

**CITY COMMISSION AGENDA
WORK SESSION**

City Hall Commission Chambers

Monday, June 15, 2009

5:30 p.m.

MEETING #4763

CALL TO ORDER

ROLL CALL

EXECUTIVE SESSION: Discuss Property Acquisition (approximately 15 minutes)

NEW BUSINESS

1. Amendment to the Smoking Ordinance
2. Friends of the Zoo funding recommendation
3. Discussion of procedures for City action related to construction of Special Events Center

ADJOURNMENT

No formal action will be taken during this Work Session

**ORDINANCE ESTABLISHING SMOKING RESTRICTIONS IN
THE CITY OF DODGE CITY, KANSAS**

WHEREAS, K.S.A. 21-4013 authorizes Cities to regulate smoking within their boundaries, so long as such regulations are at least as stringent as those imposed by the provisions of K.S.A. 21-4009 through 21-4014 (the “Act”), and

WHEREAS, the governing body of the City of Dodge City, Kansas (the “City”), recognizes that smoking and secondhand smoke pose serious public health hazards, that patrons and employees of businesses and industries, as well as persons frequenting public places, need protection from tobacco smoke exposure, and that regulation of the smoking and burning of tobacco in public places and places of employment and business is imperative in order to protect the public health and welfare of the citizens of the City;

WHEREAS, the provisions of K.S.A. 21-4010 presently provides, “Where smoking areas are designated, existing physical barriers and ventilation systems shall be used to minimize the toxic effect of smoke in adjacent nonsmoking areas”, and

WHEREAS, the City desires to more clearly define prohibited and designated smoking areas, and their requirements for a more stringent regulation regarding designated areas as authorized by the Act:

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

Section 1. Definitions: As used in this **Ordinance**:

- (a) **“Lottery Gaming Enterprise”** means a building used for the purposes of operating, managing and maintaining lottery facility games and related services or operations as authorized pursuant to K.S.A. 74-8701 et seq. as may be amended from time to time, within which space a mechanical ventilation handling system is installed utilizing pressurization, ventilation, filtration and separation to minimize the drifting, permeation, or re-circulation of smoke from any smoking portions of such building into the remainder of the building in accordance with a policy designating permitted smoking areas within such building which has been approved by the Building Inspector of the City of Dodge City.
- (b) **“Private Club”** means premises so licensed by the State of Kansas, where alcoholic liquor by the individual drink is sold, and private paid membership is required. Defined as a “Class A Club or a “Class B Club” pursuant to K.S.A. 41-2601 (e) & (f).
- (c) **“Public place”** means ***enclosed indoor areas open to the public*** or used by the general public including but not limited to: Restaurants, retail stores, public means of mass transportation, passenger elevators, health care institutions or any other place where health care services are provided to the public, educational facilities, libraries, courtrooms, state, county or municipal buildings, restrooms, grocery stores, school buses, museums, theaters, auditoriums, arenas and recreational facilities.

- (d) “Public meeting” includes all meetings open to the public.
- (e) “Smoking” means possession of a lighted cigarette, cigar, pipe or any other lighted smoking equipment partially or wholly consisting of or containing burning vegetation that is used for the introduction of smoke from the burning vegetation into the human body. For the purposes of this definition, the term vegetation includes, but is not limited to, tobacco.

Section 2. Prohibition of Smoking in Public Places: Smoking is prohibited in enclosed, in-door, public places within the City of Dodge City. It is unlawful for any person to engage in smoking, or any business to permit smoking in any enclosed, in-door, public place, or outside of any public place, within 10 feet of the primary public entrances or exits, except as provided by in this ordinance.

* Exemptions:

1. Any un-enclosed, outdoor area which is at least 10 feet from any building entrance or exit.
2. Owner designated hotel or motel rooms.
3. Private Non-Business Residences.
4. Private Clubs (as per Section 1 definition) requiring paid memberships which complies with signage provisions of this ordinance.
5. Smoking areas as designated by proprietors or other persons in charge of public places, which are permitted and inspected by the City, and comply with the provisions of this ordinance.
6. A Lottery Gaming Enterprise as defined in Section 1 which complies with the signage provisions of the ordinance.

Section 3. Posting smoking prohibited signs, designated smoking area signs, and smoking allowed in this facility signage: The proprietor or other person in charge of the premises of a public place shall:

- (a) Post or cause to be posted in a conspicuous place signs clearly stating that smoking is prohibited by state law at each entrance and within the building or other areas where smoking is prohibited. The proprietor(s) or other person in charge of the premises shall also post or cause to be posted any designated smoking signs stating that smoking is permitted in such room or area, or facility.
- (b) Signs permitting or prohibiting smoking shall have bold lettering of not less than one (1) inch in height. The international “No Smoking” symbol may also be used (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it).

Section 4. Proprietor’s Responsibility: The proprietor or other person in charge of the premises of a public place shall:

- (a) Meet all signage requirements
- (b) Advise any person smoking in a prohibited smoking area that he or she is in violation of the city ordinance. If said person does not refrain from smoking after being asked to do so, the proprietor or other person in charge of the premises shall then ask that person to leave. If the offending person refuses to leave, the proprietor shall handle the situation

consistent with lawful methods for handling persons acting in a disorderly manner or as a trespasser.

- (c) Remove all ashtrays and other smoking paraphernalia from prohibited smoking areas.
- (d) In cases where the business is located within a facility larger than the area used for said business, that business must comply with all physical separation and ventilation standards to minimize the drifting, permeation, or re-circulation of smoke from any separate designated smoking area into the adjacent or connected areas.

Section 5. Violations and Penalties: It shall be unlawful for any person subject to regulation under this ordinance to fail to comply with any of its provisions.

- (a) Any person found guilty of smoking in violation of this ordinance is guilty of a misdemeanor punishable by a fine of not more than \$50 for each violation.
- (b) Any person, who owns, manages, operates or otherwise controls the use of any place of business found guilty of failing to post signs as required by this ordinance, is guilty of a misdemeanor punishable by a fine of not more than \$100 for the first violation.
- (c) Any person, who owns, manages, operates or otherwise controls the use of any place of business found guilty of violating any provision of this ordinance, is guilty of a misdemeanor punishable by a fine of not more than \$100 for the first violation, and \$ 200 for any second violation within a one (1) year period of the first violation.
- (d) In addition to the fines established by this Section, violation of the ordinance by a person having control of a place of business may result in the suspension or revocation of any **City permit or City license** issued for the premises on which the violation occurred.

Section 6. Enforcement:

- (a) The authority to administer the provision of this ordinance shall be vested in the Building Inspector of the City of Dodge City and his or her duly authorized representative(s), and whenever the need arises, the Chief Building Official and his or her representative(s), may call upon the Dodge City Police Department, and other departments of the City to aid in the enforcement of the ordinance.
- (b) The Building Inspection Department and other such City departments shall while an establishment is undergoing otherwise mandated inspections, inspect for compliance of this ordinance, and each such department may also enforce the provisions of this ordinance through investigation of complaints filed, and unannounced inspection of the premises regarding compliance with this ordinance.
- (c) Any person may register a complaint under this ordinance to initiate enforcement with the Inspection Department.
- (d) Any owner, manager, operator or employee of any premises regulated by this ordinance shall be responsible for informing persons violating the provisions of this ordinance through appropriate notice and signage.

Section 7. Designated Smoking Provisions: In areas of public places where smoking is allowed under the provisions of this Ordinance and which have been so designated by the proprietor or other person in charge, physical barriers and ventilation systems applicable to such designated smoking area shall comply with the following requirements:

- (a) Be enclosed on all sides by solid, impermeable walls or windows extending from floor to ceiling with self-closing doors or entryway constructed in such a manner so as to minimize the effect of tobacco smoke within the remainder of the facility; and

- (b) Shall be posted as a Designated Smoking Area; and
- (c) Access to which shall be restricted to the employees, customers, clients or vendors of the facility; and
- (d) In which shall be maintained a negative air pressure, meaning more air is exhausted from the area than is directly supplied to the area by the heating, ventilation, and air conditioning (HVAC) system; and
- (e) In which shall be maintained a ventilation system which exhausts air from the room directly to the outdoors; and
- (f) Into which employees, customers, clients or vendors shall not be required against their will to enter or pass through when occupied by smokers.

Section 8. Required Registration of a Designated Smoking Area: Smoking shall not be allowed in such designated smoking areas or business facilities, until the area has been registered as a designated smoking area with the Building Inspector of the City of Dodge City on registration forms provided by the City and the City has verified compliance with this Ordinance.

Section 9. Implementation of Requirements: The Building Inspector of the City shall develop specific rules and regulations to implement the above requirements of this Ordinance.

Section 10. Severability: If any provision, clause, sentence or paragraph of the Act or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of the Ordinance are declared to be severable.

Section 11. Effective Date: Except for the provisions of Section 7, this Ordinance shall become effective from and after publication in the Dodge City Daily Globe. The provisions of Section 7 shall be effective from and after April 1, 2009.

Originally adopted the 15th day of September, 2008 by the City Commission of Dodge City, Kansas and amended this ____ day of June, 2009, by the City Commission of Dodge City, Kansas.

June 10, 2009

MEMO

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

FROM: Nannette Pogue, Finance Director/City Clerk *mp*

SUBJECT: Utility Roundup Program

At the last City Commission meeting, the Friends of the Zoo asked the City Commission to consider changing the funding received from the Utility Bill Roundup Program to go to them to support their funding of the zoo. Currently, the funds received from the Utility Bill Roundup Program go to The Alley.

When the program originally started, these funds did go to the Friends of the Zoo. Sometime in the early 2000's the City Commission approved that the funding from the Utility Bill Round-up Program go to The Alley. When the utility round up first started with the Friends of the Zoo, the collections were somewhere between \$3,000 and \$4,000 per year. After a couple of years, people lost interest, or forgot to round up the utility bill for this purpose. So, when the Alley asked for the funds to be given to them, the Friends of the Zoo agreed thinking a new program would have new interest for people to round up their bill. The same thing occurred with The Alley; the round-up started with large collections then dwindled down. In 2004, The Alley, in addition to the round-up, signed an agreement with the City that if they would solicit pledges, the City would bill these pledges monthly on the utility bills. These pledges generated more revenue for The Alley than the Round-up Program alone did.

Currently, the City collects approximately \$615.00 per month from approximately 150 customers from the pledges. Only a handful of funds, approximately \$30 per month is collected through the Round-up Program.

Staff's recommendation to the request from Friends of the Zoo to request the Utility Round Up funds is:

1. To keep the current pledges from the Alley active and have those funds continue to go to The Alley.
2. Approve an agreement with Friends of the Zoo, with the same provisions as the one with the Alley to allow Friends of the Zoo to solicit pledges from businesses and individuals served by City Utilities, designating those funds to go to the Friends of the Zoo.

3. The money collected voluntarily through the round-up program could go either $\frac{1}{2}$ to each organization, or entirely to either The Alley or the Friends of the Zoo.

