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FINAL
CITY COUNCIL

CITY OF WICHITA
KANSAS

City Council Meeting
09:00 a.m. March 17, 2015

City Council Chambers
455 North Main

OPENING OF REGULAR MEETING

-- Call to Order

-- Invocation

-- Pledge of Allegiance

-- Approve the minutes of the regular meeting on March 3, 2015

AWARDS AND PROCLAMATIONS

-- Proclamations:

Democracy Day
Children of Incarcerated Parents Awareness Month

-- Award:

Special recognition for Mayor Brewer from AARP

I. PUBLIC AGENDA

NOTICE: No action will be taken relative to items on this agenda other than referral for information. Requests to appear will be placed on a "first-come, first-served" basis. This portion of the meeting is limited to thirty minutes and shall be subject to a limitation of five minutes for each presentation with no extension of time permitted. No speaker shall be allowed to appear more frequently than once every fourth meeting. Members of the public desiring to present matters to the Council on the public agenda must submit a request in writing to the office of the city clerk prior to twelve noon on the Tuesday preceding the council meeting. Matter pertaining to personnel, litigation and violations of laws and ordinances are excluded from the agenda. Rules of decorum as provided in this code will be observed.

1. Janice Bradley - Marijuana Sentencing Reform.

II. CONSENT AGENDAS ITEMS 1 THROUGH 24

NOTICE: Items listed under the "Consent Agendas" will be enacted by one motion with no separate discussion. If discussion on an item is desired, the item will be removed from the "Consent Agendas" and considered separately

*(The Council will be considering the City Council Consent Agenda as well as the Planning, Housing, and Airport Consent Agendas. Please see **"ATTACHMENT 1 – CONSENT AGENDA ITEMS"** for a listing of all Consent Agenda Items.)*

COUNCIL BUSINESS

III. UNFINISHED COUNCIL BUSINESS

None

IV. NEW COUNCIL BUSINESS

1. Public Hearing, Adoption of Union Station Project Area 1 Plan and Approval of Development Agreement. (District I)

   RECOMMENDED ACTION: 1) Close the public hearing; 2) approve first reading of the ordinance adopting the Union Station Project Area 1 Plan and authorizing execution of a development agreement; and 3) authorize the necessary signatures.

2. Public Hearing and Tax Exemption Request, Kolbeck Properties. (District VI)

   RECOMMENDED ACTION: Close the public hearing and approve first reading of the ordinance granting Kolbeck Properties an 81% tax exemption on the identified real property improvements for a five-year term, plus an 81% tax exemption for a second five-year term, subject to City Council review.

3. Ordinance to Create an Animal Control Advisory Board.

   RECOMMENDED ACTION: Place the ordinance on first reading creating an Animal Control Advisory Board.

4. Ordinance Amendments to Title 4 of the Code of the City of Wichita Pertaining to Regulation and Licensing of Alcoholic Liquor and Cereal Malt Beverages, and Repeal of Charter Ordinance No. 105 Regarding Fees for such Licenses.

   RECOMMENDED ACTION: Place the ordinances on first reading and authorize all necessary signatures.

COUNCIL BUSINESS SUBMITTED BY CITY AUTHORITIES

PLANNING AGENDA

NOTICE: Public hearing on planning items is conducted by the MAPC under provisions of State law. Adopted policy is that additional hearing on zoning applications will not be conducted by the City Council unless a statement alleging (1) unfair hearing before the MAPC, or (2) alleging new facts or evidence has been filed with the City Clerk by 5p.m. on the Wednesday preceding this meeting. The Council will determine from the written statement whether to return the matter to the MAPC for rehearing.

V. NON-CONSENT PLANNING AGENDA

None

HOUSING AGENDA

NOTICE: The City Council is meeting as the governing body of the Housing Authority for consideration and action on the items on this Agenda, pursuant to State law, HUD, and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion. **Carole Trapp Housing Member is also seated with the City Council.**

VI. NON-CONSENT HOUSING AGENDA

None

AIRPORT AGENDA

NOTICE: The City Council is meeting as the governing body of the Airport Authority for consideration and action on items on this Agenda, pursuant to State law and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

VII. NON-CONSENT AIRPORT AGENDA

None

COUNCIL AGENDA

VIII. COUNCIL MEMBER AGENDA

None

IX. COUNCIL MEMBER APPOINTMENTS

1. Board Appointments.

   RECOMMENDED ACTION: Approve the Appointments.

Adjournment

(ATTACHMENT 1 – CONSENT AGENDA ITEMS 1 THROUGH 24)

II. CITY COUNCIL CONSENT AGENDA ITEMS

1. Report of Board of Bids and Contracts dated March 9 and 16, 2015.

   RECOMMENDED ACTION: Receive and file report; approve the Contracts; and authorize necessary signatures.

2. Applications for Licenses to Retail Cereal Malt Beverages:

Renewal	2015	(Consumption on Premises)
Chen Lin	Bai Wei**	1845 South Rock Road

Renewal	2015	(Consumption off Premises)
Martha A Vasquez	Super Del Centro***	2425 South Hillside SU300
Roberta Lang	Whole Foods Market***	1423 North Webb Road SU101
Anita Haeri	Valero#1***	851 South Meridian
Anita Haeri	Valero #2***	1622 South West Street
Chaomin HSU	Nomar International Food***	2056 North Broadway

   **General/Restaurant (need 50% or more gross revenue from sale of food)
   ***Retailer (Grocery stores, convenience stores, etc.)

   RECOMMENDED ACTION: Approve licenses subject to Staff review and approval.

3. Preliminary Estimates:
   a. List of Preliminary Estimates.

   RECOMMENDED ACTION: Receive and file.

4. Design Services Agreements:
   a. Design Agreement for Paving Improvements along Dora and Everett Streets. (District IV)

   RECOMMENDED ACTION: Approve Agreements/Contracts; authorize the necessary signatures.

5. Change Orders:
   a. Change Order No. 4 for the Douglas Avenue Bus Facility Improvements. (Districts I and VI)
   b. Change Order No. 7 for 29th Street North, Ridge to Hoover. (Districts V and VI)
   c. Change Order No. 10 for K-96 and Greenwich Interchange. (District II)
   d. Change Order No. 18 for Central, 135th to 119th Streets West. (District V)
   e. Change Order No. 7 for 135th Street West, Maple to Central. (District V)

   RECOMMENDED ACTION: Approve the Change Orders and authorize the necessary signatures.

6. Property Acquisition:
   a. Acquisition of Utility Easement at 10314 East Windemere Court. (District II)

   RECOMMENDED ACTION: Approve budgets and Contracts; authorize necessary signatures.

7. Minutes of Advisory Boards/Commissions

   Joint Investment Committee, January 8, 2015
   Joint Metropolitan Area Building and Construction Department Advisory Board, January 26, 2015
   Wichita Airport Advisory Board, February 2, 2015
   Board of Building Code Standards and Appeals, February 2, 2015

   RECOMMENDED ACTION: Receive and file.

8. Contracts and Agreements for February 2015.

   RECOMMENDED ACTION: Receive and file.

9. Payment for Settlement of Claim.

   RECOMMENDED ACTION: Authorize payment of $26,000 as full settlement of all possible claims arising out of the events which are the subject of this claim and adopt the resolution.

10. 2015 Property Crimes and Person Crimes Seizure Fund Budget.

    RECOMMENDED ACTION: Approve the Property Crimes and Person Crimes seizure fund budget.

11. Funding for Improvements to the Intersection of Mt. Vernon and Oliver. (District III)

    RECOMMENDED ACTION: Approve the revised budget, including the use of project savings by waiving the applicable policy, adopt the amending resolution, place the amending ordinance on first reading, and authorize the necessary signatures.

12. Agreement with YMCA for Improvements at 3300 South Meridian. (District III)

    RECOMMENDED ACTION: Approve the agreement and easement, place the amending ordinance on first reading and adopt the resolution, and authorize the necessary signatures.

13. 17th Street Sanitary Sewer Design for Wichita State University Innovation Campus. (District I)

    RECOMMENDED ACTION: Ratify the City Manager's approval of the project, approve the direct hire of MKEC, approve the budget, adopt the resolution, approve the design agreement, and authorize the necessary signatures.

14. Improvements to the John Mack Bridge. (District III)

    RECOMMENDED ACTION: Ratify the City Manager's approval to directly hire TranSystems, adopt the resolution, approve the agreement, and authorize the necessary signatures.

15. City Buildings and Facilities - Americans with Disabilities Act Compliance.

    RECOMMENDED ACTION: Approve the revised budget, adopt the amending resolution, and authorize the necessary signatures.

16. Lease Termination – 2130 and 2220 East 21st Street. (District I)

    RECOMMENDED ACTION: Approve the termination of lease agreement and authorize all necessary signatures.

17. Sale of City-owned Building at 2130 East 21st Street. (District I)

    RECOMMENDED ACTION: Approve the real estate purchase agreement and authorize all necessary signatures.

18. Grant of Right-of-Way across City-Owned Property Located Between Hillside, 29th Street North, I-135 and 33rd Street North. (District I)

    RECOMMENDED ACTION: Approve the contract and authorize all necessary signatures.

19. Eminent Domain Appeal Settlement - Ronald H. Groves. (District II)

    RECOMMENDED ACTION: Authorize the settlement in the amount of $1,450,000.

20. Second Reading Ordinances: (First Read March 3, 2015)
    a. List of Second Reading Ordinances.

    RECOMMENDED ACTION: Adopt the Ordinances.

II. CONSENT PLANNING AGENDA ITEMS

NOTICE: Public hearing on planning items is conducted by the MAPC under provisions of State law. Adopted policy is that additional hearing on zoning applications will not be conducted by the City Council unless a statement alleging (1) unfair hearing before the MAPC, or (2) alleging new facts or evidence has been filed with the City Clerk by 5p.m. on the Wednesday preceding this meeting. The Council will determine from the written statement whether to return the matter to the MAPC for rehearing.

21. *ZON2014-00033 – Request for TF-3 Two-Family Residential Zoning on SF-5 Single-Family Residential Zoned Property Generally Located South of Central Avenue, East of Ridge Road, on the West Side of Wayside Lane's Intersection with Newell Street and Frazier Lane. (District V)

    RECOMMENDED ACTION: Concur with the findings of the MAPC and approve the zoning and place the ordinance on first reading (simple majority vote required).

II. CONSENT HOUSING AGENDA ITEMS

NOTICE: The City Council is meeting as the governing body of the Housing Authority for consideration and action on the items on this Agenda, pursuant to State law, HUD, and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

Carole Trapp, Housing Member is also seated with the City Council.

None

II. CONSENT AIRPORT AGENDA ITEMS

NOTICE: The City Council is meeting as the governing body of the Airport Authority for consideration and action on items on this Agenda, pursuant to State law and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

22. *Airline Use Agreements - Wichita Dwight D. Eisenhower National Airport.

    RECOMMENDED ACTION: Approve the agreements, and authorize the necessary signatures.

23. *Tenant Funded Improvements and Events.

    RECOMMENDED ACTION: Approve the project budget.

24. *MSE Branded Foods of Wichita, LLC. - Supplemental Agreement No.1 - Wichita Dwight D. Eisenhower National Airport.

    RECOMMENDED ACTION: Approve the supplemental agreement and authorize the necessary signatures.

City of Wichita
City Council Meeting
March 17, 2015

TO: Mayor and City Council

SUBJECT: Public Hearing, Adoption of Union Station Project Area 1 Plan and Approval of Development Agreement (District I)

INITIATED BY: Office of Urban Development

AGENDA: New Business

Recommendation: Close the public hearing and approve the first reading of the ordinance.

Background: On October 14, 2014, the City Council adopted an ordinance establishing the boundaries of the Union Station Redevelopment District. The district is southwest of Douglas and Washington; generally bounded on the north by Douglas Avenue, between the railroad tracks and Rock Island. In order to use Tax Increment Financing (TIF) to pay a portion of the costs of a commercial development project in that area, the City Council must adopt a TIF project plan, which provides detailed information on the proposed project and how TIF will be used. The plan also demonstrates how the projected increase in property tax revenue will pay for TIF eligible costs. The action taken by the City Council established 2014 as the base year, from which the increase in property tax revenues (the tax increment) will be measured.

On February 10, 2015, the City Council adopted a resolution stating that it is considering the adoption of the Union Station Project Area 1 Plan and directing the City Clerk to give notice that a public hearing would be held on the matter on March 17, 2015. With the adoption of the redevelopment project plan, the County Treasurer will be authorized and directed to begin capturing the tax increment and distributing the money to the City to pay project costs.

Analysis: K.S.A. 12-1770 *et seq.* sets forth the procedures and requirements for the establishment of a TIF district and the capture of TIF revenue. In order for the County Treasurer to be authorized to set aside the increment of increased property tax revenues collected in the district to pay for eligible redevelopment costs, the City must adopt a redevelopment project plan that describes the district and the projects being financed with the TIF, and also establishes the financial feasibility of the TIF to finance the public improvements. The statute also directs the City to prepare the redevelopment project plan "in consultation with the planning commission of the city." On February 5, 2015, the Wichita-Sedgwick County Metropolitan Area Planning Commission considered the Union Station Project Area 1 Plan and found that the Plan is consistent with the general comprehensive plan for development of the City.

PROJECT PLAN

The proposed Union Station Project Area 1 Plan proposes the historic renovation of the existing Grand Hotel, Rock Island Passenger Depot and Rock Island Baggage Depot buildings into a mixed-use development. The Project Area 1also includes plaza improvements to the area in front of the terminal building. The estimated overall project cost for Project Area 1 is $6,244,380. The developer, Union Station LLC, proposes that tax increment financing will be used to pay for eligible redevelopment project costs on a “pay-as-you-go” basis, for City land acquisition of a public access easement, site preparation, infrastructure improvements and parking.

USE OF TAX INCREMENT FINANCING

The development is proposed to be fully financed by the developer through traditional debt and equity financing. Tax increment financing will be used to reimburse the developer for TIF eligible expenses on a pay-as-you-go basis with tax increment revenue, as available. The TIF-funded improvements consist of the following:

- **Public Improvements** – $1,223,354
- **City Acquisition of Public Access Easement –** $ 432,580
- **Total TIF -** $1,655,934

The Financial Feasibility Study contained in the Union Station Project Area 1 Plan examines the County's assessed valuation of the property located within the Union Station Redevelopment District, with respect to the value of the property in the base year (2014) to the year in which planned redevelopment projects will be fully reflected in the County's database of property values. The following table summarizes the revenue side of the analysis:

	2014 Base Year	2020 Projected
Appraised Value	$593,970	$5,783,431
Assessed Value	$148,493	$1,445,858
Captured Value	$0	$1,297,365
2014 Mill Levy*	95.865	95.865
First Full Year Tax Increment	$0	$124,372
Total Tax Increment Collected (2034)	$0	$2,475,991

*Aggregate mill levy available for TIF excludes the 20-mill statewide education levy.

Development Agreement

The City will reimburse the Developer, on a pay-as-you-go basis for eligible TIF expenses. Expenses will be reimbursed as TIF revenue is collected and distributed to the City. The Developer agrees to grant the City a public access easement in which the Developer will contain public improvements and provide access to the public.

Financial Considerations: Since the TIF project will be financed on a pay-as-you-go basis, the City will not issue any debt related to the project. The cost of mailings and publications will be charged to the Economic Development Fund. The Developer has provided a funding agreement, along with a $10,000 deposit, to cover the City's costs in establishing the district and negotiating a development agreement.

Legal Considerations: The Law Department has reviewed and approved as to form the attached ordinance, which is required for the adoption of a redevelopment project plan under the state tax increment financing statutes. The notice for a public hearing on the City's intent to adopt the redevelopment plan has been given pursuant to law. In order to adopt the redevelopment plan, the ordinance must be approved by a two-thirds majority of the City Council.

Recommendations/Action: It is recommended that the City Council 1) close the public hearing; 2) approve first reading of the ordinance adopting the Union Station Project Area 1 Plan and authorizing execution of a development agreement; and 3) authorize the necessary signatures.

Attachments:

Union Station Project Area 1 Plan
Union Station Development Agreement
Ordinance adopting the TIF Project Plan

Gilmore & Bell, P.C.
03/05/2015

(Published in ***The Wichita Eagle*** on March 27, 2015)

ORDINANCE NO. 49-951

AN ORDINANCE ADOPTING A REDEVELOPMENT PROJECT PLAN FOR PROJECT AREA 1 WITHIN THE BOUNDARIES OF THE UNION STATION REDEVELOPMENT DISTRICT AND AUTHORIZING THE EXECUTION OF A DEVELOPMENT AGREEMENT RELATING THERETO.

WHEREAS, the City of Wichita, Kansas (the "City") is a municipal corporation duly organized and validly existing under the laws of the State of Kansas as a city of the first class; and

WHEREAS, by Ordinance No. 49-839, passed October 14, 2014, and published October 17, 2014, the City of Wichita, Kansas (the "City") established a redevelopment district pursuant to K.S.A. 12-1770 *et seq.*, as amended, known as the Union Station Redevelopment District (the "District"), and

WHEREAS, the District Plan for the District provided that redevelopment of the District may be in several project areas within the District as set forth in separate redevelopment plans to be approved by the governing body of the City pursuant to the Act; and

WHEREAS, pursuant to Ordinance No. 49-938, passed February 10, 2015, and published February 13, 2015, a non-substantial amendment to Ordinance No. 49-839 and the District Plan was made by attaching a map of the proposed project areas; and

WHEREAS, the City has prepared a redevelopment project plan entitled "Union Station Redevelopment District - Project Area 1 Plan, February 5, 2015" (the "Project Plan") for the Union Station Project Area 1 ("Project Area 1") within the District and is negotiating a redevelopment agreement with respect thereto and is considering adoption of the Project Plan; and

WHEREAS, on February 5, 2015, the Wichita Sedgwick County Metropolitan Area Planning Commission reviewed the proposed Project Plan and has adopted a resolution finding that the Project Plan is consistent with the comprehensive plan for the development of the City; and

WHEREAS, the City negotiated a Development Agreement, between Union Station LLC (the "Developer") and the City (the "Development Agreement") relating to the development, site preparation, utility relocation and extension and construction of public infrastructure improvements, landscaping and public plazas to be undertaken in conjunction with the development by the Developer of a mixed use development of renovation of existing buildings and construction of commercial use space within Project Area 1; and

WHEREAS, pursuant to the requirements of the Act, Charter Ordinance No. 203 of the City and Resolution No. 15-045, adopted February 10, 2015, the Governing Body set a public hearing to consider the adoption of the Project Plan and the Development Agreement on March 17, 2015, at 9:00 a.m. or as soon thereafter as the matter could be heard, at the City Council Chambers in City Hall, 455 N. Main, Wichita, Kansas; and

WHEREAS, notice of such public hearing was provided as required by the Act; and

WHEREAS, on March 17, 2015, the public hearing was opened, public comment was received by the Governing Body and the public hearing was closed; and

WHEREAS, the Governing Body is authorized to adopt the Project Plan and approve the Development Agreement by ordinance passed by not less than two-thirds vote of the Governing Body.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

Section 1. **Project Plan Approval**. The Project Plan for the redevelopment of the Project Area within the District, together with all attachments and exhibits thereto, which is on file in the office of the City Clerk, is hereby adopted.

Section 2. **Development Agreement Approval**. The Development Agreement is hereby approved in substantially the form presented to the Governing Body, with such changes as may be approved by the City Attorney. The Mayor is hereby authorized to execute the Development Agreement by and on behalf of the City and the City Clerk is hereby authorized to attest such signature.

Section 3. Effective Date This Ordinance shall take effect and be in force from and after its passage and publication one time in the official City newspaper.

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PASSED by not less than two-thirds vote of the City Council of the City of Wichita, Kansas, on March 24, 2015.

(SEAL)

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Sharon L. Dickgrafe, Interim Director of
Law and City Attorney

[BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK]

CERTIFICATE

I, the undersigned, hereby certify that the above and foregoing is a true and correct copy of the original Ordinance No. 49-___ (the "Ordinance") of the City of Wichita, Kansas (the "City"); that said Ordinance was passed by not less than two-thirds vote of the City Council on March 24, 2015, that the record of the final vote on its passage is found on page ____ of journal ____; that it was published in the official newspaper of the City on March 27, 2015; and that the Ordinance has not been modified, amended or repealed and is in full force and effect as of this date.

DATED: March 27, 2015.

Karen Sublett, City Clerk

City of Wichita

Union Station Redevelopment District

Project Area 1 Plan

February 5, 2015

Prepared by City of Wichita
Office of Urban Development

I N D E X

1. Comprehensive Financial Feasibility Study

2. Redevelopment District Plan

3. Map and Legal Description of Property to be Redeveloped

4. Relocation Assistance Plan

5. Description of Proposed Redevelopment Project

6. Development Agreement

7. City Council Ordinances and Resolutions

8. Metropolitan Area Planning Commission Resolution

Comprehensive Financial Feasibility Study

Comprehensive Financing Feasibility Study for the

Union Station Project

within the

Union Station Redevelopment District

City of Wichita, Kansas

Project Area 1

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Overview

Sections 12-1770 through 12-1780d of the Kansas Statutes ("the Act") provide a means for cities to finance all or a portion of public infrastructure and redevelopment costs with incremental real estate and sales taxes. The purpose of the Act is to "promote, stimulate and develop the general and economic welfare of the State of Kansas and its communities, and to assist in the development and redevelopment of blighted areas and deteriorating areas which are not yet blighted, but may be so in the future, located within cities…".

A city may exercise the powers conferred under the Act provided that the governing body of the city has adopted a resolution finding that the specific area sought to be developed or redeveloped is a blighted area, a conservation area or was designated an enterprise zone prior to July 1, 1992. In addition, the city must find that the conservation, development or redevelopment of such an area is necessary to promote the general and economic welfare of the city.

One or more redevelopment projects may be undertaken within the District. Kansas Statutes require projects to be completed within 20 years from transmittal of the redevelopment project plan pursuant to K.S.A. 12-1776, with the exception of environmental investigation and remediation projects which must be completed within 20 years from the date the City enters into a consent decree with the Kansas Department of Health and Environment or the U.S. Environmental Projection Agency, unless the County and School District have expressly consented to a 10-year extension of the term.

For each redevelopment project undertaken within the District, a redevelopment project plan **("the Project Plan"**) must be prepared in consultation with the City Planning Commission. The Project Plan must include the following:

1. A summary or copy of the Comprehensive Financial Feasibility Study.

2. A reference to the statutorily required district plan for the District.

3. A description and map of the area to be redeveloped ("the Project").

4. The Relocation Assistance Plan (if applicable).

5. A detailed description of all buildings and facilities proposed to be constructed or improved.

6. Any other information the City deems necessary to advise the general public of the intent of the Project Plan.

The Comprehensive Financial Feasibility Study (this document) must show that the benefits derived from the specified redevelopment project will exceed the costs, and that the income therefrom will be sufficient to pay for the applicable project costs. Benefits are determined to be the aggregate revenues of the redevelopment project including increment income, assessment income, interest income, private party contributions and any other available funding sources. Costs are determined to be the total of eligible project expenditures as defined by K.S.A. 12-1770a, including the payment of principal and interest of debt used to finance the redevelopment project.

Pursuant to all the provisions of the Act, The City of Wichita has, by Ordinance No. 49-839 dated October 14, 2014, found a portion of the City was a blighted and that redevelopment of the area is necessary to promote the general and economic welfare of the City. With adoption of Ordinance No. 49-839, the City established and designated such area as the Union Station Redevelopment District ("the District"). The District boundaries are shown in Exhibit A.

The City is currently considering the adoption of a Project Area 1 Plan for the proposed Union Station Project (**"the Project"**) within the designated Union Station Redevelopment District. Plans for the Union Station Development include a mixed use development of approximately 10 acres generally located southwest of Douglas and Washington, east of the elevated railroad, involving retail, restaurants, and office space with historic renovation of the existing buildings on the campus, as well as new construction infill. Plans also include construction of a public parking structure with over 400 spaces.

The Developer will finance the project, including various public infrastructure improvements. The City will provide public funding in the form of pay-as-you-go financing to reimburse the Developer for TIF eligible expenditures.

General Description of Tax Increment

Property tax increment financing involves the creation of an increment (increase over a base value) in the real estate taxes that are generated from a defined geographic area of a community. Upon establishment of a redevelopment district, the total assessed value of all taxable real estate within the district for that year is determined. This valuation is referred to as the district's "Original Assessed Value." Property taxes attributable to the district's Original Assessed Value are annually collected and distributed by the county treasurer to the appropriate city, county, school district and all other applicable taxing jurisdictions in the same manner as other property taxes.

As new development occurs within the redevelopment district, the total assessed value of the district, in any given year, will normally exceed its Original Assessed Value. Property taxes generated by applying the sum of the property tax rates of all applicable taxing jurisdictions to the incremental increase in assessed value (over and above the Original Assessed Valuation) is referred to as the "property tax increment". All property tax increment is collected by the County and distributed to the City to be deposited in a special tax increment fund.

Sales tax increment financing involves the creation of an increment (increase over a base value) in the local sales taxes that are generated from a defined geographic area of a community. Upon establishment of a redevelopment district, a base value of local sales tax collections within the district is determined. As new commercial development occurs within the redevelopment district, sales tax collections are expected to increase above the base value. Pursuant to city law governing the use of local sales tax revenue, the City does not intend to collect incremental sales tax revenues as "sales tax increment".

Tax increment funds may only be used to pay for certain statutorily-defined eligible project costs, including principal and interest on debt issued, in whole or in part, to finance eligible project costs within the redevelopment district. Such financing includes notes, special obligation bonds, full faith and credit tax increment bonds, other debt instruments and pay-as-you-go. The City intends to finance eligible improvements within the district through pay-as-you-go financing. The City will reimburse the developer, through pay-as-you-go financing, for TIF eligible expenses paid for by the developer.

Project Description

Project Area 1 generally consists of the North end of the Union Station campus and is depicted on the map in Exhibit I. The Project will include site and building improvements to the Grand Hotel, the Rock Island Depot Building, the Rock Island Baggage Building and the Plaza in front of the Main Terminal Building. Site improvements consist of planters, site lighting, landscaping, irrigation, street furniture amenities. Utility upgrades will also be realized.

Projected Revenues (Benefits)
Captured Assessed Value

It is the City's intention to use the property tax increment generated by the District to reimburse the developer, on a pay-as-you-go basis, for TIF eligible expenses paid for and financed by the developer as well as acquire a public access easement within the Project. The property tax increment is based on the District's increase in assessed value over its Original Assessed Value. The increase in value is expected to be recorded in January in the years 2015-2019 and is referred to as the Captured Assessed Value.

The Total Assessed Value for the Project Area 1 as of January 1, 2020 is estimated to be $1,445,858. The Base Assessed Value of the Project Area 1 as of January 2014 is $148,493 according to data provided by the City of Wichita Geographic Information Service Office. Therefore, the Captured Assessed Value of the Project Area 1 as of January 1, 2020 is estimated to be $1,297,365.

For the purpose of this analysis, it is assumed that the Total Assessed Value of the Project Area 1 will increase during the 20 year project period at the annual inflation rate of 2%.

Property Tax Rates

In order to determine the amount of tax increment generated by the District in any given year, the Captured Assessed Value of the District must be multiplied by the sum of the tax rates for all applicable taxing jurisdictions for that year. For taxes levied in 2014 and payable in 2014, the applicable rate is 95.865 mills as shown below. The State of Kansas rate of 1.5 mills and the statewide education levy of 20 mills are not applicable to TIF and have been omitted from the following total:

Jurisdiction	Mill Rate (2014)
City of Wichita	32.652
Sedgwick County	29.478
USD No. 259	33.735
TIF-Applicable Mill Rate	95.865

Projected Property Tax Increment and Other Project Revenue

The projected property tax increment for Project Area 1 generated by the District is shown in column 8 of Exhibit III. Such projections are based on captured assessed values derived from captured assessed valuations and tax rates as previously discussed. It is assumed that Project construction will begin in 2015 and be completed before the end of 2019, and therefor achieve full valuation by January 1, 2020. It is estimated that in 2020 the property tax increment will be $124,372.

All tax increment shall be allocated and paid by the Sedgwick County Treasurer to the City Treasurer in the same manner and at the same time as normal property taxes. All such incremental taxes must be deposited in a special fund of the City for the payment of eligible redevelopment costs.

Projected Expenditures (Costs)

A projected budget for the eligible TIF project costs in the Project Area 1 is listed below.

	Phase 1
Public Improvements	$1,223,354
City Access Easement	432,580
	$1,655,934

A project budget for the developer project costs and estimated increased assessed value within Project Area 1 is listed below:

Estimated Increased Assessed Value as of January 1, 2020 for Project Area 1: $1,297,365.

Estimated TIF revenues to be generated within Project Area 1 over the 20 year period: $2,475,990.

All eligible project costs will be financed by the Developer and reimbursed by the City, as TIF revenue is available. TIF revenues will be used to reimburse the Developer for eligible TIF related project costs, to the extent TIF funds are available. No bonds will be issued with this project.

Conclusions

Kansas Statutes require that the Comprehensive Financial Feasibility Study must demonstrate that the benefits derived from the Project will exceed the costs, and that the income therefrom will be sufficient to pay for all eligible project costs. As previously discussed, Exhibit III illustrates the projections of tax increment through the year 2033. TIF revenue will be used on a pay-as-you-go basis, no TIF bonds will be used to finance eligible expenses.

All TIF eligible expenses will be financed by the Developer and reimbursed on a pay-as-you-go basis, as revenue becomes available. As such, this report demonstrates that the revenues (benefits) of the District and Project Area exceed the expenditures (costs). It is contemplated that any revenues that exceed the projected revenues can be used to pay unreimbursed TIF eligible expenditures.

EXHIBIT I

SCHEDULE I

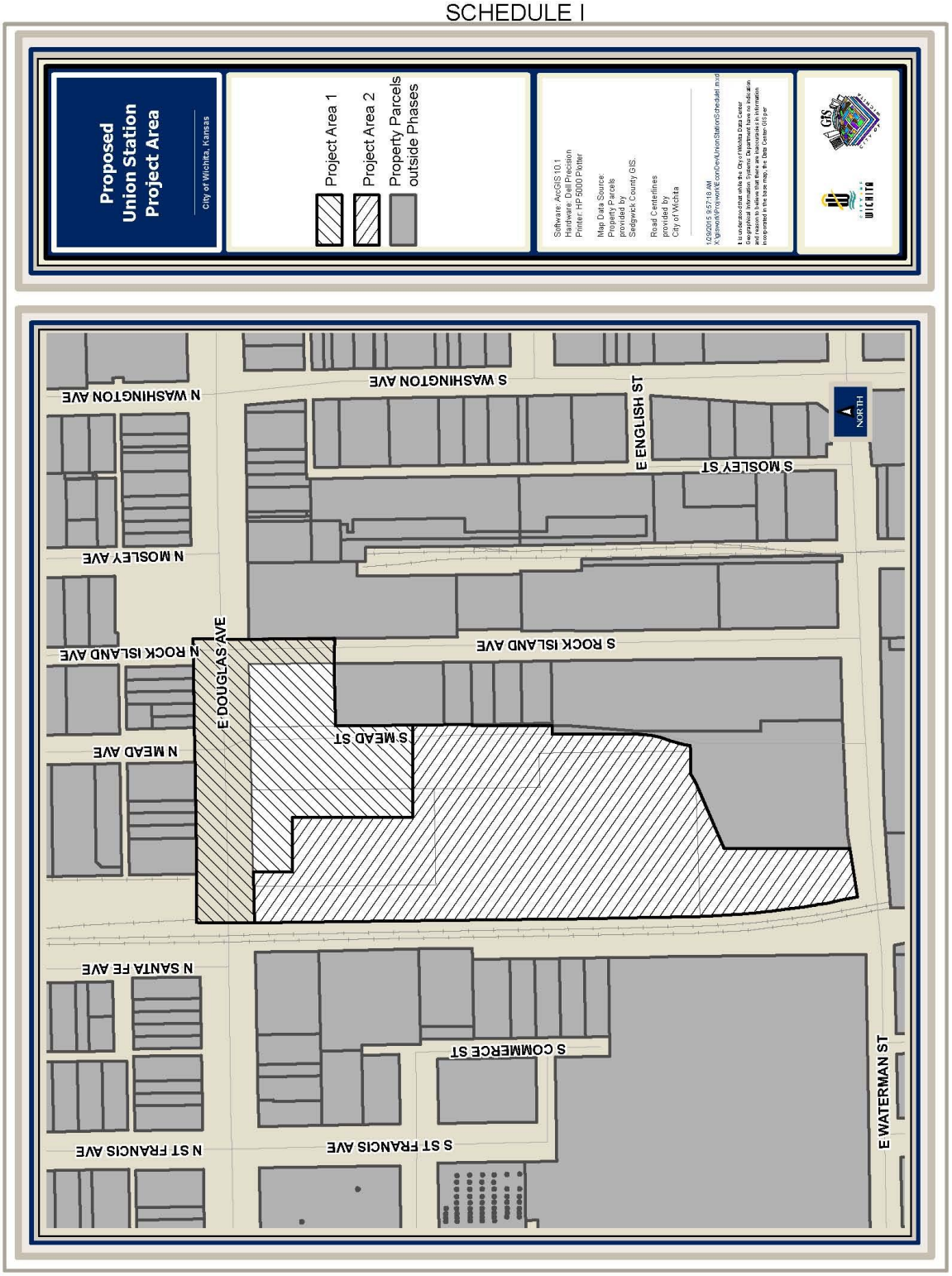

EXHIBIT II

Assumptions Report

City of Wichita, Kansas
Union Station Redevelopment District
Union Station Project

Description of Project Area — See Map (Exhibit I)

	Total	Project Area 1
Original Appraised Value (1/1/14)	$1,500,000	$593,970
Original Assessed Value (1/1/14)	375,000	$148,493
2020 Appraised Value (1/1/20)	$46,064,600	$5,783,431
2020 Assessed Value (1/1/20)	$11,516,150	$1,445,858

2014 Mill Rates	Total	TIF Applicable
City of Wichita	32.652	32.652
Sedgwick County	29.478	29.478
USD No. 259	53.735	33.735
State of Kansas	1.500	NA
Total	117.365	95.865

Property Value Inflation Rate 2%

EXHIBIT III

City of Wichita, Kansas
Union Station Redevelopment District
Union Station Project

Levy & Appraised Year	Year Taxes Distributed	Total Assessed Value	Original Assessed Value	Captured Assessed Value	Net Increment	Mill Rate	Projected Tax Increment
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
2015	2016	$ -	$ 148,493	$ -	$ -	95.865	
2016	2017	$ 528,377	$ 148,493	$ 379,885	$ 379,885	95.865	$ 36,417.64
2017	2018	$ 857,305	$ 148,493	$ 708,813	$ 708,813	95.865	$ 67,950.31
2018	2019	$ 1,061,498	$ 148,493	$ 913,006	$ 913,006	95.865	$ 87,525.31
2019	2020	$ 1,198,247	$ 148,493	$ 1,049,754	$ 1,049,754	95.865	$ 100,634.67
2020	2021	$ 1,445,858	$ 148,493	$ 1,297,365	$ 1,297,365	95.865	$ 124,371.93
2021	2022	$ 1,474,775	$ 148,493	$ 1,326,282	$ 1,326,282	95.865	$ 127,144.07
2022	2023	$ 1,504,270	$ 148,493	$ 1,355,778	$ 1,355,778	95.865	$ 129,971.66
2023	2024	$ 1,534,356	$ 148,493	$ 1,385,863	$ 1,385,863	95.865	$ 132,855.80
2024	2025	$ 1,565,043	$ 148,493	$ 1,416,551	$ 1,416,551	95.865	$ 135,797.62
2025	2026	$ 1,596,344	$ 148,493	$ 1,447,851	$ 1,447,851	95.865	$ 138,798.27
2026	2027	$ 1,628,271	$ 148,493	$ 1,479,778	$ 1,479,778	95.865	$ 141,858.94
2027	2028	$ 1,660,836	$ 148,493	$ 1,512,344	$ 1,512,344	95.865	$ 144,980.83
2028	2029	$ 1,694,053	$ 148,493	$ 1,545,560	$ 1,545,560	95.865	$ 148,165.15
2029	2030	$ 1,727,934	$ 148,493	$ 1,579,441	$ 1,579,441	95.865	$ 151,413.16
2030	2031	$ 1,762,493	$ 148,493	$ 1,614,000	$ 1,614,000	95.865	$ 154,726.12
2031	2032	$ 1,797,742	$ 148,493	$ 1,649,250	$ 1,649,250	95.865	$ 158,105.35
2032	2033	$ 1,833,697	$ 148,493	$ 1,685,205	$ 1,685,205	95.865	$ 161,552.16
2033	2034	$ 1,870,371	$ 148,493	$ 1,721,879	$ 1,721,879	95.865	$ 165,067.91
2034	2035	$ 1,907,779	$ 148,493	$ 1,759,286	$ 1,759,286	95.865	$ 168,653.97
							$ 2,475,990.88

District Plan

Gilmore & Bell, P.C.
02/03/2015

(Published in ***The Wichita Eagle*** on February 13, 2015)

ORDINANCE NO. 49-938

AN ORDINANCE AMENDING ORDINANCE NO. 49-839 OF THE CITY OF WICHITA, KANSAS, RELATING TO A NON-SUBSTANTIAL CHANGE TO THE DISTRICT PLAN FOR THE UNION STATION REDEVELOPMENT DISTRICT.

