

CITY COMMISSION SPECIAL MEETING

AGENDA

City Hall Commission Chambers

Wednesday, May 25, 2011

6:00 p.m.

CALL TO ORDER

ROLL CALL

NEW BUSINESS

1. Appointment to Local Revolving Loan Fund Advisory Board.
Report by Director of Public Information, Jane Longmeyer
2. Approval of Fire Truck Lease Purchase Agreement.
Report by City Clerk/Finance Director, Nannette Pogue
3. Approval of Management Agreement for All 4 Fun.
Report by Director of Parks & Recreation, Paul Lewis

OTHER BUSINESS

ADJOURNMENT

Memorandum

*To: City Manager
Assistant City Manager
City Commissioners*

*From: Jane Longmeyer *jl**

Date: May 12, 2011

*Subject: Local Revolving Loan Fund
(LRLF) Advisory Board.*

Agenda Item: New Business

Recommendation: Appoint Anita Williams to fill a vacant position.

Background: Dick Wyatt has served on the LRLF Advisory Board since its inception in 1990. The Board reviews LRLF applications and provides recommendations to the City Commission for approval or denial. Anita has a financial background that will be an asset to reviewing the applications.

Justification: The LRLF Advisory Board was created under the City of Dodge City Economic Development Policy. Local economic development funds are available to promote, stimulate and develop the general economic welfare of the community.

Financial Considerations: None.

Purpose/Mission: The City of Dodge City presently appoints members to various advisory boards/commissions. These groups make recommendations to the City Commission regarding various phases of municipal operations or, in some cases, are responsible for operation of certain programs or facilities. These boards are an excellent place for individuals to assist the City by providing and recommending while learning about local government operations.

Legal Considerations: None

Attachments: None.

May 24, 2011

TO: Ken Strobel, City Manager
Cherise Tieben, Assistant City Manager

FROM: Nannette Pogue, Finance Director/City Clerk *NP*

SUBJECT: Lease Purchase Agreement for Fire Truck

The City Commission recently approved the purchase of a Fire Truck from Conrad Fire in the amount of \$404,178. I sent out proposals seeking bids for a lease purchase agreement to finance the truck. The terms of the agreement were to be for 5 years with the first payment due on execution of the contract. Since we will prepay the purchase of the truck we will take advantage of discounts and the amount we will be financing is \$388,357. I received proposals back from 6 companies. Those were:

Pinnacle Public Finance, Inc.	2.24%
First Bank, Sterling, KS	2.94%
Bank fo the West	3.126%
Sunflower Bank	3.97%
OshKosh Capital	2.89%
Commerce Bank	2.44%

Since Pinnacle Public Finance, Inc had the lowest proposal, I contacted them and have been working with them to finalize a lease purchase contract. A copy of that contract is attached. The City Attorney has reviewed the contract and has approved it. If you have questions or wish additional information, please let me know.



May 13, 2011

Ms. Nannette Pogue
City of Dodge City
806 N. 2nd Avenue
Dodge City, Kansas 67801

Re: Master Equipment Lease Purchase Agreement dated May 20, 2011 and Schedule of Property No. 1 dated May 20, 2011

Dear Nanette:

Attached are the documents for the Master Equipment Lease Purchase Agreement between City of Dodge City and Pinnacle Public Finance, Inc. Please have the responsible parties execute the enclosed documents and return them to Pinnacle Public Finance, Inc., 8377 East Hartford Drive, Suite 115, Scottsdale, AZ 85255.

To be completed and executed by an authorized representative of City of Dodge City:

- **Master Equipment Lease Purchase Agreement** These are the terms and conditions which will control each Schedule executed under the Master Agreement. Please sign at the bottom.
- **Amendment No. 1** (if applicable)
- **Exhibit A: Schedule of Property No. 1** This is an itemization of the Equipment to be purchased under this Schedule which incorporates the terms and conditions of the Master Agreement into the Schedule. Please verify the information is correct and sign at the bottom.
- **Exhibit A-1: Rental Payment Schedule** This shows the date each payment is due, the amount of each payment including the interest and principal components, and the purchase price. Please verify this information is correct and sign at the bottom.
- **Exhibit B: Acceptance Certificate** Please hold until the truck is completed and delivered.
- **Letter Acknowledging Pre-Payment** This outlines the prepayment of funds to the vendor and lien and insurance requirement upon completion and delivery. Please sign at the bottom.
- **Bank Qualified Designation.** This form provides a representation regarding the Bank Qualified or Non-Bank Qualified status of the Lease. Please complete and sign this form.
- **Insurance Coverage Requirements** Please fill in the name, address and phone and fax numbers of the insurance agent in the top section. Please sign at the bottom that all information is accurate.
- **Lease Payment Instructions** Please complete the Lease Payment Instructions and include any invoicing requirements in order to ensure prompt and accurate payment of all amounts due under the Lease. Please sign at the bottom that all information is accurate.
- **Form 8038** This form is to be sent and filed with the IRS. Please follow the separate instructions for this form. Please return the form to us for filing.
- **Legal Opinion of Counsel** Please forward with the attorney cover letter to your counsel as soon as possible with a set of the executed documentation.

To be executed by an authorized individual, OTHER THAN THE REPRESENTATIVE WHO EXECUTED THE ABOVE DOCUMENTS

- **Certificate of Signature Authority** This document confirms that the person who has executed the above document is authorized to do so. THIS CANNOT BE EXECUTED BY THE SAME PERSON. Please forward this certificate, with the executed documents, to such person.

In addition to the documents listed above, please provide us, prior to funding, with the following:

- **Certificate of Insurance** - evidencing both Liability and Physical Damage coverage in the amounts stated on the Insurance Coverage Requirements form and naming Pinnacle Public Finance, Inc. as **loss payee and additional insured**. Please have your Insurance Agent reference Control #100416 and fax the certificate(s) to me directly at **877-233-2505**.
- A **Board Resolution** approving and enabling the Lease Purchase with Pinnacle Public Finance, Inc.
- **Advance Payment** - check in the amount of **\$81,150.22** made payable to Pinnacle Public Finance, Inc. per the attached invoice. Please include this check with the documentation.
- **Tax Exempt Certificate** – for the **City of Dodge City**

If you have any questions, please feel free to call me directly at 480-419-4233. Thank you for your assistance. I look forward to working with you on this transaction.

Sincerely,

Therese Lohmann
Investment Associate

Enclosures



Lessee: City of Dodge City

Attention: Nannette Pogue

Invoice Number: ADVANCE / 100416
Invoice Due Date: 5/20/2011
Amount Due: \$81,150.22

Equipment Description: 2012 Pierce Custom Contender PUC Pumper

Customer Reference Number:

Payment Number	Interest Portion	Principal Portion	Amount Due
Advance	\$0.00	\$81,150.22	\$81,150.22

Remit to:

Pinnacle Public Finance, Inc.
8377 East Hartford Drive, Suite 115
Scottsdale, AZ 85255
Attn: Therese Lohmann

Future Remittances:
P.O. Box 028549
Miami, FL 33102-8549

Keep top portion for your records

Please detach bottom portion and return with your payment.



Remit to:

Pinnacle Public Finance, Inc.
8377 East Hartford Drive, Suite 115
Scottsdale, AZ 85255
Attn: Therese Lohmann

Invoice Number: ADVANCE / 100416
Due Date: 5/20/2011
Amount Due: \$81,150.22

Amendment No. 1 (the "Amendment") to
Master Equipment Lease Purchase Agreement dated May 20, 2011 ("Agreement")
by and between
Pinnacle Public Finance, Inc. ("Lessor")
and
City of Dodge City ("Lessee")

This Amendment is entered into as of May 20, 2011 by and between Lessor and Lessee for the purpose of amending the Master Equipment Lease Purchase Agreement ("Agreement"). For and in consideration of the mutual promises and agreements contained in the Agreement to which this Amendment is attached, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Definitions.** Each term used, but not defined, herein shall have the same meaning as when such term is used in Agreement described above.
2. **Amendment to Section 7 of the Agreement.** The second sentence of Section 7 of the Agreement is hereby amended to read as follows:
"Should Lessee fail to budget or appropriate funds to pay Rental Payments under any Lease following the then current Original Term or Renewal Term, such Lease or Leases shall be deemed terminated at the end of the then current Original Term or Renewal Term."
3. **Certificate of Compliance with Kansas Law.** Lessee hereby agrees to complete, execute and deliver to Lessor with respect to each Lease a Certificate of Compliance with Kansas Law (in substantially the form attached to this Amendment as Attachment A), which shall be attached as Attachment A to Schedule of Property No. 1 and delivered together with the Lease Payment Schedule to be attached to such Schedule.

All other terms and conditions of the Agreement remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Amendment to be duly executed as of the date first written above.

LESSOR:
Pinnacle Public Finance, Inc.

LESSEE:
City of Dodge City

Signature: _____

Signature: _____

Name: / Title: _____

Name: / Title: _____

Date: _____

Date: _____

STATE OF KANSAS
ATTACHMENT A
To Schedule of Property No. 1

CERTIFICATE OF COMPLIANCE WITH KANSAS LAW

Schedule of Property No. 1 dated May 20, 2011 ("Schedule") to the
Master Equipment Lease Purchase Agreement dated May 20, 2011 ("Agreement")

by and between
Pinnacle Public Finance, Inc. ("Lessor") and City of Dodge City ("Lessee")

THE UNDERSIGNED ACKNOWLEDGES AND REPRESENTS FOR AND ON BEHALF OF LESSEE
THAT FOR THE PURPOSES OF THE KANSAS CASH-BASIS LAW, K.S.A. SECTIONS 10-1101 ET
SEQ.:

- (a) the amount or capital cost required to purchase the Equipment if paid for by cash would be
\$ _____;
- (b) the annual average effective interest cost under this Lease is _____%; and
- (c) the amount included in the Lease Payment for service, maintenance, insurance or other charges
exclusive of the capital cost and interest cost is \$ _____.

