

AGENDA

KANSAS LOTTERY GAMING FACILITY REVIEW BOARD

9 am, Thursday, July 31, 2008

Dodge City Civic Center  
2110 First Avenue  
Dodge City, Kansas

A. CALL TO ORDER

B. APPROVAL OF THE AGENDA

C. BOARD ITEMS

1. Regarding the proposed management contract between Dodge City Resort and Gaming Company and the Lottery Commission for the southwest gaming zone
  - a. Presentation by Kansas Lottery Commission (30 minutes)
  - b. Presentation by Dodge City Resort and Gaming Company (70 minutes)
  - c. Presentation by the Dodge City Commission and Ford County Commission, the endorsing authorities for the proposal (15 minutes)

The board reserves the right to question each entity, without any time limitation.

2. Regarding the proposed management contract between Butler National Service Corp. and the Lottery Commission for the south central gaming zone
  - a. Presentation by Kansas Lottery Commission (30 minutes)
  - b. Presentation by Butler National Service Corp. (70 minutes)
  - c. Presentation by the Dodge City Commission and Ford County Commission, the endorsing authorities for the proposal (15 minutes)

The board reserves the right to question each entity, without any time limitation.

D. OTHER MOTIONS

E. PUBLIC COMMENTS

Persons interested in making comments to the board must sign-up at the meeting site on the day of public comment. There will be an official sign up sheet at the meeting location, and it will be available 30 minutes prior to the start of the meeting. Names will not be taken less than 30 minutes prior to the start of the public comment session. Those wishing to speak must provide their name, address and, if affiliated with a specific group, identify that group. They also will be asked on behalf of which proposal or proposals they wish to speak or if they are making general comments. Each person will have two minutes to address the board and will be asked to give his or her name at the microphone so that it can be entered into the official record.

**F. STAFF REPORTS**

1. Executive Director
2. Chief Gaming Officer
3. Director of Administration

**G. ADJOURNMENT**

## **AGENDA PACKET CONTENTS**

1. Kansas Lottery – Executive Summary of Contract Differences
2. Dodge City Resort and Gaming – Executive Summary
3. Dodge City Resort and Gaming – Operations Matrix
4. Dodge City Resort and Gaming – Lottery Contract
5. Butler National Service Corp. – Executive Summary
6. Butler National Service Corp. – Operations Matrix
7. Butler National Service Corp. – Lottery Contract

**EXECUTIVE SUMMARY OF SUBSTANTIVE  
DIFFERENCES BETWEEN CONTRACTS IN THE  
SOUTHWEST GAMING ZONE  
(as compared to the Lottery’s template)**

<b>Contract Section</b>	<b>Boot Hill Gaming</b>	<b>Dodge City Casino and Resort</b>
1(a) -Definitions	Added definition of “ancillary lottery gaming facility operations” (identical to KELA definition, but this Manager they felt it should be included in the contract; only mentioned in this summary because it throws the numbering off for all other definitions)	(no substantive changes as compared to the template)
1(n) and 1(o) - Definitions	Specifically provides for possibility of temporary facilities (Section 1(o))	Specifically provides for possibility of temporary facilities (Section 1(n))
4 – Commencement Date Deadline	Commencement date deadline is no later than 12 months following the effective date for the “phase one interim [i.e., temporary] gaming facility” as set forth in Manager’s application.	Commencement date deadline set for <b>the later of</b> : 24 months after the manager is chosen; 18 months after Dodge City completes certain water and wastewater treatment infrastructure improvements; <b>or</b> , 24 months after all legal challenges to SB66 have been resolved
13 – Lottery Gaming Facility Construction	Again, specifically differentiates between the “phase one” temporary facilities and “phase two” permanent facility, which phase two must be completed no later than 38 months following the effective date	(no substantive changes)
14 – Construction related to Ancillary Facilities	(no substantive changes)	No later than 12 months after the first fiscal year in which the Manager generates <b>\$66.7 million</b> or more in gaming revenues, Manager will have invested at least an <u>additional</u> \$14 million in enterprise infrastructure. No later than 12 months after the first fiscal year in which the Manager generates <b>\$85 million</b> or more in gaming revenues, Manager will have invested a <u>total</u> of at least another \$32 million in infrastructure.

**EXECUTIVE SUMMARY OF SUBSTANTIVE  
DIFFERENCES BETWEEN CONTRACTS IN THE  
SOUTHWEST GAMING ZONE  
(as compared to the Lottery’s template)**

26 - Compensation	Standard 73% to Manager, but with a potential “incentive” rebate payment to the State. The calculation of this potential payment is rather complex. <u>See Exhibit G of Manager’s Contract, a copy of which is attached hereto.</u>	Standard 73% to Manager, but with the potential for reimbursement to the State if Manager’s compensation is “substantially higher than the earnings of other companies engaged in the gaming industry for facilities similar in size, character and other respects” to their facility. If during any <u>calendar year</u> “Lottery Gaming Facility Revenue exceeds \$95 million, not later than January 31 of the succeeding year, Manager will pay the Kansas Lottery ten percent (10%) of Manager’s net cash flow from the Lottery Gaming Enterprise, determined according to generally accepted accounting principles”.
28(b) – Payment of KRG C Expenses	(no substantive changes)	Revised to cite minimal language as set forth in the KELA as opposed to language recommended by KRG C and included in the template

**Executive Summary of: Dodge City Resort and Gaming Company, LLC  
Gaming Zone: Southwest**

1. Name of Facility:

Dodge City Casino Resort

2. Name of Manager:

Dodge City Resort and Gaming Company, LLC

3. Location of Facility:

Ford County

4. Investment in Infrastructure:

Temporary Lottery Gaming Facility -- \$20 million.

Phase 1 permanent Lottery Gaming Facility, Hotel, Conference Center, and other ancillary operations -- \$60.3 million (which includes approximately \$10 million from the investment in the temporary Lottery Gaming Facility).

**TOTAL INITIAL INVESTMENT -- \$70.3 MILLION**

Phase 2 mandatory expansion -- \$14 million.

Phase 3 mandatory expansion -- \$18 million.

**TOTAL INFRASTRUCTURE INVESTMENT - \$102.3 MILLION**

5. Principals/ Owners:

Long Branch Gaming Company LLC, Wichita, KS  
Ingenus Management & Consulting LLC, Brainerd, MN  
BDW Investments LLC, Wichita, KS  
Carol L. Murray Revocable Trust, Wichita, KS  
Dana M. Lies Revocable Trust, Wichita, KS  
Jay S. Maxwell Trust, Wichita, KS  
Lies Investment LP, Wichita, KS  
M. John Murray, Wichita, KS  
Vosburgh Properties LP, Wichita, KS  
Christopher M. Joseph, Topeka, KS  
Stephen M. Joseph, Wichita, KS  
Kenneth W. Mimmack, Brainerd, MN  
Lawrence E. Steckline Revocable Trust, Garden Plan, KS

6. Gaming Experience:

The senior executives of Ingenus Management and Consulting, LLC, have over 100 years experience in managing Class 3 gaming establishments.

7. Resolution of Endorsement Obtained:

Yes by Joint Resolution of Ford County Board of County Commissioners and Dodge City Commission.

8. Planning and Zoning Approval:

Yes by Conditional Use Permit Resolution of Ford County Board of County Commissioners.

9. Theme:

Wild West

10. Number of Slot Machines:

800

11. Number of Tables (positions):

20

12. Anticipated Gaming Revenue in Year 1, Year 2, Year 3:

\$44,558,728

\$46,118,283

\$47,732,423

13. Ancillary Facilities:

Hotel, Conference Center, Food and Beverage Venues, Cabaret and Lounge, Retail Outlets

14. Anticipated Ancillary Revenue Year 1, Year 2, Year 3:

\$10,783,647

\$11,302,780

\$11,779,957

15. Number of Gaming Visitors (local - within 100 miles of facility) per year:

612,726

16. Number of Gaming Visitors (tourists - further than 100 from facility) per year:

95,889

17. Number of Ancillary Visitors (local) per year:

28,379

18. Number of Ancillary Visitors (tourists) per year:

18,115

19. Number of Full Time Employees:

441

20. Projected Opening Date:

July 1, 2011

21. Length of Construction Period:

The construction schedule is 18 months total, not including the time required for the necessary water and sanitary sewer infrastructure (which is dependent on Dodge City increasing water and waste water treatment capacity).

22. Proposed Temporary Facility:

Yes. There is a 25,000 square foot facility in place on the land optioned by Dodge City Resort and Gaming Company, LLC, that will be retro-fitted to a temporary casino in about five months.

23. If yes, projected date of opening temporary facility:

May 1, 2009

a. Number of Slot Machines at temporary):

500

b. Number of Tables (positions) at temporary:

6 (36)

c. Anticipated Gaming Revenue at temporary:

Year 1 -- \$34,127,500

Year 2 -- \$34,980,688

24. Rewards Program:

The player rewards program is the primary vehicle to encourage loyalty to Dodge City Casino Resort. Utilizing a player tracking system, the Company will issue a magnetically encoded membership card, which the player inserts into any gaming device. In this manner consumer data is automatically gathered in a central database and allows the Company's marketing department to reward various segments of the customer population based on their spending behavior. The company will offer visible benefits to all segments of the player database coupled with an aggressive direct mail program that encourages frequent repeat visitation among local and day?trip markets and rewards loyalty among higher worth player segments.

25. Potential for Expansion of Gaming Floor:

The lottery gaming facility is designed to allow for gaming floor expansion to the east and west of the planned footprint. Under the Company's management contract with the Kansas Lottery, the Company is required to invest a total additional \$32 million in two expansion phases of the lottery gaming facility and ancillary operations within 12 months after two gaming revenue levels are reached.

Phase II: Implementation of the \$14,000,000 Phase II expansion of the lottery gaming enterprise is mandatory if specified revenue target is achieved. The Phase II plan expands the casino by about 400 gaming positions and the hotel by 100 rooms.

Phase III: Implementation of the \$18,000,000 Phase III expansion of the lottery gaming enterprise is mandatory if specified revenue target is achieved. The Phase III plan expands the casino with an enhanced poker room and adds 150 hotel rooms.

26. Other Gaming Operations:

The Company has no other gaming operations.

<b>Dodge City Resort &amp; Gaming Company, LLC</b>		
<b>TIMELINE OF PROJECT</b>	<b>DATE</b>	<b>COMMENTS OR DESCRIPTIONS</b>
Estimated date of awarding of License	12/1/2008	
Estimated date for approval of all building plans and variances	1/30/2009	Temporary Casino; permanent casino estimated at 2 months from completion of drawings.
Estimated date for Ground-breaking	3/16/2009	Temporary casino; for permanent casino this date is dependent upon the infrastructure required from Ford County/Dodge City for necessary sewage capacity. The construction schedule is 18-months total, not including the time required for the necessary sewage infrastructure.
If project is to be phased, please describe the phases		
Completion date for Phase 1	5/1/2009	Temporary Casino
Completion date for Phase 2	7/1/2011	Permanent Casino - 18 month construction schedule - pending necessary sewage capacity
If project is going to involve a temporary gaming facility, please note estimated date of opening of the temporary and the permanent facility		
Estimated Opening Date for temporary facility	5/1/2009	
Estimated Opening Date for permanent facility	7/1/2011	



Dodge City Resort & Gaming Company, LLC						
DESCRIPTION OF CASINO AND OTHER PHYSICAL FACILITIES						
	Square Footage	Units of Measure	COMMENTS			
<b>HOTEL</b>						
Total square footage	85,700	sf	The hotel facility rises out of the casino space and has great access to the gaming floor, but it also has its own entrance and reception area. The hotel lobby will also reflect Dodge City at the turn of the century accenting both its "wild west" history and the cattle drives and stockyards which helped create the unique fame and visibility for this small town in Kansas. The lobby is a two-story space with a delightful fireplace and an attractive curved staircase sweeping down from the second level. Millwork and dark wood paneling, tin ceilings, wood floors and period lighting will capture an image of the time period recreating an historic hotel lobby that could have come right off the stage of "Gun Smoke". Ambiance will be casual with elegant touches, overall service and design intended to meet a three-star level of hospitality. Hotel corridors will be a visual extension of the hotel lobby, but with simplified details. A colorful corridor carpet, durable wall finishes, appropriate lighting, artwork and wood panel guestroom entry doors will complete the guest experience as they arrive at their room.			
Total square footage of public areas	15,000	sf				
Number of standard rooms	114	rooms				
Number of premium rooms	11	rooms				
Square footage of standard room	404	sf				
Square footage of premium room (average)	608	sf				
<b>DESCRIPTION</b>						
The hotel has 114 standard king or double queen rooms and eleven suites. Comfortable beds will have bedcovers, dust skirts and colorful bed throws evoking a western theme. Guestroom furnishings will include carpet, vinyl accent walls, drapery or blinds, stone topped case goods, 32" flat screen televisions, comfortable seating and activity tables. Lighting and artwork will be used to create the "western" period imagery to support the overall project theming. Bathrooms will have ceramic tile floors, granite countertops, decorative & task lighting, framed mirrors, porcelain tubs, solid surface surrounds and curved shower curtains. Suite bathrooms will have Jacuzzi tubs and glass enclosed showers.						
Amenities in standard rooms (specify):						
Additional amenities in premium rooms (specify):						
Additional amenities in public areas (specify):						
<b>RESTAURANTS</b>						
Number of restaurants and eating outlets						
3						
each						
<b>Specify theme, avg daily covers, and avg spend per cover of each restaurant:</b>						
<b>THEME</b>						
Covers						
Avg Spend per cover						
<b>Overall Theming</b>	<b>Square Footage</b>	<b>SEATING CAPACITY</b>	These food and beverage spaces are all very colorful highlighted with authentic glass wall sconces, gas-like ceiling chandeliers and a fireplace with a large hearth featuring blacksmith ironwork and hanging tools and cookware.			
Steak House	4,345	178	This Steak House features elegant seating with wood floors and painted windows overlooking an exterior well landscaped plaza	175 \$	25.00	
Casual Dining Room	3,420	134	This Casual Dining Room features comfortable seating offering breakfast, lunch, and dinner menu items daily.	675 \$	10.00	
Deli	1,140	17	This quick-serve Deli offers fast sandwich and snack service for patrons in a hurry.	150 \$	7.50	

<b>Dodge City Resort &amp; Gaming Company, LLC</b>				
<b>DESCRIPTION OF CASINO AND OTHER PHYSICAL FACILITIES</b>				
<b>BARS AND LOUNGES</b>		Square Footage	Units of Measure	<b>COMMENTS</b>
Number of bars and lounges		1	70	
<b>Specify theme &amp; size of each bar</b>		Square Footage	Seating Capacity	<b>THEME</b>
Cabaret Bar		2,420	70	This high energy 70 seat lounge/cabaret provides beverage service with live stage entertainment.
<b>ENTERTAINMENT VENUES</b>		Square Footage	Seating Capacity	
Number of Entertainment Venues		2,420	70	
<b>Describe and note size of each venue</b>		Square Footage	Seating Capacity	<b>DESCRIPTION</b>
Cabaret Lounge		2,420	70	This high energy 70 seat lounge/cabaret provides beverage service with live stage entertainment.
<b>EVENT VENUES</b>		Square Footage	Seating Capacity	
Number of Event Venues		1	800-1200	
<b>Describe and note size of each venue</b>		Square Footage	Seating Capacity	<b>DESCRIPTION</b>
Multi-purpose Room		10,000	470-1340	Adjacent to the gaming floor and hotel is a 9,390 square foot multi-purpose room supported by a 3,615 square foot assembly (pre-function) space. This facility can be accessed either by parking in front of the casino and walking through the gaming floor or by parking directly to the north side of the facility where you can enter the assembly space directly. The décor for this space is Wild West rustic in a motif using the wood, lighting, artwork and accessories appropriate to the turn of the century era. Fully open the room can accommodate over 1,300 guests sitting theater style or 800 guests in a banquet setting. The room is designed so it can be broken up into four equal sized rooms or a variation of sizes depending what dividers are used. The room should serve well as both an entertainment space and as a convention/banquet space.
<b>CONVENTION FACILITIES</b>				
Square footage of Convention Space			9,390	
Square footage of Pre Function & Back of House Space			3,615	
Number of Break-out Rooms			4	<b>Assume the maximum number of possible break-out rooms</b>
<b>Capacity of Break-out rooms</b>		School-room seating	Theater seating	
Room #1		118	335	
Room #2		118	335	
Room #3		118	335	
Room #4		118	335	

<b>Dodge City Resort &amp; Gaming Company, LLC</b>			
<b>DESCRIPTION OF CASINO AND OTHER PHYSICAL FACILITIES</b>			
	<b>Square Footage</b>	<b>Units of Measure</b>	<b>COMMENTS</b>
<b>SPORTS AND RECREATION FACILITIES</b>			
<b>Description of Sports/Recreation Offerings Sporting Event Centers</b>	<b>Square Footage</b> 300,000	<b>Seating Capacity</b> tbd	<b>DESCRIPTION</b> In the master site plan 3 future sporting event centers are detailed.
<b>RETAIL OUTLETS</b>			
<b>Description and size of Retail Outlets</b>	<b>SQUARE FOOTAGE</b>		<b>DESCRIPTION</b>
Hotel gift shop	720		Gift Shop carrying magazines, sundries, candy and cigarettes.
Convenience Store	705		Convenience store offering snacks, beverages, etc.
Apparel & casino gift shop	700		Apparel Store offering souvenir baseball caps, tees shirts, jackets, etc.
Boutique Retail Outlets	tbd	tbd	In the master site plan various retail boutique outlets are detailed.
Retail Outlets	tbd	tbd	In the master site plan numerous large-scale retail outlets are detailed.
Travel/Truck Stop & C-Store	tbd	tbd	In the master site plan a full scale truck stop/travel center is detailed.
<b>PARKING FACILITIES</b>			
<b>Number of surface parking spaces</b>		1,500	
<b>Total paved square footage for surface parking</b>		562,500	<b>Include ingress and egress coverage</b>
<b>Number of enclosed parking spaces</b>			<b>Include all square footage within parking structures</b>
<b>Total square footage for enclosed parking</b>		150	
<b>Number of valet parking spaces</b>		250	
<b>Number of employee parking spaces</b>			
<b>Number of parking spaces for Recreational Vehicles</b>		100	In the master site plan, a large-scale, full-service RV Park is planned which would add an additional 150-225 sites for RV overnight parking.

**VISITATION AND SPENDING PATTERNS DURING OPERATIONS PHASE OF LOTTERY GAMING FACILITY**

**Dodge City Resort & Gaming Company, LLC**

Please submit 5-year projections, starting from the date of opening

**PROJECTED DATE OF OPENING:**

	Unit of Measure	Temporary Casino					Permanent Casino					
		2009	2010	2011	2012	2013	2014	2015				
<b>RESIDENTS</b>												
<b>Resident population (within 100 miles)</b>												
Number of adult residents	#	283,791	283,791	283,791	286,629	289,495	292,390	295,314				
Residential gaming penetration rate *	%	30.8%	30.8%	30.8%	30.9%	31.0%	31.1%	31.2%				
Market penetration rate**	%	21.6%	21.6%	21.6%	21.7%	21.7%	21.8%	21.9%				
Visits per gaming resident per year	#	10.0	10.0	10.0	10.1	10.2	10.3	10.4				
Total resident gaming visits per year	#	612,726	612,726	612,726	627,071	641,682	656,564	671,721				
Resident non-gaming visits per year***	#	28,379	28,379	28,379	28,663	28,950	29,239	29,531				
Total Residential visits per year	#	641,105	641,105	641,105	655,734	670,632	685,803	701,253				
Residential gaming spend per visit	\$	40	41	51	52	52	52	52				
Residential gamer non-gaming spend per diem	\$	19,204	19,204	19,204	20,128	20,978	21,797	22,589				
Per diem gaming resident	\$	69,439	71,587	89,484	92,616	95,857	98,254	100,710				
Per diem non-gaming resident	\$	2,182	2,249	11,522	12,077	12,587	13,078	13,554				
Total Residential Gaming Spend per annum	\$	25,345,361	26,129,238	32,661,548	33,804,701	34,987,866	35,862,563	36,759,127				
Total Residential Non-Gaming Spend per annum	\$	796,350	820,979	4,205,622	4,408,084	4,594,183	4,773,597	4,947,076				
<b>TOURISTS (residence more than 100 miles away)</b>												
Tourist gaming visits per year*	#	75,605	77,944	181,149	182,961	184,790	186,638	188,504				
Tourist non-gaming visits per year**	#	42,723	47,470	95,889	96,848	97,817	98,795	99,783				
Total Tourist visits per year	#	7,561	7,794	18,115	18,296	18,479	18,664	18,850				
Tourist gaming spend per diem	\$	24,061	24,251	32,595	33,736	34,917	35,790	36,684				
Tourist gamer non-gaming spend per diem	\$	613	562	13,516	14,167	14,765	15,342	15,899				
Tourist non-gamer spend per diem	\$	204	187	4,505	4,722	4,922	5,114	5,300				
Total Tourist Gaming Spend per annum	\$	8,782,139	8,851,450	11,897,180	12,313,582	12,744,557	13,063,171	13,389,750				
Total Tourist Non-Gaming Spend per annum	\$	298,290	273,660	6,578,025	6,894,696	7,185,774	7,466,395	7,737,734				
<b>TOTAL VISITATION PER YEAR</b>	#	691,389	696,369	755,109	770,878	786,928	803,262	819,886				
<b>TOTAL GAMING SPEND PER YEAR</b>	\$	34,127,500	34,980,688	44,558,728	46,118,283	47,732,423	48,925,734	50,148,877				
<b>TOTAL NON-GAMING SPEND PER YEAR</b>	\$	1,094,640	1,094,639	10,783,647	11,302,780	11,779,957	12,239,992	12,684,809				

VISITATION & SPENDING

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**VISITATION AND SPENDING PATTERNS DURING OPERATIONS PHASE OF LOTTERY GAMING FACILITY**

**Dodge City Resort & Gaming Company, LLC**

Please submit 5-year projections, starting from the date of opening

**PROJECTED DATE OF OPENING:**

5/1/2009 temp casino; 7/1/2011 perm casino

	Unit of Measure	Permanent Casino										
		2009	2010	2011	2012	2013	2014	2015				
<b>Tourist Visitors</b>												
Total number of tourists	#	75,605	77,944	181,149	182,961	184,790	186,638	188,504				
Leisure tourists	#	49,144	50,663	117,747	118,924	120,114	121,315	122,528				
Business/conference tourists	#	26,462	27,280	63,402	64,036	64,677	65,323	65,977				
Leisure tourists - Please specify top five source markets												
Other Kansas	#	27,029	27,865	64,761	65,408	66,062	66,723	67,390				
Oklahoma	#	12,286	12,666	29,437	29,731	30,028	30,329	30,632				
Nebraska	#	1,966	2,027	4,710	4,757	4,805	4,853	4,901				
Colorado	#	2,457	2,533	5,887	5,946	6,006	6,066	6,126				
Missouri	#	2,211	2,280	5,299	5,352	5,405	5,459	5,514				
Other	#	3,194	3,293	7,654	7,730	7,807	7,885	7,964				
Business/Conference Tourists - Please specify top five source markets												
Other Kansas	#	17,200	17,732	41,211	41,624	42,040	42,460	42,885				
Oklahoma	#	3,969	4,092	9,510	9,605	9,701	9,798	9,896				
Nebraska	#	1,058	1,091	2,536	2,561	2,587	2,613	2,639				
Colorado	#	1,455	1,500	3,487	3,522	3,557	3,593	3,629				
Missouri	#	1,588	1,637	3,804	3,842	3,881	3,919	3,959				
Other	#	1,191	1,228	2,853	2,882	2,910	2,940	2,969				
<b>HOTEL GUESTS</b>												
Number of hotel rooms	#	-	-	125	125	125	125	125				
Occupancy rate	%	0.0%	0.0%	73.1%	76.2%	78.6%	80.6%	82.5%				
Visitors per room	#	-	-	1.5	1.5	1.5	1.5	1.5				
Total hotel guests per year	#	-	-	50,028	52,149	53,792	55,161	56,461				
Average room rate	\$	-	-	123.6	127.7	131.6	135.4	138.7				
Percentage of hotel guests who are residents (within 100 miles)	%	0%	0%	43%	42%	41%	40%	39%				
Percentage of hotel guests who are tourists	%	0%	0%	57%	58%	59%	60%	61%				
Total hotel revenues per year	\$	-	-	4,123,332	4,438,609	4,719,066	4,979,229	5,219,500				
Total gaming spend by hotel guests per year	\$	-	-	6,683,809	6,917,742	7,159,863	7,338,860	7,522,332				
Total non-gaming non-hotel spend by hotel guests per year	\$	-	-	1,617,547	1,695,417	1,766,994	1,835,999	1,902,721				
<b>TOTAL SPEND BY HOTEL GUESTS PER YEAR</b>	\$	-	-	12,424,688	13,051,768	13,645,923	14,154,088	14,644,553				
<b>LEISURE HOTEL GUESTS</b>												
Visitors per room	#	-	-	2	2	2	2	2				
Total leisure guests per year	#	-	-	32,518	33,897	34,965	35,854	36,700				
Average room rate	\$	-	-	95	97	99	101	103				
Percentage of leisure guests who are residents	%	0%	0%	30%	30%	29%	29%	28%				

VISITATION & SPENDING

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**VISITATION AND SPENDING PATTERNS DURING OPERATIONS PHASE OF LOTTERY GAMING FACILITY**

**Dodge City Resort & Gaming Company, LLC**

Please submit 5-year projections, starting from the date of opening

PROJECTED DATE OF OPENING:	Unit of Measure	Temporary Casino					Permanent Casino				
		2009	2010	2011	2012	2013	2014	2015			
Percentage of leisure guests who are tourists	%	0%	0%	70%	71%	71%	72%	72%			
Total leisure hotel revenues per year	\$	-	-	1,544,609	1,642,314	1,727,921	1,807,327	1,886,930			
Total gaming spend by leisure guests per year	\$	-	-	3,073,771	3,268,205	3,438,564	3,596,580	3,754,990			
Total other non-gaming leisure spend by leisure guests per year	\$	-	-	737,705	784,369	825,255	863,179	901,198			
<b>TOTAL SPEND BY LEISURE HOTEL GUESTS PER YEAR</b>	\$	-	-	5,356,085	5,694,889	5,991,740	6,267,086	6,543,118			
<b>BUSINESS HOTEL GUESTS</b>											
Visitors per room	#	-	-	1	1	1	1	1			
Total business hotel guests per year	\$	-	-	17,510	18,252	18,827	19,306	19,761			
Average room rate	\$	-	-	147	153	159	164	169			
Percentage of business hotel guests who are residents	%	0%	0%	20%	20%	19%	19%	18%			
Percentage of business hotel guests who are tourists	%	0%	0%	80%	81%	81%	82%	82%			
Total business hotel revenues per year	\$	-	-	2,578,723	2,796,295	2,991,145	3,171,902	3,332,570			
Total gaming spend by business hotel guests per year	\$	-	-	1,108,851	1,202,407	1,286,192	1,363,918	1,433,005			
Total other non-gaming spend by business hotel guests per year	\$	-	-	887,081	961,925	1,028,954	1,091,134	1,146,404			
<b>TOTAL SPEND BY BUSINESS HOTEL GUESTS PER YEAR</b>	\$	-	-	4,574,655	4,960,627	5,306,290	5,626,955	5,911,980			

Separate from Leisure Hotel Spend

Separate from Business Hotel Spend

CHANGES IN SPENDING PATTERNS DUE TO LOTTERY GAMING FACILITY DURING OPERATIONS PHASE										
Dodge City Resort & Gaming Company, LLC	Unit of Measure	Temporary Casino					Permanent Casino			Note: Resident visitors here includes both Leisure and Business Resident visitors
		2009	2010	2011	2012	2013	2014	2015		
Please submit 5-year projections, starting from the date of opening										
<b>PROJECTED DATE OF OPENING:</b>										
	5/1/2009 temp casino, 7/1/2011 perm casino									
<b>Annual Spending by Residents at the Lottery Gaming Facility</b>		26,141,711	26,950,217	36,867,170	38,212,786	39,582,049	40,636,160	41,706,202		
<b>Total spending by residents per year (Note: distinguish between residents who gamble (Resident Gaming Visitors) and residents who do not gamble (Resident Non-Gaming Visitors))</b>										
<b>Resident Gaming Visitors</b>										
Accommodation	\$	-	-	816,539	845,118	874,697	896,564	918,978		
Food & Beverage	\$	1,241,923	1,280,333	1,600,416	1,656,430	1,714,405	1,757,266	1,801,197		
Retail	\$	-	-	359,277	371,852	384,867	394,488	404,350		
Gaming	\$	24,103,438	24,848,905	29,885,316	30,931,302	32,013,897	32,814,245	33,634,601		
Tickets to events, concerts, shows	\$	-	-	-	-	-	-	-		
Other spending	\$	-	-	-	-	-	-	-		
<b>TOTAL spending by gaming visitors (residents)</b>	\$	25,345,361	26,129,238	32,661,548	33,804,701	34,987,866	35,862,563	36,759,127		
<b>Resident Non-Gaming Visitors</b>										
Accommodation	\$	-	-	1,606,548	1,683,888	1,754,978	1,823,514	1,889,783		
Food & Beverage	\$	796,360	820,979	2,136,456	2,239,307	2,333,845	2,424,987	2,513,114		
Retail	\$	-	-	462,618	484,889	505,360	525,096	544,178		
Tickets to events, concerts, shows	\$	-	-	-	-	-	-	-		
Ticketed attractions	\$	-	-	-	-	-	-	-		
Other spending	\$	-	-	-	-	-	-	-		
<b>TOTAL spending by non gaming visitors (residents)</b>	\$	796,360	820,979	4,205,622	4,408,084	4,594,183	4,773,597	4,947,076		
<b>Total Spending by Residents</b>										
Gaming	\$	25,345,361	26,129,238	32,661,548	33,804,701	34,987,866	35,862,563	36,759,127		
Non Gaming	\$	796,360	820,979	4,205,622	4,408,084	4,594,183	4,773,597	4,947,076		
<b>TOTAL SPENDING BY RESIDENTS AT LOTTERY GAMING FACILITY</b>	\$	26,141,711	26,950,217	36,867,170	38,212,786	39,582,049	40,636,160	41,706,202		

CHANGES IN SPENDING PATTERNS DUE TO LOTTERY GAMING FACILITY DURING OPERATIONS PHASE											
	Unit of Measure	Temporary Casino			Permanent Casino						
		2009	2010	2011	2012	2013	2014				
<b>Dodge City Resort &amp; Gaming Company, LLC</b>											
<i>Please submit 5-year projections, starting from the date of opening</i>											
<b>PROJECTED DATE OF OPENING:</b>	5/1/2009 temp casino, 7/1/2011 perm casino										
<b>SOURCES OF EXPENDITURES AT LOTTERY GAMING FACILITY: For the following questions, provide your best estimates, based on your economic models</b>											
Percent of Spend that would have occurred within the region*	%	2	2	2	2	2	2	2	2	2	2
Percent of Spend that would have taken place outside the region**	%	98	98	98	98	98	98	98	98	98	98
Percent of Spend that comes from new income generated in the region***	%	95	95	95	95	95	95	95	95	95	95
	No.										
	No.										
<b>Tourist Gaming Visitors</b>											
Accommodation	\$	-	-	297,430	307,840	318,614	326,579	334,744			
Food & Beverage	\$	430,325	433,721	582,962	603,365	624,483	640,095	656,098			
Retail	\$	-	-	130,869	135,449	140,190	143,695	147,287			
Gaming	\$	8,351,814	8,417,729	10,885,920	11,266,927	11,661,270	11,952,801	12,251,621			
Tickets to events, concerts, shows	\$	-	-	-	-	-	-	-			
Other spending	\$	-	-	-	-	-	-	-			
TOTAL spending by gaming visitors (tourists)	\$	8,782,139	8,851,450	11,897,180	12,313,582	12,744,557	13,063,171	13,389,750			
<b>Tourist Non-Gaming Visitors</b>											
Accommodation	\$	-	-	2,512,805	2,633,774	2,744,966	2,852,163	2,955,814			
Food & Beverage	\$	298,290	273,660	3,341,637	3,502,505	3,650,373	3,792,929	3,930,769			
Retail	\$	-	-	723,583	758,417	790,435	821,303	851,151			
Gaming	\$	-	-	-	-	-	-	-			
Tickets to events, concerts, shows	\$	-	-	-	-	-	-	-			
Other spending	\$	-	-	-	-	-	-	-			
TOTAL spending by non-gaming visitors (tourists)	\$	298,290	273,660	6,578,025	6,894,696	7,185,774	7,466,395	7,737,734			
<b>TOTAL SPENDING BY TOURISTS AT LOTTERY GAMING FACILITY</b>											
		9,080,429	9,125,110	18,475,205	19,208,277	19,930,331	20,529,566	21,127,484			
<b>SOURCES OF EXPENDITURES AT LOTTERY GAMING FACILITY: For the following questions, provide your best estimates, based on your economic models</b>											
What proportion of Tourist visitors would not have visited the region if the Lottery Gaming Facility did not exist?	%	10	10	10	10	10	10	10	10	10	10
What proportion of Tourist visitor spending would not have occurred within the region if the Lottery Gaming Facility did not exist?	%	95	95	95	95	95	95	95	95	95	95
Please provide your estimate of induced spending by resident visitors to the LGF (import substitution)	\$	8,508,475	8,714,576	13,368,842	13,870,983	14,376,174	14,775,566	15,178,489			
Please provide your estimate of direct spending by tourist visitors to the LGF (newly injected spending)	\$	10,277,377	10,327,947	20,910,537	21,740,240	22,557,472	23,235,696	23,912,429			

CHANGES IN SPENDING PATTERNS DUE TO LOTTERY GAMING FACILITY DURING OPERATIONS PHASE										
Dodge City Resort & Gaming Company, LLC	Unit of Measure	Temporary Casino			Permanent Casino			2015		
		2009	2010	2011	2012	2013	2014			
Please submit 5-year projections, starting from the date of opening	5/1/2009 temp casino; 7/1/2011 perm casino									
<b>PROJECTED DATE OF OPENING:</b>										
Please provide your estimate of induced spending by tourist visitors to the LGF (newly injected spending to the region but not at the LGF)	\$	665,480	668,755	1,353,998	1,407,723	1,460,640	1,504,557	1,548,376		
Please provide your estimate of an appropriate expenditure multiplier for the region	#	1.6	1.6	1.6	1.6	1.6	1.6	1.6		
<b>TOTAL DIRECT, INDIRECT, AND INDUCED INCREASES IN SPENDING IN THE REGION, PER YEAR (SPEND)</b>	\$	54,673,473	55,786,605	90,975,752	94,440,009	97,906,666	100,681,545	103,472,980		
<b>ESTIMATED AGGREGATE PERSONAL INCOME IN THE REGION (API)</b>	\$	5,643,496,216	5,878,641,892	6,123,585,304	6,368,528,716	6,623,269,865	6,888,200,659	7,163,728,686		
<b>RATIO OF SPEND/API</b>	#	1.0%	0.9%	1.5%	1.5%	1.5%	1.5%	1.4%		
<b>Instructions to Proposers</b>										
The intent of this section is to provide a foundation to estimate the amount of new direct spending (from import substitution by residents and newly injected spending by tourists), and then to estimate the indirect increases in expenditure brought about in the region via a regional expenditure multiplier process										
<b>INDUCED SPENDING BY RESIDENTS</b> is incremental spending that results from residents who are in the region because of the LGF (rather than visiting other regions) and the additional expenditures they make in the region as a result. (This does not include substitution or "cannibalization" of spending that would have shifted from other businesses in the region to the LGF.)										
<b>INDUCED SPENDING</b> is incremental spending that results from tourists who stay longer in the region because of the LGF and the additional expenditures they make in the region, not at the LGF, as a result of their longer stays.										

EMPLOYMENT INFORMATION DURING OPERATIONS' PHASE OF LOTTERY GAMING FACILITY												
<b>Dodge City Resort &amp; Gaming Company, LLC</b> Please submit 5-year projections, starting from the date of opening <b>PROJECTED DATE OF OPENING:</b>	Unit of Measure	Temporary Casino					Permanent Casino					
		2009	2010	2011	2012	2013	2014	2015				
<b>No. of FTE Workers employed within the Lottery Gaming Facility</b>	#											
<b>General and Administrative</b>												
Professionals, Managers, Executives and Technicians	#	2.0	2.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0
Clerical Workers, Sales and Service Workers	#	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
Production and Transport Operators, Laborers and Cleaners	#	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0
<b>Casino</b>												
Professionals, Managers, Executives and Technicians	#	17.0	17.0	20.5	20.5	20.5	20.5	20.5	20.5	20.5	20.5	20.5
Dealers and game supervisors	#	63.0	63.0	75.0	75.0	75.0	75.0	75.0	75.0	75.0	75.0	75.0
Clerical Workers, Sales and Hosts	#	41.0	41.0	41.0	41.0	41.0	41.0	41.0	41.0	41.0	41.0	41.0
Security and surveillance	#	50.0	50.0	59.0	59.0	59.0	59.0	59.0	59.0	59.0	59.0	59.0
Cleaners	#	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Other	#	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
<b>Hotel</b>												
Professionals, Managers, Executives and Technicians	#	0.0	0.0	6.0	6.0	6.0	6.0	6.0	6.0	6.0	6.0	6.0
Clerical Workers, Sales and Marketing Staff	#	0.0	0.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0
Room cleaners, housekeeping supervisors	#	0.0	0.0	16.5	16.5	16.5	16.5	16.5	16.5	16.5	16.5	16.5
Other	#	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
<b>Food and Beverage</b>												
Professionals, Chefs, Managers, Executives and Technicians	#	3.0	3.0	4.0	4.0	4.0	4.0	4.0	4.0	4.0	4.0	4.0
Clerical Workers, Sales and Service Workers	#	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Food preparers and servers, Hosting staff, and Cleaners	#	41.0	41.0	85.5	85.5	85.5	85.5	85.5	85.5	85.5	85.5	85.5
Other	#	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

EMPLOYMENT INFORMATION DURING OPERATIONS' PHASE OF LOTTERY GAMING FACILITY												
<b>Dodge City Resort &amp; Gaming Company, LLC</b> Please submit 5-year projections, starting from the date of opening <b>PROJECTED DATE OF OPENING:</b>	Unit of Measure  5/1/2009 temp casino; 7/1/2011 perm casino	Temporary Casino			Permanent Casino							
		2009	2010	2011	2012	2013	2014	2015				
<b>No. of FTE Workers employed within the Lottery Gaming Facility</b>	#											
<b>Other (including convention, entertainment, retail, etc.)</b>												
Professionals, Managers, Executives and Technicians	#	12.0	12.0	18.0	18.0	18.0	18.0	18.0	18.0	18.0	18.0	18.0
Clerical Workers, Compliance, Accounting, and Sales	#	40.0	40.0	48.0	48.0	48.0	48.0	48.0	48.0	48.0	48.0	48.0
Human Resources	#	3.0	3.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0
Other	#	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
<b>Others (please specify)</b>												
Professionals, Managers, Executives and Technicians	#	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
Clerical Workers, Sales and Service Workers	#	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Production and Transport Operators, Laborers and Cleaners	#	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0
<b>TOTAL EMPLOYED BY THE LGF</b>	#	316.0	316.0	440.5	440.5	440.5	440.5	440.5	440.5	440.5	440.5	440.5
<b>FTE=full time equivalent</b>												

<b>PAYROLL INFORMATION DURING OPERATIONS' PHASE OF LOTTERY GAMING FACILITY</b>											
<b>Dodge City Resort &amp; Gaming Company, LLC</b>											
Please submit 5-year projections, starting from the date of opening											Unit of Measure
<b>PROJECTED DATE OF OPENING:</b>											
5/1/2009 temp casino; 7/1/2011 perm casino											
			Temporary Casino			Permanent Casino					
			2009	2010	2011	2012	2013	2014	2015		
<b>Total Payroll of Workers employed within the Lottery Gaming Facility, including cost of paid benefits such as health insurance, unemployment insurance, worker's compensation, retirement.</b>											
<b>General and Administrative</b>											
Professionals, Managers, Executives and Technicians											
	262,967	270,330	394,450	405,495	416,848	428,520	440,519				
Clerical Workers, Sales and Service Workers											
	56,250	57,825	59,444	61,109	62,820	64,579	66,387				
Production and Transport Operators, Laborers and Cleaners											
	54,340	55,862	57,426	59,034	60,687	62,386	64,133				
<b>Casino</b>											
Professionals, Managers, Executives and Technicians											
	895,620	920,697	1,053,670	1,083,173	1,113,502	1,144,680	1,176,731				
Dealers and game supervisors											
	1,539,197	1,539,197	1,810,820	1,861,523	1,913,646	1,967,228	2,022,310				
Clerical Workers, Sales and Hosts											
	1,190,490	1,223,824	1,258,091	1,293,317	1,329,530	1,366,757	1,405,026				
Security and surveillance											
	1,498,741	1,540,706	1,763,225	1,812,595	1,863,348	1,915,522	1,969,156				
Cleaners											
	0	0	0	0	0	0	0				
Other											
	0	0	0	0	0	0	0				
<b>Hotel</b>											
Professionals, Managers, Executives and Technicians											
	0	0	274,250	281,929	289,823	297,938	306,280				
Clerical Workers, Sales and Marketing Staff											
	0	0	411,840	423,372	435,226	447,412	459,940				
Room cleaners, housekeeping supervisors											
	0	0	447,005	459,521	472,388	485,615	499,212				
Other											
	0	0	0	0	0	0	0				

<b>PAYROLL INFORMATION DURING OPERATIONS' PHASE OF LOTTERY GAMING FACILITY</b>											
<b>Dodge City Resort &amp; Gaming Company, LLC</b>											
Please submit 5-year projections, starting from the date of opening											Unit of Measure
<b>PROJECTED DATE OF OPENING:</b>											5/1/2009 temp casino; 7/1/2011 perm casino
			Temporary Casino			Permanent Casino					
			2009	2010	2011	2012	2013	2014	2015		
<b>Total Payroll of Workers employed within the Lottery Gaming Facility, including cost of paid benefits such as health insurance, unemployment insurance, worker's compensation, retirement.</b>											
<b>Food and Beverage</b>											
Professionals, Chefs, Managers, Executives and Technicians											
			168,844	173,571	225,125	231,429	237,908	244,570	251,418		
Clerical Workers, Sales and Service Workers											
			0	0	0	0	0	0	0		
Food preparers and servers, Hosting staff, and Cleaners											
			799,240	821,619	1,598,480	1,643,237	1,689,248	1,736,547	1,785,170		
Other											
			0	0	0	0	0	0	0		
<b>Other (including convention, entertainment, retail, etc.)</b>											
Professionals, Managers, Executives and Technicians											
			546,236	561,531	840,363	863,893	888,082	912,948	938,511		
Clerical Workers, Compliance, Accounting, and Sales											
			1,108,402	1,139,438	1,385,503	1,424,297	1,464,177	1,505,174	1,547,319		
Human Resources											
			193,440	198,856	204,424	210,148	216,032	222,081	228,300		
Other											
			0	0	0	0	0	0	0		
<b>Others</b>											
Professionals, Managers, Executives and Technicians											
			71,500	73,502	75,560	77,676	79,851	82,086	84,385		
Clerical Workers, Sales and Service Workers											
			0	0	0	0	0	0	0		
Production and Transport Operators, Laborers and Cleaners											
			1,043,770	1,072,996	1,103,039	1,133,925	1,165,674	1,198,313	1,231,866		
<b>TOTAL PAYROLL (INCLUDING BENEFITS) FOR THE LGF</b>			9,429,037	9,649,952	12,962,715	13,325,671	13,698,790	14,082,356	14,476,662		

