

CITY COMMISSION AGENDA

City Hall Commission Chambers

Monday, March 21, 2011

7:00 p.m.

MEETING #4841

CALL TO ORDER

ROLL CALL

INVOCATION: by Rev. Jeff Turner of the First Missionary Church

PLEDGE OF ALLEGIANCE

PETITIONS & PROCLAMATIONS

PUBLIC HEARING

1. Consider the Establishment of an RHID District and Development Plan for Wagon Wheel.

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, March 7, 2011
2. Appropriation Ordinance No. 6, March 21, 2011
3. Cereal Malt Beverage License
 - a. Lotus Garden Chinese Restaurant, 1202 E. Wyatt Earp Blvd.
 - b. El Korita Restaurant, 2001 W. Wyatt Earp Blvd.

ORDINANCES & RESOLUTIONS

Resolution No. 2011-08: Resolution authorizing filing of application with the Kansas Department of Health and Environment for a Loan under the Kansas Water Pollution Control Revolving Fund Act (K.S.A. 1988 Supp. 65-3321 through 65-3329). Report by City Engineer, Ray Slattery.

Ordinance No. 3512: 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 (Wagon Wheel Project). Report by City Manager, Ken Strobel.

Ordinance No. 3513: An Ordinance Creating Housing Rehabilitation and Citizens Advisory Board to Serve the Governing Body of the City of Dodge City, Kansas in Matters Pertaining to the City's 2011 Community Development Block Grant and Establish Said Boards Functions, Duties and Authority. Report by Director of Finance/City Clerk, Nannette Pogue.

UNFINISHED BUSINESS

NEW BUSINESS

1. Approval of Engineer and Design Contract with SMH for Candletree Addition #5 Infrastructure. Report by City Engineer, Ray Slattery.
2. Authorization of payment for Easement Purchase for Wastewater Reclamation Facility. Report by City Engineer, Ray Slattery.

OTHER BUSINESS

ADJOURNMENT

CITY COMMISSION MINUTES

City Hall Commission Chambers

Monday, March 8, 2011

7:00 p.m.

MEETING #4839

CALL TO ORDER

ROLL CALL: Mayor Kent Smoll, Commissioners Rick Sowers, Jim Sherer, Monte Broeckelman and Michael Weece were present.

INVOCATION: by Rev. Adam Rankin of the First Missionary Church

PLEDGE OF ALLEGIANCE

PETITIONS & PROCLAMATIONS

National Problem Gambling Awareness Week

Great American Clean Up – Director of Public Information, Jane Longmeyer, commented on the activities for the Great American Cleanup; Riverbed Cleanup supported by Cargill, Adopt a Highway, and Arbor Day.

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).

Character Trait – Boldness, was presented by Director of Public Information, Jane Longmeyer.

CONSENT CALENDAR

1. Approval of City Commission Meeting minutes, February 21, 2011
2. Approval of Joint City/County Meeting minutes, February 26, 2011
3. Appropriation Ordinance No. 5, March 7, 2011
4. Cereal Malt Beverage License
 - a. Quick Pick, Inc., 2501 Central Avenue
5. Approval of Contract with D&J Shows.

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

ORDINANCES & RESOLUTIONS

Ordinance No. 3511: An Ordinance Rezoning a Tract of Land in a Vacated Portion of Riverside Addition From R-1, Residential Low Density to C-2, Commercial Highway was approved on a motion by Commissioner Rick Sowers, seconded by Commissioner Monte Broeckelman. Motion carried unanimously.

Resolution No. 2011-04: A Resolution of the Governing Body of the City of Dodge City, Kansas Determining That the City is Considering Establishing a Rural Housing Incentive District Within the City and Adopting a Plan For the Development of Housing and Public Facilities in Such Proposed District; Establishing the Date and Time of a Public Hearing on Such Matter, and Providing for the Giving of Notice of Such Public Hearing (Summerlon Properties, L.L.C. Project) was approved on a motion by Commissioner Monte Broeckelman, seconded by Commissioner Jim Sherer. Motion carried unanimously.

Resolution No. 2011-05: A Resolution Making Certain Findings and Determinations as to the Need for Housing Within the City of Dodge City, Kansas and Setting Forth the Legal Description of Real Property Proposed to be Designated as a Rural Housing Incentive District Pending Legal Description Within the City was approved on a motion by Commissioner Rick Sowers, seconded by Commissioner Jim Sherer. Motion carried unanimously.

Resolution No. 2011-06: A Resolution Determining the Advisability of the Making of Certain Internal Improvements in Wagon Wheel Addition in the City of Dodge City, Kansas, and Setting Forth the General Nature of the Improvement, the Extent of the Improvement District to be Assessed for the Cost Thereof, the Method of Assessment, and the Proposed Apportionment of the Cost Between the Improvement District and the City at Large; and Authorizing and Providing for the Making of the Improvement in Accordance with the Findings of the Governing Body was approved on a motion by Commissioner Monte Broeckelman, seconded by Commissioner Michael Weece. Motion carried unanimously.

Resolution No. 2011-07: A Resolution Making Certain Findings and Determinations as to the Need for Housing Within the City of Dodge City, Kansas and Setting Forth the Legal Description of Real Property Proposed to be Designated as a Rural Housing Incentive District Within the City was approved on a motion by Commissioner Rick Sowers, seconded by Commissioner Jim Sherer. Motion carried unanimously.

UNFINISHED BUSINESS**NEW BUSINESS**

1. Approval of Energy Conservation Guidelines was approved on a motion by Commissioner Michael Weece, seconded by Commissioner Jim Sherer. Motion carried unanimously.

2. The CDBG Grant Agreement between the State of Kansas and City of Dodge City was approved on a motion by Commissioner Jim Sherer, seconded by Commissioner Monte Broeckelman. The motion carried unanimously.
3. Letter of Intent to apply for T-Works Grant in the amount of \$834,168.00 with a local match of 25% was approved on a motion by Commissioner Jim Sherer, seconded by Commissioner Monte Broeckelman. Motion carried unanimously.
4. Payment for Easements for Water Reclamation Facility Pipeline was approved on a motion by Commissioner Jim Sherer, seconded by Commissioner Michael Weece. The motion carried unanimously.
5. The Proposal from APAC Kansas Inc., Shears Division for the construction of the Infrastructure Improvements for the Wagon Wheel Sub-Division in the amount of \$406,663.65 was approved on a motion by Commissioner Jim Sherer, seconded by Commissioner Michael Weece. The motion carried unanimously.
6. The Contract with United States Auto Club (USAC) to operate Dodge City Raceway Park was approved on a motion by Commissioner Monte Broeckelman, seconded by Commissioner Rick Sowers. The motion carried unanimously.

OTHER BUSINESS

Ken Strobel, City Manager:

- Today is International Women's Day – wanted to recognize the women who worked for the City and the contributions they have made.

Cherise Tieben, Assistant City Manager:

- Thanks to City Staff, particularly Mary Trent for cleaning up the racetrack, along with Corey Keller and Leonel Ibarra and Staff.
- Dodge City Night in Topeka was last night – want to Thank Kaci Davignon, Jane Longmeyer and Jan Stevens for organizing it, Cargill for donating the steaks and all the sponsors.

Jane Longmeyer, Director of Public Information:

- Ambucs Home and Leisure Show was held last weekend and was well attended. Jane drew the winners of the prizes and reported who those individuals were
 - 1st Place – Howard Muncy
 - 2nd Place – Pam Kirk
 - 3rd Place – Angie Tillman;
- Betty Muncy was recognized as the Kansas Governor's Arts Council as an Arts Patron; and
- KDOT determined that the Speed Limit on Highway 50 Bypass was reduced and signs were installed last week.

Commissioner Jim Sherer:

- Commented on Dodge City Night in Topeka and thanked everyone involved and commented on the recognition of Dodge City; and
- Thanked the Railers for their work at the Depot.

Commissioner Rick Sowers:

- Thanked the Mayor for driving to him to Dodge City Night in Topeka.

Commissioner Michael Weece:

- Commented about the article in Furniture Today and the market in Dodge City.

Commissioner Monte Broeckelman:

- Asked about truck signs on Wyatt Earp Blvd;
- Asked about air service and wanted to know about Manhattan's service; and
- Commented on there is lots of basketball to be played.

Mayor Kent Smoll:

- Dodge City Night in Topeka was fantastic. Congratulations to Economic Development, Chamber of Commerce, CVB, Brian Weber and Victory Electric;
- Commented on the Census Report that was published;
- Commented on the United Wireless Arena events; and
- Commented on the Sales Tax Report.

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

E. Kent Smoll, Mayor

ATTEST:

Nannette Pogue, City Clerk

**INDIVIDUAL/SOLE PROPRIETOR
APPLICATION FOR LICENSE TO SELL CEREAL MALT BEVERAGES**

(This form has been prepared by the Attorney General's Office)

City or County of Dodge City

SECTION 1 - LICENSE TYPE	
Check One: <input type="checkbox"/> New License <input checked="" type="checkbox"/> Renew License	
Check One:	
<input checked="" type="checkbox"/> License to sell cereal malt beverages for consumption on the premises.	
<input type="checkbox"/> License to sell cereal malt beverages in original and unopened containers and not for consumption on the licenses premises.	

SECTION 2 - APPLICANT INFORMATION			
Kansas Sales Tax Registration Number (required): <u>10350063</u>			
Name <u>Billy Vo</u>	Phone No. <u>620-225-6348</u>	Date of Birth <u>02/21/55</u>	
Residence Street Address <u>508 Runyan Ave.</u>	City <u>Dodge City</u>	Zip Code <u>67801</u>	
Applicant Spousal Information			
Spouse Name	Phone No.	Date of Birth	
Residence Street Address	City	Zip Code	

SECTION 3 - LICENSED PREMISE			
Licensed Premise (Business Location)		Mailing Address	
DBA Name <u>Lotus Gardens Chinese Restaurant</u>	Name <u>Lotus Gardens</u>	Address <u>1202 E. Wyatt-camp blvd</u>	
Business Location Address <u>1202 E. Wyatt-camp blvd</u>	City <u>Dodge City</u>	State <u>KS</u>	Zip <u>67801</u>
Business Phone No. <u>620-227-7028</u>	<input checked="" type="checkbox"/> I own the proposed business location. <input type="checkbox"/> I do not own the proposed business location.		
Business Location Owner Name(s) <u>Billy Vo</u>			

SECTION 4 - APPLICANT QUALIFICATION	
I am a U.S. Citizen	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
I have been a resident of Kansas for at least one year prior to application.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
I have resided within the state of Kansas for <u>31</u> years.	
I am at least 21 years old.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Within 2 years immediately preceding the date of this application, neither I nor my spouse ¹ has been convicted of, released from incarceration for or released from probation or parole for any of the following crimes: (1) Any felony; (2) a crime involving moral turpitude; (3) drunkenness; (4) driving a motor vehicle while under the influence of alcohol (DUI); or (5) violation of any state or federal intoxicating liquor law.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
My spouse has previously held a CMB license.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
My spouse has never been convicted of one of the crimes mentioned above while licensed.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

**INDIVIDUAL/SOLE PROPRIETOR
APPLICATION FOR LICENSE TO SELL CEREAL MALT BEVERAGES**
(This form prepared by the Attorney General's Office)

SECTION 5 – MANAGER OR AGENT QUALIFICATION		
My place of business will be conducted by a manager or agent.		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
If yes, provide the following:		
Manager/Agent Name	Phone No.	Date of Birth
Residence Street Address	City	Zip Code
Manager or Agent Spousal Information		
Spouse Name	Phone No.	Date of Birth
Residence Street Address	City	Zip Code
Qualification Statement		
My manager/agent and his/her spouse ² meets all of the qualifications in Section 4.		<input type="checkbox"/> Yes <input type="checkbox"/> No

I declare under penalty of perjury under the laws of the State of Kansas that the foregoing is true and correct. (K.S.A. 52-601)

SIGNATURE *B. Deyton* DATE MAR. 14. 2011.

FOR CITY/COUNTY OFFICE USE ONLY:	
<input checked="" type="checkbox"/> License Fee Received Amount \$ <u>200⁰⁰</u> Date <u>3-14-11</u> ((\$25 - \$50 for Off-Premise license or \$25-200 On-Premise license)	
<input checked="" type="checkbox"/> \$25 CMB Stamp Fee Received Date <u>3-14-11</u>	
<input type="checkbox"/> Background Investigation <input type="checkbox"/> Completed Date _____ <input type="checkbox"/> Qualified <input type="checkbox"/> Disqualified	
<input type="checkbox"/> New License Approved Valid From Date _____ to _____ By: _____	
<input type="checkbox"/> License Renewed Valid From Date _____ to _____ By: _____	

A PHOTOCOPY OF THE COMPLETED FORM, TOGETHER WITH THE STAMP FEE REQUIRED BY K.S.A. 41-2702(e), MUST BE SUBMITTED WITH YOUR QUARTERLY REPORT (ABC-301) TO THE ALCOHOLIC BEVERAGE CONTROL, 915 SW HARRISON STREET ROOM 214, TOPEKA, KS 66625-3512.

¹ If renewal application, applicant's spouse not required to meet the no criminal history requirement. K.S.A. 41-2703(b)(9)
² Spouse not required to be U.S. citizen, Kansas resident or over 21 years of age. K.S.A. 41-2703(b)(9)



INDIVIDUAL/SOLE PROPRIETOR
APPLICATION FOR LICENSE TO SELL CEREAL MALT BEVERAGES

(This form has been prepared by the Attorney General's Office)

City or County of Dodge City

SECTION 1 – LICENSE TYPE

Check One: New License Renew License

Check One:

License to sell cereal malt beverages for consumption on the premises.

License to sell cereal malt beverages in original and unopened containers and not for consumption on the licenses premises.

SECTION 2 – APPLICANT INFORMATION

Kansas Sales Tax Registration Number (required):

Name	Phone No.	Date of Birth
<u>Julie E. Sosa</u>	<u>(620) 253-4414</u>	<u>10-25-71</u>
Residence Street Address	City	Zip Code
<u>1100 W. Elm St.</u>	<u>Dodge City</u>	<u>67801</u>

Applicant Spousal Information

Spouse Name	Phone No.	Date of Birth
<u>Feliciano Sosa</u>	<u>(620) 253-4412</u>	<u>10-09-71</u>
Residence Street Address	City	Zip Code
<u>1100 W. Elm St.</u>	<u>Dodge City</u>	<u>67801</u>

SECTION 3 – LICENSED PREMISE

Licensed Premise (Business Location)	Mailing Address
DBA Name	Name
<u>El Morita Restaurant</u>	<u>Monica Hernandez</u>
Business Location Address	Address
<u>2001 W. Whitt Earp Blvd</u>	<u>11004 Ave A</u>
City, State, Zip	City, State, Zip
<u>Dodge City KS 67801</u>	<u>Dodge City KS 67801</u>
Business Phone No.	<input type="checkbox"/> I own the proposed business location.
<u>(620) 371-6008</u>	<input checked="" type="checkbox"/> I do not own the proposed business location.
Business Location Owner Name(s)	
<u>Monica Hernandez</u>	

SECTION 4 – APPLICANT QUALIFICATION

I am a U.S. Citizen Yes No

I have been a resident of Kansas for at least one year prior to application. Yes No

I have resided within the state of Kansas for 13 years.

I am at least 21 years old. Yes No

Within 2 years immediately preceding the date of this application, neither I nor my spouse¹ has been convicted of, released from incarceration for or released from probation or parole for any of the following crimes:
(1) Any felony; (2) a crime involving moral turpitude; (3) drunkenness; (4) driving a motor vehicle while under the influence of alcohol (DUI); or (5) violation of any state or federal intoxicating liquor law. Yes No

My spouse has previously held a CMB license. Yes No

My spouse has never been convicted of one of the crimes mentioned above while licensed. Yes No

**INDIVIDUAL/SOLE PROPRIETOR
APPLICATION FOR LICENSE TO SELL CEREAL MALT BEVERAGES**
(This form prepared by the Attorney General's Office)

SECTION 5 – MANAGER OR AGENT QUALIFICATION		
My place of business will be conducted by a manager or agent.		<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, provide the following:		
Manager/Agent Name	Phone No.	Date of Birth
Residence Street Address	City	Zip Code
Manager or Agent Spousal Information		
Spouse Name	Phone No.	Date of Birth
Residence Street Address	City	Zip Code
Qualification Statement		
My manager/agent and his/her spouse ² meets all of the qualifications in Section 4.		<input type="checkbox"/> Yes <input type="checkbox"/> No

I declare under penalty of perjury under the laws of the State of Kansas that the foregoing is true and correct. (K.S.A. 52-601)

SIGNATURE *Julie E. Doran* DATE 3-09-2011



Sabrina D. Beil

FOR CITY/COUNTY OFFICE USE ONLY:

License Fee Received Amount \$ _____ Date _____
(\$25 - \$50 for Off-Premise license or \$25-200 On-Premise license)

\$25 CMB Stamp Fee Received Date _____

Background Investigation Completed Date _____ Qualified Disqualified

New License Approved Valid From Date _____ to _____ By: _____

License Renewed Valid From Date _____ to _____ By: _____

A PHOTOCOPY OF THE COMPLETED FORM, TOGETHER WITH THE STAMP FEE REQUIRED BY K.S.A. 41-2702(e), MUST BE SUBMITTED WITH YOUR QUARTERLY REPORT (ABC-301) TO THE ALCOHOLIC BEVERAGE CONTROL, 915 SW HARRISON STREET ROOM 214, TOPEKA, KS 66625-3512.