DATED this ____ day of _____, _____.

AUTHORIZED SIGNATURE: _____

PRINTED NAME: _____

TITLE: _____

MASTER EQUIPMENT LEASE PURCHASE AGREEMENT

This Master Equipment Lease Purchase Agreement dated as of May 20, 2011 ("Agreement") and entered into between Pinnacle Public Finance, Inc., a Delaware corporation ("Lessor"), and City of Dodge City, a body corporate and politic existing under the laws of the State of Kansas ("Lessee").

1. Agreement. Lessee agrees to lease from Lessor certain "Equipment" as described in each Equipment Schedule (Exhibit A), which together with a Rental Payment Schedule (Exhibit A-1) constitute a "Schedule", subject to the terms and conditions of and for the purposes set forth in each Lease. Items of equipment may be added to the Equipment from time to time by execution of additional Schedules by the parties hereto and as otherwise provided herein. Each Schedule and the terms and provisions of this Agreement (which includes all exhibits hereto, together with any amendments and modifications pursuant thereto) which are incorporated by reference into such Schedule shall constitute a separate and independent lease and installment purchase of the Equipment therein described and are referred to herein as a "Lease".

2. Term. The "Commencement Date" for each Lease is the date when interest commences to accrue under such Lease which date shall be the earlier of (i) the date on which the Equipment listed in such Lease is accepted by Lessee in the manner described in Section 11, or (ii) the date on which sufficient monies to purchase the Equipment listed in such Lease are deposited for that purpose with an escrow agent, or (iii) the date sufficient monies are set aside for acquisition of Equipment as evidenced in Exhibit D, if applicable. The "Lease Term" for each Lease means the Original Term and all Renewal Terms therein provided and for this Agreement means the period from the date hereof until this Agreement is terminated. The "Original Term" means the period from the Commencement Date for each Lease until the end of Lessee's fiscal year or biennium (as the case may be) (the "Fiscal Period") in effect at such Commencement Date. The "Renewal Term" for each Lease is each term having a duration that is coextensive with the Fiscal Period.

3. Representations and Covenants of Lessee. Lessee represents, covenants and warrants for the benefit of Lessor on the date hereof and as of the Commencement Date of each Lease as follows: (a) Lessee is a public body corporate and politic duly organized and existing under the constitution and laws of the State with full power and authority under the constitution and laws of the state where the Lessee is located ("State") to enter into this Agreement and each Lease and the transactions contemplated hereby and to perform all of its obligations hereunder and under each Lease; (b) Lessee has duly authorized the execution and delivery of this Agreement and each Lease by proper action of its governing body at a meeting duly called and held in accordance with State law, or by other appropriate official approval, and all requirements have been met and procedures have occurred to ensure the validity and enforceability of this Agreement and each Lease; (c) Lessee will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as a body corporate and politic; (d) Lessee has complied with such public

bidding requirements as may be applicable to this Agreement and each Lease and the acquisition by Lessee of the Equipment as provided in each Lease; (e) during the Lease Term, the Equipment will be used by Lessee solely and exclusively for the purpose of performing essential governmental or proprietary functions of Lessee consistent with the permissible scope of Lessee's authority; (f) Lessee will annually provide Lessor with current financial statements, budgets, proof of appropriation for the ensuing Fiscal Period, and such other financial information relating to the ability of Lessee to continue each Lease as may be requested by Lessor; and (g) Lessee has an immediate need for the Equipment listed on each Schedule and expects to make immediate use of the Equipment listed on each Schedule.

4. Tax and Arbitrage Representations. Lessee hereby represents as follows: (a) the estimated total costs of the Equipment listed in each Schedule will not be less than the total principal portion of the Rental Payments listed in such Rental Payment Schedule; (b) the Equipment listed in each Schedule has been ordered or is expected to be ordered within 6 months of the Commencement Date, and all amounts deposited in escrow to pay for the Equipment, and interest earnings, will be expended on costs of the Equipment and the financing within 3 years of Commencement Date; (c) no proceeds of any Lease will be used to reimburse Lessee for expenditures made more than 60 days prior to the Commencement Date or, if earlier, more than 60 days prior to any official action taken to evidence an intent to finance; (d) Lessee has not created or established, and does not expect to create or establish, any sinking fund or similar fund (i) that is reasonably expected to be used to pay the Rental Payments, or (ii) that may be used solely to prevent a default in the payment of the Rental Payments; (e) the Equipment listed in each Schedule has not been and is not expected to be sold or otherwise disposed of by Lessee, either in whole or in part, prior to the last maturity of Rental Payments; (f) Lessee will comply with all applicable provisions of the Internal Revenue Code of 1986, as amended ("Code"), including without limitation Sections 103 and 148 thereof, and the applicable regulations of the Treasury Department to maintain the exclusion of the interest components of Rental Payments from gross income for purposes of federal income taxation; and (g) Lessee intends that each Lease not constitute a "true" lease for federal income tax purposes.

5. Lease of Equipment. Upon the execution of each Lease, Lessor demises, leases, transfers, and lets to Lessee, and Lessee acquires, rents, leases and hires from Lessor, the Equipment in accordance with the terms thereof. The Lease Term for each Lease may be continued, solely at the option of Lessee, at the end of the Original Term or any Renewal Term for the next succeeding Renewal Term up to the maximum Lease Term set forth in such Lease. At the end of the Original Term and at the end of each Renewal Term the Lease Term

shall be automatically extended upon the successive appropriation by Lessee's governing body of amounts sufficient to pay Rental Payments and other amounts payable under the related Lease during the next succeeding Fiscal Period until all Rental Payments payable under such Lease have been paid in full, unless Lessee shall have terminated such Lease pursuant to Section 7 or Section 22. The terms and conditions during any Renewal Term shall be the same as the terms and conditions during the Original Term, except that the Rental Payments shall be as provided in the applicable Lease.

6. Continuation of Lease Term. Lessee currently intends, subject to Section 7, to continue the Lease Term of each Lease through the Original Term and all Renewal Terms and to pay the Rental Payments thereunder. Lessee reasonably believes that legally available funds in an amount sufficient to make all Rental Payments during the maximum Lease Term of each Lease can be obtained. Lessee currently intends to do all things lawfully within its power to obtain and maintain funds from which the Rental Payments may be made, including making provision for such payments to the extent necessary in each budget or appropriation request submitted and adopted in accordance with applicable provisions of law. Notwithstanding the foregoing, the decision whether or not to budget and appropriate funds or to extend the applicable Schedule for any Renewal Term is within the discretion of the governing body of Lessee.

7. Nonappropriation. Lessee is obligated only to pay such Rental Payments under each Lease as may lawfully be made from funds budgeted and appropriated for that purpose. Should Lessee fail to budget, appropriate or otherwise make available funds to pay Rental Payments under any Lease following the then current Original Term or Renewal Term, such Lease or Leases shall be deemed terminated at the end of the then current Original Term or Renewal Term. Lessee agrees to deliver notice to Lessor of such termination at least 30 days prior to the end of the then current Original Term or Renewal Term, but failure to give such notice shall not extend the term beyond such Original Term or Renewal Term. If any Lease is terminated in accordance with this Section, Lessee agrees to peaceably deliver the Equipment to Lessor at the location(s) to be specified by Lessor.

8. Conditions to Lessor's Performance. This Agreement is not a commitment by Lessor to enter into any Lease not currently in existence, and nothing in this Agreement shall be construed to impose any obligation upon Lessor to enter into any proposed Lease, it being understood that whether Lessor enters into any proposed Lease shall be a decision solely within Lessor's discretion. Lessee will cooperate with Lessor in Lessor's review of any proposed Lease. Lessee understands that Lessor requires certain documentation and information necessary to enter into any Lease and Lessee agrees to provide Lessor with any documentation or information Lessor may request in connection with Lessor's review of any proposed Lease. Such documentation may include, without limitation, documentation concerning the Equipment and its contemplated use and location and documentation or information concerning the financial status of Lessee and other matters related to Lessee.

9. Rental Payments. Lessee shall promptly pay "Rental Payments" as described in Exhibit A-1 to each Lease, exclusively from legally available funds, to Lessor on the dates and in such amounts as provided in each Lease. Lessee shall pay Lessor a charge on any Rental Payment not paid on the date such payment is due at the rate of 12% per annum or the maximum rate permitted by law, whichever is less, from such date until paid. Rental Payments consist of principal and interest portions. *Lessor and Lessee understand and intend that the obligation of Lessee to pay Rental Payments under each Lease shall constitute a current expense of Lessee and shall not in any way be construed to be a debt of Lessee in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by Lessee, nor shall anything contained herein or in a Lease constitute a pledge of the general tax revenues, funds or monies of Lessee.*

10. RENTAL PAYMENTS TO BE UNCONDITIONAL. EXCEPT AS PROVIDED IN SECTION 7, THE OBLIGATIONS OF LESSEE TO MAKE RENTAL PAYMENTS AND TO PERFORM AND OBSERVE THE OTHER COVENANTS AND AGREEMENTS CONTAINED IN EACH LEASE SHALL BE ABSOLUTE AND UNCONDITIONAL IN ALL EVENTS WITHOUT ABATEMENT, DIMINUTION, DEDUCTION, SET-OFF OR DEFENSE, FOR ANY REASON, INCLUDING WITHOUT LIMITATION ANY FAILURE OF THE EQUIPMENT TO BE DELIVERED OR INSTALLED, ANY DEFECTS, MALFUNCTIONS, BREAKDOWNS OR INFIRMITIES IN THE EQUIPMENT OR ANY ACCIDENT, CONDEMNATION OR UNFORESEEN CIRCUMSTANCES.

