

# **CITY COMMISSION MEETING AGENDA**

City Hall Commission Chambers

806 N 2<sup>nd</sup> Avenue

Monday, June 17, 2024

7:00 p.m.

MEETING #5283

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

1. Watch live on our Facebook page at [www.facebook.com/cityofdodgecity](http://www.facebook.com/cityofdodgecity)

2. Or watch it on our Vimeo page at [www.vimeo.com/cityofdodgecity](http://www.vimeo.com/cityofdodgecity).

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

## **CALL TO ORDER**

## **ROLL CALL**

**INVOCATION BY** Minister Dusty Cookson of First Christian Church

## **PLEDGE OF ALLEGIENCE**

## **APPROVAL OF AGENDA**

## **PETITIONS & PROCLAMATIONS**

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

## **CONSENT CALENDAR**

1. Approval of City Commission Meeting Minutes, June3, 2024.
2. Appropriation, Ordinance No.14, June 17, 2024.
3. Cereal Malt Beverage License:
  - a. El Charro Restaurant of Dodge City, 1209 W. Wyatt Earp Blvd.
  - b. Love's Travel Stops, 400 E. Wyatt Earp Blvd.
  - c. Riverside RV Park, 500 Cherry Street.

## **ORDINANCES & RESOLUTIONS**

**Ordinance No. 3811:** An Ordinance Designating Dodge City Days as a Special Event in the City of Dodge City, Kansas. Report by Nicole May, Finance Director.

**Resolution No. 2024-11:** A Resolution of the Governing Body of the City of Dodge City, Kansas Determining that the City is Considering Establishing a Kansas Reinvestment Housing Incentive District Within the city and Adopting a Plan for the Development of Housing and Public Facilities in such Proposed District; Establishing the Date and Time of a Public Hearing on Such Matter, and Providing for the Giving of Notice of Such Public Hearing(USD 443). Report by Mollea Wainscott, Assistant Director of Economic Development.

## **UNFINISHED BUSINESS**

## **NEW BUSINESS**

1. Approval to Purchase an Animal Control Vehicle Topper. Report by Ryan Reid, Director of Administration.
2. Approval to Purchase New Mowers for Parks and Athletic Field Maintenance Divisions. Report by Ryan Reid, Director of Administration.
3. Approval of the Professional Engineering Services Agreement for the Road and utility Improvements to South 14th (W. McArtor Rd. to US 56) & West McArtor Road (S. 14th Ave. to S. 2nd Ave.). Report by Ray Slattery, Director of Engineering Services.
4. Approve the Amendment to the NAESB and Transaction Confirmation with STX Commodities, LLC. Report by Tanner Rutschman, City Engineer.

## **OTHER BUSINESS**

## **STAFF REPORTS**

## **EXECUTIVE SESSION**

Data Relating to the Financial Affairs or Trade Secrets of Corporations, Partnerships, Trusts, and Individual Proprietorship

## **EXECUTIVE SESSION**

Preliminary Discussions Relating to the Acquisition of Real Property

## **ADJOURNMENT**

# **CITY COMMISSION MEETING MINUTES**

City Hall Commission Chambers

806 N 2<sup>nd</sup> Avenue

Monday, June 3, 2024

7:00 p.m.

MEETING # 5282

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

1. Watch live on our Facebook page at [www.facebook.com/cityofdodgecity](http://www.facebook.com/cityofdodgecity)
2. Or watch it on our Vimeo page at [www.vimeo.com/cityofdodgecity](http://www.vimeo.com/cityofdodgecity).

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

## **CALL TO ORDER**

**ROLL CALL** Mayor Chuck Taylor, Commissioners Jeff Reinert, Daniel Pogue, Rick Sowers, Michael Burns

**INVOCATION BY** Minister Dusty Cookson of First Christian Church

## **PLEDGE OF ALLEGIENCE**

## **APPROVAL OF AGENDA**

Mayor Chuck Taylor moved to revise the agenda adding Resolution No. 2024-10. Commissioner Michael Burnsmade a motion to approve to revise the agenda with the addtion. Commissioner Jeff Reinert seconded the motion. The motion carried 5 - 0.

## **PETITIONS & PROCLAMATIONS**

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

Mike Benzel representative of the Christian Motorcyle Association thanked the commission and the City for the use of the facilities in the Wright Park.

Dan Boatright a citizen of Dodge City has concerns about the condition of the Maple Grove Cemetery for Memorial Day and hoped to see some changes in the future.

Wichita State University David Guo, Interim Director of Hugo Wall School of Public Affairs and Dr. Mercy Umeri, Mini-MPA Coordinator were present to recognize several city employees for the completion of the Mini MPA (Master of Public Administration). They were recognized and presented with a plaque from Wichita State University Hugo Wall School.

## **CONSENT CALENDAR**

1. Approval of City Commission Meeting Minutes, May 20, 2024.
2. Appropriation, Ordinance No.13, June 3, 2024.
3. Cereal Malt Beverage License:
  - a. Walmart Store, 1905 N. 14<sup>th</sup> Avenue

Commissioner Daniel Pogue moved to accept the consent calendar as presented. Commissioner Jeff Reinert seconded the motion. The motion carried 5 – 0.

## **ORDINANCES & RESOLUTIONS**

### **UNFINISHED BUSINESS**

### **NEW BUSINESS**

1. Commissioner Michael Burns moved to approve the Change Order #2 in the amount of \$199,621.58 for Iron Flat's, Phase 1 infrastructure. Commissioner Daniel Pogue seconded the motion. The motion carried 5 – 0.
2. Commissioner Michael Burns moved to approve the Change Order #11 in the amount of \$199,621.58 for the expansion of the South Wastewater Treatment Plant (redundant communications at the primary and intermediate lift stations). Commissioner Jeff Reinert seconded the motion. The motion carried 5 – 0.
3. Commissioner Daniel Pogue moved to approve the Change Order #12 in the amount of \$27,695 for the expansion of the south Wastewater Treatment Plant crane upgrade at the Hilmar Lift Station. Commissioner Michael Burns seconded the motion. The motion carried 5 – 0.
4. Commissioner Jeff Reinert moved to approve Change Order #13 in the amount of \$60,764 for the expansion of the south Wastewater Treatment Plant (anaerobic cell #4 additional coating area). Commissioner Daniel Pogue seconded the motion. The motion carried 5 – 0.
5. Commissioner Daniel Pogue moved to approve the lease agreement with Dodge City Community College for leasing the space in the Chaffin Building at 100 Chaffin Road. Commissioner Michael Burns seconded the motion. The motion carried 5 – 0.

**OTHER BUSINESS**

**STAFF REPORTS**

**ADJOURNMENT**

Commissioner Michael Burns moved to adjourn the meeting. Commissioner Rick Sowers seconded the motion. The motion carried 5 - 0.

ATTEST:

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Mayor

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City Clerk



# Memorandum

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

**From:** Nicole May, Finance Director

**Date:** June 11, 2024

**Subject:** Ordinance No. 3811 Designating Dodge City Days as a Special Event

**Agenda Item:** Ordinances and Resolutions

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**Purpose:** Ordinance No. 3811 is needed to designate Dodge City Days as a Special Event to allow the State to issue a temporary permit to those businesses requesting to sell alcohol outside their normal business.

