

CITY COMMISSION AGENDA

City Hall Commission Chambers

Monday, November 16, 2009

7:00 p.m.

MEETING #4785

CALL TO ORDER

ROLL CALL

INVOCATION: Reverend Kirk Larson, Grace Community Church

PLEDGE OF ALLEGIANCE

PETITIONS & PROCLAMATIONS

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

CONSENT CALENDAR

1. Approval of City Commission Meeting minutes, November 2, 2009
2. Appropriation Ordinance No. 23, November 16, 2009

ORDINANCES & RESOLUTIONS

Ordinance No. 3483: An ordinance to rezone lots 4 and 6, block 3, Kliesen Subdivision, Dodge City, Ford County, Kansas, from AG, Agriculture to R-2, Residential Medium Density.

Ordinance No. 3484: An ordinance regulating addressing within the corporate limits of the City of Dodge City, Kansas; repealing Article 4-1102 of Chapter IV of the Municipal Code of the City of Dodge City and incorporating by reference the "Ford County 911 Addressing Plan" as amended.

Resolution No 2009-25: A resolution authorizing payment of 2009 year end bonuses to qualified employees.

Resolution No. 2009-26: A resolution amending the Special Use Permit for a Lottery Gaming Facility.

UNFINISHED BUSINESS

NEW BUSINESS

1. Recommendation of architect for design services for the construction of Comanche Street. Presented by Joe Finley, Director of Engineering Services.
2. Recommendation of architect for design services for the construction of Brier Street. Presented by Joe Finley, Director of Engineering Services.
3. Recommendation of architect design services for Infrastructure Improvements for Gunsmoke, LLC. Presented by Joe Finley, Director of Engineering Services.
4. Approval of bids for Saint Mary's Soccer Fields Site Furnishings. Presented by Paul Lewis, Director of Parks and Recreation.
5. Approval of contract with Kansas Department of Transportation for the Bicycle Extension Project. Presented by Paul Lewis, Director of Parks and Recreation.

OTHER BUSINESS

EXECUTIVE SESSION

ADJOURNMENT

CITY COMMISSION MINUTES

City Hall Commission Chambers

Monday, November 2, 2009

7:00 p.m.

MEETING #4783

CALL TO ORDER

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

INVOCATION: Rev. Kirk Larson, Grace Community Church

PLEDGE OF ALLEGIANCE

PETITIONS & PROCLAMATIONS

National Hospice and Home Care Month

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).

Jane Longmeyer announced that the America Recycle Day Event would take place on November 14th from 10:00 a.m.—1:00 p.m. at the Civic Center. The event will feature the collection of Household Hazardous Waste and E-Waste. Residents are asked to bring gently used garage sale items to the Civic Center on Thursday, November 12 and Friday, November 13. A Community Market will be held in conjunction with the recycle event.

Jan Stevens announced that the Dodge City Convention and Visitors Bureau were recognized at the Travel Industry Association of Kansas (TIAK) Conference with three different awards.

CONSENT CALENDAR

1. Approval of City Commission Meeting minutes, October 19, 2009
2. Appropriation Ordinance No. 21, November 2, 2009
3. Cereal Malt Beverage License
 - a. Presto Store #27, 2615 E Trail Street
 - b. King Kwik Mart, 510 E Wyatt Earp Blvd
 - c. South Dodge Shamrock, 302 S 2nd Avenue
4. Purchase of Dictation System

Commissioner Sherer moved to approve the Consent Calendar, seconded by Commissioner Weber. The motion carried on a vote of 4-0.

ORDINANCES & RESOLUTIONS

Ordinance No 3482: Ordinance authorizing the execution of a loan agreement between the City of Dodge City, Kansas and the State of Kansas, acting by and through the Kansas Department of Health and Environment for the purpose of obtaining a loan from the Kansas Water Pollution Control Revolving Fund for the purpose of financing a Wastewater Treatment Project; establishing a dedicated source of revenue for repayment of such loan; authorizing and approving certain documents in connection therewith; and authorizing certain other actions in connection with the loan agreement.

Commissioner Sherer moved to approve Ordinance No 3482, seconded by Commissioner Broeckelman. The motion was carried on a vote of 4-0.

NEW BUSINESS

1. A contract with UCI for Construction of Waste Water Treatment Plant for a guaranteed maximum price of \$15,055,000.00 contingent on approval by City Manager/City Attorney was approved on a motion by Commissioner Broeckelman, seconded by Commissioner Sherer. The motion carried on a vote of 4-0.
2. Adoption of Legislation Policy Southwest Kansas Coalition was approved on a motion by Commissioner Sherer, seconded by Commissioner Weber. The motion carried on a vote of 4-0.
3. A Hospitality Interlocal Cooperation Agreement between the City of Dodge City, Kansas and Dodge City Community College contingent on final review by City Manager/City Attorney was approved on a motion by Commissioner Broeckelman, seconded by Commissioner Sherer. The motion carried on a vote of 4-0.

OTHER BUSINESS

Ken Strobel, City Manger:

- Groundbreaking for the Special Events Center was held on October 27th.
- A Special Thank You to Jack Dalton who was instrumental in getting the Special Events Center project moving forward again to the point we are at now.
- Discussion with BHC for title to the land for the Special Events Center is being finalized
- Met with representatives of Global Entertainment
- Thanks to Parks and Recreation and Friends of the Zoo for Boo for the Zoo that was held on Halloween at the Civic Center

Cherise Tieben, Assistant City Manager:

- Need to visit with Commissioners about meeting on several items
- Update Commission on the Housing Project

Christa Roy, Public Information Officer:

- 14th new portion opened up
- 14th & By Pass
- JAG is waiting to dry out on Wyatt Earp then continue to pour concrete. Looking to switch traffic to the finished part by the end of November.
- By Pass is open
- Moving dirt at Special Events Center

Commissioner Broeckelman:

- Looking forward to fall harvest
- Commented on Hospice and Prairie Home Health
- Dodge City High School Band did wonderful job at the groundbreaking

Commissioner Sherer:

- Congratulations to the Dodge City High School football team
- The ground breaking for the Special Events Center was outstanding. Thank you to all those who participated and to Jack Dalton.

Mayor Sowers:

- Thanked Dodge City High School Band, Dodge City Community College Choir, Jack Dalton (who was unable to attend) and all attendees at the groundbreaking. Christa Roy did a great job of coordinating the event. Thanked all the sponsors that contributed to the groundbreaking event.

EXECUTIVE SESSION: Discussion of Non-Elected Personnel. At 8:05 p.m. Commissioner Sherer moved to adjourn to an Executive Session not to exceed 30 minutes, seconded by Commissioner Broeckelman. The motion carried on a vote of 4-0.

At 8:35 p.m. Commissioner Weber moved to extend the Executive Session for 30 minutes, seconded by Commissioner Broeckelman. The motion carried on a vote of 4-0.

At 9:05 p.m. the regular session was reconvened.

Commissioner Weber moved to increase Ken Strobel, City Manager's salary by 5%, seconded by Commissioner Sherer. The motion was carried on a vote of 4-0.

ADJOURNMENT: Commissioner Sherer moved to adjourn the meeting, seconded by Commissioner Weber. The motion carried 4-0.

City of Dodge City

Memorandum

To: City Manager
Assistant City Manager
City Commissioners
From: Dennis Veatch
Date: November 10, 2009
Subject: Rezoning Ordinance
3107 & 3109 Joel Ave.
Agenda Item: Ordinances & Resolutions

Recommendation: It is recommended that Ordinance No. 3483 be approved.

Background: Lee Cole submitted a request to rezone Lots 4 & 6, Block 3, Kliesen Subdivision from Ag, Agriculture to R-2, Residential Medium Density. The Dodge City Zoning Board held a public hearing on October 20, 2009 to review this case and voted to approve this request unanimously. This hearing was duly advertised in the Dodge City Daily Globe. There were several property owners in attendance expressing concern about this development being used for rentals. No protest petition has been filed.

Justification: Lee Cole proposes to develop this property into single family residential dwelling units. The property will be replatted and each residential unit will be on a separate zoning lot. This proposed development will conform to the Dodge City Zoning Regulations and the City Comprehensive Plan.

