

**Agenda  
For  
Joint City/County Commission Meeting  
Monday, November 10, 2014  
City Commissioners' Chambers  
City Hall  
6:00 PM**

**Meeting # 4980**

**CALL TO ORDER**

**County Commission Roll Call:** Chairman Boys

**City Commission Roll Call:** Mayor Delzeit

**NEW BUSINESS:**

1. Aquatics Park Contractor- Report by Director of Parks and Recreation-Paul Lewis
2. United Wireless Arena and Conference Center Manager/Operator-Report by Director of Parks and Recreation-Paul Lewis

**Upcoming Meetings:**

1. December 8, 2014-Joint Commission Meeting-Rose Room, Ford County Government Center

**Adjournment**



# Parks and Recreation

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

## Memorandum

To: Joint City/County Commissions  
Cherise Tieben, City Manager  
Ed Elam, County Administrator

From: Paul Lewis, Parks & Recreation Director

Date: November 7, 2014

Subject: Aquatic Facility Contractor

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

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**RECOMMENDATION:** Staff recommends awarding the contract for Construction Manager at Risk for the Regional Aquatics Facility to McCown-Gordon and authorizing staff to execute a contract with the firm subject to review by legal counsel.

**BACKGROUND:** Recently staff published a Request for Qualifications to provide construction manager at risk services for the development of the new Regional Aquatics Facility. From that RFQ, five firms submitted proposals to provide those services. A staff committee consisting of myself, the Director of Engineering, the City Engineer and the Director of Developmental Services along with our Dave Schwartz, the consulting engineer reviewed the submittals. From that review, three firms were selected to interview.

The three firms selected were Prosser-Wilbert based in Lenexa, McCown-Gordon from their Manhattan offices and Crossland Construction from Columbus Kansas. All three firms have prior aquatics projects in their portfolios similar to our facility.

Interviews were held on Friday, Oct. 31<sup>st</sup> with all three firms. Based on the interviews, the committee eliminated Crossland from further consideration. Prosser Wilbert and McCown-Gordon were both determined to be excellent candidates to provide the necessary services and staff continued to negotiate financial terms with both firms.

Follow-up questions were presented to both firms including a request to provide a best and final offer for their proposed fees and charges. Attached with this memo is a copy of both firms' responses to those questions.

**JUSTIFICATION:** Both McCown-Gordon and Prosser Wilbert are excellent firms and well suited to provide the services necessary to carry out this project. They have the experience and background required and the support structure to insure successful development of the project. McCown-Gordon is the recommended choice because they have proposed a rate structure that will provide those services to the project at the lowest estimated cost.

**FINANCIAL CONSIDERATIONS:** This project is anticipated to have a 15 month construction schedule. The project budget for the aquatic center is \$10,000,000 from Why Not Dodge funds plus the scope also includes another \$1,360,000 for earth work and roadway improvements related to the Heritage District STAR bond project. Based on those parameters, the proposed fee provided by McCown-Gordon is \$1,025,400. That amount will vary up or down depending on bids received on construction packages required for the project, the length of the construction schedule and the potential inclusion of add alternates for the wave pool and/or 50 meter extension.

The Aquatic Center component of this contract will be paid from Why Not Dodge funds. Funds are available to meet these expenses and the fund will be reimbursed from bond funds when that process completes early in 2015. The Heritage District portion of this contract will be paid out of the City's Development Fund account and can also be reimbursed once those bond funds are available.

**PURPOSE/MISSION:** This project is consistent with the City's core purpose of Ongoing Improvement as it develops additional facilities that spur tourism, enhance our local economy and provides an enhanced quality of life for our citizens.

**LEGAL CONSIDERATIONS:** Both the City and County Commissions must approve a contract with McCown-Gordon. The proposed agreement will be a standard form AIA contract modified and amended by legal counsel.

**ATTACHMENTS:**

RFQ Fee Responses



November 6, 2014

Paul Lewis  
City of Dodge City  
City Hall, PO Box 880  
Dodge City, KS 67801-0880

**RE: Dodge City Regional Aquatic Facility**

Dear Mr. Lewis,

I'd like to take this opportunity to again thank you and the entire team for allow McCownGordon the opportunity to present our qualifications for this project. We feel that your project is a great fit for our firm and that, if chosen, our firm would be an excellent partner for the City.

Below are our responses to the questions that you submitted.

