

# **CITY COMMISSION MEETING AGENDA**

City Hall Commission Chambers

Monday, October 7, 2013

7:00 p.m.

MEETING #4935

## **CALL TO ORDER**

## **ROLL CALL**

**INVOCATION:** by Jon Losero of Fanatics of Christ Ministry

## **PLEDGE OF ALLEGIANCE**

## **PETITIONS & PROCLAMATIONS**

## **VISITORS**

Cathy Reeves. - Dodge City Public Library Quarterly Update.

Debbie Snapp – Presentation of Aquatics Park Survey.

## **CONSENT CALENDAR**

1. Approval of City Commission Meeting Minutes, September 16, 2013
2. Appropriation Ordinance No. 19, October 7, 2013;
3. Approval of Agreement with SMH Consultants for Gunsmoke Trail Extension Engineering Services. Report by Paul Lewis

## **ORDINANCES & RESOLUTIONS**

## **UNFINISHED BUSINESS**

1. Approval of Venu Works Management Agreement. Report by City Manager Ken Strobel.

## **NEW BUSINESS**

1. Approval of Airport Engineering Consultant Services for the Dodge City Regional Airport. Report by Superintendent of Public Works, Corey Keller.

## **OTHER BUSINESS**

## **ADJOURNMENT**

# **CITY COMMISSION MEETING MINUTES**

City Hall Commission Chambers

Monday, September 16, 2013

7:00 p.m.

MEETING #4934

## **CALL TO ORDER**

**ROLL CALL:** Mayor Kent Smoll, Commissioners, Brian Delzeit, Joyce Warshaw, Rick Sowers, and Jim Lembright.

**INVOCATION** by Vernon Bogart of John 14 Fellowship

## **PLEDGE OF ALLEGIANCE**

## **PETITIONS & PROCLAMATIONS**

National Welcoming Week Proclamation was read by Mayor Kent Smoll. Jane Longmeyer presented additional information regarding “Walk with your Neighbor Event” organized for September 22<sup>nd</sup> at YMCA.

**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).

Dr. Richard Stein – Spoke about Mission of Mercy Rental Services.  
Eric Haselhorst representative of Aquatics Task Force expressed appreciation for the City moving forward to CFAB the Aquatics Park as a Sales Tax Project.

## **CONSENT CALENDAR**

1. Approval of City Commission Meeting Minutes, September 3, 2013
2. Appropriation Ordinance No. 18, September 16, 2013;
3. Cereal Malt Beverage License Applications;
  - a. Boot Hill Museum, Inc., 500 W. Wyatt Earp Blvd.

Commissioner Brian Delzeit moved to approve the Consent Calendar as presented; Commissioner Jim Lembright seconded the motion. The motion carried unanimously.

## **ORDINANCES & RESOLUTIONS**

## **UNFINISHED BUSINESS**

## **NEW BUSINESS**

1. A proposal from SMH Consultants to provide engineering services for the Bicycle/Pedestrian path (Gunsmoke Trail Extension) project and authorize staff to negotiate a contract with SMH Consultants to bring back to City Commission was approved by Commissioner Jim Lembright; motion was seconded by Commissioner Rick Sowers. The motion carried unanimously.
2. Commissioner Joyce Warshaw moved to approve the engagement letter for the audit of the City of Dodge City for the years ending December 31, 2013 and 2014, seconded by Commissioner Jim Lembright. The motion carried unanimously.

**OTHER BUSINESS**

Ken Strobel:

- Joint Meeting on Thursday at 5:30 p.m. at Rose Room;
- Thanked the staff who volunteered to work the State Fair;
- Had company recently and showed them the new happenings in Dodge City;
- Survived 55<sup>th</sup> Class Reunion.

Brian Delzeit:

- Reminded everyone of the events going on at the United Wireless Arena.

Rick Sowers:

- Commented about meeting and wanted direction from Commission about accepting new projects, specifically the Water Park.

Jim Lembright:

- Asked about Dead Tree issues.

Kent Smoll:

- Went to Pueblo, Colorado along with Cherise Tieben to listen to Colorado Rail Association regarding Amtrak Service.

**ADJOURNMENT :**

Commissioner Rick Sowers moved to adjourn the meeting; Commissioner Jim Lembright seconded the motion. The motion carried unanimously.

---

E Kent Smoll, Mayor

ATTEST:

---

Nannette Pogue, City Clerk



# Parks and Recreation

PO Box 880 □ Dodge City KS 67801 □ Phone: 620/225-8160 □ Fax: 620/225-8144

## Memorandum

To: City Manager  
Assistant City Manager  
City Commissioners

From: Paul Lewis, Parks & Recreation  
Director

Date: October 2nd, 2013

Subject: Gunsmoke Trail Extension Project

Agenda Item: Consent Agenda

A handwritten signature in black ink, appearing to be "P. Lewis", is located to the right of the "To:" field.

**Recommendation:** Staff recommends authorizing City Staff to execute the agreement with SMH Consultants to provide engineering services for the Gunsmoke Trail extension running through Chilton Park.

**Background:** At a previous meeting the Commission approved SMH as the consultant for the project and authorized staff to negotiate the scope of services and a fee for Commission consideration. That work is completed and the attached proposal is ready for Commission approval.

**Justification:** This project represents another phase in the City's master plan for a comprehensive trail system. To date 3.5 miles of trail has been constructed and this project will add another .8 mile to the system. The trail system links several significant traffic generators and is providing connections to multiple neighborhoods, retail areas and community service providers. The trail system has been and continues to be well utilized and appreciated by the community.

**Financial Considerations:** Trail system construction will be funded 80% by KDOT through federal transportation funds however all preliminary design costs are solely the responsibility of the City. This contract is based on a cost not to exceed basis of \$49,800. The work is anticipated in the 2014 CIP with \$108,560 which includes design fees and the City's share of construction costs.

**Purpose/Mission:** This project meets the City's core value of Making Dodge City the Best Place to Be by enhancing the existing trail system which supports recreational opportunities and provides important social and economic benefits.

**Legal Considerations:** This agreement represents the standard agreement provided by SMH and is similar to other agreements the City has executed with the firm.

**Attachments:** SMH Contract Proposal

## CONSULTING SERVICES AGREEMENT

Client: City of Dodge City	Project: Gunsmoke Trail Extension
Address: 806 Second Avenue Dodge City, KS 67801	Project Location: Dodge City, KS Chilton Park
Telephone: 620-225-8160	
Contact: Paul Lewis	SMH Client Manager: Kurth Lancaster
Client Job No.:	SMH Job No.: 1309DG6000

This AGREEMENT is made by and between the **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:

It is the understanding of the SMH Consultants that the City of Dodge City has a desire to make hike and bike trail improvements through Chilton Park and west along Comanche Street to 14<sup>th</sup> Avenue. The proposed improvements shall generally include sidewalk improvements, box culvert modifications, pedestrian street crossings, and modification of the Chilton Park disc golf course.

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

- GENERAL CONDITIONS
- Attachment A: Scope of Services and Fee Estimate
- 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 HOURLY NOT-TO-EXCEED COST OF CONSULTANT'S SERVICES IS \$49,800.00.

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

CLIENT

By: \_\_\_\_\_  
AUTHORIZED REPRESENTATIVE

CONSULTANT

By: \_\_\_\_\_  
AUTHORIZED REPRESENTATIVE

TITLE: \_\_\_\_\_

TITLE: Dodge City Office Manager

DATE: \_\_\_\_\_

DATE: September 25, 2013

**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 are 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.



## **GUNSMOKE TRAIL EXTENSION SCOPE OF SERVICES**

**SMH will provide the following scope of services to the City of Dodge City as they relate to the Gunsmoke Trail Extension Project.**

### **Phase I - Discovery**

1. Project visioning session where SMH meets with City staff to determine what will define the project's success. During this session goals and objectives for the project will be set. This step in the process typically occurs prior to developing a detailed scope of services. A detailed scope of services is then developed to match the services required to obtain the vision of the successful completion of the project.
2. Informational flyers printed in English on one side and Spanish on the other mailed to property owners adjacent to the project site and posted on the City's website. The City shall provide a list of who the flyers should be sent to. The flyers will provide a brief overview of the project and what opportunities the public will have for input.
3. Preliminary alignment selection involving a walk-through of the project site with City staff to determine thoughts on a general alignment for the new trail, connections to existing trail segments, connections to existing adjacent neighborhoods and any future plans for Chilton Park or Comanche Street that may impact the location of an alignment chosen.
4. Development of a preliminary plan and profile of the preliminary alignment utilizing aerial photography and contour data available from the City of Dodge City.
5. Stakeholder and project team evaluation of the preliminary alignment.
6. Informational meeting with the general public at a location other than City Hall for the community to provide input and feedback on the preliminary alignment chosen based on the walkthrough and preliminary alignment plan and profile. City Commissioners and the general public will be invited to this meeting.
7. Near final alignment selected based on input, feedback and engineering analysis.
8. Topographic, boundary, and utility survey, generally 25' either side of the near final alignment.
9. Conversion of the survey into a working drawing that can be used for design.
10. Presentation of the preliminary trail alignment, resulting from public input, to City Commissioners for approval of the alignment chosen prior to further plan development.



