

# **COMMISSION FACILITIES TOUR**

**October 2, 2006 - 6:00 p.m.**

**Sheridan Center**

Tour the Sheridan Center and a short walking tour of the St. Mary's grounds

# COMMISSION AGENDA

October 2, 2006 - 7:00 p.m.  
Commission Chambers  
MEETING NO. 4660

## CALL TO ORDER

## ROLL CALL

INVOCATION by Rev. Jeff Turner, First Missionary Church.

## PLEDGE OF ALLEGIANCE

## PETITIONS & PROCLAMATIONS

VISITORS (Limit of 5 minutes per individual and fifteen minutes per topic. Final action may be deferred until the next City Commission meeting, unless an emergency situation does exist)

City of Character Trait for October – Loyalty

Report by Cathy Reeves, Library Director

## CONSENT CALENDAR

1. Approval of Minutes of Regular Meeting of September 18, 2006
2. Approval of payment of bills.
3. Approval of Cereal Malt Beverage License for:  
A. Taco Palenque, 307 Military Avenue  
(pending approval and inspections from Fire, Inspection and Police Departments)
4. Approval of Change Order #1 for 2006 Asphalt Street Reconstruction Project.
5. Approval of Change Order #1 for 2006 Street Sealing Program Project.
6. Approval of Change Orders #4 & #5 for Wyatt Earp Blvd. Reconstruction Project.
7. Approval of Hennessey Hall Lease Agreements with SWPRSC and CASA.

## ORDINANCES & RESOLUTIONS

## UNFINISHED BUSINESS

## NEW BUSINESS

1. Proposal for services to remove underground storage tank on Wyatt Earp Reconstruction Project. Report by Public Works Director, Joe Finley.

2. Request for authorization to solicit proposals for DCRP management. Report by City Manager.

#### OTHER BUSINESS

Commissioners  
City Manager

#### ADJOURNMENT

**MINUTES**  
**September 5, 2006 - 7:00 p.m.**  
**MEETING NO. 4659**

MAYOR Jim Sherer called the regular meeting to order at 7:00 p.m.

RESPONDING TO ROLL CALL were Mayor Jim Sherer, Commissioners Terry Lee, Kent Smoll, Rick Sowers, and Jim Lembright.

INVOCATION was led by Vernon Bogart

The PLEDGE OF ALLEGIANCE was recited.

**PETITIONS & PROCLAMATIONS**

Mayor Sherer presented Ryan Carpenter a recognition certificate for displaying the City of Character Trait, Initiative. Ryan secured the memorial stones from the Pentagon and Shanksville, PA September 11<sup>th</sup> crash sites for placement at Liberty Garden.

VISITORS (Limit of 5 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)

Dr. Brian spoke about the proposed smoking ban. He & his wife both work at educating people and do seminars to help people quit smoking.

Vernon Bogart said he thought we should look at getting rid of drinking as well.

Johnny Dunlap representing both East and west Love's Store locations spoke on temporary suspensions.

The CONSENT CALENDAR was approved on a motion by Commissioner Lembright, seconded by Commissioner Smoll, by unanimous vote.

1. Approval of Minutes of Regular Meeting of September 5, 2006
2. Approval of payment of bills.
3. Approval of Cereal Malt Beverage License for:
  - A. Kate's, 305 E. Trail Street
  - B. Convenience Plus #5, 2501 Central Avenue
  - C. Dillon Store #1, 1700 N. 14th  
(pending approval and inspections from Fire, Inspection and Police Departments)

**ORDINANCES & RESOLUTIONS**

Ordinance No.3422: An Ordinance to extend cable franchise agreement with Cox was adopted on a motion by Commissioner Sowers, seconded by Commissioner Smoll, by unanimous vote.

Renaldo Mesa spoke representing Cox Communications.

Resolution 2006-12: A Resolution authorizing the offering for sale of General Obligation Bonds, Series, 2006-A, of the City of Dodge City, Kansas was adopted on a motion by Commissioner Lembright, seconded by Commissioner Smoll, by a vote of 4-1 with Commissioner Lee voting nay.

## UNFINISHED BUSINESS

## NEW BUSINESS

1. A bid for Civic Center Parking Lot Project from JAG Construction in the amount of \$390,441.05 was approved on a motion by Commissioner Sowers, seconded by Commissioner Lembright, by a vote of 4-1 with Commissioner Lee voting nay.
2. Temporary suspensions of alcohol license for listed businesses and lengths were issued on a motion by Commissioner Lee, seconded by Commissioner Lembright, by unanimous vote.

Commissioner Lee asked about stricter penalties.

Commissioner Smoll asked about the violation of sale on Sunday and if should be the same as sale to minors.

Police Chief Ball commented.

### **Violation of Sale to Minor**

Loves Country Store, 400 E. Wyatt Earp	one week
Taco Jalisco, 412 E. Wyatt Earp	one week
Convenience Plus, 2501 Central	15 days

### **Violation of Sale on Sunday**

King Kwik Mart, 510 E. Wyatt Earp	one week
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3. A Project Agreement with the Kansas Department of Transportation for the Retirement of Debt for the Dodge City Depot Restoration Project was approved on a motion by Commissioner Lee, seconded by Commissioner Sowers, by unanimous vote.
4. Contract Amendment No. 19 to the contract with OMI was approved on a motion by Commissioner Smoll, seconded by Commissioner Lembright, by unanimous vote.
5. A contract for engineer's services with Schwab-Eaton in the amount of \$108,700 for the St. Mary Soccer Complex expansion was approved on a motion by Commissioner Sowers, seconded by Commissioner Smoll, by unanimous vote.

## OTHER BUSINESS

Commissioner Lembright commented on a benefit golf tournament for Steve brown and wished him the best in his recovery.

Commissioner Sowers thanked City staff for the Liberty Garden presentation. He also talked about other cities' smoking bans.

Commissioner Smoll commented about our September 11<sup>th</sup> remembrance and that the National League of Cities weekly newspaper had a photo of Dodge City's Liberty Garden on the front page. He also said he had done a non-scientific poll about a smoking ban.

Commissioner Lee commented on September 11<sup>th</sup> service. He asked about the 14<sup>th</sup> Street Reconstruction Project. Joe Finley responded that we are still acquiring Right of Way and are hoping for a spring start date.

Commissioner Sherer asked about the intersection of 14<sup>th</sup> and Hwy 50. Joe Finley responded that the City will add a third light. Commissioner Sherer also stated he attended a Human Development Steering Committee meeting in Vancouver, WA. He said he was proud to be at the Liberty Garden 9-11 memorial service.

City Manager, Jeff Pederson

- Welcomed Jan Stevens as Director of Convention and Visitors Bureau
- Reminded everyone of the regular monthly meeting of CFAB on Thursday, September 21 at 7:00 p.m. in the Commission Chambers
- Reported he had a request from staff in Community Development and Code Enforcement to ask citizens their feelings about semi-trailers parked in residential areas.

Commissioner Sherer commented that the Dodge City booth at the State Fair had won a special award.

On a motion by Commissioner Sowers, seconded by Commissioner Smoll, the meeting adjourned by unanimous vote.

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V. James Sherer, Mayor

ATTEST:

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Nannette Pogue, City Clerk

(Individual Application Form)

APPLICATION FOR LICENSE TO RETAIL CEREAL MALT BEVERAGES

Dodge city COUNTY, KANSAS, 9, 2006

TO THE GOVERNING BODY OF THE CITY OF Dodge city, KANSAS,

or THE BOARD OF COUNTY COMMISSIONERS OF Dodge city COUNTY, KANSAS.

I hereby apply for a license to retail cereal malt beverages in conformity with the laws of the State of Kansas and the rules and regulations prescribed and hereafter to be prescribed by you relating to the sale or distribution of cereal malt beverages; for the purpose of securing such license, I make the following statements under oath:

1. (a) Name of proposed licensee Gloria de Leon

(b) Age 49 years

(c) Place and date of birth

(d) Residence address 711 Av C Dodge City KS. 67801

(e) I have been a resident of the State of Kansas 19 years.

2. The premises for which the license is desired are located at 307 Military Dodge city KS 67801

(a) The legal description of said property is E1 Restaurant Taco Palenque

(b) The street number is 307 Military

(c) The building to be used is Sete For Sale Mexican Food

(d) The business will be conducted under the following name: Jaime Garcia Emma Villagiana

3. The name and address of the owner or owners of the premises upon which the proposed business will be located is

307 Military - 701 COLLAV #15

4. I am a citizen of the United States. Yes (X), No ( )

(a) My citizenship arises by birth ( ), Naturalization (X)

(b) My place of naturalization and the date thereof is as follows: 1998 5-1998 Wichita, Kansas 20

5. I have ( ), have not ( ), been convicted of a felony within two years immediately preceding the date of this application.

6. I have ( ), have not ( ), been convicted of a crime involving moral turpitude within two years immediately preceding the date of this application.

7. I have ( ), have not ( ), been adjudged guilty of drunkenness within two years immediately preceding the date of this application.

8. I have ( ), have not ( ), been adjudged guilty or entered a plea, or forfeited bond on a charge of driving a motor vehicle while under the influence of intoxicating liquors within two years immediately preceding the date of this application.

