BILL 2010-69

MEMORANDUM

TO: Mayor and City Council

FROM: David Watson, City Manager

DATE: December 2, 2010

RE: Participation Agreement between Cameron and Sukup

Attached is an Ordinance that allows the Mayor to sign a Participation Agreement between the City of Cameron and Sukup Manufacturing Company. It has taken some time for the request to go through the negotiation process. Because the document has changed, Council will need to repeal the previous Ordinance and adopt this new one.

The previous cover letter and Ordinance cover some of the details for why a Participation Agreement is needed. Please refer to that Ordinance from the October 18, 2010 Council agenda.

The basis of the agreement is that Cameron will pay for surveying the property and then install and maintain a fence and proper warning signs. There are no past costs and this agreement states that the City will be responsible for future costs such as annual inspections. In turn, Sukup will continue ownership of the land.

RECOMMENDATION

Approve the Ordinance that repeals Ordinance No. 5619 and enter into this new Participation Agreement. This item is time sensitive and staff request that all actions be taken on October 18, 2010.

Bill 2010-69 Ordinance _____

AN ORDINANCE AUTHORIZING A PARTICIPATION AGREEMENT BY AND BETWEEN THE CITY OF CAMERON, CLINTON AND DeKALB COUNTIES, MISSOURI AND SUKUP MANUFACTURING COMPANY AND REPEALING ORDINANCE NO. 5619

WHEREAS, the City of Cameron, a political subdivision of the State of Missouri, (hereinafter called "City") wishes to enter into a Participation Agreement first contemplated by Ordinance No. 5619 with Sukup Manufacturing Company of Sheffield, Iowa (hereinafter called "Sukup"); and

WHEREAS, the City and Sukup, by this agreement, will execute an Administrative Settlement Agreement and Order on Consent for Removal Action on property owned by Sukup and formally owned by the City; and

WHEREAS, the EPA has indicated that it will approve on-site management of this low-level contamination as the appropriate response rather than removal - provided the City of Cameron and Sukup timely enter into an Administrative Settlement Agreement with the EPA that will ensure proper long-term management of the affected area; and

WHEREAS, the City and Sukup have completed negotiations on the Participation Agreement attached but not signed to Ordinance No. 5619 that passed on October 18, 2010. Since that time the City and Sukup have successfully negotiated this final agreement.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CAMERON, CLINTON AND DeKALB COUNTIES, MISSOURI AS FOLLOWS,

Section 1. That Ordinance No. 5619 approved on October18, 2010 be hereby repealed and that this Ordinance and attached Participation Agreement be the final document between the parties.

Section 2. The Mayor is hereby authorized to sign the participation agreement by and between the City and Sukup a copy of which is attached hereto and made a part hereof and to execute an Administrative Settlement Agreement and Order on Consent for Removal Action.

Section 3. The Mayor is hereby authorized to sign this Ordinance on behalf of the City of Cameron.

Section 4. The City Clerk is hereby directed to attest to the Mayor's signature.

Read two times, passed and approved this 6th day of December 2010.

_____
Mayor Dennis M. Clark

ATTEST:

_____
City Clerk

PARTICIPATION AGREEMENT

This Participation Agreement ("Agreement") is entered into by and among the Parties signing below who will execute an Administrative Settlement Agreement and Order on Consent for Removal Action ("Order") to perform a Removal Action for the Rockwool Industries Superfund Site ("Site") located at 7426 N.E. 352nd Street, located in Cameron, Clinton County, Missouri.

Purpose

1. This Agreement is designed to:

   a. seek resolution of claims that have been and/or may hereafter be asserted against the Parties in connection with the area that the United States Environmental Protection Agency ("EPA") has designated as the "Area of Interest" in the Order; and

   b. govern performance and payment for the Work required under the Order; and

   c. allocate among the Parties the payment of all Costs directly resulting from the Order.