Financial Considerations: No financial considerations at this time.

Purpose/Mission: To promote and develop new growth

Legal Consideration: None

Attachments: Ordinance No. 3483, Development Services Report and map showing proposed rezoning area.

ORDINANCE NO. 3483

AN ORDINANCE REZONING LOTS 4 AND 6, BLOCK 3, KLIESEN SUBDIVISION, DODGE CITY, FORD COUNTY, KANSAS, FROM AG, AGRICULTURE TO R-2, RESIDENTIAL MEDIUM DENSITY.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF DODGE CITY, KANSAS:

SECTION 1: The following described real property located in Dodge City, Ford County, Kansas is hereby rezoned from AG, Agriculture to R2, Residential Medium Density:

Lots 4 and 6, Block 3, Kliesen Subdivision, Dodge City, Ford County, Kansas.

SECTION 2: This ordinance shall take effect, from and following its publication in the official paper, as required by law.

PASSED BY THE CITY OF DODGE CITY GOVERNING BODY, IN REGULAR SESSION AND APPROVED BY THE MAYOR, THIS SIXTEENTH DAY OF NOVEMBER, 2009.

Rick Sowers, Mayor

ATTEST:

Nannette Pogue, City Clerk

**CITY OF DODGE CITY
DEVELOPMENT SERVICES REPORT
ZONING BOARD CASE NO. 2009-07**

APPLICANT: Lee Cole

REQUEST: Zoning Map amendment, from A, Agriculture to R-2, Residential Medium Density.

SURROUNDING LAND USES (ZONING):

North- Agricultural
South- Agricultural
East- Agricultural
West- R-1, Residential Low- Density

BACKGROUND

This property is presently zoned Agriculture. The applicant wishes to develop this property for single family residential housing.

The Comprehensive Plan indicates that this site is located within a Residential Stable Neighborhood. Residential Stable Neighborhoods predominantly comprise well maintained single family and newer multi-family residential structures that function as desirable living areas, and that should be preserved and protected from disruptive uses and poor property maintenance practices. This plan encourages the construction of a wide range of new housing types in stable areas. New residential uses should be compatible with existing residential structures, but new structures are not restricted to single family detached units. Attached or multiple family structures may be compatible in certain locations so long as other policies, principles and standards are followed. This development would be considered as single family residential units and subdivided into 4 lots for each of the two existing lots for a total of 8 housing units.

The density of new residential development should be in the same range as the average density of surrounding existing areas. Significant increases in density to a higher range should be considered only if adequate access is provided, existing streets are capable of safely accommodating the traffic added by the higher density, the bulk and orientation of the new structures will not adversely affect the use of nearby property, and adequate utilities are available to the site.

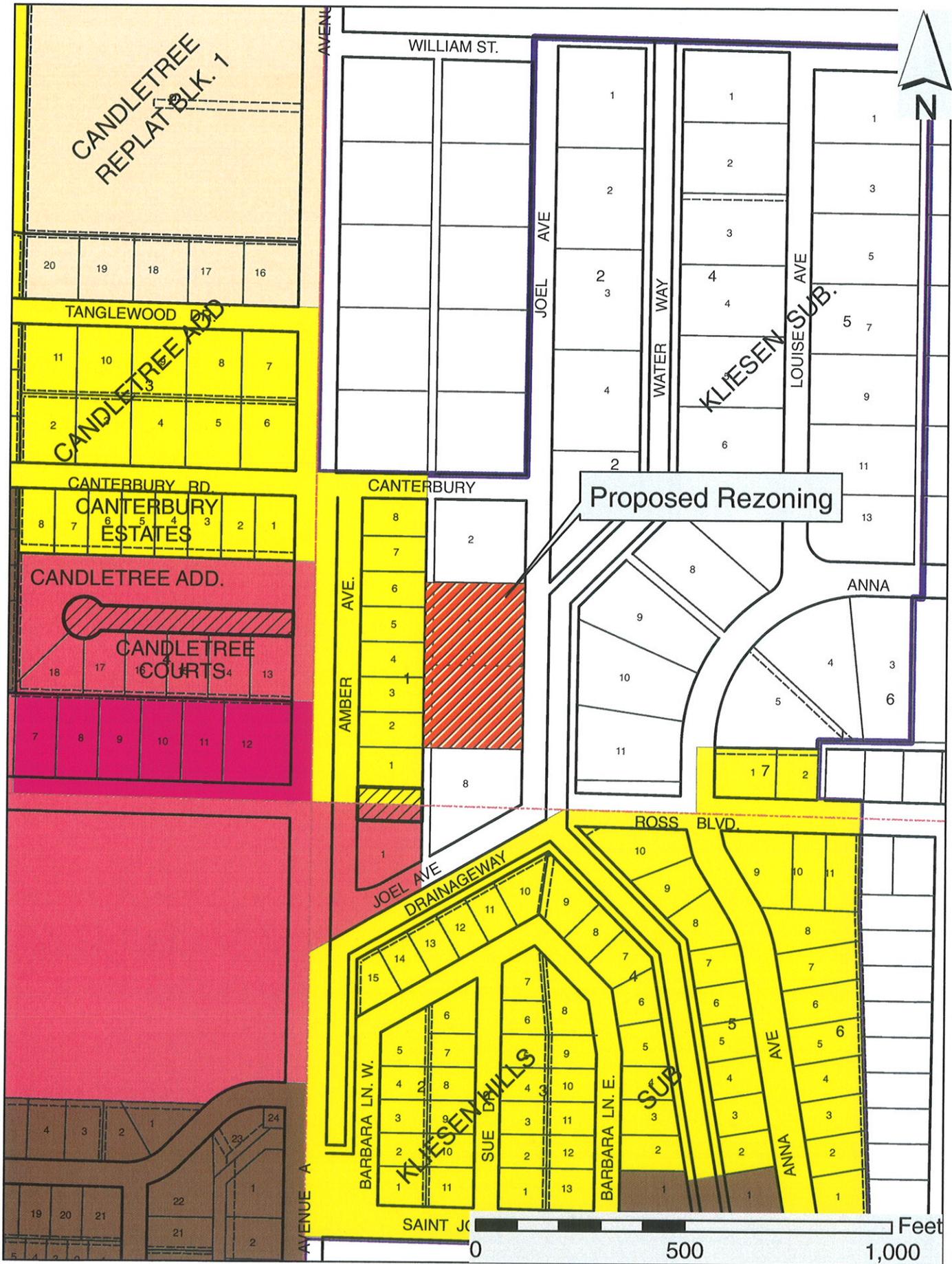
Maintenance of and improvements to the public infrastructure should be made to help sustain the quality of private residential uses.

ANALYSIS

This site will be compatible with the recommendations set forth in the Dodge City Comprehensive Plan. The R-2, Residential Medium Density District would be compatible with other uses in the area. The proposed development would be re-subdivided into 8 individual lots located on two existing one acre lots. The existing lots do not meet the size requirements for the existing Agricultural zoning district.

RECOMMEDATION

Development Services staff recommends that the Zoning Board **approve** this application.



CANDLETREE
REPLAT BLK. 1

TANGLEWOOD
CANDLETREE ADD.

CANTERBURY RD.
CANTERBURY
ESTATES

CANDLETREE ADD.

CANDLETREE
COURTS

WILLIAM ST.

JOEL AVE

WATER WAY

KLIESEN SUB.

LOUISE AVE

AMBER AVE.

CANTERBURY

Proposed Rezoning

ANNA

ROSS BLVD.

JOEL AVE
DRAINAGEWAY

BARBARA LN. W.

KLIESEN HILLS
SUE DR

BARBARA LN. E.

SUB

ANNA AVE

SAINT J

Feet

0 500 1,000



Memorandum

*To: City Manager
City Commissioners*
From: Dennis Veatch
Date: 11-11-09
Subject: 911 Addressing Policy
Agenda Item: New Business

Recommendation: Staff recommends the approval of Ordinance No. 3484 which regulates addressing within the Corporate limits of the City of Dodge City; repeals Article 4-1102 of Chapter IV of the Municipal Code and incorporates by reference the "Ford County 911 Addressing Plan" as amended.

