

**TERMINAL LEASEHOLD**  
at  
**KANSAS CITY INTERNATIONAL AIRPORT**  
For Contract No. 6222110056 – THE CHILDREN’S MERCY HOSPITAL

THIS LEASE is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2022, between KANSAS CITY, MISSOURI, a municipal corporation of the State of Missouri, (“**City**”), and The Children’s Mercy Hospital (“**Lessee**”) a not for profit Missouri Corporation.

WHEREAS, City operates and maintains an international airport known as the Kansas City International Airport, located in Platte County, Missouri (“**Airport**”);

WHEREAS, City and Lessee entered into a Memorandum of Understanding, included as **Attachment A**, regarding proposed responsibilities and relationships for the rental of space in the new terminal at the Airport; and

WHEREAS, Lessee desires to lease certain property and facilities at the Airport.

The parties agree as follows:

This Lease consists of three parts: Part I, Part II Aviation Department Standard Lease Conditions and Part III Supplemental Terms and Conditions to All Airport Agreements. These parts and any attachments or exhibits are attached hereto and incorporated herein.

**PART I**

**ARTICLE I**  
**PREMISES & TERM**

**Sec 1.1. Leased Premises.** The City hereby leases to Lessee, and Lessee leases from the City, the real property, including improvements and fixtures appurtenant thereto, more fully described in **Exhibit “A” – Leased Premises**, attached hereto and incorporated herein (hereinafter “Premises”). Because the new terminal at the Airport is still under construction, Lessee has not had the opportunity to inspect the Premises. Accordingly, the City will deliver the Premises in a condition that is reasonable in the industry for brand new airport terminals. The Premises will be configured substantially as depicted in Exhibit A. City will allow Lessee access to the Premises prior to the Commencement Date with a reasonable amount of time to install the brand display prior to the Commencement Date.

**Sec. 1.2. Term of Lease.** This Lease will begin on the date of opening the Airport’s new terminal to the public, currently expected to be March 3, 2023 (“**Commencement Date**”), ending on on the five-year anniversary of the Commencement Date. This Lease may be renewed by mutual agreement between the Director of Aviation and Lessee for one additional five (5) year term.

**Sec. 1.3. Personal Property.** The Furniture, Fixtures and Equipment (“**FF&E**”), supplies and any appurtenances to be installed by Lessee are the sole expense and responsibility of the Lessee. At the cancellation of this Lease, the Lessee shall remove all such property. In case Lessee does not remove FF&E at the end of the lease, then provisions of Part II, Section VI. B. Holding Over will be in effect.

**Sec. 1.4. Use of Premises.** Lessee shall use the Premises solely for the purpose of providing a brand display in the arrival baggage area as additionally outlined in Attachment A. Any unauthorized use of the Premises shall constitute acceptable grounds for immediate termination.

**Sec. 1.5. Relocation of Premises.** The City reserves the right to relocate the Lessee, at the City's sole expense, during the term of this Lease to alternative premises designated by the City upon 90 days written notice to the Lessee. The City further reserves the right to expand or reduce the size of the Premises assigned to Lessee upon the same advanced written notice thereof. If the City relocates the Premises and/or expands or reduces the size of the Premises assigned to Lessee, City will ensure the location and/or size of the new Premises will have equal to or greater public exposure than the current location and size. Upon relocation or resizing of the Premises, the alternative and/or resized premises shall be known as the Premises for purposes of this Agreement. If Lessee relocates during the term of this Lease, Lessee shall pay the rent as provided for in Article II, Section 2.1.A. of this Lease. If the City relocates the Premises and/or expands or reduces the size of the Premises assigned to Lessee, Lessee shall have the option to terminate the Lease without further liability.

**Sec. 1.6. Improvements to Leased Space.**

A. City will provide notice of a date that construction may begin with respect to Lessee's brand display. Such date shall provide Lessee a reasonable amount of time to design, construct and install Lessee's brand display prior to the Commencement Date. City shall provide the 100% IFC (Issued for Construction) drawing files and specifications files/documents for the new terminal and parking at the Airport to Lessee and its agents as they become available to allow Lessee to design, construct, and install Lessee's brand display.

B. Prior to the installation of the brand display, Lessee will provide brand display blueprints to the City for its approval. If Lessee desires to engage a construction firm, Lessee must receive City's approval prior to engaging such construction firm. Lessee will provide City with contact information for its architecture and construction firms. Following installation of the brand display, no improvements or alterations to the brand display may be made by Lessee without the prior written approval of the Director. This approval shall be in the form of a separate Tenant Modification Agreement through the Aviation Department's Engineering Division signed by the City and Lessee. Lessee shall be responsible, at the Lessee's sole expense, for any and all improvements or alterations made to the Premises during the term of the Lease.

## **ARTICLE II**

### **RENT**

**Sec. 2.1. Rents, Fees and Charges.**

- A. Terminal Rent Payments. Lessee will pay a flat monthly rent of \$8,333.33 (\$100,000/year) for use of the Premises during the term of the Lease.
- B. Method of Payment. Except as provided in the Partial Year provision below, on or before the first day of each calendar month during the term of the Lease, Lessee shall pay City the rent payable for such calendar month, **The payments will be made in legal tender of the United States and mailed to the Aviation Department, P.O. Box 844124, Kansas City, Missouri 64184-4124, payable to the "City Treasurer".** A service charge of one and one-half percent (1½%) per month shall automatically accrue to all payments made after the due date.

- C. Partial Year. If the Commencement Date should occur on any date other than the first day of a calendar month, Lessee shall pay City on the Commencement Date the proportionate amount of rent accrued for the balance of such current calendar month and if this Lease will not be in effect for a full month at the end of its term, Lessee shall pay City the proportionate amount of rent payable for such partial month.
- D. Additional Rent. In addition to the Rent, Lessee agrees to pay as additional rent any reasonable sums which may become due by reason of failure of Lessee to comply with any covenants of this Lease and all reasonable damages, costs and expense which City may incur because of any default of Lessee or failure to perform and any damages caused to the Premises by any act or negligence of Lessee, its officers, employees, agents and invitees.

### **ARTICLE III** **REPAIRS AND MAINTENANCE OF PREMISES**

**Sec. 3.1. Repairs.** Lessee, at its sole cost and expense, shall take good care of the Premises and all improvements thereto and additions thereon or thereto, and shall keep the same in good order and condition, except for reasonable wear and tear after the necessary repair, replacement, restoration or renewal by Lessee pursuant to its obligations hereunder, and shall make all necessary repairs thereto, which will assume such obligations. All repairs, restorations and renewals made by Lessee shall be at least equal in quality and class to the original work with respect hereto. To be clear, Lessee's obligations under this Section 3.1 only apply to the extent applicable to Lessee's brand display located on the Premises. This provision does not place a burden on Lessee to maintain, repair, restore, renew, and/or replace the surrounding area where the brand display is located (e.g., the baggage claim area).

**Sec. 3.2. Maintenance.** The City shall furnish structural maintenance of City-constructed facilities, including the roof of the Terminal Building, and provide the maintenance and operation of City-installed mechanical and electrical systems. The City shall provide exterior window and building cleaning and interior window cleaning. The City shall provide custodial maintenance only in the public areas of the Terminal Building.

At its sole cost and expense, the Lessee shall maintain and repair the Premises, its fixed improvements and its operating equipment at all times in accordance with all applicable present and future federal, state, local, or other statutes, charters, laws, rules, orders, regulations and ordinances, including those of the City.

- A. The Lessee shall provide all necessary maintenance, repairs, renewals and replacements to the building's interior of the Leased Premises and utility systems. The Lessee also shall provide janitorial and custodial services for the Premises, including window washing, lamp replacement, window glass replacement and trash removal services.
- B. All maintenance, repairs, renewals and replacements shall be at the Lessee's sole expense and shall be subject to periodic monitoring by the City to insure a continuing high quality of appearance and a brand display condition commensurate with maintenance and safety standards required for public facilities.
- C. Lessee shall comply with all rules and regulations promulgated by the federal, state and local entities including, but not limited to, the handling and disposal of refuse.

To be clear, Lessee's obligations under this Section 3.2 only apply to the extent applicable to Lessee's brand display located on the Premises. This provision does not place a burden on Lessee to clean, maintain, repair, restore, renew, or replace the surrounding area where the brand display is located (e.g., the baggage claim area).

**Sec. 3.3. Utility Services.** Utility services, excluding telephone and/or data services, required by Lessee during the Lease term shall be incorporated into the Terminal rents without additional charge to Lessee. Lessee may install and construct necessary utility lines or mains across reasonable routes as the City may designate. Any change in, deletion of, or addition to such lines and mains shall be at the sole cost and expense of Lessee.

**Sec. 3.4. Heating Ventilation Air Conditioning System.** The City, at its sole cost and expense, shall maintain and repair the Heating Ventilation Air Conditioning ("HVAC") system required by the Premises during the Lease term.

#### **ARTICLE IV**

#### **DAMAGE, DESTRUCTION, RESTORATION OF PREMISES**

**Sec. 4.1. Damage or Destruction and Restoration.** In case of any material damage to or destruction of the Premises or any part thereof resulting from Lessee's negligence or more culpable conduct or Lessee's use of the Premises, Lessee will give prompt notice to the City and, except as otherwise herein provided in Section 4.2, Lessee shall have the option to:

- A. Promptly commence and complete with due diligence and in accordance with plans approved by Lessee and the City, the restoration of the Premises as nearly reasonably practicable to the value and condition thereof immediately prior to such damage or destruction (with alterations, at Lessee's election, and with the prior consent and approval of the City), or
- B. If Lessee and the City mutually agree, Lessee may use the insurance proceeds to construct other airline-related facilities providing equal security protection for any bondholders to those facilities not restored. In the event of such damage or destruction, the proceeds from all property insurance policy or policies shall be devoted exclusively to the restoration of the Premises except as provided elsewhere in this Lease.