Currently the utility billing program will accommodate the pledges going to the organization of the customer's choice in the pledge program.

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

CITY COMMISSION AGENDA

City Hall Commission Chambers

Monday, June 15, 2009

7:00 p.m.

MEETING #4764

CALL TO ORDER

ROLL CALL

INVOCATION: Church of God in Christ

PRESENTATION OF FLAG: VFW Post 1714

PLEDGE OF ALLEGIANCE

PUBLIC HEARING: Edward Byrne Memorial Justice Assistant Grant

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, June 1, 2009
2. Appropriation Ordinance No. 12, June 15, 2009
3. Cereal Malt Beverage License
 - a. Mariah Hills Golf Course, 1800 Matt Down Lane, Dodge City
 - b. Love's Travel Stops & Country Stores, Inc., 400 E. Wyatt Earp, Dodge City
 - c. Ban Lao Garden, 102 W. Wyatt Earp, Dodge City
 - d. Southwest Sports, Inc., 600 Ross Blvd (Legends Park), Dodge City
 - e. Wal-Mart, 1905 N. 14th Street, Dodge City

ORDINANCES & RESOLUTIONS

Ordinance No. 3474: Amending present Smoking Ordinance

Resolution 2009-15: A Resolution authorizing filing of application with the Kansas Department of Health and Environment for a Loan under the Kansas Water Pollution Control Revolving Fund Act (K.S.A. 1988 Supp. 65-3321 through 65-3329).

UNFINISHED BUSINESS

NEW BUSINESS

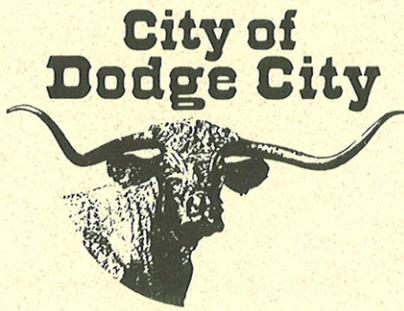
Agreement with Kansas Department of Transportation (KDOT) ARRA Funds for expansion joint replacement on 14th Street Bridge. Presented by Joe Finley, Director of Engineering Services.

Approval of bid for Library Roof Project. Presented by Mike Klein, Superintendent of Public Works.

Approval of contract to provide Engineering Services for Bicycle Pedestrian Path. Presented by Paul Lewis, Director of Parks and Recreation.

OTHER BUSINESS

ADJOURNMENT



POLICE DEPARTMENT

110 W. Spruce
Dodge City, Kansas 67801-4423
Phone 620-225-8126
Fax 620-225-8117

June 8, 2009

To: Ken Strobel
Cherise Tieben

From: John K. Ball

RE: Edward Byrne Memorial Justice Assistance Grant/2009 Local Solicitation

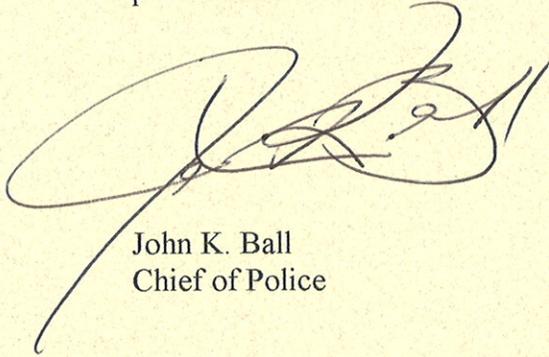
The U. S. Department of Justice has informed the Police Department that we are eligible for another \$24,687 in grant funds under the Edward Byrne Memorial grant program. This grant does not require a local match. The grant provides funds for law enforcement for use in a number of specifically listed areas. It is our plan to use these funds for the purchase of a truth verification system (Computer Voice Stress Analyzer) and an updated digital dictation system.

As investigations into criminal acts have increased, specifically in the areas of gang violence and narcotics, the need for immediate access to a truth verification system to aid in the interview of witnesses and the interrogation of suspects has become increasingly evident. The Computer Voice Stress Analyzer is a system we have had access to through the Sheriff's Department until recently with the retirement of Arlyn Leaming. To purchase the system it will cost \$9,195. This cost includes the training of two operators. These operators will be chosen from current Police Department certified officers. The system will also be used for hiring and internal affairs issues, and will be available to other departments in the city should the need arise. I have also assured Sheriff Bush that the system would be available to the Ford County Sheriff Department as well. Included in the grant will also be \$1,500 for travel, lodging and meals for the two operators while at training.

The Police Department's current dictation system for report narratives is outdated and no longer produced or supported. If it were to fail, repair of the system would be difficult at best if not impossible. Due to budget considerations we have taken replacement of the system out of the proposed budget for the last two years. Working with Ryan Reid, it is projected a new system including server will cost approximately \$18,000 to \$20,000. We

are proposing to use the balance of the grant funds (\$13,992) plus budget or seizure funds to purchase a new digital dictation system.

These two purchases will directly support initiatives of the Police and Sheriff departments including efforts involving JAG and other justice related funds. This Byrne grant will be administered by Lt. Mellecker. If you have need of further information, please let me know.

A handwritten signature in black ink, appearing to read 'J. K. Ball', is written over the typed name and title.

John K. Ball
Chief of Police

CITY COMMISSION MINUTES

City Hall Commission Chambers

Monday, June 1, 2009

7:00 p.m.

MEETING #4762

CALL TO ORDER

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

INVOCATION: Dave Smith, Church of God in Christ

PLEDGE OF ALLEGIANCE

PETITIONS & PROCLAMATIONS

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

City Character Trait: Justice vs Corruption. Presented by Nannette Pogue, City Clerk.

Friends of the Zoo: Dennis Bell asked the City to consider returning the Utility Roundup funds to the Friends of the Zoo. Also discussed activities and fundraisers at the zoo.

Bill Miller: put in a good word for the zoo. Talked about what's going on in Dodge City and Ford County.

CONSENT CALENDAR

1. Approval of City Commission Meeting minutes, May 18, 2009
2. Approval of Joint City/County Commission Meeting minutes, May 26, 2009
3. Appropriation Ordinance No. 11, June 1, 2009
4. Cereal Malt Beverage License
 - a. Pizza Hut #103, 1513 W. Wyatt Earp, Dodge City
 - b. Pizza Hut #104, 110 Frontview, Dodge City
5. 14th Ave Reconstruction Change Order Decrease in the amount of \$12,186.75

Commissioner Broeckelman moved to approve the Consent Calendar as presented, seconded by Commissioner Smoll. The motion carried unanimously.

ORDINANCES & RESOLUTIONS

Resolution 2009-14: A Resolution for the Temporary Suspension and Waiver of Certain Provisions of Ordinance No. 2838 and the Uniform Fire Code Pertaining to the Discharge of Fireworks within the City Limits of the City of Dodge City, Kansas. Commissioner Sherer moved to approve Resolution No. 2009-14, seconded by Commissioner Weber. The motion carried unanimously.

UNFINISHED BUSINESS

The Commission discussed additional information for St. Mary's Soccer Complex Playground Proposals. The bid from Fry & Associates, for the Play World Systems, Option #5 in the amount of \$11,172.00 plus allowing additional equipment purchases for younger children to use was approved on a motion by Commissioner Broeckelman, seconded by Commissioner Smoll. The motion carried unanimously.

NEW BUSINESS

1. The bid for asphalt overlay on Wilroads Garden Road and Butter & Egg Road from APAC, Kansas Inc. in the amount of \$140,219.75 was approved in a motion by Commissioner Weber, seconded by Commissioner Sherer. The motion carried unanimously.
2. Authorization to negotiate a contract with Sloan Meier Hancock for a Traffic Impact Study of Fairway Drive Extension to US 50 was approved on a motion by Commissioner Broeckelman, seconded by Commissioner Weber. The motion carried unanimously.
3. The City entered into an agreement with BG Consultants to perform necessary design to enable the City to provide bidding documents to replace the expansion joint replacement on the East Bridge on 14th Street. The agreement was approved on a motion by Commissioner Smoll, seconded by Commissioner Sherer. Motion carried unanimously.

OTHER BUSINESS

Ken Strobel:

- World of Outlaws will be in Dodge City on June 12th & 13th
- Received preliminary Final Plat for Mariah Hills Addition and will be reviewing dedication of roads and easements for Special Events Center
- Working on an agreement for Inspection Services at Casino
- Meeting with Glenn Kerbs and Brad Ralph to review a draft of the development agreement

- Moving along on construction of Events Center. City staff has been advised by Global that an editorial had appeared in Wenatchee, Washington, newspaper critical of Global's operation of their Center.

Brian Weber:

- Recovery of Police Docket Book by the FBI

Jim Sherer:

- KS League of Municipalities Governing Body will be meeting in Dodge City next week
- Last weekend attended NLC Human Development Steering Committee

Monte Broeckelman:

- Looked like Legends Field was in full operation this weekend

Kent Smoll:

- Thanked Paul Lewis for the exceptional presentation of the cemetery grounds this year
- Thanked George Laughead for assistance with the recovery of the Dodge City Police Docket Book

Mayor Sowers:

- Thanked City staff for State of the City Address
- Donations for this years Fireworks display are currently being accepted
- Friends of the Zoo, Saturday, June 6th, 12:00-3:00 p.m.
- Commissioner Weber, CFAB members Jim Lembright and Justin Banning, and City Staff will be attending a Global facility in Prescott Valley, AZ June 3rd-5th.

ADJOURNMENT: Commissioner Smoll moved to adjourn the meeting, seconded by Commissioner Weber.

Rick Sowers, Mayor

ATTEST:

Nannette Pogue, City Clerk

(Corporate Application Form)

APPLICATION FOR LICENSE TO RETAIL CEREAL MALT BEVERAGES

Dodge City, Kansas COUNTY, KANSAS, 67801

TO THE GOVERNING BODY OF THE CITY OF Dodge City, KANSAS,

or

THE BOARD OF COUNTY COMMISSIONERS OF Ford COUNTY, KANSAS.

GENTLEMEN—On behalf of the Mariah Hills Golf Course

corporation whose principal place of business is golf pro shop

and under authority of the resolution of the Board of Directors of said corporation. I hereby apply for a license to retail cereal malt beverages in conformity with the laws of the State of Kansas and the rules and regulations prescribed and hereafter to be prescribed by you relating to the sale or distribution of cereal malt beverages on behalf of said corporation; for the purpose of securing such license, I make the following statements under oath:

1. The proposed licensee is City of Dodge City DBA Mariah Hills Golf Course corporation with principal place of business at 806 Second Ave, Dodge City, KS 67801

The resident agent is Paul Lewis

with offices at 240 San Jose

Said corporation was incorporated on A copy of the Articles of Incorporation are presently on file with the Register of Deeds of this County. Yes (), No ().

2. The following are the full and complete list of officers, directors, stockholders owning in the aggregate more than 25 percent of corporate stock, and managers of said corporation together with their position and address, age, date of birth, place of birth, method of acquiring United States citizenship—if acquired by naturalization, date and place of naturalization, and the length of residence in the State of Kansas.

