per the memo, PEC, on behalf of the City, is requesting a variance to KDHE's minimum design standards regarding the maximum loading rate for Biochemical Oxygen Demand (BOD) in wastewater treatment lagoons.

Per KDHE's Minimum Standards of Design for Water Pollution Control Facilities, the maximum BOD loading rate for wastewater treatment lagoons is 34 lbs. BOD<sub>5</sub>/acre/day. As noted in the variance request memo, the current facility was expanded in 2003, at which time a variance to the required loading rate was granted, allowing a maximum loading rate of 42 lbs. BOD<sub>5</sub>/acre/day (a 23.5% increase to the maximum loading rate per KDHE minimum standards). As per recent discussions between KDHE and PEC, KDHE has indicated that the expansion project can also utilize the higher 42 lbs. BOD<sub>5</sub>/acre/day maximum loading rate. As such, the PER submitted to KDHE in December included design discussions and associated estimated costs for the facility expansion to maintain the 42 lbs. BOD<sub>5</sub>/acre/day loading rate.

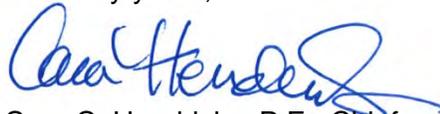
KDHE has reviewed the memo and understands that the requested maximum loading rate for the project is now 65 lbs. BOD<sub>5</sub>/acre/day, which is over 90% higher than the loading rate in the minimum standards, and represents a 55% increase from the loading rate established by variance for the 2003 facility expansion. Upon review of the memo, as well as the PER submitted for the project, the following comments are provided related to the variance request.

- The maximum BOD loading rate established by KDHE's minimum design standards supports both operational efficiency as well as odor control. For this project, while increased loading above the maximum rate provided in the standards may not impact treatment capacity concerns related to public health, excessive BOD loading can cause operational issues and foul odors from the treatment process, as also noted in the PER provided by PEC.
- The PER indicates some uncertainty regarding the treatment process for the new waste stream from Hilmar. Specifically, pg. 3-6 of the PER indicates that "additional information on Hilmar's influent alkalinity and typical chemical feed will need to be reviewed during detailed design". It is uncertain at this time how operational processes including chemical feed and waste stream flow diversions that might be incorporated into the design may impact BOD loading rates.

- Both the memo and the PER indicate that waste flows from the National Beef Packing (NBP) facility have increased over time. The PER also indicates that the BOD loadings that NBP contributes to the current South WWTF vary throughout its operations and can reach significantly higher loading rates than the designed rate of the current facility.
- There appears to be some discrepancy in the PER regarding the peak flow related to NBP's waste loading that will be factored into the facility expansion project. In the table on p. 3-7, the loading is approximated at 5 MGD; however, the discussion in the PER on pg. 5-1 regarding the flows anticipated to be experienced at the new "NBP-Only Primary Lift Station" states that it will be designed to meet the projected peak flow of 5.5 MGD. Higher peak flows from NBP may impact the BOD loading rates.
- While the memo indicates that the City has not observed any operational or treatment issues with the cells at the current loading rates provided by NBP, the PER also notes that the BOD concentration from Hilmar's wastewater is anticipated to be higher than that from NBP's wastewater. This could also create more concern with odor issues resulting from Hilmar's waste stream.
- Based on the memo and PER provided for the project, it is KDHE's understanding that the request for a waiver from the KDHE minimum standards for BOD loading stems from an attempt to reduce the amount of land required for the project and consequently the cost of the project. There is currently no indication that meeting the required area to accommodate the loading rate of 42 lbs. BOD<sub>5</sub>/acre/day is infeasible or cost-prohibitive to the project.

Due to potential odor concerns the facility may experience with the new waste stream associated with the Hilmar cheese plant, KDHE maintains the previously-approved loading rate of 42 lbs. BOD<sub>5</sub>/acre/day for the facility expansion. As previously discussed with PEC, and as noted in the memo, that loading rate was approved for the 2003 project, allowing for 23.5% above the maximum loading rate of 34 lbs. BOD<sub>5</sub>/acre/day per KDHE's minimum standards.

Sincerely yours,



Cara C. Hendricks, P.E., Chief  
Municipal Programs Unit  
Water Permitting and Compliance Section  
Bureau of Water

CCH

Pc: Ryan Eldredge, KDHE  
Sarah Unruh, PEC  
Ray Slattery, Dodge City  
Tanner Rutschman, Dodge City  
KDHE SW District Office

## Ever Villalobos

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**From:** Nicole Franken, PE  
**Sent:** Tuesday, February 15, 2022 8:43 AM  
**To:** 'Ryan Eldredge [KDHE]'; Sarah Unruh; Cara C. Hendricks [KDHE]; Ray Slattery; Tanner Rutschman  
**Cc:** Smith, Shane/DOD  
**Subject:** RE: Dodge City Lagoon Expansion Discussion  
**Attachments:** Dodge City Revised Surface Area Calculations.docx; 210263-001-C--GR-C3D\_CRG\_Lagoons-Layout1.pdf; Dual Facultative Lagoon Concept 2-9-22.pdf

**Categories:** Filed by Newforma

Ryan/Cara – thank you again for meeting with us last week to discuss the Dodge City WWTP BOD loading rate. As discussed, attached are tables included in the memo with the additional loading rates. Also attached are two potential layouts for the new cells that avoid the irrigation lines going to the south pivots with about the same amount of surface area required (~80-90 acres).

After the call we discussed an additional unique factor of this plant is that the water level and loading rate can varies depending on the time of year not just because of weather patterns but because of the significant amount of irrigation compared to other lagoon plants.

Would KDHE be open to a loading rate of 55 lbs BOD/ac/day? Let us know your thoughts on this, I would be happy to set up another call to discuss if needed.

Thanks!

### **Nicole D. Franken, PE**

Municipal Division  
316-206-1343 Direct 816-714-8241 Mobile  
[Nicole.Franken@pec1.com](mailto:Nicole.Franken@pec1.com)



**Professional Engineering Consultants**  
303 South Topeka Wichita, KS 67202  
316-262-2691 [www.pec1.com](http://www.pec1.com)

[Facebook](#) | [Twitter](#) | [LinkedIn](#)

## Ever Villalobos

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**From:** Cara C. Hendricks [KDHE] <Cara.C.Hendricks@ks.gov>  
**Sent:** Monday, March 7, 2022 3:50 PM  
**To:** Nicole Franken, PE  
**Cc:** Smith, Shane/DOD; Ryan Eldredge [KDHE]; Sarah Unruh, PE; Ray Slattery; Tanner Rutschman  
**Subject:** Follow Up to Dodge City Lagoon Expansion Discussion  
**Attachments:** 210263-001-C--GR-C3D\_CRG\_Lagoons-Layout1.pdf  
**Categories:** Filed by Newforma

Nicole:

Upon review of the submitted information, KDHE is willing to consider a maximum loading rate of 50 lbs. BOD/ac/day for the project. Based on the attached proposed layout submitted with Cells 5, 6 and 7 located south of the existing facility, it appears that a total water surface area (WSA) of approximately 91 acres is possible if the space is maximized while accommodating the location of the existing irrigation lines.

Based on the tables you provided indicating the WSA required for varying BOD loading rates, a WSA of 91 acres would provide a loading rate of less than 50 lbs. BOD/ac/day. As such, KDHE's allowance of the maximum BOD loading rate of 50 would be contingent upon efforts to maximize the space available with efforts to achieve a loading rate less than 50 lbs. BOD/ac/day, as indicated in the attached draft proposed south layout recently submitted.

We understand that the project is currently in the early stages of design. As the design phase progresses toward the submittal of project plans and specifications to KDHE, a formal variance waiver process will need to be initiated, which will require a formal request from the City to KDHE. At that time, KDHE will review the request and provide a formal response, including any conditions that may be deemed appropriate. Prior to that, the City may want to consider approaches it can be taking to safeguard against potential action/response from landowners adjacent to the project, as there may be a consideration for notice and/or confirmation from them as part of the formal variance waiver process. The variance process typically parallels the permit modification application submittal.

### **Cara C. Hendricks, P.E.**

*Chief, Municipal Programs*

KDHE BUREAU OF WATER

p: (785) 296-5527

[cara.c.hendricks@ks.gov](mailto:cara.c.hendricks@ks.gov)



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**From:** Nicole Franken, PE <Nicole.Franken@pec1.com>  
**Sent:** Tuesday, February 15, 2022 8:43 AM  
**To:** Ryan Eldredge [KDHE] <Ryan.Eldredge@ks.gov>; Sarah Unruh, PE <Sarah.Unruh@pec1.com>; Cara C. Hendricks [KDHE] <Cara.C.Hendricks@ks.gov>; Ray Slattery <rays@dodgecity.org>; Tanner Rutschman <tannerr@dodgecity.org>  
**Cc:** Smith, Shane/DOD <Shane.Smith@jacobs.com>  
**Subject:** RE: Dodge City Lagoon Expansion Discussion

**EXTERNAL:** This email originated from outside of the organization. Do not click any links or open any attachments unless you trust the sender and know the content is safe.

Ryan/Cara – thank you again for meeting with us last week to discuss the Dodge City WWTP BOD loading rate. As discussed, attached are tables included in the memo with the additional loading rates. Also attached are two potential layouts for the new cells that avoid the irrigation lines going to the south pivots with about the same amount of surface area required (~80-90 acres).

After the call we discussed an additional unique factor of this plant is that the water level and loading rate can varies depending on the time of year not just because of weather patterns but because of the significant amount of irrigation compared to other lagoon plants.

Would KDHE be open to a loading rate of 55 lbs BOD/ac/day? Let us know your thoughts on this, I would be happy to set up another call to discuss if needed.

Thanks!

**Nicole D. Franken, PE**

Municipal Division

316-206-1343 Direct 816-714-8241 Mobile

[Nicole.Franken@pec1.com](mailto:Nicole.Franken@pec1.com)



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Certification for "Cost and Effectiveness"  
KWPCRF Project No. C20 xxxx 01  
January 24, 2023

The Water Resources Reform and Development Act (WRRDA) includes Section 602(B)(13) applicable to the state Clean Water SRF programs – the Kansas Water Pollution Control Revolving Fund (KWPCRF). This requires the following certification regarding "cost and effectiveness" of the design for the wastewater collection and treatment system as a condition to receive funding from the KWPCRF.

"The applicant has studied and evaluated the cost and effectiveness of the processes, materials, techniques, and technologies for carrying out the proposed project or activity funded by this KWPCRF low interest loan, and has selected, to the maximum extent practicable, the processes, materials, techniques, and technologies that maximize the conservation and efficient use of water, considered the potential reuse of treated wastewater effluent, and considered the recapture of water for reuse, and that maximize energy conservation, taking into account construction costs, operation and maintenance costs, and replacement costs. Reference the attached checklist(s)."

Nicole D. Franken

(Signature Block of the Licensed Professional Engineer that Prepared the Planning and/or Design the Documents for the Referenced KWPCRF Project)

Roy Slaw, PE, Director of Engineering Services

(Signature Block of the Authorized Representative of the City/Applicant Receiving the Loan Assistance for KWPCRF Project)

Attachment

**KWPCRF Cost and Effectiveness Supporting Information Form  
(Mechanical Wastewater Treatment Systems)  
KWPCRF Project No. C20 xxxx 01**

The Water Resources Reform and Development Act (WRRDA) includes the following Section 602(B)(13) applicable to the state Clean Water SRF beginning October 1, 2015

“Section 602 (B) (13) – beginning in fiscal year 2016, the State will require as a condition of providing assistance to a municipality or intermunicipal, interstate, or State agency that the recipient of such assistance certify, in a manner determined by the Governor of the State, that the recipient –

- (A) has studied and evaluated the cost and effectiveness of the processes, materials, techniques, and technologies for carrying out the proposed project or activity for which assistance is sought under this title; and
- (B) has selected, to the maximum extent practicable, a project or activity that maximizes the potential for efficient water use, reuse, recapture, and conservation, and energy conservation, taking into account –
  - (i) the cost of constructing the project or activity;
  - (ii) the cost of operating and maintaining the project or activity over the life of the project or activity; and
  - (iii) the cost of replacing the project or activity”

This four page support memo provides the necessary certifications review statements as required by the KWPCRF to document this “cost and effectiveness” review requirement for the referenced project. In each case the City/Applicant must check the applicable statements as listed below, and indicate “NA” for any subjects Not Applicable to the KWPCRF project as funded.

**1. Major Sewer Rehabilitation**

       ~~X~~ The project does not include any sewer line or manhole rehabilitation measures.

       The project includes sewer line and/or manhole rehabilitation. As per KDHE program direction, reducing sewage flows by reducing I/I in the collection system will inherently reduce energy use by reducing pumping costs and costs of treatment. A detailed analysis is not needed and was not prepared.

       There is no water use by gravity sewers. A detailed analysis is not needed and was not prepared.

**2. Sewage Pumping Stations**

       The project does not include any sewage pumping stations construction or rehabilitation. As per KDHE program direction the necessary capacity for pumping is determined by peak design sewage flow and the specific

KWPCRF Cost and Effectiveness Supporting Information Form  
(Mechanical WWTP Systems)

head conditions which then dictate energy use needs for pumping. A detailed analysis is not needed and was not prepared.

  X   The design is encouraged to incorporate VFDs on the pump motors. (Check the space if VFDs are included in the design.)

  X   The design is encouraged to incorporate high efficiency design motors (NEMA Premium Efficiency) (note, smaller Hp motors may not be available as high efficiency designs). (Check the space if high efficiency design motors are included in the design.)

  X   There is no potable water use at these sewage pumping stations, except perhaps wash down at larger stations. Wherever potable water supply is provided to a sewage pumping station, backflow prevention must be provided in the design and construction. (Check the space if potable water supply to a sewage pumping station with backflow prevention is included in the design.)

### 3. Regionalization

  N/A   The Preliminary Engineering Report (PER) must give serious consideration to abandoning the existing WWTP, if regionalization with a nearby wastewater treatment facility is at all feasible. A review has been completed and submitted to KDHE within the PER.

4. Mechanical Wastewater Treatment Systems (i.e., activated sludge) – There are many opportunities to conserve electricity, conserve natural gas for building space heating, maximize aeration efficiency, maximize nitrate oxygen recovery, and (at the larger flow facilities) provide non-potable reuse of effluent in the on-site processes or by off-site irrigation reuse, all while improving nitrogen removal and phosphorus removal. A somewhat lengthy presentation written analysis received and approved by KDHE will be required for mechanical plant designs including –

A.        Although natural gas and motor fuel have recently reduced in price, electricity is going up in price, and water is always a precious commodity in Kansas.

B.        The design has considered the use of VFDs for influent pumping, and reviewed the opportunity for variable influent pumping rates in the process design. (Check the space if VFDs are included in the design.)

C.        The design is encouraged and has considered the use of high efficiency design motors (NEMA Premium Efficiency) (note, smaller Hp motors may not be available as high efficiency designs). (Check the space if high efficiency design motors are included in the design.)

D.        The opportunities to “re-purpose” any existing buildings into “cold storage”, without heat or potable water service has been reviewed.

E.        The opportunities to utilize and/or replace all lighting with LEDs and/or CFLs has been reviewed. The following lighting fixtures have not been replaced or converted to LED lighting with an explanation attached of why this improvement is not implemented. \_\_\_\_\_

KWPCRF Cost and Effectiveness Supporting Information Form  
(Mechanical WWTP Systems)

F. \_\_\_\_\_ The opportunities to provide the use of VFDs on all electric motors has been reviewed. The following electric motors do not include the use of VFDs with an explanation attached listing the motors and explaining why these do not have VFDs implemented into the design and use.

---

G. \_\_\_\_\_ The opportunities to replace motors with high efficiency design motors (NEMA Premium Efficiency) has been reviewed. The following electric motors do not provide NEMA Premium Efficiency design; an explanation is attached listing the motors and explaining why these do not have NEMA Premium Efficiency design implemented into the design and use. \_\_\_\_\_  
 \_\_\_\_\_(note, smaller Hp motors may not be available as high efficiency designs).

H. \_\_\_\_\_ The need for potable water use in the treatment processes has been reviewed, versus the provision of non-potable effluent water re-use on-site.

I. \_\_\_\_\_ The design includes a new building(s). The justification for the need for the additional heated and air conditioned space (if provided) is attached, and the need for potable water service to the new building(s) (if provided) is attached.

J. \_\_\_\_\_ The opportunities for off-site effluent irrigation reuse, or industrial non-potable reuse, have been reviewed in the PER. (Please list any off-site reuse opportunities that will be implemented. \_\_\_\_\_)

K. \_\_\_\_\_ Implementation of de-nitrification biological treatment processes following nitrification to remove ammonia is required and has been provided in the design to recover the energy benefit of chemically bound oxygen within the nitrate (NO<sub>3</sub>).

L. \_\_\_\_\_ Computer controls for aeration and denitrification systems including DO probes, ORP probes, nitrate (NO<sub>3</sub>) probes, etc., with SCADA, PLC, LC, or time clock controls to maximize the pollutant removal efficiency and energy efficiency of the treatment processes are required and provided in the design, as determined appropriate by the design engineer (a climate controlled room or small building may be required for the SCADA electronics and computer controls).

M. \_\_\_\_\_ Computer controls for chemical feed systems (including flow measurement if needed) with SCADA, PLC, LC, or time clock controls to maximize the pollutant removal efficiency and energy efficiency of the treatment processes are required and provided in the design, as determined appropriate by the design engineer (a climate controlled room or small building may be required for the SCADA, electronics, computer controls, and chemical storage).

KWPCRF Cost and Effectiveness Supporting Information Form  
(Mechanical WWTP Systems)

N. \_\_\_\_\_ A review of the cost and efficiency of phosphorus removal by pretreatment at any large discharge of phosphorus into the collection system versus “end-of-pipe” treatment at the municipal wwtp is required and has been provided in the PER. (Please list any phosphorus pretreatment opportunities that were considered, and identify those that will be implemented. \_\_\_\_\_).

O. \_\_\_\_\_ A review of the cost and efficiency of bio-P versus chem-P phosphorus reduction processes to implement the most efficient combination of processes to reduce phosphorus in the effluent is required, including a 20 year cost-effectiveness analysis comparing the phosphorus treatment alternatives, is required. The cost and efficiency analysis was provided in the PER, or is attached.

P. \_\_\_\_\_ Other concepts and considerations as proposed by the applicant and consulting engineer can be presented in the PER or the design for consideration. Those additional concepts and considerations that will be implemented are as follows: \_\_\_\_\_

Attachment(s)

BOND DEBT SERVICE

City of Dodge City, Kansas  
 General Obligation Bonds  
 Series 2019-A  
 FINAL

Refund 2009 KDHE (North WWTP Portion)

Period Ending	Principal	Coupon	Interest	Debt Service	Annual Debt Service
03/01/2020			131,260.49	131,260.49	
09/01/2020	1,155,000	4.000%	274,731.25	1,429,731.25	1,560,991.74
03/01/2021			251,631.25	251,631.25	
09/01/2021	1,055,000	4.000%	251,631.25	1,306,631.25	1,558,262.50
03/01/2022			230,531.25	230,531.25	
09/01/2022	1,100,000	4.000%	230,531.25	1,330,531.25	1,561,062.50
03/01/2023			208,531.25	208,531.25	
09/01/2023	1,145,000	4.000%	208,531.25	1,353,531.25	1,562,062.50
03/01/2024			185,631.25	185,631.25	
09/01/2024	1,190,000	4.000%	185,631.25	1,375,631.25	1,561,262.50
03/01/2025			161,831.25	161,831.25	
09/01/2025	1,235,000	4.000%	161,831.25	1,396,831.25	1,558,662.50
03/01/2026			137,131.25	137,131.25	
09/01/2026	1,285,000	4.000%	137,131.25	1,422,131.25	1,559,262.50
03/01/2027			111,431.25	111,431.25	
09/01/2027	1,335,000	4.000%	111,431.25	1,446,431.25	1,557,862.50
03/01/2028			84,731.25	84,731.25	
09/01/2028	1,390,000	4.000%	84,731.25	1,474,731.25	1,559,462.50
03/01/2029			56,931.25	56,931.25	
09/01/2029	1,445,000	3.000%	56,931.25	1,501,931.25	1,558,862.50
03/01/2030			35,256.25	35,256.25	
09/01/2030	1,490,000	2.125%	35,256.25	1,525,256.25	1,560,512.50
03/01/2031			19,425.00	19,425.00	
09/01/2031	1,520,000	** %	19,425.00	1,539,425.00	1,558,850.00
	15,345,000		3,372,116.74	18,717,116.74	18,717,116.74

January 4, 2023

U.S. Fish and Wildlife Service  
Ecological Serv./Partners for Fish and Wildlife  
2609 Anderson Avenue  
Manhattan, KS 66502-2801

Re: City of Dodge City, Kansas  
Kansas Water Pollution Control Revolving Fund  
PEC Project Number: 210263-001

To Whom it May Concern:

The City of Dodge City, Kansas is preparing an application to the Kansas Department of Health and Environment for a loan from the Kansas Water Pollution Control Revolving Fund for improvements to its sanitary sewer pumping and treatment systems. Specifically, it is requesting a loan to address aging infrastructure and upgrade its system to handle new domestic and industrial wastewater from the Hilmar Cheese Factory which is expected to begin operation in 2024 and existing flows from National Beef Packing Company (NBP).

Improvements:

- New Primary Lift Station dedicated to NBP flows
- New Intermediate Lift Station dedicated to industrial flows from NBP and Hilmar
- New lift station and force main infrastructure dedicated to Hilmar's domestic and industrial wastes  
(Environmental review letters for the new forcemain for the Hilmar flow were submitted previously as required for the U.S. Economic Development Administration (EDA) grant that was awarded to the City for that specific portion of the project.)
- Expansion of the existing South wastewater treatment plant (WWTP)
- Repair, replace, and modify existing components at the WWTP to address aging infrastructure

The proposed projects are located at several places within the City, as shown on the map provided in Attachment A.

#### **Site Location and Improvements**

The entirety of the project is located in Ford County.

- New Primary Lift Station for NBP will be constructed on the same site as the existing Primary Lift Station and have a capacity to pump a peak flow of 5.5 million gallons per day (MGD).
  - S 31, T26S, R24W
- New Intermediate Lift Station will be constructed on the same site as the current Intermediate Lift Station with separate wetwells for NBP and Hilmar flows. The site will be expanded slightly onto surrounding dryland farmland.
  - S 24, T27S, R25W

- Hilmar Lift Station will be constructed on the Hilmar Cheese Factory site, which is located on the southwest corner of US-400/56 and 112 Rd and have a capacity to pump a peak flow of 2.88 MGD.
  - S12, T27S, R25W
- Hilmar Force Main will be installed within existing and new easements along the same route as the existing forcemains connecting the Primary Lift Station with the South WWTP.
- South WWTP Improvements will be completed on the southeast and south sides of the existing WWTP. The South WWTP is a non-discharging facility; 100% of the effluent is currently used for farmland irrigation.
  - S26, T28S, R25W

(Additional improvements to the South WWTP are anticipated to include further treatment of a portion of the effluent, a forcemain, and a lift station to send flow to the Arkansas River. Since these additional improvements are in the conceptual design phase, separate environmental review letters will be submitted at a later date.)

We would appreciate your review of the project description and location, and any comments you may have regarding the proposed projects, within 30 calendar days of receipt of this letter. A project review form is provided as **Attachment B** for your use. Please provide your comments and responses to Nicole Franken at PEC by email ([Nicole.franken@pec1.com](mailto:Nicole.franken@pec1.com)) or by mail (PEC, 303 S. Topeka, Wichita, KS 67202).

If you have questions regarding the design, please call me at 316-206-1343.

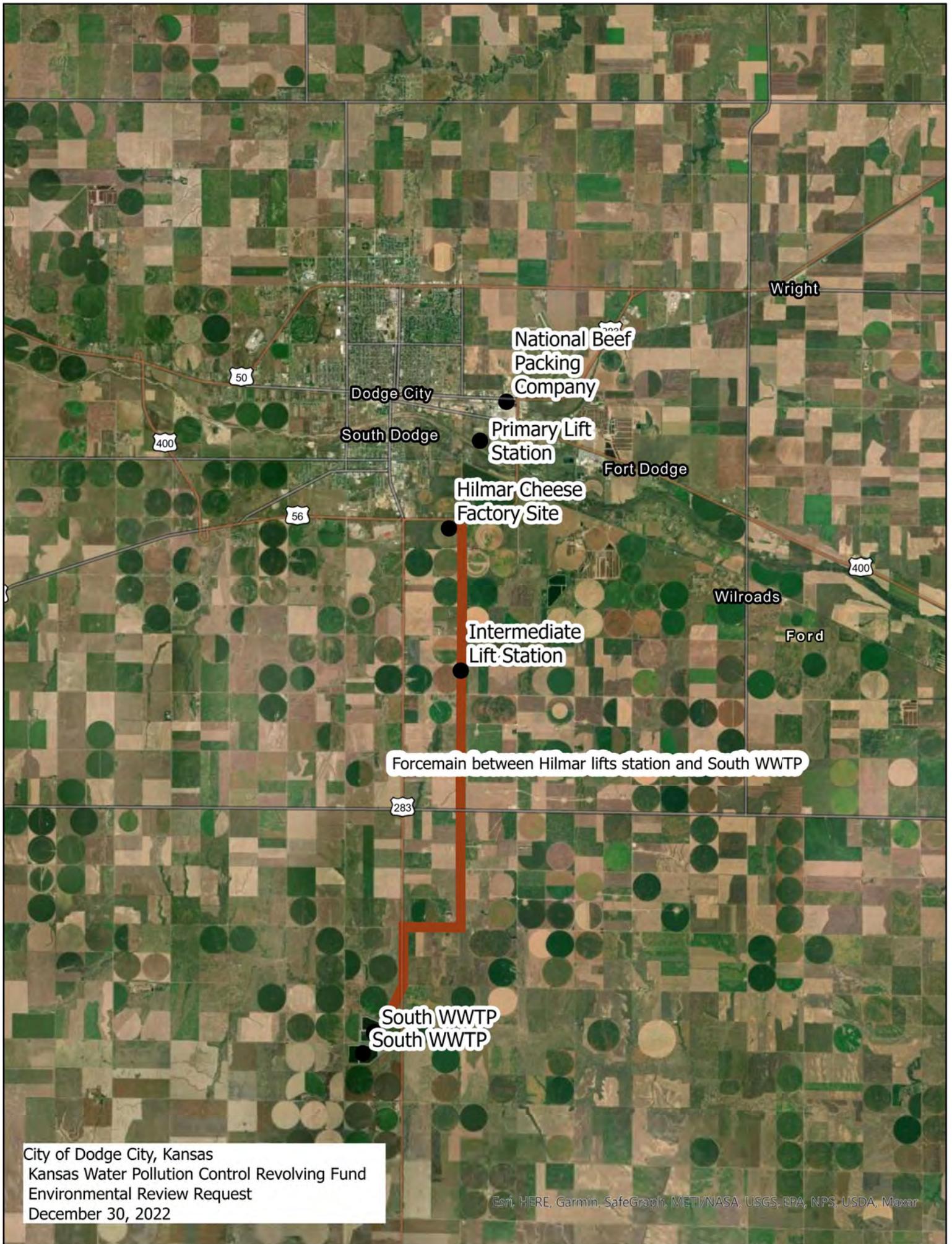
Sincerely,



Nicole Franken, P.E.  
Project Manager

attachments

# **Attachment A**



City of Dodge City, Kansas  
Kansas Water Pollution Control Revolving Fund  
Environmental Review Request  
December 30, 2022

Esri, HERE, Garmin, SafeGraph, METI/NASA, USGS, EPA, NPS, USDA, Maxar

# **Attachment B**



January 4, 2023

Kansas Water Office  
900 SW Jackson; Suite 404  
Topeka, KS 66612

Re: City of Dodge City, Kansas  
Kansas Water Pollution Control Revolving Fund  
PEC Project Number: 210263-001

To Whom it May Concern:

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(Additional improvements to the South WWTP are anticipated to include further treatment of a portion of the effluent, a forcemain, and a lift station to send flow to the Arkansas River. Since these additional improvements are in the conceptual design phase, separate environmental review letters will be submitted at a later date.)

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If you have questions regarding the design, please call me at 316-206-1343.

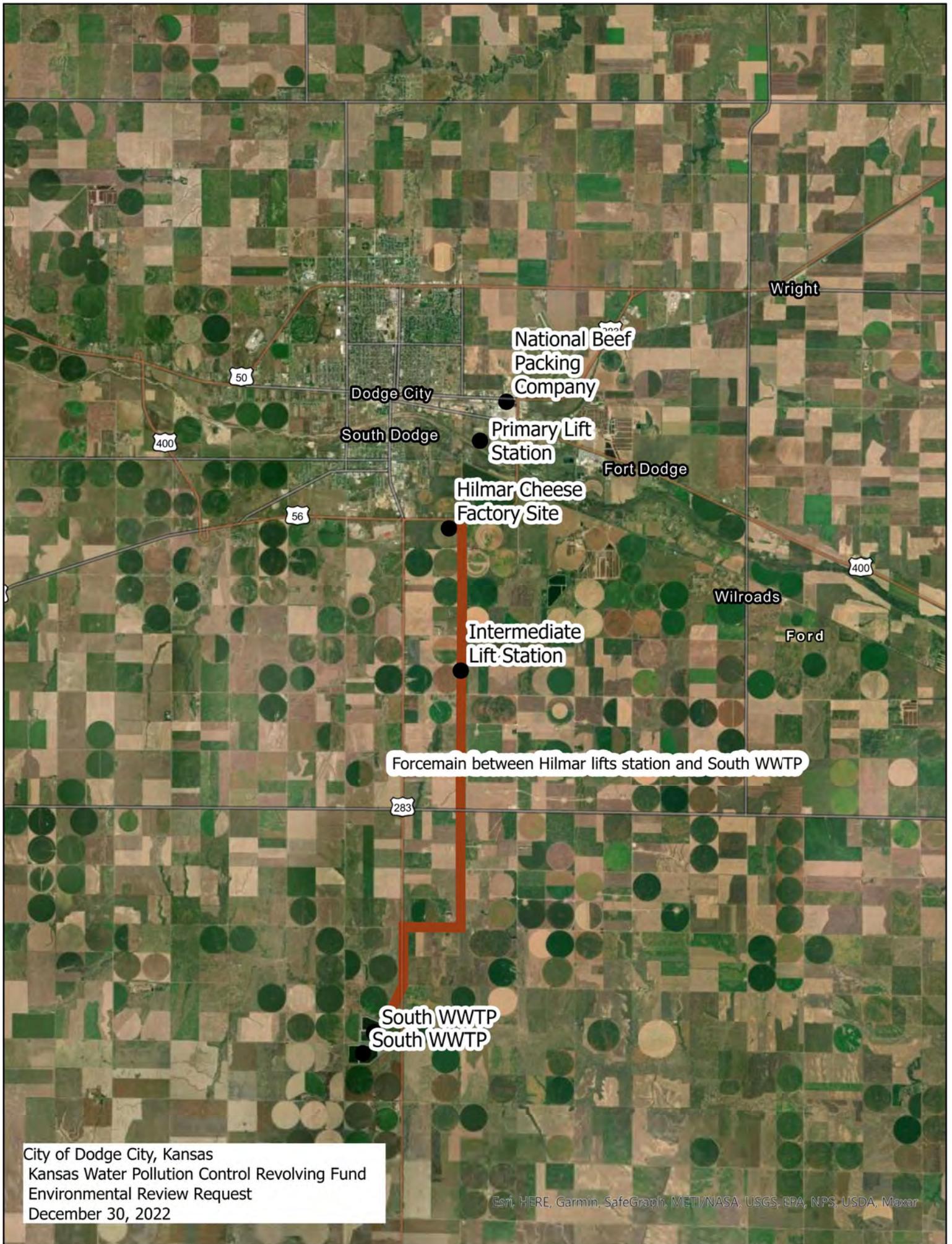
Sincerely,



Nicole Franken, P.E.  
Project Manager

attachments

# **Attachment A**



City of Dodge City, Kansas  
Kansas Water Pollution Control Revolving Fund  
Environmental Review Request  
December 30, 2022

# **Attachment B**



## Kristen Zimmerman

---

**From:** Kristen Zimmerman  
**Sent:** Wednesday, January 4, 2023 12:39 PM  
**To:** Lucius.j.duerksen@usace.army.mil  
**Cc:** Nicole Franken  
**Subject:** Environmental Review Request -- Kansas Water Pollution Control Revolving Fund  
**Attachments:** Attachment A - Map.pdf; Attachment B - AgencyReviewForm.pdf

The City of Dodge City, Kansas is preparing an application to the Kansas Department of Health and Environment for a loan from the Kansas Water Pollution Control Revolving Fund for improvements to its sanitary sewer pumping and treatment systems. Specifically, it is requesting a loan to address aging infrastructure and upgrade its system to handle new domestic and industrial wastewater from the Hilmar Cheese Factory which is expected to begin operation in 2024 and existing flows from National Beef Packing Company (NBP).

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If you have questions regarding the design, please call Nicole at 316-206-1343.

**Kristen Zimmerman**, AICP  
Community and Regional Planner | Planning, GIS, Land Development

[kristen.zimmerman@pec1.com](mailto:kristen.zimmerman@pec1.com)  
D 316.262.2691 | C 316.609.6037  
303 S Topeka | Wichita, KS 67202



## Kristen Zimmerman

---

**From:** Kristen Zimmerman  
**Sent:** Wednesday, January 4, 2023 12:39 PM  
**To:** Julie.bogle@ku.edu; samzipper@ku.edu  
**Subject:** Environmental Review Request -- Kansas Water Pollution Control Revolving Fund  
**Attachments:** Attachment A - Map.pdf; Attachment B - AgencyReviewForm.pdf

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**Kristen Zimmerman**, AICP  
Community and Regional Planner | Planning, GIS, Land Development

[kristen.zimmerman@pec1.com](mailto:kristen.zimmerman@pec1.com)  
D 316.262.2691 | C 316.609.6037  
303 S Topeka | Wichita, KS 67202



## Kristen Zimmerman

---

**From:** Kristen Zimmerman  
**Sent:** Wednesday, January 4, 2023 12:38 PM  
**To:** jdelisle@ku.edu  
**Cc:** Nicole Franken  
**Subject:** Environmental Review Request -- Kansas Water Pollution Control Revolving Fund  
**Attachments:** Attachment A - Map.pdf; Attachment B - AgencyReviewForm.pdf

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**Kristen Zimmerman**, AICP  
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D 316.262.2691 | C 316.609.6037  
303 S Topeka | Wichita, KS 67202



## Kristen Zimmerman

---

**From:** Kristen Zimmerman  
**Sent:** Wednesday, January 4, 2023 12:37 PM  
**To:** KS.NRCS.ER.FPPA@usda.gov  
**Cc:** Nicole Franken  
**Subject:** Environmental Review Request -- Kansas Water Pollution Control Revolving Fund  
**Attachments:** Attachment A - Map.pdf; Attachment B - AgencyReviewForm.pdf

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D 316.262.2691 | C 316.609.6037  
303 S Topeka | Wichita, KS 67202



## Kristen Zimmerman

---

**From:** Kristen Zimmerman  
**Sent:** Wednesday, January 4, 2023 12:36 PM  
**To:** brian.willard@ks.gov  
**Cc:** Nicole Franken  
**Subject:** Environmental Review Request -- Kansas Water Pollution Control Revolving Fund  
**Attachments:** Attachment A - Map.pdf; Attachment B - AgencyReviewForm.pdf

Mr. Willard,

The City of Dodge City, Kansas is preparing an application to the Kansas Department of Health and Environment for a loan from the Kansas Water Pollution Control Revolving Fund for improvements to its sanitary sewer pumping and treatment systems. Specifically, it is requesting a loan to address aging infrastructure and upgrade its system to handle new domestic and industrial wastewater from the Hilmar Cheese Factory which is expected to begin operation in 2024 and existing flows from National Beef Packing Company (NBP).

