

CITY COMMISSION AGENDA

City Hall Commission Chambers

Tuesday, January 18, 2011

7:00 p.m.

MEETING #4834

CALL TO ORDER

INSTALLATION OF NEW COMMISSIONER

Michael Weece

ROLL CALL

INVOCATION: by Father Dennis Zimmerman of the St. Cornelius Episcopal Church

PLEDGE OF ALLEGIANCE

PUBLIC HEARING

1. Consider the Establishment of an RHID District and Development Plan for La Estancia Partners LLC Project.
2. Consider the Establishment of an RHID District and Development Plan for Waldberg/Asher Project.

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, January 3, 2011
2. Approval of City Commission Special Meeting minutes, January 7, 2011
3. Appropriation Ordinance No. 2, January 18, 2011
4. Approval of Conveyance of Industrial Park property to Curtis Machine, Inc.
5. Approval of Assignment of the Jennison Government Services contract to Pinegar, Smith and Associates.

ORDINANCES & RESOLUTIONS

Approval of Development Agreement with Overland Properties Group, LLC and the City of Dodge City regarding a multi-family residential development to be know as La Estancia.

Ordinance No. 3507: An Ordinance of the Governing Body of the City of Dodge City, Kansas, Establishing a Rural Housing Incentive District Within the City and Adopting a Plan for the Development of Housing and Public Facilities in Such District, and Making Certain Findings in Conjunction Therewith (La Estancia Partners, LLC Project). Report by City Manager, Ken Strobel.

UNFINISHED BUSINESS

NEW BUSINESS

1. Recommendation of Appraisal Report Setting Fair and Equitable Compensation for the Utility Easements and Temporary Construction Easements for the Wastewater Treatment Plant Water Line. Report by Director of Engineering Services, Joe Finley.
2. Recommendation of Approval of KDOT Agreement to Allow KDOT to Purchase the Federal Funds Allotted for the Comanche Street Project. Report by Director of Engineering Services, Joe Finley.
3. Letter of Intent Authorizing the City to Apply for KDOT Transportation Grant. Report by Director of Parks and Recreation, Paul Lewis.

OTHER BUSINESS

ADJOURNMENT

CITY COMMISSION MINUTES

City Hall Commission Chambers

Monday, January 3, 2011

7:00 p.m.

MEETING #4831

CALL TO ORDER

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

INVOCATION: by Father Dennis Zimmerman of the St. Cornelius Episcopal Church

PLEDGE OF ALLEGIANCE

PETITIONS & PROCLAMATIONS

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

Cathy Reeves with the Dodge City Public Library gave the Quarterly report for the Library.

Carl St. Clair, Vice President of VenuWorks, introduced Ralph Nall as the new General Manager of United Wireless Events Center. Ralph comes from Hobbs, New Mexico.

CONSENT CALENDAR

1. Approval of City Commission Meeting minutes, December 20, 2010
2. Approval of City Commission Special Meeting minutes, December 27, 2010
3. Appropriation Ordinance No. 1, January 3, 2011
4. Cereal Malt Beverage License
 - a. Mariscos Nayant, 509 N. 2nd Avenue
 - b. Water Sports Campground R.V. Park, 500 Cherry
 - c. Angie's Git It n Go, 2305 W. Wyatt Earp
 - d. Tacos Jalisco, 412 W. Wyatt Earp

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

ORDINANCES & RESOLUTIONS

Ordinance No. 3505: An Ordinance relating to traffic and truck routes in the City of Dodge City; Amending Ordinance No. 2812 and Amending Chapter 14, Section 2 of the City of Dodge City Municipal Code was presented by City Attorney, Brad Ralph. The ordinance was approved

on a motion by Commissioner Monte Broeckelman, seconded by Commissioner Rick Sowers. Motion carried 4-0.

Ordinance No. 3506: An ordinance authorizing and providing for the Acquisition of Certain Land Necessary for Improvements to the Sanitary Sewer System of the City of Dodge City, Kansas, all by the power of eminent domain. Ordinance No. 3506 as submitted, omitting Section 3, A & B was approved on a motion by Commissioner Rick Sowers, seconded by Commissioner Monte Broeckelman. Motion carried 4-0.

UNFINISHED BUSINESS

NEW BUSINESS

OTHER BUSINESS

Ken Strobel, City Manager:

- Footnote to the truck ordinance, the ordinance will not be enforceable until published and appropriate signage is in place;
- Reminder the next Regular City Commission Meeting will be Tuesday, January 18, 2011;
- Dodge City Night is scheduled for March 7, 2011 in Topeka;
- Western Kansas Congressional Delegation is March 28, 2011 or April 18, 2011; and
- Possible Special Meeting on Friday, January 7, 2011 to consider candidates to fill Commissioner Brian Weber's pending resignation.

Commissioner Jim Sherer:

- Happy New Year.

Commissioner Rick Sowers:

- Growing beard out for hockey season, while Smoll prepares the tutu.

Commissioner Monte Broeckelman;

- Congratulations to the Dodge City High School Band on trip to the Citrus Bowl Parade.

Mayor Kent Smoll:

- Happy New Year.

EXECUTIVE SESSION: At 7:40 p.m., Commissioner Rick Sowers moved to adjourn to Executive Session to discuss non-elected personnel to include City Manager, Ken Strobel for 30 minutes, Commissioner Jim Sherer seconded the motion. Motion carried 4-0.

At 8:10 p.m., Commissioner Rick Sowers moved to extend the Executive Session 10 minutes; Commissioner Jim Sherer seconded the motion. Motion carried 4-0.

At 8:15 p.m., the meeting was reconvened to Regular Session. Commissioner Jim Sherer moved to extend the City Manager's base salary by 2.5% and extend his contract for 1 year. Commissioner Rick Sowers seconded the motion. Motion carried 4-0.

ADJOURNMENT: Commissioner Jim Sherer moved to adjourn the meeting; Commissioner Monte Broeckelman seconded the motion. The motion carried 4-0.

E. Kent Smoll, Mayor

ATTEST:

Nannette Pogue, City Clerk

**CITY COMMISSION
SPECIAL MEETING MINUTES**

City Hall Commission Chambers

Friday, January 7, 2011

8:00 a.m.

MEETING #4832

CALL TO ORDER

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

NEW BUSINESS

Discussion of appointment to fill Commission vacancy – seven (7) people submitted letters of interest to fill an unexpired City Commission term. The present City Commissioners voted by ballot on the top two (2) candidates. Commissioner Jim Sherer moved to appoint Michael Weece to the vacant City Commission position. Commissioner Monte Broeckelman seconded the motion. The motion carried 4-0.

OTHER BUSINESS

Commissioner Monte Broeckelman:

- Happy to see that there were seven very good interested individuals in the vacant City Commissioner position.

Ken Strobel, City Manager:

- Media Day at the United Wireless Arena is January 13th

ADJOURNMENT: Commissioner Rick Sowers moved to adjourn the meeting; Commissioner Monte Broeckelman seconded the motion. The motion carried 4-0.

E. Kent Smoll, Mayor

ATTEST:

Nannette Pogue, City Clerk

Memorandum

To: City Commissioners
From: Ken Strobel
Date: January 14, 2011
Subject: Conveyance of Industrial Park Tract
to Curtis Machine Company
Agenda Item: Consent Calendar

Recommendation: Staff recommends that the Mayor and City Clerk be authorized to execute a deed for conveying a track of property in the Dodge City Industrial Park to Curtis Machine Incorporated.

Background: The City acts as the trustee of the Industrial Park property, therefore, the deed must be executed by us even though the property is owned by and administered by the Dodge City/Ford County Development Corporation.

Justification: The transaction is necessary in order to close the purchase of the property desired by Curtis Machine in the Industrial Park. Curtis will be relocating its manufacturing plant to that site.

Financial Considerations: None

Purpose/Mission: Through coordination with the Dodge City/Ford County Development Corporation, we are retaining a long standing manufacturer in the community.

Legal Considerations: None

Attachments:

CORPORATION DEED
General Warranty

THIS INDENTURE, Made this ____ day of January, 2011 between

CITY OF DODGE CITY, KANSAS, AS TRUSTEE,

a municipal corporation duly organized, incorporated and existing under and be virtue of the State of Kansas and having its principal place of business at Ford County, in the State of Kansas of the first part, and

CURTIS MACHINE COMPANY, INC.

of Ford County, in the State of Kansas of the second part:

WITNESSETH, That said party of the first part, in consideration of other good a valuable consideration and the sum of Ten and 00/100 Dollars, the receipt of which is hereby acknowledged, does by these presents, Grant, Bargain, Sell, and convey unto said party of the second part, its successors and assigns, all of the following-described real estate, situated in Ford County and the State of Kansas, to-wit:

TRACT 3, DODGE CITY INDUSTRIAL PARK, a Subdivision located in the West Half of Section 22, Township 26 South, Range 24 West of the 6th Principal Meridian, Dodge City, Ford County, Kansas.

TO HAVE AND TO HOLD THE SAME, Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, forever.

And said grantor for itself, its successors and assigns, does hereby covenant, promise and agree, to and with said party of the second part, that at the delivery of these presents it is lawfully seized in it own right, of an absolute and indefeasible estate of inheritance, in fee simple, of and in all and singular the above granted and described premises, with the appurtenances; that the same are free, clear, discharged and unencumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments and incumbrances, of what nature or kind soever, except easements, restrictions and assessments of record; and that it will warrant and forever defend the same unto said party of the second part, its successors and assigns, against said party of the first part, its successors and assigns, and all and every persons whomsoever, lawfully claiming or to claim the same.

IN WITNESS WHEREOF, the part of the first part has hereunto caused this Deed to be signed on its behalf by its Mayor thereunto duly authorized so to do, and has caused its corporate seal to be hereunto affixed the day and year first above written.

CITY OF DODGE CITY, KANSAS, AS TRUSTEE

ATTEST:

E. Kent Smoll, Mayor

Nannette Pogue, City Clerk

STATE OF KANSAS)
) §:
COUNTY OF FORD)

BE IT REMEMBERED, that on this ____ day of January, 2011 before me, the undersigned, a notary public in and for the State and County aforesaid came E. Kent Smoll, Mayor and Nannette Pogue, City Clerk of the City of Dodge City, Kansas, as Trustee, a municipal corporation duly organized, incorporated and existing under and by virtue of the laws of the State of Kansas, who are personally known to me to be such officers, and who are personally known to me to be the same persons who executed, as such officers, the within instrument of writing on behalf of said corporation, and such persons duly acknowledged the execution of the same to be the act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

[SEAL]

Notary Public

My Appointment Expires: _____

Memorandum

To: City Commissioners
From: Cherise Tieben
Date: January 14, 2011
Subject: Jennison Agreement
Agenda Item: Consent Calendar

Recommendation: Staff recommends the assignment of the Jennison Government Services contract to Pinegar, Smith and Associates.

Background: Due to the recent appointment by Governor Brownback of Robin Jennison as Secretary of Wildlife and Parks, Robin provided the Southwest Kansas Coalition with notice of his inability to fulfill the lobbyist contract.

Justification: A conference call was held with the Southwest Kansas Coalition to discuss the assignment of the contract to another lobbyist. Due to the time constraints, the group went back to the original proposals that were submitted last year. From those proposals, Pinegar, Smith and Associates were chosen and have agreed to accept the terms of the Jennison contract.

Financial Considerations: Adequate funds have been budgeted for this expense.

Purpose/Mission: The contract will help us gain knowledge which we hope will better position us to fulfill the needs of our community.

Legal Considerations: None

Attachments: None

Memorandum

To: City Commissioners
From: Ken Strobel
Date: January 14, 2011
Subject: RHID
Agenda Item: Ordinance

Recommendation: Staff recommends the approval of the Development Agreement between the City of Dodge City and Overland Property Group. The second action required is the approval of Ordinance 3507 which includes approval of the Ordinance and the Development Plan.

Background: In 2010, City staff began working with developers interested in building multi-family and single family residential developments. Most developers were interested in utilizing the Rural Housing Incentive District program which provides assistance for various eligible costs such as infrastructure. The funding for this assistance/incentive comes from the dedication of the incremental increase in property tax back to the property owner or it may be used to pay the bonds. Due to the Overland Property Group utilizing tax credits, they are not eligible for the bond process and will be receiving a simple rebate. The Overland Property Group development will provide at least two (2) sixteen plex units in the first phase and a possible third sixteen plex unit if the market continues to support the need.

Justification: Offering this incentive helps reduce the cost of construction for the developer which in turn allows projects to cash flow and become feasible. Without such incentives, projects appear to not cash flow in our market, deterring developers.

Financial Considerations: The City, County and the School District have no risk in this process; in addition, they would not have received the increment as the development would not have been feasible without the incentive. The developer will incur all expenses and will receive the rebate of the increment directly. Should the developer not complete the full development, the developer will simply not receive the increment.

Purpose/Mission: We value progress, growth and new possibilities by providing and preparing for the community's future.

Legal Considerations: None

Attachments: Development Agreement, Ordinance 3507 and Development Plan.

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (hereinafter “Agreement”), entered into this 18th day of January, 2011, by and between the **CITY OF DODGE CITY**, Kansas, a municipal corporation of the State of Kansas (hereinafter “City”), and **OVERLAND PROPERTY GROUP LLC**, a Kansas limited liability corporation, with its principal place of business in Overland Park, Kansas (hereinafter “Developer”).

RECITALS

- A. **WHEREAS**, City and Developer (hereinafter “Parties”) desire to memorialize their intent with respect to their obligations and responsibilities for the construction of a multi-family residential development to be known as “La Estancia” (hereinafter “the Development”); and,
- B. **WHEREAS**, Developer is the title owner of real property located within the boundaries of City and described on *Exhibit A* attached hereto and incorporated herein by reference (hereinafter “the Property”); and,
- C. **WHEREAS**, Developer desires to develop the Property by construction of multi-family residences and all related internal infrastructure improvements, all as more fully described herein; and,
- D. **WHEREAS**, City has determined that the construction of the Development will foster the economic development of City and the surrounding area of Ford County, Kansas; and,
- E. **WHEREAS**, the Parties hereto are authorized to enter into this Agreement and to complete the responsibilities set forth herein.

AGREEMENT

NOW THEREFORE, in consideration of the premises and promises contained herein and other good and valuable consideration, the adequacy and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

ARTICLE I

DEFINITIONS

1.1 Definitions. As used in this Agreement, the following words and terms shall have the meaning set forth below:

“**Agreement**” means this Development Agreement, as the same may be from time to time modified, amended or supplemented in writing by the Parties hereto.

