

AGENDA

JOINT CITY/COUNTY COMMISSION MEETING

Learning Center, 308 W. Frontview

Monday, June 17, 2019

Following Joint City/County/USD #443/DCCC Meeting that begins at 5:30
Meeting # 5127

CALL TO ORDER

ROLL CALL

1. Approval of VenuWorks Management Agreement.

ADJOURNMENT

Memorandum

*To: City Commissioners and City Manager
County Commissioners and
County Administrator*

From: Assistant City Manager

Date: June 17, 2019

*Subject: VenuWorks LLC Mgmt. Agreement
Agenda Item: New Business*

Recommendation: Staff recommends the approval of the management agreement with VenuWorks, LLC.

Background: The Review Committee consisting of the City Manager, County Administrator, City Finance Director, Assistant City Finance Director and Assistant City Manager agreed upon recommendations and worked with leadership from VenuWorks, LLC to clarify contractual issues.

The general terms of the agreement were amended as follows:

- Pg. 1 Magouirk Conference Center updated to Boot Hill Casino and Resort Conference Center.
- Article 3.2.1-The Owner Right to Renegotiate was added in the event that the incumbent Executive Director resigns and requires that no fewer than three candidates be presented to the owner for consideration.
- 3.3.3-The Operations Plan was removed since VenuWorks prepares an annual business plan but not an operations plan.
- 3.3.5-The Center's Maintenance was updated to include language about including an annual budget for capital improvements and repairs as part of the fiscal year planning process. It also requires that VenuWorks notify the owner in writing immediately if any unanticipated repairs arise. In addition, if repairs are the result of VenuWorks's sole negligence, the expenses of these repairs will also be the responsibility of Venuworks.
- 5.2.2-The Contractually Obligated Incomes (COIs) Variable Fee, language was added to reflect that since the original naming rights were negotiated by Global Entertainment, not VenuWorks. VenuWorks will not collect a Variable fee on the revenues from the United Wireless naming rights until January 1, 2021 because the original naming rights contract runs through December 31, 2020.

- 5.5-TheVenuWorks Contribution Entertainment Fund was updated to reflect that VenuWorks annual contribution will be limited to ten percent of the difference between \$250,000 and the actual balance of the fund. It was previously \$25,000 annually.
- 5.6-The Budget Beater Incentive was removed because since the inception of the agreement it was never utilized.
- 6.4-Ownership meetings with the owner will now occur on a semi-annual basis to monitor performance and discuss operations. Previously, the agreement required monthly meetings.

Justification: The agreement addresses any previous concerns and begins January 1, 2020 and continues through December 31, 2024 and may be extended for an additional 60 months by mutual agreement of both parties no later than June 30, 2024.

Financial Considerations: VenuWorks will be paid a base management fee of \$5,307 per month beginning January 1, 2020. This base fee will be increased 1.5% each subsequent year beginning January 1, 2021.

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

Legal Considerations: City and County Legal Counsel have both reviewed the agreement and their recommendations have been incorporated.

Attachments: VenuWorks Management Agreement

**VenuWorks
Management Agreement
June 17, 2019**

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 Boot Hill Casino and Resort 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, 2020 and continue through December 31, 2024 ("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, 2024.

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.

3.2.1 Owner Right to Renegotiate. **OWNER** shall have the right to request a renegotiation of the Agreement during the Initial Term or the Renewal Period, in the event the incumbent Executive Director resigns, is reassigned or otherwise vacates the position, and **VENUWORKS** is unable to put forward a qualified candidate acceptable to **OWNER** within ninety (90) days after the effective date of the previous executive director's resignation. **OWNER** shall approve the selection of a candidate before the candidate is hired by **VENUWORKS** for the executive director position. **OWNER** may, at any time during the Initial Term or the Renewal Period request that **VENUWORKS** replace the incumbent executive director. If requested to replace the executive director, **VENUWORKS** shall bring no fewer than three candidates to **OWNER** for consideration

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 the duties and responsibilities under this Agreement. **VENUWORKS** shall provide **OWNER** with copies of all subcontracts under this Agreement upon request. All subcontracts entered 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 Reserved

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. **VENUWORKS** will provide **OWNER** an annual budget for capital improvements and repairs as part of the

fiscal year planning process. **VENUWORKS** will notify the **OWNER** in writing immediately should the need for unanticipated repairs arise. **VENUWORKS** shall constantly monitor, maintain and provide appropriate notice to **OWNERS** of conditions requiring repair of the Centers' facilities and equipment. In the event repairs to Center's equipment or facilities become necessary as the result of **VENUWORKS** sole negligence, the expense of said repairs will be borne by **VENUWORKS**. And **VENUWORKS** shall pay for said repairs or reimburse the **OWNER** for said expenses.