2. The Effective date of this Agreement is the date of final signature by the Parties as indicated herein.

Allocation of Costs Among the Parties

3. Notwithstanding any other theory of liability or cost share, as between and among the Parties, however, they agree as a contractual matter that all obligations arising under the Order will be performed and paid for as set forth herein.

4. Under the terms of the Order, the City of Cameron, Missouri ("City") and Sukup Manufacturing Co. ("Sukup") are designated as the "Respondents." The Order provides that the

Parties are jointly and severally responsible for the performance of and payment for the Work required by the Order, and Costs due and payable under the terms of the Order. Attachment A hereto lists the Work and Costs under the Order.

5. The Parties agree to allocate the Work and Costs as identified in Attachment A. Each party shall pay its own attorney's fees unless specifically provided otherwise. It is the intention of the Parties to keep each other well informed of the activities and schedules to be followed with regard to the Work undertaken pursuant to the Order as well as reasonable notice of all activities to be undertaken at the Site related to the Order. The City shall obtain Sukup's approval of any Work to be done on Sukup property, which approval will not be unreasonably withheld. It is understood and agreed that Sukup owns the property on which the work is to take place and thus has a legitimate interest regarding the work to be undertaken on the property.

6. In addition to the Work and Costs under the Order, the Parties agree that the special environmental counsel for the City shall timely revise and negotiate a revised Order for the Parties, following reasonable review and consent by Sukup. If a final Order cannot be agreed upon, the other terms and conditions of this Participation Agreement are null and void.

7. If the Parties are in disagreement regarding questions, concerns or disputes arising under this Agreement through negotiations as described above, either Party may give the other Party written notice of the dispute. In the event such notice is given, the Parties shall attempt to resolve the dispute promptly by negotiation between the City Administrator and the President of Sukup. Within ten (10) days of the delivery of the notice, the receiving party shall submit to the other a written response. Thereafter, the persons identified in this section shall promptly confer in person or by telephone to attempt to resolve the dispute. All reasonable requests for information made by one Party to the other will be honored.

8. If the dispute has not been resolved by negotiation within thirty days of the disputing Party's notice, or if the Parties have failed to confer within thirty days after delivery of the notice, the Parties shall proceed to non-binding mediation conducted by one mediator chosen by mutual agreement of the parties. The Parties will select a mediator from the American Academy of ADR Attorneys.

9. The Parties agree to divide the cost of the mediation equally unless otherwise agreed as part of a mediated settlement. The Parties also agree to follow the mediation rules and procedures used by the American Arbitration Association for the mediation. The Parties reserve the right to file litigation in the event the mediation does not result in resolution or in the event the mediation cannot be concluded before putting a cause of action at risk due to the running of a statute of limitation.

Release and Discharge/Indemnification

10. To the extent allowed by law, the Parties, for and in consideration of the covenants and agreements contained in this Agreement, and upon the satisfactory fulfillment thereof, on behalf of themselves and their successors, assigns, present and former affiliates, subsidiary and parent corporations, and all present and former city council members, officers, directors, shareholders, employees, agents, attorneys and representatives, do hereby release and discharge each other, and each other's predecessors, successors, assigns, and all present and former affiliates, subsidiaries, parent corporations, city council members, officers, directors, shareholders, employees, agents, attorneys and representatives, of and from all claims, causes of action, suits and liabilities, which the Parties now have, ever had or shall have, for the Work and Costs required by the Order. Notwithstanding the foregoing, nothing contained here shall be deemed to release, discharge, impair or affect in any way the promises and agreements contained

in this Agreement, or the Parties' respective rights to enforce this Agreement, nor any other claims or causes of action related to the Site except as specifically set forth in this Agreement.

11. Indemnification. The City shall indemnify and hold harmless Sukup from any and all claims arising from the activities undertaken by the City pursuant to this Agreement.

