

CITY COMMISSION AGENDA

City Hall Commission Chambers

Monday, November 2, 2009

7:00 p.m.

MEETING #4783

CALL TO ORDER

ROLL CALL

INVOCATION: Rev. Kirk Larson, Grace Community Church

PLEDGE OF ALLEGIANCE

PETITIONS & PROCLAMATIONS

National Hospice and Home Care Month

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

Announcement of America Recycle Day Event by Jane Longmeyer

Dodge City CVB Receives TIAK Marketing Awards by Jan Stevens

CONSENT CALENDAR

1. Approval of City Commission Meeting minutes, October 19, 2009
2. Appropriation Ordinance No. 21, November 2, 2009
3. Cereal Malt Beverage License
 - a. Presto Store #27, 2615 E Trail Street
 - b. King Kwik Mart, 510 E Wyatt Earp Blvd
 - c. South Dodge Shamrock, 302 S 2nd Avenue
4. Purchase of Dictation System

ORDINANCES & RESOLUTIONS

Ordinance No 3482: Ordinance authorizing the execution of a loan agreement between the City of Dodge City, Kansas and the State of Kansas, acting by and through the Kansas Department of Health and Environment for the purpose of obtaining a loan from the Kansas Water Pollution Control Revolving Fund for the purpose of financing a

Wastewater Treatment Project; establishing a dedicated source of revenue for repayment of such loan; authorizing and approving certain documents in connection therewith; and authorizing certain other actions in connection with the loan agreement

UNFINISHED BUSINESS

NEW BUSINESS

1. Contract with UCI for Construction of Waste Water Treatment Plant. Report by Joe Finley
2. Adoption of Legislation Policy Southwest Kansas Coalition. Report by Cherise Tieben
3. Approval of Hospitality Interlocal Cooperation Agreement between the City of Dodge City, Kansas and Dodge City Community College

OTHER BUSINESS

EXECUTIVE SESSION

ADJOURNMENT

Office of the *City Manager*
Dodge City, Ford County, Kansas

PROCLAMATION

Whereas, HOSPICE fulfills basic human needs of feeling comfortable in familiar surroundings and of attaining physical and emotional peace during the last stage of life; and

Whereas, Home Care services provide high quality and compassionate health care services to those in need; and

Whereas, HOSPICE care provides humane and comforting support for terminally ill patients and their families, including pain control, palliative medical care, and social, emotional and spiritual services; and

Whereas, HOME CARE services allows families to stay together, and provide for greater comfort in our communities; and

Whereas, dedicated HOSPICE and HOME CARE professionals and volunteers form a support network that continues to play a vital role in health care delivery; and

Whereas, HOSPICE and HOME CARE agencies across the United States have declared the month of November 2009 as National HOSPICE and HOME CARE Month and are calling on all Americans to observe these occasions with appropriate ceremonies and activities.

Now, therefore, be it resolved that I, Rick Sowers, City Mayor, do hereby proclaim November, 2009 as

NATIONAL HOSPICE and HOME CARE MONTH

in the City of Dodge City and encourage the support and participation of all citizens in learning more about HOSPICE and HOME HEALTH Care services available.

In witness whereof, I have hereunto set my hand and caused the Great Seal of the City of Dodge City to be affixed, this 2nd day of November 2009.

CITY COMMISSION MINUTES

City Hall Commission Chambers

October 19, 2009

7:00 p.m.

MEETING #4782

CALL TO ORDER

ROLL CALL: Mayor Rick Sowers, Commissioners Jim Sherer and Monte Broeckelman. Reported absent were Commissioners Kent Smoll and Brian Weber.

INVOCATION: Captain Joaquin Rangel, Salvation Army

PLEDGE OF ALLEGIANCE

PETITIONS & PROCLAMATIONS

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

Stephen Martino, Kansas Racing & Gaming Commission, Executive Director introduced the team that accompanied him, Don Brownlee, Security's Licensing; Patrick Martin, Assistant Attorney General & Chief Counsel; and Charles LaBoy, Audit & Electronic Security. Mr. Martino spoke about the Boot Hill Casino and Resort which will be opening in mid December and the Kansas Racing & Gaming Commission's role in that operation.

Don Winfrey: Would like to know why people who use the weight room cannot use a punch card system like the people using the swimming pool. The Commission will have the staff check into the situation.

CONSENT CALENDAR

1. Approval of City Commission Work Session minutes, October 7, 2009
2. Approval of City Commission Meeting minutes, October 7, 2009
3. Approval of Joint City/County Meeting minutes, October 13, 2009
4. Appropriation Ordinance No. 20, October 19, 2009
5. Cereal Malt Beverage License
 - a. Kate's, 305 E. Trail Street

Commission Sherer moved to approve the Consent Calendar as presented, seconded by Commissioner Broeckelman. Motion carried 3-0.

ORDINANCES & RESOLUTIONS

OTHER BUSINESS

Ken Strobel, City Manager:

- Southwest Kansas Coalition Meeting is on Thursday, October 22nd at the Dodge House at 5:00 p.m. with dinner and the meeting at 6:00 p.m.
- KDOT T-Link Meeting on Thursday, October 22nd at 1:00 p.m.
- Cherise has been working on Rural Housing District and received approval from the Department of Commerce

Christa Roy, Public Information Officer:

- Reported on the Joint City/County Meeting held last week
- October 27th will be the Groundbreaking for the Special Events Center at 2:00 p.m.
- JAG is working on Wyatt Earp and they worked through the weekend
- Pavers Inc. working on 14th

Commissioner Sherer:

- Attended the Open House for Horse Thief on October 17th

At 7:35 p.m. Commissioner Sherer moved to adjourn to an Executive Session to discuss personnel matters of non-elected employees not to exceed 15 minutes, seconded by Commissioner Broeckelman. The motion carried 3-0.

EXECUTIVE SESSION: Discussion of Personnel Matters of Non-Elected Employees

The meeting reconvened at 7:50 p.m.

ADJOURNMENT: Commissioner Broeckelman moved to adjourn the meeting, seconded by Commissioner Sherer. The motion carried 3-0.

Rick Sowers, Mayor

ATTEST:

Nannette Pogue, City Clerk

(Corporate Application Form)

APPLICATION FOR LICENSE TO RETAIL CEREAL MALT BEVERAGES

Dodge City, Ford COUNTY, KANSAS, October 20, 2009
TO THE GOVERNING BODY OF THE CITY OF Dodge City, KANSAS,

or
THE BOARD OF COUNTY COMMISSIONERS OF Ford COUNTY, KANSAS.

GENTLEMEN—On behalf of the Presto Convenience Stores, LLC
corporation whose principal place of business is Andover, KS

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

1. The proposed licensee is Presto #27
corporation with principal place of business at Andover, KS
The resident agent is Doug Wald
with offices at Andover, KS
Said corporation was incorporated on May 1969
A copy of the Articles of Incorporation are presently on file
with the Register of Deeds of this County.
Yes (), No ()

4. The name and address of the owner or owners of the premises
upon which the place of business is located is Presto Convenience Stores, LLC
Andover, KS

2. The following are the full and complete list of officers, directors, stockholders owning in the aggregate more than 25 percent of corporate stock, and managers of said corporation together with their position and address, age, date of birth, place of birth, method of acquiring United States citizenship—if acquired by naturalization, date and place of naturalization, and the length of residence in the State of Kansas.

- Terry Presto - President
14008 Reeder, Overland Park, KS
66221 Age 52 DOB-10/18/57
Garden City, KS Birth-Life
- Doug Wald - V.P.
138 Belle Terre, Wichita, KS
67230 Age 44 DOB-7/13/65
Aberdeen, SD 19 years

5. I hereby certify with regard to each of the persons named in number 2 above the following statements are true:
(a) None of them has within the last two years from this date been convicted of
(1) A felony
(2) A crime involving moral turpitude
(3) Drunkenness
(4) Driving a motor vehicle while under the influence of intoxicating liquor
(5) Violation of any state or federal intoxicating liquor law
If any of the above have been convicted of any of the above specified offenses, the details are set out hereinafter.
(b) No manager, officer or director or any stockholder owing in the aggregate more than 25% of the stock of the corporation has been an officer, manager or director, or a stockholder owning in the aggregate more than 25% of the stock of a corporation which:
(A) has had a retailer's license revoked under K.S.A. 41-2708 and amendments thereto; or
(B) has been convicted of a violation of The Drinking Establishment Act or the Cereal Malt Beverage Laws of the State.

3. The premises for which the license is desired are located at 2615 E. Trail

6. The place of business will be conducted by the following manager or agent:
Name Debbie Smith
Address 403 N. Ash
Residence Cimarron, KS
Length of residence within this city or county in which the application is being made 20 yrs.
Method of obtaining U.S. citizenship together with date of naturalization if such is the method Birth
Date and place of birth 10-9-52 Marshall, AK

(a) The legal description of the premises is NW Quarter sec 32 township 26 S. Range 24 North
(b) The street number is 2615
(c) The building is described as Block
(d) The corporate business under the license will be conducted in the name of the corporation or in the following name: Presto #27

I hereby certify that with regard to this above-named manager the statement contained in number 5 above is in every respect true. If not, the details are set out hereinafter.

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

A license fee of \$ 75.00 is enclosed herewith.

(This form prepared by the Attorney General's Office)
(Individual Application Form)

APPLICATION FOR LICENSE TO RETAIL CEREAL MALT BEVERAGES

Dodge City, Ford COUNTY, KANSAS 67801
TO THE GOVERNING BODY OF THE CITY OF Dodge City, KANSAS
or
THE BOARD OF COUNTY COMMISSIONERS OF Ford COUNTY, KANSAS

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

1. (a) Name of proposed licensee LOCK PHARATHIKOUNE
- (b) Age 55
- (c) Place and date of birth LAOS, 6/3/54
- (d) Residence address 2302 ROBIN ROAD DODGE CITY, KS 67801
- (e) I have been a resident of the State of Kansas FOUR years.

2. The premises for which the license is desired are located at 510 E. WYATTEARP BLVD

- (a) The legal description of said property is KING KWIK MART
- (b) The street number is 510 E. WYATT EARP BLVD.
DODGE CITY, KS 67801
- (c) The building to be used is _____
- (d) The business will be conducted under the following name:
KING KWIK MART

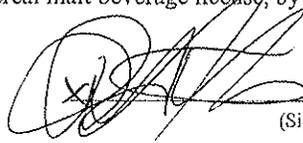
3. The name and address of the owner or owners of the premises upon which the proposed business will be located is LOCK PHARATHIKOUNE
2302 ROBIN ROAD, DODGE CITY, KS 67801

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

- (a) My citizenship arises by birth (), Naturalization ().
- (b) My place of naturalization and the date thereof is as follows:
SAN FRANCISCO, CALIFORNIA
MARCH 05 - 1998

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

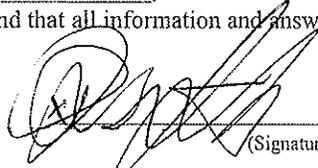
I, LOCK PHARATHIKOWNE, the above-named applicant, hereby agree to comply with all of the laws of the State of Kansas, and all rules and regulations prescribed by you, and hereafter to be prescribed by you, relating to the sale or distribution of cereal malt beverages, and do hereby agree to purchase all cereal malt beverages from a wholesaler licensed and bonded under the laws of the State of Kansas, and do hereby consent to the immediate revocation of my cereal malt beverage license, by the proper officials, for the violation of such laws, rules or regulations.



(Signature of Applicant)

STATE OF KANSAS, COUNTY OF FORD, ss.

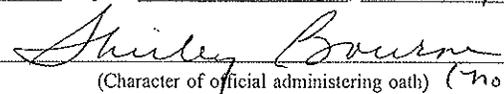
I, LOCK PHARATHIKOWNE, the above-named applicant, do solemnly swear that I have read the contents of this application, and that all information and answers herein contained are complete and true. So help me God.



(Signature of Applicant)

SUBSCRIBED AND SWORN TO before me this 26th day of October, 2009





(Character of official administering oath) (Notary Public)

My commission expires on the 27th day of April, 2013

27th day of April

APPLICATION APPROVED this _____ day of _____,

By _____
(Official position)

of _____, Kansas
(City or county)

Recorded in Volume _____, at page _____

NOTE: A PHOTOCOPY OF THE COMPLETED FORM, TOGETHER WITH THE APPLICATION FEE REQUIRED BY K.S.A. 2001 SUPP. 41-2702(e), MUST BE SUBMITTED TO THE DIVISION OF ALCOHOLIC BEVERAGE CONTROL BUREAU, KANSAS DEPARTMENT OF REVENUE.

Rvd 10/2002

(This form prepared by the Attorney General's Office)
(Individual Application Form)

APPLICATION FOR LICENSE TO RETAIL CEREAL MALT BEVERAGES

Dodge City Ford COUNTY, KANSAS Dodge City Ford Co., Ks.
TO THE GOVERNING BODY OF THE CITY OF Dodge City, KANSAS

or
THE BOARD OF COUNTY COMMISSIONERS OF Ford COUNTY, KANSAS

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

- 1. (a) Name of proposed licensee Tim J Postetter
(b) Age 48
(c) Place and date of birth Newton KS 10.22.1961
(d) Residence address 2504 Webster
(e) I have been a resident of the State of Kansas 29 Fe years.

2. The premises for which the license is desired are located at South Dodge Shamrock

- (a) The legal description of said property is Crawford Addition
(b) The street number is 302 S 2nd Ave
(c) The building to be used is Concrete Block
(d) The business will be conducted under the following name: South Dodge Shamrock AKA South Dodge 66

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

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

- (a) My citizenship arises by birth (X), Naturalization ().
(b) My place of naturalization and the date thereof is as follows:

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

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

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

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

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

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

a. If the answer above is yes, the name, age, and residence of manager or agent is _____

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

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

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

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

A license fee of \$ 75⁰⁰ is enclosed herewith.

I, Tim J Postetter, the above-named applicant, hereby agree to comply with all of the laws of the State of Kansas, and all rules and regulations prescribed by you, and hereafter to be prescribed by you, relating to the sale or distribution of cereal malt beverages, and do hereby agree to purchase all cereal malt beverages from a wholesaler licensed and bonded under the laws of the State of Kansas, and do hereby consent to the immediate revocation of my cereal malt beverage license, by the proper officials, for the violation of such laws, rules or regulations.

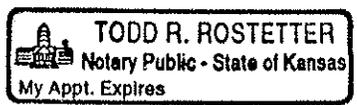
Tim J Postetter
(Signature of Applicant)

STATE OF KANSAS, COUNTY OF Ford, ss.

I, Tim J Postetter, the above-named applicant, do solemnly swear that I have read the contents of this application, and that all information and answers herein contained are complete and true. So help me God.

Tim J Postetter
(Signature of Applicant)

SUBSCRIBED AND SWORN TO before me this 22 day of October, 2009



Todd R. Rostetter
(Character of official administering oath)

My commission expires on the 2ND day of JANUARY, 2012

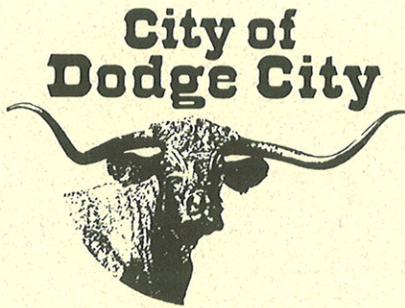
APPLICATION APPROVED this _____ day of _____,

By _____
(Official position)

of _____, Kansas
(City or county)

Recorded in Volume _____, at page _____

NOTE: A PHOTOCOPY OF THE COMPLETED FORM, TOGETHER WITH THE APPLICATION FEE REQUIRED BY K.S.A. 2001 SUPP. 41-2702(e), MUST BE SUBMITTED TO THE DIVISION OF ALCOHOLIC BEVERAGE CONTROL BUREAU, KANSAS DEPARTMENT OF REVENUE.



POLICE DEPARTMENT

110 W. Spruce
Dodge City, Kansas 67801-4423
Phone 620-225-8126
Fax 620-225-8117

October 22, 2009

To: Nannette Pogue

From: John K. Ball

RE: Equipment Purchase

The Dodge City Police Department was awarded a grant from the Department of Justice on September 1, 2009 in the amount of \$24,687. Prior to the grant award, a public hearing was held on June 15, 2009 during a city commission meeting providing information on the Police Department's intent to use the grant funds to purchase a computer voice stress analyzer system and a new dictation system.

The Police Department is now preparing to expend the funds received from the grant award as follows:

- 1.) Computer Voice Stress Analyzer II - \$9,195 for the equipment and training of two operators from the sole source vendor NITV. \$1,500 from the grant will be used for travel costs to the training site.
- 2.) Dictation System – Bids were requested for this system with Dataworks being the only vendor to submit a bid. Ryan Reid has reviewed the system and found it to meet the needs as set out in the bid. The cost of the system and server is \$19,283. The remaining \$13,992 from the grant will be used to purchase the system along with \$5,291 from department seizure funds.

If you have need of further information please let me know.

A handwritten signature in black ink, appearing to read "J. K. Ball". The signature is fluid and cursive, with a large loop at the end.

John K. Ball
Chief of Police

ORDINANCE NO. 3482

AN ORDINANCE AUTHORIZING THE EXECUTION OF A LOAN AGREEMENT BETWEEN THE CITY OF DODGE CITY, KANSAS AND THE STATE OF KANSAS, ACTING BY AND THROUGH THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT FOR THE PURPOSE OF OBTAINING A LOAN FROM THE KANSAS WATER POLLUTION CONTROL REVOLVING FUND FOR THE PURPOSE OF FINANCING A WASTEWATER TREATMENT PROJECT; ESTABLISHING A DEDICATED SOURCE OF REVENUE FOR REPAYMENT OF SUCH LOAN; AUTHORIZING AND APPROVING CERTAIN DOCUMENTS IN CONNECTION THEREWITH; AND AUTHORIZING CERTAIN OTHER ACTIONS IN CONNECTION WITH THE LOAN AGREEMENT.

WHEREAS, the Federal Water Quality Act of 1987 (the "Federal Act") established revolving fund program for public wastewater treatment systems to assist in financing the costs of infrastructure needed to achieve or maintain compliance with the Federal Act and to protect the public health and authorized the Environmental Protection Agency (the "EPA") to administer a revolving loan program operated by the individual states; and

WHEREAS, to fund the state revolving fund program, the EPA will make annual capitalization grants to the states, on the condition that each state provide a state match for such state's revolving fund; and

WHEREAS, by passage of the Kansas Water Pollution Control Revolving Fund Act, K.S.A. 65-3321 through 65-3329, inclusive (the "Loan Act"), the State of Kansas (the "State") has established the Kansas Water Pollution Control Revolving Fund (the "Revolving Fund") for purposes of the Federal Act; and

WHEREAS, under the Loan Act, the Secretary of the Kansas Department of Health and Environment ("KDHE") is given the responsibility for administration and management of the Revolving Fund; and

WHEREAS, the Kansas Development Finance Authority (the "Authority") and KDHE have entered into a Pledge Agreement (the "Pledge Agreement") pursuant to which KDHE agrees to enter into Loan Agreements with Municipalities for public wastewater treatment projects (the "Projects") and to pledge the Loan Repayments (as defined in the Pledge Agreement) received pursuant to such Loan Agreements to the Authority; and

WHEREAS, the Authority is authorized under K.S.A. 74-8905(a) and the Loan Act to issue revenue bonds (the "Bonds") for the purpose of providing funds to implement the State's requirements under the Federal Act and to loan the same, together with available funds from the EPA capitalization grants, to Municipalities within the State for the payment of Project Costs (as said terms are defined in the Loan Act); and

WHEREAS, the City of Dodge City, Kansas (the "Municipality") is a municipality as said term is defined in the Loan Act which operates a wastewater collection, treatment facilities and effluent distribution/irrigation systems (the "System"); and

WHEREAS, the System is a public Wastewater Treatment Works, as said term is defined in the Loan Act; and

WHEREAS, the Municipality has, pursuant to the Loan Act, submitted an Application to KDHE to obtain a loan from the Revolving Fund to finance the costs of improvements to its System consisting of the following:

Four separate construction projects will be completed.

The first consists of a 1.25 MGD hollow fiber membrane bioreactor wastewater treatment plant. The treatment plant will include a lift station; fine drum screen; biological treatment activated sludge basins including anaerobic basins, anoxic basins and aerobic basins; membrane basin which will contain the hollow fiber membrane cassettes for mixed liquor filtration; effluent pumps and a closed chamber medium pressure ultraviolet effluent disinfection facility. Additionally, the treatment plant will include aerobic sludge digestion tanks, a centrifuge to produce dewatered biosolids and a covered biosolids storage bay.

The second project consists of the beneficial re-use wastewater effluent distribution line (12 inch diameter approximately 4 miles long) which will convey the effluent to a golf course and other potential irrigation sites.

The third project consists of sanitary sewer interceptor lines to convey raw sewage to a pump station. These interceptor lines are located south and east of the new treatment plant and will discharge sewage to a pump station to be constructed in the fourth project which will be located approximately 4,600 feet east of the new treatment plant.

The fourth project consists of construction of a submersible pump station and 8 inch diameter force main to convey the raw sewage from the gravity interceptor sewer line to the new wastewater treatment plant (the "Project"); and

WHEREAS, the Municipality has taken all steps necessary and has complied with the provisions of the Loan Act and the provisions of K.A.R. 28-16-110 to 28-16-138 (the "Regulations") applicable thereto necessary to qualify for the loan; and

WHEREAS, KDHE has informed the Municipality that it has been approved for a loan in amount of not to exceed Twenty Nine Million Five Hundred Thirty-Two Thousand Dollars [\$29,532,000] (the "Loan") in order to finance the Project; and

WHEREAS, the governing body of the Municipality hereby finds and determines that it is necessary and desirable to accept the Loan and to enter into a loan agreement and certain other documents relating thereto, and to take certain actions required in order to implement the Loan Agreement.

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

Section 1. Authorization of Loan Agreement. The Municipality is hereby authorized to accept the Loan and to enter into a certain Loan Agreement, with an effective date of September 22, 2009, with the State of Kansas acting by and through the Kansas Department of Health and Environment (the "Loan Agreement") to finance the Project Costs (as defined in the Loan Agreement). The Mayor and Clerk are hereby authorized to execute the Loan Agreement in substantially the form presented to the governing body this date, with such changes or modifications thereto as may be approved by the Mayor and the City Attorney, the Mayor's execution of the Loan Agreement being conclusive evidence of such approval.

Section 2. Establishment of Dedicated Source of Revenue for Repayment of Loan. Pursuant to the Loan Act, the Municipality hereby establishes a dedicated source of revenue for repayment of the Loan. In accordance therewith, the Municipality shall impose and collect such rates, fees and charges for the use and services furnished by or through the System, including all improvements and additions thereto hereafter constructed or acquired by the Municipality as will provide System Revenues or levy ad valorem taxes without limitation as to rate or amount upon all the taxable tangible property, real or personal, within the territorial limits of the Municipality to produce amounts which are sufficient to (a) pay the cost of the operation and maintenance of the System, (b) pay the principal of and interest on the Loan as and when the same become due, and (c) pay all other amounts due at any time under the Loan Agreement; provided, however, no lien or other security interest is granted by the Municipality to KDHE on the System Revenues under this Agreement. In the event that the System Revenues are insufficient to meet the obligations under the Loan and the Loan Agreement, the Municipality shall levy ad valorem taxes without limitation as to rate or amount upon all the taxable tangible property, real or personal, within the territorial limits of the Municipality to produce the amounts necessary for the prompt payment of the obligations under the Loan and Loan Agreement.

In accordance with the Loan Act, the obligations under the Loan and the Loan Agreement shall not be included within any limitation on the bonded indebtedness of the Municipality.

Section 3. Further Authority. The Mayor, Clerk and other City officials are hereby further authorized and directed to execute any and all documents and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of the Ordinance, and to make alterations, changes or additions in the foregoing agreements, statements, instruments and other documents herein approved, authorized and confirmed which they may approve, and the execution or taking of such action shall be conclusive evidence of such necessity or advisability.

Section 4. Governing Law. The Ordinance and the Loan Agreement shall be governed exclusively by and construed in accordance with the applicable laws of the State of Kansas.

Section 5. Effective Date. This Ordinance shall take effect and be in full force from and after its passage by the governing body of the City and publication in the official City newspaper.

PASSED by the governing body of the City on November, 2, 2009 and signed by the Mayor.

(SEAL)

Rick Sowers, Mayor

ATTEST:

Nannette Pogue, Finance Director/City Clerk

[APPROVED AS TO FORM ONLY.]

Ken Strobel, City Attorney

LOAN AGREEMENT

Between

THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT
ACTING ON BEHALF OF
THE STATE OF KANSAS

AND

CITY OF DODGE CITY, KANSAS
KWPCRF PROJECT NO. C20 1792 01

EFFECTIVE AS OF SEPTEMBER 22, 2009

The interest of the Kansas Department of Health and Environment ("KDHE") in the Loan Repayments to be made by the Municipality and certain other revenues (the "Revenues") under this Loan Agreement have been pledged and assigned to the Kansas Development Finance Authority (the "Authority") pursuant to a Pledge Agreement, between KDHE and the Authority. The interest of the Authority in the Revenues has been pledged as security for the payment of the principal of, redemption premium, if any, and interest on the Authority's Kansas Water Pollution Control Revolving Fund Revenue Bonds, pursuant to a Master Bond Resolution adopted by the Authority.

LOAN AGREEMENT

Table of Contents

Recitals	1
ARTICLE I - DEFINITIONS	
Section 1.01 Definitions.....	2
Section 1.02 Rules of Interpretation	5
ARTICLE II - LOAN TERMS	
Section 2.01 Amount of the Loan.....	6
Section 2.02 Interest Rate.....	6
Section 2.03 Disbursement of Loan Proceeds	6
Section 2.04 Schedule of Compliance; Completion of Project	7
Section 2.05 Repayment of the Loan	8
Section 2.06 Additional Payments.....	8
ARTICLE III - REPRESENTATIONS AND COVENANTS OF MUNICIPALITY	
Section 3.01 Representations of the Municipality.....	9
Section 3.02 Particular Covenants of the Municipality.....	10
ARTICLE IV - ASSIGNMENT	
Section 4.01 Assignment and transfer by KDHE.....	14
Section 4.02 Assignment by the Municipality	14
ARTICLE V - EVENTS OF DEFAULT AND REMEDIES	
Section 5.01 Notice of Default.....	15
Section 5.02 Remedies on Default.....	15
Section 5.03 Expenses.....	15
Section 5.04 Application of Moneys	16
Section 5.05 No Remedy Exclusive; Waiver; Notice	16
Section 5.06 Retention of Rights	16
Section 5.07 Financial and Management	16

ARTICLE VI - MISCELLANEOUS

Section 6.01 Notices..... 17
Section 6.02 Binding Effect 18
Section 6.03 Severability 18
Section 6.04 Amendments, Supplements and Modifications 18
Section 6.05 Execution in Counterparts 18
Section 6.06 Governing Law and Regulations..... 18
Section 6.07 Consents and Approvals 18
Section 6.08 Further Assurances 18

Signatures and Seal 19

Exhibit A - Description of the Project 20
Exhibit B - Dedicated Source of Revenues and Loan
Repayment Schedule 21
Exhibit C - Conditions Applicable to Construction of the Project..... 23
Exhibit D - Use of Loan Proceeds..... 28
Exhibit E - Instructions for Requesting Disbursements 29
Exhibit F - Form of Municipality Ordinance 33
Exhibit G- Form of Opinion of Municipality's Counsel 39
Exhibit H - Municipality's Notice Address 42

**KANSAS WATER POLLUTION CONTROL REVOLVING FUND
LOAN AGREEMENT**

THIS LOAN AGREEMENT, effective as of September 22, 2009 by and between the KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT ("KDHE"), acting on behalf of THE STATE OF KANSAS (the "State"), and THE CITY OF DODGE CITY, KANSAS, a "Municipality" according to K.S.A. 65-3321 hereinafter referenced as the "Municipality";

WITNESSETH:

WHEREAS, the Federal Water Quality Act of 1987 (the "Federal Act") established a state revolving fund program as a means to phase-out the Environmental Protection Agency (EPA) construction grants program and replace it with a revolving loan program operated by the individual states; and

WHEREAS, to fund the state revolving fund program, the EPA will make annual capitalization grants to the states, on the condition that each state provide a state match for such state's revolving fund; and

WHEREAS, by passage of the Kansas Water Pollution Control Revolving Fund Act, K.S.A. 65-3321 through 65-3329, inclusive (the "Loan Act"), the State of Kansas (the "State") has established the Kansas Water Pollution Control Revolving Fund (the "Revolving Fund") for purposes of the Federal Act; and

WHEREAS, under the Loan Act, the Secretary (the "Secretary") of the Kansas Department of Health and Environment ("KDHE") is given the responsibility for administration and management of the Revolving Fund; and

WHEREAS, the Secretary, the Kansas Department of Administration, Division of Accounts and Reports ("the DOA"), and the Kansas Development Finance Authority (the "Authority") have entered into an Inter-Agency Agreement effective March 1, 1999, (the "Inter-Agency Agreement"), to define the cooperative relationship between KDHE, DOA, and the Authority, to jointly administer certain provisions of the Loan Act; and

WHEREAS, the Authority and KDHE have supplemented the Inter-Agency Agreement by entering into a Combined Master Pledge Agreement, dated as of November 1, 1992, as the same has been amended and may be further amended and supplemented from time to time, (jointly the "Pledge Agreement"), pursuant to which KDHE agrees to enter into Loan Agreements with Municipalities (as defined in the Loan Act) for Wastewater Treatment Projects (the "Projects") and to pledge the Loan Repayments received pursuant to such Loan Agreements and certain other revenues to the Authority; and

WHEREAS, the Authority is authorized under K.S.A. 74-8905(a) and the Loan Act to issue revenue bonds (the "Bonds") for the purpose of providing funds to implement the State's requirements under the Federal Act and to loan the same, together with available funds from the EPA capitalization grants, to Municipalities within the State for the payment of Project Costs (as said terms are defined in the Loan Act);

WHEREAS, the Municipality has made timely application to KDHE for a Loan to finance all or a portion of the Project Costs; and

WHEREAS, KDHE has approved the Municipality's application for a Loan, subject to the receipt of capitalization grants from the EPA pursuant to the Federal Act and proceeds of the Bonds when issued by the Authority; and

NOW, THEREFORE, for and in consideration of the award of the Loan by KDHE, the Municipality agrees to complete its Project and to perform under this Loan Agreement in accordance with the conditions, covenants and procedures set forth herein and attached hereto as a part hereof, as follows:

ARTICLE I

DEFINITIONS

Section 1.01. Definitions. The following terms as used in this Loan Agreement shall, unless the context clearly requires otherwise, have the following meanings:

"Act" means the Constitution and laws of the State, including particularly the Loan Act and K.S.A. 74-8905(a), as amended and supplemented.

