

CITY COMMISSION AGENDA

City Hall Commission Chambers

Thursday, August 4, 2011

6:00 p.m.

MEETING #4857

CALL TO ORDER

ROLL CALL

ORDINANCES & RESOLUTIONS

Resolution No. 2011-22: A Resolution Authorizing the Approval of Real Estate and Bond Purchase Agreement. Report by City Manager, Ken Strobel.

NEW BUSINESS

1. Consideration of Essential Air Service (EAS) Recommendation. Report by City Manager, Ken Strobel.

EXECUTIVE SESSION

ADJOURNMENT

Memorandum

To: City Commissioners
From: Ken Strobel
Date: 08-03-11
Subject: Summerlon Phase II Agreement
Agenda Item: New Business

Recommendation: Staff recommends the adoption of Resolution 2011-22 approving a Real Estate and Bond Purchase Agreement between the City of Dodge City, Summerlon Properties, LLC, Summerlon Inc., and Jim Coffin.

Background: Staff has been working with Summerlon Properties, LLC on a RHID project which will develop 20 lots on the north end of Fairway Drive. The homes must be developed with properties that appraise no less than \$150,000. We anticipate that the minimum appraisal will be exceeded in each case.

Justification: In order to complete the RHID process for Summerlon Phase II, it is necessary to complete the land transaction in order for the cost to be considered eligible for RHID reimbursement through a bond transaction, in accordance with State statutes.

Financial Considerations: None

Purpose/Mission: By providing incentives to spur the construction of additional housing, we will be working together with the developer to make Dodge City the best place to be.

Legal Considerations: Bond Counsel has prepared the attached documents.

Attachments: Attached is the draft of the Real Estate and Bond Purchase Agreement which has been prepared by Bond Counsel. The final document will be presented upon receipt.

**REAL ESTATE AND
BOND PURCHASE AGREEMENT**

**SUMMERLON PHASE II DEVELOPMENT DISTRICT
DODGE CITY, KANSAS**

THIS REAL ESTATE AND BOND PURCHASE AGREEMENT (the “Agreement”) is entered into as of August 4, 2011 among the **CITY OF DODGE CITY, KANSAS**, a municipal corporation of the State of Kansas (the “City”), **SUMMERLON PROPERTIES, LLC**, a Kansas limited company (the “Developer”), **SUMMERLON, INC.**, a Kansas corporation (the “Seller”), and James A. Coffin (the “Bond Purchaser”).

WITNESS:

WHEREAS, the Seller is the owner of the real estate situated in Ford County, Kansas, described on **Exhibit A** hereto (the “Property”); and

WHEREAS, pursuant to Ordinance No. 3515 passed by the governing body of the City on April 18, 2011 and the provisions of K.S.A. 12-5241 *et seq.*, as amended (the “Act”), the City has created a Rural Housing Incentive District consisting of the Property; and

WHEREAS, the City and the Developer have entered into a Development Agreement dated April 18, 2011 (the “Development Agreement”) pursuant to which the Developer agrees to develop the Property by the construction of a single family and limited multi-family residential development to be known as “Summerlon Phase II Development” (the “Development”); and

WHEREAS, the Seller desires to sell all of its right, title and interest in the Property to the City, and the City desires to purchase all of Seller’s right, title and interest in the Property, subject to the terms and conditions of this Agreement; and

WHEREAS, in accordance with the provisions of the Act, the City has agreed to issue its Special Obligation Revenue Bonds (Summerlon Phase II Development District), Series 2011 in the aggregate principal amount of (\$ _____) (the “Bonds”), such Bonds to be payable solely and only from amounts received by the City pursuant to K.S.A. 12-5250(b)(2)(A) (the “Incremental Tax Revenues”), and to apply the proceeds of such Bonds to the purchase of the Property from the Seller; and

WHEREAS, upon its acquisition of the Property, the City desires to transfer all of its right, title and interest in the Property to the Developer in exchange for the Developer’s agreement to construct the Development in accordance with the terms and conditions of the Development Agreement; and

WHEREAS, the Bond Purchaser desires to purchase the Bonds from the City in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, on the basis of the representations and covenants and upon the terms and conditions contained in this Agreement, the parties hereto agree as follows:

ARTICLE I

SALE AND PURCHASE OF THE PROPERTY

Section 1.1. Purchase Price. The Seller agrees to sell to the City, and the City agrees to purchase from the Seller, all of Seller's right, title and interest in the Property, for a purchase price equal to \$[_____] (the "Real Estate Purchase Price"). Seller covenants that upon payment of said Purchase Price City shall be entitled to clear title to and full and complete possession of the Property on the Closing Date (as such term is defined in **Section 3.1** hereof).

Section 1.2. Marketable Title. Seller, at its expense, shall provide to City a title insurance commitment at least 10 days prior to Closing Date reflecting that Seller possess clear title to the Property and that the Property is free and clear of any mortgage or other encumbrances, except only easements, reservations and restrictions of record. In the event the Title Commitment reflects mortgages, special assessments or other encumbrances such shall be fully paid from the Purchase Price by the Escrow Agent as hereinafter specified at or before the Closing Date, and said Escrow Agent shall provide City with releasing and Closing reflecting that all such mortgages and special assessments, if any, have been fully paid and satisfied.

Section 1.3. Deed of Conveyance. Not later than 10 days prior to the Closing Date, Seller shall execute a Warranty Deed conveying the Property to the City, subject only to existing restrictive covenants, easements and encumbrances permitted by this Agreement. Such deed shall be deposited with the Escrow Agent specified in **Section 1.4** hereof.

Section 1.4. Escrow Agent. The parties hereto mutually designate High Plains Land & Title as escrow and closing agent (the "Escrow Agent"), and agree that a signed copy of this Agreement shall be delivered to the Escrow Agent. The compensation of the Escrow Agent shall be paid by Seller. Both parties agree to execute a standard Escrow Agent agreement, which along with this Agreement shall provide instructions for the Escrow Agent.

Section 1.5. Special Assessments. The parties acknowledge that the Property is currently identified as a benefit district with special assessments for infrastructure improvements, a summary of which is attached hereto as **Exhibit B**. Seller agrees to prepay and discharge at Closing all special assessments levied against the Property by depositing with the City, in escrow, the aggregate amount of the outstanding special assessments (\$[_____]). Seller may use a portion of the Real Estate Purchase Price to satisfy such obligation as well as any other encumbrances on the Property. City agrees to deliver to the Escrow Agent, for recording with the Register of Deeds of Ford County, an appropriate release of such special assessments.

Section 1.6. Closing. Closing of the sale of the Property to the City shall occur on the Closing Date of the Bond issue, as specified in **Section 3.1** hereof. Payment of the Real Estate Purchase Price shall be made by the Trustee, on behalf of the City, from proceeds of the Bonds, by federal wire transfer or certified or official bank check or draft in immediately available federal funds, payable to the Escrow Agent. Upon receipt of the Purchase Price, the Escrow Agent is authorized to prepay and discharge all special assessments as provided in **Section 1.5** hereof as well as any mortgage or other encumbrance against the Property, by wire transfer or certified or official bank check or draft in immediately available federal funds, payable to the financial institution designated by the City in the case of the Special Assessments and to any depository holding an encumbrance against the Property. Escrow Agent is then

authorized to record with the Register of Deeds of Ford County, the release of special assessments, and the warranty deed conveying title to the Property to the City. The parties agree to provide all necessary wire instructions to the Escrow Agent and Trustee.

ARTICLE II

TRANSFER OF PROPERTY TO DEVELOPER

Section 2.1 Consideration for Transfer. The City agrees to transfer to Developer all of the City's right, title and interest in the Property in exchange for the Developer's agreement to construct the Development in accordance with the terms of the Development Agreement and for other good and valuable consideration, the receipt of which is acknowledged.

Section 2.2 Deed of Conveyance. Not later than 10 days prior to the Closing Date, City shall execute a Special Warranty Deed conveying the Property to the Developer, subject only to those encumbrances to which title was subject upon conveyance of the Property to the City. Such deed shall be deposited with the Escrow Agent.

Section 2.3. Closing. Upon recording of the documents specified in **Section 1.6** above, the Escrow Agent is authorized to record with the Register of Deeds of Ford County the special warranty deed conveying title to the Property to the Developer.