**Recommendation:** I recommend approval of Ordinance No. 3811.

**Background:** Some businesses that sell alcohol frequently request a temporary alcohol permit in areas that includes the street or public property outside their normal business K.S.A. 41-719 allows for a city to designate a festival or other similar community gathering, such as Dodge City Days, as a "special event" as a condition precedent to allowing the State of Kansas the discretion to issue temporary permits for the consumption of alcohol. The first step in allowing the State to issue a temporary permit is to pass an ordinance designating Dodge City Days as a Special Event.

We commonly have different events during the Dodge City Days and historically those events have caused no issues for the city or any of the participants.

**City Commission Options:**

1. Approve Ordinance No. 3811
2. Disapprove Ordinance No. 3811
3. Table for further discussion Ordinance No. 3811

**Financial Considerations:**

Amount \$: N/A

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

**Legal Considerations:** None

**Mission/Values:** Together we promote open communications with our community members.

**Attachments:** Ordinance No. 3811

**Approved for the Agenda by:**

*Nicole May*

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**Nicole May, Finance Director**

ORDINANCE NO. 3811

AN ORDINANCE DESIGNATING DODGE CITY DAYS AS A SPECIAL EVENT IN THE CITY OF DODGE CITY, KANSAS.

**WHEREAS**, Dodge City Days is a ten (10) day special event held annually during the last week in July and first week in August; and,

**WHEREAS**, the City of Dodge City celebrates its historical roots during this city-wide special event; and,

**WHEREAS**, a variety of activities are held throughout the City during this special event; and,

**WHEREAS**, K.S.A. 41-719 allows for a city to designate a festival or other similar community gathering, such as Dodge City Days, as a “special event” as a condition precedent to allowing the State of Kansas the discretion to issue temporary permits for the consumption of alcohol; and,

**WHEREAS**, the City of Dodge City has been asked to make such designation as a prelude for business and individuals to request temporary permits from the State of Kansas for the sale and consumption of alcoholic liquor on public streets, alleys, sidewalks, roads or highways at special events as defined by K.S.A. 41-719(a)(2).

**NOW THEREFORE**, the City of Dodge City hereby designates the community gathering and festival, commonly known as Dodge City Days as a “special event” in Dodge City, Kansas. This special event will extend for a period of ten (10) days beginning on July 26, 2024 and ending on August 4, 2024.

The Ordinance will take effect upon approval by the City Commission and upon publication of a summary Ordinance in the Dodge City Daily Globe.

Approved this 17<sup>th</sup> day of June 2024.

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Mayor

ATTEST:

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City Clerk



# Memorandum

**To:** City Manager, City Commissioners  
**From:** Mollea Wainscott, Assistant Director of Economic Development  
**Date:** 06/17/24  
**Subject:** RHID  
**Agenda Item:** Resolution 2024-11

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**Purpose:** To establish a date and time for a public hearing to approve a Development Plan for USD 443.

**Recommendation:** Staff recommends adoption of Resolution 2024-11, which establishes a date and time for a public hearing as required by Kansas statute.

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

**City Commission Options:**

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

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

**Legal Considerations:** None

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

**Attachments:** Resolution No. 2024-11

**Approved for the Agenda by:**

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Name, Title

**RESOLUTION NO. 2024-11**

**A RESOLUTION OF THE GOVERNING BODY OF THE CITY OF DODGE CITY, KANSAS DETERMINING THAT THE CITY IS CONSIDERING ESTABLISHING A KANSAS REINVESTMENT HOUSING INCENTIVE DISTRICT WITHIN THE CITY AND ADOPTING A PLAN FOR THE DEVELOPMENT OF HOUSING AND PUBLIC FACILITIES IN SUCH PROPOSED DISTRICT; ESTABLISHING THE DATE AND TIME OF A PUBLIC HEARING ON SUCH MATTER, AND PROVIDING FOR THE GIVING OF NOTICE OF SUCH PUBLIC HEARING. (USD 443)**

**WHEREAS**, K.S.A. 12-5241 et seq. (the “Act”) authorizes any city incorporated in accordance with the laws of the state of Kansas (the “State”) to designate reinvestment housing incentive districts within such city; and

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

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

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

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

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

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

**WHEREAS**, the Governing Body of the City has heretofore adopted Resolution No. 2024-08 which made certain findings relating to the need for financial incentives relating to the construction of quality housing within the City, declared it advisable to establish a Reinvestment Housing Incentive District pursuant to the Act and authorized the submission of such Resolution and a Housing Needs Analysis to the Kansas Department of Commerce in accordance with the provisions of the Act; and

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

**WHEREAS**, the Plan includes:

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

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

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

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

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

**Section 3. Public Hearing.** Notice is hereby given that a public hearing will be held by the Governing Body of the City to consider the establishment of the District and adoption of the Plan on August 5, 2024, at the City Commission Meeting Room, City Hall, 806 N. Second Avenue, Dodge City, Kansas 67801; the public hearing to commence at 7:00 p.m. or as soon thereafter as the Governing Body can hear the matter. At the public hearing, the Governing Body will receive public comment on such matters, and may, after the conclusion of such public hearing, consider the findings necessary for establishment of the District and adoption of the Plan, all pursuant to the Act.

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

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

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

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

**ADOPTED** by the Governing Body of the City of Dodge City, Kansas, on June 17, 2024.

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Mayor

ATTEST:

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City Clerk

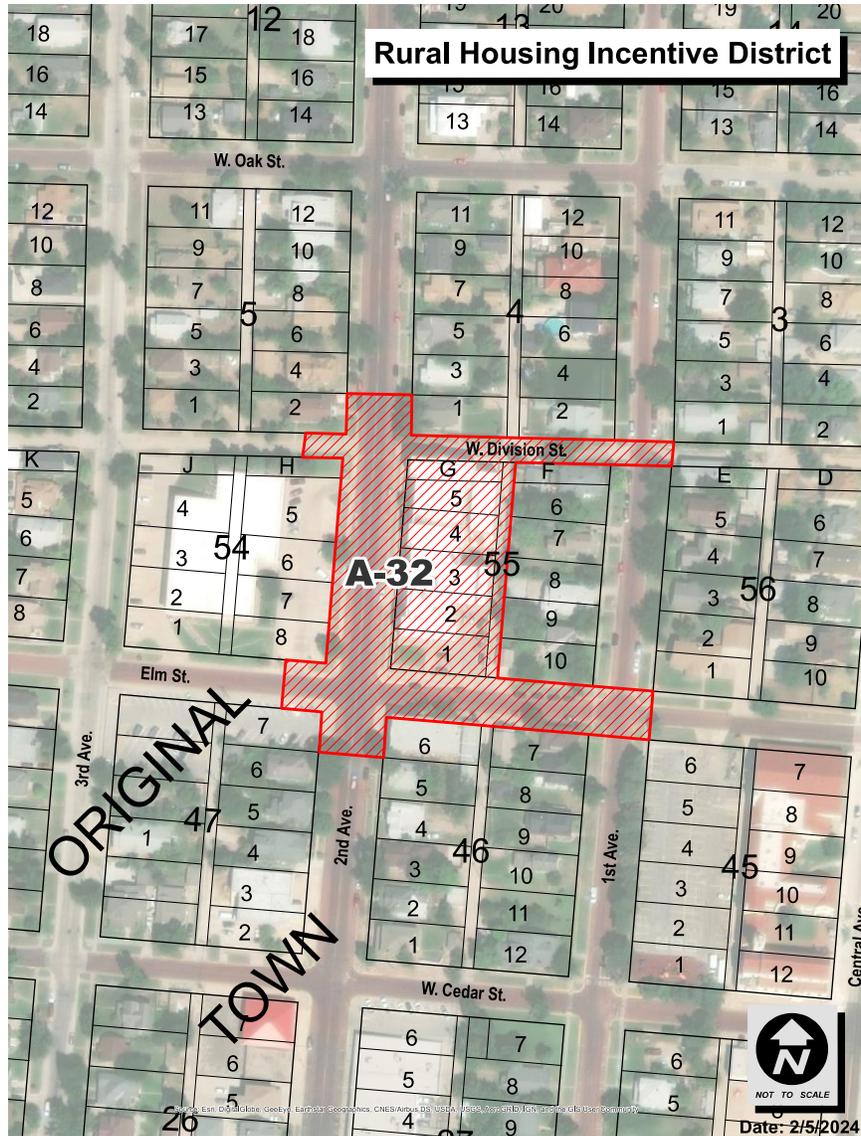
***EXHIBIT A***

**LEGAL DESCRIPTION OF PROPOSED  
REINVESTMENT HOUSING IMPROVEMENT DISTRICT BOUNDARIES  
FOR USD 443**

Beginning at the intersection of the North right-of-way line of W. Division Street and the West right-of-way line of Second Avenue; thence north along said West line of Second Avenue a distance 50 feet; thence east to a point on the East right-of-way line Second Avenue that is 50 feet north of the North right-of-way line of W. Division Street; thence south along said East line of Second Avenue to North right-of-way line of W. Division Street; thence east along said North line of W. Division Street extended to the East right-of-way line of First Avenue; thence south to the intersection of the East right-of-way line of First Avenue and the South right-of-way line of W. Division Street; thence west along said South line of W. Division Street to the East right-of-way line of the alley in Block 55, Original Town; thence south along said East line of alley to the North right-of-way line of W. Elm Street; thence east along said North line of W. Elm Street extended to the East right-of-way line of First Avenue; thence south to the intersection of the East right-of-way line of First Avenue and the South right-of-way line of W. Elm Street; thence west along said South line of W. Elm Street to the East right-of-way line of Second Avenue; thence south along said East line of Second Avenue a distance of 50 feet; thence west to a point on the West right-of-way line of Second Avenue that is 50 feet south of the South right-of-way line of W. Elm Street; thence north along said West line of Second Avenue to the South right-of-way line of W. Elm Street; thence west along said South line of W. Elm Street a distance of 50 feet; thence north to a point on the North right-of-way line of W. Elm Street that is 50 feet west of the West right-of-way line of Second Avenue; thence east along said North line of W. Elm Street to the West right-of-way line of Second Avenue; thence north along said West line of Second Avenue to the South right-of-way line of W. Division Street; thence west along said South line of W. Division street a distance of 50 feet; thence north to a point on the North right-of-way line of W. Division Street that is 50 feet west of the West right-of-way line of Second Avenue; thence east along said North line of W. Division Street to the West right-of-way line of Second Avenue and the Point of Beginning.

**EXHIBIT B**

**MAP OF PROPOSED  
REINVESTMENT HOUSING IMPROVEMENT DISTRICTS BOUNDARIES  
FOR USD 443**



*EXHIBIT C*

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

Owner of Record:

USD 443  
2112 1<sup>st</sup> Avenue  
Dodge City, KS 67801

2024 Assessed Valuation:

Land: \$54,500  
Improvements: \$0 (vacant land)

## ***EXHIBIT D***

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

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

The housing facilities will be composed of five (5) single-family residential structures.

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

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

***EXHIBIT E***

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

Contractual Assurances.

The Governing Body of the City of Dodge City will enter into a development agreement with USD 443. This agreement, as supplemented and amended, includes the project construction schedule, a description of projects to be constructed, financial obligations of the developer and financial and administrative support from the City of Dodge City.

Feasibility Study.

The City will conduct a study to determine whether the public benefits derived from the District will exceed the costs and that the income from the District, together with other sources of revenue provided by the developer. The analysis will estimate if the property tax revenues that will be generated from the development, less existing property taxes to determine the revenue stream available to support the costs of the public infrastructure.



# Memorandum

**To:** City Commission  
**From:** Ryan Reid, Director of Administrative Services  
**Date:** 2024 06 04  
**Subject:** New Animal Control Vehicle Topper  
**Agenda Item:** New Business

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**Purpose:** To replace the disabled animal control vehicle.

**Recommendation:** Approve Custom Fiberglass Coaches bid for \$24,530.

**Background:** The Animal Control van (a 2008 model) failed and was sold at auction. A replacement truck was approved a month or so ago. This is for the fiberglass topper which completes the project and will allow Animal Control to better perform their mission. We received one bid for the topper.

Staff believes that the truck and topper will meet the Division's needs and provide a more cost-effective solution for them over time vs. the vans that they have used in the past. We expect to reuse the topper when the truck reaches end of life.

This is a budgeted purchase.

**City Commission Options:**

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

**Financial Considerations:**

Amount: \$24,530

Fund: 00121200-441009

Budgeted Expense     Grant     Bonds     Other

**Legal Considerations:** None

**Mission/Values:** Ongoing Improvement, Working Towards Excellence

**Attachments:** Bid tab

**Approved for the Agenda by:**  
Ryan T. Reid, Director of Administrative Services



# Memorandum

To: City Commission  
From: Ryan Reid, Director of Administrative Services  
Date: 2024 06 10  
Subject: New Mowers for Parks and Athletic Field Maintenance (AFM)  
Agenda Item: New Business

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**Purpose:** To replace older worn out mowers and assist the Parks and AFM Divisions

**Recommendation:** Approve mower bids

**Background:** The Parks and AFM Divisions are responsible for mowing large amounts of land throughout the City. These mowers will help them achieve their mission.

Staff recommends the following purchases:

Division	Vendor	Quant	Subtotal	Desc
Parks	Morrige	1	\$39,322.07	Frontmount Grasshopper 940G w/Tweels
Parks	American Imp	2	\$52,296	Midsize Wing Hustler Super 104
AFM	American Imp	2	\$55,212	Midsize Wing Hustler Super 104 w/Tweels
Parks	Morrige	2	\$27,516	Midmount Grasshopper 440b
AFM	Morrige	2	\$29,749	Midmount Grasshopper 440b w/Tweels

Total to be approved is: \$204,095.07. This is a budgeted purchase.

Four of the midmount mowers are expected to be auctioned off (2018 and 2020 models that are end of life).