**Phase II - Field Check (50%)**

1. Preliminary trail plan and profile for the primary trail alignment, connections, and crossings from the connection at the north end of Chilton Park to 14<sup>th</sup> Avenue. Trail plans will also include site specific details depicting the elevations at key locations where required.
2. Paving details as required by the pavement design for the trail.
3. Preliminary trail cross sections for the primary trail alignment, connections, and crossings from the connection at the north end of Chilton Park to 14<sup>th</sup> Avenue. Trail cross sections will depict proposed and existing ground, water and sanitary sewer crossings, and crown elevations.
4. Preliminary Box culvert wing wall modification details for the modification of the wing wall associated with the box culvert under Soule Street to allow for the Pedestrian Crossing on Soule Street
5. Preliminary details for pedestrian actuated crossing control devices at Soule Street and Comanche Street.
6. Preliminary traffic control plans for a lane shift on Comanche Street, lane shift on 14<sup>th</sup> Avenue and lane shifts on Soule Street
7. Stormwater runoff calculations to verify the required stormwater needs as required for the design including the proper sizing of conduits and inlets.
8. Preliminary cross trail storm sewer layout to conform to City of Dodge City and KDOT Standards.
9. Storm sewer standard details as provided by KDOT.
10. Preliminary mass grading plan for the entire improvement area to depict areas of cut and fill.
11. Preliminary stormwater erosion and sediment control plan.
12. Utility Coordination with utility companies to address any potential conflicts between the proposed improvements and the existing utilities in the area.
13. 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.
14. Submittal of field check construction documents for review by the City of Dodge City and KDOT.
  15. Amenity review with the City of Dodge City regarding the specification and selection of project amenities including benches, signage, landscaping, et cetera.
  16. Development of an engineer's opinion of preliminary cost.
  17. Onsite field check with City staff and KDOT officials.

**Phase III – Office Check (95%)**

1. Office check trail plan and profile for the primary trail alignment, connections, and crossings from the connection at the north end of Chilton Park to 14<sup>th</sup> Avenue. Trail plans will also include site specific details depicting the elevations at key locations where required.
2. Paving details as required by the pavement design.
3. Office check trail cross sections for the primary trail alignment, connections, and crossings from the connection at the north end of Chilton Park to 14<sup>th</sup> Avenue. Trail cross sections will depict proposed and existing ground, water and sanitary sewer crossings, and crown elevations.
4. Office check box culvert wing wall modification details for the modification of the wing wall associated with the box culvert under Soule Street to allow for the Pedestrian Crossing on Soule Street.
5. Office check details for pedestrian actuated crossing control devices at Soule Street and Comanche Street.
6. Office Check traffic control plans for a lane shift on Comanche Street, lane shift on 14<sup>th</sup> Avenue and lane shifts on Soule Street
7. Office check cross trail storm sewer layout to conform to City of Dodge City and KDOT Standards.
8. Storm sewer standard details as provided by KDOT.



9. Office check mass grading plan for the entire improvement area to depict areas of cut and fill.
10. Office check sequencing plan and trail pedestrian traffic control plan with necessary trail detours as required.
11. Office check stormwater erosion and sediment control plan.
12. Submittal of a KDHE Notice of Intent through the National Pollutant Discharge Elimination System.
13. Office check details for trail amenities regarding the selection of project amenities including benches, signage, landscaping, et cetera.
14. Submittal of office check construction documents for review by the City of Dodge City and KDOT.
15. Submittal of any specifications for appurtenances related to the construction of the trail project (benches, trash receptacles, et cetera).
16. Development of an engineer's opinion of probable Cost.

#### **Phase IV – Final Plans**

1. Final trail plan and profile for the primary trail alignment, connections, and crossings from the connection at the north end of Chilton Park to 14<sup>th</sup> Avenue. Trail plans will also include site specific details depicting the elevations at key locations where required.
2. Paving details as required by the pavement design.
3. Final trail cross sections for the primary trail alignment, connections, and crossings from the connection at the north end of Chilton Park to 14<sup>th</sup> Avenue. Trail cross sections will depict proposed and existing ground, water and sanitary sewer crossings, and crown elevations.
4. Final box culvert wing wall modification details for the modification of the wing wall associated with the box culvert under Soule Street to allow for the Pedestrian Crossing on Soule Street.
5. Final check details for pedestrian actuated crossing control devices at Soule Street and Comanche Street.



6. Final traffic control plans for a lane shift on Comanche Street, lane shift on 14<sup>th</sup> Avenue and lane shifts on Soule Street
7. Final cross trail storm sewer layout to conform to City of Dodge City and KDOT Standards.
8. Storm sewer standard details as provided by KDOT.
9. Final mass grading plan for the entire improvement area to depict areas of cut and fill.
10. Final sequencing plan and trail pedestrian traffic control plan with necessary trail detours as required.
11. Final stormwater erosion and sediment control plan.
12. Final details for trail amenities regarding the selection of project amenities including benches, signage, landscaping, et cetera.
13. Submittal of construction documents as necessary for bidding the project.
14. Submittal of any specifications for appurtenances related to the construction of the trail project (benches, trash receptacles, et cetera).
15. Development of an engineer's opinion of probable Cost.

### **Other Services**

1. Attendance at construction coordination meetings with the City of Dodge City and the selected contractor on a once (maximum of 2 hours), every other week, basis to assist the City of Dodge City with construction administration of the project.
2. Development of a punch list near the completion of construction to assist the City of Dodge City with informing the contractor of items that need addressed prior to the completion of construction and close-out of the project.
3. Attendance at governmental or civic organizations to promote the project and gather input and feedback as necessary.

# Fee Estimate

City of Dodge City  
GunsSmoke Trail Project  
Exhibit A

SC = Survey Crew  
CT = CADD Technician  
MPLS = Managing Principal Land Surveyor

RLS = Registered Land Surveyor  
MPE = Managing Principal Engineer  
PE = Project Engineer

DE = Design Engineer  
CM = Client Manager  
CL = Clerical



	SC	CT	MPLS	RLS	MPE	PE	DE	CM	CL	Rate =	SC	CT	MPLS	RLS	MPE	PE	DE	CM	CL	Expenses	Totals Hours	Total Fee	
	Estimated Hours										Estimated Fee												
<b>PHASE I - DISCOVERY</b>																							
1. Project Vision Session					1.0			1.0							\$135.00			\$75.00			2	\$210.00	
2. Mailing					1.0			2.0	2.0						\$135.00			\$150.00	\$90.00	\$200.00	5	\$575.00	
3. Preliminary Alignment Selection					2.0			2.0							\$270.00			\$150.00			4	\$420.00	
4. Preliminary Plan and Profile			16.0		1.0							\$1,040.00			\$135.00						17	\$1,175.00	
5. Preliminary Alignment Evaluation					2.0			2.0							\$270.00			\$150.00			4	\$420.00	
6. Public Informational Meeting					1.0			1.0							\$135.00			\$75.00			2	\$210.00	
7. Near Final Alignment Selection			8.0		1.0			2.0							\$135.00			\$150.00			11	\$805.00	
8. Topographic, Boundary, and Utility Survey	36.0			2.0			1.0				\$4,140.00		\$230.00				\$75.00				39	\$4,445.00	
9. Survey Conversion			22.0									\$1,430.00									22	\$1,430.00	
10. City Commission Presentation					1.0				1.0						\$135.00					\$45.00	\$100.00	2	\$280.00
																					<b>Phase I Total =</b>		<b>\$9,970.00</b>
<b>PHASE II - FIELD CHECK</b>																							
1. Preliminary Plan and Profile		20.0			6.0		34.0				\$1,300.00				\$810.00		\$2,550.00				60	\$4,660.00	
2. Paving Details					4.0		6.0								\$540.00		\$450.00				10	\$990.00	
3. Preliminary Cross Sections		16.0			2.0		4.0				\$1,040.00				\$270.00		\$300.00				22	\$1,610.00	
4. Preliminary Wing Wall Modifications		16.0				4.0	10.0				\$1,040.00					\$400.00	\$750.00				30	\$2,190.00	
5. Field Check Ped Actuated Signals		16.0				6.0	14.0				\$1,040.00					\$600.00	\$1,050.00				36	\$2,690.00	
6. Preliminary Traffic Control		6.0				2.0	2.0				\$390.00						\$150.00				10	\$900.00	
7. Stormwater Runoff Calculations						12.0										\$1,200.00					12	\$1,200.00	
8. Preliminary Cross Trail Storm Sewer Layout						12.0										\$1,200.00					12	\$1,200.00	
9. Storm Sewer Standard Details		4.0									\$260.00										4	\$260.00	
10. Preliminary Grading Plan						4.0	34.0									\$400.00	\$2,550.00				38	\$2,950.00	
11. Preliminary SESC Plan						1.0	4.0									\$100.00	\$300.00				5	\$400.00	
12. Utility Coordination					2.0										\$270.00						2	\$270.00	
13. Jurisdictional Coordination						1.0										\$100.00					1	\$100.00	
14. Submittal		4.0									\$260.00									\$200.00	4	\$460.00	
15. Amenity Review and Specification								8.0									\$600.00		\$1,000.00		8	\$1,600.00	
16. Preliminary Construction Cost Estimate					3.0																		
17. Onsite Field Check					2.0	2.0		2.0							\$270.00	\$200.00		\$150.00			6	\$620.00	
																					<b>Phase II Total =</b>		<b>\$21,200.00</b>
<b>PHASE III - OFFICE CHECK</b>																							
1. Office Check Plan and Profile		10.0				16.0	6.0				\$650.00					\$1,600.00	\$450.00				32	\$2,700.00	
2. Paving Details		2.0				1.0					\$130.00					\$100.00					3	\$230.00	
3. Office Check Cross Sections		15.0									\$975.00										15	\$975.00	
4. Office Check Wing Wall Modifications		6.0				2.0	2.0				\$390.00					\$200.00	\$150.00				10	\$740.00	
5. Office Check Ped Actuated Signals		4.0				2.0	2.0				\$260.00					\$200.00	\$150.00				8	\$610.00	
6. Office Check Traffic Control		4.0					1.0				\$260.00						\$75.00						
7. Office Check Cross Trail Storm Sewer Layout						6.0										\$600.00					6	\$600.00	
8. Storm Sewer Standard Details		2.0				1.0					\$130.00					\$100.00					3	\$230.00	
9. Office Check Grading Plan						2.0	8.0									\$200.00	\$600.00				10	\$800.00	
10. Office Check Sequencing Plan						2.0	14.0									\$200.00	\$1,050.00				16	\$1,250.00	
11. Office Check SESC Plan							2.0										\$150.00				2	\$150.00	
12. KDHE NOI							8.0										\$600.00				8	\$600.00	
13. Amenity Details							4.0										\$300.00		\$1,000.00		4	\$1,300.00	
14. Submittal		4.0									\$260.00								\$200.00		4	\$460.00	
15. Specifications					1.0	4.0									\$135.00	\$400.00			\$2,000.00		5	\$2,535.00	
16. Engineer's Opinion of Cost					1.0	2.0									\$135.00	\$200.00							
																					<b>Phase III Total =</b>		<b>\$13,180.00</b>
<b>PHASE IV - Final Plans</b>																							
1. Final Plan and Profile					1.0		4.0								\$135.00		\$300.00				5	\$435.00	
2. Paving Details		1.0			0.5						\$65.00				\$67.50						1.5	\$132.50	
3. Final Cross Sections		4.0			1.0						\$260.00				\$135.00						5	\$395.00	
4. Final Box Wing Wall Modifications					1.0						\$135.00				\$135.00						1	\$135.00	
5. Final Ped Actuated Signals					1.0						\$135.00				\$135.00						1	\$135.00	
6. Final Traffic Control		2.0			0.5						\$67.50				\$67.50						2.5	\$206.25	
7. Final Cross Trail Storm Sewer Layout		2.0			1.0		2.0				\$130.00				\$135.00		\$150.00				5	\$415.00	
8. Storm Sewer Standard Details					0.5						\$67.50				\$67.50						0.5	\$67.50	
9. Final Grading Plan					1.0						\$135.00				\$135.00						1	\$135.00	
10. Final Sequencing Plan					0.5						\$67.50				\$67.50						0.5	\$67.50	
11. Final SESC Plan					0.5						\$67.50				\$67.50						0.5	\$67.50	
12. Final Amenity Details					0.5						\$67.50				\$67.50						0.5	\$67.50	
13. Submittal		4.0									\$260.00								\$200.00		4	\$460.00	
14. Specifications					1.0	2.0									\$135.00	\$200.00			\$2,000.00		3	\$2,335.00	
15. Engineer's Opinion of Cost					0.5	1.0									\$67.50	\$100.00					1.5	\$167.50	
																					<b>Phase IV Total =</b>		<b>\$5,015.00</b>
<b>PHASE V - Other Services</b>																							
1. Construction Coordination - FREE																						FREE	
2. Punch List					1.0			4.0							\$135.00			\$300.00			5	\$435.00	
3. Promotional Presentations to Civic Groups - FREE																						FREE	
																					<b>Phase V Total =</b>		<b>\$435.00</b>
																					<b>Grand Total =</b>		<b>\$49,800.00</b>
<b>Totals =</b>	36.00	188.00	2.00	0.00	42.50	85.00	162.00	24.00	3.00	0.00	4,140.00	12,090.00	230.00	0.00	5,332.50	8,300.00	12,150.00	1,800.00	135.00	6,900.00	531.5		