9. I have ( ), have not ( ), been convicted of a violation of any state or federal intoxicating liquor law within two years immediately preceding the date of this application.

10. My place of business will be conducted by a manager or agent— Yes (X), No ( )

(a) If the answer above is yes, the name, age, and residence of manager or agent is Jaime Garcia

Said manager or agent does (X) does not ( ), have the qualifications to have a license issued in his own name. The same to be determined by reference to K.S.A. 41-2703, K.S.A. 41-2702. Specifies concerning his residence, citizenship, and the answers to questions 5 through 9 are as follows:

11. I have (X), have not ( ), been a resident of this State for at least one year immediately preceding making this application.

12. My spouse would (X), would not ( ), be eligible to receive a retailer's license.

13. This application is for a license to retail cereal malt beverages for consumption on the premises (X). For a license to retail cereal malt beverages in original and unopened containers and not for consumption on the premises ( )

A license fee of \$ 225.00 is enclosed herewith.

# City of Dodge City

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## Memorandum

September 19, 2006

TO: Jeff Pederson, City Manager

FROM: Joseph E. Finley, P.E., Director of Public Works *JF*

RE: 2006 Asphalt Street Reconstruction Project ST 0603

Attached please find Change Order 1 for your review on the above referenced project. The change order is for a decrease of \$6,070.00.

The change order is the result of the following.

**Sub Grade Repair** – The deletion of 435 C.Y. was because less unsuitable sub grade was encountered in the project than anticipated. The incorporation of the Fly Ash into the sub grade has helped eliminate the problem of unsuitable sub grade.

**BM-4 (4") Base Course** – The deletion of 75 tons of asphalt represent actual field measurements. The reason for the under run was an over estimation of quantities in the design stage of this project.

**BM-2 (2) Surface Course** – The addition of 81 tons of asphalt represent actual field measurements. The reason for the overage was that some extra material was needed for tie-ins at existing streets.

**Water Valve Adjustment** – The addition of 2 adjustments was because the contractor uncovered these valves during construction. These two valves were not shown on the water system maps and have more than likely been covered since the street was constructed.

**Rem./Repl. Curb & Gutter** – The additional 53 L.F. of Curb and Gutter was added because there was a section of curb and gutter on El Trigo St. at the alley entrance needed to be replaced.

Staff would recommend approval of this change order as submitted. To date, the change orders are for a total decrease of \$6,070.00. Should you have questions or need additional information please let me know.

JF/jlg

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## CHANGE ORDER #1

### 2006 Asphalt Street Reconstruction ST 0603

#### ITEM:

#### DESCRIPTION:

**Sub Grade Repair** – The deletion of 435 C.Y. was because less unsuitable sub grade was encountered in the project than anticipated. The incorporation of the Fly Ash into the sub grade has helped eliminate the problem of unsuitable sub grade.

**BM-4 (4") Base Course** – The deletion of 75 tons of asphalt represent actual field measurements. The reason for the under run was an over estimation of quantities in the design stage of this project.

**BM-2 (2) Surface Course** – The addition of 81 tons of asphalt represent actual field measurements. The reason for the overage was that some extra material was needed for tie-ins at existing streets.

**Water Valve Adjustment** – The addition of 2 adjustments was because the contractor uncovered these valves during construction. These two valves were not shown on the water system maps and have more than likely been covered since the street was constructed.

**Rem./Repl. Curb & Gutter** – The additional 53 L.F. of Curb and Gutter was added because there was a section of curb and gutter on El Trigo St. at the alley entrance needed to be replaced.

## Memorandum

September 19, 2006

TO: Jeff Pederson, City Manager

FROM: Joseph E. Finley, P.E., Director of Public Works *JF*

RE: 2006 Street Sealing Program Project ST 0602

Attached please find Change Order 1 for your review on the above referenced project. The change order is for a decrease of \$506.88.

The change order is the result of the following.

**“Shot Rock” Sealing** – The deletion of 288 SY is due to the fact that a section of Soule St. at the 14<sup>th</sup> Ave. Intersection was not sealed to save the pavement markings.

Staff would recommend approval of this change order as submitted. To date, the change orders are for a total decrease of \$506.88. Should you have questions or need additional information please let me know.

JF/jlg

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**CHANGE ORDER #1**

**2006 Street Sealing Program  
ST 0602**

**ITEM:  
STREET SEALING**

**DESCRIPTION:**

**“Shot Rock” Sealing** – The deletion of 288 SY is due to the fact that a section of Soule St. at the 14<sup>th</sup> Ave. Intersection was not sealed to save the pavement markings.

## Memorandum

September 21, 2006

TO: Jeff Pederson, City Manager

FROM: Joseph E. Finley, P.E., Director of Public Works 

RE: Wyatt Earp Blvd. Reconstruction Project ST 0201

Attached please find Change Order 4 & 5 for your review on the above referenced project.

Change Order number four is for a decrease of \$15,810.00. Change Order 4 will delete Line Items No. 35 and 36, 42" and 48" storm sewer pipe, respectively, on and add a new line, item for 30" and 36" storm sewer pipe. Also, one (1) additional storm sewer manhole (reinforced concrete) for Item No. 52, has been added due to conflict with a sanitary sewer line. An additional fifteen (15) calendar days are indicated to be added to the contract for this work for various utility delays.

The fifth Change Order is for a decrease of \$2,298.69. The contractors requested to use Temporary Pavement Marking Paint instead of the Temporary Pavement Marking Tape. The paint is 30% of the tape price.

The net result is a deduction of \$18,747.69. Staff would recommend approval of these two change orders as submitted. Should you have any further questions or need additional information please let me know.

JF/jlg

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CHANGE ORDER  
For  
Change in Plans and Construction

Contract No. 06-012 Change Order No. 4  
 Description West Wyatt Earp Reconstruction, Phase I, (ST 0201) Dodge City, Kansas  
 Contractor: Dobson Brothers Construction Address: PO Box 81409, Lincoln, NE 68501

EXPLANATION OF CHANGE RECOMMENDED

Delete Line Item No. 35 and add New Item -- The size of the Storm Sewer Pipe was changed from 42" dia. to 30" dia. at Sta. 555+75 resulting in a decrease in the unit price.

Delete Line Item No. 36 and add New Item -- The size of the Storm Sewer Pipe was changed from 48" dia. to 36" dia. at Sta. 558+68 .

Line Item No. 52 -- During construction of the storm sewer on the south side of West Wyatt Earp the proposed placement of the 60" x 38" arched concrete pipe was in conflict with the elevation of an existing 18 inch sanitary sewer line running from Tenth Avenue across West Wyatt Earp. It was decided to place one additional manhole in the outside driving lane of the eastbound roadway at approximately Sta. 566+80 resulting in a change of the quantity from 1 to 2 manholes

Add 15 additional days to the contract for various utility delays making a total of 437 calendar days for the project.

OVERRUNS

Revised Quantities	Item No.	Item of Work	Contract Unit Price	Revised Unit Price	Amount
288 L.F.	New	30" Storm Sewer (RCP)		67.00	19,296.00
202 L.F.	New	36" Storm Sewer (RCP)		86.00	17,372.00
1 Each	52	Manhole (Reinforced Concrete)	4,800.00		4,800.00
		Add 15 Additional Days			
Total Overruns					\$ 41,468.00

UNDERRUNS

Original Quantities	Item No.	Item of Work	Contract Unit Price	Revised Unit Price	Amount
288 L.F.	35	42" Storm Sewer (RCP)	107.00		30,816.00
202 L.F.	36	48" Storm Sewer (RCP)	131.00		26,462.00
Total Underruns					\$ 57,278.00

This is to affirm that I/we have inspected this change in plans and construction and hereby agree to the quantities, unit prices, and amount shown above

TOTAL DECREASE/INCREASE \$ 15,810.00

Contractor Dobson Brothers Construction

Signed By *Tony Avery*

Date 9-21-06

Recommended for Approval:  
Cook, Flatt & Strobel Engineers, P.A.

By: *Chad Cook*

APPROVED:

Owner City of Dodge City

Date 9/11/06

Signed By *Joseph E. Wiley*

Date 9/21/06

CHANGE ORDER  
For  
Change in Plans and Construction

Contract No. 06-012 Change Order No. 5

Description West Wyatt Earp Reconstruction, Phase I, (ST 0201) Dodge City, Kansas

Contractor: Dobson Brothers Construction Address: PO Box 81409, Lincoln, NE 68501

EXPLANATION OF CHANGE RECOMMENDED

New Line Item No. 138 - Temporary Pavement Marking (Paint) (4") Sta/Line - The Contractor proposes to use paint instead of Type II Tape for a portion of the temporary pavement marking indicated in the plans. Per Special Provision 90P-137-R16 the unit price shall be 30% of the price bid for the Type II tape.