ARTICLE III

PURCHASE OF BONDS

Section 3.1 Purchase, Sale and Delivery of the Bonds. On the basis of the representations and covenants contained herein and in the other agreements referred to herein, and subject to the terms and conditions herein set forth, at the Closing Time (as hereinafter defined) the Bond Purchaser agrees to purchase from the City for its own account and not for reoffer or resale, and the City agrees to sell to the Purchaser, the Bonds on the terms and conditions set forth herein, at the purchase price set forth on **Exhibit C** hereto (the "Bond Purchase Price").

The Bonds shall be issued under and secured as described in an Ordinance adopted by the governing body of the City (the "Ordinance") and a Bond Trust Indenture (the "Indenture") between the City and the financial institution named therein as bond trustee (the "Trustee"). The Bonds shall have the maturities, interest rate and mandatory redemption provisions as set forth on **Exhibit C** hereto and in the Indenture. The delivery of the Bonds shall be made in definitive form as one fully registered Bond in the aggregate principal amount of the Bonds.

The Bonds shall be sold to the Bond Purchaser by the City on the date mutually agreed upon by the City and the Bond Purchaser, such date to be not later than ninety [90] days after the date of this Agreement. Payment of the Bond Purchase Price shall be made by federal wire transfer or certified or official bank check or draft in immediately available federal funds payable to the order of the Trustee for the account of the City. The date of such delivery and payment is herein called the "Closing Date," and

the hour and date of such delivery and payment is herein called the "Closing Time," and the transactions to be accomplished for delivery of the Bonds on the Closing Date shall be herein called the "Closing." The Closing shall take place in the Wichita, Kansas, offices of Bond Counsel or at the principal corporate trust office of the Trustee.

Section 3.2. City's Representations and Agreements. The City hereby represents and agrees with the Bond Purchaser that:

(a) The City is authorized and empowered pursuant to the provisions of the laws of the State of Kansas (the "State"), particularly the Act, to issue and sell the Bonds.

(b) The City will apply the proceeds from the sale of the Bonds for the purpose of (i) acquiring the Property from the Seller and (ii) paying the cost of issuing the Bonds, and (iii.) other eligible costs as reflected in Exhibit D attached hereto.

(c) The City will comply with all provisions of the Act and the Constitution and laws of the State and has full power and authority to consummate all transactions contemplated by this Agreement.

(d) The Bonds, when issued, delivered and paid for as herein provided, will have been duly executed, authenticated, issued and delivered and will constitute valid and binding special obligations of the City in accordance with their terms and entitled to the benefits and security of the Indenture (subject to any applicable bankruptcy, reorganization, insolvency, moratorium or other law or laws affecting the enforcement of creditors' rights generally or against entities such as the Issuer and further subject to the availability of equitable remedies. The Bonds and the interest thereon will be special, limited obligations of the City payable solely out of the Incremental Tax Revenues, if any, and will be secured by a transfer, pledge and assignment of and a grant of a security interest in the Trust Estate to the Trustee and in favor of the owners of the Bonds. The Bonds will NOT pledge the full faith and credit of the State of Kansas or any political subdivision thereof, including the City.

(e) The City will authorize all necessary action to be taken for: (i) the issuance and sale of the Bonds upon the terms set forth herein; (ii) the execution, delivery, receipt and due performance of this Agreement, the Bonds and the Indenture and any and all such other agreements and documents as may be required to be executed, delivered and received in order to carry out, give effect to and consummate the transactions contemplated hereby; and (iii) the carrying out, giving effect to and consummation of the transactions contemplated hereby.

(f) There is no action, suit, proceeding, inquiry or investigation at law or in equity or before or by any court, public board or body pending or, to the best of the City's knowledge, threatened against or affecting the City, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated hereby or the validity of the Bonds, this Agreement, the Indenture or any agreement or instrument to which the City will be a party and which will be used or contemplated for use in the consummation of the transactions contemplated hereby.

(g) The execution and delivery of this Agreement, the Bonds, the Indenture and the other agreements contemplated hereby, and compliance with the provisions thereof, to the best of the City's knowledge after due inquiry and in reliance in part upon advice of legal counsel, will

not conflict with or constitute on the part of the City a breach of or a default under any existing law, court or administrative regulation, decree or order or any resolution, agreement, indenture or other instrument to which the City is subject or by which it is or may be bound.

(h) Any certificate signed by the City and delivered to the Bond Purchaser shall be deemed a representation made by the City to the Purchaser as to the statements made therein.

Section 3.3. Bond Purchaser's Representations and Agreements. The Bond Purchaser hereby represents and agrees with the City that:

(a) The Bond Purchaser has sufficient knowledge and experience in business and financial matters in general, and investments such as the Bonds in particular, to enable the Bond Purchaser to evaluate the risks involved in an investment in the Bonds.

(b) The Bond Purchaser acknowledges that no official statement, private placement memorandum or other offering document has been or will be prepared in connection with the sale and purchase of the Bonds.

(c) The Bond Purchaser confirms that its investment in the Bonds constitutes an investment that is suitable for and consistent with its investment program and that the Bond Purchaser is able to bear the economic risk of an investment in the Bonds, including a complete loss of such investment.

(d) The Bond Purchaser is purchasing the Bonds solely for its own account for investment purposes only, and not with a view to, or in connection with, any distribution, resale, pledging, fractionalization, subdivision or other disposition thereof. Notwithstanding such intent, the Investor will not be prohibited in the future from reselling the Bonds although there is no present expectation to do so, and any such resale must be in accordance with applicable securities laws. If the Bond Purchaser sells any of the Bonds, the Bond Purchaser or its agent will obtain from any subsequent purchaser the same representations contained in this **Section 3.3**.

(e) The Bond Purchaser has had access to, and has examined to the extent the Bond Purchaser has deemed necessary, financial statements and other data of the City and the Developer, including ad valorem property tax projections provided by Developer, which the undersigned considers sufficient to enable the undersigned to form a decision concerning such purchase.

(f) The Bond Purchaser acknowledges that none of any past, present or future officers, directors, members, employees or agents of the City (including without limitation the City's legal counsel, the City's financial advisors, the City's consultants, the City's bond counsel or their officers, directors, members, employees or agents) will have any responsibility to the Bond Purchaser for the accuracy or completeness of any information obtained by the Bond Purchaser from any source bearing on the Bond Purchaser's decision concerning a purchase of the Bonds.

(g) The Bond Purchaser acknowledges and understands that the City is relying and will continue to rely on the statements made herein. The Bond Purchaser agrees to notify the City immediately of any changes in the information and conclusions herein.

Section 3.4. Conditions to the Bond Purchaser's Obligations. The Bond Purchaser's obligations hereunder shall be subject to the due performance by the City, the Seller and the Developer of the obligations and agreements to be performed hereunder at or prior to the Closing Time and to the accuracy of and compliance with the representations contained herein, as of the date hereof and as of the Closing Time, and are also subject to the following conditions being satisfied as of the Closing Time:

(a) The Bonds shall have been duly authorized, executed and delivered in substantially the form provided for by the Indenture with only such changes therein as shall be mutually agreed upon by the City and the Bond Purchaser.

(b) At the Closing Time, the Bond Purchaser shall receive:

(i) the approving opinion of Gilmore & Bell, P.C., Bond Counsel, dated the Closing Date and addressed to the City and the Bond Purchaser, with respect to the validity of the authorization and issuance of the Bonds;

(ii) a certificate of the City, dated as of the Closing Date and in form and substance satisfactory to the Bond Purchaser, to the effect that: (A) the City has duly performed all of its obligations to be performed at or prior to the Closing Time and that each of its representations contained herein is true as of the Closing Time; (B) the City has authorized, by all necessary action: the execution, delivery, receipt and due performance of the terms and provisions of the Bonds, the Indenture, this Agreement and any and all such other agreements and documents as may be required to be executed, delivered and received by the City to carry out, give effect to and consummate the transactions contemplated hereby; (C) no litigation is pending, or, to the best of the City's knowledge, threatened, to restrain or enjoin the issuance or sale of the Bonds or in any way affecting any authority for or the validity of the Bonds or the City's existence, powers or right to use the proceeds of the Bonds or the due execution, delivery and performance of the Indenture; and (D) the execution, delivery, receipt and due performance of the Bonds, the Indenture and the other agreements contemplated hereby under the circumstances contemplated hereby and compliance with the provisions thereof will not conflict with or constitute a breach of or a default under any existing law, court or administrative regulation, decree or order or any resolution, agreement, indenture or other instrument to which the City is subject or by which it is or may be bound;

(iii) original counterpart of the Indenture; and

(iv) such additional certificates and other documents as the Bond Purchaser, the Developer, the Seller, the City and Bond Counsel may reasonably request to evidence performance of or compliance with the provisions hereof and the transactions contemplated hereby, all such certificates and other documents to be satisfactory in form and substance to the Bond Purchaser.