1. *As this project prepares to kick off, what is your firm's obligation to other projects, both currently under contract and in the future, and what is your company's capacity to dedicate the necessary resources to our project?*

MGC Response:

Our firm is very comfortable that we have the resources available to dedicate to your project. As we discussed at our interview we are confident in our staffing approach and availability. We have a tremendous amount of capacity and resources throughout our company and are committed and confident that our firm will provide the resources required to successfully complete this project.

We currently have 2 projects planned to be under construction from our Kansas office during the time that your project is being constructed and we have no concerns about allocating the required resources.

2. *Both firms provided proposals for fees and charges for this project. We are providing you an opportunity to revise your initial proposal and make a best and final offer. We would like to have that final offer by tomorrow, Thursday Nov. 6<sup>th</sup> at 5pm. If your initial offer is your best, we will consider that as your response to this question.*

MGC Response:

We are pleased to provide the following 'best and final' offer for our fee proposal:

|                               |   |
|-------------------------------|---|
| Proposed Preconstruction Fee; | \$38,000 total for the (4) month duration |
| Proposed General Conditions;  | Approximately \$42,000/month              |
| Proposed Per Diem Expenses;   | Approximately \$3,000/month               |
| Proposed Fee for Profit;      | 2.75%                                     |

After our interview last week and after gaining a better understanding of the project we feel comfortable that our General Conditions could be at the lower end of the range that we provided, in addition we are reducing our fee for profit.

We sincerely hope that our revised fee structure is one that the City feels is competitive and that will allow our team to provide the level of services required to deliver a great project. We are open to discussing these fees further if required.



We would welcome the opportunity to further discuss any questions regarding this letter or our proposal response to be certain that your team has the information needed to make the best decision.

Sincerely,  
McCownGordon Construction, LLC



Todd Knight  
Regional Manager



November 6, 2014

Paul Lewis, Parks & Recreation Director  
City of Dodge City, Kansas  
PO Box 880  
Dodge City, KS 67801

Subject: Construction Manager @ Risk  
Why Not Dodge Regional Aquatic Facility  
Response for Additional Information

Dear Mr. Lewis,

Per your request, listed below are your additional questions along with our response. Please let me know if you would like any further information.

1. *As this project prepares to kick off, what is your firm's obligation to other projects, both currently under contract and in the future, and what is your company's capacity to dedicate the necessary resources to our project?*

Response:

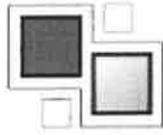
Our company currently has \$31 million dollars under construction at various stages of completion. Our company has more than sufficient capacity to complete this project that will commence immediately. This project, based on the preliminary dates given will fit in very well with our current workload.

We have a team including estimating staff, project management and pre-construction that will be available to the project immediately. We are prepared to provide the full services that we detailed in our preconstruction scope as defined in our previous letter. We have the necessary bonding and insurance capacity and have the financial resources to complete this project. This project is very important to us and we are looking forward to being a part of your team.

Our Dedicated Project Teams is as follows:

**Harold Cooper** will be our full time on site project superintendent. Harold is an accomplished Senior Project Superintendent with over 30 years' experience on complex projects valued at over \$400 million dollars. Harold will be responsible for overall field coordination, schedule updates, quality control, safety and labor relations during construction. His project experience includes a wide variety of public and private projects including waste water treatment plants, department of transportation bridges and spillways, tunnel construction, public schools, theatres, offices, and hotels. Many of these projects were completed utilizing the Construction Management At-Risk approach. Harold has completed the U.S. Army Corps of Engineer's Construction Quality Management for Contractors training. Harold is currently on a project that will be completing at the end of the year and will be available for this project on January 1, 2015. From January to the commencement of construction we will utilize him in constructability reviews and scope of work coordination.

**Rick Ryan** is an accomplished Project Superintendent with over 30 years' experience on complex projects valued at over \$300 million dollars. Rick recently completed a cast-in-place award winning aquatic complex for the City of Mission, KS. Rick will assist Harold with the aquatic aspect of this project including coordination on-site between all underground piping and utilities. Rick is proficient and exceptional at site layout. He has expertise in the operation of Total Station



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survey equipment. Rick is currently on a project that will be completing in December of this year and will be available to focus on the aquatic portion of the project.

**Mark Clayton** will be the Project Manager for this project. Mark has extensive aquatic experience. He was the project manager on the Iola Community Pool, Lyons Municipal Pool, Colby Aquatic Center, Beloit Chautauqua Aquatic Center, Norton Aquatic Center and Mission Family Aquatic Center. Mark is currently working on two projects that will end in early spring 2015. He will be dedicated to this project thereafter.

