

CLEAR CONCESSION AGREEMENT
at
KANSAS CITY INTERNATIONAL AIRPORT
Contract No. 6222100046

THIS CONCESSION AGREEMENT is made and entered into this _____ day of _____, 2022, between KANSAS CITY, MISSOURI, a municipal corporation of the State of Missouri, (“City”), and ALCLEAR, LLC, (“Concessionaire” or “CLEAR”).

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

WHEREAS, Airport desires to provide Registered Traveler services to its security lanes; and

WHEREAS, Alclear, LLC is the only company authorized by the United States Transportation Security Administration (“TSA”) to provide Registered Traveler services at US airports at this time.

WHEREAS, the Concessionaire is a qualified operator of such a concession and generates income for the City;

NOW, THEREFORE, for and in consideration of the premises, and of the mutual covenants herein contained, and the fees to be paid by the Concessionaire, it is agreed and understood by and between the City and the Concessionaire as follows:

This Concession Agreement consists of three parts: Part I, Part II Aviation Department Standard Concession Agreement 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
TERM

Sec 1.1. Term of Concession Agreement. This Concession Agreement will begin on the opening of the new terminal at the Kansas City International Airport on or before March 3, 2023 (“Commencement Date”), ending on April 30, 2028.

- A. Renewals. The City, at its sole discretion, reserves the right to extend the term of this Agreement for additional one-year periods.
- B. Termination. The City or Concessionaire may terminate this Concession Agreement at any time with a ninety (90) day written notice, but each party agrees to use good faith efforts to provide advance notice to the other party if it is considering doing so.

ARTICLE II **RESERVATIONS**

Sec. 2.1. Concession Rights. The Concessionaire's rights are as follows:

1. CLEAR Obligations

(a) CLEAR Registered Traveler Services.

The Parties agree that CLEAR will establish and operate, subject to TSA approval, a Registered Traveler Program at Kansas City International Airport ("Airport"), as follows:

- (1) CLEAR will establish dedicated CLEAR Registered Traveler ("RT") lanes, as is shown in **Exhibit A – MCI Clear Configuration**, which will meet all requirements set forth by TSA for the provision of RT services, at locations mutually determined by CLEAR and Airport.
- (2) CLEAR will staff its operations with a manager and a team of ambassadors trained in CLEAR enrollment, verification, sales and other operational procedures.
- (3) CLEAR shall furnish and install verification stations at airport security checkpoints for expediting passenger screening and enrollment and customer service stations for travelers to sign-up for or inquire about the Registered Traveler services. CLEAR will be responsible for furnishing, installing, constructing as necessary, and integrating such stations.
- (4) CLEAR shall assume all costs related to the described responsibilities to conduct Registered Traveler operations, including services, equipment, personnel, facilities, and removal of equipment and related materials when operations are terminated at a site.
- (5) CLEAR shall ensure all of its employees obtain and display an Airport identification badge issued by the Airport badging office. CLEAR acknowledges that failure to maintain a security badge may result in inability for an individual team member to continue to work at Airport location.
- (6) Airport and CLEAR will collaborate to determine the hours of operation of the Registered Traveler Service at Airport. The objective will be to maximize customer accommodation. Following establishment of operating hours CLEAR agrees that it will accommodate all reasonable operating hour requests presented by Airport.

The Parties also agree that CLEAR will operate TSA PreCheck enrollment services at mutually agreed locations at the Airport.

(b) **CLEAR Covenants.**

During the course of its operations, CLEAR shall conduct its operations only in accordance with and after TSA approval of an amendment to the Airport Security Plan (“ASP Amendment”) and agrees to indemnify the Airport for any losses related to any failure to comply with such Amendment at any time.

(c) **SAFETY Act.**

During the term of this Agreement, CLEAR will maintain the certification of its biometric system as a Qualified Anti-Terrorism Technology by the U.S. Department of Homeland Security (DHS) under the SAFETY Act. If, during the term of this Agreement CLEAR’s certification is modified, it will provide to Airport copies of such written, modified certification within a reasonable period of its receipt from DHS or any other appropriate governmental agency.