## 2013 Personnel and Reimbursable Rates

SMH Consultants

	<u>Standard Rate</u>	<u>Overtime Rate</u>
<i>Survey Crew</i>	\$115.00/hour	\$155.00/hour
<i>CADD Technician</i>	\$65.00/hour	\$83.00/hour
<i>Managing Principal Land Surveyor</i>	\$115.00/hour	\$148.00/hour
<i>Registered Land Surveyor</i>	\$105.00/hour	\$122.00/hour
<i>Managing Principal Engineer</i>	\$135.00/hour	\$174.00/hour
<i>Principal Engineer</i>	\$125.00/hour	\$161.00/hour
<i>Project Engineer</i>	\$100.00/hour	\$128.50/hour
<i>Design Engineer</i>	\$75.00/hour	\$96.00/hour
<i>Client Manager</i>	\$75.00/hour	\$96.00/hour
<i>Construction Engineering/Inspection</i>	\$70.00/hour	\$89.50/hour
<i>Clerical</i>	\$45.00/hour	\$57.00/hour
<i>Mileage</i>	\$0.55/mile	
<i>Concrete Cylinder Breaks</i>	\$20/each	

# *Memorandum*

*To: City Commission*  
*From: Ken W. Strobel, City Manager*  
*Date: 10-04-13*  
*Subject: VenuWorks Management Agreement*

---

**Recommendation:** Staff recommends approval of the attached VenuWorks Agreement for management services for the United Wireless Arena and Magouirk Conference Center.

**Background:** During the past 3 years VenuWorks has provided management services for the Wireless Arena, the Magouirk Conference Center, and the Civic Center up until the time the Civic Center was conveyed to the school district. That contract will expire on December 1 of this year. Although the overall services provided by VenuWorks over the past 3 years has been satisfactory, and in some respects very good, there have been serious concerns regarding the lack of activity, particularly at the Arena. Over the past year, staff has met numerous times with VenuWorks representatives concerning this issue. In light of our concerns, VenuWorks has recently made changes at both the corporate level as well as at the local level. We anticipate that these changes will provide substantial improvements in the activity level at both the Arena and Conference Centers.

**Justification:** Based on the organizational changes addressed above and VenuWorks' acceptance of contract wording we requested, the staff is recommending the approval of another 3 year management agreement for the arena and center. Enclosed is a copy of a memo from Glenn Kerbs outlining the main provisions of the proposed Agreement, as well as the Agreement itself. Glenn will be present at our Monday Commission Meeting to go over the terms of the Agreement. In the meantime, if you have questions, please give me a call.

**Financial Considerations:** The proposed Agreement calls for a monthly management fee of \$11,000 per month over the 3 years of the Agreement. This is a 1% increase over the current fee. The operational expenses have been estimated and budgeted for in the Why Not Dodge budget.

**Purpose / Mission:** To provide professional management services in order to provide entertainment, activities, and facilities to make Dodge City the best place to be.

**Legal Consideration:** The proposed Agreement has been reviewed by legal counsel for both the City and County.

**Attachments:** Proposed Management Agreement

# GLENN I. KERBS

ATTORNEY-AT-LAW

CENTRAL AT COMANCHE  
P.O. BOX 1473  
DODGE CITY, KANSAS 67801  
TELEPHONE (620) 225-0238  
FAX (620) 225-0318

## MEMO

### TRANSMITTED VIA EMAIL

TO: Mr. Jerry King  
Mr. Chris Boys  
Mr. Danny Gillum  
Mr. Edward W. Elam  
Mr. Ken W. Strobel

FROM: Glenn I. Kerbs   
Ford County Counselor

RE: VenuWorks Management Agreement

DATE: October 4, 2013

Attached is the proposed VenuWorks Management Agreement ("Agreement"). I have prepared the Agreement in follow-up to a meeting on September 19, 2013, with representatives of VenuWorks, Kent Smoll, Ken Strobel and Ed Elam.

The proposed Agreement reflects the following material changes from the current contract with VenuWorks:

1. **Article 2 - Commencement Date and Term.** The Initial Term of the proposed Agreement is three (3) years beginning January 1, 2014. The Agreement may be extended for an additional 36 months by mutual agreement of the parties no later than June 30, 2016.

2. **Article 3 - Management Agreement, Section 3.4 - Written Powers Reserved to Owner.** Subsection (e) has been added. The Owner (City/County) has the right of prior written approval in connection with the hiring and continued employment of the Executive Director employed by VenuWorks.

3. **Article 5 - The Management Fees.** The monthly base management fee for the Initial Term will increase from \$10,833 to \$11,000. If the Agreement is extended for an additional three (3) years, the base management fee will increase to \$11,330 beginning January 1, 2017.

The second part of Section 5.1 describes the services included in the base management fee. The service components are not included in the current contract.

**4. Article 5 - The Management Fees, Section 5.5 - VenuWorks Contribution to Entertainment Fund.** At the last joint meeting of the City and County Commissions, an Entertainment Fund Policy was adopted. The purpose of the policy is to create and establish a funding source to be used to increase event activity through the purchase and/or promoting of touring entertainment events and other activities which require "at risk" funding. The Agreement incorporates the Entertainment Fund Policy in the Agreement and provides Venuworks will immediately contribute \$25,000.

**5. Article 7 - General Terms and Conditions, Section 7.7 - Termination by Owner.** This new provision allows the City/County to terminate the Agreement at any time, without cause, by giving 120 days written notice to VenuWorks.

All of the modifications we requested were accepted by VenuWorks. It is apparent VenuWorks understands concerns exist about its performance the past three years. It is my opinion VenuWorks wants the opportunity to address concerns and keep this account by improving its performance. If improvements are not made to the satisfaction of the City/County, the Agreement may be terminated at any time by giving 120 days notice.

You will be asked to consider the Agreement during the Commission meeting on October 7, 2013. Please do not hesitate to contact me if you would like to discuss the Agreement or if I can provide any additional information. Thank you.

