

CITY COMMISSION AGENDA

City Hall Commission Chambers

Monday, August 16, 2010

7:00 p.m.

MEETING #4813

CALL TO ORDER

ROLL CALL

INVOCATION: by Phil Scott, Senior Minister – First Christian Church

PLEDGE OF ALLEGIANCE

PUBLIC HEARING

Application to the Kansas Department of Commerce for Small Cities Community Development Block Grant funds.

2011 Budget

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, August 2, 2010
2. Appropriation Ordinance No. 15, August 16, 2010
3. Approval of contract with SMH to provide the necessary service to acquire easements for installation of the transmission line for the Water Reclamation Facility.
4. Approval of contract with UCI to provide construction services for the South Dodge Lift Station.

ORDINANCES & RESOLUTIONS

Ordinance No. 3494: Rezoning from R-S to R-3 for 6th Avenue. Report by Director of Developmental Services, Dennis Veatch.

Ordinance No. 3495: An Ordinance Attesting to an Increase in Tax Revenues for the Budget Year 2011 for the City of Dodge City. Report by the Director of Finance/City Clerk, Nannette Pogue.

UNFINISHED BUSINESS

NEW BUSINESS

1. Approval of 2011 Budget. Report by Director of Finance/City Clerk, Nannette Pogue.
2. Approval of Resignation of Vernon Bogart and the Appointment of Debra Muylaert to the Cultural Relations Advisory Board Representing the Ministerial Alliance. Report by Director of Public Information, Jane Longmeyer.
3. Approval of Final Plat for Happy Trails Subdivision. Report by Director of Developmental Services, Dennis Veatch.
4. Approval of Final Plat for Wagon Wheel Addition. Report by Director of Developmental Services, Dennis Veatch.

OTHER BUSINESS

ADJOURNMENT

PUBLIC HEARING NOTICE

The City of Dodge City will hold a public hearing on Monday, August 16, 2010 at 7:00 p.m. in the Commissioners Meeting Room, City Hall, 800 N. 2nd, Dodge City, Kansas for the purpose of considering an application to be submitted to the Kansas Department of Commerce for Small Cities Community Development Block Grant funds under the Housing Rehabilitation category. A specific project application to be discussed is the rehabilitation of approximately 15 houses in an area beginning at the intersection of Wyatt Earp Blvd, and the western alley of Avenue D thence north to the northern alley of Vine Street, thence east to the eastern alley of Avenue E thence south to Wyatt Earp Blvd. thence west to the point of beginning. The estimated project cost is \$401,000.00 with the grant request for \$400,000.00 of the project cost. Other project proposals introduced at the hearing will be considered. Oral and written comments will be recorded and become a part of the City of Dodge City's CDBG Citizen Participation Plan.

Reasonable accommodations are available for persons with disabilities. Requests for accommodations should be submitted to the City Clerk by 5:00 p.m., Friday August 13, 2010.

E. Kent Smoll, Mayor

EXECUTIVE SUMMARY

2011 Budget

City of Dodge City

Submitted for the Governing Body's approval is the 2011 operating and capital budget for the City of Dodge City for the fiscal year beginning January 1, 2011. The budget proposal represents the ongoing commitment to manage the delicate balance between funding essential operations, providing for infrastructure investment, and maintaining a stable tax levy.

The proposed budget was developed with three primary objectives.

- 1). Continuation of our commitment to maintaining and improving our service delivery, through an emphasis on the importance of human resources.
- 2). Continuing our efforts to fund a Capital Improvement Program, and infrastructure programs in order to insure sound and viable City infrastructure, public works facilities, and overall service delivery capability.
- 3). Commit the resources needed to provide essential services for a growing community, as well as continue to provide programs and facilities that enhance quality of life for residents.

Budget Assumptions

During the budget preparation process we have made revenue forecasts based on national, state, and local economic trends, and state budget laws. Community needs, departmental program history, and general direction from the governing body were key factors used in projecting program costs for 2011. The budget as presented does not provide any increased services. It represents the same programming as it did in 2009, and with the exception of scheduled salary increases, the same funding level.

Some assumptions used to develop this budget include:

- 1). Assessed Valuation of \$129,478,126. This is a 4.32% increase from 2010. In 2010, the increase was a modest 1.21. The impact of the machinery and equipment abatement for industry as a result of State of Kansas changes in taxation laws, has slowed a little. Many communities are experiencing a decline in assessed valuation because of the housing market and economy. Dodge City has not experienced this decline.
- 2). Delinquent ad valorem tax at a rate of 5%
- 3). Salary increase of 2.5%

- 4). Partially restore funding for the Capital Improvement Program
- 5). No additional funding for the Municipal Equipment Replacement Program. \$100,000 was added after the initial discussion to the General Fund budgets to transfer depreciation expense to the Municipal Equipment Reserve Fund.
- 6). Health Insurance premiums increased by 8%
- 7). Continued loss of demand transfer funds from the State of Kansas.

Property Tax Funds

The Funds reflected in this budget which are supported by property tax assessment include the General Fund, Special Liability Fund, Library and Library Employee Benefit Funds, Bond & Interest Fund and Capital Improvement Fund. (In this budget the Capital Improvement Fund and the Building Fund have been combined into one fund). All other funds are supported by Special Revenue or User Fees.

This budget is presented by fund, with the revenue being listed first and the expenditures listed next and summarized by category. Reports are available that lists all the line items included in each fund as well as detail of most of the line items. A section has also been added that shows a description of each department along with the staffing levels and historical funding levels.

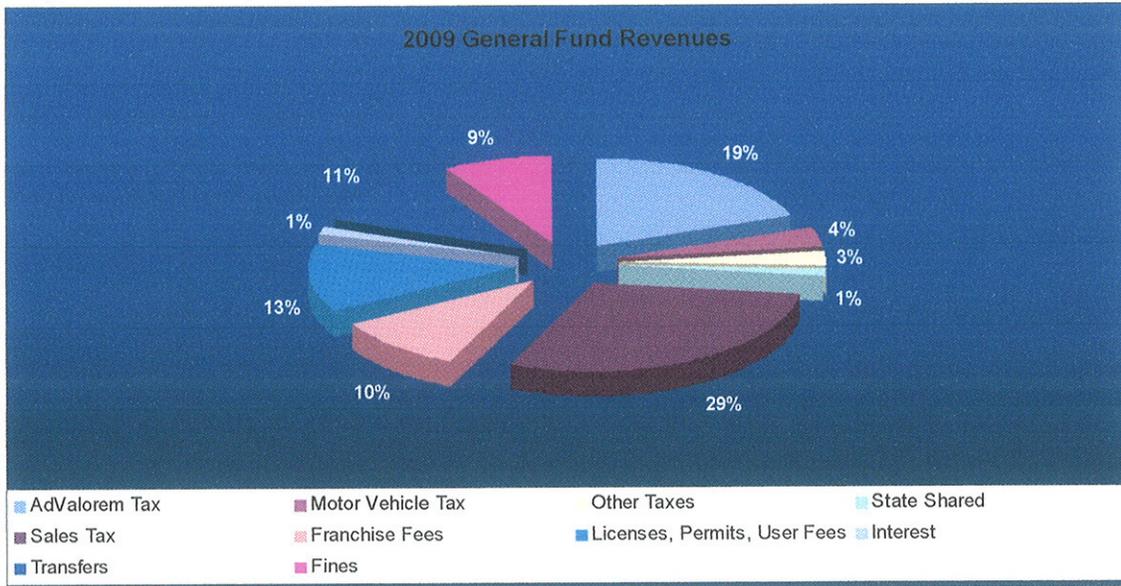
Revenue Projections

The sales tax revenue projection in 2010 is \$4,320,000. Because the sales tax has not increased as much as had been projected, this number is too aggressive. In 2011, the sales tax is projected at a 3.5% increase over the 2009 actual. In 2009, the sales tax was down approximately 2% from 2008. Year to Date the sales tax has been up, bouncing from month to month from 2.25% increase to 5.77% increase. This revenue source continues to be strong. Sales tax is one of the non-property tax funding sources that is of great importance to the City as it represents approximately 30% of the total revenue stream for the General Fund budget. For 2011 budget purposes the sales tax projection is at \$4,160,000. (This does not include the Why Not Dodge sales tax which is dealt with separately).

Interest income is not a major source of income as it has been in the past. The interest rates for idle public funds are under .25%. This is the lowest that I have ever seen it in my years of public service.

Municipal Court fine revenue had continued to grow at a steady pace, but has reached a plateau and even declined slightly in the last couple of years. I anticipate it will continue to decline.

The following graph provides an overview of the 'General Fund Revenue Sources for the Budget Year 2009 (actual).



Cash Reserves

I have shown the Cash Reserve in the budget. It is titled Transferred to Capital. This amount reflects 11.14% of the budgeted expenditures for 2010.

Capital Improvement Program, Municipal Equipment Reserve Fund and Building Fund

Included in the 2011 Budget is the proposed Five-Year Capital Improvement Program. The items in this program have been prioritized by the City Department Heads. If all available funds are spent, there would be available approximately \$520,000.

The Building Fund was started as a method to fund building projects. In the past this has funded payments for the City Hall, Golf Course Club House and the Depot. It had been expected that this would be a partial source of funding for a consolidated Public Works Shop. This fund has not yet had the opportunity to accumulate enough to fund future projects. Because we have continued cutting the mill levy amount in this fund and the expenditures were very similar to the Capital Improvement Funds, it is proposed that these two funds be combined. Any building projects would need to compete with other capital improvement projects for funding.

The Municipal Equipment Reserve Fund is funded by the depreciation amount of the equipment (vehicles and other rolling equipment) in the general fund. This fund then supports the replacement or new equipment for departments in the general fund. The equipment in the other funds (Sales Tax Fund, Water, Sewer and Sanitation) are all listed in the Program, but funded in those individual funds. The Municipal Equipment Reserve Fund is being funded by 0% depreciation in the proposed 2011 budget. There are purchases that are a high priority and mileage plus maintenance costs show that these purchases need to be made in 2011. The large purchase for 2011 is a fire truck at an estimated \$400,000. Currently the fund has approximately \$1,000,000 in it. Very few purchases are being made in 2010. Historically we have been funding approximately \$400,000 per year for capital equipment. In 2011 a priority funding was the new fire truck. Even though there is a substantial balance in this account, the purchase of this fire truck, another large truck for approximately \$220,000 and annual police car purchases, etc. the fund would quickly become depleted. In 2011 there is no funding allocated for depreciation. For these reasons, it is recommended that the fire truck be purchased through a lease purchase financing arrangement. Because of the continued increased operating costs in the general fund, it is difficult to fund the depreciation transfers into the Capital Equipment Fund. We continue to evaluate the equipment, which of this equipment can be shared, the replacement schedules, etc. All of the department heads agree that it is important to continue funding the capital equipment fund at some level to maintain quality equipment.

Funding Considerations

To accomplish the budget proposal as submitted; first, the departments submitted their proposals they felt were necessary to complete the programs outlined in their department descriptions. At the same time, the revenues were projected based on historic, economic and other factors. The budget was first put together using this information. The City Manager, Assistant City Manager and Finance Director reviewed the proposals. As usual, the requested expenditures far exceeded the revenues when considering a flat mill levy. At that time, an amount equal to the amount the departments spent in 2009 or budgeted in 2010 (whichever was less) was given to the departments as their target amount to arrive at for their proposed budget. Outlined below are what is included in this budget and what was proposed or suggested and not included in this proposed budget.

What is included:

- 1) A 2.5% salary increase for full time personnel. The amount shown below reflects the salary increase plus the cost of increased benefits (social security and retirement)

	<u>Increase</u>
General Fund	186,836
Sales Tax Fund	4,382
Convention and Visitors Fund	3,815
Special Streets Fund	4,301
Water Fund	14,634
Wastewater Fund	4,802
Sanitation Fund	16,243
Drainage Fund	974
Utilities Administration	6,795
Vehicle Maintenance	<u>2,095</u>
Totals	244,877

- 2) The health insurance was placed with Blue Cross/Blue Shield in 2010. When the health insurance was bid and placed with BC/BS, the first year increase was minimal. Currently employees have 3 options for health insurance. Two of the options are fully paid for by the City. The third option, if chosen by the employee requires an employee contribution. The amount of increase included in the budget is \$126,193 in the general fund and approximately \$51,600 in the other funds.
- 3) There are no position changes included in this budget.
- 4) Programs in all of the departments remained level.
- 5) There were no increases in the contractual and commodity line items from the 2010 budget.
- 6) There is continued funding of the Health Savings Account and the Annual Bonus to employees.
- 7) The community promotions line item includes \$50,000. Requests to date are the Cowboy Band at \$18,500, The Ailey at \$10,000, Dodge City Festivals at \$10,000, CASA at \$8,000 and the fireworks display at \$5,000. This request totals \$51,500.
- 8) All 4 Fun remains funded at a subsidy of \$30,000.

The items that were originally proposed to be funded, but have been cut are:

- 1) Depreciation into the Capital Equipment Fund has not been funded.
- 2) The reserve for the general fund at 15% of the previous year's budget and was cut to 11.14%.
- 3) \$100,000 was requested by the Dodge City Ford County Economic Development to develop a revolving loan fund for building improvements in the Main Street District.
- 4) \$200,000 was requested by Interfaith Housing Services for use in the implementation of 2 housing initiatives.
- 5) Many of the operating budgets in the General Fund were reduced significantly.

Other considerations include:

- 1) The lottery money was estimated at approximately \$600,000 per year. The revenue is being recorded in a Growth and Development Fund to be used to support street infrastructure projects. It is proposed to use \$250,000 in 2010 and \$450,000 in 2011 to fund the Bond & Interest Fund.
- 2) The construction department is included in the general fund and includes salaries, benefits and other small purchases. The department will also operate as a building maintenance department. It is anticipated to charge back some of the expenses in this fund to individual departments.
- 4) The 2010 budget also needs to be reevaluated and some cuts made.

Even though we do not anticipate the effects of the economy in Dodge City, in an effort to be prudent and protect the 2011 budget, we will reevaluate the 2010 budget and make every effort to reduce expenditures where we can.

Street GO Bond Program

It is proposed to issue a bond issue in 2010 of approximately \$2,130,000. This bond issue is the result of earlier discussions with the Commission regarding the 2010 street program. The first payments will be realized in 2011. The addition of a major bond issue in 2007 resulted in higher payments beginning in 2009. The bond issued in 2009 was for improvements at the Event Center and will be paid by the Casino through Special Assessments. In order to keep the mill levy down, \$450,000 of lottery money is proposed to fund the principal and interest payments in 2011.

Library

The Dodge City Public Library submitted a budget proposal of \$907,706 for the general Library fund and \$219,446 for the Library Employee Benefit Fund for a total of \$1,127,152. Last year's budget was \$1,101,657. Approximately \$9,200 will need to be cut from the General Library Fund request to maintain the limited 6 mills for the Library. The City Commission approved a mill levy cap of 6 mills for the Library General Fund in 2009.

Special Liability Fund

This funds the City's insurance premiums. This includes Liability, property, workmen's compensation, airport liability, and police liability. The Workmen's Compensation premium has increased substantially. An employee that had been budgeted in the City Manager's Department in the General Fund will be paid from this fund, as their primary emphasis will be on workmen's comp and other insurance issues.

Water and Wastewater Funds

The Water Fund budget reflects the operating costs for the distribution of water to the customers, payments of current bonds and some capital improvement projects.

The Wastewater Fund budget reflects the operating costs for the collection of the wastewater and taking that wastewater south of town to the wastewater treatment plant. The City of Dodge City has a contract with OMI to operate that plant.

GO Bonds that were issued in 1999 for Water and Wastewater Improvements were fully paid off in 2009. A revenue bond was issued for the improvements to the current wastewater treatment plant that included water wells and pumps in that area. These improvements were made in partnership with National Beef because of their expansion. As a result, National Beef pays 50% of the total bond payments for this project. The Water fund is responsible for 30% of the remaining payment and the Wastewater Fund is responsible for 70% of the remaining payment.

Two temporary note issues have been made to fund water system improvements. One issue was for \$2,265,000 and one for \$3,315,000. These were for the purchase of water rights and development of 4 water wells. Both of these temporary notes will mature in 2012.

Construction of the wastewater treatment plant north of Dodge City began early this year. The City received a low interest loan from KDH&E to fund this construction. We launched a rate increase in June and will have another rate increase next year to anticipate the loan repayments. We will begin to make payments on the loan in 2012. In the meantime, we continue to seek other funding sources to reduce the amount of this loan.

Sales Tax Fund

The Sales Tax Fund funds the “Why Not Dodge” projects that were voted on in 1997. This budget includes operating budgets for the Racetrack, Athletic Fields, administration costs, “organizational funding” and payments for the Revenue Bond issued in 2009 to fund the events center. Other major expenditures from this fund will result in a budget amendment because we do not know what those costs are at this time.

Special Revenue Funds

There are several other funds listed that are not mentioned in this summary. As previously stated, all of the funds are shown separately and each revenue and expenditure source is listed. If you have particular questions on any of these funds, please do not hesitate to contact Ken, Cherise or Nannette.

The 2011 budget is once again a challenge. Costs continue to rise, so we must continually ensure that the services we are providing are the services the community needs and is willing to fund.

If you have any questions or wish additional information, please do not hesitate to contact us.

The Governing Body of the City of Dodge City will meet on the 16th day of August, 2010, at 7:00 p.m. at the City Commission meeting room, 806 2nd Avenue for the purpose of hearing and answering objections of taxpayers relating to the proposed use of all funds and the amount of Ad Valorem Tax.

Detailed budget information is available at City Hall, 806 Second Avenue, and will be available at this hearing.

BUDGET SUMMARY

The "Proposed Budget 2011 Expenditures" and the "Amount of 2010 Tax to be Levied" establish the maximum limits of the 2011 budget. The "Est Tax Rate" is subject to change depending on final assessed valuation.

FUND	2009		2010		PROPOSED BUDGET 2011		
	Prior Year Actual Expenditures	Actual Tax Rate	Current Year Estimate of Expenditures	Actual Tax Rate	Expenditures	Amount of 2010 Ad Valorem Tax	Est. Tax Rate
General Fund	14,241,018	21.973	14,275,048	22.404	15,235,365	3,156,324	24.377
Special Liability	461,366	2.541	683,000	3.016	745,835	336,527	2.599
Library	844,195	5.885	855,506	5.591	898,506	776,866	6.000
Library Employee Benefit	224,697	1.646	246,151	1.731	219,446	183,717	1.419
Building Fund	22,734	1.250	443,185	0.390	0	0	0.000
Bond and Interest	2,780,266	14.802	2,861,700	15.248	3,048,100	1,738,960	13.431
Capital Improvement Fund	495,991	1.803	280,495	1.525	520,000	269,550	2.082
Sales Tax - Special Projects	15,991,997		9,738,471		4,543,774		
ST Fund	506,723		129,067		517,845		
Special Events Center Construction	4,434,033		0		0		
Convention and Visitors	497,416		626,062		782,394		
Special Streets & Highways	680,859		748,459		749,792		
Special Parks & Recreation	80,000		65,800		80,000		
Special Alcohol & Drug	95,000		65,800		80,000		
Alcohol Drug & Safety Action	23,116		40,000		78,000		
Special Law Enforcement Trust	29,106						
All 4 Fun	224,769		233,000		282,609		
Underage Alcohol Abuse Program	17,752		22,000		15,000		
DARE	15,460		20,000		15,000		
Capital Equipment	392,985		100,000		643,000		
Grants	1,435,645						
Development & Growth Fund	0		250,000		950,000		
Street Reconstruction Projects	3,622,421						
Water	4,195,575		3,940,134		4,047,444		
2008 Temp Notes-Water	3,671						
Wastewater	4,848,061		4,545,008		4,941,034		
2003 WWTP & Wvtri Imp Debt Serv	1,652,986						
2009 Wastewater Treatment Plant	436,834						
Sanitation	1,812,463		1,872,319		2,008,768		
Drainage Utility	533,373		243,464		363,524		
Utilities Administration	41		0		0		
Transportation	277,938		248,918		267,475		
Construction			124,520		0		
Medical Self Insurance	2,317,677		2,529,757		2,759,040		
Hoover	0						
Economic Development Revolving	0						
SMPC Trust	0		90,784		66,000		
TOTALS	63,196,167	49.900	45,278,648	49.905	43,857,950	6,461,944	49.908
Less Transfers:	7,041,037		6,103,847		6,092,170		
Net Expenditures	56,155,130		39,174,801		37,765,780		
Total Tax Levied	6,114,470		6,193,539		6,461,944		
Assessed Valuation	122,541,541		124,113,321		129,478,126		

	Outstanding Indebtedness, January 1,		
	2008	2009	2010
G.O. Bonds	22,530,000	21,465,000	23,335,000
Revenue Bonds	23,120,000	21,565,000	57,315,000
Temporary Notes	0	2,265,000	5,580,000
Lease Purch Princ	34,900	0	0
Total	45,684,900	45,295,000	86,230,000

*Tax Rates are expressed in mills.

CITY COMMISSION MINUTES

City Hall Commission Chambers

Monday, August 2, 2010

7:00 p.m.

MEETING #4812

CALL TO ORDER

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

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).

Employee of the Month for August 2010, Chelsey Fisher, was presented by the Director of Public Information, Jane Longmeyer.

The City Character Trait, Security was presented by Director of Public Information, Jane Longmeyer.

CONSENT CALENDAR

1. Approval of City Commission Meeting minutes, July 19, 2010
2. Appropriation Ordinance No. 14, August 2, 2010
3. Cereal Malt Beverage License
 - a. Riverstop, 705 S. 14th Avenue
 - b. Speedy Stop, 2615 Gary Avenue
4. Approval of Change Orders 1, 2 and 3 for the modification to the ARFF building during construction.