Improvements:

- New Primary Lift Station dedicated to NBP flows
- New Intermediate Lift Station dedicated to industrial flows from NBP and Hilmar
- New lift station and force main infrastructure dedicated to Hilmar's domestic and industrial wastes (Environmental review letters for the new forcemain for the Hilmar flow were submitted previously as required for the U.S. Economic Development Administration (EDA) grant that was awarded to the City for that specific portion of the project.)
- Expansion of the existing South wastewater treatment plant (WWTP)
- Repair, replace, and modify existing components at the WWTP to address aging infrastructure

The proposed projects are located at several places within the City, as shown on the map provided in Attachment A.

### Site Location and Improvements

The entirety of the project is located in Ford County.

- New Primary Lift Station for NBP will be constructed on the same site as the existing Primary Lift Station and have a capacity to pump a peak flow of 5.5 million gallons per day (MGD).
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(Additional improvements to the South WWTP are anticipated to include further treatment of a portion of the effluent, a forcemain, and a lift station to send flow to the Arkansas River. Since these additional improvements are in the conceptual design phase, separate environmental review letters will be submitted at a later date.)

We would appreciate your review of the project description and location, and any comments you may have regarding the proposed projects, within 30 calendar days of receipt of this letter. A project review form is provided as **Attachment B** for your use. Please provide your comments and responses to Nicole Franken at PEC by email ([Nicole.franken@pec1.com](mailto:Nicole.franken@pec1.com)) or by mail (PEC, 303 S. Topeka, Wichita, KS 67202).

If you have questions regarding the design, please call Nicole at 316-206-1343.

**Kristen Zimmerman**, AICP  
Community and Regional Planner | Planning, GIS, Land Development

[kristen.zimmerman@pec1.com](mailto:kristen.zimmerman@pec1.com)  
D 316.262.2691 | C 316.609.6037  
303 S Topeka | Wichita, KS 67202



## Kristen Zimmerman

---

**From:** Kristen Zimmerman  
**Sent:** Wednesday, January 4, 2023 1:28 PM  
**To:** andrew.lyon@ks.gov  
**Cc:** Nicole Franken  
**Subject:** Environmental Review Request -- Kansas Water Pollution Control Revolving Fund  
**Attachments:** Attachment A - Map.pdf; Attachment B - AgencyReviewForm.pdf

Mr. Lyon,

The City of Dodge City, Kansas is preparing an application to the Kansas Department of Health and Environment for a loan from the Kansas Water Pollution Control Revolving Fund for improvements to its sanitary sewer pumping and treatment systems. Specifically, it is requesting a loan to address aging infrastructure and upgrade its system to handle new domestic and industrial wastewater from the Hilmar Cheese Factory which is expected to begin operation in 2024 and existing flows from National Beef Packing Company (NBP).

We are writing to request an environmental review from the State Corporation Commission, as required by the loan requirements (see Attachment B.)

### Improvements:

- New Primary Lift Station dedicated to NBP flows
- New Intermediate Lift Station dedicated to industrial flows from NBP and Hilmar
- New lift station and force main infrastructure dedicated to Hilmar's domestic and industrial wastes (Environmental review letters for the new forcemain for the Hilmar flow were submitted previously as required for the U.S. Economic Development Administration (EDA) grant that was awarded to the City for that specific portion of the project.)
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**Kristen Zimmerman**, AICP  
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[kristen.zimmerman@pec1.com](mailto:kristen.zimmerman@pec1.com)  
D 316.262.2691 | C 316.609.6037  
303 S Topeka | Wichita, KS 67202



## Kristen Zimmerman

---

**From:** Kristen Zimmerman <kristen.zimmerman@pec1.com>  
**Sent:** Friday, December 30, 2022 3:46 PM  
**To:** ess@ksoutdoors.com  
**Cc:** Nicole Franken  
**Subject:** Environmental Review Request -- Kansas Water Pollution Control Revolving Fund  
**Attachments:** Attachment A - Map.pdf; Attachment B - AgencyReviewForm.pdf

**Categories:** Filed by Newforma

The City of Dodge City, Kansas is preparing an application to the Kansas Department of Health and Environment for a loan from the Kansas Water Pollution Control Revolving Fund for improvements to its sanitary sewer pumping and treatment systems. Specifically, it is requesting a loan to address aging infrastructure and upgrade its system to handle new domestic and industrial wastewater from the Hilmar Cheese Factory which is expected to begin operation in 2024 and existing flows from National Beef Packing Company (NBP).

### Improvements:

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**Kristen Zimmerman, AICP**

Community and Regional Planner  
316-206-1495 Direct 316-609-6037 Mobile  
[Kristen.Zimmerman@pec1.com](mailto:Kristen.Zimmerman@pec1.com)



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316-262-2691 [www.pec1.com](http://www.pec1.com)

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## Kristen Zimmerman

---

**From:** Kristen Zimmerman <kristen.zimmerman@pec1.com>  
**Sent:** Friday, December 30, 2022 3:46 PM  
**To:** kda.environmentalreview@ks.gov  
**Cc:** Nicole Franken  
**Subject:** Environmental Review Request -- Kansas Water Pollution Control Revolving Fund  
**Attachments:** Attachment A - Map.pdf; Attachment B - AgencyReviewForm.pdf

**Categories:** Filed by Newforma

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**Kristen Zimmerman, AICP**

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316-262-2691 [www.pec1.com](http://www.pec1.com)

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## Kristen Zimmerman

---

**From:** Kristen Zimmerman <kristen.zimmerman@pec1.com>  
**Sent:** Friday, December 30, 2022 3:47 PM  
**To:** k.stoll@kcc.ks.gov  
**Cc:** Nicole Franken  
**Subject:** Environmental Review Request -- Kansas Water Pollution Control Revolving Fund  
**Attachments:** Attachment A - Map.pdf; Attachment B - AgencyReviewForm.pdf

**Categories:** Filed by Newforma

The City of Dodge City, Kansas is preparing an application to the Kansas Department of Health and Environment for a loan from the Kansas Water Pollution Control Revolving Fund for improvements to its sanitary sewer pumping and treatment systems. Specifically, it is requesting a loan to address aging infrastructure and upgrade its system to handle new domestic and industrial wastewater from the Hilmar Cheese Factory which is expected to begin operation in 2024 and existing flows from National Beef Packing Company (NBP).

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Please contact the Kansas State Historic Preservation Office of the Kansas Historical Society with any questions at 785-272-8681 x240 or kshs.shpo@ks.gov

## Project Status

# Project Status

Under Review

## Project Info

### Project Name

Dodge City - Kansas Water Pollution Control Revolving Fund Application

### Description

The City of Dodge City, Kansas is preparing an application to the Kansas Department of Health and Environment for a loan from the Kansas Water Pollution Control Revolving Fund for improvements to its sanitary sewer pumping and treatment systems.

### Project Type

Utilities / Infrastructure

### Project #

23-01-021

## Messages

### Project Documents

Add Document  
(/Portal/ProjectDocuments/55645)



#### Title

#### Date

Environmental Review Letters\_FINAL.pdf (/Portal/GetFile/55647)

1/4/2023 11:51:20 PM

Attachment A - Map.pdf (/Portal/GetFile/55646)

1/4/2023 11:49:48 PM



CODE  
of the  
CITY OF DODGE CITY  
KANSAS

Published under the authority and by the Direction of  
The Governing Body of the City of Dodge City,  
Kansas, this 4<sup>th</sup> day of January 2022

---

A Codification of the General Ordinances  
of the City of Dodge City, Kansas

# ROSTER OF CITY OFFICIALS

## CITY OF DODGE CITY

### GOVERNING BODY

#### Commissioners

E.Kent Smoll

Michael Burns    Rick Sowers

Joseph Nuci        Chuck Taylor

---

#### Administrative Officials

Nick Hernandez  
City Manager

Bradley C. Ralph  
City Attorney

Mark Cowell  
Prosecuting Attorney

Drew Francis  
Chief of Police

Nicole May  
Finance Director

Connie Marquez  
City Clerk

## PREFACE

This volume contains the Code of the City of Dodge City, Kansas, 1987. As expressed in the adopting ordinance, the code supersedes all ordinances passed prior to February 1, 1988 which are not included herein or recognized as continuing in force by reference thereto. The code was prepared by the staff of the League of Kansas Municipalities and Dodge City officials under the authority of Sections 12-3014:3015 of the Kansas Statutes Annotated.

This code is arranged in chapters, articles, and sections in a manner similar to the Kansas Statutes Annotated arrangement. Headnotes and footnotes are included; however, these do not constitute a part of the code and no implication or presumption of intent or construction is to be drawn therefrom.

Any section of this code may be amended or repealed by ordinary ordinance by reference to the code section number as follows:

"Section 1-105 of the Code of the City of Dodge City is hereby amended to read as follows: (the new provisions shall then be set out in full)"

A new section not heretofore existing in the code may be added as follows:

"The Code of the City of Dodge City is hereby amended by adding a section (or article or chapter) which reads as follows: (the new provision shall be set out in full)"

All sections or articles or chapters to be repealed shall be repealed by specific reference as follows:

"Section 1-105 (or article or chapter) of the Code of the City of Dodge City is hereby repealed."

The user's attention is directed to the League of Kansas Municipalities publication, "HANDBOOK for the City Governing body," with the supplement for cities of the first class, both as a source of general information and as an index to the pertinent sections of the Kansas Statutes Annotated.

An index is included in this volume, and the user's attention is also directed to indexes which may appear in standard codes incorporated by reference in this Code.

THE LEAGUE OF KANSAS MUNICIPALITIES

ORDINANCE NO. 2727

AN ORDINANCE AUTHORIZING THE PROVIDING FOR THE CODIFICATION OF THE GENERAL ORDINANCES OF THE CITY OF DODGE CITY, KANSAS, AND THE PUBLICATION OF SUCH CODIFICATION IN PERMANENTLY BOUND OR LOOSELEAF BOOK FORM.

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

Section 1. That a codification of the general ordinances of the City of Dodge City, Kansas, including supplements thereto, as authorized by K.S.A. 12-3014 and 12-3015, is hereby ordered, authorized and provided for, the preparation of which shall be done by the League of Kansas Municipalities as provided by contract. When completed, the codification shall be adopted by ordinance and published together with the adopting ordinance in loose-leaf book form. No fewer than 10 copies shall be published. Such codification shall be entitled, "Code of the City of Dodge City, Kansas," of the year in which the work is completed and ready for publication. The said code shall be duly certified by the City Clerk. One copy of the code shall be filed in the office of the City Clerk and shall be designated as and shall constitute the official ordinance book. Three additional copies shall be filed in the office of the city clerk and shall be designated for used by the public.

Section 2. That this ordinance shall take effect and be in force from and after its publication once in the official city newspaper.

Passed and Approved by the Governing Body this 19th day of November, 1984.

/s/ Louis T. Sanchez, Mayor

ATTEST: Ron Thornburg, City Clerk

(SEAL)

ORDINANCE NO. 2870

AN ORDINANCE ADOPTING THE CODIFICATION OF ORDINANCES OF THE CITY OF DODGE CITY, KANSAS, AUTHORIZED BY ORDINANCE NO. 2727 PROVIDING FOR THE REPEAL OF CERTAIN OTHER ORDINANCES NOT INCLUDED THEREIN, EXCEPTING CERTAIN ORDINANCES FROM REPEAL AND SAVING CERTAIN ACCRUED RIGHTS AND LIABILITIES.

Be it ordained by the Governing Body of the City of Dodge City, KS:

Section 1. The codification of ordinances of the City of Dodge City, Kansas, authorized by Ordinance No. 2727 and K.S.A. 12-3014 and 12-3015, as set out in the following chapters, Chapter I to XVI and Appendices A and B, all inclusive, and entitled the "Code of the City of Dodge City, Kansas, 1987," is hereby adopted and ordained as the "Code of the City of Dodge City, Kansas, 1987," and said codification shall become effective upon publication of no fewer than 10 copies of said code in book form.

Section 2. All ordinances and parts of ordinances of a general nature passed prior to February 1, 1088, in force and effect at the date of the publication of no fewer than 10 copies of the "Code of the City of Dodge City, Kansas, 1987,": and this ordinance, are hereby repealed as of the date of publication of said code except as hereinafter provided.

Section 3. In construing this ordinance, the following ordinances shall not be considered or held to be ordinances of general nature:

- (a) Ordinances pertaining to the acquisition of property or interests in property by gift, purchase, devise, bequest, appropriation or condemnation;
- (b) Ordinances opening, dedicating, widening, vacating or narrowing streets, avenues, alleys and boulevards;
- (c) Ordinances establishing and changing grades of streets, avenues, alleys and boulevards;
- (d) Ordinances naming or changing the names of streets, avenues and boulevards;
- (e) Ordinances authorizing or directing public improvements to be made;
- (f) Ordinances creating districts for public improvements of whatsoever kind or nature;
- (g) Ordinances levying general taxes;
- (h) Ordinances levying special assessments or taxes;
- (i) Ordinances granting any rights, privileges, easements or franchises therein mentioned to any person, firm or corporation;
- (j) Ordinances authorizing the issuance of bonds and other instruments of indebtedness by the city;
- (k) Ordinances authorizing contracts;
- (l) Ordinances establishing the limits of the city or pertaining to annexation or exclusion of territory;

(m) Ordinances relating to compensation of officials, officers and employees of the city;

(n) Ordinances of a temporary nature; Provided, that the above enumeration of exceptions shall not be held or deemed to be exclusive, it being the purpose and intention to exempt from repeal any and all ordinances not of a general nature and general ordinances specifically excepted by this section.

Section 4. The arrangement and classification of the several chapters, articles, and sections of the code adopted by Section 1 of this ordinance and the headnotes and footnotes at the ends of the sections, are made for the purpose of convenience and orderly arrangement, and do not constitute a part of the ordinances, and therefore, no implication or presumption of legislative intent or construction is to be drawn therefrom.

Section 5. The repeal of ordinances as provided in Section 2 hereof, shall not affect any rights acquired, fines, penalties, forfeitures or liabilities incurred thereunder, or actions involving any of the provisions of said ordinances or parts thereof. Said ordinances above repealed are hereby continued in force and effect after the passage, approval and publication of this ordinance for the purpose of such rights, fines, penalties, forfeitures, liabilities and actions therefor.

Section 6. If for any reason any chapter, article, section, subsection, sentence, portion or part of the "Code of the City of Dodge City, Kansas, 1987," or the application thereof to any person or circumstances is declared to be unconstitutional or invalid, such decision will not affect the validity of the remaining portions of this code.

Section 7. This ordinance shall take effect and be in force from and after the publication of the "Code of the City of Dodge City, Kansas, 1987," as provided in K.S.A. 12-3015.

Passed by the Governing Body of the City of Dodge City, Kansas, this 7th day of March, 1988.

/s/ Bob Carlson, Mayor

ATTEST: /s/ Ron Thornburg, City Clerk

(SEAL)



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### ARTICLE 1. GENERAL PROVISIONS

15-101.

**DEFINITIONS.** Unless the context specifically indicates otherwise, the meaning of terms used in this chapter shall be as follows:

(a) City Manager shall mean a person designated by the City to supervise the operation of City functions, and who is charged with certain duties and responsibilities by this Code or his duly authorized representative.

(b) Dwellings shall include all single family residences, duplexes or two family dwellings.

(c) Industrial Wastewater shall mean the liquid wastes from industrial processes as distinct from domestic or commercial wastewater and solid wastes. Industrial wastes predominate the composition of the wastewater.

(d) Milligrams per liter (mg/l) shall mean a weight to volume ratio; the milligrams per liter value multiplied by the factor 8.34 shall be equivalent to pounds per million gallons of water.

(e) Multiple Family Dwellings shall mean all residential buildings, except hotels or motels having three or more separate living unit.

(f) Normal strength sewage shall mean sewage that has concentrations not exceeding the following parameters:

Biochemical Oxygen Demand, 5 day (BOD)	300 mg/l
Total Suspended Solids (TSS)	200 mg/l
Total Dissolved Solids (TDS)	700 mg/l

(g) Operation and maintenance shall mean all expenditures made during the useful life of a facility used to supply or distribute water or to collect and treat wastewater including materials, labor, utilities, and other items which are necessary for managing and maintaining the facility to achieve the capacity and performance for which such facility was designed and constructed.

(h) Publicly Owned Treatment Works (POTW) shall mean a treatment works as defined by Section 212 of the Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 USC 1251, et. seq., and may also be known as the Wastewater Treatment System (WWTS) and shall mean any devices and systems for the collection, storage, treatment, recycling, and reclamation of wastewater or necessary to recycle or reuse water at the most economical cost over the useful life of the works.

These include intercepting sewers, outfall sewers, wastewater collection systems, pumping, treatment and other facilities which are an integral part of the wastewater collection and treatment processes or are used for ultimate disposal of residues resulting from such treatment.

(i) Replacement shall mean expenditures for Obtaining and installing equipment, accessories, or appurtenances which are necessary during the useful life of the water or wastewater facilities to maintain the capacity and performance for which such works facilities designed and constructed.

(j) Service Charge, Monthly shall mean the total monthly charge to be levied against users and shall consist of any or all of charges related to billing, small collector mains, customer related infiltration/inflow (I/I), volume charges related to contributed volume, volume related I/I and domestic levels of strength, and in the case of industrial customers shall include a service charge to recover billing, a volume charge to recover volume related costs, and one or more strength charges including, but not limited to, biochemical oxygen demand (BOD), and total dissolved solids (TDS).

(k) Standard Methods shall mean the examination and analytical procedures set forth in the latest edition at the time of analysis of "Standard Methods for the Examination of Water and Wastewater" as prepared, approved, and published jointly by the American Water Works Association, the American Public Health Association, and the Water Pollution Control Federation.

(l) Toxic Pollutant shall mean any pollutant or combination of pollutants listed as toxic in regulations promulgated by the Administrator of the Environmental Protection Agency (EPA) under the provisions of Section 307(a) of the Clean Water Act, or other Acts.

(m) Useful Life shall mean the estimated period during which a water or wastewater facility will be operated.

(n) User shall mean a person or legal entity connected to the water system who uses water or treatment works which produces or causes to be produced wastewater requiring processing and treatment to remove pollutants.

(o) Utility shall mean and include the water supply and distribution system, the sewer collection system, the wastewater treatment system, and the solid waste collection system and/or any other utility service furnished by the City of Dodge City to the users thereof.

(p) Wastewater is synonymous with sewage and the two terms may be interchanged without altering the meaning of either.

15-102.

**DEPARTMENT ESTABLISHED.** The City departments concerned with the municipal water supply and distribution, collection and treatment of wastewater, collection and

hauling of trash and refuse of the city are hereby established as and shall constitute the Utilities Departments of the City in accordance with the provisions of K.S.A. 12-856 through 12-869, inclusive.

- 15-103. UTILITY DEPARTMENT; OFFICERS AND EMPLOYEES.** The Governing Body shall provide for such officers and employees as may be necessary for the purpose of operation of the Utility Department and shall establish rates and charges, the collection of charges for service and the imposition of liens upon real property as provided by K.S.A. 12-860.
- 15-104. UTILITY SYSTEMS; SPECIAL ASSESSMENTS.** The City may, for the purpose of the proper operation of its utility systems, levy special assessments against property in benefited districts and to issue bonds therefor in accordance with the provisions of K.S.A. 12-861.
- 15-105. SAME; REVENUE BONDS.** The Governing Body, for the proper operation of its utility systems, may issue revenue bonds in accordance with the provisions of K.S.A. 12-863, and do all things permitted by law for the proper operation of its utility systems in accordance with the provisions of K.S.A. 12-856, through 12-869, inclusive, all of which the sections of Kansas Statutes Annotated are incorporated into and made a part of this article.
- 15-106. SCOPE OF CHAPTER PROVISIONS.** All pertinent provisions of this chapter are hereby made a part of the terms and conditions whereby the City shall furnish any utility service to any person; or whereby the City shall make any utility connections, or perform any work of any kind in connection with the furnishing of any utility service.
- 15-107. SERVICE TO COMPLY WITH TECHNICAL REGULATIONS.** Any utility service furnished under the provisions of this chapter shall be in accordance with and compliance with all applicable technical provisions of this code, state law and city ordinances, specifications, rules and regulations.
- 15-108. TERMINATION FOR NONCOMPLIANCE WITH PROVISIONS.** The City shall have the right to disconnect or refuse to connect or reconnect any utility service which does not meet the applicable provisions of this code, state law or city ordinances, specifications, rules and regulations.
- 15-109. SALE OF SERVICE BY CUSTOMER.** It shall be unlawful for any person to resell any utility service obtained from the City to others except by units of local government or recognized and licensed utility companies, and then only by special arrangement with the City of Dodge City.

- 15-110. LIABILITY OF CITY FOR DAMAGE.** The City shall not be liable for any damage to the property of any customer of any utility service furnished by the City due to backflow of the sewerage system, failure of the sewer or water supply, interruption of service or any other cause outside the direct control of the City.
- 15-111. TEMPORARY INTERRUPTION OF SERVICE.** The City reserves the right to cut off any utility service without notice in case of emergencies. When an interruption in service is necessary for maintenance and improvement to the utility system, affected customers will be notified as circumstances permit.
- 15-112. USE WITHOUT PERMIT PROHIBITED.** It shall be unlawful for any person not having a permit to use any utility service offered by the City or to make any connection thereto.
- 15-113. UTILITY SERVICE; APPLICATION REQUIRED.** Any person desiring any utility service furnished by the City shall make application for the same to the city department designated by the City Manager on a form provided by the City. Such application shall contain the applicant's name, address and the uses for which such utility service is desired.
- 15-114. SAME; PERMIT.** Upon the approval of the application for any utility service, a permit therefor shall be issued by the department designated by the City Manager.
- 15-115. SAME; USES CONTRARY TO PERMIT, PROHIBITED.** Any person having a permit from the City for the use of any utility service offered by the City who shall use such utility service for any purpose other than mentioned in such permit shall be guilty of a violation of this code.
- 15-116. SAME; USE ASSUMED.** All premises connected to any utility service of the City shall be assumed to be using such utility service and the owner or occupant will be charged therefor so long as such premises shall remain connected with the utility service.
- 15-117. SAME; RESTRICTED TO ONE APPLICANT.** It shall be unlawful for any person obtaining any utility service from the City to habitually permit any other person to use such utility service.
- 15-118. SAME; SEPARATE CONNECTIONS.** (a) Every building, structure or consumer in the City shall have separate water and sanitary sewer service connections.  
(b) All multiple family rental structures having four living units or less, shall have separate water meters and separate sanitary sewer connections for each living unit.

The sewer connections shall lead either to a private sewer collection system having a minimum diameter of six inches or to the public sanitary sewer system.

(c) All structures containing or designed to contain condominiums and/or townhouse living units shall have separate water meters and separate sanitary sewer service connections for each living unit. The sewer connections shall lead either to a private sewer collection system having a minimum diameter of six inches or to the public sanitary sewer system.

(d) The requirements stated in subsection (b) and (c) hereinabove shall not apply to existing situations except as follows:

(1) In the event that one or more owners or tenants shall fail to pay any fees or charges which may be due for more than 30 days or fail to provide adequate maintenance which may cause backup, flooding, or other damage to adjacent living units or property, the City shall have the right to discontinue utility service including disconnection of water service and/or disconnection of the sewer service and shall not provide utility service until such time as the owner(s) provide separate water and/or sewer services to each living unit.

(2) In addition, should it become necessary at any time to repair, remodel, or change any structure covered by (b) and (c) hereinabove, which requires the issuance of a permit to cover the work, separate water and sewer services shall be provided at that time.

**15-119. SAME; CONNECTIONS TO SERVICE.** Connections for any utility service furnished by the City shall be made only by the City under the supervision of the authorized City representatives.

**15-120. PLUMBING INSPECTION OUTSIDE OF CITY.** In order to protect the city water supply the City will not make any water or sewer taps outside the city limits until the plumbing system of the premises involved has been inspected and approved by the City. Such inspection will be made only after deposit of the stipulated fee for the inspection by the affected property owner. The plumbing system shall be in accordance with the plumbing code of the City.

**15-121. UTILITY SERVICE; USERS TO MAINTAIN OWN SERVICE.** (a) All persons taking water utility service from the City shall keep their own service pipes, curb boxes, cocks and apparatus in good repair, and protect same from the frost at their own risk and expense, and shall prevent all unnecessary waste.

(b) All persons taking sanitary sewer service from the City shall keep their own building sewer or service lateral in good repair from the building to the city main

line and protect same from the intrusion of roots, collapse, or freezing, all at their expense.

**15-122.**

**LIABILITY OF PROPERTY OWNER; LIEN.** (a) Lessors of leased premises served by utility service furnished by the City shall be ultimately liable for payment of the cost of any utility service furnished by the City to such leased premises, whether the service is furnished upon the application and request of the lessor or the lessee of such premises.

(b) If utility service is furnished by the City to leased premises, upon the application and request of the lessee, then all billings for such service furnished shall be made to the lessee. However, if the cost of such service is not paid, as and when they become payable, the lessor of the premises served shall be liable for the payment of such cost, plus all interest and penalties as provided by the laws of the City. The lessor shall be notified in writing by first class mail within 10 days after a billing becomes delinquent.

(c) If utility service is furnished to leased premises on the application and request of the lessor of the premises, then all billings for utilities furnished to such leased premises shall be made directly to the lessor, and the lessor shall be fully liable for the cost of service furnished.

(d) Such charges shall constitute a lien upon the real estate served, and shall be certified by the City Clerk to the County Clerk, to be placed on the tax roll for collection, subject to the same penalties and collected in like manner as other taxes collectible by law.

**15-123.**

**UTILITY RATES.** (a) Rates for utility services or usage for all users or customers of city utilities shall be set by the City Commission by resolution. The City Commission shall review such utility rates on an annual basis and shall adjust such rates as necessary to ensure that adequate income is received to proportionally recover the cost of operation and maintenance, replacement, and financing the individual utility services.

(b) **SAME; CPI ADJUSTMENT.** (1) As a minimum, the rates set for each utility and the users or customers thereof shall be adjusted by the amount of change in the Consumer Price Index (CPI) for the Midwestern part of the United States as published by the Federal Department of the Treasury for the calendar year just past.

(2) Any excess revenue collected from a class of users shall be applied to the costs of operation, maintenance, and replacement needs attributable to that class for the next year.

(3) The City shall notify each user annually in conjunction with a regular bill of the rate being charged for operation, maintenance, and replacement costs of each utility service.

(c) **SAME; CLAIM FOR ADJUSTMENT OF UTILITY RATES.** Any claim for adjustment or recomputation of charges made under this section shall be made within 60 days from the first day of the month of which the adjustment or recomputation or charges is desired. Failure to file such claim within 60 days shall be presumed that the billing is accurate and binding upon the user and the City.

**15-124. PAYMENTS; WHEN DUE.** (a) All bills for utility services furnished by the City shall be due and payable prior to midnight of the 15th day following the date of such bill. Should the due day fall on a Sunday or a holiday observed by the City, the next following business day shall be allowed as a day of grace for payment.  
(b) All charges for City utility services shall be made and billed monthly.

**15-125. SAME; PENALTY FOR DELINQUENCY.** Any person who fails, refuses or neglects to pay the billing for any utility service required by this article shall be subject to a charge equal to 10% of the amount of such bill.

**15-126. DELINQUENCY AND TERMINATION NOTICE: RIGHT TO HEARING; PROCEDURE; DISCONNECTION.** (a) A delinquency and termination notice shall be issued five days after a bill is delinquent. The notice shall provide the customer in whose name the service is provided according to the records in the Utility Department with the following information:  
(1) The amount due on any unpaid balance, plus interest;  
(2) The customer's right to a hearing before a Hearing Officer of the City prior to termination of service;  
(3) Notice that all utility services will be terminated if the bill remains unpaid.  
(b) If the customer, according to the records in the office of the Utility Department, is not the occupant where utility services are provided, similar notice shall be given to the occupant of the premises. A request for a hearing must be made not later than three working days prior to the date of termination. Such hearing will be conducted by the City Manager or such other person or persons as may be designated by the City Manager. Upon receipt of a request for a hearing, the City may not discontinue service until the hearing is completed, unless public health, safety or welfare is endangered. After the hearing, the City Manager shall render his or her decision and if it is determined that service should be discontinued, the City is authorized to discontinue and disconnect utility services for any customer who shall be delinquent in the payment of bills. Customers are responsible for furnishing the utility department with their correct addresses for

billing and notification purposes.

**15-127. RESTORATION OF SERVICE AFTER DISCONTINUANCE:** In the event that utility service is discontinued for any reason, the consumer thereof shall have the right to have the same restored only upon the payment of all rates, charges, and penalties due thereon, and in addition, a delinquency fee to be set by City Commission Resolution will be charged if the past due amount on the account is not paid by the reminder due date. (ORD.3425)

**15-128. PENALTY.** Any person found to be in violation of Articles 1, 2, 3, 4, 5, and 6 of this Chapter shall upon conviction be punished by a fine of not less than \$100.00 nor more than \$500.00, or by imprisonment, for not more than 30 days, or by both such fine and imprisonment for each offense. For the purpose of this article, a separate offense shall be deemed committed on each day during or on which such violation is permitted to exist.

## **ARTICLE 2. RESIDENTIAL AND COMMERCIAL SEWERS AND WASTEWATER**

**15-201. CLASSIFICATION OF USERS.** All users of the sewers and wastewater treatment system of the city are hereby classified as follows:

(a) Residential User shall mean any user whose lot, parcel, real estate, or building is used for residential purposes only, including apartments having two or more living units, but not including motels and hotels.

(b) Commercial Users shall mean any business or service, including motels and hotels.

(c) Infiltration and Inflow (I/I) shall mean flow not specifically contributed by the City's customers, but rather which enters the wastewater system through defective pipes, pipe joints, building sewers or connections, roof drains, manhole covers, and area drains.

(d) Industrial Users shall mean all establishments which are a source of indirect discharge which does not constitute a discharge of pollutants under regulations issued pursuant to Section 402 of the Clean Water Act (33 USC 1342).

(e) All Industrial Users shall be governed by the Industrial Wastewater Code as included hereinafter.

**15-202. SEWERS, GENERAL.** (a) **CONNECTIONS REQUIRED.** To protect the public health and welfare, all persons and property owners who own buildings and structures used for residential, commercial, or industrial purposes within the City and which are located within 150 feet of a city sewer,

or in any block through which a city sewer extends, shall be required to make connection with the City sewer system for the purpose of disposing of the substances from any such building, premises, or grounds and which may lawfully and properly disposed of by means of the city sewer system.

(b) SAME; CITY EMPLOYEES TO MAKE CONNECTIONS, COSTS. All connections to the sanitary sewer shall be made by employees of the City. In addition to all other charges, the person desiring the sewer connection shall pay to the City a sum equal to the actual cost of all labor, material, and equipment used in making the connection and an additional amount equal to 10% thereof for administrative costs such as, but not limited to, checking applications, writing permits, inspections, if necessary, and other miscellaneous costs.

15-203.

**SEWER CONNECTION, PERMIT FEE.** (a) The following fees shall be paid to the City by any person for a permit to connect to any sanitary sewer of the city sewerage system:

Within the city limits - \$300.00

Outside the City limits - \$400.00

Such permit fees for connections shall be charged regardless of whether or not such connection is to be made within an established sewer district, such connection fee to be considered as an equitable payment for the extra costs of construction and for the operation and maintenance of such system by all current or previous users.

(b) SAME; CITY MAY CONNECT, COST. If any person shall fail, neglect, or refuse to connect any residential building, grounds or premises with the city sewer system within 10 days after being notified in writing by the City to do so, then the City is hereby empowered and directed to cause and have such building, premises or grounds connected with the city sewer system. The City is also hereby authorized to:

(1) Advertise by one publication in the official city paper, describing the premises, and giving at least 10 days' notice for bids for the construction and maintaining of such sewer connection; and

(2) Contract therefor with the lowest responsible bidder or bidders; and

(3) Cause such premises to be connected with the city sewer system; and

(4) Assess the cost and expenses thereof, including the sewer connection fee, against the property and premises so connected. Such assessment to be made in the same manner as other special assessments are made.

(c) SAME; COLLECTION OF COST. The City shall report and certify the cost and expenses of sewer connections, made by its order as provided by this Article, to the City Clerk, and the cost and expenses of the sewer connection shall be addressed and charged against the lots or parcels

of ground or premises and the buildings and improvements thereon. The City Clerk, at the time of certifying other city taxes to the County Clerk, shall certify the aforesaid costs and expenses, on the tax roll of the county against the lot or parcel of grounds, or premises, and the building and improvements thereon, and it shall be collected by the County Treasurer and paid to the city as other taxes are collected and paid, as by law provided.

(d) SAME; CERTAIN CONNECTIONS PROHIBITED. It shall be unlawful for any person to connect open gutters, storm drains, including roof drains and gutters or privies to the public sewers of the City.

(e) SAME; REFUSE PROHIBITED. It shall be unlawful for any person to cause any surface water or the overflow of any cistern to enter any sewer or to throw or deposit or cause or permit to be thrown or deposited in any receptacle connected with the sewer any garbage, hair, ashes, fruit or vegetable peelings, or refuse, rags, cotton, cinders, sticks or any other matter or thing whatsoever except feces, urine and necessary closet and liquid house slops; except for materials that are normally disposed of through garbage disposals.

(f) SAME; INJURY, DAMAGE TO. Any person who shall willfully injure or destroy any public sewer or who shall molest any sewer or any part of the sewer or sewer system or who cleans out a private sewer line which is connected to the public sewer system without first contacting the Utility Department for authority to do so shall be deemed guilty of a violation of this code. Any person violating the provisions of the section shall be punished as provided in Section 15-128.

(g) SAME; TERMINATION OF SERVICE FOR VIOLATIONS. The City Manager may, upon reasonable belief that any person is depositing sewage in violation of the provisions of the article, recommend to the City Commission, the suspension or revocation of the right of any person to discharge sewage into the sanitary sewers or wastewater treatment system of the City until proof satisfactory to the City Manager shall be supplied establishing that effective means have been taken to prevent the discharge of sewage in violation of this article.

**15-204.**

**CESSPOOLS AND PRIVIES PROHIBITED.** It shall be unlawful for any person to build, erect, construct or keep and maintain, or cause to be built, erected, constructed or kept and maintained, any cesspool, privy, privy vault or surface closet on any lot or premises within the city.

**15-205.**

**SEPTIC TANKS.** (a) No septic tank shall be installed within the city limits if sewer service is currently

available within 150 feet or in any portion of the block in which the connection can be located.

(b) SAME; APPLICATION. Application to install septic tank systems shall be submitted for approval by the City Building Official. Such plans shall be in accordance with the rules and regulations of the Kansas Department of Health and Environment (KDHE) and shall include a soils percolation test to be used to determine the amount of drain field necessary to serve the septic tank.

(c) SAME; ABANDON UPON AVAILABILITY OR SANITARY SEWER. Upon the availability of a city sewer, residents using septic system shall abandon them and make connections to the city sewer within six months.

**15-206. SEWER SERVICE OUTSIDE THE CITY.** Sewer service and the use of the City wastewater treatment system may be provided outside the city limits at the discretion of the City Commission and subject to the provisions and charges established therefor.

**15-207. INTERCEPTORS AND/OR TRAPS FOR SAND, MUD, GREASES, OILS, ETC.** (a) Garages, Service Stations. It shall be unlawful for any garage, automobile service station, wash rack, whether public or private, or other location to allow waste material containing grease, oil, sand, mud, or other similar substances, to enter the sanitary sewers in the city, except through a sand trap, approved by the Building Official. The sand trap shall be constructed, installed, and maintained in such a manner so as to prevent any substantial amount of such materials from entering the sewers. Where available, such sand traps shall be connected to a storm drain system.

All materials deposited in such sand traps shall be disposed of in an environmentally safe manner. Greases and oils shall be disposed of with other waste petroleum products and shall not be flushed into the sanitary sewer or storm drain system.

(b) SAME; DEFINITIONS. For the purpose of this Code, the following terms shall have the meanings indicated herein below:

(1) Kitchen, Commercial shall mean any kitchen in a restaurant, cafe, cafeteria, lunch counter, bar, club, institution or commercial building where food is served in quantity. This definition shall include fast-food establishments specializing in hamburgers, pizza, chicken, tacos, or any combinations or variations of such items.

(2) Kitchen, Limited or single service kitchen shall mean any kitchen where food is prepared for

consumption off-premise or for both off-premise consumption and incidental consumption in-house. This definition shall include establishments such as quick-shops and donut shops.