**Consolidated Pro-Forma Income and Expenditure Statement for the LGF**

	Unit of Measure 5/1/2009 temp casino; 7/1/2011 perm casino	Temporary Casino					Permanent Casino			Comments
		2009	2010	2011	2012	2013	2014	2015		
<i>Amounts in thousands of dollars</i>										
<i>Please submit 5-year projections, starting from the date of opening</i>										
<b>PROJECTED DATE OF OPENING:</b>										
<b>REVENUE (from below)</b>										
Casino	34,127.500	34,980.688	44,558.728	46,118.283	47,732.423	48,925.734	50,148.877			
Hotel	-	-	4,123.332	4,438.609	4,719.066	4,979.229	5,219.500			
Food	427.563	440.991	4,031.215	4,160.227	4,292.807	4,429.280	4,570.005			
Beverage	667.077	653.648	1,441.984	1,479.553	1,508.913	1,538.060	1,567.007			
Convention	-	-	-	-	-	-	-			
Entertainment	-	-	-	-	-	-	-			
Retail	-	-	1,187.116	1,224.391	1,259.171	1,293.423	1,328.297			
Other	-	-	-	-	-	-	-			
<b>Gross Revenues</b>	35,222.140	36,075.327	55,342.375	57,421.063	59,512.380	61,165.726	62,833.686			
less: cost of sales	304.667	306.089	2,379.325	2,452.699	2,524.039	2,596.406	2,670.525			
<b>Gross Margin</b>	34,917.473	35,769.238	52,963.050	54,968.364	56,988.341	58,569.320	60,163.161			
<b>DEPARTMENTAL EXPENSES (from below)</b>	14,296.350	14,672.551	21,866.002	22,559.704	23,259.679	23,926.349	24,605.046			
<b>DEPARTMENTAL INCOME</b>	20,621.123	21,096.687	31,097.048	32,408.660	33,728.662	34,642.971	35,558.115			
<b>GENERAL AND ADMINISTRATIVE EXPENDITURE</b>	1,610.509	1,651.242	2,286.319	2,369.016	2,452.728	2,520.332	2,588.799			
Advertising and Promotion	25.085	25.791	31.050	31.923	32.821	33.744	34.693			
Bad debt expense	29.049	28.793	171.756	178.740	185.181	191.500	197.711			
Complementary expense (not reported in departments)	2,906.510	2,906.510	6,158.526	6,158.526	6,158.526	6,096.941	6,035.972			
Depreciation and Amortization	107.764	110.712	158.374	163.277	168.325	172.869	177.535			
Equipment rental or lease	1,722.336	1,564.256	3,795.094	3,506.735	3,194.490	2,856.345	2,490.109			
Interest expense	418.756	418.756	1,040.636	1,040.636	1,040.636	1,040.636	1,040.636			All taxes, including property
Taxes - Real Estate	9,214.425	9,444.786	12,030.857	12,451.936	12,887.754	13,209.948	13,540.197			Net Income to Government
Taxes and Licenses - Other	278.184	284.923	437.094	453.512	470.029	483.087	496.260			All utilities, including energy, water, sewer, etc
Utilities (other than Energy Expenses)	1,953.281	2,002.766	3,264.344	3,398.215	3,527.737	3,644.624	3,759.657			
Other General and Administrative expenses	18,265.899	18,438.534	29,374.049	29,752.517	30,118.227	30,250.025	30,361.569			
<b>TOTAL GENERAL AND ADM. EXPENDITURE</b>	2,355.224	2,658.153	1,722.998	2,656.144	3,610.435	4,392.947	5,196.546			This amount represents fees to Manager & Developer
<b>NET INCOME BEFORE FEDERAL INCOME TAX</b>										

**Dodge City Resort & Gaming Company, LLC**

**Consolidated Pro-Forma Income and Expenditure Statement for the LGF**

Amounts in thousands of dollars

Please submit 5-year projections, starting from the date of opening

**PROJECTED DATE OF OPENING:**

Unit of Measure  
5/1/2009 temp  
casino; 7/1/2011  
perm casino

	Temporary Casino		Permanent Casino		Comments		
	2009	2010	2011	2012		2013	2014
<b>DEPARTMENTAL INCOME STATEMENTS</b>							
<b>CASINO DEPARTMENT</b>							
<b>REVENUE</b>							
Pit Revenue (including keno, bingo)	2,190,000	2,244,750	6,149,105	6,364,323	6,587,074	6,751,751	6,920,545
Electronic gaming machines	31,937,500	32,735,938	38,409,623	39,753,960	41,145,349	42,173,983	43,228,332
Poker and other non-banked card games	-	-	-	-	-	-	-
<b>TOTAL REVENUE</b>	34,127,500	34,980,688	44,558,728	46,118,283	47,732,423	48,925,734	50,148,877
<b>DEPARTMENTAL EXPENSES</b>							
Complementary expenses	397,932	394,418	2,352,807	2,448,474	2,536,710	2,623,266	2,708,345
Gaming taxes and licenses							
Preferred guest expenses	1,277,500	1,309,438	1,536,385	1,590,158	1,645,814	1,686,959	1,729,133
Payroll taxes	1,357,344	1,391,277	1,632,409	1,689,543	1,748,677	1,792,394	1,837,204
Payroll - Employee Benefits	699,921	719,607	769,745	791,394	813,652	836,535	860,063
Payroll - Other Employees	1,904,799	1,958,371	2,180,315	2,241,636	2,304,682	2,369,501	2,436,143
Other Departmental Expenses	6,970,544	7,166,591	7,886,256	8,108,057	8,336,096	8,570,549	8,811,595
<b>TOTAL EXPENSES</b>	783,924	803,523	1,252,059	1,295,879	1,341,232	1,374,764	1,409,134
<b>TOTAL CASINO INCOME</b>	13,391,964	13,743,224	17,609,975	18,165,141	18,726,863	19,253,969	19,791,618
<b>HOTEL DEPARTMENT</b>							
<b>REVENUE</b>							
Room Sales	20,735,536	21,237,463	26,948,753	27,953,142	29,005,560	29,671,765	30,357,259
Complementary rooms	1,904,799	1,958,371	2,180,315	2,241,636	2,304,682	2,369,501	2,436,143
<b>TOTAL REVENUE</b>	-	-	3,546,066	3,817,204	4,058,397	4,282,137	4,488,770
<b>DEPARTMENTAL EXPENSES</b>							
Payroll taxes	-	-	577,266	621,405	660,669	697,092	730,730
Payroll - Employee Benefits	-	-	4,123,332	4,438,609	4,719,066	4,979,229	5,219,500
Payroll - Other Employees	-	-	-	-	-	-	-
Other Departmental Expenses	-	-	-	-	-	-	-
<b>TOTAL EXPENSES</b>	-	-	1,602,555	1,665,465	1,726,234	1,786,190	1,845,398
<b>TOTAL HOTEL INCOME</b>	-	-	2,520,777	2,773,144	2,992,832	3,193,039	3,374,102

**Dodge City Resort & Gaming Company, LLC**

**Consolidated Pro-Forma Income and Expenditure Statement for the LGF**

*Amounts in thousands of dollars*

*Please submit 5-year projections, starting from the date of opening*

**PROJECTED DATE OF OPENING:**

Unit of Measure  
5/1/2009 temp  
casino; 7/1/2011  
perm casino

	2009	2010	2011	2012	2013	2014	2015	Comments
	Temporary Casino				Permanent Casino			
<b>FOOD DEPARTMENT</b>								
<b>REVENUE</b>								
Food Sales	427.563	440.991	4,031.215	4,160.227	4,292.807	4,429.280	4,570.005	
Complementary Food Sales								
<b>TOTAL REVENUE</b>	427.563	440.991	4,031.215	4,160.227	4,292.807	4,429.280	4,570.005	
Cost of sales	146.593	151.197	1,384.711	1,428.681	1,473.935	1,520.556	1,568.635	
<b>GROSS MARGIN</b>	280.970	289.794	2,646.504	2,731.547	2,818.872	2,908.724	3,001.371	
<b>DEPARTMENTAL EXPENSES</b>								
Complimentary expenses	0.214	0.212	1.263	1.314	1.362	1.408	1.454	
Payroll taxes	9.278	9.539	74.215	76.302	78.448	80.654	82.923	
Payroll - Employee Benefits	42.860	44.065	283.467	291.440	299.636	308.064	316.728	
Payroll - Other Employees	121.680	125.102	973.308	1,000.682	1,028.826	1,057.762	1,087.512	
Other Departmental Expenses	28.005	28.885	285.409	294.382	303.591	313.060	322.818	
<b>TOTAL EXPENSES</b>	202.037	207.803	1,617.662	1,664.121	1,711.863	1,760.948	1,811.434	
<b>TOTAL FOOD INCOME</b>	78.933	81.991	1,028.842	1,067.426	1,107.008	1,147.775	1,189.936	
<b>BEVERAGE DEPARTMENT</b>								
<b>REVENUE</b>								
Beverage Sales	333.538	326.824	720.992	739.776	754.457	769.030	783.503	
Complementary Beverage Sales	333.538	326.824	720.992	739.776	754.457	769.030	783.503	
<b>TOTAL REVENUE</b>	667.077	653.648	1,441.984	1,479.553	1,508.913	1,538.060	1,567.007	
Cost of sales	158.074	154.892	341.700	350.603	357.560	364.467	371.326	
<b>GROSS MARGIN</b>	509.002	498.756	1,100.284	1,128.950	1,151.353	1,173.593	1,195.680	
<b>DEPARTMENTAL EXPENSES</b>								
Payroll taxes	37.025	38.067	37.025	38.067	39.137	40.238	41.370	
Payroll - Employee Benefits	167.741	172.459	167.741	172.459	177.309	182.296	187.423	
Payroll - Other Employees	485.576	499.233	485.576	499.233	513.274	527.710	542.551	
Other Departmental Expenses	12.007	11.766	25.956	26.632	27.160	27.685	28.206	
<b>TOTAL EXPENSES</b>	702.349	721.524	716.298	736.390	756.880	777.928	799.550	
<b>TOTAL BEVERAGE INCOME</b>	(193.347)	(222.767)	383.986	392.560	394.473	395.665	396.130	

**Dodge City Resort & Gaming Company, LLC**

**Consolidated Pro-Forma Income and Expenditure Statement for the LGF**

Amounts in thousands of dollars

Please submit 5-year projections, starting from the date of opening

**PROJECTED DATE OF OPENING:**

Unit of Measure  
5/1/2009 temp  
casino; 7/1/2011  
perm casino

	Temporary Casino		Permanent Casino			Comments	
	2009	2010	2011	2012	2013		
<b>RETAIL</b>							
<b>REVENUE</b>							
Total Sales	-	-	1,163,374	1,199,903	1,233,988	1,267,555	1,301,731
Complementary Sales	-	-	23,742	24,488	25,183	25,868	26,566
<b>TOTAL REVENUE</b>	-	-	1,187,116	1,224,391	1,259,171	1,293,423	1,328,297
Cost of sales	-	-	-	-	-	-	-
<b>GROSS MARGIN</b>	-	-	652,914	673,415	692,544	711,383	730,563
	-	-	534,202	550,976	566,627	582,041	597,734
<b>DEPARTMENTAL EXPENSES</b>	-	-	-	-	-	-	-
Payroll taxes	-	-	-	-	-	-	-
Payroll - Employee Benefits	-	-	15,707	16,149	16,603	17,070	17,550
Payroll - Other Employees	-	-	70,508	72,491	74,529	76,626	78,781
Other Departmental Expenses	-	-	205,994	211,788	217,744	223,868	230,164
<b>TOTAL EXPENSES</b>	-	-	27,304	28,161	28,961	29,749	30,551
	-	-	319,512	328,588	337,837	347,312	357,046
<b>TOTAL RETAIL INCOME</b>	-	-	214,690	222,388	228,790	234,728	240,688

**CONSTRUCTION PHASE INFORMATION DURING OPERATIONS PHASE OF LOTTERY GAMING FACILITY**

**Dodge City Resort & Gaming Company, LLC**

Please submit 5-year projections, starting from the date of opening

32  
**Months from Issuance of License to Opening of Permanent Facility**

This timeline is dependent upon the infrastructure required from Ford County/Dodge City for necessary sewage capacity. The construction schedule is 18-months total, not including the time required for the necessary sewage infrastructure.

7  
**Months from Issuance of License to Opening of Temporary Facility**

	Temporary Casino 2009	2010	2011	2012	2013	2014	2015													
<b>Development Investment</b>																				
<b>Fixed asset investment</b>																				
Buildings			28,000,000																	
Land		2,500,000																		
Land improvements, excluding landscaping		750,000		1,250,000																
Landscaping		150,000		350,000																
Soft Costs, i.e. engineering, architectural, development fees		2,427,500		3,525,000																
Financing costs			916,667		1,833,333															
Public sector infrastructure				4,000,000																
Rolling stock																				
Furniture, Fixtures and Equipment			1,136,000	162,286	3,739,000	696,429	696,429	696,429	696,429	696,429	696,429	696,429	696,429	696,429	696,429	696,429	696,429	696,429	696,429	696,429
Floor and Wall Treatments																				
Gaming equipment			9,405,000	2,351,250	8,046,250	3,000,000	3,000,000	3,000,000	3,000,000	3,000,000	3,000,000	3,000,000	3,000,000	3,000,000	3,000,000	3,000,000	3,000,000	3,000,000	3,000,000	3,000,000
Others - Privilege Fee			5,500,000																	
<b>TOTAL INVESTMENT</b>		25,285,167	2,513,536	50,743,583	3,696,429	3,696,429	3,696,429	3,696,429	3,696,429	3,696,429	3,696,429	3,696,429	3,696,429	3,696,429	3,696,429	3,696,429	3,696,429	3,696,429	3,696,429	3,696,429
Source of Funds for Investment																				
Percent each year from:																				
Construction Loan																				
Debt			70%																	
Working Capital from Parent Company			30%																	
Sale of Equity																				
Other (please explain)																				
Athe following figures on a Quarterly basis		2008-IV	2009-I	2009-II	2009-III	2009-IV	2010-I	2010-II	2010-III	2010-IV	2011-I	2011-II	2011-III	2011-IV	2012-I	2012-II	2012-III	2012-IV	2013-I	2013-II
<b>Development Employment Data</b>																				
<b>Construction Employment</b>																				
Average Wage per employee		43,800	43,800	43,800	43,800	43,800	43,800	43,800	43,800	43,800	43,800	43,800	43,800	43,800	43,800	43,800	43,800	43,800	43,800	43,800
Total construction payroll		446,760	446,760	446,760	446,760	446,760	446,760	446,760	446,760	446,760	446,760	446,760	446,760	446,760	446,760	446,760	446,760	446,760	446,760	446,760
Average Benefits per employee		111,690	111,690	111,690	111,690	111,690	111,690	111,690	111,690	111,690	111,690	111,690	111,690	111,690	111,690	111,690	111,690	111,690	111,690	111,690
Other expenses per employee																				
Cost of materials from region		541,613	541,613	541,613	541,613	541,613	541,613	541,613	541,613	541,613	541,613	541,613	541,613	541,613	541,613	541,613	541,613	541,613	541,613	541,613
Cost of materials from outside of region		291,638	291,638	291,638	291,638	291,638	291,638	291,638	291,638	291,638	291,638	291,638	291,638	291,638	291,638	291,638	291,638	291,638	291,638	291,638
Other Development Expenses		172,425	172,425	172,425	172,425	172,425	172,425	172,425	172,425	172,425	172,425	172,425	172,425	172,425	172,425	172,425	172,425	172,425	172,425	172,425

<b>Dodge City Resort &amp; Gaming Company, LLC</b>		<b>Public Sector Impacts of LGF</b>						
		<b>Temporary Facility</b>			<b>Permanent Facility</b>			
		2009	2010	2011	2012	2013	2014	2015
<b>Units of Measure</b>								
<b>Population Growth</b>								
# of Construction Employees or LGF Employees who will be new residents to the area	#	48		143		120		176
<b>Infrastructure Costs</b>								
Roads/Streets Improvements	\$	\$ 7,286	\$	\$ 21,857	\$	\$ 31,526	\$	\$ 41,332
% Paid by Developer	%	60%		60%		60%		60%
% Paid by Public Sector	%	40%		40%		40%		40%
Water/Sewer Improvements	\$	\$ 4,490	\$	\$ 13,471	\$	\$ 19,429	\$	\$ 25,472
% Paid by Developer	%	60%		60%		60%		60%
% Paid by Public Sector	%	40%		40%		40%		40%
Storm Drains	\$	\$ 1,924	\$	\$ 5,773	\$	\$ 8,327	\$	\$ 10,917
% Paid by Developer	%	60%		60%		60%		60%
% Paid by Public Sector	%	40%		40%		40%		40%
Law Enforcement Building, New or Improved			NA				NA	
% Paid by Developer	\$							
% Paid by Public Sector	%							
Fire Station, New or Improved	\$	NA	NA				NA	
% Paid by Developer	%							
% Paid by Public Sector	%							

		Temporary Facility					Permanent Facility					
		2009	2010	2011	2012	2013	2014	2015				
<b>Dodge City Resort &amp; Gaming Company, LLC</b>												
PUBLIC SECTOR IMPACTS OF LGF												
<b>Operating Costs</b>												
<u>School System</u>												
	# of Additional K-12 students	#	11	21	18	26						
	Estimated number of additional K-12 teachers	#	1	1	1	2						
	K-12 support staff	#	1	1	1	2						
	Add't salary cost-teachers	\$	\$ 32,198	\$ 64,395	\$ 54,180	\$ 79,200						
	Add't salary cost-support staff	\$	\$ 21,465	\$ 42,930	\$ 36,120	\$ 52,800						
	Estimated number of additional classrooms needed	#	0	0	0	0						
	Estimated add't sq. footage of ancillary K-12 needed (gyms, cafeterias, etc.)	#	0	0	0	0						
	Estimated cost of additional rolling stock	\$	\$ 53,663	\$ 107,325	\$ 90,300	\$ 132,000						
<u>Law Enforcement</u>												
	Estimated # of add't personnel											
	Uniform	#	1	2	3	4						
	Non-Uniform	#	-	0	0	0						
	Estimated salary/benefits											
	Uniform	\$	\$ 39,980	\$ 79,960	\$ 115,331	\$ 151,203						
	Non-Uniform	\$	-	-	-	-						
	Estimated add't non-salary expense (services/supplies)	\$	\$ 6,663	\$ 13,327	\$ 19,222	\$ 25,201						
	Estimated add't rolling stock expense	\$	\$ 6,663	\$ 13,327	\$ 19,222	\$ 25,201						
	Estimated add't capital outlay expense (computers, equipment)	\$	\$ 13,327	\$ 26,653	\$ 38,444	\$ 50,401						
			\$ 66,634	\$ 133,267	\$ 192,219	\$ 252,006						

		Temporary Facility					Permanent Facility				
		2009	2010	2011	2012	2013	2014	2015			
<b>Dodge City Resort &amp; Gaming Company, LLC</b>											
PUBLIC SECTOR IMPACTS OF LGF											
<u>Fire Protection</u>											
Estimated # of add't personnel											
Uniform	#	0		0		1					1
Non-Uniform	#	-		0		0					0
Estimated salary/benefits											
Uniform	\$	9,870		19,740		28,472					37,328
Non-Uniform	\$	-		-		-					-
Estimated add't non-salary expense (services/supplies)	\$	1,645		3,290		4,745					6,221
Estimated add't rolling stock expense	\$	1,645		3,290		4,745					6,221
Estimated add't capital outlay expense (computers, equipment)	\$	3,290		6,580		9,491					12,443
	\$	<b>16,450</b>		<b>32,900</b>		<b>47,453</b>					<b>62,213</b>
<u>Ambulance Service</u>											
Estimated # of add't personnel											
Uniform	#	0		0		0					1
Non-Uniform	#	-		0		0					0
Estimated salary/benefits											
Uniform	\$	6,580		13,160		18,981					24,885
Non-Uniform	\$	-		-		-					-
Estimated add't non-salary expense (services/supplies)	\$	1,097		2,193		3,164					4,148
Estimated add't rolling stock expense	\$	1,097		2,193		3,164					4,148
Estimated add't capital outlay expense (computers, equipment)	\$	2,193		4,387		6,327					8,295
	\$	<b>10,967</b>		<b>21,933</b>		<b>31,635</b>					<b>41,475</b>

<b>Dodge City Resort &amp; Gaming Company, LLC</b>		PUBLIC SECTOR IMPACTS OF LGF		Temporary Facility		Permanent Facility			
				2009	2010	2011	2012	2013	2014
<b>Public Sector Revenue</b>									
Change in Ad Valorem Tax (Property Tax)		Attributable to this project and its							
State	\$								
County	\$	268,407		536,814		673,457		849,142	
City	\$	333,067		666,133		835,694		1,053,701	
Sales and Use Tax		We estimate annual increase in sales tax collections from the resort to be relatively small, but would increase as the other resort components come online.							
County	\$								
City	\$								
LGF Gaming Revenue									
Exp. Lottery Act Revenue Fund	\$	4,950,000		9,900,000		14,300,000		18,700,000	
Problem Gambling Fund	\$	450,000		900,000		1,300,000		1,700,000	
Cities	\$	675,000		1,350,000		1,950,000		2,550,000	
County	\$			Included with City (Local)					

## Dodge City Resort & Gaming Company, LLC

### PLEASE NOTE WHAT YOU CONSIDER TO BE THE TEN MOST IMPORTANT FEATURES OF YOUR PROPOSAL.

What factors of your proposal are most distinctive in making it more attractive to Kansas and its residents than a "generic" gaming facility that could be developed within this zone?

Please provide descriptions of ten (or fewer) features in 250 words or less for each.

<b>1</b>	<p><b>Approximately \$19,000,000 more to State</b> - Our proposal will begin to generate cash flow to the state almost immediately upon the approval of our proposal by the state and commission. We have an existing 25,000 sq ft. building on our property that is in very good shape and can be easily and quickly renovated into a temporary gaming facility that can be up and operating while the larger proposed development is in construction and the local municipalities are completing the infrastructure necessary to bring a project such as the one we've proposed to life. The construction period for the larger project is almost two years so by having this building, renovating it, putting it into operation will mean approximately \$19,000,000 more dollars per year to the state including approximately \$3,500,000 for local and compulsive gaming agencies. Both the state and residents will benefit enormously by receiving gaming income within 6 months of approval if our proposal is accepted.</p>
<b>2</b>	<p><b>Additional \$32,000,000 additional project investment</b> - DCRGC has agreed to Mandatory expansions of it's initial proposed \$60,000,000 plus facility based on hitting revenue targets taken from the market studies completed by the State's gaming market consultants. Provided the state's consultants and market analyses are correct, DCRGC will invest another \$14,000,000 in hard development costs beyond the original \$60.3 million for the initial facility. In year 5, DCRGC has committed to invest another \$18,000,000 in hard development costs to expand the facility provided again that the revenues projected by the State's consultant are met. This benefits the state not only by the additional gaming revenue that will be created to the state because of the much larger facility, but also because of the construction jobs created for the additional development as well as the jobs created by the larger operation. Also, a facility of such size will include more accommodations for out of town tourists to bring new revenue and business to the surrounding area.</p>
<b>3</b>	<p><b>Local Investors - Financial Strength</b> - Financial strength is one of two primary factors used by commission consultants to evaluate the proposing companies. DCRGC is an LLC formed by Kansas businessmen who outsourced the gaming management side of the business while maintaining majority interest in the company. The investment group includes successful Kansas business men who are using their own financial strength to finance and develop the facility. Kansas and its residents will benefit by keeping the investment local resulting in new employment opportunities beyond gaming and in additional businesses developed by this successful group. Included in the investment group are the real estate and development companies of Weigand and Sons and Weigand Omega Management, both substantial Kansas companies. Other investors include Larry Steckline, Owner and President of Mid America Ag Network, a trusted name in agriculture in the Midwest on the farm and on the radio along with his wife, Carla Stovall Steckline, past Attorney General for the State of Kansas. Jim Vosberg, owner of multiple multi-million dollar Kansas corporations with a great track record for successful developments and ventures is also an investing partner. Jay Maxwell, the organizing principle of investor group, will use his long standing success and contacts to attract future development and financial resources to ensure a successful project. The financial strength of this local conglomeration of successful residents will allow the project to be financed successfully in spite of recent down-turns on Wall Street.</p>

## Dodge City Resort & Gaming Company, LLC

### PLEASE NOTE WHAT YOU CONSIDER TO BE THE TEN MOST IMPORTANT FEATURES OF YOUR PROPOSAL.

What factors of your proposal are most distinctive in making it more attractive to Kansas and its residents than a "generic" gaming facility that could be developed within this zone?

Please provide descriptions of ten (or fewer) features in 250 words or less for each.

<p><b>4 Guarantee by Investors</b> - The investors in DCRGC have agreed to provide the equity necessary to guarantee the development of the project. Typical institutional lending in gaming would require approximately 10% equity in the facility depending upon the market projections of the facility. Due to recent declines in the economy, the investor group has committed to provide \$20,000,000 in equity financing for the project. This level of commitment exceeds the recent standards threefold, creating a 30% equity ratio. This will benefit Kansas enormously in that it ensures that the project is a reality, thus creating the opportunity for jobs, tourism and development intended by the passage of the KELA legislation. The investor group has also signed a funding agreement that essentially provides for additional equity if required due to cost over-runs or resources to fund deficits in early years. By having this investment guarantee, the State of Kansas will not have the stress of a potential failed operation due to lack of financial strength. Again, guaranteeing that the project will be a reality and will create a substantial boom to western Kansas.</p>
<p><b>5 Management Expertise</b> - The second primary factor used by commission consultants to evaluate the proposing companies is gaming experience of the management team. DCRGC has contracted with Ingenus Management and Consulting, LLC. Ingenus is an innovative gaming management, development and consulting company composed of professionals with executive level experience in virtually all major US gaming jurisdictions including traditional markets such as Las Vegas, Reno and Atlantic City as well as river boats, racinos, charitable and Indian gaming. Key members of Ingenus have held executive and senior management level positions with respected gaming companies such as Fitzgerald's, Harrah's, Grand Casino's and Stratosphere, to name a few. Dodge City is a smaller market than the other gaming zones so it was more difficult to find interested parties in the Southwest zone. Knowing the importance of having a team accustomed to operating in tighter markets, DCRGC looked for a company with proven experience and success. Needing a management team with significant gaming backgrounds, experience in small to mid-sized markets and expertise The bottom line is that the relationship between the State and its chosen manager must be based on business principles. If the venture isn't profitable for both parties, it makes no sense. Therefore, this zone must have a manager that is accustomed to being efficient and operating smart. If it's not successful, Kansas and its residents lose out on the revenue, development and the tourism planned by the act.</p>
<p><b>6 Size of Site</b> - DCRGC has obtained over 280 acres of land to be used for the development. Having a site of such size will provide the opportunity to locate the planned \$30,000,000 Dodge City Events and Convention Center on the site of the casino project. Thus creating significant synergies of businesses as well as creating a retail and entertainment zone that will attract visitors from all over Kansas and surrounding states. The project will benefit from the plans for Larry Steckline to have a radio station on-site which will serve to increase tourism and make the facility an attraction for greater Kansas. The master plan for the project includes significant development beyond the casino and hotel development required by the legislation. Kansas and its residents will benefit from this opportunity for new business, related construction and the long standing employment opportunities created.</p>

## Dodge City Resort & Gaming Company, LLC

**PLEASE NOTE WHAT YOU CONSIDER TO BE THE TEN MOST IMPORTANT FEATURES OF YOUR PROPOSAL.**

**What factors of your proposal are most distinctive in making it more attractive to Kansas and its residents than a "generic" gaming facility that could be developed within this zone?**

**Please provide descriptions of ten (or fewer) features in 250 words or less for each.**

<b>7</b>	<p><b>Retail Development</b> - DCRGC has planned retail development well beyond the casino and hotel facilities required by the Act. The site secured by the project has over 260 acres of land available for future development in addition to the 20 acres planned for the gaming and resort facility. The project master plan calls for several retail development projects surrounding the property. The planned developments will bring in hundreds of millions of additional capital and development dollars planned over the term of the KE LA management agreement. Resulting infrastructure improvements will benefit the state and its residents by bringing needed roads, water and sewer to an area that is under supplied. The investing partners noted above have made plans with major retail developers to bring boutique and name brand retail outlets. The project will also create the opportunity to turn around the recent trend of declining visitation to the Dodge City/ Ford County area by creating a significant entertainment and retail zone there.</p>
<b>8</b>	<p><b>Rodeo Arenas</b> - The DCRGC project is planning on making a significant investment in what made Dodge City famous, cowboys, rodeos and the Wild West. Kansas and its residents will benefit from the planned development of world class rodeo and equestrian facilities on the project site's 280+ acres. Facilities for livestock, vehicles, trucks, RV's, work &amp; farm equipment and the like are planned for the development. DCRGC will create World Class facilities to attract some of the largest western rodeos and events in the country. The project team has already obtained several commitments from western events organizers to bring their operations to Dodge City after the development of the facilities. Events such as those planned will bring thousands of visitors, tourists and participants to the area adding to the economic boom in Ford County.</p>
<b>9</b>	<p><b>Convention Business</b> - The initial phases of the casino facility include meeting and convention space that will meet market demand due to the lack of such space in the area. The facility designed in the project, which is unique to the area, allows for shows, concerts, conventions and meetings with services unlike any found in western Kansas. This facility will not only attract new business to western Kansas but allows for marketing the Dodge City/Ford County area as a convention destination while the city is in the process of developing and building its \$30,000,000 convention and events center.</p>
<b>10</b>	<p><b>Guest Rooms/Tourism</b> - Kansas and its residents will benefit from the project and master plan mentioned above due to the entertainment, retail and events developments planned in the development. The project is anticipated to create approximately 10,000 visitors a week which will mean an enormous boom in tourism to the area. These visitors will need a place to stay that will exceed the number of rooms planned by the development which means local hoteliers and RV park operators will benefit substantially. Additional room nights will also mean new business to local restaurants, gas stations, convenience stores and downtown businesses created by the increase in traffic. The regional airport and travel support business like rental cars, travel agencies, car services and the like will see an increase in business demand. The typical taxes created by room nights and outside visitor business will also benefit local museums, and convention and visitors bureaus to assist in attracting even more guests to the area.</p>

<b>SUMMARY OF PROPOSAL DATA</b>						
<b>Proposer:</b>		<b>Dodge City Resort &amp; Gaming Company, LLC</b>				
<b>Project Description</b>		<b>Unit of Measure</b>			<b>Comments</b>	
From award of license to opening (in months)		7				
Temporary facility if applicable		7				
Permanent facility		32			This timeline is dependent upon the infrastructure required from Ford County/Dodge City for necessary sewage capacity. The construction schedule is 18-months total, not including the time required for the necessary sewage infrastructure.	
Total investment in project		>\$90,000,000			This includes total construction costs for temporary and permanent facilities along with equipment replacement. Contractual increases to investment total another \$32,000,000.	
Casino square footage		87,043				
No. of hotel rooms		125				
# food and beverage outlets		4				
Convention center square footage		n/a				
Retail square footage		2,125				
Event/entertainment facility square footage		13,005				
No. of covered parking spaces		n/a				
No. of surface parking spaces		1,500				
					<b>1st Full Year of Operation</b>	
					<i>permanent facility</i>	
No. of annual visitors		#			755,109	
% within 100 miles		%			15%	
% of overnight visitors		%			7%	
Annual gross gaming revenue		\$			39,024,538	
Annual hotel occupancy		%			73%	
Annual hotel revenue		\$			4,123,332	
Annual food and beverage revenue		\$			5,473,199	
Net income before federal income taxes		\$			1,722,998	
<b>Employment and Payroll</b>						
No. of FTE operating employees-total project		#			441	
Annual operating payroll-total project		\$			12,962,715	
<b>Economic and Fiscal Impacts</b>						
Total economic impact-construction		\$			89,800,000	
Total economic impact-operating		\$			90,975,752	
Total incremental public sector revenue-construction		\$			3,500,000	
Total incremental public sector costs-construction		\$			81,550	
Total incremental public sector revenue-operating		\$			13,352,947	
Total incremental public sector costs-operating		\$			311,865	

<b>SUMMARY OF PROPOSAL DATA</b>			
<b>Proposer:</b>	<b>Dodge City Resort &amp; Gaming Company, LLC</b>		
<b>Three Most Important Features</b>			
<b>1</b>	<p><b>Approximately \$19,000,000 more to State</b> - Our proposal will begin to generate cash flow to the state almost immediately upon the approval of our proposal by the state and commission. We have an existing 25,000 sq ft. building on our property that is in very good shape and can be easily and quickly renovated into a temporary gaming facility that can be up and operating while the larger proposed development is in construction and the local municipalities are completing the infrastructure necessary to bring a project such as the one we've proposed to life. The construction period for the larger project is almost two years so by having this building, renovating it, putting it into operation will mean approximately \$19,000,000 more dollars per year to the state including approximately \$3,500,000 for local and compulsive gaming agencies. Both the state and residents will benefit enormously by receiving gaming income within 6 months of approval if our proposal is accepted.</p>		
<b>2</b>	<p><b>Local Investors - Financial Strength</b> - Financial strength is one of two primary factors used by commission consultants to evaluate the proposing companies. DCRGC is an LLC formed by Kansas businessmen who outsourced the gaming management side of the business while maintaining majority interest in the company. The investment group includes successful Kansas business men who are using their own financial strength to finance and develop the facility. Kansas and its residents will benefit by keeping the investment local resulting in new employment opportunities beyond gaming and in additional businesses developed by this successful group. Included in the investment group are the real estate and development companies of Weigand and Sons and Weigand Omega Management, both substantial Kansas companies. Other investors include Larry Steckline, Owner and President of Mid America Ag Network, a trusted name in agriculture in the Midwest on the farm and on the radio along with his wife, Carla Stovall Steckline, past Attorney General for the State of Kansas.</p>		
	<p>Jim Vosberg, owner of multiple multi-million dollar Kansas corporations with a great track record for successful developments and ventures is also an investing partner. Jay Maxwell, the organizing principle of investor group, will use his long standing success and contacts to attract future development and financial resources to ensure a successful project. The financial strength of this local conglomeration of successful residents will allow the project to be financed successfully in spite of recent down-turns on Wall Street.</p>		
<b>3</b>	<p><b>Management Expertise</b> - The second primary factor used by commission consultants to evaluate the proposing companies is gaming experience of the management team. DCRGC has contracted with Ingenus Management and Consulting, LLC. Ingenus is an innovative gaming management, development and consulting company composed of professionals with executive level experience in virtually all major US gaming jurisdictions including traditional markets such as Las Vegas, Reno and Atlantic City as well as river boats, racinos, charitable and Indian gaming. Key members of Ingenus have held executive and senior management level positions with respected gaming companies such as Fitzgerald's, Harrah's, Grand Casino's and Stratosphere, to name a few. Dodge City is a smaller market than the other gaming zones so it was more difficult to find interested parties in the Southwest zone.</p>		
	<p>Knowing the importance of having a team accustomed to operating in tighter markets, DCRGC looked for a company with proven experience and success. Needing a management team with significant gaming backgrounds, experience in small to mid-sized markets and expertise in new and emerging markets, Ingenus was the obvious choice. The bottom line is that the relationship between the State and its chosen manager must be based on business principles. If the venture isn't profitable for both parties, it makes no sense. Therefore, this zone must have a manager that is accustomed to being efficient and operating smart. If it's not successful, Kansas and its residents lose out on the revenue, development and the tourism planned by the act.</p>		

05/10/08

**LOTTERY GAMING FACILITY MANAGEMENT CONTRACT**

(Pursuant to the Kansas Expanded Lottery Act)

This LOTTERY GAMING FACILITY MANAGEMENT CONTRACT is for the development, construction, and management of a Lottery Gaming Facility, the business of which will be owned and operated by the Kansas Lottery, to be located in the Southwest Kansas \_\_\_\_\_ Gaming Zone.

This Agreement is between the Kansas Lottery, which is acting on behalf of the State of Kansas in accordance with the Kansas Expanded Lottery Act, K.S.A. 2007 Supp. 74-8733 through 74-8773, and Dodge City Resort and Gaming Company, LLC, a Kansas limited liability company \_\_\_\_\_ (“Manager”).

NOW THEREFORE, in consideration for the mutual promises and covenants between the parties, it is agreed that:

1. **Certain Defined Terms.** The capitalized terms listed below will have the following meanings. Any other capitalized terms not specifically defined in this Agreement will have the meanings attributed to them in the Kansas Lottery Act, the Kansas Expanded Lottery Act, or the rules and regulations implementing those Acts, as the case may be, and as amended from time to time.

- a) “Application for Lottery Gaming Facility Manager” means the competitive proposal and all attachments and supplements submitted to the Kansas Lottery by Manager under the Kansas Expanded Lottery Act for the privilege of being designated the Lottery Gaming Facility Manager in the Southwest Kansas Gaming Zone. \_\_\_\_\_  
~~gaming zone.~~
- b) “Business Plan” means the document prepared by Manager and approved by the Executive Director, at least annually, setting out the management activities anticipated for the Lottery Gaming Facility as provided below in Paragraph 11 for an upcoming Fiscal Year or portion of Fiscal Year as the case may be.
- c) “Commencement Date” means the date specified in writing when the Executive Director first determines Manager has satisfied all conditions required by this Agreement so that Lottery Facility Games may be offered for play at the Lottery Gaming Facility described in the Manager’s Application for Lottery Gaming Facility Manager. :-
- d) “Commission” means the Kansas Lottery Commission.
- e) “Effective Date” means the date this Agreement is signed by all the parties

and all required approvals for the Agreement are obtained in accordance with the Kansas Expanded Lottery Act and rules and regulations promulgated pursuant thereto.

- f) “Electronic Gaming Machine” means any electronic, electromechanical, video or computerized device, contrivance or machine authorized by the Kansas Lottery which, upon insertion of cash, tokens, electronic cards or any consideration, is available to play, operate or simulate the play of a game authorized by the Kansas Lottery pursuant to the Kansas Expanded Lottery Act, including, but not limited to, bingo, poker, blackjack, keno and slot machines, and which may deliver or entitle the Player operating the machine to receive cash, tokens, merchandise or credits that may be redeemed for cash. Electronic Gaming Machines may use bill validators and may be single-position reel-type, single or multi-game video and single-position multi-game video electronic game, including, but not limited to, poker, blackjack and slot machines. Electronic Gaming Machines are one type of Lottery Facility Games.
- g) “Executive Director” means the executive director of the Kansas Lottery.
- h) “Fiscal Year” means the accounting year established for the Lottery Gaming Facility, which is specified here to be ~~the~~ a calendar year, and includes any partial (short) year.
- i) “Gray Machine” means any mechanical, electro-mechanical or electronic device, available to the public for play that is capable of being used for gambling, that is: (1) not authorized by the Kansas Lottery; (2) not linked to the lottery central computer system as required by the Kansas Expanded Lottery Act; or (3) capable of simulating a game played on an Electronic Gaming Machine or any similar gambling game authorized pursuant to the Kansas Expanded Lottery Act.
- j) “Kansas Expanded Lottery Act” means the provisions contained in K.S.A. 2007 Supp. 74-8733 through 74-8773, and amendments thereto which may become effective during this Agreement’s term.
- k) “Kansas Lottery” means the state agency created by the Kansas Lottery Act, K.S.A. 74-8701, *et seq.*, as amended, to operate a lottery or lotteries pursuant to the Kansas Lottery Act or the Kansas Expanded Lottery Act.
- l) “Lottery Facility Games” means any Electronic Gaming Machines and any other games authorized, as of January 1, 2007, to be conducted or operated at a tribal gaming facility, as defined in K.S.A. 74-9802, and amendments thereto, located within the State of Kansas’ boundaries and are owned and operated by the Kansas Lottery.

- m) “Lottery Gaming Enterprise” means the entertainment enterprise and all facilities and operations associated therewith, including a Lottery Gaming Facility and Ancillary Lottery Gaming Facility Operations that are constructed and operated by Manager and have a coordinated business or marketing strategy, as more fully set forth in the Manager’s Application for Lottery Gaming Facility Manager.
- n) “Lottery Gaming Facility” means that portion of the building used for the purposes of operating, managing and maintaining Lottery Facility Games, as more fully described in the Application for Lottery Gaming Facility Manager filed by Manager with the Kansas Lottery and any temporary building used for those purposes approved by the Executive Director.
- o) “Lottery Gaming Facility Revenues” means the total revenues from the play of Lottery Facility Games operated at the Lottery Gaming Facility after all related Prizes are paid. This term does not include (i) money generated from Ancillary Lottery Gaming Facility Operations ~~(in which the Kansas Lottery has no financial interest)~~ even if the revenue is generated within the Lottery Gaming Facility or (ii) Promotional Credits, Credit(s).
- p) “Player” means a person who: (1) takes part in a Lottery Facility Game by paying consideration or using Promotional Credit for the chance of winning a Prize; and (2) is lawfully eligible to play a Lottery Facility Game under the Kansas Expanded Lottery Act or applicable rules and regulations.
- q) “Progressive Electronic Game” means a game played on one or more Electronic Gaming Machines for which at least one payoff increases uniformly as the game is played and the Prize is determined by application of a formula to the income of independent, local, or interlinked Electronic Gaming Machines.
- r) “Promotional Credit” means any non-cashable credit, coupon or voucher redeemable by a Player at a Lottery Gaming Facility for use in playing Lottery Facility Games that is provided to a Player by Manager on a discretionary basis for purposes of promoting the Lottery Gaming Facility in accordance with a promotional program approved by the Executive Director.
- s) “Promotional Item” means any non-cash, complimentary service or discount provided to a Player by Manager on a discretionary basis for purposes of promoting the Lottery Gaming Facility in accordance with a promotional program approved by the Executive Director.
- t) “Prize” means any money, cash, tokens, merchandise, or credits

redeemable for cash or play in a Lottery Facility Game that a Player may be entitled to as an award for playing a Lottery Facility Game under the rules of that game. For any Electronic Gaming Machines offering progressive winnings to a Player based on the use of Electronic Gaming Machines in a Progressive Electronic Game, "Prize" also includes a percentage of every wager played on a Progressive Electronic Game that is contributed to a growing jackpot amount to a successful Player as an award for playing an Electronic Gaming Machine under the rules of that Progressive Electronic Game, but does not include the reset amount. "Prize" does not include any administrative fees or other expenses associated with an Electronic Gaming Machine's acquisition, operation, maintenance or replacement that are not payable to a winning Player.

2. **Date Agreement Becomes Binding.** This Agreement will become effective and binding on the Effective Date; except that the parties agree that Paragraphs 2, 20, 28, 58, 70, 71 and 72 will become effective and binding on the parties immediately upon this Agreement's approval by the Commission.

3. **Term of Agreement.** This Agreement will terminate fifteen (15) years after the Commencement Date or by operation of K.S.A. 2007 Supp. 74-8723, as amended, law; unless this Agreement is terminated earlier, renegotiated, or renewed, in accordance with the terms set out below.

4. **Commencement Date Deadline.** The Commencement Date will occur no later than: (a) 24 months from the date that Manager is chosen as the sole Lottery Gaming Facility Manager in the Southwest Kansas Gaming Zone or (b) 18 months after the City of Dodge City completes improvements to its water supply and wastewater treatment infrastructure adequate to provide potable water and sanitary sewer service for the Lottery Gaming Enterprise or (c) 24 months from the date on which all legal challenges to the constitutionality of SB66 (otherwise known as the "Kansas Expanded Lottery Act") are fully and finally resolved, whichever occurs last. ~~[INSERT DATE]~~. This deadline will be extended by the number of days determined by the Executive Director that Manager is unable to perform its responsibilities under this Agreement due to:

- a) Court order restricting the authority of the Commission or the Kansas Lottery to own and operate Lottery Facility Games at the Lottery Gaming Facility under the Kansas Expanded Lottery Act or under this Agreement, or enjoining Manager from performing under this Agreement;
- b) Any force majeure cause as provided in Paragraph 63; or
- c) Any other reason determined by the Executive Director in his sole discretion to be outside the Manager's reasonable control, and which that adversely impacted Manager's ability to perform.

5. **Renewal of Agreement.** Prior to its expiration, this Agreement may be

renewed by the mutual written consent of the parties and in accordance with the Kansas Expanded Lottery Act, and amendments thereto. This written consent will set out the terms under which the renewal is to be effective.

6. **Manager's Representations and Warranties.** Manager represents and warrants to the Kansas Lottery as follows:

- a) Manager is a limited liability company \_\_\_\_\_duly organized, validly existing and in good standing under the laws of the State of Kansas, \_\_\_\_\_, and is duly qualified to do business as such in Kansas.
- b) Manager has full power, authority, and legal right to perform and observe the provisions in this Agreement, the requirements imposed by the Kansas Expanded Lottery Act, the rules and regulations imposed by the Commission, and the rules and regulations imposed by the Kansas Racing and Gaming Commission.
- c) ~~This Subject to the condition that all approvals required by the Kansas Expanded Lottery Act are obtained, this~~ Agreement constitutes a valid and binding obligation on Manager that is fully enforceable in accordance with its terms, and does not constitute a breach of, or default under, any other agreement to which Manager is a party or any of its assets are bound or affected.
- d) During this Agreement's term, Manager will, at its own expense, keep in full force and effect its legal existence, rights and franchises required in order for it to observe all of this Agreement's terms and conditions. Upon receiving any information or notice contrary to the representations contained in this subsection during this Agreement's term, Manager must immediately notify the Executive Director in writing with full details regarding the same.
- e) Manager has acquired full title ~~[alternative: the ability to acquire full title]~~ to the premises on which the Lottery Gaming Facility will be located, free and clear of any liens, encumbrances, covenants, charges, burdens or claims, except (i) those which do not materially and adversely affect the use by Manager of the premises as a Lottery Gaming Enterprise, and (ii) any first mortgage lien and any other lien or encumbrance ~~secured liens~~ directly related to the Lottery Gaming Enterprise, which are will be disclosed to and approved by the Executive Director, ~~concurrently with Manager's acquisition of the property or for which the Executive Director's prior approval has been obtained.~~
- f) The Lottery Gaming Enterprise and the operations thereof at all times will conform in all material respects with all applicable zoning, planning,

building, licensing, and environmental laws and regulations of governmental authorities (federal, state, or local) having jurisdiction over the Lottery Gaming Enterprise, including any amendments to such laws or regulations occurring after this Agreement's execution. Such laws include, but are not limited to, the federal Money Laundering Control Act of 1986, the Bank Secrecy Act of 1970, and the USA Patriot Act of 2001, and amendments thereto. The Manager shall defend, indemnify and hold the Kansas Lottery and the State of Kansas and all employees of the Kansas Lottery and the State of Kansas harmless from any liability or expenses resulting from any failure by the Manager to comply with the provisions of this subsection (f).