"Additional Payments" means the payments described in **Section 2.06** hereof.

"Additional Revenue Obligations" means any obligation for the payment of money undertaken by the Municipality which is payable from or secured by a pledge of, or lien upon, the System Revenues incurred after the date of execution and delivery of this Loan Agreement, and all Existing Revenue Obligations.

"Authority" means the Kansas Development Finance Authority, a public body politic and corporate and an instrumentality of the State, and its successors and assigns.

"Authorized Municipality Representative" means any person authorized pursuant to a resolution of the governing body of the Municipality to perform any act or execute any document relating to the Loan, or this Loan Agreement.

"Bonds" means the Kansas Development Finance Authority, Water Pollution Control Revolving Loan Fund Revenue Bonds, issued in one or more series, pursuant to Master Bond Resolution No. 37, and supplements thereto.

"Code" means the Internal Revenue Code of 1986, as amended, and the regulations thereunder promulgated by the Department of the Treasury.

"Dedicated Source of Revenue" shall have the meaning ascribed thereto in *Exhibit B* attached hereto.

"EPA" means the Environmental Protection Agency of the United States, its successors and assigns.

"Event of Default" means any occurrence of the following events:

(a) failure by the Municipality to pay, or cause to be paid, any Loan Repayment required to be paid hereunder when due;

(b) failure by the Municipality to observe and perform any duty, covenant, obligation or agreement on its part to be observed or performed under this Loan Agreement, other than as referred to in paragraph (a) of this Section, which failure shall continue for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, is given to the Municipality by KDHE, unless KDHE shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in such notice is correctable but cannot be corrected within the applicable period KDHE may not unreasonably withhold its consent to an extension of such time up to 90 days from the delivery of the written notice referred to above if corrective action is instituted by the Municipality within the applicable period and diligently pursued until the Event of Default is corrected;

(c) failure by the KDHE to observe and perform any duty, covenant, obligation or agreement on its part to be observed or performed under this Agreement which shall continue for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, is given to KDHE by the Municipality, unless the Municipality shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in such notice is correctable but cannot be corrected within the applicable period the Municipality may not unreasonably withhold its consent to an extension of such time up to 90 days from the delivery of the written notice referred to above if corrective action is instituted by KDHE within the applicable period and diligently pursued until the Event of Default is corrected;

(d) any representation made by or on behalf of the Municipality contained in this Loan Agreement, or in any instrument furnished in compliance with or with reference to this Loan Agreement or the Loan, is intentionally false or misleading in any material respect;

(e) any representation made by or on behalf of KDHE contained in this Agreement, or in any instrument furnished in compliance with or with reference to this Agreement, is intentionally false or misleading in any material respect;

(f) a petition is filed by or against the Municipality under any federal or state bankruptcy or insolvency law or other similar law in effect on the date of this Loan Agreement or thereafter enacted, unless in the case of any such petition filed against the Municipality, such petition shall be dismissed within thirty (30) days after such filing and such dismissal shall be final and not subject to appeal;

(g) the Municipality shall generally fail to pay its debts as such debts become due;

(h) failure of KDHE to promptly pay any Project Costs when reasonably requested to do so by the Municipality pursuant to **Section 2.03** hereof.

"Existing Revenue Obligation" means any obligation for the payment of money undertaken by the Municipality, which is payable from or secured, by a pledge of, or lien upon, the System Revenues existing or outstanding at the time of execution and delivery of this Loan Agreement by the Municipality.

"Federal Act" means the Federal Water Quality Act of 1987, as amended.

"GAAP" means generally accepted accounting principles as applicable to municipal utility systems.

"Indebtedness" means any financial obligation of the Municipality evidenced by an instrument executed by the Municipality, including this Loan, Existing Revenue Obligations, Additional Revenue Obligations, general obligation bonds or notes, lease or lease-purchase agreement or similar financial transactions.

"KDHE" means the Kansas Department of Health and Environment or its successors in interest.

"Loan Act" means the Constitution and laws of the State of Kansas, including particularly K.S.A. 65-3321 through 65-3329, inclusive, as amended and supplemented.

"Loan Agreement" means this Loan Agreement, including the Exhibits attached hereto, as it may be supplemented, modified or amended from time to time in accordance with the terms hereof.

"Loan Repayments" means the payments payable by the Municipality pursuant to **Section 2.05** of this Loan Agreement.

"Loan Terms" means the terms of this Loan Agreement provided in **Article II** hereof.

"Municipality" means Dodge City, Kansas, its successors and assigns.

"Project" means the acquisition, construction, improvement, repair, rehabilitation or extension of the System described in **Exhibit A** hereto, which constitutes a project pursuant to the Loan Act for which KDHE is making a Loan to the Municipality pursuant to this Loan Agreement.

"Project Costs" means all costs or expenses which are necessary or incident to the Project and which are directly attributable thereto, including, but not limited to: (a) costs of any Loan reserves; (b) interest on the Loan during the construction of the Project; (c) principal of and interest on any temporary financing obligations issued by the Municipality to pay Project Costs; and (d) financing and administrative costs associated with the Loan Agreement.

"Regulations" means Kansas Administrative Regulations (K.A.R.) 28-16-110 to 28-16-138, and any amendments thereto promulgated by KDHE pursuant to the Loan Act.

"Revolving Fund" means the Kansas Water Pollution Control Revolving Fund established by the Loan Act.

"SEC Rule" means Rule 15c2-12 adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as may be amended from time to time or such other similar rule regarding disclosure of information in securities transactions.

"Secretary" means the Secretary of KDHE

"State" means the State of Kansas, acting, unless otherwise specifically indicated, by and through KDHE, and its successors and assigns.

"System" means the wastewater collection, treatment facilities and effluent distribution/irrigation systems of the Municipality, as the same may be modified or enlarged from time to time, including the Project described in **Exhibit A**, for which the Municipality is making the borrowing under this Loan Agreement, which constitutes or includes a Wastewater Treatment System.

"System Revenues" means all revenues derived by the Municipality from the ownership and operation of the System.

"Wastewater Treatment System" means any Wastewater Treatment Works, as defined in the Federal Act, that is publicly owned, and as further described in the Regulations.

Section 1.02. Rules of Interpretation.

(a) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders.

(b) Unless the context shall otherwise indicate, words importing the singular number shall include the plural and vice versa, and words importing persons shall include firms, associations and corporations, including public bodies, as well as natural persons.

(c) All references in this Loan Agreement to designated "Articles," "Sections" and other subdivisions are, unless otherwise specified, to the designated Articles, Sections and subdivisions of this Loan Agreement as originally executed. The words "herein," "hereof," "hereunder" and other words of similar import refer to this Loan Agreement as a whole and not to any particular Article, Section or other subdivision.

(d) The Table of Contents and the Article and Section headings of this Loan Agreement shall not be treated as a part of this Loan Agreement or as affecting the true meaning of the provisions hereof.

ARTICLE II

LOAN TERMS

Section 2.01. Amount of the Loan. Subject to all of the terms, provisions and conditions of this Loan Agreement, and subject to the availability of State and Federal funds and proceeds of Bonds, KDHE will loan an amount not to exceed Twenty Nine Million Five Hundred Thirty-Two Thousand Dollars [\$29,532,000] to the Municipality to pay all or a portion of Project Costs described in **Exhibit A** hereto. The final actual amount of the Loan may be reduced without revision of any other terms, provisions or conditions of this Loan Agreement, other than the Loan Repayment Schedule (**Exhibit B** hereto), to reflect reductions in the estimated or actual total Project Costs as impacted by opening of bids for construction, change orders, final actual costs, and prepayments. The Municipality shall be responsible for any costs incurred by the Municipality in connection with the Project in addition to the amount of the Loan. Any amendment to **Exhibit B** shall be effected by written amendment to the Loan Agreement executed by all parties.

Section 2.02. Interest Rate. The interest rate on the loan shall be [Gross Loan Rate] 2.83% per annum, which shall be assessed on the unpaid principal balance to be paid as set out in the Loan Repayment Schedule, **Exhibit B** hereto. This interest rate consists of a net loan interest rate, and a service fee, as described in **Exhibit B**. Any subsequent revision to the amount of the Loan or **Exhibit B** hereto shall not change the gross interest rate on the Loan.

Section 2.03. Disbursement of Loan Proceeds.

(a) Subject to the conditions described in this Section, KDHE agrees to disburse the proceeds of the Loan during the progress of the Project for Project Costs. Requests for disbursement may be submitted by the Municipality (in substantially the form attached hereto as **Exhibit E**), not more than once per month, in accordance with the procedures set forth by KDHE. Any request for disbursement must be supported by proper invoices and a certificate of the Authorized Municipality Representative to the effect that all

representations made in this Loan Agreement remain true as of the date of the request and, based upon that information then available to such person, no adverse developments affecting the financial condition of the Municipality or its ability to complete the Project or to repay the Loan have occurred.

The Municipality may request disbursement for the following Project Costs:

(1) any eligible planning/design costs incurred prior to execution of this Loan Agreement;

(2) disbursement for eligible Project Costs if such Project Costs have been incurred and are due and payable to Project contractors (actual payment of such Project Costs by the Municipality is not required as a condition of the payment request); or

(3) interest becoming due on the Loan prior to the initial scheduled payment of principal; and

(4) the principal of and interest on any temporary financing obligations issued by the Municipality to pay Project Costs.

(b) KDHE shall not be under any obligation to disburse any Loan proceeds to the Municipality under this Loan Agreement unless:

(1) there are moneys available in the Revolving Fund to fund the Loan, as determined solely by KDHE;

(2) the Municipality shall certify to KDHE that it has executed a Project contract or contracts and has funds available to pay for that portion of the Project Costs not eligible (pursuant to the Loan Act or the Federal Act) to be funded under this Loan Agreement, if any;

(3) no Event of Default by the Municipality shall have occurred and be continuing; and

(4) the Municipality continues to maintain reasonable progress towards completion of the Project.

Section 2.04. Schedule of Compliance; Completion of Project.

(a) The Municipality agrees to complete the Project in accordance with the Conditions Applicable to Construction of the Project set forth in *Exhibit C* attached hereto.

(b) The completion of the construction of the Project shall be evidenced to KDHE by a certificate signed by the Authorized Municipality Representative stating: (1) that the construction of the Project has been completed in accordance with the plans and specifications therefore; and (2) that all Project Costs have been paid, except Project Costs the payment of which is not yet due or is being retained or contested in good faith by the Municipality. Such certificate shall be given not later than the date established by KDHE, which shall be approximately the date that the Project is capable of being placed into operation by the Municipality. Notwithstanding the foregoing, such certificate shall state that it is given without prejudice to any rights against third parties which exist at the date of such certificate or which may subsequently come into being.

Section 2.05. Repayment of the Loan.

(a) *Loan Repayments.* The Municipality shall pay to KDHE, on or before the due dates, installments of principal and interest on the Loan in accordance with *Exhibit B* attached hereto, until the Loan has been paid in full. Installments of principal and interest on the Loan shall be computed and paid in accordance with the Loan Repayment Schedule on *Exhibit B* as in effect at any time under this Loan Agreement. Notwithstanding any other provision of this Loan Agreement, the first payment of principal and interest due on the Loan shall be made the earlier of two years after receipt by the Municipality of the first disbursement under the Loan or one year after Project completion. The final installment of principal under the Loan shall be fully repaid not later than 20 years after Project completion.

(b) *Prepayment of the Loan.* The Municipality may prepay the outstanding principal of the Loan, in whole, or in part, at any time, without penalty, upon giving 60 days written notice to KDHE of its intent to so prepay; provided, however, a partial prepayment may be made only if the prepayment amount is the greater of 10% of the original principal amount of the Loan or \$50,000. A new *Exhibit B* will be prepared by KDHE following receipt of any acceptable partial prepayment, re-amortizing the remaining principal amount over the remaining term of the Loan.

Section 2.06. Additional Payments. The Municipality shall pay as Additional Payments the following amounts:

(a) Any amounts required to be paid by the Authority to the United States of America as arbitrage rebate, arising due to the Municipality's failure to expend proceeds of the Loan at the times certified to KDHE by the Municipality, that result in arbitrage rebate liability for the Authority, but only to the extent that the funds in the Rebate Fund established by the Master Resolution are insufficient to make such payments; and.

(b) All other payments of whatever nature which the Municipality has agreed to pay or assume hereunder.

ARTICLE III

REPRESENTATIONS AND COVENANTS OF MUNICIPALITY

Section 3.01. Representations of the Municipality. The Municipality makes the following representations:

(a) ***Organization and Authority.***

(1) The Municipality is a municipal corporation duly created and validly existing under and pursuant to the constitution and statutes of the State.

(2) The Municipality has full legal right and authority and all necessary licenses and permits required as of the date hereof to own, operate and maintain its System, to carry on its activities relating thereto, to execute and deliver this Loan Agreement, to undertake and complete the Project, and to carry out and consummate all transactions contemplated by this Loan Agreement.

(3) The Ordinance (adopted substantially in the form attached hereto as ***Exhibit F***) and other proceedings of the Municipality's governing body approving this Loan Agreement and authorizing its execution, issuance and delivery on behalf of the Municipality, and authorizing the Municipality to undertake and complete the Project have been duly and lawfully adopted.

(4) This Loan Agreement has been duly authorized, executed and delivered on behalf of the Municipality, and, constitutes the legal, valid and binding obligation of the Municipality enforceable in accordance with its terms.

(b) ***Full Disclosure.*** To the best knowledge of the Municipality, there is no fact that the Municipality has not disclosed to KDHE in writing on the Municipality's application for the Loan or otherwise that materially adversely affects or that will materially adversely affect the properties, activities, or its System, or the ability of the Municipality to make all Loan Repayments and otherwise observe and perform its duties, covenants, obligations and agreement under this Loan Agreement.

(c) ***Non-Litigation.*** There is no controversy, suit or other proceeding of any kind pending or threatened wherein or whereby any question is raised or may be raised, questioning, disputing or affecting in any way: (1) the legal organization of the Municipality; (2) its boundaries; (3) the right or title of any of its officers to their respective offices; (4) the legality of any official act taken in connection with obtaining the Loan; (5) the constitutionality or validity of the indebtedness represented by the Loan Agreement; (6) any of the proceedings had in relation to the authorization or execution of this Loan Agreement; (7) the collection of revenues of the System; (8) the levy and collection of unlimited *ad valorem* taxes to pay the principal of and interest on the Loan; or (9) the ability of the Municipality to make all Loan Repayments or otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement.

(d) **Compliance with Existing Laws and Agreements.** To the best knowledge of the Municipality, the authorization, execution and delivery of this Loan Agreement by the Municipality, and the performance by the Municipality of its duties, covenants, obligations and agreements thereunder will not result in any breach of any existing law or agreement to which the Municipality is a party.

(e) **No Defaults.** No event has occurred and no condition exists that would constitute an Event of Default. The Municipality is not presently aware of any violation of any agreement, which would materially adversely affect the ability of the Municipality to make all Loan Repayments or otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement.

(f) **Compliance with Law.** The Municipality has, to the best of the Authorized Municipality's Representative's knowledge:

(1) complied with all laws, ordinances, governmental rules and regulations to which it is subject, including, without limitation, any public hearing or public notice requirements or environmental review requirements contained in the Loan Act, the Regulations and the Federal Act, the failure to comply with which would materially adversely affect the ability of the Municipality to conduct its activities, enter into this Loan Agreement or undertake or complete the Project; and

(2) obtained all licenses, permits, franchises or other governmental authorizations presently necessary for the ownership of its property which, if not obtained, would materially adversely affect the ability of the Municipality to complete the Project or operate the Project.

(g) **Use of Loan Proceeds.** The Municipality will apply the proceeds of the Loan as described in **Exhibit D**: (1) to finance or refinance a portion of the Project Cost; and (2) where applicable, to reimburse the Municipality for a portion of the Project Costs, which portion was paid or incurred in anticipation of reimbursement by KDHE and is eligible for such reimbursement pursuant to the Regulations and the Code.

(h) **Project Costs.** The Municipality certifies that the Project Costs, as listed in **Exhibit D**, is a reasonable and accurate estimation and, upon direction of KDHE, will supply the same with a certificate from its engineer stating that such Costs are reasonable and accurate estimations, taking into account investment income to be realized during the course of construction of the Project, if any, and other lawfully available money that would, absent the Loan, have been used to pay the Project Costs.

Section 3.02. Particular Covenants of the Municipality.

(a) **Dedicated Source of Revenue for Repayment of the Loan.** The Municipality hereby establishes the Dedicated Source of Revenue described on **Exhibit B** attached hereto, which Dedicated Source of Revenue is hereby pledged to the Loan Repayments, Additional Payments and all other obligations of the Municipality under this Loan Agreement.

(b) **Performance Under Loan Agreement.** The Municipality covenants and agrees in the performance of its obligations under this Loan Agreement:

(1) to comply with all applicable State and federal laws, rules and regulations (including, but not limited to the conditions set forth in **Exhibit C** hereto) as are applicable to this Loan Agreement; and

(2) to cooperate with KDHE in the observance and performance of the respective duties, covenants, obligations and agreements of the Municipality and KDHE under this Loan Agreement (including, without limitation the requirements contained in **Exhibit C** hereto).

(c) **Completion of Project and Provision of Moneys Therefore.** The Municipality covenants and agrees:

(1) to exercise its best efforts in accordance with prudent utility practice to complete the Project and to so accomplish such completion on or before the estimated Project completion date set forth in **Exhibit C** hereto; and

(2) to provide, from its own financial resources, all moneys, in excess of the total amount of proceeds it receives under the Loan, required to complete the Project.

(d) **Delivery of Documents and Payment of Fees.** Concurrently with the delivery of this Loan Agreement and the closing of the Loan, the Municipality will cause to be delivered to KDHE:

(1) fully executed counterparts of this Loan Agreement;

(2) copies of the ordinance of the governing body of the Municipality authorizing the execution and delivery of this Loan Agreement, certified by an Authorized Municipality Representative, which shall be in substantially the form attached hereto as **Exhibit F** together with an affidavit of publication thereof in the official newspaper of the Municipality;

(3) an opinion of the Municipality's counsel substantially in the form set forth in **Exhibit G** attached hereto;

(4) such other certificates, documents, opinions and information as KDHE may reasonably require.

(e) **Operation and Maintenance of System.** The Municipality covenants and agrees that it shall, in accordance with prudent wastewater treatment utility practice:

(1) at all times operate the properties of its System in an efficient manner in accordance with applicable laws and regulations;

(2) maintain its System, making all necessary and proper repairs, renewals, replacements, additions, betterments and improvements necessary to maintain its System in good repair, working order and operating condition;

(3) implement any modification of the rates fees and charges for use of the System that comprise the Dedicated Source of Revenues as the Secretary may require to ensure repayment of the Loan in accordance with the provisions of the Loan Act; and

(4) take such other action as the Secretary may require in accordance with powers granted to the Secretary under the Loan Act and the Regulations.

(f) **Disposition of System.** The Municipality shall not sell, lease or otherwise transfer ownership of all or substantially all of its System without the consent of the Secretary. In no event shall the Municipality sell, abandon or otherwise transfer ownership of the System to any person or entity other than a city, county, township, sewer district, improvement district, or other political subdivision of the State, or any combination thereof, that has legal responsibility to treat wastewater. The Municipality shall provide the Secretary with ninety (90) days' prior written notice to KDHE of such sale, lease or transfer. No such sale, lease or transfer shall be effective unless compliance is with the provisions of *Section 4.02* hereof, assuming such sale, lease or transfer is deemed to be an assignment for the purposes of such Section. The provisions of this paragraph shall not be construed to prohibit the lease of portions of the System by the Municipality in connection with a lease-purchase transaction to finance improvements to the System; provided that a termination or an event of default by the Municipality under such arrangement shall not have a material adverse effect on the Municipality's Dedicated Source of Revenues.

(g) **Records and Accounts**

(1) The Municipality shall keep accurate records and accounts for its System (the "System Records"), separate and distinct from its other records and accounts (the "General Accounts"). Such System Records shall be audited annually in accordance with generally accepted auditing standards if the total Disbursement of Loan Proceeds exceed \$25,000 for the Municipalities fiscal year. This audit shall be completed by an independent certified public accountant or firm of independent certified public accountants, or by an independent registered municipal accountant, and may be part of the single agency audit made on the Municipality's General Accounts in accordance with the Federal Single Audit Act of 1984, OMB Circular No. A-133, **Audits of States, Local Governments, and Non-Profit Organizations** as amended in 1996 and 2003 and as may be further amended and revised. Such System Records and General Accounts shall be made available for inspection by KDHE at any reasonable time, and a copy of the Municipality's annual audit, including all written comments and recommendations of such accountant, shall be furnished to KDHE within 270 days of the close of the Municipal Fiscal Year being so audited.

(2) The Municipality shall maintain Project accounts in accordance with generally accepted government accounting standards defined in the Government Accounting, Auditing, and Financial Reporting Manual (1994 Ed.), or any revised edition, issued by the Government Finance Officers Association.

(h) **Inspections.** The Municipality shall permit the EPA, KDHE and any party designated by KDHE to examine, visit and inspect, at any and all reasonable times, the property, if any, constituting the Project, and to inspect and make copies of any accounts, books and records, including (without limitation) its records regarding receipts, disbursements, contracts, investments and any other matters relating thereto and to its financial standing, including the System Records and General Accounts, and shall supply such reports and information as the EPA and KDHE may reasonably require in connection therewith.

(i) **Financial Information.** The Municipality specifically agrees to provide to KDHE a reasonable number of copies of such financial information and operating data of the Municipality and the System to the extent necessary for KDHE to comply with its continuing disclosure obligations set forth in the SEC Rule and the Pledge Agreement. Such financial information shall be accompanied by an audit report prepared in accordance with the provisions of *subsection (g)(2)* hereof, unless such subsection exempts the Municipality from such audit report requirement. The financial information shall be prepared in accordance with GAAP, unless the Municipality has received a waiver from such requirement as permitted by State Law. Any such requested financial information and operating data shall be supplied to KDHE within 270 days after the end of the Municipal Fiscal Year. Such requirement may be satisfied by submitting the Municipality's comprehensive annual financial report (CAFR) and/or annual report of its System, unless KDHE notifies the Municipality of the need for additional information. If an audit report is required to be prepared, but is not available within 270 days of the end of the Municipal Fiscal Year, un-audited financial information shall be provided to KDHE pending receipt of the audit report. In addition, the Municipality shall provide KDHE with prompt notification of the occurrence of certain material events. For purposes of this paragraph, "material event" shall mean: (a) principal and interest payment delinquencies on any Indebtedness; (b) non-payment related defaults in agreements authorizing any Indebtedness; (c) rating changes on any Indebtedness; (d) adverse tax opinions or events affecting the tax-exempt status of any Indebtedness; or (e) unscheduled draws on debt service reserves or credit enhancements on any Indebtedness reflecting financial difficulties.

(j) **Insurance.** The Municipality will carry and maintain such reasonable amount of all-risk insurance on all properties and all operations of its System as would be carried by similar municipal operators of Systems, insofar as the properties are of an insurable nature. The Municipality also will carry general liability insurance in amounts not less than the maximum liability of a governmental entity for claims arising out of a single occurrence, as provided by the Kansas Tort Claims Act, K.S.A. 75-6101 *et seq.*, or other similar future law (currently \$500,000 per occurrence).

(k) **Notice of Material Adverse Change.** The Municipality shall promptly notify KDHE of any material adverse change in the activities, prospects or condition (financial or otherwise) of the System, or in the ability of the Municipality to make all Loan Repayments and otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement.

(l) **Additional Covenants and Requirements.** The parties hereto acknowledge that this Loan Agreement may be assigned or pledged to secure financings of the Authority. Should it be necessary to modify any covenants or obtain or enhance the security of the financings, the parties agree to take all reasonable actions and make reasonable covenants and agreements necessary to accomplish such purpose to the extent permitted by applicable laws.

ARTICLE IV

ASSIGNMENT

Section 4.01. Assignment and Transfer by KDHE. The Municipality hereby approves and consents to any assignment or transfer of this Loan Agreement that KDHE deems necessary in connection with the operation and administration of the Revolving Fund. The Municipality hereby specifically approves the assignment and pledging of the Loan Repayments and Additional Payments to the Authority, and the Authority's pledging of all or a portion of the same to the Bonds.

Section 4.02. Assignment by the Municipality. This Loan Agreement may not be assigned by the Municipality for any reason, unless the following conditions shall be satisfied:

- (a) KDHE and the Authority shall have approved said assignment in writing;
- (b) the assignee is a city, county, township, sewer district, improvement district or other political subdivision of the State or any combination thereof that has legal responsibility to treat wastewater;
- (c) the assignee shall have expressly assumed in writing the full and faithful observance and performance of the Municipality's duties, covenants, and obligations under this Loan Agreement; provided, however, such assignment shall not relieve the Municipality of its duties, covenants, and obligations under this Loan Agreement;
- (d) the assignment will not adversely impact KDHE's ability to meet its duties, covenants and obligations to the Authority under the Pledge Agreement, nor may the sale endanger the exclusion from gross income for federal income tax purposes of the interest on the Bonds; and

(e) the Municipality shall, at its expense, provide KDHE and the Authority with an opinion of a qualified attorney that each of the conditions set forth in *subparagraphs (b), (c), and (d)* hereof have been met.

ARTICLE V

EVENTS OF DEFAULT AND REMEDIES

Section 5.01. Notice of Default. If an Event of Default shall occur, the non-defaulting party shall give the party in default and the Authority prompt telephonic notice of the occurrence of such Event of Default, provided the non-defaulting party has knowledge of such Event of Default. Such telephonic notice shall be immediately followed by written notice of such Event of Default given in the manner set forth in **Section 6.01** hereof.

Section 5.02. Remedies on Default.