(c) SAME; GREASE INTERCEPTION FACILITIES. Where problems are currently being experienced with the discharge of greases by kitchens into the sewers, and in all new or remodeled Commercial or Limited Service Kitchens, the Building Official shall require the installation of a grease trap as required by Section 711 of the Uniform Plumbing Code (UPC) or the installation of a grease interceptor, as required by Section 712 of the UPC. The use of either a trap or interceptor shall depend on the number of fixtures, volume of water and grease being discharged, number of meals being served, and may also include the use of prior knowledge about similar kitchen facilities.

(1) Grease Traps. Grease traps may be permitted in locations where the Building Official determines that the number of fixtures, discharge volumes, and grease retention capacity will comply with Section 711 of the UPC.

(2) Grease Interceptors. Grease interceptors shall be installed in all other locations. Grease interceptors shall be sized according to the following formula:

$$V = N \times Q \times T \times S; \text{ where}$$

V = Interceptor size in gallons

N = Number of meals served at Peak Hour

Q = Waste Flow Rate

- a. With Dishwashing Machine 6 gal./min.
- b. Without Dishwashing Machine 5 gal./min.
- c. Limited or Single Service Kitchen 2 gal./min.
- d. Food Waste Disposal 1 gal./min.

T = Retention Times

- a. Commercial Kitchen Waste with Dishwasher 2.5 Hours
- b. Limited or Single Service Kitchen, per single serving 1.5 Hours

S = Storage Factor

- Fully Equipped Commercial Kitchen
  - a. 8 hour operation 1
  - b. 16 hour operation 2
  - c. 24 hour operation 3
- Limited or Single Service Kitchen 1.5

For the purposes of this Section, it shall be assumed that the Number of Meals per Peak Hour (N) for a limited or single service kitchen shall be a minimum of 10, whether seating is provided or not, and shall be increased by one meal for every 30 square feet over 300 square feet of additional seating area or fraction thereof.

(d) SAME; MAINTENANCE. It shall be the responsibility of the owner of a grease trap or interceptor to have the facility cleaned of accumulated grease at regular intervals in order to provide for an efficient operating condition at all times. No such collected grease shall be introduced into any drainage pipe or public or private sewer.

(e) SAME; EXISTING KITCHENS. Any establishment having either a Commercial or Limited Kitchen which is found to be discharging greases into the Sanitary Sewer System shall install either a grease trap or grease interceptor, as appropriate to the size of the kitchen, within one (1) year of the date that the Owner or Operator is notified of the violation. Such trap or interceptor shall be approved by the Building Official and a plumbing permit issued before such installation.

**15-208. AGREEMENT TO SEWER REGULATIONS; RATES; INSPECTIONS.**

(a) All persons by connecting to the sewers of the City do by such act agree to be bound by all rules, regulations, and rates which may be established by the City.

(b) Any person residing within or without the City who receives water from the Utility Department of the City shall be subject to the rates, rules, and regulations provided for in the use of the sewer system unless the water user can prove that it is not making use of the sanitary sewer facilities of the city.

**15-209. INSPECTIONS.** (a) The City Engineer and other duly

authorized employees of the City shall be permitted to enter all properties for the purposes of inspection, observation, measurement, sampling, and testing in accordance with the provisions of this section.

(b) For the purpose of making all inspections provided for in this chapter and in determining whether or not a water user is a sewer user, the Engineering Department of the City shall make all necessary inspections and determinations and shall, for that purpose, be authorized to enter upon premises of any user at all reasonable times. If a representative of the Engineering Department is refused access to any premises where a claim is made that no sewer service is being used for the purpose of determining such user, the appropriate sewage charge shall be made upon the property until proof sufficient to the inspection department has been supplied.

**15-210.**

**SEWER SERVICE CHARGES; RESIDENTIAL AND COMMERCIAL**

**USERS:** (a) All users shall pay a monthly service charge based upon the lesser of the average monthly billable water usage during the months of December through February, inclusive, or January through March, inclusive, depending on the reading cycle. All users for which an average cannot be established from usage for one or the other of the two reading cycles shall be billed on the basis of their monthly consumption of water until such average can be established.

(b) If a sewer user obtains water from a source other than the City water system, the sewer service charge to be made against such premises shall be based on the quantity of water received on the premises as established by separate metering facilities installed by such user at his or her own expense.

(1) Such metering facilities shall be approved by the City prior to installation. Such metering facility shall measure the volume of liquid actually discharged unto the sanitary sewer system from the premises. Such metering facility shall be maintained and calibrated for accuracy by the City at the users' expense and the readings from the metering facility shall be taken by the City at not less than monthly intervals.

(2) In lieu of a sewage meter and with the approval of the City Manager, the user may install auxiliary water meter(s) to measure that portion of water used which is diverted from entering the sewer system. In the event auxiliary water meters are installed, the volume of water metered by such meter(s) shall be deducted from the total volume of water before the sewer service charge schedule is applied. Such meters shall be maintained and calibrated as in Section 15-210 (b) (1) above.

(3) In the event that the City determines, for whatever reason, the auxiliary meters are not providing correct information, the City Manager shall have the right to require the user to install a sewage meter as specified in Section 15-210 (b) above.

**15-211.**

**SAME; SCHEDULE OF CHARGES.**

A schedule of charges shall be adopted by City Commission Resolution and shall contain the following elements:

(a) A monthly service charge to recover the costs associated with billings, the collection system, and customer related infiltration and inflow (I/I).

(b) A volume charge to recover the costs associated with volume contributed by residential and commercial customers, volume related to I/I and strength levels related to residential and commercial wastewater.

(c) Any users of the POTW or person liable for the payment of sewage service charges may appeal to the City Manager the reasonableness of sewage charges.

(d) Any person desiring to use the POTW of the City

by transporting of liquid matter to the POTW by means other than through the sewer system of the City may do so if the quantity, quality, type and character is of a type permitted under the laws of the City, and consists solely of organic and biodegradable wastes from septic tanks and cesspools; such person shall pay a charge for each 1,000 gallons or fraction thereof of the waste. Such charges shall be established by the City Commission as set forth hereinafter.

(1) The charge shall be based on both the volume of the waste and the five day biochemical oxygen demand (BOD). If, at any time, the wastewater is found to have a BOD of more than 300 mg/l a strength charge shall be charged for the entire BOD loading as follows:

$$S_{BOD} = V_s \times 8.34 \times C_{BOD} \times BOD$$

Where:

$S_{BOD}$  = Strength charge attributable to Biochemical Oxygen Demand.

$V_s$  - Sewage volume in million gallons

8.34 = Pounds per gallon of water

$C_{BOD}$  = Unit charge for BOD in dollars per pound  
(set by City Commission)

BOD = Five-day BOD in mg/l.

### ARTICLE 3. INDUSTRIAL WASTEWATER

**15-300.**

**WASTEWATER CODE INCORPORATED.** There is hereby incorporated by reference as if set out fully herein, the Industrial Wastewater Code adopted by the Governing Body of the City of Dodge City, Kansas, as prepared by the City and consisting of Ordinance No. 2998 and entitled AN ORDINANCE ESTABLISHING AN INDUSTRIAL WASTEWATER CODE RELATING TO THE SEWERAGE SYSTEM OF THE CITY OF DODGE CITY, KANSAS, PROVIDING FOR REGULATIONS FOR THE TREATMENT OF INDUSTRIAL WASTEWATER, PROVIDING PRETREATMENT PROVISIONS, ESTABLISHING WASTEWATER CONTRIBUTION PERMITS, REPEALING ORDINANCE NO. 2831, ADOPTED ON THE 14TH DAY OF MAY, 1987, AND PROVIDING PENALTIES FOR THE VIOLATION OF THE PROVISIONS OF THIS ORDINANCE. No fewer than three copies of the Industrial Wastewater Code marked "Official Copy as incorporated by the Code of the City of Dodge City" and to which there shall be a published copy of this section attached, shall be filed with the City Clerk to be open for inspection and available to the public at all reasonable business hours.

**15-301.**

**DEFINITIONS.** Unless the context specifically

indicates otherwise, the meaning of terms used in this Ordinance shall be as follows:

Abbreviations - the following abbreviations shall mean:

APHA - American Public Health Association  
AWWA - American Water Works Association  
BOD - Biochemical Oxygen Demand  
CFR - Code of Federal Regulations  
COD - Chemical Oxygen Demand  
EPA - Environmental Protection Agency  
FOG - Fats, Oils, and Greases  
KDHE - Kansas Department of Health and Environment  
LEL - Lower Explosive Limit  
l - Liter  
mg - Milligrams  
mg/l - Milligrams per Liter  
NPDES - National Pollutant Discharge Elimination System  
POTW - Publicly Owned Treatment Works  
SIC - Standard Industrial Classification  
SIU - Significant Industrial User  
SWDA - Solid Waste Disposal Act, 42 USC 6901, et. seq.  
TDS - Total Dissolved Solids  
TSS - Total Suspended Solids  
USC - United States Code  
WPCF - Water Pollution Control Federation  
WWTS - Wastewater Treatment System

Act or "the Act" - Federal Water Pollution Control Act, also known as Clean Water Act, as amended, 33 USC 1251, et. seq.

Approval Authority - The Environmental Protection Agency (EPA), or if the pretreatment program has been formally delegated to the Kansas Department of Health and Environment (KDHE), it shall mean the Director of the Division of Environment of KDHE.

Authorized Representative of Industrial User - may be any one of the following: (1) A principal executive officer of at least the level of vice-president, if a corporation; (2) A general partner or proprietor if a partnership or proprietorship, respectively; (3) A duly authorized representative of the individual designated above if such representative is responsible for the overall operation of the facilities from which the indirect discharge originates.

BOD (Biochemical Oxygen Demand) - quantity of oxygen utilized in the aerobic oxidation of organic matter under standard laboratory procedure in five (5) days at 20 degrees Centigrade, expressed in milligrams per liter, or as pounds per million gallons of water.

Building Inspector - person designated by the City to issue building permits and to process sewer connection permits.

Building Sewer - a sewer conveying wastewater from the premises of a User to a publicly owned sewer or to the POTW.

Certified Laboratory - a laboratory certified by the Kansas Department of Health and Environment (KDHE) for any parameters to be tested under the requirements of the Clean Water Act, as amended, per the Kansas Administrative Regulations and as specified by K.S.A. 65-171(1), as amended.

City - the City of Dodge City, Kansas

City Engineer - a licensed professional engineer employed by the City as a staff member or as a consultant.

City Manager - a person designated by the City to supervise operation of City functions, including the Publicly Owned Treatment Works (POTW) and who is charged with certain duties and responsibilities by this ordinance, or his duly authorized representative.

COD (Chemical Oxygen Demand) - quantity of oxygen required to oxidize matter in a waste sample, under specific conditions of oxidizing agent, temperature and time.

Cooling Water, Non-Contact - water discharged from any use such as air conditioning, cooling or refrigeration, or to which the only pollutant added is heat.

Control Authority - the "approval authority" as defined hereinabove, or the City's City Manager if the City has adopted a local Pretreatment Program under the provisions of this Ordinance.

Discharge, Direct - discharge of treated or untreated wastewater directly to the waters of the State.

Discharge, Indirect - discharge or introduction of non-domestic pollutants from any source regulated under Section 307 (b) or (c) of the Act, (33 USC 1317), into the POTW (including holding tank waste discharged into the system).

Domestic (Sewage) Wastewater - liquid and water borne waste derived principally from dwellings, business buildings, institutions, and the like; free from industrial wastes, and of such character as to permit satisfactory disposal without special treatment into the public sewer or by means of a private sewage disposal system.

Effluent - the wastewater or other liquid, whether raw, partially or completely treated, flowing from a basin, treatment process or treatment facility.

Environmental Protection Agency (EPA) - the United States Environmental Protection Agency, or other duly authorized official of said agency.

Garbage - solid wastes from the domestic and commercial preparation, cooking and dispensing of food, and from the handling, processing, storage and sale of food products and produce.

Governing Body - City Commission of the City.

Holding Tank Waste - any waste from holding tanks such as vessels, chemical toilets, campers, trailers, septic tanks, and vacuum-pump tank trucks.

Industrial User - a source of Indirect Discharge which does not constitute a "discharge of pollutants" under regulations issued pursuant to Section 402 of the Act (33 USC 1342).

Industrial User Representative - Industrial Users shall be represented by an Authorized Representative as defined in Section 1.4 hereinabove; or by a duly authorized representative of the individual designated according to conditions stated in said Section 1.4. 1.25 Industrial

Wastewater - liquid wastes from industrial processes as distinct from domestic wastewater and solid wastes. Industrial wastes predominate the composition of the wastewater.

Interference - inhibition or disruption of POTW treatment processes or operations which contributes to a violation of any requirement of the City's Kansas Water Pollution Control Permit No. M-UA11-N001. The term includes prevention of wastewater use or disposal of sewage sludge use or disposal by the POTW in accordance with Kansas Permit No. M-UA11-N001 issued pursuant to the provisions of Kansas Statutes Annotated 65-164 and 65-165, as amended or any criteria, guidelines, or regulations developed pursuant to the Solid Waste Disposal Act (SWDA), Clean Air Act, Toxic Substances Control Act, or more stringent State criteria.

Living Quarters - one or more habitable rooms occupied or which are intended or designed to be occupied by one family with facilities for living, sleeping, bathing, and cooking.

National Categorical Pretreatment Standard or Pretreatment Standard - any regulation containing pollutant discharge limits promulgated by the EPA in accordance with Section

307(b) and (c) of the Act (33 USC 1317) which applies to a specific category of Industrial Users.

National Pollutant Discharge Elimination System (NPDES Permit) - permit issued by KDHE pursuant to Section 402 of the Act (33 USC 1342) to Direct Dischargers.

National Prohibitive Discharge Standard or Prohibitive Discharge Standard - any regulation developed under the authority of Section 307(b) of the Act (40 CFR, Part 403.5).

New Source - any source, the construction of which is commenced after the publication of proposed regulations prescribed in 40 CFR, Part 403.3(k), as revised on July 10, 1984 (49 Federal Register 28058) and October 17, 1988 (53 Federal Register 40610); Categorical Pretreatment Standards; and July 24, 1990 (55 Federal Register 30128) Categorical Pretreatment Standards, 40 CFR Part 403.6. A new source means any source, the construction of which is commenced after the date of promulgation of the standards referred to herein.

Permit - a properly prepared and executed form authorizing a User to connect to the POTW and public sewer system under terms and conditions defined by the City. The holder of a permit for purposes of this Ordinance is called a Permittee.

Person - any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust estate, governmental entity or any other legal entity, or their legal representatives, agents or assigns. Masculine gender shall include the feminine, the singular shall include the plural where indicated by context.

pH - the reciprocal of the logarithm (Base 10) of the hydrogen-ion concentration in grams per liter of solution.

Pollutant - any dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discharged equipment, rock, sand, cellar dirt, industrial, municipal, and agricultural wastes discharged into water.

Pollution - man-made or-induced alteration of the chemical, physical, biological, and radiological integrity of water.

Pretreatment or Treatment - reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater to a less harmful state prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The

reduction or alteration can be obtained by physical, chemical or biological processes, or process changes and other means, except as prohibited by 40 CFR Part 403.6(d).

Pretreatment Program, Approved - A program developed by the City and formally approved by EPA, complying with the requirements of 40 CFR, Part 403.8. The City currently does not have an approved program.

Pretreatment Program, Local - A program developed by the City with or without the formal approval of KDHE or EPA, which will allow the City to control and/or require certain industries to meet local pretreatment standards or which will allow the City to provide pretreatment for an industry. Should the City provide pretreatment, the industry shall pay pretreatment fees over and above the normal service fees.

Pretreatment Requirements - any substantive or procedural requirement related to pretreatment, imposed on an industrial user to cause modification of the effluent from that User.

Properly Shredded Garbage - wastes from preparation, cooking, and dispensing of food that has been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than one-half (1/2) inch (1.27 centimeters) in any dimension.

Publicly Owned Treatment Works (POTW) - a treatment works as defined by Section 212 of the Act (33 USC 1292) which is owned in this instance by the City. For purposes of this Ordinance, "POTW" shall also include any sewers that convey wastewaters to the POTW from persons inside or outside the City of Dodge City who are, by contract or agreement with the City, Users of the POTW. For purposes of this Ordinance, the POTW includes the following components:

a. Laterals - branches of the sewer system which receives discharge from a building sewer and conveys it to a main sewer line of the system.

b. Main - the artery of the sewer system which receives discharge from lateral sewers and conveys it to the Primary Pump Station.

c. Force Main - a main through which sewage is conveyed by pressure.

d. Pump Station/Lift Station - a facility for the elevation of wastewater from a lower level for purposes of permitting sewage flows.

e. The Transmission System: The Primary Pump Station, Equalization Basin, Booster Pump Station, and the pipe lines from the Primary Pump Station to the Pretreatment and Storage Site;

f. The Pretreatment and Storage Site: The Anaerobic Lagoons, Aeration Basins, Facultative Reservoirs and

appurtenances thereto which treat and store the wastewater for future land application.

g. The Land Application System: the Irrigation Pump Station, irrigation pipe lines, sprinklers, and the soil and the crops grown thereon, which are in effect the final treatment and reuse of the wastewater.

Sample, Composite - for purposes of this Ordinance a composite sample shall mean a number of samples, collected over a fixed period of time, at specified intervals, which represent a proportional amount of the flow at the time the sample is taken.

Sample, Grab - a sample which is taken from a waste stream on a one-time basis with no regard to the flow in the waste stream and without consideration of time. Individual grab samples, unless mixed with a series of such samples, to form a composite sample, shall not be used to determine extra strength surcharges.

Sanitary Sewer - a sewer which carries wastewater (sewage) and to which storm, surface, and ground waters are not intentionally admitted.

Shall - the word "shall" is a mandatory term.

Significant Industrial User - any Industrial User of the City POTW who is:

a. A categorical industry by definition of the Federal standards under 40 CFR 403.6 and 40 CFR Chapter I, Subchapter N, or:

b. Has a process discharge flow of 25,000 gallons or more per average work day; or

c. Has a flow greater than 5% of the flow in the City wastewater system; or

d. Has in their wastes toxic pollutants as defined pursuant to Section 307 of the Act; or

e. Is found by the City or the EPA to have significant impact either singly or in combination with other contributing industries, on the POTW, the quality of sludge, the system's effluent quality, or air emissions generated by the system.

Significant Non-compliance - any Industrial User whose violation(s) meets one or more of the following criteria:

a. Chronic violations of discharge limits in which 67% or more of all measurements taken during a 6-month period exceed the daily maximum limit or the average limit for the same pollutant parameter;

b. Violations in which 33% or more of all measurements for each pollutant parameter taken during a 6-month period equal or exceed the product of the

daily maximum limit or the average limit multiplied by the applicable criteria [Criteria = 1.4 factor for BOD, TDS, TSS, fats, oils, greases; and, 1.2 factor for all other pollutants except pH];

c. Any other violation of a pretreatment effluent limit (daily maximum or average) which the Control Authority determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of POTW personnel or the general public);

d. Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the POTW's exercise of its emergency authority under Section 9.2, Emergency Discontinuations;

e. Failure to meet, within 90 days after the Federal schedule date, a compliance schedule contained in a local permit or enforcement order for starting construction, completing construction, or attaining final compliance;

f. Failure to provide, within 30 days after the due date, required reports such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;

g. Failure to accurately report noncompliance;

h. Any other violation or group of violations which the Control Authority determines will adversely affect the operation or implementation of the local pretreatment program.

Slug - any discharge of water, sewage, or industrial waste which in concentration of any given constituent or in quantity of flow exceeds for any period of duration longer than fifteen (15) minutes more than five (5) times the average twenty-four (24) hour period.

State - State of Kansas.

Standard Industrial Classification (SIC) - a classification pursuant to the Standard Industrial Classification Manual issued by the Executive Office of the President, Office of Management and Budget, 1972.

STANDARD METHODS - shall mean the current edition of STANDARD METHODS FOR THE EXAMINATION OF WATER AND WASTEWATER as published jointly by AWWA, APHA, WPCF.

Storm Water - any flow occurring during or following any form of natural precipitation and resulting therefrom.

Suspended Solids - solids that either float on the surface or are suspended in water, wastewater, or other liquids, and which are largely removable by laboratory filtering; or the

quantity of material removed from wastewater in a laboratory, as prescribed in STANDARD METHODS and referred to as nonfilterable residue, expressed in milligrams per liter or pounds per million gallons of water.

Total Dissolved Solids - a measure in weight (mg/l) of the mineral matter dissolved in water. This figure multiplied by 8.34 gives pounds of mineral matter per million gallons of water.

Toxic Pollutant - any pollutant or combination of pollutants listed as toxic in regulations promulgated by the Administrator of the EPA under the provision of Section 307(a) of the Act, or other Acts.

User - any person who contributes, causes or permits the contribution of wastewater into the City's POTW.

Wastewater Contribution Permit - a Permit issued by the City to an Industrial User which sets forth requirements for discharging into the POTW and specifies limitations in accordance with the conditions of this Ordinance.

Wastewater Treatment System (WWTS) - used synonymously with POTW throughout this Ordinance.

Waters of the State - all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems and all other bodies or accumulations of water, surface or underground, natural or manmade, public or private, which are contained within, flow through, or border on the State.

15-302.

**DISCHARGE OF WATERS OR WASTES TO POTW: GENERAL DISCHARGE PROHIBITIONS:** GENERAL PRETREATMENT REGULATIONS: This Ordinance sets forth uniform requirements for direct and indirect contributors into the POTW and enables the City to comply with all applicable State and Federal laws required by the Clean Water Act of 1977 as amended, and to protect the POTW. This section provides for regulation of direct and indirect contributors to the POTW through issuance of Permits to certain Users and through enforcement of general requirements for all other Users. Monitoring and enforcement activities are authorized. Certain User reporting is required. It is assumed that existing Users of the POTW will not have their use preempted so long as such users do not exceed the POTW capability to treat wastewater. This section shall apply to the City of Dodge City and to persons inside or outside the City, who are by contract or agreement with the City, Users of the POTW. This section, except as otherwise provided herein, shall be administered, implemented, and enforced by the City Manager or his authorized representative.

**15-303.**

**THE OBJECTIVES OF THIS ORDINANCE ARE:**

- a. To prevent introduction of pollutants into the POTW which will interfere with operation of the POTW or contaminate resulting water or sludge for land application;
- b. To prevent introduction of pollutants which will pass through the system, inadequately treated, into the land application system or the atmosphere or otherwise be incompatible with the POTW;
- c. To improve the opportunity to recycle and reclaim wastewaters and sludges from the system; and
- d. To provide for equitable distribution of the costs of operation, maintenance, and the replacement of the POTW.

**15-304.**

No User shall contribute or cause to be contributed, directly or indirectly, any pollutant or wastewater which will interfere with the operation or performance of the POTW. These general prohibitions apply to all Users of the POTW whether or not the User is subject to National Categorical Pretreatment Standards or Requirements, or any similar standards or requirements that may be established by the State or the City.

**15-305.**

A User shall not contribute the following substances to the POTW:

- a. Any substance which may cause the POTW's effluent or any other product of the POTW, such as residues, sludges, or scums, to be unsuitable for reclamation and reuse or which may interfere with the reclamation process, shall not be discharged into the POTW.
- b. In no case shall a substance discharged to the POTW cause the POTW to be in non-compliance with water or sludge use or disposal criteria, guidelines, or regulations developed under Section 405 of the Act; and criteria, guidelines, or regulations affecting water or sludge use or disposal developed pursuant to the Solid Waste Disposal Act, the Clean Air Act, the Toxic Substances Control Act, or State criteria applicable to the wastewater management method being used; or which will cause the POTW to violate its Kansas Water Pollution Control Use Permit or damage the receiving land.
- c. Any liquids, solids or gases which by reason of their nature or quantity are, or may be, sufficient either alone or by interaction with other substances to cause fire, explosion or be injurious in any other way to the POTW or to the operation of the POTW. At no time, shall two successive readings on an explosion hazard meter, at the point of discharge into the system (or at any point in the system) be more than five percent (5%), nor any single reading over ten percent (10%) of the Lower Explosive Limit (LEL) of the

meter. Prohibited materials include, but are not limited to, gasoline, kerosene, naphtha, benzene, toluene, xylene, ethers, alcohols, ketones, aldehydes, peroxides, chlorates, perchlorate, bromates, carbides, hydrides, and sulfides.

d. Solid or viscous substances which may cause obstruction to the flow in a sewer or other interference with the operation of the wastewater treatment facilities such as, but not limited to: fats, oils, greases, garbage with particles greater than one-half inch (1/2") in any dimension, animal intestines, entrails, or tissues, paunch manure, bones, hair, hides or fleshings, whole blood, feathers.

e. Any wastewater having ashes, cinders, sand, spent lime, stone or marble dust, metal, glass, straw, shavings, grass clippings, rags, spent grains, spent hops, wastepaper, wood, plastics, gas, tar, asphalt residues, residues from refining, or processing of fuel or lubricating oil, mud, or glass grinding or polishing wastes.

f. Any wastewater having a pH less than 6.0, or more than 9.0, or wastewater having any other corrosive property capable of causing damage or hazard to structures, equipment, and/or personnel of the POTW.

g. Any wastewater containing toxic pollutants in sufficient quantity, either singly or by interaction with other pollutants, to injure or interfere with any wastewater treatment process, constitute a hazard to humans or animals, create a toxic effect to the lands receiving the final waters from the POTW, or to exceed the limitation set forth in a Categorical Pretreatment Standard. A toxic pollutant shall include but not be limited to pollutants identified pursuant to Section 307(a) of the Act.

h. Any noxious or malodorous liquids, gases, or solids which either singly or by interaction with other wastes are sufficient to create a public nuisance or hazard to life or are sufficient to prevent entry into the sewers for maintenance and repair.

i. Any wastewater or vapor having a temperature which will damage the PVC pipe lines or which will inhibit biological activity in the POTW resulting in interference, but in no case wastewater with a temperature at the introduction into the POTW which exceeds 40 degrees Centigrade (104 degrees F).

j. Any pollutants, including oxygen demanding pollutants (BOD, etc.) released at a flow rate and/or pollutant concentration which will cause interference to the POTW. In no case shall a slug load have a flow rate or

contain concentration or qualities of pollutants that exceed for any time period longer than fifteen (15) minutes more than five (5) times the average twenty-four (24) hour concentration, quantities, or flow during normal operation.

k. Any wastewater containing radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the City Manager in compliance with applicable State or Federal regulations.

l. Any wastewater which causes hazard to human life or creates a public nuisance.

Upon determination by the City that a User(s):

a. Is contributing to the POTW, or appears likely to contribute, any of the above enumerated substances in such amounts as to interfere with operation of the POTW; or

b. Has violated any term or condition of the user's Wastewater Contribution Permit; or

c. Has violated any term or condition of this Ordinance including, but not limited to, the falsification of information in contravention to Section 12.3 of this Ordinance; or

d. Has caused or appears likely to cause the City to violate its Kansas Water Pollution Control Use Permit; or

e. Has violated any filing, inspection, reporting, or monitoring requirements of this Ordinance; The City Manager may, in addition to any other action or penalty provided herein, take any one or more of the following actions:

(1) Reject the waste.

(2) Suspend and/or revoke the User's Wastewater Contribution Permit if the User has discharged or appears likely to discharge waters, wastes, or materials into the POTW in violation of Sections 2.0 and 3.0 of this Ordinance or has caused or appears likely to cause the City to violate its Kansas Water Pollution Control Permit; or

(3) Sever the User's sewer or water connection; or

(4) After conferring with the City Attorney request the City Attorney to commence an action in the District Court of Ford County, Kansas, for appropriate legal and/or equitable relief, including damages; or

(5) Levy a civil penalty in an amount of not less

than \$500.00 nor more than \$1,000.00 for each violation and, in the case of a continuing violation every day such violation continues shall, for the purpose of this Ordinance, be deemed a separate violation. Upon imposition of such a penalty the User shall have the right to appeal the same by filing a written notice with the City Manager not more than ten (10) days after notice of the penalty. The City Manager shall, in that event, appoint a Hearing Officer to receive the User's appeal and affirm, reverse, or modify the penalty and shall specify the reasons therefor. If the User is aggrieved by the order of the City Manager, the User may file an appeal in the District Court of Ford County, Kansas, within thirty (30) days after the rendition of said order.

- 15-306.** Any User aggrieved by the action of the City Manager resulting in the suspension or revocation of the User's Permit or severance of the User's sewer or water connection may file an appeal in the District Court of Ford County, Kansas, within thirty (30) days after the taking of such action.
- 15-307.** Upon promulgation of the Federal Categorical Pretreatment Standards for a particular industrial subcategory, the Federal Standard, if more stringent than limitations imposed under this Ordinance for sources in that subcategory, shall immediately supersede the limitations imposed under this Ordinance. The City Manager shall notify KDHE, who will in turn notify all affected Users of the applicable reporting requirements under 40 CFR, Part 403.12.
- 15-308.** State requirements and limitations on discharges shall apply in any case where they are more stringent than Federal requirements and limitations or those in this Ordinance.
- 15-309.** The City reserves the right to establish by Ordinance more stringent limitations or requirements on discharges to the POTW system if deemed necessary to comply with objectives set forth in Section 2.1 of this Ordinance. The City will, at some future time when standards have been published, limit the discharge of metals.
- 15-310.** In terms of excessive or accidental discharges, no User shall ever increase the use of process water, or in any way, attempt to dilute a discharge as partial or complete substitute for adequate treatment to achieve compliance with limitations contained in the Federal Categorical Pretreatment Standards, or in any other pollutant-specific limitation developed by the City or State.
- 15-311.** Each User shall provide protection from accidental discharge of prohibited materials or other substances

regulated by this Ordinance. Facilities to prevent accidental discharge or prohibited materials shall be provided and maintained at the User's own cost and expense.

a. Detailed plans showing facilities and operating procedures to provide this protection shall be submitted to the City Manager for review, before construction of the facility.

b. All existing Users shall complete such a plan by the first anniversary renewal date of their existing Wastewater Contribution Permits.

c. No User who commences contribution to the POTW after the effective date of this Ordinance shall be permitted to introduce pollutants into the POTW until accidental discharge procedures have been approved by the City Manager. Review and approval of such plans and operating procedures shall not relieve the Users from responsibility to modify the User's facility as necessary to meet requirements of this Ordinance.

**15-312.**

In the case of an accidental discharge, it is the User's responsibility to immediately telephone and notify the City Manager. Notification shall include location of discharge, type of waste, concentration and volume, and corrective actions.

a. Written Notice. Within five (5) days following an accidental discharge; the User shall submit to the City Manager a detailed written report describing the cause of the discharge and measures to be taken by the User to prevent similar occurrences. Such notification shall not relieve the User of any expense, loss, damage, or other liability which may be incurred as a result of damage to the POTW, fish kills, or any other damage to person or property; nor shall such notification relieve the User of any fines, civil penalties, or other liability which may be imposed by this Ordinance or other applicable law.

b. Notice to Employees. A notice shall be permanently posted on the User's bulletin board or other prominent place advising employees whom to call in the event of a dangerous discharge. Employers shall insure that all employees who may cause or suffer such a dangerous discharge to occur are advised of the emergency notification procedures.

**15-313.**

**DISCHARGE OF CONTROLLED MATERIALS TO POTW:** No User shall discharge or cause to be discharged the following described substances, materials, waters, or wastes if it appears likely in the opinion of the City Manager that such wastes can harm either the sanitary sewers, wastewater treatment system, or equipment, have an adverse effect on

the land receiving the treated wastewater, or which can otherwise endanger life, limb, public property, or constitute a nuisance. In forming his opinion as to the acceptability of these waters, the City Manager will give consideration to such factors as the quantities of such wastes in relation to flows and velocities in the sewers, materials of construction of the sewers, nature of the wastewater treatment system, capacity of the wastewater treatment plant, degree of treatability of wastes in the wastewater treatment plant, and other pertinent factors.

**15-314.**

A User shall not contribute the following substances to any POTW unless specifically allowed by Permit:

- a. Any garbage not properly shredded.
- b. Any waters or wastes containing strong acid iron pickling wastes, or concentrated plating solutions whether neutralized or not.
- c. Any waters or wastes containing iron, chromium, copper, zinc, and similar objectionable or toxic substances; or wastes exerting excessive chlorine requirements, to such degree that any such material received in the composite sewage at the POTW exceeds limits established by the City Manager for such materials.
- d. Any waters or wastes containing phenols or other taste- or odor-producing substances, in such concentration exceeding limits which are established by the City Manager as necessary after treatment of the composite sewage, to meet requirements of State, Federal, or other agencies of jurisdiction for sludge management and disposal of effluent.
- e. Materials or commercial and/or industrial processes which exert or cause unusual concentrations of inert suspended solids; such as, but not limited to: Fullers earth, lime slurries, and lime residues; or of dissolved solids; such as, but not limited to: sodium chloride or sodium sulfate or colloidal clays.
- f. Waters or wastes containing substances which are not amenable to treatment or reduction by the sewage treatment process employed, or are amenable to treatment only to such degree that the sewage treatment plant effluent cannot meet requirements of other agencies having jurisdiction over disposal of effluent or agricultural use of the treated wastewater.
- g. Any wastewater with objectionable color not removed in the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions.

h. Any wastewater contributing mud, sand, soils, silts, or clays shall be required to incorporate an effective facility for removal of such solids as defined herein under total suspended solids in Section 1.0 of this Ordinance.

**15-315.**

If any waters or wastes are discharged, or are proposed to be discharged to the POTW, which waters contain the substances or possess the characteristics enumerated in Section 3.1 hereof, and which in the judgment of the City Manager have a deleterious effect upon the sewerage system, processes, equipment, or receiving lands, or which otherwise create a hazard to life or constitute a public nuisance, the City Manager may:

- a. Reject the wastes;
- b. Require pretreatment to an acceptable condition before discharge to the public sewers;
- c. Require control over the quantities and rates of discharge;
- d. Permit pretreatment and/or equalization of waste flows, providing that the design and installation of the system shall be subject to review and approval of the City, and subject to requirements of applicable codes, ordinances, laws, and permits;

**15-316.**

**RECOVERY OF COSTS; ESTABLISHING PRETREATMENT FEES:**

It is the purpose of this Section to provide for recovery of costs from Users of the City's POTW for implementation of the Local Pretreatment Program established herein. Applicable charges or fees shall be set forth by Governing Body Resolution as part of the City's Schedule of Charges and Fees. Fees associated with enforcement and administration of the Local Pretreatment Program are separate from all other fees chargeable by the City.

The City Governing Body has the authority to establish charges and fees by Resolution which may include fees for the following items:

- a. Added costs of handling and treating wastes not covered by the service charges or User charges; such as assessed surcharges established by Governing Body Resolution, according to procedures set forth in Section 11.0 of this Ordinance, for any of the following contribution situations;

(1) Any waters or wastes containing fats, wax, grease, or oils, whether emulsified or not, in excess of one thousand

(1,000) mg/l or containing substances which may solidify or become viscous at temperatures between zero degrees and 60 degrees Centigrade (32 degrees and 140 degrees F).

(2) Any waters or wastes having BOD greater than three hundred (300) mg/l by weight; or (a) containing more than two hundred (200) mg/l by weight of suspended solids; or (b) containing more than seven hundred (700) mg/l by weight of dissolved solids; or (c) having an average daily flow greater than two (2) percent of the average sewage flow of the City.

b. Processing of Wastewater Contribution Permit applications;

c. Reimbursement of costs for setting up and operating the City's Pretreatment Program;

d. Monitoring, inspections and surveillance procedures;

e. Reviewing accidental discharge procedures and construction;

f. Costs of analytical testing conducted with the use of a laboratory certified by KDHE where such tests are required by the City and according to methods as specified by K.S.A. 65-171(1);

g. Filing appeals;

h. Other fees the City may deem necessary to carry out the requirements contained herein.

**15-317.** Where preliminary treatment, pretreatment, or flow-equalization facilities are provided for by a Permittee for any waters or wastes, they shall be maintained continuously in satisfactory and effective operation at the Permittee's or Owner's expense. Such facilities shall be subject to inspection by the City at any time. Such facilities' condition of operation and analytical test results following treatment shall be made a part of the required compliance reports submitted to the City by the Permittee.

