

CITY COMMISSION AGENDA

City Hall Commission Chambers

Monday, July 6, 2009

7:00 p.m.

MEETING #4765

CALL TO ORDER

ROLL CALL

INVOCATION: Reverend Kirk Castelman, Church of Christ

PLEDGE OF ALLEGIANCE

PETITIONS & PROCLAMATIONS

PUBLIC HEARING: Application for Low Interest KDHE Loan

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 for July: Gentleness vs Harshness

CONSENT CALENDAR

1. Approval of City Commission Meeting minutes, June 15, 2009
2. Appropriation Ordinance No. 13, July 6, 2009
3. Cereal Malt Beverage License
 - a. Presto #28, 609 S. Second Ave
 - b. Love's Country Store #58, 1108 W. Wyatt Earp
4. Change Order for 2009 Asphalt Overlay Wilroads Garden Road and Butter & Egg Road.

ORDINANCES & RESOLUTIONS

Resolution No. 2009-16: A Resolution authorizing the completion of an application to the Kansas Department of Health and Environment regarding a loan from the Kansas Public Water Supply Loan Fund.

UNFINISHED BUSINESS

NEW BUSINESS

Contract for Engineering Services for Fairway Drive Traffic Study. Presented by Joe Finley, Director of Engineering Services.

Engineering Services Agreement for BG Consultants for the 14th Street Bridge. Presented by Joe Finley, Director of Engineering Services.

Contract with Friends of the Zoo. Presented by Nannette Pogue, City Clerk.

Approval of Final Plat for Mariah Center Replat. Presented by Dennis Veatch, Director of Development Services.

Ratification of Assignment for Option Agreement. Presented by Ken Strobel, City Manager.

OTHER BUSINESS

ADJOURNMENT

CITY OF DODGE CITY
City Commission Meeting
July 6, 2009

TO: City Manager and City Commission
SUBJECT: Public Meeting
INITIATED BY: Engineering Services *JJ*
AGENDA: Public Meeting for Application to KDHE for Loan

Recommendation: Open Public Meeting to allow comments from citizens concerning the application to KDHE for a loan to finance the construction of the wastewater reclamation plant.

Background: Staff has been directed to find alternative sources of funding for the proposed wastewater reclamation plant. In order to make application to KDHE, the City is required to hold a public hearing and allow comments about the advisability of applying for such funds.

Justification: This hearing is a requirement of KDHE to be eligible to receive funds through their revolving loan program.

Financial Considerations: None

Legal Considerations: KDHE requires a 60-day notification and for the City to hold a public hearing prior to approving the resolution that will be considered later by the Commission

Attachments: None

Purpose/Mission: Our Mission Statement is being fulfilled by allowing our Citizens a time of open communications to comment on the loan application through KDHE.

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

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

WE ARE DODGE CITY!

July 2009

CHARACTER TRAIT

GENTLENESS vs HARSHNESS

Key Concepts

- ◆ **Reach Out:** A gentle person builds relationships, even with those on the other side of racial, religious, or socioeconomic barriers.
- ◆ **Practice the Golden Rule:** Treat others with the respect you want them to show you, and express that respect in ways they will understand.
- ◆ **Choose Carefully:** Whether the situation calls for affirmation or correction, speak and act in a way that motivates growth.
- ◆ **Ease Tempers:** Stop! Define the problem; examine possible solutions; and avoid inflicting unnecessary hardship on others.
- ◆ **Keep the Peace:** Consider the interests of each person, and identify what must be done to repair strained relationships.



**Kind words can be
short and easy to
speak, but their
echoes are truly
endless.**

Mother Teresa

CITY COMMISSION MINUTES
WORK SESSION

City Hall Commission Chambers

Monday, June 15, 2009

5:30 p.m.

MEETING #4763

CALL TO ORDER

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

NEW BUSINESS

1. Ken Strobel, City Manager presented a draft of the proposed Smoking Ordinance which would exempt the Casino gaming floor. Steve Johnson, Inspection Services for the Casino project was in attendance to answer questions regarding the air handling systems
2. Nannette Pogue, City Clerk presented a recommendation for the Friends of the Zoo (FOTZ) request to change the Utility Roundup to benefit the FOTZ
3. Ken Strobel, City Manager asked the opinion of the City Commission regarding procedures for City action related to construction of the Special Events Center.

EXECUTIVE SESSION: At 6:35 p.m. Commissioner Weber moved to adjourn to an Executive Session not to exceed 15 minutes and to include City Manager Ken Strobel and City Clerk Nannette Pogue to discuss property acquisition, seconded by Commissioner Sherer. The motion carried unanimously.

At 6:50 p.m. the regular meeting reconvened.

ADJOURNMENT: Commissioner Sherer moved to adjourn the Work Session, seconded by Commissioner Weber. Motion carried unanimously.

CITY COMMISSION MINUTES

City Hall Commission Chambers

Monday, June 15, 2009

7:00 p.m.

MEETING #4764

CALL TO ORDER

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

PRESENTATION OF FLAG: VFW Post 1714 was represented by Isaac Sanchez, Carl Mackey, Gerald Miller and Greg Vanduran.

PLEDGE OF ALLEGIANCE: VFW Post 1714 led the Commission and audience in the Pledge of Allegiance.

Commander Carl Mackey spoke regarding the beauty and importance of the American flag.

INVOCATION: Vernon Bogart

PUBLIC HEARING: Edward Byrne Memorial Justice Assistant Grant presented by John Ball, Police Chief. The grant is in the amount of \$24,687.00. The grant is being proposed to purchase a computer stress analyzer and a digital dictation system.

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).

Ed Beckley, Promoter for the Dodge City Raceway Park presented the initial accounting for the World of Outlaws that was held this past weekend.

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

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

ORDINANCES & RESOLUTIONS

Ordinance No. 3474: An Ordinance Amending the present Smoking Ordinance. Commissioner Sherer moved to approve Ordinance No. 3474, seconded by Commissioner Smoll. The Motion carried on a vote of 3-2, with Commissioners Broeckelman and Weber voting no.

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). Commissioner Smoll moved to approve Resolution No. 2009-15, seconded by Commissioner Weber. The motion carried unanimously.

NEW BUSINESS

An Agreement with Kansas Department of Transportation (KDOT) ARRA Funds for expansion joint replacement on 14th Street Bridge was approved on a motion by Commissioner Sherer, seconded by Commissioner Smoll. The motion carried unanimously.

A bid for a new roof at the Dodge City Public Library from Diamond Roofing in the amount of \$125,620.00 was approved on a motion by Commissioner Weber, seconded by Commissioner Broeckelman. The motion carried unanimously.

A contract to provide Engineering Services for Bicycle Pedestrian Path with Brungardt Honomichl & Company, P.A. (BHC Rhodes) in the amount of \$44,262.00 was approved on a motion by Commissioner Smoll, seconded by Commissioner Sherer. The motion carried unanimously.

OTHER BUSINESS

Ken Strobel:

- Thanks to Public Works and Park & Recreation Departments for limb pick up after the storm last week

Brian Weber:

- Commented on the Smoking Ordinance decision

Jim Sherer:

- Congratulated the manager of All 4 Fun

- League of KS Municipalities Board met in Dodge City last week. Thanked Christa Roy and the CVB for their participation.

Monte Broeckelman:

- Articles from two different newspapers regarding Dodge City business

Rick Sowers:

- Thanked staff for clean up
- Thanked Ed Beckley for the great job they are doing at the racetrack

ADJOURNMENT: Commissioner Sherer moved to adjourn the meeting, seconded by Commissioner Broeckelman. Motion carried unanimously.

(Corporate Application Form)

APPLICATION FOR LICENSE TO RETAIL CEREAL MALT BEVERAGES

Dodge City, Ford COUNTY, KANSAS, June 19, 2009

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 Presto Convenience Stores, LLC.

corporation whose principal place of business is Andover, KS

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 Presto #28

corporation with principal place of business at

Andover, KS

The resident agent is Doug Ward

with offices at Andover, KS

Said corporation was incorporated on May 19/09. 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.

Tomy Presto, President, 1408B Reeder, Dierland Park, age 51, DOB 10/18/57, Garden City, KS Birth - life

Doug Ward, Vice President, 138 Belle Terre Ct, Wichita, age 43, DOB 7/13/65, Aberdeen, SD 16 years

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

6009 S 2nd Ave

(a) The legal description of the premises is Lots

1, 3, 5, 7, 9 and 11 on Paladuro St.

(b) The street number is 6009

(c) The building is described as Block

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

Presto #28

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

upon which the place of business is located is

Presto Convenience Stores, LLC

Andover, KS

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 owning 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 Debbie Smith

Address 710 N. Birch

Residence Cimmaron, KS

Length of residence within this city or county in which the application is being made 3 years

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

Date and place of birth 10/19/52 Marshall, AR

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. (X)

A license fee of \$ 75.00 is enclosed herewith.

(Corporate Application Form)

APPLICATION FOR LICENSE TO RETAIL CEREAL MALT BEVERAGES

Dodge City, Ford COUNTY, KANSAS, June 22, 2009

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 Love's Travel Stops & Country Stores, Inc.

corporation whose principal place of business is 10601 N. Pennsylvania, Oklahoma City, OK 73120

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 Country Store #58

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

corporation with principal place of business at 1108 W. Wyatt Earp, Dodge City, KS 67801

upon which the place of business is located is Love's Travel Stops & Country Stores, Inc.

P.O. Box 26210, Oklahoma City, OK 73126

The resident agent is C.T. Corporation

with offices at Topeka, KS

Said corporation was incorporated on 12/29/1986

A copy of the Articles of Incorporation are presently on file with the Register of Deeds of this County.

Yes (), No (X)

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.

* See attached

[Blank lines for list of officers, directors, stockholders, and managers]

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

1108 W. Wyatt Earp Dodge City, KS 67801

(a) The legal description of the premises is

(b) The street number is 1108 W. Wyatt Earp

(c) The building is described as concrete block

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

Love's Country Store #58

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 Johnny Dunlap

Address 417 Runyon Ave

Residence Dodge City, KS

Length of residence within this city or county in which the application is being made 9 years

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

Date and place of birth 7/2/1948 Dodge City, KS

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. (X).

A license fee of \$ 75.00 is enclosed herewith.

Memorandum

To: City Commission
Ken Strobel, City Manager
Cherise Tieben, Assistant City Manager
From: Ray Slattery, P.E. 
City Engineer
Date: June 23, 2009
RE: 2009 Asphalt Overlay ST0905

Attached please find Change Order 1 for your review on the above referenced project. The change order is for an increase of \$1,956.05.

The change order is the result of the following:

WILROADS GARDEN ROAD

Asphalt Overlay BM-2 (1 ½") – The addition of 12 tons of asphalt represent actual field measurements. The reason for this over run was due to the unevenness of the existing roadway. The Contractor was to even out the cross slope of the roadway. Doing this required more asphalt than anticipated. Tonnage needed based off of the area overlaid was 1365 tons, the Contractor placed 1377 tons, and this represents an average thickness of 1 5/8" of BM-2 surface material.

BUTTER & EGG ROAD

Asphalt Overlay BM-2 (1 ½" & 2") – The addition of 17 tons of asphalt represents actual field measurements. The reason for this over run was due to the unevenness of the existing roadway. The Contractor was to even out the cross slope of the roadway. Doing this required more asphalt than anticipated. Tonnage needed based off of the area overlaid was 490 tons, the Contractor placed 507 tons, and this represents an average thickness of 1 5/8" and 2 1/8" of BM-2 surface material.

RS/mjr

Memorandum

To: City Manager
Assistant City Manager
City Commissioners

From: Director of Engineering *JF*

Date: 6/26/09

Subject: Resolution 2009-16; KDHE Loan
Agenda Item: Ordinances & Resolutions

Recommendation: Approve Resolution 2009-16 authorizing the completion of an application to KDHE for a loan to fund the construction of the water reclamation plant.

Background: Approve Resolution 2009-16 authorizing the completion of an application to KDHE for a loan to fund the construction of the water reclamation plant.

Justification: This resolution would authorize staff to complete the application process necessary to receive a low interest loan. Without this loan, the City would need to finance the construction costs through revenue bonds or other financing methods available to the City.

Financial Considerations: There are no financial obligations upon passing this resolution. However, once the loan process is complete and the City approves the contract, the City will be required to make yearly payments to pay back the loan of \$29,500,000. At this time, the final interest rate is not known and so the yearly payments have not been determined. Once the loan has been approved, all the documents will be brought back to the Commission for final approval.

Purpose/Mission: The approval of this resolution will allow the City to receive a low interest loan to complete the construction of the wastewater reclamation plant. The loan will allow for the completion of this project at a lower interest rate than the City would receive through our normal process. The completion of the project will allow for future growth of the City by having the necessary infrastructure in place. In addition, the completed project will also remove some of the demand on the present plant.

Legal Considerations: None at this time. Once the loan is approved, the City will be bound by contract to make payments to retire the debt.

Attachments: Resoultion 2009-16

RESOLUTION NO. 2009-16

A RESOLUTION AUTHORIZING THE COMPLETION OF AN APPLICATION TO THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT REGARDING A LOAN FROM THE KANSAS PUBLIC WATER SUPPLY LOAN FUND

WHEREAS, the City of Dodge City, Kansas (the "City") is a duly incorporated city of the First Class organized under the laws of the state of Kansas (the "State") which operates a public water supply and distribution system (the "System"); and

WHEREAS, the City Commission (the "Governing Body") of the City has heretofore determined in to be in the best needs of the customers of the System to undertake certain modifications and improvements (the "Project") to the System; and

WHEREAS, the pursuant to K.S.A. 65-163c *et seq.* (the "Act"), the Kansas Department of Health and Environment ("KDHE") administers the Kansas Public Water Supply Loan Fund (the "Fund") from which loans are made to certain qualified Municipalities (as said term is defined in the Act) to finance modification and improvements to public water supply systems; and

WHEREAS, the City has heretofore made an application to KDHE for a loan in an amount not to exceed \$29,500,000 (the "Loan") to finance the Project; and

WHEREAS, the Governing Body has conducted a public hearing this date on the advisability of proceeding with the completion of the application for the Loan and desires to authorize the appropriate officials of the City to accomplish the completion process.

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

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

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

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

Adopted by the Governing Body of the City of Dodge City, Kansas on this 6th day of July 2, 2009.

(SEAL)

Rick Sowers, Mayor

ATTEST:

Nannette Pogue, City Clerk

Memorandum

To: City Manager
Assistant City Manager
City Commissioners

From: Director of Engineering 

Date: 6/29/09

Subject: Contract for Engineering Services
Fairway Drive

Agenda Item: New Business

Recommendation: Approve contract with Sloan Meier Hancock for the amount of \$9,673.00

Background: Several years ago the owner of the Summerlon Development began platting the area just south of US-50 and to the north of Fairway Drive (see map). During the preliminary discussion, the developer indicated that he desired to see Fairway Drive extended to the highway. Over the next several years the development plans have changed from all commercial to a mixture of commercial and residential. Due to these changes, it was unclear to staff whether the developer still intended to extend this portion of Fairway Drive. Staff has been concerned that not only this development, but the surrounding development is somewhat isolated from emergency response vehicles. In addition, if the area were to develop as commercial, all related traffic would be forced to go through this residential neighborhood. For this reason, conversation with the developer centered around the need to move forward with working towards this extension.