(a) Whenever an Event of Default shall have occurred and be continuing, KDHE or the Municipality shall have the right to take whatever action at law or in equity may appear necessary or desirable to collect the amounts then due and to become due or to enforce the performance and observance of any obligation or agreement of KDHE or the Municipality (including, without limitation, withholding remaining Loan disbursements, cancellation of the Loan Agreement and acceleration of the remaining scheduled principal payments set forth on **Exhibit B**, or such other remedies provided to the Secretary in the Loan Act and the Regulations.

(b) Upon the occurrence of an Event of Default on the part of KDHE, and to the extent permitted by law and availability of appropriated funds by the Kansas Legislature, KDHE shall, on demand, pay to the Municipality the reasonable fees and expenses incurred by the Municipality in the enforcement of performance or observation of any other duties, covenants, obligations or agreements of KDHE contained herein. Prior to incurring any such expenses, the Municipality shall provide written notice to KDHE that it intends to incur such expenses; provided, however, a failure by the Municipality to give such notice shall not affect the Municipality's right to receive payment for such expenses. Upon request by KDHE, the Municipality shall provide copies of statements evidencing the fees and expenses for which the Municipality is requesting payment.

Section 5.03. Expenses. Upon the occurrence of an Event of Default on the part of the Municipality, and to the extent permitted by law, the Municipality shall, on demand, pay to KDHE the reasonable fees and expenses incurred by KDHE in the collection of Loan Repayments or any other sum due hereunder or in the enforcement of performance or observation of any other duties, covenants, obligations or agreements of the Municipality contained herein. Prior to incurring any such expenses, KDHE shall provide written notice to the Municipality that it intends to incur such expenses; provided, however, a failure by KDHE to give such notice shall not affect KDHE's right to receive payment for such expenses. Upon request by the Municipality, KDHE shall provide copies of statements evidencing the fees and expenses for which KDHE is requesting payment.

Section 5.04. Application of Moneys. Any moneys collected by KDHE pursuant to **Section 5.02** hereof shall be applied: (a) first, to pay interest on the Loan as the same becomes due and payable; (b) second, to pay principal due and payable on the Loan; (c) third, to pay expenses owed by the Municipality pursuant to **Section 5.03** hereof; and (d) fourth, to pay any other amounts due and payable hereunder as such amounts become due and payable.

Section 5.05. No Remedy Exclusive; Waiver; Notice. No remedy herein conferred upon or reserved to the Parties hereto is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Loan Agreement or now or hereafter existing at law or in equity. The parties hereto, in good faith, shall exercise such remedies with due diligence in a timely manner, however, no delay or omission to exercise any right, remedy or power accruing upon any Event of Default shall impair any such right, remedy or power or shall be construed to be a waiver thereof, but any such right, remedy or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the parties hereto to exercise any remedy reserved to them in this **Article V**, it shall not be necessary to give any notice, other than such notice as may be required in this **Article V**.

Section 5.06. Retention of Rights. Notwithstanding any assignment or transfer of this Loan Agreement pursuant to the provisions hereof, or anything else to the contrary contained herein, the parties hereto shall have the right upon the occurrence of an Event of Default to take any action, including (without limitation) bringing an action against the defaulting party at law or in equity, as such party may, in its discretion, deem necessary to enforce the obligations of the defaulting party pursuant to this Loan Agreement.

Section 5.07. Financial and Management. Upon failure of the Municipality to pay one or more installments of the Loan Repayments in a timely manner, or in the event that the Secretary deems it advisable or necessary, the Secretary, after consultation with the governing body of the Municipality, may require the Municipality to undergo a financial and management operations review. The governing body shall correct any deficiencies noted during such review and adopt charges or surcharges as may be required by the Secretary during the term of this Loan Agreement.

ARTICLE VI

MISCELLANEOUS

Section 6.01. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when: (a) hand delivered; (b) mailed by registered or certified United States mail, postage prepaid; or (c) via telefax, with confirmation in the manner set forth in *subsection (b)*, to the parties hereinafter set forth at the following addresses:

- (1) to KDHE:

Department of Health and
Environment
1000 SW Jackson Street, Suite 420
Topeka, Kansas 66612-1367
Attention: Bureau of Water

with a copy to its General Counsel

- (2) to the Authority:

Kansas Development Finance
Authority
555 South Kansas Avenue, Suite 202
Topeka, Kansas 66603
Attention: President,

with a copy to its General Counsel

- (3) to the Municipality:

at the address set forth on *Exhibit H*.

All notices given by telefax as aforesaid shall be deemed given as of the date of evidence of receipt thereof by the recipient. All notices given by registered or certified mail as aforesaid shall be deemed duly given as of the date they are so deposited in the United States Postal Service, if postage is prepaid. Any of the foregoing parties may designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent, by notice in writing given to the others.

Section 6.02. Binding Effect. This Loan Agreement shall inure to the benefit of and shall be binding upon KDHE and the Municipality and their respective successors and assigns.

Section 6.03. Severability. In the event any provision of this Loan Agreement shall be held illegal, invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate, render unenforceable or otherwise affect any other provision hereof.

Section 6.04. Amendments, Supplements and Modifications. This Loan Agreement may not be amended, supplemented or modified without the prior written consent of the Authority.

Section 6.05. Execution in Counterparts. This Loan Agreement may be executed in several counterparts, each of which shall be deemed to be an original and all of which shall constitute but one and the same instrument.

Section 6.06. Governing Law and Regulations. This Loan Agreement shall be governed by and construed in accordance with the laws of the State, including the Loan Act and the Regulations, which Regulations are, by this reference thereto, incorporated herein as a part of this Loan Agreement.

Section 6.07. Consents and Approvals. Whenever the written consent or approval of the State shall be required under the provisions of this Loan Agreement, such consent or approval may only be given by the Secretary.

Section 6.08. Further Assurances. The Municipality shall, at the request of KDHE, authorize, execute, acknowledge and deliver such further resolutions, conveyances, transfers, assurances, financing statements and other instruments as may be reasonably necessary or desirable for better assuring, conveying, granting, assigning and confirming the rights, security interests and agreements granted or intended to be granted by this Loan Agreement.

[BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, KDHE and the Municipality have caused this Loan Agreement to be executed, sealed and delivered, effective as of the date above first written.



THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT, acting on behalf of THE STATE OF KANSAS

By: *[Signature]*
Title: Secretary

"KDHE"

Date: 10/9/09

DODGE CITY, KANSAS

(Seal)

By: _____
Title: Mayor

"Municipality"

Date: _____

ATTEST:

By: _____
Title: Clerk

EXHIBIT A

DESCRIPTION OF THE PROJECT

Four separate construction projects will be completed.

The first consists of a 1.25 MGD hollow fiber membrane bioreactor wastewater treatment plant. The treatment plant will include a lift station; fine drum screen; biological treatment activated sludge basins including anaerobic basins, anoxic basins and aerobic basins; membrane basin which will contain the hollow fiber membrane cassettes for mixed liquor filtration; effluent pumps and a closed chamber medium pressure ultraviolet effluent disinfection facility. Additionally, the treatment plant will include aerobic sludge digestion tanks, a centrifuge to produce dewatered biosolids and a covered biosolids storage bay.

The second project consists of the beneficial re-use wastewater effluent distribution line (12 inch diameter approximately 4 miles long) which will convey the effluent to a golf course and other potential irrigation sites.

The third project consists of sanitary sewer interceptor lines to convey raw sewage to a pump station. These interceptor lines are located south and east of the new treatment plant and will discharge sewage to a pump station to be constructed in the fourth project which will be located approximately 4,600 feet east of the new treatment plant.

The fourth project consists of construction of a submersible pump station and 8 inch diameter force main to convey the raw sewage from the gravity interceptor sewer line to the new wastewater treatment plant.

EXHIBIT B

DEDICATED SOURCE OF REVENUES AND LOAN REPAYMENT SCHEDULE

Dedicated Source of Revenue.

The Municipality shall impose and collect such rates, fees and charges for the use and services furnished by or through the System, including all improvements and additions thereto hereafter constructed or acquired by the Municipality as will provide System Revenues or levy ad valorem taxes without limitation as to rate or amount upon all the taxable tangible property, real or personal, within the territorial limits of the Municipality to produce amounts which are sufficient to (a) pay the cost of the operation and maintenance of the System, (b) pay the principal of and interest on the Loan as and when the same become due, and (c) pay all other amounts due at any time under the Loan Agreement; provided, however, no lien or other security interest is granted by the Municipality to KDHE on the System Revenues under this Agreement. In the event that the System Revenues are insufficient to meet the obligations under the Loan and the Loan Agreement, the Municipality shall levy ad valorem taxes without limitation as to rate or amount upon all the taxable tangible property, real or personal, within the territorial limits of the Municipality to produce the amounts necessary for the prompt payment of the obligations under the Loan and Loan Agreement.

The Municipality and KDHE have agreed that interest becoming due semiannually on the Loan during the construction period for the Project may be capitalized and repaid as a part of the Loan. In this regard, KDHE shall give the Municipality written notice of each semiannual installment of interest becoming due during the construction period. At its option, the Municipality may elect to pay such amounts, and if so elected, must pay such amounts within 30 days of receipt of the notice of their becoming due. If the Municipality does not elect to pay such amounts within 30 days of receipt of such notice, the amount then due and owing as semiannual interest on the Loan shall be capitalized and added to the principal amount of the Loan and shall bear interest at the rate of interest set forth in **Section 2.02** hereof.

KANSAS WATER POLLUTION CONTROL REVOLVING LOAN FUND

Project Principal: 29,159,080.25
 Interest During Const.: 340,565.98
 Service Fee During Const.: 32,353.77
 Gross Loan Costs: 29,532,000.00

Estimated Draws - Actual Interest Rate
 Amortization of Loan Costs

Prepared for:
 City of Dodge City, Project No. C20 1792-01

9/30/2009 Gross Rate: 2.83%
 Service Fee Rate: 0.25% 1st Payment Date: 9/1/2011
 Loan Interest Rate: 2.58% Number of Payments: 40

Payment Number	Payment Date	Beginning Balance	Interest Payment	Principal Payment	Service Fee	Total Payment	Ending Balance
1	9/1/2011	29,532,000.00	380,962.80	554,041.83	36,915.00	971,919.63	28,977,958.17
2	3/1/2012	28,977,958.17	373,815.66	561,881.52	36,222.45	971,919.63	28,416,076.65
3	9/1/2012	28,416,076.65	366,567.39	569,832.14	35,520.10	971,919.63	27,846,244.51
4	3/1/2013	27,846,244.51	359,216.55	577,895.27	34,807.81	971,919.63	27,268,349.24
5	9/1/2013	27,268,349.24	351,761.71	586,072.48	34,085.44	971,919.63	26,682,276.76
6	3/1/2014	26,682,276.76	344,201.37	594,365.41	33,352.85	971,919.63	26,087,911.35
7	9/1/2014	26,087,911.35	336,534.06	602,775.68	32,609.89	971,919.63	25,485,135.67
8	3/1/2015	25,485,135.67	328,758.25	611,304.96	31,856.42	971,919.63	24,873,830.71
9	9/1/2015	24,873,830.71	320,872.42	619,954.92	31,092.29	971,919.63	24,253,875.79
10	3/1/2016	24,253,875.79	312,875.00	628,727.29	30,317.34	971,919.63	23,625,148.50
11	9/1/2016	23,625,148.50	304,764.42	637,623.77	29,531.44	971,919.63	22,987,524.73
12	3/1/2017	22,987,524.73	296,539.07	646,646.15	28,734.41	971,919.63	22,340,878.58
13	9/1/2017	22,340,878.58	288,197.33	655,796.20	27,926.10	971,919.63	21,685,082.38
14	3/1/2018	21,685,082.38	279,737.56	665,075.72	27,106.35	971,919.63	21,020,006.66
15	9/1/2018	21,020,006.66	271,158.09	674,486.53	26,275.01	971,919.63	20,345,520.13
16	3/1/2019	20,345,520.13	262,457.21	684,030.52	25,431.90	971,919.63	19,661,489.61
17	9/1/2019	19,661,489.61	253,633.22	693,709.55	24,576.86	971,919.63	18,967,780.06
18	3/1/2020	18,967,780.06	244,684.36	703,525.54	23,709.73	971,919.63	18,264,254.52
19	9/1/2020	18,264,254.52	235,608.88	713,480.43	22,830.32	971,919.63	17,550,774.09
20	3/1/2021	17,550,774.09	226,404.99	723,576.17	21,938.47	971,919.63	16,827,197.92
21	9/1/2021	16,827,197.92	217,070.85	733,814.78	21,034.00	971,919.63	16,093,383.14
22	3/1/2022	16,093,383.14	207,604.64	744,198.26	20,116.73	971,919.63	15,349,184.88
23	9/1/2022	15,349,184.88	198,004.48	754,728.67	19,186.48	971,919.63	14,594,456.21
24	3/1/2023	14,594,456.21	188,268.49	765,408.07	18,243.07	971,919.63	13,829,048.14
25	9/1/2023	13,829,048.14	178,394.72	776,238.60	17,286.31	971,919.63	13,052,809.54
26	3/1/2024	13,052,809.54	168,381.24	787,222.38	16,316.01	971,919.63	12,265,587.16
27	9/1/2024	12,265,587.16	158,226.07	798,361.58	15,331.98	971,919.63	11,467,225.58
28	3/1/2025	11,467,225.58	147,927.21	809,658.39	14,334.03	971,919.63	10,657,567.19
29	9/1/2025	10,657,567.19	137,482.62	821,115.05	13,321.96	971,919.63	9,836,452.14
30	3/1/2026	9,836,452.14	126,890.23	832,733.83	12,295.57	971,919.63	9,003,718.31
31	9/1/2026	9,003,718.31	116,147.97	844,517.01	11,254.65	971,919.63	8,159,201.30
32	3/1/2027	8,159,201.30	105,253.70	856,466.93	10,199.00	971,919.63	7,302,734.37
33	9/1/2027	7,302,734.37	94,205.27	868,585.94	9,128.42	971,919.63	6,434,148.43
34	3/1/2028	6,434,148.43	83,000.51	880,876.43	8,042.69	971,919.63	5,553,272.00
35	9/1/2028	5,553,272.00	71,637.21	893,340.83	6,941.59	971,919.63	4,659,931.17
36	3/1/2029	4,659,931.17	60,113.11	905,981.61	5,824.91	971,919.63	3,753,949.56
37	9/1/2029	3,753,949.56	48,425.95	918,801.24	4,692.44	971,919.63	2,835,148.32
38	3/1/2030	2,835,148.32	36,573.41	931,802.28	3,543.94	971,919.63	1,903,346.04
39	9/1/2030	1,903,346.04	24,553.16	944,987.29	2,379.18	971,919.63	958,358.75
40	3/1/2031	958,358.75	12,362.83	958,358.75	1,198.05	971,919.63	0.00
		Totals	8,519,274.01	29,532,000.00	825,511.19	38,876,785.20	

EXHIBIT C

CONDITIONS APPLICABLE TO CONSTRUCTION OF THE PROJECT

1. Municipality agrees to expeditiously initiate and complete the Project in accordance with the following schedule:

Wastewater Reclamation (Treatment) Facility

- a. Advertising for bids within 60 days of authorization to advertise.
- b. Bid opening no sooner than 30 days after advertisement for bids.
- c. Contract award within 90 days of bid opening.
- d. Issuance of notice to proceed within 60 days of contract award.
- e. Initiation of operation within 760 days of notice to proceed or no later than November 1, 2011.
- f. Finalization of construction within 790 days of notice to proceed.
- g. Project Performance Certification 365 days following Initiation of Operation.

Effluent (Re-use) Force Main

- a. Advertising for bids within 60 days of authorization to advertise.
- b. Bid opening no sooner than 30 days after advertisement for bids.
- c. Contract award within 90 days of bid opening.
- d. Issuance of notice to proceed within 60 days of contract award.
- e. Initiation of operation within 335 days of notice to proceed or no later than November 1, 2011.
- f. Finalization of construction within 365 days of notice to proceed.
- g. Project Performance Certification 365 days following Initiation of Operation.

Interceptor Sewer Lines

- a. Advertising for bids within 60 days of authorization to advertise.
- b. Bid opening no sooner than 30 days after advertisement for bids.
- c. Contract award within 90 days of bid opening.
- d. Issuance of notice to proceed within 60 days of contract award.
- e. Initiation of operation within 335 days of notice to proceed or no later than November 1, 2011.
- f. Finalization of construction within 365 days of notice to proceed.
- g. Project Performance Certification 365 days following Initiation of Operation.

Main Off-site Pump Station and Force Main

- a. Advertising for bids within 60 days of authorization to advertise.
- b. Bid opening no sooner than 30 days after advertisement for bids.
- c. Contract award within 90 days of bid opening.
- d. Issuance of notice to proceed within 60 days of contract award.
- e. Initiation of operation within 335 days of notice to proceed or no later than November 1, 2011.
- f. Finalization of construction within 365 days of notice to proceed.
- g. Project Performance Certification 365 days following Initiation of Operation.

No change may be implemented by the Municipality, which will delay or accelerate this schedule without prior approval of KDHE. KDHE must be promptly notified of any proposed changes.

2. The Municipality agrees that all bid solicitations will include the following statement in the "Advertisement for Bids" for this project:

Nondiscrimination in Employment

Bidders on this work will be required to comply with the President's Executive Order No. 11246 as amended. Requirements for bidders and contractors under this order are explained in the specifications.

3. a. The Municipality agrees that all bid solicitations will include the following statement in the "Information to Bidders" for this project:

"Bidders on this work, including subcontractors or vendors, will be required to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et. seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et. seq.)".

Currently there is no reporting procedure associated with this requirement.

- b. The Municipality agrees to comply with the Kansas Act Against Discrimination, K.S.A. 44-1001, et. seq. and the Kansas Age Discrimination in Employment Act, K.S.A. 44-1111, et. seq. as provided by law and to include those provisions in every contract or purchase order so that they are binding upon such subcontractors or vendors.

4. The Municipality will obtain a signed Certificate of Non-Segregated Facilities from the prime contractor prior to the award of a construction contract if the contract exceeds \$10,000 and is not exempt from the provisions of the equal opportunity clause. The Municipality will assure that the prime contractor obtains a signed copy of Certificate of Non-Segregated Facilities from each subcontractor prior to the award of any subcontract exceeding \$10,000, which is not exempt from the provisions of the equal opportunity clause. The certificate signed by the prime contractor is to be kept on file with the Municipality; and certificates signed by subcontractors are to be kept on file with the prime contractor.
5. The Municipality agrees to include Section 202 of Executive Order 11246 in all contracts and subcontracts for all construction contracts exceeding \$10,000.00.
6. The Municipality hereby agrees to the following requirements regarding Disadvantaged Business Enterprise (DBE) procurement:
 - a. If the loan amount is greater than \$250,000, adopt the MBE/WBE Fair Share Objective/Goals established between KDHE and EPA for construction of the project. These goals will be made part of the construction contract specifications.
 - b. Make the good faith efforts to contact DBE firms set out in 40 CFR Section 33.301 whenever procuring construction services for the project.
 - c. Comply with the administrative provisions found in 40 CFR Section 33.302.
 - d. If the loan amount is greater than \$250,000, maintain a bidders list of contractors and subcontractors that have previously bid on municipality projects funded by KWPCRLF as required by 40 CFR Section 33.501(b).
 - e. The Municipality agrees to submit to KDHE a completed EPA Form 5700-52A by April 15 and October 15, once the notice to proceed for construction has been issued, thru the semi-annual period in which construction has been completed.
7. The Municipality agrees that all bid solicitations will include the following statement:

“Bidders must fully comply with Subpart C of 40 CFR Part 32 entitled Responsibilities of Participants Regarding Transactions. Contractors, subcontractors, or suppliers that appear on the Excluded Parties List System at www.epls.gov are not eligible for award of any contracts funded by the Kansas Water Pollution Control Revolving Loan Fund.”

Subpart C of 40 CFR Part 32 must be included as part of the contract documents.

The Municipality acknowledges that doing business with any part appearing in the "List of Parties Excluded from Federal Procurement or Non Procurement Programs" may result in disallowance of federal funds under this Loan Agreement and may also result in suspension or debarment under this Part.

8. The Municipality agrees that all bid solicitations will include the Anti-Lobbying Certification form, which must be completed and returned with the bid form.
9. The owner or successful bidder must obtain, prior to construction, permit coverage from KDHE to discharge stormwater runoff associated with construction activity for most any project which disturbs one acre or more of soils. A Notice of Intent form (NOI) must be submitted to KDHE 60 days before the start of construction and a permit determination from KDHE must be made before construction can begin. The Kansas construction stormwater general permit, a Notice of Intent (application form), a frequently asked questions file, and supplemental materials are available online on the KDHE Stormwater Web Page at www.kdhe.state.ks.us/stormwater.
10. The Municipality shall follow applicable state procurement laws and regulations, and procedures established by the Secretary of KDHE as presented in Water Quality Policy Memorandum No. 98-1 dated June 2009 - Final. KDHE approval is required prior to procurement.
11. The Municipality agrees to make prompt payment to its contractor(s) of sums due for construction and to retain only such amounts as may be justified by specific circumstances and provisions of this Loan Agreement or the construction contract.
12. The Municipality hereby assures that the engineering firm principally responsible for supervising construction and for providing engineering services during construction will continue its relationship with the Municipality for a period of up to one year after initiation of operation of the Project. During this period, the engineering firm shall direct the operation of the Project, train operating personnel and prepare curricula and training material for operating personnel. The following specific requirements apply:
 - a. The Municipality agrees the performance standards applicable to the Project are:
 - (1) The activated sludge wastewater treatment facility shall provide adequate treatment to meet the NPDES permit limitations.
 - (2) The activated sludge wastewater treatment facility shall provide adequate treatment to meet the NPDES permit goals for total nitrogen and total phosphorus.
 - (3) The sludge aeration and drying facilities shall adequately stabilize the sludge to permit land application of biosolids in compliance with the federal regulations at 40 CFR Part 503.

- (4) All construction deficiencies have been resolved.
- b. One year after completion of construction and initiation of operation of the Project, the Municipality shall certify to KDHE whether or not such Project meets the design specifications and effluent limitations contained in subparagraph a. of this condition. Any statement of non-compliance must be accompanied by a corrective action report containing: an analysis of the cause of the Project's inability to meet performance standards; actions necessary to bring it into compliance, and a reasonably scheduled date for positive certification of the Project. Timely corrective action will be executed by the Municipality.
 - c. Municipality agrees to furnish KDHE with an annual report describing actions taken to date to achieve positive certification, planned future activities, the Project's status and potential for positive certifications.
13. A final plan of operation and draft operation and maintenance manual shall be submitted by the Municipality for approval by KDHE at or prior to 50 percent construction completion. The plan of operation must include, but is not limited to, an assessment of the employee skills necessary to carry out the operation and maintenance function and a training plan designed to provide employees with the necessary skills. Details on the skills assessment must be submitted along with the final plan of operation. Necessary training as indicated by the skills assessment must be provided in accordance with the approved training plan.
14. The final operation and maintenance manual must be submitted to KDHE at or prior to 90 percent construction completion.
15. The rates and ordinances enacting the approved user charge system and sewer use requirements as approved by KDHE shall be enacted prior to initiation of operation.
16. This Project is consistent with the Kansas Water Quality Management Plan, subject to the provisions of Section 208(d) and 208(e) of the Federal Water Pollution Control Act, as amended. Service by the Project will not be denied or conditioned on the basis of factors or issues unrelated to wastewater management.
17. The Environmental Clearance Document "Finding of No Significant Impact" (FONSI) will be placed on 30 day public notice for comment. The Municipality agrees and consents to KDHE's authority to monitor and enforce compliance with any mitigative measures identified as a result of the environmental clearance process. Any such mitigative measures will be presented within an Amendment to this Loan Agreement.

EXHIBIT D

USE OF LOAN PROCEEDS

The proposed project will provide for four separate construction projects will be completed.

The first consists of a 1.25 MGD hollow fiber membrane bioreactor wastewater treatment plant. The treatment plant will include a lift station; fine drum screen; biological treatment activated sludge basins including anaerobic basins, anoxic basins and aerobic basins; membrane basin which will contain the hollow fiber membrane cassettes for mixed liquor filtration; effluent pumps and a closed chamber medium pressure ultraviolet effluent disinfection facility. Additionally, the treatment plant will include aerobic sludge digestion tanks, a centrifuge to produce dewatered biosolids and a covered biosolids storage bay.

The second project consists of the beneficial re-use wastewater effluent distribution line (12 inch diameter approximately 4 miles long) which will convey the effluent to a golf course and other potential irrigation sites.

The third project consists of sanitary sewer interceptor lines to convey raw sewage to a pump station. These interceptor lines are located south and east of the new treatment plant and will discharge sewage to a pump station to be constructed in the fourth project which will be located approximately 4,600 feet east of the new treatment plant.

The fourth project consists of construction of a submersible pump station and 8 inch diameter force main to convey the raw sewage from the gravity interceptor sewer line to the new wastewater treatment plant.

The loan proceeds will be utilized to pay the costs of:

1. Construction: All actual construction costs of the wastewater collection, pumping, and treatment plant modifications.
2. Engineering: All actual costs of construction services including basic services, design, bidding, inspection, final plan of operation, user charge and sewer use ordinance development, one year project performance evaluation, and all items as included in the engineering contract between
3. Administrative: All reasonable costs of legal and financial administrative support directly provided for the project.

Unallowable Costs: The costs of full time employees of the municipality, purchase of land and easements, repairs and replacement of privately owned sewers.

EXHIBIT E

INSTRUCTIONS FOR REQUESTING DISBURSEMENTS

1. All payment requests must be filed on the Outlay Report and Request for Disbursement Form and represent the actual completion level of the project at the date the request is prepared.
2. All cost entries must be based upon allowable work in place, which is due and payable. This means that you may **not** request payment for:
 - a. Any work or services, which have not been explicitly approved by the KDHE in the Loan Agreement or subsequent amendments.
 - b. Any work performed under a change order unless written approval of the change order has been given by the State.
 - c. Any ineligible project costs.
 - d. Any retainage which you are withholding from the construction contractor, engineer, etc.
 - e. Expenditures relating to site acquisition, easements, rights-of way, EXCEPT:
(1) additional work required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act such as appraisal and certification services;
(2) when the site itself is allowable in accordance with Federal SRF regulations and guidance; and (3) costs incurred in eminent domain proceedings.
 - f. Costs associated with the approval, preparation, issuance and sale of Bonds, and other costs incidental to normal operating overhead of a Municipality, whether performed by Municipal employees, the engineer, or the attorney.

It is essential that you understand the cost basis of the approved Loan amount. It is, therefore, necessary that you read the Loan Agreement (including all conditions) and its transmittal letter, any Loan amendments and Project correspondence, and that you maintain current and accurate files on all approved change orders. Failure to follow these procedures may result in your requesting and subsequently receiving overpayment of loan funds, which later may, in turn, result in substantial inconvenience to you and the Municipality. This could include repayment or crediting to KDHE the interest earned on overpaid funds, and any penalties that can result from this action.

3. **INSTRUCTIONS** - Please type or print legibly. Items 4, 5, 6, and 8.o. are self-explanatory; specific instructions for other items are as follows:

Item	Entry	Item	Entry
2.	This space is reserved for the assigned KDHE project number. Enter complete project identification number e.g., C20 0681 02.	8f	Enter inspection and audit fees of construction and related programs.
3	Mark the appropriate box. If the request is final, the amounts billed should represent the final cost of the project.	8g	Enter those amounts associated with the actual construction of, addition to, or restoration of a facility.
7.	The employer identification number assigned by the U.S. Internal Revenue Service MUST be entered to assist in processing of your Disbursement Request.	8h	Enter amounts for all equipment, both fixed and movable, exclusive of equipment used for construction. For example, permanently attached laboratory tables, built-in audio visual systems, movable desks, chairs, and laboratory equipment.
8.	Use only columns (a), (b), and (c).	8i	Enter the amounts for all items not specifically mentioned above.
8a	Enter amounts expended for such items as travel, legal fees, rental of vehicles and any other administrative expenses. Include the amount of interest expense when authorized by program legislation. Also show the amount of interest expense on a separate sheet.	8j	Enter the total cumulative amount to date which should be the sum of lines a through i.
8b	Enter amounts pertaining to the work of location and designing, making surveys and maps, sinking test holes, and all other work required prior to actual construction.	8k	Enter the total amount of program income applied to the loan agreement. Identify on a separate sheet of paper the sources and types of the income.
8c	Enter all amounts directly associated with the acquisition of land, existing structures and related right-of-way.	8l	Enter the net cumulative amount to date which should be the amount shown on line j minus the amount on line k.
8d	Enter basic fees for services of architectural engineers.	8m	Enter the amount of reimbursements paid to date.
8e	Enter other architectural engineering services. Do not include any amounts shown on line d.		