**15-318.** INDUSTRIAL WASTEWATER: INDUSTRIAL USERS: SIGNIFICANT INDUSTRIAL USERS: WASTEWATER CONTRIBUTION PERMITS: All Significant Industrial Users proposing to connect to or to contribute to the POTW shall obtain a Wastewater Contribution Permit before connecting to or contributing to the POTW.

**15-319.**

All existing Significant Industrial Users connected to or contributing to the POTW shall obtain a Permit within ninety (90) days after the effective date of this Ordinance, and shall submit a plan showing facilities and operating procedures providing for accidental discharge protection to the City at the same time the Permit application is filed.

**15-320.**

Other Industrial Users are required to make application for a Permit within thirty (30) days after the effective date of this Ordinance, and proposed new Users shall make application for a Permit at least ninety (90) days prior to connecting to or contributing to the POTW. In support of the Permit application, the User shall submit The following information:

a. Name, address, location (if different from address);

b. SIC number according to Standard Industrial Classification Manual, Bureau of Budget, 1972, as amended;

c. Wastewater constituents and characteristics including, but not limited to those mentioned in Sections 2.0, and 3.0 of this Ordinance as determined by a laboratory certified by KDHE whether such tests are performed by the City or on a self-monitoring basis as specified by K.S.A. 65-171(1); sampling and analysis shall be performed in accordance with procedures established by the EPA pursuant to Section 304(g) of the Act and contained in 40 CFR, Part 136, as amended;

d. Time and duration of contribution;

e. Average daily and thirty (30) minute peak wastewater flow rates, including daily, monthly and seasonal variations if any;

f. Site plans, floor plans, mechanical and plumbing plans and details to show all sewers, connections, and appurtenances by the size, location, and elevation;

g. Description of activities, facilities and plant processes on the premises including all materials which are or could be discharged;

h. Where known, the nature and concentration of any pollutants in discharge which are limited by City, State, or Federal Pretreatment Standards, and a statement regarding whether or not Pretreatment Standards are being met on a consistent basis, and if not, whether additional Operation and Maintenance and/or additional pretreatment is required;

i. If additional pretreatment and/or Operation and Maintenance will be required to meet the Pretreatment Standards or City requirements; the shortest schedule by which the User will provide such additional pretreatment. The completion date of the User's schedule shall not be later than the compliance date established for the applicable Pretreatment Standard. The following conditions shall apply to this schedule:

(1) The schedule shall contain increments of progress in the form of dates for commencement and completion of major events leading to construction and operation of additional pretreatment required for the User to meet the applicable Pretreatment Standards or City requirements (e.g., hiring an engineer, completing design plans, completing final plans, executing contract for installation, commencing construction, completing construction, completing inspection, etc.).

(2) No time increment referred to in Section 5.2.i.(1) above shall exceed six (6) months or 180 calendar days.

(3) Not later than fourteen (14) days following each date in the schedule and final date for compliance, the User shall submit a progress report to the City Manager including, as a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply. In no event shall more than six (6) months or 180 calendar days elapse between progress reports to the City Manager.

j. Each product produced by type, amount, process or processes, and rate of production;

k. Type and amount of raw materials processed (average and maximum per day);

l. Number and type of employees, and hours of operation of plant and proposed or actual hours of operation of pretreatment system; and

m. Any other information as may be deemed by the City to be necessary to evaluate the Permit application.

n. Any changes in the industrial processes, flows, discharge constituents, and potential contaminants must be submitted to the City in writing prior to instituting such changes.

**15-321.** The City Manager shall evaluate data furnished by the User and may require additional information. After

evaluation and acceptance of the data furnished, the City Manager may issue a Permit subject to terms and conditions provided herein. Within six (6) months or 180 calendar days of the promulgation of a National Categorical Pretreatment Standard, the Wastewater Contribution Permit of any Users subject to such standards shall be revised to require compliance with such standard within the time frame prescribed by such standard.

a. Where a User, subject to a National Categorical Pretreatment Standard, has not previously submitted an application for a Permit as required by Section 5.2, the User shall apply for a Permit within six (6) months or 180 calendar days after promulgation of the applicable National Categorical Pretreatment Standard.

b. The User with an existing Permit shall submit to the City Manager within six (6) months or 180 calendar days after the promulgation of an applicable Federal Categorical Pretreatment Standard the information required by items "h." and "i." of Section 5.2.

**15-322.**

Wastewater Contribution Permits shall be expressly subject to all provisions of this Ordinance and all other applicable regulations, User charges, and fees established by the City. Said permits shall contain the following provisions:

a. Limits on average and maximum wastewater constituents and characteristics;

b. Limits on average and maximum rate and time of discharge or requirements for flow regulations and equalization;

c. Requirements for installation and maintenance of inspection and sampling facilities;

d. Specifications for monitoring programs which may include sampling locations, frequency of sampling, number, types, and standards for tests and reporting schedules and that such specifications shall comply with Section 6.0 of this Ordinance;

e. Compliance schedules;

f. Requirements for submission of technical reports or discharge reports such as those identified in Section 6.0 of this Ordinance;

g. Requirements for maintaining and retaining plant records relating to wastewater discharges for a minimum period of three (3) years, and affording City access thereto;

h. Requirements for notification of the City of any new introduction of wastewater constituents or any substantial change in volume or character of discharge being introduced into the POTW system;

i. Requirements for notification of slug discharges as per Sections 2.0 and 3.0 of this Ordinance;

j. Other conditions as deemed appropriate by the City to insure compliance with this Ordinance.

k. All Wastewater Contribution Permits shall be modified to address the minimum Federal, State, or City requirements placed upon Industrial Users and Significant Industrial Users.

**15-323.** Duration of Wastewater Contribution Permits shall be for a specified time period as designated by the City Manager.

a. Said Permit may be issued for a period less than a year or may be stated to expire on a specific date not exceeding five (5) years.

b. Terms and conditions of the Permit may be subject to modification by the City during the term of the Permit as limitations or requirements as identified in Sections 2.0, 3.0, and 4.0 are modified or other just cause exists. The User shall be informed of any proposed changes in his Permit at least forty-five (45) days prior to the effective date of change. Any changes or new conditions in the Permit shall include reasonable time for a compliance schedule.

c. The User shall apply for Permit reissuance a minimum of ninety (90) days prior to the expiration of the Permittee's existing Permit.

**15-324.** A Wastewater Contribution Permit shall not be reassigned or transferred or sold to a new owner, new User, different premises, or a new or changed operation without approval of the City Manager. Any succeeding owner or User shall also comply with terms and conditions of the existing Permit. Permits are issued to a specific User for a specific operation.

**15-325. MEASUREMENTS, TESTS, ANALYSIS; REPORTING REQUIREMENTS FOR PERMITTED INDUSTRIES:** The Owner/User of any property serviced by a building sewer carrying industrial waste shall install a suitable control facility together with such necessary meters and other appurtenances in the building sewer to facilitate observations, sampling and measurement of the wastes.

**15-326.** When required by the City Manager all measurements, tests, and analyses of characteristics of waters and wastes shall be conducted with the use of a laboratory certified by KDHE whether such tests are performed by the City or on a self-monitoring basis as specified by K.S.A. 65-171(1); and, shall be by procedures established by the Approval Authority pursuant to Section 304(g) of the Act and contained in 40 CFR, Part 136, as amended; and, shall be determined at the control manhole or control facility provided, or upon suitable samples taken at said control manhole or control facility.

**15-327.** Such control manhole or control facility, when required, shall be accessible, safely located, and shall be constructed in accordance with plans approved by the City Manager. The manhole or facility shall be installed by the User at his expense and shall be maintained by him so as to be safe and accessible at all times. Should the User fail to maintain the control manhole or facility as required, the City Manager may cause the necessary service and maintenance work to be done and to recover such expenses in the form of additional charges added to the monthly fees. In the event no special manhole or facility has been required, the control manhole or facility shall be the nearest downstream manhole in the sanitary sewer to the point at which the building sewer is connected. Sampling shall be carried out by customary methods to determine hazards to life, limb and property.

**15-328.** Any User subject to Pretreatment Standards and Requirements shall submit to the City Manager a compliance report indicating the nature and concentration of all pollutants in the discharge from the regulated process which are limited by Pretreatment Standards and Requirements, and the average and maximum daily flow for these process units in the User facility which are limited by such Pretreatment Standards and Requirements.

a. This compliance report shall be submitted within sixty (60) days following the date for final compliance with applicable Pretreatment Standards, or in the case of a New Source, following commencement of the introduction of wastewater into the POTW. Any subsequent compliance reports shall be submitted to the City Manager during the months of June and December of each calendar year, unless required more frequently in the User's Wastewater Contribution Permit.

b. The compliance report shall state whether the applicable Pretreatment Standards are being met on a consistent basis and, if not, what additional Operation and Maintenance and/or pretreatment is necessary to bring the User into compliance with applicable Pretreatment Standards or

Requirements. This statement and the compliance reports shall be signed as described in 40 CFR 403.12(1) by an authorized representative of the User and shall contain a certification statement as set forth in 40 CFR 403.6(a)(2)(ii).

c. If sampling performed by the Industrial User indicates a violation, the User shall notify the control authority within twenty-four (24) hours of becoming aware of the violation. The User shall also repeat the sampling and submit the results to the control authority within fourteen (14) days after becoming aware of the violation in accordance with 40 CFR 403.12(g).

d. Any User subject to a specific Pretreatment Standard, after the compliance date of such Pretreatment Standard or, in the case of a New Source, after commencement of the discharge into the POTW, shall submit to the City Manager every three (3) months unless required more frequently by the permit, the Pretreatment Standard, or by the City Manager a report indicating the nature and concentration of pollutants in the effluent which are limited by such Pretreatment Standards.

e. At the discretion of the City Manager and in consideration of such factors as local high or low flow rates, holidays, budget cycles, etc., the City Manager may agree to alter the months during which the above reports are to be submitted. The City Manager may impose mass limitations on Users, where imposition of mass limitations are appropriate, to meet applicable Pretreatment Standards or Requirements. All analysis shall be performed with the use of a laboratory certified by KDHE whether such tests are performed by the City or on a self-monitoring basis as specified by K.S.A. 65-171(1); in accordance with procedures established by the Approval Authority pursuant to Section 304(g) of the Act and contained in 40 CFR, Part 136, as amended. Sampling shall be performed in accordance with techniques approved by the Approval Authority; and, with regard to determining hazards to life, limb, and property.

**15-329.**

**INSPECTION AND SAMPLING: ENTRANCE TO PROPERTIES:**  
**CONFIDENTIAL INFORMATION OF USER:** The City Manager and other duly authorized employees of the City bearing proper credentials and identification shall be permitted to enter all properties for purposes of inspection, observation, measurement, sampling, and testing in accordance with provisions of this Ordinance. Data concerning wastewater constituents and characteristics will not be recognized as confidential information.

**15-330.**

The City may inspect the facilities of any User to ascertain whether the purpose of this Ordinance is being met and all requirements are being complied with. Persons or occupants of premises where wastewater is created or discharged shall allow the City ready access at all reasonable times to all parts of the premises for purposes of inspection, sampling, records examination, copying of records, or in the performance of any of their duties.

a. The City, KDHE, and EPA shall have the right to install on the User's property such devices as are necessary to conduct sampling, inspection, compliance monitoring and/or metering operations.

b. Where a User has security measures in force which would require proper identification and clearance before entry into their premises, the User shall make necessary arrangements with security guards so personnel with proper identification and clearance may have entry to the premises.

**15-331.**

All costs associated with this Section 7.0 shall be borne by the User. Data obtained from a User in the form of reports, questionnaires, Permit application, Permits, or monitoring programs and from inspections shall be available to the public or other governmental agency without restriction, for a period of three (3) years, unless the User specifically requests and is able to demonstrate to the satisfaction of the City Manager that the release of such information would divulge information, processes or methods of production entitled to protection as "trade secrets" of the User.

a. When requested to withhold portions of a report which might disclose "trade secrets" the City Manager shall comply with such request. If the data requested has been classed as confidential, but is necessary for compliance with the City's Kansas Water Pollution Control Use Permit No. M-UA11-N001, or Local Pretreatment Program Requirements, the data shall be provided to the appropriate public agency making a written request and such data shall be stamped as confidential. However, as stated in paragraph 1 of this Section 7.0 wastewater constituents and characteristics will not be recognized as confidential information.

**15-332.**

While performing the necessary work on private properties referred to above, the duly authorized employees of the City shall observe all safety rules applicable to the premises established by the company, and the company shall be held harmless for injury or death of the City employees. The City shall indemnify the company against loss or damage to its property by City employees and against liability claims and demands for personal injury damage asserted against the company and growing out of the gauging and sampling operation, except as such may be caused by

negligence or failure of the company to maintain safe conditions.

**15-333.** The duly authorized employees of the City bearing proper credentials and identification shall be permitted to enter all private properties through which the City holds negotiated easements for purposes of, but not limited to, inspection, testing, observation, measurement, sampling, repair, and maintenance of any portion of the sewer system lying within said easement. All entry and subsequent work, if any, on said easement shall be done in full accordance with terms of the duly negotiated easement pertaining to the private property involved. Such work shall include television (TV) inspection and grouting repair of sewer lines. For purposes of implementing and enforcing the City's Local Pretreatment Program, the City Manager and other duly authorized employees of the City shall have unrestricted right of entry to accomplish monitoring, inspections, testing, or sampling of wastes generated by any industry which is discharging to the POTW.

**15-334.** **PRETREATMENT:** Users shall provide necessary wastewater treatment or pretreatment as required to comply with this Ordinance.

**15-335.** Any facility required to pretreat wastewater to a level acceptable to the City shall be provided, operated, and maintained at the User's expense. Plans showing pretreatment facilities and operating procedures shall be submitted to the City Manager for review before construction of the facility. Review of such plans and operating procedures will in no way relieve the User from responsibility of modifying the facility as necessary to produce an effluent acceptable to the City under provisions of this Ordinance. Any subsequent changes in pretreatment facilities or method of operation shall be reported to the City Manager prior to the User's initiation of changes.

**15-336.** **NOTICE OF VIOLATION, HARMFUL CONTRIBUTIONS, ENFORCEMENT, REVOCATION OF WASTEWATER CONTRIBUTION PERMIT OR SERVICES:** Whenever the City finds that any User has violated or is violating this Ordinance, their Water Pollution Control Permit, or causing the City to violate its Kansas Wastewater User Permit, or any prohibition, limitation of requirements contained herein, the City shall serve upon such a person a written notice stating the nature of the violation.

**15-337.** Any User who violates the following conditions of this Ordinance, or applicable State and Federal Regulations, is subject to having his Wastewater Contribution Permit revoked in accordance with procedures set forth herein.

a. Failure of a User to factually report the

wastewater constituents and characteristics of his discharge;

b. Failure of the User to report significant changes in operations, or wastewater constituents and characteristics.

c. Refusal of reasonable access to the User's premises for purposes of inspection, testing, or monitoring; or

d. Violation of conditions of the Wastewater Contribution Permit.

**15-338.**

If harmful contributions by Users are involved, the City may suspend the wastewater treatment service and/or a Wastewater Contribution Permit when such suspension is necessary, in the opinion of the City, in order to stop an actual or threatened discharge which presents or may present an imminent or substantial endangerment to the health or welfare of persons, danger to the environment, causes interference to the POTW, or causes the City to violate any condition of the City's Kansas Wastewater User Permit.

a. When the danger to the City POTW appears imminent, no notice shall be required prior to discontinuation of service.

b. Any person notified of a suspension of the wastewater treatment service and/or the Wastewater Contribution Permit shall immediately stop or eliminate the violating contribution.

c. In the event of a failure of the person to comply voluntarily with the suspension order, the City shall take such steps as deemed necessary including immediate disconnection of water service or severance of the sewer connection, to prevent or minimize damage to the POTW system or endangerment to any individuals.

d. The City shall reinstate the Wastewater Contribution Permit and/or the wastewater treatment service upon proof of elimination of the non-complying discharge.

e. A detailed written statement submitted by the User describing the causes of the harmful contribution and the measures taken to prevent any future occurrence shall be submitted to the City within fifteen (15) days of the date of occurrence.

**15-339.**

**SHOW CAUSE HEARING BY INDUSTRIAL USERS: LEGAL**

**ACTIONS:** The City may order any User who causes or allows an unauthorized discharge to enter the POTW to show cause why the proposed enforcement action should not be taken. A notice shall be served on the User specifying the time and place of a hearing to be held regarding the violation, the

reasons why the action is to be taken, the proposed enforcement action, and directing the User to show cause why the proposed enforcement action should not be taken. The notice of the hearing shall be served personally or by registered or certified mail (return receipt requested) at least ten (10) days prior to hearing. Service may be made on any agent or officer of a corporation.

- 15-340.** The Governing Body may itself conduct the hearing and take the evidence, or may designate any of its members or any officer or employee of the assigned department to:
- a. Issue in the name of the Governing Body notices of hearings requesting the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in such hearings;
  - b. Take the evidence;
  - c. Transmit a report of the evidence and hearing, including transcripts and other evidence, together with recommendations to the Governing Body for action thereon.
- 15-341.** At any hearing held pursuant to this Ordinance, testimony taken must be under oath and recorded stenographically. The transcript, so recorded, will be made available to any member of the public or any party to the hearing upon payment of the usual charges thereof.
- 15-342.** After the Governing Body has reviewed the evidence, it may issue an order to the User responsible for the discharge directing that, following a specified time period, the sewer service be discontinued unless adequate treatment facilities, devices or other related appurtenances shall have been installed on existing treatment facilities, devices or other related appurtenances are properly operated. Further orders and directives as are necessary and appropriate may be issued.
- 15-343.** If any User discharges wastewater, industrial wastes or other wastes into the City's POTW including any portion of the sewerage system contrary to the provisions of this Ordinance, Federal or State Pretreatment Requirements, or any order of the City Manager, the City Attorney may commence an action for appropriate legal and/or equitable relief in the District Courts of the State of Kansas.
- 15-344.** **INDUSTRIAL WASTEWATER RATES, FEES, AND EXTRA STRENGTH CHARGES, BASIS FOR CHARGES, REVISION OF RATES:**  
The Governing Body of the City of Dodge City, Kansas, hereby finds and determines that under K.S.A. 12-860 the rates, fees or charges for use of services rendered by the sewerage system of said City, in order to fully meet the requirements of said Statute, will be as hereinafter

specified; subject however, to an annual review and re-evaluation of the Sewer Service Charges and other changes related to sewerage use in order to provide for continuation of proper operation and maintenance of the POTW, and further, subject to such changes and revisions thereof as may be made from time to time by the Governing Body of the City of Dodge City, Kansas. The Governing Body shall set fees and charges as herein required by Resolution of the Governing Body.

**15-345.**           **ALL USERS:** Normally, all bills shall be computed from the monthly water meter readings and such other parameters as appropriate to compensate for the services performed.

If, on any User's premises connected to the POTW, some water is obtained from a source other than the City's water system, then the sewerage service charge to be made against such premises shall be based on the aggregate quantity of water received on the premises from the City's water supply and all other sources as established by separated approved meter installed by such User at his own expense.

**15-346.**           If a User desires to establish eligibility for a sewage service volume base which is less than one hundred (100) percent of monthly water usage, he shall at his sole expense:

a. Install a wastewater flow meter approved by the City Manager to measure the volume of liquid actually discharged into the sewerage system from his premises. Such meter shall be maintained and calibrated by the City at the User's expense and readings from the meter shall be taken by the City monthly. In the event a flow meter is installed, a sewerage service schedule as set forth herein shall be applied to the volume of wastewater entering the POTW as measured by the meter each month.

b. In lieu of a wastewater flow meter and with the City Manager's written approval, the User may install auxiliary water meter(s) to measure that portion of water used which is diverted from entering the POTW. In the event an auxiliary water meter is installed, the volume of water metered by such meter(s) shall be deducted from the total volume of water usage before the sewerage service charge schedule is applied. Such meters shall be maintained and calibrated as in 11.2.a. above. All readings shall be made by the City.

In the event that the City determines, for whatever reason, the auxiliary meters are not providing correct information, the City Manager shall have the right to require the User to

install a wastewater flow meter as specified in 11.2.a. above.

15-347.

**SCHEDULE OF CHARGES:** A schedule of service charges shall be adopted by Governing Body Resolution and shall include any or all of the following elements:

- a. "Monthly Service Charge", which is designed to recover billing costs.
- b. A "Volume Charge" based on the amount of wastewater released into the sewerage system. Such "Volume Charge" shall recover volume related costs of the system.
- c. "Strength Charges" to recover costs related to the biological or chemical makeup of the wastewaters. Such "Strength Charges" shall include, but not be limited to, biochemical oxygen demand (BOD), total dissolved solids (TDS), total suspended solids (TSS) or other parameters, as necessary, which are known to impact the sewerage system or the POTW.
- d. Any User of the POTW or sewerage system or person liable for the payment of sewage service charges may appeal to the City Manager the reasonableness of such charges.
- e. Any person desiring to use the POTW of the City of Dodge City by the transporting of liquid matter to said treatment facilities by means other than through the sewerage system of the City of Dodge City may do so if the quantity, quality, type, and character of the waste to be deposited in the sewerage system is of a type permitted under the provisions of the Ordinances of the City, and consists solely of organic and biodegradable wastes from septic tanks and cesspools, or similar facilities; such person shall pay a charge which shall be adopted by Governing Body Resolution in the same manner as fees and charges as described hereinabove.

15-348.

**STRENGTH CHARGE:** Wastewater discharged to the POTW from any User shall be subject to the payment of a strength charge when the strength of the waste exceeds the concentrations of sewage as listed herein.

Domestic Strength Sewage

Parameter	Domestic Strength
mg/l	

Biochemical Oxygen Demand (BOD)	300.
Total Suspended Solids (TSS)	200.
Total Dissolved Solids (TDS)	700.
Fats, Oils, and Greases (FOG)	1,000.
Sodium Chlorides	200.
pH	more than 6.5 or less than 9.0

**15-349. STRENGTH CHARGES CALCULATION:** Strength Charges for industrial wastewater shall be calculated based on one-hundred (100) percent of metered water use, except as otherwise provided in Section 11.1 and 11.2 of this Ordinance, in accordance with the following formulas:

$$\begin{aligned}
 S \text{ BOD} &= V \text{ s } X \text{ 8.34 } X \text{ C BOD } X \text{ BOD} \\
 S \text{ TSS} &= V \text{ s } X \text{ 8.34 } X \text{ C TSS } X \text{ TSS} \\
 S \text{ TDS} &= V \text{ s } X \text{ 8.34 } X \text{ C TDS } X \text{ TDS} \\
 S \text{ FOG} &= V \text{ s } X \text{ 8.34 } X \text{ C FOG } X \text{ FOG} \\
 S \text{ T} &= S \text{ BOD} + S \text{ TSS} + S \text{ TDS} + S \text{ FOG}
 \end{aligned}$$

Where:

S BOD shall be the strength charge attributable to Biochemical Oxygen Demand.

S TSS shall be the strength charge attributable to the Total Suspended Solids.

S TDS shall be the strength charge attributable to the Total Dissolved Solids.

S FOG shall be the strength charge attributable to the Fats, Oils, and Greases.

S T shall be the sum of S BOD + S TSS + S TDS + S FOG

V S shall be the wastewater volume in million gallons.

8.34 shall be the weight of water, pounds per gallon.

C BOD shall be the unit charge for Biochemical Oxygen Demand in dollars per pound.

C TSS shall be the unit charge for Total Suspended Solids in dollars per pound.

C TDS shall be the unit charge for Total Dissolved Solids in dollars per pound.

C FOG shall be the unit charge for Fats, Oils, and Greases in dollars per pound.

a. All analysis shall be performed on composite samples collected at not less than hourly intervals over a 24-hour period. All sampling and testing shall be the

responsibility of the City utilizing designated control manholes or facilities.

b. Nothing contained in this Section shall be construed as permitting any firm or Industrial User to exceed the maximum limits for wastewaters as established in Section 2.3 of this Ordinance.

c. The individual surcharge for each of C BOD, C TSS, C TDS, and C FOG shall be established by the City Governing Body and shall be reviewed annually, and shall be adjusted annually. In all cases, the rates shall be adjusted not less than the changes in the consumer price index (CPI) as published for the Midwestern United States by the Federal Department of the Treasury for the calendar year just past.

**15-350. BILLINGS AND PAYMENTS:** All charges for City wastewater treatment services shall be made and billed monthly.

a. All bills for wastewater treatment services furnished by the City shall be due and payable prior to midnight of the fifteenth day following the date of such bill.

b. Should the due day fall on Sunday or a holiday observed by the City, the next following business day shall be allowed as a day of grace for payment.

**15-351. PENALTY FOR VIOLATIONS: ACTION:** Any violation of any provision of this Ordinance, rules, regulations, and permits issued hereunder, shall be deemed to be a misdemeanor and punishable by imprisonment not exceeding one (1) year or by fine not less than \$500.00 nor more than \$1,000.00 or both, for each violation or offense.

**15-352.** Each day a violation is allowed to continue or exist shall be deemed to be a separate offense, and the Governing Body shall have the authority to maintain suit or action in any Court of competent jurisdiction to enforce this Ordinance affecting the City, and to abate nuisances maintained in violation thereof.

In addition to penalties provided herein, the City may recover reasonable attorney's fees, court costs, and other expenses of litigation by appropriate suit at law against the violator(s).

**15-353.** No unauthorized person shall maliciously, willfully, or negligently break, damage, destroy, uncover, deface, or tamper with any structure appurtenance, or equipment which is part of the public sewer system. Any person violating

this provision shall be subject to immediate arrest under the charge of disorderly conduct.

**15-354.** Any person who knowingly makes any false statements, representation or certification in any application, record, report, plan, permit, or other document filed or required to be maintained pursuant to this Ordinance, or Wastewater Contribution Permit, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required under this Ordinance, shall, upon conviction, thereof be punishable by imprisonment not exceeding one (1) year or by fine not less than \$500.00 nor more than \$1,000.00 or both, for each violation or offense.

**15-355.** **SEVERABILITY: CONFLICT:** If any provision, paragraph, word, phrase, or section of this Ordinance is invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs, words, phrases, sections, and references shall not be affected and shall continue in full force and effect. All other Ordinances and/or parts of Ordinances conflicting with any part of this Ordinance are hereby repealed to the extent of such inconsistency or conflict.

#### **ARTICLE 4. WATER SUPPLY AND DISTRIBUTION**

**15-400.** **WATER SYSTEM, GENERAL.** The following provisions shall govern the use by all customers of the water supply and distribution system, both within and without the City of Dodge City.

**15-401.** **SAME; PROTECTION OF SYSTEM.**

(a) **INJURY, TAKING WATER FROM WATER PIPES.** Any person who shall willfully destroy, injure, or take water from any water pipe or hydrant placed in the City for their use, or for the use of the public, without authority from the City shall be deemed guilty of a violation of this code.

(b) **TAPS TO BE CLOSED.** All persons using water supplied by the City shall keep the hydrant, tap, hose, water closets, urinals, bath or other fixtures allotted to their use closed except when obtaining water for use and shall be responsible for any damage or injury that may result to others from the improper use of water.

(c) **INJURY TO WATERWORKS.** Any person who shall cast anything of substance whatever into the storage reservoir, wells or Water Towers of the City's water supply and distribution system, or who shall bathe or swim therein, or in any manner pollute the water therein or who shall in any manner injure or deface the walls thereof, or without right or proper authority enter into, climb upon or in any manner ascend or mount the structure thereof, shall be guilty of a

violation of this code.

(d) **INJURY, TAMPERING WITH WATER METERS.** It shall be unlawful for any person other than a duly authorized employee of the city to alter, change, deface, remove, bypass, interfere with, open, or in any way molest any meter situated or being in or without the city and used in or for the supplying of water service to any customer thereof.

(e) **PROHIBITED CONNECTIONS.** No attachment, tap or connection shall be allowed between the corporation cock and the meter.

**15-402. WATER METERS.** Water meters shall be required for all water services and may be required for sewer utility service if deemed necessary by the city, where such services are provided by the city.

**15-403. OVERSIZE METERS.** If any person desires a meter larger than a 5/8" meter, the person shall be required to pay the cost of such meter and may, at the discretion of the City Manager, be required to pay the cost of material and labor necessary to keep such meter in good repair.

**15-404. WATER CONNECTION FEES.** The following fees shall be paid to the city by any person for a permit to connect to any water line of the city water distribution:

Within the city limits: \$300.00

Outside the city limits: \$400.00

Such permit fees for connection shall be considered as an equitable payment for the extra costs of construction and for the operation and maintenance of such system by all current and previous users.

**15-405. METER INSTALLATION COSTS.** (a) The cost of installing a standard 5/8" residential meter shall be considered as included in the water connection fee set forth in Section 15-404.

(b) The cost of installing all new oversized meters, including the cost of piping shall be determined by adding the actual cost of labor, material, and equipment employed in the work and a sum equal to ten percent (10%) thereof, and the same shall be paid by the applicant requesting such service.

(c) A deposit equal to the estimated cost of the total installation shall be made in advance of making said installation. The City shall refund any amount in excess of the actual cost of installation. Should the amount of the deposit be less than the actual installation cost, the balance of the cost shall be billed to the applicant. If said balance is not paid within 30 days from the date of billing, the same shall be charged to the utilities bill of the benefited property and shall be due and payable and collectable as though a part of the charge for water consumed.

(d) The City may permit the installation of meters and necessary appurtenances by a licensed plumber(s) but all such work shall be done under the direction and supervision of city staff.

(e) Initial water service shall be in the name of the general contractor. Water service will be changed over to the owner's name upon presentation of a certificate of occupancy. In the event the property owner is acting as general contractor for his or her construction, he or she shall not occupy the structure until a certificate of occupancy is obtained. Failure to do so will result in the turning off or disconnecting of the water service.

**15-406.**

CROSS-CONNECTIONS: GENERAL. (a) PURPOSE. (1) To protect the public potable water supply of the City of Dodge City from pollution or contamination due to cross-connection.

(2) To prohibit and eliminate all cross-connections within the public potable water supply.

(3) To provide for the maintenance of a continuing effective cross-connection control program and thus protect the public health, safety, and welfare.

(b) RESPONSIBILITY. The Building Official shall be responsible for effectively conducting the cross-connection control program of the City of Dodge City public potable water supply. If, in the judgment of said Building Official, an approved backflow prevention is required, the Building Official or his agent shall give notice in writing to the customer to install the proper device. The customer shall immediately install the proper device at the customer's expense. Failure to comply shall be grounds for discontinuing water service to said customer until the device is properly installed.

(c) DEFINITIONS. In addition to those terms defined in the Uniform Plumbing Code as adopted by Chapter IV, Article 3, of the Code of Dodge City, for the purposes of this Section, the following terms shall be hereby defined to mean:

(1) Agency. The Inspection Department of the City of Dodge City is hereby invested with the responsibility for enforcement of this Section of the Code.

(2) Air Gap. The unobstructed vertical distance at least twice the diameter of the supply line and no less than one inch, through the free atmosphere between the lowest opening from any pipe or faucet supplying water to a tank, plumbing fixture, or other device and the flood level rim of the receptacle.

(3) Approved Device. Shall mean devices tested and accepted by a recognized testing laboratory and approved by the Kansas Department of Health and Environment and the Inspection Department.

(4) Backflow. The flow of water or other substances into the distribution system of a potable supply of water from any source other than its intended source. Backsiphonage is one type of backflow.

(5) Backflow Preventer. A device or means to prevent backflow.

(6) Backsiphonage. The flowing back of substances, whether contaminated or polluted or not, from a plumbing fixture or any vessel or source into the potable water supply system due to negative pressure in said system.

(7) Contaminant. Any substance that, upon entering the potable water supply, would render it a danger to the health, safety, or welfare of the consumer.

(8) Critical Level. The Critical Level (C-L) is defined as the level to which the vacuum breaker may be submerged before backflow will occur. Where the C-L is not specified on the preventer, the bottom of the device shall be taken as the C-L.

(9) Cross Connection. Any physical connection or arrangement between two otherwise separate piping systems, one of which contains potable water and the other which contains water or any substance of unknown or questionable quality whereby there may be flow from one system to the other.

(10) Double Check Valve Assembly. A device consisting of two internally loaded soft seated check valves with positive shut-off valves on both upstream and downstream ends, and equipped with properly located test ports.

(11) Dual Check Valve. A device consisting of two internally loaded soft seated check valves. This device does not contain test ports and is acceptable for use only at the meter of residential customers. Should a dual check valve device be required on any residential customers' system, an approved thermal expansion protection device shall be installed at the same time as the dual check valve device.

(12) Free Water Surface. A water surface at atmospheric pressure.

(13) Flood Level Rim. The edge of the receptacle from which water overflows.

(14) Frost Proof Closet. A hopper with no water in the bowl and with the trap and water supply control valve located below frost line.

(15) KDHE. The Kansas Department of Health and Environment.

(16) Plumbing. The practice, materials, and fixtures used in the installation, maintenance, extension and alteration of all piping fixtures, appliances and appurtenances.

(17) Pollution. The presence of any foreign substance (organic, inorganic, or biological) in water which tends to degrade its quality so as to constitute a hazard or impair the usefulness or quality of the water to a degree which does not create an actual hazard to the public health but which does adversely affect the water.

(18) Reduced Pressure Zone Backflow Preventer. An assembly of two independently acting soft seated approved check valves together with a hydraulically operating mechanically independent differential pressure relief valve located between the check valves and at the same time below the first check valve. The unit shall contain properly located test cocks and resilient seated shut-off valves at each end of the assembly. To be approved these assemblies must be accessible for inspection and testing and shall be installed in an above ground location where no part of the assembly will be submerged.

(19) Tester. A trained technician certified in the testing and repair of backflow preventers.

(20) Vacuum. Any absolute pressure less than that exerted by the atmosphere.

(21) Vacuum Breaker. A device that permits entrance of air into the water supply distribution line to prevent backsiphonage.

(22) Water, Potable. Water free from impurities in amounts sufficient to cause disease or harmful physiological effects. Its quality shall conform to Kansas Department of Health and Environment requirements for public water supplies.

(23) Water, Non Potable. Water that is not safe for human consumption or that is of questionably potability.

(d) REQUIREMENTS. (1) General. A public potable water supply system shall be designed, installed, and maintained in such a manner as to prevent contamination from non potable sources through cross connections or any piping connection to the system.

(2) Cross Connections Prohibited. Cross connections are prohibited except when and where, as approved by Building Official, suitable backflow preventers are properly installed, tested, and maintained to ensure proper operation on a continuing basis.

(3) Interconnections. Interconnection between two or more public water supplies shall be permitted only with the approval of the Kansas Department of Health and Environment. (K.S.A. 65-163 {a})

(4) Individual Water Supplies. Connections between a private water supply and the public potable water are prohibited. (K.S.A. 65-163 {a})

(5) Connections to Boilers. Potable water connections to boiler feed water systems in which boiler conditioning chemicals are or can be introduced shall be made through an air gap or through a reduced pressure zone principal backflow preventer located in the potable water line before the point where such chemicals may be introduced.

(e) PROHIBITED CONNECTIONS. Connection to the public potable water supply system for the following is prohibited unless properly protected by the appropriate backflow prevention device.

(1) Bidets

(2) Operating, dissection, embalming, and mortuary tables or similar equipment. In such installations, the hose used for water supply shall terminate at least 12 inches away from every point of the table or attachments.

(3) Pumps for non potable water, chemicals, or other substances. Priming connections shall be made through an air gap or an approved reduced pressure zone backflow preventer.

(4) Building drains, sewers, or vent systems.

(5) Commercial buildings or industrial plants manufacturing or otherwise using polluting or contaminating substances.

(6) Any fixture or similar hazard.

(f) REFRIGERATION UNIT CONDENSERS AND COOLING JACKETS. Except when potable water provided for a refrigeration condenser or cooling jacket is entirely outside the piping or tank containing a toxic refrigerant, the inlet connection shall be provided with an approved backflow preventer. Heat exchangers used to heat water for potable use or used for cooling shall be of the double wall type, and shall not discharge back into the potable water supply.

(g) PROTECTIVE DEVICES REQUIRED. The type of protective device required under this ordinance shall be determined by the degree of hazard which exists as

follows:

(1) Premises having an auxiliary water supply shall protect the public system by either an approved air gap or an approved reduced pressure principle backflow prevention assembly.

(2) Premises having water or substances which would be non hazardous to the health and well-being of the consumers shall protect the public system with no less than an approved double check valve assembly.

