

# **CITY COMMISSION MEETING AGENDA**

City Hall Commission Chambers

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

Dodge City, KS

Monday, September 16, 2024

7:00 p.m.

MEETING # 5289

## **CALL TO ORDER**

## **ROLL CALL**

**INVOCATION BY** Pastor Eric O'Neal of Church of the Nazarene

## **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, September 3, 2024.
2. Appropriation, Ordinance No. 20, September 16, 2024.
3. Cereal Malt Beverage License:
  - a. La Hacienda Tacos Y Salsa, 504 Avenue J.

## **ORDINANCES & RESOLUTIONS**

**Ordinance No. 3818:** An Ordinance Authorizing and Providing the Issuance of General Obligation Bonds Series 2024-A, providing for the Levy and Collection of an Annual Tax for the Purpose of Paying the Principal and Interest of /Said Bonds. Report by Nicole May, Finance Director.

**Resolution No. 2024-17:** A Resolution Authorizing and Directing the Issuance, Sale and Delivery of General Obligation Temporary Notes, Series 2024-1, of the City of Dodge City, Kansas; Providing for the Levy and Collection of an Annual Tax, if Necessary for the Purpose of Paying the Principal of and Interest on said Notes as They Become Due; Making Certain Covenants and Agreements to provide for the Payment and Security Thereof; and Authorizing Certain Other Documents and Actions Connected Therewith. Report by Nicole May, Finance Director.

**Resolution No. 2024-18:** A Resolution that Prescribes the Form and Details of and Authorizing and Directing the Sale and Delivery of General Obligation Bonds, Series 2024-A, of the City of Dodge City, Kansas, previously Authorized by Ordinance No. 3818 of the Issuer; Making Certain Covenants and Agreements to Provide for the Payment and Makes Certain Covenants and Agreements to Provide for the Payment and Security Thereof; and Authorizing Certain Other Documents and Actions Connected Therewith. Report by Nicole May, Finance Director.

## **UNFINISHED BUSINESS**

## **NEW BUSINESS**

1. Approval of 2023 Audit. Report by Nicole May, Finance Director.
2. Approval of Supplemental Agreement for South Dodge Trail Extension from Wright Park to Beeson Arboretum. Report by Ray Slattery, Director of Engineering.
3. Design Agreement for 6<sup>th</sup> Avenue & Soule. Report by Ray Slattery, Director of Engineering.
4. Approval of Presbyterian Manors, Inc. Health Care Facilities Revenue Bonds. Report by Nicole May, Finance Director.
5. Approve the Memorandum of Understanding (MOU) for the Comanche Trail Agreement with the Dodge City Country Club. Report by Ray Slattery, Director of Engineering and Melissa McCoy, Assistant City Manager/Public Affairs.
6. Approval of the Purchase of a Bobcat G3ON-7 LP Forklift. Report by Kevin Israel, Director of Facilities.
7. Approval of an Agreement for a Placer.Ai Order Form to Acquire “Placer Data”. Report by Megan Welsh, Director of Dodge City Convention Visitors Bureau & Melissa McCoy, Assistant City Manager/Public Affairs.
8. Approval of a Purchase Agreement of Real Estate located at 313 S. 2<sup>nd</sup> Avenue. Report by Nick Hernandez, City Manager.
9. Approval of a Purchase Agreement of Real Estate located at 619 N. 2<sup>nd</sup> Avenue. Report by Nick Hernandez, City Manager.

## **OTHER BUSINESS**

## **STAFF REPORTS**

## **ADJOURNMENT**

# **CITY COMMISSION MEETING MINUTES**

City Hall Commission Chambers

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

Dodge City, KS

Tuesday, September 3, 2024

7:00 p.m.

MEETING # 5288

## **CALL TO ORDER**

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

**INVOCATION BY** Pastor Eric O'Neal of Church of the Nazarene

## **PLEDGE OF ALLEGIENCE**

## **PUBLIC HEARING**

Mayor Chuck Taylor opened the Public Hearing on the Revenue Neutral Rate. Finance Director Nicole May spoke about the RNR rates. There were no public comments. Mayor Taylor closed the Public Hearing.

## **APPROVAL OF AGENDA**

Commissioner Michael Burns moved to approve the agenda as presented. Commissioner Rick Sowers seconded the motion. The motion carried unanimously.

## **PETITIONS & PROCLAMATIONS**

Mayor Chuck Taylor read the VFW Day and 125th Birthday and proclaimed September 29 as VFW Day in honor of the VFW's invaluable contributions to the veteran community in Dodge City, Kansas and around the world.

Casey Fitzgerald spoke and thanked the city, employees, citizens and fellow conrads and auxiliary members of Post 1714. He spoke on some history about the American Legend and Howard Gotshcal 1714 they were named after two men from Ford Kansas that were friends and served together in World War 1, Charles Ernest Scott and Howard Gotschal.

Mayor Chuck Taylor read the Welcoming Week 2024 Proclamation and proclaimed the week of September 13th, 2024 through September 22nd, 2024 as Welcoming Week and invite all Dodge City residents to join this movement of communities worldwide by renewing our commitment to acting in the spirit of welcoming and unity.

Brenda Carmona, Chairperson of the Cultural Relations Advisory Board spoke and extended an invitation to the International Festival to be held on Sunday, September 8th at Wright Park from 2:00 pm to 6:00 pm. There will be a variety of entertainment.

**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, August 19, 2024.
2. Appropriation, Ordinance No.19, September 3, 2024.
3. Approve Change Order #3 for Iron Flat's, Phase 1 Infrastructure.
4. Approve Lease Agreement with Grow Speech Inc. for space at Hennessey Hall.

Commissioner Daniel Pogue moved to approve the consent calendar as presented. Commissioner Jeff Reinert seconded the motion. The motion carried unanimously.

## **ORDINANCES & RESOLUTIONS**

**Resolution No. 2024-16:** A Resolution exceeding the Revenue Neutral Rate (RNR) for the 2025 Budget was approved on a motion by Commissioner Michael Burns. Commissioner Daniel Pogue seconded the motion. The motion carried unanimously.

## **UNFINISHED BUSINESS**

## **NEW BUSINESS**

1. Commissioner Michael Burns moved to approve the bids from Lewis Chevrolet in the amount of \$317,069.00 for the purchase of four new trucks for various city departments. Commissioner Jeff Reinert seconded the motion. The motion carried unanimously.
2. Commissioner Jeff Reinert moved to approve the Change Order #16 with UCI in the amount of \$60,239 for the for the upsizing of the flame trap in GHB2, and upsizing of the monorail and crane at the Intermediate Pump Station changing the biogas flowmeter at GHB1, and upsizing of the monorail and crane at the Intermediate Pump Station at the south Wastewater Treatment Plant. Commissioner Daniel Pogue seconded the motion. The motion carried unanimously.

3. Commissioner Daneil Pogue moved to approve the Cargill Addition Unit 1 Plat to plat this property zoned I-2 Heavy Industrial. Commissioner Michael Burns seconded the motion. The motion carried unanimously.
4. Commissioner Michael Burns moved to approve the Walter Heights Unit 3 Plat to plat this property zoned C-2 Commercial Highway as presented. Commissioner Jeff Reinert seconded the motion. The motion carried unanimously.
5. Commissioner Jeff Reinert moved to approve authorization No. 10 with Burns and McDonnell in the amount not to exceed \$882,000 pending legal evaluation of the contract for the services for the reconstruction of Runway 2/20 at the Dodge City Regional Airport. Commissioner Daniel Pogue seconded the motion. The motion carried unanimously.
6. Commissioner Rick Sowers moved to approve bid from Vogts-Parga Construction, LLC in the amount of \$8,519,985.25 to reconstruct Runway 2-20 at the Dodge City Regional Airport. Commissioner Michael Burns seconded the motion. The motion carried unanimously.

## **OTHER BUSINESS**

## **STAFF REPORTS**

## **ADJOURNMENT**

Commissioner Jeff Reinert moved to adjourn the meeting. Commissioner Michael Burns seconded the motion. The motion carried unanimously.

ATTEST:

\_\_\_\_\_  
Mayor

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



# Memorandum

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

**From:** Nicole May, Finance Director

**Date:** September 10, 2024

**Subject:** Ordinance No. 3818 and Resolution No. 2024-18

**Agenda Item:** Ordinances and Resolutions

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**Purpose:** Issuance of this debit is necessary to fund street improvement projects.

**Recommendation:** I recommend the City Commission approve Ordinance No. 3818 and Resolution No. 2024-18.

**Background:** Ordinance No. 3818 authorizes and provides for the issuance of General Obligation Bonds, Series 2024-A, providing for the levy and collection of an annual tax for the purpose of paying the principal and interest on said bonds.

The City has previously taken action to fund several street improvements including: Northbound 14<sup>th</sup> Avenue Bridge, 6<sup>th</sup> Avenue and Comanche Street, 14<sup>th</sup> Avenue and McArtor Road, and Overpass project.

By approving Ordinance No. 3818, the City Commission will authorize the issuance of General Obligation Bonds, Series 2024-A, of the City in the principal amount of approximately \$2,090,000 to pay the costs of the improvements.

This bond issue is a public bond sale. It has been advertised in the Kansas Register and Dodge City Daily Globe. A tabulation of the binds will be available upon request.

Resolution 2024-18 prescribes the form and details of the sale and delivery of the bonds and makes certain covenants and agreements to provide for the payment and security of those bonds.

**City Commission Options:**

1. Approve Ordinance No. 3818 and Resolution No. 2024-18
2. Disapprove Ordinance No. 3818 and Resolution No. 2024-18
3. Table for further discussion

**Financial Considerations:**

Amount \$: 2,090,000

**Legal Considerations:** All have been satisfied by bond counsel. They have prepared all of the ordinances, resolutions and other documents necessary to legally complete the sale.

**Mission/Values:** We value progress and growth for the community's future.

**Attachments:** Ordinance No. 3818 and Resolution No. 2024-18

Approved for the Agenda by:

Nicole May

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Nicole May, Finance Director

**ORDINANCE NO. 3818**

**OF**

**THE CITY OF DODGE CITY, KANSAS**

**PASSED**

**SEPTEMBER 16, 2024**

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**GENERAL OBLIGATION BONDS**  
**SERIES 2024-A**

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**ORDINANCE NO. 3818**

**AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION BONDS, SERIES 2024-A, OF THE CITY OF DODGE CITY, KANSAS; PROVIDING FOR THE LEVY AND COLLECTION OF AN ANNUAL TAX FOR THE PURPOSE OF PAYING THE PRINCIPAL OF AND INTEREST ON SAID BONDS AS THEY BECOME DUE; AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH; AND MAKING CERTAIN COVENANTS WITH RESPECT THERETO.**

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

**WHEREAS**, pursuant to the laws of the State of Kansas applicable thereto, by proceedings duly had, the City Commission of the City (the “Governing Body”) has authorized the following improvements (the “Improvements”) to be made in the City, to-wit:

<u>Project Description</u>	<u>Res. No.</u>	<u>Authority (K.S.A.)</u>	<u>Financed Amount*</u>
Northbound 14 <sup>th</sup> Avenue Bridge	2024-14	13-1024a/Charter 41	\$1,000,000
6 <sup>th</sup> Avenue and Comanche Street	2024-14	13-1024a/Charter 41	500,000
14 <sup>th</sup> Avenue and McArtor Road	2024-14	13-1024a/Charter 41	515,000
Overpass project	2024-14	13-1024a/Charter 41	<u>75,000</u>
<i>Total:</i>			<b><i>\$2,090,000</i></b>

**WHEREAS**, the Governing Body is authorized by law to issue general obligation bonds of the City to pay the costs of the Improvements; and none of such general obligation bonds heretofore authorized have been issued and the City proposes to issue \$2,135,000\* of its general obligation bonds[, together with bid premium thereon], to pay the costs of the Improvements; and

**WHEREAS**, the Governing Body has advertised the sale of the Bonds in accordance with the law and at a meeting held in the City on this date awarded the sale of such Bonds to the best bidder.

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

**Section 1. Definitions of Words and Terms.** In addition to words and terms defined elsewhere herein, the following words and terms in this Ordinance shall have the meanings hereinafter set forth. Unless the context shall otherwise indicate, words importing the singular number shall include the plural and vice versa, and words importing persons shall include firms, associations and corporations, including public bodies, as well as natural persons.

“**Act**” means the Constitution and statutes of the State including K.S.A. 10-101 to 10-125, inclusive, K.S.A. 10-620 *et seq.*, and K.S.A. 13-1024a, as amended by Charter Ordinance No. 41, all as amended and supplemented from time to time.

“**Bond and Interest Fund**” means the Bond and Interest Fund of the City for its general obligation bonds.

**“Bond Resolution”** means the resolution to be adopted by the Governing Body prescribing the terms and details of the Bonds and making covenants with respect thereto.

**“Bonds”** means the City's General Obligation Bonds, Series 2024-A, dated October 3, 2024, authorized by this Ordinance.

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

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

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

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

**“Ordinance”** means this Ordinance authorizing the issuance of the Bonds.

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

**“Substitute Improvements”** means the substitute or additional improvements of the City authorized in the manner set forth in the Bond Resolution.

**Section 2. Authorization of the Bonds.** There shall be issued and hereby are authorized and directed to be issued the General Obligation Bonds, Series 2024-A, of the City in the principal amount of \$2,135,000\*, for the purpose of providing funds to: (a) pay the costs of the Improvements; and (b) pay costs of issuance of the Bonds.

**Section 3. Security for the Bonds.** The Bonds shall be general obligations of the City payable as to both principal and interest from ad valorem taxes which may be levied without limitation as to rate or amount upon all the taxable tangible property, real and personal, within the territorial limits of the City. The full faith, credit and resources of the City are hereby irrevocably pledged for the prompt payment of the principal of and interest on the Bonds as the same become due.

**Section 4. Terms, Details and Conditions of the Bonds.** The Bonds shall be dated and bear interest, shall mature and be payable at such times, shall be in such forms, shall be subject to redemption and payment prior to the maturity thereof, and shall be issued and delivered in the manner prescribed and subject to the provisions, covenants and agreements set forth in the Bond Resolution hereafter adopted by the Governing Body.

**Section 5. Levy and Collection of Annual Tax.** The Governing Body shall annually make provision for the payment of principal of, premium, if any, and interest on the Bonds as the same become due by levying and collecting the necessary taxes upon all of the taxable tangible property within the City in the manner provided by law.

The taxes above referred to shall be extended upon the tax rolls in each of the several years, respectively, and shall be levied and collected at the same time and in the same manner as the general ad valorem taxes of the City are levied and collected, shall be used solely for the payment of the principal of and interest on the Bonds as and when the same become due and the fees and expenses of the paying agent for the Bonds. The proceeds derived from said taxes shall be deposited in the Bond and Interest Fund.

If at any time said taxes are not collected in time to pay the principal of or interest on the Bonds when due, the City Treasurer is hereby authorized and directed to pay said principal or interest out of the general funds of the City and to reimburse said general funds for money so expended when said taxes are collected.

**Section 6. Further Authority.** The Mayor, Director of Finance, Clerk and other City officials are hereby further authorized and directed to execute any and all documents and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of the Ordinance, and to make 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 7. Governing Law.** This Ordinance and the Bonds shall be governed exclusively by and construed in accordance with the applicable laws of the State.

**Section 8. Effective Date.** This Ordinance shall take effect and be in full force from and after its passage by the Governing Body and publication of the Ordinance or a summary thereof in the official City newspaper.

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**PASSED** by the City Commission on September 16, 2024 and **SIGNED, APPROVED AND SIGNED** by the Mayor.

(SEAL)

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Mayor

ATTEST:

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Clerk

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**CERTIFICATE**

I hereby certify that the foregoing is a true and correct copy of the original ordinance; that said Ordinance was passed on September 16, 2024; that the record of the final vote on its passage is found on page \_\_\_\_ of journal \_\_\_\_; and that the Ordinance or a summary thereof was published in the *Dodge City Daily Globe* on :September 19, 2024.

DATED: September 19, 2024.

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Clerk

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# Memorandum

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

**From:** Nicole May, Finance Director

**Date:** September 10, 2024

**Subject:** Resolution No. 2024-17

**Agenda Item:** Ordinances and Resolutions

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**Purpose:** The City is offering for sale the temporary notes and approving the Preliminary Official Statement and providing for notice of sale for the notes.

**Recommendation:** I recommend the City Commission approve Resolution No. 2024-17.

**Background:** Resolution 2024-17 is a resolution that offers for sale general obligation temporary notes, Series 2024-1 in an amount not to exceed \$9,000,000.

The Series 2024-1 is offering temporary notes to finance United Village addition infrastructure.

This resolution also approves the Preliminary Offer Statement and authorizes the Mayor and City Clerk to execute the Certificate Deeming the Preliminary Official Statement final.

**City Commission Options:**

1. Approve Resolution No. 2024-17
2. Disapprove Resolution No. 2024-17
3. Table for further discussion

**Financial Considerations:** This is a special assessment project that will be refinanced with general obligation bonds at a later date.

Amount \$: 9,000,000

**Legal Considerations:** All have been satisfied by bond counsel. They have prepared the resolution and other documents necessary to legally complete the sale.

**Mission/Values:** We value progress and growth for the community's future.

**Attachments:** Resolution No. 2024-17

**Approved for the Agenda by:**

A handwritten signature in cursive script that reads "Nicole May".

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**Nicole May, Finance Director**

**RESOLUTION NO. 2024-17**

**OF**

**THE CITY OF DODGE CITY, KANSAS**

**ADOPTED**

**SEPTEMBER 16, 2024**

**GENERAL OBLIGATION TEMPORARY NOTES  
SERIES 2024-1**

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**RESOLUTION**

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**RESOLUTION NO. 2024-17**

**A RESOLUTION AUTHORIZING AND DIRECTING THE ISSUANCE, SALE AND DELIVERY OF GENERAL OBLIGATION TEMPORARY NOTES, SERIES 2024-1, OF THE CITY OF DODGE CITY, KANSAS; PROVIDING FOR THE LEVY AND COLLECTION OF AN ANNUAL TAX, IF NECESSARY, FOR THE PURPOSE OF PAYING THE PRINCIPAL OF AND INTEREST ON SAID NOTES AS THEY BECOME DUE; MAKING CERTAIN COVENANTS AND AGREEMENTS TO PROVIDE FOR THE PAYMENT AND SECURITY THEREOF; AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS CONNECTED THEREWITH.**

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**WHEREAS**, the City of Dodge City, Kansas (the “Issuer”) is a municipal corporation, duly created, organized and existing under the Constitution and laws of the State; and

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

<u>Project Description</u>	<u>Res. No.</u>	<u>Authority (K.S.A.)</u>	<u>Authorized Amount*</u>
United Village Addition – Sewer, Water, Street and Drainage Improvements	2023-41	12-6a01 <i>et seq.</i>	\$9,000,000
* Plus associated interest and costs of issuance			

**WHEREAS**, the governing body of the Issuer is authorized by law to issue general obligation bonds to pay the costs of the Improvements; and

**WHEREAS**, it is necessary for the Issuer to provide cash funds (from time to time) to meet its obligations incurred in constructing the Improvements prior to the completion thereof and the issuance of the Issuer's general obligation bonds, and it is desirable and in the interest of the Issuer that such funds be raised by the issuance of temporary notes of the Issuer pursuant to the Act; and

**WHEREAS**, none of such temporary notes heretofore authorized have been issued and the Issuer proposes to issue its temporary notes to pay the costs of the Improvements; and

**WHEREAS**, the governing body of the Issuer has advertised the sale of the Notes and at a meeting held in the City on this date, awarded the sale of such Notes to the best bidder; and

**WHEREAS**, the governing body of the Issuer hereby finds and determines that it is necessary for the Issuer to authorize the issuance and delivery of the Notes in the principal amount of \$10,415,000\* to pay the costs of the Improvements.

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

**ARTICLE I**  
**DEFINITIONS**

**Section 101. Definitions of Words and Terms.** In addition to words and terms defined elsewhere herein, the following words and terms as used in this Note Resolution shall have the meanings hereinafter set forth. Unless the context shall otherwise indicate, words importing the singular number shall include the plural and vice versa, and words importing persons shall include firms, associations and corporations, including public bodies, as well as natural persons.

**“Act”** means the Constitution and statutes of the State including K.S.A. 10-101 to 10-125, inclusive, specifically including K.S.A. 10-123, K.S.A. 10-620 *et seq.*, and K.S.A. 12-6a01 *et seq.*, all as amended and supplemented from time to time.

**“Authorized Denomination”** means \$5,000 or any integral multiples thereof.

**“Beneficial Owner”** of the Notes includes any Owner of the Notes and any other Person who, directly or indirectly has the investment power with respect to any of the Notes.

**“Bond and Interest Fund”** means the Bond and Interest Fund of the Issuer for its general obligation bonds.

**“Bond Counsel”** means the firm of Gilmore & Bell, P.C., or any other attorney or firm of attorneys whose expertise in matters relating to the issuance of obligations by states and their political subdivisions is nationally recognized and acceptable to the Issuer.

**“Business Day”** means a day other than a Saturday, Sunday or holiday on which the Paying Agent is scheduled in the normal course of its operations to be open to the public for conduct of its operations.

**“Cede & Co.”** means Cede & Co., as nominee of DTC.

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

**“Clerk”** means the duly elected/appointed and acting Clerk of the Issuer, or in the Clerk's absence, the duly appointed Deputy, Assistant or Acting Clerk of the Issuer.

**“Code”** means the Internal Revenue Code of 1986, as amended, and the applicable regulations proposed or promulgated thereunder of the United States Department of the Treasury.

**“Compliance Account”** means the Compliance Account created pursuant to *Section 501* hereof.

**“Consulting Engineer”** means an independent engineer or engineering firm, having a favorable reputation for skill and experience in the construction, financing and operation of public facilities, at the time employed by the Issuer for the purpose of carrying out the duties imposed on the Consulting Engineer by this Note Resolution.

**“Costs of Issuance”** means all costs of issuing the Notes, including but not limited to all publication, printing, signing and mailing expenses in connection therewith, registration fees, financial advisory fees, all legal fees and expenses of Bond Counsel and other legal counsel, expenses incurred in connection with compliance with the Code, and all expenses incurred in connection with receiving ratings on the Notes.

**“Costs of Issuance Account”** means the Costs of Issuance Account for General Obligation Temporary Notes, Series 2024-1 created pursuant to **Section 501** hereof.

**“Dated Date”** means October 3, 2024.

**“Debt Service Account”** means the Debt Service Account for General Obligation Temporary Notes, Series 2024-1 (within the Bond and Interest Fund) created pursuant to **Section 501** hereof.

**“Debt Service Requirements”** means the aggregate principal payments and interest payments on the Notes for the period of time for which calculated; provided, however, that for purposes of calculating such amount, principal and interest shall be excluded from the determination of Debt Service Requirements to the extent that such principal or interest is payable from amounts deposited in trust, escrowed or otherwise set aside for the payment thereof with the Paying Agent or other commercial bank or trust company located in the State and having full trust powers.

**“Defaulted Interest”** means interest on any Note which is payable but not paid on any Interest Payment Date.

**“Defeasance Obligations”** means any of the following obligations:

(a) United States Government Obligations that are not subject to redemption in advance of their maturity dates; or

(b) obligations of any state or political subdivision of any state, the interest on which is excluded from gross income for federal income tax purposes and which meet the following conditions:

(1) the obligations are (i) not subject to redemption prior to maturity or (ii) the trustee for such obligations has been given irrevocable instructions concerning their calling and redemption and the issuer of such obligations has covenanted not to redeem such obligations other than as set forth in such instructions;

(2) the obligations are secured by cash or United States Government Obligations that may be applied only to principal of, premium, if any, and interest payments on such obligations;

(3) such cash and the principal of and interest on such United States Government Obligations (plus any cash in the escrow fund) are sufficient to meet the liabilities of the obligations;

(4) such cash and United States Government Obligations serving as security for the obligations are held in an escrow fund by an escrow agent or a trustee irrevocably in trust;

(5) such cash and United States Government Obligations are not available to satisfy any other claims, including those against the trustee or escrow agent; and

(6) such obligations are rated in a rating category by Moody's or Standard & Poor's that is no lower than the rating category then assigned by that Rating Agency to United States Government Obligations.

**“Derivative”** means any investment instrument whose market price is derived from the fluctuating value of an underlying asset, index, currency, futures contract, including futures, options and collateralized mortgage obligations.

**“Disclosure Undertaking”** means the Continuing Disclosure Undertaking, dated as of the Dated Date, relating to certain obligations contained in the SEC Rule.

**“DTC”** means The Depository Trust Company, a limited-purpose trust company organized under the laws of the State of New York, and its successors and assigns, including any successor securities depository duly appointed.

**“DTC Representation Letter”** means the Blanket Letter of Representation from the Issuer and the Paying Agent to DTC which provides for a book-entry system, or any agreement between the Issuer and Paying Agent and a successor securities depository duly appointed.

**“Event of Default”** means each of the following occurrences or events:

(a) Payment of the principal and of the redemption premium, if any, of any of the Notes shall not be made when the same shall become due and payable, either at Stated Maturity or by proceedings for redemption or otherwise;

(b) Payment of any installment of interest on any of the Notes shall not be made when the same shall become due; or

(c) The Issuer shall default in the due and punctual performance of any other of the covenants, conditions, agreements and provisions contained in the Notes or in this Note Resolution (other than the covenants relating to continuing disclosure requirements) on the part of the Issuer to be performed, and such default shall continue for thirty (30) days after written notice specifying such default and requiring same to be remedied shall have been given to the Issuer by the Owner of any of the Notes then Outstanding.

**“Federal Tax Certificate”** means the Issuer's Federal Tax Certificate dated as of the Issue Date, as the same may be amended or supplemented in accordance with the provisions thereof.

**“Financeable Costs”** means the amount of expenditure for an Improvement which has been duly authorized by action of the governing body of the Issuer to be financed by general obligation bonds, less: (a) the amount of any temporary notes or general obligation bonds of the Issuer which are currently Outstanding and available to pay such Financeable Costs; and (b) any amount of Financeable Costs which has been previously paid by the Issuer or by any eligible source of funds unless such amounts are entitled to be reimbursed to the Issuer under State or federal law.

**“Fiscal Year”** means the twelve month period ending on December 31.

**“Funds and Accounts”** means funds and accounts created by or referred to in *Section 501* hereof.

**“Improvement Fund”** means the Improvement Fund for General Obligation Temporary Notes, Series 2024-1 created pursuant to *Section 501* hereof.

**“Improvements”** means the improvements referred to in the preamble to this Note Resolution and any Substitute Improvements.

**“Independent Accountant”** means an independent certified public accountant or firm of independent certified public accountants at the time employed by the Issuer for the purpose of carrying out the duties imposed on the Independent Accountant by this Note Resolution.

**“Interest Payment Date(s)”** means the Stated Maturity of an installment of interest on any Note which shall be March 1 and September 1 of each year, commencing March 1, 2025.

**“Issue Date”** means the date when the Issuer delivers the Notes to the Purchaser in exchange for the Purchase Price.

**“Issuer”** means the City and any successors or assigns.

**“Maturity”** when used with respect to any Note means the date on which the principal of such Note becomes due and payable as therein and herein provided, whether at the Stated Maturity thereof or call for redemption or otherwise.

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

**“Moody's”** means Moody's Investors Service, a corporation organized and existing under the laws of the State of Delaware, and its successors and assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “Moody's” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Issuer.

**“Note Payment Date”** means any date on which principal of or interest on any Note is payable.

**“Note Register”** means the books for the registration, transfer and exchange of Notes kept at the office of the Note Registrar.

**“Note Registrar”** means the State Treasurer and its successors and assigns.

**“Note Resolution”** means this resolution relating to the Notes.

**“Notes”** means the General Obligation Temporary Notes, Series 2024-1, authorized and issued by the Issuer pursuant to this Note Resolution.

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

(a) To the Issuer at:

City Hall  
806 2nd Avenue  
P.O. Box 880  
Dodge City, Kansas 67801  
Fax: (620) 225-8144

(b) To the Paying Agent at:

State Treasurer of the State of Kansas  
Landon Office Building  
900 Southwest Jackson, Suite 201  
Topeka, Kansas 66612-1235  
Fax: (785) 296-6976

(c) To the Purchaser:

[Purchaser]  
[Purchaser Address]  
Fax: [Purchaser Fax]

(d) To the Rating Agency(ies):

Moody's Municipal Rating Desk  
7 World Trade Center  
250 Greenwich Street  
23rd Floor  
New York, New York 10007

S&P Global Ratings, a division of S&P Global Inc.  
55 Water Street, 38th Floor  
New York, New York 10004

**“Notice Representative”** means:

- (a) With respect to the Issuer, the Clerk.
- (b) With respect to the Note Registrar and Paying Agent, the Director of Fiscal Services.
- (c) With respect to any Purchaser, the manager of its Municipal Bond Department.
- (d) With respect to any Rating Agency, any Vice President thereof.

**“Official Statement”** means Issuer’s Official Statement relating to the Notes.

**“Outstanding”** means, when used with reference to the Notes, as of a particular date of determination, all Notes theretofore authenticated and delivered, except the following Notes:

- (a) Notes theretofore canceled by the Paying Agent or delivered to the Paying Agent for cancellation;
- (b) Notes deemed to be paid in accordance with the provisions of *Article VII* hereof; and
- (c) Notes in exchange for or in lieu of which other Notes have been authenticated and delivered hereunder.

**“Owner”** when used with respect to any Note means the Person in whose name such Note is registered on the Note Register. Whenever consent of the Owners is required pursuant to the terms of this

Note Resolution, and the Owner of the Notes, as set forth on the Note Register, is Cede & Co., the term Owner shall be deemed to be the Beneficial Owner of the Notes.

**“Participants”** means those financial institutions for whom the Securities Depository effects book-entry transfers and pledges of securities deposited with the Securities Depository, as such listing of Participants exists at the time of such reference.

**“Paying Agent”** means the State Treasurer, and any successors and assigns.

**“Permitted Investments”** shall mean the investments hereinafter described, provided, however, no moneys or funds shall be invested in a Derivative: (a) investments authorized by K.S.A. 12-1675 and amendments thereto; (b) the municipal investment pool established pursuant to K.S.A. 12-1677a, and amendments thereto; (c) direct obligations of the United States Government or any agency thereof; (d) the Issuer's temporary notes issued pursuant to K.S.A. 10-123 and amendments thereto; (e) interest-bearing time deposits in commercial banks or trust companies located in the county or counties in which the Issuer is located which are insured by the Federal Deposit Insurance Corporation or collateralized by securities described in (c); (f) obligations of the federal national mortgage association, federal home loan banks, federal home loan mortgage corporation or government national mortgage association; (g) repurchase agreements for securities described in (c) or (f); (h) investment agreements or other obligations of a financial institution the obligations of which at the time of investment are rated in either of the three highest rating categories by Moody's or Standard & Poor's; (i) investments and shares or units of a money market fund or trust, the portfolio of which is comprised entirely of securities described in (c) or (f); (j) receipts evidencing ownership interests in securities or portions thereof described in (c) or (f); (k) municipal bonds or other obligations issued by any municipality of the State as defined in K.S.A. 10-1101 which are general obligations of the municipality issuing the same; or (l) bonds of any municipality of the State as defined in K.S.A. 10-1101 which have been refunded in advance of their maturity and are fully secured as to payment of principal and interest thereon by deposit in trust, under escrow agreement with a bank, of securities described in (c) or (f), all as may be further restricted or modified by amendments to applicable State law.

**“Person”** means any natural person, corporation, partnership, joint venture, association, firm, joint-stock company, trust, unincorporated organization, or government or any agency or political subdivision thereof or other public body.

**“Purchase Price”** means the principal amount of the Notes plus accrued interest to the date of delivery[, plus a premium of \$\_\_\_\_\_].

**“Purchaser”** means [Purchaser], [Purchaser City, State], the original purchaser of the Notes, and any successors and assigns.

**“Rating Agency”** means any company, agency or entity that provides financial ratings for the Notes.

**“Rebate Fund”** means the Rebate Fund for General Obligation Temporary Notes, Series 2024-1 created pursuant to *Section 501* hereof.

**“Record Dates”** for the interest payable on any Interest Payment Date means the fifteenth day (whether or not a Business Day) of the calendar month next preceding such Interest Payment Date.

**“Redemption Date”** when used with respect to any Note to be redeemed means the date fixed for the redemption of such Note pursuant to the terms of this Note Resolution.

**“Redemption Price”** when used with respect to any Note to be redeemed means the price at which such Note is to be redeemed pursuant to the terms of this Note Resolution, including the applicable redemption premium, if any, but excluding installments of interest whose Stated Maturity is on or before the Redemption Date.

**“Replacement Notes”** means Notes issued to the Beneficial Owners of the Notes in accordance with *Article II* hereof.

**“SEC Rule”** means Rule 15c2-12 adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934.

**“Securities Depository”** means, initially, DTC, and its successors and assigns.

**“Special Record Date”** means the date fixed by the Paying Agent pursuant to *Article II* hereof for the payment of Defaulted Interest.

**“Standard & Poor's”** means Standard & Poor's Ratings Services, a division of McGraw Hill Financial Inc., a corporation organized and existing under the laws of the State of New York, and its successors and assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, Standard & Poor's shall be deemed to refer to any other nationally recognized securities rating agency designated by the Issuer.

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

**“State Treasurer”** means the duly elected Treasurer or, in the Treasurer's absence, the duly appointed Deputy Treasurer or acting Treasurer of the State.

**“Stated Maturity”** when used with respect to any Note or any installment of interest thereon means the date specified in such Note and this Note Resolution as the fixed date on which the principal of such Note or such installment of interest is due and payable.

**“Substitute Improvements”** means the substitute or additional improvements of the Issuer described in *Article V* hereof.

**“Treasurer”** means the duly appointed and/or elected Treasurer or, in the Treasurer's absence, the duly appointed Deputy Treasurer or acting Treasurer of the Issuer.

**“United States Government Obligations”** means bonds, notes, certificates of indebtedness, treasury bills or other securities constituting direct obligations of, or obligations the principal of and interest on which are fully and unconditionally guaranteed as to full and timely payment by, the United States of America, including evidences of a direct ownership interest in future interest or principal payment on obligations issued by the United States of America (including the interest component of obligations of the Resolution Funding Corporation), or securities which represent an undivided interest in such obligations, which obligations are rated in the highest rating category by a nationally recognized rating service and such obligations are held in a custodial account for the benefit of the Issuer.

**ARTICLE II**

**AUTHORIZATION AND DETAILS OF THE NOTES**

**Section 201. Authorization of the Notes.** There shall be issued and hereby are authorized and directed to be issued the General Obligation Temporary Notes, Series 2024-1, of the Issuer in the principal amount of \$10,415,000\*, for the purpose of providing funds to: (a) pay the costs of the Improvements; and (b) pay Costs of Issuance.

**Section 202. Description of the Notes.** The Notes shall consist of fully registered notes in Authorized Denominations, and shall be numbered in such manner as the Note Registrar shall determine. All of the Notes shall be dated as of the Dated Date, shall become due in the amounts on the Stated Maturity, subject to redemption and payment prior to the Stated Maturity as provided in *Article III* hereof, and shall bear interest at the rates per annum as follows:

<b>Stated Maturity</b> <b><u>September 1</u></b> 2027	<b>Principal</b> <b><u>Amount</u></b> \$10,415,000*	<b>Annual Rate</b> <b><u>of Interest</u></b> [ ]%
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The Notes shall bear interest at the above specified rates (computed on the basis of a 360-day year of twelve 30-day months) from the later of the Dated Date or the most recent Interest Payment Date to which interest has been paid on the Interest Payment Dates in the manner set forth in *Section 204* hereof.

Each of the Notes, as originally issued or issued upon transfer, exchange or substitution, shall be printed in accordance with the format required by the Attorney General of the State and shall be substantially in the form attached hereto as *EXHIBIT A* or as may be required by the Attorney General pursuant to the Notice of Systems of Registration for Kansas Municipal Bonds, 2 Kan. Reg. 921 (1983), in accordance with the Kansas Bond Registration Law, K.S.A. 10-620 *et seq.*

**Section 203. Designation of Paying Agent and Note Registrar.** The State Treasurer is hereby designated as the Paying Agent for the payment of principal of and interest on the Note and Note Registrar with respect to the registration, transfer and exchange of Notes. The Mayor of the Issuer is hereby authorized and empowered to execute on behalf of the Issuer an agreement with the Note Registrar and Paying Agent for the Notes.

The Issuer will at all times maintain a Paying Agent and Note Registrar meeting the qualifications herein described for the performance of the duties hereunder. The Issuer reserves the right to appoint a successor Paying Agent or Note Registrar by (a) filing with the Paying Agent or Note Registrar then performing such function a certified copy of the proceedings giving notice of the termination of such Paying Agent or Note Registrar and appointing a successor, and (b) causing notice of appointment of the successor Paying Agent and Note Registrar to be given by first class mail to each Owner. No resignation or removal of the Paying Agent or Note Registrar shall become effective until a successor has been appointed and has accepted the duties of Paying Agent or Note Registrar.

Every Paying Agent or Note Registrar appointed hereunder shall at all times meet the requirements of K.S.A. 10-501 *et seq.* and K.S.A. 10-620 *et seq.*, respectively.

**Section 204. Method and Place of Payment of the Notes.** The principal of, or Redemption Price, if any, and interest on the Notes shall be payable in any coin or currency which, on the respective dates of payment thereof, is legal tender for the payment of public and private debts.

The principal or Redemption Price of each Note shall be paid at Maturity to the Person in whose name such Note is registered on the Note Register at the Maturity thereof, upon presentation and surrender of such Note at the principal office of the Paying Agent. The interest payable on each Note on any Interest Payment Date shall be paid to the Owner of such Note as shown on the Note Register at the close of business on the Record Date for such interest (a) by check or draft mailed by the Paying Agent to the address of such Owner shown on the Note Register or at such other address as is furnished to the Paying Agent in writing by such Owner; or (b) in the case of an interest payment to Cede & Co. or any Owner of \$500,000 or more in aggregate principal amount of Notes, by electronic transfer to such Owner upon written notice given to the Note Registrar by such Owner, not less than 15 days prior to the Record Date for such interest, containing the electronic transfer instructions including the bank, ABA routing number and account number to which such Owner wishes to have such transfer directed.

Notwithstanding the foregoing provisions of this Section, any Defaulted Interest with respect to any Note shall cease to be payable to the Owner of such Note on the relevant Record Date and shall be payable to the Owner in whose name such Note is registered at the close of business on the Special Record Date for the payment of such Defaulted Interest, which Special Record Date shall be fixed as hereinafter specified in this paragraph. The Issuer shall notify the Paying Agent in writing of the amount of Defaulted Interest proposed to be paid on each Note and the date of the proposed payment (which date shall be at least 30 days after receipt of such notice by the Paying Agent) and shall deposit with the Paying Agent at the time of such notice an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Paying Agent for such deposit prior to the date of the proposed payment. Following receipt of such funds the Paying Agent shall fix a Special Record Date for the payment of such Defaulted Interest which shall be not more than 15 nor less than 10 days prior to the date of the proposed payment. The Paying Agent shall promptly notify the Issuer of such Special Record Date and, in the name and at the expense of the Issuer, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, by first class mail, postage prepaid, to each Owner of a Note entitled to such notice at the address of such Owner as it appears on the Note Register not less than 10 days prior to such Special Record Date.

The Paying Agent shall keep a record of payment of principal and Redemption Price of and interest on all Notes and at least annually shall forward a copy or summary of such records to the Issuer.

**Section 205. Payments Due on Saturdays, Sundays and Holidays.** In any case where a Note Payment Date is not a Business Day, then payment of principal, Redemption Price or interest need not be made on such Note Payment Date but may be made on the next succeeding Business Day with the same force and effect as if made on such Note Payment Date, and no interest shall accrue for the period after such Note Payment Date.

**Section 206. Registration, Transfer and Exchange of Notes.** The Issuer covenants that, as long as any of the Notes remain Outstanding, it will cause the Note Register to be kept at the office of the Note Registrar as herein provided. Each Note when issued shall be registered in the name of the Owner thereof on the Note Register.

Notes may be transferred and exchanged only on the Note Register as provided in this Section. Upon surrender of any Note at the principal office of the Note Registrar, the Note Registrar shall transfer or exchange such Note for a new Note or Notes in any Authorized Denomination of the same Stated Maturity and in the same aggregate principal amount as the Note that was presented for transfer or exchange.

Notes presented for transfer or exchange shall be accompanied by a written instrument or instruments of transfer or authorization for exchange, in a form and with guarantee of signature satisfactory to the Note Registrar, duly executed by the Owner thereof or by the Owner's duly authorized agent.

In all cases in which the privilege of transferring or exchanging Notes is exercised, the Note Registrar shall authenticate and deliver Notes in accordance with the provisions of this Note Resolution. The Issuer shall pay the fees and expenses of the Note Registrar for the registration, transfer and exchange of Notes provided for by this Note Resolution and the cost of printing a reasonable supply of registered note blanks. Any additional costs or fees that might be incurred in the secondary market, other than fees of the Note Registrar, are the responsibility of the Owners of the Notes. In the event any Owner fails to provide a correct taxpayer identification number to the Paying Agent, the Paying Agent may make a charge against such Owner sufficient to pay any governmental charge required to be paid as a result of such failure. In compliance with Section 3406 of the Code, such amount may be deducted by the Paying Agent from amounts otherwise payable to such Owner hereunder or under the Notes.

The Issuer and the Note Registrar shall not be required (a) to register the transfer or exchange of any Note that has been called for redemption after notice of such redemption has been mailed by the Paying Agent pursuant to *Article III* hereof and during the period of 15 days next preceding the date of mailing of such notice of redemption; or (b) to register the transfer or exchange of any Note during a period beginning at the opening of business on the day after receiving written notice from the Issuer of its intent to pay Defaulted Interest and ending at the close of business on the date fixed for the payment of Defaulted Interest pursuant to this *Article II*.

The Issuer and the Paying Agent may deem and treat the Person in whose name any Note is registered on the Note Register as the absolute Owner of such Note, whether such Note is overdue or not, for the purpose of receiving payment of, or on account of, the principal or Redemption Price of and interest on said Note and for all other purposes. All payments so made to any such Owner or upon the Owner's order shall be valid and effective to satisfy and discharge the liability upon such Note to the extent of the sum or sums so paid, and neither the Issuer nor the Paying Agent shall be affected by any notice to the contrary.

At reasonable times and under reasonable regulations established by the Note Registrar, the Note Register may be inspected and copied by the Owners (or a designated representative thereof) of 10% or more in principal amount of the Notes then Outstanding or any designated representative of such Owners whose authority is evidenced to the satisfaction of the Note Registrar.

**Section 207. Execution, Registration, Authentication and Delivery of Notes.** Each of the Notes, including any Notes issued in exchange or as substitutions for the Notes initially delivered, shall be executed for and on behalf of the Issuer by the manual, electronic or facsimile signature of the Mayor, attested by the manual, electronic or facsimile signature of the Clerk and the seal of the Issuer shall be affixed thereto or imprinted thereon. The Mayor and Clerk are hereby authorized and directed to prepare and execute the Notes in the manner herein specified, and to cause the Notes to be registered in the office of the Clerk, which registration shall be evidenced by the manual, electronic or facsimile signature of the Clerk with the seal of the Issuer affixed thereto or imprinted thereon. The Notes shall also be registered in the office of the State Treasurer, which registration shall be evidenced by the manual, electronic or facsimile signature of the State Treasurer with the seal of the State Treasurer affixed thereto or imprinted thereon. The Notes shall be countersigned by the manual, electronic or facsimile signature of the Clerk and the seal of the Issuer shall be affixed or imprinted adjacent thereto following registration of the Notes by the Treasurer of the State of Kansas. In case any officer whose signature appears on any Notes ceases to be such officer before the delivery of such Notes, such signature shall nevertheless be valid and sufficient for all purposes, as if such person had remained in office until delivery. Any Note may be signed by such

persons who at the actual time of the execution of such Note are the proper officers to sign such Note although at the date of such Note such persons may not have been such officers.

The Mayor and Clerk are hereby authorized and directed to prepare and execute the Notes as herein specified, and when duly executed, to deliver the Notes to the Note Registrar for authentication.

The Notes shall have endorsed thereon a certificate of authentication substantially in the form attached hereto as **EXHIBIT A** hereof, which shall be manually executed by an authorized officer or employee of the Note Registrar, but it shall not be necessary that the same officer or employee sign the certificate of authentication on all of the Notes that may be issued hereunder at any one time. No Note shall be entitled to any security or benefit under this Note Resolution or be valid or obligatory for any purpose unless and until such certificate of authentication has been duly executed by the Note Registrar. Such executed certificate of authentication upon any Note shall be conclusive evidence that such Note has been duly authenticated and delivered under this Note Resolution. Upon authentication, the Note Registrar shall deliver the Notes to the Purchaser upon instructions of the Issuer or its representative.

**Section 208. Mutilated, Lost, Stolen or Destroyed Notes.** If (a) any mutilated Note is surrendered to the Note Registrar or the Note Registrar receives evidence to its satisfaction of the destruction, loss or theft of any Note, and (b) there is delivered to the Issuer and the Note Registrar such security or indemnity as may be required by each of them, then, in the absence of notice to the Issuer or the Note Registrar that such Note has been acquired by a bona fide purchaser, the Issuer shall execute and, upon the Issuer's request, the Note Registrar shall authenticate and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Note, a new Note of the same Stated Maturity and of like tenor and principal amount.

If any such mutilated, destroyed, lost or stolen Note has become or is about to become due and payable, the Issuer, in its discretion, may pay such Note instead of issuing a new Note.

Upon the issuance of any new Note under this Section, the Issuer may require the payment by the Owner of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Paying Agent) connected therewith.

Every new Note issued pursuant to this Section shall constitute a replacement of the prior obligation of the Issuer, and shall be entitled to all the benefits of this Note Resolution equally and ratably with all other Outstanding Notes.

**Section 209. Cancellation and Destruction of Notes Upon Payment.** All Notes that have been paid or redeemed or that otherwise have been surrendered to the Paying Agent, either at or before Maturity, shall be cancelled by the Paying Agent immediately upon the payment, redemption and surrender thereof to the Paying Agent and subsequently destroyed in accordance with the customary practices of the Paying Agent. The Paying Agent shall execute a certificate in duplicate describing the Notes so cancelled and destroyed and shall file an executed counterpart of such certificate with the Issuer.

**Section 210. Book-Entry Notes; Securities Depository.** The Issuer and Paying Agent have entered into a DTC Representation Letter with DTC. The Notes shall initially be registered to Cede & Co., the nominee for the Securities Depository, and no Beneficial Owner will receive certificates representing their respective interests in the Notes, except in the event the Note Registrar issues Replacement Notes as provided in this Section. It is anticipated that during the term of the Notes, the Securities Depository will make book-entry transfers among its Participants and receive and transmit payment of principal of, premium, if any, and interest on, the Notes to the Participants until and unless the Note Registrar

authenticates and delivers Replacement Notes to the Beneficial Owners as described in the following paragraph.

The Issuer may decide, subject to the requirements of the Operational Arrangements of DTC (or a successor Securities Depository), and the following provisions of this section to discontinue use of the system of book-entry transfers through DTC (or a successor Securities Depository):

(a) If the Issuer determines (1) that the Securities Depository is unable to properly discharge its responsibilities, or (2) that the Securities Depository is no longer qualified to act as a securities depository and registered clearing agency under the Securities and Exchange Act of 1934, as amended, or (3) that the continuation of a book-entry system to the exclusion of any Notes being issued to any Owner other than Cede & Co. is no longer in the best interests of the Beneficial Owners of the Notes; or

(b) if the Note Registrar receives written notice from Participants having interests in not less than 50% of the Notes Outstanding, as shown on the records of the Securities Depository (and certified to such effect by the Securities Depository), that the continuation of a book-entry system to the exclusion of any Notes being issued to any Owner other than Cede & Co. is no longer in the best interests of the Beneficial Owners of the Notes, then the Note Registrar shall notify the Owners of such determination or such notice and of the availability of certificates to Owners requesting the same, and the Note Registrar shall register in the name of and authenticate and deliver Replacement Notes to the Beneficial Owners or their nominees in principal amounts representing the interest of each, making such adjustments as it may find necessary or appropriate as to accrued interest and previous calls for redemption; provided, that in the case of a determination under (a)(1) or (a)(2) of this paragraph, the Issuer, with the consent of the Note Registrar, may select a successor securities depository in accordance with the following paragraph to effect book-entry transfers.

In such event, all references to the Securities Depository herein shall relate to the period of time when the Securities Depository has possession of at least one Note. Upon the issuance of Replacement Notes, all references herein to obligations imposed upon or to be performed by the Securities Depository shall be deemed to be imposed upon and performed by the Note Registrar, to the extent applicable with respect to such Replacement Notes. If the Securities Depository resigns and the Issuer, the Note Registrar or Owners are unable to locate a qualified successor of the Securities Depository in accordance with the following paragraph, then the Note Registrar shall authenticate and cause delivery of Replacement Notes to Owners, as provided herein. The Note Registrar may rely on information from the Securities Depository and its Participants as to the names of the Beneficial Owners of the Notes. The cost of printing, registration, authentication, and delivery of Replacement Notes shall be paid for by the Issuer.

In the event the Securities Depository resigns, is unable to properly discharge its responsibilities, or is no longer qualified to act as a securities depository and registered clearing agency under the Securities and Exchange Act of 1934, as amended, the Issuer may appoint a successor Securities Depository provided the Note Registrar receives written evidence satisfactory to the Note Registrar with respect to the ability of the successor Securities Depository to discharge its responsibilities. Any such successor Securities Depository shall be a securities depository which is a registered clearing agency under the Securities and Exchange Act of 1934, as amended, or other applicable statute or regulation that operates a securities depository upon reasonable and customary terms. The Note Registrar upon its receipt of a Note or Notes for cancellation shall cause the delivery of Notes to the successor Securities Depository in appropriate denominations and form as provided herein.

**Section 211. Nonpresentment of Notes.** If any Note is not presented for payment when the principal thereof becomes due at Maturity, if funds sufficient to pay such Note have been made available to the Paying Agent all liability of the Issuer to the Owner thereof for the payment of such Note shall forthwith

cease, determine and be completely discharged, and thereupon it shall be the duty of the Paying Agent to hold such funds, without liability for interest thereon, for the benefit of the Owner of such Note, who shall thereafter be restricted exclusively to such funds for any claim of whatever nature on his part under this Note Resolution or on, or with respect to, said Note. If any Note is not presented for payment within four (4) years following the date when such Note becomes due at Maturity, the Paying Agent shall repay, without liability for interest thereon, to the Issuer the funds theretofore held by it for payment of such Note, and such Note shall, subject to the defense of any applicable statute of limitation, thereafter be an unsecured obligation of the Issuer, and the Owner thereof shall be entitled to look only to the Issuer for payment, and then only to the extent of the amount so repaid to it by the Paying Agent, and the Issuer shall not be liable for any interest thereon and shall not be regarded as a trustee of such money.

**Section 212. Preliminary and Final Official Statement.** The Preliminary Official Statement relating to the Notes is hereby ratified and approved. For the purpose of enabling the Purchaser to comply with the requirements of Section (b)(1) of the SEC Rule, the Issuer hereby deems the information regarding the Issuer contained in the Preliminary Official Statement to be “final” as of its date, except for the omission of such information as is permitted by Section (b)(1) of the SEC Rule, and the Mayor or chief financial officer of the Issuer are hereby authorized, if requested, to provide the Purchaser a letter or certification to such effect and to take such other actions or execute such other documents as such officers in their reasonable judgment deem necessary to enable the Purchaser to comply with the requirement of the SEC Rule.

The Official Statement is hereby authorized to be prepared by supplementing, amending and completing the Preliminary Official Statement, with such changes and additions thereto as are necessary to conform to and describe the transaction. The Mayor or chief financial officer of the Issuer are hereby authorized to execute the final Official Statement as so supplemented, amended and completed, and the use and public distribution of the final Official Statement by the Purchaser in connection with the reoffering of the Notes is hereby authorized. The proper officials of the Issuer are hereby authorized to execute and deliver a certificate pertaining to such Official Statement as prescribed therein, dated as of the Issue Date.

The Issuer agrees to provide to the Purchaser within seven business days of the date of the sale of Notes sufficient copies of the final Official Statement to enable the Purchaser to comply with the requirements of the SEC Rule and Rule G-32 of the Municipal Securities Rulemaking Board.

**Section 213. Sale of the Notes.** The sale of the Notes to the Purchaser is hereby ratified and confirmed. The Mayor and Clerk are hereby authorized to execute the official bid form submitted by the Purchaser. Delivery of the Notes shall be made to the Purchaser on the Issue Date (which shall be as soon as practicable after the adoption of this Note Resolution), upon payment of the Purchase Price.

## ARTICLE III

### REDEMPTION OF NOTES

#### **Section 301. Redemption by Issuer.**

**Optional Redemption.** At the option of the Issuer, the Notes will be subject to redemption and payment prior to maturity on September 1, 2025, and thereafter, as a whole or in part (selection of the amount of Notes to be redeemed to be determined by the Issuer in such equitable manner as it may determine) at any time, at the redemption price of 100% (expressed as a percentage of the principal amount), plus accrued interest thereon to the Redemption Date.

**Section 302. Selection of Notes to be Redeemed.** Notes shall be redeemed only in an Authorized Denomination. When less than all of the Notes are to be redeemed and paid prior to their Stated Maturity, such Notes shall be redeemed in such manner as the Issuer shall determine. Notes of less than a full Stated Maturity shall be selected by the Note Registrar in a minimum Authorized Denomination of principal amount in such equitable manner as the Note Registrar may determine.

In the case of a partial redemption of Notes by lot when Notes of denominations greater than a minimum Authorized Denomination are then Outstanding, then for all purposes in connection with such redemption each minimum Authorized Denomination of face value shall be treated as though it were a separate Note of the denomination of a minimum Authorized Denomination. If it is determined that one or more, but not all, of a minimum Authorized Denomination of face value represented by any Note is selected for redemption, then upon notice of intention to redeem a minimum Authorized Denomination, the Owner or the Owner's duly authorized agent shall forthwith present and surrender such Note to the Note Registrar: (1) for payment of the Redemption Price and interest to the Redemption Date of a minimum Authorized Denomination of face value called for redemption, and (2) for exchange, without charge to the Owner thereof, for a new Note or Notes of the aggregate principal amount of the unredeemed portion of the principal amount of such Note. If the Owner of any such Note fails to present such Note to the Paying Agent for payment and exchange as aforesaid, such Note shall, nevertheless, become due and payable on the redemption date to the extent of a minimum Authorized Denomination of face value called for redemption (and to that extent only).

**Section 303. Notice and Effect of Call for Redemption.** In the event the Issuer desires to call the Notes for redemption prior to maturity, written notice of such intent shall be provided to the Note Registrar in accordance with K.S.A. 10-129, as amended, not less than 45 days prior to the Redemption Date. The Note Registrar shall call Notes for redemption and payment and shall give notice of such redemption as herein provided upon receipt by the Note Registrar at least 45 days prior to the Redemption Date of written instructions of the Issuer specifying the principal amount, Stated Maturities, Redemption Date and Redemption Prices of the Notes to be called for redemption. The Paying Agent may in its discretion waive such notice period so long as the notice requirements set forth in this Section are met.

Unless waived by any Owner of Notes to be redeemed, if the Issuer shall call any Notes for redemption and payment prior to the Stated Maturity thereof, the Issuer shall give written notice of its intention to call and pay said Notes to the Note Registrar and the Purchaser. In addition, the Issuer shall cause the Note Registrar to give written notice of redemption to the Owners of said Notes. Each of said written notices shall be deposited in the United States first class mail not less than 30 days prior to the Redemption Date.

All official notices of redemption shall be dated and shall contain the following information:

- (a) the Redemption Date;
- (b) the Redemption Price;
- (c) if less than all Outstanding Notes are to be redeemed, the identification (and, in the case of partial redemption of any Notes, the respective principal amounts) of the Notes to be redeemed;
- (d) a statement that on the Redemption Date the Redemption Price will become due and payable upon each such Note or portion thereof called for redemption and that interest thereon shall cease to accrue from and after the Redemption Date; and

(e) the place where such Notes are to be surrendered for payment of the Redemption Price, which shall be the principal office of the Paying Agent.

The failure of any Owner to receive notice given as heretofore provided or an immaterial defect therein shall not invalidate any redemption.

Prior to any Redemption Date, the Issuer shall deposit with the Paying Agent an amount of money sufficient to pay the Redemption Price of all the Notes or portions of Notes that are to be redeemed on such Redemption Date.

For so long as the Securities Depository is effecting book-entry transfers of the Notes, the Note Registrar shall provide the notices specified in this Section to the Securities Depository. It is expected that the Securities Depository shall, in turn, notify its Participants and that the Participants, in turn, will notify or cause to be notified the Beneficial Owners. Any failure on the part of the Securities Depository or a Participant, or failure on the part of a nominee of a Beneficial Owner of a Note (having been mailed notice from the Note Registrar, the Securities Depository, a Participant or otherwise) to notify the Beneficial Owner of the Note so affected, shall not affect the validity of the redemption of such Note.

Official notice of redemption having been given as aforesaid, the Notes or portions of Notes to be redeemed shall become due and payable on the Redemption Date, at the Redemption Price therein specified, and from and after the Redemption Date (unless the Issuer defaults in the payment of the Redemption Price) such Notes or portion of Notes shall cease to bear interest. Upon surrender of such Notes for redemption in accordance with such notice, the Redemption Price of such Notes shall be paid by the Paying Agent. Installments of interest due on or prior to the Redemption Date shall be payable as herein provided for payment of interest. Upon surrender for any partial redemption of any Note, there shall be prepared for the Owner a new Note or Notes of the same Stated Maturity in the amount of the unpaid principal as provided herein. All Notes that have been surrendered for redemption shall be cancelled and destroyed by the Paying Agent as provided herein and shall not be reissued.

In addition to the foregoing notice, the Issuer shall provide such notices of redemption as are required by the Disclosure Undertaking. Further notice may be given by the Issuer or the Note Registrar on behalf of the Issuer as set out below, but no defect in said further notice nor any failure to give all or any portion of such further notice shall in any manner defeat the effectiveness of a call for redemption if official notice thereof is given as above prescribed:

(a) Each further notice of redemption given hereunder shall contain the information required above for an official notice of redemption plus (1) the CUSIP numbers of all Notes being redeemed; (2) the date of issue of the Notes as originally issued; (3) the rate of interest borne by each Note being redeemed; (4) the maturity date of each Note being redeemed; and (5) any other descriptive information needed to identify accurately the Notes being redeemed.

(b) Each further notice of redemption shall be sent at least one day before the mailing of notice to Owners by first class, registered or certified mail or overnight delivery, as determined by the Note Registrar, to all registered securities depositories then in the business of holding substantial amounts of obligations of types comprising the Notes and to one or more national information services that disseminate notices of redemption of obligations such as the Notes.

(c) Each check or other transfer of funds issued for the payment of the Redemption Price of Notes being redeemed shall bear or have enclosed the CUSIP number of the Notes being redeemed with the proceeds of such check or other transfer.

The Paying Agent is also directed to comply with any mandatory standards then in effect for processing redemptions of municipal securities established by the State or the Securities and Exchange Commission. Failure to comply with such standards shall not affect or invalidate the redemption of any Note.

## ARTICLE IV

### SECURITY FOR NOTES

**Section 401. Security for the Notes.** The Notes shall be general obligations of the Issuer payable as to both principal and interest from special assessments levied upon the property benefited by the construction of the Improvements, or from general obligation bonds of the Issuer, and if not so paid, from ad valorem taxes which may be levied without limitation as to rate or amount upon all the taxable tangible property, real and personal, within the territorial limits of the Issuer. The full faith, credit and resources of the Issuer are hereby irrevocably pledged for the prompt payment of the principal of and interest on the Notes as the same become due.

**Section 402. Levy and Collection of Annual Tax.** The governing body of the Issuer shall annually make provision for the payment of principal of, premium, if any, and interest on the Notes as the same become due, if necessary, by levying and collecting the necessary taxes upon all of the taxable tangible property within the Issuer in the manner provided by law.

The taxes referred to above shall be extended upon the tax rolls and shall be levied and collected at the same time and in the same manner as the other ad valorem taxes of the Issuer are levied and collected. The proceeds derived from said taxes shall be deposited in the Bond and Interest Fund, shall be kept separate and apart from all other funds of the Issuer shall thereafter be deposited in the Debt Service Account and shall be used solely for the payment of the principal of and interest on the Notes as and when the same become due, and the fees and expenses of the Paying Agent.

If at any time said taxes are not collected in time to pay the principal of or interest on the Notes when due, the Treasurer is hereby authorized and directed to pay said principal or interest out of the general funds of the Issuer and to reimburse said general funds for money so expended when said taxes are collected.

## ARTICLE V

### ESTABLISHMENT OF FUNDS AND ACCOUNTS DEPOSIT AND APPLICATION OF NOTE PROCEEDS

**Section 501. Creation of Funds and Accounts.** Simultaneously with the issuance of the Notes, there shall be created within the Treasury of the Issuer the following funds and accounts:

- (a) Improvement Fund for General Obligation Temporary Notes, Series 2024-1.
- (b) Rebate Fund for General Obligation Temporary Notes, Series 2024-1.
- (c) Costs of Issuance Account for General Obligation Temporary Notes, Series 2024-1.
- (d) Compliance Account.

The Funds and Accounts established herein shall be administered in accordance with the provisions of this Note Resolution so long as the Notes are Outstanding.

**Section 502. Deposit of Note Proceeds.** The net proceeds received from the sale of the Notes shall be deposited simultaneously with the delivery of the Notes as follows:

(a) An amount necessary to pay the Costs of Issuance shall be deposited in the Costs of Issuance Account.

(b) The remaining balance of the proceeds derived from the sale of the Notes shall be deposited in the Improvement Fund.

**Section 503. Application of Moneys in the Improvement Fund.** Moneys in the Improvement Fund shall be used for the sole purpose of: (a) paying the costs of the Improvements, in accordance with the plans and specifications therefor prepared by the Consulting Engineer heretofore approved by the governing body of the Issuer and on file in the office of the Clerk, including any alterations in or amendments to said plans and specifications deemed advisable by the Consulting Engineer and approved by the governing body of the Issuer; (b) paying interest on the Notes during construction of the Improvements; (c) paying Costs of Issuance; and (d) transferring any amounts to the Rebate Fund required by this *Article V*.

Withdrawals from the Improvement Fund shall be made only when authorized by the governing body of the Issuer and only on duly authorized and executed warrants therefor accompanied by a certificate executed by the Consulting Engineer that such payment is being made for a purpose within the scope of this Note Resolution and that the amount of such payment represents only the contract price of the property, equipment, labor, materials or service being paid for or, if such payment is not being made pursuant to an express contract, that such payment is not in excess of the reasonable value thereof. Authorizations for withdrawals for other authorized purposes shall be supported by a certificate executed by the Clerk (or designate) stating that such payment is being made for a purpose within the scope of this Note Resolution. Upon completion of the Improvements, any surplus remaining in the Improvement Fund shall be deposited in the Debt Service Account.

**Section 504. Substitution of Improvements; Reallocation of Proceeds.**

(a) The Issuer may elect for any reason to substitute or add other public improvements to be financed with proceeds of the Notes provided the following conditions are met: (1) the Substitute Improvement and the issuance of general obligation bonds to pay the cost of the Substitute Improvement has been duly authorized by the governing body of the Issuer in accordance with the laws of the State; (2) a resolution authorizing the use of the proceeds of the Notes to pay the Financeable Costs of the Substitute Improvement has been duly adopted by the governing body of the Issuer pursuant to this Section, (3) the Attorney General of the State has approved the amendment made by such resolution to the transcript of proceedings for the Notes to include the Substitute Improvements; and (4) the use of the proceeds of the Notes to pay the Financeable Cost of the Substitute Improvement will not adversely affect the tax-exempt status of the Notes under State or federal law.

(b) The Issuer may reallocate expenditure of Note proceeds among all Improvements financed by the Notes; provided the following conditions are met: (1) the reallocation is approved by the governing body of the Issuer; (2) the reallocation shall not cause the proceeds of the Notes allocated to any Improvement to exceed the Financeable Costs of the Improvement; and (3) the reallocation will not adversely affect the tax-exempt status of the Notes under State or federal law.

**Section 505. Application of Moneys in Debt Service Account.** All amounts paid and credited to the Debt Service Account shall be expended and used by the Issuer for the sole purpose of paying the principal or Redemption Price of and interest on the Notes as and when the same become due and the usual and customary fees and expenses of the Note Registrar and Paying Agent. The Treasurer is authorized and directed to withdraw from the Debt Service Account sums sufficient to pay both principal or Redemption Price of and interest on the Notes and the fees and expenses of the Note Registrar and Paying Agent as and when the same become due, and to forward such sums to the Paying Agent, if other than the Issuer, in a manner which ensures that the Paying Agent will receive immediately available funds in such amounts on or before the Business Day immediately preceding the dates when such principal, interest and fees of the Note Registrar and Paying Agent will become due. If, through the lapse of time or otherwise, the Owners of Notes are no longer entitled to enforce payment of the Notes or the interest thereon, the Paying Agent shall return said funds to the Issuer. All moneys deposited with the Paying Agent shall be deemed to be deposited in accordance with and subject to all of the provisions contained in this Note Resolution and shall be held by the Paying Agent for the benefit of the Owners of the Notes entitled to payment from such moneys.

Any moneys or investments remaining in the Debt Service Account after the retirement of the indebtedness for which the Notes were issued shall be transferred and paid into the Bond and Interest Fund.

**Section 506. Deposits and Investment of Moneys.** Moneys in each of the Funds and Accounts shall be deposited in accordance with laws of the State, in a bank, savings and loan association or savings bank organized under the laws of the State, any other state or the United States: (a) which has a main or branch office located in the Issuer; or (b) if no such entity has a main or branch office located in the Issuer, with such an entity that has a main or branch office located in the county or counties in which the Issuer is located. All such depositories shall be members of the Federal Deposit Insurance Corporation, or otherwise as permitted by State law. All such deposits shall be invested in Permitted Investments as set forth in this Article or shall be adequately secured as provided by the laws of the State. All moneys held in the Funds and Accounts shall be kept separate and apart from all other funds of the Issuer so that there shall be no commingling with any other funds of the Issuer.

Moneys held in any Fund or Account may be invested in accordance with this Note Resolution and the Federal Tax Certificate in Permitted Investments; provided, however, that no such investment shall be made for a period extending longer than to the date when the moneys invested may be needed for the purpose for which such fund was created. All earnings on any investments held in any Fund or Account shall accrue to and become a part of such Fund or Account; provided that, during the period of construction of the Improvements, earnings on the investment of such funds may be credited to the Debt Service Account.

**Section 507. Application of Moneys in the Costs of Issuance Account.** Moneys in the Costs of Issuance Account shall be used by the Issuer to pay the Costs of Issuance. Any funds remaining in the Costs of Issuance Account, after payment of all Costs of Issuance, but not later than the later of 90 days after the issuance of the Notes, shall be transferred to the Improvement Fund until completion of the Improvements and thereafter to the Debt Service Account.

**Section 508. Application of Moneys in the Compliance Account.** Moneys in the Compliance Account shall be used by the Issuer to pay the to pay fees and expenses relating to compliance with federal arbitrage law and state or federal securities laws. Any funds remaining in the Compliance Account on the sixth anniversary of the Issue Date shall be transferred to the Debt Service Account.

## ARTICLE VI

### DEFAULT AND REMEDIES

**Section 601. Remedies.** The provisions of the Note Resolution, including the covenants and agreements herein contained, shall constitute a contract between the Issuer and the Owners of the Notes. If an Event of Default occurs and shall be continuing, the Owner or Owners of not less than 10% in principal amount of the Notes at the time Outstanding shall have the right for the equal benefit and protection of all Owners of Notes similarly situated:

(a) by mandamus or other suit, action or proceedings at law or in equity to enforce the rights of such Owner or Owners against the Issuer and its officers, agents and employees, and to require and compel duties and obligations required by the provisions of the Note Resolution or by the Constitution and laws of the State;

(b) by suit, action or other proceedings in equity or at law to require the Issuer, its officers, agents and employees to account as if they were the trustees of an express trust; and

(c) by suit, action or other proceedings in equity or at law to enjoin any acts or things which may be unlawful or in violation of the rights of the Owners of the Notes.

**Section 602. Limitation on Rights of Owners.** The covenants and agreements of the Issuer contained herein and in the Notes shall be for the equal benefit, protection, and security of the Owners of any or all of the Notes, all of which Notes shall be of equal rank and without preference or priority of one Note over any other Note in the application of the funds herein pledged to the payment of the principal of and the interest on the Notes, or otherwise, except as to rate of interest, date of maturity and right of prior redemption as provided in this Note Resolution. No one or more Owners secured hereby shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the security granted and provided for herein, or to enforce any right hereunder, except in the manner herein provided, and all proceedings at law or in equity shall be instituted, had and maintained for the equal benefit of all Outstanding Notes.

**Section 603. Remedies Cumulative.** No remedy conferred herein upon the Owners is intended to be exclusive of any other remedy, but each such remedy shall be cumulative and in addition to every other remedy and may be exercised without exhausting and without regard to any other remedy conferred herein. No waiver of any default or breach of duty or contract by the Owner of any Note shall extend to or affect any subsequent default or breach of duty or contract or shall impair any rights or remedies thereon. No delay or omission of any Owner to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein. Every substantive right and every remedy conferred upon the Owners of the Notes by this Note Resolution may be enforced and exercised from time to time and as often as may be deemed expedient. If action or proceedings taken by any Owner on account of any default or to enforce any right or exercise any remedy has been discontinued or abandoned for any reason, or shall have been determined adversely to such Owner, then, and in every such case, the Issuer and the Owners of the Notes shall, subject to any determination in such action or proceeding or applicable law of the State, be restored to their former positions and rights hereunder, respectively, and all rights, remedies, powers and duties of the Owners shall continue as if no such suit, action or other proceedings had been brought or taken.

## ARTICLE VII

### DEFEASANCE

**Section 701. Defeasance.** When any or all of the Notes, redemption premium, if any, or scheduled interest payments thereon have been paid and discharged, then the requirements contained in this Note Resolution and the pledge of the Issuer's faith and credit hereunder and all other rights granted hereby shall terminate with respect to the Notes or scheduled interest payments thereon so paid and discharged. Notes, redemption premium, if any, or scheduled interest payments thereon shall be deemed to have been paid and discharged within the meaning of this Note Resolution if there has been deposited with the Paying Agent, or other commercial bank or trust company located in the State and having full trust powers, at or prior to the Stated Maturity or Redemption Date of said Notes or the interest payments thereon, in trust for and irrevocably appropriated thereto, moneys and/or Defeasance Obligations which, together with the interest to be earned on any such Defeasance Obligations, will be sufficient for the payment of the principal of or Redemption Price of said Notes and/or interest accrued to the Stated Maturity or Redemption Date, or if default in such payment has occurred on such date, then to the date of the tender of such payments. Any money and Defeasance Obligations that at any time shall be deposited with the Paying Agent or other commercial bank or trust company by or on behalf of the Issuer, for the purpose of paying and discharging any of the Notes, shall be and are hereby assigned, transferred and set over to the Paying Agent or other bank or trust company in trust for the respective Owners of the Notes, and such moneys shall be and are hereby irrevocably appropriated to the payment and discharge thereof. All money and Defeasance Obligations deposited with the Paying Agent or such bank or trust company shall be deemed to be deposited in accordance with and subject to all of the provisions of this Note Resolution.

## ARTICLE VIII

### TAX COVENANTS

**Section 801. General Covenants.** The Issuer covenants and agrees that: it will comply with: (a) all applicable provisions of the Code necessary to maintain the exclusion from gross income for federal income tax purposes of the interest on the Notes; and (b) all provisions and requirements of the Federal Tax Certificate. The Mayor, Director of Finance and Clerk are hereby authorized and directed to execute the Federal Tax Certificate in a form approved by Bond Counsel, for and on behalf of and as the act and deed of the Issuer. The Issuer will, in addition, adopt such other ordinances or resolutions and take such other actions as may be necessary to comply with the Code and with all other applicable future laws, regulations, published rulings and judicial decisions, in order to ensure that the interest on the Notes will remain excluded from federal gross income, to the extent any such actions can be taken by the Issuer.

**Section 802. Survival of Covenants.** The covenants contained in this Article and in the Federal Tax Certificate shall remain in full force and effect notwithstanding the defeasance of the Notes pursuant to *Article VII* hereof or any other provision of this Note Resolution until such time as is set forth in the Federal Tax Certificate.

## ARTICLE IX

### CONTINUING DISCLOSURE REQUIREMENTS

**Section 901. Disclosure Requirements.** The Issuer hereby covenants with the Purchaser and the Beneficial Owners to provide and disseminate such information as is required by the SEC Rule and as further set forth in the Disclosure Undertaking, the provisions of which are incorporated herein by reference. Such covenant shall be for the benefit of and enforceable by the Purchaser and the Beneficial Owners.

**Section 902. Failure to Comply with Continuing Disclosure Requirements.** In the event the Issuer fails to comply in a timely manner with its covenants contained in the preceding section, the Purchaser and/or any Beneficial Owner may make demand for such compliance by written notice to the Issuer. In the event the Issuer does not remedy such noncompliance within 10 days of receipt of such written notice, the Purchaser or any Beneficial Owner may in its discretion, without notice or demand, proceed to enforce compliance by a suit or suits in equity for the specific performance of such covenant or agreement contained in the preceding section or for the enforcement of any other appropriate legal or equitable remedy, as the Purchaser and/or any Beneficial Owner shall deem effectual to protect and enforce any of the duties of the Issuer under such preceding section.

## ARTICLE X

### MISCELLANEOUS PROVISIONS

**Section 1001. Annual Audit.** Annually, promptly after the end of the Fiscal Year, the Issuer will cause an audit to be made of the financial statements of the Issuer for the preceding Fiscal Year by an Independent Accountant. Within 30 days after the completion of each such audit, a copy thereof shall be filed in the office of the Clerk, and a duplicate copy of the audit shall be mailed to the Purchaser. Such audit shall at all times during the usual business hours be open to the examination and inspection by any taxpayer, any Owner of any of the Notes, or by anyone acting for or on behalf of such taxpayer or Owner. Upon payment of the reasonable cost of preparing and mailing the same, a copy of any annual audit will, upon request, be sent to any Owner or prospective Owner. As soon as possible after the completion of the annual audit, the governing body of the Issuer shall review such audit, and if the audit discloses that proper provision has not been made for all of the requirements of this Note Resolution, the Issuer shall promptly cure such deficiency.

**Section 1002. Amendments.** The rights and duties of the Issuer and the Owners, and the terms and provisions of the Notes or of this Note Resolution, may be amended or modified at any time in any respect by resolution or ordinance of the Issuer with the written consent of the Owners of not less than a majority in principal amount of the Notes then Outstanding, such consent to be evidenced by an instrument or instruments executed by such Owners and duly acknowledged or proved in the manner of a deed to be recorded, and such instrument or instruments shall be filed with the Clerk, but no such modification or alteration shall:

- (a) Extend the maturity of any payment of principal or interest due upon any Note;
- (b) effect a reduction in the amount which the Issuer is required to pay as principal of or interest on any Note;
- (c) permit preference or priority of any Note over any other Note; or

(d) reduce the percentage in principal amount of Notes required for the written consent to any modification or alteration of the provisions of this Note Resolution.

Any provision of the Notes or of this Note Resolution may, however, be amended or modified by resolution or ordinance duly adopted by the governing body of the Issuer at any time in any legal respect with the written consent of the Owners of all of the Notes at the time Outstanding.

Without notice to or the consent of any Owners, the Issuer may amend or supplement this Note Resolution for the purpose of curing any formal defect, omission, inconsistency or ambiguity herein, to grant to or confer upon the Owners any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Owners, to more precisely identify the Improvements, to reallocate proceeds of the Notes among Improvements, to provide for Substitute Improvements, to conform this Note Resolution to the Code or future applicable federal law concerning tax-exempt obligations, or in connection with any other change therein which is not materially adverse to the interests of the Owners.

Every amendment or modification of the provisions of the Notes or of this Note Resolution, to which the written consent of the Owners is given, as above provided, shall be expressed in a resolution or ordinance adopted by the governing body of the Issuer amending or supplementing the provisions of this Note Resolution and shall be deemed to be a part of this Note Resolution. A certified copy of every such amendatory or supplemental resolution or ordinance, if any, and a certified copy of this Note Resolution shall always be kept on file in the office of the Clerk, and shall be made available for inspection by the Owner of any Note or a prospective purchaser or owner of any Note authorized by this Note Resolution, and upon payment of the reasonable cost of preparing the same, a certified copy of any such amendatory or supplemental resolution or ordinance or of this Note Resolution will be sent by the Clerk to any such Owner or prospective Owner.

Any and all modifications made in the manner hereinabove provided shall not become effective until there has been filed with the Clerk a copy of the resolution or ordinance of the Issuer hereinabove provided for, duly certified, as well as proof of any required consent to such modification by the Owners of the Notes then Outstanding. It shall not be necessary to note on any of the Outstanding Notes any reference to such amendment or modification.

The Issuer shall furnish to the Paying Agent a copy of any amendment to the Notes or this Note Resolution which affects the duties or obligations of the Paying Agent under this Note Resolution.

**Section 1003. Notices, Consents and Other Instruments by Owners.** Any notice, consent, request, direction, approval or other instrument to be signed and executed by the Owners may be in any number of concurrent writings of similar tenor and may be signed or executed by such Owners in person or by agent appointed in writing. Proof of the execution of any such instrument or of the writing appointing any such agent and of the ownership of Notes, if made in the following manner, shall be sufficient for any of the purposes of this Note Resolution, and shall be conclusive in favor of the Issuer and the Paying Agent with regard to any action taken, suffered or omitted under any such instrument, namely:

(a) The fact and date of the execution by any person of any such instrument may be proved by a certificate of any officer in any jurisdiction who by law has power to take acknowledgments within such jurisdiction that the person signing such instrument acknowledged before such officer the execution thereof, or by affidavit of any witness to such execution.

(b) The fact of ownership of Notes, the amount or amounts, numbers and other identification of Notes, and the date of holding the same shall be proved by the Note Register.

In determining whether the Owners of the requisite principal amount of Notes Outstanding have given any request, demand, authorization, direction, notice, consent or waiver under this Note Resolution, Notes owned by the Issuer shall be disregarded and deemed not to be Outstanding under this Note Resolution, except that, in determining whether the Owners shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Notes which the Owners know to be so owned shall be so disregarded. Notwithstanding the foregoing, Notes so owned which have been pledged in good faith shall not be disregarded as aforesaid if the pledgee establishes to the satisfaction of the Owners the pledgee's right so to act with respect to such Notes and that the pledgee is not the Issuer.

**Section 1004. Notices.** Any notice, request, complaint, demand or other communication required or desired to be given or filed under this Note Resolution shall be in writing, given to the Notice Representative at the Notice Address and shall be deemed duly given or filed if the same shall be: (a) duly mailed by registered or certified mail, postage prepaid; or (b) communicated via fax, with electronic or telephonic confirmation of receipt. Copies of such notices shall also be given to the Paying Agent. The Issuer, the Paying Agent and the Purchaser may from time to time designate, by notice given hereunder to the others of such parties, such other address to which subsequent notices, certificates or other communications shall be sent.

All notices given by: (a) certified or registered mail as aforesaid shall be deemed duly given as of the date they are so mailed; (b) fax as aforesaid shall be deemed duly given as of the date of confirmation of receipt. If, because of the temporary or permanent suspension of regular mail service or for any other reason, it is impossible or impractical to mail any notice in the manner herein provided, then such other form of notice as shall be made with the approval of the Paying Agent shall constitute a sufficient notice.

**Section 1005. Electronic Transactions.** The transactions described in this Note Resolution may be conducted, and documents related to the Notes may be sent, received, executed, and stored, by electronic means or transmissions. Copies, teletypes, electronic files and other reproductions of original executed documents (or documents executed by electronic means or transmissions) shall be deemed to be authentic and valid counterparts of such documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

**Section 1006. Further Authority.** The officers and officials of the Issuer, including the Mayor and Clerk, are hereby authorized and directed to execute all documents and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of this Note 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 1007. Severability.** If any section or other part of this Note Resolution, whether large or small, is for any reason held invalid, the invalidity thereof shall not affect the validity of the other provisions of this Note Resolution.

**Section 1008. Governing Law.** This Note Resolution shall be governed exclusively by and construed in accordance with the applicable laws of the State.

**Section 1009. Effective Date.** This Note Resolution shall take effect and be in full force from and after its adoption by the governing body of the Issuer.

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**ADOPTED** by the governing body of the Issuer on September 16, 2024.

(SEAL)

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Mayor

ATTEST:

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Clerk

**CERTIFICATE**

I hereby certify that the above and foregoing is a true and correct copy of the Note Resolution of the Issuer adopted by the governing body on September 16, 2024, as the same appears of record in my office.

DATED: September 16, 2024.

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Clerk

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**EXHIBIT A**  
**(FORM OF NOTES)**

**REGISTERED  
NUMBER \_\_\_\_\_**

**REGISTERED  
\$**

**Unless this certificate is presented by an authorized representative of The Depository Trust Company, a New York Corporation (“DTC”), to the Issuer or its agent for registration of transfer, exchange or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.**

**UNITED STATES OF AMERICA  
STATE OF KANSAS  
COUNTY OF FORD  
CITY OF DODGE CITY  
GENERAL OBLIGATION TEMPORARY NOTE  
SERIES 2024-1**

**Interest  
Rate:**

**Maturity  
Date:**

**Dated  
Date: October 3, 2024**

**CUSIP:**

**REGISTERED OWNER:**

**PRINCIPAL AMOUNT:**

**KNOW ALL PERSONS BY THESE PRESENTS:** That the City of Dodge City, in the County of Ford, State of Kansas (the “Issuer”), for value received, hereby acknowledges itself to be indebted and promises to pay to the Registered Owner shown above, or registered assigns, but solely from the source and in the manner herein specified, the Principal Amount shown above on the Maturity Date shown above, unless called for redemption prior to said Maturity Date, and to pay interest thereon at the Interest Rate per annum shown above (computed on the basis of a 360-day year of twelve 30-day months), from the Dated Date shown above, or from the most recent date to which interest has been paid or duly provided for, payable semiannually on March 1 and September 1 of each year, commencing March 1, 2025 (the “Interest Payment Dates”), until the Principal Amount has been paid.

**Method and Place of Payment.** The principal or redemption price of this Note shall be paid at maturity or upon earlier redemption to the person in whose name this Note is registered at the maturity or redemption date thereof, upon presentation and surrender of this Note at the principal office of the Treasurer of the State of Kansas, Topeka, Kansas (the “Paying Agent” and “Note Registrar”). The interest payable on this Note on any Interest Payment Date shall be paid to the person in whose name this Note is registered on the registration books maintained by the Note Registrar at the close of business on the Record Date(s)

for such interest, which shall be the 15th day (whether or not a business day) of the calendar month next preceding the Interest Payment Date. Such interest shall be payable (a) by check or draft mailed by the Paying Agent to the address of such Registered Owner shown on the Note Register or at such other address as is furnished to the Paying Agent in writing by such Registered Owner; or (b) in the case of an interest payment to Cede & Co. or any Owner of \$500,000 or more in aggregate principal amount of Notes, by electronic transfer to such Owner upon written notice given to the Note Registrar by such Registered Owner, not less than 15 days prior to the Record Date for such interest, containing the electronic transfer instructions including the bank, ABA routing number and account number to which such Registered Owner wishes to have such transfer directed. The principal or redemption price of and interest on the Notes shall be payable in any coin or currency that, on the respective dates of payment thereof, is legal tender for the payment of public and private debts. Interest not punctually paid will be paid in the manner established in the within defined Note Resolution.

**Definitions.** Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the hereinafter defined Note Resolution.

**Authorization of Notes.** This Note is one of an authorized series of Notes of the Issuer designated “General Obligation Temporary Notes, Series 2024-1,” aggregating the principal amount of \$10,415,000\* (the “Notes”) issued for the purposes set forth in the Resolution of the Issuer authorizing the issuance of the Notes (the “Note Resolution”). The Notes are issued by the authority of and in full compliance with the provisions, restrictions and limitations of the Constitution and laws of the State of Kansas, including K.S.A. 10-123 and K.S.A. 12-6a01 *et seq.*, as amended, and all other provisions of the laws of the State of Kansas applicable thereto.

**General Obligations.** The Notes constitute general obligations of the Issuer payable as to both principal and interest from special assessments levied upon the property benefited by the construction of certain Improvements, or from the proceeds of general obligation bonds of the Issuer, and if not so paid, from ad valorem taxes which may be levied without limitation as to rate or amount upon all the taxable tangible property, real and personal, within the territorial limits of the Issuer. The full faith, credit and resources of the Issuer are hereby pledged for the payment of the principal of and interest on this Note and the issue of which it is a part as the same respectively become due.

**Redemption Prior to Maturity.** The Notes are subject to redemption prior to maturity as set forth in the Note Resolution.

**Book-Entry System.** The Notes are being issued by means of a book-entry system with no physical distribution of note certificates to be made except as provided in the Note Resolution. One Note certificate with respect to each date on which the Notes are stated to mature or with respect to each form of Notes, registered in the nominee name of the Securities Depository, is being issued and required to be deposited with the Securities Depository and immobilized in its custody. The book-entry system will evidence positions held in the Notes by the Securities Depository's participants, beneficial ownership of the Notes in Authorized Denominations being evidenced in the records of such participants. Transfers of ownership shall be effected on the records of the Securities Depository and its participants pursuant to rules and procedures established by the Securities Depository and its participants. The Issuer and the Note Registrar will recognize the Securities Depository nominee, while the Registered Owner of this Note, as the owner of this Note for all purposes, including (i) payments of principal of, and redemption premium, if any, and interest on, this Note, (ii) notices and (iii) voting. Transfer of principal, interest and any redemption premium payments to participants of the Securities Depository, and transfer of principal, interest and any redemption premium payments to beneficial owners of the Notes by participants of the Securities Depository will be the responsibility of such participants and other nominees of such beneficial owners. The Issuer and the Note Registrar will not be responsible or liable for such transfers of payments or for

maintaining, supervising or reviewing the records maintained by the Securities Depository, the Securities Depository nominee, its participants or persons acting through such participants. While the Securities Depository nominee is the owner of this Note, notwithstanding the provision hereinabove contained, payments of principal of, redemption premium, if any, and interest on this Note shall be made in accordance with existing arrangements among the Issuer, the Note Registrar and the Securities Depository.

**Transfer and Exchange.** EXCEPT AS OTHERWISE PROVIDED IN THE NOTE RESOLUTION, THIS GLOBAL NOTE MAY BE TRANSFERRED, IN WHOLE BUT NOT IN PART, ONLY TO ANOTHER NOMINEE OF THE SECURITIES DEPOSITORY OR TO A SUCCESSOR SECURITIES DEPOSITORY OR TO A NOMINEE OF A SUCCESSOR SECURITIES DEPOSITORY. This Note may be transferred or exchanged, as provided in the Note Resolution, only on the Note Register kept for that purpose at the principal office of the Note Registrar, upon surrender of this Note together with a written instrument of transfer or authorization for exchange satisfactory to the Note Registrar duly executed by the Registered Owner or the Registered Owner's duly authorized agent, and thereupon a new Note or Notes in any Authorized Denomination of the same maturity and in the same aggregate principal amount shall be issued to the transferee in exchange therefor as provided in the Note Resolution and upon payment of the charges therein prescribed. The Issuer shall pay all costs incurred in connection with the issuance, payment and initial registration of the Notes and the cost of a reasonable supply of note blanks. The Issuer and the Paying Agent may deem and treat the person in whose name this Note is registered on the Note Register as the absolute owner hereof for the purpose of receiving payment of, or on account of, the principal or redemption price hereof and interest due hereon and for all other purposes. The Notes are issued in fully registered form in Authorized Denominations.

**Authentication.** This Note shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Note Resolution until the Certificate of Authentication and Registration hereon shall have been lawfully executed by the Note Registrar.

**IT IS HEREBY DECLARED AND CERTIFIED** that all acts, conditions, and things required to be done and to exist precedent to and in the issuance of this Note have been properly done and performed and do exist in due and regular form and manner as required by the Constitution and laws of the State of Kansas, and that the total indebtedness of the Issuer, including this series of notes, does not exceed any constitutional or statutory limitation.

**IN WITNESS WHEREOF**, the Issuer has caused this Note to be executed by the manual, electronic or facsimile signature of its Mayor and attested by the manual, electronic or facsimile signature of its Clerk, and its seal to be affixed hereto or imprinted hereon.

**CITY OF DODGE CITY, KANSAS**

(Facsimile Seal)

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

ATTEST:

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

COUNTERSIGNED:

This General Obligation Temporary Note shall not be negotiable unless and until countersigned below following registration by the Treasurer of the State of Kansas.

(Seal)

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

---

**CERTIFICATE OF AUTHENTICATION AND REGISTRATION**

This Note is one of a series of General Obligation Temporary Notes, Series 2024-1, of the City of Dodge City, Kansas, described in the within-mentioned Note Resolution.

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

Office of the State Treasurer,  
Topeka, Kansas,  
as Note Registrar and Paying Agent

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

Registration Number: 0130-029-100324-\_\_\_\_

---

**LEGAL OPINION**

The following is a true and correct copy of the approving legal opinion of Gilmore & Bell, P.C., Bond Counsel, which was dated and issued as of the date of original issuance and delivery of such Notes:

**GILMORE & BELL, P.C.**

Attorneys at Law  
100 N. Main Suite 800  
Wichita, Kansas 67202

(PRINTED LEGAL OPINION)

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**NOTE ASSIGNMENT**

FOR VALUE RECEIVED, the undersigned do(es) hereby sell, assign and transfer to

\_\_\_\_\_  
(Name and Address)

\_\_\_\_\_  
(Social Security or Taxpayer Identification No.)



**RESOLUTION NO. 2024-18**

**OF**

**THE CITY OF DODGE CITY, KANSAS**

**ADOPTED**

**SEPTEMBER 16, 2024**

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**GENERAL OBLIGATION BONDS  
SERIES 2024-A**

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**RESOLUTION NO. 2024-18**

**A RESOLUTION PRESCRIBING THE FORM AND DETAILS OF AND AUTHORIZING AND DIRECTING THE SALE AND DELIVERY OF GENERAL OBLIGATION BONDS, SERIES 2024-A, OF THE CITY OF DODGE CITY, KANSAS, PREVIOUSLY AUTHORIZED BY ORDINANCE NO. 3818 OF THE ISSUER; MAKING CERTAIN COVENANTS AND AGREEMENTS TO PROVIDE FOR THE PAYMENT AND SECURITY THEREOF; AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS CONNECTED THEREWITH.**

---

**WHEREAS**, the Issuer has heretofore passed the Ordinance authorizing the issuance of the Bonds;  
and

**WHEREAS**, the Ordinance authorized the City Commission of the Issuer (the “Governing Body”) to adopt a resolution prescribing certain details and conditions and to make certain covenants with respect to the issuance of the Bonds; and

**WHEREAS**, the Governing Body hereby finds and determines that it is necessary for the Issuer to authorize the issuance and delivery of the Bonds in the principal amount of \$2,135,000\* to pay the costs of the Improvements.

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

**ARTICLE I**

**DEFINITIONS**

**Section 101. Definitions of Words and Terms.** In addition to words and terms defined elsewhere herein, the following words and terms as used in this Bond Resolution shall have the meanings hereinafter set forth. Unless the context shall otherwise indicate, words importing the singular number shall include the plural and vice versa, and words importing persons shall include firms, associations and corporations, including public bodies, as well as natural persons.

“**Act**” means the Constitution and statutes of the State including K.S.A. 10-101 to 10-125, inclusive, K.S.A. 10-620 *et seq.*, and K.S.A. 13-1024a, as amended by Charter Ordinance No. 41, all as amended and supplemented from time to time.

[ “**AG**” means Assured Guaranty Inc., a Maryland domiciled financial guaranty insurance company, or any successor thereto.]

“**Authorized Denomination**” means \$5,000 or any integral multiples thereof or an integral multiple thereof).

[ “**BAM**” means Build America Mutual Assurance Company, a New York domiciled mutual insurance corporation, or any successor thereto.]

**“Beneficial Owner”** of the Bonds includes any Owner of the Bonds and any other Person who, directly or indirectly has the investment power with respect to such Bonds.

**“Bond and Interest Fund”** means the Bond and Interest Fund of the Issuer for its general obligation bonds.

**“Bond Counsel”** means the firm of Gilmore & Bell, P.C., or any other attorney or firm of attorneys whose expertise in matters relating to the issuance of obligations by states and their political subdivisions is nationally recognized and acceptable to the Issuer.

[ **“Bond Insurance Policy”** means the municipal bond insurance policy issued by the Bond Insurer concurrently with the delivery of the Bonds guaranteeing the scheduled payment when due of the principal of and interest on the Bonds.]

[ **“Bond Insurer”** means [AG] [BAM] with respect to the Bonds.]

**“Bond Payment Date”** means any date on which principal of or interest on any Bond is payable.

**“Bond Register”** means the books for the registration, transfer and exchange of Bonds kept at the office of the Bond Registrar.

**“Bond Registrar”** means the State Treasurer and any successors and assigns.

**“Bond Resolution”** means this resolution relating to the Bonds.

**“Bonds”** or **“Bond”** means the General Obligation Bonds, Series 2024-A, authorized and issued by the Issuer pursuant to the Ordinance and this Bond Resolution.

**“Business Day”** means a day other than a Saturday, Sunday or any day designated as a holiday by the Congress of the United States or by the Legislature of the State and on which the Paying Agent is scheduled in the normal course of its operations to be open to the public for conduct of its operations.

**“Cede & Co.”** means Cede & Co., as nominee of DTC and any successor nominee of DTC.

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

**“Clerk”** means the duly appointed and/or elected Clerk or, in the Clerk's absence, the duly appointed Deputy Clerk or Acting Clerk of the Issuer.

**“Code”** means the Internal Revenue Code of 1986, as amended, and the applicable regulations promulgated thereunder by the United States Department of the Treasury.

**“Compliance Account”** means the Compliance Account created pursuant to *Section 501* hereof.

**“Consulting Engineer”** means an independent engineer or engineering firm, or architect or architectural firm, having a favorable reputation for skill and experience in the construction, financing and operation of public facilities, at the time employed by the Issuer for the purpose of carrying out the duties imposed on the Consulting Engineer by this Bond Resolution.

**“Costs of Issuance”** means all costs of issuing the Bonds, including but not limited to all publication, printing, signing and mailing expenses in connection therewith, registration fees, financial

advisory fees, all legal fees and expenses of Bond Counsel and other legal counsel, expenses incurred in connection with compliance with the Code, all expenses incurred in connection with receiving ratings on the Bonds, and any premiums or expenses incurred in obtaining municipal bond insurance on the Bonds.

**“Costs of Issuance Account”** means the Costs of Issuance Account for General Obligation Bonds, Series 2024-A created pursuant to **Section 501** hereof.

**“Dated Date”** means October 3, 2024.

**“Debt Service Account”** means the Debt Service Account for General Obligation Bonds, Series 2024-A created within the Bond and Interest Fund pursuant to **Section 501** hereof.

**“Debt Service Requirements”** means the aggregate principal payments (whether at maturity or pursuant to scheduled mandatory sinking fund redemption requirements) and interest payments on the Bonds for the period of time for which calculated; provided, however, that for purposes of calculating such amount, principal and interest shall be excluded from the determination of Debt Service Requirements to the extent that such principal or interest is payable from amounts deposited in trust, escrowed or otherwise set aside for the payment thereof with the Paying Agent or other commercial bank or trust company located in the State and having full trust powers.

**“Defaulted Interest”** means interest on any Bond which is payable but not paid on any Interest Payment Date.

**“Defeasance Obligations”** means any of the following obligations:

(a) United States Government Obligations that are not subject to redemption in advance of their maturity dates; or

(b) [evidences of ownership of proportionate interests in future interest and principal payments on United States Government Obligations held by a bank or trust company as custodian, under which the owner of the investment is the real party in interest and has the right to proceed directly and individually against the obligor and the underlying United States Government Obligations are not available to any person claiming through the custodian or to whom the custodian may be obligated; or

(c) [obligations of any state or political subdivision of any state, the interest on which is excluded from gross income for federal income tax purposes and which meet the following conditions:

(1) the obligations are (i) not subject to redemption prior to maturity or (ii) the trustee for such obligations has been given irrevocable instructions concerning their calling and redemption and the issuer of such obligations has covenanted not to redeem such obligations other than as set forth in such instructions;

(2) the obligations are secured by cash or United States Government Obligations that may be applied only to principal of, premium, if any, and interest payments on such obligations;

(3) such cash and the principal of and interest on such United States Government Obligations (plus any cash in the escrow fund) are sufficient to meet the liabilities of the obligations;

(4) such cash and United States Government Obligations serving as security for the obligations are held in an escrow fund by an escrow agent or a trustee irrevocably in trust;

(5) such cash and United States Government Obligations are not available to satisfy any other claims, including those against the trustee or escrow agent; and

(6) such obligations are rated in a rating category by Moody's or Standard & Poor's that is no lower than the rating category then assigned by that Rating Agency to United States Government Obligations.