**Alex Brunetti** will head up the Estimating efforts for this project. Alex has experience on a wide variety of projects as PWCI's lead estimator. Alex will perform quantity takeoffs, budget estimates, subcontractor solicitation and bid packages throughout the preconstruction and procurement phase. Alex is available immediately and can dedicate the necessary time for this project.

**Andy Prosser** will head up the Preconstruction for this project. As founding principal of PWCI, Andy has over 30 years' experience as an accomplished construction management professional. His responsibilities include working with the owner and design team on design reviews, oversee cost estimating, value analysis, design alternatives, constructability reviews, projects schedules, budget validation and bidding. Andy can dedicate as much time as required to manage the preconstruction process.

2. Both firms provided proposals for fees and charges for this project. We are providing you an opportunity to revise your initial proposal and make a best and final offer. We would like to have that final offer by tomorrow, Thursday Nov. 6<sup>th</sup> at 5pm. If your initial offer is your best, we will consider that as your response to this question.

Response: Per your request, we have reviewed our initial proposal for reimbursable costs/general conditions and overhead and profit.

We propose the preconstruction services amount to be revised to \$30,000.

We propose the reimbursable costs/general conditions to be revised to 5.95%.

We propose the overhead and profit to be revised to 3.25%.

Prosser Wilbert advocates transparency and an open book policy. Accounting of all subcontracts and trades will be available for audit by the Owner at any time.

If you have any questions or require additional information about any of the aforementioned items, please do not hesitate to contact me. We look forward to working with you, the county and the Water's Edge on the *Why Not Dodge Regional Aquatic Facility*.

Sincerely,

**PROSSER WILBERT CONSTRUCTION, INC.**

*Andy Prosser*

Andy Prosser  
President

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13730 W.108<sup>th</sup> Street, Lenexa, KS 66215

Tel: 913-906-0104 • Fax: 913-906-9575

[www.prosserwilbert.com](http://www.prosserwilbert.com)

# Memo

**To:** City and County Commissioners  
**From:** Cherise Tieben, City Manager  
**Date:** November 7, 2014  
**Re:** VenuWorks LLC Management Agreement

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**RECOMMENDATION:** Staff recommends the approval of the management agreement with VenuWorks, LLC pending review by legal counsel.

**BACKGROUND:** Once the Review Committee agreed upon their recommendation, staff began working to clarify contractual issues with VenuWorks, LLC. The Community Facilities Advisory Board concurred with the recommendation of the Review Committee.

The general terms of the agreement have been amended as follows:

- Article 2 - New term is for 5 years, the previous agreement was for 3 years.  
Contract may be extended for another 5 years upon mutual agreement, it was 3 years.
- Article 3.3.1 – We suggested that they engage a third party marketing firm for even better promotion of the centers.
- Article 3.3.3 – Clarified the expectation of June 30<sup>th</sup> for submission of their proposed budget.
- Article 3.6 – Simply moved the expectation to receive the rent schedule from the budget to the information being submitted with the Business Plan.
- Article 4.1 – Again clarified the expectation of June 30<sup>th</sup> for the submission of their proposed budget.
- Article 4.5 – Allowed one hundred eighty (180) days for the annual audit to occur. It was previously one hundred twenty (120) days and was a significant cost factor with that short of a turnaround time frame.
- Article 5.1 – The base management fee was adjusted to \$5000 from \$11000 per month for the initial one year term of the agreement. The base management fee will increase each year by 1.5%. We established an annual evaluation process with criteria in Exhibit E and created a scoring system that allows them to increase their base management fee again annually if they receive a 75% or better score on their overall average score on their evaluations.
  - The operating account receives a 40% of convenience fees paid by patrons through Ticketmaster.
  - If phone sales occur through VenuWorks the operating account will receive 100% of convenience charges.
- Article 5.2.1 – VenuWorks variable fee for gross food and beverage sales in the Centers will increase from a flat 6%:
  - 5% of first \$550,000.
  - 6.5% of \$550,0001 - \$750,000

8% of \$750,001 - \$1,000,000

9% of \$1,000,001 and up.

Article 5.2.2 – VenuWorks variable fee for contractually obligated incomes (advertising, sponsorship, pouring rights, etc.) will decrease from 10% to 8%.

Article 5.4 – Venuworks maximum variable fees cannot exceed the maximum base fee for any one given year, this is an IRS regulation.

