

CITY COMMISSION MEETING AGENDA

City Hall Commission Chambers

Monday, October 16, 2023

7:00 p.m.

MEETING #5262

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

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

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

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

CALL TO ORDER

ROLL CALL

INVOCATION BY

PLEDGE OF ALLEGIANCE

APPROVAL OF AGENDA

PETITIONS & PROCLAMATIONS

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

Safety Spotlight Award

CONSENT CALENDAR

1. Approval of Special City Commission Meeting Minutes, September 29, 2023.
2. Approval of City Commission Meeting Minutes, October 2, 2023,
3. Approval of Joint City/County Commission Meeting Minutes, October 9, 2023
4. Appropriation Ordinance No.20, October 16, 2023.
5. Cereal Malt Beverage License:
 - a) Mariscos Nayarit Restaurant, 509 N. 2nd Avenue. (on file)
6. Approve Change Order #1 for the Biogas H2S Removal project.
7. Approve Change Order #1 for the 2023 Asphalt Maintenance Project.
8. Approval of Appointment to Community Facilities Advisory Board Vacancy.

9. Approval of Appointment for Santa Fe Community Corrections Advisory Board Vacancy.

ORDINANCES & RESOLUTIONS

Resolution No. 2023-32: A Resolution of the City of Dodge City, Kansas Authorizing Certain Public Improvements and Providing for the Payment of the Costs Thereof (2023 Streets and Water Mains). Report by Nicole May, Finance Director.

Resolution No. 2023-33 A Resolution Providing for Substitute Improvements to be Financed with Proceeds of the City of Dodge City, Kansas General Obligation Temporary Notes, Series 2023-1. Report by Nicole May, Finance Director.

UNFINISHED BUSINESS

NEW BUSINESS

1. Approval of Bid for six (6) New Trucks for the Parks Department, Athletic Field Maintenance, CREW, and the Airport. Report by Ryan Reid., Director of Administration.

OTHER BUSINESS

STAFF REPORTS

1. Downtown Revitalization Fund- Report by Nickolaus J. Hernandez, City Manager

ADJOURNMENT

CITY COMMISSION SPECIAL MEETING MINUTES

City Hall Commission Chambers

Friday, September 29, 2023

7:30 a.m.

MEETING #5259

CALL TO ORDER

ROLL CALL Mayor Michael Burns, Commissioners Joseph Nuci, Rick Sowers, Chuck Taylor, Kent Smoll

PUBLIC HEARING

Mayor Michael Burns opened the public hearing on the 2024 City Budget. There were no public comments. Mayor Burns closed the public hearing.

NEW BUSINESS

1. Commissioner Rick Sowers moved to approve the City of Dodge City 2024 City Budget. Commissioner Chuck Taylor seconded the motion. The motion carried 4 - 0.
2. Commissioner Chuck Taylor moved to approve the payment of \$46,918 for the permanent utility and temporary construction easements for Hilmar force main. Commissioner Joseph Nuci seconded the motion. The motion carried 4 - 0.
3. Commissioner Rick Sowers moved to approve to purchase from Key Equipment & Supply Co in the amount of \$ 593,258.88 with a guaranteed buy back option in the amount of \$244,535 for a new Kenworth with Vactor 21001 Combination Vacuum/Jet Rodding Sewer Cleaning Body Truck to be used by Utilities and Sewer Departments. Commissioner Joseph Nuci seconded the motion. The motion carried 4 - 0.
4. Commissioner Rick Sowers moved to approve city's match not to exceed \$86,000 and the Grant Application to the Community Foundation of Southwest Kansas and the Grant Application to Gametime Recreation to implement two new playsets and safety surfacing. Commissioner Chuck Taylor seconded the motion. The motion carried 4 - 0.

ADJOURNMENT

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

ATTEST:

Mayor

City Clerk

CITY COMMISSION MEETING MINUTES

City Hall Commission Chambers

Monday, October 2, 2023

7:00 p.m.

MEETING #5260

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

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

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

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CALL TO ORDER

ROLL CALL Mayor Michael Burns, Commissioner Joseph Nuci, Rick Sowers, Chuck Taylor, Kent Smoll

INVOCATION BY

PLEDGE OF ALLEGIANCE

APPROVAL OF AGENDA

Commissioner Kent Smoll moved to approve the agenda as presented. Commissioner Joseph Nuci seconded the motion. The motion carried unanimously.

PETITIONS & PROCLAMATIONS

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

CONSENT CALENDAR

1. Approval of City Commission Work Session Minutes, September 18, 2023.
2. Approval of City Commission Meeting Minutes, September 18, 2023.
3. Appropriation Ordinance No.19, October 2, 2023.
4. Cereal Malt Beverage License:

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

ORDINANCES & RESOLUTIONS

Resolution No. 2023-31: A Resolution of the Governing Body of the City of Dodge City, Kansas Requesting the Board of County Commissioners of Ford County, Kansas Make a Finding for the Annexation Certain Land Pursuant to K.S.A. 12-520c(a)(3) was approved on a motion by Commissioner Rick Sowers. Commissioner Kent Smoll seconded the motion. The motion carried unanimously.

UNFINISHED BUSINESS

NEW BUSINESS

1. Commissioner Kent Smoll moved to approve the bid from Lewis Chevrolet in the amount of \$42,980 for a new truck for the Dodge City Police Department. Commissioner Chuck Taylor seconded the motion. The motion carried unanimously.
2. Commissioner Chuck Taylor moved to approve the bid in the amount of \$236,500 from Ozone Roofing for the replacement of the roof at the Dodge City Police Department. Commissioner Joseph Nuci seconded the motion. The motion carried unanimously.
3. Commissioner Rick Sowers moved to approve authorization No. 9 with Burns & McDonald in the amount not to exceed \$130,9000 to complete the design and as built AGIS surveys for the reconstruction of runway 2/20 at the Dodge City Regional Airport. Commissioner Kent Smoll seconded the motion. The motion carried unanimously.

OTHER BUSINESS

STAFF REPORTS

ADJOURNMENT

Commissioner Rick Sowers moved to adjourn the meeting. Commissioner Chuck Taylor seconded the motion. The motion carried unanimously.

ATTEST:

Mayor

City Clerk

JOINT CITY/COUNTY COMMISSION MEETING AGENDA

City Hall Commission Chambers

Monday, October 9, 2023

6:30 p.m.

MEETING #5261

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

1. Watch live on our Facebook page at www.facebook.com/cityofdodgecity
2. Or watch it on our Vimeo page at www.vimeo.com/cityofdodgecity.

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CALL TO ORDER

ROLL CALL

City: Mayor Michael Burns reported absent, Vice Mayor Joseph Nuci, Commissioners Rick Sowers, Chuck Taylor, Kent Smoll, City Manager, Nick Hernandez.

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

REPORTS

Rod Boyd, Chief of the Ford County Fire and EMS Department and Daniel Cecil, Parks Director thanked first responders and qualified medical providers for stepping in and assisting in the safe delivery of a premature three-pound baby at the Longbranch Lagoon Water Park on August 19, 2023. After 41 days in newborn ICU hospital baby Bryce was able to come home. They were recognized and presented with life savers recognition awards, along with a family of four pass to Longbranch Lagoon. Baby Bryce also got a lifetime pass to the LBL water park. They thanked them for coming forward when an emergency like this happens. Those that were recognized were, Michelle Shearer, Emily Gleason, Paige Siruta,, Phillip Underwood, Kriisti Ebner,

NEW BUSINESS

1. Approval of 2024 “Why Not Dodge” Sales Tax Budget. Report by Nicole May, Finance Director.

City Action: Commissioner Rick Sowers moved to approve the 2024 “Why Not Dodge” Sales Tax Budget. Commissioner Kent Smoll seconded the motion. The motion carried 4-0.

County Action: Commissioner Shawn Tasset moved to approve the 2024 “Why Not Dodge” Sales Tax Budget. Commissioner Chris Boys seconded the motion. The motion carried 3-0.

ADJOURNMENT

City Action: Commissioner Rick Sowers made a motion to adjourn the meeting. Commissioner Kent Smoll seconded the motion. The motion carried 4 - 0.

County Action: Commissioner Shawn Tasset made a motion to adjourn the meeting. Commissioner Chris Boys seconded the motion. The motion carried 3 – 0.

ATTEST:

Mayor

City Clerk



Memorandum

To: Nick Hernandez, City Manager and City Commissioners
From: Tanner Rutschman, PE, City Engineer
Date: October 4, 2023
Subject: Change Order #1, H2S Removal - Biogas, SS 2201
Agenda Item: Consent Calendar

Purpose: Approve Change Order #1 so we can pay for additional costs not accounted for in the original contract.

Recommendation: Approve Change Order #1 for the Biogas H2S Removal project resulting in an increase in the contract of \$19,442.40.

Background: The Biogas H2S Removal project was approved in September 2022. The project is nearing completion with commissioning of the removal vessels set for mid-October. The original contract was adjusted to account for freight of the vessels and piping & media loading.

- Freight of the vessels & piping was \$7,370.40.
- The price to load the media into the vessels was \$12,072.00.

City Commission Options:

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

Financial Considerations: Change Order #1 is for an increase of \$19,442.40. Funding will be from the Biogas Fund.

Amount \$: \$19,442.40
Fund: 52142200 - 441010

Budgeted Expense Grant Bonds Other

Legal Considerations: By approving the Change Order from M-I, LLC, the contract dollar amount will be amended.

Mission/Values: This aligns with the City's Core Value of Ongoing Improvement, Safety, Working Towards Excellence.

Attachments: Freight and media loading quotes.

Approved for the Agenda by:

Ray Slattery, PE

Ray Slattery, PE, Dir. of Engineering Services

M-I LLC
 5950 North Course Dr.
 Houston
 Texas 77072, USA
 Tel: +1 800 726 7687 or +1 636 532 2316
 Fax: +1 636 532 2764



QUOTATION

PREPARED FOR:
 Tanner Rutschman
 City of Dodge City

Date: Wednesday, September 6, 2023
Quotation No.: USL09062023.1.AB

Application: Dodge City Media Loading

PRODUCT DESCRIPTION:

Item No.	Description	Qty	UOM	Unit Price, USD	Total Price, USD
1	Freight	1	ea	7,370.40	7,370.40
				TOTAL*	7,370.40

* Excludes taxes and duties unless otherwise stated.

Incoterms:	Ex-Works
Price validity:	30 days
Payment Terms:	Advance Payment
Delivery Time:	available to dispatch in 1-2 business days upon receipt of payment
Origin of Goods:	N/A
Hazardous Class:	Non-Hazardous

Notes:

This proposal is to reflect the freight for Dodge City WWTP Gas Polishing Equipment (Proposal #840048-1073)

Yours Sincerely,

Ariel Blaylock

Schlumberger Purification Solutions

Sales Engineer

Office: +1 713 896 3645

Mobile: +1 512 756 8848

ablaylock@slb.com

This quotation is subject to M-I LLC Terms & Conditions of sale detailed herein

**M-I L.L.C., Purification Solutions Business Unit
GENERAL TERMS AND CONDITIONS**

THE FOLLOWING GENERAL TERMS AND CONDITIONS OF THIS CONTRACT CONTAIN INDEMNITY AND CHOICE OF LAW PROVISIONS - PLEASE READ CAREFULLY.

1. Acceptance. By requesting M-I's products, equipment (including vessels), or services, Customer voluntarily elects to enter into and be bound by these General Terms and Conditions ("Contract").

2. Definitions.

- (a) "M-I" means SULFATREAT, a business unit of M-I L.L.C., a Delaware limited liability company.
- (b) "Customer" means the person, firm or other entity to which products, equipment and/or services are supplied or provided.
- (c) "Group" means either M-I or Customer and its respective parents, affiliates, subsidiaries, and each of their respective officers, directors, contractors and subcontractors of any tier, consultants, agents, employees and invitees.
- (d) "Claims" means damage, loss, liability, claims, demands and causes of action of every kind and character (including all costs and expenses thereof and reasonable attorney fees associated therewith).

3. Prices and Payment Terms. Unless otherwise specified in writing by M-I's authorized representative, the price quoted by M-I for the sale of products, equipment and services shall be valid for 30 days after M-I's quotation or acknowledgment or confirmation of Customer's order for the products, equipment and services, whichever occurs first, provided an authorization of Customer's order for the products, equipment and services is accepted by M-I within such 30-day time period. If M-I does not receive the authorization within that time period, M-I shall have the right to change the price for the products, equipment and services to M-I's price for the products, equipment and services at the shipment date. All prices are exclusive of taxes and insurance, which Customer will pay. Terms are cash, net 30 days, Harris County, Texas, unless M-I has approved Customer's credit in writing prior to the sale. Terms of sale for credit approved accounts are total invoice amount due at M-I's office, Houston, Texas on or before the 30th day from the date of invoice. Customer shall pay interest on past due balances at the lesser of 1.5% per month or the maximum allowed by applicable state or federal law. If Customer's account becomes delinquent, M-I shall have the right to revoke any and all previously applied discounts. Upon such revocation, the full invoice price without discount will become immediately due and owing and subject to collection. Customer hereby agrees to pay all fees directly or indirectly incurred in the collection of past due or delinquent accounts, including but not limited to agency and attorney's fees.

4. Taxes. Customer shall pay any and all taxes or other levies (other than income taxes) imposed by any government, governmental unit or similar authority with respect to the charges made or payments received in connection with M-I's products, equipment or services.

5. Independent Contractor. M-I is and shall be an independent contractor with respect to the performance of the services set forth on this Contract, and neither M-I nor anyone employed by M-I shall be the agent, representative, employee or servant of Customer in the performance of such services or any part hereof. When M-I's employees (defined to include M-I's direct, borrowed, special, or statutory employees) are covered by the Louisiana Workers' Compensation Act, La R.S. 23:1021 et seq., Customer and M-I agree that all work and operations performed by M-I and its employees pursuant to this Contract are an integral part of and are essential to the ability of Customer to generate Customer's products, products and services for purposes of La R.S. 23:1061 (A)(1). Furthermore, Customer and M-I agree that Customer is the statutory employer of M-I's employees for purposes of La R.S. 23:1061 (A)(3). Irrespective of Customer's status as the statutory employer or special employer (as defined in La R.S. 23:1031 (C)) of M-I's employees, M-I shall remain primarily responsible for the payment of Louisiana workers' compensation benefits to its employees and shall not be entitled to seek contribution for any such payments from Customer.

6. Obligations of Customer.

(a) Site Conditions; Notification of Hazardous Conditions. Customer, having custody and control of its operations and superior knowledge of the conditions in and surrounding it, shall provide M-I with all necessary information to enable M-I to perform its services safely and efficiently. M-I's products and equipment are designed to operate under conditions normally encountered in gaseous or liquid hydrocarbon operations (including wellbore) and environmental and water treatment operations; however, if hazardous or unusual conditions exist, Customer shall notify M-I in advance and make special arrangements for servicing such operations. **(b) Waste.** The handling, transportation, treatment or disposal of any products, used or unused, and any associated waste or by-products, or other hazardous wastes (as defined pursuant to applicable law) ("Products"), resulting from or incidental to, Customer's use of the products or M-I's performance of its services hereunder become the sole responsibility of Customer when title and risk of loss to such products pass to Customer in accordance with this Contract. Customer understands and agrees that the Products are the property of Customer and that Customer is the owner of the Products. Customer agrees that it will transport and dispose of any such Products in accordance with all applicable federal, state and local laws and regulations. **CUSTOMER HEREBY WAIVES, RELEASES AND AGREES TO INDEMNIFY AND NOT ASSERT ANY CLAIM OR BRING ANY COST RECOVERY ACTION AGAINST M-I GROUP IN CONNECTION WITH THE USE, GENERATION, STORAGE, TRANSPORTATION OR DISPOSAL OF PRODUCTS UNDER ANY COMMON LAW THEORIES OR FEDERAL, STATE OR LOCAL ENVIRONMENTAL LAWS OR REGULATIONS, NOW EXISTING OR HEREINAFTER ENACTED, WITHOUT REGARD TO THE CAUSE OR CAUSES THEREOF OR THE NEGLIGENCE OF ANY PARTY.** In no event shall M-I be considered the generator of Products irrespective of any handling, transportation, treatment or disposal thereof provided by M-I. M-I shall not be responsible for the signing of manifests or for the storage, transportation or disposal of Products. **(C) Change Out Policy.** Customer agrees to read and comply at all times with M-I's Loading and Change Out Procedures, as applicable, and inform all Customer Group members of such procedures and their understanding and compliance therewith. **CUSTOMER SHALL BE RESPONSIBLE FOR AND HEREBY AGREES TO RELEASE, PROTECT, DEFEND, INDEMNIFY AND HOLD HARMLESS M-I GROUP AND ITS INSURERS FROM AND AGAINST ALL CLAIMS ARISING OUT OF OR IN CONNECTION ANY FAILURE BY CUSTOMER OR A CUSTOMER GROUP MEMBER TO COMPLY WITH SECTION 6(c).**

M-I L.L.C., Purification Solutions Business Unit
GENERAL TERMS AND CONDITIONS

THE FOLLOWING GENERAL TERMS AND CONDITIONS OF THIS CONTRACT CONTAIN INDEMNITY AND CHOICE OF LAW PROVISIONS - PLEASE READ CAREFULLY.

