International Municipal Lawyers Association
2015 Annual Conference
Las Vegas, Nevada

Avoiding The Bad Environmental Ending: The Former Military Base

2015 Annual Conference Presentations

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CITY ATTORNEY

INTRODUCTION

This year marks the 50th anniversary of the 1965 closure of Schilling Air Force Base in Salina, Kansas. Decades following closure, significant levels of environmental contamination logically associated with former military operations were detected in areas of the former base property redeveloped by the community into vibrant airport, industrial, and educational uses, with important prospects for future growth. Migration of the contamination by natural groundwater flow from the former base property also posed a serious threat to the community's nearby public water supply wells.

Limitations on the incremental extent and pace of investigation and cleanup efforts under federal government programs prompted the community's willingness to take on the extraordinary responsibility of administering the primarily federally-funded work of first completing, under state regulatory oversight, the hydrogeological investigatory work necessary to accurately characterize the extent and nature of the contamination originating from the former base property. That locally-directed work is progressing well, and the community looks forward to earning the opportunity to similarly direct the federally-funded cleanup of the contamination resulting from military use of the former base property.

This presentation combines the perspective of the local municipal attorney, the environmental technical advisors, and outside environmental counsel regarding the steps taken by the community in its significant undertaking.

THE PERSPECTIVE AND ROLE OF THE LOCAL MUNICIPAL ATTORNEY

1965 – Devastating News and Community Response

Built in 1942 near Salina, the Smoky Hill Army Air Field served heavy bombardment aircraft and equipment during WWII. During the Cold War era, the Strategic Air Command Base, renamed Schilling Air Force Base ("Base"), served in the staging and maintenance of primarily B-47 bombers and in-flight refueling aircraft. The Department of Defense ("DOD") announced in November 1964 that the Base would be closed June 30, 1965. Community leaders turned to rebuilding a devastated local economy by repurposing the Base and its 12,000 foot main runway.

Pursuant to the 1965 Kansas Legislature's enactment of the Surplus Property and Public Airport Authority Act (K.S.A. §§27-315, et seq.), the City of Salina ("City") established the Salina Airport Authority ("Authority") for the purposes of

developing and operating a public airport and industrial center (Salina Code §§4-16, et seq.). Upon Base closure, most of the Base property was conveyed by the United States to the Authority by quit claim deed. Base property was also conveyed to the local school district as the location for a vocational/technical education facility and to the State of Kansas for college purposes. The City assumed control of public streets, public utilities, and the former Base sewage treatment plant.

After Base closure in 1965, the public airport quickly developed and continues to actively support general aviation, a commercial air carrier, flight training, and a number of ongoing and special military operations. The industrial center is home to industries employing a significant number of the community's workforce in either adapted Base facilities or newly constructed plants. The Salina Area Technical College now occupies the buildings conveyed by the United States to the local school district and newly constructed classrooms on the same site. The property conveyed to the State of Kansas serves as the campus for Kansas State University–Salina, including classrooms, labs, and hangar facilities located in adaptations of former Base buildings and newly constructed classrooms, labs, student center, dormitories, and recreation center. The community's industrial base has diversified significantly. The former Base property now bustles daily with thousands involved in aeronautical, industrial, and educational activity.

Twenty Years Later – DERP-FUDS

The Superfund Amendments and Reauthorization Act of 1986, Pub.L. 99-499 ("SARA") amended the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§960, et seq. ("CERCLA"). SARA, under §211, also created the Defense Environmental Restoration Program ("DERP") (10 U.S.C. §§2700, et seq.) assigning the DOD with responsibility to carry out response actions for environmental contamination at Formerly Used Defense Sites ("FUDS"). The U.S. Army Corps of Engineers ("Corps") manages the program on behalf of the DOD. The Corps completed in 1994-95 the removal of 107 large underground fuel storage tanks placed in service and utilized by the Air Force during Base operations. The Authority's cooperation by allowing "farming" of contaminated soils on Airport Authority property saved the Corps $4,000,000 in disposal costs associated with the award-winning tank removal project.

In December 1998 the Corps released what was the second site investigation ("SI") conducted by a Corps contractor. In February 1999 the Corps released its first Remedial Investigation ("RI") and Base Line Risk Assessment. The Corps concluded that no military contamination posed a risk to human health and the environment. The "good news" was short-lived, however, when a local attorney with previous experience as an EPA staff attorney reviewed the reports and concluded that the work of the Corps' contractors contained significant data gaps. Upon being advised of the data gaps in the work of the Corps' contractors, the

chief executive officers of the affected public entities recognized the importance of holding the Department of Defense responsible for soil and groundwater contamination left behind by military activities and led a unified effort to inform and advise local elected and appointed boards of the human health and economic interests at stake. This was the first step in a unified and sustained sense of common purpose among the City, the Authority, the local school district, and KSU-Salina (the "Salina Public Entities"), particularly in recognition of the daily level of human presence at the former Base site and the natural groundwater flow from the former Base site toward the City's public water supply wells.

EPA Involvement and Corps Response

In May 1999 the Salina Public Entities sent correspondence to the Corps questioning the scope and conclusions in the SI and RI. The Corps responded in February 2000 with an indication that the community had no formal role in the process. The Public Entities informed the Environmental Protection Agency ("EPA") of the suspected source areas of contamination from DOD activities, with maps. In the summer of 2000, EPA conducted an Expanded Site Investigation ("ESI") documenting the existence of source areas directly relating to DOD activities.

The Corps alleged that contaminants found at the former Base resulted from use by its current owners, not only military use. Following extensive and costly federal archival research, the Salina Public Entities made a March 2001 on-site presentation to representatives of the Kansas City District of the Corps and staff representatives of their Congressional delegation regarding acquired evidence of the extent of DOD use of chlorinated solvents and petroleum products during military use of the Base. At the conclusion of the presentation, the Corps accepted the "lion's share of responsibility" for contamination at the site.

During the ensuing months and years between 2001 and 2005 the struggle between the Salina Public Entities and the Corps continued with regard to annual appropriations, the scoping of further work plans, and disclosure of results of work performed. In July 2003, the Salina Public Entities made formal request for establishment of a Restoration Advisory Board ("RAB") (10 U.S.C. §2705). The RAB included representatives of EPA, the Kansas Department of Health and Environment ("KDHE"), local public officials, and appointed citizens. The RAB served to enhance public awareness and the sharing of information by the Corps about its activities at the former Base site.