**“Derivative”** means any investment instrument whose market price is derived from the fluctuating value of an underlying asset, index, currency, futures contract, including futures, options and collateralized mortgage obligations.

**“Disclosure Undertaking”** means the Continuing Disclosure Undertaking, dated as of the Dated Date, relating to certain obligations contained in the SEC Rule.

**“DTC”** means The Depository Trust Company, a limited-purpose trust company organized under the laws of the State of New York, and its successors and assigns, including any successor securities depository duly appointed.

**“DTC Representation Letter”** means the Blanket Letter of Representation from the Issuer and the Paying Agent to DTC which provides for a book-entry system, or any agreement between the Issuer and Paying Agent and a successor securities depository duly appointed.

**“Event of Default”** means each of the following occurrences or events:

(a) Payment of the principal and of the redemption premium, if any, of any of the Bonds shall not be made when the same shall become due and payable, either at Stated Maturity or by proceedings for redemption or otherwise;

(b) Payment of any installment of interest on any of the Bonds shall not be made when the same shall become due; or

(c) The Issuer shall default in the due and punctual performance of any other of the covenants, conditions, agreements and provisions contained in the Bonds or in this Bond Resolution (other than the covenants relating to continuing disclosure requirements contained herein and in the Disclosure Undertaking) on the part of the Issuer to be performed, and such default shall continue for thirty (30) days after written notice specifying such default and requiring same to be remedied shall have been given to the Issuer by the Owner of any of the Bonds then Outstanding.

**“Federal Tax Certificate”** means the Issuer's Federal Tax Certificate, dated as of the Issue Date, as the same may be amended or supplemented in accordance with the provisions thereof.

**“Financeable Costs”** means the amount of expenditure for an Improvement which has been duly authorized by action of the Governing Body to be financed by general obligation bonds, less: (a) the amount of any temporary notes or general obligation bonds of the Issuer which are currently Outstanding and available to pay such Financeable Costs; and (b) any amount of Financeable Costs which has been previously paid by the Issuer or by any eligible source of funds unless such amounts are entitled to be reimbursed to the Issuer under State or federal law.

**“Fiscal Year”** means the twelve month period ending on December 31.

**“Funds and Accounts”** means funds and accounts created pursuant to or referred to in *Section 501* hereof.

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

**“Improvement Fund”** means the Improvement Fund for General Obligation Bonds, Series 2024-A created pursuant to *Section 501* hereof.

**“Improvements”** means the improvements referred to in the preamble to the Ordinance and any Substitute Improvements.

**“Independent Accountant”** means an independent certified public accountant or firm of independent certified public accountants at the time employed by the Issuer for the purpose of carrying out the duties imposed on the Independent Accountant by this Bond Resolution.

[ **“Insurer’s Fiscal Agent”** means the agent designated by the Bond Insurer pursuant to the Bond Insurance Policy.]

**“Interest Payment Date(s)”** means the Stated Maturity of an installment of interest on any Bond which shall be March 1 and September 1 of each year, commencing March 1, 2025.

**“Issue Date”** means the date when the Issuer delivers the Bonds to the Purchaser in exchange for the Purchase Price.

**“Issuer”** means the City and any successors or assigns.

**“Maturity”** when used with respect to any Bond means the date on which the principal of such Bond becomes due and payable as therein and herein provided, whether at the Stated Maturity thereof or call for redemption or otherwise.

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

**“Moody's”** means Moody's Investors Service, a corporation organized and existing under the laws of the State of Delaware, and its successors and assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “Moody's” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Issuer [with notice to the Bond Insurer].

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

(a) To the Issuer at:

City Hall  
806 2nd Avenue  
P.O. Box 880  
Dodge City, Kansas 67801  
Fax: (620) 225-8144

(b) To the Paying Agent at:

State Treasurer of the State of Kansas  
Landon Office Building  
900 Southwest Jackson, Suite 201  
Topeka, Kansas 66612-1235  
Fax: (785) 296-6976

(c) To the Purchaser:

[Purchaser]  
[Purchaser Address]  
[Purchaser City, State] [Zip]  
Fax: [Purchaser Fax]

(d) To the Rating Agency(ies):

Moody's Municipal Rating Desk  
7 World Trade Center  
250 Greenwich Street, 23rd Floor  
New York, New York 10007

S&P Global Ratings, a division of S&P Global Inc.  
55 Water Street, 38th Floor  
New York, New York 10004

[ (f) To the Bond Insurer:

Assured Guaranty Inc.  
31 West 52nd Street  
New York, New York 10019  
Telephone: (212) 826-0100; Fax: (212) 339-3529

Build America Mutual Assurance Company  
200 Liberty Street, 27th Floor  
New York, New York 10281  
Attn: Surveillance, Re: Policy No. [\_\_\_\_\_] ]  
Telephone: (212) 235-2500; Fax: (212) 962-1710  
Email: [notices@buildamerica.com](mailto:notices@buildamerica.com)

or such other address as is furnished in writing to the other parties referenced herein.

**“Notice Representative”** means:

- (a) With respect to the Issuer, the Clerk.
- (b) With respect to the Bond Registrar and Paying Agent, the Director of Fiscal Services.
- (c) With respect to any Purchaser, the manager of its Municipal Bond Department.
- (d) With respect to any Rating Agency, any Vice President thereof.

[(f) With respect to the Bond Insurer, \*[AG: Attn: Managing Director – Surveillance – Re: Policy No. [\_\_\_\_]]\* \*\*[BAM: Attn: Surveillance – Re: Policy No. [\_\_\_\_]] (with a copy to Attn: General Counsel at the same address and at [claims@buildamerica.com](mailto:claims@buildamerica.com) or at Telecopier: (212) 962-1524 and marked as “URGENT MATERIAL ENCLOSED” if the notice refers to an event of default or a claim on the Bond Insurance Policy).]\*\*.]

“**Official Statement**” means Issuer’s Official Statement relating to the Bonds.

“**Ordinance**” means Ordinance No. \_\_\_\_ of the Issuer authorizing the issuance of the Bonds, as amended from time to time.

“**Outstanding**” means, when used with reference to the Bonds, as of a particular date of determination, all Bonds theretofore authenticated and delivered, except the following Bonds:

- (a) Bonds theretofore canceled by the Paying Agent or delivered to the Paying Agent for cancellation;
  - (b) Bonds deemed to be paid in accordance with the provisions of *Article VII* hereof; and
  - (c) Bonds in exchange for or in lieu of which other Bonds have been authenticated and delivered hereunder[.]; and
- \*[ (d) Bonds, the principal or interest of which has been paid by the Bond Insurer.]\*

“**Owner**” when used with respect to any Bond means the Person in whose name such Bond is registered on the Bond Register. Whenever consent of the Owners is required pursuant to the terms of this Bond Resolution, and the Owner of the Bonds, as set forth on the Bond Register, is Cede & Co., the term Owner shall be deemed to be the Beneficial Owner of the Bonds.

“**Participants**” means those financial institutions for whom the Securities Depository effects book-entry transfers and pledges of securities deposited with the Securities Depository, as such listing of Participants exists at the time of such reference.

“**Paying Agent**” means the State Treasurer and any successors and assigns.

“**Permitted Investments**” shall mean the investments hereinafter described, provided, however, no moneys or funds shall be invested in a Derivative: (a) investments authorized by K.S.A. 12-1675 and amendments thereto; (b) the municipal investment pool established pursuant to K.S.A. 12-1677a, and amendments thereto; (c) direct obligations of the United States Government or any agency thereof; (d) the Issuer's temporary notes issued pursuant to K.S.A. 10-123 and amendments thereto; (e) interest-bearing time deposits in commercial banks or trust companies located in the county or counties in which the Issuer is located which are insured by the Federal Deposit Insurance Corporation or collateralized by securities described in (c); (f) obligations of the federal national mortgage association, federal home loan banks, federal home loan mortgage corporation or government national mortgage association; (g) repurchase agreements for securities described in (c) or (f); (h) investment agreements or other obligations of a financial institution the obligations of which at the time of investment are rated in either of the three highest rating categories by Moody's or Standard & Poor's; (i) investments and shares or units of a money market fund or trust, the portfolio of which is comprised entirely of securities described in (c) or (f); (j) receipts evidencing ownership interests in securities or portions thereof described in (c) or (f); (k) municipal bonds or other obligations issued by any municipality of the State as defined in K.S.A. 10-1101 which are general

obligations of the municipality issuing the same; [or] (l) bonds of any municipality of the State as defined in K.S.A. 10-1101 which have been refunded in advance of their maturity and are fully secured as to payment of principal and interest thereon by deposit in trust, under escrow agreement with a bank, of securities described in (c) or (f); or (m) other investment obligations authorized by the laws of the State and approved in writing by the Bond Insurer], all as may be further restricted or modified by amendments to applicable State law.

**“Person”** means any natural person, corporation, partnership, joint venture, association, firm, joint-stock company, trust, unincorporated organization, or government or any agency or political subdivision thereof or other public body.

**“Purchase Price”** means the principal amount of the Bonds plus accrued interest to the date of delivery[, plus a premium of \$[\_\_\_\_\_].

**“Purchaser”** means [Purchaser], [Purchaser City, State], the original purchaser of the Bonds, and any successor and assigns.

**“Rating Agency”** means any company, agency or entity that provides, pursuant to request of the Issuer, financial ratings for the Bonds.

**“Rebate Fund”** means the Rebate Fund for General Obligation Bonds, Series 2024-A created pursuant to *Section 501* hereof.

**“Record Dates”** for the interest payable on any Interest Payment Date means the fifteenth day (whether or not a Business Day) of the calendar month next preceding such Interest Payment Date.

**“Redemption Date”** means, when used with respect to any Bond to be redeemed, the date fixed for the redemption of such Bond pursuant to the terms of this Bond Resolution.

**“Redemption Price”** means, when used with respect to any Bond to be redeemed, the price at which such Bond is to be redeemed pursuant to the terms of this Bond Resolution, including the applicable redemption premium, if any, but excluding installments of interest whose Stated Maturity is on or before the Redemption Date.

**“Replacement Bonds”** means Bonds issued to the Beneficial Owners of the Bonds in accordance with *Section 213* hereof.

**“SEC Rule”** means Rule 15c2-12 adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934.

**“Securities Depository”** means, initially, DTC, and its successors and assigns.

**“Special Record Date”** means the date fixed by the Paying Agent pursuant to *Article II* hereof for the payment of Defaulted Interest.

**“Standard & Poor's” or “S&P”** means S&P Global Ratings, a division of S&P Global Inc., a corporation organized and existing under the laws of the State of New York, and its successors and assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, Standard & Poor's shall be deemed to refer to any other nationally recognized securities rating agency designated by the Issuer [with notice to the Bond Insurer].

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

“**State Treasurer**” means the duly elected Treasurer or, in the Treasurer's absence, the duly appointed Deputy Treasurer or acting Treasurer of the State.

“**Stated Maturity**” when used with respect to any Bond or any installment of interest thereon means the date specified in such Bond and this Bond Resolution as the fixed date on which the principal of such Bond or such installment of interest is due and payable.

“**Substitute Improvements**” means the substitute or additional improvements of the Issuer described in *Article V* hereof.

[ “**Term Bonds**” means the Bonds scheduled to mature in the year 2044.]

[ “**\_\_\_ Term Bonds**” means the Bonds scheduled to mature in the year \_\_\_\_.]

[ “**2044 Term Bonds**” means the Bonds scheduled to mature in the year 2044.]

[ “**Term Bonds**” means collectively the [\_\_\_\_] Term Bonds[, the [\_\_\_\_] Term Bonds] and the 2044 Term Bonds.]

“**Treasurer**” means the duly appointed and/or elected Treasurer of the Issuer or, in the Treasurer's absence, the duly appointed Deputy Treasurer or acting Treasurer of the Issuer.

“**United States Government Obligations**” means bonds, notes, certificates of indebtedness, treasury bills or other securities constituting direct obligations of, or obligations the principal of and interest on which are fully and unconditionally guaranteed as to full and timely payment by, the United States of America, including evidences of a direct ownership interest in future interest or principal payment on obligations issued by the United States of America (including the interest component of obligations of the Resolution Funding Corporation), or securities which represent an undivided interest in such obligations, which obligations are rated in the highest rating category by a nationally recognized rating service and such obligations are held in a custodial account for the benefit of the Issuer.

## ARTICLE II

### AUTHORIZATION AND DETAILS OF THE BONDS

**Section 201. Authorization of the Bonds.** The Bonds have been heretofore authorized and directed to be issued pursuant to the Ordinance in the principal amount of \$2,135,000\*, for the purpose of providing funds to: (a) pay the costs of the Improvements; and (b) pay Costs of Issuance.

**Section 202. Description of the Bonds.** The Bonds shall consist of fully registered bonds in an Authorized Denomination, and shall be numbered in such manner as the Bond Registrar shall determine. All of the Bonds shall be dated as of the Dated Date, shall become due in the amounts, on the Stated Maturities, subject to redemption and payment prior to their Stated Maturities as provided in *Article III* hereof, and shall bear interest at the rates per annum as follows:

**[SERIAL BONDS]**

<u>Stated Maturity</u> <u>September 1</u>	<u>Principal</u> <u>Amount</u>	<u>Annual Rate</u> <u>of Interest</u>	<u>Stated Maturity</u> <u>September 1</u>	<u>Principal</u> <u>Amount</u>	<u>Annual Rate</u> <u>of Interest</u>
2025	\$[ ]	____%	2035		____%
2026			2036		
2027			2037		
2028			2038		
2029			2039		
2030			2040		
2031			2041		
2032			2042		
2033			2043		
2034			2044		

**[TERM BONDS]**

<u>Stated Maturity</u> <u>September 1</u>	<u>Principal</u> <u>Amount</u>	<u>Annual Rate</u> <u>of Interest</u>
2044	\$ _____	____%]

The Bonds shall bear interest at the above specified rates (computed on the basis of a 360-day year of twelve 30-day months) from the later of the Dated Date or the most recent Interest Payment Date to which interest has been paid on the Interest Payment Dates in the manner set forth in **Section 204** hereof.

Each of the Bonds, as originally issued or issued upon transfer, exchange or substitution, shall be printed in accordance with the format required by the Attorney General of the State and shall be substantially in the form attached hereto as **EXHIBIT A** or as may be required by the Attorney General pursuant to the Notice of Systems of Registration for Kansas Municipal Bonds, 2 Kan. Reg. 921 (1983), in accordance with the Kansas Bond Registration Law, K.S.A. 10-620 *et seq.*

**Section 203. Designation of Paying Agent and Bond Registrar.** The State Treasurer is hereby designated as the Paying Agent for the payment of principal of and interest on the Bonds and Bond Registrar with respect to the registration, transfer and exchange of Bonds. The Mayor of the Issuer is hereby authorized and empowered to execute on behalf of the Issuer an agreement with the Bond Registrar and Paying Agent for the Bonds.

The Issuer will at all times maintain a Paying Agent and Bond Registrar meeting the qualifications herein described for the performance of the duties hereunder. The Issuer reserves the right to appoint a successor Paying Agent or Bond Registrar[, and shall appoint a successor Paying Agent at the request of the Bond Insurer,] by (a) filing with the Paying Agent or Bond Registrar then performing such function a certified copy of the proceedings giving notice of the termination of such Paying Agent or Bond Registrar and appointing a successor, and (b) causing notice of appointment of the successor Paying Agent and Bond Registrar to be given by first class mail to each Owner. No resignation or removal of the Paying Agent or Bond Registrar shall become effective until a successor [acceptable to the Bond Insurer] has been appointed and has accepted the duties of Paying Agent or Bond Registrar. [Each successor Paying Agent shall be approved in writing by the Bond Insurer before the appointment of such successor Paying Agent shall become effective.]

Every Paying Agent or Bond Registrar appointed hereunder shall at all times meet the requirements of K.S.A. 10-501 *et seq.* and K.S.A. 10-620 *et seq.*, respectively.

**Section 204. Method and Place of Payment of the Bonds.** The principal of, or Redemption Price, and interest on the Bonds shall be payable in any coin or currency which, on the respective dates of payment thereof, is legal tender for the payment of public and private debts.

The principal or Redemption Price of each Bond shall be paid at Maturity to the Person in whose name such Bond is registered on the Bond Register at the Maturity thereof, upon presentation and surrender of such Bond at the principal office of the Paying Agent.

The interest payable on each Bond on any Interest Payment Date shall be paid to the Owner of such Bond as shown on the Bond Register at the close of business on the Record Date for such interest (a) by check or draft mailed by the Paying Agent to the address of such Owner shown on the Bond Register or at such other address as is furnished to the Paying Agent in writing by such Owner; or (b) in the case of an interest payment to Cede & Co. or any Owner of \$500,000 or more in aggregate principal amount of Bonds, by electronic transfer to such Owner upon written notice given to the Bond Registrar by such Owner, not less than 15 days prior to the Record Date for such interest, containing the electronic transfer instructions including the bank ABA routing number and account number to which such Owner wishes to have such transfer directed.

Notwithstanding the foregoing provisions of this Section, any Defaulted Interest with respect to any Bond shall cease to be payable to the Owner of such Bond on the relevant Record Date and shall be payable to the Owner in whose name such Bond is registered at the close of business on the Special Record Date for the payment of such Defaulted Interest, which Special Record Date shall be fixed as hereinafter specified in this paragraph. The Issuer shall notify the Paying Agent in writing of the amount of Defaulted Interest proposed to be paid on each Bond and the date of the proposed payment (which date shall be at least 30 days after receipt of such notice by the Paying Agent) and shall deposit with the Paying Agent at the time of such notice an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Paying Agent for such deposit prior to the date of the proposed payment. Following receipt of such funds the Paying Agent shall fix a Special Record Date for the payment of such Defaulted Interest which shall be not more than 15 nor less than 10 days prior to the date of the proposed payment. The Paying Agent shall promptly notify the Issuer of such Special Record Date and, in the name and at the expense of the Issuer, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefore to be mailed, by first class mail, postage prepaid, to each Owner of a Bond entitled to such notice at the address of such Owner as it appears on the Bond Register not less than 10 days prior to such Special Record Date.

The Paying Agent shall keep a record of payment of principal and Redemption Price of and interest on all Bonds and at least annually shall forward a copy or summary of such records to the Issuer.

**Section 205. Payments Due on Saturdays, Sundays and Holidays.** In any case where a Bond Payment Date is not a Business Day, then payment of principal, Redemption Price or interest need not be made on such Bond Payment Date but may be made on the next succeeding Business Day with the same force and effect as if made on such Bond Payment Date, and no interest shall accrue for the period after such Bond Payment Date.

**Section 206. Registration, Transfer and Exchange of Bonds.** The Issuer covenants that, as long as any of the Bonds remain Outstanding, it will cause the Bond Register to be kept at the office of the Bond Registrar as herein provided. Each Bond when issued shall be registered in the name of the Owner thereof on the Bond Register.

Bonds may be transferred and exchanged only on the Bond Register as provided in this Section. Upon surrender of any Bond at the principal office of the Bond Registrar, the Bond Registrar shall transfer or exchange such Bond for a new Bond or Bonds in any Authorized Denomination of the same Stated Maturity and in the same aggregate principal amount as the Bond that was presented for transfer or exchange.

Bonds presented for transfer or exchange shall be accompanied by a written instrument or instruments of transfer or authorization for exchange, in a form and with guarantee of signature satisfactory to the Bond Registrar, duly executed by the Owner thereof or by the Owner's duly authorized agent.

In all cases in which the privilege of transferring or exchanging Bonds is exercised, the Bond Registrar shall authenticate and deliver Bonds in accordance with the provisions of this Bond Resolution. The Issuer shall pay the fees and expenses of the Bond Registrar for the registration, transfer and exchange of Bonds provided for by this Bond Resolution and the cost of printing a reasonable supply of registered bond blanks. Any additional costs or fees that might be incurred in the secondary market, other than fees of the Bond Registrar, are the responsibility of the Owners of the Bonds. In the event any Owner fails to provide a correct taxpayer identification number to the Paying Agent, the Paying Agent may make a charge against such Owner sufficient to pay any governmental charge required to be paid as a result of such failure. In compliance with Code § 3406, such amount may be deducted by the Paying Agent from amounts otherwise payable to such Owner hereunder or under the Bonds.

The Issuer and the Bond Registrar shall not be required (a) to register the transfer or exchange of any Bond that has been called for redemption after notice of such redemption has been mailed by the Paying Agent pursuant to *Article III* hereof and during the period of 15 days next preceding the date of mailing of such notice of redemption; or (b) to register the transfer or exchange of any Bond during a period beginning at the opening of business on the day after receiving written notice from the Issuer of its intent to pay Defaulted Interest and ending at the close of business on the date fixed for the payment of Defaulted Interest pursuant to this *Article II*.

The Issuer and the Paying Agent may deem and treat the Person in whose name any Bond is registered on the Bond Register as the absolute Owner of such Bond, whether such Bond is overdue or not, for the purpose of receiving payment of, or on account of, the principal or Redemption Price of and interest on said Bond and for all other purposes. All payments so made to any such Owner or upon the Owner's order shall be valid and effective to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid, and neither the Issuer nor the Paying Agent shall be affected by any notice to the contrary.

At reasonable times and under reasonable regulations established by the Bond Registrar, the Bond Register may be inspected and copied by [the Bond Insurer or] the Owners (or a designated representative thereof) of 10% or more in principal amount of the Bonds then Outstanding or any designated representative of such Owners whose authority is evidenced to the satisfaction of the Bond Registrar.

**Section 207. Execution, Registration, Authentication and Delivery of Bonds.** Each of the Bonds, including any Bonds issued in exchange or as substitutions for the Bonds initially delivered, shall be executed for and on behalf of the Issuer by the manual, electronic or facsimile signature of the Mayor, attested by the manual, electronic or facsimile signature of the Clerk, and the seal of the Issuer shall be affixed thereto or imprinted thereon. The Mayor and Clerk are hereby authorized and directed to prepare and execute the Bonds in the manner herein specified, and to cause the Bonds to be registered in the office of the Clerk, which registration shall be evidenced by the manual, electronic or facsimile signature of the Clerk with the seal of the Issuer affixed thereto or imprinted thereon. The Bonds shall also be registered in the office of the State Treasurer, which registration shall be evidenced by the manual, electronic or facsimile

signature of the State Treasurer with the seal of the State Treasurer affixed thereto or imprinted thereon. In case any officer whose signature appears on any Bonds ceases to be such officer before the delivery of such Bonds, such signature shall nevertheless be valid and sufficient for all purposes, as if such person had remained in office until delivery. Any Bond may be signed by such persons who at the actual time of the execution of such Bond are the proper officers to sign such Bond although at the date of such Bond such persons may not have been such officers.

The Mayor and Clerk are hereby authorized and directed to prepare and execute the Bonds as herein specified, and when duly executed, to deliver the Bonds to the Bond Registrar for authentication.

The Bonds shall have endorsed thereon a certificate of authentication substantially in the form attached hereto as *EXHIBIT A* hereof, which shall be manually executed by an authorized officer or employee of the Bond Registrar, but it shall not be necessary that the same officer or employee sign the certificate of authentication on all of the Bonds that may be issued hereunder at any one time. No Bond shall be entitled to any security or benefit under this Bond Resolution or be valid or obligatory for any purpose unless and until such certificate of authentication has been duly executed by the Bond Registrar. Such executed certificate of authentication upon any Bond shall be conclusive evidence that such Bond has been duly authenticated and delivered under this Bond Resolution. Upon authentication, the Bond Registrar shall deliver the Bonds to the Purchaser upon instructions of the Issuer or its representative.

**Section 208. Mutilated, Lost, Stolen or Destroyed Bonds.** If (a) any mutilated Bond is surrendered to the Bond Registrar or the Bond Registrar receives evidence to its satisfaction of the destruction, loss or theft of any Bond, and (b) there is delivered to the Issuer and the Bond Registrar such security or indemnity as may be required by each of them, then, in the absence of notice to the Issuer or the Bond Registrar that such Bond has been acquired by a bona fide purchaser, the Issuer shall execute and, upon the Issuer's request, the Bond Registrar shall authenticate and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Bond, a new Bond of the same Stated Maturity and of like tenor and principal amount.

If any such mutilated, destroyed, lost or stolen Bond has become or is about to become due and payable, the Issuer, in its discretion, may pay such Bond instead of issuing a new Bond.

Upon the issuance of any new Bond under this Section, the Issuer and the Paying Agent may require the payment by the Owner of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Paying Agent) connected therewith.

Every new Bond issued pursuant to this Section shall constitute a replacement of the prior obligation of the Issuer, and shall be entitled to all the benefits of this Bond Resolution equally and ratably with all other Outstanding Bonds.

**Section 209. Cancellation and Destruction of Bonds Upon Payment.** All Bonds that have been paid or redeemed or that otherwise have been surrendered to the Paying Agent, either at or before Maturity, shall be cancelled by the Paying Agent immediately upon the payment, redemption and surrender thereof to the Paying Agent and subsequently destroyed in accordance with the customary practices of the Paying Agent. The Paying Agent shall execute a certificate in duplicate describing the Bonds so cancelled and destroyed and shall file an executed counterpart of such certificate with the Issuer.

**Section 210. Book-Entry Bonds; Securities Depository.** The Issuer and Paying Agent have entered into a DTC Representation Letter with DTC. The Bonds shall initially be registered to Cede & Co., the nominee for the Securities Depository, and no Beneficial Owner will receive certificates representing

their respective interests in the Bonds, except in the event the Bond Registrar issues Replacement Bonds as provided in this Section. It is anticipated that during the term of the Bonds, the Securities Depository will make book-entry transfers among its Participants and receive and transmit payment of principal of, premium, if any, and interest on, the Bonds to the Participants until and unless the Bond Registrar authenticates and delivers Replacement Bonds to the Beneficial Owners as described in the following paragraph.

The Issuer may decide, subject to the requirements of the Operational Arrangements of DTC (or a successor Securities Depository), and the following provisions of this section to discontinue use of the system of book-entry transfers through DTC (or a successor Securities Depository):

(a) If the Issuer determines (1) that the Securities Depository is unable to properly discharge its responsibilities, or (2) that the Securities Depository is no longer qualified to act as a securities depository and registered clearing agency under the Securities and Exchange Act of 1934, as amended, or (3) that the continuation of a book-entry system to the exclusion of any Bonds being issued to any Owner other than Cede & Co. is no longer in the best interests of the Beneficial Owners of the Bonds; or

(b) if the Bond Registrar receives written notice from Participants having interests in not less than 50% of the Bonds Outstanding, as shown on the records of the Securities Depository (and certified to such effect by the Securities Depository), that the continuation of a book-entry system to the exclusion of any Bonds being issued to any Owner other than Cede & Co. is no longer in the best interests of the Beneficial Owners of the Bonds, then the Bond Registrar shall notify the Owners of such determination or such notice and of the availability of certificates to Owners requesting the same, and the Bond Registrar shall register in the name of and authenticate and deliver Replacement Bonds to the Beneficial Owners or their nominees in principal amounts representing the interest of each, making such adjustments as it may find necessary or appropriate as to accrued interest and previous calls for redemption; provided, that in the case of a determination under (a)(1) or (a)(2) of this paragraph, the Issuer, with the consent of the Bond Registrar, may select a successor securities depository in accordance with the following paragraph to effect book-entry transfers.

In such event, all references to the Securities Depository herein shall relate to the period of time when the Securities Depository has possession of at least one Bond. Upon the issuance of Replacement Bonds, all references herein to obligations imposed upon or to be performed by the Securities Depository shall be deemed to be imposed upon and performed by the Bond Registrar, to the extent applicable with respect to such Replacement Bonds. If the Securities Depository resigns and the Issuer, the Bond Registrar or Owners are unable to locate a qualified successor of the Securities Depository in accordance with the following paragraph, then the Bond Registrar shall authenticate and cause delivery of Replacement Bonds to Owners, as provided herein. The Bond Registrar may rely on information from the Securities Depository and its Participants as to the names of the Beneficial Owners of the Bonds. The cost of printing, registration, authentication, and delivery of Replacement Bonds shall be paid for by the Issuer.

In the event the Securities Depository resigns, is unable to properly discharge its responsibilities, or is no longer qualified to act as a securities depository and registered clearing agency under the Securities and Exchange Act of 1934, as amended, the Issuer may appoint a successor Securities Depository provided the Bond Registrar receives written evidence satisfactory to the Bond Registrar with respect to the ability of the successor Securities Depository to discharge its responsibilities. Any such successor Securities Depository shall be a securities depository which is a registered clearing agency under the Securities and Exchange Act of 1934, as amended, or other applicable statute or regulation that operates a securities depository upon reasonable and customary terms. The Bond Registrar upon its receipt of a Bond or Bonds for cancellation shall cause the delivery of Bonds to the successor Securities Depository in an Authorized Denominations and form as provided herein.]

**Section 211. Nonpresentment of Bonds.** If any Bond is not presented for payment when the principal thereof becomes due at Maturity, if funds sufficient to pay such Bond have been made available to the Paying Agent all liability of the Issuer to the Owner thereof for the payment of such Bond shall forthwith cease, determine and be completely discharged, and thereupon it shall be the duty of the Paying Agent to hold such funds, without liability for interest thereon, for the benefit of the Owner of such Bond, who shall thereafter be restricted exclusively to such funds for any claim of whatever nature on his part under this Bond Resolution or on, or with respect to, said Bond. If any Bond is not presented for payment within four (4) years following the date when such Bond becomes due at Maturity, the Paying Agent shall repay, without liability for interest thereon, to the Issuer the funds theretofore held by it for payment of such Bond, and such Bond shall, subject to the defense of any applicable statute of limitation, thereafter be an unsecured obligation of the Issuer, and the Owner thereof shall be entitled to look only to the Issuer for payment, and then only to the extent of the amount so repaid to it by the Paying Agent, and the Issuer shall not be liable for any interest thereon and shall not be regarded as a trustee of such money.

**Section 212. Preliminary and Final Official Statement.** The Preliminary Official Statement relating to the Bonds is hereby ratified and approved. For the purpose of enabling the Purchaser to comply with the requirements of Section (b)(1) of the SEC Rule, the Issuer hereby deems the information regarding the Issuer contained in the Preliminary Official Statement to be “final” as of its date, except for the omission of such information as is permitted by Section (b)(1) of the SEC Rule, and the appropriate officers of the Issuer are hereby authorized, if requested, to provide the Purchaser a letter or certification to such effect and to take such other actions or execute such other documents as such officers in their reasonable judgment deem necessary to enable the Purchaser to comply with the requirement of the SEC Rule.

The Official Statement is hereby authorized to be prepared by supplementing, amending and completing the Preliminary Official Statement, with such changes and additions thereto as are necessary to conform to and describe the transaction. The Mayor and Director of Finance are hereby authorized to execute the Official Statement as so supplemented, amended and completed, and the use and public distribution of the Official Statement by the Purchaser in connection with the reoffering of the Bonds is hereby authorized. The proper officials of the Issuer are hereby authorized to execute and deliver a certificate pertaining to such Official Statement as prescribed therein, dated as of the Issue Date.

The Issuer agrees to provide to the Purchaser within seven business days of the date of the sale of Bonds sufficient copies of the Official Statement to enable the Purchaser to comply with the requirements of the SEC Rule and Rule G-32 of the Municipal Securities Rulemaking Board.

**Section 213. Sale of the Bonds.** The sale of the Bonds to the Purchaser is hereby ratified and confirmed. The Mayor and Clerk are hereby authorized to execute the official bid form submitted by the Purchaser. Delivery of the Bonds shall be made to the Purchaser on the Issue Date (which shall be as soon as practicable after the adoption of this Bond Resolution), upon payment of the Purchase Price.

## ARTICLE III

### REDEMPTION OF BONDS

**Section 301. Redemption by Issuer.**

*Optional Redemption.* At the option of the Issuer, Bonds maturing on September 1 in the years 2032, and thereafter, will be subject to redemption and payment prior to their Stated Maturity on

September 1, 2031, and thereafter, as a whole or in part (selection of maturities and the amount of Bonds of each maturity to be redeemed to be determined by the Issuer in such equitable manner as it may determine) at any time, at the Redemption Price of 100% (expressed as a percentage of the principal amount), plus accrued interest to the Redemption Date.

[ **Mandatory Redemption.** [(a) [ ] *Term Bonds.*] The [ ] Term Bonds shall be subject to mandatory redemption and payment prior to Stated Maturity pursuant to the mandatory redemption requirements of this Section at a Redemption Price equal to 100% of the principal amount thereof plus accrued interest to the Redemption Date. The taxes levied in **Article IV** hereof which are to be deposited into the Debt Service Account shall be sufficient to redeem, and the Issuer shall redeem on September 1 in each year, the following principal amounts of such [ ] Term Bonds:

<b><u>Principal Amount</u></b> \$	<b><u>Year</u></b>
	*

\_\_\_\_\_  
\*Final Maturity

(b) [ ] *Term Bonds.* The [ ] Term Bonds shall be subject to mandatory redemption and payment prior to Stated Maturity pursuant to the mandatory redemption requirements of this Section at a Redemption Price equal to 100% of the principal amount thereof plus accrued interest to the Redemption Date. The taxes levied in **Article IV** hereof which are to be deposited into the Debt Service Account shall be sufficient to redeem, and the Issuer shall redeem on September 1 in each year, the following principal amounts of such [ ] Term Bonds:

<b><u>Principal Amount</u></b> \$	<b><u>Year</u></b>
	[ ]*

\_\_\_\_\_  
\*Final Maturity]

(c) *2044 Term Bonds.*] The 2044 Term Bonds shall be subject to mandatory redemption and payment prior to Stated Maturity pursuant to the mandatory redemption requirements of this Section at a Redemption Price equal to 100% of the principal amount thereof plus accrued interest to the Redemption Date. The taxes levied in **Article IV** hereof which are to be deposited into the Debt Service Account shall be sufficient to redeem, and the Issuer shall redeem on September 1 in each year, the following principal amounts of such 2044 Term Bonds:

<b><u>Principal Amount</u></b> \$	<b><u>Year</u></b>
	2044*

\_\_\_\_\_  
\*Final Maturity]

At its option, to be exercised on or before the 45th day next preceding any mandatory Redemption Date, the Issuer may: (1) deliver to the Paying Agent for cancellation Term Bonds subject to mandatory redemption on said mandatory Redemption Date, in any aggregate principal amount desired; or (2) furnish the Paying Agent funds, together with appropriate instructions, for the purpose of purchasing any Term Bonds subject to mandatory redemption on said mandatory Redemption Date from any Owner thereof whereupon the Paying Agent shall expend such funds for such purpose to such extent as may be practical; or (3) receive a credit with respect to the mandatory redemption obligation of the Issuer under this Section for any Term Bonds subject to mandatory redemption on said mandatory Redemption Date which, prior to such date, have been redeemed (other than through the operation of the mandatory redemption requirements of this subsection) and cancelled by the Paying Agent and not theretofore applied as a credit against any redemption obligation under this subsection. Each Term Bond so delivered or previously purchased or redeemed shall be credited at 100% of the principal amount thereof on the obligation of the Issuer to redeem Term Bonds of the same Stated Maturity on such mandatory Redemption Date, and any excess of such amount shall be credited on future mandatory redemption obligations for Term Bonds of the same Stated Maturity as designated by the Issuer, and the principal amount of Term Bonds to be redeemed by operation of the requirements of this Section shall be accordingly reduced. If the Issuer intends to exercise any option granted by the provisions of clauses (1), (2) or (3) above, the Issuer will, on or before the 45th day next preceding each mandatory Redemption Date, furnish the Paying Agent a written certificate indicating to what extent the provisions of said clauses (1), (2) and (3) are to be complied with, with respect to such mandatory redemption payment.]

**Section 302. Selection of Bonds to be Redeemed.** Bonds shall be redeemed only in an Authorized Denomination. When less than all of the Bonds are to be redeemed and paid prior to their Stated Maturity, such Bonds shall be redeemed in such manner as the Issuer shall determine. Bonds of less than a full Stated Maturity shall be selected by the Bond Registrar in a minimum Authorized Denomination of principal amount in such equitable manner as the Bond Registrar may determine.

In the case of a partial redemption of Bonds by lot when Bonds of denominations greater than a minimum Authorized Denomination are then Outstanding, then for all purposes in connection with such redemption a minimum Authorized Denomination of face value shall be treated as though it were a separate Bond of the denomination of a minimum Authorized Denomination. If it is determined that one or more, but not all, of a minimum Authorized Denomination of face value represented by any Bond is selected for redemption, then upon notice of intention to redeem a minimum Authorized Denomination, the Owner or the Owner's duly authorized agent shall forthwith present and surrender such Bond to the Bond Registrar: (1) for payment of the Redemption Price and interest to the Redemption Date of a minimum Authorized Denomination of face value called for redemption, and (2) for exchange, without charge to the Owner thereof, for a new Bond or Bonds of the aggregate principal amount of the unredeemed portion of the principal amount of such Bond. If the Owner of any such Bond fails to present such Bond to the Paying Agent for payment and exchange as aforesaid, such Bond shall, nevertheless, become due and payable on the redemption date to the extent of a minimum Authorized Denomination of face value called for redemption (and to that extent only).

**Section 303. Notice and Effect of Call for Redemption.** In the event the Issuer desires to call the Bonds for redemption prior to maturity, written notice of such intent shall be provided to the Bond Registrar in accordance with K.S.A. 10-129, as amended, not less than 45 days prior to the Redemption Date. The Bond Registrar shall call Bonds for redemption and payment and shall give notice of such redemption as herein provided upon receipt by the Bond Registrar at least 45 days prior to the Redemption Date of written instructions of the Issuer specifying the principal amount, Stated Maturities, Redemption Date and Redemption Prices of the Bonds to be called for redemption. [The foregoing provisions of this paragraph shall not apply in the case of any mandatory redemption of Term Bonds hereunder, and Term Bonds shall be called by the Paying Agent for redemption pursuant to such mandatory redemption

requirements without the necessity of any action by the Issuer and whether or not the Paying Agent holds moneys available and sufficient to effect the required redemption.]

Unless waived by any Owner of Bonds to be redeemed, if the Issuer shall call any Bonds for redemption and payment prior to the Stated Maturity thereof, the Issuer shall give written notice of its intention to call and pay said Bonds to the Bond Registrar[, the Bond Insurer] and the Purchaser. In addition, the Issuer shall cause the Bond Registrar to give written notice of redemption to the Owners of said Bonds. Each of said written notices shall be deposited in the United States first class mail not less than 30 days prior to the Redemption Date.

All official notices of redemption shall be dated and shall contain the following information:

- (a) the Redemption Date;
- (b) the Redemption Price;
- (c) if less than all Outstanding Bonds are to be redeemed, the identification (and, in the case of partial redemption of any Bonds, the respective principal amounts) of the Bonds to be redeemed;
- (d) a statement that on the Redemption Date the Redemption Price will become due and payable upon each such Bond or portion thereof called for redemption and that interest thereon shall cease to accrue from and after the Redemption Date; and
- (e) the place where such Bonds are to be surrendered for payment of the Redemption Price, which shall be the principal office of the Paying Agent.

The failure of any Owner to receive notice given as heretofore provided or an immaterial defect therein shall not invalidate any redemption.

Prior to any Redemption Date, the Issuer shall deposit with the Paying Agent an amount of money sufficient to pay the Redemption Price of all the Bonds or portions of Bonds that are to be redeemed on such Redemption Date.

For so long as the Securities Depository is effecting book-entry transfers of the Bonds, the Bond Registrar shall provide the notices specified in this Section to the Securities Depository. It is expected that the Securities Depository shall, in turn, notify its Participants and that the Participants, in turn, will notify or cause to be notified the Beneficial Owners. Any failure on the part of the Securities Depository or a Participant, or failure on the part of a nominee of a Beneficial Owner of a Bond (having been mailed notice from the Bond Registrar, the Securities Depository, a Participant or otherwise) to notify the Beneficial Owner of the Bond so affected, shall not affect the validity of the redemption of such Bond.

Official notice of redemption having been given as aforesaid, the Bonds or portions of Bonds to be redeemed shall become due and payable on the Redemption Date, at the Redemption Price therein specified, and from and after the Redemption Date (unless the Issuer defaults in the payment of the Redemption Price) such Bonds or portion of Bonds shall cease to bear interest. Upon surrender of such Bonds for redemption in accordance with such notice, the Redemption Price of such Bonds shall be paid by the Paying Agent. Installments of interest due on or prior to the Redemption Date shall be payable as herein provided for payment of interest. Upon surrender for any partial redemption of any Bond, there shall be prepared for the Owner a new Bond or Bonds of the same Stated Maturity in the amount of the unpaid principal as provided herein. All Bonds that have been surrendered for redemption shall be cancelled and destroyed by the Paying Agent as provided herein and shall not be reissued.

In addition to the foregoing notice, the Issuer shall provide such notices of redemption as are required by the Disclosure Undertaking. Further notice may be given by the Issuer or the Bond Registrar on behalf of the Issuer as set out below, but no defect in said further notice nor any failure to give all or any portion of such further notice shall in any manner defeat the effectiveness of a call for redemption if official notice thereof is given as above prescribed:

(a) Each further notice of redemption given hereunder shall contain the information required above for an official notice of redemption plus (1) the CUSIP numbers of all Bonds being redeemed; (2) the date of issue of the Bonds as originally issued; (3) the rate of interest borne by each Bond being redeemed; (4) the maturity date of each Bond being redeemed; and (5) any other descriptive information needed to identify accurately the Bonds being redeemed.

(b) Each further notice of redemption shall be sent at least one day before the mailing of notice to Owners by first class, registered or certified mail or overnight delivery, as determined by the Bond Registrar, to all registered securities depositories then in the business of holding substantial amounts of obligations of types comprising the Bonds and to one or more national information services that disseminate notices of redemption of obligations such as the Bonds.

(c) Each check or other transfer of funds issued for the payment of the Redemption Price of Bonds being redeemed shall bear or have enclosed the CUSIP number of the Bonds being redeemed with the proceeds of such check or other transfer.

The Paying Agent is also directed to comply with any mandatory standards then in effect for processing redemptions of municipal securities established by the State or the Securities and Exchange Commission. Failure to comply with such standards shall not affect or invalidate the redemption of any Bond.

## ARTICLE IV

### SECURITY FOR BONDS

**Section 401. Security for the Bonds.** The Bonds shall be general obligations of the Issuer payable as to both principal and interest from ad valorem taxes which may be levied without limitation as to rate or amount upon all the taxable tangible property, real and personal, within the territorial limits of the Issuer. The full faith, credit and resources of the Issuer are hereby irrevocably pledged for the prompt payment of the principal of and interest on the Bonds as the same become due.

**Section 402. Levy and Collection of Annual Tax; Transfer to Debt Service Account.** The Governing Body shall annually make provision for the payment of principal of, premium, if any, and interest on the Bonds as the same become due by, to the extent necessary, levying and collecting the necessary taxes upon all of the taxable tangible property within the Issuer in the manner provided by law.

The taxes referred to above shall be extended upon the tax rolls in each of the several years, respectively, and shall be levied and collected at the same time and in the same manner as the other ad valorem taxes of the Issuer are levied and collected. The proceeds derived from said taxes shall be deposited in the Bond and Interest Fund, shall be kept separate and apart from all other funds of the Issuer shall thereafter be transferred to the Debt Service Account and shall be used solely for the payment of the

principal of and interest on the Bonds as and when the same become due, taking into account any scheduled mandatory redemptions, and the fees and expenses of the Paying Agent.

If at any time said taxes are not collected in time to pay the principal of or interest on the Bonds when due, the Treasurer is hereby authorized and directed to pay said principal or interest out of the general funds of the Issuer and to reimburse said general funds for money so expended when said taxes are collected.

## ARTICLE V

### ESTABLISHMENT OF FUNDS AND ACCOUNTS DEPOSIT AND APPLICATION OF BOND PROCEEDS

**Section 501. Creation of Funds and Accounts.** Simultaneously with the issuance of the Bonds, there shall be created within the Treasury of the Issuer the following Funds and Accounts:

- (a) Improvement Fund for General Obligation Bonds, Series 2024-A.
- (b) Debt Service Account for General Obligation Bonds, Series 2024-A (within the Bond and Interest Fund).
- (c) Rebate Fund for General Obligation Bonds, Series 2024-A.
- (d) Costs of Issuance Account for General Obligation Bonds, Series 2024-A.
- (e) Compliance Account.

The Funds and Accounts established herein shall be administered in accordance with the provisions of this Bond Resolution so long as the Bonds are Outstanding.

**Section 502. Deposit of Bond Proceeds.** The net proceeds received from the sale of the Bonds shall be deposited simultaneously with the delivery of the Bonds as follows:

- (a) An amount necessary to pay the Costs of Issuance shall be deposited in the Costs of Issuance Account.
- (b) The remaining balance of the proceeds derived from the sale of the Bonds shall be deposited in the Improvement Fund.

**Section 503. Application of Moneys in the Improvement Fund.** Moneys in the Improvement Fund shall be used for the sole purpose of: (a) paying the costs of the Improvements, in accordance with the plans and specifications therefor prepared by the Consulting Engineer heretofore approved by the Governing Body and on file in the office of the Clerk, including any alterations in or amendments to said plans and specifications deemed advisable by the Consulting Engineer and approved by the Governing Body; (b) paying interest on the Bonds during construction of the Improvements; (c) paying Costs of Issuance and (d) transferring any amounts to the Rebate Fund required by this *Article V*.

Withdrawals from the Improvement Fund shall be made only when authorized by the Governing Body. Each authorization for costs of the Improvements shall be supported by a certificate executed by the

Consulting Engineer stating that such payment is being made for a purpose within the scope of this Bond Resolution and that the amount of such payment represents only the contract price of the property, equipment, labor, materials or service being paid for or, if such payment is not being made pursuant to an express contract, that such payment is not in excess of the reasonable value thereof. Authorizations for withdrawals for other authorized purposes shall be supported by a certificate executed by the Director of Finance (or designate) stating that such payment is being made for a purpose within the scope of this Bond Resolution. Upon completion of the Improvements, any surplus remaining in the Improvement Fund shall be deposited in the Debt Service Account.

**Section 504. Substitution of Improvements; Reallocation of Proceeds.**

(a) The Issuer may elect for any reason to substitute or add other public improvements to be financed with proceeds of the Bonds provided the following conditions are met: (1) the Substitute Improvement and the issuance of general obligation bonds to pay the cost of the Substitute Improvement has been duly authorized by the Governing Body in accordance with the laws of the State; (2) a resolution or ordinance authorizing the use of the proceeds of the Bonds to pay the Financeable Costs of the Substitute Improvement has been duly adopted by the Governing Body pursuant to this Section, (3) the Attorney General of the State has approved the amendment made by such resolution or ordinance to the transcript of proceedings for the Bonds to include the Substitute Improvements; and (4) the use of the proceeds of the Bonds to pay the Financeable Cost of the Substitute Improvement will not adversely affect the tax-exempt status of the Bonds under State or federal law.

(b) The Issuer may reallocate expenditure of Bond proceeds among all Improvements financed by the Bonds; provided the following conditions are met: (1) the reallocation is approved by the Governing Body; (2) the reallocation shall not cause the proceeds of the Bonds allocated to any Improvement to exceed the Financeable Costs of the Improvement; and (3) the reallocation will not adversely affect the tax-exempt status of the Bonds under State or federal law.

**Section 505. Application of Moneys in Debt Service Account.** All amounts paid and credited to the Debt Service Account shall be expended and used by the Issuer for the sole purpose of paying the principal or Redemption Price of and interest on the Bonds as and when the same become due and the usual and customary fees and expenses of the Bond Registrar and Paying Agent. The Treasurer is authorized and directed to withdraw from the Debt Service Account sums sufficient to pay both principal or Redemption Price of and interest on the Bonds and the fees and expenses of the Bond Registrar and Paying Agent as and when the same become due, and to forward such sums to the Paying Agent in a manner which ensures that the Paying Agent will receive immediately available funds in such amounts on or before the Business Day immediately preceding the dates when such principal, interest and fees of the Bond Registrar and Paying Agent will become due. If, through the lapse of time or otherwise, the Owners of Bonds are no longer entitled to enforce payment of the Bonds or the interest thereon, the Paying Agent shall return said funds to the Issuer. All moneys deposited with the Paying Agent shall be deemed to be deposited in accordance with and subject to all of the provisions contained in this Bond Resolution and shall be held in trust by the Paying Agent for the benefit of the Owners of the Bonds entitled to payment from such moneys.

Any moneys or investments remaining in the Debt Service Account after the retirement of the Bonds shall be transferred and paid into the Bond and Interest Fund.

**Section 506. Application of Moneys in the Rebate Fund.**

(a) There shall be deposited in the Rebate Fund such amounts as are required to be deposited therein pursuant to the Federal Tax Certificate. All money at any time deposited in the Rebate Fund shall be held in trust, to the extent required to satisfy the Rebate Amount (as defined in the Federal Tax

Certificate), for payment to the United States of America, and neither the Issuer nor the Owner of any Bonds shall have any rights in or claim to such money. All amounts deposited into or on deposit in the Rebate Fund shall be governed by this Section and the Federal Tax Certificate.

(b) The Issuer shall periodically determine the arbitrage rebate, if any, under Code § 148(f) in accordance with the Federal Tax Certificate, and the Issuer shall make payments to the United States of America at the times and in the amounts determined under the Federal Tax Certificate. Any moneys remaining in the Rebate Fund after redemption and payment of all of the Bonds and payment and satisfaction of any Rebate Amount, or provision made therefor, shall be deposited into the Bond and Interest Fund.

(c) Notwithstanding any other provision of this Bond Resolution, including in particular *Article VII* hereof, the obligation to pay arbitrage rebate to the United States of America and to comply with all other requirements of this Section and the Federal Tax Certificate shall survive the defeasance or payment in full of the Bonds.

**Section 507. Deposits and Investment of Moneys.** Moneys in each of the Funds and Accounts shall be deposited in accordance with laws of the State, in a bank, savings and loan association or savings bank organized under the laws of the State, any other state or the United States: (a) which has a main or branch office located in the Issuer; or (b) if no such entity has a main or branch office located in the Issuer, with such an entity that has a main or branch office located in the county or counties in which the Issuer is located. All such depositories shall be members of the Federal Deposit Insurance Corporation, or otherwise as permitted by State law. All such deposits shall be invested in Permitted Investments as set forth in this Article or shall be adequately secured as provided by the laws of the State. All moneys held in the Funds and Accounts shall be kept separate and apart from all other funds of the Issuer so that there shall be no commingling with any other funds of the Issuer.

Moneys held in any Fund or Account may be invested in accordance with this Bond Resolution and the Federal Tax Certificate in Permitted Investments; provided, however, that no such investment shall be made for a period extending longer than to the date when the moneys invested may be needed for the purpose for which such fund was created. All earnings on any investments held in any Fund or Account shall accrue to and become a part of such Fund or Account; provided that, during the period of construction of the Improvements, earnings on the investment of such funds may, at the discretion of the Issuer, be credited to the Debt Service Account.

**Section 508. Application of Moneys in the Costs of Issuance Account.** Moneys in the Costs of Issuance Account shall be used by the Issuer to pay the Costs of Issuance. Any funds remaining in the Costs of Issuance Account, after payment of all Costs of Issuance, but not later than the later of 30 days prior to the first Stated Maturity of principal or one year after the date of issuance of the Bonds, shall be transferred to the Improvement Fund until completion of the Improvements and thereafter to the Compliance Account or Debt Service Account.

**Section 509. Application of Moneys in the Compliance Account.** Moneys in the Compliance Account shall be used by the Issuer to pay fees and expenses relating to compliance with federal arbitrage law and state or federal securities laws. Any funds remaining in the Compliance Account on the sixth anniversary of the Issue Date shall be transferred to the Debt Service Account.

## ARTICLE VI

### DEFAULT AND REMEDIES

**Section 601. Remedies.** The provisions of the Bond Resolution, including the covenants and agreements herein contained, shall constitute a contract between the Issuer and the Owners of the Bonds. If an Event of Default occurs and shall be continuing, the Owner or Owners of not less than 10% in principal amount of the Bonds at the time Outstanding shall have the right for the equal benefit and protection of all Owners of Bonds similarly situated:

(a) by mandamus or other suit, action or proceedings at law or in equity to enforce the rights of such Owner or Owners against the Issuer and its officers, agents and employees, and to require and compel duties and obligations required by the provisions of the Bond Resolution or by the Constitution and laws of the State;

(b) by suit, action or other proceedings in equity or at law to require the Issuer, its officers, agents and employees to account as if they were the trustees of an express trust; and

(c) by suit, action or other proceedings in equity or at law to enjoin any acts or things which may be unlawful or in violation of the rights of the Owners of the Bonds.

**Section 602. Limitation on Rights of Owners.** The covenants and agreements of the Issuer contained herein and in the Bonds shall be for the equal benefit, protection, and security of the Owners of any or all of the Bonds, all of which Bonds shall be of equal rank and without preference or priority of one Bond over any other Bond in the application of the funds herein pledged to the payment of the principal of and the interest on the Bonds, or otherwise, except as to rate of interest, date of maturity and right of prior redemption as provided in this Bond Resolution. No one or more Owners secured hereby shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the security granted and provided for herein, or to enforce any right hereunder, except in the manner herein provided, and all proceedings at law or in equity shall be instituted, had and maintained for the equal benefit of all Outstanding Bonds.

**Section 603. Remedies Cumulative.** No remedy conferred herein upon the Owners is intended to be exclusive of any other remedy, but each such remedy shall be cumulative and in addition to every other remedy and may be exercised without exhausting and without regard to any other remedy conferred herein. No waiver of any default or breach of duty or contract by the Owner of any Bond shall extend to or affect any subsequent default or breach of duty or contract or shall impair any rights or remedies thereon. No delay or omission of any Owner to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein. Every substantive right and every remedy conferred upon the Owners of the Bonds by this Bond Resolution may be enforced and exercised from time to time and as often as may be deemed expedient. If action or proceedings taken by any Owner on account of any default or to enforce any right or exercise any remedy has been discontinued or abandoned for any reason, or shall have been determined adversely to such Owner, then, and in every such case, the Issuer and the Owners of the Bonds shall, subject to any determination in such action or proceeding or applicable law of the State, be restored to their former positions and rights hereunder, respectively, and all rights, remedies, powers and duties of the Owners shall continue as if no such suit, action or other proceedings had been brought or taken.

**Section 604. [Control of Remedies Upon an Event of Default and Event of Insolvency.]** Notwithstanding anything herein to the contrary, upon the occurrence and continuance of an Event of

Default, the Bond Insurer, provided the Bond Insurance Policy is in full force and effect and the Bond Insurer shall not be in default thereunder, shall be entitled to control and direct the enforcement of all rights and remedies granted to the Owners under this Bond Resolution. Any reorganization or liquidation plan with respect to the Issuer must be acceptable to the Bond Insurer. In the event of any reorganization or liquidation, the Bond Insurer shall have the right to vote on behalf of all Owners who hold the Bonds insured by the Bond Insurer absent a default by the Bond Insurer under the applicable Bond Insurance Policy insuring such Bonds.]

## ARTICLE VII

### DEFEASANCE

**Section 701. Defeasance.** When any or all of the Bonds, redemption premium, if any, or scheduled interest payments thereon have been paid and discharged, then the requirements contained in this Bond Resolution and the pledge of the Issuer's faith and credit hereunder and all other rights granted hereby shall terminate with respect to the Bonds or scheduled interest payments thereon so paid and discharged. Bonds, redemption premium, if any, or scheduled interest payments thereon shall be deemed to have been paid and discharged within the meaning of this Bond Resolution if there has been deposited with the Paying Agent, or other commercial bank or trust company located in the State and having full trust powers, at or prior to the Stated Maturity or Redemption Date of said Bonds or the interest payments thereon, in trust for and irrevocably appropriated thereto, moneys and/or Defeasance Obligations which, together with the interest to be earned on any such Defeasance Obligations, will be sufficient for the payment of the principal of or Redemption Price of said Bonds and/or interest accrued to the Stated Maturity or Redemption Date, or if default in such payment has occurred on such date, then to the date of the tender of such payments. If the amount to be so deposited is based on the Redemption Price of any Bonds, no such satisfaction shall occur until (a) the Issuer has elected to redeem such Bonds, and (b) either notice of such redemption has been given, or the Issuer has given irrevocable instructions, or shall have provided for an escrow agent to give irrevocable instructions, to the Bond Registrar to give such notice of redemption in compliance with *Article III* hereof. Any money and Defeasance Obligations that at any time shall be deposited with the Paying Agent or other commercial bank or trust company by or on behalf of the Issuer, for the purpose of paying and discharging any of the Bonds, shall be and are hereby assigned, transferred and set over to the Paying Agent or other bank or trust company in trust for the respective Owners of the Bonds, and such moneys shall be and are hereby irrevocably appropriated to the payment and discharge thereof. All money and Defeasance Obligations deposited with the Paying Agent or such bank or trust company shall be deemed to be deposited in accordance with and subject to all of the provisions of this Bond Resolution. [The Issuer shall notify the Bond Insurer of any defeasance under this Section.]

[ Notwithstanding anything in this Bond Resolution to the contrary, in the event that the principal and/or interest due on the Bonds shall be paid by the Bond Insurer pursuant to the Bond Insurance Policy, the Bonds shall remain Outstanding for all purposes, not be defeased or otherwise satisfied and not be considered paid by the Issuer and the covenants, agreements and other obligations of the Issuer to the Owners shall continue to exist and shall run to the benefit of the Bond Insurer, and the Bond Insurer shall be subrogated to the rights of such Owners.]

**ARTICLE VIII**  
**TAX COVENANTS**

**Section 801. General Covenants.** The Issuer covenants and agrees that it will comply with: (a) all applicable provisions of the Code necessary to maintain the exclusion from gross income for federal income tax purposes of the interest on the Bonds; and (b) all provisions and requirements of the Federal Tax Certificate. The Mayor and Director of Finance are hereby authorized and directed to execute the Federal Tax Certificate in a form approved by Bond Counsel, for and on behalf of and as the act and deed of the Issuer. The Issuer will, in addition, adopt such other ordinances or resolutions and take such other actions as may be necessary to comply with the Code and with all other applicable future laws, regulations, published rulings and judicial decisions, in order to ensure that the interest on the Bonds will remain excluded from federal gross income, to the extent any such actions can be taken by the Issuer.

**Section 802. Survival of Covenants.** The covenants contained in this Article and in the Federal Tax Certificate shall remain in full force and effect notwithstanding the defeasance of the Bonds pursuant to *Article VII* hereof or any other provision of this Bond Resolution until such time as is set forth in the Federal Tax Certificate.

**ARTICLE IX**  
**[PROVISIONS RELATING TO THE BOND INSURANCE POLICY**

\*[AG:

**Section 901. Payment Procedure Pursuant to Bond Insurance Policy.** As long as the Bond Insurance Policy shall be in full force and effect, the Issuer and the Paying Agent agree to comply with the following provisions:

(a) If, on the Business Day prior to the related Stated Maturity there is not on deposit with the Paying Agent, after making all transfers and deposits required under the Bond Resolution, moneys sufficient to pay the principal of and interest on the Bonds due on such Stated Maturity, the Paying Agent shall give notice to the Bond Insurer and to the Insurer's Fiscal Agent by telephone or telecopy of the amount of such deficiency by 1:00 p.m., New York City time, on such Business Day. If, on the related Stated Maturity, there continues to be a deficiency in the amount available to pay the principal of and interest on the Bonds due on such Stated Maturity, the Paying Agent shall make a claim under the Bond Insurance Policy and give notice to the Bond Insurer and the Insurer's Fiscal Agent (if any) by telephone of the amount of such deficiency, and the allocation of such deficiency between the amount required to pay interest on the Bonds and the amount required to pay principal on the Bonds, confirmed in writing to the Bond Insurer and the Insurer's Fiscal Agent by 1:00 p.m., New York City time, on such Stated Maturity by filling in the form of Notice of Claim and Certificate delivered with the Bond Insurance Policy.

(b) In the event the claim to be made is for a mandatory sinking fund redemption installment, upon receipt of the moneys due, the Paying Agent shall authenticate and deliver to affected Owners who surrender their Bonds a new Bond or Bonds in an aggregate principal amount equal to the unredeemed portion of the Bond surrendered. The Paying Agent shall designate any portion of payment of principal on Bonds paid by the Bond Insurer, whether by virtue of mandatory sinking fund redemption, maturity or other advancement of maturity, on its books as a reduction in the principal amount of Bonds registered to the then current Owner, whether DTC or its nominee or otherwise, and shall issue a replacement Bond to the Bond Insurer, registered in the name of the Bond Insurer, in a principal amount equal to the amount of principal

so paid (without regard to authorized denominations); provided that the Paying Agent's failure to so designate any payment or issue any replacement Bond shall have no effect on the amount of principal or interest payable by the Issuer on any Bond or the subrogation rights of the Bond Insurer.

The Paying Agent shall keep a complete and accurate record of all funds deposited by the Bond Insurer into the Policy Payments Account (as hereinafter defined) and the allocation of such funds to payment of interest on and principal paid in respect of any Bond. The Bond Insurer shall have the right to inspect such records at reasonable times upon reasonable notice to the Paying Agent.

Upon payment of a claim under the Bond Insurance Policy the Paying Agent shall establish a separate special purpose trust account for the benefit of Owners referred to herein as the "Policy Payments Account" and over which the Paying Agent shall have exclusive control and sole right of withdrawal. The Paying Agent shall receive any amount paid under the Bond Insurance Policy in trust on behalf of Owners and shall deposit any such amount in the Policy Payments Account and distribute such amount only for purposes of making the payments for which a claim was made. Such amounts shall be disbursed by the Paying Agent to Owners in the same manner as principal and interest payments are to be made with respect to the Bonds under the sections hereof regarding payment of Bonds. It shall not be necessary for such payments to be made by checks or wire transfers separate from the check or wire transfer used to pay debt service with other funds available to make such payments.

Funds held in the Policy Payments Account shall not be invested by the Paying Agent and may not be applied to satisfy any costs, expenses or liabilities of the Paying Agent.

Any funds remaining in the Policy Payments Account following a Stated Maturity date shall promptly be remitted to the Bond Insurer.

(c) The Bond Insurer shall, to the extent it makes any payment of principal of or interest on the Bonds, become subrogated to the rights of the recipients of such payments in accordance with the terms of the Bond Insurance Policy.

(d) The Issuer agrees to pay or reimburse the Bond Insurer any and all charges, fees, costs and expenses which the Bond Insurer may reasonably pay or incur in connection with (1) the administration, enforcement, defense or preservation of any rights or security in respect of the Bond Resolution, (2) the pursuit of any remedies under the Bond Resolution or otherwise afforded by law or equity, (3) any amendment, waiver or other action with respect to, or related to, the Bond Resolution whether or not executed or completed, (4) the violation by the Issuer of any law, rule or regulation, or any judgment, order or decree applicable to it or (5) any litigation or other dispute in connection with the Bond Resolution or the transactions contemplated thereby, other than amounts resulting from the failure of the Bond Insurer to honor its obligations under the Bond Insurance Policy. The Bond Insurer reserves the right to charge a reasonable fee as a condition to executing any amendment, waiver or consent proposed in respect of the Bond Resolution.

(e) Payments required to be made to the Bond Insurer shall be payable solely from the taxes levied pursuant to *Article IV* hereof and shall be paid (1) prior to an Event of Default, to the extent not paid from the Debt Service Account, and (2) after an Event of Default, with respect to amounts other than principal and interest on the Bonds, on the same priority as payments to the Paying Agent for expenses. The obligations to the Bond Insurer shall survive discharge or termination of the Bond Resolution.

(f) The Bond Insurer shall be entitled to pay principal or interest on the Bonds that shall become Due for Payment but shall be unpaid by reason of Nonpayment by the Issuer (as such terms are defined in the Bond Insurance Policy) and any amounts due on the Bonds as a result of acceleration of the

maturity thereof in accordance with this Bond Resolution, whether or not the Bond Insurer has received a Notice (as defined in the Bond Insurance Policy) of Nonpayment or a claim upon the Bond Insurance Policy.

**Section 902. Consent of the Bond Insurer.** Any provision of this Bond Resolution expressly recognizing or granting rights in or to the Bond Insurer may not be amended in any manner which affects the rights of the Bond Insurer hereunder without the prior written consent of the Bond Insurer.

The Bond Insurer's consent shall be required in addition to Owner consent, when required, for the execution and delivery of any supplemental resolution, or any amendment, supplement or change to or modification of other documents relating to the security for the Bonds; removal or substitution of the Paying Agent; or approval of any action or document requiring approval of the Owners.

The Bond Insurer shall be deemed to be the sole Owner of the Bonds insured by it for the purpose of exercising any voting right or privilege or giving any consent or direction or taking any other action that the Owners of the Bonds insured by it are entitled to take pursuant to this Bond Resolution.

**Section 903. Notices to the Bond Insurer.**

(a) While the Bond Insurance Policy is in effect, the Issuer shall, in addition to the other notice requirements contained in this Bond Resolution, furnish to the Bond Insurer:

(1) As soon as practicable after the filing thereof, a copy of any financial statement, audit and/or annual report of the Issuer;

(2) A copy of any notice to be given to the Owners, including, without limitation, notice of any redemption of or defeasance of Bonds, and any certificate rendered pursuant to this Bond Resolution relating to the security for the Bonds;

(3) Notice of an Event of Default within five business days after the occurrence of such event; and

(4) such additional information as the Bond Insurer may reasonably request.

(b) The Issuer shall notify the Bond Insurer of any failure of the Issuer to provide relevant notices, certificates, etc.

(c) The Issuer will permit the Bond Insurer to discuss the affairs, finances and accounts of the Issuer or any information the Bond Insurer may reasonably request regarding the security for the Bonds with appropriate officers of the Issuer. The Issuer will permit the Bond Insurer to have access to and to make copies of all books and records relating to the Bonds at any reasonable time.

(d) The Bond Insurer shall have the right to direct an accounting at the Issuer's expense, and the Issuer's failure to comply with such direction within thirty (30) days after receipt of written notice of the direction from the Bond Insurer shall be deemed an Event of Default hereunder; provided, however, that if compliance cannot occur within such period, then such period will be extended so long as compliance is begun within such period and diligently pursued, but only if such extension would not materially adversely affect the interests of any Owner.

(e) Notwithstanding any other provision of this Bond Resolution, the Issuer shall immediately notify the Bond Insurer if at any time there are insufficient moneys to make any payments of principal and/or interest as required and immediately upon the occurrence of any Event of Default hereunder.

(f) In each case in which notice or other communication to the Bond Insurer refers to an Event of Default or with respect to which failure on the part of the Bond Insurer to respond shall be deemed to constitute consent or acceptance, then a copy of such notice or other communication shall also be sent to the attention of General Counsel and shall be marked to indicate “URGENT MATERIAL ENCLOSED.”

**Section 904. Third Party Beneficiary.** To the extent that this Bond Resolution confers upon or gives or grants to the Bond Insurer any right, remedy, or claim under or by reason of this Bond Resolution, the Bond Insurer is hereby explicitly recognized as being a third-party beneficiary hereunder and may enforce any such right, remedy or claim conferred, given or granted hereunder.

**Section 905. Parties Interested Herein.** Nothing in this Bond Resolution, expressed or implied is intended or shall be construed to confer upon, or to give to, any person or entity, other than the Issuer, the Bond Insurer, the Paying Agent and the Owners, any right, remedy or claim under or by reason of this Bond Resolution, or any covenant, condition or stipulation hereof, and all covenants, stipulations, promises and agreements in this Bond Resolution contained by and on behalf of the Issuer shall be for the sole and exclusive benefit of the Issuer, the Paying Agent, the Bond Insurer and the Owners of the Bonds.

**Section 906. Suspension of Bond Insurer's Rights.** Rights of the Bond Insurer to direct or consent to actions granted under this Bond Resolution shall be suspended during any period in which the Bond Insurer is in default in its payment obligations under the Bond Insurance Policy (except to the extent of amounts previously paid by the Bond Insurer and due and owing to the Bond Insurer) and shall be of no force or effect in the event the Bond Insurance Policy is no longer in effect or the Bond Insurer asserts that the Bond Insurance Policy is not in effect or the Bond Insurer shall have provided written notice that it waives such rights.]\*

\*\*[BAM:

**Section 907. Payment Procedure Pursuant to Bond Insurance Policy.** As long as the Bond Insurance Policy shall be in full force and effect, the Issuer and the Paying Agent agree to comply with the following provisions:

(a) In the event that principal and/or interest due on the Bonds shall be paid by the Bond Insurer pursuant to the Bond Insurance Policy, the Bonds shall remain outstanding for all purposes, not be defeased or otherwise satisfied and not be considered paid by the Issuer, the assignment and pledge of the trust estate and all covenants, agreements and other obligations of the Issuer to the registered owners shall continue to exist and shall run to the benefit of the Bond Insurer, and the Bond Insurer shall be subrogated to the rights of such registered owners including, without limitation, any rights that such owners may have in respect of securities law violations arising from the offer and sale of the Bonds.

(b) In the event that on the second (2nd) business day prior to the payment date on the Bonds, the Paying Agent has not received sufficient moneys to pay all principal of and interest on the Bonds due on the second (2nd) following business day, the Paying Agent shall immediately notify the Bond Insurer or its designee on the same business day by telephone or electronic mail, of the amount of the deficiency.

(c) If any deficiency is made up in whole or in part prior to or on the payment date, the Paying Agent or Trustee shall so notify the Bond Insurer or its designee.

(d) In addition, if the Paying Agent has notice that any Bondholder has been required to disgorge payments of principal of or interest on the Bonds pursuant to a final, non-appealable order by a court of competent jurisdiction that such payment constitutes an avoidable preference to such Bondholder within the meaning of any applicable bankruptcy law, then the Paying Agent shall notify the Bond Insurer

or its designee of such fact by telephone or electronic mail, or by overnight or other delivery service as to which a delivery receipt is signed by a person authorized to accept delivery on behalf of the Bond Insurer.

(e) The Paying Agent shall irrevocably be designated, appointed, directed and authorized to act as attorney-in-fact for holders of the Bonds as follows:

(1) If there is a deficiency in amounts required to pay interest and/or principal on the Bonds, the Paying Agent or Trustee shall (i) execute and deliver to the Bond Insurer, in form satisfactory to the Bond Insurer, an instrument appointing the Bond Insurer as agent for such holders of the Bonds in any legal proceeding related to the payment of and an assignment to the Bond Insurer of the claims for interest on the Bonds, (ii) receive as designee of the respective holders (and not as Paying Agent) in accordance with the tenor of the Bond Insurance Policy payment from the Bond Insurer with respect to the claims for interest so assigned, and (iii) disburse the same to such respective holders; and

(2) If there is a deficiency in amounts required to pay principal of the Bonds, the Paying Agent shall (i) execute and deliver to the Bond Insurer, in form satisfactory to the Bond Insurer, an instrument appointing the Bond Insurer as agent for such holder of the Bonds in any legal proceeding related to the payment of such principal and an assignment to the Bond Insurer of the Bond surrendered to the Bond Insurer (but such assignment shall be delivered only if payment from the Bond Insurer is received), (ii) receive as designee of the respective holders (and not as Paying Agent) in accordance with the tenor of the Bond Insurance Policy payment therefore from the Bond Insurer, and (iii) disburse the same to such holders.

(f) Payments with respect to claims for interest on and principal of Bonds disbursed by the Paying Agent from proceeds of the Bond Insurance Policy shall not be considered to discharge the obligation of the Issuer with respect to such Bonds, and the Bond Insurer shall become the owner of such unpaid Bond and claims for the interest in accordance with the tenor of the assignment made to it under the provisions of the preceding paragraph (e) or otherwise.

(g) Irrespective of whether any such assignment is executed and delivered, the Issuer and the Paying Agent shall agree for the benefit of the Bond Insurer that:

(1) They recognize that to the extent the Bond Insurer makes payments directly or indirectly (*e.g.*, by paying through the Paying Agent), on account of principal of or interest on the Bonds, the Bond Insurer will be subrogated to the rights of such holders to receive the amount of such principal and interest from the Issuer, with interest thereon, as provided and solely from the sources stated in the transaction documents and the Bonds; and

(2) They will accordingly pay to the Bond Insurer the amount of such principal and interest, with interest thereon as provided in the transaction documents and the Bonds, but only from the sources and in the manner provided therein for the payment of principal of and interest on the Bonds to holders, and will otherwise treat the Bond Insurer as the owner of such rights to the amount of such principal and interest.

#### **Section 908. Notices to the Bond Insurer.**

(a) While the Bond Insurance Policy is in effect, the Issuer shall, in addition to the other notice requirements contained in this Bond Resolution, furnish to the Bond Insurer:

(1) As soon as practicable after the filing thereof, a copy of any financial statement, audit and/or annual report of the Issuer;

(2) A copy of any notice to be given to the Owners, including, without limitation, notice of any redemption of or defeasance of Bonds, and any certificate rendered pursuant to this Bond Resolution relating to the security for the Bonds;

(3) Copies of any filings or notices required to be given by the Issuer pursuant to the Disclosure Undertaking;

(4) Notice of an Event of Default within five business days after the occurrence of such event; and

(5) Such additional information as the Bond Insurer may reasonably request.

(b) The Issuer shall notify the Bond Insurer of any failure of the Issuer to provide relevant notices, certificates, etc.

(c) Notwithstanding any other provision of this Bond Resolution, the Issuer shall immediately notify the Bond Insurer if at any time there are insufficient moneys to make any payments of principal and/or interest as required and immediately upon the occurrence of any Event of Default hereunder.

**Section 909. Third Party Beneficiary.** The Bond Insurer is explicitly recognized as and shall be deemed to be a third-party beneficiary of this Bond Resolution and may enforce any right, remedy or claim conferred, given or granted thereunder.

**Section 910. Suspension of Bond Insurer's Rights.** Rights of the Bond Insurer to direct or consent to actions granted under this Bond Resolution shall be suspended during any period in which the Bond Insurer is in default in its payment obligations under the Bond Insurance Policy (except to the extent of amounts previously paid by the Bond Insurer and due and owing to the Bond Insurer) and shall be of no force or effect in the event the Bond Insurance Policy is no longer in effect or the Bond Insurer asserts that the Bond Insurance Policy is not in effect or the Bond Insurer shall have provided written notice that it waives such rights.]\*\*\*

## ARTICLE X

### CONTINUING DISCLOSURE REQUIREMENTS

**Section 1001. Disclosure Requirements.** The Issuer hereby covenants with the Purchaser and the Beneficial Owners to provide and disseminate such information as is required by the SEC Rule and as further set forth in the Disclosure Undertaking, the provisions of which are incorporated herein by reference. Such covenant shall be for the benefit of and enforceable by the Purchaser and the Beneficial Owners.

**Section 1002. Failure to Comply with Continuing Disclosure Requirements.** In the event the Issuer fails to comply in a timely manner with its covenants contained in the preceding section, the Purchaser and/or any Beneficial Owner may make demand for such compliance by written notice to the Issuer. In the event the Issuer does not remedy such noncompliance within 10 days of receipt of such written notice, the Purchaser or any Beneficial Owner may in its discretion, without notice or demand, proceed to enforce compliance by a suit or suits in equity for the specific performance of such covenant or

agreement contained in the preceding section or for the enforcement of any other appropriate legal or equitable remedy, as the Purchaser and/or any Beneficial Owner shall deem effectual to protect and enforce any of the duties of the Issuer under such preceding section. [The Purchaser or Beneficial Owner shall provide a copy of any such demand or notice to the Bond Insurer.] Notwithstanding any other provision of this Bond Resolution, failure of the Issuer to comply with its covenants contained in the preceding section shall not be considered an Event of Default under this Bond Resolution.

## ARTICLE XI

### MISCELLANEOUS PROVISIONS

**Section 1101. Annual Audit.** Annually, promptly after the end of the Fiscal Year, the Issuer will cause an audit to be made of the financial statements of the Issuer for the preceding Fiscal Year by an Independent Accountant. Within 30 days after the completion of each such audit, a copy thereof shall be filed in the office of the Clerk[, and a duplicate copy of the audit shall be mailed to the Bond Insurer]. Such audit shall at all times during the usual business hours be open to the examination and inspection by any taxpayer, any Owner of any of the Bonds, or by anyone acting for or on behalf of such taxpayer or Owner. Upon payment of the reasonable cost of preparing and mailing the same, a copy of any annual audit will, upon request, be sent to any Owner or prospective Owner. As soon as possible after the completion of the annual audit, the Governing Body shall review such audit, and if the audit discloses that proper provision has not been made for all of the requirements of this Bond Resolution, the Issuer shall promptly cure such deficiency.

**Section 1102. Amendments.** The rights and duties of the Issuer and the Owners, and the terms and provisions of the Bonds or of this Bond Resolution, may be amended or modified at any time in any respect by ordinance or resolution of the Issuer with the written consent of [the Bond Insurer and] the Owners of not less than a majority in principal amount of the Bonds then Outstanding, such consent to be evidenced by an instrument or instruments executed by [the Bond Insurer and] such Owners and duly acknowledged or proved in the manner of a deed to be recorded, and such instrument or instruments shall be filed with the Clerk, but no such modification or alteration shall:

- (a) extend the maturity of any payment of principal or interest due upon any Bond;
- (b) effect a reduction in the amount which the Issuer is required to pay as principal of or interest on any Bond;
- (c) permit preference or priority of any Bond over any other Bond; or
- (d) reduce the percentage in principal amount of Bonds required for the written consent to any modification or alteration of the provisions of this Bond Resolution.

Any provision of the Bonds or of this Bond Resolution may, however, be amended or modified by ordinance or resolution duly adopted by the Governing Body at any time in any legal respect with the written consent of [the Bond Insurer and] the Owners of all of the Bonds at the time Outstanding.

Without notice to or the consent of any Owners, the Issuer may amend or supplement this Bond Resolution for the purpose of curing any formal defect, omission, inconsistency or ambiguity herein, to grant to or confer upon the Owners any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Owners, to more precisely identify the Improvements, to reallocate

proceeds of the Bonds among Improvements, to provide for Substitute Improvements, to conform this Bond Resolution to the Code or future applicable federal law concerning tax-exempt obligations, or in connection with any other change therein which is not materially adverse to the interests of the Owners. [AG: Copies of any amendments shall be provided to each Rating Agency at least 10 days prior to the effective date thereof.][BAM: Copies of any amendments which are consented to by the Bond Insurer shall be provided to Standard & Poor's.]

Every amendment or modification of the provisions of the Bonds or of this Bond Resolution, to which the written consent of the [Bond Insurer and the] Owners is given, as above provided, shall be expressed in a resolution or ordinance adopted by the Governing Body amending or supplementing the provisions of this Bond Resolution and shall be deemed to be a part of this Bond Resolution. A certified copy of every such amendatory or supplemental ordinance or resolution, if any, and a certified copy of this Bond Resolution shall always be kept on file in the office of the Clerk, [shall be delivered to the Bond Insurer] and shall be made available for inspection by the Owner of any Bond or a prospective purchaser or owner of any Bond authorized by this Bond Resolution, and upon payment of the reasonable cost of preparing the same, a certified copy of any such amendatory or supplemental ordinance or resolution or of this Bond Resolution will be sent by the Clerk to any such Owner or prospective Owner.

Any and all modifications made in the manner hereinabove provided shall not become effective until there has been filed with the Clerk a copy of the ordinance or resolution of the Issuer hereinabove provided for, duly certified, as well as proof of any required consent to such modification by [the Bond Insurer and] the Owners of the Bonds then Outstanding. It shall not be necessary to note on any of the Outstanding Bonds any reference to such amendment or modification.

The Issuer shall furnish to the Paying Agent a copy of any amendment to the Bonds or this Bond Resolution which affects the duties or obligations of the Paying Agent under this Bond Resolution.

**Section 1103. Notices, Consents and Other Instruments by Owners.** Any notice, consent, request, direction, approval or other instrument to be signed and executed by the Owners may be in any number of concurrent writings of similar tenor and may be signed or executed by such Owners in person or by agent appointed in writing. Proof of the execution of any such instrument or of the writing appointing any such agent and of the ownership of Bonds, if made in the following manner, shall be sufficient for any of the purposes of this Bond Resolution, and shall be conclusive in favor of the Issuer and the Paying Agent with regard to any action taken, suffered or omitted under any such instrument, namely:

(a) The fact and date of the execution by any person of any such instrument may be proved by a certificate of any officer in any jurisdiction who by law has power to take acknowledgments within such jurisdiction that the person signing such instrument acknowledged before such officer the execution thereof, or by affidavit of any witness to such execution.

(b) The fact of ownership of Bonds, the amount or amounts, numbers and other identification of Bonds, and the date of holding the same shall be proved by the Bond Register.

In determining whether the Owners of the requisite principal amount of Bonds Outstanding have given any request, demand, authorization, direction, notice, consent or waiver under this Bond Resolution, Bonds owned by the Issuer shall be disregarded and deemed not to be Outstanding under this Bond Resolution, except that, in determining whether the Owners shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Bonds which the Owners know to be so owned shall be so disregarded. Notwithstanding the foregoing, Bonds so owned which have been pledged in good faith shall not be disregarded as aforesaid if the pledgee establishes to the satisfaction of the Owners the pledgee's right so to act with respect to such Bonds and that the pledgee is not the Issuer.

**Section 1104. Notices.** Any notice, request, complaint, demand or other communication required or desired to be given or filed under this Bond Resolution shall be in writing, given to the Notice Representative at the Notice Address and shall be deemed duly given or filed if the same shall be: (a) duly mailed by registered or certified mail, postage prepaid; or (b) communicated via fax, with electronic or telephonic confirmation of receipt. Copies of such notices shall also be given to the Paying Agent[ and the Bond Insurer]. The Issuer, the Paying Agent[, the Bond Insurer] and the Purchaser may from time to time designate, by notice given hereunder to the others of such parties, such other address to which subsequent notices, certificates or other communications shall be sent.

All notices given by: (a) certified or registered mail as aforesaid shall be deemed duly given as of the date they are so mailed; (b) fax as aforesaid shall be deemed duly given as of the date of confirmation of receipt. If, because of the temporary or permanent suspension of regular mail service or for any other reason, it is impossible or impractical to mail any notice in the manner herein provided, then such other form of notice as shall be made with the approval of the Paying Agent shall constitute a sufficient notice.

**Section 1105. Electronic Transactions.** The transactions described in this Bond Resolution may be conducted, and documents related to the Bonds may be sent, received, executed, and stored, by electronic means or transmissions. Copies, telecopies, electronic files and other reproductions of original executed documents (or documents executed by electronic means or transmissions) shall be deemed to be authentic and valid counterparts of such documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

**Section 1106. Further Authority.** The officers and officials of the Issuer, including the Mayor, Director of Finance and Clerk, are hereby authorized and directed to execute all documents and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of this Bond 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 1107. Severability.** If any section or other part of this Bond Resolution, whether large or small, is for any reason held invalid, the invalidity thereof shall not affect the validity of the other provisions of this Bond Resolution.

**Section 1108. Governing Law.** This Bond Resolution shall be governed exclusively by and construed in accordance with the applicable laws of the State.

**Section 1109. Effective Date.** This Bond Resolution shall take effect and be in full force from and after its adoption by the Governing Body.

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**ADOPTED** by the City Commission on September 16, 2024.

(SEAL)

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Mayor

ATTEST:

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Clerk

**CERTIFICATE**

I hereby certify that the above and foregoing is a true and correct copy of the Bond Resolution of the Issuer adopted by the Governing Body on September 16, 2024, as the same appears of record in my office.

DATED: September 16, 2024.

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Clerk

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**EXHIBIT A  
(FORM OF BONDS)**

**REGISTERED  
NUMBER \_\_\_**

**REGISTERED  
\$**

**Unless this certificate is presented by an authorized representative of The Depository Trust Company, a New York Corporation (“DTC”), to the Issuer or its agent for registration of transfer, exchange or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.**

**UNITED STATES OF AMERICA  
STATE OF KANSAS  
COUNTY OF FORD  
CITY OF DODGE CITY  
GENERAL OBLIGATION BOND  
SERIES 2024-A**

**Interest  
Rate:**

**Maturity  
Date:**

**Dated  
Date: October 3, 2024**

**CUSIP:**

**REGISTERED OWNER:**

**PRINCIPAL AMOUNT:**

**KNOW ALL PERSONS BY THESE PRESENTS:** That the City of Dodge City, in the County of Ford, State of Kansas (the “Issuer”), for value received, hereby acknowledges itself to be indebted and promises to pay to the Registered Owner shown above, or registered assigns, but solely from the source and in the manner herein specified, the Principal Amount shown above on the Maturity Date shown above , unless called for redemption prior to the Maturity Date, and to pay interest thereon at the Interest Rate per annum shown above (computed on the basis of a 360-day year of twelve 30-day months), from the Dated Date shown above, or from the most recent date to which interest has been paid or duly provided for, payable semiannually on March 1 and September 1 of each year, commencing March 1, 2025 (the “Interest Payment Dates”), until the Principal Amount has been paid.

**Method and Place of Payment.** The principal or redemption price of this Bond shall be paid at maturity or upon earlier redemption to the person in whose name this Bond is registered at the maturity or redemption date thereof, upon presentation and surrender of this Bond at the principal office of the Treasurer of the State of Kansas, Topeka, Kansas (the “Paying Agent” and “Bond Registrar”). The interest payable on this Bond on any Interest Payment Date shall be paid to the person in whose name this Bond is registered on the registration books maintained by the Bond Registrar at the close of business on the Record Date(s) for such interest, which shall be the 15th day (whether or not a business day) of the calendar month next preceding the Interest Payment Date. Such interest shall be payable (a) by check or draft mailed by the Paying Agent to the address of such Registered Owner shown on the Bond Register or at such other

address as is furnished to the Paying Agent in writing by such Registered Owner; or (b) in the case of an interest payment to Cede & Co. or any Owner of \$500,000 or more in aggregate principal amount of Bonds by electronic transfer to such Owner upon written notice given to the Bond Registrar by such Registered Owner, not less than 15 days prior to the Record Date for such interest, containing the electronic transfer instructions including the bank, ABA routing number and account number to which such Registered Owner wishes to have such transfer directed. The principal or redemption price of and interest on the Bonds shall be payable in any coin or currency that, on the respective dates of payment thereof, is legal tender for the payment of public and private debts. Interest not punctually paid will be paid in the manner established in the within defined Bond Resolution.

**Definitions.** Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the hereinafter defined Bond Resolution.

**Authorization of Bonds.** This Bond is one of an authorized series of Bonds of the Issuer designated “General Obligation Bonds, Series 2024-A,” aggregating the principal amount of \$2,135,000\* (the “Bonds”) issued for the purposes set forth in the Ordinance of the Issuer authorizing the issuance of the Bonds and the Resolution of the Issuer prescribing the form and details of the Bonds (collectively the “Bond Resolution”). The Bonds are issued by the authority of and in full compliance with the provisions, restrictions and limitations of the Constitution and laws of the State of Kansas, including K.S.A. 13-1024a, as amended by Charter Ordinance No. 41, all as amended, and all other provisions of the laws of the State of Kansas applicable thereto.

**General Obligations.** The Bonds constitute general obligations of the Issuer payable as to both principal and interest from ad valorem taxes which may be levied without limitation as to rate or amount upon all the taxable tangible property, real and personal, within the territorial limits of the Issuer. The full faith, credit and resources of the Issuer are hereby irrevocably pledged for the prompt payment of the principal of and interest on the Bonds as the same become due.

**Redemption Prior to Maturity.** The Bonds are subject to redemption prior to maturity as set forth in the Bond Resolution.

**Book-Entry System.** The Bonds are being issued by means of a book-entry system with no physical distribution of bond certificates to be made except as provided in the Bond Resolution. One Bond certificate with respect to each date on which the Bonds are stated to mature or with respect to each form of Bonds, registered in the nominee name of the Securities Depository, is being issued and required to be deposited with the Securities Depository and immobilized in its custody. The book-entry system will evidence positions held in the Bonds by the Securities Depository's participants, beneficial ownership of the Bonds in authorized denominations being evidenced in the records of such participants. Transfers of ownership shall be effected on the records of the Securities Depository and its participants pursuant to rules and procedures established by the Securities Depository and its participants. The Issuer and the Bond Registrar will recognize the Securities Depository nominee, while the Registered Owner of this Bond, as the owner of this Bond for all purposes, including (i) payments of principal of, and redemption premium, if any, and interest on, this Bond, (ii) notices and (iii) voting. Transfer of principal, interest and any redemption premium payments to participants of the Securities Depository, and transfer of principal, interest and any redemption premium payments to beneficial owners of the Bonds by participants of the Securities Depository will be the responsibility of such participants and other nominees of such beneficial owners. The Issuer and the Bond Registrar will not be responsible or liable for such transfers of payments or for maintaining, supervising or reviewing the records maintained by the Securities Depository, the Securities Depository nominee, its participants or persons acting through such participants. While the Securities Depository nominee is the owner of this Bond, notwithstanding the provision hereinabove contained, payments of principal of, redemption premium, if any, and interest on this Bond shall be made

in accordance with existing arrangements among the Issuer, the Bond Registrar and the Securities Depository.

**Transfer and Exchange.** EXCEPT AS OTHERWISE PROVIDED IN THE BOND RESOLUTION, THIS GLOBAL BOND MAY BE TRANSFERRED, IN WHOLE BUT NOT IN PART, ONLY TO ANOTHER NOMINEE OF THE SECURITIES DEPOSITORY OR TO A SUCCESSOR SECURITIES DEPOSITORY OR TO A NOMINEE OF A SUCCESSOR SECURITIES DEPOSITORY. This Bond may be transferred or exchanged, as provided in the Bond Resolution, only on the Bond Register kept for that purpose at the principal office of the Bond Registrar, upon surrender of this Bond, together with a written instrument of transfer or authorization for exchange satisfactory to the Bond Registrar duly executed by the Registered Owner or the Registered Owner's duly authorized agent, and thereupon a new Bond or Bonds in any Authorized Denomination of the same maturity and in the same aggregate principal amount shall be issued to the transferee in exchange therefor as provided in the Bond Resolution and upon payment of the charges therein prescribed. The Issuer shall pay all costs incurred in connection with the issuance, payment and initial registration of the Bonds and the cost of a reasonable supply of bond blanks. The Issuer and the Paying Agent may deem and treat the person in whose name this Bond is registered on the Bond Register as the absolute owner hereof for the purpose of receiving payment of, or on account of, the principal or redemption price hereof and interest due hereon and for all other purposes. The Bonds are issued in fully registered form in Authorized Denominations.

**Authentication.** This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Bond Resolution until the Certificate of Authentication and Registration hereon shall have been lawfully executed by the Bond Registrar.

**IT IS HEREBY DECLARED AND CERTIFIED** that all acts, conditions, and things required to be done and to exist precedent to and in the issuance of this Bond have been properly done and performed and do exist in due and regular form and manner as required by the Constitution and laws of the State of Kansas, and that the total indebtedness of the Issuer, including this series of bonds, does not exceed any constitutional or statutory limitation.

**IN WITNESS WHEREOF**, the Issuer has caused this Bond to be executed by the manual, electronic or facsimile signature of its Mayor and attested by the manual, electronic or facsimile signature of its Clerk, and its seal to be affixed hereto or imprinted hereon.

**CITY OF DODGE CITY, KANSAS**

(Facsimile Seal)

By: \_\_\_\_\_ (facsimile)  
Mayor

ATTEST:

By: \_\_\_\_\_ (facsimile)  
Clerk

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**CERTIFICATE OF AUTHENTICATION AND REGISTRATION**

This Bond is one of a series of General Obligation Bonds, Series 2024-A, of the City of Dodge City, Kansas, described in the within-mentioned Bond Resolution.

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

Office of the State Treasurer,  
Topeka, Kansas,  
as Bond Registrar and Paying Agent

By \_\_\_\_\_

Registration Number: 0130-029-100324-\_\_\_\_

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**LEGAL OPINION**

The following is a true and correct copy of the approving legal opinion of Gilmore & Bell, P.C., Bond Counsel, which was dated and issued as of the date of original issuance and delivery of such Bonds:

**GILMORE & BELL, P.C.**  
Attorneys at Law  
100 N. Main Suite 800  
Wichita, Kansas 67202

(PRINTED LEGAL OPINION)

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**\*[STATEMENT OF INSURANCE**

[**AG:** Assured Guaranty Inc. (“AG”), New York, New York, has delivered its municipal bond insurance policy (the “Policy”) with respect to the scheduled payments due of principal of and interest on this Bond to the Treasurer of the State of Kansas, Topeka, Kansas, or its successor, as paying agent for the Bonds (the “Paying Agent”). Said Policy is on file and available for inspection at the principal office of the Paying Agent and a copy thereof may be obtained from AG or the Paying Agent. All payments required to be made under the Bond Insurance Policy shall be made in accordance with the provisions thereof. The owner of this Bond acknowledges and consents to the subrogation rights of AG as more fully set forth in the Bond Insurance Policy.]

[**BAM:** Build America Mutual Assurance Company (“BAM”), New York, New York, has delivered its municipal bond insurance policy (the “Policy”) with respect to the scheduled payments due of principal of and interest on this Bond to the Treasurer of the State of Kansas, Topeka, Kansas, or its successor, as paying agent for the Bonds (the “Paying Agent”). Said Policy is on file and available for inspection at the principal office of the Paying Agent and a copy thereof may be obtained from BAM or the Paying Agent. All payments required to be made under the Bond Insurance Policy shall be made in accordance with the



WITNESS my hand and official seal.

(Facsimile Seal)

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

---

**CERTIFICATE OF STATE TREASURER**

OFFICE OF THE TREASURER, STATE OF KANSAS

STEVEN JOHNSON, Treasurer of the State of Kansas, does hereby certify that a transcript of the proceedings leading up to the issuance of this Bond has been filed in the office of the State Treasurer, and that this Bond was registered in such office according to law on \_\_\_\_\_.

WITNESS my hand and official seal.

(Facsimile Seal)

By: \_\_\_\_\_  
Treasurer of the State of Kansas



# Memorandum

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

**From:** Nicole May, Finance Director

**Date:** September 10, 2024

**Subject:** Acceptance of 2023 Audit Financial Statements

**Agenda Item:** New Business

---

**Purpose:** Annually the City is required to have their financial statements audited.

**Recommendation:** I recommend the City Commission formally accept the 2023 Audited Financial Statements.

**Background:** The 2023 audited financial statements will be presented by John Hendrickson of Kennedy McKee at the work session prior to the regular meeting. He will go through the highlights and give the City Commission a chance to ask any questions.

**City Commission Options:**

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

**Financial Considerations:** The audit is budgeted for annually

Amount \$:

Fund: 001

Dept: 1120

Expense Code: 00111200 420001

Budgeted Expense

Grant

Bonds

Other

**Legal Considerations:** None

**Mission/Values:** We strive for high service standards.

**Attachments:** A hard copy of the audit will be available to each City Commissioner. The PDF version will be on the website.

**CITY OF DODGE CITY, KANSAS**

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**FINANCIAL STATEMENT  
with  
INDEPENDENT AUDITOR'S REPORT  
and  
UNIFORM GUIDANCE REPORTS  
YEAR ENDED DECEMBER 31, 2023**

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JOHN W. HENDRICKSON, CPA  
JEREMY J. APPEL, CPA

## INDEPENDENT AUDITOR'S REPORT

The Honorable Mayor and City Commissioners  
Dodge City, Kansas

### ***Adverse and Unmodified Opinions***

We have audited the accompanying fund summary statement of regulatory basis receipts, expenditures, and unencumbered cash of the City of Dodge City, Kansas, as of and for the year ended December 31, 2023 and the related notes to the financial statement.

#### *Adverse Opinion on U.S. Generally Accepted Accounting Principles*

In our opinion, because of the significance of the matter discussed in the Basis for Adverse and Unmodified Opinions section of our report, the accompanying financial statement referred to above does not present fairly, in conformity with accounting principles generally accepted in the United States of America, the financial position of the City of Dodge City, Kansas, as of December 31, 2023, or changes in financial position and cash flows thereof for the year then ended.

#### *Unmodified Opinion on Regulatory Basis of Accounting*

In our opinion, the accompanying financial statement referred to above presents fairly, in all material respects, the aggregate cash and unencumbered cash balances of the City of Dodge City, Kansas, as of December 31, 2023, and the aggregate receipts and expenditures for the year then ended in accordance with the financial reporting provisions of the *Kansas Municipal Audit and Accounting Guide* described in Note A.