**Sec. 4.2. Lessee's Election Not to Restore Damaged Property.** In the event of damage to or destruction or loss of such improvements by an insured risk, which damage, destruction or loss is not capable of being repaired within 90 days, Lessee shall have the election, indicated by written notice given to City within 90 days after the occurrence of such event, not to repair, restore, rebuild or replace the improvements, such election to be effective as of the date of such damage, destruction or loss and, upon such election, Lessee shall be relieved of all further liability and obligations hereunder. In the event Lessee exercises the foregoing election, the net amount of the insurance proceeds received by it from the insurance required herein on the property shall be forwarded to City. In the event Lessee does not exercise the foregoing election, or in the event said damage, destruction or loss is capable of being repaired within 90 days, Lessee shall promptly repair, replace, restore or rebuild said improvements to the extent of the insurance proceeds received by it, as nearly as possible to the condition said improvements were in immediately prior to such damage, destruction or loss, or with such changes or alterations as may be approved by City. If such damage, destruction or loss occurs within the last six months of the term of this Lease, then Lessee shall have the option either to effect such repair, replacement, restoration or rebuilding or, in lieu thereof, to pay to City the

proceeds received by reason of such damage, destruction or loss from the insurance required herein.

**Sec 4.3. Lessee's Limit on Liability.** To be clear, Lessee's liability under this Section 4 shall be limited to the coverage and limits of insurance that Lessee is required to procure and maintain under this Lease.

**ARTICLE V**  
**MISCELLANEOUS PROVISIONS**

**Sec. 5.1. Exclusivity.** Lessee shall be the exclusive advertising health care provider/organization in the arrival baggage claim area of the new terminal at the Airport during the term of the Lease. City shall not offer any advertising or marketing opportunities to other health care providers or other health care organizations within the arrival baggage claim area during the term of the Lease.

**Sec. 5.2. Notices.** Except as herein otherwise expressly provided, all notices required by this Lease shall be in writing sent regular U.S. mail, postage prepaid; commercial overnight courier; or email to the following:

City: Kansas City International Airport  
Properties & Commercial Development  
601 Brasilia Avenue  
Kansas City, MO 64153  
Phone: 816-243-3005  
Email: pete.fullerton@kcmo.org

Lessee: Children's Mercy Hospital  
SVP, Chief Marketing Officer  
2401 Gilham Road  
Kansas City, MO 64108  
Phone: 816-701-4586  
Email: taolsen@cmh.edu

With a copy to: The Office of General  
Counsel/Risk Management at the same  
address.

All notices are effective on the date of mailing in the U.S. mail, deposit with an overnight courier or transmission by facsimile.

**Sec. 5.3. Priorities.** In the event that any of the terms and conditions in Part I, Part II and Part III of this Lease conflicts, interpretation of this Lease shall be according to the following priority, except as mandated by law, including City Ordinances.

1. Part I
2. Part II
3. Part III

IN WITNESS WHEREOF, the parties hereto for themselves, their successors and assigns, have executed this Lease the day and year first above written.

ATTEST:

**LESSEE:**

\_\_\_\_\_  
Secretary (if applicable)

\_\_\_\_\_  
By: Rob Steele, MD  
Title: EVP, Chief Strategy and Innovation Officer

Approved as to form:

**KANSAS CITY, MISSOURI**

\_\_\_\_\_  
By: Senior Associate City Attorney

\_\_\_\_\_  
By: Patrick Kein  
Title: Director of Aviation

## Part II

### **AVIATION DEPARTMENT STANDARD LEASE CONDITIONS**

#### **I. Definitions.**

A. *“Airport”* means Kansas City International Airport or Charles B. Wheeler Downtown Airport, in accordance with the context of this Lease.

B. *“City”* means City of Kansas City, Missouri in its capacity as City.

C. *“Code”* means Kansas City, Missouri Code of General Ordinances.

D. *“Director”* means Kansas City, Missouri Director of Aviation.

E. *“Lease”* means the Lease to which this Exhibit is annexed and made a part thereof.

F. *“Lessee”* means the Lessee identified in the Lease and includes Lessee’s heirs, personal representatives, successors-in-interest and assigns.

G. *“Premises”* means the leasehold or site occupied by Lessee pursuant to the lease, license or permit that is the subject of this Lease.

#### **II. Premises Use and Ownership.**

A. Use. The Premises will be used by Lessee only for the purposes set forth in the Lease.

B. Title. Title to the Premises, including any improvements, whether existing or installed by Lessee as part of the Lease, shall remain and are at all times in the City.

C. Lessee’s Access to Premises. Lessee is granted the right, for itself, its agents, employees, patrons, suppliers and other persons doing business with Lessee, of ingress and egress to and from the Premises over Airport roadways, including the use of common use roadways, and other common areas as reasonably necessary to use the Premises, subject only

to law and to such reasonable rules and regulations governing the use of the Airport as the Director may establish, including the establishment of a fee or charge for the privilege of entry upon the Airport; provided, however, that neither Lessee nor any of its subtenants, contractors, agents or invitees shall be charged any fee to gain access to the Premises. “Common areas” shall mean those areas which are furnished in and about the Premises for the common and non-exclusive use of Lessee and City and their officers, agents, employees, customers, invitees and licensees.

D. Signs. No signs or advertising displays exposed to public view will be painted on or erected in any manner on the Premises without the prior written approval of the Director (which approval shall not be unreasonably withheld or delayed) and in accordance with the City’s standards with respect to wording, type, size, design, color and location. Upon termination, cancellation or expiration of the Lease, Lessee at its costs will remove, obliterate or paint out, any and all of its signs, advertising and displays as the Director may reasonably direct.

E. Permits/Licenses. Lessee will obtain, maintain and pay for all licenses and permits necessary or required by law for the conduct of its business and operations.

F. City’s Right of Entry. Upon reasonable prior notice, City shall have the right to enter upon the Premises at all reasonable times to inspect the Premises; to do any act or thing which City may be obligated or have the right to do under the Lease; or, after the notice and grace periods set forth in Section V.A.2. have expired, to perform maintenance and make repairs in any case where Lessee is obligated but has failed to do so (in which event, Lessee shall reimburse City for the reasonable cost thereof promptly upon demand). No abatement of fees and charges shall be claimed by or allowed to Lessee by reason of the exercise of such right.

G. City's Exclusive Rights in Premises. City reserves exclusive rights to the following; provided, however, that the City's use or exercise of those rights will not unreasonably interfere with Lessee's use of the Premises:

1. All gas, oil and minerals in and under the soil on the Premises;
2. All cemeteries, archeological findings and other historical sites on the Premises. City shall make all decisions as to the preservation, use or relocation of those findings or sites.
3. To grant, without compensation to Lessee, utility rights-of-way to itself and others, over, under, through, across or on the Premises.

### **III. Repair & Maintenance of Premises.**

#### **A. Provisions Applicable to All Leases.**

1. Lessee will keep the Premises and all improvements thereon in good repair and in a clean and orderly condition and appearance, all papers and debris picked up, and the areas immediately adjacent to the exits and entrances clean and orderly and free of obstructions. Lessee will not do or suffer any material waste or damage, disfigurement or injury to the Premises or any part thereof.
2. City reserves the right but shall not be obligated to Lessee to maintain and keep in repair all of the common areas of the Airport.

### **IV. Assignment, Sublease & Encumbrances.**

A. No Right to Assign. Lessee has no right to assign this Lease.

B. Transfer by Operation of Law. Any assignment or transfer of the lease by operation of law or any issuance, sale or transfer of a sufficient number of shares of stock in Lessee to result in a change in control of Lessee shall be deemed an assignment of this Lease for purposes of this section; provided, however, that nothing

in this section shall be deemed to require such consent solely as a result of issuance, transfer or sale of shares among the existing stockholders of Lessee; transfer of shares by devise or descent upon the death of any existing stockholder; merger of Lessee into any parent or subsidiary corporation of Lessee or sale of all or substantially all of Lessee's stock to any such parent or subsidiary corporation.

C. Assignment to Affiliate. Notwithstanding the foregoing provisions, Lessee shall have the right to assign this Lease to (1) any corporation into which or with which Lessee has merged or consolidated; (2) any parent, subsidiary, successor or affiliated entity of Lessee; or (3) any entity which acquires all or substantially all of the assets of or ownership interests in Lessee.

### **V. Defaults & Remedies.**

A. Lessee Defaults. Each of the following will constitute a default by Lessee hereunder:

1. Lessee's failure to pay when due any rent, charges or any other payments of money required to be paid by Lessee hereunder and the continuation of such failure for ten (10) days after written notice thereof is sent to Lessee;
2. Lessee's failing to perform or violation of any provision, covenant or condition of this Lease (other than payment of money) within thirty (30) days after written notice or, if the cure or performance thereof reasonably requires more than thirty (30) days to complete, Lessee's failing to begin cure or performance thereof within such thirty-day period and proceed diligently to cure or completion thereafter;
3. The attempted assignment or assumption of this Lease in violation of the terms of this Lease;
4. The filing by the Lessee of a voluntary petition in bankruptcy or any assignment for benefit of creditors of all or any part of Lessee's assets; or the adjudication of the Lessee as a bankrupt pursuant to any involuntary bankruptcy proceedings; or the



taking, by a court of competent jurisdiction of Lessee's assets pursuant to proceedings brought under the provisions of any federal reorganization act; or the appointment of a receiver or trustee of the Lessee's assets by a court of competent jurisdiction or a voluntary agreement with Lessee's creditors;

**B. City Defaults.** Each of the following will constitute a default by City hereunder:

1. Except as provided in Section V.B.2 hereof, City's failing to perform or violation of any provision, covenant or condition of this Lease within thirty (30) days after written notice or, if the cure or performance thereof reasonably requires more than thirty (30) days to complete, City's failing to begin cure or performance thereof within such thirty-day period and proceed diligently to cure or completion thereafter;

2. The lawful assumption by the United States government, or any authorized agency thereof, of the operation, control or use of the Airport, or any substantial part thereof, in such manner as to materially restrict Lessee from operating thereon for a period of at least thirty (30) days.