Need for Independent Technical Analysis

The Corps' September 2005 issuance of its Final Remedial Investigation Report without regard for the comments provided by the Salina Public Entities, the

assertion by the Corps of a 120-year travel time between the northernmost groundwater plume and the City's public water supply wells, and a significant number of other technical questions prompted the Salina Public Entities to pursue engagement of their own environmental technical consultant ("Consultant"). The Consultant was engaged in December 2005 to conduct (1) a technical review of Corps data, reports, and conclusions; and (2) to prepare the first independent and comprehensive integration and interpretation of all Corps generated data. A February 2006 public presentation of the Consultant's report, including a much shorter TCE/plume travel time to City wells, prompted discussions with Corps military leadership toward a possible settlement involving local responsibility for further investigation and management of the environmental cleanup project. That discussion led toward the Consultant's preparation of an independent cost-to-complete estimate. A series of technical meetings resulted in both the Corps' technical consultants and the Consultant for the Salina Public Entities submitting their respective cost-to-complete estimates.

Filing of Suit and Mediation Results

In January 2009 the Salina Public Entities made demand upon the Corps that settlement negotiations begin with the U.S. Department of Justice. Unsuccessful settlement negotiations prompted the Salina Public Entities to file suit in U.S. District Court against the United States under CERCLA in May 2010. Mediation resulted in a Consent Decree by the Court under which KDHE, as the oversight agency, issued a Consent Agreement and Final Order (CAFO) ordering the Salina Public Entities to complete a Remedial Investigation and Feasibility Study ("RI/FS") in exchange for the current payment by the United States of an amount to be utilized for that purpose. The RI/FS will provide the basis for KDHE's issuance of a Record of Decision ("ROD") selecting the proper remedy.

Interlocal Cooperation Agreement

In order to fulfill their responsibilities under the Consent Decree and CAFO, the Salina Public Entities entered into an Interlocal Cooperation Agreement ("Agreement') pursuant to the Kansas Interlocal Cooperation Act (K.S.A. 12-2901, et seq.) outlining the means by which the Salina Public Entities would collectively address the technical, financial, and administrative aspects of compliance with the CAFO. The Agreement authorizes the City to receive and disburse, in compliance with the Consent Decree and CAFO, the funds received from the United States in payment of its share of the estimated RI/FS costs. The Agreement also provides for administrative oversight by an "Executive Group" consisting of the chief executive officers of each of the Salina Public Entities and authorizes the City to serve as the designated contracting party for purposes of entering into contracts for services as recommended by the Executive Group. A copy of the text of the Agreement is attached.

Keys to Successful Assumption of Local Management of Investigation and Environmental Cleanup

The Salina experience prompts this local municipal lawyer serving as counsel to the City and the Airport Authority to suggest the following keys to any successful effort to assume local management of an investigative or environmental cleanup project resulting from military use of a formerly used defense site:

1. A unified sense of common purpose among the property owners seeking to assume local responsibility for the investigative or environmental cleanup project, including the financial means and willingness to potentially file claims against the United States.

2. Independent research of base-specific military use of contaminants.

3. A proven track record for responsiveness to state and federal environmental regulators.

4. An independent technical environmental advisor who does not have a conflict of interest from previous work performed for the Corps.

5. Environmental legal counsel with the experience, capability and capacity to engage in adversarial proceedings, including the potential need to file and litigate claims against the United States.

6. The capacity under applicable state law to address the technical, fiscal, and administrative requirements inherent in management of a complex investigative or environmental cleanup project.

ENVIRONMENTAL CONSULTANT

INTRODUCTION

To avoid failure in an environmental cleanup, you must have already: "put your arms around the problem." This means have: (1) complete knowledge of the site geology and groundwater conditions, (2) full delineation of the extent of contamination in the subsurface, and (3) clear understanding of how and where the chemicals have moved and behaved in the subsurface. You need to have all three prior to choosing a cleanup method and estimating its cost and duration. This was not happening at the former Schilling Air Force Base (SAFB).

The Problem at SAFB

The challenge at the former SAFB was the size, complexity, and urgency of the problem. The chemicals of concern are trichloroethene (TCE) and other degreasing chemicals that the DOD used liberally in support of the Strategic Air Command Base and its predecessors during the Cold War.

First, the problem is huge. "Typical" large TCE contamination problems involve less than 100 drums of TCE, usually much less. At SAFB, the DOD used over 200 drums per month. No one knew at the time that TCE was a carcinogenic chemical; they only knew it was a great degreaser. They used pressure washers to spray the degreasers over planes as they sat on the tarmac. The degreasers ran off the tarmac into the ground and drains. In addition to degreaser use on the tarmac, many of the buildings at SAFB had operations that relied on degreasers for the manufacture and repair of equipment for planes, rockets, and other critical components for the DOD.

Now we know that these releases of TCE and other degreasers left many areas with impacted soil which in turn have been the sources of plumes of impacted groundwater. Currently, we have identified 11 distinct plumes, many of which extend thousands of feet. Most of the plumes are being drawn toward the water supply for the community of 50,000.

Second, the contaminant hydrogeology (geology and groundwater) problem is very complex. The geology of the SAFB and downgradient areas consists of a spatially varying meandering stream deposits that overlie fractured bedrock. The groundwater from SAFB and the associated contaminants move across the meandering stream deposits. So although we now have our arms around the problem, predicting exactly where, and at what depth, the contamination is within the plume outline, is extremely difficult.

Third, the problem is urgent. The Corps knew contaminated groundwater was moving toward the municipal water supply wells. By 2005, the Entities were becoming very frustrated with the pace of the investigation by the Corps and

remediation of the soil and groundwater seemed like distant goal. When they asked us to review the Corps work, we found numerous fundamental mistakes (such as how fast the groundwater was moving toward the City well field) and significant data gaps (such as barely looking into the bedrock and not investigating deep enough in the soil).

We know that TCE is moving toward the City well field through the groundwater. We also know that contaminated groundwater and soil are below hundreds of residential, educational, industrial, and commercial buildings. Since TCE and the other chemicals of concern are volatile and they may pose an air quality problem for these buildings.

Taking Control

The Entities asked us to provide technical guidance as they tried to take control of the problem from the Corps. First, we assisted the Entities and their environmental counsel through negotiations and mediation with the DOD by critiquing the Corps reports and remediation plans and costs. We wanted to determine: What did they find? Have they fully delineated the extent of impact? What are they suggesting to do about it? Will their plan be effective? What will their plan cost and how long will it take?

Second, we worked with the Corps and the regulator (KDHE) to develop a work plan "to put our arms around the problem". The United States government is funding this work, paid up front to the Salina Entities.

Finally, we have been aggressively investigating the problem during 2014 and 2015. We now have our arms around the problem (fingertips just inches apart): we have pinpointed most of the sources, delineated the plumes, and investigated vapor intrusion. We will be pilot testing remedial options and preparing our remedial action plan in 2015-2016.

The Biggest Surprises

There were many eye-openers. First, the Corps had been gathering data for years but did not seemed focused on putting it all together or figuring out what it meant for remediation. Second, the Corps made lots of mistakes from basic to conceptual. Third, after decades, they had not yet put their arms around the problem. Fourth, the Corps seemed bent on a quick fix approach despite site conditions that were clearly not conducive to a quick fix.