- g) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body pending or, to the knowledge of the Manager, threatened against or affecting the Manager or its principals, and in which an adverse result would in any way diminish or adversely impact the Manager's ability to fulfill its obligations under this Lottery Gaming Facility Management Contract except the litigation against the Kansas Lottery and the Executive Director involving the constitutionality of the Kansas Expanded Lottery Act and other litigation identified in Paragraph 8 below. No revenue bonds, state tax abatement, local tax abatement, tax increment financing or similar financing has or will be used to finance or apply to any part of Manager's Lottery Gaming Enterprise.
- h) The Lottery Gaming Enterprise will comply in all material respects with all environmental laws and regulations, and, except in material compliance with environmental laws and regulations agrees that to the best of its knowledge (1) that no pollutants, contaminants, solid wastes, or toxic or hazardous substances will be stored, treated, generated, disposed of, or allowed to exist at the Lottery Gaming Facility or the location of any related Ancillary Lottery Gaming Facility Operations, except in compliance with all applicable laws; (2) Manager will take all reasonable and prudent steps to prevent an unlawful release of hazardous substances onto the Lottery Gaming Facility or the location of any related Ancillary Lottery Gaming Facility Operations or onto any other property adjacent to or within the immediate vicinity and owned or controlled by Manager; (3) that no asbestos will be incorporated into or disposed of on the Lottery Gaming Facility or the location of any related Ancillary Lottery Gaming Facility Operations; (4) that no underground storage tanks will be located on the Lottery Gaming Facility or the location of any related Ancillary Lottery Gaming Facility Operations, other than those used in connection with water storage, wastewater treatment, or a gasoline station or convenience store installed and operated in accordance with law, ~~except~~ as approved by the Executive Director; and (5) that no investigation, order, agreement, notice, demand or settlement with respect to any of the above

is threatened, anticipated, or in existence with respect to the Lottery Gaming Facility or the location of any related Ancillary Lottery Gaming Facility Operations. Upon receiving any information or notice contrary to the representations contained in this subsection, Manager must immediately notify the Executive Director in writing with full details regarding the same. Manager and its principals have executed the Environmental Compliance Agreement attached as Exhibit A. Manager shall defend, indemnify and hold the Kansas Lottery and the State of Kansas harmless from any liability or expenses resulting from any failure by Manager to comply with the provisions of this subsection (h).

- i) Manager will provide to the Executive Director a certificate or certificates of insurance containing all of the insurance provision requirements provided in this Agreement as follows: as respects the builder's risk and liability including worker's compensation covering construction activities, prior to the commencement of construction activities, and as respects all other insurance, prior to the commencement of any operations presenting an insurable risk. Each insurance policy obtained by Manager to comply with the insurance provision requirements must provide that if the insurance is canceled for any reason whatsoever, or the same is allowed to lapse or expire, or there be any reduction in amount, or any material change is made in the coverage, such cancellation, lapse, expiration, reduction or change shall not be effective as to the Kansas Lottery or the State of Kansas until at least thirty (30) days after receipt by the Executive Director of written notice by the insurer of such cancellation, lapse, expiration, reduction or change.
  
- j) Manager will comply with all requirements imposed by the Kansas Racing and Gaming Commission now or in the future for the oversight of all operations at the Lottery Gaming Facility including, but not limited to: oversight of internal controls; adherence to technical standards adopted by the Kansas Racing and Gaming Commission; oversight of security; performance of background investigations; determinations of qualifications and any required certifications, credentialing or licensing of Manager's officers, directors, board members, employees, contractors and agents; auditing of Lottery Gaming Facility Revenues; maintenance and integrity of all Lottery Facility Games approved by the Executive Director for play at the Lottery Gaming Facility; maintenance of facility exclusion lists; player tracking, rewards, clubs, coupons or other incentive programs; oversight of progressive payout systems and programs; oversight of unclaimed winnings; or oversight of lost patron monies. Manager understands and agrees that failure to adhere to the Kansas Racing and Gaming Commission's rules, regulations, or technical standards may result in the imposition of fines, or other sanctions or penalties against Manager. Upon receiving any information or notice claiming a violation of any requirement of the Kansas Racing and Gaming Commission or any

other governmental entity with jurisdiction over gaming-related activities after the Effective Date, Manager must immediately notify the Executive Director in writing with full details regarding the same.

- k) Manager, at a minimum, meets the following criteria: (1) has sufficient access to financial resources to support the activities required of it by this Agreement and the Kansas Expanded Lottery Act; (2) is current in filing all applicable tax returns and in payment of all taxes, interest and penalties owed to the state of Kansas and any taxing subdivisions where the Manager is located in the state of Kansas, excluding items under formal appeal pursuant to applicable statutes; and (3) ~~has Manager or its principals, affiliates or officers have~~ at least three ~~consecutive~~consecutive years' experience in the management of gaming which would be class III gaming, as defined in K.S.A. 46-2301, and amendments thereto, operated pursuant to state or federal law.
- l) Manager will comply with all applicable rules and regulations imposed now, or in the future, by the Kansas Lottery.
- m) Except as may be authorized by applicable law and confirmed in writing by the Executive Director, Manager will not own, lease, license, or control the rights to: (1) any software, hardware, computer chip, EPROMS (erasable, programmable, read-only memory), flash drives, CD-ROM or other computerized device required to operate the games available for play on the Lottery Facility Games, (2) any software, hardware, computer chip, EPROMS (erasable, programmable, read-only memory), flash drives, CD-ROM or other computerized device containing information regarding or affecting an Lottery Facility Game's chance of winning, awarding of Prizes, or setting the consideration paid by a Player, such as the random number generator or payout tables; (3) any CPUs or other electronic components involved in the operation and calculation or display of game play (e.g., game controller electronics and components housing the game or system firmware program storage media or EPROMS); or (4) any communication controller electronics, and components housing the communication control program that is used for communicating financial data, program information and security events to the central computer authorized by the Executive Director for purposes of security, real-time monitoring and auditing, as well as ticket validation and any other system used that affects the integrity of the Lottery Facility Games made available at the Lottery Gaming Facility.
- n) Manager acknowledges and agrees the State of Kansas, acting through the Commission and the Kansas Lottery, pursuant to their statutory authority, has the sole right to own, lease and operate the Lottery Facility Games placed at the Lottery Gaming Facility and has the full, complete and ultimate ownership and operational control of the gaming operation of the

Lottery Gaming Facility. Manager further acknowledges and agrees the Lottery explicitly retains the power to overrule any action of Manager affecting the gaming operation without prior notice and the Lottery retains full control over all decisions concerning Lottery Gaming Facility Games. No Gray Machines will be permitted at the Lottery Gaming Facility.

- o) Manager, on behalf of the Kansas Lottery, will be responsible at all times for processing payment of all Prizes and matters relating thereto, including the withholding of income taxes and reporting of Prizes in accordance with all applicable laws and regulations.
- p) Manager has a resolution of endorsement from the county commission ~~[alternative: city governing body]~~ where the Lottery Gaming Facility will be located, which is attached as Exhibit B.
- q) The undersigned is duly authorized to execute and deliver this Lottery Gaming Facility Management Contract on behalf of Manager.

7. **The Kansas Lottery's Representations and Warranties.** The Kansas Lottery represents and warrants to Manager as follows:

- a) The Kansas Lottery is duly established under the Kansas Lottery Act and the Kansas Expanded Lottery Act, and has the power to enter into the transactions contemplated by this Lottery Gaming Facility Management Contract and to carry out its obligations. Based upon the representations of Manager as to the utilization of the Lottery Gaming Facility, the Kansas Lottery has the authority to take the actions contemplated by applicable statute.
- b) The Executive Director is duly authorized to execute and deliver this Lottery Gaming Facility Management Contract.
- c) Neither the execution and delivery of this Lottery Gaming Facility Management Contract, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the provisions of this Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of any other contract to which the Commission or Kansas Lottery is a party or by which ~~it~~ is bound, or will constitute default under any of the foregoing.

8. **Kansas Expanded Lottery Act Litigation.** Manager acknowledges it enters into this Agreement with the understanding that the Kansas Expanded Lottery Act's constitutionality under the Kansas Constitution, and/or the implementation of that Act by the Kansas Lottery or the Commission, may come under review by courts of competent jurisdiction from time to time during this Agreement's term. Manager

acknowledges it is aware of the pending case of *State ex rel. Stephen Six v. Kansas Lottery and Ed Van Petten*, Shawnee County District Court Case No. 07 C 1312, and presently docketed with the Kansas Supreme Court as Case No. 08-99957-S, in which the constitutionality of the Kansas Expanded Lottery Act is under review. Manager further acknowledges that other litigation may be commenced in the future challenging the KELA or the Kansas Lottery's implementation pursuant thereto. The Kansas Lottery makes no warranty or representation, either express or implied, regarding the Kansas Expanded Lottery Act's constitutionality or validity, or the implementation pursuant thereto. Manager agrees it will proceed with its responsibilities under this Agreement at its own risk as to the Kansas Expanded Lottery Act's validity, or the validity of the implementation of that Act by any state ~~agency. agency; except that nothing in this sentence will be interpreted to restrict or to be prejudicial to any right Manager may have through litigation or other legal means to seek repayment of Manager's privilege fee if the Kansas Expanded Lottery Act is declared unconstitutional.~~

**9. Required Approvals Prior to this Agreement Becoming Effective.**

Subject to the terms of Paragraph 2, this Agreement will not become effective until it is approved, as required by the Kansas Expanded Lottery Act, by all three of the following public entities: (a) the Commission; (b) the Lottery Gaming Facility Review Board; and (c) the Kansas Racing and Gaming Commission.

**10. Conditions Precedent to Lottery Gaming Facility Opening.** Prior to permitting initial public access to the Lottery Gaming Facility, Manager must:

- a) Be in compliance with all statutory requirements imposed by the Kansas Expanded Lottery Act, as amended, for placing Lottery Facility Games at the Lottery Gaming Facility.
- b) Be in compliance with all rules and regulations, written policies, or written standards imposed by the Kansas Lottery Commission for placing Lottery Facility Games at the Lottery Gaming Facility.
- c) Be in compliance with all rules and regulations, licensing requirements, written policies, or written standards imposed by the Kansas Racing and Gaming Commission for placing Lottery Facility Games at the Lottery Gaming Facility.
- d) Have in an operational condition Manager's portion of the central communication system specified by the Executive Director for the purposes of security, monitoring and auditing of Electronic Gaming Machines placed at the Lottery Gaming Facility.
- e) Have current written approvals from the Executive Director for all Lottery Gaming Facility activities as required by this Agreement.
- f) Be in compliance with all local zoning requirements applicable to the

Lottery Gaming Facility.

- g) Delivered to the Secretary of State, with a copy to Executive Director, Manager's irrevocable consent to the jurisdiction and courts of the State of Kansas in accordance with K.S.A. 2007 Supp. 74-8755.
- h) Obtain and maintain all necessary governmental permits and licenses when and as may be required by law.
- i) Be in compliance with all other requirements in this Agreement as and when applicable.

11. **Manager's Business Plan.** The Executive Director and Manager will jointly develop a Business Plan, which will be based upon and not inconsistent with Manager's Application for Lottery Gaming Facility Manager, promptly after the Effective Date. This Business Plan will provide for the Lottery Gaming Facility's pre-opening activities in preparation for operation after the Commencement Date, hours of operation with 24 hour operations seven days a week being permitted by the Executive Director, advertising, marketing, public relations, number and type of Lottery Facility Games to be available to the public, process for selection of such games, Prizes, theoretical hold percentages, initial budget, Promotional Credits and procedures for controlling and accounting for the use of Promotional Credits, Promotional Items and procedures for controlling and accounting for the use of Promotional Items, special events or activities planned or anticipated by Manager during the period of time covered by the Business Plan, and other management activities to be performed by Manager consistent with the Kansas Expanded Lottery Act and applicable law that either the Manager or the Executive Director wants to address in the Business Plan. Once approved by the Executive Director, Manager will implement the approved Business Plan. The Executive Director, in consultation with Manager, may amend the Business Plan from time to time to promote the Lottery Gaming Facility's competitive position in the market in order to maximize Lottery Gaming Facility Revenues and profits. - The initial Business Plan will include Manager's proposed name for the Lottery Gaming Facility, which must be approved by the Executive Director. Any subsequent change to the facility's name must be approved by the Executive Director.

12. **Ancillary Lottery Gaming Facility Operations.** At the same time that Manager and the Executive Director develop a proposed Business Plan for the Lottery Gaming Facility, Manager separately will provide the Executive Director with Manager's anticipated business plan and budget for all Ancillary Lottery Gaming Facilities Operations that Manager anticipates developing in conjunction with the Lottery Gaming Facility, such as restaurants, hotels, motels or entertainment facilities. Manager agrees not to conduct any Ancillary Lottery Gaming Facility Operations that the Executive Director determines in his sole discretion would: (a) result in an appearance that reflects adversely on the Kansas Lottery or the Kansas Lottery Commission as the owner and operator of the Lottery Facility Games; or (b) violate any regulatory standards or local zoning laws.

13. **Lottery Gaming Facility Construction.** Manager will diligently construct at its own expense the Lottery Gaming Facility substantially in accordance with Manager's Application for Lottery Gaming Facility Manager and the plans and specifications. Prior to beginning construction, the Executive Director must approve the final plans and specifications for the Lottery Gaming Facility (or in lieu thereof such other construction-related documents acceptable to the Executive Director that are suitable for this purpose) to ensure construction will conform with the Manager's Application for Lottery Gaming Facility Manager and Manager's representation to the Kansas Lottery Commission, Lottery Gaming Facility Review Board, the Kansas Racing and Gaming Commission, or the county or city governing body where the Lottery Gaming Facility is to be located. All construction of the Lottery Gaming Facility must be completed and the Lottery Facility Games ready for play by the public within that facility no later than the Commencement Date, ~~INSERT DATE~~, unless a time extension is approved by the Executive Director. The schedule setting out Manager's anticipated benchmarks for construction completion is attached as Exhibit C. For each month between the Effective Date and the Commencement Date, Manager will report no less than monthly as directed by the Executive Director on Manager's progress toward completing construction, implementing the Business Plan, and opening the Lottery Gaming Facility to the public. No material alterations to the scope and design of the plan for the Lottery Gaming Facility increasing or decreasing the total costs by more than one percent (1%) of the total cost provided for in Manager's Application for Lottery Gaming Facility Manager may be made without the Executive Director's written approval unless such change materially affects the floor plan, surveillance, or security for the Lottery Gaming Facility in which case the Executive Director's approval is required for any material change regardless of the dollar amount. The Executive Director will promptly notify Manager of his approval or rejection of any proposed change. Manager will not need to obtain the Executive Director's approval for expenditures covered by the Manager's contingency budget.

14. **Construction Related to Ancillary Lottery Gaming Facilities Operations and Expansion of the Lottery Gaming Enterprise.** Manager will diligently construct at no expense to the Kansas Lottery the buildings and related improvements for its Ancillary Lottery Gaming Facility Operations substantially in accordance with Manager's Application for Lottery Gaming Facility Manager, ~~and Exhibit C.~~

By the end of the twelve (12) months immediately following the first fiscal year in which the Lottery Gaming Facility generates \$66.7 million or more in Lottery Gaming Facility Revenues, the Manager will have invested not less than \$14 million in the infrastructure of the Lottery Gaming Enterprise in addition to the investment in the Lottery Gaming Facility and Ancillary Lottery Gaming Facility Operations described in the Manager's Application for Lottery Gaming Facility Manager. Expansion to the Lottery Gaming Facility will be subject to all the procedures, approvals, and extensions provided in this Agreement for the design and construction of the Lottery Gaming Facility and its floor plan and to all applicable law, rule, or regulation.

By the end of the twelve (12) months immediately following the first fiscal year in which the Lottery Gaming Facility generates \$85 million or more in Lottery Gaming Facility Revenues, the Manager will have invested a total of \$32 million in the infrastructure of the Lottery Gaming Enterprise in addition to the investment in the Lottery Gaming Facility and Ancillary Lottery Gaming Facility Operations described in the Manager's Application for Lottery Gaming Facility Manager. Construction of an expansion to the Lottery Gaming Facility will be subject to all the procedures, approvals, and extensions provided in this Agreement for the design and construction of the initial Lottery Gaming Facility and its floor plan and to applicable law, rule, or regulation.

15. **Manager's Construction-Related Responsibilities.** Manager will be responsible for the management and construction of all aspects of construction-related activities concerning the Lottery Gaming Facility and the buildings and related improvements for its Ancillary Lottery Gaming Facility Operations. The responsibilities include, but are not necessarily limited to, the following:

- a) The direction of all construction activities;
- b) The direction and coordination of the performance of the architect, the other consultants and contractors;
- c) Causing all construction activities to be carried out in a good and workmanlike manner, all in substantial compliance with the Manager's Application for Lottery Gaming Facility Manager;
- d) Preparing the Lottery Gaming Facility to accommodate the central communication system as required by the Executive Director in accordance with the vendor contract for that central communication system, including installation of all specified power and communication services.services;
- e) Correcting or remedying or causing to be corrected or remedied, any violations of applicable law;
- f) Arranging for the preparation of all working drawings and specifications;
- g) Preparing or arranging for the preparation of all construction contracts and arranging for the preparation and execution of all other related documentation required in accordance with the development obligations undertaken by Manager;
- h) Securing financing, if necessary, including mortgage liens on the real property and improvements and liens on personal property, for the construction of the Lottery Gaming Facility or the building and improvements related to the Ancillary Gaming Facility Operations,

including completing the necessary documentation therefor;

- i) Maintaining appropriate cost-accounting records in accordance with generally accepted accounting principles;
- j) Obtaining all necessary government approvals, consents, permits, and licenses;
- k) Providing legal support related to the development and construction responsibilities undertaken by Manager; and
- l) Ensuring all required insurance is maintained in force.

16. **Exclusive Use of Lottery Gaming Facility.** The Lottery Gaming Facility will be used exclusively for the playing of Lottery Facility Games owned and operated by the Kansas Lottery, and the ancillary management activities approved by the Executive Director, which may include beverage service, food service, and ATM facilities. Manager may not permit any other business activities within the Lottery Gaming Facility unless approved in writing by the Executive Director.

17. **Approval of Manager's Floor Plan.** Prior to opening the Lottery Gaming Facility, Manager must submit its proposed floor plan to the Executive Director for approval. This floor plan must show the location of all Lottery Facility Games, count rooms, cages and other equipment and facilities to be contained within the Lottery Gaming Facility. No material change affecting surveillance or security, or any other material aspect of operations may be made to the approved floor plan without the Executive Director's prior written approval. Manager must perform its duties in accordance with the floor plan approved by the Executive Director, except to the extent necessary for Manager to implement pre-approved changes to the plan. The Executive Director, after consultation with Manager, will determine the location within the floor plan for each game, or type of game, to be offered to the public at the Lottery Gaming Facility.

18. **Approval of Manager's Surveillance Plan.** Prior to opening the Lottery Gaming Facility, Manager must submit its proposed surveillance plan to the Executive Director for approval. This surveillance plan at a minimum must contain all items required by applicable rule and regulation. No material change to the approved surveillance plan may be made without the Executive Director's prior written approval. Manager must perform its duties in accordance with the surveillance plan approved by the Executive Director, except to the extent necessary for Manager to implement pre-approved changes to the plan.

19. **Approval of Manager's Security Plan.** Prior to opening the Lottery Gaming Facility, Manager must submit its proposed policies and procedures relating to security to the Executive Director for approval. This security plan at a minimum must contain all items required by applicable rule and regulation. No material change to the

approved security plan may be made without the Executive Director's prior written approval. Manager must perform its duties in accordance with the security plan approved by the Executive Director, except to the extent necessary for Manager to implement pre-approved changes to the plan.

20. **Privilege Fee Payment.** No later than thirty (30) days after the Commission approves this Agreement, Manager must pay to the state treasurer of the State of Kansas a privilege fee of ~~\$5.5 million~~ ~~alternative \$5.5 million~~. This payment to the state treasurer will be deposited into the state treasury and credited to the Lottery Gaming Facility Manager Fund, which is a temporary fund created pursuant to the Kansas Expanded Lottery Act. Notwithstanding any other provision in this Agreement, if Manager fails to pay this privilege fee within 30 days after the Commission's approval, this Agreement will be void, and Manager will forfeit any rights it may have to be a Lottery Gaming Facility Manager under the Kansas Expanded Lottery Act. Once all required approvals for this Agreement are obtained in accordance with the Kansas Expanded Lottery Act, the Manager's privilege fee will be transferred on the Effective Date from the Lottery Gaming Facility Manager Fund to the Expanded Lottery Act Revenues Fund as provided by law. ~~If the Executive Director will provide Manager with notice of any meeting of the Kansas Racing and Gaming Commission to consider approval of Manager and this Agreement within ten (10) days of the Executive Director receiving notice of such meeting. If (a) the required approvals for this Agreement are not obtained in accordance with the Kansas Expanded Lottery Act, or (b) if Manager withdraws its application to be Lottery Gaming Facility Manager in the Northeast Kansas gaming zone prior to transfer of Manager's privilege fee payment to the Expanded Lottery Revenue Fund,~~ the Executive Director will promptly direct the state treasurer to refund, without interest, Manager's privilege fee payment. If the Kansas Expanded Lottery Act, or any portion thereof, is declared unconstitutional by a court of competent jurisdiction before Manager's privilege fee is transferred to the Expanded Lottery Act Revenues Fund, the Executive Director will promptly direct the state treasurer to refund, without interest, Manager's privilege fee payment at Manager's written request.

21. **Lottery Facility Game Ownership.** The Manager must purchase or lease, on behalf of the State of Kansas, for the Kansas Lottery all Lottery Facility Games, including all necessary equipment such as approved tables, felt, dice, cards, chips, layouts, or intellectual property rights as determined by the Executive Director. Manager has no authority under this Agreement to own, purchase or lease any Lottery Facility Games, except on behalf of the State of Kansas and through the Kansas Lottery. The Executive Director, in consultation with Manager, will select the Lottery Facility Games to be offered for play at the Lottery Gaming Facility and determine the Prizes to be awarded for the play of such games. The Executive Director will determine and approve all rules of play and gaming policies that are applicable to the play of all Lottery Facility Games offered at the Lottery Gaming Facility.

22. **Control Software Licensing and Ownership.** The Kansas Lottery will be the licensee, owner and possessor of the right to use all control software and logic chips required to operate the games available on the Lottery Facility Games at the Lottery

Gaming Facility. This includes: (a) any software, hardware, computer chip, EPROMS (erasable, programmable, read-only memory), flash drives, CD-ROM or other computerized device required to operate the games available for play on the Lottery Facility Games, (b) any software, hardware, computer chip, EPROMS (erasable, programmable, read-only memory), flash drives, CD-ROM or other computerized device containing information regarding or affecting a Lottery Facility Game's chance of winning, awarding of prizes, or setting the consideration paid by a Player, such as the random number generator or payout tables; (c) CPUs and other electronic components involved in the operation and calculation or display of game play (e.g., game controller electronics and components housing the game or system firmware program storage media or EPROMS); or (d) communication controller electronics, and components housing the communication control program that is used for communicating financial data, program information and security events to the central computer authorized by the Executive Director for purposes of security, real-time monitoring and auditing, as well as ticket validation and any other system used that affects the integrity of the Lottery Facility Games made available to Players at the Lottery Gaming Facility. Manager will transfer to the Kansas Lottery any rights obtained by Manager to use all control software and logic chips required to operate the games available on the Lottery Facility Games available to Players at the Lottery Gaming Facility. The Executive Director must approve all agreements concerning software licensing and ownership affecting the Lottery Facility Games made available to Players at the Lottery Gaming Facility.

**23. Daily Electronic Payment of Lottery Gaming Facility Revenues.** Manager must pay all Lottery Gaming Facility Revenues daily to the Executive Director as provided by applicable regulation. Manager will make this payment electronically in accordance with the Executive Director's written instructions, which will conform to necessary banking practices. These instructions may be changed from time to time in the Executive Director's sole discretion with reasonable notice to Manager. The Executive Director, in consultation with Manager, will develop a process so that Manager may audit and reconcile Lottery Gaming Facility Revenues after the daily payments are made. Notwithstanding any other provision in this Agreement, Manager's failure to make a daily electronic payment of Lottery Gaming Facility Revenues as required by this Agreement will be deemed an event of default unless the payment cannot be achieved due to the unavailability of bank services, force majeure events, or malfunctions in the central communications system not within Manager's control in which case the payment must be made on the first succeeding day that such services are available or such events or malfunctions cease. Manager's failure to comply with this paragraph will authorize the Executive Director in his sole discretion to immediately terminate this Agreement if Manager does not cure its failure within 24 hours of receiving written notice of Manager's failure to comply, provided that Manager's failure to make the required daily payment is not intentional.

**24. Payment Obligation is Unconditional.** Manager's obligation to make the daily payments of all Lottery Gaming Facility Revenues required above is a general obligation of Manager and is absolute and unconditional irrespective of any defense or any rights of setoff, recoupment, or counterclaim Manager may otherwise have against

the Commission, the Kansas Lottery, or any agency of the State of Kansas. Manager agrees it will not suspend, discontinue or abate any daily payment required above for any cause whatsoever including, without limiting the generality of the foregoing, failure of consideration, destruction of or damage to the Lottery Gaming Facility, commercial frustration of purpose, any change in the tax or other laws, any administrative rulings of or administrative actions by the State of Kansas or any political subdivision thereof, or any failure by any agency or entity acting on behalf of the State of Kansas to perform and observe any agreement, whether expressed or implied, or any duty, liability or obligation arising out of or in connection with this Lottery Gaming Facility Management Contract, or otherwise. Subject to the foregoing provisions, nothing contained in this paragraph shall be construed to release the Kansas Lottery from the performance of any of the agreements on its part contained in this Lottery Gaming Facility Management Contract or to affect Manager's right to seek reimbursement or damages from the Kansas Lottery as provided in this Agreement. Manager must not grant, authorize or permit any interest to be given to anyone in the Lottery Gaming Facility Revenues generated at the Lottery Gaming Facility that are to be remitted daily to the State.

25. **Setoff Right Against Manager.** Any amounts owed to Manager under this Agreement are subject to set-off by the state, municipalities, or certain others in accordance with K.S.A. 75-6201, *et seq.*, and amendments thereto.

26. **Total Compensation Paid to Lottery Gaming Facility Manager.** ~~Manager.~~ As its sole compensation for the management services for the Lottery Gaming Facility as set out in this Agreement, Manager will be paid seventy-three percent (73%) of the Lottery Gaming Facility Revenues generated at the Lottery Gaming Facility. ~~the following percentages of the Lottery Gaming Facility Revenues generated at the Lottery Gaming Facility depending upon the applicable year of operation, as follows: (a) 73% during the first partial Fiscal Year of operation, if any, and the first full Fiscal Year thereafter; (b) 72% during the second Fiscal Year of operation; (c) 71% during the third Fiscal Year of operation; (d) 69% during the fourth Fiscal Year of operation; (e) 68% during the fifth Fiscal Year of operation; (f) 65% during the sixth Fiscal Year of operation; and (g) 62% thereafter.~~

The Executive Director will direct this payment to Manager on a monthly basis, in arrears, within five business days, if possible, but no later than 10 business days, after the end of each month, based on the previous month's Lottery Gaming Facility Revenues after first deducting- Manager's share of Kansas Lottery expenses and share of Kansas Racing and Gaming Commission expenses incurred for oversight and regulation as provided in Paragraph 28 below. Manager may pledge, encumber or grant any interest in the compensation to be paid Manager, subject to the deductions and setoffs provided for in this Agreement.

Manager desires to reimburse the Kansas Lottery with a portion of Manager's compensation should that compensation be substantially higher than the earnings of other companies engaged in the gaming industry for facilities similar in size, character and other respects to the Lottery Gaming Facility. Therefore, for any Calendar Year during the Term of this Agreement in which the Lottery Gaming Facility Revenue exceeds \$95

million, not later than January 31 of the succeeding year, Manager will pay the Kansas Lottery ten percent (10%) of Manager's net cash flow from the Lottery Gaming Enterprise, determined according to generally accepted accounting principles consistently applied. On the Executive Director's request and at the Kansas Lottery's expense, the Executive Director may obtain an audit of the Lottery Gaming Enterprise's books and records performed by an independent certified public accountant to verify the accuracy of the reimbursement by Manager to the Kansas Lottery.

27. **Payments to Problem Gaming and Addictions Grant Fund and Local Governments.** Manager acknowledges and agrees the Executive Director will cause two percent (2%) of Lottery Gaming Facility Revenues to be paid to the problem gaming and addictions grant fund established by K.S.A. 2006 Supp. 79-4805, and amendments thereto. Manager further acknowledges and agrees the Executive Director will cause the amounts required to be paid under K.S.A. 2007 Supp. 74-8734(h)(15) to be paid as required by the Kansas Expanded Lottery Act, two percent (3%) to the county in which the Lottery Gaming Facility is located ~~*[alternative language for this 3% if not in a city, or if in the southeast or south central zones to comply with K.S.A. 74-8734(h)(15) and (16), or to conform to manager's application if increased from statute.]*~~

———28.- **Manager's Payments for Kansas Lottery's Expenses and Kansas Racing and Gaming Commission's Costs for Oversight and Regulation.** Manager must pay the expenses of the Kansas Lottery and the Kansas Racing and Gaming Commission, as follows:

- a) Manager's share of the Kansas Lottery's expenses directly attributable to Manager and the Kansas Lottery's proportionate share of other expenses incurred for the implementation and operation of the Kansas Expanded Lottery Act and this Agreement will be paid in accordance with this subparagraph (a). Expenses incurred by the Kansas Lottery will be billed directly to Manager by the Kansas Lottery within thirty (30) days of the Commission's approval of this Agreement and must be paid by Manager within thirty (30) days of billing. Thereafter, and prior to the Commencement Date, the Executive Director will bill Manager periodically~~periodically~~ for the Kansas Lottery's expenses and Manager will pay such expenses within thirty (30) days of billing. After the Commencement Date, the Executive Director will deduct Manager's share of Kansas Lottery expenses before making Manager's monthly compensation payment as provided above in Paragraph 26. Manager's share of Kansas Lottery expenses will be calculated by taking the costs incurred by the Kansas Lottery that are directly attributed to Manager and Manager's Lottery Gaming Facility, plus the Kansas Lottery's common expenses attributable to all racetrack and lottery gaming facility managers as a result of the Kansas Lottery's activities pursuant to the Kansas Expanded Lottery Act, which common expenses will be divided equally among all managers.

b) All costs incurred by the Kansas Racing and Gaming Commission for its oversight and regulation of Manager and the Lottery Gaming Facility in accordance with the requirements for calculating and paying such costs as ~~required by the Kansas Expanded Lottery Act. determined by the executive director of the Kansas Racing and Gaming Commission. Manager acknowledges and agrees this obligation includes the requirement that Manager pay its *pro rata* share of the anticipated expenses of the Lottery Gaming Facility Review Board, which will be billed to Manager after the Kansas Lottery Commission's approval of this Agreement. If Manager fails to pay these expenses when due, this Agreement will be void, and Manager will forfeit any rights it may have to be a Lottery Gaming Facility Manager under the Kansas Expanded Lottery Act ten (10) days after receiving written notice from the Kansas Racing and Gaming Commission of Manager's failure to timely pay. Manager further acknowledges it has been advised that the executive director of the Kansas Racing and Gaming Commission will assess each manager, whose agreement is approved by the Lottery Gaming Facility Review Board, a proportionate share of all costs incurred by the Kansas Racing and Gaming Commission since 2007 Senate Bill 66 became effective on April 19, 2007, that are attributable to that agency's responsibilities under the Kansas Expanded Lottery Act.~~

c) Manager's share of the expenses incurred for the central computer system, which share will be based proportionately on Lottery Gaming Facility Revenues generated by the Electronic Gaming Machines placed at Manager's Lottery Gaming Facility in comparison to the revenues generated by the other Electronic Gaming Machines placed by the Kansas Lottery at Racetrack Gaming Facilities and Lottery Gaming Facilities that are part of ~~this~~the central computer system.

29. **Manager's Maintenance Responsibilities.** Manager must:

- a) Keep the Lottery Gaming Facility and all property and improvements associated with its Ancillary Lottery Gaming Facility Operations in good repair and in a reasonably safe condition;
- b) Make all necessary repairs and replacements to the Lottery Gaming Facility, including maintaining in an operational condition Manager's portion of the central communication system as required by the Executive Director in accordance with the vendor contract for that central communication system, and all property and improvements associated with its Ancillary Lottery Gaming Facility Operations (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen);
- c) Maintain the Lottery Gaming Facility and all property and improvements associated with its Ancillary Lottery Gaming Facility Operations in first

class ~~condition, ordinary wear and tear excepted,~~ including, without limitation, interior and exterior cleaning, painting and decorating, plumbing, carpentry and such other items that may be desirable; commercially reasonable; and

- d) Manage the Lottery Gaming Facility and all of Ancillary Lottery Gaming Facility Operations in a sound, diligent, and prudent manner in accordance with this Agreement.

30. **Prohibitions Applicable to the State.** The Kansas Lottery, acting on behalf of the State of Kansas, agrees by entering into this Agreement that:

- a) Neither the Kansas Lottery nor the State of Kansas will enter into a management contract for more than four (4) lottery gaming facilities or similar facilities in the four gaming zones outlined in the Kansas Expanded Lottery Act with one lottery gaming facility in each gaming zone;
- b) Neither the Kansas Lottery nor the State of Kansas will designate additional areas of the state where operation of Lottery Gaming Facilities or similar gaming facilities will be authorized, other than those set out in the Kansas Expanded Lottery Act; or
- c) Neither the Kansas Lottery nor the State of Kansas will operate an aggregate of more than 2,800 Electronic Gaming Machines at all parimutuel licensee locations.

31. **State Payment for Breach.** Manager will be entitled, as its sole monetary remedy, to payment in an amount equal to the actual privilege fee paid by Manager, plus interest on such amount, compounded annually at the rate of ten percent (10%), if the Kansas Lottery or the State of Kansas violates any provision in Paragraph 30 above during the term of this Agreement. - The parties acknowledge and agree that nothing in this paragraph will be interpreted to prevent or limit any rights Manager may have to seek specific performance or other equitable relief against the Kansas Lottery or the State of Kansas to enforce the prohibitions contained in Paragraph 30. Nothing in this paragraph will be deemed a waiver of the immunities and protections reserved to the State of Kansas under the Eleventh Amendment to the Constitution of the United States.

32. **Executive Director's On-Site Personnel.** The Executive Director will appoint one or more persons to oversee on-site ~~the~~ Lottery Facility Games at the Lottery Gaming Facility and Manager's performance under this Agreement. Such person(s) will report to the Executive Director, and have such authority as the Executive Director in writing may determine. Such person(s) will oversee operations, observe gaming activities, enforce gaming rules and policies, resolve disputes between Manager and Players, and perform such other tasks as directed by the Executive Director. All

determinations made by such persons will be subject to review by the Executive Director. ~~Director, provided that Manager may act and rely upon written and verbal determinations made by the Executive Director's on-site personnel until Manager receives written notice from the Executive Director amending or reversing any such determination.~~

33. **Deactivation and Possession of Lottery Facility Games.** Upon order of the Executive Director, any or all Lottery Facility Games located at the Lottery Gaming Facility will be subject to immediate deactivation and/or cessation of operation. At any time, the Executive Director will be entitled to physically secure or take possession of any or all Lottery Facility Games and any related equipment necessary to play such games.

34. **Insurance Required.** At the time provided in ~~paragraph~~ Paragraph 6(i) above, and at all times thereafter, including without limitation during any period of construction of the Lottery Gaming Facility, Manager must maintain or cause to be maintained insurance against such risks and for such amounts as are customarily insured against by businesses of like size and type paying, as the same become due and payable, all premiums in respect thereto, including, but not necessarily limited to:

- a) Insurance against loss or damage by fire, lightning, and other casualties, with a uniform standard extended coverage endorsement, such insurance to be in an amount not less than the full replacement value of the Lottery Gaming Facility, exclusive of excavations and foundations, as determined by a recognized appraiser or insurer selected by Manager or an amount not less than the maximum foreseeable loss, as determined by a property insurance carrier provided the policy provides a replacement cost endorsement up to the limit of the policy with customary and reasonable deductibles approved by the Executive Director; or as an alternative to the foregoing, Manager may insure the Lottery Gaming Facility under a blanket insurance policy or policies covering not only the Lottery Gaming Facility but other properties as well, provided a periodic appraisal is performed at intervals determined by the Executive Director and provided to the Executive Director.
- b) Workers' compensation insurance, disability benefits insurance, and each other form of insurance which Manager is required by law to provide, covering loss resulting from injury, sickness, disability or death of Manager's employees who are located at or assigned to the Lottery Gaming Facility.
- c) Commercial General Liability Insurance against loss or losses from liabilities imposed by law or assumed in any written contract and arising from personal injury and death or damage to the property of others caused by any accident or occurrence, with limits of not less than \$10,000,000 per

accident or occurrence on account of personal injury, including death resulting there from, and \$10,000,000 per accident or occurrence on account of damage to the property of others-, excluding liability imposed upon Manager by any applicable worker's compensation law. These liability limits may be satisfied by any combination of primary and excess liability policies. The primary general liability insurance may have a self-insured retention and the excess liability policy may have a commercially-reasonable deductible, as determined by the Executive Director. These liability insurance requirements may be satisfied by blanket policies in the aggregate amount of not less than \$10,000,000.

- d) Business interruption insurance against the perils enumerated in subparagraph (a) and in amounts determined by the Executive Director to be appropriate and commercially reasonable to protect both the Kansas Lottery's and Manager's financial interests, ~~in the revenue produced by the Lottery Gaming Facility.~~
- e) Employer's practices liability coverage providing customary coverage for alleged violations of local, state or federal civil rights laws or ordinances, or employment discrimination laws.
- f) Employee Dishonesty Combination Crime coverage in amount sufficient to cover all employees employed by Manager who are, or may be, responsible for handling any Lottery Gaming Facility Revenues or other monies belonging to the Kansas Lottery that come under the Manager's custody or control.

35. **Additional Provisions Regarding Insurance.** In addition to the above, Manager must ensure that:

- a) All insurance required in Paragraph 34 above names the Commission, the Kansas Lottery, and the State of Kansas as a named insured, and their respective lenders and permitted assigns, or additional named insured.- All insurance will be procured and maintained in financially sound and generally recognized responsible insurance companies selected by the Manager, but authorized to write such insurance in Kansas. Such insurance may be written with deductible amounts or self-insured retentions approved by the Executive Director ~~in amounts~~ comparable to those on similar policies carried by other companies engaged in the gaming industry for facilities similar in size, character and other respects to the Lottery Gaming Facility. All policies evidencing such insurance must provide for (1) payment of the losses of the Commission, the Kansas Lottery, the State of Kansas, and the Manager, and their respective lenders and permitted assigns, as their respective interest may appear, and (2) at

least thirty (30) days written notice of the cancellation thereof to the Executive Director and the Manager. ~~Policies referred to in this subparagraph (a) must include both the Kansas Lottery and the Manager as loss payees as their interest may appear.~~

- b) All certificates of insurance from the insurers that such insurance is in force and effect, must be deposited with the Executive Director on or before the Effective Date, except as provided in paragraph 6(i) above. Prior to expiration of the policy evidenced by said certificates, Manager must furnish the Executive Director with evidence that the policy has been renewed or replaced or is no longer required by this Agreement. Copies of the actual insurance policies will be provided to the Executive Director promptly at his request.
- c) Within one hundred twenty (120) days after the end of each Fiscal Year, the Company must file with the Executive Director a certificate from the Manager to the effect that the insurance it maintains with respect to the Lottery Gaming Facility complies with this Agreement and that duplicate copies of all policies or certificates were filed with the Executive Director and are in full force and effect.

36. **Kansas Lottery's Right to Pay Insurance, Taxes, or Other Charges.** If Manager fails (a) to pay any tax, assessment or other governmental charge required to be paid and not being formally contested by Manager in an appropriate forum with jurisdiction to hear such contests, or (b) to maintain any insurance required to be maintained, the Executive Director, in his discretion, and following written notice to Manager, may authorize the Kansas Lottery to make payment of such tax, assessment, or other governmental charge or the premium for such insurance. Manager will reimburse the Kansas Lottery for any amount so paid together with interest thereon from the date of payment at twelve percent (12%) per annum. The Kansas Lottery may set off such payments from any money otherwise due Manager.

37. **Lottery Gaming Facility Damage, Destruction or Condemnation.** If the Lottery Gaming Facility is damaged, destroyed or condemned (in whole or in part) at any time during the term of this Agreement, Manager must promptly replace, repair, rebuild, or restore the Lottery Gaming Facility to substantially the same condition and value as an operating entity as existed prior to such damage or destruction, with such changes, alterations and modifications as may be desired by Manager and approved by the Executive Director, and may use insurance or condemnation proceeds for all such purposes. Manager will have no obligation to rebuild the Lottery Gaming Facility if such damage, destruction or condemnation occurs within five (5) years of the end of this Agreement's term. The Kansas Lottery will have no obligation to replace, repair, rebuild or restore the Lottery Gaming Facility.

38. **Advertising, Marketing, and Promotion.** Manager must use its ~~best commercially reasonable~~ efforts to advertise, market, and promote the Lottery

Gaming Facility in order to attract the public to the facility and maximize ~~to the greatest extent possible~~ Lottery Gaming Facility Revenues and profits. - Manager must comply with all applicable regulatory requirements imposed for such materials and activities. All advertising, marketing and promotion materials employed by Manager must be approved by the Executive Director prior to their first use. Manager agrees that such materials may be disapproved if the Executive Director determines in his sole discretion that such materials would reasonably be expected to offend a substantial number of people, or violate any regulatory standards applicable to such materials. In addition, Manager must make available to the public the odds of winning any prize or prizes for games played on all Lottery Facility Games offered at the Lottery Gaming Facility to the extent possible given the nature of such games and subject to the Executive Director's approval. Advertising, marketing and promotion materials may include information regarding problem gambling as directed by the Executive Director.

39. **Players' Club.** The Executive Director may institute a Player's club or similar incentive or promotional program applicable to some or all Racetrack Gaming Facilities or Lottery Gaming Facilities owned and operated by the Kansas Lottery. If the Executive Director institutes a Player's club, the Executive Director agrees that: (a) Manager will have no direct or indirect responsibility to fund such a program; (b) Manager will not be required to provide the Executive Director with any customer data under Manager's control for purposes of a Player's club instituted by the Executive Director; and (c) the Executive Director will not institute an incentive or awards programs in such Player's club that is applicable to another Racetrack Gaming Facility or Lottery Gaming Facility without also making it available to Manager for use at the Lottery Gaming Facility. As to subparagraph (b), Manager acknowledges that nothing in subparagraph (b) will be read to restrict the Executive Director's access to any customer data for regulatory, security, or auditing purposes; and the Executive Director agrees customer data provided by Manager will not be used for any Player's club or similar incentive or promotion program instituted by the Executive Director. Nothing in this paragraph will be read to prevent Manager from instituting its own Player's club or similar incentive or promotional program at the Lottery Gaming Facility provided that such club or program is authorized by the Executive Director. The Executive Director agrees that Manager has the right to establish a Player's club that awards to Players credits based on their play at the Lottery Gaming Facility, provided that such awards programs are approved by the Executive Director.

40. **Players' Tracking System.** The Executive Director may institute a Players' tracking system applicable to some or all Racetrack Gaming Facilities or Lottery Gaming Facilities owned and operated by the Kansas Lottery. Manager will administer such program at the Lottery Gaming Facility as the Executive Director may provide. Nothing in this paragraph will be read to prevent Manager from instituting its own Player's tracking system at the Lottery Gaming Facility provided that such system is authorized by the Executive Director.

41. **Use of Trademarks, Service Marks, and Trade Names.** Manager is authorized to employ any of the Kansas Lottery's trademarks, trade names, and service

marks in any advertising, marketing or promotion for the Lottery Gaming Facility or the Lottery Facility Games placed therein, subject to the Executive Director's right to approve such advertising, marketing or promotion. Manager acknowledges it has no other right regarding the Kansas Lottery's trademarks, service marks, and trade names. Manager will not be required to pay any royalty or other fee for this usage. In addition, the Executive Director may require Manager to place Kansas Lottery's trademarks, trade names, or service marks at locations within the Lottery Gaming Facility as designated by the Executive Director in order to identify the games and gaming equipment as being owned and operated by the Kansas Lottery on behalf of the State of Kansas.

The Kansas Lottery is authorized to employ any of Manager's trademarks, trade names, and service marks in any advertising, marketing or promotion for the Lottery Gaming Facility or the Lottery Facility Games placed therein, subject to the Manager's right to approve such advertising, marketing or promotion. The Kansas Lottery acknowledges it has no other right regarding the Manager's trademarks, service marks, and trade names. The Kansas Lottery will not be required to pay any royalty or other fee for this usage.

42. **Personnel.** Manager will provide, supervise, direct the work of, discharge, and determine the compensation and other benefits of all personnel necessary to provide for the play of Lottery Facility Games at the Lottery Gaming Facility, except as otherwise noted in this Agreement, based upon a staffing plan approved by the Executive Director. Such personnel will not be considered employees of the Kansas Lottery or any other agency or department of the State of Kansas. Manager may determine the compensation to be paid to all of its personnel working at the Lottery Gaming Facility provided that such compensation is within the budget for personnel compensation approved by the Executive Director. Manager must ensure its personnel meet all applicable regulatory requirements imposed by the Commission or the Kansas Racing and Gaming Commission. Manager will not discriminate against any employee or applicant for employment because of race, creed, color, sex, age, or national origin nor violate any applicable law, regulation or local ordinance governing employer obligations.