11. Delivery; Installation; Acceptance. Lessee shall order the Equipment, cause the Equipment to be delivered and installed at the location specified in each Lease and pay any and all delivery and installation costs in connection therewith. When the Equipment listed in any Lease has been delivered and installed, Lessee shall immediately accept such Equipment and evidence said acceptance by executing and delivering to Lessor an Acceptance Certificate (Exhibit B). Lessor shall provide Lessee with quiet use and enjoyment of the Equipment during the Lease Term.

12. Location; Inspection. Once installed, no item of the Equipment will be moved from the location specified for it in the Lease on which such item is listed without Lessor's consent, which consent shall not be unreasonably withheld. Lessor shall have the right at all reasonable times during regular business hours to enter into and upon the property of Lessee for the purpose of inspecting the Equipment.

13. Use; Maintenance. Lessee will not install, use, operate or maintain the Equipment improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by the related Lease. Lessee shall provide all permits and licenses, if any, necessary for the installation and operation of the Equipment. In addition, Lessee agrees to comply in all respects with all applicable laws, regulations and rulings of any legislative, executive, administrative or judicial body. Lessee agrees that it will, at Lessee's own cost and expense, maintain, preserve and keep the Equipment in good

repair and working order. Lessee will enter into a maintenance contract for the Equipment that is acceptable to Lessor.

14. Title. Upon acceptance of the Equipment under a Lease by Lessee, title to the Equipment shall vest in Lessee subject to Lessor's rights under the Lease; provided that title shall thereafter immediately and without any action by Lessee vest in Lessor, and Lessee shall immediately surrender possession of the Equipment to Lessor, upon (a) any termination of the applicable Lease other than termination pursuant to Section 22 or (b) the occurrence of an Event of Default. Transfer of title to Lessor pursuant to this Section shall occur automatically without the necessity of any bill of sale, certificate of title or other instrument of conveyance. Lessee shall, nevertheless, execute and deliver any such instruments as Lessor may request to evidence such transfer.

15. Security Interest. To secure the payment of all of Lessee's obligations under each Lease, upon the execution of such Lease, Lessee grants to Lessor a security interest constituting a first and exclusive lien on the Equipment applicable to such Lease and on all proceeds therefrom. Lessee agrees to execute such additional documents, in form satisfactory to Lessor, which Lessor deems necessary or appropriate to establish and maintain its security interest in the Equipment. The Equipment is and will remain personal property and will not be deemed to be affixed to or a part of the real estate on which it may be situated.

16. Liens, Taxes, Other Governmental Charges and Utility Charges. Lessee shall keep the Equipment free of all levies, liens and encumbrances except those created by each Lease. The parties to this Agreement contemplate that the Equipment will be used for governmental or proprietary purposes of Lessee and that the Equipment will therefore be exempt from all property taxes. If the use, possession or acquisition of any Equipment is nevertheless determined to be subject to taxation, Lessee shall pay when due all taxes and governmental charges lawfully assessed or levied against or with respect to such Equipment. Lessee shall pay all utility and other charges incurred in the use and maintenance of the Equipment. Lessee shall pay such taxes or charges as the same may become due.

17. Insurance. At its own expense, Lessee shall during each Lease Term maintain (a) casualty insurance insuring the Equipment against loss or damage by fire and all other risks covered by the standard extended coverage endorsement then in use in the State and any other risks reasonably required by Lessor, in an amount at least equal to the then applicable "Purchase Price" of the Equipment as described in Exhibit A-1 of each Lease; (b) liability insurance that protects Lessee from liability in all events in form and amount satisfactory to Lessor; and (c) workers' compensation coverage as required by the laws of the State; provided that, with Lessor's prior written consent, Lessee may self-insure against the risks described in clauses (a) and (b). Lessee shall furnish to Lessor evidence of such insurance or self-insurance coverage throughout each Lease Term. Lessee shall not materially modify or cancel such insurance or self-insurance coverage without first giving written notice thereof to Lessor at least 10 days in advance of such cancellation or modification. All such insurance described in

clauses (a) and (b) above shall contain a provision naming Lessor as a loss payee and additional insured.

18. Advances. In the event Lessee shall fail to keep the Equipment in good repair and working order, Lessor may, but shall be under no obligation to, maintain and repair the Equipment and pay the cost thereof. All amounts so advanced by Lessor shall constitute additional rent for the then current Original Term or Renewal Term and Lessee agrees to pay such amounts so advanced by Lessor with interest thereon from the advance date until paid at the rate of 12% per annum or the maximum rate permitted by law, whichever is less.

19. Damage, Destruction and Condemnation. If (a) the Equipment or any portion thereof is destroyed, in whole or in part, or is damaged by fire or other casualty or (b) title to, or the temporary use of, the Equipment or any part thereof shall be taken under the exercise or threat of the power of eminent domain by any governmental body or by any person, firm or corporation acting pursuant to governmental authority, Lessee and Lessor will cause the Net Proceeds to be applied to the prompt replacement, repair, restoration, modification or improvement of the Equipment to substantially the same condition as existed prior to the event causing such damage, destruction, or condemnation, unless Lessee shall have exercised its option to purchase the Equipment pursuant to Section 22. Any balance of the Net Proceeds remaining after such work has been completed shall be paid to Lessee.

For purposes of this Section, the term "Net Proceeds" shall mean (y) the amount of insurance proceeds received by Lessee for replacing, repairing, restoring, modifying, or improving damaged or destroyed Equipment, or (z) the amount remaining from the gross proceeds of any condemnation award or sale under threat of condemnation after deducting all expenses, including attorneys' fees, incurred in the collection thereof. If the Net Proceeds are insufficient to pay in full the cost of any replacement, repair, restoration, modification or improvement referred to herein, Lessee shall either (a) complete such replacement, repair, restoration, modification or improvement and pay any costs thereof in excess of the amount of the Net Proceeds, or (b) pursuant to Section 22 purchase Lessor's interest in the Equipment and in any other Equipment listed in the same Lease. The amount of the Net Proceeds, if any, remaining after completing such replacement, repair, restoration, modification or improvement or after purchasing Lessor's interest in the Equipment and such other Equipment shall be retained by Lessee. If Lessee shall make any payments pursuant to this Section, Lessee shall not be entitled to any reimbursement therefor from Lessor nor shall Lessee be entitled to any diminution of the amounts payable under Section 9.

20. DISCLAIMER OF WARRANTIES. LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE OR FITNESS FOR USE OF THE EQUIPMENT, OR WARRANTY WITH RESPECT THERETO WHETHER EXPRESS OR IMPLIED, AND LESSEE ACCEPTS SUCH EQUIPMENT AS IS AND WITH ALL FAULTS. IN NO EVENT SHALL LESSOR BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR

CONSEQUENTIAL DAMAGE IN CONNECTION WITH OR ARISING OUT OF ANY LEASE OR THE EXISTENCE, FURNISHING, FUNCTIONING OR LESSEE'S USE OF ANY ITEM, PRODUCT OR SERVICE PROVIDED FOR IN ANY LEASE.

21. Vendor's Warranties. Lessor hereby irrevocably appoints Lessee as its agent and attorney-in-fact during each Lease Term, so long as Lessee shall not be in default under the related Lease, to assert from time to time whatever claims and rights (including without limitation warranties) relating to the Equipment that Lessor may have against Vendor. The term "Vendor" means any supplier or manufacturer of the Equipment as well as the agents or dealers of the manufacturer or supplier from whom Lessor purchased or is purchasing such Equipment. Lessee's sole remedy for the breach of such warranty, indemnification or representation shall be against Vendor of the Equipment, and not against Lessor. Any such matter shall not have any effect whatsoever on the rights or obligations of Lessor with respect to any Lease, including the right to receive full and timely payments under a Lease. Lessee expressly acknowledges that Lessor makes, and has made, no representations or warranties whatsoever as to the existence or the availability of such warranties by Vendor of the Equipment.

22. Purchase Option. Lessee shall have the option to purchase Lessor's interest in all of the Equipment listed in any Lease, upon giving written notice to Lessor at least 60 days before the date of purchase, at the following times and upon the following terms: (a) on the Rental Payment dates specified in each Lease, upon payment in full of the Rental Payments then due under such Lease plus the then applicable Purchase Price as referenced in Exhibit A-1; or (b) in the event of substantial damage to or destruction or condemnation of substantially all of the Equipment listed in a Lease, on the day specified in Lessee's notice to Lessor of its exercise of the purchase option upon payment in full to Lessor of the Rental Payments then due under such Lease plus the then applicable Purchase Price plus accrued interest from the immediately preceding Rental Payment date to such purchase date.