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

“**Concept Site Plan**” means the site development plan prepared by a licensed professional engineer, or firm thereof, acceptable to City, attached as *Exhibit C* hereto and incorporated herein by reference, depicting the conceptual program for construction of the Development Project and the Public Improvements.

“**Construction Plans**” means plans, drawings, specifications and related documents, and construction schedules for the construction of the Work, together with all supplements, amendments or corrections.

“**Developer**” means Overland Property Group, LLC, a Kansas limited liability corporation, with its principal place of business in Overland Park, Kansas or its permitted successors or assigns in interest.

“**Development Area**” means the collective areas described in *Exhibit B* attached hereto and incorporated herein by reference.

“**Development Costs**” means the total amount spent or expected to be spent by Developer to construct the Work.

“**Development Project**” means quality multi-family residences to be constructed in the Development Area in accordance with the Concept Site Plan.

“**Governing Body**” means the City Commission of Dodge City, Kansas.

“**Internal Infrastructure Improvements**” means the water, sanitary sewer, electric, water, storm sewer, storm water detention, street, street lighting, sidewalks and all other public infrastructure improvements necessary for the Development and located within the boundaries of the Development Area, including engineering costs, any costs of right-of-way and appurtenances related thereto, as set forth on the approved plat for the Development, all as more specifically described on *Exhibit D* attached hereto and incorporated herein by this reference.

“**Material Change**” shall mean any change in the Concept Site Plan that significantly affects the nature of the Public Improvements, the number of Units, or increases/decreases the cost of the Development Project by twenty-five thousand dollars (\$25,000.00) or more for each change.

“**Mayor**” means the Mayor of Dodge City, Kansas or his duly authorized agent.

“Plans and Specifications” means the plans and specifications for the Public Improvements prepared by a licensed professional engineer, or firm thereof, acceptable to City.

“Project Costs” means all costs associated with the completion of the Public Improvements, and all associated legal, engineering and other soft costs, all as described on the cost estimates set forth on *Exhibit D* attached hereto and incorporated herein by this reference.

“Property” means the real property (including but not limited to fee interests, leasehold interests, tenant-in-common interests and such other like or similar interests) on which the Development Project will be located, more specifically described in *Exhibit A* attached hereto and incorporated herein by this reference.

“Public Improvements” means the Internal Infrastructure Improvements.

“Related Party” means any party related to the Developer by one of the relationships described in Section 267(b) of the United States Internal Revenue Code of 1986, as amended and any successor entity in which the principals of the Developer (either individually or collectively) or Developer own or control no less than fifty percent (50%) of the voting interest in such successor entity.

“Rural Housing Incentive District” means a rural housing incentive district to be created by the City for the Development Project pursuant to the Kansas Rural Housing Incentive District Act.

“Substantial Completion” means the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Construction Plans, excepting all punch list items so that Developer can occupy or utilize the Work for its intended purpose.

“Unit” means each individual apartment unit in a multi-family residence development.

“Work” means all work necessary to prepare the Property and to construct the Development Project and the Public Improvements, including; (1) demolition and removal of certain existing improvements located on the Property; (2) construction, reconstruction and/or relocation of utilities; (3) construction of the multi-family residences and structures, including surface parking facilities, and screening and site landscaping on the Property, as described in the Concept Site Plan; and (4) all other Work described in the Concept Site Plan, or reasonably necessary to effectuate the intent of this Agreement.

ARTICLE II

RURAL HOUSING INCENTIVE DISTRICT

2.1 Preliminary Resolution. Governing Body has heretofore adopted Resolution No. 2009-19 on September 8, 2009, which made certain findings pursuant to the Rural Housing Incentive District Act, relative to the need for housing in City and declaring an intent to establish Rural Housing Incentive Districts within City, which would include the Property.

2.2 Department of Commerce Finding. Pursuant to the resolution described in *Section 2.1* hereof, City caused to be prepared a Housing Needs Analysis and forwarded the same, along with said resolution, to the Kansas Secretary of Commerce. On October 7, 2009, the Kansas Secretary of Commerce issued a letter to City making certain findings required by the Rural Housing Incentive District Act, and approved City's ability to establish a Rural Housing Incentive District.

2.3 Further Proceedings. The City has caused to be prepared a Development Plan in accordance with the provisions of the Rural Housing Incentive District Act, adopted a resolution calling a public hearing relative to such Development Plan, conducted a public hearing, and will pass an ordinance approving the Development Plan and establish a Rural Housing Incentive District that includes the Property. The Rural Housing Incentive District will be deemed to be established at the time said ordinance is passed by the Governing Body. The Parties acknowledge that the creation of the Rural Housing Incentive District is subject to nullification in the manner set forth in K.S.A. 12-5246.

ARTICLE III

CONSTRUCTION OF THE PROJECT AND INTERNAL INFRASTRUCTURE IMPROVEMENTS

3.1 Development Project Construction Schedule. Developer shall commence construction of the Development Project and Internal Infrastructure Improvements within the Development Area, not more than sixty (60) days after the Rural Housing Incentive District ordinance is passed by the Governing Body. Developer will diligently pursue Substantial Completion of the Development Project.

- (a) Modifications to the Development Project. The Parties acknowledge that due to economic conditions the scope of the Development Project and the amount of real estate included within any Development Area may be modified prior to and/or during the construction of such Development Project. Developer shall notify City at least thirty (30) days in advance of any proposed Material Change of the Development Project or Development Area, as well as the factual basis necessitating the proposed Material Change.

(b) In conjunction with the Development Project, the parties acknowledge that Overland Property Group has applied for low-income housing tax credits. The City has adopted a resolution in support of such application.

3.2 Construction of the Development Project. Developer shall construct the Development Project in a good and workmanlike manner in accordance with the terms of this Agreement and as set forth in the Construction Plans.

3.2.1 Construction Contracts; Insurance. Developer may enter into one or more construction contracts to complete the Development Project. Prior to the commencement of construction of the Development Project, Developer shall obtain or shall require that any such contractor obtains workers' compensation, comprehensive public liability and builder's risk insurance as provided in *Section 5.8* hereof and shall deliver evidence of such insurance to City. Developer shall require that the insurance required is maintained by any such contractor for the duration of the construction of the Development Project or part thereof, if such contract relates to less than all of the Development Project. If Developer serves as general contractor for the Development Project, Developer shall not charge more for such services than a third-party contractor would customarily charge for such services.

3.3 Concept Site Plan. Developer, at its cost, has had prepared a Concept Site Plan. Said Concept Site Plan is hereby approved by the Parties. Developer shall promptly notify City in writing of any Material Changes to the Concept Site Plan at least thirty (30) days prior to the implementation of any such Material Change, including a description of the Material Change and reasons therefore. During the progress of the Work, Developer may make changes to the Concept Site Plan or any aspect thereof as site conditions or other issues of feasibility may dictate or as may be necessary or desirable in the sole determination of Developer to enhance the economic viability of the Development Project provided, however, that Developer may not make any Material Changes to the Public Improvements or reduce the number of Units on the Concept Site Plan without the advance written consent of City.

3.4 Construction of Internal Infrastructure Improvements. Developer shall construct, at its cost, the Internal Infrastructure Improvements in a good and workmanlike manner in accordance with the Plans and Specifications approved by City consistent with the construction of the Development Project so that the Substantial Completion of the Internal Infrastructure Improvements associated with the Development Project shall be completed on or before Substantial Completion of the Development Project.

3.4.1 Acquisition of Easements, Permits. Developer is responsible for securing any rights-of-way and/or easement rights from private parties necessary to improve or build the Internal Infrastructure Improvements and City will cooperate with Developer with respect to any such acquisition. All costs associated with the acquisition of rights-of-way and/or easements shall be considered a Project Cost. City shall cooperate with Developer in obtaining all necessary permits for construction of the Internal Infrastructure Improvements.

3.4.2 Construction Contracts; Insurance. Developer may enter into one or more construction contracts to complete the Work for the Internal Infrastructure Improvements. Prior to the commencement of construction of the Internal Infrastructure Improvements, Developer shall obtain or shall require that any such contractor obtains workers' compensation, comprehensive public liability and builder's risk insurance coverage as provided in *Section 5.8* hereof and shall deliver evidence of such insurance to City. Developer shall require that the insurance required is maintained by any such contractor for the duration of the construction of the Internal Infrastructure Improvements or part thereof, if such contract relates to less than all of the Internal Infrastructure Improvements. If Developer serves as general contractor for the Internal Infrastructure Improvements, Developer shall not charge more for such services than a third-party contractor would customarily charge for such services.

3.4.3 Certification of Substantial Completion. Promptly after Substantial Completion of the Work with respect to the Internal Infrastructure Improvements, or a phase thereof, in accordance with the provisions of this Agreement, Developer will furnish to City a Certificate of Substantial Completion in the form attached hereto as *Exhibit E*. City shall, within thirty (30) days following delivery of each Certificate of Substantial Completion, carry out such inspections as it deems necessary to verify reasonable satisfaction with, and the accuracy of, the certifications contained in each Certificate of Substantial Completion. Each Certificate of Substantial Completion shall be deemed accepted by City unless, prior to the end of such thirty (30) day period after delivery to City of each Certificate of Substantial Completion, City furnishes Developer with specific written objections to the status of the Work, describing such objections and the measures required to correct such objections in reasonable detail. At Substantial Completion of the Internal Infrastructure Improvements, Developer will dedicate to City, and City will accept, title to the Internal Infrastructure Improvements designated on *Exhibit D*. Following said dedication, City will be responsible, at its sole cost and expense, for all operating and capital costs for the dedicated Internal Infrastructure Improvements from that date forward, and shall maintain the dedicated Internal Infrastructure Improvements in a manner consistent with similar public improvements in City. Notwithstanding the foregoing, Developer may, at its sole discretion and expense, enhance the maintenance or operation of the Internal Infrastructure Improvements for the betterment of the Development Project.

ARTICLE IV

FINANCING OBLIGATIONS

4.1 Financing of Public Improvements. All costs of the Internal Infrastructure Improvements shall be paid in cash or financed by Developer,. City agrees to pay to

Developer, in reimbursement of all or a portion of the Project Costs, those amounts paid to the Treasurer of the City, as a result of this Project, pursuant to K.S.A. 12-5250(b)(2)(A). These payments shall be made within thirty (30) days of receipt of such funds from the County Treasurer beginning in 2011 and shall continue until such time as the Project Costs have been fully reimbursed to Developer, but not to exceed fifteen (15) years from the date of the establishment of the Rural Housing Incentive District. City shall have no liability and/or responsibility to Developer for any payment greater than the amounts received from the Ford County Treasurer as mandated in K.S.A. 12-5250(b)(2)(A).

ARTICLE V

GENERAL PROVISIONS

5.1 City's Right to Terminate. In addition to all other rights of termination as provided herein, City may terminate this Agreement at any time if Developer defaults in or breaches any material provision of this Agreement and fails to cure such default or breach within thirty (30) days after receipt of written notice from City of such default or breach.

5.2 Developer's Right to Terminate. In addition to all other rights of termination as provided herein, Developer may terminate this Agreement at any time if City defaults in or breaches any material provision of this Agreement (including any City default under Article IV hereof) and fails to cure such default or breach with thirty (30) days after receipt of written notice from Developer of such default or breach.

5.3 Successors and Assigns.

- (a) This Agreement shall be binding on and shall inure to the benefit of the Parties named herein and their respective heirs, administrators, executors, personal representatives, agents, successors and assigns.
- (b) Without limiting the generality of the foregoing, all or any part of the Property or any interest therein may be sold, transferred, encumbered, leased, or otherwise disposed of at any time, and the rights of Developer named herein or any successors in interest under this Agreement or any part hereof may be assigned at any time before, during or after completion of the Development Project, whereupon the Party disposing of its interest in the Property or assigning its interest under this Agreement shall be thereafter released from further obligation under this Agreement (although prior to Substantial Completion of the Improvements to such Property so disposed of or to which such interest pertains shall remain subject to the terms and conditions of this Agreement); provided, however, that the buyer, transferee or assignee shall be financially solvent as demonstrated to City.
- (c) Until Substantial Completion of the Development Project has occurred, the obligations of Developer under this Agreement may not be assigned in whole or in part without the prior written approval of City, which approval shall not be

unreasonably withheld, conditioned, or delayed upon a reasonable demonstration by Developer of the proposed assignee's experience and financial capability to undertake and complete all portions of the Work with respect to the Development Project, all in accordance with this Agreement. Notwithstanding the foregoing, Developer may be permitted to subcontract the construction of any portion of the Development Project without the consent of City as long as Developer remains liable therefore hereunder. Notwithstanding anything herein to the contrary, City hereby approves, and no prior consent shall be required in connection with, (a) the right of Developer to encumber or collaterally assign its interest in the Property or any portion thereof or any interest in the Agreement to secure loans, advances or extensions of credit to finance or from time to time refinance all or any part of the Development Project Costs, or the right of the holder of any such encumbrance or transferee of any such collateral assignment (or trustee or agent on its behalf) to transfer such interest by foreclosure or transfer in lieu of foreclosure under such encumbrance or collateral assignment; (b) the right of Developer to assign Developer's rights, duties and obligations under the Agreement to a Related Party; or (c) the right of Developer to sell or lease individual portions of the Property in the ordinary course of the development of the Development Project; provided that in each such event Developer named herein shall remain liable hereunder for the Substantial Completion of the Development Project, and shall be released from such liability hereunder only upon Substantial Completion of the Development Project.

5.4 Remedies. Except as otherwise provided in this Agreement and subject to Developer's and City's respective rights of termination, in the event of any breach of any term or condition of this Agreement by either Party, or any successor, the breaching Party (or successor) shall, upon written notice from the other Party specifying such claimed breach, proceed immediately to cure or remedy such breach, and, shall, in any event, within thirty (30) days after receipt of notice, cure or remedy such default. If the breach shall not be cured or remedied, the aggrieved Party may hold the breaching Party in default of this Agreement and thereupon may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, but not limited to proceedings to compel specific performance by the defaulting or breaching Party, withholding funds received pursuant to K.S.A. 12-5250(b)(2)(A) and/or repeal of the ordinance establishing the Rural Housing Incentive District For purposes of this *Section 5.4*, no Party may be deemed in default of this Agreement unless and until it has received notice of any claimed breach and has been given an opportunity to cure the same. Prior to instituting any legal proceedings after an event of default has been noticed and no cure has occurred, the parties agree to attempt to resolve the dispute through non-binding mediation. In the event such mediation is not successfully completed within forty-five (45) days following the expiration of any period for cure, the aggrieved Party may then immediately institute legal proceedings against the breaching Party.

