



Agenda - Final

Transportation, Infrastructure and Operations Committee

Quinton Lucas, Chair
Teresa Loar, Vice Chair
Eric Bunch, Vice Chair
Katheryn Shields
Melissa Robinson
Kevin O'Neill

Wednesday, September 29, 2021

9:00 AM

26th Floor, Council Chamber

PUBLIC OBSERVANCE OF MEETINGS

Members of the City Council may attend this meeting via videoconference.

Any closed session may be held via teleconference.

The public can observe this meeting at the links provided below.

Applicants and citizens wishing to participate have the option of attending each meeting or they may do so through the videoconference platform ZOOM, using this link:
<https://us02web.zoom.us/j/84530222968>

Water Services

[210774](#) Authorizing a \$489,923.00 design professional services contract with George Butler Associates, Inc., for the Water Main Replacement in the Area of Dr. Martin Luther King Jr. Boulevard to E. 69th Terrace, State Line Road to Prospect Avenue project.

Attachments: [210774 DPS Goals](#)
[210774 Fiscal Note](#)
[210774 Fact Sheet](#)

[210866](#) Authorizing a \$645,320.00 design professional services contract with Walter P. Moore and Associates, Inc., for the Water Main Replacement in the Area of Grandview Road to Lee's Summit Road, Gregory Boulevard to Longview Road project.

Attachments: [210866 MWBE Goals](#)
[210866 Fiscal Note](#)
[210866 Fact Sheet](#)

210870 Authorizing a \$2,000,000.00 design professional services contract with Black & Veatch Corporation, for the Annual Sewer Rehabilitation: Large Diameter project; and authorizing two successive one-year renewal options for a maximum expenditure of \$4,000,000.00 without further City Council approval.

Attachments: [210870 Goals](#)
[210870 Fiscal Note](#)
[210870 Fact Sheet](#)

210871 Authorizing a \$593,776.00 design professional services contract with Lamp Rynearson, Inc., for the Water Main Replacement in the Area of E. 27th Street to E. 63rd Street, Prospect Avenue to U.S. 40 Highway project.

Attachments: [210871 Goal Request](#)
[210871 Fact Sheet](#)
[210871 Fiscal Note](#)

210872 Authorizing a \$2,000,000.00 construction contract with Leath & Sons, Inc., for the City Wide Supplemental Workforce - Wastewater Collections - Fiscal Year 2022 project; and authorizing two successive one-year renewal options for a maximum expenditure of \$6,000,000.00 without further City Council approval.

Attachments: [210872 Approved Goals](#)
[210872 Fact Sheet](#)
[210872Fiscal Note](#)

210874 Authorizing a \$1,946,312.00 construction contract with Hettinger Excavating, LLC, for the replacement of water mains in the area of Jefferson Street to Lydia Avenue, W. 99th Terrace to E. Red Bridge Road; and authorizing a maximum expenditure of \$2,140,891.00.

Attachments: [210874 Approved Goals](#)
[210874 Fiscal Note](#)
[210874 Fact Sheet](#)

210879 Authorizing a \$999,800.00 construction contract with Infrastructure Solutions, LLC, for the Relief Sewer: 45th Street project; authorizing a maximum expenditure of \$1,100,000.00; and authorizing a \$202,503.00 Design Professional Services Amendment No. 1 to Contract No. 1580 with SE3, LLC, for a total contract amount of \$372,503.00.

Attachments: [210879 Approved SLBE](#)
[210879 Fact Sheet](#)
[210879 FICB Goal](#)
[210879 Fiscal Note](#)

Public Works

210868 Authorizing the Director of Public Works to execute a \$160,000.00 Cost Apportionment Agreement with the Missouri Highways and Transportation Commission for a Planning and Environmental Linkages Study along I-29, I-35, and US 169.

Attachments: [210868 Fiscal Note](#)
[210868 Fact Sheet](#)

HELD IN COMMITTEE

Water Services

210726 Authorizing the Director of Water Services to execute a \$725,365.00 (year 1 obligation) Contract Amendment No. 6 to Contract EV2087 with Milestone Utility Services, Inc., to extend support for the Milestone Pay Portal and corporate website and to add Amazon Web Services and additional customer support modules; and authorizing the Director to amend the Contract and execute five one-year renewal options.

Attachments: [210726 Fact Sheet](#)
[210726 Fiscal Note](#)
[210726 Contract](#)
[210726-Docket Memo.Revised](#)

City Manager

- [210732](#) Authorizing the City Manager to execute a First Amendment to Cooperative Agreement for Purchase and Use of Real Property; and authorizing the City Manager to enter into a City Parking Cooperation Agreement with the Kansas City Area Transportation Authority.

Attachments: [No Fact Sheet 210732](#)

Aviation

- [210827](#) Authorizing a Concession Management, Operation and Development Agreement with Vantage Airport Group US for the construction, leasing, operation, and management of a concession program at the New Terminal at the Kansas City International Airport.

Attachments: [fact sheet-vantage](#)
[210827 KCI Concession Agreement](#)
[210827 Fact Sheet](#)
[Vantage ord fiscal note ord 210827 9 21 21.pdf](#)
[210827-Concessions Matrix Summary 9.27.2021](#)
[Testimony Pat Murray](#)
[Testimony Pat Murray 2](#)

ADDITIONAL BUSINESS

1. There may be a general discussion regarding current Transportation, Infrastructure and Operations Committee issues.
2. Closed Session
Any closed session may be held via teleconference.

Adjournment



Legislation Text

File #: 210774, Version: 1

ORDINANCE NO. 210774

Authorizing a \$489,923.00 design professional services contract with George Butler Associates, Inc., for the Water Main Replacement in the Area of Dr. Martin Luther King Jr. Boulevard to E. 69th Terrace, State Line Road to Prospect Avenue project.

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That the Director of Water Services is authorized to execute Contract No. 9593 in the amount of \$489,923.00 with George Butler Associates, Inc., for the Water Main Replacement in the Area of Dr. Martin Luther King Jr. Boulevard to E. 69th Terrace, State Line Road to Prospect Avenue, Project No. 80002272. A copy of the contract is on file in the office of Water Services.

Section 2. That the Director of Water Services is authorized to expend up to \$489,923.00, from Account No. AL-8077-807705-B-80002272, Water Main Replacement Program, to satisfy the cost of this contract.

I hereby certify that there is a balance, otherwise unencumbered, to the credit of the appropriation to which the foregoing expenditure is to be charged, and a cash balance, otherwise unencumbered, in the treasury, to the credit of the fund from which payment is to be made, each sufficient to meet the obligation hereby incurred.

Tammy L. Queen
Director of Finance

Approved as to form and legality:

Mark P. Jones
Assistant City Attorney



MBE/WBE/DBE Contract Goals Request

Date: June 15, 2020
To: Phillip Yelder, Human Relations Department
From: Matt Bond, Water Services Department

Project Number 80002272	Project Name Water Main Replacements (Location TBD) Project No. 3	
Contract ID Number 9593	Estimated Cost: (cost breakdown attached) \$ 400,000	Solicitation Date:
Estimated Project Duration:		

Note: Click the box to select

<input checked="" type="checkbox"/> FICB PREVAILING WAGE: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO			
Contract Category:	<input type="checkbox"/> Construction	<input type="checkbox"/> Design-Build	<input type="checkbox"/> Non-Municipal Agency
	<input checked="" type="checkbox"/> Design Professional	<input type="checkbox"/> Other Goods & Services	<input type="checkbox"/> Lease
	<input type="checkbox"/> Professional Services	<input type="checkbox"/> Facilities Maintenance/Repair	<input type="checkbox"/> Tenant (MBE/WBE)
	<input type="checkbox"/> Other (Enter Type):		<input type="checkbox"/> Concession
Type:	<input checked="" type="checkbox"/> Original <input type="checkbox"/> Amendment No.		
Funding:	<input checked="" type="checkbox"/> City(MBE/WBE) <input type="checkbox"/> Federal (DBE) <input type="checkbox"/> State (DBE)		
	<input type="checkbox"/> Other: <input type="checkbox"/> Grant#		
Construction Workforce Goals: Are the estimated construction labor hours greater than 800 and the estimated cost greater than \$300,000? If yes, complete "Required Crafts" Worksheet and include total number of hours in Description of Work.			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<input checked="" type="checkbox"/> Estimated Cost Breakdown attached - Page 2 <input type="checkbox"/> List of Required Crafts attached - Page 3			

Description of work:

Design services for the water main replacement of break prone water mains.

cc:

FOR HUMAN RELATIONS DEPARTMENT USE ONLY:

No Goals are set for this Project; OR
 The following Goals are approved for this Project

% MBE 11 % WBE OR 7 % DBE

Human Relations Department *[Signature]* Date: 09/18/20

FOR FAIRNESS IN CONSTRUCTION BOARD USE ONLY¹

Approved Disapproved N/A

Date

FOR GRANT AGENCY USE ONLY³

Approved Disapproved N/A

Date

¹ DBE Programs apply to specific federal or state grant requirements.

² For Projects subject to prevailing wage requirements only.

³ Federal and state grant agreements may require granting agency approval of contract goals.

CONTRACT

Ordinance Fact Sheet

A-E/Negotiated Form



Brief Title	Approval Deadline	Reason
Water Main Replacement in the Area of Dr. Martin Luther King Jr. Boulevard to E. 69th Terrace, E. 69th Terrace, State Line Road to Prospect Avenue.		To authorize expenditures and execution of a Design Professional Services contract.

Details

Reason for Contract

This project is for the design to replace aging, break-prone cast iron pipe (CIP) water mains with ductile iron pipe (DIP).

Discussion

Project Justification

The Water Services Department is undertaking this design professional services project to improve distribution system reliability, increase hydraulic conveyance capacity, and support fire protection.

Project Description

This project includes the replacement of approximately 15,290 linear feet (LF) of 2-inch, 6-inch, 8-inch, and 12-inch water mains in the area of Dr. Martin Luther King Jr. Boulevard to E. 69th Terrace, State Line Road to Prospect Avenue, in Kansas City, Jackson County, Missouri.

The project will replace the water mains in the following areas:

- Replace 1,130 LF of 12-inch CIP water main with 12-inch DIP along W. 55th Street from State Line Road to James A. Reed Road;
- Replace 675 LF of 8-inch CIP water main with 8-inch DIP along W. 49th Street from Main Street to Brookside Boulevard;
- Replace 675 LF of 6-inch CIP water main with 8-inch DIP along W. 51st Terrace from Wornall Road to Wyandotte Street;
- Replace 1,380 LF of 6-inch CIP water main with 8-inch DIP along Walnut Street from E. 49th Street to E. 51st Street;
- Replace 560 LF of 6-inch CIP water main with 8-inch DIP along E. 50th Street from Oak Street to Cherry Street;
- Replace 1,325 LF of 8-inch CIP water main with 12-inch DIP along Cherry Street from Dr. Martin Luther King Jr. Boulevard to 300 LF south of E. 50th Street;
- Replace 650 LF of 6-inch CIP water main with 8-inch DIP along E. 51st Street from Holmes Street to Rockhill Road;
- Replace 750 LF of 6-inch CIP water main with 8-inch DIP along E. 62nd Street from Brookside Boulevard to Main Street;
- Replace 1,175 LF of 6-inch CIP water main with 8-inch DIP along W. 66th Terrace from Jefferson Street to Wornall Road;
- Replace 370 LF of 12-inch CIP water main with 12-inch DIP along Oak Street from E. Meyer Boulevard to E. 64th Terrace;
- Replace 275 LF of 12-inch CIP water main with 12-inch DIP along Oak Street from E. 69th Street to E. 69th Terrace;
- Replace 675 LF of 6-inch CIP water main with 8-inch DIP along E. Meyer Boulevard from Rockhill Road to Troost Avenue;
- Replace 325 LF of 2-inch CIP water main with 6-inch DIP along Forest Avenue from E. 66th Terrace toward the dead-end;

Roles and Responsibilities

Sponsor	Water Services Department
Department or Programs Affected	Water Services Department
Recommended Awardee	George Butler Associates, Inc.
Contract Compliance Certification Obtained?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes
Opponents	Groups or Individuals None known Reason for Opposition
Responsibilities	Design Engineering: George Butler Associates, Inc. Inspections: N/A Construction or Project Management: N/A Service Monitoring: N/A

Policy/Program Impact

Policy or Program Emphasis Change	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes
Operational Impact Assessment	N/A

(Continued on reverse side)



Legislation Text

File #: 210866, Version: 1

ORDINANCE NO. 210866

Authorizing a \$645,320.00 design professional services contract with Walter P. Moore and Associates, Inc., for the Water Main Replacement in the Area of Grandview Road to Lee’s Summit Road, Gregory Boulevard to Longview Road project.

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That the Director of Water Services is authorized to execute Contract No. 9597 in the amount of \$645,320.00 with Walter P. Moore and Associates, Inc., for the Water Main Replacement in the Area of Grandview Road to Lee’s Summit Road, Gregory Boulevard to Longview Road project, Project No. 80002274. A copy of the contract is on file in the office of Water Services.

Section 2. That the Director of Water Services is authorized to expend up to \$645,320.00, from Account No. 22-8010-807705-B-80002274, Water Main Replacement Program, to satisfy the cost of this contract.

I hereby certify that there is a balance, otherwise unencumbered, to the credit of the appropriation to which the foregoing expenditure is to be charged, and a cash balance, otherwise unencumbered, in the treasury, to the credit of the fund from which payment is to be made, each sufficient to meet the obligation hereby incurred.

Tammy L. Queen
Director of Finance

Approved as to form and legality:

Mark P. Jones
Assistant City Attorney



MBE/WBE/DBE Contract Goals Request

Date: June 15, 2020
 To: Phillip Yelder, Human Relations Department
 From: Matt Bond, Water Services Department

Project Number 80002274	Project Name Water Main Replacements (Location TBD) Project No. 5	
Contract ID Number 9597	Estimated Cost: (cost breakdown attached) \$ 400,000	Solicitation Date:
Estimated Project Duration:		

Note: Click the box to select

→ FICB PREVAILING WAGE: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO			
Contract Category:	<input type="checkbox"/> Construction	<input type="checkbox"/> Design-Build	<input type="checkbox"/> Non-Municipal Agency
	<input checked="" type="checkbox"/> Design Professional	<input type="checkbox"/> Other Goods & Services	<input type="checkbox"/> Lease
	<input type="checkbox"/> Professional Services	<input type="checkbox"/> Facilities Maintenance/Repair	<input type="checkbox"/> Tenant (MBE/WBE)
	<input type="checkbox"/> Other (Enter Type):		<input type="checkbox"/> Concession
Type:	<input checked="" type="checkbox"/> Original	<input type="checkbox"/> Amendment No.	
Funding:	<input checked="" type="checkbox"/> City(MBE/WBE)	<input type="checkbox"/> Federal (DBE)	<input type="checkbox"/> State (DBE)
	<input type="checkbox"/> Other:	<input type="checkbox"/> Grant:#	
Construction Workforce Goals: Are the estimated construction labor hours greater than 800 and the estimated cost greater than \$300,000? If yes, complete "Required Crafts" Worksheet and include total number of hours in Description of Work.			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<input checked="" type="checkbox"/> Estimated Cost Breakdown attached - Page 2			<input type="checkbox"/> List of Required Crafts attached - Page 3

Description of work:

Design services for the water main replacement of break prone water mains.

cc:

FOR HUMAN RELATIONS DEPARTMENT USE ONLY:

No Goals are set for this Project; OR
 The following Goals are approved for this Project 11 % MBE 7 % WBE OR _____ % DBE

Human Relations Department

Date: 09/18/20

FOR FAIRNESS IN CONSTRUCTION BOARD USE ONLY²

Approved Disapproved N/A

Date

FOR GRANT AGENCY USE ONLY³

Approved Disapproved N/A

Date

¹ DBE Programs apply to specific federal or state grant requirements.

² For Projects subject to prevailing wage requirements only.

³ Federal and state grant agreements may require granting agency approval of contract goals.



Legislation Text

File #: 210870, Version: 1

ORDINANCE NO. 210870

Authorizing a \$2,000,000.00 design professional services contract with Black & Veatch Corporation, for the Annual Sewer Rehabilitation: Large Diameter project; and authorizing two successive one-year renewal options for a maximum expenditure of \$4,000,000.00 without further City Council approval.

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That the Director of the Water Services Department is authorized to execute Contract No. 1625 in the amount of \$2,000,000.00 with Black & Veatch Corporation, for the Annual Sewer Rehabilitation: Large Diameter project, Project No. 81000973. A copy of the contract is on file in the office of Water Services.

Section 2. That the Director of the Water Services Department is authorized to expend up to \$2,000,000.00 from Account No. 22-8110-807769-B-81000973, Overflow Control Program, to satisfy the cost of this contract.

Section 3. That the Director of Water Services is hereby authorized to execute two successive one-year renewal options for this contract without additional Council approval with such funds as appropriated by the Council in future annual budgets.

Section 4. That the Director of Water Services is authorized to expend up to \$2,000,000.00 to satisfy the costs of the two renewals with such funds as appropriated by the Council in future annual budgets, for a maximum expenditure of \$4,000,000.00 for Contract No. 1625 and the two renewals.

I hereby certify that there is a balance, otherwise unencumbered, to the credit of the appropriation to which the foregoing expenditure is to be charged, and a cash balance, otherwise unencumbered, in the treasury, to the credit of the fund from which payment is to be made, each sufficient to meet the obligation hereby incurred.

Tammy L. Queen
Director of Finance

Approved as to form and legality:

Mark P. Jones

Assistant City Attorney



MBE/WBE/DBE Contract Goals Request

Date: November 17, 2020
 To: Phillip Yelder, Human Relations Department
 From: Leona Walton, Water Services Department

Project Number	Project Name	
81000973	Annual Sewer Rehabilitation: Large Diameter	
Contract ID Number	Estimated Cost: (cost breakdown attached)	Solicitation Date:
1625	\$830,000	Nov/Dec 2020
Estimated Project Duration:		

Note: Click the box to select

<input checked="" type="checkbox"/> FICB PREVAILING WAGE: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO			
Contract Category:	<input type="checkbox"/> Construction	<input type="checkbox"/> Design-Build	<input type="checkbox"/> Non-Municipal Agency
	<input checked="" type="checkbox"/> Design Professional	<input type="checkbox"/> Other Goods & Services	<input type="checkbox"/> Lease
	<input type="checkbox"/> Professional Services	<input type="checkbox"/> Facilities Maintenance/Repair	<input type="checkbox"/> Tenant (MBE/WBE)
	<input type="checkbox"/> Other (Enter Type):		<input type="checkbox"/> Concession
Type:	<input checked="" type="checkbox"/> Original	<input type="checkbox"/> Amendment No.	
Funding:	<input checked="" type="checkbox"/> City(MBE/WBE)	<input type="checkbox"/> Federal (DBE)	<input type="checkbox"/> State (DBE)
	<input type="checkbox"/> Other:	<input type="checkbox"/> Grant#	
Construction Workforce Goals: Are the estimated construction labor hours greater than 800 and the estimated cost greater than \$300,000? If yes, complete "Required Crafts" Worksheet and include total number of hours in Description of Work.			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<input checked="" type="checkbox"/> Estimated Cost Breakdown attached - Page 2		<input type="checkbox"/> List of Required Crafts attached - Page 3	

Description of work:

The City of Kansas City, Missouri, intends to reduce sewer overflows in the sanitary sewer system and combined sewer system by implementing city-wide rehabilitation recommendations.

cc: _____

FOR HUMAN RELATIONS DEPARTMENT USE ONLY:	
<input type="checkbox"/> No Goals are set for this Project; OR <input checked="" type="checkbox"/> The following Goals are approved for this Project	
	15% % MBE 10% % WBE OR _____ % DBE
Human Relations Department	DocuSigned by: Date: 11/19/2020

FOR FAIRNESS IN CONSTRUCTION BOARD USE ONLY²	<input type="checkbox"/> Approved	<input type="checkbox"/> Disapproved	<input type="checkbox"/> N/A
_____	Date		

FOR GRANT AGENCY USE ONLY³	<input type="checkbox"/> Approved	<input type="checkbox"/> Disapproved	<input type="checkbox"/> N/A
_____	Date		

¹ DBE Programs apply to specific federal or state grant requirements.
² For Projects subject to prevailing wage requirements only.
³ Federal and state grant agreements may require granting agency approval of contract goals.

CONTRACT

210870

Ordinance Fact Sheet

A-E/Negotiated Form

Brief Title	Approval Deadline	Reason
Authorizing a Design Professional Services contract with		To authorize execution of a Design Professional Services
Black & Veatch Corporation for the Annual Sewer Rehabilitation:		contract and expenditures and to provide for two successive
Large Diameter project and providing for two successive renewal		renewal options.
options subject to City Council approval.		

Details
<p>Reason for Contract</p> <p>In 2010, the City of Kansas City, Missouri entered into a Consent Decree with the United States Environmental Protection Agency (EPA) to reduce the volume and frequency of overflows from the City's sewer system over a 25-year period. In March 2021 the Consent Decree was modified to include additional interim and revised final performance criteria and to extend its duration to 30 years. The City's Smart Sewer Program is currently in year 11 of a 30-year implementation period.</p> <p>This project will proactively address the needs for improving the condition of large diameter sewers, (48-inch diameter and larger) in the sanitary and combined sewer systems city-wide. The intent of this work is to find and repair deteriorating large diameter sewers before failures occur and more expensive emergency repairs are necessary.</p>

Discussion
<p>Project Justification</p> <p>The purpose of this project is to evaluate large diameter sewer conditions, recommend where repairs are most needed, and select appropriate rehabilitation methods and techniques. Based on the evaluation and recommendations, City staff will authorize the Design Professional to develop contract documents for construction of necessary repairs. The total estimated linear footage of large diameter sewers within the separate and combined sewer systems is approximately 830,000 linear feet, but is subject to change pending additional field investigations and system of records review.</p>
<p>Project Description</p> <p>The scope of work to be performed under this contract entails the following professional services:</p> <ul style="list-style-type: none"> Evaluation and selection of appropriate inspection methods for condition assessment of large diameter sewers. Assess sewer condition data and provide sewer rehabilitation recommendations to City. Perform supplemental field investigations to verify sewer condition assessment data. Develop Basis of Design Memorandums (BDM) at locations requested by the City to document need for repairs and recommend the extent of sewer rehabilitation improvements. Detailed design services and development of construction contract documents for solicitation of construction bids where repairs are deemed necessary by City staff.

Roles and Responsibilities	
Sponsor	Water Services Department
Department or Programs Affected	Smart Sewer Program
Recommended Awardee	Black & Veatch Corporation
Contract Compliance Certification Obtained?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes
Opponents	Groups or Individuals None known Reason for Opposition
Responsibilities	Program Management Black & Veatch Corporation Inspections: N/A Construction or Project Management: N/A Service Monitoring: N/A

Policy/Program Impact	
Policy or Program Emphasis Change	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes
Operational Impact Assessment	N/A

(Continued on reverse side)



Legislation Text

File #: 210871, Version: 1

ORDINANCE NO. 210871

Authorizing a \$593,776.00 design professional services contract with Lamp Rynearson, Inc., for the Water Main Replacement in the Area of E. 27th Street to E. 63rd Street, Prospect Avenue to U.S. 40 Highway project.

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That the Director of Water Services is authorized to execute Contract No. 9599 in the amount of \$593,776.00 with Lamp Rynearson, Inc., for the Water Main Replacement in the Area of E. 27th Street to E. 63rd Street, Prospect Avenue to U.S. 40 Highway project, Project No. 80002275. A copy of the contract is on file in the office of Water Services.

Section 2. That the Director of Water Services is authorized to expend up to \$593,776.00, from Account No. 22-8010-807705-B-80002275, Water Main Replacement Program, to satisfy the cost of this contract.

I hereby certify that there is a balance, otherwise unencumbered, to the credit of the appropriation to which the foregoing expenditure is to be charged, and a cash balance, otherwise unencumbered, in the treasury, to the credit of the fund from which payment is to be made, each sufficient to meet the obligation hereby incurred.

Tammy L. Queen
Director of Finance

Approved as to form and legality:

Mark P. Jones
Assistant City Attorney



MBE/WBE/DBE Contract Goals Request

Date: June 15, 2020
 To: Phillip Yelder, Human Relations Department
 From: Matt Bond, Water Services Department

Project Number 80002275	Project Name Water Main Replacements (Location TBD) Project No. 6	
Contract ID Number 9599	Estimated Cost: (cost breakdown attached) \$ 400,000	Solicitation Date:

Estimated Project Duration:

Note: Click the box to select

<input checked="" type="checkbox"/> FICB PREVAILING WAGE: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO			
Contract Category:	<input type="checkbox"/> Construction	<input type="checkbox"/> Design-Build	<input type="checkbox"/> Non-Municipal Agency
	<input checked="" type="checkbox"/> Design Professional	<input type="checkbox"/> Other Goods & Services	<input type="checkbox"/> Lease
	<input type="checkbox"/> Professional Services	<input type="checkbox"/> Facilities Maintenance/Repair	<input type="checkbox"/> Tenant (MBE/WBE)
	<input type="checkbox"/> Other (Enter Type):		<input type="checkbox"/> Concession
Type:	<input checked="" type="checkbox"/> Original	<input type="checkbox"/> Amendment No.	
Funding:	<input checked="" type="checkbox"/> City(MBE/WBE)	<input type="checkbox"/> Federal (DBE)	<input type="checkbox"/> State (DBE)
	<input type="checkbox"/> Other:	<input type="checkbox"/> Grant#	
Construction Workforce Goals: Are the estimated construction labor hours greater than 800 and the estimated cost greater than \$300,000? If yes, complete "Required Crafts" Worksheet and include total number of hours in Description of Work.			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Estimated Cost Breakdown attached - Page 2 List of Required Crafts attached - Page 3

Description of work:

Design services for the water main replacement of break prone water mains.

cc:

FOR HUMAN RELATIONS DEPARTMENT USE ONLY:	
<input type="checkbox"/> No Goals are set for this Project; OR	
<input checked="" type="checkbox"/> The following Goals are approved for this Project	<u>11</u> % MBE <u>7</u> % WBE OR _____ % DBE
Human Relations Department	Date: <u>09/18/20</u>

FOR FAIRNESS IN CONSTRUCTION BOARD USE ONLY¹		<input type="checkbox"/> Approved	<input type="checkbox"/> Disapproved	<input type="checkbox"/> N/A
_____		_____		
		Date		
FOR GRANT AGENCY USE ONLY³		<input type="checkbox"/> Approved	<input type="checkbox"/> Disapproved	<input type="checkbox"/> N/A
_____		_____		
		Date		

¹ DBE Programs apply to specific federal or state grant requirements.² For Projects subject to prevailing wage requirements only.³ Federal and state grant agreements may require granting agency approval of contract goals.

CONTRACT

210871

Ordinance Fact Sheet

A-E/Negotiated Form

Brief Title	Approval Deadline	Reason
Water Main Replacement in the Area of		To authorize expenditures and execution of a Design Professional
E. 27th Street to E. 63rd Street, Prospect		Services contract.
Avenue to U.S. 40 Highway.		

Details

Reason for Contract

This project is for the design to replace aging, break-prone cast iron pipe (CIP) water mains with ductile iron pipe (DIP).

Discussion

Project Justification

The Water Services Department is undertaking this design professional services project to improve distribution system reliability, increase hydraulic conveyance capacity, and support fire protection.

Project Description

This project includes the replacement of approximately 19,300 linear feet (LF) of 6-inch, 8-inch, and 12-inch water mains in the area of E. 27th Street to E. 63rd Street, Prospect Avenue to U.S. 40 Highway, in Kansas City, Jackson County, Missouri.

The project will replace the water mains in the following areas:

- Replace 1,150 LF of 6-inch CIP water main with 8-inch DIP along Spruce Avenue between E. 27th Street and E. 29th Street;
- Replace 400 LF of 6-inch CIP water main with 8-inch DIP along E. 30th Street between Kensington Avenue and Cypress Avenue;
- Replace 1,000 LF of 6-inch CIP water main with 8-inch DIP along Brighton Avenue between E. 31st Street to the north dead end;
- Replace 900 LF of 12-inch CIP water main with 12-inch DIP along Linwood Green Park between E. 32nd Street to the South Dead End;
- Replace 1,500 LF of 6-inch CIP water main with 8-inch DIP along Blue Ridge Boulevard between E. 29th Street and E. 31st Street;
- Replace 750 LF of 6-inch CIP water main with 8-inch DIP along Crescent Avenue between E. 39th Street to the north 750 feet;
- Replace 600 LF of 12-inch CIP water main with 12-inch DIP along Pittman Road between E. 41st Street south and then north to 1-70;
- Replace 1,000 LF of 6-inch CIP water main with 8-inch DIP along E. 43rd Street S. between Blue Ridge Boulevard to U.S. 40 Highway;
- Replace 600 LF of 8-inch CIP water main with 8-inch DIP along Ditzler Avenue between E. 43rd Street to E. 44th Street;
- Replace 850 LF of 12-inch CIP water main with 12-inch DIP along Blue Ridge Cutoff between Royal Way to the south 850 Feet;
- Replace 2,300 LF of 8-inch CIP water main with 8-inch DIP along Evanston Avenue between E. 47th Street to Creston Avenue;

Roles and Responsibilities

Sponsor	Water Services Department
Department or Programs	
Affected	Water Services Department
Recommended Awardee	Lamp Rynearson, Inc.
Contract Compliance Certification Obtained?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes
Opponents	Groups or Individuals None known Reason for Opposition
Responsibilities	Design Engineering: Lamp Rynearson, Inc. Inspections: N/A Construction or Project Management: N/A Service Monitoring: N/A

Policy/Program Impact

Policy or Program Emphasis Change	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes
Operational Impact Assessment	N/A

(Continued on reverse side)



Legislation Text

File #: 210872, Version: 1

ORDINANCE NO. 210872

Authorizing a \$2,000,000.00 construction contract with Leath & Sons, Inc., for the City Wide Supplemental Workforce - Wastewater Collections - Fiscal Year 2022 project; and authorizing two successive one-year renewal options for a maximum expenditure of \$6,000,000.00 without further City Council approval.

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That the Director of Water Services Department is authorized to execute Contract No. 1637 in the amount of \$2,000,000.00 with Leath & Sons, Inc., for the City Wide Supplemental Workforce - Wastewater Collections - Fiscal Year 2022 project. A copy of this contract is on file in the office of the Water Services Department.

Section 2. That the Director of Water Services is authorized to expend up to the sum of \$2,000,000.00 from Account No. 22-8110-802040-B, Maintenance Division-Sewer Repair, to satisfy the costs of this contract.

Section 3. That the Director of the Water Services Department is authorized to execute two successive one-year renewals for this work without further City Council approval.

Section 4. That the Director of Water Services is authorized to expend up to \$4,000,000.00 to satisfy the costs of the two renewals with such funds as appropriated by the Council in future annual budgets, for a maximum expenditure of \$6,000,000.00 for Contract No. 1637 and the two renewals.

I hereby certify that there is a balance, otherwise unencumbered, to the credit of the appropriation to which the foregoing expenditure is to be charged, and a cash balance, otherwise unencumbered, in the treasury, to the credit of the fund from which payment is to be made, each sufficient to meet the obligation hereby incurred.

Tammy L. Queen
Director of Finance

Approved as to form and legality:

Mark P. Jones
Assistant City Attorney



MBE/WBE/DBE Contract Goals Request

Date: May 7, 2021
 To: Andrea Dorch, Human Relations Department
 From: Paul South, Water Services Department

Project Number 60810102	Project Name: City Wide Supplemental Work Force - Wastewater Collections	
Contract ID Number 1637	Estimated Cost: (cost breakdown attached) \$ 2,000,000	Solicitation 6/14/2021

Estimated Project Duration: 360 days + 2 renewal options

Note: Click the box to select

FICB PREVAILING WAGE: <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO			
Contract Category:	<input checked="" type="checkbox"/> Construction	<input type="checkbox"/> Design-Build	<input type="checkbox"/> Non-Municipal Agency
	<input type="checkbox"/> Design Professional	<input type="checkbox"/> Other Goods & Services	<input type="checkbox"/> Lease
	<input type="checkbox"/> Professional Services	<input type="checkbox"/> Facilities Maintenance/Repair	<input checked="" type="checkbox"/> Tenant (MBE/WBE)
	<input type="checkbox"/> Other (Enter Type):		<input type="checkbox"/> Concession
Type:	<input checked="" type="checkbox"/> Original	<input type="checkbox"/> Amendment No.	
Funding:	<input checked="" type="checkbox"/> City(MBE/WBE)	<input type="checkbox"/> Federal (DBE)	<input type="checkbox"/> State (DBE)
	<input type="checkbox"/> Other:	<input type="checkbox"/> Grant#	

Construction Workforce Goals: Are the estimated construction labor hours greater than 800 and the estimated cost greater than \$300,000? If yes, complete "Required Crafts" Worksheet and include total number of hours in Description of Work. Yes No

Estimated Cost Breakdown attached - Page 2 List of Required Crafts attached - Page 3

Description of work:

Installation of all materials necessary for removal, replacement, and rehabilitation of existing sewer mains and manholes as determined by the Water Services Department to increase reliability and capacity of the wastewater collection system.

cc: _____

FOR HUMAN RELATIONS DEPARTMENT USE ONLY:

X The following Goals are approved for this project 10 % MBE 7 % WBE OR % DBE
 Documented by: Kimberly Daniels Date: 6/3/2021
 Human Relations Department

FOR FAIRNESS IN CONSTRUCTION BOARD USE ONLY²

[Signature] 6-20-21
 Date

FOR GRANT AGENCY USE ONLY³

 Date

1 DBE Programs apply to specific federal or state grant requirements.
 2 For Projects subject to prevailing wage requirements only.
 3 Federal and state grant agreements may require granting agency approval of contract goals.

CONTRACT

210872

Ordinance Fact Sheet

Construction/Misc. Form

Brief Title
Approving a construction contract for the
City Wide Supplemental Workforce -
Wastewater Collections - Fiscal Year 2022
project.

Approval Deadline

Reason
To authorize execution of a construction contract; and
to authorize execution of two successive one-year renewal
options without further Council approval.

Details

Reason for Contract
This ordinance will authorize the Director of Water Services to enter into a construction contract with Leath & Sons, Inc. for the City Wide Supplemental Workforce - Wastewater Collections - Fiscal Year 2022 project for a term of one year. This ordinance also authorizes two successive one-year options to renew without further City Council approval.

Discussion

Project Justification
This is an annual city wide construction contract to assist the KC Water Sewer Line Maintenance Division in repairing/replacing broken sewer mains on a work order basis. Work will be performed throughout Kansas City, in Cass, Clay, Jackson, and Platte Counties, Missouri.

The repairs will restore the structural integrity and operability to deteriorated sanitary or combined sewers, will provide customers with reliable wastewater services, and will improve customer satisfaction by providing timely response to 311 service requests.

Project Description
The scope of services consists of reduction of a large backlog of sewer main line repairs, 311 Action Center complaints, and sewer repairs within the street right of way and/or sewer easement. Work will primarily relate to repair or replacement of sanitary/combined sewers but may also include repairs to service lines and other appurtenances.

Unit prices for the work to be completed under this contract were established based on original bids received. Therefore, KC Water proposes a not to exceed \$2,000,000.00 contract to satisfy the cost of issued construction work orders. This contract will be for a term of one year with two one-year renewal options.

Proposed Contract: \$2,000,000.00
Proposed Renewal No. 1: \$2,000,000.00
Proposed Renewal No. 2: \$2,000,000.00
Total: \$6,000,000.00

Roles and Responsibilities

Sponsor	Water Services Department
Department or Programs Affected	Water Services Department
Recommended Awardee	Leath & Sons, Inc.
Contract Compliance Certification Obtained?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes
Opponents	Groups or Individuals None known Reason for Opposition
Responsibilities	Design Engineering: Water Services Department Inspections: Water Services Department Construction or Project Management: Water Services Department Service Monitoring: Water Services Department

Policy/Program Impact

Policy or Program Emphasis Change	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes
Operational Impact Assessment	

(Continued on reverse side)



Legislation Text

File #: 210874, Version: 1

ORDINANCE NO. 210874

Authorizing a \$1,946,312.00 construction contract with Hettinger Excavating, LLC, for the replacement of water mains in the area of Jefferson Street to Lydia Avenue, W. 99th Terrace to E. Red Bridge Road; and authorizing a maximum expenditure of \$2,140,891.00.

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That the Director of the Water Services Department is authorized to execute Contract No. 9284 in the amount of \$1,946,312.00 with Hettinger Excavating, LLC, for the replacement of water mains in the area of area of Jefferson Street to Lydia Avenue, W. 99th Terrace to E. Red Bridge Road, Project No. 80002038. A copy of the contract is on file in the office of Water Services.

Section 2. That the Director of the Water Services Department is authorized a maximum expenditure of \$2,140,891.00 from Account No. 22-8010-807705-B-80002038, Water Main Replacement Program, to satisfy the cost of this contract.

I hereby certify that there is a balance, otherwise unencumbered, to the credit of the appropriation to which the foregoing expenditure is to be charged, and a cash balance, otherwise unencumbered, in the treasury, to the credit of the fund from which payment is to be made, each sufficient to meet the obligation hereby incurred.

Tammy L. Queen
Director of Finance

Approved as to form and legality:

Mark P. Jones
Assistant City Attorney



MBE/WBE/DBE Contract Goals Request

Date: September 25, 2019
 To: Phillip Yelder, Human Relations Department
 From: Leona Walton, Water Services Department

Project Number: 80002038	Project Name: Water Main Replacement in the Area of Jefferson Street to Lydia Avenue, W. 99th Terrace to E. Red Bridge Road	
Contract ID Number 9284	Estimated Cost: (cost breakdown attached) \$ 1,522,438.00	Solicitation Date: 11/5/2019
Estimated Project Duration: 180 Days		

Note: Click the box to select

<input checked="" type="checkbox"/> FICB PREVAILING WAGE: <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO			
Contract Category:	<input checked="" type="checkbox"/> Construction	<input type="checkbox"/> Design-Build	<input type="checkbox"/> Non-Municipal Agency
	<input type="checkbox"/> Design Professional	<input type="checkbox"/> Other Goods & Services	<input type="checkbox"/> Lease
	<input type="checkbox"/> Professional Services	<input type="checkbox"/> Facilities Maintenance/Repair	<input type="checkbox"/> Tenant (MBE/WBE)
	<input type="checkbox"/> Other (Enter Type):		<input type="checkbox"/> Concession
Type:	<input checked="" type="checkbox"/> Original <input type="checkbox"/> Amendment No.		
Funding:	<input checked="" type="checkbox"/> City(MBE/WBE) <input type="checkbox"/> Federal (DBE) <input type="checkbox"/> State (DBE)		
	<input type="checkbox"/> Other: <input type="checkbox"/> Grant#		
Construction Workforce Goals: Are the estimated construction labor hours greater than 800 and the estimated cost greater than \$300,000? If yes, complete "Required Crafts" Worksheet and include total number of hours in Description of Work.			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<input checked="" type="checkbox"/> Estimated Cost Breakdown attached - Page 2 <input checked="" type="checkbox"/> List of Required Crafts attached - Page 3			

Description of work:

This project includes the replacement of approximately 7950 linear feet (LF) of 6-inch, 8-inch, and 12-inch deteriorated and break-prone water mains along six (6) line segments in the Area of Jefferson Street to Lydia Avenue, W. 99th Terrace to E. Red Bridge Road Project, in Kansas City, Jackson County, Missouri.

cc: Davis McDonald, Project Manager

FOR HUMAN RELATIONS DEPARTMENT USE ONLY:	
<input type="checkbox"/> No Goals are set for this Project; OR	<input checked="" type="checkbox"/> The following Goals are approved for this Project
Human Relations Department	109 % MBE 67 % WBE OR _____ % DBE _____ Mark Runge Date: 9/30/2019

FOR FAIRNESS IN CONSTRUCTION BOARD USE ONLY²	
<input checked="" type="checkbox"/> Approved <input type="checkbox"/> Disapproved <input type="checkbox"/> N/A	
Robert A. Jones, on behalf of Christopher Malone	10.10.19 Date
FOR GRANT AGENCY USE ONLY³	
<input type="checkbox"/> Approved <input type="checkbox"/> Disapproved <input type="checkbox"/> N/A	
_____	_____
	Date

¹ DBE Programs apply to specific federal or state grant requirements.
² For Projects subject to prevailing wage requirements only.
³ Federal and state grant agreements may require granting agency approval of contract goals.

ESTIMATED COST BREAKDOWN FOR

PROJECT #: 80002038 PROJECT/CONTRACT NAME: Water Main Replacement in the Area of Jefferson Street to Lydia Avenue, W. 99th Terrace to E. Red Bridge Road

Department Use			
Scopes of Work	Dollar Amount	<input type="checkbox"/> DBE <input type="checkbox"/> MBE	WBE
Pre-Construction Photos	\$ 1,000.00	\$ -	\$ 1,000.00
Construction Staking	\$ 5,500.00	\$ -	\$ 5,500.00
Traffic Control	\$ 5,000.00	\$ -	\$ 5,000.00
Trucking	\$ 10,000.00	\$ -	\$ 10,000.00
Pipe Material & Appurtenances (25% for Supplier)	\$ 217,424.00	\$ -	\$ -
Pipe Installation	\$ 869,694.00	\$ -	\$ -
Pipe Testing	\$ 8,000.00	\$ -	\$ 8,000.00
Concrete (Pavement and Thrust/Straddle Blocks)	\$ 100,000.00	\$ -	\$ 50,000.00
Asphalt Pavement	\$ 296,820.00	\$ 148,410.00	\$ -
Seeding and Sodding	\$ 4,000.00	\$ -	\$ 4,000.00
Record Drawings	\$ 5,000.00	\$ -	\$ 5,000.00
Department Recommendation Total	\$ 1,522,438.00	\$ 148,410.00	\$ 88,500.00
Department Recommended Goal		10%	6%
Human Relations Department Use Only:			
Scopes of Work	Dollar Amount	<input type="checkbox"/> DBE <input type="checkbox"/> MBE	WBE
Pre-Construction Photos	\$ 1,000.00	availability	availability
Construction Staking	\$ 5,500.00	availability	availability
Traffic Control	\$ 5,000.00	availability	availability
Trucking	\$ 10,000.00	\$10,000.00	availability
Pipe Material & Appurtenances (60% for Supplier)	\$ 217,424.00	\$130,454.40	availability
Pipe Installation	\$ 869,694.00	availability	availability
Pipe Testing	\$ 8,000.00		
Concrete (Pavement and Thrust/Straddle Blocks)	\$ 100,000.00	availability	\$100,000.00
Asphalt Pavement	\$ 296,820.00	availability	availability
Seeding and Sodding	\$ 4,000.00	availability	availability
Record Drawings	\$ 5,000.00	availability	availability
HRD Recommendation Total	\$ 1,522,438.00	\$ 140,454.40	\$ 100,000.00
HRD Recommended Goal		9%	7%

NOTICE: The scopes of work and dollar amounts listed on this MBE/WBE/DBE Contract Goals Request are using internal estimates only for the purpose of analyzing the availability and capacity of M/W/DBEs to set appropriate target goals. Nothing contained within this form should be used to limit, restrict or mandate M/W/DBE participation in particular scopes of work for responding to formal solicitations, including, but not limited to, Invitations for Bids and Requests for Proposals.

CONTRACT

210874

Ordinance Fact Sheet

Construction/Misc. Form

Brief Title	Approval Deadline	Reason
Authorizing a construction contract for the replacement of water mains in the area of Jefferson Street to Lydia Avenue, W. 99th Terrace to E. Red Bridge Road.		To authorize execution of a construction contract and expenditures.

Details

Reason for Contract

This construction project will be performed to replace aging, break-prone cast iron pipe (CIP) and polyvinyl chloride (PVC) water mains with ductile iron pipe (DIP).

Discussion

Project Justification

The Water Services Department is undertaking this construction project to improve distribution system reliability, increase hydraulic conveyance capacity, and support fire protection.

Project Description

This project includes the replacement of approximately 8,300 linear feet (LF) of break prone 6-inch, 8-inch, and 12-inch water mains in the area of Jefferson Street to Lydia Avenue, W. 99th Terrace to E. Red Bridge Road, all in Kansas City, Jackson County, Missouri. The project will replace the water mains in the following locations:

- Replace 6-inch CIP with 8-inch DIP along Lydia Avenue from E. 109th Terrace and Virginia Avenue to E. 109th Street and Virginia Avenue;
- Replace 6-inch CIP with 8-inch DIP along Forest Avenue from E. 109th Terrace and tie into an 8-inch CIP at 1110 E. 109th Street as well as tie into an 8-inch CUP to the east near 10900 Tracy Avenue;
- Replace 12-inch CIP with 12-inch DIP along E. 108th Street from Holmes Road to E. 108th Terrace;
- Replace 12-inch CIP with 12-inch DIP along E. 103rd Street from Locust Street to 35 LF west of School Service Line;
- Replace 8-inch CIP with 8-inch DIP along W. 104th Street from Wornall Road to I-435 right-of-way; and
- Replace 8-inch CIP with 8-inch DIP along Jefferson Street from Carondelet Drive to the tee on W. 107th Street.

This work will include the transfer of customers' water service connections from existing mains to new mains, as well as restoration of roads and properties. The amount of this contract is \$1,946,312.00.

Roles and Responsibilities

Sponsor	Water Services Department
Department or Programs Affected	Water Services Department
Recommended Awardee	Hettinger Excavating, LLC
Contract Compliance Certification Obtained?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes
Opponents	Groups or Individuals None known Reason for Opposition
Responsibilities	Design Engineering: Olsson Associates Inspections: City staff Construction or Project Management: City staff Service Monitoring: City staff

Policy/Program Impact

Policy or Program Emphasis Change	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes
Operational Impact Assessment	

(Continued on reverse side)

Details

Solicitation

This Project was advertised in accordance with the City's Ordinance Fact Sheet; Contract Construction 012313

Finances

City's Estimate of Cost	\$ 2,141,356.00
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Contract Central



Legislation Text

File #: 210879, Version: 1

ORDINANCE NO. 210879

Authorizing a \$999,800.00 construction contract with Infrastructure Solutions, LLC, for the Relief Sewer: 45th Street project; authorizing a maximum expenditure of \$1,100,000.00; and authorizing a \$202,503.00 Design Professional Services Amendment No. 1 to Contract No. 1580 with SE3, LLC, for a total contract amount of \$372,503.00.

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That the Director of the Water Services Department is authorized to execute Contract No. 1581 in the amount of \$999,800.00 with Infrastructure Solutions, LLC, for the Relief Sewer: 45th Street project, Project No. 81000921. A copy of the contract is on file in the office of Water Services.

Section 2. That the Director of the Water Services Department is authorized a maximum expenditure of \$1,100,000.00, from Account No. 22-8110-807769-B-81000921, Overflow Control Program, to satisfy the cost of this contract.

Section 3. That the Director of the Water Services Department is authorized to execute Design Professional Services Amendment No. 1 to Contract No. 1580 in the amount of \$202,503.00, for a total contract amount of \$372,503.00, with SE3, LLC, for the Relief Sewer: 45th Street project, Project No. 81000921. A copy of the contract is on file in the office of Water Services.

Section 4. That the Director of the Water Services Department is authorized a maximum expenditure of \$202,503.00, from Account No. 22-8110-807769-B-81000921, Overflow Control Program, to satisfy the cost of this amendment.

I hereby certify that there is a balance, otherwise unencumbered, to the credit of the appropriation to which the foregoing expenditure is to be charged, and a cash balance, otherwise unencumbered, in the treasury, to the credit of the fund from which payment is to be made, each sufficient to meet the obligation hereby incurred.

Tammy L. Queen
Director of Finance

Approved as to form and legality:

Mark P. Jones
Assistant City Attorney



SLBE Contract Review Request

Date: June 28, 2019
 To: Phillip Yelder, Human Relations Department
 From: Andy Shively, Office of the City Manager

Project Number 81000921	Project Name Relief Sewer: 45th St	
Contract ID Number 1580	Estimated Cost: ¹ \$125,000	Solicitation Date: Nov 2019
Estimated Project Duration: Note: Click the box to select		

Contract Category:	<input type="checkbox"/> Construction	<input checked="" type="checkbox"/> Design Professional	<input type="checkbox"/> Professional Services	<input type="checkbox"/> Service/Maintenance
	<input type="checkbox"/> Lease	<input type="checkbox"/> Non-Municipal Agency	<input type="checkbox"/> Concession	<input type="checkbox"/> Other Goods & Services
	<input type="checkbox"/> Other (Enter Type):			
Funding:	<input checked="" type="checkbox"/> City			
	<input type="checkbox"/> Other:			

PREVAILING WAGE APPLICABLE? YES NO

Description of work:
 Design of approximately 1,500 linear feet of 24-inch diameter relief sewer is the area south of 45th Street, between Chelsea Avenue and Van Brunt Boulevard.

cc:

FOR HUMAN RELATIONS DEPARTMENT USE ONLY:

- SLBE Limited Solicitation (Following a selection, enter Contractor information below and forward a copy to HRD.)
- Bid Incentive ² _____ % (Following a selection, enter Contractor information and forward a copy to HRD.)
- Pre-Payment ³ Yes _____ % No
- Exempt

Human Relations Department

Date:

07/13/19

FOR DEPARTMENT USE ONLY - CONTRACTOR INFORMATION:

Enter selected firm below and return a copy of this page to HRD.

Company:	_____
Vendor No.:	_____
Contact:	_____
Address:	_____
Phone:	_____
Contract Value:	\$ _____
Department	_____
	Date: _____

¹ Construction or construction supply contract estimated less than \$300,000 or non-construction contract less than \$117,000.

² Bid incentive not to exceed 5% and not applicable to any contract requiring the payment of prevailing wages.

³ Pre-Payment of up to 10% of the contract amount to be paid by City upon NTP as set out in the contract documents.

CONTRACT

210879

Ordinance Fact Sheet

Construction/Misc. Form

Brief Title	Approval Deadline	Reason
Authorizing a Construction Contract for the Relief Sewer: 45th Street project		To authorize execution of a Construction Contract and expenditures and to
and authorizing a Design Professional Services Amendment No.1 to		authorize execution of a Design Professional Services Amendment.
Contract No. 1580 for Construction Phase Services.		

Details

Reason for Contract
In 2010, the City of Kansas City, Missouri entered into a Consent Decree with the United States Environmental Protection Agency (EPA) to reduce the volume and frequency of overflows from the City's sewer system over a 25-year period. In March 2021 the Consent Decree was modified to include additional interim and revised final performance criteria and to extend its duration to 30 years. The City's Smart Sewer Program is currently in year 11 of a 30-year implementation period.
This project will reduce the combined sewer overflow frequency and volume at Outfall 048 within the Lower Blue River Basin by upsizing an existing sewer to convey additional wet-weather flow to the Blue River Interceptor Sewer. Rehabilitation of existing sewers found to be in poor condition within the project area is also included.

Discussion

Project Justification						
The purpose of this project is to upsize the existing sewer and relocate the existing diversion structure, all to reduce the frequency and occurrence of combined sewer overflows.						
Design Professional Services Contract Summary						
Contract No. 1580, in the amount of \$170,000.00, was executed on June 8, 2020 with SE3, LLC for the development of proposed sewer system alternatives and preliminary and final design to provide additional combined sewer conveyance to the Blue River Interceptor Sewer.						
Proposed Amendment No. 1, in the amount of \$202,503.00, will provide construction phase services for the Relief Sewer: 45th Street project construction contract. These services include project management and administration services, field support services, and resident project representative services.						
<table border="0"> <tr> <td>Original Contract:</td> <td>\$ 170,000.00</td> </tr> <tr> <td>Proposed Amendment No. 1:</td> <td>\$ 202,503.00</td> </tr> <tr> <td>Total:</td> <td>\$ 372,503.00</td> </tr> </table>	Original Contract:	\$ 170,000.00	Proposed Amendment No. 1:	\$ 202,503.00	Total:	\$ 372,503.00
Original Contract:	\$ 170,000.00					
Proposed Amendment No. 1:	\$ 202,503.00					
Total:	\$ 372,503.00					

Construction Contract Description

The scope of work to be provided under the Relief Sewer: 45th Street project includes construction of 1,100 LF of new 18-inch diameter sewer along 45th Street from Chelsea Avenue to Coal Mine Road. The project also includes rehabilitation of 900 LF of existing sewer mains and the installation of 8 manholes and one diversion structure.
The amount of the construction contract is \$1,100,000.00 including contingency.
Work on this project will be performed in Kansas City, Jackson County, Missouri.

Roles and Responsibilities

Sponsor	Water Services Department
Department or Programs Affected	Smart Sewer Program
Recommended Awardee	Infrastructure Solutions, LLC
Contract Compliance Certification Obtained?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes
Opponents	Groups or Individuals None known Reason for Opposition
Responsibilities	Design Engineering: SE3, LLC Inspections: City Staff / SE3, LLC Construction or Project Management: SE3, LLC Infrastructure Solutions, LLC Service Monitoring: City Staff

Policy/Program Impact

Policy or Program Emphasis Change	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes
Operational Impact Assessment	

(Continued on reverse side)

Details

Construction Contract Solicitation

The Relief Sewer: 45th Street project construction contract was advertised in accordance with the City's requirements. Public bids were opened on August 17, 2021 with three (3) bidders responding.

Grant/Loan Funding

N/A

Civil Rights and Equal Opportunity Department Approval

An SLBE waiver for the Design Professional Services Contract No. 1580 was approved by the Human Relations Department on July 15, 2019.

The goals for the construction contract were established by the Fairness in Construction Board at 15% MBE and 8% WBE. The construction subcontracting information was submitted to the Civil Rights and Equal Opportunity Department for review and determination on September 3, 2021, and was approved on September 14, 2021 with 15 % MBE and 8.6% WBE participation. See the attached docket memo.

Fairness in Construction Board

There is no appeal on this contract pending before the Fairness in Construction Board.

Youth Employment Program

N/A

1% for Art

N/A

Is it good for the children?

Yes

How will this contribute to a sustainable Kansas City?

This project will contribute to a sustainable Kansas City by improving the performance, capacity, and reliability of the City's combined sewer systems, and improving water quality by reducing overflows within the project area.