OVERRUNS

Original Quantities	Item No.	Item of Work	Contract Unit Price	Revised Unit Price	Amount
102.62 Sta/Line	138	Temporary Pavement Marking (Paint) 4"	9.60		985.15

Total Overruns \$ 985.15

UNDERRUNS

Revised Quantities	Item No.	Item of Work	Contract Unit Price	Revised Unit Price	Amount
263 Sta/Line Changed to 160.38 Sta/Line	95	4" Solid (Type II Tape)	32.00		3,283.84

Total Underruns \$ 3,283.84

TOTAL DECREASE/INCREASE \$ 2,298.69

This is to affirm that I/we have inspected this change in plans and construction and hereby agree to the quantities, unit prices, and amount shown above

Contractor Dobson Brothers Construction

Signed By *Steph A Ry*

Date 09-21-06

APPROVED:

Owner City of Dodge City

Signed By *Joseph E. S. L...*

Date 9/20/06

Recommended for Approval:  
Cook, Flatt & Strobel Engineers, P.A.

By: *[Signature]*

Date 9/20/06



# City of Dodge City

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PO Box 880 • Dodge City KS 67801 • Phone: 620/225-8160 • Fax: 620/225-8184

## *Memorandum*

To: City Commission  
Jeff Pederson, City Manager  
From: Paul Lewis, Parks & Recreation Director  
cc: SMPC Advisory Board  
Date: September 28, 2006  
Subject: Hennessy Lease w/ SWPRSC

A handwritten signature in black ink, appearing to be "P. Lewis", located to the right of the "From:" line.

Attached with this memo is a lease between the City and the Southwest Plains Regional Service Center (SWPRSC) for office space at Hennessy. The space being leased is room 43 on the ground floor.

The agreement is the standard form used with all Hennessy tenants. The term of this agreement is for one year and the annual lease amount is \$6,000 payable in \$500 monthly installments. This rate was based on 1000 square feet at the standard \$6 per square foot annual rate.

I will be happy to answer any questions or provide additional information if needed.

## **HENNESSY HALL LEASE AGREEMENT**

This lease agreement is made and entered into by and between the City of Dodge City, Kansas a municipal corporation (LANDLORD), and Southwest Plains Regional Service Center, a Kansas not-for-profit corporation, (TENANT).

In consideration of the mutual promises and covenants of the parties as set forth herein, the LANDLORD and TENANT agree as follows:

- 1. LEASE PREMISES:** The LANDLORD hereby leases to the TENANT part of that property known as Hennessy Hall, located on the former St. Mary's of the Plains College Campus in Dodge City, Kansas. Attached hereto as Exhibit A are the specifications of Hennessy Hall. That portion of the premises hereby leased to TENANT is outlined in red, comprising approximately one thousand (1,000) square feet. The outlined portion of Exhibit A, attached hereto and made a part hereof, is hereinafter collectively referred to as the "leased premises."
- 2. TERM:** The term of this lease shall be for a period of one (1) year commencing August 1, 2006, and terminating July 31, 2007, subject, however, to earlier termination as set forth herein.
- 3. LEASE RENTAL:** During the first year of this lease, the TENANT shall pay to the LANDLORD annual rental in the amount of six thousand dollars (\$6,000.00), representing a square footage rental rate of approximately \$6.00 per square foot, said annual amount to be paid in equal advance monthly installments of five hundred dollars (\$500.00), commencing on the first day of August, 2006 for 1st months rent and continuing monthly thereafter for the first year of this lease, said monthly rental being hereinafter referred to as the "base rent."
- 4. ADDITIONAL RENT:** It is agreed by the parties that, in addition to the base rent as set forth above, the tenant shall pay an amount representing the TENANT'S proportionate share of any increase in the LANDLORD'S cost for taxes and utilities as set forth in the formula below. The parties understand and agree that, at the present time, the lease building facility is exempt from real estate taxes, and the parties anticipate the continued exemption of said facility during the term of this agreement; provided, however, that in the event the lease building facility in which the leased premises are located is placed on the tax rolls, then the TENANT shall pay proportionate share of such real estate taxes as set forth below.

The TENANT'S proportionate share of any increases costs for taxes and utilities will be calculated on the following basis:

(a) If the combined expenses to the LANDLORD for real estate taxes and utilities (electricity, gas, trash, and water) for any year of the lease agreement are more than the taxes and utility costs for the base year, as defined below, then, in that event, the amount of the increase in such tax and utility expenses above the amount of the base year shall be proportioned to the tenant based on a percentage that the leased premises covered by this lease bears to the total usable space in the entire building. It is agreed that the leased premises covered by this lease is approximately one thousand (1,000) square feet, and the total usable space for the entire building is 38,000 square feet, and that the TENANT'S proportionate percentage of the total building space is 2.6%.

(b) To figure the rental adjustment, the dollar amount of increase in the combined real estate taxes and utility costs shall be multiplied by 2.6%, the TENANT'S proportionate share of the entire building. A resulting amount is then divided by 1,000 square feet and that amount shall then be added to the base rent per square foot rental figure for the coming lease year. It is agreed that in no event shall the annual per square foot rental figure be increased by more than \$1.25 per square foot for any one year.

(c) The adjusted base rent figure, as provided above, shall be due and payable to the landlord in monthly installments commencing on August 1 of the following year, and on the first day of each month thereafter until the next rental adjustment.

(d) The "base year" shall be the taxes and utility costs attributable to the leased building facility for the calendar year 2006.

**5. REPAIR AND MAINTENANCE:** Throughout the term of this lease, the LANDLORD shall be responsible for the maintenance and repair of the roof, the exterior portions of all outside walls of the leased building facility and shall be responsible for repairs necessitated by structural defects of the building. In addition, the LANDLORD shall be responsible for repair and maintenance of all plumbing, sewer, lighting, electrical, and heating and air conditioning units. LANDLORD shall maintain all portions of the area adjoining the leased property including sidewalks and parking lots in a clean and orderly condition free and clear of rubbish, snow, ice, and unlawful obstructions.

The TENANT shall be responsible for all interior maintenance of the leased premises, including but not limited to, cleaning, painting, and general upkeep and shall be responsible for the prompt repair of any damage to the leased premises caused by reason of its use of the same, including but not limited to, any damage or needed repairs to any plumbing and electrical facilities located with the leased premises.

The TENANT shall be responsible for repairs, maintenance, and replacement of any improvements or renovation made to the leased premises by the TENANT, including but not limited to telephone lines and equipment, computer wiring, and any special accommodations provided or installed by the TENANT.

**6. SIGNAGE:** The LANDLORD will provide a community sign identifying the property with a listing of the building tenants at a location near the entrance to the building. The TENANT will be responsible for any individual tenant signage it might desire, the style and location of which shall be subject to prior approval of the LANDLORD.

**7. JANITORIAL SERVICES:** The LANDLORD shall be responsible for providing janitorial services for the common areas of the leased building facility. The common areas shall consist of the foyer, stairs, and common hallways located outside the lease premises. The TENANT will be responsible for providing janitorial services to the leased premises.

**8. TAXES:** The LANDLORD shall pay all real estate taxes (including special assessments) on the leased building facility, if any. The TENANT shall pay all personal property taxes assessed against personal property owned by the TENANT and located in the leased premises.

**9. USE:** The TENANT shall use and occupy the leased premises for the operation of a business office. The TENANT shall not use or knowingly permit any part of the leased premises to be used for any other purpose, without the prior written consent of the LANDLORD.

**10. TENANT RENOVATIONS:** The tenant hereby acknowledges that it has had a reasonable opportunity to view and inspect the lease premises prior to the execution of this lease agreement, and hereby accepts said lease premises in its present condition. The TENANT further acknowledges that no representation, statement or warranty, expressed or implied, has been made by or on behalf of the landlord as to the existing condition of the leased premises.

All renovations and remodeling desired by the TENANT will be at the sole expense of the TENANT and shall be performed in accordance with plans and specifications as prepared by the TENANT, subject, however, to the prior written approval of the LANDLORD, which approval shall not be unreasonably withheld.

TENANT further covenants and agrees to pay the entire cost of any work on the lease premises undertaken by the TENANT; to procure all necessary permits before undertaking such work; to do all such work in a good and workmanlike manner employing materials of good quality and complying with all governmental requirements. The TENANT further agrees to hold the LANDLORD harmless and indemnified from any injury, loss, claim, or damages to any person or property occasioned by or growing out of such work. The TENANT shall have the right to contest any claimed amounts or claims, arising out of any such work, and the TENANT shall discharge any lien, by bond, or otherwise, at its sole expense.

- a) **TERMINATION BY LANDLORD:** In the event of the sale by the LANDLORD of the lease building facility which includes the lease premises to a third party, the LANDLORD shall have the option to terminate this lease agreement by providing written notice to the TENANT at least twelve months prior to the termination date
- b) **CASUALTY INSURANCE:** The LANDLORD agrees to keep the leased building facility insured for the benefit of the LANDLORD against loss of damage by fire and all casualties included in the broadest standard form obtainable of extended coverage or supplemental contract of endorsements. The TENANT shall have the responsibility to insure all of its interest in the fixtures, equipment, inventory, and other TENANT assets.

**11. TENANT LIABILITY INSURANCE:** The TENANT shall be responsible for and shall provide total and complete liability insurance in the amount of at least \$500,000 that will save and protect the LANDLORD from any and all claims or demands of any kind or character which may arise or claim to arise against the LANDLORD by reason of the use of leased premises by the TENANT, and the LANDLORD shall be named as an additional insured on such policies.