ENVIRONMENTAL LAWYER

ROLE OF THE ENVIRONMENTAL LAWYER
REGARDING THE CONTAMINATED MILITARY SITE

The environmental lawyer investigates and gathers evidence of the contamination at the military site that was owned or operated by the United States (U.S.), analyzes and presents legal claims against the U.S. and prosecutes the case to settlement or trial. The environmental lawyer coordinates the team of clients, consultants and others to accomplish these steps. Each of these steps occurred in the case of the *Salina Public Entities v. United States.*

Investigation and Evidence

In 1942 the U.S. began construction at the Site of the Smoky Hill Army Air Field, later renamed Schilling Air Force Base, near Salina, Kansas ("Site"). Schilling was a major Air Force Base, consisting of approximately 4,000 acres and housing thousands of military employees. Its military activities included: (1) airbase operations for various military aircraft including B-17, B-29, B-47 and B-52 bombers and KC-97 and KC-135 refuelers; (2) maintenance of military aircraft and armaments and provision of necessary aircraft and Air Corps supplies from 1942 to 1965. Military aircraft flew on a daily basis in and out on the various runways. The Base became a Strategic Air Command Base in 1952. In the early 1960's, the U.S., through its contractor General Dynamics, constructed and deployed Atlas and Nike missiles and missile silos from the Site. The U.S. closed the Base in 1965. The U.S. owned and operated the Base during this entire time period. The U.S. then deeded the Base properties to the Salina Public Entities in the late 1960's.

The U.S. military polluted the soil and groundwater at the Site with various chlorinated solvents, including trichloroethylene ("TCE"), carbon tetrachloride ("Carbon Tet") and perchloroethylene ("Perc"). The U.S. military records show that the amount of solvents, TCE in this case, used per month to wash and clean aircraft was approximately 12,000 to 14,000 gallons. The United States Army Corps of Engineers (the "Corps") has detected up to 815,000 parts per billion of TCE in the groundwater at the Site. This finding is approximately 163,000 times the maximum contaminant level permitted (which is 5 parts per billion).

Extensive review of military records, interviews of witnesses and investigation by environmental consultants developed this evidence. It was essential to prove the case against the U.S.

Legal Claims against the United States

During pre-suit settlement negotiations, the U.S. Army Corps of Engineers, which handles environmental issues at former military bases, denied any responsibility or liability. But after the Salina Public Entities filed suit, the U.S. eventually admitted that military personnel of the U.S. used, disposed of and caused the release of hazardous substances at the Site.

The suit filed by the Salina Public Entities against the U.S. was based on two primary types of legal claims under the CERCLA or Superfund environmental law: (1) claims for recovery of response costs pursuant to 42 U.S.C. § 9607(a), for contribution pursuant to 42 U.S.C.§ 9613(f) and for declaratory judgment pursuant to 42 U.S.C. § 9613(g)(2) ("Response Cost Claims"); and (2) claims for citizen-suit relief pursuant to 42 U.S.C. § 9659 (which permits the recovery of attorney and expert fees and civil penalties) ("Citizen-Suit Claims").

To establish that a defendant is liable for Response Cost Claims, a plaintiff generally must prove that: (1) the Site is a "facility" as defined in CERCLA § 9601(9); (2) there has been a release or threatened release of a hazardous substance at the Site; (3) a release or threatened release of hazardous substance at the Site has caused Plaintiff to incur response costs; (4) Defendant is a "covered person" (owner or operator in this case) pursuant to CERCLA § 9607(a); and (5) the response actions taken and costs incurred were necessary and consistent with the National Contingency Plan ("NCP"). 42 U.S.C. § 9607(a); *Morrison Enterprises v. McShares, Inc.*, 302 F.3d 1127, 1135-36 (10th Cir. 2002); *Public Serv. Co. v Gates Rubber Co.*, 175 F.3d 1177, 1181 n.5 (10th Cir. 1999); *FMC Corp. v. Aero Industries, Inc.*, 998 F.2d 842, 845 (10th Cir. 1993).

To establish that a defendant is liable for Citizen-Suit Claims, a plaintiff generally must prove that a person (including the U.S.) violated a standard, regulation, condition, requirement or order which became effective under CERCLA. 42 U.S.C. § 9659(a)(1).

The U.S. is not protected by sovereign immunity under CERCLA. 42 U.S.C.§ 9620. But the U.S. may be protected from pre-enforcement review, before the cleanup is completed, under certain claims and circumstances. 42 U.S.C.§ 9613(h).

Settlement or Trial

After the Salina Public Entities filed suit, the parties agreed to mediation. The parties agreed upon an environmental lawyer as the mediator, and both sides had representatives of their clients and environmental consultants present. After several days of mediation, the parties reached a settlement of the remedial

investigation and feasibility study phase (Phase I). The U.S. agreed to pay 90% of the cost of Phase I, which is estimated to cost $9.4 million, and the Salina Public Entities are in charge of implementation of Phase I. The U.S. District Court for the District of Kansas entered a Consent Decree that documented the settlement.

The parties expect Phase I to be completed before 2018. Upon completion of Phase I, the Kansas Department of Health and Environment will adopt a remedy for the Site. The remediation phase (Phase II) has been estimated to cost $136 million. Upon completion of Phase I, the parties have agreed to mediate the allocation of costs for Phase II. If a settlement is not reached, the Salina Public Entities will file suit against the U.S. for the remediation costs.

ATTACHMENT

INTERLOCAL COOPERATION AGREEMENT
pursuant to
The Kansas Interlocal Cooperation Act (K.S.A. 12-2901, *et seq.*)
among

KANSAS STATE UNIVERSITY;
UNIFIED SCHOOL DISTRICT NO. 305, SALINE COUNTY, STATE OF KANSAS;
CITY OF SALINA, KANSAS; and
SALINA AIRPORT AUTHORITY

for

Financing and Completing the RI/FS leading
to the issuance of a Record of Decision by KDHE
for the former Schilling Air Force Base Site

This Interlocal Cooperation Agreement ("Agreement") dated December 20, 2012, is entered into among **Kansas State University**, an institution of higher education and an agency of the state of Kansas ("KSU"), which engages in higher educational activities at its Salina, Kansas campus ("K-State Salina"); **Unified School District No. 305, Saline County, State of Kansas,** ("District"); the **City of Salina, Kansas**, a Kansas municipal corporation, ("City"); and the **Salina Airport Authority**, an authority established pursuant to K.S.A. 27-317, *et seq.*, ("Authority"); collectively referred to as the "Public Entities."

Recitals

A. The Kansas Interlocal Cooperation Act ("Act') (K.S.A. 12-2901, *et seq.*) serves "to permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities, persons, associations and corporations on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities."