All the opinions, letters, certificates, instruments and other documents mentioned in this Agreement shall be deemed to be in compliance with this Agreement if, but only if, they are in form and substance satisfactory to the Bond Purchaser.

If the City, the Seller and/or the Developer shall be unable to satisfy the conditions to the obligations of the Bond Purchaser contained in this Agreement, or if the obligations of the Bond

Purchaser shall be terminated for any reason permitted by this Agreement, this Agreement shall terminate and the parties shall have no further obligations hereunder. However, the Bond Purchaser may in its discretion waive one or more of the conditions imposed by this Agreement for the protection of the Bond Purchaser and proceed with the Closing.

Section 3.5. Conditions of the City's Obligations. If the City is unable to satisfy the conditions to the obligations of the Bond Purchaser contained in this Agreement, or if the obligations of the Bond Purchaser are terminated for any reason permitted by this Agreement, this Agreement shall terminate and neither the Bond Purchaser nor the City shall be under further obligation hereunder except their respective obligations with respect to payment of expenses as provided in **Section 3.6**.

Section 3.6. Payment of Expenses. The City agrees to pay all expenses incident to the performance of its obligations hereunder, including but not limited to (a) the cost of preparing, printing, reproducing, registering, safeguarding, transporting and authenticating the Bonds, (b) the fees and disbursements of Bond Counsel, the City's financial advisors, and any other experts or consultants retained by the City, (c) the fees and expenses of the City in connection with the issuance and sale of the Bonds, including all publications required by the Act, (d) the cost of printing or other reproduction and distribution of the documents in connection with the issuance of the Bonds, including the Indenture, and (e) the fees and disbursements of the Trustee, Bond Registrar and Paying Agent. Such costs shall be paid from Bond proceeds.

The City shall be under no obligation to pay any expenses incident to the performance of the Bond Purchaser's obligations hereunder. The Bond Purchaser shall pay the expenses incurred by it in connection with its purchase of the Bonds and the fees of legal counsel to the Bond Purchaser.

ARTICLE IV

MISCELLANEOUS PROVISIONS

Section 4.1. Representations and Agreements to Survive Delivery. The representations and warranties of the parties to this Agreement shall survive the transfer of title to the Property to the Developer and the execution and delivery to the Bond Purchaser of the Bonds as contemplated hereby.

Section 4.2 Notices. Except as otherwise provided herein, it shall be sufficient service of any notice, request, demand, authorization, direction, consent, waiver or other paper required or permitted by this Agreement to be made, given or furnished to or filed with the following persons, if the same shall be delivered in person, delivered by prepaid overnight delivery service, mailed by registered or certified mail, postage prepaid, or transmitted by facsimile transmission, at the following addresses or facsimile numbers:

- (a) To the City at:

City of Dodge City
806 Second Ave.
Dodge City, Kansas 67801
Attention: City Clerk
Fax: (620) 225-8144

(b) To the Developer at:

Summerlon Properties, L.L.C.
Box 608
Dodge City, KS 67801

(c) To the Seller at:

Summerlon, Inc.
1902 Hi St.
Dodge City, KS 67801

(d) To the Bond Purchaser at:

James A. Coffin
1106 Summerlon Ridge
Dodge City, KS 67801

Section 4.3 Limitation on City Obligations. No provision, covenant, representation, agreement or obligation contained in this Agreement or any breach of this Agreement shall constitute or give rise to a pecuniary liability or a charge against the City's general credit or taxing power.

Neither the City nor any other director, officer, member, employee or agent (including any financial advisor, consultant, structuring agent or escrow agent) of the City shall be charged personally by the Bond Purchaser with any liability, or held personally accountable to the Bond Purchaser, under any term or provision of this Agreement, or because of its execution or attempted execution, or because of any breach, or attempted or alleged breach, of this Agreement.

Section 4.4. Nonassignability. This Agreement shall inure to the benefit of the parties hereto and their respective successors and assigns. Nothing in this Agreement is intended or shall be construed to give any other person, firm or corporation any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision herein contained. The terms "successor" and "assigns" as used in this Agreement shall not include any purchaser, acting in such capacity, of any of the Bonds from the Bond Purchaser. This Agreement shall not be assigned by the City. This Agreement shall not be assigned by the Seller, Developer or Bond Purchaser without the written consent of the City.

Section 4.5. Severability. If any provision in this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 4.6. Electronic Transactions. The transaction described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

Section 4.7 Governing Law. This Agreement shall be governed by the laws of the State of Kansas.

Section 4.8. Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

[The remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the City has caused this Agreement to be signed by an authorized official, such signature to be attested by an authorized officer, and its official seal to be applied, as of the date first above written.

CITY OF DODGE CITY, KANSAS

Mayor

(Seal)

ATTEST:

City Clerk

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by an authorized officer, as of the date first above written:

SUMMERLON, INC

By: _____
Name:
Title:

SUMMERLON PROPERTIES, LLC

By: _____
Name:
Title:

[BOND PURCHASER]

By: _____

EXHIBIT A

REAL PROPERTY DESCRIPTION

Lots One (1), Two (2), Three (3), Six (6), Seven (7), Eight (8), Nine (9), Ten (10), Eleven (11), Twelve (12), Thirteen (13) and Fourteen (14), in Block Two (2); and Lots One (1), Two (2) and Three (3), in Block Three (3); and Lots Two (2), Three (3), Four (4), Five (5) and Six (6) in Block 4 (4), Summerlon Phase II, an Addition to the City of Dodge City, Ford County, Kansas, according to the Plat recorded in Plat Book "E" at page 62.

EXHIBIT B

SUMMARY OF OUTSTANDING SPECIAL ASSESSMENTS

EXHIBIT C

CALCULATION OF BOND PURCHASE PRICE

Principal Amount	\$.00
Accrued Interest		
<i>Total Purchase Price</i>		

MATURITY SCHEDULE

<u>Stated Maturity</u>	<u>Principal Amount</u>	<u>Annual Rate of Interest</u>
20__	\$ _____	_____%

REDEMPTION OF BONDS

Optional Redemption. At the option of the City, the Bonds are subject to redemption and payment prior to their Stated Maturity, as a whole or in part at any time, at the Redemption Price of 100% (expressed as a percentage of the principal amount), plus accrued interest thereon to the Redemption Date.

Special Mandatory Redemption. The Bonds shall be subject to special mandatory redemption and payment prior to Stated Maturity, annually, at a Redemption Price equal to 100% of the principal amount thereof plus accrued interest to the Redemption Date, in an amount equal to the available Incremental Tax Revenues transferred by the Trustee into the Debt Service Account pursuant to the terms of the Indenture.

Memorandum

To: City Commissioners
From: Ken Strobel
Date: August 3, 2011
Subject: Essential Air Service (EAS)
Agenda Item: New Business

Gentlemen:

As you know, the City's recommendation as to our requested Essential Air Service (EAS) for the next two (2) years is due to the US Department of Transportation on August 6th.

Basically we have two options to choose from:

1. A continuation of our current service with Great Lakes Airlines ("Great Lakes") providing four (4) daily round trip flights from Dodge City to Denver utilizing a 19 seat Beech 1900 aircraft; or
2. A combination of flights consisting of two (2) daily round trip flights from Dodge City to Denver provided by Great Lakes utilizing a 19 seat Beech 1900 aircraft, and two (2) daily round trip daily flights from Garden City to Dallas provided by American Eagle utilizing a 37 to 40 passenger regional jet aircraft.

Enclosed is a draft of an Application for Alternative Essential Air Service Pilot Program which would be filed with the Department of Transportation if we choose the second option combining the services of both Great Lakes and American Eagle. Please review the Application carefully as it describes the mechanism to be used to obtain the combined service.

Please remember that we are being asked only for our recommendation. The final decision will be made by the US Secretary of Transportation with assistance from the Department of Essential Air Service office. In addition, Congress has not yet approved the FAA Re-Authorization Act nor the Department of Transportation 2012 fiscal year budget. Although the new EAS Programs are normally scheduled to begin October 1st, such could be delayed depending on Congressional action. In addition, Congress could amend the EAS legislation, or cut EAS funding, or both, which could impact the extent and/or the existence of subsidized air service for our area.