Background: Approval of this "Plan" addresses the fact that the cities located in Ford County and Ford County itself had no commonly accepted guidelines for assigning addresses. The lack of a unified system for address assignment and maintenance limited the practical usage of address records and could be the source of serious errors and omissions. These errors could result in increased operating costs, error recovery costs and in the case of Emergency Services, could have an affect on the response times.

Justification: A comprehensive and accurate addressing system can tremendously enhance many aspects of City and County government operations. If integrated with a well planned computer mapping system the added benefits of geo-referencing may be realized.

Financial Considerations: None

Purpose/Mission: By incorporating a consistent addressing plan with the County, we continue our quest for ongoing improvement in order to better serve our Citizens.

Legal Considerations:

None

Attachments: Ordinance and Ford County 911 Addressing Plan

ORDINANCE NO. 3484

AN ORDINANCE REGULATING ADDRESSING WITHIN THE CORPORATE LIMITS OF THE CITY OF DODGE CITY, KANSAS; REPEALING ARTICLE 4-1102 OF CHAPTER IV OF THE MUNICIPAL CODE OF THE CITY OF DODGE CITY AND INCORPORATING BY REFERENCE THE "FORD COUNTY 911 ADDRESSING PLAN" AS AMENDED.

Be it Ordained by the Governing Body of the City of Dodge City:

Section 1: Article 4-1102 of Chapter IV of the Municipal Code of the City of Dodge City is hereby repealed and the following inserted in lieu thereof:

Article 4-1102: There is hereby incorporated by Reference for the purpose of regulating the addressing with in the corporate limits of the City of Dodge City, Kansas, the Ford County 911 Addressing Plan as amended.

Section 2: This ordinance shall take effect and be in force from and after its publication in the official City newspaper.

Passed by the governing body of the City of Dodge City, Kansas and approved by the Mayor this 16th day of November, 2009.

Rick Sowers, Mayor

ATTEST

Nannette Pogue, City Clerk

Memorandum

*To: City Manager
Assistant City Manager
City Commissioners*

From: Jane Longmeyer, HR Officer

Date: November 10, 2009

Subject: Year End Bonus

Agenda Item: Ordinances and Resolutions

Recommendation: Approval of Resolution No. 2009-25.

Background: Each non-probationary full time employee with over one (1) year of service will receive a bonus of \$50.00 per calendar year worked for the City, a benefit adopted in 1998. A cap of \$1,000.00 after 20 years of service has been established.

Justification: This is a budgeted item and funds are available.

Financial Considerations: The amount budgeted for the 2009 bonus is \$95,150.00.

Purpose/Mission: To provide employees an annual reward/benefit for their continued efforts in striving to achieve high performance and service standards set by us and expected by the community..

Legal Considerations: None

Attachments: Resolution No. 2009-25.

RESOLUTION NO. 2009-25

A RESOLUTION AUTHORIZING PAYMENT OF 2009 YEAR END BONUSES TO
QUALIFIED EMPLOYEES

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF DODGE CITY:

WHEREAS: Taking into consideration the City's financial standing, the Governing Body desires to recognize the dedication and commitment of City employees by a discretionary year end bonus, under the guidelines established by Resolution 98-41.

ADOPTED AND APPROVED BY THE GOVERNING BODY OF THE CITY OF DODGE CITY, KANSAS, THIS 16th DAY OF NOVEMBER, 2009.

Rick Sowers, Mayor

ATTEST:

Nannette Pogue, City Clerk

City of Dodge City

Memorandum

To: City Manager
Assistant City Manager
City Commissioners
From: Dennis Veatch
Date: November 10, 2009
Subject: Special Use Permit Pylon Sign for Casino
and Event Center
Agenda Item: Ordinances & Resolutions

Recommendation: It is recommended that Resolution 2009-26 be approved.

Background: The City of Dodge City submitted a request to amend the Special Use Permit for a Lottery Gaming Facility to allow a 50' tall free standing pylon sign shared by the Boot Hill Casino & Resort and Dodge City, Ford County Event Center. The Dodge City Zoning Board held a public hearing on October 27, 2009 to review this case and voted to approve this request unanimously. This hearing was duly advertised in the Dodge City Daily Globe.

Justification: The Boot Hill Casino & Resort and the Dodge City, Ford County Event Center is proposing to share one pylon sign which is 665 square feet in area and 50 feet tall. Current zoning regulations allow one free standing sign for every 300 feet of street frontage not to exceed 200 square feet in area and a maximum of 35 feet tall. The Casino has 2649 feet of frontage and the Event Center has 1345 feet of frontage. Under current zoning regulations the Casino would be allowed 8 signs totaling 1600 square feet of area and the Event Center would be allowed 4 signs totaling 800 square feet in area. Although this one sign is considerably larger in area and taller than regulations require, restricting the Casino and Event Center to one shared pylon sign would actually reduce the overall sign area otherwise allowed.

Financial Considerations: No financial considerations at this time.

Purpose/Mission: To share in the cost and development of one sign and by reducing the overall number and area of signage otherwise allowed.

Legal Consideration: None

Attachments: Resolution No. 2009-26, Exhibit B Map showing location of sign placement, Exhibit D plan for Pylon Sign.

RESOLUTION NO. 2009-26

A RESOLUTION AUTHORIZING THE APPROVAL OF AN AMENDMENT TO THE SPECIAL USE PERMIT FOR A LOTTERY GAMING FACILITY LOCATED ON A TRACT OF LAND IN THE SOUTH HALF OF SECTION 21 AND THE NORTH HALF OF SECTION 28 BOTH IN T. 26 S., R.25 W. OF THE 6TH P.M.

WHEREAS, the City of Dodge City, Kansas, has adopted Ordinance No. 3439 adding provision XII.4 to the Zoning Ordinance creating a Special Use Permit for a Lottery Gaming Facility; and

WHEREAS, the Lottery Gaming Facility and other related facilities or campuses are allowed only in the C-2, Highway Commercial District subject to the following criteria:

1. Any approval shall be subject to the facilities being granted a Lottery Gaming License from the State of Kansas.
2. The Special Use Permit must be renewed prior to the expiration of any Lottery Gaming License. The renewal will only be valid if the Lottery Gaming License is granted by the State of Kansas.
3. In addition to the standards of the C-2, Highway Commercial District, any Lottery Gaming Facility and related facilities or campuses shall be subject to the City of Dodge City's Municipal Codes, Development Codes, Policy Manual and Standard Specifications for Construction regardless of the location within the city.
4. Any existing Lottery Gaming Facility is subject to review, if new improvements to the exterior of any building or improvements to the campus are indicated or required; and

WHEREAS, The City of Dodge City has submitted an application to amend the Special Use Permit to allow a 50' tall pylon sign to be shared by the Boot Hill Casino & Resort and the Dodge City, Ford County Event Center located on Lot 1 of Mariah Center Replat; and

WHEREAS, The Dodge City Zoning Board held a public hearing on Tuesday, October 27, 2009 to hear the request to amend the Special Use Permit to allow a 50' tall free standing pylon sign and the Zoning Board voted unanimously in favor of recommending approval of the amendment to the Special Use Permit:

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

SECTION 1. The Amendment to the Special Use Permit will be approved subject to criteria established by Ordinance No. 3439 creating a Special Use Permit for a Lottery Gaming Facility and subject to the terms and conditions of the Resolution of Endorsement approved by the governing body on September 21, 2007.

ADOPTED AND APPROVED by the governing body of the City of Dodge City, Kansas, on November 16, 2009.

By: _____
Rick Sowers, Mayor

Attest: _____
Nannette Pogue, City Clerk

Certificate

The undersigned being the duly appointed Clerk of the City of Dodge City, Kansas does hereby certify that the above and forgoing Resolution was duly adopted by majority vote of the City Commission of the City of Dodge City, Kansas on this 16th day of November, 2009.