23. Assignment. Lessor's right, title and interest in and to each Lease, including Rental Payments and any other amounts payable by Lessee thereunder and all proceeds therefrom, may be assigned and reassigned to one or more assignees or subassignees by Lessor without the necessity of obtaining the consent of Lessee; provided that any such assignment shall not be effective until (a) Lessee has received written notice, signed by the assignor, of the name and address of the assignee, and (b) it is registered on the registration books. Lessee shall retain all such notices as a register of all assignees in compliance with Section 149(a) of the Code, and shall make all payments to the assignee or assignees designated in such register. Lessee agrees to execute all documents that may be reasonably requested by Lessor or any assignee to protect its interests and property assigned pursuant to this Section. Lessee shall not have the right to and shall not assert against any assignee any claim, counterclaim or other right Lessee may have against Lessor or Vendor. Assignments may include without limitation assignment of all of Lessor's security interest in and to the Equipment listed in a particular Lease and all rights in, to and

under the Lease related to such Equipment. Lessee hereby agrees that Lessor may, without notice to Lessee, sell, dispose of, or assign this Agreement or any particular Lease or Leases through a pool, trust, limited partnership, or other similar entity, whereby one or more interests are created in this Agreement or in a Lease or Leases, or in the Equipment listed in or the Rental Payments under a particular Lease or Leases.

None of Lessee's right, title and interest in, to and under any Lease or any portion of the Equipment listed in each Lease may be assigned, subleased, or encumbered by Lessee for any reason without obtaining prior written consent of Lessor.

24. Events of Default. Any of the following events shall constitute an "Event of Default" under a Lease: (a) failure by Lessee to pay any Rental Payment or other payment required to be paid under a Lease at the time specified therein; (b) failure by Lessee to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in subparagraph (a) above, for a period of 30 days after written notice specifying such failure and requesting that it be remedied is given to Lessee by Lessor; (c) any statement, representation or warranty made by Lessee in or pursuant to any Lease shall prove to have been false, incorrect, misleading or breached in any material respect on the date when made; or (d) Lessee institutes any proceedings under any bankruptcy, insolvency, reorganization or similar law or a receiver or similar official is appointed for Lessee or any of its property.

25. Remedies on Default. Whenever any Event of Default exists, Lessor shall have the right, at its sole option without any further demand or notice, to take one or any combination of the following remedial steps: (a) by written notice to Lessee, Lessor may declare all Rental Payments payable by Lessee pursuant to such Lease and other amounts payable by Lessee under such Lease to the end of the then current Original Term or Renewal Term to be immediately due and payable; (b) with or without terminating the Lease Term under such Lease, Lessor may enter the premises where the Equipment listed in such Lease is located and retake possession of such Equipment or require Lessee at Lessee's expense to promptly return any or all of such Equipment to the possession of Lessor at such place within the United States as Lessor shall specify, and sell or lease such Equipment or, for the account of Lessee, sublease such Equipment, continuing to hold Lessee liable for the difference between (i) the Rental Payments payable by Lessee pursuant to such Lease and other amounts related to such Lease of the Equipment listed therein that are payable by Lessee to the end of the then current Original Term or Renewal Term, as the case may be, and (ii) the net proceeds of any such sale, leasing or subleasing (after deducting all expenses of Lessor in exercising its remedies under such Lease, including without limitation all expenses of taking possession, storing, reconditioning and selling or leasing such Equipment and all brokerage, auctioneer's and attorney's fees), subject, however, to the provisions of Section 7 hereof. The exercise of any such remedies in respect of any such Event of Default shall not relieve Lessee of any other liabilities under any other Lease or the Equipment listed therein; and (c) Lessor may take whatever action at law or in equity may appear necessary or desirable to enforce its rights under such Lease or as a secured party in any

or all of the Equipment. Any net proceeds from the exercise of any remedy under a Lease (after deducting all costs and expenses referenced in the Section) shall be applied as follows: (i) if such remedy is exercised solely with respect to a single Lease, Equipment listed in such Lease or rights thereunder, then to amounts due pursuant to such Lease and other amounts related to such Lease or such Equipment; or (ii) if such remedy is exercised with respect to more than one Lease, Equipment listed in more than one Lease or rights under more than one Lease, then to amounts due pursuant to such Leases pro-rata.

26. No Remedy Exclusive. No remedy herein conferred upon or reserved to Lessor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under a Lease now or hereafter existing at law or in equity.

27. Notices. All notices or other communications under any Lease shall be sufficiently given and shall be deemed given when delivered or mailed by registered mail, postage prepaid, to the parties hereto at the addresses listed below (or at such other address as either party hereto shall designate in writing to the other for notices to such party), or to any assignee at its address as it appears on the registration books maintained by Lessee.

28. Release and Indemnification. To the extent permitted by State law, and subject to Section 7, Lessee shall indemnify, release, protect, hold harmless, save and keep harmless Lessor from and against any and all liability, obligation, loss, claim, tax and damage whatsoever, regardless of cause thereof, and all expenses in connection therewith (including, without limitation, attorney's fees and expenses, penalties connected therewith imposed on interest received) arising out of or as result of (a) entering into any Lease, (b) the ownership of any item of Equipment, (c) the ordering, acquisition, use, operation,

condition, purchase, delivery, rejection, storage or return of any item of Equipment, (d) any accident in connection with the operation, use, condition, possession, storage or return of any item of Equipment resulting in damage to property or injury to or death to any person, and/or (e) the breach of any covenant or any material representation contained in a Lease. The indemnification arising under this Section shall continue in full force and effect notwithstanding the full payment of all obligations under all Leases or the termination of the Lease Term under all Leases for any reason.

29. Miscellaneous Provisions. Each Lease shall inure to the benefit of and shall be binding upon Lessor and Lessee and their respective successors and assigns. References herein to "Lessor" shall be deemed to include each of its assignees and subsequent assignees from and after the effective date of each assignment as permitted by Section 23. In the event any provision of any Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision thereof. Each Lease may be amended by mutual written consent of Lessor and Lessee. Each Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. The captions or headings in this Agreement and in each Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement or any Lease. This Agreement and each Lease shall be governed by and construed in accordance with the laws of the State.

IN WITNESS WHEREOF, Lessor and Lessee have caused this Agreement to be executed in their names by their duly authorized representatives as of the date first above written.

(LESSOR)
Pinnacle Public Finance, Inc.
8377 East Hartford Drive, Suite 115
Scottsdale, AZ 85255

(LESSEE)
City of Dodge City
806 N. 2nd Avenue
Dodge City, Kansas 67801

Signature: _____

Signature: _____

Name/Title: _____

Name/Title: _____

Date: _____

Date: _____

EXHIBIT A

SCHEDULE OF PROPERTY NO. 1

RE: MASTER EQUIPMENT LEASE PURCHASE AGREEMENT entered into as of May 20, 2011, ("Agreement"), between Pinnacle Public Finance, Inc. ("Lessor") and City of Dodge City ("Lessee"). All terms used and not otherwise defined herein have the meanings ascribed to them in the Agreement.

The following items of Equipment are hereby included under this Schedule to the Agreement.

To the extent that less than all of the Equipment subject to this Schedule has been installed and accepted by Lessee on or prior to the date hereof, Lessee hereby acknowledges that a portion of the Equipment has not been delivered, installed and accepted by Lessee for purposes of this Lease and Lessor hereby commits to provide funds in an amount sufficient to pay the costs to acquire and install the Equipment. In consideration of the foregoing, Lessee hereby acknowledges and agrees that its obligation to make Rental Payments as set forth in this Schedule is absolute and unconditional as of the date hereof and on each date and in the amounts as set forth in the Rental Payment Schedule, subject to the terms and conditions of the Lease.

Ninety five percent of the financing costs are being used to acquire assets that will be capitalized.

DESCRIPTION OF EQUIPMENT

<u>Quantity</u>	<u>Description</u>
One (1)	2012 Pierce Custom Contender PUC Pumper

Lessee hereby represents, warrants and covenants that its representations, warranties and covenants set forth in the Agreement are true and correct as though made on the Commencement Date of Rental Payments under this Schedule. **The terms and provisions of the Agreement (other than to the extent that they relate solely to other Schedules or Equipment listed on other Schedules) are hereby incorporated into this Schedule by reference and made a part hereof.**

Dated: May 20, 2011

Lessor: Pinnacle Public Finance, Inc.

Lessee: City of Dodge City

Signature: _____

Signature: _____

Name/Title: _____

Name/Title: _____

Date: _____

Date: _____

EXHIBIT A-1

RENTAL PAYMENT SCHEDULE

RE: Schedule of Property No. 1_ dated May 20, 2011 to Master Equipment Lease Purchase Agreement dated as of May 20, 2011 between Pinnacle Public Finance, Inc., as Lessor, and City of Dodge City, as Lessee.

Rate 2.2400%

Pmt #	Payment Date	Payment Amount	Interest	Principal	Purchase Price	Outstanding Balance
	5/20/2011					\$388,357.00
1	5/20/2011	\$81,150.22	\$0.00	\$81,150.22		\$307,206.78
2	5/20/2012	\$81,150.22	\$6,881.43	\$74,268.79	\$237,596.75	\$232,937.99
3	5/20/2013	\$81,150.22	\$5,217.81	\$75,932.41	\$160,145.69	\$157,005.58
4	5/20/2014	\$81,150.22	\$3,516.92	\$77,633.30	\$80,959.73	\$79,372.28
5	5/20/2015	\$81,150.22	\$1,777.94	\$79,372.28	-\$0.00	-\$0.00
Totals:		\$405,751.11	\$17,394.11	\$388,357.00		

COMMENCEMENT DATE: May 20, 2011

City of Dodge City

Signature: _____

Name/Title: _____

Date: _____

EXHIBIT B

FINAL ACCEPTANCE CERTIFICATE

Re: Schedule of Property No. 1 dated May 20, 2011 to Master Equipment Lease Purchase Agreement dated as of May 20, 2011 between Pinnacle Public Finance, Inc., as Lessor, and City of Dodge City, as Lessee.