A connection to the highway is subject to KDOT approval. We contacted District KDOT Staff and was informed that a detailed traffic analysis and impact study would be required before approval would be granted. Earlier this year staff solicited Requests for Qualifications (RFQs) from several engineering firms. The Commission approved staff's request to negotiate a contract with Sloan Meier Hancock to perform this work.

Justification: This is the last break in the access control for this section of US-50. The other breaks occur at Central Street, Avenue A, and Avenue K. This access also would line up with the access point at the bowling alley and would improve access for any future development north of the frontage road. Without this study, the City cannot seek

approval for a connection to the highway. The developer is still interested in getting an access to the highway at this location.

Financial Considerations: The contract with the Sloan Meier Hancock is \$9,673.00. The 2009 CIP budgeted \$30,000 for intersection studies at this location and Central Street. Central Street is being done through another KDOT program at no cost to the City. Once the study is complete and a recommendation is received from KDOT, the Commission will need to commit funds for the construction of the access point. Lacking a recommendation, staff does not have an estimate of the potential cost for the construction of this road intersection.

Purpose/Mission: By completing this study, staff will have the necessary information it needs to proceed with a request for access. By requesting this additional access point, the developer will be able to make better use of his property without adversely affecting the surrounding neighborhoods. In addition, safety for this area will be enhanced by having a direct access to the highway for emergency vehicles.

Legal Considerations: None at this time.

Attachments: Contract with Sloan Meier Hancock
Aerial Map of Location

CONSULTING SERVICES AGREEMENT

Client: City of Dodge City Address: 806 Second Avenue Dodge City, KS 67801	Project: US 50 and Fairway Drive TIS Project Location: US 50 & Fairway Drive, Dodge City
Telephone: 620-225-8106 Contact: Joe Finley Client Job No.:	SMH Project Manager: J. Hancock SMH Job No.: 090629DE

This AGREEMENT is made by and between the City of Dodge City, hereinafter "CLIENT", and SLOAN MEIER HANCOCK-ENGINEERS SURVEYORS, PA, INC. hereinafter called "CONSULTANT", for professional consulting services not presently specified under any other agreement between CLIENT and CONSULTANT. CONSULTANT agrees to provide CLIENT with requested consulting services more specifically described as follows:

Preliminary plat, final plat, and construction plans for Grand Champions Residential Development.

The following Attachments here hereby made a part of the AGREEMENT:

- GENERAL CONDITIONS
- Attachment A: Scope of Services and Fee Estimate for Work Authorizations
- Attachment B: Personnel and Reimbursable Rates
- Attachment C:
- Other:

By signing this AGREEMENT, CLIENT acknowledges that it has read and fully understands this AGREEMENT and all attachments thereto. CLIENT further agrees to pay CONSULTANT for services described herein upon receipt of invoice by CLIENT.

- FEE ESTIMATE SHOWN ON EACH SERIALLY NUMBERED WORK AUTHORIZATION
- THE ESTIMATED TOTAL COST OF CONSULTANT'S SERVICES IS \$9,673.00.

IN WITNESS WHEREOF, the parties hereto have made and executed this AGREEMENT.

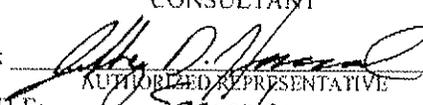
CLIENT

By: _____
 AUTHORIZED REPRESENTATIVE

TITLE: _____

DATE: _____

CONSULTANT

By: 
 AUTHORIZED REPRESENTATIVE

TITLE: *Secretary*

DATE: *June 29, 2009*

PLEASE SIGN AND RETURN ONE COPY TO SLOAN MEIER HANCOCK - ENGINEERS SURVEYORS, P.A. INC. AT THE ADDRESS BELOW

GENERAL CONDITIONS

SECTION I – Services by Consultant

1.1 General

CONSULTANT shall provide services under this AGREEMENT only upon request of the CLIENT, and only to the extent defined and required by the CLIENT. These services may include the use of outside services, outside testing laboratories and special equipment.

1.2 Scope of Services and Fees

The Services to be performed by CONSULTANT and the associated fee estimate are attached hereto and made a part of this AGREEMENT as ATTACHMENT A and shall be performed by the CONSULTANT in accordance with the CLIENT's requirement. It is mutually understood that the fee estimate shown in ATTACHMENT A is not a firm contractual amount except the total fee by the CONSULTANT shall not exceed the estimate unless authorized by the CLIENT. The intent of the Scope of Work and the estimate contained in ATTACHMENT A is to identify the Services to be provided by CONSULTANT. However, it is specifically understood that by written notice to CONSULTANT, CLIENT can decrease or, with concurrence of CONSULTANT, increase the Scope of Work.

SECTION II – Payment to Consultant

2.1 Payment for Personnel Services

2.1.1 Payment

Payment for the services rendered by CONSULTANT's personnel shall be based on the hours of chargeable time and in accordance with CONSULTANT's Schedule of Unit Rates, which is identified, attached hereto, and made a part of this AGREEMENT as ATTACHMENT B.

2.1.2 Chargeable Time

Chargeable time for CONSULTANT's personnel is that portion of their time devoted to providing services requested by CLIENT. Chargeable time for field personnel located away from CONSULTANT's office for more than one week is a minimum of eight hours per day and five days per calendar week, except for federally declared legal holidays or during an employee's sick leave or vacation time. Travel time from CONSULTANT'S office to an assigned work site and return to CONSULTANT's office is chargeable time; or if more economical for CLIENT, CONSULTANT shall lodge its personnel overnight near the work site in lieu of traveling back to CONSULTANT's office at the end of each work day.

2.1.3 Overtime Rates

The basis for payment to CONSULTANT for each hour worked in excess of forty (40) hours in any calendar week shall be the applicable hourly rate as specified in ATTACHMENT B.

2.2 Payment for Direct Expenses

2.2.1 Payment

For Direct Expenses incurred by CONSULTANT, payment to CONSULTANT by the CLIENT shall be in accordance with CONSULTANT's Schedule of Unit Rates, which is identified, attached to, and made a part of this AGREEMENT as ATTACHMENT B.

2.2.2 Direct Expenses

For the purposes of this AGREEMENT, Direct Expenses to be contracted and managed by CONSULTANT and payable by CLIENT to CONSULTANT shall include: Outside Services including the services and reimbursable expenses for firms other than CONSULTANT which are necessary for the work the CONSULTANT is directed to perform; Laboratory Test and related reports necessary for the work the CONSULTANT is directed to perform, either by the CONSULTANT or by an outside service for the CONSULTANT; Special Equipment expenses including the costs of the CONSULTANT locating, acquiring, leasing or renting any equipment or facilities not currently owned, leased or rented by CONSULTANT at the time of the request for services which are necessary to enable the CONSULTANT to provide the services requested; Vehicles furnished by CONSULTANT for CONSULTANT'S authorized travels and for CONSULTANT's field personnel; Per Diem expense of actual costs of maintaining CONSULTANT's field personnel on or near the Project site, for each day of field assignment

away from CONSULTANT's office; and Other Direct Expenses associated with all services provided hereunder and identified in ATTACHMENT B.

2.3 Payment Conditions

2.3.1 CONSULTANT shall submit monthly invoices for all personnel services and direct expenses under this AGREEMENT and a final invoice upon completion of services.

2.3.2 Invoices are due and payable upon receipt by CLIENT. Interest at a rate of 1.5% per month or the maximum allowed by law, will be charged on all past due amounts starting thirty (30) days after date of invoice. Payment will first be credited to interest and then to principal.

2.3.3 In the event of a disputed or contested invoice, only that portion so contested will be withheld from payment and the CLIENT will pay the undisputed portion. No interest will accrue on any reasonably contested portion of the invoice until mutually resolved.

2.3.4 If CLIENT fails to make payment in full to CONSULTANT within sixty (60) days after the date of the disputed invoice. CONSULTANT may after giving seven (7) days written notice to CLIENT, suspend services under this AGREEMENT until paid in full, including interest. CONSULTANT shall have no liability to CLIENT for delays or damages caused by such suspension or services. CLIENT agrees to pay all costs of collection, including reasonable attorney's fees, incurred by CONSULTANT as result of CLIENT's failure to make payments in accordance with this AGREEMENT.

2.3.5 The billing rates specified in ATTACHMENT B for subsequent years shall be adjusted annually in accordance with CONSULTANT's costs of doing business, subject to CLIENT's review and concurrence.

SECTION III – Term of Agreement

3.1 Term

CONSULTANT's obligations to perform under this AGREEMENT shall extend from the date of execution until terminated by either party.

3.2 Abandonment of Work

CLIENT shall have the absolute right to abandon any work, requested hereunder or to change the general scope of the work at any time, and such action on its part shall in no event be deemed a breach of contract.

3.3 Termination of AGREEMENT

This AGREEMENT may be terminated for convenience on thirty (30) days written notice, or for cause if either party fails substantially to perform through no fault of the other and does not commence and make a continuing effort to effect correction of such non-performance within seven (7) days of written notice.

3.4 Payment for Work Upon Abandonment or AGREEMENT Termination

If CLIENT abandons requested work or terminates this AGREEMENT, CONSULTANT shall be paid on the basis of work completed to the date of abandonment or effective date of termination. CONSULTANT shall perform no activities other than reasonable wrap-up activities after receipt of notice of abandonment or termination. Payment for the work shall be as established under Section II.

SECTION IV – General Considerations

4.1 Assignment and Responsibility for Personnel

4.1.1 The assignment of personnel and all phases of the undertaking of the services, which CONSULTANT shall provide hereunder, shall be subject to the oversight and general guidance of CLIENT.

4.1.2 While upon the premises of CLIENT or property under its control, all employees, agents and subconsultants of CONSULTANT shall be subject to CLIENT's rules and regulations respecting its property and the conduct of its employees thereon.

4.1.3 However, it is understood and agreed that in the performance of the work and obligations hereunder. CONSULTANT shall be and remain an independent Consultant and that the employees, agents or

subconsultants of CONSULTANT shall not be responsible for the supervision and performance of all subconsultants which are to perform hereunder.

4.2 Insurance

4.2.1 CONSULTANT shall furnish CLIENT a certificate of insurance upon request showing amounts and types of insurance carried by CONSULTANT, which certificate shall contain a commitment by the Insurance Company that during the time any work is being performed by CONSULTANT under this AGREEMENT it will give CLIENT ten (10) days advance notice of cancellation or change in the insurance coverage shown on such certificates.

4.3 Successors and Assigns

4.3.1 CLIENT and CONSULTANT each binds itself and its partners, successors, executors, administrators, assigns and legal representatives of such other party, in respect to all covenants, agreements, and obligations of this AGREEMENT.

4.3.2 Neither CONSULTANT nor CLIENT shall assign or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this AGREEMENT without the written consent of the other party, except as stated in paragraph 4.3.1 and except to the extent that the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this AGREEMENT. Nothing contained in this paragraph shall prevent CONSULTANT from employing such independent consultants, associates, and subconsultants as it may deem appropriate to assist in the performance of services hereunder.

4.3.3 Nothing herein shall be construed to give any rights or benefits hereunder to any one other than CLIENT and CONSULTANT except as otherwise provided herein.

4.4 Compliance with Law

4.4.1 CONSULTANT shall comply with, and cause its subconsultants to comply with, applicable Federal, state, and local laws, orders, rules and regulations relating to the performance of the services CONSULTANT is to perform under this AGREEMENT.

4.4.2 Neither the CONSULTANT nor the CONSULTANT's agents or employees shall discriminate against any employee or applicant for employment to be employed in the performance of this AGREEMENT with respect to hiring, tenure, terms, conditions, or privileges of employment, because of race, color, religion, sex or national origin.

4.5 Ownership and Reuse of Documents

4.5.1 All drawings, specifications, test reports and other materials and work products, which have been prepared or furnished by CLIENT prior to the AGREEMENT, shall remain CLIENT's property. CLIENT shall make available to CONSULTANT copies of these materials as necessary for the CONSULTANT to perform the services requested hereunder.

4.5.2 All drawing, specifications, test reports and other materials and work products, including computer aided drawings, designs and other data filed on electronic media which will be prepared or furnished by CONSULTANT (and CONSULTANT's independent professional associates and subconsultants) under this AGREEMENT, are instruments of service in respect to the Project and CONSULTANT shall retain an ownership and property interest therein whether or not the Project is completed. CLIENT may make and retain copies for information and reference in connection with the use and the occupancy of the Project by CLIENT and others; however, such documents are not intended or represented to be suitable for reuse by CLIENT or others on extensions of the Project or on any other project. Further, CONSULTANT makes no warranty as to the compatibility of computer date files with computer software and software releases other than that used by CONSULTANT in performing services herein, and to the condition or availability of the computer date after an acceptance period of thirty (30) days from delivery to CLIENT. Any reuse without written verification or adaptation by CONSULTANT for the specific purpose intended will be at CLIENT's sole risk and without liability or legal exposure to CONSULTANT or to CONSULTANT's independent professional associates or subconsultants, and CLIENT shall indemnify and hold harmless CONSULTANT and CONSULTANT's independent professional associates and subconsultants from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom. Any

such verification or adaptation will entitle CONSULTANT to further compensation at rates to be agreed upon by CLIENT and CONSULTANT.

4.6 Severability

If any of the provisions contained in this AGREEMENT are held for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision, and the AGREEMENT shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

4.7 Location of Underground Utilities

It shall be the CLIENT's responsibility to locate and physically mark all underground utilities and structures, which lie within the work area prior to the start of subsurface investigations. If the CLIENT elects not to assume this responsibility, CLIENT shall notify CONSULTANT and shall compensate CONSULTANT for all costs associated with locating and physically marking said underground utilities and structures according to CONSULTANT's project billing rates, over and above the estimated project fee. CLIENT shall indemnify and hold CONSULTANT harmless from any damages and delays resulting from unmarked or improperly marked underground utilities and structures. For reasons of safety, CONSULTANT will not begin work until this has been accomplished.

4.8 Subsurface Investigations

In soils, foundation, groundwater, and other subsurface investigations, the actual characteristics might vary significantly between successive test points and sample intervals and at locations other than where observations, exploration, and investigations have been made. Because of the inherent uncertainties in subsurface evaluations, changed or unanticipated underground conditions may occur that could affect Project cost and/or execution. These conditions and cost/execution effects are not the responsibility of the CONSULTANT.

4.9 CONSULTANT's Personnel at Project Site

4.9.1 The presence or duties of the CONSULTANT personnel at a Project site, whether as onsite representatives or otherwise, do not make the CONSULTANT or its personnel in any way responsible for those duties that belong to the CLIENT and/or the construction contractors or other entities, and do not relieve the construction contractors or any other entity of their obligations, duties, and responsibilities, including , but not limited to, all construction methods, means, techniques, sequences and procedures necessary for coordinating and completing all portions of the construction work in accordance with the project documents and any health or safety precautions required by such construction work. The CONSULTANT and its personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions and have no duty for inspecting, noting, observing, correcting, or reporting on health or safety deficiencies of the construction contractor or other entity or any other persons at the site except CONSULTANT's own personnel.