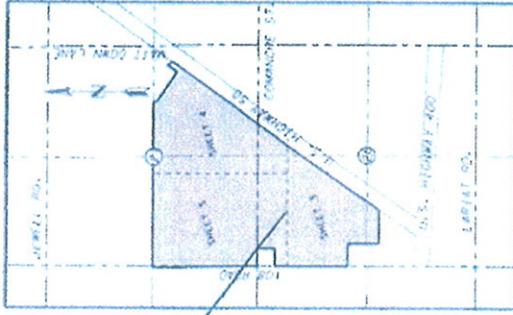
Nannette Pogue, City Clerk

*This Exhibit has been reduced to permit recording. Each party has full size versions.

Exhibit B Page 1 of 5 Development & Expanded Development

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



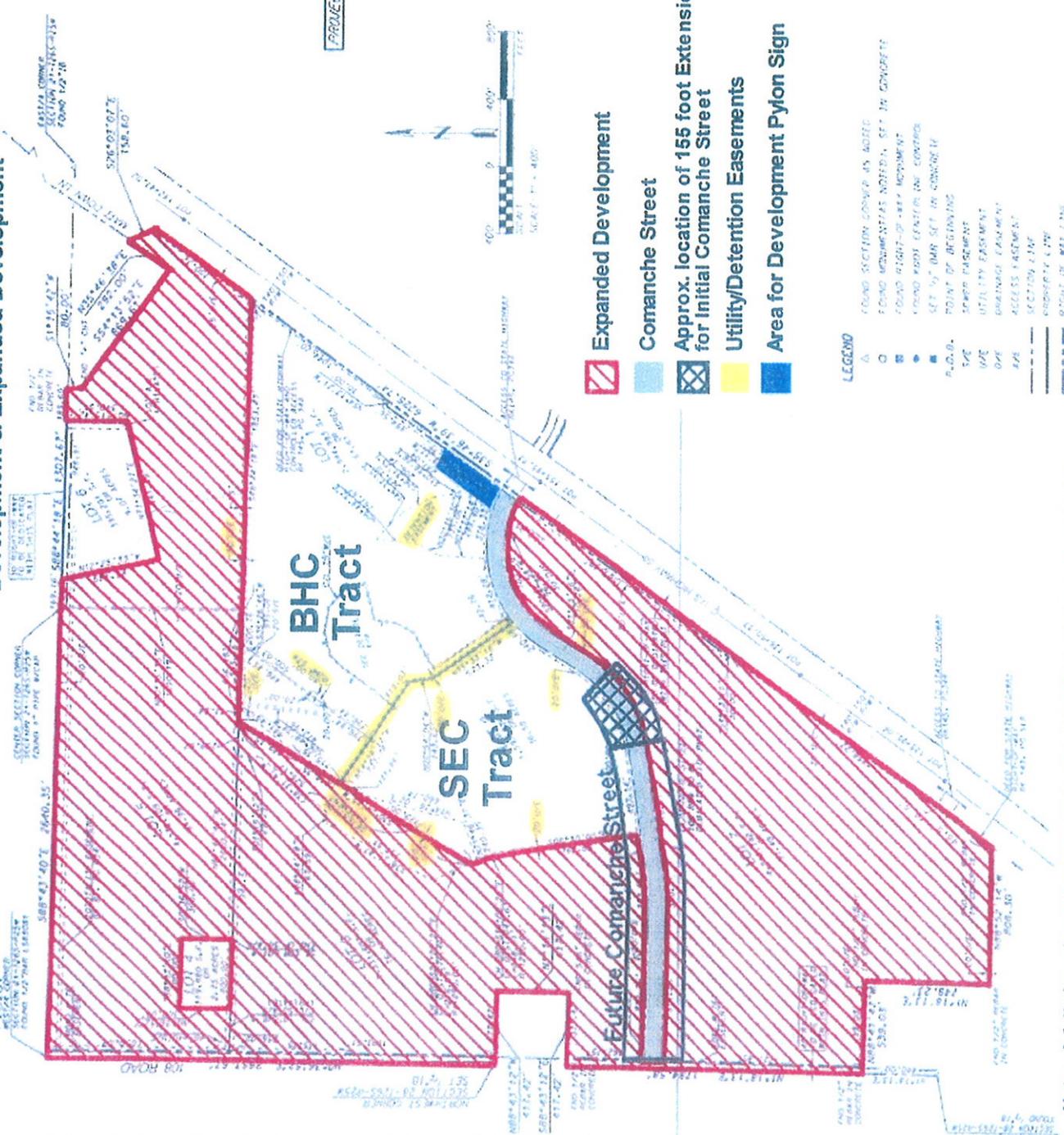
VICINITY MAP
SEC. 21-1765-0224
SEC. 28-1765-0224
1"=2000'

PROJECT LOCATION

- SURVEYOR'S NOTES**
1. AN ADDITIONAL 50 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 LINE ALONG 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 #	LENGTH	CHORD BEARING	CHORD DISTANCE	LENGTH	RADIUS
1-1	141.74	S49.24°E	140.24'	140.00'	2000.00'
1-2	156.97	S56.97°E	156.97'	156.97'	156.97'
1-3	104.37	S64.37°E	104.37'	104.37'	104.37'



- Expanded Development
- Comanche Street
- Approx. location of 155 foot Extension for Initial Comanche Street
- Utility/Detention Easements
- Area for Development Pylon Sign

LEGEND

- FOUND SECTION CORNER AS ADDED
- FOUND MONUMENT AS NOTED, SET IN CONCRETE
- FOUND RIGHT-OF-WAY MONUMENT
- FOUND ROAD CENTERLINE CORNER
- SET 1/2" IRR SET IN CONCRETE
- POINT OF BEGINNING
- T&E
- UTILITY EASEMENT
- DRAINAGE EASEMENT
- ACCESS EASEMENT
- SECTION LINE
- PROPERTY LINE
- RIGHT OF WAY LINE
- AREA OF STREET ACCESS

Note: A full size plat reflecting utility and detention easements and lot lines is available at the planning offices of the city of Dodge City, Kansas.

Memorandum

To: Ken Strobel, City Manager
From: Joseph E. Finley, P.E.
Director of Engineering Services
Date: November 11, 2009
Subject: New Business

Recommendation: Allow staff to negotiate agreement with BHCRhodes for design service for the reconstruction of Comanche Street from 14th Avenue to US 50.

Background: Staff has been including the reconstruction of this portion of Comanche Street in our 5-year plan that we submit to KDOT for several years now. We did not believe that we would be successful in receiving funds anytime soon. With the opening of the Casino and the completion of the Events Center, staff had included in this year's budget to hire a firm to do the necessary design work. However, several weeks ago staff was notified by KDOT that this project could be funded in the 2012. As this project will be funded with both KDOT and Federal Funds, there are guidelines as to how consultants must be obtained to perform the necessary design work. They require that Request for Proposals (RFP) be sent to 5-8 consulting firms. Once the RFP are reviewed then a short list is developed and 3-5 consultants are interviewed. RFP were sent to eleven firms and eight expressed interest by returning RFP. Two firms chose to partner with other firms. Because all firms submitted very good RFP, staff chose to interview all firms. Ray Slattery, Paul Lewis and I were to interview the consultants. However, Paul was unable to participate in the interviews.

Justification: Comanche Street is beginning to show severe wearing problems. In addition this street will be the gateway to and from the Casino/Events Center and must be capable of handling the additional traffic while also serving as a show case to this area as well as Dodge City. Several developers have also expressed an interest in this area. Reconstructing and expansion of this roadway will enhance this area and make it possible to provide adequate access to this area.

Financial Considerations: None at this time. .

Purpose/Mission: Reconstruction of this corridor will enhance the area for commercial development and provide for safe access to and from the Casino/Events Center.

Legal Considerations: None at this time.

Attachments: Firms and rankings

Comanche Street
Consultant Rankings

BHCRhodes	1
CFS	2
MKEC	3
HWS/SMH	4
Wilson&Company/Kirkham Michaels	5
BG Consultants	6
BWR	7
PEC	8
Transystems	No RFP

Memorandum

To: Ken Strobel, City Manager
From: Joseph E. Finley, P.E.
Director of Engineering Services
Date: November 11, 2009
Subject: New Business

Recommendation: Allow staff to negotiate agreement with BHCRhodes.