43. **Personnel Training.** Manager will provide and direct employee recruitment, instructional programs, incentives, and on-the-job training necessary to ensure a first class facility for the playing of Lottery Facility Games by the public. Such trainings and other programs for personnel are subject to the Executive Director's approval, but may be conducted on or off site, on the job, or by instructors at or from educational training facilities.

44. **Key Employees.** Manager agrees the personnel, or positions, as well as any independent contractors designated in Exhibit D, are considered Key Employees, whose employment and retention are subject to the Executive Director's approval within his sole discretion; provided, however, that nothing in this paragraph will restrict the right of either the Kansas Lottery or the Kansas Racing and Gaming Commission to take action regarding the license held by any of Manager's employees in accordance with applicable statutes or rules and regulations promulgated pursuant to law. The Executive

Director may amend Key Employees list at any time for any reason.

45. **Books and Records; Financial Statements.** Manager must maintain an accurate accounting system in connection with its management of the Lottery Gaming Facility. The books and records will be kept in accordance with generally accepted accounting principles maintained in accordance with current industry standards for similar gaming businesses. The books and records shall be maintained at all times either at the Lottery Gaming Facility and at such other locations as may be specified by regulation. The Executive Director, or his designees, shall have the right and privilege of examining these books and records at any time. In addition, the Executive Director may at any time obtain and pay for an audit performed by an independent certified public accountant. If this audit reveals a discrepancy greater than \$10,000 in Lottery Gaming Facility Revenues or a discrepancy greater than \$100,000 on any other line item previously reported to the Executive Director from the books and records provided by Manager, the audit's cost will be reimbursed by Manager as a set off from the compensation to be paid Manager pursuant to Paragraph ~~2625~~ above. On or before the 20<sup>th</sup> day following the close of each month, Manager must furnish the Executive Director with a reasonably detailed operating statement for the Lottery Gaming Facility for that period, including year-to-date results.

46. **Records Retention and Access.** Manager must maintain all books and records regarding the Lottery Gaming Facility for a minimum period of five (5) years, or such other longer period as may be imposed by regulation. Manager must permit access to such books and records as is legally required by law, regulation, or this Agreement, including giving access to the Post Auditor for the Kansas Legislature, the Executive Director or his designee, authorized representatives for the Kansas Racing and Gaming Commission, or any authorized representative of the United States government.

47. **Budget and Business Plans for Each Fiscal Year.** No later than forty-five (45) days prior to the commencement of each Fiscal Year, Manager must submit to the Executive Director a budget (the "Budget") and a proposed Business Plan for the Lottery Gaming Facility for such Fiscal Year, containing reasonably detailed revenue and expense projections and providing projections for all expenditures that Manager anticipates to be made, as well as all capital expenditures and expenditures for replacements. The Budget will accompany and be compatible with Manager's proposed Business Plan for the upcoming Fiscal Year. The Budget is intended as, and will represent only, an estimate of the projected revenues and expenditures for the Fiscal Year based upon assumptions believed by Manager to be reasonable at the time of preparation. The Budget and proposed Business Plan for each upcoming Fiscal Year will be subject to the Executive Director's approval. Thereafter, Manager will use reasonable efforts to achieve the budgetary goals reflected in the Budget, but the parties both recognize the Budget cannot be relied upon as an assurance of actual results for such Fiscal Year. Manager must promptly notify the Executive Director of any need to depart in any material way from the Budget if, in Manager's judgment, adherence to the Budget is impractical or if such departure is necessary or desirable for the Lottery Gaming Facility's efficient or profitable operation. Any such deviations from the Budget are

subject to the Executive Director's approval.

48. **Bank Accounts.** Manager will establish a special bank account in its name at a Kansas bank approved by the Executive Director with Manager being the only party authorized to draw from this account except upon a default under this Agreement by Manager or any termination of this Agreement at which time the Executive Director will have that authority. This bank account will be used by Manager for all payments. The Executive Director will cause Manager's portion of the Lottery Gaming Facility Revenues to be deposited into this account monthly. With the Executive Director's approval, Manager may establish at the same bank multiple accounts to segregate certain expenses, such as payroll.

49. **Events of Default.** Each of the following will constitute an event of default by Manager:

- a) Manager's failure to pay any amount owed the Kansas Lottery in the manner provided for in this Agreement if the Kansas Lottery decides in its sole discretion to give notice of such default to Manager;
- b) The filing of a voluntary assignment in bankruptcy or insolvency or a petition for reorganization under any bankruptcy law by Manager;
- c) The consent to an involuntary petition in bankruptcy by Manager;
- d) Entry of an order, judgment or decree by any court of competent jurisdiction, on application of a creditor, adjudicating Manager a bankrupt or insolvent or approving a petition seeking reorganization or appointing a receiver, trustee or liquidator of all or a substantial part of Manager's assets, if such order, judgment or decree continues unstayed and in effect for a period of 120 consecutive days; or
- e) Manager's failure to perform, keep or fulfill any other covenant, undertakings, obligations or conditions set out in this Agreement for a period of thirty (30) days after written notice of said failure from the Executive Director (unless a shorter period of time is specified in this Agreement); provided, however, that if the default is not susceptible of being cured within this thirty (30) day period and the defaulting party with due diligence takes and continues action to cure, then no event of default will be deemed to have occurred until the failure to take or to continue to take such action.
- f) Withdrawal of any approval granted, loss or suspension of any license issued to Manager by the Kansas Racing and Gaming Commission or any other regulatory entity with jurisdiction over Manager's activities unless such withdrawal, suspension or loss is being contested by Manager in the appropriate forum with jurisdiction over the agency action at issue; or

~~g) Manager's failure to maintain financial viability as determined by condition being such that the Executive Director in his sole discretion sum of Manager's debts exceeds the fair market value of Manager's assets.~~

g)

50. **Remedies on Default.** If an event of default occurs as provided above, the Executive Director may, without prejudice to any other legal or equitable remedy which he may have, give Manager notice of the Kansas Lottery's intention to terminate this Agreement after the expiration of fifteen (15) days from the date of such notice and upon the expiration of such period, ~~unless another cure period is expressly provided for,~~ this Agreement will be deemed terminated; provided, however, that nothing in this paragraph, or in this Agreement, will be construed to restrict the Executive Director's authority to: (a) immediately cease operation of any or all Lottery Facility Games at the Lottery Gaming Facility for any reason; or (b) physically secure or take possession of any or all Lottery Facility Games and any related equipment necessary to play such games. Manager acknowledges and agrees that once this Agreement is terminated, the Kansas Lottery thereafter will be free to enter into a management contract with a new manager for another Lottery Gaming Facility in the ~~Southwest-~~ Kansas ~~Gaming Zone~~ gaming zone without penalty to the Kansas Lottery or further recourse by Manager. Manager further acknowledges that its failure to make any daily electronic payment of Lottery Gaming Facility Revenues as required by Paragraph 23 will authorize the Executive Director in his sole discretion to immediately terminate this Agreement.

51. **Remedies Cumulative.** No remedy conferred upon or reserved to the Kansas Lottery in this Agreement is intended to be exclusive of any other available remedy, but each and every such remedy will be cumulative and in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default will impair any such right or power or will be construed to be a waiver, but any such right and power may be exercised from time to time and as often as may be deemed expedient in favor of the Kansas Lottery.

52. **Surrender Upon Termination.** At the Executive Director's request, Manager agrees that at the expiration or earlier termination of this Agreement, Manager will deliver to the Executive Director, or his designee, all books, records, accounting documents, computerized files, contracts, leases, licenses, permits or other governmental authorizations, files, supplies, keys, locks safe combinations, insurance policies not maintained as part of Manager's blanket policies, warranty contracts and cards, operating instructions and other information, warranties and guaranties concerning all equipment relating to the Lottery Facility Games, as well as any maintenance or preventive maintenance programs, schedules and logs, records, inventories of personal property and equipment purchased on behalf of the Kansas Lottery or the State of Kansas, and all other information regarding the Lottery Facility Games, and all accounts and sums held or maintained by Manager on behalf of the Kansas Lottery. Manager will have a reasonable

period of time, not to exceed forty-five (45) days from the termination date, to complete all accounting functions with respect to the Lottery Gaming Facility. Manager must cooperate with the Executive Director in changing any bank accounts maintained for the Kansas Lottery's benefit. Manager must take all actions reasonably necessary to facilitate the orderly transition or termination of the management of the Lottery Gaming Facility and must perform all reporting and accounting functions required by this Agreement for the period from the date of the last report or accounting to the termination date. If, at the termination of this Agreement, there are any Lottery Facility Games that were purchased by Manager on behalf of the Kansas Lottery with ownership transferred to the Kansas Lottery, ~~then the Executive Director will transfer ownership of such games to Manager or Manager's designee, if such transfer is lawful; but if such transfer is not lawful,~~ then the Executive Director will refund to Manager the residual value received by the Executive Director in a sale to an eligible buyer in an arm's length transaction. The Kansas Lottery will also vacate the physical space where the Lottery Gaming Facility was located within thirty (30) days of this Agreement's termination.~~of such game to an eligible buyer.~~

53. **Agreement to Pay Attorneys' Fees and Expenses.** If Manager defaults under any provision of this Agreement and the Kansas Lottery should employ attorneys or incur other expenses for the collection of amounts payable or to enforce performance or observance of Manager's obligations under this Agreement, Manager must pay, on demand, the reasonable fees of such attorneys and such other expenses incurred by the Kansas Lottery, if the Kansas Lottery is the prevailing party.

54. **Manager's Indemnification Responsibilities.** In addition to any other indemnification obligations provided in this Agreement or by law, Manager agrees as follows:

- a) To hold and save harmless the State of Kansas, Commission, Commission members, the Executive Director, the Kansas Lottery, Kansas Lottery staff, Kansas Racing and Gaming Commission, Kansas Racing and Gaming Commission members, the Kansas Racing and Gaming Commission's executive director, and Kansas Racing and Gaming Commission staff (each an "Indemnified Party") from liability for injury to persons or damages to property by reason of any cause whatsoever, either in and about the Lottery Gaming Facility or elsewhere, when Manager is carrying out the provisions of, or any way connected with, this Agreement.
- b) To hold and save harmless any Indemnified Party upon demand for any money or other property which they are required to pay out for any reasons whatsoever, whether the payment is for a budgeted expense or any other charges or debts incurred or assumed by Manager, or any other party, or judgments, settlement or expenses in defense of any claim, civil action, proceeding, charge, or prosecution made, instituted or maintained against Manager or an Indemnified Party jointly or severally, affecting or because of the condition or use of the Lottery Gaming Facility, or acts or failure to act by Manager or Manager's agents, or arising out of or based

upon any law, regulation, requirement, contract or award related to the hours of employment, working conditions, wages and/or compensation of employees or former employees at the Lottery Gaming Facility, or any other cause in connection with the Lottery Gaming Facility's management or Manager's activities related to any Ancillary Lottery Gaming Facility Operations. This ~~provision~~ entire Paragraph 54 does not include any action against the Kansas Lottery or its staff regarding the constitutionality of the Kansas Expanded Lottery Act or misconduct by an Indemnified Party that is found to be negligent or criminal.

- c) To hold and save harmless any Indemnified Party from liability for any claim arising as a result of the selection of Manager under the Kansas Expanded Lottery Act to manage the Lottery Gaming Facility, the denial of some other potential manager in making that selection, the process used in making the selection, or the process used in applying to become a Lottery Gaming Facility Manager under the Kansas Expanded Lottery Act.
- d) To hold and save harmless any Indemnified Party from liability for any violation or breach of this Agreement by Manager, its employees, or agents.
- e) To hold and save harmless any Indemnified Party from liability for any claims alleging negligent acts or omissions by Manager, its officers, employees, agents, board members, contractors, subcontractors or agents in the performance of this Agreement.
- f) To hold and save harmless any Indemnified Party from liability for any claims alleging violations of any intellectual property right for any intellectual property supplied by Manager under this Agreement, including but not limited to, infringement of patents, trademarks, trade dress, trade secrets, or copyrights arising from Manager's performance under this Agreement.

Manager's duties under this paragraph will survive the termination or expiration of this Agreement. Manager agrees to defend (with counsel selected by the Executive Director), at Manager's sole expense, any Indemnified Party, and to pay on demand all costs and expenses related to such defense regarding any indemnification right provided for in this paragraph. Nothing contained in this provision will relieve Manager from responsibility to the Kansas Lottery, as a result of willful misconduct, gross negligence, material breach of this Agreement, or acts outside the scope of Manager's authority under this Agreement on the part of Manager, its agents or employees, and Manager agrees to indemnify any Indemnified Party for damage or loss resulting from said acts. Manager's obligations under this paragraph may be satisfied in whole, or in part, by insurance purchased at Manager's expense, provided that Manager will be responsible for any indemnified liabilities in excess of insurance limits.

55. **Compliance with Orders, Ordinances, Etc.** Throughout this Agreement's term, Manager will promptly comply in all material respects with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all federal, state, county, municipal and other governments, departments, commissions, boards, companies or associations insuring the premises, courts, authorities, officials and officers, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Lottery Gaming Facility or any part thereof, or to any use, manner of use or condition of the Lottery Gaming Facility or any part thereof. Notwithstanding these requirements, Manager may in good faith contest the validity of the applicability of any requirement of the nature referred to in this paragraph. In such event, Manager may fail to comply with the requirement or requirements so contested during the period of such contest and any appeal therefrom, so long as such non-compliance is permitted by law. Manager will give notice to the Executive Director of any such non-compliance.

56. **Discharge of Liens and Encumbrances.** Manager shall not permit or create or suffer to be permitted or created any lien upon the Lottery Gaming Facility Revenues or the Lottery Gaming Facility, or any part thereof, by reason of any labor, services or materials rendered or supplied or claimed to be rendered or supplied with respect to the Lottery Gaming Facility or any part thereof, except any liens expressly approved by the Executive Director. Notwithstanding these requirements, Manager may in good faith contest any such lien. In such event, Manager, upon prior written notice to the Executive Director, may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal, unless the Executive Director requires Manager to promptly secure payment of all such unpaid items by filing the requisite bond, in form and substance satisfactory to the Executive Director, thereby causing a lien to be removed. Manager agrees this Agreement is not to be considered property, and will not permit this Agreement to be attached, garnished, or executed upon by any creditor for any reason, but such attachment, garnishment or execution shall not be grounds for default if Manager promptly contests and obtains vacation of such writs or secures a bond that causes the lien thereof to be removed; and Manager may assign its compensation under this Agreement, and Manager's related rights and remedies, to lenders in connection with financing for the Gaming Facility Enterprise.~~reason.~~ This Agreement is not transferable in bankruptcy without the Executive Director's approval.

57. **Assignment.** This Agreement may not be assigned in whole or in part without the Executive Director's express written consent and in his sole and absolute discretion, except that Manager may grant liens upon, and assign, its right to the Manager's compensation and any other payments due Manager in connection with this Agreement, subject to rights of set off as provided in this Agreement,~~which may be granted or withheld in his sole and absolute discretion. The Executive Director acknowledges that a joint venture or other business combination or transfer of an equity interest involving Manager and suitable third party or parties is permissible, provided such party or parties receive all approvals required by applicable statute or regulation.~~

58. **Notices.** All notices and other communications provided for under this Agreement, or any applicable statute or regulation, must be in writing and sent via (a) U.S. Mail, certified mail, return receipt requested, (b) recognized national overnight courier (e.g. FedEx, UPS, DHL, etc.) or (c) fax, if followed by notice under (a) or (b) at the addresses set forth below, or at such other address as such party may specify by written notice to the other parties hereto:

If to the Executive Director:

\_\_\_\_\_ Ed Van Petten

\_\_\_\_\_ Kansas Lottery

\_\_\_\_\_ 128 N. Kansas Avenue

\_\_\_\_\_ Topeka, KS 66603-3638

\_\_\_\_\_ Telephone: 785-296-5703

\_\_\_\_\_ Facsimile: 785-296-5722

If to Manager:

\_\_\_\_\_ Stephen M. Joseph

\_\_\_\_\_ Joseph & Hollander PA

\_\_\_\_\_ 500 N. Market St.

\_\_\_\_\_ Wichita, KS 67214-3514

\_\_\_\_\_ Telephone: 316-262-9393

\_\_\_\_\_ Facsimile: 316-262-9006

Notice will be deemed given three days after mailing, if by certified mail, return receipt requested, the next business day after delivery to an overnight delivery service for next business day delivery, or on the date sent by fax if confirmation of receipt is obtained and retained and provided that notice under (a) or (b) above is sent the same day.

59. **Amendments.** ~~No Except as otherwise provided in this paragraph, no amendment, waiver, or consent as to any provision in this Agreement will be effective unless it is in writing and agreed to by the Executive Director, and Manager, and each such waiver or consent will be effective only in the specific instance and for the specific purpose for which given. In addition, and notwithstanding any other provision in this Agreement, Manager acknowledges and agrees the Executive Director may overrule any action by Manager affecting operations within the Lottery Gaming Facility without prior notice to Manager, and that the Kansas Lottery maintains at all times full control over all decisions concerning the Lottery Facility Games placed at the Lottery Gaming Facility. This Agreement will also be modified, in whole or in part, in order to comply with future statutory enactments or judicial interpretations of applicable law by a court of competent jurisdiction.~~—This Agreement is subject to modification, in whole or in part, or cancellation, as deemed necessary by the Executive Director to comply with any future statutory enactments, subsequent regulatory changes, or judicial interpretations of applicable law by a court of competent jurisdiction occurring after this Agreement’s execution, without additional consideration being exchanged between the parties. ~~Nothing~~The parties agree ~~nothing~~ in this paragraph will be read to limit the remedies provided to Manager in Paragraphs 31 ~~and~~ 65.

60. **No Recourse; Special Obligation.** The Kansas Lottery's obligations and agreements contained herein and any other instrument or document executed in connection with this Agreement, and any other instrument or document supplemental thereto or hereto, are deemed the obligations and agreements of the Kansas Lottery, and not of any member, officer, contractor (other than Manager), or employee of the Commission or Kansas Lottery in his or her individual capacity, and such individuals will not be liable personally hereon or thereon or be subject to any personal liability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby.

61. **Severability.** If any provision in this Agreement is determined to be invalid or unenforceable by any court with competent jurisdiction, such holding will not invalidate or render unenforceable any other provision, and the parties may renegotiate this Agreement to conform to any such court holding.

62. **Binding Effect.** This Agreement will inure to the benefit of, and will be binding upon, the State of Kansas, the Kansas Lottery, Manager, and their respective successors and assigns.

63. **Force Majeure.** With respect to any obligation to be performed by a party during this Agreement's term, no party will be liable for failure to perform when prevented by any force majeure cause beyond the reasonable control of such party such as ~~an act of god, final resolution of any material litigation (including the litigation referred to in Paragraph 8 above)~~ strike, lockout, breakdown, accident, order or regulation of or by any governmental authority, failure of supply or inability, by the exercise of reasonable diligence, to obtain financing for the project on commercially reasonable terms that preserve project viability, supplies, parts or employees necessary to perform such obligation, or war or other emergency. The time within which such obligation must be performed will be extended for a period of time equivalent to the delay from such cause. But failure to perform by Manager's subcontractors or agents will not be considered a force majeure unless such subcontractor or supplier is prevented from timely performance by a force majeure as described above. This paragraph will not apply to any financial difficulties of Manager, or any parent, subsidiary, affiliated or associated company of Manager, but will apply to orders of the Kansas Racing and Gaming Commission, or claims or court orders restricting Manager's ability to perform so long as such orders, claims or court orders are not on account of any misconduct by Manager. ~~The provisions of this Paragraph 63 notwithstanding, the parties agree the litigation component of the force majeure definition does not apply to Manager's obligations to pay the privilege fee as required by Paragraph 20 above, or to Manager's obligations to pay the expenses of the Kansas Lottery or the Kansas Racing and Gaming Commission as required by Paragraph 28.~~

64. **Emergency Closings.** If at any time during this Agreement's term it becomes necessary in the Executive Director's or Manager's reasonable opinion to cease operations at the Lottery Gaming Facility in order to protect the facility or the health, safety and welfare of guests or employees for reasons of force majeure such as, but not

limited to, acts of war, insurrection, civil strife and commotion, labor unrest, environmental risks or other casualty, then the Lottery Gaming Facility may be closed and cease operation of all or part of the facility. If this occurs based on Manager's determination, Manager must immediately notify the Executive Director, who will then determine when the Lottery Gaming Facility is reopened without jeopardy to the facility, its guests or employees.

65. **Manager's Right to Cease Management Activities.** Manager may cease management of the Lottery Gaming Facility and terminate this Agreement with no less than six months advance written notice if:

- a) K.S.A. 2007 Supp. 74-8734(h)(1) or other applicable statute or regulation is amended to reduce the term of this Agreement;
- b) ~~Either~~ K.S.A. 2007 Supp. 74-8734(h)(12) or (13) or other applicable statute or regulation are amended to increase the minimum percentages stated ~~in~~ K.S.A. 2007 Supp. 74-8734(h)(12) or (13) above the amounts provided for in this Agreement;
- c) K.S.A. 2007 Supp. 74-8734 ~~(h)(16) or other applicable statute or regulation~~ is amended to increase above the aggregate the minimum percentages stated in K.S.A. 2007 Supp. 74-8734(h)(16) above the amounts provided for in this Agreement;
- ~~d)~~
- d) The Kansas Lottery fails to effect payment of Manager's compensation as due under this Agreement and not otherwise in dispute, provided such failure of payment is not cured within ten (10) business days of notice by Manager to the Executive Director;
- e) K.S.A. 2007 Supp. 74-8739 is amended to no longer permit the sale or service of alcoholic beverages at the Lottery Gaming Facility or Ancillary Lottery Gaming Facility Operations;

~~The Kansas Expanded Lottery Act is amended to preclude the Kansas Lottery from owning and operating table games at the Lottery Gaming Facility;~~

~~A court of competent jurisdiction, after all appropriate appeals are exhausted, invalidates paragraph 30 above or the corresponding provisions of the Kansas Expanded Lottery Act;~~

- f) The Lottery Gaming Facility operates at a financial loss to Manager at the net income level (as defined by GAAP and verified by an independent audit by an auditor approved by the Executive Director) during any consecutive 12 months full Fiscal Year and Manager gives the Executive Director at least 180-days' advance written notice of Manager's intent to cease management activities within thirty (30) forty five (45) days after the end of the 12 months Fiscal Year in which the financial loss occurs.

Notwithstanding any other provision in this Agreement, Manager may immediately

The Executive Director exercises his right under Paragraph 33 or the Kansas Expanded Lottery Act to physically secure, deactivate or cease management operation of such a substantial number of Lottery Facility Games that the Lottery Gaming Facility and terminate this Agreement if a court of competent jurisdiction, after all appropriate appeals are exhausted, invalidates Paragraph 29 above or the corresponding provision is no longer commercially viable; or

If litigation or any other challenge to the constitutionality of the Kansas Expanded Lottery Act or determines that the enforceability of this Agreement violates either the Kansas Expanded Lottery Act or Article 15, Section 3c, of remains in question more than 180 days after the Kansas Constitution Effective Date.

The parties agree that in addition to, or in lieu of, Manager's right to cease management activities under this paragraph, Manager will have available to it any legal or equitable remedy against the State of Kansas, including any impairment of the obligations of this contract prohibited by Article I, Section 10, Clause 1 of the Constitution of the United States of America, if any of the circumstances stated above in sub-paragraphs (a), (b), (c), (d) or, (e) ~~or (f)~~ occur during the term of this Agreement. Nothing in this paragraph will be deemed a waiver of the immunities and protections reserved to the State of Kansas under the Eleventh Amendment to the Constitution of the United States.

66. **Manager's Ability to Withdraw Application.** Manager may withdraw its application to be a Lottery Gaming Facility Manager at any time prior to its approval by the Lottery Gaming Facility Review Board. Notice of Manager's withdrawal must be given in writing to the Executive Director. If at the time of Manager's withdrawal, Manager has paid a privilege fee to the state treasurer and credited to the Lottery Gaming Facility Manager Fund, the Executive Director will promptly notify the state treasurer of Manager's withdrawal and direct the state treasurer to refund Manager's privilege payment without interest. Manager acknowledges and agrees that if it withdraws its application pursuant to this paragraph, this Agreement will be void and Manager will not be permitted to re-apply as a Lottery Gaming Facility Manager ~~in the Kansas Gaming Zone~~ unless the application process is reopened. Manager will not be permitted any refund for payments made by Manager to reimburse the Kansas Lottery or the Kansas Racing and Gaming Commission's expenses as required by this Agreement.

67. **Financing Commitment for Construction.** In accordance with K.S.A. 2007 Supp. 74-8734(h)(9), Manager attaches as Exhibit- E its financing commitment for construction of the Lottery Gaming Facility and ancillary facilities.

68. **Executive Director's Approval.** When it is provided in this Agreement that the Manager will submit a budget, plan or other issue for the Executive Director's approval, the Executive Director will respond within a commercially reasonable time based on the issue under consideration, provided that any request from Manager in which the Executive Director fails to respond in a commercially reasonable time will be deemed denied. The Executive Director will not exercise his discretionary authority provided to him in this Agreement in an unreasonable, arbitrary or capricious manner.

69. **Central Computer System.** Manager acknowledges and agrees that all Electronic Gaming Machines at the Lottery Gaming Facility will be directly linked to a central computer at a location determined by the Executive Director for purposes of security, monitoring, auditing, and providing other available program information to the Kansas Lottery. The Executive Director will have sole authority to determine the functions and operational capacities to be performed through this central computer system by Manager, as well as the services provided by the vendor engaged by the Executive Director to provide the central computer system. In addition to all other functions to be performed by the central computer system, the Executive Director expressly reserves the authority to determine if this central computer system will be used to validate or redeem tickets issued by an Electronic Gaming Machine commonly referred to as "Ticket-in Ticket Out."

70. **Counterparts.** This Agreement may be executed in counterparts, each of which will be an original and all of which will constitute one and the same instrument.

71. **Applicable Law.** This Agreement will be governed, construed, and enforced in accordance with Kansas law for contracts to be wholly performed within the state.

72. **Jurisdiction and Venue.** Any action by or between the parties challenging the constitutionality of, or arising out of, any provision of the Kansas Expanded Lottery Act, this Agreement, or any rule or regulation promulgated pursuant to the Kansas Expanded Lottery Act must be brought in the district court of Shawnee County, Kansas, unless a dispute is first subject to proceedings under the Kansas Administrative Procedure Act.

73. **Headings Not Controlling; ~~Construction; Survival.~~ Construction.** Each paragraph heading is prepared for convenience only and is not to control, affect the meaning, or be taken as an interpretation for any provision in this Agreement. Use of the word "including" in this Agreement does not mean including in a restrictive sense, but rather means in the sense of providing a non-exclusive illustration, as if the words "including without limitation" were included in the text. Paragraphs 30, 31, 48, 52, 54, 58, 65, 71, 72 and 73 shall survive the termination of this Agreement.

74. **No Joint Venture Created.** Manager and the Kansas Lottery agree and acknowledge that by entering into this Agreement they are not entering into a joint venture.

75. **Covenant for Continued Disclosure.** Within 30 days after the close of the Fiscal Year, Manager must update all exhibits to this Agreement. Upon the Executive Director's written request, Manager will provide such other information regarding the financial or legal undertakings of Manager, the Lottery Gaming Facility, or the Ancillary Lottery Gaming Facility Operations.

~~76.76.~~ **No Endorsement Made.** By executing this Agreement the Kansas Lottery, the Kansas Racing and Gaming Commission, and the State of Kansas have not considered or endorsed the marketability of Manager's securities or marketability of any securities of Manager's affiliates.

~~7777.~~ **Contractual Attachment.** It is further agreed that the provisions found in the Contractual Provisions Attachment (Form DA-146a), which has been revised by the parties and is attached [hereto](#) as Exhibit F, are incorporated in this Agreement as though set out in full.

IN WITNESS WHEREOF, the Executive Director, on behalf of the Kansas Lottery, and Manager have caused this Agreement to be executed in their respective names, all as of the date first above written.

THE KANSAS LOTTERY

By: \_\_\_\_\_  
Ed Van Petten  
Executive Director

DODGE CITY RESORT & GAMING CO., LLC

[INSERT NAME]

By: \_\_\_\_\_  
Stephen M. Joseph

President

## **EXHIBIT SCHEDULE**

EXHIBIT A – Environmental Compliance and Indemnification Agreement

EXHIBIT B – County Endorsement

EXHIBIT C –Expected Construction Sequence

EXHIBIT D –Key Employees

EXHIBIT E– Financing Commitment Description

EXHIBIT F – DA-146a (revised by the parties)

**EXHIBIT "A"**

**ENVIRONMENTAL COMPLIANCE AND  
INDEMNIFICATION AGREEMENT**

**ENVIRONMENTAL COMPLIANCE  
AND INDEMNIFICATION AGREEMENT**

THIS ENVIRONMENTAL COMPLIANCE AND INDEMNIFICATION AGREEMENT (the "Environmental Compliance Agreement"), dated as of May \_\_, 2008 , is given by **Dodge City Resort and Gaming Company, LLC** ("Manager"), a Kansas limited liability company having offices at 500 North Market Street, Wichita, KS 67214-3514, and the persons, firms or corporations, if any, identified as Indemnitors at the end of this Environmental Compliance Agreement (collectively "Indemnitors"), to the **Kansas Lottery**, an agency of the State of Kansas having its principal office at 128 N. Kansas Avenue, Topeka, KS 66603-3638.

**RECITALS**

**WHEREAS**, the Manager is the owner of, or is acquiring title to or other interest in, certain real property located in Ford County, State of Kansas and described more fully in Schedule "A" attached and made a part hereof (the "Premises"); and

**WHEREAS**, the Manager is contracting with the Kansas Lottery to be a Lottery Gaming Facility Manager, as that term is defined in the Kansas Expanded Lottery Act, K.S.A. 2007 Supp. 74-8733 through 74-8773, which will consist of a Lottery Gaming Facility and certain Ancillary Lottery Gaming Facility Operations, as referenced in a Lottery Gaming Facility Management Contract of even date, to which this Environmental Compliance Agreement is attached (collectively referred to as the "Project"); and

**WHEREAS**, the Lottery Gaming Facility Management Contract contemplates that Manager will construct and maintain the Project in which a certain portion will be used to house a Lottery Gaming Facility, the business of which will be owned and operated by the Kansas Lottery ; and

**WHEREAS**, the Kansas Lottery is unwilling to consummate the Lottery Gaming Facility Management Contract unless the Manager and the Indemnitors execute and deliver this Environmental Compliance Agreement to the Kansas Lottery.

**NOW, THEREFORE**, in consideration of the foregoing and to induce the Kansas Lottery to consummate the Lottery Gaming Facility Management Contract, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Manager and the Indemnitors covenant and agree with the Kansas Lottery as follows:

1. **DEFINITIONS**. All capitalized terms used in this Environmental Compliance Agreement and not defined will have the meanings set forth below.

(a) **Environment** means any water, groundwater, water vapor, land (including land surface or subsurface), soil vapor, air, fish, wildlife, biota, and all other natural resources.

(b) **Environmental Laws** mean all federal, state and local environmental, land use, zoning, health, chemical use, safety and sanitation laws, statutes, ordinances and codes

relating to the protection of the Environment and/or governing the use, storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Substances (as defined below) and the rules, regulations, policies, guidelines, interpretations, decisions, orders and directives of federal, state and local governmental agencies and authorities with respect thereto.

(c) Environmental Permits mean all permits, licenses, approvals, authorizations, consents or registrations required by any applicable Environmental Law in connection with the ownership, use and/or operation of the Premises for the storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Substances or the sale, transfer or conveyance of the Premises.

(d) Hazardous Substance means any substance (i) the presence of which requires investigation or remediation under any Environmental Law; or (ii) which is or becomes defined as a “hazardous waste”, “hazardous substance”, “toxic substance”, “solid waste”, pollutant and/or or contaminant under the Comprehensive Environmental Response, Compensation and Liability Act, as amended (42 U.S.C. section 9601 *et seq.*), the Resource Conservation and Recovery Act (42 U.S.C. section 6901 *et seq.*), as amended, the Hazardous Materials Transportation Act, as amended (49 U.S.C. Section 1801 *et seq.*), the Clean Air Act (42 U.S.C. Sections 7401, *et seq.*), the Toxic Substances Control Act, as amended (15 U.S.C. Section 2601, *et seq.*), the Clean Water Act, as amended (33 U.S.C. Sections 1251 *et seq.*), the Occupational Safety and Health Act, as amended (29 U.S.C.A. Section 651 *et seq.*), and/or any other applicable Environmental Law or any regulations promulgated under any of the foregoing; or (iii) which is toxic (including, but not limited to, toxic mold), explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority, agency, department, commission, board, agency or instrumentality of the United States, the State of Kansas or any political subdivision thereof; or (iv) the presence of which on the Premises causes or threatens to cause a nuisance upon the Property or to adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the Premises; or (v) which contains gasoline, diesel fuel or other petroleum hydrocarbons; or (vi) which contains polychlorinated biphenyls (PCBs), asbestos or urea formaldehyde foam insulation.

(e) Improvements mean any buildings, structures and other improvements (if any) presently or hereafter located on the Premises.

(f) Indemnitee means the Kansas Lottery, the Kansas Lottery Commission, and the State of Kansas, and their successors and assigns, and their respective officers, directors, employees, agents, representatives, contractors and subcontractors.

(g) Release means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the Environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any Hazardous Substance).

2. REPRESENTATIONS AND WARRANTIES: The Manager represents and warrants to the Kansas Lottery that to the best of the Manager's knowledge, information and belief:

(a) Neither the Premises nor any property adjacent to or within the immediate vicinity of the Premises is being or has been used for the storage, treatment, generation, transportation, processing, handling, production, disposal or release of any Hazardous Substance or as a landfill or other solid waste disposal site or for military, manufacturing or industrial purposes or for the storage of petroleum or petroleum based products.

(b) Underground storage tanks are not and have not been located on the Premises, except as set forth in Schedule "B" hereto.

(c) The soil, subsoil, bedrock, soil vapor, surface water and groundwater of the Premises are free of any Hazardous Substances.

(d) There has been no Release nor is there the threat of a Release of any Hazardous Substance on, at or from the Premises, or any property adjacent to or within the immediate vicinity of the Premises which through soil, subsoil, soil vapor, bedrock, surface water or groundwater migration could come to be located on the Premises, and the Manager has not received any form of notice or inquiry from any federal, state or local governmental agency or authority, any operator, tenant, subtenant, licensee or occupant of the Premises or any property adjacent to or within the immediate vicinity of the Premises or any other person with regard to a Release or the threat of a Release of any Hazardous Substance on, at or from the Premises or any property adjacent to or within the immediate vicinity of the Premises.

(e) All Environmental Permits necessary for the acquisition, construction, equipping, use or operation of the Premises have been obtained and are in full force and effect.

(f) No event has occurred with respect to the Premises which, with the passage of time or the giving of notice, or both, would constitute a violation of any applicable Environmental Law or non-compliance with any Environmental Permit.

(g) There are no agreements, consent orders, decrees, judgments, notices of violations, demand letters, license or permit conditions or other orders or directives of any federal, state or local court, governmental agency or authority relating to the past, present or future ownership, use, operation, sale, transfer or conveyance of the Premises which require any change in the present condition of the Premises or any work, repairs, construction, containment, clean-up, investigations, studies, removal or other remedial action or capital expenditures with respect to the Premises.

(h) There are no actions, suits, claims or proceedings, pending or threatened, which could cause the incurrence of expenses or costs of any name or description or which seek money damages, injunctive relief, investigations, remedial action or any other remedy that arise out of, relate to or result from (i) a violation or alleged violation of any applicable Environmental Law or non-compliance or alleged non-compliance with any Environmental Permit, (ii) the presence of any Hazardous Substance or a Release or the threat of a Release of any Hazardous Substance on, at or from the Premises or any property adjacent to or within the immediate vicinity of the Premises or (iii) human exposure to any Hazardous Substance, noises, vibrations or nuisances of whatever kind to the extent the same arise from the condition of the Premises or the ownership, use, operation, sale, transfer or conveyance thereof.

1. COVENANTS OF MANAGER: The Manager covenants and agrees with the Kansas Lottery as follows:

(a) The Manager shall keep, and shall cause all operators, tenants, subtenants, licensees, invitees and occupants of the Premises to keep, the Premises free of all Hazardous Substances and shall not cause or permit the Premises or any part thereof to be used for the storage, treatment, generation, transportation, processing, handling, production, disposal or release of any Hazardous Substances.

(b) The Manager shall comply with, and shall cause all operators, tenants, subtenants, licensees, invitees and occupants of the Premises to comply with, all applicable Environmental Laws, and shall obtain and comply with, and shall cause all operators, tenants, subtenants, licensees, invitees and occupants of the Premises to obtain and comply with, all Environmental Permits.

(c) The Manager shall not cause or permit any change to be made in the present or intended use of the Premises which would (i) involve the storage, treatment, generation, transportation, processing, handling, production, disposal or release of any Hazardous Substance or the use of the Premises as a landfill or other solid waste disposal site or for military, manufacturing or industrial purposes or for the storage of petroleum or petroleum based products, (ii) violate any applicable Environmental Law, (iii) constitute non-compliance with any Environmental Permit or (iv) increase the risk of a Release of any Hazardous Substance.

(d) The Manager shall promptly provide the Kansas Lottery with a copy of all notifications which the Manager gives or receives with respect to any past or present Release or the threat of a Release of any Hazardous Substance on, at or from the Premises or any property adjacent to or within the immediate vicinity of the Premises.

(e) The Manager shall undertake and complete all investigations, studies, sampling and testing and all removal and other remedial actions necessary to contain, remove and clean up all Hazardous Substances that are determined to be present at the Premises in accordance with all applicable Environmental Laws and all Environmental Permits.

(f) The Manager shall at all times allow the Kansas Lottery and its officers, employees, agents, representatives, contractors and subcontractors reasonable access to the Premises for the purposes of ascertaining site conditions, including, but not limited to, subsurface conditions.

(g) If at any time the Manager obtains any evidence or information which suggests that potential environmental problems may exist at the Premises, the Kansas Lottery may require that a full or supplemental environmental investigation and environmental assessment report (including a Phase II environmental investigation) with respect to the Premises of a scope and level of detail satisfactory to the Kansas Lottery to be prepared by an environmental engineer or other qualified person acceptable to the Kansas Lottery, at the Manager's expense. Said investigation may include a physical inspection of the Premises, a visual inspection of any property adjacent to or within the immediate vicinity of the Premises, personnel interviews and a review of all Environmental Permits. If the Kansas Lottery requires, such inspection shall also include a records search and/or subsurface testing for the presence of Hazardous Substances in the soil, subsoil, soil vapor, bedrock, surface water and/or groundwater. If the investigations indicate the presence of any Hazardous Substance or a Release or the threat of a Release of any Hazardous Substance on, at or from the Premises, the Manager shall promptly undertake and diligently pursue to completion all necessary, appropriate and legally authorized investigative, containment, removal, and other remedial actions, using methods recommended by the engineer or other person who conducted the investigations and acceptable to the appropriate federal, state and local agencies or authorities.

(h) Attached hereto as Schedule "C" is a complete list of all Environmental Permits presently required for the ownership, use or operation of the Premises and the businesses located thereon. The Manager agrees to notify the Kansas Lottery of any additions, deletions, or modifications of any Environmental Permits and the list thereof. Upon written request of the Kansas Lottery, the Manager shall furnish true and complete copies of all Environmental Permits.

2. INDEMNIFICATION PROVISIONS: The Manager and the Indemnitors hereby jointly and severally covenant and agree, at their sole cost and expense, to indemnify, protect, defend, and save harmless each and every Indemnitee from and against any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, actions, proceedings, costs, disbursements and/or expenses (including, without limitation, attorneys' and experts' fees for attorneys and experts selected by the Indemnitee, expenses and

disbursements) of any kind or nature whatsoever which may at any time be imposed upon, incurred by or asserted or awarded against any Indemnitee relating to, resulting from or arising out of (a) the use of the Premises for the storage, treatment, generation, transportation, processing, handling, production or disposal of any Hazardous Substance or as a landfill or other waste disposal site or for military, manufacturing or industrial purposes or for the storage of petroleum or petroleum based products, (b) the presence or claimed presence of any Hazardous Substance or a Release or the threat of a Release of any Hazardous Substance on, at or from the Premises, or of any property adjacent to or within the immediate vicinity of the Premises and owned or controlled by Manager, (c) the failure to promptly undertake and diligently pursue to completion all necessary, appropriate and legally authorized investigative, containment, removal, clean-up and other remedial actions with respect to a Release or the threat of a Release of any Hazardous Substance on, at or from the Premises, (d) human exposure to any Hazardous Substance, noises, vibrations or nuisances of whatever kind to the extent the same arise from the condition of the Premises or the ownership, use, operation, sale, transfer or conveyance thereof, (e) a violation of any applicable Environmental Law, (f) non-compliance with any Environmental Permit, (g) a material misrepresentation or inaccuracy in any representation or warranty or a material breach of or failure to perform any covenant made by the Manager in this Environmental Compliance Agreement, and (h) the designation by any state or governmental entity, the United States Environmental Protection Agency or any other governmental authority of an Indemnitee as a party responsible or potentially responsible for the remediation of any condition on the Premises (collectively, the "Indemnified Matters").

The liability of the Manager and the Indemnitors to the Kansas Lottery and each Indemnitee shall be perpetual and shall survive, and shall in no way be limited, abridged, impaired or otherwise affected, by (i) any amendment or modification of any of the Lottery Gaming Facility Management Contract, (ii) the invalidity or unenforceability of any of the terms or provisions of the Lottery Gaming Facility Management Contract, (iii) any applicable statute of limitations, (iv) any investigation or inquiry conducted by or on the behalf of the Kansas Lottery or any other Indemnitee or any information which the Kansas Lottery or any other Indemnitee may have or obtain with respect to the environmental or ecological condition of the Premises, (v) the sale, transfer or conveyance of all or part of the Premises, (vi) the dissolution or liquidation of the Manager, (vii) the death or legal incapacity of any Indemnitor, (viii) the release or discharge, in whole or in part, of the Manager or any Indemnitor in any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation or similar proceeding, (ix) any other circumstances which might otherwise constitute a legal or equitable release or discharge, in whole or in part, of the Manager under of any Indemnitor under this Environmental Compliance Agreement, (x) the expiration or termination of the Lottery Gaming Facility Management Contract or (xi) the reconveyance of title to the Premises by the Manager or any other person, whether in accordance with the terms of a lease, by foreclosure or deed in lieu of foreclosure, sale or otherwise.

The indemnification agreement contained herein is wholly independent of and in addition to any indemnification agreement given to the Kansas Lottery or any other Indemnitee, as part of the application of the Kansas Expanded Lottery Act or any other applicable statute or regulation.

5. GOVERNING LAW: This Environmental Compliance Agreement shall be governed by, construed in accordance with and enforceable under the laws of the State of Kansas.

6. COUNTERPARTS: This Environmental Compliance Agreement may be executed in one or more counterparts, each of which shall be deemed an original. Said counterparts shall constitute but one and the same instrument and shall be binding upon each of the undersigned as fully and completely as if all had signed the same instrument.

7. SUCCESSORS AND ASSIGNS: This Environmental Compliance Agreement shall be binding upon the Manager, its successors and assigns, all subsequent owners of the Premises, the Indemnitors and their respective successors, assigns, executors, administrators, legal representatives, distributees and fiduciaries and shall inure to the benefit of each Indemnitee.

**IN WITNESS WHEREOF**, the Manager and the Indemnitors have caused this Environmental Compliance Agreement to be duly executed as of the day and year first above written.

DODGE CITY RESORT & GAMING COMPANY, LLC

By: \_\_\_\_\_  
Stephen M. Joseph  
President

THE KANSAS LOTTERY

By: \_\_\_\_\_  
Ed Van Petten,  
Executive Director

INDEMNITORS

By: \_\_\_\_\_  
Name: Stephen M. Joseph  
Title: Member

By: \_\_\_\_\_  
Name: Christopher M. Joseph  
Title: Member

**ACKNOWLEDGEMENTS**

State of Kansas, County of Sedgwick, ss:

This instrument was acknowledged before me on May \_\_\_\_, 2008, by Stephen M. Joseph as President of Dodge City Resort & Gaming Company, LLC.

\_\_\_\_\_  
Notary Public

My appointment expires:

\_\_\_\_\_, 20\_\_

State of Kansas, County of Shawnee, ss:

This instrument was acknowledged before me on May \_\_\_\_, 2008, by Ed Van Petten as Executive Director of the Kansas Lottery.