Finances

City's Estimate of Cost		\$	1,520,223.00
Bid or Proposal Data	Lowest and Best Contract		
	Cost Submitted	\$	999,800.00
Bid Date:	Recommended Awardee:		
8/17/2021	Infrastructure Solutions, LLC		
	No. of Bids Submitted: 3		
	Other Bidders or Contractors Considered		Contract Costs Submitted
	Pyramid Excavation & Construction, Inc.	\$	1,338,431.00
	SHEDIGSIT, LLC	\$	1,372,113.00
		\$	
		\$	
		\$	
		\$	
		\$	
		\$	
Fund Sources and Appropriation Account Codes For These Contracts	22-8110-807769-B-81000921 (Construction) 22-8110-807769-B-81000921 (DPS Amendment) Overflow Control Program Project No. 81000921		
Source of Future Operating Funds			
Proposed Construction Contract		\$	999,800.00
Construction Contingency		\$	100,200.00
Proposed Amendment 1		\$	202,503.00
Engineering & Administration		\$	-
TOTAL		\$	1,302,503.00

Estimated Duration of Contract: 330 calendar days

Fact Sheet Prepared by:

Leona Walton
Contracts Manager

Date:

9/15/2021

Reviewed by:

D. Matt Bond
Deputy Director

Date:

9/15/2021

Reference Numbers:

Contract No. 1580 (DPS)
Contract No. 1581 (Construction)
Project No. 81000921

Council Committee Actions

Do Pass	<input type="checkbox"/>	<input type="checkbox"/> Hold
Do Pass (as amended)	<input type="checkbox"/>	<input type="checkbox"/> W/o Recommendation
Committee Sub.	<input type="checkbox"/>	<input type="checkbox"/> Do Not Pass



MBE/WBE/DBE Contract Goals Request

Date: April 27, 2021
 To: Andrea Dorch, Human Relations Department
 From: Paul South, Smart Sewer Program, Water Services Department

Project Number	Project Name:	
81000921	Relief Sewer: 45th Street	
Contract ID Number	Estimated Cost: (cost breakdown attached)	Solicitation Date:
1581	\$ 906,540	6/22/2021
Estimated Project Duration: 340 days		

Note: Click the box to select

<input checked="" type="checkbox"/> FICB PREVAILING WAGE: <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO			
Contract Category:	<input checked="" type="checkbox"/> Construction	<input type="checkbox"/> Design-Build	<input type="checkbox"/> Non-Municipal Agency
	<input type="checkbox"/> Design Professional	<input type="checkbox"/> Other Goods & Services	<input type="checkbox"/> Lease
	<input type="checkbox"/> Professional Services	<input type="checkbox"/> Facilities Maintenance/Repair	<input checked="" type="checkbox"/> Tenant (MBE/WBE)
	<input type="checkbox"/> Other (Enter Type):		<input type="checkbox"/> Concession
Type:	<input checked="" type="checkbox"/> Original	<input type="checkbox"/> Amendment No.	
Funding:	<input checked="" type="checkbox"/> City(MBE/WBE)	<input type="checkbox"/> Federal (DBE)	<input type="checkbox"/> State (DBE)
	<input type="checkbox"/> Other:	<input type="checkbox"/> Grant#	
Construction Workforce Goals: Are the estimated construction labor hours greater than 800 and the estimated cost greater than \$300,000? If yes, complete "Required Crafts" Worksheet and include total number of hours in Description of Work.			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<input checked="" type="checkbox"/> Estimated Cost Breakdown attached - Page 2		<input checked="" type="checkbox"/> List of Required Crafts attached - Page 3	

Description of work:

Installation of sanitary and storm sewers, rehabilitation of sanitary sewers and manholes necessary to to facilitate a relief sewer to maximize flow to the Blue River Interceptor by conveying flow from Manhole S082-154, located upstream of Combined Sewer Outfall 048, to Manhole S082-167, at the Blue River Interceptor Sewer (BRIS) in the Lower Blue River Basin in Kansas City, Missouri.

cc:

FOR HUMAN RELATIONS DEPARTMENT USE ONLY:

No Goals are set for this Project; OR
 The following Goals are approved for this Project

15 % MBE 98 % WBE OR _____ % DBE

Human Relations Department _____ Date: 4/29/21

FOR FAIRNESS IN CONSTRUCTION BOARD USE ONLY¹

_____ Date: 5-13-2021

FOR GRANT AGENCY USE ONLY¹

_____ Date: _____

¹ DBE Programs apply to specific federal or state grant requirements.

ESTIMATED COST BREAKDOWN FOR

PROJECT # 81000921 PROJECT/CONTRACT NAME Relief Sewer: 45th Street

Department Use			
Scopes of Work	Dollar Amount	<input type="checkbox"/> DBE <input type="checkbox"/> MBE	WBE
Open Cut Point Repair	\$ 50,000		\$ 50,000
Cured in Place Pipe Lining (CIPP)	\$ 7,200		
Traffic Control	\$ 10,000		\$ 10,000
Bypass Pumping	\$ 60,000		
Sanitary Sewer Improvements	\$ 642,000	\$ 60,000	
Storm Sewer Improvements	\$ 60,800	\$ 10,000	
Landscaping	\$ 4,520		\$ 4,520
Asphalt	\$ 63,500	\$ 63,500	
Clearing and Grubbing/Tree Removal	\$ 8,520		\$ 8,520
Department Recommendation Total	\$ 906,540	\$ 133,500	\$ 73,040
Department Recommended Goal		15%	8%
Human Relations Department Use Only:			
Scopes of Work	Dollar Amount	<input type="checkbox"/> DBE <input type="checkbox"/> MBE	WBE
Open Cut Point Repair	\$ 50,000	Availability	\$ 50,000
Cured in Place Pipe Lining (CIPP)	\$ 7,200	Availability	\$ 7,200
Traffic Control	\$ 10,000	Availability	\$ 10,000
Bypass Pumping	\$ 60,000	Availability	Availability
Sanitary Sewer Improvements	\$ 642,000	\$ 60,000	Availability
Storm Sewer Improvements	\$ 60,800	\$ 10,000	Availability
Landscaping	\$ 4,520	Availability	\$ 4,520
Asphalt	\$ 63,500	\$ 63,500	Availability
Clearing and Grubbing/Tree Removal	\$ 8,520	Availability	\$ 8,520
HRD Recommendation Total	\$ 906,540.00	\$ 133,500.00	\$ 80,240.00
HRD Recommended Goal		15%	9%

NOTICE: The scopes of work and dollar amounts listed on this MBE/WBE/DBE Contract Goals Request are using internal estimates only for the purpose of analyzing the availability and capacity of M/W/DBEs to set appropriate target goals. Nothing contained within this form should be used to limit, restrict or mandate M/W/DBE participation in particular scopes of work for responding to formal solicitations, including, but not limited to, Invitations for Bids and Requests for Proposals.

LEGISLATIVE FISCAL NOTE

LEGISLATION
NUMBER:

210879

LEGISLATION IN BRIEF:

Authorizing a \$999,800.00 construction contract with Infrastructure Solutions, LLC, for the Relief Sewer: 45th Street project; authorizing a maximum expenditure of \$1,100,000.00; and authorizing a \$202,503.00 Design Professional Services Amendment No. 1 to Contract No. 1580 with SE3, LLC, for a total contract amount of \$372,503.00.

What is the purpose of this legislation?

CAPITAL

For the purpose of funding for the construction of fixed capitalizable assets

Does this legislation spend money?

YES

Yes/No

See Sections 01, 02 and 03 for sources of funding

Does this legislation estimate new Revenues?

NO

Yes/No

0

Does this Legislation Increase Appropriations?

NO

Yes/No

0

Does this legislation expand the scope of city services, or expand the city's infrastructure?

YES

Yes/No

See Section 04 for five years of ongoing maintenance costs.

Section 00: Notes:

This project is for all new sewer pipe and manholes and Cured-In-Place-Pipe rehabilitation. The O&M over the next 50 years will total \$5,000.00.

Five years of operational and maintenance costs should be included in Section 04 below.

FINANCIAL IMPACT OF LEGISLATION

Section 01: If applicable, where are funds appropriated in the current budget?

FUND	DEPTID	ACCOUNT	PROJECT	FY 21-22 BUD	FY 22-23 EST
8110	807769	B	81000921	1,302,503.00	

Section 02: If applicable, where will new revenues be estimated?

FUND	DEPTID	ACCOUNT	PROJECT	FY 21-22 BUD	FY 22-23 EST

Section 03: If applicable, where will appropriations be increased?

FUND	DEPTID	ACCOUNT	PROJECT	FY 21-22 BUD	FY 22-23 EST

NET IMPACT ON OPERATIONAL BUDGET

-	-
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RESERVE STATUS:

SECTION 04: FIVE-YEAR FISCAL IMPACT (Direct and indirect)

FUND	FUND NAME	FY 21-22	FY 22-23	FY 23-24	FY 24-25	FY 25-26	FY 26-27	All Outyears
			-	-	-	-	-	-
			-	-	-	-	-	-
			-	-	-	-	-	-
			-	-	-	-	-	-
	TOTAL REV	-	-	-	-	-	-	-

FUND	FUND NAME	FY 21-22	FY 22-23	FY 23-24	FY 24-25	FY 25-26	FY 26-27	All Outyears
8110	Sewer Fund	1,302,503	-	-	-	-	-	-
			100	100	100	100	100	4,500
			-	-	-	-	-	-
			-	-	-	-	-	-
	TOTAL EXP	1,302,503	100	100	100	100	100	4,500

NET Per-YEAR IMPACT (1,302,503) (100) (100) (100) (100) (100) (4,500)

NET IMPACT (SIX YEARS) (1,307,503.00)

REVIEWED BY

Tanner Owens, OMB

DATE

9/20/2021



Legislation Text

File #: 210868, Version: 1

ORDINANCE NO. 210868

Authorizing the Director of Public Works to execute a \$160,000.00 Cost Apportionment Agreement with the Missouri Highways and Transportation Commission for a Planning and Environmental Linkages Study along I-29, I-35, and US 169.

WHEREAS, the City of Kansas City, Missouri applied for and secured a \$640,000.00 BUILD grant from the Federal Highway Administration to undertake a planning effort to evaluate portions of I-29, I-35, and US 169; and

WHEREAS, portions of these highways were originally built in the late 1950's as part of Kansas City's Paseo Bridge project and are reaching the end of their useful life; and

WHEREAS, these highways and associated interchanges have created barriers for pedestrians and transit users at Parvin Road, Antioch Road, North Oak Trafficway, Vivion Road, N.W. 56th Street; and

WHEREAS, the study will complete planning and community outreach and develop a list of recommended improvements to be used to guide the rehabilitation and reconstruction along these corridors;

WHEREAS, the BUILD grant requires local matching funds and the City and MoDOT are splitting the cost of the matching funds; NOW, THEREFORE,

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That the Director of the Public Works Department is hereby authorized to enter into a Cost Apportionment Agreement in the amount of \$160,000.00 with the Missouri Highways and Transportation Commission for a Planning and Environmental Linkages Study along I-29, I-35, and US 169 from funds previously appropriated to account numbers 3090-898104-B-89008871 and 3090-898204-B-89008871. A copy of the agreement is on file in the Public Works Director's Office.

I hereby certify that there is a balance, otherwise unencumbered, to the credit of the appropriation to which the foregoing expenditure is to be charged, and a cash balance, otherwise unencumbered, in the treasury, to the credit of the fund from which payment is to be made, each sufficient to meet the obligation hereby incurred.

Tammy L. Queen
Director of Finance

Approved as to form and legality:

Nelson V. Munoz
Assistant City Attorney

LEGISLATIVE FISCAL NOTE	LEGISLATION NUMBER:	210868
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LEGISLATION IN BRIEF:

Authorizing a cost apportionment agreement between MoDOT and the City

What is the purpose of this legislation? CAPITAL

For the purpose of funding for the construction of fixed capitalizable assets

Does this legislation spend money? Yes/No

See Sections 01, 02 and 03 for sources of funding

Does this legislation estimate new Revenues? Yes/No

0

Does this Legislation Increase Appropriations? Yes/No

0

Does this legislation expand the scope of city services, or expand the city's infrastructure? Yes/No

Maintenance of existing assets is included in the budget. For details see Section 00: " Notes" Below

Section 00: Notes:

Entering into a Cost Apportionment Agreement in the Amount of \$160,000 with the Missouri Highways and Transportation Commission for a Planning and Environmental Linkages Study along I-29, I-35 and US 169 from funds previously appropriated. Project is for a study and the new construction and replacement will not be known until the study is complete.

Five years of operational and maintenance costs should be included in Section 04 below.

FINANCIAL IMPACT OF LEGISLATION

Section 01: If applicable, where are funds appropriated in the current budget?

FUND	DEPTID	ACCOUNT	PROJECT	FY 21-22 BUD	FY 22-23 EST
3090	898104	619850	89008871	80,000.00	
3090	898204	619850	89008871	80,000.00	

Section 02: If applicable, where will new revenues be estimated?

FUND	DEPTID	ACCOUNT	PROJECT	FY 21-22 BUD	FY 22-23 EST

Section 03: If applicable, where will appropriations be increased?

FUND	DEPTID	ACCOUNT	PROJECT	FY 21-22 BUD	FY 22-23 EST

NET IMPACT ON OPERATIONAL BUDGET

RESERVE STATUS:

SECTION 04: FIVE-YEAR FISCAL IMPACT (Direct and indirect)

FUND	FUND NAME	FY 21-22	FY 22-23	FY 23-24	FY 24-25	FY 25-26	FY 26-27	All Outyears
TOTAL REV		-	-	-	-	-	-	-

FUND	FUND NAME	FY 21-22	FY 22-23	FY 23-24	FY 24-25	FY 25-26	FY 26-27	All Outyears
3090	Capital Improvements	160,000						
TOTAL EXP		160,000	-	-	-	-	-	-

NET Per-YEAR IMPACT (160,000)

NET IMPACT (SIX YEARS) (160,000.00)

REVIEWED BY Charles Leap DATE 9/13/2021

GENERAL

Ordinance Fact Sheet

210868

Ordinance Number

Brief Title **Approval Deadline**
 Authorizing a cost apportionment
 agreement between MoDOT and the City

Reason
 To authorize agreement and expenditure
 previously approved PIAC funds required for the project.

Details	Positions/Recommendations														
<p>Reason for Legislation</p> <p>Authorizing the Director of Public Works to execute a Cost Apportionment Agreement with the Missouri Highways and Transportation Commission for a Planning and Environmental Linkages Study along I-29, I-35, and US 169.</p>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 15%;">Sponsor</td> <td></td> </tr> <tr> <td>Programs, Departments, or Groups Affected</td> <td>Public Works Department City Planning</td> </tr> <tr> <td>Applicants / Proponents</td> <td>City Department</td> </tr> <tr> <td>Opponents</td> <td>Groups or Individuals None Known Basis of opposition</td> </tr> <tr> <td>Staff Recommendation</td> <td> <input checked="" type="checkbox"/> For <input type="checkbox"/> Against Reason Against </td> </tr> <tr> <td>Board or Commission Recommendation</td> <td> <input type="checkbox"/> For <input type="checkbox"/> Against <input checked="" type="checkbox"/> No action taken <input type="checkbox"/> For, with revisions or conditions (see details column for conditions) </td> </tr> <tr> <td>Council Committee Actions</td> <td> <input type="checkbox"/> Do pass <input type="checkbox"/> Do pass (as amended) <input type="checkbox"/> Committee Sub. <input type="checkbox"/> Without Recommendation <input type="checkbox"/> Hold <input type="checkbox"/> Do not pass </td> </tr> </table>	Sponsor		Programs, Departments, or Groups Affected	Public Works Department City Planning	Applicants / Proponents	City Department	Opponents	Groups or Individuals None Known Basis of opposition	Staff Recommendation	<input checked="" type="checkbox"/> For <input type="checkbox"/> Against Reason Against	Board or Commission Recommendation	<input type="checkbox"/> For <input type="checkbox"/> Against <input checked="" type="checkbox"/> No action taken <input type="checkbox"/> For, with revisions or conditions (see details column for conditions)	Council Committee Actions	<input type="checkbox"/> Do pass <input type="checkbox"/> Do pass (as amended) <input type="checkbox"/> Committee Sub. <input type="checkbox"/> Without Recommendation <input type="checkbox"/> Hold <input type="checkbox"/> Do not pass
Sponsor															
Programs, Departments, or Groups Affected	Public Works Department City Planning														
Applicants / Proponents	City Department														
Opponents	Groups or Individuals None Known Basis of opposition														
Staff Recommendation	<input checked="" type="checkbox"/> For <input type="checkbox"/> Against Reason Against														
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Council Committee Actions	<input type="checkbox"/> Do pass <input type="checkbox"/> Do pass (as amended) <input type="checkbox"/> Committee Sub. <input type="checkbox"/> Without Recommendation <input type="checkbox"/> Hold <input type="checkbox"/> Do not pass														
<p>Discussion (explain all financial aspects of the proposed legislation, including future implications, any direct/indirect costs, specific account numbers, ordinance references, and budget page numbers.)</p> <p>The City of Kansas City applied for and secured a \$640,000 BUILD grant from the Federal Highway Administration to undertake a planning effort to evaluate portions of I-29, I-35, and US 169. Portions of these highways were originally built in the late 1950's as part of Kansas City's Paseo Bridge project and are reaching the end of their useful life. These highways and associated interchanges have created barriers for pedestrians and transit users at Parvin Road, Antioch Road, North Oak Trafficway, Vivion Road, and NW 56th Street.</p> <p>This Planning and Environmental Linkages study will complete planning and community outreach and develop a list of recommended improvements to be used to guide the rehabilitation and reconstruction along these corridors.</p> <p>The UILD grant requires local matching funds and the City and MoDOT are splitting the cost of the matching funds and this ordinance authorizes the expenditure of previously approved Council District 1 and 2 funds for the project.</p>															

(Continued on reverse side)

Details

Policy/Program Impact

Is it good for the children? Yes

How will this contribute to a sustainable Kansas City?
 These highways have created barriers to multi-modal transportation and the bridges need to be replaced. This study will evaluate highway and interchange improvements to address these barriers.

Human Relations Approval
 Project is subject to federal DBE program and MoDOT's Human Rights Division is monitoring DBE compliance.

Policy or Program Change	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes
Operational Impact Assessment	

Finances

Cost & Revenue Projections -- Including Indirect Costs	
Financial Impact	
Fund Source (s) and Appropriation Account Codes	\$80,000 3090-898104-B-89008871 \$80,000 3090-898204-B-89008871

(Use this space for further discussion, if necessary)

Applicable Dates:

Fact Sheet Prepared by:

Reviewed by: Charles Leap, OMB Date: 9/13/2021

Reference Numbers



Legislation Text

File #: 210726, Version: 1

ORDINANCE NO. 210726

Authorizing the Director of Water Services to execute a \$725,365.00 (year 1 obligation) Contract Amendment No. 6 to Contract EV2087 with Milestone Utility Services, Inc., to extend support for the Milestone Pay Portal and corporate website and to add Amazon Web Services and additional customer support modules; and authorizing the Director to amend the Contract and execute five one-year renewal options.

WHEREAS, the City has previously entered into a contract with Milestone Utility Services, Inc., dated April 1, 2015, (EV2087) for Contractor to provide for the implementation of the Milestone Pay Portal and the migration of KC Water’s Corporate website with an option to renew support for five years; and

WHEREAS, the Contractor has performed the services required by the contract and the City desires that the contract with the Contractor be amended for Contractor to extend support for the Milestone Pay Portal and corporate website and add Amazon Web Services support and additional customer support modules; and

WHEREAS, the contract amendment would allow the contract to be renewed for up to five one-year renewal terms and a scope of work would be added to enhance access to KC Water’s web portal; NOW, THEREFORE,

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That the Director of Water Services is authorized to execute Amendment No. 6 to the contract (EV2087) with Milestone Utility Services, Inc., in the amount of \$725,365.00 (1-year amount), for the Contractor to extend support for the Milestone Pay Portal and corporate website and to add Amazon Web Services and additional customer support modules. A copy of proposed amendment is on file with the Director of Water Services.

Section 2. That the Director of Water Services is authorized to expend up to the sum of \$725,365.00 from funds previously appropriated to Account No. 22-8010-807710-B, Service Facility Improvement, to satisfy the costs of this contract.

Section 3. That the Director of Water Services is authorized to amend the Contract and to exercise the City’s five one-year renewal options without additional Council authorization.

I hereby certify that there is a balance, otherwise unencumbered, to the credit of the appropriation to which the foregoing expenditure is to be charged, and a cash balance, otherwise unencumbered, in the treasury, to the credit of the fund from which payment is to be made, each sufficient to meet the obligation

hereby incurred.

Tammy L. Queen
Director of Finance

Approved as to form and legality:

James Brady
Assistant City Attorney

GENERAL

Ordinance Fact Sheet

210726

Ordinance Number

Brief Title	Approval Deadline	Reason
Amendment Milestone Portal Support		To improve existing Water Customer pay-portal

Details	Positions/Recommendations														
<p>Reason For Legislation</p> <p>The City has an existing contract with Milestone for Customer Self-Service Portal. The Water Services Department is asking to amend the current agreement to add time and scope, detailed below. The Milestone Amendment provides to ongoing support for the existing KC Water corporate website/pay portal and provide for additional modules to be included to the base pay portal application to include; Customer appointment scheduler, eIVR, eAdmin, Kiosk integration, offline pay function) and AWS support/integration to CIS system. Renewal Terms. At any time prior to the expiration of the initial term or any subsequent term, the CITY, in its sole discretion, may renew this Contract for up to two (2) additional three (3) year terms.</p> <p>Configuration and application one-time fee \$300,000.00 Year 1 Infrastructure and managed service \$425,365.00 Year 1 TOTAL. \$725,365.00 Year 2 Infrastructure and managed service \$438,125.95 Year 3 Infrastructure and managed service \$451,269.73 Year 4 Infrastructure and managed service \$464,807.82 Year 5 Infrastructure and managed service \$478, 752.05 Year 6 Infrastructure and managed service \$493,114.62</p>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%;">Sponsor</td> <td>General Services Department</td> </tr> <tr> <td>Programs, Departments, or Groups Affected</td> <td>Water Services Department</td> </tr> <tr> <td>Applicants / Proponents</td> <td> Applicant Water Services Department City Department Water Services Department Other </td> </tr> <tr> <td>Opponents</td> <td> Groups or Individuals None Known Basis of opposition </td> </tr> <tr> <td>Staff Recommendation</td> <td> <input checked="" type="checkbox"/> For <input type="checkbox"/> Against Reason Against </td> </tr> <tr> <td>Board or Commission Recommendation</td> <td> By <input type="checkbox"/> For <input type="checkbox"/> Against <input type="checkbox"/> No action taken <input type="checkbox"/> For, with revisions or conditions (see details column for conditions) </td> </tr> <tr> <td>Council Committee Actions</td> <td> <input type="checkbox"/> Do pass <input type="checkbox"/> Do pass (as amended) <input type="checkbox"/> Committee Sub. <input type="checkbox"/> Without Recommendation <input type="checkbox"/> Hold <input type="checkbox"/> Do not pass </td> </tr> </table>	Sponsor	General Services Department	Programs, Departments, or Groups Affected	Water Services Department	Applicants / Proponents	Applicant Water Services Department City Department Water Services Department Other	Opponents	Groups or Individuals None Known Basis of opposition	Staff Recommendation	<input checked="" type="checkbox"/> For <input type="checkbox"/> Against Reason Against	Board or Commission Recommendation	By <input type="checkbox"/> For <input type="checkbox"/> Against <input type="checkbox"/> No action taken <input type="checkbox"/> For, with revisions or conditions (see details column for conditions)	Council Committee Actions	<input type="checkbox"/> Do pass <input type="checkbox"/> Do pass (as amended) <input type="checkbox"/> Committee Sub. <input type="checkbox"/> Without Recommendation <input type="checkbox"/> Hold <input type="checkbox"/> Do not pass
Sponsor	General Services Department														
Programs, Departments, or Groups Affected	Water Services Department														
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<p>Discussion</p> <p>The original Milestone master contract was approved and executed May 1, 2015 for the implementation of Milestone Pay Portal and migration of KC Water Corporate website with option to renew support for five years. This amendment will extend support for the Milestone Pay Portal and corporate website as well as adding Amazon Web Services (AWS) support and provision to add additional customer support modules, including:</p> <p>* Customer Appointment Schedule - (Pandemic Response) This will allow customers to schedule onsite visits in a safe manner and ensure appropriate resources are available for the type of issue.</p> <p>* eIVR (interactive voice response) - an added module built off the base pay portal product that leverages the existing conductivity to allow customers to interact via a telephone keypad or by speech recognition and allow payment, request copy of bill, and some service requests options.</p> <p>* eAdmin - a companion module to allow KC Water Customer Service Representatives to process online requests (move in/out, payment arrangements, special requests) and track full communication and messages with customer.</p> <p>* Kiosk Integration - allows support to integrate kiosk data channels for retrieving customer information and payment processing using existing secure portal channels</p> <p>* AWS support - Provide fill AWS infrastructure support leveraging Milestone skillsets for cloud hosted solutions •</p>															

(Continued on reverse side)

Details

M/WBE: At the time of signing this contract it was deemed in the City's best interest to waive solicitation requirements. Milestone Utility Services, Inc. has unique and specialized experience making it exceptionally well situated to perform this work. Their proprietary software has a long history of experience with the Banner Customer Suite and, in fact, has recently formed a strategic alliance with Hansen Technologies, which is Banner's parent company. Milestone Utility Services, Inc. has been engaged with 25 utilities and performed over 60 customer information system related projects and 15 Banner implementations in 16 states. Their customer self service portal is the only such portal which has been independently developed to support the Banner Customer Suite and includes not only access from the web but also the ability to have self-service access from Smartphones.

The Human Relations Department waived MBE/WBE goals on this project on June 10, 2021.

Recommendation: KC Water supports the amendment of the Milestone support contract to maintain systems and enable KC Water to consolidate platforms and move towards cloud-based responsive systems to improve customer interactions.

Policy/Program Impact

Policy or Program Change	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes
Operational Impact Assessment	
Finances	
Cost & Revenue Projections -- Including Indirect Costs	
Financial Impact	
Fund Source (s) and Appropriation Account Codes	22-8010-807710-B-80XX0002 = \$725,365.00 Service Facility Improvement
Is this Ordinance or Resolution Good for the Children?	Yes.

Applicable Dates:

Fact Sheet Prepared by:

Name: Cory Burress Date: 8/10/2021
 Title: Senior Procurement Officer

Reviewed by:

Reference Numbers: EV2087

**MASTER CONTRACT FOR PRODUCTS AND SERVICES
THE CITY OF KANSAS CITY, MISSOURI
AMENDMENT NO. 6
CONTRACT NO. EV2087**

This amendment ("Amendment") is between KANSAS CITY, MISSOURI, a constitutionally chartered municipal corporation (CITY) and Milestone UTILITY SERVICES, INC. (CONTRACTOR). The parties desire to amend the Contract EV2087 entered into on April 1, 2015 for Customer self-service portal implementation as follows:

WHEREAS, City previously entered into a contract with CONTRACTOR to provide a self-service portal; and

WHEREAS, the parties now wish to amend the contract to add the following initial term of contract and additional periods:

- The CITY and CONTRACTOR wish to add additional renewal periods to the existing contract. CITY may renew this Contract for up to two (2) additional three (3) year terms. Also, new scope of work added covers enhance access to KC Water's web portal. This will allow enhancing the portal with a web-based CSR communication tool and creating an offline accessible database, and backup VPN tunnel we can minimize the risks associated with pandemic response in addition to providing improved responses to our customer requests.

Sec. 1. Sections Amended. The following section(s) are hereby added to the Contract:

Attachment A Scope of Work
Attachment B: Pricing Schedule

Sec. 2. Initial Term of Contract and Additional Periods.

- (a) Initial Term. The initial term of this Contract shall begin on April 15, 2015 and shall end on March 30, 2021. The Manager of Procurement Services is authorized to enter into an amendment of this Contract with CONTRACTOR to extend the term of this Contract and time of performance for this Contract.
- (b) Renewal Terms. At any time prior to the expiration of the initial term or any subsequent term, the CITY, in its sole discretion, may renew this Contract for up to five (5) additional one (1) year terms.
- (c) Transition Term. Notwithstanding the expiration of the initial term or any subsequent term or all options to renew, CONTRACTOR and CITY shall continue performance under this Contract until the CITY has a new contract in place with either CONTRACTOR or another provider or until the CITY terminates the Contract, but in no event more than six months from the date of expiration or termination.

This section covers added scope and services. All other terms and conditions still apply.

Attachment A Scope of Work

Application Managed Services

CONTRACTOR will operate the EPORTAL application on behalf of the CITY and provide necessary staff to ensure the application is up and available. Meetings and status reporting will occur between CONTRACTOR and the CITY. The source code will be managed, upgraded (adhering to the CONTRACTOR's release schedule) and promoted

by the CONTRACTOR. The following services will be performed by the CONTRACTOR as part of Managed Services:

- a) Any and all patches, enhancements, updates, upgrades and new versions of the EPORTAL that CONTRACTOR makes generally commercially available as part of the product release schedule. Any such patches, enhancements, updates, upgrades and new versions will be covered by the Managed Services set forth in Section 3.1.6.
- b) Provide support for operational and troubleshooting issues and the applicable resolutions as needed within the guidelines set forth herein.
- c) Monitor ePortal and ensure the application is up and available for the CITY's CITYs and provide support to the CITY on a 24x7 basis.
- d) Managing EPORTAL source code and promotion through the testing and production environments.
- e) Updates and management of configuration and content that does not reside within EPORTAL's Admin console with the CITY.
- f) Reporting of issues and resolution progress as set forth herein.
- g) Status Meetings/Management Reports as set forth herein.

1.1. Scope

CONTRACTOR will provide the CITY with the Managed Services related to EPORTAL as described in this section. The CITY may request services by creating a ticket in the CONTRACTOR ticketing system or other system as mutually agreed upon. The CITY will assign a priority using the Incident and Severity Level table in Section 3.1.8.2. The CONTRACTORS representative will review the request and work with the CITY to fully understand the request. The CITY will be responsible for any and all approvals to promote any source code, configuration, content or any other system changes through the environment stack, as well as any changes to non-CONTRACTOR controlled applications.

1.1.1. Configuration Management

CONTRACTOR will provide the following Configuration Management Services to maintain and support the functionality of the EPORTAL Solution. CONTRACTOR will be responsible for updating Configuration settings in the EPORTAL Admin Portal and promoting the changes through the lower environments and into Production.

The CITY and CONTRACTOR will each perform their respective responsibilities as set out in the table:

Function	Responsibility	
	CITY	CONTRACTOR
User Creation and Role Assignment	RESPONSIBLE	Consults
Add or remove a user update User role assignment	RESPONSIBLE	Informs
Request Configuration setting updates in Admin Portal & assign priority.	RESPONSIBLE	Informs
Change Configuration settings in Admin Portal	Consults	RESPONSIBLE
Promote configuration settings in all portal environments.	Consults	RESPONSIBLE
Approve configuration setting promotions.	RESPONSIBLE	Informs

Function	Responsibility	
	CITY	CONTRACTOR
Assign Priority to requested changes.	RESPONSIBLE	Consults

1.1.2.EPORTAL CITY Notification Management

CONTRACTOR will configure and monitor the SMS and email notification engine and ensure that EPORTAL related CITY notifications are being sent out and provide a user interface to show returned emails.

The CITY and CONTRACTOR will each perform their respective responsibilities as set out in the table:

Function	Responsibility	
	CITY	CONTRACTOR
Manage email server used for outbound CITY communication generated by EPORTAL	Informs	RESPONSIBLE
Review and correct failed emails.	RESPONSIBLE	Consults
Run ePortal batch jobs to generate outbound CITY notifications	Informs	RESPONSIBLE
Manage outbound text service used for outbound CITY communication generated by EPORTAL	Informs	RESPONSIBLE
Assign Priority to requested changes.	RESPONSIBLE	Consults
Generate batch files of accounts or profiles for notifications triggered by 3 rd party applications.	RESPONSIBLE	Informs

1.1.3.EPORTAL Content Management

CONTRACTOR will provide a mechanism that allows a functional user (either CITY or CONTRACTOR) to be able to edit and publish content on EPORTAL.

CITY will be responsible for managing the configured Content using the Admin module. This includes changes in the lower environments and into production. CONTRACTOR will provide the required support.

CONTRACTOR will be responsible for managing and changing any content that cannot be managed through the Admin module and promote these changes through the lower environments and into production.

The CITY and CONTRACTOR will each perform their respective responsibilities as set out in the table:

Function	Responsibility	
	CITY	CONTRACTOR
Edit content through the Admin portal in lower environments	RESPONSIBLE	Informs
Publish content	RESPONSIBLE	Informs

Edit content through the Admin portal in production environment	RESPONSIBLE	Informs
Approve all non-Admin portal content changes	RESPONSIBLE	Informs
Update non-Admin portal content changes	Consults	RESPONSIBILITY
Promote non-Admin portal content changes	Informs	RESPONSIBLE
Assign Priority to requested changes	RESPONSIBLE	Consults
Support/provide backup resources to edit and publish Admin content in lower and production environments	ACCOUNTABLE	RESPONSIBLE

1.1.4. Code Migration / Promotion Management

CONTRACTOR will be responsible for managing the source code and promoting EPORTAL related source code from one environment to another. CONTRACTOR will track the code in an online source code repository (GitHub) and will be responsible for checking code out/in. Code promotions will be based upon the approval of the CITY. The CITY will be responsible for source code managed of CITY controlled applications (any applications not provided by CONTRACTOR). CONTRACTOR and the CITY will collaborate on source code promotions that are dependent on more than one system.

The CITY and CONTRACTOR will each perform their respective responsibilities as set out in the table:

Function	Responsibility	
	CITY	CONTRACTOR
Execute tests on any fixes in Test / Pre-Prod before moving to production.	RESPONSIBLE	Informs
Acknowledge acceptance of fixes prior to deployment in production	RESPONSIBLE	Informs
Promote EPORTAL code through lower tier environments	Consults	RESPONSIBLE
Approve code promotions through lower tier environments	RESPONSIBLE	Informs
Promote EPORTAL code to Production environments	Consults	RESPONSIBLE
Approve code promotions to Production environments	RESPONSIBLE	Informs
Promote any non CONTRACTOR provided code fixes & enhancements	RESPONSIBLE	Consults
Perform data refreshes of lower environments. Not to exceed 4 refreshes per year.	Consults	RESPONSIBLE

1.1.5. Usage Performance Metrics and Improvements

EPORTAL application will track usage and certain elements of transactions being performed by the CITY's. CONTRACTOR will work with the CITY to define 6 KPI's that can be derived out of the data being captured by EPORTAL. KPI's will be defined after deployment stabilization as part of turn over to the Managed Services team. The CITY may request additional reports / KPI's that may be extracted from the data as a change order. The CITY owns all data that

exists within EPORTAL. CONTRACTOR will provide reports on a monthly basis, unless a different frequency is agreed upon. The CITY and CONTRACTOR will each perform their respective responsibilities as set out in table:

Function	Responsibility	
	CITY	CONTRACTOR
Define KPI's to be included in monthly reporting.	RESPONSIBLE	Consults
Develop reports and deliver them on an agreed upon frequency.	Informs	RESPONSIBLE

1.1.6.EPORTAL Upgrade Services

1.1.6.1. Upgrades and patches

CONTRACTOR will perform two types of changes to EPORTAL periodically: i) new features and functions ii) technical currency

New features and functions: As part of continued improvements, CONTRACTOR will perform the upgrades to the EPORTAL with new features and functions. CITY may activate these non-mandatory new features whenever CITY is ready to implement them after they have been made generally available by CONTRACTOR.

Technical currency: CONTRACTOR apply changes to the platform to maintain the technical currency of the platform, including but not limited to security patches. These generally have minimal impact to CITY and end user functionalities but are mandatory. CITY is required to implement them. Urgent updates are packaged as patches and non-urgent updates are packaged with upgrades

1.1.6.2. Process and communication

1. The CONTRACTOR shall provide notice to the CITY no later than 30 days prior to the release of an Upgrade or Service Pack and no later than 5 days prior to a patch.
2. Inclusive of these notices will be supporting documentation and the availability of staff to discuss relevant details
3. The CITY will provide notice to the CONTRACTOR no later than 30 days prior to deployment of upgrades, Service packs for applications under its control and at the same time that it is notified of Patches to these systems that will be deployed.
4. The CITY will be responsible for notifying the CONTRACTOR of any known integration changes being introduced to non EPORTAL applications under its control. CONTRACTOR will provide a cost estimate to make changes to EPORTAL to accommodate changes.

Function	Responsibility	
	CITY	CONTRACTOR
Notify CITY that an Upgrade, Patch, or Service Pack is available	Informs	RESPONSIBLE

Function	Responsibility	
	CITY	CONTRACTOR
Develop project schedule for implementation of new feature	RESPONSIBLE	Consults
Apply upgraded software to the CITY's environment	Informs	RESPONSIBLE
Apply all necessary styles according to Style Guide for new pages.	Informs	RESPONSIBLE
Perform functional testing on upgraded EPORTAL application in Dev environment.	Informs	RESPONSIBLE
Make adapters to 3 rd party or CITY controlled applications available for new feature operability.	RESPONSIBLE	Consults
Provide updated training documentation for Upgraded system	Informs	RESPONSIBLE
Provide training to CITY trainers of new features	Consults	RESPONSIBLE
Provide functional test scripts used to test upgraded system	Informs	RESPONSIBLE
Correct defects to the upgraded application.	Consults	RESPONSIBLE
Promote upgraded system through lower tier environments	Consults	RESPONSIBLE
Approve upgraded system for promotion through lower environments and into production	RESPONSIBLE	Informs
Notify & train CITY end users on new features being introduced	RESPONSIBLE	Informs

1.1.7. Application Monitoring / 24x7 Support

CONTRACTOR will monitor EPORTAL and ensure the application is up and available for the CITY's CITYs and will provide support to the CITY on a 24x7 basis. The following lists the method which reported incidents will be resolved.

- 1) For issues detected by the CONTRACTOR, the CITY will be notified of any application incident that is detected by CONTRACTOR. CONTRACTOR will log an incident in their online ticketing system and will begin triage on the ticket.
- 2) For incidents detected by the CITY, the CITY will log an incident in the Contractors' online ticketing system and CONTRACTOR will begin triage on the ticket. CITY provide a reasonable number of support personnel who may access the CONTRACTOR's online ticketing system.
- 3) The CITY will be responsible for assigning the Severity to tickets as defined in section 3.1.8.2.
- 4) THE CITY will be responsible for resolving end user data input errors and addressing any end user errors or training issues.
- 5) The CITY will provide the first level of support for the application. This includes triage of functionality issues reported by CITYs and other CITY personnel, and categorize the issue

before turning the issue over to the CONTRACTOR (ie. bug, training issue, 3rd party application issue, etc) before reporting an incident to the CONTRACTOR. (Level 1 support)

- 6) The responsibility for Application Monitoring tasks are summarized in the Application Incident Management Responsibility Matrix below.

The CITY and CONTRACTOR will each perform their respective responsibilities as set out in the table:

Function	Responsibility	
	CITY	CONTRACTOR
Identify & document application incident (performance, defect, system generated error message) reported by CITY CITYs or staff.	RESPONSIBLE	Informs
Identify and document application incident as detected by system and application monitoring	Informs	RESPONSIBLE
Log Application Incident & provide supporting details	RESPONSIBLE	Informs
Assign severity to Application Incident	RESPONSIBLE	Consults
Categorize Incident and provide root cause analysis	Consults	R
Resolve application Defects (code and configuration fixes	Consults	RESPONSIBLE
Validate resolution of Defect (code and configuration fixes)	RESPONSIBLE	Consults
Resolve technical interface issues	Consults	R
Resolve system performance issue	Informs	RESPONSIBLE
Resolve end user data input errors	RESPONSIBLE	Informs
Address end user errors or training issues	RESPONSIBLE	Informs I
Generate and log application, transactional exceptions	Consults	RESPONSIBLE
Manage and resolve application, transactional exceptions	RESPONSIBLE	Consults
Support transaction exception resolution	Consults	RESPONSIBLE
Monitor EPORTAL batch jobs and correct any job failures	Informs	RESPONSIBLE

Attachment B: Pricing Schedule

This section covers added prices for additional scope and services. All other terms, conditions and pricing still apply. Pricing is required to be firm and fixed pricing. Do not submit travel and living expenses or cost of bonds separately in cost proposal.

KC Water will pay 20% upfront	\$60,000
Remaining 80% per KC Water sign off at project completion	<u>\$240,000</u>
<i>Configuration and Application Installation One-Time Fee.</i>	<i>\$300,000 (total)</i>
Infrastructure and Managed Services Year 1	\$425,365
Infrastructure and Managed Services Year 2	\$438,125.95
Infrastructure and Managed Services Year 3	\$451,269.73
Infrastructure and Managed Services Year 4	\$464,807.82
Infrastructure and Managed Services Year 5	\$478,752.05
Infrastructure and Managed Services Year 6	\$493,114.62
TOTAL	\$2,751,435.39

Configuration and Application Installation Breakdown:

With the managed services agreement Contractor will implement and configure additional plug-in modules for eIVR and eAdmin. eIVR will provide better self-service features to water customer by providing advanced IVR Features and eAdmin will allow customer service employees to better serve water customers by providing customer-centric dashboards.

Below components will be configured and installed as part of this proposal

- Configure Install eIVR with the following features
 1. PCI Pay by Phone
 2. Outbound Calling Feature
 3. Dynamic Call Routing
 4. Dynamic configuration dashboard easy deployment of call recordings and routing

- Configure Install eAdmin with the following dashboard views
 1. Account Locator
 2. Account Summary
 3. Notes Entry and History
 4. Master Bill
 5. Financials
 6. Collections
 7. Customer Communications and Contacts
 8. Case Management
 9. Service Orders
 10. Meter Reading Analysis with Graphical Representations integration to STAR
- Configure Install Appointment Scheduling Plugin
 1. KC Water Customers book appointments before coming to KC water facility
 2. Case management tool to work customer requests.
 3. Dyanmic configuration dashboard with rules to add appointment types
 4. Scheduling and Resource management

Upgrade Services (ePortal)

Contractor will include upgrade services at no additional costs for implementation. As part of the new contract the current version of ePortal will be eligible for upgrades to our latest release including failover capabilities, batch notifications payments due, and updated user experience.

Application Managed Services

- Provide support for operational and troubleshooting issues and the applicable resolutions as needed within the guidelines set forth herein.
- Monitor ePortal and ensure the application is up and available on a 24x7 basis.
- Managing source code and promotion through the testing and production environments.
- Updates and management of configuration and content.
- Reporting of issues and resolution.
- Status Meetings/Management Reports

Infrastructure and Managed Services Breakdown

Maintenance Services

- **Configuration Management** – Contractor will be responsible for updating Configuration settings and promoting the changes through the lower environments and into Production.
- **Customer Notification Management** - CONTRACTOR will configure and monitor the SMS and email notification engine and ensure that EPORTAL related customer notifications are being sent out and provide a user interface to show returned emails.
- **Content Management** - CONTRACTOR will be responsible for managing and changing any content that cannot be managed through the Admin module and promote these changes through the lower environments and into production.
- **Usage Performance Metrics and Improvements** - CONTRACTOR will work with the CUSTOMER to define 6 KPI's that can be derived out of the data being captured by EPORTAL
- **Support payment Kiosk interface** for account information and payment posting

Infrastructure Services

- Hardware and database patching, licensing, upgrades
- Failover, Backup and disaster recovery

- Code Migration / Promotion Management - Contractor will be responsible for managing the source code and promoting EPORTAL related source code from one environment to another. Will track the code in an online source code repository (GitHub) and will be responsible for checking code out/in.

Sec. 2. Sections not Amended. All other sections of the Contract shall remain in full force and effect.

Sec. 3. Effectiveness; Date. This amendment will become effective when all the parties have signed it. The date this amendment is signed by the last party to sign it will be deemed the date of this amendment.

Each party is signing this amendment on the date stated opposite that party's signature.

CONTRACTOR

I hereby certify that I have authority to execute this document on behalf of Contractor

Date: _____

By: _____

Title: _____

KANSAS CITY, MISSOURI

Date: _____

By: _____

Title: _____

Approved as to form:

Assistant City Attorney

CONTRACT FOR SERVICES
STANDARD CITY CONTRACT
AMENDMENT NO. 5
CONTRACT EV2087

This amendment is between KANSAS CITY, MISSOURI, a constitutionally chartered municipal corporation (City), and Milestone Utility Services, Inc. (Contractor). The parties amend the Contract entered into on April 1, 2015, as follows:

Sec. 1. Sections Amended. The Contract is amended as follows.

This is an amendment to add scope and pricing providing additional support to CITY assisting with customer care related to CONTRACTOR ePortal and other 3rd Party Applications. CONTRACTOR will provide part-time support as needed that can be a blended resource that is either technical, functional or both depending on the CITY need.

The following language is being added to Attachment A.

Attachment A: Scope of Work

CUSTOMER SELF-SERVICE PORTAL TO CONTRACTOR EPORTAL 2.0

1 Overview

1.1 Introduction

CITY has requested the CONTRACTOR to provide additional support helping with customer care and billing issues on as needed basis part-time. The resource will be a blended resource so there is no restriction on the type of work that might need to be performed.

1.2 Assumptions

- CITY will be responsible for procuring any necessary software or hardware.
- CITY will provide a development environment with data recently cloned from Production. CONTRACTOR will develop corrections and enhancements in this development environment, and therefore will need complete access to apply forms, processes and database objects.
- CITY will provide CONTRACTOR with remote access to Development, Training, and Testing Hansen Banner, LLC. Banner 4.3 environments. This includes the front-end application, as well as the servers and database. CONTRACTOR will be able to access and utilize other applications such as document repositories, defect tracking, log/lis file viewers, etc.

The services contained in this amendment are Fixed Price. Any changes in scope, assumptions or cost of execution will result in an additional Project Change Request. CONTRACTOR will invoice in full at the execution of this Amendment . The payment terms for all invoicing is Net 30 Days.

The table below describes the deliverables and the payment schedule.

Deliverable	Deliverable Description	Amount
2.1.1	Additional Support	\$45,000
	Total	\$45,000

TRAVEL:

No travel, living or incidental expenses are authorized to be billed separately. The fee for the deliverable is firm and fixed and inclusive of any additional charges.

Sec. 2. Sections not Amended. All other sections of the Contract shall remain in full force and effect.

Sec. 3. Effectiveness; Date. This amendment will become effective when all the parties have signed it. The date this amendment is signed by the last party to sign it will be deemed the date of this amendment.

CONTRACT FOR SERVICES
STANDARD CITY CONTRACT
AMENDMENT NO. 4
CONTRACT EV2087

This amendment is between KANSAS CITY, MISSOURI, a constitutionally chartered municipal corporation (City), and Milestone Utility Services, Inc. (Contractor). The parties amend the Contract entered into on April 1, 2015, as follows:

Sec. 1. Sections Amended. The Contract is amended as follows.

This is an amendment to add scope and pricing for the replacement of the current corporate website, configuration of AWS hosted servers, exposing ePortal web services for integration with Alexa Skillset, creation of oracle form to manage web profiles, creation oracle forms to manage start or stop service requests submitted using ePortal, saving payment methods, separation of web checks in extract files sent to the CITY banking institution, blocking customers from making credit card payments and initiating the ACH Automatic Payment Prenote process.

The following language is being added to Attachment A.

Attachment A: Scope of Work

CUSTOMER SELF-SERVICE PORTAL TO CONTRACTOR EPORTAL 2.0

1 Overview

1.1 Introduction

CITY has requested several modification related to the implementation of CONTRACTOR ePortal 2.0 (EV2087 Amendment No.3) based on gaps in functionality identified as part of the requirements gathering. The modification will be included as part of the migration to the latest release of CONTRACTOR ePortal. The modifications include a replacement of the current corporate website, configuration of AWS hosted servers to allow CONTRACTOR ePortal installation, exposing ePortal web services for integration with Alexa Skillset, creation of oracle form to manage web profiles and creation oracle forms to manage start or stop service requests submitted using ePortal.

1.2 Assumptions

- CITY will be responsible for procuring any necessary software or hardware.
- CITY will provide a development environment with data recently cloned from Production. CONTRACTOR will develop corrections and enhancements in this development environment, and therefore will need complete access to apply forms, processes and database objects.

CONTRACTOR will replace the current corporate website <https://www.kcwaterservices.org/> with a new website that will utilize Responsive Design for mobile devices and WordPress for content management. The new website will be installed on the same AWS hosted server that ePortal was installed. The configuration will include several iterations of CITY review and requirements session to finalize the overall content and appearance. CONTRACTOR will provide training on configuration and content management using WordPress. CONTRACTOR will migrate existing content from current website to the new website as required by the CITY.

2.1.2 AWS Configuration

CONTRACTOR will assist the necessary steps needed to install ePortal on hosted AWS servers. This will include configuration of a VPN tunnel necessary to communicate with CITY database servers located behind CITY firewall. Configuration of Wildfly (JBoss) web application servers required for ePortal installation for development and production environments. Configuration of outbound email and SMS messages using AWS pinpoint gateway.

2.1.3 Expose ePortal web services for Alexa Skillset

CONTRACTOR will expose ePortal web service for integration to Amazon Alexa Skillset. This will include the necessary security configuration and assistance with integration testing of web service to Alexa Skillset. CONTRACTOR will only be responsible for integrating Alexa Skillset to use the web services once exposed.

2.1.4 Web Profile Management Form

CONTRACTOR will create an Oracle form that can be used to manage ePortal Web Profiles. The ePortal base product provides a web page located within Administration console for Account Profile Management but it would require CITY employees to navigate away from the billing application to manage ePortal portal inquiries. The oracle form will have same functionality web page besides sending an email for password reset. The form will include the following information related a customer's web profile:

- UserID
- Email
- Security Questions
- Unlock Account
- Reset Password allowing a new password defined by CITY employees
- Reset Password allowing a customer to set a new password by selecting Forgot Password link on ePortal website
- View and Remove Share Account access that has been granted by a customer
- Remove ePortal registration

2.1.5 Web Start/Stop Service Requests

CONTRACTOR will create a Bank Draft extract process that will separate web check payments from recurring bank payments in extract files sent to the CITY financial institution. The process will create two separate extract files in NACHA format identifying web checks and recurring bank payments separately. The process will be executed from the Banner Application and run as part of batch processing or independently. The process will use same processing logic as the existing Bank Draft Process (UAPCBDD) that is ran today with the exception of summing payment records made on the same day using the same bank information and customer. The new Bank Draft process should be used in place of the current Bank Draft Process (UAPCBDD)

2.1.10 Bank Draft Enrollment Real-time Prenote

CONTRACTOR will modify the existing bank draft enrollment logic to create a prenote bank draft record that is sent to CITY financial institution for validation. The current process can take up to two billing periods or 60 days to begin drafting a customer’s bank account for CITY charges. The enhancement allows the customer to begin having their account drafted starting with their next bill instead of two billing periods. Prenote bank draft records will be created for both new bank draft enrollments and modifications of an existing enrollment that are the result of an ePortal web transaction.

The following language is being added to Attachment B.

Attachment B: Cost Breakdown

CUSTOMER SELF-SERVICE PORTAL TO CONTRACTOR EPORTAL 2.0

The services contained in this amendment are Fixed and Fixed Price. Any changes in scope, assumptions or cost of execution will result in an additional Project Change Request. CONTRACTOR will invoice in full once all modifications have been delivered and accepted by the CITY. The payment terms for all invoicing is Net 30 Days.

CONTRACTOR will provide CITY with Maintenance and Support on the CONTRACTOR modifications as part of CONTRACTOR ePortal maintenance agreement. This maintenance will provide CITY with defect corrections on any issue related to the identified modifications in this amendment. There will be no cost increase in the original CONTRACTOR Maintenance terms.

The table below describes the deliverables and the payment schedule.

Deliverable	Deliverable Description	Amount
2.1.1	Corporate Website Replacement	\$10,000
2.1.2	AWS Configuration	\$5,000
2.1.3	Expose ePortal web services for Alexa Skillset	\$5,000
2.1.4	Web Profile Management Form	\$0
2.1.5	Web Start/Stop Service Request Forms	\$0
2.1.6	ACH Wallet Integration	\$32,000
2.1.7	Credit Card Wallet Integration	\$16,000
2.1.8	Restrict Credit Card Payments by Customer	\$3,000
2.1.9	Web Check NACHA Extract	\$5,400
2.1.10	Bank Draft Enrollment Real-time Prenote	\$21,500
Total		\$97,900

Each party is signing this amendment on the date stated opposite that party's signature.

CONTRACTOR

I hereby certify that I have authority to execute this document on behalf of Contractor

By: Frank W Anderson

Date: 2/18/2019

Title: Chief Operating Officer

KANSAS CITY, MISSOURI

By: Wendy Joellen

Title: Procurement Mgr

Date: 3/27/19

Approved as to form:

[Signature]
Assistant City Attorney

CONTRACT FOR SERVICES
STANDARD CITY CONTRACT
AMENDMENT NO. 3
CONTRACT EV2087

This amendment is between KANSAS CITY, MISSOURI, a constitutionally chartered municipal corporation (City), and Milestone Utility Services, Inc. (Contractor). The parties amend the Contract entered into on April 1, 2015, as follows:

Sec. 1. Sections Amended. The Contract is amended as follows.

This is an amendment to add scope and pricing for the creation of a secure interface using a website redirect to JetPay to accept credit card payments using the Customer Self Service Portal.

The following language is being added to Attachment A.

Attachment A: Scope of Work

CUSTOMER SELF-SERVICE PORTAL TO CONTRACTOR EPORTAL 2.0

1 Overview

1.1 Introduction

CITY implemented the CONTRACTOR Customer Self-Service Portal in 2015. Today, CONTRACTOR ePortal 2.0 is the latest release available for upgrade and has new features and functionality aimed to improve the customer experience. As outlined in this SOW, CONTRACTOR will upgrade CONTRACTOR Customer Self-Service Portal to the new CONTRACTOR ePortal 2.0 release and provide support for 3 years.

The project is targeted to start on March 1, 2018. The names and titles of all CONTRACTOR project resources are included in the Statement of Work. A training plan is included for all functionality, administration, reporting, and technical training requirements.

CONTRACTOR will provide a Project Manager (PM) to oversee all activities for both CONTRACTOR and CITY, acting independently from the project. The resource identified will serve specifically as the PM role for CONTRACTOR with the expectation that CITY will also rely heavily on the same PM. The PM will serve independently from the technical or functional resources.

- Social Media Access – This provides the customer with the ability to login through their Facebook, Twitter, and Google accounts for the benefit of making engagement more accessible.

1.2.2 Account Summary

Account Summary provides an overview of account specific information in dashboard format and provides a user-friendly display of billing related information.

- Name and Address
- Account Number
- Account Status
- Balance on the account
- Past Due Amount if applicable
- Current Amount Due
- Next payment due date
- Meter number on the account
- Last meter read date
- Consumption amount at the last reading
- All programs the customer is enrolled in
- The ability to make a payment

1.2.3 Account History

- Billing History
- Payment History
- Usage History
- Graphical Representation of Usage for the past 36 months
- Access Current Billing Statement
- Access Past Billing Statements

*Release 2.0 Notes

- Responsive Charts and Graphs – The customer can now view more customer-friendly, easy-to-understand usage charts and graphs to improve the customer experience.