Article 5.5 – This change requires that VenuWorks contribute up to \$5,000 annually to the Entertainment Fund if the fund needs to be replenished. The fund was originally established with \$225,000 from WND (90%) and \$25,000 from VenuWorks (10%). Currently we have agreed to keep the fund at \$250,000 annually. Example 1 – if we lose \$100,000 they would contribute \$5000 back to the fund. Example 2 – if we lose \$40,000 and need to replenish the fund, VenuWorks would contribute \$4,000.

Article 5.6 – The Budget Beater Incentive is an incentive for VenuWorks to increase revenues over the budgeted projections, while controlling expenses. The variable incentive would be 10% of the revenues in excess of budget.

Article 5.7 – VenuWorks is guaranteeing that a sponsor for the conference center will be found or they will pay the net sponsorship until one is secured.

Article 7.7 – This change amends the termination from 120 days to 90 days without cause.

Article 7.11.4 – VenuWorks will hire a general manager that is mutually agreed upon and will attempt to secure an employment agreement that is not less than 5 years.

Article 7.11.5 – No VenuWorks employee will be required to sign a non-compete, which may prevent us from retaining the employee in the event of termination of the agreement.

Exhibit E – Created a committee and a format for an annual evaluation of VenuWorks performance at the Centers. This shall be used as the basis for the increases noted in Article 5.1 to the base management fee.

**JUSTIFICATION:** We believe the contract ties down some of our previous concerns, provides us with a method to clearly incentivize a strong performance and gives us the ability to make a relatively quick exit if we determine that VenuWorks has not made the improvements that have been proposed.

**FINANCIAL CONSIDERATIONS:** VenuWorks will receive a base annual fee of \$60,000 and may receive up to \$60,000 in variable fees annually. The previous contract contained a base fee of \$132,000 and were eligible for additional variable fees which would be capped at the total annual base fee.

**LEGAL CONSIDERATIONS:** The proposed agreement should be approved contingent upon review by legal counsel and by bond counsel, as the operating agreement must remain in compliance with IRS Revenue Procedure 97-13.

# **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 1

### 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, 2015, and continue through December 31, 2019 ("Initial Term"). Unless terminated earlier as set forth herein, the Agreement may be extended for an additional sixty (60) months ("Renewal Term") by mutual agreement of the Parties no later than June 30, 2019.

## 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** and may with **OWNER'S** written approval subcontract or otherwise

engage third parties to assist, consult or provide marketing assistance for promotion of the Centers.

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 by June 30 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 VenuWorks.

**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. The proposed Business Plan shall include a proposed rent structure for events proposed to take place in the Centers for the ensuing year.

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 or before June 30<sup>th</sup> 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.

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 eighty (180) 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 Five Thousand Dollars (\$5,000) per month which shall be fixed for the initial year of the agreement. Beyond the initial one year, the Base Management Fee of Five Thousand Dollars (\$5,000) per month will be increased by 1.5% each subsequent year beginning January 1, 2016.

5.1.2 Performance Based Adjustments to Base Fee. **OWNER** shall conduct an annual evaluation of **VENUWORKS** as measured against eleven areas of performance, the process for which is described in Exhibit E. An average score of 75% or above will result in the Base Fee being increased the following fiscal year by one and one half percent (1.5%)

**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 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 40 percent of convenience fees paid by

patrons, as defined in the Licensed User Agreement with TM attached hereto as Exhibit C. In the event phone sales are conducted by **VENUWORKS**, **OWNER** shall be entitled to retain 100% of convenience charges.

- 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 the following gross food and beverage sales in the Centers: 5% of first \$550,000; 6.5% of \$550,001 - \$750,000; 8% of \$750,001 - \$1,000,000; and 9% of \$1,000,001 and all sales exceeding that amount. 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 eight percent (8%) of gross sales from contracts for 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 the base management fee of the same calendar year.

5.5 **VENUWORKS** Contribution Entertainment Fund. Beginning January 1, 2016, and continuing on the first day of subsequent fiscal years through 2018, **VENUWORKS** shall contribute to the replenishment of the Event Fund, as described in Exhibit D hereto attached. The **VENUWORKS** annual contribution shall be limited to ten percent (10%) of the difference between \$250,000 and the actual balance of the fund, or \$5000, whichever is less. **VENUWORKS** will make the replenishment payment no later than January 31 of the year for which the fund will exist.