WHEREAS, the City of Wichita, Kansas (the "City") is a municipal corporation duly organized and validly existing under the laws of the State of Kansas as a city of the first class; and

WHEREAS, by Ordinance No. 49-839, passed October 14, 2014, and published October 17, 2014, the City of Wichita, Kansas (the "City") established a redevelopment district pursuant to K.S.A. 12-1770 *et seq*., as amended, known as the Union Station Redevelopment District (the "District"), and

WHEREAS, the District Plan for the District provided that redevelopment of the District could be in several project areas within the District as set forth in separate redevelopment plans to be approved by the governing body of the City pursuant to K.S.A. 12-1771; and

WHEREAS, the City's Governing Body desires to designate two project areas within the District to foster development of the District Plan; and

WHEREAS, ***Exhibit C*** to Ordinance No. 49-839 needs to be amended to include ***Schedule 1*** thereto which shall be a map generally describing the redevelopment project areas; and

WHEREAS, such insertion does not constitute an addition to the area of the District or a substantial change to the District Plan as to require public notice and hearing described in K.S.A. 12-1771(e).

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

Section 1. Amendment. ***Exhibit C*** to Ordinance No. 49-839 is hereby amended by the insertion of ***Schedule 1*** thereto in the form attached hereto and incorporated herein by reference.

Section 2. **Ratification**. The rest and remainder of Ordinance No. 49-839 is hereby ratified and confirmed.

Section 3. Effective Date. This Ordinance shall take effect and be in full force after its adoption by the City and publication once in the official newspaper of the City.

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PASSED by the City Council of the City on February 10, 2015 and **SIGNED** by the Mayor.

(SEAL)

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Sharon L. Dickgrafe, Interim Director of
Law and City Attorney

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CERTIFICATE

I hereby certify that the foregoing is a true and correct copy of the original ordinance; that said Ordinance was passed on February 10, 2015; that the record of the final vote on its passage is found on page [____] of journal [____]; and that the Ordinance or a summary thereof was published in ***The Wichita Eagle*** on February 13, 2015, and that the Ordinance has not been modified, amended or repealed and is in full force and effect as of this date..

DATED: February 13, 2015.

Karen Sublett, City Clerk

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EXHIBIT C

REVISED DISTRICT PLAN FOR THE REDEVELOPMENT OF THE UNION STATION REDEVELOPMENT DISTRICT THROUGH TAX INCREMENT FINANCING

SECTION 1: PURPOSE

A district plan is required for inclusion in the establishment of a redevelopment district under K.S.A. 12-1771. The district plan is a preliminary plan that identifies proposed redevelopment project areas within the district, and describes in a general manner the buildings, facilities and improvements to be constructed or improved.

SECTION 2: DESCRIPTION OF TAX INCREMENT INCOME

Projects financed through tax increment financing typically involve the creation of an "increment" in real estate property tax income. The increment is generated by segregating the assessed values of real property located within a defined geographic area such that a portion of the resulting property taxes flow to the City to fund projects in the redevelopment district, and the remaining portion flows to all remaining taxing jurisdictions. The portion of property taxes flowing to the City is determined by the increase in the assessed value of the properties within the redevelopment district as a result of the new development occurring within the same area. When the current aggregate property tax rates of all taxing jurisdictions are applied to this increase in assessed property value from new development, increment income is generated. Public improvements within the district and other qualified expenditures are funded by the City and repaid over a specified period of time with this increment income. The property taxes attributable to the assessed value existing prior to redevelopment, the "original valuation," continue to flow to all taxing jurisdictions just as they did prior to redevelopment. This condition continues for the duration of the established district, as defined by statute, or until all eligible project costs are funded, whichever is of shorter duration.

SECTION 3: DESCRIPTION OF THE DISTRICT BOUNDARIES

The property within the proposed district includes all property generally bounded by the railroad right of way on the west, the north right of way line of Douglas Avenue on the north, the east right of way line of Rock Island from Douglas to the south property line of 801 E. Douglas and the east property line of 725 E. Douglas on the east, and the south property line of 801 E. Doulas and south property line of lot 2 of Union Station Addition, in Wichita, Sedgwick County, Kansas; and including all street rights of way within such described areas. The legal description of the proposed district is attached hereto and incorporated herein as Attachment 1.

SECTION 4: BUILDINGS AND FACILITIES

The district is located within Project Downtown and is further identified as a catalyst site for redevelopment. The buildings are part of the 10 acre Union Station complex along the rail corridor. A majority of the buildings were constructed prior to 1950 and are vacant. Design and layout of the buildings creates an economic obsolescence based on current uses.

The redevelopment district is an area that meets the criteria for designation as a "blighted area" as defined by state law governing the establishment and financing of redevelopment districts. Property within a blighted area is legally eligible for establishment of a redevelopment district.

SECTION 5: REDEVELOPMENT AND PROJECT AREAS

It is anticipated that all property within the redevelopment district will be designated as one or more "project areas" under the redevelopment project plan, which must be adopted by the City Council by a 2/3 majority vote before the expenditure of any tax increment financing funds. The plans for redevelopment of the project area generally call for a full remodel and update of the five existing structures and development of two additional commercial structures for a total of almost 275,000 square feet of retail, restaurant, and office space. It is further anticipated that the project will include construction of a public parking structure. ***A map generally describing the various project areas is attached hereto as Schedule 1.***

Tax increment financing may be used to pay for eligible costs, on a pay-as-you-go basis, for land acquisition and site preparation including utility relocations, public infrastructure improvements, such as streetscape, public parking, utility extensions, landscaping, and public plazas. Tax increment financing may not be used for construction of any buildings owned or leased to a private, nongovernmental entity, except for a multilevel parking facility.

SECTION 6: CONCLUSION

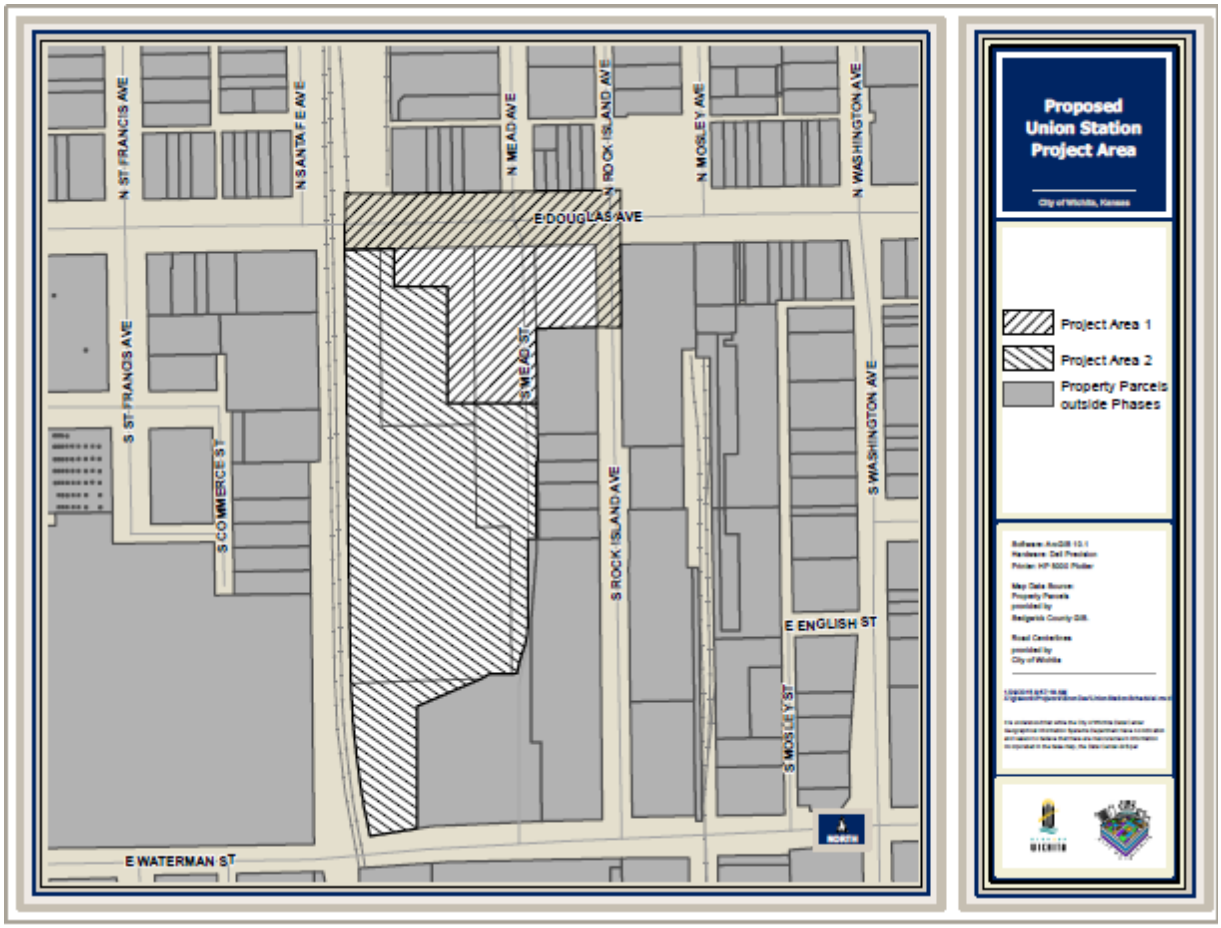
After the establishment of the redevelopment district, any redevelopment projects to be funded with tax increment financing will be presented to the Governing Body for approval through the adoption of one or more redevelopment project plans in accordance with the Act. The project plans will identify the specific project area located within the established tax increment financing district and will include detailed descriptions of the projects as well as a financial feasibility study showing that the economic benefits out- weigh the costs. The redevelopment project plans must be reviewed by the Metropolitan Planning Commission and submitted to a public hearing following further notification of property owners and occupants, before it can be adopted by a two-thirds majority vote of the Governing Body. Only then can tax increment income be spent on the redevelopment projects.

Tax increment financing does not impose any additional taxes on property located within the redevelopment district. All property within the redevelopment district is appraised and taxed the same as any other property. However, if property within the redevelopment district increases in value as a result of redevelopment, the resulting increment of additional tax revenue is diverted to pay for a portion of the redevelopment project costs.

Map and Legal Description of Property to be Redeveloped

SCHEDULE I

MAP GENERALLY DEPICTING PROJECT AREAS



BOUNDARY DESCRIPTION OF THE
UNION STATION REDEVELOPMENT DISTRICT AND PROJECT AREA 1

Redevelopment District

That part of the SW1/4 of Sec. 21, T27S, R1E of the 6th P.M., Sedgwick County, Kansas, described as beginning at the northwest corner of Lot 1, Union Station Addition, Wichita, Sedgwick County, Kansas; thence N0°05'00"W along the extended west line of said Lot 1, 114.00 feet to the North Right of way of Douglas Avenue; thence N89°56'00"E along said north right of way, 580.61 feet to the East Right of Way of Rock Island; thence S00°00'00"W, along said east Right of Way, 114.00 feet to the South Right of Way of Douglas Avenue; thence continuing S00°00'00"W, along said east Right of Way, 170.72 feet; thence S89°56'00"W, 185.00 feet; thence S00°00'00"W, 276.30 feet; thence S89°56'W, 3.22 feet; thence S00°02'21"E, 162.89 feet; thence S89°52'30"W, 17.79 feet; thence S00°00'00"W, 174.09 feet to a point of curvature of a curve to the right, said curve having a radius of 165.00 feet and an arc length of 58.13 feet; chord bearing S10°05'32"W, 57.83 feet; thence along said curve, 58.13 feet to a point of reverse curve of a curve to the left, said curve having a radius of 260.00 feet and an arc length of 49.94 feet; thence along said curve, 49.94 feet; thence S89°22'00"W, 57.02 feet; thence S68°20'30"W, 171.05 feet; thence S00°00'00"W, 253.92 feet; thence S83°50'48"W, 101.63 feet; thence N09°45'00"W, 36.96 feet; to a point of curvature of a curve to the right, said curve having a radius of 1883.87 feet and an arc length of 317.84 feet; chord bearing N04°55'00"W, 317.46 feet; thence along said curve, 317.84 feet to a point of tangency; thence N0°05'00"W, 864.61 feet to the point of beginning.

Project Area 1

That part of the SW1/4 of Sec. 21, T27S, R1E of the 6th P.M., Sedgwick County, Kansas, described as beginning at the northeast corner of Lot 3, Union Station Addition, Wichita, Sedgwick County, Kansas; thence S00°00'00"W along the east line of said Lot 3, 170.72 feet; thence S89°56'00"W, 125.00 feet; thence S00°00'00"W, 138.00 feet; thence S90°00'00"W, 192.20 feet; thence N00°05'00"W, 32.23 feet; thence N89°55'00"E, 11.00 feet; thence N00°05'00"W, 28.00 feet; thence S89°55'00"W, 11.00 feet; thence N00°05'00"W, 169.79 feet; thence S89°56'00"W, 104.22 feet; thence N00°05'00"W, 78.47 feet to the north line of said addition; thence N89°56'00"E along said north line, 421.86 feet to the place of beginning, along with the adjoining right-of-way of Douglas Avenue and Rock Island Avenue.

Public Access Easement Area – Portion located in Project Area
Parcel B: Plaza less Kiosk Area. Pedestrian.
That part of Lot 1, Union Station Addition, Wichita, Sedgwick County, Kansas, described as commencing at the northeast corner of Lot 3 in said addition; thence

S89°56’00”W along the north line of said addition, 400.86 feet to the place of beginning; thence N89°56’00”E along said north line, 122.87 feet; thence S00°05’00”E, 65.89 feet; thence S62°08’27”W, 15.54 feet; thence S00°05’00”E, 235.39 feet; thence S90°00’00”W, 25.90 feet; thence N00°05’00”W, 32.23 feet; thence N89°55’00”E, 11.00 feet; thence N00°05’00”W, 28.00 feet; thence S89°55’00”W, 11.00 feet; thence N00°05’00”W, 169.79 feet; thence S89°56’00”W, 104.22 feet; thence N00°05’00”W, 18.47 feet; thence N89°56’00”E, 21.00 feet; thence N00°05’00”W, 60.00 feet to the place of beginning, containing 15,557 square feet, more or less.

Parcel C: Surrounding Depot Buildings. Pedestrian and Vehicular.
That part of Lot 1, Union Station Addition, Wichita, Sedgwick County, Kansas, described as commencing at the northeast corner of Lot 3 in said addition; thence S89°56’00”W along the north line of said addition, 249.84 feet to the place of beginning; thence S00°05’00”E, 32.00 feet; thence S88°32’37”W, 40.00 feet; thence S00°05’00”E, 212.95 feet; thence N89°56’00”E, 8.00 feet; thence N00°05’00”W, 14.00 feet; thence N89°56’00”E, 62.00 feet; thence S00°05’00”E, 14.00 feet; thence N89°56’00”E, 12.00 feet; thence N00°05’00”W, 146.92 feet; thence N17°22’27”E, 30.00 feet; thence N00°05’00”W, 55.00 feet; thence N13°13’09”W, 37.95 feet; thence N00°05’00”W, 17.00 feet to said north line; thence N89°56’00”E along said north line, 34.40 feet; thence S00°05’00”E, 116.98 feet; thence S17°22’27”W, 25.93 feet; thence S00°05’00”E, 166.98 feet; thence S90°00’00”W, 144.90 feet; thence N00°05’00”W, 235.39 feet; thence N62°08’27”E, 15.54 feet; thence N00°05’00”W, 65.89 feet to said north line; thence N89°56’00”E along said north line, 28.15 feet to the place of beginning, containing 21,815 square feet, more or less, AND

Parcel E: Behind (South) Grand Hotel. Pedestrian and Vehicular.
That part of Lots 1 and 3, Union Station Addition, Wichita, Sedgwick County, Kansas, described as commencing at the northeast corner of said Lot 3; thence S89°56’00”W along the north line of said addition, 125.00 feet to the place of beginning; thence S00°00’00”W along the west line of said Lot 3, 117.72 feet; thence N89°56’00”E, 77.00 feet; thence S00°05’00”E, 3.00 feet; thence N89°56’00”E, 48.00 feet to the east line of said Lot 3; thence S00°00’00”W along said east line, 50.00 feet; thence N89°36’21”W, 123.32 feet; thence S00°00’00”W, 132.00 feet; thence S90°00’00”W, 21.39 feet; thence N00°05’00”W, 166.98 feet; thence N17°22’27”E, 25.93 feet; thence N00°05’00”W, 116.98 feet to said north line; thence N89°56’00”E along said north line, 14.06 feet to the place of beginning, containing 12,148 square feet, more or less.

City Minor Street Privilege Area
That part of the SW1/4 of Sec. 21, T27S, R1E of the 6th P.M., Sedgwick County, Kansas, described as beginning at the northeast corner of Lot 3, Union Station Addition, Wichita, Sedgwick County, Kansas; thence S89°56’00”W along the north line of said Lot 3 and extended, 139.06 feet; thence N00°39’46”E, 10.10 feet; thence N48°19’32”E, 7.06 feet to a point of curvature of a curve to the right, said curve having a radius of 12.00 feet and an arc length of 8.73 feet; thence easterly along said curve 8.73 feet to a point of tangency; thence S89°58’54”E, 93.97 feet; thence

N01°15’08”E, 4.01 feet to a point of curvature of a curve to the right, said curve having a radius of 6.00 feet and an arc length of 9.19 feet; thence easterly along said curve 9.19 feet to a point of tangency; thence N88°58’49”E, 28.96 feet to a point of curvature of a curve to the right, said curve having a radius of 21.50 feet and an arc length of 33.85 feet; thence southeasterly along said curve 33.85 feet to a point of tangency; thence S00°49’04”E, 137.59 feet; thence S20°19’28”W, 49.36 feet; thence N56°53’51”W, 11.55 feet to the east line of said Lot 3; thence N00°00’00”E along said east line, 170.72 feet to the place of beginning; TOGETHER WITH that part of the SW1/4 of Sec. 21, T27S, R1E of the 6th P.M., Sedgwick County, Kansas, described as commencing at the northeast corner of said Lot 3; thence S89°56’00”W along the north line of said Lot 3 and extended, 173.47 feet to the place of beginning; thence continuing S89°56’00”W along the north line of said addition, 248.39 feet; thence N00°05’00”W, 16.10 feet; thence N89°52’40”E, 230.00 feet to a point of curvature of a curve to the right, said curve having a radius of 18.50 feet and an arc length of 26.90 feet; thence southeasterly along said curve 26.90 feet to the place of beginning.

Project Area 2

That part of the SW1/4 of Sec. 21, T27S, R1E of the 6th P.M., Sedgwick County, Kansas, described as commencing at the northeast corner of Lot 3, Union Station Addition, Wichita, Sedgwick County, Kansas; thence S00°00’00”W along the east line of said Lot 3, 170.72 feet; thence S89°56’00”W, 125.00 feet; thence S00°00’00”W, 138.00 feet to the place of beginning; thence continuing S00°00’00”W, 138.30 feet; thence S89°56’00”W, 3.22 feet; thence S00°02’21”E, 162.89 feet; thence S89°52’30”W, 17.79 feet; thence S00°00’00”W, 174.09 feet to a point of curvature of a curve to the right, said curve having a radius of 165.00 feet and an arc length of 58.11 feet; thence southerly along said curve, 58.11 feet to a point of reverse curvature of a curve to the left, said curve having a radius of 260.00 feet and an arc length of 49.96 feet; thence southerly along said curve 49.96 feet; thence S89°22’00”W, 57.02 feet; thence S68°20’30”W, 171.05 feet; thence S00°00’00”W, 253.92 feet to a point on the south line of Lot 2 in said addition; thence S83°50’48”W along said south line, 101.63 feet to the southwest corner of said Lot 2; thence N09°45’00”W along the west line of said Lot 2, 36.96 feet to a point of curvature of a curve to the right, said curve having a radius of 1883.87 feet and an arc length of 317.84 feet; thence northerly along said curve, being the west line of said addition, 317.84 feet to a point of tangency; thence N00°05”00”W along said west line, 864.61 feet to the northwest corner of said addition; thence N89°56’00”E along the north line of said addition, 98.58 feet; thence S00°05’00”E, 339.43 feet; thence N89°56’41”W, 66.19 feet; thence S00°05’00”E, 392.53 feet; thence N89°55’00”E, 145.82 feet; thence S00°01’41”E, 0.47 feet; thence N89°58’19”E, 24.59 feet; thence N00°05’00”W, 369.01 feet; thence N89°55’00”E, 2.00 feet; thence N00°05’00”W, 17.00 feet; thence S89°55’00”W, 2.00 feet; thence N00°05’00”W, 37.77 feet; thence N90°00’00”E, 192.20 feet to the place of beginning.

Relocation Assistance Plan

RELOCATION ASSISTANCE PLAN

(K.S.A. 12-1777)

Assistance for the relocation of persons, families or businesses from property acquired by the City of Wichita in conjunction with the Union Station Redevelopment Project is not required. No persons or families residing in the Union Station Redevelopment District will be displaced as a result of the proposed redevelopment project. All businesses displaced by the Project have been relocated as part of the compensation paid to the businesses as part of the acquisition of real property.

Description of Union Station Project

Union Station Redevelopment District

DESCRIPTION OF REDEVELOPMENT DISTRICT AND PROJECT AREA 1

By Ordinance No. 49-839, passed October 14, 2014, and published October 17, 2014, the City of Wichita, Kansas (the "City") established a redevelopment district pursuant to K.S.A. 12-1770 *et seq*., as amended, known as the Union Station Redevelopment District (the "District"), and approved a District Plan. The District Plan was amended by Ordinance No. 49-____, passed on February ___, 2015 and published on February ___, 2015.

The Union Station Redevelopment District includes approximately 10 acres southwest of Douglas and Washington. The area consists of the Union Station Depot and surrounding buildings in the complex southwest of Douglas and Washington, East of the elevated railroad tracks downtown. The property is currently owned by Union Station LLC, the Developer.

Overall plans for development and site improvements.

Plans for development of the of the District include mixed-use development of retail, restaurants and office space, redevelopment of existing buildings on the complex, including the Union Station main terminal through historic renovation, and potentially two planned new buildings on the campus. A multi-level parking garage with over 400 spaces is also planned for the south end of the campus. Planned site improvements include resurfacing parking areas and providing public areas with brick paving and additional details similar to nearby Old Town. The City will purchase a public access easement to provide pedestrian access area and access for mobility through portions of the Union Station campus.

Project Plan. The developer intends to redevelop the District with two or more project plans. Only the Project Area 1 Plan is presented for approval and consists of the following.

Project Area 1 Boundary Description

Project Area 1 is located on the North end of the Union Station campus. It includes that portion of the campus starting at the intersection of Douglas Avenue and Rock Island Avenue, then south approximately 193' along the centerline of Rock Island to the adjacent property line, then west approximately 150' to east property line along Mead Street, then south approximately 130', then west to the face of the Terminal

Building, then north along the face of said building to the north east corner of the building, then west to the upper track retaining wall, then north approximately 15' into the ROW at Douglas Avenue, then east to point 15' north of beginning, then south to point of beginning.

The proposed improvements within Project Area 1 are as follows:

Grand Hotel Improvements

Site improvements will include new sidewalk pavers and concrete along Douglas Avenue, a new drive-thru along the east façade, re-paving and new sidewalk on the south, and new sidewalk and pavers along Mead Street. These areas will also include new landscaping, irrigation, site lighting, and street furniture amenities. Building improvements will include a new roof, restored and coated exterior masonry, new HVAC, and window replacement at all existing openings. Utility laterals and life-safety improvements will include sanitary sewer, water, electrical, and data and communication upgrades, and full fire protection (sprinklered). New construction improvements will include canopies at the north and south facades, and new entrances at the south façade. The existing west canopy will be refurbished. All interiors will be new mixed use finishes and will include an elevator.

Rock Island Passenger Depot Building Improvements

Site improvements will include new planters and sidewalk pavers along Douglas Avenue, a new drive-thru with new planters and sidewalk pavers along the east façade, re-paving and new sidewalk pavers on the south, and new planters, sidewalk, and pavers along the west (private) drive. These areas will also include all new landscaping, irrigation, site lighting, and street furniture amenities. The trash screen and utility pit/screen at the south end will be reconfigured and rebuilt. The existing screen fence at the southwest corner will be eliminated. Open-type fencing will define new outdoor dining areas along the entire west and north sides. Building improvements will include a new roof (faux historic slate shingles), restored and rebuilt masonry, new HVAC, and all window openings will be refurbished. Utility lateral improvements will include sanitary sewer, water, electrical, and data and communication upgrades. The interior will be new restaurant finishes, fixtures, furniture, and equipment on both floors.

Rock Island Baggage Depot Building Improvements

Site improvements will include new planters and sidewalk pavers along the east and west facades, and new sidewalk/pavers at the north and south facades. These areas will also include all new landscaping, irrigation, site lighting, and street furniture amenities. Building improvements will include a new roof (faux historic slate shingles) and restored and rebuilt masonry.

Plaza Improvements

These plaza improvements include the Project Area 1 area to the immediate east of the Terminal building, wrapping around and inclusive of the frontage along Douglas Avenue. This entire area will receive new hard-scape surfaces consisting of a combination of pavers divided by concrete "ribbons", and new concrete sidewalks. New planters, site lighting, landscaping, irrigation, and street furniture amenities will be included. New construction consisting of steps and planters directly in front of the terminal, plus a glass canopy for food service tenants along the west retaining wall will be included.

City Minor Street Privilege

Some of the site improvements described above lie inside city right-of-way which adjoins the Project Area 1 on Douglas Street and Rock Island. The City will grant a minor street privilege the developer to permit the access, construction, and maintenance of these site improvements.

Public Access Easement

The developer will grant a Public Access Easement to the City for vehicular and pedestrian access as provided in the Public Access Easement in the form required by the development agreement.

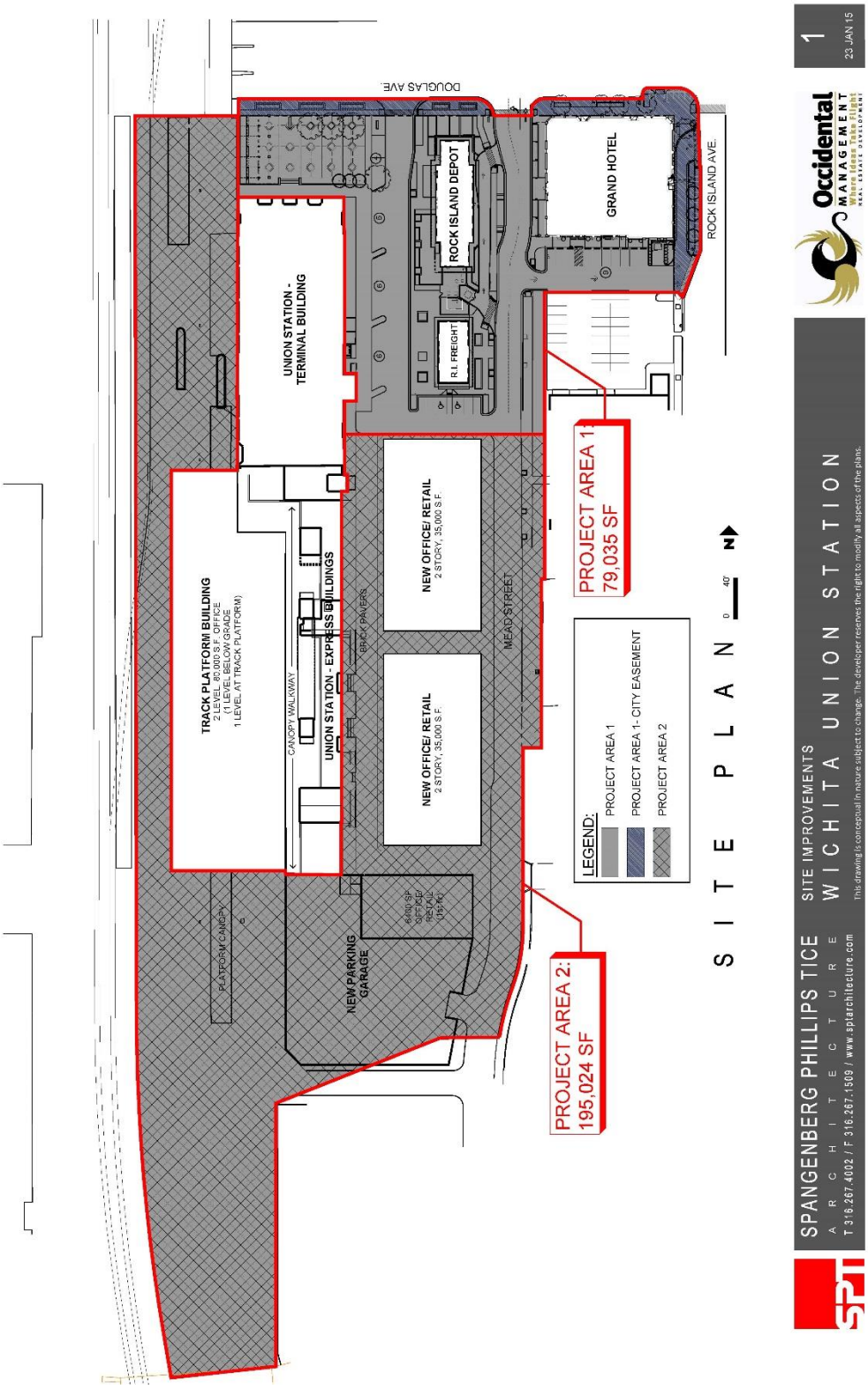
USE OF TAX INCREMENT FINANCING

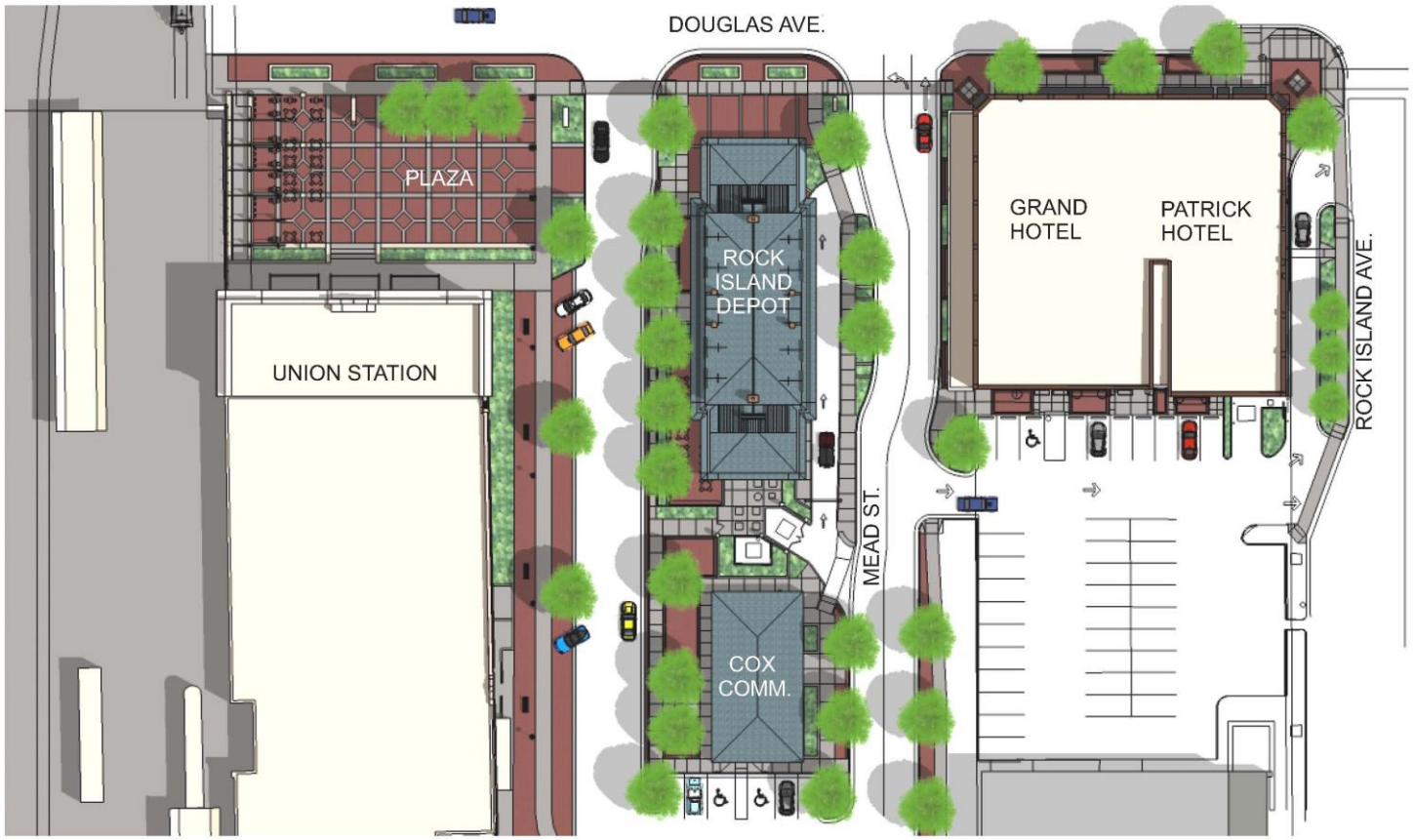
The City of Wichita has undertaken the legal steps necessary to establish a redevelopment district pursuant to state laws (K.S.A. 12-1770 *et seq*.) in order to use tax increment financing ("TIF") to reimburse the costs of TIF eligible improvements on a pay-as-you-go basis. Upon adoption of this Project Area 1 Project Plan, the City will have established its authority under state law to reimburse the improvements and financing costs from the incremental increase in property taxes resulting from the redevelopment of Project Area 1. The TIF-reimbursed improvements consist of the following:

- **Public improvements** – The Developer will undertake the construction of the infrastructure improvements at an estimated cost of $1,223,354
- **City Acquired Public Access Easement** – (portion in Project Area 1) $ 432,580
- **Total TIF**-funded costs –for Project Area 1 Plan $1,655,934

EXHIBIT A

SITE PLAN AND PROJECT RENDERINGS





PHASE 1 SITE PLAN

SPANGENBERG PHILLIPS TICE ARCHITECTURE

WICHITA UNION STATION

Occidental MANAGEMENT Where Ideas Take Flight REAL ESTATE DEVELOPMENT

Aug 18, 2014

AERIAL VIEW OF PLAZA

Metropolitan Area Planning Commission Resolution

Gilmore & Bell, P.C.
01/23/2015

RESOLUTION

A RESOLUTION OF THE WICHITA-SEDGWICK COUNTY METROPOLITAN AREA PLANNING COMMISSION FINDING THAT THE CITY OF WICHITA, KANSAS REDEVELOPMENT PROJECT PLAN FOR THE UNION STATION PROJECT AREA 1 LOCATED WITHIN THE UNION STATION REDEVELOPMENT DISRICT IS CONSISTENT WITH THE COMPREHENSIVE GENERAL PLAN FOR THE DEVELOPMENT OF THE CITY OF WICHITA, KANSAS.