¹ If renewal application, applicant's spouse not required to meet the no criminal history requirement. K.S.A. 41-2703(b)(9)
² Spouse not required to be U.S. citizen, Kansas resident or over 21 years of age. K.S.A. 41-2703(b)(9)



Memorandum

To: Ken Strobel
City Manager
From: Raymond A. Slattery, P.E. 
City Engineer
Date: March 14, 2011
Subject: Kansas Department of Health
and Environment (KDHE) Low Interest Loan
Agenda Item: Ordinances and Resolutions

Recommendation: Approve Resolution to authorize either myself or Nannette Pogue to sign all documents pertaining to the KDHE low interest loan.

Background: Back on June 15, 2009, the City Commission approved a similar Resolution so that City Staff could sign the documents pertaining to the KDHE Loan agreement.

Justification: This Resolution is needed so that the documents required by KDHE can be signed.

Financial Considerations: The KDHE Loan reimburses the City the money it has paid to the Contractor(s).

Purpose/Mission: With this Loan Agreement the City has provided sewer service for the continue growth of the City.

Legal Considerations: Authorization of signatures for the KDHE Loan Agreement.

Attachments: Resolution #2011-08.

RESOLUTION OF GOVERNING BODY OF APPLICANT
(Suggested Form for Recipient Use)

RESOLUTION NO. 2011-08

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

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

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

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

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

2. That Ray Slattery City Engineer
Nannette Pogue, Director of Finance/City Clerk be and
(Name of Authorized Representative) (Title)
he/she is hereby authorized and directed to furnish such information as may be reasonably requested in connection with the application which is herein authorized, to sign all necessary documents on behalf of the applicant, to furnish such assurances as may be required by law or regulation, and to receive payment on behalf of the applicant.

CERTIFICATE OF RECORDING OFFICER

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

That the attached resolution is a true and correct copy of the resolution adopted at a legally convened meeting of the
City Commission held on the 21st day of March, 2011;
(Name of Governing Body of Applicant)

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

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

(Seal)

(Signature of Recording Officer)

If applicant has an official seal, impress here.

(Title of Recording Officer)

Memorandum

To: City Commissioners
From: Ken Strobel
Date: March 18, 2011
Subject: RHID – Wagon Wheel
Agenda Item: Ordinance No. 3512

Recommendation: Staff recommends the approval of the Development Agreement between the City of Dodge City and Volz Builders. The second action required is the approval of Ordinance 3512 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 pay the bonds or the property owner for eligible costs. Due to Volz Builders utilizing special assessment general obligation bonds, they are not eligible to receive the rebate until after bond obligations are met. The Volz Builders development will provide eighteen (18) residential duplexes. Each duplex unit will include individual laundry facilities, cable television hook-ups and at least a single car garage.

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 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 City has minimal risk with this developer due to the issuance of general obligation bonds, and feel that the agreement lessens that risk. 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 3512 and Development Plan.

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (hereinafter “Agreement”), entered into this 21st day of March, 2011, by and between the **CITY OF DODGE CITY**, Kansas, a municipal corporation of the State of Kansas (hereinafter “City”), and **VOLZ BUILDERS, LLC**, a Kansas limited liability corporation, with its principal place of business in Dodge City, 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 “ Wagon Wheel Development” (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 Volz Builders, LLC, a Kansas limited liability corporation, with its principal place of business in Dodge City, 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 construction of not less than eighteen (18) duplex structures containing thirty-six (36) quality residences in the Development Area in accordance with the Concept Site Plan.

“**External Infrastructure Improvements**” means the extension of sanitary sewer from St. Joseph Ave. to the Development Area and the extension of City water from the present location to the Development Area.

“**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 External and 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 residence in a duplex.

“**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 not less than eighteen (18) duplex residential 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 Regarding Special Assessments. Developer has petitioned the City for special assessment financing for infrastructure improvements as reflected in *Exhibit D*. Said special assessment charges will be eligible costs to be paid by Rural Housing Incentive District incremental proceeds.

2.4 Further Proceedings Regarding the Rural Housing Incentive District Act. 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, this Agreement, establish a Rural Housing Incentive District that includes the Property and adopt a Resolution establishing a benefit district for the financing of certain internal improvements within 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 Public 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.

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, on file at City Hall.

3.3 Concept Site Plan. Developer in coordination with the City and at the cost of the City, has had prepared a Concept Site Plan. Said Concept Site Plan, attached hereto marked *Exhibit C*, is hereby approved by the Parties. Either party shall promptly notify the other in writing of any proposed 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 Public Improvements. Developer and the City shall be financially responsible for the Public Improvements as delineated on *Exhibit D*. The Developer shall allow the City to contract with and direct the work of an agreed upon contractor to construct portions of the Public Improvements. The Developer and the City shall assure that their respective Public Improvements are completed 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 Public 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 External or Internal Infrastructure Improvements and City will cooperate with Developer with respect to any such acquisition. All costs associated with the acquisition of internal 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. Each Party may enter into one or more construction contracts to complete the Work for the Public Improvements. Prior to the commencement of construction of the Public Improvements, each Party 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 maintain evidence of such

insurance with the City. Each Party shall require that the insurance required is maintained by any such contractor for the duration of the construction of the Public 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 Public Improvements, or a phase thereof, in accordance with the provisions of this Agreement, the respective contractors 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 Contractor 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 Public Improvements, Developer will dedicate to City, and City will accept, title to the Public 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. The costs of the Public Improvements shall be allocated between the Developer and the City as set out in *Exhibit D*. City agrees to finance a portion of the Developer's share of the Internal Infrastructure costs through the issuance of general obligation special assessment bonds (the "Bonds") as indicated on *Exhibit D* and as authorized by Resolution 2011-06. The City shall deposit the amounts received by the City, pursuant to K.S.A. 12-5250(b)(2)(A) (the "Increment") in a special assessment bond obligation account (the "Assessment Account"). Funds from said Assessment Account shall be used to pay all or a portion of the principle and interest on the Bonds and to reimburse the Developer for all or a portion of other eligible costs of Internal Infrastructure Improvements not covered by the Bonds.

Funds from the Assessment Account shall be accrued and disbursed in accordance with the following guidelines and in the time and manner following:

1. Developer shall be responsible for and shall upon request reimburse City for any and all funds advanced by the City from accounts other than the Assessment Account and applied to payment of principle and interest on said Bonds. Said reimbursement if requested shall be made by Developer within 30 days of receipt from the City of written request for payment accompanied by documentation of such advance payments;
2. City shall apply the Increment payments received (1) to reimbursement to the City of any non-reimbursed advanced Bond payments; (2) to a Bond payment reserve in an amount equal to two annual Bond payments; (3) to annual Bond payments currently due; and (4) to reimbursement to Developer for payments made by Developer pursuant to paragraph (1) above to reimburse City for advance payments made by City, and/or to reimburse Developer for other eligible Internal Infrastructure Improvement costs incurred by Developer and not paid from Bond proceeds.
3. Once all Bond obligations have been fully paid and all reimbursable costs to Developer have been fully satisfied and the Project completed the Assessment Account shall be closed and all future Increments shall be disbursed pursuant to the provisions of KSA 12-5250(b)(2)(B).

Payments due to Developer, if any, shall be made within thirty (30) days following the annual Bond Payment by the City beginning in 2012 and continuing until such time as the General Obligation Bonds and eligible Developer Financed Project Costs in accordance with **Exhibit D** 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). Developer shall be responsible for any bond payment or portion thereof not covered by the payment made from the Assessment Account.

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 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.

- (b) 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 except for Public Improvements 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:

Volz Builders, LLC
11170 Kliesen
Dodge City, KS 67801
Attention: Tim Volz
Phone: 620/225-3127

(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, 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.

3/18/11

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: March 21, 2011

3/18/11

ATTEST: (SEAL)

Nannette Pogue, City Clerk

VOLZ BUILDERS, LLC

By: _____
Tim Volz

Dated: March 21, 2011

3/18/11

**SCHEDULE OF EXHIBITS
OF THE DEVELOPMENT AGREEMENT**

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

3/18/11

EXHIBIT A
PROPERTY DESCRIPTION

3/18/11

EXHIBIT A

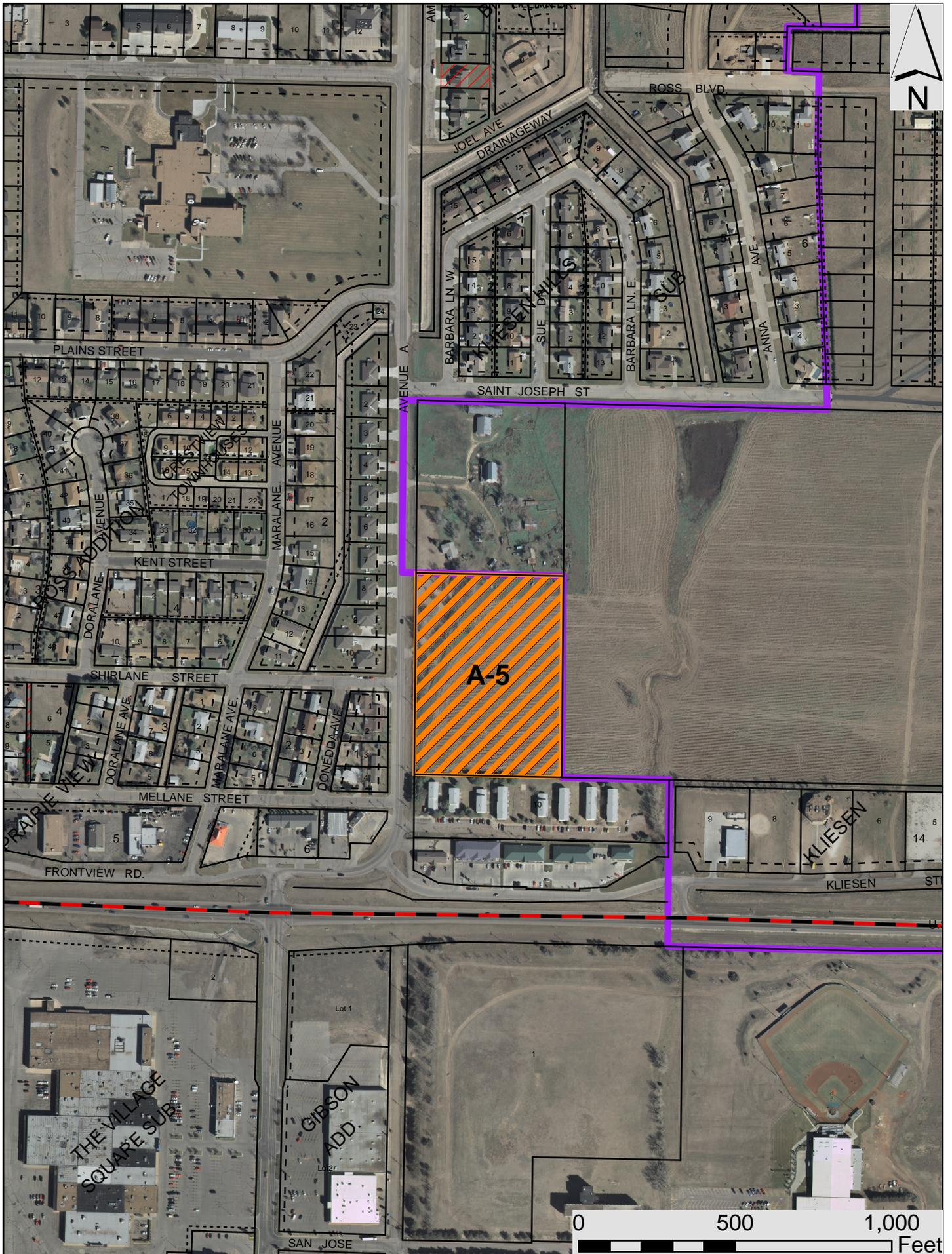
PROPERTY DESCRIPTION

Lots 1, 2, 3, 4, 5 and 6, Block 1, and Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12, Block 2, Wagon Wheel Addition, Unit one to the City of Dodge City, Ford County, Kansas.

3/18/11

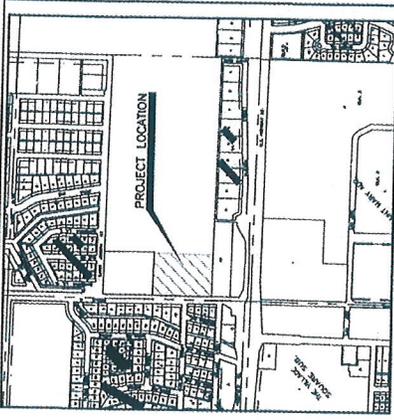
EXHIBIT B

**MAP OF RURAL HOUSING IMPROVEMENT DISTRICT
BOUNDARIES FOR WAGON WHEEL DEVELOPMENT PROJECT**



3/18/11

EXHIBIT C
WAGON WHEEL SITE DEVELOPMENT PLAN



VICINITY MAP
(NOT TO SCALE)

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

Point	North	East	Unit	Dist.	Bearing	Table	Distance
1	1722885.10	894270.15	N	80727.08'	N 00°27'08" E	643.40	
2	1722885.10	894270.15	S	80727.08'	S 00°27'08" E	643.40	
3	1722874.38	879221.61	S	80726.64'	S 00°26'44" W	643.51	
4	1722830.89	879221.61	N	80726.64'	N 00°26'44" W	643.51	
5	1722830.89	894270.15	N	80727.08'	N 00°27'08" E	643.40	

Perimeter: 2310.12 Acum. Perimeter: 2310.12
 Approx. Sta. Feet: 329168.61 Acres: 7.557
 Approx. Accum. - Sta. Feet: 329168.61 Acres: 7.557

Corner Easement Coordinates: North: 1722830.89, East: 894270.15
 Ending Coordinates: North: 1722830.89, East: 894270.15
 Error: N: -0.00 E: 0.01 Total: 0.01 Brg: N 69°52'25" W
 Distance Traversed: 2310.12 Closure: 342782

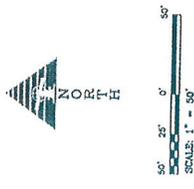
Final Plat
WAGON WHEEL
ADDITION, UNIT ONE
 an Addition, City of Dodge City,
 Ford County, Kansas



2301B Anderson Avenue, Suite 2 • Manhattan, Kansas 66503
 (785) 776-0541 • FAX 776-9760 • Email: lmb@smhman.com
 Project #091218FE DD #B3