It is further agreed that the TENANT shall save and hold harmless the LANDLORD from any and all claims, causes of action or losses which may be asserted against the LANDLORD by reason of the TENANT'S use of the leased premises under the terms and conditions of this lease and will further indemnify the LANDLORD for its attorney's fees and other costs, losses or expenses incurred by the LANDLORD in defending against any such claims or causes of action.

**12. DESTRUCTION:** In the event the leased premises, or any part thereof, be partially destroyed by an act of god, the elements, fire, or other cause covered by insurance carried by the landlord, the LANDLORD, using such insurance proceeds, shall proceed immediately with due diligence to repair, restore, and to replace said lease premises to as good a condition as it was in prior to such damage or destruction. The LANDLORD'S responsibility in this respect should be limited to the amount of insurance proceeds received by the LANDLORD because of the damage or destruction. A just and proportionate part of the monthly rental payments shall be suspended or proportionately abated in accordance with use until the lease premises is put in complete repair. If the lease premises shall, at any time during the life of this lease or an extension thereof, be substantially damaged or destroyed by causes not covered by insurance, this lease agreement shall be subject to cancellation at the option of the LANDLORD by giving TENANT written notice of cancellation within twenty (20) days after the date of such damage or destruction. All rent paid in advance, if any, by the TENANT, that is actually unearned at the date of the damage or destruction, shall be refunded forthwith to the TENANT. If no notice of cancellation is given as aforesaid, or if the leased premises are not substantially damaged or destroyed, this lease shall remain in full force and effect, and the LANDLORD shall proceed immediately with due diligence to repair, restore, and replace the lease premises to as good a condition as they were in immediately prior to the damage or destruction. It is expressly agreed that TENANT'S obligation to pay rent hereunder shall abate during the period of LANDLORD'S repair or reconstruction of the premises pursuant to the term of this paragraph; to the extent the premises are untenable.

**13. UTILITIES:** LANDLORD shall be responsible for the payment of utilities, including water, sewer, trash removal, gas, and electricity for the lease premises.

**14. ASSIGNMENT BY TENANT:** The TENANT shall not assign this lease nor sublet or permit the leased premises or any part thereof to be used by any others, without the prior written consent of the LANDLORD in each such incident. The written consent of the LANDLORD to an assignment or subletting shall not be construed to relieve the TENANT from obtaining the consent in writing of the LANDLORD to any further assignment or subletting.

**15. ASSIGNMENT BY LANDLORD:** The LANDLORD shall have the right to assign this lease to another person or entity at any time without approval of the TENANT; provided,

however, any such assignment shall not relieve the LANDLORD and its assignee of any obligations incumbent upon it under the provisions of this lease, and the same shall be binding on the LANDLORD's assignee.

**16. RULES AND REGULATIONS:** The LANDLORD reserves the right to promulgate rules and regulations concerning occupancy of the building of which the leased premises are a part. These rules and regulations shall be in writing and will take effect immediately after notice has been given by serving a copy of the rules and regulations upon the TENANT.

**17. NOTICES:** Any notice under this lease must be in writing and must be sent by registered or certified mail to the last address of the party to whom the notice is to be given, as designated by the party in writing. The LANDLORD hereby designates its address as CITY HALL, 806 2nd Avenue, PO Box 880, Dodge City, Kansas 67801. The TENANT hereby designates its address as Southwest Plains Regional Service Center USD 626, Box 1010, Sublette, KS 67877.

**18. BINDER:** This agreement shall be binding on the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the parties have hereunto set their hands in the day and year written below.

\_\_\_\_\_  
DATE

CITY OF DODGE CITY,  
A MUNICIPAL CORPORATION

By: \_\_\_\_\_  
JIM SHERER, MAYOR

APPROVED:

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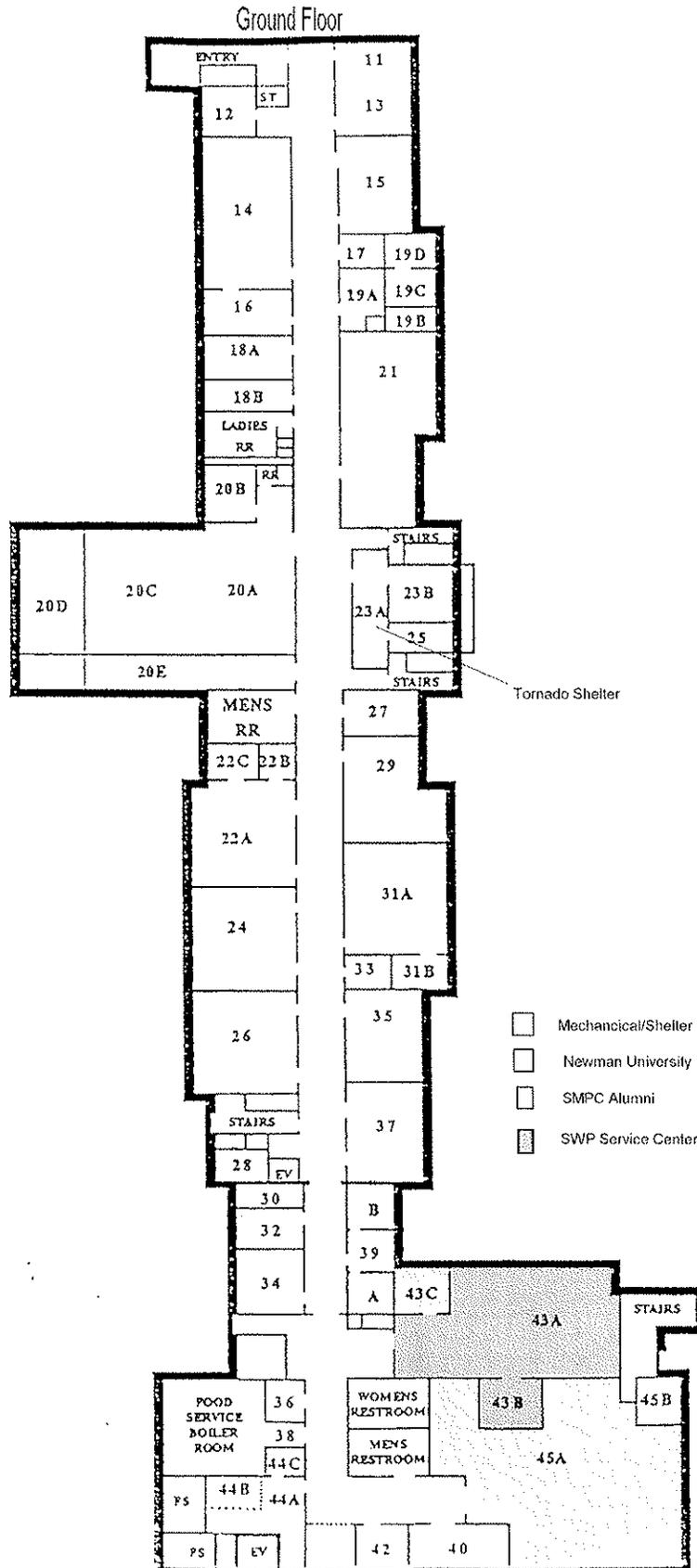
NANNETTE POGUE, CITY CLERK

SOUTHWEST PLAINS REGIONAL  
SERVICE CENTER USD 626

By: \_\_\_\_\_

  
James R. Barrett, Executive Director

# Attachment A





# City of Dodge City

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PO Box 880 • Dodge City KS 67801 • Phone: 620/225-8160 • Fax: 620/225-8184

## *Memorandum*

To: City Commissioners,  
Jeff Pederson, City Manager  
From: Paul Lewis, Parks & Recreation Director   
Date: September 28, 2006  
Subject: Hennessy Lease Agreement w/ CASA

Attached with this memo is a lease between the City and CASA, Children Worth Saving for office space at Hennessy. The space being leased is room 130 on the first floor and is located across the hall from Ford County Kids Count and the United Way.

The agreement is the standard form used with all Hennessy tenants. The term of this agreement is for two years and the annual lease amount is \$3,600 payable in \$300 monthly installments. This rate was based on 600 square feet at the standard \$6 per square foot annual rate.

I will be happy to answer any questions or provide additional information if needed.

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## **HENNESSY HALL LEASE AGREEMENT**

This lease agreement is made and entered into by and between the City of Dodge City, Kansas a municipal corporation (LANDLORD), and CASA, Children Worth Saving, a Kansas not-for-profit corporation, (TENANT).