Commissioner Jim Sherer moved to approve the Consent Calendar as presented, seconded by Commissioner Brian Weber. The motion carried 4-0.

ORDINANCES & RESOLUTIONS

UNFINISHED BUSINESS

NEW BUSINESS

FOP Supplemental Memorandum of Understanding was approved on a motion by Commissioner Rick Sowers, seconded by Commissioner Brian Weber. The motion carried 4-0.

The Mariah Hills Restaurant Lease with Brent Cunningham, amended to fulfill the intent of the contract was approved on a motion by Commissioner Jim Sherer, seconded by Commissioner Brian Weber. Motion carried 3-1, with Commissioner Rick Sowers voting no.

The City Manager was authorized to execute an Agreement with Great Plains Development for Revolving Loan Fund Administration involving Startup Kansas Awards on a motion by Commissioner Jim Sherer, seconded by Commissioner Brian Weber. The motion carried 4-0.

OTHER BUSINESS

Robin James, Chief of Police

- Introduced Phil Scott, Minister of the First Christian Church as the Police Department Chaplain.

Ken Strobel, City Manager:

- Dodge City Days has kicked off; and
- The Clean Team did an outstanding job cleaning Dodge City.

Cherise Tieben, Assistant City Manager:

- Representative Jerry Moran's staff met with City Leaders regarding Housing Meeting (USDA Housing Loan Program).

Jane Longmeyer, Director of Public Information:

- Preconstruction meeting with JAG on Bicycle/Pedestrian Path project;
- Ribbon cutting ceremony for West Wyatt Earp reconstruction to be held soon; and
- Main Street meeting was held tonight from 6:00 p.m. till 9:00 p.m. regarding the vision.

Commissioner Jim Sherer:

- Urged everyone to keep Brent Harris in your thoughts and prayers.

Commissioner Rick Sowers:

- Thanked the Staff and Nannette for their work on the Budget.

Commissioner Brian Weber:

- Thanked everyone for participating in Dodge City Days;
- Keep Brent Harris in our prayers; and
- Encouraged everyone to vote.

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

E. Kent Smoll, Mayor

ATTEST:

Nannette Pogue, City Clerk

Memorandum

*To: City Manager
Assistant City Manager
City Commissioners*

*From: Joe Finley ~~JS~~
Director of Engineering Services*

Date: August 11, 2010

*Subject: Consulting Services Agreement
with SMH*

Agenda: Consent Calendar

Recommendation: Approve contract with SMH to provide the necessary service to acquire easements necessary installations of the transmission line for the Water Reclamation Facility.

Background: In a previous commission meeting, staff was authorized to negotiate a contract with SMH to assist the City with easement acquisitions necessary for the pipeline portion of the project. Staff met with SMH and worked on the exact services that will be provided.

Justification: Our existing low interest loan requires that any right-of-way, easements, or property that is acquired for this project must be acquired by following the Kansas guidelines for property acquisition. SMH is capable of providing these services.

Financial Considerations: SMH will provide the necessary service for \$77,350 based on the scope of services. Any costs associated with condemnation will be billed to the City separately.

Purpose/Mission: By contracting with a professional acquiring company we will insure that all affected properties are being treated fairly and equitable and that acquisition requirement are being followed.

Legal Considerations: The City will be entering a contract with SMH to provide the necessary acquisitions services.

Attachments: Agreement & Attachment A & B

CONSULTING SERVICES AGREEMENT

Client: City of Dodge City	Project: ROW Acquisition
Address: Department of Public Works	Services for
806 N. Second Avenue	Pipeline Easements
Dodge City, Kansas 67801	Project Location: Dodge City
Telephone: 620-225-8106	
Contact: Joe Finley	SMH Project Manager: J. Hancock
Client Job No.:	SMH Job No.: 100802AE

This AGREEMENT is made by and between the City of Dodge City, hereinafter "CLIENT", and SMH Consultants, 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:

ROW acquisition services for pipeline easements associated with the new water reclamation facility.

The following Attachments have 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 \$77,350.00.

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

CLIENT

CONSULTANT

By: _____
AUTHORIZED REPRESENTATIVE

TITLE: _____

DATE: _____

By: 
AUTHORIZED REPRESENTATIVE

TITLE: *Owner*

DATE: *August 2, 2010*

PLEASE SIGN AND RETURN ONE COPY TO SMH CONSULTANTS

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 data 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 data 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 CONSULTANT's Personnel at Project Site

4.7.1 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.

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

4.9 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.

4.10 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.

5.3 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.

Estimated Fees

For the purposes of estimating fees it has been assumed that there will be 19 different property owners associated with 22 permanent easements and 22 associated temporary construction easements to acquire.

A detail of hourly fees, expenses, and per diem is also included below. The total fee estimated below already includes these items. The "Total For all Services" fee shown below is an estimated fee dependent upon the best information available, and estimated time involved in to bring each acquisition to closure.

Acquisition Agent (Per Property Owner)

19 Property Owners at \$1,100 per Property Owner = \$20,900
(Travel and Per Diem Inclusive)

Flagging of Easements and Certificates of Title (Per Property Owner Tract)

22 Property Owners at \$600 per Property Owner's Tracts = \$13,200
(Travel and Per Diem Inclusive)

Primary Appraisals (Per Property Owner Tract)

22 Appraisal Reports at \$1,100 per Report = \$24,200
(Travel and Per Diem Inclusive)

Review Appraisals (Per Property Owner)

22 Review Appraisal Reports at \$400 per Report = \$8,800
(Travel and Per Diem Inclusive)

Legal Services (Per Agreement w/o Condemnation)

22 Agreements estimated \$400 per Agreement = \$10,250
(Estimated 2 Hours Per Agreement, 4 Trips to Dodge City,)

Total For all Services = \$77,350
(Based on 19 Property Owners and 22 Property Owner Tracts)

HOURLY RATE AND EXPENSE DETAILS

SMH CONSULTANTS

Acquisition Agent = \$130/hour

Professional Land Surveyor = \$110/hour

Survey Crew = \$110/hour

Mileage = Current IRS Rate

THE SIMMONS COMPANY

Appraiser General Rate = \$125/hour

Appraiser Court Rate = \$175/hour

MORRISON, FROST, OLSEN, IRVINE, JACKSON & SCHATZ, LLP

Attorney = \$200/hour

Mileage = \$0.50/mile

Meals Per Diem = \$30/day

Any Direct Costs Expenses Including Phone Calls, Lodging, Reproduction, Filing Fees, Litigation Expenses, Court Fees, Deposition and Witnesses

Scope of Services

SMH will conduct a property owner meeting, notice to be sent by certified mail, during which we will explain not only the acquisition process but also the proposed project. We will fully explain the rights as a property owner and the City's ability to utilize the property when property owners are properly compensated. The City of Dodge City will provide a location for the meeting.

Certificates of Title will be collected for each property

Preparation of property appraisals by a certified appraiser. The property owner and appraiser, with easements staked in the field by survey crews, will discuss the impacts the acquisitions may have on the value of the property. The appraiser then develops a before and after value for the property that will eventually be reviewed by the review appraiser who also visits the site, although he will not meet with individual property owners. Both the primary appraisal and review appraisal result in reports that are initially reviewed by the acquisition agent. Once reviewed the acquisition agent will formulate a recommendation to the City of Dodge City in terms of setting just compensation.

Written offers to property owners by SMH Consultants. The original offer letter will contain language on how to respond to the offer along with the indication that any response will include a counter offer and justification.

For those property owners who do not accept initial offers and instead provide counter offers, SMH will consider the counter offers and formulate an opinion that will be provided to the City of Dodge City. Based on direction from the City of Dodge City, SMH will formulate a response to the counter offer. This process may continue for several iterations. If it becomes evident that the terms requested are unsupported, a recommendation will likely be made to initiate condemnation proceedings with that particular property owner.

Once agreeable terms with property owners have been reached, SMH will provide those property owners with letters of commitment which outline the terms of the agreement. Once agreements and easements are drafted they will be provided to property owners for review. The real estate agreement and easement documents will ultimately be filed with the register of deeds as an official document of the county by the City of Dodge City.

Dodge City, Kansas
 Sanitary Sewer Collection & Treatment System Improvements [PEC Pj #: 08827-002-1009]
 KIDHE Funding Request

Part III Budget Information Construction

Section A Loan Calculation Sheet for New Projects

Cost Classification	Total Cost	Non Allowable Cost	Loan Allowable
1. Administrative and legal expenses	\$ -	\$ -	\$ -
2. Land, structure, rights-of-way, appraisal services, and related costs	\$ -	\$ -	\$ -
3. Relocation expenses and payments	\$ -	\$ -	\$ -
4. Engineering fees	\$ 2,165,000	\$ -	\$ 2,165,000
4a. Planning	\$ -	\$ -	\$ -
4 b. Design	\$ -	\$ -	\$ -
4 c. Basic Construction	\$ -	\$ -	\$ -
4 d. Inspection	\$ 644,000	\$ -	\$ 644,000
4 e. Other engineering fees	\$ 125,000	\$ -	\$ 125,000
5. Site work	\$ -	\$ -	\$ -
6. Demolition and removal	\$ -	\$ -	\$ -
7. Construction	\$ -	\$ -	\$ -
Water Reclamation Facility	\$ 15,750,000	\$ -	\$ 15,750,000
Beneficial Re-use System	\$ 2,750,000	\$ -	\$ 2,750,000
Sanitary Sewer Interceptors	\$ 4,350,000	\$ -	\$ 4,350,000
Sanitary Sewer Pump Station & Force Main	\$ 1,330,000	\$ -	\$ 1,330,000
8. Equipment	\$ -	\$ -	\$ -
9. Miscellaneous	\$ -	\$ -	\$ -
10. Subtotal	\$ 27,114,000	\$ -	\$ 27,114,000
11. Interest During Construction	\$ -	\$ -	\$ -
12. Contingencies	\$ 2,418,000	\$ -	\$ 2,418,000
13. Total Project Costs	\$ 29,532,000	\$ -	\$ 29,532,000
14. Total State Funding	\$ 29,532,000	\$ -	\$ 29,532,000

Memorandum

*To: City Manager
Assistant City Manager
City Commissioners*

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

Date: August 11, 2010

Subject: Contract with UCI

Agenda: Consent Calendar

Recommendation: Approve contract with UCI to provide construction services for the South Dodge Lift Station.

Background: In a previous commission meeting the commission authorized staff to negotiate a contract with UCI to work with PEC on a design-build project to construct a new wet well for the South Dodge Lift Station and to construct other repairs as determined.

Justification: The existing sewer service tie-in has failed and must be tied into a new manhole, In addition, the existing wet well has deteriorated to the point it must be repaired or replaced.

Financial Considerations: UCI provided a guaranteed maximum price of \$196,500.00. This price included costs associated with our original scoping meeting. This project is not budgeted, however each year funds are budgeted for improvements to the collection system. The cost of this project will be taken from those available funds.

Purpose/Mission: In repairing the collapsed manhole and replace the existing wet well we preserve our ability to provide sewer service to the residents in this area of the City and provide for any future growth.

Legal Considerations: The City will be entering into a legal contract with UCI.

Attachments: Contracts & Exhibit A

Exhibit "A"

Dodge City Emergency Wet well for South Pump Station

Guaranteed Maximum Price (GMP) Proposal

Scoping Document

The proposed GMP with scope for the Dodge City Emergency Wet well for South Pump Station is as follows:

- Pre-construction services outlined in proposed contract including;
 - Management of GMP by developing and soliciting Bid Packages to vendors and subcontractors
 - Analyzing scopes and quotations from Vendors and Subcontractors
 - Meeting with City of Dodge City Staff and PEC to discuss design, GMP and construction issues.
- All supervision, labor, equipment, material and subcontracts to fulfill the work outlined in the documents listed above.
 - A new 10' x 10' x 23' deep wet well constructed caisson style with access hatch and wall penetrations for connection to existing pump station,
 - Construction of new 5' diameter manhole and 180 lf of 16" dip influent piping,
 - Bypass pipe & pumping to allow for demolition of existing wet well and connection to existing pump station.
 - Backfill and grading of site
 - Coating the Wet well and new manhole with 100% solids epoxy to protect concrete
 - Chain link Perimeter fence (400 lf)
 - Install new Bubbler system for pump controls
 - Assist in starting and commission existing Pump Station
- Performance, Payment and warranty Bonds
- Project warranty for 1 years
- To reduce costs UCI is proposing to us a caisson method to construct the wet well so Shoring and sheeting will not be required, the wet well will be constructed on top on existing grade in two sections. The interior of the wet well will excavated out and a Steel plate on the bottom of the structure will allow it to sink to grade. After the Wet well is at grade the bottom section will be "doweled" into the walls.

➤ Below is a breakdown of the proposal by Unit prices:

1. Wet well construction	\$ 101,500
2. Influent Manhole & Pipe	\$ 34,000
3. Pump Around services	\$ 15,000
4. Coatings for concrete	\$ 12,000
5. Bubbler system	\$ 5,000
6. Chain link fence	\$ 9,000
7. <u>Demolition backfill and regrade site</u>	<u>\$ 20,000</u>
Total Budget	\$196,500

Items excluded in the GMP include but are not limited to:

- ✦ Sales Tax
- ✦ Building permits
- ✦ Site survey
- ✦ Quality control testing services
- ✦ Site utility Charges for Gas, Water, Electric, or cable
- ✦ Engineering
- ✦ Piping for future
- ✦ Landscaping plantings

1.3.1 The Owner shall obtain from the Engineer either a license for Construction Manager and Subcontractors to use the design documents prepared by the Engineer or ownership of the copyrights for such design documents, and shall indemnify and hold harmless the Construction Manager against any suits or claims of infringement of any copyrights or licenses arising out of the use of the design documents for the construction of the Emergency Wet well for the South Pump Station, Dodge, City, KS in relation to said Project.

1.4 DEFINITIONS

1.4.1 Agreement means this Standard Agreement and General Conditions Between Owner and Construction Manager (Where the Basis of Payment is a Guaranteed Maximum Price with Fee for Preconstruction Services), as modified by the Parties, and Exhibits and Attachments made part of this Agreement upon its execution.

1.4.2 Engineer means the licensed Architect, Engineer or Engineer and its consultants, retained by Owner to perform design services for the Project. The Owner's Engineer for the Project is Professional Engineering Consultants, P.A.- Wichita, Kansas (PEC).

1.4.3 A Change Order is a written order signed by the Owner and the Construction Manager after execution of this Agreement, indicating changes in the scope of the Work, the GMP, Date of Substantial Completion or Date of Final Completion, including substitutions proposed by the Construction Manager and accepted by the Owner.

1.4.4 The Contract Documents consist of this Agreement, the drawings, specifications, exhibits, addenda issued prior to execution of this Agreement, approved submittals, information furnished by the Owner under Paragraph 4.3, other documents listed in this Agreement and any modifications issued after its execution period.

1.4.5 The Construction Manager is the person or entity identified in Article 1 and includes the Construction Manager's Representative.

1.4.6 The term Day shall mean calendar day unless otherwise specifically defined.

1.4.7 Final Completion occurs on the date when the Construction Manager's obligations under this Agreement are complete and accepted by the Owner and final payment becomes due and payable. This date shall be confirmed by a Certificate of Final Completion signed by the Owner and the Construction Manager.

1.4.8 A Material Supplier is a person or entity retained by the Construction Manager to provide material and equipment for the Work.

1.4.9 Others means other contractors, material suppliers, and persons at the Worksite who are not employed by the Construction Manager, or Subcontractors.

1.4.10 The term Overhead shall mean 1) payroll costs and other compensation of Construction Manager employees in the Construction Manager's principal and branch offices; 2) general and administrative expenses of the Construction Manager's principal and branch offices including deductibles paid on any insurance policy, and charges against the Construction Manager for delinquent payments, 3) the Construction Manager's capital expenses, including interest on capital used for the Work.

1.4.11 Owner is the person or entity identified in Article 1 and includes the Owner's representative.

1.4.12 The Owner's Program is an initial description of the Owner's objectives, including budgetary and time criteria, space requirements and relationships, flexibility and expandability requirements, special equipment and systems, site requirements, and any requirements for phased occupancy.

1.4.13 The Project, as identified in Article 1, is the building, facility or other improvements for which the Construction Manager is to perform Work under this Agreement. It may also include construction by the Owner or Others.

1.4.14 The Schedule of the Work is the document prepared by the Construction Manager that specifies the dates on which the Construction Manager plans to begin and complete various parts of the Work, including dates on which information and approvals are required from the Owner.

1.4.15 A Subcontractor is a person or entity retained by the Construction Manager as an independent contractor to provide the labor, materials, equipment or services necessary to complete a specific portion of the Work. The term Subcontractor does not include the Engineer or Others.

1.4.16 Substantial Completion of the Work occurs on the date when the Work is sufficiently complete in accordance with the Contract Documents so that the Owner may occupy or utilize the Work including commencing 120 Calendar Days following Notice to Proceed, or a designated portion, for the use for which it is intended, and a certificate of occupancy is issued to the Owner. The issuance of a certificate of occupancy is not a prerequisite for Substantial Completion if the certificate of occupancy cannot be obtained due to factors beyond the Construction Manager's control. This date shall be confirmed by a certificate of Substantial Completion signed by the Owner and Construction Manager.

1.4.17 A Sub-subcontractor is a person or entity who has an agreement with a Subcontractor to perform any portion of the Work.

1.4.18 Terrorism means a violent act, or an act that is dangerous to human life, property or infrastructure, that is committed by an individual or individuals and that appears to be part of an effort to coerce a civilian population or to influence the policy or affect the conduct of any government by coercion. Terrorism includes, but is not limited to, any act certified by the United States government as an act of terrorism pursuant to the Terrorism Risk Insurance Act, as amended.

1.4.19 Work means the construction and services necessary or incidental to fulfill the Construction Manager's obligations for the Project in conformance with this Agreement and the other Contract Documents. The Work may refer to the whole Project or only a part of the Project if work is also being performed by the Owner or Others.

1.4.19.1 Changed Work means work that is different from the original scope of Work; or work that changes the GMP or Date of Substantial Completion or Date of Final Completion.

1.4.19.2 Defective Work is any portion of the Work that is not in conformance with the Contract Documents, as more fully described in Paragraphs 3.5 and 3.6.

1.4.20 Worksite means the location of the Project as identified in Article 1 where the Work is to be performed.

ARTICLE 2. CONSTRUCTION MANAGER'S RESPONSIBILITIES

2.1 GENERAL RESPONSIBILITIES

2.1.1 The Construction Manager shall provide all labor, materials, equipment and services necessary to complete the Work, all of which shall be provided in full accord with and reasonably inferable from, the Contract Documents as being necessary to produce the indicated results.

2.1.2 The Construction Manager shall be responsible for the supervision and coordination of the Work, including the construction means, methods, techniques, sequences and procedures utilized, unless the Contract Documents give other specific instructions. In such case, the Construction Manager shall not be liable to the Owner for damages resulting from compliance with such instructions unless any such error, inconsistency, omission or unsafe practice in the specified construction means, methods, techniques, sequences or procedures was readily apparent and obvious and the Construction Manager failed to timely report to the Owner.

2.1.3 The Construction Manager shall perform Work only within locations allowed by the Contract Documents, applicable permits and applicable law.

2.1.4 WORKSITE VISIT. The Construction Manager acknowledges that it has visited, or has had the opportunity to visit, the Worksite to visually inspect the general and local conditions which could affect the Work.

2.1.5 CONSTRUCTION MANAGER'S REPRESENTATIVE. The Construction Manager's Representative is David Odell. The Construction Manager's Representative shall possess full authority to receive instructions from the Owner and to act on those instructions. The Construction Manager shall notify the Owner in writing of a change in the designation of the Construction Manager's Representative.

2.1.6 PROFESSIONAL SERVICES. The Construction Manager may be required to procure professional services in order to carry out its responsibilities for construction means, methods, techniques, sequences and procedures or as such services are specifically called for by the Contract Documents. The Construction Manager shall obtain these professional services, and any design certifications required, from licensed design professionals. All drawings, specifications, calculations, certifications and submittals prepared by such design professionals shall bear the signature and seal of such design professionals and the Owner, and the Engineer, shall be entitled to rely upon the adequacy, accuracy and completeness of such design services. If professional services are specifically required by the Contract Documents, the Owner shall indicate all required performance and design criteria. The Construction Manager shall not be responsible for the adequacy of such performance and design criteria. The Construction Manager shall not be required to provide such services in violation of existing laws, rules and regulations in the jurisdiction where the Project is located.

2.2 PRECONSTRUCTION SERVICES. The Preconstruction Services under this Paragraph 3.2 are included in the Construction Manager's work.

2.2.1 PRELIMINARY EVALUATION. The Construction Manager shall provide a preliminary evaluation of the Owner's Program and report such findings to the Owner and the Engineer.

2.2.2 CONSULTATION. The Construction Manager shall schedule and attend regular meetings with the Owner and Engineer. The Construction Manager shall consult with the Owner and Engineer regarding site use and improvements and the selection of materials, building systems and equipment. The Construction Manager shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost, including estimates of alternative designs or materials.

2.2.3 SCHEDULE OF THE WORK. When Project requirements have been sufficiently identified, the Construction Manager shall prepare a preliminary Schedule of the Work for the Engineer's review and the Owner's approval. The Construction Manager shall coordinate and integrate the Schedule of the Work with the services and activities of the Owner, Construction Manager, Engineer, and the requirements of governmental entities. As design proceeds, the Construction Manager shall update the Schedule of the Work to indicate proposed activity sequences, durations, or milestone dates for such activities as receipt and approval of pertinent information, issuance of the drawings and specifications, the preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead-time procurement, Owner's occupancy requirements and estimated date of Substantial Completion of the Project. If Schedule of the Work updates indicate that milestone dates contained in prior Schedules of the Work will not be met, the Construction Manager shall notify and make recommendations to the Owner. If the Project is to be completed in phases, the Construction Manager shall make recommendations to the Owner and Engineer regarding the phased issuance of the drawings and specifications.