AUGUST 2010

SHEET 1 OF 2

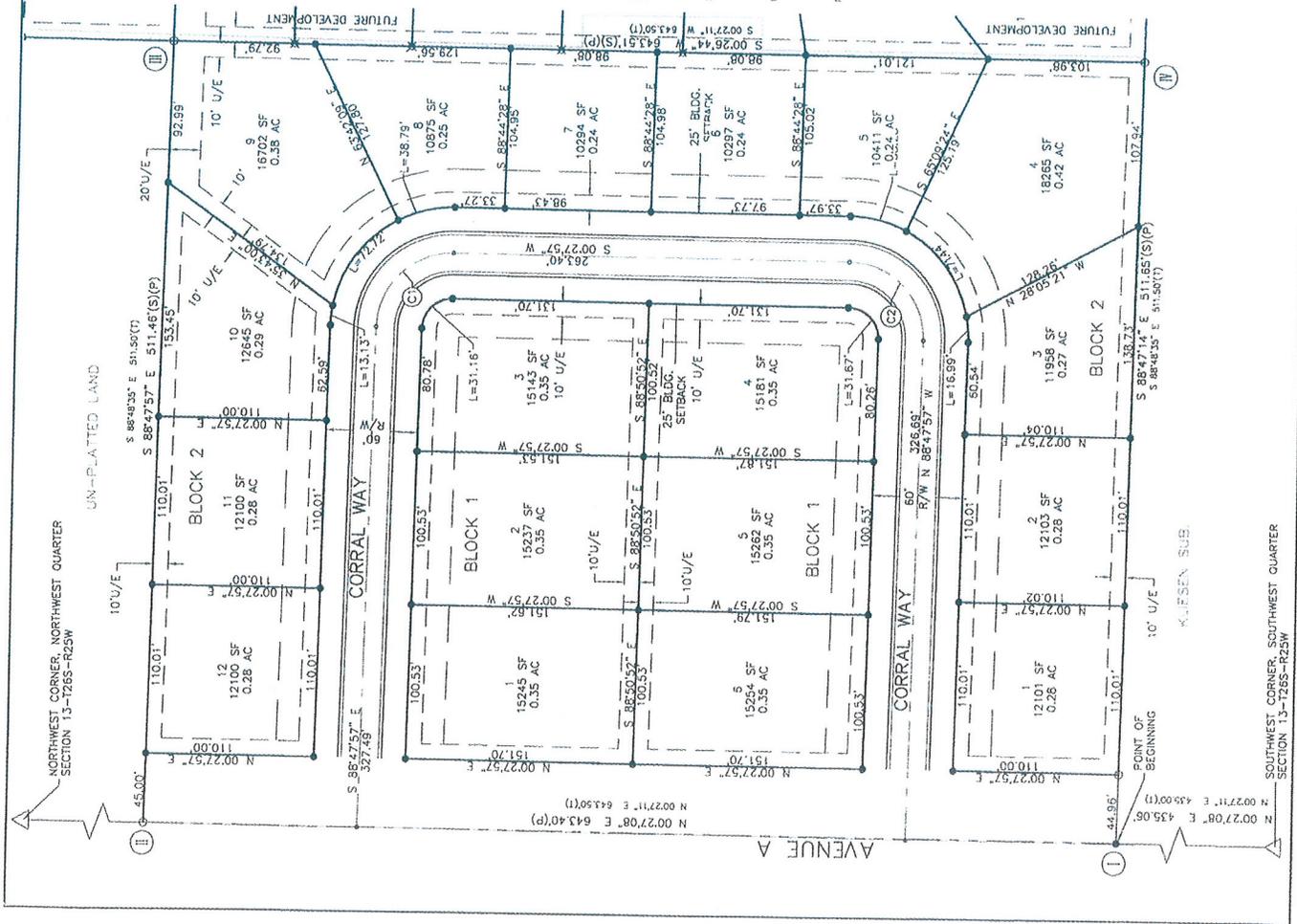


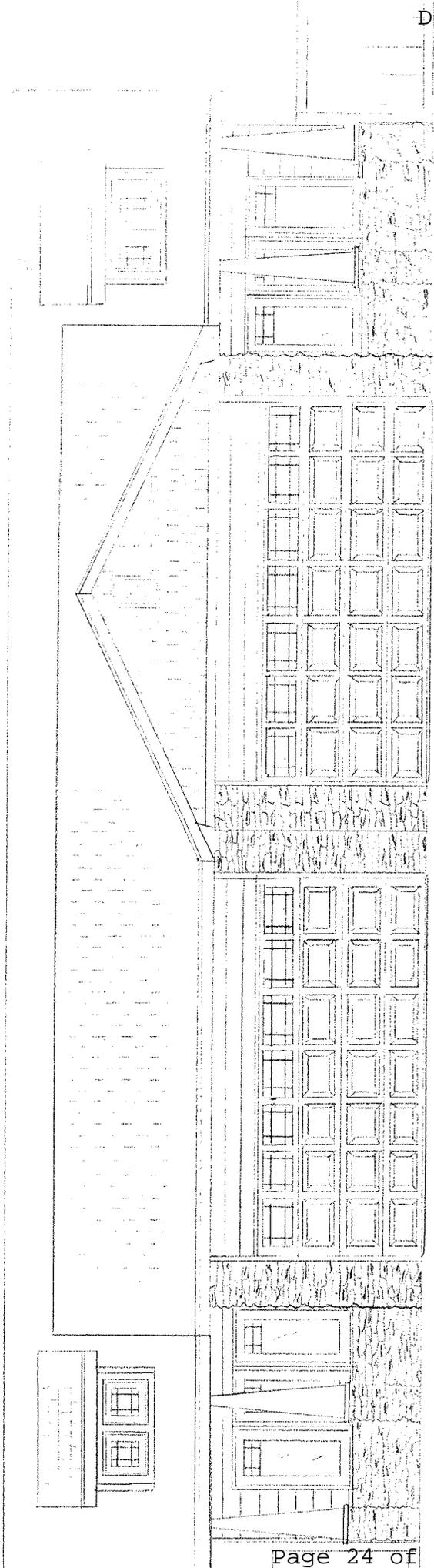
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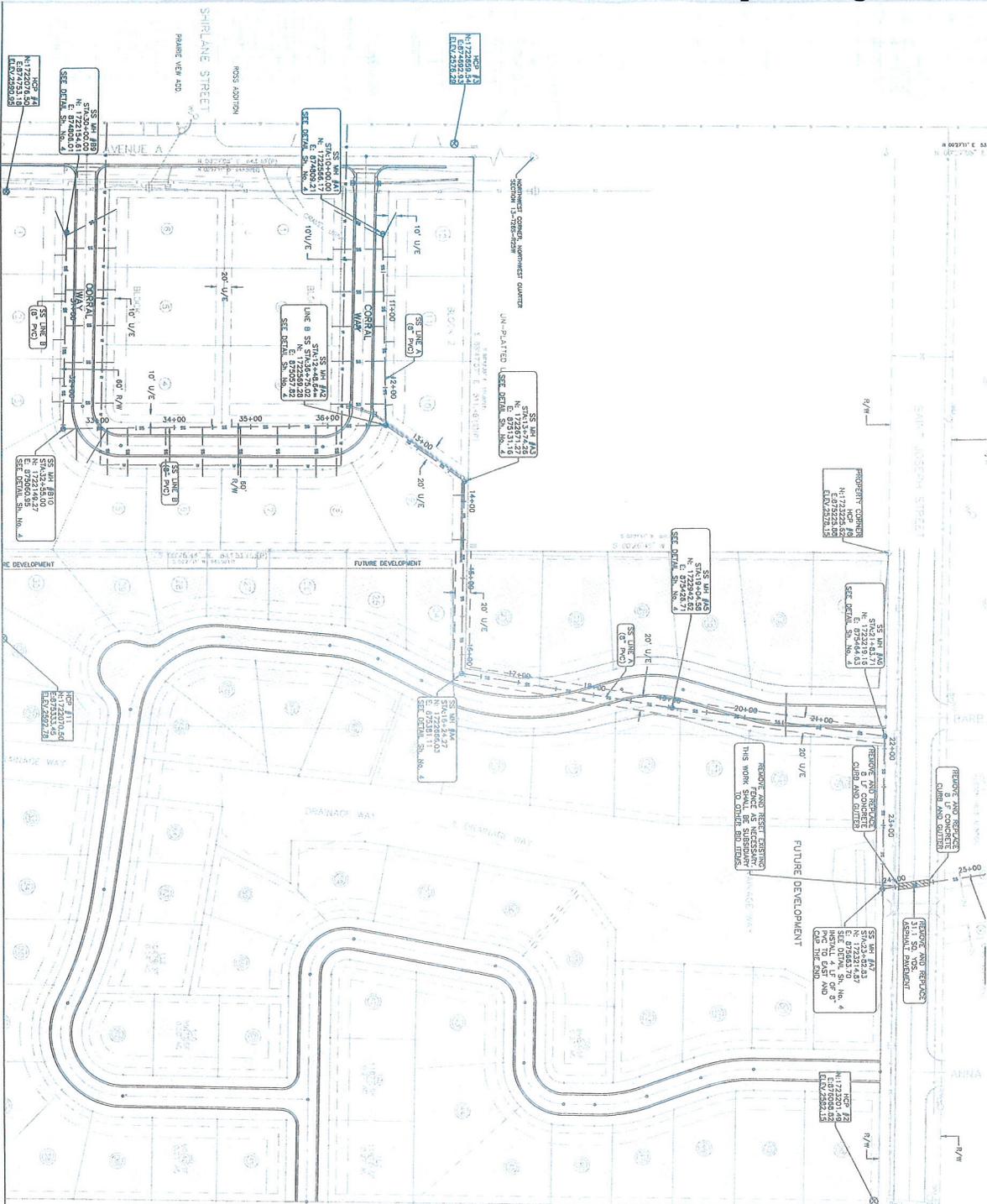
- 1/2" IRON FOUND SETS AT CORNER
 - WEST GAS METER
 - TOP CENTERLINE TELEPHONE PEDestal
 - UNDERGROUND ELECTRIC ON POWER POLE
- 1/2" IRON BAR FOUND AT CORNER
 - TOP SURV. IRON BAR W/ RED CAP, WINDHOLZ KLS 1224
 - TRAVELWAY DRIVEWAY
- 1/2" IRON BAR FOUND AT CORNER
 - FENCE LINE BEARING NORTH
 - N/A
- 1/2" IRON BAR W/ RED CAP, WINDHOLZ KLS 1224
 - POWER POLE
 - FENCE BEARING EAST - WEST
 - FENCE POST

LEGEND

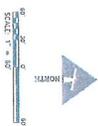
- MONUMENT FOUND (1/2" REBAR, IRON) SURVEY BY TAYLOR & ASSOC., DATED 5/27/2009
 - MONUMENT NOT SET
 - ⊙ 1/2"x24" REBAR W/ US66 CAP SET
 - (S)(P) SURVEYED DISTANCE AND/OR PLAT DISTANCE
 - (T) SURVEYED DISTANCE BY TAYLOR & ASSOC., SURVEY DATED 5/29/2009
- BEARINGS USED FOR THIS SURVEY WERE BASED ON THE SOUTH PLAT OF BLESS HILLS SUBDIVISION BEING S 89°52' E.







- LEGEND**
- BENCHMARK
 - PIPER HOLE
 - ELECTRIC METER
 - GAS T V METER
 - TELEPHONE EXCHANGE
 - FIRE HYDRANT
 - UNDERGROUND ELECTRIC LINE
 - UNDERGROUND GAS LINE
 - UNDERGROUND TELEPHONE LINE
 - WATER LINE
 - SANITARY SEWER LINE
 - SANITARY SEWER MANHOLE
 - HORIZONTAL CONTROL POINT



*NOTE: The Contractor must provide access on all manholes and structures. Access must be provided to all manholes and structures. Access must be provided to all manholes and structures. Access must be provided to all manholes and structures.

BENCHMARK INFORMATION:

PROJECT BENCHMARK 3' D.M.V. 2011.05
 (LOCATED IN THE NORTH-EAST CORNER OF THE
 INTERSECTION OF PRIVATE STREET CHERRY
 PRIVATE STREET AND 122 FEET NORTH OF THE
 NORTH CURB OF CORRAL DRIVE.)

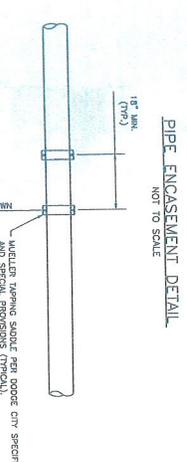
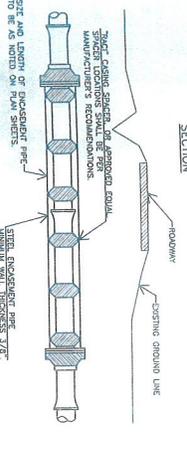
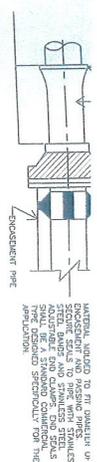
SITE BENCHMARKS

- HCP #1 ELEV. 2592.15
- HCP #2 ELEV. 2590.55
- HCP #3 ELEV. 2576.33
- HCP #4 ELEV. 2595.88
- HCP #5 ELEV. 2595.88
- HCP #6 ELEV. 2592.75

PROJECT NO.	09141976
DATE	02/11/10
SHEET NO.	28
TOTAL SHEETS	27
CHECKED BY:	T.A.
DRAWN BY:	A.H.C.



WAGON WHEEL ADDITION
SANITARY SEWER - PLAN
 DODGE CITY, KANSAS

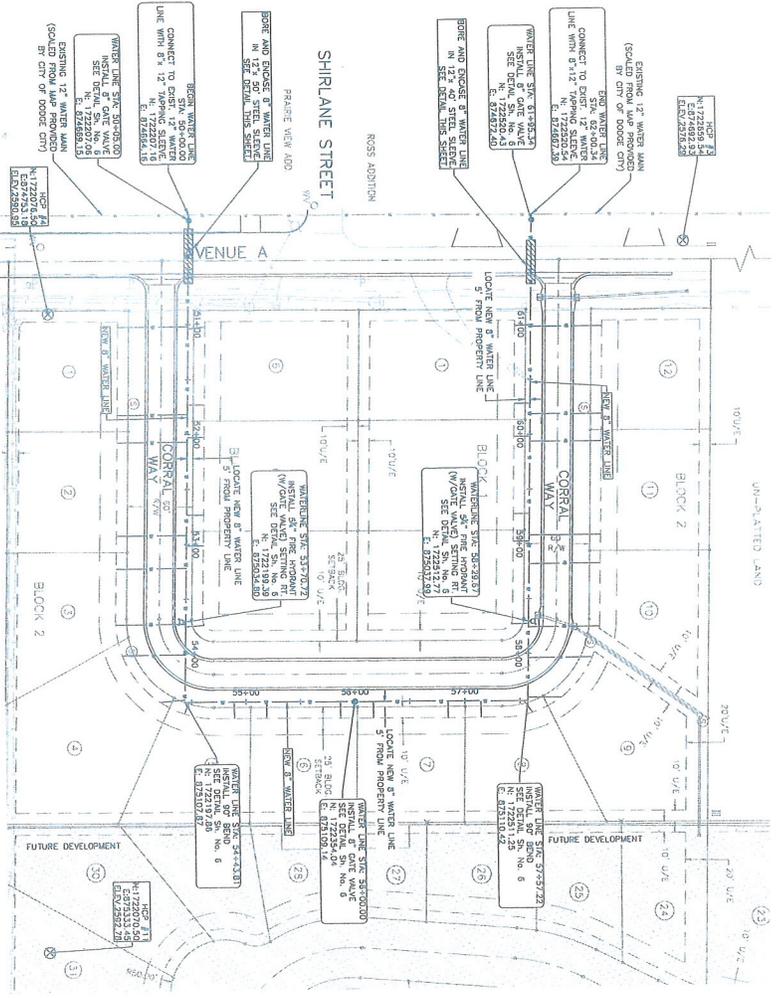
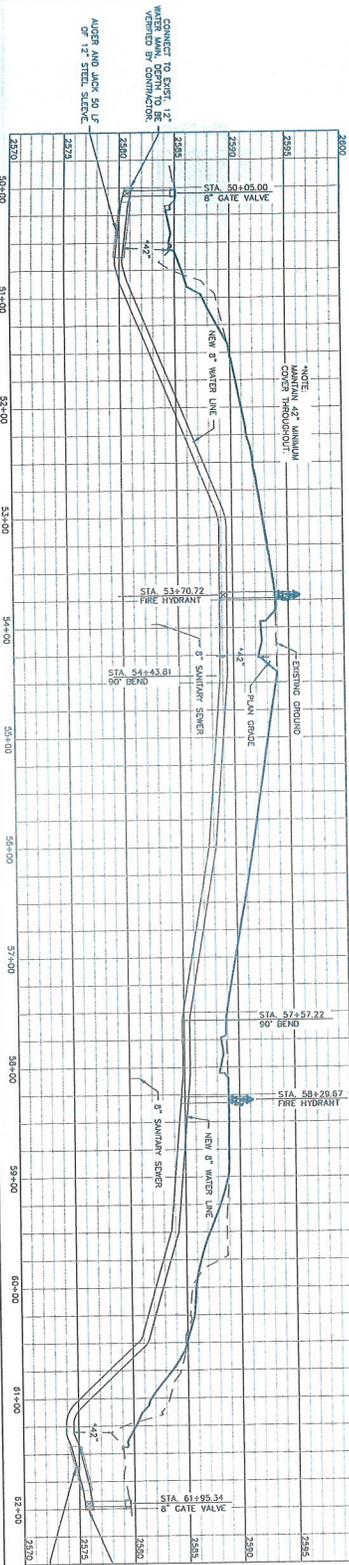


TAPPING SADDLE INSTALLATION NOTES

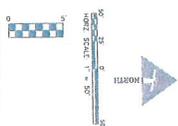
- THE TOP OF SADDLE SHALL BE ONE INCH ABOVE FINISH GRADE.
- CONNECTIONS SHALL BE NO CLOSER THAN 18" TO EACH OTHER MEASURING LONGITUDINALLY AND SHALL BE NO CLOSER THAN 18" TO ANY OTHER EXISTING OR PROPOSED SERVICE LINE MEASURING ON LINES PARALLEL TO THE LONGITUDINAL AXIS.
- CONNECTIONS SHALL BE AT LEAST 24" FROM BOTH THE BACK OF THE BELL AND THE SHOULDER REGION LINE.