(Empty lines for listing officers, directors, stockholders, and managers)

3. The premises for which the license is desired are located at 1800 Matt Down Lane Dodge City KS 67801

(a) The legal description of the premises is

(b) The street number is

(c) The building is described as Golf Course pro shop

(d) The corporate business under the license will be conducted in the name of the corporation or in the following name:

City of Dodge City Mariah Hills Golf Course

4. The name and address of the owner or owners of the premises upon which the place of business is located is 1800 Matt Down Lane Dodge City, KS 67801

5. I hereby certify with regard to each of the persons named in number 2 above the following statements are true:

(a) None of them has within the last two years from this date been convicted of

- (1) A felony
(2) A crime involving moral turpitude
(3) Drunkenness
(4) Driving a motor vehicle while under the influence of intoxicating liquor
(5) Violation of any state or federal intoxicating liquor law

If any of the above have been convicted of any of the above specified offenses, the details are set out hereinafter.

(b) No manager, officer or director or any stockholder owing in the aggregate more than 25% of the stock of the corporation has been an officer, manager or director, or a stockholder owning in the aggregate more than 25% of the stock of a corporation which:

- (A) has had a retailer's license revoked under K.S.A. 41-2708 and amendments thereto; or
(B) has been convicted of a violation of The Drinking Establishment Act or the Cereal Malt Beverage Laws of the State.

6. The place of business will be conducted by the following manager or agent:

Name Paul Lewis

Address Box 880

Residence 2701 Buffalo Dodge City, KS

Length of residence within this city or county in which the ap- 67801

plication is being made 16 years

Method of obtaining U.S. citizenship together with date of naturalization if such is the method

Date and place of birth

I hereby certify that with regard to this above-named manager the statement contained in number 5 above is in every respect true. If not, the details are set out hereinafter.

7. This application is for a license to retail cereal malt beverages for consumption on the premises. () For a license to retail cereal malt beverages in original and unopened containers and not be consumption on the premises. ()

A license fee of \$ 225.00 is enclosed herewith.

225.00
225.00

(Corporate Application Form)

APPLICATION FOR LICENSE TO RETAIL CEREAL MALT BEVERAGES

Dodge City, Ford COUNTY, KANSAS, May 21st, 2009
TO THE GOVERNING BODY OF THE CITY OF Dodge City, KANSAS,

THE BOARD OF COUNTY COMMISSIONERS OF Ford COUNTY, KANSAS.

GENTLEMEN—On behalf of the Love's Travel Stops & Country Stores, Inc.
corporation whose principal place of business is Love's Country Store #602

and under authority of the resolution of the Board of Directors of said corporation. I hereby apply for a license to retail cereal malt beverages in conformity with the laws of the State of Kansas and the rules and regulations prescribed and hereafter to be prescribed by you relating to the sale or distribution of cereal malt beverages on behalf of said corporation; for the purpose of securing such license, I make the following statements under oath:

- 1. The proposed licensee is Love's Travel Stops & Country Stores, Inc.
2. The following are the full and complete list of officers, directors, stockholders owning in the aggregate more than 25 percent of corporate stock, and managers of said corporation...
3. The premises for which the license is desired are located at 400 E. Wyatt Earp Dodge City, KS 67801
4. The name and address of the owner or owners of the premises upon which the place of business is located is Love's Travel Stops & Country Stores, Inc. P.O. Box 24210, Oklahoma City, OK 73126
5. I hereby certify with regard to each of the persons named in number 2 above the following statements are true:
6. The place of business will be conducted by the following manager or agent: Darren Newton, P.O. Box 288, Cimarron, KS 67838
7. This application is for a license to retail cereal malt beverages for consumption on the premises. (X) For a license to retail cereal malt beverages in original and unopened containers and not be consumption on the premises. (X)

A license fee of \$ 75.00 is enclosed herewith.

(Individual Application Form)

APPLICATION FOR LICENSE TO RETAIL CEREAL MALT BEVERAGES

Dodge City, Ford COUNTY, KANSAS, June 3, 2009

TO THE GOVERNING BODY OF THE CITY OF Dodge City, KANSAS,

or

THE BOARD OF COUNTY COMMISSIONERS OF Ford COUNTY, KANSAS.

I hereby apply for a license to retail cereal malt beverages in conformity with the laws of the State of Kansas and the rules and regulations prescribed and hereafter to be prescribed by you relating to the sale or distribution of cereal malt beverages; for the purpose of securing such license, I make the following statements under oath:

1. (a) Name of proposed licensee

Larry Thephachanh

(b) Age 51

(c) Place and date of birth LAOS

April 1, 1959, 20

(d) Residence address

209 E Beeson Road
Dodge City, Kansas 67801

(e) I have been a resident of the State of Kansas

5 years.

2. The premises for which the license is desired are located at

102 W. Wyatt Earp Blvd

Dodge City, KS 67801

(a) The legal description of said property is

102 W. Wyatt Earp Blvd.

Dodge City, Kansas 67801

(b) The street number is

102 West Wyatt

Earp BLVD.

Dodge City, Kansas 67801.

(c) The building to be used is

Restaurant.

(d) The business will be conducted under the following name:

Ban Lao Garden

3. The name and address of the owner or owners of the premises

upon which the proposed business will be located is

4. I am a citizen of the United States. Yes (X), No ()

(a) My citizenship arises by birth (), Naturalization (X)

(b) My place of naturalization and the date thereof is as follows:

Western District of Oklahoma
July 11, 1985, 20

5. I have (), have not (X), been convicted of a felony within two years immediately preceding the date of this application.

6. I have (), have not (X), been convicted of a crime involving moral turpitude within two years immediately preceding the date of this application.

7. I have (), have not (X), been adjudged guilty of drunkenness within two years immediately preceding the date of this application.

8. I have (), have not (X), been adjudged guilty or entered a plea, or forfeited bond on a charge of driving a motor vehicle while under the influence of intoxicating liquors within two years immediately preceding the date of this application.

9. I have (), have not (X), been convicted of a violation of any state or federal intoxicating liquor law within two years immediately preceding the date of this application.

10. My place of business will be conducted by a manager or agent— Yes (), No (X)

(a) If the answer above is yes, the name, age, and residence of manager or agent is

Said manager or agent does (), does not (), have the qualifications to have a license issued in his own name. The same to be determined by reference to K.S.A. 41-2703, K.S.A. 41-2702. Specifies concerning his residence, citizenship, and the answers to questions 5 through 9 are as follows:

11. I have (X), have not (), been a resident of this State for at least one year immediately preceding making this application.

12. My spouse would (X), would not (), be eligible to receive a retailer's license.

13. This application is for a license to retail cereal malt beverages for consumption on the premises (X). For a license to retail cereal malt beverages in original and unopened containers and not for consumption on the premises ().

A license fee of \$ 225.00 is enclosed herewith.

(Individual Application Form)

APPLICATION FOR LICENSE TO RETAIL CEREAL MALT BEVERAGES

FORD COUNTY, KANSAS, June 4, 20 09
TO THE GOVERNING BODY OF THE CITY OF Dodge City, KANSAS,
or
THE BOARD OF COUNTY COMMISSIONERS OF FORD COUNTY, KANSAS.

I hereby apply for a license to retail cereal malt beverages in conformity with the laws of the State of Kansas and the rules and regulations prescribed and hereafter to be prescribed by you relating to the sale or distribution of cereal malt beverages; for the purpose of securing such license, I make the following statements under oath:

- 1. (a) Name of proposed licensee Kala Cadwell
S.A. Sports, Inc.
(b) Age 29
(c) Place and date of birth Dodge City Dec. 20, 1980
(d) Residence address 2215 McCoy Dodge City, Ks 67801
(e) I have been a resident of the State of Kansas 29 years.

- 2. The premises for which the license is desired are located at 600 Ross Blvd, Dodge City Legends Park
(a) The legal description of said property is
(b) The street number is 600
(c) The building to be used is Legends Park
(d) The business will be conducted under the following name: Southwest Sports, Inc

3. The name and address of the owner or owners of the premises upon which the proposed business will be located is City of Dodge City

4. I am a citizen of the United States: Yes (X), No ()
(a) My citizenship arises by birth (), Naturalization ()
(b) My place of naturalization and the date thereof is as follows:

- 5. I have (), have not (X), been convicted of a felony within two years immediately preceding the date of this application.
6. I have (), have not (X), been convicted of a crime involving moral turpitude within two years immediately preceding the date of this application.
7. I have (), have not (X), been adjudged guilty of drunkenness within two years immediately preceding the date of this application.
8. I have (), have not (X), been adjudged guilty or entered a plea, or forfeited bond on a charge of driving a motor vehicle while under the influence of intoxicating liquors within two years immediately preceding the date of this application.
9. I have (), have not (X), been convicted of a violation of any state or federal intoxicating liquor law within two years immediately preceding the date of this application.
10. My place of business will be conducted by a manager or agent— Yes (), No (X)
(a) If the answer above is yes, the name, age, and residence of manager or agent is

Said manager or agent does (), does not (), have the qualifications to have a license issued in his own name. The same to be determined by reference to K.S.A. 41-2703, K.S.A. 41-2702. Specifies concerning his residence, citizenship, and the answers to questions 5 through 9 are as follows:

- 11. I have (X), have not (), been a resident of this State for at least one year immediately preceding making this application.
12. My spouse would (X), would not (), be eligible to receive a retailer's license.
13. This application is for a license to retail cereal malt beverages for consumption on the premises (X). For a license to retail cereal malt beverages in original and unopened containers and not for consumption on the premises ()

A license fee of \$ 225.00 is enclosed herewith.

(This form prepared by the Attorney General's Office)
(Corporate Application Form)

APPLICATION FOR LICENSE TO SELL RETAIL CEREAL MALT BEVERAGES

Dodge City, Ford COUNTY, KANSAS

TO THE GOVERNING BODY OF THE CITY OF Dodge City, KANSAS

or
THE BOARD OF COUNTY COMMISSIONERS OF Ford COUNTY, KANSAS

On behalf of the Wal-Mart Stores, Inc. dba Wal-Mart Supercenter #372

corporation whose principal place of business is 1905 North 14th Avenue

_____ and under authority of the resolution of the Board of Directors of said corporation, I hereby apply for a license to sell retail cereal malt beverages in conformity with the laws of the State of Kansas and the rules and regulations prescribed and hereafter to be prescribed by you relating to the sale or distribution of cereal malt beverages on behalf of said corporation; for the purpose of securing such license, I make the following statement under oath:

1. The proposed licensee is Wal-Mart Stores, Inc. corporation with principal place of business at 702 SW 8th Street Bentonville, AR 72716. The resident agent is The Corporation Company, Inc with offices at 515 S. Kansas; Topeka, KS 66603. Said corporation was incorporated on 10/31/1969 in the state of Delaware. If incorporated in Kansas, a copy of the Articles of Incorporation is on file with the Secretary of State. Yes () No ().