7. Limited Warranty.

(a) Services. M-I warrants that all services performed hereunder shall be performed in a good and workmanlike manner in accordance with good oilfield practices. M-I will give Customer the benefit of its best judgment based upon its experience interpreting information and making recommendations, either written or oral, as to reactor configuration, type or amount of material or service required or to be furnished, or manner of performance or in prediction of results or other data. M-I's recommendations or predictions are opinions only because of the impracticability of obtaining first-hand knowledge of the many variable conditions, the reliance on inferences, measurements, assumptions which are not infallible, and/or the necessity of relying on facts and supporting services furnished by others. **NOTWITHSTANDING THE FOREGOING, NO WARRANTY IS GIVEN CONCERNING, AND M-I SHALL HAVE NO RESPONSIBILITY FOR, THE ACCURACY OR COMPLETENESS OF THE DESIGN, ENGINEERING, PERFORMANCE, OR EFFECTIVENESS OF EQUIPMENT (INCLUDING VESSELS), MATERIALS, OR SUPPLIES USED, RECOMMENDATIONS GIVEN, OR RESULTS OF THE SERVICES RENDERED. M-I IS NOT RESPONSIBLE FOR ANY LOSS OR DAMAGE ARISING FROM THE RESULTS AND/OR RECOMMENDATIONS SUGGESTED BY SUCH WORK, NOR ARE THEY INTENDED TO PROVIDE THE BASIS FOR ANY DECISIONS SUBSEQUENTLY MADE BY CUSTOMER, WHICH ARE AND SHALL REMAIN CUSTOMER'S SOLE RESPONSIBILITY.** M-I's sole liability and Customer's exclusive remedy in any cause of action for breach of the foregoing warranties for services provided hereunder are expressly limited to, at M-I's sole option: (i) replacement or re-performance of the defective part of the services, if practical, or (ii) refund to Customer the invoiced and paid portion of the defective portion of the services. Any claim by Customer pursuant to M-I's warranty shall be made immediately upon discovery and confirmed in writing within thirty (30) days after discovery of the defect with respect to which the claim is made.

b) Products.

(i) Provided (i) that sufficient technical data has been made available to Seller for approval of the operating conditions and (ii) that the Goods have been installed, commissioned and operated under Seller approved conditions, Seller warrants that the Goods will remove the contaminant for the estimated bed-life indicated in either the technical proposal or Estimated Performance Sheet ("EPS").

**M-I L.L.C., Purification Solutions Business Unit
GENERAL TERMS AND CONDITIONS**

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The foregoing warranty shall not apply where failure of Goods is due to its being affected physically or chemically by mal-operation including but not limited to the following incidents; (i) multi-phase flow entering the vessel, (ii) improper loading/change outs, (iii) bed collapse, (iv) hydrate formation, (v) operator error, (vi) water injection failure, (vii) solids carried over from other parts of the plant, (viii) catalyst poisons, (ix) faulty construction and/or, (x) mis-design of items of plant equipment.

(ii) In the event that the Goods supplied by Seller fails to meet the predicted performance Product Credit will be applied against future Orders for Goods and will be calculated according to the following formula:

$[(\text{Warranted days} - \text{Days in service}) / \text{Warranted days}] \times (\text{Vessel loading, lb}) = \text{Product Credit, lb}$

The extent of liability shall be limited to the manufactured cost of the product only, and does not include delivery and any associated costs such as media loading. Seller's maximum liability under this clause will be limited to, and shall not exceed the invoice value of Goods.

(iii) Any suspected Goods failure must be notified to Seller promptly and every assistance given prior to the discharge of the Goods from the plant, including the making available of appropriate plant records and Goods samples to determine the cause of the failure. Seller will investigate the alleged failure of the Goods and endeavour to determine the cause, merits and credit amount of any warranty claim by the Buyer.

Other than as provided above no warranty is given concerning the results of Goods or Services provided. Seller's recommendations are opinions only and do not provide a basis for decisions made by Buyer, which are and shall remain Buyer's responsibility.

THE WARRANTY IN THIS SECTION IS BUYER'S EXCLUSIVE REMEDY IN THE EVENT OF A QUALIFYING WARRANTY CLAIM, AND APPLIES TO THE EXCLUSION OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY DO NOT APPLY AND ARE SPECIFICALLY DISCLAIMED. NO WARRANTY APPLIES FOR NON-QUALIFYING WARRANTY CLAIMS.

(c) Vessels. M-I provides no warranties or guarantees (express or implied) with respect to any vessels sold hereunder.

THE FOREGOING WARRANTIES IN THIS SECTION 7 FOR SERVICES OR PRODUCTS ARE IN LIEU OF ALL OTHER WARRANTIES, WHETHER ORAL, WRITTEN, EXPRESS, IMPLIED, OR STATUTORY (INCLUDING, BUT NOT LIMITED TO, COMPLIANCE WITH ANY GOVERNMENT REQUEST OR REGULATORY REQUIREMENT). WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY SHALL NOT APPLY. M-I'S WARRANTIES AND OBLIGATIONS, AND CUSTOMER'S REMEDIES, HEREUNDER (EXCEPT AS TO TITLE) ARE SOLELY AND EXCLUSIVELY AS STATED HEREIN, AND CUSTOMER, ON BEHALF OF ITSELF AND CUSTOMER GROUP, WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OTHER REPRESENTATION, WARRANTY, RIGHT, REMEDY, OR CAUSE OF ACTION ARISING FROM, OR RELATING TO, THIS CONTRACT. SECTION 7 APPLIES TO ANY ENTITY OR PERSON WHO MAY BUY, RENT, ACQUIRE, OR USE THE PRODUCTS OR SERVICES, INCLUDING ANY ENTITY OR PERSON WHO OBTAINS THE PRODUCTS OR SERVICES FROM CUSTOMER, AND SUCH ENTITY OR PERSON SHALL BE BOUND BY THE LIMITATIONS THEREIN, INCLUDING SECTION 7. CUSTOMER AGREES TO PROVIDE SUCH SUBSEQUENT TRANSFEREE CONSPICUOUS, WRITTEN NOTICE OF THIS CONTRACT.

8. Disposal of Waste. The parties hereby stipulate and agree that the Goods installed in the vessels are not in Seller's care, custody or control. In no event shall Seller be considered the generator of, or responsible for the disposal of, goods, and associated wastes, chemicals and other similar substances ("Waste") arising from the operations. Buyer acknowledges and agrees that Waste produced by the Buyer pursuant to this Agreement are the property of the Buyer and shall remain Buyer's responsibility. The Seller may with a separate agreement facilitate the transportation, storage, treatment, disposal or handling of Waste on behalf of the Buyer. Buyer is and will at all times remain the owner and the generator of the Waste even after any treatment and thus shall remain responsible for disposal of the same, under Buyer's name and waste generator number, in accordance with all applicable federal, state and local laws and regulations. BUYER HEREBY AGREES NOT TO ASSERT ANY CLAIM OR BRING ANY COST RECOVERY ACTION AGAINST SELLER'S GROUP AND SHALL WAIVE, RELEASE, PROTECT, DEFEND, INDEMNIFY AND HOLD HARMLESS SELLER'S GROUP FROM AND AGAINST ANY AND ALL CLAIMS IN CONNECTION WITH THE USE, HANDLING, TREATMENT, STORAGE, TRANSPORTATION AND/OR DISPOSAL OF WASTE, REGARDLESS OF THE SOLE, JOINT, ACTIVE, PASSIVE, GROSS OR CONCURRENT NEGLIGENCE, STRICT LIABILITY, BREACH OF CONTRACT OR DUTY, OR OTHER FAULT OF ANY MEMBER OF SELLERS GROUP.

9. Indemnities.

(a) PERSONNEL AND PROPERTY

1. M-I SHALL BE RESPONSIBLE FOR AND HEREBY AGREES TO RELEASE, PROTECT, DEFEND, INDEMNIFY AND HOLD HARMLESS CUSTOMER GROUP AND ITS INSURERS FROM AND AGAINST ALL CLAIMS ARISING OUT OF OR IN CONNECTION WITH DAMAGE TO OR LOSS OR DESTRUCTION OF PROPERTY OF OR THE PERSONAL INJURY, ILLNESS OR DEATH OF ANY MEMBER OF M-I GROUP ARISING OUT OF OR IN CONNECTION WITH THIS CONTRACT OR THE OPERATIONS, SERVICES, RENTALS AND SALES PROVIDED HEREUNDER.

THE FOLLOWING GENERAL TERMS AND CONDITIONS OF THIS CONTRACT CONTAIN INDEMNITY AND CHOICE OF LAW PROVISIONS - PLEASE READ CAREFULLY.

2. CUSTOMER SHALL BE RESPONSIBLE FOR AND HEREBY AGREES TO RELEASE, PROTECT, DEFEND, INDEMNIFY AND HOLD HARMLESS M-I GROUP AND ITS INSURERS FROM AND AGAINST ALL CLAIMS ARISING OUT OF OR IN CONNECTION WITH DAMAGE TO OR LOSS OR DESTRUCTION OF PROPERTY OF OR THE PERSONAL INJURY, ILLNESS OR DEATH OF ANY MEMBER OF CUSTOMER GROUP ARISING OUT OF OR IN CONNECTION WITH THIS CONTRACT OR THE OPERATIONS, SERVICES, RENTALS AND SALES PROVIDED HEREUNDER.

(b) SPECIAL INDEMNITY. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, CUSTOMER ASSUMES ALL LIABILITY FOR AND AGREES TO RELEASE, PROTECT, DEFEND, INDEMNIFY, AND HOLD M-I GROUP AND ITS INSURERS HARMLESS FROM AND AGAINST ALL CLAIMS BROUGHT BY OR ON BEHALF OF CUSTOMER GROUP, M-I GROUP OR THIRD PARTIES ARISING OUT OF OR IN CONNECTION HEREWITH FOR: (I) PROPERTY DAMAGE, PERSONAL INJURY, DEATH OR LOSS THAT RESULTS FROM FIRE, EXPLOSION, CUSTOMER'S FAILURE TO COMPLY WITH SECTION 6(C), BLOW-OUT, CRATERING, WILD WELL, WORK PERFORMED TO CONTROL A WILD WELL, OR UNCONTROLLED PIPELINE FLOW AND/OR CLAIMS IN CONNECTION WITH THE USE OF PRODUCTS; (II) PROPERTY DAMAGE, PERSONAL INJURY, DEATH, OR LOSS THAT RESULTS FROM POLLUTION, CONTAMINATION, OR RADIATION DAMAGE (INCLUDING ENVIRONMENTAL POLLUTION, CONTAMINATION OR DAMAGE), WHETHER CAUSED BY CUSTOMER'S FAILURE TO PROPERLY HANDLE, TRANSPORT OR DISPOSE OF ANY PRODUCTS AS REQUIRED BY SECTION 6(B) HEREOF OR OTHERWISE, INCLUDING CONTAINMENT, CLEAN-UP AND REMEDIATION OF THE POLLUTANT AND CONTAMINATION, WHETHER OR NOT REQUIRED BY AN APPLICABLE FEDERAL, STATE OR LOCAL LAW OR REGULATION; (III) PROPERTY DAMAGE OR LOSS THAT RESULTS FROM RESERVOIR OR UNDERGROUND DAMAGE, INCLUDING LOSS OF OIL, GAS, OTHER MINERAL SUBSTANCES, OR WATER OR THE WELL BORE ITSELF, AND SURFACE DAMAGE ARISING FROM SUBSURFACE OR SUBSEA DAMAGE; (IV) COST TO CONTROL A WILD WELL, UNDERGROUND OR ABOVE THE SURFACE, INCLUDING ANY REDRILLING OR REWORKING AND RELATED CLEAN UP COSTS; (V) DAMAGE TO PROPERTY OWNED BY, IN THE POSSESSION OF, OR LEASED BY CUSTOMER, AND/OR SITE OR WELL OWNER, IF DIFFERENT FROM CUSTOMER (THE TERM "WELL OWNER" SHALL INCLUDE WORKING AND ROYALTY INTEREST OWNERS OR THE OWNER OF ANY OIL/GAS PRODUCTION FACILITIES OR PIPELINES, DRILLING RIG/VESSEL, PLATFORM OR OTHER STRUCTURE AT THE WELL SITE); (VI) SUBSURFACE TRESPASS; OR (VI) LOSS OF OR DAMAGE TO M-I GROUP'S PROPERTY, EQUIPMENT, MATERIALS OR PRODUCTS, INCLUDING BUT NOT LIMITED TO, RECOVERY, REPAIR AND REPLACEMENT EXPENSES, WHEN SUCH LOSS OR DAMAGE OCCURS: (A) WHILE IN TRANSIT OR BEING MOVED ON ANY FORM OF TRANSPORTATION OWNED OR FURNISHED BY CUSTOMER, (B) WHILE LOCATED AT THE SITE WHEN M-I PERSONNEL ARE NOT PRESENT, (C) WHILE BEING USED BY OR WHILE UNDER THE CUSTODY OR CONTROL OF ANY PERSON OTHER THAN AN M-I EMPLOYEE, WHETHER IN AN EMERGENCY OR OTHERWISE, OR (D) AS A RESULT OF IMPROPERLY MAINTAINED PRIVATE ACCESS ROADS TO THE WELL SITE OR AS A RESULT OF THE INFERIOR CONDITION OF LEASE ROADS OR THE SITE. M-I'S LIABILITY FOR POLLUTION HEREUNDER IS EXPRESSLY LIMITED TO POLLUTION OR CONTAMINATION OCCURRING AND ORIGINATING ABOVE THE SURFACE OF THE LAND OR WATER (WHERE SUCH POLLUTION OR CONTAMINATION HAS NEVER BEEN INTRODUCED INTO, NOR IS EMANATING FROM, THE WELL) ORIGINATING FROM M-I'S EQUIPMENT OR VESSEL(S), UNDER M-I'S CONTROL, AND RESULTING FROM M-I'S SOLE NEGLIGENCE.

GENERAL TERMS AND CONDITIONS

THE FOLLOWING GENERAL TERMS AND CONDITIONS OF THIS CONTRACT CONTAIN INDEMNITY AND CHOICE OF LAW PROVISIONS - PLEASE READ CAREFULLY.

(c) **Application of Indemnities.** THE ASSUMPTION OF LIABILITY AND INDEMNITIES IN PARAGRAPHS (A) AND (B) ABOVE SHALL APPLY TO ANY LOSS, DAMAGE, EXPENSE, INJURY, ILLNESS, DEATH OR CLAIM ARISING OUT OF OR IN CONNECTION WITH THIS CONTRACT OR THE PRODUCTS AND SERVICES PROVIDED HEREUNDER, WITHOUT REGARD TO THE CAUSE(S) THEREOF INCLUDING, WITHOUT LIMITATION, UNSEAWORTHINESS, STRICT LIABILITY, ULTRAHAZARDOUS ACTIVITY, BREACH OF EXPRESS OR IMPLIED WARRANTY, IMPERFECTION OF MATERIAL, DEFECT OR FAILURE OF EQUIPMENT, DEFECT OR "RUIN" OR OTHER CONDITION OF PREMISES, INCLUDING ANY CONDITIONS THAT PRE-EXIST THE EXECUTION OF THIS CONTRACT, OR THE SOLE, JOINT, CONCURRENT OR GROSS, ACTIVE OR PASSIVE, NEGLIGENCE OR OTHER FAULT OF THE INDEMNIFIED GROUP.