5.5 Force Majeure. Neither City nor Developer nor any successor in interest shall be considered in breach or default of their respective obligations under this Agreement, and times for performance of obligations hereunder shall be extended in the event of any delay caused by force majeure, including, without limitation, damage or destruction by fire or casualty; strike;

lockout; civil disorder; act of terror; war; restrictive government regulations; lack of issuance of any permits and/or legal authorization by any governmental entity necessary for the Developer to proceed with construction of the Work or any portion thereof, shortage or delay in shipment of material or fuel; acts of God; unusually adverse weather or soil conditions; unforeseen site conditions that render the site economically or physically undevelopable (as a result of additional cost or delay), or any other cause or contingency similarly; or other causes beyond the Parties' reasonable control, including but not limited to, any litigation, court order or judgment resulting from any litigation affecting the validity of this Agreement; provided that such event of force majeure shall not be deemed to exist as to any matter initiated or unreasonably sustained by Developer, and further provided that Developer notifies City in writing within thirty (30) days of the commencement of such claimed event of force majeure.

5.6 Notices. Any notice, demand or other communication required by this Agreement to be given by either Party hereto to the other shall be in writing and shall be sufficiently given or delivered if dispatched by certified United States first class mail, postage prepaid, or delivered personally,

(i) In the case of Developer, to:
Overland Property Group, LLC
7500 College Blvd, Suite 500
Overland Park, Kansas 66210
Attention: Brett Johnson
Phone: 913/693-7970
Fax: 913/693-7799

(ii) In the case of City, to:
City of Dodge City, Kansas
806 N. Second Avenue
Dodge City, KS 67801
Attention: City Clerk
Phone: (620) 225-8100
Fax: (620) 225-8144

or to such other address with respect to either Party as that Party may, from time to time, designate in writing and forward to the other as provided in this Section.

5.7 Conflict of Interest. No member of the Governing Body or any branch of City's government who has any power of review or approval of any of Developer's undertakings, or of City's contracting for goods or services for the Development, shall participate in any decisions relating thereto which affect that member's personal interests or the interests of any corporation or partnership in which that member is directly or indirectly interested. Any person having such interest shall immediately, upon knowledge of such possible conflict, disclose, in writing, to the Governing Body the nature of such interest and seek a determination by the Governing Body with respect to such interest and, in the meantime, shall not participate in any actions or discussions relating to the activities herein proscribed. City represents to Developer that no such conflicts of interest exist as of the date hereof.

5.8 Insurance; Damage or Destruction of Development Projects.

- (a) Developer will cause there to be insurance coverage as hereinafter set forth at all times during the process of constructing the Work and, from time to time at the request of City, shall furnish City with proof of payment of premiums on:
- (i) Builder's Risk insurance, written on the so called "Builder's Risk— Completed Value Basis," in an amount equal to one hundred percent (100%) of the insurable value of the Work at the date of completion, and with coverage available in non-reporting form on the so called "all risk" form of policy. The interest, if any, of City shall be protected in accordance with a clause in form and content satisfactory to City; and,
 - (ii) Comprehensive general liability insurance (including operations, operations of subcontractors, completed operations and contractual liability insurance) together with an owner's contractor's policy, with limits against bodily injury and property damage of not less than Five Million dollars (\$5,000,000.00) for all claims arising out of a single accident or occurrence and Two Million dollars (\$2,000,000.00) for any one person in a single accident or occurrence (to accomplish the above required limits, an umbrella excess liability policy may be used); and
 - (iii) Workers' compensation insurance, with statutorily required coverage.
- (b) The policies of insurance required pursuant to clauses (i) and (ii) above shall be in form and content reasonably satisfactory to City and shall be placed with financially sound and reputable insurers licensed to transact business in the State of Kansas with a general policy holder's rating of not less than A- and a financial rating of A- as rated in the most current available "Best's" insurance reports. The policy of insurance delivered pursuant to clause (i) above shall contain an agreement of the insurer to give not less than thirty (30) days advance written notice to the City in the event of cancellation of such policy or change affecting the coverage thereunder. All policies of insurance required pursuant to this Section shall name City as an additional insured. Developer shall deliver to City evidence of all insurance to be maintained hereunder.

5.9 Inspection. Developer shall allow authorized representatives of City access to the Work site from time to time upon reasonable advance notice, which notice is in accordance with its normal practices with respect to inspection of construction projects in City, prior to the completion of the Work for reasonable inspection thereof. Developer shall also allow City and its employees, agents and representatives to inspect, upon request, all architectural, engineering, demolition, construction and other contracts and documents pertaining to the construction of the Work as City determines is reasonable and necessary to verify Developer's compliance with the terms of this Agreement.

5.10 Choice of Law. This Agreement shall be deemed to have been fully executed, made by the Parties in, and governed by the laws of State of Kansas for all purposes and intents.

5.11 Entire Agreement: Amendment. The Parties agree that this Agreement and the Development Plan constitute the entire agreement between the Parties and that no other agreements or representations other than those contained in this Agreement have been made by the Parties. This Agreement shall be amended only in writing and effective when signed by the authorized agents of the Parties.

5.12 Counterparts. This Agreement is executed in multiple counterparts, each of which shall constitute one and the same instruments.

5.13 Severability. If any term or provision of this Agreement is held to be unenforceable by a court of competent jurisdiction, the remainder shall continue in full force and effect, to the extent the remainder can be given effect without the invalid provision.

5.14 Representatives Not Personally Liable. No elected or appointed official, agent, employee or representative of City shall be personally liable to Developer in the event of any default or breach by any Party under this Agreement, or for any amount which may become due to any Party or on any obligations under the terms of this Agreement.

5.15 Legal Actions. If a third party brings an action against City, or any officials, agents, employees or representatives thereof contesting the validity or legality of any of the terms of this Agreement, or the ordinance approving this Agreement, Developer may, at Developer's option but only with City's consent, assume the defense of such claim or action (including, without limitation, to settle or compromise any claim or action for which Developer has assumed the defense) with counsel of Developer's choosing. The Parties expressly agree that so long as no conflicts of interest exist between them, the same attorney or attorneys may simultaneously represent City and Developer in any such proceeding; provided, Developer and its counsel shall consult with City throughout the course of any such action and Developer shall pay all reasonable and necessary costs incurred by City in connection with such action. If such defense is assumed by Developer, all costs of any such action incurred by City shall be promptly paid by Developer. If City refuses to permit Developer to assume the defense of any action, then costs incurred by City shall be paid by City.

5.16 Release and Indemnification. The indemnifications and covenants contained in this *Section 5.16* shall survive termination or expiration of this Agreement and shall be specifically subject to the limitation of *subsection 5.16.7* of this Agreement.

5.16.1 Notwithstanding anything herein to the contrary, City and its Governing Body members, officers, agents, servants, employees and independent contractors shall not be liable to Developer for damages or otherwise in the event that any ordinance, order or resolution adopted in connection with this Agreement is declared invalid or unconstitutional in whole or in part by the final (as to which all rights of appeal have expired or have been exhausted) judgment of any court of competent jurisdiction, and by reason thereof either City is prevented from

performing any of the covenants and agreements herein or Developer is prevented from enjoying the rights and privileges hereof.

5.16.2 Developer releases from, agrees to indemnify and hold harmless City, its Governing Body members, officers, agents, servants and employees against, and covenants and agrees that City and its Governing Body members, officers, agents, servants, employees and independent contractors shall not be liable for, any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the acquisition of the Property or construction of the Work including any and all claims arising from the acquisition of the Property, including, but not limited to, location of hazardous wastes, hazardous materials or other environmental contaminants on the Property, including all costs of defense, including attorneys fees, except for those matters arising out of the willful and/or wanton negligence of City and its governing body members, officers, agents, servants and employees.

5.16.3 City and its Governing Body members, officers, agents, servants and employees shall not be liable for any damage or injury to the persons or property of Developer or its officers, agents, servants or employees or any other person who may be about the Property or the Work except for matters arising out of the willful and/or wanton negligence of City and its Governing Body members, officers, agents, servants and employees.

5.16.4 All covenants, stipulations, promises, agreements and obligations of City contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of City and not of any of its Governing Body members, officers, agents, servants or employees in their individual capacities.

5.16.5 No official, employee or representative of City shall be personally liable to Developer in the event of a default or breach by any Party to this Agreement.

5.16.6 Developer releases from and covenants and agrees that City, its Governing Body members, officers, employees, agents and independent contractors shall not be liable for, and agrees to indemnify and hold City, its Governing Body members, officers, employees, agents and independent contractors, harmless from and against any and all suits, interest, claims and cost of attorney fees incurred by any of them, resulting from, arising out of, or in any way connected with: (1) the Development Project or its approval, (2) the construction of the Work, (3) the negligence or willful misconduct of Developer, its employees, agents or independent contractors in connection with the management, development, and construction of the Work, (4) the compliance by Developer with all applicable state, federal and local environmental laws, regulations, ordinances and orders, (5) underground storage tanks located on or about the Property, (6) friable asbestos or asbestos-containing materials at, on or in the Property, (7) the operation of all or any part of the Property, or the condition of the Property, including, without limitation, any environmental cost or liability, or (8) negotiations, inspections,

acquisitions, preparations, construction, leasing, operations, and other activities of Developer or its agents in connection with or relating to the Development Project or the Property; except that the foregoing release and indemnification shall not apply in the case of such liability arising directly out of the willful and/or wanton negligence of City or its authorized Governing Body members, officers, employees and agents or which arises out of matters undertaken by City following termination of this Agreement as the Development Project or portion thereof.

5.16.7 Notwithstanding anything to the contrary in this Agreement, including but not limited to the provisions related to indemnification and release set out in the *Section 5.16*, Developer shall have no obligation to indemnify City, or any other Party referenced in this Agreement, unless the claim for which indemnity is sought is actually covered by the insurance required by *Section 5.8* of this Agreement and Developer shall hereby be released for any and all claims otherwise referenced in this *Section 5.16* that are not actually covered by the insurance policies required by *Section 5.8* of this Agreement.

5.17 Cost of the Legal Fees. Upon execution of this Agreement Developer shall reimburse City for all legal and professional Costs, fees and expenses incurred by City with regard to the preparation of this Agreement and any and all other Ordinances, Resolutions or other documents necessary for implementation of the Rural Health Incentive District as well as for representation and appearances of legal counsel at any hearings or proceedings required to implement the Rural Housing Incentive District or the Project. All such reimbursement paid by Developers shall be considered Project Costs.

5.18 Survival. Notwithstanding the expiration, termination or breach of this Agreement by either Party, the agreements contained in Section 5.16 of this Agreement shall, except as otherwise expressly set forth herein, survive such expiration, termination or breach of this Agreement by the Parties hereto.

ARTICLE VI

REPRESENTATIONS OF THE PARTIES

6.1 Representations of City. City hereby represents and warrants that to the best of its collective knowledge and belief it has full constitutional and lawful right, power and authority, under current applicable law, to execute and deliver and perform the terms and obligations of this Agreement, and all of the foregoing have been or will be, duly and validly authorized and approved by all necessary City proceedings, findings and actions. Accordingly, this Agreement constitutes the legal, valid and binding obligation of City, enforceable in accordance with its terms.

6.2 Representations of Developer. Developer hereby represents and warrants it has full corporate power to execute and deliver and perform the terms and obligations of this Agreement and all of the foregoing has been duly and validly authorized by all necessary

corporate proceedings. This Agreement constitutes the legal, valid and binding obligation of Developer, enforceable in accordance with its terms.

IN WITNESS WHEREOF, City and Developer have caused this Agreement to be executed in their respective names and City has caused its seal to be affixed thereto, and attested as to the date first above written.

CITY OF DODGE CITY, KANSAS

By: _____
E. Kent Smoll, Mayor

Dated: January ____, 2011

ATTEST: (SEAL)

Nannette Pogue, City Clerk

OVERLAND PROPERTY GROUP, LLC

By: _____
Brett Johnson

Dated: January ____, 2011

**SCHEDULE OF EXHIBITS
OF THE DEVELOPMENT AGREEMENT**

- Exhibit A Property Description
- Exhibit B Map of Rural Housing Improvement District Boundaries for La Estancia Partners
LLC Project
- Exhibit C La Estancia Partners LLC Site Development Plan
- Exhibit D Eligible costs for La Estancia Partners LLC Project
- Exhibit E Certification of Substantial Completion Form

EXHIBIT A
PROPERTY DESCRIPTION

EXHIBIT A

PROPERTY DESCRIPTION

Lots 1, 2, 3, 4 and 5, Block 1, La Estancia Addition to the City of Dodge City, Ford County, Kansas, a Replat of a portion of Blocks 6 & 7, Ross Addition and a Parcel of Land located in the Southeast Quarter of Section 14, Township 26 South, Range 25 West of the 6th Principal Meridian.