(d) **Airport Security Plan Amendment.**

Airport and CLEAR agree that an amendment to the Airport’s Airport Security Plan is required in order to implement the Registered Traveler Program at Airport. Airport and CLEAR will collaborate with local TSA to amend its Airport Security Plan.

CLEAR acknowledges and agrees that: [i] it will not be able to commence the Registered Traveler program under this Agreement until it has received the appropriate documentation from Airport and TSA authorizing such program to be implemented; [ii] Airport is a "non-Federal Government customer" of CLEAR for purposes of the SAFETY Act; and [iii] CLEAR has been Certified as Qualified Anti-Terrorism Technology under the SAFETY Act.

ARTICLE III
FEES

Sec. 3.1. Fees.

A. Upfront Payment. Concessionaire shall pay to City \$500,000 within 30 days following the date upon which all applicable enrollment and verification programs to be provided by CLEAR to the Airport have launched and are fully operational.

B. Concession Fee. Concessionaire shall pay to City ten percent (10%) of the Gross Receipts, as defined below.

C. Definition of Gross Receipts. “**Gross Receipts**” means all monies paid to CLEAR, whether for cash, credit or otherwise, from CLEAR members who enroll or renew in CLEAR’s biometrics-based Registered Traveler Program, for which the enrollee provides an address within the Catchment Area, as identified in Exhibit A, regardless of when, where or how, the

membership is sold, less any applicable customer/membership refunds. A “sale” shall be deemed to have been consummated for purposes hereof, and the entire amount of the sales price shall be included in Gross Receipts at the time payments are received by CLEAR.

Gross Receipts shall not include (i) any sums collected for any federal, state, county and municipal sales taxes, so-called luxury taxes, use taxes, consumer excise taxes, gross receipts taxes and other similar taxes and/or government-mandated user fees now or hereafter imposed by law upon the sale of merchandise and products or services to the extent paid by CLEAR to any duly constituted governmental/taxing authority; (ii) the portion of the sales price for all merchandise and products returned by customers and accepted for credit to the extent of the credit actually given to the customer as well as rebates, exchanges or allowances made to customers; (iii) shipping and delivery charges if there is no profit to CLEAR and such charges are merely an accommodation to customers; (iv) discounts given by CLEAR on sales of memberships; (v) proceeds from the sale of gift certificates or like vouchers until such time as the gift certificates or like vouchers have been treated as a sale pursuant to CLEAR’s recordkeeping system or have been recognized as income; (vi) cash or credit refunds, but only to the extent that the amounts refunded or credited were originally included in Gross Receipts; (vii) credit card company fees or charges and (viii) all revenues received for TSA PreCheck enrollment.

“**Catchment Area**” shall mean the counties listed within Exhibit B.

- C. Additional Fees. In addition to the Concession Fee, Concessionaire agrees to pay as Additional Fees any sums which may become due by reason of failure of Concessionaire to comply with any covenants of this Agreement and all damages, costs and expense which City may incur because of any default of Concessionaire or failure to perform and any damages caused to the Premises by any act or negligence of Concessionaire, its officers, employees, agents and invitees.
- D. Method and Remittance of Payment. Concessionaire shall make concession fee payments monthly by the 20th of each month without notice of demand by City and without abatement, deduction or set-off, except as herein specifically provided. The fees shall be made in legal tender of the United States and mailed to the Aviation Department, P.O. Box 210513, Kansas City, Missouri 64121-0513, payable to the “City Treasurer” **or electronically by utilizing the City’s approved Automated Clearing House (ACH) process.** .
- E. Unpaid Fees. All unpaid concession fees due to the City hereunder shall bear a service charge of one and one-half percent (1½ %) per month if not paid and received by City on or before the 20th day of the month in which said payments are due. Concessionaire agrees that it shall pay and discharge all costs and expenses, including attorneys' fees, incurred or expended by City in collection of all delinquent amounts due, including service charges.

Sec. 3.2. Additional Fees and Charges. The Concessionaire shall pay City additional fees and charges under the following conditions:

- A. If the City has paid any sum or sums or has incurred any obligations or expense for which the Concessionaire has agreed to pay or reimburse City.
- B. If the City is required or elects to pay any sum or sums or incur any obligations or expense because of the failure, neglect or refusal of Concessionaire to perform or fulfill any of the conditions of this Agreement.