\_\_\_\_\_  
Notary Public

My appointment expires:

\_\_\_\_\_, 20\_\_

SCHEDULE "A"  
(Premises)

A tract of land located in the South One-Half (S/2) of Section 18. T-26-S: R-24-W of the Sixth P.M. in the Ford County, Kansas, more fully described as follows:

Commencing at the Southeast Corner of Section 18, T-26-S: R-24-W of the Sixth P.M. in Ford County, Kansas; thence N 0°-29'-00" E, 201.06 feet along the East line of said Section 18 to the North Right-of-Way line of U.S. Highway 50 Bypass, said point being THE TRUE POINT OF BEGINNING; thence continuing N 0°-29'-00" E, 2424.88 feet measured (2396.62' prior deed) along the East line of Section 18, said point being 60.70 feet South of the E/4 of said Section 18; thence N 89°-10'-50" W, 5105.74 feet to the West line of said Section 18, said point being 124.36 feet South of the W/4 Corner of said Section 18; thence e S 0°-34'-29" E, 2415.26 feet along the West line of said Section 18, to the North Right-of-Way line of U.S. Highway 50 Bypass, said point being 123.58 feet North of the Southwest Corner of said Section 18; thence S 89°-24'-28" E, 1534.31 feet along said North R/W line to the P.C. of a curve to the Right, thence along a curve concave on the South a Curve Distance of 1101.16 feet with Radius of 114,591.56 feet and a Delta of 0°-33'-00" and a Tangent Length of 550.59 feet to the P.T. of the curve; thence S 88°-52'-31" E, 2425.74 feet along the North Highway R/W line to the POINT OF BEGINNING.

SCHEDULE "B"  
(Underground Storage Tanks)

None.

SCHEDULE "C"  
(Environmental Permits)

None.

**EXHIBIT "B"**  
**ENDORSEMENT BY LOCAL**  
**GOVERNMENT**

**COUNTY RESOLUTION 2008-10**  
**CITY RESOLUTION 2008-05**

**A JOINT RESOLUTION OF ENDORSEMENT FOR THE MANAGEMENT OF A  
LOTTERYGAMING FACILITY IN DODGE CITY, FORD COUNTY, KANSAS BY  
DODGE CITY RESORT AND GAMING COMPANY, LLC**

WHEREAS, the City of Dodge City (“City”) and the County of Ford County (“County”) have undertaken an aggressive economic development program described as the Why Not Dodge development project, the purpose and intent of which is to attract tourists, visitors, conventions and meetings to the City and the Ford County area involving the construction of various entertainment and recreational facilities including facilities and programs, the primary purpose of which would be to enhance, improve and foster the nationally recognized western heritage of the area, thereby broadening, diversifying and enhancing the economic base of the City and Ford County economy; and

WHEREAS, Senate Bill 66, the Kansas Expanded Lottery Act (the “Act”), was approved by the Kansas Legislature, signed by the Governor, and was published in the Kansas Register, Vol. 26, No. 16, Pg. 518 on April 19, 2007; and

WHEREAS, the Act provides for the development of one Lottery Gaming Facility in each of four Gaming Zones; and

WHEREAS, Dodge City is located in Ford County, which is designated in the Act as the Southwest Kansas Gaming Zone; and

WHEREAS, the Act provides that each county in each gaming zone must submit to the qualified voters a resolution to permit a Lottery Gaming Facility within the County; and

WHEREAS, Ford County called for an election on the question of whether to allow a Lottery Gaming Facility in Ford County; and

WHEREAS, the election was duly noticed, conducted and the votes counted and canvassed in the matter provided by Kansas law; and

WHEREAS, the qualified electors of Ford County voted in favor of a Lottery Gaming Facility in Ford County and the certified results were transmitted to the Lottery Commission; and

WHEREAS, Dodge City Resort & Gaming Company, LLC (“Dodge City Gaming”) has proposed to construct and manage a Lottery Gaming Facility and to development a Lottery Gaming Enterprise as defined in the Act, in Ford County and

WHEREAS, Dodge City Gaming has entered into a real estate purchase option agreement to acquire approximately 281 acres of property in Ford County of which approximately 66 acres will be used for the location of the Lottery Gaming Enterprise, and

WHEREAS, Dodge City Gaming will be requesting that said property be annexed into the City, and will consent to the City's annexation there of at the appropriate time, and

WHEREAS, Dodge City Gaming has agreed to enter into a mutually agreed upon development plan with the City and County related to the use and development of the total acreage encompassing the site of the casino, and

WHEREAS, the Act requires a resolution of endorsement by the City or the County governing body of any prospective Lottery Gaming Facility Manager who submits an application for a Lottery Gaming Facility Management Contract to the Lottery Commission to manage a Lottery Gaming Facility within the Gaming Zone; and

WHEREAS, Dodge City Gaming has presented to the City and County a proposal for the development, construction and management of a Lottery Gaming Enterprise to be located on the property to be annexed and has requested a resolution of endorsement of such proposal, and

WHEREAS, Dodge City Gaming has presented to the City and County its statement of qualifications, financial resources, proposed site and development plans for the Lottery Gaming Facility & Enterprise, and

WHEREAS, after duly considering the information provided by Dodge City Gaming, the City and County have determined that Dodge City Gaming possesses the necessary qualifications, financial resources and development plans to manage a Lottery Gaming Facility as proposed; and

WHEREAS, the City and County have determined that the proposed Lottery Gaming Facility and Enterprise are well suited to attract tourism and enhance the economic development of the City, Ford County and the surrounding counties and is consistent and compatible with the long range development plans of the City and County;

NOW THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF DODGE CITY AND THE FORD COUNTY COMMISSION, FORD COUNTY, KANSAS: Pursuant to the provisions of Senate Bill No. 66, the City and County Commissions do hereby jointly issue their endorsement of the application of Dodge City Gaming to develop and manage a destination casino in Dodge City, Ford County, Kansas to be constructed and developed in accordance with the requirements of the Act and in accordance with the terms and conditions of above described development plan mutually agreed to by the City, County, and Dodge City Gaming in anticipation of Dodge City Gaming being granted a Lottery Gaming Facility management contract pursuant to the Act.

Adopted this 3<sup>rd</sup> day of March, 2008

City Commission of Dodge City

E. Kent Smoll  
E. Kent Smoll, Mayor

ATTEST:

Nannette Pogue  
Nannette Pogue, City Clerk

Ford County Board Commissioners

T. Kim Goodnight  
T. Kim Goodnight, Chair

John Swayze  
John Swayze

Terry Williams  
Terry Williams



ATTEST:

Victoria Wells  
Victoria Wells, Ford County Clerk

Certificate

The undersigned being the duly appointed Clerk of the City of Dodge City, Kansas does hereby certify that the above and forgoing Resolution was duly adopted by majority vote of the City Commission of the City of Dodge City, Kansas on this 3<sup>rd</sup> day of March, 2008.

Nannette Pogue  
Nannette Pogue, City Clerk

Victoria Wells  
Victoria Wells, Ford County Clerk



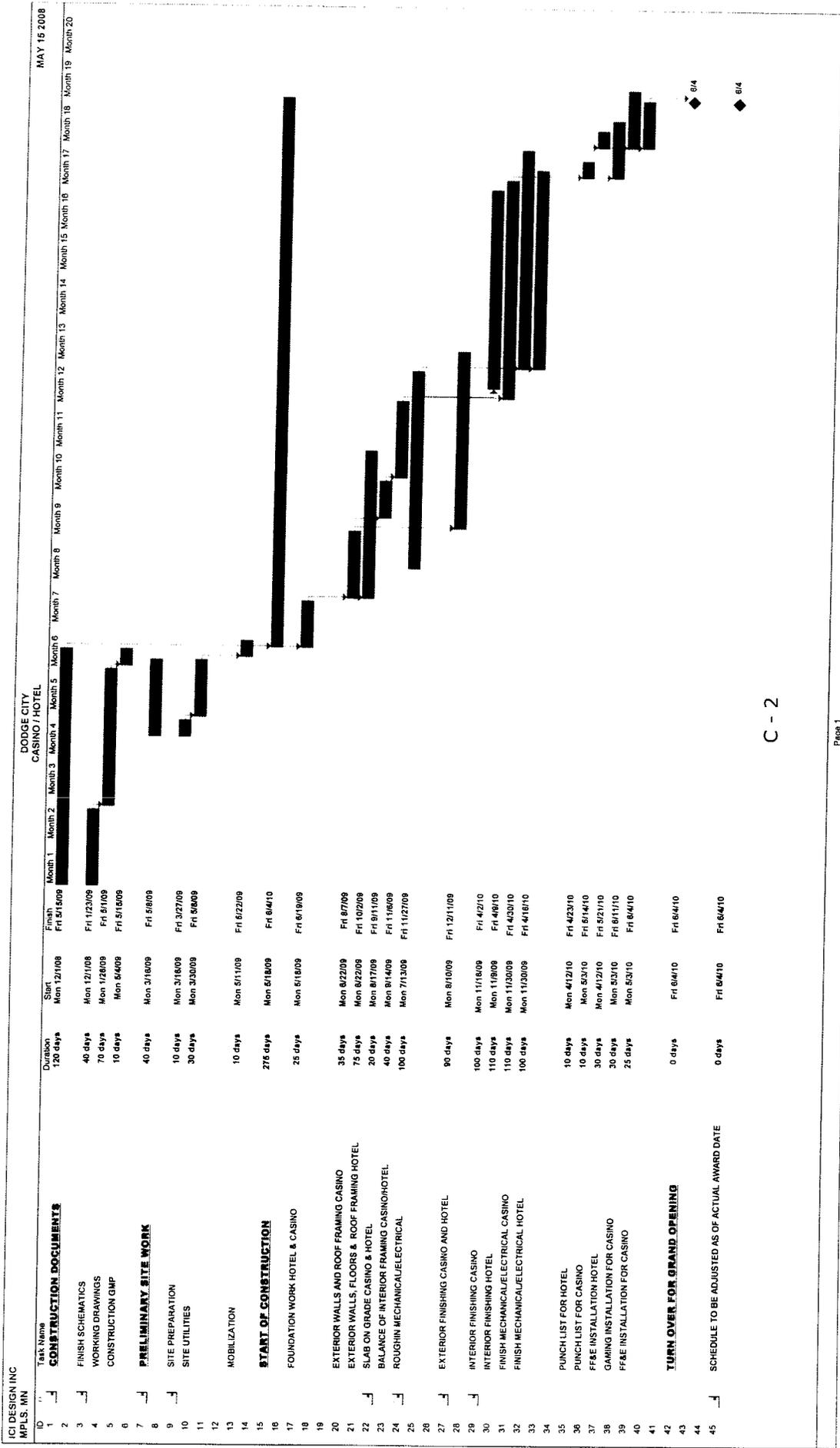
**EXHIBIT "C"**  
**EXPECTED CONSTRUCTION**  
**SEQUENCE**

DODGE CITY  
TEMPORARY  
CASINO

MAY 18 2008

ID	Task Name	Duration	Start	Finish	Month-1	Month 1	Month 2	Month 3	Month 4	Month 5
1	<b>CONSTRUCTION DOCUMENTS</b>	45 days	Mon 12/1/08	Fri 1/30/09						
2										
3	FINISH SCHEMATICS	10 days	Mon 12/1/08	Fri 12/12/08						
4	WORKING DRAWINGS	30 days	Mon 12/15/08	Fri 1/23/09						
5	BUDGET PRICE FOR TEMP. CASINO	5 days	Mon 1/26/09	Fri 1/30/09						
6										
7	<b>PRELIMINARY SITE WORK</b>	15 days	Mon 2/2/09	Fri 2/20/09						
8										
9	SITE PREPARATION	5 days	Mon 2/2/09	Fri 2/6/09						
10	SITE UTILITIES	10 days	Mon 2/9/09	Fri 2/20/09						
11										
12										
13										
14	MOBILIZATION	3 days	Mon 2/23/09	Wed 2/25/09						
15										
16	<b>START OF CONSTRUCTION</b>	72 days	Mon 12/1/08	Tue 3/10/09						
17										
18	GRADE INTERIOR OF EXISTING STRUCTURE SAND CUSHION	5 days	Mon 12/1/08	Fri 12/5/08						
19	ROUGH IN FOR SLOTS UNDER SLAB	10 days	Mon 12/8/08	Fri 12/19/08						
20	SLAB ON GRADE TEMPORARY CASINO	7 days	Mon 12/22/08	Tue 12/30/08						
21	INSULATE WALLS AND ROOF	10 days	Wed 12/31/08	Tue 1/13/09						
22	ROUGH IN MECHANICAL/ELECTRICAL	20 days	Wed 12/31/08	Tue 1/27/09						
23										
24	INTERIOR FINISHING OF TEMP. CASINO INCLUDES M.&E.	20 days	Wed 1/28/09	Tue 2/24/09						
25	INSTALL TEMP. PORTABLE RESTROOMS	5 days	Wed 2/25/09	Tue 3/3/09						
26	PUNCH LIST FOR CASINO	3 days	Wed 3/4/09	Fri 3/6/09						
27	GAMING INSTALLATION FOR CASINO	14 days	Mon 2/16/09	Thu 3/5/09						
28	FF&E INSTALLATION FOR CASINO	5 days	Mon 3/9/09	Fri 3/13/09						
29										
30	<b>TURN OVER FOR TEMP. CASINO OPENING</b>	0 days	Fri 3/13/09	Fri 3/13/09						
31										
32										
33	SCHEDULE TO BE ADJUSTED AS OF ACTUAL AWARD DATE	0 days	Mon 12/1/08	Mon 12/1/08						

C - 1



C - 2

**EXHIBIT "D"**

**KEY EMPLOYEES**

## **EXHIBIT D**

### **Key Employees**

The following positions or their functional equivalents shall be considered Key Employees of Lottery Gaming Facility Manager Dodge City Resort and Gaming Company, LLC:

#### **General Manager**

Responsible for the overall operation of the property. Ensures that Company policy and internal controls are being adhered to by applicable personnel and that all departments are being managed in the best interests of the Company.

#### **Assistant General Manager**

Assists the General Manager in managing an operations of the property. Acts in the capacity of the General Manager in the General Manager's absence.

#### **Director of Casino Operations**

Oversees and directs all operations of the Casino Games and Slot Departments in accordance with approved internal controls and procedures.

#### **Financial Controller (Chief Financial Officer)**

Plans, directs, supervises and coordinates the property's accounting, casino cashiering, credit, count room, purchasing and financial analysis functions in accordance with approved internal controls and procedures.

#### **Director of Security and Surveillance**

Oversees the operation of the security and surveillance department in accordance with approved internal controls and procedures. Supervises all security and surveillance staff.

#### **Director of Information Technology**

Plans, directs, supervises and coordinates all operations of the property's computer and information technology infrastructure in accordance with approved internal controls and procedures. Ensures data and information system security. Supervises all information technology staff

#### **Internal Audit Manager**

Responsible for planning, implementing, controlling and coordinating internal audit policies, programs, and procedures. Supervises all internal audit staff.

**EXHIBIT "E"**

**FINANCING COMMITMENT**

## EXHIBIT E

### **Financing Commitment for Construction of the Lottery Gaming Facility and Ancillary Facilities**

#### **Bank Debt Financing of \$40 Million**

Manager has received a conditional commitment for debt financing from Wells Fargo Bank, N.A. Mr. Brad Peterson, Executive Vice President of Wells Fargo Bank's Las Vegas Gaming Division, stated in his letter dated December 20, 2007, addressed to Manager:

We understand that you have formed or will form a joint venture named Dodge City Resort & Gaming Company, LLC ("Dodge City LLC") for the purpose of submitting a bid package to the Ford County Commission and Kansas Lottery in respect to the Application For Lottery Gaming Facility Manager Pursuant To The Kansas Expanded Lottery Act. We further understand that the bid package describes Dodge City LLC's proposal for developing and managing a casino resort in the Southwest Gaming Zone ("Dodge City Resort"), including information on the conceptual design, proposed development cost, and operational plans. In the event that the proposal is accepted, we are aware that Dodge City LLC intends to fund not less than \$40 million of the total project cost by external debt.

We are pleased to inform you that, based upon the information that Dodge City LLC has provided to us to date and the current market conditions, we are highly confident in our ability to put in place the financing for Dodge City Resort, subject to satisfactory terms and conditions as otherwise stated herein.

#### **Members' Equity Capital of \$30 Million**

Manager's Class C and D members have entered into a Funding Agreement among themselves and with Manager to provide Manager with up to \$30,000,000 in equity capital to develop, construct, and operating the Lottery Gaming Enterprise in addition to the equity capital already paid in by all the members. Manager has provided financial information to the Kansas Lottery substantiating a net worth in excess of \$250 million for Manager's Class C and D members.

**EXHIBIT "F"**

**DA-146a CONTRACTUAL**

**ATTACHMENT**

## CONTRACTUAL PROVISIONS ATTACHMENT

**Important:** This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 1-01), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

1. **Terms Herein Controlling Provisions:** Except as provided herein, it is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated.
2. **Agreement With Kansas Law:** All contractual agreements shall be subject to, governed by, and construed according to the laws of the State of Kansas.
3. ~~**Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.~~
3. **Termination Due To Lack Of Funding Appropriation:** Intentionally Omitted.
4. **Disclaimer Of Liability:** Neither Except as otherwise provided for in the Lottery Gaming Facility Management Contract, neither the State of Kansas nor any agency thereof shall hold harmless or indemnify any contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause:** The contractor agrees will use the best efforts to: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.  
  
Parties to this contract understand that the provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting state agency cumulatively total \$5,000 or less during the fiscal year of such agency.
6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary Except as otherwise provided for in the Lottery Gaming Facility Management Contract, no interpretation shall be allowed to find the State or any agency thereof has agreed to binding arbitration, or the payment of damages or penalties upon the occurrence of a contingency. Further, the State of Kansas shall not agree to pay attorney fees and late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The State of Kansas shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas shall not be required to purchase, any insurance against loss or damage to any personal property to which this contract relates, nor shall this contract require the State to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the vendor or lessor shall bear the risk of any loss or damage to any personal property in which vendor or lessor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."

Executive Summary of: **BUTLER NATIONAL SERVICE CORP. (SW1)**

Gaming Zone: **SOUTHWEST**

1. Name of Facility: **Boot Hill Casino and Resort**
2. Name of Manager: **Butler National Service Corporation**
3. Location of Facility: **Ford County, on US Highway 50 in Dodge City, Kansas**
4. Investment in Infrastructure: **\$92.9 million in two phases: \$22.3 million phase one (Interim Facility) and \$70.6 million in phase two (Permanent Facility-Casino, Hotel, Conference Center, Spa & Pool)**
5. Principals/ Owners: **Butler National Corporation**
6. Gaming Experience: **Parent company (Butler National Service Corp.) has operated “The Stables Casino” for the Miami Tribe in Oklahoma since 1998 (a Class III facility); furthermore, Butler has a letter of intent to contract with “The Navegante Group” regarding pre-opening and management of the Boot Hill Casino during the first 3 years of operation (which entity has a great deal of Class III experience). A formal contract will be completed with Navegante prior to 7/31/2008.**
7. Resolution of Endorsement Obtained: **Yes (September 21, 2007 by the City Commission of Dodge City, Kansas)**
8. Planning and Zoning Approval: **Yes (subject to two conditions as set forth in a resolution dated November 5, 2007: submittal of a final plat; and, granting of a “Lottery Gaming License from the State of Kansas”)**
9. Theme: **Contemporary Old West**
10. Number of Slot Machines: **875 at opening**
11. Number of Tables (positions): **Approximately 20 tables with approximately 155 positions at opening**
12. Anticipated Gaming Revenue in Year 1, Year 2, Year 3: **First three years of revenue from the Permanent Facility**

	<b>1</b>	<b>2</b>	<b>3</b>
	<b>\$66,765,023</b>	<b>\$70,366,996</b>	<b>\$72,478,006</b>

13. Ancillary Facilities:
- a. **Hotel (124 rooms)**
  - b. **Several restaurants/dining areas**
  - c. **Spa**
  - d. **Live entertainment/conference center (500 seats)**
14. Anticipated Ancillary Revenue Year 1, Year 2, Year 3: **First three years of revenue from the Permanent Facility**
- |  | 1                   | 2                   | 3                   |
|--|---------------------|---------------------|---------------------|
|  | <b>\$11,456,170</b> | <b>\$13,602,310</b> | <b>\$14,010,380</b> |
15. Number of Gaming Visitors (local – within 100 miles of facility) per year:  
**810,400 in 2014**
16. Number of Gaming Visitors (tourists – further than 100 from facility) per year:  
**417,500 in 2014**
17. Number of Ancillary Visitors (local) per year: **133,400 in 2014**
18. Number of Ancillary Visitors (tourists) per year: **52,800 in 2014**
19. Number of Full Time Employees: **503**
20. Projected Opening Date: **October of 2011 assuming LGFRB Selection and Clearing of KRGC background checks by October of 2008**
21. Length of Construction Period: **15 months**
22. Proposed Temporary Facility: **YES**
23. If yes, projected date of opening temporary facility: **September of 2009 assuming LGFRB Selection and Clearing of KRGC background checks by October of 2008**
- a. Number of Slot Machines at temporary): **575 at opening**
  - b. Number of Tables (positions) at temporary: **Open with 10 tables with 75 positions. Anticipate adding 3 tables in year two of operation with 21 additional positions.**

c. Anticipated Gaming Revenue at temporary: **Based on the two years of operation of the Interim Gaming Facility**

	<b>1</b>	<b>2</b>
	<b>\$39,826,696</b>	<b>\$42,848,304</b>

24. Rewards Program: **The planned player rewards system will reward frequent and loyal players with free play on the gaming floor to incent visit frequency and higher volume of play per visit. The specific formula for calculating the appropriate amount of free play relative to the volume of play by a specific player remains to be determined. Actual free play amount rewarded may also be different depending on the life cycle phase of the customer.**

**Compensatory services such as free rooms, meals, etc. will be focused as marketing tools for enticing high value prospective players, booking agents and convention/conference key decision makers. This is used to attract new visitors, both gaming and non-gaming, who have not previously visited our resort.**

25. Potential for Expansion of Gaming Floor: **The initial build of the permanent facility provides the necessary floor space for 125 slot machines and 20+ table games. Should it become appropriate to expand the gaming floor further, our plan is to convert the conference center to gaming floor and build a new conference center connecting with the north end of the building. This would be expanding the existing gaming floor space by approximately 20,000 square feet or near 60%.**

26. Other Gaming Operations:

Name	City, State	Operated Since
<b>The Stables</b>	<b>Miami, Oklahoma</b>	<b>1998</b>



**Butler National Service Corporation**  
**DESCRIPTION OF CASINO AND OTHER PHYSICAL FACILITIES**

	Units of		COMMENTS
	Quantity	Measure	
<b>CASINO</b>			
Square footage	48,457	SQ FT	
Number of slot machines	875	Slots	Space Provided for 1000 games - Future Growth
Number of table games	20	Table Games	Space provided for 24 table games - Future Growth
Types of table games offered:			
Blackjack	12	Tables	
Craps	1	Tables	
Roulette	2	Tables	
Pai Gow Poker	0	Tables	
Poker	5	Tables	
Other gaming offerings (specify):			
<b>HOTEL</b>			
Total square footage	89,758	SQ FT	Boot Hill Casino and Resort will include a 124-room hotel. Oversized rooms and a variety of suites are designed for our guests' comfort and luxury. The flexibility of the hotel design allows for adjacent suites to be connected creating super-premium rooms. The hotel is situated on the site to take advantage of nearly endless panoramic views of the Kansas prairie from every room.
Total square footage of public areas	20,004	SQ FT	
Number of standard rooms	100	Rooms	
Number of premium rooms	24	Rooms	
Square footage of standard room	462	SQ FT	
Square footage of premium room (average)	789	SQ FT	
Amenities in standard rooms (specify):			<b>DESCRIPTION</b> A sophisticated interior design with upscale amenities such as flatscreen televisions, stone countertops, large glass enclosed showers, woodwork and luxurious wall treatments add to the ambience.
Additional amenities in premium rooms (specify):			Similar amenities to the standard rooms in a more spacious setting.
Additional amenities in public areas (specify): Business Center			Indoor / outdoor pool, spa. See descriptions under "Sports and Recreation Facilities". Comfortable office-like setting, with private office space and areas for small private meetings.

**Butler National Service Corporation  
RESTAURANTS**

Number of restaurants and eating outlets

3 Restaurants

**Specify theme, avg daily covers, and avg spend per cover of each restaurant:**

Fine Dining / Steakhouse

**Avg. Daily Covers**  
**Avg Spend per cover**

**Square Footage** 1,584  
**Seating Capacity** 66

**THEME**

On those special occasions, guests will enjoy the warmly appointed 50-seat Fine Dining/Steakhouse. The design of this venue is envisioned with the dominant use of traditional local materials such as brick, limestone and woodwork with a unique interplay of the old west vernacular. Cattle brand window mullion or covered wagon ribs as structure for a glass entry may be included. All done in a high finish upscale abstraction. Guests will savor a classic menu of tender steaks from the finest cuts of beef, seafood specialties, and fine wines---a culinary experience. The Fine Dining/Steakhouse will also have a separate 16-seat dining room available for guests to enjoy private occasions.

24 Hour Café/ Buffet

3,600 150

60.8 \$ 35.00

Snack Bar

600 25

710.2 \$ 10.85

**BARS AND LOUNGES**

Number of bars and lounges

1 #

**Specify theme & size of each bar**  
Feature Bar

**Square Footage** 3,000  
**Seating Capacity** 50

**THEME**

Centrally located within the main casino floor, the feature bar provides an iconic destination for meeting friends and family for a cocktail before heading to the next big jackpot.

300 \$ 5.50

**Butler National Service Corporation  
ENTERTAINMENT VENUES**

Number of Entertainment Venues 2

<b>Describe and note size of each venue</b>	<b>Square Footage</b>	<b>Seating Capacity</b>	<b>DESCRIPTION</b>
Conference Facilities - See Performance Seating	11,040	1,000	The conference facility is a multi-functional space, which also serves as an entertainment venue. The facility includes sound systems, furnishings, back of house, and green room facilities to attract quality performances.
Feature Bar	NA	50	The feature bar located near the center of the casino floor will have facilities for live lounge entertainment.

**EVENT VENUES**

Number of Event Venues 0 #

<b>Describe and note size of each venue</b>	<b>Square Footage</b>	<b>Seating Capacity</b>	<b>DESCRIPTION</b>
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**CONVENTION FACILITIES**

Convention Facilities will be provided at the Special Events Center. The Boot Hill Casino and Resort will have a Conference Center. All information below pertains to the Conference Center.

Square footage of Convention Space	11,040	SQ FT	The conference center is a highly finished multi-functional facility with the equipment and flexibility to meet nearly every occasion. Acoustical movable partitions allow the space to be divided into 4 breakout rooms to fit any size requirement. Based on a nine-square grid, there are four basic sizes of breakout rooms ranging from 80 to 1,000 seat functions. See the chart below.
Square footage of Pre Function & Back of House Space	8,736	SQ FT	
Number of Break-out Rooms	4	Breakout	

<b>Capacity of Break-out rooms</b>	<b>School-room seating</b>	<b>Theater seating</b>
Space Type A	80	110
Space Type B	160	220
Space Type C	240	330
Space Type D	490	650

**Butler National Service Corporation**  
Overall Conference Space

700 1,000

**SPORTS AND RECREATION FACILITIES**

Description of Sports/Recreation Offerings	Square Footage	Seating Capacity	DESCRIPTION
Spa	3,000	NA	Guests at Boot Hill Casino and Resort can relax, rejuvenate, and experience personalized professional treatments at our Spa. Five treatment rooms, men and women treatment pools, changing and reception areas are designed with specialty lighting, quiet colors and rich durable materials to compliment the guest experience.
Indoor Pool	4,000	NA	A large indoor pool is provided for our guests. The decorative patterned pool deck will include cabanas, portable bars service areas and plenty of space for lounging and party events. The pool is enclosed in an indoor/outdoor structure with glass paneled roll-up walls so the space can flow to the outdoor pool decks during nice weather.
Outdoor Pool	NA	NA	This pool is surrounded by a large sunning deck with pool lounging furnishings and service amenities. The indoor and outdoor pools are connected with a channel so guests can swim from one pool to the other.
Fitness Area	240	NA	Fitness area with the latest in fitness equipment for the use of our Spa and Hotel patrons.

**RETAIL OUTLETS**

Description and size of Retail Outlets	SQUARE FOOTAGE	DESCRIPTION
Casino Logo Shop	1,104	The retail shop will offer necessities and convenience items to enhance the guest experience along with merchandise which promotes the state of Kansas and the Boot Hill theme.

**PARKING FACILITIES**

Number of surface parking spaces	1,575	In addition to 1,800 spaces for the adjacent Special Events Center.
Total paved square footage for surface parking	538,531	In addition to 568,208 square feet for the Special Events Center.
Number of enclosed parking spaces	0	
Total square footage for enclosed parking	0	
Number of valet parking spaces	300	

**Butler National Service Corporation**

**Number of employee parking spaces**

**Number of parking spaces for Recreational Vehicles**

300

Employee parking has been provided on the West side or back side of the facility  
Recreational vehicle parking will be provided in conjunction with the City /  
County owned Spectral Events Center.

VISITATION AND SPENDING PATTERNS DURING OPERATIONS' PHASE OF LOTTERY GAMING FACILITY									
Butler National Service Corporation									
Please submit 5-year projections, starting from the date of opening									
Unit of Measure									
9/15/2009									
PROJECTED DATE OF OPENING:									
		2009	2010	2011	2012	2013	2014		Reference
<b>RESIDENTS</b>									
<b>Resident population (within 100 miles)</b>									
Number of adult residents	#	199,900	199,900	199,900	199,900	199,900	199,800		Table 1
Residential gaming penetration rate *	%	na	69%	69%	69%	69%	69%		* Indicates only resident gaming customers
Market penetration rate**	%	na							** Includes all residents
Visits per gaming resident per year	#	na	1.40	7.11	7.90	7.90	7.90		
Total resident gaming visits per year	#	125,300	506,800	590,600	796,600	810,400	810,400		Table 3
Resident non-gaming visits per year***	#	6,700	26,700	50,000	123,400	133,400	133,400		Table 6
Total Residential visits per year	#	132,000	533,500	640,600	920,000	943,800	943,800		*** Resident non-gaming visitors
Residential gaming spend per visit	\$	\$ 48.54	\$ 49.16	\$ 51.63	\$ 52.68	\$ 54.21	\$ 54.21		Table 5
Residential gamer non-gaming spend per diem	\$	\$ 1.77	\$ 1.76	\$ 4.05	\$ 8.96	\$ 10.07	\$ 10.29		Table 6
Per diem gaming resident		\$50.31	\$50.92	\$55.68	\$61.64	\$64.28	\$64.50		
Per diem non-gaming resident		\$7.39	\$7.61	\$7.84	\$8.07	\$8.31	\$8.56		Table 4
Total Residential Gaming Spend per annum	\$	\$6,082,100	\$24,914,300	\$30,492,700	\$41,964,900	\$43,931,800	\$43,931,800		
Total Residential Non-Gaming Spend per annum	\$	\$271,659	\$1,095,970	\$2,748,524	\$8,005,340	\$9,143,374	\$9,351,128		Table 6
Spend by locals on non-gaming									

VISITATION AND SPENDING PATTERNS DURING OPERATIONS' PHASE OF LOTTERY GAMING FACILITY									
Butler National Service Corporation									
Please submit 5-year projections, starting from the date of opening									
Unit of Measure									
9/15/2009									
PROJECTED DATE OF OPENING:									
	2009	2010	2011	2012	2013	2014			
<b>TOURISTS (residence more than 100 miles away)</b>									Reference
Tourist gaming visits per year*	64,600	261,100	304,300	410,400	417,500	417,500	* Indicates gaming customers		Table 3
Tourist non-gaming visits per year**	700	3,000	13,500	47,200	52,800	52,800	** Customers who do not game		Table 6
Total Tourist visits per year	65,300	264,100	317,800	457,600	470,300	470,300			
Tourist gaming spend per diem	\$60.00	\$60.00	\$60.00	\$61.80	\$63.65	\$63.65			Table 5
Tourist gamer non-gaming spend per diem	\$1.77	\$1.76	\$4.05	\$8.96	\$10.07	\$10.29			Table 6
Tourist non-gamer spend per diem	\$7.39	\$7.61	\$6.90	\$6.60	\$6.78	\$6.98			
Total Tourist Gaming Spend per annum	\$ 3,876,000	\$ 15,666,000	\$ 18,258,000	\$ 25,363,000	\$ 26,574,000	\$ 26,574,000			
Total Tourist Non-Gaming Spend per annum	\$ 120,045	\$ 482,597	\$ 1,325,249	\$ 3,987,494	\$ 4,560,512	\$ 4,663,046	Spend by tourists on non-gaming		Table 6
<b>TOTAL VISITATION PER YEAR</b>	#	197,300	797,600	1,377,600	1,414,100	1,414,100			
<b>TOTAL GAMING SPEND PER YEAR</b>	\$	9,958,100	40,580,300	48,750,700	67,327,900	70,505,800			
<b>TOTAL NON-GAMING SPEND PER YEAR</b>	\$	391,704	1,578,567	4,073,773	11,992,834	13,703,886	14,014,174		



VISITATION AND SPENDING PATTERNS DURING OPERATIONS' PHASE OF LOTTERY GAMING FACILITY									
Butler National Service Corporation									
Please submit 5-year projections, starting from the date of opening									
PROJECTED DATE OF OPENING:	Unit of Measure	2009	2010	2011	2012	2013	2014		
<b>LEISURE HOTEL GUESTS</b>									Reference
Visitors per room	#			2	2	2	2		
Total leisure guests per year	#	-	-	8,915	37,284	42,168	42,168		Table 2
Average room rate	\$	-	-	\$113.42	\$114.83	\$117.69	\$120.34		
Percentage of leisure guests who are residents	%			29.0%	38.0%	47.0%	47.0%		Table 2
Percentage of leisure guests who are tourists	%			71.0%	62.0%	53.0%	53.0%		
Total leisure hotel revenues per year	\$			505,600	2,140,700	2,481,400	2,537,200		
Total gaming spend by leisure guests per year	\$	-	-	312,000	1,344,100	1,565,800	1,565,800		Table 9
Total other non-gaming leisure spend by leisure guests per year	\$	-	-	44,400	232,600	281,100	288,300	Separate from Leisure Hotel Spend	Table 7
<b>TOTAL SPEND BY LEISURE HOTEL GUESTS PER YEAR</b>	\$			862,000	3,717,400	4,328,300	4,391,300		
<b>BUSINESS HOTEL GUESTS</b>									
Visitors per room	#			2	2	2	2		
Total business hotel guests per year	#			6,660	27,785	31,124	31,124		Table 2
Average room rate	\$	-	-	\$113.42	\$114.83	\$117.69	\$120.34		
Percentage of business hotel guests who are residents	%			25.0%	25.0%	25.0%	25.0%		Table 2
Percentage of business hotel guests who are tourists	%			75.0%	75.0%	75.0%	75.0%		
Total business hotel revenues per year	\$			377,700	1,595,300	1,831,500	1,872,700		
Total gaming spend by business hotel guests per year	\$			233,100	1,001,700	1,155,700	1,155,700		Table 9
Total other non-gaming spend by business hotel guests per year	\$			33200	173400	207400	212800	Separate from Business Hotel Spend	Table 7
<b>TOTAL SPEND BY BUSINESS HOTEL GUESTS PER YEAR</b>	\$			644,000	2,770,400	3,194,600	3,241,200		

CHANGES IN SPENDING PATTERNS DUE TO LOTTERY GAMING FACILITY DURING OPERATIONS PHASE										
<b>Butler National Service Corporation</b>										
<i>Please submit 5-year projections, starting from the date of opening</i>										
<b>PROJECTED DATE OF OPENING: 9/15/2009</b>										
Unit of Measure										
2009 2010 2011 2012 2013 2014 2015										
Reference										
Annual Spending by Residents at the Lottery Gaming Facility	\$10,348,917	\$42,160,860	\$52,901,426	\$79,658,434	\$84,599,184	\$84,909,472			Note: Resident visitors here includes both Leisure and Business Resident visitors	Table 12
Total spending by residents per year (Note: distinguish between residents who gamble (Resident Gaming Visitors) and residents who do not gamble (Resident Non-Gaming Visitors))										
Resident Gaming Visitors										
Accommodation	\$0	\$0	\$121,207	\$603,261	\$603,261	\$808,663			37.5% are local	Table 13
Food & Beverage	\$211,162	\$847,895	\$2,270,264	\$6,775,224	\$6,775,224	\$7,745,915			1/2 are gamers	
Retail	\$6,813	\$27,359	\$73,253	\$218,612	\$218,612	\$249,933				
Gaming	\$6,083,432	\$24,915,909	\$30,494,050	\$41,967,854	\$41,967,854	\$43,932,733				
Tickets to events, concerts, shows										
Other spending	\$4,429	\$17,783	\$47,615	\$142,098	\$142,098	\$162,456				
TOTAL spending by gaming visitors (residents)	\$6,305,836	\$25,808,946	\$33,006,389	\$49,707,049	\$49,707,049	\$52,899,700				
Resident Non-Gaming Visitors										
Accommodation			121,207	603,261	808,663	826,871			37.5% are local	Table 14
Food & Beverage	49,255	202,933	357,392	869,406	985,069	101,462			1/2 are non-gamers	
Retail										
Tickets to events, concerts, shows										
Ticketed attractions										
Other spending										
TOTAL spending by non gaming visitors (residents)	49,255	202,933	478,599	1,472,667	1,793,732	928,333				
Total Spending by Residents										
Gaming	\$6,083,432	\$24,915,909	\$30,494,050	\$41,967,854	\$41,967,854	\$43,932,733				
Non Gaming	\$271,659	\$1,095,970	\$2,990,938	\$9,211,862	\$9,532,927	\$9,895,300				
TOTAL SPENDING BY RESIDENTS AT LOTTERY GAMING FACILITY	\$6,355,091	\$26,011,879	\$33,484,988	\$51,179,716	\$51,500,781	\$53,828,033				
SOURCES OF EXPENDITURES AT LOTTERY GAMING FACILITY: For the following questions, provide your best estimates, based on your economic models										

CHANGES IN SPENDING PATTERNS DUE TO LOTTERY GAMING FACILITY DURING OPERATIONS PHASE									
<b>Butler National Service Corporation</b>									
Please submit 5-year projections, starting from the date of opening									
<b>PROJECTED DATE OF OPENING: 9/15/2009</b>									
Unit of Measure									
2009 2010 2011 2012 2013 2014 2015									
Percent of Spend that would have occurred within the region*	4%	4%	8%	16%	17%	17%			Reference
Percent of Spend that would have taken place outside the region**	96%	96%	92%	84%	83%	83%			* What percent of residents' total spend would have taken place within the 100-mile radius if the LGF facility did not exist **Without an LGF, what percent would have been spent outside the 100-mile radius
Percent of Spend that comes from new income generated in the region***	0.3%	0.3%	0.3%	0.4%	0.4%	0.4%			***Percent of total spending by residents that comes from income generated by the LGF and its multiplier effects Estimated to be 1% of the direct, indirect and induced payroll. Payroll estimated from GVA Economic Impact Study
No.									
No.									
<b>Tourist Gaming Visitors</b>									
Accommodation	-	-	320,423	1,256,581	1,347,771	1,378,119			62.5% are Tourists 1/2 are gamers
Food & Beverage	108,780	436,795	1,139,597	3,213,574	3,640,047	3,719,557			Table 16
Retail	3,510	14,094	36,771	103,690	117,451	120,017			
Gaming	3,873,782	15,666,384	17,788,494	23,352,000	24,241,124	24,241,124			
Tickets to events, concerts, shows			-	-	-	-			
Other spending	2,281	9,161	23,901	67,399	76,343	78,011			
TOTAL spending by gaming visitors (tourists)	3,988,353	16,126,433	19,309,186	27,993,244	29,422,736	29,536,828			
<b>Tourist Non-Gaming Visitors</b>									
Accommodation			320,423	1,256,581	1,347,771	1,378,119			62.5% are Tourists 1/2 are non-gamers
Food & Beverage	5,473	22,548	39,710	96,601	109,452	112,736			Table 17
Retail									
Gaming									
Tickets to events, concerts, shows									
Other spending									
TOTAL spending by non-gaming visitors (tourists)	5,473	22,548	360,133	1,353,182	1,457,223	1,490,854			
<b>TOTAL SPENDING BY TOURISTS AT LOTTERY GAMING FACILITY</b>									
	3,993,826	16,148,981	19,669,320	29,346,426	30,879,959	31,027,682			Note: Tourist visitors here includes both Leisure and Business Tourist visitors
<b>SOURCES OF EXPENDITURES AT LOTTERY GAMING FACILITY: For the following questions, provide your best estimates, based on your economic models</b>									

CHANGES IN SPENDING PATTERNS DUE TO LOTTERY GAMING FACILITY DURING OPERATIONS PHASE										
<b>Butler National Service Corporation</b>										
<i>Please submit 5-year projections, starting from the date of opening</i>										
<b>PROJECTED DATE OF OPENING:</b> 9/15/2009										
Unit of Measure										
2009 2010 2011 2012 2013 2014 2015										
What proportion of Tourist visitors would not have visited the region if the Lottery Gaming Facility did not exist?	%	44%	44%	86%	81%	80%	80%	80%		Reference
What proportion of Tourist visitor spending would not have occurred within the region if the Lottery Gaming Facility did not exist?	%	98%	98%	98%	95%	95%	95%	95%		Table 19
										Table 20
Please provide your estimate of induced spending by resident visitors to the LGF (import substitution)	\$	\$6,224,883	\$25,486,465	\$32,110,556	\$47,055,770	\$47,216,303	\$49,490,909			
Please provide your estimate of direct spending by tourist visitors to the LGF (newly injected spending)	\$	\$3,873,782	\$15,666,384	\$17,788,494	\$23,352,000	\$24,241,124	\$24,241,124			Table 21
Please provide your estimate of induced spending by tourist visitors to the LGF (newly injected spending to the region but not at the LGF)	\$	2,860,545	10,490,788	24,209,198	26,266,333	25,125,070	24,814,782			Table 22
Please provide your estimate of an appropriate expenditure multiplier for the region	#	1.69	1.69	1.69	1.69	1.69	1.69			
TOTAL DIRECT, INDIRECT, AND INDUCED INCREASES IN SPENDING IN THE REGION, PER YEAR (SPEND)	\$	\$12,959,209	\$51,643,637	\$74,108,248	\$96,674,103	\$96,582,497	\$98,546,815			
ESTIMATED AGGREGATE PERSONAL INCOME IN THE REGION (API)	\$	-	-	-	-	-	-			
RATIO OF SPEND/API	#	0.16%	0.63%	0.74%	1.00%	1.02%	0.99%			Table 1
<b>Instructions to Proposers</b>										
The intent of this section is to provide a foundation to estimate the amount of new direct spending (from import substitution by residents and newly injected spending by tourists), and then to estimate the indirect increases in expenditure brought about in the region via a regional expenditure multiplier process										



EMPLOYMENT INFORMATION DURING OPERATIONS' PHASE OF LOTTERY GAMING FACILITY										
<b>Butler National Service Corporation</b>										
<i>Please submit 5-year projections, starting from the date of opening</i>	Unit of Measure	Detail staffing plans by position, hours and pay rate are provided for both the interim and permanent facility in Binder 10, Section V, Exhibit #1, pages 10 through 21 of our application.								
<b>PROJECTED DATE OF OPENING:</b>	<b>9/15/2009</b>	Interim facility opens on this date.								
		2009	2010	2011	2012	2013	2014	2015		
<b>No. of FTE Workers employed within the Lottery Gaming Facility</b>	#	229	229	303	537	552	552			
<b>General and Administrative</b>		44	44	55	87	87	87			
Professionals, Managers, Executives and Technicians	#	15	15	19	29	29	29			
Clerical Workers, Sales and Service Workers	#	29	29	36	58	58	58			
Production and Transport Operators, Laborers and Cleaners	#	-	-	-	-	-	-			

EMPLOYMENT INFORMATION DURING OPERATIONS' PHASE OF LOTTERY GAMING FACILITY												
<b>Butler National Service Corporation</b>												
<i>Please submit 5-year projections, starting from the date of opening</i>	Unit of Measure	Detail staffing plans by position, hours and pay rate are provided for both the interim and permanent facility in Binder 10, Section V, Exhibit #1, pages 10 through 21 of our application.										
<b>PROJECTED DATE OF OPENING:</b>	<b>9/15/2009</b>	Interim facility opens on this date.										
<b>Casino</b>		2009	2010	2011	2012	2013	2014	2015				
Professionals, Managers, Executives and Technicians	#	147	147	167	227	227	227					
Dealers and game supervisors	#	31	31	33	38	38	38					
Clerical Workers, Sales and Hosts	#	41	41	50	77	77	77					
Security and surveillance	#	41	41	45	58	58	58					
Cleaners	#	34	34	39	54	54	54					
Other	#	-	-	-	-	-	-					

<b>EMPLOYMENT INFORMATION DURING OPERATIONS' PHASE OF LOTTERY GAMING FACILITY</b>											
<b>Butler National Service Corporation</b>											
<i>Please submit 5-year projections, starting from the date of opening</i>											
Detail staffing plans by position, hours and pay rate are provided for both the interim and permanent facility in Binder 10, Section V, Exhibit #1, pages 10 through 21 of our application.											
Interim facility opens on this date.											
<b>PROJECTED DATE OF OPENING:</b>	2009	2010	2011	2012	2013	2014	2015				
<b>Hotel</b>	-	-	9	34	34	34					
Professionals, Managers, Executives and Technicians	#	-	1	2	2	2	2				
Clerical Workers, Sales and Marketing Staff	#	-	3	11	11	11	11				
Room cleaners, housekeeping supervisors	#	-	5	21	21	21	21				
Other	#	-	-	-	-	-	-				
<b>Food and Beverage</b>	38	38	73	181	196	196	196				
Professionals, Chefs, Managers, Executives and Technicians	#	1	2	6	6	6	6				
Clerical Workers, Sales and Service Workers	#	1	1	2	2	2	2				
Food preparers and servers, Hosting staff, and Other	#	36	36	69	173	188	188				
	#	-	-	-	-	-	-				

EMPLOYMENT INFORMATION DURING OPERATIONS' PHASE OF LOTTERY GAMING FACILITY											
<b>Butler National Service Corporation</b>											
<i>Please submit 5-year projections, starting from the date of opening</i>	Unit of Measure	Detail staffing plans by position, hours and pay rate are provided for both the interim and permanent facility in Binder 10, Section V, Exhibit #1, pages 10 through 21 of our application.									
<b>PROJECTED DATE OF OPENING:</b>	<b>9/15/2009</b>	Interim facility opens on this date.									
		2009	2010	2011	2012	2013	2014	2015			
<b>Other (including convention, entertainment, retail, etc.)</b>		-	-	7	28	28	28				
Professionals, Managers, Executives and Technicians	#	-	-	-	-	-	-	-			
Clerical Workers, Compliance, Accounting, and Sales	#	-	-	-	-	-	-	-			
Human Resources	#	-	-	-	-	-	-	-			
Other	#	-	-	7	28	28	28	28			



EMPLOYMENT INFORMATION DURING OPERATIONS' PHASE OF LOTTERY GAMING FACILITY												
<b>Butler National Service Corporation</b>												
<i>Please submit 5-year projections, starting from the date of opening</i>	Unit of Measure	Detail staffing plans by position, hours and pay rate are provided for both the interim and permanent facility in Binder 10, Section V, Exhibit #1, pages 10 through 21 of our application.										
<b>PROJECTED DATE OF OPENING:</b>	<b>9/15/2009</b>	Interim facility opens on this date.										
Headcount growth Assumptions:		2009	2010	2011	2012	2013	2014	2015				
		Headcount growth occurs beginning in 2011 through 2012 primarily due to transition from the Interim Facility to the Permanent Facility starting in Sept of 2011. Food & Beverage headcount growth between 2012 & 2013 is due to expected growth in Food & Beverage business volume.										