**C. City's Remedies.** Upon default by Lessee of this Lease which is not cured within any applicable notice or cure period, City may do any one or more of the following:

1. After giving an additional 30 days written notice to Lessee and the opportunity to cure within such 30 day period, terminate the Lease by giving written notice to Lessee, but subject to the rights of the Leasehold Mortgagee set forth in this Lease and pursuant to Exhibit "D";

2. Re-enter the Premises and every part thereof on the Effective Date of termination of the Lease without further notice of any kind, remove any and all persons therefrom and regain and resume possession either with or without the institution of summary or legal proceedings. Such re-entry, however, shall not in any manner affect, alter or

diminish any of the obligations of Lessee under the Lease;

3. Upon termination of the Lease or upon re-entry, regaining or resumption of possession of the Premises, occupy the Premises and have the right in the name of the City to relet and permit any person, firm or corporation to enter the Premises and use the same for such term and on such conditions as City may determine; and

4. Perform, on behalf and at the expense of Lessee, any obligation of Lessee under this Lease which Lessee has failed to perform and of which City has given Lessee notice, the cost of which performance by City, together with interest thereon from the date of such expenditure, shall be deemed Additional Rent and shall be payable by Lessee to City upon demand.

Notwithstanding the provisions of this clause and regardless of whether a default shall have occurred, City may exercise the remedy described in this clause without any notice to Lessee if City, in its good faith judgment, believes it would be materially injured by failure to take rapid action or if the unperformed obligation of Lessee constitutes an emergency; and

5. Any other remedy that City may have under law or equity.

**D. Lessee Remedies.** Upon default by City of this Lease, Lessee may cancel the Lease in its entirety after 30 days prior written notice to the City or pursue any other remedy Lessee may have under law or equity.

## **VI. Termination of Lease.**

**A. No Notice to Quit Possession.** No notice to quit possession at the expiration date of the term of this Lease shall be necessary. Lessee agrees that at the expiration date of the term of this Lease, or at the earlier termination thereof, it shall peaceably surrender possession of the Premises in good condition, reasonable wear and tear and acts of God excepted. City shall have the right to re-enter and take possession of the Premises at that time with or without process of law.

B. Holding Over. Should Lessee hold over the use of or continue to occupy the Premises or any part thereof after the termination of the letting, the holding over shall be deemed merely a tenancy from month to month upon a monthly rental in an amount equal to the Rent existing at the end of the Lease term plus two percent (2%) together with fair market rent for all improvements on the Premises.

C. Waiver. No acceptance by City of the rent and charges or other payments specified herein, in whole or in part, and for any period or periods, after a default of any of the terms, covenants and conditions to be performed, kept or observed by Lessee, other than the default in the payment thereof, shall be deemed a waiver of any right on the part of City to cancel or terminate this Lease on account of such default. No waiver by City at any time of any default by Lessee shall be or be construed to be a waiver at any time thereafter by City of any other or subsequent default in performance of any terms, conditions or covenants set forth herein, and no notice by City shall be required to restore or revive time as of the essence hereof after waiver by City of default in one or more instances.

E. Termination from Taking. If during the term of this Lease there shall be a taking of the whole or substantially all of the Premises, this Lease shall terminate and expire on the date of such taking and the rent payable hereunder shall be equitably apportioned and paid to the date of such taking. "Substantially all of the Premises" shall be deemed to have been taken if the untaken part of the Premises shall, in the reasonable judgment of Lessee, be insufficient for the economic and feasible continued operation of the Lessee's business in connection therewith.

F. Personal Property not Removed. Any personal property of Lessee which shall remain in or on the Premises after the termination of this Lease may, at the option of City, be deemed to have been abandoned by Lessee and either may be

retained by City as its property or be disposed of, without accountability, in such manner as City may see fit, or if City shall give written notice to Lessee to such effect, such property shall be immediately removed by Lessee at Lessee's sole cost and expense.

#### **VII. Quiet Enjoyment.**

Upon payment by Lessee of the rents herein provided, and upon the observance and performance of all the covenants, terms and conditions on Lessee's part to be observed and performed, Lessee (and its subtenants) shall peaceably and quietly hold and enjoy the Premises for the term demised without hindrance or interruption by City or any other person or persons lawfully or equitably claiming, by, through or under the City, subject, nevertheless, to the terms and conditions of the lease.

#### **VIII. Environmental Requirements.**

A. Lessee hereby covenants and agrees to comply in all material respects with all-applicable Environmental Laws and regulations in connection with its use and occupancy of the Premises, or its operations of the facilities. For purposes of this Lease, "Environmental Laws" shall mean and include all federal, state and local statutes, ordinances, regulations and rules relating to environmental quality, health, safety, contamination and clean-up, including, without limitation, the Clean Air Act, 42 U.S.C. §7401 *et seq.*; the Clean Water Act, 33 U.S.C. §1251 *et seq.*, and the Water Quality Act of 1987; the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. §136 *et seq.*; the Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. §1401 *et seq.*; the Noise Control Act, 42 U.S.C. §4901 *et seq.*; the Occupational Safety and Health Act, 29 U.S.C. §651 *et seq.*; the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §6901 *et seq.*, as amended by the Hazardous and Solid Waste Amendments of 1984; the Safe Drinking Water Act, 42 U.S.C. §300f *et seq.*; the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §9601 *et seq.*, as amended by the Superfund Amendments

and Reauthorization Act, the Emergency Planning and Community Right to Know Act, and the Radon Gas and Indoor Air Quality Research Act; the Hazardous Material Transportation Act, 49 U.S.C. §9601 *et seq.*; the Toxic Substance Control Act ("TSCA"), 15 U.S.C. §2601 *et seq.*; the Atomic Energy Act, 42 U.S.C. §2011 *et seq.*; and the Nuclear Waste Policy Act of 1982, 42 U.S.C. §1010 *et seq.*; all Missouri State environmental protection, superlien and environmental clean-up statutes, with implementing regulations and guidelines and all local laws, regulations and ordinances insofar as they are equivalent or similar to the federal laws recited above or purport to regulate Hazardous Materials.

**B. Review of Environmental Documents.** Lessee, at request of City, shall make available for inspection and copying upon reasonable notice and at reasonable times, any or all of the documents and materials Lessee has prepared pursuant to any environmental law or submitted to any governmental regulatory agency; provided, that such documents and materials relate to environmental issues or environmental laws and are pertinent to the Airport or the Premises. If any environmental law requires Lessee to file any notice or report of a release or threatened release of Hazardous Materials on under or about the Premises or the Airport, Lessee shall provide a copy of such report or notice to City and, to the extent practicable, shall receive the approval of City prior to submitting such notice or report to the appropriate governmental agency.

**C. Access for Environmental Inspection.** City shall have access to the Premises to inspect the same in order to confirm Lessee is using the Premises in accordance with all Environmental Laws. If the City elects to so inspect the Premises, any tests shall be conducted by qualified independent experts chosen by the City but subject to Lessee's approval. If either party conducts an environmental assessment of the Premises during the term of this Lease, such party shall provide a copy of the environmental report to the other party promptly after receipt thereof. The preceding sentence

shall not be construed to impose upon either party an obligation to conduct any environmental assessment of the Premises.

**D. Environmental Noncompliance.** If Lessee fails to comply with any applicable Environmental Laws, City, in addition to its rights and remedies provided elsewhere within this Agreement may enter the Premises and take all reasonable and necessary measures, at Lessee's expense, to insure compliance with Environmental Laws.

**E. Storage, Use or Disposal of Hazardous Materials.** Lessee shall not store, use or dispose of any Hazardous Materials on the Premises in violation of Environmental Laws.

**F. Duty to Notify City.** In the event of a release or threatened release of Hazardous Materials in violation of Environmental Laws arising out of Lessee's use or occupancy of the Premises or in the event any claim, demand, action or notice is made against Lessee regarding Lessee's failure or alleged failure to comply with any Environmental Laws, Lessee shall notify City, in writing, and shall provide City with copies of any written claims, demands, notices, or actions so made.

**G. Environmental Remediation.** Lessee shall undertake such steps to remedy and remove any Hazardous Materials not in compliance with Environmental Laws arising out of Lessee's use of the Premises that are necessary to protect the public health and safety and the environment from actual or potential harm and to bring the Premises into compliance with all Environmental Laws. Such work shall be performed at Lessee's sole expense, after Lessee submits to City a written plan for completing such work and receives the prior written approval of City. City shall have the right to review and inspect all such work at any time using consultants and representatives of its choice. Lessee shall pay the cost of such review and inspection. Specific cleanup levels for any environmental remediation work shall be designed to comply with all applicable Environmental Laws.

H. National Emission Standards for Hazardous Air Pollutants. Lessee warrants that all planning, design, fabrication, installation, construction, start-up, testing, maintenance and repair work performed pursuant to this Agreement shall be performed in accordance with any applicable National Emission Standards for Hazardous Air Pollutants (NESHAP), 40 C.F.R. 61.145.