WHEREAS, by Ordinance No. 49-839, passed October 14, 2014, and published October 17, 2014, the City of Wichita, Kansas (the "City") established a redevelopment district pursuant to K.S.A. 12-1770 *et seq*., as amended, known as the Union Station Redevelopment District (the "District"), and

WHEREAS, the City prepared a redevelopment project plan entitled "Union Station Project Plan for Union Station Redevelopment District, dated November 20, 2014" (the "Original Project Plan") in accordance with the Act, which includes, but is not limited to, land acquisition, site preparation, utility relocation and extension, public infrastructure improvements, landscaping, public plazas and a public parking structure (collectively, the "Original Project") to be undertaken in conjunction with the development by a private developer of a mixed use development of approximately 275,000 square feet of renovation of existing buildings and new construction of retail, restaurants, office space, located on approximately 10 acres within the Union Station Project Area of the District (the "Original Project Area"); and

WHEREAS, on November 20, 2014, the Wichita Sedgwick County Metropolitan Area Planning Commission reviewed the proposed Original Project Plan and adopted a resolution finding that the Original Project Plan is consistent with the comprehensive plan for the development of the City; and

WHEREAS, the City did not adopt the Original Project Plan, has divided the District into two project areas and has prepared a redevelopment project plan entitled "Union Station Redevelopment District, Project Area 1 Project Plan, dated February 5, 2015" (the "Project Area 1 Plan") in accordance with the Act, which includes, but is not limited to, land acquisition, site preparation, utility relocation and extension, public infrastructure improvements, landscaping and public plazas (collectively, the "Project Area 1 Project") to be undertaken in conjunction with the development by a private developer of a mixed use development of renovation of existing buildings and construction of commercial use space, located within the Union Station Project Area 1 of the District ("Project Area 1") and is considering adoption of the Project Area 1 Plan; and

WHEREAS, a relocation assistance plan under K.S.A. 12-1777 is not required within in the Project Area 1 Plan; and

WHEREAS, the Act provides that any city proposing to undertake a redevelopment project within a redevelopment district shall prepare a redevelopment project plan in consultation with the planning commission of such city; and

WHEREAS, the City's proposed Project Area 1 Plan has been presented to and reviewed by the

Wichita-Sedgwick County Metropolitan Area Planning Commission.

NOW, THEREFORE, BE IT RESOLVED BY THE WICHITA-SEDGWICK COUNTY METROPOLITAN AREA PLANNING COMMISSION:

SECTION 1. It is hereby, after due consideration, found that the Project Area 1 Plan is consistent with the comprehensive general plan for the development of the City.

SECTION 2. This Resolution shall be in full force and effect from and after its adoption.

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ADOPTED by the Wichita-Sedgwick County Metropolitan Area Planning Commission on February 5, 2014.

WICHITA-SEDGWICK COUNTY METROPOLITAN AREA PLANNING COMMISSION

(Seal)

Matt Goolsby, Chair

ATTEST:

John L. Schlegel, Secretary

APPROVED AS TO FORM:

Sharon L. Dickgrafe, Interim Director of Law and City Attorney

DEVELOPMENT AGREEMENT

REGARDING DEVELOPMENT

OF

PROJECT AREA 1

UNION STATION REDEVELOPMENT DISTRICT

BETWEEN

CITY OF WICHITA, KANSAS

AND

UNION STATION, LLC

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C Development Schedule
D Development Concept
E Legal Descriptions and Map of District and Project Areas 1 and 2
F Certification of Expenditures Form
G Land Use Restrictions
H Public Access Area 1 Easement
I Final Plans and Specifications
J City Infrastructure Policy
K Related Utility Improvements

DEVELOPMENT AGREEMENT
PROJECT AREA 1-UNION STATION REDEVELOPMENT DISTRICT

THIS AGREEMENT is made effective as of March __, 2015, between the **City of Wichita**, a municipal corporation organized under the laws of the State of Kansas (the **"City"**), and **Union Station, LLC**, a Kansas limited liability company (**"Developer"**), for development of a portion of the area known as Union Station, more particularly described below.

Summary

This Agreement summarizes the Developer's plans for renovation of the Project Area 1 of the Union Station Redevelopment District. Project Area 1 generally consists of the North end of the Union Station Redevelopment District and is depicted on the map in Exhibit E. The Project will include site and building improvements to the Grand Hotel, the Rock Island Depot Building, the Rock Island Baggage Building and the Plaza in front of the Main Terminal Building. Site improvements consist of planters, site lighting, landscaping, irrigation, street furniture amenities. Utility upgrades will also be realized as needed.

The City has agreed to support the Project by establishing the Union Station Redevelopment District which includes the Project Land and by providing pay-as-you-go Tax Increment Financing to fund TIF Eligible Costs pursuant to the Union Station Project Area 1 Plan dated February 5, 2015 (the **"Project Plan"**), and to finance and construct certain related utility improvements as described herein.

Background and Recitals

The following Background and Recitals contain merely an overview of the Project and are not intended to fully describe the obligations of the City and Developer. The specific terms and obligations are more fully set forth in the Agreement itself.

(i) Developer will develop and construct the Project according to the Development Plan, the Project Plan and the terms of this Agreement.

(ii) The Developer will be reimbursed TIF Eligible Costs through pay-as-you-go tax increment financing.

(iii) Developer will own the Project Land, including the Project Buildings and the other improvements made thereon, subject to the Public Access Area 1 Easement and the City Minor Street Privilege.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties, intending to be legally bound, agree as follows:

Section 1
Definitions and Exhibits

1.1 Certain Definitions. For purposes of this Agreement, each of the following terms, when used with an initial capital letter, shall have the following meaning:

"Affiliate" means any person, entity or group of persons or entities which controls a Party, which a Party controls or which is under common control with a Party. As used herein, the term "control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management and policies, whether through the ownership of voting securities, by contract or otherwise. Affiliate shall

include any legal entity of which (i) at least 51% of the voting interest is controlled by one of the Parties or by Gary Oborny or (ii) at least 51% of the ownership interest is controlled by one of the Parties or by Gary Oborny.

"**Agreement**" means this Development Agreement.

"Base Year" means the 2014 calendar year.

"**City**" means the City of Wichita, a municipal corporation organized under the laws of the State of Kansas, and whenever this Agreement requires "approval of the City" or words of similar intent, such approval must come from the City Council, or the City Representative as provided herein.

"**City Council**" means the City Council of the City of Wichita.

"City Minor Street Privilege" means the right of access, construction, and maintenance of site improvements in the City Minor Street Privilege Area in accordance with Chapter 10.08 of the Code of the City of Wichita.

"City Minor Street Privilege Area" means the area as legally described on Exhibit E.

"**City Representative**" means the City Manager of the City or his or her designee. The City Representative shall have full power and authority to implement the decisions of the City Council and to act on behalf of the City in the exercise of its rights and responsibilities under this Agreement. Developer may rely on the decisions and direction of the City Representative made pursuant to this Agreement as the directions of the City.

"**Completed**" or "**Completion**" means, with respect to the Project when: (a) the Project Architect certifies in writing on a form prescribed by the American Institute of Architects to the City and Developer that the construction of the Project or a phase of the Project is substantially completed in accordance with the Development Plan and the Project Plan to permit use of the Project for the purposes for which it was intended, and (b) a conditional or final occupancy permit has been issued, which date may precede the full completion of all punch-list items, and nonessential landscaping and similar design and development functions.

"**Contractors**" means the General Contractor and all other contractors, subcontractors, suppliers, persons, or entities that are engaged for construction or to provide labor, materials, supplies, or services of any kind in regard to the Project.

"**Developer**" means Union Station, LLC, a Kansas limited liability company (or its Affiliate with the approval of the City Representative).

"**Developer Improvement Contribution**" means the equity funds and Loan proceeds that Developer makes available to develop and construct the Project.

"**Development Budget**" means an estimated budget or budgets, including modifications of the budget(s), for the total cost of development and construction of the Project, including design, development, financing, construction, furnishing, fixturing, landscaping, hardscaping, equipping and pre-opening, as approved by the City and attached as Exhibit B.

"**Development Concept**" means the Development Concept attached as Exhibit D.

"**Development Plan**" means the Site Plan, Development Schedule, and Development Budget for the Project as approved by the City and Developer at the time of execution of this Agreement and as the same are amended as provided by this Agreement.

"**Development Schedule**" means the projected development schedule for the Project attached as Exhibit C.

"District" means the redevelopment district consisting of the Project Land and adjoining property in the Union Station Redevelopment District as created by the City under Ordinance No. 49-839.

"**Force Majeure**" means war, riots, civil commotion, strikes, labor disputes, embargoes, natural disasters, Acts of God or other cause or contingency similarly beyond control of the Party whose performance is affected thereby.

"**General Contractor**" means the general contractor(s) for the Project or phases of the Project, as the case may be, to be selected by Developer.

"Grand Hotel Building" means the property in the City and commonly known by that name and located at 801 - 811 East Douglas and generally depicted on Exhibit A.

"Grand Hotel Improvements" means site improvements that will include new sidewalk pavers and concrete along Douglas Avenue, a new drive-thru along the east façade, re-paving and new sidewalk on the south, and new sidewalk and pavers along Mead Street. These areas will also include new landscaping, irrigation, site lighting, and street furniture amenities. Building improvements will include a new roof, restored and coated exterior masonry, new HVAC, and window replacement at all existing openings. Utility laterals and life-safety improvements will include sanitary sewer, water, electrical, and data and communication upgrades, and full fire protection (sprinklered). New construction improvements will include canopies at the north and south facades, and new entrances at the south façade. The existing west canopy will be refurbished. All interiors will be new mixed use finishes and will include an elevator.

"**Loan**" means a loan or loans to Developer in an amount sufficient to allow Developer to complete the Developer Improvement Contribution whether or not pledging some or all of the Project Land and improvements. All Loans shall be at commercially reasonable rates or better in order for the portion allocable to TIF Eligible Costs to qualify as TIF Eligible Costs.

"**Parties**" means, collectively, the City and Developer; "**Party**" means either of the Parties.

"Plaza Area" means the area to the immediate east of the Terminal Building, wrapping around and inclusive of the frontage along Douglas Avenue as generally shown on Exhibit A.

"Plaza Improvements" means new hard-scape surfaces consisting of a combination of pavers divided by concrete "ribbons", and new concrete sidewalks. New planters, site lighting, landscaping, irrigation, and street furniture amenities will be included. New construction consisting of steps and planters directly in front of the Terminal Building, plus a glass canopy for food service tenants along the west retaining wall will be included.

"**Project**" means the Project Area 1 Project Plan of Developer to make the following improvements: Grand Hotel Improvements; Rock Island Passenger Depot Building Improvements; Rock Island Baggage Depot Building Improvements; and Plaza Improvements. The Project shall not include the Related Utility Improvements which have been financed and constructed by the City.

"**Project Architect**" means the architect for the Project, to be selected by the Developer.

"Project Buildings" means the Rock Island Passenger Depot Building, Rock Island Baggage Depot Building, and Grand Hotel Building.

"**Project Land**" means the real property described on Exhibit E and all improvements thereon, including the tracts or parcels of land upon which the Project will be constructed, together with all rights, privileges, licenses and easements appurtenant to such tracts.

"Public Access Area" means an area as described on Exhibit E and made available by Developer to the public for portions of the Project Land where certain of the public improvements will be located and in which the Developer will maintain control over the maintenance and use, subject to reasonable access by the public.

"Public Access Area Costs" means the costs incurred by Developer in the grant of the Public Access Area 1 Easement to the City in the amount of Four-Hundred Thirty-Two Thousand Five Hundred Eighty Dollars ($432,580).

"Public Access Area 1 Easement" means the easement in the form attached hereto as Exhibit H which will convey the Public Access Area to the City for the benefit of the public.

"**Related Utility Improvements**" means the utility improvements which the City financed and constructed at its cost as described and shown on Exhibit L.

"Rock Island Baggage Depot Building" means the property in the City and commonly known by that name and located at 811 East Douglas and as generally depicted on Exhibit A.

"Rock Island Baggage Depot Building Improvements" means site improvement including new planters and sidewalk pavers along the east and west facades, and new sidewalk/pavers at the north and south facades of the Rock Island Baggage Depot Building. These areas will also include all new landscaping, irrigation, site lighting, and street furniture amenities. Building improvements will include a new roof (faux historic slate shingles) and restored and rebuilt masonry.

"Rock Island Passenger Depot Building" means the property located in the City and commonly known by that name and located at 801 East Douglas and as generally depicted on Exhibit A.

"Rock Island Passenger Depot Building Improvements" means site improvements including new planters and sidewalk pavers along Douglas Avenue, a new drive-thru with new planters and sidewalk pavers along the east façade, re-paving and new sidewalk pavers on the south of the Rock Island Depot Building, and new planters, sidewalk, and pavers along the west (private) drive. These areas will also include all new landscaping, irrigation, site lighting, and street furniture amenities. The trash screen and utility pit/screen at the south end will be reconfigured and rebuilt. The existing screen fence at the southwest corner will be eliminated. Open-type fencing will define new outdoor dining areas along the entire west and north sides. Building improvements will include a new roof (faux historic slate shingles), restored and rebuilt masonry, new HVAC, and all window openings will be refurbished. Utility lateral improvements will include sanitary sewer, water, electrical, and data and communication upgrades. The interior will be new restaurant finishes, fixtures, furniture, and equipment on both floors.

"**Site Plans**" means the drawings, renderings and plans depicting the appearance of the Project attached as Exhibit A.

"**Specialists and Consultants**" means the Project Architect and the Contractors, together with other planning, architectural, engineering, interior design and other specialists and consultants selected by the Developer for the design and construction of the Project.

"Tax Increment" means the difference between the amount of real property taxes collected within the Union Station Redevelopment District and the Base Year property taxes specified for the District in this Agreement, pursuant to K.S.A. 12-1770 et seq.

"Tax Increment Funds" means 100% of the funds actually paid to the City by the Sedgwick County Treasurer as incremental property taxes collected for the Union Station Redevelopment District, pursuant to K.S.A. 12-1770 et seq. No fees will be charged or collected by the City from the Tax Increment Funds.

"Terminal Building" means the property in the City commonly known by that name and located at 701 East Douglas and as generally depicted on Exhibit A.

"Terminal Operations Building" means the property commonly known by that name and adjoined to the south end of the Terminal Building at 701 East Douglas, Wichita, KS, with a legal description given on Exhibit E.

"TIF Act" means K.S.A. 1770 *et seq.*, as amended.

"TIF Eligible Costs" means all Project costs which are eligible for reimbursement under the TIF Act, including but not limited to: Public Access Area Costs, site preparation, utility relocations, multilevel parking facilities, water mains and extensions, plazas, sidewalks, street grading, paving, curbing, guttering, surfacing, street light fixtures, connection and facilities, landscaping and plantings, fountains, shelters, benches, sculptures, lighting, decorations and similar amenities, related expenses to redevelop and finance the redevelopment, including Loans and fees paid to financial advisors, architects, engineers, attorneys, and accountants.

"**TIF Eligible Costs Cap**" is defined in Section 8.2.

"Union Station Project Fund" means a special fund of the City to pay redevelopment project costs in which the City shall deposit Tax Increment Funds received from the County Treasurer pursuant to K.S.A. 12-1775.

1.2 Other Definitions. In addition to the terms defined in Section 1.1, other terms will have the definitions provided elsewhere in this Agreement.

1.3 Exhibits. The exhibits identified in this Agreement and attached to it, or otherwise identified by the signing or initialing of the Parties, are incorporated by reference and made a part of this Agreement as though they were fully set forth in the text of this Agreement.

Section 2
Project

2.1 Project. Developer shall provide the Developer Improvement Contribution to the planning, development, and construction of the Project, and shall provide or cause all services, equipment, materials, supplies, labor, and every article of any kind necessary or appropriate for the planning, development, and construction of the Project, all in accordance with the Development Plan, the Project Plan and the terms of this Agreement. The Parties acknowledge that the Developer's responsibilities may be undertaken by Affiliates of the Developer or third parties. Developer shall be an independent contractor for all purposes,

and nothing contained in this Agreement nor any actions of the Parties shall be construed to create a partnership, joint venture, or agency relationship between the City and Developer. No one performing work on the Project under the direction of Developer, or under the direction of any of the Contractors, shall be deemed to be an employee of the City for any reason or purpose whatsoever.

2.2 Public Access Area. Prior to the release of any Tax Increment Funds to the Developer in accordance with Section 8, upon Completion of construction of the Project, Developer shall execute and deliver to the City the Public Access Area 1 Easement in the form attached as Exhibit H, which shall make the Public Access Area available to the public, reserving to the Developer the right to retain reasonable control over all scheduling, building, maintenance, use, design and ownership of the Public Access Area. The Public Access Area 1 Easement will be perpetual and recorded by the City in the real estate records of Sedgwick County, Kansas.

The Public Access Area 1 Easement shall also provide that Developer, or current owner of the Project Land, shall have the right to construct improvements on the Public Access Area without requiring amendment to the easement under the following procedures:

a. By the Developer granting to the City the same easement rights to an equal number of square feet from the Project Land acceptable to the City in writing to replace the land removed for the improvements;

b. By mutual agreement between the Developer and the City Representative; or,

c. By the City Council, upon request of the Developer, if the Developer and City Representative do not reach mutual agreement on construction of improvements on the Public Access Area.

All land upon which improvements are permitted in accordance with this procedure will be deemed as removed from the Public Access Area 1 Easement to the extent of the foot print of the improvements.

The Developer shall cause any necessary subordinations of any mortgages or similar documents, so that the Public Access Area 1 Easement is senior to such mortgages or similar documents. The Public Access Area 1 Easement shall include all of the Public Access Area.

2.3 Project Use. Subject to applicable statutory and land requirements, Developer may convert any part of the Project Land into a different use than as approved in the Development Plan or the Project Plan, or sell some or all of the buildings or Project Land at any point in the future, all as provided by this Agreement.

2.4 Conditions Precedent to Developer's Obligations. The Developer's obligation to commence construction of the Project shall be conditioned upon the closing by Developer of a guaranteed Loan to finance the Project, or Loan to finance a phase of the Project upon terms acceptable to Developer. In addition to other cancellation provisions under this Agreement, this Agreement may be cancelled by Developer if Developer is unable to obtain financing and equity on terms acceptable to Developer in its sole discretion sufficient to make the Developer Improvement Contribution.

2.5 Land Use Restrictions. The types of land uses and retailers set forth in Exhibit G hereto are prohibited on the Project Land, unless approved in writing by the City prior to the execution of a letter of intent, lease or prior to the sale of land.

2.6 Design of the Project.

2.6.1 The Developer shall be responsible for the design of the Project, subject to the City's right of review in accordance with this Section and all applicable building codes, laws, and regulations (including the Americans With Disabilities Act, the Kansas Act Against Discrimination, and all environmental laws). The Developer shall provide the City with preliminary plans and specifications for

each phase of the Project when they are prepared. The City shall review such plans and specifications to determine whether they are in substantial conformance with applicable building codes, laws, and regulations (including the Americans With Disabilities Act, the Kansas Act Against Discrimination, and all environmental laws), the Development Plan, the Project Plan and this Agreement. The City shall provide the Developer with its approval or reasonable objection to the plans and specifications within fifteen (15) calendar days of the City's receipt of the plans and specifications. In the event the City has reasonable objections to the preliminary plans and specifications, the City shall provide a written notice of such objections detailing the substantial non-conformance of the preliminary plans and specifications with applicable building codes, laws, and regulations (including the Americans With Disabilities Act, the Kansas Act Against Discrimination, and all environmental laws) and this Agreement and its specific demands of modification to the plans and specifications. The City and the Developer shall meet within five (5) business days to discuss any such objections by the City.

2.6.2 Upon approval of the preliminary plans and specifications, the Developer shall:

(a) Prepare final plans and specifications, including detailed drawings, construction plans, and technical specifications to show the character and scope of the work to be performed by contractors for the Project.

(b) Furnish to the City the number of copies of such final plans and specifications as required by the City.

The final plans and specifications shall be attached hereto as Exhibit I upon completion and approval by the City and shall be incorporated herein by reference.

2.6.3 The Parties anticipate that the layout and size of particular buildings and building improvements, as well as the Development Plan itself, will be amended by Developer from time to time to reflect changes in market conditions, economic demands, engineering, and construction review, construction costs and that such changes are within the scope and intent of this Agreement provided that: a) the changes are consistent with the Development Concept, and b) Developer provides City Representative with reasonable notice of the changes. All such changes shall be subject to the submittal of new plans and specifications as provided in Sections 2.6.1 and 2.6.2 above unless waived in writing by the City. To the fullest extent permitted by applicable law and ordinance, the City Representative is authorized to approve minor adjustments to the Development Plan in accordance with the requirements of this Section 2.6.3. Changes to the Project Plan which meet the TIF Act definition of a "substantial change" shall be subject to public notice and hearing as required by the TIF Act.

2.7 Removal of Property from District. City agrees it will not remove any property from the District as provided in K.S.A. 12-1771(g) without the prior written consent of Developer.

2.8 Related Utility Improvements. City, at its sole cost and expense, has constructed and completed the Related Utility Improvements. If it is determined during construction of the Project that utilities need to be repaired, modified or replaced, then Developer and City will work together to determine a solution.

Section 3
Construction Phase

3.1 Conditions Precedent to Construction. The following matters shall be completed before construction begins on any portion or phase of the Project which involves TIF Eligible Costs.

3.1.1 Delivery of Documents. The documents listed below (or copies), as well as any other documents reasonably required prior to commencement of construction, have been delivered to the City Representative. When necessary, Developer shall also procure the requisite filings of such documents with the appropriate officials:

(a) Construction permit and all other permits required before commencement of construction;

(b) Policies or certificate(s) of insurance evidencing that Developer has procured all insurance required by this Agreement;

(c) Satisfactory evidence to City Representative that the General Contractor selected by Developer to construct the Project is a registered contractor in good standing under the laws of Kansas and the laws of its state of its domicile;

(d) The Development Budget;

(e) The Development Plan;

(f) Executed copies of the construction contract between Developer and the General Contractor, and the contract between the Developer and the Project Architect;

(g) Such other documentation including plans and specifications, schematic drawings and renderings of the Project as may reasonably be requested by the City Representative to insure the orderly development of the Project;

(h) Path of schedule for the Project phases; and,

(i) All approvals from the local Historic Preservation Board for the historic buildings provided said buildings are part of a historic preservation project needed for development of the Project phase have been obtained in writing.

3.2 Construction. Developer will cause commencement of construction of the Project to begin upon completion of the conditions in Section 3.1.1, and subject to market conditions, Developer will pursue Completion of construction with due diligence thereafter. During construction of all phases of the Project, Developer agrees to the following conditions and instructions (where applicable, to the respective parts of the Project):

(a) To cause construction of the Project in a workmanlike manner, free of any material defects, in accordance with the final plans and specifications approved by the City, and in accordance with all applicable building codes, laws, and regulations (including the Americans With Disabilities Act, the Kansas Act Against Discrimination, and all environmental laws);

(b) To obtain all utility permits, certificates of occupancy, and all other licenses, permits and easements required for the operation of the Project;

(c) Supervise the timely and efficient performance of the Contractors and the Specialists and Consultants under their respective contracts with Developer to enable them to perform their work in a timely, safe, professional and workmanlike manner.

3.3 Construction in Phases. The Project may be constructed in phases. Construction will begin after closing of the Loan, and is anticipated to begin in the 2nd quarter of 2015 and be completed in fifteen months. Work on a particular building or portion of the Project may be adjusted by the Developer to different phases as construction, development and leasing advance in order to accommodate the orderly progress of this large and complex project.

3.4 Public Infrastructure. Developer shall have the right to perform all engineering, bidding, construction and inspection of the same in coordination with the City for all necessary public infrastructure for the Project. Developer shall comply in all respects with the City's policy set forth in Exhibit J and incorporated herein by reference. All public infrastructure improvements shall be constructed by Developer subject to City's standard review and permitting procedures and pursuant to the provisions of Exhibit J attached hereto and incorporated herein. All contracts and subcontracts for the construction of the public infrastructure improvements shall be competitively bid by Developer and the City shall have access to all such bidding documentation. The Developer shall provide to the City the statutory bonds and performance bonds required by the City for the public infrastructure improvements. All plans and specifications for the public infrastructure improvements shall be approved by the City Engineer.

3.5 Crosswalk. The City shall install at its cost a non-signaled cross walk at the entry between the Rock Island Passenger Depot Building and the Plaza Area. The cross-walk shall be completed before Developer Completes construction of the Project.

3.6 Douglas Avenue Improvements. The City agrees to consult with Developer before making future improvements on Douglas Avenue frontage which abuts the Project Land.

3.7 City Minor Street Privilege. Developer's right of access, construction, and maintenance of site improvements in the City Minor Street Privilege Area, as contemplated by the Project Plan, will be provided for via the procedures for application and approval of minor street privileges in accordance with Chapter 10.08 of the Code of the City of Wichita. Upon proper application, the City shall grant to Developer a City Minor Street Privilege on the City Minor Street Privilege Area for the right of access, construction, and maintenance of site improvements along Douglas Avenue and Rock Island Street as contemplated by the Project Plan and shown on the Site Plan. The terms of the Minor Street Privilege shall be jointly approved by the Developer and City. The Director of Operations and Maintenance shall waive the permit fee for the term of the Project Plan pursuant to City Code Section 10.08.210(c) based upon the determination that the project involves public beautification and improvement of public property for public purposes.

Section 4
Additional Rights and Obligations

4.1 Approvals. Whenever this Agreement requires the consent or approval of the City Representative, the City Representative, in his or her sole discretion, may instead present the question to the City Council for the necessary consent or approval. Notwithstanding the foregoing, the Parties intend that City Council approval shall not be required or necessary for changes in the Development Plan which do not affect the City's expenditures and are consistent with the Development Concept, unless otherwise required by law.

4.2 Title to Property. Developer shall own the improvements and the Project Land in fee simple, free and clear of all liens and encumbrances, subject only to liens and encumbrances placed thereon by Developer and real estate taxes and special assessments.

4.3 Related Improvements. Developer may construct at Developer's sole cost related improvements, such as landscaping and streetscaping, and the City Representative will coordinate and cooperate with Developer to accommodate those improvements within the Project schedule.

4.4 Development Assistance. The City will provide development assistance to Developer, as needed, to facilitate and expedite the issuance of building permits and compliance with other City-controlled requirements relating to completion of the Project. Developer may apply for applicable waivers of fees as allowed by the City's ordinances.

4.5 Access to Site. The Developer shall be provided access to streets adjacent to the Project Land during periods of demolition and construction in accordance with the Chapter 10.08 of the Code of the City of Wichita.

4.6 Certificate and Release- Gilbert and Mosely. Upon receipt of the proper application by Developer, the City will issue a certificate and release to Developer in regard to the Gilbert and Mosley groundwater contamination in accordance with the customary process for application and issuance of those certificates.

4.7 Certificate of Completion and Non-Default. Upon Completion of the Project, the City Representative shall provide a written Certificate of Completion and Non-Default to the Developer which states that: a) the Project has been Completed as defined by the Development Agreement; b) at the time of Completion to the knowledge of the City and the City Representative there was no uncured default of the Developer under the terms of the Development Agreement; and c) that any subsequent default of Developer in a later project plan in Project Area 2 shall not terminate or modify Developer's right to receive Tax Increment Funds for TIF Eligible Costs from Project Area 1. Provided however, the City Representative shall not be required to issue this Certificate if the City has issued a notice of default which remains uncured as described in Section 10. In that event, the Certificate shall be issued after the default is cured, withdrawn or otherwise resolved.

Section 5
Insurance, Bonding, and Indemnification

5.1 Types of Coverage. Developer shall carry, or cause the General Contractor to carry, the following insurance coverage insuring Developer, General Contractor, and City as specified below through final completion (as defined in the construction contracts):

(a) Special or builder's "all risk" insurance (including theft, vandalism, boiler, and pressure vessel coverage), in an amount reasonably acceptable to the Developer, insuring Developer's interests in each respective phase of the Project and any and all furniture, equipment, supplies and other property owned, leased, held or possessed by Developer n the Project (insurance shall also insure against loss from collapse of any part of the building or other structural failure during construction);

(b) Comprehensive general liability insurance insuring Developer and City against all liability for injury to or death of a person or persons and for damage to property in any way occasioned by or arising out of the activities of Developer, City, and their respective agents, contractors, or employees, in connection with the design and construction of the Project, in the amount of not less than Five Hundred Thousand Dollars ($500,000) or in such other amounts as may be reasonably acceptable to Developer and the City, provided, however, such policies shall not name the City, or insure the City, for an amount of coverage in excess of the City's maximum

liability pursuant to the Kansas Tort Claims Act and amendments (and any similar law limiting the liability of the City);

(c) Workers' compensation insurance;

(d) Automobile insurance (if applicable) with per occurrence limits of not less than $500,000, or comparable Hired and Non-owned coverage included in General Liability; and

(e) All other insurance as required by law.

5.2 Policy Requirements. The following general requirements shall apply to all insurance coverage carried by Developer and General Contractor pursuant to Section 5.1:

(a) To the extent available, each policy shall contain a clause whereby the insurer waives all rights of subrogation against General Contractor, Developer, and City, as the case may be;

(b) Subject to the limitations on builder's risk coverage in Section 5.1(a) and on general liability insurance in Section 5.1(b), the City shall be named as its interests appear in all policies obtained by Developer and General Contractor;

(c) Such policies shall be with reputable insurance companies reasonably acceptable to Developer, City, and General Contractor and licensed to do business in Kansas;

(d) Developer shall provide the City Representative with policies or certificates of insurance evidencing such coverage prior to the start of construction;

(e) Within thirty (30) days prior to expiration of coverage, or as soon as practicable, renewal policies or certificates of insurance evidencing renewal and payment of premium shall be provided by Developer to the City Representative; and

(f) The policies must be non-cancelable unless the carrier provides to the City Representative thirty (30) days' prior written notice of cancellation.

5.3 Indemnification. Developer agrees to indemnify, hold harmless, and defend the City, inclusive of members of the City Council, officers, agents, and employees (collectively referred to as the **"City Indemnified Parties"**) from and against all loss, damage, liability, cost or expense including, but not limited to, attorneys' fees and court costs incurred or suffered by or claimed against any of the City Indemnified Parties by any person or entity by reason of injury, death, loss, or damage to any person, property, or business which arises, or is alleged to have arisen, from the negligence or willful misconduct of Developer, its officers, directors, agents, or employees.

The City's liability for any claims asserted by any person or entity by reason of injury, death, loss, or damage to any person, property, or business which arises, or is alleged to have arisen, from the negligence of willful misconduct of the City, its officers, directors, agents, or employees, shall be governed by the Kansas Tort Claims Act and other applicable laws of the State of Kansas.

Section 6
Term and Survival

The term of this Agreement shall commence upon the date of this Agreement and, unless terminated sooner as provided in this Agreement, shall end on the date that all of the following have occurred: all TIF Eligible Costs have been paid from the Tax Increment Funds, subject to the requirements and limitations

set forth in Section 8, or 20 years after the date the ordinance approving the Project Plan was approved. However, the following provisions of this Agreement shall survive beyond the end of the term to the extent still applicable at the time: all representations and warranties; all agreements of indemnification; limitations on assignment under Section 9.16; and limitations concerning the Cash Basis and Budget Laws.

Section 7
Representations, Warranties, and Guaranties

7.1 City. The City warrants and represents to Developer as follows:

(a) It is a municipal corporation, duly incorporated and validly existing under the laws of the State of Kansas.

(b) It has full power and authority to execute this Agreement and consummate the transactions contemplated hereby subject to the limitations expressed herein or otherwise imposed by law.

(c) The execution and delivery of this Agreement and the other documents contemplated herein will not conflict with or result in a breach of any of the terms, covenants and provisions of any judgment, order, injunction, decree or ruling of any court or governmental agency, body or authority to which it is subject or of any material provision of any agreement, contract, indenture or instrument to which it is a party or by which it is bound, or constitutes a material breach thereunder.

7.2 Developer. The Developer warrants and represents to City as follows:

(a) It is a limited liability company duly organized, validly existing, and in good standing under the laws of Kansas.

(b) It has the requisite power through its managing member to execute the documents under this Agreement and to consummate the transactions contemplated thereby.

(c) The execution and delivery of this Agreement and the other documents contemplated herein will not conflict with or result in a breach of any of the terms, covenants and provisions of any judgment, order, injunction, decree or ruling of any court or governmental agency, body or authority to which it is subject or of any material provision of any agreement, contract, indenture or instrument to which it is a party or by which it is bound, or constitutes a material breach thereunder.

(d) It is duly authorized and registered to carry on business in Kansas pursuant to the laws of Kansas.

(e) All contracts with Contractors shall warrant that the work performed or material supplied by that Contractor to the Project will be free from any defects in materials and workmanship for a period of at least one (1) year from the date of Completion, and that such warranty does not restrict or otherwise limit that Contractor's obligation to construct the Project in a workman-like manner and in accordance with the Development Plan as it pertains to that Contractor's work.

(f) It shall use reasonable care to insure that all Specialists and Consultants selected in connection with the design and construction of the Project shall be highly qualified to do the work they are engaged to perform and Developer shall make reasonable inquiries as to such persons'

background, experience and reputation to assure they are well qualified to undertake such work.

Section 8
Tax Increment Funding and Process

8.1 Union Station Project Fund. Pursuant to City Ordinance No. 49-839, as Tax Increment Funds are generated over the life of the District, the City will reimburse Developer for actual TIF Eligible Costs incurred, including but not limited to the Public Access Area Costs, but only to the extent that Tax Increment Funds are generated. The City shall establish a Union Station Project Fund as provided by K.S.A. 12-1775 to deposit Tax Increment Funds received from the District. Those Tax Increment Funds will be paid to Developer for reimbursement of TIF Eligible Costs.

8.2 Payment of TIF Eligible Costs. When the annual Tax Increment Funds have been actually paid to the City by the Sedgwick County Treasurer as incremental property taxes collected for the District pursuant to the TIF Act, and the applicable TIF Eligible Costs are documented to the satisfaction of the City as described in Section 8.3 below, the Tax Increment Funds shall be released to Developer for reimbursement of such TIF Eligible Costs within ten (10) days thereafter. The estimated amount of TIF Eligible Costs which will be reimbursed from Tax Increment Funds is One Million Six Hundred Fifty-Five Thousand Nine Hundred and Thirty-Four Dollars ($1,655,934), and Developer shall be allowed reimbursement of all TIF Eligible Costs up to 110% of this amount (the "**TIF Eligible Costs Cap**"). Any amounts in excess of the TIF Eligible Costs Cap shall not be eligible for reimbursement from Tax Increment Funds without the City Representative finding that such excess improved the Project Area in a manner consistent with the Project Plan and such costs are not excessive or unreasonable. Financing and interest costs of that part of a Loan allocable to TIF Eligible Costs, reimbursed to Developer shall not be subject to the TIF Eligible Costs Cap. The estimated amount of Tax Increment Funds to be generated to reimburse TIF Eligible Costs is Two Million Four Hundred Seventy-Five Thousand Nine Hundred Dollars ($2,475,990).

8.3 Certification of Expenditure of TIF Eligible Costs. Developer shall submit to the City a Certificate of Expenditures in the form attached as Exhibit F setting forth the amount for which payment is sought and an itemized listing of the TIF Eligible Costs. Each Certificate of Expenditures shall be accompanied by such bills, contracts, invoices and other evidence as the City shall reasonably require to document appropriate payment of a TIF Eligible Cost.

The City shall have twenty (20) days after receipt of the Certificate of Expenditures to review and respond in writing to the Developer. The City shall approve the Certificate of Expenditures and promptly reimburse the Developer as described in Sections 8.1 and 8.2 when: (1) the TIF Eligible Costs sought to be reimbursed are reasonably itemized; and (2) evidence adequately demonstrates that Developer has paid the TIF Eligible Costs for which reimbursement is requested. If the City reasonably disapproves of any item on the Certificate of Expenditures, the City shall notify the Developer in writing of the reason for such disapproval within such twenty (20) day period and release payment for all undisputed TIF Eligible Costs. A Certificate of Expenditures will be deemed approved by the City if the City does not respond within the above mentioned twenty (20) days after submittal.

Section 9
General Provisions

9.1 Governing Law. This Agreement and the legal relations between the Parties shall be governed by, construed and interpreted under the laws of the State of Kansas, and exclusive venue for all disputes and litigation shall be in Wichita, Sedgwick County, Kansas only.

9.2 No Waiver. No failure of a Party to exercise any power given under this Agreement or to insist upon strict compliance of another Party with its obligations hereunder, and no custom or practice of the Parties at variance with the terms hereof, shall constitute a waiver of either Party's right to demand exact compliance with the terms of this Agreement.