PAYROLL INFORMATION DURING OPERATIONS' PHASE OF LOTTERY GAMING FACILITY										
Butler National Service Corporation Please submit 5-year projections, starting from the date of opening										
Unit of Measure	Payroll cost projections are based on Detail Staffing Plans which include pay and benefits by position summarized by department and are provided for both the interim and permanent facility in Binder 10, Section V, Exhibit #1, pages 10 through 21 of our application. We classified each position into the categories as best we could based on the descriptions provided for each category. Overall payroll cost has been reconciled to the PRO FORMA DATA spreadsheet which follows.									
#####	2009	2010	2011	2012	2013	2014	2015			
<b>PROJECTED DATE OF OPENING:</b>										
<b>Hotel</b>	\$	-	-	272,704	1,098,999	1,131,968	1,157,248			
Professionals, Managers, Executives and Technicians	\$	-	-	31,827	128,263	132,111	135,061			
Clerical Workers, Sales and Marketing Staff	\$	-	-	79,992	322,367	332,038	339,453			
Room cleaners, housekeeping supervisors	\$	-	-	160,885	648,369	667,820	682,734			
Other	\$									
<b>Food and Beverage</b>	\$	196,405	791,512	1,544,539	3,886,027	4,324,533	4,421,111			
Professionals, Chefs, Managers, Executives and Technicians	\$	18,435	74,293	144,974	364,751	405,910	414,975			
Clerical Workers, Sales and Service Workers	\$	2,600	10,478	20,447	51,443	57,248	58,526			
Food preparers and servers, Hosting staff, and Cleaners	\$	175,370	706,741	1,379,118	3,469,833	3,861,375	3,947,610			
Other										
<b>Other (including convention, entertainment, retail, etc.)</b>										
Professionals, Managers, Executives and Technicians										
Clerical Workers, Compliance, Accounting, and Sales										
Human Resources										
Other										

PAYROLL INFORMATION DURING OPERATIONS' PHASE OF LOTTERY GAMING FACILITY						
<b>Butler National Service Corporation</b> <i>Please submit 5-year projections, starting from the date of opening</i>	Unit of Measure					
		Payroll cost projections are based on Detail Staffing Plans which include pay and benefits by position summarized by department and are provided for both the interim and permanent facility in Binder 10, Section V, Exhibit #1, pages 10 through 21 of our application. We classified each position into the categories as best we could based on the descriptions provided for each category. Overall payroll cost has been reconciled to the PRO FORMA DATA spreadsheet which follows.				
<b>PROJECTED DATE OF OPENING:</b>	#####					
		2009	2010	2011	2012	2013
						2014
						2015
<b>Others</b>						
Professionals, Managers, Executives and Technicians						
Clerical Workers, Sales and Service Workers						
Production and Transport Operators, Laborers and Cleaners						
<b>TOTAL PAYROLL (INCLUDING BENEFITS) FOR THE LGF</b>	\$	1,962,580	7,909,197	10,127,723	16,482,611	17,299,015
						17,685,345
<b>Material Assumptions:</b>						
Labor cost annual increase	3.0%					

Butler National Service Corporation Consolidated Pro-Forma Income and Expenditure Statement for the LGF						
Amounts in thousands of dollars						
Please submit 5-year projections, starting from the date of opening						
PROJECTED DATE OF OPENING:						
	2009	2010	2011	2012	2013	2014
	Unit of Measure: \$000s					
	Estimating Basis					
<b>REVENUE (from below)</b>						
Bar and Food	9,987	40,582	48,827	67,666	70,895	72,478
Food	-	-	883	3,720	4,313	4,410
Beverage	203	820	1,600	4,025	4,479	4,579
Convention	153	619	1,207	3,037	3,379	3,455
Entertainment	15	60	166	522	661	675
Other	12	48	133	418	528	540
<b>Gross Revenues</b>	10,348	42,161	52,902	79,659	84,559	86,488
Less: Cost of Sales	141	567	1,142	2,952	3,345	3,420
<b>Gross Margin</b>	10,208	41,594	51,760	76,706	81,214	83,068
<b>DEPARTMENTAL EXPENSES (from below)</b>	5,042	20,531	25,460	37,532	39,494	40,376
<b>DEPARTMENTAL INCOME</b>	5,166	21,063	26,300	39,174	41,760	42,693
<b>GENERAL AND ADMINISTRATIVE EXPENDITURE</b>						
Bar and food	324	1,319	1,567	2,199	2,304	2,356
Complimentary expense (not reported in departments)	-	-	-	-	-	-
Depreciation - Buildings	143	574	1,219	3,155	3,155	3,155
Depreciation and Amortization	224	896	1,415	2,971	2,971	2,971
Energy Expense (electricity, gas, etc.)	71	288	478	1,038	1,070	1,093
Equipment rental of lease	719	2,874	3,272	4,465	4,465	4,465
Interest expense	401	1,979	3,663	5,263	4,799	4,240
Payroll taxes	40	162	198	288	296	303
Payroll - benefits	103	417	503	751	751	751
Payroll - others	269	641	806	1,053	1,084	1,109
Payroll - Other Employees	366	1,475	1,889	3,054	3,146	3,216
Rent of Premises	-	-	-	-	-	-
Taxes - Real Estate	106	441	937	2,450	2,995	3,062
Taxes and Licenses - Other	-	-	-	-	-	-
Utilities (other than Energy Expenses)	3,072	5,479	6,683	6,534	6,809	6,958
Other General and Administrative expenses	-	-	-	-	-	-
<b>TOTAL GENERAL AND ADM. EXPENDITURE</b>	5,779	16,695	22,927	33,609	33,855	33,706
<b>NET INCOME BEFORE FEDERAL INCOME TAX</b>	(613)	4,378	3,373	5,565	7,905	8,987
<b>DEPARTMENTAL INCOME STATEMENTS</b>						
<b>CASINO DEPARTMENT REVENUE</b>						
Pin Revenue (including bingo)	9,419	38,239	45,331	62,350	65,325	66,784
Electronic gaming machines	-	-	-	-	-	-
Power and other non-banked card games	538	2,343	3,497	5,316	5,569	5,694
<b>TOTAL REVENUE</b>	9,957	40,582	48,827	67,666	70,895	72,478

Detail estimating assumptions are provided on page 5 of Exhibit #1. Section V of the GVA Memorandum of Understanding, which we commissioned as a part of completing our Application. Revenue assumptions for VGT revenue has been altered from the GVA report based on subsequent conversations with GVA. GVA advised us that while their projected total revenue was an accurate projection, they felt we could achieve the projected revenue with fewer machines and a slight increase in pin revenue. We had our machines count per day and a slight increase in pin revenue. We had our machines count per day and a slight increase in pin revenue. We had our machines count per day and a slight increase in pin revenue. The GVA total gaming revenue was slightly lower in the first year compared to our forecast, but the GVA projections were higher in the last years of the projection versus ours. We are comfortable with our current projection.

Detail assumptions for items contained in this line item is contained on pages 3 & 4 of Exhibit #1. Section V of the GVA Memorandum of Understanding, which we commissioned as a part of completing our Application. Revenue assumptions for VGT revenue has been altered from the GVA report based on subsequent conversations with GVA. GVA advised us that while their projected total revenue was an accurate projection, they felt we could achieve the projected revenue with fewer machines and a slight increase in pin revenue. We had our machines count per day and a slight increase in pin revenue. We had our machines count per day and a slight increase in pin revenue. We had our machines count per day and a slight increase in pin revenue. The GVA total gaming revenue was slightly lower in the first year compared to our forecast, but the GVA projections were higher in the last years of the projection versus ours. We are comfortable with our current projection.

Detail assumptions for items contained in this line item is contained on pages 3 & 4 of Exhibit #1. Section V of the GVA Memorandum of Understanding, which we commissioned as a part of completing our Application. Revenue assumptions for VGT revenue has been altered from the GVA report based on subsequent conversations with GVA. GVA advised us that while their projected total revenue was an accurate projection, they felt we could achieve the projected revenue with fewer machines and a slight increase in pin revenue. We had our machines count per day and a slight increase in pin revenue. We had our machines count per day and a slight increase in pin revenue. We had our machines count per day and a slight increase in pin revenue. The GVA total gaming revenue was slightly lower in the first year compared to our forecast, but the GVA projections were higher in the last years of the projection versus ours. We are comfortable with our current projection.





Butler National Services Corporation Consolidated Pro-Forma Income and Expenditure Statement for the LGF								
Amounts in thousands of dollars	2009	2010	2011	2012	2013	2014	2015	Estimating Basis
Please submit 5-year projections, starting from the date of opening								
PROJECED DATE OF OPENING:	9/15/2009							
Unit of Measure: \$000s								
<b>BEVERAGE DEPARTMENT</b>								
Beverage Sales	126	485	1,017	2,176	3,111	3,181		Beverage revenue is based on detail calculations of seats, turns, daily covers and average ticket. The assumptions and detail of these calculations is contained on page 9 of Exhibit #1, Section V, Binder 10 of our Application. Assumptions were vetted with Navigante personnel.
Complimentary Beverage Sales	27	123	190	260	288	274		Comp services provided are all as a result of Casino play and are charged to the Casino. The assumptions and detail of these calculations is contained on page 9 of Exhibit #1, Section V, Binder 10 of our Application. Assumptions were vetted with Navigante personnel.
<b>TOTAL REVENUE</b>	153	619	1,207	3,037	3,379	3,455		
Cost of sales	44	176	343	863	960	982		Cost of sales were estimated as a percentage of Sales, which varies from 25 to 30% depending on the venue. The assumptions and detail of these calculations is contained on page 9 of Exhibit #1, Section V, Binder 10 of our Application. Assumptions were vetted with Navigante personnel.
<b>GROSS MARGIN</b>	110	443	864	2,174	2,419	2,473		
<b>DEPARTMENTAL EXPENSES</b>								
Bad debt expenses	-	-	-	-	-	-		Not separately estimated
Complimentary expenses	-	-	-	-	-	-		All comps are charged to Casino department
Payroll taxes	3	12	22	56	63	64		7% of payroll cost
Employee Expenses Benefits	7	30	58	145	162	165		Detail Staffing Plan for both Interim & Permanent Facilities on pages 10 to 21 in Exhibit #1, Section V of Binder 10 of our Application.
Payroll - Officers	-	-	-	-	-	-		Detail Staffing Plan for both Interim & Permanent Facilities on pages 10 to 21 in Exhibit #1, Section V of Binder 10 of our Application.
Payroll - Other Employees	41	164	321	807	898	918		
Other Departmental Expenses	-	-	-	-	-	-		
Payroll taxes	-	-	-	-	-	-		
<b>TOTAL EXPENSES</b>	51	205	401	1,008	1,122	1,147		duplicate line item
<b>TOTAL BEVERAGE INCOME</b>	59	237	463	1,165	1,297	1,326		

Butler National Services Corporation Consolidated Pro-Forma Income and Expenditure Statement for the LGF									
Amounts in thousands of dollars	2009	2010	2011	2012	2013	2014	2015	Estimating Basis	
Unit of Measure: \$'000s									
PROPOSED DATE OF OPENING:	9/15/2009								
Please submit 5-year projections, starting from the date of opening									
<b>CONVENTION DEPARTMENT</b>									
Total Sales	15	60	166	522	661	675			We do not have a convention center in our proposal. We do have a conference center and have included its projected revenue & cost in this section. We have projected this revenue starting with a projected revenue of \$25,000 per month and then modified it using an adjustment factor that from .2 to 2.0 over the five year projection. The adjustment factor by year is contained on page 9, Exhibit #1 of Section V, Binder 10 of our Application.
Complementary Sales	-	-	-	-	-	-	-	-	
<b>TOTAL REVENUE</b>	15	60	166	522	661	675			
Cost of sales	5	21	58	183	231	236			Cost of sales were estimated at 35% of sales. The assumptions and detail of these calculations is contained on page 9 of Exhibit #1, Section V, Binder 10 of our Application.
<b>GROSS MARGIN</b>	10	39	108	339	429	439			
<b>DEPARTMENTAL EXPENSES</b>									
Complimentary expenses	-	-	-	-	-	-	-	-	
Corporate expenses	-	-	-	-	-	-	-	-	
Payroll taxes	1	2	5	12	13	13			7% of payroll cost
Payroll - Employee Benefits	2	6	12	30	34	34			18% of payroll cost
Payroll - Officers	-	-	-	-	-	-			Detail Staffing Plan for both Interim & Permanent Facilities on pages 10 to 21 in Exhibit #1, Section V of Binder 10 of our Application
Payroll - Other Employees	9	34	67	168	187	191			Detail Staffing Plan for both Interim & Permanent Facilities on pages 10 to 21 in Exhibit #1, Section V of Binder 10 of our Application.
Other Departmental Expenses	-	-	-	-	-	-			
Payroll taxes	-	-	-	-	-	-			duplicate line item
<b>TOTAL EXPENSES</b>	11	43	84	210	234	239			
<b>TOTAL CONVENTION INCOME</b>	(1)	(4)	24	129	195	200			
<b>ENTERTAINMENT DEPARTMENT</b>									
Total Sales	-	-	-	-	-	-	-	-	
Complementary Sales	-	-	-	-	-	-	-	-	
<b>TOTAL REVENUE</b>	-	-	-	-	-	-	-	-	
Cost of sales	-	-	-	-	-	-	-	-	
<b>GROSS MARGIN</b>	-	-	-	-	-	-	-	-	
<b>DEPARTMENTAL EXPENSES</b>									
Complimentary expenses	-	-	-	-	-	-	-	-	
Corporate expenses	-	-	-	-	-	-	-	-	
Payroll taxes	-	-	-	-	-	-	-	-	
Payroll - Employee Benefits	-	-	-	-	-	-	-	-	
Payroll - Officers	-	-	-	-	-	-	-	-	
Payroll - Other Employees	-	-	-	-	-	-	-	-	
Other Departmental Expenses	-	-	-	-	-	-	-	-	
Payroll taxes	-	-	-	-	-	-	-	-	
<b>TOTAL EXPENSES</b>	-	-	-	-	-	-	-	-	
<b>TOTAL ENTERTAINMENT INCOME</b>	-	-	-	-	-	-	-	-	
<b>RETAIL</b>									
Total Sales	12	48	133	418	528	540			We have projected this revenue starting with a projected revenue of \$20,000 per month and then modified it using an adjustment factor that from .2 to 2.0 over the five year projection. This adjustment factor by year is contained on page 9 of Exhibit #1 of Section V, Binder 10 of our Application.
Complementary Sales	-	-	-	-	-	-	-	-	
<b>TOTAL REVENUE</b>	12	48	133	418	528	540			
Cost of sales	6	24	66	209	264	270			Cost of sales inclusive of labor cost were estimated at 50% of sales. The assumptions and detail of these calculations is contained on page 9 of Exhibit #1, Section V, Binder 10 of our Application.
<b>GROSS MARGIN</b>	6	24	66	209	264	270			
<b>DEPARTMENTAL EXPENSES</b>									
Complimentary expenses	-	-	-	-	-	-	-	-	
Corporate expenses	-	-	-	-	-	-	-	-	
Payroll taxes	-	-	-	-	-	-	-	-	
Payroll - Employee Benefits	-	-	-	-	-	-	-	-	
Payroll - Officers	-	-	-	-	-	-	-	-	
Payroll - Other Employees	-	-	-	-	-	-	-	-	
Other Departmental Expenses	-	-	-	-	-	-	-	-	
Payroll taxes	-	-	-	-	-	-	-	-	
<b>TOTAL EXPENSES</b>	-	-	-	-	-	-	-	-	
<b>TOTAL RETAIL INCOME</b>	6	24	66	209	264	270			
<b>OTHER DEPARTMENTAL INCOME (please specify)</b>									
StarHealth Cdn. ATMS, Vermont									

Butler National Service Corporation Consolidated Pro-Forma Income and Expenditure Statement for the LGF									
Amounts in thousands of dollars Please submit 5-year projections, starting from the date of opening									
PROJECTED DATE OF OPENING:	2009	2010	2011	2012	2013	2014	2015	Estimating Basis	Explanatory Comment
Unit of Measure: \$000s	8	31	86	271	343	351			
<b>REVENUE</b>									
Phone sales	8	31	86	271	343	351			
Complementary Sales	-	-	-	-	-	-	-		
<b>TOTAL REVENUE</b>	8	31	86	271	343	351			
Cost of sales	-	-	-	-	-	-	-		
<b>GROSS MARGIN</b>	8	31	86	271	343	351			These will be leased operators
<b>DEPARTMENTAL EXPENSES</b>									
Bad debt expenses	-	-	-	-	-	-	-		
Complementary expenses	-	-	-	-	-	-	-		
Payroll taxes	-	-	-	-	-	-	-		
Employee Benefits	-	-	-	-	-	-	-		
Payroll - Other	-	-	-	-	-	-	-		
Payroll - Other Employees	-	-	-	-	-	-	-		
Other Departmental Expenses	-	-	-	-	-	-	-		
Payroll taxes	-	-	-	-	-	-	-		
<b>TOTAL EXPENSES</b>	-	-	-	-	-	-	-		
<b>TOTAL OTHER DEPARTMENTAL INCOME</b>	8	31	86	271	343	351			

All the items in this category are effectively leased operators, which result in a net revenue payment to the resort. Some lease payments are projected at an average monthly of \$5,000. ATM's, phones and vending have an average of \$5,000 per month. We then modified it using an adjustment factor that from .2 to 2.0 over the five year projection. This adjustment factor by year is contained on page 9, Exhibit #1 of Section V, Binder 10 or our Application.

These will be leased operators

**CONSTRUCTION PHASE INFORMATION DURING OPERATIONS PHASE OF LOTTERY GAMING FACILITY**

**Butler National Service Corporation**

Please submit 5-year projections, starting from the date of completion.

**36** Issuance of License to Opening of Permanent Facility

**10** Months from Issuance of License to Opening of Temporary Facility

Issuance of License and clearing of KRGC Background checks  
Issuance of License and clearing of KRGC Background checks

2008 2009 2010 2011 2012 2013

Development Investment

Fixed asset investment

Buildings

Land

Land improvements, excluding landscaping

Landscaping

Soft Costs, i.e. engineering, architectural, development fees

Financing costs

Public sector infrastructure

Rolling stock

Furniture, Fixtures and Equipment

Floor and Wall Treatments

Gaming equipment

Others

**TOTAL INVESTMENT**

Source of Funds for Investment

Percent each year from:

Construction Loan

Debt

Working Capital from Parent Company

State of Equity

Other (Please explain)

Alpha following figures on a Quarterly basis

**2008-IV 2009-I 2009-II 2009-III 2009-IV 2010-I 2010-II 2010-III 2010-IV 2011-I 2011-II 2011-III 2011-IV 2012-I 2012-II 2012-III 2012-IV 2013-I 2013-II 2013-III 2013-IV**

**Development Employment Data**

**Construction Employment**

Average Wage per employee

Total construction payroll

Average Benefits per employee

Other expenses per employee

Cost of materials from region

Cost of materials from outside of region

Other Development Expenses

Details of our construction cost estimates can be found in Exhibit #12, Section IV of Binder 10 in our Application

Amounts in 2009 and 2011 relate to equipment leases, Amount in 2010 is free cash flow from operations

**TOTAL**

**Explanations**

Annual Wage

Benefits at 18% of base

Estimated Payroll Taxes at 7% of base pay

Does not include FFE and gaming

Does not include FFE and gaming







**PLEASE NOTE WHAT YOU CONSIDER TO BE THE TEN MOST IMPORTANT FEATURES OF what factors of your proposal are most distinctive in making it more attractive to Kansas and its residents than a "generic" gaming facility that could be developed within this zone?**

**Please provide descriptions of ten (or fewer) features in 250 words or less for each.**

accessible from all areas of town via 50 highway, Commanche or Wyatt Earp roads. Close proximity to Mariah golf course, a local public course. Ideally located to handle 24 hour traffic. This site is located on the opposite side of the city where the feedlots tend to throw off an odor to the north. We are also not near the airport approach zone for the most commonly used airport runway.

**2. Contemporary Old West Theme**- Our concept celebrates Dodge City's legacy and association with the Wild West that will be presented to our guests within the framework of an upscale, refined modern structure.

experience that cause clientele from our market area to choose the Boot Hill Casino & Resort in Dodge City over that out of state location they previously thought was their preferred option. Our hotel will provide an experience not presently found in Dodge City or a large area surrounding our location. To complement the hotel guest experience, our development includes retail, spa, pool and dining options.

sites for the Casino Resort and the Special Event Center which allows us to manage the surrounding developments that complement the overall site. Appropriate retail businesses as well as a planned mix of residential options including multi-family and single-family residential homes will provide an overall pleasant and inviting environment for the citizens of and visitors to Dodge City. Citizens will be more apt to satisfy their shopping needs locally because of the retail establishments we will attract to our site.

**5. Co-Located with the City/County Special Events Center** - We have worked with the local government advisory board and their chosen developer of the Special Events Center to create an integrated and common architectural design. Through continued joint planning we can achieve optimal success for both facilities. This Special Events is being funded exclusively by local sales tax and we are not receiving any funds or infrastructure as a part of its construction or Stewart, who was raised in Western Kansas. We have long demonstrated an interest and commitment in the long-term future of Kansas. We have worked for many years with the citizens of Dodge City and the "Why Not Dodge" initiative, which focuses on getting locals to think of Dodge City as place to work & build a family or for prospective visitors as a preferred destination choice. We empathasize with their desire to retain family members in the community and to build a future by re-invigorating their past.

**7. Interim Gaming Facility**- Our interim gaming facility will provide an early source of revenue to the State, city and county, which will assist with funding necessary community infrastructure needs. This will also accommodate the water issues in Dodge City until they can implement the water treatment and sewer capacity solution. The interim facility will be framed by a backdrop of the permanent facility under construction to sustain community excitement of what is to come.

**8. Funding of Wild West Counties "Mariah Fund"**- We are committed to contribute a percentage of our gaming win to the "Mariah Fund." This fund will be managed by a non-profit grant making organization with the sole purpose of investing in organizations that seek to attract non-resident visitors to the 22-county Wild West Country.

**9. It's All about People**- Our reputation with our guests will be built by the day-to-day interaction our associates (employees) have with each guest. We believe through training, modeling of desired behavior and our caring treatment of our associates, our associates will provide a superior experience for our guests. Remembering first names, favorite drinks, likes/dislikes of returning guests will distinguish us and will make our "It Just Fits" motto a reality

**10. It Just Fits**- In our overall design of the facility and its integration with the Special Events Center, we have created a place that feels like home. It feels comfortable and exciting, yet familiar. We wanted a place that did not stand out too much, that seemed to just fit Dodge City and caused its guests to want to return. They may not always know why they want to come back, but they just know they like how they, their families and close associates feel when they



**LOTTERY GAMING FACILITY MANAGEMENT CONTRACT**  
(Pursuant to the Kansas Expanded Lottery Act)

This LOTTERY GAMING FACILITY MANAGEMENT CONTRACT is for the development, construction, and management of a Lottery Gaming Facility, the business of which will be owned and operated by the Kansas Lottery, to be located in the Southwest Gaming Zone.

This Agreement is between the Kansas Lottery, which is acting on behalf of the State of Kansas in accordance with the Kansas Expanded Lottery Act, K.S.A. 2007 Supp. 74-8733 through 74-8773, and Butler National Service Corporation (“Manager”).

NOW THEREFORE, in consideration for the mutual promises and covenants between the parties, it is agreed that:

1. **Certain Defined Terms.** The capitalized terms listed below will have the following meanings. Any other capitalized terms not specifically defined in this Agreement will have the meanings attributed to them in the Kansas Lottery Act, the Kansas Expanded Lottery Act, or the rules and regulations implementing those Acts, as the case may be, and as amended from time to time.

- a) **“Ancillary Lottery Gaming Facility Operations” means additional non-lottery facility game products and services not owned and operated by the state which may be included in the overall development associated with the Lottery Gaming Facility. Such operations may include, but are not limited to, restaurants, hotels, motels, museums or entertainment facilities.**
- b) “Application for Lottery Gaming Facility Manager” means the competitive proposal and all attachments submitted to the Kansas Lottery by Manager under the Kansas Expanded Lottery Act for the privilege of being designated the Lottery Gaming Facility Manager in the Southwest gaming zone.
- c) “Business Plan” means the document prepared by Manager and approved by the Executive Director, at least annually, setting out the management activities anticipated for the Lottery Gaming Facility as provided below in Paragraph 11 for an upcoming Fiscal Year or portion of Fiscal Year as the case may be.
- d) “Commencement Date” means the date specified in writing when the Executive Director first determines Manager has satisfied all conditions required by this Agreement so that Lottery Facility Games may be offered for play at the Lottery Gaming Facility.

- e) “Commission” means the Kansas Lottery Commission.
- f) “Effective Date” means the date this Agreement is signed by all the parties, [the Kansas Supreme Court has held the Kansas Expanded Lottery Act is constitutional in \*State ex rel. Six v. Kansas Lottery, et al., Supreme Court Case No. 08-99957-S\*](#) and all required approvals for the Agreement are obtained in accordance with the Kansas Expanded Lottery Act and rules and regulations promulgated pursuant thereto.
- g) “Electronic Gaming Machine” means any electronic, electromechanical, video or computerized device, contrivance or machine authorized by the Kansas Lottery which, upon insertion of cash, tokens, electronic cards or any consideration, is available to play, operate or simulate the play of a game authorized by the Kansas Lottery pursuant to the Kansas Expanded Lottery Act, including, but not limited to, bingo, poker, blackjack, keno and slot machines, and which may deliver or entitle the Player operating the machine to receive cash, tokens, merchandise or credits that may be redeemed for cash. Electronic Gaming Machines may use bill validators and may be single-position reel-type, single or multi-game video and single-position multi-game video electronic game, including, but not limited to, poker, blackjack and slot machines. Electronic Gaming Machines are one type of Lottery Facility Games.
- h) “Executive Director” means the executive director of the Kansas Lottery.
- i) “Fiscal Year” means the accounting year established for the Lottery Gaming Facility, which is specified here to be a calendar year, and includes any partial (short) year.
- j) “Gray Machine” means any mechanical, electro-mechanical or electronic device, available to the public for play that is capable of being used for gambling, that is: (1) not authorized by the Kansas Lottery; (2) not linked to the lottery central computer system as required by the Kansas Expanded Lottery Act; or (3) capable of simulating a game played on an Electronic Gaming Machine or any similar gambling game authorized pursuant to the Kansas Expanded Lottery Act.
- k) “Kansas Expanded Lottery Act” means the provisions contained in K.S.A. 2007 Supp. 74-8733 through 74-8773, and amendments thereto which may become effective during this Agreement’s term.
- l) “Kansas Lottery” means the state agency created by the Kansas Lottery Act, K.S.A. 74-8701, *et seq.*, as amended, to operate a lottery or lotteries pursuant to the Kansas Lottery Act or the Kansas Expanded Lottery Act.

- m) “Lottery Facility Games” means any Electronic Gaming Machines and any other games authorized, as of January 1, 2007, to be conducted or operated at a tribal gaming facility, as defined in K.S.A. 74-9802, and amendments thereto, located within the State of Kansas’ boundaries and are owned and operated by the Kansas Lottery.
- n) “Lottery Gaming Enterprise” means the entertainment enterprise and all facilities and operations associated therewith, including a Lottery Gaming Facility and Ancillary Lottery Gaming Facility Operations, as more fully set forth in the Manager’s Application for Lottery Gaming Facility Manager.
- o) “Lottery Gaming Facility” means that portion of the building used for the purposes of operating, managing and maintaining Lottery Facility Games, as more fully described in the Application for Lottery Gaming Facility Manager filed by Manager with the Kansas [Lottery, or temporary facility used for such purposes as approved by the Executive Director.](#)~~Lottery.~~
- p) “Lottery Gaming Facility Revenues” means the total revenues from the play of Lottery Facility Games operated at the Lottery Gaming Facility after all related Prizes are paid. This term does not include (i) money generated from Ancillary Lottery Gaming Facility Operations (in which the Kansas Lottery has no financial interest) even if the revenue is generated within the Lottery Gaming Facility or (ii) Promotional Credit(s).
- q) “Player” means a person who: (1) takes part in a Lottery Facility Game by paying consideration or using Promotional Credit for the chance of winning a Prize; and (2) is lawfully eligible to play a Lottery Facility Game under the Kansas Expanded Lottery Act or applicable rules and regulations.
- r) “Progressive Electronic Game” means a game played on one or more Electronic Gaming Machines for which at least one payoff increases uniformly as the game is played and the Prize is determined by application of a formula to the income of independent, local, or interlinked Electronic Gaming Machines.
- s) “Promotional Credit” means any non-cashable credit, coupon or voucher redeemable by a Player at a Lottery Gaming Facility for use in playing Lottery Facility Games that is provided to a Player by Manager on a discretionary basis for purposes of promoting the Lottery Gaming Facility in accordance with a promotional program approved by the Executive Director.
- t) “Promotional Item” means any non-cash, complimentary service or discount provided to a Player by Manager on a discretionary basis for

purposes of promoting the Lottery Gaming Facility in accordance with a promotional program approved by the Executive Director.

- u) “Prize” means any money, cash, tokens, merchandise, or credits redeemable for cash or play in a Lottery Facility Game that a Player may be entitled to as an award for playing a Lottery Facility Game under the rules of that game. For any Electronic Gaming Machines offering progressive winnings to a Player based on the use of Electronic Gaming Machines in a Progressive Electronic Game, “Prize” also includes a percentage of every wager played on a Progressive Electronic Game that is contributed to a growing jackpot amount to a successful Player as an award for playing an Electronic Gaming Machine under the rules of that Progressive Electronic Game, but does not include the reset amount. “Prize” does not include any administrative fees or other expenses associated with an Electronic Gaming Machine’s acquisition, operation, maintenance or replacement that are not payable to a winning Player.

2. **Date Agreement Becomes Binding.** This Agreement will become effective and binding on the Effective Date; except that the parties agree that Paragraphs 2, 20, 28, 58, 70, 71 and 72 will become effective and binding on the parties immediately upon this Agreement’s approval by the Commission.

3. **Term of Agreement.** This Agreement will terminate fifteen (15) years after the Commencement Date or by operation of law, unless this Agreement is terminated earlier, renegotiated, or renewed, in accordance with the terms set out below.

4. **Commencement Date Deadline.** The Commencement Date will occur no later than twelve (12) months following the Effective Date for the phase one interim gaming facility as described in Manager’s Application for Lottery Gaming Facility Manager.~~INSERT DATE~~. This deadline will be extended by the number of days determined by the Executive~~Execute~~ Director that Manager is unable to perform its responsibilities under this Agreement due to:

- a) Court order restricting the authority of the Commission or the Kansas Lottery to own and operate Lottery Facility Games at the Lottery Gaming Facility under the Kansas Expanded Lottery Act or under this Agreement, or enjoining Manager from performing under this Agreement;
- b) Any force majeure cause as provided in Paragraph 63; or
- c) Any other reason determined by the Executive Director in his sole discretion that adversely impacted Manager’s ability to perform.

5. **Renewal of Agreement.** Prior to its expiration, this Agreement may be renewed by the mutual written consent of the parties and in accordance with the Kansas Expanded Lottery Act, and amendments thereto. This written consent will set out the

terms under which the renewal is to be effective.

6. **Manager's Representations and Warranties.** Manager represents and warrants to the Kansas Lottery as follows:

- a) Manager is a corporation, \_\_\_\_\_ duly organized, validly existing and in good standing under the laws of the State of Kansas, \_\_\_\_\_, and is duly qualified to do business as such in Kansas.
- b) Manager has full power, authority, and legal right to perform and observe the provisions in this Agreement, the requirements imposed by the Kansas Expanded Lottery Act, the rules and regulations imposed by the Commission, and the rules and regulations imposed by the Kansas Racing and Gaming Commission.
- c) Subject to the condition that all approvals required by the Kansas Expanded Lottery Act are obtained, this Agreement constitutes a valid and binding obligation on Manager that is fully enforceable in accordance with its terms, and does not constitute a breach of, or default under, any other agreement to which Manager is a party or any of its assets are bound or affected.
- d) During this Agreement's term, Manager will, at its own expense, keep in full force and effect its legal existence, rights and franchises required in order for it to observe all of this Agreement's terms and conditions. Upon receiving any information or notice contrary to the representations contained in this subsection during this Agreement's term, Manager must immediately notify the Executive Director in writing with full details regarding the same.
- e) Manager has acquired full title ~~*[alternative: the ability to acquire full title]*~~ to the premises on which the Lottery Gaming Facility will be located, free and clear of any liens, encumbrances, covenants, charges, burdens or claims, except (i) those which do not materially and adversely affect the use by Manager of the premises as a Lottery Gaming Enterprise, and (ii) any secured liens directly related to the Lottery Gaming Enterprise, which will be disclosed to the Executive Director concurrently with Manager's acquisition of the property or for which the Executive Director's prior approval has been obtained.
- f) The Lottery Gaming Enterprise and the operations thereof at all times will conform in all material respects with all applicable zoning, planning, building, licensing, and environmental laws and regulations of governmental authorities (federal, state, or local) having jurisdiction over the Lottery Gaming Enterprise, including any amendments to such laws or regulations occurring after this Agreement's execution. Such laws include,

but are not limited to, the federal Money Laundering Control Act of 1986, the Bank Secrecy Act of 1970, and the USA Patriot Act of 2001, and amendments thereto. The Manager shall defend, indemnify and hold the Kansas Lottery and the State of Kansas and all employees of the Kansas Lottery and the State of Kansas harmless from any liability or expenses resulting from any failure by the Manager to comply with the provisions of this subsection (f).

- g) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body pending or, to the knowledge of the Manager, threatened against or affecting the Manager or its principals, and in which an adverse result would in any way diminish or adversely impact the Manager's ability to fulfill its obligations under this Lottery Gaming Facility Management Contract except the litigation against the Kansas Lottery and the Executive Director involving the constitutionality of the Kansas Expanded Lottery Act and other litigation identified in Paragraph 8 below. No revenue bonds, state tax abatement, local tax abatement, tax increment financing or similar financing has or will be used to finance or apply to any part of Manager's Lottery Gaming Enterprise.
  
- h) The Lottery Gaming Enterprise will comply in all material respects with all environmental laws and regulations, and, except in material compliance with environmental laws and regulations agrees that to the best of its knowledge (1) that no pollutants, contaminants, solid wastes, or toxic or hazardous substances will be stored, treated, generated, disposed of, or allowed to exist at the Lottery Gaming Facility or the location of any related Ancillary Lottery Gaming Facility Operations, except in compliance with all applicable laws; (2) Manager will take all reasonable and prudent steps to prevent an unlawful release of hazardous substances onto the Lottery Gaming Facility or the location of any related Ancillary Lottery Gaming Facility Operations or onto any other property; (3) that no asbestos will be incorporated into or disposed of on the Lottery Gaming Facility or the location of any related Ancillary Lottery Gaming Facility Operations; (4) that no underground storage tanks will be located on the Lottery Gaming Facility or the location of any related Ancillary Lottery Gaming Facility Operations, except as approved by the Executive Director; and (5) that no investigation, order, agreement, notice, demand or settlement with respect to any of the above is threatened, anticipated, or in existence with respect to the Lottery Gaming Facility or the location of any related Ancillary Lottery Gaming Facility Operations. Upon receiving any information or notice contrary to the representations contained in this subsection, Manager must immediately notify the Executive Director in writing with full details regarding the same. Manager and its principals have executed the Environmental Compliance Agreement attached as Exhibit A. Manager shall defend, indemnify and hold the Kansas Lottery

and the State of Kansas harmless from any liability or expenses resulting from any failure by Manager to comply with the provisions of this subsection (h).

- i) Manager will provide to the Executive Director a certificate or certificates of insurance containing all of the insurance provision requirements provided in this Agreement as follows: as respects the builder's risk and liability including worker's compensation covering construction activities, prior to the commencement of construction activities, and as respects all other insurance, prior to the commencement of any operations presenting an insurable risk. Each insurance policy obtained by Manager to comply with the insurance provision requirements must provide that if the insurance is canceled for any reason whatsoever, or the same is allowed to lapse or expire, or there be any reduction in amount, or any material change is made in the coverage, such cancellation, lapse, expiration, reduction or change shall not be effective as to the Kansas Lottery or the State of Kansas until at least thirty (30) days after receipt by the Executive Director of written notice by the insurer of such cancellation, lapse, expiration, reduction or change.
- j) Manager will comply with all requirements imposed by the Kansas Racing and Gaming Commission now or in the future for the oversight of all operations at the Lottery Gaming Facility including, but not limited to: oversight of internal controls; adherence to technical standards adopted by the Kansas Racing and Gaming Commission; oversight of security; performance of background investigations; determinations of qualifications and any required certifications, credentialing or licensing of Manager's officers, directors, board members, employees, contractors and agents; auditing of Lottery Gaming Facility Revenues; maintenance and integrity of all Lottery Facility Games approved by the Executive Director for play at the Lottery Gaming Facility; maintenance of facility exclusion lists; player tracking, rewards, clubs, coupons or other incentive programs; oversight of progressive payout systems and programs; oversight of unclaimed winnings; or oversight of lost patron monies. Manager understands and agrees that failure to adhere to the Kansas Racing and Gaming Commission's rules, regulations, or technical standards may result in the imposition of fines, or other sanctions or penalties against Manager. Upon receiving any information or notice claiming a violation of any requirement of the Kansas Racing and Gaming Commission or any other governmental entity with jurisdiction over gaming-related activities after the Effective Date, Manager must immediately notify the Executive Director in writing with full details regarding the same.
- k) Manager, at a minimum, meets the following criteria: (1) has sufficient access to financial resources to support the activities required of it by this Agreement and the Kansas Expanded Lottery Act; (2) is current in filing

all applicable tax returns and in payment of all taxes, interest and penalties owed to the state of Kansas and any taxing subdivisions where the Manager is located in the state of Kansas, excluding items under formal appeal pursuant to applicable statutes; and (3) Manager or its principals, affiliates or officers have at least three consecutive years' experience in the management of gaming which would be class III gaming, as defined in K.S.A. 46-2301, and amendments thereto, operated pursuant to state or federal law.

- l) Manager will comply with all applicable rules and regulations imposed now, or in the future, by the Kansas Lottery.
  
- m) Except as may be authorized by applicable law and confirmed in writing by the Executive Director, Manager will not own, lease, license, or control the rights to: (1) any software, hardware, computer chip, EPROMS (erasable, programmable, read-only memory), flash drives, CD-ROM or other computerized device required to operate the games available for play on the Lottery Facility Games, (2) any software, hardware, computer chip, EPROMS (erasable, programmable, read-only memory), flash drives, CD-ROM or other computerized device containing information regarding or affecting an Lottery Facility Game's chance of winning, awarding of Prizes, or setting the consideration paid by a Player, such as the random number generator or payout tables; (3) any CPUs or other electronic components involved in the operation and calculation or display of game play (e.g., game controller electronics and components housing the game or system firmware program storage media or EPROMS); or (4) any communication controller electronics, and components housing the communication control program that is used for communicating financial data, program information and security events to the central computer authorized by the Executive Director for purposes of security, real-time monitoring and auditing, as well as ticket validation and any other system used that affects the integrity of the Lottery Facility Games made available at the Lottery Gaming Facility.
  
- n) Manager acknowledges and agrees the State of Kansas, acting through the Commission and the Kansas Lottery, pursuant to their statutory authority, has the sole right to own, lease and operate the Lottery Facility Games placed at the Lottery Gaming Facility and has the full, complete and ultimate ownership and operational control of the gaming operation of the Lottery Gaming Facility. Manager further acknowledges and agrees the Lottery explicitly retains the power to overrule any action of Manager affecting the gaming operation without prior notice and the Lottery retains full control over all decisions concerning Lottery Gaming Facility Games. No Gray Machines will be permitted at the Lottery Gaming Facility.
  
- o) Manager, on behalf of the Kansas Lottery, will be responsible at all times

for processing payment of all Prizes and matters relating thereto, including the withholding of income taxes and reporting of Prizes in accordance with all applicable laws and regulations.

- p) Manager has a resolution of endorsement from the city county-commission [alternative: city governing body] where the Lottery Gaming Facility will be located, which is attached as Exhibit B.
- q) The undersigned is duly authorized to execute and deliver this Lottery Gaming Facility Management Contract on behalf of Manager.

7. **The Kansas Lottery's Representations and Warranties.** The Kansas Lottery represents and warrants to Manager as follows:

- a) The Kansas Lottery is duly established under the Kansas Lottery Act and the Kansas Expanded Lottery Act, and has the power to enter into the transactions contemplated by this Lottery Gaming Facility Management Contract and to carry out its obligations. Based upon the representations of Manager as to the utilization of the Lottery Gaming Facility, the Kansas Lottery has the authority to take the actions contemplated by applicable statute.
- b) The Executive Director is duly authorized to execute and deliver this Lottery Gaming Facility Management Contract.
- c) Neither the execution and delivery of this Lottery Gaming Facility Management Contract, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the provisions of this Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of any other contract to which the Commission or Kansas Lottery is a party or by which either is bound, or will constitute default under any of the foregoing.

8. **Kansas Expanded Lottery Act Litigation.** Manager acknowledges it enters into this Agreement with the understanding that the Kansas Expanded Lottery Act's constitutionality under the Kansas Constitution, and/or the implementation of that Act by the Kansas Lottery or the Commission, may come under review by courts of competent jurisdiction from time to time during this Agreement's term. Manager acknowledges it is aware of the pending case of *State ex rel. Stephen Six v. Kansas Lottery and Ed Van Petten*, Shawnee County District Court Case No. 07 C 1312, and presently docketed with the Kansas Supreme Court as Case No. 08-99957-S, in which the constitutionality of the Kansas Expanded Lottery Act is under review. Manager further acknowledges that other litigation may be commenced in the future challenging the KELA or the Kansas Lottery's implementation pursuant thereto. The Kansas Lottery makes no warranty or representation, either express or implied, regarding the Kansas

Expanded Lottery Act's constitutionality or validity, or the implementation pursuant thereto. Manager agrees it will proceed with its responsibilities under this Agreement at its own risk as to the Kansas Expanded Lottery Act's validity, or the validity of the implementation of that Act by any state agency; except that nothing in this sentence will be interpreted to restrict or to be prejudicial to any right Manager may have through litigation or other legal means to seek repayment of Manager's privilege fee if the Kansas Expanded Lottery Act is declared unconstitutional.

**9. Required Approvals Prior to this Agreement Becoming Effective.**

Subject to the terms of Paragraph 2, this Agreement will not become effective until it is approved, as required by the Kansas Expanded Lottery Act, by all three of the following public entities: (a) the Commission; (b) the Lottery Gaming Facility Review Board; and (c) the Kansas Racing and Gaming Commission.