8n Enter the amount now being requested for reimbursement. This amount should be the difference between the amounts shown on lines l and m. If different, explain on a separate sheet.

9b Leave blank, this is to be completed by the funding agency official representative who is certifying to the percent of project completion as provided for in the terms of the loan agreement.

9a To be completed and signed by the duly authorized recipient official. The date should be the actual date the form is submitted to the funding agency.

4. **NOTE: ONE ORIGINAL SIGNATURE DISBURSEMENT REQUESTS AND ONE SET OF SUPPORTING DOCUMENTATION MUST BE SUBMITTED. Submit disbursement requests directly to:**

Kansas Department of Health & Environment
Bureau of Water
Municipal Programs
1000 SW Jackson Street, Suite 420
Topeka, Kansas 66612-1367

You should retain one copy for your records.

5. The Authorized Municipality Representative identified in the Loan Agreement remains the principal contact for all project matters.

[Balance of Page Intentionally Left Blank]

EXHIBIT E

KWPCRF or KPWSLF OUTLAY REPORT AND REQUEST FOR DISBURSEMENT (See Instructions)	1. AGENCY TO WHICH THIS REPORT IS SUBMITTED: KDHE - BUREAU OF WATER MUNICIPAL PROGRAMS SECTION OR PUBLIC WATER SUPPLY SECTION	2. KDHE PROJECT NUMBER ASSIGNED KWPCRF PROJECT # C20 _____ KPWSLF PROJECT # _____		
3. TYPE OF REQUEST: FINAL _____ PARTIAL _____	4. PAYMENT REQUEST NUMBER # _____	5. PERIOD COVERED BY THIS REPORT FROM (Mo, day, year) TO (Mo, day, year)		
6. RECIPIENT ORGANIZATION INFORMATION NAME : NO. & STREET : CITY : STATE AND ZIP CODE		7. FEIN NUMBER:		
8. TO: THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT, ACTING ON BEHALF OF THE STATE OF KANSAS UNDER THE LOAN AGREEMENT EFFECTIVE AS OF _____, BETWEEN KDHE AND the _____ The undersigned hereby requests that the following amounts be paid to the following payees for the following Project Costs as defined in said Agreement:				
CLASSIFICATION	(a) Total amount requested	(b) Payee	(c) Description	Total Approved (KDHE use only)
a. Administrative expense				See KDHE Attached Sheet or Reverse Side
b. Preliminary expense (Planning and Design)				
c. Land, structures, right-of-way (Not allowable)				
d. Architectural engineering basic fees				
e. Other architectural engineering fees				
f. Project inspection fees				
g. Construction and project improvement cost				
h. Equipment (By Separate Contract)				
i. Miscellaneous cost				
j. Total cumulative to date (sum of lines a thru i)	\$0.00			
k. Deductions for program income				
l. Net cumulative to date (Line j minus line k)	\$0.00			
m. Disbursements Paid to Date				
n. Amount due this Request (Line l minus Line m)	\$0.00			
o. Percentage of physical completion of project				
9. CERTIFICATION: I hereby state and certify that: (i) the amounts requested are or were necessary and appropriate in connection with the purchase, construction and installation of the Project, have been properly incurred and are a proper disbursement of the proceeds of the Loan and that an inspection has been performed and all work is in accordance with the terms of the Loan; have been paid or are justly due to the persons whose names and addresses are stated above; and have not been the basis of any previous requisition from the proceeds of the Loan; (ii) as of this date, except for the amounts specified above, there are no outstanding statements which are due and payable for labor, wages, materials, supplies or services in connection with the acquisition, purchase, construction, improvement, repair, rehabilitation or extension of the Wastewater Treatment Works or the Water Supply/Treatment/Distribution Works; (iii) all representations made in the Agreement remain true as of the date of this request; and (iv) no adverse developments affecting the financial condition of the Recipient or its ability to complete the Project or to repay the Loan have occurred.				
a. RECIPIENT:		b. KDHE Representative Certifying to line 8.n. Rodney R. Geisler or David F. Waldo		
Signature of Authorized Certifying Official		Signature of Authorized Certifying Official See KDHE Attached Sheet or Reverse Side		
Typed or Printed Name and Title		Typed or Printed Name and Title Chief, Municipal Programs Section or Public Water Supply		
Date Submitted	Telephone (Area Code, number & ext.)	Date Approved	Telephone (Area Code, number & ext.) 785-296-5527 or 296-5503	

*** AMOUNT ROUNDED DOWN TO NEAREST WHOLE DOLLAR PER KWPCRF PROGRAM REQUIREMENT.**

EXHIBIT F

FORM OF MUNICIPALITY ORDINANCE

**EXCERPT OF MINUTES OF A MEETING
OF THE GOVERNING BODY OF
THE CITY OF DODGE CITY, KANSAS
HELD ON [ORDINANCE DATE]**

The Governing Body of the City met in [regular/special] session at the usual meeting place in the City, at [meeting time], the following members being present and participating, to-wit:

Absent:

The Mayor declared that a quorum was present and called the meeting to order.

(Other Proceedings)

Thereupon, there was presented an Ordinance entitled:

AN ORDINANCE AUTHORIZING THE EXECUTION OF A LOAN AGREEMENT BETWEEN THE CITY OF DODGE CITY, KANSAS AND THE STATE OF KANSAS, ACTING BY AND THROUGH THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT FOR THE PURPOSE OF OBTAINING A LOAN FROM THE KANSAS WATER POLLUTION CONTROL REVOLVING FUND FOR THE PURPOSE OF FINANCING A WASTEWATER TREATMENT PROJECT; ESTABLISHING A DEDICATED SOURCE OF REVENUE FOR REPAYMENT OF SUCH LOAN; AUTHORIZING AND APPROVING CERTAIN DOCUMENTS IN CONNECTION THEREWITH; AND AUTHORIZING CERTAIN OTHER ACTIONS IN CONNECTION WITH THE LOAN AGREEMENT.

Thereupon, Commissioner _____ moved that said Ordinance be passed. The motion was seconded by Commissioner _____. Said Ordinance was duly read and considered, and upon being put, the motion for the passage of said Ordinance was carried by the vote of the Governing Body, the vote being as follows:

Yes: _____

No: _____

Thereupon, the Mayor declared said Ordinance duly passed and the Ordinance was then duly numbered Ordinance No. _____ and was signed and approved by the Mayor and attested by the Clerk. The Clerk was directed to publish the Ordinance one time in the official newspaper of the City.

(Other Proceedings)

On motion duly made, seconded and carried, the meeting thereupon adjourned.

(SEAL)

Clerk

[BALANCE OF PAGE INTENTIONALLY LEFT BLANK]

Memorandum

*To: City Manager
Assistant City Manager
City Commissioners*

From: Director of Engineering 

Date: October 28, 2009

*Subject: Contract with UCI
Construction of Water Reclamation
Plant*

Agenda Item: New Business

Recommendation: Approve contract subject to review by City Manager and approval by KDHE

Background: Due to time constraints in getting the new plant built to handle the anticipated sewer from the casino and events center, the commission authorized the City to use the Design Build Approach as apposed to the traditional Design, Bid, and Build approach. Because of this decision, City Staff solicited proposals from several qualified contractors that specialize in this work as well as the design build approach. The Commission previously approved using UCI as the contractor to build the new plant.

UCI has been involved with the City in the design process for the past several months and has already given the City a guaranteed maximum price of \$15,055,000

Justification: By approving the contact, the project can move forward and construction can begin.

Financial Considerations: With the approval of this contract, the City will be obligated to pay UCI a guaranteed maximum price of \$15,055,000

Purpose/Mission: By approving this contract, the City can begin construction of the new plant that will allow us to treat and reuse all wastewater from the casino, events center and anticipated growth.

Legal Considerations: The City will enter into a legal binding agreement.

Attachments: UCI Contract & Exhibit D

Exhibit "D"
Dodge City WWTP – Schedule of Values

Location	Structure Title	Budget cost
1	Mobilization	\$ 450,000.00
2	Administration Building	\$ 435,900.00
3	Main Pump Station	\$ 325,000.00
4	Process Building	\$ 8,300,000.00
5	Flow Control Structure	\$ 45,000.00
6	Biological Treatment Basin	\$ 1,641,100.00
7	Digesters	\$ 550,000.00
8	Sludge Handling Building	\$ 730,000.00
9	Effluent Structures	\$ 95,000.00
10	Cascade Structure	\$ 40,000.00
11	Site Earthwork and Grading	\$ 300,000.00
12	Site Piping	\$ 450,000.00
13	Site Paving	\$ 178,000.00
14	Site Improvements	\$ 935,000.00
	Project Budget GMP	\$ 14,475,000.00
	Contingency	\$ 500,000.00
	UCI Pre-Con Service	\$ 80,000.00
	total GMP	\$ 15,055,000.00
Project value added alternates not in base GMP		
A-1	Generator Sized to Operate Plant	\$ 350,000.00
A-2	Epoxy Floor Covering	\$ 45,000.00
A-3	Spare Blower	\$ 25,000.00
A-4	Meeting Flex room at Admin	\$ 45,000.00
A-5	Maintenance Garage	\$ 60,000.00
A-6	Glazing at Process BLDG	\$ 32,000.00
A-7	Building structure for future	\$ 50,000.00
A-8	Blower Suction valves	\$ 8,000.00
A-1		
	Total w/ alternates	\$ 15,670,000.00

AGREEMENT AND GENERAL CONDITIONS BETWEEN OWNER
AND CONSTRUCTION MANAGER

Guaranteed Maximum Price with Fee for Preconstruction Services

TABLE OF ARTICLES

1. AGREEMENT
2. GENERAL PROVISIONS
3. CONSTRUCTION MANAGER'S RESPONSIBILITIES
4. OWNER'S RESPONSIBILITIES
5. SUBCONTRACTS
6. TIME
7. COMPENSATION AND GUARANTEED MAXIMUM PRICE
8. COST OF THE WORK
9. CHANGES
10. PAYMENT
11. INDEMNITY, INSURANCE, WAIVERS AND BONDS
12. SUSPENSION, NOTICE TO CURE AND TERMINATION OF THE AGREEMENT
13. DISPUTE RESOLUTION
14. MISCELLANEOUS PROVISIONS
15. CONTRACT DOCUMENTS

ARTICLE 1.

AGREEMENT

This Agreement is made this _____ day of _____ in the year 2009, by and between the

OWNER
City of Dodge City
P.O. Box 880
Dodge City, Kansas 67801-0880
(Name and Address)

and the

CONSTRUCTION MANAGER
Utility Contractors, Inc. (UCI)
659 N. Market St.
Wichita, Kansas 67214

for services in connection with the following

PROJECT
Dodge City Waste Water Treatment Plant
Water Reclamation Center
Dodge City, KS

PROJECT DESIGN
As an advanced wastewater treatment facility to remove nutrients using biological nutrient removal and membranes.

Notice to the Parties shall be given at the above addresses.

ARTICLE 2.

GENERAL PROVISIONS

2.1 RELATIONSHIP OF PARTIES. The Owner and the Construction Manager agree to proceed with the Project on the basis of mutual trust, good faith and fair dealing.

2.1.1 The Construction Manager shall furnish construction administration and management services and use the Construction Manager's best efforts to perform the Work in an expeditious manner consistent with the Contract Documents. The Owner and Construction Manager shall endeavor to promote harmony and cooperation among all Project participants.

2.1.2 The Construction Manager represents that it is an independent contractor and that in its performance of the Work it shall act as an independent contractor.

2.1.3 Neither the Construction Manager nor any of its agents or employees shall act on behalf of or in the name of Owner except as provided in this Agreement unless authorized in writing by Owner's Representative.

2.1.4 The Owner and the Construction Manager shall perform their obligations with integrity, ensuring at a minimum that:

2.1.4.1 Conflicts of interest shall be avoided or disclosed promptly to the other Party; and

2.1.4.2 The Owner and the Construction Manager warrant that they have not and shall not pay nor receive any contingent fees or gratuities to or from the other Party, including their agents, officers and employees, sub-consultants or others from whom they may be liable, to secure preferential treatment.

2.2 EXTENT OF AGREEMENT. This Agreement is solely for the benefit of the Parties, represents the entire and integrated agreement between the Parties, and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement and each and every provision thereof is for the exclusive benefit of the Owner and Construction Manager and not for the benefit of any third party, except to the extent expressly provided in the Agreement.

2.3 ENGINEER. The Owner, through its separate contract with an outside Engineer, shall provide all architectural and engineering design services necessary for the completion of the Work. The Construction Manager shall not be required to provide professional services which constitute the practice of architecture or engineering except as otherwise provided in Paragraph 3.1.6.

2.3.1 The Owner shall obtain from the Engineer either a license for Construction Manager and Subcontractors to use the design documents prepared by the Engineer or ownership of the copyrights for such design documents, and shall indemnify and hold harmless the Construction Manager against any suits or claims of infringement of any copyrights or licenses arising out of the use of the design documents for the construction of Water Reclamation Facility, Dodge, City, KS.

2.4 DEFINITIONS

2.4.1 Agreement means this Standard Agreement and General Conditions Between Owner and Construction Manager (Where the Basis of Payment is a Guaranteed Maximum Price with Fee for Preconstruction Services), as modified by the Parties, and Exhibits and Attachments made part of this Agreement upon its execution.

2.4.2 Engineer means the licensed Architect, Engineer or Engineer and its consultants, retained by Owner to perform design services for the Project. The Owner's Engineer for the Project is Professional Engineering Consultants, P.A. - Wichita, Kansas (PEC).

2.4.3 A Change Order is a written order signed by the Owner and the Construction Manager after execution of this Agreement, indicating changes in the scope of the Work, the GMP, Date of Substantial Completion or Date of Final Completion, including substitutions proposed by the Construction Manager and accepted by the Owner.

2.4.4 The Contract Documents consist of this Agreement, the drawings, specifications, exhibits, addenda issued prior to execution of this Agreement, approved submittals, information furnished by the Owner under Paragraph 4.3, other documents listed in this Agreement and any modifications issued after its execution period.

2.4.5 The Construction Manager is the person or entity identified in Article 1 and includes the Construction Manager's Representative.

2.4.6 The term Day shall mean calendar day unless otherwise specifically defined.

2.4.7 Final Completion occurs on the date when the Construction Manager's obligations under this Agreement are complete and accepted by the Owner and final payment becomes due and payable. This date shall be confirmed by a Certificate of Final Completion signed by the Owner and the Construction Manager.

2.4.8 A Material Supplier is a person or entity retained by the Construction Manager to provide material and equipment for the Work.

2.4.9 Others means other contractors, material suppliers, and persons at the Worksite who are not employed by the Construction Manager, or Subcontractors.

2.4.10 The term Overhead shall mean 1) payroll costs and other compensation of Construction Manager employees in the Construction Manager's principal and branch offices; 2) general and administrative expenses of the Construction Manager's principal and branch offices including deductibles paid on any insurance policy, charges against the Construction Manager for delinquent payments, and costs related to the correction of defective work; and, 3) the Construction Manager's capital expenses, including interest on capital used for the Work.

2.4.11 Owner is the person or entity identified in Article 1 and includes the Owner's representative.

2.4.12 The Owner's Program is an initial description of the Owner's objectives, including budgetary and time criteria, space requirements and relationships, flexibility and expandability requirements, special equipment and systems, site requirements, and any requirements for phased occupancy.

2.4.13 The Project, as identified in Article 1, is the building, facility or other improvements for which the Construction Manager is to perform Work under this Agreement. It may also include construction by the Owner or Others.

2.4.14 The Schedule of the Work is the document prepared by the Construction Manager that specifies the dates on which the Construction Manager plans to begin and complete various parts of the Work, including dates on which information and approvals are required from the Owner.

2.4.15 A Subcontractor is a person or entity retained by the Construction Manager as an independent contractor to provide the labor, materials, equipment or services necessary to complete a specific portion of the Work. The term Subcontractor does not include the Engineer or Others.

2.4.16 Substantial Completion of the Work, or of a designated portion, occurs on the date when the Work is sufficiently complete in accordance with the Contract Documents so that the Owner may occupy or utilize the Work including commencing processing of waste water, or a designated portion, for the use for which it is intended. The issuance of a certificate of occupancy is not a prerequisite for Substantial Completion if the certificate of occupancy cannot be obtained due to factors beyond the Construction Manager's control. This date shall be confirmed by a certificate of Substantial Completion signed by the Owner and Construction Manager.

2.4.17 A Sub-subcontractor is a person or entity who has an agreement with a Subcontractor to perform any portion of the Work.

2.4.18 Terrorism means a violent act, or an act that is dangerous to human life, property or infrastructure, that is committed by an individual or individuals and that appears to be part of an effort to coerce a civilian population or to influence the policy or affect the conduct of any government by coercion. Terrorism includes, but is not limited to, any act certified by the United States government as an act of terrorism pursuant to the Terrorism Risk Insurance Act, as amended.

2.4.19 Work means the construction and services necessary or incidental to fulfill the Construction Manager's obligations for the Project in conformance with this Agreement and the other Contract Documents. The Work may refer to the whole Project or only a part of the Project if work is also being performed by the Owner or Others.

2.4.19.1 Changed Work means work that is different from the original scope of Work; or work that changes the GMP or Date of Substantial Completion or Date of Final Completion.

2.4.19.2 Defective Work is any portion of the Work that is not in conformance with the Contract Documents, as more fully described in Paragraphs 3.5 and 3.6.

2.4.20 Worksite means the location of the Project as identified in Article 1 where the Work is to be performed.

ARTICLE 3. CONSTRUCTION MANAGER'S RESPONSIBILITIES

3.1 GENERAL RESPONSIBILITIES

3.1.1 The Construction Manager shall provide all labor, materials, equipment and services necessary to complete the Work, all of which shall be provided in full accord with and reasonably inferable from the Contract Documents as being necessary to produce the indicated results.

3.1.2 The Construction Manager shall be responsible for the supervision and coordination of the Work, including the construction means, methods, techniques, sequences and procedures utilized, unless the Contract Documents give other specific instructions. In such case, the Construction Manager shall not be liable to the Owner for damages resulting from compliance with such instructions unless the Construction Manager recognized and failed to timely report to the Owner any error, inconsistency, omission or unsafe practice that it discovered in the specified construction means, methods, techniques, sequences or procedures.

3.1.3 The Construction Manager shall perform Work only within locations allowed by the Contract Documents, applicable permits and applicable law.

3.1.4 WORKSITE VISIT. The Construction Manager acknowledges that it has visited, or has had the opportunity to visit, the Worksite to visually inspect the general and local conditions which could affect the Work.

3.1.5 CONSTRUCTION MANAGER'S REPRESENTATIVE. The Construction Manager's authorized representative is David Odell. The Construction Manager's Representative shall possess full authority to receive instructions from the Owner and to act on those instructions. The Construction Manager shall notify the Owner in writing of a change in the designation of the Construction Manager's Representative.

3.1.6 PROFESSIONAL SERVICES. The Construction Manager may be required to procure professional services in order to carry out its responsibilities for construction means, methods, techniques, sequences and procedures or as such services are specifically called for by the Contract Documents. The Construction Manager shall obtain these professional services and any design certifications required from licensed design professionals. All drawings, specifications, calculations, certifications and submittals prepared by such design professionals shall bear the signature and seal of such design professionals and the Owner, and the Engineer, shall be entitled to rely upon the adequacy, accuracy and completeness of such design services. If

professional services are specifically required by the Contract Documents, the Owner shall indicate all required performance and design criteria. The Construction Manager shall not be responsible for the adequacy of such performance and design criteria. The Construction Manager shall not be required to provide such services in violation of existing laws, rules and regulations in the jurisdiction where the Project is located.

3.2 PRECONSTRUCTION SERVICES. The Preconstruction Services under this Paragraph 3.2 are included in the Construction Manager's work.

3.2.1 PRELIMINARY EVALUATION. The Construction Manager shall provide a preliminary evaluation of the Owner's Program and report such findings to the Owner and the Engineer.

3.2.2 CONSULTATION. The Construction Manager shall schedule and attend regular meetings with the Owner and Engineer. The Construction Manager shall consult with the Owner and Engineer regarding site use and improvements and the selection of materials, building systems and equipment. The Construction Manager shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost, including estimates of alternative designs or materials.

3.2.3 SCHEDULE OF THE WORK. When Project requirements have been sufficiently identified, the Construction Manager shall prepare a preliminary Schedule of the Work for the Engineer's review and the Owner's approval. The Construction Manager shall coordinate and integrate the Schedule of the Work with the services and activities of the Owner, Construction Manager, Engineer, and the requirements of governmental entities. As design proceeds, the Construction Manager shall update the Schedule of the Work to indicate proposed activity sequences, durations, or milestone dates for such activities as receipt and approval of pertinent information, issuance of the drawings and specifications, the preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead-time procurement, Owner's occupancy requirements and estimated date of Substantial Completion of the Project. If Schedule of the Work updates indicate that milestone dates contained in prior Schedules of the Work will not be met, the Construction Manager shall notify and make recommendations to the Owner. If the Project is to be completed in phases, the Construction Manager shall make recommendations to the Owner and Engineer regarding the phased issuance of the drawings and specifications.

3.2.4 ESTIMATES.

3.2.4.1 When the Owner has sufficiently identified the Owner's Program and other Project requirements and the Engineer has prepared other basic design criteria, the Construction Manager shall prepare, for the review of the Engineer and approval of the Owner, an initial estimate for the Project, utilizing area, volume or similar conceptual estimating techniques.

3.2.4.2 When schematic or preliminary design documents have been completed by the Engineer and approved by the Owner, the Construction Manager shall prepare for the review of the Engineer and approval of the Owner, a more detailed budget with supporting data. During the preparation of the design development documents with drawings and specifications, the Construction Manager shall update and refine this estimate at appropriate intervals agreed upon by the Owner, Engineer and Construction Manager.

3.2.5 CONSTRUCTION DOCUMENT REVIEW. The Construction Manager shall review the drawings and specifications in an effort to identify potential constructability problems that could impact the Construction Manager's ability to perform the Work in an expeditious and economical manner. The Construction Manager shall advise the Engineer and Owner for their review and action as appropriate. In addition, the Construction Manager shall promptly report to the Owner and the Engineer any errors or omissions which it discovers in the drawings and specifications.

3.2.6 TEMPORARY FACILITIES. The Construction Manager shall make recommendations regarding temporary construction facilities, equipment, materials and services for common use by the Construction Manager, its Subcontractors, Sub-subcontractors and Material Suppliers.

3.2.7 LONG-LEAD ITEMS. The Construction Manager shall recommend to the Owner and Engineer a schedule for procurement of long-lead-time items which will constitute part of the Work as required to meet the Schedule of the Work. The Construction Manager shall help expedite the delivery of long-lead-time items.

3.2.8 SOLICITATION OF SUBCONTRACTORS AND SUPPLIERS. The Construction Manager shall seek to develop Subcontractor interest in the Project and shall furnish to the Owner and Engineer a list of possible subcontractors from whom proposals may be requested for each principal portion of the Work. The Owner shall promptly reply in writing to the Construction Manager if the Owner or Engineer know of any objection to a subcontractor. The Owner may designate specific persons or entities from whom the Construction Manager shall solicit bids. CM will hold a workshop in Dodge City to Solicit Local Vendors and Subcontractors to provide services, scope and quotations for this project.

3.2.9 EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION. The Construction Manager shall consult with the Owner regarding equal employment opportunity and affirmative action programs.

3.2.10 CONSULTANTS. The Construction Manager shall assist the Owner in selecting, retaining and coordinating the professional services of a surveyor, testing laboratories and special consultants as needed.

3.2.11 PERMITS. The Construction Manager shall assist the Owner in obtaining building permits and special permits for permanent improvements, except for permits required to be obtained directly by the Construction Manager. The GMP does not include pricing for permits as these costs are borne by the Owner.

3.2.12 PRECONSTRUCTION SERVICES. The Construction Manager shall provide the Preconstruction Services as described in this Agreement for a fee of \$ 80,000.00, which shall be paid upon execution of this Agreement. The fee for Preconstruction Services shall be included as part of Lump Sum GMP. See Exhibit "A" Scoping Document.

3.3 GUARANTEED MAXIMUM PRICE (GMP)

3.3.1 At such time as the Owner and Construction Manager agree the drawings and specifications are sufficiently complete, the Construction Manager shall prepare and submit to the Owner in writing a GMP. The GMP proposal shall include the sum of the estimated cost of the Work, the Construction Manager's Fee, the clarifications and assumptions upon which it is based, allowances and reasonable contingencies, and shall include compensation for Preconstruction Services. The GMP shall also include a Schedule of Values as line items including a line item for Contingency. The format for the Schedule of Values shall be substantially in the form set forth in Exhibit D. The Construction Manager does not guarantee that the individual line items as scheduled will not be exceeded, only the GMP. Variances in line items for specific Schedule of Values which exceed or are less than any specific line item including the Contingency may be used for variables in other line items so long as the GMP is not exceeded.

3.3.2 BASIS OF GUARANTEED MAXIMUM PRICE. The Construction Manager shall include with the GMP proposal a written statement of its basis, which shall include: a written statement of its basis as Exhibit "A".

3.3.2.1 A list of the drawings and specifications, including all addenda, which were used in preparation of the GMP Proposal;

3.3.2.2 A Schedule of Values and Contingency in form substantially similar to Exhibit D;

3.3.2.3 Appendix to Exhibit A shall also include the plans as specifics supplied by Owner and Engineer as of the date of the proposed GMP, the proposed Schedule of Work as set forth below and A list of the assumptions and clarifications made by the Construction Manager in the preparation of the GMP Proposal to supplement the information contained in the drawings and specifications;

3.3.2.4 The Date of Substantial Completion or the Date of Final Completion upon which the proposed GMP is based, and the Schedule of Work upon which the Date of Substantial Completion or the Date of Final Completion is based;

3.3.2.5 A schedule of applicable alternate prices; See Exhibit "B".

3.3.2.6 A schedule of applicable unit prices;

3.3.2.7 A statement of any work to be self-performed by the Construction Manager. See Exhibit "C".

3.3.3 The Construction Manager shall meet with the Owner and Engineer to review the GMP. In the event that the Owner or Engineer discover any inconsistencies, inaccuracies or omissions in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the GMP. The Owner shall then give prompt written approval of the GMP.

3.3.4 The Owner shall cause the Engineer to revise the drawings and specifications to the extent necessary to reflect the clarifications, assumptions, and allowances on which the GMP is based. Revised drawings and specifications shall be furnished to the Construction Manager in accordance with the current Schedule of the Work, unless otherwise agreed by the Owner, Construction Manager and Engineer. The Construction Manager shall promptly notify the Owner and Engineer if the revised drawings and specifications are inconsistent with the GMP's clarifications, assumptions, and allowances.

3.3.5 If the Contract Documents are not complete at the time the GMP proposal is submitted to the Owner, the Construction Manager shall provide in the GMP for further development of the Contract Documents. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Document.

3.3.6 A Contingency to cover unanticipated cost will be established within the GMP. The Contingency line item shall be used for increases in items in the Schedule of Values which exceed the original amount set forth in that line item. Any amount remaining in the Contingency at the end of the Project shall be shared between Owner, Construction Manager and Engineer on an agreed basis at the time of the execution of the agreement for the GMP on the basis set forth in Exhibit F..

3.3.7 FAILURE TO ACCEPT THE GMP PROPOSAL. Unless the Owner accepts the GMP Proposal in writing on or before the date specified in the GMP Proposal for such acceptance and so notifies the Construction Manager, the GMP Proposal shall not be effective. If the Owner fails to accept the GMP Proposal, or rejects the GMP Proposal, the Owner shall have the right to:

3.3.7.1 Suggest modifications to the GMP Proposal. If such modifications are accepted in writing by Construction Manager, the GMP Proposal shall be deemed accepted in accordance with Subparagraph 3.3.6;

3.3.7.2 Terminate the Agreement for convenience in accordance with Paragraph 12.3.

3.3.8 PRE-GMP WORK. Prior to the Owner's acceptance of the GMP Proposal, the Construction Manager shall not incur any cost to be reimbursed as part of the Lump Sum GMP, except as provided in this Agreement or as the Owner may specifically authorize in writing.