B. The Former Schilling Air Force Base Site depicted on the attached and incorporated Exhibit 1 ("Site") was operated by the United States Department of Defense from 1942 until 1965, first as the Smoky Hill Army Airfield and subsequently as a Strategic Air Command (SAC) Base renamed in 1957 as Schilling Air Force Base ("SAFB"). Following closure of SAFB in 1965, title to a significant majority of the land and buildings included within the Former SAFB Site was conveyed by the United States of America to the Public Entities. The Board of Regents received title to the property upon which the K-State Salina campus is located. The District received title to the property upon which the now independent Salina Area Technical College ("SATC") is located and operated under lease from the District. The Authority received title to the property upon which the Salina Regional Airport, the SLN Aviation Service Center, and the Salina Industrial Center are located. The City received title to the SAFB sewage treatment plant along with public rights-of-way and utilities.

C. The United States Army Corps of Engineers (the "Corps") is tasked with the investigation of environmental contamination at formerly used defense sites and, beginning in 1995, has undertaken a number of studies of the environmental contamination present at the Site. For purposes of the Corps' investigation, the Site has been divided into what are referred to as "Operable Units 1-3" ("OU1, OU2, and OU3"). Exhibit 1 generally depicts OU1, OU2, and OU3.

D. In 2010, the Public Entities filed suit against the United States of America ("United States") in the United States District Court, District of Kansas, under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") seeking reimbursement for costs incurred, or to be incurred, for response actions at the Site and for a declaratory judgment on the United States' liability for future response costs (the "Law Suit"). The United States filed counterclaims under CERCLA against the Public Entities.

E. The Public Entities and the United States have agreed to enter into a Consent Decree in the Law Suit ("Consent Decree") under which the State of Kansas, represented by the Kansas Department of Health and Environment ("KDHE") as the oversight agency, will contemporaneously issue a Consent Agreement and Final Order ("CAFO") ordering the Public Entities to complete a Remedial Investigation and Feasibility Study ("RI/FS") for the Site within (a) the Respondent's Scope of Work attached and incorporated as Exhibit 2 ("Scope of Work"), (b) the Bureau of Environmental Remediation ("BER") RI/FS Scope of Work attached and incorporated as Exhibit 2A, and (c) the Cost Estimate Summary attached and incorporated as Exhibit 3 ("Estimated RI/FS Costs") necessary for development of the Corrective Action Decision ("CAD") or Record of Decision ("ROD"), which will be issued by KDHE, selecting the remedy to be implemented in order to address environmental contamination at the Site. The Public Entities will undertake to complete the "Work" defined in the Consent Decree and the "Activities" defined in the CAFO in exchange for the current payment by the United States of a specified sum to be utilized for that purpose.

F. This Agreement is structured according to the required elements of an interlocal cooperation agreement set forth in the Act. The City will undertake responsibility for the Public Entities' share of the cost of completing the Activities defined in the CAFO and will serve as the contracting entity, in consultation with the other Public Entities, for the purpose of entering into contracts necessary for completion of the Activities required under the CAFO. Implementation of the CAD is expressly excluded from the scope of the CAFO and neither the United States nor the Public Entities are under any obligation to fund or perform the CAD under either the Consent Decree or the CAFO.

THE PARTIES, therefore, agree and covenant:

1. **Acronyms and Definitions**. Whenever acronyms or terms listed below are used in this Agreement, the following definitions shall apply.

"Act" shall mean the Kansas Interlocal Cooperation Act, K.S.A. 12-2901, *et seq*.

"Activities" shall mean all work and obligations the Public Entities are required to perform to complete the Scope of Work to the point of issuance of a final Record of Decision ("ROD") or Corrective Action Decision ("CAD") by KDHE, which shall be under the CAFO and the Consent Decree, or any additional activities as required under Paragraph 60 of the CAFO. "Activities" does not include the implementation of the ROD or CAD, and the Public Entities are under no obligation to fund or perform the ROD or CAD under the terms of the CAFO. (CAFO, ¶15.b.)

"Additional RI/FS Costs" shall mean the necessary costs of response within the meaning of section 107(a)(4)(B) of CERCLA, 42 U.S.C. § 9607(a)(4)(B), incurred by the Public Entities, after the effective date of the Consent Decree, to investigate, clean up, perform the Work, or otherwise investigate hazardous substances at the "Site" pursuant to the CAFO that are in excess of the Estimated RI/FS Costs. Attorneys' fees or litigation-related costs may not be claimed as Additional RI/FS Costs. Additional RI/FS Costs do not include any costs of response at the Site incurred before the effective date of the Consent Decree, and do not include costs of response at the Site that result from tasks not listed in the Scope of Work (as defined below and attached as Exhibits 2 and 2A).

"BER" shall mean the Bureau of Environmental Remediation within the Kansas Department of Health and Environment.

"CAD or ROD" shall mean the Corrective Action Decision or Record of Decision, which will be issued by KDHE selecting the final remedy to address contamination at the Site.

"CAFO" shall mean the Consent Agreement and Final Order entered into between the Kansas Department of Health and Environment ("KDHE") and the Public Entities attached as Appendix A to the Consent Decree. The United States is not a party to the CAFO.

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§9601-9675.

"Consent Decree" shall mean the consent decree that the parties anticipate will be entered by the Court in *City of Salina, Kansas, et al., v. United States of America, et al.*, United States District Court for the District of Kansas at Kansas City, Case No. 10-CV-02298-CM/DJW. KDHE is not a party to the Consent Decree.

"Corps" shall mean the United States Army Corps of Engineers.

"Estimated RI/FS Costs" shall mean the parties' reasonable estimate of costs to complete the Work as set forth in the Cost Estimate Summary attached as Exhibit 3. Estimated RI/FS Costs do not include attorneys' fees or litigation-related costs.

"Fund" shall mean the separately-budgeted special revenue fund to be established by City ordinance in anticipation of receipt and authorized expenditure of the Estimated RI/FS Funding on behalf of the Public Entities.

"KDHE" shall mean the Kansas Department of Health and Environment and any successor departments or agencies of the State.

"Oversight Costs" shall mean all oversight expenditures, direct and administrative, incurred by or on behalf of KDHE to conduct or support investigation at the Site, either prior to the issuance of the CAFO, or under the terms of the CAFO. The term "direct costs" shall include, but is not limited to, employee or contractor time related to oversight, sampling, investigation work, remedial work, document review and preparation, negotiation and preparation of enforcement documents and actions, internal and external discussions, travel expenses, and public involvement activities; equipment used; and other costs directly associated with, or incurred at or in relation to, the Site. The term "administrative costs" shall include, but is not limited to, overhead costs and general administrative costs. (CAFO, ¶54.a.).