(d) **Anti-Indemnity and Insurance Savings Clause.** If any defense, indemnity or insurance provision contained in this Contract conflicts with, is prohibited by or violates 10. **Incidental or Consequential Damages.** IT IS EXPRESSLY AGREED THAT NEITHER CUSTOMER NOR M-I SHALL BE LIABLE TO THE OTHER PARTY AND ITS GROUP FOR (AND THE PARTIES SHALL RELEASE, PROTECT, DEFEND, INDEMNIFY AND HOLD EACH OTHER HARMLESS FROM AND AGAINST) ANY SPECIAL, PUNITIVE, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR LOSSES RESULTING FROM OR ARISING, DIRECTLY OR INDIRECTLY, OUT OF OR IN CONNECTION WITH THE WORK OR OPERATIONS HEREUNDER, INCLUDING, WITHOUT LIMITATION, LOSS OF USE, LOSS OF DATA, LOSS OF ASSETS (INCLUDING BUT NOT LIMITED TO LOSS OF OR DELAY IN PRODUCTION, OR LOSS OF SAMPLES), LOSS OF PROFIT, LOSS OF BUSINESS, OR BUSINESS INTERRUPTION OR DOWNTIME, AND ALL WITHOUT REGARD TO THE SOLE, JOINT, CONCURRENT, GROSS, ACTIVE OR PASSIVE NEGLIGENCE OR BREACH OF DUTY (STATUTORY OR OTHERWISE) OF ANY PARTY.

11. **Insurance.** Each party, as indemnitor, agrees to support the indemnity obligations it assumes under Sections 8, by obtaining at its own cost, adequate insurance for the benefit of the other party as indemnitee, with contractual indemnity endorsements. To the extent each party assumes liability hereunder, such insurance shall waive subrogation against the indemnified Group and its insurers and name the indemnified Group as additional insured(s) and loss payee, and to the same extent such coverage shall be primary to that carried by the indemnified Group. Customer shall not self-insure without the written consent of M-I.

12. **Limitation of Liability.** Notwithstanding anything to the contrary herein, except as provided under Section 8(a)1, M-I's total liability arising from or in connection with this Contract (whether for indemnity, breach of contract, negligence, misrepresentation, or otherwise) shall not in any circumstances exceed the full value of the consideration owed to M-I under this Contract.

**M-I L.L.C., Purification Solutions Business Unit
GENERAL TERMS AND CONDITIONS**

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13. Shipments, Title and Risk of Loss.

(a) Unless otherwise agreed, Shipments are made Ex Works (EXW) M-I's premises. Unless otherwise agreed to between the parties, title to and risk of loss for products sold will pass to Customer upon delivery to and receipt by carrier. Customer will pay or reimburse M-I for all freight, preparation, and in-transit insurance costs from the time of delivery. Customer agrees that title to and risk of loss for products will pass to and remain with Customer, even if M-I agrees to store the products at a M-I location until Customer requests delivery.

(b) The time, method, place or medium of payment will not in any way limit M-I's rights in and to the products until payment has been received in full. On all orders, M-I shall retain a security interest in the products to the extent of any unpaid balance of the purchase price therefor. Customer will execute and deliver to M-I such instruments as M-I requests to perfect such security interest. Customer grants M-I permission to enter onto Customer's premises (whether locked or otherwise) to repossess such products. M-I retains title, for security purposes only, to all products sold hereunder, until fully paid.

(c) Any claims for shortages or damages suffered in transit shall be submitted by Customer directly to the carrier. Shortages or damages must be acknowledged and signed for at the time of delivery. While M-I will use reasonable commercial efforts to maintain the delivery date(s) quoted by M-I, all shipping dates are approximate and not guaranteed. M-I shall not be responsible for non-delivery, nonperformance or delays occasioned by any causes beyond M-I's reasonable control, including without limitation, delays of vendors or carriers, fires, strikes, war, floods, acts of God, acts of Customer, weather, sabotage, restrictions, allocations, governmental actions or material shortages. Any delays so occasioned shall effect a corresponding extension of M-I's delivery or performance dates which are, in any event, understood to be approximate. M-I reserves the right to make partial shipments.

14. Intellectual Property. M-I owns all rights to the proprietary intellectual property embodied in its products and services or which are created in the course of providing such products and services to Customer. M-I does not transfer any ownership rights in such intellectual property to Customer. M-I warrants that the products sold, except as are made specifically for Customer according to Customer's specifications, do not infringe any valid U.S. patent or copyright in existence as of the date of shipment. M-I agrees to assume the defense of any litigation in a U.S. court of competent jurisdiction for infringement of any U.S. patent brought against the Customer provided (i) the Customer is a named party to the litigation, (ii) the litigation is commenced within 18 months of the purchase of products from M-I, (iii) the Customer's account with M-I is paid in full, (iv) the products are produced entirely according to M-I's design and instructions, (v) the Customer notifies M-I in writing of the suit within 10 days after the service of process, and (vi) M-I is given control of and cooperation in the defense of such suit, including the right to defend, settle and make changes in the products for the purpose of avoiding infringement. M-I's prints and drawings (including underlying technology) given by M-I to Customer in connection with this agreement are the property of M-I. M-I retains all rights, including exclusive rights of use, licensing and sale. M-I will not be liable for infringement that arises: (i) out of Customer's use of M-I products or services in combination with products or services not provided by M-I; (ii) where M-I products or services have been specially modified, designed and/or manufactured to meet Customer's specifications; (iii) out of unauthorized additions or modifications to M-I products or services; or (iv) where Customer's use of M-I products or services do not correspond to M-I published standards or specifications.

15. Miscellaneous. M-I shall not be liable for any delay or non-performance due to governmental regulation, labor disputes, hostile action, weather, fire, acts of God or any other causes beyond the reasonable control of M-I. This Contract represents a final and complete agreement between M-I and Customer with respect to the products, equipment and services, and supersedes any prior agreement or understanding between M-I and Customer, except for any Master Service Agreement or Master Operating Agreement between M-I and Customer which, with respect to services provided by M-I to Customer hereunder, will control over this Contract. This Contract may not be modified in any other way except in writing signed by an authorized M-I representative. No conditions, usage of trade, course of dealing, understanding or agreement purporting to modify this Contract shall be binding unless hereafter made in writing and signed by the party to be bound, and no modification shall be applicable to this agreement by M-I's receipt, acknowledgment, or acceptance of purchase orders, sales tickets, rental tickets, ship tickets, or other documentation containing terms at variance with or in addition to those herein. No waiver by either party with respect to any breach or default or of any right or remedy, and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver be expressed in writing and signed by the party to be bound. Where any work is to be provided in a geographic location covered by General Maritime Law, General Maritime Law shall apply and shall govern the validity, interpretation, and performance of this Contract and any applicable orders. In those instances where General Maritime Law does not apply, the laws of the State of Texas shall apply and govern the validity, interpretation, and performance of this Contract and any applicable orders. The parties agree that the law of the selected jurisdiction shall apply exclusive of any principles of conflicts of laws that would require application of the substantive laws of another jurisdiction. Any suit or proceeding hereunder shall be brought exclusively in state or federal courts located in Harris County, Texas. Each party consents to the personal jurisdiction of the state and federal courts of said county and waives any objection that such courts are an inconvenient forum or venue. References in this Contract to any act, law, statute, rule, or regulation shall be deemed to include references to such as the

M-I LLC
 5950 North Course Dr.
 Houston
 Texas 77072, USA
 Tel: +1 800 726 7687 or +1 636 532 2316
 Fax: +1 636 532 2764



QUOTATION

PREPARED FOR:
 Tanner Rutschman
 City of Dodge City

Date: Thursday, August 31, 2023
Quotation No.: USL08302023.1.AB

Application: Dodge City Media Loading

PRODUCT DESCRIPTION:

Item No.	Description	Qty	UOM	Unit Price, USD	Total Price, USD
1	MOB Crew	1	daily	2,820.00	2,820.00
2	DeMOB Crew	1	daily	2,820.00	2,820.00
3	Per Diem	2	daily	216.00	432.00
4	Supervisor	1	daily	1,260.00	1,260.00
5	Crew	1	daily	2,460.00	2,460.00
6	Equipment	1	daily	2,280.00	2,280.00
7	SLB Site Representation	1	daily	Free	Free
				TOTAL*	12,072.00

* Excludes taxes and duties unless otherwise stated.

Incoterms:	Ex-Works
Price validity:	30 days
Payment Terms:	Advance Payment
Delivery Time:	available to dispatch in 1-2 business days upon receipt of payment
Origin of Goods:	N/A
Hazardous Class:	Non-Hazardous

Notes:

This proposal is for the media loading at Dodge City Wastewater Treatment Plant. SLB will provide items listed above per SLB standards. All SLB safety policies will be followed. SLB site representation will be provided free of charge.

Yours Sincerely,

Ariel Blaylock

Schlumberger Purification Solutions

Sales Engineer

Office: +1 713 896 3645

Mobile: +1 512 756 8848

ablalock@slb.com

This quotation is subject to M-I LLC Terms & Conditions of sale detailed herein

**M-I L.L.C., Purification Solutions Business Unit
GENERAL TERMS AND CONDITIONS**

THE FOLLOWING GENERAL TERMS AND CONDITIONS OF THIS CONTRACT CONTAIN INDEMNITY AND CHOICE OF LAW PROVISIONS - PLEASE READ CAREFULLY.

1. Acceptance. By requesting M-I's products, equipment (including vessels), or services, Customer voluntarily elects to enter into and be bound by these General Terms and Conditions ("Contract").

2. Definitions.

- (a) "M-I" means SULFATREAT, a business unit of M-I L.L.C., a Delaware limited liability company.
- (b) "Customer" means the person, firm or other entity to which products, equipment and/or services are supplied or provided.
- (c) "Group" means either M-I or Customer and its respective parents, affiliates, subsidiaries, and each of their respective officers, directors, contractors and subcontractors of any tier, consultants, agents, employees and invitees.
- (d) "Claims" means damage, loss, liability, claims, demands and causes of action of every kind and character (including all costs and expenses thereof and reasonable attorney fees associated therewith).

3. Prices and Payment Terms. Unless otherwise specified in writing by M-I's authorized representative, the price quoted by M-I for the sale of products, equipment and services shall be valid for 30 days after M-I's quotation or acknowledgment or confirmation of Customer's order for the products, equipment and services, whichever occurs first, provided an authorization of Customer's order for the products, equipment and services is accepted by M-I within such 30-day time period. If M-I does not receive the authorization within that time period, M-I shall have the right to change the price for the products, equipment and services to M-I's price for the products, equipment and services at the shipment date. All prices are exclusive of taxes and insurance, which Customer will pay. Terms are cash, net 30 days, Harris County, Texas, unless M-I has approved Customer's credit in writing prior to the sale. Terms of sale for credit-approved accounts are total invoice amount due at M-I's office, Houston, Texas on or before the 30th day from the date of invoice. Customer shall pay interest on past due balances at the lesser of 1.5% per month or the maximum allowed by applicable state or federal law. If Customer's account becomes delinquent, M-I shall have the right to revoke any and all previously applied discounts. Upon such revocation, the full invoice price without discount will become immediately due and owing and subject to collection. Customer hereby agrees to pay all fees directly or indirectly incurred in the collection of past due or delinquent accounts, including but not limited to agency and attorney's fees.

4. Taxes. Customer shall pay any and all taxes or other levies (other than income taxes) imposed by any government, governmental unit or similar authority with respect to the charges made or payments received in connection with M-I's products, equipment or services.

5. Independent Contractor. M-I is and shall be an independent contractor with respect to the performance of the services set forth on this Contract, and neither M-I nor anyone employed by M-I shall be the agent, representative, employee or servant of Customer in the performance of such services or any part hereof. When M-I's employees (defined to include M-I's direct, borrowed, special, or statutory employees) are covered by the Louisiana Workers' Compensation Act, La R.S. 23:1021 et seq., Customer and M-I agree that all work and operations performed by M-I and its employees pursuant to this Contract are an integral part of and are essential to the ability of Customer to generate Customer's products, products and services for purposes of La R.S. 23:1061 (A)(1). Furthermore, Customer and M-I agree that Customer is the statutory employer of M-I's employees for purposes of La R.S. 23:1061 (A)(3). Irrespective of Customer's status as the statutory employer or special employer (as defined in La R.S. 23:1031 (C)) of M-I's employees, M-I shall remain primarily responsible for the payment of Louisiana workers' compensation benefits to its employees and shall not be entitled to seek contribution for any such payments from Customer.

6. Obligations of Customer.

(a) Site Conditions; Notification of Hazardous Conditions. Customer, having custody and control of its operations and superior knowledge of the conditions in and surrounding it, shall provide M-I with all necessary information to enable M-I to perform its services safely and efficiently. M-I's products and equipment are designed to operate under conditions normally encountered in gaseous or liquid hydrocarbon operations (including wellbore) and environmental and water treatment operations; however, if hazardous or unusual conditions exist, Customer shall notify M-I in advance and make special arrangements for servicing such operations. **(b) Waste.** The handling, transportation, treatment or disposal of any products, used or unused, and any associated waste or by-products, or other hazardous wastes (as defined pursuant to applicable law) ("Products"), resulting from or incidental to, Customer's use of the products or M-I's performance of its services hereunder become the sole responsibility of Customer when title and risk of loss to such products pass to Customer in accordance with this Contract. Customer understands and agrees that the Products are the property of Customer and that Customer is the owner of the Products. Customer agrees that it will transport and dispose of any such Products in accordance with all applicable federal, state and local laws and regulations. **CUSTOMER HEREBY WAIVES, RELEASES AND AGREES TO INDEMNIFY AND NOT ASSERT ANY CLAIM OR BRING ANY COST RECOVERY ACTION AGAINST M-I GROUP IN CONNECTION WITH THE USE, GENERATION, STORAGE, TRANSPORTATION OR DISPOSAL OF PRODUCTS UNDER ANY COMMON LAW THEORIES OR FEDERAL, STATE OR LOCAL ENVIRONMENTAL LAWS OR REGULATIONS, NOW EXISTING OR HERINAFTER ENACTED, WITHOUT REGARD TO THE CAUSE OR CAUSES THEREOF OR THE NEGLIGENCE OF ANY PARTY.** In no event shall M-I be considered the generator of Products irrespective of any handling transportation, treatment or disposal thereof provided by M-I. M-I shall not be responsible for the signing of manifests or for the storage, transportation or disposal of Products. **(C) Change Out Policy.** Customer agrees to read and comply at all times with M-I's Loading and Change Out Procedures, as applicable, and inform all Customer Group members of such procedures and their understanding and compliance therewith. **CUSTOMER SHALL BE RESPONSIBLE FOR AND HEREBY AGREES TO RELEASE, PROTECT, DEFEND, INDEMNIFY AND HOLD HARMLESS M-I GROUP AND ITS INSURERS FROM AND AGAINST ALL CLAIMS ARISING OUT OF OR IN CONNECTION ANY FAILURE BY CUSTOMER OR A CUSTOMER GROUP MEMBER TO COMPLY WITH SECTION 6(c).**

**M-I L.L.C., Purification Solutions Business Unit
GENERAL TERMS AND CONDITIONS**

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7. Limited Warranty.