**City Commission Options:**

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

**Financial Considerations:**

Parks: \$106,000  
AFM: 148,000

Budgeted Expense     Grant     Bonds     Other

**Legal Considerations: None**

**Mission/Values: Ongoing Improvement, Working Towards Excellence**

**Attachments: Bid tab**

**Approved for the Agenda by:**

**Ryan T. Reid, Director of Administrative Services**





# CITY OF DODGE CITY

Bid/RFP Tabulation

**Midmount Mowers**

2024 06 07

<u>Bidder</u>	<u>Truck #/Type</u>	<u>\$ Total</u>	<u>Special/Delivery Time</u>
Pro Turf	Toro 60" Zmaster 6000	16,545.76	
	Same	18,382.96	With tweels
Outdoor Power	Toro 72946	\$15,000	
		16,200	With tweels
Moridge	Grasshopper 440B	13,798	
	Same	14874.50	w/tweels
American Imp	943035 Hustler Hyper 60	15160	
	Same	16,556	w/tweels
Pro Tuf	Toro 96"	\$33,919.51	



# Memorandum

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

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

**Date:** June 17, 2024

**Subject:** Road and Utility Improvements to South 14<sup>th</sup> Avenue (W. McArtor Rd. to US 56) & West McArtor Road (S. 14<sup>th</sup> Ave. to S. 2<sup>nd</sup> Ave.), ST 2405

**Agenda Item:** New Business

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**Purpose:** Provide construction documents for road and utility improvements along S. 14<sup>th</sup> Ave. and McArtor Rd.

**Recommendation:** Approve the Professional Engineering Services Agreement for the Road and Utility Improvements to South 14<sup>th</sup> Avenue (W. McArtor Rd. to US 56) & West McArtor Road (S. 14<sup>th</sup> Ave. to S. 2<sup>nd</sup> Ave.) with Schwab Eaton in a not to exceed amount of \$1,237,310.00.

**Background:** S. 14<sup>th</sup> Ave. and W. McArtor Rd. are two Minor Arterials located at the southern end of town. These two roadways have both residential and commercial access points and were identified as needing major maintenance in 2022 due to the condition of the asphalt pavement. That major maintenance was delayed for two main reasons. The first reason was the planned 200-unit housing development, named United Village, that is currently under construction just east of 14<sup>th</sup> Ave. and south of McArtor Rd. The second was that City staff did not want to perform any kind of construction activities to these roadways while they acted as the defacto detour route for the KDOT roundabout project at the intersection of S. 2<sup>nd</sup> Ave. and US 400/56/283.

The housing development will have two access points onto 14<sup>th</sup> Ave. and one access to McArtor Rd. The KDOT Traffic Count Map published in March 2022 indicates an ADT of 1,595 on 14<sup>th</sup> Ave. near the access points for United Village and 2,250 on McArtor Rd. Traffic volumes along these corridors will increase with the housing development and other commercial and industrial developments taking place in the area. This along with the potential for the United Village RHID to fund most of the improvements, City staff determined that a major reconstruction project for the corridors was justified.

In March of 2024 the City Posted a Request for Qualifications (RFQ) to provide design services for the proposed roadway & utility improvements. We received five responses to the RFQ. City staff from multiple departments reviewed the submittals and scored them on using the specified criteria. Schwab Eaton received the highest score by the selection committee.

**City Commission Options:**

1. Approve
2. Disapprove

3. Table for further discussion

**Financial Considerations:**

Amount \$: \$1,237,310.00

Fund: United Village RHID

Budgeted Expense     Grant     Bonds     Other

Other sources of funding for the improvements at the south end of S. 14<sup>th</sup> Ave. include the KDOT CCLIP program and Ford County through the shared road agreement.

**Legal Considerations:** The City will be entering into a contract with Schwab Eaton and will be bound by the provisions of this agreement.

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

**Attachments:** Design Agreement, Scope and Fees from Schwab Eaton.

**Approved for the Agenda by:**



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

## AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES

This Agreement is hereby entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between the City of Dodge City, Kansas, a municipal corporation (hereinafter “City”), and Schwab Eaton a Professional Corporation, (hereinafter “Consultant”).

WHEREAS, the City desires to obtain professional engineering services, in connection with Road and Utility Improvements to South 14th Ave. (W. McArtor Rd. to US 56) and West McArtor Rd. (S. 14th Ave. to S. 2nd Ave.)

(collectively, hereinafter “Projects”); and,

WHEREAS, Consultant is a professional corporation, with corporate offices located at Schwab Eaton 5410 Ledge Stone Drive, Suite 100, Manhattan, KS 66503 licensed to provide professional engineering services in the state of Kansas; and,

WHEREAS, Consultant is qualified, capable and prepared to perform the necessary professional engineering services in connection with the Projects as described in this Agreement; and,

NOW THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

### 1. Professional Services:

A. The term “Services” when used in this Agreement shall mean any and all professional engineering services provided by Consultant in accordance with this Agreement. Unless specifically set forth in the scope of work, the term “Services” shall not include the investigation, detection, abatement, replacement, discharge, or removal of any toxic or hazardous contaminants or materials.

B. City agrees to retain Consultant and Consultant agrees to perform and complete the following Services for the Projects:

- Task 1: Project Management and QC/QA
- Task 2: Data Collection
- Task 3: Utilities
- Task 4: Preliminary Plans
- Task 5: Final Design

## Task 6: Bidding and Construction

These Services are described in detail, separately for each of the above-listed Projects, in the Scope of Work, attached as Exhibit A and incorporated herein by reference.

- C. The City reserves the right to direct revision of the Services at the City's discretion. Consultant shall advise the City of additional costs and time delays, if any, in performing the revision; and Consultant shall advise the City of any conflicts with proper engineering standards that such revisions might cause, and which Consultant cannot agree to. Once these issues are resolved, the parties shall execute an amendment to this Agreement setting forth such revision. If revisions of the Services are necessary due to Consultant's error or omission, Consultant shall provide the services and materials associated with such revisions, at no additional cost to the City.
- D. Consultant shall provide Services under this Agreement only upon written request of the City, and only to the extent defined and required by the City. Consultant shall not provide any services or materials not described by this Agreement unless Consultant obtains prior written consent from the City. If the City gives prior written consent for Supplemental Services, the City shall compensate Consultant with a fee mutually agreed upon by the parties prior to performance of the Supplemental Services. Any Supplemental services or materials provided by Consultant without the City's prior written consent shall be at Consultant's own risk, cost, and expense, and Consultant shall not make a claim for compensation from the City for such work.

### 2. Standard of Care

- A. Consultant shall exercise the same degree of care, skill, and diligence in the performance of all Services to the City that is ordinarily possessed and exercised by reasonable, prudent, and an experienced professional engineer under similar circumstances. At the City's request, the Consultant shall re-perform the Services which fail to satisfy this standard of care. If Consultant fails to possess or exercise

such care, skill and diligence in providing all Services, Consultant shall indemnify, and hold harmless, the City from any suits, actions, proceedings, judgments, claims, losses, liens, damages, or injuries, (including attorneys' fees and other expenses of litigation, arbitration, mediation or appeal), to the extent any of such arise out of such failure.