"Public Entities" ("Plaintiffs" under Consent Decree; "Respondents" under CAFO) shall mean Kansas State University, an institution of higher education and an agency of the state of Kansas ("KSU"), which engages in higher educational activities at its Salina, Kansas campus ("K-State Salina"); Unified School District No. 305, Saline County, State of Kansas, ("District"); the City of Salina, Kansas, a Kansas municipal corporation, ("City"); and the Salina Airport Authority, an authority established pursuant to K.S.A. 27-317, *et seq.*, ("Authority");

"Public Entities Project Management Costs" shall mean the costs associated with project management functions for which the Public Entities are to be compensated and related expenses to be reimbursed from the Public Entity Project Management Funds.

"Public Entities Project Management Funds" shall mean that component of the Estimated RI/FS Costs identified for "Project Management by Salina Entities" on task budget line item 23 of the Cost Estimate Summary attached as Exhibit 3.

"RI/FS" shall mean the Remedial Investigation/Feasibility Study to be conducted by the Public Entities for the Site.

"Scope of Work" shall mean the Respondents' Scope of Work – Remedial Investigation through Record of Decision incorporated into the CAFO as Exhibit 2 and BER Remedial Investigation/Feasibility Study (RI/FS) Scope of Work incorporated into the CAFO as Exhibit 2A, or any amended version of those documents as modified pursuant to the terms of the Consent Decree and the CAFO.

"Site" shall mean the former Schilling Air Force Base and surrounding area, located near Salina, Kansas in Saline County, Kansas, as generally depicted on the map attached as Exhibit 1 and as more particularly described in the CAFO.

"State" shall mean the State of Kansas, including but not limited to KDHE.

"United States" shall mean the United States of America and each department, agency, and instrumentality of the United States, including but not limited to EPA, the United States Army Corps of Engineers (Corps) and the United States Department of Defense and its Secretary of Defense (DOD), and their successor departments, agencies, and instrumentalities.

"Work" shall mean all activities and obligations the Public Entities are required to perform to complete the RI/FS to implement the CAFO, or any amended version of that CAFO that is modified consistent with the terms of this Consent Decree, but excludes costs to implement or perform the CAD or ROD. Work includes investigation relating to the potential migration of Plume D (as discussed in appendices A & B of the Consent Decree).

"Work/Activities" shall be the term used to refer to the combination of the overlapping definitions of "Work" as defined above and in the Consent Decree and "Activities" as defined above and in the CAFO.

2. Conditions Precedent and Duration.

2.1. The obligations of the Public Entities pursuant to this Agreement shall be preconditioned upon and shall commence effective upon both:

(1) Execution of an order of the United States District Court approving the Consent Decree; and

(2) The Public Entities' receipt of payment from the United States as provided in the Consent Decree. (CD, ¶11; CAFO, ¶30).

2.2. This Agreement shall remain in effect until:

(1) The Public Entities have received written notification from KDHE that the Work has been performed and completed in accordance with the CAFO (CD, ¶10; CAFO, ¶72); and

(2) All matters set forth in ¶¶ 5.11 and 5.12 below have been completed in compliance with the Consent Decree and the CAFO.

3. No Separate Entity – Executive Group. The purpose of this Agreement can be most effectively fulfilled without the creation of any separate legal or administrative entity. The Public Entities authorize their respective chief executive officers, or their designees, to serve as what shall be referred to as the "Executive Group" as more fully described in ¶6.2 below.

4. **Purpose.** In accordance with the Consent Decree, the Secretary has ordered the Public entities to conduct the activities identified in the CAFO, subject to approval by KDHE, and to be bound by its terms. (CAFO, ¶30). The purposes of this Agreement are to provide for payment of the Public Entities' 10% share of the cost of the Work (CD, ¶10) and to provide for the administrative structure necessary to enable the Public Entities to complete the Work described in the Consent Decree and the Activities described in the CAFO (collectively the "Work/Activities").

5. **Funding the Work.**

5.1. Estimated RI/FS Funding. The parties have agreed that the Estimated RI/FS Costs for performance of the Work by the Public Entities under the CAFO is $9,363,000.00 (CD, ¶10). The United States has agreed to pay to the Public Entities 90% of the Estimated RI/FS Costs in the sum of $8,426,700.00 (CD, ¶11) (the "United States' Share of Estimated RI/FS Costs"). Upon the condition precedent of receipt of payment by the Public Entities of the United States' Share of Estimated RI/FS Costs, the City shall simultaneously cause to be paid on behalf of the Public Entities the balance of the Estimated RI/FS Costs in the amount of $936,300.00 (the "Public Entities' Share of Estimated RI/FS Costs"). The United States' Share of the Estimated RI/FS Costs and the Public Entities' Share of the Estimated RI/FS Costs (collectively the "Estimated RI/FS Funding") shall be deposited, invested, and expended in the course of completion of the Work and in accordance with this Agreement, the Consent Decree, and the CAFO.

5.2. Former SAFB RI/FS Fund. The Estimated RI/FS Funding shall be held in "the Former SAFB RI/FS Fund" (the "Fund"), a separately-budgeted special revenue fund to be established by City ordinance in anticipation of receipt of the Estimated RI/FS Funding on behalf of the Public Entities. The City's director of finance and administration shall provide the United States with electronic funds transfer instructions necessary for deposit of the United States' Share of the Estimated RI/FS Costs into the Fund in compliance with ¶12 of the Consent Decree. Upon receipt of the electronic funds transfer of the United States' Share of the Estimated RI/FS Costs into the Fund, the City shall transfer to the Fund the Public Entities' Share of the Estimated RI/FS Costs. The Fund shall be entirely segregated from all other City funds. The transfer of any funds from the Fund to any other account of the City or any other of the Public Entities shall be prohibited during the term of the CAFO and shall occur only as set forth in Paragraph 5.12 below following termination of the CAFO.

5.3. Demand for Interest. Paragraph 12 of the Consent Decree provides for the payment of interest on the United States' Share of the Estimated RI/FS Costs if payment has not been made by the United States within 90 days of the effective date of the Consent Decree and the Public Entities have timely given payment instructions. If payment has not been received by the Public Entities within 90 days after the effective date of the Consent Decree, the Executive Group shall make demand upon the United States for payment of interest in accordance with the Consent Decree.

5.4. Accounting and Reporting. The City shall account and report on all financial activity relating to the Fund in compliance with generally accepted accounting principles

established by the Governmental Accounting Standards Board. The City shall separately account on a monthly basis to the Executive Group for all Fund financial activity. The Public Entities acknowledge that accounting records for the Fund are public records for purposes of the Kansas Open Records Act.

5.5. Fund Investment. The Fund shall be invested in the manner determined by the Executive Group in compliance with applicable Kansas law regarding the investment of public funds. Any earnings resulting from investment of the Fund shall be credited to the Fund.