Background: Several months ago staff formalized a policy to help developers with the cost of infrastructure. One of the developments is with Inter-Faith Housing and their planned development of Brier Street from Avenue H to Avenue P. As a part of this process, an engineering design firm will need to be hired to design the new waterline, sewer services, and street/drainage improvements. As the City is financing the improvements, the City will be contracting for these services. Requests for Proposals were sent to eleven consulting firms that we have used in the past or have done work for developers in Dodge City. We received seven RFP in response to our mailing. Ray Slattery and I reviewed the proposals and ranked the firms based on qualifications that were outlined in the RFP.

Justification: To alleviate our housing shortage, additional housing needs to be built with the necessary infrastructure being designed and built.

Financial Considerations: None at this time. However, once the consultant meets with staff and the developer, they will develop a more detailed scope of service and a detailed estimate that will be brought back to the Commission for approval.

Purpose/Mission: By contracting with a consultant to design the infrastructure for this subdivision, additional and affordable housing will be made available to current and new citizens of Dodge City.

Legal Considerations: None at this time.

Attachments: Firms and rankings

Brier Street Development
Consultant Rankings

BHCRhodes	1
BG Consultants	2
SMH	3
Kaw Valley	4
PEC	5
CFS	6
BWR	7
Wilson	No RFP
Transystems	No RFP
Kirkham Michaels	No RFP
MKEC	No RFP

Memorandum

To: Ken Strobel, City Manager
From: Joseph E. Finley, P.E.
Director of Engineering Services
Date: November 11, 2009
Subject: New Business

Recommendation: Allow staff to negotiate agreement with SMH.

Background: Several months ago staff formalized a policy to help developers with the cost of infrastructure. One of the developments is with Gunsmoke LLC and their development of an area on Avenue A just south of Kleisen Hills Development. While the developer is currently interested in developing a small tract of land, the City is interested in making sure that any infrastructure built will not only service this development, but can also serve future developments in this area. Cherise has met several times with the owners and investors about our concerns and about developing a plan for a larger development area. As the City will be financing the improvements, the developer agreed to let the City handle the design work necessary for his immediate needs and to also look at the needs that any future development might require. Requests for Proposals were sent to eleven consulting firms that we have used in the past or have done work for developers in Dodge City. We received seven RFP in response to our mailing. Ray Slattery and I reviewed the proposals and ranked the firms based on qualifications that were outlined in the RFP.

Justification: To alleviate our housing shortage, additional housing needs to be built and with the necessary infrastructure being designed and built. Future needs will also be assessed and designed even though they may not be constructed at this time. This approach will insure that development in this area can occur without duplicating cost or increasing costs because properties are land locked and can't get available city services.

Financial Considerations: None at this time. However, once the consultant meets with staff and the developer, they will develop a more detailed scope of service and a detailed estimate that will be brought back to the commission for approval.

Purpose/Mission: By contracting with a consultant to design the infrastructure for this subdivision, additional affordable housing will be made available to current and new citizens of Dodge City.

Legal Considerations: None at this time.

Attachments: Firms and rankings

Gunsmoke LLC Development
Consultant Rankings

SMH	1
PEC	2
BHCRhodes	3
Kaw Valley	4
BG Consultants	5
CFS	6
BWR	7
Wilson	No RFP
Transystems	No RFP
Kirkham Michaels	No RFP
MKEC	No RFP

Memorandum

To: City Manager
Assistant City Manager
City Commissioners

From: Paul Lewis, Parks & Recreation Director

Date: November 12, 2009

Subject: St. Mary Soccer Site Furnishings

Agenda Item: New Business



Recommendation: Staff recommends accepting the bid of Athco in the amount of \$12,275 for six bleacher sets and the bid of Sterling West in the amount of \$10,523 for benches, picnic tables, and trash receptacles.

Background: Earlier this year construction was completed on the renovation of the St. Mary Soccer Complex funded through the Why Not Dodge sales tax. That project expanded the facility to include a total of nine game fields and provided a playground area and other amenities. This bid provides site furnishings for the facility including trash cans, benches, and picnic tables and additional bleacher seating.

Justification: The additional game fields require expanding seating availability. With nine game fields now available, the six bleacher sets will supplement existing units to provide seating at all fields.

The other site furnishings are necessary to address visitor needs and provide a finished look to the complex. Benches will be placed around the playground area and along walkways. The picnic tables will be used at the concession/restroom building west of Sheridan and the trash receptacles will be placed at various places around the complex.

Staff's recommendation is to package bids 1, 2, & 3 together in order to have all products from one manufacturer and provide a consistent appearance throughout the complex.

Financial Considerations: These items were anticipated in the construction budget for the St. Mary Soccer Complex and allowances were made to retain funds for this purchase. Budgeted allowances totaled \$23,775 and this purchase is less than that figure.

The purchase will come from sales tax funds and dollars are available in that fund to complete this purchase.

Purpose/Mission: This project fits the Core values of the City as we continue to make ongoing improvements to parks and public facilities in order to enhance the quality of life for residents and provide excellent facilities for their use and enjoyment.

Legal Considerations: N/A

Attachments: Bid Tab

**Dodge City Parks & Recreation
Bid Tabulation**

St. Mary Site Furnishings

Tuesday, November 10, 2009

Bidder	Bid 1 6' Surface Mount Bench (7 benches)	Bid 2 6' Picnic Tables (4 tables)	Bid 3 32 gal. Trash Receptacles (16 units)	Freight	Bids 1-3 Sub Total	Bid 4 5 row x 15' Bleachers (6 sets)
Atcho	2960.00	2225.00	4875.00	695.00	\$10,755.00	12,275.00
Riggs Recreation	3739.12	2043.32	4159.84	1472.00	\$11,414.28	18,400.00
Fry & Assoc.	4023.67	2123.24	4853.60	0.00	\$11,000.51	18,472.98
ABCreative	4025.00	2220.00	4960.00	0.00	\$11,205.00	16,350.00
Sterling West	3931.00	1968.00	4624.00	0.00	\$10,523.00	13,470.00

Memorandum

To: City Manager
Assistant City Manager
City Commissioners

From: Paul Lewis, Parks & Recreation Director

Date: November 12, 2009

Subject: KDOT Bicycle/Pedestrian Path Agreement

Agenda Item: New Business



Recommendation: Staff recommends approving the contract with Kansas Department of Transportation regarding the Bicycle/Pedestrian Path extension project.

Background: In November of 2007 the Commission authorized an application to KDOT for a TEA-21 project to extend the existing bicycle/pedestrian path. The proposed extension would run west along Highway 50 from 6th Ave. to 14th Ave. and then south to Speiers Park. Through the TEA-21 program, 80% of the cost is reimbursed through national highway and transportation funds and the City is responsible for the remaining 20%. KDOT is responsible for administering those funds.

The project was approved for funding and earlier the Commission authorized staff to enter into contract with an engineering firm to provide construction drawings for the work. That process is now nearly complete and KDOT has just recently provided final comments on the construction documents. Those final comments will be addressed and the project should bid in January.

Justification: The first phase of the bicycle/pedestrian path has proven to be one of the most popular recreational amenities the City has provided. This project expands on the initial construction and provides connections to the trail for neighborhoods along Highway 50, Manor Drive, and Speiers Park and also Dodge City Community College. This addition reflects another step towards a long term vision of connecting the community from north to south via the trail.

Financial Considerations: Approval of this agreement represents one of the final milestones for our participation in the TEA-21 program and signifies the City's commitment to fund the project. To meet this commitment the CIP program includes \$35,000 in the 09 budget and another \$70,000 in the 2010 CIP budget to cover the City's share of construction costs plus design fees.

Purpose/Mission: This project is representative of the City's efforts towards ongoing improvement as we expand recreational and transportation opportunities in the community and a desire to provide excellent services and quality of life for our citizens.

Legal Considerations: This contract details the responsibilities of the City and KDOT under the TEA-21 program and to be eligible to receive the 80% reimbursement. The contract contains no conditions that were not anticipated and represents KDOT's standard form of agreement for participation in the TEA-21 program.