4.9.2 The presence of CONSULTANT's personnel at a construction site is for the purpose of providing to CLIENT a greater degree of confidence that the completed work will conform generally to the project documents and that the integrity of the design concept as reflected in the project documents has been implemented and preserved by the contractor(s). CONSULTANT neither guarantees the performance of the contractor(s) nor assumes responsibility for contractor(s) failure to perform their work in accordance with the project documents.

4.10 Opinions of Cost, Financial Considerations and Schedules

In providing opinions of cost, financial analyses, economic feasibility projections, and schedules for the Project, the CONSULTANT has no control over the cost of labor, materials, equipment, or services furnished by other, or over the Contractor(s) methods of determining prices, or over competitive bidding or market conditions. CONSULTANT's opinions of probable Total Project Costs and Construction Costs provided for herein as appropriate are made on the basis of CONSULTANT's experience and qualifications and represent CONSULTANT's judgments as an experienced and qualified professional consultant familiar with the construction industry. CONSULTANT makes no warranty that the CLIENT's actual Total Project or Construction Costs, financial aspects, economic feasibility, or schedules will not vary from the

CONSULTANT's opinions, analyses, projections, or estimates. If CLIENT wishes greater assurance as to any element of the Total Project or Construction cost, feasibility, or schedule, CLIENT will employ an independent cost estimator, contractor, or other appropriate advisor.

4.11 Disposition of Samples and Equipment

4.11.1 Disposition of Samples

No samples and/or materials will be kept by CONSULTANT longer than thirty (30) days after submission of the final report unless agreed otherwise.

4.11.2 Hazardous or Potentially Hazardous Samples and Materials

In the event that samples and/or materials contain or are suspected to contain, substances or constituents hazardous or detrimental to health, safety, or the environment as defined by federal, state, or local statutes, regulations or ordinances, CONSULTANT will, after completion of testing, return such samples and materials to CLIENT, or have the samples and materials disposed of in accordance with CLIENT's directions and all applicable laws. CLIENT recognizes and agrees that CONSULTANT at no time assumes title to said samples and materials, and shall have no responsibility as a handler, generator, operator, transporter, or disposer of said samples and materials.

4.11.3 Contaminated Equipment

All laboratory and field equipment contaminated in CONSULTANT's performance of services will be cleaned at CLIENT's expense. Contaminated consumables will be disposed of and replaced at CLIENT's expense. Equipment (including tools), which cannot be reasonably decontaminated shall become the property and responsibility of CLIENT. At CLIENT's expense, such equipment shall be delivered to CLIENT, or disposed of in the same manner specified in 4.11.2 above. CLIENT agrees to pay CONSULTANT the fair market value of any such equipment which cannot reasonably be decontaminated and is delivered to CLIENT pursuant to this AGREEMENT.

4.12 Discovery of Unanticipated Pollutant and Hazardous Substance Risks

4.12.1 If CONSULTANT, while performing the services, discovers pollutants and/or hazardous substances that pose unanticipated risks, it is hereby agreed that the scope of services, schedule, and the estimated cost of CONSULTANT's services will be reconsidered and that this AGREEMENT shall immediately become subject to renegotiation or termination.

4.12.2 In the event that the AGREEMENT is terminated because of the discovery of pollutants and/or hazardous substances posing unanticipated risks, it is agreed that CONSULTANT shall be paid for its total charges for labor performed and reimbursable charges incurred to the date of termination of this AGREEMENT, including, if necessary, any additional labor or reimbursable charges incurred in demobilizing.

4.12.3 CLIENT also agrees that the discovery of unanticipated pollutants and/or hazardous substances may make it necessary for CONSULTANT to take immediate measures to protect health and safety. CONSULTANT agrees to notify CLIENT as soon as practically possible should unanticipated pollutants and/or hazardous substances be suspected or encountered. CLIENT authorizes CONSULTANT to take measures that in CONSULTANT's sole judgment are justified to preserve and protect the health and safety of CONSULTANT's personnel and the public. CLIENT agrees to compensate CONSULTANT for the additional cost of taking such additional precautionary measures to protect employees' and the public's health and safety. This section is not intended to impose upon CONSULTANT any duties or obligations other than those imposed by law.

SECTION V – Professional Responsibility

5.1 Performance of Services

CONSULTANT will strive to perform services under this AGREEMENT in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. No other presentation, express or implied, and no warranty or guarantee is included or intended in this AGREEMENT, or in any report, opinion, document or otherwise.

5.2 Limitation of Liability

CLIENT and CONSULTANT agree to allocate certain of the risks so that, to the fullest extent permitted by law, CONSULTANT's total liability to CLIENT is limited to \$50,000 or CONSULTANT's fee, whichever

is greater, this being the CLIENT's sole and exclusive remedy for any and all injuries, damages, claims, losses, expenses or claim expenses (including attorney's fees) arising out of this AGREEMENT from any cause or causes. Such causes include, but are not limited to, CONSULTANT's negligence, errors, omissions, strict liability, breach of contract, or breach of warranty. CLIENT understands that dollar limits higher than that indicated above are available. If CLIENT wishes to discuss these other limits and their impact on CONSULTANT's fee, CLIENT should contact CONSULTANT prior to executing this AGREEMENT.

5.3 No Special or Consequential Damages

CLIENT and CONSULTANT agree that to the fullest extent permitted by law, CONSULTANT will not be liable to CLIENT for any special, indirect, or consequential damages whatsoever, whether caused by CONSULTANT's negligence, errors, omissions, strict liability, breach of contract, breach of warranty, or other cause or causes.

5.4 Indemnification

To the fullest extent permitted by law, CLIENT agrees to defend, indemnify and hold CONSULTANT, its agents, subconsultants and employees harmless from and against any and all claims, damages, losses and expenses, defense costs including attorneys' fees, and court arbitration costs and other liabilities arising out of or resulting from, wholly or in part, the performance of CONSULTANT's services hereunder, including the transport or disposal of hazardous samples or contaminated equipment by CONSULTANT on behalf of CLIENT, or the presence, release, or threatened release of asbestos, hazardous substances, or pollutants on or from the project property; **provided that** CLIENT shall not indemnify CONSULTANT against liability for damages or expenses to the extent caused by the negligence of CONSULTANT, its agents, subcontractors, or employees.

5.5 Third Party Beneficiaries

CLIENT and CONSULTANT expressly agree that AGREEMENT does not confer upon any third party any rights as beneficiary to this AGREEMENT. CONSULTANT accepts no responsibility for damages, if any, suffered by any third party as the result of a third party's use of the work product, including reliance, decisions, or any other action taken based upon it. CLIENT agrees that CONSULTANT's compliance with any request by CLIENT to address or otherwise release any portion of the work product to a third party shall not modify, rescind, waive or otherwise alter provisions of this AGREEMENT nor does it create or confer any third party beneficiary rights on any third party.

SECTION VI – Governing Law

This AGREEMENT is to be governed by the laws of the State of Kansas.

***U.S. 50 and Fairway Drive Intersection Traffic Study
City of Dodge City
Scope of Services***

It is our understanding the City is planning to extend Fairway Drive north from Ragan Road to connect with US HWY 50. Prior to this project the City would like a traffic study completed to evaluate the US-50 and Fairway Drive intersection for future traffic control needs. The study must be completed to KDOT standards.

Sloan Meier Hancock – Engineers Surveyors, P.A. (SMH) will perform the following tasks for the City of Dodge City Department of Engineering Services:

KDOT Traffic Impact Study and Conceptual Plans

1. Traffic impact analysis to include the following:
 - a. Data Collection (**SMH**)
 - i. Documentation of the current geometrics and traffic control at the following intersections along US-50
 1. Fairway Drive (North Leg)
 2. Avenue P
 3. Central Avenue
 4. Frontview Street access road (unnamed) between Fairway Drive and Central Avenue on the north side
 - ii. AM and PM peak hour turning movement traffic counts at the following intersections with U.S. 50;
 1. Fairway Drive (North Leg)
 2. Avenue P
 3. Central Avenue
 4. Frontview Street access road (unnamed) between Fairway Drive and Central Avenue on the north side
 - iii. KDOT provided 24 hour volume counts on US-50 with volumes reported in 15 minute increments.
 - iv. Information related to expected future development and growth within a mile radius of the proposed intersection of US-50 and Fairway Drive will be collected.
 - b. Trip Generation and Distribution (**SMH**)
 - i. Trip generation calculations along with trip distribution estimates for the north and south legs of the proposed intersection (existing, existing plus development, & development plus 20 years).
 - ii. Assignment of turning movement counts at the proposed intersection of U.S. 50 and Fairway Drive into developments

north and south of the proposed intersection (existing, existing plus development, & development plus 20 years).

- iii. Upstream Signal Timings if Necessary.
 - c. Intersection Analysis (**HWS**)
 - i. Signal Warrant Analysis
 - ii. Synchro and SimTraffic will be used to analyze the each intersection alternative, intersection geometrics and proposed countermeasures. Analysis will be based on LOS, safety and capacity for each alternative.
 - iii. The intersection of US-50 and Fairway Drive will be analyzed as a roundabout, signalized intersection and a stop controlled intersection.
2. Development of conceptual intersection geometrics including improvements along both U.S. 50 and Fairway Drive. The conceptual intersection will include the following information on 1 sheet of 24" by 36" paper set to a typical engineering scale:
- a. Aerial photography as provided by the City of Dodge City
 - b. Standard Intersection Geometrics (**SMH**)
 - i. Geometrics including existing and proposed lane widths, existing and proposed shoulder widths, proposed turn lane tapers (if required), proposed turn lane lengths (if required), and all other geometric dimensions typical of a plan view of a conceptual intersection improvement.
 - ii. Accommodations and planning for pedestrian movements.
 - iii. *Locations of proposed traffic signals and signal control boxes in addition to estimated mast arm lengths if warranted.
(**HWS**)
 - c. Roundabout Intersection Geometrics (**HWS**)
 - i. Geometrics (WB-65, Interstate Semi Trailer Design Vehicle) including existing and proposed lane widths; existing and proposed shoulder widths; proposed roundabout aisle widths, diameters, and entrance and exit angles conceptual intersection improvement.
 - ii. Accommodations and planning for pedestrian movements.
3. Preparation of a bound draft report, including improvement recommendations, and appendices for review by the City of Dodge City.
(**HWS, SMH**)
4. Quality Control Review of the draft report by HWS Consulting Group
(**HWS**)

5. Preparation of a bound final report, including improvement recommendations, and appendices for review by the Kansas Department of Transportation and City of Dodge City. **(HWS, SMH)**
6. Meetings
 - a. Meeting with the City of Dodge City to go over the preliminary results of the study including the typical intersection and roundabout intersection traffic study results and conceptual drawings of both. This meeting will be prior to submittal of the final traffic study to the KDOT.
 - b. Potential meeting with the KDOT Area and District Engineers to discuss the results of the final traffic study and any modifications that should be made to the traffic study before it is accepted by the KDOT. **(HWS Attendance Required)**
 - c. Potential meeting with the KDOT Bureau of Traffic Engineering in Topeka to discuss the results of the final traffic study and any modifications that should be made to the traffic study before it is accepted by the KDOT. **(HWS Attendance Required)**

Deliverables

1. Draft Bound Report Delivered to City of Dodge City Department of Engineering Services (2 Copies for City Review)
 - a. Table of Contents **(SMH)**
 - b. Introduction **(SMH)**
 - c. Existing Site Information **(SMH)**
 - d. Proposed Site Information **(SMH)**
 - e. Trip Generation/Trip Distribution **(SMH)**
 - f. Typical Intersection Level of Service Analysis for stop controlled, signalized and roundabout intersection. **(HWS)**
 - g. Summary **(SMH)**
 - h. Recommendation **(SMH, HWS)**
 - i. Appendix Section with Computational Analysis, Cited Information, 11"x17" Concept of Typical Intersection, 11"x17" Concept of Roundabout Intersection **(SMH & HWS)**
 - j. 1 - 24"x36" Typical Intersection Concept **(SMH)**
 - k. 1 - 24"x36" Roundabout Intersection Concept **(HWS)**
2. **Final Bound Report Delivered to City of Dodge City Department of Engineering Services and the KDOT (4 Copies for City Review and 4 Copies for KDOT Review)
 - a. Table of Contents **(SMH)**
 - b. Introduction **(SMH)**

- c. Existing Site Information **(SMH)**
- d. Proposed Site Information **(SMH)**
- e. Trip Generation/Trip Distribution **(SMH)**
- f. Typical Intersection Level of Service Analysis for stop controlled, signalized and roundabout intersection. **(HWS)**
- g. Summary **(SMH)**
- h. Recommendation **(SMH, HWS)**
- i. Appendix Section with Computational Analysis, Cited Information, 11"x17" Concept of Typical Intersection, 11"x17" Concept of Roundabout Intersection **(SMH & HWS)**
- j. 1 - 24"x36" Typical Intersection Concept **(SMH)**
- k. 1 - 24"x36" Roundabout Intersection Concept **(HWS)**

*These items will be optional services dependent upon the traffic signal warrant analysis.

**After the Draft Review by the City of Dodge City one of three Final Drafts will be submitted to the City of Dodge City and the KDOT as the "Final Report". The decision as to which intersection and study results to submit as the "Final Report" will rest with the City of Dodge City Department of Engineering Services.

1. Typical Intersection Study Results and Concept Only.
2. Roundabout Intersection Study Results and Concept Only.
3. Both Intersections Study Results and Concepts.

Fee Estimate
 City of Dodge City
 U.S. 50 and Fairway Drive



Shan Meel Hancock - Engineer, Surveyors, P.A.

Phase	Task	Team Member	Estimated Hours	CADD	P/E Engineer	Proj. Engineer	Design Engineer	HWS	Traffic Eng.	HWS	Design Engineer	HWS	Design Engineer	Task #	Task Fee
Phase 1 - Traffic Impact Analysis	Data Collection	SMH	1			\$110.00								1	\$110.00
	Top Generation and Distribution	SMH	1			\$110.00								2	\$110.00
	Intersection Analysis	HWS	4											3	\$440.00
	Preparation of Draft Report	HWS/SMH	4											4	\$440.00
	Preparation of Final Report	HWS/SMH	1			\$440.00								5	\$440.00
	Meetings with City & KDOT	HWS/SMH	4			\$110.00								6	\$440.00
				4			\$250.00							7	\$250.00
				4			\$440.00							8	\$440.00
														9	\$1,100.00
														10	\$1,100.00
Task Total = \$7,300.00															
Phase 2 - Conceptual Plans	Stop Controlled Intersection	SMH	10			\$550.00								11	\$550.00
	Roundabout Intersection	HWS	20			\$1,100.00								12	\$1,100.00
				3			\$495.00							13	\$495.00
Task Total = \$2,365.00															
Totals															
30.00															
73.00															
24.00															
18.00															
26.00															
\$1,650.00															
\$3,135.00															
\$5,673.00															
Lump Sum Fee Estimate =															

Personnel and Reimbursable Rates

Sloan Meier Hancock – Engineers Surveyors

	<u>Standard Rate</u>	<u>Overtime Rate</u>
<i>Survey Crew</i>	<i>\$100.00/hour</i>	<i>\$130.00/hour</i>
<i>CADD Technician</i>	<i>\$55.00/hour</i>	<i>\$71.50/hour</i>
<i>Registered Land Surveyor</i>	<i>\$90.00/hour</i>	<i>\$117.00/hour</i>
<i>Professional Engineer</i>	<i>\$110.00/hour</i>	<i>\$143.00/hour</i>
<i>Design Engineer</i>	<i>\$65.00/hour</i>	<i>\$84.50/hour</i>
<i>Mileage</i>	<i>\$0.505/mile</i>	
<i>HWS Senior Traffic Engineer</i>	<i>\$165.00/hour</i>	
<i>HWS Design Engineer II</i>	<i>\$73.00/hour</i>	



50

112

Kliesen

San Jose

Campus

Woodrow

Hillside

University

Andrew

McCoy

Fairway

Ragan

Marsha

Champions

Fairfield

Amber

Intentional

Wilbur

University

Pine

Carouse

Clover

East Lane

Ruth Ann

Frederick

Circle Lake

Windson

Cactus

Eliot

Memorandum

To: City Manager
Assistant City Manager
City Commissioners
From: Director of Engineering *JF*
Date: 6/29/09
Subject: Engineering Services Agreement
BG Consultants- 14th Street Bridge
Agenda Item: New Business

Recommendation: Approval of Contract with BG Consultants for \$33,000.