Other Provisions

12. Disclaimers of Liability.

a. Notwithstanding their participation in the Order and their execution of this Agreement, each Party denies any and all responsibility for the alleged presence or release of hazardous substances, pollutants or contaminants, to or from the Site.

b. The Parties expressly acknowledge that by entering into this Agreement, they do not admit or concede any wrongdoing or liability, and no Party's participation in this Agreement shall be considered or deemed an admission of liability. No Party has, nor shall a Party be deemed or construed to have, assumed the liability or responsibility for any other Party as a result of entry into this Agreement. The fact that each Party is a signatory to this Agreement shall not be admissible in any judicial or administrative proceeding, except an action or proceeding to implement or enforce the terms of this Agreement.

13. Successors and Assigns. The Parties' rights to benefits, and commitments to obligations, under this Agreement shall be binding upon each Party's successors, assigns and agents. In the event of default by any Party under this Agreement for any reason including, but not limited to, corporate dissolution or bankruptcy, the remaining Party shall have and retain all equitable and legal rights to seek redress or compensation for such breach against the defaulting Party, including claims for breach of contract.

14. Shared Information. From time to time the Parties may elect to disclose or transmit to each other such information as each Party or consultant retained for the Order deems appropriate for the sole and limited purpose of asserting common claims or defenses relating to the Site or coordinating such other activities that are necessary and proper to carry out the purposes of this Agreement. Shared information may be disclosed to or transferred among the Parties or their individual counsel or consultants orally or in writing or by any other appropriate means of communications. The Parties intend that no claim of privilege be waived by reason of participation or cooperation pursuant to this Agreement.

15. Notices. To the extent notices are required under this Agreement, they shall be provided to the person or persons designated in the "Provide Notices To" section of each Party's signature page.

16. Entire Agreement. This Agreement contains the entire agreement of the Parties. There shall be no amendments to this Agreement without the written consent of a representative of each Party affected by such amendment.

17. Authority to Sign and Independent Execution. Each signatory represents and warrants that he or she has the authority to enter into this Agreement on behalf of the Party he or she represents. This Agreement may be executed independently by each of the Parties and will become binding on each Party as of the Effective Date identified above.

SIGNATURE PAGE

SUKUP MANUFACTURING, CO.

Party Name: _____

Title: _____

Printed Name: _____

Signature: _____

Dated: _____, 2010

PROVIDE NOTICES TO:

Name: Sukup Manufacturing Co.
Attn: President

Address: Post Office Box 677

City, State, Zip: Sheffield, IA 50475-0677

Phone: (641) 892-4222 Fax: (641) 892-4629

E-mail: Charles@sukup.com

SIGNATURE PAGE

CITY OF CAMERON, MISSOURI

By: _____

Mayor

Attest: _____

City Clerk

Dated: _____, 2010

PROVIDE NOTICES TO:

Name: _____

Address: _____

_____

Phone: _____

Fax: _____

E-mail: _____

ATTACHMENT A

ACTIVITY/COSTS THEREOF	RESPONSIBLE PARTY
1. Designation and Hiring of Project Contractor	City
2. Survey of Area of Interest	City
3. Installation of fencing surrounding Area of Interest	City
4. Maintenance of fencing surrounding Area of Interest	City
5. Posting of permanent signage on fence surrounding Area of Interest	City
6. Maintenance of metal signage on fence Surrounding Area of Interest	City
7. Inspections of Area of Interest, fencing and signage	City
8. Negotiation/Filing environmental covenant	Sukup
9. Other compliance with Statement of Work	City
10. Post-Removal Site Control	City
11. Payment of EPA "Future Costs"	City
12. Payment of Stipulated Penalties	Whichever Party Triggers
13. Insurance	City (unless otherwise specified in Order)
14. Payment of MDNR oversight if not "Future Costs"	City
15. Reporting and Notification	City unless Otherwise Specifically Provided

669944.1 /22558.001 Revised 12/2/10 JBM