2. The following is the full and complete list of officers, directors and stockholders owning in the aggregate more than 25 percent of corporate stock, together with their positions and addresses, ages and dates of birth.
See attached officer's listing.

3. The premises for which the license is desired are located at 1905 North 14th Avenue

(a) The legal description of the premises is On file.

(b) The street number is 1905

(c) The building is described as One story, one room w/approx 200,084 sq ft

(d) The corporate business under the license will be conducted in the name of the corporation or in the following name:
Wal-Mart Stores, Inc. dba Wal-Mart Supercenter #372

4. The name(s) and address(es) of the owner or owners of the premises upon which the place of business is located is/are Wal-Mart Stores, Inc.

702 SW 8th Street; Bentonville, AR 72716-0500

**ORDINANCE ESTABLISHING SMOKING RESTRICTIONS IN
THE CITY OF DODGE CITY, KANSAS**

WHEREAS, K.S.A. 21-4013 authorizes Cities to regulate smoking within their boundaries, so long as such regulations are at least as stringent as those imposed by the provisions of K.S.A. 21-4009 through 21-4014 (the “Act”), and

WHEREAS, the governing body of the City of Dodge City, Kansas (the “City”), recognizes that smoking and secondhand smoke pose serious public health hazards, that patrons and employees of businesses and industries, as well as persons frequenting public places, need protection from tobacco smoke exposure, and that regulation of the smoking and burning of tobacco in public places and places of employment and business is imperative in order to protect the public health and welfare of the citizens of the City;

WHEREAS, the provisions of K.S.A. 21-4010 presently provides, “Where smoking areas are designated, existing physical barriers and ventilation systems shall be used to minimize the toxic effect of smoke in adjacent nonsmoking areas”, and

WHEREAS, the City desires to more clearly define prohibited and designated smoking areas, and their requirements for a more stringent regulation regarding designated areas as authorized by the Act:

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

Section 1. Definitions: As used in this Ordinance:

- (a) “Lottery Gaming Enterprise” means a building used for the purposes of operating, managing and maintaining lottery facility games and related services or operations as authorized pursuant to K.S.A. 74-8701 et seq. as may be amended from time to time, within which space a mechanical ventilation handling system is installed utilizing pressurization, ventilation, filtration and separation to minimize the drifting, permeation, or re-circulation of smoke from any smoking portions of such building into the remainder of the building in accordance with a policy designating permitted smoking areas within such building which has been approved by the Building Inspector of the City of Dodge City.
- (b) “Private Club” means premises so licensed by the State of Kansas, where alcoholic liquor by the individual drink is sold, and private paid membership is required. Defined as a “Class A Club or a “Class B Club” pursuant to K.S.A. 41-2601 (e) & (f).
- (c) “Public place” means ***enclosed indoor areas open to the public*** or used by the general public including but not limited to: Restaurants, retail stores, public means of mass transportation, passenger elevators, health care institutions or any other place where health care services are provided to the public, educational facilities, libraries, courtrooms, state, county or municipal buildings, restrooms, grocery stores, school buses, museums, theaters, auditoriums, arenas and recreational facilities.

- (d) “Public meeting” includes all meetings open to the public.
- (e) “Smoking” means possession of a lighted cigarette, cigar, pipe or any other lighted smoking equipment partially or wholly consisting of or containing burning vegetation that is used for the introduction of smoke from the burning vegetation into the human body. For the purposes of this definition, the term vegetation includes, but is not limited to, tobacco.

Section 2. Prohibition of Smoking in Public Places: Smoking is prohibited in enclosed, in-door, public places within the City of Dodge City. It is unlawful for any person to engage in smoking, or any business to permit smoking in any enclosed, in-door, public place, or outside of any public place, within 10 feet of the primary public entrances or exits, except as provided by in this ordinance.

* Exemptions:

1. Any un-enclosed, outdoor area which is at least 10 feet from any building entrance or exit.
2. Owner designated hotel or motel rooms.
3. Private Non-Business Residences.
4. Private Clubs (as per Section 1 definition) requiring paid memberships which complies with signage provisions of this ordinance.
5. Smoking areas as designated by proprietors or other persons in charge of public places, which are permitted and inspected by the City, and comply with the provisions of this ordinance.
6. A Lottery Gaming Enterprise as defined in Section 1 which complies with the signage provisions of the ordinance.

Section 3. Posting smoking prohibited signs, designated smoking area signs, and smoking allowed in this facility signage: The proprietor or other person in charge of the premises of a public place shall:

- (a) Post or cause to be posted in a conspicuous place signs clearly stating that smoking is prohibited by state law at each entrance and within the building or other areas where smoking is prohibited. The proprietor(s) or other person in charge of the premises shall also post or cause to be posted any designated smoking signs stating that smoking is permitted in such room or area, or facility.
- (b) Signs permitting or prohibiting smoking shall have bold lettering of not less than one (1) inch in height. The international “No Smoking” symbol may also be used (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it).

Section 4. Proprietor’s Responsibility: The proprietor or other person in charge of the premises of a public place shall:

- (a) Meet all signage requirements
- (b) Advise any person smoking in a prohibited smoking area that he or she is in violation of the city ordinance. If said person does not refrain from smoking after being asked to do so, the proprietor or other person in charge of the premises shall then ask that person to leave. If the offending person refuses to leave, the proprietor shall handle the situation consistent with lawful methods for handling persons acting in a disorderly manner or as a trespasser.

- (c) Remove all ashtrays and other smoking paraphernalia from prohibited smoking areas.
- (d) In cases where the business is located within a facility larger than the area used for said business, that business must comply with all physical separation and ventilation standards to minimize the drifting, permeation, or re-circulation of smoke from any separate designated smoking area into the adjacent or connected areas.

Section 5. Violations and Penalties: It shall be unlawful for any person subject to regulation under this ordinance to fail to comply with any of its provisions.

- (a) Any person found guilty of smoking in violation of this ordinance is guilty of a misdemeanor punishable by a fine of not more than \$50 for each violation.
- (b) Any person, who owns, manages, operates or otherwise controls the use of any place of business found guilty of failing to post signs as required by this ordinance, is guilty of a misdemeanor punishable by a fine of not more than \$100 for the first violation.
- (c) Any person, who owns, manages, operates or otherwise controls the use of any place of business found guilty of violating any provision of this ordinance, is guilty of a misdemeanor punishable by a fine of not more than \$100 for the first violation, and \$ 200 for any second violation within a one (1) year period of the first violation.
- (d) In addition to the fines established by this Section, violation of the ordinance by a person having control of a place of business may result in the suspension or revocation of any **City permit or City license** issued for the premises on which the violation occurred.

Section 6. Enforcement:

- (a) The authority to administer the provision of this ordinance shall be vested in the Building Inspector of the City of Dodge City and his or her duly authorized representative(s), and whenever the need arises, the Chief Building Official and his or her representative(s), may call upon the Dodge City Police Department, and other departments of the City to aid in the enforcement of the ordinance.
- (b) The Building Inspection Department and other such City departments shall while an establishment is undergoing otherwise mandated inspections, inspect for compliance of this ordinance, and each such department may also enforce the provisions of this ordinance through investigation of complaints filed, and unannounced inspection of the premises regarding compliance with this ordinance.
- (c) Any person may register a complaint under this ordinance to initiate enforcement with the Inspection Department.
- (d) Any owner, manager, operator or employee of any premises regulated by this ordinance shall be responsible for informing persons violating the provisions of this ordinance through appropriate notice and signage.

Section 7. Designated Smoking Provisions: In areas of public places where smoking is allowed under the provisions of this Ordinance and which have been so designated by the proprietor or other person in charge, physical barriers and ventilation systems applicable to such designated smoking area shall comply with the following requirements:

- (a) Be enclosed on all sides by solid, impermeable walls or windows extending from floor to ceiling with self-closing doors or entryway constructed in such a manner so as to minimize the effect of tobacco smoke within the remainder of the facility; and
- (b) Shall be posted as a Designated Smoking Area; and
- (c) Access to which shall be restricted to the employees, customers, clients or vendors of the facility; and

- (d) In which shall be maintained a negative air pressure, meaning more air is exhausted from the area than is directly supplied to the area by the heating, ventilation, and air conditioning (HVAC) system; and
- (e) In which shall be maintained a ventilation system which exhausts air from the room directly to the outdoors; and
- (f) Into which employees, customers, clients or vendors shall not be required against their will to enter or pass through when occupied by smokers.

Section 8. Required Registration of a Designated Smoking Area: Smoking shall not be allowed in such designated smoking areas or business facilities, until the area has been registered as a designated smoking area with the Building Inspector of the City of Dodge City on registration forms provided by the City and the City has verified compliance with this Ordinance.

Section 9. Implementation of Requirements: The Building Inspector of the City shall develop specific rules and regulations to implement the above requirements of this Ordinance.

Section 10. Severability: If any provision, clause, sentence or paragraph of the Act or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of the Ordinance are declared to be severable.

Section 11. Effective Date: Except for the provisions of Section 7, this Ordinance shall become effective from and after publication in the Dodge City Daily Globe. The provisions of Section 7 shall be effective from and after April 1, 2009.

Rick Sowers, Mayor

ATTEST:

Nannette Pogue, City Clerk

Memorandum

To: City Commission
Ken Strobel, City Manager
Cherise Tieben, Assistant City Manager
From: Joseph E. Finley, P.E. *JEF*
Director of Engineering Services
Date: June 10, 2009
RE: Kansas Department of Health and
Environment (KDHE) Low interest loan

BACKGROUND:

The City is making application for a low interest loan through KDHE to finance the construction of the Water Reclamation Facility. The application process will require the City to hold several public hearings, provide documents and financial information to KDHE necessary to process the loan agreement.

CONSIDERATION:

KDHE requires the City to pass a resolution authorizing the filing of an application with KDHE for a loan under the Kansas Water Pollution Control Revolving Fund. As a part of this resolution, the City must name an authorized representative(s) that will be responsible to furnish information requested in connection with the application, who is authorized to sign all necessary documents and to receive all payments on behalf of the applicant.

RECOMMENDATION:

Staff would recommend that myself (Joseph E. Finley) and Nannette Pogue be authorized to act of the City's behalf in securing the low interest loan, furnishing pertinent information when requested, signing documents as required, and receiving payments. At this time, there is no financial obligation to the City, as the loan has not been approved. Prior to approving the final agreement, the commission will be able to review the terms of the loan. Should you have any questions, please let me know.