(a) Services. M-I warrants that all services performed hereunder shall be performed in a good and workmanlike manner in accordance with good oilfield practices. M-I will give Customer the benefit of its best judgment based upon its experience interpreting information and making recommendations, either written or oral, as to reactor configuration, type or amount of material or service required or to be furnished, or manner of performance or in prediction of results or other data. M-I's recommendations or predictions are opinions only because of the impracticability of obtaining first-hand knowledge of the many variable conditions, the reliance on inferences, measurements, assumptions which are not infallible, and/or the necessity of relying on facts and supporting services furnished by others. **NOTWITHSTANDING THE FOREGOING, NO WARRANTY IS GIVEN CONCERNING, AND M-I SHALL HAVE NO RESPONSIBILITY FOR, THE ACCURACY OR COMPLETENESS OF THE DESIGN, ENGINEERING, PERFORMANCE, OR EFFECTIVENESS OF EQUIPMENT (INCLUDING VESSELS), MATERIALS, OR SUPPLIES USED, RECOMMENDATIONS GIVEN, OR RESULTS OF THE SERVICES RENDERED. M-I IS NOT RESPONSIBLE FOR ANY LOSS OR DAMAGE ARISING FROM THE RESULTS AND/OR RECOMMENDATIONS SUGGESTED BY SUCH WORK, NOR ARE THEY INTENDED TO PROVIDE THE BASIS FOR ANY DECISIONS SUBSEQUENTLY MADE BY CUSTOMER, WHICH ARE AND SHALL REMAIN CUSTOMER'S SOLE RESPONSIBILITY.** M-I's sole liability and Customer's exclusive remedy in any cause of action for breach of the foregoing warranties for services provided hereunder are expressly limited to, at M-I's sole option: (i) replacement or re-performance of the defective part of the services, if practical, or (ii) refund to Customer the invoiced and paid portion of the defective portion of the services. Any claim by Customer pursuant to M-I's warranty shall be made immediately upon discovery and confirmed in writing within thirty (30) days after discovery of the defect with respect to which the claim is made.

b) Products.

(i) Provided (i) that sufficient technical data has been made available to Seller for approval of the operating conditions and (ii) that the Goods have been installed, commissioned and operated under Seller approved conditions, Seller warrants that the Goods will remove the contaminant for the estimated bed-life indicated in either the technical proposal or Estimated Performance Sheet ("EPS").

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The foregoing warranty shall not apply where failure of Goods is due to its being affected physically or chemically by mal-operation including but not limited to the following incidents; (i) multi-phase flow entering the vessel, (ii) improper loading/change outs, (iii) bed collapse, (iv) hydrate formation, (v) operator error, (vi) water injection failure, (vii) solids carried over from other parts of the plant, (viii) catalyst poisons, (ix) faulty construction and/or, (x) mis-design of items of plant equipment.

(ii) In the event that the Goods supplied by Seller fails to meet the predicted performance Product Credit will be applied against future Orders for Goods and will be calculated according to the following formula:

$[(\text{Warranted days} - \text{Days in service}) / \text{Warranted days}] \times (\text{Vessel loading, lb}) = \text{Product Credit, lb}$

The extent of liability shall be limited to the manufactured cost of the product only, and does not include delivery and any associated costs such as media loading. Seller's maximum liability under this clause will be limited to, and shall not exceed the invoice value of Goods.

(iii) Any suspected Goods failure must be notified to Seller promptly and every assistance given prior to the discharge of the Goods from the plant, including the making available of appropriate plant records and Goods samples to determine the cause of the failure. Seller will investigate the alleged failure of the Goods and endeavour to determine the cause, merits and credit amount of any warranty claim by the Buyer.

Other than as provided above no warranty is given concerning the results of Goods or Services provided. Seller's recommendations are opinions only and do not provide a basis for decisions made by Buyer, which are and shall remain Buyer's responsibility.

THE WARRANTY IN THIS SECTION IS BUYER'S EXCLUSIVE REMEDY IN THE EVENT OF A QUALIFYING WARRANTY CLAIM, AND APPLIES TO THE EXCLUSION OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY DO NOT APPLY AND ARE SPECIFICALLY DISCLAIMED. NO WARRANTY APPLIES FOR NON-QUALIFYING WARRANTY CLAIMS.

(c) **Vessels.** M-I provides no warranties or guarantees (express or implied) with respect to any vessels sold hereunder.

THE FOREGOING WARRANTIES IN THIS SECTION 7 FOR SERVICES OR PRODUCTS ARE IN LIEU OF ALL OTHER WARRANTIES, WHETHER ORAL, WRITTEN, EXPRESS, IMPLIED, OR STATUTORY (INCLUDING, BUT NOT LIMITED TO, COMPLIANCE WITH ANY GOVERNMENT REQUEST OR REGULATORY REQUIREMENT). WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY SHALL NOT APPLY. M-I'S WARRANTIES AND OBLIGATIONS, AND CUSTOMER'S REMEDIES, HEREUNDER (EXCEPT AS TO TITLE) ARE SOLELY AND EXCLUSIVELY AS STATED HEREIN, AND CUSTOMER, ON BEHALF OF ITSELF AND CUSTOMER GROUP, WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OTHER REPRESENTATION, WARRANTY, RIGHT, REMEDY, OR CAUSE OF ACTION ARISING FROM, OR RELATING TO, THIS CONTRACT. SECTION 7 APPLIES TO ANY ENTITY OR PERSON WHO MAY BUY, RENT, ACQUIRE, OR USE THE PRODUCTS OR SERVICES, INCLUDING ANY ENTITY OR PERSON WHO OBTAINS THE PRODUCTS OR SERVICES FROM CUSTOMER, AND SUCH ENTITY OR PERSON SHALL BE BOUND BY THE LIMITATIONS THEREIN, INCLUDING SECTION 7. CUSTOMER AGREES TO PROVIDE SUCH SUBSEQUENT TRANSFEREE CONSPICUOUS, WRITTEN NOTICE OF THIS CONTRACT.

8. Disposal of Waste. The parties hereby stipulate and agree that the Goods installed in the vessels are not in Seller's care, custody or control. In no event shall Seller be considered the generator of, or responsible for the disposal of, goods, and associated wastes, chemicals and other similar substances ("Waste") arising from the operations. Buyer acknowledges and agrees that Waste produced by the Buyer pursuant to this Agreement are the property of the Buyer and shall remain Buyer's responsibility. The Seller may with a separate agreement facilitate the transportation, storage, treatment, disposal or handling of Waste on behalf of the Buyer. Buyer is and will at all times remain the owner and the generator of the Waste even after any treatment and thus shall remain responsible for disposal of the same, under Buyer's name and waste generator number, in accordance with all applicable federal, state and local laws and regulations. BUYER HEREBY AGREES NOT TO ASSERT ANY CLAIM OR BRING ANY COST RECOVERY ACTION AGAINST SELLER'S GROUP AND SHALL WAIVE, RELEASE, PROTECT, DEFEND, INDEMNIFY AND HOLD HARMLESS SELLER'S GROUP FROM AND AGAINST ANY AND ALL CLAIMS IN CONNECTION WITH THE USE, HANDLING, TREATMENT, STORAGE, TRANSPORTATION AND/OR DISPOSAL OF WASTE, REGARDLESS OF THE SOLE, JOINT, ACTIVE, PASSIVE, GROSS OR CONCURRENT

9. Indemnities.

(a) **PERSONNEL AND PROPERTY**

1. M-I SHALL BE RESPONSIBLE FOR AND HEREBY AGREES TO RELEASE, PROTECT, DEFEND, INDEMNIFY AND HOLD HARMLESS CUSTOMER GROUP AND ITS INSURERS FROM AND AGAINST ALL CLAIMS ARISING OUT OF OR IN CONNECTION WITH DAMAGE TO OR LOSS OR DESTRUCTION OF PROPERTY OF OR THE PERSONAL INJURY, ILLNESS OR DEATH OF ANY MEMBER OF M-I GROUP ARISING OUT OF OR IN CONNECTION WITH THIS CONTRACT OR THE OPERATIONS, SERVICES, RENTALS AND SALES PROVIDED HEREUNDER.

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2. CUSTOMER SHALL BE RESPONSIBLE FOR AND HEREBY AGREES TO RELEASE, PROTECT, DEFEND, INDEMNIFY AND HOLD HARMLESS M-I GROUP AND ITS INSURERS FROM AND AGAINST ALL CLAIMS ARISING OUT OF OR IN CONNECTION WITH DAMAGE TO OR LOSS OR DESTRUCTION OF PROPERTY OF OR THE PERSONAL INJURY, ILLNESS OR DEATH OF ANY MEMBER OF CUSTOMER GROUP ARISING OUT OF OR IN CONNECTION WITH THIS CONTRACT OR THE OPERATIONS, SERVICES, RENTALS AND SALES PROVIDED HEREUNDER.

(b) SPECIAL INDEMNITY. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, CUSTOMER ASSUMES ALL LIABILITY FOR AND AGREES TO RELEASE, PROTECT, DEFEND, INDEMNIFY, AND HOLD M-I GROUP AND ITS INSURERS HARMLESS FROM AND AGAINST ALL CLAIMS BROUGHT BY OR ON BEHALF OF CUSTOMER GROUP, M-I GROUP OR THIRD PARTIES ARISING OUT OF OR IN CONNECTION HERewith FOR: (I) PROPERTY DAMAGE, PERSONAL INJURY, DEATH OR LOSS THAT RESULTS FROM FIRE, EXPLOSION, CUSTOMER'S FAILURE TO COMPLY WITH SECTION 6(C), BLOW-OUT, CRATERING, WILD WELL, WORK PERFORMED TO CONTROL A WILD WELL, OR UNCONTROLLED PIPELINE FLOW AND/OR CLAIMS IN CONNECTION WITH THE USE OF PRODUCTS; (II) PROPERTY DAMAGE, PERSONAL INJURY, DEATH, OR LOSS THAT RESULTS FROM POLLUTION, CONTAMINATION, OR RADIATION DAMAGE (INCLUDING ENVIRONMENTAL POLLUTION, CONTAMINATION OR DAMAGE), WHETHER CAUSED BY CUSTOMER'S FAILURE TO PROPERLY HANDLE, TRANSPORT OR DISPOSE OF ANY PRODUCTS AS REQUIRED BY SECTION 6(B) HEREOF OR OTHERWISE, INCLUDING CONTAINMENT, CLEAN-UP AND REMEDIATION OF THE POLLUTANT AND CONTAMINATION, WHETHER OR NOT REQUIRED BY AN APPLICABLE FEDERAL, STATE OR LOCAL LAW OR REGULATION; (III) PROPERTY DAMAGE OR LOSS THAT RESULTS FROM RESERVOIR OR UNDERGROUND DAMAGE, INCLUDING LOSS OF OIL, GAS, OTHER MINERAL SUBSTANCES, OR WATER OR THE WELL BORE ITSELF, AND SURFACE DAMAGE ARISING FROM SUBSURFACE OR SUBSEA DAMAGE; (IV) COST TO CONTROL A WILD WELL, UNDERGROUND OR ABOVE THE SURFACE, INCLUDING ANY REDRILLING OR REWORKING AND RELATED CLEAN UP COSTS; (V) DAMAGE TO PROPERTY OWNED BY, IN THE POSSESSION OF, OR LEASED BY CUSTOMER, AND/OR SITE OR WELL OWNER, IF DIFFERENT FROM CUSTOMER (THE TERM "WELL OWNER" SHALL INCLUDE WORKING AND ROYALTY INTEREST OWNERS OR THE OWNER OF ANY OIL/GAS PRODUCTION FACILITIES OR PIPELINES, DRILLING RIG/VESSEL, PLATFORM OR OTHER STRUCTURE AT THE WELL SITE); (VI) SUBSURFACE TRESPASS; OR (VI) LOSS OF OR DAMAGE TO M-I GROUP'S PROPERTY, EQUIPMENT, MATERIALS OR PRODUCTS, INCLUDING BUT NOT LIMITED TO, RECOVERY, REPAIR AND REPLACEMENT EXPENSES, WHEN SUCH LOSS OR DAMAGE OCCURS: (A) WHILE IN TRANSIT OR BEING MOVED ON ANY FORM OF TRANSPORTATION OWNED OR FURNISHED BY CUSTOMER, (B) WHILE LOCATED AT THE SITE WHEN M-I PERSONNEL ARE NOT PRESENT, (C) WHILE BEING USED BY OR WHILE UNDER THE CUSTODY OR CONTROL OF ANY PERSON OTHER THAN AN M-I EMPLOYEE, WHETHER IN AN EMERGENCY OR OTHERWISE, OR (D) AS A RESULT OF IMPROPERLY MAINTAINED PRIVATE ACCESS ROADS TO THE WELL SITE OR AS A RESULT OF THE INFERIOR CONDITION OF LEASE ROADS OR THE SITE. M-I'S LIABILITY FOR POLLUTION HEREUNDER IS EXPRESSLY LIMITED TO POLLUTION OR CONTAMINATION OCCURRING AND ORIGINATING ABOVE THE SURFACE OF THE LAND OR WATER (WHERE SUCH POLLUTION OR CONTAMINATION HAS NEVER BEEN INTRODUCED INTO, NOR IS EMANATING FROM, THE WELL) ORIGINATING FROM M-I'S EQUIPMENT OR VESSEL(S), UNDER M-I'S CONTROL, AND RESULTING FROM M-I'S SOLE NEGLIGENCE.

**M-I L.L.C., Purification Solutions Business Unit
GENERAL TERMS AND CONDITIONS**

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(c) **Application of Indemnities.** THE ASSUMPTION OF LIABILITY AND INDEMNITIES IN PARAGRAPHS (A) AND (B) ABOVE SHALL APPLY TO ANY LOSS, DAMAGE, EXPENSE, INJURY, ILLNESS, DEATH OR CLAIM ARISING OUT OF OR IN CONNECTION WITH THIS CONTRACT OR THE PRODUCTS AND SERVICES PROVIDED HEREUNDER, WITHOUT REGARD TO THE CAUSE(S) THEREOF INCLUDING, WITHOUT LIMITATION, UNSEAWORTHINESS, STRICT LIABILITY, ULTRAHAZARDOUS ACTIVITY, BREACH OF EXPRESS OR IMPLIED WARRANTY, IMPERFECTION OF MATERIAL, DEFECT OR FAILURE OF EQUIPMENT, DEFECT OR "RUIN" OR OTHER CONDITION OF PREMISES, INCLUDING ANY CONDITIONS THAT PRE-EXIST THE EXECUTION OF THIS CONTRACT, OR THE SOLE, JOINT, CONCURRENT OR GROSS, ACTIVE OR PASSIVE, NEGLIGENCE OR OTHER FAULT OF THE INDEMNIFIED GROUP.

(d) **Anti-Indemnity and Insurance Savings Clause.** If any defense, indemnity or insurance provision contained in this Contract conflicts with, is prohibited by or violates public policy under any federal, state or other law determined to be applicable to a particular situation arising from or involving any services, equipment and/or products hereunder, it is understood and agreed that the conflicting, prohibited, or violating provision shall be deemed automatically amended in that situation to the extent, but only to the extent, necessary to conform with, not be prohibited by and avoid violating public policy under such applicable law.

10. Incidental or Consequential Damages. IT IS EXPRESSLY AGREED THAT NEITHER CUSTOMER NOR M-I SHALL BE LIABLE TO THE OTHER PARTY AND ITS GROUP FOR (AND THE PARTIES SHALL RELEASE, PROTECT, DEFEND, INDEMNIFY AND HOLD EACH OTHER HARMLESS FROM AND AGAINST) ANY SPECIAL, PUNITIVE, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR LOSSES RESULTING FROM OR ARISING, DIRECTLY OR INDIRECTLY, OUT OF OR IN CONNECTION WITH THE WORK OR OPERATIONS HEREUNDER, INCLUDING, WITHOUT LIMITATION, LOSS OF USE, LOSS OF DATA, LOSS OF ASSETS (INCLUDING BUT NOT LIMITED TO LOSS OF OR DELAY IN PRODUCTION, OR LOSS OF SAMPLES), LOSS OF PROFIT, LOSS OF BUSINESS, OR BUSINESS INTERRUPTION OR DOWNTIME, AND ALL WITHOUT REGARD TO THE SOLE, JOINT, CONCURRENT, GROSS, ACTIVE OR PASSIVE NEGLIGENCE OR BREACH OF DUTY (STATUTORY OR OTHERWISE) OF ANY PARTY.

11. Insurance. Each party, as indemnitor, agrees to support the indemnity obligations it assumes under Sections 8, by obtaining at its own cost, adequate insurance for the benefit of the other party as indemnitee, with contractual indemnity endorsements. To the extent each party assumes liability hereunder, such insurance shall waive subrogation against the indemnified Group and its insurers and name the indemnified Group as additional insured(s) and loss payee, and to the same extent such coverage shall be primary to that carried by the indemnified Group. Customer shall not self-insure without the written consent of M-I.

12. Limitation of Liability. Notwithstanding anything to the contrary herein, except as provided under Section 8(a)1, M-I's total liability arising from or in connection with this Contract (whether for indemnity, breach of contract, negligence, misrepresentation, or otherwise) shall not in any circumstances exceed the full value of the consideration owed to M-I under this Contract.