5.6. Disbursement of Funds. Disbursements from the Fund shall be made only upon presentation of invoices to the City's chief financial officer with written pre-approved for payment by the chief financial officer of the Authority, certified as:

(1) Work properly performed pursuant to a duly authorized contract and conducted subject to and consistent with: (1) the approval of KDHE in accordance with the terms of the CAFO under the BER RI/FS Scope of Work; (2) the standards, specifications and schedules approved by KDHE as contained in the exhibits to the CAFO; and (3) the terms in the Consent Decree. (CAFO, ¶32); or

(2) A KDHE Oversight Cost qualified for reimbursement pursuant to the CAFO. (CAFO, ¶54).

(3) A Public Entities Project Management Cost qualified for payment or reimbursement pursuant to ¶6.5 of this Agreement.

5.7. Signatory Authority. Approved disbursements from the Fund shall be made by dual-signature check signed by both the City's city manager and the Authority's executive director or, if unavailable, by their respective chief financial officer.

5.8. Audit. The Fund shall be annually audited as a component of the City's annual independent financial audit. The Public Entities agree that the incremental cost of auditing the Fund over and above the cost of the City's normal audit shall be separately invoiced and paid from the Fund as a project management expense.

5.9. KDHE Regulatory Oversight Costs. Paragraph 54 of the CAFO addresses reimbursement of KDHE's "Costs" in its regulatory oversight role. The Public Entities anticipate that past costs incurred by KDHE prior to the date of entry of the Consent Decree will be agreed upon and paid pursuant to ¶54.d. of the CAFO. Oversight Costs incurred by KDHE from the date of entry of the Consent Decree are to be billed 45 days following the end of the calendar quarter. The Executive Group shall review KDHE's quarterly billings for its Oversight Costs and either approve the Oversight Costs for payment within 30 days of issuance of the KDHE invoice or dispute the Oversight Costs pursuant to the dispute resolution provisions of ¶¶36-39 of the CAFO. Any direct costs incurred in pursuing dispute resolution under the CAFO, including attorney fees and expert fees, shall be shared equally among the Public Entities.

5.10. City Responsibility for Additional Work and Additional RI/FS Costs. As among the Public Entities, the City agrees to be responsible for and hold the other Public Entities harmless from any expense resulting from either:

(1) Additional work not covered by the original CAFO (CD, ¶9); or

(2) Additional RI/FS Costs as defined in ¶1 above and defined and addressed in the Consent Decree. (CD, ¶¶4 and 9).

Each of the other Public Entities agrees to participate and cooperate with the City in pursuing reimbursement of the City from the United States for its 90% share of (a) additional work not covered by the original CAFO or (b) Additional RI/FS Costs pursuant to the Consent Decree (CD, ¶¶8, 9 and 14).

5.10.1. Additional work not covered by the original CAFO. KDHE reserves the right to determine that activities may be required that are in addition to those specified in the CAFO to the extent such additional activities are consistent with the Scope of Work (CAFO, ¶60.a.). The Executive Group shall inform the United States, in writing, of any modification or proposed modification of the CAFO as required by ¶9.b. of the Consent Decree. If the United States timely informs the Public Entities that it will not reimburse the Public Entities for any costs or expenses resulting from modifications or proposed modifications to the CAFO that the United States believes are not consistent with the Scope of Work (Consent Decree, ¶9.b.) and the City, in consultation with the Executive Group, concludes that the CAFO modifications or proposed modifications are consistent with the Scope of Work and that dispute resolution should be pursued, then the Executive Group shall seek dispute resolution on behalf of the Public Entities pursuant to ¶¶ 18-19 of the Consent Decree. If the City, in consultation with the Executive Group, concurs with the United States that the CAFO modifications or proposed modifications are not consistent with the Scope of Work and concludes that a judicial determination should be pursued, then the Executive Group shall pursue on behalf of Public Entities a judicial determination of whether the additional activity or modification of the CAFO is or is not consistent with the Scope of Work pursuant to ¶60.b. of the CAFO.

5.10.2. Additional RI/FS Costs. Paragraph 14 of the Consent Decree describes the process the Public Entities are to follow to seek reimbursement for any Additional RI/FS Costs. If the Public Entities have Additional RI/FS Costs, the Executive Group shall make a written demand on behalf of the Public Entities for payment from the United States in accordance with ¶14.b. of the Consent Decree. If the United States withholds payment of its share of any Additional RI/FS Costs set out in a payment demand, in whole or in part, and the United States and the Executive Group on behalf of the Public Entities cannot informally resolve the dispute, the Executive Group shall seek dispute resolution on behalf of the Public Entities pursuant to ¶¶ 18-19 of the Consent Decree.

5.10.3. Cost of Dispute Resolution. The Public Entities agree that any direct costs incurred in pursuing dispute resolution pursuant to the Consent Decree in the case of (a) additional work not covered in the original CAFO; (b) Additional RI/FS Costs; or (c) a

judicial determination of whether the additional activity or modification of the CAFO is or is not consistent with the Scope of Work, including attorney fees or expert fees, shall be shared equally among the Public Entities.

5.11. Compliance Process Upon Completion of the Work/Activities. Upon completion of the Work/Activities the Executive Group shall, in compliance with the designated paragraph of the Consent Decree and/or the CAFO, direct the following:

(1) Consent Decree, ¶7.b. Provide a credit to the United States equivalent to the amount paid by the United States for any RI/FS Work it was compelled to perform for which the Public Entities have received compensation;

(2) Consent Decree, ¶10.a. and CAFO, ¶72.b. Submit to the State a written certification that the Work/Activities have been completed in full satisfaction of the requirements of the CAFO within 90 days after the Public Entities conclude that the Work/Activities have been completed;

(3) CAFO, ¶72.b. Pursue certification by KDHE that the Work/Activities have been performed in accordance with the CAFO and completed. If the Public Entities are notified by KDHE of activities that have not been completed in full satisfaction of the CAFO, the City, upon consultation with the Executive Group, shall (a) contract for the performance of those activities to the extent such activities are consistent with the CAFO and the Scope of Work or (b) invoke the dispute resolution procedures set forth in the CAFO. Any direct costs incurred in pursuing dispute resolution under the CAFO, including attorney fees and expert fees, shall be shared equally among the Public Entities;

(4) Consent Decree, ¶14. Determine if the Public Entities have incurred Additional RI/FS Costs to be pursued in the manner described in paragraph 5.10.2;

(5) Consent Decree, ¶15. Provide to the United States a complete set of invoices for all of the Public Entities' costs for the Work/Activities within six months of completion of the Work/Activities; and

(6) Consent Decree, ¶15. Determine and report to the United States the extent to which, if any, the United States' payments toward the cost of the Work/Activities exceeds 90% of the Public Entities' costs of the Work/Activities and determine with the United States the manner in which any such excess amount shall be ultimately applied as credits to any United States' other alleged liability at the Site.