(3) Premises where material dangerous to health is handled in a manner which creates an actual or potential hazard shall protect the public system by an approved air gap or an approved reduced pressure principle backflow prevention assembly.

(4) Premises where cross connections are uncontrolled shall protect the public water supply by installing an approved air gap or an approved reduced pressure principle backflow prevention device at the service connection.

(5) Premises where because of security requirements or other prohibitions it is impossible to complete an in plant cross connection inspection, the public system shall be protected by an approved air gap or an approved reduced pressure principle backflow prevention assembly.

(h) PREMISES REQUIRING PROTECTION. Premises which may fall into one or more of the above mentioned categories may be, but are not limited to the following:

- (1) Beverage bottling plants
- (2) Buildings - Hotels, Apartments, Public or private buildings, or other structures having actual or potential cross connections.
- (3) Car wash facilities
- (4) Chemical manufacturing, handling, or processing plants.
- (5) Chemically contaminated water.
- (6) Dairies and cold storage facilities.
- (7) Film or photography processing laboratories
- (8) Fire systems
- (9) Hospitals, Medical Centers, Morgues, Mortuaries, Autopsy facilities, Clinics, or Nursing and Convalescent homes.
- (10) Irrigation systems
- (11) Laundries
- (12) Metal cleaning, processing, or fabricating plants
- (13) Oil and gas production, storage, or transmission facilities
- (14) Packing or food processing plants.
- (15) Paper and paper products plants
- (16) Power plants
- (17) Radioactive materials plants or handling facilities
- (18) Restricted or classified facilities

- (19) Rubber plants
- (20) Sand, Gravel, or Asphalt plants
- (21) Schools or Colleges
- (22) Sewage and storm drainage facilities and reclaimed water systems
- (23) Solar heating systems
- (24) Temporary service - fire hydrants, air valves, blow-offs, and other outlets
- (25) Water from marinas.

(i) INSTALLATION. Approved devices shall be installed at all fixtures and equipment where backflow or backsiphonage may occur and where a minimum air gap between potable water outlet and the fixture or equipment flood-level rim cannot be maintained. Backflow and backsiphonage devices of all types shall be in an accessible location. Installation in pits or any other location not properly drained shall be prohibited, except that dual check valves may be installed in the meter box.

(j) CONNECTIONS NOT SUBJECT TO BACK PRESSURE. Where a water connection is not subject to back pressure, a vacuum breaker shall be installed on the discharge side of the last valve on the line serving the fixture or equipment. A list of some conditions requiring protective devices of this kind and the Critical Level (C-L) settings are given as follows:

<u>Fixtures and Equipment</u>	<u>Method of Installation</u>
Aspirators and ejectors	C-L at least 6 inches above flood level of receptacle served.
Dental units	On models without built-in vacuum breakers C-L at least 6 inches above flood level rim of bowl.
Commercial dish washing machine	C-L at least 6 inches above flood level of machine. Installed on both hot and cold water supply lines.
Garbage can cleaning machines	C-L at least 6 inches above flood level of machine. Installed on both hot and cold water supply lines.
Hose Outlets	C-L at least 6 inches

	above highest point on hose line.
Commercial laundry machines	C-L at least 6 inches above flood level of machine. Installed on both hot and cold water supply lines.
Lawn sprinklers	C-L at least 6 inches above highest sprinkler head or discharge outlet.
Steam tables	C-L at least 6 inches above flood level rim.
Tanks and vats	C-L at least 6 inches above flood level rim or line.
Trough urinals	C-L at least 30 inches above perforated flush pipe.
Flush tanks	Equipment with approved ball cock, installed according to manufacturer's instructions.
Hose bibs	C-L at least 6 inches above flood level of receptacle served.

(k) CONNECTIONS SUBJECT TO BACK PRESSURE. Where a potable water connection is made to a line, fixture, tank, vat, pump, or other equipment with a hazard of backflow or backsiphonage where the water connection is subject to backpressure, and an air gap cannot be installed, the Building Official may require the use of an approved reduced pressure principle backflow preventer. A partial list of such connections subject to back pressure is shown as follows:

- (1) Chemical lines
- (2) Dock water outlets
- (3) Hose bibs
- (4) Individual water supplies
- (5) Industrial process water lines
- (6) Irrigation Systems with Chemical Feed Lines
- (7) Pressure tanks
- (8) Pumps
- (9) Steam Lines
- (10) Swimming pools
- (11) Tanks and Vats - bottom inlets

(1) BAROMETRIC LOOP. Water connections where an actual or potential backsiphonage hazard exists may, in lieu of devices specified above, be provided with a barometric loop. Barometric loops shall precede the point of connection and shall have no source of back pressure.

(m) DUAL CHECK VALVE. Dual Check valves may be installed at the meter. These valves shall be inspected and repaired not less frequently than every third year. These valves shall be installed only in situations where the Building Official is assured that only non contaminating substances are subject to backflow into the potable system.

(n) VACUUM BREAKERS. Atmospheric vacuum breakers shall be installed with the critical level at least six inches above the flood rim of the fixture they serve and on the discharge side of the last control valve to the fixture. No shut off valve or faucet shall be installed beyond the atmospheric vacuum breaker.

Pressure vacuum breakers shall be installed with the critical level at least twelve inches above the flood rim but may have control valves down stream from the vacuum breaker. For closed equipment or vessels such as pressure sterilizers, the top of the vessel shall be considered the flood level rim and a check valve shall be installed on the discharge side of the pressure vacuum breaker.

(o) MAINTENANCE AND REPAIR. (1) It shall be the responsibility of building and premise owners to maintain all backflow preventers and vacuum breakers within the building or on the premises in good working order and to make sure no piping or other arrangements have been installed for the purpose of bypassing the backflow devices. Testing and repair of these devices shall be made by qualified technicians. (Qualified technicians are those technicians who have completed a Kansas Department of Health and Environment approved training course and have passed a written examination such as the American Backflow Prevention Association device testers examination.) The Building Official shall certify the device testers after ascertaining the technician meets the above qualifications. The Building Official will also assure the proper installation of all backflow preventers and will set appropriate testing and overhaul schedules for such devices. Testing intervals shall not exceed one (1) year and overhaul intervals shall not exceed five (5) years.

(2) Certified Tester/Repair Technicians. All certified tester/repair technicians shall be re-certified at not less than three year intervals. Persons certified as tester/repair technicians at the

time of the adoption of this ordinance shall continue to be certified for a period of not more than three (3) years as determined by the Building Official.

(p) ADMINISTRATIVE. (1) Surveys and Investigations. It shall be the duty of the Building Official to cause surveys and investigations to be made of all properties served by the city water system where private, auxiliary or emergency water supplies other than the city water system are known to exist or where such supplies are likely to exist. Such surveys and investigations shall be made a matter of public record and shall be repeated as often as the Building Official shall deem necessary.

(2) Right of entry, information. The Building Official or this agent shall have the right to enter, at any reasonable time, any property served by a connection to the city water system for the purpose of inspecting the piping system or systems thereof. On demand, the owner or occupants of any property so served shall furnish to the Building Official such information as he or she may request regarding the piping system or systems and any private, auxiliary or emergency water supply used or useful on such property. The refusal of the owner or occupant of such property to supply such information shall be prima facie evidence of the presence of improper connections which are subject to this article.

(3) Discontinuance of service authorized. The City is hereby authorized and directed to discontinue water service to any property whereon any connection in violation of the provisions of this article is known to exist or is believed to exist by virtue of the provisions of Section 15-406(p) (1), and to take such other precautionary measures as he or she may deem necessary to eliminate the danger of contamination of the City water system. Water service to such property shall not be restored until such connection or connections shall have been eliminated and corrected in compliance with the provisions of this article and the established charge for a reconnection paid by the person desiring water service.

(4) Emergency Discontinuations; Notice. When the danger of contamination to the city water system appears eminent, no notice shall be required prior to discontinuance of water service. In all other cases, service shall be disconnected following twenty-four hours notice in writing.

(5) Fire Suppression Systems. (A) All new

installations of automatic fire suppression systems of 15 heads or more or having a fire department connection shall be protected from backflow with an approved check valve assembly. Any fire suppression system into which chemicals of any type (corrosion, anti-freeze, etc.) can be added shall be protected at the service connection with an approved reduced pressure zone backflow preventer. In lieu of such protection, an anti-freeze loop may be individually protected with an approved reduced pressure zone backflow preventer, in addition to proper service line protection.

(B) All existing fire suppression systems shall be retrofitted by licensed plumbing contractors within five (5) years of the passage of this article to meet the requirements provided herein.

(q) **PENALTIES FOR VIOLATIONS.** Any violation of any provision of this ordinance, rules, regulations, and permits issued hereunder shall be deemed to be a misdemeanor.

(1) Each day a violation is allowed to continue or exist shall be deemed to be a separate offense.

(2) Misdemeanor, as defined herein, shall be punishable by imprisonment not exceeding one (1) year, or by fine not less than \$100.00 or both such fine and imprisonment, for each separate offense.

(3) In addition to penalties provided herein, the City may recover reasonable attorney's fees, court costs, and other expenses of litigation by appropriate suit at law against the violator(s).

## **15-407.**

**WATER EMERGENCY.** (a) **PURPOSE.** The purpose of this section is to provide for the declaration of a water supply emergency and the implementation of voluntary and mandatory water conservation measures throughout the city in the event such emergency is declared.

(b) **DEFINITIONS.** For the purpose of this article, the following words shall be considered to have the following meanings:

(1) "Water", as the term is used in this article, shall mean water available to the City of Dodge City for treatment by virtue of its water rights or any treated water introduced by the City into its water distribution system, including water offered for sale at any coin-operated site.

(2) "Customer", as the term is used in this article, shall mean the customer of record using water for any purpose from the City's water distribution system and for which either a regular charge is made or, in the case of coin sales, a cash charge is made at the site of delivery.

(3) "Waste of water", as the term is used in this article, includes, but is not limited to (1) permitting water to escape down a gutter, ditch, or other surface drain, or (2) failure to repair a controllable leak of water due to defective plumbing.

CLASS 1: Water used for outdoor watering, either public or private, for gardens, lawns, trees, shrubs, plants, parks, golf courses, playing fields, swimming pools or other recreational area; or the washing of motor vehicles, boats, trailers, or the exterior of any building or structure.

CLASS 2: Water used for any commercial or industrial, including agricultural, purposes: except water actually necessary to maintain the health and personal hygiene of bona fide employees while such employees are engaged in the performance of their duties at their place of employment.

CLASS 3: Domestic usage, other than that which would be included in either Classes 1 or 2.

CLASS 4: Water necessary only to sustain human life and the lives of domestic pets and maintain standards of hygiene and sanitation.

(c) DECLARATION OF A WATER EMERGENCY. Whenever the Governing Body of the City finds that an emergency exists by reason of a shortage of water supply needed for essential uses, it shall be empowered to declare by resolution that a water supply emergency exists and that it will encourage voluntary water conservation or impose mandatory restrictions on water use during the period of the emergency. Such an emergency shall be deemed to continue until it is declared by resolution of the governing body to have ended. The resolutions declaring the existence and end of a water supply emergency shall be effective upon their publication in the official city newspaper.

(d) VOLUNTARY CONSERVATION MEASURES. Upon the declaration of a water supply emergency as provided in Section 15-407(c), the City Manager is authorized to call on all water consumers to employ voluntary water measures to limit or eliminate nonessential water uses including, but not limited to, limitation on the following uses:

- (1) Sprinkling of water on lawns, shrubs or trees (including golf courses served by the city).
- (2) Washing of automobiles.
- (3) Use of water in swimming pools, fountains and evaporative air conditioning systems.
- (4) Waste of water.

(e) MANDATORY CONSERVATION MEASURES. Upon the declaration of a water supply emergency as provided in Section 15-407(c), the City Manager is also authorized to

implement certain mandatory water conservation measures, including, but not limited to, the following:

(1) Suspension of new connections to the City's water distribution system, except connections of fire hydrants and those made pursuant to agreements entered into by the City prior to the effective date of the declaration of the emergency;

(2) Restrictions on the uses of water in one or more classes of water use, wholly or in part;

(3) Restrictions on the sales of water at coin-operated facilities or sites;

(4) The imposition of water rationing based on any reasonable formula including, but not limited to, the percentage of normal use and per capita or per consumer restrictions;

(5) Complete or partial bans on the waste of water; and;

(6) Any combination of the foregoing measures.

(f) EMERGENCY WATER RATES. Upon the declaration of a water supply emergency as provided in Section 15-407(c), the governing body of the City shall have the power to adopt emergency water rates by ordinance designed to conserve water supplies. Such emergency rates may provide for, but are not limited to: (1) higher charges for increasing usage per unit of use (increasing block rates); (2) uniform charges for water usage per unit of use (uniform unit rate); or (3) extra charges in excess of a specified level of water use (excess demand surcharge).

(g) REGULATIONS. During the effective period of any water supply emergency as provided for in Section 15-407(c), the City Manager is empowered to promulgate such regulations as may be necessary to carry out the provisions of this ordinance, any water supply emergency resolution, or emergency water rate ordinance. Such regulations shall be subject to the approval of the Governing Body at its next regular or special meeting.

(h) VIOLATIONS, DISCONNECTIONS AND PENALTIES. (1) If the Mayor, City Manager, Director of Public Works, Utility Superintendent, or other city official or officials charged with implementation and enforcement of this article or a water supply emergency resolution learn of any violation of any water use restrictions imposed pursuant to Sections 15-407(e) or 15-407(g) of this article, a written notice of the violation shall be affixed to the property where the violation occurred and the customer of record and any other person known to the City who is responsible for the violation or its correction shall be provided with either actual or mailed notice. Said notice shall describe the violation and order that it be corrected, cured or abated immediately or within such specified time as the

City determines is reasonable under the circumstances. If the order is not complied with, the City may terminate water service to the customer subject to the following procedures:

(A) The City shall give the customer notice by mail or actual notice that water service will be discontinued with a specified time due to the violation and that the customer will have the opportunity to appeal the termination by requesting a hearing scheduled before the City Hearings Officer, as designated by the City Manager.

(B) If such a hearing is requested by the customer charged with the violation, he or she shall be given a full opportunity to be heard before termination is ordered; unless there is a significant misappropriation of water occurring, such as a substantial leak in the service line leading up to the property of the customer or a similar situation.

(2) A fee of \$50 shall be paid for the reconnection of any water service terminated pursuant to Section 15-407(h)(1). In the event of subsequent violations, the reconnection fee shall be \$200 for the second violation and \$300 for any additional violations.

(3) Violation of this ordinance shall be a municipal offense and may be prosecuted in Municipal Court. Any person so charged and found guilty in Municipal Court of violating the provisions of this ordinance shall be guilty of a municipal offense. Each day's violation shall constitute a separate offense. The penalty for an initial violation shall be a mandatory fine of \$100. In addition, such customer may be required by the Court to serve a definite term of confinement in the city or county jail which shall be fixed by the Court and which shall not exceed 30 days. The penalty for a second or subsequent conviction shall be mandatory fine of \$200. In addition, such customer shall serve a definite term of confinement in the city or county jail which shall be fixed by the Court and which shall not exceed 30 days.

(i) EMERGENCY TERMINATION. Nothing in this article shall limit the ability of any properly authorized city official from terminating the supply of water to any or all customers upon the determination of such city official that emergency termination of water service is required to protect the health and safety of the public.

## **ARTICLE 5. SOLID WASTE COLLECTION AND DISPOSAL**

### **15-500. SOLID WASTE, GENERAL.**

(a) This Article shall govern solid waste and the collection and disposal of solid wastes, whether such

service is provided by the City or by private collector's licensed by the City.

(b) To protect the health, safety, and welfare of the people of Dodge City, all owners and/or occupants of residences or businesses shall have solid waste collection service, whether such service is provided by the City, by a private collector, or by other means approved by the City.

(c) It shall be unlawful for the owner and/or occupant of any dwelling unit, apartment house, or business to dispose of their solid wastes by placing such wastes in a publicly or privately owned container, bin, or other receptacle without receiving the express approval of the owner or such container, bin or receptacle. It shall be unlawful to bring any solid waste material into the city from outside the city, or to transport solid waste from one property to another within the city. for the purpose of collection and removal.

(d) It shall be unlawful to accumulate or burn any solid waste or recyclable material on any land whether privately or publicly owned anywhere in the city, except as provided by other City Ordinances. All solid waste shall be collected and removed in accordance with the provisions of this chapter. An existing accumulation of solid waste shall be removed within two days after actual notice by the City to do so.

(e) No person shall bury any debris or materials which are subject to decomposition or erosion or that encourage the presence of termites, insects or vermin anywhere within the city other than in an authorized dumping area. Debris and materials shall include, but not be limited to, trees or parts thereof, brush, roofing materials, plaster products, lumber, automobile parts and bodies, any waste which may accumulate as a result of construction or manufacturing processes wood and paper boxes, wrapping materials, wastes, and paper products.

(f) Unless otherwise permitted by the City of Dodge City, all residential buildings or portion of buildings used or intended to be used as residential units not being served by a private collector on or before May 4, 1984, shall have solid waste collection services provided by the City of Dodge City. The City shall service residences in areas annexed to the City within one year of annexation. Determination of whether an account is residential or business shall be the decision of the Director of Public Works of the City.

(g) Unless otherwise agreed between the City and private collector(s), the City will not provide collection to business or industrial accounts.

- (h) It shall be unlawful for any person to enter a dumpster or polykart for any reason unless the person doing so is the user of the dumpster or has been authorized to do so by the Sanitation Foreman. Solid waste shall become the property of the City when placed by the consumer for collection in an approved container provided by the City of Dodge City.

**15-501. DEFINITIONS.** For the purpose of this article, the following words and phrases shall have the meanings respectively ascribed to them:

AUTHORIZED private solid waste hauler shall mean any person duly qualified and operating under a license issued by the City in accordance with the provisions of this article or the licensee's duly authorized representative.

BIN, CART, DUMPSTER, KART OR POLYKART means any container that is owned by the City or licensed trash provider and provided to the customer for the collection and removal of garbage.

BUSINESS shall mean any building or portion thereof which does not fall under the definition of residential.

CREW means Community Recycling Environmental Waste. This Division is responsible for all recycling efforts for the City of Dodge City.

CONSTRUCTION DEBRIS means discarded building materials and rubble including but not limited to earth, cement, brick, wire, cans, flooring material, lumber, plaster, roofing materials and any other waste resulting from construction, remodeling, repair or demolition of any structure or payment.

CUSTOMER shall mean the utility service account holder of record.

PERSON shall mean natural persons and all corporations, partnerships, associations and all other types and kinds of organizations and entities, without limitations.

RESIDENTIAL shall mean any building or portion thereof which is designed, built, rented, leased, let or hired out to be occupied as a home, and/or sleeping place. This shall include, but not be limited to single-family homes, apartments, duplexes, boarding houses. For the purpose of this definition, hotels and motels are not considered to be residential.

(1) Dwellings shall include all single family dwellings and duplexes or two-family dwellings.

(2) Apartments shall be all residential buildings, except hotels and motels, having three or more separate living units.

(i) SOLID WASTE shall mean garbage, refuse and trash as defined herein as:

(a) Brush shall mean small quantities of tree trimmings or branches that can be loaded manually by a single person. Large accumulation or branches too large for manual pickup will be considered bulky material.

(b) Bulky Material means refuse in quantities exceeding those normally collected and may include such items as rocks, bricks, concrete and other building materials, furniture, fixtures, plumbing, plastic, and metal objects, appliances, white goods and tree limbs.

(c) Garbage means any waste accumulation of animal, fruit or vegetable matter used or intended for food and any waste, which accompanies the preparation, handling or storage of food. Animal carcasses or animal parts resulting from butchering or rendering shall not be considered garbage.

(d) Hazardous Material shall include items such as lead batteries, waste oil, paint, pesticides, fertilizers and other items that may be disposed of at the county's household Hazardous waste facility.

(e) Household Trash means all solid waste such that would fit into a 30 gallon type trash bag emanating from a residence, excluding garbage, metal goods, construction debris, yard trash, hazardous materials, brush, bulky materials, appliances and white goods.

(f) Metal goods means discarded equipment, furnishings and building supplies made primarily of a metallic substance such as aluminum, iron, steel and copper. Appliances such as stoves, refrigerators, washing machines and dryers shall be considered white goods material.

(g) Recyclable material means glass, plastic, metal and paper waste generated by either a household or business that is capable of being recycled by the City of Dodge City and is on Crew's list of acceptable material.

(h) White goods means appliances such as stoves, refrigerators, dishwashers, washing machines and dryers.

(i) Yard waste shall mean grass clippings, leaves, weeds and garden waste which can be composted.

(j) Solid wastes as used herein shall not include earth and wastes from building construction or remodeling operations, rocks, concrete, solid dry wastes resulting from industrial or manufacturing processes or operations, tires, ashes, hazardous waste medical waste or other materials that cannot be disposed of at the Ford County Landfill.

#### **15-502. ENFORCEMENT AND PENALTY**

It shall be unlawful for any person to fail, neglect or refuse to comply with and abide by each provision of this chapter or any lawful order of the supervisor/code enforcer. The performance on each day of any prohibited act or practice, or the failure to perform on each day any required act or practices, shall constitute a separate offense and shall be punishable as such.

#### **15-503. RATES FOR SOLID WASTE SERVICE**

Rates for collection of solid waste for all residents of the City shall be set by resolution and published one time in the official city newspaper.

(a) Special fees. In addition to the base rates provided, there shall be an additional charge in those cases where the Sanitation Department personnel must collect any type of solid waste at a location other than an alley, curb, or other normal solid waste vehicle collection point. Sanitation department personnel shall not collect solid waste located more than 80 feet from a normal vehicle collection point (without imposing a special handling fee.)

(b) Special Handling. Special handling costs, as determined by the Director of Public Works and approved by the Governing Body, shall be charged to those customers for whom the Solid Waste Collection personnel must spend extra time, use special equipment or where special conditions warrant the imposition of special handling fees to cover the costs of collecting and disposing of large accumulations of demolition debris, large amounts of tree trimmings by one or more owner or residents, and similar circumstances.

(c) Where the use of City-owned containers causes unusual wear or damage to the containers, a special fee based on an accelerated depreciation shall be levied against such user to ensure adequate funds for

maintenance and replacement of such containers.

(d) The Director of Public Works shall determine the rates to be charged for any special conditions not included in the above rates.

#### **15-504. OCCUPANT AND OWNER RESPONSIBLE FOR COMPLIANCE**

The occupant and the owner of real property served with solid waste removal by the City or by other approved private solid waste collectors are jointly and individually responsible for compliance with the provisions of this chapter. Consumers shall correct all violations within 24 hours of notification by the City. If an inspection reveals that a violation continues beyond 24 hours, the City shall take such action as is necessary to abate the violation including code enforcement proceedings and prosecution.

##### **15-504.1. DUTY OF BUSINESS OWNERS, OCCUPANTS**

Generally. The owner or occupant of any store or other place of business situated within the city shall exercise reasonable diligence at all times to keep his or her premises clean of wastepaper, wrapping paper, paper napkins, cartons, package containers, and other used or waste materials thrown or left on the premises by its customers, and to take reasonable measures to prevent the same drifting or blowing to adjoining premises.

Receptacles. Receptacles of sufficient size and number shall be placed on the premises accessible to the customers of such business where the above referred to articles of waste may be disposed of.

Signs. Each and every business establishment shall place upon its premises in a conspicuous place or places in close proximity to the receptacle or receptacles above referred to, a sign or signs which shall, in essence, convey to its customers a request that they use such receptacles for the disposal of waste material.

Level of Service. The owner or his agent of every mobile home park, multiple family dwelling, business establishment, industrial concern and all residential buildings shall subscribe to and utilize the services of either the City solid waste collection service or that of a private collector as described herein above.

(a) Such service shall include the use of a publicly or privately owned container, bin, or other approved receptacle.

(b) In the case of mobile home parks and multiple

family dwellings, the owner or his agent shall provide a minimum of 0.75 cubic yard capacity for each mobile home space in the park or each living unit in the multiple family dwelling, located not more than 150 feet from each and every unit in the park or dwelling unless permitted otherwise by the city.

(c) No owner of any mobile home park or multiple family dwelling or any business or industrial concern shall allow old furniture, appliances, beds, boxes or other material to accumulate or to deposit such material on or about his premises or on any public way without having first made arrangements for the collection service to pick up and dispose of such material. Pick up arrangements may include the payment of appropriate fees.

#### **15-504.2 SAME; DUTY OF CUSTOMERS**

It shall be unlawful for any customer going upon the premises of another to in any manner dispose of wastepaper, wrapping paper, paper napkins, cartons, package containers, and other used or waste materials except in receptacles provided for such purposes.

#### **15-504.3 SAME; LITTERING PROHIBITED.**

It shall be unlawful for any person to throw, drop, place, cast, deposit or leave or cause to be thrown, dropped, placed, cast, deposited or left upon any public street, alley, sidewalk, park, thoroughfare or public place or upon any yard, lot or premises, either public or private, any filth of any kind, dirt, cans, trash, paper, containers, rubbish, bottles, wood shavings or debris, brush, tree trimmings, dung, excrement, compost manure, ashes or litter of any kind.

#### **15-504.4 SAME; ACCUMULATION, COLLECTION, GENERALLY.**

(a) The emptying or disposing of any garbage, trash, refuse or rubbish, or the accumulation of any such matters, in any place within the city is hereby prohibited, and no one except the duly authorized agents and employees of the city shall collect garbage and refuse or empty cans containing garbage or refuse substances, or convey or transport garbage or refuse substances on the streets, alleys and public thoroughfares of the city, except as otherwise expressly provided hereinbelow in Section 15-509 of this Article.

(b) DISPOSITION OF HEAVY ACCUMULATIONS. Heavy accumulations, such as brick, broken concrete, lumber, ashes, dirt and plaster, sand or gravel, automobile frames

and parts, dead trees, and other bulky, heavy material, shall be disposed of at the expense of the owner or person controlling same under the supervision of the City.

(c) DISPOSITION OF WHOLESALE ACCUMULATIONS. Places of wholesale accumulations, such as killing and dressing plants for fowl, wholesale fruit and vegetable houses, where the daily accumulation of kitchen garbage, trash and rubbish is more than the ordinary quantities, shall make special arrangements with the person furnishing solid waste collection for commercial and industrial firms. Such collections shall be subject to review by the Director of Public Works, and if the frequency of collection is found to be inadequate, the Director shall have the authority to direct the owner or operator of the business to have additional containers added and/or the collections made more frequently as the case may be.

(d) DISPOSITION OF CERTAIN WASTES. Manure from cow lots, horse stables, poultry yards, pigeon lofts, and waste oils from garages or filling stations shall be disposed of at the expense of the party responsible for same under the direction of the Director of Public Works.

**15-506. BURNING PROHIBITED.**

No garbage, trash or refuse shall be burned in the streets and alleys of the city under any circumstances, and no garbage, trash or refuse shall be burned on private property except by permission of the Fire Department in burners approved by the City.

**15-507. PREPARATION AND DISPOSAL OF GARBAGE FOR RESIDENTIAL CUSTOMERS.**

Household trash and garbage shall be drained of all fluid and placed in bags for collection. Bags shall be airtight, securely tied and placed in the approved kart(s) or dumpster(s) for collection. Garbage must be placed in the karts or dumpsters for collection and removal by the City provider. When placed in a kart for collection, the kart and contents shall not weigh more than 150 pounds. Only approved containers that are provided by the City are to be used for the disposal of garbage. The kart is to be rolled out to the curbside by 7:00 a.m. on the morning of the collection day. The kart should not be placed upon any street or sidewalk nor within five feet of any wall, fence, guy wire, vehicle or other obstruction so as to impede collection.

The kart must be rolled back to the house and not left out on the curbside on days other than the day of pickup.

The lid shall be secured at all times. The resident is responsible to keep the kart clean.

The kart is not to be used for rocks, hot coals or ashes,

heavy building materials, tree limbs, dirt, sod or hazardous materials.

Pet waste must be tagged.

Solid waste shall not be placed in the alleys.

Solid waste shall not be placed on or around the dumpster.

White goods, brush, yard waste, furniture, tires, ect. Shall not be placed in either the kart or dumpster.

Those residence that are furnished a kart may reserve an additional kart should they not be able to contain their garbage in one kart. There will be an additional charge for each kart required.

Residents that are provided a kart are responsible to pay the city for any kart that is lost.

Residents shall not take the kart to another address when moving without making arrangements with the Public Works Department.

#### PREPARATION OF YARD WASTE

Yard waste shall not be placed for collection with garbage or household trash. Yard waste shall be placed for collection at the front of the property producing the yard trash but not upon a street or sidewalk, nor within five feet of a fence, guy wire, vehicle or other obstruction that might impede collection.

The City shall provide a grass kart for use by each resident that wishes to pay for this service.

Grass karts can be distinguished from the karts provided for Garbage pickup by the blue lid.

Grass karts must be rented for a minimum of three months.

Grass karts will be emptied weekly.

Grass karts must be placed at the curb on the morning of the scheduled collection by 7:00 a.m. and must not be left at the In lieu of the grass kart, residents may place bags of yard waste at the curb for pickup. An additional fee as established by resolution will be charged and added to the residents' monthly bill.

The bags of yard waste shall not exceed 40 pounds.

Residents may haul their own yard waste to the landfill.

The resident will be responsible to pay any tipping fees associated with the disposal of the yard waste.

#### PREPARATION OF BRUSH/LUMBER

Service is provided for small quantities of brush and lumber that can be picked up easily by an individual sanitation worker.

All brush and lumber shall be separated from other items and placed by the street for weekly pickup.

all brush and lumber must be cut to lengths of 4-6 feet to be considered a small quantity.

Large amounts of brush that cannot be picked up easily by an

individual sanitation worker will require the use of special equipment and must be scheduled by calling the Public Works Department with a possible additional charge. Brush and lumber must be separated from all other solid waste.

Any commingled waste will be considered a special pickup and a fee may be assessed.

Any brush or lumber placed in the alley will be considered a violation of this code and may result in a fine or special handling fee.

#### PREPARATION OF METAL GOODS, WHITE GOODS AND OTHER BULKY ITEMS

Metal goods, white goods and bulky items are collected by special equipment and must be scheduled by calling the Public Works Department. All metal and white goods shall be separated from all other solid waste. Bulky items should also be separated from all other solid waste. Any commingled items will be considered a special pickup and a fee may be assessed.

Refrigerators, freezers and air conditioners require special handling and must be scheduled for pickup by calling the Public Works Department. All metal and white goods and other bulky items shall be placed for collection at the front of the property. Items placed for disposal shall not be placed more than two days in advance of the pickup unless prior arrangements have been made with the Public Works Department. Any metal, white goods, bulky items, refrigerators, freezers, heaters or air conditioners placed in the alley will be considered a violation of this code and may result in a fine and/or special handling fee.

Fees for disposal of metal and white goods are determined by a separate resolution and shall be approved annually by the City Commission.

#### SPECIAL PICKUPS

Special pickups of solid waste including household trash, metal goods, white goods, bulky items and tires shall be made in accordance with this chapter and as determined by the Public Works Director or his designee. Large and heavy accumulations associated with an owner or renter moving out shall be considered a special pickup. Accumulation of more than three items will be considered as bulky items and will be subject to a special handling fee as set forth by resolution. The Public Works Director or his designee shall establish any fee not described in the fee resolution of the City Commission based upon actual City costs of collection and disposal of the solid waste.

Solid waste that is generated as the result of a code violation notice or citation shall be the responsibility of the owner/occupant to dispose of. Failure of the owner/occupant to dispose of the solid waste will be considered a separate violation. Any cost associated with the

removal of Solid Waste by the City of Dodge City will be billed to the owner/occupant of the property.

**CONSTRUCTION DEBRIS AND YARD WASTE AND BRUSH GENERATED BY A LANDSCAPING BUSINESS**

Landscaping businesses, such as tree trimmers, tree surgeons and yard and lawn services shall remove yard waste created by their work. The consumer shall be responsible to pay the costs of yard waste collection by the City for yard trash created by a landscape business.

**15-508. MINIMUM STANDARDS FOR TRANSPORTATION OF SOLID WASTE.**

The following minimum standards and requirements are hereby established for the sanitary transportation of solid waste:

(a) Every vehicle used for the transportation of solid waste shall display a valid unrevoked permit, issued by the City to transport solid waste, unless exempted in accordance with the provisions of this article.

(b) Every vehicle shall be provided with a means of covering the solid waste to be hauled and of keeping the contents securely contained. Covers shall be of metal, wood, or canvas providing that the contents of the body are securely held.

(c) Every vehicle shall be kept well painted, clean and in good repair.

(d) Every vehicle shall be cleaned as often as may be necessary to prevent odors and attraction of flies and Vermin.

(e) The vehicle licensed under the provisions of this article shall carry an identifying sign on each side and the rear thereof in letters not less than two inches in height and one inch in width, which shall be clearly legible and shall include the name under which the vehicle is licensed.

(f) No vehicle shall be loaded with solid waste in any manner which will permit the material to fall from the vehicle while the same is in motion. All solid waste materials being transported shall be adequately secured against any wind dispersal, jiggling or jarring which might allow such material to fall from the vehicle.

(g) Any vehicle used for the transportation of or containers holding undrained garbage, swill or offal shall be constructed and maintained so as to prevent splash, spillage, drippage or leakage of liquid from the vehicle.

**15-509. DISPOSITION OF TRASH OR REFUSE.** All licensees shall only deliver solid waste to areas designated or approved by the City or the State Department of Health and Environment and shall not dispose of any solid waste by depositing or dumping the same in or upon any street, avenue, boulevard, alley, park or public grounds, or along the banks of any river, stream, drainage, canal, drainage ditch or natural water course within or without the City limits or in any unlicensed privately owned disposal area except as may be directed in areas designated by the City or the State Department of Health and Environment.

**15-510. REGULATION OF PRIVATE SOLID WASTE COLLECTORS:**

(a) LICENSE REQUIRED; EXCEPTIONS. It shall be unlawful for any person to collect, transport, or haul on any streets or alleys in the City or to dispose in any manner of any refuse accumulated in the City without first having obtained a private trash hauler's license in accordance with the terms of this article. Provided, this section shall not apply with the following:

- (1) The sanitation department or other departments of the City.
- (2) Any and all governmental agencies
- (3) Persons who collect and transport refuse produced on premises owned or occupied by the person.
- (4) Builders, wrecking or demolition contractor or other persons engaged in construction or similar occupations.
- (5) Persons, firms, or corporations engaged in occupations known as tree trimmers or tree surgeons, agriculture, arboriculture, horticulture, gardening, lawn care, landscaping, nursery work or similar occupations.
- (6) Provided, however, that such persons are not required to obtain a license under the provisions of this article shall comply with all other provisions of this article regulating the transportation of solid waste over and upon the streets and alleys of the City.

(b) PRIVATE SOLID WASTE COLLECTORS shall have the capability of providing a complete solid waste collection service to businesses. Complete service shall mean adequate numbers of staff, trucks, containers and related equipment to provide the service required by each customer without solid wastes accumulating in objectionable quantities. Complete service shall also include office and facilities to provide maintenance of collection vehicles, and equipment to provide backup service in the event of breakdowns, delays because of inclement weather, closure of

the landfill or other reasons so that solid wastes do not accumulate in objectionable quantities. (ORD. 3365)

(c) SAME; LICENSE FEES. Effective January 1, 1985, License Fees for Private Collectors shall be set by Resolution of the City Commission but in no case shall such fee be less than 5% of the gross revenue derived from the sale of solid waste collection service within the corporate limits of the City as they exist from time to time. Such license fee shall be paid to the city each calendar quarter on the tenth business day after the first days of January, March, July, and October of each year.

(d) ADJUSTMENT. The amount of such license fee based on gross revenue may be changed by Resolution of the City Commission at any time, provided that such resolution shall be passed 30 days in advance of its effective date. Following its passage, the licensee shall be advised of the change by the City. Such change in percentage shall be effective with the next billing date following the effective date of said resolution. The City shall also publish a public announcement of the fee to be imposed in a newspaper of general circulation in the City.

(e) COLLECTOR'S RECORDS. The Collector shall provide at the time of payment a signed statement indicating the gross receipts based on charges within the corporate limits within the City of Dodge City. The City shall have the right to request any necessary records from the Collector to substantiate those receipts if it deems necessary. For the purpose of determining whether or not each and every residential or business account is paying the required service fee, the City shall also have the right to request and receive, after giving reasonable notice, names and addresses of all customers serviced by Private Collectors.