In accordance with the Master Equipment Lease Purchase Agreement (the "Agreement"), the undersigned Lessee hereby certifies and represents to, and agrees with Lessor as follows:

- (1) All of the Equipment (as such term is defined in the Agreement) listed in the above-referenced Schedule of Property (the "Schedule") has been delivered, installed and accepted on the date hereof.
- (2) Lessee has conducted such inspection and/or testing of the Equipment listed in the Schedule as it deems necessary and appropriate and hereby acknowledges that it accepts the Equipment for all purposes.
- (3) Lessee is currently maintaining the insurance coverage required by Section 17 of the Agreement.
- (4) No event or condition that constitutes, or with notice or lapse of time, or both, would constitute, an Event of Default (as defined in the Agreement) exists at the date hereof.

LESSEE
City of Dodge City

Signature _____

Name/Title: _____

Acceptance Date _____

CERTIFICATE OF SIGNATURE AUTHORITY OF LESSEE

May 20, 2011

Pinnacle Public Finance, Inc.
8377 East Hartford Drive, Suite 115
Scottsdale, AZ 85255

RE: Schedule of Property No. 1 dated May 20, 2011 ("Lease") to the Master Equipment Lease Purchase Agreement dated May 20, 2011 ("Agreement"), by and between City of Dodge City ("Lessee") and Pinnacle Public Finance, Inc. ("Lessor").

Dear Pinnacle Public Finance, Inc.,

I, the undersigned, do hereby certify

(i) that _____
(please print the name and title of the person who signed the lease documents on the line above)

the officer of Lessee who executed the foregoing Lease and Agreement on behalf of Lessee and whose genuine signature appears thereon, is the duly qualified and acting officer of Lessee as stated beneath his or her signature and has been authorized to execute the foregoing Lease and Agreement on behalf of Lessee, and

(ii) that the budget year of Lessee is from _____ to _____.

Sincerely,

Signature: _____

Name/Title: _____

Dated: _____

The Certificate of Signature Authority of Lessee should be executed by an authorized individual confirming the executioner of the remaining documents is authorized. This document cannot be signed by the person signing the lease documents.

City of Dodge City



CITY HALL
P.O. Box 880
Dodge City, KS 67801-0880
Phone: 620/225-8100
FAX: 620/225-8144
TTY: 620/225-8115
www.dodgecity.org

May 16, 2011

Pinnacle Public Finance, Inc.
8377 East Hartford Drive, Suite 115
Scottsdale, AZ 85255

Re: Schedule of Property No. 2, dated May 20, 2011 ("Lease") to master Equipment Lease Purchase Agreement dated as of May 20, 2011 between Pinnacle Public Finance, Inc. ("Pinnacle"), as Lessor, and City of Dodge City ("City") as Lessee.

To Pinnacle Public Finance, Inc.:

The City of Dodge City hereby confirms that down payment in full in the amount of \$388,357.00 will be made to Pierce Manufacturing, Inc. by Pinnacle Public Finance, Inc. on behalf of the City. This down payment is for the manufacture of a 2012 Pierce Fire Apparatus which is the equipment and collateral for the Lease referenced above.

Further, the City hereby confirms that it understands its responsibility to file for title to secure Pinnacle's lien under the above-mentioned Lease. As soon as the Certificate of Origin is available, the title application will be made to the appropriate State department. The lien holder will be recorded as follows:

Pinnacle Public Finance, Inc.
8377 East Hartford Drive, Suite 115
Scottsdale, AZ 85255

In addition, the City also confirms that prior to delivery an insurance certificate will be obtained listing Pinnacle Public Finance, Inc. at the above address, as Loss Payee/Additional Insured, in accordance with the terms of the Lease, specifically Section 17.

The person who will be responsible for these items is:

Name: Nannette Pogue Title: Finance Director/City Clerk Phone: 620-225-8100

By signing below, I hereby acknowledge and confirm the above items on behalf of the City of Dodge City.

City of Dodge City

Signature: _____

Name/Title: _____

Date: _____



INSURANCE COVERAGE REQUIREMENTS

LESSOR: Pinnacle Public Finance, Inc.

LESSEE: City of Dodge City

Please Reference Control # 100416 on Certificate of Insurance

1. In accordance with Section 17 of the Agreement, we have instructed the insurance agent named below:
(Please fill in name, address and telephone number).

Keller Leopold Telephone: (620) 227-3196

Fax: ()

Contact: _____

- a. All Risk Physical Damage Insurance on the leased equipment evidenced by a Certificate of Insurance and Long Form Loss Payable Clause naming Pinnacle Public Finance, Inc. and/or its assigns, as Loss Payee.
Coverage Required: Full Replacement Value
- b. Public Liability Insurance evidenced by a Certificate of Insurance naming Pinnacle Public Finance, Inc. and/or its assigns as Additional Insured.
- c. Workers' compensation coverage as required by the laws of the State; provided that, with Lessor's prior written consent, Lessee may self-insure against the risks described in clauses.

Minimum Coverage Required: \$5,000,000

OR

2. Pursuant to Section 17 of the Agreement, we are self-insured for all risk, physical damage, and public liability and will provide proof of such self-insurance in letter form together with a copy of the statute authorizing this form of insurance.

Proof of insurance coverage will be provided prior to the time the Equipment is delivered to us.

PLEASE LIST NAME & ADDRESS AS FOLLOWS:

**Pinnacle Public Finance, Inc.
8377 East Hartford Drive, Suite 115
Scottsdale, AZ 85255**

LESSEE: City of Dodge City

Signature: _____

Name/Title: _____

Date: _____

PAYMENT INSTRUCTIONS

Pursuant to the Master Equipment Lease Purchase Agreement dated May 20, 2011 (the "Agreement"), Schedule of Property No. 1, dated May 20, 2011, between Pinnacle Public Finance, Inc. (the "Lessor") and City of Dodge City (the "Lessee"), Lessee hereby acknowledges the obligations to make Rental Payments promptly when due, in accordance with Exhibit A-1 to the Agreement.

LESSEE NAME: City of Dodge City TAX ID#: 48-6008416

INVOICE MAILING ADDRESS: P.O. Box 880, Dodge City, KS 67801

Mail invoices to the attention of: Nannette Pogue Phone (620) 225-8100 Fax (620) 225-8144

Approval of Invoices required by: _____ Phone () _____ Fax () _____

Accounts Payable Contact: Monica Aguirre Phone 620) 225-8100 Fax 620) 225-8144

Processing time for Invoices: 7 days prior to pay Approval: 1st and 3rd Mon. of Month Checks: _____

Do you have a Purchase Order Number that you would like included on the invoice? No X Yes _____ PO# _____

Do your Purchase order numbers change annually? No X Yes _____ Processing time for new purchase orders: _____

LESSEE: City of Dodge City
Signature: _____
Name/Title: _____
Date: _____

BANK QUALIFIED DESIGNATION

Schedule of Property No. 1 Dated May 20, 2011 to Master Equipment Lease
Purchase Agreement Dated May 20 2011

Lessee hereby represents and certifies the following (please check one):

Bank Qualified

Lessee has designated, and hereby designates, this Lease as a "qualified tax-exempt obligation" for the purposes and within the meaning of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended (the "Code"). In making that designation, Lessee hereby certifies and represents that:

- As of the date hereof in the current calendar year, neither Lessee nor any other issuer on behalf of Lessee has designated more than \$10,000,000 (the statutory limitation through 12/31/2011) of obligations (including this Lease) as "qualified tax-exempt obligations";
- Lessee reasonably anticipates that the total amount of tax-exempt obligations (including this Lease) to be issued by or on behalf of Lessee (or allocated to Lessee) during the current calendar year will not exceed \$10,000,000;
- The Lease will not be at any time a "private activity bond" as defined in Section 141 of the Code;
- The Lease is not subject to control by any entity and there are no entities subject to control by Lessee; and
- Not more than \$10,000,000 of obligations of any kind (including the Lease) issued by, on behalf of or allocated to Lessee will be designated for purposes of Section 265(b)(3) of the Code during the current calendar year.

Non-Bank Qualified

Lessee has not designated this Lease as a "qualified tax-exempt obligation" for the purposes and within the meaning of Section 265(b)(3) of the Code.

LESSEE: City of Dodge City

Signature: X _____

Printed Name/Title: X _____

Date: X _____

Instructions for 8038-G:

Updated for use with May, 2010 form

The below described lines need to be completed by the Lessee:

Line 2:

Enter the Lessee's EIN number

An issuer (Lessee) that does not have an employer identification number (EIN) should apply for one on Form SS-4, Application for Employer Identification Number. This form may be obtained at Social Security Administration offices or by calling 1-800-TAX-FORM (1-800-829-3676). You can also get this form on the IRS website at www.irs.gov. You may receive an EIN by telephone by following the instructions for Form SS-4.

Lines 9 and 10:

Enter the name, title, and telephone number of the officer of the Issuer whom the IRS may call for more information

If the issuer wishes to designate a person other than an officer of the issuer (including a legal representative or paid preparer) whom the IRS may call for more information with respect to this return, enter the name, title, and telephone number of such person.

Line 38:

Bank Qualified Designation

Check this box if this Lease is designated as a "small issuer exception" under section 265(b)(3)(B)(i)(III). (Lessee reasonably anticipates that the total amount of tax-exempt obligations (including this Lease) to be issued by or on behalf of Lessee (or allocated to Lessee) during the calendar year 2011 will not exceed \$10,000,000.)