NOTE: SEE SHEET 3 FOR WATER LINE SERVICE LOCATION TABLE.

WATER LINE PROFILE



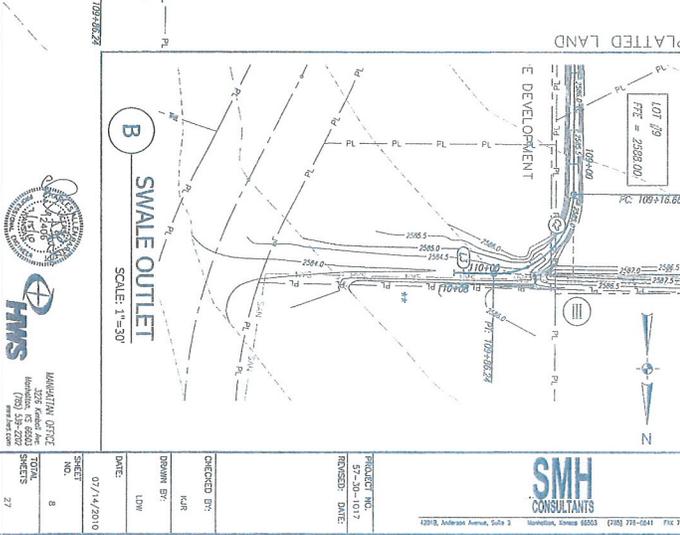
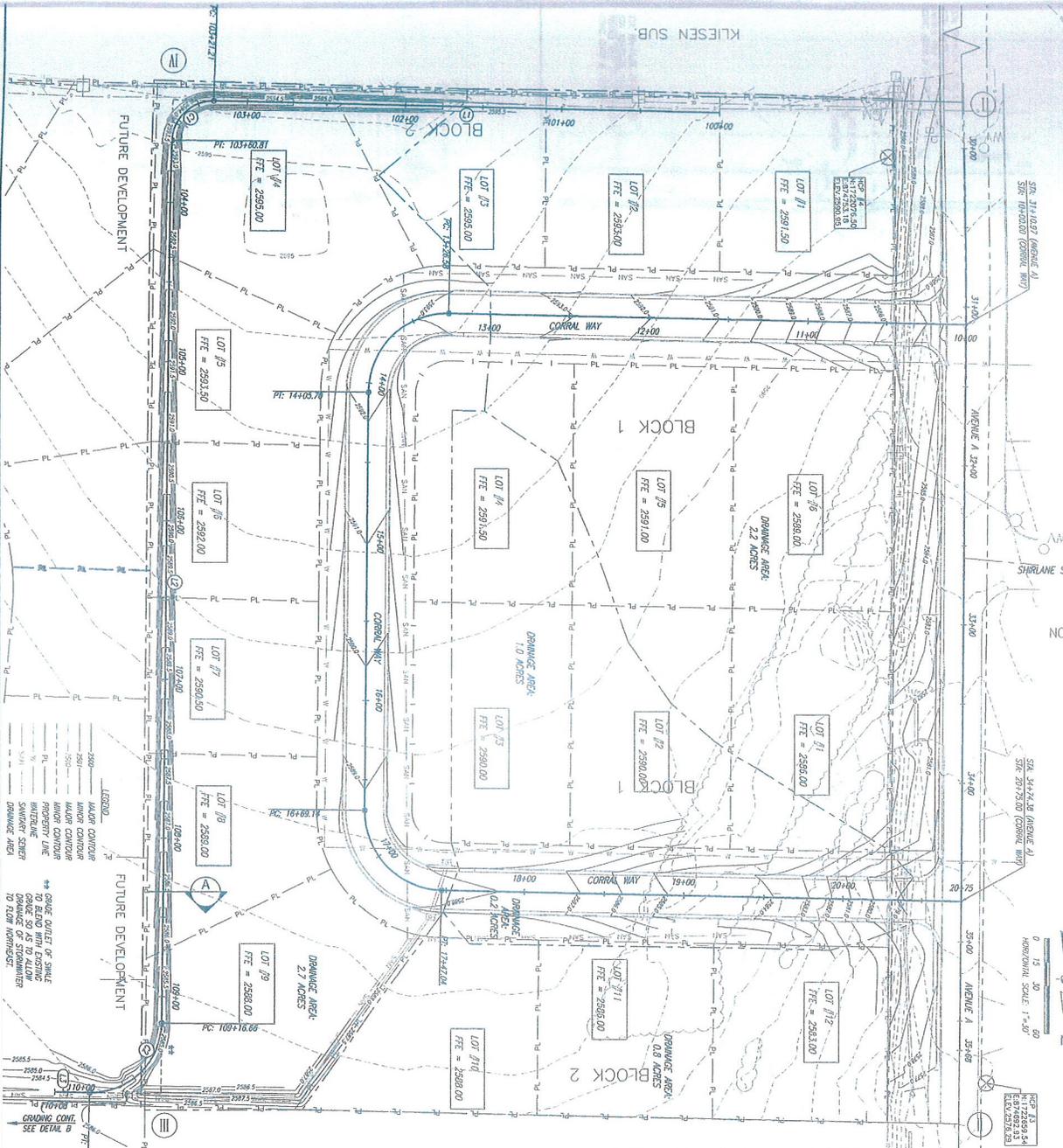
BENCHMARK INFORMATION:
 PROJECT BENCHMARK: 2" ELEV. 2811.60
 (LOCATED IN THE NORTH-EAST CORNER OF THE
 INTERSECTION OF THE CENTER OF
 PRODUCE STREET AND 124 FEET NORTH
 OF THE NORTH CURB OF CHURCH STREET.)
 SITE BENCHMARKS:
 HCP #1 ELEV. 2572.28
 HCP #4 ELEV. 2580.05
 HCP #5 ELEV. 2585.00
 HCP #11 ELEV. 2582.70



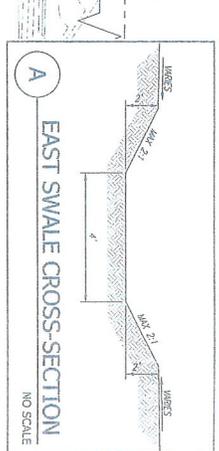
PROJECT NO.	0812187E
REVISION DATE	5-2011
DESIGN BY	MSG
CHECKED BY	MA
DATE	02/11/10
DESIGN NO.	SR
TOTAL SHEETS	27

SMH CONSULTANTS
 10210 Ardmore Avenue, Suite 2 • Independence, Kansas 67303 • Phone: 800.533.4444 • Fax: 781.747.5100

WAGON WHEEL ADDITION
WATER LINE - PLAN & PROFILE
 DODGE CITY, KANSAS



NUMBER	RESUBSTITION	BID STATION	BEAN COORDINATES	BID COORDINATES	CURVE INFO
L1	104+40.00	104+21.21	N: 172904.44 E: 87680.22	N: 172904.64 E: 87611.15	L: 39.67 T: 25.34 R: 25.00 D: 5075.59 C: 33.89
C1	PC: 103+91.21	PT: 103+60.81	PC: N: 172904.44 E: 87516.15	PT: N: 172904.44 E: 87520.88	L: 68.84 R: 41.81 D: 8945.19 C: 62.53
L2	103+60.81	103+16.66	N: 172908.44 E: 87680.80	N: 172922.28 E: 87611.12	L: 68.84 R: 41.81 D: 8945.19 C: 62.53
C2	PC: 103+16.66	PT: 103+06.24	PC: N: 172922.28 E: 87511.22	PT: N: 172908.65 E: 87520.07	L: 68.84 R: 41.81 D: 8945.19 C: 62.53
L3	103+06.24	110+00.19	N: 172968.65 E: 87938.07	N: 172985.29 E: 87920.82	L: 68.84 R: 41.81 D: 8945.19 C: 62.53



PROJECT NO: 57-20-1017
 REVISION: DATE:
 CHECKED BY: CDR
 DRAWN BY: LHW
 DATE: 07/14/2010
 SHEET NO: 8
 TOTAL SHEETS: 27

SMH CONSULTANTS
 1302 W. Anderson Avenue, Suite 3
 Hopedale, Kansas 66503 (785) 793-1241 FAX 785-793-1558

WAGON WHEEL ADDITION
GRADING & DRAINAGE PLAN
 DODGE CITY, KANSAS

3/18/11

EXHIBIT D
ELIGIBLE COSTS FOR
VOLZ BUILDERS, LLC WAGON WHEEL PROJECT

EXHIBIT D
ELIGIBLE COSTS FOR
VOLZ BUILDERS, LLC WAGON WHEEL PROJECT

	Developer's Responsibility		City's Responsibility
	Developer Financed	Financed Thru City Issued Special Assessment	Financed by City at Large
Internal Infrastructure (APAC) ¹ Sanitary Sewer ² , Waterline ² , Street ² and Grading		\$307,590.25	\$58,731.05
External Infrastructure (APAC) Sanitary Sewer from St. Joseph's Ave. to Development Area ²			\$43,537.05
Engineering (SMH) ¹		\$75,608.00	
Engineering Inspection (City) ¹		\$12,200.00	
Land Costs ¹	\$200,000.00		
Gas Infrastructure ¹	\$29,019.00		
Electric Infrastructure ¹	\$12,703.00		
	----- \$241,722.00	----- \$395,398.25	----- \$102,268.10

¹ Eligible RHID Costs

² Upon substantial completion, internal infrastructure shall be dedicated to the City of Dodge City
 All Information is Based on Estimates, Final Application will be Based on Actuals

50-50
on all Water

Development Agreement - EXHIBIT D

Opinion of Probable Costs for Gunsmoke LLC - Wagon Wheel Addition

No.	Item	Unit	Unit Price	Wagon Wheel Addition		City At Large		
				Quantity	Total Price	Quantity	Total Price	
Sanitary Sewer								
1	Mobilization	LS	\$ 13,900.00	0.64	\$ 8,896.00	0.36	\$ 5,004.00	
2	8" Sewer Line (PVC)							
	0'-6' Deep	LF	\$ 34.00	48	\$ 1,632.00	26	\$ 884.00	
	6'-10' Deep	LF	\$ 25.55	872	\$ 22,279.60	369	\$ 9,427.95	
	10'-14' Deep	LF	\$ 29.00	310	\$ 8,990.00	498	\$ 14,442.00	
3	4' Pre-cast Manhole							
	0'-6' Deep	Each	\$ 2,100.00	2	\$ 4,200.00	0	\$ -	
	6'-10' Deep	Each	\$ 2,400.00	2	\$ 4,800.00	1	\$ 2,400.00	
	10'-14' Deep	Each	\$ 2,500.00	2	\$ 5,000.00	2	\$ 5,000.00	
4	Connect to Existing Manhole	LS	\$ 3,000.00	0	\$ -	1	\$ 3,000.00	
5	Install 8"x8"x6" Wye	Each	\$ 125.00	18	\$ 2,250.00	0	\$ -	
6	6" Service Line	LF	\$ 13.80	556	\$ 7,672.80	0	\$ -	
7	Remove & Replace Curb & Gutter	LF	\$ 25.00	0	\$ -	16	\$ 400.00	
8	Rem/Repl Asphalt Pavement	SY	\$ 65.00	0	\$ -	31.1	\$ 2,021.50	
9	Construction Stacking	LS	\$ 2,660.00	0.64	\$ 1,702.40	0.36	\$ 957.60	
	Sewer Construction Total				\$ 67,422.80		\$ 43,537.05	= \$ 110,959.85
Waterline**								
1	Mobilization	LS	\$ 7,000.00	0.5	\$ 3,500.00	0.5	\$ 3,500.00	
2	Trench Compaction 0'-6' Deep	LF	\$ 8.50	555	\$ 4,717.50	555	\$ 4,717.50	
3	8" C900 Waterline	LF	\$ 11.50	600	\$ 6,900.00	600	\$ 6,900.00	
4	1" Service Line	LF	\$ 8.50	1167.5	\$ 9,923.75	1167.5	\$ 9,923.75	
5	8" Gate Valve	Each	\$ 1,025.00	2.5	\$ 2,562.50	2.5	\$ 2,562.50	
6	1" Tapping Saddle	Each	\$ 200.00	33	\$ 6,600.00	33	\$ 6,600.00	
7	90 deg Bend	Each	\$ 260.00	1	\$ 260.00	1	\$ 260.00	
8	Fire Hydrant Assembly	Each	\$ 2,430.00	1	\$ 2,430.00	1	\$ 2,430.00	
9	Connect to Existing Waterline (Wet Tap)	Each	\$ 3,785.00	1	\$ 3,785.00	1	\$ 3,785.00	
10	Bore & Steel Sleeve Casing	LF	\$ 200.00	45	\$ 9,000.00	45	\$ 9,000.00	
11	Construction Stacking	LS	\$ 1,180.00	0.5	\$ 590.00	0.5	\$ 590.00	
	Waterline Construction Total**				\$ 50,268.75		\$ 50,268.75	= \$ 100,537.50
	** City at Large pays 50% of Water Construction							
Street & Grading								
1	Mobilization	LS	\$ 10,000.00	1	\$ 10,000.00	0	\$ -	
2	Embankment							
	90% Compaction	CY	\$ 8.50	50	\$ 425.00	867	\$ 5,982.30 (\$6.90/C.Y.)	
	95% Compaction	CY	\$ 7.50	56	\$ 420.00	0	\$ -	
3	Excavation	CY	\$ 6.10	2339	\$ 14,267.90	0	\$ -	
4	Removal of Gravel Surface	SF	\$ 0.70	5936	\$ 4,155.20	0	\$ -	
5	6" Asphalt Pavement	SY	\$ 19.00	2750	\$ 52,250.00	0	\$ -	
6	30" Rolled Curb & Gutter	LF	\$ 16.00	1708	\$ 27,328.00	0	\$ -	
7	30" Transition Curb & Gutter	LF	\$ 16.00	121	\$ 1,936.00	0	\$ -	
8	30" Standard Curb & Gutter	LF	\$ 16.00	792	\$ 12,672.00	155	\$ 2,480.00	
9	6" Fly Ash Subgrade	SY	\$ 2.00	3543	\$ 7,086.00	0	\$ -	
10	Fly Ash	Ton	\$ 15.00	165	\$ 2,475.00	0	\$ -	
11	Type II Manhole (Round)	Each	\$ 1,900.00	1	\$ 1,900.00	0	\$ -	
11	Type 22 Setback Inlet	Each	\$ 2,970.00	4	\$ 11,880.00	0	\$ -	
12	18" Reinforced Concrete Pipe	LF	\$ 40.00	33	\$ 1,320.00	0	\$ -	
14	23" x 14" RCPHE	LF	\$ 60.00	33	\$ 1,980.00	0	\$ -	
13	18 HDPE	LF	\$ 39.30	352	\$ 13,833.60	0	\$ -	
14	18" HDPE End Section	Each	\$ 375.00	2	\$ 750.00	0	\$ -	
15	Valley Gutter (10' wide)	SY	\$ 62.00	77	\$ 4,774.00	0	\$ -	
17	4'x4' Erosion Control Mat	Each	\$ 125.00	10	\$ 1,250.00	0	\$ -	
18	Silt Fence	LF	\$ 2.20	4080	\$ 8,976.00	0	\$ -	
19	Ditch Check Silt Fence	Each	\$ 250.00	2	\$ 500.00	0	\$ -	
20	Stabilized Construction Entrance	Each	\$ 995.00	2	\$ 1,990.00	0	\$ -	
21	Seeding (incl. fertilizer & mulching)	Acre	\$ 1,350.00	2.2	\$ 2,970.00	0	\$ -	
22	Construction Staking	LS	\$ 4,760.00	1	\$ 4,760.00	0	\$ -	
	Street & Grading Total				\$ 189,898.70		\$ 8,462.30	= \$ 198,361.00
	GRAND TOTAL - INFRASTRUCTURE (Sewer, Water, Street/Grading)				\$ 307,590.25		\$ 102,268.10	= \$ 409,858.35
	per Lot Cost based on	18	lots		\$ 17,088.35			

3/18/11

EXHIBIT E
CERTIFICATION OF SUBSTANTIAL COMPLETION FORM

EXHIBIT E

CERTIFICATE OF SUBSTANTIAL COMPLETION FORM

The undersigned, on behalf of the Contractor, pursuant to Section 3.4.3 of the Development Agreement dated as of March_21, 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 Public 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: _____

By: _____

Name: _____

Title: _____

Company: _____

ORDINANCE NO. 3512

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 (VOLZ BUILDERS, LLC, WAGON WHEEL 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 March 21, 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. 2011-01 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 March 21, 2011 and provided for notice of such public hearing as provided in the Act; and

WHEREAS, a public hearing was held on March 21, 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 March 21, 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, 5 and 6, Block 1, and Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12, Block 2, Wagon Wheel Addition, Unit One to the City of Dodge City, Ford County, Kansas.