(f) INSURANCE COVERAGE. Insurance coverage for Private Collectors shall be issued by a company authorized to do business in Kansas and shall provide liability insurance in the aggregate of not less than the maximum liability of a government for claims arising out of a single occurrence as provided by the Kansas Tort Claims Act or other similar future law, said maximum limit now established at \$500,000. A certificate of insurance shall be furnished to the City Clerk and said certificate or endorsement thereto shall contain a provision that the issuer will not cancel or terminate the policy as filed with the City Clerk without giving of not less than 30 days notice of its intention to cancel or terminate to the City Clerk for and on behalf of the City of Dodge City.

(g) PRORATION OR REFUNDING OF LICENSE FEE. No license shall be issued for less than the annual fee

provided for by this article and no portion of the license fee shall be prorated or refunded.

(h) COLLECTION OF LICENSE FEES. The City Clerk shall collect all license fees and deposit the same to the Sanitation Fund.

(i) INDEMNIFICATION OF THE CITY. Private Collectors shall, at all times, protect and hold the City harmless from all claims, action, suits, liability, loss, expense or damages of every kind and description, including investigation costs, court costs, and reasonable attorney's fees, which may accrue to or be suffered or claimed by any person or persons arising out of the negligence of said Private Collector in the ownership, maintenance, and operation of said solid waste collection business, and by reason of any license, property right or system used in the operation of said business, providing the City gives the Private Collector(s) prompt notice of any such claims, actions and suits, without limitation, in writing.

(j) LOCATION OF EQUIPMENT. The location of waste containers and the duration of use at such location shall be approved in advance by the City's Public Works Director. Containers shall be placed on private property and shall not interfere with the solid waste removal services provided by the City. The City shall have the right to , if necessary, direct the location of collection equipment, i.e. containers, ect.if those items cause a problem with regard to engress or egress to and from properties or other collection or operational activities of the City or other utility.

(k) MAXIMUM SERVICE FEES. Maximum service fees charged by the collector shall be filed with the City of Dodge City at times of annual licensing or other times that fees are adjusted for the various levels of service provided by the collector. If the City determines that it does not believe the rates filed are reasonable, it may request financial information from the private collector, justifying the reason for the rate level.

(l) REVOCATION OF LICENSE. Any license issued by virtue of the provisions of this article may be revoked by the Governing Body upon conviction of the licensee of the violation of any of the provisions of this article, the Code of the City, or the laws of the State of Kansas pertaining to the operation of a motor vehicle, or the transportation and disposal of solid waste.

**15-511. RATES FOR COLLECTION OF SOLID WASTE.** Rates for collection of solid waste for all residents of the city shall be set by resolution and published one time in the official city newspaper.

(a) SPECIAL FEES IN ADDITION TO THE BASE RATES PROVIDED. There shall be an additional Charge in those cases where the Sanitation Department personnel must collect any type of solid waste at a location other than an alley, curb, or other normal solid waste vehicle collection point. Sanitation Department personnel shall not collect solid waste located more than 80 feet from a normal vehicle collection point.

(b) SPECIAL HANDLING. Special handling costs, as determined by the Director of Public Works and approved by the Governing Body, shall be charged to those customers for whom the Solid Waste Collection personnel must spend extra time, use special equipment or where special conditions warrant the imposition of special handling fees to cover the costs of collecting and disposing of large accumulations of demolition debris, large amounts of tree trimmings by one or more owner or residents, and similar circumstances.

(1) Where the use of City-owned containers causes unusual wear or damage to the containers, a special fee based on an accelerated depreciation shall be levied against such user to ensure adequate funds for maintenance and replace of such containers.

(2) Any special conditions not included in the above rates shall be determined by the Director of Public Works.

(c) SAME; HOME OCCUPATIONS. Home occupations shall pay both a monthly charge for the home and an added monthly charge for the home occupation or business. (Ord. No. 2997) (Ord.No. 3365)

## ARTICLE 6. STORM WATER UTILITY

### 15-601.

**DEFINITIONS.** In addition to the words, terms and phrases elsewhere defined in this Chapter, the following words, terms and phrases as used in this Chapter shall have the following meanings:

- A. "BONDS" - means revenue or general obligation bonds or notes heretofore or hereafter issued to finance the costs of improvements.
- B. "COSTS OF CAPITAL IMPROVEMENTS" - means costs incurred in providing capital improvements to the storm water management system or any portion thereof, including professional services and studies connected thereto, payment of principal and interest on bonds, heretofore or hereafter issued, including payment of delinquencies of principal and interest due on bonds that are not otherwise payable from special assessments; studies related to the operation of the system; and the costs of any studies performed heretofore in

relation to the establishment of the storm utility and other start-up costs of the Storm Water Utility.

- C. "DEBT SERVICE" - means an amount equal to the sum of:
  - (i) all interest payable on bonds during a fiscal year, plus
  - (ii) any principal installments payable on such bonds during such fiscal year.
- D. "DWELLING UNIT" - means a single structure used as permanent housing for a single family.
- E. "DEVELOPED PROPERTY" - means real property other than undeveloped property.
- F. "DRAINAGE FEE" - or "DRAINAGE FEES" - means a monetary fee authorized by resolution of the City Commission, which may be amended from time to time by the Commission, that has been established to pay operation and maintenance, extension and replacement, costs of capital improvements, and debt service associated with the storm water management system.
- G. "EXEMPT PROPERTY" - means public right-of-way, public streets, public alleys, public sidewalks, and other property as may be exempted from time to time by Storm Water Appeal Board; it also means public property upon which publicly owned and maintained storm drainage facilities are constructed.
- H. "EXTENSION AND REPLACEMENT" - means costs of extension, addition and capital improvements to, or the renewal and replacement of capital units of, or purchasing and installing of equipment for, the storm water management system, or land acquisition for the storm water management system and any related costs thereto, or paying extraordinary maintenance and repairs, including the costs of capital improvement or other expenses that are not costs of operation and maintenance or debt service.
- I. "COMMERCIAL AND INDUSTRIAL DEVELOPED PROPERTY" - means developed property other than residential developed property and includes multi-family residential developed property for three family units or more.
- J. "OPERATION AND MAINTENANCE" - means without limitation the current expenses, paid or accrued, of operation, maintenance, and current repair of the system, and includes, without limiting the generality of the foregoing, insurance premiums, administrative expenses, equipment costs, labor costs, and the cost of materials and supplies used for current operations.
- K. "RESIDENTIAL DEVELOPED PROPERTY" - means developed property

used for a single family dwelling unit or two family duplexes.

- L. "REVENUES" - means all notes, fees, assessments, rents, or other charges of income received by the Storm Water Utility in connection with the management and operation of the Storm Water Utility system, including amounts received from the investment or deposit of monies in an fund or account, and bond revenues.
- M. "STORM WATER MANAGEMENT SYSTEM", "SEWER SYSTEM", or "SYSTEM" - means storm sewers and related facilities that exist at the time of the adoption of this ordinance or that are hereafter established and all appurtenances necessary in the maintaining and operating of the same, including, but not limited to, pumping stations, lateral sewers, main sewers, interceptor, sewers, out-fall sewers, drain channels, rivers, streams, and other flood control facilities and works for the collection, transportation, pumping, treatment, and disposing of storm or surface water.
- N. "STORM WATER UTILITY" or "UTILITY" - means the utility created by this ordinance to operate, maintain, and improve the storm water management system, and for such other purposes as are set forth in this ordinance.
- O. "UNDEVELOPED PROPERTY" - means real property which has not been altered from its natural condition in a manner which disturbs or alters the topography or soil on the property to the degree that the entrance of water into the soil mantle is prevented or retarded.

**15-602. CREATION OF STORM WATER UTILITY.** In order to protect life and property throughout the City from the hazards and potential damage form storm water runoff, there is hereby established a Storm Water Utility and Management System, the purpose of which is to assist the City of Dodge City in its responsibility for the operation, construction, maintenance, and repair of storm water drainage system facilities to provide adequate systems of collection, conveyance, detention, treatment, and release of storm water.

**15-603. PROGRAM RESPONSIBILITY.** The City Manager shall be empowered to administer the Storm Water Utility and Management System may delegate such duty and responsibility as is necessary to carry out the provisions of this ordinance within the limits of the budget, directives, and storm drainage regulations adopted by the City Commission for this utility. The City Manager or his designee shall have the following responsibilities:

- (a) To develop a plan for construction, operation, reconstruction, repair and maintenance of the various facilities that make up the City's storm drainage and sewer

system including but not limited to curbs and gutters, storm drain inlets, storm drainpipes, ditches, culverts, canals, detention basins, berms and levees;

(b) To develop a recommended five (5) year capital improvement plan for needed improvements to existing facilities and/or development of new facilities;

(c) To carry out a program of work directives, and resolutions as adopted by the City Commission;

(d) To enforce all regulations pertaining to storm water including the retention of or discharge from private property;

(e) Review private systems as necessary to determine the compliance of such systems with this Chapter;

(f) Advise the Mayor, City Commission, and staff on matters relating to this utility;

(g) Prepare and review a comprehensive drainage plan for the City of Dodge City;

(h) Review plans and approve, deny, inspect, and accept extensions and connections to the system;

(i) To analyze the costs of services and benefits provided and to recommend fees, charges, fines, and other revenues of the Storm Water Utility.

**15-604.**

**OPERATING BUDGET.** The City shall adopt an operating budget for each fiscal year for said Storm Water Utility. The operating budget shall set forth for each fiscal year the estimated revenues and the estimated costs for operation and maintenance, extension, replacement, and debt service. The initial operating budget shall be for the fiscal year commencing January 1, 1996.

**15-605.**

**DRAINAGE UNIT ASSESSMENT.** (a) There is hereby established for each and every residential developed property, and commercial and industrial developed property within the City, other than property declared exempt by the provisions of this Chapter, a drainage assessment. Such drainage assessment shall be established based on the following formula:

(i) Drainage Assessment for Residential Developed Property: All residential developed property shall be assessed one drainage unit.

(ii) Drainage Assessment for Commercial and Industrial Developed Property: All such property shall be assessed

drainage units based on the following Table:

<u>BUILDING SITE AREA</u>	<u>DRAINAGE UNITS</u>
Less than 20,000 SF	2.50
20,000 to 39,999 SF	3.40
40,000 to 59,999 SF	6.80
60,000 to 79,999 SF	10.20
80,000 to 99,999 SF	13.60
100,000 to 119,999 SF	17.00
120,000 to 139,999 SF	20.40
140,000 to 159,999 SF	23.80
160,000 to 179,999 SF	27.30
180,000 to 199,999 SF	30.70
200,000 to 219,999 SF	34.10
220,000 to 239,999 SF	37.50
240,000 to 259,999 SF	40.90
260,000 to 279,000 SF	44.30
280,000 to 299,999 SF	47.70
300,000 to 319,999 SF	51.10
320,000 to 339,000 SF	54.50
340,000 to 359,999 SF	57.90
360,000 to 379,999 SF	61.30
380,000 to 399,999 SF	64.80
400,000 to 419,999 SF	68.20
420,000 to 439,999 SF	71.60
440,000 to 459,999 SF	75.00
460,000 to 479,999 SF	78.40
480,000 to 499,999 SF	81.80
500,000 SF and Greater	85.20

The drainage unit rate for commercial and industrial property is proportional to the runoff volume generated from such property compared to the typical residential lot. A runoff coefficient of 0.60 was used. For commercial and industrial property with 120,000 SF area or greater, with an impervious area of less than 40%, the Public Works Director may adjust the drainage assessment to more accurately reflect the proportionate runoff.

- (iii) Undeveloped property in its natural state with no building or hard-surfaced areas will not be assessed a drainage unit.

**15-606.**

**APPEAL PROCEDURE.** Any person disagreeing with the calculations of the drainage unit assessment or disagreeing with whether storm water or surface water from their property flows into a facility maintained by the Storm Water Utility may appeal such determination to the Director of Public Works. Any appeal must be in writing. The Director of Public Works or his/her designee shall thereupon hold an informal hearing. The Director or designee, prior to such hearing, may request that the appealing party provide information concerning the basis of the appeal, including a land survey prepared by a registered surveyor of the area in

question, if such information is deemed to be material by the Director or designee. Based upon information provided, the Director or designee shall make a determination of the drainage assessment for such property. The Director shall notify the parties in writing of the Director's decision.

(b) A person shall have the right to appeal the decision of the Director to the Storm Water Appeal Board. Such appeal shall be made within twenty (20) days of the date of the Director's notification of the decision in the informal proceedings. Such appeals shall be in writing and shall be filed with the Director.

(c) The Storm Water Appeal Board shall consist of the following members:

City Manager or designee  
City Engineer  
Director of Planning

(d) A hearing on such appeal shall be held within thirty (30) days from the date the notice of appeal is received and the appealing party shall be given seven (7) days advance notice of the time and date of the appeal hearing. At such hearing, the appealing party shall present evidence concerning the drainage assessment for the property in question and the Director of Public Works or his or her designee shall present evidence concerning their findings from the informal proceedings. The Storm Water Appeal Board shall render a decision in writing that sets forth such findings that support their decision within seven (7) days of the hearing. The decision of the Storm Water Appeals Board shall be final and any further appeal of such decision shall be to the District Court of Ford County, Kansas, in accordance with the provisions of K.S.A. 60-2101(D).

**15-607.**

**FEE SCHEDULE ESTABLISHED.** There is hereby imposed on all residential developed property, and commercial and industrial developed property within the City, except property declared exempt under the provisions of this Chapter, a Storm Water Utility fee. The amount of the Storm Water Utility fee for such property shall be based on the number of drainage units assessed against the property and shall be set by Commission Resolution, as stated in Section 1-123 of Chapter 15, Dodge City Code, and may be amended hereafter from time to time by the Commission.

**15-608.**

**STORM WATER UTILITY FEE COLLECTION.** (a) Storm Water Utility fees shall be billed and collected monthly with the monthly water and sewer utility for those properties utilizing such City utilities and shall be billed and collected separately at intervals as set by the Director for those properties not utilizing such City utilities. The Storm Water Utility fee for those properties utilizing City utilities shall be part of a consolidated statement for

utility customers which shall be paid in a single payment. In the event that a partial payment is received, the payment shall be applied proportionately between all accounts appearing on the consolidated billing. Unless otherwise provided for herein, all billings for drainage fees shall become due and payable in accordance with sections of the Code of the City and with rules and regulations which pertain to City utilities that relate to collection of utility charges. Storm Water Utility fee billing for any given property shall initially be the responsibility of the person who is paying for water and/or sewer service for the property. If the property is not using water and/or sewer services, then drainage fees shall be the responsibility of the person in possession of the property. If no person is in possession of the property, the drainage fee shall be the responsibility of the property owner. The property owner is responsible for Storm Water Utility fees not paid by the occupant.

(b) Storm Water Utility fees shall be subject to a penalty for late payment which is the same as that imposed for late payment of water and sewer utility charges. In addition to any other remedies or penalties provided by this Chapter or any other ordinance of the City, failure of any user of the Storm Water Management System to pay said charges promptly when due shall subject such user to discontinuance of city utility services and the City Manager of the City, or the City Manager's designee, is hereby empowered and directed to enforce this provision as to any and all delinquent users in accordance with provisions set forth in the City Code. Users shall be entitled to notice before city utility services are disconnected for failure to pay Storm Water Utility fees.

(c) Storm Water Utility fees authorized to be charged in this Chapter when delinquent may be certified by the Clerk of the City to the County Clerk of Ford County, Kansas, to be placed on the tax roll for collection, subject to the same penalties and be collected in like manner as other taxes, and such charges shall, thereafter, constitute a lien upon real estate served by the Storm Water Utility and against which such charges were made, regardless of whether the drainage fees were incurred when a property owner was in possession of the property or a non-owner was in possession of the property.

**15-609.**

**STORM WATER UTILITY FUND.** (a) All Storm Water Utility fees collected shall be paid into an Enterprise Fund which is hereby created to be known as the Storm Water Utility Fund. Such funds shall be used for the purpose of paying the costs of operation, capital improvements, construction, reconstruction, repair and maintenance of the storm water facilities of the City and to carry out all other purposes of this utility. To the extent that the

Storm Water Utility fees collected are insufficient to construct the needed storm water drainage facilities, the cost of same may be paid from such City funds as may be determined by the City Commission, but the City may order reimbursement of such fund if additional fees are thereafter collected. When the fund has surplus dollars on hand in excess of current needs, the surplus dollars shall be invested to return the highest yield consistent with proper safeguards. Any interest earned on invested funds, bond revenues, and other revenues shall be placed in the Storm Water Utility fund.

(b) Storm Water Utility fees and charges paid and other revenue received shall not be used for general or other governmental or proprietary purposes of the City.

(c) Nothing in this Chapter shall be so construed as to limit or restrict the planning, engineering, capital improvements, construction, reconstruction, repair, operation, or maintenance of storm water facilities through other means including but not limited to other City fees and taxes, bonds, grants, special improvement districts, contributions from other agencies, interlocal cooperation agreements, or private contributions. (C.O. No. 33)

**RESOLUTION NO. 2022-10**

**A RESOLUTION ESTABLISHING FEES AND RATES FOR SANITARY SEWER SERVICE FOR THE CITY OF DODGE CITY.**

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WHEREAS, for the peace, health, safety, and welfare of the citizens of Dodge City, it is deemed necessary for the City to provide wastewater collection and treatment service to its citizens; and

WHEREAS, such wastewater collection and treatment services includes residential, commercial, and industrial users; and

WHEREAS, Federal Regulations require that all users pay a fair and equitable share of the collection of wastewater and for the costs of treatment plant construction, operation and maintenance, and replacement costs.

NOW, THEREFORE, BE IT RESOLVED by the Governing Body of the City of Dodge City, Kansas, that the following shall be the fee schedule for Sewer Service in Dodge City.

**Section 1:** REPEAL: Resolution 2021-13 adopted on the 21st day of June, 2021 is hereby repealed.

**Section 2:** SEWER USE FEES:

Sewer use fees to pay for the cost of collection and treatment of wastewater, for operation and maintenance of the wastewater collection and treatment system and for the cost of replacement of components of the system shall be established, as set forth herein below:

2.1 Residential Customers

Monthly Service charge	\$19.09
Monthly volume charge per 1,000 gallons	\$2.58

2.2 Mobile Home Parks served by master meter (s)

Monthly service charge	\$19.09
Master meter monthly accumulative reading, Q, multiplied by \$2.58 per 1,000 gallons	A= (Q) (2.58) (1000)
Total Bill =	T= \$19.09 + A

2.3 Commercial Customers with wastewater having strengths not exceeding 300 mg/1 of five day biological oxygen demand (BOD) or 700 mg/1 of total dissolved solids (TDS) per day:

Monthly service charge	\$18.09
Monthly volume charge per 1,000 gallons	\$2.58

2.4 Industrial Customers and Commercial Customers exceeding the BOD and TDS limits set forth in 2.3 hereinabove but not using the City sewer system:

Monthly service charge	\$19.09
Monthly volume charge per 1,000 gallons	\$2.58
Monthly 5 day BOD charge per lb.	\$0.1343
Monthly TDS charge, per lb.	\$0.0827

2.5 Industrial Customers and Commercial customers exceeding the BOD and TDS limits set forth in 2.3 hereinabove and who use the City sewer system shall pay both a monthly service charge, and a monthly volume and strength charge as specified:

Monthly service charge	\$19.09
Monthly volume charge	\$2.58
Monthly 5 day BOD charge per lb.	\$0.1343
Monthly TDS charge, per lb.	\$0.0827

The calculation of the strength charges for BOD and TDS shall be made as follows:

$$SBOD = V_s \times 8.34 \times CBOD \times BOD$$

$$STDS = V_s \times 8.34 \times CTDS \times TDS$$

$$ST = SBOD + STDS$$

Where:

SBOD shall be the strength charge attributable to 5 day biochemical demand

STDS shall be the strength charge attributable to the Total Dissolved Solids

$V_s$  shall be the wastewater volume in million gallons

8.34 shall be the weight of water, pounds per gallon

CBOD shall be the unit charge for 5 day Biochemical Oxygen Demand in dollars per pound

CTDS shall be the unit charge for Total Dissolved Solids in dollars per pound

BOD shall mean five day BOD in mg/l

TDS shall mean Total Dissolved Solids in mg/l

- 2.6 National Beef, which is an industrial customer, has negotiated the following rate to discharge a high volume of wastewater that may exceed the limits allowed for industrial customers. The rate is based on a daily discharge of wastewater regardless of flow.

Volume charge regardless of flow per month	\$1,438.71 per million gallons
BOD <sub>5</sub> > 2,889,866 lbs. per month	\$0.0371 per pound above parameter
TSS > 2,281,046 lbs. per month	\$0.0371 per pound above parameter
TDS > 1,521,238 lbs. per month	\$0.0371 per pound above parameter
O&G > 1,155,946 lbs. per month	\$0.0371 per pound above parameter

- 2.7 Mid-America Washout, which is an industrial customer, has negotiated the following rate to discharge a high volume of wastewater than may exceed the limits allowed for industrial customers. The rate structure is based on a daily discharge of 50,000 gallons of wastewater.

Volume charge if flow <= 1.5 million gallons per month	\$1,872.24 per million gallons
Volume charge if flow >1.5 million gallons per month	\$2,808.36 per million gallons
BOD > 25,020 lbs. per month	\$ 0.0664 per pound above parameter
TSS > 20,016 lbs. per month	\$ 0.0664 per pound above parameter
TDS > 13,448 lbs. per month	\$ 0.0664 per pound above parameter

- 2.8 Nor-Am Logistics South, LLC, which is an industrial customer, has negotiated the following rate to discharge a high volume of wastewater that may exceed the limits allowed for industrial customers. The rate is based on a daily discharge of wastewater regardless of flow.

Volume charge regardless of flow per month	\$1,438.71 per million gallons
BOD <sub>5</sub> > 2,889,866 lbs. per month	\$0.0371 per pound above parameter
TSS > 2,281,046 lbs. per month	\$0.0371 per pound above parameter
TDS > 1,521,238 lbs. per month	\$0.0371 per pound above parameter
O&G > 1,155,946 lbs. per month	\$0.0371 per pound above parameter

- 2.9 Fees will be one and one half times outside the corporate limits of Dodge City.

### 3.0 OTHER TYPES OF CONTRIBUTORS

Any person desiring to use the wastewater treatment system by transporting liquid matter to said system by a means other than through the sewer system may do so if the quantity, quality, type, and character of the liquid waste to be deposited in the system is of a type permitted under the

Resolution 2022-10; page 4

laws of the City, and consists solely of organic or biodegradable waste from septic tanks and cesspools.

Such fees shall be based on two factors, a flat fee designed to pay for testing and the cost of administration and billing and a volume charge.

To simplify the administration and accounting for the material dumped, the volume charge will be based on the total volume of the tank used, rather than a measurement of the actual volume of material in the tank. The OMI staff has the right to measure any tank to determine the volume if there is any question about the reported volume.

The septage disposal fee shall be as follows:

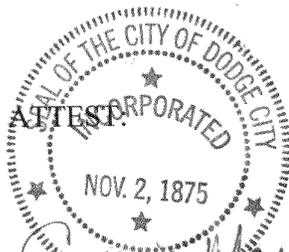
Flat fee for administration and testing	\$42.40
Volume charge	\$ 0.1816 per gallon

#### 4.0 EXTRA MONITORING FOR HIGH STRENGTH WASTES

When regulations require monitoring of wastewater from any user, whether for extra strength or for high discharges, that user shall pay a monitoring charge consisting of all costs for personnel, materials and equipment necessary to collect and analyze samples of the wastewater and shall also pay an additional administrative charge of 10% of the cost of collection and analysis.

5.0 EFFECTIVE DATE: The rates specified hereinabove shall be come effective during the month of April, 2022 as appropriate and upon its adoption by the City Commission and publication in the official City newspaper.

PASSED BY THE GOVERNING BODY OF THE CITY OF DODGE CITY, KANSAS, the 21st day of March, 2021.



*Connie Marquez*  
Connie Marquez, City Clerk

*E Kent Snow*  
\_\_\_\_\_  
Mayor

Department	Project	Fund	2023	2024	2025	2026	2027
<b>Wastewater</b>							
	Casino Wet Well Modifications	520	-	-	-	-	115,000
	Conversion of Irrigation Booster Pump to Electricity	520	-	-	50,000	-	-
	Generators for Lift Station	520	32,500	32,500	-	-	-
	Sanitary Sewer Line Rehab	520	250,000	250,000	250,000	250,000	250,000
	Master Plan	520	100,000	-	-	-	-
	Sewer MH Rehab	520	-	50,000	50,000	50,000	50,000
	Splitter Box & Valve Rehab at the Original South Plant**	520	75,000	75,000	-	-	-
	Lagoon Slope Paving Repairs	520	50,000	50,000	50,000	50,000	-
	Expansion Of Irrigation System	520	-	125,000	-	125,000	-
	Sewer Line Cleaning	520	-	75,000	75,000	75,000	75,000
	Wastewater System Imp	520	-	-	115,000	-	115,000
	Construction of Parallel Main Interceptor Line-Construction	Rev Bonds	-	-	-	4,000,000	-
	Construction of Parallel Main Interceptor Line-Design	Rev Bonds	-	-	725,000	-	-
	South Dodge Forcemain Upgrade-Construction	Rev Bonds	-	-	-	1,400,000	-
	South Dodge Forcemain Upgrade-Design	Rev Bonds	-	-	175,000	-	-
	Membrane Replacement	Rev Bonds	101,000	101,000	101,000	-	-
	Park Street Sewer Extension	Rev Bonds	-	-	-	-	220,000
	Park Street Sewer Extension	Special Assessment	-	-	-	-	220,000
	Center Ave Sewer Extension	Rev Bonds	-	27,500	275,000	-	-
	Center Ave Sewer Extension	Special Assessment	-	27,500	275,000	-	-
	Wilroads Garden Rd. Sewer Extension	Rev Bonds	-	-	-	-	312,500
	Wilroads Garden Rd. Sewer Extension	Special Assessment	-	-	-	-	312,500
	<b>Total - Wastewater</b>		<b>608,500</b>	<b>813,500</b>	<b>2,141,000</b>	<b>5,950,000</b>	<b>1,670,000</b>
<b>Biogas</b>							



# Memorandum

**To:** Nick Hernandez, City Manager and City Commission  
**From:** Nicole May, Finance Director  
**Date:** March 15, 2023  
**Subject:** Resolution 2023-12  
**Agenda Item:** Ordinances and Resolutions

---

**Recommendation:** I recommend the City Commission approve Resolution 2023-12.

**Background:** A 6(a) petition has been submitted by Tim Volz to the City of Dodge City to make improvements in the Iron Flats Addition. The improvements are for waterline and sewerline extension and service and streets, curb and gutter construction. The proposed resolution authorizes the City to make the improvements in the benefit district and specially assess the costs of those improvements back to the property owner over a 15 year period. The City's current development policy allows special assessments as a financing tool for development projects. This area is a part of a RHID (Rural Housing Incentive District).

**Justification:** To assist the developer in residential development and promote affordable housing.

**Financial Considerations:** The City will issue temporary notes/GO bonds to cover the costs of the improvements and the bond payments will be made through special assessments to the benefit district and the increment property taxes in the RHID will go to pay back the special assessments.

**Purpose/Mission:** To assist in residential development in Dodge City.

**Legal Considerations:** All legal considerations have been satisfied by the proposed resolution.

**Attachments:** Resolution No. 2023-12.

**RESOLUTION NO. 2023-12**

**A RESOLUTION DETERMINING THE ADVISABILITY OF THE MAKING OF CERTAIN INTERNAL IMPROVEMENTS IN THE CITY OF DODGE CITY, KANSAS; MAKING CERTAIN FINDINGS WITH RESPECT THERETO; AND AUTHORIZING AND PROVIDING FOR THE MAKING OF THE IMPROVEMENTS IN ACCORDANCE WITH SUCH FINDINGS (VARIOUS INTERNAL IMPROVEMENTS/IRON FLATS, PHASE I).**

**WHEREAS**, a petition (the “Petition”) was filed with the City Clerk of the City of Dodge City, Kansas (the “City”) proposing certain internal improvements; and said Petition sets forth: (a) the general nature of the proposed improvements; (b) the estimated or probable cost of the proposed improvements; (c) the extent of the proposed improvement district to be assessed for the cost of the proposed improvements; (d) the proposed method of assessment; (e) the proposed apportionment of the cost between the improvement district and the City at large; and (f) a request that such improvements be made without notice and hearing as required by K.S.A. 12-6a01 *et seq.* (the “Act”); and

**WHEREAS**, the governing body of the City hereby finds and determines that said Petition was signed by the owners of record of more than one-half of the area liable for assessment for the proposed improvements, and is therefore sufficient in accordance with the provisions of the Act.

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

**Section 1. Findings of Advisability.** The governing body hereby finds and determines that:

(a) It is advisable to make the following improvements (collectively the “Improvements”):

The design, inspection, and construction of the sanitary sewer manholes, gravity sanitary sewer main, water main, water valves, fire hydrants, streets, curbs and drainage as necessary to serve the future Iron Flats, Phase I, an addition to the City of Dodge City, Ford County, Kansas.

(b) The estimated or probable cost of the Improvements is: \$6,750,000 to be increased at the pro rata rate of 1 percent per month from and after the date of adoption of this Resolution.

(c) The extent of the improvement district (the “Improvement District”) to be assessed for the cost of the Improvements is:

Lots 1-35, Block 1; Lots 1-4, Block 2; Lots 1-31 Block 5; Lots 6-25 Block 6; Lots 1-11, Block 8 of Iron Flats, Phase I

(d) The method of assessment is: per lot

(e) The apportionment of the cost of the Improvements, between the Improvement District and the City at large, is: 100% to be assessed against the Improvement District and 0% to be paid by the City-at-large.

**Section 2. Authorization of Improvements.** The above said Improvements are hereby authorized and ordered to be made in accordance with the findings of the governing body of the City as set forth in **Section 1** of this Resolution.

**Section 3. Bond Authority; Reimbursement.** The Act provides for the Improvements to be paid by the issuance of general obligation bonds or special obligation bonds of the City (the “Bonds”). The Bonds may be

issued to reimburse expenditures made on or after the date which is 60 days before the date of this Resolution, pursuant to Treasury Regulation 1.150-2.

**Section 4. Effective Date.** This Resolution shall be effective upon adoption. This Resolution shall be published one time in the official City newspaper, and shall also be filed of record in the office of the Register of Deeds of Ford County, Kansas.

**ADOPTED** by the governing body of the City on March 20, 2023.

(SEAL)

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Clerk

### CERTIFICATE

I hereby certify that the above and foregoing is a true and correct copy of the Resolution of the City adopted by the governing body on March 20, 2023, as the same appears of record in my office.

DATED:

\_\_\_\_\_  
Clerk



# Memorandum

**To:** City Commission

**From:** City Manager, Nick Hernandez

**Date:** February 6, 2023

**Subject:** Approval of a lease agreement with Catholic Charities of Southwest Kansas (CCSK)

**Agenda Item:** Unfinished Business

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**Recommendation:** Approve the lease agreement with CCSK for partial use of City Hall located at 806 N. 2<sup>nd</sup> Avenue.

**Background:** With the purchase of the Municipal Services Building, there will be available office space at the current City Hall as Engineering Services, Public Works and Development Services have moved to the new building. City Services remaining in the building include Municipal Court Services, Utility Building, City Clerk services and administration services.

**Justification:** CCSK has been searching for a new space that will help them better meet the needs of the community through their various services including counseling services, citizenship preparation, immigrant, and refugee services among other services. They have also worked in partnership with the City to offer these services.

The proposed space for lease is approximately 7,092 sq. ft.

**Financial Considerations:**

The proposed terms are similar to rent and lease rates at other City owned facilities and are proposed as follows:

- The annual lease payments beginning June 1, 2023, prorated monthly and billed by City are \$12/sq. ft per year, \$7,092/month and \$85,104/annual
- Utilities -gas, electricity, sewer, security, and internet costs shared by City and CCSK based on allocated space. Total area of the building is 12,678 sq. ft. +/- and CCSK's leased space represents 7,092 sq. ft. +/- equaling 56%.
- CCSK will be responsible for their own telephone services and equipment
- The annual lease payment beginning on March 1, 2026 will be \$92,196.00.
- The annual lease payment beginning on March 1, 2029 will be \$99,288.00.
- All annual rent will be paid in monthly installments calculated in the same fashion for subsequent terms as the initial term.
- CCSK will have the option to purchase the building after the 3<sup>rd</sup> year of the lease for the appraised value established by Ford County.

- CCSK will be allowed a credit of 10% of all rents paid prior to closing against the purchase price. Title insurance and closing agent fees shall be equally divided. The real estate taxes and rents shall be prorated to the closing date. The premises shall be sold “as is.

**Legal Considerations:** The agreement commences on June 1, 2023 and is for a ten-year period. There is also an option to extend for an additional five-year term as well as purchase option as mentioned in the financial considerations. The agreement has been reviewed by both City and CCSK Legal Counsel.

**Cite Commission Options:**

1. Approve
2. Disapprove
3. Table for further discussion

**Attachments:**

Catholic Charities of Southwest Kansas Lease Proposal

LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Lease") is made this \_\_\_<sup>st</sup> day of March, 2023 by and between

Catholic Charities of Southwest Kansas  
906 Central, Dodge City, KS 67801  
hereinafter referred to as

"TENANT"

AND

City of Dodge City, Kansas  
806 Second Ave  
Dodge City, Kansas 67801  
hereinafter referred to as

"LANDLORD"

WITNESSETH:

1. LEASED PREMISES: LANDLORD, in consideration of the full performance of the covenants and agreements of this Lease, and in full payment of the rentals as hereinafter specified, does hereby lease to the TENANT and TENANT hereby leases from LANDLORD for the term hereinafter set out the following described premises (the "Premises"), to-wit:

That portion of the improvements located in the Landlord's building at 806 Second Avenue, in the approximate amount of seven thousand, ninety-two (7,092) square feet, all as set forth on the Exhibit A attached hereto and incorporated herein.

2. COMMON AREAS: There are no Common Areas to this tenancy, but TENANT may have reasonable access to the City Court courtroom, at the discretion of the LANDLORD, at such times as the courtroom is not in use for functions of the

Municipal Court or the City Commission. In any such instances, TENANT will be responsible to compensate the City for IT services necessary for the operation of audio visual equipment. Such services would be on an as-needed basis using IT staff employed by the City and would be compensated at the rate of \$\_\_\_\_\_ per hour for actual time spent.

2. ACCEPTANCE AND USE OF PREMISES: TENANT agrees to accept the Premises in its existing condition at the date of occupancy. TENANT further agrees the Premises shall be used and occupied by TENANT for business offices.

3. TERM: This Lease shall commence on June 1, 2023 and continue thereafter for an initial term of ten (10) years.

4. OPTION TO EXTEND: This Lease shall automatically be extended for an additional five (5) year term, at the end of the initial term, unless TENANT shall notify LANDLORD in writing one (1) year prior to the termination of this Lease of TENANT's desire not to extend the term of this Lease for the said five (5) year period.

In the event this Lease is extended for the additional five (5) year term provided above, this Lease shall automatically be extended for a second five (5) year term beginning at the end of the first five (5) year option, unless TENANT shall notify LANDLORD in writing, six (6) months prior to the termination of the then existing lease period, of TENANT's desire not to extend the term of this Lease for a second five (5) year term.

All extensions of this Lease, as provided above, shall be upon the same terms and conditions as contained herein, except that the amount of the monthly rental payment shall be negotiable prior to the commencement of each five (5) year option.

5. RENTAL: As rent for the Premises TENANT agrees to pay to LANDLORD without deduction, set-off or demand, the total sum of Eighty-Five Thousand, One Hundred Four Dollars (\$85,104.00) annually for the initial term of this Lease payable in equal advance monthly installments of seven thousand, ninety-two dollars (\$7,092.00), beginning on the first day of June 2023 for first month's rent and continuing monthly thereafter for the first three years of this Lease. The annual rent beginning on March 1, 2026 will be Ninety-Two Thousand, One Hundred Ninety-Six Dollars (\$92,196.00). The annual rent beginning on March 1, 2029 will be Ninety-Nine Thousand, Two Hundred Eighty-Eight Dollars (\$99,288.00). All annual rent will

be paid in monthly installments calculated in the same fashion for subsequent terms as the initial term.