13. Shipments, Title and Risk of Loss.

(a) Unless otherwise agreed, Shipments are made Ex Works (EXW) M-I's premises. Unless otherwise agreed to between the parties, title to and risk of loss for products sold will pass to Customer upon delivery to and receipt by carrier. Customer will pay or reimburse M-I for all freight, preparation, and in-transit insurance costs from the time of delivery. Customer agrees that title to and risk of loss for products will pass to and remain with Customer, even if M-I agrees to store the products at a M-I location until Customer requests delivery.

(b) The time, method, place or medium of payment will not in any way limit M-I's rights in and to the products until payment has been received in full. On all orders, M-I shall retain a security interest in the products to the extent of any unpaid balance of the purchase price therefor. Customer will execute and deliver to M-I such instruments as M-I requests to perfect such security interest. Customer grants M-I permission to enter onto Customer's premises (whether locked or otherwise) to repossess such products. M-I retains title, for security purposes only, to all products sold hereunder, until fully paid.

(c) Any claims for shortages or damages suffered in transit shall be submitted by Customer directly to the carrier. Shortages or damages must be acknowledged and signed for at the time of delivery. While M-I will use reasonable commercial efforts to maintain the delivery date(s) quoted by M-I, all shipping dates are approximate and not guaranteed. M-I shall not be responsible for non-delivery, nonperformance or delays occasioned by any causes beyond M-I's reasonable control, including without limitation, delays of vendors or carriers, fires, strikes, war, floods, acts of God, acts of Customer, weather, sabotage, restrictions, allocations, governmental actions or material shortages. Any delays so occasioned shall effect a corresponding extension of M-I's delivery or performance dates which are, in any event, understood to be approximate. M-I reserves the right to make partial shipments.

**M-I L.L.C., Purification Solutions Business Unit
GENERAL TERMS AND CONDITIONS**

THE FOLLOWING GENERAL TERMS AND CONDITIONS OF THIS CONTRACT CONTAIN INDEMNITY AND CHOICE OF LAW PROVISIONS - PLEASE READ CAREFULLY.

14. Intellectual Property. M-I owns all rights to the proprietary intellectual property embodied in its products and services or which are created in the course of providing such products and services to Customer. M-I does not transfer any ownership rights in such intellectual property to Customer. M-I warrants that the products sold, except as are made specifically for Customer according to Customer's specifications, do not infringe any valid U.S. patent or copyright in existence as of the date of shipment. M-I agrees to assume the defense of any litigation in a U.S. court of competent jurisdiction for infringement of any U.S. patent brought against the Customer provided (i) the Customer is a named party to the litigation, (ii) the litigation is commenced within 18 months of the purchase of products from M-I, (iii) the Customer's account with M-I is paid in full, (iv) the products are produced entirely according to M-I's design and instructions, (v) the Customer notifies M-I in writing of the suit within 10 days after the service of process, and (vi) M-I is given control of and cooperation in the defense of such suit, including the right to defend, settle and make changes in the products for the purpose of avoiding infringement. M-I's prints and drawings (including underlying technology) given by M-I to Customer in connection with this agreement are the property of M-I. M-I retains all rights, including exclusive rights of use, licensing and sale. M-I will not be liable for infringement that arises: (i) out of Customer's use of M-I products or services in combination with products or services not provided by M-I; (ii) where M-I products or services have been specially modified, designed and/or manufactured to meet Customer's specifications; (iii) out of unauthorized additions or modifications to M-I products or services; or (iv) where Customer's use of M-I products or services do not correspond to M-I published standards or specifications.

15. Miscellaneous. M-I shall not be liable for any delay or non-performance due to governmental regulation, labor disputes, hostile action, weather, fire, acts of God or any other causes beyond the reasonable control of M-I. This Contract represents a final and complete agreement between M-I and Customer with respect to the products, equipment and services, and supersedes any prior agreement or understanding between M-I and Customer, except for any Master Service Agreement or Master Operating Agreement between M-I and Customer which, with respect to services provided by M-I to Customer hereunder, will control over this Contract. This Contract may not be modified in any other way except in writing signed by an authorized M-I representative. No conditions, usage of trade, course of dealing, understanding or agreement purporting to modify this Contract shall be binding unless hereafter made in writing and signed by the party to be bound, and no modification shall be applicable to this agreement by M-I's receipt, acknowledgment, or acceptance of purchase orders, sales tickets, rental tickets, ship tickets, or other documentation containing terms at variance with or in addition to those herein. No waiver by either party with respect to any breach or default or of any right or remedy, and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver be expressed in writing and signed by the party to be bound. Where any work is to be provided in a geographic location covered by General Maritime Law, General Maritime Law shall apply and shall govern the validity, interpretation, and performance of this Contract and any applicable orders. In those instances where General Maritime Law does not apply, the laws of the State of Texas shall apply and govern the validity, interpretation, and performance of this Contract and any applicable orders. The parties agree that the law of the selected jurisdiction shall apply exclusive of any principles of conflicts of laws that would require application of the substantive laws of another jurisdiction. Any suit or proceeding hereunder shall be brought exclusively in state or federal courts located in Harris County, Texas. Each party consents to the personal jurisdiction of the state and federal courts of said county and waives any objection that such courts are an inconvenient forum or venue. References in this Contract to any act, law, statute, rule, or regulation shall be deemed to include references to such as the same may be amended, replaced or reenacted from time to time. Notwithstanding the above, all applicable federal environmental laws or regulations shall apply. Customer and M-I agree that the proper venue for all actions arising in connection herewith shall be only in Texas, and the parties agree to submit to such jurisdiction. Should any clause, sentence, or part of this Contract be held invalid, such holding shall not invalidate the remainder, and the Contract shall be interpreted as if the invalid clause, sentence, or part has been modified or omitted, if necessary, as required to conform to the jurisdiction purporting to limit such provision. No action, regardless of form, arising out of transactions relating to this Contract, may be brought by either party more than 2 years after the cause of action has accrued. The Convention for the International Sales of Goods shall not apply to this Contract. Customer shall not assign its rights or delegate its duties or any interest herein without M-I's prior written consent.



Memorandum

To: Nick Hernandez, City Manager and City Commissioners
From: Ray Slattery, PE, Director of Engineering Services
Date: October 16, 2023
Subject: Change Order #1, 2023 Asphalt Street Maintenance, ST 2302
Agenda Item: Consent Calendar

Purpose: Approve Change Order #1 of the 2023 Asphalt Maintenance Project.

Recommendation: Approve Change Order #1 for the 2023 Asphalt Maintenance Project for an increase in the amount of \$47,586.40.

Background: The 2023 Asphalt Maintenance Project was approved in June of this year. The project started construction on September 20, 2023. Prior to construction starting, staff decided to add a portion of US 50 to the project, instead of having a short section of old pavement between two sections of new pavement. The extra work resulted in an overrun in Milling and Asphalt. The following item was adjusted based on quantities placed in the field:

- An additional 2,012 S.Y received a 2" Asphalt Mill.
- An additional 241 Tons of Asphalt was used for this portion.

City Commission Options:

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

Financial Considerations: Change Order #1 is for an increase of \$47,586.40. Funding will be from Street Sales Tax Fund.

Amount \$: \$47,586.40

Fund: 12730300 – 442004

Budgeted Expense Grant Bonds Other

Legal Considerations: By approving the Change Order for APAC Kansas, Inc., the contract dollar amount will be amended.

Mission/Values: This aligns with the City's Core Value of Ongoing Improvement, Safety, Working Towards Excellence.

Attachments: Change Order #1

Approved for the Agenda by:

Ray Slattery, PE

Ray Slattery, PE, Dir. of Engineering Services

CITY OF DODGE CITY

Change Order

CONTRACT FOR: 2023 Asphalt Street Maintenance

PROJECT NUMBER: ST 2302 - Revised

CONTRACTOR: APAC Kansas Inc., Shears Division

REQUEST NUMBER: 1

ITEM DESCRIPTION	UNIT	CONTRACT OR PREVIOUS QUANTITY	ADJUSTED QUANTITY	AMOUNT OF OVERRUN OR UNDERRUN	CONTRACT UNIT PRICE	NEW UNIT PRICE	DOLLAR AMOUNT OF CHANGE
2" Asphalt Mill	S.Y.	3025	5037.00	2012.00	\$ 2.45		\$ 4,929.40
2" HMA Surface Course	Ton	908	1149.00	241.00	\$ 177.00		\$ 42,657.00
NET INCREASE							\$ 47,586.40

RECOMMENDED FOR APPROVAL:

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

Ray Slattery, P.E.
Director of Engineering Services

Contractor: APAC Kansas Inc., Shears Division

Connie Marquez, City Clerk

Mayor or City Manager

By: _____



Memorandum

To: Ford County Commission and City of Dodge City Commission

From: Assistant City Manager/Public Affairs, Melissa McCoy

Date: October 16, 2023

Subject: CFAB Board Member Appointment

Agenda Item: Consent Calendar

Recommendation: The CFAB Board Chair, City and County Administration and Mayor recommend Lee Griffith be appointed to fill a board vacancy.

Background: The Community Facility Advisory Board (CFAB) board 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. Lee Griffith will be filling a vacancy for an at large position left by Paige Gilmore. Ms. Gilmore ended her term when she was appointed to serve as City Attorney. Her term began in January 2022 and will end in January 2025. The City published a media release and did social media postings for advisory board positions including CFAB. The CFAB Chair, City Manager, County Administrator and Mayor were in favor and support the recommendation to appoint Mr. Griffith to fill the board vacancy.

Justification: Mr. Griffith brings diverse work experience as well as many years of service as a volunteer in the community.

City Commission Options:

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

Financial Considerations: There are no financial considerations.

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

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

Approved for the Agenda by:

A handwritten signature in black ink, appearing to read "Melissa McCoy".

Melissa McCoy, Assistant City Manager/Public Affairs



Memorandum

To: City Commission; CC: City Manager Nick Hernandez

From: Public Information Officer, Collin Clark

Date: October 16, 2023

Subject: Approval of appointment to fill one vacant position on the Santa Fe Trails Community Corrections Advisory Board

Agenda Item: Consent Calendar

Purpose: To fill the vacant position on the Santa Fe Community Corrections Advisory Board.

Recommendation: Approve the appointment of Bailey Schafer to fill a vacant position left by James Jones on the Santa Fe Trail Community Corrections Advisory Board.

Background: In early October, Collin Clark, Public Information Officer, received the formal resignation from James Jones to step down from his position on the Santa Fe Trails Community Corrections Advisory Board. During that time, Collin received an application from Bailey Schafer to fill the vacancy left by James Jones on the Santa Fe Trails Community Corrections Advisory Board. If appointed, Bailey Schafer will fill the vacant position left by James Jones.

City Commission Options:

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

Financial Considerations: There are no financial considerations.

Legal Considerations: There are no Legal Considerations.

Mission/Values: Working with Boards and Commissions fulfills the City's mission statement: Together, we promote open communications with our community members to improve quality of life and preserve our heritage to foster a better future.

Approved for the Agenda by:

A handwritten signature in black ink, appearing to read "C. Clark".

Collin Clark, Public Information Officer



Memorandum

To: Nick Hernandez, City Manager and City Commissioners
From: Nicole May, Finance Director
Date: October 11, 2023
Subject: Resolutions 2023-32 and 2023-33
Agenda Item: Ordinances and Resolutions

Recommendation: I recommend the City Commission approve Resolutions 2023-32 and 2023-33.

Background: So that the City can obtain financing for construction projects in the form of general obligation bonds or temporary notes, the project first needs to be authorized by Resolution of the City of Dodge City. At the March 20, 2023 meeting Resolution 2023-12 was approved, authorizing various internal improvements for Iron Flats, Phase I. In order for the City to be reimbursed for the costs of the construction of the internal improvements the cost can not have been paid more than 90 days prior to the authorization. There was approximately \$600,000 of costs paid prior to the 90 days. Resolution 2023-33 will authorize a substitute project so that the City can receive reimbursement for the approximately \$600,000 of expenses paid. Resolution 2023-32 authorizes the 2023 Street and Water projects expenses to be eligible costs to be reimbursed to the City.

Justification: To issue Temporary Notes for public improvement projects need to be authorized by Resolution.

Financial Considerations: Once the projects are authorized, funding will be issued to fund these projects.

Purpose/Mission: To maintain and improve the infrastructure in Dodge City.

Legal Considerations: All legal considerations have been satisfied by the proposed resolution.

Attachments: Resolution No. 2023-32 and 2023-33.

Gilmore & Bell, P.C.
10/06/2023

Gilmore & Bell, P.C.
10/06/2023

RESOLUTION NO. 2023-32

A RESOLUTION OF THE CITY OF DODGE CITY, KANSAS, AUTHORIZING CERTAIN PUBLIC IMPROVEMENTS AND PROVIDING FOR THE PAYMENT OF THE COSTS THEREOF (2023 STREETS AND WATER MAINS).

WHEREAS, K.S.A. 13-1024a, as amended by Charter Ordinance No. 41 (the “Act”) of the City of Dodge City, Kansas (the “City”), provides that for the purpose of paying for any bridge, viaduct, street, sidewalk or pedestrian way improvement, airport, public building or structure, parking improvement, or other public utility or works, including any appurtenances related thereto and the land necessary therefor, for lands for public parks and recreation facilities, including golf courses, stadiums and community centers, and developing and making improvements to the same, within or without the City, for the establishment, development and construction of crematories, desiccating or reduction works, including any appurtenances related thereto and the land necessary therefor, within or without the City, or for the improvement, repair or extension of any waterworks, sanitary sewer facilities, sewage treatment or disposal plant, sewerage system, storm water improvement, electric light plant, crematory, desiccating or reduction works or other public utility plant or works owned by the City, and for the purpose of rebuilding, adding to or extending to the same or acquiring land necessary therefor from time to time, as the necessities of the City may require, or for the acquisition of equipment, vehicles and other personal property to be used in relation to any of the improvements authorized herein, the City may borrow money and issue its general obligation bonds and/or temporary notes for the same; and

WHEREAS, the City may issue such general obligation bonds when authorized to do so by the adoption of a resolution by the City Commission (the “Governing Body”) describing the purpose to be provided for and the amount of general obligation bonds to be issued, such bonds to be issued, sold, delivered and retired in accordance with the provisions of the general bond law; and

WHEREAS, the Governing Body desires to authorize the issuance of general obligation bonds of the City to finance all or a portion of the public improvements set forth below.

THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF DODGE CITY, KANSAS:

Section 1. Public Improvements; Bond Authorization. The Governing Body hereby authorizes the issuance of general obligation bonds of the City (the “Bonds”) for the following described public improvements (collectively the “Improvements”):

<u>Description</u>	<u>Estimated Cost*</u>
Street reconstruction and replacement of water mains (Toalson Avenue, Shirlane Street, Burr Parkway, 13 th Avenue, Greenwood Avenue, 12 th Avenue, West Cedar Street, East Sprce Street, East Elm Street, 1 st Avenue, and West Market Street)	\$1,347,807.50

* Plus amounts for public art pursuant to Ordinance 3603

All or a portion of the costs of the Improvements, interest on interim financing and associated financing costs shall be payable from the proceeds of the Bonds issued under authority of the Act.

Section 2. Reimbursement. 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 3. Effective Date. This Resolution shall take effect and be in full force from and after its adoption by the Governing Body.

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ADOPTED AND APPROVED by the governing body of the City of Dodge City, Kansas, on October 16, 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 October 16, 2023, as the same appears of record in my office.

DATED: October 16, 2023.

Clerk

RESOLUTION NO. 2023-33

A RESOLUTION PROVIDING FOR SUBSTITUTE IMPROVEMENTS TO BE FINANCED WITH PROCEEDS OF THE CITY OF DODGE CITY, KANSAS, GENERAL OBLIGATION TEMPORARY NOTES, SERIES 2023-1.