1.2.4 Payment

- Credit/Debit Card Payments (redirects to payment vendor website)
- Automatic Bank Draft
- Electronic Check (One-time Phone Check)
- Pay by Phone (Displays the Contact Phone Number to make a payment by phone)
- Payment Location (Display all the pay location in a map view and provide address)
- Payment Arrangements

*Release 2.0 Notes

- Dynamic Rules – Gives more flexibility to the utility in managing the website by making it easier to configure without CONTRACTOR’s assistance.
- Analytics – Reporting capabilities making it easier to obtain and drill down on the information from the analytics captured in graphs, charts, etc. Provides information needed to improve the quality of service to customers.
- Dynamic Alerts – The utility can now configure the portal with dynamic alerts which are based on the utility’s specific billing and payment business processes.
- Rebates and Other Programs – Added the ability to provide information about rebates and other programs.

1.4 Technology/Architectural Overview

CONTRACTOR ePortal API’s can be used by the self-service portal as well as through the IVR application. These API’s are configurable and rule-driven. These API’s include all the same edits found in the Banner forms when a CSR is performing these transactions manually.

The presentation layer is separated from business layer and data layer. CONTRACTOR ePortal model is based on N-tier architecture, Presentation Layer, Business Layer and Data Layer. This model helps the client make changes to the presentation layer without affecting the business or data layer and vice versa. This model also allows the client to add new enhancements to any of the layers to reduce the implementation time and downtime to apply the new releases.

The frontend framework is designed and developed on SOA architecture. CONTRACTOR ePortal is mobile ready through responsive design. CONTRACTOR used HTML5, Spring Mobile and JQuery Mobile.

- ***Release 2.0 Feature**
Responsive Design – Responsive design provides the ePortal user with the ability for the ePortal to adapt to any device, tablet, desktop, and smartphone. This adds another way to view the website on a smartphone without downloading the mobile app.

1.5 Assumptions

- CITY will be responsible for procuring any necessary software or hardware.
- CITY will provide a development environment with data recently cloned from Production. CONTRACTOR will develop corrections and enhancements in this development environment, and therefore will need complete access to apply forms, processes and database objects.
- CITY will provide CONTRACTOR with remote access to Development, Training, and Testing Hansen Banner, LLC. Banner 4.3 environments. This includes the front-end application, as well as the servers and database. CONTRACTOR will be able to access and utilize other applications such as document repositories, defect tracking, log/lis file viewers, etc.
- CITY will provide the project team with knowledge of current installation and business processes (or access to them) and has the authority to make decisions about online self-service web offerings.

Deliverable Number	1.
Content	A detailed task list including schedules, and resource assignments.
Primary Responsibility	CONTRACTOR
Participants/Roles	CONTRACTOR Project Manager, CONTRACTOR Customer Engagement Specialist, & CITY Project Manager
CITY Contribution	Work with CONTRACTOR Project Manager to finalize CITY resources and project deliverables.
Deliverable Format	MS Project

Deliverable Number	2.
Deliverable Name	Weekly Activity Status Reports
Purpose	To provide clear, on-going communications to the project team concerning the status of the CONTRACTOR deliverables, the CONTRACTOR Project Manager will prepare a formal weekly activity report providing current project status.
Content	Ongoing communication between the project managers will help to ensure that any variances to the project plan are identified and addressed in a timely manner. The reports will contain sufficiently detailed information to enable CITY to determine the status of the project and any variance from the project plan.
Primary Responsibility	CONTRACTOR
Participants/Roles	CONTRACTOR PM will provide information to the CITY PM
CITY Contribution	Attend status meetings, provide feedback on any CITY tasks.
Deliverable Format	MS Word delivered electronically on a weekly basis.

2.1.2 Configuration Workshop

CONTRACTOR will conduct an on-site workshop to review the Admin Console and new configuration settings included with the solution. The content management system will be demonstrated, and CITY will review the content that has been converted from the existing website. This content includes on screen messaging, email content, and enrollment policies displayed to the user.

CONTRACTOR will capture these different settings in a configuration setting document. This document will be used to set up the software in the CONTRACTOR development instance. Additionally, these will be the configuration settings provided on the initial software installation on CITY's development instance.

CONTRACTOR will document the configuration settings in a configuration document and provide to CITY. This document will be used to set up the CONTRACTOR ePortal system for testing and then as the installed application on CITY's development box.

Deliverable Number	5.
Deliverable Name	Updated Configuration Document – Initial Configuration
Purpose	Provide up-to-date configuration document to CITY in the event of an agreed upon setting change (if there are any changes).
Content	Specific codes and setting to be used to set up CONTRACTOR ePortal software.
Primary Responsibility	CONTRACTOR
Participants/Roles	CONTRACTOR Functional Consultants, CITY Functional Personnel, CITY Technical Personnel
CITY Contribution	Resolve any issues or conflicting requirements.
Deliverable Format	MS Excel Document

2.1.4 Configuration Testing

Once the Application Configuration has occurred, CONTRACTOR will conduct a basic test ensuring that the application has been configured properly, the appropriate transactions are being created in Hansen Banner, LLC. Banner, and that the correct modules are available to the end user. The testing verification will also include migration of existing content from previous version of ePortal to the new release where it can be managed within the Admin Console. CONTRACTOR will make the base test cases available to CITY when they are complete, and prior to Configuration Testing, so they can be used in the creation of UAT test cases. CONTRACTOR will provide completed test cases with results at the completion of UAT.

Verification of all web content will be done by CONTRACTOR Customer Engagement Specialist Marketing Resource to ensure all customer facing information is clear and concise. The objective of this test is to verify configuration, operability, registration migration, and website content is in accordance with CITY's configuration settings. This test will be conducted in CITY development servers. CONTRACTOR will deliver all testing documentation to CITY for review of test results and to assist with the creation of UAT test scripts.

Deliverable Number	6.
Deliverable Name	Unit Test Results – Initial Configuration
Purpose	Provide proof to CITY of the functioning system after configuration.
Content	Test purpose, test steps, and testing results
Primary Responsibility	CONTRACTOR
Participants/Roles	CONTRACTOR QA Testers, CONTRACTOR Customer Engagement Specialist
CITY Contribution	None
Deliverable Format	MS Word – CONTRACTOR Test Case Template

3. Training

After the configuration has been tested to verify it is operating according to CITY's requirements, CONTRACTOR will provide CITY with application training for CSRs and supervisors. This training will demonstrate each module that has been configured. Instruction will be provided on each of the modules and how the different settings accomplish CITY's requirements. CONTRACTOR will work directly with CITY Trainer(s) to finalize training documentation that will be used for training and can also be utilized for end user training classes going forward.

Additionally, CONTRACTOR will provide training for the support and communication staff to go over the technical support and administrative requirements of the system. CONTRACTOR will provide training on content management, template configuration (SMS/email) and dashboard analytical reporting to CITY communication staff so they can properly configure and manage customer facing interaction. CONTRACTOR will also provide support training to go over rule configuration, database schemas/table structure and basic triage of potential issues.

CONTRACTOR Customer Engagement Specialist will provide input and collaborate with CITY Marketing Director.

As we move through the training, CITY may find that there are some final configuration changes that they would like to make. These final changes will be updated in the Configuration Setting Document or Gap analysis document.

3.1 Training Plan and Agenda

3.1.1 Train the Trainer Training (Duration: 1 week, Sessions: 2)

The first part of training will consist of training CSRs and supervisor. The training will last approximately 4 days and will be available in two-separate, one-week sessions. Each training session will contain no more than 24 people and users will be expected to complete activities that will involve training PC's connected to a test environment. The complete functionality of CONTRACTOR ePortal including both existing and new functionality will be included. The first two days will primarily focus on the customer-facing CONTRACTOR ePortal functionality highlighting new functionality to this release. The next two days will focus on making updates to customers' accounts based on requests received. If needed, CONTRACTOR will provide one Saturday training session shifting the schedule below to include a full-day of training on Saturday.

Day	Description	CITY Resources
Monday AM	Travel	
Monday PM	Introduction and Demo ePortal Registration via Social Media Pay Now* Sharing the Account* Find an Account Profile Management Notifications*	CSRs and Supervisors

Day	Description	CITY Resources
	Follow up items and questions.	
Wednesday AM	System Rules and Configuration, Dashboard reporting for APIs	IT Support
Wednesday PM	Database Schema and Table, Researching Account Issues	IT Support
Thursday AM	Follow up on items, Questions	IT Support

Deliverable Number	9.
Deliverable Name	Technical Training
Purpose	To provide an overview on the database structure and system configuration to assist IT Support inquiries and future configuration changes.
Content	Classroom setting consisting of lecture and hands-on practice training as described.
Primary Responsibility	CONTRACTOR
Participants/Roles	CONTRACTOR Trainer, CITY CS Support Team
CITY Contribution	Attend Training
Deliverable Format	Classroom training environment for 4 days designed for 1-3 attendees.

Deliverable Number	10.
Deliverable Name	Functional Training
Purpose	To provide functional training on the complete application including both old and new features.
Content	Classroom setting consisting of lecture and hands-on practice training as described.
Primary Responsibility	CONTRACTOR
Participants/Roles	CONTRACTOR Trainer / CITY Trainer(s)
CITY Contribution	Attend Training.
Deliverable Format	Classroom setting for 4 days consisting of lecture and hands-on practice training for up to 12 attendees.

Deliverable Number	11.
Deliverable Name	Functional Training Documentation
Purpose	To develop step-by-step training documentation that will be used for CSR training sessions for current and future needs.
Content	The content of the training document will cover all modules that will be utilized by CITY and available to their customers. This will include but not limited to e-bill payments, service orders, automatic payments, password reset/unlock, usage and history.
Primary Responsibility	CONTRACTOR
Participants/Roles	CONTRACTOR Trainer / CITY Trainer

5. User Acceptance Testing

CONTRACTOR will provide functional and technical support for CITY’s User Acceptance Testing. This support includes triaging issues found by CITY’s testers, addressing any of those issues via configuration, coding corrections, and/or potential training issues. CONTRACTOR will provide 1 FTE (Full Time Equivalent) for 2 weeks of support. (The hours for this task may be split between multiple technical and functional resources.) CONTRACTOR will provide the base configuration test cases to CITY to be utilized in the creation of CITY UAT test cases. CONTRACTOR functional resources will work with CITY resources to review and finalize UAT test cases that will perform complete end-to-end testing based on business processes. The CONTRACTOR Project Manager will oversee the development and execution of the CITY UAT test cases to assure the tasks are completed by the agreed upon dates. CITY will be responsible for the creation of UAT test cases with CONTRACTOR review and the execution of all UAT test cases.

Deliverable Number	14.
Deliverable Name	User Acceptance Testing Documentation
Purpose	Proof of completed test cases
Content	Test steps, testing results, sign off
Primary Responsibility	CITY
Participants/Roles	CITY Functional/Business Resources: Development and execution of UAT test cases; CONTRACTOR Support: Triage and fix UAT issues; CONTRACTOR Functional Resource: assist in reviewing/finalizing UAT test cases; CONTRACTOR PM: track status of UAT tasks to assure completion by agreed upon date.
CITY Contribution	Create, Execute and document tests
Deliverable Format	To be determined by CITY to notify CONTRACTOR that UAT is complete. Testing should be completed within the 15-day period after final configuration is delivered.

6. Go-Live Support

CONTRACTOR will provide go-live support to CITY that may be used after User Acceptance Testing and during go-live. These support tasks include triage of issues reported by CITY, correction of base application issues and answering questions regarding functionality of the application.

CONTRACTOR will provide 1 FTE (Full Time Equivalent) for 4 weeks of support post Go-Live. The hours for this task may be split between multiple technical and functional resources. After the 4 weeks, all support will rollover into the Maintenance period.

Deliverable Number	15.
Deliverable Name	Go Live Support
Purpose	To assist CITY in the execution of the migration cut-over plan.

8. Marketing and Communications Support Services

CONTRACTOR will provide (1) Customer Engagement Specialist to provide communication campaign support. Work is expected to include content consulting and strategic guidance for materials such as email, landing page, web banner, social media asset, article content, video, event materials, and/or press release. CONTRACTOR will share best practices to increase customer acquisition and retention to help support more recognized value to CITY from the CONTRACTOR ePortal 2.0 upgrade. Marketing assets will be created, produced, and distributed by CITY.

The Customer Engagement Specialist will test documentation prepared by CONTRACTOR. The effort will include reporting on customer-specific testing to ensure a positive customer journey is executed in the upgraded CONTRACTOR ePortal.

Deliverable Number	17.
Deliverable Name	Customer Engagement Campaign Support
Purpose	To support a successful communication campaign launch of new features available to customers.
Content	Consulting and strategic guidance related to marketing materials for the new ePortal customer launch campaign. May include materials such as email, landing page, web banner, social media asset, article content, event materials, and/or press release. *marketing assets will be created, produced, and distributed by CITY.
Primary Responsibility	CONTRACTOR
Participants/Roles	Customer Engagement Specialist
CITY Contribution	Collaboration with communications manager and team members.
Deliverable Format	As determined by CITY.

9. Customizations

Any gaps regarding eligibility for certain programs or plans that were captured during the workshop phase are discussed with CITY. If CITY wishes to pursue the additional functionality, then this will proceed using the change request methodology detailed below.

10. Schedule of Work

For this CONTRACT, electronic media will be MS Word or Adobe (PDF) for text and MS Project for project plans. The deliverables are discussed in detail in the tables within each task.

The schedule of work will be agreed by both parties upon acceptance of any work incorporated under this implementation SOW. CONTRACTOR will provide resources to perform work within a mutually agreed upon start date. Estimated start date is targeted for March 1, 2018 or 2 weeks following contract execution.

10.2 Methodology

Task Name	Duration	Start	Finish
- Project Management	126 days	Thu 3/1/18	Thu 5/23/18
Finalize Project Plan and Resources	10 days?	Mon 9/11/17	Fri 9/22/17
Manage all project resources	121 days?	Mon 9/18/17	Mon 3/5/18
Conduct weekly status meetings	121 days?	Mon 9/18/17	Mon 3/5/18
Deliver Project Status updates to KC Water	121 days?	Mon 9/18/17	Mon 3/5/18
- Milestone ePortal Implementation	121 days?	Thu 3/1/18	Thu 8/16/18
- Project Initiation	13 days?	Thu 3/1/18	Mon 3/19/18
Develop Detailed Joint Project Plan & Schedule	2 days	Thu 3/1/18	Fri 3/2/18
Identify Project Resources	0 days?	Fri 3/2/18	Fri 3/2/18
Establish Project Communication & recurring meetings	0 days?	Fri 3/2/18	Fri 3/2/18
Project Kickoff	1 day	Mon 3/19/18	Mon 3/19/18
- Platform Installation - Development	8 days	Mon 3/5/18	Wed 3/14/18
Install and Config Framework Software	1 day	Mon 3/5/18	Mon 3/5/18
Install ePortal Software	5 days	Tue 3/6/18	Mon 3/12/18
Installation Verification	2 days	Tue 3/13/18	Wed 3/14/18
- Configuration Workshop	17 days?	Thu 3/15/18	Fri 4/6/18
Conduct Onsite Config Workshop	4 days	Thu 3/15/18	Tue 3/20/18
Configuration Settings Document - Draft	2 days	Wed 3/21/18	Thu 3/22/18
Document Gaps	2 days	Fri 3/23/18	Mon 3/26/18
Document Screen Mock Ups	3 days	Tue 3/27/18	Thu 3/29/18
Review Documentation with Client	1 day?	Wed 4/4/18	Wed 4/4/18
Deliver Final Documentation	1 day?	Fri 4/6/18	Fri 4/6/18
- Platform Configuration	12 days	Mon 4/9/18	Tue 4/24/18
Enable / Disable Modules	2 days	Mon 4/9/18	Tue 4/10/18
Enter Config based on Config Document	3 days	Mon 4/9/18	Fri 4/13/18
Application Blending	3 days	Wed 4/11/18	Tue 4/17/18
Modify Screens as per Mock Ups	3 days	Wed 4/16/18	Tue 4/24/18
- Interfaces and Enhancements	11 days?	Mon 4/9/18	Mon 4/23/18
Configure Bill Presentment Interface	1 day	Mon 4/9/18	Mon 4/9/18
Configure JetPay Payment Interface	1 day	Tue 4/10/18	Tue 4/10/18
Configure Aclara MDM interfac	3 days	Wed 4/11/18	Fri 4/20/18
Testing Complete - System Ready for Ci	1 day?	Mon 4/23/18	Mon 4/23/18

- Additional Support	121 days	Thu 3/1/18	Thu 8/16/18
Support for out of scope items	10 days	Mon 3/5/18	Fri 3/16/18
- Marketing	120 days?	Mon 3/5/18	Fri 8/17/18
Implementation Workshops and Meetings	1 day?	Mon 3/5/18	Mon 3/5/18
Post Go-Live reporting metrics	1 day?	Fri 8/17/18	Fri 8/17/18
Customer-centric testing	3 days	Thu 5/17/18	Wed 5/23/18
Communication and Reporting	1 day?	Fri 7/13/18	Fri 7/13/18
- Campaign Consulting	10 days	Tue 3/20/18	Mon 4/2/18
Marketing Plan	3 days	Tue 3/20/18	Thu 3/22/18
Consultation on existing marketing strategy	3 days	Fri 3/23/18	Tue 3/27/18
Content consulting, writing, design	4 days	Wed 3/28/18	Mon 4/2/18

11. Resources

The following CONTRACTOR resources will work on the identified objectives and deliverables.

SOURCE	NAME	TITLE	ROLE/RESPONSIBILITY
CONTRACTOR	Brian Menard	Project Manager	Manage overall implementation tasks for both CONTRACTOR and CITY resources.
CONTRACTOR	Mike Burnor	Senior Business Consultant	Configuration workshop, Application testing, Documentation, Training, Support
CONTRACTOR	Phani Kosuri	Technical Consultant (Web)	Application Configuration, Support
CONTRACTOR	Sreenivasa Kosuri	Technical Consultant (Web)	Application Configuration, Support
CONTRACTOR	Anil Mittamidi	Technical Consultant (DB)	Application Configuration, Support
CONTRACTOR	TBD	QA Tester	Run and verify testing according to scripts
CONTRACTOR	Jennifer Espelien	Communications Director/ Customer Engagement Specialist	Testing, QA, and verification of Marketing Review and requirements
CITY	Joel Mendoza	Co-Technical Lead	Oversee technical aspects of project
CITY	Liz Duggan	Functional Lead	Oversee functional requirements

Sec. 2. Sections not Amended. All other sections of the Contract shall remain in full force and effect.

Sec. 3. Effectiveness; Date. This amendment will become effective when all the parties have signed it. The date this amendment is signed by the last party to sign it will be deemed the date of this amendment.

Each party is signing this amendment on the date stated opposite that party's signature.

CONTRACTOR

I hereby certify that I have authority to execute this document on behalf of Contractor

By: Frank W Anderson

Date: 2/28/2018

Title: Chief Business Development Officer

KANSAS CITY, MISSOURI

By: Renee Medlin

Date: 03/01/2018

Title: Procurement Manager

Approved as to form:

Assistant City Attorney

CONTRACT FOR SERVICES
STANDARD CITY CONTRACT
AMENDMENT NO. 2.
CONTRACT EV2087

This amendment is between KANSAS CITY, MISSOURI, a constitutionally chartered municipal corporation (City), and Milestone Utility Services, Inc. (Contractor). The parties amend the Contract entered into on April 1, 2015, as follows:

Sec. 1. Sections Amended. The Contract is amended as follows.

This is an amendment to add scope and pricing for the creation of a secure interface using a website redirect to JetPay to accept credit card payments using the Customer Self Service Portal.

The following language is being added to Attachment A.

Attachment A: Scope of Work

CREDIT CARD INTERFACE FOR JETPAY

1. INTRODUCTION AND OBJECTIVES

CONTRACTOR will modify the CONTRACTOR Customer Self Service Portal.

Provide Kansas City Water Services with a means to accept credit card payments using the Customer Self Service Portal by creating an interface to JetPay to process payments. The interface will be a secure interface using a combination of server and web packages to assure information is secure. The customer will be redirected to JetPay website to complete payment. This modification will apply to both the website and mobile application.

The applicable assumptions, definitions, scope, and deliverables applicable to the modifications to the CONTRACTOR Customer Self Service Portal are contained within this SOW.

1.1 Understanding the Requirements

CONTRACTOR will create a new credit card interface to JetPay to allow customers to submit credit card payments using a redirect to JetPay website to complete the payment from the website and mobile app. Payments will also be accepted from IVR allowing the customer to enter the credit card information also notifying the customer of the fee amount.

2. ASSUMPTIONS

2.1 CITY will be responsible for procuring any necessary software or hardware.

2.2 CITY will provide a Banner or Customer Suite development environment with data recently cloned from Production. CONTRACTOR will develop corrections and enhancements in this development environment, and therefore will need complete access to apply forms, processes and database objects.

- 2.3 CITY will provide CONTRACTOR with remote access to Development, Training and Testing Banner or Customer Suite environments. This includes the front-end application, as well as the servers and database. CONTRACTOR will be able to access and utilize other applications such as document repositories, defect tracking, log/lis file viewers, etc.
- 2.4 All CONTRACTOR-led training will be conducted with an optimal class size of twelve (12) attendees and a moderate level of interaction. If there are additional attendees, an additional trainer will be allocated and utilized, pursuant to the Change Request provisions otherwise specified in this SOW.
- 2.5 CITY will provide training room with equipment setup.
- 2.6 CITY provides project team with knowledge of current installation and business processes (or access to them) and has the authority to make decisions about online self-service web offerings.
- 2.7 CITY has a project manager who is responsible for managing CITY's tasks and resources. CONTRACTOR will provide a project manager who is responsible for managing CONTRACTOR tasks and resources.
- 2.8 The target version to integrate CONTRACTOR Customer Self-Service Portal is Customer Suite Version 4.3. The target version of MCSSP to implement is ePortal 2.0.
- 2.9 CITY will create an environment on the operating server such that the CONTRACTOR ePortal 2.0 can be installed.
- 2.10 If online Credit/Debit payments are to be utilized, CITY will negotiate with the online payment card vendor where the portal will navigate the customer.
- 2.11 All software will be delivered electronically.
- 2.12 Project Management and Technical and Functional Support ("Project Oversight") Services are based on a project duration of no longer than six (6) months. Any extension or delay of the project, or requests for additional Project Oversight will require CITY to develop and execute a separate, additional Statement of Work for any additional Project Management and/or Technical and Functional Support hours.
- 2.13 Upon acceptance by both parties, CONTRACTOR and CITY shall each assign a representative to act as Project Manager for the appointing party through the final acceptance by CITY. The total project duration will not exceed six (6) months without mutual agreement of the project managers, including a user acceptance test period lasting no longer than (10) calendar days.
- 2.14 CITY will be responsible for the development and execution of Acceptance Testing test plans, test cases and other testing artifacts with support from CONTRACTOR personnel.
- 2.15 This SOW is for professional services only. It does not include costs associated with obtaining licensed products from CONTRACTOR, hardware costs, or third party software or services costs associated with the implementation.
- 2.16 CITY is responsible for testing the Software and reporting any deficiencies to CONTRACTOR for investigation. All software deficiencies will be resolved under the terms of the Software License Agreement.
- 2.17 CITY is responsible for all changes on the IVR side to communicate with the JetPay interface through the Billing Database.

2.18 CONTRACTOR will not be responsible for stopping payments made from the mobile app for previous version downloads. The code is stored on the mobile device so it can't be modified without the customer downloading a new version.

3. DEFINITIONS

All capitalized terms used and not defined herein shall have the same meanings given them in the Agreement.

(a) "Baseline Component System" has the meaning ascribed to such term in the Software License Agreement between the parties, and further, for purposes of this SOW, refers specifically to the CONTRACTOR Customer Self-Service Portal (MCSSP).

(b) "Change Request" means any request for a change to this SOW as specified in Section 5 of this SOW.

(c) "Customizations" mean those modifications and/or interfaces made to the Baseline Component System. Also referred to as "Customization" or "Modification."

(d) "Cut-over" means the period of time beginning with final migration and working towards production processing.

(e) "Deliverable" means the Services, documents and /or materials identified in Section 4 of this SOW.

(f) "Target Release" means the version of the Baseline Component System to which CITY is implementing.

(g) "Work Effort" means the Services rendered by the team of CITY and CONTRACTOR as specified in this SOW.

(h) "Third party software" means binary versions of the computer software programs licensed to Ventyx from third parties and sublicensed to CITY pursuant to the terms and conditions of a License Agreement.

4. SCOPE OF WORK AND DELIVERABLES

CITY has purchased and implemented the CONTRACTOR Customer Self-Service Portal and wishes to make a modification to the Baseline product. The Work Effort consists of the major activities described below.

- 4.1 Create a package on both the website and mobile application that will be called when a customer requests to make a credit card payment. The package will send a request to the JBOSS server to retrieve the transaction id required to redirect a customer to JetPay website.
- 4.2 Create a JBOSS server package to retrieve the transaction id from JetPay. The package will be created on the JBOSS server to keep JetPay user credentials secure. The package will send a request to JetPay using the saved credentials returning a unique transaction id that can only be used one time.
- 4.3 Create an interface using a 3rd party redirect on both the website and mobile application to send the transaction id and account information to JetPay. This will allow the customer to complete a credit card payment using the JetPay Website.
- 4.4 Update Self Service Database Package to populate the credit card payment history table using the new interface.

- 4.5 Create an interface to IVR that will return the fee amount and allow customers to submit credit card payments. The interface will first return a fee amount to the customer based on the payment amount the customer requests to submit. Once the customer accepts the fee a second transaction will be made that will include the credit information. The credit card and account information will be sent to JetPay to complete payment transaction. The JetPay interface will then return a success or failure message.
- 4.6 Modify the mobile app login to restrict users from logging in on the old mobile app versions to keep credit card payments from being submitted to the old vendor Elavon. A new parameter will be added to the login procedure to identify the app version.

The following language is being added to Attachment B.

Attachment B: Cost Breakdown

CREDIT CARD INTERFACE FOR JETPAY

PRICING SUMMARY:

Create a secure interface to JetPay to accept credit card payments using the Customer Self Service Portal.

Modification	Cost
Mod 1: Credit Card Interface for JetPay	\$28,000

PAYMENT TERMS:

The services contained in this PCR are Fixed Price. Any changes in scope, assumptions or cost of execution will result in an additional Project Change Request. CONTRACTOR will invoice in full at the end of project once City has accepted portal. The payment terms for all invoicing is Net 30 Days.

Deliverable	Amount
Code Delivery	\$28,000
Total Cost	\$28,000

TRAVEL:

All above pricing is inclusive of all travel and living expenses. No additional fees will be accepted for payment. There will be no Travel & Living expenses for this project. CONTRACTOR will do all the work remotely.

Sec. 2. Sections not Amended. All other sections of the Contract shall remain in full force and effect.

Sec. 3. Effectiveness; Date. This amendment will become effective when all the parties have signed it. The date this amendment is signed by the last party to sign it will be deemed the date of this amendment.

Each party is signing this amendment on the date stated opposite that party's signature.

CONTRACTOR

I hereby certify that I have authority to execute this document on behalf of Contractor

By: Frank W Anderson

Title: Chief Business Development Officer

Date: 8/9/17

KANSAS CITY, MISSOURI

By: Cedric K...

Title: Manager of Procurement Services

Date: 8/31/17

Approved as to form:

[Signature]
Assistant City Attorney

**CONTRACT FOR SERVICES
STANDARD CITY CONTRACT**

AMENDMENT NO. 1

CONTRACT EV2087

This amendment is between KANSAS CITY, MISSOURI, a constitutionally chartered municipal corporation (City), and Milestone Utility Services, Inc. (Contractor). The parties amend the Contract entered into on April 1, 2015, as follows:

Sec. 1. Sections Amended. The Contract is amended as follows.

The following language is being added to Attachment A.

Attachment A: Scope of Work

MCSSP Modify MVOT Processing: Self-service portal currently generates move out service orders automatically without a manual review process. The self-service portal will be modified to restrict generation of move out orders prior to the request being reviewed manually. Orders will be reviewed using the same process in place for move in request.

SCOPE OF WORK:

Create a new procedure to process move out orders that will create a record on the UZTSMVN/UZTMVIN allowing manual review of the order. The UZTMVIN/UZTSMVN will be modified to add the order type, default customer number, default customer first/last name and Internal Review Indicator (Default to Checked for Office). The form will also be modified to generate the move out service order when a user accepts the order. The portal and mobile app will be modified to utilize the new service order procedure.

SCHEDULE OF WORK:

The project duration will be 1.5 weeks of work. The go-live date will be 8/13/2015.

	Task	Duration	Deliverable
1	Modify and test UZTMVIN/UZTSMVN adding order type, default customer information and internal indicator for Office target system.	24	Modified UZTSMVN/UZTMVIN form
2	Create and test new service order procedure to generate move out requests on UZTMVIN to be reviewed manually	26	New service order procedure for move out orders
3	Modify and test web and mobile app to use the new database procedure	10	Modification to web services to utilize database package.

The following language is being added to Attachment B.

Attachment B: Cost Breakdown

Addition of new project:

MCSSP Modify MVOT Processing

PRICING SUMMARY:

Description	Amount
Firm and Fixed Cost	\$10,530

PAYMENT TERMS:

The services contained in this PCR are Fixed Price. Any changes in scope, assumptions or cost of execution will result in an additional Project Change Request.

Milestone will invoice KCMO as follows:

Invoice	Deliverable	Amount
1	Completion of Client testing and Go Live Prep	\$5,265
2	Acceptance of Software	\$5,265
	Total	\$10,530

TRAVEL:

All above pricing is inclusive of all travel and living expenses. No additional fees will be accepted for payment.

Sec. 2. Sections not Amended. All other sections of the Contract shall remain in full force and effect.

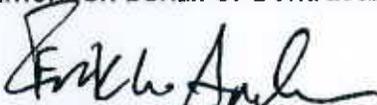
Sec. 3. Effectiveness; Date. This amendment will become effective when all the parties have signed it. The date this amendment is signed by the last party to sign it will be deemed the date of this amendment.

Each party is signing this amendment on the date stated opposite that party's signature.

CONTRACTOR

I hereby certify that I have authority to execute this document on behalf of Contractor

Date: 8/14/15

By: 

Title: Chief Business Development Officer

KANSAS CITY, MISSOURI

Date: 8/17/15

By: 

Title: Manager of Procurement Services

Approved as to form:


Assistant City Attorney

STANDARD CITY CONTRACT

MASTER CONTRACT FOR PRODUCTS AND SERVICES - THE CITY OF KANSAS CITY, MISSOURI

CONTRACT NO.: EV2087

TITLE/DESCRIPTION: MILESTONE CUSTOMER SELF-SERVICE PORTAL IMPLEMENTATION

THIS Contract (the "Contract") is between KANSAS CITY, MISSOURI, a constitutionally chartered municipal corporation ("CITY"), and Milestone Utility Services, Inc. ("MUSI"), a Florida corporation ("CONTRACTOR"). Each of the CITY and CONTRACTOR shall be referred to hereinafter as a "Party" and collectively, as the "Parties."

Sec. 1. The Contract. The Contract between the CITY and CONTRACTOR consists of the following Contract Documents:

- (a) this Contract; and
- (d) any and all Attachments and Exhibits attached to the Contract. All documents listed in this Section 1 shall be collectively referred to as the "Contract Documents" and are incorporated into this Contract. CITY and CONTRACTOR agree that the terms "Agreement" and "Contract" and "Contract Documents" are used interchangeably in this Contract and the terms "Agreement" and "Contract" and "Contract Documents" each include all "Contract Documents." The Contract Documents include:

Attachment A:	Scope of Work
Attachment B:	Cost Breakdown
Attachment C:	Software Maintenance and License Terms and Conditions
Attachment D:	Contractor Support Priority, Response and Resolution Guidelines
Attachment E:	City Support Escalation Contacts

Sec. 2. Initial Term of Contract and Additional Periods.

- (a) **Initial Term.** The initial term of this Contract shall begin on April 1, 2015 and shall end on March 30, 2016. The Manager of Procurement Services is authorized to enter into an amendment of this Contract with CONTRACTOR to extend the term of this Contract and time of performance for this Contract.
- (b) **Renewal Terms.** At any time prior to the expiration of the initial term or any subsequent term, the CITY, in its sole discretion, may renew this Contract for up to four (4) additional one (1) year terms.
- (c) **Transition Term.** Notwithstanding the expiration of the initial term or any subsequent term or all options to renew, CONTRACTOR and CITY shall continue performance under this

Contract until the CITY has a new contract in place with either CONTRACTOR or another provider or until the CITY terminates the Contract.

Sec. 3. Compensation.

- A. CITY shall order all services to be provided by CONTRACTOR under this Contract by means of a Purchase Order issued by the CITY's Manager of Procurement Services for which funds have been certified and encumbered by the City's Director of Finance. CITY shall not have any financial obligations to CONTRACTOR under this Contract until the CITY issues a Purchase Order to CONTRACTOR. CONTRACTOR shall not provide any services in excess of the dollar amount contained in any Purchase Order and CONTRACTOR shall not be entitled to any payment in excess of the dollar amount of the Purchase Orders from CITY.

Sec. 4. Effective Date of Contract.

- (a) Notwithstanding Section 2 of this Contract, neither party has any obligation under this Contract until the Manager of Procurement Services issues a Purchase Order which shall be signed by the City's Director of Finance certifying there is a balance, otherwise unencumbered, to the credit of the appropriation to which the expenditure is to be charged, and a cash balance, otherwise unencumbered, in the treasury, to the credit of the fund from which payment will be made, each sufficient to meet the obligation incurred in the Purchase Order.
- (b) The date of the first Purchase Order issued by the CITY is the effective date of this Contract
- (c) The date of the first Purchase Order issued by the CITY after the CITY renews this Contract shall be the effective date of the renewal term or transition term.

Sec. 5. Invoices.

- (a) CONTRACTOR shall submit to CITY a request for payment (hereinafter "Invoice") for services performed in sufficient detail for the CITY to determine that the amount CONTRACTOR is requesting is in fact due and payable.
- (b) CITY shall not pay any Invoice from CONTRACTOR unless CONTRACTOR is in compliance with, and not in breach or default of, all terms, covenants and conditions of this Contract. If damages are sustained by CITY as a result of breach or default by CONTRACTOR, CITY may withhold payment(s) to CONTRACTOR for the purpose of set off until such time as the exact amount of damages due to CITY from CONTRACTOR may be determined.
- (c) CITY shall not pay CONTRACTOR's Invoice unless CONTRACTOR's Invoice is in proper form, correctly computed, and is approved by CITY as payable under the terms of this Contract. In the event that CONTRACTOR submits an invoice with any error(s) a to form or computation, CITY will provide CONTRACTOR with written notice of such error(s) within fifteen (15) days of receipt of such Invoice, so that CONTRACTOR may promptly cure such error(s) and submit a corrected Invoice.

- (d) CITY is not liable for any obligation incurred by CONTRACTOR except as approved under the provisions of this Contract.
- (e) If CONTRACTOR is required to meet MBE/WBE goals for this Contract, CONTRACTOR shall not submit an Invoice to the City unless CONTRACTOR's Invoice is accompanied by a copy of the most recent 00485.01 M/WBE Monthly Utilization Report submitted by CONTRACTOR to the City's Human Relations Department. CONTRACTOR shall remain current on CONTRACTOR's filing of 00485.01 M/WBE Monthly Utilization Reports. CITY shall not pay CONTRACTOR's Invoice unless CONTRACTOR is current on CONTRACTOR's filing of 00485.01 M/WBE Monthly Utilization Reports.

Sec. 6. Representations and Warranties of CONTRACTOR. CONTRACTOR hereby represents and warrants to the CITY the following:

- (a) CONTRACTOR is in good standing under the laws of the state of Missouri and each state in which it does business, except any such state where the failure to be in good standing would not have a material adverse effect on CONTRACTOR's ability to perform this Contract in accordance with its terms.
- (b) The execution, delivery and performance by CONTRACTOR of this Contract have been duly authorized by all necessary corporate action and do not and will not (i) require any consent or approval of CONTRACTOR's board of directors; (ii) require any authorization, consent or approval by, or registration, declaration or filing with, or notice to, any governmental department, commission, board, bureau, agency or instrumentality, or any third party, except such authorization, consent, approval, registration, declaration, filing or notice as has been obtained prior to the date hereof; (iii) violate any provision of any law, rule or regulation or of any order, writ, injunction or decree presently in effect having applicability to CONTRACTOR or its articles or by-laws; and (iv) result in a breach of or constitute a default under any material agreement, lease or instrument to which CONTRACTOR is a party or by which it or its properties may be bound or affected.
- (c) CONTRACTOR shall not enter into any contract for the services to CITY that purports to grant a security interest or right of repossession to any person or entity respecting the services, or any portions thereof or chattels placed thereon.
- (d) There is no litigation, proceeding or other investigation pending or, to the knowledge of CONTRACTOR, threatened against CONTRACTOR which would prevent consummation of the transaction contemplated by this Contract or would have a materially adverse effect on CONTRACTOR.

Sec. 7. Survival of the Representations, Warranties and Covenants. All representations, warranties and covenants expressed herein shall survive the execution of this Contract for the benefit of the parties hereto.

Sec. 8. Governing Law This Contract shall be construed and governed in accordance with the laws 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.

Sec. 9. Termination for Convenience. CITY may, at any time upon thirty (30) days' prior written notice to CONTRACTOR specifying the effective date of termination, terminate this Contract, in whole or in part. CONTRACTOR shall provide CITY with a final Invoice within fifteen (15) days of the effective date of termination, and CITY shall pay all amounts submitted and approved under such final Invoice upon the normal payment terms set forth herein.

Sec. 10. Default and Remedies.

- (a) If CONTRACTOR shall be in default or breach of any provision of this Contract, CITY may terminate this Contract, suspend CITY's performance, withhold payment or invoke any other legal or equitable remedy after giving CONTRACTOR ten (10) days' prior written notice and opportunity to cure such default or breach.
- (b) If CITY shall be in default or breach of any provision of this Contract, CONTRACTOR may terminate this contract or suspend CONTRACTOR's performance after giving CITY ten (10) days' prior written notice and opportunity to cure such default or breach. If CITY fails to cure such default, then CONTRACTOR shall deliver to CITY a final Invoice for all approved amounts outstanding, and CITY shall tender payment for all amounts outstanding within thirty (30) days of receiving the final Invoice.

Sec. 11. Waiver. Waiver by CITY of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or of any other term, covenant or condition. No term, covenant, or condition of this Contract can be waived except by written consent of CITY, and forbearance or indulgence by CITY in any regard whatsoever shall not constitute a waiver of same to be performed by CONTRACTOR to which the same may apply and, until complete performance by CONTRACTOR of the term, covenant or condition, CITY shall be entitled to invoke any remedy available to it under this Contract or by law despite any such forbearance or indulgence.

Sec. 12. Acceptance. No payment made under this Contract shall be proof of satisfactory performance of the Contract, either wholly or in part, and no payment shall be construed as acceptance of deficient or unsatisfactory services.

Sec. 13. Records.

- (a) For purposes of this Section:
 - 1. "CITY" shall mean the City Auditor, the City's Internal Auditor, the City's Director of Human Relations, the City Manager, the City department administering this Contract and their delegates and agents.
 - 2. "Record" shall mean any document, book, paper, photograph, map, sound recordings or other material, regardless of physical form or characteristics, made or received in connection with this Contract and all Contract amendments and renewals.

- (b) CONTRACTOR shall maintain and retain all Records for a term of five (5) years that shall begin after the expiration or termination of this Contract and all Contract amendments. CITY shall have a right to examine or audit all Records, and CONTRACTOR shall provide access to CITY of all Records upon ten (10) days written notice from the CITY.
- (c) The books, documents and records of CONTRACTOR in connection with this Contract shall be made available to the City Auditor, the City's Internal Auditor, the City's Director of Human Relations and the City department administering this Contract within ten (10) days after the written request is made.

Sec. 14. Affirmative Action. If this Contract exceeds \$300,000.00 and CONTRACTOR employs fifty (50) or more people, CONTRACTOR shall comply with City's Affirmative Action requirements in accordance with the provisions of Chapter 3 of City's Code, the rules and regulations relating to those sections, and any additions or amendments thereto; in executing any Contract subject to said provisions, CONTRACTOR warrants that it has an affirmative action program in place and will maintain the affirmative action program in place for the duration of the Contract. CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, color, sex, religion, national origin or ancestry, disability, sexual orientation, gender identity or age in a manner prohibited by Chapter 3 of City's Code. CONTRACTOR shall:

- (a) Submit, in print or electronic format, a copy of CONTRACTOR'S current certificate of compliance to the City's Human Relations Department (HRD) prior to receiving the first payment under the Contract, unless a copy has already been submitted to HRD at any point within the previous two (2) calendar years. If, and only if, CONTRACTOR does not possess a current certification of compliance, CONTRACTOR shall submit, in print or electronic format, a copy of its affirmative action program to HRD prior to receiving the first payment under the Contract, unless a copy has already been submitted to HRD at any point within the previous two (2) calendar years.
- (b) Require any Subcontractor awarded a subcontract exceeding \$300,000.00 to affirm that Subcontractor has an affirmative action program in place and will maintain the affirmative action program in place for the duration of the subcontract.
- (c) Obtain from any Subcontractor awarded a subcontract exceeding \$300,000.00 a copy of the Subcontractor's current certificate of compliance and tender a copy of the same, in print or electronic format, to HRD within thirty (30) days from the date the subcontract is executed. If, and only if, Subcontractor does not possess a current certificate of compliance, CONTRACTOR shall obtain a copy of the Subcontractor's affirmative action program and tender a copy of the same, in print or electronic format, to HRD within thirty (30) days from the date the subcontract is executed.

City has the right to take action as directed by City's Human Relations Department to enforce this provision. If CONTRACTOR fails, refuses or neglects to comply with the provisions of Chapter 3 of City's Code, then such failure shall be deemed a total breach of this Contract and this Contract may be terminated, canceled or suspended, in whole or in part, and CONTRACTOR may be declared ineligible for any further contracts funded by City for a period of one (1) year. This is a material term of this Contract.

Sec. 15. Tax Compliance. If the CITY's payments to CONTRACTOR exceed \$150,000.01 for the period of May 1st through April 30th, CONTRACTOR shall provide proof of compliance with the CITY's tax ordinances administered by the CITY's Commissioner of Revenue as a precondition to the CITY making the first payment under this Contract. CONTRACTOR also shall submit to the CITY proof of compliance

with the CITY's tax ordinances administered by the CITY's Commissioner of Revenue as a condition precedent to the CITY making final payment under the Contract.

Sec. 16. Buy American Preference. It is the policy of the CITY that any manufactured goods or commodities used or supplied in the performance of any CITY Contract or any subcontract thereto shall be manufactured or produced in the United States whenever possible.

Sec. 17. Notices. All notices to be given hereunder shall be in writing and may be given, served or made by depositing the same in the United States mail addressed to the party to be notified, postpaid and registered or certified with return receipt requested or by delivering the same in person to such person. Notice deposited in the mail in accordance with the provisions hereof shall be effective unless otherwise stated in such notice or in this Contract from and after the second day next following the date postmarked on the envelope containing such notice. Notice given in any other manner shall be effective only if and when received by the party to be notified. All notices shall be sent to the following addresses:

If to the CITY: City of Kansas City, Missouri
Procurement Services Division
414 East 12th Street, 1st Floor, Room 102 W
Kansas City, Missouri 64106
Attention: Cedric Rowan, C.P.M., Manager
Telephone: (816) 513-1592
Facsimile: (816) 513-1156

With copies to: William Geary, Esq.
City Attorney
Law Department of Kansas City, Missouri
414 East 12th Street, 28th Floor
Kansas City, Missouri 64106
Telephone: (816) 513-3118

If to the CONTRACTOR: Ram Kasarla, President & CEO
11830 NW 4th Street
Plantation, Florida 33325-2416

With copies to: Michael De Biase, Esq.
Tobin & Reyes, P.A.
225 N.E. Mizner Blvd.
Suite 510
Boca Raton, Florida 33432
Telephone: (561) 620-0656
Facsimile: (561) 620-0657

Sec. 18. General Indemnification.

(a) For purposes of this Section only, the following terms shall have the meanings listed:

1. 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.
 2. CONTRACTOR's Agents means CONTRACTOR's officers, employees, subcontractors, successors, assigns, invitees, and other agents.
 3. CITY means CITY, its Agencies, its agents, officials, officers and employees.
- (b) CONTRACTOR's obligations under this Section with respect to indemnification for acts or omissions, including negligence, of CITY, shall be limited to the coverage and limits of insurance that CONTRACTOR is required to procure and maintain under this Contract. CONTRACTOR affirms that it has had the opportunity to recover all costs of the insurance requirements imposed by this Contract in its contract price.
- (c) CONTRACTOR 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 Contract caused in whole or in part by CONTRACTOR or CONTRACTOR's Agents, regardless of whether or not caused in part by any act or omission, including negligence, of CITY. CONTRACTOR is not obligated under this Section to indemnify CITY for the sole 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.

Sec. 19. Indemnification for Professional Negligence. If this contract is for professional services, CONTRACTOR shall indemnify, and hold harmless CITY and any of its agencies, officials, officers, or employees from and against all claims, damages, liability, losses, costs, and expenses, including reasonable attorneys' fees, arising out of any negligent acts or omissions in connection with this Contract, caused by CONTRACTOR, its employees, agents, subcontractors, or caused by others for whom CONTRACTOR is liable, in the performance of professional services under this Contract. CONTRACTOR is not obligated under this Section to indemnify CITY for the negligent acts of CITY or any of its agencies, officials, officers, or employees.

Sec. 20. Insurance.

- (a) CONTRACTOR shall procure and maintain in effect throughout the term of this Contract insurance policies with coverage not less than the types and amounts specified in this Section. CONTRACTOR must have:
1. Commercial General Liability Insurance Policy: with limits of \$1,000,000 per occurrence and \$2,000,000 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.
 - d. No Contractual Liability Limitation Endorsement
 - e. Additional Insured Endorsement, ISO form CG20 10, current edition, or its equivalent.
2. Workers' Compensation Insurance and Employers Liability Policies as required by Missouri law.
 3. Commercial Automobile Liability Insurance Policy: with a limit of \$1,000,000 per occurrence, covering owned, hired, and non-owned automobiles. The Policy shall provide coverage on an "any auto" basis and on an "occurrence" basis. This insurance policy 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 Contract, by CONTRACTOR.
 4. If this Contract is for professional services, CONTRACTOR shall obtain Professional Liability Insurance with limits per claim and annual aggregate of \$1,000,000.
- (b) All insurance policies required in this Section shall provide that the policy will not be canceled until after the Insurer provides the CITY ten (10) days' prior written notice of cancellation in the event that the cancellation is for CONTRACTOR's nonpayment of premiums and thirty (30) days' prior written notice of cancellation to CITY for all other reasons of cancellation.
 - (c) The Commercial General and Automobile Liability Insurance Policies specified above shall provide that CITY and its agencies, agents, officials, officers, and employees, while acting within the scope of their authority, will be named as additional insureds for the services performed under this Contract. CONTRACTOR shall provide to CITY at execution of this Contract a certificate of insurance showing all required endorsements and additional insureds.
 - (d) All insurance policies must be provided by Insurance 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 provide insurance in Missouri.
 - (e) Regardless of any approval by CITY, CONTRACTOR shall maintain the required insurance coverage in force at all times during the term of this Contract. CONTRACTOR's failure to maintain the required insurance coverage will not relieve CONTRACTOR of its contractual obligation to indemnify the CITY pursuant to this Section of this Contract. In the event CONTRACTOR fails to maintain the required insurance coverage in effect, CITY may declare CONTRACTOR in default.
 - (f) 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.

Sec. 21. Interpretation of the Contract.

- (a) CITY selected CONTRACTOR through a negotiated procurement process rather than an Invitation for Bids ("IFB") solicitation. Unlike the IFB, this process allows the CITY and CONTRACTOR to discuss and negotiate a contract at arms length prior to entering a final contract that is acceptable to both the CITY and the CONTRACTOR. After negotiation and discussion, CONTRACTOR and CITY have incorporated multiple exhibits and documents into this Agreement. In the event of any conflict between the CITY and CONTRACTOR regarding the terms and provisions of this Agreement, the CITY and CONTRACTOR shall follow the following conflict resolution procedure before either party may issue a notice of default under Section 10 of the Contract. First, the CITY's Senior Buyer in its Procurement Services Division and the CONTRACTOR's Chief Business Development Officer shall enter into good faith, non-binding discussions and meet at least once, either in person or over the phone, during a period of not less than fifteen (15) calendar days to seek to mutually and amicably resolve the conflict. If these two officials are unable to mutually and amicably resolve the conflict during the 15 day (or longer) period, the head of the CITY's Procurement Services Division and the CONTRACTOR's Chief Business Development Officer, shall enter into good faith, non-binding discussions and meet at least once, either in person or over the phone, during an additional period of not less than ten (10) calendar days to seek to mutually and amicably resolve the conflict. If these two officials are further unable to mutually and amicably resolve the conflict during the 10 day (or longer) period, the City Manager and/or the CITY's Director of Neighborhood & Community Services Department and the CONTRACTOR's Chief Business Development Officer shall enter into good faith, non-binding discussions and meet at least once, either in person or over the phone, during an additional period of not less than ten (10) days to seek to mutually and amicably resolve the conflict. If the conflict resolution procedure is unsuccessful and the conflict remains unresolved at the end of the last 10 day (or longer) period, either party may then pursue the remedies available to them under the terms of this Contract including, but not limited to, the remedies available under Section 10 of this Contract
- (b) CONTRACTOR acknowledges and agrees that the CITY has provided CONTRACTOR with an opportunity to have CONTRACTOR's attorney review and advise CONTRACTOR on the Contract and any potential ambiguities or areas of disagreement and the potential adverse legal consequences of CONTRACTOR agreeing to this Section as well as the entire Contract.
- (c) CONTRACTOR certifies that CONTRACTOR has either (1) waived its right to have CONTRACTOR's attorney review this Section and the Contract; or (2) CONTRACTOR has consulted with an attorney on this Section and the Contract.
- (d) CONTRACTOR knowingly and voluntarily agrees to this Section and the entire Contract. CONTRACTOR certifies that this Contract was not procured by fraud, duress or undue influence.

Sec. 22. Contract Execution. This Contract may be executed in one or more counterparts, each of which will be deemed an original copy of this Contract and all of which, when taken together, will be deemed to constitute one and the same Contract. This Contract shall be effective upon the execution of counterparts by both Parties, notwithstanding that both Parties may not sign the same counterpart. The Parties'

signatures transmitted by facsimile or by other electronic means shall be proof of the execution of this Contract and shall be acceptable in a court of law.

Sec. 23. Guaranteed Lowest Pricing. CONTRACTOR certifies that this Contract contains CONTRACTOR's lowest and best pricing for all services supplied by CONTRACTOR to any government, governmental entity, political subdivision, city, state, school district or any other public entity in the United States as of the date of this Contract.

Sec. 24. Assignability and Subcontracting.

- (a) Assignability. CONTRACTOR shall not assign or transfer any part or all of CONTRACTOR'S obligation or interest in this Contract without prior written approval of City. If CONTRACTOR shall assign or transfer any of its obligations or interests under this Contract without the City's prior written approval, it shall constitute a material breach of this Contract. This provision shall not prohibit CONTRACTOR from subcontracting as otherwise provided for herein.

- (b) Subcontracting. CONTRACTOR shall not subcontract any part or all of CONTRACTOR'S obligations or interests in this Contract unless the subcontractor has been identified in a format required by City. If CONTRACTOR shall subcontract any part of CONTRACTOR'S obligations or interests under this Contract without having identified the subcontractor, it shall constitute a material breach of this Contract. The utilization of subcontractors shall not relieve CONTRACTOR of any of its responsibilities under the Contract, and CONTRACTOR shall remain responsible to City for the negligent acts, errors, omissions or neglect of any subcontractor and of such subcontractor's officers, agents and employees. City shall have the right to reject, at any point during the term of this Contract, any subcontractor identified by CONTRACTOR, and to require that any subcontractor cease working under this Contract. City's right shall be exercisable in its sole and subjective discretion. City shall not be obligated to pay or be liable for payment of any monies which may be due to any subcontractor. CONTRACTOR shall include in any subcontract a requirement that the subcontractor comply with all requirements of this Contract in performing CONTRACTOR'S services hereunder.

Sec. 25. Professional Services – Conflict of Interest Certification. If this Contract is for professional services other than for medical doctors or appraisers, CONTRACTOR certifies that CONTRACTOR is not an expert witness for any party in litigation against the CITY at the time of the issuance of this Contract.

Sec. 26. Intellectual Property Rights. CONTRACTOR shall grant to CITY a license to utilize CONTRACTOR'S Software, substantially in the form of Attachment C, hereto.

Sec. 27. RESERVED.

Sec. 28. Employee Eligibility Verification. CONTRACTOR shall execute and submit an affidavit, in a form prescribed by the CITY, affirming that CONTRACTOR does not knowingly employ any person in connection with the contracted services who does not have the legal right or authorization under federal law to work in the United States as defined in 8 U.S.C. §1324a(h)(3). CONTRACTOR shall attach to the affidavit documentation sufficient to establish CONTRACTOR's enrollment and participation in an electronic verification of work program operated by the United States Department of Homeland Security to

verify information of newly hired employees, under the Immigration and Reform and Control Act of 1986. CONTRACTOR may obtain additional information about E-Verify and enroll at <https://e-verify.uscis.gov/enroll/StartPage.aspx?JS=YES>. For those CONTRACTORS enrolled in E-Verify, the first and last pages of the E-Verify Memorandum of Understanding that CONTRACTOR will obtain upon successfully enrolling in the program shall constitute sufficient documentation for purposes of complying with this section. CONTRACTOR shall submit the affidavit and attachments to the CITY prior to execution of the contract, or at any point during the term of the contract if requested by the CITY.

Sec. 29. Emergencies.