Also, enclosed are two Memo's prepared by Mike Klein, our airport manager, reflecting the opinion and recommendation of the Airport Advisory Board. Both of these documents were prepared based on the assumption that if we assisted with the cost of the American Eagle jet service at Garden City, we would have no Great Lake's service at our Dodge City airport.

If you have any questions concerning the matter, please give me a call before the meeting.

**UNITED STATE OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Docket OST 2004-18715

**APPLICATION FOR ALTERNATE
ESSENTIAL AIR SERVICE PILOT PROGRAM**

Submitted by:

DODGE CITY, KANSAS

Under 49 U.S.C. 41745 *et seq.*

**Essential Air Service Docket #
OST 1998-3502**

Dodge City DUNS# _____

Comes now the City of Dodge City, Kansas and respectfully submits this Application for an Alternative Essential Air Service Pilot Program under the terms and conditions as set forth herein.

EXISTING AIR SERVICE

By virtue of Order 2009-9-5, dated September 11, 2009, Dodge City, Kansas (“Dodge City”) is provided Essential Air Service by Great Lakes Aviation (“Great Lakes”) consisting of 12 nonstop and 12 one-stop weekly round trips to Denver, Colorado (“Denver”). All service is provided with 19 seat Beech 1900 aircraft.

SERVICE HISTORY

Dodge City has been a recipient of Essential Air Service (“EAS”) since the inception of the program. Initially, a linear routing provided service for the community to Denver and Wichita, Kansas. Later the eastern hub was changed to Kansas City. The most recent order now provides service exclusively to Denver. Passenger boarding’s have fluctuated over the years, usually reflecting national trends, but currently averages approximately 4,000 boarding’s annually at Dodge City.

There are two extenuating factors which may significantly impact the future air service at Dodge City and the communities of Western Kansas:

- First, an increase in the Congressional effort to eliminate the EAS program, or at least to cut the annual funding allocation to the point where service under the program may be adversely impacted;
- Second, American Eagle has expressed an interest in providing service in Western Kansas by submitting a proposal in response to the Department’s recent Request For Proposal’s (“RFP”) to provide Garden City with service to Dallas, Texas (“Dallas”) utilizing regional jet aircraft.

THE FUTURE OF EAS

As mentioned above, Dodge City has participated in the traditional EAS program since the programs inception. Dodge City, along with Liberal and Garden City, not only meet

the legal criteria for “eligibility”, but also optimize the type of communities the EAS program was intended to serve. The cities are geographically isolated from the nation’s air transportation network with relatively low population density, yet with economic and commercial needs for access to metropolitan markets throughout the nation. For the past 30 years, the EAS program has proven to be an economic lifeline for the communities by providing access to the nation’s air transportation network which has allowed the cities to grow and prosper despite their geographic isolation.

From the beginning, the EAS program has come under scrutiny by some members of Congress as being an unjustified expenditure of federal tax dollars. To date, and despite numerous amendments designed to restrict access to the program, EAS has survived those Congressional efforts. Although, in our opinion, the merits of the program more than justify the relatively minor expenditure of Federal funds, there can be no doubt that the program is currently under Congressional scrutiny and will most likely remain so for the foreseeable future. With the unsettled future of the EAS program and the potential for regional jet service to Western Kansas, it appears to us that the time is at hand to explore the possibility of a regional approach to commercial air service for Southwest Kansas.

COMMUNITY AIR SERVICE NEEDS

As reflected by attached Exhibit A, Dodge City, Liberal and Garden City all suffer from extreme isolation from the nation’s air transportation network. None of the cities benefit

from reasonable access to an interstate highway. The two lane highway travel available to the communities is congested by an extremely high level of truck traffic which services the nations beef packing industry located in our area. Liberal is without passenger rail service, while Dodge City and Garden City currently receive very limited service. Consequently, reliable air service to the communities is essential to their continued economic growth.

Over the years, the communities have participated in various air travel studies in an attempt to identify the most important and appealing service schedules and travel destinations in order to provide the most beneficial air service for businesses and industries within the area. These studies have consistently reflected strong economic ties to a wide variety of hub destinations. Garden City and Liberal studies have indicated a strong economic connection with destinations best served by southbound air service, while Dodge City appears to mandate an east/west service pattern with connections and/or destinations at Denver and Kansas City.

As indicated above, the studies have indicated that although the communities are very similar in population and economic base, all have individual economic interests and destination needs which would best be served by differing air service proposals.

In response to the Departments most recent RFP for the next two (2) year funding cycle for the Western Kansas communities, American Eagle has proposed to provide Garden City with regional jet service to Dallas, while Great Lakes has proposed service to

Denver for all three communities. While a combination of the American Eagle and Great Lakes service would best address the individual needs of the communities, the subsidy required by American Eagle along with the increase in subsidy proposal by Great Lakes would inflate the total program cost by over \$3,000,000. Such an additional increase in the total subsidy figure is simply not realistic given the economic challenges facing the Department.

THE CONCEPT OF REGIONAL AIR SERVICE

Over the past several years the cities of Dodge City, Garden City and Liberal have given serious consideration to the concept of regionalization involving several aspects of their joint community needs and opportunities. The three communities recently collaborated in developing and jointly proposing an area highway improvement plan for the region which was eventually adopted by the Kansas Department of Transportation. More recently, Garden City and Dodge City partnered in a grant request made by Garden City, and strongly endorsed and supported by Dodge City, to participate in a source of state funding which could be applied to reduce the subsidy required under the American Eagle proposal. A grant of \$333,333 for that purpose was approved (the “REAP Grant”), but is conditioned upon the implementation of the American Eagle service proposal.

The two cities are again partnering in presenting this proposal, in pursuit of another regionalization opportunity from which both will benefit, and which can be accomplished without increasing the overall subsidy cost to the Department. It is our belief that

implementing our proposal will result in additional boarding's at both communities and best serve the interests of Western Kansas.

INTENT OF ALTERNATIVE EAS PILOT PROGRAM

Clearly, the Alternative EAS Pilot Program was established in order to allow subsidy eligible EAS communities to deviate from the traditional program in order to provide transportation services which were more beneficial to the individual community than that available under the traditional program, but at no more cost than would have been required under the traditional subsidy proposal.

The Departments Notice announcing the establishment of the program addressed the purpose of the program as follows:

Congress established this Pilot Program to provide communities with an alternative to the traditional EAS-type service. Typically, the EAS program pays subsidy to regional air carriers to provide two or three round trips a day to a major hub airport with 19-seat aircraft. The new Pilot program is designed to allow communities to forego their EAS for a prescribed amount of time in exchange for receiving a grant to spend *in a variety of ways that might better suit their individual needs*. These options are spelled out in statute and include more frequent service with smaller aircraft, on-demand air taxi service, scheduled or on-demand surface transportation, *regionalized* air service, or purchasing an aircraft. *(Emphases added)*

We are implementing the Pilot Program by inviting communities to submit applications to use EAS funds in an alternative manner to address their transportation needs. *We will use an open and flexible format for applications because we recognize that each community's circumstances may be different, and they need latitude in identifying their own objectives and developing strategies for accomplishing them.* At the same time, general, vague, or unsupported applications will not be entertained. The

more highly defined the application, the more likely it will receive favorable consideration. (*Emphases added*)

The overall goal of the Program is described in the Notice as follows:

“We seek proposals that are fully thought out and are designed to meet the individual needs of a community. We encourage proposals that have the greatest chance of increasing passenger usage and therefore reducing the need for future subsidy under either the EAS or Pilot Program.”

SUMMARY OF THE ALTERNATIVE PLAN

In response to the Department’s current RFP, Great Lakes has proposed to continue to provide service to Denver for all five (5) subsidized points in Western Kansas. The City’s of Dodge City and Garden City are recommending an Alternate Pilot plan for service to the two communities without impacting the balance of the proposed Great Lakes service to the other Kansas eligible points.

Basically, Dodge City would forgo its traditional EAS service as proposed by Great Lakes in exchange for a grant under the Alternative Program (the “Alternative Grant”) in the amount of the subsidy required for Dodge City service under the Great Lakes proposal in the amount of approximately \$2,280,000 annually.