9.3 Entire Agreement. This Agreement contains the entire agreement of the Parties with respect to the subject matter hereof, and no representations, inducements, promises, or agreements, oral or otherwise, between the Parties not embodied or referenced herein shall be of any force or effect.

9.4 Written Amendments. Any amendment to this Agreement shall not be binding on any of the Parties unless the amendment is in writing, is duly authorized, and is duly executed by the Parties to this Agreement.

9.5 Time of Essence. Time is of the essence of this Agreement.

9.6 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts together shall constitute one and the same instrument.

9.7 Headings. The headings of the sections and subsections of this Agreement are inserted for convenience only and do not constitute a part of this Agreement.

9.8 Notices. All notices required to be given under this Agreement shall be delivered in writing and delivered either by (a) hand delivery, and considered delivered upon receipt, (b) telefacsimile, and considered delivered upon completion of transmittal, (c) certified mail, and considered delivered upon signed receipt or refusal to accept notice, or (d) nationally-recognized overnight delivery service, and considered delivered the next business day after the notice is deposited with that service for delivery. For notice purposes, the Parties agree to keep each other informed at all times of their current addresses. For purposes of notices or other written communications, the addresses of the Parties shall be as follows:

(a) If to the City:

City Manager
City Hall, 13th Floor
455 North Main Street
Wichita, Kansas 67202
Fax # (316) 268-4519

and

City Clerk
City Hall, 13th Floor
455 North Main Street
Wichita, Kansas 67202

and

City Attorney
City Hall, 13th Floor
455 North Main Street
Wichita, Kansas 67202
Fax # (316) 268-4335

(b) If to Developer:

Gary Oborny, Managing Member
Union Station, LLC

8111 East 32nd Street North, Suite 101
Wichita, Kansas 67226
Fax # (316) 262-6321

and

Adams Jones Law Firm, P.A.
Attention: Mert Buckley
1635 N. Waterfront Parkway #200
Wichita, KS 67206
Fax # (316) 265-9719

9.9 Electronic Transactions. The transactions described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

9.10 Validity and Severability. It is the intention of the parties that the provisions of this Agreement shall be enforced to the fullest extent permissible under the laws and public policies of State of Kansas, and that the unenforceability (or modification to conform with such laws or public policies) of any provision hereof shall not render unenforceable, or impair, the remainder of this Agreement. Accordingly, if any provision of this Agreement shall be deemed invalid or unenforceable in whole or in part, this Agreement shall be deemed amended to delete or modify, in whole or in part, if necessary, the invalid or unenforceable provision or provisions, or portions thereof, and to alter the balance of this Agreement in order to render the same valid and enforceable.

9.11 Licenses and Permits. It shall be the ultimate responsibility of Developer to secure all local licenses and permits required to be obtained by Developer or City with respect to construction, completion and occupancy of the Project, including any necessary building, occupancy, sewer and utility permits. The City shall cooperate with Developer and all Contractors to the extent permitted by law, as needed, to facilitate and expedite the issuance of these licenses and permits.

9.12 Documents. All as-built drawings, plans, specifications, and other documents prepared for the Project pursuant to this Agreement are and shall remain the property of Developer whether or not the Project is Completed.

9.13 Approvals. Whenever the approval or consent of a Party is required in this Agreement, such approval or consent shall not be unreasonably withheld, delayed or conditioned.

9.14 "Including." Whenever general words or terms are followed by the word "including" (or other forms of the word "include") and words of particular and specific meaning, the words "including without limitation," and the general words shall be construed in their widest extent, and shall not be limited to persons or things of the same general kind or class as those specifically mentioned in the words of particular and specific meaning.

9.15 Binding Effect. Subject to the limitations of Section 9.16, this Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns.

9.16 Assignment. Except as provided herein, no Party may assign all or any part of its interest in this Agreement without the prior written consent of the other Party, and any such assignment without such consent shall be void. The City may assign all or part of its interest to a city-established entity without

approval of the other Party, but with thirty (30) days prior written notice to Developer so long as such assignee has the legal authority to fulfill the City's obligations under this Agreement and, to the extent that it does not have such authority, the assignment shall continue in effect but the City will remain obligated for such non-assignable or unauthorized obligations. Members of the Developer may pledge their membership interests in the Developer entity to the lender holding the primary Loan on the Project if so required by such lender.

At any time before January 1, 2020, Developer may transfer membership interests to other parties without the consent of the City; provided however, no such transfer may occur unless Gary L. Oborny remains the manager of the Developer and unless Gary L. Oborny or an Affiliate retains at least a 51% ownership interest in the Developer, either personally or through ownership in an entity that is a member of the Developer. Developer may assign this Agreement, in whole or in part, at any time before January 1, 2020; provided however, such an assignment shall not release Developer from any of its obligations originating from this Agreement, unless the assignee agrees to assume in writing the obligations and the City consents to the assignment and assumption.

After January 1, 2020, Developer may assign this Agreement upon notice to the City: a) to an assignee who has been approved by the City as an approved developer in accordance with existing City policy if the Project Plan has not been completed and the approved developer assumes in writing the obligations hereunder or b) to any assignee if the Project Plan is completed or no further work is anticipated on the Project Plan as provided in Section 9.20 and the assignee assumes in writing the obligations hereunder, and in the event of an assignment in compliance with the foregoing a) or b) Developer shall be released from all obligations under this Agreement.

9.17 Brokerage Commissions. Except as noted below, both Parties represent to the other that they have not discussed this Agreement or the subject matter thereof with any real estate broker, agent or salesperson so as to create any legal right in any such broker, agent or salesperson to claim a real estate commission or similar fee with respect to the transactions between the Parties contemplated by this Agreement. Occidental Management, Inc., (Occidental) an entity owned by Oborny, will act as broker and agent for purposes of development, construction, entitlements and leasing for the property owned by Union Station, LLC and shall act as property manager for any leased properties. Occidental Management, Inc. will be entitled to fees and expenses customary in the industry for such services. Both Parties hereby indemnify the other Party against and agree to hold the other harmless from any and all claims, suits, or judgments (including, without limitation, court costs and attorneys' fees incurred in connection with any such claims, suits or judgments) for any real estate commissions or similar fees arising out of or in any way connected with any claimed agency relationship with the indemnitor and relating to the transactions contemplated by this Agreement.

9.18 Cash Basis and Budget Laws. It is the intent of the Parties that the provisions of this Agreement are not intended to violate the Kansas Cash Basis Law (K.S.A. 10-1101, et seq.) (the "Cash Basis Law") or the Kansas Budget Law (K.S.A. 79-2925) (the "Budget Law"). Therefore, notwithstanding anything to the contrary herein contained, the City's obligations under this Agreement are to be construed in a manner that assures that the City is at all times not in violation of the Cash Basis Law or the Budget Law.

9.19 Other Agreements. The Parties also covenant to negotiate and execute such additional documents as may be reasonably necessary to provide for the coordinated construction and operation of the Project.

9.20 Force Majeure. If an act of Force Majeure delays the ability of a Party to perform its obligations under this Agreement, the time for performance of the obligation shall be extended by a period of time reasonably necessary after the act of Force Majeure has ended. If an act of Force Majeure so

damages the Project that it cannot be Completed within the Development Budget, then Developer may terminate this Agreement by giving written notice to the City, or make such modifications to the Development Plan as are reasonable in light of the Force Majeure event. In any such event, the Parties will pay their own respective costs and expenses incurred, and in the event of termination of the Agreement the Parties will thereafter have no further obligation to Complete construction and development of the Project.

9.21 Effect of Violation of the Terms and Provisions of this Agreement. The City is deemed the beneficiary of the terms and provisions of this Agreement, for and in its own rights and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the covenants running with the land have been provided. The Agreement shall run in favor of the City, without regard to whether the City has been, remains or is an owner of any land or interest therein in the Project or the District. The City shall have the right, if the Agreement or covenants are breached, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Agreement and covenants may be entitled.

9.22. Agreement Controls. The Parties agree that the Development Plan and Project Plan will be implemented as agreed in this Agreement. This Agreement specifies the rights, duties and obligations of the City and Developer with respect to constructing the Project, the payment of TIF Eligible Costs and all other methods of implementing the Development Plan and the Project Plan. The Parties further agree that this Agreement contains provisions that are in greater detail than as set forth in the Development Plan and the Project Plan and that expand upon the estimated and anticipated sources and uses of funds to implement the Development Plan and Project Plan. Nothing in this Agreement shall be deemed an amendment of the Development Plan or the Project Plan. Except as otherwise expressly provided herein, this Agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter hereof and is a full integration of the agreement of the Parties.

9.23. Required Disclosures. The Developer shall immediately notify the City of the occurrence of any material event which would cause any of the information furnished to the City by the Developer in connection with the matters covered in this Agreement to contain any untrue statement of any material fact or to omit to state any material fact required to be stated therein or necessary to make any statement made therein, in the light of the circumstances under which it was made, not misleading.

9.24. Tax Implications. The Developer acknowledges and represents that (1) neither the City nor any of its officials, employees, consultants, attorneys or other agents has provided to the Developer any advice regarding the federal or state income tax implications or consequences of this Agreement and the transactions contemplated hereby, and (2) the Developer is relying solely upon its own tax advisors in this regard.

9.25. Recordation of Agreement. The Parties agree to execute and deliver an original of this Agreement and any amendments or supplements hereto, in proper form for recording and/or indexing in the appropriate land or governmental records, including, but not limited to, recording in the real estate records of Sedgwick County, Kansas. This Agreement shall be recorded by the Developer at Developer's sole cost and expense, and proof of recording shall be provided to the City.

9.26. Incorporation of Exhibits. The Exhibits attached hereto and incorporated herein by reference are a part of this Agreement to the same extent as if fully set forth herein.

9.27 Amendment and Termination. In recognition: a) of the size and complexity of the Project, b) that the Developer is financing the Project itself with pay-as-you-go financing and will only receive Tax Increment Funds after, and to the extent that, it improves the value of the Project Land, c) success of the Project depends upon unpredictable timing of tenant leasing of the Project space, and d) Developer has an

economic incentive to complete the Project as described in the Development Plan, then, notwithstanding anything else to the contrary in this Agreement, Developer shall have the absolute discretion to delay, postpone or even abandon commencement of the Project without consequence under this Agreement or to its rights to receive Tax Increment Funds or future Tax Increments for eligible improvements made to the District. For purposes of this section, "commencement" of construction means the Developer has incurred hard construction costs of Five Hundred Thousand Dollars ($500,000) on the Project.

In addition to other cancellation provisions under this Agreement, this Agreement may be cancelled by Developer if Developer is unable to obtain financing and equity sufficient to make the Developer Improvement Contribution.

If Developer cancels this Agreement under the terms of this section, then the Parties will pay their own expenses incurred to date, without seeking compensation from each other, and they shall have no further obligations toward each other.

Section 10
Defaults and Remedies

10.1 In the event any party hereto (whether one or more the "**Defaulting Party**"), shall fail to perform any obligation of such party under this Agreement and shall fail to correct the same within thirty (30) days ("**Cure Period**") after written notice thereof from the party claiming such default (whether one or more, the "**Non-Defaulting Party**") specifying such failure, then the Defaulting Party shall be deemed to be in default hereunder this Agreement; provided, in the event the default cannot reasonably be fully cured within such thirty (30) day period of time then no default shall be deemed to exist hereunder so long as the Defaulting Party shall commence curing the same within such thirty (30) day period and shall prosecute the same to completion with reasonable diligence.

10.2 In the event that any party defaults on its obligations hereunder, then the non-defaulting party or parties may seek a temporary restraining order, an injunction, specific performance or any other equitable relief that the non-defaulting party or parties deem(s) reasonably appropriate. The parties hereby acknowledge that an adequate remedy in damages will not be available upon breach of this Agreement, disclaim recovery of incidental or consequential damages, and in lieu thereof agree that the parties shall be entitled to pursue the above equitable remedies as reasonably necessary in order to remedy a breach of this Agreement.

10.3 Notwithstanding anything to the contrary herein so long as the City Representative has issued a Certificate of Completion and Non-Default, a termination of this Agreement shall not terminate or modify Developer's right to receive Tax Increment Funds for TIF Eligible Costs expended to the date of termination for the remainder of the original term of the Project Plan, and any such terms of this Agreement necessary to continue reimbursements of TIF Eligible Costs incurred to the date of termination of the Agreement shall survive the termination.

CITY OF WICHITA, KANSAS

By: _____
Carl Brewer, Mayor

Attest:_____
Karen Sublett, City Clerk

ACKNOWLEDGMENT

STATE OF KANSAS)
) SS:
COUNTY OF SEDGWICK)

On this _____ day of _____, 2015, before me personally appeared Carl Brewer and Karen Sublett, to me personally known, who being by me duly sworn did say that they are the Mayor and City Clerk of the City of Wichita, Kansas, a Kansas municipal corporation and that said instrument was signed and delivered on behalf of said City and acknowledged to me that he executed the same as the free act and deed of said City.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal the day and year

_____
[SEAL] Notary Public

_____
Typed or Printed Name of Notary Public

My Appointment Expires:

_____

Approved as to Form:

_____
Sharon L. Dickgrafe, Interim Director of Law and City Attorney

UNION STATION, LLC

By:_____
Gary L. Oborny, Managing Member

ACKNOWLEDGMENT

STATE OF KANSAS)
) ss.
COUNTY OF SEDGWICK)

On this _____ day of _____, 2015, before me personally appeared Gary L. Oborny, to me personally known, who being by me duly sworn did say that he is the Managing Member of Union Station, LLC, and that said instrument was signed and delivered on behalf of said limited liability company and acknowledged to me that he executed the same as the free act and deed of said limited liability company.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

_____
[SEAL] Notary Public

_____
Typed or Printed Name of Notary Public

My Appointment Expires:

_____

EXHIBIT A

SITE PLAN

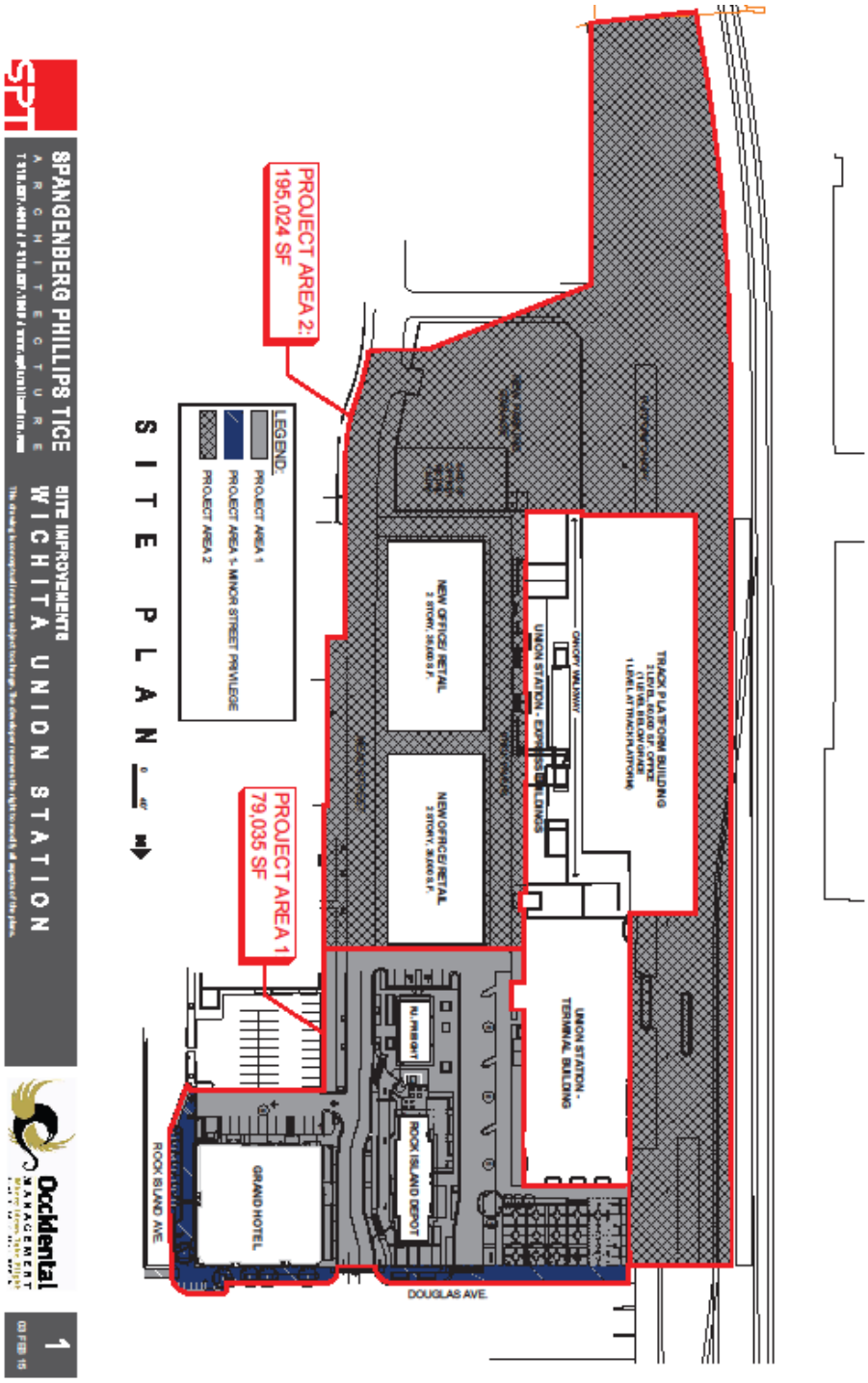


EXHIBIT B

Development Budget

Grand Hotel Building	$ 1,941,428
Rock Island Baggage Depot Building	240,643
Rock Island Passenger Depot Building	899,870
Site Improvements	1,223,354
Tenant Improvement Costs	1,094,585
Landscaping, Signage, Contingency Costs	126,184
Architectural Fees	172,212
Engineering Fees	86,106
Leasing Commission Fees	232,312
Other Soft Costs (financing, legal, holding)	227,686
Total Project 1 Development Budget	$ 6,244,380

EXHIBIT C

Development Schedule

Developer plans to commence construction in March, 2015 and estimates that construction will be completed by the end of October, 2015.

EXHIBIT D

Development Concept

The Project consists of site and building improvements to the Grand Hotel, the Rock Island Depot Building, the Rock Island Baggage Building and the Plaza in front of the Main Terminal Building. Site improvements consist of planters, site lighting, landscaping, irrigation, and street furniture amenities. Utility upgrades will also be realized. The buildings will provide a mix of office and retail use, subject to market conditions and recognizing that uses may be modified as development and leasing progresses.

EXHIBIT E

Legal Descriptions and Map of District
And Project Areas 1 and 2

Redevelopment District

That part of the SW1/4 of Sec. 21, T27S, R1E of the 6th P.M., Sedgwick County, Kansas, described as beginning at the northwest corner of Lot 1, Union Station Addition, Wichita, Sedgwick County, Kansas; thence N0°05'00"W along the extended west line of said Lot 1, 114.00 feet to the North Right of way of Douglas Avenue; thence N89°56'00"E along said north right of way, 580.61 feet to the East Right of Way of Rock Island; thence S00°00'00"W, along said east Right of Way, 114.00 feet to the South Right of Way of Douglas Avenue; thence continuing S00°00'00"W, along said east Right of Way, 170.72 feet; thence S89°56'00"W, 185.00 feet; thence S00°00'00"W, 276.30 feet; thence S89°56'W, 3.22 feet; thence S00°02'21"E, 162.89 feet; thence S89°52'30"W, 17.79 feet; thence S00°00'00"W, 174.09 feet to a point of curvature of a curve to the right, said curve having a radius of 165.00 feet and an arc length of 58.13 feet; chord bearing S10°05'32"W, 57.83 feet; thence along said curve, 58.13 feet to a point of reverse curve of a curve to the left, said curve having a radius of 260.00 feet and an arc length of 49.94 feet; thence along said curve, 49.94 feet; thence S89°22'00"W, 57.02 feet; thence S68°20'30"W, 171.05 feet; thence S00°00'00"W, 253.92 feet; thence S83°50'48"W, 101.63 feet; thence N09°45'00"W, 36.96 feet; to a point of curvature of a curve to the right, said curve having a radius of 1883.87 feet and an arc length of 317.84 feet; chord bearing N04°55'00"W, 317.46 feet; thence along said curve, 317.84 feet to a point of tangency; thence N0°05'00"W, 864.61 feet to the point of beginning.

Project Area 1

That part of the SW1/4 of Sec. 21, T27S, R1E of the 6th P.M., Sedgwick County, Kansas, described as beginning at the northeast corner of Lot 3, Union Station Addition, Wichita, Sedgwick County, Kansas; thence S00°00'00"W along the east line of said Lot 3, 170.72 feet; thence S89°56'00"W, 125.00 feet; thence S00°00'00"W, 138.00 feet; thence S90°00'00"W, 192.20 feet; thence N00°05'00"W, 32.23 feet; thence N89°55'00"E, 11.00 feet; thence N00°05'00"W, 28.00 feet; thence S89°55'00"W, 11.00 feet; thence N00°05'00"W, 169.79 feet; thence S89°56'00"W, 104.22 feet; thence N00°05'00"W, 78.47 feet to the north line of said addition; thence N89°56'00"E along said north line, 421.86 feet to the place of beginning along with the adjoining right-of-way of Douglas Avenue and Rock Island Avenue.

Public Access Easement Area

Surrounding Depot Buildings. Pedestrian and Vehicular.
That part of Lot 1, Union Station Addition, Wichita, Sedgwick County, Kansas, described as commencing at the northeast corner of Lot 3 in said addition; thence S89°56'00"W along the north line of said addition, 249.84 feet to the place of beginning; thence S00°05'00"E, 32.00 feet; thence S88°32'37"W, 40.00 feet; thence S00°05'00"E, 212.95 feet; thence N89°56'00"E, 8.00 feet; thence N00°05'00"W, 14.00 feet; thence N89°56'00"E, 62.00 feet; thence S00°05'00"E, 14.00 feet; thence N89°56'00"E, 12.00 feet; thence N00°05'00"W, 146.92 feet; thence N17°22'27"E, 30.00 feet; thence N00°05'00"W, 55.00 feet; thence N13°13'09"W, 37.95 feet; thence N00°05'00"W, 17.00 feet to said north line; thence N89°56'00"E along said north line, 34.40 feet; thence S00°05'00"E, 116.98 feet; thence S17°22'27"W, 25.93 feet; thence S00°05'00"E, 166.98 feet; thence S90°00'00"W, 144.90 feet; thence N00°05'00"W, 235.39 feet; thence N62°08'27"E, 15.54 feet; thence N00°05'00"W, 65.89 feet to said north line; thence N89°56'00"E along said north line, 28.15 feet to the place of beginning, containing 21,815 square feet, more or less, AND

Behind (South) Grand Hotel. Pedestrian and Vehicular.

That part of Lots 1 and 3, Union Station Addition, Wichita, Sedgwick County, Kansas, described as commencing at the northeast corner of said Lot 3; thence S89°56'00"W along the north line of said addition, 125.00 feet to the place of beginning; thence S00°00'00"W along the west line of said Lot 3, 117.72 feet; thence N89°56'00"E, 77.00 feet; thence S00°05'00"E, 3.00 feet; thence N89°56'00"E, 48.00 feet to the east line of said Lot 3; thence S00°00'00"W along said east line, 50.00 feet; thence N89°36'21"W, 123.32 feet; thence S00°00'00"W, 132.00 feet; thence S90°00'00"W, 21.39 feet; thence N00°05'00"W, 166.98 feet; thence N17°22'27"E, 25.93 feet; thence N00°05'00"W, 116.98 feet to said north line; thence N89°56'00"E along said north line, 14.06 feet to the place of beginning, containing 12,148 square feet, more or less.

Plaza less Kiosk Area. Pedestrian.

That part of Lot 1, Union Station Addition, Wichita, Sedgwick County, Kansas, described as commencing at the northeast corner of Lot 3 in said addition; thence S89°56'00"W along the north line of said addition, 400.86 feet to the place of beginning; thence N89°56'00"E along said north line, 122.87 feet; thence S00°05'00"E, 65.89 feet; thence S62°08'27"W, 15.54 feet; thence S00°05'00"E, 235.39 feet; thence S90°00'00"W, 25.90 feet; thence N00°05'00"W, 32.23 feet; thence N89°55'00"E, 11.00 feet; thence N00°05'00"W, 28.00 feet; thence S89°55'00"W, 11.00 feet; thence N00°05'00"W, 169.79 feet; thence S89°56'00"W, 104.22 feet; thence N00°05'00"W, 18.47 feet; thence N89°56'00"E, 21.00 feet; thence N00°05'00"W, 60.00 feet to the place of beginning, containing 15,557 square feet, more or less.

City Minor Street Privilege Area

That part of the SW1/4 of Sec. 21, T27S, R1E of the 6th P.M., Sedgwick County, Kansas, described as beginning at the northeast corner of Lot 3, Union Station Addition, Wichita, Sedgwick County, Kansas; thence S89°56'00"W along the north line of said Lot 3 and extended, 139.06 feet; thence N00°39'46"E, 10.10 feet; thence N48°19'32"E, 7.06 feet to a point of curvature of a curve to the right, said curve having a radius of 12.00 feet and an arc length of 8.73 feet; thence easterly along said curve 8.73 feet to a point of tangency; thence S89°58'54"E, 93.97 feet; thence N01°15'08"E, 4.01 feet to a point of curvature of a curve to the right, said curve having a radius of 6.00 feet and an arc length of 9.19 feet; thence easterly along said curve 9.19 feet to a point of tangency; thence N88°58'49"E, 28.96 feet to a point of curvature of a curve to the right, said curve having a radius of 21.50 feet and an arc length of 33.85 feet; thence southeasterly along said curve 33.85 feet to a point of tangency; thence S00°49'04"E, 137.59 feet; thence S20°19'28"W, 49.36 feet; thence N56°53'51"W, 11.55 feet to the east line of said Lot 3; thence N00°00'00"E along said east line, 170.72 feet to the place of beginning; TOGETHER WITH that part of the SW1/4 of Sec. 21, T27S, R1E of the 6th P.M., Sedgwick County, Kansas, described as commencing at the northeast corner of said Lot 3; thence S89°56'00"W along the north line of said Lot 3 and extended, 173.47 feet to the place of beginning; thence continuing S89°56'00"W along the north line of said addition, 248.39 feet; thence N00°05'00"W, 16.10 feet; thence N89°52'40"E, 230.00 feet to a point of curvature of a curve to the right, said curve having a radius of 18.50 feet and an arc length of 26.90 feet; thence southeasterly along said curve 26.90 feet to the place of beginning.

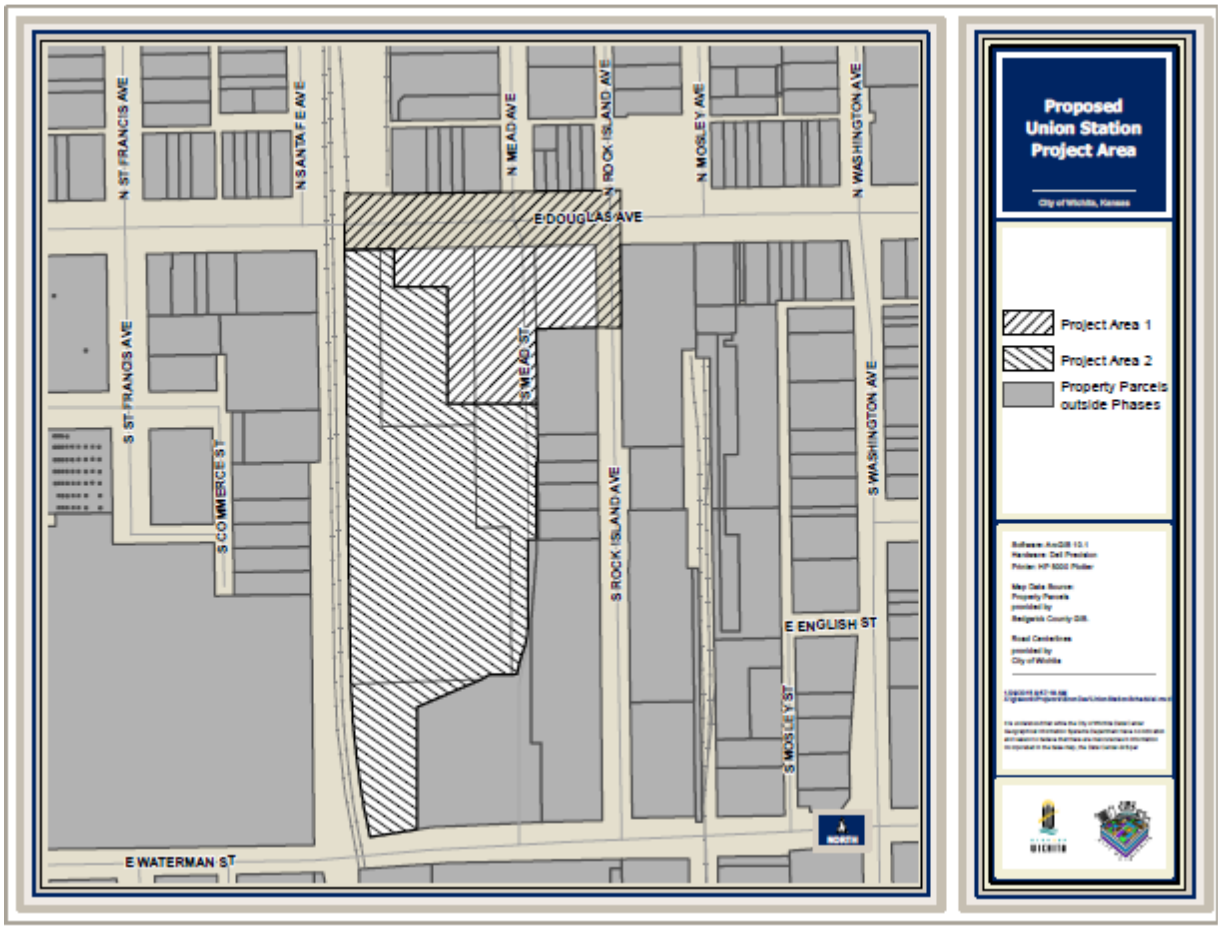

Proposed Union Station Project Area
City of Wichita, Kansas
Project Area 1
Project Area 2
Property Parcels outside Phases
N ST FRANCIS AVE
N SANTA FE AVE
N MEAD AVE
N ROCK ISLAND AVE
N MOSLEY AVE
N WASHINGTON AVE
E DOUGLAS AVE
S ST FRANCIS AVE
S COMMERCE ST
S MEAD ST
S ROCK ISLAND AVE
S WASHINGTON AVE
E ENGLISH ST
S MOSLEY ST
E WATERMAN ST
NORTH

EXHIBIT F

Certification of Expenditures Form

Request No. _____ Date:_____

Pursuant to the Development Agreement effective as of _____, 2015 (the "Agreement") for the Union Station Redevelopment District the Project Area 1 Project Plan between the City of Wichita, Kansas and the undersigned (the "Developer"), the Developer requests a reimbursement of Tax Increment Funds and hereby states and certifies as follows to the best of its knowledge:

1. The date and number of this request are as set forth above.

2. All terms in this request shall have and are used with the meanings specified in the Agreement.

3. The names of the persons, firms or corporations to whom the payments have been made and reimbursement is hereby requested, the amounts to be reimbursed and the general classification and description of the TIF Eligible Costs for which each obligation requested to be reimbursed hereby was incurred are as set forth on **Attachment I** hereto.

4. These costs have been incurred and are reasonable TIF Eligible Costs that are reimbursable under the Agreement and are within the TIF Eligible Costs Cap and have not been previously reimbursed.

5. Each item listed on *Schedule 1* hereto is a TIF Eligible Project Cost and was incurred in connection with the construction of the Project after October 14, 2014.

6. These TIF Eligible Costs have been paid by the Developer and are reimbursable under the Agreement.

7. Each item listed on *Schedule 1* has not previously been paid or reimbursed and no part thereof has been included in any other certificate previously filed with the City.

8. There has not been filed with or served upon the Developer any notice of any lien, right of lien or attachment upon or claim affecting the right of any person, firm or corporation to receive payment of the amounts stated in this request, except to the extent any such lien is being contested in good faith.

9. All necessary permits and approvals required for the work for which this certificate relates were issued and were in full force and effect at the time such work was being performed.

10. All work for which payment or reimbursement is requested has been performed in a good and workmanlike manner and in accordance with the Agreement.

UNION STATION, LLC

By: _____
Title: _____

Approved this ____ day of _____, 20__

CITY OF WICHITA

By: _____
City Representative

ATTACHMENT I
TO CERTIFICATION OF EXPENDITURES

REQUEST NO. _____ DATED_____

SCHEDULE OF PAYMENTS REQUESTED

Person, firm or corporation to whom payment was made	Amount to be reimbursed	General classification and description of the TIF Eligible Costs to be reimbursed

EXHIBIT G

Land Use Restrictions

1. Adult Book and Video Stores
2. Community Correctional Facilities
3. Half-way Houses
4. Drug or Alcohol Rehabilitation Facilities
5. Used Car Lots
6. Multi-game, Casino-style Gambling Facilities
7. Commercial Billboards

EXHIBIT H

Public Access Area 1 Easement

After recording return to:
Adam Andrus
Adams Jones Law Firm
1635 N. Waterfront Pkwy #200
Wichita, KS 67206

PUBLIC ACCESS AREA 1 EASEMENT

THIS EASEMENT ("**Easement**") made this _____ day of _____, 2015, by and between Union Station, LLC, a Kansas Limited Liability Company ("Grantor"), and the City of Wichita, Kansas ("Grantee"),

1. Easement. Grantor, in consideration of the payment of tax increment proceeds for the Public Access Area Costs (as defined in the separate Development Agreement Regarding Development of Project Area 1 between the parties hereto, dated _____, 2015), does hereby grant and convey unto the Grantee, for the benefit of the public: 1) a perpetual non-exclusive right-of-way and access easement in gross for the purpose of pedestrian and vehicular ingress and egress over, along and through the drives and surface parking lots located upon the real estate legally described in the attached Exhibit A, and, 2) a perpetual non-exclusive right-of-way and access easement in gross for the purpose of pedestrian ingress, egress and transit, over, along and through the drives, surface parking lots, pedestrian walkways and plazas, located upon the real estate legally in the attached Exhibit B (collectively, the "**Easement Area**").

2. Right to Control. Grantor expressly reserves the right to reasonable control over all scheduling, maintenance, use, design, and ownership of the Easement Area, including but not limited to the right to restrict public access during events, maintenance, construction, and pursuant to Kansas liquor laws, and for other purposes consistent with Grantor's and the public's intended use of and access to the Easement Area.

3. Subject to Existing Easements. This Easement is subject to existing easements and restrictions of record.

4. Modification to Allow Improvements. Grantor shall have the right to construct improvements on the Easement Area without requiring amendment to this easement under the following procedures:

a. By the Developer granting to the City the same easement rights to an equal number of square feet from the Project Land (as shown on Exhibit D attached) acceptable to the City in writing to replace the land removed for the improvements;

b. By mutual agreement between the Grantor and the Grantee; or,

c. By approval of the City Council of the City of Wichita, upon request of the Grantor, if the Grantor and City Representative do not reach mutual agreement on construction of improvements on the Easement Area.

All land upon which improvements are permitted in accordance with this procedure will be deemed as removed from the Easement Area to the extent of the foot print of the improvements.

5. Covenants to Run with Land. The rights and obligations under this Agreement shall run with the land and create equitable servitudes in favor of the real property benefitted; shall bind every person having any fee, leasehold or other interest therein; and shall inure to the benefit of the respective parties and their successors, assigns, heirs and personal representatives.

IN WITNESS WHEREOF: The said Grantor has signed these presents the day and year first above written.

Union Station, LLC

By:_____
Gary L. Oborny, Managing Member

STATE OF KANSAS)
) SS:
COUNTY OF SEDGWICK)

BE IT REMEMBERED, that on this _____ day of _____, 2015, before me, the undersigned, a Notary Public, in and for the County and State aforesaid came Gary L. Oborny, as Managing Member of Union Station, LLC, a Kansas Limited Liability Company, personally known to me to be the same person who executed the within instrument of writing and such person duly acknowledged the execution of the same, for and on behalf and as the act and deed of said limited liability company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.