- B. Consultant represents it has all other necessary licenses, permits, and certifications required to perform the Services described herein.
- C. Consultant shall comply with, and cause its sub-consultants to comply with, applicable federal, state and local laws, orders, rules and regulations relating to the performance of the Services.
- D. Non-Discrimination. During the term of this contract, the Consultant shall comply with the following Non-Discrimination-Equal Employment Opportunity/Affirmative Action Program Requirements:
  - 1. During the performance of this contract, the Consultant, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended; The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.
  - 2. Requirements of the State of Kansas:
    - a. The Consultant shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under this Agreement because of race, religion, color, sex, disability, national origin, ancestry or age except where age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business;
    - b. In all solicitations or advertisements for employees, the Consultant shall include the phrase, "Equal Opportunity Employer", or a similar phrase to

- be approved by the "Kansas Human Rights Commission";
- c. If the Consultant fails to comply with the manner in which the Consultant reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 44-1031, and amendments thereto, the Consultant shall be deemed to have breached this Agreement and it may be canceled, terminated or suspended, in whole or in part, by the City;
  - d. If the Consultant is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the Consultant shall be deemed to have breached this Agreement and it may be canceled, terminated or suspended, in whole or in part, by the City;
  - e. The Consultant shall include the foregoing subsections a-d in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor;
  - f. The provisions of this Subsection 2-D-2 shall not apply to this Agreement if: (1) the Consultant employs fewer than four employees during the term of this Agreement; or (2) the Consultant's contracts with the City cumulatively total \$5,000 or less during the fiscal year of the City.

### 3. Compensation

- A. As consideration for providing the Services, the City shall pay Consultant a fee for each of the Projects, based upon the tasks and hourly rates, set forth on Exhibit B, attached hereto and incorporated herein by reference. Consultant acknowledges and agrees that the total cost to complete the Project shall not exceed the sum of \$1,237,310.00; and the payment for each individual task, set forth on Exhibit B, shall not exceed the listed amount per task without prior written approval by the City. Each project cost is defined below:
- B. Consultant shall submit an itemized invoice to the City on the first of each month that details the percentage of each Task for each Project that was completed in the

month immediately prior. The invoice shall also indicate the percentage total of each Task that has been completed for each Project. City agrees to pay the balance of an approved invoice, or undisputed portions of a disputed invoice, within 30 days of the date of receipt by the City. In the event of a dispute, and prior to the invoice's due date, City shall pay the undisputed portion of the invoice and notify Consultant of the nature of the dispute regarding the balance.

#### 4. Schedule & Delay

- A. Unless otherwise directed by the City, Consultant shall commence performance of the Services upon execution of this Agreement.
- B. Consultant shall provide Services pursuant to the agreed-upon schedule, which shall be:
  - October 2024 Survey and data collection complete
  - April 2025 Preliminary plans submittal
  - May 2025 Field check complete
  - July 2025 Utility relocation plans submittal
  - September 2025 Final plans submittal
  - October 2025 Bid letting complete
  - December 2025 Project award by City Commission
- C. Neither the City nor the Consultant shall be in default of the Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party, including, but not limited to, unusually severe weather conditions, floods, tornadoes, earthquakes, fires, and epidemics; wars, riots and other civil disturbances; strikes, lockouts, and other labor disturbances; or judicial restraint. Should such a circumstance occur, the non-performing party shall, within a reasonable time, give the other party written notice describing the circumstances and the anticipated date to resume performance of the Agreement.
- D. If Consultant's performance is delayed due to delays caused by the City, Consultant shall have no claim against the City for damages or payment adjustment other than an extension of time to perform the Services.

#### 5. Liability & Indemnification

- A. Consultant shall indemnify and hold harmless the City, and its departments, elected officials, officers, employees and agents, from and against all suits, actions, proceedings, judgments, claims, losses, liens, damages, and injuries, (including reasonable attorneys' fees and other expenses of litigation, arbitration, mediation or appeal), to the extent any of such arise out of or have been connected with, Consultant's negligence, error, omission, recklessness, or wrongful or criminal conduct in the performance of Services, including performance by Consultant's employees, agents and subcontractors.
- B. Consultant's obligation to indemnify and hold harmless shall remain in effect and shall be binding on Consultant whether such injury shall accrue, or may be discovered, before or after termination of this Agreement.

## 6. Insurance

- A. Consultant shall purchase and maintain, at its expense, insurance coverage as required in this Section for the term of this Agreement. The failure to purchase and maintain the minimum insurance required herein shall constitute a material breach of this Agreement upon which the City may immediately terminate or suspend this Agreement. Compliance with the insurance requirements set forth in this Section to purchase and maintain insurance shall not in any manner limit or qualify the liability and obligations otherwise assumed by the Consultant in the written contract/agreement. Consultant shall furnish any or all insurance certificates to the City, as requested by the City. Insurance Companies must be rated a minimum "A-" by the Best's Key Rating Guide's latest edition.
- B. The consultant shall purchase and maintain insurance of the following types of coverage and limits of liability:
  - 1. Commercial General Liability (CGL) with limits of insurance of not less than \$1,000,000 each occurrence and \$2,000,000 Annual Aggregate.
    - a. If the CGL coverage contains a General Aggregate Limit, such General Aggregate shall apply separately to each project.
    - b. CGL coverage shall be written on ISO Occurrence form CG00 01 1096 or a substitute form providing equivalent coverage and shall cover

liability arising from premises, operations, independent consultants, products-completed operations, and personal and advertising injury.

- c. City of Dodge City, Kansas and all other parties required by the contract shall be included as additional insureds on the CGL. This insurance for the additional insured shall be as broad as the insurance for the named insured Consultant. It shall apply as Primary and non-contributory insurance before any other insurance or self-insurance, including any deductible, maintained by, or provided to, the additional insured.
  - d. Consultant shall maintain CGL coverage for itself and all additional insureds for the duration of the project and maintain Completed Operations coverage for itself and each additional insured for at least 3 years after completion of work.
2. Automobile Liability with limits of at least \$1,000,000 for each accident.
    - a. Business Auto coverage must include coverage for liability arising out of all owned, leased, hired, and non-owned automobiles.
    - b. The City shall be named as additional insured on the auto liability policy.
  3. Workers Compensation and Employers Liability limit of at least \$500,000 for each accident, \$500,000 for bodily injury by accident, and \$500,000 for each employee for injury by disease.
    - a. Where applicable, US Longshore and Harborworkers Compensation Act Endorsement shall be attached to the policy.
    - b. Where applicable, the Maritime Coverage Endorsement shall be attached to the policy.
  4. Professional Liability Insurance: Consultant shall purchase and maintain Professional Liability Insurance with a limit of at least \$1,000,000 for each claim and in the aggregate.
- C. Consultant shall provide, prior to the commencement of the project, a certificate of insurance illustrating compliance with the insurance requirements outlined above. This certificate and the insurance policies required shall contain a provision that coverage afforded under the policies will not be cancelled or allowed to expire until at least 30 days prior written notice has been given to the City of Dodge City,

Kansas.

7. Assignment of and Responsibility for Personnel

- A. The Consultant's assignment of personnel to perform the Services shall be subject to the City's oversight and general guidance.
- B. While upon City premises or property under the City's control, the Consultant's employees, agents, and subconsultants shall be subject to the City's rules and regulations respecting its property and the conduct of its employees thereon.