Attachments: KDOT Contract

PROJECT NO. 29 TE-0325-01
TEA- T032(501)
TRANSPORTATION ENHANCEMENT PROJECT
PEDESTRIAN/BICYCLE PATH-EXTENSION
CITY OF DODGE CITY, KANSAS

A G R E E M E N T

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

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

Collectively referred to as the "Parties."

PURPOSE: The Secretary is authorized by the current Federal-Aid Transportation Act to set aside certain portion of Federal funding allocated under the current Federal-Aid Transportation Act for Transportation Enhancement (TE) projects. The Secretary is empowered to pass through Federal Surface Transportation Program (STP) funds for TE projects to eligible state agencies or local governments. The Secretary and the City are empowered by the laws of Kansas to enter into agreements for Federal STP funding under the Transportation Enhancement Provision of current the Federal-Aid Transportation Act. Under the terms of the current Federal-Aid Transportation Act and the rules and regulations of the Federal Highway Administration (FHWA), states and local governments are, under certain circumstances, entitled to receive assistance in the financing of TE projects, provided however, that in order to be eligible for such federal-aid, such work is required by Federal law to be done in accordance with the laws of the state.

PROJECT: The Secretary and the City desire to enter into this Agreement and take such steps as are deemed by the Secretary to be necessary or advisable for the purpose of securing the benefits of the current Federal-Aid Transportation Act for the construction of a TE project, hereinafter referred to as the Project, for the construction of a pedestrian/bicycle path, in Dodge City, Kansas, described as follows:

Construction of a concrete pedestrian/bicycle path along the south side of US Highway 50, between Sixth and Fourteenth Streets and a path spur from Dodge City Community College, east to Fourteenth Street and another path spur from Spier's Park west to Fourteenth Street, and will include: ADA accessibility, bollard, bike rack, trash receptacle, bench, pavement marking, signals and landscaping.

EFFECTIVE

DATE: The Parties in consideration of the premises and to secure the approval and construction of the Project shall mutually agree to perform in accordance with this Agreement as of the ____ day of _____, 20__.

ARTICLE I

THE SECRETARY AGREES:

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

2. To reimburse the City for eighty percent (80%) of the total actual costs of construction, which includes the costs of all construction contingency items, and construction administration, except in instances where the Project has significant non-participation construction costs. In such a case the reimbursement rate for the construction administration services will be reduced commensurate with the non-participating costs. The Secretary shall not be responsible for the total actual costs of preliminary engineering, rights of way, and utility adjustments for the Project.

3. To make partial payments to the City for amounts not less than \$1,000 and no more frequently than monthly. Such payments will be made after receipt of proper billing and approval by a licensed professional engineer and/or licensed architect employed by the City that the Project is being constructed within substantial compliance of the plans and specifications. Billing shall be supported by a progress schedule acceptable to the Secretary, which should include the beginning/ending of the billing period, the percentage of work completed, and the actual costs incurred during the billing period. Accumulated partial payments shall not exceed the total fees earned less the \$500 retainage for each work phase, prior to approval and acceptance of completed work on the all phases by the Secretary.

ARTICLE II

THE CITY AGREES:

1. To make or contract to have made design plans, specifications, estimates, surveys, and any necessary studies or investigations, including, but not limited to, environmental, hydraulic, and geological investigations or studies for the Project. The City shall design the Project or contract to have the Project designed in conformity with the state and federal design criteria appropriate for the Project in accordance with the current American Association of Highway and Transportation Officials (AASHTO) design standards, the American Institute of Architects (AIA) standards, the Secretary of the Interior's Standards for the Treatment of Historic Properties, the American Society of Landscape Architects guidelines and KDOT's Design Engineering Requirements, the current version of the City's standard specifications and the rules and regulations of FHWA pertaining thereto. The final design plans for the Project are incorporated by reference and hereby made a part of this Agreement. The City further agrees to follow the Kansas Transportation Enhancement Program Project Administration Guide for the administration of the Project.

2. To make or contract to have made design plans, specifications, estimates, and any necessary surveys, studies or investigations, including, but not limited to, environmental, hydraulic or geological investigations or studies for the Project which shall be submitted to the Secretary by a licensed professional engineer and/or a licensed professional architect attesting to the conformity of the design with the items in paragraph 1 above. The final design plans must be signed and sealed by a licensed professional engineer and/or licensed professional architect responsible for preparation of the design plans.

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

4. Any design exception to the current version of the AASHTO Design Standards shall be in accordance with 23 C.F.R. § 625. For any design exception, the City agrees to the extent permitted by law and subject to the maximum liability provisions of the Kansas Tort Claims Act, to defend, indemnify, hold harmless, and save the Secretary and his or her authorized representatives from any and all costs, liabilities, expenses, suits, judgments, damages to persons or property or claims of any nature whatsoever arising out of or in connection with the design exceptions for this Agreement by the City, the City's employees, or subcontractors.

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

6. To the extent permitted by law and subject to the maximum liability provisions of the Kansas Tort Claims Act, the City will defend, indemnify, hold harmless, and save the Secretary and his or her authorized representatives from any and all costs, liabilities, expenses, suits, judgments, damages to persons or property or claims of any nature whatsoever arising out of or in connection with the provisions or performance of this Agreement by the City, the City's employees, or subcontractors. The City shall not be required to defend, indemnify and hold the Secretary harmless for negligent acts or omissions of the Secretary or his or her authorized representatives or employees.

7. To require the contractor to indemnify, hold harmless, and save the Secretary and the City from personal injury and property damage claims arising out of the act or omission of

the contractor, the contractor's agent, subcontractors (at any tier), or suppliers (at any tier). If the Secretary or the City defends a third party's claim, the contractor shall indemnify the Secretary and the City for damages paid to the third party and all related expenses either the Secretary or the City or both incur in defending the claim.

8. A duly appointed representative, or Chairperson of the City Commission is authorized to sign for the City any or all routine reports as may be required or requested by the Secretary in the completion of the Project undertaken under this Agreement.

9. The Secretary shall not participate in the cost of acquisition or lease of any real property or easements within, across or through any land owned in fee simple or controlled by the City. The City shall provide any real property, easements or land owned in fee simple or controlled by the City at no cost or charge to the Secretary.

10. To warrant at all times during the construction of the Project and for the period of its useful life, the City will coordinate with the Secretary on all matters involving use of highway right of way adjacent to or in the vicinity of the Project, including but not limited to access, traffic control, drainage and utilities, and shall abide by the Secretary's determination of any needs for joint use of right of way, easements or real property for state highway purposes which may arise from or in connection with this Project.

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

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

13. To acquire rights of way in accordance with the laws and with procedures established by the Bureau of Right of Way and the Office of Chief Counsel of KDOT. The City further agrees copies of all documents including recommendations and coordination for appeal, bills, contracts, journal entries, case files or documentation requested by the Secretary will be sent to the Secretary within the time limits set by the Secretary.

14. Within its respective jurisdictions, it will move or adjust, or cause to be moved or adjusted, and will be responsible for such removal or adjustment of all existing structures, pole lines, pipe lines, meters, manholes, and other utilities, publicly or privately owned, which may be necessary to construct the Project in accordance with the final design plans. New or existing utilities to be installed, moved or adjusted will be located or relocated in accordance with the current version of the KDOT Utility Accommodation Policy (UAP), as amended or supplemented. The expense of the removal or adjustment of the utilities located on public rights of way shall be borne by the owners. The expense of the removal or adjustment of privately owned utilities located on private rights of way or easement shall be borne by the City.

15. It will expeditiously take such steps as necessary to facilitate the early adjustment of any utilities, will initiate the removal or adjustment of the utilities, and will proceed with reasonable diligence to prosecute this work to completion. The City further agrees to move or adjust or cause to be moved or adjusted all necessary utilities prior to the scheduled construction letting except those necessary to be adjusted during construction and those which would disturb the existing street surface. The City will initiate and proceed to complete adjusting any remaining utilities in order to ensure the contractor shall not be delayed in construction of the Project.

16. It is understood the City shall determine the manner in which traffic is to be handled during construction in accordance with the latest version, as adopted by the Secretary, of the Manual of Uniform Traffic Control Devices (MUTCD).