Signature and Consent:

Please provide an authorized signature, date, and printed (or typed) name and title of the individual signing on behalf of Lessee.

Part I Reporting Authority		If Amended Return, check here <input type="checkbox"/>
1 Issuer's name City of Dodge City		2 Issuer's employer identification number (EIN) 48 : 6008416
3 Number and street (or P.O. box if mail is not delivered to street address) 806 N. 2nd Avenue	Room/suite	4 Report number (For IRS Use Only) 3
5 City, town, or post office, state, and ZIP code Dodge City, KS 67801		6 Date of issue May 20, 2011
7 Name of Issue Sch of Prop No. 1 dtd 5/20/2011 to MELPA dtd 5/20/2011		8 CUSIP number
9 Name and title of officer of the issuer or other person whom the IRS may call for more information Nannette Pogue, Finance Director City Clerk		10 Telephone number of officer or other person (620) 225-8100

Part II Type of Issue (enter the issue price) See instructions and attach schedule		
11 Education		
12 Health and hospital		
13 Transportation		
14 Public safety	\$388,357	00
15 Environment (including sewage bonds).		
16 Housing		
17 Utilities		
18 Other. Describe ▶		
19 If obligations are TANs or RANs, check only box 19a		<input type="checkbox"/>
If obligations are BANs, check only box 19b		<input type="checkbox"/>
20 If obligations are in the form of a lease or installment sale, check box		<input checked="" type="checkbox"/>

Part III Description of Obligations. Complete for the entire issue for which this form is being filed.					
	(a) Final maturity date	(b) Issue price	(c) Stated redemption price at maturity	(d) Weighted average maturity	(e) Yield
21	5/20/2015	\$ 388,357.00	\$ n/a	4 years	2.2400 %

Part IV Uses of Proceeds of Bond Issue (including underwriters' discount) N/A						
22	Proceeds used for accrued interest					
23	Issue price of entire issue (enter amount from line 21, column (b))					
24	Proceeds used for bond issuance costs (including underwriters' discount)					
25	Proceeds used for credit enhancement					
26	Proceeds allocated to reasonably required reserve or replacement fund					
27	Proceeds used to currently refund prior issues					
28	Proceeds used to advance refund prior issues					
29	Total (add lines 24 through 28)					
30	Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here)					

Part V Description of Refunded Bonds (Complete this part only for refunding bonds.) N/A	
31	Enter the remaining weighted average maturity of the bonds to be currently refunded years
32	Enter the remaining weighted average maturity of the bonds to be advance refunded years
33	Enter the last date on which the refunded bonds will be called (MM/DD/YYYY)
34	Enter the date(s) the refunded bonds were issued ▶ (MM/DD/YYYY)

Part VI Miscellaneous

- | | | |
|------------|--|--|
| 35 | | |
| 36a | | |
| 37a | | |
- 35** Enter the amount of the state volume cap allocated to the issue under section 141(b)(5)
- 36a** Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (GIC) (see instructions)
- b** Enter the final maturity date of the GIC ▶ _____
- 37** Pooled financings: **a** Proceeds of this issue that are to be used to make loans to other governmental units
- b** If this issue is a loan made from the proceeds of another tax-exempt issue, check box and enter the name of the issuer ▶ _____ and the date of the issue ▶ _____
- 38** If the issuer has designated the issue under section 265(b)(3)(B)(i)(III) (small issuer exception), check box
- 39** If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box
- 40** If the issuer has identified a hedge, check box

Signature and Consent

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. I further declare that I consent to the IRS's disclosure of the issuer's return information, as necessary to process this return, to the person that I have authorized above.

▶ Nannette Pogue 5- Date ▶ Nannette Pogue Finance Director | City Clerk Type or print name and title

Paid Preparer's Use Only

Preparer's signature	<u>Faithleen D. Jimenez</u>	Date	5-13-201	Check if self-employed <input type="checkbox"/>	Preparer's SSN or PTIN
Firm's name (or yours if self-employed), address, and ZIP code	<u>Pinnacle Public Finance, Inc.</u>	EIN	<u>27</u>	<u>3119149</u>	
	<u>8377 E. Hartford Dr., Ste 115, Scottsdale AZ 85255</u>	Phone no.	<u>(480)</u>	<u>585-3789</u>	

EXHIBIT C

(To be put on Attorney's Letterhead)

Pinnacle Public Finance, Inc.
8377 East Hartford Drive, Suite 115
Scottsdale, AZ 85255

Re: Schedule of Property No. 1, dated May 20, 2011 to Master Equipment Lease Purchase Agreement dated as of May 20, 2011 between Pinnacle Public Finance, Inc., as Lessor, and City of Dodge City, as Lessee.

Ladies and Gentlemen:

As legal counsel to City of Dodge City, (the "Lessee"), I have examined (a) an executed counterpart of a certain Master Equipment Lease Purchase Agreement dated as of May 20, 2011 and Exhibits thereto by and between Pinnacle Public Finance, Inc. (the "Lessor") and City of Dodge City, (the "Agreement") and an executed counterpart of Schedule of Property No. 1 dated May 20, 2011 by and between Lessor and Lessee (the "Schedule"), which, among other things, provides for the lease with option to purchase to the Lessee of certain property listed in the Schedule (the "Equipment"), (b) an executed counterpart of the ordinances or resolutions of Lessee which, among other things, authorize Lessee to execute the Agreement and the Schedule and (c) such other opinions, documents and matters of law as I have deemed necessary in connection with the following opinion. The Schedule and the terms and provisions of the Agreement incorporated therein by reference together with the Rental Payment Schedule attached to the Schedule are herein referred to collectively as the "Lease".

In rendering this opinion, we have assumed without inquiry:

- (a) The authenticity of all documents submitted to us as copies of the originals, and the conformity of such copies to the originals as they are finally executed and delivered by Lessee and Lessor;
- (b) That the Lease has been or will be duly authorized, executed and delivered by Lessor;
- (c) That the Lease constitutes valid, legal and binding obligations of Lessor enforceable against Lessor in accordance with its terms; and
- (d) That the Lease accurately describes and contains the mutual understandings of the parties, and that there are not oral or written statements or agreements that modify, amend or vary, or purport to modify, amend or vary, any of the terms thereof.

Based on the foregoing, I am of the following opinion:

- (1) Lessee is a public body corporate and politic, duly organized and existing under the laws of the State, or has a substantial amount of one the following sovereign powers: (a) the power to tax, (b) the power of eminent domain, or (c) police power;
- (2) The name of the lessee contained in the Lease is the correct legal name of the Lessee;
- (3) Lessee has the requisite power and authority to lease and acquire the Equipment with an option to purchase and to execute and deliver the Lease and to perform its obligations under the Lease;

(4) The Lease has been duly authorized, approved, executed, and delivered by and on behalf of Lessee and the Lease is a legal, valid and binding obligation of Lessee enforceable in accordance with its terms, subject to (i) all applicable bankruptcy, reorganization, insolvency, fraudulent conveyance, moratorium and other similar laws; (ii) the qualification that certain waivers, restrictions and remedies provided for in this Lease, including without limitation certain indemnification obligations, may be wholly or partially unenforceable under Kansas law; and (iii) general principles of equity.

(5) The authorization, approval, execution, and delivery of the Lease and all other proceedings of Lessee relating to the transactions contemplated thereby have been performed in accordance with all open meeting laws, public bidding laws and all other applicable state laws; and

(6) To the best of my knowledge, there is no proceeding pending or threatened in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, would adversely affect the transactions contemplated by the Lease or the security interest of Lessor or its assigns, as the case may be, in the Equipment thereunder.

All of the opinions set forth above are also subject to the following qualifications, limitations and exceptions:

(a) The opinions expressed herein are limited to matters governed by the laws of the State of Kansas. No opinion is expressed regarding the laws of any other jurisdiction.

(b) The opinions expressed herein are based upon the law in effect on the date hereof, and we assume no obligation to revise or supplement them if the law is changed by legislative action, judicial decision or otherwise.

All capitalized terms herein shall have the same meanings as in the Lease unless otherwise provided herein. Lessor, its successors and assigns, and any counsel rendering an opinion on the tax-exempt status of the interest components of the Rental Payments, are entitled to rely on this opinion.

Printed Name
Signature

PLEASE
FORWARD
TO
ATTORNEY

Attorney for City of Dodge City, as Lessee

Re: Exhibit C, Opinion of Counsel, to Schedule of Property No. 1, dated May 20, 2011 to Master Equipment Lease Purchase Agreement dated as of May 20, 2011 between Pinnacle Public Finance, Inc., as Lessor, and City of Dodge City, as Lessee.

To Whom It May Concern:

Attached is our standard Opinion of Counsel. Please review the representations and qualifications, print the letter on your firm letterhead, and execute. Please return either directly to us at 8377 East Hartford Drive, Suite 115, Scottsdale, Arizona 85255 or to the Lessee for delivery to us. If you cannot sign this letter in its current form, please contact Cathy Jimenez at 480-585-3789 to discuss any changes prior to making them. Please keep any requested changes to a minimum. Our receipt of an opinion that does not meet our requirements will slow down the funding process. We will not be able to fund the transaction contemplated by the above documents without the representations contained in the attached opinion letter.

Thank you for your prompt attention to this matter. We look forward to completing this transaction.