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 fifteen 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 three 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, **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 fifteen 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
- (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 August 1st 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. The Base Fee paid to **VENUWORKS** in 2019 is \$5307 per month. Beginning January 1, 2020 **VENUWORKS** will be paid a Base Management Fee of Five Thousand Three Hundred Eighty-Seven Dollars (\$5387). The Base Management Fee will be increased by 1.5% each subsequent year beginning January 1, 2021.

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 (40%) of convenience fees paid by patrons, as defined in the Licensed User Agreement with TM attached hereto as Exhibit B.

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 Management Fee will consist of the following components:

5.2.1 Food and Beverage Variable Fee. **VENUWORKS** will be paid a monthly variable management 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. Given that the original naming rights contract with United Wireless was negotiated by Global Entertainment, not **VENUWORKS**, and that it runs through December 31, 2020, **VENUWORKS** shall not collect a Variable Management Fee on the revenues from the United Wireless naming rights contract during the original term of the contract. **VENUWORKS** shall begin to collect a Variable Management Fee on the United Wireless naming rights contract beginning January 1, 2021.

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. **VENUWORKS** shall, upon receipt of an invoice from **OWNER**, contribute each fiscal year to the replenishment of the Event Fund, as described in Exhibit C 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.

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 Ownership 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 semi-annually 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.

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 anytime during the Initial Term or Renewal Term, without cause, with ninety (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 employer's 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 and \$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 *I* \$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 *I* 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: | Reserved- No Content |
| 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

Brian Delzeit, Mayor

Shawn Tasset, Chairman

Chris Boys, Commissioner

Kenneth Snook, Commissioner

ATTEST:

ATTEST

Nannette Pogue, City Clerk

Debbie Cox, County Clerk

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

By: Steven L. Peters
Its: Member

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

Reserved – No Content

Exhibit C

Ticketmaster Licensed User Agreement

Exhibit D

Entertainment Fund Policy

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 Content

Exhibit C

Ticketmaster Licensed User

Agreement

ticketmaster

AMENDMENT TO LICENSED USER AGREEMENT

THIS AMENDMENT TO LICENSED USER AGREEMENT ("Amendment") is entered into as of November 1, 2014 and is made effective as of January 1, 2015 (the "Amendment Effective Date"), by and between Ticketmaster L.L.C., a Virginia limited liability company ("Ticketmaster") and VenuWorks of Dodge City, LLC, an Iowa limited liability company ("Compass Affiliate"), with reference to the following facts:

A. Ticketmaster and Compass Affiliate entered into that certain Licensed User Agreement, dated as of December 17, 2010 (as may have been amended prior to the date hereof, the "LUA"), with respect to the use of the TM System at the Facilities set forth therein.

B. Ticketmaster and Compass Affiliate hereby desire to amend the LUA solely in certain respects as set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, the parties hereby agree, effective as of the date set forth above, as follows:

1. **Defined Term(s)**. All capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the LUA.

2. **Extension of Term**. The term of the LUA, as modified by this Amendment, is hereby extended for a period of five (5) years, commencing on July 1, 2015 and continuing through June 30, 2020 (such five (5) year period, the "Extended Term"). Accordingly, the Term expiration date of June 30, 2015 is hereby deleted from the LUA and is hereby replaced with the date of June 30, 2020, in each such instance. The six (6) month period commencing as of the Effective Date of this Amendment and continuing through June 30, 2015 shall be referred to herein as the "Initial Term", and each twelve (12) month period commencing on July 1 and continuing through the following June 30 during the Extended Term thereafter shall be a "Contract Year" as such term is used herein. The Initial Term, together with the Extended Term, shall be collectively the "Term".