Garden City will recommend that it’s EAS service be provided by American Eagle at a subsidy cost of not to exceed \$3,255,000, and that such cost be funded in part by the Department committing approximately \$2,330,000, being the amount of subsidy for

Garden City under the Great Lakes proposal, to the American Eagle proposal. In addition, Garden City will also apply the REAP Grant in the amount of \$333,333 toward American Eagle subsidy requirement, with remaining short fall in the American Eagle subsidy requirement coming from the Dodge City Alternative Grant. Dodge City would then contract with Great Lakes to provide at least two (2) daily round trip flights from Dodge City to Denver. The funding required to support such Denver service would come from the Dodge City Alternative Grant.

Remaining Dodge City Alternative Grant funds, if any, would be held by the Department in trust for use in funding future transportation projects as proposed by Dodge City and approved by the Secretary. Such projects could include scheduled surface transportation between the Dodge City and Garden City airports to accommodate Garden City passengers traveling to Denver and Dodge City passengers traveling to Dallas, as well as other transportation projects as approved from time to time by the Secretary.

The total cost of all projects would not exceed the total of the funds represented by the Alternative Grant.

ALTERNATIVE SERVICE PLAN PROPOSAL

In an effort to better serve the individual air service needs of the respective communities and to move forward toward the concept of regionalize air service which regional service has the “greatest chance of increasing passenger usage and therefore reducing the need

for future subsidy under either the EAS or Pilot Program,” the city of Dodge City makes the following commitments:

- a. Dodge City, in exchange for a Alternative Grant from the Department in the amount of the subsidy requirement as proposed by Great Lakes in the amount of \$2,278,126 per year, will forego its right as a subsidy eligible EAS point to the traditional EAS service proposed by Great Lakes for a period of two (2) years commencing October 1, 2011;
- b. Dodge City will agree that the Department allocate annually from the Alternative Grant funding in an amount necessary to supplement the funding of American Eagles required subsidy in order to provide at least two (2) daily round trip flights to and from Dallas from the Garden City airport utilizing regional jet aircraft with a capacity of at least 37 passengers;
- c. Dodge City will contract with Great Lakes to provide at least two (2) daily round trip flights to and from Denver from the Dodge City airport utilizing 19 passenger Beech 1900 aircraft. Compensation necessary to provide such Great Lakes service will come from the Alternative Grant funds;
- d. Dodge City will agree that any remaining balance of the Alternative Grant funds be held by the Department to be dispersed by the Department to Dodge City to fund other transportation programs as proposed from time to time by the City and subject to approval by the Secretary;

- e. Dodge City specifically reserves its right as a subsidy eligible EAS point to reinstatement to the traditional EAS program in the event of any significant changes in the EAS program or the funding thereof.

The above commitments are subject to and contingent upon the Department's ability to fully fund the subsidy amounts as setout in the summary of service proposals as submitted by the Department and to the continued provision of service by American Eagle as reflected in its original EAS proposal.

DRAFT

P.O. Box 880 / 703 W. Trail
Dodge City, KS 67801
Phone: 620-225-8170
Fax: 620-225-8259

Memorandum

Date: Friday, June 24, 2011

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

CC: Airport Advisory Board
City Commission

FROM: Mike Klein, Airport Manager *MK*

SUBJECT: Airport Advisory Board Essential Air Service Recommendation

The Airport Advisory Board met on June 17, 2011 to review the Essential Air Service (EAS) proposals and to discuss the Regional Airport concept. It is the Airport Advisory Boards recommendation to maintain commercial air service in Dodge City by requesting EAS funding for Great Lakes with service to Denver.

Dodge City needs to maintain commercial air service for accessibility to the national airline system for its citizens, business travelers, professionals and economic contributions in terms of employment, payroll, and visitor spending. With the loss of commercial air service the airport will eliminate rental income of \$ 25,200.00 per year from Great Lakes and TSA. We will be loosing 6 TSA Agents and 10 Great Lakes employees with estimated combined wages of \$325,000.00, as well as loss of fuel sales and mechanical services for Great Lakes provided by the local FBO.

The Airport Advisory Board agrees with the concept of Garden City having regional jet service to Dallas and the benefit it would bring to Southwest Kansas. The Airport Advisory Board agrees that Dodge City continuing commercial air service to Denver would provide an ever better regional air service concept for Southwest Kansas. At the current time, Dodge City is enplaning an average of 310 passengers to Denver per month. Garden City has an average of 790 to Denver per month for a combined total of 1,100 per month or 13,200 per year going to Denver. It would be within reason that most of the travelers from Dodge City and Garden City still have the need to fly to Denver and a need to get from Denver to Dodge City. This concept would give Southwest Kansas better access to the national air service system. Dodge City to Denver and Garden City to Dallas.

The Kansas airport system is comprised of 142 public use general aviation and commercial airports. Dodge City is classified by the Federal Aviation Administration (FAA) as a Commercial Service Airport. Seventy-nine of the 142 airports in the Kansas system are included in the National Plan of Integrated Airport System (NPIAS) making these airports subject to FAA standards and eligible for federal funding. Currently, Dodge City receives \$150,000 per year entitlement money from FAA for airport improvements. Dodge City Regional Airport also

receives discretionary money, left over funds from other airport projects in the region, plus the entitlement money accounts for all of our airport improvement projects. If an airport has 10,000 enplanements per year the entitlement money is \$1,000,000 per year. At the current time, Garden City has over 10,000 enplanements per year and receives \$1,000,000 entitlement money. Looking at a different concept, Garden City has service to Dallas and Dodge City maintains service to Denver, it is within reason Dodge City could have 10,000 enplanements per year and receive \$1,000,000 entitlement money for airport improvements. If Dodge City elects to terminate commercial air service, the airport will still be eligible to receive \$150,000 entitlement money for airport improvements. However, the rating scale for project will be lowered.

With all of the new projects Dodge City has completed and plans to complete in the near future Dodge City is a destination. Maintaining commercial air service in Dodge City is an integral connection between Dodge City businesses and residents and the ever-expanding global economy. The Dodge City Airport helps to lead and sustain growth and economic diversification. Dodge City Regional Airport is an important economic catalyst, supporting jobs and millions of dollars in economic activity. Larger employers, as well as many smaller businesses, rely on the local commercial aviation system to reliably transport employees, customers, supplies, and products to and from their operations and to support businesses in Dodge City. There is a strong relationship between Dodge City's economy and commercial air service.

If you have any question or need additional information please let me know.

Attachment: Loss of wages Dodge City TSA Agents

Mike Klein Airport Manager

June 27, 2011

806 2nd Avenue

Dodge City, KS 67801

Reference: No commercial air service from Dodge City

Loss of wages of Dodge City TSA employees is approximately:

6 TSA agents Approximate wages:	\$225,000
Spouses	\$180,000
10 Great Lakes Agents Approximate wages:	\$100,000
Spouses	\$400,000

TSA also does advertising with the radio and newspaper on a fairly regular basis.

Different individuals from Wichita TSA come to Dodge City every month to give classes and so forth. Majority of the time Dodge City is where they choose to stay the night when they are visiting all of the regional airports, due to its central location. So Dodge City would be losing this revenue from motels stays and meals.

The flight crew stays nightly here in Dodge City so this would be a loss of 2 rooms a night for 365 days along with their meals.

Crotts does the maintenance on the airplanes which would cause a loss in revenue for them along with the fueling on the plane.

Hertz car rental would be greatly affected by no commercial air service

A lot the passengers come from the surrounding area with this they eat at the local restaurants before their flight or upon returning to Dodge City.

In checking about local sales tax, I came across the Passenger Facility Charge which is available for airport improvements. The way I understand this if we did not have commercial flights this fund would not be available.

With our new event center and casino, I feel that Dodge City could draw more people in with commercial air service, from fan club members for different acts at the event center to possible charter flights for the casino.

Sincerely,

Lisa McVaugh

Dodge City TSA Supervisor

Memorandum

Date: Wednesday, July 13, 2011

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

CC: Airport Advisory Board
City Commission

FROM: Mike Klein, Airport Manager

SUBJECT: Essential Air Service

Attachments: Appendix A Enhanced Essential Air Service
Appendix B Alternate Air Service Pilot Program
Appendix C What is Essential Air Service (EAS)

There is a strong relationship between commercial air service and the local economy. The Dodge City Regional Airport is an important economic catalyst, supporting jobs and millions of dollars in economic activity. Larger employers, as well as many smaller businesses, rely on the local commercial aviation system to transport employees, customers and supplies to and from their operations in other parts of the country. Many of the local businesses have other operations or the need to travel to Denver, such as Lopp Motors, National Beef, Western Plains Medical Complex, Western Beverage and the leisure travelers. The debate over the regional airport concept comes down to where our customers want to go. Most of the people I have talked to have a need to go to Denver not Dallas.