_____
Notary Public

(My Appointment Expires:_____)

Approved as to form:

Sharon L. Dickgrafe, Interim City Attorney
And Director of Law

Exhibit A to Public Access Area 1 Easement

Parcel C: Surrounding Depot Buildings. Pedestrian and Vehicular.
That part of Lot 1, Union Station Addition, Wichita, Sedgwick County, Kansas, described as commencing at the northeast corner of Lot 3 in said addition; thence S89°56'00"W along the north line of said addition, 249.84 feet to the place of beginning; thence S00°05'00"E, 32.00 feet; thence S88°32'37"W, 40.00 feet; thence S00°05'00"E, 212.95 feet; thence N89°56'00"E, 8.00 feet; thence N00°05'00"W, 14.00 feet; thence N89°56'00"E, 62.00 feet; thence S00°05'00"E, 14.00 feet; thence N89°56'00"E, 12.00 feet; thence N00°05'00"W, 146.92 feet; thence N17°22'27"E, 30.00 feet; thence N00°05'00"W, 55.00 feet; thence N13°13'09"W, 37.95 feet; thence N00°05'00"W, 17.00 feet to said north line; thence N89°56'00"E along said north line, 34.40 feet; thence S00°05'00"E, 116.98 feet; thence S17°22'27"W, 25.93 feet; thence S00°05'00"E, 166.98 feet; thence S90°00'00"W, 144.90 feet; thence N00°05'00"W, 235.39 feet; thence N62°08'27"E, 15.54 feet; thence N00°05'00"W, 65.89 feet to said north line; thence N89°56'00"E along said north line, 28.15 feet to the place of beginning, containing 21,815 square feet, more or less, AND

Parcel E: Behind (South) Grand Hotel. Pedestrian and Vehicular.
That part of Lots 1 and 3, Union Station Addition, Wichita, Sedgwick County, Kansas, described as commencing at the northeast corner of said Lot 3; thence S89°56'00"W along the north line of said addition, 125.00 feet to the place of beginning; thence S00°00'00"W along the west line of said Lot 3, 117.72 feet; thence N89°56'00"E, 77.00 feet; thence S00°05'00"E, 3.00 feet; thence N89°56'00"E, 48.00 feet to the east line of said Lot 3; thence S00°00'00"W along said east line, 50.00 feet; thence N89°36'21"W, 123.32 feet; thence S00°00'00"W, 132.00 feet; thence S90°00'00"W, 21.39 feet; thence N00°05'00"W, 166.98 feet; thence N17°22'27"E, 25.93 feet; thence N00°05'00"W, 116.98 feet to said north line; thence N89°56'00"E along said north line, 14.06 feet to the place of beginning, containing 12,148 square feet, more or less.

*Parcels C and E on Exhibit C below.

Exhibit B to Public Access Area 1 Easement

Parcel B: Plaza less Kiosk Area. Pedestrian.
That part of Lot 1, Union Station Addition, Wichita, Sedgwick County, Kansas, described as commencing at the northeast corner of Lot 3 in said addition; thence S89°56'00"W along the north line of said addition, 400.86 feet to the place of beginning; thence N89°56'00"E along said north line, 122.87 feet; thence S00°05'00"E, 65.89 feet; thence S62°08'27"W, 15.54 feet; thence S00°05'00"E, 235.39 feet; thence S90°00'00"W, 25.90 feet; thence N00°05'00"W, 32.23 feet; thence N89°55'00"E, 11.00 feet; thence N00°05'00"W, 28.00 feet; thence S89°55'00"W, 11.00 feet; thence N00°05'00"W, 169.79 feet; thence S89°56'00"W, 104.22 feet; thence N00°05'00"W, 18.47 feet; thence N89°56'00"E, 21.00 feet; thence N00°05'00"W, 60.00 feet to the place of beginning, containing 15,557 square feet, more or less.

*Parcel B on Exhibit C below.

Exhibit C to Public Access Area 1 Easement

Exhibit D to Public Access Area 1 Easement

That part of the SW1/4 of Sec. 21, T27S, R1E of the 6th P.M., Sedgwick County, Kansas, described as beginning at the northeast corner of Lot 3, Union Station Addition, Wichita, Sedgwick County, Kansas; thence S00°00'00"W along the east line of said Lot 3, 170.72 feet; thence S89°56'00"W, 125.00 feet; thence S00°00'00"W, 138.00 feet; thence S90°00'00"W, 192.20 feet; thence N00°05'00"W, 32.23 feet; thence N89°55'00"E, 11.00 feet; thence N00°05'00"W, 28.00 feet; thence S89°55'00"W, 11.00 feet; thence N00°05'00"W, 169.79 feet; thence S89°56'00"W, 104.22 feet; thence N00°05'00"W, 78.47 feet to the north line of said addition; thence N89°56'00"E along said north line, 421.86 feet to the place of beginning.

EXHIBIT I

Final Plans and Specifications

(To be incorporated herein upon completion and approval by the City)

EXHIBIT J

City Infrastructure Policy

(see attached)

When the Final Record drawings are submitted, the City Engineer's Inspector will perform a field check of all visible items.

Project Completion

Upon completion of a field check, the City Engineer will issue either a Certificate of Acceptance or a Defect Notice. Once the City Engineer has been notified that defects have been corrected, another field check will be performed. Warranties shall begin on the date the City issues the Certificate of Acceptance.

Contractor Responsibilities

Bonds

Bonds are filed by the Contractor on the 11th floor of the County Courthouse with City of Wichita Bond Forms.

The Performance and Maintenance Bond is required for 100% of the cost of the improvements in public right-of-way or easements, through and including the water vault, if applicable. The Performance Bond guarantees to the City the performance of the work as provided in the plans and specifications. The Maintenance provision is limited to 15% of the cost of the improvements. The Maintenance Bond guarantees to the City the correction of any defect on material or workmanship, latent in character, and not discernible at the time of final acceptance, and guarantees against any damage to such improvements by reason of settling of the ground base or foundation thereof.

The Statutory Bond is required for 100% of the cost of the improvement in public right-of-way or easements, through and including the water vault, if applicable. This bond guarantees to the State of Kansas the payment of all materials, labor, machinery, and damage to property or persons. This bond must be filed with the Clerk of the District Court in the Sedgwick County Courthouse ($36.00 filing fee made out to *Clerk of the District Court*) and the original receipt must be submitted to the City Engineer. KSA 60-1111 should be referenced somewhere on the bond.

Notification

The Contractor shall notify the Consultant Engineer and all property owners and/or tenants within 500 feet of the furthest extents of the project at least ten (10) working days prior to construction. Contractor shall notify affected property owners of any disruption of service at least 2 days in advance.

Water Taps

All "wet" taps on Public Mains shall be completed by Public Works & Utilities staff. No tap on the City main will be made until final plans have been approved and all bonding requirements are met. The current Fee Schedule is available on the City's website in the Water Utilities, Customer Service section.

Construction

The Contractor must have a signed set of plans on site during construction. Fire protection lines must be installed by a licensed Fire Sprinkler Contractor.

Street Cut Permits

For private construction projects that require cutting a street, curb, drive approach, or sidewalk, the Contractor will need to get a Street Cut Permit. The pavement will need to be replaced by the City's Contractor. Contact Linda Firsching at 268-4418 for Street Cut Permits and unit prices for pavement replacement.

Contacts:

Central Inspection Site Plans Examiner:
Paul Hays 268-4663

Tap Fees/Approved Materials:
Bryan Smith 268-4555

Water Line Plan Review:
Tim Davidson 268-4455

Sanitary/Drainage/Paving Plan Review:
Julianne Kallman 268-4236

Stormwater Management:
Scott Lindebak 268-4498
Tim Davidson 268-4498

Bonding Requirements/Field Inspections:
Tom Mason 268-4574

Street Cut Permits:
Linda Firsching 268-4418

Engineering's FTP Site Administrator:
Andy Smith 268-4275

Fire Department – Cpt. Schowalter 268-4441
Fire Department – Chief Bob Thompson 268-4441

www.wichita.gov
May 2011

Prepared and Printed by:
Department of Public Works & Utilities
Engineering Division

CITY OF WICHITA

Construction of Infrastructure Improvements By Private Contract

Water
●
Sanitary Sewer
●
Stormwater/Drainage
●
Paving

Construction of Infrastructure Improvements by Private Contract

Overview

This information applies to all infrastructure improvements constructed under private contract in public easement, public right-of-way, and/or private property including water lines, storm-water/drainage systems, sanitary sewer, and paving improvements.

Prior to commencement of construction, the following must be submitted to and approved by the City Engineer:

- Engineered plans
- Plan Review Fee
- Recorded easements
- Electronic .dwg and .pdf files of signed, approved plans for sanitary, drainage and paving projects.
- Electronic .dwg and .pdf files and mylars of signed, approved plans for water projects
- Bonds (Statutory & Performance and Maintenance)

At the completion of construction, the following must be submitted to the City Engineer:

- Final Record Plans in pdf format and mylars for the water projects.
- Inspection Logs
- Test Documentation
- TV Tapes and/or Water Quality Test
- Valve and Fire Hydrant manufacturers and models, and pipe certifications.

Owner/Developer Responsibilities

The Owner is responsible for hiring a Consultant Engineer and a Contractor, and responsible for seeing that the Engineer and Contractor fulfill the requirements of this policy.

Consultant Responsibilities

Engineered Plans

The Consultant Engineer needs to furnish complete plans to the City. All plans need to be certified by a professional engineer licensed in the state of Kansas. Final water plans need to be on 22"x36" Mylar for approval signatures. Final Sanitary and Drainage plans can be on media chosen by the Consultant for approval signatures. Electronic .dwg and .pdf files need to be submitted along with the final plans. The Signature Block, standard detail sheets, and sample sets of plans are available in AutoCAD format on Engineering's FTP site in the Private Project Templates and Details sections at ftp://detailusr:D244$7yf@Files3.cyberlynk.net

Water Line Projects:

Plans are required for any line publicly maintained, any domestic service line over 2", and any fire protection line, from the tap to the building and/or furthest hydrant. Profile is required for the entire fire protection line, but only for the public portion of a domestic service line. Upon approval, 2 11x17 signed copies and the signed mylar plans shall be submitted to the City Engineer's Office along with .dwg and .pdf files.

Sanitary Sewer Projects:

Plans (plan and profile) are required for any publicly maintained line, and any private sewer line 8" or larger. Upon approval, .dwg and .pdf files need to be submitted to the City Engineer's office. The .pdf files should be made from the signed set of plans.

Stormwater/Drainage Projects:

Developments that require stormwater management facilities, detention ponds, downstream channel protection, water quality treatment, and/or storm sewers shall submit a (ppd) plan. For information on the plan submittal process and possible permit application see the city web site at http://www.wichita.gov/stormwater under the Regulatory & Permit Documents tab. Stormwater permit applications shall be submitted with all supporting documentation to the Public Works & Utilities Engineering Division, with reviews taking place by both Stormwater Management & Engineering staff. Submit two sets of half-scale plans.

Plans (plan and profile) are required for publicly maintained line, as well as private line 12" or larger. Upon approval, electronic copies of all stormwater permit application documentation and .dwg and .pdf files of the plans shall be submitted to the City Engineer's office.

Paving Projects:

Plans are required for any street that is to be publicly maintained. Upon approval, .dwg and .pdf files need to be submitted to the City Engineer's office. The .pdf files should be made from the signed set of plans.

Plan Review Fee

This fee reimburses the City for the costs of plan review, recording, final inspection, and administration of the project. The Consultant Engineer submits it to the City Engineer's Office along with preliminary plans. It is based on the project size according to the following fee schedule:

Water, Sewer and Drainage	
100' or less	$150
100' – 500'	$250
500' – 1000'	$350
Over 1000'	$0.35 per foot
Paving	
100' or less	$250
100' – 500'	$375
500' – 1000'	$500
Over 1000'	$0.50 per foot

Checks should be made out to *City of Wichita* and submitted to the City Engineer along with preliminary plans.

Recorded Easements

Easements are to be recorded at Sedgwick County Courthouse and the original is to be provided to the City Engineer prior to approval of the Final Plans.

Inspection Arrangements

All Private Projects must be inspected and certified by a professional engineering firm, with a professional engineer licensed in the state of Kansas, with the exception of water line taps and valve operations, which are performed by City staff. Inspection arrangements are the responsibility of the Consultant Engineer, but it may be delegated to the Contractor to make arrangements. Inspection services shall be performed in accordance with the City of Wichita Standard Specifications available on the City's website in the Public Works section.

Testing

The Consultant Engineer (or the designated inspecting firm) shall perform all inspection and testing services (including televising and air testing of sewers) and shall document and provide the City satisfactory documentation of all such activities.

Final Record Drawings

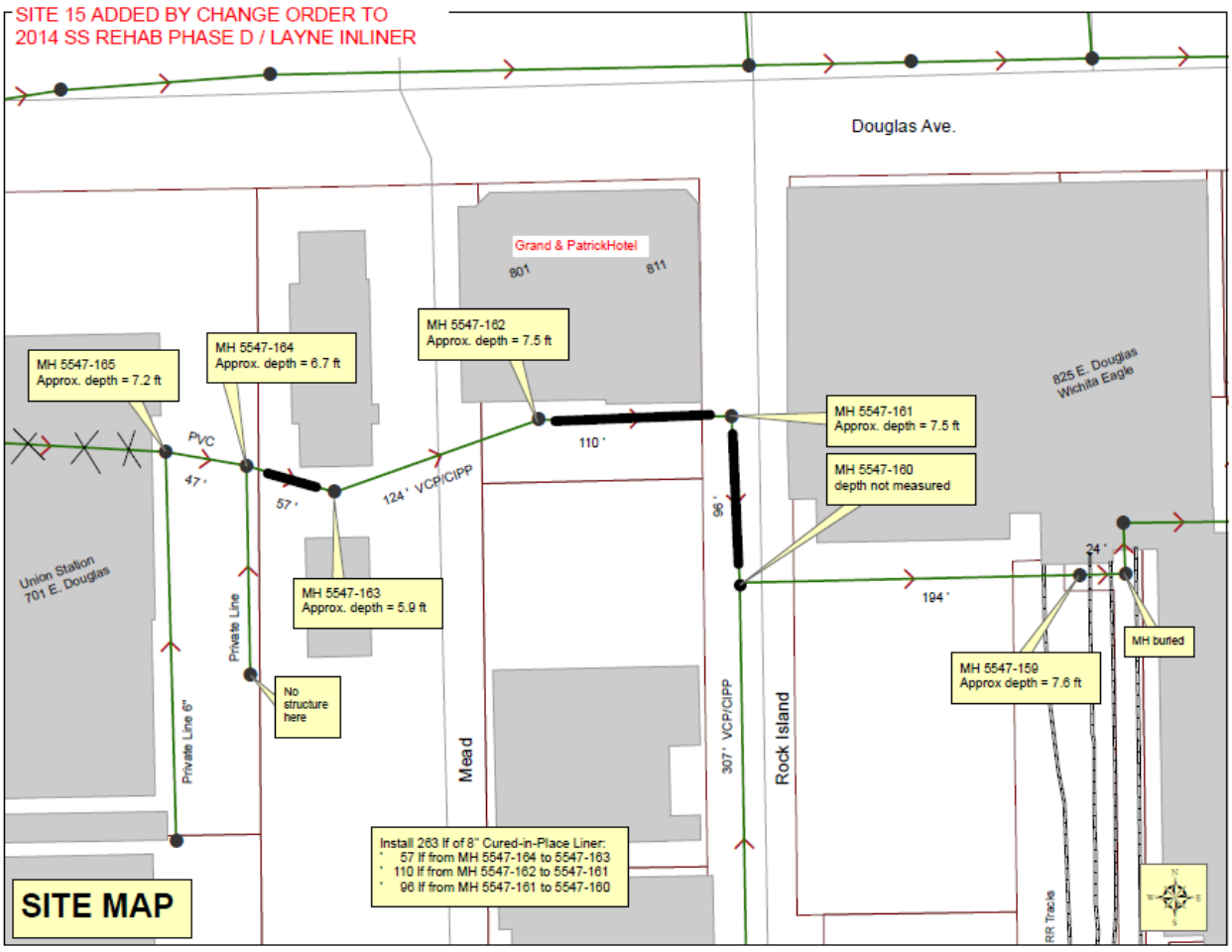
The Consultant Engineer (or the designated inspecting firm) shall document construction with Final Record drawings. Final Record (as-built) information may be added to the original .pdf or signed Mylar plans. Add information including the size, make, and reading of all meters. One .pdf (plus mylar for water) of Final Record plans shall be submitted along with the following number of 11x17 copies:

Water Lines	1
Sanitary Sewers	3
Stormwater/Drainage	1
Paving	1

EXHIBIT K

Related Utility Improvements

The City has completed the Related Utility Improvements necessary for the Project consisting of certain sanitary sewer improvements as shown below:



City of Wichita
City Council Meeting
March 17, 2015

TO: Mayor and City Council

SUBJECT: Public Hearing and Tax Exemption Request (Kolbeck Properties) (District VI)

INITIATED BY: Office of Urban Development

AGENDA: New Business

Recommendation: Close the public hearing and place the ordinance on first reading.

Background: Ferroloy, Inc. and Kolbeck Industries, LLC are sister companies operating under the legal entity Kolbeck Properties (Kolbeck). Ferroloy is a metal foundry that casts steel and Kolbeck Industries machines the cast steel.

Kolbeck is planning an expansion and is seeking approval of an Economic Development Tax Exemption (EDX) to make the project viable.

Analysis: Ferroloy began in 1950 as an iron foundry in Wichita and was purchased by the current owners in 2003. The company expanded into machining in the 1980s and more recently into assemblies. The company provides cast iron parts, fully machined and assembled with the ability to heat treat, coat or paint. It largely serves heavy construction, agriculture and the oil and gas industries. Kolbeck is located at 515 E. 29th Street North, near 29th and Broadway, and currently employs 44.

There is a trend in the metal casting industry toward a more machined and refined end product. To remain competitive Kolbeck needs to invest in additional facilities and equipment, or risk losing business to competitors outside of Wichita. It intends to add on to its existing building and acquire new equipment to achieve the level of work required by its customers.

There are very few companies doing the foundry work in Wichita, due in part to the low margins in this business. An expansion into additional machining could increase the margins for this company. To achieve the expansion requires a significant up front cost predominantly in new machinery and equipment.

Building/New Construction	$ 600,000
Machinery & Equipment	$ 6,200,000
TOTAL	$ 6,800,000

Kolbeck intends to add 18 new jobs over the next five years at an average annual salary of $32,100. (There is no NAICS average due to low number of firms in the industry. An average of three Occupational Employment Statistics = $31,040.)

Based on the City's sliding scale for determining the total tax abatement percentage, Kolbeck qualifies for a 44% abatement for its capital investment and an additional 37% for job creation, for a total abatement of 81%.

Financial Considerations: Based on the latest available mill levy, the estimated amount of exempted property taxes for the first full year is $14,260, based upon the Sedgwick County Appraiser's office valuing the real property improvements subject to exemption at $600,000. The estimated amount of

forgone tax revenue for each of the taxing jurisdictions based on the 81% real property tax exemption is as follows:

City	$ 3,967	State	$ 182
County	$ 3,582	USD 259	$ 6,529

Wichita State University's Center for Economic Development and Business Research performed a cost-benefit analysis indicating benefit-to-cost ratios, which are as follows:

City of Wichita	2.30 to one
City – General Fund	2.04 to one
Sedgwick County	1.80 to one
USD 259	1.22 to one
State of Kansas	38.54 to one

Even with the proposed property tax exemption, this project will generate $32,692 in revenue to the General Fund and $11,574 to the Debt Service Fund during the ten year period from the existing facility. The improvements will add an additional $36,171 to the General Fund and $12,805 to the Debt Service fund over ten years. After the 10-year exemption period, the new improvements would generate an estimated $204,067 annually for the General Fund and $72,259 for the Debt Service Fund. The existing facility is currently appraised at $542,300 which generates $15,911 in property taxes annually.

Legal Considerations: The Law Department has approved the attached Ordinance and Economic Development Incentive Agreement as to form.

Recommendations/Actions: It is recommended that the City Council close the public hearing and approve first reading of the ordinance granting Kolbeck Properties an 81% tax exemption on the identified real property improvements for a five-year term, plus an 81% tax exemption for a second five-year term, subject to City Council review.

Attachments: Ordinance
Economic Development Incentive Agreement

OCA 028001

_____FIRST PUBLISHED IN THE WICHITA EAGLE ON MARCH 24, 2015_____

ORDINANCE NO. 49-952

AN ORDINANCE EXEMPTING PROPERTY FROM AD VALOREM TAXATION FOR ECONOMIC DEVELOPMENT PURPOSES PURSUANT TO ARTICLE 11, SECTION 13, OF THE KANSAS CONSTITUTION; PROVIDING THE TERMS AND CONDITIONS FOR AD VALOREM TAX EXEMPTION; AND DESCRIBING THE PROPERTY OF KOLBECK PROPERTIES, LLC SO EXEMPTED.

WHEREAS, Article 11, Section 13, of the Kansas Constitution provides that the governing body of the City may, by Ordinance, exempt from all ad valorem taxation all or any portion of the appraised value of certain property meeting the requirements of the constitutional provision; and

WHEREAS, the City of Wichita has adopted an Economic Development Incentive Policy by which the City will consider granting tax exemptions upon a clear and factual showing of direct economic benefit including the creation of additional jobs or the upgrading of existing jobs and the stimulation of additional private investment; and

WHEREAS, Kolbeck Properties, LLC, requests an ad valorem tax exemption on a proposed expansion project of 81% for a five-plus-five year term on the expansion and equipping of a facility; and

WHEREAS, Kolbeck Properties, LLC has operated within the City for more than ten years as a manufacturer; and

WHEREAS, Kolbeck Properties, LLC, proposes a $6,800,000 expansion and equipping of a building located at 515 E. 29th Street North in north Wichita; and

WHEREAS, the City Council of the City of Wichita has reviewed the application and supporting documentation supplied by Kolbeck Properties, LLC, has reviewed the impact statements provided by Staff, and the Cost-Benefit Analysis by the Wichita State University and has conducted a public hearing on such application on March 17, 2015; and

WHEREAS, the City Council of the City of Wichita has found and determined:

1. Kolbeck Properties, LLC is an existing business located in Wichita, Kansas, and intends to expand its business by the acquisition, expansion and equipping of an existing building.

2. The expansion and equipping for which the exemption is given occurred after January 1, 2015. No exemption will be given for expansion and equipping which occurred before that date.

3. Such acquisition, expansion and equipping is to be used exclusively for manufacturing and distribution of articles of commerce.

4. By such expansion, Kolbeck Properties, LLC will retain 44 employees and create new employment for 18 employees within five years after the start of the project.

5. Tax exemption will be given only for the expansion and equipping of the existing building.

6. The property on which exemption is given will meet the requirements of the Kansas Constitution and the City of Wichita's Economic Development Incentive Policy.

7. Such ad valorem tax exemption is in the public interest providing for economic growth and benefit including the creation of jobs and stimulating additional private investment.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WICHITA, KANSAS,

1. The City Council of the City of Wichita, Kansas hereby makes a factual determination that an ad valorem tax exemption of the type requested by Kolbeck Properties, LLC is required to retain jobs in the State of Kansas, and that the property to be exempted is to be used exclusively for manufacturing and distribution of articles of commerce.

2. Kolbeck Properties, LLC is hereby granted an ad valorem tax exemption of 81% for a five-year term on the expansion and equipping of an existing building and 81% for a second five years, subject to approval by the then current governing body, located within the Wichita City limits at 515 E. 29th Street Nrorth in north Wichita, at an estimated cost of $6,800,000. Such exemption is to begin in the calendar year after the calendar year in which the expansion is completed, and may be terminated early (and Kolbeck Properties, LLC may be required to repay amounts previously abated), in the event of any failure by Kolbeck Properties, LLC, to perform its obligations under the Economic Development Incentive Agreement it has executed with the City.

3. The Economic Development Incentive Agreement between the City of Wichita and Kolbeck Properties, LLC is hereby approved.

4. The Office of Urban Development shall be responsible for monitoring the performance of Kolbeck Properties, LLC and shall provide annual reports on such performance.

5. Such exemption is subject to verification that the level of employment at the time of the completion of the project is at least equal to the level of employment as stated in Kolbeck Properties, LLC’s written request for ad valorem tax exemptions as presented to the City Council and to administrative staff and dated January 20, 2015 and as stated in Kolbeck Properties, LLC’s annually approved EEO/AA Plan.

6. Such exemption may hereafter be withdrawn by the City Council upon a finding that Kolbeck Properties, LLC no longer is entitled to such exemption in accordance with the Economic Development Incentive Agreement, which Kolbeck Properties, LLC has executed with the City.

7. The City Council may, at its discretion, require Kolbeck Properties, LLC to return all funds exempted if there is a failure to meet the terms and conditions of the Economic Development Incentive Agreement which Kolbeck Properties, LLC has executed with the City.

8. Upon finding that Kolbeck Properties, LLC has failed to meet its obligations under the Economic Development Incentive Agreement, the City Council shall require the repayment of all prior amounts of taxes that have been exempted and shall withhold any future exemption of taxes on Kolbeck Properties, LLC's expansion project. All repayments shall be redistributed to the local taxing authorities at the proper taxing rates.

9. This Ordinance shall be in full force and effect from and after its passage and publication in the official City paper.

Passed by the governing body of the City of Wichita, Kansas this 24th day of March, 2015.

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to Form:

_____
Sharon L. Dickgraffe, Interim City Attorney
and Director of Law

Economic Development Incentive Agreement

THIS ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT (the "Agreement") is made and entered into on this ____ day of March, 2015, by and between the City of Wichita, Kansas, hereinafter referred to as the "City," and Kolbeck Properties, LLC hereinafter referred to as the "Company."

WHEREAS, the Company currently operates a manufacturing and distribution facility in Wichita, Kansas, and will complete a building expansion, including equipping of said expansion, to its facility; and

WHEREAS, both the City and the Company desire for the Company to continue operating its business in Wichita, Kansas; and

WHEREAS, the City desires to increase employment opportunities for the citizens of Wichita, Kansas, and to further the other goals advanced by its economic development incentive policy; and

WHEREAS, the Company warrants that it is capable of, and desires to, increase the number of employment positions at its Wichita, Kansas facility; and

WHEREAS, the City has designed an economic development incentive program to accomplish its goal of increasing employment opportunities in Wichita, Kansas; and

WHEREAS, the purpose of this Agreement is to state the terms and conditions under which the City will cooperate in furnishing said economic development incentives.

NOW, THEREFORE, in consideration of the mutual conditions, covenants and promises contained herein, the parties hereto agree as follows:

1. **THE COMPANY.** The Company agrees (to the extent not already hitherto performed) that it shall do the following:

   A. Between January 1, 2015 and December 31, 2015, the Company will expand and equip a facility, located at 515 E. 29th Street North, Wichita, Kansas, at a cost of $6,800,000, to be used exclusively for the purposes of manufacturing and distributing articles of commerce;

   B. Maintain, throughout the period from the date of this Agreement to December 31, 2019, employment of not less than forty-four (44) employees at the facility;

   C. On or prior to December 31, 2019, the Company will add an additional eighteen (18) new jobs at the new facility, and thereafter, maintain

employment of not less than sixty-two (62) employees through December 31, 2024;

D. During the entire term of this Agreement, the Company will continuously maintain the average wage paid to its employees at a level (1) equal to or greater than the average wage paid by businesses in the Wichita Metropolitan Statistical Area with the Company's NAICS classification, or alternatively, (2) greater than the average wage for all jobs in the Wichita Metropolitan Statistical Area excluding wages paid by businesses classified in NAICS Sector 326;

E. During the entire term of this Agreement, the Company will meet any Equal Employment Opportunity/Affirmative Action goals set forth in its periodic filings with the City, and will annually file its Equal Employment Opportunity/Affirmative Action Plan with the City;

F. During the entire term of this Agreement, the Company will timely pay all *ad valorem* property taxes levied on its real or personal property within Sedgwick County, Kansas;

G. During the entire term of this Agreement, the Company will ensure that it does not discriminate or permit discrimination against any person on the basis of race, color, national origin or ancestry, religion, sex, age, disability or marital status in its operations or services, and the Company will comply with all applicable provisions of the Civil Rights Act of 1964, as amended; the Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375 and 11141; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Kansas Act Against Discrimination, K.S.A. 44-1000, *et seq.*; the Code of the City of Wichita Section 2.12.950; and, any laws, amendments or regulations promulgated thereunder, including any Ordinance of the City of Wichita, Kansas, presently existing or hereafter enacted, which pertains to civil rights and equal employment opportunity;

H. During the entire term of this Agreement, the Company will comply with all applicable governmental laws, rules and regulations; and,

I. During the entire term of this Agreement, the Company will cooperate with any annual compliance audit procedure(s) the City may adopt to monitor compliance with conditions, including any annual reports required of the Company and any inspection of the Company's premises or interviews with the Company's staff.

2. **EFFECT OF COMPANY'S BREACH; REMEDIES**. The Company acknowledges that in the event of its noncompliance with any of its obligations or

agreements under the foregoing Section 1, the City will not have received the social and economic development benefits expected in connection with its entry into this Agreement and its furnishing of the economic development incentives provided for hereunder, and the resulting loss to the City will be difficult to measure. In such event, Company shall be required to pay to the City, as liquidated damages, or as a payment in lieu of tax, an amount equal to the *ad valorem* taxes that would theretofore have been payable but for the tax exemption referred to in Section 3 of this Agreement, and the City shall be entitled to take action to cancel and revoke such exemption for any subsequent period. No delay or omission by the City to enforce any of its rights as provided for herein shall impair such right, nor shall any such delay or omission be construed to be a waiver of such right.

3. **THE CITY.** So long as the Company meets and performs its obligations under this Agreement, it is the City's intention that the expansion and equipping of a building by the Company pursuant to Section 1.A., above, shall be entitled to an 81% exemption from *ad valorem* taxation for a period of five (5) calendar years, commencing January 1, 2015, such commencement date is contingent on the project actually being completed by December 31, 2015, and provided proper application is made therefor. It is the City's further intention that the building expansion shall be entitled to an 81% exemption from *ad valorem* taxation for an additional period of five years from January 1, 2020 to December 31, 2024, subject to the approval, in 2019, of the then current governing body. The City agrees that, during the term of this Agreement, and so long as the Company continues to meet and perform all of its obligations under this Agreement, the City will reasonably cooperate with the Company's efforts to perfect the intended exemption before the Kansas Court of Tax Appeals, and to make all necessary annual filings required to maintain such *ad valorem* tax exemption in full force and effect during the term of this Agreement, in accordance with K.S.A. 79-210 *et seq.*

4. **TERM.** This Agreement shall commence on the date first written above, and shall end on December 31, 2024.

5. **INCORPORATION OF APPENDIX**. Appendix A (Revised Non-Discrimination and Equal Employment Opportunity/Affirmative Action Program Requirements Statement for Contracts or Agreements) is attached hereto and made a part hereof as if fully set out herein.

6. **ENTIRE AGREEMENT.** This Agreement and any Appendices attached hereto contain all the terms and conditions agreed upon by both parties. No other understandings, oral or otherwise, regarding the subject matter of this agreement shall be deemed to exist or to bind any of the parties hereto. Any agreement not contained herein shall not be binding on either party, nor of any force or effect. In the event of a conflict between the terms of this Agreement and the terms

contained in an Appendix, Statement of Work or other attachment, the terms of this Agreement will control.

7. **NOTIFICATION.** Notifications required pursuant to this Agreement shall be made in writing and mailed to the addresses shown below. Such notification shall be deemed complete upon mailing.

City: Office of Economic Development
Attn: Economic Development Administrator
455 North Main, 13th Floor
Wichita, Kansas 67202

and

Department of Law
Attn: City Attorney
455 North Main, 13th Floor
Wichita, Kansas 67202

Company: Kolbeck Properties, LLC
Attn: Paul Kolbeck
515 E. 29th St. N.
Wichita, KS 67219

8. **AUTHORITY.** Each person executing this Agreement represents and warrants that they are duly authorized to do so on behalf of the entity that is a party hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

CITY OF WICHITA, KANSAS

ATTEST:

_____
Carl Brewer, Mayor

_____
Karen Sublett, City Clerk

KOLBECK PROPERTIES, LLC

APPROVED AS TO FORM:

_____
Name: _____
Title: _____

_____
Sharon L. Dickgraffe, Interim City Attorney
and Director of Law

APPENDIX A

REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements:

A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.

B. Requirements of the State of Kansas:

1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;

2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";

3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.

C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:

1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;

2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;

3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;

4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.

5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars ($5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.

2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

City of Wichita
City Council Meeting
March 17, 2015

TO: Mayor and City Council

SUBJECT: Ordinance to Create an Animal Control Advisory Board

INITIATED BY: Police Department Animal Control Section

AGENDA: New Business

Recommendation: Place the ordinance to create an Animal Control Advisory Board on the first reading.

Background: In June, 2014, a project team was formed to review the current operating processes within the Animal Control Division. The approach included an assessment of best practices of other ICMA cities and interviews and surveys with community members. On January 9, 2015, the team presented its improvement recommendations to City Manager Robert Layton and Interim Police Chief Nelson Mosley. Among the actions recommended was the creation of an Animal Control Advisory Board

The Animal Control Advisory Board will provide recommendations to the City Council, which encourage responsible pet ownership, ensure the humane treatment of all animals and promote public safety through the creation and enforcement of animal control ordinances.

Analysis: The Animal Control Advisory Board will review existing animal control regulations and make recommendations for changes; seek constructive solutions to the concerns of community members regarding animal control regulations, and assist in providing education to the community. This board will enhance the ability of Animal Control Officers to communicate with the community and determine operating policies, which further its mission of both public safety and the humane care of animals.

The Animal Control Advisory Board which shall consist of the Wichita Chief of Police, or the duly authorized representative and the shelter supervisor or the duly authorized representative, who shall serve as the secretary of the board, and seven other at large members, with a goal of having one member being a licensed veterinarian and one from a certified local rescue group.

Financial Considerations: There are no financial considerations.

Legal Considerations: The ordinance has been reviewed and approved as to form by the Law Department.

Recommendations/Actions: It is recommended that the City Council place the ordinance on first reading creating an Animal Control Advisory Board and authorize the necessary signatures.

Attachments: Ordinance

First Published in The Wichita Eagle on March 27, 2015

CLEAN DATE

ORDINANCE NO. 49-954

AN ORDINANCE CREATING SECTIONS 6.02.010 THROUGH 6.02.040 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO THE CREATION OF THE ANIMAL CONTROL ADVISORY BOARD.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

Section 1. Section 6.02.010 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

Section 6.02.010. Animal Control Advisory Board- Established.

An Animal Control Advisory Board is hereby established.

Section 2. Section 6.02.020 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

Section 6.02.020. Composition.

The animal control advisory board shall consist of representatives of the Wichita Police Department, including the Animal Control Section, as determined by the Chief of Police. A designated representative of the Animal Control Section shall serve as the non-voting, secretary of the board. The board shall consist of seven other at- large members to be appointed by the City Council pursuant to the provision of Section 2.12.030 of the Municipal Code for the City of Wichita, Kansas, with a goal of having one member being a licensed veterinarian and one member from a certified local rescue group. All appointed board members must meet the provisions of Section 2.12.010 of the Municipal Code for the City of Wichita, Kansas. The board shall elect its own chairman and make

such rules as are necessary for the conduct of its business and shall be subject to the provisions of Section 2.12.020 of the Municipal Code for the City of Wichita, Kansas.

Section 3. Section 6.02.030 of the Code of the City of Wichita is hereby created to read as follows:

Section 6.02.030. Purpose and Duties.

(a) Purpose. The board shall provide recommendations to the Wichita Police Department, Division of Animal Control to encourage responsible pet ownership, ensure the humane treatment of all animals and promote public safety through the recommendation of the animal control ordinances of the City of Wichita, Kansas. The board shall have no authority relative to the interpretation of the administrative provisions of the Municipal Code for the City of Wichita, Kansas nor shall the board be empowered to waive requirements of this Code.

(b) Duties: The board's duties and responsibilities shall include:

1. Provide education to the community throught neighborhood meetings and distribution of materials pertaining to ordinances, low cost spay/neuter services, the benefits of micro chipping, and other prograns and opportunities to improve the quality if life for pets and the citizens of Wichtia;
2. Review existing ordinances and make recommendatinosions for additional ordinances or revisions;
3. Offer community members an opportunity to express concerns about practices within Animal Control and seek constructive solutions to these issues; and
4. Share Animal Control performance metrics with community members.