2.2.4 ESTIMATES.

2.2.4.1 When the Owner has sufficiently identified the Owner's Program and other Project requirements and the Engineer has prepared other basic design criteria, the Construction Manager shall prepare, for the review of the Engineer and approval of the Owner, an initial estimate for the Project, utilizing area, volume or similar conceptual estimating techniques.

2.2.4.2 When schematic or preliminary design documents have been completed by the Engineer and approved by the Owner, the Construction Manager shall prepare for the review of the Engineer and approval of the Owner, a more detailed budget with supporting data. During the preparation of the design development documents with drawings and specifications, the Construction Manager shall update and refine this estimate at appropriate intervals agreed upon by the Owner, Engineer and Construction Manager.

2.2.5 CONSTRUCTION DOCUMENT REVIEW. The Construction Manager shall review the drawings and specifications in an effort to identify readily apparent and obvious constructability problems that could impact the Construction Manager's ability to perform the Work in an expeditious and economical manner. The Construction Manager shall advise the Engineer and Owner for their review and action as appropriate. In addition, the Construction Manager shall promptly report to the Owner and the Engineer any such errors or omissions in the drawings and specifications which the Construction Manager believes are readily apparent and obvious.

2.2.6 TEMPORARY FACILITIES. The Construction Manager shall make recommendations regarding temporary construction facilities, equipment, materials and services for common use by the Construction Manager, its Subcontractors, Sub-subcontractors and Material Suppliers.

2.2.7 LONG-LEAD ITEMS. The Construction Manager shall recommend to the Owner and Engineer a schedule for procurement of long-lead-time items that will constitute part of the Work as required to meet the Schedule of the Work. The Construction Manager shall help expedite the delivery of long-lead-time items.

2.2.8 SOLICITATION OF SUBCONTRACTORS AND SUPPLIERS. The Construction Manager shall seek to develop Subcontractor interest in the Project and shall furnish to the Owner and Engineer a list of possible subcontractors from whom proposals may be requested for each principal portion of the Work. The Owner shall promptly reply in writing to the Construction Manager if the Owner or Engineer know of any objection to a subcontractor. The Owner may designate specific persons and/or entities from whom the Construction Manager shall solicit bids.

2.2.9 EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION. The Construction Manager shall consult with the Owner regarding equal employment opportunity and affirmative action programs.

2.2.10 CONSULTANTS. The Construction Manager shall assist the Owner in selecting, retaining and coordinating the professional services of a surveyor, testing laboratories and special consultants as needed.

2.2.11 PERMITS. The Construction Manager shall assist the Owner in obtaining building permits and special permits for permanent improvements, except for permits required to be obtained directly by the Construction Manager. The GMP does not include pricing for permits as these costs are borne by the Owner.

2.2.12 PRECONSTRUCTION SERVICES. The Construction Manager shall provide the Preconstruction Services as described in this Agreement for a fee of \$0, which shall be paid upon execution of this Agreement.. The fee for Preconstruction Services shall be included as part of Lump Sum GMP. See Exhibit "A" Scoping Document.

2.3 GUARANTEED MAXIMUM PRICE (GMP)

2.3.1 At such time as the Owner and Construction Manager agree the drawings and specifications are sufficiently complete, the Construction Manager shall prepare and submit to the Owner in writing a GMP. The GMP proposal shall include the sum of the estimated cost of the Work, the Construction Manager's Fee, the clarifications and assumptions upon which it is based, allowances and reasonable contingencies, and shall include compensation for Preconstruction Services. The GMP shall also include a Schedule of Values as line items. The format for the Schedule of Values shall be substantially in the form set forth in Exhibit A. The Construction Manager does not guarantee that the individual line items as scheduled will not be exceeded, only the GMP. Variances in line items for specific Schedule of Values which exceed or are less than any specific line item may be used for variables in other line items so long as the GMP is not exceeded.

2.3.2 BASIS OF GUARANTEED MAXIMUM PRICE. The Construction Manager shall include with the GMP proposal a written statement of its basis, which shall include: a written statement of its basis as Exhibit "A".

2.3.2.1 A list of the drawings and specifications, including all addenda, which were used in preparation of the GMP Proposal;

2.3.2.2 A Schedule of Values in form substantially similar to Exhibit A;

2.3.2.3 Exhibit A shall also include the proposed Schedule of Work as set forth below and A list of the assumptions and clarifications made by the Construction Manager in the preparation of the GMP Proposal;

1.0.0 The Construction Manager shall meet with the Owner and Engineer to review the GMP. In the event that the Owner or Engineer discover any inconsistencies, inaccuracies or omissions in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the GMP. The Owner shall then give prompt written approval of the adjusted GMP.

2.3.3 The Owner shall cause the Engineer to revise the drawings and specifications to the extent necessary to reflect the clarifications, assumptions, and allowances on which the GMP is based. Revised drawings and specifications shall be furnished to the Construction Manager in accordance with the current Schedule of the Work, unless otherwise agreed by the Owner, Construction Manager and Engineer. The Construction Manager shall promptly notify the Owner and Engineer if the revised drawings and specifications are inconsistent with the GMP's clarifications, assumptions, and allowances.

2.3.4 If the Contract Documents are not complete at the time the GMP proposal is submitted to the Owner, the Construction Manager shall provide in the GMP for further development of the Contract Documents. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Document.

3.3.6 FAILURE TO ACCEPT THE GMP PROPOSAL. Unless the Owner accepts the GMP Proposal in writing on or before the date specified in the GMP Proposal for such acceptance and so notifies the Construction Manager, the GMP Proposal shall not be effective. If the Owner fails to accept the GMP Proposal, or rejects the GMP Proposal, the Owner shall have the right to:

1.0.0.0 Suggest modifications to the GMP Proposal. If such modifications are accepted in writing by Construction Manager, the GMP Proposal shall be deemed accepted in accordance with Subparagraph 3.3.3;

2.3.5.1 Terminate the Agreement for convenience in accordance with Paragraph 12.4.

1.0 CONSTRUCTION SERVICES AND ADMINISTRATION

2.3.6 In order to facilitate its responsibilities for completion of the Work in accordance with and as reasonably inferable from the Contract Documents, prior to commencing the Work the Construction Manager shall examine and compare the drawings and specifications with information furnished by the Owner pursuant to Paragraph 4.3, relevant field measurements made by the Construction Manager and any visible conditions at the Worksite affecting the Work.

2.3.7 If, in the course of the performance of the obligations in Subparagraph 3.4.1, the Construction Manager discovers any errors, omissions or inconsistencies in the Contract Documents, the Construction Manager shall promptly report them to the Owner.

It is recognized, however, that the Construction Manager is not acting in the capacity of a licensed design professional, and that the Construction Manager's examination is to facilitate construction and does not create an affirmative responsibility to detect errors, omissions or inconsistencies or to ascertain compliance with applicable laws, building codes or regulations. Following receipt of written notice from the Construction Manager of defects, the Owner shall promptly inform the Construction Manager what action, if any, the Construction Manager shall take with regard to the defects.

2.3.8 The Construction Manager shall have no liability for errors, omissions or inconsistencies discovered under Subparagraphs 3.4.1 and 3.4.2, unless the Construction Manager fails to report a readily apparent and obvious problem which the Construction Manager had recognized to the Owner.

2.3.9 The Construction Manager may be entitled to additional costs or time because of clarifications or instructions growing out of the Construction Manager's reports described in the three (3) preceding subparagraphs.

2.3.10 COST REPORTING. The Construction Manager shall keep such full and detailed accounts as are necessary for proper financial management under this Agreement. Construction Manager shall maintain a complete set of all books and records prepared or used by the Construction Manager with respect to the Project. The Construction Manager's records supporting its performance and billings under this Agreement shall be current, complete and accurate and maintained according to Generally Accepted Accounting Principles. The Owner shall be afforded access to all the Construction Manager's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to this Agreement and provide access to KDHE for audit. The Construction Manager shall preserve all such records for a period of two years after the final payment or longer where required by law.

2.3.10.1 The Construction Manager agrees to use reasonable skill and judgment in the preparation of cost estimates, Schedule of the Work, Schedule of Values, but does not warrant or guarantee them other than to complete Project within GMP as amended by Change Orders.

2.3.11 CONSTRUCTION PERSONNEL AND SUPERVISION

2.3.11.1 The Construction Manager shall provide competent supervision for the performance of the Work. Before commencing the Work, Construction Manager shall notify Owner in writing of the name and qualifications of its proposed superintendent(s) and project manager, so Owner may review the individual's qualifications. If, for reasonable cause, the Owner refuses to approve the individual, or withdraws its approval after once giving it, Construction Manager shall name a different superintendent for Owner's review. Any disapproved superintendent shall not perform in that capacity thereafter at the Worksite.

2.3.11.2 The Construction Manager shall be responsible to the Owner for acts or omissions of Parties or entities performing portions of the Work for or on behalf of the Construction Manager or any of its Subcontractors.

2.3.11.3 The Construction Manager shall permit only fit and skilled persons to perform the Work. The Construction Manager shall enforce safety procedures, strict discipline and good order among persons performing the Work. If the Owner determines that a particular person does not follow safety procedures, or is unfit or unskilled for the assigned work, the Construction

Manager shall immediately reassign the person on receipt of the Owner's written notice to do so.

2.3.12 SUBMITTALS

2.3.12.1 The Construction Manager shall submit to the Owner and, if directed, to its Engineer for review and the Owner's approval all shop drawings, samples, product data and similar submittals required by the Contract Documents. Submittals may be submitted in electronic form if required in accordance with Subparagraph 4.6.1. The Construction Manager shall be responsible to the Owner for the accuracy and conformity of its submittals to the Contract Documents. The Construction Manager shall prepare and deliver its submittals to the Owner in such time and sequence so as not to delay the performance of the Work or the work of the Owner and Others. When the Construction Manager delivers its submittals to the Owner, the Construction Manager shall identify in writing for each submittal all changes, deviations or substitutions from the requirements of the Contract Documents. The review and approval of any Construction Manager submittal shall not be deemed to authorize changes, deviations or substitutions from the requirements of the Contract Documents unless express written approval is obtained from the Owner specifically authorizing such deviation, substitution or change. To the extent a change, deviation or substitution causes an impact to the Contract Price or Contract Time, such approval shall be promptly memorialized in a Change Order. Further, the Owner shall not make any change, deviation or substitution through the submittal process without specifically identifying and authorizing such deviation to the Construction Manager. In the event that the Contract Documents do not contain submittal requirements pertaining to the Work, the Construction Manager agrees upon request to submit in a timely fashion to the Owner for review and approval any shop drawings, samples, product data, manufacturers' literature or similar submittals as may reasonably be required by the Owner.

2.3.12.2 The Owner shall be responsible for review and approval of submittals with reasonable promptness to avoid causing delay.

2.3.12.3 The Construction Manager shall perform all Work strictly in accordance with approved submittals. Approval does not relieve the Construction Manager from responsibility for Defective Work resulting from errors or omissions of any kind on the approved shop drawings.

2.3.12.4 Record copies of the following, incorporating field changes and selections made during construction shall be maintained at the Worksite and available to the Owner upon request: drawings, specifications, addenda and other modifications, and required submittals including product data, samples and shop drawings.

2.3.12.5 No substitutions shall be made in the Work unless permitted in the Contract Documents and then only after the Construction Manager obtains all approvals required under the Contract Documents for substitutions. All such substitutions shall be memorialized promptly in a Change Order no later than seven (7) Days following approval by the Owner and, if applicable, provide for an adjustment in the Contract Price or Contract Time.

2.3.13 The Construction Manager shall prepare and submit to the Owner (Designate only one)

___1___ final marked-up as-built drawings

or

_____ such documentation as defined by the Parties by further attachment to this Agreement,

in general documenting how the various elements of the Work were actually constructed or installed.

2.3.14 COOPERATION WITH WORK OF OWNER AND OTHERS

2.3.14.1 The Owner may perform work at the Worksite directly or by Others. Any agreements with Others to perform construction or operations related to the Project shall include provisions pertaining to insurance, indemnification, waiver of subrogation, coordination, interference, clean up and safety which are substantively the same as the corresponding provisions of this Agreement.

2.3.14.2 In the event that the Owner elects to perform work at the Worksite directly or by Others, the Construction Manager and Owner shall coordinate the activities of all forces at the Worksite and agree upon fair and reasonable schedules and operational procedures for Worksite activities. The Owner shall require each separate contractor to cooperate with the Construction Manager and assist with the coordination of activities and the review of construction schedules and operations. The GMP or the Date of Substantial Completion or the Date of Final Completion shall be equitably adjusted, as mutually agreed by the Parties, for changes made necessary by the coordination of construction activities, and the Schedule of the Work shall be revised accordingly. The Construction Manager, Owner and Others shall adhere to the revised Schedule of the Work until it may subsequently be revised.

2.3.14.3 With regard to the work of the Owner and Others, the Construction Manager shall (a) proceed with the Work in a manner which does not hinder, delay or interfere with the work of the Owner or Others or cause the work of the Owner or Others to become defective, (b) afford the Owner or Others reasonable access for introduction and storage of their materials and equipment and performance of their activities, and (c) coordinate the Construction Manager's construction and operations with theirs as required by this Subparagraph 3.4.9.

2.3.14.4 Before proceeding with any portion of the Work affected by the construction or operations of the Owner or Others, the Construction Manager shall give the Owner and Engineer prompt, written notification of any defects the Construction Manager discovers in their work which will prevent the proper execution of the Work. The Construction Manager's obligations in this Subparagraph 3.4.9 do not create a responsibility for the work of Others, but are for the purpose of facilitating the Work. If the Construction Manager does not notify the Owner of patent defects interfering with the performance of the Work, the Construction Manager acknowledges that the work of the Owner or Others is not defective and is acceptable for the proper execution of the work. Following receipt of written notice from the Construction Manager of defects, the Owner shall promptly inform the Construction Manager what action, if any, the Construction Manager shall take with regard to the defects.

2.3.15 CUTTING, FITTING AND PATCHING.

2.3.15.1 The Construction Manager shall perform cutting, fitting and patching necessary to coordinate the various parts of the Work and to prepare its Work for the work of the Owner or Others.

2.3.15.2 Cutting, patching or altering the work of the Owner or Others shall be done with the prior written approval of the Owner. Such approval shall not be unreasonably withheld.

2.3.16 CLEANING UP.

2.3.16.1 The Construction Manager shall regularly remove debris and waste materials at the Worksite resulting from the Work. Prior to discontinuing Work in an area, the Construction Manager shall clean the area and remove all rubbish and its construction equipment, tools, machinery, waste and surplus materials. The Construction Manager shall minimize and confine dust and debris resulting from construction activities. At the completion of the Work and prior to final payment, the Construction Manager shall remove from the Worksite all construction equipment, tools, surplus materials, waste materials and debris.

2.3.16.2 If the Construction Manager fails to commence compliance with cleanup duties within two (2) business Days after written notification from the Owner of non-compliance, the Owner may implement appropriate cleanup measures without further notice and the cost shall be deducted from any amounts due or to become due the Construction Manager in the next payment period.

2.3.16.3 ACCESS TO WORK. The Construction Manager shall facilitate the access of the Owner, its Engineer and Others to Work in progress.

2.3.17 MATERIALS FURNISHED BY THE OWNER OR OTHERS.

2.3.17.1 In the event the Work includes installation of materials or equipment furnished by the Owner or Others, it shall be the responsibility of the Construction Manager to examine the items so provided and thereupon handle, store and install the items, unless otherwise provided in the Contract Documents, with such skill and care as to provide a satisfactory and proper installation. Loss or damage due to acts or omissions of the Construction Manager shall be the responsibility of the Construction Manager and may be deducted from any amounts due or to become due the Construction Manager. Any defects discovered in such materials or equipment shall be reported at once to the Owner. Following receipt of written notice from the Construction Manager of defects, the Owner shall promptly inform the Construction Manager what action, if any, the Construction Manager shall take with regard to the defects.

2.3.18 TESTS AND INSPECTIONS.

2.3.18.1 The Construction Manager shall schedule all required tests, approvals and inspections of the Work or portions thereof at appropriate times so as not to delay the progress of the Work or other work related to the Project. The Construction Manager shall give proper notice to all required Parties of such tests, approvals and inspections. If feasible, the Owner and Others may timely observe the tests at the normal place of testing. Except as provided in Clause 3.4.13.3, the Owner shall bear all expenses associated with tests, inspections and approvals required by the Contract Documents which, unless

otherwise agreed to, shall be conducted by an independent testing laboratory or entity retained by the Owner. Unless otherwise required by the Contract Documents, required certificates of testing, approval or inspection shall be secured by the Construction Manager and promptly delivered to the Owner.

2.3.18.2 If the Owner or appropriate authorities determine that tests, inspections or approvals in addition to those required by the Contract Documents will be necessary, the Construction Manager shall arrange for the procedures and give timely notice to the Owner and Others who may observe the procedures. Costs of the additional tests, inspections or approvals are at the Owner's expense except as provided in Clause 3.4.14.3.

2.3.18.3 If the procedures described in Clauses 3.4.13.1 and 3.4.13.2 indicate that portions of the Work fail to comply with the Contract Documents due to the negligence of the Construction Manager, the Construction Manager shall be responsible for costs of testing pursuant to Clause 3.4.13.2, correction and retesting.

2.4 WORKMANSHIP.

2.4.1 The Work shall be executed in accordance with the Contract Documents in a workmanlike manner. All materials used in the Work shall be furnished in sufficient quantities to facilitate the proper and expeditious execution of the Work and shall be new except such materials as may be expressly provided in the Contract Documents to be otherwise.

2.5 WARRANTY.

2.5.1 The Construction Manager warrants that all materials and equipment furnished under the Construction Phase of this Agreement will be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. At the Owner's request, the Construction Manager shall furnish satisfactory evidence of the quality and type of materials and equipment furnished. The Construction Manager further warrants that the Work shall be free from material defects not intrinsic in the design or materials required in the Contract Documents. The Construction Manager's warranty does not include remedies for defects or damages caused by normal wear and tear during normal usage, use for a purpose for which the Project was not intended, improper or insufficient maintenance, modifications performed by the Owner or Others, or abuse. The Construction Manager's warranty pursuant to this Paragraph 3.6 shall commence on the Date of Substantial Completion, except for Equipment for which warranty commencement date shall be in accordance with the manufacturer's warranty.

2.5.2 With respect to any portion of Work first performed after Substantial Completion, the Construction Manager's warranty obligation shall be extended by the period of time between Substantial Completion and the actual performance of the later Work.

2.5.3 The Construction Manager shall obtain from its Subcontractors and Material Suppliers any special or extended warranties required by the Contract Documents. All such warranties shall then be listed in an attached Addendum to this Agreement. Construction Manager's liability for such warranties shall be limited to the one-year correction period referred to in Paragraph 3.7. After that period Construction Manager shall assign them to the Owner and provide reasonable assistance to the Owner in enforcing the obligations of Subcontractors or Material Suppliers.

2.5.4 Any warranties for Equipment purchased by Construction Manager for installation as part of the Work shall be in conformance to the warranty provided by the Equipment manufacturer and seller, and any warranty by Construction Manager under this Agreement for Equipment is limited to the terms and conditions of the Equipment manufacturer/seller's warranty under this Paragraphs 3.6 and 3.7.

2.6 CORRECTION OF WORK WITHIN ONE YEAR.

2.6.1 If prior to Substantial Completion and within one (1) year after the date of Substantial Completion of the Work any Defective Work is found, the Owner shall promptly notify the Construction Manager in writing. Unless the Owner provides written acceptance of the condition, the Construction Manager shall promptly correct the Defective Work. If within the one (1) year correction period the Owner discovers and does not promptly notify the Construction Manager or give the Construction Manager an opportunity to test or correct Defective Work as reasonably requested by the Construction Manager, the Owner waives the Construction Manager's obligation to correct that Defective Work as well as the Owner's right to claim a breach of the warranty with respect to that Defective Work, but will not waive any claims of negligence that may exist.

2.6.2 With respect to any portion of Work first performed after Substantial Completion, the one (1) year correction period shall be extended by the period of time between Substantial Completion and the actual performance of the later Work. Correction periods shall not be extended by corrective work performed by the Construction Manager.

2.6.3 If the Construction Manager fails to correct Defective Work within a reasonable time after receipt of written notice from the Owner prior to final payment, the Owner may correct it in accordance with the Owner's right to carry out the Work in Paragraph 12.2. In such case, an appropriate Change Order shall be issued deducting the cost of correcting such deficiencies from payments then or thereafter due the Construction Manager. If payments then or there after due Construction Manager are not sufficient to cover such amounts, the Construction Manager shall pay the difference to the Owner.

2.6.4 If after the one (1) year correction period, but before the applicable limitation period the Owner discovers any Defective Work, the Owner shall, unless the Defective Work requires emergency correction, promptly notify the Construction Manager. If the Construction Manager elects to correct the Work it shall provide written notice of such intent within fourteen (14) Days of its receipt of notice from the Owner. The Construction Manager shall complete the correction of Work within a mutually agreed time frame. If the Construction Manager does not elect to correct the Work, the Owner may have the Work corrected by itself or Others and charge the Construction Manager for the reasonable cost of the correction. Owner shall provide Construction Manager with an accounting of correction costs it incurs. Notification by Owner to Construction Manager under this section shall not extend or expand Construction Manager's obligations to correct Defective Work.

2.6.5 If the Construction Manager's correction or removal of Defective Work causes damage to or destroys other completed or partially completed work or existing building, the Construction Manager shall be responsible for the cost of correcting the destroyed or damaged property.

2.6.6 The one (1) year period for correction of Defective Work does not constitute a limitation period for any third-party claims, including but not limited to the

Construction Manager's negligence and the enforcement of the Construction Manager's other obligations under the Contract Documents.