WHEREAS, on August 7, 2023, the City of Dodge City, Kansas (the “Issuer”), adopted Resolution No. 2023-27 (the “Note Resolution”) authorizing the issuance of the Issuer’s General Obligation Temporary Notes, Series 2023-1, in the original principal amount of \$6,800,000 (the “Notes”); and

WHEREAS, the Note Resolution provided that the proceeds of the Notes would finance a portion of the cost of certain public improvements (the “Improvements”), as shown below:

<u>Project Description</u>	<u>Res. No.</u>	<u>Authority (K.S.A.)</u>	<u>Authorized Amount*</u>
Iron Flats, Phase 1 – Sewer, Water, Street and Drainage Improvements	2023-12	12-6a01 <i>et seq.</i>	\$6,750,000

* Plus associated interest and costs of issuance

WHEREAS, the Notes were issued on August 31, 2023; and

WHEREAS, *Section 504* of the Note Resolution provides that the Issuer may elect for any reason to substitute or add other improvements to be financed with proceeds of the Notes provided certain conditions are met; and

WHEREAS, pursuant to provisions of the laws of the State of Kansas, by proceedings duly had, the governing body of the City has authorized the following improvements (the “Substitute Improvements”) to be made in the City, to-wit:

<u>Project Description</u>	<u>Res. No.</u>	<u>Authority (K.S.A.)</u>	<u>Estimated Cost</u>
Street reconstruction and replacement of water mains (Toalson Avenue, Shirlane Street, Burr Parkway, 13 th Avenue, Greenwood Avenue, 12 th Avenue, West Cedar Street, East Sprce Street, East Elm Street, 1 st Avenue, and West Market Street)	2023-[]	13-1024a/ Charter No. 41	\$1,347,807.50

WHEREAS, there are or will be moneys remaining in the Improvement Fund established by the Note Resolution and the Issuer hereby finds it necessary and desirable to authorize the addition of the Substitute Improvements to be financed with proceeds of the Notes.

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

Section 1. The governing body hereby authorizes the designation of certain improvements as Substitute Improvements, as follows:

<u>Project Description</u>	<u>Initial Allocation</u>	<u>New Allocation</u>	<u>Reallocated Amount</u>
Iron Flats, Phase 1 – Sewer, Water, Street and Drainage Improvements	\$6,800,000	\$6,194,810	-\$605,190
Street reconstruction and replacement of water mains (Toalson Avenue, Shirlane Street, Burr Parkway, 13th Avenue, Greenwood Avenue, 12th Avenue, West Cedar Street, East Sprce Street, East Elm Street, 1st Avenue, and West Market Street)	<u>0</u>	<u>605,190</u>	605,190
<i>Total</i>	<i>\$6,800,000</i>	<i>\$6,800,000</i>	

Section 2. The officers and officials of the Issuer, including the Mayor and Clerk, are hereby authorized and directed to execute all documents and take such other actions as they may deem necessary or advisable in order to carry out and perform the purposes of this Resolution and to make ministerial alterations, changes or additions in the foregoing agreements, statements, instruments and other documents herein approved, authorized and confirmed which they may approve, and the execution or taking of such action shall be conclusive evidence of such necessity or advisability.

Section 3. This Resolution shall take effect and be in full force from and after its adoption by the governing body of the Issuer.

[BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK]

ADOPTED by the governing body of the Issuer on October 16, 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 October 16, 2023, as the same appears of record in my office.

DATED: October 16, 2023.

Clerk



Memorandum

To: Dodge City Commission
From: Ryan Reid, Director of Administrative Services
Date: 2023 10 09
Subject: New Trucks (6)
Agenda Item: New Business

Purpose:

The six proposed trucks will assist City Departments in maintaining and improving the City. It aligns with the City's Core Value of Working Towards Excellence.

Recommendation:

Staff recommends approving the bids from Lewis Chevrolet for a total of \$298,862 for the six trucks. This is a budgeted purchase for 2024 and Lewis Chevrolet is the low bid overall. The other bidder, Lopp Motors, was slightly lower on the ¾ Ton Long Bed Trucks. However, Lewis Chevrolet has been able to reliably provide vehicles over the last few years when other vendors have not been able to produce them.

Background:

These vehicles will replace older vehicles which will be passed down to other employees or sold at auction. The trucks are for Parks, Athletic Field Maintenance, CREW, and the Airport.

City Commission Options:

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

Financial Considerations:

Amount \$298,862

Trucks will be paid for by: Parks, AFM, CREW, and the Airport.

Budgeted Expense Grant Bonds Other

Legal Considerations: None

Mission/Values: Safety, Ongoing improvement, Excellence

Attachments: Bid tab

Approved for the Agenda by:

Name, Title

Bid Tab

1/2 ton short bed trucks

<u>Bidder</u>	<u>Quant</u>	<u>Each\$</u>		<u>Total</u>	<u>Time</u>	<u>Depts</u>
Lopp Motors	3	\$52,287	\$	156,861.00	Unknown	Parks
Lewis Chevrolet	3	\$45,300	\$	135,900.00	Unknown	Parks

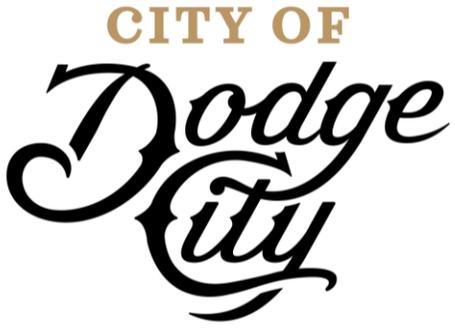
3/4 Ton Long Bed Trucks

<u>Bidder</u>	<u>Quant</u>	<u>Each\$</u>		<u>Total</u>	<u>Time</u>	<u>Depts</u>
Lopp Motors	2	\$51,310	\$	102,620.00	Unknown	AFM and CREW
Lewis Chevrolet	2	\$51,434	\$	102,868.00	Unknown	AFM and CREW

3/4 Ton Truck w/ Utility Box

<u>Bidder</u>	<u>Quant</u>	<u>Each\$</u>		<u>Total</u>	<u>Time</u>	<u>Depts</u>
Lopp Motors	1	\$52,287	\$	60,435.00	Unknown	Airport
Lewis Chevrolet	1	\$45,300	\$	60,094.00	Unknown	Airport

Total for all six trucks as recommended \$ 298,862.00



**100 Chaffin Rd.
Dodge City, KS 67801**

 **bids@dodgecity.org**

 **620-225-8100**

 **dodgecity.org**

Request for Proposal

For Downtown District Revitalization

Issued: _____, 2023

****This document is a draft; all provisions are subject to change, including deadlines.**

Proposal Due Date: January 01, 2024

Submit Proposals To:

City of Dodge City
c/o Nickolaus J. Hernandez
100 Chaffin Rd
Dodge City, KS 67801



**100 Chaffin Rd.
Dodge City, KS 67801**

 **bids@dodgecity.org**

 **620-225-8100**

 **dodgecity.org**

The City of Dodge City invites applicants to submit proposals for the use of loan funds from the Downtown Revitalization Loan Fund to assist towards the design, and/or construction of a multi-use project located in the Downtown District in Dodge City. To encourage as many applications as possible, the City of Dodge City is waiving application fees, unless and until such time the applicant's proposal is accepted and the applicant is awarded the contract.

DRAFT



100 Chaffin Rd.
Dodge City, KS 67801

 bids@dodgecity.org

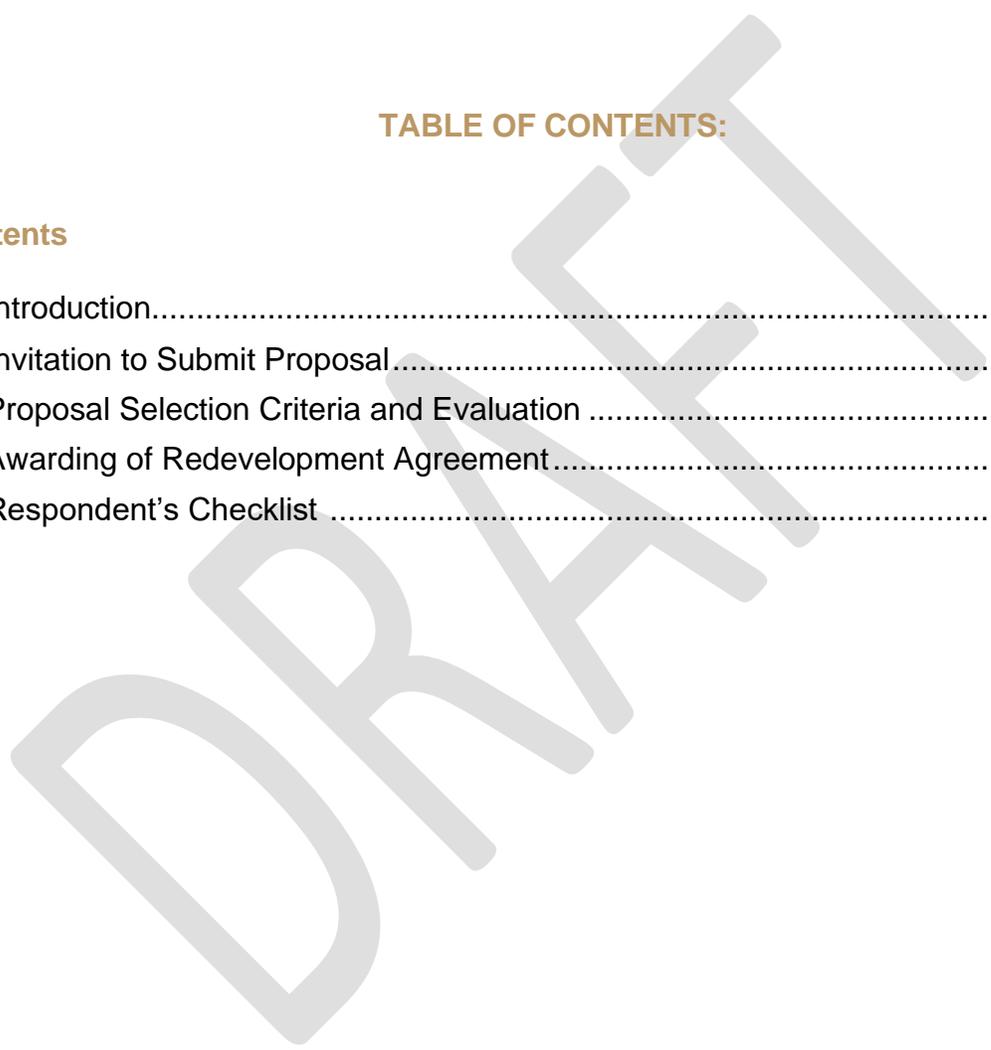
 620-225-8100

 dodgecity.org

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100 Chaffin Rd.
Dodge City, KS 67801

 bids@dodgecity.org
 620-225-8100
 dodgecity.org

1. Introduction

A. About Historic Downtown Dodge City

The existing Downtown area is showing its age and needs revitalization. The Downtown has been a regional and international draw, but its current condition has hampered economic development and tourism. The 50-year-old streetscape and the 100-plus year-old brick streets and utilities are well beyond their useful life, and it shows to residents and visitors alike. In addition, with the recent expansion of Boot Hill Museum, Dodge City is seeing an influx of visitors but unfortunately the downtown is not meeting the expectations of visitors or Dodge citizens.

B. Governance:

The City of Dodge City is governed by the City Commission and is made up of five elected Dodge City residents. The commissioners serve four or two-year terms, depending on the amount of votes they receive in the elections. There are three seats available each election for the City Commission. The mayor and vice-mayor are selected annually by the current commissioners at the first meeting in January.

C. Mission Statement and Core Purpose

Mission: Together, we promote open communication with our community members to improve quality of life and preserve our heritage to foster a better future.

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



**100 Chaffin Rd.
Dodge City, KS 67801**

 **bids@dodgecity.org**

 **620-225-8100**

 **dodgecity.org**

D. About Revitalization

The revitalization of Dodge City’s historic downtown is an essential part of the Dodge City STAR Bond project. This project focuses on the streetscape and infrastructure improvements along Front Street from 3rd Avenue to Central Avenue.

The community, including downtown businesses, have been engaged throughout the project and provided feedback through an online survey in both English and Spanish as well as stakeholder and community engagement sessions.

The public response to the downtown streetscape project has been overwhelmingly positive and in the Dodge City 2030, Comprehensive Plan, Planning for tomorrow, 92% of the public said strengthening the downtown area was important to them and 91% said the City should be involved in revitalizing the downtown area.

For more information about the Dodge City Streetscape project please visit <https://www.dodgecity.org/1020/Downtown-Streetscape>

E. Award Structure

To be considered, each applicant must submit a response to this Request for Proposals (hereinafter, “RFP”) using the format provided in **Section III**. No other distribution of proposals will be made. An official authorized to bind the applicant must sign the proposal in ink. Each proposal must remain valid for at least thirty days from the due date of this RFP. Responses to this RFP will be evaluated using the criteria shown below. A selection committee from City Staff will complete the evaluation. No Interviews will be conducted due to short time frame necessary for award of a design contract.

F. Points of Contact

Nickolaus J. Hernandez
City Manager
806 N. 2nd Ave
Dodge City, Kansas 67801
nickh@dodgecity.org

Melissa R. McCoy
Assistant City Manager
806 N. 2nd Ave
Dodge City, Kansas 67801
melissam@dodgecity.org



**100 Chaffin Rd.
Dodge City, KS 67801**

 **bids@dodgecity.org**

 **620-225-8100**

 **dodgecity.org**

2. Invitation to Submit Proposal

The purpose and scope of work of this RFP is to provide applicants an opportunity to invest in the success of Downtown Dodge City through the Downtown Revitalization Loan Fund.

The term “Applicant” or “applicant” shall be defined as a person, organization, business, or other entity that submits a proposal in response to the RFP. The term Applicant differs from the role of a consultant, sub-contractor or supplier selected by Applicant to provide ancillary services for a proposed project. Entities providing these ancillary services may solicit their service for the proposal of multiple Applicant.

In their proposal, the Applicant will specify the nature of the proposed use and design details, size, and character of the development project. Schematic designs should identify land use, footprint of the structures, height, scale, and location of accompanying elements. The concept should also include possible architectural styles, landscaping, signage, and materials.

A. Submission of Proposal:

Proposals must be received at City of Dodge City offices located at 100 Chaffin Rd or 806 N Second Ave., Dodge City, KS 67801, no later than **January 1, 2024 at 4:00pm CST**. Proposals must be submitted in an envelope that is completely sealed, bears the name and mailing address of the Applicant, and be clearly marked, “Proposal for the Dodge City Downtown Revitalization Fund”. One (1) original unbound copy, two (2) bound copies, and a type-written document providing a link to a digital version of the proposal on a secure file hosting site should be submitted and enclosed inside the envelope.

Applicants may hand-deliver their sealed proposal by providing 24-hours’ advance notice of expected delivery date and time to bids@dodgecity.org. Should the sealed proposal require delivery by a courier mail service, please provide tracking information to bids@dodgecity.org

Proposals must be submitted with and on the official proposal forms which are included as Exhibits to this RFP. All proposals must be legibly written in ink or typewritten with all numerical amounts provided both in words and figures. Proposals must be prepared on 8-1/2” x 11 paper using a font no smaller than 11-point. Any modifications thereof or deviations therefrom may be considered non-responsive and sufficient cause for



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rejection. There shall be no conflict between the proposal and the evidence of performance ability or other documents required to be included with the proposal.

More than one proposal submitted by an Applicant under the same or different names will not be considered. Reasonable grounds for suspecting that an Applicant is submitting more than one proposal will result in all proposals by the Applicant being rejected. All submitted proposals will be rejected if there is a reason to believe that collusion exists among Applicants and no participant in such collusion will be considered in future proposals with the City of Dodge City.

The original unbound copy of the submitted proposal must be signed in ink by a duly authorized official of the Applicant. The Applicant's legal name and form of organization must be fully stated. If the Applicant is an individual, the Applicant himself/herself must sign the proposal. If the Applicant is a partnership, the signature must be that of a general partner. A proposal signed by a limited partner is not acceptable. If the Applicant is a corporation, the signature must be that of a duly authorized executive officer, attested to by the corporate secretary.

This Request for Proposal does not commit the City of Dodge City to pay any cost incurred in the submission of a proposal or the cost incurred in making necessary studies and designs for the preparation thereof, or contract for services or supplies.