SECTION 4. Section 6.02.040 of the Code of the City of Wichita, Kansas is hereby created to read as follows:

Section 6.02.040. Meetings.

The board shall meet at least quarterly. The board shall conduct meetings, elect officers, and adopt by-laws in accordance with the policy for boards and commissions as stated in Section 2.12.020 of the Municipal Code for the City of Wichita, Kansas. The Wichita Police Department shall provide the necessary staff support to insure that the board receives informational support and professional and technical assistance necessary to carry on its duties and conduct its meetings.

SECTION 5. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper.

PASSED by the governing body of the City of Wichita, Kansas, this 24th day of March, 2015.

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to Form:

_____
Sharon Dickgrafe, Interim City Attorney and Director of Law

City of Wichita
City Council Meeting
March 17, 2015

TO: Mayor and City Council Members

SUBJECT: Ordinance Amendments to Title 4 of the Code of the City of Wichita Pertaining to Regulation and Licensing of Alcoholic Liquor and Cereal Malt Beverages, and Repeal of Charter Ordinance No. 105 Regarding Fees for such Licenses.

INITIATED BY: Law Department

AGENDA: New Business

Recommendation: Place the ordinances on first reading.

Background: Kansas law has been amended and now requires that all licenses regulating liquor by the drink, including those issued by municipalities, be two years in duration. The statutes also mandate that a local permit fee be charged to retail liquor stores. Both provisions require ordinance amendments to bring the City Code into compliance with state law. Further amendments are proposed which implement other statutory changes made in recent years and incorporate into Title 4 certain regulatory measures regarding alcoholic liquor (AL) and cereal malt beverage (CMB) that are found in other locations in the City Code. Finally, the proposed amendments address specific regulatory issues that are designed to make the licensing process simpler and assist the police with enforcement of the ordinances.

Analysis: The proposed amendments represent a complete revision of Title 4 of the City Code, which regulates AL and CMB. This review process has been ongoing for over a year and included staff from Law, Police, Finance, Fire and Zoning. Amendments are proposed to the three chapters in Title 4 with a new Chapter 4.05 created to implement licensing of retail liquor sales. The amendments include the following substantive changes:

- Incorporation of license fees for AL and CMB into Title 4 from Charter Ordinance #105 making the fee structure easier to find and amend if necessary.
- Implementation of two-year licenses for sale of AL as required by state law with the process to phase in this change.
- Implementation of permits for retail liquor stores as required by state law with the process to phase in this change.
- Inclusion of recent changes made by the Kansas legislature regarding offering of samples by retail liquor stores, drinking establishments and private clubs and allowing complementary AL and CMB to be served at charitable events and events supporting the arts without the need for a temporary alcohol sales permit or a special event cereal malt beverage retailer's permit.
- The identical treatment of AL and CMB regarding possession of an open container on public property and consumption in public.
- Incorporation of Sunday sales law into Title 4, making it accessible to users.
- Repeal of sections involving outdated regulations that are no longer usable or applicable.
- Amendment of all penalties to conform to those set forth in state statutes.

- Allows for minors to be on the premises of certain drinking establishments, which have obtained such a license for BYOB activities.
- Creation of sections clearly identifying each type of license required for the sale of AL and the rights and duties of the holders of each license.
- Addition of the definition of the term "guest" as applied by the state to provide clarification and assist with enforcement activity regarding private parties.

The proposed changes reorganize and clarify Title 4 by assembling all regulations pertaining to AL and CMB in one location, making the code easier to use by both the public and law enforcement. Additionally, drafting of future amendments made necessary by changes to state statutes will be simplified. Most of the ordinance changes have been drafted to mirror state law, although provisions do remain that are unique to Wichita and do not appear in the Kansas statutes. Unique provisions have been left unchanged that were drafted and adopted at the specific direction of present and prior City Councils and that represent an attempt to address a specific need or problem within the City.

Financial Considerations: New Chapter 4.05 of the City Code would provide for the implementation of a biennial license fee of $600 for retail liquor sales, which would be phased in over a two-year period. Currently, there are approximately 100 liquor stores within the City of Wichita which would provide additional revenue of approximately $60,000 every two years. The City accepted 363 one-year Drinking Establishment (DE) applications in 2014 with an annual fee of $250. Extending these to two-year licenses at $500 each is not expected to have any material impact on alcohol license revenue, as renewals are staggered throughout the calendar year. Other changes to Chapter 4 of the Wichita Municipal Code will not materially affect licensing revenue.

Legal Considerations: The amendment has been prepared and approved as to form by the Law Department.

Recommendation/ Actions: It is recommended that the City Council place the ordinances on first reading and authorize all necessary signatures.

Attachment: Copy of the proposed new ordinances.

Published in The Wichita Eagle March 27, and April 3, 2015

02/25/15

Charter Ordinance No. 225

A CHARTER ORDINANCE REPEALING CHARTER ORDINANCE NO. 105 OF THE CITY OF WICHITA, KANSAS, EXEMPTING THE CITY OF WICHITA, KANSAS, FROM THE PROVISIONS OF K.S.A. 41-2622, 41-2702, 41-2703(c) AND 41-310 AND AMENDMENTS THERETO, ESTABLISHING A SCHEDULE OF FEES FOR ALCOHOLIC LIQUOR AND CEREAL MALT BEVERAGE LICENSES AUTHORIZED BY TITLE 4 OF THE CODE OF THE CITY OF WICHITA, KANSAS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1: Charter Ordinance No. 105 of the City of Wichita, Kansas, is hereby repealed.

SECTION 2. This Charter Ordinance shall be published once each week for two consecutive weeks in the official city newspaper.

SECTION 3. This is a Charter Ordinance and shall take effect sixty-one (61) days after final publication, unless a sufficient petition for referendum is filed requiring a referendum to be held on the ordinance as provided in Article 12, Section 5, Subdivision (c)(3), of the Constitution of the State of Kansas, in which case, the ordinance shall become effective if approved by a majority of the electors voting thereon.

PASSED BY THE GOVERNING BODY, not less than two-thirds of the members elect voting in favor thereof, this 24th day of March, 2015.

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to Form:

_____
Sharon L. Dickgrafe, Interim City Attorney and
Director of Law

First Published in The Wichita Eagle on March 27, 2015

CLEAN 02/25/15

ORDINANCE NO.49-955

AN ORDINANCE AMENDING SECTIONS 4.04.010, 4.04.017, 4.04.025, 4.04.040, AND 4.04.070; CREATING SECTION 4.04.065 AND REPEALING SECTIONS 4.04.020 AND 4.04.035 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO GENERAL PROVISIONS AND PROHIBITED ACTS INVOLVING INTOXICATING LIQUOR AND CEREAL MALT BEVERAGES.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. The title to Chapter 4.04 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

Chapter 4.04. General Provisions and Prohibited Acts

SECTION 2. Section 4.04.010 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Definitions.** Unless otherwise expressly stated or the context clearly indicates a different intention, the following terms shall, for the purpose of this title, have the meanings indicated in this section. Any term used in this title that is not defined herein shall have the same meaning and definition as set forth in K.S.A. Chapter 41 and amendments thereto.

(a) "*Alcohol'* means the product of distillation of any fermented liquid, whether rectified or diluted, whatever the origin thereof, and includes synthetic ethyl alcohol but does not include denatured alcohol or wood alcohol.

(b) *'Alcoholic liquor'* means alcohol, spirits, wine, beer, and every liquid or solid, patented or not, containing alcohol, spirits, wine or beer and capable of being

consumed as a beverage by a human being, but shall not include any cereal malt beverage.

(c) *'Barrier'* means any natural or manmade obstruction which precludes direct traffic, between a church or school and a private club, drinking establishment or a place of business at which cereal malt beverages are sold and is of such a character that it completely separates such establishments, including parking facilities. Barriers include, but are not limited to: rivers, railroad tracks, levees, and drainage ditches.

(d) *'Beer'* modified, or limited by other words, means a beverage, containing more than 3.2% alcohol by weight, obtained by alcoholic fermentation of an infusion or concoction of barley, or other grain, malt, and hops in water and includes beer, ale, stout, lager beer, porter, and similar beverages having such alcoholic content.

(e) *'Beneficial interest'* shall not include any interest a person may have as owner, operator, lessee or franchise holder of any licensed hotel or motel on the premises of which a club or drinking establishment is located.

(f) *'Bus'* means every motor vehicle designed for carrying more than ten passengers and used for transportation of persons; and every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

(g) *'Caterer'* means an individual, partnership or corporation which sells alcoholic liquor by the individual drink or domestic beer, and provides services related to the serving thereof, on unlicensed premises which may be open to the public, but does not include a holder of a temporary permit, selling alcoholic liquor in accordance with the terms of such permit.

(h) *'Cereal malt beverage'* means any fermented but undistilled liquor brewed or made from malt or from a mixture of malt or malt substitute or any flavored malt beverage, as defined in K.S.A. 41-2729, and amendments thereto, but does not include any such liquor which is more than 3.2% alcohol by weight.

(i) *'Cereal malt beverage retailer'* means any person who sells or offers for sale any cereal malt beverage for use or consumption and not for resale in any form.

(j) *'Class A club'* means a premises which is owned or leased by a corporation, partnership, business trust or association, and which is operated thereby as a bona fide nonprofit social, fraternal or war veterans' club, as determined by the director, for the exclusive use of the corporation stockholders, partners, trust beneficiaries or associates (hereinafter referred to as "members"), and their families and guests accompanying them.

(k) *'Class B club'* means a premises operated for profit by a corporation, partnership or individual to which members of such club may resort for the consumption of food or alcoholic beverages and for entertainment.

(l) *'Club'* means a Class A or Class B club.

(m) *'Crime of moral turpitude'* means a crime involving dishonesty.

(n) *'Director'* means the Director of Alcoholic Beverage Control of the Kansas State Department of Revenue.

(o) *'Distributor'* shall have the meaning ascribed to it by K.S.A. 41-102 and amendments thereto.

(p) *'Domestic beer'* means beer which contains not more than percent 10% alcohol by weight and which is manufactured in this state.

(q) *'Drinking establishment'* means premises which may be open to the general public over 21 years of age, where alcoholic liquor by the individual drink is sold.

(r) *'Drinking establishment/restaurant'* means premises which may be open to the general public, where alcoholic liquor by the individual drink is sold and which derive not less than 30% of its gross revenues from sales of food and beverages for consumption on such premises in a two month period. Failure on the part of the licensee to meet the 30% food sales criteria, or conviction of the licensee or any owner, officer, or employee of the licensee of any two violations of Section 4.16.130 of the City Code occurring on the licensed premises within one year shall result in the premises being reclassified as a drinking establishment as provided in Section 4.16.095(c) and any amendments thereto.

(s) *'Drinking establishment/restaurant/event center'* means premises which may or may not be open to the public, are frequently rented out for public or private activities which are not repeated on a weekly basis, are not open to the public on a daily basis at times other than when an event is scheduled, and which derive at least 30% of its gross revenue from sales of food and beverages for consumption on the premises in a six-month period.

(t) *'Employee'* means any person employed by a licensee in the business of selling cereal malt beverages or alcoholic liquor.

(u) *'Food'* means any raw, cooked or processed edible substance or ingredient, other than alcoholic liquor or cereal malt beverage, used or intended for use or for sale, in whole or in part, for human consumption.

(v) *'Gross revenues'* means only that income derived from cereal malt beverages, alcoholic liquor, and other food consumables.

(w) *'Guest or Guests'* means a person or persons to whom a private or personal invitation, as opposed to a public announcement, has been extended for hospitality or entertainment. Paying customers or patrons of any kind of business establishment are not "guests" as the term is used in Section 4.04.040(c) of this code.

(x) *'Hotel'* has the meaning ascribed to it by K.S.A. 36-501 and amendments thereto.

(y) *'Individual drink'* means a beverage containing alcoholic liquor or cereal malt beverage served to an individual for consumption by such individual or another individual, but which is not intended to be consumed by two or more individuals. The term "individual drink" includes beverages containing not more than: (1) Eight ounces of wine; (2) 32 ounces of beer or cereal malt beverage; or (3) four ounces of a single spirit or a combination of spirits.

(z) *'Legal age for consumption of cereal malt beverage'* means 21 years of age, except that *'legal age for consumption of cereal malt beverage'* shall mean 18 years of age if at any time the provisions of P.L. 98-363 penalizing states for permitting persons under 21 years of age to consume cereal malt beverage are repealed or otherwise invalidated or nullified.

(aa) *'Licensee'* means any person to whom a current license, temporary permit or special event retailer's permit has been issued pursuant to this chapter authorizing sale of cereal malt beverages and/or alcoholic liquor. This term shall also mean any person to whom a current license or temporary permit has been issued by the

Director of Alcoholic Beverage Control pursuant to the Liquor Control Act or the Club and Drinking Establishment Act of the state of Kansas.

(bb) *'Manager'* means the manager or assistant manager, or both, of any establishment licensed under this Title who is in charge of the daily operations of the establishment. A manager shall be deemed to be employed in connection with the dispensing, selling, mixing or serving of alcoholic liquor.

(cc) *'Manufacture'* means to distill, rectify, ferment, brew, make, mix, concoct, process, blend, bottle or fill an original package with any alcoholic liquor, beer or cereal malt beverage.

(dd) *'Manufacturer'* shall have the meaning ascribed to it by K.S.A. 41-102 and amendments thereto.

(ee) *'Minor'* means any person under 21 years of age.

(ff) *'Morals charge'* means a charge involving the sale of sexual relations, buying sexual relations, human trafficking, any crime defined in article 55 of chapter 21 of the Kansas Statutes Annotated and amendments thereto; violation of K.S.A. 21-5604 and amendments thereto; bigamy; any violation of Chapter 5.26 of the Code of the City of Wichita and amendments thereto; or any crime defined in article 57 of chapter 21 of the Kansas Statutes Annotated and amendments thereto.

(gg) *'Off-premises business'* means a business establishment which sells cereal malt beverages or alcoholic liquor in original unopened containers for consumption off of the licensed premises.

(hh) *'Original package'* means any bottle, flask, jug, can, cask, barrel, keg, hogshead or other receptacle or container whatsoever, used, corked, or capped, sealed and labeled by the manufacturer of alcoholic liquor or cereal malt beverage to contain and to convey any alcoholic liquor or cereal malt beverage. Original container does not include a sleeve.

(ii) *'Person'* means any natural person, corporation, partnership, trust or association. As used in Chapter 4.12, *'Person'* means any individual, firm, partnership, corporation or association.

(jj) *'Place of business'* means any place, except a tavern, at which cereal malt beverages and/or alcoholic liquor are sold.

(kk) *'Premises'* means the specific area described in the license application and approved as the location upon which the cereal malt beverages and/or alcoholic liquor may be sold and/or consumed under the license.

(ll) *'Public assembly area'* means the area of the licensed premises to which the general public has access for purposes including, but not limited to, food and drink consumption, entertainment, recreation, social functions or awaiting transportation.

(mm) *'Retailer'* means a person who sells at retail, or offers for sale at retail, alcoholic liquors, and does not include a microbrewery, microdistillery or a farm winery, as those terms are defined in K.S.A. 41-102 and amendments thereto. Retailer also means any person who sells or offers for sale any cereal malt beverage for use or consumption and not for resale in any form.

(nn) *'Sale'* means any transfer, exchange or barter in any manner or by any means whatsoever for a consideration; and includes all sales made by any person, whether principal, proprietor, agent, servant or employee.

(oo) *'Sample"* means a serving of alcoholic liquor which contains not more than: (1) One-half ounce of distilled spirits; (2) one ounce of wine; or (3) two ounces of beer or cereal malt beverage. A sample of a mixed alcoholic beverage shall contain not more than one-half ounce of distilled spirits.

(pp) *'School'* means the use of a site for instructional purposes on an elementary or secondary level, including both public schools as well as private schools that have curriculums similar to those in public schools.

(qq) (1) *'Sell at retail'* and *'sale at retail'* refer to and mean sales for use or consumption and not for resale in any form and sales to clubs, licensed drinking establishments, licensed caterers or holders of temporary permits.

(2) *'Sell at retail'* and *'sale at retail'* do not refer to or mean sales by a distributor, a microbrewery, a farm winery, a licensed club, a licensed drinking establishment, a licensed caterer or a holder of a temporary permit.

(rr) *'Special event'* means a picnic, bazaar, fair, festival or similar gatherings or events which have been issued a Community Event permit pursuant to Chapter 3.11 of the Code of the City of Wichita, where a temporary permit for the sale of cereal malt beverages or alcoholic liquor is issued pursuant to regulations established by this title, and the Kansas Club and Drinking Establishment Act and amendments thereto.

(ss) *'Spirits'* means any beverage which contains alcohol obtained by distillation, mixed with water or other substance in solution, and includes brandy, rum, whiskey, gin or other spirituous liquors, and such liquors when rectified, blended or otherwise mixed with alcohol or other substances.

(tt) *'Tavern'* means any business establishment licensed to sell cereal malt beverages for consumption on the premises that derives in any one month of the calendar year less than 50% of its gross revenues from the sale of food for consumption on the premises.

(uu) *'Temporary permit'* shall have the meaning ascribed to it by K.S.A. 41-2601 and amendments thereto.

(vv) *'To sell'* includes to solicit or receive an order for, to keep or expose for sale and keep with intent to sell.

(ww) *'Vehicle'* means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, except electric personal assistive mobility devices or devices moved by human power or used exclusively upon stationary rails or tracks.

(xx) *'Wine'* means any alcoholic beverage obtained by the normal alcoholic fermentation of the juice of sound, ripe grapes, fruits or berries or other agricultural products, including such beverages containing added alcohol or spirits or containing sugar added for the purpose of correcting natural deficiencies."

SECTION 3. Section 4.04.017 shall be amended to read as follows:

"**Purchase or consumption of alcoholic beverage by minor; penalty; exception, use of preliminary breath test to determine violations.** (a) Except with

regard to serving of alcoholic liquor or cereal malt beverage as permitted by K.S.A. 41-308a, 41-308b, 41-727a, 41-2610, 41-2652, 41-2704, and 41-2727, and amendments thereto, and subject to any rules and regulations adopted pursuant to such statutes, and as permitted by Section 4.12.140 and 4.16.080 of this Code, and amendments thereto, no person under 21 years of age shall possess, consume, obtain, purchase or attempt to obtain or purchase any alcoholic beverage except as authorized by law.

(b) As used in this section, "alcoholic beverage" means any alcoholic liquor, as defined by Section 4.04.010(b) of the Code of the City of Wichita and amendments thereto, or any cereal malt beverage, as defined by Section 4.04.010(h) of the Code of the City of Wichita and amendments thereto.

(c) Violation of this section by a person 18 or more years of age but less than 21 years of age is a misdemeanor punishable by a minimum fine of $200, and not to exceed $500, or by imprisonment not to exceed 30 days, or by both such fine and imprisonment.

(d) Any person less than 18 years of age who violates this section is a juvenile offender under the Kansas juvenile justice code. Upon adjudication thereof and as a condition of disposition, the court shall require the offender to pay a fine of not less than $200 nor more than $500.

(e) In addition to any other penalty provided for a violation of this section:

(1) The court may order the offender to do either or both of the following:

(A) Perform 40 hours of public service; or

(B) Attend and satisfactorily complete a suitable educational or training program dealing with the effects of alcohol or other chemical substances when ingested by humans; and

(2) Upon a first conviction of a violation of this section, the court shall order the division of vehicles to suspend the driving privilege of such offender for 30 days. Upon receipt of the court order, the division shall notify the violator and suspend the driving privileges of the violator for 30 days whether or not that person has a driver's license.

(3) Upon a second conviction of a violation of this section, the court shall order the division of vehicles to suspend the driving privilege of such offender for 90 days. Upon receipt of the court order, the division shall notify the violator and suspend the driving privileges of the violator for 90 days whether or not that person has a driver's license.

(4) Upon a third or subsequent conviction of a violation of this section, the court shall order the division of vehicles to suspend the driving privilege of such offender for one year. Upon receipt of the court order, the division shall notify the violator and suspend the driving privileges of the violator for one year whether or not that person has a driver's license.

(f) This section shall not apply to the possession and consumption of cereal malt beverage by a person under the legal age for consumption of cereal malt beverage when such possession and consumption is permitted and supervised, and such beverage is furnished, by the person's parent or legal guardian.

(g) A law enforcement officer may request a person under 21 years of age to submit to a preliminary screening test of the person's breath to determine if alcohol has been consumed by such person if the officer has reasonable grounds to believe that the person has alcohol in the person's body except that, if the officer has reasonable grounds to believe the person has been operating or attempting to operate a vehicle under the influence of alcohol, the provisions of K.S.A. 8-1012, and amendments thereto, shall apply. No waiting period shall apply to the use of a preliminary breath test under this subsection. If the person submits to the test, the results shall be used for the purpose of assisting law enforcing officers in determining whether an arrest should be made for violation of this section. A law enforcement officer may arrest a person based in whole or in part upon the results of a preliminary screening test. Such results or a refusal to submit to a preliminary breath test shall be admissible in court in any criminal action, but are not per se proof that the person has violated this section. The person may present to the court evidence to establish the positive preliminary screening test was not the result of a violation of this section."

SECTION 4. Section 4.04.025 of the code of the City of Wichita, Kansas is hereby amended to read as follows:

"**Alcoholic liquor and cereal malt beverage – furnishing to minors, incapacitated persons—Prohibited acts.** (a) No person shall furnish alcoholic liquor or cereal malt beverage to a minor.

(1) Furnishing alcoholic liquor or cereal malt beverage to a minor is recklessly, directly or indirectly selling, giving, exchanging, buying for,

delivering, distributing or in any way furnishing any alcoholic liquor or cereal malt beverage to, for, on behalf of, or at the request of any minor.

(2) As used in this section, all terms have the meanings provided by Section 4.04.010 of the Code of the City of Wichita, Kansas, and amendments thereto.

(3) Any person violating any of the provisions of this subsection shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $200 nor more than $1,000 or by imprisonment for not more than six months, or by both such fine and imprisonment.

(b) It shall be a defense to a prosecution under this section if:

(1) The defendant is a licensed retailer, club, drinking establishment, tavern, caterer, or holds a temporary permit or a special event retailer's permit, or is an employee thereof; and

(2) The defendant sold the alcoholic liquor or cereal malt beverage to the minor with reasonable cause to believe that the minor was 21 or more years of age; and

(3) To purchase the alcoholic liquor, the minor exhibited to the defendant a driver's license, Kansas nondriver's identification card or other official or apparently official document containing a photograph of the minor and purporting to establish that such minor was 21 or more years of age or of legal age for the consumption of alcoholic liquor or cereal malt beverage.

(c) This section shall not apply to wine intended for use and used by any church or religious organization for sacramental purposes.

(d) This section shall not apply to the furnishing of cereal malt beverage by a parent or legal guardian to such parent's child or such guardian's ward when such furnishing is permitted and supervised by the child's or ward's parent or legal guardian.

(e) No person shall recklessly, directly or indirectly, sell, give away, dispose of, exchange or deliver, purchase or buy for, distribute or permit the sale, gift or procuring of any alcoholic liquor to, for or on behalf of any person who is an incapacitated person, or any person who is physically or mentally incapacitated by the consumption of such liquor. Violation of this section is a misdemeanor punishable by a fine of not less than $100 nor more than $250 or by imprisonment not exceeding 30 days, or by both such fine and imprisonment."

SECTION 5. Section 4.04.040 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Consumption and possession of alcoholic beverages in public places prohibited – exceptions. (a) It is unlawful for any person within the corporate limits of the city to consume or possess any open container of alcoholic beverage upon the public streets, alleys, roads or highways, or inside vehicles while upon the public streets, alleys, roads or highways except as follows:

(1) Alcoholic liquor may be sold and/or consumed at a special event held on public streets, alleys, roads, sidewalks or highways, provided that such streets, alleys, roads, sidewalks or highways have been closed to motor vehicle traffic by the City Council and when a temporary permit has been issued pursuant to K.S.A. 41-2645 and amendments thereto, for such event and the consumption

of such alcoholic liquor at such event has been approved by the City Council pursuant to Section 3.11.065.

(2) Cereal malt beverage may be possessed and/or consumed on any city street closed for a community event licensed pursuant to Chapter 3.11 of this Code where a written request for such consumption and possession and the community event are approved by the City Council.

(3) No alcoholic beverage may be consumed inside or on motor vehicles while on public streets, alleys, roads or highways at such special event.

(4) No person shall remove any alcoholic beverage from inside the boundaries of a special event as designated by the City Council pursuant to Section 3.11.065. The boundaries of such event shall be clearly marked by signs, a posted map or other means which reasonably identify the area in which alcoholic beverages may be possessed or consumed at such event.

(5) No person shall possess or consume alcoholic beverage inside the premises licensed as a special event that was not sold or provided by the licensee holding either the special event retailers permit or the temporary permit for such special event, whichever is applicable, or by an adjacent drinking establishment which has extended its licensed premises into and made a part of the licensed premises for such special event pursuant to K.S.A. 41-2645(e)(2) and Section 4.16.070 of this Code and amendments thereto.

(6) It shall be unlawful for any person to distribute, sell or allow the consumption of any alcoholic beverage on the streets or sidewalks within any special event without obtaining the approval of the City Council and any and all

necessary state and local permits for the sale or consumption of such alcoholic beverages.

(7) Each licensee selling alcoholic liquor for consumption on the premises of a special event for which a temporary permit has been issued shall be liable for violations of all laws governing the sale and consumption of alcoholic liquor.

(8) Any community event which is licensed to allow the sale, possession and/or consumption of alcoholic liquor and/or cereal malt beverage shall comply with the provisions of Section 3.11.065 of this Code regarding the possession, consumption or sale of such alcoholic liquor and/or cereal malt beverage.

(9) A person may possess alcoholic liquor upon the public streets, alleys, roads or highways, or inside vehicles while upon the public streets, alleys, roads or highways when transporting an open container of alcoholic liquor as allowed by Section 4.16.155(c) of this Code.

(b) As used in this section, "alcoholic beverage" means any alcoholic liquor, as defined by Section 4.04.010(b) of this Code and any amendments thereto, and/or any cereal malt beverage as defined by Section 4.04.010(h) of this Code and any amendments thereto.

(c) No person shall consume alcoholic liquor on private property except:

(1) On premises where the sale of liquor by the individual drink is authorized by this title and by the Club and Drinking Establishment Act of the State of Kansas;

(2) Upon private property by a person occupying such property as an owner or lessee of an owner and by the guests of such person, if no charge is made for the serving or mixing of any drink or drinks of alcoholic liquor or for any substance mixed with any alcoholic liquor and if no sale of alcoholic liquor in violation of K.S.A. 41-803 and amendments thereto, takes place;

(3) In a lodging room of any hotel, motel or boarding house by the person occupying such room and by the guests of such person, if no charge is made for the serving or mixing of any drink or drinks of alcoholic liquor or for any substance mixed with any alcoholic liquor and if no sale of such alcoholic liquor in violation of K.S.A. 41-803 and amendments thereto take place;

(4) In private dining room of a hotel, motel or restaurant, if the dining room is rented or made available on special occasion to an individual or organization for a private party and if no sale of alcoholic liquor in violation of K.S.A. 41-803 and amendments thereto takes place; or

(5) On the premises of a manufacturer, microbrewery, microdistillery or farm winery, if authorized by K.S.A. 41-305, 41-308a, 41-308b or K.S.A. 41-354, and amendments thereto.

(6) Any person or entity who is licensed to sell alcoholic liquor in the original package at retail may conduct wine, beer and distilled spirit tastings on the licensed premises or adjacent premises, monitored and regulated by the Division of Alcoholic Beverage Control as set forth in K.S.A. 41-308d and Section 4.05.100 of this Code.

(d) No person shall consume alcoholic liquor on public property except:

(1) On real property leased by a city to others under the provisions of K.S.A. 12-1740 through 12-1749, and amendments thereto, if such real property is actually being used for hotel or motel purposes incidental thereto.

(2) In any state-owned or operated building or structure and on the surrounding premises, which is furnished to and occupied by any state officer or employee as residence.

(3) On premises licensed as a club or drinking establishment and located on property owned or operated by the Wichita Airport Authority.

(4) On property which has been specifically exempted by ordinance the title of which is vested in the City of Wichita.

(e) Any property located within the corporate limits of the City of Wichita that is under the control of the Kansas State Board of Regents and the Kansas State Board of Regents has exempted said property from the provisions of K.S.A. 41-719(c) and amendments thereto and said property is not used for classroom instruction.

(f) On the premises of any Kansas national guard regional training center or armory, and any building on such premises, as authorized by rules and regulations of the adjutant general and upon approval of the Kansas military board.

(g) Violation of any provision of this section is a misdemeanor punishable by a fine of not less than $50 nor more than $200 or by imprisonment for not more than six months, or both."

SECTION 6. Section 4.04.065 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

"Nuisances; places and properties operated or used in violation of this Chapter and Chapter 4.05 of this title. Any room, house, building, boat, vehicle, airplane, structure or place of any kind where alcoholic liquors are sold, manufactured, bartered or given away, in violation of this Chapter or Chapter 4.05 of this title, or any building, structure or boats where persons are permitted to resort for the purpose of drinking alcoholic liquors in violation of this Chapter or Chapter 4.05 of this title, or any place where such liquors are kept for sale, barter or gift in violation of this Chapter or Chapter 4.05 of this title, and all such liquors, and all property kept in and used in maintaining such a place, are each and all of them hereby declared to be a common nuisance. Any person who maintains or assists in maintaining such common nuisance is guilty of a misdemeanor and shall be punished and subject to the legal process as set forth in K.S.A. 41-805 and amendments thereto."

SECTION 7. Section 4.04.070 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Acts with regard to alcoholic liquor prohibited unless allowed by ordinance; exceptions. No person shall manufacture, bottle, blend, sell, barter, transport, deliver, furnish or possess any alcoholic liquor for beverage purposes, except as specifically provided in this title and by the Kansas Liquor Control Act, by the Kansas Club and Drinking Establishment Act, or Article 27 of Chapter 41 of the Kansas Statutes Annotated, and amendments thereto, except that nothing contained in this act shall prevent:

(a) The possession and transportation of alcoholic liquor for the personal use of the possessor, the possessor's family and guests except that the provisions of this title and K.S.A. 41-407 and amendments thereto shall be applicable to all persons;

(b) The making of wine, cider, or beer by a person from fruit, vegetables or grains, or the product thereof, by simple fermentation and without distillation, if it is made solely for the use of the maker and the maker's family;

(c) Any duly licensed practicing physician or dentist from possessing or using alcoholic liquor in the strict practice of the medical or dental profession;

(d) Any hospital or other institution caring for sick and diseased persons, from possessing and using alcoholic liquor for the treatment of bona fide patients of such hospital or institution;

(e) Any drugstore employing a licensed pharmacist from possessing and using alcoholic liquor in the compounding of prescriptions of duly licensed physicians;

(f) The possession and dispensation of wine by an authorized representative of any church for the purpose of conducting any bona fide rite or religious ceremony conducted by such church;

(g) The sale of wine to a consumer in this state as allowed in K.S.A. 41-104(g) and amendments thereto;

(h) The serving of complimentary alcoholic liquor or cereal malt beverages at fund raising activities of charitable organizations as defined by K.S.A. 17-1760, and amendments thereto, and as qualified pursuant to 26 U.S.C.A. § 501(c) and by committees formed pursuant to K.S.A. 25-4142 et seq., and amendments thereto. The serving of such alcoholic liquor at such fund raising activities shall not constitute a sale

pursuant to this title, the Kansas Liquor Control Act, the Club and Drinking Establishment Act or article 27 of chapter 41 of the Kansas Statutes Annotated, and amendments thereto. Any such fund raising activity shall not be required to obtain a license or a temporary permit pursuant to this title, the Kansas Liquor Control Act, the Club and Drinking Establishment Act or article 27 of chapter 41 of the Kansas Statutes Annotated, and amendments thereto; or

(i) The serving of complimentary alcoholic liquor or cereal malt beverage on the unlicensed premises of a business by the business owner or owner's agent at an event sponsored by a nonprofit organization promoting the arts and which has been approved by ordinance or resolution of the City Council and whereby the Director of the Alcoholic Beverage Control has been notified thereof no less than 10 days in advance."

SECTION 8. The original of Sections 4.04.010, 4.04.017, 4.04.020, 4.04.025, 4.04.035, 4.04.040, and 4.04.070 of the Code of the City of Wichita, Kansas, are hereby repealed.

SECTION 9. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper.

PASSED by the governing body of the City of Wichita, Kansas, this 24th day of March, 2015.

_____

Carl Brewer, Mayor

ATTEST:

_____

Karen Sublett, City Clerk

Approved as to Form:

_____

Sharon L. Dickgrafe, Interim City Attorney and
Director of Law

First Published in The Wichita Eagle on March 27, 2015

02/25/15

ORDINANCE NO. 49-956

AN ORDINANCE CREATING CHAPTER 4.05 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO RETAIL LIQUOR SALES, LICENSING AND PROHIBITED ACTS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. The title to Chapter 4.05 of the Code of the City of Wichita, Kansas, shall read as follows:

Chapter 4.05. Retail Liquor Sales

SECTION 2. Section 4.05.010 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

"**License required.** It is unlawful for any person to sell, keep for sale, or offer for sale any alcoholic liquor as a retailer except on premises licensed for such sales under the provisions of K.S.A. Chapter 41, this Title and this Chapter. Violation of this section is a misdemeanor and punishable as set forth in Section 4.05.130."

SECTION 3. Section 4.05.015 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

"**Effective date of ordinance; licensing of existing and new businesses, and renewals thereof.** This chapter shall become effective on the 91st day after publication in the official city newspaper. Upon this date, all alcoholic liquor retailers operating within the corporate limits of the City of Wichita must obtain a license to operate from the City. However, application for this license and payment of the fees required by this chapter shall not be due until the next renewal of the state license for the same premises.

Such application and payment of the required fees must be submitted no later than ten (10) business days following the renewal of the state license for the premises, and within ten (10) business days after each subsequent renewal of the state license.

For alcoholic liquor retailers whose business is established after the effective date of this ordinance, the license required by this chapter shall be obtained and the fee therefore shall be paid before business is begun under an original state license, and within ten (10) business days after each subsequent renewal of the state license."

SECTION 4. Section 4.05.020 of the Code of the City of Wichita, Kansas, is hereby created to read as follows**:**

"License application. Any person desiring to secure a license or renew an existing license for the retail sale of alcoholic liquor in the original package under the provisions of this Chapter shall make a verified application with the City Treasurer. Such application shall be on a form provided by the City Treasurer and shall contain the following information:

1. The name and address of the applicant;

2. The address of the premises for which the license is desired;

3. The name and address of the owner of the premises upon which the business is located, if different from the applicant;

4. The name and address of all officers, directors, stockholders, owners, members, employees and the manager, if any; and

5. A copy of the diagram of the premises covered by the state license.

A copy of the state retailer's license for the same premises shall be attached to the City application. Such application shall be accompanied by the license fee required by Section 4.05.030."

SECTION 5. Section 4.05.030 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

"**License fee.** There is hereby assessed a biennial license fee in the amount of $600 on each retailer of alcoholic liquor in the original package operating within the corporate limits of the City of Wichita. Any person who fails or refuses to pay such license fee is guilty of a misdemeanor and shall be punished as set forth in Section 4.05.130."

SECTION 6. Section 4.05.040 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

"**Issuance of License.** All applications for a new or renewal alcohol retailer license shall be submitted to the City Treasurer's office for approval. Upon presentation of a state license, payment of the City's license fee and a determination that the proposed location of the retail establishment does not conflict with or violate any city zoning ordinance, building, health or fire codes, or the provisions of this or any other chapter of the City Code, the City Treasurer or his or her designee shall issue a city license for the premises specified in the application. No license fee required by this chapter or any portion thereof shall be refunded for any reason, except if, in the determination of the City Treasurer or his or her designee, the application of this section would result in a substantial and unfair burden upon the applicant."

SECTION 7. Section 4.05.050 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

"Term of license. The license issued pursuant to this Chapter shall be valid for the period of time covered by the state license. Any extension of the effective term of the state license shall be deemed to extend the term of the license issued pursuant to this Chapter for the same time period, provided, however, the licensee shall be responsible for providing proof of any license extension by the state to the City Treasurer's office."