### ***Basis for Adverse and Unmodified Opinions***

We conducted our audit in accordance with auditing standards generally accepted in the United States of America (GAAS), the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, and the *Kansas Municipal Audit and Accounting Guide*. Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of the Financial Statement section of our report. We are required to be independent of the City of Dodge City, Kansas and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audit. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our adverse and unmodified audit opinions.

## *Matter Giving Rise to Adverse Opinion on U.S. Generally Accepted Accounting Principles*

As discussed in Note A of the financial statement, the financial statement is prepared by the City of Dodge City, Kansas on the basis of the financial reporting provisions of the *Kansas Municipal Audit and Accounting Guide*, which is a basis of accounting other than accounting principles generally accepted in the United States of America. The effects on the financial statement of the variances between the regulatory basis of accounting described in Note A and accounting principles generally accepted in the United States of America, although not reasonably determinable, are presumed to be material.

### ***Responsibilities of Management for the Financial Statement***

Management is responsible for the preparation and fair presentation of this financial statement in accordance with the *Kansas Municipal Audit and Accounting Guide* as described in Note A; this includes determining that the regulatory basis of accounting is an acceptable basis for the preparation of the financial statement in the circumstances. Management is also responsible for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of the financial statement that is free from material misstatement, whether due to fraud or error.

In preparing the financial statement, management is required to evaluate whether there are conditions or events, considered in the aggregate, which raise substantial doubt about the City of Dodge City, Kansas' ability to continue as a going concern for twelve months beyond the financial statement date, including any currently known information that may raise substantial doubt shortly thereafter.

### ***Auditor's Responsibilities for the Audit of the Financial Statement***

Our objectives are to obtain reasonable assurance about whether the financial statement as a whole is free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinions. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with GAAS and *Government Auditing Standards* will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statement.

In performing an audit in accordance with GAAS and *Government Auditing Standards*, we:

- exercise professional judgement and maintain professional skepticism throughout the audit.
- identify and assess the risks of material misstatement of the financial statement, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statement.
- obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the City of Dodge City, Kansas' internal control. Accordingly, no such opinion is expressed.
- evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statement.
- conclude whether, in our judgment, there are conditions or events, considered in the aggregate, which raise substantial doubt about the City of Dodge City, Kansas' ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control-related matters that we identified during the audit.

### ***Supplementary Information***

Our audit was conducted for the purpose of forming an opinion on the fund summary statement of regulatory basis receipts, expenditures, and unencumbered cash (basic financial statement) as a whole. The summary of regulatory basis expenditures – actual and budget, individual fund schedules of regulatory basis receipts and expenditures, and summary of regulatory basis receipts and disbursements – agency funds (Schedules 1, 2 and 3 as listed in the table of contents) are presented for analysis and are not a required part of the basic financial statement, however, are required to be presented under the provisions of the *Kansas Municipal Audit and Accounting Guide*. The schedule of expenditures of federal awards is presented for additional analysis as required by Title 2 U.S. Code of Federal Regulations (CFR) Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) and is also not a required part of the basic financial statement. Such information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the basic financial statement. The information has been subjected to the auditing procedures applied in the audit of the basic financial statement and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the basic financial statement or to the basic financial statement itself, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the information is fairly stated in all material respects in relation to the basic financial statement as a whole, on the basis of accounting described in Note A.

We also previously audited, in accordance with auditing standards generally accepted in the United States of America, the basic financial statement of the City of Dodge City, Kansas as of and for the year ended December 31, 2022 (not presented herein), and have issued our report thereon dated August 29, 2023, which contained an unmodified opinion on the basic financial statement. The 2022 basic financial statement and our accompanying report are not presented herein but are available in electronic form from the website of the Kansas Department of Administration at the following link: <https://admin.ks.gov/offices/accounts-reports/local-government/municipal-services/municipal-audits>. The 2022 actual column (2022 comparative information) presented in the individual fund schedules of regulatory basis receipts and expenditures for the year ended December 31, 2023 (Schedule 2 as listed in the table of contents) is presented for purposes of additional analysis and is not a required part of the basic financial statement. Such 2022 comparative information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the 2022 basic financial statement. The 2022 comparative information was subjected to the auditing procedures applied in the audit of the 2022 basic financial statement and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the 2022 basic financial statement or to the 2022 basic financial statement itself, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the 2022 comparative information is fairly stated in all material respects in relation to the basic financial statement as a whole for the year ended December 31, 2022, on the basis of accounting described in Note A.

### ***Other Reporting Required by Government Auditing Standards***

In accordance with *Government Auditing Standards*, we have also issued our report dated August 22, 2024 on our consideration of the City of Dodge City, Kansas' internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the City of Dodge City, Kansas' internal control over financial reporting and compliance.

*Kennedy McKee & Company LLP*

August 22, 2024

**CITY OF DODGE CITY, KANSAS**

**SUMMARY STATEMENT OF RECEIPTS, EXPENDITURES  
AND UNENCUMBERED CASH  
REGULATORY BASIS**

For the Year Ended December 31, 2023

Fund	Beginning unencumbered cash balance (deficit)	Prior year cancelled encumbrances	Receipts
General fund:			
General	\$ 5,293,791	\$ -	\$ 18,552,395
Special purpose funds:			
Special liability	-	-	530,077
Library	76,494	-	1,030,138
Library employee benefits	8,531	-	219,154
Sales tax	2,117,879	-	8,425,259
Convention and visitors	1,119,889	-	1,227,725
Special streets and highways	106,258	-	756,087
Special parks and recreation	76,435	-	141,287
Special alcohol and drug	22,153	-	141,288
Alcohol and drug safety action	8,867	-	-
Development and growth	464,104	-	707,745
Non-budgeted special purpose funds:			
Sales tax organizations	334,493	-	710,000
Sales tax depreciation and replacement	856,840	-	2,227,939
Sales tax event	2,350	-	195,519
Rural housing incentive district	571,008	-	344,737
Transient guest tax	415,244	-	386,468
Street sales tax	-	-	2,224,178
Special law enforcement trust	45,962	-	38,825
Economic development revolving	361,599	-	57,095
Hoover trust	131,612	-	9,876
Roof insurance repairs	365,788	-	192,732
Medical insurance reserve	3,790,589	-	2,594,094
CDBG - CV grant	-	-	48,251
Capital equipment reserve	(230,884)	-	645,883
Hilmar	465,329	-	-
GREAT	4,709	-	1,789
Fire CPR training	30,426	-	7,200
Municipal band	10,223	-	18,500
SMPC trust	204,506	-	24,000
Depot	710,257	-	281,619
Civil asset forfeiture	10,827	-	-
Public art	53,605	-	-
Total special purpose funds	12,135,093	-	23,187,465

## STATEMENT 1

Page 1 of 4

<u>Expenditures</u>	<u>Ending unencumbered cash balance (deficit)</u>	<u>Add encumbrances and accounts payable</u>	<u>Ending cash balance (deficit)</u>
\$ 20,441,061	\$ 3,405,125	\$ 1,251,553	\$ 4,656,678
520,400	9,677	-	9,677
1,106,632	-	-	-
227,685	-	-	-
9,999,506	543,632	101,164	644,796
1,068,778	1,278,836	211,967	1,490,803
922,966	(60,621)	304,560	243,939
50,000	167,722	-	167,722
110,725	52,716	-	52,716
-	8,867	-	8,867
198,205	973,644	12,293	985,937
682,736	361,757	-	361,757
1,897,570	1,187,209	134,609	1,321,818
178,750	19,119	-	19,119
1,745,796	(830,051)	781,563	(48,488)
200,208	601,504	-	601,504
2,216,382	7,796	142,411	150,207
10,336	74,451	242	74,693
836	417,858	70	417,928
-	141,488	-	141,488
389,270	169,250	4,200	173,450
2,457,061	3,927,622	59,687	3,987,309
48,251	-	-	-
1,472,789	(1,057,790)	1,070,333	12,543
-	465,329	-	465,329
451	6,047	-	6,047
-	37,626	-	37,626
18,412	10,311	-	10,311
-	228,506	-	228,506
205,469	786,407	10,786	797,193
-	10,827	-	10,827
39,503	14,102	-	14,102
<u>25,768,717</u>	<u>9,553,841</u>	<u>2,833,885</u>	<u>12,387,726</u>

**CITY OF DODGE CITY, KANSAS**

**SUMMARY STATEMENT OF RECEIPTS, EXPENDITURES  
AND UNENCUMBERED CASH  
REGULATORY BASIS**

For the Year Ended December 31, 2023

Fund	Beginning unencumbered cash balance (deficit)	Prior year cancelled encumbrances	Receipts
Special purpose grant funds:			
Runway 220	\$ -	\$ -	\$ -
Runway 14-32 design	19,801	-	-
CARES Act funding - airport	-	-	59,000
Police body worn cameras	2,266	-	3,825
Minibus grant 2020-21	54,771	-	-
Minibus grant 2022-23	(93,651)	-	415,217
Minibus grant 2023-24	-	-	356,279
American Rescue Plan Act	2,286,768	-	-
KHRC moderate income housing	68,803	-	450,000
Opioid	6,558	-	74,488
Downtown kiosk	-	-	-
USDA rural business development	(95,109)	-	-
<b>Total grant funds</b>	<b>2,250,207</b>	<b>-</b>	<b>1,358,809</b>
Bond and interest funds:			
GO bond and interest	7,531	-	4,216,410
Non-budgeted debt service funds:			
Cost of issuance	8,278	-	759,277
Special events center revenue bonds	4,079,447	-	2,908,748
Water park revenue bonds	975,891	-	730,413
<b>Total debt service funds</b>	<b>5,071,147</b>	<b>-</b>	<b>8,614,848</b>
Capital projects funds:			
Capital improvement	738,250	-	540,766
Non-budgeted capital project funds:			
Municipal services building	1,176,048	-	322,200
Temporary notes star bonds	312,072	-	-
GO bonds 2018	111,422	-	-
GO bonds 2013	781,362	-	-
Temporary notes Milstock	181,825	-	-
GO bonds 2016	135,595	-	-
GO bonds 2017	459,250	-	-
GO bonds 2019	(55,742)	-	-
GO bonds 2020	510,102	-	-
GO bonds 2022	7,810,000	-	-
Star bond power center	(291,092)	-	-
Temporary notes Wagon Wheel	79,293	-	-
Lease purchase trash truck	(548,500)	-	548,500
Candletree 6 infrastructure	-	-	-

Expenditures	Ending unencumbered cash balance (deficit)	Add encumbrances and accounts payable	Ending cash balance (deficit)
\$ 4,000	\$ (4,000)	\$ -	\$ (4,000)
-	19,801	-	19,801
-	59,000	-	59,000
282	5,809	-	5,809
-	54,771	-	54,771
321,566	-	-	-
429,658	(73,379)	19,782	(53,597)
739,936	1,546,832	-	1,546,832
407,995	110,808	-	110,808
-	81,046	-	81,046
52,742	(52,742)	1,955	(50,787)
-	(95,109)	-	(95,109)
<u>1,956,179</u>	<u>1,652,837</u>	<u>21,737</u>	<u>1,674,574</u>
4,184,162	39,779	-	39,779
151,178	616,377	-	616,377
2,715,013	4,273,182	-	4,273,182
685,000	1,021,304	-	1,021,304
<u>7,735,353</u>	<u>5,950,642</u>	<u>-</u>	<u>5,950,642</u>
273,989	1,005,027	593	1,005,620
1,472,195	26,053	117,604	143,657
-	312,072	-	312,072
-	111,422	-	111,422
-	781,362	-	781,362
184,444	(2,619)	-	(2,619)
-	135,595	-	135,595
-	459,250	-	459,250
-	(55,742)	-	(55,742)
101,363	408,739	43,990	452,729
89	7,809,911	-	7,809,911
3,517,139	(3,808,231)	284,920	(3,523,311)
-	79,293	-	79,293
-	-	-	-
39,119	(39,119)	1,000	(38,119)

**CITY OF DODGE CITY, KANSAS**

**SUMMARY STATEMENT OF RECEIPTS, EXPENDITURES  
AND UNENCUMBERED CASH  
REGULATORY BASIS**

For the Year Ended December 31, 2023

Fund	Beginning unencumbered cash balance (deficit)	Prior year cancelled encumbrances	Receipts
Capital projects funds (continued):			
Temporary notes Candletree	\$ 2,320,395	\$ -	\$ -
United Village	-	-	175,000
YMCA building	(6,798)	-	-
KLETC project	28,902	-	-
Boot Hill museum	(74,894)	-	-
Airport terminal renovation	(511,172)	-	-
Wagon Wheel III	(272,347)	-	-
Iron Flats	(2,611,080)	-	6,323,785
McCaustland Rd #2	82,150	-	-
Casa Del Rio	150,141	-	-
GO bonds 2023	-	-	3,331,680
	<u>10,505,182</u>	<u>-</u>	<u>11,241,931</u>
Total capital projects funds			
Business funds:			
Water utility	4,038,899	-	6,973,664
Wastewater utility	3,031,606	-	7,284,865
Biogas operations	(1,160,260)	-	3,961,590
Solid waste utility	817,437	-	2,800,087
Drainage utility	177,381	-	308,812
Vehicle maintenance	-	-	199,836
Non-budgeted business funds:			
Facilities maintenance	-	-	-
2009 temporary notes	17,409	-	-
Wastewater treatment plant construction	(1,735,165)	-	-
Water and wastewater revenue bonds	130,725	-	-
	<u>5,318,032</u>	<u>-</u>	<u>21,528,854</u>
Total business funds			
Total reporting entity	<u>\$ 40,573,452</u>	<u>\$ -</u>	<u>\$ 84,484,302</u>

<u>Expenditures</u>	<u>Ending unencumbered cash balance (deficit)</u>	<u>Add encumbrances and accounts payable</u>	<u>Ending cash balance (deficit)</u>
\$ 264,189	\$ 2,056,206	\$ 98,866	\$ 2,155,072
2,422,579	(2,247,579)	420,411	(1,827,168)
-	(6,798)	-	(6,798)
91,170	(62,268)	-	(62,268)
322,860	(397,754)	-	(397,754)
1,100,771	(1,611,943)	186,623	(1,425,320)
-	(272,347)	-	(272,347)
4,615,621	(902,916)	404,646	(498,270)
-	82,150	-	82,150
42,291	107,850	-	107,850
191,072	3,140,608	2,878	3,143,486
<u>14,638,891</u>	<u>7,108,222</u>	<u>1,561,531</u>	<u>8,669,753</u>
4,763,556	6,249,007	431,378	6,680,385
6,833,199	3,483,272	89,667	3,572,939
3,178,508	(377,178)	574,011	196,833
2,619,968	997,556	122,589	1,120,145
341,069	145,124	65,431	210,555
650,421	(450,585)	104,668	(345,917)
380,441	(380,441)	25,165	(355,276)
-	17,409	-	17,409
19,699,113	(21,434,278)	3,064,955	(18,369,323)
-	130,725	-	130,725
<u>38,466,275</u>	<u>(11,619,389)</u>	<u>4,477,864</u>	<u>(7,141,525)</u>
<u>\$ 109,006,476</u>	<u>\$ 16,051,278</u>	<u>\$ 10,146,570</u>	<u>\$ 26,197,848</u>

**CITY OF DODGE CITY, KANSAS****SUMMARY STATEMENT OF RECEIPTS, EXPENDITURES  
AND UNENCUMBERED CASH  
REGULATORY BASIS**

For the Year Ended December 31, 2023

## Composition of cash balance:

Demand deposits	\$ (1,531,247)
Money market accounts	143,015
Certificates of deposit	10,793,932
Investments	19,509,922
Petty cash	<u>3,850</u>
Total cash	28,919,472
Agency funds	<u>(2,721,624)</u>
Total - excluding agency funds	<u><u>\$ 26,197,848</u></u>

The notes to the financial statement are an integral part of this statement.

# CITY OF DODGE CITY, KANSAS

## NOTES TO THE FINANCIAL STATEMENT

December 31, 2023

### A. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

This summary of significant accounting policies applied in the preparation of the accompanying financial statement is presented to assist in understanding the City's financial statement. The financial statement, schedules, and notes are representations of the City's management, which is responsible for their integrity and objectivity.

#### 1. Municipal Financial Reporting Entity

The City of Dodge City is a municipal corporation governed by a City Manager-Commission form of government. This regulatory financial statement presents the City of Dodge City (the Municipality) and does not include the related municipal entities shown below. A related municipal entity is an entity established to benefit the City and/or its constituents.

**Dodge City Public Library.** The members of the governing board of the Public Library are appointed by the City Commissioners. The Public Library is fiscally dependent on the City because the budget is approved by the City Commissioners. In addition, the Public Library is prohibited from issuing bonded debt without the approval of the City Commission.

**Dodge City – Ford County Development Corporation.** Two members of the Corporation's Board of Directors are appointed by the City Commissioners. The Corporation is fiscally dependent on the City because nearly all employees of the Corporation are paid by the City and are accountable to the City Manager and Commissioners.

**Dodge City Housing Authority.** The members of the governing board of the Housing Authority are appointed by the City Commission. Although the City does not have the authority to approve or modify the Housing Authority's operational and capital budgets, the Housing Authority has the authority to issue bonded debt, the City is fiscally responsible for the Housing Authority since it was created as an agent of the City.

**VenuWorks of Dodge City, L.L.C.** Was organized under the laws of the State of Iowa on November 1, 2010 to operate United Wireless Arena. The City engaged VenuWorks to manage all activities and operations of the facility.

#### 2. Basis of Presentation – Fund Accounting

The accounts of the City are organized and operated on the basis of funds. In governmental accounting, a fund is defined as an independent fiscal and accounting entity with a self-balancing set of accounts. Fund accounting segregates funds according to their intended purpose and is used to aid management in demonstrating compliance with finance related legal and contractual provisions. The minimum number of funds is maintained consistent with legal and managerial requirements.

## A. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

### 2. Basis of Presentation – Fund Accounting (Continued)

The following types of funds comprise the financial activities of the City for the year ended December 31, 2023:

#### REGULATORY BASIS FUND TYPES

General fund – the chief operating fund. Used to account for all resources except those required to be accounted for in another fund.

Special Purpose fund – used to account for the proceeds of specific tax levies and other specific regulatory receipt sources (other than Capital Project and tax levies for long-term debt) that are intended for specified purposes.

Bond and Interest fund – used to account for the accumulation of resources, including tax levies, transfers from other funds and payment of general long-term debt.

Capital Project fund – used to account for the debt proceeds and other financial resources to be used for acquisition or construction of major capital facilities or equipment.

Business fund – funds financed in whole or in part by fees charged to users of the goods or services (i.e., enterprise and internal service fund, etc.).

Agency fund – funds used to report assets held by the municipal reporting entity in a purely custodial capacity.

### 3. Regulatory Basis of Accounting and Departure from Accounting Principles Generally Accepted in the United States of America

The *Kansas Municipal Audit and Accounting Guide* (KMAAG) regulatory basis of accounting involves the recognition of cash, cash equivalents, marketable investments, and certain accounts payable and encumbrance obligations to arrive at a net unencumbered cash and investments balance on a regulatory basis for each fund, and the reporting of changes in unencumbered cash and investments of a fund resulting from the difference in regulatory basis receipts and regulatory basis expenditures for the fiscal year. All recognized assets and liabilities are measured and reported at cost unless they have been permanently impaired and have no future cash value or represent no future obligation against cash. The KMAAG regulatory basis does not recognize capital assets, long-term debt, accrued receivables and payables, or any other assets, liabilities or deferred inflows or outflows, other than those mentioned above.

The City has approved a resolution that is in compliance with K.S.A. 75-1120a(c), waiving the requirement for application of generally accepted accounting principles and allowing the City to use the regulatory basis of accounting.

A. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

4. Budgetary Information

Kansas statutes require that an annual operating budget be legally adopted for the general fund, special purpose funds (unless specifically exempted by statute), bond and interest funds, and business funds. Although directory rather than mandatory, the statutes provide for the following sequence and timetable in the adoption of the legal annual operating budget:

- a. Preparation of the budget for the succeeding calendar year on or before August 1st.
- b. Publication in local newspaper on or before August 5th of the proposed budget and notice of public hearing on the budget.
- c. Public hearing on or before August 15th, but at least ten days after publication of notice of hearing.
- d. Adoption of the final budget on or before August 25th.

If the City is holding a revenue neutral rate hearing, the budget timeline for adoption of the final budget has been adjusted to on or before September 20th. The City did hold a revenue neutral rate hearing for this year.

The statutes allow for the governing body to increase the originally adopted budget for previously unbudgeted increases in regulatory receipts other than ad valorem property taxes. To do this, a notice of public hearing to amend the budget must be published in the local newspaper. At least ten days after publication the hearing may be held, and the governing body may amend the budget at that time. The following budget was amended during the year:

<u>Fund</u>	<u>Original budget</u>	<u>Amended budget</u>
Convention and Visitors Fund	\$960,560	\$1,100,000
Special Streets and Highways Fund	948,851	988,851
Wastewater Utility Fund	6,241,395	6,837,985

The statutes permit transferring budgeted amounts between line items within an individual fund. However, such statutes prohibit expenditures in excess of the total amount of the adopted budget of expenditures of individual funds. Budget comparison schedules are presented for each fund showing actual receipts and expenditures compared to legally budgeted receipts and expenditures.

All legal annual operating budgets are prepared using the regulatory basis of accounting, in which receipts are recognized when cash is received, and expenditures include disbursements, accounts payable, and encumbrances, with disbursements being adjusted for prior year's accounts payable and encumbrances. Encumbrances are commitments by the municipality for future payments and are supported by a document evidencing the commitment, such as a purchase order or contract. Any unused budgeted expenditure authority lapses at year end.

A. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

4. Budgetary Information (Continued)

A legal operating budget is not required for special purpose grant funds, certain bond and interest funds, capital project funds and the following special purpose and business funds:

Sales Tax Organizations	Capital Equipment Reserve
Sales Tax Depreciation and Replacement	Hilmar
Sales Tax Event	GREAT
Rural Housing Incentive District	Fire CPR Training
Transient Guest Tax	Municipal Band
Street Sales Tax	SMPC Trust
Special Law Enforcement Trust	Depot
Economic Development Revolving	Civil Asset Forfeiture
Hoover Trust	Public Art
Roof Insurance Repairs	Facilities Maintenance
Medical Insurance Reserve	2009 Temporary Notes
CDBG – CV Grant	Wastewater Treatment Plant Construction
Water and Wastewater Revenue Bonds	

Spending in funds which are not subject to the legal annual operating budget requirement is controlled by federal regulations, other statutes, or by the use of internal spending limits established by the governing body.

5. Special Assessments

Projects financed in part by special assessments are financed through issuance of general obligation bonds of the City and are retired from the Bond and Interest Fund. Special assessments paid prior to the issuance of bonds are recorded as receipts in the appropriate project. Special assessments received after the issuance of bonds are recorded as receipts in the Bond and Interest Fund.

B. COMPLIANCE WITH KANSAS STATUTES

References made herein to the statutes are not intended as interpretations of law but are offered for consideration of the Director of Accounts and Reports, the Kansas Department of Administration, and legal representatives of the City.

The budget law provided by K.S.A. 79-2935 prohibits the expenditure of funds in excess of that allowed by budget. Expenditures exceeded the adopted budget of the Sales Tax, GO Bond and Interest, Water Utility, Solid Waste Utility, Drainage Utility, and Vehicle Maintenance funds by \$1,270,761, \$133,644, \$267, \$295,675, \$50,247 and \$186,481, respectively.

The cash basis law provided by K.S.A. 10-1113 prohibits the creation of indebtedness in excess of available monies in a fund. Funds in the category are as follows:

Special Streets and Highways	\$	60,621
Rural Housing Incentive District		830,051
Capital Equipment Reserve		1,057,790
Runway 220		4,000
Minibus 2023-24		73,379
Temporary Notes Milstock		2,619
GO Bonds 2019		55,742
Star Bonds Power Center		3,808,231

B. COMPLIANCE WITH KANSAS STATUTES (CONTINUED)

The cash basis law provided by K.S.A. 10-1113 prohibits the creation of indebtedness in excess of available monies in a fund. Funds in the category are as follows (continued):

Candletree 6 Infrastructure	\$	39,119
United Village		2,247,579
YMCA Building		6,798
KLETC Project		62,268
Boot Hill Museum		397,754
Airport Terminal Renovation		1,611,943
Wagon Wheel III		272,347
Iron Flats		902,916
Biogas Operations		377,178
Vehicle Maintenance		450,585
Facilities Maintenance		380,441
Wastewater Treatment Plant Construction		21,434,278

Although the following special purpose federal grant funds overspent their cash balances, according to K.S.A. 12-1664, the City is not prohibited from financing the federal share of a local program from current funds if available.

Runway 220	\$	4,000
Minibus 2023-24		73,379
Downtown Kiosk		52,742
USDA Rural Business Development		95,109

C. DEPOSITS AND INVESTMENTS

As of December 31, 2023, the City had the following investments and maturities.

<u>Investment Type</u>	<u>Fair Value</u>	<u>Maturity</u>	<u>Rating</u>
Kansas Municipal Investment Pool	\$11,900,898	< 1 Year	N/A
Escrow Accounts – Dreyfus	5,290,241	< 1 Year	AAAm
Federated Government Obligation Fund	<u>2,318,783</u>	< 1 Year	AAAm
	<u>\$19,509,922</u>		

K.S.A. 9-1401 establishes the depositories which may be used by the City. The statute requires banks eligible to hold the City’s funds to have a main or branch bank in the county in which the City is located, or in an adjoining county if such institution has been designated as an official depository, and the banks provide an acceptable rate of return on funds. In addition, K.S.A. 9-1402 requires the banks to pledge securities for deposits in excess of FDIC coverage. The City has no other policies that would further limit interest rate risk.

K.S.A. 12-1675 limits the City’s investment of idle funds to time deposits, open accounts, and certificates of deposit with allowable financial institutions; U.S. government securities; temporary notes; no-fund warrants; repurchase agreements; and the Kansas Municipal Investment Pool. The City has no investment policy that would further limit its investment choices.

C. DEPOSITS AND INVESTMENTS (CONTINUED)

*Concentration of credit risk.* State statutes place no limit on the amount the municipality may invest in any one issuer as long as the investments are adequately secured under K.S.A. 9-1402 and 9-1405. The City's allocation of investments as of December 31, 2023 is as follows:

<u>Investment</u>	<u>Percentage of Investments</u>
Kansas Municipal Investment Pool	61%
Escrow Accounts – Dreyfus	27%
Federated Government Obligation Fund	12%

*Custodial credit risk - deposits.* Custodial credit risk is the risk that, in the event of a bank failure, the City's deposits may not be returned to it. State statutes require the City's deposits in financial institutions to be entirely covered by federal depository insurance or by collateral held under a joint custody receipt issued by a bank within the State of Kansas, the Federal Reserve Bank of Kansas City, or the Federal Home Loan Bank of Topeka. All deposits were legally secured at December 31, 2023.

At December 31, 2023, the City's carrying amount of deposits, including certificates of deposit, was \$9,405,700 and the bank balance was \$13,300,757. Of the bank balance, \$2,750,000 was covered by federal depository insurance and \$10,550,757 was collateralized with securities held by the pledging financial institutions' agents in the City's name.

*Custodial credit risk – investments.* For an investment, this is the risk that, in the event of the failure of the issuer or counterparty, the City will not be able to recover the value of its investments or collateral securities that are in the possession of an outside party. State statutes require investments to be adequately secured.

At December 31, 2023, the City had invested \$11,900,898 in the State's Municipal Investment Pool. The Municipal Investment Pool is under the oversight of the Pooled Money Investment Board. The Board is comprised of the State Treasurer and four additional members appointed by the State Governor. The Board reports annually to the Kansas Legislature. State pooled monies may be invested in direct obligations of, or obligations that are insured as to principal and interest, by the U.S. government or any agency thereof, with maturities up to four years. No more than ten percent of those funds may be invested in mortgage-backed securities. In addition, the State pool may invest in repurchase agreements with Kansas banks or with primary government securities dealers.

D. CAPITAL PROJECTS

Capital project authorizations with approved change orders compared with cash disbursements and accounts payable from inception are as follows:

	<u>Project authorization</u>	<u>Cash disbursements and accounts payable to date</u>
Downtown Streetscape	\$ 15,188,601	\$ 5,919,419
Iron Flats Infrastructure	6,298,327	4,659,714
South Wastewater Treatment Plant Expansion	45,378,122	14,400,530
Force Main	5,971,705	1,479,992
United Village Infrastructure	<u>12,262,523</u>	<u>2,053,816</u>
Total	<u>\$ 85,099,278</u>	<u>\$ 28,513,471</u>

## E. LONG-TERM DEBT

Changes in long-term liabilities for the municipal financial reporting entity for the year ended December 31, 2023, were as follows:

<u>Issue</u>	<u>Balance beginning of year</u>	<u>Additions</u>	<u>Reductions/ payments</u>	<u>Balance end of year</u>	<u>Interest paid</u>
General obligation bonds:					
Series 2012-B issued August 1, 2012 in the amount of \$21,285,000 at interest rates of 2.00% to 4.00% maturing September 1, 2032	\$4,415,000	\$ -	\$ 900,000	\$3,515,000	\$ 137,771
Series 2014-A issued December 1, 2014 in the amount of \$675,000 at interest rates of 2.00% to 3.25% maturing September 1, 2029	345,000	-	345,000	-	9,902
Series 2016-A issued February 3, 2016 in the amount of \$5,705,000 at interest rates of 2.00% to 3.125% maturing September 1, 2035	4,015,000	-	260,000	3,755,000	120,906
Series 2016-B issued December 15, 2016 in the amount of \$2,000,000 at interest rates of 2.00% to 4.00% maturing September 1, 2031	1,285,000	-	120,000	1,165,000	46,325
Series 2017-A issued June 1, 2017 in the amount of \$2,860,000 at interest rates of 2.50% to 3.00% maturing September 1, 2026	1,280,000	-	305,000	975,000	36,775
Series 2017-B issued December 28, 2017 in the amount of \$5,815,000 at interest rates of 2.00% to 4.00% maturing September 1, 2029	4,370,000	-	610,000	3,760,000	174,800
Series 2018-A issued December 20, 2018 in the amount of \$3,950,000 at interest rates of 3.00% to 5.00% maturing September 1, 2033	3,180,000	-	235,000	2,945,000	117,675
Series 2019-A issued December 5, 2019 in the amount of \$16,875,000 at interest rates of 2.125% to 4.00% maturing September 1, 2039	13,430,000	-	1,205,000	12,225,000	469,388
Series 2019-B issued December 5, 2019 in the amount of \$7,000,000 at interest rates of 2.183% to 2.896% maturing September 1, 2039	3,105,000	-	1,365,000	1,740,000	76,685
Series 2020-A issued August 13, 2020 in the amount of \$4,200,000 at interest rates of 1.00% to 2.00% maturing September 1, 2040	3,825,000	-	190,000	3,635,000	53,023

## E. LONG-TERM DEBT (CONTINUED)

<u>Issue</u>	<u>Balance beginning of year</u>	<u>Additions</u>	<u>Reductions/ payments</u>	<u>Balance end of year</u>	<u>Interest paid</u>
General obligation bonds (continued):					
Series 2021-A issued September 1, 2021 in the amount of \$7,725,000 at interest rates of 1.00% to 2.00% maturing September 1, 2040	\$7,425,000	\$ -	\$ 320,000	\$7,105,000	\$ 131,178
Series 2022-A issued August 25, 2022 in the amount of \$8,990,000 at interest rates of 3.00% to 5.00% maturing September 1, 2042	8,990,000	-	285,000	8,705,000	380,278
Series 2023-A issued August 31, 2023 in the amount of \$6,905,000 at interest rates of 4.00% to 5.00% maturing September 1, 2043	-	6,905,000	-	6,905,000	-
Total general obligation bonds	<u>55,665,000</u>	<u>6,905,000</u>	<u>6,140,000</u>	<u>56,430,000</u>	<u>1,754,706</u>
Revenue bonds:					
Series 2015 issued March 7, 2016 in the amount of \$9,840,000 at interest rates of 2.00% to 4.00% maturing June 1, 2034	7,165,000	-	440,000	6,725,000	245,000
Series 2016 issued March 22, 2016 in the amount of \$32,435,000 at interest rates of 1.75% to 5.00% maturing June 1, 2034	<u>27,975,000</u>	<u>-</u>	<u>1,580,000</u>	<u>26,395,000</u>	<u>1,135,013</u>
Total revenue bonds	<u>35,140,000</u>	<u>-</u>	<u>2,020,000</u>	<u>33,120,000</u>	<u>1,380,013</u>
Loans:					
KDHE - Wastewater loan issued September 22, 2009 in the amount of \$35,715,446 at the interest rate of 2.83% maturing March 1, 2031	<u>7,132,598</u>	<u>-</u>	<u>706,391</u>	<u>6,426,207</u>	<u>196,890</u>
Finance leases:					
CREW Building issued February 12, 2021 in the amount of \$715,866 at the interest rate of 2.276% maturing February 12, 2031	651,306	-	66,029	585,277	14,817
Radio Equipment issued June 1, 2016 in the amount of \$695,740 at the interest rate of 1.765% maturing June 1, 2023	103,922	-	103,922	-	1,846
Airport Hangar issued April 5, 2013 in the amount of \$349,878 at the interest rate of 3.00% maturing April 5, 2023	39,822	-	39,822	-	1,195

## E. LONG-TERM DEBT (CONTINUED)

### Finance leases (continued):

2018 Fire Truck issued October 18, 2018 in the amount of \$935,000 at the interest rate of 2.99% maturing October 18, 2027	\$ 486,279	\$ -	\$ 92,027	\$ 394,252	\$ 14,540
Trash Truck issued March 31, 2023 in the amount of \$548,500 at the interest rate of 4.10% maturing April 1, 2028	<u>-</u>	<u>548,500</u>	<u>-</u>	<u>548,500</u>	<u>-</u>
Total finance leases	<u>1,281,329</u>	<u>548,500</u>	<u>301,800</u>	<u>1,528,029</u>	<u>32,398</u>

### Temporary notes:

GO Temporary Notes issued September 1, 2021 in the amount of \$2,235,000 at the interest rate of 0.45% maturing September 1, 2023	2,235,000	-	\$2,235,000	-	10,058
GO Temporary Notes issued August 25, 2022 in the amount of \$1,495,000 at the interest rate of 2.60% maturing June 1, 2024	1,495,000	-	1,495,000	-	39,518
GO Temporary Notes issued August 31, 2023 in the amount of \$6,800,000 at the interest rate of 4.125% maturing September 1, 2025	-	6,800,000	-	6,800,000	-
GO Temporary Notes issued September 1, 2020 in the amount of \$1,230,000 at interest rates of 0.06% to 1.00% maturing September 1, 2024	<u>620,000</u>	<u>-</u>	<u>310,000</u>	<u>310,000</u>	<u>4,030</u>
Total temporary notes	<u>4,350,000</u>	<u>6,800,000</u>	<u>4,040,000</u>	<u>7,110,000</u>	<u>53,606</u>
Total long-term debt	<u>\$103,568,927</u>	<u>\$14,253,500</u>	<u>\$13,208,191</u>	<u>\$104,614,236</u>	<u>\$3,417,613</u>

Current maturities of general obligation bonds and interest for the next five years and in five-year increments through maturity are as follows:

	<u>Principal due</u>	<u>Interest due</u>	<u>Total due</u>
2024	\$ 5,905,000	\$ 1,872,927	\$ 7,777,927
2025	4,740,000	1,674,404	6,414,404
2026	4,535,000	1,502,696	6,037,696
2027	4,355,000	1,333,483	5,688,483
2028	4,550,000	1,174,005	5,724,005
2029-2033	16,960,000	3,841,440	20,801,440
2034-2038	8,025,000	1,910,392	9,935,392
2039-2043	<u>7,360,000</u>	<u>589,063</u>	<u>7,949,063</u>
Total	<u>\$ 56,430,000</u>	<u>\$ 13,898,410</u>	<u>\$ 70,328,410</u>

E. LONG-TERM DEBT (CONTINUED)

Current maturities of revenue bonds and interest for the next five years and in five-year increments through maturity are as follows:

	<u>Principal due</u>	<u>Interest due</u>	<u>Total due</u>
2024	\$ 2,160,000	\$ 1,331,713	\$ 3,491,713
2025	2,260,000	1,275,150	3,535,150
2026	2,415,000	1,166,900	3,581,900
2027	2,575,000	1,051,100	3,626,100
2028	2,745,000	927,500	3,672,500
2029-2033	16,490,000	2,623,731	19,113,731
2034	<u>4,475,000</u>	<u>190,800</u>	<u>4,665,800</u>
Total	<u>\$ 33,120,000</u>	<u>\$ 8,566,894</u>	<u>\$ 41,686,894</u>

Current maturities of loans and interest for the next five years and in five-year increments through maturity are as follows:

	<u>Principal due</u>	<u>Interest due</u>	<u>Total due</u>
2024	\$ 726,523	\$ 161,143	\$ 887,666
2025	747,229	142,266	889,495
2026	768,525	122,851	891,376
2027	790,429	102,883	893,312
2028	812,956	82,346	895,302
2029-2031	<u>2,580,545</u>	<u>117,876</u>	<u>2,698,421</u>
Total	<u>\$ 6,426,207</u>	<u>\$ 729,365</u>	<u>\$ 7,155,572</u>

Current maturities of finance leases and interest for the next five years and in five-year increments through maturity are as follows:

	<u>Principal due</u>	<u>Interest due</u>	<u>Total due</u>
2024	\$ 263,163	\$ 48,036	\$ 311,199
2025	271,851	39,348	311,199
2026	280,714	30,485	311,199
2027	287,675	21,317	308,992
2028	192,718	11,913	204,631
2028-2031	<u>231,908</u>	<u>10,636</u>	<u>242,544</u>
Total	<u>\$ 1,528,029</u>	<u>\$ 161,735</u>	<u>\$ 1,689,764</u>

Current maturities of temporary notes and interest through maturity are as follows:

	<u>Principal due</u>	<u>Interest due</u>	<u>Total due</u>
2024	\$ 310,000	\$ 143,199	\$ 453,199
2025	<u>6,800,000</u>	<u>280,500</u>	<u>7,080,500</u>
Total	<u>\$ 7,110,000</u>	<u>\$ 423,699</u>	<u>\$ 7,533,699</u>

F. INTERFUND TRANSACTIONS

Operating transfers were as follows:

<u>From</u>	<u>To</u>	<u>Amount</u>	<u>Regulatory authority</u>
General	Capital equipment	\$ 652,683	K.S.A. 68-141g
General	Municipal band	18,500	K.S.A. 12-101a
Sales tax	Special event center revenue bond	2,781,304	Resolution No. 2009-09
Sales tax	Water park revenue bond	692,442	Resolution No. 2015-03
Sales tax	Sales tax organizations	710,000	Resolution No. 2009-09
Sales tax	Sales tax event	100,000	Resolution No. 2009-09
Sales tax	General	150,000	Resolution No. 2009-09
Sales tax	Sales tax depreciation and replacement	2,215,439	Interfund
Special park and recreation	General	50,000	Contractual
Sales tax organizations	Depot	250,000	Interfund
Convention & visitors	General	150,000	K.S.A. 12-825d
Water utility	General	689,552	K.S.A. 12-825d
Wastewater utility	General	613,722	K.S.A. 12-825d
Biogas operations	Wastewater utility	500,000	K.S.A. 12-1,118
Biogas operations	GO bond and interest	600,000	K.S.A. 12-1,118
Biogas operations	Capital improvement	325,000	K.S.A. 12-1,118
Sanitation	General	232,734	K.S.A. 12-825d
Drainage	General	95,722	K.S.A. 12-825d
Drainage	GO bond and interest	<u>241,050</u>	K.S.A. 12-1,118
		<u>\$11,068,148</u>	

Transfers to the related municipal entity were as follows:

<u>From</u>	<u>To</u>	<u>Amount</u>
Library	Dodge City Public Library	\$1,106,632
Library employee benefits	Dodge City Public Library	<u>227,685</u>
		<u>\$1,334,317</u>

G. OTHER LONG-TERM OBLIGATIONS FROM OPERATIONS

*Other Post-Employment Benefits.* As provided by K.S.A. 12-5040, the City allows retirees to participate in the group health insurance plan. While each retiree pays the full amount of the applicable premium, conceptually, the City is subsidizing the retirees because each participant is charged a level of premium regardless of age. However, the cost of this subsidy has not been quantified in the financial statement.

Under the Consolidated Omnibus Budget Reconciliation Act (COBRA), the City makes health care benefits available to eligible former employees and eligible dependents. Certain requirements are outlined by the federal government for this coverage. The premium is paid in full by the insured. There is no cost to the City under this program.

*Death and Disability Other Post-Employment Benefits.* As provided by K.S.A. 74-4927, disabled members in the Kansas Public Employees Retirement System (KPERS) receive long-term disability benefits and life insurance benefits. The plan is administered through a trust held by KPERS that is funded to pay annual benefit payments. The employer contribution rate was set at 1% and contributions were \$72,557 for the year ended December 31, 2023.

*Termination Benefits.* The City provides an early retirement program for certain eligible employees. Full-time employees may voluntarily elect to retire early. Qualifying employees must have at least 10 years of continuous service with the City, must meet the KPERS or KP&F Early Retirement Qualifications (years of experience plus age), and must not be more than 64 years of age. The rate of retirement compensation is an annual sum of \$7,200. Benefits will cease when the retiree reaches age 65.

The future commitment for the voluntary early retirement plan is as follows:

	<u>Amount</u>
2024	\$ 91,938
2025	79,200
2026	72,554
2027	72,000
2028	69,230
2029-2033	133,198
2034	<u>554</u>
Total	<u>\$ 518,674</u>

*Section 125 Plan.* The City offers a Section 125 flexible benefit plan to employees electing to participate. It is used for health insurance premiums, other medical costs, and child-care costs. The plan is administered by the health insurance provider.

*Health Savings Account.* The City offers eligible employees a health savings account administered by a third party. It is optional for employees to participate in the City's high deductible health plan. The City's match for the HSA is \$750 for family and \$250 for single.

## G. OTHER LONG-TERM OBLIGATIONS FROM OPERATIONS (CONTINUED)

*Compensated Absences.* The City's policies regarding paid time off (PTO) permit an employee to accumulate a maximum of 176 to 512 hours of PTO, depending on years of service. Fire department personnel can accumulate a maximum of 633 to 754 hours of PTO, depending on years of service. These amounts are paid to the employee upon retirement or if the employee left in good standing. The compensation shall be paid at the employee's base rate of pay. The City has a PTO bank whereby employees can transfer excess PTO and have exhausted their own PTO accumulation. The PTO bank is administered by a committee of City employees. All employees are given credit for holidays worked, which is then accumulated for additional time off. This holiday time must be taken within the same year in which earned, or the time is lost.

## H. DEFINED BENEFIT PENSION PLAN

### General Information About the Pension Plan

*Plan Description.* The City participates in the Kansas Public Employees Retirement System (KPERS), a cost-sharing multiple-employer defined benefit pension plan as provided by K.S.A. 74-4901, et seq. Kansas law establishes and amends benefit provisions. KPERS issues a publicly available financial report that includes financial statements and required supplementary information. KPERS' financial statements are included in its Annual Comprehensive Financial Report which can be found on the KPERS website at [www.kpers.org](http://www.kpers.org) or by writing to KPERS (611 South Kansas, Suite 100, Topeka, KS 66603) or by calling 1-888-275-5737.

*Contributions.* K.S.A. 74-4919 and K.S.A. 74-49,210 establish the KPERS member-employee contribution rates. KPERS has multiple benefit structures and contribution rates depending on whether the employee is a KPERS 1, KPERS 2 or KPERS 3 member. KPERS 1 members are active and contributing members hired before July 1, 2009. KPERS 2 members were first employed in a covered position on or after July 1, 2009, and KPERS 3 members were first employed in a covered position on or after January 1, 2015. Effective January 1, 2015, Kansas law established the KPERS member-employee contribution rate at 6% of covered salary for KPERS 1, KPERS 2 and KPERS 3 members. K.S.A. 74-4975 establishes KP&F member-employee contribution rate at 7.15% of covered salary. Member contributions are withheld by the City and paid to KPERS according to the provisions of Section 414(h) of the Internal Revenue Code.

State law provides that the employer contribution rates for KPERS 1, KPERS 2 and KPERS 3 and KP&F be determined based on the results of each annual actuarial valuation. Kansas law sets a limitation on annual increases in the employer contribution rates. The actuarially determined employer contribution rate (not including the 1% contribution rate for the Death and Disability Program) and the statutory contribution rate was 8.43% for KPERS and 22.86% for KP&F for the fiscal year ended December 31, 2023. Contributions to the pension plan from the City were \$645,374 for KPERS, \$1,254,334 for KP&F, and \$8,001 for KPERS working after retirement for the year ended December 31, 2023.

## H. DEFINED BENEFIT PENSION PLAN (CONTINUED)

### Net Pension Liability

At December 31, 2023, the City's proportionate share of the collective net pension liability reported by KPERS was \$7,066,058 and \$10,337,710 for KP&F. The net pension liability was measured as of June 30, 2023, and the total pension liability used to calculate the net pension liability was determined by an actuarial valuation as of December 31, 2022, which was rolled forward to June 30, 2023. The City's proportion of the net pension liability was based on the ratio of the City's contributions to KPERS, relative to the total employer and non-employer contributions of the Local subgroup within KPERS. Since the KMAAG regulatory basis of accounting does not recognize long-term debt, this liability is not reported in this financial statement.

The complete actuarial report including all actuarial assumptions and methods, and the report on the allocation of the KPERS collective net pension liability to all participating employers are publicly available on the website at [www.kpers.org](http://www.kpers.org) or can be obtained as described above.

## I. RISK MANAGEMENT

The City is exposed to various risks of loss related to torts; theft of, damage to, and destruction of assets; errors and omissions; injuries to employees; natural disasters; and medical needs of employees. The City participates in a public entity risk pool to cover worker's compensation claims. The City purchases commercial insurance to cover property, liability, and medical needs of employees. There have been no significant reductions in coverage from the prior year. Settled claims have not exceeded coverage in any of the past three years.

## J. CONTINGENCIES

The City receives significant financial assistance from numerous federal and state governmental agencies in the form of grants and state pass-through aid. The disbursement of funds received under these programs generally requires compliance with terms and conditions specified in the grant agreements and are subject to audit. Any disallowed claims resulting from such audits could become a liability of the General Fund or other applicable funds. However, in the opinion of management, any such disallowed claims will not have a material effect on the financial statement of the City at December 31, 2023.

The City received \$4,136,318 from the Department of the Treasury through the American Rescue Plan Act (ARPA). As of December 31, 2023, \$1,546,832 remained in the American Rescue Plan Act fund. These funds must be obligated by December 31, 2024 and expended by December 31, 2026.

## K. JOINT VENTURES

On January 1, 1993, the City of Dodge City, Kansas entered into a joint venture with Ford County, Kansas, for the operation of a communications center. By joint resolution, the Dodge City/Ford County Emergency Communications Board was created to operate the Dodge City/Ford County Communications Department. The Board consists of equal membership of City and County personnel. The department provides emergency communications for City and County agencies and is physically located in a separate location. The budgeted operating expenditures are shared equally by the two governments.

## K. JOINT VENTURES (CONTINUED)

On July 21, 1997, the City of Dodge City, Kansas entered into a joint venture with Ford County, Kansas for the construction and operation of certain public projects. On June 10, 1997, the voters of Dodge City and Ford County approved a one-half percent city-wide and a one-half percent county-wide retailer's sales tax to finance these projects. The projects included but were not limited to the following: air conditioning at the Civic Center building; an outdoor motor sports complex; field sport facilities, including a baseball/softball complex and additional soccer facilities and renovation of existing facilities; and a special events center.

All City sales tax revenues for these projects are deposited into the Sales Tax Fund. County sales tax revenues which are designated for Ford County and the City of Dodge City are transferred to the City and deposited into the same fund. All expenditures from the Sales Tax Fund are subject to approval of the City Commission. All real estate acquired for the projects is titled to the City.

The interlocal agreement was amended on August 10, 2005. The agreement created a Community Facilities Advisory Board (CFAB) to serve as the project review and advisory committee. There are seven members on the Board: one City Commissioner, one County Commissioner, four at-large members and the Chairperson of the Board of Directors of the Dodge City/Ford County Development Corporation, or their designee.

On November 18, 2010, the City of Dodge City, Kansas entered into a joint venture with Venuworks of Dodge City, L.L.C. The agreement calls for Venuworks to operate and manage the Special Events Center. The City retains title and ownership of the Center. Venuworks receives a flat monthly management fee plus variable management fees for food and beverage sales, contractually obligated incomes, and fulfillment fees. Variable commissions are capped on an annual basis.

On November 5, 2012, the City of Dodge City, Kansas entered into a joint venture with Young Men's Christian Association of Southwest Kansas (YMCA). The agreement calls for the YMCA to operate and manage the Parks and Recreation Department. The City retains title to all Parks and Recreation property. The City reimburses the YMCA for a percentage of payroll and also for large property purchases and repairs.

## L. RELATED PARTY TRANSACTIONS

The City transacted business with the Sound Shop in the amount of \$113,701 and Taylor's Roadhouse in the amount of \$263,929. The owners of these businesses also serve on the City Commission.

## M. SUBSEQUENT EVENTS

Management has evaluated events subsequent to year end through August 22, 2024 and believes there are no subsequent events that are required to be recognized or disclosed in this financial statement.

**REGULATORY-REQUIRED  
SUPPLEMENTARY INFORMATION**

## CITY OF DODGE CITY, KANSAS

SUMMARY OF EXPENDITURES - ACTUAL AND BUDGET  
REGULATORY BASIS

For the Year Ended December 31, 2023

<u>Funds</u>	<u>Certified budget</u>	<u>Adjustment for qualifying budget credits</u>	<u>Total for budget comparison</u>	<u>Expenditures chargeable to current year</u>	<u>Variance favorable (unfavorable)</u>
General fund:					
General	\$ 20,687,766	\$ -	\$ 20,687,766	\$ 20,441,061	\$ 246,705
Special purpose funds:					
Special liability	1,200,000	-	1,200,000	520,400	679,600
Library	1,113,000	-	1,113,000	1,106,632	6,368
Library employee benefits	233,400	-	233,400	227,685	5,715
Sales tax	8,728,745	-	8,728,745	9,999,506	(1,270,761)
Convention and visitors	1,100,000	-	1,100,000	1,068,778	31,222
Special streets and highways	988,851	-	988,851	922,966	65,885
Special parks and recreation	100,000	-	100,000	50,000	50,000
Special alcohol and drug	120,000	-	120,000	110,725	9,275
Alcohol and drug safety action	-	-	-	-	-
Development and growth	625,000	-	625,000	198,205	426,795
Bond and interest funds:					
GO bond and interest	4,050,518	-	4,050,518	4,184,162	(133,644)
Capital project fund:					
Capital improvement fund	1,200,000	-	1,200,000	273,989	926,011
Business funds:					
Water utility	4,763,289	-	4,763,289	4,763,556	(267)
Wastewater utility	6,837,985	-	6,837,985	6,833,199	4,786
Biogas operations	5,000,729	-	5,000,729	3,178,508	1,822,221
Solid waste utility	2,324,293	-	2,324,293	2,619,968	(295,675)
Drainage utility	290,822	-	290,822	341,069	(50,247)
Vehicle maintenance	463,940	-	463,940	650,421	(186,481)
<b>Total</b>	<b>\$ 59,828,338</b>	<b>\$ -</b>	<b>\$ 59,828,338</b>	<b>\$ 57,490,830</b>	<b>\$ 2,337,508</b>

See Independent Auditor's Report.

**CITY OF DODGE CITY, KANSAS**

**GENERAL FUND**

**SCHEDULE OF RECEIPTS AND EXPENDITURES - ACTUAL AND BUDGET  
REGULATORY BASIS**

For the Year Ended December 31, 2023  
(With Comparative Actual Totals for the Prior Year Ended December 31, 2022)

	2022	2023		Variance favorable (unfavorable)
		Actual	Budget	
Receipts:				
Taxes:				
Ad valorem tax	\$ 3,786,418	\$ 3,915,966	\$ 4,183,962	\$ (267,996)
Motor vehicle tax	642,146	614,863	593,820	21,043
Recreational vehicle tax	3,794	3,476	3,120	356
16/20M truck tax	-	-	1,724	(1,724)
Delinquent tax	189,164	241,689	150,000	91,689
Commercial vehicle tax	33,883	28,868	29,957	(1,089)
Watercraft	-	-	1,266	(1,266)
Local alcoholic liquor tax	133,603	141,330	121,564	19,766
Local sales tax	6,077,999	6,221,606	6,000,000	221,606
Payment in lieu of taxes	40,258	68,813	-	68,813
Licenses, permits and fees	420,990	304,086	275,475	28,611
Franchise fees	1,963,109	1,767,356	2,138,000	(370,644)
Police	269,699	296,259	250,000	46,259
Engineering fees	10,934	10,165	5,000	5,165
Airport	150,286	157,668	152,500	5,168
Cemetery	102,988	96,804	100,000	(3,196)
Recreation	600	-	-	-
Golf course	642,397	643,898	560,000	83,898
Licenses, permits and fees - other	46,666	50,455	-	50,455
Fines and forfeitures	759,343	698,446	681,000	17,446
Animal control	48,748	58,538	40,000	18,538
Rent and leases	151,540	223,987	123,000	100,987
Misc. charges for service	4,751	7,259	6,500	759
Interest	147,302	453,222	20,000	433,222
State aid	33,830	364,140	33,500	330,640
Federal aid	-	21,128	-	21,128
Operating grants	14,245	20,826	150,000	(129,174)
Contributions & donations	141,001	86,197	20,000	66,197
Zoo contributions	711	250	-	250
Sale of equipment	83,825	-	500	(500)
Sale of labor and materials	5,582	73,370	15,000	58,370
Other	3,089	-	-	-
Operating transfers in	1,684,925	1,981,730	2,038,730	(57,000)
<b>Total receipts</b>	<b>17,593,826</b>	<b>18,552,395</b>	<b>\$ 17,694,618</b>	<b>\$ 857,777</b>

CITY OF DODGE CITY, KANSAS

GENERAL FUND

SCHEDULE OF RECEIPTS AND EXPENDITURES - ACTUAL AND BUDGET  
REGULATORY BASIS

For the Year Ended December 31, 2023  
(With Comparative Actual Totals for the Prior Year Ended December 31, 2022)

	2022	2023		Variance favorable (unfavorable)
		Actual	Budget	
Expenditures:				
Commission:				
Personal services	\$ 61,738	\$ 61,314	\$ 61,500	\$ 186
Contractual services	15,099	4,991	8,650	3,659
Commodities	145	707	1,100	393
Subtotal	76,982	67,012	71,250	4,238
Depot train station:				
Personal services	19,458	20,507	26,587	6,080
Contractual services	1,358	1,952	2,100	148
Commodities	456	139	1,200	1,061
Subtotal	21,272	22,598	29,887	7,289
Economic development:				
Personal services	428,831	445,291	429,900	(15,391)
Reimbursed wages	(52,853)	(7,895)	-	7,895
Subtotal	375,978	437,396	429,900	(7,496)
Police department:				
Personal services	4,758,383	5,087,593	5,343,730	256,137
Contractual services	408,673	485,273	482,980	(2,293)
Commodities	236,353	177,098	222,935	45,837
Capital outlay	38,432	21,939	35,650	13,711
Subtotal	5,441,841	5,771,903	6,085,295	313,392
Animal control:				
Personal services	305,261	313,546	339,375	25,829
Contractual services	78,486	93,018	79,490	(13,528)
Commodities	49,677	48,884	45,775	(3,109)
Capital outlay	-	23,536	1,300	(22,236)
Subtotal	433,424	478,984	465,940	(13,044)

**CITY OF DODGE CITY, KANSAS**

**GENERAL FUND**

**SCHEDULE OF RECEIPTS AND EXPENDITURES - ACTUAL AND BUDGET  
REGULATORY BASIS**

For the Year Ended December 31, 2023  
(With Comparative Actual Totals for the Prior Year Ended December 31, 2022)

	2022	2023		Variance favorable (unfavorable)
		Actual	Budget	
Fire department:				
Personal services	\$ 2,234,545	\$ 2,477,908	\$ 2,440,490	\$ (37,418)
Contractual services	119,952	139,704	79,500	(60,204)
Commodities	66,546	130,874	60,250	(70,624)
Capital outlay	103	12,478	56,500	44,022
Subtotal	2,421,146	2,760,964	2,636,740	(124,224)
Municipal court:				
Personal services	242,188	266,307	268,750	2,443
Contractual services	262,598	218,364	235,250	16,886
Commodities	8,861	6,990	7,200	210
Capital outlay	6,380	607	8,600	7,993
Subtotal	520,027	492,268	519,800	27,532
Public works:				
Personal services	297,070	309,451	374,800	65,349
Contractual services	456,932	444,721	453,800	9,079
Commodities	45,544	45,988	39,400	(6,588)
Subtotal	799,546	800,160	868,000	67,840
Engineering:				
Personal services	354,977	414,142	351,350	(62,792)
Contractual services	16,777	15,373	22,350	6,977
Commodities	10,712	19,701	9,950	(9,751)
Capital outlay	1,976	9,256	4,000	(5,256)
Subtotal	384,442	458,472	387,650	(70,822)
Airport:				
Personal services	103,663	156,842	143,710	(13,132)
Contractual services	122,837	108,373	90,300	(18,073)
Commodities	37,097	26,100	38,800	12,700
Capital outlay	(4,182)	46,046	-	(46,046)
Hangar lease	41,016	41,016	41,016	-
Subtotal	300,431	378,377	313,826	(64,551)

**CITY OF DODGE CITY, KANSAS**

**GENERAL FUND**

**SCHEDULE OF RECEIPTS AND EXPENDITURES - ACTUAL AND BUDGET  
REGULATORY BASIS**

For the Year Ended December 31, 2023  
(With Comparative Actual Totals for the Prior Year Ended December 31, 2022)

	2022	2023		Variance favorable (unfavorable)
		Actual	Budget	
Forestry & landscape:				
Contractual services	\$ -	\$ 2,539	\$ -	\$ (2,539)
Construction department:				
Commodities	-	592	-	(592)
Cemetery:				
Personal services	126,555	153,423	148,860	(4,563)
Contractual services	33,652	27,771	40,595	12,824
Commodities	21,950	21,140	22,300	1,160
Capital outlay	-	440	-	(440)
Subtotal	182,157	202,774	211,755	8,981
Public transportation:				
Contractual services	157,395	284,093	230,000	(54,093)
Recreation - administrative:				
Contractual services	(10,734)	31,484	16,500	(14,984)
Capital outlay	-	-	25,000	25,000
Subtotal	(10,734)	31,484	41,500	10,016
Park:				
Personal services	877,543	992,520	958,910	(33,610)
Contractual services	122,001	135,615	122,020	(13,595)
Commodities	196,640	201,280	151,500	(49,780)
Capital outlay	3,159	6,790	23,500	16,710
Subtotal	1,199,343	1,336,205	1,255,930	(80,275)
Zoo:				
Personal services	104,811	104,677	151,710	47,033
Contractual services	11,323	8,169	22,050	13,881
Commodities	35,441	13,055	43,050	29,995
Capital outlay	-	-	10,000	10,000
Subtotal	151,575	125,901	226,810	100,909

**CITY OF DODGE CITY, KANSAS**

**GENERAL FUND**

**SCHEDULE OF RECEIPTS AND EXPENDITURES - ACTUAL AND BUDGET  
REGULATORY BASIS**

For the Year Ended December 31, 2023  
(With Comparative Actual Totals for the Prior Year Ended December 31, 2022)

	2022	2023		Variance favorable (unfavorable)
		Actual	Budget	
Golf course:				
Personal services	\$ 433,255	\$ 516,825	\$ 467,850	\$ (48,975)
Contractual services	121,042	125,977	79,900	(46,077)
Commodities	305,568	321,256	211,600	(109,656)
Capital outlay	-	15,000	16,700	1,700
Subtotal	<u>859,865</u>	<u>979,058</u>	<u>776,050</u>	<u>(203,008)</u>
Hennessy Hall:				
Personal services	19,195	22,147	30,700	8,553
Contractual services	114,227	113,583	119,700	6,117
Commodities	11,280	12,914	16,600	3,686
Capital outlay	-	-	12,000	12,000
Subtotal	<u>144,702</u>	<u>148,644</u>	<u>179,000</u>	<u>30,356</u>
Development services:				
Personal services	523,218	655,347	588,030	(67,317)
Contractual services	167,169	180,851	198,000	17,149
Commodities	39,125	35,415	44,700	9,285
Capital outlay	10,783	2,628	2,000	(628)
Subtotal	<u>740,295</u>	<u>874,241</u>	<u>832,730</u>	<u>(41,511)</u>
Administration:				
Personal services	929,171	1,197,911	980,000	(217,911)
Contractual services	354,500	1,319,439	327,050	(992,389)
Commodities	21,092	27,414	24,100	(3,314)
Capital outlay	9,952	9,839	13,500	3,661
Subtotal	<u>1,314,715</u>	<u>2,554,603</u>	<u>1,344,650</u>	<u>(1,209,953)</u>
Attorney:				
Contractual services	<u>218</u>	<u>676</u>	<u>-</u>	<u>(676)</u>

**CITY OF DODGE CITY, KANSAS**

**GENERAL FUND**

**SCHEDULE OF RECEIPTS AND EXPENDITURES - ACTUAL AND BUDGET  
REGULATORY BASIS**

For the Year Ended December 31, 2023  
(With Comparative Actual Totals for the Prior Year Ended December 31, 2022)

	2022	2023		Variance favorable (unfavorable)
		Actual	Budget	
Information systems:				
Personal services	\$ 275,375	\$ 374,181	\$ 345,870	\$ (28,311)
Contractual services	1,955	2,047	6,000	3,953
Commodities	2,164	7,332	5,000	(2,332)
Capital outlay	2,291	607	1,000	393
Subtotal	<u>281,785</u>	<u>384,167</u>	<u>357,870</u>	<u>(26,297)</u>
Non-departmental:				
Contractual services	869,574	917,752	94,000	(823,752)
Capital outlay	181,928	259,015	1,721,000	1,461,985
Other	-	-	1,130,500	1,130,500
Subtotal	<u>1,051,502</u>	<u>1,176,767</u>	<u>2,945,500</u>	<u>1,768,733</u>
Transfers out:				
Municipal band	21,000	18,500	-	(18,500)
Capital equipment	581,112	652,683	477,683	(175,000)
Subtotal	<u>602,112</u>	<u>671,183</u>	<u>477,683</u>	<u>(193,500)</u>
Total expenditures	<u>17,450,019</u>	<u>20,441,061</u>	<u>\$ 20,687,766</u>	<u>\$ 246,705</u>
Receipts over (under) expenditures	143,807	(1,888,666)		
Unencumbered cash, beginning of year	5,057,230	5,293,791	<u>\$ 2,993,148</u>	<u>\$ 2,300,643</u>
Prior year cancelled encumbrances	92,754	-		
Unencumbered cash, end of year	<u>\$ 5,293,791</u>	<u>\$ 3,405,125</u>		

See Independent Auditor's Report.

**CITY OF DODGE CITY, KANSAS**

**SPECIAL LIABILITY FUND**

**SCHEDULE OF RECEIPTS AND EXPENDITURES - ACTUAL AND BUDGET  
REGULATORY BASIS**

For the Year Ended December 31, 2023  
(With Comparative Actual Totals for the Prior Year Ended December 31, 2022)

	2023		Variance favorable (unfavorable)	
	2022	Actual		Budget
Receipts:				
Taxes:				
Ad valorem tax	\$ 384,213	\$ 439,179	\$ 468,994	\$ (29,815)
Motor vehicle tax	63,361	62,061	60,256	1,805
Recreational vehicle tax	374	184	317	(133)
16/20M truck tax	-	-	175	(175)
Delinquent tax	18,718	25,725	15,000	10,725
Commercial vehicle tax	3,326	2,928	3,040	(112)
Watercraft	-	-	128	(128)
Charge for services:				
Sales tax	-	-	120,000	(120,000)
Water	-	-	120,000	(120,000)
Wastewater	-	-	90,000	(90,000)
Sanitation	-	-	50,000	(50,000)
Biogas	-	-	92,000	(92,000)
Contributions & donations	-	-	180,000	(180,000)
Total receipts	469,992	530,077	\$ 1,199,910	\$ (669,833)
Expenditures:				
Contractual services	469,992	520,400	\$ 1,200,000	\$ 679,600
Receipts over (under) expenditures	-	9,677		
Unencumbered cash, beginning of year	-	-	\$ 90	\$ (90)
Unencumbered cash, end of year	\$ -	\$ 9,677		

See Independent Auditor's Report.

## CITY OF DODGE CITY, KANSAS

## LIBRARY FUND

SCHEDULE OF RECEIPTS AND EXPENDITURES - ACTUAL AND BUDGET  
REGULATORY BASIS

For the Year Ended December 31, 2023

(With Comparative Actual Totals for the Prior Year Ended December 31, 2022)

	2022	2023		Variance favorable (unfavorable)
		Actual	Budget	
Receipts:				
Taxes:				
Ad valorem tax	\$ 900,520	\$ 816,705	\$ 872,801	\$ (56,096)
Motor vehicle tax	143,374	144,234	141,259	2,975
Recreational vehicle tax	847	814	742	72
16/20M truck tax	-	-	410	(410)
Delinquent tax	42,100	52,720	40,000	12,720
Commercial vehicle tax	7,579	6,861	7,126	(265)
Watercraft	-	-	301	(301)
Payment in lieu of taxes	5,763	8,804	-	8,804
Total receipts	1,100,183	1,030,138	<u>\$ 1,062,639</u>	<u>\$ (32,501)</u>
Expenditures:				
Appropriation to Library board	1,060,000	1,106,632	<u>\$ 1,113,000</u>	<u>\$ 6,368</u>
Receipts over (under) expenditures	40,183	(76,494)		
Unencumbered cash, beginning of year	36,311	76,494	<u>\$ 50,361</u>	<u>\$ 26,133</u>
Unencumbered cash, end of year	<u>\$ 76,494</u>	<u>\$ -</u>		

See Independent Auditor's Report.

## CITY OF DODGE CITY, KANSAS

## LIBRARY EMPLOYEE BENEFITS FUND

SCHEDULE OF RECEIPTS AND EXPENDITURES - ACTUAL AND BUDGET  
REGULATORY BASIS

For the Year Ended December 31, 2023  
(With Comparative Actual Totals for the Prior Year Ended December 31, 2022)

	2022	2023		Variance favorable (unfavorable)
		Actual	Budget	
Receipts:				
Taxes:				
Ad valorem tax	\$ 191,676	\$ 175,510	\$ 187,567	\$ (12,057)
Motor vehicle tax	30,276	30,653	30,073	580
Recreational vehicle tax	179	174	158	16
16/20M truck tax	-	-	87	(87)
Delinquent tax	9,213	11,357	10,000	1,357
Commercial vehicle tax	1,601	1,460	1,517	(57)
Watercraft	-	-	64	(64)
Total receipts	232,945	219,154	\$ 229,466	\$ (10,312)
Expenditures:				
Appropriation to Library board	226,000	227,685	\$ 233,400	\$ 5,715
Receipts over (under) expenditures	6,945	(8,531)		
Unencumbered cash, beginning of year	1,586	8,531	\$ 3,934	\$ 4,597
Unencumbered cash, end of year	\$ 8,531	\$ -		

See Independent Auditor's Report.

**CITY OF DODGE CITY, KANSAS**

**SALES TAX FUND**

**SCHEDULE OF RECEIPTS AND EXPENDITURES - ACTUAL AND BUDGET  
REGULATORY BASIS**

For the Year Ended December 31, 2023  
(With Comparative Actual Totals for the Prior Year Ended December 31, 2022)

	2023		Variance favorable (unfavorable)	
	2022	Actual		Budget
<b>Receipts:</b>				
Local sales tax	\$ 7,959,084	\$ 7,836,205	\$ 7,520,000	\$ 316,205
Aquatics park revenue	394,342	382,545	405,000	(22,455)
Sports commission	43,087	27,773	-	27,773
Concessions	6,785	4,671	7,000	(2,329)
Interest	34,445	83,651	73,000	10,651
Contributions & donations	-	-	3,000	(3,000)
Sale of scrap	-	-	3,000	(3,000)
<b>Athletic field:</b>				
Other	75,585	73,319	50,000	23,319
Field rental	9,172	17,095	8,000	9,095
Racetrack sales	500	-	-	-
Operating transfers in	2,500	-	-	-
<b>Total receipts</b>	<b>8,525,500</b>	<b>8,425,259</b>	<b>\$ 8,069,000</b>	<b>\$ 356,259</b>
<b>Expenditures:</b>				
<b>Field sports - maintenance:</b>				
Personal services	240,151	241,974	\$ 260,300	\$ 18,326
Contractual services	131,075	138,070	113,050	(25,020)
Commodities	122,692	127,293	88,000	(39,293)
Capital outlay	-	-	25,200	25,200
<b>Subtotal</b>	<b>493,918</b>	<b>507,337</b>	<b>486,550</b>	<b>(20,787)</b>
<b>Field sports - tournaments:</b>				
Personal services	58,839	62,234	68,350	6,116
Contractual services	136,835	112,745	115,500	2,755
Commodities	9,485	13,843	10,000	(3,843)
Sports commission	2,558	2,558	-	(2,558)
<b>Subtotal</b>	<b>207,717</b>	<b>191,380</b>	<b>193,850</b>	<b>2,470</b>
<b>Administration:</b>				
Contractual services	-	-	865,300	865,300
Other	-	-	2,800	2,800
<b>Subtotal</b>	<b>-</b>	<b>-</b>	<b>868,100</b>	<b>868,100</b>

**CITY OF DODGE CITY, KANSAS**

**SALES TAX FUND**

**SCHEDULE OF RECEIPTS AND EXPENDITURES - ACTUAL AND BUDGET  
REGULATORY BASIS**

For the Year Ended December 31, 2023  
(With Comparative Actual Totals for the Prior Year Ended December 31, 2022)

	2022	2023		Variance favorable (unfavorable)
		Actual	Budget	
Motor sports:				
Personal services	\$ 3,734	\$ 7,105	\$ 10,800	\$ 3,695
Contractual services	339,578	478,963	322,300	(156,663)
Commodities	25,971	24,152	9,000	(15,152)
Capital outlay	30,761	13,564	-	(13,564)
Subtotal	400,044	523,784	342,100	(181,684)
Special events centers:				
Contractual services	905,757	1,075,187	895,500	(179,687)
Commodities	146	-	44,160	44,160
Capital outlay	7,932	170,574	20,000	(150,574)
Subtotal	913,835	1,245,761	959,660	(286,101)
Facilities maintenance:				
Contractual services	-	1,897	-	(1,897)
Commodities	-	-	2,500	2,500
Subtotal	-	1,897	2,500	603
Outdoor regional aquatics facility:				
Personal services	432,694	513,788	275,152	(238,636)
Contractual services	271,389	164,993	118,700	(46,293)
Commodities	104,298	196,381	108,500	(87,881)
Capital outlay	51,531	5,000	-	(5,000)
Subtotal	859,912	880,162	502,352	(377,810)

**CITY OF DODGE CITY, KANSAS**

**SALES TAX FUND**

**SCHEDULE OF RECEIPTS AND EXPENDITURES - ACTUAL AND BUDGET  
REGULATORY BASIS**

For the Year Ended December 31, 2023  
(With Comparative Actual Totals for the Prior Year Ended December 31, 2022)

	<u>2022</u>	<u>2023</u>		Variance favorable (unfavorable)
		<u>Actual</u>	<u>Budget</u>	
Operating transfers out	<u>\$ 4,158,443</u>	<u>\$ 6,649,185</u>	<u>\$ 5,373,633</u>	<u>\$(1,275,552)</u>
Total expenditures	<u>7,033,869</u>	<u>9,999,506</u>	<u>\$ 8,728,745</u>	<u>\$(1,270,761)</u>
Receipts over (under) expenditures	1,491,631	(1,574,247)		
Unencumbered cash, beginning of year	<u>626,248</u>	<u>2,117,879</u>	<u>\$ 665,623</u>	<u>\$ 1,452,256</u>
Unencumbered cash, end of year	<u>\$ 2,117,879</u>	<u>\$ 543,632</u>	<u>\$ 5,878</u>	<u>\$ 537,754</u>

See Independent Auditor's Report.

## CITY OF DODGE CITY, KANSAS

## CONVENTION &amp; VISITORS FUND

SCHEDULE OF RECEIPTS AND EXPENDITURES - ACTUAL AND BUDGET  
REGULATORY BASIS

For the Year Ended December 31, 2023  
(With Comparative Actual Totals for the Prior Year Ended December 31, 2022)

	2022	2023		Variance favorable (unfavorable)
		Actual	Budget	
Receipts:				
Transient guest tax	\$ 1,088,243	\$ 1,159,403	\$ 1,155,000	\$ 4,403
Trolley charges	35,977	38,326	36,000	2,326
Other	38,049	29,996	35,000	(5,004)
Total receipts	<u>1,162,269</u>	<u>1,227,725</u>	<u>\$ 1,226,000</u>	<u>\$ 1,725</u>
Expenditures:				
Personal services	273,239	350,512	\$ 347,810	\$ (2,702)
Contractual services	344,278	266,261	375,000	108,739
Commodities	30,379	34,164	41,750	7,586
Capital outlay	35,482	267,841	185,440	(82,401)
Operating transfers out	150,000	150,000	150,000	-
Total expenditures	<u>833,378</u>	<u>1,068,778</u>	<u>\$ 1,100,000</u>	<u>\$ 31,222</u>
Receipts over (under) expenditures	328,891	158,947		
Unencumbered cash, beginning of year	<u>790,998</u>	<u>1,119,889</u>	<u>\$ 692,484</u>	<u>\$ 427,405</u>
Unencumbered cash, end of year	<u>\$ 1,119,889</u>	<u>\$ 1,278,836</u>	<u>\$ 818,484</u>	<u>\$ 460,352</u>

See Independent Auditor's Report.

## CITY OF DODGE CITY, KANSAS

## SPECIAL STREETS AND HIGHWAYS FUND

SCHEDULE OF RECEIPTS AND EXPENDITURES - ACTUAL AND BUDGET  
REGULATORY BASIS

For the Year Ended December 31, 2023  
(With Comparative Actual Totals for the Prior Year Ended December 31, 2022)

	2022	2023		Variance favorable (unfavorable)
		Actual	Budget	
Receipts:				
State of Kansas gas tax	\$ 735,564	\$ 753,480	\$ 756,000	\$ (2,520)
State aid	353,081	-	-	-
Other	10,316	2,607	-	2,607
Total receipts	<u>1,098,961</u>	<u>756,087</u>	<u>\$ 756,000</u>	<u>\$ 87</u>
Expenditures:				
Personal services	270,187	325,339	\$ 316,951	\$ (8,388)
Contractual services	28,784	23,808	38,600	14,792
Commodities	183,394	198,452	193,300	(5,152)
Capital outlay	498,927	375,367	440,000	64,633
Operating transfers out	550,000	-	-	-
Total expenditures	<u>1,531,292</u>	<u>922,966</u>	<u>\$ 988,851</u>	<u>\$ 65,885</u>
Receipts over (under) expenditures	(432,331)	(166,879)		
Unencumbered cash, beginning of year	<u>538,589</u>	<u>106,258</u>	<u>\$ 597,560</u>	<u>\$ (491,302)</u>
Unencumbered cash (deficit), end of year	<u>\$ 106,258</u>	<u>\$ (60,621)</u>	<u>\$ 364,709</u>	<u>\$ (425,330)</u>

See Independent Auditor's Report.

## CITY OF DODGE CITY, KANSAS

## SPECIAL PARKS AND RECREATION FUND

SCHEDULE OF RECEIPTS AND EXPENDITURES - ACTUAL AND BUDGET  
REGULATORY BASIS

For the Year Ended December 31, 2023  
(With Comparative Actual Totals for the Prior Year Ended December 31, 2022)

	<u>2022</u>	<u>2023</u>		<u>Variance favorable (unfavorable)</u>
		<u>Actual</u>	<u>Budget</u>	
Receipts:				
State of Kansas liquor tax	\$ 133,563	\$ 141,287	<u>\$ 121,564</u>	<u>\$ 19,723</u>
Expenditures:				
Operating transfers out	<u>100,000</u>	<u>50,000</u>	<u>\$ 100,000</u>	<u>\$ 50,000</u>
Receipts over (under) expenditures	33,563	91,287		
Unencumbered cash, beginning of year	<u>42,872</u>	<u>76,435</u>	<u>\$ 19,407</u>	<u>\$ 57,028</u>
Unencumbered cash, end of year	<u>\$ 76,435</u>	<u>\$ 167,722</u>	<u>\$ 40,971</u>	<u>\$ 126,751</u>

See Independent Auditor's Report.

## CITY OF DODGE CITY, KANSAS

## SPECIAL ALCOHOL AND DRUG FUND

SCHEDULE OF RECEIPTS AND EXPENDITURES - ACTUAL AND BUDGET  
REGULATORY BASIS

For the Year Ended December 31, 2023  
(With Comparative Actual Totals for the Prior Year Ended December 31, 2022)

	<u>2022</u>	<u>2023</u>		<u>Variance favorable (unfavorable)</u>
		<u>Actual</u>	<u>Budget</u>	
Receipts:				
State of Kansas liquor tax	\$ 133,563	\$ 141,288	<u>\$ 121,564</u>	<u>\$ 19,724</u>
Expenditures:				
Contractual services	<u>121,489</u>	<u>110,725</u>	<u>\$ 120,000</u>	<u>\$ 9,275</u>
Receipts over (under) expenditures	12,074	30,563		
Unencumbered cash, beginning of year	<u>10,079</u>	<u>22,153</u>	<u>\$ 10,079</u>	<u>\$ 12,074</u>
Unencumbered cash, end of year	<u>\$ 22,153</u>	<u>\$ 52,716</u>	<u>\$ 11,643</u>	<u>\$ 41,073</u>

See Independent Auditor's Report.

**CITY OF DODGE CITY, KANSAS**

ALCOHOL AND DRUG SAFETY ACTION FUND

SCHEDULE OF RECEIPTS AND EXPENDITURES - ACTUAL AND BUDGET  
REGULATORY BASIS

For the Year Ended December 31, 2023  
(With Comparative Actual Totals for the Prior Year Ended December 31, 2022)

	<u>2022</u>	<u>2023</u>		<u>Variance favorable (unfavorable)</u>
		<u>Actual</u>	<u>Budget</u>	
Receipts:				
Attorney fees	\$ 300	\$ -	\$ -	\$ -
Expenditures	<u>-</u>	<u>-</u>	<u>\$ -</u>	<u>\$ -</u>
Receipts over (under) expenditures	300	-		
Unencumbered cash, beginning of year	<u>8,567</u>	<u>8,867</u>	<u>\$ -</u>	<u>\$ 8,867</u>
Unencumbered cash, end of year	<u>\$ 8,867</u>	<u>\$ 8,867</u>		

See Independent Auditor's Report.

## CITY OF DODGE CITY, KANSAS

## DEVELOPMENT AND GROWTH FUND

SCHEDULE OF RECEIPTS AND EXPENDITURES - ACTUAL AND BUDGET  
REGULATORY BASIS

For the Year Ended December 31, 2023  
(With Comparative Actual Totals for the Prior Year Ended December 31, 2022)

	2023			Variance favorable (unfavorable)
	2022	Actual	Budget	
Receipts:				
Lottery revenues	\$ 741,711	\$ 707,245	\$ 625,000	\$ 82,245
Contributions & donations	-	500	-	500
Total receipts	<u>741,711</u>	<u>707,745</u>	<u>\$ 625,000</u>	<u>\$ 82,745</u>
Expenditures:				
Principal	20,000	20,000	\$ -	\$ (20,000)
Interest	5,870	26,511	-	(26,511)
Contractual services	154,159	151,694	-	(151,694)
Commodities	210	-	-	-
Capital outlay	-	-	375,000	375,000
Operating transfers out	342,125	-	250,000	250,000
Total expenditures	<u>522,364</u>	<u>198,205</u>	<u>\$ 625,000</u>	<u>\$ 426,795</u>
Receipts over (under) expenditures	219,347	509,540		
Unencumbered cash, beginning of year	<u>244,757</u>	<u>464,104</u>	<u>\$ 244,756</u>	<u>\$ 219,348</u>
Unencumbered cash, end of year	<u>\$ 464,104</u>	<u>\$ 973,644</u>	<u>\$ 244,756</u>	<u>\$ 728,888</u>

See Independent Auditor's Report.

**CITY OF DODGE CITY, KANSAS**

**ALL NON-BUDGETED SPECIAL PURPOSE FUNDS**

**SCHEDULE OF RECEIPTS AND EXPENDITURES  
REGULATORY BASIS**

For the Year Ended December 31, 2023

	<u>Sales tax organizations</u>	<u>Sales tax depreciation and replacement</u>	<u>Sales tax event</u>	<u>Rural housing incentive district</u>
Receipts:				
Taxes:				
Ad valorem	\$ -	\$ -	\$ -	\$ 344,737
Local sales tax	-	-	-	-
Transient guest tax	-	-	-	-
Fines and forfeitures	-	-	-	-
Rent	-	-	-	-
Charges for service	-	-	-	-
Interest	-	-	-	-
Federal aid	-	-	-	-
Contributions & donations	-	12,500	95,519	-
Sale of labor, materials and land	-	-	-	-
Other	-	-	-	-
Insurance recoveries	-	-	-	-
Operating transfers in	710,000	2,215,439	100,000	-
	<u>710,000</u>	<u>2,215,439</u>	<u>100,000</u>	<u>-</u>
Total receipts	<u>710,000</u>	<u>2,227,939</u>	<u>195,519</u>	<u>344,737</u>
Expenditures:				
Personal services	-	-	-	-
Contractual services	432,736	-	178,750	-
Commodities	-	-	-	-
Capital outlay	-	1,897,570	-	-
Reimburse development costs	-	-	-	1,462,320
Principal	-	-	-	155,000
Interest	-	-	-	128,476
Lease payments	-	-	-	-
Operating transfers out	250,000	-	-	-
	<u>682,736</u>	<u>1,897,570</u>	<u>178,750</u>	<u>1,745,796</u>
Total expenditures	<u>682,736</u>	<u>1,897,570</u>	<u>178,750</u>	<u>1,745,796</u>
Receipts over (under) expenditures	27,264	330,369	16,769	(1,401,059)
Unencumbered cash (deficit), beginning of year	<u>334,493</u>	<u>856,840</u>	<u>2,350</u>	<u>571,008</u>
Unencumbered cash (deficit), end of year	<u>\$ 361,757</u>	<u>\$ 1,187,209</u>	<u>\$ 19,119</u>	<u>\$ (830,051)</u>

See Independent Auditor's Report.

<u>Transient guest tax</u>	<u>Street sales tax</u>	<u>Special law enforcement trust</u>	<u>Economic development revolving</u>	<u>Hoover trust</u>	<u>Roof insurance repairs</u>	<u>Medical insurance reserve</u>
\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
-	2,224,178	-	-	-	-	-
386,468	-	-	-	-	-	-
-	-	38,825	-	-	-	-
-	-	-	-	-	-	-
-	-	-	-	-	-	2,467,054
-	-	-	57,095	9,876	-	-
-	-	-	-	-	-	-
-	-	-	-	-	-	127,040
-	-	-	-	-	-	-
-	-	-	-	-	192,732	-
-	-	-	-	-	-	-
<u>386,468</u>	<u>2,224,178</u>	<u>38,825</u>	<u>57,095</u>	<u>9,876</u>	<u>192,732</u>	<u>2,594,094</u>
-	-	-	-	-	-	746,066
200,208	-	9,097	836	-	389,270	1,710,995
-	450,605	1,239	-	-	-	-
-	1,765,777	-	-	-	-	-
-	-	-	-	-	-	-
-	-	-	-	-	-	-
-	-	-	-	-	-	-
-	-	-	-	-	-	-
<u>200,208</u>	<u>2,216,382</u>	<u>10,336</u>	<u>836</u>	<u>-</u>	<u>389,270</u>	<u>2,457,061</u>
186,260	7,796	28,489	56,259	9,876	(196,538)	137,033
<u>415,244</u>	<u>-</u>	<u>45,962</u>	<u>361,599</u>	<u>131,612</u>	<u>365,788</u>	<u>3,790,589</u>
<u>\$ 601,504</u>	<u>\$ 7,796</u>	<u>\$ 74,451</u>	<u>\$ 417,858</u>	<u>\$ 141,488</u>	<u>\$ 169,250</u>	<u>\$ 3,927,622</u>

**CITY OF DODGE CITY, KANSAS**

**ALL NON-BUDGETED SPECIAL PURPOSE FUNDS**

**SCHEDULE OF RECEIPTS AND EXPENDITURES  
REGULATORY BASIS (CONTINUED)**

For the Year Ended December 31, 2023

	<u>CDBG - CV grant</u>	<u>Capital equipment reserve</u>	<u>Hilmar</u>	<u>GREAT</u>
<b>Receipts:</b>				
Taxes:				
Ad valorem	\$ -	\$ -	\$ -	\$ -
Local sales tax	-	-	-	-
Transient guest tax	-	-	-	-
Fines and forfeitures	-	-	-	-
Rent	-	-	-	-
Charges for service	-	-	-	-
Interest	-	-	-	-
Federal aid	48,251	-	-	-
Contributions & donations	-	-	-	1,789
Sale of labor, materials and land	-	-	-	-
Other	-	(6,800)	-	-
Insurance recoveries	-	-	-	-
Operating transfers in	-	652,683	-	-
	<u>48,251</u>	<u>645,883</u>	<u>-</u>	<u>1,789</u>
<b>Total receipts</b>	<b>48,251</b>	<b>645,883</b>	<b>-</b>	<b>1,789</b>
<b>Expenditures:</b>				
Personal services	-	-	-	-
Contractual services	48,251	-	-	-
Commodities	-	-	-	451
Capital outlay	-	1,366,223	-	-
Reimburse development costs	-	-	-	-
Principal	-	-	-	-
Interest	-	-	-	-
Lease payments	-	106,566	-	-
Operating transfers out	-	-	-	-
	<u>48,251</u>	<u>1,472,789</u>	<u>-</u>	<u>451</u>
<b>Total expenditures</b>	<b>48,251</b>	<b>1,472,789</b>	<b>-</b>	<b>451</b>
Receipts over (under) expenditures	-	(826,906)	-	1,338
Unencumbered cash (deficit), beginning of year	<u>-</u>	<u>(230,884)</u>	<u>465,329</u>	<u>4,709</u>
Unencumbered cash (deficit), end of year	<u>\$ -</u>	<u>\$ (1,057,790)</u>	<u>\$ 465,329</u>	<u>\$ 6,047</u>

See Independent Auditor's Report.

<u>Fire CPR Training</u>	<u>Municipal band</u>	<u>SMPC trust</u>	<u>Depot</u>	<u>Civil asset forfeiture</u>	<u>Public art</u>	<u>Total</u>
\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 344,737
-	-	-	-	-	-	2,224,178
-	-	-	-	-	-	386,468
-	-	-	-	-	-	38,825
-	-	-	4,321	-	-	4,321
7,200	-	-	-	-	-	2,474,254
-	-	-	-	-	-	66,971
-	-	-	-	-	-	48,251
-	-	24,000	-	-	-	260,848
-	-	-	27,298	-	-	27,298
-	-	-	-	-	-	(6,800)
-	-	-	-	-	-	192,732
-	18,500	-	250,000	-	-	3,946,622
<u>7,200</u>	<u>18,500</u>	<u>24,000</u>	<u>281,619</u>	<u>-</u>	<u>-</u>	<u>10,008,705</u>
-	-	-	46,092	-	-	792,158
-	18,412	-	84,012	-	39,503	3,112,070
-	-	-	75,365	-	-	527,660
-	-	-	-	-	-	5,029,570
-	-	-	-	-	-	1,462,320
-	-	-	-	-	-	155,000
-	-	-	-	-	-	128,476
-	-	-	-	-	-	106,566
-	-	-	-	-	-	250,000
-	18,412	-	205,469	-	39,503	11,563,820
7,200	88	24,000	76,150	-	(39,503)	(1,555,115)
<u>30,426</u>	<u>10,223</u>	<u>204,506</u>	<u>710,257</u>	<u>10,827</u>	<u>53,605</u>	<u>8,134,483</u>
<u>\$ 37,626</u>	<u>\$ 10,311</u>	<u>\$ 228,506</u>	<u>\$ 786,407</u>	<u>\$ 10,827</u>	<u>\$ 14,102</u>	<u>\$ 6,579,368</u>

**CITY OF DODGE CITY, KANSAS**

**SPECIAL PURPOSE GRANT FUNDS**

**SCHEDULE OF RECEIPTS AND EXPENDITURES  
REGULATORY BASIS**

For the Year Ended December 31, 2023

	<u>Runway 220</u>	<u>Runway 14-32 design</u>	<u>CARES Act funding - airport</u>	<u>Police body worn cameras</u>
Receipts:				
Federal grants and aid	\$ -	\$ -	\$ 59,000	\$ -
State grants and aid	-	-	-	-
Contributions & donations	-	-	-	3,825
Total receipts	<u>-</u>	<u>-</u>	<u>59,000</u>	<u>3,825</u>
Expenditures:				
Personal services	-	-	-	-
Contractual services	-	-	-	-
Commodities	-	-	-	282
Capital outlay	4,000	-	-	-
Operating transfers out	-	-	-	-
Total expenditures	<u>4,000</u>	<u>-</u>	<u>-</u>	<u>282</u>
Receipts over (under) expenditures	(4,000)	-	59,000	3,543
Unencumbered cash (deficit), beginning of year	<u>-</u>	<u>19,801</u>	<u>-</u>	<u>2,266</u>
Unencumbered cash (deficit), end of year	<u>\$ (4,000)</u>	<u>\$ 19,801</u>	<u>\$ 59,000</u>	<u>\$ 5,809</u>

See Independent Auditor's Report.

<u>Minibus grant 2020-21</u>	<u>Minibus grant 2022-23</u>	<u>Minibus grant 2023-24</u>	<u>American rescue plan act</u>	<u>KHRC moderate income housing</u>	<u>Opioid</u>	<u>Downtown kiosk</u>
\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
-	326,547	205,414	-	450,000	74,488	-
-	88,670	150,865	-	-	-	-
-	415,217	356,279	-	450,000	74,488	-
-	231,752	304,362	-	-	-	-
-	36,631	36,510	719,823	407,995	-	-
-	53,183	87,048	-	-	-	-
-	-	1,738	20,113	-	-	52,742
-	-	-	-	-	-	-
-	321,566	429,658	739,936	407,995	-	52,742
-	93,651	(73,379)	(739,936)	42,005	74,488	(52,742)
54,771	(93,651)	-	2,286,768	68,803	6,558	-
<u>\$ 54,771</u>	<u>\$ -</u>	<u>\$ (73,379)</u>	<u>\$ 1,546,832</u>	<u>\$ 110,808</u>	<u>\$ 81,046</u>	<u>\$ (52,742)</u>

**CITY OF DODGE CITY, KANSAS****SPECIAL PURPOSE GRANT FUNDS****SCHEDULE OF RECEIPTS AND EXPENDITURES  
REGULATORY BASIS**

For the Year Ended December 31, 2023

	USDA rural business development	<u>Total</u>
Receipts:		
Federal grants and aid	\$ -	\$ 59,000
State grants and aid	-	1,056,449
Contributions & donations	-	243,360
	<u>-</u>	<u>1,358,809</u>
Total receipts	-	1,358,809
Expenditures:		
Personal services	-	536,114
Contractual services	-	1,200,959
Commodities	-	140,513
Capital outlay	-	78,593
Operating transfers out	-	-
	<u>-</u>	<u>-</u>
Total expenditures	-	1,956,179
Receipts over (under) expenditures	-	(597,370)
Unencumbered cash (deficit), beginning of year	<u>(95,109)</u>	<u>2,250,207</u>
Unencumbered cash (deficit), end of year	<u>\$ (95,109)</u>	<u>\$ 1,652,837</u>

See Independent Auditor's Report.

## CITY OF DODGE CITY, KANSAS

## GO BOND AND INTEREST FUND

SCHEDULE OF RECEIPTS AND EXPENDITURES - ACTUAL AND BUDGET  
REGULATORY BASIS

For the Year Ended December 31, 2023  
(With Comparative Actual Totals for the Prior Year Ended December 31, 2022)

	2022	2023		Variance favorable (unfavorable)
		Actual	Budget	
Receipts:				
Taxes:				
Ad valorem tax	\$ 1,776,423	\$ 1,730,492	\$ 1,848,836	\$ (118,344)
Motor vehicle tax	275,791	283,537	278,693	4,844
Recreational vehicle tax	1,629	831	1,465	(634)
16/20M truck tax	-	-	809	(809)
Delinquent tax	81,689	107,215	70,000	37,215
Commercial vehicle tax	14,544	13,531	14,059	(528)
Watercraft	-	-	594	(594)
Special assessments	650,567	1,239,754	656,706	583,048
Interest	30	-	-	-
Operating transfers in	1,762,920	841,050	1,162,050	(321,000)
Total receipts	<u>4,563,593</u>	<u>4,216,410</u>	<u>\$ 4,033,212</u>	<u>\$ 183,198</u>
Expenditures:				
Bond principal	3,647,200	3,148,050	\$ 2,558,050	\$ (590,000)
Other financing payments	-	-	700,000	700,000
Interest	922,580	1,036,112	792,468	(243,644)
Total expenditures	<u>4,569,780</u>	<u>4,184,162</u>	<u>\$ 4,050,518</u>	<u>\$ (133,644)</u>
Receipts over (under) expenditures	(6,187)	32,248		
Unencumbered cash, beginning of year	<u>13,718</u>	<u>7,531</u>	<u>\$ 17,306</u>	<u>\$ (9,775)</u>
Unencumbered cash, end of year	<u>\$ 7,531</u>	<u>\$ 39,779</u>		

See Independent Auditor's Report.

**CITY OF DODGE CITY, KANSAS**

**NON-BUDGETED DEBT SERVICE FUNDS**

**SCHEDULE OF RECEIPTS AND EXPENDITURES  
REGULATORY BASIS**

For the Year Ended December 31, 2023

	<u>Cost of issuance</u>	<u>Special events center revenue bonds</u>	<u>Water park revenue bonds</u>	<u>Total</u>
Receipts:				
Bond proceeds	\$ 759,277	\$ -	\$ -	\$ 759,277
Investment income (loss)	-	127,444	37,971	165,415
Operating transfers in	-	2,781,304	692,442	3,473,746
<b>Total receipts</b>	<u>759,277</u>	<u>2,908,748</u>	<u>730,413</u>	<u>4,398,438</u>
Expenditures:				
Principal	-	1,580,000	440,000	2,020,000
Interest	-	1,135,013	245,000	1,380,013
Debt issuance costs	151,178	-	-	151,178
<b>Total expenditures</b>	<u>151,178</u>	<u>2,715,013</u>	<u>685,000</u>	<u>3,551,191</u>
Receipts over (under) expenditures	608,099	193,735	45,413	847,247
Unencumbered cash, beginning of year	8,278	4,079,447	975,891	5,063,616
<b>Unencumbered cash, end of year</b>	<u>\$ 616,377</u>	<u>\$ 4,273,182</u>	<u>\$ 1,021,304</u>	<u>\$ 5,910,863</u>

See Independent Auditor's Report.

## CITY OF DODGE CITY, KANSAS

## CAPITAL IMPROVEMENT FUND

SCHEDULE OF RECEIPTS AND EXPENDITURES - ACTUAL AND BUDGET  
REGULATORY BASIS

For the Year Ended December 31, 2023  
(With Comparative Actual Totals for the Prior Year Ended December 31, 2022)

	2023		Variance favorable (unfavorable)	
	2022	Actual		Budget
Receipts:				
Taxes:				
Ad valorem	\$ 152,975	\$ 123,772	\$ 132,223	\$ (8,451)
Motor vehicle	24,158	24,428	23,985	443
Recreational vehicle	143	138	126	12
16/20M truck	-	-	70	(70)
Delinquent	6,812	8,423	7,500	923
Commercial vehicle tax	1,272	1,165	1,210	(45)
Watercraft	-	-	51	(51)
Rent & leases	-	(17,160)	-	(17,160)
Contributions & donations	76,000	75,000	-	75,000
Operating transfers in	307,158	325,000	325,000	-
Total receipts	<u>568,518</u>	<u>540,766</u>	<u>\$ 490,165</u>	<u>\$ 50,601</u>
Expenditures:				
Administration:				
Capital outlay	-	-	\$ 1,200,000	\$ 1,200,000
Police:				
Capital outlay	11,253	-	-	-
Lease payments	105,768	105,768	-	(105,768)
Public works:				
Capital outlay	607	-	-	-
Cemetery:				
Capital outlay	139,830	168,221	-	(168,221)
Recreation:				
Capital outlay	389,000	-	-	-
Total expenditures	<u>646,458</u>	<u>273,989</u>	<u>\$ 1,200,000</u>	<u>\$ 926,011</u>
Receipts over (under) expenditures	(77,940)	266,777		
Unencumbered cash, beginning of year	816,190	738,250	\$ 709,835	\$ 28,415
Unencumbered cash, end of year	<u>\$ 738,250</u>	<u>\$ 1,005,027</u>		

See Independent Auditor's Report.