B. Eligibility

To be eligible for the consideration, Applicant must:

1. State the full name and address of its organization and, if applicable, the branch office or other subordinate that will perform, or assist in performing the work. Indicate whether it operates as an individual, partnership, or corporation. If as a corporation, include the State in which it is incorporated. Indicate which State Licenses are held.
2. Include the number of executive and professional personnel by skill and qualifications that will be assigned to the work. Indicate which of these individuals you consider key to the successful completion of the project. Identify individuals who will do the majority of the work on this project by name and title. Resumes or qualifications are required for all proposed project personnel who will be assigned to the project. Qualifications and capabilities of any subconsultants shall also be included.



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3. State history of Applicant, in terms of length of existence, types of services provided, etc. Identify the technical details that make the Applicant uniquely qualified for this work.

C. Pre-Proposal Meeting

The Pre-Proposal Meeting to review and discuss the details of the RFP will be held **virtually and will take place on April 21, 2024, 10:00 am CST**. Registration and attendance by an Applicant or an Applicant's designee to the Pre-Proposal Meeting is mandatory for any Applicant wishing to submit a proposal. Any proposals received from Applicants that do not attend the Pre-Proposal Meeting will be returned to Applicant unopened.

E. Submission of Questions and Document Request:

Questions and requests for clarification or documents related to this RFP must be directed in writing, via email, to bids@dodgecity.org. The deadline for submitting such questions or requests is **May 19, 2024, 5:00pm CST**. If a substantive clarification is in order, an addendum to this RFP will be issued and posted on the City of Dodge City website at www.dodgecity.org and emailed to the Applicants registered for the Pre-Proposal Meeting.

F. Addendums and Modifications

The City of Dodge City reserves the right, in its sole discretion, to amend this RFP at any time prior to the deadline for submission of proposals. In the event that it becomes necessary to revise or expand upon any part of this RFP, all addendums, amendments, and interpretations to this RFP will be made in writing and posted on the City of Dodge City website at www.dodgecity.org and emailed to the Applicants registered for the Pre-Proposal Meeting.

G. Disqualification of Applicants

The City of Dodge City will not accept a proposal from any person or persons, firm, partnership, company, or corporation that is in default or breach of any outstanding debt or performance obligation owed to the City of Dodge City. Additionally, a proposal will not be accepted from an Applicant having a conflict of interest that could prevent carrying out the proposal in the best interest of the City of Dodge City.



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H. Non-Collusion Affidavit

Each Applicant is required to submit with its proposal on the form furnished (Exhibit A) for that purpose, an affidavit(s) that the Applicant has not entered into collusion with any other person in regard to any proposal or document submitted.

I. Sources and Uses Affidavit

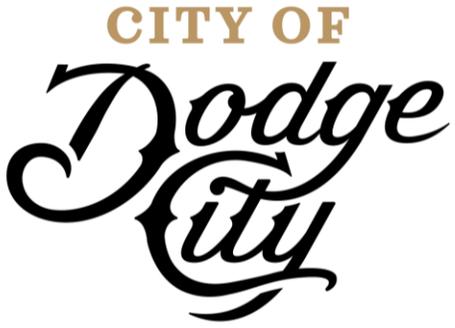
Each Applicant is required to submit with its proposal on the form furnished (Exhibit B) for that purpose, an affidavit(s) that the Applicant has provided complete and truthful information related to the sources and uses of funding for the Financing Plan of the proposed project.

J. Withdrawal of Proposal

An Applicant may withdraw its proposal any time. The withdrawal shall be written request signed in the same manner and by the same person who signed the proposal.

K. Rejection of Proposals

A violation of any of the following provisions by the Applicant shall be sufficient reason for rejection of a proposal, or shall make any contract between the City of Dodge City and the Applicant that is based on the proposal, null and void: 1) failure to submit the proposal by the stated deadline; 2) divulging the information in said sealed proposal to any person, other than those having a financial interest with the Applicant in said proposal, until after proposals have been opened; 3) submission of a proposal which is incomplete, unbalanced, obscure, incorrect, or which has conditional clauses, additions, or irregularities of any kind not in the original proposal form, or which is not in compliance with the published Invitation to Submit Proposals, or which is made in collusion with another Applicant. City of Dodge City shall have the right to waive, in its sole discretion any defects or irregularities in any proposal received.



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L. Applicant's Qualification

Each proposal must also be accompanied by the Applicant's background, qualifications, and experience. Applicant's reputation, experience and financial responsibility shall be important factors in awarding any contract under this RFP. The City of Dodge City reserves the right to be the sole judge of this determination and to accept or reject any or all proposals. The City of Dodge City will be the sole judge as to the best qualified, responsible Applicant to serve the best interests of the City of Dodge City and the Dodge City community, and may waive any informalities or technical errors that, in its judgement, will best serve these interests.

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3. Proposal Selection Criteria and Evaluation

The City of Dodge City intends to evaluate the proposals and award an Agreement to the Applicant whose proposal best meets the standards, expectations, and innovation desired as determined by the Dodge City Commissioners. Consideration will be given to the following elements:

- **Project Description and Feasibility of Success**
- **Increase in Housing Density**
- **Community Engagement and Partnership**
- **Creation of Affordable Housing Units**

Evaluation of proposals may result in short-listing multiple Applicants in which case the Applicants will be invited to interview before a selection committee and deliver a brief presentation to further narrow the number of proposals and determine the most qualified proposal. Although it is Dodge City's intent to choose only the most qualified Applicant, City of Dodge City reserves the right to choose any number of qualified proposals for final selection.

4. Awarding of Redevelopment Agreement

The notification of the Award shall give the successful Applicant no right of action or claim against the City of Dodge City upon such award until it shall have been reduced to writing in a Redevelopment Agreement and duly signed and executed by the contracting parties. The award by the City of Dodge City will not be considered complete until the Redevelopment Agreement is duly signed and executed as approved by the City Commissioners and legal counsel.

Upon execution of a term sheet and receipt of the application fee by the City of Dodge City, parties to the Redevelopment Agreement will make a good faith effort to promptly finalize negotiations of the standard form Redevelopment Agreement (Exhibit D). Upon finalization of the Redevelopment Agreement, the successful Applicant shall execute and deliver the Agreement to City of Dodge City within twenty (20) days after receipt.

Applicant should thoroughly review the attached standard Redevelopment Agreement to ensure Applicant will be able to comply with the standard terms and conditions. The City of Dodge City reserves the right to incorporate additional terms and/or conditions based on the specifications of the proposed project.



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5. Respondent's Checklist

The Following items shall be completed in full and returned to the City of Dodge City on or before the proposal due date as stated within:

- 1. Cover Letter** RFP Project title; Date of submission; Name(s) of the person(s) authorized to represent Applicant in any discussions and negotiations; Applicant's mailing addresses, phone numbers, and email address.
- 2. Narrative**: Present a written narrative for the project vision, including a reasonably detailed development program, horizontal improvements, economic benefits, and architectural concept for the site. Also indicate the proposed project schedule, including pre-development, anticipated pursuit and acquisition timeline, site control, zoning approval, financing, and construction milestones through to project completion.
- 3. Company**: Identification, qualifications, and experience of the Applicant's company including the names and titles of principals. Also provide history of firm and description of other comparable projects and history of using public funds.
- 4. Proposal Application Form (Exhibit C)**: Complete and include form with RFP proposal submission along with additional documentation as requested on the form.
- 5. Financing Plan**: Provide a detailed description of committed and projected equity and debt sources for financing the project. For equity, Applicants must describe each investor's equity commitment to the project, including letters of commitment from each equity investor stating the full terms and conditions. For debt, Applicants must provide satisfactory evidence of Applicant's ability to secure project debt, including tentative commitment letters from prospective lenders.
- 6. Design Documents**: Conceptual renderings including possible design, materials, and an estimated time frame for implementation.
- 7. Non-Collusion Affidavit (Exhibit A)**: Complete and include form with RFP proposal submission.
- 8. Sources and Uses Affidavit (Exhibit B)**: Complete and include form with RFP proposal submission.

Please submit RFP documents in the order of the above checklist to assist in the efficiency of the evaluation.



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EXHIBIT B
SOURCES AND USES AFFIDAVIT

Reference is hereby made to the undersigned Applicant’s Proposal dated _____, 2024 (“Proposal”) delivered in response to the Request for Proposal for the Downtown Streetscape on April 3, 2024 (“RFP”). Capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the RFP and/or the Proposal.

In consideration of the City of Dodge City extending consideration to the Proposal, the undersigned Applicant does hereby certify that the financial information contained in the Applicant’s Financing Plan regarding the Applicant’s source of capital and equity in the Project is complete, accurate and correct in all material respects as of the date of the Proposal. Applicant further agrees that, should any material changes in the Applicant’s sources and uses of capital or equity in the Project occur after submission of the Proposal, Applicant will promptly disclose such changes to the City of Dodge City, in writing.

Applicant further certifies to the City of Dodge City that Applicant’s Financing Plan includes a statement identifying all tax credit or other developer assistance programs applied for or which Applicant intends to apply for in connection with the Project.

Applicant acknowledges that failure to identify or disclose any development assistance from any public entity (to include any tax credit program) in connection with the Project will constitute an Event of Default under the Development Agreement and may result in Applicant being disqualified from any future City of Dodge City development projects.

Date: _____, 2024

By _____

Name _____

Title _____

"Applicant"



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EXHIBIT C

PROPOSAL APPLICATION FORM

Attached as a separate document:

The undersigned Applicant agrees to furnish, upon request from the City of Dodge City, any additional information needed to substantiate or clarify the Applicant's ability to satisfactorily fulfill the requirements of this proposal.

If Applicant requires additional space for answers that cannot fit on this form, include an additional type-written page attached immediately after the completed form that clearly labels the section in which you are providing additional information.

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EXHIBIT D

STANDARD REDEVELOPMENT AGREEMENT

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REDEVELOPMENT AGREEMENT

THIS REDEVELOPMENT AGREEMENT made and entered into, by and between the City of Dodge City, a municipal corporation, (hereinafter "DODGE CITY" or "the City") having its principal office at 806 N. 2nd Ave, Dodge City, Kansas, 67801, and _____ (the "Developer"), a *Kansas limited liability company*, having its principal office at _____.

WHEREAS, the City of Dodge City Commissioners have established a Downtown Revitalization Fund to be spent to promote the economic vitality of downtowns, including streetscaping, Façade improvements, enhanced storefront capabilities, and downtown housing.

WHEREAS, the City has established the funding for eligible projects in forms of low to no interest loans. As loans are repaid, the funds are being used to reinvest in additional projects.

WHEREAS, the City developed guidelines, proposals, and recommendations for the development or redevelopment of Dodge City properties located within the Downtown District and has appointed a Downtown Development and Redevelopment Fund Committee ("DDRF Committee") to review and make recommendations to the City Commission as to those projects determined to be the most beneficial and efficient use of said funds in providing financial assistance to developers of residential projects in the Downtown Dodge City area; and

WHEREAS, upon recommendations of the DDRF Committee, DODGE CITY has selected Developer to receive funding to assist in the development of a _____ project.

WHEREAS, the Developer shall construct, maintain and operate the _____ Project consisting of a _____ development located at _____, Dodge City, Kansas 67801. The _____ are to be constructed in a good and workmanlike manner and substantially in accordance with the representations set forth in that certain proposal filed with City on _____, 202_, by Developer in response to the Request For Proposal (RFP) issued by the DODGE CITY on or about November 1, 2024; and

WHEREAS, based upon the recommendation of the DDRF Committee and the selection of the Developer by DODGE CITY, DODGE CITY has been directed to enter into negotiations for a Redevelopment Agreement between DODGE CITY and Developer in order to make available financial assistance in the sum of (\$XXX.00), in the form of a ___ percent (___%) interest bearing loan for a _____ (XX) year period secured by a Promissory Note and second or primary Mortgage on the premises above described, all in accordance with the terms and conditions of this Redevelopment Agreement, and the agreement between DODGE CITY and the City governing the administration of funds.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and conditions set forth herein, the parties hereto do hereby agree as follows, to-wit:

SECTION 1. DEFINITIONS

The terms set forth herein shall for all purposes of this Redevelopment Agreement have the following meanings. Unless the context otherwise indicates, words importing the singular shall include the plural and vice versa and the use of the neuter, masculine or feminine gender is for convenience only and shall be deemed to mean and include the neuter, masculine and feminine gender.

- A. "Advance" shall mean any of the advances of funds requested by the Developer and approved by DODGE CITY to reimburse Developer for "Expenditures Eligible for Reimbursement" incurred by Developer in the development of the _____ Project.
- B. "Advance Request" means each Advance Request submitted by the Developer and approved by DODGE CITY in the form set forth on Attachment "A" attached hereto.
- C. "City" means the City of Dodge City, Kansas.
- D. "Developer" means _____.
- E. "Effective Date" means, for the purpose of measuring the term of the Loan and the maturity date of the Promissory Note, the date that the Developer submits its first Advance Request.
- F. "Expenditures Eligible for Reimbursement" means all Development Costs reasonably and necessarily incurred by the Developer in the development and construction of the _____ Project.
- G. "Development Costs" means the costs associated with construction of the improvements, including labor, materials, supplies, and services.
- H. "Downtown Dodge City" means that area bounded by the loop known as the Inner Dispersal Loop created around the central business district by various highways in Dodge City.
- I. "Loan" means the six percent (6%) interest bearing loan from DODGE CITY to the Developer in the principal sum of _____ (\$XXX.00) as evidenced by the Promissory Note and secured by the second Mortgage.
- J. "Maximum Amount of Advances" means the principal sum of _____ (\$XXX.000)
- K. "Mortgage" means that certain primary or second mortgage granted by Developer to DODGE CITY against the Property securing the repayment of the Loan, which Mortgage shall at all times be subordinate to the first mortgage and assignment of rents granted by Developer to Senior Lender.
- L. "Property" means the real estate located at _____ ORIGINAL TOWN, CITY OF DODGE CITY, Ford County, State of Kansas, according to the recorded Plat thereof.
- M. "Senior Lender" means _____ or such other lender chosen by Developer to finance the acquisition, construction, and/or permanent financing of the _____ Project and who holds the first mortgage and assignment of rents referenced herein.
- N. "Termination Event" shall mean the occurrence of any of the following:
1. Default under Redevelopment Agreement. Any material default in or breach of the terms and provisions of this Redevelopment Agreement by the Developer which has not been remedied to the satisfaction of DODGE CITY or the City, within ninety (90) days after written notice thereof has been given to the Developer.
 2. Breach of Warranties or Representations. Any warranty, representation, Advance Request, statement, certificate, schedule or report made or furnished to DODGE CITY by the Developer proves to be materially false or misleading at the time of the making thereof.

SECTION 2. SCOPE OF THE DEVELOPMENT; DEFINITION OF REDEVELOPMENT PROJECT

The Developer will incur and expend construction costs of at least _____ (\$XXX.00) toward construction of the _____ Project, consisting of the following:

- A. At least ____ (XX) Number of Housing Units (average unit size above ____ square feet)
- B. At least ____ square feet of commercial space; and
- C. Façade Improvements conforming to the Downtown Streetscape Plans; and,
- D. All necessary public and private utility relocations.

SECTION 3. SUBMISSION OF CONSTRUCTION PLANS

A. All Construction Documents and any changes subsequently made with respect to the development or redevelopment of the Property and construction of improvements shall be in compliance with, all necessary permits, inspections, applicable codes and procedures of, the City of Dodge City; and Developer shall furnish copies of such permits to DODGE CITY. Further, all such plans shall be substantially in compliance with the descriptions, standards, specifications, and representations set forth in the documents submitted to the DDRF Committee and DODGE CITY and this Agreement. In the event of conflict between the descriptions, standards, specifications, and representations set forth in the documents submitted to the DDRF Committee and DODGE CITY and this Agreement, this Agreement shall control and govern.

B. The City of Dodge City, Kansas may retain record copies of all documents, including drawings, specifications, invoices, and data created by or submitted to DODGE CITY in connection with the redevelopment of the Property. Provided however, this provision does not transfer any common law, statutory, intellectual property, or other property rights, including without limitation copyrights, in the aforementioned documents to DODGE CITY or the City of Dodge City.