GIK:jb  
Attachment

# VenuWorks Management Agreement

This AGREEMENT ("Agreement"), is made by and between the City of Dodge City, Kansas ("**City**") and the County of Ford County, Kansas ("**County**"), together and independently referenced herein as "**OWNER**" and VenuWorks of Dodge City, LLC, an Iowa limited liability corporation, with offices at 4611 Mortensen Road, Suite 111, Ames, Iowa, 50014 ("**VENUWORKS**").

WHEREAS, **OWNER** is the Owner of the Dodge City/Ford County Events Center, known as the United Wireless Center and Magouirk Conference Center, consisting of a multi-purpose arena and a conference center (the "Events Center" or collectively as 'The Centers'); and

WHEREAS, **VENUWORKS** is in the business of providing management and operation, marketing, food and beverage and catering services to similar facilities, and possesses the knowledge and expertise to manage and market the Centers; and

WHEREAS, **VENUWORKS** is a wholly owned subsidiary of VenuWorks, Inc. ("VWI"), an Iowa Corporation with offices at 4611 Mortensen Road, Suite 111, Ames, Iowa, 50014, and enjoys the benefits of a services contract with VWI for on-going support, guidance and consultation to be provided to **VENUWORKS** by VWI in the completion of **VENUWORKS'** responsibilities as defined herein, and;

WHEREAS, VWI hereby guarantees the performance of **VENUWORKS** upon all obligations to be performed by **VENUWORKS** set forth in this Agreement; and

WHEREAS, **OWNER** entered into an agreement with **VENUWORKS**, dated November 18, 2010 for the opening and management of the Centers; and

WHEREAS, **OWNER** desires to continue its agreement with **VENUWORKS** to provide full management, operation and food and beverage and catering services, and **VENUWORKS** desires to accept such engagement pursuant to the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other consideration, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

## ARTICLE ONE

### RETENTION OF VENUWORKS

**OWNER** hereby retains **VENUWORKS** as an independent contractor for the purpose of performing the services described in this Agreement. Subject to the terms and conditions set forth herein, **VENUWORKS** agrees to provide management services in accordance with this Agreement, and consistent with policies approved by **OWNER**. **VENUWORKS** agrees to use its best efforts to maximize revenues and minimize expenses from use of the Centers, including, without limitation, marketing and sales and event production and promotion and otherwise managing the Centers in accordance with this Agreement. In providing these services **VENUWORKS** shall manage the Centers in accordance with sound business practices and consistent with the standards and operations of similar and comparable Centers in the United States . In conducting such services, **VENUWORKS** hereby acknowledges and agrees that it owes a fiduciary obligation to the **OWNER**.

The parties to this agreement acknowledge that the **OWNER** will retain title and ownership of the Centers and that **VENUWORKS** will not acquire title to, any security interest in, or any rights of any kind in or to the Centers (or any income, receipts or revenues there from).

## **ARTICLE 2**

### **COMMENCEMENT DATE AND TERM**

The term of this Agreement shall begin January 1, 2014, and continue through December 31, 2016 ("Initial Term"). Unless terminated earlier as set forth herein, the Agreement may be extended for an additional thirty-six (36) months ("Renewal Term") by mutual agreement of the Parties no later than June 30, 2016.

## ARTICLE 3

### MANAGEMENT AGREEMENT

3.1 Provision of Services. During the Term and any Renewal Term of this Agreement, **VENUWORKS** shall provide the services set forth in this Article 3.

3.2 Grant to VENUWORKS. During the term of this Agreement, **OWNER** grants to **VENUWORKS** the right to manage, market, promote, operate and maintain the Centers, and direct food and beverage sales, sponsorship projects and advertising at the Centers, all of the proceeds of which shall accrue to **OWNER**, subject to **OWNER'S** right to terminate this Agreement as provided below.

3.3 VENUWORKS' Responsibilities. **VENUWORKS** shall assume management responsibilities as set forth below. Where **VENUWORKS** is required to direct or arrange for services or material, **VENUWORKS** shall employ all persons performing such services or shall contract with a third party for the performance of such services however, any such subcontract does not relieve **VENUWORKS** of its obligations to **OWNER** to perform all of the duties and responsibilities under this Agreement. **VENUWORKS** shall provide **OWNER** with copies of all subcontracts under this Agreement upon request. All subcontracts entered into by **VENUWORKS** shall provide that in the event this Agreement is terminated, the **OWNER** may assume **VENUWORKS'** rights and obligations under such subcontract by written notice to such subcontractor.

3.3.1 Marketing and Promotion. **VENUWORKS** shall direct all marketing activities which shall be undertaken so as to maximize the use of the Centers by all persons, including independent promoters and affiliates of **VENUWORKS** so as to provide maximum Revenue, as defined in Paragraph 3.3.14 below for the Centers and accessibility for the community to the Centers. **VENUWORKS** shall be responsible for ensuring that appropriate programs are booked into the Centers and that suitable media coverage is obtained and shall coordinate such efforts with **OWNER**.

3.3.2 Scheduling. **VENUWORKS** shall develop and maintain all schedules for events held at the Centers and scheduling shall be accomplished in accordance with applicable law, and in a manner to maximize the use of the Centers so as to provide maximum Revenue and minimize expenses for the Centers and accessibility for the community to the Centers. **VENUWORKS** shall use an event rental agreement acceptable in form to **OWNER**. The parties understand and agree that **VENUWORKS** shall be empowered to negotiate event agreements as **OWNER'S** agent, subject to **OWNER'S** reasonable approval. **VENUWORKS** may deviate from standard rental rates when such negotiation is deemed by both parties to be in the best interests of the Centers.

3.3.3 Operations Plan. In addition to the Business Plan referenced in Section 3.6 hereof, **VENUWORKS** shall prepare and develop an annual operations plan, including an Annual Budget, as defined below, which shall be submitted to **OWNER** for approval each year for the following fiscal year. To the extent possible, the goals of the Business Plan shall be reflected in the Annual Budget. **VENUWORKS** will cooperate and will work with **OWNER** to ensure that the operations plan meets the reasonable requirements and expectations of **OWNER**.

3.3.4 Food & Beverage Services. **VENUWORKS** shall be responsible for providing the food & beverage services at the Centers. The manager for the catering and concessions will be accountable to **VENUWORKS'** Centers Executive Director (or his/her designee) for meeting service, quality and financial standards (including the submission of financial statements and budgets) set by **OWNER**.

3.3.5 Centers Maintenance. **VENUWORKS** will be responsible for the performance of all facilities maintenance work. **VENUWORKS** will carry out work required of **OWNER** which shall be limited to ordinary maintenance and repairs (the depreciable life of which, according to generally accepted accounting principles, is less than one (1) year) and which do not increase the value or extend the life of an asset at the Centers

3.3.6 Custodial and Cleaning Services. **VENUWORKS** shall provide or cause to be provided all routine cleaning and janitorial services at the Centers.

3.3.7 Pest Control. **VENUWORKS** shall direct all necessary pest control services,

whether performed by **VENUWORKS** or a pest control service engaged by **VENUWORKS**.

3.3.8 Snow Removal. **VENUWORKS** shall direct all snow removal services on the pathways and sidewalks adjacent to the Centers.

3.3.9 Trash Removal. **VENUWORKS** shall direct removal of all trash from the Centers and agrees that it shall not permit any employee, concessionaire or caterer to place refuse outside the buildings at the Centers, except in designated trash containers as approved by the OWNER.

3.3.10 Operational Services **VENUWORKS** shall direct all services required to stage (set up and tear down) the Centers for each event, including but not limited to, services involving the stage area, sound system, lighting system, stage rigging, dressing area, stage equipment, loading in and loading out. **VENUWORKS** shall hire and manage all management staff, ticket sales personnel, ushers and other personnel required for the operation of the Centers, including but not limited to, ticket taking, novelty sales, program distributions and assistance to patrons generally, including the handicapped.

3.3.11 Ticket Sales. **VENUWORKS** shall direct all aspects of ticket sales for events and activities including computerized tickets, utilizing the services of a competent ticketing services company, acceptable to **OWNER**, to provide state of the art equipment and software to the Centers. Ticket sales services shall include ordering, selling and accounting for tickets, reporting ticket revenues for a given event for each user of the Centers, cash, check, and credit card processing, complete auditing and accounting for each event, and providing an accounting of the event income and expenses within ten days after each event is held. The amounts charged by the ticketing contractor for service charges, and the Centers' participation in revenues from these service charges, will be consistent with industry standards in the central local region.

3.3.12 Security. **VENUWORKS** shall arrange for proper security for events at the Centers and for general security when events are not in progress. Such security may be provided by **VENUWORKS** or by contract, in its discretion. **VENUWORKS** shall review and coordinate exterior crowd management and traffic control with

appropriate local authorities.

3.3.13 Licenses and Permits. **VENUWORKS** shall obtain and maintain all licenses and permits necessary for management, operation and food and beverage services of the Centers, subject to the local procedures for the granting of such licenses and permits.

3.3.14 Revenues; Bank Accounts and Payment of Operating Expenses.

**VENUWORKS** shall be responsible for the collection of all Revenues and payment of Operating Expenses, as defined in Exhibit A, including payment and remittance of applicable sales taxes. As used herein, "Revenue" is defined as the total amount received by **VENUWORKS** or any other person or entity operating on **VENUWORKS'** behalf from third parties, directly or indirectly arising out of or connected with and on behalf of the Centers, including without limitation, transactions for cash, credit and credit card sales, less applicable sales taxes. **VENUWORKS**, in cooperation with **OWNER**, shall maintain two separate commercial bank accounts. These accounts shall be in the name of **OWNER** and utilize **OWNER'S** federal identification number. Signatories shall include those individuals as deemed appropriate by **VENUWORKS** and **OWNER**. The names of the commercial accounts shall be **OWNER** Operating Account and **OWNER** Box Office Account, and the Owner ATM Account. Revenues from the sale of tickets to events at the Centers shall be deposited by **VENUWORKS** in **OWNER** Box Office Account. After payment from such ticket sales Revenues of all event-related expenses, and within ten working days after the end of the event, **VENUWORKS** shall transfer the remaining event ticket sales Revenues to the **OWNER** Operating Account.