2.6.7 Prior to final payment, at the Owner's option and with the Construction Manager's agreement, the Owner may elect to accept Defective Work rather than require its removal and correction. In such cases the GMP shall be equitably adjusted for any diminution in the value of the Project caused by such Defective Work.

2.7 CORRECTION OF COVERED WORK.

2.7.1 On request of the Owner, Work that has been covered without a requirement that it be inspected prior to being covered may be uncovered for the Owner's inspection. The Owner shall pay for the costs of uncovering and replacement if the Work proves to be in conformance with the Contract Documents, or if the defective condition was caused by the Owner or Others. If the uncovered Work proves to be defective or if no reasonable opportunity for inspection was provided to Owner, the Construction Manager shall pay the costs of uncovering and replacement.

2.7.2 If contrary to specific requirements in the Contract Documents or contrary to a specific request from the Owner, a portion of the Work is covered, the Owner, by written request, may require the Construction Manager to uncover the Work for the Owner's observation. In this circumstance the Work shall be replaced at the Construction Manager's expense and with no adjustment to the Dates of Substantial or Final Completion.

2.7.3 The Construction Manager is required to correct in a timely fashion any Work rejected by the Owner which fails to comply with the Contract Documents prior to the commencement of the warranty period(s) or during the correction period(s) established under Paragraph 3.7. The Construction Manager shall correct at its own cost and time and bear the expense of additional services required for correction of any Defective Work for which it is responsible.

2.8 SAFETY OF PERSONS AND PROPERTY.

2.8.1 SAFETY PRECAUTIONS AND PROGRAMS. The Construction Manager shall have overall responsibility for safety precautions and programs in the performance of the Work. While this Paragraph 3.9 establishes the responsibility for safety between the Owner and Construction Manager, it does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with the provisions of applicable laws and regulations.

2.8.2 The Construction Manager shall seek to avoid injury, loss or damage to persons or property by taking reasonable steps to protect:

2.8.2.1 its employees and other persons at the Worksite;

2.8.2.2 materials and equipment stored at on-site or off-site locations for use in the Work; and

2.8.2.3 property located at the Worksite and adjacent to Work areas, whether or not the property is part of the Work.

2.8.3 CONSTRUCTION MANAGER'S SAFETY REPRESENTATIVE. The Construction Manager's Worksite Safety Representative is the Project Superintendent, Ed Bender, who shall act as the Construction Manager's authorized safety representative

with a duty to prevent accidents in accordance with Subparagraph 3.9.2. The Construction Manager shall report immediately in writing all accidents and injuries occurring at the worksite. When the Construction Manager is required to file an accident report with a public authority, the Construction Manager shall furnish a copy of the report to the Owner.

2.8.4 The Construction Manager shall provide the Owner with copies of all notices required of the Construction Manager by law or regulation. The Construction Manager's safety program shall comply with the requirements of governmental and quasi-governmental authorities having jurisdiction.

2.8.5 Damage or loss not insured under property insurance which may arise from the Work, to the extent caused by negligent acts or omissions of the Construction Manager, or anyone for whose acts the Construction Manager may be liable, shall be promptly remedied by the Construction Manager. With regard to damage or loss attributable to the acts or omissions of the Owner or Others and not to the Construction Manager, the Owner may either (a) promptly remedy the damage or loss; or (b) accept the damage or loss.

2.8.6 If the Owner deems any part of the Work or Worksite unsafe, the Owner, without assuming responsibility for the Construction Manager's safety program, may require the Construction Manager to stop performance of the Work or take corrective measures satisfactory to the Owner, or both. If the Construction Manager does not adopt corrective measures, the Owner may perform them and deduct their cost from the GMP. The Construction Manager agrees to make no claim for damages, or an increase in the GMP, or for a change in the Dates of Substantial or Final Completion based on the Construction Manager's compliance with the Owner's reasonable request.

2.9 EMERGENCIES. In an emergency, the Construction Manager shall act in a reasonable manner to prevent personal injury or property damage. If appropriate, an equitable adjustment in GMP or Date of Substantial Completion or Date of Final Completion shall be determined in a Change Order.

2.10 HAZARDOUS MATERIALS.

2.10.1 A Hazardous Material is any substance or material identified now or in the future as hazardous under any federal, state or local law or regulation, or any other substance or material that may be considered hazardous or otherwise subject to statutory or regulatory requirement governing handling, disposal or clean-up. The Construction Manager shall not be obligated to commence or continue work until any Hazardous Material discovered at the Worksite has been removed, rendered or determined to be harmless by the Owner as certified by an independent testing laboratory and approved by the appropriate government agency.

2.10.2 If after the commencement of the Work, Hazardous Material is discovered at the Worksite, the Construction Manager shall be entitled to immediately stop Work in the affected area. The Construction Manager shall report the condition to the Owner, the Engineer, and, if required, the government agency with jurisdiction.

2.10.3 The Construction Manager shall not be required to perform any Work relating to or in the area of Hazardous Material without written mutual agreement.

2.10.4 The Owner shall be responsible for retaining an independent testing laboratory to determine the nature of the material encountered and whether the material requires corrective measures or remedial action. Such measures shall be the sole

responsibility of the Owner, and shall be performed in a manner minimizing any adverse effects upon the Work. The Construction Manager shall resume Work in the area affected by any Hazardous Material only upon written agreement between the Parties after the Hazardous Material has been removed or rendered harmless and only after approval, if necessary, of the governmental agency with jurisdiction.

2.10.5 If the Construction Manager incurs additional costs or is delayed due to the presence or remediation of Hazardous Material, the Construction Manager shall be entitled to an equitable adjustment in the GMP or the Dates of Substantial or Final Completion. Construction Manager shall not be responsible for testing or remediating the Worksite as a result of any pre-existing condition at the Worksite due to the presence of Hazardous Materials.

2.11 MATERIALS BROUGHT TO THE WORKSITE.

2.11.1 Material Safety Data (MSD) sheets as required by law and pertaining to materials or substances used or consumed in the performance of the Work, whether obtained by the Construction Manager, Subcontractors, the Owner or Others, shall be maintained at the Worksite by the Construction Manager and made available to the Owner, Subcontractors and Others.

2.11.2 The Construction Manager shall be responsible for the proper delivery, handling, application, storage, removal and disposal of all materials and substances brought to the Worksite by the Construction Manager in accordance with the Contract Documents and used or consumed in the performance of the Work. Unless it is found that Construction Manager has not properly handled the Hazardous Material which it was required to bring to the Worksite by the Contract Documents and used in its performance of the Work, Construction Manager is not responsible for handling the clean-up of any such Hazardous Material.

2.12 CONCEALED OR UNKNOWN WORKSITE CONDITIONS. If the conditions at the Worksite are (a) subsurface or other physical conditions which are materially different from those indicated in the Contract Documents, or (b) unusual or unknown physical conditions which are materially different from conditions ordinarily encountered and generally recognized as inherent in Work provided for in the Contract Documents, the Construction Manager shall give immediate written notice of the condition to the Owner and the Engineer, and, if necessary, stop Work. Any change in the GMP, Construction Manager's Fee, Date of Substantial Completion or Date of Final Completion and, if appropriate, the Compensation for Preconstruction Services as a result of the unknown condition shall be determined as provided in Article 9. The Construction Manager shall provide the Owner with written notice of any claim as a result of unknown conditions within the time period set forth in Paragraph 9.4.

2.13 PERMITS AND TAXES.

2.13.1 Construction Manager shall give public authorities all notices required by law and, except for permits and fees which are the responsibility of the Owner pursuant to Paragraph 4.4, shall obtain and pay for all necessary permits, licenses and renewals pertaining to the Work. Construction Manager shall provide to Owner copies of all notices, permits, licenses and renewals required under this Agreement.

2.13.2 Construction Manager shall pay all applicable taxes legally enacted when bids are received or negotiations concluded for the Work provided by the Construction Manager.

2.13.3 The GMP is based on the project being Tax exempt for materials purchased in the fulfillment of the Contract. The Owner will provide the Construction Manager a Tax Exemption certificate for the Duration of the Project. The GMP shall be adjusted for additional costs resulting from laws, ordinances, rules and regulations enacted after the date of this Agreement, including increased taxes.

2.13.4 If, in accordance with the Owner's direction, the Construction Manager claims an exemption for taxes, the Owner shall indemnify and hold the Construction Manager harmless from any liability, penalty, interest, fine, tax assessment, attorneys fees or other expense or cost incurred by the Construction Manager as a result of any such action. Owner represents and directs Construction Manager to claim exemption for taxes for the Project.

2.14 CONFIDENTIALITY. The Construction Manager shall treat as confidential and not disclose to third persons, except Subcontractors, Sub-subcontractors and as is necessary for the performance of the Work, or use for its own benefit, any of the Owner's confidential information, know-how, discoveries, production methods and the like that may be disclosed to the Construction Manager or which the Construction Manager may acquire in connection with the Work. The Owner shall treat as confidential information all of the Construction Manager's financial reporting, safety systems and programs, and know-how, discoveries, production methods and the like that may be disclosed to the Owner in connection with the performance of this Agreement. The Owner and the Construction Manager shall each specify those items to be treated as confidential and shall mark them as "Confidential".

ARTICLE 3.

OWNER'S RESPONSIBILITIES

3.1 INFORMATION AND SERVICES. Any information or services to be provided by the Owner shall be provided in a timely manner so as not to delay the Work.

3.2 FINANCIAL INFORMATION. Prior to commencement of the Work and thereafter at the written request of the Construction Manager, the Owner shall provide the Construction Manager with evidence of Project financing. Evidence of such financing shall be a condition precedent to the Construction Manager's commencing or continuing the Work. The Construction Manager shall be notified prior to any material change in Project financing.

3.3 WORKSITE INFORMATION. Except to the extent that the Construction Manager knows of any inaccuracy, the Construction Manager is entitled to rely on Worksite information furnished by the Owner pursuant to this Paragraph 4.3. To the extent the Owner has obtained, or is required elsewhere in the Contract Documents to obtain, the following Worksite information, the Owner shall provide at the Owner's expense and with reasonable promptness:

3.3.1 information describing the physical characteristics of the Worksite, including surveys, Worksite evaluations, legal descriptions, data or drawings depicting existing conditions, subsurface conditions and environmental studies, reports and investigations;

3.3.2 tests, inspections and other reports dealing with environmental matters, Hazardous Material and other existing conditions, including structural, mechanical and chemical tests, required by the Contract Documents or by law; and

3.3.3 any other information or services requested in writing by the Construction Manager which are relevant to the Construction Manager's performance of the Work and under the Owner's control.

The information required by this Paragraph 4.3 shall be provided in reasonable detail. Legal descriptions shall include easements, title restrictions, boundaries, and zoning restrictions. Worksite descriptions shall include existing buildings and other construction and all other pertinent site conditions. Adjacent property descriptions shall include structures, streets, sidewalks, alleys, and other features relevant to the Work. Utility details shall include available services, lines at the Worksite and adjacent thereto and connection points. The information shall include public and private information, subsurface information, grades, contours, and elevations, drainage data, exact locations and dimensions, and benchmarks that can be used by the Construction Manager in laying out the Work.

3.4 BUILDING PERMIT, FEES AND APPROVALS. The Owner shall secure and pay for all permits, approvals, easements, assessments and fees required for the development, construction, use or occupancy of permanent structures or for permanent changes in existing facilities, including the building permit.

3.5 MECHANICS AND CONSTRUCTION LIEN INFORMATION. Within seven (7) Days after receiving the Construction Manager's written request, the Owner shall provide the Construction Manager with the information necessary to give notice of or enforce mechanics lien rights and, where applicable, stop notices. This information shall include the Owner's interest in the real property on which the Project is located and the record legal title.

3.6 CONTRACT DOCUMENTS. Unless otherwise specified, Owner shall provide a reasonable number of hard copies of the Contract Documents to the Construction Manager without cost.

3.6.1 ELECTRONIC DOCUMENTS. If the Owner requires that the Owner, Engineer and Construction Manager exchange documents and data in electronic or digital form, prior to any such exchange, the Owner, Engineer and Construction Manager shall agree on a written protocol governing all exchanges in a separate Agreement, which, at a minimum, shall specify: (1) the definition of documents and data to be accepted in electronic or digital form or to be transmitted electronically or digitally; (2) management and coordination responsibilities; (3) necessary equipment, software and services; (4) acceptable formats, transmission methods and verification procedures; (5) methods for maintaining version control; (6) privacy and security requirements; and (7) storage and retrieval requirements. Except as otherwise agreed to by the Parties in writing, the Parties shall bear their own costs as identified in the protocol. In the absence of a written protocol, use of documents and data in electronic or digital form shall be at the sole risk of the recipient.

3.7 OWNER'S REPRESENTATIVE. The Owner's authorized representative is Joe Finley. The representative shall be fully acquainted with the Project, and shall have authority to bind the Owner in all matters requiring the Owner's approval, authorization or written notice. If the Owner changes its representative or the representative's authority as listed above, the Owner shall immediately notify the Construction Manager in writing.

3.8 OWNER'S CUTTING AND PATCHING. Cutting, patching, or altering the Work by the Owner or Others shall be done with the prior written approval of the Construction Manager, which approval shall not be unreasonably withheld.

3.9 OWNER'S RIGHT TO CLEAN UP. In case of a dispute between the Construction Manager and Others with regard to respective responsibilities for cleaning up at the

Worksite, the Owner may implement appropriate cleanup measures after two (2) business Days notice and allocate the cost among those responsible during the following pay period.

3.10 COST OF CORRECTING DAMAGED OR DESTROYED WORK. With regard to damage or loss attributable to the acts or omissions of the Owner or Others and not to the Construction Manager, the Owner may either (a) promptly remedy the damage or loss or (b) accept the damage or loss. If the Construction Manager incurs additional costs or is delayed due to such loss or damage, the Construction Manager shall be entitled to an equitable adjustment in the GMP, estimated Cost of the Work, Construction Manager's Fee, Date of Substantial Completion or Date of Final Completion and, if appropriate, the Compensation for Preconstruction Services.

ARTICLE 4.

SUBCONTRACTS

4.1 SUBCONTRACTORS. The Work not performed by the Construction Manager with its own forces shall be performed by Subcontractors. All subcontracts shall be issued on a lump sum basis unless the Owner has given prior written approval of a different method of payment to the Subcontractor.

4.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK.

4.2.1 As soon after the execution of this Agreement as possible the Construction Manager shall provide the Owner, and if directed, the Engineer with a written list of the proposed subcontractors and significant material suppliers. If the Owner has a reasonable objection to any proposed subcontractor or material supplier, the Owner shall notify the Construction Manager in writing. Failure to promptly object shall constitute acceptance.

4.2.2 If the Owner has reasonably and promptly objected as provided in Subparagraph 5.2.1, the Construction Manager shall not contract with the proposed subcontractor or material supplier, and the Construction Manager shall propose another acceptable to the Owner. An appropriate Change Order shall reflect any increase or decrease in the GMP or Dates of Substantial or Final Completion because of the substitution.

4.3 BINDING OF SUBCONTRACTORS AND MATERIAL SUPPLIERS. The Construction Manager agrees to bind every Subcontractor and Material Supplier (and require every Subcontractor to so bind its subcontractors and Material Suppliers) to all the provisions of this Agreement and the Contract Documents as they apply to the Subcontractor's and Material Supplier's portions of the Work.

4.4 LABOR RELATIONS. (Insert here any conditions, obligations or requirements relative to labor relations and their effect on the Project. Legal counsel is recommended):

4.5 CONTINGENT ASSIGNMENT OF SUBCONTRACTS.

4.5.1 If this Agreement is terminated, each subcontract agreement shall be assigned by the Construction Manager to the Owner, subject to the prior rights of any surety, provided that:

4.5.1.1 this Agreement is terminated by the Owner pursuant to Paragraphs 12.3 or 12.4; and

4.5.1.2 the Owner accepts such assignment after termination by notifying the Subcontractor and Construction Manager in writing, and assumes all rights and obligations of the Construction Manager pursuant to each subcontract agreement.

4.5.2 If the Owner accepts such an assignment, and the Work has been suspended for more than thirty (30) consecutive Days, following termination, the Subcontractor's compensation shall be equitably adjusted as a result of the suspension.

ARTICLE 5.

TIME

5.1 PERFORMANCE OF THE WORK.

5.1.1 DATE OF COMMENCEMENT. The Date of Commencement is the date of this Agreement as first written in Article 1 unless otherwise set forth below:

Notice to Proceed _____

Substantial Completion _____

Final Acceptance _____

The Work shall proceed in general accordance with the Schedule of Work as such schedule may be amended from time to time, subject to other provisions of this Agreement.

5.1.2 SUBSTANTIAL/FINAL COMPLETION. Unless the Parties agree or otherwise, the Date of Substantial Completion or the Date of Final Completion shall be established in Amendment No. 1 to this Agreement subject to adjustments as provided for in the Contract Documents. The Owner and the Construction Manager may agree not to establish such dates, or in the alternative, to establish one but not the other of the two dates. If such dates are not established upon the execution of this Agreement, at such time as GMP is accepted a Date of Substantial Completion or Date of Final Completion of the Work shall be established in Amendment No.1. If a GMP is not established and the Parties desire to establish a Date of Substantial Completion or Date of Final Completion, it shall be set forth in Amendment No.1.

5.1.3 Time limits stated above are of the essence of this Agreement.

5.1.4 The Construction Manager shall not knowingly commence the Work before the effective date of insurance to be provided by the Construction Manager and Owner as required by the Contract Documents.

5.2 SCHEDULE OF THE WORK.

5.2.1 Before submitting the first application for payment, the Construction Manager shall submit to the Owner and, if directed, the Engineer a Schedule of the Work that shall show the dates on which the Construction Manager plans to commence and complete various parts of the Work, including dates on which information and approvals are required from the Owner. On the Owner's written approval of the Schedule of the

Work, the Construction Manager shall comply with it unless directed by the Owner to do otherwise or the Construction Manager is otherwise entitled to an adjustment in the Contract Time. The Construction Manager shall update the schedule on a monthly basis or at appropriate intervals as required by the conditions of the Work and the Project.

5.2.2 The Owner may determine the sequence in which the Work shall be performed, provided it does not unreasonably interfere with the approved project schedule. The Owner may require the Construction Manager to make reasonable changes in the sequence at any time during the performance of the Work in order to facilitate the performance of work by the Owner or Others. To the extent such changes increase Construction Manager's time and costs the GMP and Dates of Substantial or Final Completion shall be equitably adjusted.

5.3 DELAYS AND EXTENSIONS OF TIME.

5.3.1 If the Construction Manager is delayed at any time in the commencement or progress of the Work by any cause beyond the control of the Construction Manager, the Construction Manager shall be entitled to an equitable extension of the Date of Substantial Completion or Date of Final Completion. In addition, if the Construction Manager incurs additional costs as a result of such delay, the Construction Manager shall be entitled to an equitable adjustment in the GMP subject to Paragraph 11.2. Examples of causes beyond the control of the Construction Manager include, but are not limited to the following: acts or omissions of the Owner, the Engineer or Others; Engineer and/or Owner not providing timely or sufficiently detailed plans and specification for the orderly progress of the Work in accordance with the Schedule, changes in the Work or the sequencing of the Work ordered by the Owner, or arising from decisions of the Owner that impact the time of performance of the Work; labor disputes not involving the Construction Manager; fire; encountering Hazardous Materials; adverse weather conditions not reasonably anticipated; concealed or unknown conditions; delay authorized by the Owner pending dispute resolution and suspension by the Owner under Paragraph 12.1. The Construction Manager shall submit any requests for equitable extensions of Contract Time or equitable adjustment in Contract Price in accordance with the provisions of Article 9.

5.3.2 In addition, if the Construction Manager incurs additional costs as a result of a delay that is caused by acts or omissions of the Owner, the Engineer or Others, changes in the Work or the sequencing of the Work ordered by the Owner, or arising from decisions of the Owner that impact the time of performance of the Work, encountering Hazardous Materials, or concealed or unknown conditions, delay authorized by the Owner pending dispute resolution or suspension by the Owner under Paragraph 12.1, the Construction Manager shall be entitled to an equitable adjustment in the GMP subject to Paragraph 9.4.

5.3.3 NOTICE OF DELAYS. In the event delays to the Work are encountered for any reason, the Construction Manager shall provide prompt written notice to the Owner of the cause of such delays after Construction Manager first recognizes the delay, but in no instance longer than three (3) days after the delay is encountered.

5.4 NOTICE OF DELAY CLAIMS. If the Construction Manager requests an equitable extension of Contract Time or an equitable adjustment in Contract Price as a result of a delay described in Subparagraph 6.3.1, the Construction Manager shall give the Owner written notice of the claim in accordance with Paragraph 9.4. If the Construction Manager causes delay in the completion of the Work, the Owner shall be entitled to recover its additional costs subject to Paragraph 11.2. The Owner shall process any such claim against the Construction Manager in accordance with Paragraph 9.

5.5

LIQUIDATED DAMAGES.

5.5.1 SUBSTANTIAL COMPLETION. The Owner and the Construction Manager agree that this Agreement shall provide for the imposition of liquidated damages based on the Date of Substantial Completion established in Subparagraph 6.1.1.

The Construction Manager understands that if the Date of Substantial Completion established by this Agreement, as may be amended by subsequent Change Order, is not attained, the Owner will suffer damages which are difficult to determine and accurately specify. The Construction Manager agrees that if the Date of Substantial Completion is not attained the Construction Manager shall pay the Owner Zero Dollars (\$0) as liquidated damages and not as a penalty for each Day that Substantial Completion extends beyond the Date of Substantial Completion. The liquidated damages provided herein shall be in lieu of all liability for any and all extras costs, losses, expenses, claims, penalties and any other damages of whatsoever nature incurred by the Owner which are occasioned by any delay in achieving the Date of Substantial Completion.