RESOLUTION OF GOVERNING BODY OF APPLICANT
(Suggested Form for Recipient Use)
RESOLUTION NO. 2009-15

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

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

NOW, THEREFORE, be it resolved by City of Dodge City, Kansas
(Governing Body of Applicant)

1. That Joseph E. Finley or Nannette Pogue be and he/she is hereby authorized to execute and
(Designate Official)
file an application on behalf of City of Dodge City with the Kansas Department
(Legal Name of Applicant)
of Health and Environment for a loan to aid in the construction of four sanitary sewer system improvements as described below, along with authorization to execute contracts for said projects as required for completion of the capital improvements.
(Brief Project Description)

- (a) Water Reclamation Facility to process an average day flow of 1.25 MGD.
- (b) Beneficial Re-Use System consisting of pumps and force main to deliver high quality effluent for use as irrigation water to public facilities.
- (c) Sanitary sewer interceptors to collect flow in the northern portion of the City.
- (d) Pump Station and force main to deliver flow from the collection system to the Water Reclamation Facility.

2. That Joseph E. Finley Director of Engineering
Nannette Pogue Director of Finance be and
(Name of Authorized Representative) (Title)

he/she is hereby authorized and directed to furnish such information as may be reasonably requested in connection with the application which is herein authorized, to sign all necessary documents on behalf of the applicant, to furnish such assurances as may be required by law or regulation, and to receive payment on behalf of the applicant.

CERTIFICATE OF RECORDING OFFICER

The undersigned, duly qualified and acting Director of Finance/City Clerk of the
(Title of Officer)
City of Dodge City, does hereby certify:
(Legal Name of Applicant)

That the attached resolution is a true and correct copy of the resolution adopted at a legally convened meeting of the
City Commission held on the 15th day of June, 2009;
(Name of Governing Body of Applicant)

and, further, that such resolution has been fully recorded in the journal of proceedings and records in my office.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____.

(Seal)

If applicant has an official seal, impress here.

(Signature of Recording Officer)

(Title of Recording Officer)

Memorandum

*To: City Commission
Ken Strobel, City Manager
Cherise Tieben, Assistant City Manager*

*From: Joseph E. Finley, P.E. 
Director of Engineering Services*

Date: June 10, 2009

*RE: Agreement with Kansas Department of
Transportation (KDOT) ARRA Funds for
expansion joint replacement on 14th St.
Bridge*

BACKGROUND:

Earlier this year KDOT notified the City that a project we submitted for consideration for funding through the American Recovery and Reinvestment Act (ARRA) would be eligible to receive funds. Through this program, the City requested \$169,000. KDOT will provide \$99,000 of ARRA funds for this project and the City will be responsible for the remaining \$70,600.

CONSIDERATION:

In order to receive these funds, KDOT requires that the City enter into agreement with them. In doing so, the City is required to follow certain procurement processes when hiring a consultant to perform the engineering design and inspection. In addition, the contractor will be required to follow certain requirements regarding wages and payroll. These requirements are outlined in the KDOT Agreement and supporting documents.

RECOMMENDATION:

Staff would recommend that the commission approve the agreement as submitted. Should you have any questions, please let me know.

PROJECT NO. 29 U-2259-01
BRIDGE REPAIR
CITY OF DODGE CITY, KANSAS

A G R E E M E N T

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

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

Collectively referred to as the "Parties."

PURPOSE: The Secretary and the City are empowered by the laws of Kansas to enter into agreements for the construction and maintenance of city streets utilizing federal funds. The City desires to construct a Project on 14th Avenue in the City with federal funds, hereinafter referred to as the "Project." The Secretary is authorizing the use of federal recovery funds for this Project under the American Recovery and Reinvestment Act of 2009 (ARRA or Recovery Act). The City understands the United States Congress and Federal Highway Administration (FHWA) have placed conditions on the use of recovery funds. The City agrees to abide by all the conditions stated in this Agreement. The City understands lack of compliance could result in forfeiture or reimbursement of Recovery Act funds.

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

Expansion joint replacement on the 14th Avenue bridge over the Arkansas River.

EFFECTIVE

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

ARTICLE I

THE SECRETARY AGREES:

1. To provide technical information upon request to help the City acquire rights of way in accordance with the laws and with procedures established by the Bureau of Right of Way and the Office of Chief Counsel of KDOT and as required by FHWA directives such that the City may obtain participation of federal funds in the cost of the Project.

2. To let the contract for the Project and shall award the contract to the lowest responsible bidder upon concurrence in the award by the City. The Secretary further agrees, as agent for the City, to administer the construction of the Project in accordance with the final design plans, as required by the FHWA, to negotiate with and report to the FHWA and administer the payments due

the contractor, including the portion of the cost borne by the City. As part of its administration functions and to comply with the Recovery Act, the Secretary will:

- a. Include and enforce contract language requiring contractors and subcontractors to comply with the Recovery Act's monthly employment reporting requirements as set forth in Required Contract Provision 03-10-09-R5. The KDOT Field Engineer assigned to the Project will monitor the contractor's "MONTHLY EMPLOYMENT REPORT," DOT Form 1589, for compliance with Required Contract Provision 03-10-09-R5.
- b. Enforce contract language requiring consultants and subconsultants performing design services or construction inspection to comply with the Recovery Act's monthly employment requirements as set forth in Required Contract Provision 03-10-09-R5. The KDOT Field Engineer assigned to the Project will monitor the consultant's "MONTHLY EMPLOYMENT REPORT," DOT Form 1589, for compliance with Required Contract Provision 03-10-09-R5. While KDOT will enforce the provision, it is the City's responsibility to include this provision in all consulting agreements (i.e. design and construction inspection) as provided in Article II, paragraphs 4 and 16.
- c. Include contract language requiring contractors and subcontractors to comply with the auditing requirements of Required Contract Provision 04-03-09-R3.

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

4. The Project shall use federal funds consisting of American Recovery and Reinvestment Act (ARRA) funds and City funds as allocated by the Secretary to the Project.

- ARRA Funds

To be responsible for one-hundred percent (100%) of the total actual costs of construction (which includes the costs of all construction contingency items) and construction engineering, but not to exceed a maximum of \$99,000.00 for the Project from ARRA funds. However, this reimbursement obligation is contingent upon the City's compliance with Article II, paragraph 2. The Secretary shall not be responsible for the total actual costs of construction (which includes the costs of all construction contingency items) and construction engineering that exceeds \$99,000.00 for the Project from ARRA funds.

The Secretary shall not be responsible for the total actual costs of preliminary engineering, rights of way, and utility adjustments for the Project.

5. After receipt of the FHWA acknowledgement of final voucher claim, the Secretary's Chief of Fiscal Services will, in a timely manner, prepare a complete and final billing of all Project

costs for which the City is responsible and shall then transmit the complete and final billing to the City.

ARTICLE II

THE CITY AGREES:

1. The Project shall be undertaken, prosecuted and completed for and on behalf of the City by the Secretary acting in all things as its agent, and the City hereby constitutes and appoints the Secretary as its agent, and all things hereinafter done by the Secretary in connection therewith are hereby by the City authorized, adopted, ratified and confirmed to the same extent and with the same effect as though done directly by the City acting in its own individual corporate capacity instead of by its agent.

2. The Secretary is authorized by the City to take such steps as are deemed by the Secretary to be necessary or advisable for the purpose of securing the benefits of the current Federal-Aid Transportation Act for this Project. The City agrees to take all steps necessary to obtain federal aid for this Project.

a. To secure Recovery Act funds, the City shall take the following steps:

- On or before November 1, 2009, complete the right-of-way acquisition, utility relocation arrangements, and preparation of plans, specifications, and estimates for the Project, so the Secretary may let the project in the December 16, 2009 letting.
- If the City's forces are performing the inspection services for the Project, complete the Recovery Act monthly employment reporting requirement, "MONTHLY EMPLOYMENT REPORT," DOT Form 1589, for City employees who charge time to the Project rather than charging time to overhead. The City shall complete the "MONTHLY EMPLOYMENT REPORT," DOT Form 1589, electronically on KDOT's website by accessing the Economic Stimulus link at www.ksdot.org or using the link at www.ksdot.org/EconomicRecovery.asp. The City shall submit the completed on-line "MONTHLY EMPLOYMENT REPORT," DOT Form 1589, no later than 10 calendar days after the last Saturday in the month being reported. Further details are provided in Required Contract Provision 03-10-09-R5.
- Obtain a D-U-N-S number (Dun & Bradstreet Number) to include on the "MONTHLY EMPLOYMENT REPORT," DOT Form 1589. Acquire the D-U-N-S number using the following link: http://www.dnb.com/us/duns_update/.
- Include and enforce contract language requiring consultants and subconsultants to comply with the monthly employment reporting requirements of Required Contract Provision 03-10-09-R5 (See Article II, paragraphs 4 and 16).

- b. The City understands the Secretary loses Recovery Act funds if the funds are not obligated within the 365 days the Recovery Act requires. Thus, if the City's failure to complete the right-of-way acquisition, utility relocation arrangements, and preparation of plans, specifications, and estimates for the Project on or before November 1, 2009 precludes KDOT from letting the project in the December 16, 2009 letting, the Secretary may remove the funds from the City's Project and allocate the funds elsewhere. If the Secretary removes Recovery Act funds from the City's Project and Recovery Act funds already have been expended on preliminary engineering, the City will be obligated to reimburse the Secretary for Recovery Act funds used for preliminary engineering expenses. This provision does not affect federal-aid funds from sources other than the Recovery Act.
- c. The City understands that the Secretary loses Recovery Act funds if the reporting requirements are not met. Thus, if the City, for its own forces, fails to meet the reporting requirements, the City will have to reimburse the Secretary for Recovery Act funds lost because of such failure to comply.
- d. The City understands that Required Contract Provision 03-10-09-R5 contains additional sanctions for the City's failure to meet the reporting requirements for City employees.

3. To design the Project or contract to have the Project designed in conformity with the state and federal design criteria appropriate for the Project in accordance with the current Project Development Manual for Non-National Highway System Local Government Road and Street Projects, Volume I, Bureau of Local Project's (BLP's) project memorandums, memos, the KDOT Design Manual, Geotechnical Bridge Foundation Investigation Guidelines, Bureau of Design's road memorandums, the latest version, as adopted by the Secretary, of the Manual on Uniform Traffic Control Devices (MUTCD), the current version of the Bureau of Transportation Safety and Technology's Traffic Engineering Guidelines, and the current version of the KDOT Standard Specifications for State Road and Bridge Construction with Special Provisions, and any necessary Project Special Provisions, and with the rules and regulations of the FHWA pertaining thereto.

4. To make or contract to have made design plans, specifications, estimates, surveys, and any necessary studies or investigations, including, but not limited to, environmental, hydraulic, and geological investigations or studies for the Project. Upon completion thereof, the design plans, specifications, estimates, surveys, and any necessary studies or investigations, including, but not limited to, environmental, hydraulic, and geological investigations or studies for the Project shall be submitted to the Secretary by a licensed professional engineer attesting to the conformity of the design plans with the items in paragraph 3 above. Contracts between the City and any consultant retained by them to perform any of the services described or referenced in this paragraph for the Project covered by this Agreement shall contain language requiring conformity with paragraph 3 above. In addition, any contract between the City and any consultant retained by them to do the design for the Project covered by this Agreement shall also contain the following:

- a. Language requiring completion of all plan development stages no later than the current Project schedule's due dates as issued by KDOT, exclusive of delays beyond the consultant's control.