The boundaries of the District do not contain any property not referenced in Resolution No. 2011-01, 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 March 21, 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 and in accordance with the Development Agreement.

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 March 21, 2011.

[SEAL]

E. Kent Smoll, Mayor

Nannette Pogue, City Clerk

3/18/11

Referenced in Ordinance No. 3512

**DEVELOPMENT PLAN
FOR THE WAGON WHEEL DEVELOPMENT RURAL HOUSING INCENTIVE
DISTRICT
OF THE CITY OF DODGE CITY, KANSAS**

March 21, 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 Wagon Wheel Development Rural Housing Incentive District (the “District”) (Resolution 2009-19, exhibit A-5, B-5).

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, the City proposes this Development Plan to assist in the development of quality housing within the City.

- (1) The legal description of the Wagon Wheel Development Rural Housing Incentive District is:

Lots 1, 2, 3, 4, 5 and 6, Block 1, and Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12, Block 2, Wagon Wheel Addition, Unit one to the City of Dodge City, Ford County, Kansas.

Developer: Volz Builders, L.L.C.
(Site Work and Infrastructure) 11170 Kliesen
Dodge City, KS 67801

Individuals with Specific Interest: Volz Builders, L.L.C. Members
Timothy E. Volz
11170 Kliesen
Dodge City, KS 67801

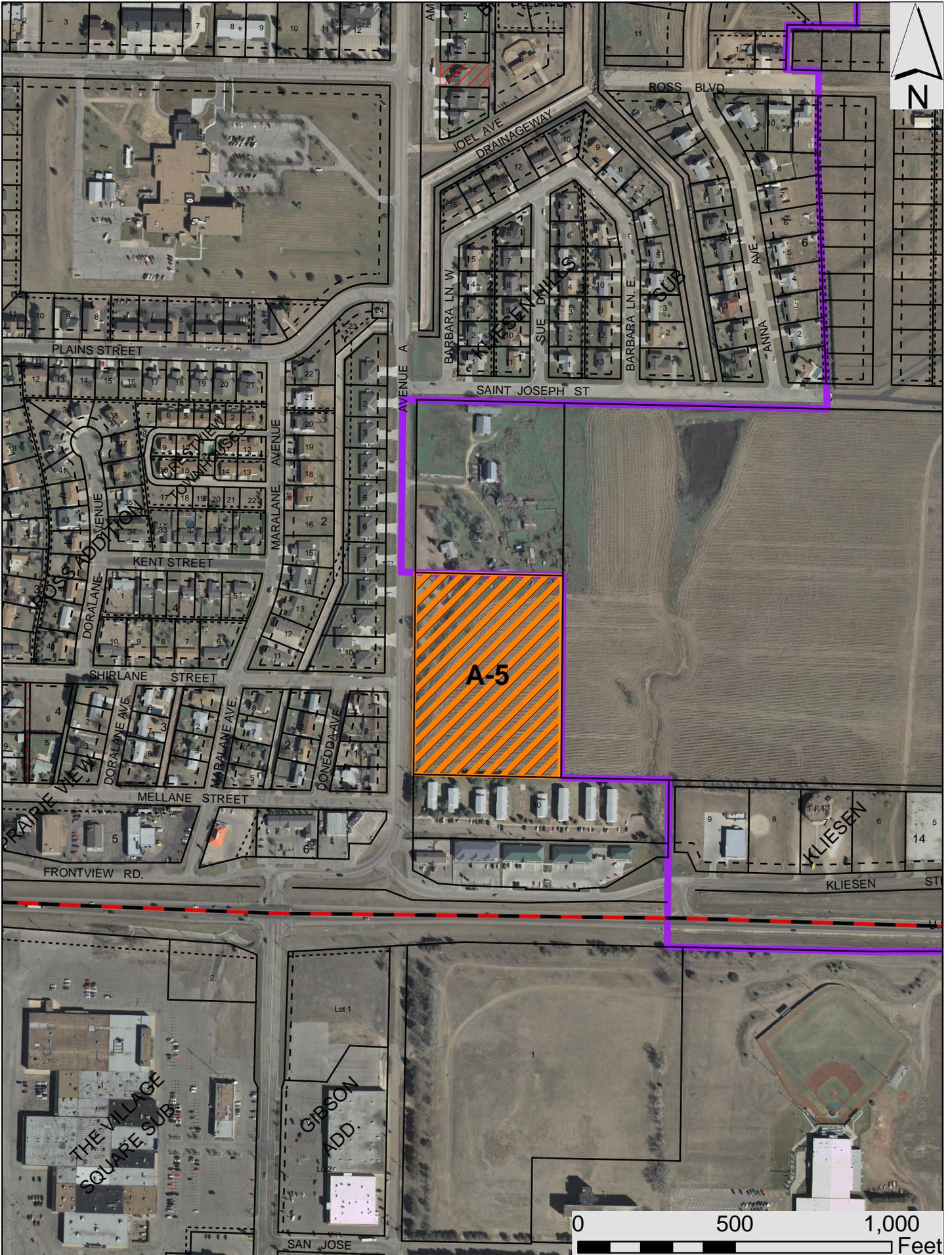
- (6) The Governing Body of the City of Dodge City entered into a Development Agreement with Volz Builders, L.L.C., a Kansas limited liability corporation, in March of 2011. The Development Agreement, as supplemented and amended, includes the project construction schedule, a description of projects to 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 Director of Finance has conducted and had reviewed by the City's Financial Advisor, Stifel Nicolaus and Company, Inc., 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 special obligation tax increment bonds to finance the public infrastructure. The revenue stream is compared to the estimated debt service of the proposed bonds to determine the amount of financing the revenue stream can support. The size of the financings that is supportable by the revenue stream is compared to the estimated costs of the improvements and the costs of the financing. The estimates indicate that the revenue realized from the project would be adequate to pay the costs of the public infrastructure.

3/18/11

Referenced in Ordinance No. 3512

**EXHIBIT A
MAP OF THE
WAGON WHEEL DEVELOPMENT DISTRICT**

EXHIBIT A



3/18/11

Referenced in Ordinance No. 3512

EXHIBIT B

COMPREHENSIVE FINANCIAL FEASIBILITY ANALYSIS

Volz Subdivision

Cost of Infrastructure Improvements	434,627	326,679
Annual Payments assuming 5.5% for 10 years		43,300.00
Annual Payments assuming 5.5% for 15 years	43,300.00	

Current Value	81,590	Property Class	30.00%	Mill Levy	149.968	Property Tax	3,670.77
---------------	--------	----------------	--------	-----------	---------	--------------	----------

Current Property Tax
Land - 6 acres

	Estimated Value	Property Class	Mill Levy	Property Tax	Increment Tax	Cumulative
Duplex	137,000	11.50%	186.624	2,940.26	-730.51	-730.51
Duplex	137,000	11.50%	186.624	2,940.26	2,940.26	2,209.76
Duplex	137,000	11.50%	186.624	2,940.26	2,940.26	5,150.02
Duplex	137,000	11.50%	186.624	2,940.26	2,940.26	8,090.28
Duplex	137,000	11.50%	186.624	2,940.26	2,940.26	11,030.54
Duplex	137,000	11.50%	186.624	2,940.26	2,940.26	13,970.80
Duplex	137,000	11.50%	186.624	2,940.26	2,940.26	16,911.06
Duplex	137,000	11.50%	186.624	2,940.26	2,940.26	19,851.32
Duplex	137,000	11.50%	186.624	2,940.26	2,940.26	22,791.58
Duplex	137,000	11.50%	186.624	2,940.26	2,940.26	25,731.84
Duplex	137,000	11.50%	186.624	2,940.26	2,940.26	28,672.11
Duplex	137,000	11.50%	186.624	2,940.26	2,940.26	31,612.37
Duplex	137,000	11.50%	186.624	2,940.26	2,940.26	34,552.63
Duplex	137,000	11.50%	186.624	2,940.26	2,940.26	37,492.89
Duplex	137,000	11.50%	186.624	2,940.26	2,940.26	40,433.15
Duplex	137,000	11.50%	186.624	2,940.26	2,940.26	43,373.41
Duplex	137,000	11.50%	186.624	2,940.26	2,940.26	46,313.67
Duplex	137,000	11.50%	186.624	2,940.26	2,940.26	49,253.93

At 100% increment going to pay off infrastructure costs

3/18/11

Referenced in Ordinance No. 3512

EXHIBIT C

DEVELOPMENT AGREEMENT

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (hereinafter “Agreement”), entered into this 21st day of March, 2011, by and between the **CITY OF DODGE CITY**, Kansas, a municipal corporation of the State of Kansas (hereinafter “City”), and **VOLZ BUILDERS, LLC**, a Kansas limited liability corporation, with its principal place of business in Dodge City, 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 “ Wagon Wheel Development” (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 Volz Builders, LLC, a Kansas limited liability corporation, with its principal place of business in Dodge City, 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 construction of not less than eighteen (18) duplex structures containing thirty-six (36) quality residences in the Development Area in accordance with the Concept Site Plan.

“**External Infrastructure Improvements**” means the extension of sanitary sewer from St. Joseph Ave. to the Development Area and the extension of City water from the present location to the Development Area.

“**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 External and 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 residence in a duplex.

“**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 not less than eighteen (18) duplex residential 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 Regarding Special Assessments. Developer has petitioned the City for special assessment financing for infrastructure improvements as reflected in *Exhibit D*. Said special assessment charges will be eligible costs to be paid by Rural Housing Incentive District incremental proceeds.

2.4 Further Proceedings Regarding the Rural Housing Incentive District Act. 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, this Agreement, establish a Rural Housing Incentive District that includes the Property and adopt a Resolution establishing a benefit district for the financing of certain internal improvements within 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 Public 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

Exhibit C of Development Plan

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.

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, on file at City Hall.

3.3 Concept Site Plan. Developer in coordination with the City and at the cost of the City, has had prepared a Concept Site Plan. Said Concept Site Plan, attached hereto marked *Exhibit C*, is hereby approved by the Parties. Either party shall promptly notify the other in writing of any proposed 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 Public Improvements. Developer and the City shall be financially responsible for the Public Improvements as delineated on *Exhibit D*. The Developer shall allow the City to contract with and direct the work of an agreed upon contractor to construct portions of the Public Improvements. The Developer and the City shall assure that their respective Public Improvements are completed 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 Public 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 External or Internal Infrastructure Improvements and City will cooperate with Developer with respect to any such acquisition. All costs associated with the acquisition of internal 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. Each Party may enter into one or more construction contracts to complete the Work for the Public Improvements. Prior to the commencement of construction of the Public Improvements, each Party 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 maintain evidence of such

insurance with the City. Each Party shall require that the insurance required is maintained by any such contractor for the duration of the construction of the Public 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 Public Improvements, or a phase thereof, in accordance with the provisions of this Agreement, the respective contractors 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 Contractor 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 Public Improvements, Developer will dedicate to City, and City will accept, title to the Public 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. The costs of the Public Improvements shall be allocated between the Developer and the City as set out in *Exhibit D*. City agrees to finance a portion of the Developer's share of the Internal Infrastructure costs through the issuance of general obligation special assessment bonds (the "Bonds") as indicated on *Exhibit D* and as authorized by Resolution 2011-06. The City shall deposit the amounts received by the City, pursuant to K.S.A. 12-5250(b)(2)(A) (the "Increment") in a special assessment bond obligation account (the "Assessment Account"). Funds from said Assessment Account shall be used to pay all or a portion of the principle and interest on the Bonds and to reimburse the Developer for all or a portion of other eligible costs of Internal Infrastructure Improvements not covered by the Bonds.

Funds from the Assessment Account shall be accrued and disbursed in accordance with the following guidelines and in the time and manner following:

1. Developer shall be responsible for and shall upon request reimburse City for any and all funds advanced by the City from accounts other than the Assessment Account and applied to payment of principle and interest on said Bonds. Said reimbursement if requested shall be made by Developer within 30 days of receipt from the City of written request for payment accompanied by documentation of such advance payments;
2. City shall apply the Increment payments received (1) to reimbursement to the City of any non-reimbursed advanced Bond payments; (2) to a Bond payment reserve in an amount equal to two annual Bond payments; (3) to annual Bond payments currently due; and (4) to reimbursement to Developer for payments made by Developer pursuant to paragraph (1) above to reimburse City for advance payments made by City, and/or to reimburse Developer for other eligible Internal Infrastructure Improvement costs incurred by Developer and not paid from Bond proceeds.
3. Once all Bond obligations have been fully paid and all reimbursable costs to Developer have been fully satisfied and the Project completed the Assessment Account shall be closed and all future Increments shall be disbursed pursuant to the provisions of KSA 12-5250(b)(2)(B).

Payments due to Developer, if any, shall be made within thirty (30) days following the annual Bond Payment by the City beginning in 2012 and continuing until such time as the General Obligation Bonds and eligible Developer Financed Project Costs in accordance with **Exhibit D** 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). Developer shall be responsible for any bond payment or portion thereof not covered by the payment made from the Assessment Account.

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 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.
- (b) 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 except for Public Improvements 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:

Volz Builders, LLC
11170 Kliesen
Dodge City, KS 67801
Attention: Tim Volz
Phone: 620/225-3127

(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

Exhibit C of Development Plan

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, 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

Exhibit C of Development Plan

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: March 21, 2011

3/18/11

Exhibit C of Development Plan

ATTEST: (SEAL)

Nannette Pogue, City Clerk

VOLZ BUILDERS, LLC

By: _____
Tim Volz

Dated: March 21, 2011

**SCHEDULE OF EXHIBITS
OF THE DEVELOPMENT AGREEMENT**

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

3/18/11

Exhibit C of Development Plan

EXHIBIT A

PROPERTY DESCRIPTION

EXHIBIT A

PROPERTY DESCRIPTION

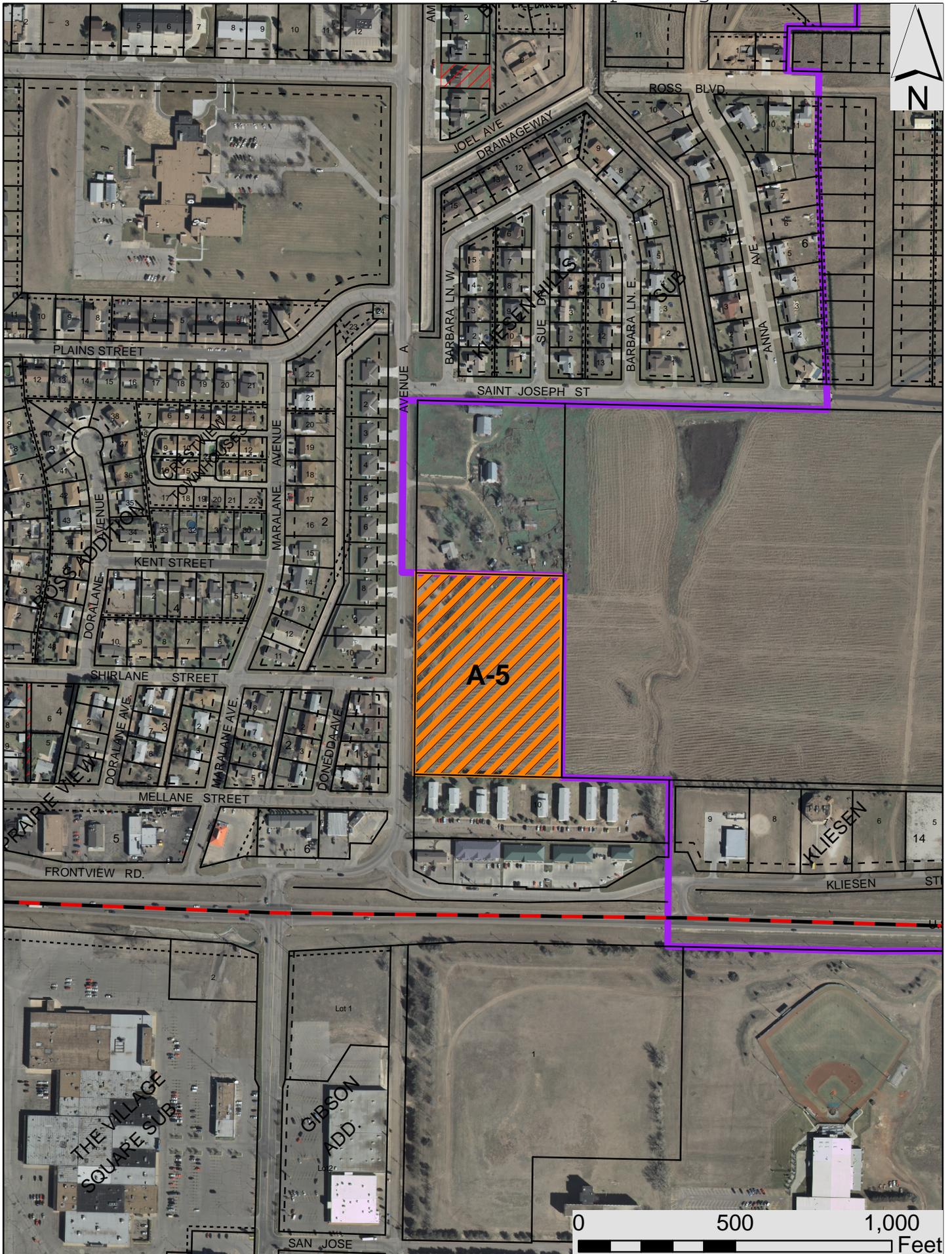
Lots 1, 2, 3, 4, 5 and 6, Block 1, and Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12, Block 2, Wagon Wheel Addition, Unit one to the City of Dodge City, Ford County, Kansas.