Background: Earlier this year, the City submitted the replacement of the expansion joints on the 14th Street Bridge to KDOT for consideration for funding through the American Recovery and Reinvestment Act (ARRA). This project was selected for funding. Staff received several Request for Qualifications (RFQ's) from several firms. During a recent commission meeting, approval was given for staff to negotiate a contract with BG Consultants to perform the necessary design work.

The original scope was for the consultant to prepare the necessary design documents for the replacement of the expansion joints only. However, after visiting with BG consultants and looking at the abutment supports, it appears that we may not be able to repair the expansion joints without doing some additional repair work. The contract that is being submitted is the result of several conversations with the consultant concerning their concern over the condition of the abutment supports.

Justification: The expansion joints have come loose from the bridge. The expansion joints allow for the bridge to contract and expand due to temperature. With the loss of the expansion joints, the bridge can continue to expand and contract, but water and other undesirable materials are allowed to fall onto the abutment and substructure of the bridge. The salt and other corrosive materials have caused some damage to the concrete and steel underneath the deck. In an effort to stop this continued deterioration, the street crews have placed asphalt in the joints.

While the present condition does not endanger the structure from failure, it does continue to deteriorate the structure and will require substantial work on the bridge if left unfixed. The contract with BG will address the expansion joint and the deterioration under the deck at the abutments.

Financial Considerations: The cost for BG Consultants to perform the necessary design work is \$33,000. This item was not in the 2009 budget. Funds will come from either projects that have come in under budget or from delaying other projects until next year.

Purpose/Mission: This project serves the citizens of Dodge City by preserving our current infrastructure and insuring that our street network is safe.

Legal Considerations: None

Attachments: Agreement for Engineering Services with BG Consultants.

AGREEMENT FOR ENGINEERING SERVICES

This AGREEMENT made and entered into this _____ day of _____, 2009, By and Between the **City of Dodge City, Kansas**, hereinafter referred to as the CITY, and **BG Consultants, Inc.**, located in Hutchinson, Kansas, hereinafter referred to as the CONSULTANT.

WITNESSETH:

WHEREAS, the CITY is authorized and empowered to contract with the CONSULTANT for the purpose of obtaining professional engineering services, and

WHEREAS, the CONSULTANT is registered in accordance with the laws of the State of Kansas to perform the professional engineering services desired by the CITY; that the CITY desires to engage the following list of services of the CONSULTANT at the following site:

**14th Avenue Bridge over Arkansas River
EXPANSION JOINT IMPROVEMENTS**

WHEREAS, the Consultant is licensed in accordance with the laws of the State of Kansas and is qualified to perform the professional engineering services desired by the City, now therefore:

IT IS AGREED by and between the two parties aforesaid as follows:

ARTICLE I

Section I – Definition and Scope of Project

The Consultant shall commence from the date of this agreement the services required under this section.

The Engineering Services to be performed under this section are as follows:

PROJECT DESIGN

1. Consult with City officials to coordinate each major section of the project development and design. These meetings may be formal board meetings and/or informal staff meetings, as deemed necessary by the CITY related to the project improvements.
2. Complete informational gathering in the field and office research for the project.
3. Conduct the site control required for plan design and preparation. This will include the bridge site location.
4. Consult with the CITY and regulatory agencies concerning construction documents and requirements covering specific items of design.
5. Prepare preliminary and final opinion of probable cost estimates for project scope evaluation.
6. Prepare preliminary plans to be reviewed by the CITY.
7. After review of the preliminary plans by the CITY, prepare final plans and specifications for the proposed construction work.
8. Part A – The PROJECT shall consist of replacement of expansion joint seals.
Part B – The PROJECT shall consist of repair on expansion joints including concrete repair and possible pier support design.

THE CONSULTANT AGREES:

1. To provide the various technical and professional services, equipment, material and transportation to perform the tasks as outlined in the SCOPE OF PROJECT.
2. To attend meetings with the CITY and other local, state and federal agencies as necessitated by the SCOPE OF PROJECT.
3. Prepare and submit preliminary work plan for the expansion joint repair to the CITY for review and comments.

4. When authorized by the CITY the CONSULTANT shall prepare final plans for the PROJECT based upon comments as agreed upon in the preliminary plan review. Major items of work included in development of final plans are:
 - a) Prepare engineering plans, specifications, special provisions and opinion of probable costs, for the PROJECT.
 - b) All engineering plans shall be prepared in ink on standard mylar and vellum sheets in the format required by the CITY and/or KDOT. Also, final plans, field notes and other pertinent project mapping records are to be provided to the CITY via floppy diskettes (3-1/2"), or other media acceptable to the CITY. The files are to be AutoCAD drawing files or DXF/DXB files. Layering, text fonts, etc. are to be reviewed and approved during the preliminary concept development phase of the design work.
 - c) Submit two (2) sets of full sizes final plans to the CITY and , one (1) set of half-sized plans, and two copies of specifications and bid documents to the City.
 - d) Final plans shall include expansion joint repair details, construction phasing details, traffic control details, and all other necessary construction details required for the PROJECT.
 - e) Geology for the bridge substructure shall be arranged by the CONSULTANT and billed direct to CITY by Geologist.
 - f) Final Tracings. The original tracings (plan sheets to be computer plotted on mylar) of the approved final plans and specifications shall be delivered to the City.
 - g) The date identified as the date of CITY acceptance of final plans and other supplementary work will be that date upon which the CITY ascertains that such plans and work are in accordance with all provisions of the contract for design services.
 - h) Engineers Opinion of Probable Costs shall be submitted in tabular form and on a unit cost basis.
5. To make available during regular office hours, all calculations, sketches and drawings such as the CITY may wish to examine periodically during performance of this agreement.
6. To maintain books, documents, papers, accounting records and other evidence pertaining to cost incurred by the CONSULTANT and, where relevant to method of payment, to make such material available to the CITY.

7. To comply with all Federal, State and local laws, ordinances and regulations applicable to the work.
8. To accept compensation for the work herein described in such amounts and at such periods as provided in Article II and that such compensation shall be satisfactory and sufficient payment for all work performed, equipment or materials used and services rendered in connection with such work.
9. To comply with the Required Contract Provisions of the American Recovery and Reinvestment Act of 2009 including the Reporting Requirements for Recovery Act Contracts and Implementation of Section 902 and 1515(b), .

ARTICLE II

THE CITY AGREES:

1. To furnish all available data pertaining to the PROJECT now in the City's files at no cost to the CONSULTANT. Confidential material so furnished will be kept confidential by the CONSULTANT.
2. To provide standards as required for the PROJECT; however, reproduction costs are the responsibility of the CONSULTANT.
3. To provide the right-of-entry for CONSULTANT'S personnel in performing field surveys and inspections.
4. To examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by CONSULTANT in a timely fashion.
5. To make payments to the CONSULTANT for the performance of the professional services required by this agreement based upon the CONSULTANT'S actual costs which may be less than the estimated amount. Payment shall be full compensation for salary costs, expenses, overhead, profit, subcontracting and all other costs required in performing the work described herein. Overhead includes fringe benefits.

Total payments to the CONSULTANT for the preparation of the work associated with the PROJECT shall include the actual costs accrued in the performance of the professional services as outlined in this agreement which are estimated to amount to **\$ 29,570.00** plus a fee for profit of **\$ 3,430.00**, so that the total payments shall not exceed the sum of **\$ 33,000.00**, unless approved by the CITY.

6. When requested by the CITY, the CONSULTANT will enter into a Supplemental Agreement for additional services related to the PROJECT such as, but not limited to:

- a) Consultant or witness for the CITY in any litigation, administrative hearing, or other legal proceedings related to the PROJECT except as outlined in the Scope of Services.
- b) Additional design services not covered by the scope of this agreement. This may also include revisions required to the project following design freeze made necessary by changes in project scope or design guidelines, additional Opinions of Probable Costs due to schedule delays, or other services requested of the CONSULTANT due to factors beyond the control of the CONSULTANT.
- c) Construction staking, material testing, inspection and construction administration related to the PROJECT.
- d) A major change in the scope of services for the PROJECT. If additional work should be necessary, the CONSULTANT will be given written notice by the CITY along with a request for an estimate of the increase necessary in the not-to-exceed fee for performance of such additions. No additional work shall be performed nor shall additional compensation be paid except on the basis of a Supplemental Agreement duly entered into by the parties.

ARTICLE III

THE PARTIES HERETO MUTUALLY AGREE:

1. That the services to be performed by the CONSULTANT under the terms of this agreement are personal and cannot be assigned, sublet or transferred without written consent of the CITY.
2. That the right is reserved to the CITY to terminate this agreement at any time upon written notice in the event the improvement is to be abandoned or indefinitely postponed, or because the services of the CONSULTANT are unsatisfactory, or failure by the CONSULTANT to prosecute the work with due diligence or to complete the work within the time limits specified in this agreement; provided, however, that in any such case the CONSULTANT shall be paid the reasonable value of the services rendered up to the time of termination on the basis of the payment provisions of the Agreement.
3. That an extension of time shall be granted the CONSULTANT for delays recognized by the CITY as unavoidable; provided, however, that such extension of time shall be requested in writing by the CONSULTANT, stating fully the reasons for such request.

4. Additional Work.
 - a) That all authorized work performed by the CONSULTANT following design freeze which results in a loss to the CONSULTANT by reason of basic changes in location or geometrics shall be paid for as additional work on the basis of actual costs incurred by the CONSULTANT to revise the plans to an equal state of completion as obtained prior to receiving notice of required changes.
 - b) The introduction of new items of work beyond the stated or implied scope of the agreement.
5. That the CONSULTANT and the CITY may arrange for such conferences, visits to the site, or inspections of the work as may be deemed necessary or desirable.
6. The CONSULTANTS shall and hereby covenants and agrees to indemnify, protect, defend, and save the CITY harmless from and against all claims, demands, liabilities and costs, including attorney fees, arising from damage or injury, actual or claimed, or whatsoever kind of character to property or persons occurring or allegedly occurring as a result of any negligent errors, omissions or acts of the CONSULTANT, its agents, servants, employees or subcontractors during such period of times as CITY may be legally liable for said claims, demands, liabilities and costs, including attorney fees. Upon timely written notice from the CITY, the CONSULTANT shall defend the CITY in any action or proceedings brought thereon, provided however, that nothing contained in this section shall be construed as requiring CONSULTANT to indemnify CITY for any claim resulting from any act or omission of the CITY or its agents or employees. This agreement shall survive the completion of CONSULTANT professional services under this proposal.

The CONSULTANT covenants and agrees that all reports, information, data, opinions of probable costs and other work or material furnished under this proposal, including any additions, alterations or amendments thereto, shall be free from any defects, errors or deficiencies caused by CONSULTANT'S negligence, errors, omissions or acts. The CONSULTANT shall correct or revise, without additional cost to the CITY, any defects, errors or deficiencies in the CONSULTANT'S performance under this proposal.

CONSULTANT shall procure and maintain such insurance as will protect the CONSULTANT from damages resulting from negligent errors, omissions or acts of the CONSULTANT, its agents, officers, employees and subcontractors, in the performance of the professional services to be rendered under this agreement. Such policy of insurance shall be in an amount not less than \$1,000,000.00, subject to a deductible of \$100,000.00. In addition, a Worker's Compensation and Employer Liability policy shall be procured and maintained. Said policy shall also cover claims for injury, disease, or death of employees arising out of and in the course of their employment, which, for any reason, may not fall within the provisions of the Workers Compensation Law. The limits of

Liability shall not be less than:

Workers' Compensation Statutory	
Employers' Liability	\$500,000.00 each occurrence

In addition, a comprehensive general liability policy shall be procured and maintained by the CONSULTANT, which shall be written in a comprehensive form and shall protect CONSULTANT against all claims arising from injuries to persons (other than CONSULTANT'S employees) or damage to property of the CITY or arising out of any negligent act or omission of CONSULTANT, its agents, officers, employees or subcontractors in the performance of CONSULTANT'S services under this proposal. The liability limits shall not be less than \$500,000.00 per occurrence for bodily injury, death or property damage. Certificates of insurance in form satisfactory to the CITY shall be filed with the CITY CLERK prior to the time the CONSULTANT starts any work under this proposal. Said policies shall contain a provision that the CITY shall be given thirty (30) days written notice by the insuring company(s) before any such policies are canceled. Further, CONSULTANT shall supply CITY with a copy of every endorsement issued to such policies after initial delivery, as soon as possible after CONSULTANT'S receipt of such endorsement. The policies providing coverage for comprehensive general liability and for errors and omissions may, at the option of the CONSULTANT, provide coverage for occurrences and not on claims made basis. If claims made policies are provided by CONSULTANT, CONSULTANT agrees to maintain such insurance, as long as it is available, providing substantially the same coverage, for the duration of the contract and for two (2) years after completion of the contract CONSULTANT shall continue in full force and effect the comprehensive general liability policy for five (5) years following completion of the contract, the policies covering negligent errors, omissions or acts.

7. DISPUTE SETTLEMENT: All claims, disputes and other matters in questions arising out of or relating to the contract documents, the work contemplated by the contract documents, or at anytime arising during the terms of this agreement, except for claims which have been waived by the making and acceptance of final payment, shall be litigated only in the District Court of Ford County, Kansas, and the CONSULTANT waives any right to bring any action against CITY arising out of their contract relationship in any other court than said court, and specifically, waives the right to bring any action in any federal court. Both parties waive their rights to a trial by jury and agree that any dispute arising out of this agreement shall be submitted to a judge sitting without a jury.

IN WITNESS WHEREOF, said parties have caused this agreement to be signed by their duly authorized officers.

BG CONSULTANTS, INC.

DODGE CITY, KANSAS

By: _____
Sid Arpin, P.E., Vice President

By: _____
Rick Sowers, Mayor

ATTEST:

ATTEST:

Notary Public

City Clerk

CITY OF DODGE CITY
City Commission Meeting
July 16, 2009

TO: City Manager
Assistant City Manager
City Commission

SUBJECT: Agreement With Friends of the Zoo for Voluntary Utility Bill Donations

INITIATED BY: Nannette Pogue 

AGENDA: New Business

Recommendation: I recommend approval of the agreement with Friends of the Zoo.