I. Environmental Indemnification. In addition to any indemnification set forth herein, Lessee hereby indemnifies and agrees to defend and hold harmless City, its agents, partners, officers, representatives and employees, from all costs, claims, demands, actions, liabilities, complaints, fines, citations, violations or notices of violation ("Claims") arising from or attributable to (i) the presence due to Lessee's handling, generation, manufacturing, processing, treating, storing, using, reusing, refining, recycling, reclaiming, blending or burning for energy recovery, incinerating, accumulating speculatively, transporting, transferring, disposing or abandoning of Hazardous Materials ("Management") at the Airport or the subsurface thereof or the violation of any Environmental Laws due to Lessee's Management, including, without limiting the generality thereof, any cost, claim, liability or defense expended in remediation required by a governmental authority, or by reason of any actual or threatened spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing of Hazardous Materials into the environment (as environment is defined in CERCLA), due to Lessee's Management at the Airport or violation of any Environmental Laws), or (ii) any breach by Lessee of any of its warranties, representations or covenants in this Section. Lessee's obligations hereunder shall survive the termination or expiration of this Agreement, and shall not be affected in any way by the amount of or the absence in any case of covering insurance or by the failure or refusal of any insurance carrier to perform any obligation

on its part under insurance policies affecting the Airport or any part thereof.

J. No Liability for Pre-Existing Conditions. Notwithstanding anything to the contrary contained in this Lease, Lessee shall have no obligation or liability whatsoever with respect to (1) any Hazardous Materials that are present on the Premises as of the Commencement Date; (2) any violation of Environmental Law that exists as of the Commencement Date; or (3) the presence or release of any Hazardous Materials or the violation of any Environmental Law that is caused by a party other than Lessee. The City represents to Lessee that as of the Commencement Date the Premises will not contain any Hazardous Materials and will be in compliance with all Environmental Laws.

K. Definitions. For purposes of this Section, the term "Hazardous Materials" shall mean and include the following, including mixtures thereof; any hazardous substance, pollutant, contaminant, waste, by-product or constituent as defined in any environmental law; oil and petroleum products and natural gas, natural gas liquids, liquefied natural gas and synthetic gas usable for fuel; pesticides regulated under the FIFRA; asbestos and asbestos-containing materials, PCBs and other substances regulated under the TSCA; source material, special nuclear material, by-product material and any other radioactive materials or radioactive wastes however produced, regulated under the Atomic Energy Act or the Nuclear Waste Policy Act; chemicals subject to the OSHA Hazard Communication Standard, 29 C.F.R. §1910.1200 *et seq.*; any "Hazardous Waste" as defined by the Missouri Hazardous Waste Management Law, Mo.Rev.Stat. §§260.350 to 260.480; and industrial process and pollution control wastes, whether or not hazardous within the meaning of RCRA.

#### **IX. Indemnification and Insurance.**

A. General Indemnification. For purposes of this Section only, the following terms shall have the meanings listed:

a. Claims means all claims, damages, liability, losses, costs and expenses, court costs and reasonable attorneys' fees, including attorneys' fees incurred by the City in the enforcement of this indemnity obligation.

b. Lessee's Agents means Lessee's officers, employees, successors, assigns and other agents.

c. City means City and its agents, officials, officers and employees.

B. Coverage. Lessee's obligations under this Paragraph with respect to indemnification of City for acts or omissions, including negligence, shall be limited to the coverage and limits of insurance that Lessee is required to procure and maintain under this Lease.

C. Negligence. Lessee shall defend, indemnify and hold harmless City from and against all claims arising out of or resulting from all acts or omissions in connection with this Lease to the extent caused by the negligence of Lessee or Lessee's Agents. Lessee is not obligated under this Section to indemnify City for the negligence of City.

D. In no event shall the language in this section constitute or be construed as a waiver or limitation of the City's rights or defenses with regard to sovereign immunity, governmental immunity, or other official immunities and protections as provided by the federal and state constitutions or by law.

Insurance. Lessee shall procure and maintain in effect throughout the duration of this Lease insurance coverage not less than the types and amounts specified in this section. In the event that additional insurance, not specified herein, is required during the term of this Lease, Lessee shall supply such insurance at City's cost. Policies containing a Self-Insured Retention are unacceptable to City.

1. Commercial General Liability Insurance with limits of \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate, written on an

"occurrence" basis. The policy shall be written or endorsed to include the following provisions:

- (a) Severability of Interests Coverage applying to Additional Insureds
- (b) Contractual Liability
- (c) Per Project Aggregate Liability Limit or, where not available, the aggregate limit shall be \$2,000,000.00
- (d) No Contractual Liability Limitation Endorsement
- (e) Additional Insured Endorsement, ISO form CG20 10, current edition or its equivalent

2. Workers' Compensation Insurance as required by statute, including Employers Liability with limits of:  
Workers' Compensation – Statutory Employers Liability - \$100,000 accident with limits of; \$500,000 disease-policy limit; \$100,000 disease-each employee.

3. Commercial Automobile Liability Insurance with a limit of \$1,000,000.00 per occurrence, covering owned, hired and non-owned automobiles. Coverage provided shall be on an "any auto" basis and written on an "occurrence" basis. This insurance will be written on a Commercial Business Auto form, or acceptable equivalent, and will protect against claims arising out of the operation of motor vehicles, as to acts done in connection with the Agreement.

4. Full Replacement Cost Insurance on all of the improvements on the Premises (now or hereafter existing) or used in connection therewith against any loss or damage by fire, flood, earthquake and other or any casualties or peril, and all other perils as are included within what is commonly known as "all risk coverage" for any improvements on the Premises with full replacement cost insurance, in amounts sufficient to prevent City from being or becoming a co-insurer within the terms of the policy or policies in question and in no event less than the full replacement cost value thereof, exclusive of the cost of foundations, excavations, and footings below the lowest basement floor, and without any deduction being made for depreciation. The replacement cost value

shall be determined from time to time, but not more frequently than once in any 12 consecutive calendar months at the request of City, by an appraiser, architect and/or contractor.

E. Insurance Policies. No policy may be canceled until after 30 days written notice of cancellation to City, ten days in the event of nonpayment of premium. The Commercial General and Automobile Liability Insurance specified above shall provide that the City and its agencies, officials, officers and employees, while acting within the scope of their authority, will be named as additional insureds for the services performed under this Lease. Lessee shall provide to City at execution of this Lease a certificate of insurance showing all required endorsements and additional insureds.

F. Insurance Companies. All insurance coverage must be written by companies that have an A.M. Best's rating of "A-V" or better, and are licensed or approved by the State of Missouri to do business in Missouri.

G. Maintenance of Insurance. Regardless of any approval by the City, it is the responsibility of Lessee to maintain the required insurance coverage in force at all times; its failure to do so will not relieve it of any contractual obligation or responsibility. In the event of Lessee's failure to maintain the required insurance in effect, City may obtain such insurance and any premiums paid by the City shall be payable by Lessee to the City with the next installment of rent due under the Lease with interest thereon of one and one-half percent (1.5%) per month or may pursue its remedies for breach of this Lease as provided for herein and by law. Lessee understands and agrees that insurance coverages may be reasonably increased or added to in order to protect the City and its property.

#### **X. Liens and Removal of Fixtures.**

A. Mechanic's/Materialman's Liens. Lessee will promptly cause to be released or bond around any mechanic's or materialman's or any other involuntary lien placed upon the Premises or the leasehold by reason of any

work or labor performed or materials furnished by any mechanic or materialman.

B. Removal of Lessee's Property. Lessee shall be allowed, at its expense, to remove Lessee's inventory, computers, maintenance equipment, furniture, furnishings, and other office equipment on the Premises when this Lease terminates, provided that Lessee repairs any damage to the Premises caused by such removal.

#### **XI. City Requirements.**

A. Gratuities and Kickbacks. The provisions of City's Code Section 3-303, prohibiting gratuities to City employees, and kickbacks by subcontractors, and Code Section 3-307 and 3-309, imposing sanctions for violations, shall apply to this Lease.

1. Gratuities. Lessee certifies that it has not and will not offer or give any city employee or officer a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation or preparation of any part of a contract requirement or purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any contract or subcontract, or to any solicitation or proposal therefor.

2. Kickbacks. Lessee certifies that no payment, gratuity, offer of employment or benefit has been or will be made by or on behalf of or solicited from a subcontractor under a contract to Lessee or higher tier subcontractor or any person associated therewith as an inducement for the award of a subcontract or order.

B. Conflicts of Interest. The provisions of City's Code Sections 3-301 prohibiting city officers and employees from having a financial or personal interest in any contract with City, and Code Sections 3-307 and 3-309, imposing sanctions for violations, shall apply to this Lease. Lessee certifies that no

officer or employee of City has, or will have, a direct or indirect financial or personal interest in this Lease, and that no officer or employee of City, or member of such officer's or employee's immediate family, either has negotiated, or has or will have an arrangement, concerning employment to perform services on behalf of Lessee in this Lease.

C. Prohibition Against Contingent Fees. The provisions of City's Code Section 3-305, prohibiting the retention of persons to solicit contracts for contingent fees, and Sections 3-307 and 3-309, imposing sanctions for violations, shall apply to this Lease. Lessee certifies that no person or selling agency has been employed or retained to solicit or secure this Lease upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by Lessee for the purpose of securing business. For breach or violation of this warranty, City shall have the right to annul this Lease without liability or, at its discretion, to deduct from the Lease price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

D. Earnings Tax/Occupational License Clearance. As a condition precedent to approval of this Lease, Lessee shall furnish the City sufficient proof from City's Commissioner of Revenue, dated not more than 60 days before the date furnished to the City, that it is not delinquent for any City earnings or occupational license taxes, including withholdings from its respective employees.

E. Records/Audit. The City Auditor, City's Director of Human Relations and the Aviation Department shall have the right to audit this Lease and all Lessee's books, documents and records relating thereto and such books, documents and records will be made available on ten (10) days written notice. Lessee agrees to maintain its books, records and documents relating to this Lease during the Lease term and for three (3) years thereafter.

## **XII. Miscellaneous Provisions.**

A. Headings; Construction of Lease. The headings of each section of this Lease are for reference only. Unless the context of this Lease clearly requires otherwise, all terms and words used herein, regardless of the number and gender in which used, shall be construed to include any other number, singular or plural, or any other gender, masculine, feminine or neuter, the same as if such words had been fully and properly written in that number or gender.