3.4 CONSTRUCTION SERVICES AND ADMINISTRATION

3.4.1 In order to facilitate its responsibilities for completion of the Work in accordance with and as reasonably inferable from the Contract Documents, prior to commencing the Work the Construction Manager shall examine and compare the drawings and specifications with information furnished by the Owner pursuant to Paragraph 4.3, relevant field measurements made by the Construction Manager and any visible conditions at the Worksite affecting the Work.

3.4.2 If, in the course of the performance of the obligations in Subparagraph 3.4.1, the Construction Manager discovers any errors, omissions or inconsistencies in the Contract Documents, the Construction Manager shall promptly report them to the Owner. It is recognized, however, that the Construction Manager is not acting in the capacity of a licensed design professional, and that the Construction Manager's examination is to facilitate construction and does not create an affirmative responsibility to detect errors, omissions or inconsistencies or to ascertain compliance with applicable laws, building codes or regulations. Following receipt of written notice from the Construction Manager of defects, the Owner shall promptly inform the Construction Manager what action, if any, the Construction Manager shall take with regard to the defects.

3.4.3 The Construction Manager shall have no liability for errors, omissions or inconsistencies discovered under Subparagraphs 3.4.1 and 3.4.2, unless the Construction Manager knowingly fails to report a recognized problem to the Owner.

3.4.4 The Construction Manager may be entitled to additional costs or time because of clarifications or instructions growing out of the Construction Manager's reports described in the three preceding subparagraphs.

3.4.5 **COST REPORTING.** The Construction Manager shall keep such full and detailed accounts as are necessary for proper financial management under this Agreement. Construction Manager shall maintain a complete set of all books and records prepared or used by the Construction Manager with respect to the Project. The Construction Manager's records supporting its performance and billings under this Agreement shall be current, complete and accurate and maintained according to Generally Accepted Accounting Principles. The Owner shall be afforded access to all the Construction Manager's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to this Agreement and provide access to KDHE for audit. The Construction Manager shall preserve all such records for a period of two years after the final payment or longer where required by law.

3.4.5.1 The Construction Manager agrees to use reasonable skill and judgment in the preparation of cost estimates, Schedule of the Work, Schedule of Values, but does not warrant or guarantee them other than to complete Project within GMP as amended by Change Orders.

3.4.6 CONSTRUCTION PERSONNEL AND SUPERVISION

3.4.6.1 The Construction Manager shall provide competent supervision for the performance of the Work. Before commencing the Work, Construction Manager shall notify Owner in writing of the name and qualifications of its proposed superintendent(s) and project manager, so Owner may review the individual's qualifications. If, for reasonable cause, the Owner refuses to approve the individual, or withdraws its approval after once giving it, Construction Manager shall name a different superintendent for Owner's review. Any disapproved superintendent shall not perform in that capacity thereafter at the Worksite.

3.4.6.2 The Construction Manager shall be responsible to the Owner for acts or omissions of Parties or entities performing portions of the Work for or on behalf of the Construction Manager or any of its Subcontractors.

3.4.6.3 The Construction Manager shall permit only fit and skilled persons to perform the Work. The Construction Manager shall enforce safety procedures, strict discipline and good order among persons performing the Work. If the Owner determines that a particular person does not follow safety procedures, or is unfit or unskilled for the assigned work, the Construction Manager shall immediately reassign the person on receipt of the Owner's written notice to do so.

3.4.7 SUBMITTALS

3.4.7.1 The Construction Manager shall submit to the Owner and, if directed, to its Engineer for review and the Owner's approval all shop drawings, samples, product data and similar submittals required by the Contract Documents. Submittals may be submitted in electronic form if required in accordance with Subparagraph 4.6.1. The Construction Manager shall be responsible to the Owner for the accuracy and conformity of its submittals to the Contract Documents. The Construction Manager shall prepare and deliver its submittals to the Owner in such time and sequence so as not to delay the performance of the Work or the work of the Owner and Others. When the Construction Manager delivers its submittals to the Owner, the Construction Manager shall identify in writing for each submittal all changes, deviations or substitutions from the requirements of the Contract Documents. The review and approval of any Construction Manager submittal shall not be deemed to authorize changes, deviations or substitutions from the requirements of the Contract Documents unless express written approval is obtained from the Owner specifically authorizing such deviation, substitution or change. To the extent a change, deviation or substitution causes an impact to the Contract Price or Contract Time, such approval shall be promptly memorialized in a Change Order. Further, the Owner shall not make any change, deviation or substitution through the submittal process without specifically identifying and authorizing such deviation to the Construction Manager. In the event that the Contract Documents do not contain submittal requirements

pertaining to the Work, the Construction Manager agrees upon request to submit in a timely fashion to the Owner for review and approval any shop drawings, samples, product data, manufacturers' literature or similar submittals as may reasonably be required by the Owner.

3.4.7.2 The Owner shall be responsible for review and approval of submittals with reasonable promptness to avoid causing delay.

3.4.7.3 The Construction Manager shall perform all Work strictly in accordance with approved submittals. Approval does not relieve the Construction Manager from responsibility for Defective Work resulting from errors or omissions of any kind on the approved shop drawings.

3.4.7.4 Record copies of the following, incorporating field changes and selections made during construction shall be maintained at the Worksite and available to the Owner upon request: drawings, specifications, addenda and other modifications, and required submittals including product data, samples and shop drawings.

3.4.7.5 No substitutions shall be made in the Work unless permitted in the Contract Documents and then only after the Construction Manager obtains all approvals required under the Contract Documents for substitutions. All such substitutions shall be memorialized promptly in a Change Order no later than seven (7) Days following approval by the Owner and, if applicable, provide for an adjustment in the Contract Price or Contract Time.

3.4.8 The Construction Manager shall prepare and submit to the Owner (Designate only one)

____ 1__ final marked-up as-built drawings

or

____ such documentation as defined by the Parties by further attachment to this Agreement,

in general documenting how the various elements of the Work were actually constructed or installed.

3.4.9 COOPERATION WITH WORK OF OWNER AND OTHERS

3.4.9.1 The Owner may perform work at the Worksite directly or by Others. Any agreements with Others to perform construction or operations related to the Project shall include provisions pertaining to insurance, indemnification, waiver of subrogation, coordination, interference, clean up and safety which are substantively the same as the corresponding provisions of this Agreement.

3.4.9.2 In the event that the Owner elects to perform work at the Worksite directly or by Others, the Construction Manager and Owner shall coordinate the activities of all forces at the Worksite and agree upon fair and reasonable schedules and operational procedures for Worksite activities. The Owner shall require each separate contractor to cooperate with the Construction Manager and assist with the coordination of activities and the review of construction schedules and operations. The GMP or the Date of Substantial Completion or the Date of Final Completion shall be equitably adjusted, as mutually agreed by the Parties, for changes made necessary by the coordination of construction activities, and the Schedule of the Work shall be revised accordingly. The Construction Manager, Owner and Others shall adhere to the revised Schedule of the Work until it may subsequently be revised.

3.4.9.3 With regard to the work of the Owner and Others, the Construction Manager shall (a) proceed with the Work in a manner which does not hinder, delay or interfere with the work of the Owner or Others or cause the work of the Owner or Others to become defective, (b) afford the Owner or Others reasonable access for introduction and storage of their materials and equipment and performance of their activities, and (c) coordinate the Construction Manager's construction and operations with theirs as required by this Subparagraph 3.4.9.

3.4.9.4 Before proceeding with any portion of the Work affected by the construction or operations of the Owner or Others, the Construction Manager shall give the Owner and Engineer prompt, written notification of any defects the Construction Manager discovers in their work which will prevent the proper

execution of the Work. The Construction Manager's obligations in this Subparagraph 3.4.9 do not create a responsibility for the work of Others, but are for the purpose of facilitating the Work. If the Construction Manager does not notify the Owner of patent defects interfering with the performance of the Work, the Construction Manager acknowledges that the work of the Owner or Others is not defective and is acceptable for the proper execution of the Work. Following receipt of written notice from the Construction Manager of defects, the Owner shall promptly inform the Construction Manager what action, if any, the Construction Manager shall take with regard to the defects.

3.4.10 CUTTING, FITTING AND PATCHING.

3.4.10.1 The Construction Manager shall perform cutting, fitting and patching necessary to coordinate the various parts of the Work and to prepare its Work for the work of the Owner or Others.

3.4.10.2 Cutting, patching or altering the work of the Owner or Others shall be done with the prior written approval of the Owner. Such approval shall not be unreasonably withheld.

3.4.11 CLEANING UP.

3.4.11.1 The Construction Manager shall regularly remove debris and waste materials at the Worksite resulting from the Work. Prior to discontinuing Work in an area, the Construction Manager shall clean the area and remove all rubbish and its construction equipment, tools, machinery, waste and surplus materials. The Construction Manager shall minimize and confine dust and debris resulting from construction activities. At the completion of the Work, the Construction Manager shall remove from the Worksite all construction equipment, tools, surplus materials, waste materials and debris.

3.4.11.2 If the Construction Manager fails to commence compliance with cleanup duties within two (2) business Days after written notification from the Owner of non-compliance, the Owner may implement appropriate cleanup measures without further notice and the cost shall be deducted from any amounts due or to become due the Construction Manager in the next payment period.

3.4.11.3 ACCESS TO WORK. The Construction Manager shall facilitate the access of the Owner, its Engineer and Others to Work in progress.

3.4.12 MATERIALS FURNISHED BY THE OWNER OR OTHERS.

3.4.12.1 In the event the Work includes installation of materials or equipment furnished by the Owner or Others, it shall be the responsibility of the Construction Manager to examine the items so provided and thereupon handle, store and install the items, unless otherwise provided in the Contract Documents, with such skill and care as to provide a satisfactory and proper installation. Loss or damage due to acts or omissions of the Construction Manager shall be the responsibility of the Construction Manager and may be deducted from any amounts due or to become due the Construction Manager. Any defects discovered in such materials or equipment shall be reported at once to the Owner. Following receipt of written notice from the Construction Manager of defects, the Owner shall promptly inform the Construction Manager what action, if any, the Construction Manager shall take with regard to the defects.

3.4.13 TESTS AND INSPECTIONS.

3.4.13.1 The Construction Manager shall schedule all required tests, approvals and inspections of the Work or portions thereof at appropriate times so as not to delay the progress of the Work or other work related to the Project. The Construction Manager shall give proper notice to all required Parties of such tests, approvals and inspections. If feasible, the Owner and Others may timely observe the tests at the normal place of testing. Except as provided in Clause 3.4.14.3, the Owner shall bear all expenses associated with tests, inspections and approvals required by the Contract Documents which, unless otherwise agreed to, shall be conducted by an independent testing laboratory or entity retained by the Owner. Unless otherwise required by the Contract Documents, required certificates of testing, approval or inspection shall be secured by the Construction Manager and promptly delivered to the Owner.

3.4.13.2 If the Owner or appropriate authorities determine that tests, inspections or approvals in addition to those required by the Contract Documents will be necessary, the Construction Manager shall arrange for the procedures and give timely notice to the Owner and Others who may observe the procedures. Costs of the additional tests, inspections or approvals are at the Owner's expense except as provided in Clause 3.4.14.3.

3.4.13.3 If the procedures described in Clauses 3.4.14.1 and 3.4.14.2 indicate that portions of the Work fail to comply with the Contract Documents due to the negligence of the Construction Manager, the Construction Manager shall be responsible for costs of correction and retesting.

3.5 WORKMANSHIP.

3.5.1 The Work shall be executed in accordance with the Contract Documents in a workmanlike manner. All materials used in the Work shall be furnished in sufficient quantities to facilitate the proper and expeditious execution of the Work and shall be new except such materials as may be expressly provided in the Contract Documents to be otherwise.

3.6 WARRANTY.

3.6.1 The Construction Manager warrants that all materials and equipment furnished under the Construction Phase of this Agreement will be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. At the Owner's request, the Construction Manager shall furnish satisfactory evidence of the quality and type of materials and equipment furnished. The Construction Manager further warrants that the Work shall be free from material defects not intrinsic in the design or materials required in the Contract Documents. The Construction Manager's warranty does not include remedies for defects or damages caused by normal wear and tear during normal usage, use for a purpose for which the Project was not intended, improper or insufficient maintenance, modifications performed by the Owner or Others, or abuse. The Construction Manager's warranty pursuant to this Paragraph 3.6 shall commence on the Date of Substantial Completion, except for Equipment for which warranty commencement date shall be in accordance with the manufacturer's warranty.

3.6.2 With respect to any portion of Work first performed after Substantial Completion, the Construction Manager's warranty obligation shall be extended by the period of time between Substantial Completion and the actual performance of the later Work.

3.6.3 The Construction Manager shall obtain from its Subcontractors and Material Suppliers any special or extended warranties required by the Contract Documents. All such warranties shall then be listed in an attached Addendum to this Agreement. Construction Manager's liability for such warranties shall be limited to the one-year correction period referred to in Paragraph 3.7. After that period Construction Manager shall assign them to the Owner and provide reasonable assistance to the Owner in enforcing the obligations of Subcontractors or Material Suppliers.

3.6.4 Any warranties for Equipment purchased by Construction Manager for installation as part of the Work shall be in conformance to the warranty provided by the Equipment manufacturer and seller, and any warranty by Construction Manager under this Agreement for Equipment is limited to the terms and conditions of the Equipment manufacturer/seller's warranty under this Section 3.6 and 3.7.

3.7 CORRECTION OF WORK WITHIN ONE YEAR.

3.7.1 If prior to Substantial Completion and within one year after the date of Substantial Completion of the Work any Defective Work is found, the Owner shall promptly notify the Construction Manager in writing. Unless the Owner provides written acceptance of the condition, the Construction Manager shall promptly correct the Defective Work. If within the one-year correction period the Owner discovers and does not promptly notify the Construction Manager or give the Construction Manager an opportunity to test or correct Defective Work as reasonably requested by the Construction Manager, the Owner waives the Construction Manager's obligation to correct that Defective Work as well as the Owner's right to claim a breach of the warranty with respect to that Defective Work.

3.7.2 With respect to any portion of Work first performed after Substantial Completion, the one year correction period shall be extended by the period of time between Substantial Completion and the actual performance of the later Work. Correction periods shall not be extended by corrective work performed by the Construction Manager.

3.7.3 If the Construction Manager fails to correct Defective Work within a reasonable time after receipt of written notice from the Owner prior to final payment, the Owner may correct it in accordance with the Owner's right to carry out the Work in Paragraph 12.2. In such case, an appropriate Change Order shall be issued deducting the cost of correcting such deficiencies from payments then or thereafter due the Construction Manager. If payments then or there after due Construction Manager are not sufficient to cover such amounts, the Construction Manager shall pay the difference to the Owner.

3.7.4 If after the one-year correction period but before the applicable limitation period the Owner discovers any Defective Work, the Owner shall, unless the Defective Work requires emergency correction, promptly notify the Construction Manager. If the Construction Manager elects to correct the Work it shall provide written notice of such intent within fourteen (14) Days of its receipt of notice from the Owner. The Construction Manager shall complete the correction of Work within a mutually agreed time frame. If the Construction Manager does not elect to correct the Work, the Owner may have the Work corrected by itself or Others and charge the Construction Manager for the reasonable cost of the correction. Owner shall provide Construction Manager with an accounting of correction costs it incurs. Notification by Owner to Construction Manager under this section shall not extend or expand Construction Manager's obligations to correct Defective Work.

3.7.5 If the Construction Manager's correction or removal of Defective Work causes damage to or destroys other completed or partially completed work or existing building, the Construction Manager shall be responsible for the cost of correcting the destroyed or damaged property.

3.7.6 The one-year period for correction of Defective Work does not constitute a limitation period with respect to the enforcement of the Construction Manager's other obligations under the Contract Documents.

3.7.7 Prior to final payment, at the Owner's option and with the Construction Manager's agreement, the Owner may elect to accept Defective Work rather than require its removal and correction. In such cases the GMP shall be equitably adjusted for any diminution in the value of the Project caused by such Defective Work.

3.8 CORRECTION OF COVERED WORK.

3.8.1 On request of the Owner, Work that has been covered without a requirement that it be inspected prior to being covered may be uncovered for the Owner's inspection. The Owner shall pay for the costs of uncovering and replacement if the Work proves to be in conformance with the Contract Documents, or if the defective condition was caused by the Owner or Others. If the uncovered Work proves to be defective, the Construction Manager shall pay the costs of uncovering and replacement.

3.8.2 If contrary to specific requirements in the Contract Documents or contrary to a specific request from the Owner, a portion of the Work is covered, the Owner, by written request, may require the Construction Manager to uncover the Work for the Owner's observation. In this circumstance the Work shall be replaced at the Construction Manager's expense and with no adjustment to the Dates of Substantial or Final Completion.

3.8.3 The Construction Manager is required to correct in a timely fashion any Work rejected by the Owner which fails to comply with the Contract Documents prior to the commencement of the warranty period(s) or during the correction period(s) established under Paragraph 3.7. The Construction Manager shall correct at its own cost and time and bear the expense of additional services required for correction of any Defective Work for which it is responsible.

3.9 SAFETY OF PERSONS AND PROPERTY.

3.9.1 SAFETY PRECAUTIONS AND PROGRAMS. The Construction Manager shall have overall responsibility for safety precautions and programs in the performance of the Work. While this Paragraph 3.9 establishes the responsibility for safety between the Owner and Construction Manager, it does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with the provisions of applicable laws and regulations.

3.9.2 The Construction Manager shall seek to avoid injury, loss or damage to persons or property by taking reasonable steps to protect:

3.9.2.1 its employees and other persons at the Worksite;

3.9.2.2 materials and equipment stored at on-site or off-site locations for use in the Work; and

3.9.2.3 property located at the Worksite and adjacent to Work areas, whether or not the property is part of the Work.

3.9.3 CONSTRUCTION MANAGER'S SAFETY REPRESENTATIVE. The Construction Manager's Worksite Safety Representative is the Project Superintendent, Ed Bender, who shall act as the Construction Manager's authorized safety representative with a duty to prevent accidents in accordance with Subparagraph 3.9.2. The Construction Manager shall report immediately in writing all accidents and injuries occurring at the Worksite. When the Construction Manager is required to file an accident report with a public authority, the Construction Manager shall furnish a copy of the report to the Owner.

3.9.4 The Construction Manager shall provide the Owner with copies of all notices required of the Construction Manager by law or regulation. The Construction Manager's safety program shall comply with the requirements of governmental and quasi-governmental authorities having jurisdiction.

3.9.5 Damage or loss not insured under property insurance which may arise from the Work, to the extent caused by negligent acts or omissions of the Construction Manager, or anyone for whose acts the Construction Manager may be liable, shall be promptly remedied by the Construction Manager. With regard to damage or loss attributable to the acts or omissions of the Owner or Others and not to the Construction Manager, the Owner may either (a) promptly remedy the damage or loss; or (b) accept the damage or loss.

3.9.6 If the Owner deems any part of the Work or Worksite unsafe, the Owner, without assuming responsibility for the Construction Manager's safety program, may require the Construction Manager to stop performance of the Work or take corrective measures satisfactory to the Owner, or both. If the Construction Manager does not adopt corrective measures, the Owner may perform them and deduct their cost from the GMP. The Construction Manager agrees to make no claim for damages, or an increase in the GMP, or for a change in the Dates of Substantial or Final Completion based on the Construction Manager's compliance with the Owner's reasonable request.

3.10 EMERGENCIES. In an emergency, the Construction Manager shall act in a reasonable manner to prevent personal injury or property damage. If appropriate, an equitable adjustment in GMP or Date of Substantial Completion or Date of Final Completion shall be determined in a Change Order.

3.11 HAZARDOUS MATERIALS.

3.11.1 A Hazardous Material is any substance or material identified now or in the future as hazardous under any federal, state or local law or regulation, or any other substance or material that may be considered hazardous or otherwise subject to statutory or regulatory requirement governing handling, disposal or clean-up. The Construction Manager shall not be obligated to commence or continue work until any Hazardous Material discovered at the Worksite has been removed, rendered or determined to be harmless by the Owner as certified by an independent testing laboratory and approved by the appropriate government agency.

3.11.2 If after the commencement of the Work, Hazardous Material is discovered at the Worksite, the Construction Manager shall be entitled to immediately stop Work in the affected area. The Construction Manager shall report the condition to the Owner, the Engineer, and, if required, the government agency with jurisdiction.

3.11.3 The Construction Manager shall not be required to perform any Work relating to or in the area of Hazardous Material without written mutual agreement.

3.11.4 The Owner shall be responsible for retaining an independent testing laboratory to determine the nature of the material encountered and whether the material requires corrective measures or remedial action. Such measures shall be the sole responsibility of the Owner, and shall be performed in a manner minimizing any adverse effects upon the Work. The Construction Manager shall resume Work in the area affected by any

Hazardous Material only upon written agreement between the Parties after the Hazardous Material has been removed or rendered harmless and only after approval, if necessary, of the governmental agency with jurisdiction.

3.11.5 If the Construction Manager incurs additional costs or is delayed due to the presence or remediation of Hazardous Material, the Construction Manager shall be entitled to an equitable adjustment in the GMP or the Dates of Substantial or Final Completion.

3.11.6 To the extent not caused by the negligent acts or omissions of the Construction Manager, its Subcontractors and Subsubcontractors, and the agents, officers, directors and employees of each of them, the Owner shall defend, indemnify and hold harmless the Construction Manager, its Subcontractors and Subsubcontractors, and the agents, officers, directors and employees of each of them, from and against any and all direct claims, damages, losses, costs and expenses, including but not limited to attorneys' fees, costs and expenses incurred in connection with any dispute resolution procedure, arising out of or relating to the performance of the Work in any area affected by Hazardous Material. To the fullest extent permitted by law, such indemnification shall apply regardless of the fault, negligence, breach of warranty or contract, or strict liability of the Owner.

3.12 MATERIALS BROUGHT TO THE WORKSITE.

3.12.1 Material Safety Data (MSD) sheets as required by law and pertaining to materials or substances used or consumed in the performance of the Work, whether obtained by the Construction Manager, Subcontractors, the Owner or Others, shall be maintained at the Worksite by the Construction Manager and made available to the Owner, Subcontractors and Others.

3.12.2 The Construction Manager shall be responsible for the proper delivery, handling, application, storage, removal and disposal of all materials and substances brought to the Worksite by the Construction Manager in accordance with the Contract Documents and used or consumed in the performance of the Work.

3.12.3 To the extent not caused by the negligent acts or omissions of the Construction Manager, its agents, officers, directors and employees, the Owner shall defend, indemnify and hold harmless the Construction Manager, its agents, officers, directors and employees, from and against claims, damages, losses, costs and expenses, including but not limited to reasonable attorneys' fees, costs and expenses incurred in connection with any dispute resolution process, to the extent permitted pursuant to Paragraph 6.7, arising out of or relating to the delivery, handling, application, storage, removal and disposal of all materials and substances.

3.13 CONCEALED OR UNKNOWN WORKSITE CONDITIONS. If the conditions at the Worksite are (a) subsurface or other physical conditions which are materially different from those indicated in the Contract Documents, or (b) unusual or unknown physical conditions which are materially different from conditions ordinarily encountered and generally recognized as inherent in Work provided for in the Contract Documents, the Construction Manager shall give immediate written notice of the condition to the Owner and the Engineer, and, if necessary, stop Work. Any change in the GMP, Construction Manager's Fee, Date of Substantial Completion or Date of Final Completion and, if appropriate, the Compensation for Preconstruction Services as a result of the unknown condition shall be determined as provided in Article 9. The Construction Manager shall provide the Owner with written notice of any claim as a result of unknown conditions within the time period set forth in Paragraph 9.4.

3.14 3.14 PERMITS AND TAXES.

3.14.1 Construction Manager shall give public authorities all notices required by law and, except for permits and fees which are the responsibility of the Owner pursuant to Paragraph 4.4, shall obtain and pay for all necessary permits, licenses and renewals pertaining to the Work. Construction Manager shall provide to Owner copies of all notices, permits, licenses and renewals required under this Agreement.

3.14.2 Construction Manager shall pay all applicable taxes legally enacted when bids are received or negotiations concluded for the Work provided by the Construction Manager.

3.14.3 The GMP is based on the project being Tax exempt for materials purchase in the fulfillment of the Contract. The Owner will provide the CM a Tax Exemption certificate for the Duration of the Project. The GMP shall be adjusted for additional costs resulting from laws, ordinances, rules and regulations enacted after the date of this Agreement, including increased taxes.

3.14.4 If, in accordance with the Owner's direction, the Construction Manager claims an exemption for taxes, the Owner shall indemnify and hold the Construction Manager harmless from any liability, penalty, interest, fine, tax assessment, attorneys fees or other expense or cost incurred by the Construction Manager as a result of any such action. Owner represents and directs Construction Manager to claim exemption for taxes for the Project

3.15 CONFIDENTIALITY. The Construction Manager shall treat as confidential and not disclose to third persons, except Subcontractors, Sub-subcontractors and as is necessary for the performance of the Work, or use for its own benefit, any of the Owner's confidential information, know-how, discoveries, production methods and the like that may be disclosed to the Construction Manager or which the Construction Manager may acquire in connection with the Work. The Owner shall treat as confidential information all of the Construction Manager's financial reporting, safety systems and programs, and know-how, discoveries, production methods and the like that may be disclosed to the Owner in connection with the performance of this Agreement. The Owner and the Construction Manager shall each specify those items to be treated as confidential and shall mark them as "Confidential".

ARTICLE 4.

OWNER'S RESPONSIBILITIES

4.1 INFORMATION AND SERVICES. Any information or services to be provided by the Owner shall be provided in a timely manner so as not to delay the Work.

4.2 FINANCIAL INFORMATION. Prior to commencement of the Work and thereafter at the written request of the Construction Manager, the Owner shall provide the Construction Manager with evidence of Project financing. Evidence of such financing shall be a condition precedent to the Construction Manager's commencing or continuing the Work. The Construction Manager shall be notified prior to any material change in Project financing.

4.3 WORKSITE INFORMATION. Except to the extent that the Construction Manager knows of any inaccuracy, the Construction Manager is entitled to rely on Worksite information furnished by the Owner pursuant to this Paragraph 4.3. To the extent the Owner has obtained, or is required elsewhere in the Contract Documents to obtain, the following Worksite information, the Owner shall provide at the Owner's expense and with reasonable promptness:

4.3.1 information describing the physical characteristics of the Worksite, including surveys, Worksite evaluations, legal descriptions, data or drawings depicting existing conditions, subsurface conditions and environmental studies, reports and investigations;

4.3.2 tests, inspections and other reports dealing with environmental matters, Hazardous Material and other existing conditions, including structural, mechanical and chemical tests, required by the Contract Documents or by law; and

4.3.3 any other information or services requested in writing by the Construction Manager which are relevant to the Construction Manager's performance of the Work and under the Owner's control.

The information required by this Paragraph 4.3 shall be provided in reasonable detail. Legal descriptions shall include easements, title restrictions, boundaries, and zoning restrictions. Worksite descriptions shall include existing buildings and other construction and all other pertinent site conditions. Adjacent property descriptions shall include structures, streets, sidewalks, alleys, and other features relevant to the Work. Utility details shall include available services, lines at the Worksite and adjacent thereto and connection points. The information shall include public and private information, subsurface information, grades, contours, and elevations, drainage data, exact locations and dimensions, and benchmarks that can be used by the Construction Manager in laying out the Work.

4.4 BUILDING PERMIT, FEES AND APPROVALS. The Owner shall secure and pay for all permits, approvals, easements, assessments and fees required for the development, construction, use or occupancy of permanent structures or for permanent changes in existing facilities, including the building permit.

4.5 MECHANICS AND CONSTRUCTION LIEN INFORMATION. Within seven (7) Days after receiving the Construction Manager's written request, the Owner shall provide the Construction Manager with the

information necessary to give notice of or enforce mechanics lien rights and, where applicable, stop notices. This information shall include the Owner's interest in the real property on which the Project is located and the record legal title.

4.6 CONTRACT DOCUMENTS. Unless otherwise specified, Owner shall provide a reasonable number of hard copies of the Contract Documents to the Construction Manager without cost.