- b. Language requiring the consultant to submit to the City (and to the Secretary upon request) progress reports at monthly or at mutually agreed intervals in conformity with the official Project schedule.
- c. Because of the Secretary of Transportation of the State of Kansas (Secretary) obligation to administer state funds, federal funds, or both, the Secretary shall be a third party beneficiary to this agreement between the City and the consultant. This third party beneficiary status is for the limited purpose of seeking payment or reimbursement for damages and costs the Secretary or the City or both incurred or will incur because the consultant failed to comply with its contract obligations under this Agreement or because of the consultant's negligent acts, errors, or omissions. Nothing in this provision precludes the City from seeking recovery or settling any dispute with the consultant as long as such settlement does not restrict the Secretary's right to payment or reimbursement.
- d. Language incorporating into the consultant contract Required Contract Provision 03-10-09-R5 which requires the consultant to complete on-line and submit electronically the "MONTHLY EMPLOYMENT REPORT", DOT Form 1589, but only if the design or other preliminary engineering services are being paid with Recovery Act funds.
- e. Language incorporating into the consultant contract Required Contract Provision 04-03-09-R3 which permits the United States Comptroller General, or the Inspector General and their representatives to audit Project records and interview employees. Even if the design or other preliminary engineering services are not being paid with Recovery Act funds, these consultant records may be audited as documents that pertain to a contract using Recovery Act funds.

5. The City and any consultant retained by the City shall have the sole responsibility for the adequacy and accuracy of design plans, specifications, estimates, and necessary surveys, investigations or studies, including, but not limited to, environmental, hydraulic, and geological investigations or studies for the Project. Any review of these items may be performed by the Secretary or his or her representatives is not intended to and shall not be construed to be an undertaking of the City's and its consultant's duty to provide adequate and accurate design plans, specifications, estimates, and necessary surveys, investigations or studies, including, but not limited to, environmental, hydraulic, and geological investigations or studies for the Project. Such reviews are not done for the benefit of the consultant, the construction contractor, the City, or other political subdivision, nor the traveling public. The Secretary makes no representation, express or implied warranty to any person or entity concerning the adequacy or accuracy of the design plans, specifications, estimates, and necessary surveys, investigations or studies, including, but not limited to, environmental, hydraulic, and geological investigations or studies for the Project, or any other work performed by the consultant or the City.

6. A duly appointed representative of the City is authorized to sign for the City any or all routine reports as may be required or requested by the Secretary in the completion of the Project undertaken under this Agreement. The design plans must be signed and sealed by the licensed

professional engineer responsible for preparation of the design plans. Geological investigations or studies must be signed and sealed by either a licensed geologist or licensed professional engineer in accordance with K.S.A. 74-7042, who is responsible for the preparation of the geological investigations or studies. Right of way descriptions must be signed and sealed by a licensed land surveyor responsible for the preparation of the right of way descriptions.

7. It will, in its own name, as required by law, acquire by purchase, dedication or condemnation all the rights of way, easements, and access rights shown on the final design plans in accordance with the schedule established by KDOT. The City agrees the necessary rights of way, easements, and access rights shall be acquired in compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, and administrative regulations contained in 49 C.F.R., pt. 24, entitled Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs. The City shall certify to the Secretary, on forms provided by the Bureau of Local Projects, such rights of way, easements, and access rights have been acquired. The City further agrees it will have recorded in the Office of the Register of Deeds all rights of way, deeds, dedications, permanent easements and temporary easements.

8. To contact the Secretary if there will be any displaced person on the Project prior to making the offer for the property. The Parties mutually agree the Secretary will provide relocation assistance for eligible persons as defined in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, and as provided in 49 C.F.R., pt. 24, entitled Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs, and in general accordance with K.S.A. 58-3501 to 58-3507, inclusive, and Kansas Administrative Regulations 36-16-1 *et seq.*

9. To provide all legal descriptions required for right of way acquisition work. The City further agrees to acquire rights of way, easements, and access rights in accordance with the laws and with procedures established by the Bureau of Right of Way and the Office of Chief Counsel of KDOT and as required by FHWA directives for the participation of federal funds in the cost of the Project. The City agrees copies of all documents, including recommendations and coordination for appeals, bills, contracts, journal entries, case files, or documentation requested by the Office of Chief Counsel will be sent to the Office of Chief Counsel within the time limits set by the Secretary.

10. If federal funds are used in the acquisition of rights of way, any disposal of or change in the use of rights of way or in access after Project construction will require prior written approval by the Secretary.

11. The Secretary shall have the right to utilize any land owned or controlled by the City, lying inside or outside the limits of the City as shown on the final design plans, for the purpose of constructing the highway Project. Neither the Secretary nor the FHWA shall participate in the cost of these rights of way or easements.

12. It will move or adjust, or cause to be moved or adjusted, and will be responsible for such removal or adjustment of all existing structures, pole lines, pipe lines, meters, manholes, and other utilities, publicly or privately owned, which may be necessary to construct the Project in

accordance with the final design plans. New or existing utilities to be installed, moved, or adjusted will be located or relocated in accordance with the current version of the KDOT Utility Accommodation Policy (UAP), as amended or supplemented.

Except as provided by state and federal laws, the expense of the removal or adjustment of the utilities located on public rights of way shall be borne by the owners. The expense of the removal or adjustment of privately owned utilities located on private rights of way or easements shall be borne by the City except as provided by state and federal laws.

13. It will expeditiously take such steps as are necessary to facilitate the early adjustment of utilities, will initiate the removal or adjustment of the utilities, and will proceed with reasonable diligence to prosecute this work to completion. The City further agrees to move or adjust or cause to be moved or adjusted all necessary utilities sixty (60) days prior to the scheduled construction letting except those necessary to be adjusted during construction and those which would disturb the existing street surface. The City further agrees to certify to the Secretary on forms supplied by the Secretary all utilities required to be moved prior to construction have either been moved or a date provided by the City as to when, prior to construction, they will be moved. The City will initiate and proceed to complete adjusting the remaining utilities not required to be moved during construction in order the contractor shall not be delayed in construction of the Project. The City will indemnify, hold harmless, and save the Secretary and the construction contractor for damages incurred by the Secretary and construction contractor because identified utilities have not been moved or adjusted timely or accurately.

14. To furnish the Secretary a list of existing and known utilities affected, together with locations and proposed adjustments of the same and designate an individual to be responsible for coordinating the necessary removal or adjustment of utilities.

15. To certify to the Secretary all privately owned utilities occupying public rights of way required for the construction of the Project are permitted thereon by franchise, ordinance, agreement or permit and the instrument shall include a statement as to which party will bear the cost of future adjustments or relocations required as a result of street or highway improvements.

16. To provide the construction inspection in accordance with the rules and guidelines developed for the current KDOT approved construction engineering program and in accordance with the current edition of the KDOT Standard Specifications for State Road and Bridge Construction with Special Provisions and any necessary Project Special Provisions. The detailed inspection is to be performed by the City forces or the consultant. The Secretary does not undertake for the benefit of the City, the contractor, the consultant or any third party the duty to perform the day-to-day detailed inspection of the Project, or to catch the contractor's errors, omissions, or deviations from the final design plans and specifications. To complete the Recovery Act monthly employment reporting requirements for City employees performing construction inspection, to require consultants performing construction inspection to complete the reporting requirements, and to require consultants performing construction inspection to comply with the Recovery Act auditing requirements.

- a. The City will require at a minimum all personnel, whether City or consultant to comply with the high visibility apparel requirements of the KDOT Safety Manual,

Chapter 4, Section 8 Fluorescent Vests. If the City executes an agreement for inspection, the agreement shall contain this requirement as a minimum. The City may set additional clothing requirements for adequate visibility of personnel.

- b. If the City performs some or all of the construction inspection with City employees who charge their time to the Project rather than overhead, the City will complete on-line and submit electronically the "MONTHLY EMPLOYMENT REPORT," DOT Form 1589 as required by Required Contract Provision 03-10-09-R5. This requirement applies even if the City limits the use of Recovery Act funds to the construction contract and fails to use Recovery Act funds for the City's construction inspection.
- c. If the City retains a third party to perform some or all of the construction inspection, the City will incorporate into the construction inspection contract the current Required Contract Provision 03-10-09-R5 which requires the consultant to complete on-line and submit electronically the "MONTHLY EMPLOYMENT REPORT," DOT Form 1589. This requirement applies even if the City limits the use of Recovery Act funds to the construction contract and fails to use Recovery Act funds for the construction inspection contract.
- d. If the City retains a third party to perform some or all of the construction inspection, the City will incorporate into the construction inspection contract the current Required Contract Provision 04-03-09-R3 which permits the United States Comptroller General or the Inspector General and their representatives to audit Project records and interview employees.

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

18. The Project shall use federal funds consisting of American Recovery and Reinvestment Act (ARRA) funds and City funds as allocated by the Secretary to the Project.

- ARRA Funds

To be responsible for zero percent (0%) of the total actual costs of construction (which includes the costs of all construction contingency items) and construction engineering, up to \$99,000.00 for the Project from ARRA funds. However, this obligation is contingent upon the City's compliance with Article II, paragraph 2.

The Secretary shall not be responsible for one hundred percent (100%) of the total actual costs of construction (which includes the costs of all construction contingency items) and construction engineering that exceeds \$99,000.00 for the Project from the ARRA funds.

The Secretary shall not be responsible for one hundred percent (100%) of the total actual costs of preliminary engineering, rights of way, and utility adjustments for the Project.

19. If any payment is due to the Secretary, such payment shall be made within thirty (30) days after receipt of a complete and final billing from the Secretary's Chief of Fiscal Services.

20. To participate and cooperate with the Secretary in an annual audit of the Project. To participate and cooperate with the Secretary in any audit of the Project undertaken by FHWA, the United States Comptroller General, or the Inspector General and their representatives as provided in Required Contract Provision 04-03-09-R3. The City shall make its records and books available to representatives of the Secretary and/or the FHWA for audit for a period of five (5) years after date of final payment under this Agreement. If any such audits reveal payments have been made with federal funds by the City for items considered non-participating or if any such audits result in disallowance of costs for other reasons, the City shall promptly reimburse the Secretary for such items upon notification by the Secretary.

21. If it cancels the Project, it will reimburse the Secretary for any costs incurred by the Secretary prior to the cancellation of the Project. The City agrees to reimburse the Secretary within thirty (30) days after receipt by the City of the Secretary's statement of the cost incurred by the Secretary prior to the cancellation of the Project.