5.12. Close-out of the Fund. Following (1) completion of the processes outlined in paragraph 5.11, (2) final accounting and audit of all expenditures from the Fund; and (3) the

identification and disposition of that amount, if any, to ultimately be applied as credits to any United States' other alleged liability at the Site pursuant to ¶15 of the Consent Decree; any cash balance remaining in the Fund shall be reimbursed to the City, whereupon the Fund shall be terminated (unless the United States and the Public Entities determine that any amounts to be credited to the United States' other alleged liability at the Site are to be retained in the Fund).

6. Administration of the Work/Activities.

6.1. Performance of Work/Activities. All Work/Activities to be performed by the Public Entities pursuant to the CAFO shall be conducted subject to and consistent with:

(1) The approval of KDHE in accordance with the terms of the CAFO and within the Scope of Work (Exhibit 2) and BER's RIFS Scope of Work (Exhibit 2A);

(2) The standards, specifications and schedules approved by KDHE as contained in the exhibits to the CAFO; and

(3) The terms in the Consent Decree. (CAFO, ¶32).

Upon KDHE approval, the Public Entities will be responsible for implementing the tasks to be detailed in what will be Exhibit 3 to the CAFO, the RI/FS Work Plan, in accord with what will be the corresponding Exhibit 3A to the CAFO, the RI/FS Schedule. (CAFO, ¶32.c.).

6.2. Oversight by Executive Group. In order to enable the Public Entities to collectively administer execution of their collective responsibility for completion of the Work/Activities, the Public Entities delegate to what shall be referred to as the "Executive Group" the administrative oversight responsibility and authority normally associated with their own executive support staff functions. Consistent with that purpose, the Executive Group shall consist of the chief executive officers of each of the Public Entities, including:

(1) The CEO and Dean of K-State Salina on behalf of KSU;
(2) The Superintendent on behalf of the District;
(3) The City Manager on behalf of the City; and
(4) The Executive Director on behalf of the Authority.

The Executive Group shall meet and confer as needed and shall serve (1) in the roles described in this Agreement, and (2) as authorized representatives of the Public Entities in relation to the collective obligations of the "Plaintiffs" under the Consent Decree and the "Respondents" under the CAFO.

6.3. Contracts for General Consultant and Specialized Services. The Public Entities agree that the Work/Activities can best be accomplished through contracts for services between the City, as the Public Entities' designated contracting party, and:

(1) A general consultant selected by the Executive Group in the manner outlined in ¶6.3.1. ("General Consultant"); and

(2) Specialized contractors to be selected by the Executive Group in the manner outlined in ¶6.3.2. (the "Specialized Contractors") to perform categories of specialized tasks identified by the Executive Group, all under the oversight and coordination of the General Consultant (but not as subcontractors of the General Consultant).

In order to complete the Work/Activities, the City shall, by public action of its governing body and subject to the requirements of ¶6.1 above, enter into contracts with and compensate from the Fund the General Consultant and Specialized Contractors to be selected in the following manner:

6.3.1. General Consultant Selection. The Public Entities agree that the interests of their respective constituencies are best served by engaging the Dragun Corporation, Farmington Hills, Michigan, ("Dragun") as the General Consultant for completion of the Work/Activities. Dragun was selected in 2005 as the Public Entities' technical consultant in relation to the Site from among a number of highly qualified candidates through a competitive, qualifications and interview based selection process. Dragun played an integral role in the development of the Scope of Work (Exhibit 2) and related Cost Estimate Summary (Exhibit 3) by working in collaboration with the Corps and its consultants. Dragun has extensively studied all environmental and hydro-geological aspects of the Site in the course of its work relating to the Site and is uniquely qualified to serve as the General Consultant. For those reasons, the Public Entities desire to engage Dragun as their general consultant. The City, in consultation with the Executive Group, agrees to make a good faith effort to negotiate a contract with Dragun for its services as General Consultant in the completion of the Work/Activities. If the City's negotiations with Dragun are unsuccessful or if a contract between the City and Dragun for Dragun's services as General Consultant is terminated for any reason, the Executive Group shall conduct a qualifications-based selection process to identify a recommended alternative General Consultant. The City, in consultation with the Executive Group, agrees to enter into good faith negotiations toward entering into a contract with the alternative General Consultant recommended by the Executive Group for its services as General Consultant in the completion of the Work/Activities.

6.3.2. Specialized Contractor Selection. The Executive Group shall direct the processes it determines necessary in order to:

(1) Identify, after consideration of the recommendation of the General Consultant, the categories of specialized work and the scope of work to be performed by Specialized Contractors in accordance with ¶6.1;

(2) Pre-qualify a reasonable field of specialized contractors for each category of specialized work; and

(3) Conduct a qualifications-based selection process to identify recommended contractors for each category of specialized work.

The City, in consultation with the Executive Group, agrees to make a good faith effort to negotiate a contract with each of the specialized contractors recommended by the Executive Group. If the City's negotiations with a particular specialized contractor are unsuccessful or if a contract between the City and a particular specialized contractor is terminated for any reason, the Executive Group shall conduct a qualifications-based selection process to identify a recommended alternative specialized contractor for the applicable category of specialized work. The City, in consultation with the Executive Group, agrees to make a good faith effort to negotiate a contract with the alternative specialized contractor recommended by the Executive Group.

6.4. Potential Work Performed by Public Entity Personnel. The Executive Group may from time-to-time identify specific components of the Work/Activities that can be most readily be performed by employees of one or more of the Public Entities. In those cases, the Executive Group shall provide the chief executive officer of any Public Entity with employees involved in a component of the Work/Activities with a written scope of the work to be performed and authorization to direct the performance of the work. If the applicable Public Entity is to be compensated for the work performed by its employees, it shall, subject to the requirements of ¶6.1 above, enter into a contract with the City for completion of the work for compensation to be approved by the Executive Group and paid in accordance with ¶5.6. If the work is to be performed by employees of the City, the contract for completion of the work shall be entered into between the City and the Authority.

6.5. Public Entities' Project Management. The Estimated RI/FS Costs as set forth in the Cost Estimate Summary attached as Exhibit 3 include a task budget line item 23 for "Project Management by Salina Entities" ("Public Entities Project Management Funds"). The Executive Group shall be responsible for managing the utilization of those budgeted funds on behalf of the Public Entities, subject to the requirements of ¶6.1 above. The Executive Group shall by separate memorandum identify:

(1) Those project management functions to be compensated and related expenses to be reimbursed from the Project Management Funds ("Public Entities Project Management Costs");

(2) The method of cost accounting for Public Entities Project Management Costs; and

(3) The form of documentation required for payment pursuant to ¶5.6 above to any of the Public Entities for Public Entities Project Management Costs.