3/18/11

Exhibit C of Development Plan

EXHIBIT B

**MAP OF RURAL HOUSING IMPROVEMENT DISTRICT
BOUNDARIES FOR WAGON WHEEL DEVELOPMENT PROJECT**

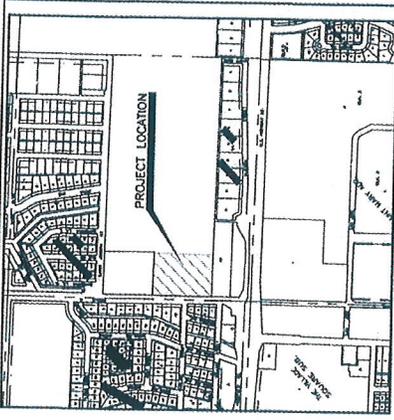


3/18/11

Exhibit C of Development Plan

EXHIBIT C

WAGON WHEEL SITE DEVELOPMENT PLAN



VICINITY MAP
(NOT TO SCALE)

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

Point	North	East	Unit	Dist.	Bearing	Table	Distance
1	1722885.10	89470.15	N	80727.08'			643.40
2	1722885.10	89470.15	S	80727.08'			643.40
3	1722874.38	875221.61	S	80727.08'			643.40
4	1722830.89	875210.61	S	80727.08'			643.40
5	1722804.12	87495.30	N	80727.08'			643.40

Perimeter: 2310.12 Acum. Perimeter: 2310.12
 Approx. Sta. Feet: 329168.61 Acres: 7.557
 Approx. Acum. - Sq. Feet: 329168.61 Acres: 7.557
 Contour Elevation: North: 1722804.12, East: 87495.30
 Ending Coordinates: North: 1722804.12, East: 87495.30
 Error: N: -0.00 E: 0.01 Total: 0.01 Brg: N 69°32'25"W
 Distance Traveled: 2310.12 Closure: 342782

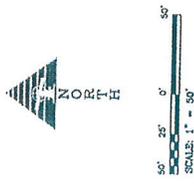
Final Plat
WAGON WHEEL
ADDITION, UNIT ONE
 an Addition, City of Dodge City,
 Ford County, Kansas



2301B Anderson Avenue, Suite 2 • Manhattan, Kansas 66503
 (785) 776-0541 • FAX 776-9760 • Email: lmb@smhman.com
 Project #091218FE DD #B3

AUGUST 2010

SHEET 1 OF 2

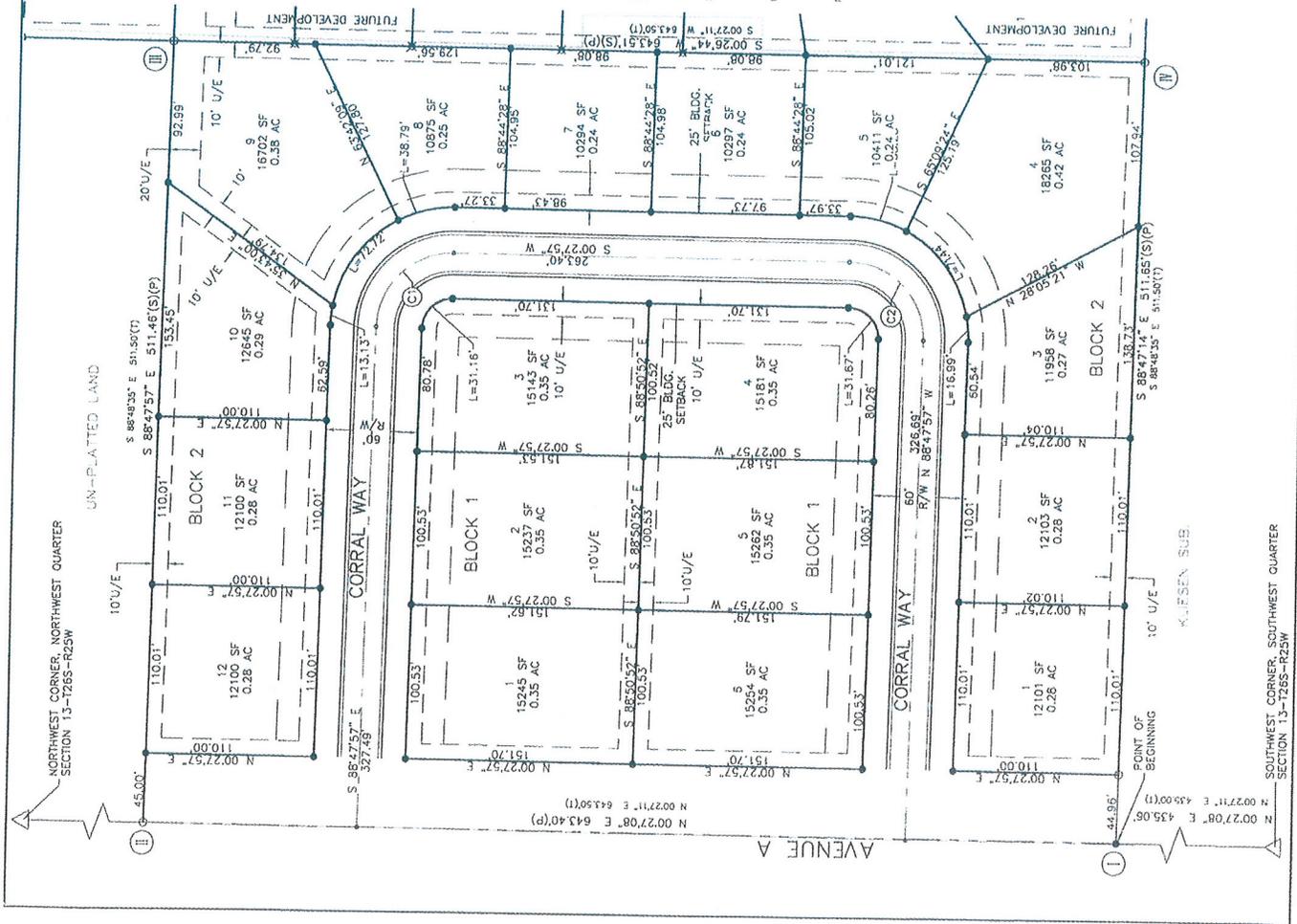


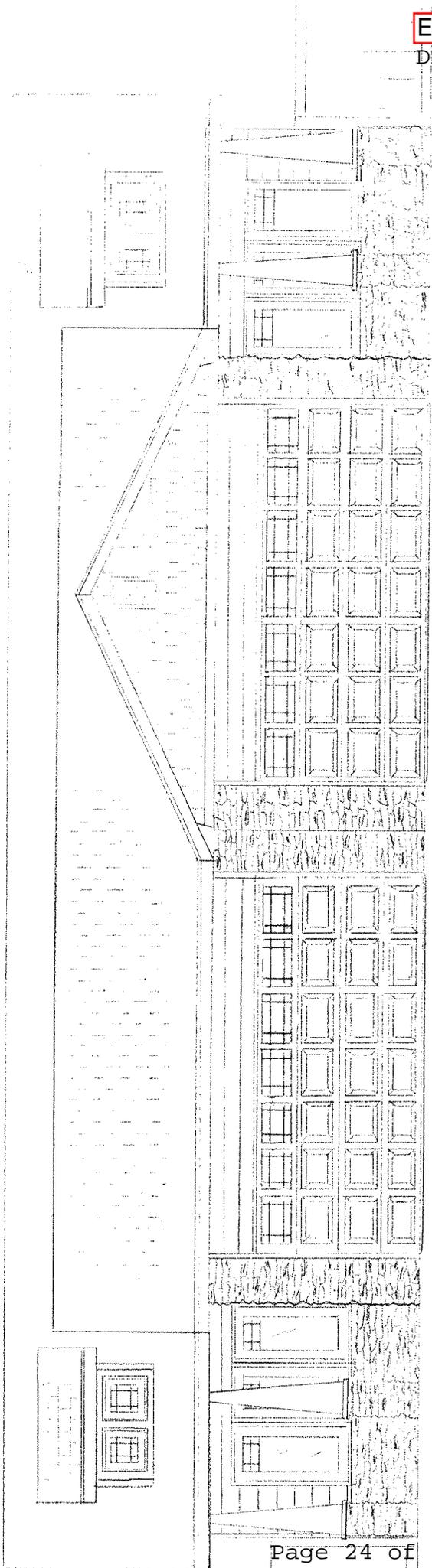
REFERENCE TIES

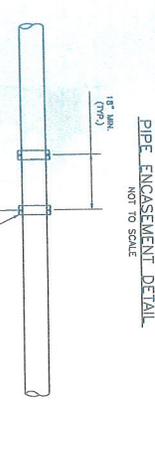
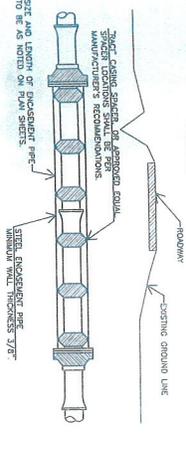
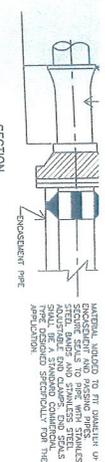
- 1/2" IRON FOUND SETS AT CORNER
- WEST GAS METER
- TOP CENTERLINE TELEPHONE PEDestal
- UNDERGROUND ELECTRIC ON POWER POLE
- 1/2" IRON BAR FOUND AT CORNER
- TOP SIGN W/ RED CAP, WINDHOLZ KLS 1224
- TRAVELWAY DRIVEWAY
- 1/2" IRON BAR FOUND AT CORNER
- FENCE LINE BEARING NORTH
- N/A
- 1/2" IRON BAR W/ RED CAP, WINDHOLZ KLS 1224
- POWER POLE
- FENCE BEARING EAST - WEST
- FENCE POST

LEGEND

- MONUMENT FOUND (1/2" REBAR, IRON) SURVEY BY TAYLOR & ASSOC., DATED 5/27/2009
 - MONUMENT NOT SET
 - ⊙ 1/2" x 24" REBAR W/ US66 CAP SET
 - (S)(P) SURVEYED DISTANCE AND/OR PLAT DISTANCE
 - (T) SURVEYED DISTANCE BY TAYLOR & ASSOC., SURVEY DATED 5/29/2009
- BEARINGS USED FOR THIS SURVEY WERE BASED ON THE SOUTH PLAT OF BLESS HILLS SUBDIVISION, BEING S 89°32' E.





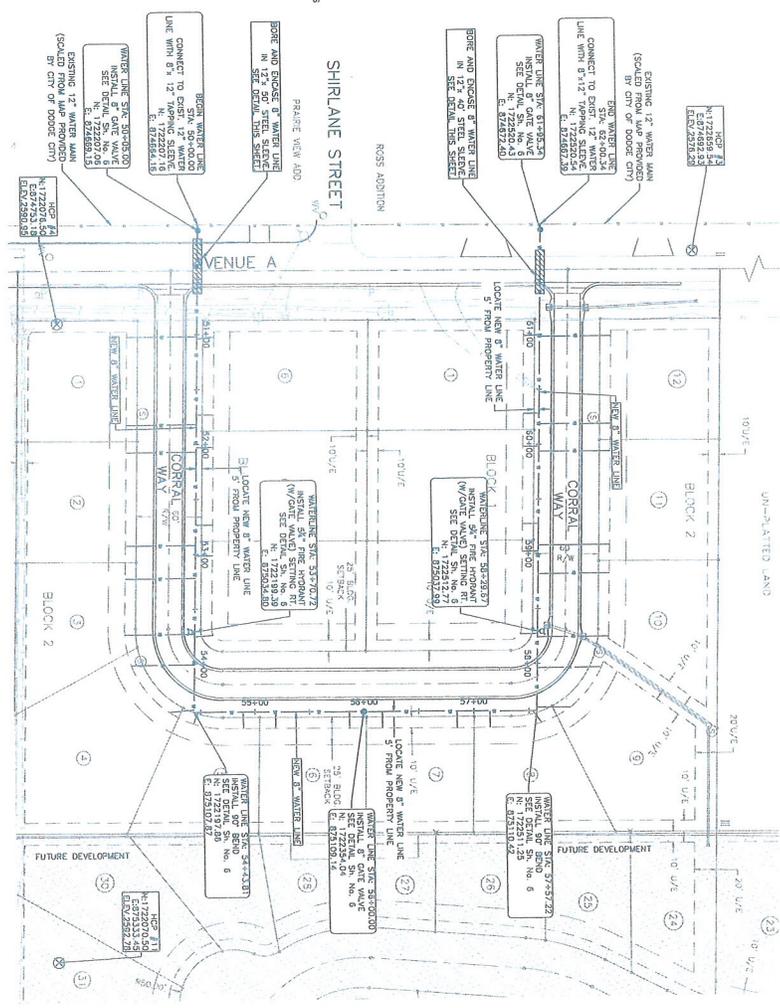
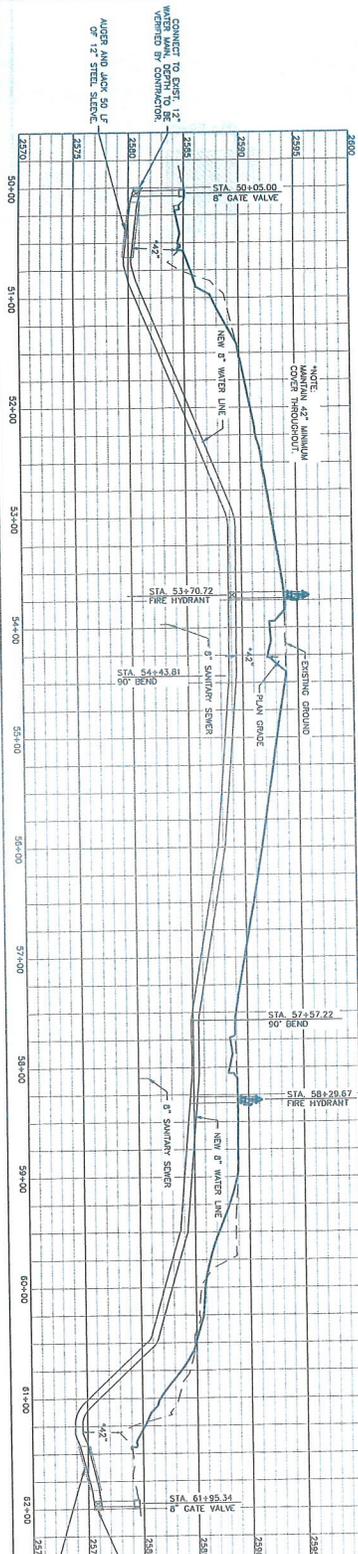


TAPPING SADDLE INSTALLATION NOTES

1. THE TOP OF SADDLE SHALL BE ONE EIGHTH OF PIPE DIA. THE CONNECTIONS SHALL BE NO CLOSER THAN 18" TO EACH OTHER MEASURING LONGITUDINALLY AND SHALL BE NO CLOSER THAN 18" TO THE CENTERLINE OF THE SERVICE LINE. THE CONNECTIONS ON THE LINES PARALLEL TO THE LONGITUDINAL AXIS SHALL BE AT LEAST 24" FROM BOTH THE BACK OF THE BELL AND THE SPREAD RESISTION LINE.

NOTE: SEE SHEET 3 FOR WATER LINE SERVICE LOCATION TABLE.

WATER LINE PROFILE



BENCHMARK INFORMATION:

PROJECT BENCHMARK: 2" ELEV. 2811.60
 (LOCATED IN THE NORTHWEST CORNER OF THE
 INTERSECTION OF THE CENTER OF THE
 PARALLEL STREET AND 122 FEET NORTH
 OF THE NORTH CURB OF CORRAL WAY.)