22. To adopt an ordinance requiring the removal of all encroachments either on or above the limits of the right of way shown on the final design plans for this Project, and it will initiate and proceed with diligence to remove or require the removal of the encroachments. It is further agreed all such encroachments be removed before the Project is advertised for letting (provided, however, if the Secretary is satisfied, with respect to any encroachment, the physical removal thereof has been fully provided for between the City and the owner thereof and will be accomplished within a time sufficiently short to present no hindrance or delay to the construction of the Project, the Secretary may cause the Project to be advertised for letting before such encroachment is fully removed). The City further agrees it will not in the future permit the erection of gas and fuel dispensing pumps upon the rights of way of the Project, and it will require any gas and fuel dispensing pumps erected, moved, or installed along the Project be placed no less than twelve (12) feet back of the right of way line. All rights of way provided for the Project shall be used solely for public street purposes and no signs, posters, billboards, roadside stands, fences, structures, or other private installations shall be permitted within the right of way limits except as provided by state and federal laws.

23. To adopt all necessary ordinances and/or resolutions and to take such legal steps as may be required to give full effect to the terms of this Agreement.

24. To locate and be responsible for all costs necessary to remedy or clean up any hazardous waste site, including, but not limited to, leaking underground storage tanks discovered on rights of way, easements, and access rights acquired by the City. The City shall be responsible to the Secretary for all damages, fines or penalties, expenses, claims, and costs incurred by the Secretary from any hazardous waste site discovered on rights of way, easements, and access rights acquired by the City prior to commencement of construction of the Project. The City shall take appropriate action to contain or remediate any identified hazardous waste site within the Project limits prior to letting of the Project. The City will investigate any and all hazardous waste sites discovered during construction of the Project on City owned land within the Project boundary and shall take appropriate action to contain or remediate such hazardous waste sites.

For any hazardous waste site, including, but not limited to, leaking underground storage tanks, the City shall hold harmless, defend, and indemnify the Secretary, its agents and employees against and from all damages, expenses and costs incurred by any person, the State of Kansas, or the United States Government for determining and undertaking remedial action, any fines or penalties assessed under state or federal laws, contract claims, personal injury claims, and damage of or loss of natural resources.

It is specifically agreed between the Parties executing this Agreement any provision of this hazardous waste clause is not intended to make the public, or any member thereof, a third party beneficiary hereunder, or to authorize anyone not a party of this Agreement to maintain a suit for personal injuries, property damages, or hazardous waste claims. The duties, obligations and responsibilities of the Parties to this Agreement with respect to third parties shall remain as imposed by law.

The City, by signing this Agreement with the Secretary has not repudiated, abandoned, surrendered, waived or forfeited its right to bring any action, seek indemnification or seek any other form of recovery or remedy against any third party responsible for any hazardous waste on any rights of way, easements, and access rights acquired by the City. The City reserves the right to bring any action against any third party for any hazardous waste site on any rights of way, easements, and access rights acquired by the City.

The term hazardous waste includes, but is not limited to, any substance which meets the test of hazardous waste characteristics by exhibiting flammability, corrosivity, or reactivity, or which is defined by state and federal laws and regulations, and any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare. Any hazardous waste as defined by state and federal laws and regulations and amendments occurring after November 11, 1991, are incorporated by reference and include but not limited to: (1) 40 C.F.R. § 261 *et seq.*, Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Toxicity Characteristics Revisions; Final Rule; (2) 40 C.F.R. § 280 *et seq.*, Underground Storage Tanks; Technical Requirements and State Program Approval; Final Rules; (3) 40 C.F.R. § 300, National Oil and Hazardous Substances Pollution Contingency Plan; Final Rule; and (4) K.S.A. 1990 Supp. 65-3431 *et seq.*, Hazardous Waste.

The standards to establish cleanup of a hazardous waste site include, but is not limited to, federal programs administered by the E.P.A., State of Kansas environmental laws and regulations, and city and county standards where the hazardous waste site is located.

25. To control parking of vehicles on the city street throughout the length of the Project covered by this Agreement. On-street parking will be permitted until such time as parking interferes with the orderly flow of traffic along the street.

26. The arterial characteristics inherent in the Project require uniformity in information and regulations to the end that traffic may safely and expeditiously be served and shall adopt and enforce such rules and regulations governing traffic movements as may be deemed necessary or desirable by the Secretary and the FHWA.

27. To maintain the control of access rights and to prohibit the construction or use of any entrances or access points along the Project within the City other than those shown on the final design plans, unless prior approval is obtained from the Secretary.

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

29. When the Project is completed and final acceptance is issued the City will, at its own cost and expense, maintain the Project and will make ample provision each year for such maintenance. Upon notification by the State Transportation Engineer of any unsatisfactory maintenance condition, the City will begin the necessary repairs within thirty (30) days and will prosecute the work continuously until it is satisfactorily completed.

30. To allow the contractor to work anytime during a twenty-four (24) hour period. The City agrees to grant all permits and licenses necessary to allow sound levels in excess of those set forth in local ordinances and/or to waive any and all local ordinances or restrictions on the contractor's working hours.

ARTICLE III

THE PARTIES MUTUALLY AGREE:

1. Plans for handling traffic during construction must be included in the design plans provided by the City and must be in conformity with the latest version, as adopted by the Secretary, of the Manual on Uniform Traffic Control Devices (MUTCD). Detour routes and road closings, if necessary, shall be noted on the design plans. The Secretary or his or her authorized representative may act as the City's agent with full authority to determine the dates when any road closings shall commence and terminate. The Secretary or his or her authorized representative shall notify the City of the determinations made pursuant to this section.

2. The final design plans for the Project are by reference made a part of this Agreement.

3. If any items are found to be non-participating by the Secretary, acting in his or her own behalf and on the behalf of the FHWA, the total cost of these items will be paid by the City.

4. The location, form and character of informational, regulatory and warning signs, of traffic signals and of curb and pavement or other markings installed or placed by any public authority, or other agency as authorized by K.S.A. 8-2005, shall conform to the manual and specifications adopted under K.S.A. 8-2003, and any amendments thereto are incorporated by reference and shall be subject to the approval of the FHWA.

5. The Special Attachment No. 1 attached hereto, pertaining to the implementation of the Civil Rights Act of 1964, is hereby made a part of this Agreement.

6. The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 1-01), which is attached hereto, are hereby incorporated in this contract and made a part thereof.

7. The Project Special Provision 03-10-09-R5, **REQUIRED CONTRACT PROVISIONS, AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009, REPORTING REQUIREMENTS FOR RECOVERY ACT CONTRACTS**, attached hereto, is hereby made a part of this Agreement.

8. The Project Special Provision 04-03-09-R3, **REQUIRED CONTRACT PROVISIONS, AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009, IMPLEMENTATION OF SECTION 902 AND 1515(b)**; attached hereto, is hereby made a part of this Agreement.

9. This Agreement and all contracts entered into under the provisions of this Agreement shall be binding upon the Secretary and the City and their successors in office.

10. No third party beneficiaries are intended to be created by this Agreement, nor do the Parties herein authorize anyone not a party to this Agreement to maintain a suit for damages pursuant to the terms or provisions of this Agreement.

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

ATTEST:

THE CITY OF DODGE CITY, KANSAS

CITY CLERK (Date)

MAYOR

(SEAL)

Kansas Department of Transportation
Debra L. Miller, Secretary of Transportation

By: _____
Jerome T. Younger, P.E. (Date)
Deputy Secretary for Engineering and
State Transportation Engineer

Memorandum

*To: Ken Strobel, City Manager
Cherise Tieben, Assistant City Manager
City Commission*

From: Mike Klein, Supt. of Public Works

Date: Wednesday, June 10, 2009

*Subject: Bid- Library Roof Replacement
2009 Budget Fund and Amount
CIP \$115,500.00*

One bid was received and opened on June 9, 2009, for the replacement of the roof at the Dodge City Public Library. The current roof is a Built up Roof with Gravel; this is the original roofing system that was installed in 1981. The existing roof has been repair numerous times by different roofing contractors, however the roof continues to leak due the age and condition of the current roof. To repair the roof it has been recommended by roofing contractors, library and city staff for a complete removal of the old roof and installation of a new Modified Bituminous Roofing System with a 20 year warranty. This project was advertised in the local paper, on the city web page, mailed to three roofing contractor and a Pre Bid Conference was conducted on June 3, 2009 at the Library.

The bid received from Diamond Roofing, of Dodge City, for a total amount of \$ 125, 620.00. Staff is recommending accepting the bid from Diamond Roofing. This project is \$ 10,120.00 over the budgeted amount. Staff is anticipating other CIP project to come in under the estimates to cover the overage on this project.

If you have any questions or need further information, please contact my office.



City of Dodge City

PO Box 880 • Dodge City KS 67801 • Phone: 620/225-8160 • Fax: 620/225-8184

Memorandum

To: City Commissioners
Ken Strobel, City Manager
From: Paul Lewis, Parks & Recreation Director
Date: June 10, 2009
Subject: Bike/Ped Trail Engineering Agreement

A handwritten signature in black ink, appearing to be "P. Lewis", located to the right of the "From:" line.

Attached for your review and consideration is an agreement for engineering services for the design, plan development, and contract administration related to the bicycle/pedestrian trail extension project. The proposed agreement is a contract involving the City and Brungardt, Honomichl & Company who was previously selected to provide these services.

BHC will perform topographical surveys, develop a conceptual trail alignment, prepare all necessary plans for bidding, and assist in contract administration once the project is let. The total cost for these services is to be \$44,262. Costs for additional services outside the proposed scope are detailed in the contract.

Up to the point of final design, the cost for this contract is solely the responsibility of the City. Once those plans are approved by KDOT, all remaining costs including the bidding phase and contract administration will be reimbursed at the rate of 80%. Based on the breakout of costs outlined in the agreement, the City can expect to be reimbursed approximately \$4,700.

This project is funded in the 2009 CIP and staff recommends the contract be approved. If there are any questions, I'll be happy to answer them or provide any additional information required.

AGREEMENT FOR SERVICES

**Professional Engineering Services
Bike/Pedestrian Path**

Between:

BRUNGARDT HONOMICHL & COMPANY, P.A.

And

City of DODGE CITY, KANSAS

**BHC RHODES Contract Number:
June 5, 2009**

**AGREEMENT FOR
PROFESSIONAL SERVICES**

THIS AGREEMENT, effective the 5th day of June, 2009, by and between **Brungardt Honomichi & Company, P.A.** (hereinafter referred to as Consultant), a professional corporation with offices at 6363 College Blvd., Suite 500, Overland Park, Kansas 66211, and the city of Dodge City, Kansas (hereinafter referred to as City), a public entity.

WITNESSETH:

WHEREAS, City requires engineering services for design of extension of a Bike/Pedestrian Path from Highway 50 from 6th Ave. to 14th Ave, then segments west and east from 14th Ave. to Dodge City Community College and Spiers Park respectively ; and,

WHEREAS, Consultant is prepared to provide such services;

NOW THEREFORE, in consideration of the premises and mutual covenants herein contained, the parties hereto agree as follows:

ARTICLE 1.0 - SERVICES TO BE PERFORMED BY CONSULTANT. Consultant shall perform the Services described in Attachment A, Scope of Services, which is attached hereto and incorporated by reference as part of this agreement.