8. Ownership & Reuse of Documents

- A. All drawings, specifications, test reports, and other materials and work products which are prepared or furnished by the City prior to this Agreement, or for the performance thereof, shall remain the City's sole property. The City shall make available to the Consultant the copies of such materials as necessary for the Consultant to perform the Services.
- B. All drawings, specifications, test reports, and other materials and work products, including computer aided drawings, designs, and other data filed on electronic media which will be prepared or furnished by Consultant (and Consultant's independent professional associates and subconsultants) under this Agreement, are instruments of service in respect to the Project and such information and documents (the "Project Instruments") prepared by Consultant shall become the property of the City. The City shall be entitled to the possession and use of the Project Instruments, subject to the provisions of Subsection C, hereinafter; provided, however, nothing contained herein shall be deemed to prevent, or prohibit, Consultant's retention, and use, of the Project Instruments for its own purposes. At the City's request, Consultant shall give the City all materials obtained or produced in the course of the Services. The City makes no warranty as to the compatibility of computer data files with computer software or software releases other than that used by Consultant in performing services herein. Consultant shall maintain complete Services records for five (5) years after completion of the Services.
- C. The City understands that the reuse of the Project Instruments without written

verification or adaptation by Consultant for the specific purpose intended by the City shall be at the City's sole risk and without liability or legal exposure to Consultant. The City further agrees not to transfer the right of possession, or use, of the Project Instruments to third parties.

#### 9. Consultant's Personnel at the Project Site

- A. The presence of Consultant's personnel at a construction site is for the purpose of providing the City with information and advice, subject to the provisions of Subsection B hereinafter, that the completed work will generally conform to the Scope of Work and related Project documents, and that the integrity of the design concept as reflected in the Project documents have been implemented and preserved by the Contractor(s).
- B. Consultant has no authority to exercise control over any construction contractor. Consultant neither guarantees the performance of the Contractor(s), nor assumes the responsibility for the Contractor's failure to perform their work in accordance with the Project documents.

#### 10. Relationship of the Parties

- A. The City and Consultant agree that the Consultant shall be and remain an independent contractor in the performance of the Services. Consultant's employees, agents, or subconsultants shall not be considered employees of or subject to the direction and control of the City.
- B. Consultant shall be solely responsible for the supervision and performance of all subconsultants/subcontractors to perform under this Agreement.

#### 11. Notices

- A. All notices required by this Agreement shall be in writing, and unless otherwise directed by this Agreement, shall be sent to the addresses as set forth in this Section.
- B. Notices sent by the Consultant to the City shall be sent to:

Ray Slattery  
Director of Engineering Services  
100 Chaffin Road

Dodge City, KS 67801

- C. Notices sent by the City to the Consultant shall be sent to:

Gregory Fief

Schwab Eaton

5410 Ledge Stone Drive, Suite 100

Manhattan, KS 66503

## 12. Term & Termination

- A. The effective date of this Agreement shall be the date of execution when the Agreement is signed by both parties. This Agreement shall terminate upon completion of all Services to the satisfaction of the City, and upon final payment by the City.
- B. Notwithstanding Paragraph 12-A, the City reserves the right and may elect to terminate this Agreement at any time, with or without cause. The City shall compensate Consultant for the Services that have been completed to the City's satisfaction as of the date of termination. Consultant shall perform no activities other than reasonable wrap-up activities after receipt of notice of termination.

## 13. Miscellaneous Provisions

- A. **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Kansas.
- B. **Venue and Jurisdiction.** The parties agree any legal action arising out of this Agreement shall be filed solely in the Ford County, Kansas, District Court or the U.S. District Court of Kansas, as appropriate.
- C. **Entire Agreement.** This Agreement, including attachments incorporated herein by reference, represents the entire Agreement and understanding between the parties, and this Agreement supersedes any prior negotiations, proposals, or agreements. Unless otherwise provided in this Agreement, any amendment to this Agreement shall be in writing and shall be signed by the City and Consultant and attached hereto. This Agreement consists of the body of this Agreement together with any and all Exhibits and addenda attached hereto. These documents constitute the entire agreement between the parties and supersede any and all other agreements or

understandings, oral or written. If any language found in an Exhibit, addendum, or other attachment to this Agreement conflicts with any language actually set out in the body of this Agreement, the language actually set out in the body of this Agreement shall control.

- D. Severability. If any part, term or provision of this Agreement, or any attachments or amendments hereto, is declared invalid, void, or enforceable, all remaining parts, terms and provisions shall remain in full force and effect.
- E. Waiver. The failure of either party to require performance of this Agreement shall not affect such party's right to enforce the same. A waiver by either party of any provision or breach of this Agreement shall be in writing. A written waiver shall not affect the waiving party's rights with respect to any other provision or breach.
- F. Assignment. Nothing in this Agreement shall be construed to give any rights or benefits to any party other than the City and Consultant. Consultant shall not assign any interest in this Agreement without the City's prior written consent. If Consultant assigns an interest in this Agreement without the City's prior written consent, such assignment shall be void, and City may immediately terminate or suspend this Agreement.
- G. Successors and Assigns. Subject to Paragraph 13-F, this Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.
- H. Third Parties. The Services to be performed by Consultant are intended solely for the benefit of the City. Nothing contained herein shall create a contractual relationship with, or any rights in favor of, any person or entity not a signatory to this Agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands the day and year above written.

CONSULTANT:  
Schwab Eaton

\_\_\_\_\_  
Gregory E. Fief, P.E.

CITY OF DODGE CITY:

\_\_\_\_\_  
Chuck Taylor, Mayor

ATTEST:

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

**EXHIBIT A - SCOPE OF SERVICES**  
**Road and Utility Improvements to South 14th Ave. (W. McArtor Rd. to US 56) and West**  
**McArtor Rd. (S. 14th Ave. to S. 2nd Ave.)**  
**Dodge City, KS**



Date: May, 2024

General Scope of Project

S. 14th Ave. specific items

- Improve S. 14th Ave. from a 2-lane County Road section with ditches to a 3-lane urban roadway with curb & gutter and drainage system.
- 12" Waterline replacement along 14th Ave. from W. McArtor Rd. to Marboeuf Blvd, (formerly Merritt Rd.)
- Inspect the existing 12" Sanitary Sewer Line from W. McArtor Rd. to Marboeuf Blvd, (formerly Merritt Rd.). Design necessary repairs.
- Design Intersection Improvements at S. 14th Ave. & W. McArtor Rd. S. 14th Ave. north of W. McArtor Rd. is a 4-lane urban street section. Intersection is controlled by Stop signs. S. 14th Ave. has the Stop signs.
- Study the fore-mentioned intersection to determine what improvements are necessary to improve safety and operations.

W. McArtor Rd. specific items

- Improve W. McArtor Rd from a 2-lane former state highway section with ditches to a 3-lane urban roadway with curb & gutter and drainage system.
- W. McArtor Rd. is a Residential/Commercial Roadway with several drives. Consolidation of drives is not anticipated.
- Replacement, extension, and upsizing of the existing 6" waterline along McArtor Rd.
- Extend sanitary sewer along McArtor Rd. to provide sewer to businesses along W. McArtor Rd. that have septic systems.

Improvement items common to both

- Design of multi-use trail and sidewalk along roadways.
- The construction of the roadway may be phased over a few years. The Consultant may need to provide transition plans between the existing roadway and improved roadway.