6. OWNERSHIP AND POSSESSION: LANDLORD covenants that LANDLORD is lawfully seized of the Premises and has full right and power to enter into this Lease for the full term and upon all the conditions herein contained and will deliver full and complete possession of the Premises upon the commencement date of this Lease. TENANT, on paying the said rent and performing the covenants agreed to be performed, shall and may peaceably and quietly have, hold and enjoy the Premises for the term and for the use and purpose leased hereunder.

7. MAINTENANCE: TENANT shall, at TENANT's expense, keep and maintain the interior of the Premises, including but not limited to furnace and air conditioning filters, exterior entry and exit doors, interior plate glass and glazing in or on the Premises in good order, condition and repair, and in compliance with all laws and regulations applicable thereto during the entire term of this Lease. TENANT shall be responsible for repair of plumbing stopped up by reason of foreign matter introduced into the plumbing fixtures located in the Premises .

LANDLORD warrants that, upon the commencement of this Lease, all underground plumbing shall be in good operable condition. LANDLORD shall, at LANDLORD 's own expense, keep and maintain the roof and exterior walls, exterior plate glass, parking lots, HVAC, electrical, underground plumbing except if stopped up by reason of foreign matter introduced into plumbing fixtures or floor drains, and all structural components of the Premises in good order, condition and repair during the term of this Lease. The phrase "exterior walls" as herein used shall not be so construed as to require LANDLORD to make repairs to the interior surfaces thereof.

LANDLORD shall be responsible for snow removal on the exterior parking lots and sidewalks. LANDLORD will be responsible for replacement of interior floor covering at normal replacement intervals for commercial office space.

All paper products for the restroom facilities in the leased premises will be provided by TENANT.

There shall be no obligation on the part of the LANDLORD to make any of the repairs required in this section unless and until TENANT gives LANDLORD written notice, advising LANDLORD of the necessity of the repair.

8. KEYS: TENANT will be provided \_\_(\_\_) keys at the inception of this Lease. Replacement of keys or replacement of locks will be the physical responsibility of LANDLORD and the financial responsibility of TENANT. TENANT is prohibited from duplicating keys or replacing locks on its own initiative or authority.

9. JANITORIAL: TENANT will be responsible for the janitorial services necessary for the leased premises.

10. INSURANCE: TENANT, at TENANT's expense, shall carry commercial general liability insurance coverage in an amount of at least \$500,000 per occurrence and \$1,000,000 aggregate, including advertising, in personal injury liability coverage with respect to the Premises and the business of TENANT and naming LANDLORD as additional insured.

LANDLORD agrees, as a material condition of this Lease, to maintain insurance coverage on the building of which the Premises are a part, insuring the building against loss by fire and extended coverage in an amount at least equal to eighty percent (80%) of the fair replacement value of said building.

11. SUBORDINATION OF LEASE: It is expressly understood and agreed between the parties hereto that LANDLORD reserves the right to subject and subordinate this Lease at all times to the lien of any mortgage or mortgages now or hereafter placed upon LANDLORD's interest in the Premises. TENANT agrees to execute and deliver upon LANDLORD's demand, such further instruments subordinating this lease to the lien of any such mortgage or mortgages as may be required; provided, however, that the mortgagee shall acknowledge in advance that this Lease will be valid in the event of a foreclosure of LANDLORD's interest.

12. ALTERATIONS: TENANT, by obtaining LANDLORD's prior written approval, shall have the right to make alterations or additions to the Premises at its sole cost and expense. Any such alterations or additions shall be of good workmanship and material and shall not reduce the size or strength of the then existing improvements. LANDLORD's approval of any alterations or additions is at its sole and unfettered discretion. In considering any such approval, LANDLORD will be guided by all applicable Federal, State and Local laws, regulations and ordinances pertinent to the

request. Any such alterations or additions shall remain with the Premises and become the property of LANDLORD.

13. FIXTURES AND EQUIPMENT: It is understood and agreed that any equipment, furniture, signs and sign standards, installed or owned in the building or otherwise on the Premises by TENANT, shall remain TENANT's property and may be removed by TENANT at any time, whether attached to the building or not, provided, nevertheless, that TENANT shall repair any and all damage to the Premises caused by such removal. Any fixtures which are owned by LANDLORD and a part of this Lease shall remain LANDLORD's property and not be removed from the Premises.

14. SIGNS: All exterior signs shall be subject to the written approval of LANDLORD (at LANDLORD's sole discretion) being obtained prior to the installation of any such sign. The cost of such installation shall be borne by TENANT. Upon the expiration or termination of this Lease or any renewal thereof, TENANT, at its sole expense, agrees to remove from the Premises any signs which it may have installed, provided that TENANT shall repair any and all damage to the Premises and/or LANDLORD's building caused by such removal.

15. DAMAGE OR DESTRUCTION: In the event the improvements located upon the premises shall be damaged or destroyed by fire or other casualty, Tenant shall give written notice thereof to Landlord within a reasonable time.

A. If the improvements located upon the leased premises are substantially destroyed (50% or more) or said improvements are so damaged that it reasonably appears that the rebuilding or repair of the same can not be completed in 120 days, then this lease shall cease and come to an end at the option of either the Landlord or Tenant. To exercise said option of termination either the Landlord or Tenant shall give written notice to the other party within 20 days after such damage occurs. In the event the option to terminate is not so exercised within the time specified therefore, this lease shall remain in full force and effect and Landlord shall proceed with due diligence to repair and restore said premises to substantially the same condition as prior to said damage or destruction, excepting Tenant improvements. Until said

premises are repaired and restored to such condition the rent shall abate.

B. In the event the improvements located upon the leased premises shall be damaged by fire, tornado or other casualty but to an extent as to not be substantially destroyed (less than 50%), this lease shall not terminate. In such event, Landlord shall proceed with reasonable diligence to repair and rebuild said improvements, excepting Tenant improvements, to substantially the condition to which they existed prior to said damage. Until said premises are repaired and restored the rent payable hereunder shall abate. In the event Landlord shall fail to complete such repairs or rebuilding within 120 days after the date of said damage, Tenant may, at Tenant's option, terminate this lease by delivering written notice of termination to Landlord whereupon all rights and obligations hereunder shall cease.

16. SUBLETTING AND ASSIGNMENT: TENANT shall not, without the prior written consent of the LANDLORD, have the right to assign this Lease or sublet the Premises or any portion thereof. TENANT shall have the right to provide space to independent contractors of the TENANT if related to the purposes and mission of the TENANT.

17. UTILITIES: TENANT agrees to pay a pro rata share of all charges of public or private utilities consumed on the Premises including charges for gas, electricity, sewer, security, and internet. Said pro rata share shall be fifty-six percent (56%) of the total utilities consumed on the Premises. The pro rata share will be invoiced to TENANT on a monthly basis and will be payable within ten (10) days of the date of the invoice.

18. DEFAULT BY TENANT: LANDLORD shall give TENANT written notice of any default by TENANT in the payment of rent or the performance of any other obligation to be kept or performed by TENANT and if such default continues for a period of fifteen (15) days in the case of rent or thirty (30) days in case of other defaults after receipt by TENANT of a written notice from LANDLORD specifying such default, LANDLORD may thereafter without further notice or demand, enter onto the Premises and take full and absolute possession thereof, without such re-entry causing

a forfeiture of the rent to be paid or the covenants to be performed by TENANT hereunder for the full term of this Lease. LANDLORD may thereafter lease or sublease the Premises for such rent as LANDLORD may reasonably obtain, crediting TENANT with the rent so obtained after deducting the costs LANDLORD reasonably Incurs by such re-entry, leasing or subleasing, or the LANDLORD, at LANDLORD's election may, terminate this Lease and re-enter and take full and absolute possession of the Premises free from any further right or claim by TENANT.

19. SURRENDER OF PREMISES: At the expiration of the tenancy hereby created, TENANT shall surrender the Premises in the same condition as the Premise were in upon delivery of possession thereto except as may be provided in Article 15 hereof, and shall surrender all keys for the Premises to LANDLORD of the place then fixed for payment of rent and shall inform LANDLORD of all combinations on locks, safes and vaults, if any/ in the Premises. TENANT shall remove all its trade fixtures before surrendering the Premises as aforesaid and shall repair any damage to the Premises caused by such removal. TENANT's obligation to observe or perform this covenant shall survive the expiration or other termination of the term of this Lease.

20. PROPER USE OF PREMISES: TENANT shall not perform any acts or carry on any practices which may injure the building or be a nuisance or menace under local code and shall keep the Premises under TENANTs control, clean and free from rubbish under acceptable standards. The Parties acknowledge and agree that the exterior door located at the southeast corner of the leased premises shall be available and open to the use of the Landlord as an emergency exit for the occupants of the north portion of the Landlord's building as referenced above. Said exit door will be used by the Landlord only as an emergency exit and not as a regular manner of ingress or egress.

TENANT shall have use of the parking area located directly to the south of the leased premises consisting of approximately \_\_\_\_ parking spaces.

21. HOLDING OVER: Any holding-over after the expiration of the term hereof shall be construed to be a tenancy from month-to-month at the rents herein specified and shall otherwise be on the terms and conditions herein specified, so far as applicable.

22. MANNER OF SERVING NOTICE: All notices or requests which may be or are required to be given to either LANDLORD or TENANT shall be in writing and sent by certified mail, or by personal service, addressed to the parties as follows:

LANDLORD:

TENANT:

City of Dodge City, Kansas  
\_\_\_\_\_  
Dodge City, Kansas 67801

Catholic Charities  
806 Second Avenue  
Dodge City, Kansas 67801

23. WARRANT OF AUTHORITY: Each party warrants that the person executing this Lease on its behalf is duly authorized to execute this Lease, that the execution is not proscribed by the bylaws or articles of incorporation of the corporation, if either party is a corporation, and that all necessary action has been taken by its board of directors and/or commissioners to authorize the execution of this Lease.

24. REAL ESTATE TAXES: LANDLORD shall pay all real estate taxes and special assessments which may be levied or imposed against the Premises.

25. PURCHASE OPTION: TENANT shall have the option to purchase the premises at any time after the third (3<sup>rd</sup>) year of the lease for the appraised value then established by Ford County, Kansas. In the event of such purchase, the LANDLORD shall have the option to rent any space then in use by the LANDLORD at the same rate and terms then existing between the LANDLORD and TENANT. TENANT shall be allowed a credit of 10% of all rents paid prior to closing against the purchase price. Title insurance and closing agent fees shall be equally divided. The real estate taxes and rents shall be prorated to the closing date. The premises shall be sold "as is".

26. RIGHT TO CANCEL: TENANTS ability to meet lease obligations is dependent on federal and state grant and program payments and subsidies. In the event that federal, state or third party revenues generated by the program<sub>s</sub> operated out of the leased space, shall drop or decrease by 10% from the levels existing at commencement of the lease, the parties agree to negotiate in good faith for a rent adjustment. If the parties are unable to agree, the TENANT shall have the right to cancel the lease with 90 day notice in advance of a rent payment date.

IN WITNESS HEREOF, the parties hereto have caused this Lease to be entered into the day and year first above written and the same shall be binding on the heirs, executors, administrators and assigns of the respective parties except as limited herein.

LANDLORD City of Dodge City,  
Kansas

Catholic Charities of Southwest  
Kansas

BY: \_\_\_\_\_

TENANT

By: Michael Burns, Mayor

BY: \_\_\_\_\_



# Memorandum

**To:** Nick Hernandez, City Manager and City Commissioners  
**From:** Ray Slattery, PE, Director of Engineering Services  
**Date:** March 20, 2023  
**Subject:** Approval of Consulting Service Agreement for Gunsmoke Trail Extension along Comanche St. and Widening of Comanche St. from Fairway Dr. to Ave. P as required for the Trail Extension, PK 2201  
**Agenda Item:** New Business

**Recommendation:** Approve Consulting Service Agreement with SMH Consultants, P.A. in the amount of \$180,755.00.

**Background:** The City has been awarded a Transportation Alternatives (TA) Grant for the extension of the Gunsmoke Trail along Comanche St. from 1<sup>st</sup> Ave. to Ave. P. As part of the grant agreement, the City is responsible for the design of the trail extension per KDOT Standards. In November of 2022 the City advertised for Request for Qualifications (RFQ) for the design of the trail extension. The City received 6 proposals from engineering firms to design the trail extension and widening of Comanche St. After careful review by the selection committee, it was decided to have SMH Consultants, P.A. provide the design service for the extension and widening. The Trail Extension will meet KDOT requirements. With the design, KDOT and the City will be able to bid the construction of the Trail Extension and Comanche St. Widening, respectively. SMH will provide all the necessary plans for the construction of the Trail Extension and Comanche St. Widening.

**City Commission Options:**

1. Approve
2. Disapprove
3. Table for further discussion

**Financial Considerations:** The design contract with SMH Consultants is for a not to exceed amount of \$180,755.00. This is a reimbursable expense through the RHID Program.

Amount \$: \$180,755.00

Fund:

Budgeted Expense     Grant     Bonds     Other

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

**Mission/Values:** This project aligns with the City's Core Value of Ongoing Improvements.

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

**Approved for the Agenda by:**

*Ray Slattery, PE*

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**Ray Slattery, PE, Dir. of Engineering Services**

**CONSULTING SERVICES AGREEMENT**

Client: <u>City of Dodge City</u>	Project: <u>Comanche Trail</u>
Address: <u>806 N. Second Avenue</u> <u>Dodge City, KS 67801</u>	Project Location: <u>Dodge City</u>
Telephone: <u>620-225-8106</u>	SMH Project Manager: <u>Ben Gasper, PE</u>
Contact: <u>Ray Slattery, Dir. Eng. Ser.</u>	
Client Job No.: _____	SMH Job No.: <u>2303-0089</u>

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

Comanche Trail – Development of Construction Documents for multi-use trail along Comanche Street from 1<sup>st</sup> Avenue to Avenue P

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

- GENERAL CONDITIONS
- Attachment A: Scope of Services
- Attachment B: Personnel and Reimbursable Rates
- Attachment C: Lump Sum Fee Estimate
- Other:

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

- FEE ESTIMATE SHOWN ON EACH SERIALLY NUMBERED WORK AUTHORIZATION
- THE LUMP SUM COST OF CONSULTANT’S DESIGN SERVICES IS \$102,605.00. RIGHT OF WAY & EASEMENT ACQUISITION SERVICES IS \$5,000/TRACT WITH AN ESTIMATED 6 TRACTS TOTALING \$30,000. TOTAL FEE FOR ALL SERVICES IS \$132,605.

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

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

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



## **GENERAL CONDITIONS**

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

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

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

#### **1.2 Fees**

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

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

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

##### **2.1.1 Payment**

Payment for the services rendered by CONSULTANT's personnel shall be based on percent of complete and units complete (acquisition) of services identified in the scope of work.

##### **2.2 Payment Conditions**

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

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

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

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

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

##### **2.3 Independent Contractor**

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

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

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

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

#### **3.1 Term**

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

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

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

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

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

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

#### **3.4 Damages and Injunctive Relief**

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

### **SECTION IV – General Considerations**

#### **4.1 Assignment and Responsibility for Personnel**

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

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

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

#### **4.2 Insurance**

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

#### **4.3 Compliance with Law**

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

#### **4.4 Ownership and Reuse of Documents**

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

**4.4.2** All drawing, specifications, test reports and other materials and work products, including computer aided drawings, designs and other data filed on electronic media which will be prepared or furnished by CONSULTANT (and CONSULTANT's independent professional associates and subconsultants) under this AGREEMENT, are instruments of service in respect of the PROJECT and CONSULTANT shall retain an ownership and property interest therein whether or not the PROJECT is completed. CLIENT may make and retain copies for information and reference in connection with the use and the occupancy of the PROJECT by CLIENT and others; however, such documents are not intended or represented to be suitable for reuse by CLIENT or others on extensions of the PROJECT or on any other project. Further, CONSULTANT makes no warranty as to the compatibility of computer data files with computer software and software releases other than that used by CONSULTANT in performing the services herein, and to the condition or availability of the computer data after an accepted period of thirty (30) days from delivery to CLIENT. Any reuse of such material without written verification or adaptation by CONSULTANT for the specific purpose intended will be at CLIENT's sole risk and without liability or legal exposure to CONSULTANT or to CONSULTANT's independent professional associates or subconsultants, and CLIENT shall indemnify and hold harmless CONSULTANT and CONSULTANT's independent professional associates and subconsultants from all claims, damages, losses and expenses including, but not limited to, attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle CONSULTANT to further compensation at rates to be agreed upon by CLIENT and CONSULTANT.

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

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

#### **4.6 Subsurface Investigations**

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

the CONSULTANT. CLIENT shall indemnify and hold CONSULTANT harmless from any damages and delays resulting from such changes or unanticipated underground conditions.

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

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

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

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

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

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

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

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

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

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

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

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

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

### **SECTION V – Professional Responsibility**

#### **5.1 Performance of Services**

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

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

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

#### **5.3 Indemnification**

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

#### **5.4 Third Party Beneficiaries**

CLIENT and CONSULTANT expressly agree that this AGREEMENT does not confer upon any third party any rights as a beneficiary to this AGREEMENT. CONSULTANT accepts no responsibility for damages, if any, suffered by any third party as a result of a third party's use of the work product, including reliance, decisions, or any other action taken based upon it. CLIENT agrees that CONSULTANT's compliance with any request by CLIENT to address or otherwise release any portion of the work product to a third party shall

not modify, rescind, waive or otherwise alter provisions of this AGREEMENT nor does it create or confer any third party beneficiary rights on any third party.

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

### **6.1 Confidential Information**

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

Confidential Information will not include information which:

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

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

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

### **6.3 Representatives of CLIENT**

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

### **6.4 Use of Confidential Information**

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

### **6.5 Survival of AGREEMENT and Confidentiality**

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

### **6.6 Return of Confidential Information**

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

#### **6.7 Forced Disclosure**

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

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

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

#### **6.9 Enforcement**

Each party retains all rights and remedies with respect to the Confidential Information afforded it under any applicable laws of the State of Kansas and the United States both during and after the term of this AGREEMENT, including, without limitation, any trade secret or other laws designed to protect proprietary or confidential information. This AGREEMENT will be construed, interpreted and applied in accordance with the laws of the State of Kansas. It is hereby agreed that any and all claims, disputes or controversies whatsoever or arising from or in connection with this AGREEMENT shall be commenced, filed and litigated exclusively in the District Court of Riley County, Kansas or the applicable federal district court in Kansas, as determined by CONSULTANT, and the parties hereby consent to the personal jurisdiction of said court, and waive any objection to such jurisdiction and venue.

### **SECTION VII – Miscellaneous**

#### **7.1 Applicable Law**

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

#### **7.2 Severability**

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

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

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

#### **7.4 Headings**

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

#### **7.5 Successors and Assigns**

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

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

**7.6 Counterparts**

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

**7.7 Time is of the Essence**

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

**7.8 Entire Agreement**

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

**7.9 Amendment and Modification**

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

**7.10 Waiver of Breach**

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

**7.11 Rights not Exclusive to CONSULTANT**

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

**7.12 Notices**

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

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

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

**7.13 Authority**

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

**7.14No Partnership**

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

**COMANCHE TRAIL EXTENSION  
FINAL DESIGN SERVICES  
SCOPE OF SERVICES**

**SMH will provide the following scope of services to the City of Dodge City as they relate to the Comanche Street Trail Extension.**

**Phase I - Discovery**

1. Preliminary alignment selection involving a walk-through of the project site with City staff to determine thoughts on a general alignment for the new trail, connections to existing trail segments, connections to existing adjacent neighborhoods, parks, and any potential future connection plans which may impact the location of an alignment chosen.
2. Development of a preliminary plan of the preliminary alignment utilizing aerial photography and LiDAR obtained from an sUAV.
3. Topographic, boundary, and utility survey from the centerline of the adjacent roadway to generally 25-feet on to the private property side of the right of way. Survey will also include other areas beyond the primary alignment as needed for connections, crossings, and et cetera.
4. Stakeholder and project team evaluation of the preliminary alignment, including meetings with the country club.
5. Preliminary right of way and easement strip map and estimated easement acquisition costs.
6. Conversion of the survey into a working drawing that can be used for design.
7. Presentation of the preliminary trail alignment to City Commissioners for approval of the alignment chosen prior to further plan development.

**Phase II - Field Check (50%)**

1. Preliminary trail plan and profile for the primary trail alignment from 1<sup>st</sup> Avenue to Avenue P, and connections to Jean Russell Park. Trail plans will also include site specific details depicting the elevations at key locations where required.
2. Paving details as required by the pavement design for the trail.

3. Preliminary trail cross sections for the primary trail alignment, connections, and crossings. Trail cross sections will depict proposed and existing ground, water and sanitary sewer crossings, and high edge elevations.
4. Preliminary details for pedestrian actuated crossing control devices at various locations.
5. Preliminary traffic control plans.
6. Preliminary plan and profile of any required storm sewer appurtenances.
7. Stormwater runoff calculations to verify the required stormwater needs as required for the design including the proper sizing of conduits and inlets.
8. Storm sewer standard details as provided by KDOT.
9. Preliminary grading plan for the entire improvement area to depict areas of cut and fill.
10. Preliminary stormwater erosion and sediment control plan.
11. Utility Coordination with utility companies to address any potential conflicts between the proposed improvements and the existing utilities in the area.
12. Submittal of field check construction documents for review by the City of Dodge City and KDOT.
13. Amenity review with the City of Dodge City regarding the specification and selection of project amenities including benches, signage, landscaping, et cetera.
14. Development of an engineer's opinion of preliminary cost.
15. Onsite field check with City staff and KDOT officials.

**Phase III – Office Check (95%)**

1. Office check trail plan and profile for the primary trail alignment from 1<sup>st</sup> Avenue to Avenue P, and connections to Jean Russell Park. Trail plans will also include site specific details depicting the elevations at key locations where required.
2. Paving details as required by the pavement design.
3. Office check trail cross sections for the primary trail alignment, connections, and crossings. Trail cross sections will depict proposed and existing ground, water and sanitary sewer crossings, and high edge elevations.
4. Office check details for pedestrian actuated crossing control devices.
5. Office check traffic control plan, sequencing plan, and trail pedestrian traffic control plan with necessary trail and/or sidewalk detours as required.
6. Office check plan and profile of any required storm sewer appurtenances.
7. Storm sewer standard details as provided by KDOT.
8. Office check grading plan for the entire improvement area to depict areas of cut and fill.
9. Office check stormwater erosion and sediment control plan.
10. Submittal of a KDHE Notice of Intent through the National Pollutant Discharge Elimination System.
11. Office check details for trail amenities regarding the selection of project amenities including benches, signage, landscaping, et cetera.
12. Submittal of office check construction documents for review by the City of Dodge City and KDOT.
13. Submittal of any specifications for appurtenances related to the construction of the trail project (benches, trash receptacles, et cetera).
14. Development of an engineer's opinion of probable Cost.

**Phase IV – Final Plans**

1. Final trail plan and profile for the primary trail alignment from 1<sup>st</sup> Avenue to Avenue P, and connections to Jean Russell Park. Trail plans will also include site specific details depicting the elevations at key locations where required.
2. Paving details as required by the pavement design.
3. Final trail cross sections for the primary trail alignment, connections, and crossings. Trail cross sections will depict proposed and existing ground, water and sanitary sewer crossings, and high edge elevations.
4. Final check details for pedestrian actuated crossing control devices.
5. Final traffic control plan, sequencing plan, and trail pedestrian traffic control plan with necessary trail and/or sidewalk detours as required.
6. Final plan and profile of any required storm sewer appurtenances.
7. Storm sewer standard details as provided by KDOT.
8. Final grading plan for the entire improvement area to depict areas of cut and fill.
9. Final stormwater erosion and sediment control plan.
10. Final details for trail amenities regarding the selection of project amenities including benches, signage, landscaping, et cetera.
11. Submittal of construction documents as necessary for bidding the project.
12. Submittal of any specifications for appurtenances related to the construction of the trail project (benches, trash receptacles, et cetera).
13. Development of an engineer's opinion of probable Cost.

## **Phase V – Easement Acquisition Services**

*These acquisition services will be provided for each tract (each property owner) by the Acquisition Agent as required by the project.*

### **Step 1 – Initial meetings with the Client.**

1. SMH Consultants (Acquisition Agent) to meet with the client to review the project details and property acquisitions (ongoing throughout the project).
2. Understand the project deliverables to ensure all expectations are clearly identified. Make the acquisition process as easy as possible for the client. Ensure all expectations are set for a successful project.

### **Step 2 – Property Owner Project Commencement Letters**

1. A project commencement letter is sent to the property owner introducing the project and the acquisition agent. Contact information and preferred means of communication will be requested from the property owner. This letter will also explain the acquisition process, an exhibit of what's being acquired, and the pamphlet titled "*Real Property Acquisition for Kansas Highways, Roads, Streets, and Bridges*" available from the Kansas Department of Transportation.
2. Review certificates of title and any potential mortgages, liens or conflicts.

### **Step 3 – Initial meeting with the property owner.**

1. Provide an overview of the project, provide an exhibit and/or a legal description of the property being acquired, discuss potential impacts of the project on the owner's property, and provide a historical overview of the acquisition and plan development process to-date.
2. Full explanation of the rights each property owner has through the acquisition process and the County's right to utilize/acquire the property when property owners are properly compensated.
3. Provide a probable timetable for the acquisition process from the initial meeting through closing.

### **Step 4 - Appraisal, Review Appraisal, Estimates of Compensation and Just Compensation.**

1. Coordinate appraisals and property visits with property owners.
2. Preparation of property appraisals by a certified appraiser.

3. Appraisals reviewed by a review appraiser when values exceed \$10,000.
4. Primary appraisals and review appraisals are reviewed by the Acquisition Agent. Once reviewed, the Acquisition Agent will recap values by property and request just compensation.

**Step 5 - Offer and Negotiation (No offers will be made without Just Compensation set by City Council or their designee.)**

1. Provide an offer letter to each property owner in the amount of the approved just compensation. The offer letter will contain language on how to respond to the offer along with requirements needed for submitting a counter offer.
2. Continued negotiations and follow-up with the property owner through the acquisition process after the offer letter is sent.
3. Once agreeable terms with the property owner have been reached, SMH Consultants will provide that property owner a letter or email of commitment which outline the basic terms of the agreement.
4. If necessary, SMH Consultants will prepare an Administrative Settlement Report justifying a contract amount in excess of just compensation. This report will require client approval.
5. If all negotiation attempts have been exhausted, SMH Consultants will provide the client with a letter of impasse, recommending the condemnation process begins.

**Step 6 - Contracts and Closing**

1. Basic terms of the agreement with property owners will be shared with the real estate Attorney to draft the initial real estate agreement and applicable easement.
2. Once the agreement and easement(s) are drafted by the Attorney, SMH Consultants will coordinate with the property owners and client for review. If the client and the property owner are in concurrence with the draft agreement, it will be finalized and signed by both parties. SMH Consultants will facilitate contract signatures with both the client and the property owner.
3. At closing, the closing agent will provide the seller their proceeds and gather final signatures necessary to finalize the transaction.

**Sourcing and coordination of the tasks below. These tasks will be coordinated and managed by SMH Consultants.**

1. Order Certificate of Title or O&E Reports.

2. Survey and stake Right of Way boundaries.
3. Utilize Title Company to close the transactions.

#### **Acquisition Documentation Provided to the Client**

1. Negotiation log detailing all property owner contact and negotiations.
2. Property owner correspondence including letters, emails and text messages.
3. Owner contracting documents applicable to each acquisition.
4. Owner contact information.
5. Appraisals and review appraisals.

#### **Acquisition Notes**

1. These services do not include any relocation assistance services that may be required.
2. These services do not include condemnation services related to any of the acquisitions (i.e. testimony, depositions, condemnation filings). If condemnation becomes necessary those services will be billed at hourly rates. SMH will provide any information requested by the City for condemnation hearings.

#### **Services not Included but May be Required for the Construction Documents**

1. Dumpster enclosure design and details.
2. Structural design services.
3. Geotechnical engineering services
4. Retaining Wall Design for walls over three (3) feet high.
5. Lighting plan or details, if necessary.
6. All other services not identified in the above scope of services.

**Additional Services**

1. Additional design services not include in the scope of services and/or construction observations services (site visits, construction observation, materials testing, and etc.) requested of SMH after the design and permit approval will be provided at 2023 hourly rates.
2. Additional requested survey services to acquire as-built information, construction staking, and etc. will be provided at 2023 hourly rates.
3. Any services not identified in the fore mentioned scope of services requested by the owners will be provided at 2023 hourly rates.

**Notes:**

1. This scope of work does not include any construction phase services. SMH can provide shop drawing review, inspection, construction engineering, site visits and materials testing if contracted to do so.
2. There may be studies (i.e. additional traffic, additional drainage, sewer and etc.) not identified in this scope of services that are required by the City of Dodge City, KDOT or other jurisdictional agencies that are not included in this scope of services. As the need for these studies arises a separate scope of work will be developed for approval by the client.
3. Any changes to the overall layout of the site, the design constraints, original design intent and so forth made midstream in the project will impact the ability to complete the work within fee proposed. These changes, if necessary, will constitute a revised and re-negotiated scope of work and fee.
4. All designs shall be provided on SMH title blocks and provided to City of Dodge City in PDF format.



## 2023 Personnel and Reimbursable Rates SMH Consultants

<i>Survey Crew</i>	<i>\$150/hour</i>
<i>GPS /Robot Crew</i>	<i>\$115/hour</i>
<i>CADD Technician</i>	<i>\$100/hour</i>
<i>Drone Piloting</i>	<i>\$115/hour</i>
<i>Drone Processing</i>	<i>\$100/hour</i>
<i>Managing Principal Professional Surveyor</i>	<i>\$170/hour</i>
<i>Professional Surveyor</i>	<i>\$135/hour</i>
<i>Managing Principal Engineer</i>	<i>\$215/hour</i>
<i>Principal Engineer</i>	<i>\$190/hour</i>
<i>Project Engineer</i>	<i>\$150/hour</i>
<i>Design Engineer</i>	<i>\$125/hour</i>
<i>Landscape Architect</i>	<i>\$125/hour</i>
<i>Construction Engineering/Inspection</i>	<i>\$100/hour</i>
<i>Land Acquisition Agent</i>	<i>\$150/hour</i>
<i>Clerical</i>	<i>\$60/hour</i>
<i>Mileage</i>	<i>\$0.80/mile</i>
<i>Proctor</i>	<i>\$350/each</i>
<i>Concrete Cylinder Breaks</i>	<i>\$50/each</i>

**Fee Estimate**

Comanche Trail  
Dodge City, KS  
Prepared March 10, 2023

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

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

DE = Design Engineer  
LA = Landscape Architecture  
CL = Clerical



	SC	CT	MPLS	RLS	MPE	PE	DE	LA	CL	Rate =	SC	CT	MPLS	RLS	MPE	PE	DE	LA	CL	Expenses	Totals Hours	Total Fee			
	Estimated Hours										170.00														
<b>PART I - DISCOVERY</b>																							<b>PART I - DISCOVERY =</b>		<b>\$20,730.00</b>
1. Preliminary Alignment selection						4	8	4								\$600.00	\$1,000.00	\$500.00			16	\$2,100.00			
2. Preliminary Plan/Alignment							16										\$2,000.00				16	\$2,000.00			
3. Topo survey	40		4								\$6,000.00		\$680.00								44	\$6,680.00			
4. Stakeholder & Project Team Evaluation						2		8								\$300.00		\$1,000.00			10	\$1,300.00			
5. Prelim ROW & Esmt Strip map & Acq. Cost Estimate						16	8	8								\$2,400.00	\$1,000.00	\$1,000.00			32	\$4,400.00			
6. Survey Conversion		40															\$4,000.00				40	\$4,000.00			
7. Present Prelim Trail Alignment to City Commission								2											\$250.00		2	\$250.00			
<b>PART II - FIELD CHECK (50%)</b>																							<b>PART II - FIELD CHECK =</b>		<b>\$39,475.00</b>
1. Prelim Trail Plan & Profile						6	60	16								\$900.00	\$7,500.00	\$2,000.00			82	\$10,400.00			
2. Paving Details						4	6									\$600.00	\$750.00				10	\$1,350.00			
3. Prelim Trail Cross Sections						2	20									\$300.00	\$2,500.00				22	\$2,800.00			
4. Prelim Details for Ped Crossings						6	30									\$900.00	\$3,750.00				36	\$4,650.00			
5. Prelim Traffic Control Plans						2	8									\$300.00	\$1,000.00				10	\$1,300.00			
6. Prelim Storm Plan & Profile						16	8									\$2,400.00	\$1,000.00				24	\$3,400.00			
7. Stormwater calcs						8	16									\$1,200.00	\$2,000.00				24	\$3,200.00			
8. Storm Details							4										\$500.00				4	\$500.00			
9. Prelim Grading Plan						4	40									\$600.00	\$5,000.00				44	\$5,600.00			
10. Prelim SESC						1	4									\$150.00	\$500.00				5	\$650.00			
11. Utility Coordination						1	2	4								\$150.00	\$250.00	\$500.00			7	\$900.00			
12. Field Check Submittal						1	4	1								\$150.00	\$500.00	\$125.00			6	\$775.00			
13. Amenity & Landscape Review								16										\$2,000.00			16	\$2,000.00			
14. Prelim Engineer Cost Estimate						1	8									\$150.00	\$1,000.00				9	\$1,150.00			
15. Field Check Walk Thru w/KDOT						2	2	2								\$300.00	\$250.00	\$250.00			6	\$800.00			
<b>PART III - OFFICE CHECK (95%)</b>																							<b>PART III - OFFICE CHECK =</b>		<b>\$28,775.00</b>
1. 95% Trail Plan & Profile						16	16									\$2,400.00	\$2,000.00				32	\$4,400.00			
2. Paving Details						1	2									\$150.00	\$250.00				3	\$400.00			
3. 95% Trail Cross Sections						1	16									\$150.00	\$2,000.00				17	\$2,150.00			
4. 95% Details for Ped Crossings						2	8									\$300.00	\$1,000.00				10	\$1,300.00			
5. 95% Traffic Control Plans						2	6									\$300.00	\$750.00				8	\$1,050.00			
6. 95% Storm Plan & Profile						6	8									\$900.00	\$1,000.00				14	\$1,900.00			
7. Storm Details						1	2									\$150.00	\$250.00				3	\$400.00			
8. 95% Grading Plan						8	16									\$1,200.00	\$2,000.00				24	\$3,200.00			
9. 95% SESC						1	2									\$150.00	\$250.00				3	\$400.00			
10. KDHE NOI Submittal						1	8									\$150.00	\$1,000.00				9	\$1,150.00			
11. 95% Amenity & Landscape Plans								80										\$10,000.00	\$100.00		80	\$10,100.00			
12. Office Check Submittal						1	4	1								\$150.00	\$500.00	\$125.00			6	\$775.00			
13. Specs for Appurtenances						1	4	2								\$150.00	\$500.00	\$250.00			7	\$900.00			
14. Eng Cost Estimate						1	4									\$150.00	\$500.00				5	\$650.00			
<b>PART IV - FINAL CDS</b>																							<b>PART IV - FINAL CDS =</b>		<b>\$13,625.00</b>
1. Initial meetings with Client						2		2								\$300.00		\$250.00			4	\$550.00			
2. Property Owner(s) Letters						16										\$2,400.00					16	\$2,400.00			
3. Initial meetings with Property Owner(s)						16										\$2,400.00					16	\$2,400.00			
4. Appraisal/Review of Appraisal/Estimate of Compensation																				\$9,810.00		\$9,810.00			
5. Offer & Negotiations						26										\$3,900.00					26	\$3,900.00			
6. Contracts & Closings																				\$4,000.00		\$4,000.00			
7. Certificate of Title & O&E Reports																				\$1,200.00		\$1,200.00			
8. Survey & Stake ROW Boundaries	16		2								\$2,400.00		\$340.00								18	\$2,740.00			
9. Title Company to Close Transactions																				\$3,000.00		\$3,000.00			
<b>PART V - ACQUISITION</b>																							<b>PART V - ACQUISITION =</b>		<b>\$30,000.00</b>
<b>Totals =</b>	56.00	40.00	6.00	0.00	0.00	194.00	386.00	189.00	0.00		\$8,400.00	\$4,000.00	\$1,020.00	\$0.00	\$0.00	\$29,100.00	\$48,250.00	\$23,625.00	\$0.00	\$18,210.00	871.00				

**Fee Estimate = \$132,605.00**

**CONSULTING SERVICES AGREEMENT**

Client: <u>City of Dodge City</u>	Project: <u>Comanche St. Widening</u>
Address: <u>806 N. Second Avenue</u> <u>Dodge City, KS 67801</u>	Project Location: <u>Dodge City</u>
Telephone: <u>620-225-8106</u>	SMH Project Manager: <u>Ben Gasper, PE</u>
Contact: <u>Ray Slattery, Dir. Eng. Ser.</u>	
Client Job No.: _____	SMH Job No.: <u>2303-0090</u>

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

Comanche Street Widening – Development of Construction Documents for widening of Comanche Street from Fairway Drive to Avenue P

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

- GENERAL CONDITIONS
- Attachment A: Scope of Services
- Attachment B: Personnel and Reimbursable Rates
- Attachment C: Lump Sum Fee Estimate
- Other:

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

- FEE ESTIMATE SHOWN ON EACH SERIALLY NUMBERED WORK AUTHORIZATION
- THE LUMP SUM COST OF CONSULTANT'S DESIGN SERVICES IS **\$48,150.00.**

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

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

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



## **GENERAL CONDITIONS**

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

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

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

#### **1.2 Fees**

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

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

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

##### **2.1.1 Payment**

Payment for the services rendered by CONSULTANT's personnel shall be based on percent of complete and units complete (acquisition) of services identified in the scope of work.