In consideration of the mutual promises and covenants of the parties as set forth herein, the LANDLORD and TENANT agree as follows:

- 1. LEASE PREMISES:** The LANDLORD hereby leases to the TENANT part of that property known as Hennessy Hall, located on the former St. Mary's of the Plains College Campus in Dodge City, Kansas. Attached hereto as Exhibit A are the specifications of Hennessy Hall. That portion of the premises hereby leased to TENANT is outlined in red, comprising approximately six hundred (600) square feet. The outlined portion of Exhibit A, attached hereto and made a part hereof, is hereinafter collectively referred to as the "leased premises."
- 2. TERM:** The term of this lease shall be for a period of two (2) years commencing August 1, 2006 and terminating July 31, 2008, subject, however, to earlier termination as set forth herein.
- 3. LEASE RENTAL:** During the first year of this lease, the TENANT shall pay to the LANDLORD annual rental in the amount of Three thousand six hundred dollars (\$3,600.00), representing a square footage rental rate of approximately \$6.00 per square foot, said annual amount to be paid in equal advance monthly installments of \$300.00, commencing on the first day of August 2006 for 1st months rent and continuing monthly thereafter for the remaining term of this lease, said monthly rental being hereinafter referred to as the "base rent."
- 4. ADDITIONAL RENT:** It is agreed by the parties, that, in addition to the base rent as set forth above, the tenant shall pay an amount representing the TENANT'S proportionate share of any increase in the LANDLORD'S cost for taxes and utilities as set forth in the formula below. The parties understand and agree that, at the present time, the lease building facility is exempt from real estate taxes, and the parties anticipate the continued exemption of said facility during the term of this agreement; provided, however, that in the event the lease building facility in

which the leased premises are located is placed on the tax rolls, then the TENANT shall pay proportionate share of such real estate taxes as set forth below.

The TENANT'S proportionate share of any increases costs for taxes and utilities will be calculated on the following basis:

(a) If the combined expenses to the LANDLORD for real estate taxes and utilities (electricity, gas, trash, and water) for any year of the lease agreement are more than the taxes and utility costs for the base year, as defined below, then, in that event, the amount of the increase in such tax and utility expenses above the amount of the base year shall be proportioned to the tenant based on a percentage that the leased premises covered by this lease bears to the total usable space in the entire building. It is agreed that the leased premises covered by this lease is approximately six hundred (600) square feet, and the total usable space for the entire building is 38,000 square feet, and that the TENANT'S proportionate percentage of the total building space is 1.6%.

(b) To figure the rental adjustment, the dollar amount of increase in the combined real estate taxes and utility costs shall be multiplied by 1.6%, the TENANT'S proportionate share of the entire building. A resulting amount is then divided by 600 square feet. The resulting amount shall then be added to the base rent per square foot rental figure for the coming lease year. It is agreed that in no event shall the annual per square foot rental figure be increased by more than \$1.25 per square foot for any one year.

(c) The adjusted base rent figure, as provided above, shall be due and payable to the landlord in monthly installments commencing on August 1, of the following year, and on the first day of each month thereafter until the next rental adjustment.

(d) The "base year" shall be the taxes and utility costs attributable to the leased building facility for the calendar year 2006.

**5. REPAIR AND MAINTENANCE:** Throughout the term of this lease, the LANDLORD shall be responsible for the maintenance and repair of the roof, the exterior portions of all outside walls of the leased building facility and shall be responsible for repairs necessitated by structural defects of the building. In addition, the LANDLORD shall be responsible for repair and maintenance of all plumbing, sewer, lighting, electrical, and heating and air conditioning units. LANDLORD shall maintain all portions of the area adjoining the leased property including

sidewalks and parking lots in a clean and orderly condition free and clear of rubbish, snow, ice, and unlawful obstructions.

The TENANT shall be responsible for all interior maintenance of the leased premises, including but not limited to, cleaning, painting, and general upkeep and shall be responsible for the prompt repair of any damage to the leased premises caused by reason of its use of the same, including but not limited to, any damage or needed repairs to any plumbing and electrical facilities located with the leased premises.

The TENANT shall be responsible for repairs, maintenance, and replacement of any improvements or renovation made to the leased premises by the TENANT, including but not limited to telephone lines and equipment, computer wiring, and any special accommodations provided or installed by the TENANT.

**6. SIGNAGE:** The LANDLORD will provide a community sign identifying the property with a listing of the building tenants at a location near the entrance to the building. The TENANT will be responsible for any individual tenant signage it might desire, the style and location of which shall be subject to prior approval of the LANDLORD.

**7. JANITORIAL SERVICES:** The LANDLORD shall be responsible for providing janitorial services for the common areas of the leased building facility. The common areas shall consist of the foyer, stairs, and common hallways located outside the lease premises. The TENANT will be responsible for providing janitorial services to the leased premises.

**8. TAXES:** The LANDLORD shall pay all real estate taxes (including special assessments) on the leased building facility, if any. The TENANT shall pay all personal property taxes assessed against personal property owned by the TENANT and located in the leased premises.

**9. USE:** The TENANT shall use and occupy the leased premises for the operation of a business office. The TENANT shall not use or knowingly permit any part of the leased premises to be used for any other purpose, without the prior written consent of the LANDLORD.

**10. TENANT RENOVATIONS:** The tenant hereby acknowledges that it has had a reasonable opportunity to view and inspect the lease premises prior to the execution of this lease agreement, and hereby accepts said lease premises in its present condition. The TENANT further

acknowledges that no representation, statement or warranty, expressed or implied, has been made by or on behalf of the landlord as to the existing condition of the leased premises.

All renovations and remodeling will be at the sole expense of the TENANT and shall be performed in accordance with plans and specifications as prepared by the TENANT, subject, however, to the prior written approval of the LANDLORD, which approval shall not be unreasonably withheld.

TENANT further covenants and agrees to pay the entire cost of any work on the lease premises undertaken by the TENANT; to procure all necessary permits before undertaking such work; to do all such work in a good and workmanlike manner employing materials of good quality and complying with all governmental requirements. The TENANT further agrees to hold the LANDLORD harmless and indemnified from any injury, loss, claim, or damages to any person or property occasioned by or growing out of such work. The TENANT shall have the right to contest any claimed amounts or claims, arising out of any such work, and the TENANT shall discharge any lien, by bond, or otherwise, at its sole expense.

**11. TERMINATION BY LANDLORD:** In the event of the sale by the LANDLORD of the lease building facility which includes the lease premises to a third party, the LANDLORD shall have the option to terminate this lease agreement by providing written notice to the TENANT at least twelve months prior to the termination date.

**12. CASUALTY INSURANCE:** The LANDLORD agrees to keep the leased building facility insured for the benefit of the LANDLORD against loss of damage by fire and all casualties included in the broadest standard form obtainable of extended coverage or supplemental contract of endorsements. The TENANT shall have the responsibility to insure all of its interest in the fixtures, equipment, inventory, and other TENANT assets.

**13. TENANT LIABILITY INSURANCE:** The TENANT shall be responsible for and shall provide total and complete liability insurance in the amount of at least \$500,000 that will save and protect the LANDLORD from any and all claims or demands of any kind or character which may arise or claim to arise against the LANDLORD by reason of the use of leased premises by the TENANT, and the LANDLORD shall be named as an additional insured on such policies.

It is further agreed that the TENANT shall save and hold harmless the LANDLORD from any and all claims, causes of action or losses which may be asserted against the LANDLORD by reason of the TENANT'S use of the leased premises under the terms and conditions of this lease and will further indemnify the LANDLORD for its attorney's fees and other costs, losses or expenses incurred by the LANDLORD in defending against any such claims or causes of action.

**14. DESTRUCTION:** In the event the leased premises, or any part thereof, be partially destroyed by an act of god, the elements, fire, or other cause covered by insurance carried by the landlord, the LANDLORD, using such insurance proceeds, shall proceed immediately with due diligence to repair, restore, and to replace said lease premises to as good a condition as it was in prior to such damage or destruction. The LANDLORD'S responsibility in this respect should be limited to the amount of insurance proceeds received by the LANDLORD because of the damage or destruction. A just and proportionate part of the monthly rental payments shall be suspended or proportionately abated in accordance with use until the lease premises is put in complete repair. If the lease premises shall, at any time during the life of this lease or an extension thereof, be substantially damaged or destroyed by causes not covered by insurance, this lease agreement shall be subject to cancellation at the option of the LANDLORD by giving TENANT written notice of cancellation within twenty (20) days after the date of such damage or destruction. All rent paid in advance, if any, by the TENANT, that is actually unearned at the date of the damage or destruction, shall be refunded forthwith to the TENANT. If no notice of cancellation is given as aforesaid, or if the leased premises are not substantially damaged or destroyed, this lease shall remain in full force and effect, and the LANDLORD shall proceed immediately with due diligence to repair, restore, and replace the lease premises to as good a condition as they were in immediately prior to the damage or destruction. It is expressly agreed that TENANT'S obligation to pay rent hereunder shall abate during the period of LANDLORD'S repair or reconstruction of the premises pursuant to the term of this paragraph, to the extent the premises are untenable.

**15. UTILITIES:** LANDLORD shall be responsible for the payment of utilities, including water, sewer, trash removal, gas, and electricity for the lease premises.

**16. ASSIGNMENT BY TENANT:** The TENANT shall not assign this lease nor sublet or permit the leased premises or any part thereof to be used by any others, without the prior written consent of the LANDLORD in each such incident. The written consent of the LANDLORD to an assignment or subletting shall not be construed to relieve the TENANT from obtaining the consent in writing of the LANDLORD to any further assignment or subletting.