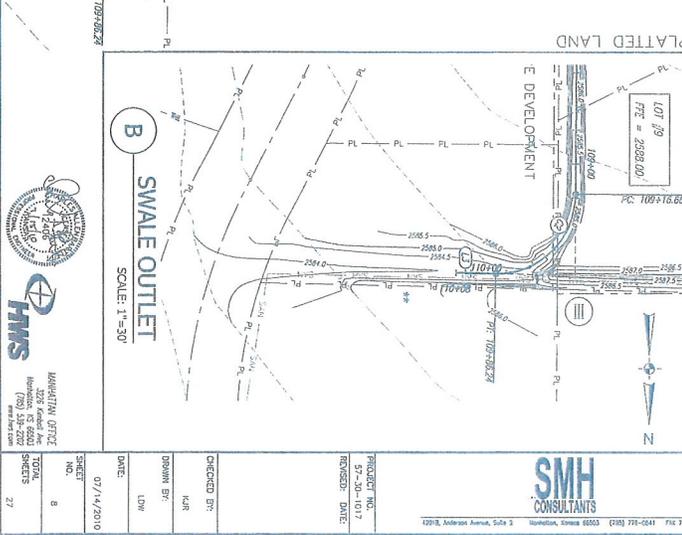
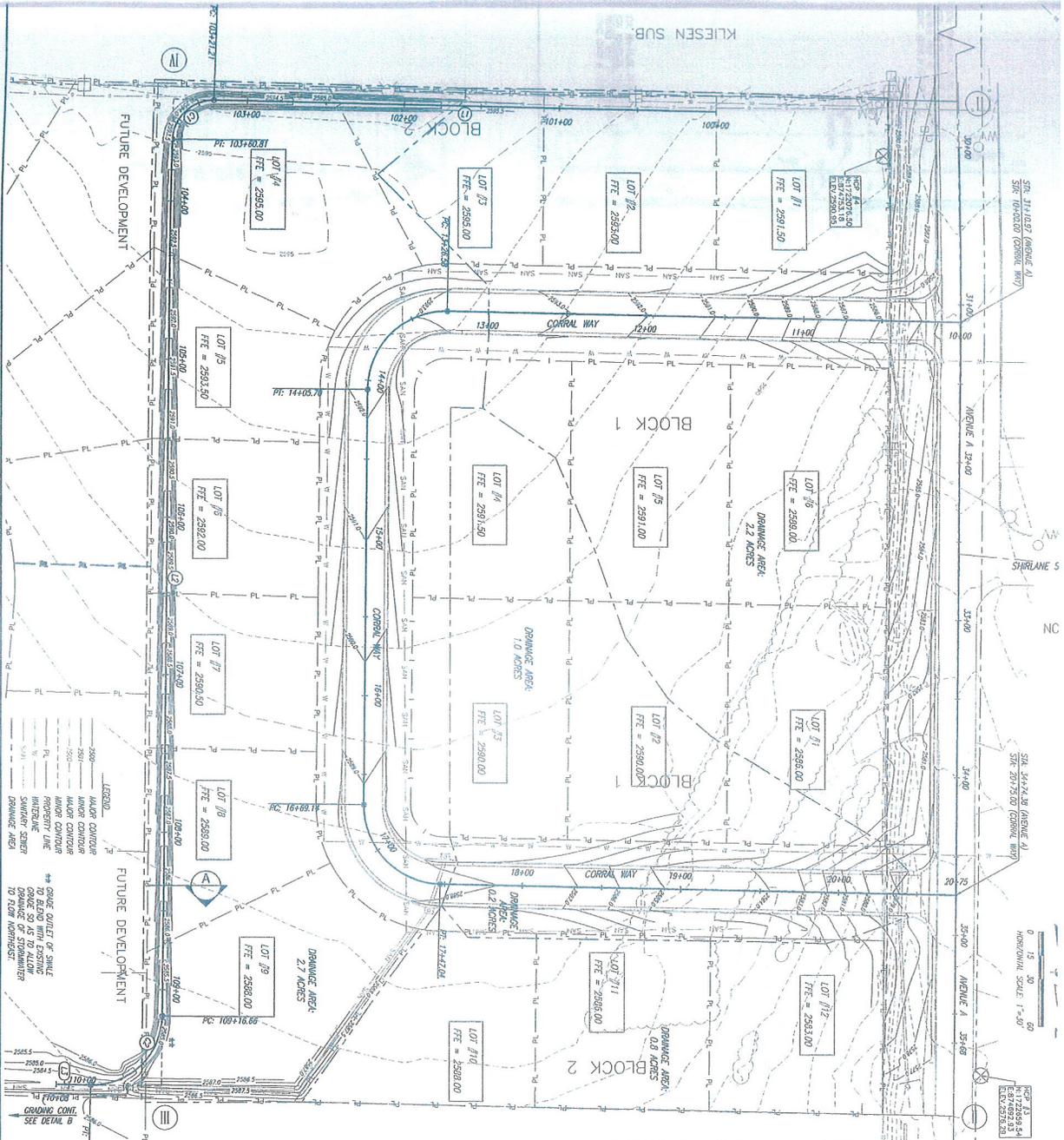
SITE BENCHMARKS:

- HPD #1 ELEV. 2572.28
- HPD #2 ELEV. 2572.28
- HPD #3 ELEV. 2572.28
- HPD #4 ELEV. 2572.28
- HPD #5 ELEV. 2572.28
- HPD #6 ELEV. 2572.28
- HPD #7 ELEV. 2572.28
- HPD #8 ELEV. 2572.28
- HPD #9 ELEV. 2572.28
- HPD #10 ELEV. 2572.28
- HPD #11 ELEV. 2572.28

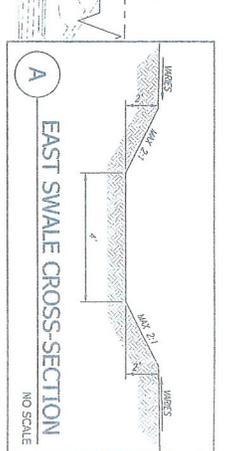


WAGON WHEEL ADDITION
 WATER LINE - PLAN & PROFILE
 DODGE CITY, KANSAS

PROJECT NO.	0812187E
REVISION DATE	5-2011
DESIGN BY	MSG
CHECKED BY	MA
DATE	02/11/10
TOTAL SHEETS	27
SHEET NO.	5R



NUMBER	RESUBSTITION	BID STATION	BEEN COORDINATES	BID COORDINATES	CURVE INFO
L1	100+400.00	103+21.21	N: 172904.44 E: 87680.22	N: 172904.64 E: 87611.15	L: 18.61 T: 25.34 R: 25.00 D: 50°25.59' C: 33.89
C1	PC: 103+431.21	PT: 103+400.81	PC: N: 172904.44 E: 87680.22	PT: N: 172904.64 E: 87611.15	L: 18.61 T: 25.34 R: 25.00 D: 50°25.59' C: 33.89
L2	103+400.81	103+16.66	N: 172908.44 E: 87680.80	N: 172922.28 E: 87611.12	L: 68.84 T: 41.51 R: 41.51 D: 89°45.19' C: 62.53
C2	PC: 103+16.66	PT: 103+06.24	PC: N: 172922.28 E: 87611.22	PT: N: 172926.65 E: 87528.07	L: 68.84 T: 41.51 R: 41.51 D: 89°45.19' C: 62.53
L3	103+06.24	110+00.19	N: 172968.65 E: 87528.07	N: 172968.29 E: 87528.07	L: 68.84 T: 41.51 R: 41.51 D: 89°45.19' C: 62.53



3/18/11

Exhibit C of Development Plan

EXHIBIT D

**ELIGIBLE COSTS FOR
VOLZ BUILDERS, LLC WAGON WHEEL PROJECT**

EXHIBIT D

**ELIGIBLE COSTS FOR
VOLZ BUILDERS, LLC WAGON WHEEL PROJECT**

	Developer's Responsibility		City's Responsibility
	Developer Financed	Financed Thru City Issued Special Assessment	Financed by City at Large
Internal Infrastructure (APAC) ¹ Sanitary Sewer ² , Waterline ² , Street ² and Grading		\$307,590.25	\$58,731.05
External Infrastructure (APAC) Sanitary Sewer from St. Joseph's Ave. to Development Area ²			\$43,537.05
Engineering (SMH) ¹		\$75,608.00	
Engineering Inspection (City) ¹		\$12,200.00	
Land Costs ¹	\$200,000.00		
Gas Infrastructure ¹	\$29,019.00		
Electric Infrastructure ¹	\$12,703.00		
	\$241,722.00	\$395,398.25	\$102,268.10

¹ Eligible RHID Costs

² Upon substantial completion, internal infrastructure shall be dedicated to the City of Dodge City
All Information is Based on Estimates, Final Application will be Based on Actuals

Exhibit C of Development Plan

 Development Agreement - EXHIBIT D

Opinion of Probable Costs for Gunsmoke LLC - Wagon Wheel Addition

No.	Item	Unit	Unit Price	Wagon Wheel Addition		City At Large		
				Quantity	Total Price	Quantity	Total Price	
Sanitary Sewer								
1	Mobilization	LS	\$ 13,900.00	0.64	\$ 8,896.00	0.36	\$ 5,004.00	
2	8" Sewer Line (PVC)							
	0'-6' Deep	LF	\$ 34.00	48	\$ 1,632.00	26	\$ 884.00	
	6'-10' Deep	LF	\$ 25.55	872	\$ 22,279.60	369	\$ 9,427.95	
	10'-14' Deep	LF	\$ 29.00	310	\$ 8,990.00	498	\$ 14,442.00	
3	4' Pre-cast Manhole							
	0'-6' Deep	Each	\$ 2,100.00	2	\$ 4,200.00	0	\$ -	
	6'-10' Deep	Each	\$ 2,400.00	2	\$ 4,800.00	1	\$ 2,400.00	
	10'-14' Deep	Each	\$ 2,500.00	2	\$ 5,000.00	2	\$ 5,000.00	
4	Connect to Existing Manhole	LS	\$ 3,000.00	0	\$ -	1	\$ 3,000.00	
5	Install 8"x8"x6" Wye	Each	\$ 125.00	18	\$ 2,250.00	0	\$ -	
6	6" Service Line	LF	\$ 13.80	556	\$ 7,672.80	0	\$ -	
7	Remove & Replace Curb & Gutter	LF	\$ 25.00	0	\$ -	16	\$ 400.00	
8	Rem/Repl Asphalt Pavement	SY	\$ 65.00	0	\$ -	31.1	\$ 2,021.50	
9	Construction Stacking	LS	\$ 2,660.00	0.64	\$ 1,702.40	0.36	\$ 957.60	
Sewer Construction Total					\$ 67,422.80	\$ 43,537.05	=	\$ 110,959.85
Waterline**								
1	Mobilization	LS	\$ 7,000.00	0.5	\$ 3,500.00	0.5	\$ 3,500.00	
2	Trench Compaction 0'-6' Deep	LF	\$ 8.50	555	\$ 4,717.50	555	\$ 4,717.50	
3	8" C900 Waterline	LF	\$ 11.50	600	\$ 6,900.00	600	\$ 6,900.00	
4	1" Service Line	LF	\$ 8.50	1167.5	\$ 9,923.75	1167.5	\$ 9,923.75	
5	8" Gate Valve	Each	\$ 1,025.00	2.5	\$ 2,562.50	2.5	\$ 2,562.50	
6	1" Tapping Saddle	Each	\$ 200.00	33	\$ 6,600.00	33	\$ 6,600.00	
7	90 deg Bend	Each	\$ 260.00	1	\$ 260.00	1	\$ 260.00	
8	Fire Hydrant Assembly	Each	\$ 2,430.00	1	\$ 2,430.00	1	\$ 2,430.00	
9	Connect to Existing Waterline (Wet Tap)	Each	\$ 3,785.00	1	\$ 3,785.00	1	\$ 3,785.00	
10	Bore & Steel Sleeve Casing	LF	\$ 200.00	45	\$ 9,000.00	45	\$ 9,000.00	
11	Construction Stacking	LS	\$ 1,180.00	0.5	\$ 590.00	0.5	\$ 590.00	
Waterline Construction Total**					\$ 50,268.75	\$ 50,268.75	=	\$ 100,537.50
** City at Large pays 50% of Water Construction								
Street & Grading								
1	Mobilization	LS	\$ 10,000.00	1	\$ 10,000.00	0	\$ -	
2	Embankment							
	90% Compaction	CY	\$ 8.50	50	\$ 425.00	867	\$ 5,982.30 (\$6.90/C.Y.)	
	95% Compaction	CY	\$ 7.50	56	\$ 420.00	0	\$ -	
3	Excavation	CY	\$ 6.10	2339	\$ 14,267.90	0	\$ -	
4	Removal of Gravel Surface	SF	\$ 0.70	5936	\$ 4,155.20	0	\$ -	
5	6" Asphalt Pavement	SY	\$ 19.00	2750	\$ 52,250.00	0	\$ -	
6	30" Rolled Curb & Gutter	LF	\$ 16.00	1708	\$ 27,328.00	0	\$ -	
7	30" Transition Curb & Gutter	LF	\$ 16.00	121	\$ 1,936.00	0	\$ -	
8	30" Standard Curb & Gutter	LF	\$ 16.00	792	\$ 12,672.00	155	\$ 2,480.00	
9	6" Fly Ash Subgrade	SY	\$ 2.00	3543	\$ 7,086.00	0	\$ -	
10	Fly Ash	Ton	\$ 15.00	165	\$ 2,475.00	0	\$ -	
11	Type II Manhole (Round)	Each	\$ 1,900.00	1	\$ 1,900.00	0	\$ -	
11	Type 22 Setback Inlet	Each	\$ 2,970.00	4	\$ 11,880.00	0	\$ -	
12	18" Reinforced Concrete Pipe	LF	\$ 40.00	33	\$ 1,320.00	0	\$ -	
14	23" x 14" RCPHE	LF	\$ 60.00	33	\$ 1,980.00	0	\$ -	
13	18 HDPE	LF	\$ 39.30	352	\$ 13,833.60	0	\$ -	
14	18" HDPE End Section	Each	\$ 375.00	2	\$ 750.00	0	\$ -	
15	Valley Gutter (10' wide)	SY	\$ 62.00	77	\$ 4,774.00	0	\$ -	
17	4'x4' Erosion Control Mat	Each	\$ 125.00	10	\$ 1,250.00	0	\$ -	
18	Silt Fence	LF	\$ 2.20	4080	\$ 8,976.00	0	\$ -	
19	Ditch Check Silt Fence	Each	\$ 250.00	2	\$ 500.00	0	\$ -	
20	Stabilized Construction Entrance	Each	\$ 995.00	2	\$ 1,990.00	0	\$ -	
21	Seeding (incl. fertilizer & mulching)	Acre	\$ 1,350.00	2.2	\$ 2,970.00	0	\$ -	
22	Construction Staking	LS	\$ 4,760.00	1	\$ 4,760.00	0	\$ -	
Street & Grading Total					\$ 189,898.70	\$ 8,462.30	=	\$ 198,361.00
GRAND TOTAL - INFRASTRUCTURE (Sewer, Water, Street/Grading)					\$ 307,590.25	\$ 102,268.10	=	\$ 409,858.35
per Lot Cost based on		18	lots	\$ 17,088.35				

3/18/11

Exhibit C of Development Plan

EXHIBIT E

CERTIFICATION OF SUBSTANTIAL COMPLETION FORM

EXHIBIT E

CERTIFICATE OF SUBSTANTIAL COMPLETION FORM

The undersigned, on behalf of the Contractor, pursuant to Section 3.4.3 of the Development Agreement dated as of March_21, 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 Public 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: _____

By: _____

Name: _____

Title: _____

Company: _____

Memorandum

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

From: Nannette Pogue

Date: March 18, 2011

Subject: Ordinance No.

Agenda Item: Ordinances and Resolutions

Recommendation: I recommend the approval of Ordinance No. .

Background: The City of Dodge City received a Community Development Block Grant in the amount of \$266,000 for Housing Rehabilitation. Each applicant can apply for up to \$20,000 in rehabilitation funds. It is recommended that instead of the City Commission accepting and reviewing the applications, awarding bids, etc. that a Housing Rehabilitation and Citizens Advisory Board to serve the Governing Body be appointed. This board would meet as needed to receive and process applications for the housing rehabilitation grants, receive bids and award contracts, approve final inspections and establish policy or guidelines. The functions and duties of the board are outlined in the ordinance. It is recommended to appoint a 5 member board. The recommendation of members to serve on this board is Vicki Williamson, Dan Stucker, Kevin Israel, John Scott and Marilyn Treto. Vicki, Dan and Kevin are employees in the inspection and code enforcement departments and have been very instrumental in promoting this grant and seeking programs that can aid in houses being code compliant. John Scott is President of Interfaith Housing and is very interested in promoting housing in Dodge City. Marilyn Treto serves on the Cultural Relations Board and has been very instrumental in bringing the citizens together in the target area and getting the information to them.