Sincerely,

Therese Lohmann
Investment Associate

Enclosures



OFFICE OF THE CITY ATTORNEY
C/O Williams Law Firm
P.O. Box 39
Dodge City, KS 67801
Phone: 620/225-4168
FAX: 620/225-7261

May 17, 2011

Pinnacle Public Finance, Inc.
8377 East Hartford Drive, Suite 115
Scottsdale, AZ 85255

Re: Schedule of Property No. 1, dated May 20, 2011 to Master Equipment Lease Purchase Agreement dated as of May 20, 2011 between Pinnacle Public Finance, Inc., as Lessor, and City of Dodge City, as Lessee.

Ladies and Gentlemen:

As legal counsel to City of Dodge City, (the "Lessee"), I have examined (a) an executed counterpart of a certain Master Equipment Lease Purchase Agreement dated as of May 20, 2011 and Exhibits thereto by and between Pinnacle Public Finance, Inc. (the "Lessor") and City of Dodge City, (the "Agreement") and an executed counterpart of Schedule of Property No. 1 dated May 20, 2011 by and between Lessor and Lessee (the "Schedule"), which, among other things, provides for the lease with option to purchase to the Lessee of certain property listed in the Schedule (the "Equipment"), (b) an executed counterpart of the ordinances or resolutions of Lessee which, among other things, authorize Lessee to execute the Agreement and the Schedule and (c) such other opinions, documents and matters of law as I have deemed necessary in connection with the following opinion. The Schedule and the terms and provisions of the Agreement incorporated therein by reference together with the Rental Payment Schedule attached to the Schedule are herein referred to collectively as the "Lease".

In rendering this opinion, I have assumed without inquiry:

- (a) The authenticity of all documents submitted to us as copies of the originals, and the conformity of such copies to the originals as they are finally executed and delivered by Lessee and Lessor;
- (b) That the Lease has been or will be duly authorized, executed and delivered by Lessor;
- (c) That the Lease constitutes valid, legal and binding obligations of Lessor enforceable against Lessor in accordance with its terms; and,



- (d) That the Lease accurately describes and contains the mutual understandings of the parties, and that there are no oral or written statements or agreements that modify, amend or vary, or purport to modify, amend or vary, any of the terms thereof.

Based on the foregoing, I am of the following opinion:

- (1) Lessee is a public body corporate and politic, duly organized and existing under the laws of the State, or has a substantial amount of one the following sovereign powers: (a) the power to tax, (b) the power of eminent domain, or (c) police power;
- (2) The name of the Lessee contained in the Lease is the correct legal name of the Lessee;
- (3) Lessee has the requisite power and authority to lease and acquire the Equipment with an option to purchase and to execute and deliver the Lease and to perform its obligations under the Lease;
- (4) The Lease has been duly authorized, approved, executed, and delivered by and on behalf of Lessee and the Lease is a legal, valid and binding obligation of Lessee enforceable in accordance with its terms, subject to (i) all applicable bankruptcy, reorganization, insolvency, fraudulent conveyance, moratorium and other similar laws; (ii) the qualification that certain waivers, restrictions and remedies provided for in this Lease, including without limitation certain indemnification obligations, may be wholly or partially unenforceable under Kansas law; and (iii) general principles of equity;
- (5) The authorization, approval, execution, and delivery of the Lease and all other proceedings of Lessee relating to the transactions contemplated thereby have been performed in accordance with all open meeting laws, public bidding laws and all other applicable state laws; and,
- (6) To the best of my knowledge, there is no proceeding pending or threatened in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, would adversely affect the transactions contemplated by the Lease or the security interest of Lessor or its assigns, as the case may be, in the Equipment thereunder.

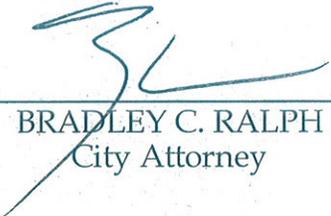
All of the opinions set forth above are also subject to the following qualifications, limitations and exceptions:

- (a) The opinions expressed herein are limited to matters governed by the laws of the State of Kansas. No opinion is expressed regarding the laws of any other jurisdiction.
- (b) The opinions expressed herein are based upon the law in effect on the date hereof, and I assume no obligation to revise or supplement them if the law is changed by legislative action, judicial decision or otherwise.

All capitalized terms herein shall have the same meanings as in the Lease unless otherwise provided herein. Lessor, its successors and assigns, and any counsel rendering an opinion on the tax-exempt status of the interest components of the Rental Payments, are entitled to rely on this opinion.

WILLIAMS, MALONE
& RALPH, P.A.

BY: _____


BRADLEY C. RALPH
City Attorney

Memorandum

To: City Manager
Assistant City Manager
City Commissioners

From: Paul Lewis 

Date: May 24, 2011

Subject: All-4-Fun Management Agreement

Agenda Item: New Business

Recommendation: Staff recommends approving the Management Agreement with SportZone LLC for the operation of the All-4-Fun facility for the 2011 season subject to final revisions by the City Attorney.

Background: Recently with the announcement that the City would not open All-4-Fun this year, a couple of people contacted staff about private operations. Based on that interest, an RFP asking for proposals from potential operators was published and one individual responded. With approval from the Commission, staff has worked with the operator to negotiate a management agreement allowing SportZone LLC to open the facility for the upcoming season.

Justification: This management agreement provides for the operation of the facility to continue for the upcoming season at a reduced cost from the City's past experience. Combined with debt retirement, the City's cost to operate the facility the past three years has ranged from \$90,000 to \$116,000 annually. With this agreement, the City's obligation is limited to the \$30,000 annual debt payment which is already paid for the year, and any capital improvements or repairs that we would have to agree to.

SportZone LLC represents a group of people from Wichita with previous experience in owning and operating family entertainment centers. Before selling the business in 2006, they successfully managed two All Star family facilities in Wichita and currently they have an arcade business with clients from Oklahoma City to Kansas City.

Financial Considerations: Under this agreement, SportZone will pay all utilities, hire all staff necessary to operate the facility, perform all general custodial duties, and provide all the equipment and supplies necessary. They will maintain certain levels of insurance required by the agreement and are responsible for all marketing and promotion. The City will continue to provide outside grounds maintenance which we would be required to do whether or not the facility was opened.

For this initial term, which covers the rest of 2011, this agreement provides for no lease payment from the operator to the City nor any sharing of revenues with the City. It is a no cost management agreement which allows both parties the option of determining if it is a practical arrangement going forward.

In negotiating this agreement, the operator requested City participation in capital improvements to facilitate a successful launch under new management. Improvements requested included landscaping improvements in the miniature golf course, additional tables and chairs, new signage, and computer equipment and software to update the point of sale program. Staff has committed to utilizing up to \$20,000 from the CIP fund to implement these improvements. Some of these items represent materials which can be used in other locations so in the event this arrangement doesn't proceed past the first year, the items purchased can be utilized in other areas and the expense would not be wasted.

It should also be noted the corporation will also invest a substantial amount of money in the business. New arcade equipment including a \$25,000 virtual simulator game along with other items will bring the corporations capital investment in the project to over \$75,000.

Purpose/Mission: The purpose of this agreement is two-fold. It facilitates the continued operation of the facility and maintains a service to the local public and tourists that is highly desired and it does so at a cost that is 50% less than the City's previous experience.

Secondly, it provides a trial basis to see if this type of arrangement might be feasible for future operations as well as gives additional time to see if this site is appropriate for other potential long term improvements.

Legal Considerations: The term of this agreement is designed to correspond with the City sales contract for the facility which includes a re-conveyance clause. With that clause, the City has until the end of December to either payoff the City's obligation or turn the property back over to the original owner. If the City wants to complete the purchase, the balance owed now stands at \$340,000.

Between now and the time this agreement expires, the City will need to determine if they want to complete the purchase, return the property or possibly negotiate extended payments with the owner.

Attachments: SportZone LLC Management Agreement

SportZone Management LLC Management Agreement

This AGREEMENT ("Agreement"), is made by and between the City of Dodge City, Kansas ("**City**") referenced herein as "**OWNER**" and SportZone Management, LLC, a Kansas limited liability corporation, with offices at _____ ("**SportZone**").

WHEREAS, **City** is the **Owner** of the All-4-Fun entertainment facility, located on South Fourteenth Street in Dodge City, Kansas, consisting of an arcade, miniature golf course and a go-kart track (the "Center"); and,

Deleted: OWNER

Formatted: Font: Bold

WHEREAS, **OWNER** and **SportZone** agree it is in the best interests of the community that the Center be managed and operated by **SportZone** under the terms and conditions of this Agreement; and,

WHEREAS, **SportZone** possesses the knowledge and expertise to manage and market the Center; and,

WHEREAS, **OWNER** desires to engage **SportZone** to perform full management, operation and food and beverage services of the Center and **SportZone** desires to accept such engagement, pursuant to the terms and conditions contained herein.

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

ARTICLE ONE

RETENTION OF SPORTZONE MANAGEMENT LLC

1.1 **OWNER** hereby retains **SportZone** as an independent contractor for the purpose of performing the services described in this Agreement. Subject to the terms and conditions set forth herein, **SportZone** agrees to provide management services in accordance with this Agreement. **SportZone** agrees to use its best efforts to maximize revenues and minimize expenses from use of the Center and otherwise managing the Center in accordance with this Agreement. In providing these services **SportZone** shall manage the Center in accordance with sound business practices and consistent with the standards and operations of similar and comparable Centers. In providing such services, **SportZone** hereby acknowledges and agrees that it owes a fiduciary obligation to the **OWNER**.

The parties to this Agreement acknowledge that the **OWNER** will retain title and ownership of the Center and that **SportZone** will not acquire title to, any security interest in, or any rights of any kind in or to the Center, other than specific arcade equipment owned by SportZone and described in Schedule B attached hereto.