All other Revenues generated by use of the Centers and collected by **VENUWORKS** shall be deposited in the **OWNER** Operating Account. **VENUWORKS** is authorized to make disbursements from the **OWNER** Box Office Account to promoters or performers in any amount due the performer or promoter as per contracts with them, and to pay budgeted Operating Expenses from the **OWNER** Operating Account. **OWNER** shall be authorized at any time, to obtain information and records from the bank concerning such accounts and to inspect

the same. It shall be an Event of Default, as defined below, entitling **OWNER** to terminate this Agreement, if **VENUWORKS** withdraws any money from the **OWNER** Operating Account or the **OWNER** Box Office Account except in accordance with this Agreement. Interest accrued in these accounts shall be revenue to the Centers and belong to **OWNER**. The Owner ATM Account will be exclusively used to service the ATM machines in the Centers.

3.3.15 Petty Cash and Change Funds: The Centers requires a Petty Cash and Change Fund to conduct cash transactions at the Centers. **VENUWORKS** and **OWNER** agree that any and all petty cash and change funds shall belong to the **OWNER**. These funds will be returned to the **OWNER** at the end of the contract term. **VENUWORKS** shall establish internal financial controls and procedures and maintain daily accounting records of such funds.

3.3.16 Cash Discrepancies: **VENUWORKS** will be responsible for any cash discrepancies resulting from errors made in making change at cash sale points.

3.3.17 Staffing: **VENUWORKS** shall be responsible for supervision and direction of all personnel staffing at the Centers. All Centers staff will be in the employment of **VENUWORKS**. All expenses associated with the employment of staff will be considered operating expenses of the Centers. **OWNER** has the right to participate in the recruitment, interviewing and hiring of the Executive Director of the Centers, including the creation of a recruiting task force to work with **VENUWORKS** in the hiring process.

3.3.18 Additional Duties. **VENUWORKS** shall also be required to provide, on a timely basis, information, data, and solutions to project issues as may be reasonably requested by **OWNER**, together with such other services consistent herewith as **OWNER** may reasonably require.

3.3.19 Use of **OWNER** Equipment. **VENUWORKS** will use equipment at the Centers in performance of its obligations hereunder.

3.4 Written Powers Reserved to **OWNER**. **OWNER** shall have right of prior written approval in connection with the following:

- (a) The Annual Budget; and
- (b) The Business Plan, as defined below

- (c) Any expenditure for personnel or equipment in excess of budget and;
- (d) Any booking of events involving risk of **OWNER** funds and;
- (e) The hiring and continued employment of the Executive Director employed by Venu Works.

**OWNER**, at its discretion, may delegate a specific person, or an advisory board or committee to act on behalf of **OWNER** in regard to this Agreement.

- 3.5 Relationship of Parties. **VENUWORKS** is an independent contractor of **OWNER** and shall not be deemed to be an employee, joint venturer, or partner of **OWNER** except for those matters which are specifically addressed in this Agreement.
- 3.6 Business Plan. The Business Plan shall be subject to the prior written approval of **OWNER**. The Business Plan shall be a marketing plan and a projection of Revenues and Operating Expenses for the year and shall include an analysis of the basis and assumptions underlying each line item of Revenues and Operating Expenses. **VENUWORKS** shall submit a Business Plan on an annual basis and shall deliver the same to **OWNER** simultaneously with the delivery of the Annual Budget. The Business Plan shall in no way become a performance obligation for either **OWNER** or **VENUWORKS** but serve as a management blueprint to monitor **VENUWORKS'** performance.
- 3.7 Relationship with **OWNER**: **VENUWORKS** shall provide all of its Management Services in a manner which shall ensure full compliance with all **OWNER** requirements.

## ARTICLE 4

### ANNUAL BUDGET

4.1 Delivery of Budget On a date to be determined by **OWNER** each year during the term, **VENUWORKS** shall submit to **OWNER** a proposed annual operating budget for the ensuing year, listing all projected Revenues and Operating Expenses by category, broken down by month, with explanations and assumptions for each Revenue and Operating Expense line item. The proposed annual budget shall include a proposed rent structure for events proposed to take place in the Centers for the ensuing year.

4.1.1. Capital Improvements. **VENUWORKS** will include in the Annual Budget a list of capital improvements (the depreciable life of which, according to generally accepted accounting principles, is in excess of one (1) year) at the Centers that **VENUWORKS** has identified as reasonably necessary to maintain the operations and maintenance of the Centers for the purpose of allowing **OWNER** to consider for inclusion such projects in its upcoming budget and to prepare and update a long-range capital expenditure budget. Additionally, **OWNER** shall have the right to recommend Capital Expenditures for the benefit of the Centers at its discretion.

4.2 Review of Budget. The proposed annual budget shall be reviewed by **OWNER** in accordance with **OWNER'S** budget development schedule. Upon approval by **OWNER**, the proposed annual budget shall become the final annual budget (the "Annual Budget") for the year. If **OWNER** objects to the proposed annual budget or any part thereof, **VENUWORKS** shall be obligated to promptly respond to each such objection and revise the proposed annual budget in connection therewith. Without the prior consent of **OWNER**, **VENUWORKS** shall not exceed, commit or contract to expend any sums in excess of the amounts allowed in the Annual Budget. **VENUWORKS** will report in writing to **OWNER** any significant change or variance in the Annual Budget upon **VENUWORKS'** recognition of such variance.

4.3 Revision of Annual Budget. **VENUWORKS** and **OWNER** may revise the Annual Budget at any time by mutual written agreement.

4.4 Certified Statements. **VENUWORKS** shall deliver to **OWNER**, within twenty (20)

days after the end of each calendar month and within forty-five (45) days after the end of each fiscal year, a true and correct statement, certified as true and correct by **VENUWORKS** Centers' Executive Director, of all Revenues and Operating Expenses of the preceding calendar month and fiscal year, together with any reasonable supporting documentation requested by **OWNER**. **VENUWORKS** shall provide a profit and loss accounting of each ticketed event held at the Centers in said monthly reports for the preceding calendar month. Included in the monthly reports shall be information and records concerning the bank accounts.

4.5. Annual Audit. **VENUWORKS** agrees to provide to **OWNER**, within one hundred twenty (120) days following the end of each calendar year, a certified audit report on the accounts and records as kept by **VENUWORKS** for the Centers. Costs associated with obtaining such certified audit report shall be an operating expense of the Centers included in the Annual Budget. **VENUWORKS** shall utilize an external auditor approved by **OWNER** to conduct such audit, which shall be conducted in accordance with generally accepted auditing standards. A letter from such accounting firm expressing its opinion as to the effectiveness of internal controls and a management letter will accompany the audit report. In the event of an adverse finding(s), **VENUWORKS** shall meet with **OWNER** to discuss such findings and should **OWNER** determine that corrective action is required, **VENUWORKS** shall take corrective action in the time periods set for in Section 7.5.

## ARTICLE 5

### THE MANAGEMENT FEES

5.1 Base Management Fee. VenuWorks will be paid a Base Management Fee of Eleven Thousand Dollars (\$11,000) per month which shall be fixed for the Initial Term. In the event the Agreement is continued into the Renewal Term, VenuWorks will be paid a Base Management Fee of Eleven Thousand Three Hundred Thirty Dollars (\$11,330) per month which shall be fixed for the Renewal Term.

**VENUWORKS** shall provide the following service components as part of the base fee:

- Event Programming: **VENUWORKS** shall package offers to promoters, producers, agents and managers to deliver performances to the Centers, at prices significantly below list price.
- Planning, budgeting and reporting systems: **VENUWORKS** team works to develop and recommend to the OWNER a well-developed, tested and realistic annual budget for the the Centers, including recommendations on a capital improvements budget.
- Food and Beverage (F/B): **VENUWORKS** shall provide ongoing consultation, monitoring and direction to achieve the highest product quality, contain expenses through detailed inventory control, offer creative menu items and do so with prices that are affordable for patrons.
- Ticketing: **VENUWORKS** is served through a national ticketing agreement with Ticketmaster (TM). OWNER is not charged for box office equipment provided by TM. The Centers also have free access to the latest in sales and marketing support offered by TM, and the operating account receives a percentage of service fees paid by patrons, as defined in the Licensed User Agreement with TM attached hereto as Exhibit C.
- Legal Compliance: **VENUWORKS** provides ongoing assurance and online materials to ensure the Centers are in complete compliance with federal and state regulations.

- Staffing Continuity: **VENUWORKS** ensures there will be continuity of programs, with no interruption to the Centers services due to the departure of staff, by providing corporate staff to fill in when openings occur. Also, **VENUWORKS** assumes responsibility for employer and operator liability for its employees.

5.2 Variable Management Fee: **OWNER** shall pay to **VENUWORKS** a Variable Management Fee, over and above the Base Management Fee. The Variable Fee will consist of the following components:

5.2.1 Food and Beverage Variable Fee . **VENUWORKS** will be paid a monthly variable fee equal to six percent (6%) of gross food and beverage sales in the Centers. For the purposes of this calculation, Gross Food and Beverage Sales shall be defined as the total monthly sales from concessions as well as the food and beverage sales within the catering services, less any applicable sales taxes.