SECTION 8. Section 4.05.060 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

"Certain sales prohibited, hours of sale, Sunday sales. (a) No person shall sell at retail any alcoholic liquor in the original package within the corporate limits of the city:

(1) At or from premises located in areas zoned for more restricted or higher use than "NR"—Neighborhood Retail, under Title 28 of this Code;

(2) At or from premises located within 200 feet of any public or parochial school, college or church; provided, that if any school, college or church shall be established within 200 feet of any retail premises licensed under the provisions of the State Liquor Control Act and of this Title after such premises have been licensed, then such premises shall be an eligible location for retail licensing;

(3) At or from premises which do not conform to the Wichita-Sedgwick County Uniform Building and Trade Code, that violate the Wichita-

Sedgwick County Unified Zoning Code, any city health or fire code, or any of the provisions of this title.

(4) On Easter Sunday, Thanksgiving Day and Christmas Day;

(5) Before 9 a.m. or after 11 p.m. on any day when the sale of alcoholic liquor at retail is permitted; or

(6) Pursuant to Ordinance No. 47-466, on any Sunday other than Easter Sunday before 12 noon or after 8 p.m.

(b) Violation of any of the provisions of subsection (a) is a misdemeanor and is punishable as set forth in Section 4.05.130."

SECTION 9. Section 4.05.070 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

"**Display of license.** Every licensee shall cause the alcoholic retailer's license issued pursuant to this Chapter to be framed and hung in plain view in a conspicuous place on the licensed premises either next to or below the state retailer's license."

SECTION 10. Section 4.05.080 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

"**License Limited to Premises.** A license issued pursuant to this Chapter is valid for only one location, as specified in the license application, and it shall be unlawful for any person to conduct business as an alcoholic liquor retailer from any other premises than as specified in the license."

SECTION 11. Section 4.05.090 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

"License Non-transferable. No license issued pursuant to this Chapter may be transferred to any other person, except as authorized under the provisions of K.S.A. Chapter 41."

SECTION 12. Section 4.05.100 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

"Mixing drinks on premises prohibited and employment of certain persons prohibited, exceptions. (a) It shall be unlawful for a retailer of alcoholic liquor:

(1) to permit any person to mix drinks in or on the licensed premises except as provided in subsection (b);

(2) to employ any person under the age of 21 years in connection with the operation of such retail establishment; or

(3) to employ any person in connection with the operation of such retail establishment who has been adjudged guilty of a felony.

(b) The provisions of subsection (a)(1) shall not apply to the preparation and mixing of samples for the purposes of conducting wine, beer or distilled spirit tastings or any combination thereof, as authorized by K.S.A. 2012 Supp. 41-308d and K.A.R. 14-13-16 and 14-13-17, and amendments thereto.

(c) Violation of this section is a misdemeanor and punishable as set forth in Section 4.05.130."

SECTION 13. Section 4.05.110 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

"Suspension or revocation of license. (a) The Chief of Police, or his or her designee, shall immediately suspend the license of any licensee under this chapter whenever the state license of the licensee is suspended by the state for any reason.

(b) The City Council shall immediately revoke the license of any licensee under this chapter whenever the state license of the licensee is revoked by the state for any reason.

(c) If the state license of a licensee is reinstated by the state, the City Treasurer shall reinstate the license issued under this chapter.

SECTION 14. Section 4.05.120 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

"Right of inspection of licensed premises. The right of immediate entry to and inspection of any premises where alcoholic liquor is sold by a licensee or any premises subject to the control of any licensee by any duly authorized officer or agent of the city, or by any law enforcement officer, shall be a condition on which every license is issued, and the application for and acceptance of any license shall conclusively be deemed to be the consent of the applicant and licensee or permit holder to such immediate entry and inspection. Such consent shall not be revocable during the term of the license. Such right of immediate inspection shall be at any time when the premises are occupied and is not limited to hours when the retail establishment is open for business. Upon the refusal of any licensee to permit immediate entry and inspection as said above, the city attorney or the chief of police or a designee of either shall report such refusal to the State Director of Alcoholic Beverage Control."

SECTION 15. Section 4.05.130 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

"**General penalty.** Any person who violates any of the provisions of this chapter is guilty of a misdemeanor and, unless otherwise provided, shall be punished by a fine not to exceed $500 or by imprisonment not to exceed six months, or by both such fine and imprisonment."

SECTION 16. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper.

PASSED by the governing body of the City of Wichita, Kansas, this 24th day of March, 2015.

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to Form:

_____
Sharon L. Dickgrafe, Interim City Attorney and
Director of Law

First Published in The Wichita Eagle on _____

DELINEATED 02/25/15

ORDINANCE NO._____

AN ORDINANCE AMENDING SECTIONS 4.04.010, 4.04.017, 4.04.025, 4.04.040, AND 4.04.070; CREATING SECTION 4.04.065 AND REPEALING SECTIONS 4.04.020 AND 4.04.035 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO GENERAL PROVISIONS AND PROHIBITED ACTS INVOLVING INTOXICATING LIQUOR AND CEREAL MALT BEVERAGES.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. The title to Chapter 4.04 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

Chapter 4.04. ~~In~~ General Provisions and Prohibited Acts

SECTION 2. Section 4.04.010 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Definitions.** Unless otherwise expressly stated or the context clearly indicates a different intention, the following terms shall, for the purpose of this title, have the meanings indicated in this section. Any term used in this title that is not defined herein shall have the same meaning and definition as set forth in K.S.A. Chapter 41 and amendments thereto.

(a) "*Alcohol'* means the product of distillation of any fermented liquid, whether rectified or diluted, whatever the origin thereof, and includes synthetic ethyl alcohol but does not include denatured alcohol or wood alcohol.

(b) *'Alcoholic liquor'* means alcohol, spirits, wine, beer, and every liquid or solid, patented or not, containing alcohol, spirits, wine or beer and capable of being

consumed as a beverage by a human being, but shall not include any cereal malt beverage.

(c) *'Barrier'* means any natural or manmade obstruction which precludes direct traffic, between a church or school and a private club, drinking establishment or a place of business at which cereal malt beverages are sold and is of such a character that it completely separates such establishments, including parking facilities. Barriers include, but are not limited to: rivers, railroad tracks, levees, and drainage ditches.

(d) *'Beer'* modified, or limited by other words, means a beverage, containing more than ~~three and two-tenths percent~~ 3.2% alcohol by weight, obtained by alcoholic fermentation of an infusion or concoction of barley, or other grain, malt, and hops in water and includes beer, ale, stout, lager beer, porter, and similar beverages having such alcoholic content.

(e) *'Beneficial interest'* shall not include any interest a person may have as owner, operator, lessee or franchise holder of any licensed hotel or motel on the premises of which a club or drinking establishment is located.

(f) *'Bus'* means every motor vehicle designed for carrying more than ten passengers and used for transportation of persons; and every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

(g) *'Caterer'* means an individual, partnership or corporation which sells alcoholic liquor by the individual drink or domestic beer, and provides services related to the serving thereof, on unlicensed premises which may be open to the public, but

does not include a holder of a temporary permit, selling alcoholic liquor in accordance with the terms of such permit.

(h) *'Cereal malt beverage'* means any fermented but undistilled liquor brewed or made from malt or from a mixture of malt or malt substitute or any flavored malt beverage, as defined in K.S.A. 41-2729, and amendments thereto, but does not include any such liquor which is more than ~~three and two-tenths percent~~ 3.2% alcohol by weight.

(i) *'Cereal malt beverage retailer'* means any person who sells or offers for sale any cereal malt beverage for use or ~~compensation~~ consumption and not for resale in any form.

(j) *'Class A club'* means a premises which is owned or leased by a corporation, partnership, business trust or association, and which is operated thereby as a bona fide nonprofit social, fraternal or war veterans' club, as determined by the director, for the exclusive use of the corporation stockholders, partners, trust beneficiaries or associates (hereinafter referred to as "members"), and their families and guests accompanying them.

(k) *'Class B club'* means a premises operated for profit by a corporation, partnership or individual to which members of such club may resort for the consumption of food or alcoholic beverages and for entertainment.

(l) *'Club'* means a Class A or Class B club.

(m) *'Crime of moral turpitude'* means a crime involving dishonesty.

(n) *'Director'* means the Director of Alcoholic Beverage ~~Controls~~ Control of the Kansas State Department of Revenue.

(o) *'Distributor'* shall have the meaning ascribed to it by K.S.A. 41-102 and amendments thereto.

(p) *'Domestic beer'* means beer which contains not more than ~~eight~~ percent 10% alcohol by weight and which is manufactured in this state.

~~(q) *'Drink of alcoholic liquor'* means one individual serving of any beverage containing alcoholic liquor.~~

~~(r) *'Drink of cereal malt beverage'* means one individual serving of any cereal malt beverage not to exceed twelve ounces.~~

(~~s~~q) *'Drinking establishment'* means premises which may be open to the general public over ~~twenty-one~~ 21 years of age, where alcoholic liquor by the individual drink is sold.

(~~t~~r) *'Drinking establishment/restaurant'* means premises which may be open to the general public, where alcoholic liquor by the individual drink is sold and which derive not less than ~~thirty percent~~ 30% of its gross revenues from sales of food and beverages for consumption on such premises in a two month period. Failure on the part of the licensee to meet the ~~thirty percent~~ 30% food sales criteria, or conviction of the licensee or any owner, officer, or employee of the licensee of any two violations of Section 4.16.130 of the City Code occurring on the licensed premises within one year shall result in the premises being reclassified as a drinking establishment as provided in Section 4.16.095(c) and any amendments thereto.

(~~u~~s) *'Drinking establishment/restaurant/event center'* means premises which may or may not be open to the public, are frequently rented out for public or private

activities which are not repeated on a weekly basis, are not open to the public on a daily basis at times other than when an event is scheduled, and which derive at least ~~thirty percent~~ 30% of its gross revenue from sales of food and beverages for consumption on the premises in a six-month period.

(~~v~~t) *'Employee'* means any person employed by a licensee in the business of selling cereal malt beverages or alcoholic liquor ~~by a licensee~~.

(~~w~~u) *'Food'* means any raw, cooked or processed edible substance or ingredient, other than alcoholic liquor or cereal malt beverage, used or intended for use or for sale, in whole or in part, for human consumption.

(~~x~~v) *'Gross revenues'* means only that income derived from cereal malt beverages, alcoholic liquor, and other food consumables.

(w) *'Guest or Guests'* means a person or persons to whom a private or personal invitation, as opposed to a public announcement, has been extended for hospitality or entertainment. Paying customers or patrons of any kind of business establishment are not "guests" as the term is used in Section 4.04.040(c) of this code.

(~~y~~x) *'Hotel'* has the meaning ascribed to it by K.S.A. 36-501 and amendments thereto.

(~~z~~y) *'Individual drink'* means a beverage containing alcoholic liquor or cereal malt beverage served to an individual for consumption by such individual or another individual, but which is not intended to be consumed by two or more individuals. The term "individual drink" includes beverages containing not more than: (1) Eight ounces of wine; (2) ~~thirty-two~~ 32 ounces of beer or cereal malt beverage; or (3) four ounces of a single spirit or a combination of spirits.

(~~aa~~z) *'Legal age for consumption of cereal malt beverage'* means ~~twenty-one~~ 21 years of age, except that *'legal age for consumption of cereal malt beverage'* shall mean 18 years of age if at any time the provisions of P.L. 98-363 penalizing states for permitting persons under 21 years of age to consume cereal malt beverage are repealed or otherwise invalidated or nullified.

(~~bb~~aa) *'Licensee'* means any person to whom a current ~~cereal malt beverages~~ license, temporary permit or special event retailer's permit has been issued pursuant to this chapter ~~by the city council~~, authorizing sale of cereal malt beverage~~s~~ and/or alcoholic liquor. ~~any person to whom a current club, drinking establishment, drinking establishment/restaurant, drinking establishment hotel, or caterer's license or temporary permit has been issued pursuant to this title and/or~~ This term shall also mean any person to whom a current ~~club, drinking establishment, drinking establishment hotel, or caterer's~~ license or temporary permit has been issued by the Director of Alcoholic Beverage Control pursuant to the ~~Kansas~~ Liquor Control Act or the Club and Drinking Establishment Act of the state of Kansas. ~~K.S.A. 41-101 et seq., and amendments thereto~~."

(~~cc~~bb) *'Manager'* means the manager or assistant manager, or both, of any establishment licensed under this Title who is in charge of the daily operations of the establishment. A manager shall be deemed to be employed in connection with the dispensing, selling, mixing or serving of alcoholic liquor.

(~~dd~~cc) *'Manufacture'* means to distill, rectify, ferment, brew, make, mix, concoct, process, blend, bottle or fill an original package with any alcoholic liquor, beer or cereal malt beverage.

(~~ee~~dd) *'Manufacturer'* shall have the meaning ascribed to it by K.S.A. 41-102 and amendments thereto.

(~~ff~~ee) *'Minor'* means any person under ~~twenty-one~~ 21 years of age.

(~~gg~~ff) *'Morals charge'* means a charge involving ~~prostitution or sodomy; pimping or promoting prostitution or sodomy; procuring any person; soliciting a child under eighteen year of age for any immoral act involving sex~~; the sale of sexual relations, buying sexual relations, human trafficking, any crime defined in article 55 of chapter 21 of the Kansas Statutes Annotated and amendments thereto; violation of K.S.A. 21-5604 and amendments thereto; ~~rape; incest; indecent liberties with a child;~~ gambling; ~~illegal cohabitation~~; ~~adultery;~~ bigamy; ~~a crime against nature; lewd and lascivious behavior;~~ any violation of Chapter 5.26 of the Code of the City of Wichita and amendments thereto; or any ~~violation of the Uniform Controlled Substances Act as set forth in K.S.A. 65-4101 et seq.~~ crime defined in article 57 of chapter 21 of the Kansas Statutes Annotated and amendments thereto.

(~~hh~~gg) *'Off-premises business'* means a business establishment which sells cereal malt beverages or alcoholic liquor in original unopened containers for consumption off of the licensed premises.

(~~ii~~hh) *'Original package'* means any bottle, flask, jug, can, cask, barrel, keg, hogshead or other receptacle or container whatsoever, used, corked, or capped, sealed and labeled by the manufacturer of alcoholic liquor or cereal malt beverage to contain and to convey any alcoholic liquor or cereal malt beverage. Original container does not include a sleeve.

(~~jj~~ii) *'Person'* means any natural person, corporation, partnership, trust or association. As used in Chapter 4.12, *'Person'* means any individual, firm, partnership, corporation or association.

(~~kk~~jj) *'Place of business'* means any place, except a tavern, at which cereal malt beverages and/or alcoholic liquor are sold.

(~~ll~~kk) *'Premises'* means the specific area described in the license application and approved as the location upon which the cereal malt beverages and/or alcoholic liquor may be sold and/or consumed under the license.

(~~mm~~ll)*'Public assembly area'* means the area of the licensed premises to which the general public has access for purposes including, but not limited to, food and drink consumption, entertainment, recreation, social functions or awaiting transportation.

~~(nn) *'Public place'* means any place to which the general public has access and a right to resort for business, entertainment, or other lawful purpose, but does not necessarily mean a place devoted solely to the uses of the public. It shall also include the front or immediate area of any store, shop, restaurant, tavern or other place of business and also public grounds, areas or parks.~~

(mm) *'Retailer'* means a person who sells at retail, or offers for sale at retail, alcoholic liquors, and does not include a microbrewery, microdistillery or a farm winery, as those terms are defined in K.S.A. 41-102 and amendments thereto. Retailer also means any person who sells or offers for sale any cereal malt beverage for use or consumption and not for resale in any form.

(~~oo~~nn)*'Sale'* means any transfer, exchange or barter in any manner or by any means whatsoever for a consideration; and includes all sales made by any person, whether principal, proprietor, agent, servant or employee.

(oo) *"Sample"* means a serving of alcoholic liquor which contains not more than: (1) One-half ounce of distilled spirits; (2) one ounce of wine; or (3) two ounces of beer or cereal malt beverage. A sample of a mixed alcoholic beverage shall contain not more than one-half ounce of distilled spirits.

(pp) *'School'* means the use of a site for instructional purposes on an elementary or secondary level, including both public schools as well as private schools that have curriculums similar to those in public schools.

(qq) (1) *'Sell at retail'* and *'sale at retail'* refer to and mean sales for use or consumption and not for resale in any form and sales to clubs, licensed drinking establishments, ~~licenses~~ licensed caterers or holders of temporary permits.

(2)*'Sell at retail'* and *'sale at retail'* do not refer to or mean sales by a distributor, a microbrewery, a farm winery, a licensed club, a licensed drinking establishment, a licensed caterer or a holder of a temporary permit.

(rr) *'Special event'* means a picnic, bazaar, fair, festival or similar gatherings or events which have been issued a ~~community event license~~ Community Event permit pursuant to Chapter 3.11 of the Code of the City of Wichita, where a temporary permit for the sale of cereal malt beverages or alcoholic liquor is issued pursuant to regulations established by this title, and the Kansas Club and Drinking Establishment Act and amendments thereto.

(ss) *'Spirits'* means any beverage which contains alcohol obtained by distillation, mixed with water or other substance in solution, and includes brandy, rum, whiskey, gin or other spirituous liquors, and such liquors when rectified, blended or otherwise mixed with alcohol or other substances.

(tt) *'Tavern'* means any business establishment licensed to sell cereal malt beverages for consumption on the premises that derives in any one month of the calendar year less than ~~fifty percent~~ 50% of its gross revenues from the sale of food for consumption on the premises.

(uu) *'Temporary permit'* shall have the meaning ascribed to it by K.S.A. 41-2601 and amendments thereto.

(vv) *'To sell'* includes to solicit or receive an order for, to keep or expose for sale and keep with intent to sell.

(ww) *'Vehicle'* means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, except electric personal assistive mobility devices or devices moved by human power or used exclusively upon stationary rails or tracks.

(xx) *'Wine'* means any alcoholic beverage obtained by the normal alcoholic fermentation of the juice of sound, ripe grapes, fruits or berries or other agricultural products, including such beverages containing added alcohol or spirits or containing sugar added for the purpose of correcting natural deficiencies.

~~(xx) *'Wholesaler'* means a distributor as defined by K.S.A. 41-2701 and amendments thereto."~~

SECTION 3. Section 4.04.017 shall be amended to read as follows:

"**Purchase or consumption of alcoholic beverage by minor; penalty; exception, use of preliminary breath test to determine violations.** (a) Except with regard to serving of alcoholic liquor or cereal malt beverage as permitted by K.S.A. 41-308a, 41-308b, 41-727a, 41-2610, 41-2652, 41-2704, and 41-2727, and amendments thereto, and subject to any rules and regulations adopted pursuant to such statutes, and as permitted by Section 4.12.140 and 4.16.080 of this Code, and amendments thereto, no person under 21 years of age shall possess, consume, obtain, purchase or attempt to obtain or purchase any alcoholic beverage except as authorized by law.

(b) As used in this section, "alcoholic beverage" means any alcoholic liquor, as defined by Section 4.04.010(b) of the Code of the City of Wichita and amendments thereto, or any cereal malt beverage, as defined by Section 4.04.010(h) of the Code of the City of Wichita and amendments thereto.

(c) Violation of this section by a person 18 or more years of age but less than 21 years of age is a misdemeanor ~~for which the~~ punishable by a minimum fine ~~is~~ of ~~two hundred dollars~~ $200, and not to exceed $500, or by imprisonment not to exceed 30 days, or by both such fine and imprisonment.

(d) Any person less than 18 years of age who violates this section is a juvenile offender under the Kansas juvenile justice code. Upon adjudication thereof and as a condition of disposition, the court shall require the offender to pay a fine of not less than ~~two hundred dollars~~ $200 nor more than ~~five hundred dollars~~ $500.

(e) In addition to any other penalty provided for a violation of this section:

(1) The court may order the offender to do either or both of the following:

(A) Perform 40 hours of public service; or

(B) Attend and satisfactorily complete a suitable educational or training program dealing with the effects of alcohol or other chemical substances when ingested by humans; and

(2) Upon a first conviction of a violation of this section, the court shall order the division of vehicles to suspend the driving privilege of such offender for 30 days. Upon receipt of the court order, the division shall notify the violator and suspend the driving privileges of the violator for 30 days whether or not that person has a driver's license.

(3) Upon a second conviction of a violation of this section, the court shall order the division of vehicles to suspend the driving privilege of such offender for 90 days. Upon receipt of the court order, the division shall notify the violator and suspend the driving privileges of the violator for 90 days whether or not that person has a driver's license.

(4) Upon a third or subsequent conviction of a violation of this section, the court shall order the division of vehicles to suspend the driving privilege of such offender for one year. Upon receipt of the court order, the division shall notify the violator and suspend the driving privileges of the violator for one year whether or not that person has a driver's license.

(ef) This section shall not apply to the possession and consumption of cereal malt beverage by a person under the legal age for consumption of cereal malt beverage when such possession and consumption is permitted and supervised, and such beverage is furnished, by the person's parent or legal guardian.

(~~f~~g) A law enforcement officer may request a person under 21 years of age to submit to a preliminary screening test of the person's breath to determine if alcohol has been consumed by such person if the officer has reasonable grounds to believe that the person has alcohol in the person's body except that, if the officer has reasonable grounds to believe the person has been operating or attempting to operate a vehicle under the influence of alcohol, the provisions of K.S.A. 8-1012, and amendments thereto, shall apply. No waiting period shall apply to the use of a preliminary breath test under this subsection. If the person submits to the test, the results shall be used for the purpose of assisting law enforcing officers in determining whether an arrest should be made for violation of this section. A law enforcement officer may arrest a person based in whole or in part upon the results of a preliminary screening test. Such results or a refusal to submit to a preliminary breath test shall be admissible in court in any criminal action, but are not per se proof that the person has violated this section. The person may present to the court evidence to establish the positive preliminary screening test was not the result of a violation of this section."

SECTION 4. Section 4.04.025 of the code of the City of Wichita, Kansas is hereby amended to read as follows:

"**Alcoholic liquor <u>and cereal malt beverage – furnishing to</u> minors, incapacitated persons—Prohibited acts.** (a) No person shall furnish alcoholic liquor <u>or cereal malt beverage</u> to a minor.

(1) Furnishing alcoholic liquor <u>or cereal malt beverage</u> to a minor is recklessly, directly or indirectly selling, giving, exchanging, buying for,

delivering, distributing or in any way furnishing any alcoholic liquor or cereal malt beverage to, for, on behalf of, or at the request of any minor.

(2) As used in this section, all terms have the meanings provided by Section 4.04.010 of the Code of the City of Wichita, Kansas, and amendments thereto.

(3) Any person violating any of the provisions of this subsection shall be guilty of a misdemeanor and upon ~~a first~~ conviction thereof shall be punished by a fine of not less than ~~two hundred dollars~~ $200 nor more than ~~one thousand dollars~~ $1,000 or by imprisonment for not more than six months, or by both such fine and imprisonment~~; and upon a second conviction thereof shall be punished by a fine of not less than three hundred dollars nor more than one thousand dollars or by imprisonment for not more than six months or by both such fine and imprisonment; and upon a third or subsequent conviction thereof shall be punished by a fine of not less than five hundred dollars nor more than one thousand dollars or by imprisonment for not more than six months, or by both such fine and imprisonment~~.

(b) It shall be a defense to a prosecution under this section if:

(1) The defendant is a licensed retailer, club, drinking establishment, tavern, caterer, or holds a temporary permit or a special event retailer's permit, or is an employee thereof; and

(2) The defendant sold the alcoholic liquor or cereal malt beverage to the minor with reasonable cause to believe that the minor was ~~twenty-one~~ 21 or more years of age; and

(3) To purchase the alcoholic liquor, the minor exhibited to the defendant a driver's license, Kansas nondriver's identification card or other official or apparently official document containing a photograph of the minor and purporting to establish that such minor was ~~twenty-one~~ 21 or more years of age or of legal age for the consumption of alcoholic liquor or cereal malt beverage.

(c) This section shall not apply to wine intended for use and used by any church or religious organization for sacramental purposes.

(d) This section shall not apply to the furnishing of cereal malt beverage by a parent or legal guardian to such parent's child or such guardian's ward when such furnishing is permitted and supervised by the child's or ward's parent or legal guardian.

(e) No person shall recklessly, directly or indirectly, sell, give away, dispose of, exchange or deliver, purchase or buy for, distribute or permit the sale, gift or procuring of any alcoholic liquor to, for or on behalf of any person who is an incapacitated person, or any person who is physically or mentally incapacitated by the consumption of such liquor. Violation of this section is a misdemeanor~~. Upon first conviction of a violation of this subsection, a person shall be punished~~ punishable by a fine of not less than ~~one hundred dollars~~ $100 nor more than ~~two hundred fifty dollars~~ $250 or by imprisonment not exceeding ~~thirty~~ 30 days, or by both such fine and imprisonment~~; and upon a second conviction of a violation of this subsection, a person shall be punished by a fine of not less than two hundred dollars nor more than two hundred fifty dollars or by imprisonment not exceeding thirty days, or by both such fine and imprisonment; and upon a third or subsequent conviction for a violation of this subsection, a person shall be punished by a~~

~~fine of two hundred fifty dollars or by imprisonment not exceeding thirty days or by both such fine and imprisonment~~.

~~(d) For the purpose of determining whether a conviction is a second, third or subsequent conviction under this section, all convictions for violation of the sections and chapters enumerated herein occurring within the immediately preceding eighteen months, including those prior to the effective date of this section, shall be aggregated and considered together and it is irrelevant whether an offense occurred before or after conviction for a prior offense.~~ "

SECTION 5. Section 4.04.040 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Consumption and possession of alcoholic beverages in public places prohibited – exceptions. (a) ~~Except as otherwise provided herein,~~ It is unlawful for any person within the corporate limits of the city to ~~drink or~~ consume or possess any open container of alcoholic ~~liquor~~ beverage upon the public streets, alleys, roads or highways, or inside vehicles while upon the public streets, alleys, roads or highways except as follows:

(1) Alcoholic liquor may be sold and/or consumed at a special event held on public streets, alleys, roads, sidewalks or highways, provided that such streets, alleys, roads, sidewalks or highways have been closed to motor vehicle traffic by the City Council and when a temporary permit has been issued pursuant to K.S.A. 41-2645 and amendments thereto, for such event and the consumption of such alcoholic liquor at such event has been approved by the City Council pursuant to Section 3.11.065.

(2) Cereal malt beverage may be possessed and/or consumed on any city street closed for a community event licensed pursuant to Chapter 3.11 of this Code where a written request for such consumption and possession and the community event are approved by the City Council.

~~(2)~~(3) No alcoholic ~~liquor~~ beverage may be consumed inside or on motor vehicles while on public streets, alleys, roads or highways at such special event.

~~(3)~~(4) No person shall remove any alcoholic ~~liquor~~ beverage from inside the boundaries of a special event as designated by the City Council pursuant to Section 3.11.065. The boundaries of such event shall be clearly marked by signs, a posted map or other means which reasonably identify the area in which alcoholic ~~liquor~~ beverages may be possessed or consumed at such event.

~~(4)~~(5) No person shall possess or consume alcoholic ~~liquor~~ beverage inside the premises licensed as a special event that was not sold or provided by the licensee holding either the special event retailers permit or the temporary permit for such special event, whichever is applicable, or by an adjacent drinking establishment which has extended its licensed premises into and made a part of the licensed premises for such special event pursuant to K.S.A. 41-2645(e)(2) and Section 4.16.070 of this Code and amendments thereto.

~~(5)~~(6) It shall be unlawful for any person to distribute, sell or allow the consumption of any alcoholic ~~liquor~~ beverage on the streets or sidewalks within any special event without obtaining the approval of the City Council and any and all necessary state and local permits for the sale or consumption of such alcoholic ~~liquor~~ beverages.

~~(6)~~(7) Each licensee selling alcoholic liquor for consumption on the premises of a special event for which a temporary permit has been issued shall be liable for violations of all laws governing the sale and consumption of alcoholic liquor.

(8) Any community event which is licensed to allow the sale, possession and/or consumption of alcoholic liquor and/or cereal malt beverage shall comply with the provisions of Section 3.11.065 of this Code regarding the possession, consumption or sale of such alcoholic liquor and/or cereal malt beverage.

(9) A person may possess alcoholic liquor upon the public streets, alleys, roads or highways, or inside vehicles while upon the public streets, alleys, roads or highways when transporting an open container of alcoholic liquor as allowed by Section 4.16.155(c) of this Code.

(b) As used in this section, "alcoholic beverage" means any alcoholic liquor, as defined by Section 4.04.010(b) of this Code and any amendments thereto, and/or any cereal malt beverage as defined by Section 4.04.010(h) of this Code and any amendments thereto.

(~~b~~c) No person shall ~~drink or~~ consume alcoholic liquor on private property except:

(1) On premises where the sale of liquor by the individual drink is authorized by this title and by the Club and Drinking Establishment Act of the State of Kansas;

(2) Upon private property by a person occupying such property as an owner or lessee of an owner and by the guests of such person, if no charge is made for the serving or mixing of any drink or drinks of alcoholic liquor or for any substance

mixed with any alcoholic liquor and if no sale of alcoholic liquor in violation of K.S.A. 41-803 and amendments thereto, takes place;

(3) In a lodging room of any hotel, motel or boarding house by the person occupying such room and by the guests of such person, if no charge is made for the serving or mixing of any drink or drinks of alcoholic liquor or for any substance mixed with any alcoholic liquor and if no sale of such alcoholic liquor in violation of K.S.A. 41-803 and amendments thereto take place;

(4) In private dining room of a hotel, motel or restaurant, if the dining room is rented or made available on special occasion to an individual or organization for a private party and if no sale of alcoholic liquor in violation of K.S.A. 41-803 and amendments thereto takes place; or

(5) On the premises of a manufacturer, microbrewery, microdistillery or farm winery, if authorized by K.S.A. 41-305, 41-308a, 41-308b or ~~Section 2 of 2012 Substitute for House Bill 2689~~ K.S.A. 41-354, and amendments thereto.

(6) Any person or entity who is licensed to sell alcoholic liquor in the original package at retail may conduct wine, beer and distilled spirit tastings on the licensed premises or adjacent premises, monitored and regulated by the ~~division of alcoholic beverage control~~ Division of Alcoholic Beverage Control as set forth in ~~Section 3 of 2012 Substitute for House Bill 2689~~ K.S.A. 41-308d and Section 4.05.100 of this Code.

(~~c~~d) No person shall ~~drink or~~ consume alcoholic liquor on public property except:

(1) On real property leased by a city to others under the provisions of K.S.A. 12-1740 through 12-1749, and amendments thereto, if such real property is actually being used for hotel or motel purposes incidental thereto.

(2) In any state-owned or operated building or structure and on the surrounding premises, which is furnished to and occupied by any state officer or employee as residence.

(3) On premises licensed as a club or drinking establishment and located on property owned or operated by the Wichita Airport Authority.

(~~d~~4) On property which has been specifically exempted by ordinance the title of which is vested in the City of Wichita.

(e) Any property located within the corporate limits of the City of Wichita that is under the control of the Kansas State Board of Regents and the Kansas State Board of Regents has exempted said property from the provisions of K.S.A. 41-719(c) and amendments thereto and said property is not used for classroom instruction.

(f) On the premises of any Kansas national guard regional training center or armory, and any building on such premises, as authorized by rules and regulations of the adjutant general and upon approval of the Kansas military board.

(g) Violation of any provision of this section is a misdemeanor punishable by a fine of not less than ~~fifty dollars~~ $50 nor more than ~~two hundred dollars~~ $200 or by imprisonment for not more than six months, or both."

SECTION 6. Section 4.04.065 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

"Nuisances; places and properties operated or used in violation of this Chapter and Chapter 4.05 of this title. Any room, house, building, boat, vehicle, airplane, structure or place of any kind where alcoholic liquors are sold, manufactured, bartered or given away, in violation of this Chapter or Chapter 4.05 of this title, or any building, structure or boats where persons are permitted to resort for the purpose of drinking alcoholic liquors in violation of this Chapter or Chapter 4.05 of this title, or any place where such liquors are kept for sale, barter or gift in violation of this Chapter or Chapter 4.05 of this title, and all such liquors, and all property kept in and used in maintaining such a place, are each and all of them hereby declared to be a common nuisance. Any person who maintains or assists in maintaining such common nuisance is guilty of a misdemeanor and shall be punished and subject to the legal process as set forth in K.S.A. 41-805 and amendments thereto."

SECTION 7. Section 4.04.070 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"~~Manufacture of~~ Acts with regard to alcoholic liquor prohibited unless allowed by ordinance; exceptions. ~~Chapter inapplicable in certain cases~~. No person shall manufacture, bottle, blend, sell, barter, transport, deliver, furnish or possess any alcoholic liquor for beverage purposes, except as specifically provided in this title and by the Kansas Liquor Control Act, by the Kansas Club and Drinking Establishment Act, or Article 27 of Chapter 41 of the Kansas Statutes Annotated, and amendments thereto, except that nothing contained in this act shall prevent:

(a) The possession and transportation of alcoholic liquor for the personal use of the possessor, the possessor's family and guests except that the provisions of

this title and ~~K.S.A. 41-1103 and amendments thereto relating to transportation and the provisions of~~ K.S.A. 41-407 and amendments thereto shall be applicable to all persons;

(b) The making of wine, cider, or beer by a person from fruit, vegetables or grains, or the product thereof, by simple fermentation and without distillation, if it is made solely for the use of the maker and the maker's family;

(c) Any duly licensed practicing physician or dentist from possessing or using alcoholic liquor in the strict practice of the medical or dental profession;

(d) Any hospital or other institution caring for sick and diseased persons, from possessing and using alcoholic liquor for the treatment of bona fide patients of such hospital or institution;

(e) Any drugstore employing a licensed pharmacist from possessing and using alcoholic liquor in the compounding of prescriptions of duly licensed physicians; ~~or~~

(f) The possession and dispensation of wine by an authorized representative of any church for the purpose of conducting any bona fide rite or religious ceremony conducted by such church;

(g) ~~The sale or possession of flavoring extracts, syrups or medicinal, scientific, culinary or toilet preparations or food products unfit for beverage purposes.~~ The sale of wine to a consumer in this state as allowed in K.S.A. 41-104(g) and amendments thereto;

(h) The serving of complimentary alcoholic liquor or cereal malt beverages at fund raising activities of charitable organizations as defined by K.S.A. 17-1760,

and amendments thereto, and as qualified pursuant to 26 U.S.C.A. § 501(c) and by committees formed pursuant to K.S.A. 25-4142 et seq., and amendments thereto. The serving of such alcoholic liquor at such fund raising activities shall not constitute a sale pursuant to this title, the Kansas Liquor Control Act, the Club and Drinking Establishment Act or article 27 of chapter 41 of the Kansas Statutes Annotated, and amendments thereto. Any such fund raising activity shall not be required to obtain a license or a temporary permit pursuant to this title, the Kansas Liquor Control Act, the Club and Drinking Establishment Act or article 27 of chapter 41 of the Kansas Statutes Annotated, and amendments thereto; or

(i) The serving of complimentary alcoholic liquor or cereal malt beverage on the unlicensed premises of a business by the business owner or owner's agent at an event sponsored by a nonprofit organization promoting the arts and which has been approved by ordinance or resolution of the City Council and whereby the Director of the Alcoholic Beverage Control has been notified thereof no less than 10 days in advance."

SECTION 8. The original of Sections 4.04.010, 4.04.017, 4.04.020, 4.04.025, 4.04.035, 4.04.040, and 4.04.070 of the Code of the City of Wichita, Kansas, are hereby repealed.

SECTION 9. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper.

PASSED by the governing body of the City of Wichita, Kansas, this _____ day of _____, 2015.

_____

Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to Form:

_____
Sharon L. Dickgrafe, Interim City Attorney and
Director of Law

First Published in The Wichita Eagle on March 27, 2015

CLEAN 02/25/15

ORDINANCE NO. 49-957

AN ORDINANCE AMENDING SECTIONS 4.12.050, 4.12.090, 4.12.110, 4.12.150, 4.12.190, AND 4.12.220; CREATING SECTION 4.12.045 AND REPEALING SECTIONS 4.12.040, 4.12.135, 4.12.145, 4.12.160, 4.12.170, 4.12.195 AND 4.12.200 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO LICENSING THE SALE OF CEREAL MALT BEVERAGES.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. Section 4.12.045 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

"License term, license and permit fees. (a) A license to sell cereal malt beverages in the City of Wichita shall be issued for the term of one calendar year. The following fees shall be paid for either a new or renewal license and shall accompany the application:

Tavern Cereal Malt Beverage On-premise Consumption license -------$200 per year;

Restaurant Cereal Malt Beverage On-premise Consumption license----$200 per year; and

Cereal Malt Beverage Off-premise Consumption license…----------$50 per year.