##### **2.2 Payment Conditions**

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

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

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

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

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

##### **2.3 Independent Contractor**

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

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

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

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

#### **3.1 Term**

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

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

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

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

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

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

#### **3.4 Damages and Injunctive Relief**

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

### **SECTION IV – General Considerations**

#### **4.1 Assignment and Responsibility for Personnel**

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

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

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

#### **4.2 Insurance**

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

#### **4.3 Compliance with Law**

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

#### **4.4 Ownership and Reuse of Documents**

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

**4.4.2** All drawing, specifications, test reports and other materials and work products, including computer aided drawings, designs and other data filed on electronic media which will be prepared or furnished by CONSULTANT (and CONSULTANT's independent professional associates and subconsultants) under this AGREEMENT, are instruments of service in respect of the PROJECT and CONSULTANT shall retain an ownership and property interest therein whether or not the PROJECT is completed. CLIENT may make and retain copies for information and reference in connection with the use and the occupancy of the PROJECT by CLIENT and others; however, such documents are not intended or represented to be suitable for reuse by CLIENT or others on extensions of the PROJECT or on any other project. Further, CONSULTANT makes no warranty as to the compatibility of computer data files with computer software and software releases other than that used by CONSULTANT in performing the services herein, and to the condition or availability of the computer data after an accepted period of thirty (30) days from delivery to CLIENT. Any reuse of such material without written verification or adaptation by CONSULTANT for the specific purpose intended will be at CLIENT's sole risk and without liability or legal exposure to CONSULTANT or to CONSULTANT's independent professional associates or subconsultants, and CLIENT shall indemnify and hold harmless CONSULTANT and CONSULTANT's independent professional associates and subconsultants from all claims, damages, losses and expenses including, but not limited to, attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle CONSULTANT to further compensation at rates to be agreed upon by CLIENT and CONSULTANT.

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

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

#### **4.6 Subsurface Investigations**

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

the CONSULTANT. CLIENT shall indemnify and hold CONSULTANT harmless from any damages and delays resulting from such changes or unanticipated underground conditions.

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

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

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

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

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

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

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

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

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

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

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

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

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

### **SECTION V – Professional Responsibility**

#### **5.1 Performance of Services**

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

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

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

#### **5.3 Indemnification**

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

#### **5.4 Third Party Beneficiaries**

CLIENT and CONSULTANT expressly agree that this AGREEMENT does not confer upon any third party any rights as a beneficiary to this AGREEMENT. CONSULTANT accepts no responsibility for damages, if any, suffered by any third party as a result of a third party's use of the work product, including reliance, decisions, or any other action taken based upon it. CLIENT agrees that CONSULTANT's compliance with any request by CLIENT to address or otherwise release any portion of the work product to a third party shall

not modify, rescind, waive or otherwise alter provisions of this AGREEMENT nor does it create or confer any third party beneficiary rights on any third party.

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

### **6.1 Confidential Information**

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

Confidential Information will not include information which:

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

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

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

### **6.3 Representatives of CLIENT**

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

### **6.4 Use of Confidential Information**

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

### **6.5 Survival of AGREEMENT and Confidentiality**

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

### **6.6 Return of Confidential Information**

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

#### **6.7 Forced Disclosure**

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

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

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

#### **6.9 Enforcement**

Each party retains all rights and remedies with respect to the Confidential Information afforded it under any applicable laws of the State of Kansas and the United States both during and after the term of this AGREEMENT, including, without limitation, any trade secret or other laws designed to protect proprietary or confidential information. This AGREEMENT will be construed, interpreted and applied in accordance with the laws of the State of Kansas. It is hereby agreed that any and all claims, disputes or controversies whatsoever or arising from or in connection with this AGREEMENT shall be commenced, filed and litigated exclusively in the District Court of Riley County, Kansas or the applicable federal district court in Kansas, as determined by CONSULTANT, and the parties hereby consent to the personal jurisdiction of said court, and waive any objection to such jurisdiction and venue.

### **SECTION VII – Miscellaneous**

#### **7.1 Applicable Law**

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

#### **7.2 Severability**

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

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

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

#### **7.4 Headings**

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

#### **7.5 Successors and Assigns**

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

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

**7.6 Counterparts**

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

**7.7 Time is of the Essence**

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

**7.8 Entire Agreement**

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

**7.9 Amendment and Modification**

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

**7.10 Waiver of Breach**

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

**7.11 Rights not Exclusive to CONSULTANT**

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

**7.12 Notices**

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

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

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

**7.13 Authority**

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

**7.14No Partnership**

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

**COMANCHE WIDENING  
FINAL DESIGN SERVICES  
SCOPE OF SERVICES**

**SMH will provide the following scope of services to the City of Dodge City as they relate to the Comanche Street widening from a two-lane rural section to a three lane urban section with curb and gutter between just east of Fairway Drive to Avenue P.**

**Phase I – Construction Documents**

1. Topographic, boundary, and utility survey of Comanche Street from Fairway Drive to Avenue P 25-feet beyond the ROW north and south of the right of way. Survey will also include other areas beyond the primary alignment as needed for connections, crossings, and et cetera.
2. Conversion of the survey into a working drawing that can be used for design.
3. Title sheet with appropriate signature blocks and other requirements of the City of Dodge City.
4. General Notes & Quantities sheet that corresponds with City of Dodge City standards.
5. Utility Coordination with utility companies to address any potential conflicts between the proposed improvements and the existing utilities in the area.
6. Widening plan and profiles for widening on each side of the Comanche Street.
7. Intersection details detailing horizontal and vertical design information at each of the intersections.
8. Typical street sections of the widening based on City of Dodge City standards and paving details as required by the pavement design.
9. Roadway cross sections. Roadway cross sections will depict proposed and existing known and discoverable ground conditions, characteristics and improvements, as well as water and sanitary sewer crossings and crown elevations.
10. Project striping and signage plan. The striping and signage plan shall extend beyond the paving limits and address striping and signage on Comanche Street between Central Avenue and Avenue P.

11. Stormwater runoff calculations to verify the required stormwater needs as a result of the widening and conversion from a rural section to an urban section, including the proper sizing of conduits and inlets, including a drainage map.
12. Storm sewer plan and profile internal to the development. The storm sewer plan and profile shall conform to City of Dodge City Standards.
13. Storm sewer standard details as provided by the City of Dodge City.
14. Erosion and sediment control plan and shall conform to City of Dodge City regulations.
15. Erosion and sediment control details based on City of Dodge City standards.
16. Preparation and submittal of a stormwater pollution prevention plan to the Kansas Department of Health and Environment and all necessary NPDES permitting applications. Upon approval the approved NPDES NOI and accompanying SWPPP will be provided to the developer. This document is required to be onsite through construction of the project.
17. Preparation of final provision and specifications documents using City of Dodge City standard forms.
18. Submittal of field check construction documents (electronically and one full size paper set) for review by the City of Dodge City. This task also includes a field check by the Dodge City Office Manager. This task also includes addressing any modifications to the plans required as a result of the field check review by the City of Dodge City.
19. Quality control check by the Project Manager, an independent Project Manager and a Managing Principal Engineer who will provide quality assurance. This review will also include a design charrette involving the most experienced engineers within the company to discuss the design, cost saving opportunities, and the quality of the final plan set.
20. Submittal of final plans, special provisions, and specifications (electronically and two full size paper sets, and two 11"x17" paper sets).
21. Preparation of an Engineer's Estimate.
22. Preparation of a project bid sheet that includes utilities for the City to utilize in obtaining bids for construction of the project. Bid document book preparation by the City.
23. Responding to questions from bidders regarding the project as they prepare project bids.

**Services not Included but May be Required for the Construction Documents**

1. Dumpster enclosure design and details.
2. Structural design services.
3. Geotechnical engineering services
4. Retaining Wall Design for walls over three (3) feet high.
5. Lighting plan or details, if necessary.
6. All other services not identified in the above scope of services.

**Additional Services**

1. Additional design services not include in the scope of services and/or construction observations services (site visits, construction observation, materials testing, and etc.) requested of SMH after the design and permit approval will be provided at 2023 hourly rates.
2. Additional requested survey services to acquire as-built information, construction staking, and etc. will be provided at 2023 hourly rates.
3. Any services not identified in the fore mentioned scope of services requested by the owners will be provided at 2023 hourly rates.

**Notes:**

1. This scope of work does not include any construction phase services. SMH can provide shop drawing review, inspection, construction engineering, site visits and materials testing if contracted to do so.
2. There may be studies (i.e. additional traffic, additional drainage, sewer and etc.) not identified in this scope of services that are required by the City of Dodge City, KDOT or other jurisdictional agencies that are not included in this scope of services. As the need for these studies arises a separate scope of work will be developed for approval by the client.

3. Any changes to the overall layout of the site, the design constraints, original design intent and so forth made midstream in the project will impact the ability to complete the work within fee proposed. These changes, if necessary, will constitute a revised and re-negotiated scope of work and fee.
  
4. All designs shall be provided on SMH title blocks and provided to City of Dodge City in PDF format.



## 2023 Personnel and Reimbursable Rates

SMH Consultants

<i>Survey Crew</i>	<i>\$150/hour</i>
<i>GPS /Robot Crew</i>	<i>\$115/hour</i>
<i>CADD Technician</i>	<i>\$100/hour</i>
<i>Drone Piloting</i>	<i>\$115/hour</i>
<i>Drone Processing</i>	<i>\$100/hour</i>
<i>Managing Principal Professional Surveyor</i>	<i>\$170/hour</i>
<i>Professional Surveyor</i>	<i>\$135/hour</i>
<i>Managing Principal Engineer</i>	<i>\$215/hour</i>
<i>Principal Engineer</i>	<i>\$190/hour</i>
<i>Project Engineer</i>	<i>\$150/hour</i>
<i>Design Engineer</i>	<i>\$125/hour</i>
<i>Landscape Architect</i>	<i>\$125/hour</i>
<i>Construction Engineering/Inspection</i>	<i>\$100/hour</i>
<i>Land Acquisition Agent</i>	<i>\$150/hour</i>
<i>Clerical</i>	<i>\$60/hour</i>
<i>Mileage</i>	<i>\$0.80/mile</i>
<i>Proctor</i>	<i>\$350/each</i>
<i>Concrete Cylinder Breaks</i>	<i>\$50/each</i>

# Fee Estimate

Comanche Widening  
Dodge City, KS  
Prepared March 10, 2023

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

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

DE = Design Engineer  
LA = Landscape Architecture  
CL = Clerical



	SC	CT	MPLS	RLS	MPE	PE	DE	LA	CL	Rate =	SC	CT	MPLS	RLS	MPE	PE	DE	LA	CL	Expenses	Totals Hours	Total Fee																				
	Estimated Hours										170.00																															
<b>PART I - CONSTRUCTION DOCUMENTS</b>																																										
1. Topo Survey	40										\$6,000.00										40	\$6,000.00																				
2. Conversion of Survey		20										\$2,000.00									20	\$2,000.00																				
3. Title Sheet					1	4									\$150.00	\$500.00					5	\$650.00																				
4. General Notes & Quantities					4	8						\$600.00	\$1,000.00								12	\$1,600.00																				
5. Utility Coordination					2	4	2					\$300.00	\$500.00	\$250.00							8	\$1,050.00																				
6. Widening Plan & Profiles					8	32	2					\$1,200.00	\$4,000.00	\$250.00							42	\$5,450.00																				
7. Intersection Details					4	32						\$600.00	\$4,000.00								36	\$4,600.00																				
8. Typical Sections					1	4						\$150.00	\$500.00								5	\$650.00																				
9. Roadway Cross Sections					1	16						\$150.00	\$2,000.00								17	\$2,150.00																				
10. Striping & Signage Plan					2	12						\$300.00	\$1,500.00								14	\$1,800.00																				
11. Stormwater Runoff Calcs					8	24						\$1,200.00	\$3,000.00								32	\$4,200.00																				
12. Storm Sewer Plan & Profile					4	32						\$600.00	\$4,000.00								36	\$4,600.00																				
13. Storm Sewer Details					1	2						\$150.00	\$250.00								3	\$400.00																				
14. SESC Plan					1	12						\$150.00	\$1,500.00								13	\$1,650.00																				
15. SESC Details					1	2						\$150.00	\$250.00								3	\$400.00																				
16. NOI & SWPPP					1	8						\$150.00	\$1,000.00								9	\$1,150.00																				
17. Final Provisions					2	4						\$300.00	\$500.00								6	\$800.00																				
18. Submit Field Check Plans					1	2	1					\$150.00	\$250.00	\$125.00							4	\$525.00																				
19. QA/QC					8	24	4					\$1,200.00	\$3,000.00	\$500.00							36	\$4,700.00																				
20. Submittal of Final Plans					1	2	1					\$150.00	\$250.00	\$125.00							4	\$525.00																				
21. Engineer Estimate					1	4						\$150.00	\$500.00								5	\$650.00																				
22. Bid Sheet					1	4						\$150.00	\$500.00								5	\$650.00																				
23. Bidding Process Questions					8	4	2					\$1,200.00	\$500.00	\$250.00							14	\$1,950.00																				
<b>Totals =</b>																						40.00	20.00	0.00	0.00	0.00	61.00	236.00	12.00	0.00	\$6,000.00	\$2,000.00	\$0.00	\$0.00	\$0.00	\$9,150.00	\$29,500.00	\$1,500.00	\$0.00	\$0.00	369.00	\$48,150.00

**Fee Estimate = \$48,150.00**



# Memorandum

**To:** Nick Hernandez, City Manager and City Commissioners  
**From:** Ray Slattery, PE, Director of Engineering  
**Date:** March 20, 2023  
**Subject:** Approval of Cost Share to Repair Jayhawk Dr., ST 2111  
**Agenda Item:** New Business

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**Recommendation:** Approve the Cost Share Request from Buffalo Builders/B&B Concrete for repairs to Jayhawk Rd. in the amount of \$94,260.00.

**Background:** As part of the Fed Ex development, approximately 1,550 L.F. of Jayhawk Rd. had to be improved to provide access to the development. During the negotiations of the development, the developer requested help from the City to construct Jayhawk Rd. However, in the end, the developer decided to construct the road with the Fed Ex development. Upon completion of the placement of the roadway, cracks appeared in numerous panels on the roadway. Per our specifications, panels that have cracks in the outer ¼ of the panels are to be repaired by removing between a ¼ and ½ of panel. Staff met with the prime and sub-contractor to mark which panels needed to be repaired. After marking the panels, staff considered what it would take to do major replacement of the roadway so that concrete roadway did not look like a quilt work of patches. This would also leave in place some cracked panels, that by specification, would not need to be repaired. The result of the major replacement was to replace two large sections and make larger repairs on other sections. Staff discussed this with the Contractor and made a verbal offer to partner with a cost share on the repairs. In our opinion, doing this will result in a better end-product and will also result in less maintenance over the life of the roadway. B&B Concrete considered our request and came back with a price fore mentioned price to perform the major repairs.

Staff was estimating the cost to construct the roadway at \$550,000 to \$600,000 plus design when the developer requested help on developing Jayhawk Dr. We also looked at what the cost would be to preform the major repairs, we had figured the cost would be approximately \$250,000, of which the city could pay half. D&D Concrete is requesting the city pay half the cost of repairs. Therefore, they are looking at the repairs costing \$188,520.00.

Another thing to consider is if this was special assessed to the adjoining property owners, the City would be responsible for 25% of the total cost due to the amount of roadway adjoining the MSB. The City/Development Cooperation would have been responsible for 9%. Chaffin Inc., Curtis Machine, and the former Fed Ex facility would have been responsible for 12% each.

## City Commission Options:

1. Approve
2. Disapprove

3. Table for further discussion

**Financial Considerations:** By costing on the repairs, the end product will be better and future maintenance will be less.

Amount \$: \$94,260.00

Fund: Special Streets or GOB

Budgeted Expense       Grant       Bonds       Other      Unbudgeted

**Legal Considerations:** Payment to B&B Concrete for the cost share amount.

**Mission/Values:** This project aligns with the City's Core Value of Ongoing Improvements.

**Attachments:** Drawing that shows the major repair areas.

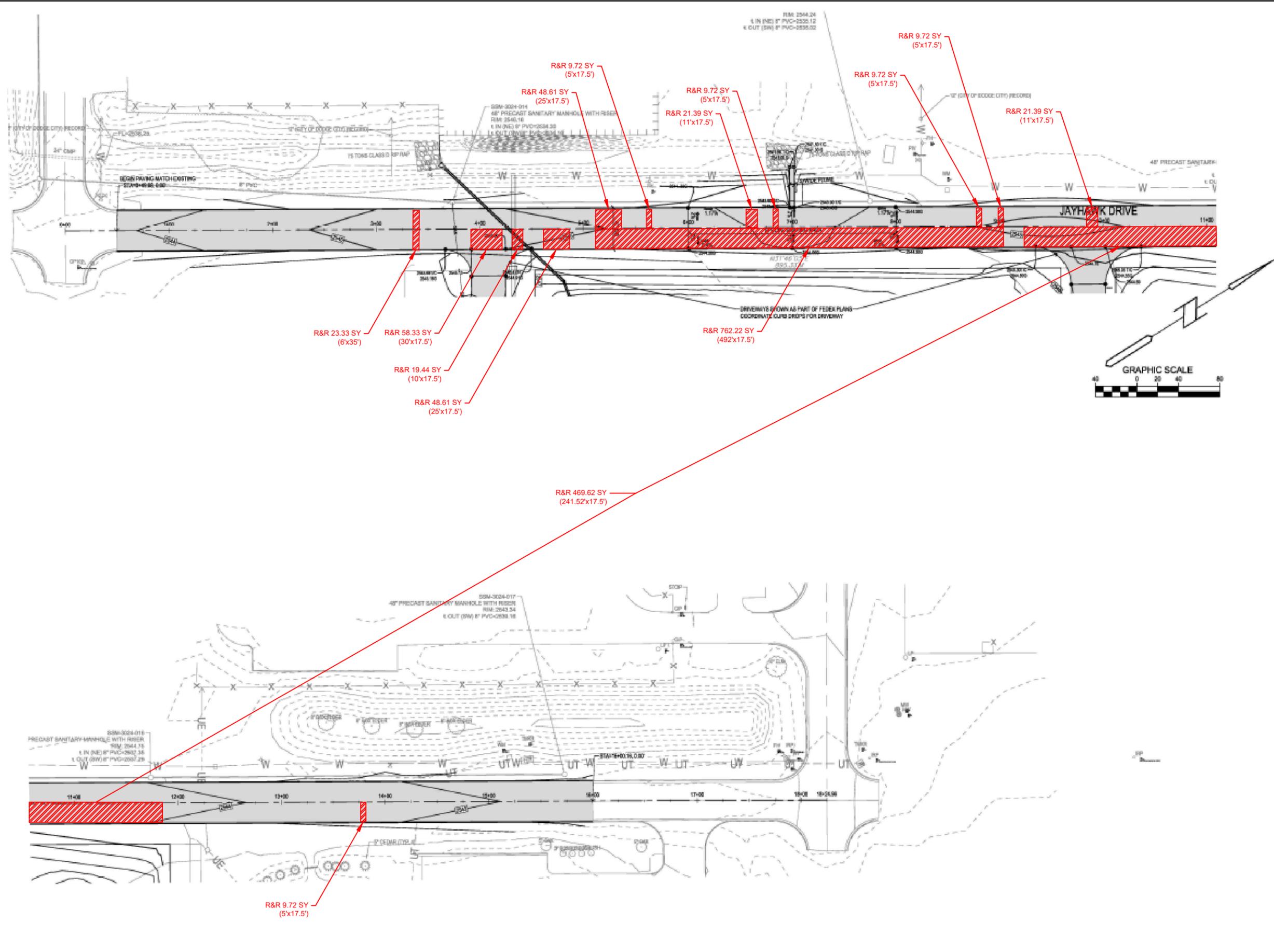
**Approved for the Agenda by:**

A handwritten signature in blue ink that reads "Ray Slattery, PE". The signature is written in a cursive style.

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Ray Slattery, PE, Dir. of Engineering Services

12/28/2024 1:50:34 PM L:\LAND PROJECTS\2024\10\1027 FEDEX LANDSCAPE\DWG-C3.1 GRADING.DWG



REFERENCE NUMBER:
DESIGNED BY: BA
CHECKED BY: DB
APPROVED DATE:
PROJECT NUMBER: <b>210372</b>
SHEET NUMBER: <b>C3.1</b>



# Memorandum

**To:** City Commission  
**From:** City Manager, Nick Hernandez  
**Date:** March 20, 2023  
**Subject:** City Attorney Agreement  
**Agenda Item:** New Business

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**Purpose:** Appoint a City Attorney to serve as a legal compliance officer for the City, and legal advisor to the City Manager and City Commission.

**Recommendation:** Approve contract for City Attorney Services with Paige Bangerter with the Bangerter Law Firm, Dodge City, KS.

**Background:** In December 2022, the City of Dodge City issued a request for qualifications for Dodge City Attorney. This was to replace current City Attorney Brad Ralph who notified the City of his intention to retire from his appointment with the City at the end of the current contract year. Only one proposal was received from the Bangerter Law Firm.

**Justification:** To assist with the transition to services with Bangerter Law Firm, City Attorney Brad Ralph will continue to work with the City until December 31, 2023. Bangerter will serve as an independent contract for the City and this agreement is for over eighty hours per month. The scope of services includes:

- Providing legal advice to the City Commission, City Manager, department heads and designated staff of the City.
- Preparing and/or reviewing agreements, contracts, ordinances, resolutions, deeds, and other legal instruments, as needed.
- Providing advice and counsel to the City Manager on personnel matters such as personnel matters.
- Attending all regular Commission meetings plus occasional special meetings and work sessions as needed.
- Being an effective advocate for the City and uphold its law and ordinances.
- Advising on zoning, land use, platting and Planning Commission procedures.
- Meeting regularly with the City Manager and as needed with other City staff.
- Attending board and agency meetings, as needed and when requested.
- Serving as liaison between the City and State, Federal and local legal officers.
- Providing necessary legal opinions and compliance opinions to federal and state agencies and loan programs.
- Performing regular research and updates on general areas of municipal and governmental law.
- Preparing an annual audit letter to the City's certified public accountants regarding the legal affairs of the City
- Reviewing agenda materials of all City Commission meetings.
- Maintaining adequate and complete files of legal documents and proceedings on which the City Attorney is consulted.

**City Commission Options:**

1. Approve
2. Disapprove

3. Table for further discussion

**Financial Considerations:**

The compensation provided to Bangerter Law Firm from the City for ordinary services is \$15,300 per month. Additional Services will be compensated at hourly rates of \$180 per hour. Hourly services will be billed monthly.

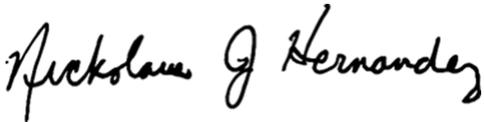
**Legal Considerations:** The attached contract was reviewed by Bangerter Law Firm and City Attorney Brad Ralph.

**Mission/Values:** Together, we strive to achieve high performance and service standards set by us and expected by the community.

**Attachments:**

City Attorney Agreement

**Approved for the Agenda by:**



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Nickolaus J. Hernandez  
City Manager

## **CONTRACT FOR CITY ATTORNEY SERVICES**

**THIS CONTRACT FOR CITY ATTORNEY SERVICES** ("Contract") entered into by and between the City of Dodge City, Kansas, a municipal corporation within the State of Kansas (the "City"), and Paige Bangerter (the "City Attorney") with the firm Bangerter Law Firm, P.A., Dodge City, Kansas (the "Firm").

### **WITNESSETH:**

**WHEREAS**, the City Attorney is appointed by the City Commission (in consultation with the City Manager) and does not exercise control over policy making decisions, but serves generally as a legal compliance officer for the City, legal advisor to the City Manager and the City Commission and, occasionally, as directed and necessary, as an advocate for the City's interests; and

**WHEREAS**, the City Attorney, directly or indirectly oversees the prosecutorial functions of the Dodge City Municipal Court; and

**WHEREAS**, the City shall not exercise any control over the hiring, supervision, pay or benefits of any attorney or any employee of the Firm. Neither the Firm nor the City Attorney shall exercise any control or supervision over the hiring, engagement, pay or benefits of any other contractor or employee of the City; and

**WHEREAS**, the City desires to engage the City Attorney and she desires to act as the City Attorney to provide the legal services as delineated herein.

**NOW, THEREFORE**, in consideration of the mutual covenants, conditions and promises contained herein, the parties hereto agree and covenant as follows:

1. **Scope of Ordinary Services.** In addition to any responsibility incumbent upon the City Attorney by virtue of their designation as a matter of State law, the City Attorney hereby agrees to provide the following legal services as ordinary services pursuant to this Contract ("Ordinary Services"). These Ordinary Services are defined to include:

- A. Provide legal advice to the City Commission, City Manager, department heads and designated staff of the City.
- B. Prepare and/or review agreements, contracts, ordinances, resolutions, deeds and other legal instruments, as needed.
- C. Provide advice and counsel to the City Manager on personnel matters including, but not limited to, employee grievances, personnel actions, unemployment hearings, and other personnel matters.
- D. Attend all regular Commission meetings plus occasional special meetings and work sessions, as needed. (Commission meetings are held at 7 p.m. on the 1st and 3rd Mondays of each month.) The City Attorney may substitute other attorneys of the Firm for attendance when necessary.
- E. Be an effective advocate for the City and uphold its law and ordinances.
- F. Advise on zoning, land use, platting and Planning Commission procedures.
- G. Meet regularly with the City Manager and as needed with other City staff.
- H. Attend board and agency meetings, as needed and when requested.
- I. Serve as liaison between the City and State, Federal and local legal officers.

- J. Provide necessary legal opinions and compliance opinions to federal and state agencies and loan programs.
- K. Perform regular research and updates on general areas of municipal and governmental law, including tort liability, contractual liability, open records and meetings laws, and other specialized municipal areas of the law.
- L. Prepare an annual audit letter to the City's certified public accountants regarding the legal affairs of the City when requested.
- M. Review agenda materials of all City Commission meetings and, where necessary, provide legal input for items on the agenda.
- N. Maintain adequate and complete files of legal documents and proceedings on which the City Attorney is consulted.

In addition to the outlined Ordinary Services, and as a component part thereof, the City Attorney, a licensed attorney practicing within the Firm (or a designated third-party responsible attorney selected in consultation with the City Manager at the City Attorney's expense) shall provide for the oversight of the Municipal Judge and City Prosecutor for Prosecutorial functions in the form of prosecution of all violations and cases filed in Municipal Court. These Ordinary Services shall include advising the Chief of Police, police officers, and other City staff concerning enforcement of City ordinances and questions of criminal law; providing training to the City and City police regarding Code enforcement, probable cause, and other matters incidental to the foregoing; assisting the Chief of Police, police officers and other City staff in the preparation of criminal complaints and warrants when required; and provide in-service education for police officers and other City staff when necessary. The Prosecutorial oversight functions may necessitate Additional Services (hereinafter described) on district court appeals from municipal court criminal matters (See "Additional Services" hereafter described).

2. **Additional Services.** In addition to the Ordinary Services (including Municipal Court Prosecutorial oversight functions), the City may desire that the City Attorney and/or the Firm provide additional services in the form of special projects/investigations, eminent domain or civil litigation (special or appellate). ("Additional Services"). Said Additional Services will be compensated at the rate identified in Section 4 under Compensation. The exact terms and conditions of the provision of said Additional Services will be mutually agreed by the City Manager prior to the commencement of any such services by the City Attorney, and the City Attorney shall advise when a representation will exceed the scope of Ordinary Services.

3. **Term.** Except to the extent hereafter modified by applicable law, the term of this Contract shall be for one year commencing on the date hereof, and shall automatically renew for an additional year upon the same terms unless terminated by either party (or in the event of non-appropriation by the City Commission for any reason). The City Attorney acknowledges that this Contract shall not constitute an agreement for any continuing relationship with the City after the end of the second year. This Contract and the City Attorney's appointment (unless re-appointed for an additional term by subsequent contract) shall terminate at the end of two years, unless earlier terminated by either party. Notwithstanding the foregoing, City Attorney may be removed from their position at any time by the City Commission for any reason upon notice given to the City Attorney. Either party may terminate this Contract upon 30 days' notice.

4. **Compensation.** The compensation provided to the City Attorney from the City for the Ordinary Services referenced in Section 1 of this Contract shall be \$15,300 per month. Additional Services will be compensated at hourly rates of \$180 per hour. Hourly services will be billed

monthly in increments of 1/10th of an hour. Out-of-pocket third-party expenses shall be advanced by the City Attorney and reimbursed monthly at the actual out-of-pocket cost.

5. **Independent Contractor.** The parties hereby agree the City Attorney is an independent contractor. This Contract is intended to create an independent contractor relationship between the City Attorney and the City for the purposes of federal, state, and local law, including the Internal Revenue Code of 1986, as amended. The City Attorney is not an employee of the City and, therefore, is not entitled to any benefits to which employees may be entitled under state or federal law, including health insurance, retirement, vacation, sick leave, workers' compensation or unemployment compensation benefits. The City Attorney shall maintain their own adequate professional liability insurance and workers compensation insurance, and if requested, shall provide proof of same.

The City Attorney assumes full responsibility for payment of all taxes or assessments on compensation earned and paid hereunder, under all applicable federal, state and local laws, including, but not limited to, income tax and self-employment tax. The City shall not withhold any federal, state, or local taxes from the City Attorney's compensation and shall not pay any social security and/or Medicare taxes attributable to such compensation. The City Attorney agrees to indemnify, defend and hold the City harmless for and against any claimed or actual taxes or assessments, or fees, fines or penalties in connection therewith, related to compensation under, or for work performed by the City Attorney pursuant to, this Contract.

6. **Independent Performance of Services.** The City Attorney shall have full control over the methods, techniques, and procedures for performing both Ordinary Services and Additional Services, shall establish the necessary priorities and sequence required for the work hereunder to be completed in a timely manner and, subject to the rules and procedures of the City Commission and City Municipal Court, shall determine when, where and how to complete the Ordinary Services and Additional Services. The City Attorney shall provide all such labor, office space, necessary equipment (including computer) materials, assistance and staff as he shall from time to time deem necessary to perform the complement if services hereunder. The City shall not provide work materials or equipment. The City Attorney is not expected to devote substantially all their time to the City, shall not have any set hours of work and shall not maintain an office at City Hall. Except as dictated by the Kansas Rules of Professional Conduct, nothing herein shall restrict the City Attorney or any member of the Firm from other gainful work and shall not restrict the City Attorney or said Firm (by implication or otherwise) from serving other lawful clients. It is understood that the City Attorney spends more than a de minimis amount of time serving other clients unrelated to the City and that the City Attorney's services are available to the general public on a regular and consistent basis. The City Attorney shall perform the contract services hereunder as he, in their professional opinion, shall deem appropriate to meet the needs of the City.

The City Attorney hereby represents that they are a Kansas attorney, duly licensed in the State of Kansas, authorized to practice before the Kansas Supreme Court and the United States District Court of Kansas. The City Attorney agrees to maintain such licensure, including all required continuing legal education credits and training necessary for continued licensure at the City Attorney's expense. The City shall be responsible for, and pay any membership fees to, professional associations and organizations uniquely related to the positions of City Attorney and City Prosecutor, including the Kansas League of Municipalities, the Kansas Municipal Attorney's Association, and the like. City shall pay for tuition, enrollment fees, travel costs, and similar costs for seminars and meetings intended to provide continuing education in the areas of municipal law

and prosecution, if approved in advance by the City Manager. The parties acknowledge that in carrying out the services addressed in this Contract, the City Attorney will be acting on behalf of or in service to a governmental entity in an official capacity, as referenced in the Kansas Tort Claims Act, K.S.A. 75-6102(d)(1).

The City Attorney shall not be required, nor is it expected that anyone from the Firm shall, attend any City employee meetings, training or employee functions and shall not be required to provide a regular or oral written report of the City Attorney's or Firm's activities under this Contract, except as required by the ethical standards for communication with the Firm's clients. Contract services will include a legal review of routine agenda memos, e-mail correspondence and contracts. The City Attorney may be requested to attend occasional City business meetings (e.g., with potential land developers or contractors for the City). The City Attorney will prepare and certify ordinance summaries, as from time to time requested by the City Manager and as required by law.

As designated City Attorney, the City Attorney will correspond directly with the City Manager and shall be permitted to correspond directly with the Commissioners and City staff for discussion of official City business on the basis determined necessary by the City Attorney.

While the Firm will assist in determining the legality of public policy decisions that are made by the City Commission, the Firm will not render any opinion on financial matters, nor will it be involved in the selection of other professionals engaged by the City for financial advice, borrowing or refinancing considerations, or other matters. The Firm is not a financial advisor and its advice will generally be limited to matters of law and the validity of the City's actions. Neither the Firm's operations nor its services shall be in any manner integrated with the operations of the City, nor shall the City in any manner exercise any control over the operations of the Firm or the independent judgment of the City Attorney.

With respect to the City Attorney, this Contract shall be considered a personal services contract. In the event the City Attorney is unable to provide the essential legal services contained in this Contract due to extended illness, absence, or other pursuits, the City Commission and/or City Manager may negotiate compensation with other attorneys to provide legal services, but no compensation will be paid to the City Attorney during their absence unless their functions are completed by other members of their Firm.

Nothing contained in this Contract shall prohibit the City from utilizing other legal representation for specific types of legal services which may be deemed in the best interest of the City at any time.

7. **Compliance with Law.** In providing services pursuant to this Contract, the City Attorney will comply with all applicable federal, state and local laws.

8. **Non-Discrimination.** In providing services pursuant to this Contract, the City Attorney will not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry.

9. **Interest of Public Officials.** No public official who exercises any functions or responsibilities in the review and approval of this Contract will have any direct or indirect interest in the amounts payable pursuant to this Contract.

10. **Assignment.** No party hereto has the authority to assign this Contract, or any interest under this Contract.

11. **Notices.** All notices required herein will be made in writing and mailed or hand delivered to the regular places of business of the respective parties hereto.

12. **Entirety of the Contract; Amendment.** All prior negotiations have been reduced to writing and are included herein. This Contract supersedes, cancels and terminates all prior written and/or oral understandings or agreements relating to the same or similar subject matter. This Contract constitutes the entire agreement of the parties and may not be amended, altered, or modified, except by written agreement of the parties.

13. **Governing Law.** This Contract shall be construed and interpreted in accordance with, and all actions arising hereunder shall be governed by, the laws of the State of Kansas.

**IN WITNESS WHEREOF**, this Contract is hereby executed by the parties hereto as of the \_\_\_\_\_ of \_\_\_\_\_, 2023.