4.6.1 ELECTRONIC DOCUMENTS. If the Owner requires that the Owner, Engineer and Construction Manager exchange documents and data in electronic or digital form, prior to any such exchange, the Owner, Engineer and Construction Manager shall agree on a written protocol governing all exchanges in a separate Agreement, which, at a minimum, shall specify: (1) the definition of documents and data to be accepted in electronic or digital form or to be transmitted electronically or digitally; (2) management and coordination responsibilities; (3) necessary equipment, software and services; (4) acceptable formats, transmission methods and verification procedures; (5) methods for maintaining version control; (6) privacy and security requirements; and (7) storage and retrieval requirements. Except as otherwise agreed to by the Parties in writing, the Parties shall bear their own costs as identified in the protocol. In the absence of a written protocol, use of documents and data in electronic or digital form shall be at the sole risk of the recipient.

4.7 OWNER'S REPRESENTATIVE. The Owner's authorized representative is Joe Finley. The representative shall be fully acquainted with the Project, and shall have authority to bind the Owner in all matters requiring the Owner's approval, authorization or written notice. If the Owner changes its representative or the representative's authority as listed above, the Owner shall immediately notify the Construction Manager in writing.

4.8 OWNER'S CUTTING AND PATCHING. Cutting, patching, or altering the Work by the Owner or Others shall be done with the prior written approval of the Construction Manager, which approval shall not be unreasonably withheld.

4.9 OWNER'S RIGHT TO CLEAN UP. In case of a dispute between the Construction Manager and Others with regard to respective responsibilities for cleaning up at the Worksite, the Owner may implement appropriate cleanup measures after two (2) business Days notice and allocate the cost among those responsible during the following pay period.

4.10 COST OF CORRECTING DAMAGED OR DESTROYED WORK. With regard to damage or loss attributable to the acts or omissions of the Owner or Others and not to the Construction Manager, the Owner may either (a) promptly remedy the damage or loss or (b) accept the damage or loss. If the Construction Manager incurs additional costs or is delayed due to such loss or damage, the Construction Manager shall be entitled to an equitable adjustment in the GMP, estimated Cost of the Work, Construction Manager's Fee, Date of Substantial Completion or Date of Final Completion and, if appropriate, the Compensation for Preconstruction Services.

ARTICLE 5.

SUBCONTRACTS

5.1 SUBCONTRACTORS. The Work not performed by the Construction Manager with its own forces shall be performed by Subcontractors. All subcontracts shall be issued on a lump sum basis unless the Owner has given prior written approval of a different method of payment to the Subcontractor.

5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK.

5.2.1 As soon after the execution of this Agreement as possible the Construction Manager shall provide the Owner, and if directed, the Engineer with a written list of the proposed subcontractors and significant material suppliers. If the Owner has a reasonable objection to any proposed subcontractor or material supplier, the Owner shall notify the Construction Manager in writing. Failure to promptly object shall constitute acceptance.

5.2.2 If the Owner has reasonably and promptly objected as provided in Subparagraph 5.2.1, the Construction Manager shall not contract with the proposed subcontractor or material supplier, and the Construction Manager shall propose another acceptable to the Owner. An appropriate Change Order shall reflect any increase or decrease in the GMP or Dates of Substantial or Final Completion because of the substitution.

5.3 BINDING OF SUBCONTRACTORS AND MATERIAL SUPPLIERS. The Construction Manager agrees to bind every Subcontractor and Material Supplier (and require every Subcontractor to so bind its subcontractors and Material Suppliers) to all the provisions of this Agreement and the Contract Documents as they apply to the Subcontractor's and Material Supplier's portions of the Work.

5.4 LABOR RELATIONS. (insert here any conditions, obligations or requirements relative to labor relations and their effect on the Project. Legal counsel is recommended):

5.5 CONTINGENT ASSIGNMENT OF SUBCONTRACTS.

5.5.1 If this Agreement is terminated, each subcontract agreement shall be assigned by the Construction Manager to the Owner, subject to the prior rights of any surety, provided that:

5.5.1.1 this Agreement is terminated by the Owner pursuant to Paragraphs 12.3 or 12.4; and

5.5.1.2 the Owner accepts such assignment after termination by notifying the Subcontractor and Construction Manager in writing, and assumes all rights and obligations of the Construction Manager pursuant to each subcontract agreement.

5.5.2 If the Owner accepts such an assignment, and the Work has been suspended for more than thirty (30) consecutive Days, following termination, the Subcontractor's compensation shall be equitably adjusted as a result of the suspension.

ARTICLE 6.

TIME

6.1 PERFORMANCE OF THE WORK.

6.1.1 DATE OF COMMENCEMENT. The Date of Commencement is the date of this Agreement as first written in Article 1 unless otherwise set forth below:

Notice to Proceed _____

Substantial Completion _____

Final Acceptance _____

The Work shall proceed in general accordance with the Schedule of Work as such schedule may be amended from time to time, subject to other provisions of this Agreement.

6.1.2 SUBSTANTIAL/FINAL COMPLETION. Unless the Parties agree or otherwise, the Date of Substantial Completion or the Date of Final Completion shall be established in Amendment No. 1 to this Agreement subject to adjustments as provided for in the Contract Documents. The Owner and the Construction Manager may agree not to establish such dates, or in the alternative, to establish one but not the other of the two dates. If such dates are not established upon the execution of this Agreement, at such time as GMP is accepted a Date of Substantial Completion or Date of Final Completion of the Work shall be established in Amendment No.1. If a GMP is not established and the Parties desire to establish a Date of Substantial Completion or Date of Final Completion, it shall be set forth in Amendment No.1.

6.1.3 Time limits stated above are of the essence of this Agreement.

6.1.4 The Construction Manager shall not knowingly commence the Work before the effective date of insurance to be provided by the Construction Manager and Owner as required by the Contract Documents.

6.2 SCHEDULE OF THE WORK.

6.2.1 Before submitting the first application for payment, the Construction Manager shall submit to the Owner and, if directed, the Engineer a Schedule of the Work that shall show the dates on which the Construction Manager plans to commence and complete various parts of the Work, including dates on which information and approvals are required from the Owner. On the Owner's written approval of the Schedule of the Work, the Construction Manager shall comply with it unless directed by the Owner to do otherwise or the Construction Manager is otherwise entitled to an adjustment in the Contract Time. The Construction Manager shall update the schedule on a monthly basis or at appropriate intervals as required by the conditions of the Work and the Project.

6.2.2 The Owner may determine the sequence in which the Work shall be performed, provided it does not unreasonably interfere with the approved project schedule. The Owner may require the Construction Manager to make reasonable changes in the sequence at any time during the performance of the Work in order to facilitate the performance of work by the Owner or Others. To the extent such changes increase Construction Manager's time and costs the GMP and Dates of Substantial or Final Completion shall be equitably adjusted.

6.3 DELAYS AND EXTENSIONS OF TIME.

6.3.1 If the Construction Manager is delayed at any time in the commencement or progress of the Work by any cause beyond the control of the Construction Manager, the Construction Manager shall be entitled to an equitable extension of the Date of Substantial Completion or Date of Final Completion. In addition, if the Construction Manager incurs additional costs as a result of such delay, the Construction Manager shall be entitled to an equitable adjustment in the GMP subject to Paragraph 11.2. Examples of causes beyond the control of the Construction Manager include, but are not limited to the following: acts or omissions of the Owner, the Engineer or Others; Engineer and/or Owner not providing timely or sufficiently detailed plans and specification for the orderly progress of the Work in accordance with the Schedule, changes in the Work or the sequencing of the Work ordered by the Owner, or arising from decisions of the Owner that impact the time of performance of the Work; labor disputes not involving the Construction Manager; fire; encountering Hazardous Materials; adverse weather conditions not reasonably anticipated; concealed or unknown conditions; delay authorized by the Owner pending dispute resolution and suspension by the Owner under Paragraph 12.1. The Construction Manager shall submit any requests for equitable extensions of Contract Time or equitable adjustment in Contract Price in accordance with the provisions of Article 9.

6.3.2 In addition, if the Construction Manager incurs additional costs as a result of a delay that is caused by acts or omissions of the Owner, the Engineer or Others, changes in the Work or the sequencing of the Work ordered by the Owner, or arising from decisions of the Owner that impact the time of performance of the Work, encountering Hazardous Materials, or concealed or unknown conditions, delay authorized by the Owner pending dispute resolution or suspension by the Owner under Paragraph 12.1, the Construction Manager shall be entitled to an equitable adjustment in the GMP subject to Paragraph 6.7.

6.3.3 NOTICE OF DELAYS. In the event delays to the Work are encountered for any reason, the Construction Manager shall provide prompt written notice to the Owner of the cause of such delays after Construction Manager first recognizes the delay.

6.4 NOTICE OF DELAY CLAIMS. If the Construction Manager requests an equitable extension of Contract Time or an equitable adjustment in Contract Price as a result of a delay described in Subparagraph 6.3.1, the Construction Manager shall give the Owner written notice of the claim in accordance with Paragraph 9.4. If the Construction Manager causes delay in the completion of the Work, the Owner shall be entitled to recover its additional costs subject to Paragraph 11.2. The Owner shall process any such claim against the Construction Manager in accordance with Article 9.

6.5 LIQUIDATED DAMAGES.

6.5.1 SUBSTANTIAL COMPLETION. The Owner and the Construction Manager agree that this Agreement shall provide for the imposition of liquidated damages based on the Date of Substantial Completion established in Article 6.1.1.

The Construction Manager understands that if the Date of Substantial Completion established by this Agreement, as may be amended by subsequent Change Order, is not attained, the Owner will suffer damages which are difficult to determine and accurately specify. The Construction Manager agrees that if the Date of Substantial Completion is not attained the Construction Manager shall pay the Owner _____ Dollars

(\$ _____) as liquidated damages and not as a penalty for each Day that Substantial Completion extends beyond the Date of Substantial Completion. The liquidated damages provided herein shall be in lieu of all liability for any and all extras costs, losses, expenses, claims, penalties and any other damages of whatsoever nature incurred by the Owner which are occasioned by any delay in achieving the Date of Substantial Completion.

6.5.2 FINAL COMPLETION. The Owner and the Construction Manager agree that this Agreement shall provide for the imposition of liquidated damages based on the Date of Final Completion.

6.5.2.1 The Construction Manager understands that if the Date of Final Completion established by this Agreement, as may be amended by subsequent Change Order is not attained, the Owner will suffer damages which are difficult to determine and accurately specify. The Construction Manager agrees that if the Date of Final Completion is not attained the Construction Manager shall pay the Owner _____ Dollars (\$ _____) as liquidated damages and not as a penalty for each Day that Final Completion extends beyond the Date of Final Completion. The liquidated damages provided herein shall be in lieu of all liability for any and all extras costs, losses, expenses, claims, penalties and any other damages of whatsoever nature incurred by the Owner which are occasioned by any delay in achieving the Date of Final Completion.

6.5.3 OTHER LIQUIDATED DAMAGES. The Owner and the Construction Manager may agree upon the imposition of liquidated damages based on other project milestones or performance requirements. Such agreement shall be included as an exhibit to this Agreement.

6.6 LIMITED MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES. Except for damages mutually agreed upon by the Parties as liquidated damages in Paragraph 6.6 and excluding losses covered by insurance required by the Contract Documents, the Owner and the Construction Manager agree to waive all claims against each other for any consequential damages that may arise out of or relate to this Agreement, except for those specific items of damages excluded from this waiver as mutually agreed upon by the Parties and identified below. The Owner agrees to waive damages including but not limited to the Owner's loss of use of the Project, any rental expenses incurred, loss of income, profit or financing related to the Project, as well as the loss of business, loss of financing, principal office overhead and expenses, loss of profits not related to this Project, loss of reputation, or insolvency. The Construction Manager agrees to waive damages including but not limited to loss of business, loss of financing, principal office overhead and expenses, loss of profits not related to this Project, loss of bonding capacity, loss of reputation, or insolvency. The provision of this Paragraph shall also apply to the termination of this Agreement and shall survive such termination.

6.6.1 The following items of damages are excluded from this mutual waiver: None.

The Owner and the Construction Manager shall require similar waivers in contracts with Subcontractors and Others retained for the Project.

SUBSTANTIAL COMPLETION -Agreement shall be subject to liquidated damages. Owner will provide rubric for determining amounts.

Comment [JSEL1]: Define rubric

FINAL COMPLETION- Agreement shall be subject to liquidated damages. Owner will provide rubric for determining amounts.

ARTICLE 7. COMPENSATION AND GUARANTEED MAXIMUM PRICE

7.1 The Owner shall compensate the Construction Manager for Work performed on the following basis:

7.1.1 the amount set forth in Exhibit D including Schedule of Values and contingency as described in Section 3; and

7.1.2 the Construction Manager's Fee paid in proportion to the Work performed subject to adjustment as provided in Paragraph 7.4.

7.2 The compensation to be paid shall be limited to the GMP established in this Amendment No. 1, as the GMP may be adjusted under Article 9.

7.2.1 Payment for Work performed shall be as set forth in Article 10.

7.3 CONSTRUCTION MANAGER'S FEE. The Construction Manager's Fee is included in the Schedule of Values found in Exhibit D, subject to adjustment as provided in Paragraph 7.4.

7.4 ADJUSTMENT IN THE CONSTRUCTION MANAGER'S FEE. Adjustment in the Construction Manager's Fee shall be made as follows:

7.4.1 for changes in the Work as provided in Article 9, the Construction Manager's Fee shall be adjusted as provided in Paragraph 9.3.1.3:

7.4.2 for delays in the Work not caused by the Construction Manager, except as provided in Paragraph 6.3, there shall be an equitable adjustment in the Construction Manager's Fee to compensate the Construction Manager for increased expenses; and

7.4.3 if the Construction Manager is placed in charge of managing the replacement of an insured or uninsured loss, the Construction Manager shall be paid an additional fee in the same proportion that the Construction Manager's Fee bears to the estimated Cost of the Work for the replacement.

7.5 PRECONSTRUCTION SERVICES COMPENSATION. The Construction Manager shall be compensated for Preconstruction Services, as set forth in Paragraphs 3.2 and 3.3.

ARTICLE 8.

COST OF CHANGE ORDERS

8.1 If the Owner and Construction Manager can not otherwise agree on the amount of a Change order, The Owner agrees to pay the Construction Manager for the Cost of Change Orders under Section 9.3.1.3 below.

8.2 DETERMINATION OF COST ITEMS FOR CHANGE ORDERS. Exhibit "D" Schedule of Values. Exhibit "E" Process Equipment Budget.

8.2.1 Wages paid for labor in the direct employ of the Construction Manager in the performance of the Work.

8.2.2 Salaries of the Construction Manager's employees when stationed at the field office, in whatever capacity employed, employees engaged on the road expediting the production or transportation of material and equipment, and employees from the principal or branch office performing the functions listed below:

8.2.3 Cost of all employee benefits and taxes, including but not limited to, workers' compensation, unemployment compensation, Social Security, health, welfare, retirement and other fringe benefits as required by law, labor agreements, or paid under the Construction Manager's standard personnel policy, insofar as such costs are paid to employees of the Construction Manager who are included in the Cost of the Work under Subparagraphs 8.2.2 and 8.2.3.

8.2.4 Reasonable transportation, travel, hotel and moving expenses of the Construction Manager's personnel incurred in connection with the Work.

8.2.5 Cost of all materials, supplies and equipment incorporated in the Work, including costs of inspection and testing if not provided by the Owner, transportation, storage and handling.

8.2.6 Payments made by the Construction Manager to Subcontractors for work performed under this Agreement.

8.2.7 Cost, including transportation and maintenance of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workers that are used or consumed in the performance of the Work, less salvage value or residual value; and cost less salvage value on such items used, but not consumed that remain the property of the Construction Manager.

8.2.8 Rental charges of all necessary machinery and equipment, exclusive of hand tools owned by workers, used at the Worksite, whether rented from the Construction Manager or Others, including installation, repair and replacement, dismantling, removal, maintenance, transportation and delivery costs. Rental from unrelated third parties shall be reimbursed at actual cost. Rentals from the Construction Manager or its affiliates, subsidiaries or related parties shall be reimbursed at the prevailing rates in the locality of the Worksite up to eighty-five percent (85%) of the value of the piece of equipment.

8.2.9 Cost of the premiums for all insurance and surety bonds which the Construction Manager is required to procure or deems necessary, and approved by the Owner including any additional premium incurred as a result of any increase in the GMP.

8.2.10 Use, gross receipts or other taxes, tariffs or duties related to the Work for which the Construction Manager is liable.

8.2.11 Permits, fees, licenses, tests, royalties, damages for infringement of patents or copyrights, including costs of defending related suits for which the Construction Manager is not responsible as set forth in Paragraph 3.7, and deposits lost for causes other than the Construction Manager's negligence.

8.2.12 Losses, expenses or damages to the extent not compensated by insurance or otherwise, and the cost of corrective work during the Construction Phase and for a period of one year following the Date of Substantial Completion, provided that such losses, expenses, damages or corrective work did not arise from the negligence of the Construction Manager.

8.2.13 All costs associated with establishing, equipping, operating, maintaining and demobilizing the field office.

8.2.14 All costs associated with demobilizing and remobilizing the field office and the Construction Manager's workforce, including Subcontractor workforces, as a result of a suspension of the Work by the Owner.

8.2.15 Reproduction costs, photographs, facsimile transmissions, long-distance telephone calls, data processing costs and services, postage, express delivery charges, data transmission, telephone service and computer-related costs at the Worksite to the extent such items are used and consumed in the performance of the Work or are not capable of use after completion of the Work.

8.2.16 All water, power and fuel costs necessary for the Work.

8.2.17 Cost of removal of all nonhazardous substances, debris and waste materials.

8.2.18 Costs incurred due to an emergency affecting the safety of persons or property.

8.2.19 Legal, mediation and arbitration fees and costs, other than those arising from disputes between the Owner and the Construction Manager, reasonably and properly resulting from the Construction Manager's performance of the Work.

8.2.20 Additional costs resulting from laws, ordinances, rules, regulations and taxes enacted after the date of this Agreement.

8.2.21 All costs directly incurred in the performance of the Work or in connection with the Project, and not included in the Construction Manager's Fee as set forth in Article 7, which are reasonably inferable from the Contract Documents as necessary to produce the intended results.

8.3 DISCOUNTS. All discounts for prompt payment shall accrue to the Owner to the extent such payments are made directly by the Owner. To the extent payments are made with funds of the Construction

Manager, all cash discounts shall accrue to the Construction Manager. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment, shall be credited to the Cost of the Work.

ARTICLE 9.

CHANGES

Changes in the Work that are within the general scope of this Agreement shall be accomplished, without invalidating this Agreement, by Change Order and Interim Directed Change.

9.1 CHANGE ORDER.

9.1.1 The Construction Manager may request or the Owner may order changes in the Work or the timing or sequencing of the Work that impacts the GMP or the estimated Cost of the Work, Construction Manager's Fee, Date of Substantial Completion or Date of Final Completion and, if appropriate, the Compensation for Preconstruction Services. All such changes in the Work shall be formalized in a Change Order. Any such requests for changes in the Work shall be processed in accordance with this Article 9.

9.1.2 The Owner and the Construction Manager shall negotiate in good faith an equitable adjustment to the GMP or the Date of Substantial Completion or Date of Final Completion and shall conclude these negotiations as expeditiously as possible. Acceptance of the Change Order and any equitable adjustment in the GMP or Date of Substantial Completion or Date of Final Completion shall not be unreasonably withheld.

9.2 INTERIM DIRECTED CHANGES.

9.2.1 The Owner may issue a written Interim Directed Change directing a change in the Work prior to reaching agreement with the Construction Manager on the adjustment, if any, in the GMP or the Date of Substantial Completion or Date of Final Completion.

9.2.2 The Owner and the Construction Manager shall negotiate expeditiously and in good faith for appropriate adjustments, as applicable, to the GMP or the Date of Substantial Completion or Date of Final Completion arising out of Interim Directed Changes. As the changed Work is performed, the Construction Manager shall submit its costs for such Work with its application for payment beginning with the next application for payment within thirty (30) Days of the issuance of the Interim Directed Change. If there is a dispute as to the cost to the Owner, the Owner shall pay the Construction Manager fifty percent (50%) of its estimated cost to perform the work. In such event, the Parties reserve their rights as to the disputed amount, subject to the requirements of Article 12.

9.2.3 When the Owner and the Construction Manager agree upon the adjustments in the GMP or the Date of Substantial Completion or Date of Final Completion, for a change in the Work directed by an Interim Directed Change, such agreement shall be the subject of an appropriate Change Order. The Change Order shall include all outstanding Interim Directed Changes issued since the last Change Order.

9.3 DETERMINATION OF COST.

9.3.1 An increase or decrease in the GMP or the Date of Substantial Completion or Date of Final Completion resulting from a change in the Work shall be determined by one or more of the following methods:

9.3.1.1 unit prices set forth in this Agreement or as subsequently agreed;

9.3.1.2 a mutually accepted, itemized lump sum;

9.3.1.3 costs calculated on a basis agreed upon by the Owner and Construction Manager plus 10% Overhead and 5% Profit for self performed work; 7% Overhead and 3% Profit for subcontracted work.

9.3.2 If the Owner and the Construction Manager disagree as to whether work required by the Owner is within the scope of the Work, the Construction Manager shall furnish the Owner with an estimate of the costs to perform the disputed work in accordance with the Owner's interpretations.

9.3.3 If the Owner issues a written order for the Construction Manager to proceed, the Construction Manager shall perform the disputed work and the Owner shall pay the Construction Manager Fifty percent (50%) of its estimated cost to perform the work. In such event, both Parties reserve their rights as to whether the work was within the scope of the Work. The Owner's payment does not prejudice its right to be reimbursed should it be determined that the disputed work was within the scope of Work. The Construction Manager's receipt of payment for the disputed work does not prejudice its right to receive full payment for the disputed work should it be determined that the disputed work is not within the scope of the Work.

9.4 CLAIMS FOR ADDITIONAL COST OR TIME. Except as provided in Subparagraph 6.3.2 and Paragraph 6.4 for any claim for an increase in the GMP or the Date of Substantial Completion or Date of Final Completion, the Construction Manager shall give the Owner written notice of the claim within fourteen (14) Days after the occurrence giving rise to the claim or within fourteen (14) Days after the Construction Manager first recognizes the condition giving rise to the claim, whichever is later. Except in an emergency, notice shall be given before proceeding with the Work. Any change in the GMP or the Date of Substantial Completion or Date of Final Completion resulting from such claim shall be authorized by Change Order.

ARTICLE 10.

PAYMENT

10.1 SCHEDULE OF VALUES. The Construction Manager shall prepare and submit to the Owner and, if directed, the Engineer, a schedule of values apportioned to the various divisions or phases of the Work. Each line item including the Contingency contained in the schedule of values shall be assigned a value such that the total of all items shall equal the GMP.

10.2 PROGRESS PAYMENTS.

10.2.1 APPLICATIONS. The Construction Manager shall submit to the Owner, and, if directed, its Engineer a monthly application for payment no later than the Twentieth (20th) Day of the calendar month for the preceding thirty (30) Days; or Construction Manager's applications for payment shall be itemized and supported by the Construction Manager's schedule of values and any other substantiating data as required by this Agreement. Payment applications shall include payment requests on account of properly authorized Change Orders or Interim Directed Changes. The Owner shall pay the amount otherwise due on any payment application, no later than twenty (20) Days after the Construction Manager has submitted a complete and accurate payment application. The Owner may deduct from any progress payment amounts as may be retained pursuant to Subparagraph 10.2.4.

10.2.2 STORED MATERIALS AND EQUIPMENT. Unless otherwise provided in the contract documents, applications for payment may include materials and equipment not yet incorporated into the Work but delivered to and suitably stored on-site or off-site including applicable insurance, storage and costs incurred transporting the materials to an off-site including applicable insurance, storage and costs incurred transporting the materials to an off-site storage facility. Approval of payment applications for stored materials and equipment stored off-site shall be conditioned on submission by the Construction Manager of bills of sale and proof of required insurance, or such other procedures satisfactory to the Owner to establish the proper valuation of the stored materials and equipment, the Owner's title to such materials and equipment, and to otherwise protect the Owner's interests therein, including transportation to the Worksite.

10.2.3 LIEN WAIVERS AND LIENS.

10.2.3.1 PARTIAL LIEN WAIVERS AND AFFIDAVITS. If requested by the Owner, as a prerequisite for payment, the Construction Manager shall provide partial lien and claim waivers in the amount of the application for payment. Such waivers shall be conditional upon payment. In no event shall the Construction Manager be required to sign an unconditional waiver of lien or claim, either partial or final, prior to receiving payment or in an amount in excess of what it has been paid.

10.2.3.2 RESPONSIBILITY FOR LIENS. If Owner has made payments in the time required by this Article 10, the Construction Manager shall, within thirty (30) Days after filing, cause the removal of any liens filed against the premises or public improvement fund by any party or parties performing labor or services or supplying materials in connection with the Work. If the Construction Manager fails to take such action on a lien to provide Owner with a plan of action satisfactory to Owner for resolution of issues and removal of the lien, the Owner may cause the lien to be removed at the Construction Manager's expense, including bond costs and reasonable attorneys' fees. This Clause shall not apply if there is a dispute pursuant to Article 13 relating to the subject matter of the lien.

10.2.4 RETAINAGE. From each progress payment made prior to Substantial Completion, the Owner may retain ten percent (10%), of the amount otherwise due after deduction of any amounts as provided in Paragraph 10.3 and in no event shall such percentage exceed any applicable statutory requirements.

10.2.4.1 If the progress of the Work is satisfactory, after the Work is fifty percent (50%) complete, the Owner shall withhold no additional retainage and shall pay the Construction Manager the Full amount of what is due on account of progress payments;

10.2.4.2 The Owner may, in its sole discretion, reduce the amount to be retained at any time;

10.2.4.3 The Owner may release retainage on that portion of the Work a Subcontractor has completed in whole or in part, and which the Owner has accepted;

10.2.4.4 In lieu of retainage, the Construction Manager may furnish a retention bond or other security interest, acceptable to the Owner, to be held by the Owner.

10.3 ADJUSTMENT OF CONSTRUCTION MANAGER'S PAYMENT APPLICATION. The Owner may adjust or reject a payment application or nullify a previously approved payment application, in whole or in part, as may reasonably be necessary to protect the Owner from loss or damage based upon the following, to the extent that the Construction Manager is responsible under the Agreement:

10.3.1 The Construction Manager's repeated failure to perform the Work as required by the Contract Documents;

10.3.2 Loss or damage arising out of or relating to this Agreement and caused by the Construction Manager to the Owner or Others to whom the Owner may be liable;

10.3.3 The Construction Manager's failure to properly pay Subcontractors and Material Suppliers following receipt of such payment from the Owner;

10.3.4 Defective Work not corrected in a timely fashion;

10.3.5 Reasonable evidence of delay in performance of the Work such that the Work will not be completed by the Dates of Substantial or Final Completion; and

10.3.6 Reasonable evidence demonstrating that the unpaid balance of the GMP is insufficient to fund the cost to complete the Work.

10.3.7 Third-party claims involving the Construction Manager or reasonable evidence demonstrating that third-party claims are likely to be filed unless and until the Construction Manager furnishes the Owner with adequate security in the form of a surety bond, letter of credit or other collateral or commitment sufficient to discharge such claims if established.

10.3.8 No later than seven (7) Days after receipt of an application for payment, the Owner shall give written notice to the Construction Manager, at the time of disapproving or nullifying all or part of an application for payment, stating its specific reasons for such disapproval or nullification, and the remedial actions to be taken by the Construction Manager in order to receive payment. When the above reasons for disapproving or nullifying an application for payment are removed, payment will be promptly made for the amount previously withheld.

10.4 ACCEPTANCE OF WORK. Neither the Owner's payment of progress payments nor its partial or full use or occupancy of the Project constitutes acceptance of Work not complying with the Contract Documents.

10.5 PAYMENT DELAY. If for any reason not the fault of the Construction Manager the Construction Manager does not receive a progress payment from the Owner within seven (7) Days after the time such payment is due as defined in Subparagraph 10.2.1, then the Construction Manager, upon giving seven (7) Days' written notice to the Owner, and without prejudice to and in addition to any other legal remedies, may stop Work until payment of the full amount owing to the Construction Manager has been received, including interest from the date payment was due. The GMP and Dates of Substantial or Final Completion shall be equitably adjusted by a Change Order for reasonable cost and delay resulting from shutdown, delay and start-up.

10.6 SUBSTANTIAL COMPLETION

10.6.1 The Construction Manager shall notify the Owner and, if directed, its Engineer when it considers Substantial Completion of the Work or a designated portion to have been achieved. The Owner, with the assistance of its Engineer, shall promptly conduct an inspection to determine whether the Work or designated portion can be occupied or utilized for its intended use by the Owner without excessive interference in completing any remaining unfinished Work by the Construction Manager. If the Owner determines that the Work or designated portion has not reached Substantial Completion, the Owner, with the assistance of its Engineer shall promptly compile a list of items to be completed or corrected so the Owner may occupy or utilize the Work or designated portion for its intended use. The Construction Manager shall promptly complete all items on the list.