17. To let the contract for the Project and shall award the contract to the lowest responsible bidder upon concurrence in the award by the Secretary. The City further agrees to administer the construction of the Project in accordance with the final design plans, the standard specifications, a Construction Administration Agreement and administer the payments due the contractor, including the portion of the cost borne by the Secretary. Decisions about what construction costs are federal participating will be made in accordance with the requirements of the Federal Highway Administration and the Secretary.

18. To require the contractor to pay prevailing wages if required. The City will incorporate into the construction contract, if applicable, the following bid documents: The Davis-Bacon Certification Verification Agreement along with the current general wage decision for the county in which the Project is being constructed, Disadvantage Business Enterprises (DBE) Contract Goals, Certification of Understanding DBE Goal and Federal Aid Utilization of DBEs.

19. To incorporate into the construction contract, the following required bid documents: Certification Regarding Noncollusion & History of Debarment, Required Contract Provisions Certification-Federal Funds-Lobbying, Required Contract Provisions Certification Contractual Services with Current Legislator or Legislator's Firm, Kansas Department of Transportation Special Attachment (Civil Rights and Nondiscrimination), FHWA-1273 Required Contract Provisions Federal-Aid Construction Contracts, FHWA 11246- Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity, Required Contract Provision Specific Equal Employment Opportunity Contractual Requirement and Buy American Materials.

20. To construct the Project in accordance with the plans and specifications, and supervise the construction and administer the payment due the contractor, including the portion of cost borne by the Secretary. The participating items shall be shown separated and listed apart from the non-participating items on both the final design plans and the bid documents. The specifications will require the contractor to provide a performance bond in a sum not less than the amount of the contract as awarded.

21. To provide the construction inspection necessary to determine substantial compliance with the design plans, the specifications, Project provisions, this Agreement and a construction administration agreement. The City agrees to execute a construction administration agreement with the Secretary.

22. To be responsible for twenty percent (20%) of the total actual costs of construction, which includes the cost of all construction contingency items and construction administration. The City further agrees to be responsible for one hundred percent (100%) of the total actual costs for preliminary engineering, rights of way, and utility adjustments for the Project.

23. To maintain a complete set of final plans reproducible, as-built prints, approved shop drawings, and structural materials certification for five (5) years after the Project's completion. The City further agrees to make such reproducible, prints, drawings, and certifications available for inspection by the Secretary upon request. The City shall provide access to or copies of all of the above-mentioned documents to the Secretary.

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

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

26. During the useful life of the Project any change in the use of the real property will require written approval by the Secretary. After the Project is completed and approved, the City agrees not to change the use of the real property for the Project. If the City determines the use of the real property for the Project is to be changed, the City agrees the change in the use of the real property will require prior written approval by the Secretary.

27. To adopt an ordinance requiring the removal of all encroachments either on or above the limits of the right of way within their respective jurisdictions as shown on the final design plans for this Project and they will initiate and proceed with diligence to remove or require the removal of the encroachments. It is further agreed all such encroachments be removed before the Project is advertised for letting providing, however, with respect to any encroachment, the physical removal thereof has been fully provided for between the City and the

owner thereof and will be accomplished within a time sufficiently short to present no hindrance or delay to the construction of the Project. All right of way provided for the Project shall be used solely for public street purposes and no signs, posters, billboards, roadside stands, fences, structures or other private installations shall be permitted within the right of way limits except as provided by state laws.

28. To locate and shall be responsible for all costs necessary to remedy or clean-up any hazardous waste site, including, but not limited to, leaking underground storage tanks discovered on rights of way, easements and access rights acquired by the City. The City shall be responsible to the Secretary for all damages, fines or penalties, expenses, claims and costs incurred by the Secretary from any hazardous waste site discovered on rights of way, easements and access rights acquired by the City.

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

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

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

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

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

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

ARTICLE III

THE PARTIES MUTUALLY AGREE:

1. The estimated cost for construction is \$407,547 and for construction engineering is \$61,132 for a total estimated cost of \$468,679. It is further mutually agreed these estimated cost figures are to be used for encumbrance purposes by KDOT and adjustments will be made based on the actual Project costs.

2. If any items are found to be non-participating by the Secretary, acting in his or her own behalf and on behalf of FHWA, the total cost of these items will be paid for by the City. If any construction items are found to be non-participating by the Secretary, the City agrees the Secretary can reduce the construction administration cost in its proportion to the reduction in the total participating construction cost.

3. All change orders shall be reviewed and approved by the Secretary prior to the City authorizing the work associated with such change order. If the City has not received prior approval, then the work will be considered non-participating and will be paid for by the City.

4. Representatives of the Secretary may make periodic inspection of the Project and the records of the City and as may be deemed necessary or desirable. The City will direct or cause its contractor to accomplish any corrective action or work required by the Secretary's representative as needed for a determination of federal participation. The Secretary does not undertake (for the benefit of the City, the contractor, the consultant, or any third party) the duty to perform the day-to-day detailed inspection of the Project, or to catch the contractor's errors, omissions, or deviations from the final design plans and specifications.

5. It is the policy of the Secretary to make any final payments to the City for services related to the Highway program in a timely manner. The Single Audit Standards set forth in Federal O.M.B. Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations and in 49 C.F.R. § 18 *et seq.*, require an audit be performed by an independent certified public accountant in accordance with those standards. All information audited shall comply with 49 C.F.R. § 18 *et seq.*

The Secretary may pay any final amount due for the authorized work performed based upon the City's most recent Single Audit Report available and a desk review of the claim

by the Contract Audit Section of the Secretary's Bureau of Fiscal Services. The City, by acceptance of this Agreement, acknowledges the final payment is subject to all single audits which cover the time period of the expenses being claimed for reimbursement. The Secretary and the City agree as the Single Audit Report becomes available for the reimbursement period (normally within a period of 1-2 years after the Project has closed), the Secretary will review the Single Audit Report for items which are declared as not been eligible for reimbursement. The City agrees if payment has been made to the City for items subsequently found to be not eligible for reimbursement by audit, the City will refund to the Secretary the total amount of monies paid for same. The City further agrees to make such payment to the Secretary within thirty (30) days after receipt of a complete and final billing from the Secretary's Chief of Fiscal Services.

6. It is not the intent of this Agreement or the Project provided herein to create or expand the status of any land involved in this Project as a "significant publicly owned public park, recreation area, or wildlife and waterfowl refuge, or any significant historic site," for purposes of 49 U.S.C. § 303 and 23 C.F.R. § 771.135 (hereinafter referred to as "4(f) status"), except as hereinafter expressly provided.

Unless otherwise stated below in this section, it is agreed the major purposes or functions of land involved in the Project are to preserve or enhance the scenic, historic, environmental or archeological aspects, or the usefulness for intermodal users (including bicyclists, pedestrians, and other non-motorized transportation users) of existing or new transportation facilities. It is further agreed any park, recreation or refuge purposes or functions are secondary or incidental thereto.

The Parties agree for purposes of any future determinations of 4(f) issues as required by 49 U.S.C. § 303 or regulations adopted thereunder, the Secretary is hereby designated as the public official having jurisdiction of such determinations. However, it is not the intent of this section to affect the determination of whether a historic or archaeological site is on or eligible for inclusion on the National Register of Historic Places.

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

8. The provisions found in KDOT's Civil Rights Special Attachment No. 2 attached hereto are hereby incorporated into this Agreement by reference and made a part hereof.

9. The provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 1-01), which is attached hereto, are hereby incorporated into this Agreement by reference and made a part hereof.

10. If, in the judgment of KDOT, sufficient funds are not appropriated to continue the function performed in this Agreement and for the payment of the charges hereunder, KDOT may terminate this Agreement at the end of its current fiscal year.

11. It is further understood this Agreement and all contracts entered into under the provisions of this Agreement shall be binding upon the Secretary, the City and their successors in office.

12. It is expressly agreed no third party beneficiaries are intended to be created by this Agreement, nor do the Parties herein authorize anyone not a party to this Agreement to maintain a suit for damages pursuant to the terms of provisions of this Agreement.