EXHIBIT B

**MAP OF RURAL HOUSING IMPROVEMENT DISTRICT
BOUNDARIES FOR LA ESTANCIA PARTNERS LLC PROJECT**

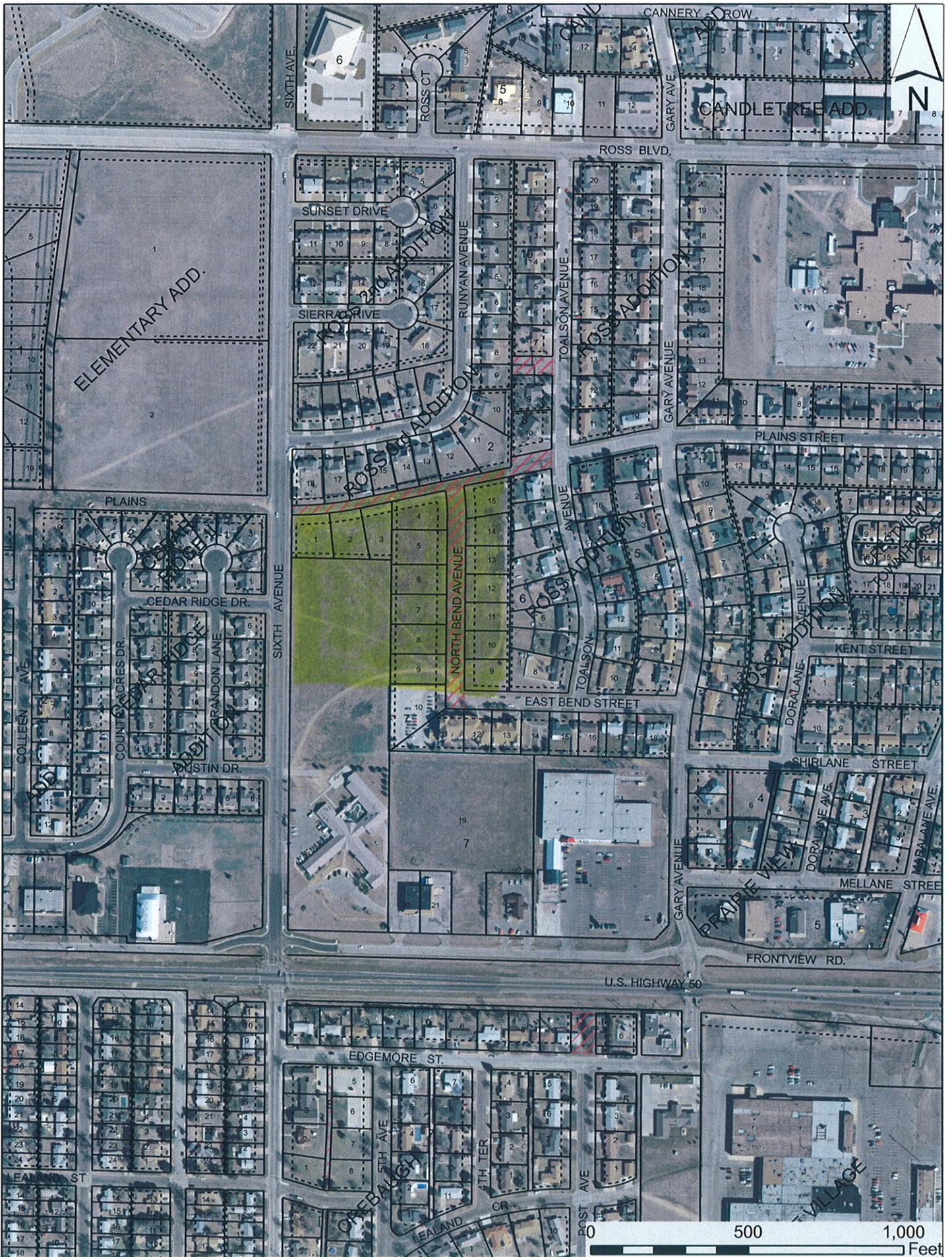
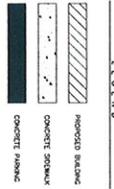


EXHIBIT C

LA ESTANCIA PARTNER LLC SITE DEVELOPMENT PLAN

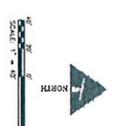
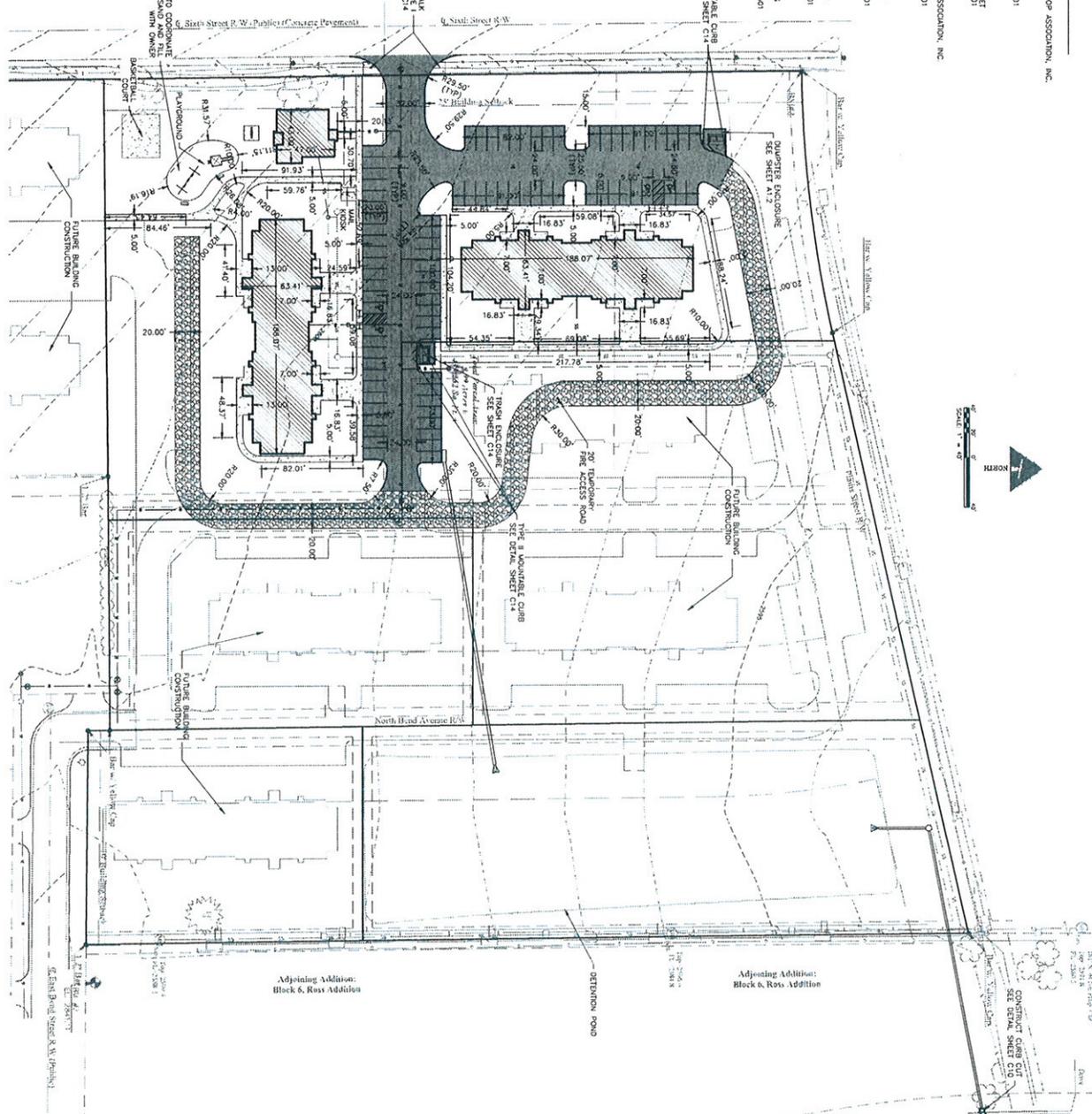
UTILITY CONTACTS

- ELECTRIC:**
 ACTORV ELECTRIC COOP ASSOCIATION, INC.
 2320 N. 14TH AVE.
 DODGE CITY, KS 67801
 (620) 227-2139
- TELEPHONE:**
 A&W FIBERGLASS CABLE
 800000 CITY, KS 67801
 (620) 227-4888
- WATER:**
 UNITED TELEPHONE ASSOCIATION, INC.
 1107 WESTERN ROAD
 DODGE CITY, KS 67801
 ALAN SELWANSKY
- SEWER:**
 CITY OF DODGE CITY
 P.O. BOX 840
 DODGE CITY, KS 67801
 WENDY KESTER
- TV:**
 CITY OF DODGE CITY
 P.O. BOX 840
 DODGE CITY, KS 67801
 WENDY KESTER
- COX COMMUNICATIONS:**
 710 N. 5TH STREET
 DODGE CITY, KS 67801
 (620) 227-7800
 SAM GREEN



CALL BEFORE YOU DIG - DIAL - 811
 KANSAS ONE-CALL SYSTEM, INC.
 (800) 244-7733
 (316) 581-3183
 (781) 776-2544

KANSAS ONE CALL SYSTEM, INC.
 The address on the drawing may differ from the address on the ground. It is the contractor's responsibility to verify the location of all utilities before starting any excavation project and obtain them by dialing 811.



SMH CONSULTANTS
 ARCHITECTS

4201B Ardmore Avenue, Suite 2 • Wichita, Kansas 67203
 (781) 776-2544 • FAX 776-3706 • Email: SMH@smhconsultants.com

NOTES:

1. ALL CONSTRUCTION SHALL BE COMPLETED WITHIN THE PERIOD OF TIME SPECIFIED IN THE CONTRACT DOCUMENTS.
2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF DODGE CITY.
3. THE CONTRACTOR SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTIES AT ALL TIMES.
4. THE CONTRACTOR SHALL BE RESPONSIBLE FOR PROTECTING ALL EXISTING UTILITIES AND STRUCTURES.
5. THE CONTRACTOR SHALL MAINTAIN ADEQUATE RECORDS OF ALL CONSTRUCTION ACTIVITIES.
6. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION AND MAINTENANCE OF ALL EXISTING UTILITIES AND STRUCTURES.
7. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION AND MAINTENANCE OF ALL EXISTING UTILITIES AND STRUCTURES.
8. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION AND MAINTENANCE OF ALL EXISTING UTILITIES AND STRUCTURES.
9. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION AND MAINTENANCE OF ALL EXISTING UTILITIES AND STRUCTURES.
10. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION AND MAINTENANCE OF ALL EXISTING UTILITIES AND STRUCTURES.

CAUTION - NOTICE TO CONTRACTOR:
 THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF DODGE CITY. THE CONTRACTOR SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTIES AT ALL TIMES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR PROTECTING ALL EXISTING UTILITIES AND STRUCTURES. THE CONTRACTOR SHALL MAINTAIN ADEQUATE RECORDS OF ALL CONSTRUCTION ACTIVITIES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION AND MAINTENANCE OF ALL EXISTING UTILITIES AND STRUCTURES.

WARRANTY / DISCLAIMER:
 THE ARCHITECT HAS PREPARED THESE PLANS TO THE BEST OF HIS KNOWLEDGE AND BELIEF. THE ARCHITECT DOES NOT WARRANT THE ACCURACY OF THE INFORMATION PROVIDED BY THE CONTRACTOR. THE ARCHITECT SHALL NOT BE RESPONSIBLE FOR ANY CONSTRUCTION DEFECTS OR OMISSIONS. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION AND MAINTENANCE OF ALL EXISTING UTILITIES AND STRUCTURES.

SAFETY NOTICE TO CONTRACTOR:
 THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF DODGE CITY. THE CONTRACTOR SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTIES AT ALL TIMES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR PROTECTING ALL EXISTING UTILITIES AND STRUCTURES. THE CONTRACTOR SHALL MAINTAIN ADEQUATE RECORDS OF ALL CONSTRUCTION ACTIVITIES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION AND MAINTENANCE OF ALL EXISTING UTILITIES AND STRUCTURES.

APARTMENT
 C1

ESTANCIA APARTMENTS
 NEW APARTMENT COMPLEX
 DODGE CITY, KANSAS

JONES GILLAM RENZ
 Architects Planners Designers
 781 S. 10th St. • Dodge City, KS 67801
 (781) 827-0386 • (781) 827-0392 Fax
 jgr@jgarchitects.com

EXHIBIT D
ELIGIBLE COSTS FOR
LA ESTANCIA PARTNERS LLC PROJECT

EXHIBIT D
ELIGIBLE COSTS FOR
LA ESTANCIA PARTNERS LLC PROJECT

La Estancia Apartments Site Work Estimates

Haul Off – Dem – Dump Fees	\$ 6,477.00
Site Preparation	\$301,538.00
Concrete Testing	\$ 5,500.00
Power Transmission and Dist	\$ 6,500.00
Concrete Paving	\$ 97,515.00
Concrete Walks	\$ 74,000.00
Concrete Curb and Gutter	\$ 18,500.00
Pavement Marking	\$ 3,200.00
Water Meter	\$ 5,500.00
Water Distribution	\$ 44,790.00 *
Storm Sewage	\$ 46,599.00
Sanitary Sewage	\$ 41,025.00 *
Sewer Connection Fees	\$ 500.00
Land	<u>\$114,000.00</u>
	\$765,644.00

* Upon substantial completion, internal infrastructure shall be dedicated to the City of Dodge City.

EXHIBIT E

CERTIFICATION OF SUBSTANTIAL COMPLETION FORM

EXHIBIT E

CERTIFICATE OF SUBSTANTIAL COMPLETION FORM

The undersigned, on behalf of Overland Property Group LLC (the “Developer”), pursuant to Section 3.4.3 of the Development Agreement dated as of January ____, 2011 (the “Development Agreement”) by and among the City of Dodge City, Kansas, and the Developer, hereby certifies as follows. All capitalized terms used herein shall have the meaning attributable to such terms in the Development Agreement.

1. The Work with respect to the Internal Infrastructure Improvements in Development Project is sufficiently complete in accordance with the Construction Plans, excepting all punch list items, such that the Developer can occupy or utilize the Work for its intended purpose.
2. The Work has been completed in a good and workmanlike manner.
3. There are no mechanic’s or materialmen’s liens or other statutory liens on file encumbering title to the Property; all bills for labor and materials furnished for the Work which could form the basis of a mechanic’s, materialmen’s or other statutory lien against the Property have been paid in full, and within the past four months no such labor or materials have been furnished which have not been paid for.
4. All applicable building codes have been complied with in connection with the Work.