Such payments shall include all interest, costs, damages and penalties in conjunction with such sums so paid or expenses so incurred and may be added to any installment of the fees, charges and rental thereafter due hereunder. Each and every part of such payment shall be recoverable by the City in the same manner and with like remedies as if it were originally part of the basic fees, charges and rental, as set forth herein.

For all purposes under this section, and in any suit, action or proceeding of any kind between the parties, any receipt showing the payment of any sum or sums by the City for any work done or material furnished shall be *prima facie* evidence against the Concessionaire that the amount of such payment was necessary and reasonable.

Sec. 3.3. Net Agreement. This Agreement, in every sense, shall be without cost to the City. It shall be the sole responsibility of the Concessionaire to equip, furnish, stock, keep, maintain, repair and operate the equipment, wiring and appurtenances required under this Agreement, at the Concessionaire's sole cost and expense.

Sec. 3.4. Prompt Payment. The Concessionaire covenants and agrees to pay promptly all lawful general taxes, special assessments, excises, license fees, permit fees, and utility service charges of whatever nature, applicable to its operation at the Airport, and to take out and keep current all licenses and permits, municipal, state or federal, required for the conduct of its business at and upon the Airport, and further covenants and agrees not to permit any of said taxes, assessments, excises, fees or charges to become delinquent.

Sec. 3.5. Reports. Concessionaire shall provide the City, in a form and detail satisfactory to the City, a true and correct statement of monthly Gross Revenue and also the cumulative annual gross receipts. Said monthly statement shall be due by the 20th day of the following month. Statements of Gross Revenue shall be certified as correct by an officer of the Concessionaire.

ARTICLE IV

CONCESSIONAIRE'S OPERATIONS

Sec. 4.1. Performance and Operating Standards. The Concessionaire will provide services in a first-class manner by adhering to high standards of operation and service regularity, as defined below and audited from time-to-time. When mutually agreed to by both parties, the City, through the Director of Aviation may make any necessary changes without further City of Kansas City, Missouri City Council approval.

Sec. 4.2. Tenant Modification Agreement. No improvements, structures, facilities, alterations or additions to the Premises will be made by Concessionaire without 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 City and Concessionaire. The Tenant Modification Agreement may have requirements for payment and performance bonds, prevailing wage, Minority/Women's Business Enterprise participation, and Federal Aviation Administration review, among other conditions.

Sec. 4.3. Mechanic's/Materialman's Liens. Concessionaire will not permit any mechanic's or materialman's or any other lien to be placed upon the Premises or the leasehold, or the equipment or facilities thereon, by reason of any work or labor performed or materials furnished by any mechanic or materialman.

Sec. 4.4. Removal of Fixtures. If Concessionaire is allowed to remove any fixtures or improvements when this Concession agreement terminates, it will do so at its expense and will restore the Premises to its original condition prior to installation of the fixtures or improvements.

ARTICLE V

CITY'S RESPONSIBILITIES

Sec. 5.1. City shall work with TSA toward modifying the MCI Airport Security Program to include the CLEAR Service.

Sec. 5.2. City shall provide the Concessionaire with reasonable access to the Airport for installation and maintenance of required equipment to provide the services described herein.

Sec. 5.3. During the term of this agreement, City may, but under no circumstances shall be obligated to conduct visual inspections of Concessionaire's services at the Airport, and may provide Concessionaire with a written report of such issues or matters it would like the Concessionaire to address with respect to the services, including but not limited to a description of any loss of or damage to any system components and/or any non-observance of or compliance with the uniform standards and guidelines for sponsorships or announcements.

ARTICLE VI

MISCELLANEOUS PROVISIONS

Sec. 6.1. Notices. Except as herein otherwise expressly provided, all notices required by this Concession Agreement shall be in writing sent regular U.S. mail, postage prepaid; commercial overnight courier; or facsimile to the following:

City Kansas City International Airport Properties & Commercial Development 601 Brasilia Avenue	Concessionaire Alclear, LLC Attn: General Counsel 65 East 55 th Street
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Kansas City, MO 64153
Phone: 816-243-3005
Email: pete.fullerton@kcmo.org