Detailed Scope of Services

1. Design plans shall be on 22" x 34" plan sheets to meet City of Dodge City requirements for roadway reconstruction and utility improvements.
2. The Consultant will complete topographic and boundary surveying field work and generate an electronic file (AutoCad) with features, 1 ft. interval contours, section lines, property lines and property owner information. Upon completion of the project electronic files will be provided to the City.
3. A soils investigation will not be included as part of the work.
4. The Consultant will hire a subcontractor to video the sanitary sewers within the study area and will provide video tapes to the City. Consultant to review the video with the City and develop a plan for repair and/or replacement of said sewers.

5. Typical street section design to include standard curb and gutter, three (3) 12' lanes, one (1) 5' sidewalk, and one (1) 10' multi-use trail.
6. Provide drainage design for a 10-year storm to include storm sewers. Open ditches may be used where pipe systems are not practical. This project will be coordinated with the work to be completed as part of the United Village subdivision.
7. Provide water supply system design for replacement, extension, and upsizing of the existing 6" waterline along McArtor Rd and 12" Waterline along 14th Ave. from W. McArtor Rd. to Marboeuf Blvd, (formerly Merritt Rd.)
8. Consultant to identify required permitting and assist City of Dodge City with submittals of required materials. Anticipated permits include submittals to KDHE for stormwater (NOI), and sanitary sewer and water improvements and KDOT use of right of way for improvements at Highway 56. Other potential permits include DWR submittals for stream modifications and wetlands.
9. Consultant to perform SYNCHRO analysis of the intersection of 14<sup>th</sup> and McArtor to determine intersection Level of Service. The City will provide turning movement counts for three consecutive days during the a.m. and p.m. peak hours. These counts will be completed in the fall of 2025 on a Tuesday, Wednesday, and Thursday when school is in session. Total traffic volumes will be taken from the most current City or KDOT 24-hour counts.
10. Consultant to evaluate improvement scenarios for the intersection and draft a report with summary of analysis, conclusions, and recommendations.
11. The Consultant to prepare ROW and/or easement exhibits if needed.
12. Submit construction plans, and contract documents/technical specifications for the following milestones:
  - a. Conceptual Design
  - b. Field Check including ROW, easements, and utilities
  - c. Final Check/Final Plans, Specifications, and Cost Opinion for Letting
13. Plan sheets to include:
  - a. Title sheet
  - b. General notes
  - c. Sanitary sewer plan and profiles
  - d. Water main plan and profiles
  - e. Street plan and profiles including pavement markings
  - f. Intersection improvements
  - g. Storm sewer plan and profiles
  - h. Cross sections
  - i. Construction phasing plans
  - j. Traffic control
  - k. Phasing
  - l. Erosion control
  - m. Construction details
14. The Consultant will prepare two sets of plans to allow the project to be split into two phases. The first phase will be 14 Street from US 56 to McArtor Road including the intersection. Phase 2 will be McArtor Road. Transitions between the two phases will be designed and included in the construction drawings.
15. Prepare technical specifications for items not addressed by the Dodge City Standard Technical Specifications. DC standard specs will be referenced in the contract documents. The City will provide "front end" contract documents for inclusion in the project manual. The projects will be bid using a Unit Price format.
16. Provide construction cost estimate with Field Check and Final Check submittals.

17. Attend two (2) public meetings with adjacent property owners. City to lead the public meetings. Consultant to provide engineering information and project illustrations, as needed for presentations.
18. Provide utility coordination services including,
  - a. Contact utility companies within the limits of the project and provide a general layout of the project at the Concept phase.
  - b. Provide construction plans and contract documents to utility companies for review at Field Check submittal.
  - c. Attend and conduct two (2) coordination meetings with utility companies to discuss any comments or utility conflicts for the project.
  - d. In locations where potential conflicts may occur, the City will pothole their utilities to gain insight on their exact locations.
19. Attend two (2) project review meetings with the City for Field Check (on site) and Final Check (virtual) submittals.
20. Be available during bidding to answer questions from contractors and prepare necessary addenda.
21. Consultant will not attend the bid opening, but will provide a bid tabulation sheet, review bids, provide letter of recommendation for award and an itemized bid tabulation.
22. Through a virtual meeting, Consultant will conduct a pre-construction conference with the City, Contractor, subcontractors, and utility companies present.
23. The City of Dodge City will be responsible for Construction and Contract Administration, but Consultant will provide Shop Drawing review of material submittals from the Contractor.
24. Attend construction progress meetings when requested. Such meetings will be considered additional services and billed on hourly rates.
25. Record drawings upon completion of project will be completed by others (not the Consultant).

**EXHIBIT B - ENGINEERING FEE**  
**Road and Utility Improvements to South 14th Ave. (W. McArtor Rd. to**  
**US 56) and West McArtor Rd. (S. 14th Ave. to S. 2nd Ave.)**  
**Dodge City, KS**



Date: May, 2024

TASKS	FEES	% OF TOTAL
TASK I - PROJECT MANAGEMENT	\$125,072	10.38%
TASK II - DATA COLLECTION	\$210,208	17.44%
TASK III - UTILITIES	\$62,196	5.16%
TASK IV - PRELIMINARY PLANS	\$562,074	46.64%
TASK V - FINAL DESIGN	\$207,892	17.25%
TASK VI - BIDDING AND CONSTRUCTION	\$37,732	3.13%
<b>Total Labor Fee:</b>	<b>\$1,205,174</b>	<b>100.00%</b>
EXPENSES AND SUBCONTRACTOR FEES	\$32,136	
<b>Total Contract Amount for Engineering Services:</b>	<b>\$1,237,310.00</b>	



# Memorandum

**To:** Nick Hernandez, City Manager and City Commissioners  
**From:** Tanner Rutschman, PE, City Engineer  
**Date:** June 17, 2024  
**Subject:** STX Industrial Biogas Sales Contract Amendment  
**Agenda Item:** New Business

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**Purpose:** This amendment to the NAESB (Base Contract) and transaction confirmation will allow STX to continue to market our RNG through changes in European Union (EU) regulations and help the City avoid a situation where our biogas could not be certified through the ISCC.

**Recommendation:** Approve the amendment to the NAESB and transaction confirmation with STX Commodities, LLC.

**Background:** In 2023 the City selected STX Commodities as its new industrial biogas offtaker following an RFP process. The base contract was approved and executed in May & the transaction confirmation became effective September 1<sup>st</sup>. These contracts constitute the whole of the sales agreement. In this agreement, STX has rights to purchase up to 550 MMBtu/day of RNG and a right of first refusal to any volumes exceeding that figure at a fixed price of \$19/MMBtu. There is no minimum volume obligation for the City under this agreement. The City's only obligation is that we produce ISCC Certified RNG with a carbon intensity of 14 or less. This amendment will not change any of these commercial terms.

This amendment came about due to some changes in EU regulations that could exclude our RNG from being ISCC certifiable. The modifications included in this contract amendment will assist both parties in navigating potential changes in law or regulations that could impact our agreement as it is currently structured. The attached summary describes the contract changes in more depth.