SECTION 4. SCHEDULE OF REDEVELOPMENT

The Developer shall begin construction of the _____ Project no later than _____, and shall thereafter diligently prosecute to completion, the construction of the _____ Project in order to complete and receive its full and final Certificate of Occupancy within _____ (XX) months of the commencement date. If at any time during construction, the Developer determines that it will not be able to complete construction of the _____ Project within the time allocated, it shall forthwith give notice to DODGE CITY of that fact and advise DODGE CITY of the reason for the delay and the additional time needed for completion. DODGE CITY may grant additional time by amending this Redevelopment Agreement or, in the alternative, may elect to terminate this Redevelopment Agreement by reason of the failure of Developer to timely complete the work. Notice of termination shall be given in the manner set forth in Section 18.

SECTION 5. CONDITIONS PRECEDENT TO FUNDING OF LOAN

DODGE CITY shall have no obligation to advance funds under this Redevelopment Agreement before and until the following conditions have been satisfied:

- A. An abstract of title, certified to a current date, showing marketable title to the Property to be vested in the Developer, subject only to the Acquisition Mortgage described in Section 6, below.
- B. Documentation in such form as DODGE CITY shall reasonably require, demonstrating that Developer has secured necessary private funding for the _____ Project and all required insurance coverage are in force.
- C. DODGE CITY shall have determined that the financing, development and construction documents, and all other aspects of the proposed redevelopment are in substantial compliance with the application, documents, proposals, and representations of the Developer made to the DDRF Committee and to DODGE CITY.
- D. Funds to cover the full Loan Amount exist in the Downtown Development and Redevelopment Fund.

SECTION 6. TITLE

A. Developer, within thirty (30) days following the execution and delivery of this Redevelopment Agreement, shall furnish DODGE CITY an abstract of title certified to a current date, showing a marketable title to the Property vested in Developer, subject only to reasonable easements, restrictions or obligations of record, and a first mortgage and assignment of rents in favor of Senior Lender as Mortgagee in the principal amount of _____ Dollars (\$XXX.00) (the "Acquisition Mortgage"). DODGE CITY shall have twenty (20) days after receipt of the abstract in which to have the abstract examined and furnish Developer notice in writing of any title objections thereto. Developer shall then have reasonable time as may be agreed on by the parties in which to correct said objections to the satisfaction of DODGE CITY. Marketability of title shall be based on the title standards of the Kansas Bar Association.

B. Upon acceptance of title to the Property by DODGE CITY, a loan Closing shall be scheduled at a mutually agreeable date and time at the offices of DODGE CITY. At Closing, the Developer shall execute a Promissory Note and second Mortgage to DODGE CITY in the forms attached hereto as Exhibit "B" and Exhibit "C" in the principal amount of the loan (the Loan Amount), for the sum of _____ (\$XXX.00). DODGE CITY shall promptly file the Mortgage for recordation among the land records of Dodge City County, Kansas, showing DODGE CITY as a mortgagee. DODGE CITY shall execute for recording any subordination agreement reasonably requested by Senior Lender to evidence the subordination of the Mortgage to Senior Lender's first mortgage and assignment of rents.

SECTION 7. DODGE CITY AND CITY RIGHT TO INSPECT

A. Developer acknowledges and agrees that DODGE CITY and the City of Dodge City shall have the right to inspect the Property and _____ Project at all reasonable times upon receipt of twenty-four (24) hours written notice.

SECTION 8. LIMITATION UPON ENCUMBRANCE OF PROPERTY

A. After execution of this Redevelopment Agreement and prior to the Developer's repayment of the Loan, the Developer shall not engage in any financing or any other transaction creating any mortgage, encumbrance, or lien upon the Property whether by express Redevelopment Agreement or operation of law, or suffer any encumbrance or lien to be made on or attached to the Property with priority superior to the DODGE CITY second mortgage except for any first mortgage and assignment of rents not exceeding _____ (\$XXX.00) which may now or hereafter affect the Property, without the prior written consent of DODGE CITY. The Developer may re-finance or convert the Acquisition Mortgage and/or obtain such other financing and provide such security as Developer deems necessary for completion of the _____ Project, but in no event will the amount of such first mortgage and assignment of rents on the Property exceed the amount of _____ (\$XXX.00) without the consent of DODGE CITY. Any such increase without the consent of DODGE CITY will constitute a violation of this Redevelopment Agreement and cause the indebtedness due to be accelerated. The Mortgage shall be subject, junior, and subordinate at all times to the lien of any first mortgage and assignment of rents not exceeding _____ (\$XXX.00) which may now or hereafter affect the Property, including, without limitation the first mortgage and assignment of rents granted to Senior Lender, and to all renewals, modifications, amendments, consolidations, replacements, and extensions thereof. DODGE CITY and the City of Dodge City agree to execute and deliver any instrument which may be reasonably required by the Developer or any mortgagee or trustee of Developer in confirmation of such subordination promptly upon Developer's request. For the avoidance of doubt, this Section 8 limitation upon encumbrance of property shall not limit Developer's right to obtain any other financing for completion of the _____ Project, including without limitation bridge loans, provided such financing is not secured by a mortgage, lien, or encumbrance upon the Property with priority superior to the Mortgage, unless approved by DODGE CITY.

(WHERE APPLICABLE) In addition, Developer may execute any amendments and or property transfers or leases necessary to effectuate the restoration of the historic interior and exterior of the _____ Project, and the development of the _____ Project that will qualify for historic rehabilitation tax credits allowed for qualified rehabilitation expenditures incurred in connection with the "certified rehabilitation" of a "certified historic structure" (the "Historic Tax Credit") pursuant to Sections 47 and 50 of the Internal Revenue Code of 1986, as amended from time to time, or any corresponding provision or provisions of prior or succeeding law (the "Code").

B. Should any taxes, assessments, encumbrance, mechanic's or any materialmen's lien, or any other unauthorized encumbrance or lien attach to the Property, and the Developer fail to take or cause to be taken corrective measure to cure any such encumbrance or lien within ninety (90) days after written demand by DODGE CITY, or such other time as agreed in writing by both parties, this Redevelopment Agreement shall be in default.

C. Developer agrees that all the proceeds of any first or second mortgage and all funds received from the Loan from DODGE CITY herein authorized must be expended on the _____ Project on the Property described herein.

SECTION 9. DILIGENCE REQUIRED

A. The Developer agrees for itself, its successors, and assigns to promptly begin and diligently complete the _____ Project on the Property through the construction of the improvements thereon, and the construction shall in any event be begun and completed within the periods specified above, unless a written extension has been approved and executed by both parties. It is agreed that these Redevelopment Agreements and covenants shall, until terminated in accordance with Section 15, be covenants running with the land, binding for the benefit of the City of Dodge City, Kansas and DODGE CITY, and enforceable by DODGE CITY and the City against the Developer and its successors and assigns.

B. If the Developer, or its successor in interest, shall materially default in or violate its obligations with respect to the construction of the improvements (including the nature and dates for the beginning and completion thereof), or shall abandon or substantially suspend construction work, and the Developer fails to take or cause to be taken corrective measure to cure any such default, violation, abandonment, or suspension within ninety (90) days after written demand by DODGE CITY, or such other time as agreed in writing by both parties, then DODGE CITY shall have the right to institute such actions or proceedings, in law or in equity, as it may deem desirable, including foreclosure through judicial proceedings.

SECTION 10. CONTACT PERSON

The Developer represents that _____ is the owner of a majority interest in the Developer and the manager of Developer. _____ shall act as primary contact person, acting on behalf of the Developer regarding all aspects of the project. Developer may update this information periodically and any changes or updates to the contact information below shall be provided to DODGE CITY in writing. The Developer furnishes the following contact information and grants permission for the City or DODGE CITY to contact:

Name:

Address:

Address:

Phone:

Email:

SECTION 11. UNCONTROLLABLE FORCES

Neither DODGE CITY nor the Developer shall be considered to be in default of this Redevelopment Agreement if delays in or failure of performance shall be due to forces which are beyond the reasonable control of the parties, including, but not limited to: fire, flood, earthquakes, storms, lighting, epidemic,

pandemic, war, riot, civil disturbance, sabotage, inability to procure supplies, materials or services required to be provided by either DODGE CITY or the Developer under this Redevelopment Agreement. The time for the performance of the obligations shall be extended for the period of each delay on a cumulative basis, as mutually determined in writing by DODGE CITY and Developer.

SECTION 12. LOAN PROCEEDS AVAILABLE TO DEVELOPER

A. Loan proceeds available to the Developer are subject to the terms and conditions set forth herein and any terms contained in the City of DODGE CITY Agreement, as well as the Promissory Note and Mortgage, Attachments Exhibits "B" and "C", in the principal sum of _____ (\$XXX.00). These funds shall be available to draw upon by the Developer for reimbursement of Development Costs solely from the City of Dodge City Account established for the funding of the _____ Project described herein. Reimbursement shall be made only for the Developer's Expenditures Eligible for Reimbursement properly submitted to and approved by DODGE CITY and the City.

SECTION 13. INSURANCE

Prior to commencement of construction of the _____ Project, Developer shall provide to DODGE CITY the following documents:

A. A copy of the general contractor's certificate of insurance from an insurance company licensed to do business in Kansas evidencing all-risk builders risk insurance with coverage at least in the amount of the Loan Amount.

B. A certificate evidencing general liability insurance for all contractors and subcontractors with bodily injury and property damage combined single limit coverage of not less than \$1,000,000.00 and not less than \$2,000,000.00 in the aggregate. DODGE CITY shall be notified of any policy cancellation by thirty (30) days written notice.

SECTION 14. APPLICATION FOR ADVANCES

Requests from the Developer for an Advance of Expenditures Eligible for Reimbursement shall be made to DODGE CITY.

A. Requests shall be made no more frequently than once every thirty (30) days. DODGE CITY will pay Developer all undisputed portions of the Request within thirty (30) days of receipt of such Request.

B. No amounts shall be reimbursed after DODGE CITY has provided Developer a Certificate of Completion in accordance with Section 15 of this Agreement unless, by subsequent action, DODGE CITY has authorized an extension of said date.

C. All Advance Requests shall be made utilizing the Advance Request form attached hereto and include the following:

1. When and where applicable, requests shall be submitted on an AIA Document G702 with certification by a licensed architect and include a schedule of values for all elements of work performed; and
2. A detailed invoice of expenses incurred during the timeframe of the Request; and

3. When applicable, an approved City permit related to the applicable expense on the invoice, and which DODGE CITY has reviewed; and
4. A signed subcontractor lien waiver for each applicable portion on the invoice; and
5. A valid certificate of insurance for all insurances, including but not limited to: worker's compensation for each contractor or subcontractor services on the invoice.

SECTION 15. CERTIFICATE OF CONSTRUCTION COMPLETION

A. Promptly after completion of the construction of the improvements in accordance with this Redevelopment Agreement, and upon written notification from the Developer that the work has been completed, the Developer shall provide to DODGE CITY a copy of the Certificate of Occupancy issued by the City, following the City's final building inspection; and DODGE CITY, after a satisfactory final inspection, will furnish the Developer with a Certificate of Completion. The certification by DODGE CITY shall be a conclusive determination of satisfaction and termination of the covenants in this Redevelopment Agreement with respect to the obligations of the Developer and its successors and assigns to construct the improvements. The certification shall be in such form as will enable it to be recorded in the Dodge City County land records.

B. All other covenants in this Redevelopment Agreement shall remain in force and effect upon the Developer and its successors and assigns until the Loan is repaid and a release of the Mortgage has been filed of record.

SECTION 16. AFFORDABLE HOUSING & COMPLIANCE MONITORING

The Developer agrees to the following:

A. Developer shall annually certify compliance with the Developer's Affordable Units and Workforce Units requirements utilizing an "Annual Certification" on a form prescribed by DODGE CITY. This report will be due on _____ of each year for the preceding twelve (12) month certification period.

B. DODGE CITY will notify the Developer in writing if DODGE CITY discovers that the Developer's activities do not comply with the affordability covenants in this Redevelopment Agreement. In such event, a correction period of 90 days to correct noncompliance issues may be allowed. Developer is solely responsible for compliance with the affordability covenants regardless of DODGE CITY's notification or not.

C. Developer's failure to certify compliance or to maintain compliance with Developer's Affordable Units requirements shall constitute an event of default and breach of this Redevelopment Agreement.

SECTION 17. NON-DISCRIMINATION IN EMPLOYMENT, ACCESS, RENTAL, OR SALE

The Developer agrees for itself, its successor and assigns that the _____ Project is open to all persons without discrimination on the basis of race, color, religion, sex, sexual orientation, age, national origin or handicap status and that there shall be no discrimination in employment, and allowing use of or access to the public areas of the Property or in the rental or sale of the housing units. Developer agrees to include a statement to that effect in any advertisement for the construction, rental or sale of the residential units, retail or restaurant spaces.

SECTION 18. NOTICES AND DEMANDS

A notice, demand or other communication under this Redevelopment Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail postage prepaid, return receipt requested, electronic mail (with confirmation of receipt) or delivered personally as follows:

To DODGE CITY:
City of Dodge City Redevelopment Fund
100 Chaffin Rd.
Dodge City, KS 67801
Attention: City Manager
Email: nickh@dodgecity.org

With a copy to:
Paige Gilmore, City Attorney
City of Dodge City
806 N. 2nd Ave.
Dodge City, KS 67801
Email: paigeg@dodgecity.org

To the Developer:
Email:
With a copy to:
To the Senior Lender:
With a Copy to:

SECTION 19. PROHIBITION AGAINST TRANSFER OF THE PROPERTY WITHOUT WRITTEN PERMISSION OF DODGE CITY

The Developer has not made or created, and will not, prior to the repayment of the Loan Amount in full, as certified by a Mortgage release filed by DODGE CITY, make or suffer to be made the sale of all or any part of the Property, except as hereinafter provided, and agrees the Property is subject to the Due on Sale Clause. This restriction shall not prohibit the owners of Developer (and/or any owner of an interest in the owners of Developer) from transferring all or part of an ownership interest in the Developer to any member of his family within the second degree of consanguinity (including a trust established for such family member), another owner of Developer, an affiliate of an Owner of Developer, or other entity owned either as a stockholder, member, or partner of Developer. Further, it shall not prohibit the owners of Developer from transferring or selling up to an undivided forty-nine percent (49%) of the ownership interest in the Developer.

SECTION 20. LEASE OF UNITS PERMITTED.

The Developer shall have the right to lease any unit of the Property within the building, whether residential, commercial, or retail; provided however, all residential units redeveloped pursuant to this Redevelopment Agreement shall only be leased for the uses described herein.

SECTION 21. REDEVELOPMENT AGREEMENT TO SURVIVE CLOSING OF LOAN

Except as set forth in Section 15, the terms and provisions of this Redevelopment Agreement shall survive the Closing and remain in full force and effect until the repayment of all sums due under the Promissory Note and Mortgage from Developer to DODGE CITY.

SECTION 22. DEFAULT OR BREACH OF REDEVELOPMENT AGREEMENT

Except as otherwise provided in this Redevelopment Agreement, in the event of any material default in or breach of the Redevelopment Agreement, or any of its terms or conditions, by either party hereto, or any successor to such party, such party (or successor) shall, upon written notice from the other, proceed immediately to cure or remedy such default or breach, and, in any event, within ninety (90) days after receipt of such notice. In case such action is not taken or diligently pursued, or the default or breach shall not be cured or remedied within such time, the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, but not limited to, proceedings to compel specific performance by the party in default or breach of its obligations and/or foreclosure of the Mortgage. DODGE CITY shall provide written notice to the Senior Lender prior to taking any remedial action or instituting any proceedings as may be necessary or desirable in its opinion to cure and remedy a default or breach of Developer.

No official, employee, or agent of the City shall be personally liable to the Developer, or any successor in interest, pursuant to the provisions of this Redevelopment Agreement, for any default or breach. No provision herein shall create a personal guarantee of the performance of this Redevelopment Agreement, and no member, manager, representative, or agent of Developer shall be personally liable to the City of Dodge City pursuant to the provision of this Redevelopment Agreement for any default or breach by Developer.

SECTION 23. COUNTERPARTS

This Redevelopment Agreement may be executed in counterparts, each of which shall constitute one and the same instrument and may be used as an original.

IN WITNESS WHEREOF, the Developer and DODGE CITY have caused this Redevelopment Agreement to be duly executed this ____ day of _____, 20____.