Several questions come up during the discussion on commercial air service and Essential Air Service. Will EAS funding be eliminated? Today's environment all federally funded programs are on the chopping block. Is it a matter of time before EAS funding is eliminated? If the funding is eliminated there will be 140 other communities across the nation that will be in the same boat with us. I do not believe in the political arena that would be a popular decision.

When Great Lakes terminated the Kansas City route this was a decision that was out of our hands. With the elimination of the Denver service this will affect a larger number of businesses and the economic development in Dodge City. We have a say in the Denver service. Garden City wants to go to Dallas; Dodge City needs to continue service to Denver.

The Regional Airport concept has its merits on the impact it could have on Southwest Kansas. If Garden City has service to Dallas it will benefit the travelers that are going south. However, the loss of Denver will have major impacts on the current and future business in Dodge City. I have received several comments from local businesses that it would not be beneficial to their business.

Research indicates that Dodge City has had some sort of commercial air service for the past 77 years. We have worked long and hard to maintain air service in Dodge City. Giving up commercial air service is not the right choice in today's economy. We have already heard stories that doctor's who come from Denver to clinics in this area will shut down their clinics. Needless to say they will not fly Denver to Dallas to Garden City just to get to a clinic. This will be the same scenario for numerous businesses and professional people.

There are two things that drive a decision to fly, Price & Schedule.

With only two flights a day to Dallas, this does not promote a decent business schedule for the business traveler. If American Eagle cancels a flight we will be down to one flight, rolling over passengers to the next flight. We will run into the potential of not being able to accommodate the total passengers. American Eagle utilizes a 44 seat airplane, 88 seats a day each way.

Currently Dodge City has 4 flights a day x 19 seats = 38 (½ the seats due to sharing of the plane with Garden City). Garden City has 5 flights a day 19 seats = 95 seats. So you can see the two markets will be giving up total seats in the market.

At the current time, Dodge City is enplaning an average of 310 passengers to Denver per month. Garden City has an average of 790 to Denver per month for a combined total of 1,100 per month or 13,200 per year going to Denver. It would be within reason that most of the travelers from Dodge City and Garden City still have the need to fly to Denver and a need to get from Denver to Dodge City. This concept would give Southwest Kansas better access to the national air service system. Dodge City to Denver and Garden City to Dallas.

Another scenario. The other morning customers arrived at the Garden City airport at 5:30am only to find out the 30 knot crosswind would not allow the plane to land. The good news is 9 passengers drove over to Dodge City, boarded the plane and were on their way. With only one airport with service to Dallas this won't be an option

American owns Dallas as a Hub, there is no competition at DFW. Significantly higher air fares going to DFW versus Denver. Denver has United, Southwest & Frontier all competing for customers.

Research on the Enhanced Essential Air Service (Appendix A)

The following is a brief of the Enhanced Essential Air Service Program. Entire program is attached in Appendix A.

Department's guidelines in 14 CFR 398 as well as specifying an increased minimum level of service—termed "basic" EAS—for any community that was eligible for service under the earlier program and actually receiving service during any part of fiscal year 1988. In addition, Public Law 100-223 provided for a higher level of service--termed "enhanced" EAS--which communities could obtain either by agreeing to a subsidy-sharing commitment or by agreeing to risk the loss of basic service if the Department-funded enhanced service failed to meet agreed levels of passenger use.

A State or local government may submit a proposal to the Secretary of Transportation for Enhanced Essential Air Service to an eligible place for which basic essential air service is being provided under section 41733. The proposal shall specify the level and type of Enhanced

Essential Air Service the State or local government considers appropriate; and include an agreement related to compensation required for the proposed service.

The agreement submitted under paragraph (1)(B) of this subsection shall provide that the State or local government or a person pay 50 percent of the compensation required for the proposed service and the United States Government pay the remaining 50 percent;

Or; the Government pays 100 percent of the compensation;

If the proposed service is not successful for at least a 2-year period under the criteria prescribed by the Secretary under paragraph (3) of this subsection, the eligible place is not eligible for air service or air transportation for which compensation is paid by the Secretary under this subchapter.

Recommendation: in our proposal to DOT request that Dodge City maintain status quo with Great Lakes to Denver. In addition, request Enhanced Essential Air Service for Garden City to Dallas and the government to pay 100% of the compensation. The proposal would be on a two year trial basis. If the Dallas service is a great success and Denver service declines, it would be our recommendation to terminate the Denver service. A two year trail basis will give the regional airport the opportunity to try the Dallas service to see if it will be successful. It will also allow the Dodge City airport to maintain commercial air service and be a back up airport for the Dallas and Denver service. This would allow the communities more time to get accustomed to the regional airport concept.

Research on the Alternate Essential Air Service Pilot Program (Appendix B)

After reviewing this section it is my understanding that the money can be used for on demand scheduled ground transportation, on demand air taxi, and purchase an aircraft to provide transportation.

Or to pay for other transportation or related services that the Secretary may permit.

Related transportation needs at the airport. If we elected to eliminate commercial air service and the Secretary would fund other related transportation needs at the airport, I would recommend the following.

New expanded parking lot, \$ 700,000
Two, 100 x 120 x 24 aircraft storage hangar, \$ 1,000,000
Remodel the FBO office and new hangar doors, \$ 180,000
New hangar doors on the Piper hangar \$ 120,000
Large hangar for Eagle Med with living quarters, \$400,000
Hangar, class rooms and helipad for Universal Helicopters, \$ 500,000
12 T-Hangars, \$ 540,000

Total \$ 3,400,000 estimated costs

The following is a brief of the Alternate Essential Air Service Pilot Program. Entire program is attached in Appendix B.

The Secretary of Transportation shall establish an alternate essential air service pilot program in accordance with the requirements of this section. In carrying out the program, the Secretary, instead of paying compensation to an air carrier to provide essential air service to an eligible place, may provide assistance directly to a unit of local government having jurisdiction over the eligible place or a State within the boundaries of which the eligible place is located.

A unit of local government or State receiving assistance for an eligible place under the program may use the assistance for any of the following purposes:

To provide assistance to air carriers that will use smaller equipment to provide the service and to consider increasing the frequency of service using such smaller equipment if the Secretary determines that passenger safety would not be compromised by the use of such smaller equipment and if the State or unit of local government waives the minimum service requirements under section 41732 (b).

To provide assistance to an air carrier to provide on-demand air taxi service to and from the eligible place.

To provide assistance to a person to provide scheduled or on-demand surface transportation to and from the eligible place and an airport in another place.

In combination with other units of local government in the same region, to provide transportation services to and from all the eligible places in that region at an airport or other transportation center that can serve all the eligible places in that region.

To purchase aircraft to provide transportation to and from the eligible place or to purchase a fractional share in an aircraft to provide such transportation after the effective date of a rule the Secretary issues relating to fractional ownership.

To pay for other transportation or related services that the Secretary may permit.

Conclusion: Maintaining commercial air service in Dodge City is an integral connection between Dodge City businesses and residents and the ever-expanding global economy. The Dodge City Airport helps to lead and sustain growth and economic diversification. Dodge City Regional Airport is an important economic catalyst, supporting jobs and millions of dollars in economic activity. Larger employers, as well as many smaller businesses, rely on the local commercial aviation system to reliably transport employees, customers and supplies to and from their operations and to support businesses in Dodge City.

Recommendation: in our proposal to DOT request that Dodge City maintain status quo with Great Lakes to Denver. In addition, request Enhanced Essential Air Service for Garden City to Dallas and the government to pay 100% of the compensation. The proposal would be for a two year trial basis. If the Dallas service is a great success and Denver service declines, it would be our recommendation to terminate the Denver service. A two year trial basis will give the regional airport the opportunity to try the Dallas service to see if it will be successful. It will also allow the Dodge City airport to maintain commercial air service, TSA security and be a back up airport for the Dallas service. This would allow the southwest region more time to get accustomed to the regional airport concept.

Appendix A

Enhanced Essential Air Service

41735. Enhanced essential air service

(a) Proposals.—

(1) A State or local government may submit a proposal to the Secretary of Transportation for enhanced essential air service to an eligible place for which basic essential air service is being provided under section 41733 of this title. The proposal shall—

(A) specify the level and type of enhanced essential air service the State or local government considers appropriate; and

(B) include an agreement related to compensation required for the proposed service.