ARTICLE 2.0 - COMPENSATION. City shall pay Consultant for performance of services in accordance with fees presented in Attachment B, Fee Schedule, which is attached hereto and incorporated by reference as part of this agreement. Consultant shall submit invoices every four weeks with breakdowns based on percent completion of the project. Payment shall be made within 30 days after receipt of invoice.

ARTICLE 3.0 - GENERAL OBLIGATIONS OF CONSULTANT. Consultant shall exercise the same degree of care, skill, and diligence in the performance of the Services as is ordinarily provided in the performance of such services. All of the Services shall be performed by qualified personnel.

Consultant shall exercise usual and customary professional care in its effort to comply with all rules or regulations of the federal, state, or other government body or any administrative agency pertaining to the performance of the work hereunder.

ARTICLE 4.0 - GENERAL OBLIGATIONS OF THE CITY. The City shall provide payment to the Consultant as provided in Article 2.0, Compensation.

The City shall monitor the performance of the Consultant's work and shall notify them of any concerns and/or modifications required to the Services.

In order to assist the Consultant in the provision of professional services, the City will provide the name of a representative to whom the Consultant will report and from whom Consultant will receive review comments, instructions, directions and authorizations.

The City shall make available to the Consultant any documents, drawings, specifications, files or other information necessary in the execution and completion of the Services. The City shall furnish, at the City's expense, all information, requirements, reports, and instructions required by this Agreement. The Consultant may use such information, requirements, reports, and instructions in performing its services and is entitled to rely upon the accuracy and completeness thereof.

ARTICLE 5.0 - OWNERSHIP OF DOCUMENTS. The City acknowledges the Consultant's documents, including electronic files, as instruments of professional service. Nevertheless, the final documents prepared under this Agreement shall become the property of the City upon completion of the Services and payment in full of all monies due to the Consultant. The City shall not reuse or make any modification to the documents without the prior written authorization of the Consultant. The City agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Consultant, its officers, directors, employees and subconsultants (collectively, Consultant) against any damages, liabilities or cost, including reasonable attorneys' fees and defense costs, arising from or allegedly arising from or in any way connected with the unauthorized reuse or modification of the documents by the City or any person or entity that acquires or obtains the documents from or through the City without the written authorization of the Consultant.

ARTICLE 6.0 - INSURANCE. Consultant shall carry and maintain throughout the performance of the Services insurance acceptable to the City in the following amounts:

1. Workers Compensation, including occupational disease.
(Statutory Limits)
2. General (Public) Liability

Bodily Injury	\$1,000,000
Property Damage	\$1,000,000
3. Automobile Liability (hired, owned, non-owned)

Bodily Injury	\$1,000,000
Property Damage	\$1,000,000
4. Professional Liability

Per Claim	\$1,000,000
Annual Aggregate	\$2,000,000

The Consultant shall provide the City with certificates of insurance evidencing the coverage in effect. After such policies become effective, none of such policies shall be canceled by the insurance company except after ten days notice in writing to the City.

ARTICLE 7.0 - INDEMNIFICATION. The Consultant shall indemnify the City and hold it and its officers harmless from any damage, expense, and liability or claim therefore on account of

any injury, including death, resulting therefrom, or damage sustained by any person or persons (including the Consultant's employees) by reason of any negligent act, omission or neglect on the part of the Consultant's employees.

The City shall also indemnify the Consultant and hold him and his officers harmless from any damage, expense, and liability or claim therefore on account of any injury, including death resulting therefrom, or damage sustained by any person or persons (including the City's employees) by reason of any negligent act, omission, or neglect on the part of the City's employees.

Neither the City nor the Consultant shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence.

ARTICLE 8.0 - TERMINATION. Either party may terminate this Agreement at any time by giving the other party thirty days written notice of such termination. Immediately upon receipt of Notice of Termination, the Consultant shall discontinue Services and incur no further obligation or expenses. The Consultant shall be paid for all work completed prior to the effective date of such termination.

The Consultant shall not assign, transfer, or sublet this Agreement or any interest herein without the prior written consent of the City.

ARTICLE 9.0 - NON-DISCRIMINATION. There shall be no discrimination against any person employed pursuant to this Agreement in any manner forbidden by law.

ARTICLE 10.0 - STATUS. The Consultant shall, during the entire term of this Agreement, be construed to be an independent contractor, and in no event shall any of its personnel be construed to be an employee of the City.

ARTICLE 11.0 - GOVERNING LAW AND JURISDICTION. The City and Consultant agree that this Agreement and any legal actions concerning its validity, interpretation, and performance shall be governed by the laws of Kansas. It is further agreed that any legal action between the City and the Consultant arising out of this Agreement or the performance of the services shall be brought in a court of competent jurisdiction in Kansas.

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized representatives effective the day and year first above written.

**City of Dodge City
Dodge City, Kansas**

**Consultant
Brungardt Honomichl & Company, P.A.**

Authorized Signature

By: _____
Kevin L. Honomichl, P.E., L.S.

Title: President

Date: _____

Date: _____

ATTEST:

ATTEST:

City Clerk

Notary Public

Attachment A Scope of Services

The Consultant will provide professional services as follows:

- Attend kick-off meeting with City staff and KDOT personnel to discuss project goals and parameters, necessities, and design aspects.
- Perform design survey to collect topographic and boundary information within the intended limits of the project as illustrated on the attached drawing. Existing public right-of-way will be determined using existing plats and legal descriptions and existing monumentation that can be found in the field. This work is not expected to include the completion of any boundary surveys. Likewise, the project is only expected to require a description of right-of-way or an easement for construction on the Community College property.
- Develop conceptual trail alignments for the portions of the trail along Hwy 50 between 6th Ave and 14th Ave, from the Community College parking lot to 14th Avenue HAWK signal location, and from the 14th Ave trail spur east of the HAWK signal to Spiers Park for City review. Conceptual plans will be submitted to the City electronically (in PDF format) as well as 2 full-size sets of drawings. A conceptual opinion of construction costs will be submitted as well. It is not expected that this project will include any traffic signal modifications.
- Based on City comments regarding conceptual trail alignments, the Consultant will prepare preliminary (field check) plans for review by the City and KDOT. The field check submittal will include 3 full-size and 2 half-size sets of plans as well as PDF copies of the plans. A preliminary opinion of probable costs will also be submitted. The Consultant will also submit additional sets of plans to KDOT staff.
- Attend a field check meeting with City staff and KDOT personnel to review preliminary plans.
- Based on field check comments, the Consultant will prepare final plans (including general layout, trail plan and profile, traffic signage and pavement marking plans, erosion control, temporary traffic control, details, and cross sections sheets) to the City for approval. The final plan submittal will include 3 full-size and 2 half-size sets of plans as well as PDF copies of the plans. The Consultant will also provide any supplementary technical specifications and a final opinion of probable cost.
- The Consultant, if necessary, will prepare a land disturbance permit application (NOI) for submittal to KDHE by the City.
- The Consultant will prepare required bid documents using City standard forms. Electronic copies (Word or PDF formats) of the prepared bid documents will be provided to the City along with 2 paper copies sealed by the designer of record.
- If desired, the Consultant can provide copies of bid package to interested bidders for a non-refundable fee. Bid packages will be provided at no cost to the City, Dodge City Chamber of Commerce, KDOT, and up to 2 additional plan rooms.
- The Consultant will attend the bid letting, review submitted bids, and provide a recommendation as to contract award.

- The Consultant will provide construction phase services throughout construction to include the following:
 - Interpretation of plans
 - Review of pay requests
 - Provide any documentation required by KDOT

Construction observation is NOT expected to be provided by the Consultant.

ADDITIONAL SERVICES

When specific surveys, plans, specifications, inspection of construction or other such services are called for or requested by the City, Consultant will furnish personnel, equipment and management to provide such services on an hourly basis as hereinafter provided.

These additional services could include, but not be limited to design of private utility relocations, wetlands assessment and mitigation design, design of improvements beyond limits of project, and construction observation services.

SCHEDULE

This Scope of Services is anticipated to follow the timeline listed below. Milestone dates may vary, due to input and reviews by outside regulatory agencies.

	<u>Proposed Timeline</u>
Notice of Award	June 2009
Project Kickoff Meeting	June 2009
Notice to Proceed	June 2009
Conceptual Design Submittal (25%)	July 2009
Preliminary Design Submittal (60%)	August 2009
Final Design Submittal (95%)	September 2009
Final PS&E Submittal	September/October 2009
Bidding	TBD

**Attachment B
Fee Schedule**

BASIC SERVICES

The City will reimburse the Consultant for the provision of professional services described in the Scope of Services on the basis of a lump sum amount of Forty Four Thousand Two Hundred Sixty Two Dollars (\$44,262.00). Said lump sum shall include all labor, overhead, direct expense associated with the Scope of Services above, and a reasonable profit. This lump sum amount is based on the following breakdown of fees and expenses:

Kickoff, Survey & Conceptual Design	\$18,284.00	(164 man-hours)
Preliminary Plans & Field Check	\$10,801.00	(99 man-hours)
Final Plans	\$9,215.00	(90 man-hours)
Bid Phase Services	\$3,724.00	(28 man-hours)
Limited Construction Services	\$2,238.00	(20 man-hours)

ADDITIONAL SERVICES

If additional services beyond those described in the Scope of Services are required and agreed to in writing by the City, an equitable adjustment in fee and time of performance will be mutually determined by both the Consultant and the City prior to the Consultant proceeding with the additional services.

Additional work will be performed on an hourly basis at the hourly rates listed below. Reimbursable expenses incurred outside of this agreement will be charged to the City in accordance with the reimbursable expense schedule listed on the next page.

<u>Title</u>	<u>Hourly Rates</u>
Project Manager	\$142
Project Engineer	\$115
Design/Staff Engineer	\$88
Sr. Designer	\$105
Sr. Engineering Technician	\$88
Engineering Technician	\$74
CAD Technician	\$62
Clerical	\$42
2 Person Survey Crew	\$142
Survey Manager	\$146
Sr. Land Surveyor	\$156

Project Surveyor
Survey Technician

\$115
\$62

Reimbursable Expenses:

The following reimbursable expenses shall apply for work performed on a time and materials basis:

	<u>DESCRIPTION</u>	<u>UNIT PRICE</u>
A. Passenger Vehicle	Per mile	IRS rate
B. Survey Vehicle	Per mile	\$0.70
C. Telephone/Cellular/Long Distance		Actual Cost
D. In House B&W Reproduction	Sq. Ft.	\$0.15
Color Reproduction	Sq. Ft.	\$1.00
E. Miscellaneous Supplies		Actual Cost
F. Freight & Postage		Actual Cost
G. Total Station Equipment fee	Per Hour	\$15.00
H. GPS Equipment fee	Per Hour	\$30.00
I. Robotic Total Station	Per Hour	\$40.00
J. Laser Scanning	Price per Project	