5.2.2 Contractually Obligated Incomes (COIs) Variable Fee. **VENUWORKS** will be paid a monthly fee equal to ten percent (10%) of revenues from display advertising, sponsorships, naming rights, pouring rights and premium seating realized by the Centers monthly from contracts arranged and executed by **VENUWORKS** staff members on behalf of the Centers.

5.2.3 No Fulfillment Variable Fee. **VENUWORKS** shall maintain but receive no variable fee during the Initial Term and any Renewal Term of this Agreement for any revenues received from sponsorship, advertising, naming rights, pouring rights and premium seating contracts arranged for the Centers prior to January 1, 2011. A listing of the sponsorships, advertising, naming rights, pouring rights and premium seating contracts subject to this provision is attached hereto as Exhibit B.

5.3 Payment of Variable Management Fee. The Variable Management Fee will be due and owing to **VENUWORKS** in the month following the month in which the Revenues were realized.

5.4 Cap on Variable Management Fee. The total amount of the Variable Management Fee for any given calendar year shall not exceed One Hundred Thirty Thousand dollars (\$130,000).

5.5 **VENUWORKS** Contribution Entertainment Fund. **VENUWORKS** will contribute within five (5) working days of the execution of this Agreement, \$25,000 to the Centers

Entertainment Fund, to be used in accordance with the Entertainment Fund Policy approved by the **OWNER** and incorporated herein. The Entertainment Fund Policy is attached hereto as Exhibit D.

## ARTICLE 6

### PAYMENT OF MANAGEMENT FEES, AND OPERATING EXPENSES

- 6.1 Deposit of Funds. On the first business day of each quarter during the Term and any Renewal Term of this Agreement, **OWNER** will deposit into the **OWNER** Operating Account an amount equal to the estimated deficit, if any, as defined below, for such month as set forth in the Annual Budget.
- 6.2 Management Fees. **VENUWORKS** will invoice **OWNER** and **OWNER** will, within fifteen (15) days, deposit within the Operating Account all management fees payable to **VenuWorks** with respect to the current calendar month.
- 6.3 Insufficient Funds. In the event that the **OWNER** Operating Account is insufficient, or is anticipated by **VENUWORKS** to be insufficient, to cover the Operating Expenses plus the Base Management Fee and any Variable Fee, if any, due and payable during a month (the "Monthly Deficiency"), then notice of the Monthly Deficiency shall be communicated by **VENUWORKS** to **OWNER**, and **OWNER** shall deposit sufficient funds into the Operating Account within five (5) working days after **OWNER'S** receipt of the notice of the Monthly Deficiency. If the amounts deposited by **OWNER** in the **OWNER** Operating Account exceeded the amounts required to pay the Operating Expenses plus the Fees in any month, then such positive balance shall be credited against **OWNER'S** obligation to make future deposits into the **OWNER** Operating Account.
- 6.4 Monthly Meetings. Representatives of **VENUWORKS'** on-site management and the **OWNER** shall meet each month to review revenues and operating expenses for the prior calendar month. **VENUWORKS** corporate representatives shall meet quarterly with the **OWNER** to monitor performance and discuss operations.

## ARTICLE 7

### GENERAL TERMS AND CONDITIONS

7.1 Representation of OWNER. **OWNER** hereby represents and warrants to **VENUWORKS** that **OWNER** possesses the resources to ensure the on-going financial support and maintenance of the Centers from the “Why Not Dodge?” sales tax which is a perpetual tax. **OWNER** shall indemnify and save harmless **VENUWORKS**, its owners, officers, directors, trustees, agents, representatives and any affiliated or related entities, from all liability arising from any claims or suits that have been, or maybe filed by Global Entertainment, or any of its subsidiaries, officers, shareholders, creditors or agents, arising from **OWNER’S** decision to enter into this Agreement. In the event that Global Entertainment Corporation brings action in a court of law that prevents **VENUWORKS** from performing the services described in this Agreement, **OWNER** will be obligated to pay **VENUWORKS** in accordance with the terms of this Agreement through the period of interruption.

7.2 Representation of VENUWORKS. **VENUWORKS** hereby represents and warrants to **OWNER** on its own behalf and on behalf of its shareholders, officers, directors and employees, that **VENUWORKS** is fully capable of providing services as outlined in this Agreement.

7.3 Standard of Operation. **VENUWORKS** represents and warrants to **OWNER** that it shall maintain an efficient and high quality operation at the Centers comparable to other similar facilities and containing facilities similar to those of the Centers.

7.4 Accounting Records, Reports and Practices.

7.4.1 Maintain Records. **VENUWORKS** shall maintain accounting records relating to the Centers using accounting practices in accordance with generally accepted accounting principles consistently applied

7.4.2 Internal Financial Controls. **VENUWORKS** shall establish internal financial control policies and practices which are in accordance with generally accepted standards in the industry and reasonably acceptable to **OWNER**.

7.4.3 OWNER Access. **OWNER** shall have unlimited access to all accounting

records and supporting documentation of **VENUWORKS** relating to the Centers during the term and any Renewal Term of this Agreement and for a period of three (3) years thereafter. Such right to access shall be exercised in a reasonable manner.

7.5 Default, Right to Cure. It shall be an event of default ("Event of Default") hereunder if either party hereto:

(i) fails to pay or deposit sums due by one party to the other within seven (7) days after written notice by the other of such failure, or (ii) fails to perform or comply with any other obligation of such party hereunder within thirty (30) days after written notice by the other of such failure (which notice shall specify, in sufficient detail, the specific circumstances so as to give the defaulting party adequate notice and the opportunity to cure the same); provided however, that if the default is of a nature that it cannot be cured within thirty (30) days, then the defaulting party shall not be deemed in default hereunder if it commences to cure the default within ten (10) days after the effective date of the notice of such default and diligently proceeds to cure such default within ninety (90) days after the effective date of notice.

7.6 Jurisdiction. The parties agree that any court proceeding related to any claim or proceeding arising out of or related to this Agreement shall be brought in the Ford County District Court in Ford County Kansas. The parties submit to the personal and subject matter jurisdiction of said court.

7.7. Termination by **OWNER**. **OWNER may terminate the Agreement**, at its option: (i) in the event **VENUWORKS** ceases operations; or (ii) upon entry of a decree or order by a court having jurisdiction in the premises for relief in respect of **VENUWORKS**, ordering the reorganization, winding up or liquidation of its affairs; or (iii) in the event **VENUWORKS** commences a voluntary case seeking relief under the United States Bankruptcy Code or any other applicable federal or state law, or consent by **VENUWORKS** to a bankruptcy or insolvency proceeding against it, or the consent or acquiescence by **VENUWORKS** to the appointment of or taking possession by a custodian, receiver, trustee, sequestrator (or other similar official) of **VENUWORKS** for the purpose of being adjudicated a bankrupt or insolvent in order to accomplish

reorganization, adjustment, or re-composition of **VENUWORKS**, or in the event Manager seeks reorganization outside of the jurisdiction of the United States Bankruptcy Courts, regardless whether **VENUWORKS** remains in business **OWNER** may terminate this Agreement at any time during the Initial Term or Renewal Term, without cause, with 120 days written notice to **VENUWORKS**.

#### 7.8 Insurance.

7.8.1 Employment Matters. In connection with the employment of its employees, **VENUWORKS** shall pay all applicable social security, re-employment, worker's compensation or other employment taxes or contributions of insurance, and shall comply with all federal and state laws and regulations relating to employment generally, minimum wages, social security, re-employment insurance and workers' compensation. **VENUWORKS** shall indemnify and hold harmless the **OWNER** from all costs, expenses, claims or damages resulting from any failure of **VENUWORKS** to comply with this Section.

#### 7.8.2 Insurance Requirements:

7.8.2.1 Workers Compensation Insurance: **VENUWORKS** shall purchase and maintain during this contract, workers compensation insurance in accordance with Kansas statutory requirements and employers liability insurance with limits of not less than \$500,000 per accident and per employee for bodily injury.

7.8.2.2 General Liability Insurance: **VENUWORKS** shall purchase and maintain during this contract, commercial general liability insurance including liquor liability insurance (if available) on a per occurrence basis with limits of liability not less than \$1,000,000 per occurrence / \$2,000,000 in aggregate for Bodily Injury, Personal Injury, and Property Damage. Policy coverage shall include Premises and Operations, Products and Completed Operations, less inclusive and no more restrictive than the coverage provided by a standard Commercial General Liability Policy form (ISO CG 00 01 96) with standard Bodily Injury and Property Damage exclusions, and standard Personal and Advertising Injury exclusions. Any additional exclusion shall be clearly identified on the Certificate of Insurance and shall be subject to the approval of **OWNER** and **VENUWORKS**. The insurance required by this contract shall be written on non-assessable insurance companies licensed to do business as an admitted carrier in the

State of Kansas and currently rated "A" or better by the A.M. Best Company.

7.8.2.3 Automobile Liability Insurance: **VENUWORKS** shall purchase and maintain during this Agreement, automobile liability insurance on a per occurrence basis with either a combined limit of at least \$1,000,000 per occurrence for bodily injury and property damage. Coverage shall include any owned, all hired and non-owned motor vehicles used in the performance of this Agreement by **VENUWORKS** or its employees. The insurance required by this Agreement shall be written on non-assessable insurance companies licensed to do business as an admitted carrier in the State of Kansas and currently rated "A" or better by the A.M. Best Company.

7.8.2.4 Umbrella and Excess Liability Insurance: **VENUWORKS** shall purchase and maintain during this Agreement an umbrella and excess insurance policy on a per occurrence basis with limits of liability of not less than \$5,000,000 per occurrence / \$5,000,000 in aggregate. Any umbrella and excess insurance shall be written on a per occurrence basis on a pay on behalf form providing the same coverage and endorsements required of the primary policies.