**10. Conditions Precedent to Lottery Gaming Facility Opening.** Prior to permitting initial public access to the Lottery Gaming Facility, Manager must:

- a) Be in compliance with all statutory requirements imposed by the Kansas Expanded Lottery Act, as amended, for placing Lottery Facility Games at the Lottery Gaming Facility.
- b) Be in compliance with all rules and regulations, written policies, or written standards imposed by the Kansas Lottery Commission for placing Lottery Facility Games at the Lottery Gaming Facility.
- c) Be in compliance with all rules and regulations, licensing requirements, written policies, or written standards imposed by the Kansas Racing and Gaming Commission for placing Lottery Facility Games at the Lottery Gaming Facility.
- d) Have in an operational condition Manager's portion of the central communication system specified by the Executive Director for the purposes of security, monitoring and auditing of Electronic Gaming Machines placed at the Lottery Gaming Facility.
- e) Have current written approvals from the Executive Director for all Lottery Gaming Facility activities as required by this Agreement.
- f) Be in compliance with all local zoning requirements applicable to the Lottery Gaming Facility.
- g) Delivered to the Secretary of State, with a copy to Executive Director, Manager's irrevocable consent to the jurisdiction and courts of the State of Kansas in accordance with K.S.A. 2007 Supp. 74-8755.

- h) Obtain and maintain all necessary governmental permits and licenses when and as may be required by law.
- i) Be in compliance with all other requirements in this Agreement as and when applicable.

11. **Manager's Business Plan.** The Executive Director and Manager will jointly develop a Business Plan, which will be based upon and not inconsistent with Manager's Application for Lottery Gaming Facility Manager, promptly after the Effective Date. This Business Plan will provide for the Lottery Gaming Facility's pre-opening activities in preparation for operation after the Commencement Date, hours of operation with 24 hour operations seven days a week being permitted by the Executive Director, advertising, marketing, public relations, number and type of Lottery Facility Games to be available to the public, process for selection of such games, Prizes, theoretical hold percentages, initial budget, Promotional Credits and procedures for controlling and accounting for the use of Promotional Credits, Promotional Items and procedures for controlling and accounting for the use of Promotional Items, special events or activities planned or anticipated by Manager during the period of time covered by the Business Plan, and other management activities to be performed by Manager consistent with the Kansas Expanded Lottery Act and applicable law that either the Manager or the Executive Director wants to address in the Business Plan. Once approved by the Executive Director, Manager will implement the approved Business Plan. The Executive Director, in consultation with Manager, may amend the Business Plan from time to time to promote the Lottery Gaming Facility's competitive position in the market in order to maximize Lottery Gaming Facility Revenues. The initial Business Plan will include Manager's proposed name for the Lottery Gaming Facility, which must be approved by the Executive Director. Any subsequent change to the facility's name must be approved by the Executive Director.

12. **Ancillary Lottery Gaming Facility Operations.** At the same time that Manager and the Executive Director develop a proposed Business Plan for the Lottery Gaming Facility, Manager separately will provide the Executive Director with Manager's anticipated business plan and budget for all Ancillary Lottery Gaming Facilities Operations that Manager anticipates developing in conjunction with the Lottery Gaming Facility, such as restaurants, hotels, motels or entertainment facilities. Manager agrees not to conduct any Ancillary Lottery Gaming Facility Operations that the Executive Director determines in his sole discretion would: (a) result in an appearance that reflects adversely on the Kansas Lottery or the Kansas Lottery Commission as the owner and operator of the Lottery Facility Games; or (b) violate any regulatory standards or local zoning laws.

13. **Lottery Gaming Facility Construction.** Manager will diligently construct at its own expense the Lottery Gaming Facility substantially in accordance with Manager's Application for Lottery Gaming Facility Manager and the plans and specifications, including Manager's plans for a phase one interim Lottery Gaming Facility (the "Phase One Lottery Gaming Facility") and phase two permanent Lottery

Gaming Facility (the “Phase Two Lottery Gaming Facility”).specifications. Prior to beginning construction, the Executive Director must approve the final plans and specifications for the Lottery Gaming Facility (or in lieu thereof such other construction-related documents acceptable to the Executive Director that are suitable for this purpose) to ensure construction will conform with the Manager’s Application for Lottery Gaming Facility Manager and Manager’s representation to the Kansas Lottery Commission, Lottery Gaming Facility Review Board, the Kansas Racing and Gaming Commission, or the county or city governing body where the Lottery Gaming Facility is to be located. All construction of the Phase One Lottery Gaming Facility must be completed and the Lottery Facility Games ready for play by the public within that facility no later than 12 months following the Effective Date, and all construction of the Phase Two Lottery Gaming Facility must be completed and the Lottery Facility Games ready for play by the public within that facility no later than 38 months following the Effective Date [INSERT DATE], unless a time extension is approved by the Executive Director. The schedule setting out Manager’s anticipated benchmarks for construction completion is attached as Exhibit C For each month between the Effective Date and the Commencement Date, Manager will report no less than monthly as directed by the Executive Director on Manager’s progress toward completing construction, implementing the Business Plan, and opening the Lottery Gaming Facility to the public. No material alterations to the scope and design of the plan for the Lottery Gaming Facility increasing or decreasing the total costs by more than one percent (1%) of the total cost provided for in Manager’s Application for Lottery Gaming Facility Manager may be made without the Executive Director’s written approval unless such change materially affects the floor plan, surveillance, or security for the Lottery Gaming Facility in which case the Executive Director’s approval is required for any material change regardless of the dollar amount. The Executive Director will promptly notify Manager of his approval or rejection of any proposed change. Manager will not need to obtain the Executive Director’s approval for expenditures covered by the Manager’s contingency budget.

**14. Construction Related to Ancillary Lottery Gaming Facilities**

**Operations.** Manager will diligently construct at no expense to the Kansas Lottery the buildings and related improvements for its Ancillary Lottery Gaming Facility Operations substantially in accordance with Manager’s Application for Lottery Gaming Facility Manager and Exhibit C.

**15. Manager’s Construction-Related Responsibilities.** Manager will be responsible for the management and construction of all aspects of construction-related activities concerning the Lottery Gaming Facility and the buildings and related improvements for its Ancillary Lottery Gaming Facility Operations. The responsibilities include, but are not necessarily limited to, the following:

- a) The direction of all construction activities;
- b) The direction and coordination of the performance of the architect, the other consultants and contractors;

- c) Causing all construction activities to be carried out in a good and workmanlike manner, all in substantial compliance with the Manager's Application for Lottery Gaming Facility Manager;
- d) Preparing the Lottery Gaming Facility to accommodate the central communication system as required by the Executive Director in accordance with the vendor contract for that central communication system, including installation of all specified power and communication services;
- e) Correcting or remedying or causing to be corrected or remedied, any violations of applicable law;
- f) Arranging for the preparation of all working drawings and specifications;
- g) Preparing or arranging for the preparation of all construction contracts and arranging for the preparation and execution of all other related documentation required in accordance with the development obligations undertaken by Manager;
- h) Securing financing, if necessary, including mortgage liens on the real property and improvements and liens on personal property, for the construction of the Lottery Gaming Facility or the building and improvements related to the Ancillary Gaming Facility Operations, including completing the necessary documentation therefor;
- i) Maintaining appropriate cost-accounting records in accordance with generally accepted accounting principles;
- j) Obtaining all necessary government approvals, consents, permits, and licenses;
- k) Providing legal support related to the development and construction responsibilities undertaken by Manager; and
- l) Ensuring all required insurance is maintained in force.

16. **Exclusive Use of Lottery Gaming Facility.** The Lottery Gaming Facility will be used exclusively for the playing of Lottery Facility Games owned and operated by the Kansas Lottery, and the ancillary management activities approved by the Executive Director, which may include beverage service, food service, and ATM facilities. Manager may not permit any other business activities within the Lottery Gaming Facility unless approved in writing by the Executive Director.

17. **Approval of Manager's Floor Plan.** Prior to opening the Lottery Gaming Facility, Manager must submit its proposed floor plan to the Executive Director for

approval. This floor plan must show the location of all Lottery Facility Games, count rooms, cages and other equipment and facilities to be contained within the Lottery Gaming Facility. No material change affecting surveillance or security, or any other material aspect of operations may be made to the approved floor plan without the Executive Director's prior written approval. Manager must perform its duties in accordance with the floor plan approved by the Executive Director, except to the extent necessary for Manager to implement pre-approved changes to the plan. The Executive Director, after consultation with Manager, will determine the location within the floor plan for each game, or type of game, to be offered to the public at the Lottery Gaming Facility.

18. **Approval of Manager's Surveillance Plan.** Prior to opening the Lottery Gaming Facility, Manager must submit its proposed surveillance plan to the Executive Director for approval. This surveillance plan at a minimum must contain all items required by applicable rule and regulation. No material change to the approved surveillance plan may be made without the Executive Director's prior written approval. Manager must perform its duties in accordance with the surveillance plan approved by the Executive Director, except to the extent necessary for Manager to implement pre-approved changes to the plan.

19. **Approval of Manager's Security Plan.** Prior to opening the Lottery Gaming Facility, Manager must submit its proposed policies and procedures relating to security to the Executive Director for approval. This security plan at a minimum must contain all items required by applicable rule and regulation. No material change to the approved security plan may be made without the Executive Director's prior written approval. Manager must perform its duties in accordance with the security plan approved by the Executive Director, except to the extent necessary for Manager to implement pre-approved changes to the plan.

20. **Privilege Fee Payment.** No later than thirty (30) days after the Commission approves this Agreement, Manager must pay to the state treasurer of the State of Kansas a privilege fee of ~~\$5.5 million~~ \$25 million. ~~[alternative \$5.5 million]~~. This payment to the state treasurer will be deposited into the state treasury and credited to the Lottery Gaming Facility Manager Fund, which is a temporary fund created pursuant to the Kansas Expanded Lottery Act. Notwithstanding any other provision in this Agreement, if Manager fails to pay this privilege fee within 30 days after the Commission's approval, this Agreement will be void and Manager will forfeit any rights it may have to be a Lottery Gaming Facility Manager under the Kansas Expanded Lottery Act. Once all required approvals for this Agreement are obtained in accordance with the Kansas Expanded Lottery Act, the Manager's privilege fee will be transferred on the Effective Date from the Lottery Gaming Facility Manager Fund to the Expanded Lottery Act Revenues Fund as provided by law. The Executive Director will provide Manager with notice of any meeting of the Kansas Racing and Gaming Commission to consider approval of Manager and this Agreement -within ten (10) days of the Executive Director receiving notice of such meeting. If (a) the required approvals for this Agreement are not obtained in accordance with the Kansas Expanded Lottery Act or (b) if Manager

withdraws its application to be Lottery Gaming Facility Manager in the ~~Southwest~~~~Northeast~~ Kansas gaming zone prior to transfer of Manager's privilege fee payment to the Expanded Lottery Revenue Fund, the Executive Director will promptly direct the state treasurer to refund, without interest, Manager's privilege fee payment. If the Kansas Expanded Lottery Act, or any portion thereof, is declared unconstitutional by a court of competent jurisdiction before Manager's privilege fee is transferred to the Expanded Lottery Act Revenues Fund, the Executive Director will promptly direct the state treasurer to refund, without interest, Manager's privilege fee payment at Manager's written request. This paragraph does not preclude Manager from pursuing whatever rights it might have to recover the privilege fee after Manager's privilege fee is transferred to the Expanded Lottery Act Revenues Fund.

21. **Lottery Facility Game Ownership.** The Manager must purchase or lease, on behalf of the State of Kansas, for the Kansas Lottery all Lottery Facility Games, including all necessary equipment such as approved tables, felt, dice, cards, chips, layouts, or intellectual property rights as determined by the Executive Director. Manager has no authority under this Agreement to own, purchase or lease any Lottery Facility Games, except on behalf of the State of Kansas and through the Kansas Lottery. The Executive Director, in consultation with Manager, will select the Lottery Facility Games to be offered for play at the Lottery Gaming Facility and determine the Prizes to be awarded for the play of such games. The Executive Director will determine and approve all rules of play and gaming policies that are applicable to the play of all Lottery Facility Games offered at the Lottery Gaming Facility.

22. **Control Software Licensing and Ownership.** The Kansas Lottery will be the licensee, owner and possessor of the right to use all control software and logic chips required to operate the games available on the Lottery Facility Games at the Lottery Gaming Facility. This includes: (a) any software, hardware, computer chip, EPROMS (erasable, programmable, read-only memory), flash drives, CD-ROM or other computerized device required to operate the games available for play on the Lottery Facility Games, (b) any software, hardware, computer chip, EPROMS (erasable, programmable, read-only memory), flash drives, CD-ROM or other computerized device containing information regarding or affecting a Lottery Facility Game's chance of winning, awarding of prizes, or setting the consideration paid by a Player, such as the random number generator or payout tables; (c) CPUs and other electronic components involved in the operation and calculation or display of game play (e.g., game controller electronics and components housing the game or system firmware program storage media or EPROMS); or (d) communication controller electronics, and components housing the communication control program that is used for communicating financial data, program information and security events to the central computer authorized by the Executive Director for purposes of security, real-time monitoring and auditing, as well as ticket validation and any other system used that affects the integrity of the Lottery Facility Games made available to Players at the Lottery Gaming Facility. Manager will transfer to the Kansas Lottery any rights obtained by Manager to use all control software and logic chips required to operate the games available on the Lottery Facility Games available to Players at the Lottery Gaming Facility. The Executive Director must approve all

agreements concerning software licensing and ownership affecting the Lottery Facility Games made available to Players at the Lottery Gaming Facility.

**23. Daily Electronic Payment of Lottery Gaming Facility Revenues.**

Manager must pay all Lottery Gaming Facility Revenues daily to the Executive Director as provided by applicable regulation. Manager will make this payment electronically in accordance with the Executive Director's written instructions, which will conform to necessary banking practices. These instructions may be changed from time to time in the Executive Director's sole discretion with reasonable notice to Manager. The Executive Director, in consultation with Manager, will develop a process so that Manager may audit and reconcile Lottery Gaming Facility Revenues after the daily payments are made. Notwithstanding any other provision in this Agreement, Manager's failure to make a daily electronic payment of Lottery Gaming Facility Revenues as required by this Agreement will be deemed an event of default unless the payment cannot be achieved due to the unavailability of bank services, force majeure events, or malfunctions in the central communications system not within Manager's control in which case the payment must be made on the first succeeding day that such services are available or such events or malfunctions cease. Manager's failure to comply with this paragraph will authorize the Executive Director in his sole discretion to immediately terminate this Agreement if Manager does not cure its failure within 24 hours of receiving written notice of Manager's failure to comply, provided that Manager's failure to make the required daily payment is not intentional.

**24. Payment Obligation is Unconditional.** Manager's obligation to make the daily payments of all Lottery Gaming Facility Revenues required above is a general obligation of Manager and is absolute and unconditional irrespective of any defense or any rights of setoff, recoupment, or counterclaim Manager may otherwise have against the Commission, the Kansas Lottery, or any agency of the State of Kansas. Manager agrees it will not suspend, discontinue or abate any daily payment required above for any cause whatsoever including, without limiting the generality of the foregoing, failure of consideration, destruction of or damage to the Lottery Gaming Facility, commercial frustration of purpose, any change in the tax or other laws, any administrative rulings of or administrative actions by the State of Kansas or any political subdivision thereof, or any failure by any agency or entity acting on behalf of the State of Kansas to perform and observe any agreement, whether expressed or implied, or any duty, liability or obligation arising out of or in connection with this Lottery Gaming Facility Management Contract, or otherwise. Subject to the foregoing provisions, nothing contained in this paragraph shall be construed to release the Kansas Lottery from the performance of any of the agreements on its part contained in this Lottery Gaming Facility Management Contract or to affect Manager's right to seek reimbursement or damages from the Kansas Lottery as provided in this Agreement. Manager must not grant, authorize or permit any interest to be given to anyone in the Lottery Gaming Facility Revenues generated at the Lottery Gaming Facility that are to be remitted daily to the State.

**25. Setoff Right Against Manager.** Any amounts owed to Manager under this Agreement are subject to set off by the state, municipalities, or certain others in accordance with K.S.A. 75-6201, *et seq.*, and amendments thereto.

26. **Total Compensation Paid to Lottery Gaming Facility Manager.** As its sole compensation for the management services for the Lottery Gaming Facility as set out in this Agreement, Manager will be paid the following percentages of the Lottery Gaming Facility Revenues generated at the Lottery Gaming Facility depending upon the applicable year of operation-, as follows: ~~(a) 73% during each year of this agreement. As an incentive to the State of Kansas, first partial Fiscal Year of operation, if any, and the Manager agrees to perform an incentive calculation annually that may result in a Net Incentive Payment by first full Fiscal Year thereafter ; (b) 72% during the Manager to second Fiscal Year of operation; (c) 71% during the State third Fiscal Year of Kansas, which is defined and calculated according to Exhibit G attached to this Contract operation; (d) 69% during the fourth Fiscal Year of operation; (e) 68% during the fifth Fiscal Year of operation; (f) 65% during the sixth Fiscal Year of operation; and (g) 62% thereafter.~~

The Executive Director will direct this payment to Manager on a monthly basis on the fifth (5<sup>th</sup>) day of each month, if possible, but no later than the tenth (10<sup>th</sup>) day of the month (or on a more frequent basis as may be agreed to between the Executive Director and the Manager).; in arrears, based on the previous month's Lottery Gaming Facility Revenues after first deducting- Manager's share of Kansas Lottery expenses and share of Kansas Racing and Gaming Commission expenses incurred for oversight and regulation as provided in Paragraph 28 below. Manager may pledge, encumber or grant any interest in the compensation to be paid Manager, subject to the deductions and setoffs provided for in this Agreement. Manager may pledge, encumber or grant to its lender an interest in management services compensation under this Paragraph 26, any right to receive the return of the Privilege Fee payment paid under Paragraph 20 and any other sums payable to the Manager hereunder. Upon request of Manager, the Executive Director will acknowledge and approve such pledge, encumbrance or grant, agree to make all such payments directly to its lender (or as otherwise directed by its lender) and agree and confirm to its lender such matters as are customary for financing of facilities of this type

27. **Payments to Problem Gaming and Addictions Grant Fund and Local Governments.** Pursuant to K.S.A. 2007 Supp. 74-8734(h)(13) and K.S.A. 2007 Supp. 74-8766(c), Manager acknowledges and agrees the Executive Director will cause two percent (2%) of Lottery Gaming Facility Revenues to be paid to the problem gaming and addictions grant fund established by K.S.A. 2006 Supp. 79-4805, and amendments thereto. Manager further acknowledges and agrees the Executive Director will cause 1.5% of Lottery Gaming Facility Revenues to be paid to Ford County, Kansas, and 1.5% of Lottery Gaming Facility Revenues to be paid to Dodge City, Kansas, as provided in the Kansas Expanded Lottery Act at K.S.A. 2007 Supp. 74-9734(h)(15)(A).two percent (3%) to the county in which the Lottery Gaming Facility is located [alternative language for this 3% if not in a city, or if in the southeast or south central zones to comply with K.S.A. 74-8734(h)(15) and (16), or to conform to manager's application if increased from statute.].

28. **Manager's Payments for Kansas Lottery's Expenses and Kansas Racing and Gaming Commission's Costs for Oversight and Regulation.** Manager

must pay the expenses of the Kansas Lottery and the Kansas Racing and Gaming Commission, as follows:

- a) Manager's share of the Kansas Lottery's expenses directly attributable to Manager and the Kansas Lottery's proportionate share of other expenses incurred for the implementation and operation of the Kansas Expanded Lottery Act and this Agreement will be paid in accordance with this subparagraph (a). Expenses incurred by the Kansas Lottery will be billed directly to Manager by the Kansas Lottery within thirty (30) days of the Commission's approval of this Agreement and must be paid by Manager within thirty (30) days of billing. Thereafter, and prior to the Commencement Date, the Executive Director will bill Manager periodically for the Kansas Lottery's expenses and Manager will pay such expenses within thirty (30) days of billing. After the Commencement Date, the Executive Director will deduct Manager's share of Kansas Lottery expenses before making Manager's monthly compensation payment as provided above in Paragraph 26. Manager's share of Kansas Lottery expenses will be calculated by taking the costs incurred by the Kansas Lottery that are directly attributed to Manager and Manager's Lottery Gaming Facility, plus the Kansas Lottery's common expenses attributable to all racetrack and lottery gaming facility managers as a result of the Kansas Lottery's activities pursuant to the Kansas Expanded Lottery Act, which common expenses will be divided equally among all managers.
- b) All costs incurred by the Kansas Racing and Gaming Commission for its oversight and regulation of Manager and the Lottery Gaming Facility in accordance with the requirements for calculating and paying such costs as determined by the executive director of the Kansas Racing and Gaming Commission. Manager acknowledges and agrees this obligation includes the requirement that Manager pay its *pro rata* share of the anticipated expenses of the Lottery Gaming Facility Review Board, which will be billed to Manager after the Kansas Lottery Commission's approval of this Agreement. If Manager fails to pay these expenses when due, this Agreement will be void, and Manager will forfeit any rights it may have to be a Lottery Gaming Facility Manager under the Kansas Expanded Lottery Act ten (10) days after receiving written notice from the Kansas Racing and Gaming Commission of Manager's failure to timely pay. Manager further acknowledges it has been advised that the executive director of the Kansas Racing and Gaming Commission will assess each manager, whose agreement is approved by the Lottery Gaming Facility Review Board, a proportionate share of all costs incurred by the Kansas Racing and Gaming Commission since 2007 Senate Bill 66 became effective on April 19, 2007, that are attributable to that agency's responsibilities under the Kansas Expanded Lottery Act.
- c) Manager's share of the expenses incurred for the central computer system,

which share will be based proportionately on Lottery Gaming Facility Revenues generated by the Electronic Gaming Machines placed at Manager's Lottery Gaming Facility in comparison to the revenues generated by the Kansas Lottery at Racetrack Gaming Facilities and Lottery Gaming Facilities that are part of the central computer system.

29. **Manager's Maintenance Responsibilities.** Manager must:

- a) Keep the Lottery Gaming Facility and all property and improvements associated with its Ancillary Lottery Gaming Facility Operations in good repair and in a reasonably safe condition;
- b) Make all necessary repairs and replacements to the Lottery Gaming Facility, including maintaining in an operational condition Manager's portion of the central communication system as required by the Executive Director in accordance with the vendor contract for that central communication system, and all property and improvements associated with its Ancillary Lottery Gaming Facility Operations (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen);
- c) Maintain the Lottery Gaming Facility and all property and improvements associated with its Ancillary Lottery Gaming Facility Operations in first class condition, ordinary wear and tear excepted, including, without limitation, interior and exterior cleaning, painting and decorating, plumbing, carpentry and such other items that may be commercially reasonable; and
- d) Manage the Lottery Gaming Facility and all of Ancillary Lottery Gaming Facility Operations in a sound, diligent, and prudent manner in accordance with this Agreement.

30. **Prohibitions Applicable to the State.** The Kansas Lottery, acting on behalf of the State of Kansas, agrees by entering into this Agreement that:

- a) Neither the Kansas Lottery nor the State of Kansas will enter into a management contract for more than four (4) lottery gaming facilities or similar facilities in the four gaming zones outlined in the Kansas Expanded Lottery Act with one lottery gaming facility in each gaming zone;
- b) Neither the Kansas Lottery nor the State of Kansas will designate additional areas of the state where operation of Lottery Gaming Facilities or similar gaming facilities will be authorized, other than those set out in the Kansas Expanded Lottery Act; or

- c) Neither the Kansas Lottery nor the State of Kansas will operate an aggregate of more than 2,800 Electronic Gaming Machines at all parimutuel licensee locations.

31. **State Payment for Breach.** Manager will be entitled, as its sole monetary remedy, to payment in an amount equal to the actual privilege fee paid by Manager, plus interest on such amount, compounded annually at the rate of ten percent (10%), if the State of Kansas violates any provision in Paragraph 30 above during the term of this Agreement. The parties acknowledge and agree that nothing in this paragraph will be interpreted to prevent or limit any rights Manager may have to seek specific performance or other equitable relief against the Kansas Lottery or the State of Kansas to enforce the prohibitions contained in Paragraph 30. Nothing in this paragraph will be deemed a waiver of the immunities and protections reserved to the State of Kansas under the Eleventh Amendment to the Constitution of the United States.

32. **Executive Director's On-Site Personnel.** The Executive Director will appoint one or more persons to oversee on-site the Lottery Facility Games at the Lottery Gaming Facility and Manager's performance under this Agreement. Such person(s) will report to the Executive Director, and have such authority as the Executive Director in writing may determine. Such person(s) will oversee operations, observe gaming activities, enforce gaming rules and policies, resolve disputes between Manager and Players, and perform such other tasks as directed by the Executive Director. All determinations made by such persons will be subject to review by the Executive Director, provided that Manager may act and rely upon written and verbal determinations made by the Executive Director's on-site personnel until Manager receives written notice from the Executive Director amending or reversing any such determination.

33. **Deactivation and Possession of Lottery Facility Games.** Upon order of the Executive Director, any or all Lottery Facility Games located at the Lottery Gaming Facility will be subject to immediate deactivation and/or cessation of operation. At any time, the Executive Director will be entitled to physically secure or take possession of any or all Lottery Facility Games and any related equipment necessary to play such games.

34. **Insurance Required.** At the time provided in Paragraph 6(i) above, and at all times thereafter, including without limitation during any period of construction of the Lottery Gaming Facility, Manager must maintain or cause to be maintained insurance against such risks and for such amounts as are customarily insured against by businesses of like size and type paying, as the same become due and payable, all premiums in respect thereto, including, but not necessarily limited to:

- a) Insurance against loss or damage by fire, lightning, and other casualties, with a uniform standard extended coverage endorsement, such insurance to be in an amount not less than the full replacement value of the Lottery Gaming Facility, exclusive of excavations and foundations, as determined

by a recognized appraiser or insurer selected by Manager or an amount not less than the maximum foreseeable loss, as determined by a property insurance carrier provided the policy provides a replacement cost endorsement up to the limit of the policy with customary and reasonable deductibles approved by the Executive Director; or as an alternative to the foregoing, Manager may insure the Lottery Gaming Facility under a blanket insurance policy or policies covering not only the Lottery Gaming Facility but other properties as well, provided a periodic appraisal is performed at intervals determined by the Executive Director and provided to the Executive Director.

- b) Workers' compensation insurance, disability benefits insurance, and each other form of insurance which Manager is required by law to provide, covering loss resulting from injury, sickness, disability or death of Manager's employees who are located at or assigned to the Lottery Gaming Facility.
- c) Commercial General Liability Insurance against loss or losses from liabilities imposed by law or assumed in any written contract and arising from personal injury and death or damage to the property of others caused by any accident or occurrence, with limits of not less than \$10,000,000 per accident or occurrence on account of personal injury, including death resulting there from, and \$10,000,000 per accident or occurrence on account of damage to the property of others, excluding liability imposed upon Manager by any applicable worker's compensation law. These liability limits may be satisfied by any combination of primary and excess liability policies. The primary general liability insurance may have a self-insured retention and the excess liability policy may have a commercially-reasonable deductible, as determined by the Executive Director. These liability insurance requirements may be satisfied by blanket policies in the aggregate amount of not less than \$10,000,000.
- d) Business interruption insurance against the perils enumerated in subparagraph (a) and in amounts determined by the Executive Director to be appropriate and commercially reasonable to protect both the Kansas Lottery's and Manager's financial interests in the revenue produced by the Lottery Gaming Facility.
- e) Employer's practices liability coverage providing customary coverage for alleged violations of local, state or federal civil rights laws or ordinances, or employment discrimination laws.
- f) Employee Dishonesty Combination Crime coverage in amount sufficient to cover all employees employed by Manager who are, or may be, responsible for handling any Lottery Gaming Facility Revenues or other

monies belonging to the Kansas Lottery that come under the Manager's custody or control.

35. **Additional Provisions Regarding Insurance.** In addition to the above, Manager must ensure that:

- a) All insurance required in Paragraph 34 above names the Commission, the Kansas Lottery, and the State of Kansas as a named insured, or additional named insured. All insurance will be procured and maintained in financially sound and generally recognized responsible insurance companies selected by the Manager, but authorized to write such insurance in Kansas. Such insurance may be written with deductible or self-insured retentions approved by the Executive Director in amounts comparable to those on similar policies carried by other companies engaged in the gaming industry for facilities similar in size, character and other respects to the Lottery Gaming Facility. All policies evidencing such insurance must provide for (1) payment of the losses of the Commission, the Kansas Lottery, the State of Kansas, and the Manager as their respective interest may appear, and (2) at least thirty (30) days written notice of the cancellation thereof to the Executive Director and the Manager. Policies referred to in this subparagraph (a) must include both the Kansas Lottery and the Manager as loss payees as their interest may appear.
- b) All certificates of insurance from the insurers that such insurance is in force and effect, must be deposited with the Executive Director on or before the Effective Date, except as provided in paragraph 6(i) above. Prior to expiration of the policy evidenced by said certificates, Manager must furnish the Executive Director with evidence that the policy has been renewed or replaced or is no longer required by this Agreement. Copies of the actual insurance policies will be provided to the Executive Director promptly at his request.
- c) Within one hundred twenty (120) days after the end of each Fiscal Year, the Company must file with the Executive Director a certificate from the Manager to the effect that the insurance it maintains with respect to the Lottery Gaming Facility complies with this Agreement and that duplicate copies of all policies or certificates were filed with the Executive Director and are in full force and effect.

36. **Kansas Lottery's Right to Pay Insurance, Taxes, or Other Charges.** If Manager fails (a) to pay any tax, assessment or other governmental charge required to be paid and not being formally contested by Manager in an appropriate forum with jurisdiction to hear such contests, or (b) to maintain any insurance required to be

maintained, the Executive Director, in his discretion, and following written notice to Manager, may authorize the Kansas Lottery to make payment of such tax, assessment, or other governmental charge or the premium for such insurance. Manager will reimburse the Kansas Lottery for any amount so paid together with interest thereon from the date of payment at twelve percent (12%) per annum. The Kansas Lottery may set off such payments from any money otherwise due Manager.

37. **Lottery Gaming Facility Damage, Destruction or Condemnation.** If the Lottery Gaming Facility is damaged, destroyed or condemned (in whole or in part) at any time during the term of this Agreement, Manager must promptly replace, repair, rebuild, or restore the Lottery Gaming Facility to substantially the same condition and value as an operating entity as existed prior to such damage or destruction, with such changes, alterations and modifications as may be desired by Manager and approved by the Executive Director, and may use insurance or condemnation proceeds for all such purposes. Manager will have no obligation to rebuild the Lottery Gaming Facility if such damage, destruction or condemnation occurs within five (5) years of the end of this Agreement's term. The Kansas Lottery will have no obligation to replace, repair, rebuild or restore the Lottery Gaming Facility.

38. **Advertising, Marketing, and Promotion.** Manager must use its commercially reasonable efforts to advertise, market, and promote the Lottery Gaming Facility in order to attract the public to the facility and maximize to the greatest extent possible Lottery Gaming Facility Revenues. Manager must comply with all applicable regulatory requirements imposed for such materials and activities. All advertising, marketing and promotion materials employed by Manager must be approved by the Executive Director prior to their first use. Manager agrees that such materials may be disapproved if the Executive Director determines in his sole discretion that such materials would reasonably be expected to offend a substantial number of people, or violate any regulatory standards applicable to such materials. In addition, Manager must make available to the public the odds of winning any prize or prizes for games played on all Lottery Facility Games offered at the Lottery Gaming Facility to the extent possible given the nature of such games and subject to the Executive Director's approval. Advertising, marketing and promotion materials may include information regarding problem gambling as directed by the Executive Director.

39. **Players' Club.** The Executive Director may institute a Player's club or similar incentive or promotional program applicable to some or all Racetrack Gaming Facilities or Lottery Gaming Facilities owned and operated by the Kansas Lottery. If the Executive Director institutes a Player's club, the Executive Director agrees that: (a) Manager will have no direct or indirect responsibility to fund such a program; (b) Manager will not be required to provide the Executive Director with any customer data under Manager's control for purposes of a Player's club instituted by the Executive Director; and (c) the Executive Director will not institute an incentive or awards programs in such Player's club that is applicable to another Racetrack Gaming Facility or Lottery Gaming Facility without also making it available to Manager for use at the Lottery Gaming Facility. As to subparagraph (b), Manager acknowledges that nothing in

subparagraph (b) will be read to restrict the Executive Director's access to any customer data for regulatory, security, or auditing purposes; and the Executive Director agrees customer data provided by Manager will not be used for any Player's club or similar incentive or promotion program instituted by the Executive Director. Nothing in this paragraph will be read to prevent Manager from instituting its own Player's club or similar incentive or promotional program at the Lottery Gaming Facility provided that such club or program is authorized by the Executive Director. The Executive Director agrees Manager has the right to establish a Player's club that awards to Players credits based on their play at the Lottery Gaming Facility, provided that such awards programs are approved by the Executive Director.

40. **Players' Tracking System.** The Executive Director may institute a Players' tracking system applicable to some or all Racetrack Gaming Facilities or Lottery Gaming Facilities owned and operated by the Kansas Lottery. Manager will administer such program at the Lottery Gaming Facility as the Executive Director may provide. Nothing in this paragraph will be read to prevent Manager from instituting its own Player's tracking system at the Lottery Gaming Facility provided that such system is authorized by the Executive Director.

41. **Use of Trademarks, Service Marks, and Trade Names.** Manager is authorized to employ any of the Kansas Lottery's trademarks, trade names, and service marks in any advertising, marketing or promotion for the Lottery Gaming Facility or the Lottery Facility Games placed therein, subject to the Executive Director's right to approve such advertising, marketing or promotion. Manager acknowledges it has no other right regarding the Kansas Lottery's trademarks, service marks, and trade names. Manager will not be required to pay any royalty or other fee for this usage. In addition, the Executive Director may require Manager to place Kansas Lottery's trademarks, trade names, or service marks at locations within the Lottery Gaming Facility as designated by the Executive Director in order to identify the games and gaming equipment as being owned and operated by the Kansas Lottery on behalf of the State of Kansas.

The Kansas Lottery is authorized to employ any of Manager's trademarks, trade names, and service marks in any advertising, marketing or promotion for the Lottery Gaming Facility or the Lottery Facility Games placed therein, subject to the Manager's right to approve such advertising, marketing or promotion. The Kansas Lottery acknowledges it has no other right regarding the Manager's trademarks, service marks, and trade names. The Kansas Lottery will not be required to pay any royalty or other fee for this usage.

42. **Personnel.** Manager will provide, supervise, direct the work of, discharge, and determine the compensation and other benefits of all personnel necessary to provide for the play of Lottery Facility Games at the Lottery Gaming Facility, except as otherwise noted in this Agreement, based upon a staffing plan approved by the Executive Director. Such personnel will not be considered employees of the Kansas Lottery or any other agency or department of the State of Kansas. Manager may determine the compensation to be paid to all of its personnel working at the Lottery

Gaming Facility. ~~provided that such compensation is within the budget for personnel compensation approved by the Executive Director.~~ Manager must ensure its personnel meet all applicable regulatory requirements imposed by the Commission or the Kansas Racing and Gaming Commission. Manager will not discriminate against any employee or applicant for employment because of race, creed, color, sex, age, or national origin nor violate any applicable law, regulation or local ordinance governing employer obligations.

43. **Personnel Training.** Manager will provide and direct employee recruitment, instructional programs, incentives, and on-the-job training necessary to ensure a first class facility for the playing of Lottery Facility Games by the public. Such trainings and other programs for personnel are subject to the Executive Director's approval, but may be conducted on or off site, on the job, or by instructors at or from educational training facilities.

44. **Key Employees.** Manager agrees the personnel, or positions, as well as any independent contractors designated in Exhibit D, are considered Key Employees, whose employment and retention are subject to the Executive Director's approval within his sole ~~discretion;~~ discretion; provided, however, that nothing in this paragraph will restrict the right of either the Kansas Lottery or the Kansas Racing and Gaming Commission to take action regarding the license held by any of Manager's employees in accordance with applicable statutes or rules and regulations promulgated pursuant to law. The Executive Director may amend Key Employees list at any time for any reason.

45. **Books and Records; Financial Statements.** Manager must maintain an accurate accounting system in connection with its management of the Lottery Gaming Facility. The books and records will be kept in accordance with generally accepted accounting principles maintained in accordance with current industry standards for similar gaming businesses. The books and records shall be maintained at all times either at the Lottery Gaming Facility and at such other locations as may be specified by regulation. The Executive Director, or his designees, shall have the right and privilege of examining these books and records at any time. In addition, the Executive Director may at any time obtain and pay for an audit performed by an independent certified public accountant. If this audit reveals a discrepancy greater than \$10,000 in Lottery Gaming Facility Revenues or a discrepancy greater than \$100,000 on any other line item previously reported to the Executive Director from the books and records provided by Manager, the audit's cost will be reimbursed by Manager as a set off from the compensation to be paid Manager pursuant to Paragraph 25 above. On or before the 20<sup>th</sup> day following the close of each month, Manager must furnish the Executive Director with a reasonably detailed operating statement for the Lottery Gaming Facility for that period, including year-to-date results.

46. **Records Retention and Access.** Manager must maintain all books and records regarding the Lottery Gaming Facility for a minimum period of five (5) years, or such other longer period as may be imposed by regulation. Manager must permit access to such books and records as is legally required by law, regulation, or this Agreement, including giving access to the Post Auditor for the Kansas Legislature, the Executive

Director or his designee, authorized representatives for the Kansas Racing and Gaming Commission, or any authorized representative of the United States government.

47. **Budget and Business Plans for Each Fiscal Year.** No later than forty-five (45) days prior to the commencement of each Fiscal Year, Manager must submit to the Executive Director a budget (the “Budget”) and a proposed Business Plan for the Lottery Gaming Facility for such Fiscal Year, containing reasonably detailed revenue and expense projections and providing projections for all expenditures that Manager anticipates to be made, as well as all capital expenditures and expenditures for replacements. The Budget will accompany and be compatible with Manager’s proposed Business Plan for the upcoming Fiscal Year. The Budget is intended as, and will represent only, an estimate of the projected revenues and expenditures for the Fiscal Year based upon assumptions believed by Manager to be reasonable at the time of preparation. The Budget and proposed Business Plan for each upcoming Fiscal Year will be subject to the Executive Director’s approval. Thereafter, Manager will use reasonable efforts to achieve the budgetary goals reflected in the Budget, but the parties both recognize the Budget cannot be relied upon as an assurance of actual results for such Fiscal Year. Manager must promptly notify the Executive Director of any need to depart in any material way from the Budget if, in Manager’s judgment, adherence to the Budget is impractical or if such departure is necessary or desirable for the Lottery Gaming Facility’s efficient or profitable operation. Any such deviations from the Budget are subject to the Executive Director’s approval.

48. **Bank Accounts.** Manager will establish a special bank account in its name at a Kansas bank approved by the Executive Director with Manager being the only party authorized to draw from this account except upon a default under this Agreement by Manager or any termination of this Agreement at which time the Executive Director will have that authority. This bank account will be used by Manager for all payments. The Executive Director will cause Manager’s portion of the Lottery Gaming Facility Revenues to be deposited into this account monthly, unless another time period is authorized by law and agreed to by the Executive Director.~~monthly.~~ With the Executive Director’s approval, Manager may establish at the same bank multiple accounts to segregate a portion of the amount due to the Manager under paragraph 26 herein, for the payment of certain expenses, such as payroll, debt service, equipment lease payments, taxes, marketing and promotional items and other expenses.~~certain expenses, such as payroll.~~

49. **Events of Default.** Each of the following will constitute an event of default by Manager:

- a) Manager’s failure to pay any amount owed the Kansas Lottery in the manner provided for in this Agreement if the Kansas Lottery decides in its sole discretion to give notice of such default to Manager;
- b) The filing of a voluntary assignment in bankruptcy or insolvency or a petition for reorganization under any bankruptcy law by Manager;

- c) The consent to an involuntary petition in bankruptcy by Manager;
- d) Entry of an order, judgment or decree by any court of competent jurisdiction, on application of a creditor, adjudicating Manager a bankrupt or insolvent or approving a petition seeking reorganization or appointing a receiver, trustee or liquidator of all or a substantial part of Manager's assets, if such order, judgment or decree continues unstayed and in effect for a period of 120 consecutive days; or
- e) Manager's failure to perform, keep or fulfill any other covenant, undertakings, obligations or conditions set out in this Agreement for a period of thirty (30) days after written notice of said failure from the Executive Director (unless a shorter period of time is specified in this Agreement); provided, however, that if the default is not susceptible of being cured within this thirty (30) day period and the defaulting party with due diligence takes and continues action to cure, then no event of default will be deemed to have occurred until the failure to take or to continue to take such action.
- f) Withdrawal of any approval granted, loss or suspension of any license issued to Manager by the Kansas Racing and Gaming Commission or any other regulatory entity with jurisdiction over Manager's activities unless such withdrawal, suspension or loss is being contested by Manager in the appropriate forum with jurisdiction over the agency action at issue; or
- g) Manager's financial condition being such that the sum of Manager's debts exceeds the fair market value of Manager's assets.

50. **Remedies on Default.** If an event of default occurs as provided above, the Executive Director may, without prejudice to any other legal or equitable remedy which he may have, give Manager notice of the Kansas Lottery's intention to terminate this Agreement after the expiration of fifteen (15) days from the date of such notice and upon the expiration of such period, unless another cure period is expressly provided for, this Agreement will be deemed terminated; provided, however, that nothing in this paragraph, or in this Agreement, will be construed to restrict the Executive Director's authority to: (a) immediately cease operation of any or all Lottery Facility Games at the Lottery Gaming Facility for any reason; or (b) physically secure or take possession of any or all Lottery Facility Games and any related equipment necessary to play such games. Manager acknowledges and agrees that once this Agreement is terminated, the Kansas Lottery thereafter will be free to enter into a management contract with a new manager for another Lottery Gaming Facility in the Kansas gaming zone without penalty to the Kansas Lottery or further recourse by Manager. Manager further acknowledges that its failure to make any daily electronic payment of Lottery Gaming Facility Revenues as required by Paragraph 23 will authorize the Executive Director in his sole discretion to

immediately terminate this Agreement.

51. **Remedies Cumulative.** No remedy conferred upon or reserved to the Kansas Lottery in this Agreement is intended to be exclusive of any other available remedy, but each and every such remedy will be cumulative and in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default will impair any such right or power or will be construed to be a waiver, but any such right and power may be exercised from time to time and as often as may be deemed expedient in favor of the Kansas Lottery.

52. **Surrender Upon Termination.** At the Executive Director's request, Manager agrees that at the expiration or earlier termination of this Agreement, Manager will deliver to the Executive Director, or his designee, all books, records, accounting documents, computerized files, contracts, leases, licenses, permits or other governmental authorizations, files, supplies, keys, locks safe combinations, insurance policies not maintained as part of Manager's blanket policies, warranty contracts and cards, operating instructions and other information, warranties and guaranties concerning all equipment relating to the Lottery Facility Games, as well as any maintenance or preventive maintenance programs, schedules and logs, records, inventories of personal property and equipment purchased on behalf of the Kansas Lottery or the State of Kansas, and all other information regarding the Lottery Facility Games, and all accounts and sums held or maintained by Manager on behalf of the Kansas Lottery. Manager will have a reasonable period of time, not to exceed forty-five (45) days from the termination date, to complete all accounting functions with respect to the Lottery Gaming Facility. Manager must cooperate with the Executive Director in changing any bank accounts maintained for the Kansas Lottery's benefit. Manager must take all actions reasonably necessary to facilitate the orderly transition or termination of the management of the Lottery Gaming Facility and must perform all reporting and accounting functions required by this Agreement for the period from the date of the last report or accounting to the termination date. If, at the termination of this Agreement, there are any Lottery Facility Games that were purchased by Manager on behalf of the Kansas Lottery with ownership transferred to the Kansas Lottery, then the Executive Director will transfer ownership of such games to Manager or Manager's designee, if such transfer is lawful; but if such transfer is not lawful, then the Executive Director will refund to Manager the residual value received by the Executive Director in a sale of such game to an eligible buyer.

53. **Agreement to Pay Attorneys' Fees and Expenses.** If Manager defaults under any provision of this Agreement and the Kansas Lottery should employ attorneys or incur other expenses for the collection of amounts payable or to enforce performance or observance of Manager's obligations under this Agreement, Manager must pay, on demand, the reasonable fees of such attorneys and such other expenses incurred by the Kansas Lottery, if the Kansas Lottery is the prevailing party.

54. **Manager's Indemnification Responsibilities.** In addition to any other indemnification obligations provided in this Agreement or by law, Manager agrees as

follows:

- a) To hold and save harmless the State of Kansas, Commission, Commission members, the Executive Director, the Kansas Lottery, Kansas Lottery staff, Kansas Racing and Gaming Commission, Kansas Racing and Gaming Commission members, the Kansas Racing and Gaming Commission's executive director, and Kansas Racing and Gaming Commission staff (each an "Indemnified Party") from liability for injury to persons or damages to property by reason of any cause whatsoever, either in and about the Lottery Gaming Facility or elsewhere, when Manager is carrying out the provisions of, or any way connected with, this Agreement.
- b) To hold and save harmless any Indemnified Party upon demand for any money or other property which they are required to pay out for any reasons whatsoever, whether the payment is for a budgeted expense or any other charges or debts incurred or assumed by Manager, or any other party, or judgments, settlement or expenses in defense of any claim, civil action, proceeding, charge, or prosecution made, instituted or maintained against Manager or an Indemnified Party jointly or severally, affecting or because of the condition or use of the Lottery Gaming Facility, or acts or failure to act by Manager or Manager's agents, or arising out of or based upon any law, regulation, requirement, contract or award related to the hours of employment, working conditions, wages and/or compensation of employees or former employees at the Lottery Gaming Facility, or any other cause in connection with the Lottery Gaming Facility's management or Manager's activities related to any Ancillary Lottery Gaming Facility Operations. This entire Paragraph 54 does not include any action against the Kansas Lottery or its staff regarding the constitutionality of the Kansas Expanded Lottery Act or misconduct by an Indemnified Party that is found to be negligent or criminal.
- c) To hold and save harmless any Indemnified Party from liability for any claim arising as a result of the selection of Manager under the Kansas Expanded Lottery Act to manage the Southwest Lottery Gaming Facility. ~~Lottery Gaming Facility, the denial of some other potential manager in making that selection, the process used in making the selection, or the process used in applying to become a Lottery Gaming Facility Manager under the Kansas Expanded Lottery Act.~~
- d) To hold and save harmless any Indemnified Party from liability for any violation or breach of this Agreement by Manager, its employees, or agents.
- e) To hold and save harmless any Indemnified Party from liability for any claims alleging negligent acts or omissions by Manager, its officers, employees, agents, board members, contractors, subcontractors or agents

in the performance of this Agreement.