5.5.2 FINAL COMPLETION. The Owner and the Construction Manager agree that this Agreement shall provide for the imposition of liquidated damages based on the Date of Final Completion.

5.5.2.1 The Construction Manager understands that if the Date of Final Completion established by this Agreement, as may be amended by subsequent Change Order is not attained, the Owner will suffer damages which are difficult to determine and accurately specify. The Construction Manager agrees that if the Date of Final Completion is not attained the Construction Manager shall pay the Owner Zero Dollars (\$0) as liquidated damages and not as a penalty for each Day that Final Completion extends beyond the Date of Final Completion. The liquidated damages provided herein shall be in lieu of all liability for any and all extras costs, losses, expenses, claims, penalties and any other damages of whatsoever nature incurred by the Owner which are occasioned by any delay in achieving the Date of Final Completion.

5.5.3 OTHER LIQUIDATED DAMAGES. The Owner and the Construction Manager may agree upon the imposition of liquidated damages based on other project milestones or performance requirements. Such agreement shall be included as an exhibit to this Agreement.

5.6 LIMITED MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES. The parties have agreed to zero (\$0.00) as the amount of liquidated damages in Paragraph 6.5 and excluding losses covered by insurance required by the Contract Documents, the Owner and the Construction Manager also agree to waive all claims against each other for any consequential damages that may arise out of or relate to this Agreement. The Owner agrees to waive damages including but not limited to the Owner's loss of use of the Project, any rental expenses incurred, loss of income, profit or financing related to the Project, as well as the loss of business, loss of financing, principal office overhead and expenses, loss of profits not related to this Project, loss of reputation, or insolvency. The Construction Manager agrees to waive damages including but not limited to loss of business, loss of financing, principal office overhead and expenses, loss of profits not related to this Project, loss of bonding capacity, loss of reputation, or insolvency. The provision of this Paragraph shall also apply to the termination of this Agreement and shall survive such termination.

ARTICLE 6.
COMPENSATION AND GUARANTEED MAXIMUM PRICE

6.1 The Owner shall compensate the Construction Manager for Work performed on the following basis:

6.1.1 the amount set forth in Exhibit A including Schedule of Values as described in Section 3; and

6.1.2 the Construction Manager's Fee paid in proportion to the Work performed subject to adjustment as provided in Paragraph 7.4.

6.2 The compensation to be paid shall be limited to the GMP established in this Amendment No. 1, as the GMP may be adjusted under Article 9.

6.2.1 Payment for Work performed shall be as set forth in Article 10.

6.3 **CONSTRUCTION MANAGER'S FEE.** The Construction Manager's Fee is included in the Schedule of Values found in Exhibit A, subject to adjustment as provided in Paragraph 7.4.

6.4 **ADJUSTMENT IN THE CONSTRUCTION MANAGER'S FEE.** Adjustment in the Construction Manager's Fee shall be made as follows:

6.4.1 for changes in the Work as provided in Article 9, the Construction Manager's Fee shall be adjusted as provided in Paragraph 9.3.1.3:

6.4.2 for delays in the Work not caused by the Construction Manager, except as provided in Paragraph 6.3, there shall be an equitable adjustment in the Construction Manager's Fee to compensate the Construction Manager for increased expenses; and

6.4.3 if the Construction Manager is placed in charge of managing the replacement of an insured or uninsured loss, the Construction Manager shall be paid an additional fee in the same proportion that the Construction Manager's Fee bears to the estimated Cost of the Work for the replacement.

ARTICLE 1.

COST OF CHANGE ORDERS

6.5 If the Owner and Construction Manager cannot otherwise agree on the cost of a Change order, The Owner agrees to pay the Construction Manager for the Cost of Change Orders under Paragraph 9.3.1.3 below.

6.6 **DETERMINATION OF COST ITEMS FOR CHANGE ORDERS.**

6.6.1 Wages paid for labor in the direct employ of the Construction Manager in the performance of the Work.

6.6.2 Salaries of the Construction Manager's employees when stationed at the field office, in whatever capacity employed, employees engaged on the road expediting the production or transportation of material and equipment, and employees from the principal or branch office performing the functions listed below:

6.6.3 Cost of all employee benefits and taxes, including but not limited to, workers' compensation, unemployment compensation, Social Security, health, welfare, retirement and other fringe benefits as required by law, labor agreements, or paid under the Construction Manager's standard personnel policy, insofar as such costs are paid to employees of the Construction Manager who are included in the Cost of the Work under Subparagraphs 8.2.2 and 8.2.3.

6.6.4 Reasonable transportation, travel, hotel and moving expenses of the Construction Manager's personnel incurred in connection with the Work.

6.6.5 Cost of all materials, supplies and equipment incorporated in the Work, including costs of inspection and testing if not provided by the Owner, transportation, storage and handling.

6.6.6 Payments made by the Construction Manager to Subcontractors for work performed under this Agreement.

6.6.7 Cost, including transportation and maintenance of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workers that are used or consumed in the performance of the Work, less salvage value or residual value; and cost less salvage value on such items used, but not consumed that remain the property of the Construction Manager.

6.6.8 Rental charges of all necessary machinery and equipment, exclusive of hand tools owned by workers, used at the Worksite, whether rented from the Construction Manager or Others, including installation, repair and replacement, dismantling, removal, maintenance, transportation and delivery costs. Rental from unrelated third parties shall be reimbursed at actual cost. Rentals from the Construction Manager or its affiliates, subsidiaries or related parties shall be reimbursed at the prevailing rates in the locality of the Worksite up to eighty-five percent (85%) of the value of the piece of equipment.

6.6.9 Cost of the premiums for all insurance and surety bonds which the Construction Manager is required to procure or deems necessary, and approved by the Owner including any additional premium incurred as a result of any increase in the GMP.

6.6.10 Use, gross receipts or other taxes, tariffs or duties related to the Work for which the Construction Manager is liable.

6.6.11 Losses, expenses or damages to the extent not compensated by insurance or otherwise, and the cost of corrective work during the Construction Phase and for a period of one year following the Date of Substantial Completion, provided that such losses, expenses, damages or corrective work did not arise from the negligence of the Construction Manager.

6.6.12 All costs associated with establishing, equipping, operating, maintaining and demobilizing the field office.

6.6.13 All costs associated with demobilizing and remobilizing the field office and the Construction Manager's workforce, including Subcontractor workforces, as a result of a suspension of the Work by the Owner.

6.6.14 Reproduction costs, photographs, facsimile transmissions, long-distance telephone calls, data processing costs and services, postage, express delivery charges, data transmission, telephone service and computer-related costs at the Worksite to the

extent such items are used and consumed in the performance of the Work or are not capable of use after completion of the Work.

6.6.15 All water, power and fuel costs necessary for the Work.

6.6.16 Cost of removal of all nonhazardous substances, debris and waste materials.

6.6.17 Costs incurred due to an emergency affecting the safety of persons or property.

6.6.18 Legal, mediation and arbitration fees and costs, other than those arising from disputes between the Owner and the Construction Manager, reasonably and properly resulting from the Construction Manager's performance of the Work.

6.6.19 Additional costs resulting from laws, ordinances, rules, regulations and taxes enacted after the date of this Agreement.

6.6.20 All costs directly incurred in the performance of the Work or in connection with the Project, and not included in the Construction Manager's Fee as set forth in Article 7, which are reasonably inferable from the Contract Documents as necessary to produce the intended results.

6.7 DISCOUNTS. All discounts for prompt payment shall accrue to the Owner to the extent such payments are made directly by the Owner. To the extent payments are made with funds of the Construction Manager, all cash discounts shall accrue to the Construction Manager. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment, shall be credited to the Cost of the Work.

ARTICLE 7.

CHANGES

Changes in the Work that are within the general scope of this Agreement shall be accomplished, without invalidating this Agreement, by Change Order and Interim Directed Change.

7.1 CHANGE ORDER.

7.1.1 The Construction Manager may request or the Owner may order changes in the Work or the timing or sequencing of the Work that impacts the GMP or the estimated Cost of the Work, Construction Manager's Fee, Date of Substantial Completion or Date of Final Completion and, if appropriate, the Compensation for Preconstruction Services. All such changes in the Work shall be formalized in a Change Order. Any such requests for changes in the Work shall be processed in accordance with this Article 9.

7.1.2 The Owner and the Construction Manager shall negotiate in good faith an equitable adjustment to the GMP or the Date of Substantial Completion or Date of Final Completion and shall conclude these negotiations as expeditiously as possible. Acceptance of the Change Order and any equitable adjustment in the GMP or Date of Substantial Completion or Date of Final Completion shall not be unreasonably withheld.

7.2 INTERIM DIRECTED CHANGES.

7.2.1 The Owner may issue a written Interim Directed Change directing a change in the Work prior to reaching agreement with the Construction Manager on the adjustment, if any, in the GMP or the Date of Substantial Completion or Date of Final Completion.

7.2.2 The Owner and the Construction Manager shall negotiate expeditiously and in good faith for appropriate adjustments, as applicable, to the GMP or the Date of Substantial Completion or Date of Final Completion arising out of Interim Directed Changes. As the changed Work is performed, the Construction Manager shall submit its costs for such Work with its application for payment beginning with the next application for payment within thirty (30) Days of the issuance of the Interim Directed Change. If there is a dispute as to the cost to the Owner, the Owner shall pay the Construction Manager fifty percent (50%) of its estimated cost to perform the work. In such event, the Parties reserve their rights as to the disputed amount, subject to the requirements of Article 12.

7.2.3 When the Owner and the Construction Manager agree upon the adjustments in the GMP or the Date of Substantial Completion or Date of Final Completion, for a change in the Work directed by an Interim Directed Change, such agreement shall be the subject of an appropriate Change Order. The Change Order shall include all outstanding Interim Directed Changes issued since the last Change Order.

7.3 DETERMINATION OF COST.

7.3.1 An increase or decrease in the GMP or the Date of Substantial Completion or Date of Final Completion resulting from a change in the Work shall be determined by one or more of the following methods:

7.3.1.1 unit prices set forth in this Agreement or as subsequently agreed;

7.3.1.2 a mutually accepted, itemized lump sum;

7.3.1.3 costs calculated on a basis agreed upon by the Owner and Construction Manager plus 10% Overhead and 5% Profit for self performed work; 7% Overhead and 3% Profit for subcontracted work.

7.3.2 If the Owner and the Construction Manager disagree as to whether work required by the Owner is within the scope of the Work, the Construction Manager shall furnish the Owner with an estimate of the costs to perform the disputed work in accordance with the Owner's interpretations.

7.3.3 If the Owner issues a written order for the Construction Manager to proceed, the Construction Manager shall perform the disputed work and the Owner shall pay the Construction Manager Fifty percent (50%) of its estimated cost to perform the work. In such event, both Parties reserve their rights as to whether the work was within the scope of the Work. The Owner's payment does not prejudice its right to be reimbursed should it be determined that the disputed work was within the scope of Work. The Construction Manager's receipt of payment for the disputed work does not prejudice its right to receive full payment for the disputed work should it be determined that the disputed work is not within the scope of the Work.

7.4 CLAIMS FOR ADDITIONAL COST OR TIME. Except as provided in Subparagraph 6.3.2 and Paragraph 6.4 for any claim for an increase in the GMP or the Date of Substantial Completion or Date of Final Completion, the Construction Manager

shall give the Owner written notice of the claim within fourteen (14) Days after the occurrence giving rise to the claim. Any claim submitted after said Fourteen (14) Day period shall be deemed to have been waived by the Construction Manager. Except in an emergency, notice shall be given before proceeding with the Work. Any change in the GMP or the Date of Substantial Completion or Date of Final Completion resulting from such claim shall be authorized by Change Order.

ARTICLE 8.

PAYMENT

8.1 SCHEDULE OF VALUES. The Construction Manager shall prepare and submit to the Owner and, if directed, the Engineer, a schedule of values apportioned to the various divisions or phases of the Work. Each line item shall be assigned a value such that the total of all items shall equal the GMP.

8.2 PROGRESS PAYMENTS.

8.2.1 APPLICATIONS. The Construction Manager shall submit to the Owner, and, if directed, its Engineer a monthly application for payment no later than the Twentieth (20th) Day of the calendar month for the preceding thirty (30) Days; or Construction Manager's applications for payment shall be itemized and supported by the Construction Manager's schedule of values and any other substantiating data as required by this Agreement. Payment applications shall include payment requests on account of properly authorized Change Orders or Interim Directed Changes. The Owner shall pay the amount otherwise due on any payment application, no later than twenty (20) Days after the Construction Manager has submitted a complete and accurate payment application. The Owner may deduct from any progress payment amounts as may be retained pursuant to Subparagraph 10.2.4.

8.2.2 STORED MATERIALS AND EQUIPMENT. Unless otherwise provided in the contract documents, applications for payment may include materials and equipment not yet incorporated into the Work but delivered to and suitably stored on-site or off-site including applicable insurance, storage and costs incurred transporting the materials to an off-site including applicable insurance, storage and costs incurred transporting the materials to an off-site storage facility. Approval of payment applications for stored materials and equipment stored off-site shall be conditioned on submission by the Construction Manager of bills of sale and proof of required insurance, or such other procedures satisfactory to the Owner to establish the proper valuation of the stored materials and equipment, the Owner's title to such materials and equipment, and to otherwise protect the Owner's interests therein, including transportation to the Worksite.

8.2.3 LIEN WAIVERS AND LIENS.

8.2.3.1 PARTIAL LIEN WAIVERS AND AFFIDAVITS. As a prerequisite for payment, the Construction Manager shall provide partial lien and claim waivers in the amount of the application for payment. Such waivers shall be conditional upon payment. In no event shall the Construction Manager be required to sign an unconditional waiver of lien or claim, either partial or final, prior to receiving payment or in an amount in excess of what it has been paid.

8.2.3.2 RESPONSIBILITY FOR LIENS. If Owner has made payments in the time required by this Article 10, the Construction Manager shall, within thirty (30) Days after filing, cause the removal of any liens filed against the premises or public improvement fund by any party or parties performing labor or services or

supplying materials in connection with the Work. If the Construction Manager fails to take such action on a lien to provide Owner with a plan of action satisfactory to Owner for resolution of issues and removal of the lien, the Owner may cause the lien to be removed at the Construction Manager's expense, including bond costs and reasonable attorneys' fees. This Clause shall not apply if there is a dispute pursuant to Article 13 relating to the subject matter of the lien.

8.2.4 RETAINAGE. From each progress payment made prior to Substantial Completion, the Owner may retain ten percent (10%), of the amount otherwise due after deduction of any amounts as provided in Paragraph 10.3 and in no event shall such percentage exceed any applicable statutory requirements.

10.2.4.1 If the progress of the Work is satisfactory, after the Work is fifty percent (50%) complete, the Owner shall withhold no additional retainage and shall pay the Construction Manager the Full amount of what is due on account of progress payments;

10.2.4.2 The Owner may, in its sole discretion, reduce the amount to be retained at any time;

10.2.4.3 The Owner may release retainage on that portion of the Work a Subcontractor has completed in whole or in part, and which the Owner has accepted;

10.2.4.4 In lieu of retainage, the Construction Manager may furnish a retention bond or other security interest, acceptable to the Owner, to be held by the Owner.

8.3 ADJUSTMENT OF CONSTRUCTION MANAGER'S PAYMENT APPLICATION. The Owner may adjust or reject a payment application or nullify a previously approved payment application, in whole or in part, as may reasonably be necessary to protect the Owner from loss or damage based upon the following, to the extent that the Construction Manager is responsible under the Agreement:

10.3.1 The Construction Manager's repeated failure to perform the Work as required by the Contract Documents;

10.3.2 Loss or damage arising out of or relating to this Agreement and caused by the Construction Manager to the Owner or Others to whom the Owner may be liable;

10.3.3 The Construction Manager's failure to properly pay Subcontractors and Material Suppliers following receipt of such payment from the Owner;

10.3.4 Defective Work not corrected in a timely fashion;

10.3.5 Reasonable evidence of delay in performance of the Work such that the Work will not be completed by the Dates of Substantial or Final Completion; and

10.3.6 Reasonable evidence demonstrating that the unpaid balance of the GMP is insufficient to fund the cost to complete the Work.

10.3.7 Third-party claims involving the Construction Manager or reasonable evidence demonstrating that third-party claims are likely to be filed

unless and until the Construction Manager furnishes the Owner with adequate security in the form of a surety bond, letter of credit or other collateral or commitment sufficient to discharge such claims if established.

10.3.8 No later than seven (7) Days after receipt of an application for payment, the Owner shall give written notice to the Construction Manager, at the time of disapproving or nullifying all or part of an application for payment, stating its specific reasons for such disapproval or nullification, and the remedial actions to be taken by the Construction Manager in order to receive payment. When the above reasons for disapproving or nullifying an application for payment are removed, payment will be promptly made for the amount previously withheld.

8.4 ACCEPTANCE OF WORK. Neither the Owner's payment of progress payments nor its partial or full use or occupancy of the Project constitutes acceptance of Work not complying with the Contract Documents.

8.5 PAYMENT DELAY. If for any reason not the fault of the Construction Manager the Construction Manager does not receive a progress payment from the Owner within seven (7) Days after the time such payment is due as defined in Subparagraph 10.2.1, then the Construction Manager, upon giving seven (7) Days' written notice to the Owner, and without prejudice to and in addition to any other legal remedies, may stop Work until payment of the full amount owing to the Construction Manager has been received, including interest from the date payment was due. The GMP and Dates of Substantial or Final Completion shall be equitably adjusted by a Change Order for reasonable cost and delay resulting from shutdown, delay and start-up.

8.6 SUBSTANTIAL COMPLETION

8.6.1 The Construction Manager shall notify the Owner and, if directed, its Engineer when it considers Substantial Completion of the Work or a designated portion to have been achieved. The Owner, with the assistance of its Engineer, shall promptly conduct an inspection to determine whether the Work or designated portion can be occupied or utilized for its intended use by the Owner without excessive interference in completing any remaining unfinished Work by the Construction Manager. If the Owner determines that the Work or designated portion has not reached Substantial Completion, the Owner, with the assistance of its Engineer shall promptly compile a list of items to be completed or corrected so the Owner may occupy or utilize the Work or designated portion for its intended use. The Construction Manager shall promptly complete all items on the list.

8.6.2 When Substantial Completion of the Work or a designated portion is achieved, the Construction Manager shall prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, and the respective responsibilities of the Owner and Construction Manager for interim items such as security, maintenance, utilities, insurance and damage to the Work, and fixing the time for completion of all items on the list accompanying the Certificate. The Certificate of Substantial Completion shall be submitted by the Construction Manager to the Owner, and if directed, to its Engineer for the Owner's written acceptance of responsibilities assigned in the Certificate.

8.6.3 Unless otherwise provided in the Certificate of Substantial Completion, warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or a designated portion.

8.6.4 Unless otherwise provided herein, upon acceptance by the Owner of the Certificate of Substantial Completion, the Owner shall pay to the Construction Manager the remaining retainage held by the Owner for the Work described in the Certificate of

Substantial Completion less a sum equal to two hundred percent (200%) of the estimated cost of completing or correcting remaining items on that part of the Work, as agreed to by the Owner and Construction Manager as necessary to achieve Final Completion. Uncompleted items shall be completed by the Construction Manager in a mutually agreed time frame. The Owner shall pay the Construction Manager monthly the amount retained for unfinished items as each item is completed.

8.7 PARTIAL OCCUPANCY OR USE.

8.7.1 The Owner may occupy or use completed or partially completed portions of the Work when (a) the portion of the Work is designated in a Certificate of Substantial Completion, (b) appropriate insurer(s) consent to the occupancy or use, and (c) public authorities authorize the occupancy or use. The Construction Manager shall not unreasonably withhold consent to partial occupancy or use. Owner shall not unreasonably refuse to accept partial occupancy.

8.8 FINAL COMPLETION AND FINAL PAYMENT.

8.8.1 Upon notification from the Construction Manager that the Work is complete and ready for final inspection and acceptance, the Owner, with the assistance of its Engineer shall promptly conduct an inspection to determine if the Work has been completed and is acceptable under the Contract Documents.

8.8.2 When the Work is complete, the Construction Manager shall prepare for the Owner's acceptance a final application for payment stating that to the best of the Construction Manager's knowledge, and based on the Owner's inspections, the Work has reached final completion in accordance with the Contract Documents.

8.8.3 Final payment of the balance of the GMP shall be made to the Construction Manager within twenty (20) Days after the Construction Manager has submitted an application for final payment, including submissions required under Subparagraph 10.8.4, and a Certificate of Final Completion has been executed by the Owner and Construction Manager.

8.8.4 Final payment shall be due on the Construction Manager's submission of the following to the Owner:

8.8.4.1 an affidavit declaring any indebtedness connected with the Work, e.g. payrolls or invoices for materials or equipment, to have been paid, satisfied or to be paid with the proceeds of final payment, so as not to encumber the Owner's property;

8.8.4.2 as-built drawings, manuals, copies of warranties and all other close-out documents required by the Contract Documents;

8.8.4.3 release of any liens, conditioned on final payment being received;

8.8.4.4 consent of any surety if required by Owner; and

8.8.4.5 any outstanding known and unreported accidents or injuries experienced by the Construction Manager or its Subcontractors at the Worksite.

8.8.5 If, after Substantial Completion of the Work, the Final Completion of a portion of the Work is materially delayed through no fault of the Construction Manager,

the Owner shall pay the balance due for portion(s) of the Work fully completed and accepted. If the remaining contract balance for Work not fully completed and accepted is less than the retained amount prior to payment, the Construction Manager shall submit to the Owner, and if directed the Engineer the written consent of any surety to payment of the balance due for portions of the Work that are fully completed and accepted. Such payment shall not constitute a waiver of claims, but otherwise shall be governed by Paragraph 10.8.