B. Merger. This Lease, including any referenced Attachments or Exhibits, constitutes the entire agreement between City and Lessee with respect to this subject matter, and supersedes all prior agreements between City and Lessee with respect to this subject matter, and any such prior agreement shall be void and of no further force or effect as of the date of this Lease.

C. Governing Law. This Agreement is made in and shall be construed and governed in accordance with the law of the State of Missouri without giving effect to Missouri's choice of law provisions. The City and Contractor: (1) submit to the jurisdiction of the state and federal courts located in Jackson County, Missouri; (2) waive any and all objections to jurisdiction and venue; and (3) will not raise forum non conveniens as an objection to the location of any litigation.

D. Americans with Disabilities Act. Lessee agrees to comply, during the course of this Agreement, with all provisions of the Americans with Disabilities Act, Public Law 101-336 as well as 28 CFR Parts 35 and 36 and 29 CFR Part 1630, as applicable and as amended from time to time.

E. Rights & Remedies Cumulative. All rights and remedies granted to City herein and any other rights and remedies which City may have at law and in equity are hereby declared to be cumulative and not exclusive, and the fact that the City may have exercised any remedy without terminating this Lease shall not impair City's

rights thereafter to terminate or to exercise any other remedy herein granted or to which City may be otherwise entitled.

F. Modification.

1. Unless stated otherwise in this Lease, no provision of this Lease may be waived, modified or amended except by written amendment signed by City and Lessee.

2. No act, conversation or communication with any officer, agent or employee of City, either before or after the execution of this Lease, shall affect or modify any term or terminology of this Lease and any such act, conversation or communication shall not be binding upon City or Lessee.

G. Severability of Provisions. Except as specifically provided herein, all of the provisions of this Lease shall be severable. In the event that any provision of this Lease is found by a court of competent jurisdiction to be unconstitutional or unlawful, the remaining provisions of this Lease shall be valid unless the court finds the valid provisions of this Contract are so essentially and inseparably connected with and so dependent upon the invalid provision(s) that it cannot be presumed that the parties to this Lease could have included the valid provisions without the invalid provision(s); or unless the court finds that the valid provisions, standing alone, are incapable of being performed in accordance with the intentions of the parties.

H. Binding Effect. This Lease shall be binding upon City and Lessee and their successors in interest.

I. Representations and Warranties. City and Lessee each certify that it has the power and authority to execute and deliver this and to perform this Lease in accordance with its terms.

J. Compliance With Laws. Lessee shall comply with all federal, state and local laws, ordinances and regulations applicable to this Lease. Lessee, at its own expense, shall secure all occupational and professional licenses and permits from public or private sources necessary for the

fulfillment of its obligations under this Lease.

K. Force Majeure. Neither party shall be liable to the other for any failure, delay or interruption in the performance of any of the terms, covenants or conditions of this Agreement due to causes beyond the control of that party including, without limitation, strikes, boycotts, labor disputes, embargoes, shortages of material, acts of God, acts of the public enemy, action of superior governmental authority, weather conditions, floods, riots, rebellion, sabotage or any other circumstance for which such party is not responsible or which is not in its power to control.

L. Interpretation. The language of this Lease shall be construed according to its fair meaning, and not strictly for or against either City or Lessee.

M. No Personal Liability. No councilman, director, officer, employee or other agent of either party shall be personally liable under or in connection with this Lease.

N. Time of the Essence. Time is of the essence of this Lease.

O. Memorandum of Lease. At the request of the City or Lessee, the parties hereto shall execute and acknowledge a memorandum hereof in recordable form that Lessee shall file for recording in the real property records of the county in which the Premises is situated.

P. Estoppel Certificate. The City, upon request by Lessee or a Leasehold Mortgagee, shall execute an estoppel certificate confirming the terms of this Lease, certifying as to whether or not Lessee is in compliance with all of the terms and conditions of this Lease, and containing such other matters as may be reasonably requested.

Q. No Merger. In the event that the same person or entity should acquire both the interest held by the City and the interest held by Lessee in this Lease, same shall not work a merger of such interests and this



Lease shall continue in effect, unless a written instrument to the contrary is signed by the holder of such interests and filed in the real property records of the county in which the Premises is situated.

R. Consents and Approvals. In any case where a consent or approval by the City or Lessee is required hereunder, such consent or approval shall not be unreasonably withheld, conditioned or delayed.

S. Affirmative Action. To the extent applicable, Lessee shall establish and maintain for the term of this Lease an Affirmative Action Program in accordance with the provisions of Chapter 3 (Section 3-401 and Section 3-403) of the Code, the rules and regulations relating thereto and any additions or amendments. Lessee shall not discriminate against any employee or applicant for employment because of race, color, creed or religion, ancestry or national origin, sex, handicap or disability, age, familial status, marital status or sexual orientation, in a manner prohibited by Chapter 3 of the Code. If Lessee fails, refuses or neglects to comply with Chapter 3 of the Code, then the failure shall be deemed a total breach of this lease and this Lease may be terminated, canceled or suspended, in whole or in part, and Lessee may be declared ineligible for any further contracts funded by the City for a period of one (1) year. This is a material term of this Lease.

### **XIII. General Civil Rights Provisions.**

To the extent applicable, the Lessee agrees that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the Lessee/Contractors from the bid/RFP solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

### Part III

#### **SUPPLEMENTAL TERMS AND CONDITIONS TO ALL AIRPORT AGREEMENTS**

##### **I. Assurances.**

A. Lessee/Contractor shall furnish its services on a fair, equal and not unjustly discriminatory basis to all users of the Airport.

B. Lessee/Contractor shall charge fair, reasonable and not unjustly discriminatory prices for each unit or services; provided that, Lessee/Contractor may be allowed to make reasonable and non-discriminatory discounts, rebates or other similar types of price reductions to volume purchasers. Non-compliance with this requirement shall be a material breach of this Lease/Contract/Agreement for which the City shall have the right to terminate this Lease/Contract/Agreement and any estate created herewith, without liability therefor; or, at the election of the City or the United States, either or both of said governments shall have the right to judicially enforce said requirement.

C. Lessee/Contractor warrants that no person shall, on the grounds of race, creed, color, national origin, sex, age or handicap, be excluded from participating in any activity conducted on or from the Premises, or otherwise be excluded from the benefits offered by Lessee/Contractor to the general public.

D. As part of the consideration of this Lease/Contract/Agreement, Lessee/Contractor does hereby covenant and agree that in the event facilities are constructed, maintained, or otherwise operated on the Premises for a purpose for which a DOT program or activity is extended for another purpose involving the provision of similar services or benefits, Lessee/Contractor shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Code of Federal Regulations, Title 49, DOT, Subtitle A, Office of the Secretary of Transportation,

Part 21-Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights of 1964, as said regulations exist and may be amended from time to time.

In this Lease/Contract/Agreement, the Covenant is hereby made a covenant running with the land for the term of the Lease/Contract/Agreement, and is judicially enforceable by the United States.

E. As part of the consideration of the Lease/Contract/Agreement, Lessee/Contractor does hereby covenant and agree that:

1. No person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; and

2. In the construction of any improvements on, over or under such Premises and the furnishing of services thereon, no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.

3. That the Lessee/Contractor will use the premises in compliance with all other requirements imposed by or pursuant to the List of discrimination Acts and Authorities.

In this Lease/Contract/Agreement, the Covenant is hereby made a covenant running with the land for the term of the Lease/Contract/Agreement, and is judicially enforceable by the United States.

F. The foregoing discrimination covenants are a material part of this Lease/Contract/Agreement and for breach thereof the City shall have the right to terminate this Lease/Contract/Agreement and to reenter and repossess the Premises and facilities thereon, and hold the same as if said Lease/Contract/Agreement had never been made. This provision does not become effective until the procedures of 49

CFR Part 21 are followed and completed, including expiration of appeal rights.

G. Lessee/Contractor agrees to insert the foregoing six provisions (A-F) in any Lease/Contract/Agreement by which Lessee/Contractor grants a right or privilege to any person, firm or corporation to render accommodations and/or services to the public on or from the Premises.

H. Lessee/Contractor agrees that it will undertake an affirmative action plan in conformance with 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin or sex be excluded from participating in any employment, contracting or leasing activities covered in 14 CFR Part 152, Subpart E. Lessee/Contractor assures that no person will be excluded on such grounds from participating in or receiving the services or benefits of any program or activity covered by Subpart E. Lessee/Contractor further agrees that it will require its covered suborganizations to provide assurances to Lessee/Contractor that they similarly will undertake affirmative action programs and that they will require like assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E.

I. The City reserves the right, but is in no way obligated to Lessee/Contractor, to develop or improve the landing area of the Airport as it deems appropriate, without regard to Lessee/Contractor, and without interference or hindrance from Lessee/Contractor.

J. The City reserves the right, but is in no way obligated to Lessee/Contractor, to maintain and keep in repair the landing area of the Airport and all publicly owned facilities of the Airport, together with the right to direct and control all activities of Lessee/Contractor in this regard.

K. Lessee/Contractor acknowledges that this Lease/Contract/Agreement is subordinate to any existing or future agreement between the City and the United States concerning the development, operation or maintenance of the Airport.

L. The Lease/Contract/Agreement is subordinate to the reserved right of the City its successors and assigns, to occupy and use for the benefit of the public the airspace above the Premises for the right of flight for the passage of aircraft. This public right of flight shall include the right to cause in said airspace any noise inherent in the operation of any aircraft through said airspace or in landing at or taking off from, or operation on an Airport.

M. Lessee/Contractor agrees to comply with the notification and review requirements of Federal Aviation Regulation Part 77 in the event future construction of a structure is planned for the Premises, or in the event of a planned modification of a structure on the Premises. Lessee/Contractor covenants for itself, its successors and assigns that it will not erect or permit the erection of any structure or permit the growth of any tree, on the Premises above the mean sea level elevation that is defined as an object that effects navigable airspace as defined in Federal Aviation Regulations Part 77. As a remedy for the breach of said covenant the City of Kansas City, Missouri, reserves the right to enter upon the Premises and remove the offending structure or cut the offending tree, all at the expense of Lessee/Contractor.