- f) To hold and save harmless any Indemnified Party from liability for any claims alleging violations of any intellectual property right for any intellectual property supplied by Manager under this Agreement, including but not limited to, infringement of patents, trademarks, trade dress, trade secrets, or copyrights arising from Manager's performance under this Agreement.

Manager's duties under this paragraph will survive the termination or expiration of this Agreement. Manager agrees to defend (with counsel selected by the Executive Director), at Manager's sole expense, any Indemnified Party, and to pay on demand all costs and expenses related to such defense regarding any indemnification right provided for in this paragraph. Nothing contained in this provision will relieve Manager from responsibility to the Kansas Lottery, as a result of willful misconduct, gross negligence, material breach of this Agreement, or acts outside the scope of Manager's authority under this Agreement on the part of Manager, its agents or employees, and Manager agrees to indemnify any Indemnified Party for damage or loss resulting from said acts. Manager's obligations under this paragraph may be satisfied in whole, or in part, by insurance purchased at Manager's expense, provided that Manager will be responsible for any indemnified liabilities in excess of insurance limits.

**55. Compliance with Orders, Ordinances, Etc.** Throughout this Agreement's term, Manager will promptly comply in all material respects with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all federal, state, county, municipal and other governments, departments, commissions, boards, companies or associations insuring the premises, courts, authorities, officials and officers, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Lottery Gaming Facility or any part thereof, or to any use, manner of use or condition of the Lottery Gaming Facility or any part thereof. Notwithstanding these requirements, Manager may in good faith contest the validity of the applicability of any requirement of the nature referred to in this paragraph. In such event, Manager may fail to comply with the requirement or requirements so contested during the period of such contest and any appeal therefrom, so long as such non-compliance is permitted by law. Manager will give notice to the Executive Director of any such non-compliance.

**56. Discharge of Liens and Encumbrances.** Manager shall not permit or create or suffer to be permitted or created any lien upon the Lottery Gaming Facility Revenues or the Lottery Gaming Facility, or any part thereof, by reason of any labor, services or materials rendered or supplied or claimed to be rendered or supplied with respect to the Lottery Gaming Facility or any part thereof, except any liens expressly approved by the Executive Director. Notwithstanding these requirements, Manager may in good faith contest any such lien. In such event, Manager, upon prior written notice to the Executive Director, may permit the items so contested to remain undischarged and

unsatisfied during the period of such contest and any appeal, unless the Executive Director requires Manager to promptly secure payment of all such unpaid items by filing the requisite bond, in form and substance satisfactory to the Executive Director, thereby causing a lien to be removed. Manager agrees this Agreement is not to be considered property, and will not permit this Agreement to be attached, garnished, or executed upon by any creditor for any reason. This Agreement is not transferable in bankruptcy without the Executive Director's approval.

57. **Assignment.** This Agreement may not be assigned in whole or in part without the Executive Director's express written consent, which may be granted or withheld in his sole and absolute discretion. The Executive Director acknowledges that a joint venture or other business combination or transfer of an equity interest involving Manager and suitable third party or parties is permissible, provided such party or parties receive all approvals required by applicable statute or regulation.

58. **Notices.** All notices and other communications provided for under this Agreement, or any applicable statute or regulation, must be in writing and sent via (a) U.S. Mail, certified mail, return receipt requested, (b) recognized national overnight courier (e.g. FedEx, UPS, DHL, etc.) or (c) fax, if followed by notice under (a) or (b) at the addresses set forth below, or at such other address as such party may specify by written notice to the other parties hereto:

If to the Executive Director:	Ed Van Petten Kansas Lottery 128 N. Kansas Avenue Topeka, KS 66603-3638 Telephone: 785-296-5703 Facsimile: 785-296-5722
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If to Manager:	<u>Clark D. Stewart</u> <u>Butler National Service Corporation</u> <u>19920 W. 161<sup>st</sup> Street</u> <u>Olathe, KS 66062</u> <u>Telephone: 913-780-9595</u> <u>Facsimile: 913-780-5088</u>
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Notice will be deemed given three days after mailing, if by certified mail, return receipt requested, the next business day after delivery to an overnight delivery service for next business day delivery, or on the date sent by fax if confirmation of receipt is obtained and retained and provided that notice under (a) or (b) above is sent the same day.

59. **Amendments.** Except as otherwise provided in this paragraph, no amendment, waiver, or consent as to any provision in this Agreement will be effective unless it is in writing and agreed to by the Executive Director and Manager, and each such waiver or consent will be effective only in the specific instance and for the specific

purpose for which given. In addition, and notwithstanding any other provision in this Agreement, Manager acknowledges and agrees the Executive Director may overrule any action by Manager affecting operations within the Lottery Gaming Facility without prior notice to Manager, and that the Kansas Lottery maintains at all times full control over all decisions concerning the Lottery Facility Games placed at the Lottery Gaming Facility. This Agreement will also be modified, in whole or in part, in order to comply with future statutory enactments or judicial interpretations of applicable law by a court of competent jurisdiction. This Agreement is subject to modification, in whole or in part, or cancellation, as deemed necessary by the Executive Director to comply with any future statutory enactments, subsequent regulatory changes, or judicial interpretations of applicable law by a court of competent jurisdiction occurring after this Agreement's execution, without additional consideration being exchanged between the parties. The parties agree nothing in this paragraph will be read to limit the remedies provided to Manager in Paragraphs 31 or 65.

60. **No Recourse; Special Obligation.** The Kansas Lottery's obligations and agreements contained herein and any other instrument or document executed in connection with this Agreement, and any other instrument or document supplemental thereto or hereto, are deemed the obligations and agreements of the Kansas Lottery, and not of any member, officer, contractor (other than Manager), or employee of the Commission or Kansas Lottery in his or her individual capacity, and such individuals will not be liable personally hereon or thereon or be subject to any personal liability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby.

61. **Severability.** If any provision in this Agreement is determined to be invalid or unenforceable by any court with competent jurisdiction, such holding will not invalidate or render unenforceable any other provision, and the parties may renegotiate this Agreement to conform to any such court holding.

62. **Binding Effect.** This Agreement will inure to the benefit of, and will be binding upon, the State of Kansas, the Kansas Lottery, Manager, and their respective successors and assigns.

63. **Force Majeure.** With respect to any obligation to be performed by a party during this Agreement's term, no party will be liable for failure to perform when prevented by any force majeure cause beyond the reasonable control of such party such as an act of god, final resolution of any material litigation (including the litigation referred to in Paragraph 8 above) strike, lockout, breakdown, accident, order or regulation of or by any governmental authority, failure of supply or inability, by the exercise of reasonable diligence, to obtain supplies, parts or employees necessary to perform such obligation, or war or other emergency. The time within which such obligation must be performed will be extended for a period of time equivalent to the delay from such cause. But failure to perform by Manager's subcontractors or agents will not be considered a force majeure unless such subcontractor or supplier is prevented from timely performance by a force majeure as described above. This paragraph will not apply to any financial difficulties of Manager, or any parent, subsidiary, affiliated or associated

company of Manager, but will apply to orders of the Kansas Racing and Gaming Commission, or claims or court orders restricting Manager's ability to perform so long as such orders, claims or court orders are not on account of any misconduct by Manager. The provisions of this Paragraph 63 notwithstanding, the parties agree the litigation component of the force majeure definition does not apply to Manager's obligations to pay the privilege fee as required by Paragraph 20 above, or to Manager's obligations to pay the expenses of the Kansas Lottery or the Kansas Racing and Gaming Commission as required by Paragraph 28.

64. **Emergency Closings.** If at any time during this Agreement's term it becomes necessary in the Executive Director's or Manager's reasonable opinion to cease operations at the Lottery Gaming Facility in order to protect the facility or the health, safety and welfare of guests or employees for reasons of force majeure such as, but not limited to, acts of war, insurrection, civil strife and commotion, labor unrest, environmental risks or other casualty, then the Lottery Gaming Facility may be closed and cease operation of all or part of the facility. If this occurs based on Manager's determination, Manager must immediately notify the Executive Director, who will then determine when the Lottery Gaming Facility is reopened without jeopardy to the facility, its guests or employees.

65. **Manager's Right to Cease Management Activities.** Manager may cease management of the Lottery Gaming Facility and terminate this Agreement with no less than six months advance written notice if:

- a) K.S.A. 2007 Supp. 74-8734(h)(1) or other applicable statute or regulation is amended to reduce the term of this Agreement;
- b) Either K.S.A. 2007 Supp. 74-8734(h)(12) or (13) or other applicable statute or regulation are amended to increase the minimum percentages stated in K.S.A. 2007 Supp. 74-8734(h)(12) or (13) above the amounts provided for in this Agreement;
- c) K.S.A. 2007 Supp. 74-8734 (h)(16) or other applicable statute or regulation is amended to increase above the aggregate the minimum percentages stated in K.S.A. 2007 Supp. 74-8734(h)(16) above the amounts provided for in this Agreement;
- d) The Kansas Lottery fails to effect payment of Manager's compensation as due under this Agreement and not otherwise in dispute, provided such failure of payment is not cured within ten (10) business days of notice by Manager to the Executive Director;

- e) K.S.A. 2007 Supp. 74-8739 is amended to no longer permit the sale or service of alcoholic beverages at the Lottery Gaming Facility or Ancillary Lottery Gaming Facility Operations;
- f) The Kansas Expanded Lottery Act is amended to preclude the Kansas Lottery from owning and operating table games at the Lottery Gaming Facility;
- g) A court of competent jurisdiction, after all appropriate appeals are exhausted, invalidates paragraph 30 above or the corresponding provisions of the Kansas Expanded Lottery Act;
- h) The Lottery Gaming Facility operates at a financial loss to Manager at the net income level (as defined by GAAP and verified by an independent audit by an auditor approved by the Executive Director) during a full Fiscal Year and Manager gives the Executive Director at least 180-days' advance written notice of Manager's intent to cease management activities within forty-five (45) days after the end of the Fiscal Year in which the financial loss occurs;
- i) The Executive Director exercises his right under Paragraph 33 or the Kansas Expanded Lottery Act to physically secure, deactivate or cease operation of such a substantial number of Lottery Facility Games that the Lottery Gaming Facility is no longer commercially viable; or
- j) If litigation or any other challenge to the constitutionality of the Kansas Expanded Lottery Act or the enforceability of this Agreement remains in question more than 180 days after the Effective Date.

The parties agree that in addition to, or in lieu of, Manager's right to cease management activities under this paragraph, Manager will have available to it any legal or equitable remedy against the State of Kansas, including any impairment of the obligations of this contract prohibited by Article I, Section 10, Clause 1 of the Constitution of the United States of America, if any of the circumstances stated above in sub-paragraphs (a), (b), (c), (d), (e) or (f) occur during the term of this Agreement. Nothing in this paragraph will be deemed a waiver of the immunities and protections reserved to the State of Kansas under the Eleventh Amendment to the Constitution of the United States.

66. **Manager's Ability to Withdraw Application.** Manager may withdraw its application to be a Lottery Gaming Facility Manager at any time prior to its approval by the Lottery Gaming Facility Review Board. Notice of Manager's withdrawal must be

given in writing to the Executive Director. If at the time of Manager's withdrawal, Manager has paid a privilege fee to the state treasurer and credited to the Lottery Gaming Facility Manager Fund, the Executive Director will promptly notify the state treasurer of Manager's withdrawal and direct the state treasurer to refund Manager's privilege payment without interest. Manager acknowledges and agrees that if it withdraws its application pursuant to this paragraph, this Agreement will be void and Manager will not be permitted to re-apply as a Lottery Gaming Facility Manager in the [Southwest Kansas Gaming Zone](#) unless the application process is reopened. Manager will not be permitted any refund for payments made by Manager to reimburse the Kansas Lottery or the Kansas Racing and Gaming Commission's expenses as required by this Agreement.

67. **Financing Commitment for Construction.** In accordance with K.S.A. 2007 Supp. 74-8734(h)(9), Manager attaches as Exhibit E its financing commitment for construction of the Lottery Gaming Facility and ancillary facilities.

68. **Executive Director's Approval and Authority.** When it is provided in this Agreement that the Manager will submit a budget, plan or other issue for the Executive Director's approval, the Executive Director will respond within a commercially reasonable time based on the issue under consideration, provided that any request from Manager in which the Executive Director fails to respond in a commercially reasonable time will be deemed denied. ~~Additionally, the~~ Executive Director will not exercise his ~~discretionary~~ authority provided to him in this Agreement in an unreasonable, arbitrary or capricious manner.

69. **Central Computer System.** Manager acknowledges and agrees that all Electronic Gaming Machines at the Lottery Gaming Facility will be directly linked to a central computer at a location determined by the Executive Director for purposes of security, monitoring, auditing, and providing other available program information to the Kansas Lottery. The Executive Director will have sole authority to determine the functions and operational capacities to be performed through this central computer system by Manager, as well as the services provided by the vendor engaged by the Executive Director to provide the central computer system. In addition to all other functions to be performed by the central computer system, the Executive Director expressly reserves the authority to determine if this central computer system will be used to validate or redeem tickets issued by an Electronic Gaming Machine commonly referred to as "Ticket-in Ticket Out."

70. **Counterparts.** This Agreement may be executed in counterparts, each of which will be an original and all of which will constitute one and the same instrument.

71. **Applicable Law.** This Agreement will be governed, construed, and enforced in accordance with Kansas law for contracts to be wholly performed within the state.

72. **Jurisdiction and Venue.** Any action by or between the parties challenging the constitutionality of, or arising out of, any provision of the Kansas

Expanded Lottery Act, this Agreement, or any rule or regulation promulgated pursuant to the Kansas Expanded Lottery Act must be brought in the district court of Shawnee County, Kansas, unless a dispute is first subject to proceedings under the Kansas Administrative Procedure Act.

73. **Headings Not Controlling; Construction; Survival.~~Construction.~~** Each paragraph heading is prepared for convenience only and is not to control, affect the meaning, or be taken as an interpretation for any provision in this Agreement. Use of the word “including” in this Agreement does not mean including in a restrictive sense, but rather means in the sense of providing a non-exclusive illustration, as if the words “including without limitation” were included in the text. Paragraphs 30, 31, 48, 52, 54, 58, 65, 71, 72 and 73 shall survive the termination of this Agreement.

74. **No Joint Venture Created.** Manager and the Kansas Lottery agree and acknowledge that by entering into this Agreement they are not entering into a joint venture.

75. **Covenant for Continued Disclosure.** Within 30 days after the close of the Fiscal Year, Manager must update all exhibits to this Agreement. Upon the Executive Director’s written request, Manager will provide such other information regarding the financial or legal undertakings of Manager, the Lottery Gaming Facility, or the Ancillary Lottery Gaming Facility Operations.

76.. **No Endorsement Made.** By executing this Agreement the Kansas Lottery, the Kansas Racing and Gaming Commission, and the State of Kansas have not considered or endorsed the marketability of Manager’s securities or marketability of any securities of Manager’s affiliates.

77.. **Contractual Attachment.** It is further agreed that the provisions found in the Contractual Provisions Attachment (Form DA-146a), which has been revised by the parties and is attached as Exhibit F, are incorporated in this Agreement as though set out in full.

IN WITNESS WHEREOF, the Executive Director, on behalf of the Kansas Lottery, and Manager have caused this Agreement to be executed in their respective names, all as of the date first above written.

THE KANSAS LOTTERY

By: \_\_\_\_\_  
Ed Van Petten, Executive Director

BUTLER NATIONAL SERVICE CORPORATION  
{INSERT NAME}

By: \_\_\_\_\_  
Clark Stewart, Chief Executive Officer

## **EXHIBIT SCHEDULE**

EXHIBIT A – Environmental Compliance and Indemnification Agreement

EXHIBIT B – [CityCounty](#) Endorsement

EXHIBIT C –Expected Construction Sequence

EXHIBIT D –Key Employees

EXHIBIT E– Financing Commitment Description

EXHIBIT F – DA-146a (revised by the parties)

[EXHIBIT G – Incentive Payment Description](#)

**EXHIBIT “A”**

**ENVIRONMENTAL COMPLIANCE AND  
INDEMNIFICATION AGREEMENT**

**ENVIRONMENTAL COMPLIANCE  
AND INDEMNIFICATION AGREEMENT**

THIS ENVIRONMENTAL COMPLIANCE AND INDEMNIFICATION AGREEMENT (the "Environmental Compliance Agreement"), dated as of [insert date], is given by **Butler National Service Corporation**, a Kansas corporation ("Manager") having offices at 19920 W. 161<sup>st</sup> Street, Olathe, KS 66062, to the **Kansas Lottery**, an agency of the State of Kansas having its principal office at 128 N. Kansas Avenue, Topeka, KS 66603-3638.

**RECITALS**

**WHEREAS**, the Manager is the owner of, or is acquiring title to or other interest in, certain real property located \_\_\_\_\_, State of Kansas and described more fully in Schedule "A" attached and made a part hereof (the "Premises"); and

**WHEREAS**, the Manager is contracting with the Kansas Lottery to be a Lottery Gaming Facility Manager, as that term is defined in the Kansas Expanded Lottery Act, K.S.A. 2007 Supp. 74-8733 through 74-8773, which will consist of a Lottery Gaming Facility and certain Ancillary Lottery Gaming Facility Operations, as referenced in a Lottery Gaming Facility Management Contract of even date, to which this Environmental Compliance Agreement is attached (collectively referred to as the "Project"); and

**WHEREAS**, the Lottery Gaming Facility Management Contract contemplates that Manager will construct and maintain the Project in which a certain portion will be used to house a Lottery Gaming Facility, the business of which will be owned and operated by the Kansas Lottery ; and

**WHEREAS**, the Kansas Lottery is unwilling to consummate the Lottery Gaming Facility Management Contract unless the Manager executes and delivers this Environmental Compliance Agreement to the Kansas Lottery.

**NOW, THEREFORE**, in consideration of the foregoing and to induce the Kansas Lottery to consummate the Lottery Gaming Facility Management Contract, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Manager covenants and agrees with the Kansas Lottery as follows:

1. **DEFINITIONS**. All capitalized terms used in this Environmental Compliance Agreement and not defined will have the meanings set forth below.

(a) **Environment** means any water, groundwater, water vapor, land (including land surface or subsurface), soil vapor, air, fish, wildlife, biota, and all other natural resources.

(b) **Environmental Laws** mean all federal, state and local environmental, health, chemical use, safety and sanitation laws, statutes, ordinances and codes relating to the protection

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of the Environment and/or governing the use, storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Substances (as defined below) and the rules, regulations, policies, guidelines, interpretations, decisions, orders and directives of federal, state and local governmental agencies and authorities with respect thereto.

(c) Environmental Permits mean all permits, licenses, approvals, authorizations, consents or registrations required by any applicable Environmental Law in connection with the ownership, use and/or operation of the Premises for the storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Substances or the sale, transfer or conveyance of the Premises.

(d) Hazardous Substance means any substance, which are not naturally occurring, (i) the presence of which requires investigation or remediation under any Environmental Law; or (ii) which is or becomes defined as a “hazardous waste”, “hazardous substance”, “toxic substance”, “solid waste”, pollutant and/or or contaminant under the Comprehensive Environmental Response, Compensation and Liability Act, as amended (42 U.S.C. section 9601 *et seq.*), the Resource Conservation and Recovery Act (42 U.S.C. section 6901 *et seq.*), as amended, the Hazardous Materials Transportation Act, as amended (49 U.S.C. Section 1801 *et seq.*), the Clean Air Act (42 U.S.C. Sections 7401, *et seq.*, the Toxic Substances Control Act, as amended (15 U.S.C. Section 2601, *et seq.*), the Clean Water Act, as amended (33 U.S.C. Sections 1251 *et seq.*) the Occupational Safety and Health Act, as amended (29 U.S.C.A. 651 *et seq.*) , and/or any other applicable Environmental Law or any regulations promulgated under any of the foregoing; or (iii) which is toxic (including, but not limited to, toxic mold), explosive, corrosive, flammable, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority, agency, department, commission, board, agency or instrumentality of the United States, the State of Kansas or any political subdivision thereof; or (iv) which contains gasoline, diesel fuel or other petroleum hydrocarbons; or (v) which contains polychlorinated biphenyls (PCBs), asbestos or urea formaldehyde foam insulation.

(e) Improvements mean any buildings, structures and other improvements (if any) presently or hereafter located on the Premises.

(f) Indemnitee means the Kansas Lottery, the Kansas Lottery Commission, and the State of Kansas, and their successors and assigns, and their respective officers, directors, employees, agents, representatives, contractors and subcontractors.

(g) Release means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the Environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any Hazardous Substance).

2. REPRESENTATIONS AND WARRANTIES: The Manager represents and warrants to the Kansas Lottery that to the best of the Manager’s knowledge, information and

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belief:

(a) Neither the Premises nor any property adjacent to the Premises is being or has been used for the storage, treatment, generation, transportation, processing, handling, production, disposal or release of any Hazardous Substance or as a landfill or other solid waste disposal site or for military, manufacturing or industrial purposes or for the storage of petroleum or petroleum based products.

(b) Underground storage tanks are not and have not been located on the Premises, except as set forth in Schedule "B" hereto.

(c) The soil, subsoil, bedrock, soil vapor, surface water and groundwater of the Premises are free of any Hazardous Substances in excess of Kansas Department of Health and Environment limits for commercial use.

(d) There has been no Release nor is there the threat of a Release of any Hazardous Substance on, at or from the Premises, or any property adjacent to or within the immediate vicinity of the Premises which through soil, subsoil, soil vapor, bedrock, surface water or groundwater migration could come to be located on the Premises, and the Manager has not received any form of written notice or inquiry from any federal, state or local governmental agency or authority, any operator, tenant, subtenant, licensee or occupant of the Premises or any property adjacent to or within the immediate vicinity of the Premises or any other person with regard to a Release or the threat of a Release of any Hazardous Substance on, at or from the Premises or any property adjacent to or within the immediate vicinity of the Premises.

(e) All Environmental Permits necessary for the acquisition, construction, equipping, use or operation of the Premises will be obtained and will be in full force and effect.

(f) No event has occurred with respect to the Premises which, with the passage of time or the giving of notice, or both, would constitute a violation of any applicable Environmental Law or non-compliance with any Environmental Permit.

(g) There are no agreements, consent orders, decrees, judgments, notices of violations, demand letters, license or permit conditions or other orders or directives of any federal, state or local court, governmental agency or authority relating to the past, present or future ownership, use, operation, sale, transfer or conveyance of the Premises which require any change in the present condition of the Premises or any work, repairs, construction, containment, clean-up, investigations, studies, removal or other remedial action or capital expenditures with respect to the Premises.

(h) There are no actions, suits, claims or proceedings, pending or threatened, which could cause the incurrence of expenses or costs of any name or description or which seek money damages, injunctive relief, investigations, remedial action or any other remedy that arise out of, relate to or result from (i) a violation or alleged violation of any applicable Environmental Law or non-compliance or alleged non-compliance with any Environmental Permit, (ii) the presence of any Hazardous Substance or a Release or the threat of a Release of any Hazardous Substance on, at or from the Premises or any property adjacent to or within the immediate vicinity of the Premises or (iii) human exposure to any Hazardous Substance of whatever kind to the extent the same arise from the condition of the Premises or the ownership, use, operation, sale, transfer or conveyance thereof.

3. COVENANTS OF MANAGER: The Manager covenants and agrees with the Kansas Lottery as follows:

(a) Except in accordance with Environmental Laws, Manager shall keep, and shall cause all operators, tenants, subtenants, licensees, invitees and occupants of the Premises to keep, the Premises free of all Hazardous Substances and shall not cause or permit the Premises or any part thereof to be used for the storage, treatment, generation, transportation, processing, handling, production, disposal or release of any Hazardous Substances.

(b) The Manager shall comply with, and shall cause all operators, tenants, subtenants, licensees, invitees and occupants of the Premises to comply with, all applicable material Environmental Laws, and shall obtain and comply with, and shall cause all operators, tenants, subtenants, licensees, invitees and occupants of the Premises to obtain and comply with, all Environmental Permits.

(c) Except in accordance with Environmental laws, Manager shall not cause or permit any change to be made in the present or intended use of the Premises which would (i) involve the storage, treatment, generation, transportation, processing, handling, production, disposal or release of any Hazardous Substance or the use of the Premises as a landfill or other solid waste disposal site or for military, manufacturing or industrial purposes, (ii) violate any applicable Environmental Law, (iii) constitute non-compliance with any Environmental Permit or (iv) increase the risk of a Release of any Hazardous Substance.

(d) The Manager shall promptly provide the Kansas Lottery with a copy of all written notifications which the Manager gives or receives with respect to any past or present Release or the threat of a Release of any Hazardous Substance on, at or from the Premises or any property adjacent to or within the immediate

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vicinity of the Premises.

(e) To the extent required by applicable Environmental Laws, Manager shall undertake and complete all investigations, studies, sampling and testing and all removal and other remedial actions necessary to contain, remove and clean up all Hazardous Substances that are determined to be present at the Premises in accordance with all applicable Environmental Laws and all Environmental Permits.

(f) The Manager shall at all times, upon reasonable notice, allow the Kansas Lottery and its officers, employees, agents, representatives, contractors and subcontractors reasonable access to the Premises for the purposes of ascertaining site conditions, including, but not limited to, subsurface conditions. In exercising such right, the Kansas Lottery will use good faith efforts to not unreasonably disturb or disrupt the Premises. In exercising such right, the Kansas Lottery will use good faith efforts to not unreasonably disturb or disrupt the Premises. In the event the Kansas Lottery negligently damages the Premises in the exercise of its rights under this subparagraph (f), the Kansas Lottery will return the Premises to the same condition as existed prior to the Kansas Lottery's entering the Premises pursuant to this subparagraph (f).

(g) Except as provided in the Lottery Gaming Facility Management Contract, if at any time the Manager obtains credible evidence or information which suggests that potential violation of Environmental Laws or Environmental Permits may exist at the Premises, the Kansas Lottery may require that a full or supplemental environmental investigation and environmental assessment report (including a Phase II environmental investigation) with respect to the Premises of a scope and level of detail satisfactory to the Kansas Lottery to be prepared by an environmental engineer or other qualified person acceptable to the Kansas Lottery, at the Manager's expense. Said investigation may include a physical inspection of the Premises, a visual inspection of any property adjacent to or within the immediate vicinity of the Premises, personnel interviews and a review of all Environmental Permits. If the Kansas Lottery requires, such inspection shall also include a records search and/or subsurface testing for the presence of Hazardous Substances in the soil, subsoil, soil vapor, bedrock, surface water and/or groundwater. If the investigations indicate the presence of any Hazardous Substance or a Release or the threat of a Release of any Hazardous Substance on, at or from the Premises, the Manager shall promptly undertake and diligently pursue to completion all necessary, appropriate and legally authorized investigative, containment, removal, and other remedial actions, using methods recommended by the engineer or other person who conducted the investigations and acceptable to the appropriate federal, state and local agencies or authorities.

(h) Attached hereto as Schedule "C" is a complete list of all

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Environmental Permits presently required for the ownership, use or operation of the Premises and the businesses located thereon. The Manager agrees to notify the Kansas Lottery of any additions, deletions, or modifications of any Environmental Permits and the list thereof. Upon written request of the Kansas Lottery, the Manager shall furnish true and complete copies of all Environmental Permits.

4. INDEMNIFICATION PROVISIONS: Except for claims or liabilities arising from the actions or failure to act by any Indemnitee or Indemnitees or their agents (excluding Manager to the extent an agency relationship would be found as a matter of law between Manager and any Indemnitee), Manager covenants and agrees, at its sole cost and expense, to indemnify, protect, defend, and save harmless each and every Indemnitee from and against any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, actions, proceedings, costs, disbursements and/or expenses (including, without limitation, attorneys' and experts' fees for attorneys and experts selected by the Indemnitee, expenses and disbursements) of any kind or nature whatsoever which may at any time be imposed upon, incurred by or asserted or awarded against any Indemnitee relating to, resulting from or arising out of (a) the use of the Premises, during the term of the Lottery Gaming Facility Management Contract, for the storage, treatment, generation, transportation, processing, handling, production or disposal of any Hazardous Substance, except in accordance with Environmental Laws or Environmental Permits, or as a landfill or other waste disposal site or for military, manufacturing or industrial purposes, (b) the presence or claimed presence of any Hazardous Substance, except in accordance with Environmental Laws or Environmental Permits, or a Release or the threat of a Release of any Hazardous Substance on, at or from the Premises, or of any property adjacent to or within the immediate vicinity of the Premises during the term of the Lottery Gaming Facility Management Contract, (c) the failure during the term of the Lottery Gaming Facility Management Contract to promptly undertake and diligently pursue to completion all necessary, appropriate and legally authorized investigative, containment, removal, clean-up and other remedial actions with respect to a Release or the threat of a Release of any Hazardous Substance on, at or from the Premises, (d) human exposure during the term of this Lottery Gaming Facility Management Contract to any Hazardous Substance, except in accordance with Environmental Laws or Environmental Permits, to the extent the same arise from the condition of the Premises or the ownership, use, operation, sale, transfer or conveyance thereof, (e) a violation of any applicable Environmental Law during the term of the Lottery Gaming Facility Management Contract, (f) non-compliance with any Environmental Permit during the term of the Lottery Gaming Facility Management Contract, (g) a material misrepresentation or inaccuracy in any representation or warranty or a material breach of or failure to perform any covenant made by the Manager in this Environmental Compliance Agreement, and (h) the designation by any state or governmental entity, the United States Environmental Protection Agency or any other governmental authority of an Indemnitee as a party responsible or potentially responsible for the remediation of any condition on the Premises (collectively, the "Indemnified Matters").

The liability of the Manager to the Kansas Lottery and each Indemnitee shall be perpetual

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and shall survive for a period of three (3) years following the termination or expiration of the Lottery Gaming Facility Management Contract, and shall in no way be limited, abridged, impaired or otherwise affected, by (i) any amendment or modification of any of the Lottery Gaming Facility Management Contract, (ii) the invalidity or unenforceability of any of the terms or provisions of the Lottery Gaming Facility Management Contract, (iii) any applicable statute of limitations, (iv) any investigation or inquiry conducted by or on the behalf of the Kansas Lottery or any other Indemnitee or any information which the Kansas Lottery or any other Indemnitee may have or obtain with respect to the environmental or ecological condition of the Premises, (v) the sale, transfer or conveyance of all or part of the Premises, (vi) the dissolution or liquidation of the Manager, (vii) the release or discharge, in whole or in part, of the Manager in any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation or similar proceeding, (viii) any other circumstances which might otherwise constitute a legal or equitable release or discharge, in whole or in part, of the Manager under this Environmental Compliance Agreement, (ix) the expiration or termination of the Lottery Gaming Facility Management Contract or (x) the reconveyance of title to the Premises by the Manager or any other person, whether in accordance with the terms of a lease, by foreclosure or deed in lieu of foreclosure, sale or otherwise.

The indemnification agreement contained herein is wholly independent of and in addition to any indemnification agreement given to the Kansas Lottery or any other Indemnitee, as part of the application of the Kansas Expanded Lottery Act or any other applicable statute or regulation.

5. GOVERNING LAW: This Environmental Compliance Agreement shall be governed by, construed in accordance with and enforceable under the laws of the State of Kansas.

6. COUNTERPARTS: This Environmental Compliance Agreement may be executed in one or more counterparts, each of which shall be deemed an original. Said counterparts shall constitute but one and the same instrument and shall be binding upon each of the undersigned as fully and completely as if all had signed the same instrument.

7. SUCCESSORS AND ASSIGNS: This Environmental Compliance Agreement shall be binding upon the Manager, its successors and assigns, all subsequent owners of the Premises, and their respective successors, assigns, executors, administrators, legal representatives, distributees and fiduciaries and shall inure to the benefit of each Indemnitee.

**IN WITNESS WHEREOF**, the Manager has caused this Environmental Compliance Agreement to be duly executed as of the day and year first above written.

BUTLER NATIONAL SERVICE CORPORATION

By: \_\_\_\_\_

Name: Clark D. Stewart

Title: President

THE KANSAS LOTTERY

By: \_\_\_\_\_  
Ed Van Petten, Executive Director

State of \_\_\_\_\_ )  
County of \_\_\_\_\_ ) ss.:

On the \_\_\_\_ day of \_\_\_\_\_ in the year 2008, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signatures on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public

[State of \_\_\_\_\_ )  
County of \_\_\_\_\_ ) ss.:

On the \_\_\_\_ day of \_\_\_\_\_ in the year 2007 before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signatures on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public]

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**SCHEDULE “A”**

**(Premises)**

**Lot 1, MARIAH CENTER a subdivision in part of Section 21 and part of  
Section 28, Dodge City, Ford County, Kansas**

**A-1**

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**SCHEDULE “B”**  
**(Underground Storage Tanks)**

None

B-1

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SCHEDULE “C”  
(Environmental Permits)

TO BE SUPPLEMENTED

C-1

**EXHIBIT "B"**  
**ENDORSEMENT BY LOCAL  
GOVERNMENT**

**A RESOLUTION OF ENDORSEMENT FOR THE MANAGEMENT OF A LOTTERY  
GAMING FACILITY IN DODGE CITY, FORD COUNTY, KANSAS BY BUTLER  
NATIONAL SERVICE CORPORATION**

WHEREAS, the City of Dodge City (“City”) and Ford County have undertaken an aggressive economic development program described as the Why Not Dodge development project, the purpose and intent of which is to attract tourists, visitors, conventions and meetings to the City and the Ford County area involving the construction of various entertainment and recreational facilities including facilities and programs, the primary purpose of which would be to enhance, improve and foster the nationally recognized western heritage of the area, thereby broadening, diversifying and enhancing the economic base of Ford County and the City economy; and

WHEREAS, in addition to the efforts undertaken by the City and County, a volunteer group of local supporters formed Boothill Gaming Inc. (“Boothill Gaming”), for the purpose of exploring, pursuing and implementing the concept of a gaming facility in the City in order to attract area tourists, conventions, visitors and programs from across the state and nation, and

WHEREAS, due in part at least to the efforts of Boothill Gaming, Senate Bill 66, the Kansas Expanded Lottery Act (the “Act”), was approved by the Kansas Legislature, signed by the Governor, and was published in the Kansas Register, Vol. 26, No. 16, Pg. 518 on April 19, 2007; and

WHEREAS, the Act provides for the development of one Lottery Gaming Facility in each of four Gaming Zones; and

WHEREAS, Dodge City is located in Ford County, which is designated in the Act as the Southwest Kansas Gaming Zone; and

WHEREAS, the Act provides that each county in each gaming zone must submit to the qualified voters a resolution to permit a Lottery Gaming Facility within the County; and

WHEREAS, Ford County called for an election on the question of whether to allow a Lottery Gaming Facility in Ford County; and

WHEREAS, the election was duly noticed, conducted and the votes counted and canvassed in the matter provided by Kansas law; and

WHEREAS, the qualified electors of Ford County voted in favor of a Lottery Gaming Facility in Ford County and the certified results were transmitted to the Lottery Commission; and

WHEREAS, Boothill Gaming has enlisted the services of Butler National Service Corporation (“Butler”) for the purpose of managing a Lottery Gaming Facility and the development of a Lottery Gaming Enterprise as defined in the Act, in Ford County and

WHEREAS, Butler has entered into a real estate purchase agreement to acquire approximately 400 acres of property in Ford County for the location of the Lottery Gaming Enterprise and has requested said property be annexed into the City, and

WHEREAS, the City has taken the required legal action to accomplish the annexation of said property into the City and has adopted the proper ordinance annexing the property, and

WHEREAS, the Act requires a resolution of endorsement by the City governing body of any prospective Lottery Gaming Facility Manager who submits an application for a Lottery Gaming Facility Management Contract to the Lottery Commission to manage a Lottery Gaming Facility within the City limits; and

WHEREAS, Butler and Boothill Gaming have presented to the City a proposal for the development, construction and management of a Lottery Gaming Enterprise to be located on

the annexed property and has requested that the City issue its resolution of endorsement of such proposal, and

WHEREAS, Butler has presented to the City its statement of qualifications, financial resources, proposed site and development plans for the Lottery Gaming Facility and its ancillary development; and

WHEREAS, after duly considering all information and testimony provided by Butler, the City has determined that Butler possesses the necessary qualifications, financial resources and development plans to manage a Lottery Gaming Facility in the City; and

WHEREAS, the City has determined that the proposed location, together with Butler's plan for development of a Lottery Gaming Facility and ancillary operations, is well suited to attract tourism and enhance the economic development of the City, Ford County and the surrounding counties and is consistent and compatible with the long range development plans of the City, and

WHEREAS, to facilitate the location of the Southwest Kansas Lottery Gaming Facility in Dodge City, Ford County, Kansas, the City has determined that based on the proposal and information presented by Butler, it is in the best interest of the City to issue a Resolution of Endorsement to Butler; and

WHEREAS, Butler and the City have discussed and have agreed in principle to an overall development plan that will enhance and attract tourism and economic development to the area:

NOW THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF DODGE CITY, FORD COUNTY, KANSAS:

Pursuant to the provisions of Senate Bill No. 66, the City Commission of the City of Dodge City, Kansas does hereby issue its endorsement of the application of Butler National Service Corporation to develop and manage a destination casino in Dodge City, Ford County, Kansas

to be constructed and developed in accordance with the requirements of the Act and a development plan to be mutually agreed to by the City and Butler National Service Corporation in anticipation of Butler National Service Corporation being granted a Lottery Gaming Facility management contract pursuant to the Act.

Adopted this 21<sup>st</sup> day of September, 2007.

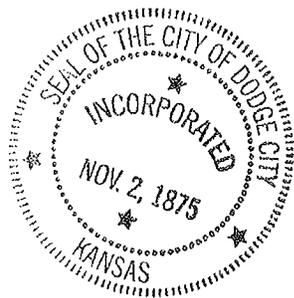
City Commission of Dodge City, Kansas

By: *Rick Sowers*  
Rick Sowers, Vice Mayor

Attest: *Nannette Pogue*  
Nannette Pogue  
City Clerk

Certificate

The undersigned being the duly appointed Clerk of the City of Dodge City, Kansas does hereby certify that the above and forgoing Resolution was duly adopted by majority vote of the City Commission of the City of Dodge City, Kansas on this 21<sup>st</sup> day of September, 2007.



*Nannette Pogue*  
Nannette Pogue, City Clerk

**EXHIBIT "C"**  
**EXPECTED CONSTRUCTION**  
**SEQUENCE**



**EXHIBIT “D”**  
**KEY EMPLOYEES**

## Lottery Gaming Facility Management Contract, Exhibit D

### Key Employees

#### Chief Executive Officer/General Manager

Leadership responsibility for all on-site operations at Boot Hill Casino and Resort including gaming facility and ancillary gaming operations (hotel, food & beverage, conference center, spa & pool).

#### Vice President of Casino Operations

Direct responsibility for day-to-day casino operations. Reports to CEO/General Manager.

#### Director of Finance

Responsible for daily oversight of accounting and related staff including responsibility for ensuring Count Team and Count Rooms function in compliance with gaming regulations.

#### Director of Surveillance

Responsible for the day-to-day operations of the surveillance room. Reports to Vice President of Casino Operations.

#### Manager of Internal Audit

Responsible for auditing the adherence to internal control procedures for the casino gaming operations as well as all ancillary operations (hotel, food & beverage, etc.) Reports to Management Board.

#### Director of Security

Direct responsibility for security department staff and overall security of the Boot Hill Casino & Resort. Reports to the CEO/General Manager.

**EXHIBIT “E”**

**FINANCING COMMITMENT**



# **Butler National Corporation**

19920 WEST 161st STREET OLATHE, KANSAS 66062-2700 U.S.A.

## EXHIBIT E

### FINANCING COMMITMENT DESCRIPTION

Manager hereby confirms that it is highly confident that it can obtain the financial resources necessary to support the activities by the Management Agreement and the Kansas Expanded Lottery Act by accessing the senior debt markets, the public debt markets or other available sources of capital. To the extent a parent guarantee is legally required for either the financing commitment, the phasing of the construction or the environmental indemnification, Manager's parent will work promptly and in good faith to accomplish that.

Christopher Reedy  
Vice President and General Counsel  
Butler National Corporation  
Dated May 22, 2008

**EXHIBIT "F"**

**DA-146a CONTRACTUAL**

**ATTACHMENT**

## CONTRACTUAL PROVISIONS ATTACHMENT

**Important:** This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 1-01), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

- 1. Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated.
- 2. Agreement With Kansas Law:** All contractual agreements shall be subject to, governed by, and construed according to the laws of the State of Kansas.
- 3. Termination Due To Lack Of Funding Appropriation:** ~~If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.~~
- 4. Disclaimer Of Liability:** ~~Neither Except as otherwise provided for in the Lottery Gaming Facility Management Contract, neither the State of Kansas nor any agency thereof shall hold harmless or indemnify any contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).~~
- 5. Anti-Discrimination Clause:** ~~The contractor agrees will use the best efforts to: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.~~

Parties to this contract understand that the provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting state agency cumulatively total \$5,000 or less during the fiscal year of such agency.
- 6. Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
- 7. Arbitration, Damages, Warranties:** ~~Notwithstanding any language to the contrary Except as otherwise provided for in the Lottery Gaming Facility Management Contract, no interpretation shall be allowed to find the State or any agency thereof has agreed to binding arbitration, or the payment of damages or penalties upon the occurrence of a contingency. Further, the State of Kansas shall not agree to pay attorney fees and late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.~~
- 8. Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
- 9. Responsibility For Taxes:** The State of Kansas shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
- 10. Insurance:** The State of Kansas shall not be required to purchase, any insurance against loss or damage to any personal property to which this contract relates, nor shall this contract require the State to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the vendor or lessor shall bear the risk of any loss or damage to any personal property in which vendor or lessor holds title.
- 11. Information: No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.**
- 12. The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."

**EXHIBIT "G"**  
**NET INCENTIVE PAYMENT**  
**CALCULATION**

**Lottery Gaming Facility Management Contract, Exhibit G  
"Net Incentive Payment" Calculation from the Manager to the State of Kansas**

"Incentive Level"	Percent actual casino win exceeds		"Gross Incentive Amount" Calculation	
	Greater than or equal to	Less than	"Incentive Percentage"	Effective rate for this range
0	n/a	1%	0.0%	27.0%
1	1%	10%	2.0%	29.0%
2	10%	30%	4.0%	31.0%
3	30%	50%	7.0%	34.0%
4	50%	75%	10.0%	37.0%
5	75%	100%	13.0%	40.0%
6	100%	n/a	16.0%	43.0%

**Base Plan** - Proforma Annual Gaming Win as presented in Exhibit #1 of Section V in Binder 10 of the Application. (Year 1- \$39,826,696, 2- \$42,848,304, 3- \$66,765,023, 4- \$70,366,996, & 5- \$73,478,006. For year 6 and beyond, the year 5 Annual Gaming Win would be increased by 3% per annum. Base plan would be adjusted pro-rata depending on the actual commencement date of gaming operations.

**Gross Incentive Amount** - Calculated gross earned incentive according to above table for a specific fiscal year of operation based on audited financial results.

**Incentive Level** - In any given fiscal year, the Gross Incentive Amount may be calculated using one or more Incentive Levels. For instance, should the actual gaming win for a given fiscal year exceed the Base Plan by 32%, the Gross Incentive Amount would be calculated, as follows:

- by taking the dollar amount of gaming win that is greater than or equal to 1% and less than 10% times the incentive Level 1 Incentive % of 2.0%
- plus the dollar amount that is greater than or equal to 10% and less than 30% times Incentive Level 2 incentive % of 4.0%
- plus the dollar amount of gaming win that is greater than or equal to 30% times Incentive Level 3 Incentage % of 7%.

**Incentive Percentage** - Percentage of gaming win offered by the Manager as an incentive in excess of statutory percentage of 27% for a given Incentive Level.

**Net Incentive Payment**- Is the actual incentive payment to the State of Kansas calculated as follows:

The cumulative Gross Incentive Amounts from this and prior fiscal years since contract inception plus the cumulative prior Net Incentive Amounts paid to the State of Kansas in prior fiscal years, minus

The cumulative cost of KLC and KRGC regulation/oversight and the central computer system costs paid by the Manager (reference Section 28 a), b) & c) of the Lottery Gaming Facility Management Contract) from inception to date.

**Payment Frequency of Net Incentive Amount** - Any Net Incentive Amount due to the State of Kansas will be paid by the Manager once each fiscal year 30 days following the completion of the annual financial audit of the financial records of the records of the Boot Hill Casino & Resort by the Manager's independent auditors.