- (a) Disaster means any large scale event such as an act of terrorism, fire, wind, flood, earthquake or other natural or man-made calamity which results in, or has the potential to result in a significant loss of life or property.
- (b) During and after a disaster, CONTRACTOR shall provide special services to the CITY including CONTRACTOR shall open CONTRACTOR'S facilities even on nights and weekends as necessary to meet the needs of the City during a disaster.
- (c) CONTRACTOR shall not charge CITY any fee for opening facilities during an emergency or for extending CONTRACTOR'S hours of operation during a disaster. CITY shall pay CONTRACTOR the agreed upon contract prices for all purchases made by CITY during the disaster and CONTRACTOR shall not charge CITY any additional mark-up, fee or cost for any purchases made by CITY during a disaster.
- (d) CONTRACTOR shall quickly mobilize CONTRACTOR's internal and external resources to assist CITY when a disaster unfolds.
- (e) Extended hours and personnel. During disasters, CONTRACTOR'S facilities shall stay open 24 hours if requested by the CITY. CONTRACTOR shall utilize additional CONTRACTOR personnel to take CITY orders if necessary. CONTRACTOR's Call Center shall accept phone orders 24 hours a day.
- (f) CONTRACTOR shall have contingency plans with CONTRACTOR'S suppliers to provide additional supplies and equipment quickly to CITY as needed.
- (g) CONTRACTOR shall cooperate with CITY to properly document any and all expenses incurred by CITY with CONTRACTOR and CONTRACTOR shall assist CITY in meeting any and all documentation requirements of the Federal Emergency Management Agency (FEMA).
- (h) Notwithstanding the foregoing, CONTRACTOR'S duties and obligations under this Section 29, shall be limited to the provision of CONTRACTOR's services as contemplated by this Contract. CONTRACTOR shall not be required to provide any additional services outside the scope of this Contract.

Sec. 42. Tax Exemption - Federal and State.

- A. The CITY is exempt from Federal Excise and Transportation taxes on purchases under Chapter 32, Internal Revenue Code. The federal tax registration number issued by the St. Louis District Director on November 11, 1974 is No. 43740340K.
- B. The CITY is exempt from payment of Missouri Sales and Use Tax in Accordance with Section 39(10) Article 3, of the Missouri Constitution and Sections 144.040 and 144.615 RSMo 1969 and supplement thereto. A copy of the exemption from Missouri Sales and Use Tax is available upon request.

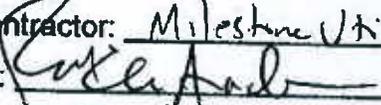
Sec. 43. Annual Appropriation of Funds.

- A. Multi-year term supply and service contracts and leases and the exercise of options to renew term contracts are subject to annual appropriation of funds by the City Council. Payments made under term contracts and leases are considered items of current expense. Purchase orders are funded when issued, therefore are current expense items and are not subject to any subsequent appropriation of funds.
- B. In the event sufficient funds are not appropriated for the payment of lease payments or anticipated term contract payments required to be paid in the next occurring lease or contract term and if no funds are legally available from other sources, the lease or contract may be terminated at the end of the original term or renewal term and the CITY shall not be obligated to make further payments beyond the then current original or renewal term. The CITY will provide notice of its inability to continue the lease or contract at such time as the Manager of Procurement Services is aware of the nonappropriation of funds; however, failure to notify does not renew the term of lease or contract. If a lease is cancelled, the events of default will occur as described in the lease and/or the section titled TERMINATION FOR DEFAULT. The CITY shall have no further monetary obligations in event of termination or reduction of a term contract, other than for services performed (if approved) but not yet invoiced, since such contracts represent estimated quantities and are not funded as a contract, but only to the extent of purchase orders issued.

CONTRACTOR

I hereby certify that I have the authority to execute this document on behalf of CONTRACTOR.

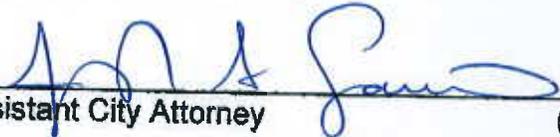
Contractor: Milestone Utility Services, Inc

By: 

Title: Chief Business Development Officer

Date: 3/28/15

APPROVED AS TO FORM


Assistant City Attorney (Date)

KANSAS CITY, MISSOURI

By: Pranee Medlin

Title: Procurement Manager

Date: 03-31-2015

ATTACHMENT A SCOPE OF WORK

1. MILESTONE CUSTOMER SELF-SERVICE PORTAL AND LICENSE AGREEMENT

CITY has purchased the software license for Milestone Customer Self-Service Portal. CONTRACTOR will provide the services needed to implement the new software. CONTRACTOR will perform the work required to install the new software according to City of Kansas City's requirements. When new production issues arise, CITY will first report the issue to CONTRACTOR. for support services and receive a case number.

1.1 ASSUMPTIONS

- CITY will be responsible for procuring any necessary software or hardware.
- CITY will provide a Banner or Customer Suite development environment with data recently cloned from Production. CONTRACTOR will develop corrections and enhancements in this development environment, and therefore will need complete access to apply forms, processes and database objects.
- CITY will provide CONTRACTOR with remote access to Development, Training and Testing Banner or Customer Suite environments. This includes the front end application, as well as the servers and database. CONTRACTOR will be able to access and utilize other applications such as document repositories, defect tracking, log/lis file viewers, etc.
- All CONTRACTOR-led training will be conducted with an optimal class size of twelve (12) attendees and a moderate level of interaction. If there are additional attendees, an additional trainer will be allocated and utilized.
- CITY will provide training room with equipment setup.
- CITY will provide a project team with knowledge of current installation and business processes (or access to them) and they will have the authority to make decisions about online self-service web offerings.
- CITY will have a project manager who is responsible for managing CITY's tasks and resources. CONTRACTOR will provide a project manager who is responsible for managing CONTRACTOR tasks and resources.
- The target version to integrate Milestone Customer Self-Service Portal is Customer Suite Version 4.3. The target version of MCSSP to implement is version 1.0.
- CITY will create an environment on the operating server such that the Milestone Customer Self-Service Portal can be installed.
- If online Credit/Debit payments are to be utilized, CITY will negotiate with the online payment card vendor where the portal will navigate the customer.
- All software will be delivered electronically.
- Project Management and Technical and Functional Support ("Project Oversight") Services are based on a project duration of no longer than six (6) months. Any

extension or unforeseen delay of the project, or requests for additional Project Oversight will require an amendment approved by both the CITY and CONTRACTOR for the additional work.

- Upon acceptance by both parties, CONTRACTOR and CITY shall each assign a representative to act as Project Manager for the appointing party through the final acceptance by CITY. The total project duration will not exceed six (6) months without mutual agreement of the project managers, including a user acceptance test period lasting no longer than (10) calendar days. If the project exceeds six (6) months, an amendment to the project schedule via contract amendment must be approved.
- CITY will be responsible for the development and execution of Acceptance Testing test plans, test cases and other testing artifacts with support from CONTRACTOR personnel.
- CITY is responsible for testing the Software and reporting any deficiencies to CONTRACTOR for investigation. All software deficiencies will be resolved under the terms of the Software License Agreement.

2. DEFINITIONS

All capitalized terms used and not defined herein shall have the same meanings given them in the Contract.

(a) "Baseline Component System" has the meaning ascribed to such term in the Software License Agreement between the parties, and further, for purposes of this CONTRACT, refers specifically to the Milestone Customer Self-Service Portal (MCSSP).

(b) "Change Request" means any request for a change to this CONTRACT as specified in Section 5 of this CONTRACT.

(c) "Customizations" mean those modifications and/or interfaces made to the Baseline Component System. Also referred to as "Customization" or "Modification."

(d) "Cut-over" means the period of time beginning with final migration and working towards production processing.

(e) "Deliverable" means the Services, documents and /or materials identified in Section 3 of this CONTRACT.

(f) "Target Release" means the version of the Baseline Component System to which CITY is implementing.

(g) "Work Effort" means the Services rendered by the team of CITY and CONTRACTOR as specified in this CONTRACT.

(h) "Third party software" means binary versions of the computer software programs licensed to Ventyx from third parties and sublicensed to CITY pursuant to the terms and conditions of a License Agreement.

3. PROJECT DELIVERABLES

3.1 PROJECT INITIATION

CONTRACTOR Project Manager will meet with CITY Project Manager and Core Team to review the project schedule and tasks that are required to complete the project and the implementation rollout strategy and the roles and responsibilities of the participants for completing the Work Effort as defined in the CONTRACT. The review meeting will also help to establish the project parameters and enables the parties to address concerns early in the project. The key project individuals will be identified as well as the stakeholders and decision makers. Project resources will be agreed on as well as the project schedule and detailed project plan. The Milestone Project Manager will provide input on the Milestone tasks and deliverables to the CITY project manager, so that the full project schedule can be developed.

Deliverable Number	1.
Deliverable Name	Detailed Project Plan
Purpose	To provide the detailed information in support of the delivery of the elements in the CONTRACT.
Content	A detailed task list including schedules, and resource assignments.
Primary Responsibility	CITY
Participants/Roles	CONTRACTOR Project Manager & CITY Project Manager
CITY Contributon	Develop the overall project plan and schedule.
Deliverable Format	MS Project

Deliverable Number	2.
Deliverable Name	Monthly Activity Status Reports
Purpose	To provide clear on-going communications to the project team concerning the status of the Milestone deliverables, the CONTRACTOR Project Manager will prepare a formal monthly activity report and provide informal weekly status updates.
Content	Ongoing communication between the Project Managers will help to ensure that any variances to the Project Plan are identified and addressed in a timely manner. The reports will contain sufficiently detailed information to enable CITY to determine the status of the Project and any variance from the Project Plan.
Responsibility	Milestone
Participants/Roles	Milestone PM will provide information to the CITY PM
CITY Contributon	Attend status meetings, provide feedback on any CITY tasks
Deliverable Format	Electronic media format and will be delivered/transmitted by the close of business on the first Friday of each month.

3.2 CONFIGURATION WORKSHOP

CONTRACTOR will conduct an onsite workshop to go over the different modules and configuration settings of the product. It is at this point that preliminary decisions will be made about which modules will be offered to the end customer. Once the modules are decided upon, then the different configuration settings will be reviewed (such as Payment Codes, Payment Arrangement Types, etc). CONTRACTOR will capture these different settings a configuration setting document. This document will be used to set up the software in the CONTRACTOR development instance. Additionally, these will be the configuration settings provided on the initial software installation on CITY's development instance.

In addition to configuration settings, CONTRACTOR will work with CITY to mock up the MCSSP screens for both the web portal and mobile App. We will start out with the base screen shots and then work with CITY to determine if and where each field should be on the screen so that it will make the most sense to their customer.

CONTRACTOR will document the configuration settings and screen mockups in a configuration document that will be provided to CITY. This document will be used to set up the initial MCSSP system for testing and then as the installed application on CITY's development box.

In addition to configuration and screen mock up information, CONTRACTOR will capture any requirement or request that is not offered in the base product. This Gap document will be provided to CITY along with the initial configuration setting document. CITY may decide to pursue one or more of the Gap requirements as a modification; however that would fall into the Project Change Request procedure.

Deliverable Number	3.
Deliverable Name	Configuration Document
Purpose	To document the configuration settings needed by CITY
Content	Specific codes and setting to be used to set up the MCSSP software.
Responsibility	Milestone
Participants/Roles	CONTRACTOR Functional Consultants, CITY Functional Personnel, CITY Technical Personnel
CITY Contributor	Attend configuration workshop, provide requirements and resolve any issues or conflicting requirements.
Deliverable Format	MS Excel Document.

Deliverable Number	4.
Deliverable Name	Gap Document
Purpose	To provide a listing of requirements to CITY that cannot be handled by the base software or standard configuration.
Content	CONTRACTOR personnel will document these requirements and provide them to CITY for review CITY may decide to either forgo these requirements or opt for a modification to the software.
Responsibility	Milestone
Participants/Roles	CONTRACTOR Functional Consultant, CITY Core Team
CITY Contributor	Review and Agree with the documented gaps.
Deliverable Format	MS Word Document.

3.3 APPLICATION CONFIGURATION

After the initial configuration document has been completed, CONTRACTOR will begin configuring the application in the development instance. This configuration consists of the following:

1. Enable / Disable different modules
2. Setting the different rules and validations according to the Configuration Setting Document that was developed during Training.
3. 'Blending' of the MCSSP front end application into CITY's website and mobile App.
4. Hide / Display / Move fields on the screens

If there are additional Customer Suite rules that are being established with the implementation of MCSSP, then those rules and validations will need to be managed by CITY. CONTRACTOR may set these rules up in the Development/Training environment just for testing & training purposes, but CITY must be responsible for creating the appropriate rules in other environments (for example, Milestone will not deliver scripts to set up new Payment Arrangement types on UTRPYAR).

Deliverable Number	5.
Deliverable Name	Updated Configuration Document – Initial Configuration
Purpose	Provide up to date configuration document to the CITY in the event of an agreed upon setting change (if there are any changes)
Content	Specific codes and setting to be used to set up the MCSSP software.
Responsibility	Milestone
Participants/Roles	CONTRACTOR Functional Consultants, CITY Functional Personnel, CITY Technical Personnel
CITY Contributor	Resolve any issues or conflicting requirements.
Deliverable Format	MS Excel Document.

3.4 CONFIGURATION TESTING

Once the Application Configuration has occurred, CONTRACTOR will conduct a basic test ensuring that the application has been configured properly, the appropriate transactions are being created in Customer Suite, and that the correct modules are available to the end user. The objective of this test is to verify configuration and operability with CITY's configuration settings. This test will be conducted in the CITY development servers.

Deliverable Number	6.
Deliverable Name	Unit Test Results – Initial Configuration
Purpose	Provide proof to CITY of the functioning system after configuration.
Content	Test Purpose, Test steps, and testing results
Responsibility	Milestone
Participants/Roles	Milestone
CITY Contributor	None
Deliverable Format	MS Word – Milestone Test Case Template

3.5 SOFTWARE INSTALLATION

The configured software will be installed on CITY's development server. CONTRACTOR will provide installers and a System Engineer/Technical Lead to perform off-site and on-site installation and verification activities.

CONTRACTOR will install the development instance, which will be the first database installed; however, we also anticipate using this instance for training. This instance should be connected to a development instance of the Customer Suite application (specifically, an instance of Customer Suite where CONTRACTOR has access to manipulate the customer data if necessary).

CONTRACTOR will provide detailed installation instructions to CITY so that additional instances of the application may be brought online. CITY is responsible for creating the other instances of MCSSP.

Deliverable Number	7.
Deliverable Name	Dev Environment Configuration
Purpose	Set up and configure the Development environment in preparation for MCSSP installation
Content	n/a
Responsibility	CITY
Participants/Roles	CITY DBA / System Admin, CONTRACTOR Technical Consultant
CITY Contributor	Configure development environment
Deliverable Format	n/a

Deliverable Number	8.
Deliverable Name	Installation of the base product install
Purpose	Install the Baseline Component System on CITY's hardware.
Content	This includes the installation instructions and media for the CITY's machines.
Responsibility	CONTRACTOR
Participants/Roles	CONTRACTOR Technical Consultant, CITY's IT Installer, CITY's DBA
CITY Contributor	Provide development environment
Deliverable Format	Application code placed on CITY's machine that has been designated for training, testing, functional review, and one server.

3.6 TRAINING

After the configuration has been tested to verify it is operating according to CITY's requirements, CONTRACTOR will provide CITY with training on the application. Training will require 1 day preparation and will be a 3 day training session designed for 12 attendees. This training will demonstrate each module that CITY has configured. Instruction will be provided on each of the configuration settings for the module and how the different setting accomplishes CITY's

requirements. Additionally, CONTRACTOR will provide training, in a smaller setting, for the technical staff to go over the technical support and administrative requirements of the system.

As we move through the training, CITY may find that there are some final configurations changes that they would like to make. These final changes will be updated in the Configuration Setting Document.

Deliverable Number	9.
Deliverable Name	Technical Training
Purpose	To provide training on the technical features of the Baseline Component System to appropriate personnel designated by CITY.
Content	Classroom setting consisting of lecture and hands-on practice training as described.
Responsibility	Milestone
Participants/Roles	CONTRACTOR Technical Consultant, CITY Technical Team
CITY Contributor	Attend Training.
Deliverable Format	Classroom training environment for 1 day designed for 1-3 attendees.

Deliverable Number	10.
Deliverable Name	Functional Training
Purpose	To provide functional training on the new features of the configured system.
Content	Classroom setting consisting of lecture and hands-on practice training as described
Responsibility	Milestone
Participants/Roles	CONTRACTOR Functional Consultant, CITY Core Team
CITY Contributor	Attend Training.
Deliverable Format	Classroom setting for 3 days consisting of lecture and hands-on practice training for up to 12 attendees.

3.7 FINAL CONFIGURATION

CONTRACTOR will update the final configuration settings in the City of Kansas City development system. These final changes may include true configuration settings or field changes on the different screens. CONTRACTOR does not anticipate reaching this phase of the project and having to configure new modules for CITY (for instance, if CITY decided not to offer payment arrangements during the initial configuration, we would not expect to have to configure payment arrangements during Final Configuration.)

The Configuration Workbook will be updated with the final updates. The final changes will be approved. If any other changes are requested by CITY that were not identified in the Configuration Workbook, then the change will be documented and estimated following the control procedures below (see Change Requests).

The Final configuration settings will be tested in the City of Kansas City development instance and then installed on CITY's test system. A final verification test will be performed to ensure the final configuration settings are operating correctly in CITY's development environment.

Deliverable Number	11.
Deliverable Name	Approved Configuration Document – Final Configuration
Purpose	Provide up to date configuration document to the CITY in the event of an agreed upon setting change (if there are any changes)
Content	Specific codes and setting to be used to set up the MCSSP software.
Responsibility	Milestone
Participants/Roles	CONTRACTOR Functional Consultants, CITY Functional Personnel, CITY Technical Personnel
CITY Contributon	Review & Approve. Resolve any issues or conflicting requirements.
Deliverable Format	MS Excel Document.

Deliverable Number	12.
Deliverable Name	Unit Test Results – Final Configuration
Purpose	Provide proof to CITY of the functioning system after final configuration changes. The scope of this test is only for the final configuration changes.
Content	Test Purpose, Test steps, and testing results
Responsibility	Milestone
Participants/Roles	Milestone
CITY Contributon	None
Deliverable Format	MS Word – Milestone Test Case Template

3.8 USER ACCEPTANCE TESTING

CONTRACTOR will provide functional and technical support for CITY's User Acceptance Testing. This support includes triaging issues found by CITY's testers, addressing any of those issues via Configuration, coding corrections, or potential training issues. CONTRACTOR will provide 1 full time resource for 2 weeks of support (however, the hours for this task may be split between a technical and functional resource).

Deliverable Number	13.
Deliverable Name	User Acceptance Testing Documentation
Purpose	Proof of completed test cases
Content	Test Steps, Testing Results, sign off.
Responsibility	CITY
Participants/Roles	CITY Functional/Business Resources, Milestone Functional Resource
CITY Contributon	Execute and document tests

Deliverable Number	13.
Deliverable Format	To be determined by CITY to notify CONTRACTOR that UAT is complete.

3.9 ADDITIONAL SUPPORT, PRODUCTION PREPARATION AND CUT-OVER

CONTRACTOR will provide additional support to CITY that may be used after User Acceptance Testing and during go-live. These support tasks include triage of issues reported by CITY, researching data or software issues, proposing solutions to correct issues in the system, answer questions regarding functionality of the system. This support period will be for 1 full time resource for 2 weeks past Go Live and then support will roll over into the Maintenance period.

Deliverable Number	14.
Deliverable Name	Additional Support
Purpose	To assist CITY in the execution of the migration Cut-over plan
Content	CONTRACTOR will provide functional and technical support to assist the CITY with its execution of the migration Cut-over plan. The Cut-over plan details the tasks required to begin using the solutions in a production environment, including the sequence of events, the development of the schedule, the roles and responsibilities, and the development of contingency plans.
Responsibility	Milestone
Participants/Roles	CONTRACTOR Functional Consultant, CONTRACTOR Technical Consultant, CITY
CITY Contributor	CITY will lead the cutover event.
Deliverable Format	Onsite and remote support

3.10 CUSTOMIZATIONS

Any Gaps regarding eligibility for certain programs or plans that were captured during the workshop phase are discussed with CITY. If CITY wishes to pursue the additional functionality, then this will proceed using the Change Request methodology detailed in Section 4 below.

3.11 DATA MIGRATION

CONTRACTOR is estimating that some basic user credential data will be migrated from CITY's existing web portal. CONTRACTOR is assuming that this consists of basic enrollment and log on information: User id, password, and some linkage of User ID to Customer Suite Account. This information will be loaded into the MCSSP enrollment database tables so that the customer may use their same user name and password to access the same accounts that they were able to access in the previous self service application. Additional Data Migration Requirements would be considered out of scope and will require a Change Request.

Deliverable Number	15.
Deliverable Name	User Credentials Migration

Deliverable Number	15.
Purpose	Milestone will migrate CITY's current user credentials to the Milestone Customer Self-Service Portal as previously estimated.
Content	Migrated source with user credentials
Responsibility	Milestone
Participants/Roles	Milestone Functional Consultants, Milestone Developer, CITY Functional Personnel, CITY Technical Personnel
CITY Contributor	Provide understanding and access to the user credentials on the database.
Deliverable Format	Migrated Credentials.

4. CHANGES TO STATEMENT OF WORK AND CONTRACT AMENDMENTS

Request for changes to this CONTRACT that will change the Work Effort must be reviewed and considered as a change, which will be managed as outlined in this section. The investigation and implementation of changes can result in modification to the estimated cost to the CITY or other conditions specified in this CONTRACT.

Any changes that affect the overall contract scope, contract timeline or deliverable dates, or additional cost will be handled via an amendment to the contract. These amendments must be approved by the CITY and CONTRACTOR prior the change being made. All changes to cost must have a Purchase Order issued as well. An amendment may occur at any time throughout the life of the project or during a renewal of the maintenance of the contract.

Minor adjustments to the project schedule and movement of day to day tasks are authorized through the change order process.

The Change Request procedure to be utilized is as follows:

(1) Change Requests may be initiated as a result of the Gap Document

(2) Any Change to the base application, timeline or cost will result in an amendment change control, as these enhancements have not been previously included in the scope of services by Milestone. CITY and CONTRACTOR must document the requested change via email for records purposes using the standard Change Control template.

(3) The change will be reviewed by CITY's team lead. If approved by the team lead, the Change Control will be sent to Milestone to determine the impact on the Estimate and Schedule.

(4) CONTRACTOR will supply CITY with an updated SOW to document the price change. CITY may approve or disapprove the updated SOW.

(5) If the changes are approved then a functional specification will be written to document how the change will work functionally.

(6) The functional specification will be reviewed and approved by CITY.

(7) Once the Change Order is approved, CONTRACTOR and CITY will determine if a contract amendment is required. If so, CITY will submit information to Procurement for processing. Once any required documentation (approved change order and contract amendment) is executed, CONTRACTOR may proceed with coding the changes in the software and testing by a CONTRACTOR functional analyst. The testing results and test scripts will be documented and these results will be provided to CITY.

5. SCHEDULE OF WORK

For the purpose of this CONTRACT, electronic media will be MS Word or Adobe (pdf) for text and MS Project for Project Plans. The deliverables are discussed in detail in the tables within each task.

The schedule of work will be agreed by both parties upon acceptance of any work incorporated under this implementation SOW. CONTRACTOR will provide resources to perform work within a mutually agreed upon start date. Estimated Start Date is 2 weeks following contract execution.

The project plan shown below is a living document and may change as the project proceeds. Minor changes to the project plan require a Change Order; major changes to the project plan require a contract amendment.

6. VERIFICATION CRITERIA

CONTRACTOR will perform Factory Qualification Test (FQT) testing on the development environment to confirm compatibility and completeness with regard to the migrated in scope Customizations and interfaces and ensure the migrated Customizations are ready for Site Integration and Testing. CONTRACTOR personnel will create contrived test data, test each Customization alone and in concert with associated functionality and Customizations, and correct issues that preclude releasing the Customization(s) and software modifications for CITY-instance installation and testing.

6.1 VERIFICATION

The verification criteria set forth in this section will apply and govern with respect to each Deliverable identified in Section 4 above in which verification thereof is required by its terms. CONTRACTOR will notify the CITY when each Deliverable has been completed. The CITY will inform CONTRACTOR in writing within ten (10) business days following CONTRACTOR's notification to CITY; if the CITY believes CONTRACTOR has not satisfied the Completion Criteria set forth in Section 3 above with respect to such item. To the extent that the CITY rejects a Deliverable, it must specify the reasons for such assertion, providing there is a sufficient level of detail. Such reasons must be based specifically on CONTRACTOR's failure to satisfy the requirements set forth in this CONTRACT and, particularly, the descriptions set forth in Section 3 above.

All obligations of CONTRACTOR as outlined in Section 3, "Deliverables" regarding the Deliverable in question (except ongoing warranty obligations) will be deemed satisfied and the Deliverable will be deemed accepted upon written notification from CITY. Should an extension to the ten (10)

business days referenced above be required due to the nature of the Deliverable, such extension will be determined mutually by the CONTRACTOR and CITY Project Managers.

7. REMEDY

Following a notice to CONTRACTOR during the 10-day period described above that a Deliverable fails to meet the governing verification criteria, then, CONTRACTOR will be obligated to remedy the identified deficiency and provide a Deliverable which meets its governing verification criteria described in Sections 3. Following the re-delivery by CONTRACTOR of the remedied Deliverable, then the CITY will again be provided the 10-day period to verify the originally documented deficiencies, as applicable and the provisions of Section 6 above will control the verification thereof.

**ATTACHMENT B
COST BREAKDOWN**

1. SOFTWARE LICENSE AND IMPLEMENTATION SERVICES

Proposed	Cost
Milestone's Customer Self-Service Portal License	\$149,500
Firm and Fixed Price Professional Services Implementation	\$ 90,500
Total	\$240,000

2. PAYMENT TERMS & SCHEDULE

The fee(s) for the implementation will be performed on a Firm and Fixed Price basis. CITY is tax exempt.

The table below describes the deliverables and the payment schedule.

Invoice	Item	Project Milestone	Amount
1	License - Installment 1	License Contract Signed	\$ 99,500
2	Year 1 Maintenance	Acceptance of Software	\$ 10,000
3	Implementation Installment 1	Software Installation	\$ 20,000
4	Implementation Installment 2	Completion of Configuration	\$ 20,000
5	Implementation Installment 3	Completion of Client testing and Go Live Prep	\$ 25,000
6	License - Installment 2	Completion of Client testing and Go Live Prep	\$ 50,000
7	Implementation Installment 4	Acceptance of Software	\$ 25,500
		Total:	\$250,000

Year two and three of the ongoing portal and maintenance fee will be invoiced and paid in full upon the renewal date of the contract. There will be no increase in the fee for the first two renewal years. Subsequent renewal years will be held to a maximum renewal increase of CPI, if accepted by CITY and adequate justification is provided by CONTRACTOR for increase.

3. MILESTONE CUSTOMER SELF-SERVICE PORTAL SUPPORT AND MAINTENANCE COSTS

CONTRACTOR will provide CITY with Maintenance and Support on the MCSSP product. This maintenance will provide CITY with defect corrections to WATER's installed version of the software. Additionally, CITY will get software upgrades or enhancements to the base software added by CONTRACTOR. The annual maintenance fee will be \$10,000.

Annual Support and Maintenance:	Cost
Year 1	\$10,000
Year 2	\$10,000
Year 3	\$10,000

4. TRAVEL EXPENSES

All above pricing is inclusive of all travel and living expenses. No additional fees will be accepted for payment.

For the Customer Self-Service Portal Milestone includes onsite consulting with CITY for the following tasks:

- Configuration Workshop
- Software Installation
- Training
- UAT Support
- Go-live

**ATTACHMENT C
SOFTWARE MAINTENANCE AND
LICENSE TERMS AND CONDITIONS**

1. Definitions. The terms defined in this section 2 and any other capitalized terms defined in other sections of this License Agreement have the meanings stated.
 - 1.1. "Milestone" means Milestone Utility Services, Inc., a Florida corporation.
 - 1.2. "Milestone Proprietary Information" means all proprietary information, know-how, trade secrets and Confidential Information developed or held by Milestone or obtained by Milestone from third parties other than Licensee relating to Milestone's business. Milestone Proprietary Information includes, without limitation, all versions of MCSSP.
 - 1.3. "MCSSP" means the object code of MCSSP version licensed hereunder, specifically the products listed in Appendix A, MCSSP includes all revisions and new versions of MCSSP received by Licensee, if applicable.
 - 1.4. "Licensee Computers" means the stand alone or shared file server computers owned by, and under the exclusive control of, Licensee.
 - 1.5. "License Term" means the term of the license as set forth in Appendix A.
 - 1.6. "Documentation" means information in any format, including documents, manuals and computer-readable files, delivered by Milestone to Licensee regarding the installation, use, troubleshooting and other technical information relating to MCSSP.

2. License Grants.
 - 2.1 Software License Grant. Milestone hereby grants Licensee a perpetual, personal, non-transferable, non-exclusive license, without right of sublicense, to install MCSSP and any other Milestone Proprietary Information provided by Milestone to Licensee onto the hard disks of Licensee Computers for use solely by Licensee's employees, [OPTIONAL] contractors, and authorized third parties], each of which has entered into a written agreement with Licensee that obligates them to protect the proprietary rights of Milestone and its Licensors and to comply substantially with the nondisclosure provisions of this Agreement, as authorized herein, and to reproduce the Documentation for use only as required for the authorized use of MCSSP. Licensee agrees to maintain the computers and media on which MCSSP is copied in a secure place.
 - 2.2 No Third-Party Access to MCSSP. Licensee may not allow contractors or any other third parties to access or copy MCSSP files or install MCSSP on any computer other than a Licensee Computer.
 - 2.3 Modifications of MCSSP. Licensee shall not reverse engineer, decompile or otherwise prepare any derivative works of MCSSP. Licensee acknowledges that MCSSP is proprietary and contains confidential and valuable trade secrets of Milestone, which Licensee agrees to safeguard as provided for under section 8, Confidential Information, below.

- 2.1. Usage Audit. The parties agree that Milestone may conduct an audit of Licensee's usage of MCSSP no more frequently than once per calendar year. Such audit shall be conducted so as to minimize interference with Licensee's use of the product and its normal business operations.
- 2.2. Backup Copies of MCSSP. Licensee may make a reasonably necessary number of copies of MCSSP on magnetic or optical media for backup and disaster recovery purposes.
3. Intellectual Property Ownership Rights. All rights not expressly granted in this License Agreement are reserved by Milestone. Milestone retains sole and exclusive ownership of the Software, the Documentation, and all other associated intellectual property including, but not limited to the technology, inventions, know-how, show-how, designs, formulae, processes, techniques, trade secrets, ideas, artwork, software, works of authorship, and any suggestions, ideas, enhancement requests, feedback, recommendations or other similar information provided by Licensee or any other party relating to MCSSP and any document or other materials embodying any of the foregoing, whether or not any of the same are patentable or copyrightable, and related documentation (collectively, the "Intellectual Property"). Milestone retains all intellectual property rights in, to and/or embodied in or associated with the Intellectual Property provided by Milestone hereunder, and all copies and derivative works thereof, including, but not limited to patent rights (including patent applications and invention disclosures), copyrights, rights in database, moral rights, trademarks, service marks, trade secrets, know-how and any other intellectual property rights recognized in any country or jurisdiction in the world, now or hereafter existing, and whether or not perfected, filed or recorded. The use by Licensee of such MCSSP is authorized only for the purposes herein set forth. Such authorization will cease except as otherwise explicitly provided herein, upon termination of the license.
4. Limited Warranty/Disclaimer.
 - 4.1. MCSSP Warranty. Milestone warrants to Licensee that it has title and/or the authority to grant licenses of MCSSP. Milestone further warrants to Licensee only, and not to Licensee's customers, that MCSSP will perform in substantial accordance with the Documentation for a period of one year as offered in the Maintenance Agreement from the date that MCSSP is installed on Licensee's computer and available for commercial operations ("Warranty Period"). When the Warranty Period expires, Licensee may choose to purchase Maintenance and Support with Milestone (Appendix B). In the event that Licensee elects not to pay for support, Milestone will provide support on a time and materials basis.
 - 4.2. Repair or Refund. If during the Warranty Period MCSSP does not perform as warranted in Section 6.1 above, Milestone shall undertake to correct MCSSP, or if correction of MCSSP is not reasonably possible, Milestone may terminate this License Agreement and refund to Licensee the fees paid hereunder. The foregoing are Licensee's sole and exclusive remedies for breach of warranty. The warranties set forth above are made to and for the benefit of Licensee only and not any third party. The foregoing warranties will apply only if (a) MCSSP has been properly installed and used at all times and in accordance with the instructions for use, and (b) no modification, alteration or addition has been made to MCSSP by persons other than Milestone or Milestone's authorized representative.

- 4.3. Limited Warranty. OTHER THAN THE WARRANTIES EXPRESSLY STATED ABOVE, THERE ARE NO EXPRESS OR IMPLIED WARRANTIES RELATING TO MCSSP, THE DOCUMENTATION OR THE SUPPORT SERVICES COVERED BY THIS LICENSE AGREEMENT, AND MILESTONE EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. MILESTONE DOES NOT WARRANT AND HEREBY DISCLAIMS ANY IMPLIED WARRANTY THAT THE OPERATION OF MCSSP WILL BE ERROR FREE OR UNINTERRUPTED.
- 4.4. Allocation of Risk; No Expansion of Warranty. The provisions of this Section 6 allocate risks under this License Agreement between Licensee and Milestone. The license fees paid for MCSSP reflects this allocation of risks and limitation of liability.

5. Limitation Of Liability And Damages.

- 5.1. Limitation of Liability. OTHER THAN EXPRESSLY STATED HEREIN, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, LOSS OF USE, INTERRUPTION OF BUSINESS, LOST PROFITS OR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, OR INDIRECT DAMAGES OF ANY KIND UNDER ANY CAUSE OR ACTION (INCLUDING NEGLIGENCE), WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.
- 5.2. Limitation of Damages. EXCEPT FOR MILESTONE'S OBLIGATIONS UNDER SECTION 9 ("INDEMNIFICATION") BELOW, MILESTONE'S TOTAL LIABILITY FOR DAMAGES IN CONNECTION WITH THIS LICENSE AGREEMENT, WHETHER IN AN ACTION IN CONTRACT OR TORT OR ANY OTHER FORM OF ACTION, WILL IN NO EVENT EXCEED THE ENTIRE AMOUNT OF THIS CONTRACT ~~OF THE LICENSE FEES PAID BY LICENSEE.~~
- 5.3. Damages as set forth in this Section 7 are the sole and exclusive remedy where no other remedy is expressly provided and are the sole and exclusive alternative remedy in the event another remedy is provided in this License Agreement and such other remedy is deemed to fail of its essential purpose.

6. Confidential Information And Publicity.

- 6.1. Confidential Information. As used in this License Agreement, the term "Confidential Information" means any information, technical data or know-how, including, but not limited to, that which relates to business plans, financial projections, agreements with third parties, patents, patent applications, trade secrets, research, product plans, products, services, suppliers, customers, prices and costs, markets, software, developments, inventions, processes, technology, designs, drawings, engineering, hardware configuration, marketing, licenses, budgets or finances that Milestone or any director, officer, partner, employee, agent or other representative, including advisor, attorney, accountant, financial advisor and

potential financing source (all together, "Representatives") thereof or affiliates provide or have provided to the Licensee by any means (including, but not limited to, orally or in writing or gathered by inspection), together with any and all notes, memoranda, analyses, compilations, studies or other documents (whether in hard copy or electronic media) prepared by or for the Licensee or its Representatives which contain or otherwise reflect Confidential Information, together with any and all copies, extracts or other reproductions of any of the same. The term "Confidential Information" does not include information that: (i) is or becomes generally known to the public through no wrongful act of Milestone or its Representatives; or (ii) is obtained by the Licensee through no wrongful act of Milestone or its Representatives from a source other than Milestone or its Representative provided that such source is not subject to any confidentiality, fiduciary or other obligation to the Milestone or otherwise; or (iv) is independently developed by the Licensee without reference to or reliance upon the Confidential Information. CONTRACTOR agrees that if a request is received for information, that CITY must disclose pursuant to the Missouri Sunshine Law. CONTRACTOR understands that CITY must comply with the Missouri Sunshine Law.

- 6.2. Copies; Reproduction. Licensee may make one (1) archival copy of the Confidential Information provided that the Licensee affixes to such copy all copyright and confidentiality notices (as applicable) that appear on the original. Said archival copy of the Confidential Information must be maintained in a safe and protected environment protected against damage, theft, unauthorized reproduction or use. Further, Licensee shall not analyze, reverse engineer, reconstruct, disassemble, decompile, adapt or otherwise attempt to ascertain the nature of the Confidential Information.

7. Indemnification.

- 7.1. Milestone Options. Milestone hereby indemnifies Licensee, including attorneys' fees and costs at trial or on any appeal, against any claim that MCSSP used within the scope of this License Agreement infringes any United States copyright, patent, or trademark rights of any third party. In the event that (a) MCSSP is held by a court of appropriate jurisdiction to infringe the United States intellectual property rights of a third party and the use of MCSSP is enjoined, (b) Milestone concludes that MCSSP infringes the rights of a third party, or (c) in the case of settlement, Milestone will, if possible on commercially reasonable terms, at its own expense and option: (i) procure for Licensee the right to continue to use MCSSP, (ii) replace the infringing components of MCSSP with other components with the same or similar functionality that are reasonably acceptable to Licensee, or (iii) suitably modify MCSSP so that it is non-infringing and reasonably acceptable to Licensee. If, at Milestone's sole discretion, none of the foregoing options are available on commercially reasonable terms, (A) Milestone may terminate the license rights granted by this License Agreement, and (B) in such case for a perpetual license, refund the license fee reduced by twenty-five percent (25%) for each year Licensee has had use of MCSSP. Licensee will cooperate with Milestone in the return of MCSSP.
- 7.2. Limitation. Notwithstanding the provisions of Section 9.1 above, Milestone assumes no liability for (a) infringements arising from combinations of MCSSP with non-MCSSP or hardware products, including any of Licensee's products, (b) modifications to MCSSP made by any party other than Milestone or Milestone's authorized representative or made under Milestone's direction, (c) use of a prior version of MCSSP to the extent such infringement

would have been avoided by the use of the current version of MCSSP, provided that Milestone has offered or provided such current version to Licensee at no additional cost, or (d) trademark infringements involving any marking or branding not applied by Milestone or involving any marking or branding applied at the request of Licensee.

7.3. Entire Liability. THE FOREGOING PROVISIONS OF THIS SECTION 9 STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF MILESTONE AND THE EXCLUSIVE REMEDY OF LICENSEE WITH RESPECT TO ANY ALLEGED INFRINGEMENT OF PATENTS, COPYRIGHTS, TRADEMARKS OR OTHER INTELLECTUAL PROPERTY RIGHTS BY MCSSP OR ANY PART THEREOF.

8. Return Of MCSSP.

8.1. Termination for Cause. Either party may terminate this License Agreement at any time upon written notice to the other party if (a) the other party materially breaches any provision hereof and fails to cure such breach within thirty (30) days after receiving written notice of such breach, (b) the other party becomes insolvent, (c) the other party makes an assignment for the benefit of creditors, or (d) if there are instituted by or against the other party proceedings in bankruptcy, reorganization, receivership or dissolution and such proceeding is not stayed or dismissed within sixty (60) days. Licensee's failure to pay any amount that is due to Milestone hereunder within thirty (30) days after Milestone gives Licensee written notice of such non-payment shall be a material breach of the Contract.

8.2. Return of MCSSP. Upon termination of this License Agreement, Licensee will make no further use of MCSSP or the Documentation. Within five (5) business days after such termination, Licensee will either destroy or return to Milestone the originals and all copies of MCSSP and the Documentation in the possession or under the control of Licensee. Licensee will certify to Milestone that it has complied with the foregoing requirements. In addition, Licensee shall immediately cease to use all trademarks and, at Milestone's election, destroy or deliver to Milestone all materials provided to Licensee, or in its control or possession which bear such trademarks. The foregoing obligations apply to copies of MCSSP and Documentation in all forms, partial and complete, in all types of media and computer memory, and whether or not modified or combined with other materials.

8.3. Surviving Provisions of Agreement. The provisions of section 5 ("Intellectual Property Ownership Rights"), section 6 ("Limited Warranty"), section 9 ("Indemnification"), section 7 ("Limitation of Liability and Damages"), section 8 ("Confidential Information"), section 10 ("Return of MCSSP"), Section 11 ("Additional Provisions") and Section 12 ("Third Party Licensor Components") shall survive the termination of this License Agreement for any reason. All other rights and obligations of the parties shall cease upon termination of this License Agreement.

MAINTENANCE TERMS AND CONDITIONS

1. Maintenance and Support. During any period for which Licensee has paid the required annual support payment, Milestone shall provide Licensee with support services as further described in this Appendix and including:
 - 1.1. All upgrades, patches and service packs for MCSSP which are generally made available to other MCSSP Licensees entitled to software support from Milestone.
 - 1.2. Correction of Defects in MCSSP as described herein;
 - 1.3. Updated Documentation for any upgrades, modifications, improvements, enhancements, extensions, and other changes to MCSSP provided to Licensee under support.
2. Defect Correction.
 - 2.1. When Licensee reports a suspected Defect in MCSSP to Milestone, Milestone shall attempt, based upon information provided by Licensee, to recreate the suspected Defect. If the Defect is confirmed, Milestone shall use commercially reasonable efforts to provide Licensee a Correction. For the purpose herein, a "Defect" is a material failure of MCSSP to operate substantially in accordance with the applicable Documentation, and a "Correction" includes, without limitation, workarounds, support releases, update disks, correction disks, component replacements, patches and/or Documentation changes, as Milestone deems appropriate.
 - 2.2. Milestone shall not be responsible for correcting Defects in any version of MCSSP other than the most recent release of MCSSP, provided that Milestone shall continue to support prior releases superseded by recent releases for a minimum of eighteen (18) months.
 - 2.3. Licensee agrees to implement within a reasonable time all Corrections provided by Milestone hereunder.
 - 2.4. If, after Milestone notifies Licensee that a problem, error or malfunction, for which Licensee has requested telephone or other support, is not covered by support, Licensee requests Milestone to provide telephone assistance or consulting services to correct the problem, error or malfunction, time relating to such assistance and services, and any other consulting services that Licensee may request, will be charged to Licensee at Milestone's standard hourly rates.

**ATTACHMENT D
CONTRACTOR SUPPORT PRIORITY, RESPONSE
AND RESOLUTION GUIDELINES**

LEVEL OF SUPPORT FOR MILESTONE CUSTOMER SELF SERVICE PORTAL

Milestone Utility Services Maintenance and Support is based on the general requirements and specifications of Production Support.

GENERAL ASSUMPTIONS

1. KCMO will provide a development environment with data recently cloned from Production. MUSI will develop corrections and enhancements in this development environment, and therefore will need complete access to apply forms, processes and database objects.
2. KCMO will provide MUSI with remote access to MCSSP environment to be supported by MUSI. This includes the front end application, as well as the servers and database. MUSI will be able to access and utilize other applications such as document repositories, defect tracking, log/lis file viewers, etc.

Level of Support

Milestone provides operational support to manage and support daily operations which include triage of issues, and defect process management.

Priority Support

Milestone provides the response times indicated in the table below. Priority indicates the level of criticality of the error/defect. In providing the Services, Milestone shall prioritize and complete the Services, for each component Service requested, by the Time for First Correction and, if needed, the Time for Final Correction, as denoted below.

Priority/Severity	Time for First Correction	Time for Final Correction
Priority 1-Severity 1	Eight (8) business hours	Ten (10) days
Priority 1-Severity 2	Eight (8) business hours	Thirty (30) days
Priority 1-Severity 3	Twenty-four (24) business hours	Three (3) months
Priority 2	Thirty (30) days	120 days; if error time critical, Priority 1-appropriate severity level applies
Priority 3	No deadline/correction as possible	No deadline/correction as possible

“Time for First Correction” is the total time between notice of an error/defect and the introduction of at least a temporary fix for the error/defect, if not the permanent fix.

"Time for Final Correction" is the total time between notice of an error/defect and the completion of a permanent fix for the error/defect.

"Priority 1-Severity 1" means an error such that the Software is not functioning; and Customer is unable to bill its customers.

"Priority 1-Severity 2" means an error in a time sensitive or mission critical function, e.g. payment application not operable, inability to perform budget billing, or an error precluding operation of the charge calculation process, or an error in the batch process function, e.g. inability to run the nightly batch window.

"Priority 1-Severity 3" means an error rendering mission critical applications partially inoperable, e.g. some accounts not completing billing, or inability to complete budget billing for some accounts.

"Priority 2" means an error that is not time critical, e.g. bad debt function not working, monthly GL feed not working.

"Priority 3" means an error that is cosmetic and not related to an important function, e.g. error in documentation, error in on-line help function.

**ATTACHMENT E
CITY SUPPORT ESCALATION CONTACTS**

The CONTRACTOR's day to day point of contact for operational related issues is:

Milestone Utility Services
Sales Executive
Linda Lukas
(803) 960-1487
llukas@musiusa.com

Frank Anderson
Chief Business Development Officer
843-323-5589
fanderson@milestonessi.com

The CONTRACTOR's day to day point of contact for service/technical related issues is:

Ram Kasarla
Chief Executive Officer
954-478-9447
rkasarla@milestonessi.com

Brian Menard
Project Manager
803-445-6549
bmenard@milestonessi.com

The City's day to day point of contact for operational/service and technical related issues is:

Joel Medoza
joel.mendoza@kcmo.org

Miguel Echeverria
816-513-0852
miguel.echeverria@kcmo.org

The City's day to day point of contact for contract related issues is:

Keely Golden, CPPB
Senior Buyer, Procurement Services Division
816-513-0812
keely.golden@kcmo.org

Inter-Departmental Communication

Date: September 14, 2021

To: Mayor Quinton Lucas; Chair: Transportation, Infrastructure & Operations Committee

From: Andrea Dorch; Director; Civil Rights & Equal Opportunity Department

Subject: Docket Memo for Amendment #:210726

CONTRACTOR:	Milestone Utility Services, Inc.
Address:	11830 NW 4 th St. Plantation, FL 33325
Contract #	EV2087 – Milestone Customer Service Portal
Contract Amount:	\$2,751,435.39
MBE Goal:	0%
WBE Goal:	0%
MBE Achieved:	0%
WBE Achieved:	0%

MBE SUBCONTRACTORS:

None

WBE SUBCONTRACTORS:

None

Comments:

This contract started in 2015. A solicitation waiver was approved by the City Manager and the contract was awarded to Milestone Utility Services. The Civil Rights & Equal Opportunity Dept. (then Human Relations Dept.) approved a waiver of MBE/WBE goals on the project due to the proprietary nature of the software provided and maintained by the prime contractor. The original contract was for \$1,150,000 and covered the original contract and five (5) renewals. The contract is now being extended for up to two (2) three-year terms to for the maintenance of the Customer Service Portal and to add additional services to the contract (Amazon Web Services). The Director of Civil Rights & Economic Opportunity Dept. has approved a waiver of MBE/WBE goals on the contract amendment.

Page 2: EV2087 – Milestone Customer Service Portal Amendment

Contract Extension Year 1:	\$ 425,365.00
Contract Extension Year 2:	\$ 438,125.95
Contract Extension Year 3:	\$ 451,269.95
Contract Extension Year 4:	\$ 464,807.82
Contract Extension Year 5:	\$ 478,752.05
Contract Extension Year 6:	<u>\$ 493,114.62</u>
Total Contract Amount:	\$2,751,435.39



Legislation Text

File #: 210732, Version: 1

ORDINANCE NO. 210732

Authorizing the City Manager to execute a First Amendment to Cooperative Agreement for Purchase and Use of Real Property; and authorizing the City Manager to enter into a City Parking Cooperation Agreement with the Kansas City Area Transportation Authority.

WHEREAS, the City, KCATA and Port Authority of Kansas City, Missouri (“Port KC”) entered into a Cooperative Agreement for Purchase and Development of Real Property (“Purchase Agreement”) dated April 5, 1999, pursuant to which each contributed to the purchase of certain property located generally at 3rd and Grand Boulevard and the KCATA was to purchase and own the Property and enter into a separate lease with the City for the use of the Property; and

WHEREAS, the parties to the Purchase Agreement wish to amend the Purchase Agreement to provide for its termination in order to facilitate transportation oriented development at the Property; and

WHEREAS, the Kansas City Transportation Authority (“KCATA”) and the City did enter into a certain Parking Agreement dated September 20, 1999 (the “Parking Lease”), pursuant to which the KCATA leases the “Property” to the City; and

WHEREAS, KCATA is party to that certain Development Agreement between KCATA, Ride KC, and 3G Development, LLC dated as of December 3, 2020 pursuant to which 3G Development, LLC will develop a mixed-use development adjacent to the City Market and including the Property; and

WHEREAS, the City and KCATA desire to encourage transit-oriented development, multi-modal transportation, and the repopulation of the River Market area (“Transportation Oriented Development”); and

WHEREAS, the construction of Transportation Oriented Development on the Property will require termination of the Parking Lease; NOW, THEREFORE,

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That the City Manager is hereby authorized to execute a First Amendment to Cooperative Agreement for Purchase and Use of Real Property with KCATA and Port KC in a substantially the form attached hereto as Exhibit A.

Section 2. That the City Manager is hereby authorized to enter into and implement a City Parking Cooperation Agreement with KCATA in substantially the form attached hereto as Exhibit B.

Approved as to form and legality:

Katherine Chandler
Assistant City Attorney

**No Fact Sheet
for
Ordinance
No. 210732**



Legislation Text

File #: 210827, Version: 1

ORDINANCE NO. 210827

Authorizing a Concession Management, Operation and Development Agreement with Vantage Airport Group US for the construction, leasing, operation, and management of a concession program at the New Terminal at the Kansas City International Airport.

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That the Director of Aviation is authorized to execute a Concession Management, Operation and Development Agreement with Vantage Airport Group US for the construction, leasing, operation, and management of a concession program at the New Terminal at the Kansas City International Airport for a term of 15 years. A copy of the agreement, in substantial form, is on file in the Office of the Director of Aviation and is hereby approved.

Section 2. That the Director of Aviation is authorized to execute such documents, contracts, leases, approvals, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this ordinance and to implement the transaction contemplated herein.

Approved as to form and legality:

Nelson V. Munoz
Deputy City Attorney

**CONCESSION MANAGEMENT, OPERATION AND
DEVELOPMENT AGREEMENT**

KANSAS CITY INTERNATIONAL AIRPORT

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**CONCESSION MANAGEMENT, OPERATION AND
DEVELOPMENT AGREEMENT**

KANSAS CITY INTERNATIONAL AIRPORT

THIS CONCESSION MANAGEMENT, OPERATION AND DEVELOPMENT AGREEMENT (“**Agreement**”), made and entered into as of the ____ day of _____, 2021 by and between the CITY OF KANSAS CITY, a municipal corporation of the State of Missouri (hereinafter called the "**City**"), and Vantage Airport Group (US) Ltd., a limited liability company organized under the laws of the State of Delaware registered to do business in the State of Missouri under Missouri Charter No. _____ (“**Developer**”). The City and Developer together are referred to herein as the “Parties”.

WITNESSETH: That,

WHEREAS, the City is the owner of Kansas City International Airport, located in Platte County, Missouri, hereinafter referred to as the "**Airport**."

WHEREAS, the City is in the process of constructing a new airport terminal to replace all existing passenger aviation facilities (“**New Terminal**”).

WHEREAS, the City has determined that they desire to enter into a single concession agreement to develop, lease, operate, and manage all Foodservice, Convenience and Specialty Retail concessions to provide useful merchandise and Services for the general public in the New Terminal which generates income for the City.

WHEREAS, the City issued a “Request for Proposals for the Development, Operation, and Management of the Concession Program for the New Terminal at Kansas City International Airport Request Number 04161964” (as amended, the “**RFP**”).

WHEREAS, the Developer presented its proposal, included herein by reference, in competition with others submitting sealed proposals for the operation of such concession at the Airport (“**Proposal**”). Based on an evaluation of the proposals received and interviews conducted in accordance with the evaluation criteria and processes set forth in the RFP, a selection committee selected Developer’s Proposal.

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

DEFINITIONS

The terms defined in this Section for all purposes of this Agreement and of any instrument supplemental hereto, or relating hereto, shall have the following meanings, excepts where the context or clear implication requires otherwise:

“**Affiliate**” means any individual or business entity that has an ownership interest of twenty percent (20%) or more of Developer, or of which Developer has an ownership interest of 20% or more.

“**Agreement**” means this written agreement, awarded as a result of the RFP, between the City and Developer leasing the Premises and setting forth the Parties’ rights and responsibilities.

“**Airport Concession Disadvantaged Business Enterprise**” or “**ACDBE**” means a business entity, whether a sole proprietorship, partnership, or corporation of which at least fifty-one percent (51%) of the interest is owned and controlled by a "socially and economically disadvantaged individual" as such term is defined in the

Airport and Airways Improvement Act of 1982, as amended, and the regulations promulgated pursuant thereto at 49 CFR Part 23. ACDBEs must meet the experience and economic guidelines set forth in 49 CFR Part 23 and be certified by the Missouri Regional Certification Committee (“MRCC”). Individuals who are rebuttably presumed to be socially and economically disadvantaged include women, African Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, and Asian-Indian Americans. ACDBE firms, generally, are concession operators or firms directly related to the operation of concessions.

“**Applicable Law**” means all laws, statutes, ordinances, rules, and regulations (including without limitation Environmental Laws) lawfully issued or promulgated by any Governmental Authority governing or otherwise applicable to the Developer or the Airport, including Airport Rules and Regulations and City Policies and Procedures adopted by the City, as any of the same may now exist or may hereafter be adopted or amended, modified, extended, re-enacted, re-designated, or replaced from time to time and judicial interpretations thereof.

“**Back of House**” means areas and equipment that are necessary for the operation of some or all concessions, but that are not generally accessible by the public. Examples of this include trash rooms, garbage rooms, and service corridors.

“**Base Building Work**” means the sub-floor, structural elements, demising walls at the exterior of the Premises, utilities infrastructure and other base building improvements, structures, and fixtures that the City installs at the Premises. Base Building Work includes preparation of portions of the Premises designated for concession activities in Shell Condition. This work will be completed by the New Terminal builder.

“**Build-out**” means all Work to improve or renovate the Premises, other than the Base Building Work, to prepare these areas to be used for their intended purposes in accordance with the Agreement. This work will be completed either by Developer, its Sublessees, or other parties through agreements with the Developer or its Sublessees, subject to approval by the City, if required.

“**Capital Improvements**” means the improvements, structures and fixtures initially installed by Developer and/or Sublessees in the Premises to prepare all or part of the Premises for issuance of an occupancy permit and otherwise finish it out for the Sublessee’s operations, and any subsequent Refurbishments that are affixed and cannot be removed from the Base Building Work without damage to the New Terminal. Capital Improvements may include, but are not limited to, finish-out work on floors, ceilings, demising walls and store facades, storefront signage, the panel box and hook-ups to utilities wires and conduits infrastructure, decorations, shelves, counters, cash wraps, lighting and interior design and construction work necessary in general to accommodate the operation of the Premises. Ownership of all Capital Improvements in Sublessee Premises shall vest to the Developer at the expiration of a Sublease Agreement. Ownership of all Capital Improvements throughout the entirety of the Premises shall vest immediately to the City upon the expiration or termination of this Agreement as provided herein.