Justification: To create and appoint a Housing Rehabilitation and Citizens Advisory Board to serve the Governing Body to carry out the guidelines and purpose of the CDBG Housing Grant.

Financial Considerations: None.

Purpose/Mission: To promote citizen involvement in assisting with livable housing in Dodge City.

Attachments: Ordinance No.

ORDINANCE NO. 3513

AN ORDINANCE CREATING HOUSING REHABILITATION AND CITIZENS ADVISORY BOARD TO SERVE THE GOVERNING BODY OF THE CITY OF DODGE CITY, KANSAS, IN MATTERS PERTAINING TO THE CITY'S 2011 COMMUNITY DEVELOPMENT BLOCK GRANT AND ESTABLISHING SAID BOARD'S FUNCTIONS, DUTIES AND AUTHORITY.

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

SECTION 1. Housing Rehabilitation and Citizens Advisory Board Created

There is hereby created and established a Housing Rehabilitation and Citizens Advisory Board (hereinafter called the Board) to serve the governing body of the City of Dodge City which shall have the functions, duties, and authority prescribed herein.

SECTION 2. Membership and Vacancies

The Board shall consist of 5 members to be appointed by the Mayor with the consent of the governing body. All members shall be residents of the City and shall serve the duration of the city's 2011 State Community Development Block Grant, No. 11-HR-031. Any vacancies that occur during the term of said Grant may be filled for the remaining term by appointment by the Mayor with the consent of the governing body. All members of the Board shall serve without pay.

SECTION 3. Functions, Duties, and Authority

The Board shall have the following functions, duties, and authority:

1. Serve as citizens' advisory group for community development applications to the state CDBG program.
2. Receive and process applications for housing rehabilitation grants.
3. Receive bids and award contracts for housing rehabilitation.
4. Approve final inspections of housing rehabilitation work and payments to be made to the contractor by the City.
5. Establish policy where not otherwise specified.
6. Recommend changes in program guidelines to the governing body of the City.
7. Authorize change orders to work in progress, which authorization shall be subject to appeal in the manner hereinafter set forth in paragraph 8.

8. Have decision-making authority concerning repair of existing housing, provided, however, that the owner of any house who disputes any such decision made by the Board may appeal such decision to the governing body of the City if such appeal is made in writing and filed with the City Clerk within 10 days after the Board's decision is made. Upon receipt of such notice of appeal, the governing body of the City shall set a time and place for a hearing on the appeal and shall give said owner written notice thereof. At such hearing said Owner shall be given an opportunity to be heard and to show why the Board's decision should be modified or overruled. Upon hearing the evidence and testimony presented at such hearing, the governing body of the City shall issue its order either sustaining, modifying, or overruling the Board's decision, which order shall be reduced to writing and mailed to said owner, at his/her last known address, within 7 days after the date of the hearing. The only decisions, which shall be subject to appeal by the owner, shall be those decisions made by the Board pursuant to this paragraphs 8 and paragraph 7 above.

SECTION 4. Officers

The Board shall elect a Chairman and Vice-Chairman, who shall serve for the duration of said Grant.

SECTION 5. Meetings and Records

The Board shall determine meeting times and places. Special meetings may be held on call of the Chairman. A majority of the Board shall constitute a quorum for the transaction of business. The Board shall cause a proper record to be kept of its proceedings.

This Ordinance shall take effect and be in force from and after its passage, approval, and publication one time in the official city newspaper.

PASSED AND APPROVED BY THE MAYOR AND GOVERNING BODY OF THE CITY OF DODGE CITY, KANSAS, THIS 21st DAY OF MARCH, 2011.

E. Kent Smoll, Mayor

ATTEST

Nannette Pogue, City Clerk

Memorandum

To: Ken Strobel
City Manager
From: Raymond A. Slattery, P.E. 
City Engineer
Date: March 14, 2011
Subject: Design Contract for Candletree #5
Agenda Item: New Business

Recommendation: Approve Agreement pending review by City Attorney

Background: City Staff has been working with a developer to opening an area for housing using the RHID Incentive Program. SMH will provide engineering services necessary to develop preliminary platting information, develop final plat based on comments from developer and City Staff, and develop construction plans and documents necessary to construct streets, water, sewer, and storm sewer infrastructure.

Justification: The City has a need for additional housing and this subdivision will help in addressing the need. SMH will provide the necessary services to insure that the subdivision meets all City requirements while meeting the developer's time schedule.

Financial Considerations: The contract with SMH is for \$46,260.00.

Purpose/Mission: By contracting with SMH, we will provide additional housing opportunities for new and existing citizens.

Legal Considerations: The City is entering into a contract with SMH and is bound by the provisions of this contract.

Attachments: The Consulting Services Agreement with SMH Consultants.

CONSULTING SERVICES AGREEMENT

Client: City of Dodge City	Project: Candletree
Address: 806 Second Avenue	Addition Unit 5
Dodge City, KS	
67801	Project Location: Dodge City, KS
Telephone: 620-225-8106	
Contact: Ray Slattery	SMH Project Manager: Jeff Hancock
Client Job No.:	SMH Job No.: 110214AE

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

Final Platting, and Construction Documents for Sanitary Sewer, Water, Mass Grading, and Street Construction related to the Candletree Addition Unit 5 Subdivision in Dodge City, KS.

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

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

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

- FEE ESTIMATE SHOWN ON EACH SERIALLY NUMBERED WORK AUTHORIZATION
- THE LUMP SUM TOTAL COST OF CONSULTANT'S SERVICES IS \$46,260.00

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

CLIENT

By: _____
AUTHORIZED REPRESENTATIVE

CONSULTANT

By:  _____
AUTHORIZED REPRESENTATIVE

TITLE: _____

TITLE: Vice-President

DATE: _____

DATE: March 3, 2011

PLEASE SIGN AND RETURN ONE COPY TO SMH CONSULTANTS, P.A.



GENERAL CONDITIONS

SECTION I – Services by Consultant

1.1 General

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

1.2 Scope of Services and Fees

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

SECTION II – Payment to Consultant

2.1 Payment for Personnel Services

2.1.1 Payment

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

2.1.2 Chargeable Time

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

2.1.3 Overtime Rates

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

2.2 Payment for Direct Expenses

2.2.1 Payment

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

2.2.2 Direct Expenses

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

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

2.3 Payment Conditions

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

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

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

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

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

SECTION III – Term of Agreement

3.1 Term

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

3.2 Abandonment of Work

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

3.3 Termination of AGREEMENT

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

3.4 Payment for Work Upon Abandonment or AGREEMENT Termination

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

SECTION IV – General Considerations

4.1 Assignment and Responsibility for Personnel

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

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

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

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

4.2 Insurance

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

4.3 Successors and Assigns

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

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

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

4.4 Compliance with Law

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

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

4.5 Ownership and Reuse of Documents

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

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

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

4.6 Severability

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

4.7 Location of Underground Utilities

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

4.8 Subsurface Investigations

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

4.9 CONSULTANT's Personnel at Project Site

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

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

4.10 Opinions of Cost, Financial Considerations and Schedules

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

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

4.11 Disposition of Samples and Equipment

4.11.1 Disposition of Samples

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

4.11.2 Hazardous or Potentially Hazardous Samples and Materials

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

4.11.3 Contaminated Equipment

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

4.12 Discovery of Unanticipated Pollutant and Hazardous Substance Risks

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

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

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

SECTION V – Professional Responsibility

5.1 Performance of Services

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

5.2 No Special or Consequential Damages

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

5.3 Indemnification

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

5.4 Third Party Beneficiaries

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

SECTION VI – Governing Law

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

***Candletree Unit #5
Residential Subdivision
Scope***

SMH Consultants (SMH) will perform the following tasks for the City of Dodge City:

Phase I (Topographic Survey)

1. A complete boundary, topographic, and site survey for the entire 12 acre site that is to be platted and built on.
2. Conversion of the survey into a working drawing that can be used for final platting and design
3. cursory Drainage Impact Analysis to determine the overall plan for addressing drainage.

Phase II (Final Plat)

1. Preparation of a final plat for approximately 12 acres located north Gary. The final plat shall include required finish floor elevations on each of the platted lots.
2. Coordination with all private utility companies to ensure proper easements are in place for utility services to each of the lots within the subdivision.
3. Twenty copies of the plat to be provided to the City of Dodge City as required.
4. Modifications to final plat based on input from Volz Builders and the City of Dodge City.
5. Setting of all property pins as required by the laws of the State of Kansas.
6. Submittal of three Mylar copies of final plat.

Phase III (Preliminary Construction Documents)

1. Project construction title sheet.
2. Preliminary sanitary sewer plan and profile for the extension of sanitary sewer from the existing City sanitary sewer to the 12 acre final platted development and internal to the development. The proposed sanitary sewer plan and profile will also depict the location of service lines both vertically and horizontally. The sanitary sewer plan and profile shall conform to City of Dodge City Standards.
3. Sanitary sewer standard details as provided by the City of Dodge City.

4. Preliminary water main plan and profile for the extension of water service to and within the 12 acre platted subdivision. The water main plan and profile shall conform to City of Dodge City standards.
5. Water main standard details as provided by the City of Dodge City.
6. Utility Coordination with utility companies to address any potential conflicts between the proposed improvements and the existing utilities in the area.
7. Preliminary roadway plans and profiles for all primary roadways within the 12 acre final platted subdivision. Roadway plans will also include intersection details depicting the elevations at key locations within intersections.
8. Paving details as required by the pavement design.
9. Preliminary roadway cross sections for all primary roadways within the proposed 12 acre platted subdivision. Roadway cross sections will depict proposed and existing ground, water and sanitary sewer crossings, and crown elevations.
10. Stormwater runoff calculations to determine the required stormwater needs of the subdivision including the proper sizing of conduits and inlets.
11. Preliminary storm sewer layout and design.
12. Storm sewer standard details as provided by the City of Dodge City.
13. Preliminary mass grading plan for the 12 acre site along with required tops of foundations elevations on each of the platted lots.
14. Preliminary stormwater erosion and sediment control plan.
15. Contact with the United States Army Corps of Engineers to request a jurisdictional determination in regards to regulatory requirements or mitigation necessary prior to construction. The current assumption is that the site is non jurisdictional and that additional permitting will not be required.
16. Preparation of the sanitary sewer extension permit for City of Dodge City signature and submittal to the Kansas Department of Health and Environment.
17. Submittal of preliminary construction documents (up to 3 full size sets and electronically) for review by the City of Dodge City.
18. Basis of design report to be submitted to the City of Dodge City.

Phase IV (Final Construction Documents)

1. Project construction title sheet.
2. Final sanitary sewer plan and profile for the extension of sanitary sewer the existing City sanitary sewer system to the 12 acre final platted development and internal to the development based on review comments from the City of Dodge City. The proposed sanitary sewer plan and profile will also depict the location of service lines both vertically and horizontally. The sanitary sewer plan and profile shall conform to City of Dodge City Standards.
3. Sanitary sewer standard details as provided by the City of Dodge City.
4. Final water main plan and profile for the extension of water service to and within the 12 acre platted subdivision based on review comments from the City of Dodge City. The water main plan and profile shall conform to City of Dodge City standards.
5. Water main standard details as provided by the City of Dodge City.
6. Utility Coordination with utility companies to address any potential conflicts between the proposed improvements and the existing utilities in the area.
7. Final roadway plans and profiles for all primary roadways within the 12 acre final platted subdivision based on review comments from the City of Dodge City. Roadway plans will also include intersection details depicting the elevations at key locations within intersections.
8. Paving details as required by the pavement design.
9. Final storm sewer layout and design.
10. Storm sewer standard details as provided by the City of Dodge City.
11. Final roadway cross sections for all primary roadways within the proposed 12 acre platted subdivision based on review comments from the City of Dodge City. Roadway cross sections will depict proposed and existing ground, water and sanitary sewer crossings, and crown elevations.
12. Final mass grading plan for the 12 acre site along with required finish floor elevations on each of the platted lots based on review comments from the City of Dodge City.
13. Final erosion and sediment control plan based on review comments from the City of Dodge City. The final storm water erosion and sediment control plan also includes all

necessary permitting including the preparation and submittal of a stormwater pollution prevention plan to the Kansas Department of Health and Environment.

14. Preparation of final bid documents using City of Dodge City standard forms.

Phase V (Bid/Construction Services)

1. Submittal to the City of Dodge City of up to two full size sets of plans and bid documents sealed and signed by the engineer. Submittal will also include electronic copies of the same.
2. Bid package distribution by SMH to interested bidders for a non-refundable fee including issuance of addendums as required.
3. Bid package submittal to the City of Dodge City, Dodge City Chamber of Commerce, and Volz Builders.
4. Preparation of an engineer's estimate.
5. Bid review and tabulation by SMH along with a letter of recommendation concerning the lowest responsible bidder.

Additional Services

Any services not identified in the fore mentioned scope of services requested by the City of Dodge City will be provided at 2011 hourly rates included herein.

Schedule

The scope of services presented is intended to allow for the construction of public infrastructure to begin late summer or fall of 2011.

2011 Personnel and Reimbursable Rates

SMH Consultants

	<u>Standard Rate</u>	<u>Overtime Rate</u>
<i>Survey Crew</i>	\$110.00/hour	\$150.00/hour
<i>CADD Technician</i>	\$60.00/hour	\$78.00/hour
<i>Managing Principal Land Surveyor</i>	110.00/hour	\$143.00/hour
<i>Registered Land Surveyor</i>	\$100.00/hour	\$117.00/hour
<i>Managing Principal Engineer</i>	\$130.00/hour	\$169.00/hour
<i>Principal Engineer</i>	\$120.00/hour	\$156.00/hour
<i>Design Engineer</i>	\$70.00/hour	\$91.00/hour
<i>Construction Engineering/Inspection</i>	\$65.00/hour	\$84.50/hour
<i>Clerical</i>	\$40.00/hour	\$52.00/hour
<i>Mileage</i>	\$0.55/mile	

Memorandum

To: Ken Strobel
City Manager
From: Raymond A. Slattery, P.E. *RS*
City Engineer
Date: March 16, 2011
Subject: Easement acquisition for pipeline for Wastewater Reclamation Facility
Agenda Item: New Business

Recommendation: Approve payment to acquire easements

Background: The City has been working for several months to acquire the necessary permanent and temporary easements for the new transmission and force main lines for the new reclamation plant. The Commission previously set just compensation amounts for the all of the necessary parcels. We have negotiated with the various property owners and are now bringing to the commission several of the final offers.

Justification: The Commission needs to approve the final offers so that the easements can be purchased.

Financial Considerations: The appraisals have recommended the following offers:

Margaret Maupin	\$969
Diane & Todd Tabor	
Jay & Marlene Maupin	
Closing Costs	\$300
Filing Costs	\$ 16
Total	\$1,285

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: Agreement for sale and buyer's closing statement that will need to be signed by the City Clerk.

BUYER'S CLOSING STATEMENT

GF#: 11-9411

Prepared for:
CITY OF DODGE CITY, KANSAS

806 N. 2ND AVENUE
DODGE CITY, KS 67801

Prepared by:
High Plains Land & Title
P.O. Box 878
107 Gunsmoke
Dodge City, Ks. 67801

Property:
W/15' OF LOTS 5 THRU 8, BLOCK
& W/15' OF LOTS 8 THRU 13, BLO
15, ALL IN SCOTTSDALE SUBDIV.

Seller : MARGARET A. MAUPIN
DIANE & TODD TABOR
Closing date (MO/DY/YR) : 04/01/11

Closer : BRENDA K. LEE

	<u>DEBITS</u>	<u>CREDITS</u>
Contract Sales Price	969.00	
Settlement or Closing HIGH PLAINS LAND & TITLE	300.00	
Recording Temporary Easement	16.00	
Funds payable at closing		1,285.00
	<u>\$1,285.00</u>	<u>\$1,285.00</u>

Approved:

CITY OF DODGE CITY, KANSAS

Closing officer or Broker

SELLER'S CLOSING STATEMENT

GF#: 11-9411

Prepared for:
MARGARET A. MAUPIN
DIANE & TODD TABOR
JAY & MARLENE MAUPIN

Prepared by:
High Plains Land & Title
P.O. Box 878
107 Gunsmoke
Dodge City, Ks. 67801

Property:
W/15' OF LOTS 5 THRU 8, BLOCK
& W/15' OF LOTS 8 THRU 13, BLOC
15, ALL IN SCOTTSDALE SUBDIV.

Buyer : CITY OF DODGE CITY, KANSAS

Closing date (MO/DY/YR) : 04/01/11

Closer : BRENDA K. LEE

	<u>DEBITS</u>	<u>CREDITS</u>
Contract Sales Price		969.00
Funds to seller	969.00	
	<u>\$969.00</u>	<u>\$969.00</u>

Approved:

MARGARET A. MAUPIN

Closing officer or Broker

DIANE TABOR
TODD K. TABOR

JAY MAUPIN
MARLENE D. MAUPIN