3. **Compensation**. Sections 3(a), 3(b), 3(c) and 3(d) of the LUA shall be deleted in their entirety and replaced with the following:

"(a) **Inside Charges**: Ticketmaster shall be entitled to assess and receive from gross Ticket proceeds collected by it as an agent of Principal an Inside Charge with respect to each Ticket sold through Outlets, Telephone Sales and Internet Sales. The amount of the Inside Charge shall initially be as follows:

| <u>Type of Sale</u> | <u>Inside Charge</u> |
|--|-----------------------------|
| Outlet sales | \$0.00 per Ticket |
| Telephone Sales and Internet Sales | \$0.00 per Ticket |
| Other Tickets (including complimentary Tickets) printed by or on behalf of Principal | \$0.00 per Ticket |

The amount of Inside Charges owed by Principal to Ticketmaster shall be deducted from gross Ticket proceeds in the manner provided in Section 11 hereof.

(b) **Convenience Charge (Per Ticket) and Processing Fee (Per Order):**

(i) **Convenience Charge (Per Ticket):** Ticketmaster shall assess a Convenience Charge against purchasers of Tickets for Tickets to all Attractions sold by Ticketmaster. The amount of the Convenience Charge for each applicable category of Ticket sale shall initially be as follows:

| <u>Type of Ticket/Face Value of Ticket</u> | <u>Convenience Charge - Outlet Sales, Telephone Sales, and Internet Sales*</u> |
|---|---|
| Tickets to Family Attractions (excluding Feld Attractions and excluding Live Nation Attractions) with the following Face Values: | |
| \$9.99 and below | \$4.10 per Ticket |
| \$10.00 to \$19.99 | \$4.85 per Ticket |
| \$20.00 and above | \$5.60 per Ticket |

| | |
|---|-------------------|
| Tickets to Community Events (excluding Feld Attractions and excluding Live Nation Attractions) with the following Face Values: | |
| \$9.99 and below | \$2.00 per Ticket |
| \$10.00 to \$19.99 | \$2.50 per Ticket |
| \$20.00 and above | \$3.00 per Ticket |

| | |
|--|-------------------|
| Tickets to All Other Attractions (excluding Feld Attractions and excluding Live Nation Attractions) with the following Face Values: | |
| \$14.99 and below | \$5.15 per Ticket |
| \$15.00 to \$24.99 | \$6.15 per Ticket |
| \$25.00 to \$49.99 | \$7.15 per Ticket |
| \$50.00 to \$74.99 | \$8.15 per Ticket |
| \$75.00 and above | \$9.15 per Ticket |

*Each of the Convenience Charges set forth in the chart above shall be subject to (i) automatic increase on the first day of the second Contract Year and on the first day of each Contract Year thereafter during the Term in the amount of \$0.25 per Ticket, and (ii) further increase or decrease from time to time at Compass Facility Management, Inc.'s ("CFM") optional discretion, upon CFM's written notice to Ticketmaster requesting any such further increase or decrease.

(ii) **Processing Fee (Per Order):** Ticketmaster shall assess a Processing Fee against purchasers of Tickets in the amount of \$4.50 with respect to each order of Tickets ordered by Internet Sales and Telephone Sales. The Processing Fee for Telephone Sales and Internet Sales set forth above shall be subject to subsequent increase or decrease from time to time at CFM's optional discretion, upon CFM's written notice to Ticketmaster requesting any such further increase or decrease.

(c) **Feld Attractions:** Notwithstanding anything in this Licensed User Agreement to the contrary, the charges and fees set forth in Sections 3(a) and 3(b) above shall not apply with respect to Attractions presented by Feld Entertainment (including, without limitation, Disney on Ice, Circus, and Motor Sports) ("Feld Attractions") at the Facility. The charges and fees with respect to Feld Attractions shall be determined pursuant to a separate national agreement between Ticketmaster and Feld Entertainment.