“**City’s Agents**” means all persons employed or otherwise engaged with City, including, but not limited to employees, contractors, and consultants, but excluding Developer’s Agents and Sublessee’s Agents,

“**City Council**” means the City Council of the City.

“**Common Area(s)**” are the areas, included in the Premises, that are leased by the Developer from the City, but which are not leased by the Developer to a specific Sublessee. These may include, but are not limited to the cleaning of and maintenance of:

- A. Public seating areas, including dining furniture
- B. Any sanitation facilities located in Food Courts

- C. Walkways through Food Courts
- D. Back-room maintenance facilities

“Common Area Maintenance” or **“CAM”** means maintenance and service of designated Common Areas of the Premises, including, but not limited to:

- A. Services provided for general cleaning (sweeping, mopping, and sanitation) of floors and Common Area amenities, furnishings and equipment.
- B. Repair and replacement of Food Court Common Area tables, chairs, dividers, borders, and other features.
- C. Collection and consolidation of Sublessee and Developer trash and recycling materials from the Premises and transportation of these materials to the centralized trash and recyclable materials collection area supplied by City, on a regular basis so to avoid the accumulation of trash, foul odors, and the potential to attract vermin. It is strongly recommended that trash be collected and removed to the centralized area at least three (3) times per day, or more often if necessitated due to the volume of trash produced. There will be no areas in which Developer may consolidate trash in the Premises, which therefore requires transportation of collected trash to the centralized area as often as it is collected.
- D. Pest control and hood cleaning.

“Common Area Maintenance Fees” or **“CAM Fees”** means an amount to be invoiced as a separate line item and collected from Sublessees by Developer for the purpose of reimbursing, at cost with no mark-up permitted, all of Developer’s actual out-of-pocket expenses incurred to provide Common Area Maintenance services, spread proportionately among all Sublessee Locations, substantially based on the amount of time spent in cleaning related facilities, and the approximate volume of trash that they produce. Different CAM Fees are recommended for:

- A. Foodservice in Food Courts
- B. Table Service
- C. Other Foodservice
- D. Convenience Retail
- E. Other Retail and Services

By way of example, Food Service in Food Courts will generally incur a relatively high assessment percentage, due to the requirement of the cleaning of related Food Court equipment and furniture, and the relative amount of trash which they produce. Table Service might be expected to incur a larger than average assessment percentage, as they produce large amounts of trash, particularly when disposable service ware is utilized. Specialty Retail are generally expected to incur a lower assessment percentage as they do not benefit from Food Court Maintenance and tend to produce relatively little trash.

Common Areas Maintenance may be performed by Developer with its own employees, or may be subcontracted out to a third party, at the discretion of the Developer.

“Concession Fee” means the fee to be paid by Developer to the City as proposed by Developer and accepted by City for the right and privilege to occupy the Premises and provide concession services on an exclusive

basis, as more particularly described and set forth in Section 401 and as further detailed in Developer's Proposal.

"Concession Location" means an individual location within the Premises occupied and used for purposes of the sale of consumer goods or services to the public.

"Concession Manager" means the person charged by the Developer with the responsibility to manage and oversee the day-to-day operations and management of the Premises, as further explained in this Agreement.

"Concession Program" means the totality of the concession services to be managed by Developer in the New Terminal as provided in this Agreement and set forth in the Developer's Proposal, as may be amended or adjusted during the Lease Term, to include without limitation development and management of Foodservice, Convenience Retail, Specialty Retail, and Services to be offered in Concession Locations; the management of Creative Spaces and Common Areas; operation of the Loading Docks; collection of the CAM Fee and Joint Marketing Fund Fee and development and implementation of the annual marketing plan; and administration and monitoring of ACDBE and MBE/WBE participation in concession and construction opportunities.

"Construction Costs" means the sums Developer and Sublessees actually spend on the construction of improvements to Sublessee Premises, with the approval of the City. This term shall also include, for Developer, the amounts, verifiable based on payment receipts, which were paid by Developer to prepare Common Areas and Creative Spaces for use, and any renovations thereto.

"Convenience Retail" shall mean the offering for sale of merchandise commonly found in newsstands, including, but not limited to newspapers, magazines, paperback books, candy, gum, packaged snacks, grab and go sandwiches and salads, pre-packaged baked goods, bottled water and beverages, freshly brewed coffee and tea (but not espresso drinks, lattes, and similar), and souvenirs. Other types of merchandise may be offered, if approved by both City and Developer.

"Creative Spaces" means spaces which are part of the Premises which are held back for future development based on a schedule proposed by Developer and accepted by the City. These spaces may be used for any other purpose, so long as they enhance customer service, safety, the image of the New Terminal, and/or the customer experience, until the space is needed for additional Concession Locations. A failure to develop Creative Spaces pursuant to the accepted schedule may result in Developer being in default of this Agreement.

"Date of Substantial Completion" for all Concession Locations which are part of the concession plan shall be the date that is one hundred twenty (120) days from the City's issuance of permits and approvals for each Build-out. By this date, Capital Improvements shall be completed, and the Concession Location shall be ready for merchandising, staff training, soft opening, and general final readying for the New Terminal Opening Day. As of the Effective Date, the anticipated Date of Substantial Completion is February 15, 2023. For all construction following the opening of the New Terminal, a Date of Substantial Completion will be established between the City and Developer for each unit to be built or renovated.

"Day" means a calendar day of 24 hours measured from midnight to 11:59:59 of that day.

"Depreciation Schedule" means a schedule reflecting the monthly depreciation of the Eligible Costs for Capital Improvements installed or mid-term Refurbishments made by the Developer or a Sublessee in any Sublessee Premises. For Capital Investments made by the Developer, depreciation shall commence on the New Terminal Opening Day on a straight-line basis over the Lease Term. Concession Locations shall be depreciated on a straight-line basis over each Sublease Term beginning on the Date of Beneficial Occupancy of the Location. Depreciation relating to Common Area furniture shall be no more than three (3) years beginning with the date of installation. Any schedule submitted by Developer or Sublessees for this purpose shall not be

deemed a “Depreciation Schedule” until such schedule is approved by the City, which approval shall not be unreasonably withheld.

“**Design and Construction Phase**” or “**D&C Phase**” means the period that begins on the Effective Date and shall continue until the New Terminal Opening Day, unless earlier terminated in accordance with Article XIII of the Agreement.

“**Developer**” means the entity, duly organized, and qualified to do business in the State of Missouri, or any successor thereto or assignee thereof permitted by the Agreement, which develops and/or leases and manages operations that sell goods or services for a profit at the Airport under the rights granted in this Agreement.

“**Developer’s Agents**” means all persons employed or otherwise engaged with Developer, including, but not limited to employees, contractors, consultants, and vendors, but excluding City’s Agents and Sublessee’s Agents.

“**Developer’s Architect/Engineer**” means the licensed firm(s) engaged by Developer or its Sublessees from time to time and approved by the City, to design and prepare the Plans and specifications for the improvements to Premises.

“**Disadvantaged Business Enterprise**” or “**DBE**” means a business entity, whether a sole proprietorship, partnership, or corporation of which at least fifty-one percent (51%) of the interest is owned and controlled by a "socially and economically disadvantaged individual" as such term is defined in the Airport and Airways Improvement Act of 1982, as amended, and the regulations promulgated pursuant thereto at 49 CFR Part 23. DBEs must meet the experience and economic guidelines set forth in 49 CFR Part 23 and be certified by MDOT. Individuals who are rebuttably presumed to be socially and economically disadvantaged include women, African Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, and Asian-Indian Americans. DBE firms are certified under a City program and include any type of firm which might participate in projects at an airport, including, but not limited to, design and construction firms, public relations firms, and services firms. DBE firms, within the context of this Agreement, encompass MBE (“**Minority Business Enterprises**”) or WBE (“**Women-owned Business Enterprises**”) firms, which are certified by the City Civil Rights and Equal Opportunity Department (“CREOD”). Please note that the designation as an MBE or WBE does not have the same meaning as the ACDBE designation.

“**Drawings**” means the documents showing the layout of the proposed Premises.

“**Effective Date**” means the date upon which the Agreement is operative and binding upon the Parties. The Effective Date is rebuttably presumed to be ten (10) days after the City ordinance approving this Agreement is adopted by the City Council. The precise date that constitutes the Effective Date may be hand-written by the City in Section 301, and final copies of the Agreement shall be provided to the Parties in accordance with Section 2118.

“**Eligible Costs**” means, for any expenditures made by Developer and its Sublessees in Capital Improvements or Refurbishments, the following:

- A. Construction Costs, and
- B. Architectural and engineering fees, construction management fees and the cost to obtain the applicable permits, which amounts under this clause shall not exceed fifteen percent (15%) of the contracted Construction Costs, unless otherwise approved by the City in writing, and
- C. Capital Improvements (including any equipment and custom-built “trade fixtures”) which constitute fixtures installed for use in the Premises, and

- D. Initial Capital Improvements for which Developer is obligated to reimburse a Sublessee under an approved Sublease as the result of the termination of such Sublease without cause by Developer at City's request.

Notwithstanding the foregoing, the definition of Eligible Costs shall exclude:

- A. Costs for Base Building Work incurred by the City, and
- B. Costs in excess of one hundred twenty-five percent (125%) of the estimated costs of Capital Improvements provided by Developer to, and approved in writing by, the City at the time preliminary approval is sought for the Sublessee unless otherwise specifically approved by City in writing, and
- C. Any overhead, financing costs (e.g., loan origination fees or interest, points, legal fees or any non-construction-related cost) in connection with said construction, or
- D. Amounts paid to any Affiliate of Developer or Sublessee.

In addition, to qualify as Eligible Costs, documentary evidence of payments for expenditures on improvements to the Sublessee Premises must be provided to the City.

“Established Price Items” means the items, as specified by the City, and which may be additionally proposed by the Developer, which prices will be equivalent to those at the QuikTrip convenience store located at 7133 NW Barry Road, Kansas City, Missouri, 64153, or a successor location as proposed by the Developer and approved by the City should the QuikTrip cease operations or substantially change its mode of operation.

The products which are initially considered Established Price Items are as follows:

- A. Soft drinks in cans and bottles of any composition of 1 liter or less, excluding branded “energy” or similar drinks in cans and bottles.
- B. Drinking water, still, sparkling, or flavored, in containers of 1 liter or less.
- C. Fountain soft drinks in all sizes.
- D. Other products mutually agreed by City and Developer.

“Expiration Date” means 11:59 P.M. on the date that is the fifteenth anniversary of the New Terminal Opening Day, such earlier date if this Agreement is terminated earlier in accordance with Article XIII hereof, or such later date if this Agreement is extended in accordance with Section 2105.

“FFE” means furniture, fixtures and equipment supplied by Developer in the Build-out of any location.

“FIFA” means the Fédération Internationale de Football Association, the organization which, along with the USSF, will be responsible for organizing the Tournament.

“FIFA Store” means the store, located in the New Terminal, which will be operated by FIFA during the six (6) month period prior to the Tournament, until one (1) month after the Tournament concludes.

“First-Class Manner” means the manner of operation of the concessions such that the standards for cleanliness and customer service meet those of upscale malls and similar high-quality airport and non-airport retail/food and beverage facilities.

"Food Court" means areas within the Premises, including both Sublessee Premises and Food Court Common Areas that are characterized as having multiple food-service type Sublessee Premises that share a common seating area.

"Food Court Common Area" means all areas within the Food Court that are not Sublessee Premises.

"Foodservice" means all Sublessee Premises which engage in the sale of food products for immediate consumption or consumption on aircraft. Foodservice concessions consist of, generally:

- A. **Table Service**, including bars, which include appropriately spaced internal seating areas where food and beverages are brought to the tables by staff. Table Service may also include food bars, such as sushi bars or seafood bars, where a customer sits at a counter and is served food designed to be consumed at the counter.
- B. **Counter Service**, either freestanding or as part of Food Court, where customers place orders and pay for them at a counter and the food is generally received soon after that at the counter, with seating either internal to the unit or immediately adjacent and, most often, shared with other Counter Service. Units offering coffee products may be Counter Service if they offer significant seating internal or immediately adjacent to the Counter Service.
- C. **Walkaway**, which offer food that is generally designed to be consumed elsewhere within the New Terminal or on aircraft, including grab and go units as well as snack/coffee offerings with no seating related to the concession location.

"GAAP" means generally accepted accounting principles in the United States of America, as set forth in the opinions and pronouncements of the Institute of Certified Public Accountants' Accounting Principles Board and Financial Accounting Standards Board or in such other statements by such other entity as may be in general use by significant segments of the accounting profession, to the extent such principles are applicable to the facts and circumstances on the date of determination.

"Governmental Authority" means any federal, State, county, City (including the Aviation Department) or other governmental entity, or any subdivision thereof, with authority over the Airport or the Developer.

"Indemnified Party" or **"Indemnified Parties"** means the City and each of its elected and appointed officers and officials, employees, agents, contractors, subcontractors and volunteers.

"Joint Marketing Fund" means the accumulation of funds contributed by Sublessees to Developer, to be spent by Developer on the marketing and promotion of the Concession Program or on any item or service that may enhance the overall passenger experience at the New Terminal related to concessions, all in accordance with the approved Concession Program and its annual marketing plan component.

"Joint Marketing Fund Fee" means each Sublessee's contribution to the Joint Marketing Fund, payable monthly, in an amount not to exceed 0.5% of Operator Gross Receipts.

"Kiosks" means a Premises that is a mobile or non-mobile, and is a free-standing facility not affixed to the Terminal, whether completely free-standing or located against the wall, that is used as a selling location for merchandise or Services.

"Lease Term" means the period beginning on the Effective Date and ending on the date set forth in Section 301, or such shorter period if this Agreement is terminated in accordance with Article XIII or such later period if this Agreement is extended in accordance with Section 2105.

"Lease Year" means the 365-day periods (366 days for any leap years), commencing on the first Day of the fiscal year recognized by the City, which Day is May 1. The first Lease Year, which may be a partial calendar year, shall end on April 30, at 11:59 p.m. The final Lease Year, which may also be a partial calendar year, shall end on the Expiration Date.

"Minimum Annual Guarantee" or "MAG" means the minimum Concession Fee to be paid by Developer to the City, which MAG shall be calculated for purposes of this Agreement to be \$1.75 per enplaned passenger, as set forth in Article IV.

"New Terminal" means the facility constructed by the City to replace the former commercial passenger terminals of the Airport, in which Developer shall develop, lease, and manage the Premises.

"New Terminal Opening Day" means the date the New Terminal is opened for scheduled passenger service operations by all, or substantially all, airlines serving the Airport. As provided in Section 512 herein, the New Terminal Opening Day constitutes the date upon which the Developer is expected to open all Concession Locations which are part of the Developer's initial plan for the sale of consumer goods and services to the public. As of the Effective Date, the anticipated New Terminal Opening Day is March 3, 2023. The City shall notify Developer upon any change in the New Terminal Opening Day immediately upon making, or contractually agreeing with any other entity, to the change.

"Operational Phase" means the period beginning at 12:00 A.M. local time on the New Terminal Opening Day and ending on the Expiration Date or earlier date if this Agreement is terminated in accordance with Article XIII or later date if this Agreement is extended in accordance with Section 2105.

"Operator" means a Sublessee, and Developer for all areas not subleased to other parties.

"Operator Gross Receipts" mean and includes all monies paid or payable to each and every Operator of a Concession Location whether in cash, credit or otherwise, for sales made or services rendered at or from the Airport regardless of when or where the order therefor is received, including, without limitation:

- A. Proceeds from the sale of gift and merchandise certificates (unless such gift or merchandise certificates can only be used within the Concession Locations, which are to be recognized as Gross Receipts at the time they are redeemed).
- B. Sales occurring at the Airport, whether made from a Concession Location or an airport wide system or application developed by Developer or City, for which the product is shipped to a destination of the customer's choice.
- C. Catalogue sales, whether in print or electronic (catalogues displayed or accessed within Sublessee Premises must include a tracking number unique to the Sublessee Premises that allows for an auditable method for tracking such sales).
- D. Internet sales for delivery at the Airport or when merchandise to fill such orders is taken from Concession Locations.
- E. If commercially reasonable technology is implemented that can capture this, Internet sales, where orders are placed due to displays or sales activities which take place anywhere within the Airport.
- F. Orders for merchandise placed anywhere within the Airport utilizing an airport-wide system or application developed by Developer, City, or a third-party contracted by the Developer.
- G. Deposits not refunded to purchasers.

- H. Orders taken at the Premises (although such orders may be filled elsewhere).
- I. Display allowances, placement allowances, or other promotional incentives received by Sublessees from vendors, suppliers or manufacturers and other revenues of any other type arising out of or in connection with any Sublessee's operations at the Airport.
- J. The sales value of "add-ons" to shipping services done as a convenience for customers (whether for free, or at the cost of the provision of the shipping), such as wrapping charge, convenience or handling fees, envelopes or boxes for shipping, etc.
- K. Sales through Automated Retail units; and
- L. All insurance proceeds received due to loss of gross earnings under any Sublessee's business interruption insurance coverage.

A "sale" shall be treated as consummated for the purposes of this definition or service deemed rendered, and the entire amount of the sales price shall be included in Operator Gross Receipts and deemed received at the time of determination of the amount due for each transaction, whether for cash, credit or otherwise, and not at the time of payment. No deduction shall be allowed for uncollected or uncollectable credit accounts or "bad" checks.

Operator Gross Receipts shall not include:

- A. Any sums collected for any federal, state, county and municipal sales taxes, so-called luxury taxes, use taxes, consumer excise taxes, Operator Gross Receipts taxes and other similar taxes now or hereafter imposed by law upon the sale of merchandise or Services but only if separately stated from the sales price and only to the extent paid by Sublessees to any duly constituted governmental/taxing authority,
- B. The exchange of merchandise between the stores or warehouses owned by or affiliated with any Sublessee, if any, where such exchanges of goods or merchandise are made solely for the convenient operation of the business of such Sublessee and not for the purpose of consummating a sale which has theretofore been made at, in, from or upon the Premises nor for the purpose of decreasing payments otherwise due the City hereunder which otherwise would be made at, in, from or upon the Premises,
- C. The amount of any cash or credit refund made upon any sale where the merchandise sold, or some part thereof, is thereafter returned by a purchaser and accepted by the Operator to which it is returned,
- D. Sale of fixtures, equipment or other items of property that are not stock in trade and not in the ordinary course of any Operator's business,
- E. Any receipts of an Operator that arise from its operations under any other contract with the City and are subject to a percentage fee or percentage rent under that contract,
- F. Shipping and delivery charges if provided at the cost of such shipping or delivery and such services are merely an accommodation to customers. Any additional service that is sold to a customer (wrapping, or a handling fee, for example) are considered to be part of Gross Receipts,
- G. Fees charged to Sublessees, including but not limited to:
 - 1. Common Area Maintenance Fees

2. Joint Marketing Fund Fees
 3. Delivery Fees (if applicable)
 4. Dock Management Fees (if applicable)
- H. Receipts in the form of refunds from or the value of merchandise, services, supplies or equipment returned to vendors, shippers, suppliers, or manufacturers including volume discounts received from a Sublessee's vendors, suppliers, or manufacturers,
 - I. Customary discounts given by an Operator on sales of merchandise or Services to its own employees, if separately stated, and limited in total amount to not more than one percent (1%) of its Operator Gross Receipts per month,
 - J. Discounts, if separately stated, given by Operators on sales of merchandise or Services to employees of Developer, City, airline employees, and other persons employed at the Airport who are in possession of a valid City or Airline issued badge,
 - K. Gratuities for services performed by employees of an Operator that are paid by an Operator or its customers to such employees,
 - L. The sale or transfer in bulk of the inventory of an Operator to a purchaser of all or substantially all the assets of such Operator in a transaction not in the ordinary course of such Operator's business,
 - M. Amounts given as discounts to customers redeeming coupons issued either by the specific Sublessee, the brand of the operation, or through catalog, flyer, brochure, or advertisement (paper or virtual) prepared by Developer as part of the joint marketing effort for the Terminal,
 - N. Except with respect to insurance proceeds received due to loss of gross earnings under any Operator's business interruption insurance coverage as provided above and/or insurance proceeds that may be payable to City under such coverage, receipts from all other insurance proceeds received by an Operator as a result of a loss or casualty.

“Payment and Performance and Maintenance Bonds,” means a surety bond (in a form substantially similar to that shown in **Exhibit A**) given to the City by the Developer to secure both payment and performance and maintenance for the Work.

“Plans” means the completed set of architectural working plans, Drawings and specifications and engineering Drawings and specifications prepared by the Developer's or Sublessee' Architect/Engineer of record for the construction of Capital Improvements or Refurbishments.

“Premises” means the area that the Developer will lease, develop, manage, and market, including the specified Premises and Sublessee Premises, the designated Common Areas, and Creative Spaces, depicted in **Exhibit C**.

“Proposal” means the document(s) requested by the City and submitted by Developer in accordance with the Request for Proposals, including both the Technical Proposal and Financial Proposal submitted by Developer. Both RFP and Developer's response are included herein by reference and have full effect as if they were attached physically. Any plan, proposal, commitment, or promise made by Developer in its Proposal as accepted by City shall have the full effect as if it was a part of this Agreement.

“Rent” means the payment to Developer by Sublessees for the subletting of the Premises, calculated as the greater of a percentage of Operator Gross Receipts or a minimum annual guarantee, as agreed to between

Developer and each Sublessee. Rent shall not include fees charged by Developer to Sublessees including Common Area Maintenance Fees, Joint Marketing Fund Fees, Delivery Fees and Dock Management Fees. Rent further shall not include Storage Rent as set forth in Developer's Proposal and loan repayment or other payments to the Developer in connection with ACDBE financing as set forth in Developer's Proposal.

"Request For Proposal" or **"RFP"** means the "Request For Proposals For The Development, Operation, and Management of the Concession Program For the New Terminal at Kansas City International Airport (Request No. 04161964)" issued by the City on February 8, 2021, and any and all exhibits and addenda thereto.

"Services" means personal, health and business services including but not limited to shoeshine shops, nail salons, massage services, barber shop/hairdresser/beauty salon, pharmacies, banks, automated teller machines, gyms, food delivery within the New Terminal, and personal shopping services. Services further shall include additional personal, health and business services introduced at comparable airports to the Airport during the Lease Term. Services do not include airline passenger lounges, the USO lounge, meeting and conference rooms, state or local lottery, children's play areas, sensory areas for passengers with disabilities, mother's lactation rooms, and pet relief areas.

"Shell Condition" means smooth concrete floors, demising studs and walls, and utility services (conduits, lines, pipes) of typical commercial capacity and size located at the lease lines of each of Premises or in reasonable proximity thereto which shall be prepared by the City for use by Developer.

"Specialty Retail" means retail uses, other than those defined as Convenience Retail. These may include but are not limited to automated retail; bookstores; clothing stores; carry-away packaged food not meant for immediate consumption; accessory stores; and music stores, for example.

"Sublease" means a lease executed by the Developer and approved by the City conveying to a Sublessee the same interest in certain Premises that the Developer enjoys for a specified term.

"Sublease Term" means the period of time, pursuant to Section 305 herein, during which a specific Sublessee operates and manages one or more Sublessee Premises.

"Sublessee" and **"Sublessees"** means any sole proprietor(s) or business entities having the right to sublease and occupy any portion of the Premises under a Sublease with the Developer.

"Sublessee's Agents" means all persons employed or otherwise engaged with Sublessee, including, but not limited to employees, contractors, and consultants, excluding City's Agents and Developer's Agents.

"Sublessee Premises" means the individual leasehold of a shop, store, office, storage area, or kitchen area subleased, or available to be subleased, through rights granted in the Agreement.

"Tenant Design Standards" means standards, established by the City, as may be amended from time to time, to set forth the esthetic qualities required of Concessions in the Terminal. Tenant Design Standards are attached as **Exhibit B**.

"Tournament" means the 2026 Men's World Cup Tournament.

"TSA" means the United States Transportation Security Administration, and any successor agency, office, or department thereof.

"USSF" means the United States Soccer Federation, the organization which will be working with FIFA within the United States to host the Tournament

"Work" means everything necessary for the design, engineering, construction, and installation of the Capital Improvements.

**ARTICLE I
PREMISES**

SECTION 101. DESCRIPTION OF PREMISES. City hereby leases to Developer and Developer leases from the City for the uses and purposes described in Section 201 below, and subject to terms, covenants, and conditions contained in this Agreement, the real property described in **Exhibit C** referred to as the "**Premises**".

- A. The City, in its sole discretion, may, if it becomes necessary in the orderly development of the Airport and in accordance with Section 1401.C hereof, require the relocation of any portion of the Premises to other space within the New Terminal that is reasonably suitable for the purposes for which this Agreement is entered into as such purposes are set forth herein.
- B. At any time during the Lease Term, and on one or more occasions, either party may propose to modify the Premises to add such additional areas of the New Terminal as may be suitable for Foodservice, Convenience Retail, Specialty Retail, and/or Services, and, on mutual consent, the Parties shall modify **Exhibit C** accordingly. The Premises may be expanded to areas of the New Terminal as it exists on the New Terminal Opening Day; any expansion of the New Terminal; or any additional satellite, concourse or unit terminal at the Airport designed and constructed for the purpose of accommodating scheduled commercial service passenger operations.
- C. At any time during the Lease Term, and on one or more occasions, the Developer may propose to relocate any Concession Location or Common Area to an alternate location within the New Terminal or to turn-back any Concession Location to the City. Any such modification to the Premises is subject to the City's reasonable discretion, and the City may reject any such proposal that the City finds is not in the best interests of the Airport and its tenants, passengers, employees and users.
- D. The City may withdraw from the Premises any Concession Location that is the subject of five liquidated damages assessments within any rolling twelve (12) month period, including for example and without limitation failure to satisfy the performance and operating standards set forth in Article VI hereof. Prior to withdrawal, the City will provide Developer with an opportunity to cure the violations that resulted in the assessment of liquidated damages. Within thirty (30) days of the assessment of the fifth liquidated damages penalty, City will provide Developer with written notice in accordance with Section 2118 declaring City's intent to withdraw the Concession Location. Developer shall have ten (10) business days in which to present a proposed corrective action plan, including a schedule for remedying the underlying conditions that resulted in the assessment of liquidated damages, which corrective action plan may include, for example and without limitation, termination of the Sublease and relet of the Concession Location by Developer to another Operator. The Parties shall meet and confer as necessary to finalize a corrective action plan that is acceptable to each party. If Developer fails to initiate and complete the corrective action as set forth in the plan, the City may withdraw the Concession Location from the Premises and modify **Exhibit C** accordingly. Upon withdrawal, the City may relet the Concession Location, including for Foodservice, Convenience Retail, Specialty Retail, and/or Services to any Operator on such terms and conditions as may be established by the City. Developer shall include a termination provision in each Sublease consistent with this provision.
- E. The Director of Aviation is authorized, on behalf of the City, to adjust the Premises and **Exhibit C** as provided in this Article I without further City Council approval.

ARTICLE II
CONCESSION RIGHTS AND RESPONSIBILITIES

SECTION 201. CONCESSION RIGHTS AND RESPONSIBILITIES. Developer's rights and responsibilities are as follows:

- A. The City hereby grants to the Developer, subject to all the terms, covenants, and conditions of this Agreement, the exclusive concession rights to provide Foodservice, Convenience Retail, Specialty Retail, and Services to the public in the New Terminal, including Concession Locations of the types and sizes included in the Proposal (subject to modification on mutual consent of the Parties) for each respective location shown on **Exhibit C** in a First-Class Manner.
- B. City agrees that, so long as Developer remains in compliance with the obligations of this Agreement, City will not lease or otherwise permit use of the New Terminal by any entity other than the Developer for Foodservice, Convenience Retail, Specialty Retail and/or Services without first providing Developer with the right of first refusal to provide the concession service(s). This exclusive right applies to the New Terminal as it exists on the New Terminal Opening Day; any expansion of the New Terminal during the Lease Term; and/or any additional satellite, concourse, or unit terminal at the Airport designed and constructed for the purpose of accommodating scheduled commercial service passenger operations during the Lease Term.
- C. Developer shall use the Premises solely for the operation of the Concession Program as described and depicted in its Proposal (subject to modification on mutual consent of the Parties), along with related preparation, storage, and office spaces. No facilities other than those described in **Exhibit C** may be offered or made available without the prior written consent of the City.
- D. Developer shall not make any unlawful, improper, or offensive use of the Premises contrary to Applicable Law. Developer further shall not use the Premises in such manner as to interfere with the safe and secure operation of the New Terminal and shall require the same of each Sublessee.
- E. Developer and Sublessees shall have the right to use all public Airport areas as reasonably required for access to and egress from the Premises, provided Developer's Agents abide by the Airport Rules and Regulations and any other Applicable Laws. The City retains the right of ingress and egress over, though, and across the Premises, at any time, after giving Developer and the Operator, if any, reasonable notice.
- F. Developer shall have the responsibility for the overall management of the Premises, including the management of Sublessees, business development, performance enhancement, and quality control, pursuant to the plans and programs proposed by Developer and accepted by the City and included herein by reference. A failure to fully implement all material plans and programs from Developer's Proposal may result in the imposition of Liquidated Damages and/or termination of this Agreement as provided herein.
- G. Developer shall be responsible for overseeing the operation of and ensuring the equitable management of the loading docks on the A Concourse and the B Concourse of the New Terminal in the manner set forth in Section 402.D.
- H. The Developer will act as the project manager for its own and Sublessees' design and construction programs, which will be coordinated with City. All designs and construction will meet the City's standards and will be subject to the City's permitting process. Additional information regarding the construction and permitting processes may be found in Article V.

The City reserves the right to require the Developer to provide its list of selected architects, interior designers, and construction managers for prior written approval by the City. Developer should supply a list of qualified MBE/WBE contractors to its Sublessees and to assist Sublessees with contracting with such businesses.

The Developer will be required to design and build-out the Food Court Common Area(s), including all shared circulation, seating, sanitation, and Back of House facilities. The Sublessees will be responsible for finishing their respective subleased spaces, including, by way of example, shelving, counters, merchandise displays, point-of-sale units, interior design, cooking equipment, cleaning facilities (three compartment sinks, mop sinks and storage closets for brooms, mops and chemicals), seating contained within the Sublessee Premises (if any), and utility hook-ups to the wires and conduits installed by the City. Notwithstanding the foregoing, however, the Developer has the ultimate responsibility for ensuring that all Concession Locations and Common Areas are open and operating in a First-Class Manner as defined herein on the New Terminal Opening Day in accordance with Section 512.

- I. The Developer will have the right, but not the obligation, to finance, if necessary and desired, the development of Sublessee Premises. Such financing arrangements are between Developer and its Sublessees, and the City is not a party to such agreements. Notwithstanding the above, the City has the right to review and approve all financing agreements before their implementation. The City will not receive any revenues that result from financial transactions of this nature between Developer and Sublessees; neither does it accept any risk therefrom. If the Developer considers financing a Sublessee's Construction Costs or undertaking certain non-Base Building Work (if approved by the City), the Developer will not be entitled to reimbursement or other repayment for any costs or expenses it incurs in connection with any such financing or undertakings from any Rent or other revenues to be derived from the plan or to be otherwise payable to the City (e.g., through chargebacks or otherwise), nor may the Developer agree or arrange to tie-in or otherwise condition such Sublessee financing or undertakings on any other rights, privileges, allowances, or business terms and conditions granted to a Sublessee. The Developer will be prohibited from waiving any right to receive rents, fees, charges, or other revenues that may be paid or payable by any Sublessee, user, or occupant under its Sublease, without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed, and will similarly be prohibited from granting any rent abatements, extensions, or other modifications without the prior written consent of the City.
- J. The Developer will manage the Concession Program including, but not limited to:
 1. Monitoring the sales activity, pricing, customer service, hours of operation, merchandise, sales reporting, and payment of Rent.
 2. Providing janitorial and custodial services for all Food Court Common Areas and other Common Areas within the Premises.
 3. Ensuring that grease traps and vents are installed and checked/cleaned on at least a monthly basis in all applicable Foodservice concessions.
 4. Ensuring and overseeing Sublessee compliance with Concession Program maintenance and performance standards.
 5. Ensuring that all Sublessees are actively maintaining sanitation standards within their Sublessee Premises, including the use by all employees of gloves when handling food, and wearing of face masks and hair nets when preparing food, or more stringent requirements as put forth by the City. The wearing of face masks or hair nets is mandatory and is not subject to the personal choice of the Sublessee or individual employee.

6. Providing quality control audits and reports covering compliance with Agreement requirements, cleanliness of the facility, sanitation of the facility, timeliness of service, and quality of the products to the Sublessees, with copies to the City. The standards will be developed jointly by the City and Developer and shall not be subject to unilateral revision by either party.
 7. Collection and disposal of all Sublessee-related refuse and garbage into City-provided dumpsters.
 8. Collection and disposal of all recyclable materials into City-provided cardboard compactors or other containers, as appropriate, for the purpose of recycling; and
 9. Timely payment of Concession Fees to the City, including all required rental reports, as specified in Article IV herein.
- K. Developer shall manage the Concession Program as set forth in the Proposal, including for example and without limitation Tab 6 (Management/Operational Plan). Without limiting the generality of the foregoing, Developer shall employ, at no cost to City, at least one (1) full-time, dedicated, on-site General Manager, and one (1) full-time, dedicated, on-site Commercial Manager. The individuals Developer proposes to employ in these capacities are subject to the prior approval of the City. The General Manager, Commercial Manager or other senior representative shall be present at the Airport during normal business hours, Monday through Friday, and further shall be available twenty-four (24) hours per day to resolve any issues pertaining to the Concession Program and available to meet with the City at the Airport, and available at all other times by telephone, being able to arrive by car at the Airport within one (1) hour of being called in an emergency situation. The City reserves the right to require Developer to remove and replace any General Manager or Commercial Manager who, in City's reasonable judgment, does not perform up to the standards consistent with the fulfillment of Developer's obligations under the Agreement.

The General Manager and Commercial Manager shall serve as a liaison with the City, and the Sublessees, with sufficient authority and support staff and appropriate equipment, supplies and means to manage and perform the development, management, maintenance, repair and other functions and obligations of the Developer with respect to the Premises, including, without limitation, the obligation to administer the Subleases and other contracts to which Developer is party, to monitor and enforce compliance by the Sublessees with their Subleases and the Agreement, each with authority to resolve operational issues short of executing an actual amendment to the Agreement or Sublease Agreement. The General Manager shall monitor the Premises to evaluate and enforce the Sublessees' compliance with their respective Subleases, including but not limited to compliance with the City's Rules and Regulations, and shall report in writing any noncompliance to the Sublessee(s) and the City, and their actions to remedy the non-compliance. The General Manager shall use commercially reasonable efforts to remedy any problem or issue raised by Airport patrons with respect to the operation of the Premises. The General Manager shall also continually monitor ACDBE performance to ensure both continued goal achievement, in accordance with Section 1201, as well as ensuring that ACDBE's have support available, when needed, to assist in their growth and compliance, and ensure that they are able to take advantage of opportunities present for their operation. Further, during any period in which construction is occurring on the Premises, whether by Developer or Sublessees, the General Manager shall ensure that MBE/WBEs are utilized to the greatest extent possible, but in any case, no less than the goals established in the RFP.

- L. The Developer will develop and implement a joint marketing program the purpose of which is to enhance concession sales, the customer experience, and customer satisfaction. The joint marketing program shall include the elements set forth in Developer's Proposal at Tab 19 (Marketing Program). The Developer is expected to ensure that all Joint Marketing Fees due from Sublessees are reported

and paid for. It is recommended that Developer perform occasional audits to ensure that all fees due and payable are paid.

1. It is expected that Developer shall develop an organized plan before the beginning of each Lease Year that proposes the uses of funds and timing of expenditures for the forthcoming year. It is expected that Developer will be creative in determining the uses of the Joint Marketing Fund and will not rely solely on the same ideas on a repetitive basis. It is recommended, but not mandatory, that Developer seek input from Sublessees which are willing to share their ideas and evaluations of the proposed marketing efforts. These plans shall be reviewed by City for comments, but City may not direct Developer to exclude any planned idea, unless it is known to be a violation of a City Ordinance.
 2. As part of the marketing program, the Developer must establish a barricade signage program for any unoccupied or incomplete concessions spaces. The designs for the barricades will be subject to the prior written approval of the City through its established permit process and must complement the interior design and finishes of the New Terminal and shall also supply information about both forthcoming concessions and other concession alternatives nearby. Solid white barriers with no marketing messages are not permitted for barricade signage.
 3. The cost of establishing and maintaining Creative Spaces may not be charged to the Joint Marketing Fund.
 4. The Joint Marketing Fund may be utilized to pay for a mystery shopping service in order to determine the performance of all Concession Locations, to give Developer and City a fuller understanding of performance, find general performance deficiencies, and to understand what additional training courses may be needed. However, the Joint Marketing Fund may not be utilized to pay for any training.
 5. Developer will be responsible for providing an annual report to Sublessees and City regarding of the sources and uses of the Joint Marketing Fund, as well as the results from the promotional activities, to the extent they can be deduced. If there are funds remaining in the Joint Marketing Fund at the end of a Lease Year, then the Joint Marketing Fund Fee for the next Lease Year for every Sublessee will be reduced by the proportional share of the remaining fund. If there is a shortage in any year, it shall be the responsibility of the Developer to cover the shortage until such time as the Joint Marketing Fund balance becomes positive.
- M. The Developer will be required to attend all meetings called by the City that relate to the Concession Program with at least two (2) business days' notice (or less, in the case of emergencies).
- N. The Developer has proposed a Concession Layout Plan in the Proposal at Tab 11 (Location & Sublease Planning). Upon the Effective Date, the City and Developer shall review the Concession Layout Plan and come to an agreement regarding the uses of the available space, the configuration of spaces to be developed, and desired Sublessees for each space to be operated. The Developer is not under a specific obligation to provide any Operator with a Concession Location if a mutually agreeable Sublease cannot be reached.
- O. The Developer shall prepare and submit for City review and approval a standard-form Sublease, with modifications as necessary to account for the different concession services performed by Sublessees. Developer may request City review and approval of changes to the standard-form Sublease during the Lease Term. In addition, Developer will seek and obtain City consent to execute each Sublease, which City review shall be limited to considering the permitted uses in the Sublease and determining whether the Sublease is consistent with the approved standard form. Each Sublease shall include the rights and obligations required by this Agreement to be passed to Sublessees and shall provide the right on the

part of the City to assume Developer's rights and obligations under the Sublease upon termination or expiration of this Agreement.

- P. In the event that the USSF should award the City the rights to hold one or more soccer matches within the Tournament, Developer will be responsible to assign a highly visible Concession Location for FIFA to operate a retail store ("**FIFA Store**") for the period commencing six (6) months before the Tournament until one (1) month after the Tournament concludes.
1. A contract between Developer, the City, and FIFA will be executed for the temporary occupancy of the FIFA Store. The contract may be provided by FIFA.
 2. Developer will be permitted to charge a rent commensurate with other Specialty Retail stores in the New Terminal. FIFA shall not be charged the Joint Marketing Fund Fee but may be required to pay all other fees which would be normally charged from the FIFA Store's commencement date through the day on which FIFA ceases retail operations. Sales from the FIFA Store shall be included in the calculation of Operator Gross Receipts as provided herein, and Rent from the FIFA Store shall be included in the calculation of the Concession Fee as provided herein.
 3. The City recommends (but does not require) that Developer identify a Concession Location in the A Concourse of the New Terminal for the FIFA Store. This space may be used as Creative Space until the period when FIFA will need to occupy it. Alternately, Developer may place other Sublessees in the identified Concession Location, so long as the Sublessee has vacated the space in time and in condition to be improved by FIFA. Developer shall assist FIFA in any way necessary to expedite FIFA's construction plans (if any). The Parties acknowledge that the space for the FIFA Store will most likely not be needed until at least spring 2026. If there are commercially useful activities which can be conducted in the identified Concession Location, such as pop-up shops for small and local vendors, then the City recommends that Developer maximize the revenue potential of the space.
 4. Developer shall not be responsible for enforcing contractual or Airport rules on FIFA. If Developer observes any violation of these rules, so long as it does not cause any immediate danger to the City, the Developer, any Sublessees or their employees (including FIFA employees), or the public, Developer shall notify City promptly of the issue and the circumstances surrounding it. This shall be Developer's only duty regarding enforcement of contractual operational rules.
 5. In the event that FIFA does not leave the space in the broom clean standard required of other Sublessees, Developer shall have the responsibility to return the space to leasable condition. Developer is permitted to invoice City for any costs incurred, which must be substantiated by receipts in order to get reimbursement. The City will not pay for any incurred expense, without corresponding receipts. Any amounts due to Developer will be provided as a credit memo against forthcoming Concession Fee due to City from Developer.

SECTION 202. INCORPORATION OF RFP AND PROPOSAL. The RFP and any written clarification thereto, and Developer's Proposal are incorporated and made a part hereof by reference. Developer shall be obligated to meet all material specifications described in the RFP and all plans and programs recommended by Developer in its Proposal pertaining to the Concession Program as accepted by City; provided, however, that in the event an express provision of this Agreement is in conflict with any provision of the RFP and/or the Proposal, this Agreement shall govern and control unless City deems that the provision in the RFP and/or the Proposal offers a higher level of service to City or the traveling public than indicated in the conflicting provision of this Agreement, in which case such provision in the RFP and/or Proposal shall govern and control.

Developer shall be required to keep and abide by all material commitments and promises that appear in the Proposal. Developer was selected as a result of the commitments made in the Proposal. As a result, failure to

perform any such commitment or promise which was accepted by City shall be deemed a default of this Agreement and shall subject Developer to assessment of Liquidated Damages as provided in Article XX.

The Parties acknowledge and agree that the needs of the Airport and its passengers, employees and users may change over the Lease Term and that, as a result, Developer may make corresponding changes in the Concession Program, with the City's approval. Notwithstanding the provisions of this Section 202, Developer shall not be held to a plan, program, standard or requirement of the RFP or Proposal if the Parties have expressly agreed to adjust, replace or eliminate such plan, program, standard or requirement.

ARTICLE III TERM OF AGREEMENT

SECTION 301. **TERM.** This Agreement, and all rights and obligations of the Parties as set forth herein, shall be effective as of the Effective Date, which date shall be _____, 2021 (to be hand-written to reflect the effective date of the City Council ordinance approving this Agreement). The Design and Construction Phase of this Agreement shall commence upon the Effective Date and shall continue until midnight on the Day before the New Terminal Opening Day. The Operational Phase, which shall last for a period of fifteen (15) years, shall commence at 12:00 a.m. local time on the New Terminal Opening Day and shall terminate at 11:59 p.m. local time, on the fifteenth anniversary of the New Terminal Opening Day, unless the Lease Term is extended, or the Agreement terminated, as permitted herein.

SECTION 302. **SURRENDER OF POSSESSION.** No notice to cease operations or to quit possession of the Premises at the Expiration Date shall be necessary. The Developer covenants and agrees that at the Expiration Date, Developer will peaceably surrender possession of the Premises in good condition, reasonable wear and tear, acts of God, and other casualties excepted, and the City shall have the right to take possession of the Premises.

SECTION 303. **HOLDOVER.**

- A. City's decision. The City may permit Developer to holdover beyond the expiration of this Agreement, subject to the terms and conditions set forth herein, in order for the City to conclude a solicitation process or to prepare for a follow-on concession tenancy either with Developer or such other firm or firms selected by the City. The City will notify the Developer in writing of the City's offer of a holdover tenancy. Within thirty (30) days of receipt of the City's notice, the Developer shall notify the City in writing as to the Developer's acceptance of said holdover tenancy. If the Developer fails to so notify the City in writing within said thirty (30)-day period, the Developer shall be deemed to have rejected the City's offer of holdover tenancy.
- B. Holdover time period. The City, in its sole discretion, may permit the Developer to hold over and operate from, at and upon the Premises, for a period not to exceed one calendar year from the end of the Term agreed to by the Developer and the City. Nothing herein shall preclude the City and Developer from extending the Lease Term as provided in Section 2105.
- C. Holdover terms.
 - 1. Month-to-month tenancy. If the City permits the Developer to holdover on or at the Premises, such a holding over shall not be deemed a renewal or extension of the Agreement, but shall create a month-to-month tenancy on the same terms and conditions of the Agreement in effect immediately prior to the commencement of the holding over (hereafter the "**Holdover Start**"), unless modified as deemed necessary by the City. Such modifications may include, but are not limited to, the Developer's obligation to (1) pay to the City the rents, fees and charges in effect at the Holdover Start, (2) furnish a sufficient Payment and Performance and Maintenance Bond and

adequate insurance coverage in accordance with the terms of the Agreement in effect at the Holdover Start and (3) provide defense, release, indemnity and liability protection to the City as required by the terms of the Agreement in effect at the Holdover Start.

2. Termination. The City may, upon sixty (60) days written notice, after the Holdover Start, notify Developer that the Holdover period shall be terminated. Developer agrees that it will follow the provisions of this Agreement upon the time and date specified by the City in such notice.
3. No Other Holdover Permitted. Other than as specified as in Section 303.C. Developer may not otherwise remain in the Premises for any reason, beyond the expiration date set forth in Section 301, above. This Agreement will not be extended for any reason, and City will seek to tender a new Agreement to Developer or an alternative Developer, through whatever means are available or required during the period before the expected expiration date.

ARTICLE IV PAYMENTS AND FEES; SUBLESSEE FEES

SECTION 401. CONCESSION FEE PAYMENTS.

- A. No Concession Fee during D&C Phase. From and after the commencement of the D&C Phase, until the New Terminal Opening Day, Developer shall pay no Concession Fee, or any other rent or fees of any type to the City. However, Developer will be responsible for paying for all utilities which it consumes which may be separately metered (for example, in an office).
- B. Concession Fee during Operational Phase. Beginning on the commencement of the Operational Phase, Developer shall pay the Concession Fee to the City.
- C. Concession Fee Formula. Developer shall pay the City the greater of a percentage fee or the Minimum Annual Guarantee. The percentage fee shall be eighty percent (80%) of all Rent up to \$16,000,000, and eighty-four percent (84%) of all Rent above \$16,000,000. As a limited exception to the foregoing, Developer shall pay the percentage fee only, without MAG, prior to May 1, 2023, or, if the New Terminal Opening Day is later than May 1, 2023, MAG shall apply beginning on the New Terminal Opening Day.
- D. At the beginning of each Lease Year, the City shall provide Developer with the estimated number of enplaning passengers, based on the prior Lease Year's actual number of enplaning passengers. The Developer will pay MAG based on the estimated number of enplaning passengers, on a monthly basis, no later than the 5th Day of each month, using the following formula: Estimated total enplaned passengers times the MAG per enplaned passenger, divided by 12.
- E. Each month by the 25th Day, the Developer shall prepare and send to City a monthly report, summarizing the Operator Gross Receipts and Rents received from Sublessees, and the calculation of the Concession Fee due to City for the previous month. The report will include the detailed calculation of the Concession Fee, and calculate any percentage fee due to City, over and above the MAG.

At the end of each Lease Year, City shall provide Developer with the actual number of enplaning passengers for such year, as reported to the City by airlines serving the Airport. Developer shall provide City with a reconciliation of the Concession Fee, based on the actual number of enplaning passengers, including a true-up of the MAG, and the annual calculation of the Concession Fee based on the total Rent received by Developer for the entire Lease Year.

- F. If, during the Lease Term, the number of enplaned passengers at the Airport decreases by more than eighty (80) percent, measured on a monthly basis compared to the same month of the previous year, the Parties shall abate the MAG, by the same percentage as the decrease in enplaned passengers, until such time as the year-over-year decrease in enplaned passengers is less than eighty percent.

SECTION 402. OTHER OCCUPANCY FEES NOT PART OF OPERATOR GROSS RECEIPTS. The Developer or its Sublessees are responsible for any or all the following applicable fees and charges.

- A. Utilities. City shall furnish utilities to the Premises. Developer may pass the costs of all utilities for the Premises to Sublessees, without mark-up. Developer agrees that all other utility services required for the Premises during the Lease Term must be obtained by direct connection to the distribution system of the utility company and paid for by Developer or Sublessees. In the event Developer leases space or is granted rights or privileges where such direct connection to the distribution system of the utility company is not possible, then Developer may be permitted to receive service through City's airport system subject to a charge applicable to all airport users of like services. Developer shall pay monthly for such service upon receipt of a bill from City. Should the City determine that it is in its best interest and in the best interests of its tenants for the City to pay a unified utility bill and invoice it tenants for their individual utility usage, City retains the right to require Developer to reimburse City for utility usage.
- B. Common Area Maintenance ("CAM"). The Developer will provide CAM services for all Common Areas within the Premises. CAM fees are to be separately stated on monthly invoices for Rent or separately billed by Developer to the Sublessees and assessed at cost with no Developer mark-up. Specific costs attributable to the maintenance of a Food Court will only be borne by those Sublessees in that Food Court, and not by Sublessees who operate concessions in other parts of the Terminal. Developer shall be required to provide an annual reconciliation to its Sublessees, which includes a reconciliation and true-up of estimated costs to actual costs, and a summary of receipts and expenditures by category to its Sublessees and the City.
- C. Joint Marketing Fund. The Developer will develop and implement marketing and promotions programs to enhance concession sales and customer satisfaction as shown in Section 201.J. Expenditures for the marketing and promotions program may be funded through a percentage of Operator Gross Receipts fee charged for each Subleased Location. The Developer may not apply any mark-up to the marketing fees charged to the Sublessees. The maximum allowable marketing and promotions fee shall be 0.5% of Operator Gross Receipts and shall be separately stated on Developer's invoices to its Sublessees or separately invoiced.
- D. Distribution and Loading Docks. Developer shall be responsible for the build-out of the Primary Loading Dock, located on the A-Concourse and accessible from the New Terminal roadway, as well as the operation and management of both the Primary Loading Dock for the acceptance of all deliveries from external sources, and the Secondary Loading Dock, located on the B-Concourse, for deliveries by Developer or its third party operator, to B-Concourse Sublessees.
 - 1. Developer shall develop and operate the Primary Loading Dock and Secondary Loading Dock in the manner set forth in Developer's Proposal at Tab 18 (Delivery Management Plan). Developer shall, in consultation with the City, develop a specific plan for the development and operation of the Loading Docks and submit such Loading Dock Operational Plan to the City for review and approval. The Loading Dock Operational Plan shall address, for example and without limitation, the security of the Loading Docks, consistent with the Airport Security Plan and the rules and directives of the Transportation Security Administration. City may request changes in the Loading Dock Operational Plan during the Lease Term to address, for example and without limitation,

safety, security, and efficient operations of the New Terminal. In the absence of a request by the City, Developer shall review the Loading Dock Operational Plan no less than once per Lease Year and submit any proposed changes to the City for review. The Airport Director may approve changes in the Loading Dock Operational Plan without amending this Agreement.

2. Developer's capital investment in the Loading Docks shall not be charged to the Sublessees.
3. The Primary Loading Dock shall accept all deliveries to the New Terminal, including, but not limited to: deliveries by the United States Postal Service, United Parcel Service, FedEx, DHL, Amazon and similar package delivery services; product delivery by distributors and vendors, including for example baked goods and fresh produce; newspapers and magazines; and emergency deliveries, including for example when a Concession Location has run out of a product or ingredient.
4. Developer has the option of either managing the Loading Dock itself with its own employees, or subcontracting Loading Dock management to a third party. In either case, the managing firm for the Loading Docks shall be referred to herein as the "**LD Manager**".
5. The LD Manager shall maintain the Loading Docks in a neat and orderly condition, ensuring that sanitation standards are consistently applied. All trash, recycling and waste products related to the Loading Dock operation must be placed in appropriate containers and frequently removed to dumpsters.
6. The Developer shall construct, and the LD Manager shall operate and maintain, dry and cold storage, to include frozen storage, with sufficient capacity to accommodate expected deliveries during the Lease Term.
7. Developer will not have total management responsibility for the Loading Docks until five days before the New Terminal Opening Day. Until that time, Developer shall work with the City's Project Manager for the construction of the New Terminal, or their designee, to coordinate deliveries, pick-ups, and movement of products and supplies from the Loading Docks to their destination. Pursuant to the Construction Schedule found in **Exhibit D**, Developer will be given adequate time to finish the Loading Docks area per Developer's plan, as approved by City.
8. During the Design and Construction Phase, Developer will be responsible for managing the acceptance of deliveries of merchandise to be used to stock all Concession Locations as part of the Concession Build-out. No deliveries should be permitted to remain on any Loading Dock for an unreasonable amount of time, as determined by the Developer.
9. Developer shall be informed by City of the date when Developer will assume the responsibility for the acceptance and processing of certain mail, small packages, and supplies for all non-concession Airport tenants. LD Manager will be responsible for the processing of such items to a secure, designated lock box for each non-concession Airport tenant and notifying such non-concession Airport tenants of deliveries, pursuant to the following requirements:
 - a. Developer has the option of either delivering product, supplies, mail, and packages to the Sublessees, or requiring Sublessees to pick up their deliveries at the Primary Loading Dock or Secondary Loading Dock, or a combination thereof, based on whichever method is most efficient and convenient for the Sublessees. At no point shall any Sublessee be expected to carry products or merchandise from the Primary Loading Dock to the Secondary Loading Dock (or vice versa, in the case of merchandise returns). No merchandise may be transported through the passenger walkway connecting A-Concourse to B-Concourse at any time unless advanced permission is given by City on a case by case basis.