Dated: _____

OVERLAND PROPERTY GROUP LLC

By: _____

Name:

Title:

ORDINANCE NO. 3507

AN ORDINANCE OF THE GOVERNING BODY OF THE CITY OF DODGE CITY, KANSAS, ESTABLISHING A RURAL HOUSING INCENTIVE DISTRICT WITHIN THE CITY AND ADOPTING A PLAN FOR THE DEVELOPMENT OF HOUSING AND PUBLIC FACILITIES IN SUCH DISTRICT, AND MAKING CERTAIN FINDINGS IN CONJUNCTION THEREWITH (LA ESTANCIA PARTNERS, LLC PROJECT)

WHEREAS, K.S.A. 12-5241 *et seq.* (the “Act”) authorizes any city incorporated in accordance with the laws of the state of Kansas (the “State”) with a population of less than 40,000 located in a county with a population of less than 60,000, to designate rural housing incentive districts within such city; and

WHEREAS, prior to such designation the governing body of such city shall conduct a housing needs analysis to determine what, if any, housing needs exist within its community; and

WHEREAS, after conducting such analysis, the governing body of such city may adopt a resolution making certain findings regarding the establishment of a rural housing incentive district and providing the legal description of property to be contained therein; and

WHEREAS, after publishing such resolution, the governing body of such city shall send a copy thereof to the Secretary of Commerce of the State (the “Secretary”) requesting that the Secretary agree with the finding contained in such resolution; and

WHEREAS, if the Secretary agrees with such findings, such city may proceed with the establishment of a rural housing incentive district within such city and adopt a plan for the development of housing and public facilities in the proposed district; and

WHEREAS, the City of Dodge City, Kansas (the “City”) has an estimated population of approximately 28,000, is located in Ford County, Kansas, which has an estimated population of approximately 34,000, and therefore constitutes a city as said term is defined in the Act; and

WHEREAS, the Governing Body of the City has performed a Housing Needs Analysis dated April 23, 2008 (the “Analysis”), a copy of which is on file in the office of the City Clerk; and

WHEREAS, the Governing Body of the City has heretofore adopted Resolution No. 2009-19 which made certain findings relating to the need for financial incentives relating to the construction of quality housing within the City, declared it advisable to establish a Rural Housing Incentive District pursuant to the Act and authorized the

submission of such Resolution and a Housing Needs Analysis to the Kansas Department of Commerce in accordance with the provisions of the Act; and

WHEREAS, the Secretary of the Kansas Department of Commerce, pursuant to a letter dated October 7, 2009, authorized the City to proceed with the establishment of a Rural Housing Incentive District pursuant to the Act (the “District”); and

WHEREAS, the City has caused to be prepared a plan for the development or redevelopment of housing and public facilities in the proposed District in accordance with the provisions of the Act (the “Plan”); and

WHEREAS, the Plan includes:

1. The legal description and map required by subsection (a) of K.S.A. 12-5244;
2. The existing assessed valuation of the real estate in the proposed District, listing the land and improvement values separately;
3. A list of the names and addresses of the owners of record of all real estate parcels within the proposed District;
4. A description of the housing and public facilities project or projects that are proposed to be constructed or improved in the proposed District, and the location thereof;
5. A listing of the names, addresses and specific interests in real estate in the proposed District of the developers responsible for development of the housing and public facilities in the proposed District;
6. The contractual assurances, if any, the Governing Body has received from such developer or developers, guaranteeing the financial feasibility of specific housing tax incentive projects in the proposed District;
7. A comprehensive analysis of the feasibility of providing housing tax incentives in the proposed District as provided in the Act, set forth the boundaries of the proposed District, provided a summary of the proposed Plan, called a public hearing concerning the establishment of the proposed District for January 18, 2011 and provided for notice of such public hearing as provided in the Act; and

WHEREAS, the Governing Body of the City has heretofore adopted Resolution No. 2010-29 which made a finding that the City is considering the establishment of the proposed District and adopting the proposed Plan pursuant to the Act, set forth the boundaries of the proposed District, provides a summary of the proposed Plan, called a

public hearing concerning the establishment of the proposed District for January 18, 2011 and provided for notice of such public hearing as provided in the Act; and

WHEREAS, a public hearing was held on January 18, 2011, after due published and delivered notice in accordance with the provisions of the Act; and

WHEREAS, upon and considering the information and public comments received at the public hearing, the governing body of the City hereby deems it advisable to make certain findings to establish the proposed District and to adopt the proposed Plan.

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

Section 1. Findings. The Governing Body hereby finds that due notice of the public hearing conducted January 18, 2011 was made in accordance with the provisions of the Act.

Section 2. Creation of Rural Housing Incentive District. A Rural Housing Incentive District is hereby created within the City in accordance with the provisions of the Act, which shall consist of the following described real property in the Development, an addition to the City of Dodge City, Ford County, Kansas:

Lots 1, 2, 3, 4 and 5, Block 1, La Estancia Addition to the City of Dodge City, Ford County, Kansas, a Replat of a portion of Blocks 6 & 7, Ross Addition and a Parcel of Land located in the Southeast Quarter of Section 14, Township 26 South, Range 25 West of the 6th Principal Meridian.

The boundaries of the District do not contain any property not referenced in Resolution No. 2010-29, which provided notice of public hearing on the creation of the District and adoption of the Plan.

Section 3. Approval of Development Plan. The Plan for the development or redevelopment of housing and public facilities in the District, as presented to the Governing Body this date, is hereby approved.

Section 4. Adverse Effect on Other Governmental Units. If, within 30 days following the conclusion of the public hearing on January 18, 2011, any of the following occurs, the Governing Body shall take action to repeal this Ordinance:

- a. The Board of Education of U.S.D. No. 443 determines by resolution that the District will have an adverse effect on such school district; or
- b. The Board of County Commissioners of Ford County, Kansas, determines by resolution that the District will have an adverse effect on such county.

As of this date, the City has not received a copy of any such resolution and is not aware of the adoption of any such resolution by the governing body of Ford County or Unified School District No. 443.

Section 5. Reimbursement. The Act authorizes the City to reimburse the Developer for all or a portion of the costs of implementing the Plan through the use of property tax increments allocated to the City under the provisions of the Act.

Section 6. Further Action. The Mayor, City Clerk and other officials and employees of the City, including the City Attorney, are hereby further authorized and directed to take such other actions as may be appropriate to accomplish the purposes of this Ordinance.

Section 7. Effective Date. This Ordinance shall be effective upon its passage by the Governing Body of the City of Dodge City, Kansas and publication one time in the official City newspaper.

[remainder of this page left blank intentionally]

PASSED by the Governing Body of the City of Dodge City, Kansas and signed by the Mayor on January 18, 2011.

[SEAL]

E. Kent Smoll, Mayor

Nannette Pogue, City Clerk

1-13-11

Referenced in Ordinance No. 3507

**DEVELOPMENT PLAN
FOR THE LA ESTANCIA PARTNERS, L.L.C. RURAL HOUSING INCENTIVE
DISTRICT
OF THE CITY OF DODGE CITY, KANSAS**

January 18, 2011

INTRODUCTION

On September 8, 2009 the Governing Body of the City of Dodge City, Kansas (the “City”) adopted Resolution 2009-19 that found and determined that:

1. there is a shortage of quality housing of various price ranges in the City despite the best efforts of public and private housing developers.
2. the shortage of quality housing can be expected to persist and that additional financial incentives are necessary in order to encourage the private sector to construct or renovate housing in the City.
3. the shortage of quality housing is a substantial deterrent to the future economic growth and development of the City.
4. the future economic wellbeing of the City depends on the Governing Body providing additional incentives for the construction of/or renovation of quality housing in the City.

Based on these findings and determinations, the Governing Body proposed the establishment of a Rural Housing Incentive District within Dodge City pursuant to the Act.

Following the adoption of Resolution 2009-19, a certified copy was submitted to the Secretary of Commerce for approval of the establishment of the Rural Housing Incentive District in Dodge City, as required by K.S.A. 12-5244(c).

On October 7, 2009, the Secretary of Commerce provided written confirmation, approving the establishment of the La Estancia Partners, L.L.C. Rural Housing Incentive District (the “District”) (Resolution 2009-19, exhibit A-6, B-6).

DEVELOPMENT PLAN ADOPTION

K.S.A. 12-5245 states that once the City receives approval from the Secretary of Commerce for the development of a Kansas Rural Housing Incentive District, the governing body must adopt a plan for the development of housing and public facilities within the proposed district.

DEVELOPMENT PLAN

As a result of the shortage of quality housing within Dodge City, City proposes this Development Plan to assist in the development of quality housing within the City.

- (1) The legal description of the La Estancia Partners, L.L.C. Rural Housing Incentive District is:

Lots 1, 2, 3, 4 and 5, Block 1, La Estancia Addition to the City of Dodge City, Ford County, Kansas, a Replat of a portion of Blocks 6 & 7, Ross

Addition and a Parcel of Land located in the Southeast Quarter of Section 14, Township 26 South, Range 25 West of the 6th Principal Meridian.

A map of the District is attached as **Exhibit A** to this document.

- (2) The assessed valuation of all real estate within the District for 2010 is \$23,694.00.
- (3) The name and address of the owner of record for the real estate within the District is:

La Estancia Partners, L.L.C.
7500 College Blvd., Suite 500
Overland Park, KS 66210

- (4) The housing and public facilities projects that are proposed to be constructed include the following:

Housing Facilities

The housing facilities will be composed of two multi-family sixteen (16) plex residences with an onsite clubhouse/office. The housing facilities will be constructed in two phases as one project. Each individual family unit will have laundry hook-ups, cable television hook-ups and onsite parking. A third multi-family sixteen (16) plex residence may be erected as Phase III.

Public Facilities

Public improvements will include construction of infrastructure improvements located within the boundaries of the District, including electric, gas, water, sanitary sewer, storm sewer, storm water detention, streets, street lighting, fire services and sidewalks. Infrastructure improvements will be constructed concurrently with the project.

- (5) The names, addresses and specific interests in the real estate in the District of the developers responsible for development of the housing and public facilities is:

Owner of Real Property:	La Estancia, L.L.C. 7500 College Blvd., Suite 500 Overland Park, KS 66210
Developer: (Site Work and Infrastructure)	Overland Property Group, L.L.C. 7500 College Blvd., Suite 500 Overland Park, KS 66210
Individuals with Specific Interest:	Brett Johnson 2850 SW Mission Woods Dr. Topeka, KS 66614

Ed Keating
2850 SW Mission Woods Dr.
Topeka, KS 66614

Pat Beatty
2850 SW Mission Woods Dr.
Topeka, KS 66614

Rex Vanier
2850 SW Mission Woods Dr.
Topeka, KS 66614

- (6) The Governing Body of the City of Dodge City entered into a Development Agreement with Overland Property Group, L.L.C., a Kansas limited liability corporation, in January of 2011. The Development Agreement, as supplemented and amended, includes the project construction schedule, a description of projects to be constructed, financial obligations of the developer and financial and administrative support from the City of Dodge City. The complete Development Agreement is attached hereto as **Exhibit C**.
- (7) The City's Finance Director conducted a study to determine whether the public benefits derived from the District will exceed the costs and that the income from the District, together with other sources of revenue, would be sufficient to pay for the public improvements to be undertaken in the District. A copy of the analysis is attached hereto as **Exhibit B**. The analysis estimates the property tax revenues that will be generated from the District, less existing property taxes, to determine the revenue stream available to support reimbursement to the Developer for all or a portion of the costs of financing the public infrastructure. The estimates indicate that the revenue realized from the project would be adequate to pay all or a significant portion of the eligible costs.

1-13-11

Referenced in Ordinance No. 3507

DEVELOPMENT PLAN - EXHIBIT A

**MAP OF THE LA ESTANCIA PARTNERS, L.L.C.
RURAL HOUSING IMPROVEMENT DISTRICT**

1-13-11

Referenced in Ordinance No. 3507

DEVELOPMENT PLAN - EXHIBIT B
COMPREHENSIVE FINANCIAL FEASIBILITY ANALYSIS

1-13-11

Referenced in Ordinance No. 3507

DEVELOPMENT PLAN - EXHIBIT C

DEVELOPMENT AGREEMENT

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (hereinafter “Agreement”), entered into this 18th day of January, 2011, by and between the **CITY OF DODGE CITY**, Kansas, a municipal corporation of the State of Kansas (hereinafter “City”), and **OVERLAND PROPERTY GROUP LLC**, a Kansas limited liability corporation, with its principal place of business in Overland Park, Kansas (hereinafter “Developer”).

RECITALS

- A. **WHEREAS**, City and Developer (hereinafter “Parties”) desire to memorialize their intent with respect to their obligations and responsibilities for the construction of a multi-family residential development to be known as “La Estancia” (hereinafter “the Development”); and,
- B. **WHEREAS**, Developer is the title owner of real property located within the boundaries of City and described on *Exhibit A* attached hereto and incorporated herein by reference (hereinafter “the Property”); and,
- C. **WHEREAS**, Developer desires to develop the Property by construction of multi-family residences and all related internal infrastructure improvements, all as more fully described herein; and,
- D. **WHEREAS**, City has determined that the construction of the Development will foster the economic development of City and the surrounding area of Ford County, Kansas; and,
- E. **WHEREAS**, the Parties hereto are authorized to enter into this Agreement and to complete the responsibilities set forth herein.

AGREEMENT

NOW THEREFORE, in consideration of the premises and promises contained herein and other good and valuable consideration, the adequacy and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

ARTICLE I

DEFINITIONS

1.1 Definitions. As used in this Agreement, the following words and terms shall have the meaning set forth below:

Exhibit C of Development Plan

“**Agreement**” means this Development Agreement, as the same may be from time to time modified, amended or supplemented in writing by the Parties hereto.

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

“**Concept Site Plan**” means the site development plan prepared by a licensed professional engineer, or firm thereof, acceptable to City, attached as *Exhibit C* hereto and incorporated herein by reference, depicting the conceptual program for construction of the Development Project and the Public Improvements.

“**Construction Plans**” means plans, drawings, specifications and related documents, and construction schedules for the construction of the Work, together with all supplements, amendments or corrections.

“**Developer**” means Overland Property Group, LLC, a Kansas limited liability corporation, with its principal place of business in Overland Park, Kansas or its permitted successors or assigns in interest.

“**Development Area**” means the collective areas described in *Exhibit B* attached hereto and incorporated herein by reference.

“**Development Costs**” means the total amount spent or expected to be spent by Developer to construct the Work.

“**Development Project**” means quality multi-family residences to be constructed in the Development Area in accordance with the Concept Site Plan.

“**Governing Body**” means the City Commission of Dodge City, Kansas.

“**Internal Infrastructure Improvements**” means the water, sanitary sewer, electric, water, storm sewer, storm water detention, street, street lighting, sidewalks and all other public infrastructure improvements necessary for the Development and located within the boundaries of the Development Area, including engineering costs, any costs of right-of-way and appurtenances related thereto, as set forth on the approved plat for the Development, all as more specifically described on *Exhibit D* attached hereto and incorporated herein by this reference.

“**Material Change**” shall mean any change in the Concept Site Plan that significantly affects the nature of the Public Improvements, the number of Units, or increases/decreases the cost of the Development Project by twenty-five thousand dollars (\$25,000.00) or more for each change.