(2) The agreement submitted under paragraph (1)(B) of this subsection shall provide that—

(A) the State or local government or a person pay 50 percent of the compensation required for the proposed service and the United States Government pay the remaining 50 percent; or

(B)

(i) the Government pay 100 percent of the compensation; and

(ii) if the proposed service is not successful for at least a 2-year period under the criteria prescribed by the Secretary under paragraph (3) of this subsection, the eligible place is not eligible for air service or air transportation for which compensation is paid by the Secretary under this subchapter.

(3) The Secretary shall prescribe by regulation objective criteria for deciding whether enhanced essential air service to an eligible place under this section is successful in terms of—

(A) increasing passenger usage of the airport facilities at the place; and

(B) reducing the amount of compensation provided by the Secretary under this subchapter for that service.

(b) Decisions.— Not later than 90 days after receiving a proposal under subsection (a) of this section, the Secretary shall—

(1) approve the proposal if the Secretary decides the proposal is reasonable; or

(2) if the Secretary decides the proposal is not reasonable, disapprove the proposal and notify the State or local government of the disapproval and the reasons for the disapproval.

(c) Compensation Payments.—

(1) The Secretary shall pay compensation under this section when and in the way the Secretary decides is appropriate. Compensation for enhanced essential air service under this section may be paid only for the costs incurred in providing air service to an eligible place that are in addition to the costs incurred in providing basic essential air service to the place under section 41733 of this title. The Secretary shall continue to pay compensation under this section only as long as—

(A) the air carrier maintains the level of enhanced essential air service;

(B) the State or local government or person agreeing to pay compensation under this section continues to pay the compensation; and

(C) the Secretary decides the compensation is necessary to maintain the service to the place.

(2) The Secretary may require the State or local government or person agreeing to pay compensation under this section to make advance payments or provide other security to ensure that timely payments are made.

(d) Review.—

(1) The Secretary shall review periodically the enhanced essential air service provided to each eligible place under this section.

(2) For service for which the Government pays 50 percent of the compensation, based on the review and consultation with the affected community and the State or local government or person paying the remaining 50 percent of the compensation, the Secretary shall make appropriate adjustments in the type and level of service to the place.

(3) For service for which the Government pays 100 percent of the compensation, based on the review and consultation with the State or local government submitting the proposal, the Secretary shall decide whether the service has succeeded for at least a 2-year period under the criteria prescribed under subsection (a)(3) of this section. If unsuccessful, the place is not eligible for air service or air transportation for which compensation is paid by the Secretary under this subchapter.

(e) Ending, Suspending, and Reducing Air Transportation.— An air carrier may end, suspend, or reduce air transportation to an eligible place below the level of enhanced essential air service established for that place by the Secretary under this section only after giving the Secretary, the affected community, and the State or local government or person paying compensation for that service at least 30 days' notice before ending, suspending, or reducing the service. This subsection does not relieve the carrier of an obligation under section 41734 of this title.

Appendix B

Alternate Air Service Pilot Program

41745. Community and regional choice programs

(a) Alternate Essential Air Service Pilot Program.—

(1) **Establishment.—** The Secretary of Transportation shall establish an alternate essential air service pilot program in accordance with the requirements of this section.

(2) **Assistance to eligible places.—** In carrying out the program, the Secretary, instead of paying compensation to an air carrier to provide essential air service to an eligible place, may provide assistance directly to a unit of local government having jurisdiction over the eligible place or a State within the boundaries of which the eligible place is located.

(3) **Use of assistance.—** A unit of local government or State receiving assistance for an eligible place under the program may use the assistance for any of the following purposes:

(A) To provide assistance to air carriers that will use smaller equipment to provide the service and to consider increasing the frequency of service using such smaller equipment if the Secretary determines that passenger safety would not be compromised by the use of such smaller equipment

and if the State or unit of local government waives the minimum service requirements under section 41732 (b).

(B) To provide assistance to an air carrier to provide on-demand air taxi service to and from the eligible place.

(C) To provide assistance to a person to provide scheduled or on-demand surface transportation to and from the eligible place and an airport in another place.

(D) In combination with other units of local government in the same region, to provide transportation services to and from all the eligible places in that region at an airport or other transportation center that can serve all the eligible places in that region.

(E) To purchase aircraft to provide transportation to and from the eligible place or to purchase a fractional share in an aircraft to provide such transportation after the effective date of a rule the Secretary issues relating to fractional ownership.

(F) To pay for other transportation or related services that the Secretary may permit.

(b) Community Flexibility Pilot Program.—

(1) In general.— The Secretary shall establish a pilot program for not more than 10 eligible places or consortia of units of local government.

(2) Election.— Under the program, the sponsor of an airport serving an eligible place may elect to forego any essential air service for which compensation is being provided under this subchapter for a 10-year period in exchange for a grant from the Secretary equal in value to twice the compensation paid to provide such service in the most recent 12-month period.

(3) Grant.— Notwithstanding any other provision of law, the Secretary shall make a grant to each airport sponsor participating in the program for use on any project that—

(A) is eligible for assistance under chapter 471 and complies with the requirements of that chapter;

(B) is located on the airport property; or

(C) will improve airport facilities in a way that would make such facilities more usable for general aviation.

(c) Fractionally Owned Aircraft.— After the effective date of the rule referred to in subsection (a)(3)(E), only those operating rules that relate to an aircraft that is fractionally owned apply when an aircraft described in subsection (a)(3)(E) is used to provide transportation described in subsection (a)(3)(E).

(d) Applications.—

(1) In general.— An entity seeking to participate in a program under this section shall submit to the Secretary an application in such form and containing such information as the Secretary may require.

(2) Required information.— At a minimum, the application shall include—

(A) a statement of the amount of compensation or assistance required; and

(B) a description of how the compensation or assistance will be used.

(e) Participation Requirements.— An eligible place for which compensation or assistance is provided under this section in a fiscal year shall not be eligible in that

fiscal year for the essential air service that it would otherwise be entitled to under this subchapter.

(f) Subsequent Participation.— A unit of local government participating in the program under this subsection (a) in a fiscal year shall not be prohibited from participating in the basic essential air service program under this subchapter in a subsequent fiscal year if such unit is otherwise eligible to participate in such program.

(g) Funding.— Amounts appropriated or otherwise made available to carry out the essential air service program under this subchapter shall be available to carry out this section.

Appendix C

Essential Air Service

WHAT IS ESSENTIAL AIR SERVICE (EAS)

Prepared by the Office of Aviation Analysis, U. S. DOT
(Revised April 1, 2009)

BACKGROUND:

In 1978, when the Airline Deregulation Act (ADA) was enacted, 746 communities in the United States and its territories were listed on air carrier certificates issued under section 401 of the Federal Aviation Act of 1958. Before deregulation, air carriers' operating certificates for most of these communities required carriers to schedule and provide two daily round trips at each point on their certificates. During the pre-ADA debates, the prospect of allowing carriers to terminate scheduled service without prior Government approval raised concern that communities with relatively lower traffic levels would lose service entirely as carriers shifted their operations to larger, potentially more lucrative markets. To address this concern, Congress added section 419 to the Federal Aviation Act, which established the EAS program, which today is administered by the Department of Transportation, to ensure that smaller communities would retain a link to the national air transportation system, with Federal subsidy where necessary.

Under this program, the Department determines the minimum level of service required at each eligible community by specifying a hub through which the community is linked to the national network, a minimum number of round trips and available seats that must be provided to that hub, certain characteristics of the aircraft to be used, and the maximum permissible number of intermediate stops to the hub. The program's guidelines were codified by rulemaking as a Policy Statement of the Department in Volume 14, Code of Federal Regulations (CFR), Part 398. Where necessary, the Department pays subsidy to a carrier to ensure that the specified level of service is provided. Most eligible points, of course, do not require subsidized service; as of April 1, 2009, the Department was subsidizing service at 108 communities in the contiguous 48 states, Hawaii, and Puerto Rico, and 45 in Alaska.