New York, New York 10022
Email: legal@clearme.com

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

Sec. 6.2. Restricted Areas/Security. Concessionaire 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. Concessionaire shall fully comply with applicable provisions of Transportation Security Administration regulations TSA CFR 49 1542, (and TSA CFR 49 1540 if Concessionaire is an air carrier). City has adopted a Security Plan for the Airport approved by the FAA pursuant to TSA CFR 49 1542. Concessionaire agrees to be bound by and follow the Security Plan. Any access to the Airport granted to Concessionaire 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 Concessionaire that Concessionaire is not authorized to engage in or perform under this Concession agreement unless expressly authorized in writing by the Director in accordance with TSA CFR 49 1542. In the event Concessionaire, its officer, employees, invitees or 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, Concessionaire 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 Concessionaire in writing of any claimed violations so as to permit Concessionaire an opportunity to participate in any investigation or proceedings.

Sec. 6.3. Priorities. In the event that any of the terms and conditions in Part I, Part II and Part III of this Concession Agreement conflicts, interpretation of this Concession Agreement 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 Concession Agreement the day and year first above written.

ALCLEAR, LLC

KANSAS CITY, MISSOURI

By:
Title:

By: Pat Klein
Title: Director of Aviation

Approved as to form and legality

By: Charlotte Ferns

Title: Senior Associate City Attorney

EXHIBIT A

MCI CLEAR CONFIGURATION

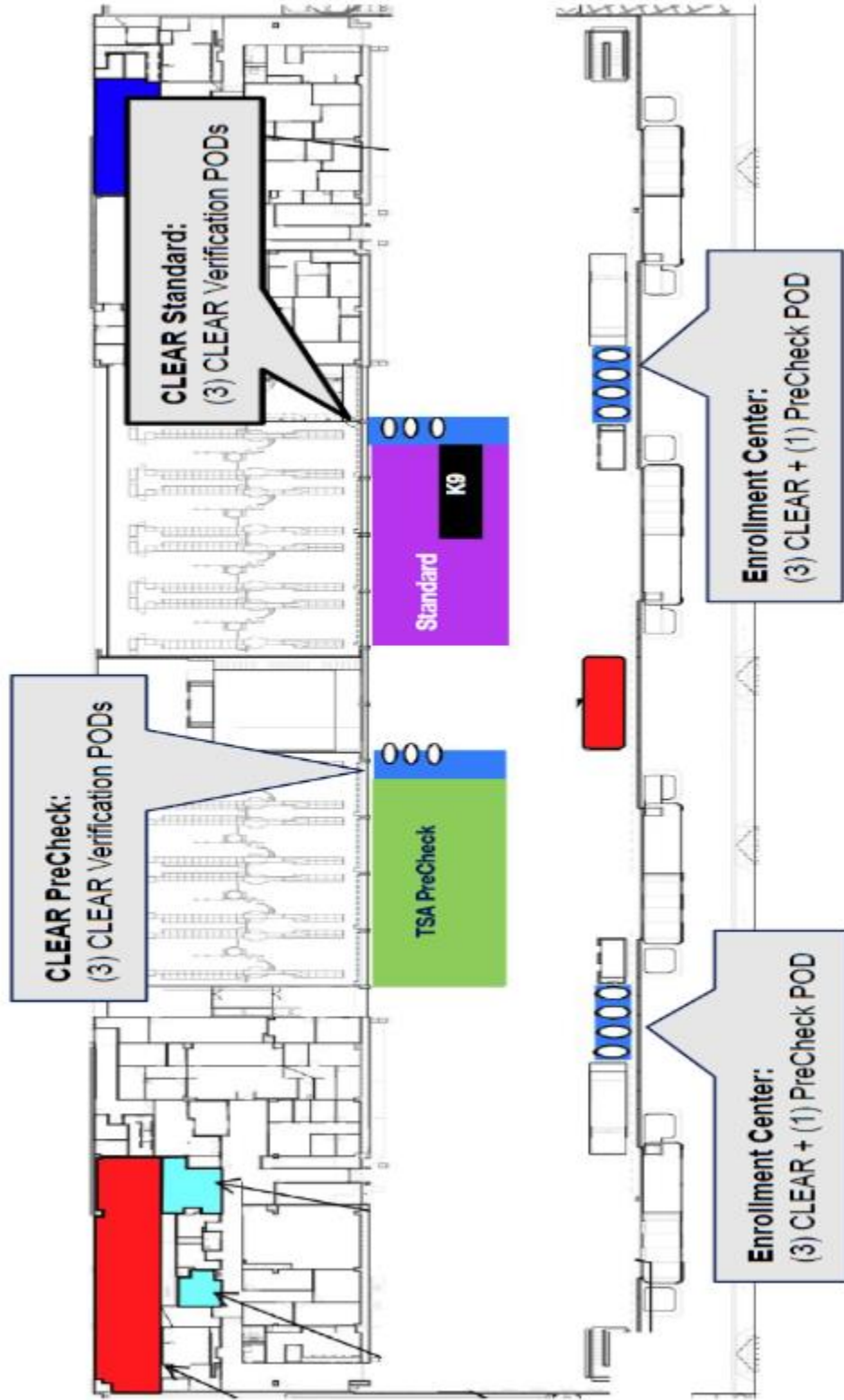


EXHIBIT B

Catchment Area: The following ten (10) Missouri counties: Cass, Clay, Clinton, Jackson, Lafayette, Platte, Ray, Bates, Caldwell.

The following four (4) Kansas counties: Johnson, Leavenworth, Miami, Wyandotte.

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 of 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 without the prior written consent of City, which consent shall not be unreasonably withheld or delayed.

B. City Consent. In the event of any proposed assignment, Lessee, not less than 30 days prior to the proposed Effective Date of such action, shall give notice to the City which includes the name, address and telephone number of the proposed assignee and a fully executed original set of any and all documents being used to effect the proposed actions in a form reasonably acceptable to the City. All documents will clearly set forth that the assignment and assumption actions are subject to and conditioned upon the City's consenting thereto in writing. Any assignee must have assumed all obligations of Lessee under this Lease and shall have specifically agreed to perform and observe the covenants and conditions contained in this Lease on Lessee's part to be performed and observed. Upon such assumption by any assignee, Lessee shall be released from its obligations under this Lease.