ARTICLE TWO

COMMENCEMENT DATE AND TERM

2.1 The term of this Agreement shall begin May 27, 2011 and will terminate on December 31, 2011 unless terminated earlier as set forth herein.

ARTICLE THREE

MANAGEMENT AGREEMENT

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

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

3.3 SportZone Responsibilities. Beginning with the commencement of the Agreement **SportZone** shall assume management responsibilities as set forth below. Where **SportZone** is required to direct or arrange for services or material, **SportZone** shall employ all persons performing such services or shall contract with a third party for the performance of such services however, any such subcontract does not relieve **SportZone** of its obligations to **OWNER** to perform all of the duties and responsibilities under this Agreement. **SportZone** shall provide **OWNER** with copies of all subcontracts under this Agreement upon request.

3.3.1 Marketing and Promotion. **SportZone** shall direct all marketing activities.

SportZone shall be responsible for ensuring that appropriate programs are booked into the Center and that suitable media coverage is obtained.

3.3.2 Scheduling. **SportZone** shall develop and maintain all schedules for events held at the Center and scheduling shall be accomplished in accordance with applicable law.

3.3.3 Utilities. **SportyZone** shall be responsible for the payment of all utilities necessary for the operation of the Center.

3.3.4 Food & Beverage / Concessions. **SportZone** shall be responsible for providing the food & beverage services at the Center.

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

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

3.3.7 Pest Control. **SportZone** shall direct and pay for all necessary pest control services at the Center.

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

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

3.3.10 Operational Services. **SportZone** shall hire and manage all management staff, ticket sales personnel, ushers and other personnel required for the operation of the Center, including but not limited to, ticket taking, novelty sales, program distributions and assistance to patrons generally, including the handicapped.

3.3.12 Security. **SportZone** shall arrange and pay for proper security for events at the Center and for general security when events are not in progress. Such security may be provided by **SportZone** or by contract, in its discretion.

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

3.3.14 Revenues; Bank Accounts and Payment of Operating Expenses.

SportZone shall be responsible for the collection of all Revenues and payment of

Operating Expenses, including payment and remittance of applicable sales taxes.

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

3.3.16 Staffing: **SportZone** shall be responsible for supervision and direction of all personnel staffing at the Center. All Center's staff will be in the employment of **SportZone**. All expenses associated with the employment of staff will be considered operating expenses of the Center.

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

3.3.18 Use of OWNER Equipment: **SportZone** will use equipment owned by Owner at the Center in performance of its obligations hereunder, including but not limited to the motorized go-karts. Prior to opening the Center, **OWNER** and **SportZone** will conduct an inventory of Center equipment to be used by **SportZone** during this Agreement. **SportZone** shall maintain and operate the go-karts, at its own expense, in a commercially reasonable manner and shall be responsible to **OWNER** for any and all damage to said go-karts, normal wear and tear excepted.

3.4 Relationship of Parties: **SportZone** is an independent contractor of **OWNER** and shall not be deemed to be an employee, joint venturer, or partner of **OWNER** except for those matters which are specifically addressed otherwise in this Agreement.

3.5 Relationship with OWNER: **SportZone** shall provide all of its Management Services in a manner which shall ensure full compliance with all **OWNER** requirements.

ARTICLE FOUR

CAPITAL IMPROVEMENTS

4.1. Capital Improvements. The parties will cooperate in determining what, if any, capital improvements the OWNER will make to the Center in preparation for SportZone's management.

4.2. Annual Audit. **SportZone** agrees to provide to **OWNER**, within one hundred twenty (120) days following the end of each Operating Year, an audit report on the accounts and records as kept by **SportZone** for the Center.

ARTICLE FIVE

THE MANAGEMENT FEES

5.1 Management Fee. **SportZone** will be paid no Management Fee from OWNER for any services provided under this Agreement. SportZone will retain any and all revenue derived from the operation of the Center during the term of this Agreement

ARTICLE SIX

GENERAL TERMS AND CONDITIONS

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

6.2 Abandonment. If at any time during the term of this Agreement, the Center is not open for operation for a period of ten (10) consecutive days the parties agree that this Agreement will terminate upon written notice by OWNER to SportZone.

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

6.4 Accounting Records, Reports and Practices.

6.4.1 Maintain Records. **SportZone** shall maintain accounting records relating to the Center using accounting practices in accordance with generally accepted accounting principles consistently applied

6.4.2 Internal Financial Controls. **SportZone** shall establish internal financial control policies and practices which are in accordance with generally accepted standards in the industry.

6.4.3 OWNER Access. **OWNER** shall have unlimited access to all accounting records and supporting documentation of **SportZone** relating to the Center during the term of this Agreement and for a period of one (1) year thereafter. Such right to access shall be exercised in a reasonable manner.

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

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

6.6 Jurisdiction. The parties submit to the jurisdiction of the courts sitting in Ford County, Kansas, with respect to any claim or proceeding arising out of or related to this Agreement.

6.7 Insurance.

6.7.1 Employment Matters. In connection with the employment of its employees, **SportZone** shall pay all applicable social security, re-employment, worker's compensation or other employment taxes or contributions of insurance, and shall comply with all federal and state laws and regulations relating to employment generally, minimum wages, social security, re-employment insurance and workers' compensation.

SportZone shall indemnify and hold harmless the **OWNER** from all costs, expenses, claims or damages resulting from any failure of **SportZone** to comply with this Section.

6.7.2 Insurance Requirements:

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

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

6.7.2.3 Automobile Liability Insurance: **SportZone** shall purchase and maintain during this contract, automobile liability insurance on a per occurrence basis with either a combined limit of at least \$1,000,000 per occurrence for bodily injury and property damage. Coverage shall include any owned, all hired and non-owned motor vehicles used in the performance of this contract by **SportZone** or its employees. The insurance required by this contract shall be written on non-assessable insurance

companies licensed to do business as an admitted carrier in the State of Kansas and currently rated "A" or better by the A.M. Best Company.

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

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

6.7.2.6 Subcontractors: **SportZone** shall require all its subcontractors who perform work and / or services under this contract to meet appropriate insurance requirements as reasonably required by **OWNER**.

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

6.7.2.8 Reserved:

6.7.2.9 Proof of Insurance: **SportZone** shall furnish **OWNER** with Certificates of Insurance and a copy of the policies if requested by **OWNER**. The name of the project or contract shall be listed on the certificates of insurance along with any deductible or self-insured retention. Before commencing any performance under this Contract, **SportZone** shall deliver all the Certificates of Insurance to **OWNER** certifying that the policies stipulated above are in full force and effect. All insurance shall remain in effect during the term of the agreement.

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

6.7.4 Reserved

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

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

6.7.7 Insurance Cost: The cost of providing insurance hereunder by SportZone shall be an Operating Expense.

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

6.7.9 Tort Liability Limit Insurance referenced in this Agreement, except Workers Compensation/Employers Liability, shall list both **SportZone** and **OWNER** as named insureds.

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

6.9 Damage to and Destruction of the Center. If all or part of the Center is rendered unusable by damage from fire and other casualty which, in the reasonable opinion of **OWNER**, cannot be substantially repaired under applicable laws and governmental regulations within ninety (90) days from the date of such casualty (employing normal construction methods without overtime or other premium), then **OWNER** shall notify **SportZone** thereof. In such case, either **OWNER** or **SportZone** may elect to terminate this Agreement as of the date of such casualty by written notice delivered to the other not more than thirty (30) days after receipt by **SportZone** of **OWNER'S** notice concerning the reconstruction.

6.10 Employees.

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

6.10.2 Employee Expense . All costs of employment of Center's employees incurred by **SportZone** shall be an Operating Expense of the Center.

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

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

business days of its intention to terminate the Agreement due to the uncured default.

6.12 Compliance with Laws. **SportZone** will comply with all federal, state and local ordinances, statutes, rules and regulations as they relate to the operation of the Center. **SportZone's** failure to comply with such ordinances, statutes, rules and regulations relating to the Center shall be an Event of Default under this Agreement and shall entitle **OWNER** to terminate this Agreement pursuant to the provisions of Section 6.11 hereof.

6.13 Non-waiver. The failure of either party at any time to enforce a provision of this Agreement shall in no way constitute a waiver of the provision, nor in any way affect the validity of this Agreement or any part hereof, or the right of such party thereafter to enforce each and every provision hereof.

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

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

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

6.17 Notices. Any notice required herein shall be in writing and shall be deemed effective and received (a) upon personal delivery; or, (b) five (5) days after deposit in the United States mail, certified mail, return receipt requested, postage prepaid, to **SportZone** or **OWNER** at the following addresses:

If intended for City, to:

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

If to **SportZone** : **SportZone Management, LLC**
4611
Am
Attention: _____

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

6.18 Representatives. **OWNER'S** representative to **SportZone** in connection with Center's operations shall be City Manager or its designee, and **SportZone's** representative shall be _____ on-site Executive Director at the Center.

6.18.1. **OWNER** Reserved Right of Entry. Representatives of **OWNER** presenting official **OWNER** identification shall have the right to enter all portions of the Center at any time, to inspect the same, to observe the performance by **SportZone** of its obligations under this Agreement or to do any act or thing which **OWNER** may be obligated to do or have the right to do under this Agreement.

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

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

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

6.22. Assignment. This Agreement may not be assigned by either party without the prior written consent of the other.

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

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

Rick Sowers, Mayor

ATTEST:

Nannette Pogue, City Clerk

For **SportZone Management, LLC**

By: _____ DATE
Its: President