**CITY OF DODGE CITY, KANSAS**

**CAPITAL PROJECT FUNDS**

**SCHEDULE OF RECEIPTS AND EXPENDITURES  
REGULATORY BASIS**

For the Year Ended December 31, 2023

	<u>Municipal services building</u>	<u>Temporary notes star bonds</u>	<u>GO bonds 2018</u>	<u>GO bonds 2013</u>
Receipts:				
Debt proceeds	\$ -	\$ -	\$ -	\$ -
Contributions & donations	<u>322,200</u>	<u>-</u>	<u>-</u>	<u>-</u>
Total receipts	<u>322,200</u>	<u>-</u>	<u>-</u>	<u>-</u>
Expenditures:				
Debt issuance costs	-	-	-	-
Interest	-	-	-	-
Public works:				
Contractual services	-	-	-	-
Capital outlay	-	-	-	-
Capital project:				
Contractual services	819,087	-	-	-
Commodities	201,674	-	-	-
Capital outlay	<u>451,434</u>	<u>-</u>	<u>-</u>	<u>-</u>
Total expenditures	<u>1,472,195</u>	<u>-</u>	<u>-</u>	<u>-</u>
Receipts over (under) expenditures	(1,149,995)	-	-	-
Unencumbered cash (deficit), beginning of year	<u>1,176,048</u>	<u>312,072</u>	<u>111,422</u>	<u>781,362</u>
Unencumbered cash (deficit), end of year	<u>\$ 26,053</u>	<u>\$ 312,072</u>	<u>\$ 111,422</u>	<u>\$ 781,362</u>

See Independent Auditor's Report

Temporary notes Milstock	GO bonds 2016	GO bonds 2017	GO bonds 2019	GO bonds 2020	GO bonds 2022
\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
-	-	-	-	-	-
-	-	-	-	-	-
-	-	-	-	-	-
184,183	-	-	-	-	-
261	-	-	-	-	-
-	-	-	-	101,363	89
-	-	-	-	-	-
-	-	-	-	-	-
-	-	-	-	-	-
184,444	-	-	-	101,363	89
(184,444)	-	-	-	(101,363)	(89)
181,825	135,595	459,250	(55,742)	510,102	7,810,000
\$ (2,619)	\$ 135,595	\$ 459,250	\$ (55,742)	\$ 408,739	\$ 7,809,911

**CITY OF DODGE CITY, KANSAS**

**CAPITAL PROJECTS FUNDS**

**SCHEDULE OF RECEIPTS AND EXPENDITURES  
REGULATORY BASIS**

For the Year Ended December 31, 2023

	<u>Star bond power center</u>	<u>Temporary notes Wagon Wheel</u>	<u>Lease purchase trash truck</u>	<u>Candletree 6 infrastructure</u>
Receipts:				
Debt proceeds	\$ -	\$ -	\$ 548,500	\$ -
Contributions & donations	-	-	-	-
 Total receipts	 <u>-</u>	 <u>-</u>	 <u>548,500</u>	 <u>-</u>
Expenditures:				
Debt issuance costs	-	-	-	-
Interest	-	-	-	34,506
Public works:				
Contractual services	-	-	-	332
Capital outlay	-	-	-	4,281
Capital project:				
Contractual services	888	-	-	-
Commodities	-	-	-	-
Capital outlay	3,516,251	-	-	-
 Total expenditures	 <u>3,517,139</u>	 <u>-</u>	 <u>-</u>	 <u>39,119</u>
Receipts over (under) expenditures	(3,517,139)	-	548,500	(39,119)
Unencumbered cash (deficit), beginning of year	<u>(291,092)</u>	<u>79,293</u>	<u>(548,500)</u>	<u>-</u>
Unencumbered cash (deficit), end of year	<u><u>\$ (3,808,231)</u></u>	<u><u>\$ 79,293</u></u>	<u><u>\$ -</u></u>	<u><u>\$ (39,119)</u></u>

See Independent Auditor's Report.

Temporary notes Candletree	United Village	YMCA building	KLETC project	Boot Hill museum	Airport terminal renovation	Wagon Wheel III
\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
-	175,000	-	-	-	-	-
-	175,000	-	-	-	-	-
-	-	-	90,000	220,000	-	-
-	-	-	1,170	2,860	-	-
43,820	231	-	-	-	840,498	-
220,369	2,422,348	-	-	-	260,273	-
-	-	-	-	100,000	-	-
-	-	-	-	-	-	-
-	-	-	-	-	-	-
264,189	2,422,579	-	91,170	322,860	1,100,771	-
(264,189)	(2,247,579)	-	(91,170)	(322,860)	(1,100,771)	-
2,320,395	-	(6,798)	28,902	(74,894)	(511,172)	(272,347)
<u>\$ 2,056,206</u>	<u>\$ (2,247,579)</u>	<u>\$ (6,798)</u>	<u>\$ (62,268)</u>	<u>\$ (397,754)</u>	<u>\$ (1,611,943)</u>	<u>\$ (272,347)</u>

**CITY OF DODGE CITY, KANSAS**

**CAPITAL PROJECTS FUNDS**

**SCHEDULE OF RECEIPTS AND EXPENDITURES  
REGULATORY BASIS**

For the Year Ended December 31, 2023

	<u>Iron Flats</u>	<u>McCaustland Rd #2</u>
Receipts:		
Debt proceeds	\$ 6,323,785	\$ -
Contributions & donations	-	-
	<u>6,323,785</u>	<u>-</u>
Total receipts		
Expenditures:		
Debt issuance costs	-	-
Interest	-	-
Public works:		
Contractual services	-	-
Capital outlay	4,615,621	-
Capital project:		
Contractual services	-	-
Commodities	-	-
Capital outlay	-	-
	<u>4,615,621</u>	<u>-</u>
Total expenditures		
Receipts over (under) expenditures	1,708,164	-
Unencumbered cash (deficit), beginning of year	<u>(2,611,080)</u>	<u>82,150</u>
Unencumbered cash (deficit), end of year	<u>\$ (902,916)</u>	<u>\$ 82,150</u>

See Independent Auditor's Report.

Casa Del Rio	GO bonds 2023	Total
\$ -	\$ 3,331,680	\$ 10,203,965
-	-	497,200
-	3,331,680	10,701,165
-	-	310,000
42,006	-	264,725
285	191,072	1,076,499
-	-	7,624,344
-	-	919,975
-	-	201,674
-	-	3,967,685
42,291	191,072	14,364,902
(42,291)	3,140,608	(3,663,737)
150,141	-	9,766,932
<u>\$ 107,850</u>	<u>\$ 3,140,608</u>	<u>\$ 6,103,195</u>

## CITY OF DODGE CITY, KANSAS

## WATER UTILITY FUND

SCHEDULE OF RECEIPTS AND EXPENDITURES - ACTUAL AND BUDGET  
REGULATORY BASIS

For the Year Ended December 31, 2023  
(With Comparative Actual Totals for the Prior Year Ended December 31, 2022)

	2022	2023		Variance favorable (unfavorable)
		Actual	Budget	
Receipts:				
Sale of water	\$ 6,199,186	\$ 6,244,848	\$ 5,000,000	\$ 1,244,848
Rent & leases	24,159	32,433	8,000	24,433
Other	4,117	5,303	4,500	803
National Beef bond payment	247,654	5,481	247,961	(242,480)
Interest	92,658	438,052	1,500	436,552
Sale of labor and materials	170,798	247,547	100,000	147,547
Total receipts	<u>6,738,572</u>	<u>6,973,664</u>	<u>\$ 5,361,961</u>	<u>\$ 1,611,703</u>
Expenditures:				
Bond principal	1,767,800	1,671,950	\$ 1,671,950	\$ -
Interest	209,654	146,543	160,528	13,985
Personal services	581,717	573,753	663,179	89,426
Contractual services	1,578,691	1,065,739	845,000	(220,739)
Commodities	321,082	478,704	408,900	(69,804)
Capital outlay	526,047	155,017	175,000	19,983
Other	(11,764)	(16,202)	5,000	21,202
Utility administration	-	(1,500)	144,180	145,680
Operating transfers out	1,166,500	689,552	689,552	-
Total expenditures	<u>6,139,727</u>	<u>4,763,556</u>	<u>\$ 4,763,289</u>	<u>\$ (267)</u>
Receipts over (under) expenditures	598,845	2,210,108		
Unencumbered cash, beginning of year	<u>3,440,054</u>	<u>4,038,899</u>	<u>\$ 4,001,705</u>	<u>\$ 37,194</u>
Unencumbered cash, end of year	<u>\$ 4,038,899</u>	<u>\$ 6,249,007</u>	<u>\$ 4,600,377</u>	<u>\$ 1,648,630</u>

See Independent Auditor's Report.

## CITY OF DODGE CITY, KANSAS

## WASTEWATER UTILITY FUND

SCHEDULE OF RECEIPTS AND EXPENDITURES - ACTUAL AND BUDGET  
REGULATORY BASIS

For the Year Ended December 31, 2023  
(With Comparative Actual Totals for the Prior Year Ended December 31, 2022)

	2022	2023		Variance favorable (unfavorable)
		Actual	Budget	
Receipts:				
Sewage service charges	\$ 6,503,229	\$ 6,534,738	\$ 6,200,000	\$ 334,738
Rent & leases	4,718	2,595	1,000	1,595
National Beef bond payment	577,859	12,788	578,576	(565,788)
Interest	41,890	234,744	205,099	29,645
Sale of labor and materials	-	-	5,000	(5,000)
Operating transfers in	416,662	500,000	500,000	-
Total receipts	<u>7,544,358</u>	<u>7,284,865</u>	<u>\$ 7,489,675</u>	<u>\$ (204,810)</u>
Expenditures:				
Bond principal	1,100,000	1,145,000	\$ 1,145,000	\$ -
Interest	461,063	417,063	417,603	540
Utilities:				
Collection - personal services	296,171	340,864	255,291	(85,573)
Collection - contractual services	76,484	133,029	24,100	(108,929)
Collection - commodities	15,884	28,178	17,300	(10,878)
Collection - capital outlay	13,344	9,967	-	(9,967)
Collection - other	19,272	18,247	15,000	(3,247)
Treatment - contractual services	3,631,549	3,530,539	3,606,699	76,160
Treatment - commodities	-	-	2,500	2,500
Treatment - capital outlay	79,170	596,590	596,590	-
Operating transfers out	447,132	613,722	757,902	144,180
Total expenditures	<u>6,140,069</u>	<u>6,833,199</u>	<u>\$ 6,837,985</u>	<u>\$ 4,786</u>
Receipts over (under) expenditures	1,404,289	451,666		
Unencumbered cash, beginning of year	<u>1,627,317</u>	<u>3,031,606</u>	<u>\$ 1,397,623</u>	<u>\$ 1,633,983</u>
Unencumbered cash, end of year	<u>\$ 3,031,606</u>	<u>\$ 3,483,272</u>	<u>\$ 2,049,313</u>	<u>\$ 1,433,959</u>

See Independent Auditor's Report.

## CITY OF DODGE CITY, KANSAS

## BIOGAS OPERATIONS FUND

SCHEDULE OF RECEIPTS AND EXPENDITURES - ACTUAL AND BUDGET  
REGULATORY BASIS

For the Year Ended December 31, 2023  
(With Comparative Actual Totals for the Prior Year Ended December 31, 2022)

	2022	2023		Variance favorable (unfavorable)
		Actual	Budget	
Receipts:				
Sale of methane gas - energy credits	\$ 3,737,792	\$ 3,961,590	\$ 6,270,292	\$ (2,308,702)
Expenditures:				
Bond principal	686,816	706,391	\$ -	\$ (706,391)
Interest	197,342	179,497	-	(179,497)
Debt service fees	19,122	17,393	904,283	886,890
Contractual services	771,677	830,785	2,571,446	1,740,661
Capital outlay	1,365,954	19,442	200,000	180,558
Operating transfers out	1,469,162	1,425,000	1,325,000	(100,000)
Total expenditures	4,510,073	3,178,508	\$ 5,000,729	\$ 1,822,221
Receipts over (under) expenditures	(772,281)	783,082		
Unencumbered cash (deficit), beginning of year	(387,979)	(1,160,260)	\$ 707,590	\$ (1,867,850)
Unencumbered cash (deficit), end of year	\$ (1,160,260)	\$ (377,178)	\$ 1,977,153	\$ (2,354,331)

See Independent Auditor's Report.

## CITY OF DODGE CITY, KANSAS

## SOLID WASTE UTILITY FUND

SCHEDULE OF RECEIPTS AND EXPENDITURES - ACTUAL AND BUDGET  
REGULATORY BASIS

For the Year Ended December 31, 2023  
(With Comparative Actual Totals for the Prior Year Ended December 31, 2022)

	2023			Variance favorable (unfavorable)
	2022	Actual	Budget	
<b>Receipts:</b>				
Service fees - sanitation	\$ 2,319,894	\$ 2,500,879	\$ 2,300,000	\$ 200,879
Yard waste	130,515	135,363	125,000	10,363
Container	-	597	400	197
Interest	15,719	87,584	500	87,084
Federal grants - operating	16,366	-	-	-
Sale of recyclables	76,473	43,597	45,000	(1,403)
Sale of scrap	293	744	-	744
Other	51,849	31,323	40,000	(8,677)
<b>Total receipts</b>	<b>2,611,109</b>	<b>2,800,087</b>	<b>\$ 2,510,900</b>	<b>\$ 289,187</b>
<b>Expenditures:</b>				
<b>Utilities:</b>				
Collection - personal services	887,235	925,679	\$ 911,751	\$ (13,928)
Collection - contractual services	618,746	661,083	544,848	(116,235)
Collection - commodities	274,018	213,694	206,150	(7,544)
Collection - capital outlay	86,899	213,441	1,000	(212,441)
Collection - other	14,193	13,658	12,000	(1,658)
Recycling - personal services	176,650	170,985	189,274	18,289
Recycling - contractual services	54,689	40,799	60,450	19,651
Recycling - commodities	12,580	15,609	13,150	(2,459)
Recycling - capital outlay	(2,056)	51,434	-	(51,434)
Recycling - other	80,852	80,852	80,846	(6)
Utility administration	-	-	72,090	72,090
Operating transfers out	187,027	232,734	232,734	-
<b>Total expenditures</b>	<b>2,390,833</b>	<b>2,619,968</b>	<b>\$ 2,324,293</b>	<b>\$ (295,675)</b>
Receipts over (under) expenditures	220,276	180,119		
Unencumbered cash, beginning of year	597,161	817,437	\$ 363,388	\$ 454,049
Unencumbered cash, end of year	\$ 817,437	\$ 997,556	\$ 549,995	\$ 447,561

See Independent Auditor's Report.

## CITY OF DODGE CITY, KANSAS

## DRAINAGE UTILITY FUND

SCHEDULE OF RECEIPTS AND EXPENDITURES - ACTUAL AND BUDGET  
REGULATORY BASIS

For the Year Ended December 31, 2023  
(With Comparative Actual Totals for the Prior Year Ended December 31, 2022)

	2022	2023		Variance favorable (unfavorable)
		Actual	Budget	
Receipts:				
Service fees	\$ 267,764	\$ 281,776	\$ 260,000	\$ 21,776
Interest	5,229	27,036	1,000	26,036
Total receipts	<u>272,993</u>	<u>308,812</u>	<u>\$ 261,000</u>	<u>\$ 47,812</u>
Expenditures:				
Contractual services	60	134	\$ 7,100	\$ 6,966
Commodities	-	-	100	100
Capital outlay	1,582	3,331	75,000	71,669
Other	997	832	850	18
Operating transfers out	207,561	336,772	207,772	(129,000)
Total expenditures	<u>210,200</u>	<u>341,069</u>	<u>\$ 290,822</u>	<u>\$ (50,247)</u>
Receipts over (under) expenditures	62,793	(32,257)		
Unencumbered cash, beginning of year	104,339	177,381	<u>\$ 34,839</u>	<u>\$ 142,542</u>
Prior year cancelled encumbrances	10,249	-		
Unencumbered cash, end of year	<u>\$ 177,381</u>	<u>\$ 145,124</u>	<u>\$ 5,017</u>	<u>\$ 140,107</u>

See Independent Auditor's Report.

**CITY OF DODGE CITY, KANSAS**

**VEHICLE MAINTENANCE FUND**

**SCHEDULE OF RECEIPTS AND EXPENDITURES - ACTUAL AND BUDGET  
REGULATORY BASIS**

For the Year Ended December 31, 2023  
(With Comparative Actual Totals for the Prior Year Ended December 31, 2022)

	2022	2023		Variance favorable (unfavorable)
		Actual	Budget	
Receipts:				
Internal charges	\$ 397,009	\$ 199,836	\$ 465,000	\$ (265,164)
Expenditures:				
Personal services	104,663	214,006	\$ 153,140	\$ (60,866)
Contractual services	82,782	128,226	104,350	(23,876)
Commodities	209,564	238,896	206,450	(32,446)
Capital outlay	-	69,293	-	(69,293)
Total expenditures	397,009	650,421	\$ 463,940	\$ (186,481)
Receipts over (under) expenditures	-	(450,585)		
Unencumbered cash, beginning of year	-	-	\$ 228	\$ (228)
Unencumbered cash, end of year	\$ -	\$ (450,585)	\$ 1,288	\$ (451,873)

See Independent Auditor's Report.

## CITY OF DODGE CITY, KANSAS

## ALL NON-BUDGETED BUSINESS FUNDS

SCHEDULE OF RECEIPTS AND EXPENDITURES  
REGULATORY BASIS

For the Year Ended December 31, 2023

	Facilities maintenance	2009 Temp notes	Wastewater treatment plant	Water & wastewater revenue bonds	Total
Receipts	\$ -	\$ -	\$ -	\$ -	\$ -
Personal services	197,287	-	-	-	197,287
Contractual services	33,150	-	17,598,883	-	17,632,033
Commodities	100,034	-	-	-	100,034
Capital outlay	49,970	-	2,100,230	-	2,150,200
Total expenditures	<u>380,441</u>	<u>-</u>	<u>19,699,113</u>	<u>-</u>	<u>20,079,554</u>
Receipts over (under) expenditures	(380,441)	-	(19,699,113)	-	(20,079,554)
Unencumbered cash (deficit), beginning of year	<u>-</u>	<u>17,409</u>	<u>(1,735,165)</u>	<u>130,725</u>	<u>(1,587,031)</u>
Unencumbered cash (deficit), end of year	<u>\$ (380,441)</u>	<u>\$ 17,409</u>	<u>\$ (21,434,278)</u>	<u>\$ 130,725</u>	<u>\$ (21,666,585)</u>

See Independent Auditor's Report.

## CITY OF DODGE CITY, KANSAS

## AGENCY FUNDS

SCHEDULE OF RECEIPTS AND DISBURSEMENTS  
REGULATORY BASIS

For the Year Ended December 31, 2023

<u>Fund</u>	<u>Beginning cash balance</u>	<u>Receipts</u>	<u>Disbursements</u>	<u>Ending cash balance</u>
Community improvement district fund	\$ 305,572	\$ 495,522	\$ 398,254	\$ 402,840
Special obligation debt service 2011	3,372	83,177	82,925	3,624
Special obligation debt service 2013	1,417	107,196	105,925	2,688
Special obligation debt service 2014	1,700	88,743	87,601	2,842
Star bond debt service 2015	1,053,603	1,889,862	1,883,563	1,059,902
Special obligation debt service 2017	77	183,607	180,755	2,929
Special obligation debt service 2018	<u>1,249,932</u>	<u>1,419,348</u>	<u>1,422,481</u>	<u>1,246,799</u>
	<u>\$ 2,615,673</u>	<u>\$ 4,267,455</u>	<u>\$ 4,161,504</u>	<u>\$ 2,721,624</u>

See Independent Auditor's Report.

## **APPENDICES**

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

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JOHN W. HENDRICKSON, CPA  
JEREMY J. APPEL, CPA

**INDEPENDENT AUDITOR'S REPORT ON INTERNAL CONTROL OVER  
FINANCIAL REPORTING AND ON COMPLIANCE AND OTHER MATTERS  
BASED ON AN AUDIT OF FINANCIAL STATEMENTS PERFORMED  
IN ACCORDANCE WITH GOVERNMENT AUDITING STANDARDS**

The Honorable Mayor  
and City Commissioners  
Dodge City, Kansas

We have audited, in accordance with the auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States, the financial statement of the City of Dodge City, Kansas, as of and for the year ended December 31, 2023, and the related notes to the financial statement and have issued our report thereon dated August 22, 2024. Our report on the financial statement disclosed that, as described in Note A to the financial statement, the City has prepared this financial statement on the basis of the financial reporting provisions of the *Kansas Municipal Audit and Accounting Guide*, which is a basis of accounting other than accounting principles generally accepted in the United States of America.

**Report on Internal Control Over Financial Reporting**

In planning and performing our audit of the financial statement, we considered City of Dodge City, Kansas' internal control over financial reporting (internal control) as a basis for designing audit procedures that are appropriate in the circumstances for the purpose of expressing our opinions on the financial statement, but not for the purpose of expressing an opinion on the effectiveness of City of Dodge City, Kansas' internal control. Accordingly, we do not express an opinion on the effectiveness of City of Dodge City, Kansas' internal control.

A *deficiency in internal control* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct misstatements on a timely basis. A *material weakness* is a deficiency, or a combination of deficiencies, in internal control such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented or detected and corrected on a timely basis. A *significant deficiency* is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies and therefore, material weaknesses or significant deficiencies may exist that were not identified. Given these limitations, during our audit we did not identify any deficiencies in internal control that we consider to be material weaknesses. However, material weaknesses or significant deficiencies may exist that were not identified.

### **Report on Compliance and Other Matters**

As part of obtaining reasonable assurance about whether the City of Dodge City, Kansas' financial statement is free from material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the financial statement. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

### **Purpose of this Report**

The purpose of this report is solely to describe the scope of our testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the City's internal control or on compliance. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the entity's internal control and compliance. Accordingly, this communication is not suitable for any other purpose.

*Kennedy McKee & Company LLP*

August 22, 2024

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

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**INDEPENDENT AUDITOR'S REPORT ON COMPLIANCE FOR EACH MAJOR PROGRAM AND ON INTERNAL CONTROL OVER COMPLIANCE REQUIRED BY THE UNIFORM GUIDANCE**

The Honorable Mayor  
and City Commissioners  
Dodge City, Kansas

**Report on Compliance for Each Major Federal Program**

***Opinion on Each Major Federal Program***

We have audited the City of Dodge City, Kansas' compliance with the types of compliance requirements identified as subject to audit in the *OMB Compliance Supplement* that could have a direct and material effect on each of the City of Dodge City, Kansas' major federal programs for the year ended December 31, 2023. The City of Dodge City, Kansas' major federal programs are identified in the summary of auditor's results section of the accompanying schedule of findings and questioned costs.

In our opinion, the City of Dodge City, Kansas complied, in all material respects, with the compliance requirements referred to above that could have a direct and material effect on each of its major federal programs for the year ended December 31, 2023.

***Basis for Opinion on Each Major Federal Program***

We conducted our audit of compliance in accordance with auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States; and the audit requirements of Title 2 U.S. *Code of Federal Regulations* Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance). Our responsibilities under those standards and the Uniform Guidance are further described in the Auditor's Responsibilities for the Audit of Compliance section of our report.

We are required to be independent of the City of Dodge City, Kansas and to meet our other ethical responsibilities, in accordance with relevant ethical requirements relating to our audit. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion on compliance for each major federal program. Our audit does not provide a legal determination of the City of Dodge City, Kansas' compliance with the compliance requirements referred to above.

## ***Responsibilities of Management for Compliance***

Management is responsible for compliance with the requirements referred to above and for the design, implementation, and maintenance of effective internal control over compliance with the requirements of laws, statutes, regulations, rules, and provisions of contracts or grant agreements applicable to the City of Dodge City, Kansas' federal programs.

## ***Auditor's Responsibilities for the Audit of Compliance***

Our objectives are to obtain reasonable assurance about whether material noncompliance with the compliance requirements referred to above occurred, whether due to fraud or error, and express an opinion on the City of Dodge City, Kansas' compliance based on our audit. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with generally accepted auditing standards, *Government Auditing Standards*, and the Uniform Guidance will always detect material noncompliance when it exists. The risk of not detecting material noncompliance resulting from fraud is higher than for that resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Noncompliance with the compliance requirements referred to above is considered material if there is a substantial likelihood that, individually or in the aggregate, it would influence the judgment made by a reasonable user of the report on compliance about the City of Dodge City, Kansas' compliance with the requirements of each major federal program as a whole.

In performing an audit in accordance with generally accepted auditing standards, *Government Auditing Standards*, and the Uniform Guidance, we:

- exercise professional judgment and maintain professional skepticism throughout the audit.
- identify and assess the risks of material noncompliance, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the City of Dodge City, Kansas' compliance with the compliance requirements referred to above and performing such other procedures as we considered necessary in the circumstances.
- obtain an understanding of the City of Dodge City, Kansas' internal control over compliance relevant to the audit in order to design audit procedures that are appropriate in the circumstances and to test and report on internal control over compliance in accordance with the Uniform Guidance, but not for the purpose of expressing an opinion on the effectiveness of the City of Dodge City, Kansas' internal control over compliance. Accordingly, no such opinion is expressed.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit and any significant deficiencies and material weaknesses in internal control over compliance that we identified during the audit.

## Report on Internal Control over Compliance

*A deficiency in internal control over compliance* exists when the design or operation of a control over compliance does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, noncompliance with a type of compliance requirement of a federal program on a timely basis. A *material weakness in internal control over compliance* is a deficiency, or a combination of deficiencies, in internal control over compliance, such that there is a reasonable possibility that material noncompliance with a type of compliance requirement of a federal program will not be prevented, or detected and corrected, on a timely basis. A *significant deficiency in internal control over compliance* is a deficiency, or a combination of deficiencies, in internal control over compliance with a type of compliance requirement of a federal program that is less severe than a material weakness in internal control over compliance, yet important enough to merit attention by those charged with governance.

Our consideration of internal control over compliance was for the limited purpose described in the Auditor's Responsibilities for the Audit of Compliance section above and was not designed to identify all deficiencies in internal control over compliance that might be material weaknesses or significant deficiencies in internal control over compliance. Given these limitations, during our audit we did not identify any deficiencies in internal control over compliance that we consider to be material weaknesses, as defined above. However, material weaknesses or significant deficiencies in internal control over compliance may exist that were not identified.

Our audit was not designed for the purpose of expressing an opinion on the effectiveness of internal control over compliance. Accordingly, no such opinion is expressed.

The purpose of this report on internal control over compliance is solely to describe the scope of our testing of internal control over compliance and the results of that testing based on the requirements of the Uniform Guidance. Accordingly, this report is not suitable for any other purpose.

*Kennedy McKee & Company LLP*

August 22, 2024

**CITY OF DODGE CITY, KANSAS**

**SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS**

For the Year Ended December 31, 2023

Federal grantor/ pass-through grantor/ program title	Federal CFDA number	Pass-through/ grantor's number	Expenditures
<b>U.S. Department of Commerce</b>			
Passed through Kansas			
Department of Commerce:			
Community Development Block Grants	14.218		\$ 48,251
<b>U.S. Department of Transportation</b>			
<b>Federal Aviation Administration</b>			
Direct programs:			
Airport Improvement Program - Snow Removal Equipment	20.106	3-20-0017-036-2022	17,054
Reconstruct Runway 2-20 - Design	20.106	3-20-0017-037-2023	4,000
<b>Total Federal Aviation Administration</b>			21,054
<b>U.S. Department of Transportation</b>			
Passed through Kansas			
Department of Transportation:			
Formula Grants for other than Urbanized Areas			
Formula Grants for Rural Areas 2022-2023	20.509		195,159
Formula Grants for Rural Areas 2023-2024	20.509		198,456
State and Community Highway Safety	20.600		6,286
National Priority Safety Program	20.616		14,540
<b>Total U.S. Department of Transportation</b>			414,441
<b>U.S. Department of Justice</b>			
Passed through Kansas Attorney General:			
Coronavirus Emergency Supplemental Funding	16.034		21,128
Crime Victims Compensation Board	16.576		1,500
<b>Total U.S. Department of Justice</b>			22,628
<b>U.S. Department of Treasury</b>			
Passed through Kansas Governor's Office:			
American Rescue Plan Act	21.027		739,936
Total federal awards			\$ 1,246,310

The accompanying Notes to the Schedule of Expenditures of Federal Awards are an integral part of this statement.

## CITY OF DODGE CITY, KANSAS

### NOTES TO THE SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS

December 31, 2023

#### A. BASIS OF PRESENTATION

The accompanying schedule of expenditures of federal awards (Schedule) includes the federal award activity of the City of Dodge City, Kansas under programs of the federal government for the year ended December 31, 2023. The information in this Schedule is presented in accordance with the requirement of Title 2 *U.S. Code of Federal Regulations Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance). Because the Schedule presents only a selected portion of the operation of the City of Dodge City, Kansas, it is not intended to and does not present the financial position, changes in net assets, or cash flows of the City of Dodge City, Kansas. The Schedule is presented using a regulatory basis of accounting prescribed by the *Kansas Municipal Audit and Accounting Guide* (as described in Note A to the financial statement), which is the same basis of accounting as the financial statement accompanying this schedule.

#### B. BASIS OF ACCOUNTING

Expenditures reported on the Schedule are reported using the regulatory basis of accounting. Such expenditures are recognized following the cost principles contained in the Uniform Guidance, wherein certain types of expenditures are not allowable or are limited as to reimbursement. Expenditures include disbursements, accounts payable, and encumbrances, with disbursements being adjusted for prior year's accounts payable and encumbrances.

#### C. INDIRECT COST RATE

The City of Dodge City, Kansas has not elected to use the 10% de minimis cost rate as allowed under the Uniform Guidance.

#### D. AWARDS TO SUBRECIPIENTS

There were no awards passed through to subrecipients.

## CITY OF DODGE CITY, KANSAS

### SCHEDULE OF FINDINGS AND QUESTIONED COSTS

Year ended December 31, 2023

#### A. SUMMARY OF AUDITOR'S RESULTS

1. The auditor's report expresses an adverse opinion on whether the financial statement of the City of Dodge City, Kansas was prepared in accordance with GAAP.
2. No significant deficiencies relating to the audit of the financial statement are reported in the Independent Auditor's Report on Internal Control over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with *Government Auditing Standards*.
3. No instances of noncompliance material to the financial statements of the City of Dodge City, Kansas, which would be required to be reported in accordance with *Government Auditing Standards*, were disclosed during the audit.
4. No significant deficiencies relating to the audit of the major federal award programs are reported in the Independent Auditor's Report on Compliance for Each Major Program and on Internal Control over Compliance Required by the Uniform Guidance.
5. The auditor's report on compliance for the major federal award programs for the City of Dodge City, Kansas expresses an unmodified opinion on all major programs.
6. Audit findings required to be reported in accordance with 2 CFR section 200.516(a) are reported in this schedule.
7. The program tested as a major program included:  
American Rescue Plan Act      CFDA 21.027
8. The threshold for distinguishing Type A and Type B programs was \$750,000.
9. The City of Dodge City did not qualify as a low-risk auditee.

#### B. FINDINGS - FINANCIAL STATEMENT AUDIT

None noted.

#### C. FINDINGS AND QUESTIONED COSTS - MAJOR FEDERAL AWARD PROGRAMS AUDIT

None noted.



# Memorandum

**To:** Nick Hernandez, City Manager and City Commissioners  
**From:** Ray Slattery, PE, Director of Engineering Services  
**Date:** September 16, 2024  
**Subject:** Approval of Supplemental Agreement for S. Dodge Trail Extension from Wright Park to Beeson Arboretum, PK 2201  
**Agenda Item:** New Business

---

**Purpose:** The purpose of this supplemental agreement is to provide final construction documents for the S. Dodge Trail Extension from Wright Park to Beeson Arboretum along with the pedestrian bridge over the Arkansas River for letting by KDOT.

**Recommendation:** Approve Supplemental Agreement with SMH Consultants, P.A. to provide the final construction bidding documents of the S. Dodge Trail Extension in the amount of \$166,077.50.

**Background:** At the June 19, 2023, Commission Meeting, the Commission approved the Discovery and Bridge Design Agreement with SHM Consultants, P.A. for the extension of the S. Dodge Trail proposed along Sunnyside Ave. from Wright Park to Beeson Arboretum. The final alignment of the trail extension has been completed and actual design has started. The design of the pedestrian bridge across the Arkansas River is also well underway along with the necessary permitting. This supplement agreement will complete the plan preparation to meet KDOT requirements.

**City Commission Options:**

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

**Financial Considerations:**

Amount \$: \$166,077.50

Fund:

Budgeted Expense       Grant       Bonds       Other

**Legal Considerations:** The City will enter into a contract with SMH Consultants and is bound by the provisions of this contract.

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

**Attachments:** Supplemental Agreement from SMH Consultants, P.A. for the S. Dodge Trail Extension.

**Approved for the Agenda by:**

A handwritten signature in blue ink that reads "Ray Slattery, PE". The signature is written in a cursive style.

---

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

**CONSULTING SERVICES AGREEMENT**

Client: <u>City of Dodge City</u>	Project: <u>South Dodge City Trail</u>
Address: <u>806 N. Second Avenue</u> <u>Dodge City, KS 67801</u>	Project Location: <u>Dodge City</u>
Telephone: <u>620-225-8106</u>	SMH Project Manager: <u>Ben Gasper, PE</u>
Contact: <u>Ray Slattery, Dir. Eng. Ser.</u>	
Client Job No.: <u>PK 2201 - S. Dodge Trail</u>	SMH Job No.: <u>2304-0120</u>

This AGREEMENT is made by and between **The City of Dodge City, Kansas**, hereinafter referred to as “CLIENT”, and SMH Consultants, P.A., hereinafter referred to as “CONSULTANT”, for professional consulting services not presently specified under any other agreement between CLIENT and CONSULTANT. CONSULTANT agrees to provide client with requested consulting services more specifically described as follows, hereinafter referred to as the “PROJECT.” The PROJECT is commonly known as:

South Dodge City Trail – Development of Construction Documents for multi-use trail with a pedestrian bridge from Wright Park to Besson Arboretum along Sunnyside Avenue

The following Attachments are hereby incorporated into and made a part of this AGREEMENT:

- GENERAL CONDITIONS
- Attachment A: Scope of Services
- Attachment B: Personnel and Reimbursable Rates
- Attachment C: Lump Sum Fee Estimate
- Other:

---

By signing this AGREEMENT, CLIENT acknowledges that it has read and fully understands this AGREEMENT and all attachments thereto. CLIENT further agrees to pay consultant for services described herein upon receipt of invoice by CLIENT.

- FEE ESTIMATE SHOWN ON EACH SERIALLY NUMBERED WORK AUTHORIZATION
- THE LUMP SUM COST OF CONSULTANT’S DESIGN SERVICES IS **\$166,077.50.**

---

IN WITNESS WHEREOF, the parties hereto have made and executed this AGREEMENT.

CLIENT

By: \_\_\_\_\_  
          AUTHORIZED REPRESENTATIVE

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

CONSULTANT

By:   
          AUTHORIZED REPRESENTATIVE

TITLE: Office Manager

DATE: 5-15-2024

PLEASE SIGN AND RETURN ONE COPY TO SMH CONSULTANTS, P.A.



## **GENERAL CONDITIONS**

### **SECTION I – Services by CONSULTANT**

#### **1.1 Scope of Services**

CONSULTANT shall provide the certain services under this AGREEMENT as such services are described in ATTACHMENT A. The intent of the Scope of Work and the estimate contained in ATTACHMENT A is to identify the services to be provided by CONSULTANT. However, it is specifically understood that by written notice to and with the consent and agreement of CONSULTANT, CLIENT may increase the Scope of Work. These services may include the use of outside services, outside testing laboratories and special equipment.

#### **1.2 Fees**

The Fee Estimate for the above-described services is attached hereto and made a part of this AGREEMENT as ATTACHMENT C. It is mutually understood that the Fee Estimate set forth in ATTACHMENT C is non-binding.

### **SECTION II – Payment to CONSULTANT**

#### **2.1 Payment for Personnel Services**

##### **2.1.1 Payment**

Payment for the services rendered by CONSULTANT's personnel shall be based on percent of complete and units complete (acquisition) of services identified in the scope of work.

##### **2.2 Payment Conditions**

**2.2.1** CONSULTANT shall submit monthly invoices for all personnel services and expenses under this AGREEMENT and a final invoice upon completion of services.

**2.2.2** Invoices are due and payable upon receipt by CLIENT. Interest at a rate of one and one-half percent (1.5%) per month or the maximum allowed by law, will be charged on all past due amounts starting thirty (30) days after the date of invoice. Payment will first be credited to interest and then to principal.

**2.2.3** In the event of a disputed or contested invoice, only that portion so contested will be withheld from payment and the CLIENT will pay the undisputed portion.

**2.2.4** If CLIENT fails to make payment in full to CONSULTANT within sixty (60) days after the date of the disputed invoice, CONSULTANT may, after giving seven (7) days written notice to CLIENT, suspend services under this AGREEMENT until paid in full, including any and all applicable interest. CONSULTANT shall have no liability of any kind to CLIENT for delays or damages caused by such suspension of services. CLIENT agrees to pay all costs of collection, including reasonable attorneys' fees, incurred by CONSULTANT as a result of CLIENT's failure to make payments in accordance with this AGREEMENT.

**2.2.5** The billing rates specified in ATTACHMENT B for subsequent years may be adjusted annually in accordance with CONSULTANT's costs of doing business, and such adjustments shall be binding on CLIENT.

##### **2.3 Independent Contractor**

**2.3.1** The parties acknowledge and agree that CONSULTANT will be providing services to CLIENT hereunder as an independent contractor and not as an employee. Accordingly, CLIENT shall have no responsibility for the collection or payment of any federal, state or local payroll tax in connection with any fees paid to CONSULTANT pursuant to this AGREEMENT, including, but not limited to, income taxes, Social Security taxes, unemployment compensation taxes, and any other fees, charges or licenses required by law.

**2.3.2** Because CONSULTANT is engaged in its own independent business, neither it nor its employees are eligible for, nor entitled to, and shall not participate in, any of CLIENT's pension, health or other fringe benefit plans, if any such plans exist. Such participation in these fringe benefit plans is limited solely to CLIENT's employees.

**2.3.3** Because CONSULTANT is engaged in its own independent business and is not an employee of CLIENT, CLIENT will not obtain workers' compensation insurance for CONSULTANT or its employees.

The CONSULTANT agrees to obtain any legally required workers' compensation for itself and its employees and to furnish a copy of such certificate of workers' compensation insurance to CLIENT, at CLIENT's request.

### **SECTION III – Terms of AGREEMENT**

#### **3.1 Term**

CONSULTANT's obligations to perform under this AGREEMENT shall extend from the date of execution until terminated by either party and/or the completion of the PROJECT, whichever comes first.

#### **3.2 Termination of AGREEMENT**

In the event of breach by either party of the terms and conditions of the AGREEMENT and where such breach has not been rectified by the party in default within thirty (30) days of first being notified of such breach, this AGREEMENT may be terminated by the other party in writing. CLIENT may not terminate such AGREEMENT if CONSULTANT has made a good faith attempt to cure such default within the thirty (30) day period.

If, for any reason of force majeure (i.e., causes beyond the control and without the negligence or malfeasance of the party, including but not limited to: war, civil unrest, government action, flood, earthquake, epidemics) either party considers it no longer possible or safe for the CONSULTANT to carry out the duties specified, or should the AGREEMENT be invalidated for any other reason beyond the control of CLIENT or the CONSULTANT, the AGREEMENT may be terminated by either party without liability of any kind, with fifteen (15) day's written notice, provided that CLIENT will reimburse the CONSULTANT for services already satisfactorily performed and justifiable expenses incurred prior to communication of notice of termination.

#### **3.3 Payment for Work Upon Abandonment or AGREEMENT Termination**

If CLIENT terminates this AGREEMENT, CONSULTANT shall be paid on the basis of work completed to the effective date of termination. Payment for the work shall be as established under Section II above.

#### **3.4 Damages and Injunctive Relief**

The parties hereto recognize, acknowledge and agree that because of the damages that could be done to CONSULTANT by breach of any covenant contained in this Section 3.4 by CLIENT, CONSULTANT shall be entitled, in addition to any other rights or remedies afforded to CONSULTANT by law or under the terms of this AGREEMENT, to enforce these covenants, and all of their provisions, by injunction, specific performance or other relief in a court of law or equity. In the event of any breach or threatened breach by the CLIENT of the covenants contained in this section, CONSULTANT shall therefore be entitled, in addition to any other rights or remedies afforded by law or under this AGREEMENT, to any injunction restraining or prohibiting CLIENT from doing anything that violates the covenants contained in this AGREEMENT. All remedies set forth above shall be construed to be cumulative and not exclusive of other remedies granted to CONSULTANT herein or by law.

### **SECTION IV – General Considerations**

#### **4.1 Assignment and Responsibility for Personnel**

**4.1.1** The assignment of personnel and all phases of the undertaking of the services related to the PROJECT, which CONSULTANT shall provide hereunder, shall be subject to the general oversight and general guidance of CLIENT.

**4.1.2** While upon the premises of CLIENT or property under its control, all employees, agents and subconsultants of CONSULTANT shall be subject to CLIENT's rules and regulations respecting its property and the conduct of its employees thereon, provided such rules and regulations do not interfere with CONSULTANT providing its services to CLIENT.

**4.1.3** However, it is understood and agreed that in the performance of the work and obligations hereunder, CONSULTANT shall be and remain an independent contractor and that the employees, agents or

subconsultants of CONSULTANT shall not be responsible for the supervision and performance of all subconsultants which are to perform hereunder.

#### **4.2 Insurance**

CONSULTANT shall upon request furnish to CLIENT a certificate of insurance showing amounts and types of insurance carried by CONSULTANT.

#### **4.3 Compliance with Law**

**4.3.1** The CONSULTANT shall not discriminate against any independent contractor, employee or applicant for employment with respect to hiring, tenure, terms, conditions, or privileges of employment, because of race, color, religion, sex or national origin.

#### **4.4 Ownership and Reuse of Documents**

**4.4.1** All drawings, specifications, test reports and other materials and work products, which have been prepared or furnished by CLIENT prior to the AGREEMENT, shall remain CLIENT's property. CLIENT shall make available to CONSULTANT copies of these materials as is necessary for the CONSULTANT to perform the services requested hereunder.

**4.4.2** All drawing, specifications, test reports and other materials and work products, including computer aided drawings, designs and other data filed on electronic media which will be prepared or furnished by CONSULTANT (and CONSULTANT's independent professional associates and subconsultants) under this AGREEMENT, are instruments of service in respect of the PROJECT and CONSULTANT shall retain an ownership and property interest therein whether or not the PROJECT is completed. CLIENT may make and retain copies for information and reference in connection with the use and the occupancy of the PROJECT by CLIENT and others; however, such documents are not intended or represented to be suitable for reuse by CLIENT or others on extensions of the PROJECT or on any other project. Further, CONSULTANT makes no warranty as to the compatibility of computer data files with computer software and software releases other than that used by CONSULTANT in performing the services herein, and to the condition or availability of the computer data after an accepted period of thirty (30) days from delivery to CLIENT. Any reuse of such material without written verification or adaptation by CONSULTANT for the specific purpose intended will be at CLIENT's sole risk and without liability or legal exposure to CONSULTANT or to CONSULTANT's independent professional associates or subconsultants, and CLIENT shall indemnify and hold harmless CONSULTANT and CONSULTANT's independent professional associates and subconsultants from all claims, damages, losses and expenses including, but not limited to, attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle CONSULTANT to further compensation at rates to be agreed upon by CLIENT and CONSULTANT.

#### **4.5 Location of Underground Utilities**

It shall be the CLIENT's responsibility to locate and physically mark all underground utilities and structures, which lie within the work area prior to the start of subsurface investigations. If the CLIENT elects not to assume this responsibility, CLIENT shall notify CONSULTANT and shall compensate CONSULTANT for all costs associated with locating and physically marking said underground utilities and structures according to CONSULTANT's billing rates for the PROJECT, which shall be over and above the estimated PROJECT fee set forth on ATTACHMENT C hereto. CLIENT shall indemnify and hold CONSULTANT harmless from any damages or delays resulting from unmarked or improperly marked underground utilities and structures. The parties agree and acknowledge that for reasons of safety, CONSULTANT will not begin work until the location of underground utilities has been accomplished.

#### **4.6 Subsurface Investigations**

In soils, foundation, groundwater, and other subsurface investigations, the actual characteristics might vary significantly between successive test points and sample intervals and at locations other than where observations, exploration, and investigations have been made. Because of the inherent uncertainties in subsurface evaluations, changed or unanticipated underground conditions may occur that could affect cost and/or execution of the PROJECT. These conditions and cost/execution effects are not the responsibility of the CONSULTANT. CLIENT shall indemnify and hold CONSULTANT harmless from any damages and delays resulting from such changes or unanticipated underground conditions.

#### **4.7 CONSULTANT's Personnel at PROJECT Site**

**4.7.1** The presence or duties of the CONSULTANT personnel at the PROJECT site, whether as onsite representatives or otherwise, do not make the CONSULTANT or its personnel in any way responsible for those duties that belong to the CLIENT and/or construction contractor(s) or other entities, and do not relieve construction contractor(s) or any other person and/or entity of their obligations, duties, and responsibilities, including, but not limited to, all construction methods, means, techniques, sequences and procedures necessary for coordinating and completing all portions of the construction work in accordance with the PROJECT documents and any health or safety precautions required by such construction work. The CONSULTANT and its personnel have no authority to exercise any control over any construction contractor(s) or other entity or their employees in connection with their work or any health or safety precautions and have no duty for inspecting, noting, observing, correcting, or reporting on health or safety deficiencies of the construction contractor(s) or other entity or any other persons at the site except CONSULTANT's own personnel.

**4.7.2** The presence of CONSULTANT's personnel at a construction site is for the purpose of providing to CLIENT a greater degree of confidence that the completed work will conform generally to the PROJECT documents and that the integrity of the design concept as reflected in the PROJECT documents has been implemented and preserved by the contractor(s). CONSULTANT neither guarantees the performance of the contractor(s) nor assumes responsibility for contractor(s) failure to perform their work in accordance with the PROJECT documents. Contractor(s) shall indemnify and hold CONSULTANT harmless from any damages and delays resulting from changes or unanticipated underground conditions.

#### **4.8 Opinions of Cost, Financial Considerations and Schedules**

In providing opinions of cost, financial analysis, economic feasibility projections, and schedules for the PROJECT, the CONSULTANT has no control over the cost of labor, materials, equipment, or services furnished by other, or over the contractor(s) methods of determining prices, or over competitive bidding or market conditions. CONSULTANT's opinion of probable total PROJECT costs and construction costs provided for as set forth on ATTACHMENT C hereto are made on the basis of CONSULTANT's experience and qualifications and represent CONSULTANT's judgments and experience. CONSULTANT makes no warranty that the CLIENT's actual costs will not vary from the CONSULTANT's opinions, analyses, projections, or estimates. If CLIENT wishes greater assurance as to any element of the cost, feasibility or schedule of the PROJECT, CLIENT should employ an independent cost estimator, contractor, or other appropriate advisor at CLIENT's sole expense.

#### **4.9 Disposition of Samples and Equipment**

**4.9.1** No samples and/or materials will be kept by CONSULTANT longer than thirty (30) days after submission of the final report unless agreed otherwise by CLIENT and CONSULTANT in writing.

**4.9.2** In the event that samples and/or materials contain, or are suspected to contain, substances or constituents that are hazardous or detrimental to health, safety, or the environment as defined by relevant federal, state, or local statutes, regulations or ordinances, CONSULTANT will, after completion of testing, return such samples and materials to CLIENT, or have the samples and materials disposed of in accordance with CLIENT's directions and all applicable laws. CLIENT recognizes and agrees that CONSULTANT at no time assumes title to said samples and materials, and shall have no responsibility as a handler, generator, operator, transporter, or disposer of said samples and materials.

**4.9.3** All laboratory and field equipment contaminated in CONSULTANT's performance of services will be cleaned at CLIENT's expense. Contaminated consumables will be disposed of and replaced at CLIENT's expense. Equipment (including tools) which cannot be reasonably decontaminated shall become the property and responsibility of CLIENT. At CLIENT's expense, such equipment shall be delivered to CLIENT, or disposed of in the same manner as specified in paragraph 4.9.2 above. CLIENT agrees to pay CONSULTANT the fair market value of any such equipment which cannot reasonably be decontaminated and is delivered to CLIENT pursuant to this AGREEMENT.

#### **4.10 Discovery of Unanticipated Pollutant and Hazardous Substance Risks**

**4.10.1** If CONSULTANT, while performing services for CLIENT pursuant to this AGREEMENT, discovers pollutants and/or hazardous substances that pose unanticipated risks, it is hereby agreed that the scope of

services, schedule and the estimated cost of CONSULTANT's services will be reconsidered and that this AGREEMENT shall immediately become subject to renegotiation or termination.

**4.10.2** In the event that the AGREEMENT is terminated because of the discovery of pollutants and/or hazardous substances posing unanticipated risks, it is agreed that CONSULTANT shall be paid for its total charges for labor performed and reimbursable charges incurred to the date of termination of this AGREEMENT, including, if necessary, any additional labor or reimbursable charges incurred in demobilizing.

**4.10.3** CLIENT also agrees that the discovery of unanticipated pollutants and/or hazardous substances may make it necessary for CONSULTANT to take immediate measures to protect the health and safety of CONSULTANT's employees and the public. CONSULTANT agrees to notify CLIENT as soon as practically possible should unanticipated pollutants and/or hazardous substances are suspected or encountered. CLIENT hereby authorizes CONSULTANT to take measures that in CONSULTANT's sole discretion are justified to preserve and protect the health and safety of CONSULTANT's personnel and the public. CLIENT agrees to compensate CONSULTANT for the additional cost of taking such additional precautionary measures to protect CONSULTANT's employees' and the public's health and safety. Notwithstanding the foregoing, this paragraph 4.10.3 is not intended to impose upon CONSULTANT any additional duties or obligations.

## **SECTION V – Professional Responsibility**

### **5.1 Performance of Services**

CONSULTANT will strive to perform services under this AGREEMENT in a manner consistent with that level of care and skill ordinarily exercised by the members of the profession currently practicing in the same locality under similar conditions. No other representation, express or implied, and no warranty or guarantee regarding the performance of the services in this AGREEMENT is included or intended in this AGREEMENT, or may be implied in any report, opinion, or other document prepared by CONSULTANT.

### **5.2 No Special or Consequential Damages**

CLIENT and CONSULTANT agree that to the fullest extent permitted by law, CONSULTANT will not be liable to CLIENT for any special, indirect, or consequential damages whatsoever, whether caused by CONSULTANT's negligence, errors, omissions, strict liability, breach of contract, breach of warranty, or any other cause or causes.

### **5.3 Indemnification**

To the fullest extent permitted by law, CLIENT agrees to defend, indemnify and hold CONSULTANT, its agents, subconsultants, and employees harmless from and against any and all claims, damages, losses and expenses, defense costs including, but not limited to, attorneys' fees, and court arbitration costs and other liabilities arising out of or resulting from, wholly or in part, the performance of CONSULTANT's services on the PROJECT hereunder, including the transport or disposal of hazardous samples or contaminated equipment by CONSULTANT on behalf of CLIENT, or the presence, release, or threatened release of asbestos, hazardous substances, or pollutants on or from the PROJECT property.

### **5.4 Third Party Beneficiaries**

CLIENT and CONSULTANT expressly agree that this AGREEMENT does not confer upon any third party any rights as a beneficiary to this AGREEMENT. CONSULTANT accepts no responsibility for damages, if any, suffered by any third party as a result of a third party's use of the work product, including reliance, decisions, or any other action taken based upon it. CLIENT agrees that CONSULTANT's compliance with any request by CLIENT to address or otherwise release any portion of the work product to a third party shall not modify, rescind, waive or otherwise alter provisions of this AGREEMENT nor does it create or confer any third party beneficiary rights on any third party.

## **SECTION VI – CONFIDENTIALITY AND NON-DISCLOSURE**

### **6.1 Confidential Information**

“Confidential Information” shall be defined as any and all data and information in any format or form, electronic, written or oral, relating to the business, affairs, personnel and/or operations of the CONSULTANT, which at any time may be communicated or revealed to the CLIENT, either directly or indirectly, including, but not limited to, contracts, reports, memoranda, legal documentation, financial data, present or future business plans or strategies, customer data, technology, design and techniques, personal information, and/or any information related to the negotiations in connection with the PROJECT and/or the underlying reason for entering into the PROJECT.

Confidential Information will not include information which:

- (a) has rightfully been in the possession of the CLIENT prior to the date of disclosure of such information by the CONSULTANT;
- (b) has been in the public domain prior to the date of disclosure of such information by the CONSULTANT;
- (c) later becomes part of the public domain by publication or by other means except by means of an unauthorized act or omission on the part of the CLIENT; or
- (d) is lawfully obtained by the CLIENT from a third party independent of the CONSULTANT who, to the knowledge of the CLIENT, is not under any obligation of confidence to the CONSULTANT.

### **6.2 Relevancy of Confidential Information**

The CLIENT understands that the CONSULTANT has endeavored to include in the Confidential Information those materials which the CONSULTANT believes to be relevant to the PROJECT, but the CLIENT acknowledges that there are no representations or warranties, whether express or implied, as to the accuracy or completeness of the Confidential Information. Nothing herein shall be construed as a commitment by the CONSULTANT to enter into the PROJECT with the CLIENT.

### **6.3 Representatives of CLIENT**

The CLIENT agrees to provide the Confidential Information only to those of its directors, officers, employees, attorneys, agents, advisors and/or representatives directly concerned with the evaluation of the PROJECT who need to know the Confidential Information so as to enable the CLIENT to evaluate entering into the PROJECT (collectively, the “Representatives”) and who agree to be bound by this AGREEMENT.

### **6.4 Use of Confidential Information**

The CLIENT shall receive and maintain the Confidential Information in the strictest of confidence and shall only use the Confidential Information for the limited purpose of enabling the CLIENT to evaluate entering into the PROJECT with the CONSULTANT and for no other purpose or use, and shall not disclose such Confidential Information or any part thereof to any other person or entity except with the CONSULTANT’s prior written consent. Also, without the prior written consent of the CONSULTANT, the CLIENT will not disclose the fact that the Confidential Information has been made available to the CLIENT, that discussions or negotiations are taking place, or any other facts with respect to the PROJECT, including the status thereof, except as required by law, and then only upon furnishing the CONSULTANT with prompt written notice to allow the CONSULTANT to oppose such process.

### **6.5 Survival of AGREEMENT and Confidentiality**

This AGREEMENT shall survive the cessation of any discussions between the parties with regard to the PROJECT. The restrictions and obligations upon the parties under this AGREEMENT concerning the confidentiality and/or non-disclosure of the Confidential Information shall not expire or terminate.

### **6.6 Return of Confidential Information**

At the option of the CONSULTANT and upon its request, the CLIENT shall promptly return or destroy all notes, memoranda, correspondence, documents and any other material containing or derived from Confidential Information, including all copies thereof, either furnished hereunder or prepared by the

CLIENT. Any destruction of such Confidential Information shall be confirmed in writing upon the request of the CONSULTANT.

#### **6.7 Forced Disclosure**

In the event the CLIENT is required by judicial or administrative process to disclose the Confidential Information, the CLIENT shall promptly notify the CONSULTANT and allow the CONSULTANT to oppose such process.

#### **6.8 No Conveyance of Confidential Information or Rights Therein**

Nothing in this AGREEMENT, nor any action taken by the CLIENT during any discussions or negotiations prior to the consummation of the PROJECT shall be construed to convey to the CLIENT any right, title or interest in the Confidential Information, or any license to use, sell, exploit, copy or further develop in any way any Confidential Information. No license is hereby granted or implied under any patent, copyright or trademark, any application for any of the foregoing, or any trade name, trade secret or other proprietary information, in which the CONSULTANT has any right, title or interest.

#### **6.9 Enforcement**

Each party retains all rights and remedies with respect to the Confidential Information afforded it under any applicable laws of the State of Kansas and the United States both during and after the term of this AGREEMENT, including, without limitation, any trade secret or other laws designed to protect proprietary or confidential information. This AGREEMENT will be construed, interpreted and applied in accordance with the laws of the State of Kansas. It is hereby agreed that any and all claims, disputes or controversies whatsoever or arising from or in connection with this AGREEMENT shall be commenced, filed and litigated exclusively in the District Court of Riley County, Kansas or the applicable federal district court in Kansas, as determined by CONSULTANT, and the parties hereby consent to the personal jurisdiction of said court, and waive any objection to such jurisdiction and venue.

### **SECTION VII – Miscellaneous**

#### **7.1 Applicable Law**

This AGREEMENT shall be construed in accordance with and governed by the laws of the state of Kansas, without regard to the principles of conflicts of law.

#### **7.2 Severability**

If any of the provisions contained in this AGREEMENT are held for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision, and the AGREEMENT shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

#### **7.3 Survival and Further Assurances**

It is the intention of the parties that all covenants, agreements, representations, warranties, and obligations of any kind contained in this AGREEMENT shall survive and continue after the completion of the PROJECT.

#### **7.4 Headings**

Headings used in this AGREEMENT are for convenience only and shall not be used to interpret or construe its provisions.

#### **7.5 Successors and Assigns**

**7.5.1** CLIENT and CONSULTANT each binds itself and its partners, successors, executors, administrators, assigns and legal representatives of such other party, in respect to all covenants, agreements, and obligations of this AGREEMENT.

**7.5.2** Neither CONSULTANT nor CLIENT are permitted to assign or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this AGREEMENT without the written consent of the other party. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or

responsibility under this AGREEMENT. Notwithstanding the foregoing, nothing contained in this paragraph 7.5.2 shall prevent CONSULTANT from employing such independent consultants, associates, and subconsultants as it may deem appropriate to assist in the performance of services hereunder.

**7.6 Counterparts**

This AGREEMENT shall be binding upon and shall inure to the benefit of each of the parties hereto and to their respective successors, heirs, personal representatives and assigns and may be executed in two (2) or more counterparts each of which shall be deemed an original but all of which together shall constitute but one and the same instrument.

**7.7 Time is of the Essence**

Time shall be considered of the essence in the performance of this AGREEMENT.

**7.8 Entire Agreement**

This AGREEMENT embodies the entire agreement between the parties hereto with respect to the transactions contemplated herein and supersedes any and all prior agreements and negotiations between the parties, whether written or oral. There have been and are no agreements, representations or warranties between the parties other than those set forth or provided herein.

**7.9 Amendment and Modification**

This AGREEMENT may not be modified except in writing and signed by all parties.

**7.10 Waiver of Breach**

The waiver by either party of a breach of any provision of this AGREEMENT shall not operate or be construed as a waiver of any subsequent breach by either party.

**7.11 Rights not Exclusive to CONSULTANT**

All rights and remedies granted in this AGREEMENT to CONSULTANT shall be cumulative and not exclusive of all the other rights and remedies which CONSULTANT may have at law or in equity, and CONSULTANT may exercise all or any of such rights and remedies at any one or more times without being deemed to have waived any or all other rights and remedies which CONSULTANT may have.

**7.12 Notices**

Unless contrary provisions are expressly set forth herein, all notices of any kind shall be in writing and shall, at the option of the party giving the notice, be

- (i) personally delivered; or
- (ii) delivered by reputable overnight courier; or
- (iii) sent by fax or email; or
- (iv) sent by certified or registered mail, postage prepaid;

to the person entitled to receive the notice at the last address provided in writing by such person to the other signatory hereto. All such notices shall be deemed given on the date the notice is actually received at the address indicated.

**7.13 Authority**

The undersigned agents that signed this AGREEMENT have proper corporate authority to bind their respective companies to the terms and conditions of this AGREEMENT.

**7.14 No Partnership**

The parties do not intend that any partnership or agency relationship be created by this AGREEMENT.



**SOUTH DODGE TRAIL EXTENSION  
FINAL DESIGN SERVICES  
SCOPE OF SERVICES**

**SMH will provide the following scope of services to the City of Dodge City as they relate to the South Dodge Trail Extension.**

**Phase I – Additional Survey**

1. Topographic, boundary, and utility survey from the centerline of the adjacent roadway to generally 25-feet on to the private property side of the right of way. Survey will also include other areas beyond the primary alignment as needed for connections, crossings, and et cetera.
2. Conversion of the survey into a working drawing that can be used for design.

**Phase II - Field Check (50%)**

1. Preliminary trail plan and profile for the primary trail alignment from Wright Park to Sunnyside via pedestrian bridge and 2<sup>nd</sup> Avenue with connection down to Besson Arboretum. Trail plans will also include site specific details depicting the elevations at key locations where required.
2. Paving details as required by the pavement design for the trail.
3. Preliminary trail cross sections for the primary trail alignment, connections, and crossings. Trail cross sections will depict proposed and existing ground, water and sanitary sewer crossings, and high edge elevations.
4. Preliminary details for pedestrian actuated crossing control devices at various locations.
5. Preliminary traffic control plans.
6. Preliminary grading plan for the entire improvement area to depict areas of cut and fill.
7. Preliminary stormwater erosion and sediment control plan.
8. Utility Coordination with utility companies to address any potential conflicts between the proposed improvements and the existing utilities in the area.

9. Submittal of field check construction documents for review by the City of Dodge City and KDOT.
10. Amenity review with the City of Dodge City regarding the specification and selection of project amenities including benches, signage, landscaping, et cetera.
11. Development of an engineer's opinion of preliminary cost.
12. Onsite field check with City staff and KDOT officials.

**Phase III – Office Check (95%)**

1. Office check trail plan and profile for the primary trail alignment from Wright Park to Sunnyside via pedestrian bridge and 2<sup>nd</sup> Avenue with connection down to Besson Arboretum. Trail plans will also include site specific details depicting the elevations at key locations where required.
2. Paving details as required by the pavement design.
3. Office check trail cross sections for the primary trail alignment, connections, and crossings. Trail cross sections will depict proposed and existing ground, water and sanitary sewer crossings, and high edge elevations.
4. Office check details for pedestrian actuated crossing control devices.
5. Office check traffic control plan, sequencing plan, and trail pedestrian traffic control plan with necessary trail and/or sidewalk detours as required.
6. Office check grading plan for the entire improvement area to depict areas of cut and fill.
7. Office check stormwater erosion and sediment control plan.
8. Submittal of a KDHE Notice of Intent through the National Pollutant Discharge Elimination System.
9. Office check details for trail amenities regarding the selection of project amenities including benches, signage, landscaping, et cetera.

10. Submittal of office check construction documents for review by the City of Dodge City and KDOT.
11. Submittal of any specifications for appurtenances related to the construction of the trail project (benches, trash receptacles, et cetera).
12. Development of an engineer's opinion of probable Cost.

**Phase IV – Final Plans**

1. Final trail plan and profile for the primary trail alignment from Wright Park to Sunnyside via pedestrian bridge and 2<sup>nd</sup> Avenue with connection down to Besson Arboretum. Trail plans will also include site specific details depicting the elevations at key locations where required.
2. Paving details as required by the pavement design.
3. Final trail cross sections for the primary trail alignment, connections, and crossings. Trail cross sections will depict proposed and existing ground, water and sanitary sewer crossings, and high edge elevations.
4. Final check details for pedestrian actuated crossing control devices.
5. Final traffic control plan, sequencing plan, and trail pedestrian traffic control plan with necessary trail and/or sidewalk detours as required.
6. Final grading plan for the entire improvement area to depict areas of cut and fill.
7. Final stormwater erosion and sediment control plan.
8. Final details for trail amenities regarding the selection of project amenities including benches, signage, landscaping, et cetera.
9. Submittal of construction documents as necessary for bidding the project.
10. Submittal of any specifications for appurtenances related to the construction of the trail project (benches, trash receptacles, et cetera).
11. Development of an engineer's opinion of probable Cost.

## **Phase V – Easement Acquisition Services**

*These acquisition services will be provided for each tract (each property owner) by the Acquisition Agent as required by the project.*

### **Step 1 – Initial meetings with the Client.**

1. SMH Consultants (Acquisition Agent) to meet with the client to review the project details and property acquisitions (ongoing throughout the project).
2. Understand the project deliverables to ensure all expectations are clearly identified. Make the acquisition process as easy as possible for the client. Ensure all expectations are set for a successful project.

### **Step 2 – Property Owner Project Commencement Letters**

1. A project commencement letter is sent to the property owner introducing the project and the acquisition agent. Contact information and preferred means of communication will be requested from the property owner. This letter will also explain the acquisition process, an exhibit of what's being acquired, and the pamphlet titled "*Real Property Acquisition for Kansas Highways, Roads, Streets, and Bridges*" available from the Kansas Department of Transportation.
2. Review certificates of title and any potential mortgages, liens or conflicts.

### **Step 3 – Initial meeting with the property owner.**

1. Provide an overview of the project, provide an exhibit and/or a legal description of the property being acquired, discuss potential impacts of the project on the owner's property, and provide a historical overview of the acquisition and plan development process to-date.
2. Full explanation of the rights each property owner has through the acquisition process and the County's right to utilize/acquire the property when property owners are properly compensated.
3. Provide a probable timetable for the acquisition process from the initial meeting through closing.

### **Step 4 - Appraisal, Review Appraisal, Estimates of Compensation and Just Compensation.**

1. Coordinate appraisals and property visits with property owners.
2. Preparation of property appraisals by a certified appraiser.
3. Appraisals reviewed by a review appraiser when values exceed \$10,000.
4. Primary appraisals and review appraisals are reviewed by the Acquisition Agent. Once reviewed, the Acquisition Agent will recap values by property and request just compensation.

**Step 5 - Offer and Negotiation (No offers will be made without Just Compensation set by City Council or their designee.)**

1. Provide an offer letter to each property owner in the amount of the approved just compensation. The offer letter will contain language on how to respond to the offer along with requirements needed for submitting a counter offer.
2. Continued negotiations and follow-up with the property owner through the acquisition process after the offer letter is sent.
3. Once agreeable terms with the property owner have been reached, SMH Consultants will provide that property owner a letter or email of commitment which outline the basic terms of the agreement.
4. If necessary, SMH Consultants will prepare an Administrative Settlement Report justifying a contract amount in excess of just compensation. This report will require client approval.
5. If all negotiation attempts have been exhausted, SMH Consultants will provide the client with a letter of impasse, recommending the condemnation process begins.

**Step 6 - Contracts and Closing**

1. Basic terms of the agreement with property owners will be shared with the real estate Attorney to draft the initial real estate agreement and applicable easement.
2. Once the agreement and easement(s) are drafted by the Attorney, SMH Consultants will coordinate with the property owners and client for review. If the client and the property owner are in concurrence with the draft agreement, it will be finalized and signed by both parties. SMH Consultants will facilitate contract signatures with both the client and the property owner.
3. At closing, the closing agent will provide the seller their proceeds and gather final signatures necessary to finalize the transaction.

**Sourcing and coordination of the tasks below. These tasks will be coordinated and managed by SMH Consultants.**

1. Order Certificate of Title or O&E Reports.
2. Survey and stake Right of Way boundaries.
3. Utilize Title Company to close the transactions.

**Acquisition Documentation Provided to the Client**

1. Negotiation log detailing all property owner contact and negotiations.
2. Property owner correspondence including letters, emails and text messages.
3. Owner contracting documents applicable to each acquisition.
4. Owner contact information.
5. Appraisals and review appraisals.

**Acquisition Notes**

1. These services do not include any relocation assistance services that may be required.
2. These services do not include condemnation services related to any of the acquisitions (i.e. testimony, depositions, condemnation filings). If condemnation becomes necessary those services will be billed at hourly rates. SMH will provide any information requested by the City for condemnation hearings.

**Services not Included but May be Required for the Construction Documents**

1. Dumpster enclosure design and details.
2. Structural design services.
3. Geotechnical engineering services
4. Retaining Wall Design for walls over three (3) feet high.
5. Lighting plan or details, if necessary.
6. All other services not identified in the above scope of services.

### **Additional Services**

1. Additional design services not include in the scope of services and/or construction observations services (site visits, construction observation, materials testing, and etc.) requested of SMH after the design and permit approval will be provided at 2024 hourly rates.
2. Additional requested survey services to acquire as-built information, construction staking, and etc. will be provided at 2024 hourly rates.
3. Any services not identified in the fore mentioned scope of services requested by the owners will be provided at 2024 hourly rates.

### **Notes:**

1. This scope of work does not include any construction phase services. SMH can provide shop drawing review, inspection, construction engineering, site visits and materials testing if contracted to do so.
2. There may be studies (i.e. additional traffic, additional drainage, sewer and etc.) not identified in this scope of services that are required by the City of Dodge City, KDOT or other jurisdictional agencies that are not included in this scope of services. As the need for these studies arises a separate scope of work will be developed for approval by the client.
3. Any changes to the overall layout of the site, the design constraints, original design intent and so forth made midstream in the project will impact the ability to complete the work within fee proposed. These changes, if necessary, will constitute a revised and re-negotiated scope of work and fee.
4. All designs shall be provided on SMH title blocks and provided to City of Dodge City in PDF format.

# Fee Estimate

South Dodge CDs  
Dodge City, KS  
Prepared March 10, 2023

SC = Survey Crew  
CT = CADD Technician  
MPLS = Managing Principal Land Surveyor

RLS = Registered Land Surveyor  
MPE = Managing Principal Engineer  
PE = Project Engineer

DE = Design Engineer  
LA = Landscape Architecture  
CL = Clerical



	SC	CT	MPLS	RLS	MPE	PE	DE	LA	CL	Rate =	SC	CT	MPLS	RLS	MPE	PE	DE	LA	CL	Expenses	Totals Hours	Total Fee	
	Estimated Hours										160.00	110.00	170.00	140.00	225.00	155.00	130.00	130.00	60.00				170.00
<b>PART I - ADDITIONAL SURVEY</b>																							
3. Topo survey	60		8			2					\$9,600.00		\$1,360.00			\$310.00					70	\$11,270.00	
6. Survey Conversion		60										\$6,600.00									60	\$6,600.00	
																					<b>PART I - SURVEY =</b>		<b>\$17,870.00</b>
<b>PART II - FIELD CHECK (50%)</b>																							
1. Prelim Trail Plan & Profile						6	60	16								\$930.00	\$7,800.00	\$2,080.00			82	\$10,810.00	
2. Paving Details						4	6									\$620.00	\$780.00				10	\$1,400.00	
3. Prelim Trail Cross Sections						2	20									\$310.00	\$2,600.00				22	\$2,910.00	
4. Prelim Details for Ped Crossings						6	30									\$930.00	\$3,900.00				36	\$4,830.00	
5. Prelim Traffic Control Plans						2	8									\$310.00	\$1,040.00				10	\$1,350.00	
6. Prelim Grading Plan						4	40									\$620.00	\$5,200.00				44	\$5,820.00	
7. Prelim SESC						1	4									\$155.00	\$520.00				5	\$675.00	
8. Utility Coordination						1	2	4								\$155.00	\$260.00	\$520.00			7	\$935.00	
9. Field Check Submittal						1	4	1								\$155.00	\$520.00	\$130.00			6	\$805.00	
10. Amenity & Landscape Review								12										\$1,560.00			12	\$1,560.00	
11. Prelim Engineer Cost Estimate						1	8									\$155.00	\$1,040.00				9	\$1,195.00	
12. Field Check Walk Thru w/KDOT						8	2	4								\$1,240.00	\$260.00	\$520.00			14	\$2,020.00	
																					<b>PART II - FIELD CHECK =</b>		<b>\$34,310.00</b>
<b>PART III - OFFICE CHECK (95%)</b>																							
1. 95% Trail Plan & Profile						16	16									\$2,480.00	\$2,080.00				32	\$4,560.00	
2. Paving Details						1	2									\$155.00	\$260.00				3	\$415.00	
3. 95% Trail Cross Sections						1	16									\$155.00	\$2,080.00				17	\$2,235.00	
4. 95% Details for Ped Crossings						2	8									\$310.00	\$1,040.00				10	\$1,350.00	
5. 95% Traffic Control Plans						2	6									\$310.00	\$780.00				8	\$1,090.00	
6. 95% Grading Plan						8	16									\$1,240.00	\$2,080.00				24	\$3,320.00	
7. 95% SESC						1	2									\$155.00	\$260.00				3	\$415.00	
8. KDHE NOI Submittal						1	8									\$155.00	\$1,040.00				9	\$1,195.00	
9. 95% Amenity & Landscape Plans								80										\$10,400.00		\$100.00	80	\$10,500.00	
10. Office Check Submittal						1	4	1								\$155.00	\$520.00	\$130.00			6	\$805.00	
11. Specs for Appurtenances						1	4	2								\$155.00	\$520.00	\$260.00			7	\$935.00	
12. Eng Cost Estimate						1	4									\$155.00	\$520.00				5	\$675.00	
																					<b>PART III - OFFICE CHECK =</b>		<b>\$27,495.00</b>
<b>PART IV - FINAL CDS (95%)</b>																							
1. Final Trail Plan & Profile						2	8									\$310.00	\$1,040.00				10	\$1,350.00	
2. Paving Details						0.5	1									\$77.50	\$130.00				1.5	\$207.50	
3. Final Trail Cross Sections						0.5	4									\$77.50	\$520.00				4.5	\$597.50	
4. Final Details for Ped Crossings						1	4									\$155.00	\$520.00				5	\$675.00	
5. Final Traffic Control Plans						1	3									\$155.00	\$390.00				4	\$545.00	
6. Final Grading Plan						4	8									\$620.00	\$1,040.00				12	\$1,660.00	
7. Final SESC						0.5	1									\$77.50	\$130.00				1.5	\$207.50	
8. Final Amenity & Landscape Plans								40										\$5,200.00		\$100.00	40	\$5,300.00	
9. Office Check Submittal						1	4	1								\$155.00	\$520.00	\$130.00			6	\$805.00	
10. Specs for Appurtenances						1	4	2								\$155.00	\$520.00	\$260.00			7	\$935.00	
11. Eng Cost Estimate						1	4									\$155.00	\$520.00				5	\$675.00	
																					<b>PART IV - FINAL CDS =</b>		<b>\$12,957.50</b>
<b>PART V - EASEMENT ACQUISITION SERVICES</b>																							
1. Initial meetings with Client						2		2								\$310.00		\$260.00			4	\$570.00	
2. Property Owner(s) Letters						32										\$4,960.00					32	\$4,960.00	
3. Initial meetings with Property Owner(s)						40										\$6,200.00					40	\$6,200.00	
4. Appraisal/Review of Appraisal/Estimate of Compensation																			\$25,000.00			\$25,000.00	
5. Offer & Negotiations						65										\$10,075.00					65	\$10,075.00	
6. Contracts & Closings																			\$10,000.00			\$10,000.00	
7. Certificate of Title & O&E Reports																			\$3,000.00			\$3,000.00	
8. Survey & Stake ROW Boundaries	32		6								\$5,120.00		\$1,020.00								38	\$6,140.00	
9. Title Company to Close Transactions																				\$7,500.00		\$7,500.00	
																					<b>PART V - ACQUISITION =</b>		<b>\$73,445.00</b>
<b>Totals =</b>	92.00	60.00	14.00	0.00	0.00	224.50	311.00	165.00	0.00		\$14,720.00	\$6,600.00	\$2,380.00	\$0.00	\$0.00	\$34,797.50	\$40,430.00	\$21,450.00	\$0.00	\$45,700.00	866.50		

**Fee Estimate = \$166,077.50**



# Memorandum

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

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

**Date:** September 16, 2024

**Subject:** Determine the necessary Roadway, Utility, and School Access Improvements to 6<sup>th</sup> Avenue (Comanche St. to Soule St.) & Soule St. (Manor Dr. to 1<sup>st</sup> Ave.), ST 2408

**Agenda Item:** New Business

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**Purpose:** Gather the necessary information and provide concepts for road, utility, and school access improvements along Soule St. and 6<sup>th</sup> Ave.

**Recommendation:** Approve Consulting Service Agreement with SMH Consultants, P.A. in the amount of \$101,915.00 for the Discovery Phase of the Soule St. and 6<sup>th</sup> Ave. Corridors with looking at School Access Improvements on these corridors.

**Background:** Soule St. and 6<sup>th</sup> Ave. are Major Collector and Minor Arterial, respectively, located in an area with three schools which creates congestion in the mornings and afternoons. These two roadways have been identified for improvements, so in June of 2024 the City posted a Request for Qualifications (RFQ) to provide design services for the proposed roadway, utility, and school access improvements. We received five responses to the RFQ. City staff from multiple departments reviewed the submittals and scored them on using the specified criteria. SMH Consultants, P.A. received the highest score from the selection committee.

**City Commission Options:**

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

**Financial Considerations:**

Amount \$: \$101,915.00

Fund:

Budgeted Expense     Grant     Bonds     Other

**Legal Considerations:** The City will be entering into a contract with SMH Consultants, P.A. and will be bound by the provisions of this agreement.

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

**Attachments:** Consulting Service Agreement, Scope of Services, and Fee Estimate from SMH Consultants, P.A..

**Approved for the Agenda by:**

A handwritten signature in blue ink that reads "Ray Slattery, PE". The signature is written in a cursive style.

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

**CONSULTING SERVICES AGREEMENT**  
**LUMP SUM**

Client: <u>City of Dodge City</u>	Project: <u>6<sup>th</sup> and Soule</u>
Address: <u>P.O. Box 880</u> <u>806 N 2<sup>nd</sup> Avenue</u> <u>Dodge City, KS 67801</u>	<u>Discovery Phase</u>
Telephone: <u>620-225-8100</u>	Project Location: <u>6<sup>th</sup> and Soule</u>
Contact: <u>Ray Slattery, P.E.</u>	SMH Project Manager: <u>Jeff Hancock, P.E.</u>
Client Job No.: <u>ST 2408</u>	SMH Job No.: <u>2408-0307</u>

This AGREEMENT is made by and between **the City of Dodge City**, hereinafter referred to as “CLIENT”, and SMH Consultants, P.A., hereinafter referred to as “CONSULTANT”, for professional consulting services not presently specified under any other agreement between CLIENT and CONSULTANT. CONSULTANT agrees to provide client with requested consulting services more specifically described as follows, hereinafter referred to as the “PROJECT.” The PROJECT is commonly known as:

*6<sup>th</sup> and Soule Improvements - Discovery Phase*

The following Attachments are hereby incorporated into and made a part of this AGREEMENT:

- GENERAL CONDITIONS
- Attachment A: Scope of Services
- Attachment B: Fee Estimate
- Other:

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By signing this AGREEMENT, CLIENT acknowledges that it has read and fully understands this AGREEMENT and all attachments thereto. CLIENT further agrees to pay consultant for services described herein upon receipt of invoice by CLIENT.

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THE LUMP SUM NOT TO EXCEED FEE FOR CONSULTANT SERVICES IS \$101,915.00

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IN WITNESS WHEREOF, the parties hereto have made and executed this AGREEMENT.

CLIENT

CONSULTANT

By: \_\_\_\_\_  
AUTHORIZED REPRESENTATIVE

By: \_\_\_\_\_  
AUTHORIZED REPRESENTATIVE

TITLE: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

PLEASE SIGN AND RETURN ONE COPY TO SMH CONSULTANTS, P.A.



## **GENERAL CONDITIONS**

### **SECTION I – Services by CONSULTANT**

#### **1.1 Scope of Services**

CONSULTANT shall provide the certain services under this AGREEMENT as such services are described in ATTACHMENT A. The intent of the Scope of Work and the estimate contained in ATTACHMENT A is to identify the services to be provided by CONSULTANT. However, it is specifically understood that by written notice to and with the consent and agreement of CONSULTANT, CLIENT may increase the Scope of Work. These services may include the use of outside services, outside testing laboratories and special equipment.

#### **1.2 Fees**

The Fee Estimate for the above-described services is attached hereto and made a part of this AGREEMENT as ATTACHMENT B. It is mutually understood that the Fee set forth in ATTACHMENT B is binding.

### **SECTION II – Payment to CONSULTANT**

#### **2.1 Payment for Personnel Services**

##### **2.1.1 Payment**

Payment for the services rendered by CONSULTANT's personnel shall be based on the lump sum not to exceed fee for consultant services and in accordance with CONSULTANT's Fee Estimate, which is identified, attached hereto, and made a part of this AGREEMENT as ATTACHMENT B.

##### **2.2 Payment Conditions**

**2.2.1** CONSULTANT shall submit monthly invoices for the percent of work complete under this AGREEMENT.

**2.2.2** Invoices are due and payable upon receipt by CLIENT. Interest at a rate of one and one-half percent (1.5%) per month or the maximum allowed by law, will be charged on all past due amounts starting thirty (30) days after the date of invoice. Payment will first be credited to interest and then to principal.

**2.2.3** In the event of a disputed or contested invoice, only that portion so contested will be withheld from payment and the CLIENT will pay the undisputed portion.

**2.2.4** If CLIENT fails to make payment in full to CONSULTANT within sixty (60) days after the date of the disputed invoice, CONSULTANT may, after giving seven (7) days written notice to CLIENT, suspend services under this AGREEMENT until paid in full, including any and all applicable interest. CONSULTANT shall have no liability of any kind to CLIENT for delays or damages caused by such suspension of services. CLIENT agrees to pay all costs of collection, including reasonable attorneys' fees, incurred by CONSULTANT as a result of CLIENT's failure to make payments in accordance with this AGREEMENT.

##### **2.3 Independent Contractor**

**2.3.1** The parties acknowledge and agree that CONSULTANT will be providing services to CLIENT hereunder as an independent contractor and not as an employee. Accordingly, CLIENT shall have no responsibility for the collection or payment of any federal, state or local payroll tax in connection with any fees paid to CONSULTANT pursuant to this AGREEMENT, including, but not limited to, income taxes, Social Security taxes, unemployment compensation taxes, and any other fees, charges or licenses required by law.

**2.3.2** Because CONSULTANT is engaged in its own independent business, neither it nor its employees are eligible for, nor entitled to, and shall not participate in, any of CLIENT's pension, health or other fringe benefit plans, if any such plans exist. Such participation in these fringe benefit plans is limited solely to CLIENT's employees.

**2.3.3** Because CONSULTANT is engaged in its own independent business and is not an employee of CLIENT, CLIENT will not obtain workers' compensation insurance for CONSULTANT or its employees. The CONSULTANT agrees to obtain any legally required workers' compensation for itself and its employees

and to furnish a copy of such certificate of workers' compensation insurance to CLIENT, at CLIENT's request.

### **SECTION III – Terms of AGREEMENT**

#### **3.1 Term**

CONSULTANT's obligations to perform under this AGREEMENT shall extend from the date of execution until terminated by either party and/or the completion of the PROJECT, whichever comes first.

#### **3.2 Termination of AGREEMENT**

In the event of breach by either party of the terms and conditions of the AGREEMENT and where such breach has not been rectified by the party in default within thirty (30) days of first being notified of such breach, this AGREEMENT may be terminated by the other party in writing. CLIENT may not terminate such AGREEMENT if CONSULTANT has made a good faith attempt to cure such default within the thirty (30) day period.

If, for any reason of force majeure (i.e., causes beyond the control and without the negligence or malfeasance of the party, including but not limited to: war, civil unrest, government action, flood, earthquake, epidemics) either party considers it no longer possible or safe for the CONSULTANT to carry out the duties specified, or should the AGREEMENT be invalidated for any other reason beyond the control of CLIENT or the CONSULTANT, the AGREEMENT may be terminated by either party without liability of any kind, with fifteen (15) day's written notice, provided that CLIENT will reimburse the CONSULTANT for services already satisfactorily performed and justifiable expenses incurred prior to communication of notice of termination.

#### **3.3 Payment for Work Upon Abandonment or AGREEMENT Termination**

If CLIENT terminates this AGREEMENT, CONSULTANT shall be paid on the basis of work completed to the effective date of termination. Payment for the work shall be as established under Section II above.

#### **3.4 Damages and Injunctive Relief**

The parties hereto recognize, acknowledge and agree that because of the damages that could be done to CONSULTANT by breach of any covenant contained in this Section 3.4 by CLIENT, CONSULTANT shall be entitled, in addition to any other rights or remedies afforded to CONSULTANT by law or under the terms of this AGREEMENT, to enforce these covenants, and all of their provisions, by injunction, specific performance or other relief in a court of law or equity. In the event of any breach or threatened breach by the CLIENT of the covenants contained in this section, CONSULTANT shall therefore be entitled, in addition to any other rights or remedies afforded by law or under this AGREEMENT, to any injunction restraining or prohibiting CLIENT from doing anything that violates the covenants contained in this AGREEMENT. All remedies set forth above shall be construed to be cumulative and not exclusive of other remedies granted to CONSULTANT herein or by law.

### **SECTION IV – General Considerations**

#### **4.1 Assignment and Responsibility for Personnel**

**4.1.1** The assignment of personnel and all phases of the undertaking of the services related to the PROJECT, which CONSULTANT shall provide hereunder, shall be subject to the general oversight and general guidance of CLIENT.

**4.1.2** While upon the premises of CLIENT or property under its control, all employees, agents and subconsultants of CONSULTANT shall be subject to CLIENT's rules and regulations respecting its property and the conduct of its employees thereon, provided such rules and regulations do not interfere with CONSULTANT providing its services to CLIENT.

**4.1.3** However, it is understood and agreed that in the performance of the work and obligations hereunder, CONSULTANT shall be and remain an independent contractor and that the employees, agents or

subconsultants of CONSULTANT shall not be responsible for the supervision and performance of all subconsultants which are to perform hereunder.

#### **4.2 Insurance**

CONSULTANT shall upon request furnish to CLIENT a certificate of insurance showing amounts and types of insurance carried by CONSULTANT.

#### **4.3 Compliance with Law**

**4.3.1** The CONSULTANT shall not discriminate against any independent contractor, employee or applicant for employment with respect to hiring, tenure, terms, conditions, or privileges of employment, because of race, color, religion, sex or national origin.

#### **4.4 Ownership and Reuse of Documents**

**4.4.1** All drawings, specifications, test reports and other materials and work products, which have been prepared or furnished by CLIENT prior to the AGREEMENT, shall remain CLIENT's property. CLIENT shall make available to CONSULTANT copies of these materials as is necessary for the CONSULTANT to perform the services requested hereunder.

**4.4.2** All drawing, specifications, test reports and other materials and work products, including computer aided drawings, designs and other data filed on electronic media which will be prepared or furnished by CONSULTANT (and CONSULTANT's independent professional associates and subconsultants) under this AGREEMENT, are instruments of service in respect of the PROJECT and CONSULTANT shall retain an ownership and property interest therein whether or not the PROJECT is completed. CLIENT may make and retain copies for information and reference in connection with the use and the occupancy of the PROJECT by CLIENT and others; however, such documents are not intended or represented to be suitable for reuse by CLIENT or others on extensions of the PROJECT or on any other project. Further, CONSULTANT makes no warranty as to the compatibility of computer data files with computer software and software releases other than that used by CONSULTANT in performing the services herein, and to the condition or availability of the computer data after an accepted period of thirty (30) days from delivery to CLIENT. Any reuse of such material without written verification or adaptation by CONSULTANT for the specific purpose intended will be at CLIENT's sole risk and without liability or legal exposure to CONSULTANT or to CONSULTANT's independent professional associates or subconsultants, and CLIENT shall indemnify and hold harmless CONSULTANT and CONSULTANT's independent professional associates and subconsultants from all claims, damages, losses and expenses including, but not limited to, attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle CONSULTANT to further compensation at rates to be agreed upon by CLIENT and CONSULTANT.

#### **4.5 Location of Underground Utilities**

It shall be the CLIENT's responsibility to locate and physically mark all underground utilities and structures, which lie within the work area prior to the start of subsurface investigations. The CONSULTANT may coordinate this work, on behalf of the CLIENT, through a third party. CLIENT shall indemnify and hold CONSULTANT harmless from any damages or delays resulting from unmarked or improperly marked underground utilities and structures. The parties agree and acknowledge that for reasons of safety, CONSULTANT will not begin work until the location of underground utilities has been accomplished.

#### **4.6 Subsurface Investigations**

In soils, foundation, groundwater, and other subsurface investigations, the actual characteristics might vary significantly between successive test points and sample intervals and at locations other than where observations, exploration, and investigations have been made. Because of the inherent uncertainties in subsurface evaluations, changed or unanticipated underground conditions may occur that could affect cost and/or execution of the PROJECT. These conditions and cost/execution effects are not the responsibility of the CONSULTANT. CLIENT shall indemnify and hold CONSULTANT harmless from any damages and delays resulting from such changes or unanticipated underground conditions.

#### **4.7 CONSULTANT's Personnel at PROJECT Site**

**4.7.1** The presence or duties of the CONSULTANT personnel at the PROJECT site, whether as onsite representatives or otherwise, do not make the CONSULTANT or its personnel in any way responsible for

those duties that belong to the CLIENT and/or construction contractor(s) or other entities, and do not relieve construction contractor(s) or any other person and/or entity of their obligations, duties, and responsibilities, including, but not limited to, all construction methods, means, techniques, sequences and procedures necessary for coordinating and completing all portions of the construction work in accordance with the PROJECT documents and any health or safety precautions required by such construction work. The CONSULTANT and its personnel have no authority to exercise any control over any construction contractor(s) or other entity or their employees in connection with their work or any health or safety precautions and have no duty for inspecting, noting, observing, correcting, or reporting on health or safety deficiencies of the construction contractor(s) or other entity or any other persons at the site except CONSULTANT's own personnel.

**4.7.2** The presence of CONSULTANT's personnel at a construction site is for the purpose of providing to CLIENT a greater degree of confidence that the completed work will conform generally to the PROJECT documents and that the integrity of the design concept as reflected in the PROJECT documents has been implemented and preserved by the contractor(s). CONSULTANT neither guarantees the performance of the contractor(s) nor assumes responsibility for contractor(s) failure to perform their work in accordance with the PROJECT documents. Contractor(s) shall indemnify and hold CONSULTANT harmless from any damages and delays resulting from changes or unanticipated underground conditions.

#### **4.8 Opinions of Cost, Financial Considerations and Schedules**

In providing opinions of cost, financial analysis, economic feasibility projections, and schedules for the PROJECT, the CONSULTANT has no control over the cost of labor, materials, equipment, or services furnished by others, or over the contractor(s) methods of determining prices, or over competitive bidding or market conditions. CONSULTANT's opinion of probable total PROJECT costs and construction costs are made on the basis of CONSULTANT's experience and qualifications and represent CONSULTANT's judgments and experience. CONSULTANT makes no warranty that the CLIENT's actual costs will not vary from the CONSULTANT's opinions, analyses, projections, or estimates. If CLIENT wishes greater assurance as to any element of the cost, feasibility or schedule of the PROJECT, CLIENT should employ an independent cost estimator, contractor, or other appropriate advisor at CLIENT's sole expense.

#### **4.9 Disposition of Samples and Equipment**

**4.9.1** No samples and/or materials will be kept by CONSULTANT longer than thirty (30) days after submission of the final report unless agreed otherwise by CLIENT and CONSULTANT in writing.

**4.9.2** In the event that samples and/or materials contain, or are suspected to contain, substances or constituents that are hazardous or detrimental to health, safety, or the environment as defined by relevant federal, state, or local statutes, regulations or ordinances, CONSULTANT will, after completion of testing, return such samples and materials to CLIENT, or have the samples and materials disposed of in accordance with CLIENT's directions and all applicable laws. CLIENT recognizes and agrees that CONSULTANT at no time assumes title to said samples and materials, and shall have no responsibility as a handler, generator, operator, transporter, or disposer of said samples and materials.

**4.9.3** All laboratory and field equipment contaminated in CONSULTANT's performance of services will be cleaned at CLIENT's expense. Contaminated consumables will be disposed of and replaced at CLIENT's expense. Equipment (including tools) which cannot be reasonably decontaminated shall become the property and responsibility of CLIENT. At CLIENT's expense, such equipment shall be delivered to CLIENT, or disposed of in the same manner as specified in paragraph 4.9.2 above. CLIENT agrees to pay CONSULTANT the fair market value of any such equipment which cannot reasonably be decontaminated and is delivered to CLIENT pursuant to this AGREEMENT.

#### **4.10 Discovery of Unanticipated Pollutant and Hazardous Substance Risks**

**4.10.1** If CONSULTANT, while performing services for CLIENT pursuant to this AGREEMENT, discovers pollutants and/or hazardous substances that pose unanticipated risks, it is hereby agreed that the scope of services, schedule and the estimated cost of CONSULTANT's services will be reconsidered and that this AGREEMENT shall immediately become subject to renegotiation or termination.

**4.10.2** In the event that the AGREEMENT is terminated because of the discovery of pollutants and/or hazardous substances posing unanticipated risks, it is agreed that CONSULTANT shall be paid for its total charges for labor performed and reimbursable charges incurred to the date of termination of this

AGREEMENT, including, if necessary, any additional labor or reimbursable charges incurred in demobilizing.

**4.10.3** CLIENT also agrees that the discovery of unanticipated pollutants and/or hazardous substances may make it necessary for CONSULTANT to take immediate measures to protect the health and safety of CONSULTANT's employees and the public. CONSULTANT agrees to notify CLIENT as soon as practically possible should unanticipated pollutants and/or hazardous substances be suspected or encountered. CLIENT hereby authorizes CONSULTANT to take measures that in CONSULTANT's sole discretion are justified to preserve and protect the health and safety of CONSULTANT's personnel and the public. CLIENT agrees to compensate CONSULTANT for the additional cost of taking such additional precautionary measures to protect CONSULTANT's employees' and the public's health and safety. Notwithstanding the foregoing, this paragraph 4.10.3 is not intended to impose upon CONSULTANT any additional duties or obligations.

## **SECTION V – Professional Responsibility**

### **5.1 Performance of Services**

CONSULTANT will strive to perform services under this AGREEMENT in a manner consistent with that level of care and skill ordinarily exercised by the members of the profession currently practicing in the same locality under similar conditions.

### **5.2 Third Party Beneficiaries**

CLIENT and CONSULTANT expressly agree that this AGREEMENT does not confer upon any third party any rights as a beneficiary to this AGREEMENT. CONSULTANT accepts no responsibility for damages, if any, suffered by any third party as a result of a third party's use of the work product, including reliance, decisions, or any other action taken based upon it. CLIENT agrees that CONSULTANT's compliance with any request by CLIENT to address or otherwise release any portion of the work product to a third party shall not modify, rescind, waive or otherwise alter provisions of this AGREEMENT nor does it create or confer any third party beneficiary rights on any third party.

## **SECTION VI – CONFIDENTIALITY AND NON-DISCLOSURE**

### **6.1 Confidential Information**

"Confidential Information" shall be defined as any and all data and information in any format or form, electronic, written or oral, relating to the business, affairs, personnel and/or operations of the CONSULTANT, which at any time may be communicated or revealed to the CLIENT, either directly or indirectly, including, but not limited to, contracts, reports, memoranda, legal documentation, financial data, present or future business plans or strategies, customer data, technology, design and techniques, personal information, and/or any information related to the negotiations in connection with the PROJECT and/or the underlying reason for entering into the PROJECT.

Confidential Information will not include information which:

- (a) has rightfully been in the possession of the CLIENT prior to the date of disclosure of such information by the CONSULTANT;
- (b) has been in the public domain prior to the date of disclosure of such information by the CONSULTANT;
- (c) later becomes part of the public domain by publication or by other means except by means of an unauthorized act or omission on the part of the CLIENT; or
- (d) is lawfully obtained by the CLIENT from a third party independent of the CONSULTANT who, to the knowledge of the CLIENT, is not under any obligation of confidence to the CONSULTANT.

### **6.2 Relevancy of Confidential Information**

The CLIENT understands that the CONSULTANT has endeavored to include in the Confidential Information those materials which the CONSULTANT believes to be relevant to the PROJECT, but the CLIENT acknowledges that there are no representations or warranties, whether express or implied, as to the accuracy

or completeness of the Confidential Information. Nothing herein shall be construed as a commitment by the CONSULTANT to enter into the PROJECT with the CLIENT.

### **6.3 Representatives of CLIENT**

The CLIENT agrees to provide the Confidential Information only to those of its directors, officers, employees, attorneys, agents, advisors and/or representatives directly concerned with the evaluation of the PROJECT who need to know the Confidential Information so as to enable the CLIENT to evaluate entering into the PROJECT (collectively, the “Representatives”) and who agree to be bound by this AGREEMENT.