6.6. Project Management Structure. The Executive Group shall represent the Public Entities for purposes of all collective administrative and oversight functions required in order to complete the Work/Activities. Under the terms of its contract with the City, the General Consultant will be responsible for completion of the Work/Activities in accordance with ¶6.1

above. The General Consultant will be assisted in the performance of the Work/Activities by (a) certain subcontractors to be selected and directly subcontracted by the General Consultant and (b) the Specialized Contractors. The work of the General Consultant's staff, its subcontractors, and the Specialized Contractors will all be under the oversight and coordination of the General Consultant. The General Consultant will designate a Project Manager who will represent and be the contact person for communications between the Executive Group and the General Consultant. The General Consultant will also maintain a resident field manager to coordinate on-Site execution of the Work/Activities.

6.7. Compliance with Specific Provisions of the Consent Decree. The Consent Decree addresses specific obligations of the Public Entities in the performance of the Work/Activities. Attached as Exhibit 4 is a spreadsheet outlining the Obligations of the Public Entities under the Consent Decree, the sections in which those obligations are addressed in either the CAFO or this Interlocal Agreement, and the party responsible for meeting the obligation.

6.8. Compliance with Specific Provisions of the CAFO. The CAFO addresses specific obligations of the Public Entities in the performance of the Work/Activities. Attached as Exhibit 5 is a spreadsheet outlining the Obligations of the Public Entities under the CAFO and the party responsible for meeting the obligation.

7. Termination, Amendment, or Withdrawal from Agreement. This Agreement shall not be terminated prior to the fulfillment of its duration pursuant to Section 2 above. This Agreement may be amended by the unanimous written consent of all of the parties. Individual parties may be allowed to withdraw as a party to this Agreement upon the unanimous written consent of the remaining parties.

8. Manner of Acquiring, Holding, and Disposing of Property. The Public Entities do not anticipate the separate acquisition, holding or disposition of property under this Agreement. Ownership of any personal property acquired pursuant to this Agreement shall be designated among the Public Entities by the Executive Group at the time of purchase of the personal property. Any capital improvements or the installation of equipment that would be regarded as a part of the real estate owned by a Public Entity shall be regarded as the property of that Public Entity. Any monitoring systems or other installations relating to the monitoring, remediation, or mitigation of environmental contaminants will be regarded as part of the City's water and sewer utility system.

9. General Provisions.

9.1 Non-appropriation. The Public Entities acknowledge that the City is subject to Kansas budget and cash basis laws, and that payment of the obligations of the City can only be paid from appropriated funds legally available for such purpose. Nothing in the Interlocal Agreement shall be interpreted or construed as a commitment or requirement that the City, on behalf of the Public Entities, obligate or pay funds in contravention of applicable Kansas law.

9.2. Entire agreement. This Agreement constitutes the entire agreement among the Public Entities and supersedes all prior agreements and understandings pertaining thereto,

whether written or oral. No covenant, representation or condition not expressed in this Agreement shall affect or be deemed to interpret, change or restrict the express provisions of this Agreement.

9.3. Feminine-Masculine, Singular-Plural. Wherever used, singular shall include the plural, plural the singular, and use of any gender shall include all genders.

9.4. Kansas Law – Interpretation. This Agreement and its validity, construction and performance shall be governed by the laws of Kansas. This Agreement shall be interpreted according to its fair meaning, and not in favor of or against any party.

9.5. Notices. All notices and demands shall be given in writing either by personal service or by registered or certified mail, postage prepaid, and return receipt requested. Notices shall be addressed as appears below for each party:

K-State Salina:	Verna Fitzsimmons CEO and Dean 2310 Centennial Road College Center 202C Salina, KS 67401-8196
USD 305:	Bill Hall Superintendent 1511 Gypsum Salina, KS 67401
City of Salina, Kansas:	Lieu Ann Elsey City Clerk P.O. Box 736 Salina, KS 67402-0736
Salina Airport Authority:	Timothy F. Rogers Executive Director 3237 Arnold Ave. Salina, KS 67401

9.6. Invalidity in part. In the event that any condition, covenant or other provision herein contained is held to be invalid or void by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect any other condition, covenant or provision herein contained. In the event a provision is deemed invalid, the Public Entities agree to amend this Agreement to include a new condition, covenant, or other provision that replicates as closely as is legally possible under Kansas law the intent of the severed provision.

9.7. Authorized signatories. Each signatory executing this Agreement does thereby represent and warrant to the other parties that the signatory has been duly authorized to deliver this Agreement in the capacity and for the entity for which the signatory acts.

9.8. Headings. The headings of the sections of this Agreement are included for the purposes of convenience only and shall not affect the interpretation of any provision hereof.

9.9. Applicable Law; Venue. This Agreement and its validity, construction and performance shall be governed by the laws of Kansas. In the event of any legal action to enforce or interpret this Agreement, the sole and exclusive venue shall be in the Saline County, Kansas District Court.

9.10. Time. Time is of the essence of this Agreement.

9.11. Parties Bound. This Agreement shall extend to and bind the parties and their successors or other entities or persons otherwise bound by law.

9.12. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, or in multiple originals, and all such counterparts or originals shall for all purposes constitute one agreement. To ensure that each of the Public Entities signs an identical document and that there is a meeting of the minds, the final Agreement shall be emailed to the Public Entities and their representatives attached as a read-only PDF in one group email ready for execution. Any document bearing language different from the emailed attachment will not be considered an original or counterpart.

9.13. Waiver. No failure or delay by a party hereto to insist on the strict performance of any term of this Agreement, or to exercise any right or remedy consequent to a breach thereof, shall constitute a waiver of any breach or any subsequent breach of such term. No waiver of any breach hereunder shall affect or alter the remaining terms of this Agreement, but each and every term of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

9.14. No Third Party Beneficiaries. Solely the parties to this Agreement shall have rights and may make claims under this Agreement. There are no intended third party beneficiaries under this Agreement, and no third parties shall have any rights or make any claims hereunder.

9.15. Authority and Consent to Transaction. Each party represents to the other that the person executing this Agreement has full and legal authority to bind such party to the terms of this Agreement, and that the execution and delivery of this Agreement have been duly and validly authorized by the governing body of each party.

IN WITNESS WHEREOF, each of the parties hereto, by its duly authorized representative, has executed this Agreement on the date shown below the representative's signature, with this Agreement to be in effect as of the latest date of signature below.

KANSAS STATE UNIVERSITY

Kirk H. Schulz, President
Date: 12-20-2012

CITY OF SALINA, KANSAS

Norman M. Jennings, Mayor
Date: 12/19/2012

Attest:

Lieu Ann Elsey, CMC, City Clerk

SALINA AIRPORT AUTHORITY

Dr. Randy Hassler, Chairman
Date: 12-20-12

Attest:

Jeff Maes, Secretary

UNIFIED SCHOOL DISTRICT 305

Dr. Phil Black, Board President
Date: 12/20/12

Attest:

Dr. Nancy Kiltz, Board Clerk

APPROVAL AS TO FORM BY THE KANSAS ATTORNEY GENERAL

Approved as to form:

DEREK SCHMIDT
Attorney General

By: _____
Lisa A. Mendoza
Assistant Attorney General