(d) **Payment Processing Fees:** With respect to Tickets purchased with credit cards, debit cards, gift cards or any other methods of payment, the payment authorization and processing fees ("Payment Processing Fees" or "credit card company charges") shall be passed on to the Ticket purchaser at an amount equal to 2.11% of the Face Value of all Tickets (plus any Convenience Charges, Processing Fees and any other fees whatsoever added to the Face Value) sold via Telephone Sales and Internet Sales, by increasing the applicable Convenience Charge by the amount of such Payment Processing Fees; provided, the Convenience Charge shall be rounded up to the nearest \$0.05. With respect to all purchases at Outlets, Payment Processing Fees shall be passed on to the Ticket purchaser at an amount equal to 2.63% of the Face Value of all Tickets (plus any Convenience Charges and any other fees whatsoever added to the Face Value), by increasing the applicable Convenience Charge by the amount of such Payment Processing Fees; provided, the Convenience Charge shall be rounded up to the nearest \$0.05. The Payment Processing Fees set forth above are subject to automatic increase due to increases in interbank rates imposed on Ticketmaster. Notwithstanding the above, with respect to any Feld Attractions, Principal agrees that Principal shall be obligated to pay for the Payment Processing Fees for Tickets to Feld Attractions, or shall obtain the agreement of Feld Entertainment to adjust the fees payable for such Feld Attractions to include the amount of such Payment Processing Fees; in any such event Ticketmaster shall not be obligated to absorb the Payment Processing Fees with respect to Tickets to any Feld Attractions."

4. **TM Charge Fees.** The first sentence of Section 3(h)(v) of the LUA shall be deleted in its entirety and replaced with the following: "In connection with Principal's credit card sales of Tickets authorized via TM Charge using either Visa or MasterCard, the Processor shall deduct the merchant fees in the amount of 2.11% of transactions processed on a daily basis."

5. **Principal's Royalties.** Section 3(f) of the Licensed User Agreement shall be deleted in its entirety and replaced with the following:

"(f) **Principal's Royalties:** Principal shall be entitled to receive Ticket sales royalties (collectively, "Royalties") from Ticketmaster with respect to each fee set forth below, in each case to the extent received (and not refunded) by Ticketmaster. The amounts of the Royalties are as set forth below:

| Type of Royalty | Type of Sales | Amount of Royalty |
|------------------------|---|--|
| Convenience Charge | Outlets, Telephone Sales and Internet Sales | 40% of the Convenience Charge; provided Principal shall only be entitled to such Royalties for Tickets sold with a Convenience Charge of \$3.75 and above. |
| Processing Fee | Telephone Sales and Internet Sales | 40% of the Processing Fee |

Notwithstanding the above, Principal shall not be entitled to Royalties with respect to portions of each fee set forth above attributable to Payment Processing Fees (i.e., Payment Processing Fees shall be deducted from the applicable fees before the Royalties are calculated), or with respect to any Tickets sold to any Feld Attractions or Live Nation Attractions at the Facility. The Royalties shall be payable weekly, along

with the next settlement after the end of such period conducted under Section 11 below. Principal may use the Royalties in such manner as it determines in its sole discretion."

6. **TicketExchange**. The parties acknowledge and agree that Ticketmaster no longer offers the secondary market ticket resale platform known as "TicketExchange" or "Ticketmaster TicketExchange"; accordingly, the defined terms "TicketExchange" and "Ticketmaster TicketExchange", if applicable, and all terms and conditions relating to such terms (if any) set forth in the LUA are hereby deleted, and shall be null, void and of no further force or effect.

7. **Mail Fee**. Ticketmaster shall be entitled to assess and receive a fee in the amount of \$2.25 per order against purchasers of Tickets using the U.S. mail method of delivery (the "Mail Fee"). The Mail Fee is subject to automatic increase equal to any increases (rounded up to the nearest \$0.05) to the postal rates. Principal may elect to increase the Mail Fee by an additional amount not to exceed \$2.25 per order, and Principal shall retain the entirety of such additional amount for each Mail Fee received (and not refunded) by Ticketmaster, less applicable taxes or credit card fees (calculated at the same rate for credit card transactions as set forth in the Agreement) on such additional amount.