### **6.4 Use of Confidential Information**

The CLIENT shall receive and maintain the Confidential Information in the strictest of confidence and shall only use the Confidential Information for the limited purpose of enabling the CLIENT to evaluate entering into the PROJECT with the CONSULTANT and for no other purpose or use, and shall not disclose such Confidential Information or any part thereof to any other person or entity except with the CONSULTANT’s prior written consent. Also, without the prior written consent of the CONSULTANT, the CLIENT will not disclose the fact that the Confidential Information has been made available to the CLIENT, that discussions or negotiations are taking place, or any other facts with respect to the PROJECT, including the status thereof, except as required by law, and then only upon furnishing the CONSULTANT with prompt written notice to allow the CONSULTANT to oppose such process.

### **6.5 Survival of AGREEMENT and Confidentiality**

This AGREEMENT shall survive the cessation of any discussions between the parties with regard to the PROJECT. The restrictions and obligations upon the parties under this AGREEMENT concerning the confidentiality and/or non-disclosure of the Confidential Information shall not expire or terminate.

### **6.6 Return of Confidential Information**

At the option of the CONSULTANT and upon its request, the CLIENT shall promptly return or destroy all notes, memoranda, correspondence, documents and any other material containing or derived from Confidential Information, including all copies thereof, either furnished hereunder or prepared by the CLIENT. Any destruction of such Confidential Information shall be confirmed in writing upon the request of the CONSULTANT.

### **6.7 Forced Disclosure**

In the event the CLIENT is required by judicial or administrative process to disclose the Confidential Information, the CLIENT shall promptly notify the CONSULTANT and allow the CONSULTANT to oppose such process.

### **6.8 No Conveyance of Confidential Information or Rights Therein**

Nothing in this AGREEMENT, nor any action taken by the CLIENT during any discussions or negotiations prior to the consummation of the PROJECT shall be construed to convey to the CLIENT any right, title or interest in the Confidential Information, or any license to use, sell, exploit, copy or further develop in any way any Confidential Information. No license is hereby granted or implied under any patent, copyright or trademark, any application for any of the foregoing, or any trade name, trade secret or other proprietary information, in which the CONSULTANT has any right, title or interest.

### **6.9 Enforcement**

Each party retains all rights and remedies with respect to the Confidential Information afforded it under any applicable laws of the State of Kansas and the United States both during and after the term of this AGREEMENT, including, without limitation, any trade secret or other laws designed to protect proprietary or confidential information. This AGREEMENT will be construed, interpreted and applied in accordance with the laws of the State of Kansas. It is hereby agreed that any and all claims, disputes or controversies whatsoever or arising from or in connection with this AGREEMENT shall be commenced, filed and litigated exclusively in the District Court of Riley County, Kansas or the applicable federal district court in Kansas, as determined by CONSULTANT, and the parties hereby consent to the personal jurisdiction of said court, and waive any objection to such jurisdiction and venue.

## **SECTION VII – Miscellaneous**

### **7.1 Applicable Law**

This AGREEMENT shall be construed in accordance with and governed by the laws of the state of Kansas, without regard to the principles of conflicts of law.

### **7.2 Severability**

If any of the provisions contained in this AGREEMENT are held for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision, and the AGREEMENT shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

### **7.3 Survival and Further Assurances**

It is the intention of the parties that all covenants, agreements, representations, warranties, and obligations of any kind contained in this AGREEMENT shall survive and continue after the completion of the PROJECT.

### **7.4 Headings**

Headings used in this AGREEMENT are for convenience only and shall not be used to interpret or construe its provisions.

### **7.5 Successors and Assigns**

**7.5.1** CLIENT and CONSULTANT each binds itself and its partners, successors, executors, administrators, assigns and legal representatives of such other party, in respect to all covenants, agreements, and obligations of this AGREEMENT.

**7.5.2** Neither CONSULTANT nor CLIENT are permitted to assign or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this AGREEMENT without the written consent of the other party. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this AGREEMENT. Notwithstanding the foregoing, nothing contained in this paragraph 7.5.2 shall prevent CONSULTANT from employing such independent consultants, associates, and subconsultants as it may deem appropriate to assist in the performance of services hereunder.

### **7.6 Counterparts**

This AGREEMENT shall be binding upon and shall inure to the benefit of each of the parties hereto and to their respective successors, heirs, personal representatives and assigns and may be executed in two (2) or more counterparts each of which shall be deemed an original but all of which together shall constitute but one and the same instrument.

### **7.7 Time is of the Essence**

Time shall be considered of the essence in the performance of this AGREEMENT.

### **7.8 Entire Agreement**

This AGREEMENT embodies the entire agreement between the parties hereto with respect to the transactions contemplated herein and supersedes any and all prior agreements and negotiations between the parties, whether written or oral. There have been and are no agreements, representations or warranties between the parties other than those set forth or provided herein.

### **7.9 Amendment and Modification**

This AGREEMENT may not be modified except in writing and signed by all parties.

### **7.10 Waiver of Breach**

The waiver by either party of a breach of any provision of this AGREEMENT shall not operate or be construed as a waiver of any subsequent breach by either party.

**7.11 Rights not Exclusive to CONSULTANT**

All rights and remedies granted in this AGREEMENT to CONSULTANT shall be cumulative and not exclusive of all the other rights and remedies which CONSULTANT may have at law or in equity, and CONSULTANT may exercise all or any of such rights and remedies at any one or more times without being deemed to have waived any or all other rights and remedies which CONSULTANT may have.

**7.12 Notices**

Unless contrary provisions are expressly set forth herein, all notices of any kind shall be in writing and shall, at the option of the party giving the notice, be

- (i) personally delivered; or
- (ii) delivered by reputable overnight courier; or
- (iii) sent by fax or email; or
- (iv) sent by certified or registered mail, postage prepaid;

to the person entitled to receive the notice at the last address provided in writing by such person to the other signatory hereto. All such notices shall be deemed given on the date the notice is actually received at the address indicated.

**7.13 Authority**

The undersigned agents that signed this AGREEMENT have proper corporate authority to bind their respective companies to the terms and conditions of this AGREEMENT.

**7.14 No Partnership**

The parties do not intend that any partnership or agency relationship be created by this AGREEMENT.

**7.15 Termination of the Agreement**

The County reserves the right and may elect to terminate this AGREEMENT at any time, with or without cause. The County shall compensate Consultant for the Services that have been completed to the County'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.

**Attachment A**  
**SCOPE OF SERVICES**

***6<sup>th</sup> Avenue and Soule Street***  
***Discovery Phase***  
***Scope of Professional Services***  
***Prepare: August 2024***

The discovery phase of the project is intended to accomplish several tasks to develop the project into a concept for design. These tasks will generally include project management, traffic study, stakeholder input, concept survey, and a concept plan. Information from the discovery phase of the project will be developed in a second phase of professional services for developing construction documents ready for bidding the project. The discovery phase of the project will include the following services.

**Project Management and Administration**

1. This task shall include management of SMH resources, various client and USD 443 communications, coordination with third parties, project accounting and invoicing, project scheduling, and various other task associated with delivery of the discovery phase of the project to the City of Dodge City.

**Traffic Impact Study and Recommendations**

1. Level of Service Analysis of traffic at the intersections of 6<sup>th</sup> Avenue and Soule Street, 6<sup>th</sup> Avenue and Morgan Street, 6<sup>th</sup> Avenue and Comanche Street, 1<sup>st</sup> Avenue and Soule Street, and 1<sup>st</sup> Avenue and Morgan Street; and queuing analysis. This work will include the following data collection by both the City of Dodge City and SMH.
  - a. The City of Dodge City will collect count data with their camera system and provide count data to SMH for analysis so recommendations for improvements at each of the intersections can be developed for recommendation to the city. These counts will occur over the course of 3 days at each intersection location when school is in session during the AM Peak Hour of drop-off at the nearby schools, the PM Peak Hour of pick-up at the nearby schools, and during the PM Peak Hour, generally not school related to the schools, of commuter traffic in the area. These counts will include both vehicular and pedestrian count data.
  - b. SMH will collect queuing information related to the drop off and pick up at the three nearby schools during the AM Peak Hour of drop off and the PM Peak Hour of pick up at the nearby schools to gain a better understanding of the queuing traffic volumes at the schools during peak times.

2. City of Dodge City to provide SMH with the last three years of accident data at the intersections of 6<sup>th</sup> Avenue and Soule Street, 6<sup>th</sup> Avenue and Morgan Street, 6<sup>th</sup> Avenue and Comanche Street, 1<sup>st</sup> Avenue and Soule Street, and 1<sup>st</sup> Avenue and Morgan Street, along 6<sup>th</sup> Avenue from Comanche Street to Soule Street and along Soule Street from Manor Drive to 1<sup>st</sup> Avenue. This data will be evaluated for accident themes potentially addressable with constructed improvements to be designed.
3. Drafting of a final report and recommendations in letter format for review by the city and eventual presentation to the City Commission.

### **Concept Survey**

1. Establishment and setting of project ground control in various locations throughout the area of potential improvements. Horizontal control shall be established in the Kansas State Plane South Zone Coordinates and vertical benchmarks set relative to the NAVD88 Datum. All control shall be No. 5 rebar set flush with the ground and marked with survey lathe unless on an existing structure or fixed point.
2. Aerial and LiDAR survey data gathered via an aerial sUAS platform to develop a contour map of 1-foot contours in the project area against aerial photography.
3. The surveyed location of all located utilities in the project area as located by third party facility locators.
4. The surveyed location of key property corners to establish an estimate of available right of way along the corridors impacted.
5. Development of maps of the project area to include aerial photography, 1-foot contours, color coded utilities, and property lines based on a mix of survey data and information provided by the City's GIS system.

### **Concept Plan**

1. Concept plan showing improvements against aerial photography. The concept plan shall show the location of all proposed paved areas, curb, pavement markings and lane configurations, pedestrian facilities, location of proposed signals, potential location of storm sewer facilities, and proposed utility improvements and relocations throughout the project area on both the city right of way and on USD 443 property.
2. Development of a cost estimate based on the concept plan. This estimate will include construction costs based on historical and recent unit costs, estimated design fees, right of way acquisition cost, contingency; and if applicable cost sharing based on guidance from the City of Dodge City and USD 443.

3. Research of potential and available third-party funding opportunities through the Kansas Infrastructure Hub.

### **Stakeholder Input and Coordination**

1. Meetings with USD 443 to include discussions regarding improvements on school property, policy changes related to the logistics of the drop off and/or pick-up of students at the nearby schools, cost sharing discussions, and general regular updates on the progression of the project.
2. Bi-weekly meetings (once the project is progressing in earnest) with the City of Dodge City to discuss the progression of the project, gather input, share information from other stakeholders, and generally coordinate the project coming together.
3. Meetings as required with the various utility companies to discuss the coordination of utility accommodations, utility relocations, and scheduling.
4. Meetings with the Dodge City Police Department and Dodge City Fire Department to gather input on proposed improvements and impacts related to emergency services the design team should be aware of or could potentially address in the design phase.
5. Open House Meeting to present the final conceptual design to the public. This will include boards of the proposed improvements, development of a project schedule, and attendance by at least 2 representatives of SMH.
6. Presentation of the final concept, cost estimates, and other information gathered in the discovery phase to the City Commission at a work session.

**Attachment B**  
**FEE ESTIMATE**

# Fee Estimate

City of Dodge City  
6th and Soule Discovery Phase  
Exhibit B  
Prepared September 2024

SC = Survey Crew  
CT = CADD Technician  
MPLS = Managing Principal Land Surveyor

LA = Landscape Architect  
MPE = Managing Principal Engineer  
PE = Project Engineer

OPSC = One Person Survey Crew  
PRE = Principal Engineer  
CL = Clerical



	SC	CT	MPLS	LA	MPE	PE	OPSC	PRE	CL	Rate =	SC	CT	MPLS	LA	MPE	PE	OPSC	PRE	CL	Expenses	Totals Hours	Total Fee	
	Estimated Hours										Estimated Fee												
<b>Project Management and Administration</b>																							
1. Project Management and Administration				10	10				10					\$1,300.00	\$2,250.00					\$600.00	30	\$4,150.00	
																					<b>Phase I Total =</b>		<b>\$4,150.00</b>
<b>Traffic Impact Study and Recommendation</b>																							
1. Level of Service Analysis								80												\$16,000.00	80	\$16,000.00	
2. Analysis of Traffic Crash Data								8												\$1,600.00	8	\$1,600.00	
3. Drafting of Final Report					8			66							\$1,800.00					\$13,200.00	74	\$15,000.00	
																					<b>Phase II Total =</b>		<b>\$32,600.00</b>
<b>Concept Survey</b>																							
1. Project Control	16		8	2							\$2,560.00		\$1,360.00	\$260.00							26	\$4,180.00	
2. Aerial and LiDAR Survey	20	16			1						\$3,200.00	\$1,760.00			\$225.00						37	\$5,185.00	
3. Utility Locates	40										\$6,400.00										40	\$6,400.00	
4. Establishment of ROW	40	16	4	8							\$6,400.00	\$1,760.00	\$680.00	\$1,040.00							68	\$9,880.00	
5. Survey Map		40			1							\$4,400.00			\$225.00						41	\$4,625.00	
																					<b>Phase III Total =</b>		<b>\$30,270.00</b>
<b>Concept Plan</b>																							
1. Concept Plan					8	100		8							\$1,800.00	\$15,500.00				\$1,600.00	116	\$18,900.00	
2. Cost Estimate					1	8									\$225.00	\$1,240.00					9	\$1,465.00	
3. Third Party Funding Research					8			6							\$1,800.00					\$1,200.00	14	\$3,000.00	
																					<b>Phase IV Total =</b>		<b>\$23,365.00</b>
<b>Stakeholder Input and Coordination</b>																							
1. USD 443 Meetings				4										\$520.00							4	\$520.00	
2. Bi-Weekly Meetings with City				16	8						\$2,080.00	\$1,800.00									24	\$3,880.00	
3. Utility Coordination				8							\$1,040.00										8	\$1,040.00	
4. Meetings with PD And DCFD				4							\$520.00										4	\$520.00	
5. Open House Meeting				4	4	16		4			\$520.00	\$900.00	\$2,480.00						\$800.00	\$160.00	28	\$4,860.00	
6. CC Presentation				2	2						\$260.00	\$450.00									4	\$710.00	
																					<b>Phase III Total =</b>		<b>\$11,530.00</b>

**Fee Estimate = \$101,915.00**



# Memorandum

**To:** Nick Hernandez, City Manager and City Commissioners  
**From:** Nicole May, Finance Director  
**Date:** September 11, 2024  
**Subject:** Approval of Presbyterian Manors, Inc. Health Care Facilities Revenue Bonds  
**Agenda Item:** New Business

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**Recommendation:** I recommend the City Commission support Resolution 24-297 adopted by the City of Wichita determining the advisability of issuing health care facilities revenue bonds for Presbyterian Manors, Inc. in an amount not to exceed \$90,000,000.

**Background:** The City of Wichita has acted as issuer of bonds on behalf of Presbyterian Manors Inc (PMI) since 1990 to finance improvements to PMI communities throughout Kansas. Having a single issuer enables PMI to have an integrated financing structure, which benefits PMI and all the communities due to improved borrowing costs. In 2013, the City of Dodge City entered into an Interlocal Cooperation Agreement with the City of Wichita to enable Wichita to be the issuer of the bonds. This agreement will terminate in 2054.

#### **PMI Project Financing**

By letter dated September 4, 2024, the City of Wichita formally requested the Certificate of City Clerk from the City of Dodge City approving the issuance of the bonds. The proceeds of which will be used by PMI to (1) refund all or a portion of the City of Wichita, Kansas Health Care Facilities Revenue Bonds Series IV-A, 2013 and Series IV-A, 2014; (2) to finance the acquisition, construction and equipping of improvements to senior living and health care facilities located within the State of Kansas operated by PMI. One of the facilities financed by the Refunded Bonds and potentially constituting a portion of the project is located within the City of Dodge City, Kansas.

**Justification:** To assist Presbyterian Manors in service Dodge City by facilitating the issuance of health care facilities revenue bonds through the City of Wichita.

**Financial Considerations:** There is no financial considerations. The bonds will be responsibility of Presbyterian Manors, Inc.

**Purpose/Mission:** On-going Improvement – We value progress, growth and new possibility by providing and preparing for the community’s future.

**Legal Considerations:** None

**Attachments:** Certificate of City Clerk and City of Wichita Resolution No. 24-297



September 4, 2024

City Commission  
City of Dodge City  
806 N 2nd Avenue  
P.O. Box 880  
Dodge City, Kansas 67801-0880

Re: Not to Exceed \$90,000,000  
City of Wichita, Kansas  
Health Care Facilities Revenue Bonds  
(Presbyterian Manors, Inc.)

Attached is a copy of Resolution No. 24-297 (the "Resolution") adopted by the City Council of the City of Wichita, Kansas, on September 3, 2024, declaring an intent to issue its Health Care Facilities Revenue Bonds (Presbyterian Manors, Inc.), in an aggregate principal amount of not to exceed \$90,000,000 (the "Bonds") pursuant to K.S.A. 12-1740 *et seq.* and K.S.A. 10-116a (collectively, the "Act") to provide funds to: (a) refund all or a portion of the City of Wichita, Kansas Health Care Facilities Revenue Bonds (Presbyterian Manors, Inc.), Series IV-A, 2013 and Series IV-A, 2014 (collectively, the "Refunded Bonds"); and (b) to finance the acquisition, construction and equipping of improvements to senior living and health care facilities located within the State of Kansas operated by Presbyterian Manors, Inc. (collectively, the "Project"). One of the facilities financed by the Refunded Bonds and potentially constituting a portion of the Project is located within the City of Dodge City, Kansas (the "City"). The Resolution is provided pursuant to a portion of the Act (K.S.A. 12-1741a) for consideration and approval by the City Commission. Approval may be affirmatively made by action of the City Commission, or will be deemed made if the City Commission fails to disapprove the issuance of the Bonds within seven business days after its next regular meeting following receipt of this request. Attached hereto is a form of Certificate of City Clerk acknowledging receipt of this letter and Resolution and evidencing action or in-action by the City Commission of the City.

The Bonds are special obligations of the City of Wichita payable only from rental payments to be made by Presbyterian Manors, Inc. and shall not be an obligation payable in any manner of the City or the City of Wichita.



CITY OF WICHITA, KANSAS



Jamie Buster, City Clerk

Enclosure

**CERTIFICATE OF CITY CLERK  
CITY OF DODGE CITY, KANSAS**

STATE OF KANSAS            )  
  )SS:  
COUNTY OF FORD         )

The undersigned, City Clerk for the City of Dodge City (the "City"), hereby certifies in connection with the issuance by the City of Wichita, Kansas ("Wichita") of its Health Care Facilities Revenue Bonds (Presbyterian Manors, Inc.) (the "Bonds"):

The City Clerk, on behalf of the City Commission, received on September \_\_, 2024, a written request from the Wichita City Clerk, submitted pursuant to K.S.A. 12-1741a, to approve adoption of Resolution No. 24-297 (the "Resolution") adopted by the City Council of the City of Wichita, Kansas, on September 3, 2024 regarding the issuance of the Bonds.

1. The undersigned transmitted a copy of the Resolution to the City Commission of the City (the "Governing Body").
2. The next regular meeting of the Governing Body following receipt of the Resolution was held on September \_\_, 2024.
3. Please select the appropriate action:
  - The Governing Body approved the issuance of the Bonds at such meeting.
  - No action was taken by the Governing Body at such meeting to approve or disapprove the issuance of the Bonds and no written notice specifically disapproving the issuance of the Bonds was delivered by the City Clerk to the Wichita City Clerk within seven business days after such meeting.
  - The Governing Body disapproved the issuance of the Bonds at such meeting and a written notice of such disapproval was delivered by the City Clerk to the Wichita City Clerk within seven business days after such meeting.

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

\_\_\_\_\_  
City Clerk, City of Dodge City, Kansas

(SEAL)

**RESOLUTION NO. 24-297**

**A RESOLUTION OF THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS DETERMINING THE ADVISABILITY OF ISSUING HEALTH CARE FACILITIES REVENUE BONDS FOR THE PURPOSE OF FINANCING OR REFINANCING THE ACQUISITION, CONSTRUCTION, IMPROVEMENT AND EQUIPPING OF SENIOR LIVING AND HEALTH CARE RELATED FACILITIES; AND AUTHORIZING EXECUTION OF RELATED DOCUMENTS**

**WHEREAS**, the City of Wichita, Kansas (the “City”) is a municipal corporation, duly created, organized and existing under the Constitution and laws of the State of Kansas (the “State”); and

**WHEREAS**, the City Council (the “Governing Body”) of the City desires to promote, stimulate and develop the general economic welfare and prosperity of the City, and thereby to further promote, stimulate and develop the general economic welfare and prosperity of the State; and

**WHEREAS**, pursuant to the provisions of the Kansas Economic Development Revenue Bond Act, as amended and codified in K.S.A. 12-1740 *et seq.* and K.S.A. 10-116a (collectively, the “Act”), the City is authorized to issue revenue bonds for such purposes and to issue revenue bonds for the purpose of refunding such bonds; and

**WHEREAS**, pursuant to the provisions of the Act, the City has heretofore issued multiple series of health care facilities revenue bonds for the purpose of financing or refinancing the acquisition, construction, renovation and equipping of a senior living and health care facility and corporate office facility (collectively, the “Wichita Facilities”) located within the corporate limits of the City for the benefit of Presbyterian Manors, Inc., a Kansas not for profit corporation (the “Corporation”); and

**WHEREAS**, the City has, pursuant to K.S.A. 12-2901 *et seq.*, as amended (the “Interlocal Cooperation Act”), previously entered into interlocal cooperation agreements with the cities of Arkansas City, Clay Center, Dodge City, Emporia, Ft. Scott, Lawrence, Newton, Parsons, Salina, and Topeka, Kansas (the “Participants”) for the purpose of acting as issuer of health care facilities revenue bonds for the purpose of financing or refinancing the acquisition, construction, renovation and equipping of senior living and health care facilities located within the city limits of the Participants (collectively, the “Participant Facilities”); and

**WHEREAS**, the City has heretofore issued its Health Care Facilities Revenue Bonds (Presbyterian Manors, Inc.), Series IV-A, 2013 and Series IV-B, 2013 (collectively, the “Series 2013 Bonds”), the proceeds of which were used to: (a) acquire, construct, improve, equip, reimburse or refinance the costs of improvements to the Wichita Facilities and certain of the Participant Facilities; and (b) refund certain of the City’s then outstanding revenue bonds previously issued for the benefit of the Corporation; and

**WHEREAS**, the City has heretofore issued its Health Care Facilities Revenue Bonds (Presbyterian Manors, Inc.), Series IV-A, 2014 (the “Series 2014 Bonds”), which were issued to acquire, construct, improve, equip, reimburse or refinance the costs of improvements to the Wichita Facilities; and

**WHEREAS**, the City has heretofore issued its Health Care Facilities Revenue Bonds (Presbyterian Manors, Inc.), Series I, 2018 (the “Series 2018 Bonds”), the proceeds of which were used to: (a) acquire existing senior living and health care facilities located in the City of Olathe, Kansas (the “Olathe Facility”); (b) refund and refinance revenue bonds issued by the City of Olathe, Kansas for the Olathe Facility; and (c) construct, improve, equip, reimburse or refinance the costs of improvements to the Olathe Facility, the Wichita Facilities and certain of the Participant Facilities; and

**WHEREAS**, the City has heretofore issued its Health Care Facilities Revenue Bonds (Presbyterian Manors, Inc.), Series III, 2019 (the “Series 2019 Bonds”), the proceeds of which were used to: (a) refund a portion of the Series 2013 Bonds and Series 2014 Bonds; and (b) construct, improve, equip, reimburse or refinance the costs of improvements to the Wichita Facilities, the Olathe Facility and certain of the Participant Facilities; and

**WHEREAS**, the Wichita Facilities, the Participant Facilities and the Olathe Facility (collectively, the “Facilities”) are leased by the City to the Corporation; and

**WHEREAS**, the Governing Body determines it to be advisable and in the interest and for the welfare of the City and its inhabitants that revenue bonds of the City be authorized and issued, in one or more series, for the purpose of providing funds to: (a) refund all or a portion of the Series 2013 Bonds and Series 2014 Bonds (collectively, the “Refunded Bonds”); and (b) to finance all or a portion of the acquisition, construction and equipping of improvements to the Facilities (collectively, the “Project”).

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

**Section 1. Public Purpose.** The Governing Body hereby finds and determines that the Project and the refinancing of the debt represented by the Refunded Bonds will promote, stimulate and develop the general economic welfare and prosperity of the City, and thereby further promote, stimulate and develop the general economic welfare and prosperity of the State.

**Section 2. Authorization to Acquire Project; Intent to Issue Bonds.** The City is hereby authorized to proceed with the Project and the refinancing of the Refunded Bonds and to issue its revenue bonds, in one or more series, in an aggregate principal amount not to exceed \$90,000,000 (collectively, the “Bonds”) to pay the costs thereof, subject to satisfaction of the conditions of issuance set forth herein.

**Section 3. Conditions to Issuance of Bonds.** The issuance of the Bonds is subject to: (a) the Corporation’s written acceptance of a Letter of Intent containing the City’s conditions to the issuance of the Bonds (the “Letter of Intent”) in accordance with the City of Wichita/Sedgwick County Economic Development Guidelines (the “Guidelines”); (b) the successful negotiation and sale of the Bonds to a purchaser or purchasers to be determined by the Corporation and acceptable to the City (the “Purchaser”), which sale shall be the responsibility of the Corporation and not the City; (c) the receipt of the approving legal opinion of Gilmore & Bell, P.C. (“Bond Counsel”) in form acceptable to the City, the Corporation and the Purchaser; (d) the obtaining of all necessary governmental approvals to the issuance of the Bonds; and (e) the commitment to and payment by the Corporation or Purchaser of all expenses relating to the issuance of the Bonds, including, but not limited to: (i) expenses of the City and the City Attorney; (ii) any underwriting or placement fees and expenses; (iii) all legal fees and expenses of Bond Counsel; and (iv) all recording and filing fees, including fees of the Kansas Board of Tax Appeals.

**Section 4. Sales Tax Exemption.** The Governing Body hereby determines that pursuant to the provisions of K.S.A. 79-3601 *et seq.* (the “Sales Tax Act”), particularly K.S.A. 79-3606(b) and (d) and other applicable laws, sales of tangible personal property or services purchased in connection with construction of the Project and financed with proceeds of the Bonds are entitled to exemption from the tax imposed by the Sales Tax Act; provided proper application is made therefore and compliance with State Department of Revenue procedures and guidelines. In the event that the Bonds are not issued for any reason, the Corporation will not be entitled to a sales tax exemption under the terms of the Sales Tax Act and will remit to the State Department of Revenue all sales taxes that were not paid due to reliance on the sales tax exemption certificate granted hereunder.

**Section 5. Reliance by Corporation; Limited Liability of City.** It is contemplated that in order to expedite acquisition of the Project and realization of the benefits to be derived thereby, the Corporation may incur temporary indebtedness or expend its own funds to pay costs of the Project prior to the issuance of the Bonds; provided that such expenditures incurred prior to the issuance of the Bonds are at the risk of the Corporation that the Bonds will actually be issued. Proceeds of Bonds may be used to reimburse the Corporation for such expenditures made not more than 60 days prior to the date this Resolution is adopted, and as provided by §1.150-2 of the U.S. Treasury Regulations. The Bonds herein authorized and all interest thereon shall be paid solely from the revenues to be received by the City from the Corporation’s operation of the Facilities and not from any other fund or source. The City shall not be obligated on such Bonds in any way, except as herein set out. In the event that the Bonds are not issued, the City shall have no liability to the Corporation.

**Section 6. Execution and Delivery of Documents.** The Mayor is hereby authorized to execute the Letter of Intent, and the City Clerk is authorized to deliver executed copies of this Resolution and the Letter of Intent to the Corporation. After compliance with the provisions of the Letter of Intent by the Corporation has been demonstrated, the Mayor and City Clerk are authorized to execute a bond purchase agreement with the Purchaser and the Corporation for the sale of the Bonds in a form satisfactory to the City Attorney and Bond Counsel.

**Section 7. Further Action.** The Mayor, City Clerk and other officials, employees and agents of the City, including the City Attorney and Bond Counsel, are hereby further authorized and directed to take such other actions as may be appropriate or desirable to accomplish the purposes of this Resolution, including, but not limited to: (a) execution on behalf of the City of the information statement regarding the proposed issuance of the Bonds to be filed with the State Board of Tax Appeals pursuant to the Act; (b) cooperate with the Corporation in filing an application for a sales tax exemption certificate with the Kansas Department of Revenue with respect to Bond-financed property; (c) providing for timely notification to the Trustee for the Refunded Bonds to call such bonds for redemption on such permitted redemption date as the Corporation shall request in writing; (d) cooperate with the Corporation to maintain any *ad valorem* property tax exemption for the Facilities which is consistent with the Corporation’s charitable purposes, and execute such documents in connection therewith as are approved by the City Attorney; and (e) dissemination of this Resolution or other notices as may be required by the Act.

**Section 8. Effective Date.** This resolution shall become effective upon adoption by the Governing Body and shall remain in effect until December 31, 2025, unless extended by affirmative vote of a majority of the Governing Body.

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# Memorandum

**To:** Nick Hernandez, City Manager and City Commissioners  
**From:** Ray Slattery, PE, Director of Engineering & Melissa McCoy, Assistant City Manager  
**Date:** September 16, 2024  
**Subject:** Approve the Memorandum of Understanding for the Comanche Trail Agreement with the Dodge City Country Club  
**Agenda Item:** New Business

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**Purpose:** To acquire a recreational easement from the Dodge City Country Club required for the construction of the Gunsmoke/Comanche St. Trail extension.

**Recommendation:** Approve the Memorandum of Understanding (MOU) of the Comanche Trail Agreement with the Dodge City Country Club.

**Background:** The City Commission previously approved Resolution 2022-15 for the KDOT Transportation Alternative grant to develop the Comanche extension to expand the existing walking trails from 1<sup>st</sup> Avenue and Comanche east to Avenue K. KDOT’s share of the project was set at \$872,776. However, we have been notified that KDOT will be able to increase that funding amount and will be responsible for 80% of the project cost even if it is greater than the \$827,776.00. At the time of the application the City’s match for this project was \$216,942.00.

In order to construct the Gunsmoke/Comanche St. Pedestrian/ Bicycle Trail extension, the City needs to acquire a recreational easement from the Dodge City Country Club (DCCC) for the trail. Due to the construction of the trail and how it will affect the grounds, the MOU agreement includes costs of sprinkler replacement, removal of existing trees and replacement trees, and the relocation of a section of the golf cart path near tee box 12 and green 16. The City will also provide signage to inform pedestrians of the risk of golf balls in the area. Included in the trail project construction, the Club House and Maintenance Shop drives off Comanche St. will be reconstructed. The drainage flume near Ave. E and Comanche St. will also be reconstructed as these are all affected by the trail crossing.

**City Commission Options:**

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

**Financial Considerations:** Bids were acquired to determine the cost of the improvements which include:

Sprinkler Replacement	\$9,000.00
Golf Cart Path	\$19,800.00
Hole 16 Landscaping	\$10,000.00
Split Rail Fence	<u>\$17,801.00</u>
<b>TOTAL</b>	<b>\$56,601.00</b>

Funds: 46630300 442001

Budgeted Expense  Grant  Bonds  Other

**Legal Considerations:** The City Attorney developed the agreement and reviewed and approved all changes. City Staff and the City Attorney have met with the Dodge City Country Club Board of Directors, and they have approved the terms of this agreement.

**Mission/Values:** Approving this agreement aligns with the City's Core Values of Working Towards Excellence and Ongoing Improvement.

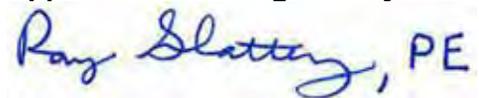
**Attachments:**

Comanche Trail Extension Image

Dodge City Country Club

Memorandum of Understanding for the Comanche Trail Agreement

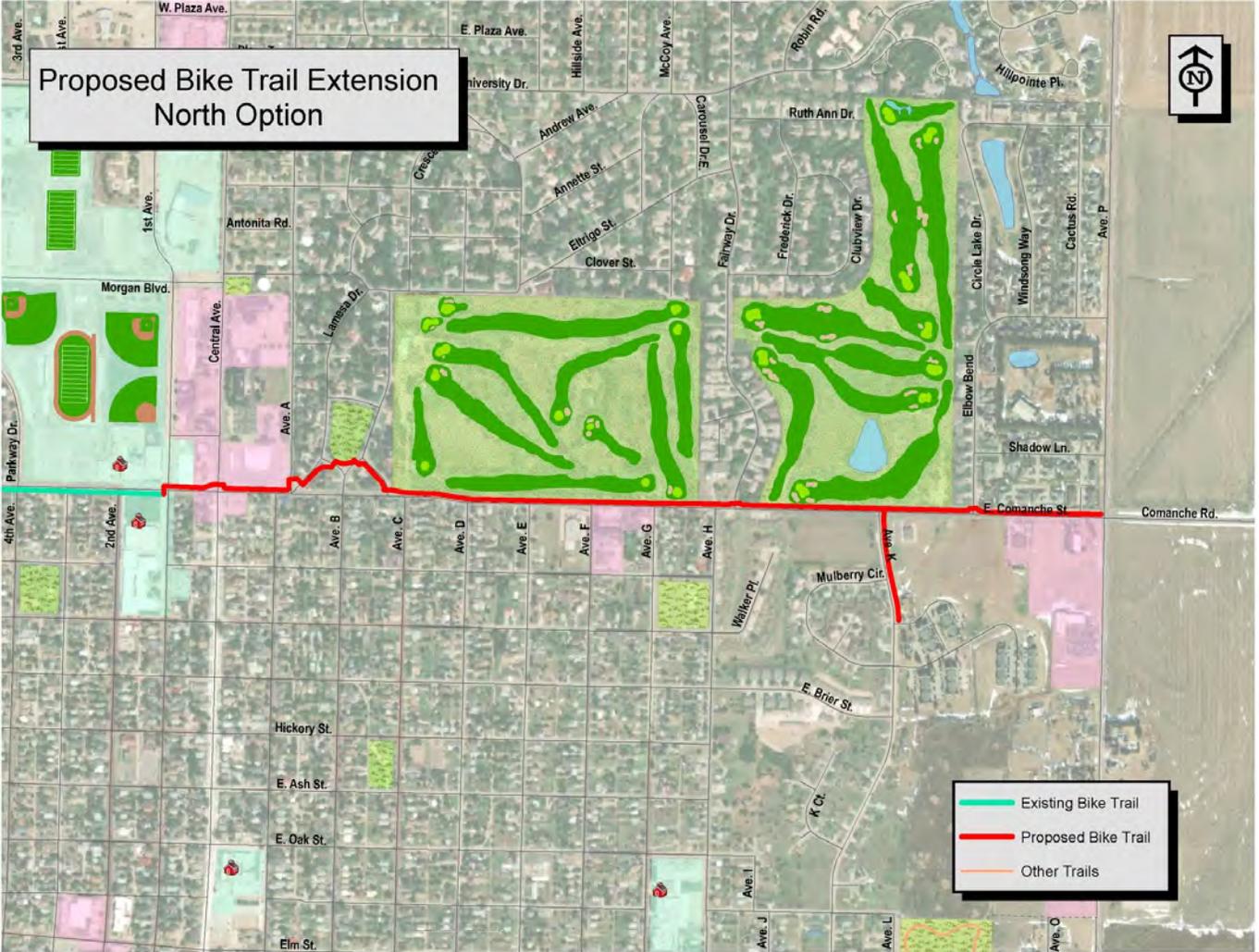
**Approved for the Agenda by:**



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Ray Slattery, Dir. Of Engineering Services

# Proposed Bike Trail Extension North Option



September 12, 2024

**MEMORANDUM OF UNDERSTANDING**  
Comanche Trail Agreement  
(City of Dodge City and Dodge City Country Club 2024)

By this Memorandum of Understanding and Intent, the City of Dodge City, a municipal corporation located in Dodge City, Kansas with an address of 100 Chaffin Rd., Dodge City, KS 67801 (hereinafter, “City”) and Dodge City Country Club a domestic not-for-profit corporation operating at 1900 Country Club Drive, Dodge City, KS 67801 (hereinafter, “Country Club”) (collectively, “the Parties”) evidence their mutual intent and desire to enter into a formal agreement or agreements to provide the construction of a recreation trail known as the Comanche Trail through the Club’s property.

WHEREFORE, the City holds core values which include prioritizing ongoing improvement, working toward excellence, and safety; and

WHEREFORE, in pursuit of furthering these goals, the City acknowledged paved walking trails open year-round provide an essential element to the health and quality of life for a community and adopted the Trails Master Plan; and

WHEREFORE, as part of the plan, a trail system shall be established providing the community of Dodge City with the benefit of paved walking trails; and

WHEREFORE, the City desires to construct a portion of this trail system through land owned by the Country Club; and

WHEREFORE, the Country Club agrees to provide the City with the necessary land by granting the City a trail easement as described herein, for good and valuable consideration described herein; and

WHEREFORE, in recognition of the benefits to both the City and Country Club resulting from their mutual cooperation, the City and Country Club hereby express their intent to formalize and enter into an agreement to achieve such benefits. The Parties intend by this instrument to enter into a binding agreement.

THEREFORE, the Parties hereby agree as follows:

1. **Recreation Easement**: The Parties hereby enter into agreement whereby the Country Club grants to the City a recreation easement more particularly described as:

A tract of land in the Southwest Quarter of Section 24, Township 26 South, Range 25 West of the Sixth Principal Meridian, Dodge City, Ford County, Kansas described as follows:

September 12, 2024

Beginning at a point that is N 00°41'16" E 30.00 feet from the Southeast Corner, Southwest Quarter of said Section 24; thence N 88°42'00" W 1494.40 feet; thence N 88°16'20" W 204.69 feet; thence N 88°42'00" W 281.13 feet; thence N 00°38'46" E 8.84 feet; thence S 83°26'35" E 20.65 feet; thence S 88°40'54" E 172.72 feet; thence on a curve to the right, length of 116.69 feet, radius of 815.97 feet, chord of S 85°33'59" E 116.59 feet; thence S 80°04'55" E 123.08 feet; thence along a curve to the left, length of 78.70 feet, radius of 653.83 feet, chord of S 85d28'00" E 78.65 feet; thence S 88°41'37" E 920.41 feet; thence S 88°51'14" E 547.67 feet; thence S 00°41'16" W 9.01 feet to the point of beginning, containing 0.335 acres.

Subject to easements and restrictions of record.

and shown approximately in the attached Exhibit A in the area marked "permanent easement" (hereinafter, "Recreation Easement"). Upon execution of this agreement, the City may record this agreement with the Register of Deeds for Ford County, Kansas. Upon request of the City, the Country Club shall execute and deliver to the City any documents in connection with such recording. Upon execution of this agreement, the Country Club shall cooperate with the City to execute a deed granting the Recreation Easement shown in Exhibit A to the City and the Parties shall cooperate to cause the Recreation Easement to be duly recorded with the Register of Deeds in Ford County, Kansas in accordance with applicable law.

2. **Comanche Trail**: Upon the Recreation Easement, the City shall construct a paved walking path which shall be constructed in accordance with plans and specifications as prepared by the City's consulting engineers (hereinafter, the "Comanche Trail") and which shall be owned and operated by the City for the purpose of public use and enjoyment as a paved recreation trail.

The City shall ensure the contractors constructing the Comanche Trail shall hold the required insurance and provide a Certificate of Insurance (COI) that meets the contract requirements. This insurance shall cover any potential incidence of injury to persons or machinery which may occur on an active golf course.

Any grass area on the Country Club property disturbed by the construction of the Comanche Trail shall be re-seeded by the City. The City shall communicate with the Country Club regarding species of grass.

3. **Temporary Easement**: For purposes of constructing the Comanche Trail, the Country Club grants the City temporary access in the area labeled on the attached Exhibit B as

“Temporary Easement.” The City shall have access to this area during construction of the Comanche Trail and for one year thereafter.

4. **Sprinkler Replacement**: The City shall provide the Country Club with nine thousand dollars (\$9,000) for the purpose of replacement of sprinkler heads which require relocation due to the Comanche Trail project. Relocation of the sprinkler heads shall be done by the Country Club or its designee and shall be at the Country Club’s sole discretion so long as the location of the sprinkler heads does not interfere with the Comanche Trail.
5. **Vegetative Growth Maintenance**: The Country Club shall maintain grass and other growth around the Comanche Trail so that it remains free and clear of vegetative obstruction.
6. **Pavement Repair**: The Country Club shall promptly notify the City of any damage to the pavement surface of the Comanche Trail. Upon receiving such notice, the City shall take action to make repairs within a reasonable time.
7. **Trees**: The construction of the Comanche Trail may require the removal of certain trees. The City shall remove trees as necessary and replace them. The species and height of the replacement trees shall be determined by mutual oral or written agreement of the parties or their designees.
8. **Signage**: Prior to the opening of the Comanche Trail to the public, the City shall provide and place signage along the Comanche Trail informing those using the trail (hereinafter “Pedestrians”) to utilize the Comanche Trail at their own risk. The wording of the signage shall be at the discretion of the City but will be placed with the goal of informing Pedestrians that the Comanche Trail crosses an active golf course and Pedestrians assume all risk inherent in utilizing a walking path in such a location.
9. **Golf Cart Path**: The Parties understand the construction of the Comanche Trail will require the relocation of a portion of the Country Club’s existing paved path for golf carts. It is the intent of the Parties for the City to provide funding for relocation of the golf-cart path as shown in the attached Exhibit C subject to the following terms and conditions:
  - a. The City shall provide an amount not to exceed nineteen thousand eight hundred dollars (\$19,800) for the relocation of the golf-cart path. The relocation shall be completed in a manner that is satisfactory to both the City and the Country Club and in compliance with all applicable laws and regulations. The agreed sum shall be payable to the Country Club upon completion of the golf cart path relocation and submission of any required documentation as per the City’s standard procedures.
  - b. The Country Club shall be responsible for supervising the contractor’s performance, communicating with the contractor when necessary, and communicating any necessary information to the City.
  - c. If funds in addition to those initially approved shall become necessary, the Country Club shall seek approval of the additional funds from the City.

- d. In no event shall this paragraph nine (9) or its sub-paragraphs be construed to bind the City to pay any amount undetermined at the time of execution of this agreement. The Parties understand the City cannot be bound by contract provisions purporting to bind the City to pay undetermined amounts, and the City must follow cash-basis and budget laws which prohibit the City from being bound to pay unspecified amounts. Therefore, this paragraph expresses the Parties' intent to enter into a subsequent agreement regarding payment for relocation of the golf-cart path described herein.
10. **Split-Rail Fence Affected by Comanche Trail**: The Parties recognize the City or its designee may be required to remove portions of the fence to construct the Comanche Trail as designed. The Parties acknowledge and accept the City or its designee will be responsible only for the removal of the existing split-rail fence directly conflicting with the construction of the proposed Comanche Trail. Therefore, the City hereby agrees to provide materials necessary to repair and/or reconstruct three thousand two hundred feet (3,200ft) of the split-rail fence affected by the Comanche Trail. The City shall not be responsible for the construction of said split-rail fence, and the Country Club agrees that it shall bear responsibility for repairs and/or reconstruction of the split-rail fence after receiving the necessary materials for the split-rail fence from the City. The determination of what materials are necessary to be provided by the City shall be determined at the City's discretion, in consultation with the governing body of the Country Club or the governing body's designee. The City shall acquire bids for materials. Approval of bids for materials shall be subject to the discretion of the City Manager, unless such bids exceed the City Manager's approval authority, in which case approval shall be subject to the discretion of the City Commission.
11. **Split Rail Fence Unaffected by Comanche Trail**: The Country Club shall bear all responsibility for removing and replacing the portion of its split-rail fence which is not directly impacted by the Comanche Trail, including the cost of materials. The City shall waive permitting fees for the Country Club's construction of the split-rail fence.
12. **Hole Sixteen Landscaping**: In the area around hole sixteen (16), the Country Club desires not to construct fencing, but rather to cultivate landscaping. The City will provide an amount not to exceed ten thousand dollars (\$10,000) for said landscaping. The Country Club shall possess the authority and responsibility to plant and maintain the landscaping near hole sixteen (16) and to ensure the landscaping does not interfere with the Comanche Trail.
13. **Driveway Replacement**: The Parties acknowledge the Comanche Trail will be constructed crossing two (2) distinct driveways which enter the Country Club's property and one (1) drainage flume. Construction of the trail will require re-construction of the approach-areas of these two (2) driveways and one (1) drainage flume. The City agrees to reconstruct the driveways and flume as follows:
  - a. **Clubhouse Drive**: Comanche Trail shall cross the driveway used as the main entrance to access the Country Club clubhouse. The attached Exhibit D more particularly describes this driveway (hereinafter "Clubhouse Drive"). The City shall

reconstruct Clubhouse Drive from the point it connects with East Comanche Street to approximately twenty (20) feet north of East Comanche Street, as approximately shown in the attached Exhibit D.

- b. **Maintenance Drive:** Comanche Trail shall cross a driveway existing at 1200 E. Comanche Street which is used by the Country Club to access its maintenance shop. The attached Exhibit E more particularly describes this driveway (hereinafter "Maintenance Drive"). The City shall reconstruct the Maintenance Drive from the point it connects with East Comanche Street to approximately twenty-two (22) feet north of East Comanche Street, as approximately shown in Exhibit E.
  - c. **Avenue E Flume:** Comanche Trail shall cross a drainage flume existing along Comanche Street near the intersection with Avenue E, shown more particularly in the attached Exhibit F. The City shall replace the existing Avenue E Flume as recommended by the City's Engineer or his designee.
14. **Maintenance Shop Flume:** The parties understand this project will necessitate the removal of the currently existing drainage flume circled in red and shown in Exhibit G. The Country Club shall re-direct drainage from its wash area to a newly constructed storm sewer access point. The City will work with the Country Club on the location of the storm sewer connection and will provide the new access point at the easement line. Connection to this access point shall be at the cost of the Country Club, in cooperation with the City. The Country Club shall communicate with the City regarding this construction and allow the City to inspect the same. In no event shall the Country Club allow grass clippings, oil, gas, chemicals related to maintenance equipment, or other contaminants from the Country Club's Maintenance Shop wash area to flow into the City's storm water drainage system.
15. **Term of Agreement.** This Agreement shall begin on the date of execution as written below and shall continue until the material terms of this Agreement have been completed or fulfilled.
16. **Cash Basis Provision.** Notwithstanding anything contained in the Agreement to the contrary, it is understood and agreed by the parties hereto that City is obligated only to pay under the Agreement as may lawfully be paid from funds budgeted and appropriated for such purpose during the City's then current budget Year (i.e., January 1 to December 31) or from funds made available from any lawfully operated, revenue producing source. Should the City fail to budget, appropriate or otherwise make available funds for payments due under the Agreement in any budget year, the Agreement shall be deemed terminated on the last day of the then current budget year for which appropriations were received without penalty or expense to the City of any kind whatsoever, except as to the portions of the recurring charges herein agreed upon for which funds have appropriated and budgeted or are otherwise made available. City agrees to notify contractor of such termination, which shall not constitute a default under the Agreement, at least sixty (60) days prior to the end of the City's then current budget year.
17. **Anti-Discrimination Clause:** In dealings under this Agreement, the Country Club agrees: to comply with the Kansas Act Against Discrimination and the Kansas Age Discrimination in Employment Act and the applicable provisions of the Americans with Disabilities Act

and Kansas Executive Order No. 19-02, and to not discriminate against any person because of race, color, gender, sexual orientation, gender identity or expression, religion, national origin, ancestry, age, military or veteran status, disability status, marital or family status, genetic information, or political affiliation that is unrelated to the person's ability to reasonably perform the duties of a particular job or position. If it is determined that the Country Club has violated the provisions of any portion of this paragraph, such violation shall constitute a breach of contract and the contract may be canceled, terminated, or suspended, in whole or in part, by the City.

18. This agreement shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in Ford County, Kansas.
19. No provision of this contract will be given effect that attempts to require the City or its agents or employees to defend, hold harmless, or indemnify the Country Club or any contractor or third party for any acts or omissions. The liability of the City of Dodge City is defined under the Kansas Tort Claims Act (K.S.A. 75-6101, *et seq.*).
20. No interpretation of this contract shall find that the City or its agents and employees have agreed to binding arbitration, or the payment of damages or penalties. Further, the City does not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403).
21. The Parties acknowledge that the Country Club's ability to enter into binding agreements concerning the above is subject to the approval of its governing body.
22. This contract shall not be considered binding upon the City unless approved by the City Commission for the City of Dodge City and approved by the Country Club's governing body.
23. By signing this contract, the representative(s) of the Country Club thereby represents that such person(s) is duly authorized to execute this agreement on behalf of the Country Club and that the Country Club agrees to be bound by the provisions thereof.

**Signature page to follow.**

September 12, 2024

Approved and adopted this \_\_\_\_ day of \_\_\_\_\_, 2024.

CITY OF DODGE CITY, KANSAS

By: \_\_\_\_\_  
Chuck Taylor, Mayor

ATTEST:

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

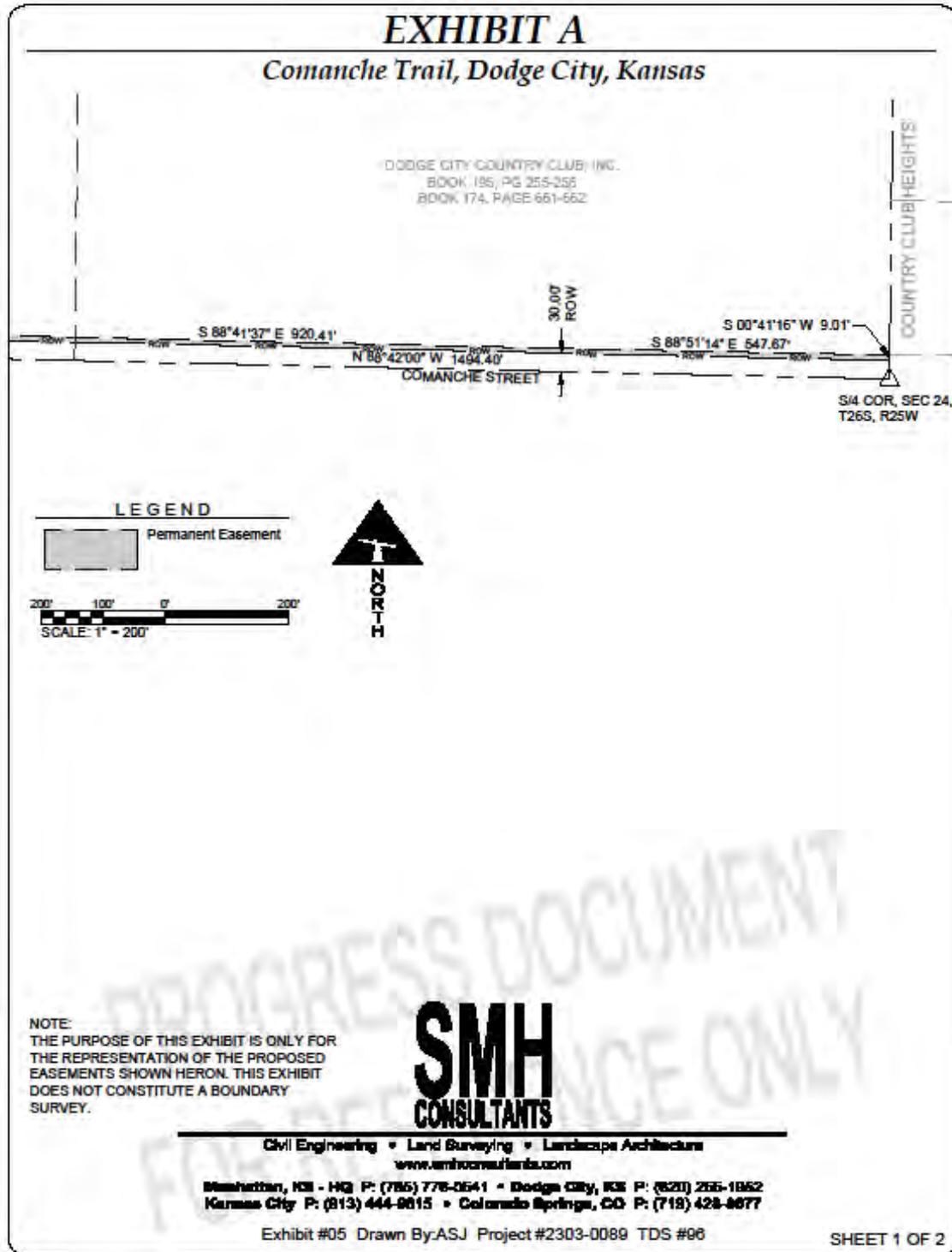
DODGE CITY COUNTRY CLUB

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

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

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

EXHIBIT A – Recreation Easement



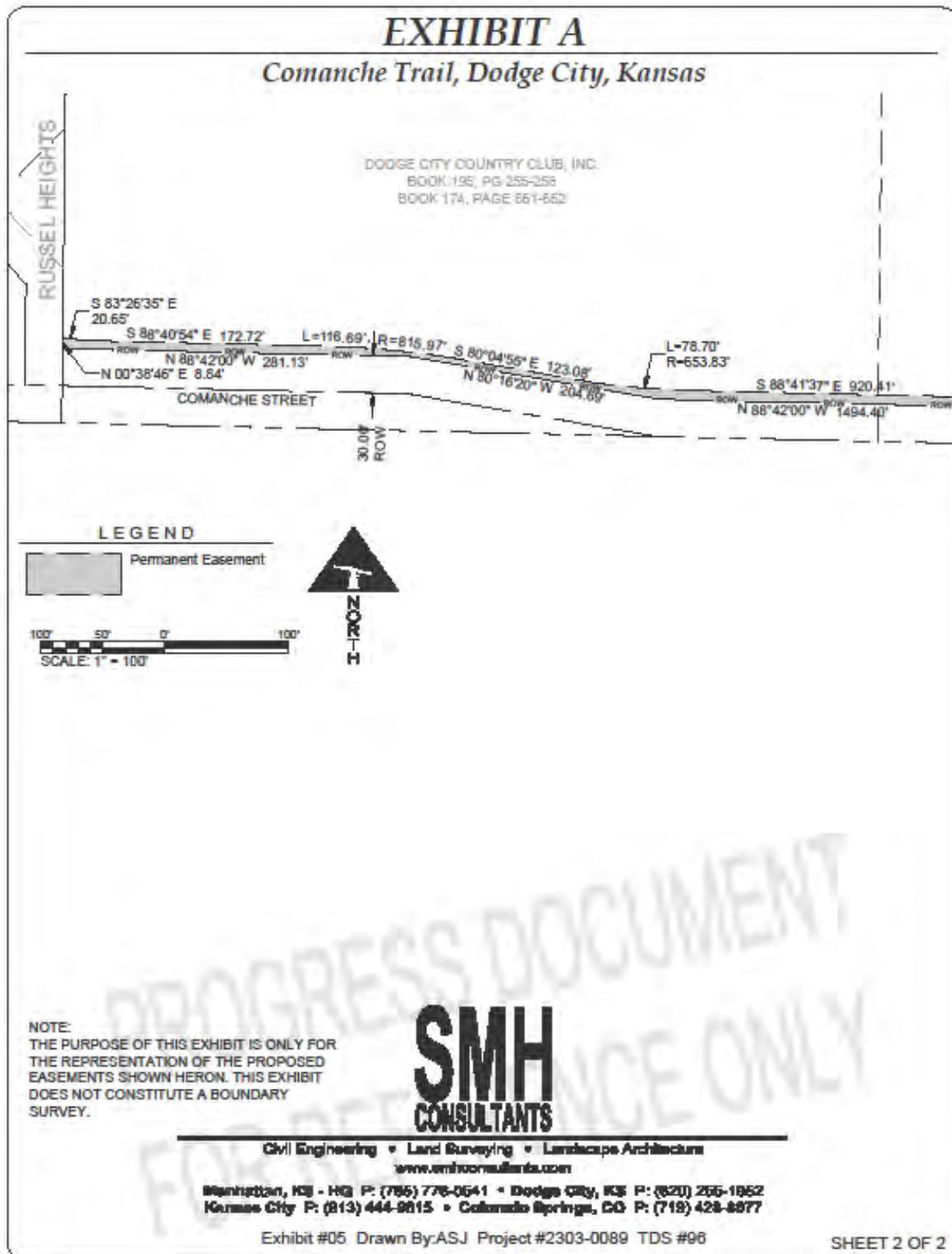
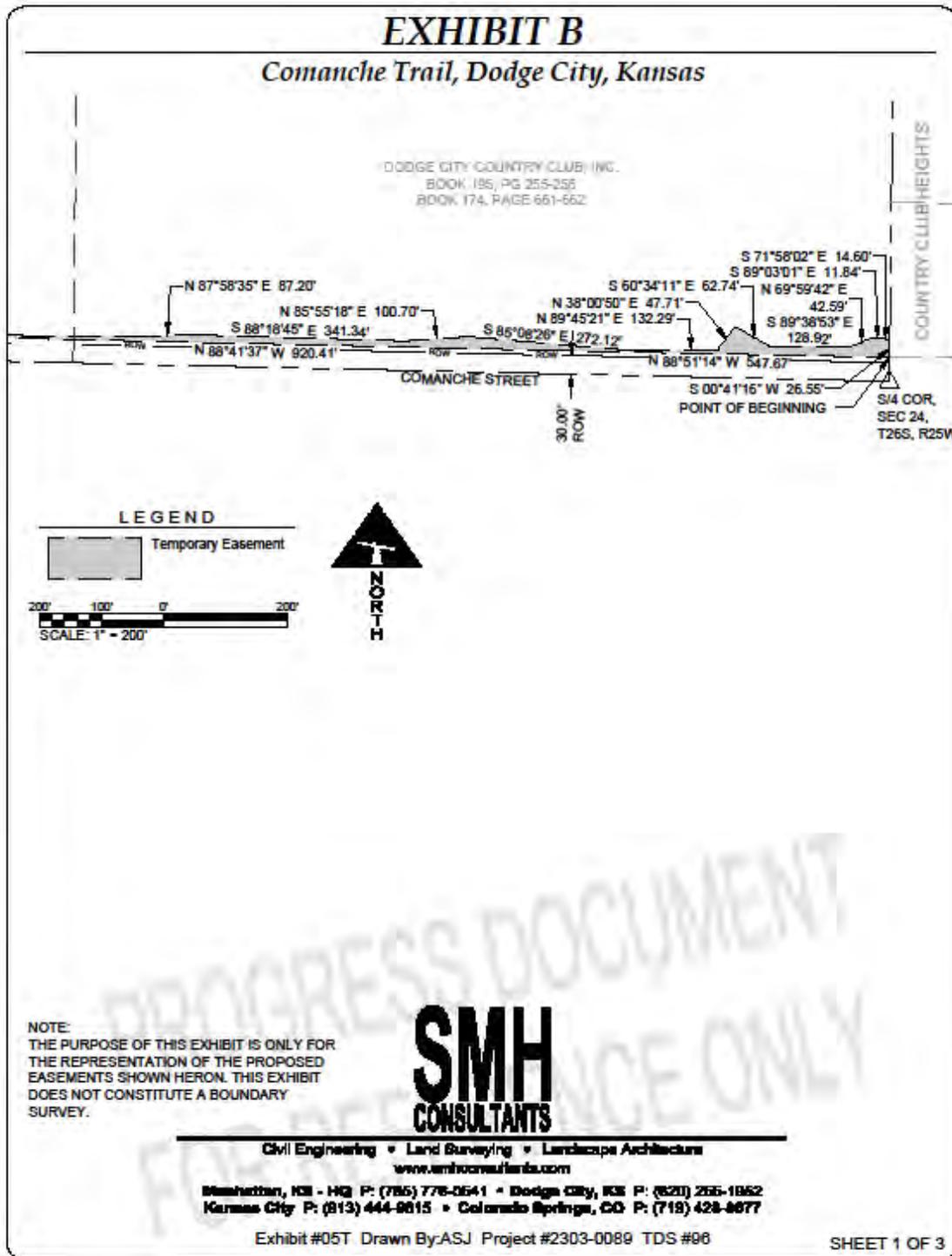
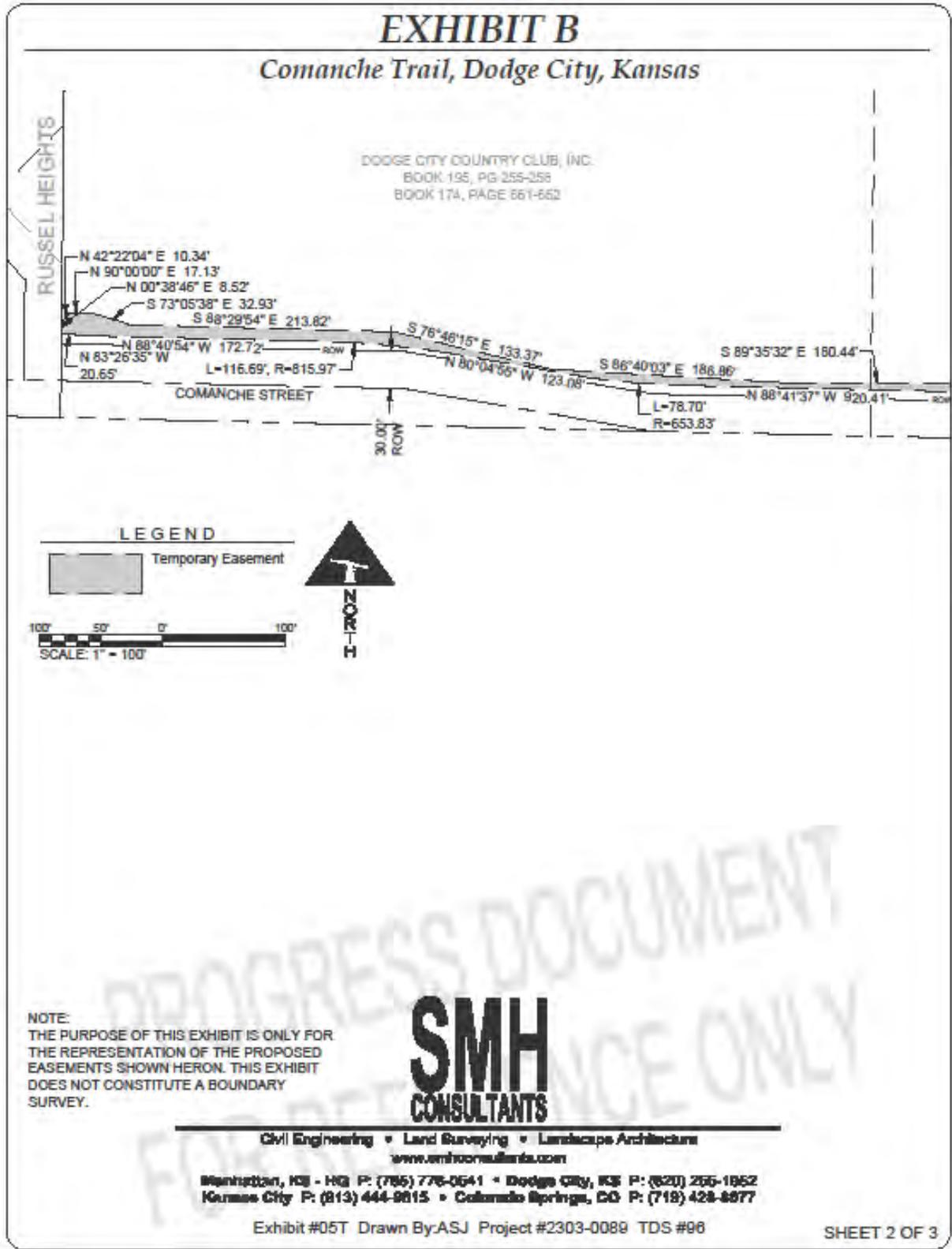


EXHIBIT B – Temporary Easement





## EXHIBIT B

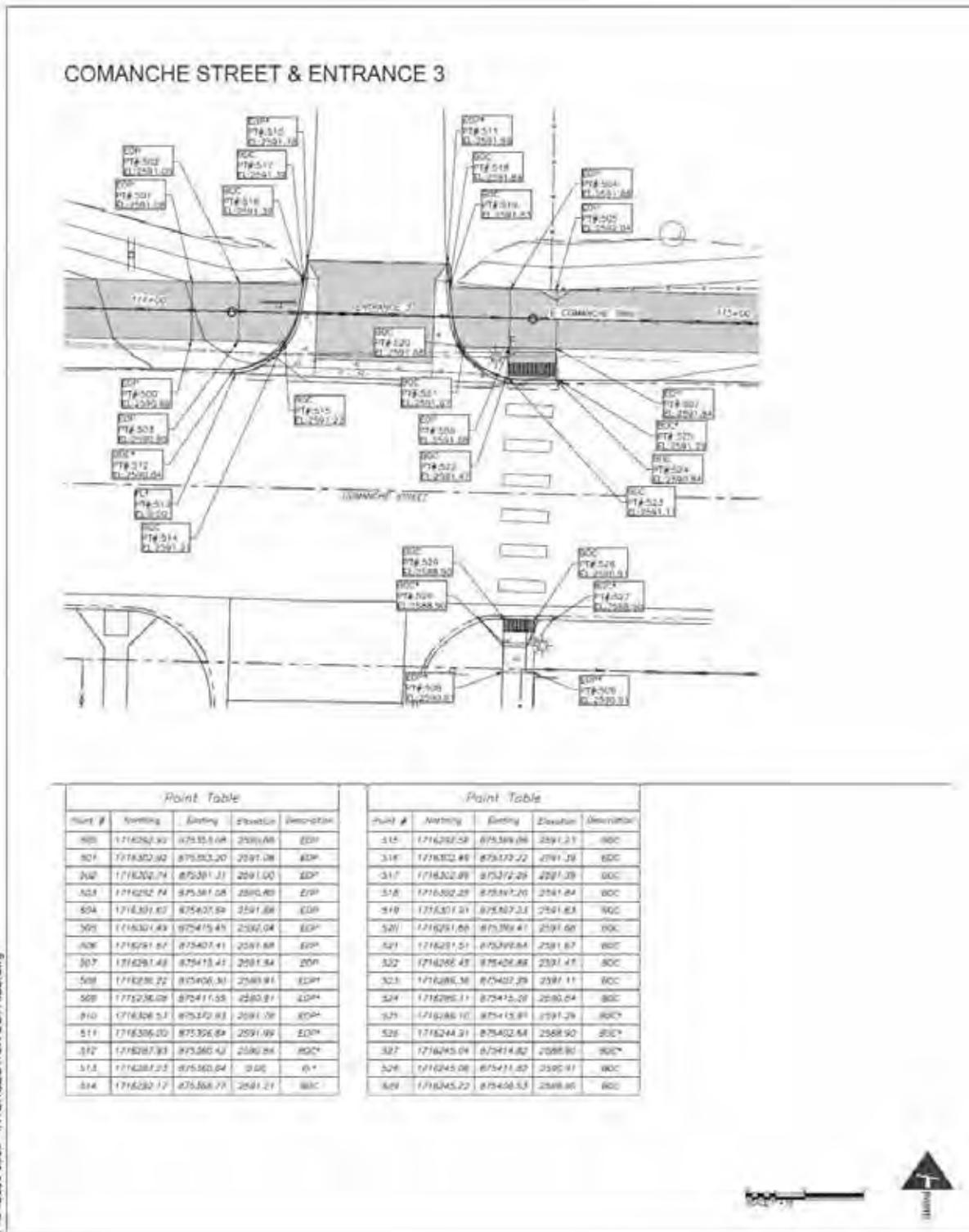
A tract of land in the Southwest Quarter of Section 24, Township 26 South, Range 25 West of the Sixth Principal Meridian, Dodge City, Ford County, Kansas described as follows:

Beginning at a point that is N 00°41'16" E 39.01 feet from the Southeast Corner, Southwest Quarter of said Section 24; thence  
N 88°51'14" W 547.67 feet; thence  
N 88°41'37" W 920.41 feet; thence  
along a curve to the right, length of 78.70 feet, radius of 653.83 feet, chord of N 85d28'00" W 78.65 feet; thence  
N 80°04'55" W 123.08 feet; thence  
on a curve to the left, length of 116.69 feet, radius of 815.97 feet, chord of N 85°33'59" W 116.59 feet; thence  
N 88°40'54" W 172.72 feet; thence  
N 83°26'35" W 20.65 feet; thence  
N 00°38'46" E 8.52 feet; thence  
N 42°22'04" E 10.34 feet; thence  
N 90°00'00" E 17.13 feet; thence  
S 73°05'38" E 32.93 feet; thence  
S 88°29'54" E 213.82 feet; thence  
S 76°46'15" E 133.37 feet; thence  
S 86°40'03" E 186.86 feet; thence  
S 89°35'32" E 180.44 feet; thence  
N 87°58'35" E 87.20 feet; thence  
S 88°18'45" E 341.34 feet; thence  
N 85°55'18" E 100.70 feet; thence  
S 85°08'26" E 272.12 feet; thence  
N 89°45'21" E 132.29 feet; thence  
N 38°00' 50" E 47.71 feet; thence  
S 60°34'11" E 62.74 feet; thence  
S 89°38'53" E 128.92 feet; thence  
N 69°59'42" E 42.59 feet; thence  
S 89°03'01" E 11.84 feet; thence  
S 71°58'02" E 14.60 feet; thence  
S 00°41'16" W 26.55 feet to the point of beginning, containing 0.503 acres.

Subject to easements and restrictions of record.



EXHIBIT D – Clubhouse Drive



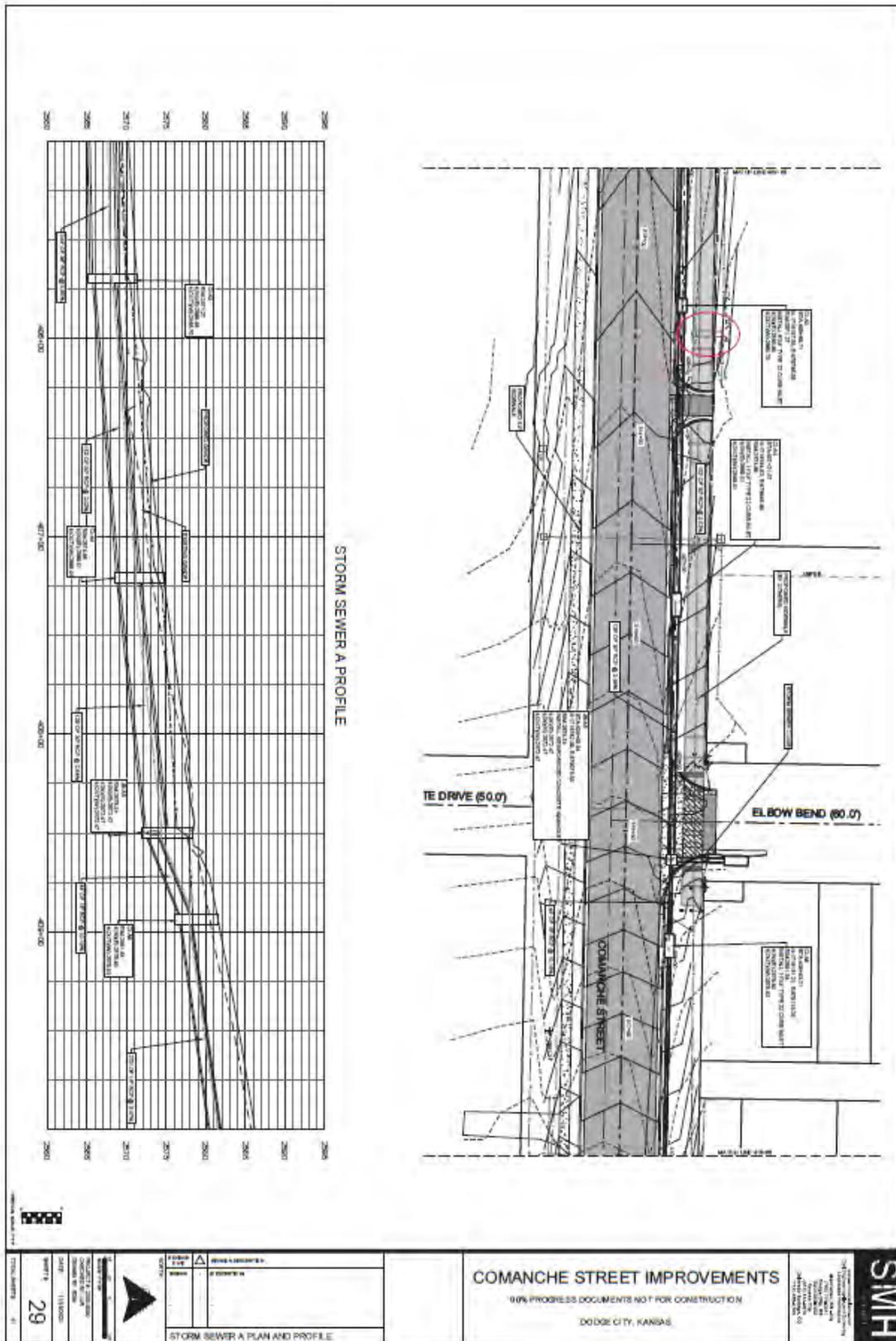


September 12, 2024

EXHIBIT F – Avenue E Flume



EXHIBIT G – Maintenance Shop Flume





# Memorandum

To: City Commission  
From: Ryan Reid, Director of Administrative Services  
Date: 2024 09 12  
Subject: Replacement forklift  
Agenda Item: New Business

---

**Purpose:** To replace older worn out forklifts (two).

**Recommendation:** Approve Bobcat G30N-7 LP forklift quote from Doosan

**Background:** We currently have two broken down units and need this Bobcat to conduct operations. This unit was chosen because they are offering a special \$8,000 rebate which is included in the price below. We are not trading in because our units are in the auction currently.

**Total to be approved is:** \$33,550. This is a budgeted purchase.

**City Commission Options:**

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

**Financial Considerations:**

\$8,000 from Sewer  
\$20,000 budgeted  
\$ Remaining expected from auction of older forklift(s)

Budgeted Expense     Grant     Bonds     Other

**Legal Considerations:** None

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

**Approved for the Agenda by:**

Ryan T. Reid, Director of Administrative Services



TO : City Of Dodge City  
100 Chaffin Rd.  
Dodge City, KS 67801

Telephone : 620-408-8346  
Attention : Kevin Israel

Date : 9/11/2024  
Quotation : KK 00166  
Prepared By : Kevin Knox

**FOB: Delivered**  
**Estimated DOD: (1) UNIT IN STOCK / 1N5157**



We are pleased to submit the following quotation for your consideration

(1) Bobcat Forklifts G30N-7 LP 6,000 lb. Capacity, I. C. Pneumatic Tire Forklift

### Configured Options

UL Rating	UL Rated Type LP
Brakes	<b>Oil-Cooled Disc Brakes</b>
Tires	Single Solid Soft-Ride 8.15-15 Drive / 6.50-10 Steer
Mast	<b>3-Stage Full Free Triple Wide View MFH 189" OAL 86" FFH 57"</b>
Tilt Cylinders	6° Forward / 5° Back
Sideshifter	<b>Hang-On 44" Wide - Class III</b>
Carriage	Hook Type 44" Wide - Class III
Forks	<b>Hook Type - Pallet - 1.8" x 5" x 47"</b>
Load Backrest	46" Wide x 47" High
Overhead Guard	Standard Height - 86"
Hydraulic Lines	3-Way For Sideshifter
Hydraulic Control Valve	3 Section with 3 Levers
Mirrors	<b>Large Rear View Mirrors</b>
Seat	<b>Vinyl Suspension Seat</b>
Seat Belt	Orange
Direction Control	Standard - Lever Direction Control
Grab Bar	<b>Rear Grab Bar with Horn Button</b>
LP Tank Cradle	Standard Mounting
Warning Lights	<b>Strobe - Amber - Mounted Below OHG</b>
Warning Device	<b>Back-Up Alarm (Outside Mount)</b>
Front Work Lights	<b>(2) Front Flood Lights - LED</b>
Rear Work Lights	<b>(1) Rear Flood Light - LED</b>
Radiator	Standard Radiator
Warranty	<b>Bobcat Assurance - Standard 2 Year / 3,000 Hour, Powertrain 3 Year / 6,000 Hour, OCDB 5 Year / 10,000 Hour</b>

## Standard Equipment

Power Shift Transmission

**Oil Cooled Disc Brakes**

Power Steering

Tilttable Steering Column

Engine Shutdown

**Dual Element Air Cleaner**

LP Tank Mounting

**Interior Tilt Cylinder Covers**

**Steering Wheel Knob**

## Other Equipment & Accessories

**Doosan 5500lb Manual Pallet Jack (PROMO)**

**Total Equipment And Accessories As Spec'd  
Courtesy Discounting (\$3,800.00)**

**\$ 37,350.00**

**Delivered Price : \$ 33,550.00**

### **Proposal Authorization:**

Signed and accepted on behalf of:  
City Of Dodge City

Signed and accepted on behalf of:  
Lift Truck Center

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## Lift Truck Center, Inc. Terms and Conditions (effective 12/1/2022)

As used in these terms and conditions (these "Terms"), "Seller" means Lift Truck Center, Inc., "Customer" means the person to whom this Quotation is given as listed in the Quotation, and "Equipment" means the good(s) specified in the Quotation (as modified below). All other capitalized terms are defined in the Quotation or below. "Quotation" means each quotation provided by Seller to Customer in connection with the sale of Equipment or Services on or after the effective date of these Terms. "Services" means the services specified in the Quotation.

**1. Customer's Offer to Purchase.** By signing the Quotation Customer makes an offer to purchase the Equipment subject to these Terms and Conditions. The Quotation is only a quotation and not an offer to sell the Equipment.

**2. Acceptance by Seller.** Seller is not obligated to accept Customer's offer to purchase the Equipment. Seller will accept Customer's offer, if at all, on the earliest of when (a) Seller ships the Equipment, or (b) acceptance by the signature of Seller's authorized employee. Seller reserves the right to make partial shipment, and partial shipment is acceptance of only the Equipment shipped, which will be confirmed with Customer prior to shipment. Notwithstanding the foregoing, Seller's acceptance of Customer's offer is expressly conditioned on Customer's assent to all of the terms of the Agreement.

**3. Agreement.** When Customer's offer is accepted by Seller, the following is the complete agreement (the "Agreement") of the parties: (1) any applicable National Account Terms (defined below), (2) these Terms, (3) the information in the Quotation referenced in these Terms, (4) Warranty Certificates (as defined below), if any, and (5) any other applicable terms and conditions incorporated in these Terms. When in conflict, priority is given the documents in the foregoing order. Once an agreement is formed, it may not be cancelled except as provided in these Terms. No prior or contemporaneous proposals, statements, Customer purchase order, course of dealing, or usage of the trade will be part of the Agreement, which Seller expressly rejects. The Agreement may not be amended except in writing signed by Seller's authorized employee.

**4. National Account Terms.** Customer may be subject to additional terms if Customer has an account with a national account originator ("NAO") recognized by Seller. Modifications to National Account Terms must be coordinated between the Customer and the NAO, whether or not the Customer or a third party company is purchasing the Equipment. Modifications to National Account Terms may not be negotiated with Seller. "National Account Terms" means the terms which Seller has agreed with the applicable NAO to provide to Customer.

**5. Credit Terms.** If Customer has indicated in the Quotation payment by financing, including without limitation an operating lease, such financing may be provided not by Seller but by an unaffiliated, third-party creditor, subject to such creditor's credit approval at creditor's discretion, and separate terms and conditions, if applicable. Customer is subject to the Agreement whether or not they have completed a credit application. For the avoidance of doubt, any leasing company or financing company acting on behalf of Customer, or which becomes the purchaser under this Agreement, will be bound by the same terms and conditions that Customer is bound under this Agreement.

**6. Maintenance Terms.** If Customer selects a maintenance program for the Equipment in the Quotation, separate terms and conditions are applicable and those separate terms and conditions, as well as any maintenance agreement entered into between Customer and Seller, are incorporated in this Agreement. Seller will not be bound to any maintenance agreement until it signs such agreement. If the parties do not enter into a maintenance agreement for any reason (even if selected on the Quotation), it will not affect the validity and enforceability of the other provisions of this Agreement.

**7. Conditions on Performance.** Seller's obligations are subject to (a) Seller's on-going credit review and approval of Customer, (b) Seller's on-going determination that Customer and the Quotation are in

compliance with all applicable laws, regulations, and Seller's compliance policies, and (c) the receipt and availability of Equipment and applicable parts and supplies from Seller's suppliers in sufficient quantities. If Seller determines in good faith at any time that there is credit and/or compliance issues with the Quotation that have not been satisfactorily addressed, or that adequate quantities of the applicable Equipment, parts or supplies, Seller may cancel the Agreement upon written notice to the Customer. If Seller is not able to provide to Customer all Equipment provided in the Quotation for delivery within a reasonable time as determined by Seller, then Seller may cancel the agreement with respect to the Equipment it is unable to provide, without liability or obligation to Customer, and may fulfill this Agreement with respect to the remaining pieces of Equipment covered by the Quotation.

**8. Equipment.** Any time before delivery, Seller may substitute the Equipment stated in the Quotation for other equipment with the same or better specifications at no additional charge to Customer, which substitute will become the Equipment without prior approval from Customer. Except as provided in the previous sentence, Seller may substitute equipment which is substantially the same as the Equipment stated in the Quotation, only upon Customer's written approval.

**9. Price.** The price of the Equipment will be as stated in Seller's Quotation except as provided in this Section. Customer acknowledges that the price stated in Seller's Quotation cannot be guaranteed, and may change after the Quotation is provided, without any liability to Customer. Seller will notify Customer of any increase in the price before Customer will be obligated to accept delivery of the Equipment. Customer may terminate this Agreement with respect to any Equipment which it refuses to purchase as a result of any increase in the price of the Equipment.

**10. Trade-In.** If the Quotation states credit for equipment accepted as a trade-in ("Trade-In"), Customer agrees to sell such Trade-In to Seller upon receipt by Seller. Customer represents and warrants that at the time of delivery by Customer: (a) the Trade-In is in materially the same condition, except for ordinary wear and tear, as at the time that Seller inspects the Trade-In, (b) Customer is the sole owner of the Trade-In with full authority to sell it to Seller, and (c) the Trade-In is free of all liens, claims, and encumbrances of any type or nature. Sale of the Trade-In is subject to Seller's acceptance after inspection. If the Trade-In is not in acceptable condition as solely determined by Seller, Seller may reject the Trade-In or reduce the credit given by an equitable amount, and Customer will immediately pay to Seller any excess of Trade-In credit already applied. If the purchase under the applicable Quotation is cancelled, and if Seller and Customer agree, Seller may purchase the Trade-In for an amount equal to the credit that Customer would have been entitled to, and subject to the other terms of this Section.

**11. Taxes.** Unless expressly stated otherwise in the Agreement, prices do not include and Customer will be solely responsible for payment of any sales, use, gross receipts, excise, value-added, or other taxes or imposts, however described, arising out of or related to the Agreement, the Equipment, or Trade-In and all interest and penalties assessed thereon ("Taxes"), other than taxes on Seller's net income. Customer will indemnify Seller for all Taxes. If Customer claims a tax exemption, Customer must provide a current tax exemption certificate acceptable to Seller and the relevant taxing authority.

**12. Payment.** Payment of the price, Taxes, and other costs and expenses specified in this Agreement, less amount of any Trade-In credit, is due at such time(s) and in such amount(s) as stated in Seller's written acceptance or if not so stated, in the Quotation. If no payment terms are specified, or unless otherwise agreed to in writing, Customer will pay Net 10 days from factory shipment on new equipment, and Net due upon delivery for new stock inventory or used equipment. In addition to any other remedies, a late payment fee will be charged on all amounts past due until paid in full at 1.5% per month

(or highest lawful rate, if lower), together with all costs of collection and attorneys' fees. If payment is made by credit card, Customer agrees to pay in accordance with its agreement with the card issuer and within the acceptable transaction amount as determined by Seller. Seller reserves the right to limit the amount Customer may pay by credit card, and Seller may require Customer to pay any applicable credit card processing fees to the extent permitted by law.

**13. Security Interest.** Customer grants Seller a purchase money security interest in the Equipment and all attachments, accessions, proceeds, and replacements thereto until Seller receives full payment of all amounts owed under the Agreement. Customer will sign and deliver to Seller a financing statement and any additional documents Seller may request to perfect this security interest, and Customer irrevocably appoints Seller its attorney-in-fact to execute any such documents should Customer refuse to so sign and deliver any such document. Upon Customer's breach of any term of this Agreement, and without any liability of any kind to Customer, Seller may enter onto Customer's premises and remove or disable the Equipment, or may disable the Equipment remotely using telemetry or other technological means. If removed, Seller may use, sell, or lease the Equipment. The remedies stated herein are in addition to any other remedies available to Seller.

**14. Delivery and Acceptance.** All delivery dates are estimates only. Customer is responsible for the cost of freight and shipping insurance. All products are sold F.O.B. shipping point, unless otherwise stated in the Quotation. If delivery is delayed due to unavailability of Customer's facilities or any other cause, Customer hereby requests and authorizes Seller to store the Equipment or ship the Equipment to storage of Seller's choosing. Customer will pay Seller for all storage-related charges, including insurance and shipping costs. One business day after delivery to Customer (or at the time of Customer picks up the Equipment from Seller or the manufacturer), Customer will inspect the Equipment using non-harmful methods, and unless Customer provides written notice to Seller rejecting the Equipment as a result of a defect (and such notice identifies the defect), the Equipment will be deemed irrevocably accepted upon the earlier of (a) two business days after the Equipment was delivered to, or picked up by Customer, or (b) actual use by Customer. Damage may occur to the Equipment after it is delivered to the carrier. It is solely Customer's responsibility to determine whether the Equipment is damaged prior to accepting it from the carrier. Seller is not responsible for freight damage unless the Equipment is shipped directly from Seller to Customer. If the products are damaged by the carrier, it is solely Customer's responsibility to address the damage with the carrier, except for shipments made by Seller to Customer from Seller's facility or the factory, which will be Seller's responsibility to address with the freight carrier.

**15. Warranty and Disclaimer.** If provided with this Agreement or when delivered, the original equipment manufacturer ("OEM") for the Equipment (and not Seller) may provide the limited warranty for new Equipment and Seller (not the OEM) may provide a limited warranty for qualifying used Equipment, in each case set forth on the pre-printed warranty certificate corresponding to the Equipment, or other electronic or physical document ("**Warranty Certificate**"), subject to the terms, conditions, and limitations set forth on the Warranty Certificate. Although Seller may provide a limited warranty for qualifying used Equipment, Seller does not provide a warranty for all OEMs or all Equipment. The remedies provided in the Warranty Certificate are Customer's sole remedies arising out of or related to the Equipment, its condition, or operation, and OTHERWISE ALL EQUIPMENT IS PROVIDED "AS IS" AND "WITH ALL FAULTS," AND THERE ARE NO OTHER REPRESENTATIONS, WARRANTIES, OR COVENANTS, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT. Although Seller may provide warranty work for some Equipment, it does not provide warranty work for all Equipment, nor for all components of each piece of Equipment.

**16. Confidentiality.** This Agreement, including without limitation, prices and all of the terms and conditions, are confidential and

proprietary to Seller. Customer must use reasonable measures to safeguard this information and may not disclose this information to any person outside of Customer. If Customer breaches or threatens to breach this Section 16, Seller would not be adequately compensated by money damages alone; therefore, Seller is entitled to injunctive and other equitable relief for the breach or threatened breach of this Section 16.

**17. Limitation of Liability.** SELLER'S LIABILITY FOR ANY CLAIM OF ANY KIND, WHETHER ARISING OUT OF CONTRACT, STRICT LIABILITY, TORT (INCLUDING NEGLIGENCE), OR OTHER LEGAL THEORY, FOR ANY LOSS OR DAMAGE ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM THIS AGREEMENT, THE PERFORMANCE OR BREACH THEREOF, OR FROM THE EQUIPMENT, PARTS, COMPONENTS, MATERIALS, OR SERVICES COVERED BY OR FURNISHED UNDER THIS AGREEMENT WILL IN NO CASE EXCEED THE TOTAL PRICE OR COSTS PAID TO SELLER (LESS EXPENSES AND CREDITS) FOR THE EQUIPMENT THAT GIVES RISE TO THE CLAIM. IN NO EVENT WILL SELLER BE LIABLE FOR ANY INDIRECT, SPECIAL, EXEMPLARY, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS, BUSINESS INTERRUPTION, LOSS OF USE OR DATA, OR COST OF SUBSTITUTE PRODUCTS OR SERVICES.

**18. Limitation of Actions.** No action may be maintained by Customer against Seller unless written notice of the same is delivered by Customer to Seller within thirty (30) days after the event complained of first becomes known, but in no case may Customer maintain an action against Seller unless the same is brought within 1 year after the cause of action accrues.

**19. State Law Exclusion.** The laws of some states do not permit limitations on certain warranties or their remedies. If such laws apply, the foregoing exclusions and limitations are amended only to the extent required by said laws, if applicable.

**20. Assignment and Binding Effect.** Customer may not assign its rights or obligations under this Agreement, and any attempted assignment is void. This Agreement will benefit and be binding upon each of the parties and their respective heirs, administrators, executors, personal representatives, and permitted successors and assigns. Except to the extent prohibited by law, no third party will be the beneficiary to any of the rights or obligations hereunder (including but not limited to, warranty obligations).

**21. Force Majeure.** Notwithstanding anything contained herein, Seller will have no obligation or liability and will not be considered in default for its failure or delay due to (a) any cause not reasonably within the control of Seller including, but not limited to fire, explosion, riot, acts of war or terror, civil disturbances, acts of God, floods, earthquakes, hurricanes, tornadoes, and casualties similar in nature to the foregoing, strikes, lock-out, and other labor disturbances, or (b) delays or lack of sufficient quantities of Equipment, parts or supplies, caused by shippers, vendors, or suppliers of Seller, or destruction or significant damage to the Equipment. Should events occur which would give rise to Customer's claim that Seller is in default, Customer will first give Seller 30 day's written notice of its claim during which time Seller may cure any claimed default and incur no liability therefor.

**22. Additional Remedies, Further Assurances.** No failure or delay by Seller to exercise any right or remedy will operate as a continuing waiver. Additionally, Customer will be liable for all damages, costs, expenses (including attorneys' fees) incurred or to be incurred by Seller by reason of the occurrence of any breach or threatened breach of this Agreement, including the exercise of Seller's remedies thereto, and all incidental and consequential damages. Seller may off-set against any amount owed by Seller to Customer, any amount Customer owes to Seller, whether arising under this Agreement or any other agreement between Customer and Seller.

**23. Notices.** Any notices related to claims, breach, termination, or disputed debts (including instruments tendered in full satisfaction of a debt) hereunder must be in writing and personally delivered or mailed, by certified mail, return receipt requested, and addressed to Seller at Seller's address listed in the Quotation and to Customer at: the

Customer's address in the Quotation, the address where invoices are sent, any address of any of Customer's places of business, or where Customer may be served by legal process. All other notices required or allowed hereunder must be in writing and sent by reasonable means, including to [sales@lcenter.com](mailto:sales@lcenter.com) for Seller and the email address designated on the Quotation for Customer.

**24. Interpretation.** Headings and captions used in the Agreement are for the parties' convenience, do not form a part of, and will not be used to construe the Agreement. No consideration will be given to the fact or presumption that one party had a greater or lesser hand in drafting this Agreement. Unless specified otherwise, all days are calendar days.

**25. Choice of Law, Forum.** This Agreement will be governed by the laws of the State of Kansas ignoring rules on conflicts of law. Any dispute arising out of or related to the Agreement will be brought exclusively in a court sitting in Sedgwick County, Kansas; but, unless Customer is a "consumer" within the meaning of the Kansas Consumer Protection Act ("KCPA"), the provisions of the KCPA will not apply to this Agreement or the parties. Customer represents and warrants to Seller that it is purchasing the Equipment for business uses, and not for personal or household uses.

**26. Dispute Resolution and Binding Arbitration.**

**a.** CUSTOMER AND SELLER HEREBY GIVE UP ANY RIGHTS TO LITIGATE CLAIMS IN A COURT OR BEFORE A JURY. OTHER RIGHTS THAT CUSTOMER WOULD HAVE IF IT WENT TO COURT MAY ALSO BE UNAVAILABLE OR MAY BE LIMITED IN ARBITRATION. ANY CLAIM, DISPUTE OR CONTROVERSY (WHETHER IN CONTRACT, TORT OR OTHERWISE, WHETHER PRE-EXISTING, PRESENT OR FUTURE, AND INCLUDING STATUTORY, CONSUMER PROTECTION, COMMON LAW, INTENTIONAL TORT, INJUNCTIVE AND EQUITABLE CLAIMS) BETWEEN SELLER AND CUSTOMER ARISING FROM OR RELATING IN ANY WAY TO CUSTOMER'S PURCHASE OF THE EQUIPMENT, WILL BE RESOLVED EXCLUSIVELY AND FINALLY BY BINDING ARBITRATION.

**b.** The arbitration will be administered by the American Arbitration Association ("AAA") in accordance with the Consumer Arbitration Rules (the "AAA Rules") then in effect, except as modified by this Section. (The AAA Rules are available at [adr.org](http://adr.org) or by calling the AAA at 1-800-778-7879.) The Federal Arbitration Act will govern the interpretation and enforcement of this section. The arbitrator will have exclusive authority to resolve any dispute relating to arbitrability and/or enforceability of this arbitration provision, including any unconscionability challenge or any other challenge that the arbitration provision or the Agreement is void, voidable or otherwise invalid. The arbitrator will be empowered to grant whatever relief would be available in court under law or in equity. Any award of the arbitrator(s) will be final and binding on each of the parties and may be entered as a judgment in any court of competent jurisdiction.

**c.** Customer may elect to pursue its claim in small-claims court rather than arbitration if it provides Seller with written notice of its intention to do so within 60 days of its purchase. The arbitration or small-claims court proceeding will be limited solely to Customer's individual dispute or controversy.

**d.** Customer agrees to an arbitration on an individual basis. In any dispute, NEITHER CUSTOMER NOR SELLER WILL BE ENTITLED TO JOIN OR CONSOLIDATE CLAIMS BY OR AGAINST OTHER CUSTOMERS IN COURT OR IN ARBITRATION OR OTHERWISE PARTICIPATE IN ANY CLAIM AS A CLASS REPRESENTATIVE, CLASS MEMBER OR IN A PRIVATE ATTORNEY GENERAL CAPACITY. The arbitral tribunal may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding. The arbitral tribunal has no power to consider the enforceability of this class arbitration waiver and any challenge to the class arbitration waiver may only be raised in a court of competent jurisdiction.

**e.** If any provision of this arbitration agreement is found unenforceable, the unenforceable provision will be severed and the remaining arbitration terms will be enforced.

**27. Severability.** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal, void, or unenforceable, then that provision will be deemed severed from these Terms and will not affect the validity or enforceability of the remaining provisions of these Terms. The severed provision will be replaced by the court by a legal, valid, and enforceable provision that is as near as possible to the original intent of the parties.

**28. Entire Agreement.** The Agreement will be deemed the final and integrated agreement between Customer and Seller on the matters contained in the Agreement.

**29. UL Ratings, Functionality and Trained Operators.** Customer acknowledges that it is solely responsible for determining independently or with its insurer, what UL ratings are required for its use of the Equipment. Customer acknowledges that Seller has advised Customer that (1) UL ratings can be voided as a result of any alteration or modification to Equipment after delivery to Customer, or when factory ordered in conjunction with specific options or components, and (2) that capacity ratings change and are reduced as the Equipment is lifted to different heights or operated under different circumstances, when equipped with attachments, and with various load sizes and distributions of weight. Customer understands that it is solely their responsibility to provide an operator trained in compliance with all OSHA rules and regulations and all other applicable laws for each piece of Equipment. Customer acknowledges that Customer is solely responsible for determining who is adequately trained and qualified to operate its equipment, even if such persons receive training from Seller. Any operator training provided by Seller may be subject to additional terms and conditions.



# Memorandum

To: City Commission

From: Megan Welsh, Director of Dodge City CVB

Date: September 16, 2024

Subject: Approval of Placer.ai order form to acquire "Placer Data"

Agenda Item: New Business

**Purpose:** To provide the Dodge City Convention and Visitors Bureau (CVB) and the City of Dodge City (City) with research data including analytics and performance analysis to help drive growth for the community.

**Recommendation:** Staff recommend approval of the Placer.ai order form for \$45,712 for a 36-month initial term.

**Background:** Placer.ai is one of the most advanced location analytics platforms that observes foot traffic data, analyzes retail locations, visitor data and provides statistically significant data on how people and places interact. Specifically for travel and tourism, this system can analyze visitors' origins, interests and travel patterns in our region to help better target marketing efforts to help drive traffic to events and attractions. In addition, Placer.ai will provide monthly reports with visitor metrics for key points of interest.