Background: Friends of the Zoo approached the City Commission in June asking that the Utility Roundup Program monies revert back to them. When the program originally started, the funds went to the Friends of the Zoo. Early in 2000, the City Commission approved those funds to be given to The Alley to help support their programs. The Alley then went to a pledge system whereby they collected pledges from patrons and the amount pledged was collected through the monthly utility bill. This method generates more funds than does the utility bill roundup. The question from the City Commission was can both The Alley and Friends of the Zoo get pledges to be put on the utility bill. This is the recommendation.

Justification: The Friends of the Zoo would like additional funding to support programs at the City of Dodge City's municipal zoo located in Wright Park

Financial Considerations: This revenue source from Friends of the Zoo will supplement funding at the Zoo. There will be very little administration time spent. The only time spent will be setting up an account within the internal accounting system to collect the funds and the Utility Clerk's time spent entering the pledges into the computer system.

Legal Considerations: The agreement with Friends of the Zoo is desirable to spell out each party's responsibility.

Attachments: The agreement and the pledge form

Purpose/Mission: With additional funding available to Friends of the Zoo, it will improve a quality of life project of the City's, which is the Zoo.

AGREEMENT FOR VOLUNTARY UTILITY BILL DONATIONS
FRIENDS OF THE ZOO

THIS AGREEMENT is made and entered into by and between the City of Dodge City, Kansas, a municipal corporation (“City”) and Friends of the Zoo, a not for profit Kansas Corporation;

WHEREAS, The Friends of the Zoo, is an organization dedicated to providing support to the municipally operated Zoo located in Wright Park;

WHEREAS, the City presently collects funds for the purpose of supporting local organizations, namely “The Alley” and in the future “Friends of the Zoo” from proceeds generated by the Water Bill Roundup Program, and

WHEREAS, the Friends of the Zoo desires to implement a new alternative for raising more funds to support the maintenance, operations and expansion of the Zoo, and

WHEREAS, the City is willing to assist The Friends of the Zoo by receiving voluntary contributions for the Friends of the Zoo from the city’s utility customers, subject to the terms and conditions set forth herein:

NOW, THEREFORE, in consideration of the mutual promises of the parties, it is agreed as follows:

1. The Friends of the Zoo shall be solely responsible for the soliciting of pledges from individuals and businesses within the Dodge City community which are served by City utilities for the support of the Friends of the Zoo programs, which pledges, when properly signed by the donor, shall authorize the City to include in the City’s monthly utility bill to the utility customer the amount of the customer’s monthly pledged contribution to The Friends of the Zoo. That portion of the donor pledge providing such authorization shall be in substantial compliance with the language as set forth in Exhibit A attached hereto. The Friends of the Zoo will be solely responsible for

soliciting and obtaining all such pledges, verifying the authenticity of the signatures thereon and for delivering a copy thereof to the City.

2. Upon receipt by the City of a copy of a properly signed donor pledge and authorization, the City agrees to include on the utility customer's monthly City utility bill the amount of the customer's monthly pledged contribution to the Friends of the Zoo. The amount of the donor's monthly contribution shall be clearly reflected on the monthly utility statement as a separate amount from the utility charges owed by the utility customer and such contribution shall not constitute a part of the utility charges to the customer, but may be included in the total amount paid by the utility customer to the City. In the event the total amount of the utility customer's monthly payment does not equal the total amount of the utility charges due and the donor's pledged contribution to the Friends of the Zoo as reflected on the statement, the customer's payment will be applied first to the payment of the utility charges due, and the balance of the total payment, if any, will be applied to the Friends of the Zoo contribution.
3. The City shall have no responsibility for enforcement of the payment of any donor pledge, nor shall the City be obligated to identify any donor failing to pay all or any portion of the amount of the pledge or maintain any records of any such non-payments. In the event of delinquent utility payments by the customer, no delinquent charges, fees or other city utility collection or enforcement remedies shall include the amount of the donor pledge. Non-payment of all or any portion of a donor pledge shall not be the basis for discontinuance of any utility services to the utility customer.
4. Once inclusion of the donor pledge has been properly authorized on the utility statement by the utility customer, the amount of the pledge will continue to be reflected and identified on the customer's utility bill on a monthly basis until the City

receives written or verbal instructions from the donor that the amount of the pledge be removed from the customer's utility bill, or until this Agreement is terminated as provided herein.

5. Upon receipt by the City of utility payments which include all or any portion of a donor contribution, in addition to the amount of the utility charges due, the city will remit, upon request, to the Friends of the Zoo a check representing the total amount of utility customer contributions received by the City since the previous distribution. The mailing or delivery of such check to the Friends of the Zoo at the address set forth herein shall fully satisfy the City's responsibility hereunder.
6. This Agreement creates no financial obligation on the part of the City in favor of the Friends of the Zoo, except only for the City's transmittal to the Friends of the Zoo of donor contributions received by the City as reflected above. This Agreement creates no agency relationship between the City and the Friends of the Zoo and the Friends of the Zoo shall make no representation to donors, prospective donors or City residents that it is acting on behalf of the City or as a representative or agent thereof.
7. This Agreement and the rights and privileges granted hereunder may not be assigned or transferred by the Friends of the Zoo to any other person or entity without the prior written approval of the City.
8. The Friends of the Zoo agrees to fully indemnify and to save and hold harmless the City of and from any and all claims, causes of action, losses, costs, and expenses including reasonable attorney's fees, incurred by the City arising out of any actions of The Friends of the Zoo, its agents, servants, employees, volunteers or other representatives, or arising out of this Agreement and the City's actions taken in accordance with this Agreement.

9. This Agreement shall become effective upon approval by the governing body of the City and may be terminated at any time by the City or the Friends of the Zoo upon at least 60 days prior written notice to the other.

This agreement is approved by the respective parties on the dates reflected below and shall be binding upon the party's and their respective successors and assignees.

Adopted this _____ day of July, 2009.

City of Dodge City, Kansas, a
Municipal Corporation

Mayor

ATTEST:

Nannette Pogue, City Clerk

Friends of the Zoo

Utility Bill Pledge

Donation to: The Friends of the Zoo

Name: _____

Address: _____

Amount Pledged: _____

Authorized Signature: _____

The above utility customer does hereby authorize the City of Dodge City to include in my monthly City utility bill the amount of my monthly pledge and contribution to the Friends of the Zoo as reflected above until such time as I notify the City, verbally or in writing, to remove such amount from my utility bill. I acknowledge and understand that the amount of my pledge to the Friends of the Zoo is not a part of my monthly city utility charges but will be included in my monthly payment to the City as my voluntary contribution to the Friends of the Zoo which contribution will be forwarded by the City to the Friends of the Zoo.

City of Dodge City

Memorandum

Date: July 1, 2009

TO: Ken Strobel, City Manager

FROM: Dennis Veatch, Development Service Director

RE: Final Plat of Mariah Center Replat

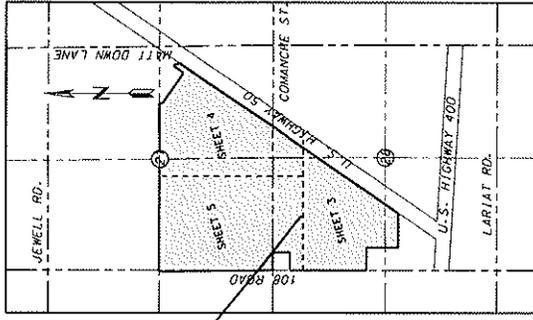
Attached for your review and approval by the City Commission is the Final Plat of Mariah Center Replat. The Dodge City Zoning Board met June 16, 2009 to review this plat. The Zoning Board is recommending to the City Commission that this final plat be approved subject to a few technical revisions.

Hard copies of this plat should be available prior to the commission meeting.

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

FINAL PLAT

OF
MARIAH CENTER REPLAT
 A REPLAT OF MARIAH CENTER LOT 1, BLOCK 1,
 A SUBDIVISION OF LAND IN DODGE CITY,
 FORD COUNTY, KANSAS LOCATED
 IN SECTION 21, TOWNSHIP 26
 SOUTH, RANGE 25 WEST
 AND SECTION 28, TOWNSHIP 26
 SOUTH, RANGE 25 WEST
 OF THE SIXTH PRINCIPAL MERIDIAN



VICINITY MAP
 SEC. 21-T26S-R25W
 SEC. 28-T26S-R25W
 T-26000

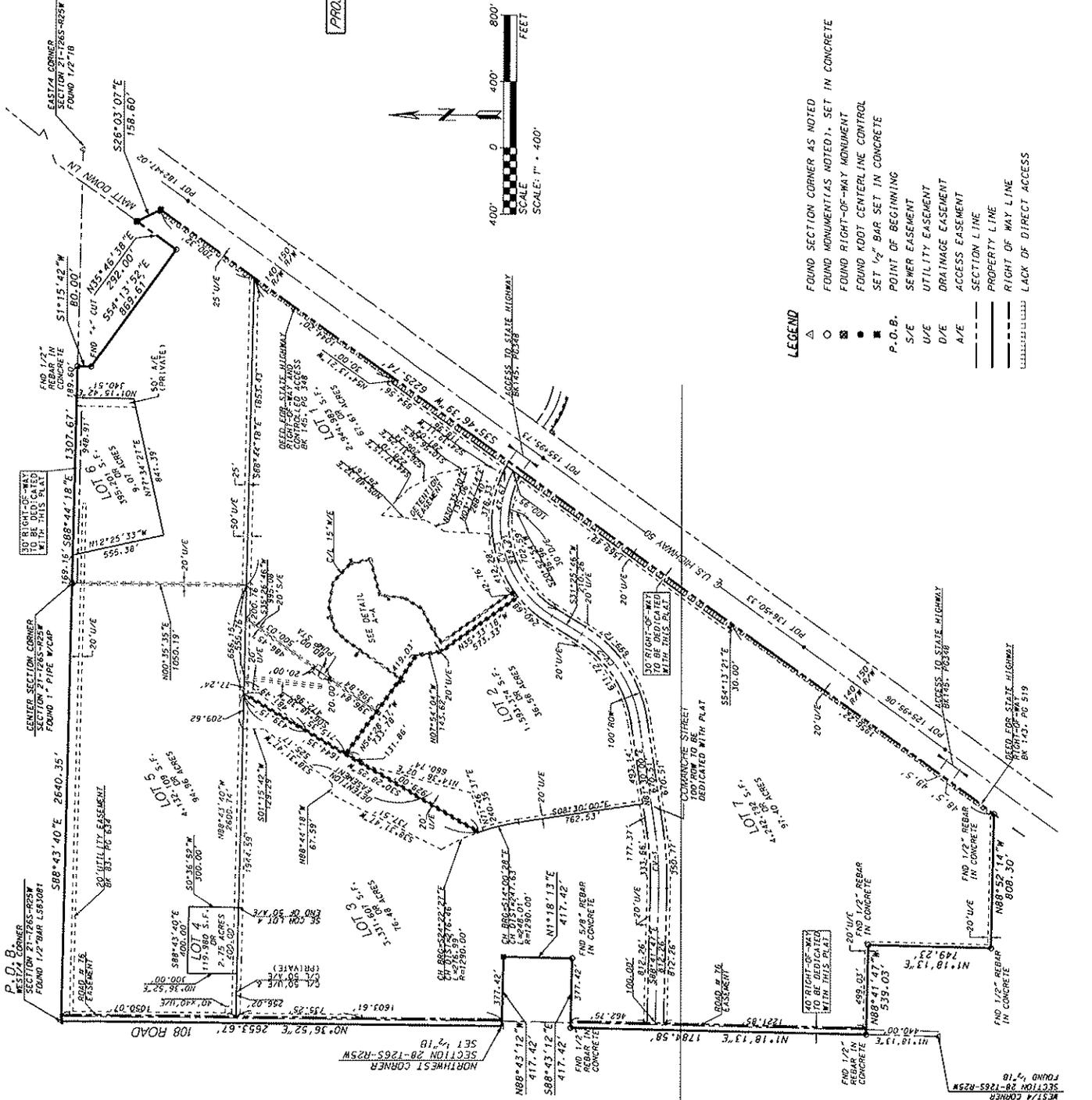
SURVEYOR'S NOTES

1. AN ADDITIONAL 30 FEET OF 50 HIGHWAY RIGHT-OF-WAY WILL BE DEDICATED WITH THIS PLAT ALONG THE WEST SIDE OF THE HIGHWAY AS NOTED.
2. AN ADDITIONAL 40' OF ROAD RIGHT-OF-WAY FROM THE SECTION 21 TO THE EAST SIDE OF THE ROAD WILL BE DEDICATED WITH THIS PLAT AS NOTED.
3. ALL INTERIOR LOT CORNERS ARE TO BE SET AFTER CONSTRUCTION.