## City Commission Options:

1. Approve Amended NAESB & Transaction Confirmation
2. Reject Amended NAESB & Transaction Confirmation
3. Table for further discussion

## Financial Considerations:

N/A

**Legal Considerations:** By approving the amendment to the NAESB and transaction confirmation (contract) with STX Commodities, LLC, the City will be obligated to comply with the amended terms and conditions of the contract. The City Attorney worked directly with STX to put this amendment together and supports the proposed changes.

**Mission/Values:** The completion of this project aligns with the City's Core Value of Ongoing Improvement by preparing for the community's future.

**Attachments:** Amendment document and summary of changes.

**Approved for the Agenda by:**

*Ray Slattery, PE*

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**Ray Slattery, Dir. Of Engineering Services**

## AMENDMENT

This Amendment, dated as of the \_\_\_\_ day of June 2024 (the “**Amendment**”), constitutes changes to the Transaction Confirmation with an Effective Date of September 1, 2023 (the “Transaction Confirmation”) and the Special Provisions for NAESB Base Contract dated May 9, 2023 (the “Special Provisions”) subject to both that certain NAESB Base Contract dated May 9, 2023 and the Special Provisions and collectively with the Transaction Confirmation and the NAESB Base Contract, the “Agreement”) between City of Dodge City, KS (“Seller”) and STX Commodities, LLC (“Buyer”). Each of the Buyer and the Seller may be referred to individually as a “Party” and collectively as the “Parties.”

## RECITALS

**WHEREAS**, the Parties entered into the Agreement; and

**WHEREAS**, the Parties wish to amend the terms of the Agreement as below provided;

**NOW, THEREFORE**, in consideration of the promises and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as aforesaid and as follows:

1. **Proposed Amendments:** With regard to the Transaction Confirmation the Parties wish to amend said document as follows:
  - A. In subsection (d) the definition of “Change in Law Event” is deleted in its entirety and replaced with the following:

“(d) any other material modification to the Applicable Program or any new Applicable Law (including but not limited to those related to the United Kingdom’s Renewable Transportation Fuel Obligation and the ISCC for example) is enacted or existing Applicable Law is amended or are changed, applied, or interpreted differently by a Governmental Authority than applied as of the Effective Date or new Applicable Laws are promulgated after the Effective Date, any of which individually or collectively will have a material adverse effect upon the rights and obligations of a Party, as a whole, under this Transaction Confirmation, and which do not constitute a Force Majeure event.”
  - B. A new subsection (e) is added to the definition of “Change in Law Event” as follows:

“(e) any modification, addition, or deletion to the Applicable Program or Applicable law that results in Buyer no longer being able, using commercially reasonable efforts, to avoid (i) Buyer’s inability to perform its obligations under this Transaction Confirmation; or (ii) negative and material economic impacts on Buyer which are certain to arise from such modification, addition, or deletion; or (iii) the termination of Buyer’s existing (as of the Effective Date hereof), BG purchase and sale agreement (the “BG PSA”) with its receiver, due to a Change in Law Event as defined in Buyer’s contract with its receiver.”
  - C. A new paragraph shall be inserted after the first paragraph of Section 5 “Change in Law and Early Termination Rights” as follows:

“Should a Change of Law Event be noticed by Buyer claiming that it is unable due to such Change of Law Event to sell the BG under the Applicable Program and Pathway then Buyer shall make reasonable efforts to avoid the adverse impacts of said Change of Law Event and to resolve the event or occurrence once it has occurred in order to resume performance. In performance of this obligation Buyer among other actions will use commercially reasonable efforts to sell the BG under a new Applicable Program or Pathway which will allow Seller to qualify for delivery of the BG to the Delivery Point at a price and on terms as close as possible to the price and terms existing prior to the Change of Law Event. Any Change of Law Event which prevents Seller from delivering the BG to the Delivery Point in compliance with the Applicable Program or Pathway shall be deemed a Force Majeure Event for Seller. In such case Seller will be relieved of its obligation, from the onset of such Force Majeure event, to make delivery of BG to Buyer, to the extent and for the duration of such Force Majeure, and Seller shall not be deemed to have failed in such obligations to the Buyer during such occurrence or event.

- D. With regard to the Special Conditions, the Parties wish to amend said document as follows:
- a. Replace the definition of “Applicable Program” in section 2.36 to read as follows:  
“Applicable Program means United Kingdom’s Renewable Transportation Fuel Obligation or means RED II, or when effective RED III which requires ISCC-EU Certification.”
  - b. Replace the second sentence in the definition of “Pathway” in section 2.52 to read as follows:  
“Unless agreed to in writing by both Parties the only Pathway involved in the sale of Biogas hereunder is that approved by United Kingdom’s Renewable Transportation Fuel Obligation.”
2. **No Other Amendments; Effectiveness.** Except as set forth in this Amendment, the Agreement is ratified and confirmed in all respects. This Amendment shall be effective as of the date hereof.
  3. **Governing Law.** This Amendment shall be construed in accordance with, and all matters arising out of or relating in any way whatsoever to this Amendment (whether in contract, tort or otherwise) shall be governed by, the law of the State of New York, without giving effect to principles of conflicts of laws that would cause the application of the law of any jurisdiction other than New York.
  4. **Counterparts.** This Amendment may be executed by one or more of the Parties in any number of separate counterparts and all such counterparts taken together shall constitute one and the same instrument.
  5. **Authority to Execute this Amendment.** Each of the persons whose signature appears below represents and warrants that he or she has been duly authorized to execute this Amendment for and on behalf of the Party with whom he or she is affiliated.

**IN WITNESS WHEREOF**, the Parties have executed this Amendment effective as of the date first above written.

**Signature page to follow.**

**City of Dodge City, KS**

**STX Commodities, LLC**

By: \_\_\_\_\_  
Name: Chuck Taylor  
Title: Mayor

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

Approved as to form:

By: \_\_\_\_\_  
Paige Gilmore, City Attorney

ATTEST:

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

## **Summary of Changes in the STX Amendment:**

### **Why this amendment is necessary:**

- STX reached out to amend the contract because regulations in the EU changed in a way that our biogas no longer meets the definition of “segregated” biogas.
- This means that we would arguably no longer be able to certify our biogas as “ISCC-EU Certified” and could be construed as breaching our representation and warranty to deliver ISCC-EU certified RNG.
- This change in EU regulations also makes it more difficult for STX to find buyers for our biogas.

### **Change to definition of “change in law event.”**

- Change in law definition section (d) is slightly expanded to catch changes like this change in EU regulations that may happen in the future.
- The new section (e) of the Change in Law definition adds language to encompass the situation where a change in law affecting STX’s contract with its receiver could also be a change in law under our contract if, using commercially reasonable efforts, STX is no longer able to perform.

### **Changes to “Change in Law and Early Termination Rights”**

- This paragraph adds extra protection for the City, essentially requiring STX to use commercially reasonable efforts to attempt to resume performance under the same or similar price and terms we originally agreed, even if there is a change in law event.
- This paragraph also makes it a “force majeure” event if a change in law prevents the City from delivering the biogas to the delivery point in compliance with law. Defining this as a force majeure event protects us because if something is a force majeure event, the City can be excused from performance.

### **Changes to Special Conditions:**

- These changes reflect the change from selling to EU markets to United Kingdom markets.