5.6 Budget Beater Incentive. VenuWorks shall receive an annual incentive fee, equal to 10% of the amount by which actual Operating Revenues exceed Budgeted Operating Revenues, as reflected in the approved budget for the fiscal year. The incentive fee potential will be calculated at the end of each fiscal year during the term and any renewals of the Agreement. Payment shall be made within thirty days of VenuWorks delivering a true and accurate financial statement for the fiscal year.

5.7 Conference Center Sponsorship. VenuWorks guarantees that there will be a naming sponsor for the Conference Center effective no later than April 1, 2015, at the historic rate for the naming sponsorship and the suite held by the previous naming sponsor. In the event that there is not a successor naming sponsor commitment by April 1, 2015, VenuWorks will assume the responsibility of paying the monthly net sponsorship fee until a new naming sponsor is under contract. VenuWorks reserves the right to hold the naming sponsorship for the term of the management contract, and make the name of the

conference center The VenuWorks Conference Center.

## 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. In addition to the above, **OWNER** may terminate this Agreement at any time during the Initial Term or Renewal Term, without cause, with 90 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**.

7.11.4 VenuWorks shall retain a mutually agreed upon general manager.

7.11.5 No VenuWorks employee will be required to sign a non-compete employment agreement which would prevent or restrict the **OWNER** from retaining the services of said employee in the event of a termination or the expiration of this Agreement.

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 N. Second Avenue  
Dodge City, KS 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. 620-2274670  
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<br>Fee Schedule |
| Exhibit C: | Ticketmaster Licensed<br>User Agreement |
| Exhibit D: | Entertainment Fund<br>Policy            |
| Exhibit E: | Evaluation Process                      |

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

\_\_\_\_\_  
Brian Delzeit, Mayor

\_\_\_\_\_  
Chris Boys, Chairman

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

\_\_\_\_\_  
Shawn Tasset, Commissioner

ATTEST:

ATTEST

\_\_\_\_\_  
Nannette 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

Exhibit B

No Fulfillment Variable Fee

Exhibit C

Ticketmaster Licensed User Agreement

Exhibit D

Entertainment Fund Policy

Exhibit E

Evaluation Process

## 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

| <u>Company/Individual</u>              | <u>Date Signed</u> | <u>Term</u>             |
|--|--------------------|-------------------------|
| Centera Bank                           | 10/27/2010         | 10/29/2010 – 02/29/2016 |
| Coldwell Banker Hancocks of Dodge City | 11/11/2010         | 10/29/2010 – 02/29/2016 |
| Magouirk Chevrolet-Cadillac            | 08/18/2010         | 02/01/2011 - 01/31/2018 |
| MJE                                    | 10/26/2010         | 10/29/2010 – 02/29/2016 |
| United Wireless                        | 10/28/2010         | 10/22/2010 – 12/31/2020 |
| United Wireless                        | 11/04/2010         | 10/22/2010 -12/31/2020  |
| Western Beverage                       | 08/06/2010         | 02/01/2011 – 01/31/2016 |
| Henrichs, Kelly and Ronnetta           | 10/05/2010         | 03/01/2011 – 02/29/2016 |
| Winter Livestock                       | 10/04/2010         | 03/01/2011 – 02/29/2016 |
| Coast Health Services                  | 10/29/2010         | 03/01/2011 - 02/29/2016 |
| Dole, Gene                             | 10/22/2010         | 03/01/2011 – 02/29/2016 |
| MJE, LLC                               | 10/26/2010         | 03/01/2011 – 02/29/2016 |
| Smoll & Banning                        | 11/17/2010         | 03/01/2011 – 02/28/2016 |

## Exhibit E

### Evaluation Process

Six (6) designated individuals composed of a County Commissioner, City Commissioner, County Manager, City Manager, Arena Sponsor designee and Conference Center Sponsor designee would be invited to rate VenuWorks performance against eleven service areas:

- Cleanliness
- Event Execution
- Customer Service
- Food and beverage service
- Maintenance
- Reports and communications
- Sales and marketing
- Box Office
- Work with CVB
- Compliance (Legal and Audit)
- Operating Efficiency

Under this plan, each official would complete a score card at the end of the fiscal year. Scoring would be as follows:

- 1 Consistently fails to meet expectations
- 2 Consistently meets expectations
- 3 Consistently exceeds expectations

The score cards would be totaled and averaged, and the average score would determine the grade. Example: Average score would compute as follows:  $27/33=82\%$ . The percentage rating from each of the 6 evaluators would then be averaged for a total scoring average.

The total scoring average will result in a 1.5% base management fee increase if the score is 75% or more.