“**Mayor**” means the Mayor of Dodge City, Kansas or his duly authorized agent.

Exhibit C of Development Plan

“Plans and Specifications” means the plans and specifications for the Public Improvements prepared by a licensed professional engineer, or firm thereof, acceptable to City.

“Project Costs” means all costs associated with the completion of the Public Improvements, and all associated legal, engineering and other soft costs, all as described on the cost estimates set forth on *Exhibit D* attached hereto and incorporated herein by this reference.

“Property” means the real property (including but not limited to fee interests, leasehold interests, tenant-in-common interests and such other like or similar interests) on which the Development Project will be located, more specifically described in *Exhibit A* attached hereto and incorporated herein by this reference.

“Public Improvements” means the Internal Infrastructure Improvements.

“Related Party” means any party related to the Developer by one of the relationships described in Section 267(b) of the United States Internal Revenue Code of 1986, as amended and any successor entity in which the principals of the Developer (either individually or collectively) or Developer own or control no less than fifty percent (50%) of the voting interest in such successor entity.

“Rural Housing Incentive District” means a rural housing incentive district to be created by the City for the Development Project pursuant to the Kansas Rural Housing Incentive District Act.

“Substantial Completion” means the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Construction Plans, excepting all punch list items so that Developer can occupy or utilize the Work for its intended purpose.

“Unit” means each individual apartment unit in a multi-family residence development.

“Work” means all work necessary to prepare the Property and to construct the Development Project and the Public Improvements, including; (1) demolition and removal of certain existing improvements located on the Property; (2) construction, reconstruction and/or relocation of utilities; (3) construction of the multi-family residences and structures, including surface parking facilities, and screening and site landscaping on the Property, as described in the Concept Site Plan; and (4) all other Work described in the Concept Site Plan, or reasonably necessary to effectuate the intent of this Agreement.

ARTICLE II

RURAL HOUSING INCENTIVE DISTRICT

2.1 Preliminary Resolution. Governing Body has heretofore adopted Resolution No. 2009-19 on September 8, 2009, which made certain findings pursuant to the Rural Housing Incentive District Act, relative to the need for housing in City and declaring an intent to establish Rural Housing Incentive Districts within City, which would include the Property.

2.2 Department of Commerce Finding. Pursuant to the resolution described in *Section 2.1* hereof, City caused to be prepared a Housing Needs Analysis and forwarded the same, along with said resolution, to the Kansas Secretary of Commerce. On October 7, 2009, the Kansas Secretary of Commerce issued a letter to City making certain findings required by the Rural Housing Incentive District Act, and approved City's ability to establish a Rural Housing Incentive District.

2.3 Further Proceedings. The City has caused to be prepared a Development Plan in accordance with the provisions of the Rural Housing Incentive District Act, adopted a resolution calling a public hearing relative to such Development Plan, conducted a public hearing, and will pass an ordinance approving the Development Plan and establish a Rural Housing Incentive District that includes the Property. The Rural Housing Incentive District will be deemed to be established at the time said ordinance is passed by the Governing Body. The Parties acknowledge that the creation of the Rural Housing Incentive District is subject to nullification in the manner set forth in K.S.A. 12-5246.

ARTICLE III

CONSTRUCTION OF THE PROJECT AND INTERNAL INFRASTRUCTURE IMPROVEMENTS

3.1 Development Project Construction Schedule. Developer shall commence construction of the Development Project and Internal Infrastructure Improvements within the Development Area, not more than sixty (60) days after the Rural Housing Incentive District ordinance is passed by the Governing Body. Developer will diligently pursue Substantial Completion of the Development Project.

- (a) Modifications to the Development Project. The Parties acknowledge that due to economic conditions the scope of the Development Project and the amount of real estate included within any Development Area may be modified prior to and/or during the construction of such Development Project. Developer shall notify City at least thirty (30) days in advance of any proposed Material Change of the Development Project or Development Area, as well as the factual basis necessitating the proposed Material Change.

- (b) In conjunction with the Development Project, the parties acknowledge that Overland Property Group has applied for low-income housing tax credits. The City has adopted a resolution in support of such application.

3.2 Construction of the Development Project. Developer shall construct the Development Project in a good and workmanlike manner in accordance with the terms of this Agreement and as set forth in the Construction Plans.

3.2.1 Construction Contracts; Insurance. Developer may enter into one or more construction contracts to complete the Development Project. Prior to the commencement of construction of the Development Project, Developer shall obtain or shall require that any such contractor obtains workers' compensation, comprehensive public liability and builder's risk insurance as provided in *Section 5.8* hereof and shall deliver evidence of such insurance to City. Developer shall require that the insurance required is maintained by any such contractor for the duration of the construction of the Development Project or part thereof, if such contract relates to less than all of the Development Project. If Developer serves as general contractor for the Development Project, Developer shall not charge more for such services than a third-party contractor would customarily charge for such services.

3.3 Concept Site Plan. Developer, at its cost, has had prepared a Concept Site Plan. Said Concept Site Plan is hereby approved by the Parties. Developer shall promptly notify City in writing of any Material Changes to the Concept Site Plan at least thirty (30) days prior to the implementation of any such Material Change, including a description of the Material Change and reasons therefore. During the progress of the Work, Developer may make changes to the Concept Site Plan or any aspect thereof as site conditions or other issues of feasibility may dictate or as may be necessary or desirable in the sole determination of Developer to enhance the economic viability of the Development Project provided, however, that Developer may not make any Material Changes to the Public Improvements or reduce the number of Units on the Concept Site Plan without the advance written consent of City.

3.4 Construction of Internal Infrastructure Improvements. Developer shall construct, at its cost, the Internal Infrastructure Improvements in a good and workmanlike manner in accordance with the Plans and Specifications approved by City consistent with the construction of the Development Project so that the Substantial Completion of the Internal Infrastructure Improvements associated with the Development Project shall be completed on or before Substantial Completion of the Development Project.

3.4.1 Acquisition of Easements, Permits. Developer is responsible for securing any rights-of-way and/or easement rights from private parties necessary to improve or build the Internal Infrastructure Improvements and City will cooperate with Developer with respect to any such acquisition. All costs associated with the acquisition of rights-of-way and/or easements shall be considered a Project Cost. City shall cooperate with Developer in obtaining all necessary permits for construction of the Internal Infrastructure Improvements.

3.4.2 Construction Contracts; Insurance. Developer may enter into one or more construction contracts to complete the Work for the Internal Infrastructure Improvements. Prior to the commencement of construction of the Internal Infrastructure Improvements, Developer shall obtain or shall require that any such contractor obtains workers' compensation, comprehensive public liability and builder's risk insurance coverage as provided in *Section 5.8* hereof and shall deliver evidence of such insurance to City. Developer shall require that the insurance required is maintained by any such contractor for the duration of the construction of the Internal Infrastructure Improvements or part thereof, if such contract relates to less than all of the Internal Infrastructure Improvements. If Developer serves as general contractor for the Internal Infrastructure Improvements, Developer shall not charge more for such services than a third-party contractor would customarily charge for such services.

3.4.3 Certification of Substantial Completion. Promptly after Substantial Completion of the Work with respect to the Internal Infrastructure Improvements, or a phase thereof, in accordance with the provisions of this Agreement, Developer will furnish to City a Certificate of Substantial Completion in the form attached hereto as *Exhibit E*. City shall, within thirty (30) days following delivery of each Certificate of Substantial Completion, carry out such inspections as it deems necessary to verify reasonable satisfaction with, and the accuracy of, the certifications contained in each Certificate of Substantial Completion. Each Certificate of Substantial Completion shall be deemed accepted by City unless, prior to the end of such thirty (30) day period after delivery to City of each Certificate of Substantial Completion, City furnishes Developer with specific written objections to the status of the Work, describing such objections and the measures required to correct such objections in reasonable detail. At Substantial Completion of the Internal Infrastructure Improvements, Developer will dedicate to City, and City will accept, title to the Internal Infrastructure Improvements designated on *Exhibit D*. Following said dedication, City will be responsible, at its sole cost and expense, for all operating and capital costs for the dedicated Internal Infrastructure Improvements from that date forward, and shall maintain the dedicated Internal Infrastructure Improvements in a manner consistent with similar public improvements in City. Notwithstanding the foregoing, Developer may, at its sole discretion and expense, enhance the maintenance or operation of the Internal Infrastructure Improvements for the betterment of the Development Project.

ARTICLE IV

FINANCING OBLIGATIONS

4.1 Financing of Public Improvements. All costs of the Internal Infrastructure Improvements shall be paid in cash or financed by Developer,. City agrees to pay to

Developer, in reimbursement of all or a portion of the Project Costs, those amounts paid to the Treasurer of the City, as a result of this Project, pursuant to K.S.A. 12-5250(b)(2)(A). These payments shall be made within thirty (30) days of receipt of such funds from the County Treasurer beginning in 2011 and shall continue until such time as the Project Costs have been fully reimbursed to Developer, but not to exceed fifteen (15) years from the date of the establishment of the Rural Housing Incentive District. City shall have no liability and/or responsibility to Developer for any payment greater than the amounts received from the Ford County Treasurer as mandated in K.S.A. 12-5250(b)(2)(A).

ARTICLE V

GENERAL PROVISIONS

5.1 City's Right to Terminate. In addition to all other rights of termination as provided herein, City may terminate this Agreement at any time if Developer defaults in or breaches any material provision of this Agreement and fails to cure such default or breach within thirty (30) days after receipt of written notice from City of such default or breach.

5.2 Developer's Right to Terminate. In addition to all other rights of termination as provided herein, Developer may terminate this Agreement at any time if City defaults in or breaches any material provision of this Agreement (including any City default under Article IV hereof) and fails to cure such default or breach with thirty (30) days after receipt of written notice from Developer of such default or breach.

5.3 Successors and Assigns.

- (a) This Agreement shall be binding on and shall inure to the benefit of the Parties named herein and their respective heirs, administrators, executors, personal representatives, agents, successors and assigns.
- (b) Without limiting the generality of the foregoing, all or any part of the Property or any interest therein may be sold, transferred, encumbered, leased, or otherwise disposed of at any time, and the rights of Developer named herein or any successors in interest under this Agreement or any part hereof may be assigned at any time before, during or after completion of the Development Project, whereupon the Party disposing of its interest in the Property or assigning its interest under this Agreement shall be thereafter released from further obligation under this Agreement (although prior to Substantial Completion of the Improvements to such Property so disposed of or to which such interest pertains shall remain subject to the terms and conditions of this Agreement); provided, however, that the buyer, transferee or assignee shall be financially solvent as demonstrated to City.
- (c) Until Substantial Completion of the Development Project has occurred, the obligations of Developer under this Agreement may not be assigned in whole or in part without the prior written approval of City, which approval shall not be

unreasonably withheld, conditioned, or delayed upon a reasonable demonstration by Developer of the proposed assignee's experience and financial capability to undertake and complete all portions of the Work with respect to the Development Project, all in accordance with this Agreement. Notwithstanding the foregoing, Developer may be permitted to subcontract the construction of any portion of the Development Project without the consent of City as long as Developer remains liable therefore hereunder. Notwithstanding anything herein to the contrary, City hereby approves, and no prior consent shall be required in connection with, (a) the right of Developer to encumber or collaterally assign its interest in the Property or any portion thereof or any interest in the Agreement to secure loans, advances or extensions of credit to finance or from time to time refinance all or any part of the Development Project Costs, or the right of the holder of any such encumbrance or transferee of any such collateral assignment (or trustee or agent on its behalf) to transfer such interest by foreclosure or transfer in lieu of foreclosure under such encumbrance or collateral assignment; (b) the right of Developer to assign Developer's rights, duties and obligations under the Agreement to a Related Party; or (c) the right of Developer to sell or lease individual portions of the Property in the ordinary course of the development of the Development Project; provided that in each such event Developer named herein shall remain liable hereunder for the Substantial Completion of the Development Project, and shall be released from such liability hereunder only upon Substantial Completion of the Development Project.

5.4 Remedies. Except as otherwise provided in this Agreement and subject to Developer's and City's respective rights of termination, in the event of any breach of any term or condition of this Agreement by either Party, or any successor, the breaching Party (or successor) shall, upon written notice from the other Party specifying such claimed breach, proceed immediately to cure or remedy such breach, and, shall, in any event, within thirty (30) days after receipt of notice, cure or remedy such default. If the breach shall not be cured or remedied, the aggrieved Party may hold the breaching Party in default of this Agreement and thereupon may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, but not limited to proceedings to compel specific performance by the defaulting or breaching Party, withholding funds received pursuant to K.S.A. 12-5250(b)(2)(A) and/or repeal of the ordinance establishing the Rural Housing Incentive District. For purposes of this *Section 5.4*, no Party may be deemed in default of this Agreement unless and until it has received notice of any claimed breach and has been given an opportunity to cure the same. Prior to instituting any legal proceedings after an event of default has been noticed and no cure has occurred, the parties agree to attempt to resolve the dispute through non-binding mediation. In the event such mediation is not successfully completed within forty-five (45) days following the expiration of any period for cure, the aggrieved Party may then immediately institute legal proceedings against the breaching Party.

5.5 Force Majeure. Neither City nor Developer nor any successor in interest shall be considered in breach or default of their respective obligations under this Agreement, and times for performance of obligations hereunder shall be extended in the event of any delay caused by force majeure, including, without limitation, damage or destruction by fire or casualty; strike;

lockout; civil disorder; act of terror; war; restrictive government regulations; lack of issuance of any permits and/or legal authorization by any governmental entity necessary for the Developer to proceed with construction of the Work or any portion thereof, shortage or delay in shipment of material or fuel; acts of God; unusually adverse weather or soil conditions; unforeseen site conditions that render the site economically or physically undevelopable (as a result of additional cost or delay), or any other cause or contingency similarly; or other causes beyond the Parties' reasonable control, including but not limited to, any litigation, court order or judgment resulting from any litigation affecting the validity of this Agreement; provided that such event of force majeure shall not be deemed to exist as to any matter initiated or unreasonably sustained by Developer, and further provided that Developer notifies City in writing within thirty (30) days of the commencement of such claimed event of force majeure.