7.8.2.5 Property Insurance: **OWNER** will maintain property insurance coverage on the Centers itself. **VENUWORKS** shall assume all risks for loss of or damage to its own property at the Centers and **VENUWORKS** may maintain such insurance, at its sole expense, as it deems necessary to protect its own property.

7.8.2.6 Subcontractors: **VENUWORKS** shall require all its subcontractors who perform work and / or services under this Agreement to meet appropriate insurance requirements as reasonably required by **OWNER**

7.8.2.7 Deductibles and Self-Insured Retention: Any policy deductible or self-insured retention must be declared on the Certificate of Insurance and shall be subject to the approval of the **OWNER**.

7.8.2.8 Professional Liability Insurance: **VENUWORKS** shall maintain professional liability insurance coverage, at its expense, throughout the Term of this Agreement and any Renewal Terms, and for twelve (12) months after termination of this Agreement, in the minimum amount of \$1,000,000.

7.8.2.9 Proof of Insurance: **VENUWORKS** shall furnish **OWNER** with Certificates of Insurance and a copy of the policies if requested by **OWNER**. The name

of the project or contract shall be listed on the certificates of insurance along with any deductible or self-insured retention. Before commencing any performance under this Agreement, **VENUWORKS** shall deliver all the Certificates of Insurance to **OWNER** certifying that the policies stipulated above are in full force and effect. All insurance shall remain in effect during the life of the Agreement.

7.8.3 Insurance Cancellation or Material Change Notice: The certificates of insurance shall state that the insurance company will provide thirty (30) days written notice prior to cancellations, non-renewal, or material change including reduction of insurance coverage or limits. The notice will be sent to the **OWNER**, via certified mail.

7.8.4 Reserved

7.8.5 Cooperation: Each party agrees to cooperate fully with the other in promptly providing such insurance underwriting and other information as may be necessary or appropriate to obtaining and maintaining the insurance described herein. The parties further agree to cooperate with the insurance companies and agents by responding promptly to their reasonable requests.

7.8.6 Releases: **VENUWORKS** and **OWNER** expressly waive all rights and claims they may have against the other, their subsidiaries and affiliates for loss or damage arising or resulting from the operation at the Centers caused by fire or other perils, but only to the extent covered by insurance. Each insurance policy procured by **VENUWORKS** and **OWNER** shall affirmatively state that it will not be invalidated because the insured waived its rights of recovery against any party prior to the occurrence of a loss.

7.8.7 Crime Insurance. During the term of this Agreement **VENUWORKS** shall maintain Crime Insurance, with an insurer acceptable to **OWNER** (such acceptance by **OWNER** not to be unreasonably withheld or delayed), providing at least the following coverage in at least the amounts set forth below for each coverage:

- (a) Employee Dishonesty- \$500,000;
- (b) Depositor's Forgery - \$500,000;
- (c) Money & Securities - \$500,000 (each, "Inside" and "Outside")
- (d) Computer Theft - \$500,000;
- (e) Wire Transfer Fraud - \$500,000;

provided, however, that if such coverage are provided on a "blanket" limit basis, a blanket limit of \$500,000 shall be considered to be sufficient to comply with this provision. The policy shall include an endorsement providing that any "employee" of **VENUWORKS** shall not be deemed to also be an "employee" of **OWNER** for purposes of the coverage afforded under the Employee Dishonesty coverage part.

**OWNER** shall be both a Loss Payee (as its interests may appear) and an Additional Insured under such policy, which policy shall be written to apply to the Crime exposures arising under or in connection with this Agreement, and not to any other unrelated Crime exposures incurred by **VENUWORKS** or **OWNER** under any other similar agreements or otherwise.

7.8.8 Insurance Cost: The cost of providing insurance hereunder shall be an Operating Expense except for Professional Liability Insurance in Section 7.8.2.8, regardless of which party procures the coverage.

7.8.9 Insurance Terms. Insurance terms not otherwise defined in this Agreement shall be interpreted consistent with insurance industry usage.

7.8.10 Named Insureds in Insurance Policies Insurance referenced in this Agreement, except Workers Compensation/Employers Liability, shall list both **VENUWORKS** and **OWNER** as named insureds.

7.9 Hold Harmless. **VENUWORKS** shall indemnify and save harmless **OWNER**, their officers, directors, trustees, its agents, representatives and any affiliated or related entities, from all liability arising out of the negligent acts or omissions of **VENUWORKS**.

7.10 Damage to and Destruction of the Centers. If all or part of the Centers are rendered unusable by damage from fire and other casualty which, in the reasonable opinion of **OWNER**, cannot be substantially repaired under applicable laws and governmental regulations within one hundred eighty (180) days from the date of such casualty (employing normal construction methods without overtime or other premium), then **OWNER** shall notify **VENUWORKS** thereof. In such case, either **OWNER** or **VENUWORKS** may elect to terminate this Agreement as of the date of such casualty by written notice delivered to the other not more than sixty (60) days after receipt by **VENUWORKS** of **OWNER'S** notice concerning the reconstruction.

7.11 Employees.

7.11.1 Employees of VENUWORKS. All persons engaged at the Centers in operating any of the services hereunder shall be the sole and exclusive employees of **VENUWORKS** and shall be paid by **VENUWORKS**, except for those individuals employed or utilized by subcontractors of **VENUWORKS**, as provided for in this Agreement but in no event deemed an employee of **OWNER**. In connection with the employment of its employees, **VENUWORKS** shall pay all applicable social security, reemployment insurance, worker's compensation or other employment taxes or contributions to insurance plans, and retirement benefits, and shall comply with all federal and state laws and regulations relating to employment generally, minimum wages, social security, reemployment insurance and worker's compensation, and shall defend, indemnify and save **OWNER** harmless from any responsibility therefore. **VENUWORKS** shall comply with all applicable laws, ordinances and regulations including, without limitation, those pertaining to human rights and non-discrimination. Notwithstanding any provision of this Agreement to the contrary, this Agreement may be canceled or terminated by **OWNER** for a violation of this paragraph.

7.11.2 Employee Expense. All costs of employment of Centers employees incurred by **VENUWORKS** shall be an operating expense of the Centers. **OWNER** and **VENUWORKS** will work together to assure a positive and productive working environment at the Centers.

7.11.3 Employee Standards. **VENUWORKS** will employ trained and neatly uniformed employees and said employees shall conduct themselves at all times in a proper and respectful manner. Any dismissal shall be in accordance with **VENUWORKS'** corporate policy and applicable federal, state or local laws which may be in effect and, further, shall be in compliance with applicable union or labor organizational agreements which may be in effect at the time of said dismissal and **VENUWORKS** shall defend, indemnify and save **OWNER** harmless from any claim, cause of action, expense (including attorney fees) lost, cost or damage of any kind or nature arising therefrom, except in the case of express written direction from **OWNER**.

7.12 Availability of Centers. **VENUWORKS** agrees that, except as a result of full or partial destruction of the Centers, the Centers will be made available for all events scheduled therein and **VENUWORKS** agrees to defend, indemnify and save **OWNER**

harmless from and against any and all claims, causes of action, expenses (including attorney fees) losses, costs and damages arising from the failure of the Centers to be available in the condition necessary for the conduct of such events for scheduled events due to the negligence or willful misconduct of **VENUWORKS**, its agents, servants, employees or contractors of any tier, and in such case, **VENUWORKS** shall pay to **OWNER** the estimated Revenues, less Operating Expenses, for such event within five (5) days after the event was to have taken place.

7.13 No Payment by OWNER. Notwithstanding anything in this Agreement or exhibits hereto to the contrary, **OWNER** shall not be obligated to reimburse **VENUWORKS** as Operating Expenses or otherwise for costs and expenses (including attorney fees) for litigation which is covered by **VENUWORKS**' defense and indemnification obligations set forth in Sections 7.12 and 7.11.3 above.

7.14 Termination for Cause. Either party may terminate this Agreement if the other is in default, and has not met the deadlines for curing, or undertaking steps to cure the default, as described in Section 7.5 of this Agreement. In the event of default, the non-defaulting party shall provide the defaulting party with five (5) business days notice of its intention to terminate the Agreement due to the uncured default.

In the event of early termination for any reason, **OWNER** shall pay to **VENUWORKS** all amounts owing hereunder and accrued through the date of termination.

7.15 Compliance with Laws. **VENUWORKS** will comply with all federal, state and local ordinances, statutes, rules and regulations as they relate to the operation of the Centers. **VENUWORKS**' failure to comply with such ordinances, statutes, rules and regulations relating to the Centers shall be an Event of Default under this Agreement and shall entitle **OWNER** to terminate this Agreement pursuant to the provisions of Section 7.5 hereof. **VENUWORKS** agrees that it shall not be entitled to claim litigation costs (including attorney fees) as Operating Expenses pursuant to subparagraph (1) of Exhibit A with regard to its rules and obligation to comply with ordinances, statutes, and regulations as set forth herein.

7.16 Non-waiver. The failure of either party at any time to enforce a provision of this Agreement shall in no way constitute a waiver of the provision, nor in any way affect the

validity of this Agreement or any part hereof, or the right of such party thereafter to enforce each and every provision hereof.

7.17 Amendment. The parties may amend this Agreement only by written agreement executed by the parties.

7.18 Choice of Law. The laws of the State of Kansas shall govern the rights and obligations of the parties under this Agreement.

7.19 Severability. Any provision of this Agreement decreed invalid by a court of competent jurisdiction shall not invalidate the remaining provisions of this Agreement.