C. 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.

D. 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.

E. Subleases. Lessee shall have the right to sublease all or any portion of the Premises without the consent of (but with notice to) the City; provided, however, that any sublease shall be subject to the terms of this Lease. No sublease shall release Lessee from its obligations under this Lease. Nothing contained in this Lease shall be construed to prevent Lessee from charging fair market rents for space in the Premises or from charging market rates for the products and services provided by Lessee. In the event that Lessee subleases the Premises, the City shall, within thirty (30) days after request by Lessee, execute a commercially reasonable instrument providing that the sublessee shall have the right to cure any default by Lessee under this Lease in order to protect the interest of such sublessee in the Premises.

F. Mortgage of Leasehold Interest. Lessee shall have the right to mortgage or otherwise encumber its interest under this Lease without the consent of the City. If requested by Lessee, the City shall execute a commercially reasonable agreement with a proposed or existing leasehold mortgagee (a "Leasehold Mortgagee") setting forth the respective rights of the City and Leasehold Mortgagee in respect of this Lease. Without limiting the content of any such agreement, the City agrees that such agreement may, among other things, (1) grant to the Leasehold Mortgagee the right to receive notices of, and to cure, defaults by Lessee under this Lease; (2) require the City to enter into a new Lease of the Premises for the then remaining term hereof in the event that this Lease is terminated due to default by or the bankruptcy of Lessee; (3) allow the Leasehold Mortgagee to foreclose upon the interest of Lessee under this Lease and to subsequently convey such interest to a third party without the consent of the City; and (4) contain such other provisions as may be reasonably requested by the Leasehold Mortgagee in order to protect its interest in this Lease and the Premises. In addition to the above, City and Lessee hereby agree that the terms and conditions set forth on Exhibit "D" attached hereto are hereby incorporated into this Lease and made a part hereof.

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.

XIX. General Civil Rights Provisions.

To the extent applicable, 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.

PART III
SUPPLEMENTAL TERMS AND CONDITIONS TO ALL AIRPORT
AGREEMENTS

FEDERAL CONTRACT PROVISIONS FOR NON-AIP FUNDED CONTRACTS

APPLICATION OF REFERENCES

“**Owner**” and “**Sponsor**” means the City of Kansas City, Missouri Aviation Department.