- b. Developer, along with LD Manager, if it is a third party, shall prepare a plan so that processing of mail or small packages for any non-concession Airport tenant will occur no more than four (4) hours after receipt at the Primary Loading Dock (except for evening deliveries, where the material shall be processed early the next calendar day). If processing cannot be completed until the next day, due to late arrival, the delivery must be secured by the LD Manager.
- c. If the delivery is destined for a Concession Location, and if LD Manager is delivering the product, the same four (4) hour rule shall apply.
- d. If certain Sublessees are required to pick up their deliveries at a Loading Dock, then the LD Manager shall notify the recipient of the availability of their merchandise either at the Primary Loading Dock, or the Secondary Loading Dock, as is most appropriate, as soon as practical after the delivery process begins (or immediately prior to that moment), so that the delivered materials may be promptly removed from the Loading Dock by the Sublessee. If a Sublessee does not pick up such deliveries within a reasonable time frame as set by the Developer, the LD Manager must hold and secure those deliveries, which may result in an additional charge to the Sublessee.
- e. If certain B-Concourse Sublessees are required to pick up deliveries from the LD Manager, then the LD Manager shall move the materials from the Primary Loading Dock to the Secondary Loading Dock according to a pre-planned schedule and secure such materials until they are accepted by Sublessee representatives within a reasonable time frame of notification. If a Sublessee does not pick up such deliveries within a reasonable time frame set by the LD Manager, the LD Manager must hold and secure those deliveries, which may result in an additional charge to the Sublessee.
- f. If the LD Manager receives clearly-marked urgent, delicate, valuable, or fragile item for a Sublessee, it shall process, deliver, or arrange the pick-up within one-half (1/2) hour of receipt at the Loading Docks. For tenants who do not regularly receive products delivered by the LD Manager, the items shall be securely stored until the tenant picks them up. In such a case, the LD Manager shall inform the tenant that they have a delivery waiting.
- g. Within its Loading Dock Operational Plan, LD Manager must prepare recommendations for the procedure for immediate delivery to the addressee of clearly-marked urgent, delicate, valuable or fragile items within one-half (1/2) hour of the acceptance of the delivery from any delivery firm. If such urgent, delicate, valuable, or fragile item is for a Sublessee and the LD Manager does not provide delivery service, then LD Manager shall be required to inform said Sublessee of the arrival of such item at the earliest possible moment. If the Sublessee is located on the B-Concourse, shall inform Sublessee of when they will be able to pick up the merchandise from the Secondary Loading Dock, taking into account transportation time by the LD Manager to the Secondary Loading Dock, and shall, if necessary, secure the merchandise on the Secondary Loading Dock in a safe manner, maintaining the item in the same condition it arrived in, until pick up by the Sublessee.
- h. The LD Manager shall operate the Loading Docks throughout the day, seven (7) days per week, 365/366 days per year, from as early in the morning as is required for the receipt of merchandise, until the end of the standard business day (5:00 p.m.) or later, as scheduled by the LD Manager. Exceptions to these operating hours' requirements may be requested by Developer, at its option, which permission shall be granted, absent a justified reason for keeping the Loading Dock(s) open. It is recommended that LD Manager identify one or more people who can arrive at the Airport within thirty (30) minutes to accept an off-hours delivery if the delivery is urgent, or there is a justified reason for a delivery to occur outside of regularly

scheduled hours of operation. The LD Manager shall designate an employee to be on call to open the Loading Dock(s) outside of normal operating hours in the event of an emergency.

- i. The LD Manager must sort and process mail securely into the designated lock box for each Sublessee and non-concession tenant.
- j. Developer may assess the proportionate cost of LD Manager's services for operations relating to Sublessees only (thereby excluding the cost of providing receiving and processing services to non-concession Airport tenants), based on their usage of LD Manager's services. The charges to Sublessees must be clearly denoted as a separate line item on the Sublessee's monthly payment invoices. The monthly invoicing to Sublessees will be estimates calculated to reimburse the Developer for its costs to provide the services, without markup. City will do periodic audits of these billings. The chargeback methodology, including the steps that Developer will take to exclude costs relating to receiving and processing of non-concession-related product and mail, for example, must be clearly established in Developer's Loading Dock Operational Plan.
- k. By the second March 1st after the New Terminal Opening Day, and every March 1st thereafter, Developer shall provide to the City, without request, a report which summarizes the total estimated amounts received from Sublessees for Loading Dock management services (and delivery, if applicable) during the previous Calendar Year, compared to the cost of providing the services.
- l. If the estimated fees collected are greater than the cost of supplying the services, then Developer shall credit or refund the excess estimated billings and reduce the estimated monthly fees for the following year.
- m. If the estimated fees collected are less than the cost of providing the services, then Developer shall be permitted to increase its charge for Loading Dock management and delivery services based on the projected operating costs for the next year, and recover the shortfall from Sublessees.
- n. LD Manager has the right, but not the responsibility, of scheduling delivery times with suppliers, and, if a schedule is established, refusing to accept an out-of-order/off-scheduled-time delivery.
- o. Distribution of product to Concession Locations and/or Loading Docks for Sublessees that elect to pick up deliveries, will be the sole responsibility of the LD Manager or Sublessee, pursuant to the approved Loading Dock Operational Plan. All deliveries of merchandise and supplies shall be through the Loading Dock, and none shall take place through other means. Developer shall be responsible for securing the permits, training, and equipment for vehicles and drivers to operate on the Airfield in order to facilitate movement of delivered materials from the Primary Loading Dock to the Secondary Loading Dock or other storage locations on the Airfield level. Developer may provide delivery services through a third party, provided at cost without markup to Sublessees. Should Developer choose to provide delivery services with its own employees, it shall propose a methodology for calculating the delivery cost for the approval of the City, which approval shall not be unreasonably withheld. The rate shall not be changed without the approval of the City.
- p. Deliveries to Sublessees and others must be made on a non-discriminatory basis, such that one firm is not prioritized over all others. If evidence of this practice is found by City, Liquidated Damages may be assigned to Developer.

SECTION 403. ADDITIONAL FEES AND CHARGES. The Developer shall pay City additional fees and charges under the following conditions:

- A. In the event the Premises, together with all other land located within the Airport, is subjected to a Declaration of Covenants and Restrictions, which includes, among other things, a provision for assessment of charges for maintenance of common properties and/or for provision of common charges to all land within the Airport, Developer shall pay, in addition to any Concession Fee, its proportionate share of such charges.
- B. If the City has assessed Liquidated Damages in accordance with Article XX.
- C. If the City has paid any sum or sums or has incurred any obligations or expense for which the Developer has agreed to pay or reimburse City.
- D. 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 Developer to perform or fulfill any of the conditions of this Agreement.
 - 1. 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 by the Developer to the City hereunder. 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.
 - 2. For all purposes under this sub-Section 403.E, 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 Developer that the amount of such payment was necessary and reasonable.

SECTION 404. REMITTANCE OF PAYMENTS. All remittances shall be made payable to the "City Treasurer" and forwarded to:

City of Kansas City, Missouri
Aviation Department Lockbox
P.O. Box 210513
Kansas City, MO 64121-0513

All payments hereunder shall be paid to City's payment address, or at such other place as City may from time to time designate in writing. The City may also, at any time, require Developer to make electronic transfer payments. Should City so desire, City will provide Developer with the appropriate electronic address, and thereafter, Developer will be required to make all payments electronically.

SECTION 405. PROMPT PAYMENT. The Developer covenants and agrees to pay promptly all Concession Fees, 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.

The above paragraph shall appear in all Subleases signed by Developer.

SECTION 406. REPORTS. Developer shall provide the City, in a form and detail satisfactory to the City, a true and correct statement of monthly Operator Gross Receipts along with the cumulative annual Operator

Gross Receipts for the Calendar Year (regardless of the Fiscal Year of the Developer). Said monthly statement shall be due by the 25th Day of the following month. Statements of Operator Gross Receipts shall be certified as correct by an officer of the Developer. Developer shall use the report form proposed in its Proposal, as approved by City, and which may be found in **Exhibit F: Form of Monthly Report**. A copy of this report shall be provided with the payment required in Article IV. An electronic version of this report shall be emailed to the Director or other such email address as specified by the City, by the 25th Day of each month. Note that a separate section should be available in the Monthly Report for reporting of Liquidated Damages assessed and collected. Further note that late submissions of any report to the City may subject Developer to Liquidated Damages, pursuant to this Agreement.

SECTION 407. ANNUAL AUDIT. Within ninety (90) days after the close of each Lease Year hereunder, or portion thereof, Developer shall furnish to the City a sworn statement certified by an independent Certified Public Accountant, selected by the Developer, showing the total Operator Gross Receipts collected at the Airport by the Developer and summary of the payments made by Developer to City during the Lease Year. If Developer has overpaid the City in any Lease Year, then the amount of the overpayment will be credited against payments due for the following Lease Year, spread equally over a period of no less than six (6) months, unless City shall specify another period. If the Developer has underpaid the City, Developer shall pay the amount of the underpayment by the April 30 of the year following the timely submission of the Annual Audit to City. This date may be adjusted by City at its option, depending upon when the Annual Audit is received by City. Note, however, that late submissions of any report to the City may subject Developer to Liquidated Damages, pursuant to this Agreement.

SECTION 408. INTERESTS, PENALTIES AND LATE CHARGES. If Developer fails to pay City any amount due City under this Agreement, City shall charge a service charge of one and one-half percent (1.5%) per month if same is not paid and received by the City on or before the twentieth (20th) day of the month following the month in which said payments are due. Developer agrees to pay reasonable costs and expenses incurred by the City in collection of delinquent amounts, including service charges.

SECTION 409. PAYMENT BOND AND PERFORMANCE AND MAINTENANCE BOND. The Developer shall furnish Payment Bond and a Performance and Maintenance Bond to the City in a form substantially similar to that presented in **Exhibit A – Payment Bond and Performance and Maintenance Bond**.

The Payment Bond shall reflect the amount of Developer's Capital Investment required to perform the Work as provided herein. The Payment Bond shall be kept in full force and effect during the D&C Phase, and thereafter until the Developer completes its work and provides the City with the close-out documents as set forth in Section 507. The Performance and Maintenance Bond shall reflect the annual amount required to guarantee the payment of Concession Fee and the performance of Developer's other obligations as provided herein. The Performance and Maintenance Bond shall be kept in full force and effect during the Lease Term, and thereafter until all obligations of the Developer are fulfilled.

At least thirty (30) days prior to the expiration of any annual renewable bond, Developer shall submit to the City a new bond renewal in accordance with the terms and conditions of this Agreement. If any said bond coverage is cancelled or reduced, Developer shall, within five (5) days after the date of such written notice from the bank or surety of such cancellation or reduction in coverage, file with the City evidence of bond renewal showing that the required bond has been reinstated or provided through another bank, Surety Company or companies. Developer shall also require that all Sublessees maintain sufficient Payment and Performance Bonds to ensure payment of their obligations to Developer and the City. Developer's failure, at any time during the Lease Term, to maintain the bond coverage required in accordance with the terms and conditions of this Agreement shall constitute an event of default in accordance with Article XIII, subject to cure in accordance with Section 1304. Alternatively, the City may secure a bond as required herein, and the Developer shall reimburse the City for same with interest thereon on and service charges, as provided for herein.

City shall not be required to keep the Payment Bond and the Performance and Maintenance Bond or any proceeds thereof, as applicable, separate from its general accounts. Any proceeds of the Payment Bond and the Performance and Maintenance Bond is and will remain the sole and separate property of City until actually repaid to Developer, said sum not being earned by Developer until all provisions precedent for its payment to Developer have been fulfilled. If Developer performs all of Developer's obligations hereunder, the Payment Bond and the Performance and Maintenance Bond, or the proceeds thereof, or so much thereof as has not theretofore been applied by City, shall be returned, without payment of interest or other increment for its use, to Developer (or, at City's option, to the last assignee, if any, of Developer's interest hereunder) within sixty (60) days after the expiration of the Term, and after Developer has vacated the Premises. No trust relationship is created herein between City and Developer with respect to the Payment Bond and the Performance and Maintenance Bond or any proceeds thereof.

SECTION 410. ACCOUNTING RECORDS. Developer and its Sublessees shall keep, throughout the entire term of this Agreement in the case of Developer, or throughout the entire term of the Sublessee's Agreement or any extension thereof, all books of account and records customarily used in similar type of operation, and as may be reasonably required by the City, in accordance with GAAP. Such books of account and records shall be retained and available for such period as provided herein unless otherwise reduced by the City. The City, at all times throughout the term of this Agreement or any extension thereof, and for up to three (3) years following termination, shall have the right to audit and examine, during normal business hours, all such records and books of account relating to the Developer's operation hereunder, including Sublessee records and books of account provided that the Developer or Sublessee shall not be required to retain such books of account and records for more than three (3) years after the end of each Lease Year of this Agreement.

Developer shall install and use or cause to be installed and used at the Premises, cash registers, sales slips, invoicing machines and other automatic accounting equipment or devices required to record properly and accurately the Operator Gross Receipts on all sales, services, and other business transactions made by Developer under this Agreement. Electronic ordering is expressly permitted for all concessions, so long as customer can obtain a receipt from a point in the Airport or via e-mail, and sales amounts through said electronic means are auditable by City, by request.

SECTION 411. EARNINGS TAX. All City earnings tax, payable out of earnings from revenues generated under this Agreement, must be withheld, and paid directly to the City by the Developer and its Sublessees. Such withholdings and payments will be made a condition of all contracts entered into by the Developer in connection with revenue generated and/or work performed under the terms of this Agreement, and such earnings tax payments by the Developer and its Sublessees shall be confirmed by the City's Division of Revenue.

SECTION 412. RIGHT TO AUDIT. The City Auditor, the City's Internal Auditor, the City's Director of Human Relations, and the City and their hired Agents shall have the right to audit this Agreement and all books, documents and records relating thereto. Developer and all Sublessees shall maintain all their books, documents and records relating to this Agreement during the term of their agreement and for three (3) years after expiration. The books, documents, and records of Developer in connection with this Agreement shall be made available to the City within ten (10) days after the written request is made. Records must be made available in Kansas City, Missouri, at a location mutually agreeable to City, its Agents involved, and Developer or Sublessee. If City Agents are required to travel outside Kansas City in order to audit these books, Developer or Sublessee shall be liable for all costs, including airline travel (or mileage), hotels, rental cars, meals, and related expenses, which shall be paid within fifteen (15) days of these expenses being billed to Developer or Sublessee.

The final authority for the determination of what books, documents and records are required shall rest with the City. In the event that any inspection or audit made by or on behalf of the City discloses any discrepancy in any statement(s) of Developer's or Sublessee's Operator Gross Receipts and/or in the amount of any sums of money owed, the Developer or Sublessee shall forthwith pay the sum of money owed to the City plus an

interest charge of one-and-one-half percent (1.5%) per month to the City to the date payment is made to the City.

SECTION 413. NET AGREEMENT. This Agreement shall be without cost to the City. It shall be the sole responsibility of the Developer, or Sublessees, to equip, furnish, stock, keep, maintain, repair, and operate the facilities and utilities required under this Agreement, without cost to the City.

ARTICLE V CONDITION AND IMPROVEMENT OF PREMISES

SECTION 501. DEVELOPER CONSTRUCTION AGREEMENT. No improvements, structures, facilities, alterations or additions to the Premises will be made by Developer without prior written approval of the Director. This approval shall be in the form of a separate tenant construction agreement through the Aviation Department's Engineering Division signed by City and Developer. The tenant construction agreement may have requirements for payment and performance bonds, compliance with the Tenant Design Standards, prevailing wage, MBE/WBE participation, and FAA review, among other conditions. The Parties acknowledge and agree that the Missouri Prevailing Wage Law (Chapter 290, Missouri Revised Statutes) and applicable wage order for Platte County shall apply to the Work.

SECTION 502. CONSTRUCTION INSTRUCTIONS. Attached as **Exhibit E** are the Construction Instructions by the City's contractor overseeing the building of the New Terminal. These same rules will apply to Developer's and Sublessee's construction efforts.

SECTION 503. INITIAL CONDITION OF PREMISES. As of the Effective Date, the New Terminal is under construction. Immediately upon the Effective Date, City shall provide, and instruct City's Agents to provide, access to plans, drawings, schedules and other documents concerning the New Terminal to Developer, Developer's Agents and Developer's Architects/Engineers that are necessary or appropriate for Developer to plan and prepare for the Capital Improvements. Also upon the Effective Date, City shall provide Developer, Developer's Agents and Developer's Architects/Engineers with supervised access to the New Terminal construction site as may be necessary to perform such on-site inspection, survey and related work in preparation for the Capital Improvements. The Parties acknowledge that areas of the New Terminal construction site will not become available for Developer or Sublessee construction prior to the dates shown on the Construction Schedule, provided by City's contractor, and shown in **Exhibit D**, or such alternate dates as may be communicated by the City to Developer. City agrees to make the Premises available to Developer, or Sublessees responsible for Capital Improvements to Concession Locations, at the earliest practicable time after completion of the Base Building Work, when a Concession Location has been completed to a Shell Condition, and when the start of Capital Improvements for Build-out will not interfere with the safe, secure and orderly construction of the New Terminal.

- A. **Exhibit D** includes a marked section in the New Terminal in which will occur the "Baggage Handling Blackout." **Exhibit D** also contains the expected schedule for the Baggage Handling Blackout. During the blackout period, which is for system testing of the new baggage system, within the established zones, there may be no cutting or drilling through the concrete slabs.

When received from City, all facilities shall be in Shell Condition. The Developer or Sublessee shall be required to make all connections into utility services. The Developer or Sublessee shall be responsible for securing all applicable permits in order for the Developer or Sublessee to conduct its business on the Premises. Developer shall ensure that they, and Sublessees have secured all necessary permits, and the Developer shall furnish to the City copies of all such permits.

SECTION 504. INITIAL CAPITAL IMPROVEMENTS. Upon the delivery of the Premises, or portion thereof, to Developer by the City, Developer or its Sublessee will complete, at its own expense, such capital improvements as are necessary to develop the Premises to be substantially similar to the proposed design,

appearance, layout and other specifications as identified in Developer's Proposal, including without limitation Tab 21 (Design), and the plans submitted by Developer in accordance with this Article V, including but not limited to doors, storefronts, canopies, walls, partitions, fixtures, equipment, floors, ceilings, interior design and décor, and external appearance and décor (collectively, the "**Capital Improvements**"). Developer and its Sublessees will take affirmative steps to prevent any leakage of fluids through the floor or cracks or expansion joints therein and shall be required to install floor liners that reach at least six inches (6") above the intersection of the floor and wall in all locations with running water or drains, pursuant to the Tenant Design Standards. All Capital Improvements shall conform with the terms and conditions of the Tenant Design Standards, attached hereto as **Exhibit B** and made a part hereof and as may be amended from time to time by the City without further City Council approval. All materials, finishes, furniture, equipment, and fixtures shall be of new manufacture, except for acceptable reuse of materials in accordance with an approved sustainability program which reuses construction materials, and will follow all Applicable Laws, including but not limited to the Americans with Disabilities Act ("**ADA**").

SECTION 505. TITLE TO IMPROVEMENTS. All Capital Improvements constructed or installed by the Developer upon the Premises shall become the property of the City upon termination or expiration of this Agreement, without compensation to the Developer. Developer shall, within seven (7) calendar days following the Expiration Date, remove FFE, except as may be mutually agreed by the Parties, and return the Premises in a broom clean condition, ordinary wear and tear excluded. In the event the City determines that any Concession Location or Common Area is to be used after the Expiration Date for a purpose other than concession services, the City may require Developer to remove any or all Capital Improvements and restore the Concession Location or Common Area to its Shell Condition, at no cost to the City. Developer shall confer upon Sublessees the same rights and obligations as provided herein.

SECTION 506. MIDTERM REFURBISHMENT. Subleases with term greater than six (6) years will require a mid-term refurbishment of at least 15% of the original Construction Cost for the Concession Location. This is in addition to any maintenance requirements undertaken by the Developer and/or Sublessees or any re-leasing or rebranding strategies undertaken by the Developer.

SECTION 507. COST OF CAPITAL IMPROVEMENTS. Within one hundred and eighty (180) days of the completion of the Capital Improvements or Midterm Refurbishments, Developer shall provide to the City, in a form and detail satisfactory to the City, a true and correct statement of the actual Construction Costs of all Capital Improvements. The statement of Construction Costs shall only include Eligible Costs and shall be certified as correct by an officer of Developer or Sublessee. If Developer or Sublessees fail to provide proper documentation of their investments to City as well as as-built Drawings as defined in Section 509, within the time frame stated above, then City will not be responsible for any reimbursement of investment if otherwise required herein. Additionally, City may assess Liquidated Damages as appear in Article XX.

SECTION 508. DEPRECIATION AND EARLY TERMINATION. Developer or Sublessee shall establish a Depreciation Schedule for each facility, which shall be submitted to the City for its approval. Any schedule submitted by Developer or Sublessees for this purpose shall not be deemed a "Depreciation Schedule" until such schedule is approved by the City, which approval shall not be unreasonably withheld.

SECTION 509. AS-BUILT DRAWINGS. Developer shall submit the following as-built drawings to the City upon conclusion of construction activities:

- A. Two complete sets of as-built Drawings containing a separate stamp from the Developer's Architect/Engineer attested to by both the Developer/Sublessee and either the Developer's or Sublessee's Architect or Engineer that such submitted Drawings constitute true and accurate representations of the as-built condition of the Capital Improvements. It is recommended that Developer review Sublessee's drawings before submittal to the City; and

- B. One complete set in Computer Aided Design (“CAD”) format which complies with the City's then-current CAD standards.

These Drawings must include any applicable governmental approval or permit numbers, the Capital Improvements as constructed or installed by the Developer or Sublessee on or in the Premises, and shall include the location and details of installation of all equipment, utility lines, and heating, ventilating, and air-conditioning ducts and related matters.

The Developer and Sublessees shall keep said Drawings current by updating the same to reflect thereon any changes or modifications which may be made in or to the Premises and then submitting such updated drawings to City.

SECTION 510. RELETTING. Each time a Concession Location is relet to a new Sublessee, the Developer or new Sublessee shall be required to renovate or modify the existing facility to the then-current Tenant Design Standards. In the event the Concession Location is to be used for a new concession service, the Developer or Sublessee shall rebrand and renovate the Concession Location and replace FFE as necessary to satisfy the standards of this Agreement and the Proposal and present a like-new Concession Location.

SECTION 511. LIENS. The Developer, for itself and its Sublessees, agrees not to permit any mechanic's or material man's or any other lien to be foreclosed upon the Airport or any part or parcel thereof, by reason of any work or labor performed or materials furnished by any mechanic or material man or for any other reason.

SECTION 512. CONSTRUCTION COMPLETION. All substantive construction will be completed by the Substantial Completion Date, and each Concession Location and the Common Areas shall be open and operating on the New Terminal Opening Day, except if the Developer's Substantial Completion Date is later than the New Terminal Opening Day, in which event the Concession Location and Common Area shall be open to the public no later than fourteen (14) days after the Developer's Substantial Completion Date. Notwithstanding the generality of the foregoing, Developer may propose, and the City may, in its reasonable discretion, agree to a later opening day for a limited number of Concession Locations for business or operational reasons but not for Developer's, Developer's Agents or Sublessee's failures to meet the construction schedule. Failure to meet either the Date of Substantial Completion or to be fully open on the New Terminal Opening Day as provided herein will subject Developer to Liquidated Damages in accordance with Article XX.

**ARTICLE VI
DEVELOPER'S OPERATIONS
AND USE OF PREMISES**

SECTION 601. PERFORMANCE AND OPERATING STANDARDS. The Developer and its Sublessees 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, in accordance with the plans, policies and programs set forth in the Developer's Proposal. The principal elements of the Proposal that set forth the performance and operating standards of the Concession Program to be managed and implemented by Developer include, for illustration and without limitation: Tab 2 (Program Management Methodology), Tab 9 (Employee Incentive Program), Tab 10 (Sales and/or Customer Service Programs), Tab 14 (Operating Hours), Tab 15 (Management of the Concessions Programs), and Tab 20 (Pricing). When mutually agreed to by both Parties, the City, through the Director of Aviation, may amend these plans, policies and programs and make any necessary changes without further City Council approval. This Section reflects certain portions of Developer's Proposal agreed to by the City central to the requirement to manage the Concession Program in a First-Class Manner.

- A. Hours of Operation. The Developer shall require Sublessees to maintain hours of operation that correspond as closely as possible with the flight schedules of the airlines operating in the New Terminal and the consumer needs and interests of Airport passengers, employees and users. Beginning

on the New Terminal Opening Day, the hours of operation shall be as set forth in Tab 14 (Operating Hours) of the Proposal. During the Lease Term, Developer shall manage the Concession Program according to the following minimum standards:

1. Some number of Concession Locations for Foodservice and Convenience Retail must be open at least one hour before the first departing flight each day.
2. Substantially all Concession Locations must be open between the hours of 6 A.M. and 10 P.M. each day.
3. Some number of Foodservice and Convenience Retail must remain open until thirty minutes after the last scheduled flight each day.
4. Automated Retail Units will be available at all times.
5. Developer and Sublessees shall maintain plans and schedules for flight delays and irregular operations, including, for example and without limitation, weather and other events that cause extended airline schedule delays and/or result in passengers overnighing in the New Terminal.

When mutually agreed to by the Parties, the City, through the Director of Aviation may agree to changes in the hours of operation without further City Council approval. Developer's failure to monitor and enforce the required hours of operation may result in the imposition of Liquidated Damages as provided in Article XX.

B. Pricing. Developer shall maintain a value pricing program as follows:

1. Pricing shall conform to the pricing program set forth at Tab 20 (Pricing) in Developer's Proposal. The principal element of the pricing program is that the selling price of goods and services shall be no more than fifteen percent (15%) higher than street pricing, calculated and monitored as presented in the Proposal. All sublessees will be required to participate in an employee discount program providing a minimum ten percent (10%) discount to badged employees, with exceptions for certain categories of products and services.
2. Should the City receive a significant number of complaints that Developer's pricing program results in an unreasonably large disparity between Airport pricing and street pricing and, as a result, depresses sales and revenues, the Parties shall meet and confer to identify and evaluate potential options to adjust the pricing program. Changes may include reexamining and adjusting the comparable store locations; introducing additional products and services at lower price points; adding products to the list of Established Price Items, as provided below; or additional marketing, promotional or similar activities. For purposes of this subsection, a "significant" number of complaints shall mean fifteen (15) complaints received from separate passengers using the New Terminal on a specific product and/or product category in any rolling twelve (12) month period.
3. Developer shall be responsible for monitoring and enforcing the pricing program among its Sublessees, and Developer's nonperformance of this obligation may result in the imposition of Liquidated Damages as provided in Article XX.
4. City has included this Section 601.B as a condition precedent to the tendering of this Agreement with Developer, as a critical factor underlying the acceptance by City of Developer's proposed financial offer and its pricing regime, and for all future operations under this Agreement. Developer explicitly confirms this Section 601.B as being acceptable for all operations by any firm under this Agreement, including Developer, Developer's Affiliates, and Sublessees.
5. The City has determined that certain items, called Established Price Items, must be offered at a consistent price as determined via the methodology shown below at all Concession Locations, regardless of Operator or the type of offering.

- a. All Concession Locations will offer the Established Price Items at a consistent price. The only exception to this rule will be the sale of items which otherwise would be Established Price Items in sit-down restaurants or bars, where the items are sold for in-restaurant consumption only. Any “to-go” products sold within such establishments must meet the prices for Established Price Items. If any restaurant or bar operator does not wish to have two prices for the same item, then all products must be sold as Established Price Items.
- b. Operators, with the approval of Developer and City, may offer Established Price Items at a price established for that specific product so that the retail price of the item is consistent across all Concession Locations, regardless of Operator.
- c. Developer shall do a price comparison shop no more often than once every three (3) months.
- d. The initial location which shall be used for price comparison shops shall be the QuikTrip convenience store located at 7133 NW Barry Road, Kansas City, Missouri, 64153. This comparable location shall be changed, subject to City’s approval if the QuikTrip convenience store listed above ceases operations or substantially changes its mode of operation. Additionally, the comparable location may be changed upon request of the Developer, subject to the City’s approval. This policy will be a contractual requirement as a precedent for allowing a reasonable pricing program to prevail for all other products and is non-negotiable. The prices charged shall be the exact prices charged at the comparison location, without markup, provided that prices shall be as commonly charged at the comparison location and not during any temporary sale or promotional period.
- e. Reasons for product differentiation may include, but are not limited to:
 - (1) Packaging (for example, water in boxes vs. plastic bottles); container/cup size;
 - (2) status of brand (by way of example, Tasmanian Rain branded water versus brands such as Polar Springs or Dasani);
 - (3) product acquisition cost (Developer or Sublessee shall be required to provide documentation to prove any claim of cost differences);
 - (4) Other reasons as accepted by Developer and City.
- f. Developer and City will review any potential suggested differentiators, as well as prices for all previously defined products, within seven (7) calendar days (or fewer), following the presentation of findings to the City, to provide updated Established Prices, as necessary, for all Items offered.
- g. No product which fits within the definition of Established Price Items may be sold at the Airport if it is not included in the comparison shop and/or any equivalencies are established by Developer with approval by the City.
 - (1) If any Concession Location offers a product which fits the definition of an Established Price Item, without a price established through a comparison shop or equivalency determination, the item will be immediately removed from the display, returned to the vendor, and the operator of that Concession Location will be subject to Liquidated Damages to be assessed by Developer or City.
- h. If prices are to be changed, then they should be changed at all Concession Locations on the same day. Developer should coordinate the price change process.
- i. City reserves the right to change the list of Established Price Items, subject to mutual agreement with Developer, if it receives multiple complaints from the traveling public, press,

or City officials, on the pricing of any general product class, without the further approval of the City Council.

SECTION 602. Applicable Law. The Developer shall comply with Applicable Law, now or hereafter applicable to the Premises or to any adjoining public ways, as to the manner of use or the condition of the Premises and the Developer's improvements thereon or of adjoining public ways; provided however, that the Developer shall not be obligated to conform with any amendment to a rule, regulation, policy or directive adopted by the Director of Aviation or City Manager for the Airport that results in the Developer or Sublessee to incur a material capital or operating cost, except for the purposes of health, safety or environmental protection or if the Parties agree to a commercial resolution.

SECTION 603. INTERFERENCE WITH AIR NAVIGATION. The Developer, for itself and for Sublessees, agrees not to install any structures, objects, machinery or equipment that would interfere with operation of navigation aids or that would interfere with the safe and efficient operation of the Airport, or interfere with the operations of other tenants and users of the Airport. This Agreement shall terminate immediately, without recourse, if broadcast or receiving emanations of the Developer's equipment purposefully interfere with Federal Aviation Administration ("FAA") systems on the Airport. If such interference was unintentional, the source of broadcast or receipt of emanations shall be immediately unplugged and removed from the Airport within three (3) days. If Developer or Sublessee fails to follow the above rule, then this Agreement or the Sublease will be subject to immediate termination without further warning or process.

SECTION 604. SIGNAGE. Except for signage required by law to be applied to the Premises, the Developer agrees that no signs, advertising displays, or exterior decorations shall be painted on or erected in any manner upon the Premises without the prior written approval of the City, and that such signs shall conform to reasonable standards established by the City with respect to wording, type, size, design, color and location. A concise written description of signage, along with a brief artist's rendering, swatch(es)/sample(s) and proposed color scheme(s) shall be submitted to the City for review and approval prior to installation.

SECTION 605. CUSTOMER SERVICE AND MARKETING PLANS. Developer shall implement customer service and marketing plans as set forth in Tab 10 (Sales and/or Customer Service Training Programs) and Tab 19 (Marketing Program) of the Proposal. Developer and Sublessees shall execute these plan(s), as approved by the City, in its/their entirety. Developer shall submit revisions to the customer service and marketing plans no less frequently than within 180 days of the fifth (5th) and tenth (10th) anniversary of the New Terminal Opening Day. Developer shall review the previous plans and update them based on the effectiveness of customer service and marketing efforts in the preceding five years, and the availability of different marketing theories, ideas, technology and applications.

**ARTICLE VII
MAINTENANCE OF PREMISES AND FACILITIES**

SECTION 701. MAINTENANCE. The City shall furnish structural maintenance of City-constructed facilities including the roof of the New Terminal and provide the maintenance and operation of City-installed mechanical and electrical systems.

At their sole cost and expense, the Developer and/or its Sublessees shall maintain and repair the Premises at all times in accordance with Developer's Proposal, including primarily but without limitation Tab 17 (Sanitation, Pest Control, Cleanliness and Maintenance Plans), and in accordance with Applicable Law.

ARTICLE VIII
COMPLIANCE WITH ENVIRONMENTAL LAWS AND REGULATIONS

SECTION 801. COMPLIANCE WITH ENVIRONMENTAL LAWS. Developer hereby covenants and agrees, on behalf of itself and its Subtenants, to comply with all applicable Environmental Laws in connection with its use and occupancy of the Premises and any Airport facilities and property.

SECTION 802. STORM WATER BEST MANAGEMENT PRACTICES. Developer shall comply with, or shall cause any Sublessee as applicable to comply with, the Airport's Storm Water Best Management Practices ("**Storm Water BMP**"), which are attached hereto as **Exhibit G**.

SECTION 803. REVIEW OF ENVIRONMENTAL DOCUMENTS. Developer, at the written request of City, shall make available for inspection and copying, at Developer's cost and expense, upon reasonable notice and at reasonable times, all non-privileged documents and materials Developer has prepared to satisfy the requirements of 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.

SECTION 804. ACCESS FOR ENVIRONMENTAL INSPECTION. City shall have reasonable access to the Premises upon notice to Developer and at reasonable times to inspect the same in order to confirm Developer is using the Premises in accordance with applicable Environmental Laws. Any testing shall be accomplished in a manner designed to minimize any impact on Developer's operations and, subject to the next sentence, at Developer's expense. If such testing and analysis confirms that Developer's activities would not result in a technical violation under any Environmental Law, the City shall reimburse all costs of testing and analysis expended by Developer under this Section.

SECTION 805. ENVIRONMENTAL NONCOMPLIANCE. If Developer receives a notice of violation for an alleged failure to comply with an applicable Environmental Law related to Developer's operations at the Airport from a regulatory agency responsible for implementation of said Environmental Law, Developer shall provide a copy of such notice to the City within 48 hours of its receipt of such notice. If Developer fails to correct the alleged noncompliance within the period required by applicable Environmental Laws or does not appeal the notice of violation, then City, in addition to its rights and remedies provided elsewhere within this Agreement, may enter the Premises upon reasonable written notice to Developer and at reasonable times, and take all reasonable and necessary measures to correct the non-compliance as required by applicable Environmental Laws, at Developer's expense.

SECTION 806. WRITTEN AUTHORIZATION NECESSARY TO STORE, USE OR DISPOSE OF HAZARDOUS MATERIALS. Developer shall not store, use, treat or dispose of any Hazardous Materials on the Airport except those Hazardous Materials used in the ordinary course of its operations unless Developer first secures the written authorization of the City and complies with any reasonable conditions City may impose, which reasonable conditions shall be consistent with Environmental Laws, including the submission to City of all Safety Data Sheets (or similar data sheets) for the Hazardous Materials to be stored.

SECTION 807. DUTY TO NOTIFY CITY. In the event of Developer's knowledge of a release or threatened release of any Hazardous Materials into the environment relating to or arising out of Developer's use or occupancy of the Airport, Developer must notify the City as soon as reasonably practicable by contacting the Aviation Department Environmental Manager or the Airport's Communication Center promptly after the release. In the event any written claim, demand, action or notice is made against Developer regarding Developer's failure or alleged failure to comply with any Environmental Laws in connection with Developer's operations at the Airport, Developer must within a reasonable time notify City in writing and must provide City with copies of any written claims, demands, notices, or actions so made.

SECTION 808. ENVIRONMENTAL REMEDIATION. Developer shall undertake such steps to remedy and/or remove any Hazardous Materials or other environmental contamination released or discharged (or threatened to be released or discharged) in, on, under, to or from the Airport as a result of Developer's operations at the Airport that are required by the relevant environmental regulatory agency pursuant to applicable Environmental Laws to protect the public health and safety and the environment from actual or potential harm. Such work must be performed at Developer's expense. The City shall cooperate with the Developer so as not to inhibit such work. Developer shall submit to City its proposed plan for completing such work at the time submitted to the responsible regulatory agency. Upon reasonable written notice to Developer, City may review and inspect all such work at any time using City staff or, to the extent the City determines to be necessary, consultants and representatives of its choice at Developer's cost and expense.

SECTION 809. NATIONAL EMISSION STANDARDS FOR HARZARDOUS AIR POLLUTANTS. Developer warrants that all planning, design, fabrication, installation, construction, start-up, testing, maintenance and repair work performed pursuant to this Agreement will be performed in accordance with any applicable National Emission Standards for Hazardous Air Pollutants ("NESHAP"), 40 C.F.R. 61.145, as well as state and local law.

SECTION 810. STORM WATER COMPLIANCE.

- (A) If applicable, Developer shall maintain any oil water separators or other types of process operated by the Developer or any Sublessee at the Airport in a manner that prevents the discharge of petroleum contaminants into the waterways that would negatively impact the City's National Pollutant Discharge Elimination System ("NPDES") permit. Use of soaps, surfactants or materials in a manner that may ultimately enter the storm water and negatively impact the City's NPDES permit is prohibited except for approved operational aircraft deicing and other uses specifically approved in writing by the City.
- (B) The Developer will be responsible for containing spills or releases that can or will impact the storm water systems immediately when such spills or releases are caused or permitted by Developer. Any release or spill of a Hazardous Material into the environment at the Airport and caused or permitted by Developer, whether or not of a quantity reportable under Environmental Law must be reported to the City as soon as reasonably practicable, but in no event more than a twenty-four (24) hour period following any initial actions taken to contain and/or clean up the release. In the event such a release is determined to be beyond the Developer's ability to safely address, or if it cannot or will not be cleaned up prior to entering any storm water systems or should the release present an immediate hazard to life or property, the Developer shall notify the Aviation Department Environmental Manager or the Airport's Communication Center immediately.

SECTION 811. ENVIRONMENTAL INDEMNIFICATION. In addition to any indemnification set forth elsewhere in this Agreement, Developer hereby indemnifies and agrees to defend and hold harmless the Indemnified Parties from all costs, claims, demands, actions, liabilities, complaints, fines, citations, violations or notices of violation arising from or attributable to: (i) a presence or release of Hazardous Materials caused by Developer or Developer's Agents at the Airport or the subsurface, waters, air or ground thereof in excess of levels allowable by applicable Environmental Laws or the violation of applicable Environmental Laws due to Developer's or Developer's Agent's management, control, authorization, handling, possession or use of Hazardous Materials at the Airport into the environment (as environment is defined in CERCLA); (ii) any breach by Developer of any of its warranties, representations or covenants in this Article; (iii) Developer's remediation or failure to remediate Hazardous Materials as required by this Agreement. Provided, however, Developer shall have no indemnification obligation under subsection (i) of this Section for any costs or liabilities related to any release of Hazardous Materials at the Airport in, on, or under the Premises prior to the date of the Developer's first occupancy of the Premises, except to the extent the Developer or Developer's Agents exacerbate such release or fail to comply with applicable Environmental Laws. Developer's obligations hereunder will survive the termination or expiration of this Agreement, and will 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, except that, in the event that City recovers funds from insurance carriers in connection with claims associated with (i), (ii) and (iii) above, City may not recover the same funds from Developer.

ARTICLE IX COMPLIANCE WITH LAWS AND PAYMENT OF TAXES

SECTION 901. COMPLIANCE WITH LAWS AND PAYMENT OF TAXES. The Developer, for itself and for Sublessees, and the City covenant and agree to observe and obey all federal, state and city laws and ordinances and airport rules and regulations; provided, however, that such airport rules and regulations are consistent with safety and are not in conflict with this Agreement, the Sublease, or the rules of any federal agency having jurisdiction thereover. The Developer and its Sublessees are required to purchase and maintain an Occupational License for the term of this Agreement and to establish an earnings tax account with the City. The Developer further agrees, on behalf of itself and Sublessees, whose Subleases must contain language substantially similar to this Article IX, to pay promptly, and not to permit to become delinquent, all applicable taxes, special assessments, excises, permit fees, license fees, and utility service charges.

Notwithstanding the foregoing provisions, the Developer or the Sublessee shall have the right, in its own name, to contest in good faith the validity or applicability of any law, statute, rule, regulation, order, or ordinance of any governmental body or agency to the Premises or the operation thereon. The fact that the Developer or Sublessee may, in connection with such contest, refrain from complying with such law, statute, rule, regulation, order, or ordinance shall not affect in any way the Developer's or Sublessee's obligation to (1) refrain from subjecting any part of the Premises to forfeiture or loss, and (2) pay the required fees set forth in Article IV. (Payments and Fees; Sublessee Fees)

SECTION 902. COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT

- A. Developer's warranty. The Developer agrees that it shall develop, manage, use, and occupy the Premises in accordance with the Americans with Disabilities Act, 42 U.S.C. Section 12101 et seq. (hereafter collectively the "ADA"), including, without limitation, modifying the Developer's policies, practices, and procedures, and providing auxiliary aids and services to disabled persons.
- B. Accessible services. The Developer acknowledges that, pursuant to the ADA, programs, services, and other activities provided by a public entity, whether directly or through a contractor, must be accessible to disabled persons. The Developer shall provide the services specified in this Agreement in a manner that complies with the ADA and all other applicable federal, state, or county disability rights legislation. The Developer agrees not to discriminate against disabled persons in the provision of services, benefits, or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of the Developer and Developer's Agents shall constitute a material breach of this Agreement.
- C. Developer's alterations. With respect to all work required to be performed by the Developer or Sublessee in preparing the Premises for the Developer's or Sublessee's use and occupancy, including, without limitation, the construction and installation of all Concession Improvements and FFE on or at the Premises, the Developer, on behalf of itself and its Sublessees agrees to complete such work in full compliance with the ADA. Upon City's request, the Developer, on behalf of itself and its Sublessees, shall provide the City with evidence satisfactory to the City that all such work was completed in compliance with the ADA. The Developer, on behalf of itself and its Sublessees, further agrees that any future alterations or improvements made by the Developer to the Premises shall comply with the ADA.
- D. ADA audit. The Developer shall conduct and complete, at the Developer's sole cost and expense, an audit as required under the ADA identifying and describing the architectural barriers to disabled access

which must or should be removed, which audit shall be subject to the City's review and approval. The Developer agrees, for itself and for its Sublessees, to remove, or cause to be removed, at the Developer's or Sublessee's sole cost and expense, all such barriers identified and described in the audit approved by the City.

- E. Notice. The City and the Developer, on behalf of itself and Sublessees, agree to promptly, for the purposes of this section, promptly is defined as no greater than three (3) calendar days, give written notice to the other of any notices which it receives alleging ADA violations.
- F. Developer's indemnification. The Developer and its Sublessees, shall release, defend, indemnify, and keep and hold harmless the City, its Agents, successors and assigns, from and against any and all claims, demands, suits, actions, causes of action, judgments, liabilities, losses, damages, costs and expenses resulting or arising from the Developer's or Sublessee's failure to comply with the Developer's or Sublessee's obligations hereunder with respect to the ADA.

SECTION 903. SUBLEASES. All Subleases under this Agreement shall contain language substantially similar to this Article IX to bind Sublessees to compliance with laws and payment of taxes.

ARTICLE X INDEMNIFICATION AND INSURANCE

SECTION 1001 INDEMNIFICATION.

- A. Developer shall indemnify, defend and hold harmless the Indemnified Parties from and against all liabilities, losses, costs, suits, claims, judgments, expenses, fines or demands of any kind (including, but not limited to, costs of investigation, reasonable attorney's fees, court costs and expert fees) of any nature whatsoever (collectively, "**Losses**"), arising out of or alleged to arise out of the use, occupancy or operations of Developer, or any of its Affiliates, officers, volunteers, representatives, agents, employees, contractors, subcontractors, licensees, subtenants, Sublessee, invitees, or suppliers (collectively, the "**Developer Parties**"), on the Premises or at the Airport or any acts or omissions of Developer in connection with this Agreement. Each of Developer's approved Affiliates shall indemnify the Indemnified Parties as provided to the extent set forth in this Section 1001 against any Losses arising out of or alleged to arise out of the use, occupancy or operations of or at the Airport of such Affiliate or any of its Developer's Parties.
- B. Developer shall not be liable for any injuries, death or damage to the extent that such injury, death or damage is caused by sole the negligence or willful misconduct of an Indemnified Party. It is the intent of the parties that, where the negligence or willful misconduct of one or more Indemnified Parties is determined to have been contributory, the principles of comparative negligence as applied in the State of Missouri shall be followed and each party shall bear the proportionate cost of any loss, damage or liability attributable to its own negligence or willful misconduct.
- C. The City shall have the right, at its option and at its sole expense, to participate in the defense of any suit, without relieving Developer of any of its obligations under this indemnity provision, provided that the City and its attorneys shall coordinate and cooperate with Developer's attorneys, unless the Developer and the Indemnified Parties cannot be represented by the same attorneys under Applicable Law or ethical rules applicable to attorneys, in which case the Developer shall be responsible for the costs of the attorneys for the Indemnified Parties in addition to those of the Developer.
- D. Developer shall notify City, by fax or certified letter, promptly following Developer's receipt of any lawsuit filed against Developer and the City, any letter written by an attorney on behalf of a complainant, or a complaint by any regulatory agency arising out of or alleged to arise out of the use, occupancy or operations of an Developer Party on the Premises or at the Airport. Such notification shall be sent to

the City's Aviation Department at the address and/or facsimile number set forth herein without undue delay.

- E. Sections, substantially similar to this Article shall appear in all Subleases.
- F. The Developer shall hold liability for Developer and all Developer's Agents, including Sublessees, entering, or coming onto the Premises. The use of the Airport and the Premises by the Developer and the Developer's Agents shall be at their own risk.
- G. This Section 1001 shall survive the termination or expiration of this Agreement with respect to occurrences during the term of this Agreement.

SECTION 1002. INSURANCE.

- A. Without limiting Developer's obligations to indemnify the City, as provided in Section 1001, Developer and Sublessee, without expense to the City, shall obtain and cause to be kept in force at all times during the term of this Agreement, such liability and other insurance as is appropriate for activities under this Agreement, but not less than the types and amounts specified in this Section, whether such activities are to be performed by the Developer, any Developer Party, or anyone directly or indirectly employed by Developer, or anyone for whose acts they may be liable.
- B. Insurance must be written under policies no more restrictive than the standard form of policy as follows:
 - 1. Commercial General Liability Insurance with limits of \$5,000,000.00 per occurrence and \$5,000,000.00 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. Per Project Aggregate Liability Limit or, where not available, the aggregate limit shall be \$5,000,000.00.
 - c. Liquor liability insurance with limits of not less than \$5,000,000 per occurrence, \$25,000,000 in the aggregate.
 - 2. Workers' Compensation. 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 \$5,000,000 combined single limit per accident, written on a form at least as broad as the ISO CA 00 01, covering owned, hired and non-owned motor vehicles. Coverage provided shall be on an "any auto" basis and written on an "occurrence" basis. This insurance shall protect against claims arising out of the operation of motor vehicles on the Airport, as to acts done in connection with the Agreement, by Developer.
 - 4. Property 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 twelve (12) consecutive calendar months at the request of City, by an appraiser, architect and/or Developer. All property insurance proceeds shall promptly be deposited with the City.

SECTION 1003. INSURANCE GENERAL REQUIREMENTS.

- A. The insurance, provided in Sections 1002 (B) (1), (2) and (3) above which are required to be purchased and maintained by Developer shall:
1. Include at least the specific coverages and be written for not less than the limits of liability specified herein or required by Applicable Laws, whichever is greater;
 2. If Developer carries insurance limits greater than those required by this Agreement, the City shall have the right to the full amount of insurance coverage available to Developer, including amounts in excess of those required under this Agreement up to a maximum amount of \$50,000,000;
 3. Developer may use commercial umbrella/excess liability insurance so that Developer has the flexibility to select the best combination of primary and excess limits to meet the total insurance limits required by this Agreement;
 4. The City reserves the right at any time throughout the Term of this Agreement to adjust the insurance requirements set forth in this Agreement if, in the City's reasonable judgment, the insurance required by this Agreement is deemed inadequate to properly protect the City's interests. In such event, Developer agrees that it shall procure the adjusted insurance, provided that the coverage is available at commercially reasonable rates;
 5. Include contractual liability insurance covering Developer's indemnity obligations under Section 1001 of this Agreement with no contractual liability limitation endorsement (applies to Subsections 1002 (1) and (3) only, only to the extent insurable thereunder);
 6. Contain a provision or endorsement that the coverage afforded will not be canceled, materially changed, or renewal refused until at least 30 days' prior written notice has been given to the City except that only ten (10) day notice shall be required in the event of cancellation due to non-payment of premium;
 7. Contain a cross liability or severability of interest clause or endorsement (applies to Subsections 1002 (1) and (3) only);
 8. Name the City as an additional insured (applies to Subsections 1002 (1) and (3) only);
 9. Be primary without any right of contribution from any other insurance which may be carried by the City;
 10. Waive Developer's rights of subrogation against the City, including the City's appointed and elected officials, agents and employees;
 11. Written by companies that have an A.M. Best, or S & P rating of A-V or better or have been approved by the Director of Aviation;
 12. Contain, to the extent available, waiver of all rights to set off, counterclaim or any other deduction, against the City, including the City's appointed and elected officials, agents and employees; and

13. Provide that it may not be invalidated by any action or inaction of Developer.

SECTION 1004. EVIDENCE OF INSURANCE.

- A. Unless otherwise authorized by the Director, certificates or other evidence of insurance coverages in amounts no less than those stipulated herein or as may be in effect from time to time, required of Developer in this Article shall be delivered to the Director on or before the Effective Date.
- B. Within fifteen (15) days after the date of written notice from the insurer of cancellation or reduction in coverage (but in all events before cancellation of such insurance), Developer shall deliver to the Director evidence that the required insurance has been reinstated or provided through another insurance company or companies. In no event shall the Developer permit the insurance coverage(s) defined within this Agreement to lapse.

SECTION 1005. INSURANCE DEFAULT. Notwithstanding any other provision of this Agreement, failure to obtain or maintain in force the insurance required herein shall constitute an event of default in accordance with Article XIII, subject to cure in accordance with Section 1304.

SECTION 1006. CITY INSURANCE. The City, in operating the Airport, will carry and maintain comprehensive liability and property damage insurance in such amounts as would normally be maintained by public bodies engaged in carrying on similar activities.

**ARTICLE XI
AFFIRMATIVE ACTION/EQUAL EMPLOYMENT AND NON-DISCRIMINATION**

SECTION 1101. AFFIRMATIVE ACTION.

- A. Developer shall establish and maintain for the term of this Agreement an Affirmative Action Program, to the extent required by Chapter 3, Code of General Ordinances of Kansas City, Missouri, and comply with all applicable provisions, rules and regulations relating thereto and any additions, amendments or subsequent requirements thereof.

SECTION 1102. EQUAL EMPLOYMENT. Developer shall:

- A. To the extent required by Chapter 38, article I, refrain from any unlawful employment practices as defined by Chapter 38, Article III, Code of General Ordinances of Kansas City, Missouri, as amended.
- B. Post at its Premises, at the office of employment, notices setting forth provisions of Chapter 38, Article III, and further setting forth that Developer agrees to abide by the provisions thereof and to implement the Certificate of Compliance or Affirmative Action Program submitted by Developer in connection with this Agreement.
- C. Permit City's Director of CREOD, or her or his duly authorized agent or employees, access at all reasonable times to all such persons, books, papers, records, reports or accounts in the possession of or under the control of Developer, as may be necessary to ascertain compliance with Chapter 38, Article III, and to furnish such further information as may be required, all within ten (10) days of the date requested in writing.
- D. Include as a condition thereof, within all contracts executed by Developer with a subcontractor and relating to this Agreement, the provisions of Chapter 38, Article III, Code of General Ordinances, to which all subcontracts also shall be subject.

SECTION 1103. NON-DISCRIMINATION.

A. Developer shall comply with the following FAA required provisions as interpreted from time to time by the United States Department of Transportation (“USDOT”) or the FAA.

1. Civil Rights – General. Developer agrees to 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. If Developer transfers its obligation to another, the transferee is obligated in the same manner as Developer.

This provision obligates Developer for the period during which the Premises is owned, used or possessed by Developer and the City remains obligated to the FAA. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

2. Civil Rights – Title VI Assurances – Compliance with Nondiscrimination Requirements.

- a. Compliance with Regulations: Developer (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.

- b. Non-discrimination: Developer, with regard to the work performed by it during the Agreement, 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. Developer will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

- c. Solicitations for Subcontracts, including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by Developer 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 Developer of Developer’s obligations under this Agreement and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

- d. Information and Reports: Developer 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 FAA to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of Developer is in the exclusive possession of another who fails or refuses to furnish the information, Developer will so certify to the City or the FAA, as appropriate, and will set forth what efforts it has made to obtain the information.

- e. Sanctions for Noncompliance: In the event of Developer’s noncompliance with the non-discrimination provisions of this contract, the City will impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:

- i. Withholding payments to Developer under the Agreement until Developer complies; and/or

- ii. Cancelling, terminating or suspending the Agreement, in whole or in part.

- f. Incorporation of Provisions: Developer 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. Developer will take action with respect to any subcontract or procurement as the City or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if Developer becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, Developer may request the City to enter into any litigation to protect the interests of the City. In addition, Developer may request the United States to enter into the litigation to protect the interests of the United States.
- g. Civil Rights – Title VI Clauses for Use/Access to Real Property. Developer for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Premises or the Airport, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that Developer will use the premises in compliance with all other requirements imposed by or pursuant to the List of Pertinent Nondiscrimination Acts And Authorities in Paragraph 3 below.

In the event of breach of any of the above nondiscrimination covenants, the City will have the right to terminate the Agreement and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said Agreement had never been made or issued.

- 3. Title VI List of Pertinent Nondiscrimination Acts and Authorities. During the performance of this Agreement, Developer, for itself, its assignees, and successors in interest (hereinafter referred to as “Developer”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:
 - a. Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
 - b. 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);
 - c. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
 - d. Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
 - e. The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*), (prohibits discrimination on the basis of age);
 - f. 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);
 - g. 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);
- h. 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 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
 - i. The FAA’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
 - j. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination 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;
 - k. 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);
 - l. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).
4. Developer further agrees to comply with all provisions of Public Law 101-336, as well as 28 C.F.R. Part 35 and 29 C.F.R. Part 1630 (Americans with Disabilities Act), as amended from time to time during the term of this Agreement. Such law prohibits discrimination on the basis of disability by private entities in places of public accommodation and requires that all new places of public accommodation and commercial facilities be designed and constructed so as to be readily accessible to and usable by persons with disabilities.

**ARTICLE XII
ACDBE AND MBE/WBE PARTICIPATION**

SECTION 1201. AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISES. This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. The Developer 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 concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23.

The Developer agrees to include the above statements in any subsequent Sublessee agreements or contract covered by 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements.

The City is committed to ensuring that Airport Concession Disadvantaged Business Enterprises (“ACDBEs”) participate to the maximum extent possible in the performance of City agreements. The City has set a minimum goal of sixteen percent (16%) for ACDBE participation for this Agreement.

Developer's plan for ACDBE participation in the Concession Program is included at Tab 4 (ACDBE Program & Local Participation Requirements) of the Proposal. Developer shall adhere to its plan to ensure the level of ACDBE participation set forth in the Proposal.