5.6 Notices. Any notice, demand or other communication required by this Agreement to be given by either Party hereto to the other shall be in writing and shall be sufficiently given or delivered if dispatched by certified United States first class mail, postage prepaid, or delivered personally,

(i) In the case of Developer, to:
Overland Property Group, LLC
7500 College Blvd, Suite 500
Overland Park, Kansas 66210
Attention: Brett Johnson
Phone: 913/693-7970
Fax: 913/693-7799

(ii) In the case of City, to:
City of Dodge City, Kansas
806 N. Second Avenue
Dodge City, KS 67801
Attention: City Clerk
Phone: (620) 225-8100
Fax: (620) 225-8144

or to such other address with respect to either Party as that Party may, from time to time, designate in writing and forward to the other as provided in this Section.

5.7 Conflict of Interest. No member of the Governing Body or any branch of City's government who has any power of review or approval of any of Developer's undertakings, or of City's contracting for goods or services for the Development, shall participate in any decisions relating thereto which affect that member's personal interests or the interests of any corporation or partnership in which that member is directly or indirectly interested. Any person having such interest shall immediately, upon knowledge of such possible conflict, disclose, in writing, to the Governing Body the nature of such interest and seek a determination by the Governing Body with respect to such interest and, in the meantime, shall not participate in any actions or discussions relating to the activities herein proscribed. City represents to Developer that no such conflicts of interest exist as of the date hereof.

5.8 Insurance; Damage or Destruction of Development Projects.

- (a) Developer will cause there to be insurance coverage as hereinafter set forth at all times during the process of constructing the Work and, from time to time at the request of City, shall furnish City with proof of payment of premiums on:
- (i) Builder's Risk insurance, written on the so called "Builder's Risk— Completed Value Basis," in an amount equal to one hundred percent (100%) of the insurable value of the Work at the date of completion, and with coverage available in non-reporting form on the so called "all risk" form of policy. The interest, if any, of City shall be protected in accordance with a clause in form and content satisfactory to City; and,
 - (ii) Comprehensive general liability insurance (including operations, operations of subcontractors, completed operations and contractual liability insurance) together with an owner's contractor's policy, with limits against bodily injury and property damage of not less than Five Million dollars (\$5,000,000.00) for all claims arising out of a single accident or occurrence and Two Million dollars (\$2,000,000.00) for any one person in a single accident or occurrence (to accomplish the above required limits, an umbrella excess liability policy may be used); and
 - (iii) Workers' compensation insurance, with statutorily required coverage.
- (b) The policies of insurance required pursuant to clauses (i) and (ii) above shall be in form and content reasonably satisfactory to City and shall be placed with financially sound and reputable insurers licensed to transact business in the State of Kansas with a general policy holder's rating of not less than A- and a financial rating of A- as rated in the most current available "Best's" insurance reports. The policy of insurance delivered pursuant to clause (i) above shall contain an agreement of the insurer to give not less than thirty (30) days advance written notice to the City in the event of cancellation of such policy or change affecting the coverage thereunder. All policies of insurance required pursuant to this Section shall name City as an additional insured. Developer shall deliver to City evidence of all insurance to be maintained hereunder.

5.9 Inspection. Developer shall allow authorized representatives of City access to the Work site from time to time upon reasonable advance notice, which notice is in accordance with its normal practices with respect to inspection of construction projects in City, prior to the completion of the Work for reasonable inspection thereof. Developer shall also allow City and its employees, agents and representatives to inspect, upon request, all architectural, engineering, demolition, construction and other contracts and documents pertaining to the construction of the Work as City determines is reasonable and necessary to verify Developer's compliance with the terms of this Agreement.

5.10 Choice of Law. This Agreement shall be deemed to have been fully executed, made by the Parties in, and governed by the laws of State of Kansas for all purposes and intents.

5.11 Entire Agreement: Amendment. The Parties agree that this Agreement and the Development Plan constitute the entire agreement between the Parties and that no other agreements or representations other than those contained in this Agreement have been made by the Parties. This Agreement shall be amended only in writing and effective when signed by the authorized agents of the Parties.

5.12 Counterparts. This Agreement is executed in multiple counterparts, each of which shall constitute one and the same instruments.

5.13 Severability. If any term or provision of this Agreement is held to be unenforceable by a court of competent jurisdiction, the remainder shall continue in full force and effect, to the extent the remainder can be given effect without the invalid provision.

5.14 Representatives Not Personally Liable. No elected or appointed official, agent, employee or representative of City shall be personally liable to Developer in the event of any default or breach by any Party under this Agreement, or for any amount which may become due to any Party or on any obligations under the terms of this Agreement.

5.15 Legal Actions. If a third party brings an action against City, or any officials, agents, employees or representatives thereof contesting the validity or legality of any of the terms of this Agreement, or the ordinance approving this Agreement, Developer may, at Developer's option but only with City's consent, assume the defense of such claim or action (including, without limitation, to settle or compromise any claim or action for which Developer has assumed the defense) with counsel of Developer's choosing. The Parties expressly agree that so long as no conflicts of interest exist between them, the same attorney or attorneys may simultaneously represent City and Developer in any such proceeding; provided, Developer and its counsel shall consult with City throughout the course of any such action and Developer shall pay all reasonable and necessary costs incurred by City in connection with such action. If such defense is assumed by Developer, all costs of any such action incurred by City shall be promptly paid by Developer. If City refuses to permit Developer to assume the defense of any action, then costs incurred by City shall be paid by City.

5.16 Release and Indemnification. The indemnifications and covenants contained in this *Section 5.16* shall survive termination or expiration of this Agreement and shall be specifically subject to the limitation of *subsection 5.16.7* of this Agreement.

5.16.1 Notwithstanding anything herein to the contrary, City and its Governing Body members, officers, agents, servants, employees and independent contractors shall not be liable to Developer for damages or otherwise in the event that any ordinance, order or resolution adopted in connection with this Agreement is declared invalid or unconstitutional in whole or in part by the final (as to which all rights of appeal have expired or have been exhausted) judgment of any court of competent jurisdiction, and by reason thereof either City is prevented from

Exhibit C of Development Plan

performing any of the covenants and agreements herein or Developer is prevented from enjoying the rights and privileges hereof.

5.16.2 Developer releases from, agrees to indemnify and hold harmless City, its Governing Body members, officers, agents, servants and employees against, and covenants and agrees that City and its Governing Body members, officers, agents, servants, employees and independent contractors shall not be liable for, any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the acquisition of the Property or construction of the Work including any and all claims arising from the acquisition of the Property, including, but not limited to, location of hazardous wastes, hazardous materials or other environmental contaminants on the Property, including all costs of defense, including attorneys fees, except for those matters arising out of the willful and/or wanton negligence of City and its governing body members, officers, agents, servants and employees.

5.16.3 City and its Governing Body members, officers, agents, servants and employees shall not be liable for any damage or injury to the persons or property of Developer or its officers, agents, servants or employees or any other person who may be about the Property or the Work except for matters arising out of the willful and/or wanton negligence of City and its Governing Body members, officers, agents, servants and employees.

5.16.4 All covenants, stipulations, promises, agreements and obligations of City contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of City and not of any of its Governing Body members, officers, agents, servants or employees in their individual capacities.

5.16.5 No official, employee or representative of City shall be personally liable to Developer in the event of a default or breach by any Party to this Agreement.

5.16.6 Developer releases from and covenants and agrees that City, its Governing Body members, officers, employees, agents and independent contractors shall not be liable for, and agrees to indemnify and hold City, its Governing Body members, officers, employees, agents and independent contractors, harmless from and against any and all suits, interest, claims and cost of attorney fees incurred by any of them, resulting from, arising out of, or in any way connected with: (1) the Development Project or its approval, (2) the construction of the Work, (3) the negligence or willful misconduct of Developer, its employees, agents or independent contractors in connection with the management, development, and construction of the Work, (4) the compliance by Developer with all applicable state, federal and local environmental laws, regulations, ordinances and orders, (5) underground storage tanks located on or about the Property, (6) friable asbestos or asbestos-containing materials at, on or in the Property, (7) the operation of all or any part of the Property, or the condition of the Property, including, without limitation, any environmental cost or liability, or (8) negotiations, inspections,

Exhibit C of Development Plan

acquisitions, preparations, construction, leasing, operations, and other activities of Developer or its agents in connection with or relating to the Development Project or the Property; except that the foregoing release and indemnification shall not apply in the case of such liability arising directly out of the willful and/or wanton negligence of City or its authorized Governing Body members, officers, employees and agents or which arises out of matters undertaken by City following termination of this Agreement as the Development Project or portion thereof.

5.16.7 Notwithstanding anything to the contrary in this Agreement, including but not limited to the provisions related to indemnification and release set out in the **Section 5.16**, Developer shall have no obligation to indemnify City, or any other Party referenced in this Agreement, unless the claim for which indemnity is sought is actually covered by the insurance required by **Section 5.8** of this Agreement and Developer shall hereby be released for any and all claims otherwise referenced in this **Section 5.16** that are not actually covered by the insurance policies required by **Section 5.8** of this Agreement.

5.17 Cost of the Legal Fees. Upon execution of this Agreement Developer shall reimburse City for all legal and professional Costs, fees and expenses incurred by City with regard to the preparation of this Agreement and any and all other Ordinances, Resolutions or other documents necessary for implementation of the Rural Health Incentive District as well as for representation and appearances of legal counsel at any hearings or proceedings required to implement the Rural Housing Incentive District or the Project. All such reimbursement paid by Developers shall be considered Project Costs.

5.18 Survival. Notwithstanding the expiration, termination or breach of this Agreement by either Party, the agreements contained in Section 5.16 of this Agreement shall, except as otherwise expressly set forth herein, survive such expiration, termination or breach of this Agreement by the Parties hereto.

ARTICLE VI

REPRESENTATIONS OF THE PARTIES

6.1 Representations of City. City hereby represents and warrants that to the best of its collective knowledge and belief it has full constitutional and lawful right, power and authority, under current applicable law, to execute and deliver and perform the terms and obligations of this Agreement, and all of the foregoing have been or will be, duly and validly authorized and approved by all necessary City proceedings, findings and actions. Accordingly, this Agreement constitutes the legal, valid and binding obligation of City, enforceable in accordance with its terms.

6.2 Representations of Developer. Developer hereby represents and warrants it has full corporate power to execute and deliver and perform the terms and obligations of this Agreement and all of the foregoing has been duly and validly authorized by all necessary

1/13/2011

Exhibit C of Development Plan

corporate proceedings. This Agreement constitutes the legal, valid and binding obligation of Developer, enforceable in accordance with its terms.

IN WITNESS WHEREOF, City and Developer have caused this Agreement to be executed in their respective names and City has caused its seal to be affixed thereto, and attested as to the date first above written.

CITY OF DODGE CITY, KANSAS

By: _____
E. Kent Smoll, Mayor

Dated: January ____, 2011

ATTEST: (SEAL)

Nannette Pogue, City Clerk

OVERLAND PROPERTY GROUP, LLC

By: _____
Brett Johnson

Dated: January ____, 2011

**SCHEDULE OF EXHIBITS
OF THE DEVELOPMENT AGREEMENT**

Exhibit A	Property Description
Exhibit B	Map of Rural Housing Improvement District Boundaries for La Estancia Partners LLC Project
Exhibit C	La Estancia Partners LLC Site Development Plan
Exhibit D	Eligible costs for La Estancia Partners LLC Project
Exhibit E	Certification of Substantial Completion Form

1/13/2011

Exhibit C of Development Plan

EXHIBIT A

PROPERTY DESCRIPTION

EXHIBIT A

PROPERTY DESCRIPTION

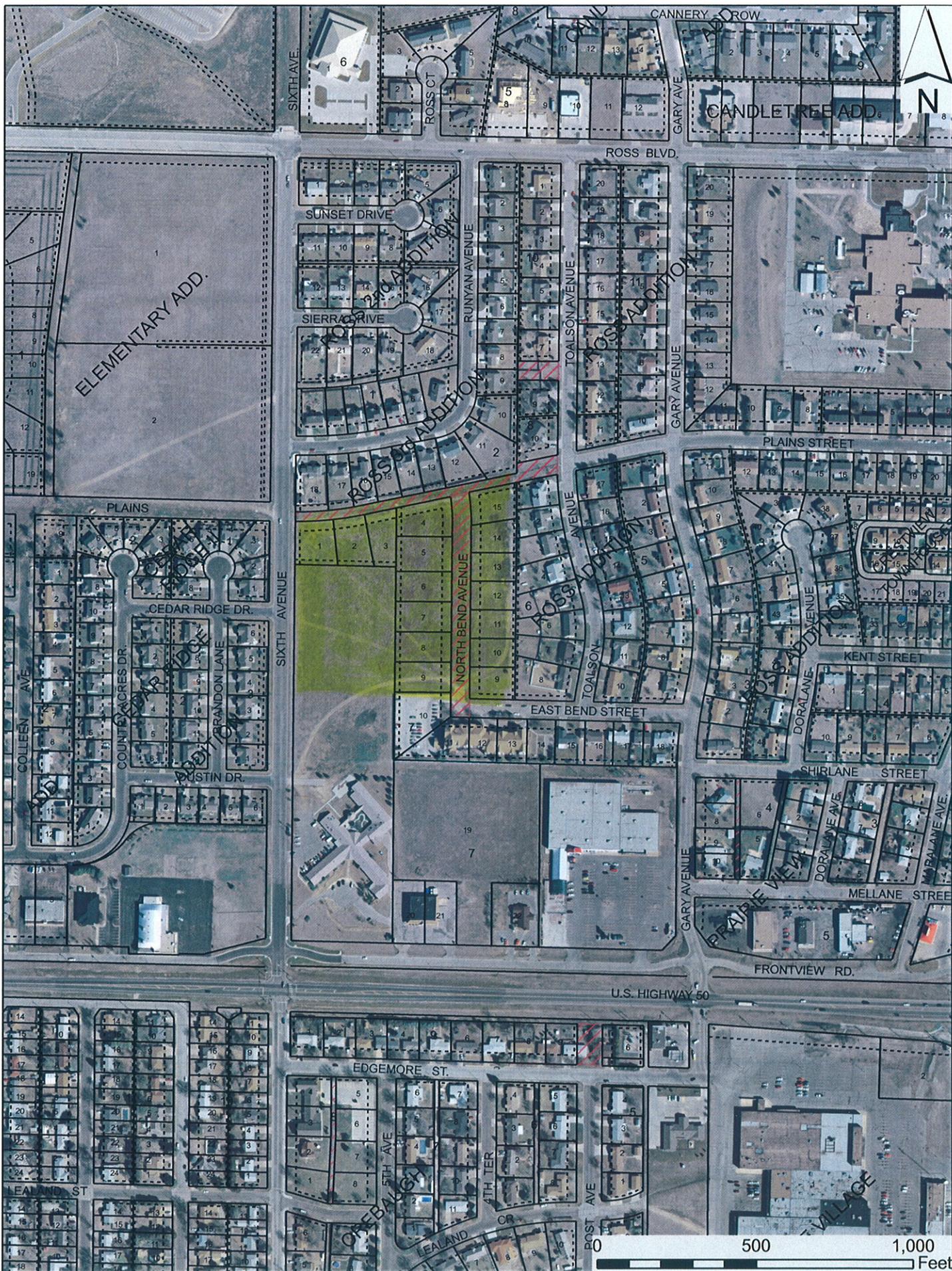
Lots 1, 2, 3, 4 and 5, Block 1, La Estancia Addition to the City of Dodge City, Ford County, Kansas, a Replat of a portion of Blocks 6 & 7, Ross Addition and a Parcel of Land located in the Southeast Quarter of Section 14, Township 26 South, Range 25 West of the 6th Principal Meridian.