**17. ASSIGNMENT BY LANDLORD:** The LANDLORD shall have the right to assign this lease to another person or entity at any time without approval of the TENANT; provided, however, any such assignment shall not relieve the LANDLORD and its assignee of any obligations incumbent upon it under the provisions of this lease, and the same shall be binding on the LANDLORD's assignee.

**18. RULES AND REGULATIONS:** The LANDLORD reserves the right to promulgate rules and regulations concerning occupancy of the building of which the leased premises are a part. These rules and regulations shall be in writing and will take effect immediately after notice has been given by serving a copy of the rules and regulations upon the TENANT.

**19. NOTICES:** Any notice under this lease must be in writing and must be sent by registered or certified mail to the last address of the party to whom the notice is to be given, as designated by the party in writing. The LANDLORD hereby designates its address as CITY HALL, 806 2nd Avenue, PO Box 880, Dodge City, Kansas 67801. The TENANT hereby designates its address as 236 San Jose, Room 130.

**20. BINDER:** This agreement shall be binding on the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the parties have hereunto set their hands in the day and year written below.

---

DATE

CITY OF DODGE CITY,  
A MUNICIPAL CORPORATION

By: \_\_\_\_\_  
JIM SHERER, MAYOR

APPROVED:

\_\_\_\_\_  
NANNETTE POGUE, CITY CLERK

CASA, CHILDREN WORTH SAVING

By: \_\_\_\_\_  
Rhenda Field, President

ATTEST:

\_\_\_\_\_  
Jeanie Zortman, Treasurer



# City of Dodge City

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## *Memorandum*

September 27, 2006

TO: Jeff Pederson, City Manager  
FROM: Joseph E. Finley, P.E., Director of Public Works  
RE: Underground Storage Tank Removal

During recent construction activities along Wyatt Earp Blvd. at the NE corner of 5<sup>th</sup> Ave., an underground storage tank was uncovered during the installation of new inlets and drainage pipe.

The tank was filled with some type of liquid that appears to be petroleum based. At this point it does not appear that any leakage has occurred. However, the City is responsible to insure proper removal of the tank and any contaminated soil.

The original environmental impact study was performed by Terracon, and the city retained them to provide any service necessary to deal with any environmental problems encountered on this project.

Terracon has provided the city a proposal to properly excavate and dispose of the underground storage tank and its contents. They have estimated the work to be in the range of \$7,300.00 - \$9,600.00. We hope that the cost will be on the low side. However, until Terracon can sample the liquid they will not know whether Safety-Kleen can dispose of the liquid. In addition, we can't tell whether the soil is contaminated.

As part of the proposal, Terracon will research to determine whether the City is eligible to receive clean-up funds under KDHE's LUST Program. Until this clean-up is completed, work can not continue at this location. Therefore, staff would recommend approval of this proposal as submitted.

Should you have any questions, please let me know.

JF/jlg

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September 26, 2006



Mr. Ray Slattery, City Engineer  
City of Dodge City  
P.O. Box 880  
Dodge City, KS 67801

1815 South Eisenhower  
Wichita, Kansas 67209  
Phone 316.262.0171  
Fax 316.262.6997  
www.terracon.com

Re: Proposal for UST System Removal/Closure  
5<sup>th</sup> & Wyatt Earp  
Dodge City, KS  
Terracon Proposal No. E0106211

Dear Mr. Slattery:

Terracon, Inc. (Terracon) is pleased to submit this proposal to provide underground storage tank (UST) closure services at the above referenced site in Dodge City, Kansas.

#### **A. PROJECT INFORMATION**

We understand during expansion of Wyatt Earp Boulevard in Dodge City, Kansas that an abandoned underground storage tank (UST) was found on the northeast corner of 5<sup>th</sup> and Wyatt Earp. At the request of Cook, Flatt & Strobel, Terracon mobilized to the site to observe the exposed UST. Upon arrival, overburden had been removed to expose a portion of the UST. The UST diameter was approximately 8 feet but the length could not be determined. An apparent fill port had been removed from the top of the UST and fluid, consisting of apparent diesel fuel, water and/or waste oil, was observed approximately 2 feet below the top of the fill port.

Terracon is submitting this proposal to properly excavate and dispose of the UST and its contents.

#### **B. SCOPE OF SERVICES**

For the purposes of this proposal, we have assumed only one 2,500 gallon capacity UST is present and will be removed. The UST removal and closure will be performed in general accordance with the Kansas Storage Tank Program Corrective Action Policy Manual dated February, 2004.

Terracon will conduct the following UST removal/closure activities at the site:

- Prior to commencing fieldwork, as required by the regulations, Terracon will notify the KDHE of the proposed UST removal. However, KDHE may waive the 30 day notification, provided they are notified prior to removal of UST.
- Prior to excavating the UST, the contents of the UST will be characterized for disposal purposes and the contents removed and properly disposed. Terracon will collect a representative sample of the UST fluid and submit the sample to Safety Kleen for analysis. We understand the City has a contract with Safety Kleen. Terracon contacted Safety Kleen to discuss disposal of the UST contents. Safety Kleen indicated that if the fluid in the UST contains less than 20% water and no sludge, they will dispose of the fluid at no cost to the City. Our proposal includes an estimated cost to dispose of the UST contents assuming the fluid contains greater than 20% water and sludge. A vacuum truck will be used to remove the fluid from the UST. If appreciable sludge is present in the UST, the interior of the UST will be washed with a high pressure washer to facilitate removal of the sludge by vacuum hose.
- Once the UST is empty, the UST atmosphere will be checked for flammable vapors. If required, the UST atmosphere will be purged with dry ice at a rate of 50 pounds per 1000 gallons of tank. UST atmosphere conditions will be monitored on-site using a combustible gas indicator (CGI) to determine the concentration of combustible vapors within the tank. The task of removing the UST will occur only after the UST has been vented and purged to remove combustible gases to a measurable level of no greater than 10% of the lower explosion level (LEL).
- Using a backhoe, the UST will be removed from the excavation, loaded onto a truck and transported to a disposal facility for disposal. The exhumed UST will be observed for pits, seam-cracks, corrosion, and other signs of deterioration. Underwriters Laboratories (UL) labels will be removed, if present. The tank will be loaded onto a flat bed trailer, secured, transported to the disposal facility and cut into scrap. A certificate of disposal will be provided. Only piping that is readily removable during excavation of the USTs will be removed and disposed. Additional excavation to remove piping will not be conducted.
- Our proposal assumes contaminated soil is not present in the excavation. Excavated soil will be placed back into the excavation, assuming the excavated soil is suitable for construction purposes. If the excavated soil is contaminated, the client and KDHE will be notified and approval requested from KDHE to place the contaminated soil back into the excavation. If KDHE requires over-excavation of contaminated soil and/or offsite disposal of contaminated soil Terracon will submit a cost proposal to the client for over-

excavation and soil disposal.

- During excavation of the UST, a Terracon professional will be on-site to supervise removal of the UST contents and removal of the UST and to perform a UST environmental assessment. KDHE requires an environmental assessment be conducted during UST removals. Terracon will conduct the following UST environmental assessment:
  - During excavation of the UST, a Terracon representative will field screen the excavated soil and sidewall soil samples for the presence of headspace volatile organic compound (VOC) vapors using a photoionization detector (PID).
  - Upon completion of excavation activities, one soil sample from each excavation sidewall and one soil sample from the bottom of each UST (total of 5 soil samples) will be collected, submitted to a KDHE certified laboratory, and analyzed for TPH per Iowa Test Methods OA-1 and OA-2, and BTEX, 1,2 DCE and naphthalene per EPA Method 8260. In addition, a soil sample of the excavated soil will be collected and laboratory analyzed.
  - Groundwater within the vicinity of the Site is anticipated to occur at depths of approximately 15 to 20 feet below ground surface. As a result, groundwater is not expected to be encountered during the UST excavation. KDHE may require collection of a groundwater sample if groundwater is less than 40 feet below ground surface and elevated soil contamination is detected during the UST excavation. For purposes of this proposal, we are assuming contaminated soils are not present, consequently, groundwater sampling will not be required. If groundwater sampling is required by KDHE, Terracon will submit a separate proposal to collect a groundwater sample.
- After excavation and removal of the UST, the excavation will be backfilled with self-compacting crushed rock (57-stone) and soil removed from the excavation. Crusher-run (gravel with fines) will be placed to approximately 6-inches from the surface grade, rolled and compacted using excavation equipment. Disturbed areas will not be resurfaced since the surrounding ground surface is not paved.

#### Underground Utility Clearance

Prior to commencement of field activities, Kansas One Call (KOC) will be contacted regarding the identification and location of underground utilities within the vicinity of the proposed work area. In addition, Terracon requests that the client provide Site drawings of underground utilities and structures, which might not be cleared by KOC. Terracon is not responsible for

damage to underground utilities and structures not cleared by KOC or the client.

#### Health and Safety Plan

A site-specific health and safety plan will be prepared and adhered to in the field during field-related activities.