8.8.6 Claims not reserved in writing with the making of final payment shall be waived except for claims relating to liens or similar encumbrances, warranties and Defective Work.

8.8.7 ACCEPTANCE OF FINAL PAYMENT. Unless the Construction Manager provides written identification of unsettled claims with an application for final payment, its acceptance of final payment constitutes a waiver of such claims.

8.9 LATE PAYMENT. Payments due but unpaid shall bear interest from the date payment is due at the prime rate prevailing at the place of the Project.

ARTICLE 9.

INDEMNITY, INSURANCE, WAIVERS AND BONDS

9.1 INDEMNITY.

9.1.1 To the fullest extent permitted by law, the Construction Manager shall indemnify and hold harmless the Owner, Owner's officers, directors, members, consultants, agents, and employees, the Engineer and Others (the Indemnities) from all claims for bodily injury and property damage, other than to the Work itself and other property insured under Paragraph 11.3, including reasonable attorneys' fees, costs and expenses, that may arise from the performance of the Work, but only to the extent caused by the negligent acts or omissions of the Construction Manager, Subcontractors or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable. The Construction Manager shall be entitled to reimbursement of any defense costs paid above Construction Manager's percentage of liability for the underlying claim to the extent provided for under Subparagraph 11.1.2.

9.1.2 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Construction Manager, its officers, directors, members, consultants, agents, and employees, Subcontractors or anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable from all claims for bodily injury and property damage, other than property insured under Subparagraph 11.4.1, that may arise from the performance of work by Owner, Engineer or Others, to the extent of the negligence attributed to such acts or omissions by Owner, Engineer or Others. The Construction Manager shall be entitled to reimbursement of any defense costs paid above Construction Manager's percentage of liability for the underlying claim to the extent provided for under Subparagraph 11.1.1.

9.1.3 LIMITATION ON LIABILITY. Construction Manager's liability under this Agreement, including any claim for indemnity, shall be limited to the total amount paid to Construction Manager under this Agreement, or the amount of available insurance to be provided by Construction Manager under this section, whichever amount is greater.

9.2 INSURANCE.

Prior to the start of the Work, the Construction Manager shall procure and maintain in force Workers Compensation Insurance, Employers' Liability Insurance, Business Automobile Liability Insurance, and Commercial General Liability Insurance (CGL). The CGL policy shall include coverage for liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, contractual liability, and broad form property damage. The Construction Manager's Employers' Liability, Business Automobile Liability and Commercial General Liability policies, as required in this Subparagraph 11.2.1, shall be written with at least the following limits of liability:

11.2.1.1 Employer's Liability

- a. \$1,000,000 Bodily Injury by Accident Each Accident
- b. \$1,000,000 Bodily Injury by Disease Policy Limit
- c. \$1,000,000 Bodily Injury by Disease Each Employee

11.2.1.2 Business Automobile Liability Insurance

- a. \$1,000,000 Each Accident

11.2.1.3 Commercial General Liability Insurance

- a. \$1,000,000 Each Occurrence
- b. \$2,000,000 General Aggregate
- b. \$2,000,000 Products/Completed Operations Aggregate
- c. \$1,000,000 Personal and Advertising Injury Limit

9.2.1 Employers' Liability, Business Automobile Liability and Commercial General Liability coverages required under Subparagraph 11.3.1 may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by Excess or Umbrella Liability policies.

9.2.2 The Construction Manager shall maintain in effect all insurance coverage required under Subparagraph 11.2.1 with insurance companies lawfully authorized to do business in the jurisdiction in which the Project is located. If the Construction Manager fails to obtain or maintain any insurance coverage required under this Agreement, the Owner may purchase such coverage and charge the expense to the Construction Manager, or terminate this Agreement.

The policies of insurance required under Subparagraph 11.2.1 shall contain a provision that the coverages afforded under the policies will not be cancelled or allowed to expire until at least thirty (30) Days prior written notice has been given to the Owner. The Construction Manager shall maintain completed operations liability insurance for one year after acceptance of the Work, Substantial Completion of the Project, or to the time required by the Contract Documents, whichever is longer. Prior to commencement of the Work, Construction Manager shall furnish the Owner with certificates evidencing the required coverages.

9.3 PROPERTY INSURANCE.

11.3.1 BEFORE THE START OF THE WORK, THE CONSTRUCTION MANAGER SHALL OBTAIN AND MAINTAIN A BUILDER'S RISK POLICY UPON THE ENTIRE PROJECT FOR THE FULL COST OF REPLACEMENT AT THE TIME OF LOSS TO BE INCLUDED IN THE GMP. THIS INSURANCE SHALL ALSO NAME THE OWNER, CONSTRUCTION MANAGER, SUBCONTRACTORS AND SUB-SUBCONTRACTORS AND THE ENGINEER AS NAMED INSUREDS. THIS INSURANCE SHALL BE WRITTEN AS A BUILDER'S RISK POLICY OR EQUIVALENT FORM TO COVER ALL RISKS OR PHYSICAL LOSS EXCEPT THOSE SPECIFICALLY EXCLUDED BY THE POLICY, AND SHALL INSURE AT LEAST AGAINST THE PERILS OF FIRE, LIGHTNING, EXPLOSION, WINDSTORM, AND HAIL, SMOKE, AIRCRAFT (EXCEPT AIRCRAFT, INCLUDING HELICOPTER, OPERATED BY OR ON BEHALF OF CONSTRUCTION MANAGER) AND VEHICLES, RIOT AND CIVIL COMMOTION, TERRORISM, THEFT, VANDALISM, MALICIOUS MISCHIEF, DEBRIS REMOVAL, FLOOD, EARTHQUAKE, EARTH MOVEMENT, WATER DAMAGE, WIND, TESTING IF APPLICABLE, COLLAPSE HOWEVER CAUSED, AND DAMAGE RESULTING FROM DEFECTIVE DESIGN, WORKMANSHIP OR MATERIAL. THE OWNER SHALL BE SOLELY RESPONSIBLE FOR ANY DEDUCTIBLE AMOUNTS OR COINSURANCE PENALTIES. THIS POLICY SHALL PROVIDE FOR A WAIVER OF SUBROGATION IN FAVOR OF THE OWNER, SUBCONTRACTORS, SUB-SUBCONTRACTORS AND MATERIAL SUPPLIERS. THIS INSURANCE SHALL REMAIN IN EFFECT UNTIL FINAL PAYMENT HAS BEEN MADE OR UNTIL NO PERSON OR ENTITY OTHER THAN THE OWNER HAS AN INSURABLE INTEREST IN THE PROPERTY TO BE COVERED BY THIS INSURANCE, WHICHEVER IS SOONER. PARTIAL OCCUPANCY OR USE OF THE WORK SHALL NOT COMMENCE UNTIL THE OWNER HAS SECURED THE CONSENT OF THE INSURANCE COMPANY OR COMPANIES PROVIDING THE COVERAGE REQUIRED IN THIS SUBPARAGRAPH 11.3.1. PRIOR TO COMMENCEMENT OF THE WORK, THE OWNER SHALL PROVIDE A COPY OF THE PROPERTY POLICY OR POLICIES OBTAINED IN COMPLIANCE WITH THIS SUBPARAGRAPH 11.3.1.

9.3.2 Owner and Construction Manager waive all rights against each other and their respective employees, agents, contractors, subcontractors and sub-subcontractors for damages caused by risks covered by the property insurance provided under Subparagraph 11.3.1, except such rights as they may have to the proceeds of the insurance and such rights as the Construction Manager may have for the failure of the Owner to obtain and maintain property insurance in compliance with Subparagraph 11.3.1. To the extent of the limits of Construction Manager's Commercial General Liability Insurance specified in Subparagraph 11.3.1 or the amount paid to Construction Manager under this Agreement, whichever is more, the Construction Manager shall indemnify and hold harmless the Owner against any and all liability, claims, demands, damages, losses and expenses, including attorneys' fees, in connection with or arising out of any damage or alleged damage to any of Owner's existing adjacent property that may arise from the performance of the Work, to the extent caused by the negligent acts or omissions of the Construction Manager, Subcontractor or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable.

9.4 OWNER'S INSURANCE.

9.4.1 OWNER'S LIABILITY INSURANCE. The Owner shall obtain and maintain its own liability insurance for protection against claims arising out of the performance of this Agreement, including without limitation, loss of use and claims, losses and expenses arising out of the Owner's errors or omissions in amount equal or greater to that required from Construction Manager under Paragraph 11.2.

9.5 ROYALTIES, PATENTS AND COPYRIGHTS. The Construction Manager shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods or systems selected by the Construction Manager and incorporated in the Work. The Construction Manager shall indemnify and hold the Owner harmless from all suits or claims for infringement of any patent rights or copyrights arising out of such selection. The Owner agrees to indemnify and hold the Construction Manager harmless from any suits or claims of infringement of any patent rights or copyrights arising out of any patented or copyrighted materials, methods or systems specified by the Owner or Engineer.

9.6 BONDS.

9.6.1 Performance, Payment, and Statutory Bonds

(Designate only one)

 x are/ are not

required of the Construction Manager. Such bonds shall be issued by a surety admitted in the State in which the Project is located and must be acceptable to the Owner. The penal sum of the bonds shall be one hundred (100%) of the GMP. Any increase in the GMP that exceeds ten percent (10%) in the aggregate shall require a rider to the Bonds increasing penal sums accordingly. Up to such ten percent (10%) amount, the penal sum of the bond shall remain equal to one hundred (100%) of the original GMP. The Construction Manager shall endeavor to keep its surety advised of changes potentially impacting the GMP and Contract Time, though the Construction Manager shall require that its surety waives any requirement to be notified of any alteration or extension of time within the scope of the initial Agreement. The Construction Manager's payment bond for the Project, if any, shall be made available by the Owner for review and copying by the Subcontractor. The Owner's acceptance shall not be unreasonably withheld.

ARTICLE 10.

SUSPENSION, NOTICE TO CURE AND TERMINATION OF THE AGREEMENT

10.1 SUSPENSION BY OWNER FOR CONVENIENCE.

10.1.1 OWNER SUSPENSION. Should the Owner order the Construction Manager in writing to suspend, delay, or interrupt the performance of the Work for such period of time as may be determined to be appropriate for the convenience of the Owner and not due to any act or omission of the Construction Manager or any person or entity for whose acts or omissions the Construction Manager may be liable, then the Construction Manager shall immediately suspend, delay or interrupt that portion of the Work as ordered by the Owner. The GMP, Construction Manager's Fee and the Dates of Substantial or Final Completion shall be equitably adjusted by Change Document for the cost and delay resulting from any such suspension.

10.1.2 Any action taken by the Owner that is permitted by any other provision of the Contract Documents and that results in a suspension of part or all of the Work does not constitute a suspension of Work under this Paragraph 12.1.

10.2 NOTICE TO CURE A DEFAULT. If the Construction Manager persistently refuses or fails to supply enough properly skilled workers, proper materials, or equipment, to maintain the approved Schedule of the Work in accordance with Article 6, or fails to make prompt payment to its workers, Subcontractors or Material Suppliers, disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or is otherwise guilty of a material breach of a provision of this Agreement,

the Construction Manager may be deemed in default. If the Construction Manager fails within ten (10) Days after receipt of written notification to commence and continue satisfactory correction of such default with diligence and promptness or reach an agreement with Owner of reasonable cure of any default including a time table for cure, then the Owner shall give the Construction Manager a second notice to correct the default within a three (3) Day period. If the Construction Manager fails to promptly commence and continue satisfactory correction of the default following receipt of such second notice, the Owner without prejudice to any other rights or remedies may:

10.2.1 supply workers, equipment and other facilities as the Owner deems necessary for the satisfactory correction of the default and charge the cost to the Construction Manager, who shall be liable for the payment of same including reasonable overhead, profit and attorneys' fees;

10.2.2 contract with Others to perform such part of the Work as the Owner determines shall provide the most expeditious correction of the default, and charge the cost to the Construction Manager; who shall be liable for the payment of same including reasonable overhead, profit and attorneys' fees;

10.2.3 withhold payment due the Construction Manager in accordance with Paragraph 10.3; and

10.2.4 in the event of an emergency affecting the safety of persons or property, immediately commence and continue satisfactory correction of such default as provided in Subparagraphs 12.2.1 and 12.2.2 without first giving written notice to the Construction Manager, but shall give prompt written notice of such action to the Construction Manager following commencement of the action.

10.3 OWNER'S RIGHT TO TERMINATE FOR DEFAULT.

10.3.1 TERMINATION BY OWNER FOR DEFAULT. If, within three (3) Days of receipt of the second notice to cure pursuant to Paragraph 12.2, the Construction Manager fails to commence and satisfactorily continue correction of the default set forth in the notice to cure, the Owner may terminate this Agreement by written notice absent appropriate corrective action. Termination for default is in addition to any other remedies available to Owner under Paragraph 12.2. If the Owner's cost arising out of the Construction Manager's failure to cure, including the cost of completing the Work and reasonable attorney fees, exceeds the unpaid GMP, the Construction Manager shall be liable to the Owner for such excess costs. In the event the Owner exercises its rights under this Paragraph, upon the request of the Construction Manager the Owner shall furnish to the Construction Manager a detailed accounting of the cost incurred by the Owner.

10.3.2 If the Owner or Others perform Work under this Paragraph 12.3, the Owner shall have the right to take and use any materials and supplies belonging to the Construction Manager and located at the Worksite for the purpose of completing any remaining Work. Immediately upon completion of the Work, any remaining materials, supplies or equipment not consumed or incorporated in the Work, and not paid for by Owner, shall be returned to the Construction Manager in substantially the same condition as when they were taken, reasonable wear and tear excepted.

10.3.3 If the Construction Manager files a petition under the Bankruptcy Code, this Agreement shall terminate if the Construction Manager or the Construction Manager's trustee rejects the Agreement, if there has been a default, or if the Construction Manager is unable to give adequate assurance that the Construction Manager will perform as required by this Agreement or otherwise is unable to comply with

the requirements for assuming this Agreement under the applicable provisions of the Bankruptcy Code.

10.3.4 The Owner shall make reasonable efforts to mitigate damages arising from Construction Manager's default, and shall promptly invoice the Construction Manager for all amounts due pursuant to Paragraphs 12.2 and 12.3.

10.4 TERMINATION BY OWNER FOR CONVENIENCE.

10.4.1 Upon written notice to the Construction Manager, the Owner may, without cause, terminate this Agreement. The Construction Manager shall immediately stop the Work, follow the Owner's instructions regarding shutdown and termination procedures, and strive to minimize any further costs.

10.4.2 If the Owner terminates this Agreement pursuant to this Paragraph 12.4, the Construction Manager shall be paid

10.4.2.1 for the Work performed to date including overhead and profit;

10.4.2.2 for all demobilization costs and costs incurred as a result of the termination but not including overhead or profit on work not performed;

10.4.2.3 all retainage on all Work performed and five percent (5%) fee on all Work remaining to be performed.

10.4.3 If the Owner terminates this Agreement pursuant to Paragraphs 12.3 or 12.4, the Construction Manager shall:

10.4.3.1 execute and deliver to the Owner all papers and take all action required to assign, transfer and vest in the Owner the rights of the Construction Manager to all materials, supplies and equipment for which payment has or will be made in accordance with the Contract Documents and all subcontracts, orders and commitments which have been made in accordance with the Contract Documents;

10.4.3.2 exert reasonable efforts to reduce to a minimum the Owner's liability for subcontracts, orders and commitments that have not been fulfilled at the time of the termination;

10.4.3.3 cancel any subcontracts, orders and commitments as the Owner directs; and

10.4.3.4 sell at prices approved by the Owner any materials, supplies and equipment as the Owner directs, with all proceeds paid or credited to the Owner.

10.5 CONSTRUCTION MANAGER'S RIGHT TO TERMINATE.

10.5.1 Upon ten (10) Business Days' written notice to the Owner, the Construction Manager may terminate this Agreement if the Work has been stopped for a thirty (30) Day period through no fault of the Construction Manager for any of the following reasons:

10.5.1.1 under court order or order of other governmental authorities having jurisdiction;

10.5.1.2 as a result of the declaration of a national emergency or other governmental act during which, through no act or fault of the Construction Manager, materials are not available; or

10.5.1.3 suspension by Owner for convenience pursuant to Paragraph 12.1.

10.5.2 In addition, upon ten (10) Days' written notice to the Owner, the Construction Manager may terminate the Agreement if the Owner:

10.5.2.1 fails to furnish reasonable evidence pursuant to Paragraph 4.2 that sufficient funds are available and committed for Project financing or

10.5.2.2 assigns this Agreement over the Construction Manager's reasonable objection, or

10.5.2.3 fails to pay the Construction Manager in accordance with this Agreement and the Construction Manager has complied with Paragraph 10.6,

10.5.3 Upon termination by the Construction Manager in accordance with Paragraph 12.5, the Construction Manager shall be entitled to recover from the Owner payment for all Work executed and for any proven loss, cost or expense in connection with the Work, including all demobilization costs plus five percent (5%) on Work not performed.

10.6 OBLIGATIONS ARISING BEFORE TERMINATION. Even after termination pursuant to Article 12, the provisions of this Agreement still apply to any Work performed, payments made, events occurring, costs charged or incurred or obligations arising before the termination date.

ARTICLE 11.

DISPUTE MITIGATION AND RESOLUTION

11.1 WORK CONTINUANCE AND PAYMENT. Unless otherwise agreed in writing, the Construction Manager shall continue the Work and maintain the Schedule of the Work during any dispute resolution proceedings. If the Construction Manager continues to perform, the Owner shall continue to make payments in accordance with this Agreement.

11.2 DIRECT DISCUSSIONS. If the Parties cannot reach resolution on a matter relating to or arising out of the Agreement, the Parties shall endeavor to reach resolution through good faith direct discussions between the Parties' representatives, who shall possess the necessary authority to resolve such matter and who shall record the date of first discussions. If the Parties' representatives are not able to resolve such matter within five (5) business Days from the date of first discussion, the Parties' representatives shall immediately inform senior executives of the Parties in writing that resolution was not affected. Upon receipt of such notice, the senior executives of the Parties shall meet within five (5) business Days to endeavor to reach resolution. If the dispute remains unresolved after fifteen (15) Days from the date of first discussion, the

Parties shall submit such matter to the dispute mitigation and dispute resolution procedures selected herein.

11.3 MEDIATION. If direct discussions pursuant to Paragraph 13.2 do not result in resolution of the matter, the Parties shall endeavor to resolve the matter by mediation. The mediation rules and administration of the mediation shall be as mutually agreed by the Parties. The mediation shall be convened within thirty (30) business Days of the matter first being discussed and shall conclude within forty-five (45) business Days of the matter being first discussed. Either Party may terminate the mediation at any time after the first session, but the decision to terminate shall be delivered in person by the terminating Party to the non-terminating Party and to the mediator. The costs of the mediation shall be shared equally by the Parties.

11.4 BINDING DISPUTE RESOLUTION. If the matter remains unresolved after submission of the matter to a mitigation procedure or to mediation, the Parties shall submit the matter to the binding dispute resolution procedure selected herein:

(Designate only one):

 X Litigation in either the state or federal court having jurisdiction of the matter in the location of the Project.

11.4.1 VENUE. The venue of any binding dispute resolution procedure shall be the location of the Project unless the Parties agree on a mutually convenient location.

11.5 MULTIPARTY PROCEEDING. The Parties agree that all Parties necessary to resolve a claim shall be Parties to the same dispute resolution proceeding. Appropriate provisions shall be included in all other contracts relating to the Work to provide for the joinder or consolidation of such dispute resolution procedures.

11.6 LIEN RIGHTS. Nothing in this Article 13 shall limit any rights or remedies not expressly waived by the Construction Manager that the Construction Manager may have under lien laws.

ARTICLE 12.

MISCELLANEOUS PROVISIONS

12.1 ASSIGNMENT. Neither the Owner nor the Construction Manager shall assign their interest in this Agreement without the written consent of the other except as to the assignment of proceeds. The terms and conditions of this Agreement shall be binding upon both Parties, their partners, successors, assigns and legal representatives. Neither Party to this Agreement shall assign the Agreement as a whole without written consent of the other except that the Owner may assign the Agreement to a wholly owned subsidiary of Owner when Owner has fully indemnified Construction Manager or to an institutional lender providing construction financing for the Project as long as the assignment is no less favorable to the Construction Manager than this Agreement. In the event of such assignment, the Construction Manager shall execute any consent reasonably required. In such event, the wholly owned subsidiary or lender shall assume the Owner's rights and obligations under the Contract Documents. If either Party attempts to make such an assignment, that Party shall nevertheless remain legally responsible for all obligations under this Agreement, unless otherwise agreed by the other Party.

12.2 GOVERNING LAW. This Agreement shall be governed by the law of the State of Kansas.

12.3 SEVERABILITY. The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.

12.4 NO WAIVER OF PERFORMANCE. The failure of either Party to insist, in any one or more instances, on the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right with respect to further performance or any other term, covenant, condition or right.

12.5 TITLES AND GROUPINGS. The titles given to the articles of this Agreement are for ease of reference only and shall not be relied upon or cited for any other purpose. The grouping of the articles in this Agreement and of the Owner's specifications under the various headings is solely for the purpose of convenient organization and in no event shall the grouping of provisions, the use of paragraphs or the use of headings be construed to limit or alter the meaning of any provisions.

12.6 JOINT DRAFTING. The Parties expressly agree that this Agreement was jointly drafted, and that both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to execution. Therefore, this Agreement shall be construed neither against nor in favor of either Party, but shall be construed in a neutral manner.

12.7 RIGHTS AND REMEDIES. The Parties' rights, liabilities, responsibilities and remedies with respect to this Agreement, whether in contract, tort, negligence or otherwise, shall be exclusively those expressly set forth in this Agreement.

ARTICLE 13.