**City Commission Options:**

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

**Financial Considerations:** The fees for the 36-month Initial Term are \$45,712 and will be invoiced annually beginning on the last signature date set forth below.

\$14,500/year 1  
 \$15,225/year 2  
 \$15,987/year 3

Amount \$: \$45,712

Fund:                      Dept:                      Expense Code:

Budgeted Expense     Grant                       Bonds                       Other

**Legal Considerations:** The City Attorney has reviewed the Placer.ai order form and approved the form.

**Mission/Values:** The addition of Placer.ai will further support the City's Core Values of Ongoing Improvement where together we value progress, growth and service standards by providing for and preparing for the community's future.

**Attachments:**

Placer.ai Order Form

**Approved for the Agenda by:**

A handwritten signature in black ink, appearing to read 'M. Welsh', written over a horizontal line.

Megan Welsh  
CVB Director



**PLACER LABS, INC.**

**ORDER FORM**

Dodge City Convention and Visitors Bureau	(“Customer”)	Placer Labs, Inc.	(“Placer”)
Address:	400 W. Wyatt Earp Blvd Dodge City, KS 67801	Address:	440 N Barranca Ave., #1277 Covina, CA 91723
Contact Person:	Megan Welsh	Contact Person	William Houck
Email:	meganw@dodgecity.org	Billing Contact Person:	Jason Tsui
Phone:	620-225-8186	Billing Email*:	<a href="mailto:billing@placer.ai">billing@placer.ai</a>
Billing Contact Email:	meganw@dodgecity.org	Billing Phone*:	415-228-2444 ext 806

\*Not for use for official notices.

**1. Services.**

The services provided under this Order Form (the “**Services**”) include:

- Access, via Placer Venue Analytics Platform (“**Placer’s Platform**”), to all major venues within the United States
- Access is limited to the 4 users which are part of the Convention & Visitors Bureau Team. User credentials, logins and Placer Data may not be shared with others
- Customer may not provide access to any third party agents acting on its behalf (including any consultants, contractors, or other agents of Customer) without prior written consent from Placer. Any such approved access may be subject to an additional fee pursuant to a written amendment to this Order Form
- Access, via Placer’s Platform, to reports, including Visits, Trade Areas, Customer Journey, Customer Insights, Dwell Times, and Visitation by Hour/Day
- Actionable insights include:
  - Foot traffic counts and dwell time
  - True Trade Areas displaying frequent-visitors-density by home and work locations
  - Customers’ demographics, interests, and time spent at relevant locations
  - Where customers are coming from and going to, and the routes they take
  - Benchmarking of Foot Traffic, Market Share, Audiences, and other key metrics
  - Competitive insights
  - Void Analysis Reports
- Access to Xtra reports per ad hoc needs; in Excel, KML, Tableau, and other formats: Quarterly Maximum of 26 credits; Annual Maximum of 104 credits
- Access to STI Demographics Bundle + Mosaic Data Set, and AGS CrimeRisk. The applicable Advanced Demographics and Psychographics are generated using the Input Datasets from the data vendors as set forth below:

Description	Input Datasets Used
<b>STI Demographics Bundle</b>	PopStats
	Spending Patterns
	Workplace
	Market Outlook
<b>Experian Mosaic</b>	Mosaic Segmentation
<b>AGS CrimeRisk</b>	CrimeRisk

**2. Permitted Uses**

The data, information and materials accessible via the Services are referred to as “**Placer Data**”. Customer may use Placer Data solely for the following purposes (“**Permitted Uses**”): (a) Customer may use Placer Data for Customer’s internal business purposes; and (b) Customer may incorporate Placer Data into Research Data, as described and subject to the restrictions below.

“**Research Data**” means datasets and other materials created by Customer that result in any part from Customer’s use of Placer Data. The Customer may share Research Data with current and potential customers, and in marketing materials; provided that the Customer shall cite Placer as a provider of such information (for such purpose only, Placer grants Customer the rights to use the Placer.ai name and logo, provided that any such use of the Placer.ai name and logo must clearly indicate that Placer is the provider of data only, and is not involved in any analysis, conclusion, recommendation). Customer shall not, directly or indirectly, resell, distribute, sublicense, display or otherwise provide Placer Data to any third parties, except that Customer may display Placer Data as part of Research Data.

### 3. Term and Termination.

**Initial Term:** The initial term of this Order Form will begin as of the last signature date set forth below, and will continue for 36 consecutive months thereafter (the “**Initial Term**”). Each renewal or additional term, if any, is referred to as “**Additional Term**,” and the Initial Term and any Additional Terms are referred to collectively as the “**Term**.”

**Additional Term:** This Order Form shall continue on the same terms and conditions set forth herein for additional periods of 12 months, if mutually agreed in writing by both parties (email would be sufficient).

**Termination:** Either party may terminate this Order Form upon thirty (30) days’ notice if the other party materially breaches any of the terms or conditions of this Order Form or the Agreement (as defined below), and the breach remains uncured during such thirty (30) days. In addition, Placer may immediately suspend Customer’s access to the Services, or terminate the Order Form, in the event of non-payment by the Customer or breach by Customer of any restrictions regarding usage of the Services.

### 4. Fees.

\$14,500/year 1  
\$15,225/year 2  
\$15,987/year 3

Fees for the 36-month Initial Term are \$45,712 and fees will be invoiced annually beginning on the last signature date set forth below.

Additional Terms of 12 months, if any, will be invoiced in full at the start of the Term

Fees for the Initial Term represent a promotional rate for the Initial Term only and will be subject to an increase to the prevailing market rate for Additional Terms.

Invoice sent electronically to Customer’s billing contact email via NetSuite.

Customer shall pay the fees set forth above in this Order Form. Customer agrees that if any event occurs that will result in a material increase in Customer’s usage of the Services (whether due to a merger or acquisition or otherwise), Customer will notify Placer in writing no later than thirty (30) days following the date of such event and Placer reserves the right to increase the Customer’s Annual Fee accordingly. If such event consists of Customer’s merger

with or acquisition of another customer of Placer, the Annual Fee increase shall be in an amount no less than the pro-rated annual fee of such other customer.

Unpaid amounts are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection.

Customer is responsible for all applicable taxes arising directly from the Services other than U.S. taxes based on Placer's net income.

If Customer believes that Placer has billed Customer incorrectly, Customer must contact Placer no later than sixty (60) days after the closing date on the first billing statement in which the error or problem appeared in order to receive an adjustment or credit. Inquiries should be directed to Placer's customer support department at support@placer.ai.

Placer may increase the Fees any time following the Initial Term (but not more frequently than once in any twelve (12) month period) unless otherwise agreed upon in this Order Form. The amount of such annual increase will equal the greater of CPI or five percent (5%) per annum.

All billing will be sent via electronic invoice to the Customer contact indicated above. Customer shall pay all fees within thirty (30) days of the invoice date.

In the event of any termination, Customer will pay in full for the Services.

#### **5. Support.**

Placer will use commercially reasonable efforts to provide customer service and technical support in connection with the Services on weekdays during the hours of 9:00 A.M. through 5:00 P.M. Pacific Time, with the exclusion of federal holidays. For any such support, please contact us at support@placer.ai.

#### **6. Mutual NDA.**

Each party (the "**Receiving Party**") understands that the other party (the "**Disclosing Party**") has disclosed or may disclose business, technical or financial information relating to the Disclosing Party's business (hereinafter referred to as "**Proprietary Information**" of the Disclosing Party). Proprietary Information of Placer includes, without limitation, non-public information regarding features, functionalities and performance of, and pricing for, the Services. The Receiving Party agrees: (i) to take reasonable precautions to protect such Proprietary Information, and (ii) not to use (except in performance of the Services or as otherwise permitted by the Agreement) or disclose to any third party any Proprietary Information. The foregoing shall not apply with respect to any information that the Receiving Party can document (a) is or becomes generally available to the public, (b) was in the possession of or known to the Receiving Party, prior to disclosure thereof by the Disclosing Party, without any restrictions or confidentiality obligations, (c) was rightfully disclosed to it, without any restrictions or confidentiality obligations, by a third party, (d) was independently developed without use of any Proprietary Information of the Disclosing Party, or (e) is required to be disclosed by law, provided that the Receiving Party provides the Disclosing Party with prompt written notice of such requirement and reasonably cooperates with the Disclosing Party to limit or challenge such requirement. These provisions regarding Proprietary Information shall apply in perpetuity and shall survive any termination of the Order Form or the Agreement.

## 7. Miscellaneous.

**Notices.** All notices under the Order Form and the Agreement will be in writing and will be deemed to have been duly given (a) upon delivery by a recognized delivery service (e.g., FedEx) with delivery confirmation, (b) upon receipt, if sent by U.S. certified or registered mail, return receipt requested, or (c) when sent via email, if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient. Notices shall be sent to the addresses set forth in the Order Form, which addresses may be subsequently modified by written notice given in accordance with these provisions.

**Trial Offering.** If Placer provides Customer with additional Services or Placer Data during the Term and identifies such Services or Placer Data as for evaluation or trial purposes only (a “**Trial Offering**”), access to the Trial Offering is permitted only during the period designated by Placer (or if not designated, 30 days from receipt of access) (“**Trial Subscription Term**”), unless the Trial Offering is earlier terminated as provided below. During the Trial Subscription Term, Customer may only use the Trial Offering for internal evaluation purposes and may not otherwise use or distribute the Trial Offering for any other purposes. Notwithstanding any provision included in this Order Form or the Agreement to the contrary, in respect of the Trial Offering Customer acknowledges and agrees that: (i) either party may terminate the Trial Subscription Term immediately and without liability upon written notice to the other party; (ii) any Trial Offering is provided “as is”; (iii) Placer provides no warranty, service levels or indemnity for any Trial Offering and (iv) Placer's liability related to any Trial Offering will not exceed USD \$100. Notwithstanding the foregoing, the Services and Placer Data provided in this Order Form is not considered a Trial Offering.

**Funding Failure Termination Right.** If funds for continued payments under this Agreement by the Customer are at any time unavailable or are insufficient for the Initial Term or any Additional Term, through failure of any entity, including the Customer itself, to appropriate such funds, then the Customer shall, within ten (10) days of such determination, provide notice to Placer and both Placer and the Customer shall have the right to immediately terminate this Order Form without penalty or further payment by the Customer.

**Public Records Laws.** Placer acknowledges that if Customer is subject to the applicable public records laws and regulations for Kansas state (“Public Records Laws”), that all obligations imposed by this Agreement are subordinate to Customer’s obligations under Public Records Laws. Notwithstanding the foregoing, Customer agrees that it will keep Placer's Proprietary Information (including any Placer Data) confidential in accordance with this Order Form and the Agreement unless otherwise required by applicable law, including Public Records Law.

**License Agreement Amendments.** For the purposes of this Order Form only, the Agreement is hereby amended as follows:

- If applicable law prohibits Customer from indemnifying Placer, then Section 5.b of the Agreement, beginning “Customer shall defend, indemnify and hold Placer harmless...”, is hereby deleted in its entirety.
- The third to the last sentence of Section 8 of the Agreement is hereby removed in its entirety and replaced with the following: “This Agreement shall be governed by the laws of the State of Kansas without regard to its conflict of laws provisions.”

**Promotional Use.** Customer grants Placer the right to use Customer’s company name and company logo, for Placer’s promotional purposes.

This Order Form is entered into by and between Customer and Placer effective as of the date of the last signature below. This Order Form and use of the Services are governed by, and Customer and Placer agree to, the License Agreement located at <https://www.placer.ai/placer-license-agreement/> (the “**Agreement**”); provided, however, that in the event of any conflict

between this Order Form and the Agreement, this Order Form shall control. Unless otherwise defined in this Order Form, capitalized terms herein have the same meaning as in the Agreement.

**“Customer”**

Dodge City Convention and Visitors Bureau
By:
Name:
Title:
Date:

**“Placer”**

Placer Labs, Inc.
By:
Name:
Title:
Date:



# Memorandum

**To:** City Commission

**From:** City Manager, Nick Hernandez

**Date:** September 16, 2024

**Subject:** Approval of a purchase agreement with Dodge Petroleum Inc for \$450,000

**Agenda Item:** New Business

---

**Recommendation:** Approve the Real Estate Agreement with Dodge Petroleum Inc for the purchase of 313 S. 2nd Ave for an amount not to exceed \$450,000.

**Background:** The Property located at 313 S. 2<sup>nd</sup>, is also known as the South Dillons property.

Purchase of the property will allow for expansion of fire and police services in the area south of the railroad tracks. The size of the facility will allow for expanded capabilities for the fire service and will allow for storage and dispatch of police officer personal and patrol vehicles.

**Justification:**

We are seeing significant construction activities in both residential and commercial properties, and it is time to begin looking at enhancing our capabilities with equipment and response for both fire and medical response services.

Fire Station 2 - Estimated remodel cost is \$2 million.

Includes the following-

- Auxiliary station for PD and Potential for EMS
- 4 bays. 8 doors allowing through building access
- 12 Bunks with Jack and Jill style bathrooms for FD
- 3 Bunks with Jack and Jill bathrooms for future EMS needs
- 5 Offices, Kitchen and common areas.
- 4 Common area bathrooms
- Training for confined spaces
- Small Gym
- 1 Sallyport for PD with offices and storage/possible evidence
- 2-3 Offices, Bathroom, Kitchenette
- EMS small version of FD area
- Parking for all units inside including SWAT vehicles.

**Financial Considerations:**

Three options exist.

1. Purchase the Structure and Remodel for a cost estimated to be around \$2.45 Million
2. Remodel Existing Station #2 for \$200-300K, which will not enhance service capability.
3. Do Nothing for the time being.

Staff Recommends Option #1.

**Legal Considerations:** The agreement has been reviewed and approved by the City Attorney

**Cite Commission Options:**

1. Approve the purchase agreement with Dodge Petroleum Inc.
2. Reject the Proposal
3. Table for further discussion

**Attachments:**

Real Estate Sales Contract with Dodge Petroleum Inc.

September 12, 2024

## REAL ESTATE SALE CONTRACT

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2024 by and between, **Dodge Petroleum, Inc.**, a Kansas limited liability company, hereinafter referred to as "Seller," whether one or more, and **City of Dodge City, Kansas**, a municipal corporation, hereinafter referred to as "Buyer," whether one or more, (hereinafter collectively referred to as "the parties").

**WITNESSETH:** That for and in consideration of the mutual promises, covenants and payments hereinafter set out, the parties hereto do hereby contract to and with each other, as follows:

Seller: the Seller of the Property is Dodge Petroleum, Inc. (hereinafter "Seller") and may be contacted as follows:

Dodge Petroleum Inc.  
Attn: Nageeb Alhaj  
313 S. 2<sup>nd</sup> Ave.  
Dodge City, KS 67801  
E-mail: nalhaj@cox.com  
Phone: 620-227-9511

Buyer: the Buyer is the City of Dodge City, (hereinafter, "Buyer") a municipal corporation with contact information as follows:

City of Dodge City  
Attn: Paige Gilmore  
100 Chaffin Rd.  
Dodge City, KS 67801  
E-mail: [paigeb@dodgecity.org](mailto:paigeb@dodgecity.org)  
Phone: 620-471-4648

1. The Seller does hereby agree to sell and convey to the Buyer by a good and sufficient general warranty deed the following described real property, situated in Ford County, Kansas, with a legal description attached and made part hereof and illustrated in attached Exhibit A, subject to easements and restrictions of record (hereinafter "the Property").
2. Buyer hereby agrees to purchase, and pay to Seller, as consideration for the conveyance to it of the Property, the sum of four hundred fifty thousand dollars and zero cents (\$450,000.00) ("the sale price") in the manner following to-wit: cash at closing.
3. The parties acknowledge the existence, at the time of sale, of a lease contract by and between Seller and Minet Construction, Inc. (hereinafter, "Tenant"). This lease contract (hereinafter "the Lease") is attached hereto as Exhibit C whereby Seller rents and leases to Tenant the use of the parking lot to the north of the building included in the Property. The parties understand the Lease term is for one year beginning on March 18, 2024 and shall expire March 31, 2025. The parties hereby agree, Seller's rights under the Lease as landlord shall transfer to Buyer upon closing, including but not limited to right of receipt of all rental income, rights to terminate, and rights to extend the lease term.

September 12, 2024

4. Seller agrees to furnish to Buyer a title insurance company's commitment to insure, to the Property, showing a merchantable title vested in Seller, subject to easements and restrictions of record. The Title Evidence shall be sent to Buyer for examination by Buyer as promptly and expeditiously as possible, and it is understood and agreed that Seller shall have a reasonable time after said Title Evidence has been examined in which to correct any defects in title.
5. A duly executed copy of this Purchase Agreement shall be delivered to the parties hereto.
6. Seller further agrees to convey the Property with all the improvements located thereon and deliver possession of the same in the same condition as they now are, reasonable wear and tear excepted.
7. It is agreed by the Parties that the closing of this transaction (the "Closing") shall take place within fourteen (14) days from date of execution of this Purchase Agreement during which time Buyer shall conduct such due diligence as it deems necessary and appropriate. The Closing may be extended by mutual agreement of the parties. At the Closing, Buyer shall pay to Seller the balance of the sale price. Seller shall deliver to Buyer the deed of conveyance, and all other documents and things to which Buyer shall be entitled. Upon the payment of such monies and delivery of such documents, this transaction shall be deemed closed. The parties will share the costs of closing, and the closing agent will be High Plains Land & Title of Dodge City.
8. Possession to be given to Buyer at closing.
9. All closing agent costs will be shared equally by Buyer and Seller.
10. All fixtures and all personal property remaining on the Property at the time of the Closing shall pass to and become the property of the Buyer.
11. Seller will be responsible for and shall pay all taxes and special assessments, if any, assessed against the Property for the year 2023 and all prior years. The taxes and special assessments, if any, for 2024 will be prorated based on the number of months, or fraction thereof, which each party shall be in possession of the Property. At the Closing, Seller shall pay to Buyer a sum equal to a prorated share of the 2024 taxes and special assessments, if any, said prorated share to be based upon the amount of taxes and special assessments assessed for the preceding year. Buyer will be responsible for and shall pay all taxes and special assessments for its prorated share of the 2024 year during which Buyer held possession of the Property when the same become due and payable, and all taxes and special assessments for subsequent years Buyer owns and possesses the Property.
12. The parties covenant and agree that except for closing, title insurance and commissions referenced elsewhere herein, each is solely responsible for the payment of any fee for brokerage, technical or other professional services relating to the execution and performance of this Purchase Agreement incurred by such party.

September 12, 2024

13. Seller makes no warranty or guarantee as to the suitability of the Property for the intended use of Buyer. Therefore, Buyer covenants and agrees that Buyer at Buyer's own expense, shall examine the Property in order to determine such suitability including but not limited to:
  - A. Soils data and geology, drainage, hydrology and topographical features that would affect any present or future intended use;
  - B. The presence or absence of any contamination by any hazardous substance;
  - C. The nature, extent, and cost of public utilities needed to serve all or a portion of such real property;
  - D. The extent and cost of compliance with subdivision regulations, building codes and other applicable rules and regulations involving public improvements, private improvements, access, building setbacks, public dedications, platting and re-platting requirements of such real property;
  - E. The nature and extent of zoning and subdivision statutes, laws, ordinances, and regulations affecting the present use, and the ease or difficulty involved in the zone-change and subdivision approval procedures necessary or desirable to allow for the Buyer's intended use or uses.
14. The parties agree this Purchase Agreement embodies the complete agreement and understanding among the parties and supersedes and preempts any prior understandings, agreements, or representations by or among the parties, written or oral, which may have related to the subject matter hereof in any way. This agreement may not be amended orally and may only be amended by a subsequent written agreement executed with the same formalities of this agreement.
15. In the event Closing is not completed within sixty (60) days of the execution of this Purchase Agreement and the parties have not mutually agreed to extend the closing date in writing, this agreement shall automatically terminate and neither party shall be bound thereby.

**SIGNATURE PAGE TO FOLLOW**

September 12, 2024

**Exhibit A**

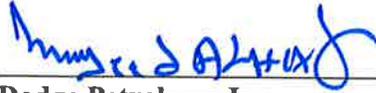
**LEGAL DESCRIPTION**

A tract of land in the Southeast Quarter (SE/4) of Section Thirty-five (35), Township Twenty-six (26) South, Range Twenty-five (25) West of the 6th P.M., Ford County, Kansas, and being a part of what was formerly Block One (1) Crawford's Second Addition to the City of Dodge City, Ford County, Kansas, and described as follows: Commencing at the intersection of the West line of Bridge Avenue (now South Second Avenue), Crawford's Addition to Dodge City, Ford County, Kansas, and the East line of County Road 8 (now Sunnyside Avenue), thence South along the West line of said Bridge Avenue (now South Second Avenue) for two hundred sixty-eight and six tenths (268.6) feet to a point of beginning; thence continuing South along the West line of said Bridge Avenue (now South Second Avenue) for two hundred ninety-one and three tenths (291.3) feet; thence West at right angles for two hundred forty-two and nine tenths (242.9) feet to the East line of County Road No. 8 (now Sunnyside Avenue) for three hundred seventeen and six tenths (317.6) feet; thence East for one hundred seventeen (117) feet to the point of beginning.

September 12, 2024

**WITNESS OUR HANDS AND SEALS** the day and year first above written.

**SELLER**



**Dodge Petroleum Inc.**  
Nageeb Alhaj, Owner

**BUYER**

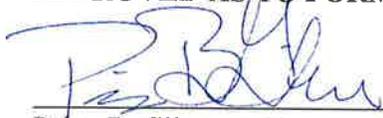
By Direction of the City Commission

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

**ATTEST:**

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

**APPROVED AS TO FORM:**



\_\_\_\_\_  
Paige B. Gilmore, City Attorney

Exhibit B

**PARKING SPACE RENTAL AGREEMENT**

**I. The Parties.** This agreement (dated March 15 2024) is by and between Dodge Petroleum Inc with a mailing address of 2307 Central Ave STE 8, Dodge City, Kansas, 67801 (hereinafter known as the "Lessor") and Muar Construction Inc with a street address of 307 S 2nd Ave, Dodge City, Kansas, 67801 (hereinafter known as the "Lessee") for ten (10) parking spaces located at 313 S. 2nd Ave, Dodge City, Kansas, 67801. Other Details: N Parking for 10 spaces during in Black Jack Liquor.

**II. Term.** This tenancy shall be on a fixed term.

This agreement begins on March 18 2024 and ends on March 31 2025.

**III. Rent.** The payment of rent by the Lessee to the Lessor shall be due on the first (1st) of every month in the amount of \$400 (US Dollars). Payment shall be delivered to the Lessor by the Lessee in the following manner: Rent shall be sent via check to the Lessor's mailing address provided.

**IV. Subletting.** The Lessee is not allowed to sublease (sublet) the space without the direct written consent from the Lessor.

**V. Current Registration & Insurance.** Lessee may only use the space for vehicles that are up-to-date with all state and local registration. In addition, all vehicles must maintain current with insurance that is legal under the State of registration.

**VI. Maintenance.** Lessee is required to keep the vehicle in good repair and free of hazardous leaks or oils or big leaks. No repairs of any type are allowed on the parking space and, if needed, must be towed to a location that allows such activities.

**VII. Use of Space & Damage.** The use of the space may only be for the parking of a vehicle that is owned/leased by the owner. No storage of personal property may be allowed in the space. Lessor is not liable for any damage done to the vehicle or personal property taken from it. All Liability to the vehicle and personal property will be responsibility of the Lessee.

**VIII. Governing Law.** This agreement shall be governed under the laws in the State of Kansas.

This agreement was signed on March 15 2024.

Lessor's Signature Imma J. ALUACK  
Dodge Petroleum Inc

Lessee's Signature [Handwritten Signature]



# Memorandum

**To:** City Commission

**From:** City Manager, Nick Hernandez

**Date:** September 16, 2024

**Subject:** Approval of a purchase agreement with DW Skyrise for 619 N.2<sup>nd</sup>

**Agenda Item:** New Business

---

**Recommendation:** Approve the Real Estate Agreement with DW Skyrise LLC for the purchase of 619 N. 2nd Ave and associated properties for an amount not to exceed \$740,000.

**Background:** The Property located at 619 N. 2<sup>nd</sup>, known iconically as the First National Bank building (FNB) lies in the heart of our downtown and serves as the only “skyscraper” within the City of Dodge City outside of grain elevators. The iconic building was declared a dangerous and unfit structure in July 2020.

The building needs immediate stabilization to avoid further damage which could lead to demolition. It has been determined by Staff that the best course of action is for the City to purchase the property and begin demolition of the interior and stabilization of the exterior allowing for the property to not succumb to further damage from water(freeze/thaw), mold, and mildew damage.

Upon closing the City will immediately begin efforts to mitigate the damage by demolition of the interior to expose existing damage. Upon discovery the damage, the damage will be repaired and stabilized. All utilities will be cut to the building to allow for the safe operations of the contractors and staff to effectively mitigate the hazard during the work.

**Justification:** DW Skyrise has been trying to find a cost-effective approach to renovate the structure to remedy the declaration as an unfit building. After numerous attempts and scenarios, it was determined by Staff and DW Skyrise that it would only ever be potentially financially beneficial if it was converted to low-income housing, coupled with significant government subsidies in the form of long-term tax breaks, federal subsidies and direct local contributions.

With the City obtaining ownership of the structure, we will be able to mitigate and over time develop a plan for reuse. The plan could take months to years to complete, however, control of the iconic property will be left in the City’s hands and not at risk for further deterioration. Stabilization of the property is budgeted for around \$250,000.

**Financial Considerations:**

Three options exist:

1. Demolish the interior of the structure at the estimated cost of \$3 million, which would be from public funds.

2. Purchase and stabilize the structure to mitigate further damage. For an estimated \$1 million.
3. Provide significant subsidies in the form of Tax Breaks, Federal Subsidies, and Local Contributions from the City to allow for low-income housing apartment. Could easily exceed \$2 Million in loss of tax revenue and direct City funds.

Funds will come from utility funds in the form of a loan to be reimbursed with the future proceeds of reutilization plan.

Staff Recommends Option #2.

**Legal Considerations:** The agreement has been reviewed and approved by the City Attorney.

**Cite Commission Options:**

1. Approve the purchase agreement with DW Skyrise LLC
2. Reject the Proposal
3. Table for further discussion

**Attachments:**

Real Estate Sales Contract with DW Skyrise LLC

September 13, 2024

## REAL ESTATE SALE CONTRACT

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2024 by and between, **DW Skyrise, LLC**, a Kansas limited liability company, hereinafter referred to as "Seller," whether one or more, and **City of Dodge City, Kansas**, a municipal corporation, hereinafter referred to as "Buyer," whether one or more, (hereinafter collectively referred to as "the parties").

**WITNESSETH:** That for and in consideration of the mutual promises, covenants and payments hereinafter set out, the parties hereto do hereby contract to and with each other, as follows:

**Seller:** the Seller of the Property is DW Skyrise LLC (hereinafter "Seller") and may be contacted as follows:

DW Skyrise LLC  
Attn: Ryan Deutsch  
619 N. 2<sup>nd</sup> Ave.  
Dodge City, KS 67801  
E-mail: [rdeutsch@dwproperties.com](mailto:rdeutsch@dwproperties.com)  
Phone: 620-789-7368

**Buyer:** the Buyer is the City of Dodge City, (hereinafter, "Buyer") a municipal corporation with contact information as follows:

City of Dodge City  
Attn: Paige Gilmore  
100 Chaffin Rd.  
Dodge City, KS 67801  
E-mail: [paigeb@dodgecity.org](mailto:paigeb@dodgecity.org)  
Phone: 620-471-4648

1. The Seller does hereby agree to sell and convey to the Buyer by a good and sufficient special warranty deed the following described real property, situated in Ford County, Kansas, with a legal description attached and made part hereof and illustrated in attached Exhibit A, subject to easements and restrictions of record (hereinafter "the Property").
2. Buyer hereby agrees to purchase, and pay to Seller, as consideration for the conveyance to it of the Property, the sum of seven hundred forty thousand and zero cents (\$740,000.00) ("the sale price") in the manner following to-wit:
  - a) \$37,000.00 in earnest money and down payment, payable to High Plainst Land and Title as escrow and closing agent, to be held until the closing and then applied to the purchase price
  - b) \$703,000.00 in available funds at closing.
3. The parties acknowledge the existence, at the time of sale, of a telecom easement and assignment of telecom rents (collectively "Telecom Easement") by and between third parties. Seller asserts a true and accurate copy of Telecom Easement documents are attached hereto as Exhibit B (Agreement for Purchase of Easement) and Exhibit C

September 13, 2024

(Communication Facility Agreement). The Telecom Easement will all rights to extend the term pursuant to the easement, and any assignments of such easements shall be a permitted exception to Seller's commitment in paragraph one (1) herein to provide good and sufficient warranty of clear title to the Property. The parties acknowledge that Seller receives no rental income as a result of this Telecom Easement and any related leases or interests, and Buyer understands it shall not acquire rights to rental income regarding the same.

Seller asserts the Telecom Easement owner, Neutral Path Networks, LLC may be contacted as follow:

Neutral Path Networks, LLC  
1900 Pacific Avenue  
Dallas, Texas 75201  
Attn: Ben Collins

4. Seller agrees to furnish to Buyer a commitment for owner's title insurance from High Plains Land and Title to insure, to the Property, showing a merchantable title vested in Seller, subject to easements, leases, and restrictions of record. The Title Evidence shall be sent to Buyer for examination by Buyer as promptly and expeditiously as possible, and it is understood and agreed that Seller shall have a reasonable time after said Title Evidence has been examined in which to correct any defects in title.
5. A duly executed copy of this Purchase Agreement shall be delivered to the parties hereto.
6. Seller further agrees to convey the Property with all the improvements located thereon and deliver possession of the same in the same condition as they now are, reasonable wear and tear excepted.
7. It is agreed by the Parties that the closing of this transaction (the "Closing") shall take place within sixty (60) days from date of execution of this Purchase Agreement. The parties shall cooperate in good faith to close within such 60 days. Prior to the closing the Buyer shall conduct such due diligence as it deems necessary and appropriate. If no objections are made to the property with regard to the matters set out in Paragraph 13 at least 15 days prior to the scheduled closing date, all objections shall be deemed waived. The Closing may be extended by mutual agreement of the parties, and will be extended if necessary to allow reasonable time to cure title objections, if any are made. At the Closing, Buyer shall pay to Seller the balance of the sale price. Seller shall deliver to Buyer the deed of conveyance, and all other documents and things to which Buyer shall be entitled. Upon the payment of such monies and delivery of such documents, this transaction shall be deemed closed. The parties will share the costs of closing, and the closing agent will be High Plains Land & Title of Dodge City.
8. Possession to be given to Buyer at closing, subject to the telecommunication leasehold interests

September 13, 2024

9. All closing agent costs will be shared equally by Buyer and Seller. The title insurance premium shall be equally divided at closing. Deed recording fees shall be paid by the Buyer.
10. All fixtures and all personal property remaining on the Property at the time of the Closing shall pass to and become the property of the Buyer, excepting the telecommunication equipment of third parties.
11. Seller will be responsible for and shall pay all taxes and special assessments, if any, assessed against the Property for the year 2023 and all prior years. The taxes and special assessments, if any, for 2024 will be prorated based on the number of months, or fraction thereof, which each party shall be in possession of the Property. At the Closing, Seller shall pay to Buyer a sum equal to a prorated share of the 2024 taxes and special assessments, if any, said prorated share to be based upon the amount of taxes and special assessments assessed for the preceding year. Buyer will be responsible for and shall pay all taxes and special assessments for its prorated share of the 2024 year during which Buyer held possession of the Property when the same become due and payable, and all taxes and special assessments for subsequent years Buyer owns and possesses the Property.
12. The parties covenant and agree that except for closing, title insurance and commissions referenced elsewhere herein, each is solely responsible for the payment of any fee for brokerage, technical or other professional services relating to the execution and performance of this Purchase Agreement incurred by such party.
13. Seller makes no warranty or guarantee as to the suitability of the Property for the intended use of Buyer. Therefore, Buyer covenants and agrees that Buyer at Buyer's own expense, shall examine the Property in order to determine such suitability including but not limited to:
  - A. Soils data and geology, drainage, hydrology and topographical features that would affect any present or future intended use;
  - B. The presence or absence of any contamination by any hazardous substance;
  - C. The nature, extent, and cost of public utilities needed to serve all or a portion of such real property;
  - D. The extent and cost of compliance with subdivision regulations, building codes and other applicable rules and regulations involving public improvements, private improvements, access, building setbacks, public dedications, platting and replatting requirements of such real property;
  - E. The nature and extent of zoning and subdivision statutes, laws, ordinances, and regulations affecting the present use, and the ease or difficulty involved in the zone-change and subdivision approval procedures necessary or desirable to allow for the Buyer's intended use or uses.

Seller and the Seller's members are not experts in property condition, and do not warrant the condition of the property, nor does the Seller promise to perform repairs. Any statements made by the Seller or the Seller's members as to the property condition are not warranties. Buyer will perform its own inspection as to the condition of the property, the fixtures and improvements.

September 13, 2024

13. If damages shall occur to the property after the contract is signed and before the closing, the Seller shall apply insurance proceeds to the repair of the property. If the property cannot be repaired due the extent of the loss or the limitations of coverage, Seller may, at Seller's option, retain the insurance proceeds, cancel the contract, and the earnest money shall be returned to the Buyer. Seller retains the right to negotiate and settle all claims.
14. If either party shall default in the performance of their obligations under this contract without legal justification, the non-defaulting party shall have remedies as specified by Kansas law.
15. The parties agree this Purchase Agreement embodies the complete agreement and understanding among the parties and supersedes and preempts any prior understandings, agreements, or representations by or among the parties, written or oral, which may have related to the subject matter hereof in any way. This agreement may not be amended orally and may only be amended by a subsequent written agreement executed with the same formalities of this agreement.

**SIGNATURE PAGE TO FOLLOW**

September 13, 2024

**WITNESS OUR HANDS AND SEALS** the day and year first above written.

**SELLER**

**BUYER**

By Direction of the City Commission

\_\_\_\_\_  
**DW Skyrise, LLC**

(printed name of member with authority to bind)

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

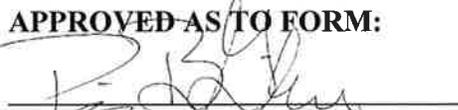
\_\_\_\_\_  
**DW Skyrise, LLC**

(signature of member with authority to bind)

ATTEST:

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

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Paige B. Gilmore, City Attorney

September 13, 2024

**Exhibit A**

**LEGAL DESCRIPTION**

Tract One: Lots Thirty-three (33), Thirty-five (35), Thirty-seven (37), and thirty-nine (39), on Spruce Street, Original Town of Dodge City, Ford County, Kansas, according to the recorded Plat thereof.

and

Tract Two: Part of Lot Three (3), all of Lots Four (4) and Five (5), Block Nineteen (19), Original Townsite of Dodge City, Ford County, Kansas, according to the recorded Plat thereof, described as follows: Beginning at the intersection of the South line of Vine Street and the West line of Second Avenue, Dodge City, Kansas, thence South along the West line of Second Avenue, 83.75 feet to a point; thence West parallel with the South line of Vine Street 117.5 feet more or less, to a point in the East line of the alley, which point is 83.75 feet South of the South line of Vine Street; thence North to the South line of Vine Street; thence East to the point of beginning.

September 13, 2024

**Exhibit B**

Agreement for Purchase of Easement

(page 1-80)

September 13, 2024

**Exhibit C**

Communication Facility Agreement

(page 1-46)

## AGREEMENT FOR PURCHASE OF EASEMENT

This Agreement for Purchase of Easement (this "Agreement") is made as of February 20, 2021, by and between Varsity Square LLC, a Nevada limited liability company ("Seller") and Neutral Path Networks, LLC, a Delaware limited liability company ("Purchaser").

### Preliminary Statement

Seller has agreed to sell the Property, to Purchaser, and Purchaser has agreed to purchase the Property from Seller, on the terms, covenants and conditions set forth in this Agreement. In addition, Seller has agreed to enter into the Easement with Purchaser at Closing.

"Property" means Purchaser's easement interest pursuant to the Easement, the Tenant Leases, the Intangible Personal Property, the Improvements and the Tangible Personal Property; except for the easement interest in a portion of the Rooftop granted pursuant to the Easement, Purchaser is not purchasing or taking fee title or other interest in or to any Real Property (including the building thereon) of Seller.

Seller and Purchaser hereby agree as follows:

1. **DEFINITIONS.** Capitalized terms used but not otherwise defined in this Agreement will have the meanings set forth in Exhibit "A".

2. **SALE AND PURCHASE.** In consideration of the mutual covenants contained in this Agreement, and other good and valuable consideration, Seller agrees to sell and convey the Property to Purchaser and Purchaser agrees to purchase the Property from Seller, on the terms, covenants and conditions set forth in this Agreement. In addition, Seller agrees to enter into the Easement with Purchaser at Closing regarding the top story rooftop of the building located at 619 North 2nd Avenue, Dodge City, Kansas (the "Rooftop").

3. **PURCHASE PRICE AND METHOD OF PAYMENT.**

3.1 *Purchase Price.* The Purchase Price of the Property (including the consideration for the entering into of the Easement) is Seven Hundred Forty Thousand Dollars (\$740,000.00), subject to all adjustments, credits and proration contained in this Agreement. Purchaser shall pay the Purchase Price to Seller by wired funds, cashier's check or certified check.

3.2 *Rent Reconciliation.* Notwithstanding anything contained in Section 8 to the contrary, at Closing, Purchaser shall withhold an amount equal to the rent payments due under the Tenant Leases during the period of time commencing on the Closing Date and expiring on the last day of the first calendar month after the Closing Date, such amount to be reconciled once the Tenants under the Tenant Leases commence payment of rent directly to Purchaser, whereupon either party owing the other party a sum of money from such Tenant Lease rent payments will promptly pay the sum to the other party in Current Funds.

4. REPRESENTATIONS AND WARRANTIES OF SELLER. As a material inducement to Purchaser to enter into this Agreement, Seller represents and warrants to Purchaser as follows:

4.1 *Authority.* Seller is a Nevada limited liability company, duly organized, validly existing and in good standing under the laws of the state of its incorporation. All documents, including this Agreement, executed or to be executed by Seller (a) have been duly authorized, and have been or will be duly executed and delivered by Seller, (b) are or will be legal, valid and binding obligations of Seller, and (c) do not and will not violate any provisions of any agreement to which Seller is a party or Seller is bound. Seller has the full right, power and authority, without the necessity of obtaining the consent or approval of any other Person, to enter into this Agreement and to perform Seller's obligations under this Agreement.

4.2 *Real Property.* For all Real Property owned by Seller, Seller has good and marketable fee simple title to the Real Property, which is legally described on Schedule 4.2 attached hereto and made a part hereof, and the Improvements thereon. Seller will enter into the Easement with Purchaser at Closing, free and clear of all liens and encumbrances.

4.3 *Tenant Leases.* Seller has attached hereto as Schedule 4.3, true, correct and complete copies of the Tenant Leases. Seller will assign its interests in the Tenant Leases to Purchaser at Closing free and clear of all liens and encumbrances, excepting only the Permitted Exceptions. Except for the rights of the Tenants, as tenants only, pursuant to the Tenant Leases, no Person other than Purchaser will on the Closing Date be in, or have any right or claim to, possession of any of the Property. Other than the Tenant Leases, there are no leases, subleases, licenses or other occupancy agreements (written or oral) which grant any possessory interest in or to the Rooftop or the Improvements thereon, or which grant other rights with respect to the use of any of the Property. Furthermore, Seller represents and warrants that to Seller's actual knowledge: (i) each Tenant Lease is in full force and effect and has not been modified, terminated, non-renewed or amended, nor has any Tenant given notice (written or oral) of an intent to terminate the Tenant Lease; (ii) each Tenant has accepted and remains in possession of its premises under its Tenant Lease and operates and maintains its equipment thereon; (iii) Seller is collecting the rent set forth in each Tenant Lease on a current basis and there are no past due amounts thereunder; (iv) except as expressly set forth in the Tenant Leases, no Tenant is entitled to any rental concessions or abatements in rent for any period subsequent to the Closing Date; (v) Seller has not given notice to any Tenant claiming that the Tenant is in default under its Tenant Lease, and, to the best of Seller's knowledge, there is no event which, with the giving of notice or the passage of time or both, would constitute such a default; (vi) Seller has not received notice from any Tenant claiming that Seller is in default under the Tenant Lease, or claiming that there are defects, offsets or defenses in the Improvements, which default or defect remains in any manner uncured; (vii) except as expressly set forth in the Tenant Leases, there are no security deposits or prepaid rentals under any of the Tenant Leases; (ix) no Tenant Lease provides for non-monetary rent or other consideration to the lessor thereunder; and (x) no Tenant is an Affiliate of Seller.

4.4 *Defects.* To Seller's actual knowledge, there are no physical, structural or mechanical defects in the Rooftop or other Improvements. For avoidance of doubt, Seller discloses it knows of water infiltration from the second story (mezzanine) roof that drained to the basement

and needs to be cleaned up, but Seller has no actual knowledge of any defects concerning the top story roof.

4.5 *Utilities and Access.* To Seller's actual knowledge, all electric, telephone, drainage facilities and other utilities required for use and operation of the Improvements on the Rooftop are installed within valid, written, recorded easements. To Seller's actual knowledge, such utilities are in good working order, meet all current codes and ordinances and are of adequate size and capacity to service the Rooftop. Seller is not responsible for the payment of any utilities charges for electricity or any other utility service used by any Tenant.

4.6 *Mechanics' Liens.* On the Closing Date, there will be no outstanding contracts made or authorized by Seller for the Improvements or any other work or services to the Property, including professionals such as architects, engineers and planners, which have not been fully paid.

4.7 *Taxes and Assessments.* On the Closing Date, all ad valorem real property taxes for the Real Property and all personal property taxes for the Tangible Personal Property that are due and payable will have been fully paid. To Seller's actual knowledge, there are no existing or pending special assessments, fees or similar obligations affecting the Real Property, which may be assessed by any Governmental Authority.

4.8 *Condemnation.* To Seller's actual knowledge, there are no present or pending legal or administrative proceedings relative to condemnation, or other taking by any Governmental Authority, of any portion of the Real Property.

4.9 *Legal Compliance; No Proceedings.* To Seller's actual knowledge, there are no outstanding notices of violation currently in effect for the Property and no pending or threatened suits, actions or proceedings affecting the Property before any Governmental Authority, and Seller is not in default under any judgment, order, writ, injunction, rule or regulation of or issued by any Governmental Authority.

4.10 *Permits.* To Seller's actual knowledge, all Permits have been issued, are fully paid for and are in full force and effect.

4.11 *Hazardous Materials.* To Seller's actual knowledge, the Real Property has not in the past been used, and is not presently being used, for the handling, storage, transportation, or disposal of hazardous or toxic substances, materials, pollutants or waste (or similar items under applicable environmental Legal Requirements). To Seller's actual knowledge, there has been no release of any such items into the environment from the Real Property.

4.12 *No Other Contracts.* Seller has not entered into any other contract of sale of, and has not given any Person the option to purchase, any portion of the Property. The Real Property is presently listed for sale and expected to be sold, subject to the Easement.

4.13 *Accurate Documents.* All contracts, documents, reports, deeds, leases, title insurance policies, title opinions, surveys and other items relating to the Property and delivered to

Purchaser pursuant to this Agreement are true, correct and complete copies of the originals thereof which are in Seller's possession.

4.14 *Accuracy of Representations and Warranties.* All of Seller's representations and warranties contained in this Agreement and Seller's liability therefore will survive the Closing for a period of six (6) months. Purchaser will have no duty to investigate or inquire about the accuracy or veracity of any representation or warranty of Seller.

## 5. INSPECTION PERIOD.

5.1 *Access.* Purchaser and its representatives, will have access to the Property and the financial records of the Property at any time during normal business hours during the Inspection Period, at Purchaser's sole cost and expense, to show the Property to third parties and to perform any tests, inspections, surveys, studies, environmental site assessments and measurements which Purchaser reasonably deems necessary or appropriate. Purchaser will restore any disturbed Property to its prior condition. Purchaser will indemnify and hold Seller harmless from any Claims suffered or incurred by Seller as a result of Purchaser's entry upon the Real Property prior to the Closing, for a period of one (1) year after the Closing or the earlier termination of this Agreement. Purchaser must provide Seller at least two (2) business days' notice prior to accessing the Property and will not unreasonably interfere with the use and occupancy of the Real Property. Purchaser shall not conduct any materially invasive inspections or tests without Seller's prior written consent.

5.2 *Key Documents.* Within five (5) days following its execution of this Agreement, Seller will furnish to Purchaser true, correct and complete copies of all records, documentation and other information in its possession as Purchaser may reasonably request concerning the ownership, use, operation and condition of the Property.

5.3 *Governmental and Third Party Contact.* Purchaser may, but is not obligated to, contact any Governmental Authority about any Permits or Legal Requirements concerning the Property, and may, but is not obligated to, contact any Tenant or other Person about the Easement, the Tenant Leases or any other aspects of the Property.

5.4 *Changes During Inspection Period.* During the Inspection Period, Seller will not (a) permit any new occupancy of, or enter into any new lease, license or other occupancy Agreement for, space on the Rooftop or in any of the Improvements located on the Rooftop, (b) renew, modify or terminate the Tenant Leases, (c) take any action or fail to take any action that would constitute a default under the Tenant Leases, or (d) enter into or renew any management, maintenance, service or other Agreement affecting the Rooftop, without Purchaser's prior written approval in each instance, which approval will not be unreasonably withheld or delayed.

5.5 *Conduct During Inspection Period.* During the Inspection Period, Seller (a) will conduct its business in the usual and ordinary course, (b) will maintain and preserve the Property and Real Property, and (c) will not encumber, modify or alter the Property in any material respect.

5.6 *Termination.* Purchaser will have the right, in its sole and absolute discretion, to terminate this Agreement during the Inspection Period for any reason whatsoever by giving written

notice to Seller of such termination on or prior to the last day of the Inspection Period. If Purchaser fails to so notify Seller within such time period, all rights of Purchaser to terminate this Agreement pursuant to this Section will lapse.

5.7 *Easement.* At Closing, Seller and Purchaser shall enter into that Easement and Assignment Agreement, in the form attached hereto as Exhibit "D" (the "Easement"). The terms of the Easement are incorporated herein by reference.

6. CLOSING. If all representations and warranties contained in this Agreement are true and correct, and all conditions precedent contained in this Agreement are satisfied and this Agreement is not terminated in accordance with Section 5.6, then Seller and Purchaser agree that the Closing will be consummated on the Closing Date and conducted by mail. At the Closing, Seller will deliver the items listed on Exhibit "B" to Purchaser, each fully executed and acknowledged as required, and Purchaser will deliver the items listed on Exhibit "C" to Seller, each fully executed and acknowledged as required.

7. EXPENSES. Seller and Purchaser will each pay its own attorneys' fees and costs incurred in connection with the negotiation of this Agreement and consummation of the Closing. Purchaser will pay the cost of any transfer taxes (including any documentary stamp taxes), the cost of a title insurance policy insuring Purchaser's title to the easement interest, the cost of any survey (if Purchaser obtains a survey), and any costs associated with its inspection of the Property (including the Rooftop) during the Inspection Period. Any costs not specifically allocated will be paid by the party that customarily bears such cost in the locale where the Real Property is located.

8. PRORATIONS. All taxes, real estate assessments, utility charges and similar expenses related to the Property will be prorated on the Closing Date. Seller shall be responsible for such expenses for the period prior to the Closing Date and shall be entitled to all Property income attributable to the period prior to the Closing Date. Purchaser shall be responsible for such expenses for the period after the Closing Date and shall be entitled to all Property income attributable to the period after the Closing Date. Rents actually collected under the Tenant Leases will be prorated as of the Closing Date. If Seller receives rents or other receipts under the Tenant Leases after the Closing Date which relate to any period after to the Closing Date, Seller will pay to Purchaser in Current Funds that portion of such rents attributable to the period after the Closing Date. All utility deposits and reservation fees paid by or on behalf of Seller in connection with the Property will be assigned and transferred to Purchaser. If any of the prorations cannot be calculated accurately on the Closing Date, then the same will be calculated within sixty (60) days after the Closing Date and either party owing the other party money based on such prorations will promptly pay the sum to the other party in Current Funds. The terms of this Section will survive the Closing.

9. RISK OF LOSS. Seller will bear all risk of loss to the Property, whether by fire, casualty or otherwise from the Effective Date through and including the Closing Date.

10. INDEMNITY.

10.1 *Seller's Indemnity.* After the Closing Date, Seller will indemnify, defend and hold harmless Purchaser from and against any Claims arising out of (a) any breach of any representation

or warranty by Seller, (b) any breach or default by Seller under this Agreement, and (c) any act or omission of Seller or its agents or representatives relating to the period of time prior to the Closing, including any act or omission, or series of similar or related acts or omissions commencing prior to the Closing Date and continuing after the Closing Date.

10.2 *Purchaser's Indemnity.* After the Closing Date, Purchaser will indemnify, defend and hold harmless Seller from and against any Claims arising out of (a) any breach of any representation or warranty by Purchaser, (b) any breach or default by Purchaser under this Agreement, and (c) any act or omission of Purchaser or its agents or representatives relating to the period of time subsequent to the Closing, excluding, however, any Claims arising out of any act or omission, or series of similar or related acts or omissions, of Seller commencing prior to the Closing Date and continuing after the Closing Date.

## 11. DEFAULT.

11.1 *Purchaser's Default.* If Purchaser fails to perform its obligations under this Agreement, Seller will have the right of specific performance, without waiving Seller's right to sue Purchaser for damages, or a combination of specific performance and damages. No remedy conferred upon Seller is intended to be exclusive of any other remedy, and each remedy will be cumulative and in addition to every other remedy available under this Agreement, at law or in equity. No single or partial exercise of any remedy will preclude any other. The parties hereby waive any right to claim punitive, consequential, special or indirect damages.

11.2 *Seller's Default.* If Seller fails to perform any of Seller's obligations under this Agreement, Purchaser will have the right of specific performance, without waiving Purchaser's right to sue Seller for damages, or a combination of specific performance and damages. No remedy conferred upon Purchaser is intended to be exclusive of any other remedy, and each remedy will be cumulative and in addition to every other remedy available under this Agreement, at law or in equity. No single or partial exercise of any remedy will preclude any other. The parties hereby waive any right to claim punitive, consequential, special or indirect damages.

12. **BROKER.** Except for Tower Capital Advisors LLC, whose fees shall be paid by Purchaser, neither Purchaser nor Seller has dealt with any real estate agent, broker or finder in connection with the transaction contemplated by this Agreement.

13. **INTERPRETATION.** The section headings in this Agreement have been inserted for convenience of reference only and do not define, modify or describe the scope or intent of any of the terms of this Agreement. This Agreement will be interpreted and enforced in accordance with its provisions and without the aid of any custom or rule of law requiring or suggesting construction against the party drafting or causing the drafting of the provisions in question.

14. **NOTICES.** All notices or communications required or permitted under this Agreement will be in writing and delivered by hand, or by certified mail, return receipt requested, postage prepaid, or by national overnight courier service, or by email, to the party at its respective address below, or at such address specified by subsequent written notice given as provided herein.

15. **ATTORNEYS FEES AND COSTS.** In the event of any litigation or arbitration arising out of this Agreement, the prevailing party will be entitled to recover all expenses and costs incurred, including reasonable attorneys' fees and costs. This Section will survive the Closing.

16. **GOVERNING LAW.** This Agreement will be governed by and construed and enforced in accordance with the laws of the state where the Real Property is located, without regard to conflict of laws principles.

17. **VENUE.** Venue for any legal proceeding related to this Agreement shall be in the county where the Real Property is located.

18. **INTEGRATION.** All prior understandings and agreements between the parties with respect to the subject matter of this Agreement are merged in this Agreement. Neither party is relying upon any statement, covenant or representation made by any other party which is not embodied in this Agreement.

19. **AMENDMENTS.** No purported amendment or waiver of any term of this Agreement will be binding or have any effect unless the same is in writing and signed by the party to be charged.

20. **ASSIGNMENT.** Either party may assign this Agreement by written instrument only.

21. **BINDING EFFECT.** This Agreement will be binding upon, and will inure to the benefit of, the Seller, Purchaser and their respective successors and assigns.

22. **FURTHER ASSURANCES.** Each party will, from time to time, execute, acknowledge and deliver such further instruments, and perform such additional acts, as the other party may reasonably request in order to effectuate the intent of this Agreement. This Section will survive the Closing.

23. **THIRD PARTIES.** Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies to any Persons other than Seller, Purchaser and their respective successors and assigns.

24. **COVENANT NOT TO COMPETE.**

24.1 *Seller's Acknowledgments.* Seller hereby acknowledges that:

24.1.1 The agreements and covenants Seller is providing in this Section are reasonable and necessary to Purchaser's protection of its legitimate interests in the transaction contemplated by this Purchase Agreement;

24.1.2 Seller has certain knowledge of the business operations that may be required to ensure the effective and successful conduct of the business of Purchaser, and has access to trade secrets and confidential business methods, plans and practices considered confidential by Purchaser, this information has commercial value in the business in which Purchaser will be engaged after the consummation of the transaction contemplated by this Agreement, Purchaser

will be irreparably damaged and its substantial investment in the transaction contemplated by this Agreement materially impaired if Seller were to enter into an activity competing or interfering with the business of Purchaser in violation of the terms of this Section or if Seller were to disclose or make unauthorized use of any confidential information concerning the business of the Seller or Purchaser; and

24.1.3 The scope and length of the term of this Section and the geographical restrictions contained herein are fair and reasonable and not the result of overreaching, duress or coercion of any kind and the full, uninhibited and faithful observance of each of the agreements and covenants contained in this Section will not cause Seller any undue hardship, financial or otherwise, and enforcement of each of the covenants contained in this Section will not impair Seller's ability, if Seller so desires, to obtain work commensurate with Seller's abilities and on terms fully acceptable to Seller.

24.2 *Covenant Not To Compete.* Seller covenants and agrees that Seller will not, at any time during the term of the Easement, lease space to telecommunications providers on the Real Property for telecommunications purposes. Seller may, without violating this Agreement, use, provide and allow customary personal telecommunications services to Seller, its tenants and its occupants. Purchaser will market available space on the Rooftop for telecommunications purposes for the benefit of Seller and Purchaser in accordance with the terms of the Easement.

24.3 *Remedies.* Seller and Purchaser acknowledge that Purchaser will be irreparably damaged (and damages at law would be an inadequate remedy) if this Section is not specifically enforced. Therefore, in the event of a breach or threatened breach by Seller of the provisions of this Section 24 of the Purchase Agreement, then Purchaser shall be entitled, in addition to all other rights or remedies which may be available at law or in equity, to an injunction restraining such breach, without being required to show any actual damage or to post an injunction bond and/or to a decree for specific performance of the provisions of this Section. The terms of this Section shall survive the Closing.

The parties hereto have executed this Agreement on the dates set forth below.

SELLER:

Varsity Square LLC

By: Chiye Onodera Duffy  
Chiye Onodera Duffy (Feb 23, 2021 22:11 EST)  
Chiye Onodera Duffy, Manager

PURCHASER:

Neutral Path Networks, LLC

By: Ben Collins  
Ben Collins, President and CEO

Address:

Varsity Square LLC  
5558 West Bayshore Drive  
Port Orange, Florida 32127-6116  
Attention: Chiye Onodera Duffy, Manager

Address

Neutral Path Networks, LLC  
1900 Pacific Avenue  
Dallas, Texas 75201  
Attention: Ben Collins

### Schedule of Exhibits

- Exhibit "A" - Defined Terms
- Exhibit "B" - List of Seller's Closing Documents
- Exhibit "C" - List of Purchaser's Closing Documents
- Exhibit "D" - Form of Easement
- Schedule 4.2 - Legal Description of Real Property
- Schedule 4.3 - True and Correct Copies of Tenant Leases

Exhibit "A"  
Defined Terms

The following terms will have the following meanings throughout this Agreement:

"Affiliate" - with respect to a Person, any other Person that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the first Person.

"Bill of Sale and Assignment" - an instrument from Seller to Purchaser conveying and assigning the Tangible Personal Property, the Improvements and the Tenant Leases, with limited warranties of title, in form and substance reasonably acceptable to Seller and Purchaser.

"Business Day" - any day other than a Saturday, Sunday or a day upon which banking institutions in the State of Kansas are authorized or required by law to close.

"Claim" - any claim, damage, loss, liability, obligation, demand, defense, judgment, suit, proceeding, disbursement or expense, including reasonable attorneys' fees or costs (including those related to appeals).

"Closing" - the date upon which the consummation of the purchase and sale of the Property occurs in accordance with the terms of this Agreement.

"Closing Date" - the second Business Day following the expiration of the Inspection Period, unless extended by the terms of this Agreement or by mutual consent of Purchaser and Seller.

"Code" - the federal Internal Revenue Code of 1986, as amended.

"Current Funds" - wired funds, cashier's check or certified check.

"Effective Date" - the date first written in this Agreement.

"Governmental Authority" - the United States of America, the state, county, or municipality in which any of the Property is located, any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to any of them (including the FAA, the FCC, any drainage district, street lighting district or special taxing district).

"Improvements" - all towers, poles, equipment shelters, storage facilities, cabinets, anchors, guy wires and other improvements which are located on or appurtenant to the Property to the extent the same exclusively serve the Tenant Leases.

"Included Lease" - any Tenant Lease provided (a) (1) such Tenant has not filed bankruptcy, (2) such Tenant Lease does not expire within six (6) months following the Closing Date, (3) the applicable Tenant does not intend to terminate (including notice of non-renewal) or repudiate the applicable Tenant Lease, and (4) such Tenant has not alleged a default by the landlord under such Tenant Lease prior to the Closing Date, and (b) the applicable Tenant has installed and operates

and maintains its equipment on the Rooftop and the applicable Tenant has commenced paying rent under the applicable Tenant Lease.

“Income and Expense Affidavit” - an affidavit from Seller to Purchaser attesting to the income and expenses associated with the Tenant Leases.

“Inspection Period” - the period commencing on the Effective Date and ending on the first Business Day following the forty-fifth (45th) day thereafter.

“Intangible Personal Property” - any development rights, documents, technical matters and work product relating to the Property, including any Permits, environmental studies, construction, engineering, architectural, landscaping or other plans or drawings related to the Property and any surveys, maps, site plans, plats and other graphics relating to the Property.

“Legal Requirements” - any law, ordinance, order, rule or regulation of any Governmental Authority which pertains to the Property or Seller, including all building, zoning, land use, subdivision, setback, platting, health, traffic, environmental, hazardous waste, natural resources or flood control matters.

“Permits” - all permits, licenses, authorizations, certificates of occupancy, certificates of completions, variances and similar approvals of any Governmental Authority having jurisdiction over the Property.

“Permitted Exceptions” - exceptions to title which Purchaser fails to object to in writing during the Inspection Period.

“Person” - a natural person, corporation, partnership, limited liability company, trust, joint venture, unincorporated association, Governmental Authority or other entity.

“Real Property” - the real property described on Schedule 4.2 upon which the building located at 619 North 2nd Avenue, Dodge City, Kansas is situated.

“Service Contracts” - all service contracts, maintenance contracts and management contracts, if any, affecting the Property.

“Tangible Personal Property” - all personal property, furniture, fixtures, equipment, appliances and other items of personal property owned by Seller and used exclusively in connection with the Tenant Leases.

“Tenant Leases” - the leases, licenses and other occupancy agreements attached on Schedule 4.3 pursuant to which any Person is granted the right to use space or install equipment on the Rooftop or in any of the Improvements located on the Rooftop.

“Tenants” - each of the lessees, licensees or other occupants under the Tenant Leases.

Exhibit "B"  
List of Seller's Closing Documents

1. The Easement.
2. The Bill of Sale and Assignment.
3. The Tenant Estoppels (in forms required by Tenant Leases).
4. The Income and Expense Affidavit.
5. Originals of all Tenant Leases and Permits to the extent the same are in Seller's possession.
6. A notice from Seller to each of the Tenants, in form and substance reasonably acceptable to Purchaser, informing the Tenants of the sale of the Property to Purchaser.
7. Evidence that all utility charges for the Rooftop have been paid through a date not more than thirty (30) days prior to the Closing Date.
8. Evidence of the termination of the Services Contracts which Purchaser has not elected to assume.
9. An affidavit to Purchaser's title insurer, in form and substance reasonably acceptable to Purchaser, which will be sufficient to have the standard printed exceptions deleted from the title insurance policy of Purchaser and its lender.
10. An affidavit certifying that Seller is not a "foreign person" under Section 1445(f)(3) of the Code.
11. A 1099-S form.
12. Any other documents or instruments required by this Agreement or reasonably requested by Purchaser to consummate the Closing.

Exhibit "C"  
List of Purchaser's Closing Documents

1. The Purchase Price subject to all adjustments, credits and prorations provided for in this Agreement.
2. The Easement.
3. The Bill of Sale and Assignment.
4. A certificate from Purchaser, in form and substance reasonably acceptable to Seller, certifying that all representations and warranties of Purchaser remain true and correct as of the Closing Date.
5. Any other documents or instruments required by this Agreement or reasonably requested by Seller to consummate the Closing.

**EXHIBIT D**  
EASEMENT AND ASSIGNMENT AGREEMENT

This Easement and Assignment Agreement (“Easement Agreement”) is made as of February\_\_\_\_, 2021 (“Effective Date”), by and between Varsity Square LLC, a Nevada limited liability company (“Site Owner”) and Neutral Path Networks, LLC, a Delaware limited liability company (“Grantee”). This Easement Agreement is attached to and is an exhibit to the Agreement for Purchase of Easement (“Purchase Agreement”). Capitalized terms not defined herein are defined in Schedule 1.

Preliminary Statement

Site Owner is the owner of that certain real property including a building (“Building”) located at 619 North 2nd Avenue, Dodge City, Kansas 67801 (“Real Property”), being more particularly described in Exhibit 1 to the Memorandum. All Exhibits referenced herein shall be attached to and considered a part of this Easement Agreement.

In consideration of the mutual covenants contained in this Easement Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Site Owner and Grantee hereby agree as follows:

1. GRANT OF EASEMENT: Site Owner grants and conveys to Grantee:

1.1 *Exclusive Easement.* Exclusive rights to the Communication Easement, solely for Telecommunications Purposes and related activities necessary for Grantee to comply with its obligations under the Existing Agreements. The “Communication Easement” is that portion of the Real Property leased to Existing Customers pursuant to the Existing Agreements, and the portion of the Real Property actually in use by the Existing Customers, and as further described on Exhibit 2. Grantee’s exclusivity as described herein shall not preclude Site Owner from using the Real Property or areas on the top story roof of the Building (the “Rooftop”) outside the Communication Easement for any purpose that is not a Telecommunications Purpose.

1.2 *Non-Exclusive Easement.* Non-exclusive rights to the Access and Utility Easement solely for the purposes described therein. The “Access and Utility Easement” is that portion of the Real Property for ingress and egress to and from the Communication Easement and a public right-of-way, and for the installation, repair, maintenance and removal of utilities providing service to the Communication Easement and the Systems, and any related activities and uses, as described on Exhibit 3. Grantee may not exercise rights to the Access and Utility Easement in a manner which would unreasonably interfere with use and occupancy of the Real Property by Site Owner, its tenants or its occupants. In addition, Grantee shall provide prior written notice to Site Owner together with any plans and specifications prior to commencing any work which would affect the building or building systems located on the Real Property, and such work shall be subject to Site Owner’s reasonable approval.

2. TERM: The terms and conditions of this Easement Agreement shall bind Grantee and the Site Owner throughout the Term.

3. COMPENSATION: Grantee shall compensate Site Owner as follows:

3.1 *Purchase Price.* In consideration of Site Owner entering into this Easement Agreement and allowing Grantee to retain one hundred percent (100%) of the Existing Revenue during the Term, Grantee agrees to pay Site Owner on the date hereof the Purchase Price identified in the Purchase Agreement.

3.2 *Existing Revenue Replacement.* If Existing Agreements expire or are terminated during the Term, Grantee may replace the Existing Revenue by retaining one hundred percent (100%) of the revenue from Future Customers, if any, until the revenue from Future Customers is equivalent to the amount of Existing Revenue lost to expiration or termination. Any revenue in excess of the Existing Revenue shall be distributed in accordance with Sections 3.3 and 3.4 below.

3.3 *Future Customer Revenue Sharing.* Subject to Section 3.2 above, Grantee shall pay Site Owner the Revenue Share. Revenue Share payments will be calculated beginning with the first dollar generated from agreements with Future Customers, except in the event of a rent reduction of any Existing Agreement, or a termination or non-renewal of any Existing Agreement. In such event, Grantee shall retain rents from the Future Customer in the amount of the Base Rent, and share any excess pursuant to this Section.

3.4 *Revenue Share Payment.* Revenue Share payments shall be made by check or EFT delivered one month in arrears (before the last day of the month following the month in which the rent payment was received by Grantee). Grantee shall also deliver to Site Owner a monthly report identifying all Future Customers which have, during the previous month, operated Systems from the Easements and the fee received from each such Future Customer during that month, including any past arrearage paid within that month. All Revenue Share payments shall be computed from the first of the month following the actual installation or removal of the System. Removal of a System may be cause for an adjustment to the Revenue Share payments.

4. ASSIGNMENT OF EXISTING AGREEMENTS: As of the Effective Date, Site Owner sells, transfers and assigns to Grantee all of its right, title and interest in, to and under the Existing Agreements. Grantee assumes only the obligations and liabilities of Site Owner under the Existing Agreements accruing on or after the Effective Date. Notwithstanding such assignment, it shall be Site Owner's responsibility to maintain the Communication Easement, including but not limited to roof replacement if Systems are located on the roof of a building on the Real Property. Grantee shall repair any damage to the Real Property resulting from its operations at the Real Property, and shall enforce any provision in an Existing Agreement requiring the Customer to repair damages to the Real Property caused by the Customer's operations. Grantee shall require Future Customers to repair damages to the Real Property caused by the Customer's operations. If an Existing Agreement allows the Customer to perform certain repairs and seek reimbursement from the lessor therein, Grantee shall provide the reimbursement, and Site Owner shall reimburse Grantee within thirty (30) days of receipt of an invoice therefor.

5. RELOCATION: In the event Site Owner performs any roof repair, maintenance, replacement or other restorative work upon the Easement area which requires the temporary

relocation or movement of the Systems, such temporary relocation or movement of the Systems shall be at Site Owner's sole cost and expense unless otherwise provided in the Existing Agreements. Grantee shall ensure the Future Customers' cooperation with Site Owner's efforts and will enforce any such relocation provisions in the Existing Agreements.

6. **USE OF EASEMENTS:** Grantee may allow the use of the Easements in accordance with the Existing Agreements and may market the Easements to Future Customers for Telecommunications Purposes and installation of Systems upon the Easements. The Systems may be owned by Grantee's Customers and shall not be deemed fixtures. Grantee may remove any System during the Term and shall repair any damage to the Real Property caused by such removal. Removal of a System or all Systems shall not cause an expiration or termination of this Easement Agreement. Grantee may also market other available areas of the Rooftop to Future Customers for Telecommunications Purposes and, if such Future Customers are approved by Grantor in its reasonable discretion in accordance with Section 7, the areas leased to such Future Customers by Grantee will be deemed part of the Easements.

7. **SITE OWNER APPROVALS:** Prior to entering into any agreement with a Future Customer or installing any new System, Grantee shall deliver Plans for the proposed System for Site Owner's approval, which shall not be unreasonably withheld, conditioned or delayed. In the absence of Site Owner's response within thirty (30) days of Grantee's request to review and approve Plans, the Plans shall be deemed approved. If Site Owner disapproves of the proposed Plans for any reason, Site Owner shall identify its reason for disapproval and provide Grantee the opportunity to submit revised Plans which Site Owner shall consider in accordance with this provision. In no event shall Site Owner condition its approval of Plans on an increased Revenue Share or other benefit not provided in this Easement Agreement. Grantee shall provide Site Owner with a copy of the final executed agreement with the Future Customer.

8. **UTILITIES:**

8.1 *Electrical Service.* Existing Customers shall continue to utilize the electrical service in operation as of the Effective Date. If any Existing System's electrical service is sub-metered off of the electrical distribution system at the Real Property and Site Owner reads the meter and/or invoices any Existing Customer, Site Owner shall continue to do so. Grantee reserves the right, with Site Owner's prior approval, to require any Existing Customer to install a remote-readable sub-meter and engage the services of a third-party meter reading service, or to obtain electrical service directly from the utility. Grantee may require Future Customers to obtain electrical service directly from the utility whenever possible; alternatively, Grantee shall require the Future Customer to sub-meter off of the Real Property's electrical service, install a remote-readable sub-meter, and engage a third-party meter reading service. Reimbursements paid to Site Owner for utilities shall not be included in the calculation of Revenue Share payments.

8.2 *Electrical System Modifications.* Grantee reserves the right to make reasonable modifications to the Real Property's electrical distribution system to accommodate the electrical requirements of the Systems. Prior to the installation or modifications of the existing utilities, Grantee shall submit to the Site Owner, for its approval, plans and specifications for same. Such approval shall not be unreasonably withheld, conditioned or delayed. All costs and expenses

related to the installations and modifications for electrical services and meters shall be borne solely by Grantee or its Customers.

9. **EXCLUSIVITY:** During the Term, Site Owner shall not enter into any agreement, directly or through a third party, granting any third party the right to use any portion of the Real Property or any adjacent property for the installation or operation of Systems. Any actions taken to contravene the intended effect of this Section shall constitute a breach of this Easement Agreement by the Site Owner. With Site Owner's reasonable approval, Grantee may post a sign on the Real Property identifying its right to use the Real Property for the purposes described herein.

10. **INTERFERENCE:** Should the Systems cause any interference to the radio, television or other electronic components of Site Owner or the residents and tenants of the Real Property, Grantee will eliminate or remediate the interference to an acceptable level, power down the System, or remove components of the offending System. In the event the Site Owner or Site Owner's residents or tenants install electronic equipment after the installation date of any Customer's System and such equipment causes interference to the Systems, then the Site Owner agrees to resolve the interference problem or remove or relocate the offending equipment.

11. **QUIET ENJOYMENT:** Site Owner covenants and agrees that upon Grantee's observing and performing all the terms of this Easement Agreement, Grantee may peacefully and quietly enjoy the Real Property, subject to the terms and conditions of this Easement Agreement and the Title Encumbrances.

12. **ACCESS:** Grantee may itself, and may allow its authorized representatives to, access the Real Property to install, inspect, remove, operate, repair and maintain the Systems, and Site Owner agrees to allow such access to the Real Property. Grantee shall provide forty-eight (48) hour prior notice of any such access, except when any Existing Agreement requires less notice, in which case the notice provided herein shall conform to that Existing Agreement. Access shall be during normal working hours on normal business days, except when any Existing Agreement allows for greater access, in which case the rights of access herein shall conform to that Existing Agreement. In the case of an emergency or equipment malfunction, access will be permitted at any time, subject to reasonable security, safety and identification procedures required by the Site Owner. If any Existing Customer is entitled to rent abatement, payment or damages as a result of interference with (i) the Customer's access to the Real Property or (ii) the Customer's operations, and such payment or damages is warranted pursuant to the Existing Agreement, Grantee shall seek recovery directly from Site Owner. If Grantee pays a Revenue Share, Grantee shall abate payments to Site Owner accordingly. During the Term Site, Owner shall not disturb, destroy or alter the access route to the Communication Easement in effect as of the Effective Date hereof without first consulting with Grantee and providing an alternative access route to the Communication Easement substantially similar to the access route in use as of the Effective Date hereof. Any access under this section shall not unreasonably interfere with the use and occupancy of the Real Property by Site Owner, its tenants and its occupants.

13. **INSURANCE:** Grantee shall furnish a Certificate of Insurance to Site Owner, naming Site Owner as holder, to cover any damage that may arise by virtue of the installation, removal, operation or maintenance of the Systems. The Certificate of Insurance delivered to the Site Owner

will provide that coverage shall not be canceled or terminated without giving Site Owner notice in accordance with policy provisions. Grantee shall procure insurance which shall provide for bodily injury and property damage coverage in not less than the following amounts:

Combined Single Limit:

Bodily Injury; Real Property Damage, any one accident: \$1,000,000

Excess Liability (Umbrella Form): \$2,000,000

14. TAXES: Grantee shall require all Future Customers to pay all personal property taxes, assessments, charges and increases to Site Owner's real property taxes that are directly attributable to the Future Customer's System. Grantee shall enforce any provision in an Existing Agreement requiring the Existing Customer to pay taxes at the Real Property. Site Owner acknowledges its continuing obligation to pay, on or before the due date, all present and future real property taxes, transfer taxes, penalties, interest, roll-back or additional taxes, fees and assessments attributable to the Real Property, this Easement Agreement, and the Easements regardless of the party to whom such taxes are billed. If Site Owner's failure to pay any such taxes jeopardizes Grantee's continued rights to the Real Property as granted herein, Grantee shall have the right, but not the obligation, to pay such taxes on behalf of Site Owner. Site Owner shall reimburse Grantee for the full amount of such payment within five (5) business days of Site Owner's receipt of an invoice from Grantee. If any Customer delivers payment to Grantee intended to be applied to Site Owner's taxes, Grantee shall forward such payment to Site Owner.

15. ENVIRONMENTAL COVENANTS AND INDEMNITY: Site Owner represents that it has no actual knowledge of any Hazardous Substance, underground storage tanks, asbestos-containing insulation or materials or products containing PCB located on, under or about the Real Property in actionable levels requiring remediation by the applicable governmental authority. Given the age of the building on the Real Property, it may contain asbestos-containing materials and other substances commonly found in structures of similar age. Neither Site Owner nor Grantee will introduce or use any Hazardous Substance on, under or about the Real Property in violation of any applicable law or regulation. Site Owner shall defend, indemnify, protect and hold Grantee harmless from and against all claims, costs, fines, judgments and liabilities, including attorney's fees and costs, caused by or arising from the presence, Release, or threatened Release of any Hazardous Substance or the acts, omissions or negligence of the Site Owner and its respective agents, contractors and employees. Grantee shall defend, indemnify, protect and hold Site Owner harmless from and against all claims, costs, fines, judgments and liabilities, including attorney's fees and costs, caused by or arising from Grantee bringing any Hazardous Substance onto the Real Property or any Release or threatened Release of any Hazardous Substance caused by Grantee, or the acts, omissions or negligence of Grantee. With respect to Future Customers, Grantee shall defend, indemnify, protect and hold Site Owner harmless from and against all claims, costs, fines, judgments and liabilities, including attorney's fees and costs, caused by any Future Customer bringing any Hazardous Substance onto the Real Property or any Release or threatened Release of any Hazardous Substance caused by any Future Customer, or the acts, omissions or negligence of any Future Customer. With respect to Existing Customers, Grantee shall defend, indemnify, protect and hold Site Owner harmless from and against all claims, costs, fines, judgments and liabilities, including attorney's fees and costs, caused by any Existing Customer bringing any Hazardous Substance onto the Real Property, or the acts, omissions or negligence of any Existing Customer, to the extent that Grantee is indemnified pursuant to the applicable Existing Agreement,

as assigned. The foregoing indemnities shall survive any termination of this Easement Agreement. Site Owner and Grantee shall each provide to the other copies of any written notice, claim, government document, or complaint alleging a legal action arising from the Release or presence of Hazardous Materials or waste on, under, or at the Real Property that is received by that party.

16. **GENERAL INDEMNITY:** In addition to the Environmental Indemnity set forth above, Site Owner and Grantee shall each indemnify, defend and hold the other harmless against any and all costs (including reasonable attorney's fees) and claims of liability or loss arising (i) due to the breach of any representation, warranty or covenant of such indemnifying party set forth herein; and (ii) out of the use and/or occupancy of the Real Property and Easements by the indemnifying party. This indemnity shall not apply to any claims to the extent arising from the negligence or intentional misconduct of the indemnified party.

17. **COMPLIANCE:** Both Grantee and Site Owner shall comply with all applicable rules, regulations, laws, ordinances, statutes and requirements of all governmental authorities, as such pertain to their operations at the Real Property pursuant to this Easement Agreement.

18. **TERMINATION:** Site Owner may not terminate this Easement Agreement. In the event Grantee and its Customers voluntarily cease to use the Easements for a period of more than two (2) years (for reasons other than casualty, condemnation or Act of God) and Grantee is not actively marketing the Easements, the Easements shall be deemed abandoned. Grantee may abandon the Easements for any reason or at any time by giving thirty (30) days written notice to Site Owner. Upon abandonment, this Easement Agreement shall be terminated, and Grantee and Site Owner shall execute and record such documents reasonably required to terminate the Easements.

19. **ASSIGNMENT; SECURED PARTIES:** Provided that (i) Grantee is not in default hereunder; (ii) Grantee provides timely written notice of the assignment; and (iii) the assignee agrees to assume all of Grantee's obligations hereunder (including those due and owing as of the effective date of assignment), Grantee shall have the right to assign or transfer its interest in this Easement Agreement, in whole or part, to (x) any parent, subsidiary or Affiliate of Grantee; (y) any entity with which or into which Grantee is merged or consolidated; or (z) any corporation which acquires 51% or more of Grantee's assets. Any assignment hereof by Grantee other than pursuant to these terms and other than as collateral to a Secured Party, as described below, shall be subject to the written approval of Site Owner, which shall not be unreasonably withheld, conditioned or delayed. Grantee may assign, mortgage or grant a lien on and/or a security interest in all of Grantee's interest in and to this Easement Agreement and the Easements, and may assign this Easement Agreement and the Easements to any Secured Party or Secured Parties as collateral security for the repayment of any indebtedness to the Secured Parties. Nothing contained herein shall be construed to grant a lien upon or security interest in any of Site Owner's assets. Should the Secured Parties exercise any rights of Grantee under this Easement Agreement, Site Owner agrees to accept such exercise of rights by the Secured Parties as if same had been exercised by Grantee. This Easement Agreement may not be amended in any respect which would be reasonably likely to have a material adverse effect on the Secured Parties' interest or surrendered, terminated or cancelled, without the prior written consent of the Secured Parties. If this Easement Agreement is terminated or rejected in any bankruptcy proceeding Site Owner will enter into a new easement agreement with the Secured Party upon the same terms of this Easement Agreement, without

requiring the payment of any additional fees. If any Secured Party shall succeed to Grantee's interest under this Easement Agreement, such Secured Party shall have no liability for any defaults of Grantee accruing prior to the date that such Secured Party succeeds to such interest. Site Owner hereby waives any and all lien rights it may have, statutory or otherwise, in and to the Easements and/or the Systems or any portion thereof.

20. CASUALTY; CONDEMNATION:

20.1 *Casualty.* In the event of damage to or destruction of the Real Property or any part thereof not caused by Grantee or any Customer which renders the Real Property unusable or inoperable, and as a result of which Grantee determines that the Real Property is no longer suitable for Grantee or the Customers to continue their operations and any necessary repairs have not been completed or cannot be reasonably completed within sixty (60) days from the date of the damage, Grantee shall have the right, but not the obligation, to terminate this Easement Agreement and all of its duties and obligations therein upon written notice to Site Owner. If Grantee does not terminate this Easement Agreement, any Revenue Share payment to Site Owner shall be reduced or abated in proportion to the actual reduction or abatement of rent paid by the Future Customers subject to Section 3.3.

20.2 *Condemnation.* In the event of condemnation, unless Grantee is allowed by the condemning authorities to continue its operation on the Real Property, this Easement Agreement shall terminate as of the date title to the lands vests in the condemning authority or the date Grantee is required to cease its operation, whichever is earlier. Grantee shall be entitled to seek its own award from the condemning authority provided such award does not reduce any award to Site Owner.

21. **DEFAULT:** In the event of a default by Grantee, Site Owner agrees to notify Grantee and any Secured Parties in writing of such default, and to give Grantee and/or any Secured Parties the right to cure any default within a period of not less than thirty (30) days from Grantee's receipt of the written default notice. If Grantee or any Secured Parties shall fail to cure the default in accordance with this Section, Site Owner agrees that any and all damages for which Site Owner may be compensated is limited to the actual damages of Site Owner. In the event that any dispute or claim arises that could impair the use or possession of the Systems by Grantee or its Customers, Grantee shall have the right to seek injunctive relief, without the necessity of posting a bond. In no event will a Secured Party have any obligation to cure a default by Grantee. In the event of a default by Site Owner, Grantee agrees to notify Site Owner in writing of such default, and to give Site Owner the right to cure the default within a period of not less than thirty (30) days from receipt of the written notice. If a default by Grantee or Site Owner is of such a nature that it cannot be reasonably cured in such thirty (30) day period, and if the defaulting party proceeds promptly to cure the same with due diligence, the time for curing such default shall be extended for such a period of time as may be reasonable to complete such curing.

22. **DISPUTES:** Any claim or controversy regarding this Easement Agreement shall be brought in the county where the Real Property is located. The prevailing party in any such controversy shall be entitled to reasonable attorneys' fees, costs and expenses incurred in connection therewith.

23. **RIGHT OF FIRST REFUSAL:** This Section shall only apply if one or more Future Customers has installed a System upon the Easements, generating a Revenue Share payable to Site Owner. If at any time during the Term, Site Owner receives an Offer which Site Owner desires to accept, Site Owner shall first give Grantee written notice of such Offer, including a copy of the proposed contract or letter of intent, prior to becoming obligated under such Offer, with such notice giving Grantee the right to pay Site Owner for future Revenue Share payments. Grantee shall have a period of fifteen (15) days after receipt of Site Owner's notice and terms to exercise Grantee's right to purchase the Revenue Share payments and exercise this right of first refusal by notifying Owner in writing. If Grantee has not exercised its right to purchase the Revenue Share payments in writing to Site Owner within such fifteen (15) day period, the Offer will be deemed rejected by Grantee. This Section shall not apply to a third party offer to purchase the entirety of the Real Property, including the Revenue Share payments.

24. **REPRESENTATIONS OF SITE OWNER:** Site Owner represents, warrants and agrees that: (i) it is the legal owner of indefeasible and marketable title to the Real Property with the right, power and authority to enter into this Easement Agreement and to grant the Easements to Grantee, and any consents and authorizations required in connection with the execution and delivery of this Easement Agreement have been obtained; (ii) except for the Existing Agreements and the Title Encumbrances disclosed on Exhibit C, no leases, mortgages, deeds of trust or other encumbrances affect the Real Property as of the Effective Date, (iii) Site Owner has delivered to Grantee true, correct and complete copies of the Existing Agreements, and, to Site Owner's best knowledge, no party is in default of any of their respective obligations under the Existing Agreements; and (iv) Site Owner shall not use nor permit its affiliates, licensees, invitees or agents to use any portion of the Real Property or any other property owned or controlled by Site Owner, either directly or indirectly, in a manner which in any way could result in default of the Existing Agreements or otherwise unreasonably interfere with the operations of Grantee and/or any Customers.

25. **ESTOPPEL CERTIFICATE:** Each party shall, within ten (10) days after request by the other party, execute and deliver to the requesting party, or the party designated by requesting party, a statement certifying (i) that this Easement Agreement is unmodified and in full force and effect (or, if there have been modifications, stating the modifications and that the modified Easement Agreement is in full force and effect); (ii) whether or not, to the best knowledge of the responding party, the requesting party is in default in performance of any of its obligations under this Easement Agreement, and, if so, specifying each such default; (iii) that there are no amounts due to Site Owner by Grantee; and, (iv) any other information reasonably requested concerning this Easement Agreement.

26. **SURVIVORSHIP:** The provisions of and covenants contained in this Easement Agreement shall run with the land and shall bind and inure to the benefit of the Parties, and their respective successors, heirs and assigns. In the event of a sale or transfer of the Real Property, Site Owner shall provide Grantee with the contact information (name, telephone, email) for the purchaser, as well as a copy of the bill of sale or deed.

27. **RECORDATION:** Site Owner or Grantee, at its option, shall have the right to record a Memorandum of this Easement Agreement, in the form attached hereto, with the county clerk's

office in which the Real Property is located and/or the county clerk's office in which this Easement Agreement was executed.

28. INTERPRETATION. The singular includes the plural and the plural includes the singular. The word "or" is not exclusive and the word "including" is not limiting. References to a law include any rule or regulation issued under the law and any amendment to the law, rule or regulation. References to a Section, Exhibit or Schedule mean a Section, Exhibit or Schedule contained in or attached to this Easement Agreement or the Purchase Agreement. This Easement Agreement will be interpreted and enforced in accordance with its provisions and without the aid of any custom or rule of law requiring or suggesting construction against the party drafting or causing the drafting of the provisions in question.

29. MISCELLANEOUS: (a) This Easement Agreement and all Exhibits attached hereto constitute the entire agreement and understanding of Site Owner and Grantee with respect to the subject matter of this Easement Agreement, and supersedes all offers, negotiations and any other written or verbal agreements; (b) any amendments to this Easement Agreement must be in writing and executed by both parties; (c) this Easement Agreement is governed by, enforced and construed in accordance with the laws of the State in which the Real Property is located without regard to principles of conflicts of laws; (d) if any term of this Easement Agreement is found to be void or invalid, such provision shall be fully severable herefrom and such invalidity shall not affect the remaining terms of this Easement Agreement, which shall continue in full force and effect; (e) the section headings of this Easement Agreement have been inserted for convenience of reference only, and shall in no way modify or restrict the terms of this Easement Agreement; (f) this Easement Agreement may be executed in any number of counterparts and by facsimile, each of which shall, when executed, be deemed to be an original and all of which shall be deemed to be one and the same instrument; and (g) Site Owner and Grantee each represent that the signatories of this Easement Agreement presently have and shall maintain full authority to enter into this Easement Agreement and to bind and obligate their respective organizations to the terms, rights and obligations under this Easement Agreement.

30. NOTICES: All notices required under or permitted by this Easement Agreement shall be given in writing, delivered personally, by overnight courier, or if sent by United States Mail, certified, return receipt requested, and addressed to the following parties:

If to Site Owner: Varsity Square LLC, 5558 W. Bayshore Dr., Port Orange, FL 32127  
With copy to: Donovan Trott PLLC (Attorney for Chiye Onodera Duffy), P.O. Box  
50535, Austin, TX 78763

If to Grantee:  
With a copy to: Neutral Path Networks, LLC, 1900 Pacific Avenue, Dallas, TX 75201,  
Attention: Ben Collins.

[EXECUTION PAGES FOLLOW]

The parties hereto have executed this Easement Agreement as of the Effective Date.

SITE OWNER:  
Varsity Square LLC

By: \_\_\_\_\_  
Chiye Onodera Duffy, Manager

GRANTEE:  
Neutral Path Networks, LLC

By: \_\_\_\_\_  
Ben Collins, President and CEO

#### ATTACHMENTS

- Schedule 1 - Definitions
- Exhibit A - Existing Agreements
- Exhibit B - W-9 Form
- Exhibit C - Title Encumbrances Memorandum of Easement Agreement
- Exhibit 1 - Legal Description of Real Property
- Exhibit 2 - Communication Easement Description
- Exhibit 3 - Access and Utility Easement Description
- Exhibit 4 - Existing Agreements

## SCHEDULE 1

### DEFINITIONS

The following defined terms shall apply throughout this Easement Agreement:

1. Access and Utility Easement- that portion of the Real Property for ingress and egress to and from the Communication Easement and a public right-of-way, and for the installation, repair, maintenance and removal of utilities providing service to the Communication Easement and the Systems, and any related activities and uses, as described on Exhibit 3.
2. Affiliate- a party controlling, controlled by, or under common control with Grantee.
3. Base Rent- the total annualized rent pursuant to all Existing Agreements as of the Effective Date hereof, currently in the amount of which shall increase (i) in accordance with the escalations in the Existing Agreements, and (ii) due to revenue amendments to the Existing Agreements.
4. Communication Easement- the portion of the Real Property leased to Existing Customers pursuant to the Existing Agreements, and the portion of the Real Property actually in use by the Existing Customers, and as further described on Exhibit 2.
5. Customers- collectively, the Existing Customers and Future Customers.
6. Easements- collectively, the Communication Easement and Access and Utility Easements.
7. Existing Agreements- the agreements identified in Exhibit A.
8. Existing Customers- third parties operating Systems at the Real Property as of the Effective Date pursuant to the Existing Agreements. Existing Customers who execute amendments or new agreements for the same or enhanced Systems shall remain Existing Customers and the new or amended agreements shall remain Existing Agreements.
9. Existing Revenue- the revenue generated by the Existing Agreements.
10. Future Customers- third parties operating Systems at the Real Property pursuant to leases, licenses or other agreements between Grantee and those third parties, commencing during the Term.
11. Hazardous Substance- shall mean any: (a) chemical, product, material, substance or waste defined as or included in the definition of “hazardous substance”, “hazardous material”, “hazardous waste”, “restricted hazardous waste”, “extremely hazardous waste”, “solid waste”, “toxic waste”, “extremely hazardous substance”, “toxic substance”, “toxic pollutant”, “contaminant”, “pollutant”, or words of similar meaning or import found in any environmental law; (b) petroleum hydrocarbons, petroleum products, petroleum substances, natural gas, crude oil, or any components, fractions, or derivatives thereof Released into the environment; or (c)

asbestos containing materials, polychlorinated biphenyls, radioactive materials, urea formaldehyde foam insulation, NORM, or radon gas.

12. Memorandum- the Memorandum of Easement Agreement, attached to and made a part of this Easement Agreement.

13. Offer- a bona fide written offer from a third party to pay Site Owner for the right to purchase and receive the Revenue Share payments.

14. Plans- the plans and specifications depicting a proposed System design and location upon the Real Property.

15. Release- depositing, spilling, leaking, pumping, pouring, placing, emitting, discarding, abandoning, emptying, discharging, migrating, injecting, escaping, leaching, dumping, or disposing into the environment.

16. Revenue Share- an amount equal to fifty percent (50%) of the total revenue collected by Grantee from Future Customers utilizing the Easements, in excess of the Base Rent.

17. Secured Party- third parties to which Grantee may assign, mortgage or grant a security interest or lien in all of Grantee's interest in and to this Easement Agreement and the Easements.

18. System- a wireless communication facility which may consist of antennas, mounts, poles, platforms, electronic equipment, transmission lines, utility lines and supporting equipment, used for Telecommunication Purposes.

19. Telecommunications Purposes- the transmission, reception and relay of communication signals, intended to provide radio frequency coverage to the Real Property and areas surrounding the Real Property over the wireless spectrum.

20. Term- a period of fifty-five (55) years commencing on the Effective Date.

EXHIBIT A  
EXISTING AGREEMENTS

Site Owner sells, assigns and transfers to Grantee, as of the effective date herein, all of its right, title and interest in, to and under the following existing lease or license agreements, as amended, and any assignments thereof from a third party or prior owner of the Real Property to Site Owner, affecting any portion of the Real Property leased by Site Owner under the Existing Agreements:

EXHIBIT B

W-9 FORM

EXHIBIT C  
TITLE ENCUMBRANCES

[TBD]

MEMORANDUM OF  
EASEMENT AND ASSIGNMENT AGREEMENT

This Memorandum of Easement and Assignment Agreement is made as of February \_\_\_\_\_, 2021, by and between Varsity Square LLC, a Nevada limited liability company (“Site Owner”) and \_\_\_\_\_, a \_\_\_\_\_ (“Grantee”).

1. Site Owner and Grantee entered into an Easement and Assignment Agreement of even date concerning the Real Property identified in Exhibit 1.
2. Pursuant to the agreement, Site Owner granted to Grantee an exclusive easement concerning a portion of the Real Property identified in Exhibit 2.
3. Pursuant to the agreement, Site Owner granted to Grantee a non-exclusive easement concerning a portion of the Real Property identified in Exhibit 3.
4. Both easements are for the specific purposes and according to the terms and conditions set forth in the agreement.
5. The term of the agreement is fifty-five (55) years commencing on the date hereof.
6. Pursuant to the agreement, Site Owner sold, transferred and assigned to Grantee all of its right, title and interest in and to those agreements identified in Exhibit 4.

All exhibits mentioned above are incorporated by reference.

SITE OWNER:  
Varsity Square LLC

GRANTEE:  
Neutral Path Networks, LLC

By: \_\_\_\_\_  
Chiye Onodera Duffy, Manager

By: \_\_\_\_\_  
Ben Collins, President and CEO

[NOTARY BLOCK]

[NOTARY BLOCK]

EXHIBIT 1  
LEGAL DESCRIPTION OF REAL PROPERTY

TRACT ONE:

Lots Thirty-three (33), Thirty-five (35), Thirty-seven (37), and Thirty-nine (39), on Spruce Street, Original Town of Dodge City, Ford County, Kansas, according to the recorded Plat thereof.

TRACT TWO:

Part of Lot Three (3), all of Lots Four (4) and Five (5), Block Nineteen (19), Original Townsite of Dodge City, Kansas, according to the recorded Plat thereof, described as follows:

Beginning at the intersection of the South line of Vine Street and the West line of Second Avenue, Dodge City, Kansas, thence South along the West line of Second Avenue, 83.75 feet to a point; thence West parallel with the South line of Vine Street 117.5 feet more or less, to a point in the East line of the alley, which point is 83.75 feet South of the South line of Vine Street; thence North to the South line of Vine Street; thence East to the point of beginning.

EXHIBIT 2  
COMMUNICATION EASEMENT

That portion of the Real Property on which any Systems exist on the date of this Easement Agreement together with the portion of the Real Property leased by Site Owner under the Existing Agreements.

EXHIBIT 3  
ACCESS AND UTILITY EASEMENTS

That portion of the Real Property on which any Systems exist on the date of this Easement Agreement together with the portion of the Real Property provided by Site Owner under the Existing Agreements for access and utility providers, and the portion of the Real Property substantially described as follows:

All rights of ingress and egress across the Real Property described in Exhibit 1 hereof, to and from the Communication Easements described in Exhibit 2 hereof, providing access

to a publicly dedicated roadway, including but not limited to North 2nd Avenue (the "Access Easement");

A non-exclusive easement in, to, under and over portion of the Real Property for ingress and egress to the Communication Easements, building risers, conduits, shafts, raceways or other designated space to connect the telecommunications equipment to other locations inside or outside the building as is necessary to install wiring, electronic equipment and other personal property, and to support and maintain the Systems (the "Utility Easement"), along with the right to use said Access Easement and Utility Easement for the development, repair, maintenance and removal of utilities providing service to the Communication Easements and the Systems, as defined herein, and any related activities and uses.

In no event shall Grantee exercise any such access or utility easements rights contained herein in a manner which would unreasonably interfere with use and occupancy of the Real Property by Site Owner, its tenants or its occupants. Grantee shall provide prior written notice to Site Owner together with any plans and specifications prior to commencing any work which would affect the building and/or building systems located on the Real Property, and such scope of work shall be subject to Site Owner's reasonable approval.

#### EXHIBIT 4 EXISTING AGREEMENTS

Site Owner sells, assigns and transfers to Grantee, as of the effective date herein, all of its right, title and interest in, to and under the following existing lease or license agreements, as amended, and any assignments thereof from a third party or prior owner of the Real Property to Site Owner, affecting any portion of the Real Property leased by Site Owner under the Existing Agreements:

Schedule 4.2  
Legal Description of Real Property

TRACT ONE:

Lots Thirty-three (33), Thirty-five (35), Thirty-seven (37), and Thirty-nine (39), on Spruce Street, Original Town of Dodge City, Ford County, Kansas, according to the recorded Plat thereof.

TRACT TWO:

Part of Lot Three (3), all of Lots Four (4) and Five (5), Block Nineteen (19), Original Townsite of Dodge City, Kansas, according to the recorded Plat thereof, described as follows:

Beginning at the intersection of the South line of Vine Street and the West line of Second Avenue, Dodge City, Kansas, thence South along the West line of Second Avenue, 83.75 feet to a point; thence West parallel with the South line of Vine Street 117.5 feet more or less, to a point in the East line of the alley, which point is 83.75 feet South of the South line of Vine Street; thence North to the South line of Vine Street; thence East to the point of beginning.

Schedule 4.3  
True and Correct Copies of Tenant Leases

AT&T  
Verizon

RCC ATLANTIC, INC.  
COMMUNICATIONS FACILITY AGREEMENT  
DODGE CITY, KANSAS

**1. Lease of Premises.** RCC Atlantic, Inc., a Minnesota corporation ("Lessee") hereby leases from Varsity Square, LLC, a Nevada limited liability company ("Lessor"), a portion of that certain real property described in Exhibit A hereto (the "Property"), such portion being described in Exhibit B and referred to hereinafter as the "Premises", in order to install, maintain, and operate a communications facility (the "Facility"), together with the right to install and maintain utility cables and conduits to, over, under and through the Premises, and a right of reasonable access to the Premises.