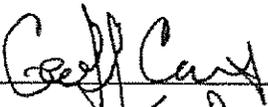
8. **Live Nation Attractions**. Notwithstanding any terms in the LUA to the contrary, in the event that any Attraction is presented by Live Nation ("Live Nation Attraction") at the Facility, the LUA shall be superseded by that certain separate ticketing service agreement between Live Nation and Ticketmaster and shall not apply with respect to such Live Nation Attraction. For the avoidance of doubt, the charges and fees applicable, as well as the settlement of Ticket Receipts and Royalties, in each case with respect to Live Nation Attractions shall be determined pursuant to that certain separate ticketing service agreement between Live Nation and Ticketmaster.

9. **Conflicting Terms**. In the event a conflict arises between this Amendment and the terms and conditions of the LUA the terms and conditions of this Amendment shall control. Except as specifically set forth herein to the contrary, all of the terms and conditions of the LUA are in full force and effect, shall continue in full force and effect throughout the term and are hereby ratified and confirmed by the parties.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the Amendment Effective Date.

TICKETMASTER L.L.C.,
a Virginia limited liability company

VENUWORKS OF DODGE CITY, LLC,
an Iowa limited liability company

By: 
Title: NSA

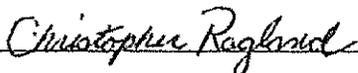
By: 
Title: Exec. Director

Exhibit D

Entertainment Fund Policy

Entertainment Fund Policy

- 1. Purpose:** The purpose of this Policy is to create and establish a funding source to be used to increase event activity at the United Wireless Arena and Magouirk Conference Center through the purchase and/or promoting of touring entertainment events and other activities at the facilities which require “At Risk” funding.
- 2. Event Fund Account:** An Event Fund in the amount of not less than \$250,000 annually shall be established through an initial contribution of \$225,000 from the Why Not Dodge retailers’ sales tax budget and \$25,000 from VenuWorks, Inc.* The Fund will be used to pay artist guarantees and deposits where “at risk” funding is required to secure the performance. First revenue dollars above expenses, if any, will be returned to the Fund to make it whole with any excess revenues being applied to the operational budget. At the beginning of each budget year the Fund will be restored to an amount not less than \$250,000 by contributions from the original contributing parties in proportion to their original contribution.
- 3. Fund Committee:** Expenditures from the Event Fund will be determined by majority vote of a 5 member committee consisting of one member appointed by the City Manager, one member appointed by the County Commission, one member appointed by the General Manager of Boot Hill Resort and Casino, one member appointed by VenuWorks local manager. The chairperson of the CFAB will be the 5th member of the committee.

The Fund Committee will meet as needed to review potential acts/events, select desired events and/or performers, and determine the amount to be placed at risk for each performance.

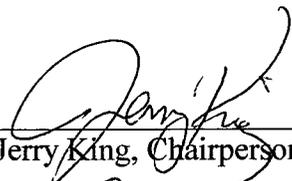
4. VenuWorks Responsibilities: VenuWorks shall be responsible to provide

documentation and support information concerning potential shows and events.

VenuWorks will compile a list of proposed events to be pursued through the course of the year. Any committee member may propose other or alternative events for consideration. Upon the approval of an event by the Committee, VenuWorks will move forward to contract for the event and invest in the show to the extent authorized by the Committee.

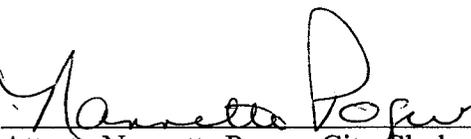
5. Amendment of Policy: This policy and the activities undertaken shall be reviewed each year. This Policy may be amended or terminated at anytime by action of the City and County Commissions. In the event of termination, funds remaining in the Fund Account will be returned to the original contributors in proportion to the amount of their original contribution.

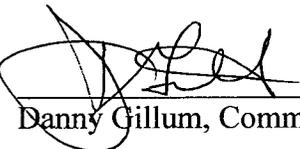
Adopted this 22 day of August, 2013.

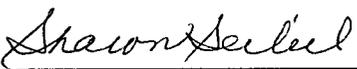

Jerry King, Chairperson


E. Kent Smoll, Mayor


Chris Boys, Commissioner


Attest: Nannette Pogue, City Clerk


Danny Gillum, Commissioner


Attest: Sharon Seibel, City Clerk