13. It is mutually agreed the Project will be constructed within the limits of the existing public property. Necessary utility adjustments will be made prior to submission of final plans. The expense of removal or adjustment of utilities and encroachments located on public rights of way or easement shall be borne by the owner or the City.

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

ATTEST:

THE CITY OF DODGE CITY, KANSAS

CITY CLERK

MAYOR

Debra L. Miller
Secretary of Transportation

(SEAL)

BY: _____
Jerome T. Younger, P.E.
Deputy Secretary for Engineering and
State Transportation Engineer

INDEX OF ATTACHMENTS

- Attachment No. 1 - Design Engineering Requirements
- Attachment No. 2 - Civil Rights Act of 1964 & Rehabilitation Act of 1973
- Attachment No. 3 - Contractual Provisions Attachment

DESIGN ENGINEERING REQUIREMENTS

Scope of Design Services:

- (1) Prepare detailed drawings and specifications in accordance with the American Association of Highway and Transportation Officials (AASHTO) Design Standards. The KSHS shall provide for design exceptions in accordance with 23 C.F.R. § 625.
- (2) Make the necessary surveys to determine the extent of rehabilitation to meet the necessary requirements.
- (3) Prepare and furnish to KDOT the requested number drawings of preliminary construction plans for field/office check. These plans shall consist of drawings and other documents to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, material and such other elements as may be appropriate.
- (4) Field/Office check the Project with a representative of Program and Project Management.
- (5) Complete drawings and make necessary revisions made at a field check and/or an office check review or by recommendations, errors, or omissions at any time prior to the completion and final acceptance of the construction contract.
- (6) Complete the plans, include the specifications and necessary bidding and contract documents.
- (7) Submit required number of completed sets of plans to KDOT for final review along with an updated detailed cost estimate.

KANSAS DEPARTMENT OF TRANSPORTATION

Special Attachment
To Contracts or Agreements Entered Into
By the Secretary of Transportation of the State of Kansas

NOTE: Whenever this Special Attachment conflicts with provisions of the Document to which it is attached, this Special Attachment shall govern.

THE CIVIL RIGHTS ACT OF 1964, and any amendments thereto,
REHABILITATION ACT OF 1973, and any amendments thereto,
AMERICANS WITH DISABILITIES ACT OF 1990, and any amendments thereto,
AGE DISCRIMINATION ACT OF 1975, and any amendments thereto,
EXECUTIVE ORDER 12898, FEDERAL ACTIONS TO ADDRESS ENVIRONMENTAL JUSTICE IN MINORITY
POPULATIONS AND LOW INCOME POPULATIONS 1994, and any amendments thereto,
49 C.F.R. Part 26.1 (DBE Program), and any amendments thereto

NOTIFICATION

The Secretary of Transportation for the State of Kansas, in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (78 Stat. 252), §504 of the Rehabilitation Act of 1973 (87 Stat. 355) and the Americans with Disabilities Act of 1990 (42 USC 12101), the Age Discrimination Act of 1975 (42 USC 6101), the Regulations of the U.S. Department of Transportation (49 C.F.R., Part 21, 23, and 27), issued pursuant to such ACT, Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations (1994), and the DBE Program (49 C.F.R., Part 26.1), hereby notifies all contracting parties that, the contracting parties will affirmatively ensure that this contract will be implemented without discrimination on the grounds of race, religion, color, gender, age, disability, national origin, or minority populations and low income populations as more specifically set out in the following "Nondiscrimination Clauses".

CLARIFICATION

Where the term "consultant" appears in the following "Nondiscrimination Clauses", the term "consultant" is understood to include all parties to contracts or agreements with the Secretary of Transportation of the State of Kansas.

Nondiscrimination Clauses

During the performance of this contract, the consultant, or the consultant's assignees and successors in interest (hereinafter referred to as the "Consultant"), agrees as follows:

- 1) Compliance with Regulations: The consultant will comply with the Regulations of the U.S. Department of Transportation relative to nondiscrimination in federally-assisted programs of the U.S. Department of Transportation (Title 49, Code of Federal Regulations, Parts 21, 23 and 27, hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- 2) Nondiscrimination: The consultant, with regard to the work performed by the consultant after award and prior to the completion of the contract work, will not discriminate on the grounds of race, religion, color, gender, age, disability, national origin or minority populations and low income populations in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The consultant will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- 3) Solicitations for Subcontractors, including Procurements of Material and Equipment: In all solicitations, either competitive bidding or negotiation made by the consultant for work to be performed under a subcontract including procurements of materials and equipment, each potential subcontractor or supplier shall be notified by the consultant of the consultant's obligation under this contract and the Regulations relative to nondiscrimination on the grounds of race, religion, color, gender, age, disability, national origin or minority populations and low income populations.

- 4) Information and Reports: The consultant will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and the Secretary of the Transportation of the State of Kansas will be permitted access to the consultant's books, records, accounts, other sources of information, and facilities as may be determined by the Secretary of Transportation of the State of Kansas to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a consultant is in the exclusive possession of another who fails or refuses to furnish this information, the consultant shall so certify to the Secretary of Transportation of the State of Kansas and shall set forth what efforts it has made to obtain the information.
- 5) Employment: The consultant will not discriminate against any employee or applicant for employment because of race, religion, color, gender, age, disability, or natural origin.
- 6) Sanctions for Noncompliance: In the event of the consultant's noncompliance with the nondiscrimination provisions of this contract, the Secretary of Transportation of the State of Kansas shall impose such contract sanctions as the Secretary of Transportation of the State of Kansas may determine to be appropriate, including, but not limited to,
 - (a) withholding of payments to the consultant under the contract until the contractor complies, and/or
 - (b) cancellation, termination or suspension of the contract, in whole or in part.
- 7) Disadvantaged Business Obligation
 - (a) Disadvantaged Business as defined in the Regulations shall have a level playing field to compete for contracts financed in whole or in part with federal funds under this contract.
 - (b) All necessary and reasonable steps shall be taken in accordance with the Regulations to ensure that Disadvantaged Businesses have equal opportunity to compete for and perform contracts. No person(s) shall be discriminated against on the basis of race, color, gender, or national origin in the award and performance of federally-assisted contracts.
 - (c) The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of Federally-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.
- 8) Executive Order 12898
 - (a) To the extent permitted by existing law, and whenever practical and appropriate, all necessary and reasonable steps shall be taken in accordance with Executive Order 12898 to collect, maintain, and analyze information on the race, color, national origin and income level of persons affected by programs, policies and activities of the Secretary of Transportation of the State of Kansas and use such information in complying with this Order.

Incorporation of Provisions: The consultant will include the provisions of paragraphs (1) through (8) in every subcontract, including procurements of materials and equipment, unless exempt by the Regulations, order, or instructions issued pursuant thereto. The consultant will take such action with respect to any subcontract or procurement as the Secretary of Transportation of the State of Kansas may direct as a means of enforcing such provisions including sanctions for noncompliance: PROVIDED, however, that, in the event a consultant becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the consultant may request the State to enter into such litigation to protect the interests of the State.

State of Kansas
 Department of Administration
 DA-146a (Rev. 1-01)

CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:
 "The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 1-01), which is attached hereto, are hereby incorporated in this contract and made a part thereof."
 The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the _____ day of _____, 20_____.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated.
2. **Agreement With Kansas Law:** All contractual agreements shall be subject to, governed by, and construed according to the laws of the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** Neither the State of Kansas nor any agency thereof shall hold harmless or indemnify any contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Parties to this contract understand that the provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting state agency cumulatively total \$5,000 or less during the fiscal year of such agency.

6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation shall be allowed to find the State or any agency thereof has agreed to binding arbitration, or the payment of damages or penalties upon the occurrence of a contingency. Further, the State of Kansas shall not agree to pay attorney fees and late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The State of Kansas shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas shall not be required to purchase, any insurance against loss or damage to any personal property to which this contract relates, nor shall this contract require the State to establish a "self-insurance" fund to protect against any such loss of damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the vendor or lessor shall bear the risk of any loss or damage to any personal property in which vendor or lessor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."