“**Contractor**” means any party to this agreement other than the Owner, including without limitation any lessee, tenant, concessionaire, licensee, or permittee. “**Subcontractor**” means all subcontractors under contract with the Contractor.

“**Consultant**” means architectural, engineering or other entity providing professional services to the Owner pursuant to an agreement.

“**Construction**” means the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility service. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

PROVISIONS APPLICABLE TO ALL CONTRACTS

CIVIL RIGHTS – GENERAL

The 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 disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the Contractor and subcontractors from the bid 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.

CIVIL RIGHTS – TITLE VI ASSURANCES

Title VI Solicitation Notice

The Kansas City Aviation Department, 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 offerers that it will affirmatively ensure that any contract entered into pursuant to this advertisement, 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, ornational origin in consideration for an award.

Contract Provision: Compliance with Nondiscrimination Requirements

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

1. **Compliance with Regulations:** The Contractor (hereinafter includes Consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts 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 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 Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and 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 Subcontracts, 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 Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** The 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 Sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts And Authorities and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the Sponsor 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 Contractor's noncompliance with the non-discrimination provisions of this contract, the Sponsor 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 Contractor under the contract until the Contractor complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the Sponsor to enter into any litigation to protect the interests of the Sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

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 U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination 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);
- 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).

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.

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. The employer must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The employer 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). The employee 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.

GRANT ASSURANCES

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

2. Contractor shall charge fair, reasonable and not unjustly discriminatory prices for each unit or services; provided that, 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 Contract for which the City shall have the right to terminate this Contract 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.
3. 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 Contractor to the general public.
4. As part of the consideration of this Contract, 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, 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 Contract, the Covenant is hereby made a covenant running with the land for the term of the Contract, and is judicially enforceable by the United States.
5. As part of the consideration of the Contract, Contractor does hereby covenant and agree that:
 - a. 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
 - b. 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.
 - c. That the 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 Contract, the Covenant is hereby made a covenant running with the land for the term of the Contract, and is judicially enforceable by the United States.

6. The foregoing discrimination covenants are a material part of this Contract and for breach thereof the City shall have the right to terminate this Contract and to reenter and repossess the Premises and facilities thereon, and hold the same as if said Contract 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.
7. Contractor agrees to insert the foregoing six provisions (A-F) in any Contract by which 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.
8. 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. 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. Contractor further agrees that it will require its covered suborganizations to provide assurances to

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.

9. The City reserves the right, but is in no way obligated to Contractor, to develop or improve the landing area of the Airport as it deems appropriate, without regard to Contractor, and without interference or hindrance from Contractor.
10. The City reserves the right, but is in no way obligated to 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 Contractor in this regard.
11. Contractor acknowledges that this Contract is subordinate to any existing or future agreement between the City and the United States concerning the development, operation or maintenance of the Airport.
12. The Contract 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.
13. 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. 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 Contractor.
14. Contractor, by accepting this Contract, 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 Contractor.
15. Contractor acknowledges that nothing contained in this Contract shall be construed to grant or authorize the granting of an exclusive right within the meaning of 49 U.S.C. Section 40103(e).
16. This Contract 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.

RIGHT TO AMEND

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 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.

IMMIGRATION REFORM and CONTROL ACT OF 1986

Contractor understands and acknowledges the applicability of the IRCA to it. Contractor agrees to comply

with the provisions of IRCA as it applies to its activities under this Contract and to permit the City to inspect its personnel records to verify such compliance.

RESTRICTED AREAS/SAFETY

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. Contractor shall fully comply with applicable provisions of the Code of Federal Regulations (CFR) Title 49: Transportation. 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 Contractor is an air carrier); and 49 CFR Part 1546 – Foreign Air Carrier Security (if 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. Contractor agrees to be bound by and follow the Airport Security Plan. Any access to the Airport granted to 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 Contractor that Contractor is not authorized to engage in or perform under this Contract unless expressly authorized in writing by the Director in accordance with TSA CFR 49 1542. In the event Contractor, its officer, employees, invitees or 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, 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 Contractor in writing of any claimed violations so as to permit Contractor an opportunity to participate in any investigation or proceedings.

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.

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