When an ACDBE subcontractor is terminated or fails to complete its work on the contract for any reason, the Developer is required to make good faith efforts to find another ACDBE subcontractor to substitute for the original ACDBE. The Developer will be required to obtain written approval from City for the replacement of the ACDBE or the substitute ACDBE and to provide copies of all new or amended subcontracts or documentation of good faith efforts. The good faith efforts shall be directed at finding another ACDBE to perform at least the same amount of work under the contract as the ACDBE that was terminated, to the extent needed to meet the program goal under the Agreement. The good faith efforts shall be documented by the Developer. If City requests documentation under this provision, the Developer shall submit the documentation within seven (7) days. City shall provide a written determination to the Developer stating whether or not good faith efforts have been demonstrated.

Failure by Developer to carry out the requirements of this part will constitute a material breach of the Agreement and may result in the termination of the Agreement or such other remedy as City deems appropriate.

SECTION 1202. MINORITY BUSINESS ENTERPRISE/WOMEN BUSINESS ENTERPRISE PARTICIPATION. The City requires its Developer and Sublessees to use good faith efforts to provide for meaningful participation by MBEs and WBEs in all construction work. For purposes hereof, MBE shall mean any business enterprise which is at least fifty-one percent owned by, or in the case of a publicly owned business, at least fifty-one percent of the stock of which is owned by citizens or permanent resident aliens who are minorities and such ownership is real, substantial and continuing. For the purposes hereof, WBE shall mean any business enterprise which is at least fifty-one percent owned by, or in the case of a publicly owned business, at least fifty-one percent of the stock of which is owned by women and such ownership is real, substantial, and continuing. A minority shall be defined as African American, Hispanic, Asian and Pacific Islander, Native American, or Alaskan Native. "Meaningful participation" shall mean that at least fifteen percent (15%) of the total dollar value of the construction contracts (including subcontracts) covering the construction work are for the participation MBE firms, and at least ten percent (10%) of the total dollar value of the construction contracts (including subcontracts) covering the construction work are for the participation of WBE firms. Good faith efforts to include meaningful participation by MBEs and WBEs shall include at least the following:

- A. Dividing the work to be subcontracted into smaller portions where feasible.
- B. Actively and affirmatively soliciting bids for subcontracts from MBEs and WBEs, including circulation of solicitations to minority and female contractor associations. The Developer and its Sublessees shall maintain records detailing the efforts made to provide for meaningful MBE and WBE participation in the work, including the names and addresses of all MBEs and WBEs contacted and, if any such MBE or WBE is not selected as a joint venturer or subcontractor, the reason for such decision.
- C. Making plans and specifications for prospective construction work available to MBEs and WBEs in sufficient time for review.
- D. Utilizing the list of eligible MBEs and WBEs maintained by CREOD or seeking minorities and women from other sources for the purpose of soliciting bids for subcontractors.
- E. Encouraging the formation of joint ventures, partnerships, or other similar arrangements among subcontractors, where appropriate, to ensure that the Developer and Contractor will meet their obligations hereunder.
- F. Ensuring that provision is made to provide progress payments to MBEs and WBEs on a timely basis.

- G. Not requiring bonds from and/or providing bonds and insurance for MBEs and WBEs, where appropriate.
- H. Providing meaningful efforts to identify new, qualified, but uncertified MBEs and WBEs, and assisting same in obtaining their certification.

**ARTICLE XIII
TERMINATION OF AGREEMENT IN ENTIRETY**

SECTION 1301. CITY'S RIGHT TO TERMINATE. The City, acting by and through the Director of Aviation, may declare this Agreement terminated in its entirety, upon the happening of any one or more of the following events and may exercise all rights of entry and re-entry upon the Premises, following Developer's right to cure, if any, as provided herein:

- A. Nonpayment. If the payments which the Developer herein agrees to pay City shall be unpaid for a period of 30 days after the date the payment was due and remains uncured as provided in Section 1304.
- B. Default. If the Developer shall fail in the performance of any covenant or condition herein required to be performed by the Developer, that is not cured as provided in Section 1304, including the responsibility to actively manage the Concession Program and Sublessees.
- C. Bankruptcy. If the Developer makes an assignment for the benefit of creditors or if the Developer files an answer admitting the material allegations of a petition filed against any said assignee or sub Developer in any bankruptcy, reorganization or insolvency proceedings; or if during the term of this Agreement an order, judgment or decree shall be entered by any court of competent jurisdiction, or the application of a creditor, adjudicating the Developer as bankrupt or insolvent, or approving a petition seeking a reorganization of Agreement, and such order, judgment or decree shall continue unstayed and in effect for any period of ninety (90) consecutive days.
- D. Suspension. The happening of any act or omission, other than a force majeure event pursuant to Section 2107, that results in the suspension or revocation of any act, power, license, permit or authority that terminates the conduct and operation of the Concession Program by the Developer, or suspends it for any time in excess of thirty (30) days.
- E. Attachment. The levy of any attachment, or the execution of any process of any court of competent jurisdiction which does or as a direct consequence of such process will interfere with the Developer's use of the Premises and will interfere with its operations under this Agreement, and which attachment, execution, or other process of such court is not enjoined, vacated, dismissed, or set aside within a period of thirty (30) days.
- F. Relinquishment. The Developer shall voluntarily abandon, desert, vacate or discontinue all or a part of its operation of the Premises or any other action that results in a failure by the Developer to provide the public and others with the service contemplated hereunder or which substantially negatively impacts the Concession Fees paid to the City.
- G. Developer or any of Developer's Agents shall be indicted by any legal authority for any alleged crime connected with the performance of this Agreement. Developer shall include this clause in any contract with any Sublessee to this Agreement.

- H. Pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, possession or use of a controlled substance is prohibited on City premises. Any violation of this prohibition by Developer, Developer's Agents, Sublessee, or Sublessee's Agent shall constitute a default hereunder.
- I. There shall occur a default under any other agreement between Developer and City, if any, and such default is not cured as may be provided in such agreement; provided, however, that nothing herein shall be deemed to imply that Developer shall be entitled to additional notice or cure rights with respect to such default other than as may be provided in such other agreement.

On the date set forth in the notice of termination, the terms of this Agreement and all right, title and interest of the Developer shall expire.

Failure by the City to take any authorized action upon default by the Developer of any of the terms, covenants or conditions required to be performed, kept and observed by the Developer shall not be construed to be or act as a waiver of default or in any subsequent default of any of the terms, covenants and conditions herein contained to be performed, kept and observed by the Developer. The acceptance of Concession Fees by the City from the Developer for any period or periods after a default by the Developer of any of the terms, covenants, and conditions herein required to be performed, kept and observed by the Developer shall not be deemed a waiver or estoppel of any right on the part of the City to terminate this Agreement for failure by the Developer to so perform, keep or observe any of said terms, covenants or conditions.

Developer shall include language substantially similar to this Section 1301 in any Sublease, reserving to itself the rights to terminate the Sublease, and reserving to City the right to require Sublease to be terminated by Developer.

SECTION 1302. DEVELOPER'S RIGHT TO TERMINATE. The Developer, at its option, may declare this Agreement terminated in its entirety, in the manner provided herein for the following causes:

- A. Restraining Use of Airport. If a court of competent jurisdiction issues an injunction or restraining order against the City preventing or restraining the use of the Airport for airport purposes in its entirety or substantial entirety.
- B. Abandonment of Airport. If the City shall have abandoned the Airport for a period of at least thirty (30) days and shall fail to operate and maintain the Airport in such manner as to permit landings and takeoffs of planes by the scheduled air carriers.

SECTION 1303. ADDITIONAL RIGHT TO TERMINATE. Either the City or the Developer may terminate this Agreement if the FAA or a court of competent jurisdiction issues an order or ruling which materially and adversely affects this Agreement or the ability of the City or the Developer to perform their respective obligations set forth herein. Termination of this Agreement under this Section 1303 will not give any party any right to seek damages if the Parties otherwise comply with their obligations up to the date of termination.

SECTION 1304. PROCEDURE FOR TERMINATION OR REPOSSESSION. Upon the occurrence of an event of default, the non-defaulting party shall provide written notice as provided in Section 2118 to the defaulting party and provide a reasonable period to cure an event of default prior to termination. The limited exception to this obligation is for events of default explicitly declared herein to be incurable. The defaulting party shall immediately investigate the alleged default and respond to the non-defaulting party stating whether the defaulting party contests the allegation or plans to cure and, if so, the corrective action plan. If the defaulting party elects to cure, the party shall commence corrective action immediately and complete corrective action as promptly as is reasonably practicable. Notwithstanding the generality of the foregoing, defaults that affect public health, safety or security or the maintenance of bond and insurance coverage shall be cured within no

more than three (3) days or such lesser period of time as may be prescribed by the City; defaults involving the payment of the Concession Fee or additional fees shall be cured within ten (10) business days; and all other defaults shall be cured within the time period established by the Parties. In the event the defaulting party fails to respond to the notice of default, fails to commence corrective action, or fails to complete corrective action by the prescribed deadline, the non-defaulting party may terminate this Agreement by providing written notice to the other party.

SECTION 1305. CITY'S RIGHT TO RE-ENTER AND RESUME SERVICES. Except as provided in Section 1304 preceding, upon termination as provided herein, the City shall have the right at once and without further notice to the Developer to remove the Developer and its business, by force or otherwise and with or without legal process, to remove all chattels belonging to the Developer that may be found upon or within the Airport or any premises or facilities used in the operation of the Developer without being liable to prosecution or to any claim for damages therefore. Such re-entry or regaining or resumption of possession, however, shall not in any manner affect, alter, or diminish any of the obligations of the Developer under this Agreement. On such termination by the City, all rights and privileges of the Developer thereunder shall cease, and the Developer shall immediately vacate any space occupied by it on the Airport or any premises or facilities used in the operation of the business. In any event, any costs associated with the activities in this section shall be borne by the Developer.

SECTION 1306. RIGHTS CUMULATIVE. It is understood and agreed that the rights and remedies of the City and the Developer specified in this Article are not intended to be, and shall not be exclusive of one another or exclusive of any common law right of either of the parties hereto, provided however, except in cases involving willful or wanton conduct, and except as otherwise provided above, Developer's liability to the City is limited to its obligations to pay commissions as described above.

ARTICLE XIV RESERVATIONS

SECTION 1401. RESERVATIONS. The grant of the Developer thereunder is subject to the following reservations and conditions:

- A. The City reserves the right, but shall not be obligated to the Developer, to maintain and keep in repair the landing area of the Airport and all publicly owned facilities of the Airport. The City reserves the right to direct and control all the activities of the Developer in this regard.
- B. The City reserves the right further to develop or improve the Airport as it sees fit, regardless of the desires or views of the Developer and without interference or hindrance.
- C. As set forth in Section 101.A, the City reserves the right to withdraw from the Premises any Concession Location, Creative Space, Common Area, Back of House or other area included in the Premises needed, as determined by the City in its sole discretion, for Airport operations or the operational needs of one or more signatory airlines serving the Airport. In such event, City shall seek to identify an alternate location within the New Terminal that is comparable in size and similarly suitable for the concession service(s) offered at the original location and, if such location is identified by City and accepted by Developer and Operator, to modify **Exhibit C** accordingly. The City will give the Developer and any Sublessee at a Concession Location sixty (60) days' written notice of City's intent to withdraw the area, unless such withdrawal is required sooner by the FAA, TSA or other Governmental Authority. Whether the location is withdrawn or relocated, City shall reimburse Developer, for the benefit of the Sublessee if the Sublessee was responsible for the cost of Capital Improvements at the original Concession Location, for the unamortized portion of Eligible Costs as documented herein. In the event the Parties elect to relocate, City further shall deliver the new location in Shell Condition capable for Build-out by Developer or Sublessee, or reimburse Developer, for the

benefit of Sublessee if applicable, for the cost to bring the new location to Shell Condition. Reimbursement for Eligible Costs and payment to bring a new location to Shell Condition shall be the Developer's and Sublessee's sole remedy, and the City assumes no liability for lost earnings or profits resulting from withdrawal and/or relocation. Each Sublease shall include a provision allowing for termination or relocation consistent with this provision.

- D. During time of war or national emergency, the City shall have the right to enter into an agreement with the United States Government for military or naval use of part or all of the landing area, the publicly owned air navigation facilities, and/or other areas or facilities of the Airport. If any such agreement is executed, the provisions of this instrument, insofar as they are inconsistent with the provisions of the agreement with the Government, shall be suspended.
- E. It is understood and agreed that the rights granted by this Agreement will not be exercised in such a way as to interfere with or adversely affect the use, operation, maintenance, or development of the Airport.
- F. City reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstruction, together with the right to prevent Lessee from erecting or permitting to be constructed, any building or other structure on the Airport which, in City's sole opinion, would limit the usefulness of the Airport or constitute a hazard to aircraft.
- G. The City reserves the right to assign its obligations hereunder to any public entity that assumes the ownership, operation and sponsorship of the Airport or to any private entity that assumes the obligations, pursuant to a lease or contract with the City, to manage the Airport or the New Terminal.

ARTICLE XV DAMAGE OR DESTRUCTION

SECTION 1501. PARTIAL DAMAGE. If all or a portion of the Airport are partially damaged by fire, explosion, acts of God, the elements, severe climatic or weather conditions or phenomena (such as high winds, rainstorms, hurricanes, floods, earthquakes and seismic waves), acts of the public enemy, sabotage, riots, rebellion, and other civil commotion or other casualty, but not rendered uninhabitable, the same will be repaired with due diligence by the City, subject to the limitations as hereafter provided; provided however, if said damage is caused by the negligence or omission to act of the Developer or Developer's Agents including Sublessees, the Developer shall be responsible for directly and fully paying for all such repair and for directly and fully reimbursing the City for the cost and expenses incurred in such repair upon demand and as directed by the City.

SECTION 1502. EXTENSIVE DAMAGE. If the damages are so extensive as to render the Premises or a portion thereof uninhabitable, but are capable of being repaired within thirty (30) days, the same shall be repaired with due diligence by the City, subject to the limitations as hereafter provided, and an appropriate portion of the rents, fees, and charges payable herein shall abate from the time of the damage until such time as the Premises or portion thereof are fully restored and certified by the City as again ready for use; provided, however, that if such damage is caused by the negligence or omission to act of the Developer, Sublessees or the Developer's Agents, said rents, fees, and charges will not abate and the Developer shall be responsible for reimbursing the City for the costs and expenses incurred by the City in completing such repairs upon demand and as directed by the City.

SECTION 1503. COMPLETE DESTRUCTION. If all or a substantial portion of the Premises are completely destroyed by fire, explosion, acts of God, the elements, severe climatic and weather conditions or phenomena (such as high winds, rainstorms, hurricanes, floods, earthquakes and seismic waves (tsunami)), acts of the public enemy, sabotage, riots, rebellion, or other civil commotion or other casualty, or are so damaged that

they are uninhabitable and cannot be replaced except after more than thirty (30) days, the City shall be under no obligation to repair, replace, or reconstruct the Premises, and an appropriate portion of the rents, fees, and charges payable hereunder shall abate as of the time of such damage or destruction and shall henceforth cease until such time as the Premises are fully restored. The City shall notify the Developer of the City's intentions within sixty (60) days of the destruction or damage. If within twelve (12) months after the time of such damage or destruction, the Premises have not been repaired or reconstructed, the Developer may terminate this Agreement in its entirety upon seven (7) days written notice to the City, such termination to be effective as of the date of such damage or destruction subject to the survival of the Developer's obligations as set forth in this Agreement, particularly in Article XVI (Survival of Obligations) herein. Notwithstanding the foregoing, if the Premises, or a substantial portion thereof, are completely destroyed as a result of the negligence or omission to act of the Developer or the Developer's Agents, said rents, fees, and charges shall not abate and the City may, in its discretion, require the Developer to repair and reconstruct the Premises within twelve (12) months of such destruction and pay the cost therefor, or the City may repair and reconstruct the same within twelve (12) months of such destruction and the Developer shall fully reimburse the City for the cost and expenses incurred by the City in completing such repair upon demand and as directed by the City.

SECTION 1504. LIMITS OF CITY'S OBLIGATIONS DEFINED. It is understood that, in the application of the foregoing provisions, the City's obligations shall be limited to repair or reconstruction of the Premises to condition of the Base Building Work. Capital Improvements shall be the responsibility of the Developer. Any such replacement by Developer shall be equivalent to or better in quality than the Capital Improvements so destroyed or damaged, as of the date of the original installation and construction. Further, City will not be responsible for any projected or actual loss of sales or revenue.

SECTION 1505. RESTRICTIONS ON ABATEMENT. The foregoing provisions for abatement of the obligation to pay rents, fees, and charges required under this Agreement and for cancellation of this Agreement shall not apply if the Developer has caused or is responsible in any part for the Premises becoming damaged, destroyed, untenable, or uninhabitable.

ARTICLE XVI SURVIVAL OF OBLIGATIONS

SECTION 1601. CITY'S RIGHT TO ENFORCE. Termination of this Agreement, whether by expiration or sooner termination, shall not affect the right of the City to enforce any or all indemnities and representations and warranties given or made by the Developer to the City under this Agreement, nor shall it affect any provision of this Agreement that expressly states it shall survive termination hereof, including, without limitation, Section 409 (Payment and Performance Bond), Section 501 (Developer Construction Agreement), Section 502 (Construction Instructions), Section 902 (Compliance with Americans with Disabilities Act) and Section 2124 (Brokers), as well as Articles X (Indemnification and Insurance), XVII (Condemnation), XVIII (Litigation), and XIX (Liens). The Developer specifically acknowledges and agrees that, with respect to each of the Developer's indemnities contained in this Agreement, the Developer has an immediate and independent obligation to defend the City from any claim which actually or potentially falls within the indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to the Developer by the City. A substantially similar clause shall appear in all Subleases tendered by Developer.

SECTION 1602. ACCRUED OBLIGATIONS. The Developer's obligation to make payments to the City in respect of accrued charges (including those which have not yet been billed) and to make repairs (including those relating to the return of the Premises to the City) which are accrued at the expiration or earlier termination of this Agreement shall survive the expiration or earlier termination of this Agreement.

**ARTICLE XVII
CONDEMNATION**

SECTION 1701. DEFINITIONS. For purposes of this Article XVII. (Condemnation), the following capitalized terms shall have the following meanings

- A. "Award" means all compensation, sums or value paid, awarded, or received for taking, whether pursuant to judgment, agreement, settlement or otherwise.
- B. "Date of Taking" means the earlier of: (a) the date upon which title to the portion of the Premises taken passes to and vests in the condemner, and (b) the date on which the Developer is dispossessed.
- C. "Taking" means a taking or damaging, including severance damage, by eminent domain, inverse condemnation or for any public or quasi-public use under applicable laws. A Taking may occur pursuant to the recording of a final order of condemnation, or by voluntary sale or conveyance in lieu of condemnation or in settlement of a condemnation action.

SECTION 1702. GENERAL. If during the Agreement term, any Taking of all or any part of the Premises or any interest in this Agreement occurs, the rights and obligations of the parties hereunder shall be determined pursuant to this Article XVII. (Condemnation). The City and the Developer intend that the provisions hereof govern fully in the event of a Taking.

- A. Total Taking; Automatic Termination. If a total Taking of the Premises occurs (all the Premises are included in the Taking) then this Agreement shall terminate as of the Date of Taking.
- B. Partial Taking; Election to Terminate.
 - 1. Entire termination. If a Taking of any portion (but less than all) of the Premises occurs, then this Agreement shall terminate in its entirety if all of the following exist: (a) the partial Taking renders the remaining portion of the Premises untenable or unsuitable for continued use by the Developer for the operation of the Concession; (b) the condition rendering the Premises untenable or unsuitable either is not curable or is curable but the City is unwilling or unable to cure such condition; and (c) the City elects to terminate.
 - 2. Material portion taken. If a partial Taking of a material portion of the Premises or the Airport terminal structure within which a portion of the Premises is located occurs, the City shall have the right to terminate this Agreement in its entirety.
 - 3. Notice of election. The City's election to terminate this Agreement pursuant to this Article XVII. (Condemnation) shall be exercised by the City by giving notice to the Developer on or before the date that is one hundred twenty (120) days after the Date of Taking, and thereafter this Agreement shall terminate upon on the thirtieth (30th) day after such notice is given.
 - 4. Award. Upon termination of this Agreement pursuant to a Total Taking under Section 1702.A. (Total Taking; Automatic Termination) or an election under Section 1702.B (Partial Taking; Election to Terminate) herein then:
 - a. Developer.
 - i. Fees. The Developer's obligation to pay all rents, fees and charges required under this Agreement shall continue up until the date of termination and thereafter shall cease.

- ii. Surviving obligations. The Developer shall continue to be obligated to perform and comply with all obligations that are intended to survive the termination of the Agreement, including, without limitation, those obligations set forth in Article XVI. (Survival of Obligations) herein.
 - iii. Concession Improvements. The Developer shall be entitled to recover unamortized value of the Concession Improvements constructed and installed on the Premises by the Developer, so long as required and timely documentation of the investments was provided. The unamortized value of the Concession Improvements shall be determined to be the balance after the depreciation taken using the Depreciation Schedule.
 - iv. No claim against the City. The Developer shall have no claim against the City or others for (i) compensation or indemnity for the Developer's leasehold interest and (ii) compensation and damages payable for or on account of land (including access rights) or improvements thereon except as provided in Section 1702.B.4.a.(3) (Concession Improvements) herein.
 - v. Separate claim against condemning authority. The Developer may make a separate claim for compensation from the condemning authority for the Developer's relocation expenses, or the interruption of or damage to the Developer's business or damage to the Developer's personal property. If the condemning authority or a court of competent jurisdiction concurs that said claim exists and is justified, the Developer may receive any Award made specifically to the Developer for such claim.
- b. City. The City shall be entitled to the entire Award in connection with the Taking (including any portion of the Award made for the value of the leasehold estate created by this Agreement), except for the unamortized value of the Concession Improvements as set forth in Section 1702.B.4.a.(3) (Concession Improvements) herein.
5. Partial Taking; Continuation of Agreement. If a partial Taking of the Premises occurs and this Agreement is not terminated in its entirety under Section 1702.B. (Partial Taking; Election to Terminate) herein, then this Agreement shall terminate as to the portion of the Premises so taken, but shall remain in full force and effect as to the portion of the Premises not taken, and the rights and obligations of the City and the Developer shall be modified as follows:
- A. Potential Fee Reduction. If the Taking causes any portion of the Premises to become unusable for the operation of the Concession, as authorized under this Agreement, the Concession Fee shall be reduced as follows:
 - 1. Non-sales space. For all non-Sales space comprising the Premises that are part of the Taking, the Concession Fee paid by the Developer will be reduced by a factor comprising the square footage of the space comprising the Taking multiplied by the applicable rates and charges established by the City for the applicable category of space.
 - 2. Sales space. For the Sales spaces of the Premises that are part of the Taking, the Concession Fee paid by the Developer shall be reduced proportionately in a manner equitably determined by City and Developer at the time of the Taking.
 - B. Concession Improvements. The Developer shall be entitled to recover the unamortized value of the Concession Improvements constructed and installed on the Premises by the Developer, so long as investments were timely and completely documented. The value of the Concession Improvements shall be determined to be the balance after the depreciation taken on a straight-line basis.

- C. No claim against the City. The Developer shall have no claim against the City or others for (i) compensation or indemnity for the Developer's leasehold interest and (ii) compensation and damages payable for or on account of land (including access rights) or improvements thereon (except as provided in Section 1702.B.4.a.(3) (Concession Improvements) herein.
 - D. Separate claim against condemning authority. The Developer may make a separate claim for compensation from the condemning authority for the interruption of or damage to the Developer's business or damage to the Developer's personal property. If the condemning authority or a court of competent jurisdiction concurs that said claim exists and is justified, the Developer may receive any Award made specifically to the Developer for such claim.
 - E. City's Award. The City shall be entitled to the entire Award in connection with the Taking (including any portion of the Award made for the value of the leasehold estate created by this Agreement), except for the unamortized value of the Concession Improvements as set forth in Section XVII.B.4.a.(3) (Concession Improvements) herein.
 - F. Prompt Use. Any portion of the Award received by the Developer shall be used promptly by the Developer to the extent necessary to restore or replace the Concession Improvements on the remaining Premises, in accordance with Plans, specifications, Drawings, cost estimates and schedules first approved in writing by the City.
 - G. Continuing obligation. Nothing herein shall be construed to excuse the Developer from the Developer's full performance of all covenants, obligations, terms and conditions under the Agreement as to the part of the Premises not part of the Taking and the Developer shall remain responsible for paying to the City all rents, fees and charges required under the Agreement.
6. Temporary Takings. Notwithstanding anything to the contrary in this Article XVII. (Condemnation), if a Taking occurs with respect to all or any part of the Premises for a limited period of time not in excess of one hundred eighty (180) consecutive days, this Agreement shall remain unaffected thereby, and the Developer shall continue to pay the rents, fees and charges required under the Agreement and to perform all of the terms, conditions and covenants of this Agreement. In the event of such temporary Taking, the City shall be entitled to receive any Award.
7. Responsibility for Sublessees. Developer shall be responsible for the administration of all activities under this Article XVII as they relate to Sublessees and shall be responsible for coordination with the City to ensure that all activities under this Article XVII are completed on a timely basis.

**ARTICLE XVIII
LITIGATION**

SECTION 1801. DEVELOPER RESPONSIBLE. If the City shall, with or without any fault, be made a party to any litigation commenced by or against the Developer arising out of the Developer's or its Sublessee's occupancy or use of the Premises, or attributable to the construction, installation, or use of the Concession Improvements or the Developer's or FF&E (other than condemnation proceedings), the Developer and Sublessee shall release, indemnify, defend, and keep and hold harmless and if appropriate or necessary, insure the City and the City's Agents, from and against any and all claims, demands, actions, suits, causes of action, judgments, injunctions, decisions, orders, liabilities, losses, damages, costs and expenses arising out of or related to any such litigation, including, without limitation, paying any and all costs, charges, and reasonable attorneys' fees incurred or imposed on the City in connection with such litigation. In any action by the City for recovery of any sum due under this Agreement, or to enforce any of the terms, covenants, or conditions contained in this Agreement, the City shall be entitled to recover all costs, fees, charges, consultants' fees and attorneys' fees incurred or imposed on the City in connection with such actions.

SECTION 1802. ATTORNEYS' FEES. For purposes of this Agreement, reasonable attorneys' fees shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of law for which the City's attorneys' services were rendered who practice in the City.

SECTION 1803. CONSULTANTS' FEES. For purposes of this Agreement, reasonable Consultants' fees shall be equivalent to the actual billing for hours work and expenses by City's consultants pursuant to efforts rendered.

SECTION 1804. PROMPT NOTICE. Each party shall give prompt written notice to the other party of any claim or suit instituted against it that may affect the other party.

SECTION 1805. WAIVER OF CLAIMS. The Developer, for itself and on behalf of Sublessees, hereby waives any claim against the City and the City's Agents for loss of revenue, loss of opportunity, and loss of anticipated profits caused by any suit or proceedings directly or indirectly attacking the validity of this Agreement or any part hereof, or by any judgment or award in any suit or proceedings declaring this Agreement null, void, or voidable, or delaying the same, or any part hereof, from being carried out.

**ARTICLE XIX
LIENS**

SECTION 1901. CITY'S LIEN. The City shall have a lien upon all the Developer's FFE upon the Premises, to the extent permitted by law, for the purpose of securing to the City the payment of all sums, including rents, fees, and other charges, which may be due from the Developer under this Agreement. In the event that past due rents, fees, or charges are not paid by the Developer within five (5) days after a written notice of default is given by the City to the Developer, the City may take possession of and sell such portion of the Developer's FFE as may be sufficient to pay the delinquent rents, fees, and charges owed by the Developer to the City. A sale of the Developer's personal property pursuant to this Article XIX (Liens) may be made either publicly or privately, upon the notice given to the Developer as herein provided.

SECTION 1902. OTHER LIENS PROHIBITED. The Developer shall not commit or suffer any act or neglect whereby the Premises, or any portion thereof, including any portion of the Airport's or the Concession Improvements thereupon or therein, or the estate or interest of the Developer in the same, at any time during the term of this Agreement shall become subject to any attachment, lien, charge, or encumbrance whatsoever. The Developer shall release, indemnify, defend, save and hold the City harmless, and if or when appropriate or necessary, insure the City, and the City's Agents from and against any and all attachments, liens, charges, and encumbrances, and any and all actions, suits, judgments, and orders relating thereto and any and all costs,

fees, charges, expenses, and attorneys' fees resulting therefrom, it being expressly understood that the Developer shall have no authority, express or implied, to create any attachment, lien, charge, or encumbrance upon or affecting the Premises, or any portion thereof, except as otherwise authorized in writing by the City under this Concession Agreement.

**ARTICLE XX
LIQUIDATED DAMAGES**

SECTION 2001. FAILURE TO FOLLOW AGREEMENT. Developer's or Sublessees failure to adhere to the Agreement (specifically including any requirement imposed by any Exhibit, as well as any differences between commitments made in Developer's Proposal and its actual mode of operation) is reasonably anticipated to result in inconvenience to the public, adverse effects on the overall business of the Airport, a reduction in the amount of Concession Fees to be paid to the City, unfair rents or charges assessed to Sublessees, and/or a significant expenditure of the City resources to address the failure. The Parties agree that the damages sustained by the City for violations of the provisions of the Agreement and the plans, policies and programs in the Proposal will be difficult to determine and track. Therefore, the Parties hereto agree that the amounts set forth as follows are reasonable estimates of the damages anticipated to be suffered or incurred by the City.

SECTION 2002. LIQUIDATED DAMAGES ASSESSMENTS AND OPPORTUNITY TO CURE.

- A. City may assess Liquidated Damages for failure to construct the Capital Improvements by the Substantial Completion Date and/or to open each Concession Location by the New Terminal Opening Day, in accordance with Section 512 hereof. Liquidated Damages for failure to meet the deadlines in Section 512 will be ONE THOUSAND DOLLARS (\$1,000) per day per Concession Location. These Liquidated Damages may be assessed without opportunity to cure; provided however that Developer shall take all commercially reasonable actions to satisfy its obligations.

- B. Developer further shall be liable to pay Liquidated Damages to the City for failure to manage the Concession Program in accordance with the RFP, the Proposal, and the performance and operating standards prescribed in this Agreement. Actions for which the City may assess Liquidated Damages against Developer shall include, for example and without limitation, the following:
 - (i) failure to operate the Loading Docks in accordance with Section 402.D and the Loading Docks Operational Plan required thereunder;

 - (ii) failure to operate each Concession Location for the minimum required hours of operation as set forth in Section 601.A, for which Liquidated Damages may be assessed on a per-day, per-Concession-Location basis;

 - (iii) failure to comply with the pricing program as set forth in Section 601.B;

 - (iv) failure to maintain the Premises as set forth in Section 701;

 - (v) failure to submit required documentation as required under this Agreement;

 - (vi) failure to remove a product deemed objectionable by the City within the time provided for removal;

 - (vii) violation of a fire safety standard or requirement; and

 - (viii) violation of a health and human safety standard or requirement.

- C. Liquidated Damages for the violations identified in the preceding paragraph shall be TWO HUNDRED AND FIFTY DOLLARS (\$250) per day for the first five (5) calendar days. A second Liquidated Damage in the amount of FIVE HUNDRED DOLLARS (\$500) per day may be assessed if the incident which led to the imposition of the Liquidated Damage continues after five (5) calendar dates. If the incident which led to imposition continues after ten (10) calendar days, the City may impose Liquidated Damages in the amount of ONE THOUSAND DOLLARS (\$1,000) per day until the violation is corrected.

SECTION 2003. FAILURE TO CURE. The City's imposition of five (5) Liquidated Damages Assessments within a rolling twelve (12) month period for a specific Concession Location may result in the withdrawal of the Concession Location from the Premises or termination of the Sublease, in accordance with Section 101.D.

SECTION 2004. PAYMENTS. Developer shall pay all Liquidated Damages within thirty (30) days of the imposition thereof. The failure to pay Liquidated Damages shall represent a separate default under this Agreement. Developer may pass through any Liquidated Damages assessed by City upon a Sublessee and shall be responsible for collection thereof. However, payment is still due directly from Developer to City on Sublessee's behalf regardless of whether Developer can collect the value of the Liquidated Damage from Sublessee.

SECTION 2005 NO WAIVER; NO OBLIGATION. The City's failure to impose sanctions for any violation shall not waive any right or prohibit the City from doing so for subsequent violations. The City shall have no obligation, whether to Developer or any third party, to impose fines on or otherwise act against any party at the City for violation of the Agreement or any performance and operating standards adopted by the Developer.

SECTION 2006. OTHER FINES. Other fines and penalties may be set forth in the Airport Rules and Regulations, and nothing in this Agreement is intended to limit the ability of the City to impose those fines and penalties as specifically provided by the Airport Rules and Regulations.

SECTION 2007. REMEDIES CUMULATIVE. All rights, options and remedies of the City contained in this Agreement shall be construed and held to be distinct, separate and cumulative, and no one of them shall be exclusive of the other, and the City shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law or in equity, whether or not stated in this Agreement. Furthermore, payment of any liquidated damages amount shall not relieve Developer of its responsibility for physical damage, personal injury, or any other harm caused by Developer's Agents.

ARTICLE XXI ADDITIONAL PROVISIONS

SECTION 2101. NO PERSONAL LIABILITY. No council member, director, commissioner, officer, employee, consultant, or other agent of either party shall be personally liable under or in connection with this Agreement.

SECTION 2102. AGREEMENTS WITH THE UNITED STATES. This Agreement is subject and subordinate to the provisions of any agreement heretofore made between the City and the United States, relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of federal rights or property to the City for airport purposes, or to the expenditure of federal funds for the extension, expansion, or development of the Airport, including the expenditure of federal funds for the development of the Airport in accordance with the provisions of the Airport and Airway Development Act as it has been amended from time to time. Any agreement hereafter made between the City and the United States will not be inconsistent with rights granted to the Developer herein.

SECTION 2103. MODIFICATIONS FOR GRANTING OF FAA FUNDS. In the event the FAA requires modifications or changes to this Agreement as a condition precedent to the granting of funds for the

improvement of the Airport, the Developer agrees to consent to such reasonable amendments, modifications, revisions, supplements or deletions of any of the terms, conditions, or requirements of this Agreement as may be reasonably required to enable the City to obtain said FAA funds or government grants, provided that in no event shall such changes impair the rights of the Developer hereunder.

SECTION 2104. GOVERNING LAW. This Agreement shall be deemed to have been made in and be construed in accordance with the laws of the State of Missouri without giving effect to Missouri's choice of law provisions. The City and Developer: (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.

SECTION 2105. AMENDMENTS. This Agreement may be amended from time to time by written agreement, duly authorized and executed by representatives of the Parties.

SECTION 2106. PREVIOUS AGREEMENTS. It is expressly understood that the terms and provisions of this Agreement shall in no way affect or impair the terms, obligations, or conditions of any existing or prior agreement, if any, between the Developer and the City.

SECTION 2107. FORCE MAJEURE. Neither the City nor Developer shall be deemed in violation of this Agreement if either party is prevented from performing any of the obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortage of material, acts of God, acts of the public enemy, acts of superior Governmental Authority, weather conditions, riots, rebellion, sabotage, or any other circumstances for which the Parties are not responsible or which are not within their control; provided, however, that these provisions shall not excuse Developer from paying the Concession Fee and additional fees as provided herein. The City shall be under no obligation to supply any service if and to the extent and during any period that the supplying of any such service or the use of any component necessary therefore shall be prohibited, restricted or rationed by any Applicable Law.

SECTION 2108. INVALID PROVISIONS. In the event any covenant, condition or provision herein contained is held to be invalid by a court of competent jurisdiction, the invalidity of any such covenant, condition or provision shall in no way affect any other covenant, condition or provision herein contained, provided the invalidity of any such covenant, condition or provision does not materially prejudice either the City or the Developer in its respective rights and obligations contained in the valid covenants, conditions and provisions of this Agreement.

SECTION 2109. HEADINGS. The headings of the Articles and Sections of this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

SECTION 2110. INTERPRETATION. In general, it is the intention of the City that the language of this Agreement shall be in all cases construed simply according to its fair meaning and not strictly for or against either the City or the Developer.

SECTION 2111. WITHHOLDING REQUIRED APPROVALS. Whenever the approval of the City, or the City, or of the Developer, is required herein, no such approval shall be unreasonably requested or withheld.

SECTION 2112. SUCCESSORS AND ASSIGNS. All the terms, provisions, covenants, stipulations, conditions, and considerations of this Agreement shall extend to and bind the legal representatives, successors, Sublessees and assigns of the respective parties hereto.

SECTION 2113. BINDING EFFECT. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns. No verbal statement, representation or agreement made by any

one or more City or its Council representatives, City's Agents, or any other representatives of the City before or after the execution hereof shall be binding upon the City.

SECTION 2114. WAIVERS. No waiver of default by either party of any of the terms, covenants and conditions hereof to be performed, kept and observed by the other party shall be construed as, or operate as, a waiver of any subsequent default of any of the terms, covenants or conditions herein contained, to be performed, kept and observed by the other party.

SECTION 2115. TITLE TO SITE. The Premises from the date hereof until the termination of this Agreement shall be owned in fee simple by the City or in such lesser estate as in the opinion of the City Attorney is sufficient to permit the letting thereof by the City as herein provided for the full term provided in this Agreement.

SECTION 2116. OPERATION OF AIRPORT. The City agrees to operate, maintain, and keep in good repair the areas and facilities provided by the City for the common use of the tenants and public in accordance with the practices of a reasonable prudent airport operator. The City agrees to use its best efforts to keep the Airport free from obstructions and to do all things reasonably necessary for the safe, convenient, and proper use of the Airport by those who are authorized to use the same. The City agrees to maintain and operate the Airport in accordance with all applicable standards, rules, and regulations of the FAA.

SECTION 2117. NO ASSIGNMENT OR SUBCONTRACTING WITHOUT CITY APPROVAL. The Developer may not assign this Agreement or subcontract all or substantially all of Developer's obligations hereunder without first obtaining the written approval of the City, provided that the Developer may assign this Agreement without such approval to any corporation or partnership in which it has fifty percent (50%) or more beneficial interest or ownership interest or to any limited partnership in which the Developer or a permitted assign has an interest in fifty percent (50%) or more of the general partnership interest in said limited partnership. The Developer shall submit a written request to the City together with evidence demonstrating the proposed assignee's or subcontractor's sufficient financial capacity and experience to assume Developer's obligations hereunder. No assignment or subcontract shall be made or shall be effective unless the Developer shall not be in default of any of the other terms, covenants and obligations contained in this Agreement. In the event of an assignment consistent with the provisions of this section, the Developer, upon consummation thereof, shall be discharged from all obligations herein contained.

SECTION 2118. NOTICES. Except as herein otherwise expressly provided, all notices required to be given to the City hereunder shall be in writing and shall be sent by certified mail, return receipt requested, to:

City of Kansas City, Missouri
Kansas City International Airport
601 Brasilia Avenue
P.O. Box 20047
Kansas City, Missouri 64153-0047

All notices, demands and requests by the City to the Developer shall be sent by certified mail, return receipt requested, addressed to:

Vantage Airport Group, U.S.
295 Madison Avenue
New York, NY 10017

The parties, or either of them, may designate in writing from time to time any changes in addresses or any addresses of substitute or supplementary persons in connection with said notices. The effective date of service of any such notice shall be the date such notice is mailed to the Developer or to the City.

SECTION 2119. USE OF RECYCLED AND ENVIRONMENTALLY PREFERABLE PRODUCTS. It is the policy of the City to encourage and prefer the use of recycled and environmentally preferable products to the fullest extent possible and practicable consistent with good business practices, and that all Developers, licensees, and Sublessees shall perform any and all obligations hereunder in a manner consistent with such policy.

SECTION 2120. ACCORD AND SATISFACTION. The payment by the Developer or the receipt by the City of a lesser amount than the Concession Fee stipulated in this Agreement may be, at the City's sole option, deemed to be on account of the earliest due of first: (1) any interest, service charges and late fees and second (2) any stipulated Concession Fee (beginning with earliest owing fee), notwithstanding any instruction by or on behalf of the Developer to the contrary, which instructions shall be null and void, and no endorsement or statement on any check or any letter accompanying any such check or payment will be deemed an accord and satisfaction, and the City may accept such check or payment without prejudice to the City's right to recover the balance of such Concession Fee or pursue any other remedy available in this Agreement or at law.

SECTION 2121. ESTOPPEL STATEMENTS

- A. Developer must deliver. Within ten (10) days after request therefor by the City, the Developer shall deliver, in recordable form, an estoppel statement certifying that this Agreement is in full force and effect, the date of the Developer's most recent payment of the Concession Fee, and that the Developer has no defenses or offsets outstanding, or stating those claimed, and any other information reasonably requested by the City.
- B. Failure to deliver. If the Developer fails to deliver the requested estoppel statement to the City within the specified period, the following shall be deemed conclusive: (1) this Agreement is in full force and effect, without modification, except as may be represented by the City; (2) there are no uncured defaults in the City's performance and the Developer has no right of offset, counterclaim or deduction against the fees payable under this Agreement; and (3) no more than one month's MAG has been paid in advance. Such conclusions shall be binding upon the Developer. Notwithstanding these conclusions, the Developer's failure to deliver the requested estoppel statement shall constitute a breach of this Agreement.

SECTION 2122. AUTHORITY. If the Developer signs as a corporation, a limited liability company, or a partnership, each of the persons executing this Agreement on behalf of the Developer does hereby covenant and warrant that the Developer is a duly authorized and existing entity, that the Developer has and is duly qualified to do business in Missouri, that the Developer has full right and authority to enter into this Agreement, and that each and all of the persons signing on behalf of the Developer are authorized to do so. Upon the City's request, the Developer shall provide the City evidence reasonably satisfactory to the City confirming the foregoing representations and warranties.

SECTION 2123. COUNTERPARTS. This Agreement may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same document, binding all of the parties hereto notwithstanding all of the parties are not signatory to the original or the same counterpart. For all purposes, including, without limitation, recordation, filing and delivery of this Agreement, duplicate unexecuted pages of the counterparts may be discarded, and the remaining pages assembled as one document.

SECTION 2124. BROKERS. The Developer warrants and represents to the City that the Developer has not had any contact or dealings regarding the use of the Premises, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the Agreement. In the event that any broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the Developer shall be responsible for such commission or fee and shall release, indemnify, defend, and hold harmless the City from any and all claims, demands, actions, suits, causes of action, judgments, liabilities, losses, damages, costs, and expenses arising from the Developer's dealings and interactions with any broker, finder or person who could claim a

right to a commission or finder's fee. The provisions of this Section shall survive any termination or expiration of this Agreement

SECTION 2125. ENTIRE AGREEMENT. This Agreement, together with all exhibits attached hereto, constitutes the entire Agreement between the parties hereto and all other representations of statement heretofore made, verbal or written, are merged herein and this Agreement may be amended only in writing, and executed by duly authorized representatives of the parties hereto.

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

Approved as to form:

KANSAS CITY, a municipal corporation of Missouri

Assistant City Attorney

Patrick Klein
Director of Aviation

Date: _____

VANTAGE AIRPORT GROUP, US, a Delaware corporation

By: _____

Title: _____

Date: _____

EXHIBIT A

When mutually agreed to by both parties, the Director of Aviation may amend Exhibit "A" and make any necessary changes without further City Council approval.

CITY OF FOUNTAINS
HEART OF THE NATION



KANSAS CITY
MISSOURI

PERFORMANCE AND MAINTENANCE BOND

Project Number _____

Project Title _____

KNOW ALL MEN BY THESE PRESENTS: That _____, as PRINCIPAL (CONTRACTOR), and _____, (SURETY), licensed to do business as such in the State of Missouri, hereby bind themselves and their respective heirs, executors, administrators, successors, and assigns unto Kansas City, Missouri, a constitutionally chartered municipal corporation, (OWNER), as obligee, in the penal sum of _____ Dollars (\$ _____) for the payment whereof CONTRACTOR and SURETY bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, CONTRACTOR has entered into a Contract with OWNER for _____ which Contract, including any present or future amendment thereto, is incorporated herein by reference and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if CONTRACTOR shall promptly and faithfully perform said Contract including all duly authorized changes thereto, and including any maintenance requirements contained therein, according to all the terms thereof, including those under which CONTRACTOR agrees to pay legally required wage rates including the prevailing hourly rate of wages in the locality, as determined by the Department of Labor and Industrial Relations or by final judicial determination, for each craft or type of workman required to execute the Contract and, further, shall defend, indemnify, and hold harmless OWNER from all damages, including but not limited to, liquidated damages, loss and expense occasioned by any failure whatsoever of said CONTRACTOR and SURETY to fully comply with and carry out each and every requirement of the Contract, then this obligation shall be void; otherwise, it shall remain in full force and effect.

WAIVER. That SURETY, for value received, hereby expressly agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the Work to be performed thereunder, shall in any way affect the obligations of this Bond; and it does hereby waive notice of any such change, extension of time, or alteration or addition to the terms of the Contract or the Work to be performed thereunder.

IN WITNESS WHEREOF, the above parties have executed this instrument the ____ day of _____, 20__.

CONTRACTOR

Name, address and facsimile number of Contractor

I hereby certify that I have authority to execute this document on behalf of Contractor.

By: _____

Title: _____

(Attach corporate seal if applicable)

SURETY

Name, address and facsimile number of Surety:

I hereby certify that (1) I have authority to execute this document on behalf of Surety; (2) Surety has an A.M. Best rating of A-, V, or better; (3) Surety is named in the current list of "Companies Holding Certificates of Authority as Acceptable Reinsuring Companies: as published in Circular 570 (most current revision) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury; and (4) Surety is duly licensed to issue bonds in the State of Missouri and in the jurisdiction in which the Project is located.

By: _____

Title: _____

Date: _____

(Attach seal and Power of Attorney)



PAYMENT BOND

Project Number _____

Project Title _____

KNOW ALL MEN BY THESE PRESENTS: That _____, as PRINCIPAL (CONTRACTOR), and _____, (SURETY), licensed to do business as such in the State of Missouri, hereby bind themselves and their respective heirs, executors, administrators, successors, and assigns unto Kansas City, Missouri, a constitutionally chartered municipal corporation, (OWNER), as obligee, in the penal sum of _____ Dollars (\$_____) for the payment whereof CONTRACTOR and SURETY bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS,

CONTRACTOR has entered into a contract with OWNER for _____, which Contract, including any present or future amendment thereto, is incorporated herein by reference and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if in connection with the Contract, including all duly authorized modifications thereto, prompt payment shall be made to all laborers, subcontractors, teamsters, truck drivers, owners or other suppliers or for equipment employed on the job, and other claimants, for all labor performed in such work whether done for CONTRACTOR, a subcontractor, SURETY, a completion contractor or otherwise (at the full wage rates required by any law of the United States or of the State of Missouri, where applicable), for services furnished and consumed, for repairs on machinery, for equipment, tools, materials, lubricants, oil, gasoline, water, gas, power, light, heat, oil, telephone service, grain, hay, feed, coal, coke, groceries and foodstuffs, either consumed, rented, used or reasonably required for use in connection with the construction of the work or in the performance of the Contract and all insurance premiums, both for compensation and for all other kinds of insurance on the work, for sales taxes and for royalties in connection with, or incidental to, the completion of the Contract, in all instances whether the claim be directly against CONTRACTOR, against SURETY or its completion contractor, through a subcontractor or otherwise, and, further, if CONTRACTOR shall defend, indemnify and hold harmless OWNER from all such claims, demands or suits by any such person or entity, then this obligation shall be void; otherwise, it shall remain in full force and effect.

Any conditions legally required to be included in a Payment Bond on this Contract, including but not limited to those set out in §107.170 RSMo. are included herein by reference.

SURETY agrees that, in the event that CONTRACTOR fails to make payment of the obligations covered by this Bond, it will do so and, further, that within forty-five (45) days of receiving, at the address given below, a claim hereunder stating the amount claimed and the basis for the claim in reasonable detail, it (a) will send an answer to the claimant, with a copy to OWNER stating the amounts that are undisputed and the basis for challenging any amounts that are disputed, and (b) will pay any amounts that are undisputed. The amount of this Bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder.

While this Bond is in force, it may be sued on at the instance of any party to whom any such payment is due, in the name of OWNER to the use for such party. OWNER shall not be liable for the payment of any costs or expenses of any such suit.

No suit shall be commenced or pursued hereunder other than in a state court of competent jurisdiction in Jackson, Clay or Platte County, Missouri, or in the United States District Court for the Western District of

Missouri.

WAIVER. That SURETY, for value received, hereby expressly agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the Work to be performed thereunder, shall in any way affect the obligations of this Bond; and it does hereby waive notice of any such change, extension of time, or alteration or addition to the terms of the Contract or the Work to be performed thereunder.

IN WITNESS WHEREOF, the above parties have executed this instrument the _____ day of _____, 20____.

CONTRACTOR

Name, address and facsimile number of Contractor

I hereby certify that I have authority to execute this document on behalf of Contractor.

By: _____

Title: _____

(Attach corporate seal if applicable)

SURETY

Name, address and facsimile number of Surety:

I hereby certify that (1) I have authority to execute this document on behalf of Surety; (2) Surety has an A.M. Best rating of A-. or better; (3) Surety is named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (most current revision) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury; and(4) Surety is duly licensed to issue bonds in the State of Missouri and in the jurisdiction in which the Project is located.

By: _____

Title: _____

Date: _____

(Attach seal and Power of Attorney)

PERFORMANCE BOND

EXHIBIT B

TENANT DESIGN STANDARDS

When mutually agreed to by both parties, the Director of Aviation may amend Exhibit "B" and make any necessary changes without further City Council approval.

EXHIBIT C

PREMISES

When mutually agreed to by both parties, the Director of Aviation may amend Exhibit "C" and make any necessary changes without further City Council approval.

EXHIBIT D

CONSTRUCTION SCHEDULE

When mutually agreed to by both parties, the Director of Aviation may amend Exhibit "D" and make any necessary changes without further City Council approval.

EXHIBIT E

CONSTRUCTION INSTRUCTIONS

When mutually agreed to by both parties, the Director of Aviation may amend Exhibit "E" and make any necessary changes without further City Council approval.

EXHIBIT F

FORM OF MONTHLY REPORT

When mutually agreed to by both parties, the Director of Aviation may amend Exhibit "F" and make any necessary changes without further City Council approval.

EXHIBIT G

When mutually agreed to by both parties, the Director of Aviation may amend Exhibit "G" and make any necessary changes without further City Council approval.

STORM WATER BEST MANAGEMENT PRACTICES

The Airport operates under the requirements of a National Pollutant Discharge Elimination System ("NPDES") Permit issued by the Missouri Department of Natural Resources ("MDNR"). The NPDES Permit imposes controls that assure that the Airport storm water discharges meet applicable water quality standards. NPDES controls are implemented at the Airport by operation of the Airport Storm Water Pollution Prevention Plan ("SWPPP"). Under the terms of the Permit, the Airport is responsible to the State of Missouri for all industrial and storm water discharges origination on Airport property. Each tenant is responsible to the Airport for contributions to the Airport industrial and storm water that originate for the tenant's leases property and from the tenant's activities anywhere on Airport property.

The following Best Management Practices ("BMP") require conformity to NPDES Permit mandates for activities that take place on Airport property. These BMP's apply to Airport departments, tenants, and all individuals (persons) whose activities could contribute to industrial or storm water discharges from Airport property. Airport departments and tenants are responsible for the actions of their personnel, contractors, supplies, services, providers, holders of operating permits, and all others who enter Airport property under their authorization.

1. All vehicles operated on the Airport shall be maintained in good condition at all times and be free of oil and gas leaks.
2. Each tenant operator shall keep individual areas clean pf vehicle liquid spills.
3. No tenant shall permit or cause to be permitted the discharge of flammable or combustibile liquids or any waste liquid containing crude petroleum or its products into or upon any, street, highway, drainage canal, ditch, storm drainage system, lake, waterway or ground.
4. Outside repairs, servicing, washing or adjustments to ground vehicles which could cause pollutants, including by not limited to grease, oil, fuel, detergents, etc., to enter storm water systems is prohibited.
5. Tenants shall properly maintain fuel systems and oil water separators as to prevent discharge of petroleum contaminants to the Airport's storm water discharge systems.
6. Outside use of soaps, surfactants or materials that would ultimately enter the storm water and negatively impact the Airport NPDES permit is prohibited.
7. Tenant will be responsible for initiating immediate containment of spills and immediate cleanup/remediation of releases that can or will impact storm water systems. Note: Application of oil dry on a petroleum sill without subsequent removal/disposal of oil dry from pavement does not constitute acceptable cleanup.

8. All spills, irrespective of exceeding environmental regulation reportable quantities, that could or have entered the storm water systems shall be reported to Airport immediately following initial actions taken to contain and/or cleanup the release. In the event that a release is deemed to be beyond the lessee's ability to safely address or presents an immediate hazard to life, property or impact or storm water systems the Airport Communications Center shall be notified immediately.
9. The application of Aircraft Deicing Fluid ("ADF") is authorized on carrier and cargo aprons only. Any unused or out of specification ADF will be disposed of off Airport to include the ADF impact water (rinsate) from the cleaning of tanks and vehicles. Any inadvertent loss of ASF fluid that was not sprayed on an aircraft during winter operations constitutes a spill and will be cleaned up and disposed of in the same manner as a grease/oil spill.

CONTRACT

210827

Ordinance Fact Sheet

Brief Title	Approval Deadline	Reason
Contract with Vantage Airport Group	Routine	To authorize execution of a Concessions Management, Operations and Development Contract

Details

Reason for Contract
 Authorizing a Concession Management, Operation and Development Agreement with Vantage Airport Group US for the construction, leasing, operation, and management of a concession program at the New Terminal at the Kansas City International Airport.

Project Description
 This ordinance will authorize the execution of a Concessions Management, Operation and Development Contract with Vantage Airport Group.
 This agreement will allow Vantage Airport Group to develop and lease concessions at the new terminal at KCI. Vantage will build out 100% of the concession space at opening of the new terminal.

Budget
 Vantage has agreed in this Agreement to invest \$65 million to build out the concession space.
 The term of the agreement is 15 years. Subleases with term greater than six (6) years will require a mid-term refurbishment of at least 15% of the original construction cost for the concession location.
 Vantage proposes to provide the airport an 80% - 84% of total gross receipts or \$1.75 minimum annual guarantee per enplaned passenger, whichever is greater.

Solicitation
 This Project was solicited as a Request for Proposal and was advertised on the City's as well as aviation related websites on February 8, 2021. KCAD received 5 proposals on June 3, 2021 (Technical) & June 24, 2024 (Financial). On July 20, 2021, presentations were heard from all 5 proposers.