**2. Commencement; Termination.** This Agreement shall commence on the date stated on the signature page (the "Commencement Date"). Contemporaneously with the Commencement Date, Lessee shall, at its expense, seek to obtain all permits, instruments and approvals required by governmental authorities and third persons with an interest in the Property for installation, operation and maintenance of the Facility ("Approvals"). Within reason, Lessor shall provide any assistance with Approvals requested by Lessee. Upon receipt of all Approvals, Lessee shall notify Lessor of the "Rent Commencement Date" by providing the notice set forth in Exhibit C hereto. The Rent Commencement Date shall fall on the first day of the month following the date that Lessee obtains Approvals required for installation of the Facility. If despite its efforts Lessee is unable to obtain Approvals sufficient to install, operate or maintain the Facility, this Agreement and the parties' obligations hereunder shall terminate ten (10) days following receipt by Lessor of a termination notice from Lessee.

**3. Term; Renewals.** The "Initial Term" of the Agreement shall run for five (5) years beginning on the Rent Commencement Date. Thereafter Lessee shall have the option to extend this Agreement by up to four (4) "Additional Terms" of five (5) years each. Collectively, the Initial Term and Additional Terms shall be referred to hereinafter as the "Term." Each Additional Term will automatically be exercised unless Lessee notifies Lessor of its election to terminate thirty (30) days before the expiration of the Initial Term or Additional Term in effect.

**4. Rent.** Beginning on the Rent Commencement Date, and thereafter on the first day of each month during the Term, Lessee shall pay Lessor monthly rent for use of the Premises in the amount of One Thousand Four Hundred Dollars and 00/100ths (\$1,400.00) per month. Thereafter, each year on the anniversary of the Rent Commencement Date, the monthly rent shall be increased by 3% of the monthly rent paid by Lessee for the preceding year of the Term or Renewal Term, as applicable.

**5. Utilities.** Lessee shall be responsible, at its sole cost and expense, for installation of electrical, telephone or other communication lines to the Premises suitable for the Facility (collectively, "Utility Lines"), which Utility Lines shall be installed and operable prior to the Rent Commencement Date. Lessor grants Lessee an easement to extend the Utility Lines to the Facility where necessary, and to use such Utility Lines for its Facility. Any modification of Utility Lines by either party shall not interrupt, damage or conflict with the other party's use, or with any requirements of law or contract concerning Utility Lines on or at the Property or the Premises. Lessee shall pay for all utilities used for its Facility. Whenever possible, Lessee shall install a separate meter to measure its electrical use and pay the service provider directly. In the event of a loss of electrical power, and in the absence of a permanent emergency generator being installed as part of the Facility, Lessee shall have the right to install a temporary generator on or near the Premises until power is restored.

**6. Installation; Maintenance; Security.** Prior to installation of the Facility, Lessee and its authorized representatives shall have the right to enter upon the Premises for the purpose of taking measurements or conducting studies, tests and inspections required for the installation and operation of the Facility. These studies may include surveys, soil test, environmental evaluations, radio wave propagation measurements, field strength tests and such other analysis and studies as Lessee deems necessary or desirable. Upon receipt of Approvals sufficient to commence construction, and throughout the Term, Lessee and its authorized representatives shall have the non-exclusive right of ingress and egress to and from the Premises twenty-four hours (24) a day, seven (7) days a week for the installation, maintenance, and alteration of the Facility. Where possible, Lessee

shall install security devices to restrict access to the Facility, provided that such devices do not interfere with Lessor's use of the Property. In cases where Lessor provides keys, security devices, or codes for accessing the Premises, Lessee agrees not to duplicate such keys or disclose such devices or codes to anyone other than authorized representatives of Lessee without Lessor's permission.

#### **7. Liability and Worker's Compensation**

**Insurance.** Beginning on the Commencement Date, each party shall obtain insurance against liability for injury including death to the public or damage to property, occurring within, upon or about the Premises. Any insurance policy will provide minimum limits of One Million Dollars (\$1,000,000.00) per personal injury or death. Each party shall name the other as an additional insured under each policy. Said insurance may be in the form of general coverage or floating policies covering these and other premises. Each party shall also procure and maintain workers' compensation insurance for its employees who will work on or at the Premises.

**8. Property Insurance.** Lessor shall maintain at all times beginning on the Commencement Date, at Lessor's expense, insurance against loss or damages to the Premises, including, without limitation, loss or damage from fire, vandalism, and malicious mischief. Lessee shall maintain, at Lessee's expense, insurance in an amount of at least eighty percent (80%) of the replacement value of the Facility.

**9. Certificates of Insurance.** By no later than the Rent Commencement Date, Lessee and Lessor shall furnish to each other certificates of insurance for each of the insurance policies required hereunder. Such insurance shall be obtained from insurance companies authorized to do business in Kansas. Each such certificate shall provide that the insurance indicated therein shall not be cancelled or changed without at least thirty (30) days' prior written notice to the additional insured.

**10. Taxes.** Lessee shall be responsible for (i) payment of all personal property taxes assessed directly upon and arising principally from the presence of the Facility on the Property; and (ii) real property taxes principally attributable to Lessee's installation, operation and maintenance of the Facility. Lessee shall pay Lessor any taxes owed hereunder within thirty (30) days of receipt of an accounting from Lessor or the taxing authorities

apportioning such taxes among the parties; provided, however, that Lessee may delay such payment an additional thirty (30) days in order to request reasonable supporting documentation from Lessor, which documents Lessor shall promptly provide to Lessee upon request.

**11. Title; Quiet Enjoyment.** Lessor represents and warrants to Lessee that it has full authority to enter into this Agreement, and that it is authorized to grant the leasehold interest and rights of access and use contemplated hereunder without violation of any other contract, agreement, instrument, covenant, or other document. Lessor further represents and warrants that there are no undisclosed liens, judgments, or other conditions of title or use known to Lessor that would materially affect Lessee's use and enjoyment of, and access to, the Premises. Lessor further represents and warrants that all structures and uses on the Property are in compliance with municipal, state, and federal laws, and with all permits, approvals, and judicial and administrative orders affecting the Property. Upon request of Lessee, Lessor agrees during the Term to execute such documents or instruments reasonably necessary for Lessor to confirm the representations and warranties of title and quiet enjoyment contained herein as of a date certain.

**12. Hazardous Substances.** Lessor warrants, represents and covenants that to the best of its knowledge (1) there are no past, pending or threatened administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, notices of noncompliance or violation, investigations or proceedings affecting the Premises or against any individual or entity with an interest in the Premises; (2) no "Hazardous Substance" (as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 690 *et seq.*, and including petroleum or petroleum products, radioactive materials, friable asbestos, and equipment containing polychlorinated biphenyls) or "Hazardous Waste" (as defined in the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 9601 *et seq.*) has at any time been released or disposed of at or on the Premises; and (3) there is no underground storage tank located at the Premises. The parties agree not to introduce any Hazardous Substances or Hazardous Wastes to the Premises (or on a location of the Property reasonably likely to affect the Premises) during the Term. Lessor shall be responsible for remediation of any Hazardous Substances or

Hazardous Wastes introduced onto the Property or Premises after the Commencement Date, unless such introduction is caused by Lessee; said obligation shall survive the earlier termination of this Agreement.

**13. Compliance with Laws.** During the term of this Agreement, each party shall comply in all respects with all statutes, and with all ordinances, rules and regulations of federal, state, or municipal authorities with jurisdiction over the Property and Premises, and with any administrative or judicial orders validly issued by such authorities affecting the Property and Premises. In the event that Lessor fails to comply with laws and orders relating to the presence of the Facility on the Property (including but not limited to federal communications, environmental, aviation, and security requirements, and state and municipal land use and environmental requirements), Lessee shall have the right, at its sole option, to bring the Property into compliance, and upon delivery to Lessor of an accounting of said costs of compliance there shall be an abatement of rent equal to the costs expended to attain compliance.

**14. Alterations.** During the Term, Lessee may, at its sole cost and expense, make such improvements on and alterations to the Premises and the Facility as it deems necessary from time to time in order to operate and optimize the Facility in a manner consistent with Lessee's Federal Communications Commission ("FCC") licenses, and provided that such changes occur within the Premises. If Lessee proposes changes occurring outside of the Premises, Lessee shall first seek the prior written permission of Lessor, which permission shall not be unreasonably delayed, conditioned or withheld. Lessee agrees not to allow any mechanics' or materialmen's liens to be placed on the Premises as a result of alterations or improvements. Lessor agrees to cooperate with Lessee with respect to obtaining any required Approvals for improvements and alterations, at Lessee's cost and expense.

**15. Structural Integrity.** Lessor shall prohibit any other individual or entity with communications equipment on the Property (a "User") from installing or making alterations to its equipment that would threaten the structural integrity of any support structure comprising part of the Premises, including a communications tower or rooftop. If, based on a structural report from a licensed engineer, a User may install equipment or make alterations to its equipment following improvements to the support structure, Lessor agrees that Lessee shall not incur any part of

such costs. In the event that Lessee makes alterations or improvements to the Facility that threaten the structural integrity of a support structure, Lessee shall incur all the costs of any engineer-recommended improvements to the support structure necessary to make its alterations.

**16. Interference.** Lessee will resolve technical interference problems it causes to other equipment located on the Property on the Commencement Date, or to any equipment installed on the Property at any future date if Lessee makes alterations or improvements to the Facility that causes technical interference problems. Lessor agrees that it will not allow the installation of any equipment by itself or any User after the Commencement Date which is likely to result in technical interference problems with the Facility. After the Rent Commencement Date, Lessor shall resolve, and shall cause all Users to resolve, any technical interference problems caused to the Facility by addition of or alterations to Lessor's or a User's communications equipment, to Lessee's reasonable satisfaction. Lessor shall also ensure that no installation of equipment by Lessor or a User after the Commencement Date encroaches upon the Premises, and that improvements on the Property do not interfere with or materially impede the operating characteristics of the Facility.

**17. Emissions.** If the power output ("RF Emissions") from the support structure on which all or part of the Facility is located at any time during the Term becomes subject to any restrictions imposed by the FCC or other federal, state, or local governmental agency or entity for RF Emissions standards on Maximum Permissible Exposure limits or a standard similar thereto (in either case, "MPE limits"), Lessee shall comply with Lessor's reasonable requests for modifications to the Facility which are reasonably necessary for Lessor to comply with such limits, rules, regulations, restrictions or ordinances, and Lessee shall use commercially reasonable efforts to cause all other Users on the Property to promptly comply. Any reduction in power use required by Lessee to attain compliance shall be no greater in proportion in relation to Lessee's then-existing power use than the largest proportional reduction required of any other User on the Property. If an engineering evaluation or other power density study is performed to evaluate RF Emissions compliance with MPE limits, then all reasonable costs of such an evaluation or study shall be paid proportionately by Lessee, Lessor and all other Users of the support structure within 30 days of a request from Lessor, with said

proportion tied to proportion of each party's then-existing power usage at the site. If said study or a study sponsored by any governmental agency indicates that RF Emissions from equipment on the support structure at the Property do not comply with MPE limits, then Lessor and Lessee, each for itself, shall immediately take any and all steps necessary to ensure compliance with such limits, up to and including cessation of operation, until a maintenance program or other mitigating measures can be implemented to attain compliance. In addition, Lessor shall use commercially reasonable efforts to cause all other Users to take similar steps necessary to ensure compliance with MPE limits. If in Lessee's reasonable discretion the changes required to comply with MPE limits deprive Lessee of the Facility's optimal function within its communications network, Lessee may terminate this Agreement upon written notice and payment to Lessor of all rent due up until the next anniversary of the Rent Commencement Date following the date of such notice.

**18. Ownership.** All personal property, trade fixtures, and improvements installed by Lessee on the Premises shall remain the property of Lessee and may be removed by Lessee at any time. Lessor hereby waives any and all lien rights it has or may have, statutory or otherwise, concerning the Facility or any component thereof.

**19. Assignment.** Lessee may not assign or transfer this Agreement without the prior written consent of Lessor, which consent shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, Lessee may freely, without Lessor's consent (i) assign its interest hereunder to any entity that is a subsidiary of or related to Lessee by common ownership or control, or in the event of a sale of substantially all of Lessee's assets; (ii) mortgage or pledge its interest in the Facility for financing purposes.

**20. Estoppel Certificate.** During the term of this Agreement, upon receipt of thirty (30) days prior written notice by a party, the other party shall execute, acknowledge and deliver to the requesting party a statement in writing certifying that this Agreement is in full force and effect (or confirming any modifications) and that the requesting party is not in default (or declaring the notice of any default), except as specified in such statement, in regard to any of its obligations hereunder, and further setting forth such other statements relating to this Agreement as the requesting party, its lender, purchaser, assignee or

sublessee may require. Said statement shall be accurate and binding on the other party and may be relied upon by third persons.

**21. Eminent Domain.** In the event the Premises shall at any time during the term of this Agreement be taken by any public authority or agency for any public use, the entire damages which may be awarded for the taking shall be equitably apportioned between Lessor and Lessee, taking into account the value of their respective interests, and this Agreement shall terminate as of the date of said taking. In the event a portion of the Property shall be so taken for public use and such portion taken renders the Premises unsuitable or uneconomic for Lessee's use contemplated hereunder in Lessee's reasonable business determination, Lessee may, at its option, terminate this Agreement. Upon such taking, Lessor shall refund to Lessee a pro rata portion of the rent prepaid to the date of taking or conveyance, as the case may be.

**22. Damage or Destruction.** If the whole or any part of the Premises or the Facility is damaged or destroyed by fire, the elements or subsidence of sublateral or subjacent support or any other casualty so as to make the Premises unsuitable or uneconomic for Lessee's use, Lessee may terminate this Agreement and all of the obligations of either party hereto (apart from obligations expressly surviving termination) shall terminate upon thirty (30) days' notice to Lessor. In case of such destruction, there shall be a total or partial abatement of rent from the date of destruction, depending on the circumstances. In lieu of termination, Lessee shall have the right to install a temporary communications facility ("TCF") at a location on the Property suitable for maintaining its network until the damage or destruction is addressed by Lessor. If Lessee does not elect to terminate or install a TCF, Lessee may elect to restore the Premises to substantially the same condition as it was in immediately before destruction and obtain an abatement of rent from the date of destruction, except such obligation shall not create any obligation with respect to replacement of any road or Utility Lines used by Lessee for the Premises.

**23. Removal.** Upon expiration or termination of the Agreement, Lessee shall remove all equipment and improvements it has installed in, on or at the Premises provided, however, that such removal can be done without damage to the Premises, normal wear and tear excepted. Lessee shall be responsible

to Lessor for any such property damage sustained to the Property as a result of removal.

**24. Indemnification.** Lessor and Lessee each indemnify the other against, and hold the other harmless from, any and all costs (including reasonable attorneys' fees and expenses), claims, actions, damages, obligations, liabilities and liens which arise out of the use and/or occupancy of the Premises or the Property by such indemnifying party. The indemnity shall not apply to any claims, actions, damages, obligations, liabilities and liens arising from any grossly negligent or intentional misconduct of the indemnified party. The obligation to indemnify shall survive the termination of this Agreement.

**25. Events of Default.** Except as expressly limited hereby, Lessor and Lessee shall each have such remedies for the default of the other party hereto for a breach under this Agreement as may be provided at law or equity (in each case, an "Event of Default") following written notice of such default and failure to cure the same within thirty (30) days, provided, however, that if the nature of the default is such that it cannot be reasonably be cured within thirty (30) days and if the defaulting party shall be diligently pursuing the cure of such default, then the defaulting party shall be permitted such reasonable period of time as is needed to fully cure such Event of Default.

**26. Termination.** After the Rent Commencement Date, this Agreement may be terminated by Lessee at any time by notice to Lessor without further liability if Lessee does not obtain all Approvals required to alter, improve, or continue to operate its Facility, or if any such Approval or Approvals are canceled, expire or are withdrawn or terminated; or if any of the representations, warranties or covenants herein are breached without cure; or if Lessee for any other reason, in its sole discretion, determines that it will be unable to attain optimal use of the Facility within its communications network. Upon termination, all prepaid rent will be retained by Owner.

**27. Bankruptcy and Insolvency.** Lessor and Lessee agree that this Agreement constitutes a lease of non-residential real property for purposes of federal or state bankruptcy laws, including 11 U.S.C. § 365(d)(4) or its successor provision.

**28. Notices.** All notices required by the terms of this Sublease Agreement shall be given by mailing such notices by certified or registered mail, return receipt

RCC Atlantic, Inc.  
DODGE CITY 1, KS  
Asset ID: KS9519

requested, to the addresses of the parties as stated here:

<u>Lessor</u>	<u>Lessee</u>
Varsity Square, LLC Airport Tower 2082 Michelson Dr., Suite 450 Irvine, CA 92612	RCC Atlantic, Inc. 3905 Dakota St SW Alexandria, MN 56308 Attn: Real Estate Manager

With a copy to:  
Gregory B. Starks  
Coldwell Banker  
Hancocks  
2300 First Avenue  
Dodge City, KS 67801

or to such other address as may be designated in writing.

**29. Miscellaneous.** (a) Lessor represents and warrants that any person or entity executing in a representative capacity for Lessor has full authority. (b) This Agreement supersedes all prior discussions and negotiations and contains all agreements and understandings between Lessor and Lessee. (c) This agreement may only be amended in writing signed by both parties. (d) Any exhibits hereto are incorporated into this Agreement by reference. (e) This Agreement may be signed in counterparts by the parties hereto. (f) The terms and conditions of this Agreement shall run with the Property and shall extend to and bind the heirs, personal representatives, successors and assigns of Lessor and Lessee. (g) The prevailing party in any action or proceeding in court to enforce the terms of this Agreement shall be entitled to receive its reasonable attorneys' fees and other reasonable enforcement costs and expenses from the non-prevailing party. (h) No failure or delay on the part of a party to exercise any right, power or remedy under this Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right under this Agreement preclude any other or further exercise thereof or the exercise of any other right. (i) Lessor shall execute, acknowledge and deliver to Lessee for recording a Memorandum of this Agreement ("Memorandum") in the form of Exhibit D. (j) This Agreement shall be construed in accordance with the laws of the state in which the site is located, and shall be enforced only in state or federal courts located within the State of Kansas, and such courts shall have exclusive subject matter and personal jurisdiction over the

parties based on a dispute arising from this Agreement. (k) Lessor hereby agrees to cooperate with Lessee and its authorized representatives regarding any reasonable request made subsequent to execution of this Agreement to correct any clerical errors contained in this Agreement, and to provide any and all additional documentation deemed necessary by Lessee to effectuate the transaction contemplated by this Agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands as of the 15 day of August, 2007.

IN THE PRESENCE OF:

LESSOR

Varsity Square, LLC

[Signature]

Witness

By [Signature]

Print Name: Gregory B. Starks  
Print Title: Facility Manager

STATE OF KANSAS

COUNTY OF FORD

On this the 15<sup>th</sup> day of JULY, 2007, before me personally appeared GREGORY B. STARKS, who acknowledged himself to be the Facility Manager of Varsity Square, LLC, a Nevada limited liability company, and that he acknowledged the foregoing instrument by him/her sealed and subscribed to be his/her free act and deed and the free act and deed of said Varsity Square, LLC..

In witness whereof I hereunto set my hand and official seal.



Before me, [Signature]  
Notary Public  
My Commission Expires: 11-9-09

IN THE PRESENCE OF:

LESSEE

Cynthia Shuck  
Witness

RCC Atlantic, Inc., a Minnesota corporation

By: Richard Ekstrand

Print Name: Richard Ekstrand

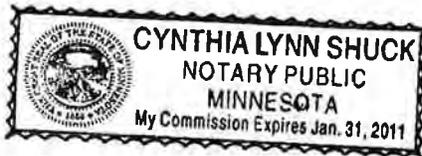
Print Title: President & Chief Executive Officer

STATE OF MINNESOTA

COUNTY OF DOUGLAS

On the 15 day of Aug, 2007, before me personally appeared Richard Ekstrand, to me known, who being by me duly sworn, did depose and say that he is the President & Chief Executive Officer of RCC Atlantic, Inc., the Lessee described in and which executed the foregoing instrument as his free act and deed and the free act and deed of said RCC Atlantic, Inc.

Before me Cynthia Shuck  
Notary Public  
My Commission Expires: \_\_\_\_\_



**EXHIBIT A**

**DESCRIPTION OF PROPERTY**

The Premises are located on a portion of that certain real property known as 619 2<sup>nd</sup> Avenue, Dodge City, Kansas 67801. See legal description below:

**TRACT ONE:**

Lots ~~Thirty-three (33)~~, Thirty-five (35), Thirty-seven (37), and Thirty-nine (39), on Spruce Street, Original Town of Dodge City, Ford County, Kansas, according to the recorded Plat thereof.

**TRACT TWO:**

Part of Lot Three (3), all of Lots Four (4) and Five (5). Block Nineteen (19), Original Townsite of Dodge City, Kansas, according to the recorded Plat thereof, described as follows:

Beginning at the intersection of the South line of Vine Street and the West line of Second Avenue, Dodge City, Kansas, thence South along the West line of Second Avenue, 83.75 feet to a point; thence West parallel with the South line of Vine Street 117.5 feet more or less, to a point in the East line of the alley, which point is 83.75 feet South of the South line of Vine Street; thence North to the South line of Vine Street; thence East to the point of beginning.

**EXHIBIT B**

**DESCRIPTION OF PREMISES**

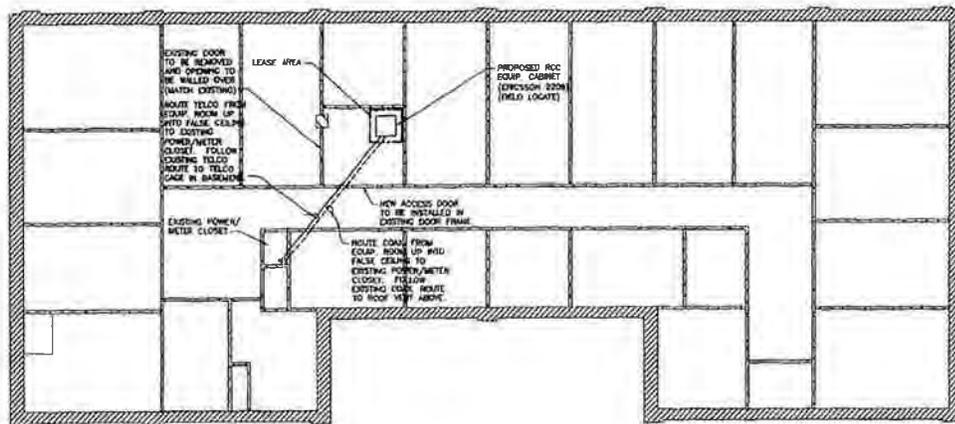
The Premises shall consist of the following:

(a) space on the roof of that certain building located on the Property known as Bank building, 610 2<sup>nd</sup> Avenue, Dodge City, KS 67801 for purposes of installing 3 antenna support structures on which to mount antennas;

(b) Six (6) antennas on the roof of that certain building and a 12 x 14 space inside the top floor of the building for its equipment;

(c) utility cables and conduits to, over, under, along and through the Premises deemed necessary for the operation of Lessee's Communications Facility.

The Premises are depicted on the construction drawings prepared by Ulteig Engineers and dated June 4, 2007, copies of which are attached hereto and incorporated herein by reference.



5th FLOOR PLAN  
 SCALE: 1/2" = 1'-0" (8/27/94)

<p>Utah Engineering        1000 East 1000 South, Suite 100        Salt Lake City, Utah 84143        Phone: (801) 466-1111 Fax: (801) 466-1112        Website: www.utaheng.com</p>	<p><b>DODGE CITY SITE</b></p>	<p><b>RCC</b>        RURAL CELLULAR COMPANY        PHONE: 320-880-1100 FAX: 320-880-2000</p>	<table border="1"> <tr> <td>NO. OF SHEETS</td> <td>DATE</td> <td>BY</td> <td>CHECKED</td> <td>DATE</td> <td>BY</td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </table>	NO. OF SHEETS	DATE	BY	CHECKED	DATE	BY							<p>14. APPROVED FOR CONSTRUCTION BY THE ARCHITECT AND ENGINEER AND THE ARCHITECT AND ENGINEER'S LICENSE NUMBER IS 10000. THE ARCHITECT AND ENGINEER'S LICENSE NUMBER IS 10000.</p>	<p><b>RURAL CELLULAR        5th FLOOR PLAN        DODGE CITY BANK OF AMERICA</b></p> <p>DATE: 8/27/94        DRAWN BY: G. LONG        A00</p>
NO. OF SHEETS	DATE	BY	CHECKED	DATE	BY												

6 5 4 3 2 1

EXHIBIT C

NOTICE OF RENT COMMENCEMENT DATE

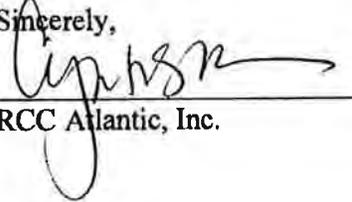
To: Varsity Square, LLC, Airport Tower, 2082 Michelson Dr., Suite 450; Irvine, CA 92612,  
with a copy to: Gregory B. Starks, Coldwell Banker Hancocks, 2300 First Avenue, Dodge City,  
KS 67801

From: RCC Atlantic, Inc., 3905 Dakota Street SW, Alexandria, MN 56308

Re: Communications Facility at 619 2<sup>nd</sup> Avenue, Dodge City, KS 67801. Rent  
Commencement Date: Sept 1, 2007.

Please be apprised that, as of the date above stated, RCC Atlantic, Inc., has obtained all Approvals necessary to install its Communications Facility on the Premises described in the Communications Facility Agreement, dated Aug 15, 2007. The Rent Commencement Date, as described in that same Communications Facility Agreement, commences as of the above-stated date.

Sincerely,

  
\_\_\_\_\_  
RCC Atlantic, Inc.

**Recording Requested By  
And When Recorded Mail to:**

Rural Cellular Corporation  
Attn: Real Estate Manager  
3905 Dakota Street SW  
Alexandria, Minnesota 56308-2000

STATE OF KANSAS

COUNTY OF FORD

**EXHIBIT D**  
**MEMORANDUM OF AGREEMENT**

KNOW ALL PERSONS BY THESE PRESENTS that the parties identified below are parties to that certain Communications Facility Agreement, dated \_\_\_\_\_, 2007 (the "Agreement"), and acknowledge and agree that the following accurately represents the following terms and conditions:

Lessor	Varsity Square, LLC, a Nevada limited liability company, with an address at Airport Tower, 2082 Michelson Dr., Suite 450; Irvine, CA 92612, with a copy to: Gregory B. Starks, Coldwell Banker Hancocks, 2300 First Avenue, Dodge City, KS 67801
Lessee	RCC Atlantic, Inc., a Minnesota corporation, with an address at 3905 Dakota St SW, Alexandria, MN 56308
Leased Property:	The "Premises" leased by Lessor to Lessee is described in Exhibit A attached hereto and incorporated herein.
Initial Term:	A term of five (5) years commencing on _____, 2007.
Rights to Extend or Renew:	Lessee has the right to extend/renew the Agreement as follows: four (4) options to extend the Initial Term for periods of five (5) years each on the terms and conditions set forth in the Agreement. If Lessee exercises all options to renew, the final expiration of the Agreement will occur on _____, 20__.

Assignment Restrictions:	Lessee may not assign or transfer this Agreement without the prior written consent of Lessor, which consent shall not be unreasonably withheld, conditioned, or delayed. Lessee may freely, without Lessor's consent (i) assign its interest hereunder to any entity that is a subsidiary of or related to Lessee by common ownership or control, or in the event of a sale of substantially all of Lessee's assets; (ii) mortgage or pledge its interest in the Facility for financing purposes.
Right of first refusal	No
Right to purchase	No

This Memorandum of Agreement will be recorded in the applicable land records and is intended to provide notice to third parties of the Agreement and any and all amendments thereto pursuant to K.S.A. 58-2221. The Agreement and any and all amendments thereto contain terms and conditions in addition to those set forth in this Memorandum of Agreement. This Memorandum of Agreement is not intended to amend or modify the terms and conditions of the Agreement or of any amendments thereto. To the extent that the terms and conditions of this Memorandum of Agreement differ from the terms and conditions of the Agreement and/or any amendments thereto, the terms and conditions of the Agreement and/or any amendments thereto shall govern and prevail. Capitalized terms not otherwise defined herein shall have the meaning defined in the Agreement and/or any amendments thereto. A copy of the Agreement and any amendments thereto is kept at Lessee's place of business, at the address noted above.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Agreement to be effective as of the date first set forth above.

**IN THE PRESENCE OF:**

**LESSOR**

**Varsity Square, LLC**

\_\_\_\_\_  
Witness

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

Print Name: Gregory B. Starks

Print Title: Facility Manager

STATE OF KANSAS

COUNTY OF FORD

On this the \_\_\_ day of JULY, 2007, before me personally appeared GREGORY B. STARKS, who acknowledged himself to be the Facility Manager of Varsity Square, LLC, a Nevada limited liability company, and that he acknowledged the foregoing instrument by him/her sealed and subscribed to be his/her free act and deed and the free act and deed of said Varsity Square, LLC.

In witness whereof I hereunto set my hand and official seal.

Before me, \_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

IN THE PRESENCE OF:

**LESSEE**

**RCC Atlantic, Inc., a Minnesota corporation**

\_\_\_\_\_  
Witness

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

Print Name: Richard Ekstrand

Print Title: President & Chief Executive Officer

STATE OF MINNESOTA

COUNTY OF DOUGLAS

On the \_\_\_\_ day of \_\_\_\_\_, 2007, before me personally appeared Richard Ekstrand, to me known, who being by me duly sworn, did depose and say that he is the President & Chief Executive Officer of RCC Atlantic, Inc., the Lessee described in and which executed the foregoing instrument as his free act and deed and the free act and deed of said RCC Atlantic, Inc.

Before me, \_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

## EXHIBIT A

### DESCRIPTION OF PROPERTY

The Premises are located on a portion of that certain real property known as 619 2<sup>nd</sup> Avenue, Dodge City, Kansas 67801. See legal description below:

#### TRACT ONE:

Lots Thirty-three (33), Thirty-five (35), Thirty-seven (37), and Thirty-nine (39), on Spruce Street, Original Town of Dodge City, Ford County, Kansas, according to the recorded Plat thereof.

#### TRACT TWO:

Part of Lot Three (3), all of Lots Four (4) and Five (5), Block Nineteen (19), Original Townsite of Dodge City, Kansas, according to the recorded Plat thereof, described as follows:

Beginning at the intersection of the South line of Vine Street and the West line of Second Avenue, Dodge City, Kansas, thence South along the West line of Second Avenue, 83.75 feet to a point; thence West parallel with the South line of Vine Street 117.5 feet more or less, to a point in the East line of the alley, which point is 83.75 feet South of the South line of Vine Street; thence North to the South line of Vine Street; thence East to the point of beginning.

### DESCRIPTION OF PREMISES

The Premises shall consist of the following:

- (a) space on the roof of that certain building located on the Property known as Bank building, 610 2<sup>nd</sup> Avenue, Dodge City, KS 67801 for purposes of installing 3 antenna support structures on which to mount antennas;
- (b) Six (6) antennas on the roof of that certain building and a 12 x 14 space inside the top floor of the building for its equipment;
- (c) utility cables and conduits to, over, under, along and through the Premises deemed necessary for the operation of Lessee's Communications Facility.

The Premises are depicted on the construction drawings prepared by Ulteig Engineers and dated June 4, 2007, copies of which are attached hereto and incorporated herein by reference.

## FIRST AMENDMENT TO COMMUNICATIONS FACILITY AGREEMENT

THIS FIRST AMENDMENT TO <sup>EAS</sup> COMMUNICATIONS FACILITY AGREEMENT ("First Amendment") made effective as of this <sup>6<sup>th</sup></sup> day of <sup>October</sup>, 2010, by and between Varsity Square, LLC, a Nevada limited liability company ("Lessor" or "Owner") and Abraham Divestiture Company LLC, a Delaware limited liability company ("Lessee").

### RECITALS

A. Lessor and Lessee's predecessor-in-interest entered into the Communications Facility Agreement ("Site Agreement") dated as of the 15th day of August 2007, under which Lessee leased from Lessor certain locations upon a certain building located at 617-619 Second Avenue, Dodge City, Kansas 67801 for the installation of Lessee's radio communications equipment.

B. The parties desire to amend the Site Agreement as provided herein.

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

1. Equipment. The parties agree that Lessee shall be allowed a total of twelve (12) panel antennas, twelve (12) TMAs and eighteen (18) coaxial cables on the roof of the building. Lessee will agree to remove all other existing Lessee antennas on the building which Lessee has chosen to no longer use.
2. Rent. For the increase in number of antenna and elevations, Lessee rent shall increase by Two Hundred Fifty Dollars and 00/00 (\$250.00) per month, over the now current rent. The effective date of this amendment, for the purposes of amended rent, shall be the installation of said equipment.
3. Notices. Lessee's notice addresses provided in Section 28 of the Site Agreement are hereby deleted in their entirety and replaced with the following:

Abraham Divestiture Company LLC  
Attn: Network Real Estate Administration  
Site Name: Dodge City BOA (KS)  
Fixed Asset No. 10139116  
12555 Cingular Way, Suite 1300  
Alpharetta, GA 30004

With a copy to:

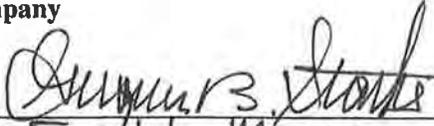
Abraham Divestiture Company LLC  
Attn: AT&T Legal Dep't  
Site Name: Dodge City BOA (KS)  
Fixed Asset No. 10139116  
15 East Midland Avenue  
Paramus, NJ 07652

4. Emergency 911 Service. In the future, without the payment of additional rent and at a location mutually acceptable to Lessor and Lessee, Lessor agrees that Lessee may add, modify and/or replace equipment in order to be in compliance with any current or future federal, state or local mandated application, including but not limited to emergency 911 communication services,

5. Misc. In all other respects, except as expressly modified herein, the Site Agreement shall remain in full force and effect. In the event of any discrepancies between the Site Agreement and this First Amendment, this First Amendment shall control.

LESSOR:

**Varsity Square, LLC, a Nevada limited liability company**

By:   
Its: Facility Manager  
Date: 10/6/10

LESSEE:

**Abraham Divestiture Company LLC (ADC)**

By: AT&T Mobility II, LLC

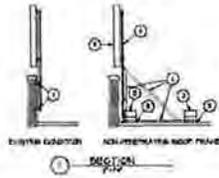
Its: Attorney-in-fact

By: AT&T Mobility Corporation

Its: Manager

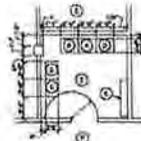
By:   
Its: Director  
Date: 9/10/10

# Exhibit A



Angles of the existing parapet structure indicate that an attempt should be made to support the parapet on the existing structure. The parapet and retain the height of parapet of the existing structure. It is to be noted that parapet has an offset base of existing existing (see Fig. 10-3-1) and that it is to be noted.

Parapet steel trusses shall be steel trusses supported above steel truss members. Existing parapet steel trusses shall be steel trusses supported above steel trusses. A non-permanently roof truss of steel to support the existing parapet.



- 1. EXISTING FLOOR FRAMING TO 2ND FLOOR
- 2. EXISTING FLOOR FRAMING TO 2ND FLOOR
- 3. EXISTING FLOOR FRAMING TO 2ND FLOOR
- 4. EXISTING FLOOR FRAMING TO 2ND FLOOR
- 5. EXISTING FLOOR FRAMING TO 2ND FLOOR
- 6. EXISTING FLOOR FRAMING TO 2ND FLOOR
- 7. EXISTING FLOOR FRAMING TO 2ND FLOOR
- 8. EXISTING FLOOR FRAMING TO 2ND FLOOR
- 9. EXISTING FLOOR FRAMING TO 2ND FLOOR
- 10. EXISTING FLOOR FRAMING TO 2ND FLOOR

PARTIAL FLOOR FRAMING PLAN AT THE COMMUNICATION ROOM

THE EXISTING STRUCTURE HAS BEEN CHECKED AND FOUND TO BE ADEQUATE FOR THE LIVE LOADS AND SEISMIC LOADS AS INDICATED ON THE DRAWINGS.

THE ANALYSIS OF THE EXISTING STRUCTURE HAS BEEN DONE BY THE ENGINEER AND FOUND TO BE ADEQUATE FOR THE LIVE LOADS AND SEISMIC LOADS AS INDICATED ON THE DRAWINGS.

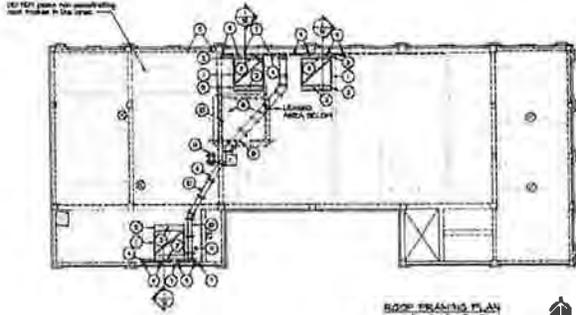
ANALYSIS OF EXISTING STRUCTURE

DESIGNER: P. S. SINGH P.E.

REVISIONS: P. S. SINGH P.E.

APPROVED: P. S. SINGH P.E.

DATE: 10/10/2010



ROOF FRAMING PLAN

- KEY TO PLAN NOTES
1. New antenna structure non-permanently roof truss with 12 ft base.
  2. 12" x 12" steel truss members spaced at 48" on center in both directions.
  3. 12" x 12" steel truss members spaced at 48" on center in both directions.
  4. 12" x 12" steel truss members spaced at 48" on center in both directions.
  5. 12" x 12" steel truss members spaced at 48" on center in both directions.
  6. 12" x 12" steel truss members spaced at 48" on center in both directions.
  7. 12" x 12" steel truss members spaced at 48" on center in both directions.
  8. 12" x 12" steel truss members spaced at 48" on center in both directions.
  9. 12" x 12" steel truss members spaced at 48" on center in both directions.
  10. 12" x 12" steel truss members spaced at 48" on center in both directions.

NEW ANTENNA MOUNTING FOR BANK OF AMERICA BUILDING

P. S. SINGH P.E.

10/10/2010

S-1



Intracompany Transmittal for review and approval of contracts.

February 05, 2007  
E. McDonald  
Tracy Majors  
Chad Tarver - ext. 0538  
New Rooftop attachment in Dodge City, KS

Type of instrument	Building Attachment Communications Site Agreement (Rooftop)(2 originals)		
ALLTEL Site Reference	Notice of Commencement (2 originals)		
Lessor Site Reference	KS - Dodge City #4		
Market / Co. # / Job #	Same		
Lessor	KS RSA 12 - Hodgeman		
Lessor Vendor number	ACP BA, LLC	Co. # 404	Job # 740455062
Lessor Notice Address	18309281		
Lessor Remittance Address	Coldwell Banker Hancock, ATTN: Gregory Starks, 2300 First Ave., Dodge City, KS 67801; P: 620-227-2408		
ALLTEL Entity	To be determined		
Effective Date	ALLTEL Kansas Limited Partnership		
Commencement date - ¶ 3	To be determined		
Terms - ¶¶ 3, 4	Earlier of installation of equipment or 120 days from full execution		
Renewal Language - ¶ 4	5-year initial term with three (3) additional 5-year renewal terms		
Rent - ¶ 5(a)	Automatically renewed unless ALLTEL provides notice of intent NOT to renew at least 90 days prior to exp. of then-current term.		
Escalation - ¶ 5(b)	\$800.00 per month		
Assignment - ¶ 23	CPI per term, not to exceed 5%. If Commencement other than 1 <sup>st</sup> of month, escalation applied on first day of month following said anniversary date.		
Subleasing - ¶ 24	Requires Owner's prior written consent if other than Affiliate.		
Termination Provisions	Requires Owner's prior written consent		
Monetary Termination	No Voluntary Termination; Other Termination: ¶ 13(a): by either party for uncured default after 30 days of receipt of notice by other party (¶ 28(a)(ii): 10 days for non-payment); ¶ 13(b): by ALLTEL if unable to obtain or maintain any required governmental permit; ¶ 13(c): by ALLTEL if premises are damaged so as to render ineffective use of the site; ¶ 10: by ALLTEL for any interference which after 45 days' written notice to Owner has not been corrected; ¶ 13(d) by ALLTEL upon 6 months' written notice if in tenant's judgment design or technology changes render site obsolete or unnecessary (6 months' rent due w/ this option); ¶ 18: by ALLTEL if condemnation takes all or sufficient portion of premises to render site unsuitable; ¶ 7: by ALLTEL if any of conditions precedent fail within 90 days of execution.		
Post Termination Language	¶ 13(d) - if ALLTEL terminates due to obsolescence, ALLTEL to pay 6 months' rent.		
Holdover - ¶ 31	In the event Tenant remains on the Building after expiration, Tenant shall occupy the Premises month-to-month at a rate 1.5 x the current rental rate.		
Indemnification - ¶ 19	Reciprocal; also includes reciprocal Waiver of Liability.		
Interference - ¶ 10	Owner shall not use nor permit use of Premises that interferes with ALLTEL's operations. ALLTEL agrees to not cause interference to Owner and others already in place. Owner to place similar restrictions upon other future wireless carriers.		
Negotiated/Approved by:	Terri Dolezal (402) 436-4278 / Jim McGee (303) 373-3404		

**BUILDING ATTACHMENT**  
**COMMUNICATIONS SITE LEASE**  
**(Rooftop)**

THIS BUILDING ATTACHMENT COMMUNICATIONS SITE LEASE ("Lease") is entered into this 4th day of December, 2006 by and between **ACP BA LLC**, a California LLC (Limited Liability Company) ("Owner") and **ALLTEL Kansas Limited Partnership**. ("Tenant").

1. **Grant.** Subject to the following terms and conditions, Owner hereby grants Tenant the nonexclusive right to install, maintain, operate and remove radio communications equipment and appurtenances on space on Owner's building (the "Building") located on the property described in Exhibit "A" (the "Premises"), and leases to Tenant a portion of the Premises for occupancy to house Tenant's equipment on the Premises and additional areas connecting Tenant's equipment on the Building to Tenant's equipment in other locations within or without the Building (the space on the Building for Tenant's attachment and the additional space for Tenant's occupancy and connection, collectively the "Site"), a description of the Site is more particularly described in Exhibit "C". Owner shall continue to have the right to occupy the Building and to grant others rights to occupy or utilize the Premises and the Building at Owner's sole discretion. Owner also grants to Tenant a non-exclusive easement during the term of this Lease for ingress and egress and for the installation and transmission of utilities on property described on attached Exhibit "B" ("Easement"). Tenant may install equipment, personal property, improvements, alterations or fixtures as listed on Exhibit "C" (the Equipment), or as Owner may otherwise approve, such approval not to be unreasonably withheld, conditioned or denied. Any personal property owned by Tenant, whether or not fixed or attached to the Premises or Building, shall remain the property of Tenant prior to termination of this Lease without regard to whether it appears on Exhibit "C".

2. **Use.** Tenant shall use the Equipment and the Site for the purpose of constructing, installing, maintaining, improving and operating, at Tenant's expense, a communications facility, including antennae, buildings and incidental uses. Tenant shall be solely responsible for securing any and all building permits and approvals, zoning changes or approvals, variances, use permits, and other governmental permits from applicable governmental authorities, including any Federal Aviation Administration approval (collectively, "Permits") prior to any construction on the Premises. Owner agrees to reasonably cooperate with Tenant in obtaining the Permits. Copies of the Permits shall be provided to Owner, upon request. Tenant shall promptly pay all costs and expenses and shall not cause or permit any lien to be created against the Premises.

3. **Term.** The Initial term of this Lease shall be five (5) years, commencing upon the earlier of Tenant's commencement of installation of its Equipment on Owner's Building, or One-Hundred Twenty (120) days from the date of full execution of this Lease (the "Commencement Date") and terminating at midnight five years therefrom ("Initial Term").

4. **Renewal Term(s).** Tenant shall have the right to extend this Lease for three (3) additional terms of five (5) years each ("Renewal Term(s)") on the same terms and conditions as set forth in this Lease except that the Rent shall be as specified in Paragraph 5 below. This Lease shall automatically be renewed for each successive Renewal Term unless Tenant notifies Owner of Tenant's intention not to renew the Lease at least ninety (90) days prior to expiration of the then current term.

5. **Rent.**

- a. **Initial Term.** Beginning on the Commencement Date, Tenant shall pay to Owner as rental the sum of Eight Hundred Dollars (\$800.00) per month ("Rent"). Rent payments shall be made monthly in advance to the Owner's notice address as specified below and shall be

prorated for any partial month at the commencement or termination of this Lease, based on the number of days in that month.

- b. Renewal Term. In the event that Tenant elects to renew this Lease, rent shall, during the first month of each successive Renewal Term, be adjusted by the same percentage that the Consumer Price Index ("CPI") increases during the current term. Such adjustment shall be calculated by multiplying the then-current monthly rent by a fraction, the denominator of which is the CPI last published in the month immediately prior to the first month of current term and the numerator of which is the CPI last published in the month immediately preceding the adjustment. In no event shall such adjustment result in a monthly rent that decreases and, in no event, shall such adjustment exceed five percent (5%) per annum. If the Commencement Date falls on any day other than the first of the month, rent escalation shall be applied on the first day of the month following the applicable anniversary of the Commencement Date.

6. Building Maintenance. Owner represents and warrants that the Building and all of Owner's adjoining property and improvements, exclusive of Tenant's Equipment, meets and will be maintained in accordance with all applicable local building and regulation codes. Tenant, at its sole cost, shall comply with all applicable laws relating to its possession of the Site and use of the Equipment. Owner shall maintain the Building in good operating condition. The costs of maintaining the Building shall be borne by Owner with the exception of Tenant's antennae and Equipment, and except for damage to the Building caused by Tenant, or Tenant's agents, employees, contractors or subcontractors, which shall be borne solely by Tenant. Tenant shall timely repair at Tenant's cost any such damage.

7. Conditions Precedent. Tenant's obligation to perform under this Lease shall be subject to and conditioned upon:

- a. Tenant's obtaining, at its option, a title report or commitment for a leasehold title policy from a title insurance company of Tenant's choice which must show no defects or restrictions of title or any liens or encumbrances which may adversely affect Tenant's use of the Premises or Tenant's ability to obtain financing;
- b. Tenant's obtaining, at its option, a survey and analysis tests, which must show no defects which, in the reasonable opinion of the Tenant, may adversely affect Tenant's use of the Site;
- c. Tenant's approval of the condition of the Premises, which may be subject to, at Tenant's option, an environmental audit of the Premises performed by an environmental consulting firm of Tenant's choice;
- d. Tenant's securing appropriate approvals for Tenant's intended use of its Equipment on the Site from the Federal Communications Commission, the Federal Aviation Administrator, the applicable State Historic Preservation Office, and any other federal, state or local regulatory agency having jurisdiction over Tenant's proposed use of the Equipment; and
- e. Tenant's reasonable determination that the Building is structurally appropriate for Tenant's needs.

In the event of a failure of any of the above referenced conditions precedent within Sixty (60) days of execution of this Lease, Tenant may terminate this Lease through written notice to Owner.

8. Conditions Subsequent. In the event that Tenant's intended use of the Site and the Premises is actually or constructively prohibited or the Site and the Premises are, in Tenant's reasonable opinion, unacceptable to Tenant, through no fault, error or omission of Tenant, then this Lease shall terminate and be of no further force or effect.

9. Electrical Charges: Tenant's electrical consumption on the Premises shall be metered separately at Tenant's expense and shall be paid separately by Tenant. In the event the electrical consumption cannot be metered separately from that consumed by Owner, Tenant shall sub-meter the Premises and Tenant shall pay monthly in advance during the term of the Lease an Electrical Charge of One Hundred Dollars (\$100.00). The parties acknowledge that the Electrical Charge is an estimate of the actual cost of Tenant's electrical consumption. Within sixty (60) days after the end of each Lease Year, Owner shall determine the actual cost of Tenant's electrical consumption for such Lease Year by reading the sub-meter and applying the rates, taxes and other fees charged for such consumption by the applicable utility provider. In the event the actual electrical cost determined by Owner for such Lease Year exceeds the aggregate amount of electrical charge paid by Tenant, Tenant shall pay the difference within fifteen (15) days after receipt of an invoice. In the event the actual electrical consumption is less than the aggregate electrical charge paid by Tenant for the Lease Year, Owner shall credit Tenant for such difference against future electrical charges. Further, Owner shall have the right from time to time modify the monthly amount of electrical charge paid by Tenant to an amount equal to one-twelfth (1/12) of Owner's reasonable estimate of the annual cost of Tenant's electrical consumption.

10. Interference. Owner shall not use, nor permit its tenants, licensees, invitees or agents to use any portion of the Premises or any adjoining or proximate property of Owner in any way that interferes with the operations of Tenant. Tenant may enforce this provision at law or in equity. Tenant agrees to install Equipment only of types and generating frequencies which will not cause interference to transmissions or signals from Owner and other users of the Building as may be already in place on the Building. At Owner's request, Tenant shall provide a detailed interference analysis showing potential conflicts between Tenant's frequencies and those of the Owner or other users already in place on the Building. In the event the Equipment causes such interference, Tenant will take all steps necessary to correct and eliminate the interference. If the interference cannot be eliminated within 48 hours after receipt of written notice from Owner to Tenant, Tenant shall temporarily disconnect the electric power and shut down the Equipment (except for intermittent operation for the purpose of testing, after performing maintenance, repair, modification, replacement, or other action taken for the purpose of correcting such interference) and if such interference is not corrected within 30 days after receipt of the written notice, Tenant agrees to remove the Equipment from the Building and the Premises and this Lease shall terminate as if by expiration. After the Equipment has been installed, Owner shall place similar restrictions upon interference with Tenant's frequencies on others using Owner's Building with Owner's permission, or under Owner's authority, installed on the Building after Owner's installation of the Equipment. Should Owner fail to cure the cause of any such interference within 45 days of Owner's receipt of written notice of the interference, Tenant may remove the Equipment from the Building and the Premises and terminate this Lease. Tenant's activities and operations and the Equipment shall not disturb the occupancy of Owner's other tenants.

11. Maximum Permissible Emissions: Cooperative Efforts. Tenant shall regulate its antenna power output ("RF Emissions") according to applicable guidelines or restrictions imposed by the FCC for RF Emissions standards on Maximum Permissible Exposure ("MPE") levels. Similarly, any subsequent communications service providers ("Subsequent Users") installing Equipment on the Property or the Premises after the Commencement Date of this Lease shall also be held to compliance with such limits, rules and regulations and such Subsequent User shall adjust its RF Emissions subordinate to any requirements of Tenant. If Owner requires an engineering evaluation or other power density study be performed to evaluate RF Emissions compliance with MPE limits then all reasonable costs of such an evaluation or study shall be shared equally among Owner, Tenant and any Subsequent Users of the Premises. If said study indicates that RF Emissions at the facility do not comply with MPE limits, then Tenant and any Subsequent User shall immediately take any steps necessary to ensure that they are individually in compliance with such limits or shall, upon demand of Owner, cease operations until a maintenance program or other mitigating measures can be implemented to comply with MPE. Tenant shall have the right to terminate this Lease in the event any

mitigation measures cannot be implemented without materially adversely affecting the Tenant's operations of its Equipment.

12. Utilities and Access. Owner represents that utilities are presently available on the Premises. Further, from time to time,

- a. Tenant shall have the right to install utilities, to be separately metered at Tenant's expense, and to improve present utilities on the Premises, including but not limited to the installation of emergency power generators. Tenant shall have the right to permanently place utilities on, or to bring utilities across or under, the Premises and the Easement in order to service the Equipment throughout the Initial Term or any Renewal Term of this Lease. Owner shall, upon Tenant's request, execute a separate written easement in a form which may be filed of record evidencing this right. Tenant shall be responsible for all utility connection charges, and all utility use charges, for electricity or any other utility used by Tenant. Tenant has the right to install an emergency power generator on the Premises to provide emergency power service, so long as such generator does not interfere with Owner's or the other tenant's use of the Building or Premises.
- b. Owner shall provide Tenant access to the Site and the Equipment during reasonable business hours and as reasonably possible during emergencies, through the common areas or the Easement.

13. Termination. Except as otherwise provided, this Lease may be terminated, without any penalty or further liability, immediately upon written notice or as otherwise provided below, as follows:

- a. By either party upon a default of any covenant or term of this Lease by the other party which default is not cured or the curing of which is not commenced within 30 days of receipt of written notice of default (without, however, limiting any other rights available to the parties pursuant to any other provisions of this Lease); or
- b. By Tenant if it is unable to obtain or maintain any license, permit or other Permits necessary to the construction and operation of the Equipment or Tenant's business or intended use of the Premises; or
- c. By Tenant if the Premises or Equipment is damaged by casualty so as to hinder the effective use of the Equipment; or in the event that interference, whether or not from Owner's activities or any other source, to transmissions or signals from the Communications Facility, in Tenant's reasonable judgment, may not be adequately corrected or eliminated by Tenant;
- d. By Tenant upon six month's written notice to Owner if, in Tenant's reasonable judgment, network design or technology changes render the Communications Facility obsolete or unnecessary, with payment of an early termination fee in the amount of six (6) months then current rent.

14. Improvements. Tenant shall not make or cause to be made any alterations, additions or improvements to or of the Premises any part thereof without the prior written consent of Owner, which shall not be unreasonably denied or delayed. Any permitted alterations or additions shall be made by Tenant at Tenant's sole cost and expense and by persons duly licensed by the State of Kansas. Within 30 days of the expiration or sooner termination of the term hereof and upon written demand by Owner, Tenant shall, at its sole cost and expense, forthwith and with all due diligence, remove any alterations, additions, or improvements made by Tenant to the Premises designated by Owner to be removed. Tenant shall, forthwith and with all due diligence, at its sole cost and expense, repair any damage to the Premises or the Building caused by such removal.

15. Taxes. Tenant shall pay any personal property taxes assessed on, or any portion of such taxes attributable to, Tenant's Equipment. Tenant shall not pay real property taxes or other Rent and assessments attributable to the Premises.

16. Liens. Tenant shall keep the Premises free from any liens arising out of any work performed, materials furnished or obligations incurred by Tenant. Owner may require, at Owner's sole option, that Tenant shall provide to Owner, at Tenant's sole cost and expense, a lien and completion bond in an amount equal to one and one-half (1½) times any and all estimated costs of any improvements, additions, or alterations, on or to the Premises, to insure Owner against any liability for mechanics' and materialmen's liens and to insure completion of the work.

17. Liability Insurance. During the initial term and all renewal terms of this Lease, Owner and Tenant shall each maintain, at its own expense, insurance covering claims for public liability, personal injury, death and property damage under a policy of general liability insurance, with limits of not less than \$1,000,000.00 per person and \$2,000,000.00 per occurrence, and property damage insurance of not less than \$500,000.00. Such insurance shall insure against liabilities arising out of or in connection with Owner and Tenant's use or occupancy of the Premises and the Building subject to the standard exceptions found in commercial general liability insurance policies. At Owner's request, Tenant shall be required to include Owner as Additional Insured under said insurance policy.

18. Condemnation. If a condemning authority takes, or acquires by deed in lieu of condemnation, all of the Premises, or a portion sufficient to render the Premises, the Site or the Building becoming unsuitable for the use which Tenant was then making of the Site, the Premises or the Building, Tenant may terminate this Lease effective as of the date the title vests in the condemning authority. Tenant shall separately file its claim with the condemning authority for any relief it may seek.

19. Environmental Matters.

- a. Owner represents that, to Owner's best knowledge, no Hazardous Materials are presently located on the Site or Easement, and Owner agrees that it will provide, at no cost or expense to Tenant, for the removal of any Hazardous Materials if Hazardous Materials are present on the Site or the Easement prior to the date of this Lease or if Hazardous Materials are brought onto the Site or Easement by Owner, its agents, servants, employees, licensees, invitees or contractors. If after Tenant takes possession of the Premises Hazardous Materials are discovered to exist on the Site, Owner agrees that it will provide, at no cost or expense to Tenant, for the removal of any Hazardous Materials.
- b. Tenant shall comply with all laws, ordinances, rules, orders or regulations applicable to Hazardous Materials. Tenant shall not use the Premises or the Easement for treatment, storage, transportation to or from, use or disposal of Hazardous Materials (other than petroleum products necessary for the operation of an emergency electrical generator to serve the Equipment). Tenant shall be responsible for any expense incident to the abatement or compliance with the requirements of any federal, state or local statutory or regulatory requirements caused, directly or indirectly, by the activities of the Tenant or Tenant's agents, employees or contractors.
- c. As used in this Lease, "Hazardous Materials" shall mean any and all polychlorinated biphenyls, petroleum products, urea formaldehyde and other hazardous or toxic materials, wastes or substances, any pollutants, and/or contaminants, or any other similar substances or materials which are defined or identified as such in or regulated by any federal, state or local laws, rules or regulations (whether now existing or hereinafter enacted) pertaining to environmental regulations, contamination, cleanup or any judicial or administrative interpretation of such laws, rules or regulations or any substance that after release into the environment and upon exposure, ingestion, inhalation or assimilation, either directly from the environment or directly through food chains will or may reasonably be anticipated to cause death, disease, behavior abnormalities, cancer or genetic abnormalities.

20. Hold Harmless.

a. By Owner. Owner agrees to defend, indemnify and hold Tenant and its Affiliates or subsidiary companies, their officers, agents and employees harmless from and against any and all, costs, charges, expenses, losses, claims, actions, suits, causes of action, judgments and charges of every kind and nature whatsoever, including reasonable attorneys fees, arising from Owner's use or occupancy of the Premises, or from Owner's performance or failure to perform under this Lease or from any negligence or intentional misconduct by Owner, its subcontractors, agents, servants, employees or any or all of them, or from any defect in the title to the Premises, or from the presence of any Hazardous Materials on the Premises prior to the Commencement Date, or thereafter if brought onto the Premises by Owner or Owner's agents, employee's licensees, invitees or contractors.

b. By Tenant. Tenant agrees to defend, indemnify and hold Owner and its Affiliates or subsidiary companies, their officers, agents and employees harmless from any and all costs, damages, expenses, losses, claims, actions, suits, causes of action, judgments, and charges of every kind and nature whatsoever, including reasonable attorney's fees, which may in any manner arise out of or relate to Tenant's use of the Equipment or Premises or the performance or non-performance of this Lease by Tenant, Tenant's subcontractors, employees, agents, or assigns, including without limitation, those that may arise out of the use or furnishing of materials, and as to such claims, actions or causes of action arising from or resulting from any negligence or intentional misconduct by Tenant, its subcontractors, agents, servants, employees, or any or all of them.

c. Waiver of Liability. Neither Owner nor Tenant shall be responsible or liable to the other party for any loss or damage arising from any claim to the extent attributable to any acts or omissions of other licensees or tower users occupying the communications facility or vandalism or for any structural or power failures or destruction or damage to the communications facility except to the extent caused by the negligence or willful misconduct of such party. Notwithstanding anything to the contrary in this Lease, in no event shall Owner or Tenant be liable to the other for, and Owner and Tenant each hereby waive the right to recover, incidental, consequential (including lost profits, loss of use or loss of business opportunity), punitive, exemplary and similar damages.

21. Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, by certified mail, return receipt requested, by overnight service having a record of receipt, or by facsimile with confirmation of transmission to the addresses indicated below:

If to Owner, to:

Coldwell Banker Hancock  
Attn: Gregory Starks  
2300 First Avenue  
Dodge City, KS 67801  
Facsimile: (620) 227-2408

If to Tenant, to:

ALLTEL Communications, Inc.  
P.O. Box 2177  
Little Rock, AR 72203-2177  
Attn: Property Management Dept.  
Facsimile: (501) 905-7375

22. Warranties and Quiet Enjoyment. Owner warrants it has the full right, power and authority to execute this Lease and that it has good and marketable title to the Premises free and clear of any liens, encumbrances or mortgages. Owner further warrants that Tenant shall not be deprived of the quiet enjoyment of the Premises during the term of this Lease. Owner shall defend, protect, indemnify and hold harmless Tenant against any interference with Tenant's use and quiet enjoyment of the Premises or breach of this paragraph 22. Owner further warrants and represents to the best of Owner's knowledge that (i) Tenant's intended use of the Site is not prohibited by covenant, restriction, easement, subdivision rule or other contract which would prohibit Tenant's intended use of the Site; and (ii) there are no easements, licenses, rights of use or other encumbrances which will interfere with Tenant's intended use of the Site.

23. Assignment. Tenant may not assign its interest in this Lease without prior written approval by Owner, not to be unreasonably withheld, except that Tenant may assign its rights and obligations under this Lease to an Affiliate, as follows: "Affiliates" shall mean any person or entity that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with, another person or entity. "Control" for this definition shall be defined as holding at least a majority of voting power or operating control.

24. Subletting: Tenant shall not sublet the Premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person or entity to occupy or use the Premises or any portion thereof without the prior written consent of Owner.

25. Successors and Assigns. This Lease shall be binding upon and inure to the benefit of the parties, their respective heirs, successors, personal representatives and assigns. Owner's consent to one assignment, subletting, occupation or use by another other person shall not be deemed to be consent to any subsequent assignment, subletting, occupation or use by another person. Any such assignment or subletting without such consent shall be void, and shall, at the option of the Owner, constitute default under this Lease.

26. Compliance with Laws. All installations and operations in connection with this Lease by either party shall be conducted in accordance with all applicable rules and regulations of the Federal Communications Commission, Federal Aviation Agency, and any other applicable federal, state and local laws, codes and regulations. Tenant is solely responsible for the licensing, operation and maintenance of Tenant's Equipment, including, without limitation, compliance with any terms of its Federal Communications Commission license with respect to Building light observation and any notification to the Federal Aviation Administration in that regard. Tenant's Equipment, transmission lines, and any related devices, and the installation, maintenance and operation thereof, shall not damage the Building or any property or properties adjoining, or interfere with the use of the Building and the remainder of the Premises, by Owner or others, and Tenant shall defend, indemnify and hold harmless Owner from any such damage.

27. Inspection, Compliance and Entry by Owner. Owner reserves and shall at reasonable times have the right to enter the Premises and the Site, upon prior notice to Tenant, to verify compliance by Tenant with this Lease, to inspect the Site and Equipment, to supply any service to be provided by Owner to Tenant hereunder, to show the Premises to prospective purchasers or tenants, and to post notices of non-responsibility. Owner shall provide Tenant thirty (30) days prior notice a schedule improvement or repair the Site or any portion of the Premises that Owner may deem necessary or desirable without abatement of Rent, and may for that purpose erect scaffolding and other necessary structures where reasonably required by the character of the work to be performed, always providing that the entrance to the Premises shall not be blocked thereby, and further providing that the business of Tenant shall not be unreasonably interfered with or interrupted. Owner may enter the Site at any time Owner, at its discretion, in the event of an emergency.

28. Default/Breach. The occurrence of any one or more of the following events shall constitute a default and/or breach of this Lease by Tenant.

- a. "Default" is defined as a failure by the Tenant to comply with or perform any of the terms, covenants, conditions or rules and regulations under this Lease. A "Breach" is defined as the occurrence of one or more of the following defaults and failure of Tenant to cure such default within any applicable grace period:
  - i. The vacating or abandonment of the Site by Tenant.
  - ii. The failure by Tenant to make any payment of Rent or any other payment required to be made by Tenant hereunder, within ten (10) days of receipt of written notice from Owner of such failure.
  - iii. The failure by Tenant to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Tenant, where such failure shall continue for a period of thirty (30) days after written notice thereof by Owner to Tenant.
- b. The making by Tenant of any general assignment or general arrangement for the benefit of creditors; or the filing by or against Tenant of a petition to have Tenant declared a debtor under the Bankruptcy Code; or a petition or reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant, the same is dismissed within sixty (60) days); or the appointment of a trustee or a receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within thirty (30) days; or the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where such seizure is not discharged in thirty (30) days.

29. Remedies in Breach. In the event of any material Breach or Breach by Tenant, Owner may at any time thereafter, with or without notice or demand and without limiting Owner in the exercise of a right or remedy which Owner may have by reason of such breach:

- a. Terminate Tenant's right to possession of the Site or Premises by any lawful means, in which case this Lease shall terminate and Tenant shall immediately surrender possession of the Site to Owner. In such event Owner shall be entitled to recover from Tenant all damages incurred by Owner by reason of Tenant's breach including, but not limited to: the cost of recovering possession of the Site and reasonable attorney's fees. Unpaid installments of Rent or other sums shall bear interest from the date due at the rate of ten percent (10%) per annum. In the event Tenant shall have abandoned the Site, Owner shall have the option of: (a) taking possession of the Site and recovering from Tenant the amount specified in this paragraph; or (b) proceeding under the provisions of the following Article 29.b.
- b. Maintain Tenant's right to possession, in which case this Lease shall continue in effect whether or not Tenant shall have abandoned the Site. In such event Owner shall be entitled to enforce all of Owner's rights and remedies under this Lease, including the right to recover the Rent as it becomes due hereunder.
- c. Pursue any other remedy now or hereafter available to Owner under applicable laws.

30. Rules and Regulations. Tenant shall faithfully observe and comply with the rules and regulations that Owner shall from time to time promulgate. Owner reserves the right from time to time to make all reasonable modifications to said rules. The additions and modification to any rules and regulations shall be binding upon Tenant upon delivery of a copy of them to Tenant. Owner shall not be responsible to Tenant for the nonperformance of any of the rules and regulations by any other tenants or occupants.

31. Holding Over. In the event Tenant remains on the Building and in possession of the Site or the Premises after the expiration of the Initial Term or a Renewal Term without executing a new Lease, Tenant shall occupy the Premises month-to-month, subject to all of the terms and conditions of this Lease insofar as so

consistent, except that the rent shall be equal to one and one half (1½) times the rent during the immediately preceding term.

32. Estoppel. Each party agrees to furnish to the other, within 10 days after request, such truthful estoppel information as the other may reasonably request.

33. Subordination, Attornment. Upon request of Owner, Tenant will, in a document in the form and content acceptable to Tenant, subordinate its rights hereunder to the lien of any mortgage, or deed of trust to any bank, insurance company or other lending institution, now or hereafter in force against the Premises and Building, and upon any building hereafter placed upon the Premises and to all advances made or hereafter to be made upon the security thereof. However, Owner shall enter into financing and mortgage agreements which allow Tenant to retain its leasehold interest in the Premises provided Tenant is not in Default under this Lease beyond any applicable cure period and which obligates Tenant to abide by all the terms, covenants and conditions of this lease in the event the mortgagee takes title to the Premises through foreclosure or accepts a deed in lieu of foreclosure.

34. Miscellaneous.

- a) This Lease shall not be amended or modified except in writing and then only when signed by all the Parties hereto. This Lease constitutes the entire agreement and understanding of Owner and Tenant, and supersedes all offers, negotiations and other agreements.
- b) This Lease shall not be effective or binding on any party until fully executed by both parties hereto.
- c) The waiver by Owner of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition on any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of Rent hereunder by Owner shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, other than the failure of Tenant to pay the particular rental so accepted, regardless of Owner's knowledge of such preceding breach at the time of acceptance of such Rent.
- d) If either Owner or Tenant is represented by a real estate broker or agent in this transaction, that party shall be fully responsible for any fees or commission due such broker or agent and shall hold the other party harmless from any such claims arising from execution of this Lease.
- e) Owner agrees to reasonably cooperate with Tenant in executing any documents necessary to protect Tenant's rights under this Lease or Tenant's use of the Premises. Tenant may record this Lease or a Memorandum of Lease executed by all parties.
- f) If any term of this Lease is found to be void or invalid, such invalidity shall not affect the remaining terms of this Lease, which shall continue in full force and effect.
- g) Each of the undersigned warrants that he or she has the full right, power, and authority to execute this Lease on behalf of the party indicated.
- h) The marginal headings are not a part of this Lease and shall have no effect upon the construction or interpretation of any part hereof.
- i) Time is of the essence of this Lease and each and all of its provisions in which performance is a factor.
- j) In the event of any sale of the Premises, Owner shall be and is hereby entirely freed and relieved of all liability under any and all of its covenants and obligations contained in or derived from this Lease arising out of any act, occurrence or omission occurring after the consummation of such

sale; and the purchaser, at such sale or any subsequent sale of the Premises shall be deemed, without any further agreement between the parties or their successors in interest or between the Parties and any such purchaser, to have assumed and agreed to carry out any and all of the covenants and obligations of Owner under this Lease.

- k) In the event any proceedings are brought for foreclosure or in the event of the exercise of the power of sale under any mortgage or deed of trust made by Owner covering the Premises, Tenant shall attorn to the purchaser upon any such foreclosure or sale and recognize such purchaser as Owner under this Lease. In the event of Owner's succession, the new owner shall recognize the tenancy and the rights granted to Tenant in accordance with the Lease.
- l) Tenant shall not use the name of Owner or the Building for any purpose other than as an address of the business to be conducted by Tenant in the Premises.
- m) No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.
- n) This Lease shall be binding upon the Parties, their personal representatives, successors and assigns and be governed by the laws of the State of Kansas. Any litigation between the Parties hereto concerning this Lease shall be initiated in the county in which the Building is located and governed by the laws of Kansas.
- o) Tenant shall not place any sign upon the Premises or Building or conduct any auction or sale of any kind outside the Premises without Owner's prior written consent, such consent not to be unreasonably withheld, except for all signs that are required by the FCC and/or FAA.

**THIS BUILDING ATTACHMENT COMMUNICATION SITE LEASE CONSTITUTES A PROPOSAL BY TENANT TO LEASE SPACE ON OWNER'S PREMISES AND SHALL NOT BE BINDING UPON TENANT UNTIL SUCH TIME AS IT IS EXECUTED ON BEHALF OF TENANT BY TENANT'S AUTHORIZED REPRESENTATIVE AND DELIVERED TO OWNER.**

IN WITNESS WHEREOF, Owner and Tenant have executed Lease as of the date year first above written.

**OWNER: ACP BA LLC**

**By: American Capital Properties LLC, its Managing Member**

Witness(es):

Melody Moradi  
Melody Moradi

By: [Signature]

Name: Marc Tavakoli

Title: Member

**TENANT: ALLTEL Kansas Limited Partnership  
by its General Partner, ALLTEL Corporate Services, Inc.**

Witness(es)

Jennifer Kaucher  
Jennifer Kaucher

By: [Signature]

Name: James E. McDonald  
V.P. Network Services

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

**ACKNOWLEDGMENTS**

STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES

I, Fariba Berokim, a Notary Public of the County and State aforesaid, certify that Marc Tavakoli personally appeared before me this day and acknowledged that he is a Member of American Capital Properties LLC, a California limited liability company, and that by authority duly given and as the act of the said limited liability company, the foregoing instrument was signed in its name.

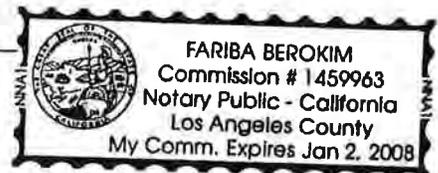
WITNESS my hand and notarial seal this 4<sup>th</sup> day of December 2006.

FBerokim

Notary Public

My Commission Expires: Jan 2, 2008

SEAL



STATE OF Arkansas  
COUNTY OF Fulaski

I, Shannon Davis, a Notary Public of the County and State aforesaid, certify that James E. McDonald personally appeared before me this day and acknowledged that he/she is V.P. Network Services of ALLTEL Kansas Limited Partnership, a Delaware corporation, and that by authority duly given and as the act of the said corporation, the foregoing instrument was signed in its name.

WITNESS my hand and notarial seal this 7 day of February, 2007

Partnership

Shannon Davis  
Notary Public

My Commission Expires: 2/7/2016

SEAL



**EXHIBIT "A"**

LEGAL DESCRIPTION OF  
PROPERTY

The property referred to herein as Premises is located within the parent parcel described as follows:

Lots Thirty-Three (33), Thirty-Five (35), Thirty-Seven (37), and Thirty-Nine (39), Spruce Street in the Original Townsite of Dodge City, Ford County, Kansas, according to the recorded Plat thereof.

The Building is located on the parent parcel description. Owner and Tenant agree that within sixty (60) days following the full execution of the Lease, Tenant shall attach Exhibit B which shall be included an "as built" survey and site plan.

**EXHIBIT "B"**

SITE PLAN  
and  
EQUIPMENT LIST

**Insert Tenant's Site Plan**

Equipment Shelter to house transmission cables & equipment to be located upon the roof of the Building.  
Cabinet size shall be approx. \_\_\_" wide X \_\_\_" tall X \_\_\_" deep (see diagram).

\_\_\_\_\_ Antennas, each \_\_\_" X \_\_\_' X \_\_\_";  
Coaxial cable that connects the cabinet to the antennas;  
Electrical power panel and cable;  
Telephone panel and cable.

**EXHIBIT "C"**

**Notice of Commencement of Installation of Equipment**

[Owner's Name]  
[Owner's Address]

Re: Lease from Owner to Tenant at \_\_\_\_\_, \_\_\_\_\_  
Site No. \_\_\_\_\_

Dear \_\_\_\_\_:

Pursuant to Section \_\_\_\_ of the above-referenced \_\_\_\_\_, this letter serves to advise you that Tenant commenced the installation of its Facilities on the Leased Space on the above-referenced property on \_\_\_\_\_, 20\_\_\_\_, which date shall be the Commencement Date, as defined in the above referenced Site Lease.

Sincerely,

Tenant



Intracompany Transmittal for review and approval of contracts

DATE: February 4, 2008  
 TO: James E. McDonald  
 THROUGH: Stacy Majors   
 FROM: Mary Jordan 

SUBJECT: First Amendment/ Dodge City #4, KS / KS RSA 12 - Hodgeman  
*Please review the abstract of the agreement provided below. If it meets your approval, please sign the attached agreements where indicated and return to me. Feel free to contact me with any questions or concerns at extension 7191. Thanks!*

Type of instrument	First Amendment to Building Attachment communications Site Lease ( 4 originals)
ALLTEL Site Reference	KS - Dodge City #4
Lessor Site Reference	Same
Market /Company #/Job No.	KS RSA 12 - Hodgeman / Co. 404 /Job Number 740455062 / ATLAS 196378143
Lessor	Varsity Square LLC
Lessor Vendor number	Requested
Lessor Notice Address	Coldwell Banker Hancock Attn: Gregory Starks 2300 First Avenue Dodge City, KS 67801 P: 620-227-2408
Lessor Remittance Address	Box 694 Greensburg, KS 67054
ALLTEL Entity	ALLTEL COMMUNICATIONS, LLC
Executed date	TBD
Commencement date	Upon full execution
Term ¶	Remainder of current term ending, 02/08/2012, with three, 5 year renewal terms remaining
Renewal Language ¶	No change
Rent ¶ 2	Current Rent - \$800.00/month <del>First Amendment - \$300.00/month</del> New Rent Amount - \$1,100.00/month - <b>\$300 increase</b>
Escalation ¶	No change
Antenna/Ground Restrictions ¶ 1	First Amendment adds leased area in building (Suite 501) 12' x 17' (\$1.47 sq. ft.)  Rooftop Agreement: Two (2) Antel LPA-80063-8 Four (4) Antel LPA-80063-8-5 Two (2) lines of 1-5/8" coax Four (4) lines of 7/8" coax
Assignment ¶	No change
Sublease ¶	No change
Termination ¶	No change
Monetary Termination ¶	No change
Post Termination Language ¶	No change
Holdover Provisions ¶	No change
Indemnification ¶	No change
Interference ¶	No change
Prime Lease	No change
Comments	This amendment is for additional leased premises, Suite 501 in bank building (12' x 17')
Change to standard lease	
Contract Negotiated by	Kathi Rogers - 905-1418
Contract Approved by	Tory Cruse - 905-8586

**FIRST AMENDMENT TO  
BUILDING ATTACHMENT COMMUNICATIONS SITE LEASE**

**THIS FIRST AMENDMENT TO BUILDING ATTACHMENT COMMUNICATIONS SITE LEASE** ("Amendment") is made and entered into this 8<sup>th</sup> day of February, 2008, by and between VARSITY SQUARE, LLC, a Nevada LLC, successor in interest to ACP BA, LLC ("Owner") and ALLTEL Communications, LLC formerly known as ALLTEL Kansas Limited Partnership ("Tenant") (the "parties").

**WHEREAS**, on the 4th day of December, 2006, Owner and Tenant entered into that certain Building Attachment Communications Site Lease; and

**WHEREAS**, the parties wish to amend the lease to allow for additional space to be leased to Tenant for additional monthly rent;

**NOW THEREFORE**, Owner and Tenant by mutual consent do hereby agree to amend the Lease as follows:

1. Exhibit "C" of the Lease is hereby deleted and replaced in its entirety with the attached Exhibit "C-1," to include the additional leased premises, specifically a 12' x 17' space (Suite 501) in the bank building.
2. Paragraph 5 of the Lease, entitled Rent, states that the rental consideration is Eight Hundred Dollars and Zero Cents (\$800.00) per month. As of the date this First Amendment is fully executed by the parties, the Rent shall increase by Three Hundred Dollars and Zero Cents (\$300.00) per month to One Thousand One Hundred Dollars and Zero Cents (\$1,100.00) per month.
3. Except as amended hereby the Agreement shall remain in full force and effect in accordance with the original terms and provisions, and the Agreement is ratified and confirmed a valid and existing agreement between the parties.
4. In the event of a conflict between the terms of this First Amendment and the terms of the Agreement, the terms of this First Amendment shall control. All of the defined terms in the Agreement shall have the same definitions in the First Amendment, unless otherwise defined herein.
5. This Amendment shall be binding upon and inure to the benefit of each of the parties hereto, their respective heirs, executors, administrators, legal representatives, successors and assigns.

IN WITNESS WHEREOF, Owner and Tenant have executed the Amendment as of the date year first above written.

OWNER: VARSITY SQUARE, LLC

Witness(es):  
Gayle B. Harger  
Paula Olyk

By: *Gregory B. Starks*  
Name: Gregory B. Starks

Title: Facility Manager

TENANT: ALLTEL Communications, LLC

Witness(es)  
Michelle Peice  
Sharon Pruitt

By: *James E. McDonald*  
Name: James E. McDonald  
Title: Vice President - Network Services

OWNER ACKNOWLEDGMENT

STATE OF KANSAS,  
COUNTY OF FORD,

I, Betty Ann South, a Notary Public of the County and State aforesaid, certify that Gregory B. Starks personally appeared before me this day and acknowledged that he/she is Dodge City, Kansas Facility Manager of Varsity Square, LLC, a Nevada limited liability company, and that by authority duly given and as the act of the said limited liability company, the foregoing instrument was signed in its name.

WITNESS my hand and notarial seal this 5<sup>th</sup> day of February, 2008.

My Commission Expires: July 12, 2011  
SEAL

*Betty Ann South*  
Notary Public



TENANT ACKNOWLEDGMENT

STATE OF ARKANSAS  
COUNTY OF PULASKI

I, Jennifer Kaucher, a Notary Public of the County and State aforesaid, certify that James E. McDonald personally appeared before me this day and acknowledged that he/she is Vice President-Network Services of Alltel Communications, LLC, a Delaware corporation, and that by authority duly given and as the act of the said corporation, the foregoing instrument was signed in its name.

WITNESS my hand and notarial seal this 5<sup>th</sup> day of February, 2008.

My Commission Expires: January 31, 2013  
SEAL

*Jennifer Kaucher*  
Notary Public

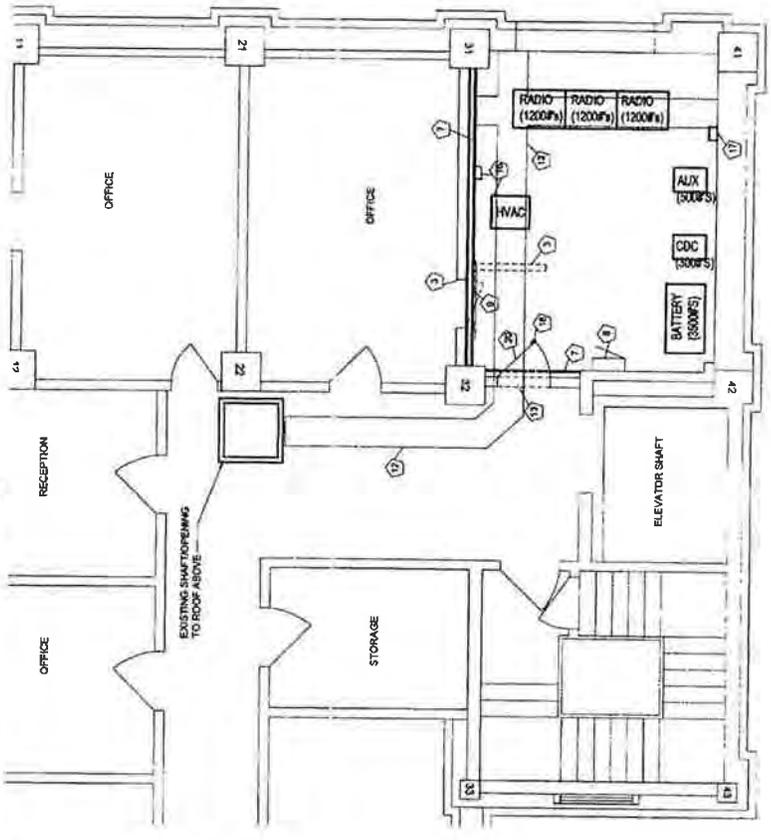
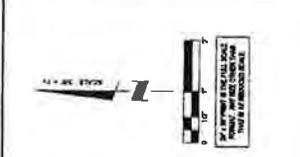


NO.	REVISIONS
1	REVISION TO RADIO CABINETS IN ELEVATOR
2	ADD NEW CONDUIT
3	ADD NEW CONDUIT
4	ADD NEW CONDUIT
5	ADD NEW CONDUIT
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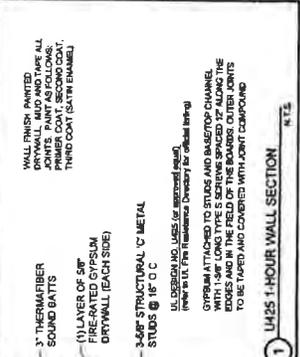
**DODGE CITY #4  
(BANK OF AMERICA)**  
 180 AVENUE  
 AND SHERIDAN  
 DODGE CITY, KS 67801

DATE	11/20/08
DESIGNED BY	20-000
PROJECT	20-000

**A-2**  
 PARTIAL 5TH FLOOR PLAN  
 SHEET NUMBER



PARTIAL 5TH FLOOR PLAN  
 SCALE: 3/8" = 1'-0"



**KEYED NOTES:**

1. 1" x 1/2" x 1/2" SURFACE MOUNTED FLUORESCENT LIGHT FIXTURE WITH 2' x 4' x 1/2" LAMP. LAMP TO BE PROVIDED BY OTHER TRADE.
2. CEILING MOUNTED PAR 80'S BELL TRANSISTOR AND ELECTRIC WIRE SMOKE/HEAT DETECTOR WITH WIRE CONDUIT TO THE HVAC SHUT DOWN RELAY AND SIGNAL WIRE TO 66 PUNCH DOWN BLOCK.
3. CONTRACTOR TO REMOVE PARTITION WALL AND BOARD UP EXISTING DOOR TO ADJACENT OFFICE.
4. TWO HEAD EMERGENCY LIGHT / LED EXIT SIGN COMBINATION LPV-7/BURN/WHI - SURE LITES MODEL NUMBER.
5. INTERIOR LIGHT SWITCH (SINGLE POLE - "HUBBLE" - #1201-WH/TE). 10 P.A.F.
6. 120V DUPLEX RECEPTACLE "HUBBLE" #6992-WHITE - INSTALL @ 18" P.A.F.
7. NEW 1-HOUR RATED WALL TO BE CONSTRUCTION OF ALL COMMON WALLS OF OFFICE SPACE (SEE DETAIL THIS SHEET).
8. PROPOSED ALLTEL POWER PANEL, 200A, 120AMP, 10.
9. TELCO TERMINAL WITH 48 Pairs (DAK1727) ON TELCO BOARD.
- 10.
- 11.
12. INTERIOR CABLE TRAY (NEUTROK 12" WIDE, MODEL #8929A-11X AND 18" WIDE MODEL #80203-3A2X) OR APPROVED EQUAL ENTRANCE.
13. INSTALL A 12 POINT CABLE ENTRY PANEL AT EQUIPMENT ROOM.
14. 4" x 2 1/2" x 1/4" MASTER GROUND BAR.
15. 4" x 2 1/2" x 1/4" EQUIPMENT GROUND BAR.
16. HVAC AIR HANDLING UNIT WITH DISCONNECT. SEE MECHANICAL PAGE.
17. CARRIER MASTER CLIMATE CONTROL THERMOSTAT.
18. MAGNETIC DOOR ALARM. PROVIDE SIGNAL WIRE TO 66 PUNCH DOWN BLOCK IN ALARM JUNCTION BOX.
- 19.
- 20.
- 21.
- 22.
- 23.
- 24.
- 25.
- 26.
- 27.
- 28.
- 29.
- 30.

**INSTALLATION**

Install items per manufacturer's data and to comply with provisions of SD-125. Install doors per manufacturer's data and to comply with dimensions specified in SD-106(A) and SD-106(B). Refer to SD-106(C) for details. Refer to SD-106(D) for details. Refer to SD-106(E) for details. Refer to SD-106(F) for details. Refer to SD-106(G) for details. Refer to SD-106(H) for details. Refer to SD-106(I) for details. Refer to SD-106(J) for details. Refer to SD-106(K) for details. Refer to SD-106(L) for details. Refer to SD-106(M) for details. Refer to SD-106(N) for details. Refer to SD-106(O) for details. Refer to SD-106(P) for details. Refer to SD-106(Q) for details. Refer to SD-106(R) for details. Refer to SD-106(S) for details. Refer to SD-106(T) for details. Refer to SD-106(U) for details. Refer to SD-106(V) for details. Refer to SD-106(W) for details. Refer to SD-106(X) for details. Refer to SD-106(Y) for details. Refer to SD-106(Z) for details.

**VERIFY THE STATUS OF EXISTING DOOR AND FRAME. IF DOOR AND FRAME ARE NOT RATED, REFER TO SPEC ABOVE FOR NEW REPLACEMENT DOOR.**



Intracompany Transmittal for review and approval of contracts

**DATE:** December 11, 2008  
**TO:** James E. McDonald  
**THROUGH:** Gigi Good *gh*  
**FROM:** Rick Cossey/ Md7 - Catherine Abejar *rc*  
**SUBJECT:** Strategic Relocation - Second Amendment

*Please review the abstract of the agreement provided below. If it meets your approval, please sign the attached agreements where indicated and return to me. Feel free to contact me with any questions or concerns at extension 2175. Thanks!*

Type of instrument	<b>Second Amendment to Building Attachment Communications Site Lease (Rooftop) (3)</b>
Changes to Standard Lease	<b>This is the standard Second Amendment to Building Attachment Communications Site Lease (Rooftop) with no changes</b>
ALLTEL Site Name:	Dodge City #4 - Atlas # 196378143
Licensor Site Reference:	Dodge City #4
Market /Company #/Job No.	KS/Kansas- All RSA's (Cellular) / CO # 404 / Job #740455062
Lessor/Licensor Entity Name:	Varsity Square, LLC
Lessor/Licensor Vendor No:	18341273
Lessor/Licensor Notice Address	Varsity Square, LLC, 2300 1st Ave, Dodge City, KS 67801-2527 Phone: (620) 227-2129
Lessor/Licensor Remit Address:	Varsity Square, LLC, ATTN: Property Manager, 2300 1st Ave, Dodge City, KS 67801-2527
ALLTEL Entity	Alltel Communications, LLC
New Commencement Date	Second Amendment: February 9, 2009
New Term	Initial term of 5 years with 5 additional Renewal Terms of 60 months each. Initial Term: 2/9/2009 - 2/8/2014 1 <sup>st</sup> Renewal: 2/9/2014 - 2/8/2019 2 <sup>nd</sup> Renewal: 2/9/2019 - 2/8/2024 3 <sup>rd</sup> Renewal: 2/9/2024 - 2/8/2029 4 <sup>th</sup> Renewal: 2/9/2029 - 2/8/2034 5 <sup>th</sup> Renewal: 2/9/2034 - 2/8/2039
New Renewal Language	Automatically renews unless Alltel provides 90 day prior written notice of election NOT TO renew.
Current Rent - Section 5(a)	\$1,100.00 per month ✓
New Rent	\$900.00 per month ↓ \$200
Current Escalation - Section 5(b)	CPI every term (5 years), not to exceed 5% per annum ↓
New Escalation	10% beginning on each Renewal Term. Initial Term: 2/9/2009 - 2/8/2014 - \$900.00 per month 1 <sup>st</sup> Renewal: 2/9/2014 - 2/8/2019 - \$990.00 per month 2 <sup>nd</sup> Renewal: 2/9/2019 - 2/8/2024 - \$1,089.00 per month 3 <sup>rd</sup> Renewal: 2/9/2024 - 2/8/2029 - \$1,197.90 per month 4 <sup>th</sup> Renewal: 2/9/2029 - 2/8/2034 - \$1,317.69 per month 5 <sup>th</sup> Renewal: 2/9/2034 - 2/8/2039 - \$1,449.46 per month
Current Termination	No Voluntary Termination ¶ 13(a): by either party for uncured default after 30 days of receipt of notice by other party; ¶ 13(b): by Alltel if unable to obtain or maintain any required governmental permit; ¶ 13(c): by Alltel if premises are damaged so as to render ineffective use of the site; ¶ 13(d) by Alltel upon 6 months' written notice if in tenant's judgment design or technology changes render site obsolete or unnecessary (6 months rent due w/ this option); ¶ 28: Upon 30 days written notice for default.
New Termination	Alltel may terminate at any time upon 12 months written notice to Owner; Alltel may terminate sooner as long as within 30 days after date of termination, Alltel pays Owner lump sum equal to the Rent owing through the date that was 12 months after Alltel first gave termination notice.
Negotiated by:	Rick Cossey -- (501) 905-2175
Approved by:	Gigi Good -- (501) 905-6635

Site ID: 196378143  
Site Address: 619 North 2<sup>nd</sup> Avenue  
Dodge City, KS 67801

**SECOND AMENDMENT TO  
BUILDING ATTACHMENT COMMUNICATIONS SITE LEASE  
(ROOFTOP)**

**THIS SECOND AMENDMENT TO BUILDING ATTACHMENT COMMUNICATIONS SITE LEASE (ROOFTOP) ("Second Amendment")** is made by and between Varsity Square, LLC, a Nevada limited liability company, as successor in interest to ACP BA LLC, a California limited liability company (together with its successors and assigns, "**Owner**"), and Alltel Communications, LLC, a Delaware limited liability company, as successor in interest to ALLTEL Kansas Limited Partnership (together with its successors and assigns, "**Tenant**").

**RECITALS**

WHEREAS, Owner and Tenant (or their predecessors in interest) entered into that certain Building Attachment Communications Site Lease (Rooftop), dated December 4, 2006, as amended by First Amendment to Building Attachment Communications Site Lease, dated February 8, 2008 (collectively, the "**Lease**"), whereby Owner leased to Tenant certain site described therein, together with any and all other space currently utilized by Tenant (the "**Site**"), that are a portion of the property located at 619 North 2<sup>nd</sup> Avenue, Dodge City, KS 67801 (the "**Premises**");

WHEREAS, Owner and Tenant have agreed to reduce Tenant's Rent (defined below) obligations under the Lease in exchange for a longer termination notice period to be provided by Tenant; and

WHEREAS, Owner and Tenant, in their mutual interest, wish to amend the Lease to accomplish the foregoing on the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the foregoing Recitals which are incorporated herein by this reference, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner and Tenant hereby agree as follows:

1. **Term.** The current term of the Lease (whether such term is the initial term, a renewal term or a modified term) hereby is extended so that, commencing on February 9, 2009 (the "**Extension Date**"), such current term shall continue for sixty (60) months (the "**Modified Term**"), expiring on February 8, 2014 (the "**New Expiration Date**"). Rent for any partial month or partial year of the current term prior to the Extension Date shall be prorated. Tenant shall have the right to renew the Lease for up to five (5) additional sixty (60) month periods (each, a "**Renewal Term**"). Each Renewal Term automatically shall commence, on the same terms and conditions of the Lease, without further action by Tenant, unless Tenant provides Owner with written notice of its intention not to renew the Lease at least ninety (90) days prior to the end of the Modified Term or any Renewal Term.

2. **Modification of Rent.** Commencing on the Extension Date, the rent payable under the Lease for the Modified Term shall be \$900.00 per month ("**Rent**"), subject to adjustments as provided herein. The Rent shall be paid monthly to Owner, in advance throughout the Modified Term. Commencing on the first day of each Renewal Term, if any, Rent shall be increased by 10% of the Rent in effect immediately prior to the adjustment date.

3. **Termination Notice.** Tenant may terminate the Lease at any time upon twelve (12) months prior written notice to Owner; provided, however, that Tenant may terminate the Lease sooner so long as, within thirty (30) days after the date of termination, Tenant pays to Owner a lump sum amount equal to the amount Owner otherwise would have received had Tenant paid to Owner the amount of Rent owing through the date that was twelve (12) months after Tenant first gave Owner the notice of termination.

4. **Notices.** All notices, requests, demands and communications under the Lease will be given by first class, certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid. Notices will be addressed to the parties as follows: (i) as to Tenant: Alltel Communications, LLC, ATTN: Network Property Management Department B2F02-A, P.O. Box 2177, Little Rock, AR 72203-2177; Hand Delivery Address: Alltel Communications, LLC, ATTN: Network Property Management Department, Building II, Floor 2-A, One Allied Drive, Little Rock, AR 72202 and (ii) as to Owner: Varsity Square, LLC, 2300 1<sup>st</sup> Avenue, Dodge City, KS 67801-2527. Either party hereto may change the place for the giving of notice to it by not less than thirty (30) days prior written notice to the other party as provided herein.

5. **Other Terms and Conditions Remain.** In the event of any inconsistencies between the Lease and this Second Amendment, the terms of this Second Amendment shall govern and control. Except as expressly set forth in this Second Amendment, the Lease otherwise is unmodified and remains in full force and effect. This Second Amendment may be executed in multiple counterparts, and signatures sent by facsimile or email may be treated as original signatures.

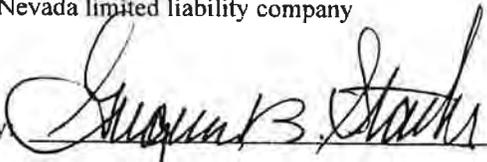
6. **Miscellaneous.** Owner acknowledges that: (a) Owner has read and understands this Second Amendment and the underlying Lease and (b) Owner has been advised and is informed that should Owner not enter into this Second Amendment, the underlying Lease between Owner and Tenant, including any termination or non-renewal provisions therein, will remain in full force and effect.

(Signature Page Follows)

IN WITNESS WHEREOF, the parties have caused their properly authorized representatives to execute and deliver this Second Amendment effective as of the date below ("**Effective Date**").

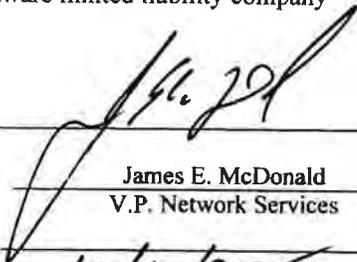
OWNER:

Varsity Square, LLC,  
a Nevada limited liability company

By:   
Name: Gregory B. Starks  
Title: Facility Manager

TENANT:

Alltel Communications, LLC,  
a Delaware limited liability company

By:   
Name: James E. McDonald  
V.P. Network Services  
Title: \_\_\_\_\_  
Date: 12/15/08

# PSA Dodge City Telecom Easement & Leases 2-20-2021

Final Audit Report

2021-02-24

Created:	2021-02-19
By:	Peter L. Donovan (peter@donovan.name)
Status:	Signed
Transaction ID:	CBJCHBCAABAAARVPub8vI2jNQ5NBNTu_fixBHk0n5jg

## "PSA Dodge City Telecom Easement & Leases 2-20-2021" History

-  Document created by Peter L. Donovan (peter@donovan.name)  
2021-02-19 - 11:46:48 PM GMT- IP address: 70.114.217.166
-  Document emailed to Chiye Onodera Duffy (chiyeduffy@gmail.com) for signature  
2021-02-19 - 11:49:02 PM GMT
-  Email viewed by Chiye Onodera Duffy (chiyeduffy@gmail.com)  
2021-02-21 - 5:44:26 AM GMT- IP address: 66.249.88.147
-  Email viewed by Chiye Onodera Duffy (chiyeduffy@gmail.com)  
2021-02-24 - 2:59:29 AM GMT- IP address: 66.249.88.141
-  Document e-signed by Chiye Onodera Duffy (chiyeduffy@gmail.com)  
Signature Date: 2021-02-24 - 3:11:20 AM GMT - Time Source: server- IP address: 72.239.215.22
-  Agreement completed.  
2021-02-24 - 3:11:20 AM GMT

RCC ATLANTIC, INC.  
COMMUNICATIONS FACILITY AGREEMENT  
DODGE CITY, KANSAS

**1. Lease of Premises.** RCC Atlantic, Inc., a Minnesota corporation ("Lessee") hereby leases from Varsity Square, LLC, a Nevada limited liability company ("Lessor"), a portion of that certain real property described in Exhibit A hereto (the "Property"), such portion being described in Exhibit B and referred to hereinafter as the "Premises", in order to install, maintain, and operate a communications facility (the "Facility"), together with the right to install and maintain utility cables and conduits to, over, under and through the Premises, and a right of reasonable access to the Premises.