CURVE TABLE

CURVE #	CHORD BEARING	CHORD DISTANCE	LENGTH	RADIUS
CV-1	N88°24'08"E	341.79'	342.21'	2000.00'
CV-2	N55°27'53"E	634.76'	655.42'	750.00'
CV-3	N74°41'14"E	904.57'	936.59'	680.00'

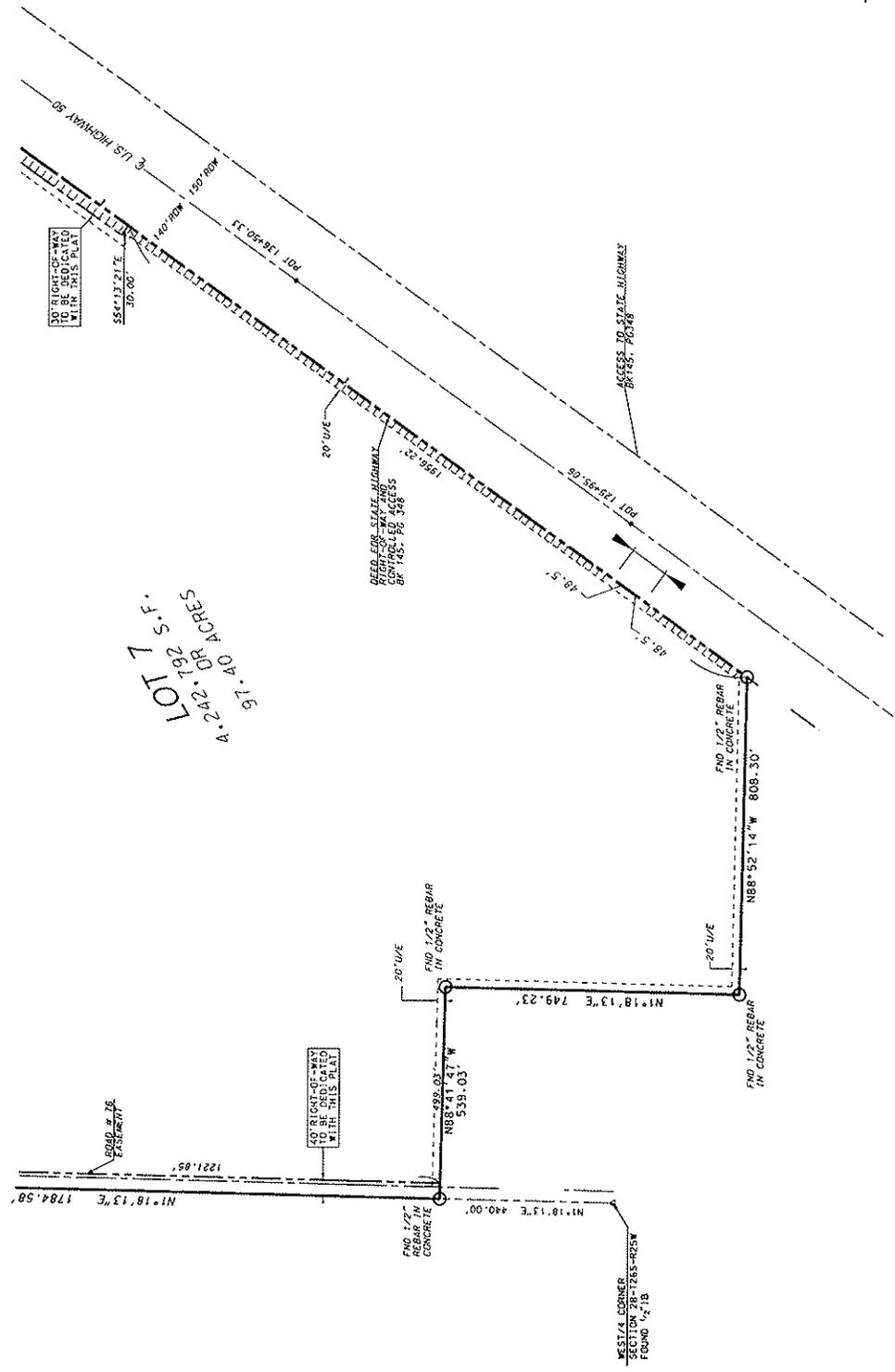
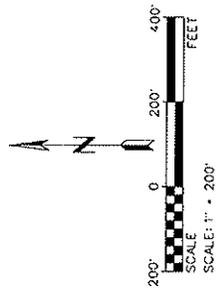
- LEGEND**
- △ FOUND SECTION CORNER AS NOTED
 - FOUND MONUMENT (AS NOTED), SET IN CONCRETE
 - ⊗ FOUND RIGHT-OF-WAY MONUMENT
 - FOUND KDOT CENTERLINE CONTROL
 - SET 1/2" BAR SET IN CONCRETE
 - P.O.B. POINT OF BEGINNING
 - S/E SEWER EASEMENT
 - U/E UTILITY EASEMENT
 - D/E DRAINAGE EASEMENT
 - A/E ACCESS EASEMENT
 - SECTION LINE
 - PROPERTY LINE
 - RIGHT OF WAY LINE
 - |||||| LACK OF DIRECT ACCESS



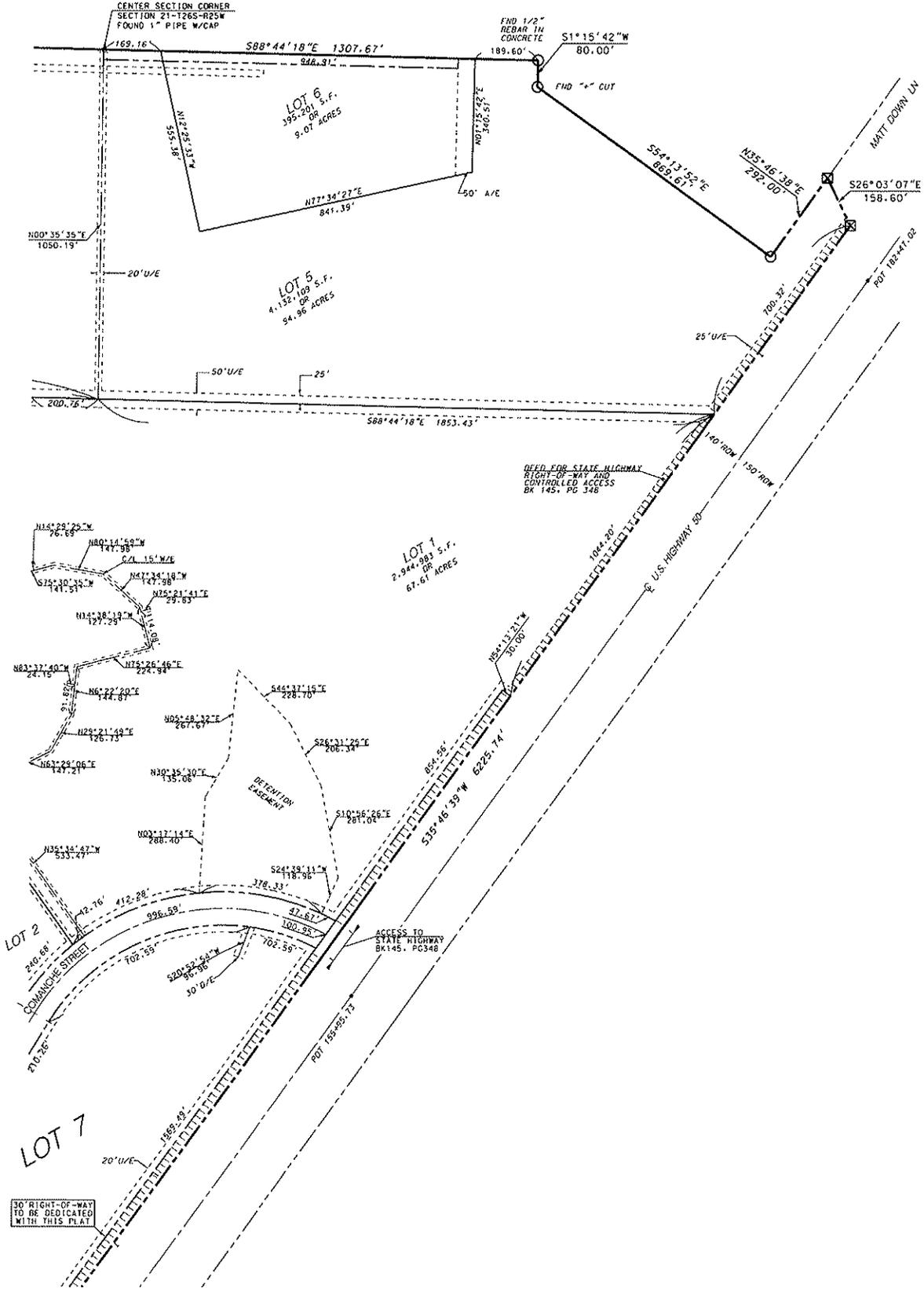
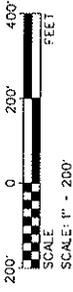
CFS
 Cook, Flatt & Strobel
 ENGINEERS, P.A.
 1000 MASSACHUSETTS
 DRIVE
 SUITE 1000
 DODGE CITY, KANSAS 66201
 PHONE 785-223-2222
 FAX 785-223-2223

**FINAL PLAT OF
MARIAH CENTER REPLAT**
A REPLAT OF MARIAH CENTER LOT 1, BLOCK 1, A SUBDIVISION OF LAND IN DODGE CITY,
FORD COUNTY, KANSAS LOCATED IN SECTION 21, TOWNSHIP 26 SOUTH, RANGE 25 WEST
AND SECTION 28, TOWNSHIP 26 SOUTH, RANGE 25 WEST OF THE SIXTH PRINCIPAL MERIDIAN

LOT 1
4.22 ± ACRES
DR. 192
S.F.



**FINAL PLAT OF
MARIAH CENTER REPLAT**
A REPLAT OF MARIAH CENTER LOT 1, BLOCK 1, A SUBDIVISION OF LAND IN DODGE CITY,
FORD COUNTY, KANSAS LOCATED IN SECTION 21, TOWNSHIP 26 SOUTH, RANGE 25 WEST
AND SECTION 28, TOWNSHIP 26 SOUTH, RANGE 25 WEST OF THE SIXTH PRINCIPAL MERIDIAN



30' RIGHT-OF-WAY TO BE DEDICATED WITH THIS PLAT

Memorandum

To: City Commissioners
From: Ken Strobel, City Manager
Date: July 2, 2009
Subject: Purchase Option of Water Rights
Agenda Item: New Business

Recommendation: Ratification and approval of Assignment Agreement.

Background: Attached for your review and ratification is an Agreement where by the City will acquire an option presently held by Dodge City Gaming to purchase approximately 266 acre feet of municipal use water rights. These water rights are located very close to the City's existing water distribution system and will require minimal infrastructure investment when the City is ready to develop the rights.

Upon approval of the Assignment, the City will have the right to extend the Option on an annual basis until such time as the City is ready to purchase and develop the rights.

Justification: The City's need for an adequate water supply in order to accommodate future growth.

Financial Considerations: The funds for the purchase of the Assignment will be paid from the water fund. Funds for the purchase of the water rights at the point the City is ready to develop the rights will need to be bonded. The annual option payment is applicable to the purchase price.

Purpose/Mission: Prepare and provide for the communities future water needs.

Legal Considerations: None

Attachments: Assignment of Option Agreement

ASSIGNMENT OF OPTION AGREEMENT

This Assignment of Option Agreement (the "Assignment") is made and entered into by and between Dodge City Resort and Gaming Company, LLC, a Kansas limited liability company (the "Assignor") and the City of Dodge City, Kansas, a municipal corporation (the "Assignee"), the Assignor and Assignee herein after collectively referred to as the "Parties".

Whereas, the Assignor has entered into an Option Agreement dated June 24, 2008 (the "Option Agreement") a copy of which is attached hereto, marked Exhibit A and made a part hereof by this reference, whereby the Assignor has acquired the right to purchase certain water rights and property rights located in Ford County, Kansas, and

Whereas, under the provisions of said Option Agreement the Assignor has the unconditional right to assign its option to purchase such water rights and property interests, and

Whereas, the Assignee desires to acquire the water rights and property interests which the Assignor has an option to purchase, and

Whereas, the Parties have reached an agreement whereby the Assignor shall assign its rights under the Option Agreement to the Assignee and both desire to reduce their agreement to writing:

NOW THEREFORE, in consideration of the foregoing recitations, the mutual covenants setout herein and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. The Assignor hereby warrants and represents that the Option Agreement represents a binding agreement between the Assignor, as Buyer, and the Seller, and vests in the Assignor the right to purchase the Water Rights and Property Interests described therein, subject only to compliance with the terms and conditions of said Option Agreement.
2. The Assignor further warrants and represents that it is the exclusive and unconditional owner of the rights granted to it pursuant to said Option Agreement and that the Assignor will not and has not, conveyed, sold, transferred, assigned, encumbered, or otherwise divested itself of any such rights, or any portion thereof or interest therein, to any other entity or individual and that upon the closing of this Assignment the Assignee shall become the unconditional, exclusive and unencumbered owner of all rights granted to Assignor pursuant to said Option Agreement, subject only to the terms of said Option Agreement.
3. As consideration for the Assignment of the Assignor's rights under the Option Agreement the Assignee shall pay to Assignor the sum of Ninety Six Thousand Nine Hundred Forty Eight Dollars and no cents (\$96,948.00); (the "Purchase Price") in the time and manner following:

- a. The sum of Five Thousand Dollars and no cents (\$5,000.00), upon execution of this Assignment, the receipt of which is hereby acknowledged by the Assignor; and
 - b. The balance of the Purchase Price at the time of closing of this Assignment.
4. Upon receipt of the payment by Assignee to Assignor of the Purchase Price, the Assignor shall assign, transfer, grant, and convey to Assignee all of Assignor's rights, title, and interest in and to the Option Agreement, subject only to the terms and conditions of said Option Agreement, and further agrees to quit claim to Assignee all of Assignor's interest in and to the Water Rights and Property Interests as described in and to be conveyed under the provisions of said Option Agreement.
5. This Assignment shall close within thirty (30) days of the date of execution of this Assignment by Assignee. At closing the Assignee shall pay Assignor the Purchase Price and Assignor shall execute and deliver to Assignee any documents necessary to assign Assignor's rights in and to the Option Agreement to Assignee.
6. In the event this Assignment is not closed by the date of the expiration of the Option Period as set out in paragraph 4 of the Option Agreement, Assignor shall provide all necessary notices and make all payments necessary to extend the Option Period as provided in said paragraph 4. At the closing of this Assignment Assignee shall, in addition to

payment of the Purchase Price, pay to Assignor the sum of Seven Thousand Four Hundred Forty Eight dollars and no cents (\$7,448.00) representing reimbursement of the payment for the extension of the Option Period.

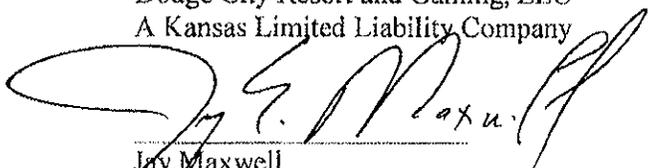
7. Assignor agrees to provide to Assignee within fifteen (15) days of the execution of this Assignment any and all test results, studies, reports, surveys, and other information in its possession, or readily available to it, which have not already been provided regarding the Water Rights and Property Interests as described in the Option Agreement.
8. If during the one (1) year period commencing the date of the execution of this Assignment by the Assignee (the "Rescission Period") the Assignee fails to close on the purchase of the Water Rights and Property Interests as setout in the Option Agreement due solely to the Sellers inability or failure to satisfy any Condition Precedent as setout in paragraph 10 of the Option Agreement, then in that event, the Assignee shall have the right to rescind this Assignment by providing written notice to Assignor. Within fifteen (15) days of receipt of such notice and documentation of the reason for the failure to close the Option Agreement, Assignor shall thereupon refund to Assignee the amount of Thirty Seven Five Hundred Dollars and no cents (\$37,500.00). Upon receipt of said payment, Assignee shall immediately reassign to Assignor all rights under the Option Agreement and this Assignment shall become null and void. The

provisions of this paragraph 8 shall remain in effect for the one (1) year Rescission Period only and shall automatically expire upon the expiration of the Rescission Period.

9. This Assignment is binding on the Parties hereto and the respective successors and assigns of the Parties. The persons executing this Agreement represent and warrant that they are authorized and empowered to sign this Assignment on behalf of, and to bind, their respective parties to the provisions of this Agreement. The warranties and representations of Assignor as setout herein shall survive the closing of this transaction and remain in full force and effect following closing of this Assignment.

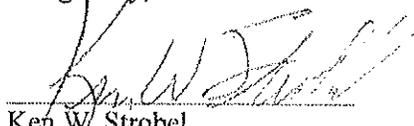
This Assignment is approved and executed by the Parties this 17th day of June, 2009.

ASSIGNOR
Dodge City Resort and Gaming, LLC
A Kansas Limited Liability Company



Jay Maxwell
Director

ASSIGNEE
City of Dodge City,
Dodge City, Kansas



Ken W. Strobel
City Manager

OPTION AGREEMENT

THIS OPTION AGREEMENT (the "Agreement") is made and entered as of the 24th day of JUNE, 2008, (herein the "Effective Date") by and between Ford County Land & Cattle Company and Gary and June Kliesen Trust (collectively referred to as the "Seller") and Dodge City Resort and Gaming Company, LLC, a Kansas limited liability (the "Buyer"). Seller and Buyer may be individually referred to as a "Party" and collectively as "Parties."