Roles and Responsibilities

Sponsor	Aviation Department
Department or Programs Affected	Aviation Department
Recommended Awardee	Vantage Airport Group
Contract Compliance Certification Obtained?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes
Opponents	Groups or Individuals Reason for Opposition
Responsibilities	Design Engineering: Inspections: Construction or Project Management: Service Monitoring:

Policy/Program Impact

Policy or Program Emphasis Change	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes
Operational Impact Assessment	

(Continued on reverse side)

OPERATING/PROGRAMMATIC

210827

Legislative Fiscal Note

Ordinance Number

Ordinance Title (in Brief)

Authorizing a Concession Management, Operation and Development Agreement with Vantage Airport Group

US for the construction, leasing, operation, and management of a concession program at the New Terminal at the Kansas City Intern

Does this Legislation Estimate New or Additional Revenues to the City?

No

Yes

If yes, please identify in which Fund these revenues will be deposited (e.g. General, Sales Tax) and provide the following revenue information:

Revenue Detail

FY 24

General Fund

Special Revenue

Enterprise

8,750,000

Total: \$

(Please detail type of revenue (fees, grants, tax) and change that will occur as a result of this legislation. Provide multi-year estimates if known, or if grant revenue please identify source of funds (federal or state) and duration of grant support)

It is estimated that enplaned passengers for FY2024 will be 5M and at \$1.75 ep, minimum annual guarantee will be \$8,750,000. Revenues should grow in subsequent years for 15 year term.

Does this Legislation increase appropriations in the current budget?

No

Yes

If Yes, please complete the following budget information:

Expense Detail

FY

General Fund

Special Revenue

Enterprise/Other

Total: \$ 0

Please detail the extent to which these increased appropriations will be of a permanent nature (e.g. number of additional staff, facilities, long-term contracts)

Does this Legislation expand the scope of current city services?

No

Yes

(Please detail estimate number of people to be served, who is delivering services currently to that population, service performance expectations, and if grant supported, provisions for support if grant support ends.)

Is this legislation the result of a federal or state legislative mandate?

No

Yes

(If yes, please detail the purpose and source for that mandate).

Reviewed by:

Office of Management and Budget
Tanner Owens, OMB

OMB Approval Date

9/21/2021

Concessions Matrix Summary

	<u>MWBE - 15/10% - Minimum Annual</u>	<u>Airport Concessions</u>	<u>Total Build Out</u>	<u>Common Areas</u>	<u>Non-Concessions</u>	<u>Equity Member Interests</u>	<u>Renovation, Rebranding, Refurbishment Plan</u>	<u>Initial Build</u>	<u>Time to Full</u>	<u>Pricing Model</u>	<u>Pay Ranges</u>
	<u>Number of firms listed</u>	<u>Guarantee or Rent</u>	<u>Disadvantaged Business Enterprise</u>	<u>Amount</u>		<u>Local (Yes or No)</u>		<u>Out</u>	<u>Build Out</u>		
Vantage Airport Group	15/10 - 17	\$1.75/Enplaned Pax or 80-84% of rents total	59%	<u>Total \$65,000,000</u>	included in subtenant build out	Yes	Year 6 15% of original construction account	100%	100% at opening	Street +15%	\$15-\$18 F&B \$15-\$17 Retail
Company T	15/10 - 7	No enplaned MAG - 80% of prior year total rent	20%	<u>Total \$51,731,142</u>	\$3,709,300	No	Year 5 20% Year 10 25%	95%	3 years	Street +18%	\$15 Starting
Company U	15/10 - 4	\$1.25/Enplaned Pax or 80% of prior year total rent	16%	<u>Total \$50,164,000</u>	\$2,652,400	No	Year 5 15% (\$1M) Year 7 75% (\$5M) Year 9 90% (\$5.9M) Year 11 100% (\$6.6M)	89%	When Traffic Drives Need	Street +10%-20%	\$13.40 - \$18
Company V	15/10 - 11	\$1.33/Enplaned Pax or percentage of rent 8%-24%	24.7%	<u>Total \$45,200,000</u>	None anticipated	No	Year 5 \$4,200,000 Year 10 \$4,200,000	89%	Not listed	Street +15%	\$10.40 - \$19.49
Company W	15/10 - 1	No enplaned MAG - 85% of prior year total rent	22.5%	<u>Total \$48,000,000</u>	Proposer listed at confidential	Yes	Proposer listed at confidential	80%-85%	When Traffic Drives Need	Street +10%-20%	\$12-\$17 F&B \$11-\$16 Retail
				(Total Build Out includes common and non-concessions areas)							(All committed to \$15 minimum in interview)

PLTR—SSP@KCI, LLC

Paradies Lagardere and SSP America

2849 Paces Ferry Road | Overlook I, Suite 400 | Atlanta, GA 30339

September 21, 2021

The Honorable Quinton Lucas
Mayor of Kansas City, Missouri
414 East 12th Street,
29th Floor, City Hall
Kansas City, Missouri 65106
Quinton.Lucas@kcmo.org

SENT VIA ELECTRONIC MAIL

Re: Ordinance No. 210827; Public Testimony for Council Committee

Dear Mayor Lucas:

PLTR—SSP@KCI, LLC (comprised of Paradies Lagardere and SSP America, individually or collectively, “PLTR—SSP”) respectfully requests that it be given 20 minutes to participate in the public meeting of the Transportation, Infrastructure and Operations Committee (“Committee”) for pending Ordinance No. 210827 (the “Ordinance”) to award the KCI Concession Agreement to Vantage Airport Group (US) Ltd (“Vantage”). PLTR—SSP submitted a proposal in response to the City’s Request for Proposals for the Development, Operation, and Management of the Concession Program for the New Terminal at Kansas City International Airport Request Number 04161964 (“RFP”). As you may know the RFP prohibits the offerors to the RFP from contacting city officials with the express exception of participating in a public meeting. In anticipation of the limited time that will be available to PLTR—SSP and its team to provide oral public testimony in Committee, PLTR—SSP submits this letter to supplement its oral testimony in writing to you and the City Council members serving on the Committee.

We heard many City Council members at the September 16, 2021, Business Session of the City Council express a desire to understand proposals submitted by other offerors to the RFP in comparison to the proposal submitted by Vantage and to address other questions and concerns regarding the Vantage proposal. Our testimony set forth in this letter will address many of those questions and concerns and outline other items the Committee should take into consideration as it considers any recommendation of the Ordinance to the full City Council.

In the airport’s and Vantage’s presentations during the Business Session, Vantage received and took quite a bit of credit for running concession programs in various locations in the USA, Canada and elsewhere. Serious inquiry should be undertaken to determine Vantage’s specific roles in the various projects that are attributed to them in both presentations. Who actually controls the food, beverage and retail operations at these airports? Who is actually paying rent on these spaces and who is merely collecting a fee for services? How is Vantage’s relationship documented? Is it an owner? A consultant? Something else?

In its oral and written presentation, Vantage took credit for the entire concession program at Chicago Midway, including that program's impressive ACDBE participation of 56%. In reality, Vantage did not develop that concession program; SSP and its retail partner did. Vantage did not partner with any ACDBE's; SSP and its retail partner did. Vantage is a service provider in Chicago Midway, reporting to SSP and its retail partner. It is SSP and its retail partner that developed the entire program and who run the actual food, beverage, and retail operations at Chicago Midway. Vantage was engaged to provide services. Vantage has three employees on the ground and does not own any equity in the operating companies. It is a service provider that acts as a conduit to the airport at the behest of the real owner operators of the business, SSP and its retail partner.

It is also important to point out that over the last several weeks, facts have come to light indicating that there is strong reason to believe that Vantage failed to meet the basic RFP criteria of presenting a complete concession program at the time it submitted its proposal. We have oral communications and digital evidence that Vantage is actively attempting to poach PLTR-SSP's team members who were identified in PLTR-SSP's proposal and with whom PLTR-SSP has exclusive contractual business relations. We suspect we are not the only proponent to have experienced this. The poaching is and was occurring after Vantage submitted its proposal and after Vantage was selected for exclusive negotiations with the City. Not only is this unfair to all other offerors; it may rise to the level of tortious interference with PLTR-SSP's business expectancies and relationships, breaches of confidentiality, and other violations. If the City is in any way encouraging or supporting this behavior by its selected offeror by allowing Vantage to alter and improve its proposal or otherwise before an official award, then the City may also be exposing itself to risk.

The following discussion contains a comparison of the Vantage proposal as disclosed in our proposal and some of the information provided in our testimony is information that may not be known to the public but is generally known by other industry experts and seasoned airport executives versed in the areas of concessions management and operations. The discussion and comparison will be substantially based upon the evaluation criteria set forth by the City in Section 29 of the RFP to be used to evaluate the proposals.

Experience

PLTR-SSP have a combined experience running airports and retail units at 114 airports in North America alone. The companies collectively operate 1,300 units and have worked in the North American aviation space for a combined 121 years. Both companies are part of international, globally held companies with operations in a combined 74 countries. PLTR-SSP are recognized as the leading operators who have won the industry's most prestigious awards and directly manage thousands of employees. PLTR-SSP has seven owners on its offeror team and five of those owners are local to Kansas City. Our local team owners include:

- Constance McCloskey Terry, Devotions Boutique, LLC
- Elliott Threatt, E&K Retail, Inc.
- Colin Shipley-Gates, Hulk Solutions, LLC
- Calvin Vick, KC Airport Concessions, LLC
- Marisa Wiruhayarn, M-Power Enterprises, LLC

Only one of the three owners on the Vantage offeror team is from Kansas City.

An examination of Vantage’s stated experience should take place. How many of the airport contracts Vantage says it has, are current contracts or even recent contracts? How did Vantage score higher on the Experience & Qualifications Request for Proposal criteria when it clearly does not have more experience? How many of Vantage’s contracts are to operate restaurants and retail or even serve as a developer to restaurant and retail operators—or is it really another type of aviation service? Has Vantage, including its partners, been terminated for consistently failing to perform at any airport? And, has Vantage delivered in its promises in current contracts where it is tasked with implementing new programs?

The RFP requested offerors to provide references. Were Vantage’s references contacted? PLTR-SSP’s references were not contacted. How thorough was the evaluation if all offerors’ references were not contacted?

KCI staff have indicated that they have been negotiating for weeks with Vantage. What have they been negotiating? Brands? Financial Offer? Something else?

Rent

Vantage has presented a “Developer” for fee model. By nature, the “Developer” for fee model relies on a 3rd party middleman, which is a proven inefficient operation in the airport concessions industry. In this case Vantage’s developer model will generate \$35 million less in revenues to KCI and its stakeholders compared to the proven industry model offered by PLTR-SSP. Not only will KCI lose under the Vantage model, but the Vantage ACDBE subtenants will pay more than \$53 million in unnecessary fees to Vantage.

Only one entity benefits from this model: Vantage as the Developer

	Vantage	PLTR-SSP	PLTR-SSP Improvement vs Developer
MAG Description	\$1.75 per enplanement	85% of Prior Year Rent Paid	Many factors drive growth
Total MAG: 15 Years*	\$166,449,138	\$202,222,932	\$35,773,794
KCI Rent Income: 15 Years**	\$227,593,486	\$264,448,047	\$36,854,560
Pricing	Street + 15%	Street + 10%	5% points
Developer Overrides on Subtenants	\$53,643,820	\$0	(\$53,643,820)

*Vantage MAG is based on Year 1 enplanements of 5.5 million growing 2% annually

*PLTR-SSP MAG is based on prior year actual rent paid (Y2 MAG is 85% of \$10.6M rent paid in Y1 or \$9.2M) and escalated based on sales growth from several factors in addition to traffic increase

** KCI Rent Income from Vantage is calculated at 80% of Percentage Rent up to \$16 million and 84% above \$16 million, assuming 14% Rent charged to subtenants (Vantage is not limited in what it can charge the subtenants however so the actual rate is not determined yet)

** KCI Rent Income from the PLTR-SSP model is based on 13.2% average rent paid directly to KCI

The Vantage contract before the City Council does not limit the rent Vantage will charge its subtenants, including ACDBEs. Assuming a 14% rent, Vantage would make over \$53 million in overrides from local businesses and ACDBE's. **PLTR-SSP has zero rent override on subtenants.**

The actual rent charge to the subtenants by Vantage is unknown and undisclosed. The Vantage contract before the City Council for approval does not restrict the rent it can charge its subtenants.

Vantage will charge subtenants higher rent than what is paid to KCI. Vantage will keep 20% of the rent up to \$16 million in collected rent. A simple example using 14% rent charge:

- Concessionaires generate \$100 million in sales and pay rent of 14% ($\$100 \text{ million} \times 14\% = \14 million in rent paid by concessionaires).
- Vantage keeps 20% of that amount ($\$14 \text{ million} \times 20\% = \2.8 million).
- KCI gets paid \$11.2 million in rent ($\$14 \text{ million} - \2.8 million retained by Vantage).
- KCI is receiving Percentage Rent of only 11.2% ($\$11.2 \text{ million} / \100 million in sales) but the ACDBE concessionaires are paying 14% Rent. This is a \$2.8 million override to Vantage at the expense of the ACDBE tenants. The ACDBE's could simply pay KCI \$11.2 million directly and save a significant amount of money for their business without 3rd party (Vantage) taking such a large override

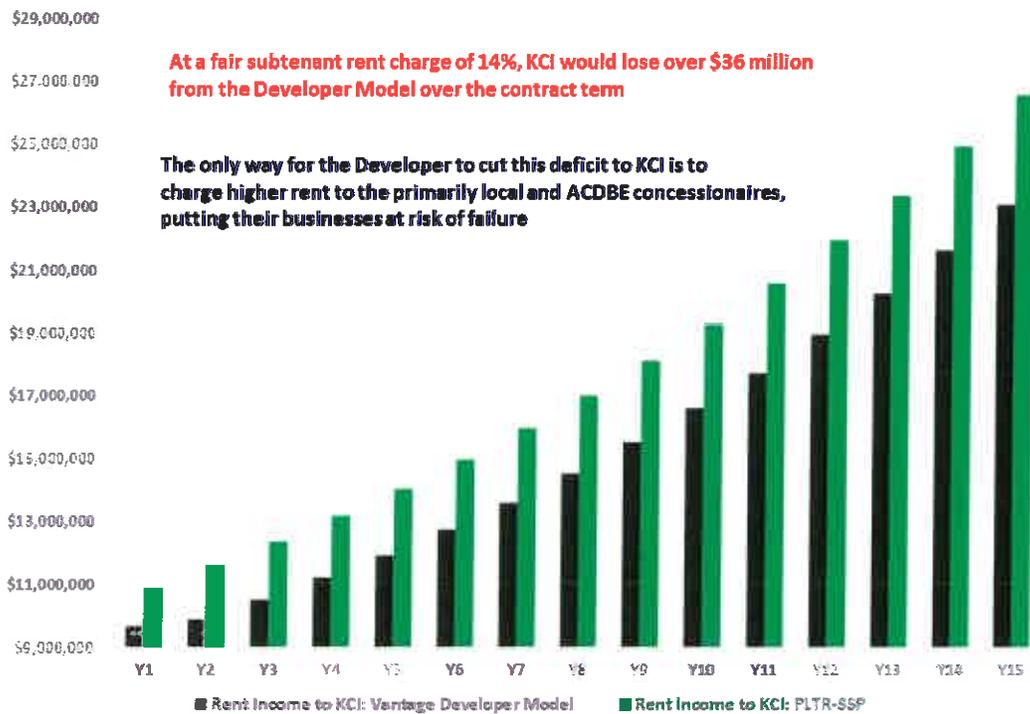
PLTR-SSP provides a much more straightforward and fair rent formula: Percentage rent by sales category (Food, Retail, Alcohol) averaging 13.2% paid directly to KCI. With the same \$100 million in Sales, KCI would receive \$13.2 million compared to \$11.2 million from Vantage.

So in this example for just 1 year, KCI loses \$2.0 million in rent ($\13.2 million that PLTR-SSP would have paid - $\$11.2 \text{ million}$ that the Vantage model pays). Over 15 years, this amounts to over \$36 million in total rent lost that KCI would have had from PLTR-SSP

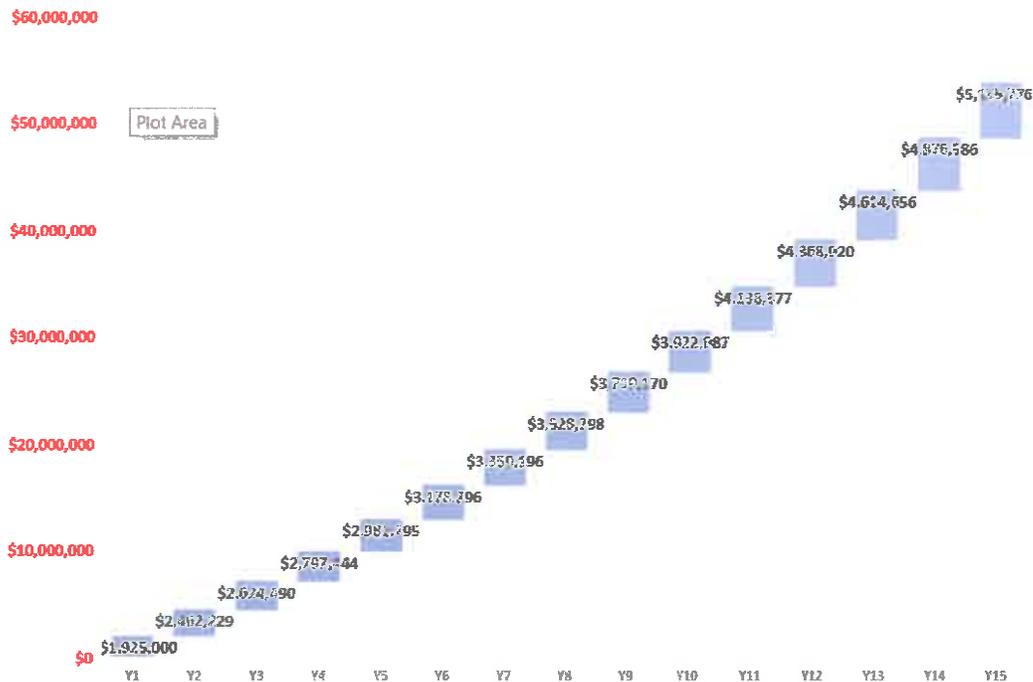
Vantage will keep for themselves 20% of every dollar of rent paid by the subtenants, which amounts to \$53 million over the 15-year term. In comparison PLTR-SSP would keep 0%. The PLTR-SSP model would pay KCI \$36 million more in rent.

This is further illustrated in the charts below.

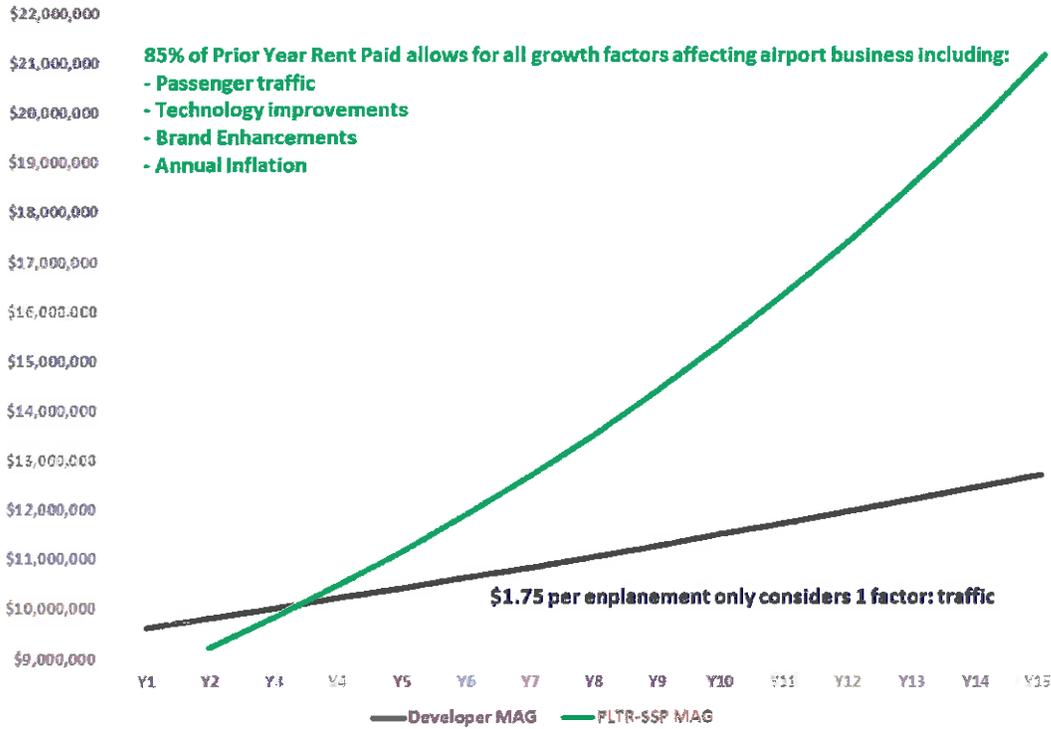
PLTR-SSP Model Pays More Rent to KCI



Developer Stands to Make Over \$60 Million in Rent Overrides on Subtenants
 Developer Income Based on 14% Subtenant Rent



The Developer Model Guaranteed Rent Pales in Comparison to PLTR-SSP



	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12	Year 13	Year 14	Year 15
Enplanements	5,500,000	5,610,000	5,722,000	5,836,944	5,953,977	6,072,444	6,193,889	6,317,771	6,444,127	6,573,009	6,704,469	6,838,959	6,976,930	7,118,836	7,265,139
Revenue Per Enplanement	\$15.00	\$15.68	\$16.36	\$17.12	\$17.88	\$18.69	\$19.53	\$20.41	\$21.33	\$22.29	\$23.29	\$24.34	\$25.44	\$26.58	\$27.76
Concession Sales	\$10,850,000	\$9,886,750	\$12,121,100	\$9,908,706	\$10,402,890	\$12,512,100	\$10,990,904	\$10,774,222	\$13,462,946	\$14,821,794	\$15,817,837	\$17,447,457	\$17,458,904	\$19,132,701	\$20,697,188
Assumed Rent Charge to Stores	14.0%	14.0%	14.2%	14.2%	14.0%	14.2%	14.0%	14.0%	14.0%	14.0%	14.0%	14.0%	14.2%	14.2%	14.2%
Rent Comparison															
Developer Model															
Concessionaires' Rent Paid	\$11,830,000	\$12,812,145	\$13,122,408	\$13,897,219	\$14,512,977	\$15,851,478	\$16,929,727	\$18,054,909	\$19,264,812	\$20,513,046	\$21,804,835	\$23,305,749	\$24,841,599	\$26,476,659	\$28,223,609
Rent Income to KO: Vantage															
Developer Model	\$5,626,000	\$5,248,916	\$10,427,930	\$11,189,775	\$13,827,181	\$12,713,163	\$13,955,910	\$14,926,190	\$16,593,740	\$16,990,986	\$17,729,478	\$18,996,619	\$20,216,842	\$21,620,074	\$23,067,627
Developer's Fair	\$1,925,000	\$2,462,228	\$2,624,490	\$2,787,444	\$2,981,795	\$3,178,296	\$3,260,186	\$3,328,798	\$3,739,170	\$3,922,087	\$4,138,377	\$4,368,820	\$4,614,656	\$4,876,196	\$5,153,778
PLTR-SSP Model															
Rent Income to KO: PLTR-SSP	\$5,850,000	\$11,576,186	\$12,339,750	\$13,132,212	\$14,000,943	\$14,942,791	\$15,921,521	\$16,977,145	\$18,095,939	\$19,265,461	\$20,599,571	\$22,104,466	\$23,898,008	\$24,937,541	\$26,556,715
KO Cash Loss from Developer Model	(\$1,235,490)	(\$1,727,288)	(\$1,811,108)	(\$1,962,437)	(\$2,091,762)	(\$2,229,608)	(\$2,338,391)	(\$2,459,954)	(\$2,570,296)	(\$2,697,593)	(\$2,833,093)	(\$2,976,617)	(\$3,131,666)	(\$3,295,867)	(\$3,470,488)
Annual Guarantee Comparison															
Developer Model															
Enplanements	5,500,000	5,610,000	5,722,000	5,836,944	5,953,977	6,072,444	6,193,889	6,317,771	6,444,127	6,573,009	6,704,469	6,838,959	6,976,930	7,118,836	7,265,139
MAG \$/sq	\$1.75	\$1.75	\$1.75	\$1.75	\$1.75	\$1.75	\$1.75	\$1.75	\$1.75	\$1.75	\$1.75	\$1.75	\$1.75	\$1.75	\$1.75
Developer MAG	\$9,625,000	\$9,817,500	\$10,013,500	\$10,214,127	\$10,419,419	\$10,628,778	\$10,842,313	\$11,060,100	\$11,272,222	\$11,488,776	\$11,709,821	\$11,935,478	\$12,165,757	\$12,400,664	\$12,640,219
PLTR-SSP Model															
PLTR-SSP MAG	\$5,235,616	\$6,839,767	\$10,492,207	\$11,178,380	\$11,864,100	\$12,701,978	\$13,628,899	\$14,648,976	\$15,755,948	\$16,955,192	\$17,475,636	\$18,629,279	\$19,844,817	\$21,122,150	\$22,422,592
Developer MAG Shortage	\$4,389,384	\$2,977,733	(\$2,478,707)	(\$1,936,292)	(\$1,444,681)	(\$1,166,667)	(\$986,524)	(\$811,276)	(\$692,828)	(\$583,676)	(\$493,845)	(\$407,181)	(\$324,869)	(\$245,713)	(\$171,627)

Pricing

The RFP asks the offerors to define the “Pricing Rule” the offeror intends to implement. Pricing is what will be charged for the products sold at the airport. Vantage is recommending street pricing plus 15%. PLTR-SSP proposed street pricing plus 10%.

What does this mean to Kansas City passengers? It is common for a concessionaire to raise prices slightly above street pricing because the operations cost is greater and more difficult at the airport than other locations throughout the city. Vantage will mark up pricing 5% points more than PLTR-SSP which passes a substantially higher burden on passengers to enhance the Vantage’s bottom line and its apparent offer to the City. The developer model (the Vantage model) is not concerned about the consumer, how much the consumer will pay for a BBQ sandwich or how the overpriced items will be perceived by local travelers. A developer is just the middleman, and its proposed inflated consumer price mark-up will be used to off-set its financial offer.

Does Kansas City want their passengers to pay this inflated mark-up for products? Will that mark-up lead to less sales in the long run as passengers choose not to shop or eat at those prices?

Financial Capacity

In the presentation on September 16th, Vantage mentioned that they are not the operators, and they just create the environment for concessionaires to be successful.

The RFP requested each offeror to provide evidence to verify its ability to obtain the necessary capital, and that it has sufficient reserves to pay necessary salaries and the ability to provide working capital prior to the date of Beneficial Occupancy. Vantage is not the operator in its model, and therefore, has Vantage or the city vetted all 11 subtenants to determine whether they have the required capital and ability to pay salaries? If so, why is the \$20 million fund necessary? Who are the subtenants that cannot qualify for third-party financing? Vantage has stated that it will establish a \$20 million fund for ACDBE’s to borrow funds for the build out of their facilities. What are the loan terms? Is this loan fund a profit center for Vantage?

Vantage also says it will spend \$65 million on the project. How much of the \$65 million is Vantage contributing or is this really being contributed by the other partners and subtenants?

PLTR-SSP’s initial investment of \$ 48 million is all equity provided by PLTR and SSP. Borrowing money in today’s environment comes with tremendous risk. Again, one must ask whether Vantage and KCI staff have examined this?

Wages

Vantage has stated it is committing to \$15.00 per hour starting minimum wage plus benefits for all associates. Vantage does not operate any retail or restaurant facilities, nor will it be administrating payroll. Is Vantage mandating this from their subtenants without understanding the realities of pay in today's restaurant industry? This commitment does not seem to make senses or appear to be legally compliant; the relationship with labor is between the subtenant employers and their employees. A \$15.00 per hour wage demonstrates the Vantage's inexperience with operating restaurants. In our current operations at many airports throughout the United States we employ line cooks who in some cases make in excess of \$20 per hour, while bartenders and waiters, that are tipped may make less than \$15 an hour and in other cases substantially more. These rates are typically laid out within a collective bargaining agreement.

Further, the majority of PLTR-SSP operations throughout the country are under Collective Bargaining Agreements with unions. This is a standard practice for large concessionaires in our industry. While Vantage makes public statement regarding minimum wages, there is nothing in the Vantage contract before the City Council for approval, nor is there any CBA, to protect these wages or the actual employees. Lastly, PLTR-SSP has a signed labor peace agreement to ensure a smooth transition while Vantage has stated on September 16, 2021, that it was "working on it", showing clearly its lack of readiness to take this project on and its failure to recognize the role that labor plays in a successful concessions program.

ACDBE

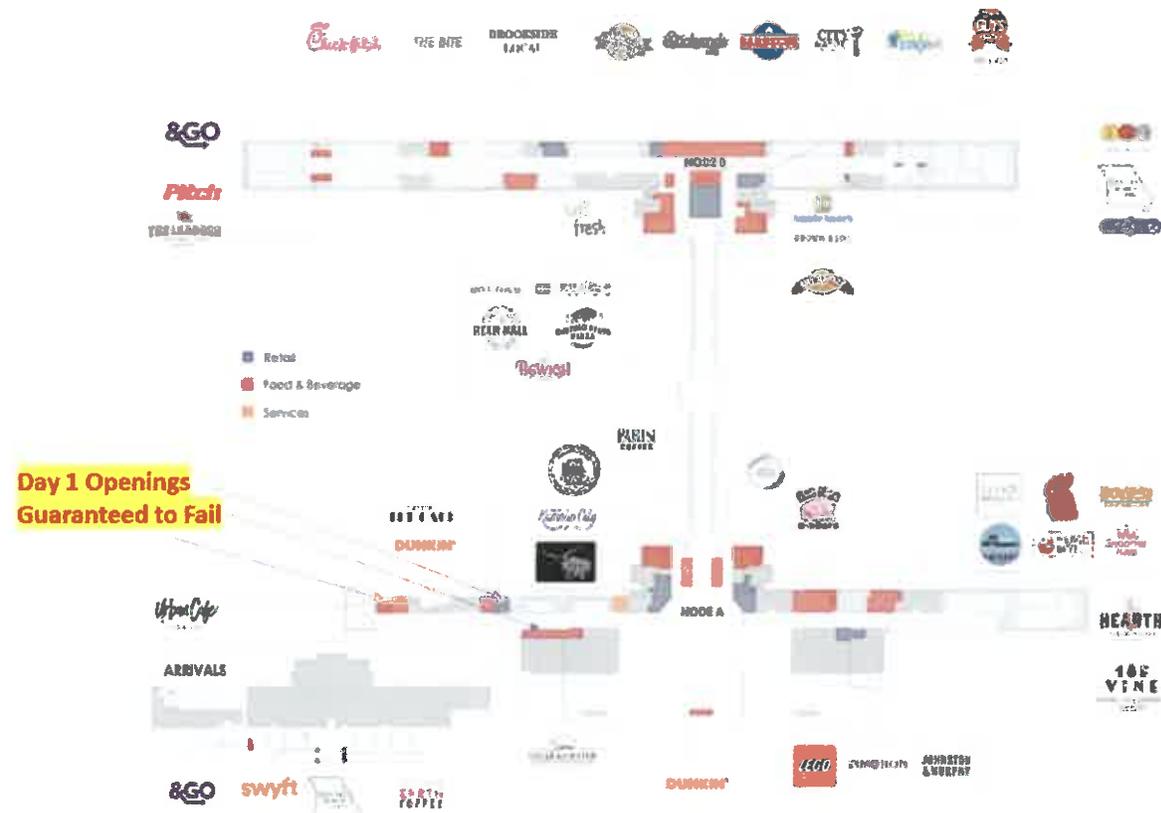
Taking into account that the RFP had a 16% Airport Concession Disadvantaged Business Enterprise goal and the section was a pass or fail, we are confident that our submittal met and exceeded the requirements and that our ACDBE response met the tenets of the ACDBE program. Our program builds lasting relationships with our ACDBE partners across the country as we ensure our team is meeting contractual obligations and building strong, long-term relationships. We have woven inclusion and opportunity into our corporate culture. Our goals mirror those of the U.S. Department of Transportation through our focus on: 1. Removing barriers for ACDBE participation by casting a wide net, 2. Applying inclusive practices, and 3. Providing flexible options for ACDBE participation.

In response to the proposed 59% ACDBE participation in the Vantage proposal, Vantage referenced that Chicago Midway is currently achieving 56% ACDBE participation. To clarify this statement, as noted earlier, Vantage is merely a service provider in Chicago. It is SSP and its retail partner that are responsible for all aspects of the ACDBE program.

A critical component of mentoring ACDBE's is helping with all aspects of design, development, construction, capitalizing, organizing, sourcing procurement, assisting with hiring, software and register systems, inventory, profit and losses. The Vantage presentation was extremely cavalier about these areas. Without the substantial resources PLTR-SSP brings to the table, these critical areas would be left to chance.

This challenge is amplified when you look at the brand airport map that was presented by Vantage. For example, Vantage emphasized Justin Clark's Urban Café in its presentation. In reality, the brand map shown by Vantage locates Urban Café in Concourse A South that does not have any planned passengers. This is location does not provide a base for success for Urban Café. Justin would be borrowing and spending millions to build a restaurant in an area of the airport that does not have any planned passengers.

Historically, ACDBE subtenants have a higher risk to fail because they are independent businesses and they are often placed in under performing parts of the airport. Given the current Vantage proposal, we see that several of these businesses are in fact placed in less profitable or underperforming locations which could in fact destroy a small local hometown business.



We have run an extensive database search and cannot locate any of the lead ACDBE partners presented with an ACDBE certification from the city of Kansas City, although they were presented as ACDBE partners. We have found that only Jason Parson is a local entrepreneur and that the others are from out of state; Charles Hopkins is based in Maryland and OHM Concessions led by Milan Patel is based in Saint Louis.

PLTR-SSP work with joint venture partners to ensure they are supported through every aspect of the business to ensure success. We believe that as partners success is a reflection of our company. We manage over 200 joint venture, subtenants, design and construction partners. We manage success through

financial assistance, mentorship, communication and engagement. PLTR-SSP provides outside lending sources for our partners, and we have negotiated very favorable terms for our partners. Additionally, we have established a relationship with Leed Bank in Kansas City to be a lender to our partners on this project. We believe that partners having access to capital that is independent to our company keeps the financials undiluted and allows the partner to maintain their own independence in business matters, including the fact that we do not charge a management fee to our partners. PLTR-SSP has a proven record with mentoring and growing our partners in nearly every market that we do business; our work in this area has allowed many new small businesses across the country to grow in the airport food and beverage space with many notable businesses that have exponentially grown with and out of PLTR-SSP. Weekly partner calls are also conducted where all partners can join and engage directly with our executive teams and other leaders in the aviation industry. This provides an open dialog with leadership that contributes to everyone's success.

Our submittal presented all local Kansas City, MO certified ACDBE participants. We pride our package with a rich diversity of partners representing all areas of the City. Each of our partners brings a strong foundation and knowledge of both restaurant and business experience including airport concessions experience. We are very proud of the knowledge and strength our team provides. We have a diversity pledge that shows our passion for building a diverse workforce and portfolio of partners featuring ACDBE partnerships and dozens of ACDBE subtenants. Our growing network of ACDBE partnerships accounted for over \$250 million in airport concession sales during our most recent fiscal year.

Sense of Place

PLTR-SSP has been in the local market for three years developing relationships and operating partnerships with Kansas City's most iconic, popular, and enduring brands. The latter was tested by an on-going pandemic through which all our partners have endured and currently flourish once again. PLTR-SSP approached the development of its concept plan from 360 degrees to ensure it accomplished the following:

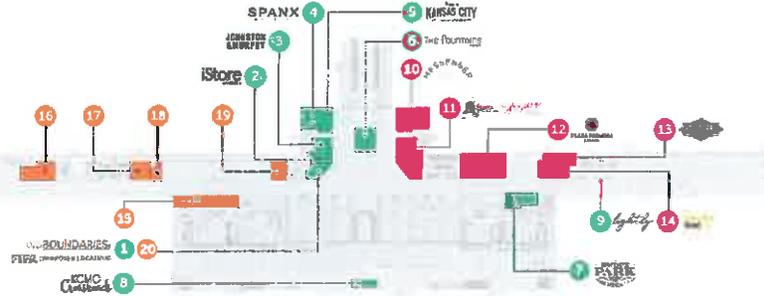
- **Ensure representation from each of the city's districts.** The PLTR-SSP program ensures anyone from Kansas City, travelling through the airport, will find something familiar, something that they share pride in seeing, and something they can boast about and recommend to their friends that travel.
- **Bring a Taste of Place to KCI.** The teams stated mission, "to bring cool, authentic restaurants (to Kansas City's airport) that reflect a taste of place," is not only center stage in its proposal, but we'd proudly go so far as to say it 'epitomizes' the Kansas City food scene and brings it to KCI. To name a few:
 - **Minsky's Pizza** - 45 years of continuous operations, over 15 locations in Kansas City currently operating or being developed, and it has received every possible local award imagined.

- Jasper's - 67 years family owned and operated and celebrated as one of America's most iconic Italian restaurants patronized by athletes, broadcasters, politicians, and Presidents.
 - Justin Clark (Urban Café, Urban Bird) - a local chef phenom who fuses flavors from the south with his mid-west roots and shares a vision with us of showcasing his cuisine and making Troost Avenue shine in the airport.
 - Summit Restaurant Group - Featuring the iconic Summit Grill, 3rd Street Social, Boru Asian, and South of Summit Mexican. They are a culinary force in the city and all their restaurants are continually found in the Top Ten of the city in publications and website alike. Their experience and success cannot be overlooked as it speaks loudly to the contemporary tastes of the city.
 - Kansas City Chiefs - After 58 years in KC, countless hall of famers, three AFL championships, two Superbowl wins (and counting), they have chosen PLTR-SSP as its exclusive partner to develop a state-of-the-art food and football experience at KCI. PLTR-SSP would argue that the presence of the Kansas City Chiefs in KCI is a must (and long overdue). Our partners at the Chiefs have been patient and selective as always to ensure they chose the most accomplished and compatible player in the airport foodservice industry to actualize their vision for KCI. This is the jewel in the crown of the PLTR-SSP proposal and we accept this with both pride and a great sense of responsibility.
- **Establish the correct mix of local and national power brands** that have the bandwidth to partner and operate in a high volume, critical, and visible environment. Being successful from day one is the goal and expectation. The systems and logistics that support airport operations are the bedrock of success. Those systems are as unique and proprietary as the brands and menus themselves. It is the fusion of PLTR-SSP's and our brands' respective experience and expertise that ensures success in an airport venue.
 - **The correct placement of brands within the concourses (see below maps).** Ensuring the correct mix of fast casual, QSR, and sit-down dining is critical to each zone of the airport and coffee must be prolific and center stage throughout. PLTR-SSP's program considered that goal and ensures no passenger will be left wanting. Speed of service, food options, and a variety of price points will be available throughout the airport to all.

LOCATION PLAN

DEPARTURES LEVEL - CONCOURSE A

INITIAL BUILD



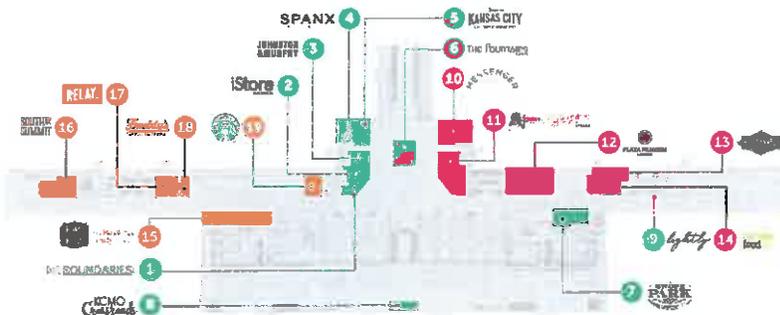
- | RETAIL | | | FOOD & BEVERAGE | | | CREATIVE SPACE | | |
|--|---|---|--|---|---|---|---|-------------------------------------|
| 1 NO BOUNDARIES
SPACE 000-000
1,800 SF | 4 SPANX
SPACE 000-008-009
8,000 SF | 7 SWOOP PARK SUPPLY CO.
SPACE 410-1-0
1,000 SF | 10 MISSENGER COFFEE CO.
SPACE 000-009-011
1,845 SF | 13 BOULEVARD BREWING CO.
SPACE 410-070
1,247 SF | 16 SOUTH OF SUMMIT
SPACE 410-070
2,752 SF | 19 TOM'S TOWN DISTILLING CO.
SPACE 410-070
2,752 SF | 18 RELAY
SPACE 410-070
2,752 SF | 20 PFA
SPACE 410-070
2,752 SF |
| 2 ISTORE EXPRESS
SPACE 000-001
400 SF | 5 MADE IN KANSAS CITY
SPACE 000-001-002
1,000 SF | 8 WCHO CROSSROADS
SPACE 000-001
800 SF | 11 SHANK & JAEGER'S
SPACE 000-001-002
1,000 SF | 14 CAMDEN FOOD CO.
SPACE 000-001-002
1,000 SF | 17 LA BOUTIQUE DUTY FREE
SPACE 000-001-002
1,000 SF | 19 TOM'S TOWN DISTILLING CO.
SPACE 000-001-002
1,000 SF | 20 PFA
SPACE 000-001-002
1,000 SF | |
| 3 JOHNSTON & MURPHY
SPACE 000-002
1,400 SF | 6 THE FOUNTAINS MARKET
SPACE 000-002-003
2,000 SF | 9 LIGHTLY AUTOMATED RETAIL
SPACE 000-003
1,000 SF | 12 PLAZA PREMIUM LOUNGE
SPACE 000-003
1,000 SF | | | | | |

11-1

LOCATION PLAN

DEPARTURES LEVEL - CONCOURSE A

FUTURE BUILD



- | RETAIL | | | FOOD & BEVERAGE | | | FUTURE PHASES | | |
|--|---|---|--|---|---|--|---|---|
| 1 NO BOUNDARIES (PFA)
SPACE 000-000
1,800 SF | 4 SPANX
SPACE 000-008-009
8,000 SF | 7 SWOOP PARK SUPPLY CO.
SPACE 410-1-0
1,000 SF | 10 MISSENGER COFFEE CO.
SPACE 000-009-011
1,845 SF | 13 BOULEVARD BREWING CO.
SPACE 410-070
1,247 SF | 16 TOM'S TOWN DISTILLING CO.
SPACE 410-070
2,752 SF | 17 RELAY
SPACE 410-070
2,752 SF | 18 FREDDY'S
SPACE 410-070-001
1,000 SF | 19 STARBUCKS
SPACE 410-070-001
1,000 SF |
| 2 ISTORE EXPRESS
SPACE 000-001
400 SF | 5 MADE IN KANSAS CITY
SPACE 000-001-002
1,000 SF | 8 WCHO CROSSROADS
SPACE 000-001
800 SF | 11 SHANK & JAEGER'S
SPACE 000-001-002
1,000 SF | 14 CAMDEN FOOD CO.
SPACE 000-001-002
1,000 SF | 17 LA BOUTIQUE DUTY FREE
SPACE 000-001-002
1,000 SF | 18 FREDDY'S
SPACE 410-070-001
1,000 SF | 19 STARBUCKS
SPACE 410-070-001
1,000 SF | |
| 3 JOHNSTON & MURPHY
SPACE 000-002
1,400 SF | 6 THE FOUNTAINS MARKET
SPACE 000-002-003
2,000 SF | 9 LIGHTLY AUTOMATED RETAIL
SPACE 000-003
1,000 SF | 12 PLAZA PREMIUM LOUNGE
SPACE 000-003
1,000 SF | | 16 SOUTH OF SUMMIT
SPACE 410-070
2,752 SF | | | |

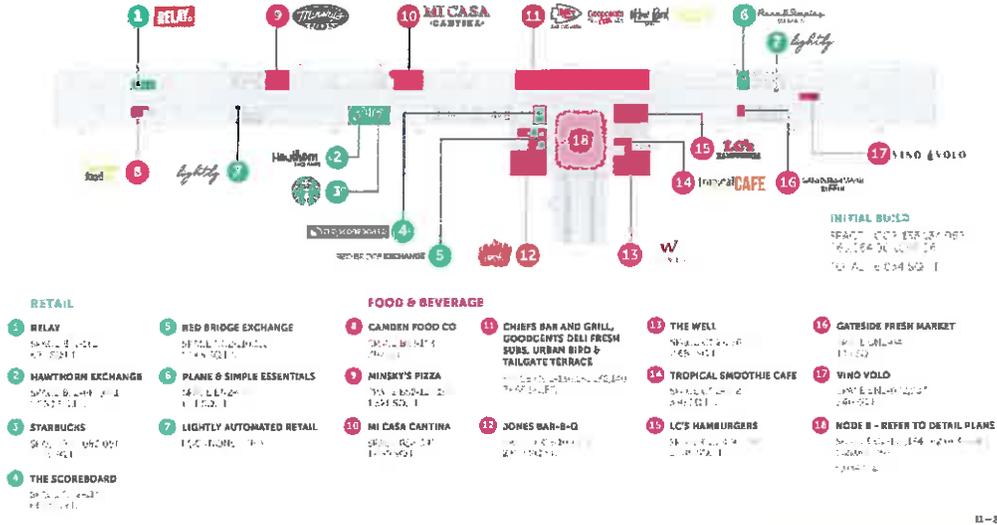
11-2



LOCATION PLAN

DEPARTURES LEVEL - CONCOURSE B

INITIAL BUILD



New airport terminals happen once in a lifetime, City Council members have one opportunity to get this program right for the next 15-20 years. Now is not the time to settle for an underwhelming proposal full of unanswered questions and risk; now is the time to get this right and bring these iconic Kansas City brands to the airport and to truly represent all parts of Kansas City.

Sincerely,

Pat Murray

PLTR-SSP@KCI, LLC

- cc: Councilwoman Loar (Teresa.Loar@kcmo.org)
- Councilman Bunch (Eric.Bunch@kcmo.org)
- Councilwoman Shields (Katheryn.Shields@kcmo.org)
- Councilman O'Neill (Kevin.ONeill@kcmo.org)
- Councilwoman Robinson (Melissa.Robinson@kcmo.org)
- Marilyn Sanders (City Clerk) (Marilyn.Sanders@kcmo.org)
- Pete Fullerton (Pete.Fullerton@kcmo.org)

PLTR—SSP@KCI, LLC

Paradies Lagardere and SSP America

2849 Paces Ferry Road | Overlook I, Suite 400 | Atlanta, GA 30339

September 24, 2021

The Honorable Quinton Lucas

Mayor of Kansas City, Missouri
414 East 12th Street,
29th Floor, City Hall
Kansas City, Missouri 65106
Quinton.Lucas@kcmo.org

**SENT VIA ELECTRONIC MAIL &
VIA HAND DELIVERY**

Re: Ordinance No. 210827; Public Testimony for Council Committee

Dear Mayor Lucas:

Members of the PLTR-SSP@KCI, LLC (“PLTR-SSP”) team attended the Transportation, Infrastructure, and Operations Committee public meeting on September 22, 2021, to observe the proceedings and even comment on Kansas City International Airport’s decision to award the KCI Concession Agreement to Vantage Airport Group (US) Ltd (“Vantage”). While we weren’t permitted to comment, the public meeting did spark serious concerns about the procurement process and its fairness, the validity of Vantage’s proposal claims, the quality of its proposal, and the fact that Vantage is being allowed to submit and re-submit an “evolving proposal” where its brands, subtenants, partners, and financial offers are always changing.

In addition to the concerns we previously outlined in our September 21, 2021 correspondence, our additional concerns are listed below:

Fairness and Violation of RFP Section 34 – Communicating with Airport Staff and City Officials

Throughout the RFP process, it was very clear to us based on the RFP and industry standard practice that any contact with a city official (even the city attorney to raise legal concerns), except for participation in a public meeting or formal Offeror meeting, is prohibited and may result in the disqualification of the proposer at the city’s sole discretion. Section 34.2 of the RFP expressly provides “no Offeror or representative thereof shall have any ex parte communications regarding this Solicitation...” This is a clear and express prohibition. Section 34.3 expressly provides that “Any Offeror that engages in communications determined to be prohibited or improper may be disqualified at the sole discretion of the City.”

Further, Assistant Director of Properties and Commercial Development, Pete Fullerton, reiterated this prohibition in his August 11, 2021, correspondence to offerors when he announced that the Airport was negotiating with a selected Offeror (Vantage). In addition, at the TIO public meeting on September 22, 2021, Councilwoman Katheryn Shields said that she had spoken with Vantage regarding labor agreements. We also understand that councilmembers may be negotiating directly with Vantage to

include specific brands into the agreement prior to council approval. And, if Councilmembers discussed the removal of Chick Fil A with Vantage, that would also be a clear procurement violation.

The premise of Section 34 of the RFP is to promote a fair and competitive solicitation process. An unequal application of this rule or varying degrees of direction to offerors at various times is a very unfair process. It appears this has been the case given that the selected offeror has been free to communicate with city officials without advising the other offerors that the city was allowing such communications without apparent repercussions. ***Has Vantage been disqualified for its communications with city council members?***

Comparison Matrix, and a Request to be Heard

It was made clear during the public meeting that all voting city officials were only presented with the details of Vantage's proposal – one that has been allowed to be changed after its submission and after input and questions from various city stakeholders. The details relating to the other offerors' proposals are unknown to these city officials. Rightfully and prudently, a comparison matrix was requested for review prior to any formal award. This matrix was requested last week during a city council Business Session. Why would the staff not have a matrix readily available? Did the staff not prepare a matrix for the selection committee? Did the staff not prepare a matrix as the selection committee shifted through the 5 proposals to rank the proposals and determine the best proposal? Any current matrix provided should distinguish between the Vantage proposal as originally submitted and the modifications that have been made to improve its proposal in comparison to the other offerors. Either way, we are concerned that the construction of this matrix will not tell the real story of each offeror and its proposal, ***Therefore, we respectfully request a copy of this matrix in advance and an opportunity to speak to the city officials prior to award.*** This way, we can take 20 minutes or so to present the merits of our proposal – with a keen eye on a real “apples to apples” comparison of the rent to be paid to KCI, who our brands are, where the brands will be situated in the Airport, who will operate each brand, and who our ACDBE partners are. This will also allow city officials to ask us questions, which we welcome. We can also tell you the real story at Chicago Midway. If the City is concerned about maintaining proprietary information of other offerors, the City can ask the offerors if they are willing to have the contents of their proposals disclosed and then disclose. Our team is certainly willing to disclose and authorizes the City to disclose the full contents of our proposal to the city council and to the public.

Reference Checks

The Director of Aviation, Patrick Klein, shared during the meeting that Southwest Airlines completed the reference and background check for Vantage. Why didn't a member of the KCI procurement team check references? Why were the references for the other offerors not checked? How can the experience of offerors be scored without checking the references of all offerors? Failure to check references of the other offeror is a red flag that they were not under any serious consideration. It is important to note that a diligent reference check would have revealed that Vantage inappropriately took credit for the Chicago Midway concession program, when in reality Vantage is only a service provider that reports to the true architects and owners of the program, SSP and its retail partner. Thorough reference checks would have also revealed that Vantage inappropriately took credit for Chicago Midways' 56% ACDBE

participation. That credit is not Vantage's to claim, it is SSP's and its retail partner's ACDBE partners that make up the 56%.

Labor

At the council committee meeting Vantage again stated they are still in negotiations for an agreement with UNITE Here. Vantage also stated that it would require its subtenants to enter into a collective bargaining agreement ("CBA"). However, the reality is that only 2 of Vantage's large subtenants (OHM and Marshall Retail Group) will be required to enter into a CBA because the other 12 of them will have fewer than 15 employees (and thus not required to enter into a CBA). ALL of the PLTR-SSP's employees will be unionized. As you know, we have an executed agreement with Unite Here.

Kansas City Chiefs

SSP has signed an exclusive agreement with the Kansas City Chiefs. The Chiefs are the most followed NFL team. The Chiefs are the most watched NFL Team. Clearly the Chiefs are the most powerful brand in Kansas City. It's difficult to understand why this was discounted in favor of what Vantage proposed.

Subleases

The Committee members posed questions to Vantage about its relationships with its subtenants. Developer contracts are notoriously rife with fees, and while larger subtenants may be familiar with these fees, smaller, local firms won't be familiar. Based on the experience of your selection committee, it is very likely that they have no reason to be familiar with these fees. Who on the selection committee has extensive experience with the developer model? These fees can make it very difficult, if not impossible, for a small operator to run a financially viable business. Has KCI seen and approved the subleases and terms sheets for all subtenants? For example, what share of the \$1.75 per enplanement MAG are the subtenants taking on and what blended % rent are they are committing to? What other terms are buried in these subleases?

No Reason for Immediate Rush

Why the rush to approve and enter this contract? We understand the clock is ticking to complete the airport on time, but you have time to be sure to get this most visible component to the traveler right. You have one chance to get this right, so take the time you have to be sure the city council gets this right. Our team and surely the other offerors can bring the City a completed concession package on time with a signed contract in December 2021 or January 2022. Take these next two to three months to get this right for the citizens of Kansas City. If done correctly the concessions will generate nearly \$2 billion in gross sales over 15 years or nearly \$65 million in sales tax revenues to the City. If done poorly, gross sales may not approach one-quarter billion in 15 years and that is a loss of nearly \$57 million to the City coffers, not to mention the lost revenues to the Aviation Department.

September 24, 2021

Thank you for your consideration of these important matters. We hope you will accommodate our request to speak at your next committee meeting and provide our public testimony as you did for Vantage and it's team members and at least one of the other offerors at the last committee meeting.

Sincerely,



Pat Murray
PLTR-SSP@KCI, LLC

cc: Councilwoman Loar (Teresa.Loar@kcmo.org)
Councilman Fowler (Dan.Fowler@kcmo.org)
Councilman Bunch (Eric.Bunch@kcmo.org)
Councilwoman Shields (Katheryn.Shields@kcmo.org)
Councilman O'Neill (Kevin.ONeill@kcmo.org)
Councilwoman Robinson (Melissa.Robinson@kcmo.org)
Councilwoman Hall (Heather.Hall@kcrmo.org)
Councilman Ellington (brandon.ellington@kcmo.org)
Councilman Barnes (lee.barnes@kcmo.org)
Councilwoman Parks-Shaw (ryana.parks-shaw@kcmo.org)
Councilwoman Bough (andrea.bough@kcmo.org)
Mayor Pro Tem McManus (kevin.mcmanus@kcmo.org)
Marilyn Sanders (City Clerk) (Marilyn.Sanders@kcmo.org)
Matthew Gigliotti (matthew.gigliotti@kcmo.org)
Pete Fullerton (Pete.Fullerton@kcmo.org)