#### UST Closure Report

Upon receipt of analytical results, a UST Closure Report will be prepared and submitted to the client. The report will include a brief discussion of the UST removal activities, and the results of the environmental assessment. If contamination is detected, the report will include a discussion of the contamination relative to State cleanup criteria. A photo log, certificate of destruction for the USTs, and laboratory reports will be included in the report.

#### Project Schedule

Terracon is prepared to initiate project activities upon receipt of written authorization to proceed (signed Agreement for Services, attached) from the client. Upon receipt of notice to proceed, we anticipate notifying KDHE of the pending UST closure within approximately 3 business days and commencing field work within approximately 5 to 7 business days after notifying KDHE, assuming equipment availability, suitable weather, and KDHE waives the 30 day notification period. The UST Closure Report will be submitted to the client approximately 5 business days after receipt of laboratory analytical results.

#### Optional Work Scope

If desired by the client, to identify the likely owner of this UST, Terracon will contact the KDHE Kansas Petroleum Storage Tank Program (LUST Program) and request KDHE review their records to determine if the adjacent property is a participant in the LUST Program. If the adjacent property is not in the LUST Program, Terracon will conduct a limited records review. The limited records review will include contacting the County Clerk to request limited site ownership records and/or conducting a review of City directories to identify the likely owner of the UST.

### **C. COMPENSATION**

The scope of services outlined herein will be performed for the following estimated fees:

Notify KDHE of UST Removal	\$ 150 to 250
Lab analysis-UST fluid	\$ 150 to 350
Remove UST/UST assessment & report	<u>\$7,000 to 9,000</u>
<b>TOTAL ESTIMATED COST</b>	<b>\$7,300 to \$9,600</b>

If the UST fluid contains greater than 20% water and sludge is present, the estimated cost to have Safety Kleen remove and dispose of the UST contents is approximately \$5,000. In addition, if the client desires, the optional limited records review will be conducted for an estimated fee of \$450 to \$650.

All work, including any additional work that is requested or required, will be billed based upon the actual units of work performed in accordance with the attached fee schedule.

The above estimated fee is based upon the following assumptions:

- Only one 2500 gallon UST is removed and disposed.
- Safety Kleen will accept and dispose of the UST contents as non-hazardous, the maximum quantity of fluid removed and disposed is less than 2000 gallons, and sludge is not present in the UST. If more than 2000 gallons of fluid is removed and disposed each additional gallon removed/disposed will be billed to the client at \$2.00 per gallon.
- Laboratory fees to characterize the fluid do not exceed \$250.
- UST closure activities can be completed in one day (8 hours) during normal business hours and traffic control is not required to conduct the work. If traffic control is required, additional costs will be billed to the client.
- Excavated soil removed from the excavation is not contaminated and can be placed back into the excavation and only piping that is readily accessible from the UST excavation is removed. If contaminated soil is present and requires offsite disposal, Terracon will provide disposal options and costs to the client.
- Legal and physical access to perform the work is provided by the client and field work can be performed in Level D personal protective equipment.
- KDHE does not require additional soil testing and/or groundwater sampling and testing.

#### D. AUTHORIZATION

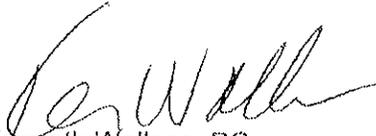
If this proposal is acceptable, please provide Terracon with authorization to proceed by executing both originals of the attached Agreement for Services and returning an executed copy along with this proposal to Terracon. Please indicated on the last page whether you desire the optional limited records review be conducted. This Agreement, including the limitations outlined in this Proposal, shall constitute the exclusive terms, conditions and services to be performed for this project.

UST Closure  
5<sup>th</sup> & Wyatt Earp  
Dodge City, KS  
Terracon Proposal No. E0106211  
September 25, 2006  
Page 6

Terracon

Terracon appreciates the opportunity to provide environmental services for this project and we look forward to working with you on this project. If you have any questions or comments regarding our Proposal, please give us a call.

Sincerely,  
**Terracon**



Kenneth Wallace, PG  
Environmental Department Manager

Attachments: Agreement for Services

\\WICHITA1\data\ENV Proposals\2006\E0106160\UST Removal proposal.doc  
cc. Mel Chapman-Cook, Flat & Strobel

#### OPTIONAL LIMITED RECORDS REVIEW

Please indicated below if you desire the limited records review be conducted:

Yes \_\_\_\_\_

No \_\_\_\_\_

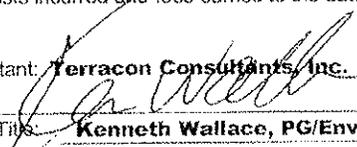
By: \_\_\_\_\_ Date: \_\_\_\_\_

## AGREEMENT FOR SERVICES

This AGREEMENT is between The City of Dodge City, Kansas ("Client") and Terracon Consultants, Inc. ("Consultant") for Services to be provided by Consultant for Client on the 5<sup>th</sup> and Wyatt Earp UST Removal project ("Project"), as described in the Project Information section of Consultant's Proposal dated September 25, 2006 ("Proposal") unless the Project is otherwise described in Exhibit A to this Agreement (which section or Exhibit is incorporated into this Agreement).

- 1. Scope of Services.** The scope of Consultant's services is described in the Scope of Services section of the Proposal ("Services"), unless Services are otherwise described in Exhibit B to this Agreement (which section or exhibit is incorporated into this Agreement). Portions of the Services may be subcontracted. Consultant's Services do not include the investigation or detection of, nor do recommendations in Consultant's reports address the presence or prevention of biological pollutants (e.g., mold, fungi, bacteria, viruses, or their byproducts) or occupant safety issues, such as vulnerability to natural disasters, terrorism, or violence. If Services include purchase of software, Client will execute a separate software license agreement. Consultant's findings, opinions, and recommendations are based solely upon data and information obtained by and furnished to Consultant at the time of the Services.
- 2. Acceptance.** Client agrees that execution of this Agreement is a material element of the consideration Consultant requires to execute the Services, and if Services are initiated by Consultant prior to execution of this Agreement as an accommodation for Client at Client's request, both parties shall consider that commencement of Services constitutes formal acceptance of all terms and conditions of this Agreement. Additional terms and conditions may be added or changed only by written amendment to this Agreement signed by both parties. In the event Client uses a purchase order or other form to administer this Agreement, the use of such form shall be for convenience purposes only and any additional or conflicting terms it contains are stricken. This Agreement shall not be assigned by either party without prior written consent of the other party.
- 3. Change Orders.** Client may request changes to the scope of Services by altering or adding to the Services to be performed. If Client so requests, Consultant will return to Client a statement (or supplemental proposal) of the change setting forth an adjustment to the Services and fees for the requested changes. Following Client's review, Client shall provide written acceptance. If Client does not follow these procedures, but instead directs, authorizes, or permits Consultant to perform changed or additional work, the Services are changed accordingly and Consultant will be paid for this work according to the fees stated or its current fee schedule. If project conditions change materially from those observed at the site or described to Consultant at the time of proposal, Consultant is entitled to a change order equitably adjusting its Services and fee.
- 4. Compensation and Terms of Payment.** Client shall pay compensation for the Services performed at the fees stated in the Compensation section of the Proposal unless fees are otherwise stated in Exhibit C to this Agreement (which section or Exhibit is incorporated into this Agreement). If not stated in either, fees will be according to Consultant's current fee schedule. Fee schedules are valid for the calendar year in which they are issued. Consultant may invoice Client at least monthly and payment is due upon receipt of invoice. Client shall notify Consultant in writing, at the address below, within 15 days of the date of the invoice if Client objects to any portion of the charges on the invoice, and shall promptly pay the undisputed portion. Client shall pay a finance fee of 1.5% per month, but not exceeding the maximum rate allowed by law, for all unpaid amounts 30 days or older. Client agrees to pay all collection-related costs that Consultant incurs, including attorney fees. Consultant may suspend Services for lack of timely payment.
- 5. Third Party Reliance.** This Agreement and the Services provided are for Consultant and Client's sole benefit and exclusive use with no third party beneficiaries intended. Reliance upon the Services and any work product is limited to Client, and is not intended for third parties. For a limited time period not to exceed three months from the date of the report, Consultant will issue additional reports to others agreed upon with Client, however Client understands that such reliance will not be granted until those parties sign and return Consultant's reliance agreement and Consultant receives the agreed-upon reliance fee.
- 6. LIMITATION OF LIABILITY.** CLIENT AND CONSULTANT HAVE EVALUATED THE RISKS AND REWARDS ASSOCIATED WITH THIS PROJECT, INCLUDING CONSULTANT'S FEE RELATIVE TO THE RISKS ASSUMED, AND AGREE TO ALLOCATE CERTAIN OF THE RISKS SO, TO THE FULLEST EXTENT PERMITTED BY LAW, THE TOTAL AGGREGATE LIABILITY OF CONSULTANT (AND ITS RELATED CORPORATIONS AND EMPLOYEES) TO CLIENT AND THIRD PARTIES GRANTED RELIANCE IS LIMITED TO ITS FEE, FOR ANY AND ALL INJURIES, DAMAGES, CLAIMS, LOSSES, OR EXPENSES (INCLUDING ATTORNEY AND EXPERT FEES) ARISING OUT OF CONSULTANT'S SERVICES OR THIS AGREEMENT REGARDLESS OF CAUSE(S) OR THE THEORY OF LIABILITY, INCLUDING NEGLIGENCE, INDEMNITY, OR OTHER RECOVERY. THIS LIMITATION SHALL NOT APPLY TO THE EXTENT THE DAMAGE IS PAID UNDER CONSULTANT'S COMMERCIAL GENERAL LIABILITY POLICY.
- 7. Indemnity/Statute of Limitations.** Consultant and Client shall defend, indemnify, and hold harmless the other, their agents, and employees, from and against legal liability for all claims, losses, damages, and expenses to the extent such claims, losses, damages, or expenses are caused by their negligent acts, errors, or omissions. In the event such claims, losses, damages, or expenses are caused by the joint or concurrent negligence of Consultant and Client, they shall be borne by each party in proportion to its own negligence under comparative fault principles. Causes of action arising out of Consultant's services or this Agreement regardless of cause(s) or the theory of liability, including negligence, indemnity or other recovery shall be deemed to have accrued and the applicable statute of limitations shall commence to run not later than the date of Consultant's substantial completion of services on the project.
- 8. Warranty.** Consultant will perform the Services in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions in the same locale. CONSULTANT MAKES NO WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, RELATING TO CONSULTANT'S SERVICES AND CONSULTANT DISCLAIMS ANY IMPLIED WARRANTIES OR WARRANTIES IMPOSED BY LAW, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
- 9. Insurance.** Consultant represents that it now carries, and will continue to carry: (i) workers' compensation insurance in accordance with the laws of the states having jurisdiction over Consultant's employees who are engaged in the Services, and employer's liability insurance (\$1,000,000); (ii) commercial general liability insurance (\$1,000,000 occ / \$2,000,000 agg); (iii) automobile liability insurance (\$1,000,000 B.I. and P.D. combined single limit); and (iv) professional liability insurance (\$1,000,000 claim / agg). Certificates of insurance will be provided upon request. Client and Consultant shall waive subrogation against the other party on all general liability and property coverage.