WHEREAS, Seller is the owner of certain Water Rights more particularly described below; and

WHEREAS, Buyer desires an exclusive option to purchase the Water Rights from Seller, and Seller is agreeable to granting such exclusive option upon the terms and conditions contained herein; and

WHEREAS, the Parties agree that this Agreement should set out the terms and conditions of their agreement regarding the sale of the Water Rights to Buyer in the event Buyer exercises the Option; and

WHEREAS, the Parties agree that in order to make effective use of the Water Rights, certain other interests such as easements, and collectively referred to herein as "Property Interests" must also be conveyed to Seller;

NOW THEREFORE, in consideration of the foregoing recitations, the mutual covenants hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Definitions.**

"Buried Lines" means buried water pipelines, valves, meters, buried electric power lines, buried communications lines, buried fuel pipelines, and cathodic protection equipment as well as other equipment reasonably necessary and convenient to allow Buyer to divert water and transport it to its authorized place of use.

"Covenants, Limitations and Reservations" means those specific provisions of this Agreement that shall be set out in a warranty deed from Seller to Buyer at the Closing and more fully described below.

"Seller's Land" means the following described real property:

(Here describe the authorized place of use for all three water rights)

"Property Interests" means (a) the Water Rights; (b) the Well Site; (c) the Covenants, Limitations and Reservations; (d) the right to apply for, develop and perfect the Water Rights on the Well Site and to divert groundwater from under all of Seller's Land; (e) the right to drill and complete wells and pumps on the Well Site, and the right to pump, mine, capture, produce and

use groundwater and groundwater resources on and under Seller's Land; and (f) the other rights and privileges specified herein and subject to such title limitations and to the reservations as are set forth herein. The Property Interests shall not include domestic water rights as provided in this Agreement; oil, gas and other mineral interests, except water shall not be considered a mineral interest; and all other rights not specifically conveyed to the Buyer hereunder.

"Water Rights" means, the Seller's water appropriation rights more fully described as follows:

DWR File No.: 4,743
Date of Priority: October 29, 1955
Rate: 500 Gallons per Minute
Quantity: 134 Acre-Feet per Year
Point of Diversion: A well in the SW/4 of the SE/4 of the SE/4 of Section 13, T26S - R25W, Ford County, Kansas, 609 feet North and 994 feet West of the SE corner of said section
Place of Use: 10 acres in the NE/4 of the SE/4, 40 acres in the NW/4 of the SE/4, 20 acres in the SW/4 of the SE/4 all in Section 13, T26S - R25W, Ford County, Kansas
Beneficial Use: Irrigation

DWR File No.: 19,874
Date of Priority: December 18, 1972
Rate: 500 Gallons per Minute
Quantity: 54 Acre-Feet per Year
Point of Diversion: A well in the SW/4 of the SE/4 of the SE/4 of Section 13, T26S - R25W, Ford County, Kansas, 609 feet North and 994 feet West of the SE corner of said section
Place of Use: Six ponds in Section 13, T26S - R25W, Ford County, Kansas
Beneficial Use: Recreation

DWR File No.: 19,875
Date of Priority: December 18, 1972
Rate: 1085 Gallons per Minute
Quantity: 129 Acre-Feet per Year
Point of Diversion: A well in the SW/4 of the SE/4 of the SE/4 of Section 13, T26S - R25W, Ford County, Kansas, 609 feet North and 994 feet West of the SE corner of said section.
Place of Use: 40 acres in the NW/4 of the NE/4, 40 acres in the SW/4 of the NE/4, 10 acres in the SE/4 of the NE/4, 23 acres in the SE/4 of the NW/4, 23 acres in the NE/4 of the SW/4, all in Section 13, T26S - R25W, Ford County, Kansas
Beneficial Use: Irrigation

“**Well Site**” means a well location on Seller’s Land selected by the Buyer as provided herein. The original Well Site shall consist of a circular surface area two hundred feet (200’) in diameter, centered on a well location on Seller’s Land selected by the Buyer after testing to determine the optimum location for a Well Site. Buyer shall have the right to relocate the Well Site to other locations on Seller’s Land as required by hydrologic and engineering considerations. If the Buyer determines it necessary to redrill or relocate a well and thus must substitute a Well Site, Seller hereby consents to the substitution of a Well Site.

Buyer shall be entitled to use the original or any replacement Well Site to construct those structures that it requires to pump, treat and convey water, including wells, pumps, casings, wellhouses, valves, controls, meters, fences, treatment devices and systems, pipes, pipelines, wires, communication lines and Buried Lines as are necessary and convenient for the operation and control of Buyer’s water wells, pipelines and related equipment.

Upon completion of the original well, the Buyer shall cause a legal description of the Well Site and the Easements to be prepared on an as-built basis. The description shall be set out in an Affidavit, which shall be filed of record as provided herein and such Affidavit shall be deemed an amendment to this Agreement.

2. **Option.** Seller hereby grants to Buyer the exclusive option (the “Option”) to purchase the Property Interests pursuant to the terms and conditions of this Agreement. Seller represents that no other person or entity has been granted, nor shall any other person or entity be granted, an option or other interest in the Property Interests that is superior in time or right to the Option granted to the Buyer herein.

3. **Option Fee.** As consideration for the granting of this Option, Buyer shall deliver to Seller the sum of \$7,448.00 by cashier’s check, money order or wire transfer. The aforementioned fees shall be referred to as the “Option Fee” and shall be applied to the Purchase Price at Closing.

4. **Term of Option.** Buyer shall have the right to exercise the Option, for a period commencing on the Effective Date and expiring at 5:00 p.m., Central Time on the first anniversary of the Effective Date (the “Option Period”). The term “Option Period” shall include the initial Option Period and any extensions of the Option Period.

Buyer may extend the Option Period for periods of one year by providing written notice of such extension to Seller prior to the expiration of the preceding Option Period, and along with such extension notice, a payment in the amount of \$7,448.00 as consideration therefore which shall be applied to the Purchase Price at Closing.

5. **Exercise of Option.** To exercise the Option granted herein, Buyer shall provide Seller with written notice prior to the expiration of the Option Period. The date on which the Buyer exercises its Option to purchase the Property Interests shall be referred to herein as the “Exercise Date”.

In the event Buyer should fail to give written notice of the exercise of the Option within the Option Period, the Option shall lapse and cease, the Option Fee shall be retained by Seller and this Agreement shall be of no further force or effect.

6. **Purchase Price.** The Purchase Price (the "Purchase Price") for the Property Interests shall be \$744,800.00. The Purchase Price is based on \$2,800.00 per acre-foot of water for a total of 266 acre-feet of water which is the quantity the Parties expect will be available to Buyer after converting the Water Rights to Buyer's new uses. If a review of the Kansas Department of Agriculture, Division of Water Resources ("DWR") files reveals that the actual total acre-feet available to Buyer is different than the foregoing, or if the DWR actually issues a Change Order for a different quantity of water, then the price will be adjusted accordingly. The balance due from the Buyer shall be paid in cash or other immediately available funds at Closing.

7. **Title.** Seller represents that it has fee simple title to the entire authorized place of use as reflected in the DWR files for each of the Water Rights. Further, Seller warrants good and merchantable title to the Water Rights, the Well Site and Seller's Land, free and clear of any mortgage, lien or other encumbrance not created under this Agreement, except the following will not cause Seller's title to be unmerchantable: oil and gas leases, the reservation by Seller of all oil, gas and other minerals, except that water shall not be considered a mineral, and the existence of apparent and recorded restrictions, easements, rights-of-way, public roads and public utilities that do not interfere with Buyer's use of the Water Rights. To the extent that Seller's Land or any portion thereof is subject to a mortgage, the Seller shall secure a subordination agreement acceptable to Buyer from any and all mortgage holders prior to Closing.

8. **Title Evidence.** Within thirty (30) days following Buyer's exercise of the Option, Seller, at Seller's expense, shall deliver or cause to be delivered to the Buyer an up-to-date abstract of title covering title to the Water Rights and Seller's Land. The abstract shall show title in Seller subject only to (1) the title exceptions set forth in this Agreement, and (2) title exceptions pertaining to liens or encumbrances of a definite or ascertainable amount that may be removed by the payment of money at the time of Closing and that the Seller shall remove at Closing or which shall be subordinated as herein provided.

The Buyer will examine the abstract in accordance with the Title Standards of the Bar Association of the State of Kansas and the provisions of the Kansas Marketable Record Title Act, as amended. The Buyer may also raise questions about titles issues related to or concerning water and Water Rights even if no standards are set out. If the abstract discloses unpermitted exceptions that render the title unmerchantable, Buyer shall notify Seller in writing of such defects within sixty (60) days after receipt of the abstract. Seller will have a reasonable time, not to exceed ninety (90) days, after the Buyer notifies Seller of such title defects to have the exceptions removed, or to have a title insurer commit to insure against loss or damage that may be occasioned by such exceptions. In such event, the time of Closing shall be extended until such defects are cured. If Seller fails to have the exceptions removed, or in the alternative, to obtain a commitment of title insurance as to such exceptions within the specified time, the Buyer may terminate this Agreement or may elect, upon written notice to Seller, to take title as it then is. If the Buyer does not so elect, this Agreement shall terminate without further action and all

funds paid to by Seller shall be refunded. All abstracts of title delivered to the Buyer for examination shall be returned to Seller at the end of the examination period, provided however, the Seller shall retain the abstracts and make them available to Buyer from time to time after Closing as needed. The Closing Date shall be extended, if necessary, to allow Seller the full benefit of the 90-day defect cure period described above.

9. **Change Application.** Within thirty (30) days after exercise of the Option, Buyer will file an application with DWR to change the point of diversion, place of use and type of use of the Water Rights. Closing shall be conditioned upon an approval of said change application and issuance of an Order (the "Change Order") providing a minimum of two hundred sixty-six (266) acre-feet of water annually at a minimum rate of 1085 gallons per minute. In the event DWR fails or refuses to issue a Change Order allowing this minimum quantity and rate, Buyer may, at its sole option, terminate this Agreement and shall be refunded all monies paid to Seller pursuant thereto.

10. **Conditions Precedent.** The following conditions are conditions precedent to Buyer's obligation to close provided, however, they are for the benefit of Buyer and Buyer may waive any or all of these conditions in its sole discretion:

- A. DWR and the appropriate Groundwater Management District must approve all necessary applications for changes in the point of diversion, place of use and type of use of the Water Rights, such that the Buyer can drill its new well at the location provided in this Agreement and use the water for the Buyer's intended purposes.
- B. DWR must approve a change in the Water Rights that will allow Buyer to divert a minimum of two hundred sixty-six (266) acre-feet of water annually at a minimum rate of 1085 gallons per minute for Buyer's uses on Buyer's land;
- C. Seller must provide evidence of marketable title to the Water Rights as provided in this Agreement. To the extent there is a mortgage on the Seller's Land, said mortgage must either be released or a mortgage subordination agreement satisfactory to Buyer must be filed of record.
- D. Buyer must be able to obtain all necessary easements, rights-of-way, governmental permits and any other approvals required to move water from the Well Site to Buyer's land and to enable Buyer, in Buyer's judgment, to fully utilize the Water Rights.
- E. Closing of this Agreement shall be contingent on test results which show that the water quality is satisfactory for municipal use and that it will meet all relevant state and federal water quality laws and regulations without treatment.

11. **Closing.** This transaction shall be consummated and closed (“**Closing**”) in accordance with the following:

- A. **Closing Date.** The Closing shall take place at High Plains Land & Title, 107 Gunsmoke, Dodge City, Kansas, within thirty (30) days after the issuance of a Change Order by DWR as provided herein (herein the “Closing Date”).
- B. **Seller’s Instruments.** At Closing, Seller will deliver or cause to be delivered to the Closing Agent the following documents:
 - i. **Seller’s Warranty Deed.** A duly executed and acknowledged original Seller’s Warranty Deed conveying the Property Interests to Buyer and including the Covenants, Limitations and Reservations;
 - ii. **Owner’s Affidavit.** A duly executed and acknowledged Owner’s Affidavit, on such form as may be reasonably acceptable to Seller and to the Closing Agent, that would, if Title Insurance were to be used in this transaction, remove the standard exceptions (other than the survey exception) from a Title Insurance Commitment and Owner’s Policy;
 - iii. **Non-Foreign Affidavit.** A duly executed non-foreign affidavit sufficient to comply with Section 1445 of the United States Internal Revenue Code;
 - iv. **Closing Statement.** A Closing Statement prepared by the Closing Agent and approved by Seller; and
 - v. **Other Documents.** Such other documents and instruments as may be reasonably required by the Seller or the Closing Agent as a condition to Closing, or which may otherwise be reasonably necessary to effectuating the Closing.
- C. **Buyer’s Instruments.** At Closing, Buyer will deliver or cause to be delivered to the Parties indicated, the following documents:
 - i. **Closing Statement.** A Closing Statement prepared by the Closing Agent and approved by Buyer;
 - ii. **Purchase Price.** The balance of the Purchase Price due; and
 - iii. **Other Documents.** Such other documents and instruments as may be reasonably required by the Buyer or the Closing

Agent as a condition to Closing, or which may otherwise be reasonably necessary to effectuating the Closing.

12. **Fees, Pro-Rations and Adjustments.** At Closing, the following fees, adjustments and pro-rations shall be computed and paid as follows:

- A. **Property Taxes.** All taxes and the current installments of special assessments, if any, assessed against the Water Rights shall be adjusted and pro-rated between the Parties as of the Closing Date. Taxes and installments of special assessments shall be pro-rated on the basis of the taxes and installments of special assessments levied for the tax year in which the Closing occurs or, if such figures are not available or cannot be determined, then such pro-ration shall be on the basis of the taxes and installments of special assessments levied for the tax year immediately preceding the tax year in which the Closing occurs.
- B. **Closing Fee.** All Closing costs, fees and recording costs, including fees charged by the Closing Agent, shall be divided equally between the Parties.

13. **Covenants, Limitations, and Reservations.** At Closing, the Buyer and Seller shall execute a recordable document in which Seller will grant, subject to limitations set forth in this Agreement, the following easements, rights and privileges to the Buyer as Covenants, Limitations and Reservations. Said Covenants, Limitations and Reservations shall be perpetual in nature, will be placed in the deed, will burden Seller's Land and benefit any and all land acquired by Buyer and on which the Water Rights are used or authorized to be used and will run with the land.