N. Lessee/Contractor, by accepting this Lease/Contract/Agreement, covenants for itself, its successors and assigns that no use will be made of the Premises that might in any manner interfere with the landing and taking off of aircraft from the Airport, or otherwise constitute a hazard to air navigation. As a remedy for the breach of said covenant, the City reserves the right to enter upon the Premises and cause the abatement of such interference, all at the expense of Lessee/Contractor.

O. Lessee/Contractor acknowledges that nothing contained in this Lease/Contract/Agreement shall be construed to grant or authorize the granting of an exclusive right within the meaning of 49 U.S.C. Section 40103(e).

P. This Lease/Contract/Agreement and all provisions hereof are subordinate to whatever rights the United States now has or in the future may acquire affecting the control, operation, regulation and taking-over of the Airport, or the exclusive or non-exclusive use of the Airport by the United States during a time of war or national emergency.

## **II. Right to Amend.**

In the event that the Federal Aviation Administration or its successors requires modifications or changes in this Agreement as a condition precedent to the granting of funds for the improvement of the Airport, or otherwise, the Lessee/Contractor agrees to consent to such amendments, modifications, revisions, supplements, or deletions of any of the terms, conditions, or requirements of this Agreement as may be reasonably required.

## **III. Immigration Reform and Control Act of 1986.**

Lessee/Contractor understands and acknowledges the applicability of the IRCA to it. Lessee/Contractor agrees to comply with the provisions of IRCA as it applies to its activities under this Lease/Contract/Agreement and to permit the City to inspect its personnel records to verify such compliance.

## **IV. Disadvantaged Business Enterprise Requirements.**

To the extent that this Lease/Contract/Agreement is covered by 49 CFR Part 23, Subpart F, Lessee/Contractor agrees that this Lease/Contract/Agreement is subject to the requirements of the U.S. Department of Transportation Regulations at 49 CFR Part 23, Subpart F. Lessee/Contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award, or performance of any Lease/Contract/Agreement covered by 49 CFR Part 23, Subpart F.

Lessee/Contractor agrees to include the foregoing statement in any subsequent Lease/Contract/Agreement that it enters

and cause those businesses to similarly include said statement in further agreements.

## **V. Restricted Areas/Security.**

Lessee/Contractor will comply with any and all applicable present and future rules, regulations, restrictions, ordinances, statutes, laws and/or orders of any federal, state or local governmental entity regarding airfield security. Lessee/Contractor shall fully comply with applicable provisions of the Code of Federal Regulations (CFR) Title 49: Transportation.

Lessee/Contractor shall fully comply specifically with 49 CFR Part 1540 – Civil Aviation Security; 49 CFR Part 1542 – Airport Security; 49 CFR Part 1544 – Aircraft Operator Security: Air Carriers and commercial Operators (if Lessee/Contractor is an air carrier); and 49 CFR Part 1546 – Foreign Air Carrier Security (if Lessee/Contractor is a foreign air carrier). City has adopted a Security Plan for the Airport approved by the Transportation Security Administration (TSA) pursuant to Department of Transportation (DOT) TSA CFR 49 1542. Lessee/Contractor agrees to be bound by and follow the Airport Security Plan. Any access to the Airport granted to Lessee/Contractor shall not be used, enjoyed or extended to any person, entity or vehicle engaged in any activity or performing any act or furnishing any service for or on behalf of the Lessee/Contractor that Lessee/Contractor is not authorized to engage in or perform under this Lease/Contract/Agreement unless expressly authorized in writing by the Director in accordance with TSA CFR 49 1542. In the event Lessee/Contractor, its officer, employees, invitees or Lessee/Contractors cause or contribute to unauthorized persons or vehicles entering the air operations areas of the Airport, or otherwise violate the Security Plan or any laws, regulations, rules, etc. governing airport security, and in addition to any other remedies available hereunder, Lessee/Contractor shall be liable to City for an amount equal to any civil penalty imposed on City for such violations and hereby agrees to indemnify City for any such federal civil penalties, provided City

shall promptly notify Lessee/Contractor in writing of any claimed violations so as to permit Lessee/Contractor an opportunity to participate in any investigation or proceedings.

#### **VI. General Civil Rights Provisions.**

The Lessee/Contractor agrees that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the Lessee/Contractors from the bid/RFP solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

If, Lessee transfers its obligation to another, the transferee is obligated in the same manner as the Lessee/Tenant/Concessionaire. This provision obligates the Lessee/Tenant/Concessionaire for the period during which the property is owned, used or possessed by the Lessee/Tenant/Concessionaire and the airport remains obligated to the Guidelines for Contract Provisions for Obligated Sponsors and Airport Improvement Program Projects Issued on June 19, 2018 Page 13 Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

#### **VII. Civil Rights-Title VI Assurances.**

##### Title VI Solicitation Notice:

The City, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders or offerors that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises or airport concession disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or

national origin in consideration for an award.

##### Compliance with Nondiscrimination Requirements

During the performance of this contract, the Lessee/Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Lessee/Contractor") agrees as follows:

1. Compliance with Regulations: The Lessee/Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Statutes and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. Non-discrimination: The Lessee/Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Lessee/Contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. Solicitations for subcontractors, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Nondiscrimination Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.

4. Information and Reports: The Lessee/Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the City or the Federal Aviation Administration to be pertinent to ascertain compliance with such Acts and Authorities and instructions. Where any information required of a Lessee/Contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Lessee/Contractor will so certify to the City or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of a Lessee/Contractor's noncompliance with the Non-discrimination provisions of this contract, the City will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

- a. Withholding payments to the Lessee/Contractor under the contract until the Lessee/Contractor complies; and/or
- b. Cancelling, terminating, or suspending a contract, in whole or in part.

6. Incorporation of Provisions: The Lessee/Contractor will include the provisions of paragraphs one through seven in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Lessee/Contractor will take action with respect to any subcontract or procurement as the

City or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Lessee/Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Lessee/Contractor may request the City to enter into any litigation to protect the interests of the City. In addition, the Lessee/Contractor may request the United States to enter into the litigation to protect the interests of the United States.

7. For persons with Limited English Proficiency (LEP), please contact KCAD Airport Communications Center (ACC) at 816-243-4000 for help to obtain interpreters of many different languages.

#### **VIII. TITLE VI LIST OF PERTINENT NONDISCRIMINATION ACTS AND AUTHORITIES**

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation— Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits

- discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100); Guidelines for Contract Provisions for Obligated Sponsors and Airport Improvement Program Projects Issued on June 19, 2018 Page 23
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

#### **IX. Additional Records Requirements.**

In addition to the requirements related to Records in Part II of this Contract, the Federal Aviation Administration and the Comptroller General of the United States or any of their duly authorized representatives shall have a right to examine or audit all Records and Contractor shall provide access to them of all Records upon ten (10) days written notice.

#### **X. Clean Air and Water Pollution Control.**

Contractor agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 USC § 740-7671q) and the Federal Water Pollution Control Act as amended (33 USC § 1251-1387). The Contractor agrees to report any violation to the City immediately upon discovery. The City assumes responsibility for notifying the Environmental Protection Agency (EPA) and the Federal Aviation Administration. Contractor must include this requirement in all subcontracts that exceeds \$150,000.

#### **XI. Texting When Driving.**

In accordance with Executive Order 13513, “Federal Leadership on Reducing Text Messaging While Driving”, (10/1/2009) and DOT Order 3902.10, “Text Messaging

While Driving”, (12/30/2009), the Federal Aviation Administration encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or subgrant.

In support of this initiative, the City encourages the Contractor to promote policies and initiatives for its employees and other work personnel that decrease crashes by distracted drivers, including policies that ban text messaging while driving motor vehicles while performing work activities associated with the project. The Contractor must include the substance of this clause in all sub-tier contracts exceeding \$3,500 that involve driving a motor vehicle in performance of work activities associated with the project.

## **XII. ENERGY CONSERVATION REQUIREMENTS**

Contractor and Subcontractor agree to comply with mandatory standards and policies relating to energy efficiency as contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 USC 6201et seq).

## **XIII. FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)**

All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers.

The contractor has full responsibility to monitor compliance to the referenced statute or regulation. The contractor must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division

## **XIV. OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970**

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Contractor must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Contractor retains full responsibility to monitor its compliance and their subcontractor’s compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). Contractor must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.



## ATTACHMENT A

**Memorandum of Understanding ("MOU")  
Between  
Children's Mercy Hospital and City of Kansas City, Missouri**

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1. Purpose: To provide a basis for the rental of space at the arrival baggage claim area inside the new terminal of Kansas City International Airport. This MOU describes the proposed responsibilities and relationship between the City of Kansas City, Missouri through its Aviation Department and Children's Mercy Hospital (hereafter referred to as "KCI" and "Children's Mercy") as it relates to the proposed rental of space.
2. Description of Area: Children's Mercy will install a brand display in the arrival baggage area. Location and schematic provided as **Exhibit "A"**. This Children's Mercy brand display as depicted in Exhibit "A" is subject to change as the new terminal is constructed.
3. Term of this Memorandum of Understanding:
  - a. The term of this MOU begins July 16, 2021 and will terminate upon the execution of the Lease Agreement (defined below), or earlier if either party gives notice of termination to the other.
  - b. Following execution of this MOU, the parties will promptly commence negotiations with the objective of completing and executing a definitive lease agreement ("Lease Agreement"), the first draft of which will be presented by KCI to Children's Mercy at a later date. The expected lease commencement date is subject to completion of the new terminal and date of official occupancy given by KCI. An anticipated opening and occupancy of the space is on or before March, 2023.
  - c. Neither KCI nor Children's Mercy will have any legally-binding obligation with respect to the subject matter of this MOU until and unless the parties execute the Lease Agreement.
  - d. The following sections of this MOU describe generally the proposed elements of the Lease Agreement as presently envisioned by the parties.
4. General Terms and Conditions:
  - a. Children's Mercy shall install a brand display at its sole expense as depicted on Exhibit A.
  - b. Children's Mercy shall pay a rental for this brand display at a rate of \$100,000 each year.
  - c. The term of the Lease Agreement shall be five (5) years beyond the beginning of commercial use of the airport center facility, currently scheduled to be the 1<sup>st</sup> quarter 2023. Pending negotiations, an additional term of five (5) years may be offered, however, such additional term will have refreshing/updating of the marketing elements.
  - d. Children's Mercy shall clean the brand display on a regular basis at its sole expense.
  - e. Children's Mercy shall maintain and replace broken parts of the brand display during the term of the Lease Agreement at its sole expense.