- 10. CONSEQUENTIAL DAMAGES.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR LOSS OF PROFITS OR REVENUE; LOSS OF USE OR OPPORTUNITY; LOSS OF GOOD WILL; COST OF SUBSTITUTE FACILITIES, GOODS, OR SERVICES; COST OF CAPITAL; OR FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT, PUNITIVE, OR EXEMPLARY DAMAGES.
- 11. Dispute Resolution.** Client shall not be entitled to assert a Claim against Consultant based on any theory of professional negligence unless and until Client has obtained the written opinion from a registered, independent, and reputable engineer, architect, or geologist that Consultant has violated the standard of care applicable to Consultant's performance of the Services. Client shall provide this opinion to Consultant and the parties shall endeavor to resolve the dispute within 30 days, after which Client may pursue its remedies at law. This Agreement shall be governed by and construed according to Kansas law.
- 12. Subsurface Explorations.** Subsurface conditions throughout the site may vary from those depicted on logs of discrete borings, test pits, or other exploratory services. Client understands Consultant's layout of boring and test locations is approximate and that Consultant may deviate a reasonable distance from those locations. Consultant will take reasonable precautions to reduce damage to the site when performing Services; however, Client accepts that invasive services such as drilling or sampling may damage or alter the site. Site restoration is not provided unless specifically included in the Services.
- 13. Testing and Observations.** Client understands that testing and observation are discrete sampling procedures, and that such procedures indicate conditions only at the depths, locations, and times the procedures were performed. Consultant will provide test results and opinions based on tests and field observations only for the work tested. Client understands that testing and observation are not continuous or exhaustive, and are conducted to reduce - not eliminate - project risk. Client agrees to the level or amount of testing performed and the associated risk. Client is responsible (even if delegated to contractor) for notifying and scheduling Consultant so Consultant can perform these Services. Consultant shall not be responsible for the quality and completeness of contractor's work or their adherence to the project documents, and Consultant's performance of testing and observation services shall not relieve contractor in any way from its responsibility for defects discovered in its work, or create a warranty or guarantee. Consultant will not supervise or direct the work performed by contractor or its subcontractors and is not responsible for their means and methods.
- 14. Sample Disposition, Affected Materials, and Indemnity.** Samples are consumed in testing or disposed of upon completion of tests (unless stated otherwise in the Services). Client shall furnish or cause to be furnished to Consultant all documents and information known or available to Client that relate to the identity, location, quantity, nature, or characteristic of any hazardous waste, toxic, radioactive, or contaminated materials ("Affected Materials") at or near the site, and shall immediately transmit new, updated, or revised information as it becomes available. Client agrees that Consultant is not responsible for the disposition of Affected Material unless specifically provided in the Services, and that Client is responsible for directing such disposition. In the event that test samples obtained during the performance of Services (i) contain substances hazardous to health, safety, or the environment, or (ii) equipment used during the Services cannot reasonably be decontaminated, Client shall sign documentation (if necessary) required to ensure the equipment and/or samples are transported and disposed of properly, and agrees to pay Consultant the fair market value of this equipment and reasonable disposal costs. In no event shall Consultant be required to sign a hazardous waste manifest or take title to any Affected Materials. Client shall have the obligation to make all spill or release notifications to appropriate governmental agencies. The Client agrees that Consultant neither created nor contributed to the creation or existence of any Affected Materials conditions at the site. Accordingly, Client waives any claim against Consultant and agrees to indemnify and save Consultant, its agents, employees, and related companies harmless from any claim, liability or defense cost, including attorney and expert fees, for injury or loss sustained by any party from such exposures allegedly arising out of Consultant's non-negligent performance of services hereunder, or for any claims against Consultant as a generator, disposer, or arranger of Affected Materials under federal, state, or local law or ordinance.
- 15. Ownership of Documents.** Work product, such as reports, logs, data, notes, or calculations, prepared by Consultant shall remain Consultant's property. Proprietary concepts, systems, and ideas developed during performance of the Services shall remain the sole property of Consultant. Files shall be maintained in general accordance with Consultant's document retention policies and practices.
- 16. Utilities.** Client shall provide the location and/or arrange for the marking of private utilities and subterranean structures. Consultant shall take reasonable precautions to avoid damage or injury to subterranean structures or utilities. Consultant shall not be responsible for damage to subterranean structures or utilities that are not called to Consultant's attention, are not correctly marked, including by a utility locate service, or are incorrectly shown on the plans furnished to Consultant.
- 17. Site Access and Safety.** Client shall secure all necessary site related approvals, permits, licenses, and consents necessary to commence and complete the Services and will execute any necessary site access agreement. Consultant will be responsible for supervision and site safety measures for its own employees, but shall not be responsible for the supervision or health and safety precautions for any other parties, including Client, Client's contractors, subcontractors, or other parties present at the site.
- 18. Termination.** Either party may terminate this Agreement or the Services upon written notice to the other. In such case, Consultant shall be paid costs incurred and fees earned to the date of termination plus reasonable costs of closing the project.

Consultant: **Terracon Consultants, Inc.**  
By:  Date: \_\_\_\_\_  
Name/Title: **Kenneth Wallace, PG/Environmental Mgr.**  
Address: **1815 S. Eisenhower**  
**Wichita, KS 67209**  
Phone: **316.262.0171** Fax: **316.262.6997**

Client: \_\_\_\_\_  
By: \_\_\_\_\_ Date: \_\_\_\_\_  
Name/Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Agreement Reference Number (Terracon Proposal or Project Number): E0106211

September 27, 2006

To- City of Dodge City Attn- Jeff Pederson  
From- DCRP Mike Mathis  
Re- Contract at DCRP

As you are aware, the Racetrack Operating Agreement between myself and the City of Dodge City was amended for 2006 to reflect a review of operational and financial information that was completed by the CFAB and myself late in 2005. I believe that it was understood by all parties that the Amendment for the year of 2006 would result in re-consideration of the terms of the Agreement for the years of 2007 and 2008.

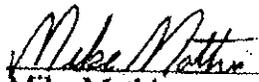
It was the stated opinion of several participants in the 2006 Amendment process that the operation of Dodge City Raceway Park subsequent to 2006 be determined in part through the solicitation of proposals from potential operators in addition to myself. It is my desire at this time to proceed with such a solicitation procedure in a timely manner.

Accordingly, the purpose of this letter is to authorize the City to solicit proposals from other persons or entities who may be interested in the operation of Dodge City Raceway Park for the 2007 racing season and subsequent years. If such solicitation's result in proposals for the operation of the racetrack which the City feels would better serve its interests, I would consent to the mutual and voluntary termination of my current contract upon terms and conditions as mutually agreed to.

In the meantime, it is my intent to complete the 2006 racing season and to fulfill my contractual responsibilities in accordance with the terms and conditions of the current agreement and the 2006 Addendum.

If I can be of any assistance to the City regarding the solicitation of such proposals or provide any additional information, please feel free to contact me.

Thank you for your consideration of this request.

  
\_\_\_\_\_  
Mike Mathis, pres. DCRP

9-27-2006  
Date