- A. Easements to operate private, un-paved access roads to and from each Well Site for the exclusive use of the Buyer and the Seller at locations mutually agreeable to both Parties.
- B. Easements to install, maintain, repair, replace and operate Buried Lines.
- C. The Buyer may, from time to time during the life of the Water Rights, desire or be required to change the location of the point(s) of diversion for its Water Rights. The Buyer may, at its option but subject to the limitations stated in this Agreement, move the location of any well a distance of up to 300 feet from its original location.
- D. An easement to drill such test wells as may be deemed necessary from time to time by the Buyer or its consultants to properly locate the original Well Site and any replacement well locations as provided in this Agreement.
- E. The Buyer shall:

- i. Restore the surface contours of the Seller's Land after any operations on the surface and pay Seller for damages to Seller's growing crops, if any;
 - ii. Repair, replace, and restore the surface of the land to its original condition, where trenching and excavating has occurred, to avoid settling, ponding, erosion, or other surface damage; and
 - iii. Continuously maintain all Buried Lines below plow depth.
- F. Upon completion of all wells, connection of such wells to the Buyer's water system and the completion of the roads all as contemplated by the terms of this Agreement, the Buyer shall cause the locations of the wells, Well Sites, Buried Lines and roads, or the replacement or extension thereof, to be surveyed by a surveyor licensed by the State of Kansas. Upon completion of the survey, the Buyer shall prepare an affidavit for filing with the Register of Deeds, attaching the survey which has been signed by the surveyor, that shall describe the exact location of each well, Well Site or replacement thereof, and set out a metes and bounds description of the easements and rights-of-way. Upon completion of the affidavit, the Buyer shall provide a copy of the affidavit and surveyor's report to the Seller or their successors by certified mail, return receipt requested. Proof of mailing of such notice shall be attached to the affidavit filed with the Register of Deeds or attached to a separate affidavit so filed. The Seller or their successors shall have a period of sixty (60) days after mailing of the notice to object to said affidavit and survey. Upon the expiration of sixty (60) days, if Seller has not objected to the affidavit and survey, the Well Sites, easements and rights-of-way contemplated by this Agreement or the replacement or extension thereof shall be established and shall remain in full force and effect until they are changed or altered in accord with the terms of this Agreement, the Water Rights are terminated or upon mutual agreement of the Parties. Buyer may file the affidavit and survey with the Register of Deeds either before or after the 60 day notice to the Seller and nothing herein shall prohibit the waiver of the notice provisions set out in this paragraph by the Seller or Seller's successors provided that such waiver is in writing and included with an affidavit filed of record. Notice mailed to the owner of record of any replacement Well Site at the address shown in the County Treasurer's office shall be deemed adequate notice.
- G. Any replacement Well Site shall be a tract of land with the same dimensions as the original Well Site with the center located at the center of any replacement well drilled by the Buyer. The Buyer shall have

additional easements from any original Well Site to any replacement Well Site to construct such Buried Lines and roadways as are necessary to connect the replacement Well Site to the Buyer's water system and Buried Lines.

- H. Upon completion of a replacement Well Site and connection to the Buyer's water system, the Buyer shall restore the original Well Site to its original condition to the extent possible, consistent with the easements granted herein.
- I. Seller excepts and retains the right and privilege to use and enjoy Seller's Land adjoining the Well Site, but not the Well Site itself, subject to the easements and privileges herein granted, and Seller will not be liable to the Buyer for such use and enjoyment as long as Seller is not negligent; provided, however, the Seller agrees that they will not use any portion of Seller's Land for the purpose of constructing, operating or maintaining commercial animal feeding operations or landfills or other waste disposal sites. In addition, there shall be a prohibition on the construction and operation of the following: sewage lagoons and septic systems closer than permitted by Kansas Department of Health and Environment rules, regulations or guidelines. Livestock and products ordinarily and customarily used by Seller for its agricultural production business, such as fuel, lubricants, fertilizer and pesticides, shall not be considered waste disposal so long as such products are used in compliance with all applicable laws and fertilizers and other chemicals are applied at reasonable rates. Seller shall provide prompt notice to the Buyer of any releases of any environmental contaminants on Seller's Land and shall promptly remediate any and all such releases.
- J. The easements and rights-of-way granted herein will remain in full force and effect as long as the Buyer owns a Well Site or the Water Rights have not been abandoned.
- K. Title to the equipment placed by the Buyer will remain in the Buyer and will at all times be severed from Seller's Land.
- L. Seller and Seller's assigns will not obtain or seek to obtain any other water rights, other than domestic water rights, that would be appurtenant or have points of diversion on Seller's Land. All new or replacement domestic water supply wells constructed or installed on Seller's Land shall be grouted to a depth of one hundred (100) feet.
- M. Following the plugging of a well on an abandoned Well Site and upon Seller's request, the Buyer will execute and deliver a quit claim deed or deeds in recordable form conveying the abandoned Well Site to Seller or their successors and assigns.

- N. If the Buyer abandons any Well Site, Seller, at Seller's option, may require the Buyer to remove all property placed on the Well Site, to properly plug the wells in accordance with applicable regulations and guidelines and to restore the surface of the land to its original condition. Nothing herein shall prevent the Buyer from plugging Buyer's wells in order to comply with applicable regulatory requirements. Buyer may abandon any and all Buried Lines in place.
- O. Nothing in this Agreement shall be construed to impair or impede Seller's use of water on Seller's Land for domestic purposes under existing domestic water rights.

14. **Possession.** Possession of the Water Rights shall be given to Buyer on the Closing Date, provided, however that the Seller shall be entitled to use the water from the Water Rights to complete any irrigation of any crops growing on Seller's Land when the Change Order is issued; provided, however, possession shall not extend beyond December 31st of the year in which Closing occurs and further provided that water shall not be used in violation of any provision of the Water Rights or the Change Order. Seller shall provide proper notice to each of its tenants terminating any and all farm leases on the Seller's Land or any portion thereof on or before the date of possession. Seller shall not plant any crop that will require irrigation using the Water Rights after the Exercise Date without the written permission from Buyer.

15. **Maintenance of Water Rights.** At all during the Option Period and at all times prior to Closing, Seller will maintain and operate the Water Rights in a prudent and businesslike manner, and the condition of the Water Rights on the Closing date shall be the same or better than on Effective Date.

16. **Default.** If prior to Closing any Party defaults, or any obligation hereunder is not performed as herein provided, then the non-defaulting Party shall give written notice of the default to the defaulting Party and a thirty (30) day opportunity to cure said default. Unless the default is cured within such period, the defaulting Party shall be in default of this Agreement, and there shall be the following remedies:

- A. If Seller is in default, the Buyer may (1) elect to treat this Agreement as terminated, in which case all value received hereunder shall be returned to the Buyer, or (2) elect to treat this Agreement as being in full force and effect and the Buyer shall have the right to an action for specific performance or such other remedies are available at law or in equity.
- B. If the Buyer is in default, Seller may elect to treat this Agreement as terminated and all payments and things of value shall be retained by the Seller as liquidated damages.

17. **Notices.** All notices, demands, consents and requests which may or are required to be given by any Party to the other hereunder shall be in writing and shall be either: (1)

personally delivered; or (2) sent by nationally recognized overnight delivery service (i.e., FedEx, DHL) addressed as set forth in this section or to such other place as any Party may from time to time designate in a written notice to the other Parties. Notices, demands, consents and requests served upon any Party in the foregoing manner shall be deemed served or given for all purposes hereunder at the time such notice, demand, consent or request shall be personally delivered or, if sent via overnight delivery service, one (1) business day after such notice, demand, consent or request was provided to such overnight delivery service, whether or not actually delivered within such one (1) day period.

As to Gary and
June Kliesen Trust:

Gary and June Kliesen
HC 66 Box 18
Wilmore, KS 67155

Joyce E. Kliesen
2631 N. Athenian
Wichita, KS 67204

Jerry & Judith D. Michaelis
2327 W. 29th N
Wichita, KS 67204

As to Ford County
Land & Cattle
Company:

Ford County Land & Cattle Company
c/o Ronnie Herrmann
12466 Highway 400
Ford, Kansas 67842

As to Buyer:

Stephen M. Joseph, President
Dodge City Resort and Gaming
Company, LLC
500 N. Market
Wichita, KS 67214-3514

With a Copy to:

David M. Traster
Foulston Siefkin LLP
1551 N. Waterfront Parkway
Suite 100
Wichita, KS 67206-4466

The customary courier receipt shall be evidence of the giving of such notice. Any Party hereto may change the name and address of the designee to whom their notice shall be sent by giving written notice of such change to the other Parties hereto in the manner above provided, at least ten (10) days prior to the effective date of such change.

18. **Commissions.** Buyer and Seller agree that no Party is entitled to be paid a fee or commission from the Seller in connection with the transaction contemplated by this Agreement, and that neither Buyer nor Seller have had any dealings or agreements with any individual who is

entitled to a finder's fee, brokerage or other real estate commission. If any individual or entity shall assert a claim to such a fee, the Party who is alleged to have contracted for service resulting in such claim shall be responsible for the same and does hereby agree to indemnify and hold the other Party harmless from and against any such claim and all costs, expenses, liabilities and damages incurred in connection with such claim or any action or proceeding brought thereon. Notwithstanding any other provision of this Agreement to the contrary, the indemnity and hold harmless provisions contained in this paragraph shall survive the Closing or the termination of this Agreement.

19. **Condemnation.** In the event any entity with the powers of condemnation commences condemnation proceedings with respect to the Water Rights prior to the Closing, then Buyer shall have the right to proceed with the purchase as set forth herein, in which case the Buyer shall be deemed to have waived any objections to the Condemnation. If the Buyer elects not to proceed with the purchase, Buyer and Seller shall each have the right to terminate this Agreement by giving the other Party written notice of termination within thirty (30) days after being notified of such proceedings. In the event this Agreement is terminated in accordance with the provisions of this paragraph, the Option Fee shall be returned to Buyer and the Parties shall be relieved of their respective rights and obligations set forth in this Agreement. In the event neither Party terminates this Agreement in accordance with the foregoing, then, on the Closing Date, Seller shall assign to Buyer all of its right, title and interest in and to any condemnation proceeds which may be payable as a result of such proceedings and the Purchase Price shall be paid without reduction.

20. **Fees.** Each Party shall be separately liable for the fees of that Party's attorney in connection with the preparation of this Agreement, examination of title and correction of title defects, drafting of other documents and Closing.

21. **Governing Law; Choice of Venue.** This Agreement shall be controlled, construed and enforced in accordance with the laws of the State of Kansas.

22. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original but which together shall constitute one and the same instrument.

23. **Waiver.** The waiver by one Party of the performance of any covenant, condition or promise set out in this Agreement, shall not invalidate this Agreement nor shall it be considered a waiver by such Party of any other covenant, condition or promise hereunder. The waiver by either or both Parties of the time for performing any act shall not constitute a waiver of the time for performing any other act or an identical act required to be performed at a later time. The exercise of any remedy provided by law and the provisions of this Agreement shall not exclude other consistent remedies available to a Party under the terms of this Agreement.

24. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

25. **Assignment.** Either Party may assign this Agreement without the consent of the other Party.

26. **Recording Memorandum.** Buyer and Seller shall execute and the Buyer may record the attached Memorandum of Option in the office of the Register of Deeds in Ford County, Kansas.

27. **Entire Agreement.** This Agreement constitutes the Parties' full and final agreement and will supersede all prior agreements, contracts, understandings, memoranda, letters of intent and confidentiality agreements that pertain to the subject matter hereof, whether written or oral. There are no representations, inducements, promises or agreements, oral or otherwise, between the Parties hereto which are not embodied in this Agreement, which are of any force or effect with reference to this Agreement.

28. **Amendment.** This Agreement shall not be altered or amended except in writing signed by all Parties hereto, or their successors or assigns.

29. **Severability.** The invalidation of any of the provisions of this Agreement by law, judgment or court order will in no manner affect any of the other provisions which shall remain in full force and effect.

30. **Survival.** All the promises and covenants of the Parties contained herein shall survive Closing and the delivery of any documents of title.

31. **Signatures.** Signatures transmitted by facsimile or that are scanned and transmitted by electronic mail shall be acceptable and bind the Parties but the Parties agree that original signatures shall be obtained and exchanged within thirty (30) days after execution of this Agreement.

32. **Seller's Cooperation.** Seller shall cooperate with Buyer in obtaining all necessary entitlements including, but not limited to, the Change Order, utilities and zoning.

33. **Miscellaneous.** As used in this Agreement, the masculine, feminine or neutral gender and singular or plural numbers shall each be deemed to include the other whenever the context so indicates. The captions set forth at the beginning of each paragraph are for the convenience of the Parties only and are not intended to fully describe or define the provisions of portions of the Agreement to which they pertain. If any date under this Agreement on which an event is to occur or notice is to be given falls on a Saturday, Sunday or legal holiday, then such date shall be the first business day following such Saturday, Sunday or legal holiday. The recitations set forth on the first page of this Agreement are a part of this Agreement and are incorporated herein.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date first set forth above.

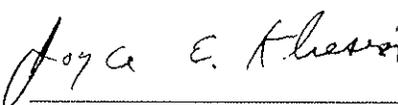
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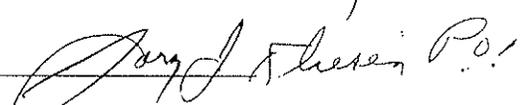
FORD COUNTY LAND & CATTLE COMPANY

By: 
Ronnie Herrmann

GARY AND JUNE KLIESEN TRUST

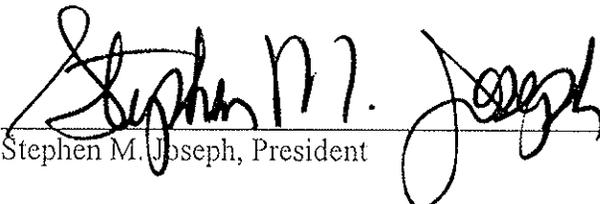
By: 
Gary and June Kliesen

By:  By 
Joyce E. Kliesen P.O.A.

By:  By 
Jerry & Judith D. Michaelis P.O.A.

“BUYER”

DODGE CITY RESORT AND GAMING
COMPANY, LLC

By: 
Stephen M. Joseph, President

ACKNOWLEDGEMENT

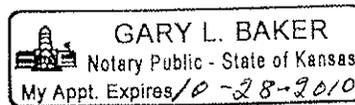
STATE OF Kansas)
COUNTY OF Ford) SS:

NOW on this 18th day of JUNE, 2008, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Ronnie Herrmann, Dodge City, Ks of Ford County Land & Cattle Company, who is personally known to me to be the same person who executed the foregoing Option Agreement, and duly acknowledged the execution of the same on behalf of Ford County Land & Cattle Company.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal on the day and year last above written.

Gary L. Baker
Notary Public

My Appointment Expires:
10-28-2010



ACKNOWLEDGEMENT

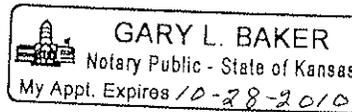
STATE OF Kansas)
) SS:
COUNTY OF Comanche

NOW on this 18th day of June, 2008, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Gary and June Kliesen, Wilmore, Ks of the Gary and June Kliesen Trust, who are personally known to me to be the same persons who executed the foregoing Option Agreement, and duly acknowledged the execution of the same on behalf of Gary and June Kliesen Trust

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal on the day and year last above written.

Gary L. Baker
Notary Public

My Appointment Expires:
10-28-2010



ACKNOWLEDGMENT

State of Kansas, County of Sedgwick, ss:

This instrument was acknowledged before me on June 28, 2008, by Stephen M. Joseph as President of Dodge City Resort and Gaming Company, LLC.


Notary Public

My appointment expires on June 4, 2010