- f. No health care provider or other health care related organization, other than Children's Mercy, shall be permitted to advertise or market in the baggage claim area.
- g. This MOU shall become effective on the Effective Date and may be terminated by either party at any time for any reason upon written notice to the other party.

5. Provided by Children's Mercy:

- a. Children's Mercy will be responsible for construction of the brand display noted in Exhibit "A". KCI will give notice of a date that construction may begin in a reasonable agreed amount of time.
- b. Children's Mercy shall be responsible for providing KCI with blueprints and as needed correspondence with Children's Mercy's architecture firm. As a contract is signed with said architecture firm KCI will be provided with the details and contact information.
- c. Children's Mercy shall be responsible for providing contact information and details as a construction company is sought and signed with Children's Mercy. KCI shall have the ability to concur with the use of said company.
- d. KCI will provide, and Children's Mercy shall be responsible to understand, what expectations and rights are granted for signage, exterior design needs/opportunities and interior design needs/opportunities from KCI. Children's Mercy will abide by these expectations.
- e. To the extent necessary, Children's Mercy shall provide staffing and other support for the brand display inside the KCI airport terminal. These details and expectations will be provided in the Lease Agreement.

6. KCI Shall Provide:

- a. KCI will be responsible for construction of the airport center facility as provided for with the 100% IFC (Issued for Construction) drawing files and specifications files/documents for the New Single Terminal and Parking at KCI project.
- b. KCI will provide to Children's Mercy the 100% IFC (Issued for Construction) drawing files and specifications files/documents for the New Single Terminal and Parking at KCI project as they become available.

7. Compliance with Regulations and Directives:

- a. Children's Mercy and its volunteers will follow all federal, state, local laws, and KCI Rules, Regulations, Policies, and Directives as well as approved training programs.

8. Notices: All official correspondence shall be mailed to the addresses below:

a. Children's Mercy  
Laurie Ellison  
Senior Vice President-Chief Marketing Officer  
2401 Gilham Road  
Kansas City, MO 64108  
816-701-4586  
lellison@cmh.edu

b. Kansas City International Airport  
Patrick Klein  
Director of Aviation  
601 Brasilia Avenue  
Kansas City, MO 64153  
816-243-3100  
Pat.Klein@KCMO.org