**2. Commencement; Termination.** This Agreement shall commence on the date stated on the signature page (the "Commencement Date"). Contemporaneously with the Commencement Date, Lessee shall, at its expense, seek to obtain all permits, instruments and approvals required by governmental authorities and third persons with an interest in the Property for installation, operation and maintenance of the Facility ("Approvals"). Within reason, Lessor shall provide any assistance with Approvals requested by Lessee. Upon receipt of all Approvals, Lessee shall notify Lessor of the "Rent Commencement Date" by providing the notice set forth in Exhibit C hereto. The Rent Commencement Date shall fall on the first day of the month following the date that Lessee obtains Approvals required for installation of the Facility. If despite its efforts Lessee is unable to obtain Approvals sufficient to install, operate or maintain the Facility, this Agreement and the parties' obligations hereunder shall terminate ten (10) days following receipt by Lessor of a termination notice from Lessee.

**3. Term; Renewals.** The "Initial Term" of the Agreement shall run for five (5) years beginning on the Rent Commencement Date. Thereafter Lessee shall have the option to extend this Agreement by up to four (4) "Additional Terms" of five (5) years each. Collectively, the Initial Term and Additional Terms shall be referred to hereinafter as the "Term." Each Additional Term will automatically be exercised unless Lessee notifies Lessor of its election to terminate thirty (30) days before the expiration of the Initial Term or Additional Term in effect.

**4. Rent.** Beginning on the Rent Commencement Date, and thereafter on the first day of each month during the Term, Lessee shall pay Lessor monthly rent for use of the Premises in the amount of One Thousand Four Hundred Dollars and 00/100ths (\$1,400.00) per month. Thereafter, each year on the anniversary of the Rent Commencement Date, the monthly rent shall be increased by 3% of the monthly rent paid by Lessee for the preceding year of the Term or Renewal Term, as applicable.

**5. Utilities.** Lessee shall be responsible, at its sole cost and expense, for installation of electrical, telephone or other communication lines to the Premises suitable for the Facility (collectively, "Utility Lines"), which Utility Lines shall be installed and operable prior to the Rent Commencement Date. Lessor grants Lessee an easement to extend the Utility Lines to the Facility where necessary, and to use such Utility Lines for its Facility. Any modification of Utility Lines by either party shall not interrupt, damage or conflict with the other party's use, or with any requirements of law or contract concerning Utility Lines on or at the Property or the Premises. Lessee shall pay for all utilities used for its Facility. Whenever possible, Lessee shall install a separate meter to measure its electrical use and pay the service provider directly. In the event of a loss of electrical power, and in the absence of a permanent emergency generator being installed as part of the Facility, Lessee shall have the right to install a temporary generator on or near the Premises until power is restored.

**6. Installation; Maintenance; Security.** Prior to installation of the Facility, Lessee and its authorized representatives shall have the right to enter upon the Premises for the purpose of taking measurements or conducting studies, tests and inspections required for the installation and operation of the Facility. These studies may include surveys, soil test, environmental evaluations, radio wave propagation measurements, field strength tests and such other analysis and studies as Lessee deems necessary or desirable. Upon receipt of Approvals sufficient to commence construction, and throughout the Term, Lessee and its authorized representatives shall have the non-exclusive right of ingress and egress to and from the Premises twenty-four hours (24) a day, seven (7) days a week for the installation, maintenance, and alteration of the Facility. Where possible, Lessee

shall install security devices to restrict access to the Facility, provided that such devices do not interfere with Lessor's use of the Property. In cases where Lessor provides keys, security devices, or codes for accessing the Premises, Lessee agrees not to duplicate such keys or disclose such devices or codes to anyone other than authorized representatives of Lessee without Lessor's permission.

**7. Liability and Worker's Compensation Insurance.** Beginning on the Commencement Date, each party shall obtain insurance against liability for injury including death to the public or damage to property, occurring within, upon or about the Premises. Any insurance policy will provide minimum limits of One Million Dollars (\$1,000,000.00) per personal injury or death. Each party shall name the other as an additional insured under each policy. Said insurance may be in the form of general coverage or floating policies covering these and other premises. Each party shall also procure and maintain workers' compensation insurance for its employees who will work on or at the Premises.

**8. Property Insurance.** Lessor shall maintain at all times beginning on the Commencement Date, at Lessor's expense, insurance against loss or damages to the Premises, including, without limitation, loss or damage from fire, vandalism, and malicious mischief. Lessee shall maintain, at Lessee's expense, insurance in an amount of at least eighty percent (80%) of the replacement value of the Facility.

**9. Certificates of Insurance.** By no later than the Rent Commencement Date, Lessee and Lessor shall furnish to each other certificates of insurance for each of the insurance policies required hereunder. Such insurance shall be obtained from insurance companies authorized to do business in Kansas. Each such certificate shall provide that the insurance indicated therein shall not be cancelled or changed without at least thirty (30) days' prior written notice to the additional insured.

**10. Taxes.** Lessee shall be responsible for (i) payment of all personal property taxes assessed directly upon and arising principally from the presence of the Facility on the Property; and (ii) real property taxes principally attributable to Lessee's installation, operation and maintenance of the Facility. Lessee shall pay Lessor any taxes owed hereunder within thirty (30) days of receipt of an accounting from Lessor or the taxing authorities

apportioning such taxes among the parties; provided, however, that Lessee may delay such payment an additional thirty (30) days in order to request reasonable supporting documentation from Lessor, which documents Lessor shall promptly provide to Lessee upon request.

**11. Title; Quiet Enjoyment.** Lessor represents and warrants to Lessee that it has full authority to enter into this Agreement, and that it is authorized to grant the leasehold interest and rights of access and use contemplated hereunder without violation of any other contract, agreement, instrument, covenant, or other document. Lessor further represents and warrants that there are no undisclosed liens, judgments, or other conditions of title or use known to Lessor that would materially affect Lessee's use and enjoyment of, and access to, the Premises. Lessor further represents and warrants that all structures and uses on the Property are in compliance with municipal, state, and federal laws, and with all permits, approvals, and judicial and administrative orders affecting the Property. Upon request of Lessee, Lessor agrees during the Term to execute such documents or instruments reasonably necessary for Lessor to confirm the representations and warranties of title and quiet enjoyment contained herein as of a date certain.

**12. Hazardous Substances.** Lessor warrants, represents and covenants that to the best of its knowledge (1) there are no past, pending or threatened administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, notices of noncompliance or violation, investigations or proceedings affecting the Premises or against any individual or entity with an interest in the Premises; (2) no "Hazardous Substance" (as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 690 *et seq.*, and including petroleum or petroleum products, radioactive materials, friable asbestos, and equipment containing polychlorinated biphenyls) or "Hazardous Waste" (as defined in the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 9601 *et seq.*) has at any time been released or disposed of at or on the Premises; and (3) there is no underground storage tank located at the Premises. The parties agree not to introduce any Hazardous Substances or Hazardous Wastes to the Premises (or on a location of the Property reasonably likely to affect the Premises) during the Term. Lessor shall be responsible for remediation of any Hazardous Substances or

Hazardous Wastes introduced onto the Property or Premises after the Commencement Date, unless such introduction is caused by Lessee; said obligation shall survive the earlier termination of this Agreement.

**13. Compliance with Laws.** During the term of this Agreement, each party shall comply in all respects with all statutes, and with all ordinances, rules and regulations of federal, state, or municipal authorities with jurisdiction over the Property and Premises, and with any administrative or judicial orders validly issued by such authorities affecting the Property and Premises. In the event that Lessor fails to comply with laws and orders relating to the presence of the Facility on the Property (including but not limited to federal communications, environmental, aviation, and security requirements, and state and municipal land use and environmental requirements), Lessee shall have the right, at its sole option, to bring the Property into compliance, and upon delivery to Lessor of an accounting of said costs of compliance there shall be an abatement of rent equal to the costs expended to attain compliance.

**14. Alterations.** During the Term, Lessee may, at its sole cost and expense, make such improvements on and alterations to the Premises and the Facility as it deems necessary from time to time in order to operate and optimize the Facility in a manner consistent with Lessee's Federal Communications Commission ("FCC") licenses, and provided that such changes occur within the Premises. If Lessee proposes changes occurring outside of the Premises, Lessee shall first seek the prior written permission of Lessor, which permission shall not be unreasonably delayed, conditioned or withheld. Lessee agrees not to allow any mechanics' or materialmen's liens to be placed on the Premises as a result of alterations or improvements. Lessor agrees to cooperate with Lessee with respect to obtaining any required Approvals for improvements and alterations, at Lessee's cost and expense.

**15. Structural Integrity.** Lessor shall prohibit any other individual or entity with communications equipment on the Property (a "User") from installing or making alterations to its equipment that would threaten the structural integrity of any support structure comprising part of the Premises, including a communications tower or rooftop. If, based on a structural report from a licensed engineer, a User may install equipment or make alterations to its equipment following improvements to the support structure, Lessor agrees that Lessee shall not incur any part of

such costs. In the event that Lessee makes alterations or improvements to the Facility that threaten the structural integrity of a support structure, Lessee shall incur all the costs of any engineer-recommended improvements to the support structure necessary to make its alterations.

**16. Interference.** Lessee will resolve technical interference problems it causes to other equipment located on the Property on the Commencement Date, or to any equipment installed on the Property at any future date if Lessee makes alterations or improvements to the Facility that causes technical interference problems. Lessor agrees that it will not allow the installation of any equipment by itself or any User after the Commencement Date which is likely to result in technical interference problems with the Facility. After the Rent Commencement Date, Lessor shall resolve, and shall cause all Users to resolve, any technical interference problems caused to the Facility by addition of or alterations to Lessor's or a User's communications equipment, to Lessee's reasonable satisfaction. Lessor shall also ensure that no installation of equipment by Lessor or a User after the Commencement Date encroaches upon the Premises, and that improvements on the Property do not interfere with or materially impede the operating characteristics of the Facility.

**17. Emissions.** If the power output ("RF Emissions") from the support structure on which all or part of the Facility is located at any time during the Term becomes subject to any restrictions imposed by the FCC or other federal, state, or local governmental agency or entity for RF Emissions standards on Maximum Permissible Exposure limits or a standard similar thereto (in either case, "MPE limits"), Lessee shall comply with Lessor's reasonable requests for modifications to the Facility which are reasonably necessary for Lessor to comply with such limits, rules, regulations, restrictions or ordinances, and Lessee shall use commercially reasonable efforts to cause all other Users on the Property to promptly comply. Any reduction in power use required by Lessee to attain compliance shall be no greater in proportion in relation to Lessee's then-existing power use than the largest proportional reduction required of any other User on the Property. If an engineering evaluation or other power density study is performed to evaluate RF Emissions compliance with MPE limits, then all reasonable costs of such an evaluation or study shall be paid proportionately by Lessee, Lessor and all other Users of the support structure within 30 days of a request from Lessor, with said

proportion tied to proportion of each party's then-existing power usage at the site. If said study or a study sponsored by any governmental agency indicates that RF Emissions from equipment on the support structure at the Property do not comply with MPE limits, then Lessor and Lessee, each for itself, shall immediately take any and all steps necessary to ensure compliance with such limits, up to and including cessation of operation, until a maintenance program or other mitigating measures can be implemented to attain compliance. In addition, Lessor shall use commercially reasonable efforts to cause all other Users to take similar steps necessary to ensure compliance with MPE limits. If in Lessee's reasonable discretion the changes required to comply with MPE limits deprive Lessee of the Facility's optimal function within its communications network, Lessee may terminate this Agreement upon written notice and payment to Lessor of all rent due up until the next anniversary of the Rent Commencement Date following the date of such notice.

**18. Ownership.** All personal property, trade fixtures, and improvements installed by Lessee on the Premises shall remain the property of Lessee and may be removed by Lessee at any time. Lessor hereby waives any and all lien rights it has or may have, statutory or otherwise, concerning the Facility or any component thereof.

**19. Assignment.** Lessee may not assign or transfer this Agreement without the prior written consent of Lessor, which consent shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, Lessee may freely, without Lessor's consent (i) assign its interest hereunder to any entity that is a subsidiary of or related to Lessee by common ownership or control, or in the event of a sale of substantially all of Lessee's assets; (ii) mortgage or pledge its interest in the Facility for financing purposes.

**20. Estoppel Certificate.** During the term of this Agreement, upon receipt of thirty (30) days prior written notice by a party, the other party shall execute, acknowledge and deliver to the requesting party a statement in writing certifying that this Agreement is in full force and effect (or confirming any modifications) and that the requesting party is not in default (or declaring the notice of any default), except as specified in such statement, in regard to any of its obligations hereunder, and further setting forth such other statements relating to this Agreement as the requesting party, its lender, purchaser, assignee or

sublessee may require. Said statement shall be accurate and binding on the other party and may be relied upon by third persons.

**21. Eminent Domain.** In the event the Premises shall at any time during the term of this Agreement be taken by any public authority or agency for any public use, the entire damages which may be awarded for the taking shall be equitably apportioned between Lessor and Lessee, taking into account the value of their respective interests, and this Agreement shall terminate as of the date of said taking. In the event a portion of the Property shall be so taken for public use and such portion taken renders the Premises unsuitable or uneconomic for Lessee's use contemplated hereunder in Lessee's reasonable business determination, Lessee may, at its option, terminate this Agreement. Upon such taking, Lessor shall refund to Lessee a pro rata portion of the rent prepaid to the date of taking or conveyance, as the case may be.

**22. Damage or Destruction.** If the whole or any part of the Premises or the Facility is damaged or destroyed by fire, the elements or subsidence of sub/terrestrial or subjacent support or any other casualty so as to make the Premises unsuitable or uneconomic for Lessee's use, Lessee may terminate this Agreement and all of the obligations of either party hereto (apart from obligations expressly surviving termination) shall terminate upon thirty (30) days' notice to Lessor. In case of such destruction, there shall be a total or partial abatement of rent from the date of destruction, depending on the circumstances. In lieu of termination, Lessee shall have the right to install a temporary communications facility ("TCF") at a location on the Property suitable for maintaining its network until the damage or destruction is addressed by Lessor. If Lessee does not elect to terminate or install a TCF, Lessee may elect to restore the Premises to substantially the same condition as it was in immediately before destruction and obtain an abatement of rent from the date of destruction, except such obligation shall not create any obligation with respect to replacement of any road or Utility Lines used by Lessee for the Premises.

**23. Removal.** Upon expiration or termination of the Agreement, Lessee shall remove all equipment and improvements it has installed in, on or at the Premises provided, however, that such removal can be done without damage to the Premises, normal wear and tear excepted. Lessee shall be responsible

to Lessor for any such property damage sustained to the Property as a result of removal.

**24. Indemnification.** Lessor and Lessee each indemnify the other against, and hold the other harmless from, any and all costs (including reasonable attorneys' fees and expenses), claims, actions, damages, obligations, liabilities and liens which arise out of the use and/or occupancy of the Premises or the Property by such indemnifying party. The indemnity shall not apply to any claims, actions, damages, obligations, liabilities and liens arising from any grossly negligent or intentional misconduct of the indemnified party. The obligation to indemnify shall survive the termination of this Agreement.

**25. Events of Default.** Except as expressly limited hereby, Lessor and Lessee shall each have such remedies for the default of the other party hereto for a breach under this Agreement as may be provided at law or equity (in each case, an "Event of Default") following written notice of such default and failure to cure the same within thirty (30) days, provided, however, that if the nature of the default is such that it cannot be reasonably be cured within thirty (30) days and if the defaulting party shall be diligently pursuing the cure of such default, then the defaulting party shall be permitted such reasonable period of time as is needed to fully cure such Event of Default.

**26. Termination.** After the Rent Commencement Date, this Agreement may be terminated by Lessee at any time by notice to Lessor without further liability if Lessee does not obtain all Approvals required to alter, improve, or continue to operate its Facility, or if any such Approval or Approvals are canceled, expire or are withdrawn or terminated; or if any of the representations, warranties or covenants herein are breached without cure; or if Lessee for any other reason, in its sole discretion, determines that it will be unable to attain optimal use of the Facility within its communications network. Upon termination, all prepaid rent will be retained by Owner.

**27. Bankruptcy and Insolvency.** Lessor and Lessee agree that this Agreement constitutes a lease of non-residential real property for purposes of federal or state bankruptcy laws, including 11 U.S.C. § 365(d)(4) or its successor provision.

**28. Notices.** All notices required by the terms of this Sublease Agreement shall be given by mailing such notices by certified or registered mail, return receipt

RCC Atlantic, Inc.  
DODGE CITY 1, KS  
Asset ID: KS9519

requested, to the addresses of the parties as stated here:

<u>Lessor</u>	<u>Lessee</u>
Varsity Square, LLC Airport Tower 2082 Michelson Dr., Suite 450 Irvine, CA 92612	RCC Atlantic, Inc. 3905 Dakota St SW Alexandria, MN 56308 Attn: Real Estate Manager

With a copy to:  
Gregory B. Starks  
Coldwell Banker  
Hancocks  
2300 First Avenue  
Dodge City, KS 67801

or to such other address as may be designated in writing.

**29. Miscellaneous.** (a) Lessor represents and warrants that any person or entity executing in a representative capacity for Lessor has full authority. (b) This Agreement supersedes all prior discussions and negotiations and contains all agreements and understandings between Lessor and Lessee. (c) This agreement may only be amended in writing signed by both parties. (d) Any exhibits hereto are incorporated into this Agreement by reference. (e) This Agreement may be signed in counterparts by the parties hereto. (f) The terms and conditions of this Agreement shall run with the Property and shall extend to and bind the heirs, personal representatives, successors and assigns of Lessor and Lessee. (g) The prevailing party in any action or proceeding in court to enforce the terms of this Agreement shall be entitled to receive its reasonable attorneys' fees and other reasonable enforcement costs and expenses from the non-prevailing party. (h) No failure or delay on the part of a party to exercise any right, power or remedy under this Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right under this Agreement preclude any other or further exercise thereof or the exercise of any other right. (i) Lessor shall execute, acknowledge and deliver to Lessee for recording a Memorandum of this Agreement ("Memorandum") in the form of Exhibit D. (j) This Agreement shall be construed in accordance with the laws of the state in which the site is located, and shall be enforced only in state or federal courts located within the State of Kansas, and such courts shall have exclusive subject matter and personal jurisdiction over the

parties based on a dispute arising from this Agreement. (k) Lessor hereby agrees to cooperate with Lessee and its authorized representatives regarding any reasonable request made subsequent to execution of this Agreement to correct any clerical errors contained in this Agreement, and to provide any and all additional documentation deemed necessary by Lessee to effectuate the transaction contemplated by this Agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands as of the 15 day of August, 2007.

IN THE PRESENCE OF:

LESSOR

Varsity Square, LLC

[Signature]  
Witness

By [Signature]  
Print Name: Gregory B. Starks  
Print Title: Facility Manager

STATE OF KANSAS

COUNTY OF FORD

On this the 15<sup>th</sup> day of JULY, 2007, before me personally appeared GREGORY B. STARKS, who acknowledged himself to be the Facility Manager of Varsity Square, LLC, a Nevada limited liability company, and that he acknowledged the foregoing instrument by him/her sealed and subscribed to be his/her free act and deed and the free act and deed of said Varsity Square, LLC..

In witness whereof I hereunto set my hand and official seal.



Before me, [Signature]  
Notary Public  
My Commission Expires: 11-9-09

IN THE PRESENCE OF:

LESSEE

RCC Atlantic, Inc., a Minnesota corporation

Cynthia Shuck  
Witness

By: Richard Ekstrand

Print Name: Richard Ekstrand

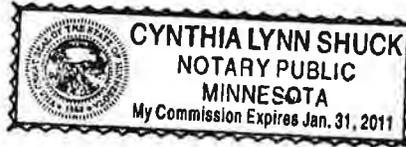
Print Title: President & Chief Executive Officer

STATE OF MINNESOTA

COUNTY OF DOUGLAS

On the 15 day of Aug, 2007, before me personally appeared Richard Ekstrand, to me known, who being by me duly sworn, did depose and say that he is the President & Chief Executive Officer of RCC Atlantic, Inc., the Lessee described in and which executed the foregoing instrument as his free act and deed and the free act and deed of said RCC Atlantic, Inc.

Before me Cynthia Shuck  
Notary Public  
My Commission Expires: \_\_\_\_\_



**EXHIBIT A**

**DESCRIPTION OF PROPERTY**

The Premises are located on a portion of that certain real property known as 619 2<sup>nd</sup> Avenue, Dodge City, Kansas 67801. See legal description below:

**TRACT ONE:**

Lots Thirty-three (33), Thirty-five (35), Thirty-seven (37), and Thirty-nine (39), on Spruce Street, Original Town of Dodge City, Ford County, Kansas, according to the recorded Plat thereof.

**TRACT TWO:**

Part of Lot Three (3), all of Lots Four (4) and Five (5). Block Nineteen (19), Original Townsite of Dodge City, Kansas, according to the recorded Plat thereof, described as follows:

Beginning at the intersection of the South line of Vine Street and the West line of Second Avenue, Dodge City, Kansas, thence South along the West line of Second Avenue, 83.75 feet to a point; thence West parallel with the South line of Vine Street 117.5 feet more or less, to a point in the East line of the alley, which point is 83.75 feet South of the South line of Vine Street; thence North to the South line of Vine Street; thence East to the point of beginning.

**EXHIBIT B**

**DESCRIPTION OF PREMISES**

The Premises shall consist of the following:

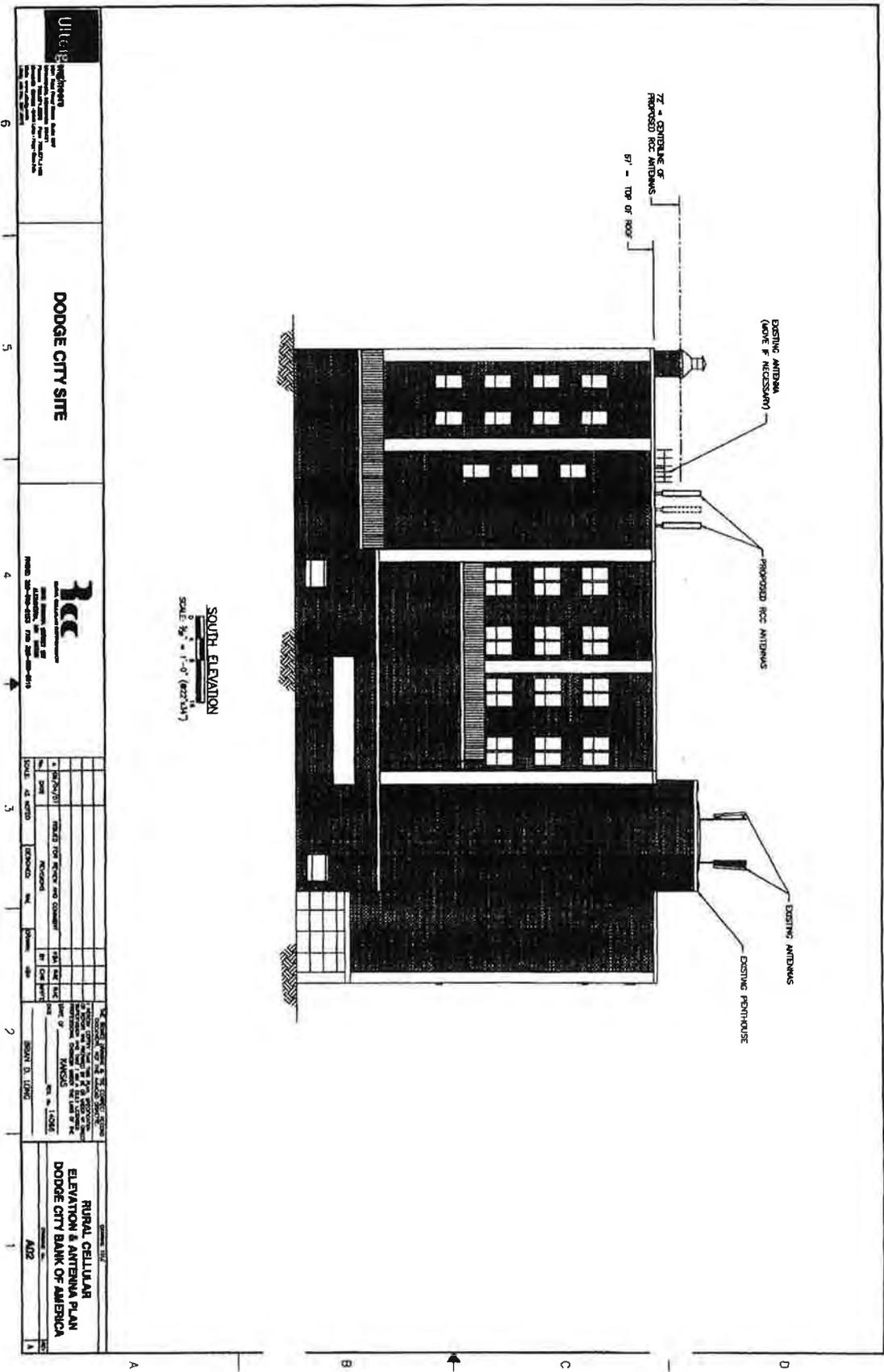
(a) space on the roof of that certain building located on the Property known as Bank building, 610 2<sup>nd</sup> Avenue, Dodge City, KS 67801 for purposes of installing 3 antenna support structures on which to mount antennas;

(b) Six (6) antennas on the roof of that certain building and a 12 x 14 space inside the top floor of the building for its equipment;

(c) utility cables and conduits to, over, under, along and through the Premises deemed necessary for the operation of Lessee's Communications Facility.

The Premises are depicted on the construction drawings prepared by Ulteig Engineers and dated June 4, 2007, copies of which are attached hereto and incorporated herein by reference.





**Utter**  
 ARCHITECTS  
 1000 W. 10th St., Suite 200  
 Dodge City, KS 67801  
 Phone: 785-726-1111  
 Fax: 785-726-1112

**DODGE CITY SITE**

**JCC**  
 ARCHITECTURAL SERVICES  
 1000 W. 10th St., Suite 200  
 Dodge City, KS 67801  
 Phone: 785-726-1111  
 Fax: 785-726-1112

NO.	DATE	REVISIONS	BY	CHKD.
1	10/20/03	ISSUED FOR REVIEW AND COMMENT	JCC	JCC
2	11/10/03	REVISED PER COMMENTS	JCC	JCC
3	11/10/03	REVISED PER COMMENTS	JCC	JCC
4	11/10/03	REVISED PER COMMENTS	JCC	JCC
5	11/10/03	REVISED PER COMMENTS	JCC	JCC
6	11/10/03	REVISED PER COMMENTS	JCC	JCC
7	11/10/03	REVISED PER COMMENTS	JCC	JCC
8	11/10/03	REVISED PER COMMENTS	JCC	JCC
9	11/10/03	REVISED PER COMMENTS	JCC	JCC
10	11/10/03	REVISED PER COMMENTS	JCC	JCC

THE BOARD OF ARCHITECTS OF THE STATE OF KANSAS  
 HAS GRANTED TO THE ABOVE NAMED ARCHITECTS  
 A LICENSE TO PRACTICE ARCHITECTURE IN THE STATE OF KANSAS  
 UNDER THE PROVISIONS OF THE ARCHITECTURE ACT OF 1987 AS  
 AMENDED. EXPIRES 12/31/04.

**RURAL CELLULAR  
 ELEVATION & ANTENNA PLAN  
 DODGE CITY BANK OF AMERICA**  
 A02

UNIVERSITY OF ILLINOIS  
 ARCHITECTURAL RECORDS  
 1100 S. WASHINGTON ST., CHICAGO, ILL. 60607  
 TEL. 312-977-2400

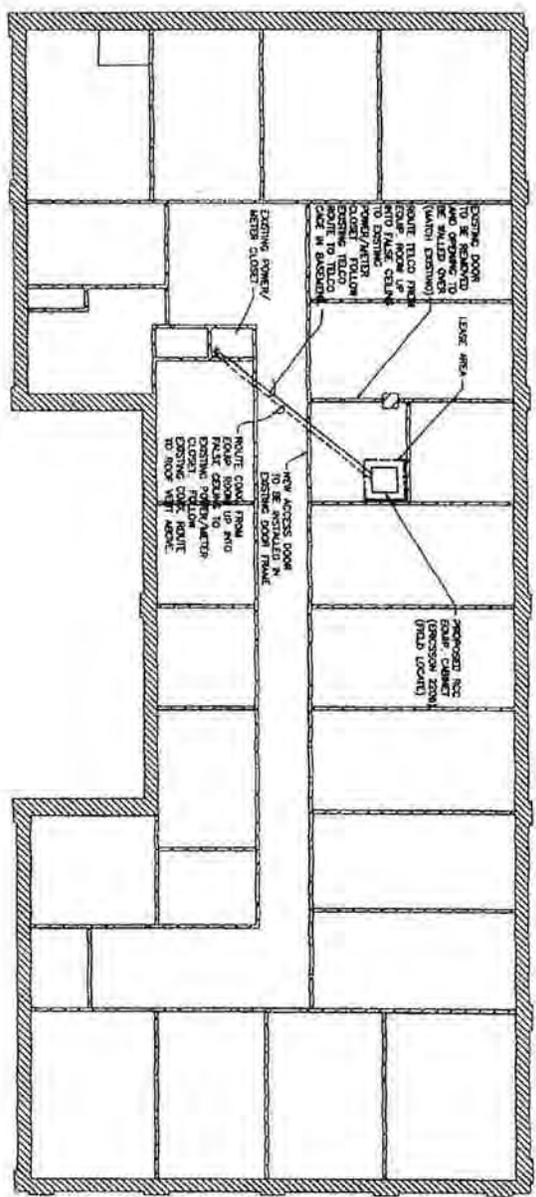
**DOODGE CITY SITE**



NO.	DATE	REVISIONS	BY	CHKD.	APP'D.
1	10/20/78	SCALE FOR RECORD AND CONSTRUCTION			
2					
3					
4					
5					
6					

**RURAL CELLULAR  
 5th FLOOR PLAN  
 DOODGE CITY BANK OF AMERICA**

**5th FLOOR PLAN**  
 SCALE: 1/4" = 1'-0" (827' S47)



A B C D

1 2 3 4 5 6

EXHIBIT C

NOTICE OF RENT COMMENCEMENT DATE

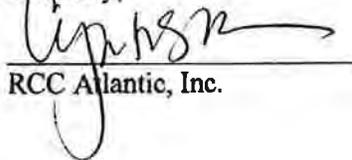
To: Varsity Square, LLC, Airport Tower, 2082 Michelson Dr., Suite 450; Irvine, CA 92612,  
with a copy to: Gregory B. Starks, Coldwell Banker Hancocks, 2300 First Avenue, Dodge City,  
KS 67801

From: RCC Atlantic, Inc., 3905 Dakota Street SW, Alexandria, MN 56308

Re: Communications Facility at 619 2<sup>nd</sup> Avenue, Dodge City, KS 67801. Rent  
Commencement Date: Sept 1, 2007.

Please be apprised that, as of the date above stated, RCC Atlantic, Inc., has obtained all  
Approvals necessary to install its Communications Facility on the Premises described in the  
Communications Facility Agreement, dated Aug 15, 2007. The Rent Commencement  
Date, as described in that same Communications Facility Agreement, commences as of the  
above-stated date.

Sincerely,

  
\_\_\_\_\_  
RCC Atlantic, Inc.

**Recording Requested By  
And When Recorded Mail to:**

Rural Cellular Corporation  
Attn: Real Estate Manager  
3905 Dakota Street SW  
Alexandria, Minnesota 56308-2000

STATE OF KANSAS

COUNTY OF FORD

**EXHIBIT D**  
**MEMORANDUM OF AGREEMENT**

KNOW ALL PERSONS BY THESE PRESENTS that the parties identified below are parties to that certain Communications Facility Agreement, dated \_\_\_\_\_, 2007 (the "Agreement"), and acknowledge and agree that the following accurately represents the following terms and conditions:

Lessor	Varsity Square, LLC, a Nevada limited liability company, with an address at Airport Tower, 2082 Michelson Dr., Suite 450; Irvine, CA 92612, with a copy to: Gregory B. Starks, Coldwell Banker Hancocks, 2300 First Avenue, Dodge City, KS 67801
Lessee	RCC Atlantic, Inc., a Minnesota corporation, with an address at 3905 Dakota St SW, Alexandria, MN 56308
Leased Property:	The "Premises" leased by Lessor to Lessee is described in Exhibit A attached hereto and incorporated herein.
Initial Term:	A term of five (5) years commencing on _____, 2007.
Rights to Extend or Renew:	Lessee has the right to extend/renew the Agreement as follows: four (4) options to extend the Initial Term for periods of five (5) years each on the terms and conditions set forth in the Agreement. If Lessee exercises all options to renew, the final expiration of the Agreement will occur on _____, 20__.

Assignment Restrictions:	Lessee may not assign or transfer this Agreement without the prior written consent of Lessor, which consent shall not be unreasonably withheld, conditioned, or delayed. Lessee may freely, without Lessor's consent (i) assign its interest hereunder to any entity that is a subsidiary of or related to Lessee by common ownership or control, or in the event of a sale of substantially all of Lessee's assets; (ii) mortgage or pledge its interest in the Facility for financing purposes.
Right of first refusal	No
Right to purchase	No

This Memorandum of Agreement will be recorded in the applicable land records and is intended to provide notice to third parties of the Agreement and any and all amendments thereto pursuant to K.S.A. 58-2221. The Agreement and any and all amendments thereto contain terms and conditions in addition to those set forth in this Memorandum of Agreement. This Memorandum of Agreement is not intended to amend or modify the terms and conditions of the Agreement or of any amendments thereto. To the extent that the terms and conditions of this Memorandum of Agreement differ from the terms and conditions of the Agreement and/or any amendments thereto, the terms and conditions of the Agreement and/or any amendments thereto shall govern and prevail. Capitalized terms not otherwise defined herein shall have the meaning defined in the Agreement and/or any amendments thereto. A copy of the Agreement and any amendments thereto is kept at Lessee's place of business, at the address noted above.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Agreement to be effective as of the date first set forth above.

**IN THE PRESENCE OF:**

**LESSOR**

**Varsity Square, LLC**

\_\_\_\_\_  
Witness

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

Print Name: Gregory B. Starks

Print Title: Facility Manager

STATE OF KANSAS

COUNTY OF FORD

On this the \_\_\_ day of JULY, 2007, before me personally appeared GREGORY B. STARKS, who acknowledged himself to be the Facility Manager of Varsity Square, LLC, a Nevada limited liability company, and that he acknowledged the foregoing instrument by him/her sealed and subscribed to be his/her free act and deed and the free act and deed of said Varsity Square, LLC.

In witness whereof I hereunto set my hand and official seal.

Before me, \_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

IN THE PRESENCE OF:

**LESSEE**

**RCC Atlantic, Inc., a Minnesota corporation**

\_\_\_\_\_  
Witness

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

Print Name: Richard Ekstrand

Print Title: President & Chief Executive Officer

STATE OF MINNESOTA

COUNTY OF DOUGLAS

On the \_\_\_\_ day of \_\_\_\_\_, 2007, before me personally appeared Richard Ekstrand, to me known, who being by me duly sworn, did depose and say that he is the President & Chief Executive Officer of RCC Atlantic, Inc., the Lessee described in and which executed the foregoing instrument as his free act and deed and the free act and deed of said RCC Atlantic, Inc.

Before me, \_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

## EXHIBIT A

### DESCRIPTION OF PROPERTY

The Premises are located on a portion of that certain real property known as 619 2<sup>nd</sup> Avenue, Dodge City, Kansas 67801. See legal description below:

#### TRACT ONE:

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- (b) Six (6) antennas on the roof of that certain building and a 12 x 14 space inside the top floor of the building for its equipment;
- (c) utility cables and conduits to, over, under, along and through the Premises deemed necessary for the operation of Lessee's Communications Facility.

The Premises are depicted on the construction drawings prepared by Ulteig Engineers and dated June 4, 2007, copies of which are attached hereto and incorporated herein by reference.

**FIRST AMENDMENT TO COMMUNICATIONS FACILITY AGREEMENT**

THIS FIRST AMENDMENT TO <sup>ETBS</sup> COMMUNICATIONS FACILITY AGREEMENT ("First Amendment") made effective as of this 16<sup>th</sup> day of October, 2010, by and between Varsity Square, LLC, a Nevada limited liability company ("Lessor" or "Owner") and Abraham Divestiture Company LLC, a Delaware limited liability company ("Lessee").

**RECITALS**

A. Lessor and Lessee's predecessor-in-interest entered into the Communications Facility Agreement ("Site Agreement") dated as of the 15th day of August 2007, under which Lessee leased from Lessor certain locations upon a certain building located at 617-619 Second Avenue, Dodge City, Kansas 67801 for the installation of Lessee's radio communications equipment.

B. The parties desire to amend the Site Agreement as provided herein.

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

1. Equipment. The parties agree that Lessee shall be allowed a total of twelve (12) panel antennas, twelve (12) TMAs and eighteen (18) coaxial cables on the roof of the building. Lessee will agree to remove all other existing Lessee antennas on the building which Lessee has chosen to no longer use.
2. Rent. For the increase in number of antenna and elevations, Lessee rent shall increase by Two Hundred Fifty Dollars and 00/00 (\$250.00) per month, over the now current rent. The effective date of this amendment, for the purposes of amended rent, shall be the installation of said equipment.
3. Notices. Lessee's notice addresses provided in Section 28 of the Site Agreement are hereby deleted in their entirety and replaced with the following:

Abraham Divestiture Company LLC  
Attn: Network Real Estate Administration  
Site Name: Dodge City BOA (KS)  
Fixed Asset No. 10139116  
12555 Cingular Way, Suite 1300  
Alpharetta, GA 30004

With a copy to:

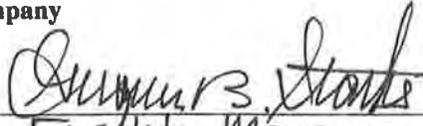
Abraham Divestiture Company LLC  
Attn: AT&T Legal Dep't  
Site Name: Dodge City BOA (KS)  
Fixed Asset No. 10139116  
15 East Midland Avenue  
Paramus, NJ 07652

4. Emergency 911 Service. In the future, without the payment of additional rent and at a location mutually acceptable to Lessor and Lessee, Lessor agrees that Lessee may add, modify and/or replace equipment in order to be in compliance with any current or future federal, state or local mandated application, including but not limited to emergency 911 communication services,

5. Misc. In all other respects, except as expressly modified herein, the Site Agreement shall remain in full force and effect. In the event of any discrepancies between the Site Agreement and this First Amendment, this First Amendment shall control.

LESSOR:

**Varsity Square, LLC, a Nevada limited liability company**

By:   
Its: Facility Manager  
Date: 10/6/10

LESSEE:

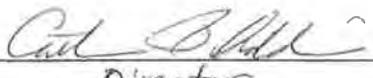
**Abraham Divestiture Company LLC (ADC)**

By: AT&T Mobility II, LLC

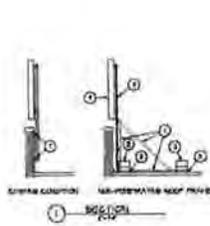
Its: Attorney-in-fact

By: AT&T Mobility Corporation

Its: Manager

By:   
Its: Director  
Date: 9/10/10

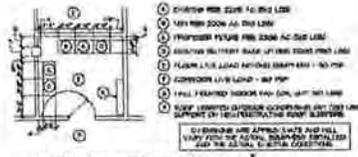
# Exhibit A



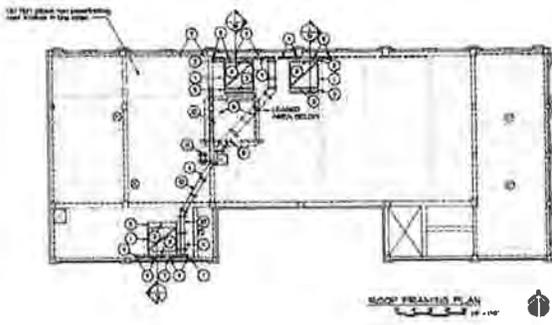
Examples of the existing existing parapet conditions that are shown in elevation of the parapet and to provide the water barrier at the parapet and to provide the floor of the roof at the parapet. It is a long-term solution for the roof and to provide a water barrier. The roof is shown in the elevation.

Parapets are provided that the existing parapets show some of the existing parapets and to provide the water barrier at the parapet. It is a long-term solution for the roof and to provide a water barrier. The roof is shown in the elevation.

A non-permeable roof frame is shown in the existing parapet.



- 1 EXISTING WALL 2000 x 2000 x 120
- 2 NEW WALL 2000 x 2000 x 120
- 3 EXISTING WALL 2000 x 2000 x 120
- 4 EXISTING WALL 2000 x 2000 x 120
- 5 EXISTING WALL 2000 x 2000 x 120
- 6 EXISTING WALL 2000 x 2000 x 120
- 7 EXISTING WALL 2000 x 2000 x 120
- 8 EXISTING WALL 2000 x 2000 x 120
- 9 EXISTING WALL 2000 x 2000 x 120
- 10 EXISTING WALL 2000 x 2000 x 120
- 11 EXISTING WALL 2000 x 2000 x 120
- 12 EXISTING WALL 2000 x 2000 x 120
- 13 EXISTING WALL 2000 x 2000 x 120
- 14 EXISTING WALL 2000 x 2000 x 120
- 15 EXISTING WALL 2000 x 2000 x 120
- 16 EXISTING WALL 2000 x 2000 x 120
- 17 EXISTING WALL 2000 x 2000 x 120
- 18 EXISTING WALL 2000 x 2000 x 120
- 19 EXISTING WALL 2000 x 2000 x 120
- 20 EXISTING WALL 2000 x 2000 x 120



THE EXISTING STRUCTURE AND NEW STRUCTURE ARE SHOWN IN THE PLAN. THE EXISTING STRUCTURE IS SHOWN IN THE PLAN. THE NEW STRUCTURE IS SHOWN IN THE PLAN. THE EXISTING STRUCTURE IS SHOWN IN THE PLAN. THE NEW STRUCTURE IS SHOWN IN THE PLAN.

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- EXISTING PLAN NOTES**
1. Use Anderson WAP-2000 non-permeable roof frame and 12" thick.
  2. Use 2" x 4" studs spaced 16" on center at all the walls to support the roof frame and to provide the water barrier.
  3. Use 2" x 4" studs spaced 16" on center at all the walls to support the roof frame and to provide the water barrier.
  4. Use 2" x 4" studs spaced 16" on center at all the walls to support the roof frame and to provide the water barrier.
  5. Use 2" x 4" studs spaced 16" on center at all the walls to support the roof frame and to provide the water barrier.
  6. Use 2" x 4" studs spaced 16" on center at all the walls to support the roof frame and to provide the water barrier.
  7. Use 2" x 4" studs spaced 16" on center at all the walls to support the roof frame and to provide the water barrier.
  8. Use 2" x 4" studs spaced 16" on center at all the walls to support the roof frame and to provide the water barrier.
  9. Use 2" x 4" studs spaced 16" on center at all the walls to support the roof frame and to provide the water barrier.
  10. Use 2" x 4" studs spaced 16" on center at all the walls to support the roof frame and to provide the water barrier.
  11. Use 2" x 4" studs spaced 16" on center at all the walls to support the roof frame and to provide the water barrier.
  12. Use 2" x 4" studs spaced 16" on center at all the walls to support the roof frame and to provide the water barrier.
  13. Use 2" x 4" studs spaced 16" on center at all the walls to support the roof frame and to provide the water barrier.
  14. Use 2" x 4" studs spaced 16" on center at all the walls to support the roof frame and to provide the water barrier.
  15. Use 2" x 4" studs spaced 16" on center at all the walls to support the roof frame and to provide the water barrier.
  16. Use 2" x 4" studs spaced 16" on center at all the walls to support the roof frame and to provide the water barrier.
  17. Use 2" x 4" studs spaced 16" on center at all the walls to support the roof frame and to provide the water barrier.
  18. Use 2" x 4" studs spaced 16" on center at all the walls to support the roof frame and to provide the water barrier.
  19. Use 2" x 4" studs spaced 16" on center at all the walls to support the roof frame and to provide the water barrier.
  20. Use 2" x 4" studs spaced 16" on center at all the walls to support the roof frame and to provide the water barrier.

**NEW ANTENNA MOUNTING POINT**  
**ROOF OF EXISTING BUILDING**  
**PROJECT NO. 101**  
**DATE: 10/1/2010**  
**SH**



Intracompany Transmittal for review and approval of contracts.

, February 05, 2007

es E. McDonald

ancy Majors

Chad Tarver - ext. 0538

at: New Rooftop attachment in Dodge City, KS

Type of instrument	Building Attachment Communications Site Agreement (Rooftop)(2 originals) Notice of Commencement (2 originals)		
ALLTEL Site Reference	KS - Dodge City #4		
Lessor Site Reference	Same		
Market / Co. # / Job #	KS RSA 12 - Hodgeman	Co. # 404	Job # 740455062
Lessor	ACP BA, LLC		
Lessor Vendor number	18309281		
Lessor Notice Address	Coldwell Banker Hancock, ATTN: Gregory Starks, 2300 First Ave., Dodge City, KS 67801; P: 620-227-2408		
Lessor Remittance Address	To be determined		
ALLTEL Entity	ALLTEL Kansas Limited Partnership		
Effective Date	To be determined		
Commencement date - ¶ 3	Earlier of installation of equipment or 120 days from full execution		
Terms - ¶¶ 3, 4	5-year initial term with three (3) additional 5-year renewal terms		
Renewal Language - ¶ 4	Automatically renewed unless ALLTEL provides notice of intent NOT to renew at least 90 days prior to exp. of then-current term.		
Rent - ¶ 5(a)	\$800.00 per month		
Escalation - ¶ 5(b)	CPI per term, not to exceed 5%. If Commencement other than 1 <sup>st</sup> of month, escalation applied on first day of month following said anniversary date.		
Assignment - ¶ 23	Requires Owner's prior written consent if other than Affiliate.		
Subleasing - ¶ 24	Requires Owner's prior written consent		
Termination Provisions	No Voluntary Termination; Other Termination: ¶ 13(a): by either party for uncured default after 30 days of receipt of notice by other party (¶ 28(a)(ii): 10 days for non-payment); ¶ 13(b): by ALLTEL if unable to obtain or maintain any required governmental permit; ¶ 13(c): by ALLTEL if premises are damaged so as to render ineffective use of the site; ¶ 10: by ALLTEL for any interference which after 45 days' written notice to Owner has not been corrected; ¶ 13(d) by ALLTEL upon 6 months' written notice if in tenant's judgment design or technology changes render site obsolete or unnecessary (6 months' rent due w/ this option); ¶ 18: by ALLTEL if condemnation takes all or sufficient portion of premises to render site unsuitable; ¶ 7: by ALLTEL if any of conditions precedent fail within 90 days of execution.		
Monetary Termination	¶ 13(d) - if ALLTEL terminates due to obsolescence, ALLTEL to pay 6 months' rent.		
Post Termination Language	¶ 1 - Personal property remains Tenant's prior to termination of Agreement.		
Holdover - ¶ 31	In the event Tenant remains on the Building after expiration, Tenant shall occupy the Premises month-to-month at a rate 1.5 x the current rental rate.		
Indemnification - ¶ 19	Reciprocal; also includes reciprocal Waiver of Liability.		
Interference - ¶ 10	Owner shall not use nor permit use of Premises that interferes with ALLTEL's operations. ALLTEL agrees to not cause interference to Owner and others already in place. Owner to place similar restrictions upon other future wireless carriers.		
Negotiated/Approved by:	Terri Dolezal (402) 436-4278 / Jim McGee (303) 373-3404		

**BUILDING ATTACHMENT**  
**COMMUNICATIONS SITE LEASE**  
**(Rooftop)**

THIS BUILDING ATTACHMENT COMMUNICATIONS SITE LEASE ("Lease") is entered into this 4th day of December, 2006 by and between ACP BA LLC, a California LLC (Limited Liability Company) ("Owner") and ALLTEL Kansas Limited Partnership. ("Tenant").

1. **Grant.** Subject to the following terms and conditions, Owner hereby grants Tenant the nonexclusive right to install, maintain, operate and remove radio communications equipment and appurtenances on space on Owner's building (the "Building") located on the property described in Exhibit "A" (the "Premises"), and leases to Tenant a portion of the Premises for occupancy to house Tenant's equipment on the Premises and additional areas connecting Tenant's equipment on the Building to Tenant's equipment in other locations within or without the Building (the space on the Building for Tenant's attachment and the additional space for Tenant's occupancy and connection, collectively the "Site"), a description of the Site is more particularly described in Exhibit "C". Owner shall continue to have the right to occupy the Building and to grant others rights to occupy or utilize the Premises and the Building at Owner's sole discretion. Owner also grants to Tenant a non-exclusive easement during the term of this Lease for ingress and egress and for the installation and transmission of utilities on property described on attached Exhibit "B" ("Easement"). Tenant may install equipment, personal property, improvements, alterations or fixtures as listed on Exhibit "C" (the Equipment), or as Owner may otherwise approve, such approval not to be unreasonably withheld, conditioned or denied. Any personal property owned by Tenant, whether or not fixed or attached to the Premises or Building, shall remain the property of Tenant prior to termination of this Lease without regard to whether it appears on Exhibit "C".

2. **Use.** Tenant shall use the Equipment and the Site for the purpose of constructing, installing, maintaining, improving and operating, at Tenant's expense, a communications facility, including antennae, buildings and incidental uses. Tenant shall be solely responsible for securing any and all building permits and approvals, zoning changes or approvals, variances, use permits, and other governmental permits from applicable governmental authorities, including any Federal Aviation Administration approval (collectively, "Permits") prior to any construction on the Premises. Owner agrees to reasonably cooperate with Tenant in obtaining the Permits. Copies of the Permits shall be provided to Owner, upon request. Tenant shall promptly pay all costs and expenses and shall not cause or permit any lien to be created against the Premises.

3. **Term.** The Initial term of this Lease shall be five (5) years, commencing upon the earlier of Tenant's commencement of installation of its Equipment on Owner's Building, or One-Hundred Twenty (120) days from the date of full execution of this Lease (the "Commencement Date") and terminating at midnight five years therefrom ("Initial Term").

4. **Renewal Term(s).** Tenant shall have the right to extend this Lease for three (3) additional terms of five (5) years each ("Renewal Term(s)") on the same terms and conditions as set forth in this Lease except that the Rent shall be as specified in Paragraph 5 below. This Lease shall automatically be renewed for each successive Renewal Term unless Tenant notifies Owner of Tenant's intention not to renew the Lease at least ninety (90) days prior to expiration of the then current term.

5. **Rent.**

- a. **Initial Term.** Beginning on the Commencement Date, Tenant shall pay to Owner as rental the sum of Eight Hundred Dollars (\$800.00) per month ("Rent"). Rent payments shall be made monthly in advance to the Owner's notice address as specified below and shall be

prorated for any partial month at the commencement or termination of this Lease, based on the number of days in that month.

- b. Renewal Term. In the event that Tenant elects to renew this Lease, rent shall, during the first month of each successive Renewal Term, be adjusted by the same percentage that the Consumer Price Index ("CPI") increases during the current term. Such adjustment shall be calculated by multiplying the then-current monthly rent by a fraction, the denominator of which is the CPI last published in the month immediately prior to the first month of current term and the numerator of which is the CPI last published in the month immediately preceding the adjustment. In no event shall such adjustment result in a monthly rent that decreases and, in no event, shall such adjustment exceed five percent (5%) per annum. If the Commencement Date falls on any day other than the first of the month, rent escalation shall be applied on the first day of the month following the applicable anniversary of the Commencement Date.

6. Building Maintenance. Owner represents and warrants that the Building and all of Owner's adjoining property and improvements, exclusive of Tenant's Equipment, meets and will be maintained in accordance with all applicable local building and regulation codes. Tenant, at its sole cost, shall comply with all applicable laws relating to its possession of the Site and use of the Equipment. Owner shall maintain the Building in good operating condition. The costs of maintaining the Building shall be borne by Owner with the exception of Tenant's antennae and Equipment, and except for damage to the Building caused by Tenant, or Tenant's agents, employees, contractors or subcontractors, which shall be borne solely by Tenant. Tenant shall timely repair at Tenant's cost any such damage.

7. Conditions Precedent. Tenant's obligation to perform under this Lease shall be subject to and conditioned upon:

- a. Tenant's obtaining, at its option, a title report or commitment for a leasehold title policy from a title insurance company of Tenant's choice which must show no defects or restrictions of title or any liens or encumbrances which may adversely affect Tenant's use of the Premises or Tenant's ability to obtain financing;
- b. Tenant's obtaining, at its option, a survey and analysis tests, which must show no defects which, in the reasonable opinion of the Tenant, may adversely affect Tenant's use of the Site;
- c. Tenant's approval of the condition of the Premises, which may be subject to, at Tenant's option, an environmental audit of the Premises performed by an environmental consulting firm of Tenant's choice;
- d. Tenant's securing appropriate approvals for Tenant's intended use of its Equipment on the Site from the Federal Communications Commission, the Federal Aviation Administrator, the applicable State Historic Preservation Office, and any other federal, state or local regulatory agency having jurisdiction over Tenant's proposed use of the Equipment; and
- e. Tenant's reasonable determination that the Building is structurally appropriate for Tenant's needs.

In the event of a failure of any of the above referenced conditions precedent within Sixty (60) days of execution of this Lease, Tenant may terminate this Lease through written notice to Owner.

8. Conditions Subsequent. In the event that Tenant's intended use of the Site and the Premises is actually or constructively prohibited or the Site and the Premises are, in Tenant's reasonable opinion, unacceptable to Tenant, through no fault, error or omission of Tenant, then this Lease shall terminate and be of no further force or effect.

9. Electrical Charges: Tenant's electrical consumption on the Premises shall be metered separately at Tenant's expense and shall be paid separately by Tenant. In the event the electrical consumption cannot be metered separately from that consumed by Owner, Tenant shall sub-meter the Premises and Tenant shall pay monthly in advance during the term of the Lease an Electrical Charge of One Hundred Dollars (\$100.00). The parties acknowledge that the Electrical Charge is an estimate of the actual cost of Tenant's electrical consumption. Within sixty (60) days after the end of each Lease Year, Owner shall determine the actual cost of Tenant's electrical consumption for such Lease Year by reading the sub-meter and applying the rates, taxes and other fees charged for such consumption by the applicable utility provider. In the event the actual electrical cost determined by Owner for such Lease Year exceeds the aggregate amount of electrical charge paid by Tenant, Tenant shall pay the difference within fifteen (15) days after receipt of an invoice. In the event the actual electrical consumption is less than the aggregate electrical charge paid by Tenant for the Lease Year, Owner shall credit Tenant for such difference against future electrical charges. Further, Owner shall have the right from time to time modify the monthly amount of electrical charge paid by Tenant to an amount equal to one-twelfth (1/12) of Owner's reasonable estimate of the annual cost of Tenant's electrical consumption.

10. Interference. Owner shall not use, nor permit its tenants, licensees, invitees or agents to use any portion of the Premises or any adjoining or proximate property of Owner in any way that interferes with the operations of Tenant. Tenant may enforce this provision at law or in equity. Tenant agrees to install Equipment only of types and generating frequencies which will not cause interference to transmissions or signals from Owner and other users of the Building as may be already in place on the Building. At Owner's request, Tenant shall provide a detailed interference analysis showing potential conflicts between Tenant's frequencies and those of the Owner or other users already in place on the Building. In the event the Equipment causes such interference, Tenant will take all steps necessary to correct and eliminate the interference. If the interference cannot be eliminated within 48 hours after receipt of written notice from Owner to Tenant, Tenant shall temporarily disconnect the electric power and shut down the Equipment (except for intermittent operation for the purpose of testing, after performing maintenance, repair, modification, replacement, or other action taken for the purpose of correcting such interference) and if such interference is not corrected within 30 days after receipt of the written notice, Tenant agrees to remove the Equipment from the Building and the Premises and this Lease shall terminate as if by expiration. After the Equipment has been installed, Owner shall place similar restrictions upon interference with Tenant's frequencies on others using Owner's Building with Owner's permission, or under Owner's authority, installed on the Building after Owner's installation of the Equipment. Should Owner fail to cure the cause of any such interference within 45 days of Owner's receipt of written notice of the interference, Tenant may remove the Equipment from the Building and the Premises and terminate this Lease. Tenant's activities and operations and the Equipment shall not disturb the occupancy of Owner's other tenants.

11. Maximum Permissible Emissions; Cooperative Efforts. Tenant shall regulate its antenna power output ("RF Emissions") according to applicable guidelines or restrictions imposed by the FCC for RF Emissions standards on Maximum Permissible Exposure ("MPE") levels. Similarly, any subsequent communications service providers ("Subsequent Users") installing Equipment on the Property or the Premises after the Commencement Date of this Lease shall also be held to compliance with such limits, rules and regulations and such Subsequent User shall adjust its RF Emissions subordinate to any requirements of Tenant. If Owner requires an engineering evaluation or other power density study be performed to evaluate RF Emissions compliance with MPE limits then all reasonable costs of such an evaluation or study shall be shared equally among Owner, Tenant and any Subsequent Users of the Premises. If said study indicates that RF Emissions at the facility do not comply with MPE limits, then Tenant and any Subsequent User shall immediately take any steps necessary to ensure that they are individually in compliance with such limits or shall, upon demand of Owner, cease operations until a maintenance program or other mitigating measures can be implemented to comply with MPE. Tenant shall have the right to terminate this Lease in the event any

mitigation measures cannot be implemented without materially adversely affecting the Tenant's operations of its Equipment.

12. Utilities and Access. Owner represents that utilities are presently available on the Premises. Further, from time to time,

- a. Tenant shall have the right to install utilities, to be separately metered at Tenant's expense, and to improve present utilities on the Premises, including but not limited to the installation of emergency power generators. Tenant shall have the right to permanently place utilities on, or to bring utilities across or under, the Premises and the Easement in order to service the Equipment throughout the Initial Term or any Renewal Term of this Lease. Owner shall, upon Tenant's request, execute a separate written easement in a form which may be filed of record evidencing this right. Tenant shall be responsible for all utility connection charges, and all utility use charges, for electricity or any other utility used by Tenant. Tenant has the right to install an emergency power generator on the Premises to provide emergency power service, so long as such generator does not interfere with Owner's or the other tenant's use of the Building or Premises.
- b. Owner shall provide Tenant access to the Site and the Equipment during reasonable business hours and as reasonably possible during emergencies, through the common areas or the Easement.

13. Termination. Except as otherwise provided, this Lease may be terminated, without any penalty or further liability, immediately upon written notice or as otherwise provided below, as follows:

- a. By either party upon a default of any covenant or term of this Lease by the other party which default is not cured or the curing of which is not commenced within 30 days of receipt of written notice of default (without, however, limiting any other rights available to the parties pursuant to any other provisions of this Lease; or
- b. By Tenant if it is unable to obtain or maintain any license, permit or other Permits necessary to the construction and operation of the Equipment or Tenant's business or intended use of the Premises; or
- c. By Tenant if the Premises or Equipment is damaged by casualty so as to hinder the effective use of the Equipment; or in the event that interference, whether or not from Owner's activities or any other source, to transmissions or signals from the Communications Facility, in Tenant's reasonable judgment, may not be adequately corrected or eliminated by Tenant;
- d. By Tenant upon six month's written notice to Owner if, in Tenant's reasonable judgment, network design or technology changes render the Communications Facility obsolete or unnecessary, with payment of an early termination fee in the amount of six (6) months then current rent.

14. Improvements. Tenant shall not make or cause to be made any alterations, additions or improvements to or of the Premises any part thereof without the prior written consent of Owner, which shall not be unreasonably denied or delayed. Any permitted alterations or additions shall be made by Tenant at Tenant's sole cost and expense and by persons duly licensed by the State of Kansas. Within 30 days of the expiration or sooner termination of the term hereof and upon written demand by Owner, Tenant shall, at its sole cost and expense, forthwith and with all due diligence, remove any alterations, additions, or improvements made by Tenant to the Premises designated by Owner to be removed. Tenant shall, forthwith and with all due diligence, at its sole cost and expense, repair any damage to the Premises or the Building caused by such removal.

15. Taxes. Tenant shall pay any personal property taxes assessed on, or any portion of such taxes attributable to, Tenant's Equipment. Tenant shall not pay real property taxes or other Rent and assessments attributable to the Premises.

16. Liens. Tenant shall keep the Premises free from any liens arising out of any work performed, materials furnished or obligations incurred by Tenant. Owner may require, at Owner's sole option, that Tenant shall provide to Owner, at Tenant's sole cost and expense, a lien and completion bond in an amount equal to one and one-half (1½) times any and all estimated costs of any improvements, additions, or alterations, on or to the Premises, to insure Owner against any liability for mechanics' and materialmen's liens and to insure completion of the work.

17. Liability Insurance. During the initial term and all renewal terms of this Lease, Owner and Tenant shall each maintain, at its own expense, insurance covering claims for public liability, personal injury, death and property damage under a policy of general liability insurance, with limits of not less than \$1,000,000.00 per person and \$2,000,000.00 per occurrence, and property damage insurance of not less than \$500,000.00. Such insurance shall insure against liabilities arising out of or in connection with Owner and Tenant's use or occupancy of the Premises and the Building subject to the standard exceptions found in commercial general liability insurance policies. At Owner's request, Tenant shall be required to include Owner as Additional Insured under said insurance policy.

18. Condemnation. If a condemning authority takes, or acquires by deed in lieu of condemnation, all of the Premises, or a portion sufficient to render the Premises, the Site or the Building becoming unsuitable for the use which Tenant was then making of the Site, the Premises or the Building, Tenant may terminate this Lease effective as of the date the title vests in the condemning authority. Tenant shall separately file its claim with the condemning authority for any relief it may seek.

19. Environmental Matters.

- a. Owner represents that, to Owner's best knowledge, no Hazardous Materials are presently located on the Site or Easement, and Owner agrees that it will provide, at no cost or expense to Tenant, for the removal of any Hazardous Materials if Hazardous Materials are present on the Site or the Easement prior to the date of this Lease or if Hazardous Materials are brought onto the Site or Easement by Owner, its agents, servants, employees, licensees, invitees or contractors. If after Tenant takes possession of the Premises Hazardous Materials are discovered to exist on the Site, Owner agrees that it will provide, at no cost or expense to Tenant, for the removal of any Hazardous Materials.
- b. Tenant shall comply with all laws, ordinances, rules, orders or regulations applicable to Hazardous Materials. Tenant shall not use the Premises or the Easement for treatment, storage, transportation to or from, use or disposal of Hazardous Materials (other than petroleum products necessary for the operation of an emergency electrical generator to serve the Equipment). Tenant shall be responsible for any expense incident to the abatement or compliance with the requirements of any federal, state or local statutory or regulatory requirements caused, directly or indirectly, by the activities of the Tenant or Tenant's agents, employees or contractors.
- c. As used in this Lease, "Hazardous Materials" shall mean any and all polychlorinated biphenyls, petroleum products, urea formaldehyde and other hazardous or toxic materials, wastes or substances, any pollutants, and/or contaminants, or any other similar substances or materials which are defined or identified as such in or regulated by any federal, state or local laws, rules or regulations (whether now existing or hereinafter enacted) pertaining to environmental regulations, contamination, cleanup or any judicial or administrative interpretation of such laws, rules or regulations or any substance that after release into the environment and upon exposure, ingestion, inhalation or assimilation, either directly from the environment or directly through food chains will or may reasonably be anticipated to cause death, disease, behavior abnormalities, cancer or genetic abnormalities.

20. Hold Harmless.

a. By Owner. Owner agrees to defend, indemnify and hold Tenant and its Affiliates or subsidiary companies, their officers, agents and employees harmless from and against any and all, costs, charges, expenses, losses, claims, actions, suits, causes of action, judgments and charges of every kind and nature whatsoever, including reasonable attorneys fees, arising from Owner's use or occupancy of the Premises, or from Owner's performance or failure to perform under this Lease or from any negligence or intentional misconduct by Owner, its subcontractors, agents, servants, employees or any or all of them, or from any defect in the title to the Premises, or from the presence of any Hazardous Materials on the Premises prior to the Commencement Date, or thereafter if brought onto the Premises by Owner or Owner's agents, employee's licensees, invitees or contractors.

b. By Tenant. Tenant agrees to defend, indemnify and hold Owner and its Affiliates or subsidiary companies, their officers, agents and employees harmless from any and all costs, damages, expenses, losses, claims, actions, suits, causes of action, judgments, and charges of every kind and nature whatsoever, including reasonable attorney's fees, which may in any manner arise out of or relate to Tenant's use of the Equipment or Premises or the performance or non-performance of this Lease by Tenant, Tenant's subcontractors, employees, agents, or assigns, including without limitation, those that may arise out of the use or furnishing of materials, and as to such claims, actions or causes of action arising from or resulting from any negligence or intentional misconduct by Tenant, its subcontractors, agents, servants, employees, or any or all of them.

c. Waiver of Liability. Neither Owner nor Tenant shall be responsible or liable to the other party for any loss or damage arising from any claim to the extent attributable to any acts or omissions of other licensees or tower users occupying the communications facility or vandalism or for any structural or power failures or destruction or damage to the communications facility except to the extent caused by the negligence or willful misconduct of such party. Notwithstanding anything to the contrary in this Lease, in no event shall Owner or Tenant be liable to the other for, and Owner and Tenant each hereby waive the right to recover, incidental, consequential (including lost profits, loss of use or loss of business opportunity), punitive, exemplary and similar damages.

21. Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, by certified mail, return receipt requested, by overnight service having a record of receipt, or by facsimile with confirmation of transmission to the addresses indicated below:

If to Owner, to:

Coldwell Banker Hancock  
Attn: Gregory Starks  
2300 First Avenue  
Dodge City, KS 67801  
Facsimile: (620) 227-2408

If to Tenant, to:

ALLTEL Communications, Inc.  
P.O. Box 2177  
Little Rock, AR 72203-2177  
Attn: Property Management Dept.  
Facsimile: (501) 905-7375

22. Warranties and Quiet Enjoyment. Owner warrants it has the full right, power and authority to execute this Lease and that it has good and marketable title to the Premises free and clear of any liens, encumbrances or mortgages. Owner further warrants that Tenant shall not be deprived of the quiet enjoyment of the Premises during the term of this Lease. Owner shall defend, protect, indemnify and hold harmless Tenant against any interference with Tenant's use and quiet enjoyment of the Premises or breach of this paragraph 22. Owner further warrants and represents to the best of Owner's knowledge that (i) Tenant's intended use of the Site is not prohibited by covenant, restriction, easement, subdivision rule or other contract which would prohibit Tenant's intended use of the Site; and (ii) there are no easements, licenses, rights of use or other encumbrances which will interfere with Tenant's intended use of the Site.

23. Assignment. Tenant may not assign its interest in this Lease without prior written approval by Owner, not to be unreasonably withheld, except that Tenant may assign its rights and obligations under this Lease to an Affiliate, as follows: "Affiliates" shall mean any person or entity that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with, another person or entity. "Control" for this definition shall be defined as holding at least a majority of voting power or operating control.

24. Subletting: Tenant shall not sublet the Premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person or entity to occupy or use the Premises or any portion thereof without the prior written consent of Owner.

25. Successors and Assigns. This Lease shall be binding upon and inure to the benefit of the parties, their respective heirs, successors, personal representatives and assigns. Owner's consent to one assignment, subletting, occupation or use by another other person shall not be deemed to be consent to any subsequent assignment, subletting, occupation or use by another person. Any such assignment or subletting without such consent shall be void, and shall, at the option of the Owner, constitute default under this Lease.

26. Compliance with Laws. All installations and operations in connection with this Lease by either party shall be conducted in accordance with all applicable rules and regulations of the Federal Communications Commission, Federal Aviation Agency, and any other applicable federal, state and local laws, codes and regulations. Tenant is solely responsible for the licensing, operation and maintenance of Tenant's Equipment, including, without limitation, compliance with any terms of its Federal Communications Commission license with respect to Building light observation and any notification to the Federal Aviation Administration in that regard. Tenant's Equipment, transmission lines, and any related devices, and the installation, maintenance and operation thereof, shall not damage the Building or any property or properties adjoining, or interfere with the use of the Building and the remainder of the Premises, by Owner or others, and Tenant shall defend, indemnify and hold harmless Owner from any such damage.

27. Inspection, Compliance and Entry by Owner. Owner reserves and shall at reasonable times have the right to enter the Premises and the Site, upon prior notice to Tenant, to verify compliance by Tenant with this Lease, to inspect the Site and Equipment, to supply any service to be provided by Owner to Tenant hereunder, to show the Premises to prospective purchasers or tenants, and to post notices of non-responsibility. Owner shall provide Tenant thirty (30) days prior notice a schedule improvement or repair the Site or any portion of the Premises that Owner may deem necessary or desirable without abatement of Rent, and may for that purpose erect scaffolding and other necessary structures where reasonably required by the character of the work to be performed, always providing that the entrance to the Premises shall not be blocked thereby, and further providing that the business of Tenant shall not be unreasonably interfered with or interrupted. Owner may enter the Site at any time Owner, at its discretion, in the event of an emergency.

28. Default/Breach. The occurrence of any one or more of the following events shall constitute a default and/or breach of this Lease by Tenant.

- a. "Default" is defined as a failure by the Tenant to comply with or perform any of the terms, covenants, conditions or rules and regulations under this Lease. A "Breach" is defined as the occurrence of one or more of the following defaults and failure of Tenant to cure such default within any applicable grace period:
  - i. The vacating or abandonment of the Site by Tenant.
  - ii. The failure by Tenant to make any payment of Rent or any other payment required to be made by Tenant hereunder, within ten (10) days of receipt of written notice from Owner of such failure.
  - iii. The failure by Tenant to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Tenant, where such failure shall continue for a period of thirty (30) days after written notice thereof by Owner to Tenant.
- b. The making by Tenant of any general assignment or general arrangement for the benefit of creditors; or the filing by or against Tenant of a petition to have Tenant declared a debtor under the Bankruptcy Code; or a petition or reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant, the same is dismissed within sixty (60) days); or the appointment of a trustee or a receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within thirty (30) days; or the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where such seizure is not discharged in thirty (30) days.

29. Remedies in Breach. In the event of any material Breach or Breach by Tenant, Owner may at any time thereafter, with or without notice or demand and without limiting Owner in the exercise of a right or remedy which Owner may have by reason of such breach:

- a. Terminate Tenant's right to possession of the Site or Premises by any lawful means, in which case this Lease shall terminate and Tenant shall immediately surrender possession of the Site to Owner. In such event Owner shall be entitled to recover from Tenant all damages incurred by Owner by reason of Tenant's breach including, but not limited to: the cost of recovering possession of the Site and reasonable attorney's fees. Unpaid installments of Rent or other sums shall bear interest from the date due at the rate of ten percent (10%) per annum. In the event Tenant shall have abandoned the Site, Owner shall have the option of: (a) taking possession of the Site and recovering from Tenant the amount specified in this paragraph; or (b) proceeding under the provisions of the following Article 29.b.
- b. Maintain Tenant's right to possession, in which case this Lease shall continue in effect whether or not Tenant shall have abandoned the Site. In such event Owner shall be entitled to enforce all of Owner's rights and remedies under this Lease, including the right to recover the Rent as it becomes due hereunder.
- c. Pursue any other remedy now or hereafter available to Owner under applicable laws.

30. Rules and Regulations. Tenant shall faithfully observe and comply with the rules and regulations that Owner shall from time to time promulgate. Owner reserves the right from time to time to make all reasonable modifications to said rules. The additions and modification to any rules and regulations shall be binding upon Tenant upon delivery of a copy of them to Tenant. Owner shall not be responsible to Tenant for the nonperformance of any of the rules and regulations by any other tenants or occupants.

31. Holding Over. In the event Tenant remains on the Building and in possession of the Site or the Premises after the expiration of the Initial Term or a Renewal Term without executing a new Lease, Tenant shall occupy the Premises month-to-month, subject to all of the terms and conditions of this Lease insofar as so

consistent, except that the rent shall be equal to one and one half (1½) times the rent during the immediately preceding term.

32. Estoppel. Each party agrees to furnish to the other, within 10 days after request, such truthful estoppel information as the other may reasonably request.

33. Subordination, Attornment. Upon request of Owner, Tenant will, in a document in the form and content acceptable to Tenant, subordinate its rights hereunder to the lien of any mortgage, or deed of trust to any bank, insurance company or other lending institution, now or hereafter in force against the Premises and Building, and upon any building hereafter placed upon the Premises and to all advances made or hereafter to be made upon the security thereof. However, Owner shall enter into financing and mortgage agreements which allow Tenant to retain its leasehold interest in the Premises provided Tenant is not in Default under this Lease beyond any applicable cure period and which obligates Tenant to abide by all the terms, covenants and conditions of this lease in the event the mortgagee takes title to the Premises through foreclosure or accepts a deed in lieu of foreclosure.

34. Miscellaneous.

- a) This Lease shall not be amended or modified except in writing and then only when signed by all the Parties hereto. This Lease constitutes the entire agreement and understanding of Owner and Tenant, and supersedes all offers, negotiations and other agreements.
- b) This Lease shall not be effective or binding on any party until fully executed by both parties hereto.
- c) The waiver by Owner of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition on any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of Rent hereunder by Owner shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, other than the failure of Tenant to pay the particular rental so accepted, regardless of Owner's knowledge of such preceding breach at the time of acceptance of such Rent.
- d) If either Owner or Tenant is represented by a real estate broker or agent in this transaction, that party shall be fully responsible for any fees or commission due such broker or agent and shall hold the other party harmless from any such claims arising from execution of this Lease.
- e) Owner agrees to reasonably cooperate with Tenant in executing any documents necessary to protect Tenant's rights under this Lease or Tenant's use of the Premises. Tenant may record this Lease or a Memorandum of Lease executed by all parties.
- f) If any term of this Lease is found to be void or invalid, such invalidity shall not affect the remaining terms of this Lease, which shall continue in full force and effect.
- g) Each of the undersigned warrants that he or she has the full right, power, and authority to execute this Lease on behalf of the party indicated.
- h) The marginal headings are not a part of this Lease and shall have no effect upon the construction or interpretation of any part hereof.
- i) Time is of the essence of this Lease and each and all of its provisions in which performance is a factor.
- j) In the event of any sale of the Premises, Owner shall be and is hereby entirely freed and relieved of all liability under any and all of its covenants and obligations contained in or derived from this Lease arising out of any act, occurrence or omission occurring after the consummation of such

sale; and the purchaser, at such sale or any subsequent sale of the Premises shall be deemed, without any further agreement between the parties or their successors in interest or between the Parties and any such purchaser, to have assumed and agreed to carry out any and all of the covenants and obligations of Owner under this Lease.

- k) In the event any proceedings are brought for foreclosure or in the event of the exercise of the power of sale under any mortgage or deed of trust made by Owner covering the Premises, Tenant shall attorn to the purchaser upon any such foreclosure or sale and recognize such purchaser as Owner under this Lease. In the event of Owner's succession, the new owner shall recognize the tenancy and the rights granted to Tenant in accordance with the Lease.
- l) Tenant shall not use the name of Owner or the Building for any purpose other than as an address of the business to be conducted by Tenant in the Premises.
- m) No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.
- n) This Lease shall be binding upon the Parties, their personal representatives, successors and assigns and be governed by the laws of the State of Kansas. Any litigation between the Parties hereto concerning this Lease shall be initiated in the county in which the Building is located and governed by the laws of Kansas.
- o) Tenant shall not place any sign upon the Premises or Building or conduct any auction or sale of any kind outside the Premises without Owner's prior written consent, such consent not to be unreasonably withheld, except for all signs that are required by the FCC and/or FAA.

**THIS BUILDING ATTACHMENT COMMUNICATION SITE LEASE CONSTITUTES A PROPOSAL BY TENANT TO LEASE SPACE ON OWNER'S PREMISES AND SHALL NOT BE BINDING UPON TENANT UNTIL SUCH TIME AS IT IS EXECUTED ON BEHALF OF TENANT BY TENANT'S AUTHORIZED REPRESENTATIVE AND DELIVERED TO OWNER.**

IN WITNESS WHEREOF, Owner and Tenant have executed Lease as of the date year first above written.

**OWNER: ACP BA LLC**

**By: American Capital Properties LLC, its Managing Member**

Witness(es):

Melody Moradi  
Melody Moradi

By: [Signature]

Name: Marc Tavakoli

Title: Member

**TENANT: ALLTEL Kansas Limited Partnership  
by its General Partner, ALLTEL Corporate Services, Inc.**

Witness(es)

Jennifer Kaucher  
Jennifer Kaucher

By: [Signature]

Name: James E. McDonald  
V.P. Network Services

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

**ACKNOWLEDGMENTS**

STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES

I, Fariba Berokim, a Notary Public of the County and State aforesaid, certify that Marc Tavakoli personally appeared before me this day and acknowledged that he is a Member of American Capital Properties LLC, a California limited liability company, and that by authority duly given and as the act of the said limited liability company, the foregoing instrument was signed in its name.

WITNESS my hand and notarial seal this 4<sup>th</sup> day of December 2006.

[Signature]

Notary Public

My Commission Expires: Jan 2, 2008

SEAL



STATE OF Arkansas  
COUNTY OF Fulaski

I, Shannon Davis, a Notary Public of the County and State aforesaid, certify that James E. McDonald personally appeared before me this day and acknowledged that he/she is V.P. Network Services of ALLTEL Kansas Limited Partnership, a Delaware corporation, and that by authority duly given and as the act of the said corporation, the foregoing instrument was signed in its name.

WITNESS my hand and notarial seal this 7 day of February, 2007

[Signature]  
Notary Public

My Commission Expires: 2/7/2016

SEAL



**EXHIBIT "A"**

**LEGAL DESCRIPTION OF  
PROPERTY**

The property referred to herein as Premises is located within the parent parcel described as follows:

Lots Thirty-Three (33), Thirty-Five (35), Thirty-Seven (37), and Thirty-Nine (39), Spruce Street in the Original Townsite of Dodge City, Ford County, Kansas, according to the recorded Plat thereof.

The Building is located on the parent parcel description. Owner and Tenant agree that within sixty (60) days following the full execution of the Lease, Tenant shall attach Exhibit B which shall be included an "as built" survey and site plan.

**EXHIBIT "B"**

SITE PLAN  
and  
EQUIPMENT LIST

**Insert Tenant's Site Plan**

Equipment Shelter to house transmission cables & equipment to be located upon the roof of the Building.  
Cabinet size shall be approx. \_\_\_" wide X \_\_\_" tall X \_\_\_" deep (see diagram).

\_\_\_\_\_ Antennas, each \_\_\_\_\_" X \_\_\_\_\_' X \_\_\_\_\_";  
Coaxial cable that connects the cabinet to the antennas;  
Electrical power panel and cable;  
Telephone panel and cable.

**EXHIBIT "C"**

**Notice of Commencement of Installation of Equipment**

[Owner's Name]  
[Owner's Address]

Re: Lease from Owner to Tenant at \_\_\_\_\_, \_\_\_\_\_  
Site No. \_\_\_\_\_

Dear \_\_\_\_\_:

Pursuant to Section \_\_\_\_ of the above-referenced \_\_\_\_\_, this letter serves to advise you that Tenant commenced the installation of its Facilities on the Leased Space on the above-referenced property on \_\_\_\_\_, 20\_\_\_\_, which date shall be the Commencement Date, as defined in the above referenced Site Lease.

Sincerely,

Tenant



Intracompany Transmittal for review and approval of contracts

**DATE:** February 4, 2008  
**TO:** James E. McDonald  
**THROUGH:** Stacy Majors *SM*  
**FROM:** Mary Jordan *MJ*

**SUBJECT:** First Amendment/ Dodge City #4, KS / KS RSA 12 - Hodgeman  
*Please review the abstract of the agreement provided below. If it meets your approval, please sign the attached agreements where indicated and return to me. Feel free to contact me with any questions or concerns at extension 7191. Thanks!*

Type of instrument	First Amendment to Building Attachment communications Site Lease ( 4 originals)
ALLTEL Site Reference	KS - Dodge City #4
Lessor Site Reference	Same
Market /Company #/Job No.	KS RSA 12 - Hodgeman / Co. 404 /Job Number 740455062 / ATLAS 196378143
Lessor	Varsity Square LLC
Lessor Vendor number	Requested
Lessor Notice Address	Coldwell Banker Hancock Attn: Gregory Starks 2300 First Avenue Dodge City, KS 67801 P: 620-227-2408
Lessor Remittance Address	Box 694 Greensburg, KS 67054
ALLTEL Entity	ALLTEL COMMUNICATIONS, LLC
Executed date	TBD
Commencement date	Upon full execution
Term ¶	Remainder of current term ending, 02/08/2012, with three, 5 year renewal terms remaining
Renewal Language ¶	No change
Rent ¶ 2	Current Rent - \$800.00/month <del>First Amendment - \$300.00/month</del> New Rent Amount - \$1,100.00/month - <b>\$500 increase</b>
Escalation ¶	No change
Antenna/Ground Restrictions ¶ 1	First Amendment adds leased area in building (Suite 501) 12' x 17' (\$1.47 sq. ft.)  Rooftop Agreement: Two (2) Antel LPA-80063-8 Four (4) Antel LPA-80063-8-5 Two (2) lines of 1-5/8" coax Four (4) lines of 7/8" coax
Assignment ¶	No change
Sublease ¶	No change
Termination ¶	No change
Monetary Termination ¶	No change
Post Termination	No change
Language ¶	No change
Holdover Provisions ¶	No change
Indemnification ¶	No change
Interference ¶	No change
Prime Lease	No change
Comments	This amendment is for additional leased premises, Suite 501 in bank building (12' x 17')
Change to standard lease	
Contract Negotiated by	Kathi Rogers - 905-1418
Contract Approved by	Tory Cruse - 905-8586

**FIRST AMENDMENT TO  
BUILDING ATTACHMENT COMMUNICATIONS SITE LEASE**

**THIS FIRST AMENDMENT TO BUILDING ATTACHMENT COMMUNICATIONS SITE LEASE** ("Amendment") is made and entered into this 8<sup>th</sup> day of February, 2008, by and between **VARSITY SQUARE, LLC**, a Nevada LLC, successor in interest to ACP BA, LLC ("Owner") and **ALLTEL Communications, LLC** formerly known as **ALLTEL Kansas Limited Partnership** ("Tenant") (the "parties").

**WHEREAS**, on the 4th day of December, 2006, Owner and Tenant entered into that certain Building Attachment Communications Site Lease; and

**WHEREAS**, the parties wish to amend the lease to allow for additional space to be leased to Tenant for additional monthly rent;

**NOW THEREFORE**, Owner and Tenant by mutual consent do hereby agree to amend the Lease as follows:

1. Exhibit "C" of the Lease is hereby deleted and replaced in its entirety with the attached Exhibit "C-1," to include the additional leased premises, specifically a 12' x 17' space (Suite 501) in the bank building.
2. Paragraph 5 of the Lease, entitled Rent, states that the rental consideration is Eight Hundred Dollars and Zero Cents (\$800.00) per month. As of the date this First Amendment is fully executed by the parties, the Rent shall increase by Three Hundred Dollars and Zero Cents (\$300.00) per month to One Thousand One Hundred Dollars and Zero Cents (\$1,100.00) per month.
3. Except as amended hereby the Agreement shall remain in full force and effect in accordance with the original terms and provisions, and the Agreement is ratified and confirmed a valid and existing agreement between the parties.
4. In the event of a conflict between the terms of this First Amendment and the terms of the Agreement, the terms of this First Amendment shall control. All of the defined terms in the Agreement shall have the same definitions in the First Amendment, unless otherwise defined herein.
5. This Amendment shall be binding upon and inure to the benefit of each of the parties hereto, their respective heirs, executors, administrators, legal representatives, successors and assigns.

IN WITNESS WHEREOF, Owner and Tenant have executed the Amendment as of the date year first above written.

OWNER: VARSITY SQUARE, LLC

Witness(es):  
Jay Salter  
Debra O'Leary

By: *Gregory B. Starks*  
Name: Gregory B. Starks  
Title: Facility Manager

Witness(es):  
Michelle Purice  
Sharon Pruitt

TENANT: ALLTEL Communications, LLC  
By: *James E. McDonald*  
Name: James E. McDonald  
Title: Vice President - Network Services

OWNER ACKNOWLEDGMENT

STATE OF KANSAS,  
COUNTY OF FORD,

I, Betty Ann South, a Notary Public of the County and State aforesaid, certify that Gregory B. Starks personally appeared before me this day and acknowledged that he/she is Dodge City, Kansas Facility Manager of Varsity Square, LLC, a Nevada limited liability company, and that by authority duly given and as the act of the said limited liability company, the foregoing instrument was signed in its name.

WITNESS my hand and notarial seal this 5<sup>th</sup> day of February, 2008.

My Commission Expires: July 12, 2011  
SEAL

*Betty Ann South*  
Notary Public



TENANT ACKNOWLEDGMENT

STATE OF ARKANSAS  
COUNTY OF PULASKI

I, Jennifer Kaucher, a Notary Public of the County and State aforesaid, certify that James E. McDonald personally appeared before me this day and acknowledged that he/she is Vice President-Network Services of Alltel Communications, LLC, a Delaware corporation, and that by authority duly given and as the act of the said corporation, the foregoing instrument was signed in its name.

WITNESS my hand and notarial seal this 5<sup>th</sup> day of February, 2008.

My Commission Expires: January 31, 2011  
SEAL

*Jennifer Kaucher*  
Notary Public





Intracompany Transmittal for review and approval of contracts

DATE: December 11, 2008  
 TO: James E. McDonald  
 THROUGH: Gigi Good *gh*  
 FROM: Rick Cossey/ Md7 - Catherine Abejar *rc*  
 SUBJECT: Strategic Relocation - Second Amendment

Please review the abstract of the agreement provided below. If it meets your approval, please sign the attached agreements where indicated and return to me. Feel free to contact me with any questions or concerns at extension 2175. Thanks!

Type of instrument	Second Amendment to Building Attachment Communications Site Lease (Rooftop) (3)
Changes to Standard Lease	This is the standard Second Amendment to Building Attachment Communications Site Lease (Rooftop) with no changes
ALLTEL Site Name:	Dodge City #4 - Atlas # 196378143
Lessor Site Reference:	Dodge City #4
Market /Company #/Job No.	KS/Kansas- All RSA's (Cellular) / CO # 404 / Job #740455062
Lessor/Licensor Entity Name:	Varsity Square, LLC
Lessor/Licensor Vendor No:	18341273
Lessor/Licensor Notice Address	Varsity Square, LLC, 2300 1st Ave, Dodge City, KS 67801-2527 Phone: (620) 227-2129
Lessor/Licensor Remit Address:	Varsity Square, LLC, ATTN: Property Manager, 2300 1st Ave, Dodge City, KS 67801-2527
ALLTEL Entity	Alltel Communications, LLC
New Commencement Date	Second Amendment: February 9, 2009
New Term	Initial term of 5 years with 5 additional Renewal Terms of 60 months each. Initial Term: 2/9/2009 - 2/8/2014 1 <sup>st</sup> Renewal: 2/9/2014 - 2/8/2019 2 <sup>nd</sup> Renewal: 2/9/2019 - 2/8/2024 3 <sup>rd</sup> Renewal: 2/9/2024 - 2/8/2029 4 <sup>th</sup> Renewal: 2/9/2029 - 2/8/2034 5 <sup>th</sup> Renewal: 2/9/2034 - 2/8/2039
New Renewal Language	Automatically renews unless Alltel provides 90 day prior written notice of election NOT TO renew.
Current Rent - Section 5(a)	\$1,100.00 per month ✓
New Rent	\$900.00 per month ↓ \$200
Current Escalation - Section 5(b)	CPI every term (5 years), not to exceed 5% per annum ↓
New Escalation	10% beginning on each Renewal Term. Initial Term: 2/9/2009 - 2/8/2014 - \$900.00 per month 1 <sup>st</sup> Renewal: 2/9/2014 - 2/8/2019 - \$990.00 per month 2 <sup>nd</sup> Renewal: 2/9/2019 - 2/8/2024 - \$1,089.00 per month 3 <sup>rd</sup> Renewal: 2/9/2024 - 2/8/2029 - \$1,197.90 per month 4 <sup>th</sup> Renewal: 2/9/2029 - 2/8/2034 - \$1,317.69 per month 5 <sup>th</sup> Renewal: 2/9/2034 - 2/8/2039 - \$1,449.46 per month
Current Termination	No Voluntary Termination ¶ 13(a): by either party for uncured default after 30 days of receipt of notice by other party; ¶13(b): by Alltel if unable to obtain or maintain any required governmental permit; ¶13(c): by Alltel if premises are damaged so as to render ineffective use of the site; ¶13(d) by Alltel upon 6 months' written notice if in tenant's judgment design or technology changes render site obsolete or unnecessary (6 months rent due w/ this option); ¶28: Upon 30 days written notice for default.
New Termination	Alltel may terminate at any time upon 12 months written notice to Owner; Alltel may terminate sooner as long as within 30 days after date of termination, Alltel pays Owner lump sum equal to the Rent owing through the date that was 12 months after Alltel first gave termination notice.
Negotiated by:	Rick Cossey -- (501) 905-2175
Approved by:	Gigi Good -- (501) 905-6635

Site ID: 196378143  
Site Address: 619 North 2<sup>nd</sup> Avenue  
Dodge City, KS 67801

**SECOND AMENDMENT TO  
BUILDING ATTACHMENT COMMUNICATIONS SITE LEASE  
(ROOFTOP)**

**THIS SECOND AMENDMENT TO BUILDING ATTACHMENT COMMUNICATIONS SITE LEASE (ROOFTOP) ("Second Amendment")** is made by and between Varsity Square, LLC, a Nevada limited liability company, as successor in interest to ACP BA LLC, a California limited liability company (together with its successors and assigns, "**Owner**"), and Alltel Communications, LLC, a Delaware limited liability company, as successor in interest to ALLTEL Kansas Limited Partnership (together with its successors and assigns, "**Tenant**").

**RECITALS**

WHEREAS, Owner and Tenant (or their predecessors in interest) entered into that certain Building Attachment Communications Site Lease (Rooftop), dated December 4, 2006, as amended by First Amendment to Building Attachment Communications Site Lease, dated February 8, 2008 (collectively, the "**Lease**"), whereby Owner leased to Tenant certain site described therein, together with any and all other space currently utilized by Tenant (the "**Site**"), that are a portion of the property located at 619 North 2<sup>nd</sup> Avenue, Dodge City, KS 67801 (the "**Premises**");

WHEREAS, Owner and Tenant have agreed to reduce Tenant's Rent (defined below) obligations under the Lease in exchange for a longer termination notice period to be provided by Tenant; and

WHEREAS, Owner and Tenant, in their mutual interest, wish to amend the Lease to accomplish the foregoing on the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the foregoing Recitals which are incorporated herein by this reference, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner and Tenant hereby agree as follows:

1. **Term.** The current term of the Lease (whether such term is the initial term, a renewal term or a modified term) hereby is extended so that, commencing on February 9, 2009 (the "**Extension Date**"), such current term shall continue for sixty (60) months (the "**Modified Term**"), expiring on February 8, 2014 (the "**New Expiration Date**"). Rent for any partial month or partial year of the current term prior to the Extension Date shall be prorated. Tenant shall have the right to renew the Lease for up to five (5) additional sixty (60) month periods (each, a "**Renewal Term**"). Each Renewal Term automatically shall commence, on the same terms and conditions of the Lease, without further action by Tenant, unless Tenant provides Owner with written notice of its intention not to renew the Lease at least ninety (90) days prior to the end of the Modified Term or any Renewal Term.

2. **Modification of Rent.** Commencing on the Extension Date, the rent payable under the Lease for the Modified Term shall be \$900.00 per month ("**Rent**"), subject to adjustments as provided herein. The Rent shall be paid monthly to Owner, in advance throughout the Modified Term. Commencing on the first day of each Renewal Term, if any, Rent shall be increased by 10% of the Rent in effect immediately prior to the adjustment date.

3. **Termination Notice.** Tenant may terminate the Lease at any time upon twelve (12) months prior written notice to Owner; provided, however, that Tenant may terminate the Lease sooner so long as, within thirty (30) days after the date of termination, Tenant pays to Owner a lump sum amount equal to the amount Owner otherwise would have received had Tenant paid to Owner the amount of Rent owing through the date that was twelve (12) months after Tenant first gave Owner the notice of termination.

4. **Notices.** All notices, requests, demands and communications under the Lease will be given by first class, certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid. Notices will be addressed to the parties as follows: (i) as to Tenant: Alltel Communications, LLC, ATTN: Network Property Management Department B2F02-A, P.O. Box 2177, Little Rock, AR 72203-2177; Hand Delivery Address: Alltel Communications, LLC, ATTN: Network Property Management Department, Building II, Floor 2-A, One Allied Drive, Little Rock, AR 72202 and (ii) as to Owner: Varsity Square, LLC, 2300 1<sup>st</sup> Avenue, Dodge City, KS 67801-2527. Either party hereto may change the place for the giving of notice to it by not less than thirty (30) days prior written notice to the other party as provided herein.

5. **Other Terms and Conditions Remain.** In the event of any inconsistencies between the Lease and this Second Amendment, the terms of this Second Amendment shall govern and control. Except as expressly set forth in this Second Amendment, the Lease otherwise is unmodified and remains in full force and effect. This Second Amendment may be executed in multiple counterparts, and signatures sent by facsimile or email may be treated as original signatures.

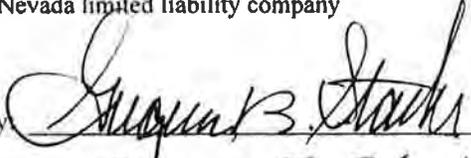
6. **Miscellaneous.** Owner acknowledges that: (a) Owner has read and understands this Second Amendment and the underlying Lease and (b) Owner has been advised and is informed that should Owner not enter into this Second Amendment, the underlying Lease between Owner and Tenant, including any termination or non-renewal provisions therein, will remain in full force and effect.

(Signature Page Follows)

**IN WITNESS WHEREOF**, the parties have caused their properly authorized representatives to execute and deliver this Second Amendment effective as of the date below ("**Effective Date**").

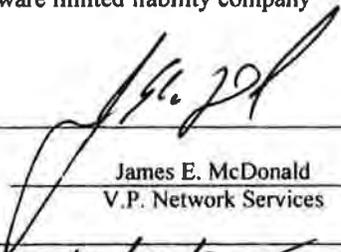
OWNER:

Varsity Square, LLC,  
a Nevada limited liability company

By:   
Name: Gregory B. Starks  
Title: Facility Manager

TENANT:

Alltel Communications, LLC,  
a Delaware limited liability company

By:   
Name: James E. McDonald  
V.P. Network Services  
Title: \_\_\_\_\_  
Date: 12/15/08

# PSA Dodge City Telecom Easement & Leases 2-20-2021

Final Audit Report

2021-02-24

Created:	2021-02-19
By:	Peter L. Donovan (peter@donovan.name)
Status:	Signed
Transaction ID:	CBJCHBCAABAAARVPub8vI2JNQ5NBNITu_fixBHK0n5jg

## "PSA Dodge City Telecom Easement & Leases 2-20-2021" History

-  Document created by Peter L. Donovan (peter@donovan.name)  
2021-02-19 - 11:46:48 PM GMT- IP address: 70.114.217.166
-  Document emailed to Chiye Onodera Duffy (chiyeduffy@gmail.com) for signature  
2021-02-19 - 11:49:02 PM GMT
-  Email viewed by Chiye Onodera Duffy (chiyeduffy@gmail.com)  
2021-02-21 - 5:44:26 AM GMT- IP address: 66.249.88.147
-  Email viewed by Chiye Onodera Duffy (chiyeduffy@gmail.com)  
2021-02-24 - 2:59:29 AM GMT- IP address: 66.249.88.141
-  Document e-signed by Chiye Onodera Duffy (chiyeduffy@gmail.com)  
Signature Date: 2021-02-24 - 3:11:20 AM GMT - Time Source: server- IP address: 72.239.215.22
-  Agreement completed.  
2021-02-24 - 3:11:20 AM GMT