CONTRACT DOCUMENTS

13.1 The Contract Documents in existence at the time of execution of this Agreement are as follows:

13.2 INTERPRETATION OF CONTRACT DOCUMENTS.

13.2.1 The drawings and specifications are complementary. If Work is shown only on one but not on the other, the Construction Manager shall perform the Work as though fully described on both consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

13.2.2 In case of conflicts between the drawings and specifications, the specifications shall govern. In any case of omissions or errors in figures, drawings or specifications, the Construction Manager shall immediately submit the matter to the Owner and, if directed, to its Engineer for clarification. The Owner's clarifications are final and binding on all Parties, subject to an equitable adjustment in Dates of Substantial or Final Completion or Price pursuant to Article 9 or dispute resolution in accordance with Article 13.

13.2.3 Where figures are given, they shall be preferred to scaled dimensions.

13.2.4 Any terms that have well-known technical or trade meanings, unless otherwise specifically defined in this Agreement, shall be interpreted in accordance with their well-known meanings.

13.2.5 In case of any inconsistency, conflict or ambiguity among the Contract Documents, the documents shall govern in the following order: (a) Change Orders and written amendments to this Agreement; (b) the Agreement; (c) subject to Subparagraph 15.2.2 the drawings, specifications and addenda issued prior to the execution of this Agreement; (d) approved submittals; (e) information furnished by the Owner pursuant to Paragraph 4.3; (f) other documents listed in this Agreement. Among all the Contract Documents, the term or provision that is most specific or includes the latest date shall control. Information identified in one Contract Document and not identified in another shall not be considered to be a conflict or inconsistency. If any provision of this Agreement conflicts with or is inconsistent with any other provision of other Contract Documents, the provision of this Agreement governs, unless the other provision specifically refers to the provision it supersedes and replaces in this Agreement.

This Agreement is entered into as of the date entered in Article 1.

ATTEST:

OWNER: City of Dodge City

BY:

PRINT NAME _____

PRINT TITLE _____

ATTEST:

CONSTRUCTION MANAGER: Utility Contractors, Inc. d/b/a UCI

BY:

PRINT NAME _____

PRINT TITLE _____

Memorandum

*To: City Manager
Assistant City Manager
City Commissioners*

From: Dennis Veatch

Date: August 11, 2010

*Subject: 10-13 Overland Property Group
Rezoning Of Trinity Association
Property*

Agenda Item: Ordinances and Resolutions

Recommendation: The Dodge City Zoning Board is recommending approval of Ordinance No. 3494. Development Services Staff concurs with the recommendation.

Background: Mr. Brett Johnson, member of Overland Property Group, LLC, submitted an application on June 18, 2010 to rezone a tract of land north of Trinity Manor and east of Sixth Avenue from R-S, Residential Suburban to R-3, Residential High Density. Owners of the property, Methodist Hospital Association, Inc., submitted a Letter of Authorization authorizing Overland Property Group to act as an agent for the purpose of gaining approval for this project. The Zoning Board held a public hearing on July 29, 2010 to review this case. The Zoning Board is recommending approval of the rezoning by a 4-0 vote on the basis of staff recommendation, compatibility with the City Comprehensive Plan and proximity to adjacent R-3 zoning districts and uses. This hearing was duly advertised in the Dodge City Daily Globe. There were a number of citizens in attendance that spoke for and against this request. The owners within 200 feet of the proposed area submitted a protest petition at the end of the public hearing on July 29, 2010. 14 owners out of the total 19 owners of record signed the protest petition. The protest petition has been determined to be sufficient enough to require that the ordinance adopting the amendment shall not be passed except by at least a $\frac{3}{4}$ vote of all of the members of the governing body. The governing body may choose to override the Zoning Boards recommendation by a $\frac{2}{3}$ majority vote of the membership of the governing body or return such recommendation to the Zoning Board with a statement specifying the basis of failure to approve or disapprove.

Justification: Mr. Johnson proposes to develop this property into affordable housing. The development conforms to the Dodge City Zoning Regulations and the City Comprehensive Plan.

Financial Considerations: None

Purpose/Mission: To provide affordable housing within the community of Dodge City.

Legal Considerations: None

Attachments: Ordinance No. 3494, Development Services Report and map showing proposed rezoning.

ORDINANCE NO. 3494

AN ORDINANCE REZONING A TRACT OF LAND FROM R-S, RESIDENTIAL SUBURBAN TO R-3, RESIDENTIAL HIGH 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 R-S, Residential Suburban to R-3, Residential High Density:

A tract of land lying South of Lots 1,2 and 3, and West of Lots 6, 7, 8 and 9, Block 7, Ross Addition to the City of Dodge City, Ford County, Kansas, more fully described as follows; Commencing at the Southwest corner of Lot 1, Block 7, of said Ross Addition, thence South 89 degrees 27 minutes 26 seconds East along the South line of Lots 1, 2 and 3, Block 7, of said Ross Addition for a distance of 320.00 feet; thence South 0 degrees 28 minutes 13 seconds East along the West line of Lots 6,7,8 and 9, Block 7, of said Ross Addition for a distance of 393.94 feet, to the Southwest corner of Lot 9, Block 7, of said Ross Addition; thence at right angles to the previous course South 89 degrees 31 minutes 47 seconds West for a distance of 319.95 feet to the East Right of Way line of Sixth Avenue; thence North 0 degrees 28 minutes 13 seconds West along the East Right of Way line of Sixth Avenue for a distance of 399.60 feet to the point of beginning, said descriptive tract containing 2.91 acres, more or less.

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 AUGUST, 2010.

E KENT SMOLL, MAYOR

ATTEST:

NANNETTE POGUE, CITY CLERK

**CITY OF DODGE CITY
DEVELOPMENT SERVICES REPORT
CASE NO. 10-13**

APPLICANT: Brett Johnson - Overland Prop.

REQUEST: Zoning Map amendment, from R-S, Residential Suburban to R-3, Residential High-Density.

SURROUNDING LAND USES (ZONING):

- North-Residential High Density (R-3)
- South- Residential Suburban (R-S)
- East- Residential High Density (R-3)
- West- Residential Low Density (R-1)

BACKGROUND

This property has always been zoned R-S, Residential Suburban since annexation into the city limits. It is vacant and has never been developed or subdivided. The property to the North and East was platted as Ross Addition and approved and filed on April 9, 1976. Zoning Ordinance No. 2171 designated Lots 1 thru 11, Block 7, Ross Addition as R-3, Multiple Family Residential and passed by the Governing Body of the City of Dodge City on July 6, 1976.

The Comprehensive Plan indicates that this site is located within a Residential Stable Neighborhood predominantly comprising of well maintained single family and 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.

Residential Stable Neighborhood policies should be followed:

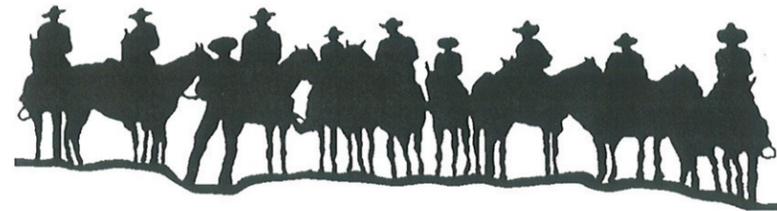
- Timely, routine maintenance of all property is specifically encouraged. Enforcement of the Property Maintenance Code will correct any minor problems before they become severe.
- Vacant land or the reuse of presently occupied land or structures should be used for residential, public, or semi-public uses (such as schools and places of worship).
- 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.
- 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.

ANALYSIS

This site is adjacent to R-3, Residential High Density zoning district to the North and East. The proposed development plan provides adequate access and Sixth Street is capable of safely accommodating the traffic added by the higher density. This zoning change would be compatible to the surrounding area.

RECOMMEDATION

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



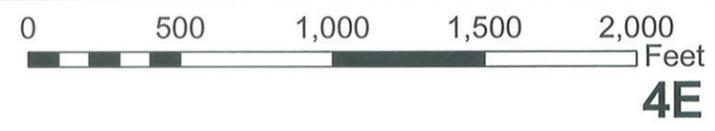
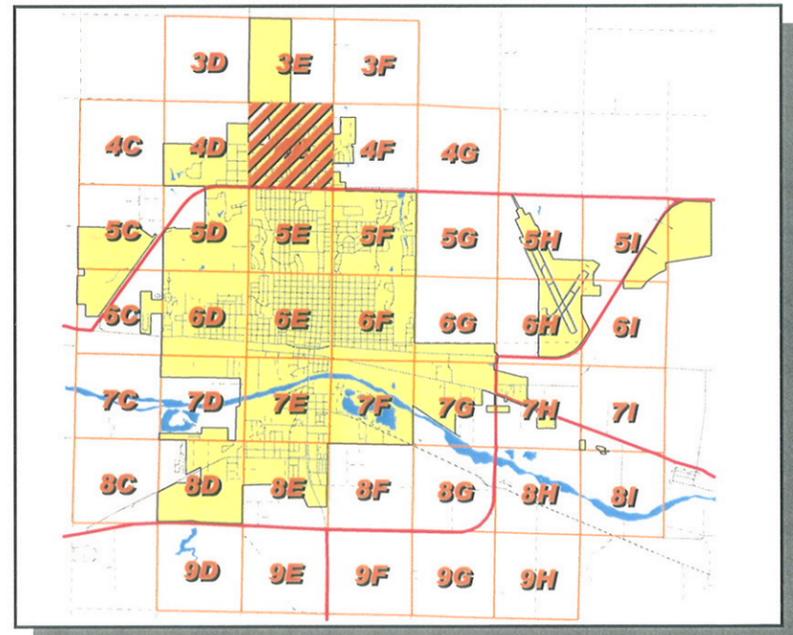
Zoning Map

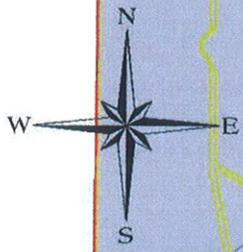
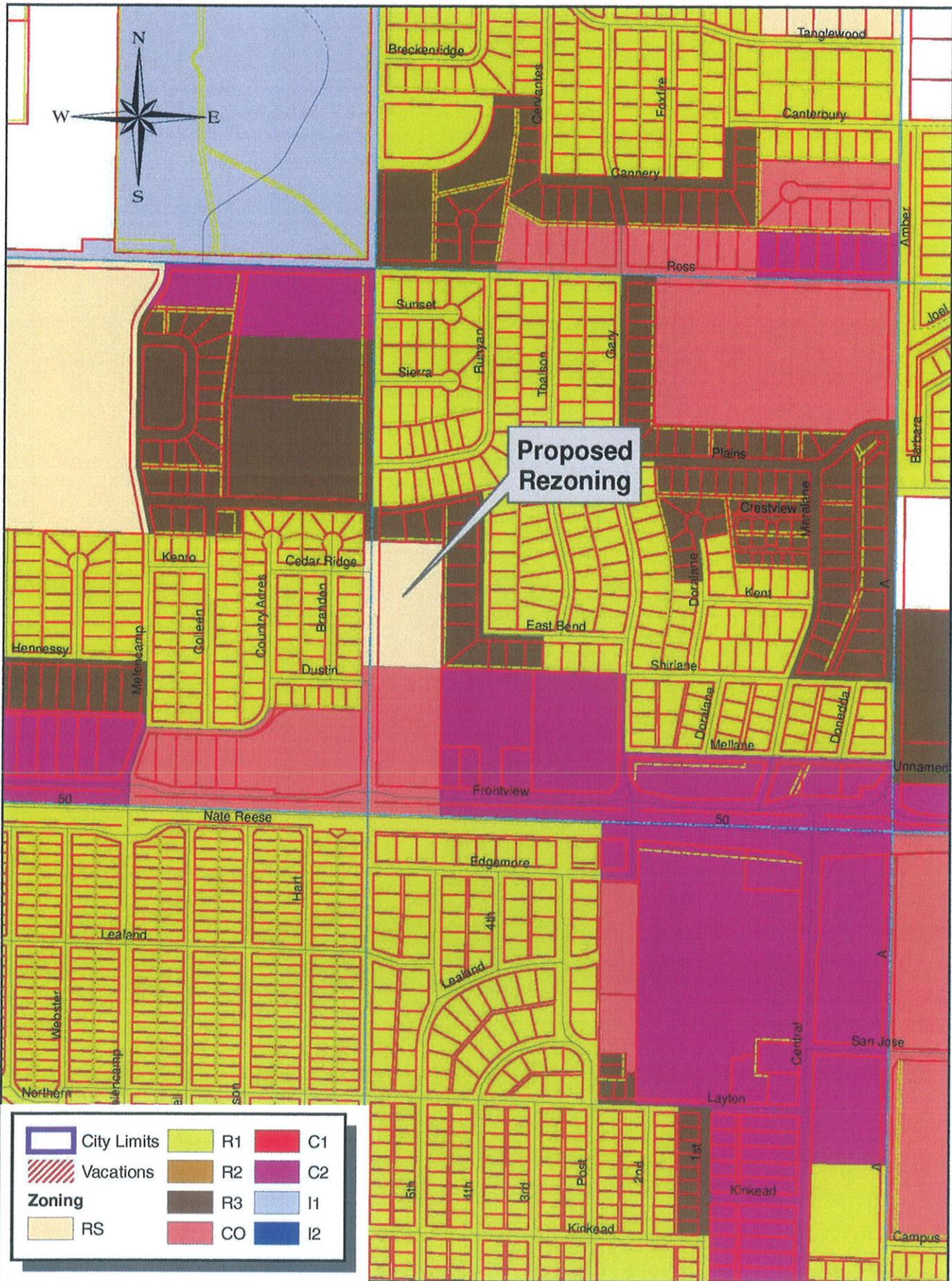
of the City of Dodge City

Mapped, edited, and published by the
 City of Dodge City, Engineering Department.
 806 2nd Ave., P.O. Box 880, Dodge City, Kansas 67801
 Ph. (620) 225-8106

Aug 09, 2010

	City Limits		R1		C1
	Vacations		R2		C2
Zoning			R3		I1
	RS		CO		I2





**Proposed
Rezoning**

	City Limits		R1		C1
	Vacations		R2		C2
Zoning			R3		I1
	RS		CO		I2



7-29-10

PROTEST PETITION

TO THE GOVERNING BODY OF THE CITY OF DODGE CITY, KANSAS:

We, the undersigned, being owners of record of property within a two hundred (200) foot radius of the property described below to wit:

Tract of land East of 6th St + North of Trinity Association, bound by the South line of Lots 23 & 4, Block 7 and the West line of Lots 5, 6, 7, 8 & 9, Block 7, Ross Addition.

NOTICE: The names may not be withdrawn from this petition by the signers hereof after the Governing Body commences consideration of the petition or later than seven (7) days after the petition is filed, whichever occurs first.

<u>NAME</u>	<u>ADDRESS</u>	<u>PHONE</u>
Nancy L. Thomas	2704 Brandon Lane	620-227-6596
Nancy L. Thomas		
Rita A. Slattery	Rita A. Slattery 2700 Brandon Ln	620-225-1203
Curt Thomas	2704 Brandon Ln	620-227-6596
Curt Thomas		
Don Wade	2708 Brandon Lane	620-225-6383
Marie A. Wade		
Alice H. Ohlmeier	2706 Brandon Lane	620-225-4698
Blenda L. Ohlmeier	2706 Brandon Ln.	620-225-4698
Barbie L. Ackerman	2710 Brandon Ln.	620-225-2530
John M. Ackerman	2710 Brandon Lane	620-225-2530
Angie M. Ackerman	2802 Brandon Ct.	620-225-6605
Mavis Reener	511 Runyan	620 225 0611
Shirley Reener	511 Runyan	620 225 0611
Cherry L. Reener	509 Runyan	620 255 3499
Bryan L. Reener	509 Runyan	620 255 1108
Marjorie Reener	2802 Brandon Court	620-225-6605
Rosalva Pena	513 Runyan Ave	620-225-4796
Luzita Camp	513 Runyan	(620) 225-47-96

PROTEST PETITION

TO THE GOVERNING BODY OF THE CITY OF DODGE CITY, KANSAS:

We, the undersigned, being owners of record of property within a two hundred (200) foot radius of the property described below to wit:

Tract of land East of 6th St + North of Trinity Association, bound by the South Line of Lots 2, 3 + 4, Block 7 and the West Line of Lots 5, 6, 7, 8 + 9, Block 7, Ross Addition

NOTICE: The names may not be withdrawn from this petition by the signers hereof after the Governing Body commences consideration of the petition or later than seven (7) days after the petition is filed, whichever occurs first.

<u>NAME</u>	<u>ADDRESS</u>	<u>PHONE</u>
Nolan Robertson	507 Runyan Ave.	620-225-6662
Debbie Robertson	507 Runyan Ave.	620-225-6662
John Burner	2806 Brandon Ct.	620-561-7027
Kaycie Pogner	2806 Brandon Ct.	620-225-3498
Lynn Heenan	2800 Brandon Ct.	(620) 225-4487
Frances Whitten	2804 Brandon Ct.	(620) 225-9170
Randy Waldgren	2804 Brandon Ct.	620-225-9670
Lee Wherki	2702 Brandon Ln.	620-227-3480
Sharon Perkins	2702 Brandon Lane	620-227-3480

Memorandum

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

From: Nannette Pogue

Date: August 11, 2010

Subject: Budget Ordinance

Agenda Item: Ordinances and Resolutions

Recommendation: I recommend the approval of Ordinance No. 3495

Background: The State of Kansas requires an Ordinance be adopted by the City if tax revenues increase from the previous year. I have included the worksheet to determine if the tax has increased excluding the debt service levy. For the 2011 budget there was an increase in the amount of property tax that is required so an Ordinance is required. That ordinance is attached and simply states that the Commission has scheduled a public hearing and has determined that in order to maintain the level of service provided, an increase in tax levy is necessary.

Justification: In order to maintain the level of service provided, the property tax required to fund the 2011 Budget increased from the 2010 Budget.

Financial Considerations: The mill levy of 49.908 remained the same, but the amount levied increased by \$268,405.

Purpose/Mission: Maintain quality of life.

Legal Considerations: Ordinance required by State Statute.

Attachments: Ordinance No. .

ORDINANCE NO. 3495

AN ORDINANCE ATTESTING TO AN INCREASE IN TAX REVENUES FOR THE BUDGET YEAR 2011 FOR THE CITY OF DODGE CITY.

WHEREAS, the City of Dodge City must continue to provide services to protect the health, safety, and welfare of the citizens of this community; and

WHEREAS, the cost of providing essential services to the citizens of this city continues to increase.

NOW THEREFORE, be it ordained by the Governing Body of the City of Dodge City:

Section 1. In accordance with state law, the City of Dodge City has scheduled a public hearing and has prepared the proposed budget necessary to fund city services from January 1, 2011 until December 31, 2011.

Section 2. After careful public deliberations, the governing body has determined that in order to maintain the public services that are essential for the citizens of this city, it will be necessary to budget property tax revenues in an amount exceeding the levy in the 2010 budget.

Section 3. This ordinance shall take effect after publication once in the official city newspaper.

Passed and approved by the Governing Body on this 16st day of August, 2011.

Mayor

ATTEST:

City Clerk

Computation to Determine Limit for 2011

	Amount of Levy
1. Total Tax Levy Amount in 2010 Budget	+ \$ <u>6,193,539</u>
2. Debt Service Levy in 2010 Budget	- \$ <u>1,892,371</u>
3. Tax Levy Excluding Debt Service	<u>\$ 4,301,168</u>
 2010 Valuation Information for Valuation Adjustments:	
4. New Improvements for 2010:	+ <u>4,927,413</u>
5. Increase in Personal Property for 2010:	
5a. Personal Property 2010	+ <u>7,450,394</u>
5b. Personal Property 2009	- <u>8,404,508</u>
5c. Increase in Personal Property (5a minus 5b)	+ <u>0</u>
	(Use Only if > 0)
6. Valuation of annexed territory for 2010	
6a. Real Estate	+ <u>0</u>
6b. State Assessed	+ <u>0</u>
6c. New Improvements	- <u>0</u>
6d. Total Adjustment (Sum of 6a, 6b, and 6c)	+ <u>0</u>
7. Valuation of Property that has Changed in Use during 2010	<u>2,569,503</u>
8. Total Valuation Adjustment (Sum of 4, 5c, 6d & 7)	<u>7,496,916</u>
9. Total Estimated Valuation July 1, 2010	<u>129,478,126</u>
10. Total Valuation less Valuation Adjustment (9 minus 8)	<u>121,981,210</u>
11. Factor for Increase (8 divided by 10)	<u>0.06146</u>
12. Amount of Increase (11 times 3)	+ \$ <u>264,348</u>
13. Maximum Tax Levy, excluding debt service, without an Ordinance (3 plus 12)	\$ <u><u>4,565,516</u></u>
14. Debt Service in this 2011 Budget	<u>1,738,960</u>
15. Maximum levy, including debt service, without an Ordinance (13 plus 14)	<u><u>6,304,476</u></u>

If the 2011 budget includes tax levies exceeding the total on line 15, you must adopt an ordinance to exceed this limit, publish the ordinance, and attach a copy of the published ordinance to this budget.

Memorandum

*To: City Manager
Assistant City Manager
City Commissioners*

From: Jane Longmeyer ^{jl}

Date: August 16, 2010

Subject: Cultural Relations Adv. Board

Agenda Item: New Business

Recommendation: Approve the resignation of Vernon Bogart and the appointment of Debra Muylaert to Cultural Relations Advisory Board representing the Ministerial Alliance.

Background: Resolution No. 2010-19 adopted on June 21, 2010 established the creation of a nine-member Board. Vernon Bogart submitted an application on behalf of the Ministerial Alliance. After the deadline for applications, an application was submitted by Debra Muylaert. Vernon is resigning and requests the appointment of Debra to represent the Ministerial Alliance.