10.6.2 When Substantial Completion of the Work or a designated portion is achieved, the Construction Manager shall prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, and the respective responsibilities of the Owner and Construction Manager for interim items such as security, maintenance, utilities, insurance and damage to the Work, and fixing the time for completion of all items on the list accompanying the Certificate. The Certificate of Substantial Completion shall be submitted by the Construction Manager to the Owner, and if directed, to its Engineer for the Owner's written acceptance of responsibilities assigned in the Certificate.

10.6.3 Unless otherwise provided in the Certificate of Substantial Completion, warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or a designated portion.

10.6.4 Upon acceptance by the Owner of the Certificate of Substantial Completion, the Owner shall pay to the Construction Manager the remaining retainage held by the Owner for the Work described in the Certificate of Substantial Completion less a sum equal to two hundred percent (200%) of the estimated cost of completing or correcting remaining items on that part of the Work, as agreed to by the Owner and Construction Manager as necessary to achieve Final Completion. Uncompleted items shall be completed by the Construction Manager in a mutually agreed time frame. The Owner shall pay the Construction Manager monthly the amount retained for unfinished items as each item is completed.

10.7 PARTIAL OCCUPANCY OR USE.

10.7.1 The Owner may occupy or use completed or partially completed portions of the Work when (a) the portion of the Work is designated in a Certificate of Substantial Completion, (b) appropriate insurer(s) consent to the occupancy or use, and (c) public authorities authorize the occupancy or use. The Construction Manager shall not unreasonably withhold consent to partial occupancy or use. Owner shall not unreasonably refuse to accept partial occupancy.

10.8 FINAL COMPLETION AND FINAL PAYMENT.

10.8.1 Upon notification from the Construction Manager that the Work is complete and ready for final inspection and acceptance, the Owner, with the assistance of its Engineer shall promptly conduct an inspection to determine if the Work has been completed and is acceptable under the Contract Documents.

10.8.2 When the Work is complete, the Construction Manager shall prepare for the Owner's acceptance a final application for payment stating that to the best of the Construction Manager's knowledge, and based on the Owner's inspections, the Work has reached final completion in accordance with the Contract Documents.

10.8.3 Final payment of the balance of the GMP shall be made to the Construction Manager within twenty (20) Days after the Construction Manager has submitted an application for final payment, including submissions required under Subparagraph 10.8.4, and a Certificate of Final Completion has been executed by the Owner and Construction Manager.

10.8.4 Final payment shall be due on the Construction Manager's submission of the following to the Owner:

10.8.4.1 an affidavit declaring any indebtedness connected with the Work, e.g. payrolls or invoices for materials or equipment, to have been paid, satisfied or to be paid with the proceeds of final payment, so as not to encumber the Owner's property;

10.8.4.2 as-built drawings, manuals, copies of warranties and all other close-out documents required by the Contract Documents;

10.8.4.3 release of any liens, conditioned on final payment being received;

10.8.4.4 consent of any surety if required by Owner; and

10.8.4.5 any outstanding known and unreported accidents or injuries experienced by the Construction Manager or its Subcontractors at the Worksite.

10.8.5 If, after Substantial Completion of the Work, the Final Completion of a portion of the Work is materially delayed through no fault of the Construction Manager, the Owner shall pay the balance due for portion(s) of the Work fully completed and accepted. If the remaining contract balance for Work not fully completed and accepted is less than the retained amount prior to payment, the Construction Manager shall submit to the Owner, and if directed the Engineer the written consent of any surety to payment of the balance due for portions of the Work that are fully completed and accepted. Such payment shall not constitute a waiver of claims, but otherwise shall be governed by Paragraph 10.8.

10.8.6 Claims not reserved in writing with the making of final payment shall be waived except for claims relating to liens or similar encumbrances, warranties and Defective Work.

10.8.7 ACCEPTANCE OF FINAL PAYMENT. Unless the Construction Manager provides written identification of unsettled claims with an application for final payment, its acceptance of final payment constitutes a waiver of such claims.

10.9 LATE PAYMENT. Payments due but unpaid shall bear interest from the date payment is due at the prime rate prevailing at the place of the Project.

ARTICLE 11. INDEMNITY, INSURANCE, WAIVERS AND BONDS

11.1 INDEMNITY.

11.1.1 To the fullest extent permitted by law, the Construction Manager shall indemnify and hold harmless the Owner, Owner's officers, directors, members, consultants, agents, and employees, the Engineer and Others (the Indemnities) from all claims for bodily injury and property damage, other than to the Work itself and other property insured under Subparagraph 11.3, including reasonable attorneys' fees, costs and expenses, that may arise from the performance of the Work, but only to the extent caused by the negligent acts or omissions of the Construction Manager, Subcontractors or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable. The Construction Manager shall be entitled to reimbursement of any defense costs paid above Construction Manager's percentage of liability for the underlying claim to the extent provided for under Subparagraph 11.1.2.

11.1.2 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Construction Manager, its officers, directors, members, consultants, agents, and employees, Subcontractors or anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable from all

claims for bodily injury and property damage, other than property insured under Subparagraph 11.4.1, that may arise from the performance of work by Owner, Engineer or Others, to the extent of the negligence attributed to such acts or omissions by Owner, Engineer or Others. The Construction Manager shall be entitled to reimbursement of any defense costs paid above Construction Manager's percentage of liability for the underlying claim to the extent provided for under Subparagraph 11.1.1.

11.1.3 LIMITATION ON LIABILITY. Construction Manager's liability under this Agreement including any claim for indemnity shall be limited to the total amount paid to Construction Manager under this Agreement, or the amount of insurance to be provided by Construction Manager under this section, whichever amount is greater.

11.2 INSURANCE.

Prior to the start of the Work, the Construction Manager shall procure and maintain in force Workers Compensation Insurance, Employers' Liability Insurance, Business Automobile Liability Insurance, and Commercial General Liability Insurance (CGL). The CGL policy shall include coverage for liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, contractual liability, and broad form property damage. The Construction Manager's Employers' Liability, Business Automobile Liability and Commercial General Liability policies, as required in this Subparagraph 11.2.1, shall be written with at least the following limits of liability:

11.2.1.1 Employer's Liability

- a. \$1,000,000 Bodily Injury by Accident Each Accident
- b. \$1,000,000 Bodily Injury by Disease Policy Limit
- c. \$1,000,000 Bodily Injury by Disease Each Employee

11.2.1.2 Business Automobile Liability Insurance

- a. \$1,000,000 Each Accident

11.2.1.3 Commercial General Liability Insurance

- a. \$1,000,000 Each Occurrence
- b. \$2,000,000 General Aggregate
- b. \$2,000,000 Products/Completed Operations Aggregate
- c. \$1,000,000 Personal and Advertising Injury Limit

11.2.1 Employers' Liability, Business Automobile Liability and Commercial General Liability coverages required under Subparagraph 11.3.1 may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by Excess or Umbrella Liability policies.

11.2.2 The Construction Manager shall maintain in effect all insurance coverage required under Subparagraph 11.2.1 with insurance companies lawfully authorized to do business in the jurisdiction in which the Project is located. If the Construction Manager fails to obtain or maintain any insurance coverage required under this Agreement, the Owner may purchase such coverage and charge the expense to the Construction Manager, or terminate this Agreement.

The policies of insurance required under Subparagraph 11.2.1 shall contain a provision that the coverages afforded under the policies will not be cancelled or allowed to expire until at least thirty Days prior written notice has been given to the Owner. The Construction Manager shall maintain completed operations liability insurance for one year after acceptance of the Work, Substantial Completion of the Project, or to the time required by the

Contract Documents, whichever is longer. Prior to commencement of the Work, Construction Manager shall furnish the Owner with certificates evidencing the required coverages.

11.3 PROPERTY INSURANCE.

11.3.1 Before the start of the Work, the Construction Manager shall obtain and maintain a Builder's Risk Policy upon the entire Project for the full cost of replacement at the time of loss to be included in the GMP. This insurance shall also name the Owner, Construction Manager, Subcontractors and Subsubcontractors and the Engineer as named insureds. This insurance shall be written as a Builder's Risk Policy or equivalent form to cover all risks or physical loss except those specifically excluded by the policy, and shall insure at least against the perils of fire, lightning, explosion, windstorm, and hail, smoke, aircraft (except aircraft, including helicopter, operated by or on behalf of Construction Manager) and vehicles, riot and civil commotion, terrorism, theft, vandalism, malicious mischief, debris removal, flood, earthquake, earth movement, water damage, wind, testing if applicable, collapse however caused, and damage resulting from defective design, workmanship or material. The Owner shall be solely responsible for any deductible amounts or coinsurance penalties. This policy shall provide for a waiver of subrogation in favor of the Owner, Subcontractors, Subsubcontractors and Material Suppliers. This insurance shall remain in effect until final payment has been made or until no person or entity other than the Owner has an insurable interest in the property to be covered by this insurance, whichever is sooner. Partial occupancy or use of the Work shall not commence until the Owner has secured the consent of the insurance company or companies providing the coverage required in this Subparagraph 11.3.1. Prior to commencement of the Work, the Owner shall provide a copy of the property policy or policies obtained in compliance with this Subparagraph 11.3.1.

11.3.2 Owner and Construction Manager waive all rights against each other and their respective employees, agents, contractors, subcontractors and subsubcontractors for damages caused by risks covered by the property insurance provided under Subparagraph 11.3.1, except such rights as they may have to the proceeds of the insurance and such rights as the Construction Manager may have for the failure of the Owner to obtain and maintain property insurance in compliance with Subparagraph 11.3.1 To the extent of the limits of Construction Manager's Commercial General Liability Insurance specified in Subparagraph 11.3.1 or the amount paid to Construction Manager under this Agreement, whichever is more, the Construction Manager shall indemnify and hold harmless the Owner against any and all liability, claims, demands, damages, losses and expenses, including attorneys' fees, in connection with or arising out of any damage or alleged damage to any of Owner's existing adjacent property that may arise from the performance of the Work, to the extent caused by the negligent acts or omissions of the Construction Manager, Subcontractor or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable.

11.4 OWNER'S INSURANCE.

11.4.1 OWNER'S LIABILITY INSURANCE. The Owner shall obtain and maintain its own liability insurance for protection against claims arising out of the performance of this Agreement, including without limitation, loss of use and claims, losses and expenses arising out of the Owner's errors or omissions in amount equal or greater to that required from Construction Manager under Section 11.2.

11.5 ROYALTIES, PATENTS AND COPYRIGHTS. The Construction Manager shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods or systems selected by the Construction Manager and incorporated in the Work. The Construction Manager shall indemnify and hold the Owner harmless from all suits or claims for infringement of any patent rights or copyrights arising out of such selection. The Owner agrees to indemnify and hold the Construction Manager harmless from any suits or claims of infringement of any patent rights or copyrights arising out of any patented or copyrighted materials, methods or systems specified by the Owner or Engineer.

11.6 BONDS.

11.6.1 Performance and Payment Bonds

(Designate only one)

 x are/ are not

required of the Construction Manager. Such bonds shall be issued by a surety admitted in the State in which the Project is located and must be acceptable to the Owner. The penal sum of the bonds shall be 100% of the GMP. Any increase in the GMP that exceeds 10% in the aggregate shall require a rider to the Bonds increasing penal sums accordingly. Up to such 10% amount, the penal sum of the bond shall remain equal to 100% of the original GMP. The Construction Manager shall endeavor to keep its surety advised of changes potentially impacting the GMP and Contract Time, though the Construction Manager shall require that its surety waives any requirement to be notified of any alteration or extension of time within the scope of the initial Agreement. The Construction Manager's payment bond for the Project, if any, shall be made available by the Owner for review and copying by the Subcontractor. The Owner's acceptance shall not be reasonably withheld.

ARTICLE 12. SUSPENSION, NOTICE TO CURE AND TERMINATION OF THE AGREEMENT

12.1 SUSPENSION BY OWNER FOR CONVENIENCE.

12.1.1 **OWNER SUSPENSION.** Should the Owner order the Construction Manager in writing to suspend, delay, or interrupt the performance of the Work for such period of time as may be determined to be appropriate for the convenience of the Owner and not due to any act or omission of the Construction Manager or any person or entity for whose acts or omissions the Construction Manager may be liable, then the Construction Manager shall immediately suspend, delay or interrupt that portion of the Work as ordered by the Owner. The GMP, Construction Manager's Fee and the Dates of Substantial or Final Completion shall be equitably adjusted by Change Document for the cost and delay resulting from any such suspension.

12.1.2 Any action taken by the Owner that is permitted by any other provision of the Contract Documents and that results in a suspension of part or all of the Work does not constitute a suspension of Work under this Paragraph 12.1.

12.2 **NOTICE TO CURE A DEFAULT.** If the Construction Manager persistently refuses or fails to supply enough properly skilled workers, proper materials, or equipment, to maintain the approved Schedule of the Work in accordance with Article 6, or fails to make prompt payment to its workers, Subcontractors or Material Suppliers, disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or is otherwise guilty of a material breach of a provision of this Agreement, the Construction Manager may be deemed in default. If the Construction Manager fails within ten (10) Business Days after receipt of written notification to commence and continue satisfactory correction of such default with diligence and promptness or reach an agreement with Owner of reasonable cure of any default including a time table for cure, then the Owner shall give the Construction Manager a second notice to correct the default within a three (3) Business Day period. If the Construction Manager fails to promptly commence and continue satisfactory correction of the default following receipt of such second notice, the Owner without prejudice to any other rights or remedies may:

12.2.1 supply workers, equipment and other facilities as the Owner deems necessary for the satisfactory correction of the default and charge the cost to the Construction Manager, who shall be liable for the payment of same including reasonable overhead, profit and attorneys' fees;

12.2.2 contract with Others to perform such part of the Work as the Owner determines shall provide the most expeditious correction of the default, and charge the cost to the Construction Manager; who shall be liable for the payment of same including reasonable overhead, profit and attorneys' fees;

12.2.3 withhold payment due the Construction Manager in accordance with Paragraph 10.3; and

12.2.4 in the event of an emergency affecting the safety of persons or property, immediately commence and continue satisfactory correction of such default as provided in Subparagraphs 12.2.1 and 12.2.2 without first giving written notice to the Construction Manager, but shall give prompt written notice of such action to the Construction Manager following commencement of the action.

12.3 OWNER'S RIGHT TO TERMINATE FOR DEFAULT.

12.3.1 **TERMINATION BY OWNER FOR DEFAULT.** If, within ten (10) Business Days of receipt of a notice to cure pursuant to Paragraph 12.2, the Construction Manager fails to commence and satisfactorily

continue correction of the default set forth in the notice to cure, the Owner may notify the Construction Manager that it intends to terminate this Agreement for default absent appropriate corrective action within fourteen additional Days. After the expiration of the additional twenty (20) day period, the Owner may terminate this Agreement by written notice absent appropriate corrective action. Termination for default is in addition to any other remedies available to Owner under Paragraph 12.2. If the Owner's cost arising out of the Construction Manager's failure to cure, including the cost of completing the Work and reasonable attorney fees, exceeds the unpaid GMP, the Construction Manager shall be liable to the Owner for such excess costs. If the Owner's costs are less than the unpaid GMP the Owner shall pay the difference to the Construction Manager. In the event the Owner exercises its rights under this Paragraph, upon the request of the Construction Manager the Owner shall furnish to the Construction Manager a detailed accounting of the cost incurred by the Owner.

12.3.2 If the Owner or Others perform Work under this Paragraph 12.3, the Owner shall have the right to take and use any materials and supplies belonging to the Construction Manager and located at the Worksite for the purpose of completing any remaining Work. Immediately upon completion of the Work, any remaining materials, supplies or equipment not consumed or incorporated in the Work shall be returned to the Construction Manager in substantially the same condition as when they were taken, reasonable wear and tear excepted.

12.3.3 If the Construction Manager files a petition under the Bankruptcy Code, this Agreement shall terminate if the Construction Manager or the Construction Manager's trustee rejects the Agreement or, if there has been a default, the Construction Manager is unable to give adequate assurance that the Construction Manager will perform as required by this Agreement or otherwise is unable to comply with the requirements for assuming this Agreement under the applicable provisions of the Bankruptcy Code.

12.3.4 The Owner shall make reasonable efforts to mitigate damages arising from Construction Manager's default, and shall promptly invoice the Construction Manager for all amounts due pursuant to Paragraph 12.2 and 12.3.

12.4 TERMINATION BY OWNER FOR CONVENIENCE.

12.4.1 Upon written notice to the Construction Manager, the Owner may, without cause, terminate this Agreement. The Construction Manager shall immediately stop the Work, follow the Owner's instructions regarding shutdown and termination procedures, and strive to minimize any further costs.

12.4.2 If the Owner terminates this Agreement pursuant to this Paragraph 12.4, the Construction Manager shall be paid

12.4.2.1 for the Work performed to date including overhead and profit;

12.4.2.2 for all demobilization costs and costs incurred as a result of the termination but not including overhead or profit on work not performed;

12.4.2.3 and a premium constituting ten percent (10%) fee on all Work performed and five percent (5%) fee on all Work remaining to be performed.

12.4.3 If the Owner terminates this Agreement pursuant to Paragraphs 12.3 or 12.4, the Construction Manager shall:

12.4.3.1 execute and deliver to the Owner all papers and take all action required to assign, transfer and vest in the Owner the rights of the Construction Manager to all materials, supplies and equipment for which payment has or will be made in accordance with the Contract Documents and all subcontracts, orders and commitments which have been made in accordance with the Contract Documents;

12.4.3.2 exert reasonable efforts to reduce to a minimum the Owner's liability for subcontracts, orders and commitments that have not been fulfilled at the time of the termination;

12.4.3.3 cancel any subcontracts, orders and commitments as the Owner directs; and

12.4.3.4 sell at prices approved by the Owner any materials, supplies and equipment as the Owner directs, with all proceeds paid or credited to the Owner.

12.5 CONSTRUCTION MANAGER'S RIGHT TO TERMINATE.

12.5.1 Upon ten (10) Business Days' written notice to the Owner, the Construction Manager may terminate this Agreement if the Work has been stopped for a thirty (30) Day period through no fault of the Construction Manager for any of the following reasons:

12.5.1.1 under court order or order of other governmental authorities having jurisdiction;

12.5.1.2 as a result of the declaration of a national emergency or other governmental act during which, through no act or fault of the Construction Manager, materials are not available; or

12.5.1.3 suspension by Owner for convenience pursuant to Paragraph 12.1.

12.5.2 In addition, upon ten (10) Business Days' written notice to the Owner, the Construction Manager may terminate the Agreement if the Owner:

12.5.2.1 fails to furnish reasonable evidence pursuant to Paragraph 4.2 that sufficient funds are available and committed for Project financing or

12.5.2.2 assigns this Agreement over the Construction Manager's reasonable objection, or

12.5.2.3 fails to pay the Construction Manager in accordance with this Agreement and the Construction Manager has complied with Paragraph 10.6,

12.5.2.4 otherwise materially breaches this Agreement.

12.5.3 Upon termination by the Construction Manager in accordance with Paragraph 12.5, the Construction Manager shall be entitled to recover from the Owner payment for all Work executed and for any proven loss, cost or expense in connection with the Work, including all demobilization costs plus ten percent (10%) on Work not performed.

12.6 OBLIGATIONS ARISING BEFORE TERMINATION. Even after termination pursuant to Article 12, the provisions of this Agreement still apply to any Work performed, payments made, events occurring, costs charged or incurred or obligations arising before the termination date.

ARTICLE 13.

DISPUTE MITIGATION AND RESOLUTION

13.1 WORK CONTINUANCE AND PAYMENT. Unless otherwise agreed in writing, the Construction Manager shall continue the Work and maintain the Schedule of the Work during any dispute resolution proceedings. If the Construction Manager continues to perform, the Owner shall continue to make payments in accordance with this Agreement.

13.2 DIRECT DISCUSSIONS. If the Parties cannot reach resolution on a matter relating to or arising out of the Agreement, the Parties shall endeavor to reach resolution through good faith direct discussions between the Parties' representatives, who shall possess the necessary authority to resolve such matter and who shall record the date of first discussions. If the Parties' representatives are not able to resolve such matter within five (5) business Days from the date of first discussion, the Parties' representatives shall immediately inform senior executives of the Parties in writing that resolution was not affected. Upon receipt of such notice, the senior executives of the Parties shall meet within five (5) business Days to endeavor to reach resolution. If the dispute remains unresolved after fifteen (15) Days from the date of first discussion, the Parties shall submit such matter to the dispute mitigation and dispute resolution procedures selected herein.

13.3 MEDIATION. If direct discussions pursuant to Paragraph 13.2 do not result in resolution of the matter, the Parties shall endeavor to resolve the matter by mediation through the current Construction Industry Mediation Rules of the American Arbitration Association, or the Parties may mutually agree to select another set of mediation rules. The administration of the mediation shall be as mutually agreed by the Parties. The mediation shall be convened within thirty (30) business Days of the matter first being discussed and shall conclude within forty-five (45) business Days of the matter being first discussed. Either Party may terminate the mediation at any time after the first session, but the decision to terminate shall be delivered in person by the terminating Party to the non-terminating Party and to the mediator. The costs of the mediation shall be shared equally by the Parties.

13.4 BINDING DISPUTE RESOLUTION. If the matter remains unresolved after submission of the matter to a mitigation procedure or to mediation, the Parties shall submit the matter to the binding dispute resolution procedure selected herein:

(Designate only one):

Arbitration using the current Construction Industry Arbitration Rules of the American Arbitration Association or the Parties may mutually agree to select another set of arbitration rules. The administration of the arbitration shall be as mutually agreed by the Parties.

Litigation in either the state or federal court having jurisdiction of the matter in the location of the Project.

13.4.1 The costs of any binding dispute resolution procedure shall be borne by the non-prevailing Party, as determined by the adjudicator of the dispute.

13.4.2 VENUE. The venue of any binding dispute resolution procedure shall be the location of the Project unless the Parties agree on a mutually convenient location.

13.5 MULTIPARTY PROCEEDING. The Parties agree that all Parties necessary to resolve a claim shall be Parties to the same dispute resolution proceeding. Appropriate provisions shall be included in all other contracts relating to the Work to provide for the joinder or consolidation of such dispute resolution procedures.

13.6 LIEN RIGHTS. Nothing in this Article 13 shall limit any rights or remedies not expressly waived by the Construction Manager which the Construction Manager may have under lien laws.

ARTICLE 14.

MISCELLANEOUS PROVISIONS

14.1 ASSIGNMENT. Neither the Owner nor the Construction Manager shall assign their interest in this Agreement without the written consent of the other except as to the assignment of proceeds. The terms and conditions of this Agreement shall be binding upon both Parties, their partners, successors, assigns and legal representatives. Neither Party to this Agreement shall assign the Agreement as a whole without written consent of the other except that the Owner may assign the Agreement to a wholly owned subsidiary of Owner when Owner has fully indemnified Construction Manager or to an institutional lender providing construction financing for the Project as long as the assignment is no less favorable to the Construction Manager than this Agreement. In the event of such assignment, the Construction Manager shall execute any consent reasonably required. In such event, the wholly owned subsidiary or lender shall assume the Owner's rights and obligations under the Contract Documents. If either Party attempts to make such an assignment, that Party shall nevertheless remain legally responsible for all obligations under this Agreement, unless otherwise agreed by the other Party.

14.2 GOVERNING LAW. This Agreement shall be governed by the law of the State of Kansas.

14.3 SEVERABILITY. The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.

14.4 NO WAIVER OF PERFORMANCE. The failure of either Party to insist, in any one or more instances, on the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right with respect to further performance or any other term, covenant, condition or right.

14.5 TITLES AND GROUPINGS. The titles given to the articles of this Agreement are for ease of reference only and shall not be relied upon or cited for any other purpose. The grouping of the articles in this Agreement and of the Owner's specifications under the various headings is solely for the purpose of convenient organization and in no event shall the grouping of provisions, the use of paragraphs or the use of headings be construed to limit or alter the meaning of any provisions.

14.6 JOINT DRAFTING. The Parties expressly agree that this Agreement was jointly drafted, and that both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to execution. Therefore, this Agreement shall be construed neither against nor in favor of either Party, but shall be construed in a neutral manner.

14.7 RIGHTS AND REMEDIES. The Parties' rights, liabilities, responsibilities and remedies with respect to this Agreement, whether in contract, tort, negligence or otherwise, shall be exclusively those expressly set forth in this Agreement.

ARTICLE 15.

CONTRACT DOCUMENTS

15.1 The Contract Documents in existence at the time of execution of this Agreement are as follows:

15.2 INTERPRETATION OF CONTRACT DOCUMENTS.

15.2.1 The drawings and specifications are complementary. If Work is shown only on one but not on the other, the Construction Manager shall perform the Work as though fully described on both consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

15.2.2 In case of conflicts between the drawings and specifications, the specifications shall govern. In any case of omissions or errors in figures, drawings or specifications, the Construction Manager shall immediately submit the matter to the Owner and, if directed, to its Engineer for clarification. The Owner's clarifications are final and binding on all Parties, subject to an equitable adjustment in Dates of Substantial or Final Completion or Price pursuant to Article 9 or dispute resolution in accordance with Article 13.

15.2.3 Where figures are given, they shall be preferred to scaled dimensions.

15.2.4 Any terms that have well-known technical or trade meanings, unless otherwise specifically defined in this Agreement, shall be interpreted in accordance with their well-known meanings.

15.2.5 In case of any inconsistency, conflict or ambiguity among the Contract Documents, the documents shall govern in the following order: (a) Change Orders and written amendments to this Agreement; (b) the Agreement; (c) subject to Subparagraph 15.2.2 the drawings, specifications and addenda issued prior to the execution of this Agreement; (d) approved submittals; (e) information furnished by the Owner pursuant to Paragraph 4.3; (f) other documents listed in this Agreement. Among all the Contract Documents, the term or provision that is most specific or includes the latest date shall control. Information identified in one Contract Document and not identified in another shall not be considered to be a conflict or inconsistency. If any provision of this Agreement conflicts with or is inconsistent with any other provision of other Contract Documents, the provision of this Agreement governs, unless the other provision specifically refers to the provision it supersedes and replaces in this Agreement.

This Agreement is entered into as of the date entered in Article 1.

ATTEST:

OWNER: City of Dodge City

BY:

PRINT NAME

PRINT TITLE

ATTEST:

CONSTRUCTION MANAGER: Utility Contractors, Inc. d/b/a UCI

BY:

PRINT NAME

PRINT TITLE

Exhibit "A"

Dodge City Water Reclamation Facility

Guaranteed Maximum Price (GMP) @ 30% Design

Scoping Document

The proposed GMP for the Dodge City Reclamation facility was developed by the Design-Build team utilizing the following documents:

- Plans provided by PEC for 30% design dated May 15,2009(attachment a)
- Specification provided by PEC for 30% design dated May 15,2009(attachment b)
- Updated Process plan sheets dated June 24 2009(Attachment c)
- Process equipment spreadsheet and technical proposals(attachment d)
- Pre-Construction Schedule (attachment d)

Items included in the GMP include but are not limited to;

- Pre-construction services outlined in proposed contract including;
 - Management of GMP by developing and soliciting Bid Packages to vendors and subcontractors
 - Analyzing scopes and quotations from Vendors and Subcontractors
 - Meeting with City of Dodge City Staff and PEC to discuss design, GMP and construction issues.
- All supervision, labor, equipment, material and subcontracts to fulfill the work outlined in the documents listed above.
- Performance, Payment and warranty Bonds
- Project warranty for 2 years
- Temporary on site construction support facilities
 - Double wide construction trailer to house UCI-PEC on site personnel
 - Secured fenced in lay down areas for materials
 - Installation of owner supplied asphalt millings for access road
 - Construction staking

- SWPP NOI-Temporary Erosion Control
- On site project management of either self performed or subcontracted work.
 - Weekly progress meetings to include Owner, designer, contractor, subcontractors and any major vendors. These meetings will gauge the project's progress as well as look ahead schedules to make certain work is ready to be processed.
 - Overall safety for all site personnel will be planned and monitored by UCI personnel.