1/13/2011

Exhibit C of Development Plan

EXHIBIT B

**MAP OF RURAL HOUSING IMPROVEMENT DISTRICT
BOUNDARIES FOR LA ESTANCIA PARTNERS LLC PROJECT**



1/13/2011

Exhibit C of Development Plan

EXHIBIT C

LA ESTANCIA PARTNER LLC SITE DEVELOPMENT PLAN

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Exhibit C of Development Plan

EXHIBIT D

**ELIGIBLE COSTS FOR
LA ESTANCIA PARTNERS LLC PROJECT**

EXHIBIT D**ELIGIBLE COSTS FOR
LA ESTANCIA PARTNERS LLC PROJECT**

La Estancia Apartments Site Work Estimates

Haul Off – Dem – Dump Fees	\$ 6,477.00
Site Preparation	\$301,538.00
Concrete Testing	\$ 5,500.00
Power Transmission and Dist	\$ 6,500.00
Concrete Paving	\$ 97,515.00
Concrete Walks	\$ 74,000.00
Concrete Curb and Gutter	\$ 18,500.00
Pavement Marking	\$ 3,200.00
Water Meter	\$ 5,500.00
Water Distribution	\$ 44,790.00 *
Storm Sewage	\$ 46,599.00
Sanitary Sewage	\$ 41,025.00 *
Sewer Connection Fees	\$ 500.00
Land	<u>\$114,000.00</u>
	\$765,644.00

* Upon substantial completion, internal infrastructure shall be dedicated to the City of Dodge City.

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Exhibit C of Development Plan

EXHIBIT E

CERTIFICATION OF SUBSTANTIAL COMPLETION FORM

EXHIBIT E

CERTIFICATE OF SUBSTANTIAL COMPLETION FORM

The undersigned, on behalf of Overland Property Group LLC (the "Developer"), pursuant to Section 3.4.3 of the Development Agreement dated as of January ____, 2011 (the "Development Agreement") by and among the City of Dodge City, Kansas, and the Developer, hereby certifies as follows. All capitalized terms used herein shall have the meaning attributable to such terms in the Development Agreement.

1. The Work with respect to the Internal Infrastructure Improvements in Development Project is sufficiently complete in accordance with the Construction Plans, excepting all punch list items, such that the Developer can occupy or utilize the Work for its intended purpose.
2. The Work has been completed in a good and workmanlike manner.
3. There are no mechanic's or materialmen's liens or other statutory liens on file encumbering title to the Property; all bills for labor and materials furnished for the Work which could form the basis of a mechanic's, materialmen's or other statutory lien against the Property have been paid in full, and within the past four months no such labor or materials have been furnished which have not been paid for.
4. All applicable building codes have been complied with in connection with the Work.

Dated: _____

OVERLAND PROPERTY GROUP LLC

By: _____

Name:

Title:

Memorandum

To: Ken Strobel
City Manager
From: Joseph E. Finley, P.E.
Director of Engineering
Date: January 11, 2011
Subject: Property Acquisition for pipeline for Wastewater Reclamation Facility
Agenda Item: New Business

Recommendation: Approve appraisal recommendations setting fair and equitable compensation for the utility easements and temporary construction easements necessary for this project.

Background: The City needs to acquire several permanent utility easements and temporary construction easements that are necessary for the underground pipeline. As a part of the process, an appraisal is done and then review by a second appraiser. This has been completed and the City is required to set a fair and equitable compensation as outline in the Uniform Act for Property Acquisition.

Justification: Without the acquisition of these properties, the City will be unable to complete the pipeline portion of the project.

Financial Considerations: The appraisals have recommended the following offers:

Tract 5-Stego	\$9,629
Tract 8- Kliesen	\$2,958
Tract 17-Shirley & Shirley Cattle Company	\$8,599
Tract 18-Abundant Life Family Church	\$ 909
Tract 19-Elsie A. Zimmer	\$12,960
Tract 24-Lopp	\$2,810
Tract 25-Majeski	<u>\$ 500</u>
	\$38,365

These costs are not reimbursable by the KDHE loan and will be paid through the Wastewater Treatment budget.

Purpose/Mission: The purchase of these easements will insure the completion of the project, which is necessary for the continued growth of Dodge City.

Legal Considerations: None

Attachments: None

Memorandum

To: Ken Strobel
City Manager
From: Joseph E. Finley, P.E.
Director of Engineering
Date: January 11, 2011
Subject: Utilizing Federal Exchange Program
Agenda Item: New Business

Recommendation: Approve KDOT agreement to allow them to purchase the federal funds allotted for the Comanche Street Project under the Federal Fund Exchange Program.

Background: Currently when the City receives funds from the Federal Government to use on projects such as Wyatt Earp, the City must follow the design and inspection requirements stipulated by the State Agency administering funds. While the process is good and insures a quality project that meets the specifications set by FWHA, the process is cumbersome and adds substantial time and cost to the project. For this reason, KDOT has implemented a program where they will trade Federal Funds for State Funds for Local Projects. However, since there are additional requirements they have to follow, the Cities that utilize this program will receive 90% of the funds.

Justification: Staff believes that by utilizing this program, not only can we complete the design quicker, but that the cost of design and inspection will be decreased enough to offset the 10% decrease in funds. In addition, the City would also bid and administer the project and would have total control during the construction.

Financial Considerations: The Federal Funds available for this project is approximately \$3,200,000. Utilizing the program would mean the City would only receive \$2,880,000 in state funds or a decrease of \$320,000. We believe the savings on inspection will more than make up for the decrease.

Purpose/Mission: By utilizing the program, the City will be utilizing the funds more economically for our citizens.

Legal Considerations: None

Attachments: Agreement



**KANSAS DEPARTMENT OF TRANSPORTATION
BUREAU OF LOCAL PROJECTS
REQUEST TO EXCHANGE FEDERAL FUNDS**

County/City: Ford/Dodge City

Federal Funds to Be Exchanged: \$ \$3,200,000

The Secretary of Transportation is hereby requested to make available to the city/county state funds in exchange for the city's/county's allotment of federal funds in the amount stated above.

We understand that the amount of state funds provided by the Secretary will be calculated at an exchange rate of \$0.90 of state funds per dollar of federal funds. We further understand that the state funds must be used for transportation project(s) in accordance with the program guidelines and will be paid on a reimbursement basis as the city/county incurs costs on the project(s).

Proposed project(s) to use the state funds are listed on the attached sheets.

Contact Person: Joseph E. Finley, P.E. Title: Director of Engineering

Address: 806 2nd Avenue, Dodge City, Kansas 67801

Phone: 620-225-8106 Email: joef@dodgecity.org

Signature*

E. Kent Smoll

Typed or Printed Name

Mayor

Title

1/18/2011

Date

***The representative signing this request must be authorized by law to bind the city/county to an agreement.**



Memorandum

To: City Manager
Assistant City Manager
City Commissioners

From: Paul Lewis 

Date: January 14, 2011

Subject: Public Transportation Grants

Agenda Item: New Business

Recommendation: Staff recommends authorizing staff to provide letters of support for 5311 and 5316 grant submittals for public transportation services by the City of Dodge City.

Background: Over the last few weeks staff has researched and prepared grant applications for General Public Transportation grants (5311) and Job Access Reverse Commute grants (5316). Attached is a memo provided by the Mobility Manager explaining the programs and submittals.

Justification: Currently the City funds a 5311 program that provides demand based, point to point services utilizing two vehicles. This letter of support is to revise that service and utilize one vehicle for demand based services, the second vehicle for a deviated fixed route, and expand the program through a joint effort with Ford County to provide a third vehicle to serve a route to surrounding communities and back to Dodge City.

The letter of support for the 5316 - Job Access program is the grant that provides for the Mobility Manager and is being modified to provide a new fixed route service intended to transport individuals to and from work. Principal local match for this new service will be provided by local businesses that benefit from the project.

Financial Considerations: These grant programs are based on an 80-20 split for capital equipment (the vehicle purchases) and a 50-50 split for general operating costs. The City currently has in the 2011 MERF budget \$10,000 for a replacement vehicle proposed in the existing 5311 program. There is also a sum of \$45,468 budgeted in the general fund for our local match. The City has previously approved \$8,000 in cooperation with Ford County to match for the Mobility Manager position.

To fully support all of the expanded programs will require an additional \$30,832 in City matching funds. That match then leverages \$140,000 in other local support and \$470,000 in grant funds from KDOT.

Purpose/Mission: Expanded public transportation programs are consistent with the City's Core Value of Ongoing Improvement. Expanding service levels addresses several needs identified by the members of the breakout team that has been studying and reviewing public transportation services over the last several months.

Legal Considerations: The deadline for these applications is January 28th. At this time, all of the other supporting entities have not committed to their matches. Therefore, the City's letters are written in a fashion to allow us to de-commit from the expanded services should all of the local support not be available.

Attachments: Mobility Manger memo
5311 Sample letter of support
5316 Sample letter of support

Cc: Kathy Denhardt, Mobility Manager

January 13, 2011

To: City Commission
From: Kathy Denhardt, Mobility Manager
Re: Public Transportation Expansion Options

In preparation for January 28 deadlines for KDOT 5311 and 5316 grant applications we are considering the following options for changing and expanding public transit in the Dodge City / Ford County area. We are seeking three year commitments of support from Ford County, National Beef, and Cargill to partner with the City of Dodge City in providing the local matching funds necessary for these grants.

With our existing two vehicles we are exploring the following changes in service, which would not change the overall cost of the program from 2010 levels:

- I. Make service changes to existing 2 vehicles funded through 5311 grant:
 - a. Change 13 passenger vehicle to a Deviated Fixed Route service making regular stops throughout Dodge City.
 - b. Existing 6 passenger vehicle will be replaced (requiring 20% match for capital investment) and remain a Demand Response vehicle.
 - c. Dodge City's current local match would remain unchanged at:

Local 20% match for new 6 passenger vehicle:	\$ 9,730
Local 50% match for operating 2 vehicles	<u>\$54,150</u>
TOTAL	\$63,880

- II. Expand deviated fixed route service through 5311 grant to include service between Dodge City and Wright, Spearville, Bucklin, and Ford.
 - a. Purchase new 13 passenger vehicle for this new Deviated Fixed Route service
 - b. Staff with part-time Drivers
 - c. We would seek to share the local match for this expanded service with Ford County on a 25-75 basis. This would be new expense for the Dodge City budget:

Local 20% match for new 13 passenger vehicle	\$13,000	
Local 50% match for operating costs	<u>\$26,000</u>	
TOTAL	\$39,000	
Dodge City	25%	\$ 9,750
Ford County	75%	\$29,250

- III. Apply for 5316 grant to continue funding Mobility Manager position and to establish deviated fixed route service from residential areas of Dodge City on a route timed with shifts at National Beef and Cargill (6000 employees and a lot of traffic).
- Purchase three 20-passenger buses (largest KDOT program includes)
 - Operate with part time drivers six days a week (4:30-7:30 am, 1:30-5:30 pm, 11 pm – 2 am).
 - Charge \$2.50 fare each trip (assuming a 50% occupancy of every bus this would generate \$93,600 in revenue)
 - Continue funding Mobility Manager position
 - Seek to have Cargill and National Beef carry 80% of the local match, Ford County 10% and Dodge City 10%.

Local 20% match for 3 new 20 passenger vehicles and Mobility Manager		\$50,000
Local 50% match for operating costs		<u>\$74,000</u>
TOTAL		\$124,000
Cargill	40%	\$49,600
National Beef	40%	\$49,600
Dodge City	10%	\$12,400
Ford County	10%	\$12,400
KDOT share of capital and operating costs		\$274,000
Rider Fares		<u>\$ 94,000</u>
Total Year 1 expenses for 5316 JARC Project		\$492,000

If we replaced one existing vehicle, purchased 4 new vehicles for expanded service, operated the new buses with part-time drivers, and were successful in getting Ford County, Cargill and National Beef to contribute to the local match as assumed, the total impact on Dodge City budget for next fiscal year would be:

Change existing 5311 service	\$63,880 (same as 2010)
Expand 5311 to include Ford County route	\$ 7,750 (new)
5316 Mobility Manager + create routes to plants	<u>\$12,400</u> (\$8,000 in 2010)
Total Dodge City match	\$84,030

Sample Letter

KANSAS DEPARTMENT OF TRANSPORTATION

Application for Public Transportation Assistance Project **SFY 12 - (07/1/2011 – 6/30/2012)**

The City of Dodge City commits to providing local matching funds in the amount of \$73,630 for the USC 49-5311 for maintenance and expansion of public transportation, subject to final budgetary approval. These funds will be available by September 1, 2011. The City of Dodge City budgets on an annual basis.

If you have any questions, contact Nannette Pogue at _____

Sincerely,

Nannette Pogue

Sample Letter

KANSAS DEPARTMENT OF TRANSPORTATION

Application for Public Transportation Assistance Project **SFY 12 - (07/1/2011 – 6/30/2012)**

U.S.C 49-5316 FUNDING

The City of Dodge City commits to providing local matching funds in the amount of \$12,400 for the USC 49-5316 for expansion of public transportation to include Job Access Reverse Commute routes, subject to final budgetary approval. These funds will be available by September 1, 2011. The City of Dodge City budgets on an annual basis.

If you have any questions, contact Nannette Pogue at _____

Sincerely,

Nannette Pogue