Justification: The appointment is a result of the resignation of Vernon Bogart.

Financial Considerations: None.

Purpose/Mission: The City of Dodge City Mission Statement is "Together, we promote open communications with our community members to improve quality of life and preserve our heritage to foster a better future." The purpose of the Cultural Relations Advisory Board would meet the City's mission.

Legal Considerations: None

Attachments: Resignation Letter/Application

August 6, 2010

Jane Longmeyer
Director of Public Relations
City of Dodge City
P.O. Box 880
806 N. Second
Dodge City, KS 67801

RE: Cultural Relations Advisory Board

Dear Jane:

This letter is to advise you of my resignation from the Cultural Advisory Board. As I told you I submitted my name to be considered because the time was short for any other ministers to contact me concerning this appointment.

At this time I have an application from Debra Muylaert, pastor of Kingdom Harvest Church, which is enclosed.

Please consider her for this Board as she has expressed a desire to participate.

Thank you for your consideration.


Vernon Bogart, President
Dodge City Ministerial Alliance

CC: Debra Muylaert
file

Encl:

APPLICATION FOR CITY OF DODGE CITY ADVISORY BOARDS

NAME: Debra L. Maylaert OCCUPATION: Pastor / Teacher
ADDRESS: P.O. Box 1895, Dodge City, KS 67801-1895 TELEPHONE: (620) 430-6892
Advisory Board(s) you wish to be considered for: Cultural Relations Advisory Board

Tell us about your educational background:

School	Dates Attended	Major
<u>Regent Univ, Virginia Beach, VA</u>	<u>2002-2006</u>	<u>Practical Theology (M.Div.)</u>
<u>Jacksonville State Univ, Jacksonville, AL</u>	<u>1986-1992</u>	<u>Public Admin - Criminal Justice</u>
<u>Wichita State Univ, Wichita, KS</u>	<u>1980-1982</u>	<u>Admin. of Justice (BS) (MPA)</u>
<u>Garden City Comm. College</u>	<u>1978-1980</u>	<u>Police Science (Assoc. Degree)</u>

Work history:

Job and Title	Dates of Employment
<u>Kingdom Harvest, Founding Pastor</u>	<u>2006 - Present</u>
<u>DCCC Adult Learning Center, ESL Instructor</u>	<u>2007 - Present</u>
<u>Regent University, Adjunct Professor</u>	<u>2005 - 2009</u>

To the best of your knowledge, would the appointment of you to the Cultural Relations advisory board create any conflicts of interest due to your employment or business endeavors? If yes, please explain:
No, not that I'm aware of.

Have you ever served on any advisory board, committee, etc. of another public body? If you have, please tell us something about it.
No.

Tell us about other qualifications you have which you feel qualify you for appointment.
I'm a U.S. Army retiree. As a veteran, I served and worked with people from many different cultures. Through the military, I attended training in the Hispanic culture (Latin American Orientation Course).
Signature: Debra L. Maylaert Date: 7/16/10

Please return to: City Manager's Office, City Hall, P.O. Box 880, Dodge City, Kansas 67801-0880.

Thank you for your interest!

Memorandum

*To: City Manager
Assistant City Manager
City Commissioners*

From: Dennis Veatch

Date: August 10, 2010

*Subject: Happy Trails Subdivision
Final Plat*

Agenda Item: New Business

Recommendation: The Dodge City Zoning Board met June 15, 2010 to review the Final Plat of Happy Trails Subdivision. They are recommending approval of this plat. City staff also concurs with the recommendation.

Background: Taylor & Associates, Inc. submitted an application for this plat on behalf of the owner on February 12, 2009. The preliminary plat was reviewed by the Zoning Board on March 17, 2009. The Zoning Board tabled approval because there were too many issues unresolved. The Zoning Board met again on April 13, 2010 and approved the preliminary plat. The Zoning Board approved the Final Plat on June 15, 2010.

Justification: This plat conforms to the Dodge City Subdivision Regulations, Dodge City Zoning Regulations and the City Comprehensive Plan.

Financial Considerations: None

Purpose/Mission: To create additional lots for sale and redevelopment.

Legal Considerations: None

Attachments: Final Plat of Happy Trails Subdivision

Memorandum

*To: City Manager
Assistant City Manager
City Commissioners*

From: Dennis Veatch

Date: August 10, 2010

Subject: Wagon Wheel Add.

Agenda Item: New Business

Recommendation: The Dodge City Zoning Board met July 29, 2010 to review the Final Plat of Wagon Wheel Addition. They are recommending approval of this plat. City staff also concurs with the recommendation.

Background: SMH Consultants submitted an application for this plat on behalf of the owner on March 15, 2010. The Development Services Committee reviewed the plat and comments were furnished to the Zoning Board.

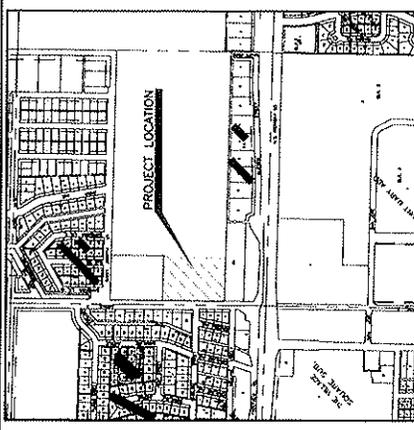
Justification: This plat conforms to the Dodge City Subdivision Regulations, Dodge City Zoning Regulations & City Comprehensive Plan.

Financial Considerations: None

Purpose/Mission: To create additional lots for sale and redevelopment

Legal Considerations: None

Attachments: Final Plat of Wagon Wheel Addition.



VICINITY MAP
(NOT TO SCALE)

Curve #	Length	Radius	Delta	Chord Direction	Chord Length
C1	77.90'	50.00'	89°15'53"	S 44°10'00" E	70.26'
C2	79.18'	50.00'	90°44'07"	S 45°50'00" W	71.16'

Point	Station	North	West	Unit	Opp.	Closure	Table	Distance
1	0+00.00	0.00	0.00	ft				0.00
2	1+72.665	10.15	874.10	ft		N 00°27'08"E		843.40
3	3+172.374	3.38	875.21	ft		S 88°47'37"E		511.57
4	4+172.203	0.89	875.16	ft		S 00°26'44"W		64.31
5	5+172.204	1.72	874.70	ft		N 88°47'14"W		511.64

Perimeter: 2310.12 Accum. Perimeter: 2310.12
 Approx. Sz. Feet: 230196.61 Acres: 7.587
 Approx. Acrem. - 54.196 Acres: 7.587
 Corner: E6403 Coordinates: North: 172004.77 East: 874705.07
 Ending Coordinates: North: 172004.72 East: 874705.08
 Error: N: -0.05 E: 0.01 Total: 0.01 Brg: N 88°25'25"W
 Distance Traveled: 2310.12 Closure: 342782

Final Plat

WAGON WHEEL
ADDITION, UNIT ONE

an Addition, City of Dodge City,
Ford County, Kansas



4201B Anderson Avenue, Suite 2 • Miamonia, Kansas 66503
 (785) 776-0541 • FAX 776-9760 • Email: info@smhconsultants.com
 Project #091218FE DD #83

AUGUST 2010

SHEET 1 OF 2



SCALE: 1" = 60'

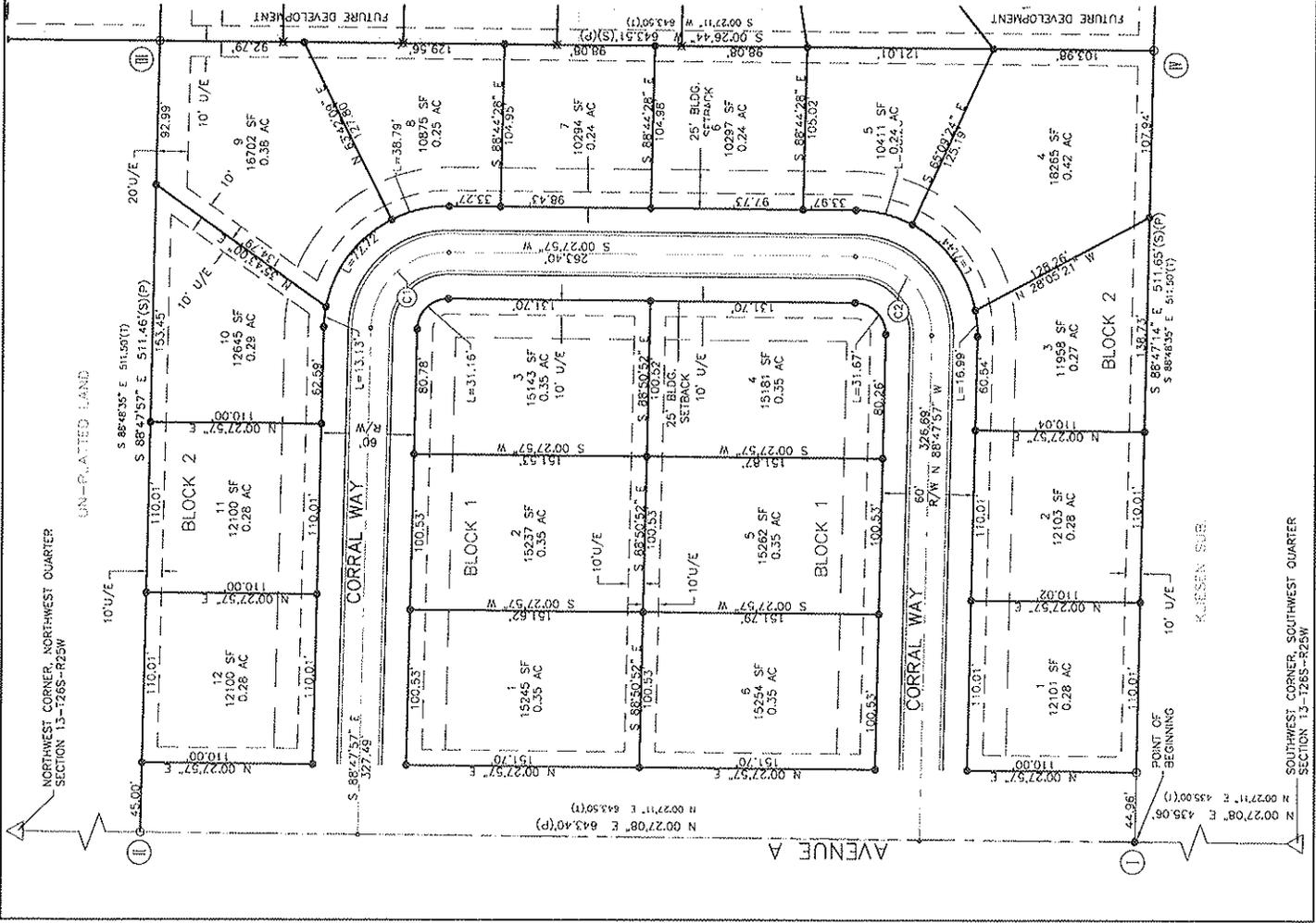
REFERENCE TIES

- I. 1/2" IRON FOUND SET AT CORNER
2. WEST GAS METER RISER
3. TOP CENTERLINE TELEPHONE PEDESTAL
4. UNDERGROUND ELECTRIC ON POWER POLE
- II. 1/2" IRON BAR FOUND AT CORNER
1. 1/2" IRON BAR W/ RED CAP, WINDHOLZ NLS 1224
2. 1/2" IRON BAR W/ RED CAP, WINDHOLZ NLS 1224
3. 1/2" IRON BAR W/ RED CAP, WINDHOLZ NLS 1224
4. TRAVELWAY DRIVEWAY
- III. 1/2" IRON BAR FOUND AT CORNER
1. 1/2" IRON BAR W/ RED CAP, WINDHOLZ NLS 1224
2. FENCE LINE BEARING NORTH
3. N/A
4. N/A
- IV. 1/2" IRON BAR W/ RED CAP, WINDHOLZ NLS 1224
1. 1/2" IRON BAR W/ RED CAP, WINDHOLZ NLS 1224
2. FENCE BEARING EAST - WEST
3. 1/2" IRON BAR W/ RED CAP, WINDHOLZ NLS 1224
4. 1/2" IRON BAR W/ RED CAP, WINDHOLZ NLS 1224

L. E. G. E. N. D

- MONUMENT FOUND (1/2" REBAR), ORIGIN - SURVEY BY TAYLOR & ASSOC., DATED 5/29/2009
- 1/2"x2"x REBAR W/ LS86 CAP SET
- ✳ MONUMENT NOT SET
- (S)(P) SURVEYED DISTANCE AND/OR PLAT DISTANCE
- (T) SURVEYED DISTANCE 5/29/2009 BY TAYLOR & ASSOC.

BEARINGS USED FOR THIS SURVEY
 ARE BASED ON THE 1983
 LINE OF MERIDIAN HILL'S SUBDIVISION,
 BEING S 88°45'52" E.



K. RESEN, SUR.

SOUTHWEST CORNER, SOUTHWEST QUARTER
SECTION T3-1285-R25W

CITY APPROVAL
STATE OF KANSAS
CITY OF DODGE CITY

THE ABOVE AND FOREGOING DOCUMENT KNOWN AS "WAGON WHEEL ADDITION, UNIT ONE" TO THE CITY OF DODGE CITY, FORD COUNTY, KANSAS, HAS BEEN SUBMITTED TO THE GOVERNING BODY OF THE CITY OF DODGE CITY, FORD COUNTY, KANSAS AT THE REGULAR MEETING HELD ON THE _____ DAY OF _____, 2010, AND THE SAME IS HEREBY APPROVED THIS _____ DAY OF _____, 2010.

KENT SMALL, MAYOR
MANNETTE POQUE, CITY CLERK

CERTIFICATION BY COUNTY SURVEYOR
STATE OF KANSAS
COUNTY OF FORD

THE PLAT HAS BEEN EXAMINED THIS _____ DAY OF _____, 2010 FOR COMPLIANCE WITH THE REQUIREMENTS OF THE ACT CONCERNING LAND SURVEYS IN THE STATE OF KANSAS, K.S.A. 38-2300.

EDWARD W. EDAM, COUNTY SURVEYOR, FORD COUNTY, KANSAS

DODGE CITY ZONING BOARD:
THIS PLAT OF "WAGON WHEEL ADDITION, UNIT ONE" HAS BEEN SUBMITTED TO AND APPROVED BY THE DODGE CITY ZONING BOARD THIS _____ DAY OF _____, 2010.

SECRETARY: DENNIS T. VATCH

REGISTER OF DEEDS CERTIFICATE
STATE OF KANSAS
COUNTY OF FORD

THIS IS TO CERTIFY THAT THIS INSTRUMENT WAS FILED FOR RECORD IN THE OFFICE OF THE REGISTER OF DEEDS ON THIS _____ DAY OF _____, 2010 IN PLAT BOOK _____ PAGE _____ AND IS DUPLY RECORDED.

BRENDA POQUE, FORD COUNTY REGISTER OF DEEDS

TRANSFER RECORD CERTIFICATE:
THIS IS TO CERTIFY THAT THIS INSTRUMENT WAS ENTERED INTO THE TRANSFER RECORD ON THIS _____ DAY OF _____, 2010.

SHARON SIBREL, FORD COUNTY CLERK

Final Plat
**WAGON WHEEL
ADDITION, UNIT ONE**
an Addition, City of Dodge City,
Ford County, Kansas



4021B Anderson Avenue, Suite 2 • Manhattan, Kansas 66503
(785) 776-0841 • FAX 776-9760 • Email: tim@spainandmeter.com
Project #091218FE DD #63

AUGUST 2010

SHEET 2 OF 2

SURVEYOR:
SMH Consultants
Tim Sloan, L.S., President
4201B Anderson Avenue, Suite 2,
Manhattan, KS 66503
PH: 785-776-0841

OWNER and SUB-DIVIDER:
Gunsmoke, LLC,
Ford County, Kansas
Address: 1170 Kilsen Street
Manhattan, Kansas 66503
PH: 785-776-3127
Contact: Tim Voiz, General Partner

OWNERS CERTIFICATE:
TIM VOIZ, GENERAL PARTNER OF GUNSMOKE LLC, A KANSAS CORPORATION, HAS CAUSED TO BE PLATED A TRACT OF LAND TO BE CALLED "WAGON WHEEL ADDITION, UNIT ONE" AN ADDITION TO THE CITY OF DODGE CITY, FORD COUNTY, KANSAS, WHICH INCLUDES PORTIONS OF THE SOUTHWEST QUARTER OF SECTION 13, TOWNSHIP 26 SOUTH, RANGE 26 WEST OF THE 6TH PRINCIPAL MERIDIAN, FORD COUNTY, KANSAS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 13; DISTANCE OF 435.00 TO THE POINT OF BEGINNING;
THENCE CONTINUING NORTH 02°27'11" EAST ALONG THE WEST LINE OF SAID SOUTHWEST QUARTER A DISTANCE OF 435.00 TO THE POINT OF BEGINNING;
THENCE SOUTH 88°49'35" WEST A DISTANCE OF 511.50 FEET TO THE POINT OF BEGINNING;
THENCE NORTH 88°49'35" WEST A DISTANCE OF 511.50 FEET TO THE POINT OF BEGINNING;
SUBJECT TO EASEMENTS AND RIGHT-OF-WAYS OF RECORD.

THE ABOVE DESCRIBED TRACT OF LAND CONTAINS 7.56 ACRES MORE OR LESS AND IS SUBJECT TO EASEMENTS AND RIGHT-OF-WAYS OF RECORD.
ON THIS PLAT AND HEREBY DEDICATED TO THE PUBLIC AN EASEMENT AND LICENSE TO LOGS AS WELL AS THE RIGHT TO CONSTRUCT, OPERATE, INSPECT, REPLACE, AND MAINTAIN OR AUTHORIZE THE LOCATION, CONSTRUCTION, AND SINKING OF WELLS AND MAINTENANCE OF POLES, WIRES, CONDUITS, WATER, GAS, AND OTHER STRUCTURES NECESSARY TO CARRY OUT THE FUNCTION OF THE EASEMENT, UPON THE AREA MARKED FOR EASEMENTS ON THIS PLAT. IT IS ALSO HEREBY DEDICATED TO THE PUBLIC, WHEN AND IF SEVER, WATER, GAS, ELECTRICITY, CABLE TV, AND TELEPHONE WIRES AND IF USED FOR HIGHWAY, TO THE PUBLIC, THE RIGHT OF TRAVEL BY WHATEVER MEANS, UNLESS THE TERM IS LIMITED BY OTHER WORDS OR PHRASES, SUCH AS "PEDESTRIAN TRAVEL", ETC. THE UNDERSIGNED HEREBY WARRANTS THAT THE EASEMENTS, RIGHTS, AND LICENSES DEDICATED TO THE PUBLIC CONSTITUTE A CONVEYANCE HEREOF TO THE CITY OF DODGE CITY, FORD COUNTY, KANSAS, IN TRUST, FOR THE USES NAMED, EXPRESSED OR INTENDED.

GUNSMOKE LLC
TIM VOIZ, GENERAL PARTNER

STATE OF KANSAS
COUNTY OF FORD

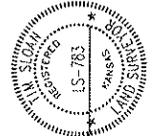
BEFORE ME, A NOTARY PUBLIC, WITHIN AND BEYOND COUNTY AND STATE, PERSONALLY KNOWN TO ME TO BE THE LEGAL PARTY WHO EXECUTED THE ABOVE AND FOREGOING INSTRUMENT, AND ACKNOWLEDGED TO ME SAID PARTY EXECUTED THE SAME AS A FREE AND VOLUNTARY ACT AND DEED FOR THE PURPOSES SET FORTH, IN WITNESS WHEREOF, I HAVE HEREUNTO PUT MY HAND AND SEAL THE DAY AND YEAR LAST ABOVE WRITTEN.

MY COMMISSION EXPIRES _____

NOTARY PUBLIC

SUBDIVIDER CERTIFICATE:
I, TIM SLOAN, THE UNDERSIGNED, DO HEREBY CERTIFY THAT I AM, BY PROFESSION, A LAND SURVEYOR, AND THAT I AM THE SURVEYOR OF THE WAGON WHEEL ADDITION, UNIT ONE, AN ADDITION TO THE CITY OF DODGE CITY, FORD COUNTY, KANSAS, DESCRIBED BY THIS PLAT. I HEREBY CERTIFY THAT THE MONUMENTS SHOWN HEREIN ACTUALLY EXIST AND THEIR POSITIONS ARE CORRECTLY SHOWN, THIS SURVEY MEETS THE KANSAS MINIMUM STANDARDS FOR THE PRACTICE OF LAND SURVEYING OF A TRACT OF LAND WHICH IS SUBJECT TO THE EASEMENTS AND RIGHTS OF RECORD SHOWN ON THIS PLAT. THE SURVEY IS SUBJECT TO THE EASEMENTS AND RIGHTS OF RECORD OF THE 6TH PRINCIPAL MERIDIAN, FORD COUNTY, KANSAS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 13; DISTANCE OF 435.00 TO THE POINT OF BEGINNING;
THENCE NORTH 02°27'11" EAST ALONG THE WEST LINE OF SAID SOUTHWEST QUARTER A DISTANCE OF 435.00 TO THE POINT OF BEGINNING;
THENCE SOUTH 88°49'35" EAST A DISTANCE OF 511.50 FEET;
THENCE SOUTH 02°27'11" WEST A DISTANCE OF 435.00 FEET;
THENCE NORTH 88°49'35" WEST A DISTANCE OF 511.50 FEET TO THE POINT OF BEGINNING;
THE ABOVE DESCRIBED TRACT OF LAND CONTAINS 7.56 ACRES MORE OR LESS AND IS SUBJECT TO EASEMENTS AND RIGHT-OF-WAYS OF RECORD.



Tim Sloan, R.L.S.,
President