Congress initially authorized the program for a ten-year period, through October 23, 1988. Its interest in ensuring service at small communities remained strong, and before the program's expiration, Congress enacted the Airport and Airway Safety and Capacity Expansion Act of 1987, Public Law 100-223, which expanded the program and extended it for ten more years, through fiscal year 1998. In so far as service guarantees were concerned, Public Law 100-223 amended section 419 of the Federal Aviation Act by codifying many of the Department's guidelines in 14 CFR 398 as well as specifying an increased minimum level of service—termed "basic" EAS—for any community that was

eligible for service under the earlier program and actually receiving service during any part of fiscal year 1988. In addition, Public Law 100-223 provided for a higher level of service--termed "enhanced" EAS--which communities could obtain either by agreeing to a subsidy-sharing commitment or by agreeing to risk the loss of basic service if the Department-funded enhanced service failed to meet agreed levels of passenger use.

Finally, the new law contained provisions by which new communities could participate in the program if they were willing to pay part of the total subsidy.

The various statutorily-mandated elements comprising basic EAS exceeded the minimums that had prevailed under the Department's discretionary regulatory guidelines since 1978, but, at the time that Public Law 100-223 was enacted, program funding was insufficient for the Department to implement the service upgrades to meet the new standards, much less for what would be necessary to support enhanced service or service at new points. In fact, during fiscal year 1990, twenty-six communities were made ineligible as a result of reduced funding.²

However, under the Omnibus Budget Reconciliation Act of 1990, Public Law 100-508, Congress committed to authorize funds (\$38.6 million annually), beginning in fiscal year 1992, that would enable the Department to implement the upgrades necessary to ensure all remaining eligible communities of basic EAS as envisioned by Public Law 100-223. (No specific provision was made in this appropriation for enhanced service or for service at new points.) The revised levels of basic EAS were authorized by the Department by the end of fiscal year 1991. In general, Public Law 100-223 required the following elements of basic EAS:

- (a) service to a hub airport, defined as an FAA-designated medium- or large-hub airport,
- (b) service with no more than one intermediate stop to the hub,
- (c) service with aircraft having at least 15 passenger seats at communities that averaged more than 11 passenger enplanements a day in any calendar year from 1976-1986,
- (d) under certain circumstances, service with pressurized aircraft, and
- (e) flights at reasonable times taking into account the needs of passengers with connecting flights.

In addition, Public Law 100-223 authorized the Department to enter into agreements and to incur obligations from the Airport and Airway Trust Fund for the payment of subsidy for the provision of EAS, effective fiscal year 1992. (Previously, the program was funded from the general fund.) The Department's budget for fiscal year 1994, set by the Department of Transportation and Related Agencies Appropriations Act, 1994 (Public Law 103-122),³ provided that the program's annual appropriation be reduced by \$5.2 million, to \$33.4 million. Thus, the Department, using criteria set by Congress in Public Law 103-122,³ was initially compelled to discontinue subsidy support for EAS at an additional eleven communities,⁴ effective December 1, 1993, and at Trenton, New Jersey, effective June 8, 1994. The EAS program was again funded at \$33.4 million for fiscal year 1995. The Department again had to discontinue subsidy support for a

Law 103-122), provided that the program's annual appropriation be reduced by \$5.2 million, to \$33.4 million. Thus, the Department, using criteria set by Congress in Public Law 103-122,³ was initially compelled to discontinue subsidy support for EAS at an additional eleven communities,⁴ effective December 1, 1993, and at Trenton, New Jersey, effective June 8, 1994. The EAS program was again funded at \$33.4 million for fiscal year 1995. The Department again had to discontinue subsidy support for a

community, Danville, Illinois, effective November 30, 1994.

For fiscal year 1996, Congress appropriated \$22.6 million to the Department to fund the EAS program. This represented a \$10.8 million, or about one-third, reduction from the \$33.4 million that had been appropriated for the program for fiscal years 1994 and 1995. This funding level was insufficient to maintain full EAS at fiscal year 1995 levels at all eligible points that were receiving subsidized service. In order to fit the program to the appropriation, the Department looked for guidance to the Conference Committee Report and noted that:

The conferees fully intend that all essential air service communities that are participating in the program in fiscal year 1995 will continue to be eligible for participation in the essential air service program in fiscal year 1996, albeit at reduced levels. The conferees expect that the Department may be required to make pro-rata reductions in the subsidy or daily/weekly service levels to manage the funding reductions included in the conference report.

Consequently, unlike in earlier rounds of funding cuts in which certain communities were eliminated entirely from subsidized-service eligibility, the Department was directed to implement subsidy reductions across the board. The Department did this by discontinuing subsidy support for weekend service, service to more than one hub, and service in excess of two round trips each weekday. (See Order 95-11-28, November 17, 1995, for a full discussion.) During fiscal year 1996 the Department also discontinued subsidy support for three communities that failed the statutory eligibility requirements originally set by Public Law 103-122: Danville, Virginia; Worthington, Minnesota; and Anniston, Alabama.

The EAS program was funded at \$25.9 million for fiscal year 1997. No structural changes were made.

Beginning in fiscal year 1998, Congress funded the EAS program at \$50 million a year by the Rural Air Service Survival Act, which is part of the Federal Aviation Administration Reauthorization Act of 1996, Public Law 104-264. That legislation also removed the September 30, 1998, sunset date when the program would otherwise have ended. The Department has used these funds to restore compliance with the statutory

³ A community is ineligible to receive subsidized EAS if it is within 70 miles of a medium or large hub, or if its subsidy exceeds \$200 per passenger (unless it is more than 210 miles from a medium or large hub.)

⁴ Gadsden, Alabama; Stockton, California; Galesburg, Illinois; Bloomington, Muncie/Anderson/New Castle, and Terre Haute, Indiana; Laconia, New Hampshire; Santa Fe, New Mexico; Paris, Texas; Hot Springs, Virginia; and Elkins, West Virginia.

EAS requirements established in the Airport and Airway Safety and Capacity Expansion Act of 1987 (discussed above).

The Fiscal Year 2000 Appropriations Act, PL-106-69, made permanent a requirement that no EAS subsidies will be provided to communities other than Alaska that are located fewer than 70 highway miles from the nearest large or medium hub airport, or that require a rate of subsidy per passenger in excess of \$200 unless the community is greater than 210 surface miles from the nearest large or medium hub airport.

The EAS statute was once again amended by Congress in *Vision 100—Century of Aviation Reauthorization Act*, PL 108-176, December 12, 2003. Congress increased the authorized appropriation, in addition to the \$50 million in overflight fees, from \$15 million to \$77 million. Moreover, Congress created community and regional choice programs that include the Alternate EAS Pilot Program and the Community Flexibility Pilot Program. To date, no community has applied to participate in either of these programs. Congress also created a code-sharing pilot program that gives the Secretary

the discretion to require air carriers providing subsidized EAS and major air carriers serving large hub airports to participate in code-share arrangements. On July 12, 2005, the Department issued a Notice requesting comments on and interest in participating in the code-sharing pilot program. Comments received by communities, air carriers and other interested parties were predominately against the concept of forcing air carriers into code-share agreements. Vision-100 also created the EAS local participation program in which 10 EAS communities located in proximity to hub airports are required to assume 10 percent of their EAS subsidy costs for a 4-year period. However, each subsequent Appropriation prohibited the Secretary from enacting that provision, and that prohibition has now been made permanent. Section 411, of Vision-100, created the National Commission on Small Community Air Service; however, this section has never been funded so it has not been established.

After the attacks of 9-11, all carriers suffered dramatic decreases in traffic and increases in revenue due to additional security requirements. Carriers not operating subsidized service pursuant to EAS contracts reduced service to reflect the lower traffic levels. However, carriers operating under EAS contracts could not adjust their service, because contracts specify that minimum service levels be provided. Moreover, those new security-screening burdens were particularly onerous on the short-haul service typical provided at subsidized communities, because short-haul passengers could readily drive to nearby hubs in lieu of being screened. Because the existing contracts were no longer remunerative, the Department granted program-wide relief by DOT Order 2001-2-11. Between October 1, 2001, and October 1, 2008, the number of subsidized EAS communities outside of Alaska increased from 74 to 107.

Finally, Section 409, of Vision-100 allowed communities that had lost their EAS eligibility due to a determination of their proximity to the nearest hub airport, to petition the Secretary to review such determination. (That provision was effective from the date of enactment backwards in time two years; thus, it no longer is in force.) In reviewing such a petition the Secretary was directed to determine the highway mileage between the community and the nearest medium hub airport or large hub airport by identifying the most commonly used route. If a community was deemed eligible to be reinstated in the program, such determination was only valid until September 30, 2007.