7.20 Notices. Any notice required herein shall be in writing and shall be deemed effective and received (a) upon personal delivery; (b) five (5) days after deposit in the United States mail, certified mail, return receipt requested, postage prepaid; or (c) one (1) business day after deposit with a national overnight air courier, fees prepaid, to **VENUWORKS** or **OWNER** at the following addresses:

If intended for City, to:

City Manager  
City of Dodge City  
806 Second Avenue  
Dodge City, Kansas 67801  
Tel. 620-225-8100  
Fax (620) 225-8144

If intended for County, to:

County Administrator  
County of Ford County  
100 Gunsmoke Street  
Dodge City, KS 67801  
Tel. (620) 227-4670  
Fax (620) 227-4717

If to **VENUWORKS**: **VenuWorks of Dodge City, LLC**  
4611 Mortensen Road, Suite 111  
Ames, IA 50014  
Attention: President

Either party may designate an additional or another representative or address for notices upon giving notice to the other party pursuant to this paragraph. For the purposes of this Agreement, "business day" shall mean a day which is not a Saturday, a Sunday or a legal holiday of the United States of America.

7.21 Representatives. **OWNER'S** representative to **VENUWORKS** in connection with Centers' operations shall be **OWNER** or their designee, and the **VENUWORKS** representative shall be **VENUWORKS'** on-site Executive Director at the Centers.

7.21.1. **OWNER** Reserved Right of Entry. Representatives of **OWNER** presenting official **OWNER** identification shall have the right to enter all portions of the Centers at any time, to inspect the same, to observe the performance by **VENUWORKS** of its obligations under this Agreement or to do any act or thing which **OWNER** may be obligated to do or have the right to do under this Agreement; provided, however, representatives of **OWNER** shall not be allowed to enter into performers' or teams' restricted areas unless such entry is a matter of law enforcement or public safety.

7.22 Force Majeure. Neither party shall be obligated to perform hereunder, and neither shall be deemed to be in default, if performance is prevented by fire, earthquake, flood, act of God, riot, civil commotion or other matter or condition of like nature, including the unavailability of sufficient fuel or energy to operate the Centers, or any law, ordinance, rule, regulation or order of any public or military authority stemming from the existence of economic controls, riot, hostilities, war or governmental law and regulations.

7.23 Labor Dispute. In the event of a labor dispute which results in a strike, picket or boycott affecting the Centers or the services described in this Agreement, **VENUWORKS** shall not be deemed to be in default or to have breached any part of this Agreement.

7.24 Recognition of Special Consideration for Securing a Sports Tenant. **VENUWORKS** shall be responsible for providing good faith professional consultation to **OWNER** concerning the best interests of the Events Center with regard to securing a sports tenant. **VENUWORKS** will negotiate the user agreement for any sports tenant.

7.25 Integration. This Agreement and all appendices and exhibits hereto embody the entire agreement of the parties relating to the services to be provided hereunder. There are no promises, terms, conditions or obligations other than those contained herein, and this Agreement shall supersede all previous communications, representations or agreements, either oral or written, between the parties hereto. Exhibits hereby integrated hereto are:

Exhibit A:	Operating Expenses
Exhibit B:	No Fulfillment Variable Fee Schedule
Exhibit C:	Ticketmaster Licensed User Agreement

Exhibit D: Entertainment Fund  
Policy

If the terms of this Agreement and any exhibit are inconsistent, the terms of the Agreement shall control.

7.26 Section Headings. Section headings in this Agreement are for convenience only and shall have no effect on the interpretation of this Agreement.

7.27. During the Term, any Renewal Terms and for a period of three (3) years following the date of termination by **OWNER** for an uncured default on the part of **VENUWORKS**, **VENUWORKS** will not work on, or assist in any way, directly or indirectly, in the feasibility, development, management, marketing or food service of a competing facility within a one hundred twenty-five (125) mile radius of the Event Center.

7.28. Assignment. This Agreement may not be assigned by either party without the prior written consent of the other, which consent shall not be unreasonably withheld or delayed.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.

For **OWNER**  
City of Dodge City, Kansas

County Commission of Ford County,  
Kansas

\_\_\_\_\_  
Kent Smoll, Mayor

\_\_\_\_\_  
Jerry King, Chairman

\_\_\_\_\_  
Chris Boys, Commissioner

\_\_\_\_\_  
Danny Gillum, Commissioner

ATTEST:

ATTEST

\_\_\_\_\_  
Nanette Pogue, City Clerk

\_\_\_\_\_  
Sharon Seibel, County Clerk

For **VENUWORKS of Dodge City, LLC,**

\_\_\_\_\_  
By: Steven L. Peters  
Its: President

DATE

VenuWorks, Inc. guarantees the performance of VenuWorks of Dodge City, LLC or any VenuWorks, Inc wholly owned subsidiary that may perform services under this Agreement.

VenuWorks, Inc

By:

Date:

## Exhibit A

### Operating Expenses

1. The term "Operating Expenses" shall mean the following and shall be, in all cases, subject to **OWNER'S** approval of the Annual Budget:
  - (a) on-the-job payroll cost, including wages paid to employees and the cost of paid holidays, vacations, severance benefits, sick leave, employment practices liability, workers compensation and other compensation and benefits, cost of training, payroll processing costs;
  - (b) employer contribution cost, in relation to employees carried on the on-the-job payroll mentioned in the foregoing clause (a), of every nature whatsoever, including but not limited to, social security, reemployment insurance, benefits for medical and hospital care, disability, death, termination, retirement or pensions, or insurance or annuity contracts to provide any of the foregoing, and all payments, other than those referred to in the foregoing clause (a), required under any collective bargaining agreement to which **VENUWORKS** is a party, or under any state or federal law or any regulations promulgated there under;
  - (c) cost of medical and security examination for employees on the on-the-job payroll;
  - (d) cost of purchasing, renting, maintaining and cleaning uniforms;
  - (e) cost of equipment, materials and supplies, including the cost of installation thereof;
  - (f) cost of insurance, permits, licenses and fees;
  - (g) cost of property, business, privilege, sales and all taxes other than taxes based on net income, provided that any penalties or fines for failure to collect and remit sales taxes shall not be an Operating Expenses but shall be borne by **VENUWORKS**;
  - (h) cost of marketing, promotions and advertising; cost of travel on behalf of Centers;
  - (i) cost of necessary outside professional services, upon prior written approval by the **OWNER**;
  - (j) cost of the Commodities, (i.e. food stuffs purchased for resale to the public);
  - (k) cost of utilities;
  - (l) litigation expenses or other costs (including attorney fees) incurred by **VENUWORKS** in connection with any proceeding; provided however that **OWNER**

- shall not be obligated to pay any such fees or costs (including attorney fees) unless prior to incurring any legal expense (including attorney fees), **VENUWORKS** shall consult with the **OWNER**, and **OWNER** and **VENUWORKS** shall jointly determine the course of action (including payment obligations thereof) to be taken with regard to any claim made against **VENUWORKS** or **OWNER** (concerning the Centers) or to be made by **VENUWORKS** or **OWNER**;
- (m) cost of installation of Additional Equipment and replacements thereof;
  - (n) cost of replacements of pots, pans, dishes, linens, uniforms, silverware and glassware necessary for the operation of the Concessions and Catering;
  - (o) cost of ordinary maintenance and repair of the Centers and the equipment.
  - (p) cost of ordinary housekeeping of the Centers;
  - (q) all costs, verified by appropriate receipts, related to **VENUWORKS** corporate staff travel and lodging incurred in connection with servicing **OWNER'S** needs at Centers, not to exceed one hundred sixty-five dollars (\$165.00) per day, which rate shall be reviewed and adjusted annually;
  - (r) all other expenses not specifically set forth in this Exhibit but not including the cost of home office overhead relating to the services provided by **VENUWORKS** hereunder, subject to **OWNER'S** prior written approval of any such expense, which approval shall not be unreasonably withheld or denied;

**Exhibit B**

**No Fulfillment Variable Fee**

**Exhibit C**

**Ticketmaster Licensed User Agreement**

**Exhibit D**

**Entertainment Fund Policy**

## Memorandum

*To: City Manager  
Assistant City Manager  
City Commissioners*

*From: Corey Keller/ Airport Manager*

*Date: October 3, 2013*

*Subject: Approval of Airport Engineering  
Consultant Services*

*Agenda Item: New Business*

---

**Recommendation:** On August 15, 2013 the Dodge City Regional Airport received two statements of qualification from engineering firms for the engineering consultant of the Dodge City Regional Airport. Based on the interviews and the statements received it is the review boards and airport staffs recommendation that the commission accept entering into a five year contract agreement with Burns and McDonnell.

**Background:** By FAA regulations, every 5 years the Airport is required to solicit other interested engineering firms. On August 15<sup>th</sup> we received two statements of qualifications from: Burns & McDonnell, Kansas City, MO, and SMH Consultants KS. The statements of qualifications were reviewed and rated by the Airport Advisory Board members, Dan Cammack, Kerry Zimmerman, Mitchell Counce, Jeff Hutton, and staff Delbert Downey, Mike Klein and Corey Keller. The review information is based on recent experience of airport projects, reputation, key personnel's professional background, current work load, knowledge of FAA regulations, capability to furnish qualified inspectors and construction observation inspectors, and quality of previous airport projects.

**Justification:** It is the consensus of the review board and staff's recommendation to enter into a five year contract agreement with Burns & McDonnell of Kansas City, MO. Burns & McDonnell is our current airport consultant and have done an excellent job for the airport over the last five years.

**Financial Considerations:** The Contract is for Terms and Conditions only there is no monetary value

**Attachments:** None