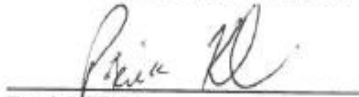
**Children's Mercy**



**Rob Steele, MD**  
**Executive Vice President**

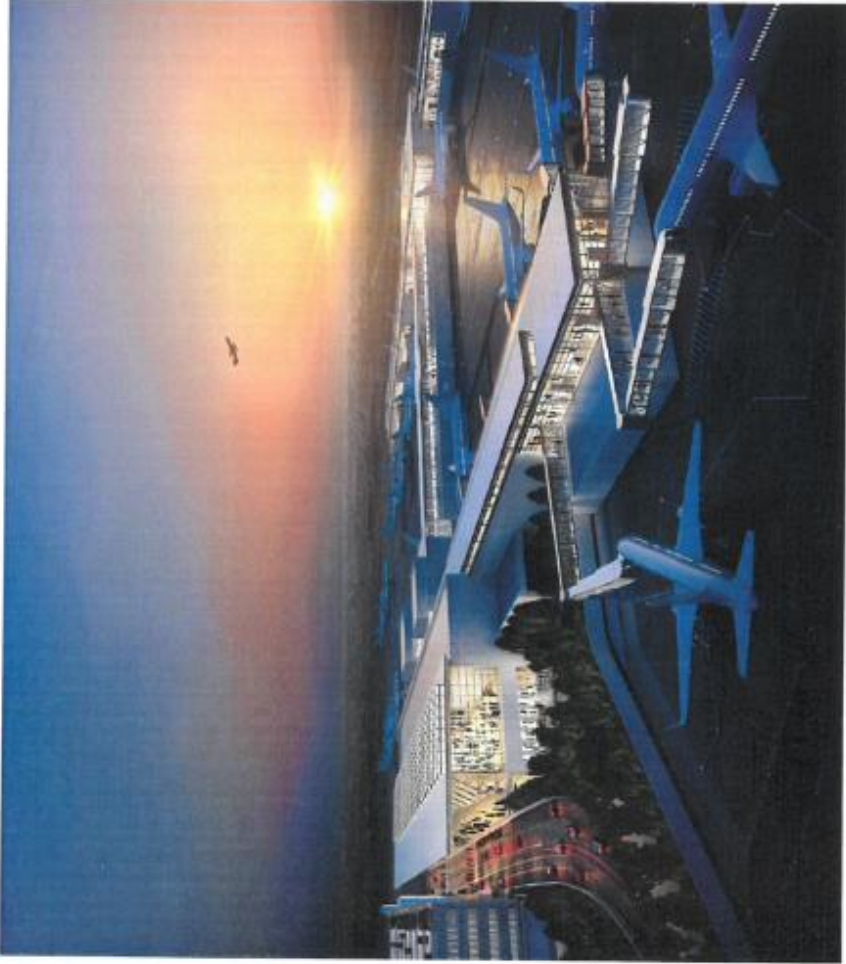
**Date:** 8/4/2021

**Kansas City International Airport**



**Patrick Klein**  
**Director of Aviation**

**Date:** 7-30-21

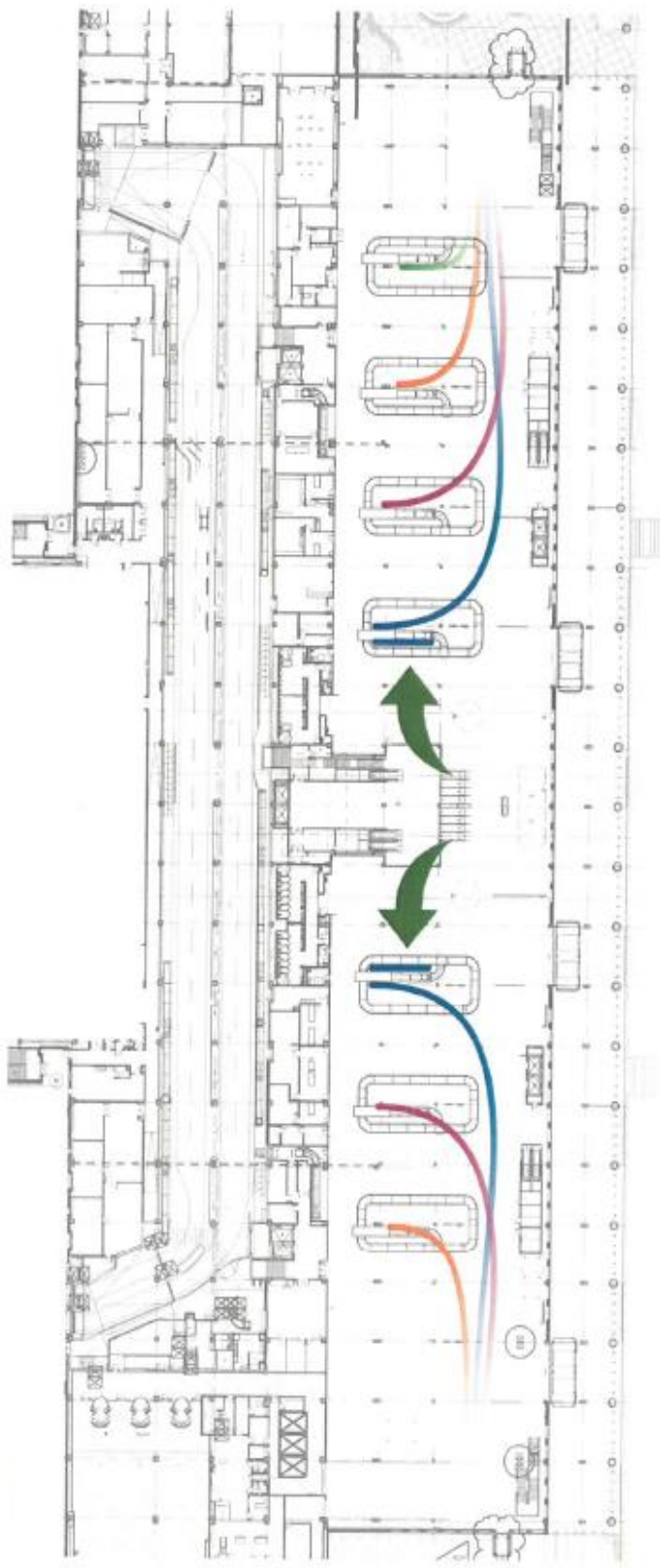


MOU Exhibit A

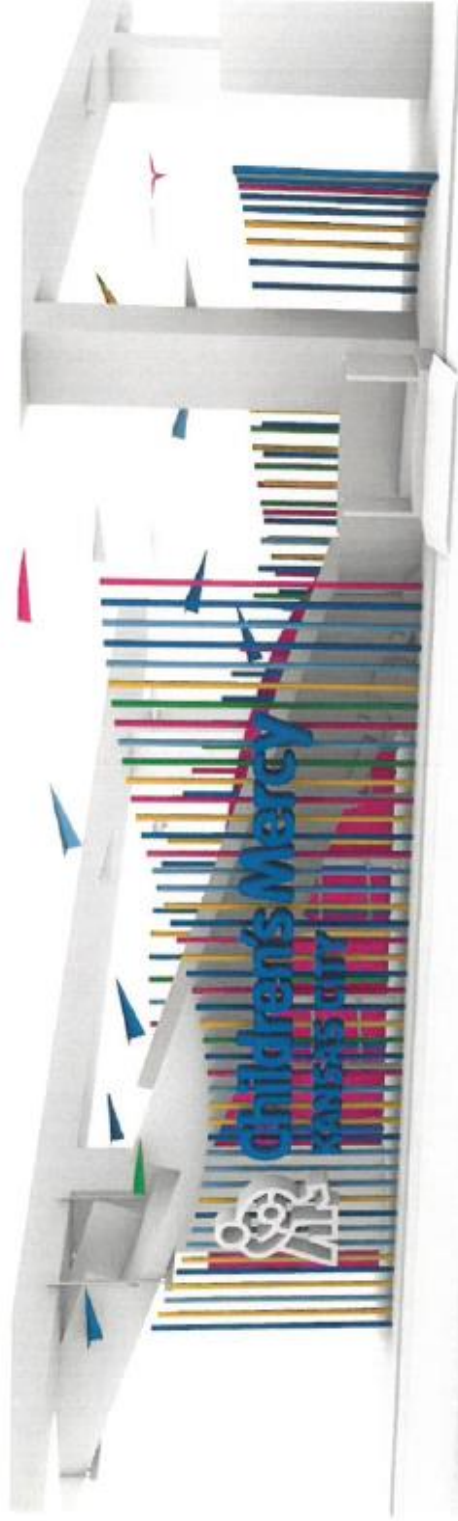
# Children's Mercy Brand Display

July 2021

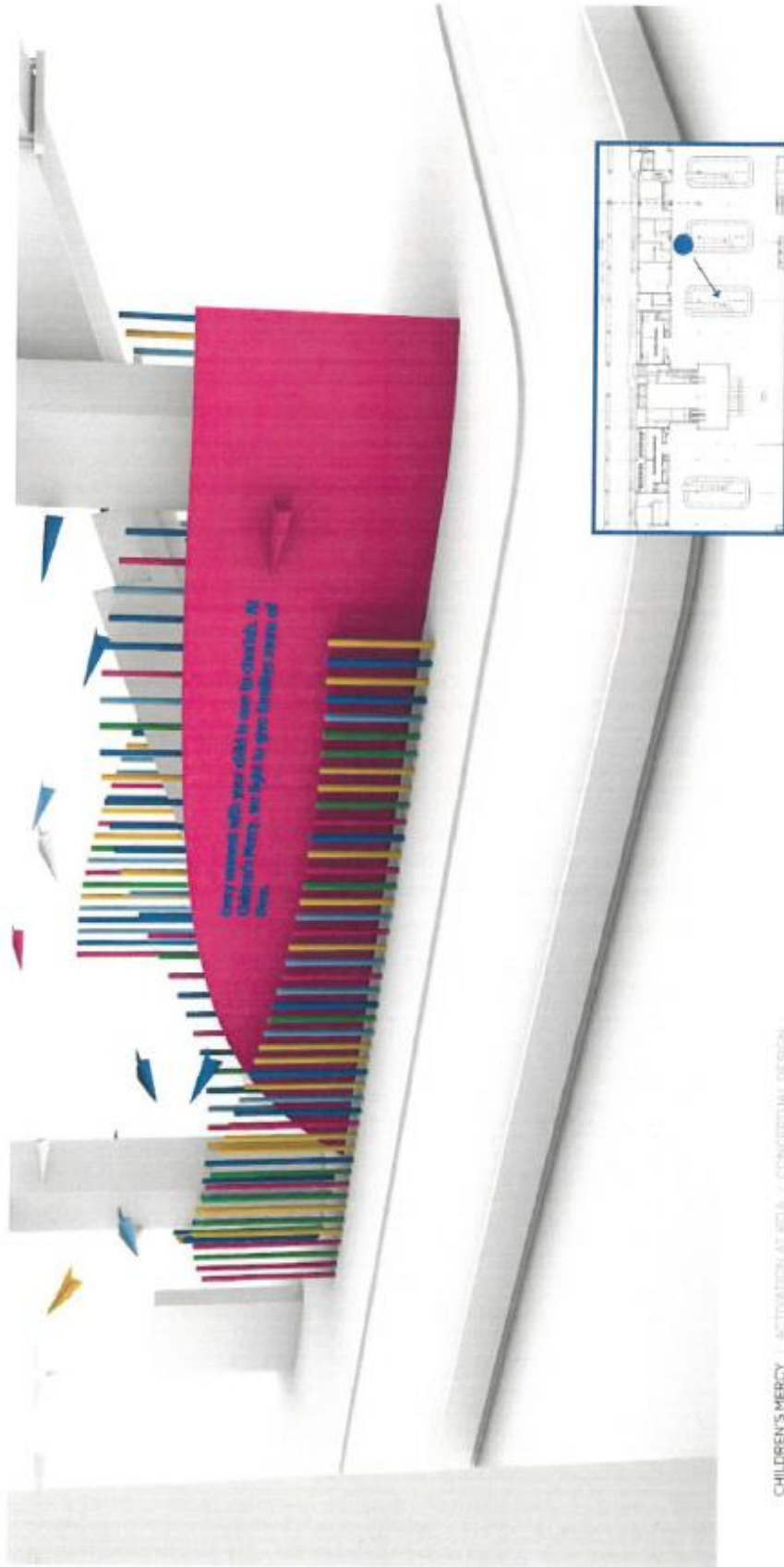
## Baggage Claim Area



Green arrows depict location of large CM displays.  
Color "swooshes" indicate "flight plan" of aluminum airplanes overhead.







CHILDREN'S MERCY / ACTIVATION AT RDA // CONCEPTUAL DESIGN



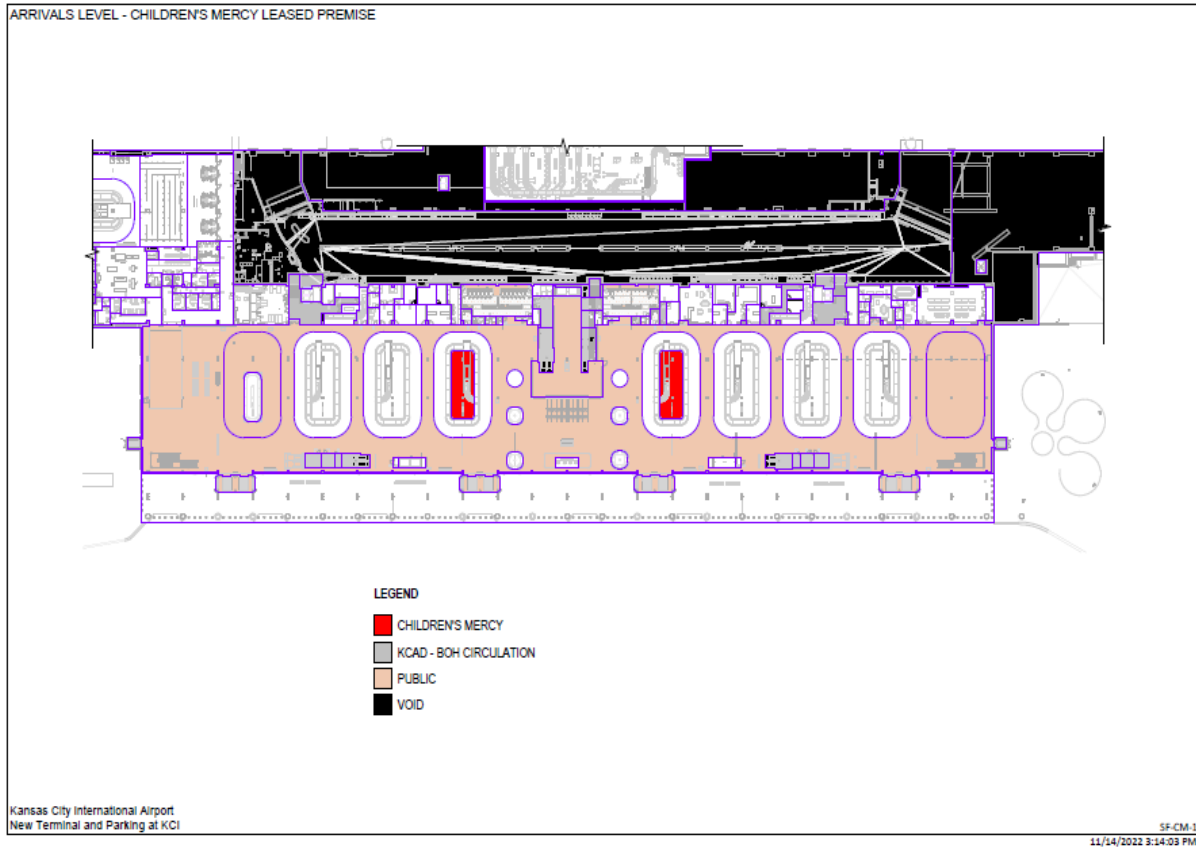






## EXHIBIT A Leased Premises

*This Exhibit may be amended between the Director of Aviation and Lessee without further Council approval.*



In addition to the displays located on new terminal Carousels 4 & 5, there are 290 metal “planes” that hang throughout the arrivals level. Each of these planes are part of the premise as well as the display located on the carousels.