Exhibit "A" continued

- Budgeted items are include as the Design has not been completed include and shown will budgeted price include
 - Painting(no schedule given) \$200,000
 - Laboratory Casework 25,000
 - Miscellaneous Metals 200,000
 - Appliances, Marker Boards, Building specialties 20,000
- Process equipment includes installation as well as the following:
 - Start up and Manufacture's check out
 - Training
 - Operation and Maintenance Manuals
- Permanent Seeding of all disturbed areas on site

Items added but not shown on the 30% design drawings:

- ❖ Pump Station Valve Vault
- ❖ Yard piping for Field Routing
 - WT-51, 94, 85-88, 93, 65, 83,122,123,133-35, etc.
 - Headwall at 30" WT-40
- ❖ Decking on Membrane Tanks

Items excluded in the GMP include but are not limited to:

- ✦ Sales Tax
- ✦ Building permits
- ✦ Site survey
- ✦ Quality control testing services
- ✦ Site utility Charges for Gas, Water, Electric, or cable
- ✦ Water for testing structures
- ✦ Chemicals for waste water treatment equipment
- ✦ Landscaping plantings or sprinkler systems
- ✦ Supplying Millings for access road base

Exhibit "B"

Dodge City Water Reclamation Facility

Guaranteed Maximum Price (GMP)@ 30% Design

July 17 2009-Dodge City Kansas

Project Base GMP	14,475,000
Project value added alternates	
• Generator Sized to operate Plant	350,000
• Epoxy floor covering	45,000
• Spare Blower	25,000
• Meeting/flex room at admin	45,000
• Maintenance Garage	60,000
• Glazing at Process Building	32,000
• Building for Future	50,000
• Blower Suction Valves	8,000

Exhibit "C" UCI Self performed work Dodge City Water Reclamation 2009

UCI as the Construction Manager will self perform and is not limited to the following items of work:

- Preconstruction Services
- Set Up and Manage temporary Site Facilities
- Construction layout
- Structural Excavation and Backfill
- Yard and Piping & Valves
- Structural concrete
- Process Equipment installation
- Process Piping & Valves
- Start Services for all Process Equipment
- On site Management of subcontractors
- Documentation of Work
 - Submittals and shop drawing management
 - Changes in GMP/Scope
 - O & M Manuals
 - Start Up Documents
 - Training Documents
- Site Cleanup
- Punch List management

Exhibit "D"
Dodge City WWTP – Schedule of Values

Location	Structure Title	Budget cost
1	Administration Building	\$ 435,900.00
2	Main Pump Station	\$ 325,000.00
3	Process Building	\$ 8,750,000.00
4	Flow Control Structure	\$ 45,000.00
5	Biological Treatment Basin	\$ 1,641,100.00
7	Digesters	\$ 550,000.00
8	Sludge Handling Building	\$ 730,000.00
9	Effluent Structures	\$ 95,000.00
10	Cascade Structure	\$ 40,000.00
11	Site Earthwork and Grading	\$ 300,000.00
12	Site Piping	\$ 450,000.00
13	Site Paving	\$ 178,000.00
14	Site Improvements	\$ 935,000.00
	Project Budget GMP	\$ 14,475,000.00
	Contingency	\$ 500,000.00
	UCI Pre-Con Service	\$ 80,000.00
	total GMP	\$ 15,055,000.00
Project value added alternates not in base GMP		
A-1	Generator Sized to Operate Plant	\$ 350,000.00
A-2	Epoxy Floor Covering	\$ 45,000.00
A-3	Spare Blower	\$ 25,000.00
A-4	Meeting Flex room at Admin	\$ 45,000.00
A-5	Maintenance Garage	\$ 60,000.00
A-6	Glazing at Process BLDG	\$ 32,000.00
A-7	Building structure for future	\$ 50,000.00
A-8	Blower Suction valves	\$ 8,000.00
A-1		
	Total w/ alternates	\$ 15,670,000.00

Exhibit "E"

SPEC	DESCRIPTION	AMOUNT	
11207	Vertical turbine Pumps		
	National	\$17,800.00	
	Fairbanks Morse(budget)	\$25,000.00	
11235	Closed Channel Ultra violet Disinfection Unit		\$250,000.00
	Aquionics	\$250,000.00	
	Wedeco	\$275,000.00	
	Trojan(not Speced)	\$0.00	
11370	Centrifuge Dewatering Equipment		\$334,000.00
11241	Polymer Feed System		
11369	Shaftless Screw Type Conveyor		
	Seimens	\$359,000.00	
	Andritz	\$375,000.00	
	Westfallia	\$334,000.00	
11305	Submersible Pumps		\$18,000.00
	Ebarra	\$28,000.00	
	Flygt	\$18,000.00	
	KSB	\$10,297.00	
	Fairbanks Morse		
11306	Reuse Water System		\$0.00
	????above vert turbine		
11308	Screw Centrifugal Pumps		\$95,300.00
	Wemco	\$95,300.00	
	Hayward Gordon(Budget)	\$110,000.00	
11313	Rotary Lobe Pumps		\$126,800.00
	Alfa Laval	\$126,800.00	
	Boeger	\$130,000.00	
	Lobeline	\$135,000.00	
11317	Compressed Air System		\$0.00
	By Membrane MFG????		
	Kaeser	\$22,900.00	
11337	Rotary Drum Fine Screen		\$261,800.00
11338	Screening Compactor Unit		
	Westech(not Spec)	\$365,000.00	
	Waste-Tech Rot-Seive	\$261,800.00	
	Baycor	\$278,500.00	
11372	Positive Displacement Blowers		\$120,000.00
	Kaeser	\$147,000.00	Reduce to 10 blowers
	Aerezen	\$120,000.00	
no spec	Demister, filter Solberg Budget		\$15,000.00
11373	Fine Bubble Diffusers		\$100,000.00
11374	Coarse Bubble Diffusers		
	SSI	\$139,000.00	
	EDI	\$150,000.00	
	Aquarius(fine only)	\$100,000.00	Reduce to 2 Digestors
11380	Floating Decantors		\$43,500.00
	Douglas Envirment	\$43,500.00	
	Aqua Aerobics	\$61,000.00	
11383	Submersible Mixers		\$190,000.00
	Airolater	\$208,000.00	Reduce to 25 mixers
	Flygt	\$259,600.00	
	KSB 31	\$190,000.00	
11001	Membranes		\$2,038,000.00
	GE-Zenon	\$2,038,000.00	Pricing not changed
	Koch	\$2,300,000.00	Pricing not changed
	PAL		
11452	Residential Appliances	Budget	\$2,000.00
11606	Lab Equipment	Budget	\$5,000.00
11607	Refrigerated Sampler	Budget	\$5,000.00
11610	Labroatory Fume Hood	Budget	\$5,000.00
116216	Projection Screens	Budget	\$2,000.00

\$3,611,400.00

PRICE COMPARISON SHEET

* - Not Specified

PROJECT	DESCRIPTION	QTY	Low AMOUNT	Joe maris AMOUNT	Andy Mitchell AMOUNT	Mike Rudy AMOUNT	Mark Mayer AMOUNT	Dave McClure AMOUNT	Others AMOUNT	UCI AMOUNT	AMOUNT	AMOUNT	AMOUNT
11207	Vertical turbine Pumps	2	\$17,800.00	xxxxxxx	National 17800	xxxxxxx	xxxxxxx	xxxxxxx	xxxxxxx	xxxxxxx			
11235	Closed Channel Ultra violet Disinfection Unit	2	\$250,000.00	777777	xxxxxxx	Aquionics 250000	Medico 275000	xxxxxxx	xxxxxxx	xxxxxxx			
11370	Centrifuge Dewatering Equipment	1	\$334,000.00	Seimens 358000	Anulitz 375000	Westhalla 334000	xxxxxxx	xxxxxxx	xxxxxxx	xxxxxxx			
11241	Polymer Feed System	1											
11369	Shaftless Screw Type Conveyor	1											
11305	Submersible Pumps	2	\$18,000.00	Ehara 30000	Flyht 18000	xxxxxxx	KSB 10297	xxxxxxx	Fairbanks P&P				
11306	Reuse Water System	1	\$0.00	xxxxxxx	xxxxxxx	xxxxxxx	xxxxxxx	xxxxxxx	xxxxxxx				
11308	Screw Centrifugal Pumps		\$85,300.00	xxxxxxx	Wemco 95300	xxxxxxx	xxxxxxx	xxxxxxx	xxxxxxx				
11313	Rotary Lobe Pumps	5	\$126,800.00	Alfa Laval 128800	xxxxxxx	Boeiger 130000	xxxxxxx	xxxxxxx	Labeline 135000				
11317	Compressed Air System		\$0.00	xxxxxxx	Kasser 22900	xxxxxxx	xxxxxxx	xxxxxxx	xxxxxxx				
11337	Rotary Drum Fine Screen	2	\$281,800.00	Westech 365000	Wastech Role Sieve 261800	Baycor 278500	xxxxxxx	xxxxxxx	xxxxxxx				
11338	Screening Compactor Unit		\$135,000.00	xxxxxxx	Kasser 161000	Aerzan 135000	xxxxxxx	xxxxxxx	G Denver, Cullum & B				
no spec	Dentist, filter Solberg	1ea	\$10,000.00	xxxxxxx	xxxxxxx	xxxxxxx	xxxxxxx	xxxxxxx	xxxxxxx				
11373	Fine Bubble Diffusers		\$100,000.00	SSI 139000	Santare 100000	Aqualuis 100000	xxxxxxx	xxxxxxx	EDJ 150000				
11380	Floating Decantors		\$43,000.00	Douglas Environmental 43000	Aqua Aerobics 61000	xxxxxxx	xxxxxxx	xxxxxxx	xxxxxxx				
11383	Submersible Mixers	25	\$190,000.00	Ariador 210000	Flyht 258600	Zenon 2038660	KSB 190000	xxxxxxx	Wilo-EMU				
11452	Residential Appliances		\$2,000.00										
11608	Lab Equipment		\$5,000.00										
11607	Refrigerated Sampler		\$5,000.00										
11610	Laboratory Fume Hood		\$5,000.00										
115216	Projection Screens		\$2,000.00										

Total Division 11000 \$3,620,900.00

Memorandum

*To: City Manager
City Commissioners*
From: Cherise Tieben
Date: 10-30-09
*Subject: SW KS Coalition Legislative
Policy*
Agenda Item: New Business

Recommendation: Approve the Southwest Kansas Coalition Legislative Policy.

Background: The Commission has been actively working on refining this policy for months with the Southwest Kansas Coalition. The Policy will be utilized to offer a uniform legislative Policy for the coordinated cities.

Justification: The Coalition was formed not only to share information and assist each other through open communication but to coordinate legislatively. The voice of one City will never be as loud as the voice of the three largest communities in Western Kansas speaking as one. In order to effectively utilize that collective voice, the legislative policy was necessary to make sure it was a coordinated voice.

Financial Considerations: Not applicable.

Purpose/Mission: The legislative policy addresses areas that will improve the quality of life in our community and foster a better future for Dodge City.

Legal Considerations: None

Attachments: Southwest Kansas Coalition Legislative Policy



Southwest Kansas Coalition

2010
Legislative Policy

SKC Defined

The Southwest Kansas Coalition consists of representatives from the elected governing bodies of the City of Dodge City, the City of Liberal and the City of Garden City; united around a common set of issues impacting the region.

The Southwest Kansas Coalition was formed to foster mutually beneficial conditions within the region by working collectively to advocate a policy agenda promoting the idea that Southwest Kansas should be consistently considered in State and Federal level decisions; particularly in instances where those decisions affect major issues impacting the lives of residents of the region.

The Southwest Kansas Coalition is committed to achieving its mission through rigorous discussion and collective agreement on issues brought before the body in so far as those issues comprise a workable and attainable core agenda that may be advanced at State and Federal levels.

Coalition members, have cooperatively and collaboratively designed an agenda promoting and identified a set of policy positions intended to generate positive social and economic impacts for all Southwest Kansans.

Summary Position

In 2010, the Southwest Kansas Coalition seeks to convey the critical role of transportation in the maintenance and achievement of economic benefits for all of Southwest Kansas. As such, SKC would urge the Kansas Legislature to implement a comprehensive transportation plan establishing a system designed to stimulate and preserve economic and social growth throughout the region and the State of Kansas.

Core Principles

EDUCATION:

The development of an adequate and stable workforce through the process of establishing additional opportunities for the region's residents to obtain advanced educational degrees and specialized training programs is essential to maintaining and growing the economy of Southwest Kansas.

ECONOMIC DEVELOPMENT:

The region's communities rely on State and Federal programs designed to maximize their competitiveness in their efforts to recruit and retain businesses as well as qualified workers. Unfortunately, due to their micropolitan designation, each of the three communities ineligible for a number of programs that would be beneficial in economic development efforts because they are designed specifically for either rural or urban communities. Efforts to design programs for the growing segment of micropolitan communities in Kansas would prove extremely beneficial in their transition to a more urban designation.

IMMIGRATION:

Communities in Southwest Kansas rely heavily on labor provided by immigrants. As such Congress and the Kansas Legislature should engage in a common sense approach to addressing the growing need for additional resources that assist municipalities in their attempts to integrate immigrants into their new communities as well as reduce the time and distance barriers between legal residents' pursuit of citizenship.

TRANSPORTATION:

Transportation infrastructure is critical to the safety of the region's travelers as well as a vital means of maintaining and growing our regional economy. Infrastructure development in the western half of Kansas should be a top priority as the State works to cultivate regional partnerships in the development process of a future Comprehensive Transportation Plan.

Any future comprehensive plan must consider a region's economic impact, rather than only population density, as a way to determine the need for multi-lane highways. According to the study, "Public highway investments could affect the allocation of economic activity by drawing economic activity toward new or expanded highways or by encouraging expansion of particular industries." Southwest Kansas is a key driver of the State's agricultural economy as evidenced by the region's standing in the areas of beef, dairy and crop production. Producers in these counties are limited in their ability to effectively and efficiently move commodities due to the inadequately designed transportation infrastructure that often re-

sults in excessive roadway congestion and limited connectivity to destination markets. Enhancing and expanding transportation infrastructure will achieve a substantial reduction in roadway congestion leading to increased passenger safety as well as enhancing connectivity allowing businesses to efficiently expand to reach larger state and national markets through improved connectivity.

The State has done a great deal to improve the transportation infrastructure of large population centers such as Wichita, Topeka and Kansas City. It is apparent that the highways in the Southwest region serve (in many cases) a substantially higher percentage of commercial traffic. This may be attributed to the significant amount of agricultural exports that leave the area for larger markets and identifies a clear need to improve the capacity of the infrastructure to allow continued growth.

Transportation and more specifically the pressing need for the development of a new Comprehensive Transportation Plan that focuses on enhancing regional economies has been a primary focus for the Southwest Kansas Coalition. Transportation is a critical component of this region's economy; and, as such, the Coalition has adopted a regional approach to identifying issues and proposing solutions to assist the Kansas Department of Transportation and legislators in their efforts to construct a comprehensive plan that not only serves to maintain the existing transportation infrastructure of the region but to also enhance it to better meet regional needs by: 1) ensuring access to safe travel routes; 2) allowing businesses to ship and receive goods more quickly and at a lower cost; 3) allowing consumers to travel more quickly to retail or service outlets as well as medical facilities; 4) allowing workers to travel more quickly and economically to work.

STATE

State Comprehensive Transportation Plan

POSITION

We support the development of a new comprehensive State transportation plan promoting initiatives that demonstrate efficient use of State funds and reward regional partnerships.

BACKGROUND

The development of a new comprehensive State transportation plan is essential for the Kansas Department of Transportation to sufficiently address the transportation needs of Kansas. Failing to implement such a plan would severely limit the long-term growth and development prospects in regions throughout the state; particularly in southwest Kansas.

State Comprehensive Transportation Plan Projects

POSITION

Any State Comprehensive Plan (CTP) should effectively utilize State and Federal funding rewarding regional approaches to project identification. Specifically, major transportation improvement projects in the southwest Kansas region should include:

POSITION

The State should consider the significant impact of specific projects on the Southwest Kansas Coalition when developing its comprehensive transportation plan

BACKGROUND

1. US-54/400: KDOT should have the goal of improving US-54/400 to a 4 lane highway from Mullinville to Kingman;
- US-50/400: Any future CTP should establish the goal of improving US-50 to 4 lanes between Garden City and Dodge City;
- US-83: KDOT should strive to provide passing lanes on US-83 from the Oklahoma State Line to I-70;
- US-54: KDOT should work to improve US-54 to 4 lanes from Liberal to Mullinville

- Funding for turn lanes on highways at major intersections in rural areas;
- Continued funding of the Kansas Airport Improvement Program
- Increased funding for Public Transit, including regional transit programs;
- Increased funding for local roads and streets (Special City & County Highway Fund);
- Maintenance of or Increase in lane mile payments to cities for maintenance of city connecting links;
- Funding for KLINK resurfacing projects on city connecting links;
- Funding for geometric improvements on city connecting links;
- Funding for economic development projects within cities and counties;
- Discretionary funding to allow KDOT assistance for local economic development projects.

Economic Development

POSITION

The Kansas Department of Commerce should modify the IMPACT Act to utilize the program more fully to meet the needs of businesses in the region.

BACKGROUND

Businesses in the region have struggled to remain competitive in recruitment and retention efforts due to the inflexibility of incentive programs offered by the State. As such the Kansas Legislature should act to:

- A.** Modify the IMPACT Act in order to allow it to more effectively meet the needs of Kansas companies while also allowing their recruitment and retention efforts to remain competitive.
 - Allow choice of debt service or cash based financing thereby maximizing investment value to the State and the businesses.
 - Eliminate the 95% withholding limit.
 - Set targets for rural and small business opportunities.
 - Allow unallocated funds to carry over from year to year.
- B.** Streamline and simplify investment and job creation tax credit programs
 - Simplify qualified investment calculation
 - Reintroduce HB 2170 to create Opportunity Zones, Investment credits and Job Creation credits
- C.** Allow Kansas Department of Commerce the flexibility to create a "deal closing" fund
- D.** Create "Investment in Kansas Employment" (IKE), a job creation incentive which is payroll withholding tax driven and serves as a cash-equivalent incentive for job creation.

FEDERAL

Rail Transportation

POSITION

Continue rail and passenger rail service to and through Southwest Kansas.

BACKGROUND

Preserving cross-country rail service through southwest Kansas is important as rural regions must offer as many alternative modes of transportation as possible if they are expected to satisfy citizens' needs and attract or retain businesses. We ask that our delegation ensure continued federal support of passenger rail service to southwest Kansas.

Air Transportation

POSITION

Continue federal funding for passenger air service to Southwest Kansas.

BACKGROUND

Essential Air Service (EAS) is critical to maintaining commercial air service to Southwest Kansas. We encourage continued support from our Congressional Delegation.

Airport Improvement Program (AIP) Funding

POSITION

Support continued AIP for primary airports.
Support continued virtual primary airport status for airports that traditionally meet primary airport status.

BACKGROUND

Federal funding through the Airport Improvement Program (AIP) is critical to maintaining the infrastructure of primary airports. The lasting effects of 9/11 and recent high fuel costs have increased the volatility of this funding and have required special legislative language through "virtual primary airport status" to enable airports to continue necessary capital improvements. As numbers rise back to their pre-9/11 pace, we support continued funding through virtual primary airport status.

Economic Development

POSITION

Congress should further refine its definition of "micropolitan" to allow communities contained within this growing category the opportunity to engage in federal programs designed to create regional residential and commercial growth opportunities.

BACKGROUND

Communities being classified as "micropolitan" is relatively new in that the designation includes counties previously categorized as nonmetropolitan or rural counties. Micropolitan counties have small cities of population 10,000 to 49,999 and surrounding counties that are linked through commuting ties. Micropolitan counties serve a distinct and important role in regions across the United States, in that they act as regional trade centers and provide opportunities for regional growth benefitting both nonmetropolitan and rural areas throughout the nation.

Congress should further define the "micropolitan" needs through the development and implementation of policies that stimulate economic development in that sector. Many definitions used in federal policy targeting metro/non-metro are neither consistent nor interchangeable with urban/rural definitions. As a result, many micropolitan areas are excluded from programs targeting rural areas because they exceed population parameters and are excluded from programs targeting urban sectors because they are too small.

Refining the definition for micropolitan counties and enhancing public policy/programs aimed at assisting rural and micropolitan counties in their development initiatives achieve growth by integrating cluster strategies stimulating business and residential development in these areas.

Immigration Reform

POSITION

Congress should seek to provide assistance to those communities located in rural areas with large immigrant populations.

BACKGROUND

Congress should consider providing under served rural areas with large immigrant populations assistance through the establishment of a dedicated outreach program or a dedicated service center that would offer immigration services consistent with those provided by Federal Immigration Offices throughout the country. Such services would signify a sustained effort on the part of the Federal Government to remove time and distance barriers standing in the way of legal residents' pursuit of citizenship.



Southwest Kansas Coalition

Memorandum

*To: City Manager
City Commissioners*
From: Cherise Tieben
Date: 10-30-09
*Subject: Hospitality Interlocal
Agreement with DCCC*
Agenda Item: New Business

Recommendation: Authorize the Mayor to sign the Hospitality Interlocal Agreement with Dodge City Community College, upon review by legal counsel.

Background: The tax abatement agreements entered into by the City with the LaQuinta and Best Western Hotel, stipulated an in lieu of taxes payment each year for a period of ten years. The payment is to be utilized to offer a cooperative program through the CVB and Dodge City Community College for the recruiting and training of individuals involved in the delivery of hospitality and tourism services in the Dodge City area. The funds have been utilized to sponsor Scott Ginsberg, the "Name Tag Guy", and are currently being utilized to establish the Hospitality Program through local retailers. These programs have and will be complimentary to the Hospitality education track offered through the Dodge City Community College.

Justification: The interlocal agreement establishes an advisory board to recommend to the Commission how the funds will be utilized between CVB and Dodge City Community College. The agreement will also guide the advisory board and the Commission regarding the most appropriate use of the funds.

Financial Considerations: The annual funds available to be distributed through this agreement are approximately \$23,500.00.

Purpose/Mission: The Hospitality programs offered through both the CVB and Dodge City Community College are strong efforts to improve the quality of hospitality service in our community.

Legal Considerations: An interlocal agreement is required by State Statute in order for taxing entities to commit to long term exchange of funding.

Attachments: Interlocal Agreement

INTERLOCAL COOPERATION AGREEMENT

THIS AGREEMENT is made and entered by and between the City of Dodge City, Kansas (the "City") and Dodge City Community College (the "College") effective the 28th day of October, 2009.

RECITALS

WHEREAS, the City has entered into written agreements with Kimbroy's Properties, L.L.C., and David, Inc., for payments in lieu of taxes ("PILOT") in exchange for the issuance of industrial revenue bonds by the City;

WHEREAS, each PILOT provides for the payment of an "origination fee" to be used by the City to enhance economic development activities of the area which among other such activities may include a cooperative effort of the City's convention and visitors bureau and Dodge City Community College for the recruiting and training of employees or potential employees in hospitality management, operations and services for the hospitality and/or tourism businesses in Dodge City and the surrounding area to include the possible development of programs, courses, instructional classes and activities to be conducted and provided by virtue of an interlocal cooperation agreement between the College and the City;

WHEREAS, the College has developed a Hospitality Management Program which includes an eight course hospitality operations certificate, a twelve course food and beverage management diploma and a thirteen course hospitality management diploma;

WHEREAS, the Hospitality Management Program and its curriculum have been approved by the College Board of Trustees and the Kansas State Board of Regents;

WHEREAS, the Kansas Interlocal Cooperation Act (K.S.A. 12-2901 *et seq.*) provides that governmental units may enter into agreements for functions relating to economic development and educational services for joint or cooperative action pursuant to the provisions of the act;

AND WHEREAS, the governing bodies of the City and the College desire to enter into this agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

1. **Recitals.** The recitals set out above are hereby incorporated as part of this agreement.

2. **Purpose.** The purpose of this agreement is to establish the mechanism and procedures for using the funds generated by the origination fee required by the aforementioned PILOTS to recruit and train employees or potential employees in hospitality management, operations and services for the hospitality and/or tourism businesses in Dodge City and the surrounding area.

3. **General Intent of the Parties.** The parties intend the College develop, operate and maintain an accredited Hospitality Management Program. The College's responsibilities shall include development of curriculum, recruitment of students, provision of adequate classroom space, employment of qualified instructors and support staff, and maintenance of necessary records. It is the further intent of the parties that funds generated by the PILOT origination fees shall be used to financially assist with the net costs associated with the College's Hospitality Management Program.

4. **Financing.** The College shall have the primary responsibility for financing its Hospitality Management Program and shall be entitled to receive all tuition, fees, state reimbursements and any other payments from or on behalf of students enrolled in the program. The City will provide financial assistance to the program from funds generated by the PILOT origination fees. The City shall have no financial obligation beyond those funds actually collected from the PILOT origination fees and awarded to the College as provided herein.

5. **Advisory Committee.** There is hereby created a Hospitality Management Program Advisory Committee ("Advisory Committee"). The Advisory Committee shall provide advice, counsel and recommendations concerning the College's Hospitality Management Program.

a. **Membership.** The Advisory Committee shall consist of six (6) members. The members shall be:

- (1) The Director of Business Services of the College or her designee;
- (2) The Director of Business Technology and Continuing Education of the College;
- (3) The Director of the City's Convention and Visitor's Bureau;
- (4) The City Manager of the City or his designee;
- (5) Two persons actively engaged in the hospitality and/or tourism business sector. One person shall be appointed by the College's Board of Trustees and one person shall be appointed by the City Commission of the City.

The Advisory Committee shall annually elect from its membership a chairperson. The Dean of Technical Education at the College shall be an ex-officio member of the Advisory Committee.

b. **Duties and Functions.** The Advisory Committee shall meet at least one time during the fall semester and one time during the spring semester of the College school year. The Advisory Committee shall meet at such other times as deemed necessary. The Advisory Committee shall make recommendations to the City concerning funding from the PILOT origination fees collected, provide advice and counsel to the College concerning hospitality and/or tourism needs and opportunities in the community, and such other acts to support and promote the Hospitality Management Program.

6. **Acquisition of Property.** Any property acquired with PILOT origination fees for the use and benefit of the College's Hospitality Management Program shall become the property of the College and shall remain the property of the College in the event of the termination of this agreement.

7. **Duration.** The duration of this agreement shall be perpetual. However, either party may terminate this agreement upon giving written notice to the other party at least 120 days prior to the effective date of termination.

8. **Binding Effect.** This agreement shall be binding upon and extend to the benefit of the parties hereto and their respective successors and assigns.

9. **Applicable Law.** This agreement shall be governed by and interpreted in accordance with the laws of the State of Kansas.

10. **Venue.** It is agreed that should any dispute arise concerning the validity and effect of this agreement or any breach of this agreement, venue for the action concerning such dispute shall be in the District Court of Ford County, Kansas.

11. **Severability.** If any section, clause or phrase of this agreement should be determined by a court of competent jurisdiction to be invalid for any reason whatsoever, such determination shall not affect the remaining provisions of this agreement, which shall remain in full force and effect; and to this end the provisions of this agreement are hereby declared to be severable and should be presumed to have been agreed upon knowing the various provisions of this agreement are severable.

12. **Prior Agreements.** This agreement constitutes the entire understanding and agreement between the parties with respect to the subject matter contained herein and supersedes all prior negotiations and discussions concerning any matter addressed herein.

13. **Effective Date.** This agreement shall take effect upon its approval by the Attorney General of the State of Kansas and after it is recorded in the office of the Register of Deeds of Ford County and in the office of the Secretary of State of the State of Kansas.

14. **Modification.** Except as otherwise specifically stated herein, the provisions of this agreement shall not be subsequently modified, except by mutual consent and agreement of the parties, expressed in writing, dated and signed.

15. Waiver of Breach. No waiver of a breach of this agreement shall be deemed a waiver of any subsequent breach.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed and made effective as set forth herein.

CITY OF DODGE CITY, KANSAS

Rick Sowers, Mayor

Approved by the City Commission of the City of Dodge City, Kansas, this _____ day of November, 2009.

Nanette Pogue, City Clerk

DODGE CITY COMMUNITY COLLEGE

Merrill Conant, Board Chair

Approved by the Dodge City Community College Board of Trustees this 28th day of October, 2009.

Richard K. Burke, Secretary

Approved by the Attorney General of the State of Kansas on this _____ day of _____, 2009.

By: _____
Assistant Attorney General