(b) A Special Event Retailers' Permit shall be issued for the duration of the special event as provided in Section 4.12.020. A fee of $65 per day shall be paid for a Special Event Retailers' Permit and shall accompany the application.

(c) No fee required by this chapter or any portion thereof shall be pro-rated or refunded for any reason, except if, in the determination of the City Treasurer or his or her

designee, the application of this section would result in a substantial and unfair burden upon the applicant."

SECTION 2. Section 4.12.050 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Examination of applicant by the City Council; issuance or denial of license.** If the application for a license is in proper form and accompanied by the license fee the City Council shall examine the application and, after examination of the application, the City Council, if they approve the same, shall issue a license to the applicant; provided

(a) That no license shall be issued to:

(1) A person who is not a resident of the city or county in which the premises covered by the license are located, and who has not been a resident in good faith of the state at least one year prior to the application and a resident of the county in which such place of business is to be operated for at least six months, prior to the filing of the application;

(2) A person who is not of good character and reputation in the community in which the person resides;

(3) A person who is not a citizen of the United States;

(4) A person who, within two years immediately preceding the date of making application, has been convicted of, released from incarceration for or released from probation or parole for a felony or of any crime involving moral turpitude, drunkenness, or driving a motor vehicle while under the influence of intoxicating liquor or drugs, violation of any other intoxicating liquor law of any city, state or of the United States;

(5) A partnership, unless all members of such partnership shall otherwise be qualified to obtain a license;

(6) A corporation, if any manager, officer or director thereof, and/or any stockholder owning in the aggregate more than 25% of the stock of such corporation would be ineligible to receive a license hereunder for any reason other than the citizenship or residency requirements;

(7) A corporation, if any manager, officer or director thereof, or any stockholder owning in the aggregate more than 25% of the stock of such corporation, has been an officer, manager or director, or a stockholder owning in the aggregate more than 25% of the stock, of a corporation which: (A) Has had a retailer's license revoked under K.S.A. 41-2708 and amendments thereto; or (B) has been convicted of a violation of the drinking establishment act or the cereal malt beverage laws of this state;

(8) A person whose place of business is conducted by a manager or agent, unless such manager or agent possesses the same qualifications required of the licensee;

(9) A person whose spouse would be ineligible to receive a retailer's license for any reason other than citizenship, residence requirements or age, except that this subsection shall not apply in determining eligibility for a renewal license;

(10) A person whose spouse has been convicted of a felony or other crime which would disqualify a person from licensure under this chapter and such

felony or other crime was committed during the time that the spouse held a license under this chapter; or

(11) A person who has failed to pay any outstanding administrative penalty imposed pursuant to Section 4.12.090(c) or Section 4.16.095(d) of the City Code.

(b) A license shall not be issued for a tavern on premises located within 300 feet of any church or school or a residential zoning district, the distance to be measured as set forth in the Wichita/Sedgwick County Unified Zoning Code. Renewal of licenses may be made for all establishments presently licensed that are within 300 feet of any church or school or a residential zoning district, so long as the premises are used or held for use as a tavern; provided, however, that should an establishment located within 300 feet of the property line of any church or school or a residential zoning district cease to be used as a tavern for a period of 90 days or more or said premises are used for another type of business, then, and in that event, no new license shall be issued for the sale of cereal malt beverages on the premises, provided, however, that the distance requirements set out above shall not apply to the place of business of a licensee selling cereal malt beverages at retail and not for consumption on the premises. Periods of time during which taverns are being remodeled or are being repaired because of damage caused by fire or natural disasters such as floods or windstorms, shall not be included in computing the above 90 day period; provided, however, that any remodeling or repair must be commenced within 90 days after closure of any given structure and completed within a reasonable time thereafter. Additionally, the vice section of the Wichita Police Department shall be notified within 30 days of closing whenever any tavern is closed for

remodeling or repairs. Such notice shall state the date when remodeling will start and the date it will be completed. It is further provided that the space limitations prohibiting the licensing of cereal malt beverage retailers within 300 feet of the property line or any church or school shall not apply to colleges and universities within the city limits, and the colleges and universities are exempted from the space limitation. Off-street parking shall be provided as required by the Wichita/Sedgwick County Unified Zoning Code.

(c) A license shall not be issued for the sale of cereal malt beverages for consumption on the premises if the place of business is also licensed for the sale of cereal malt beverages for consumption off the premises.

(d) No license shall be issued for premises wherein the use thereof would be in violation of the city zoning laws or the city building codes or fire codes.

(e) The denial of a license or permit application shall be subject to the appeal process and provisions set forth in Section 4.12.090(c) and (d), except that the notice of appeal shall include the name and address of the appellant, the date of the license or permit application, the date of the denial of the application or permit and the factual basis for the appeal. The review conducted by the City Council shall be of the facts and circumstances of the license denial."

SECTION 3: Section 4.12.090 of the Code of the City of Wichita is hereby amended to read as follows:

"Suspension of license by Chief of Police. (a) The Chief of Police, upon five days' written notice to the person holding any license to sell cereal malt beverages, shall have the authority to suspend such license for a period not to exceed 30 days, for any violation of the provision of this chapter or other ordinances pertaining to cereal malt

beverages, which violation does not in the Chief's judgment justify a recommendation of revocation to the City Council.

(b) The Chief of Police, upon five day's written notice to the person holding any license to sell cereal malt beverages, shall have the authority to suspend such license if the licensee, the licensee's manager, employee or agent, or any person under the direction and control of the licensee has committed a violation of Sections 7.41.010 or 7.41.030 (noise) of this Code, or any amendment thereto. Within any two-year period of time, upon a first violation of said sections, the Chief of Police shall issue a written warning to the licensee; upon a second violation, the Chief shall suspend such license for a period of one day; upon a third violation, the Chief shall suspend such license for a period of one week; and upon a fourth or subsequent violation, the chief shall suspend such license for a period of one year.

(c) The licensee may appeal any order of suspension issued pursuant to this section by filing with the City Clerk a written notice of appeal to the City Council within 10 business days of the decision to suspend a license by the Chief of Police. The Notice of Appeal shall specify:

(1) the name and address of the appellant;

(2) the date of the suspension of the license; and

(3) the factual basis for the appeal.

Upon receipt of a complete and timely filed Notice of Appeal, the City Clerk shall schedule a hearing before the City Council, no later than 30 days from the date of the filing of the Notice of Appeal with the City Clerk. Any appeal shall stay the suspension of the license until the matter is heard by the City Council. The City Council may

approve or overrule the suspension of a license or may modify the decision to suspend a license, and in addition, may impose an administrative penalty of up to $1,000. In any hearing before the City Council pursuant to this section, a certified copy of a conviction from any local, state, or federal court for any violation is prima facia evidence of such violation.

(d) The Council's decision may be appealed to the Eighteenth Judicial District Court of the State of Kansas pursuant to K.S.A. 60-2101 and any amendments thereto. Any such appeal to the District Court shall not stay the suspension of the license or any modification imposed thereupon by the City Council.

(e) The Chief of Police shall notify the City Manager prior to making a suspension hereunder.

(f) As used in this Section, any authority granted to the Chief of Police shall include his or her designee."

SECTION 4: Section 4.12 110 of the Code of the City of Wichita is hereby amended to read as follows:

"Hours of sale—Possession during excluded hours—Prohibited sales.

(a) The premises on which a tavern is located may not be open or in use and no cereal malt beverages may be sold thereon:

(1) Between the hours of 12:00 midnight and 6:00 a.m.; or

(2) On Sunday.

(3) No person, except the operator of a tavern, shall have cereal malt beverages in such person's possession on the premises of such tavern-during excluded hours.

(b) Sale of cereal malt beverages other than on the premises of a tavern is allowed between the hours of 6:00 a.m. and 12:00 midnight, and on any Sunday except Easter Sunday between the hours of 12:00 noon and 8:00 p.m.:

(1) As authorized by Ordinance No. 47-466 for the sale at retail of cereal malt beverage in the original package; or

(2) Upon the premises of a community event which is permitted to sell cereal malt beverages for consumption on the premises; or

(3) Upon the premises of a place of business which is licensed or permitted to sell cereal malt beverages for consumption on the premises and which derives not less than 30% of its gross receipts from the sale of food for consumption on the premises.

(c) Nothing in subsection (b) of this section shall be construed to permit taverns to be open on Sunday.

(d) No retailer, or employee or agent of a retailer, licensed to sell cereal malt beverages for consumption on the premises shall:

(1) Offer or serve any free cereal malt beverage to any person;

(2) Offer or serve to any person a drink of cereal malt beverage at a price that is less than the acquisition cost of the drink to the licensee;

(3) Sell, offer to sell or serve to any person an unlimited number of drinks during any set period of time for a fixed price, except at private functions not open to the general public;

(4) Encourage or permit, on the licensed premises, any game or contest which involves drinking cereal malt beverage or the awarding of drinks as prizes;

(5) Advertise or promote in any way, whether on or off the licensed premises, any of the practices prohibited under subdivisions (d)(1) through (4) of this subsection;

(6) Sell, offer to sell or serve any drink of cereal malt beverage for consumption off the premises; or

(7) Recklessly allow or permit any person to remove a drink of cereal malt beverage or alcoholic liquor from the licensed premises.

(e) A retailer may:

(1) Offer free food or entertainment at any time;

(2) Sell, offer to sell and serve individual drinks at different prices throughout any day; or

(3) Sell or serve cereal malt beverage in a pitcher capable of containing not more than 64 fluid ounces.

(f) Violation of any provision of this section is a misdemeanor and punishable by a fine of not more than $500 or imprisonment not to exceed one year or by both such fine and imprisonment.

(g) Violation of any provision of this act shall be grounds for suspension or revocation of any license issues pursuant to this Chapter.

(h) Every licensee subject to the provisions of this section shall make available at any time upon request a price list showing the licensee's current prices for all cereal malt beverages."

SECTION 5: Section 4.12 150 of the Code of the city of Wichita is hereby amended to read as follows:

"Revocation or suspension of license by City Council; grounds; right of appeal. The City Council, upon five days' written notice, to a person holding a license to sell cereal malt beverages may assess an administrative penalty up to $1,000 and/or suspend such license for a period not to exceed 30 days or may revoke such license for any of the following reasons:

(a) If the licensee has fraudulently obtained the license by giving false information in the application therefor;

(b) If the licensee, manager, employee or agent has violated any of the provisions of this Chapter, or Chapter 3.30 of the Code of the City of Wichita, any rule or regulation of the City Council, or the licensed premises are in violation of the health, housing, fire, zoning or building codes of any local, state or federal jurisdiction, including but not limited to, occupancy exceeding licensed capacity of a premises;

(c) If the licensee has become ineligible to obtain a license under this chapter;

(d) Drunkenness of a person holding such license, drunkenness of a licensee's manager or employee while on duty and while on the premises for which said license is issued, or for a licensee, his manager or employee permitting any intoxicated person to remain in such place selling cereal malt beverages;

(e) The sale or gift of cereal malt beverages to those under the legal age for consumption of cereal malt beverages by a licensee, his manager or employee;

(f) The nonpayment of any license fees payable hereunder;

(g) For a licensee, his manager or employee to permit gambling in or upon premises selling cereal malt beverages;

(h) For a licensee, his manager or employee to permit any person to mix drinks with materials purchased in such place of business or brought in for that purpose unless currently licensed as a private club or drinking establishment;

(i) For the employment of persons under the legal age of consumption in dispensing cereal malt beverages in a tavern or under eighteen years of age in a food service establishment or for off-premises consumption;

(j) For employing or continuing the employment of a person in connection with the sale, serving or dispensing of cereal malt beverages if the licensee knows such person has been within the preceding two years adjudged guilty of a felony or of any violation of the intoxicating liquor laws of the city, this state, another state or the United States.

(k) For the sale or possession of or for permitting any person to use or consume upon or in said premises alcoholic liquor, as defined in Section 4.04.010 except in a place of business licensed as a private club or drinking establishment, pursuant to this title and Article 26 of Chapter 41 of the Kansas Statutes Annotated;

(l) For failure to maintain sufficient records to determine the percentage of gross revenues obtained from the selling of cereal malt beverages;

(m) For failure to permit the inspection of such records at all times during business hours by proper agents of the city;

(n) For recklessly, directly or indirectly, selling giving away, disposing of, exchanging or delivering, purchasing or buying for distributing or permitting the sale, gift or procuring of any cereal malt beverage to for, or on behalf of any person who is an incapacitated person, or any person who is physically or mentally incapacitated by the consumption of such cereal malt beverage; or

(o) There has been a violation of K.S.A. 21-4106 (maintaining a public nuisance) or 21-4107 (permitting a public nuisance) prior to their repeal, or K.S.A. 21-6204 (maintaining, permitting a public nuisance) and amendments thereto, in or upon the licensee's place of business.

Within 10 business days after the order of the City Council revoking or suspending any license, or assessment of an administrative penalty, the licensee may appeal from such order to the Sedgwick County District Court as now provided by law in K.S.A. 41-2708 and amendments thereto; provided, that any appeal taken from an order revoking or suspending any such license shall not stay the order of revocation or suspension during the pendency of any such appeal.

In case of the revocation of a license of any licensee, no new license shall be issued to such person or to any person acting for or on behalf, for a period of six months after the revocation."

SECTION 6. Section 4.12.190 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Possession on unlicensed premises prohibited.** (a) No person shall have in such person's possession any alcoholic liquor on premises where cereal malt beverages are sold, other than upon the premises of a club or drinking establishment licensed by the State of Kansas. Any person violating the provisions of this section shall be punished as set forth in Section 4.12.220.

(b) Cereal malt beverages may be sold on premises which are licensed pursuant to both this chapter and for the sale of alcoholic liquor pursuant to both this Title and state law at any time when alcoholic liquor is allowed by law to be served on such premises."

SECTION 7. Section 4.12.220 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Penalty.** Any person who violates any of the provisions of this chapter for which a penalty is not otherwise specifically provided is guilty of a misdemeanor and shall be punished by a fine of not more than $500 or by imprisonment not to exceed one year, or by both such fine and imprisonment."

SECTION 8. The original of Sections 4.12.040, 4.12.050, 4.12.090, 4.12.110, 4.12.135, 4.12.145, 4.12.150, 4.12.160, 4.12.170, 4.12.190, 4.12.195, 4.12.200 and 4.12.220 of the Code of the City of Wichita, Kansas, are hereby repealed.

SECTION 9. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper.

PASSED by the governing body of the City of Wichita, Kansas, this 24th day of March, 2015.

_____

Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to Form:

_____
Sharon L. Dickgrafe, Interim City Attorney and
Director of Law

First Published in The Wichita Eagle on _____

DELINEATED 02/25/15

ORDINANCE NO._____

AN ORDINANCE AMENDING SECTIONS 4.12.050, 4.12.090, 4.12.110, 4.12.150, 4.12.190, AND 4.12.220; CREATING SECTION 4.12.045 AND REPEALING SECTIONS 4.12.040, 4.12.135, 4.12.145, 4.12.160, 4.12.170, 4.12.195 AND 4.12.200 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO LICENSING THE SALE OF CEREAL MALT BEVERAGES.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. Section 4.12.045 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

"License term, license and permit fees. (a) A license to sell cereal malt beverages in the City of Wichita shall be issued for the term of one calendar year. The following fees shall be paid for either a new or renewal license and shall accompany the application:

Tavern Cereal Malt Beverage On-premise Consumption license -------$200 per year;

Restaurant Cereal Malt Beverage On-premise Consumption license----$200 per year; and

Cereal Malt Beverage Off-premise Consumption license…----------$50 per year.

(b) A Special Event Retailers' Permit shall be issued for the duration of the special event as provided in Section 4.12.020. A fee of $65 per day shall be paid for a Special Event Retailers' Permit and shall accompany the application.

(c) No fee required by this chapter or any portion thereof shall be pro-rated or refunded for any reason, except if, in the determination of the City Treasurer or his or her

designee, the application of this section would result in a substantial and unfair burden upon the applicant."

SECTION 2. Section 4.12.050 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Examination of applicant by the City Council; issuance or denial of license.** If the application for a license is in proper form and accompanied by the license fee the City Council shall examine the application and, after examination of the application, the City Council, if they approve the same, shall issue a license to the applicant; provided

(a) That no license shall be issued to:

(1) A person who is not a resident of the city or county in which the premises covered by the license are located, and who has not been a resident in good faith of the state at least one year prior to the application and a resident of the county in which such place of business is to be operated for at least six months, prior to the filing of the application;

(2) A person who is not of good character and reputation in the community in which ~~he~~ the person resides;

(3) A person who is not a citizen of the United States;

(4) A person who, within two years immediately preceding the date of making application, has been convicted of, released from incarceration for or released from probation or parole for a felony or of any crime involving moral turpitude, drunkenness, or ~~been adjudged guilty of~~ driving a motor vehicle while under the influence of intoxicating liquor or drugs, ~~or of the~~ violation of any other intoxicating liquor law of any city, state or of the

United States~~; provided that the terms "conviction" and "adjudged guilty" shall include being placed on diversion~~;

(5) A partnership, unless all members of such partnership shall otherwise be qualified to obtain a license;

(6) A corporation, if any manager, officer or director thereof, and/or any stockholder owning in the aggregate more than ~~twenty-five percent~~ 25% of the stock of such corporation would be ineligible to receive a license hereunder for any reason other than the citizenship or residency requirements;

(7) A corporation, if any manager, officer or director thereof, or any stockholder owning in the aggregate more than ~~twenty-five percent~~ 25% of the stock of such corporation, has been an officer, manager or director, or a stockholder owning in the aggregate more than ~~twenty-five percent~~ 25% of the stock, of a corporation which: (A) Has had a retailer's license revoked under K.S.A. 41-2708 and amendments thereto; or (B) has been convicted of a violation of the drinking establishment act or the cereal malt beverage laws of this state;

(8) A person whose place of business is conducted by a manager or agent, unless such manager or agent possesses the same qualifications required of the licensee;

(9) A person whose spouse would be ineligible to receive a retailer's license for any reason other than citizenship, residence requirements or

age, except that this subsection shall not apply in determining eligibility for a renewal license;

(10) A person whose spouse has been convicted of a felony or other crime which would disqualify a person from licensure under this chapter and such felony or other crime was committed during the time that the spouse held a license under this chapter; or

(11) A person who has failed to pay any outstanding administrative penalty imposed pursuant to Section 4.12.090(c) or Section 4.16.095(d) of the City Code.

(b) A license shall not be issued for a tavern on premises located within ~~three hundred~~ 300 feet of any church or school or a residential zoning district, the distance to be measured as set forth in the Wichita/Sedgwick County Unified Zoning Code. Renewal of licenses may be made for all establishments presently licensed that are within ~~three hundred~~ 300 feet of any church or school or a residential zoning district, so long as the premises are used or held for use as a tavern ~~or building in which cereal malt beverages are sold~~; provided, however, that should an establishment located within ~~three hundred~~ 300 feet of the property line of any church or school or a residential zoning district cease to be used as a tavern ~~or building in which cereal malt beverages are sold~~ for a period of ~~ninety~~ 90 days or more or said premises are used for another type of business, then, and in that event, no new license shall be issued for the sale of cereal malt beverages on the premises, provided, however, that the distance requirements set out above shall not apply to the place of business of a licensee selling cereal malt

beverages at retail and not for consumption on the premises. Periods of time during which taverns ~~or buildings in which cereal malt beverages are sold~~ are being remodeled or are being repaired because of damage caused by fire or natural disasters such as floods or windstorms, shall not be included in computing the above ~~ninety~~ 90 day period; provided, however, that any remodeling or repair must be commenced within ~~ninety~~ 90 days after closure of any given structure and completed within a reasonable time thereafter. Additionally, the vice section of the Wichita Police Department shall be notified within ~~thirty~~ 30 days of closing whenever any tavern ~~or building in which cereal malt beverages are sold~~ is closed for remodeling or repairs. Such notice shall state the date when remodeling will start and the date it will be completed. It is further provided that the space limitations prohibiting the licensing of cereal malt beverage retailers within ~~three hundred~~ 300 feet of the property line or any church or school shall not apply to colleges and universities within the city limits, and the colleges and universities are exempted from the space limitation. Off-street parking shall be provided as required by the Wichita/Sedgwick County Unified Zoning Code.

(c) A license shall not be issued for the sale of cereal malt beverages for consumption on the premises if the place of business is also licensed for the sale of cereal malt beverages for consumption off the premises.

(d) No license shall be issued for premises wherein the use thereof would be in violation of the city zoning laws or the city building codes or fire codes.

(e) ~~Cereal malt beverages retailers' licenses shall be issued on an annual basis, except that this provision shall not apply to special events licenses.~~ The denial of

a license or permit application shall be subject to the appeal process and provisions set forth in Section 4.12.090(c) and (d), except that the notice of appeal shall include the name and address of the appellant, the date of the license or permit application, the date of the denial of the application or permit and the factual basis for the appeal. The review conducted by the City Council shall be of the facts and circumstances of the license denial."

SECTION 3: Section 4.12.090 of the Code of the City of Wichita is hereby amended to read as follows:

"Suspension of license by Chief of Police. (a) The ~~chief of police,~~ Chief of Police, upon five days' written notice to the person holding any license to sell cereal malt beverages, shall have the authority to suspend such license for a period not to exceed ~~thirty~~ 30 days, for any violation of the provision of this chapter or other ordinances pertaining to cereal malt beverages, which violation does not in the ~~chief's~~ Chief's judgment justify a recommendation of revocation to the City Council.

(b) The ~~chief of police~~ Chief of Police, upon five day's written notice to the person holding any license to sell cereal malt beverages, shall have the authority to suspend such license if the licensee, the licensee's manager, employee or agent, or any person under the direction and control of the licensee has committed a violation of Sections 7.41.010 or 7.41.030 (noise) of this Code, or any amendment thereto. Within any two-year period of time, upon a first violation of said sections, the ~~chief of police~~ Chief of Police shall issue a written warning to the licensee; upon a second violation, the ~~chief~~ Chief shall suspend such license for a period of

one day; upon a third violation, the ~~chief~~ Chief shall suspend such license for a period of one week; and upon a fourth or subsequent violation, the chief shall suspend such license for a period of one year.

(c) The licensee may appeal any order of suspension issued pursuant to this section ~~to the city council within seven days from the date of such order; and in the event such order of suspension is upheld by the city council, the licensee may appeal to the district court of the county, in the manner now provided by K.S.A. 41-2708 and any amendments thereto. Any appeal taken from an order of the chief of police shall stay the order of suspension until the matter is resolved by the city council. Any appeal to district court shall not stay the order of the city council~~. by filing with the City Clerk a written notice of appeal to the City Council within 10 business days of the decision to suspend a license by the Chief of Police. The Notice of Appeal shall specify:

(1) the name and address of the appellant;

(2) the date of the suspension of the license; and

(3) the factual basis for the appeal.

Upon receipt of a complete and timely filed Notice of Appeal, the City Clerk shall schedule a hearing before the City Council, no later than 30 days from the date of the filing of the Notice of Appeal with the City Clerk. Any appeal shall stay the suspension of the license until the matter is heard by the City Council. The City Council may approve or overrule the suspension of a license or may modify the decision to suspend a license, and in addition, may impose an administrative penalty of up to $1,000. In any hearing before the City Council pursuant to this

section, a certified copy of a conviction from any local, state, or federal court for any violation is prima facia evidence of such violation.

(d) The Council's decision may be appealed to the Eighteenth Judicial District Court of the State of Kansas pursuant to K.S.A. 60-2101 and any amendments thereto. Any such appeal to the District Court shall not stay the suspension of the license or any modification imposed thereupon by the City Council.

~~(d)~~ (e) The ~~chief of police~~ Chief of Police shall notify the ~~city manager~~ City Manager prior to making a suspension hereunder.

(f) As used in this Section, any authority granted to the Chief of Police shall include his or her designee."

SECTION 4: Section 4.12 110 of the Code of the City of Wichita is hereby amended to read as follows:

"Hours of sale—Possession during excluded hours—Prohibited sales.

(a) ~~No cereal malt beverages may be sold, nor~~ The premises on which a tavern is located may not be open or in use and no cereal malt beverages may be sold thereon:

(1) Between the hours of ~~twelve~~ 12:00 midnight and ~~six~~ 6:00 a.m.; or

(2) On Sunday. ~~, except as may be authorized by Ordinance No. 47-466 for sale at retail of cereal malt beverage in the original package, and except in a place of business or special event which is licensed to sell cereal malt beverages for consumption on the premises and which derives not less than thirty percent of its gross receipts from the sale of food for consumption on the premises;~~

(3) ~~Nor shall any~~ No person, ~~during excluded hours~~, except the operator of ~~the place of business or~~ a tavern, shall have cereal malt beverages in ~~his~~ such person's possession ~~in~~ on the premises of such ~~place of business or~~ tavern~~, cereal malt beverages~~ during excluded hours.

(b) Sale of cereal malt beverages other than on the premises of a tavern is allowed between the hours of 6:00 a.m. and 12:00 midnight, and on any Sunday except Easter Sunday between the hours of 12:00 noon and 8:00 p.m.:

(1) As authorized by Ordinance No. 47-466 for the sale at retail of cereal malt beverage in the original package; or

(2) Upon the premises of a community event which is permitted to sell cereal malt beverages for consumption on the premises; or

(3) Upon the premises of a place of business which is licensed or permitted to sell cereal malt beverages for consumption on the premises and which derives not less than 30% of its gross receipts from the sale of food for consumption on the premises.

(c) Nothing in subsection ~~(a)(2)~~ (b) of this section shall be construed to permit taverns to be open on Sunday.

(d) No retailer, or employee or agent of a retailer, licensed to sell cereal malt beverages for consumption on the premises shall:

(1) Offer or serve any free ~~drink~~ cereal malt beverage to any person;

(2) Offer or serve to any person a drink of cereal malt beverage at a price that is less than the acquisition cost of the drink to the licensee;

(3) Sell, offer to sell or serve to any person an unlimited number of drinks during any set period of time for a fixed price, except at private functions not open to the general public;

(4) Encourage or permit, on the licensed premises, any game or contest which involves drinking ~~alcoholic liquor or~~ cereal malt beverage or the awarding of drinks as prizes;

(5) Advertise or promote in any way, whether on or off the licensed premises, any of the practices prohibited under subdivisions ~~(b)~~(d)(1) through (4) of this subsection;

(6) Sell, offer to sell or serve any drink of cereal malt beverage for consumption off the premises; or

(7) Recklessly allow or permit any person to remove a drink of cereal malt beverage or alcoholic liquor from the licensed premises.

(e) A retailer may:

(1) Offer free food or entertainment at any time;

(2) Sell, offer to sell and serve individual drinks at different prices throughout any day; or

(3) Sell or serve cereal malt beverage in a pitcher capable of containing not more than 64 fluid ounces.

(f) Violation of any provision of this section is a misdemeanor and punishable by a fine of not more than ~~five hundred dollars~~ $500 or imprisonment not to exceed one year or by both such fine and imprisonment.

(g) Violation of any provision of this act shall be grounds for suspension or revocation of ~~the retailer's~~ any license issues pursuant to ~~as provided by~~ this ~~title~~ Chapter.

(h) Every licensee subject to the provisions of this section shall make available at any time upon request a price list showing the licensee's current prices for all cereal malt beverages."

SECTION 5: Section 4.12 150 of the Code of the city of Wichita is hereby amended to read as follows:

"Revocation or suspension of license by ~~city council~~ City Council; grounds; right of appeal. The City Council, upon five days' written notice, to a person holding a license to sell cereal malt beverages ~~shall~~ may assess an administrative penalty up to $1,000 and/or suspend such license for a period not to exceed 30 days or may revoke ~~or cause to be suspended for a period of not more than thirty days~~ such license for any of the following reasons:

(a) If the licensee has fraudulently obtained the license by giving false information in the application therefor;

(b) If the licensee, manager, employee or agent has violated any of the provisions of this Chapter~~, Chapter 3.28~~, or Chapter 3.30~~, or Section 3.08.030~~ of the Code of the City of Wichita, ~~or~~ any rule or regulation ~~by~~ of the City Council ~~of the city~~, or the licensed premises are in violation of the health, housing, fire, zoning or building codes of any local, state or federal jurisdiction, including but not limited to, occupancy exceeding licensed capacity of a premises;

(c) If the licensee has become ineligible to obtain a license under this chapter;

(d) Drunkenness of a person holding such license, drunkenness of a licensee's manager or employee while on duty and while on the premises for which said license is issued, or for a licensee, his manager or employee permitting any intoxicated person to remain in such place selling cereal malt beverages;

(e) The sale or gift of cereal malt beverages to those under the legal age for consumption of cereal malt beverages by a licensee, his manager or employee;

(f) The nonpayment of any license fees payable hereunder;

(g) For a licensee, his manager or employee to permit gambling in or upon premises selling cereal malt beverages;

(h) For a licensee, his manager or employee to permit any person to mix drinks with materials purchased in such place of business or brought in for that purpose unless currently licensed as a private club or drinking establishment;

(i) For the employment of persons under the legal age of consumption in dispensing cereal malt beverages in a tavern or under eighteen years of age in a food service establishment or for off-premises consumption;

(j) For employing or continuing the employment of a person in connection with the sale, serving or dispensing of cereal malt beverages if the licensee knows such person ~~who~~ has been within the preceding two years adjudged guilty of a felony~~, a violation of an offense involving a morals charge or a crime of moral turpitude~~ or ~~a~~ of any violation of ~~an~~ the intoxicating liquor ~~or drug law~~ laws of the city, this state, another state or the United States~~; provided that the term "adjudged guilty" shall include being placed on diversion. The chief of police may require any employee to submit to fingerprinting to determine if a violation of this section~~

~~has occurred, and the failure of an employee to submit to fingerprinting, if required by the chief of police, shall be prima facie evidence that the employee is ineligible for employment under the provisions of this section~~.

(k) For the sale or possession of or for permitting any person to use or consume upon or in said premises alcoholic liquor, as defined in Section 4.04.010 except in a place of business licensed as a private club or drinking establishment, pursuant to this title and Article 26 of Chapter 41 of the Kansas Statutes Annotated;

(l) For failure to maintain sufficient records to determine the percentage of gross revenues obtained from the selling of cereal malt beverages;

(m) For failure to permit the inspection of such records at all times during business hours by proper agents of the city;

(n) ~~For knowingly allowing or permitting any known felon to loiter upon or about the licensed premises;~~

~~(o)~~ For recklessly, directly or indirectly, selling giving away, disposing of, exchanging or delivering, purchasing or buying for distributing or permitting the sale, gift or procuring of any ~~or providing~~ cereal malt beverage to for, or on behalf of any person who is ~~intoxicated who thereafter and by reason of such intoxication or where such intoxication is a contributing factor violates any ordinance of the City of Wichita, the laws of the State of Kansas or the federal government~~ an incapacitated person, or any person who is physically or mentally incapacitated by the consumption of such cereal malt beverage; or

(o) There has been a violation of K.S.A. 21-4106 (maintaining a public nuisance) or 21-4107 (permitting a public nuisance) prior to their repeal, or K.S.A. 21-6204 (maintaining, permitting a public nuisance) and amendments thereto, in or upon the licensee's place of business.

~~Provided, that if any of the grounds for revocation herein enumerated are violated by an employee or a manager, then in the absence of proof of knowledge by the licensee, there shall be no revocation, except as herein provided, but there may be a suspension of not more than thirty days; it being further provided that in the event any licensee is subjected to more than two such suspensions in any twelve-month period, this license may be revoked on the third such violation~~.

Within ~~twenty~~ 10 business days after the order of the City Council revoking or suspending any license, or assessment of an administrative penalty, the licensee may appeal from such order to the ~~district court~~ Sedgwick County District Court ~~of the county in the manner~~ as now provided by law in K.S.A. 41-2708 and amendments thereto; provided, that any appeal taken from an order revoking or suspending any such license shall not ~~suspend~~ stay the order of revocation or suspension during the pendency of any such appeal.

In case of the revocation of a license of any licensee, no new license shall be issued to such person or to any person acting for or on behalf, for a period of six months after the revocation."

SECTION 6. Section 4.12.190 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Possession on unlicensed premises prohibited.** (a) No person shall have in ~~his~~ such person's possession any alcoholic liquor on premises where cereal malt beverages are sold, other than upon the premises of a club or drinking establishment licensed by the ~~director of the alcoholic beverage control commission~~ State of Kansas. Any person violating the provisions of this section shall be ~~deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine or not more than one hundred dollars and by imprisonment for not more than thirty days.~~ punished as set forth in Section 4.12.220.

(b) Cereal malt beverages may be sold on premises which are licensed pursuant to both this chapter and for the sale of alcoholic liquor pursuant to both this Title and state law at any time when alcoholic liquor is allowed by law to be served on such premises."

SECTION 7. Section 4.12.220 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Penalty.** ~~(a)~~ Any person who violates any of the provisions of this chapter ~~(Chapter 4.12),~~ for which a penalty is not otherwise specifically provided is guilty of a misdemeanor and shall be punished by a fine of not more than $500 or by imprisonment not to exceed one year, or by both such fine and imprisonment. ~~Except for violations of Sections 4.12.025, 4.12.140(a) and 4.12.197, a person convicted of any of the provisions in this chapter shall be punished as follows: Upon a first conviction the person shall be sentenced to a fine of not less than one hundred dollars nor more than five hundred dollars; and upon a second conviction, the person shall be sentenced to a fine of~~

~~not less than two hundred dollars nor more than five hundred dollars; and upon a third or subsequent conviction the person shall be sentenced to a fine of five hundred dollars.~~

~~(b) For the purpose of determining whether a conviction is a second, third or subsequent conviction under this section, all convictions for violation of the sections and chapters enumerated herein occurring within the immediately preceding eighteen months, including those prior to the effective date of this section, shall be aggregated and considered together and it is irrelevant whether an offense occurred before or after conviction for a prior offense.~~"

SECTION 8. The original of Sections 4.12.040, 4.12.050, 4.12.090, 4.12.110, 4.12.135, 4.12.145, 4.12.150, 4.12.160, 4.12.170, 4.12.190, 4.12.195, 4.12.200 and 4.12.220 of the Code of the City of Wichita, Kansas, are hereby repealed.

SECTION 9. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper.

PASSED by the governing body of the City of Wichita, Kansas, this _____ day of _____, 2015.

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to Form:

_____
Sharon L. Dickgrafe, Interim City Attorney and
Director of Law

First Published in The Wichita Eagle on March 27, 2015

CLEAN 02/25/15

ORDINANCE NO. 49-958

AN ORDINANCE AMENDING SECTIONS 4.16.040, 4.16.080, 4.16.090, 4.16.095, 4.16.130, 4.16.150, 4.16.155, 4.16.180 AND 4.16.190; CREATING SECTIONS 4.16.050, 4.16.055, 4.16.060, 4.16.065, 4.16.074, 4.16.152, 4.16.153, 4.16.154, 4.16.160, AND 4.16.165, AND REPEALING SECTIONS 4.16.020 4.16.030, 4.16.075 AND 4.16.170 OF THE CODE OF THE CITY OF WICHITA, KANSAS, AND REPEALING RESOLUTION R-95-549 PERTAINING TO LICENSING THE SALE OF ALCOHOLIC LIQUOR BY THE DRINK, FEES AND OTHER REQUIREMENTS OF LICENSURE, AND PROHIBITED ACTS BY LICENSEES.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. The title to Chapter 4.16 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

Chapter 4.16. Drinking Establishments, Private Clubs and Sale of Liquor By the Drink

SECTION 2. Section 4.16.040 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Allowing illegal consumption of alcoholic liquor.** (a) No person shall allow consumption of alcoholic liquor in violation of this chapter on any property owned, leased or otherwise under ~~his~~ such person's control. Any person allowing such consumption shall be guilty of a misdemeanor and upon conviction thereof shall be subject to a fine not to exceed $500 or by imprisonment not to exceed six months or by both such fine and imprisonment.

(b) The property on which the violation takes place is declared to be a common nuisance and as such is subject to abatement as provided for any other common nuisance by city ordinance or as provided in K.S.A. 41-805 and amendments thereto."

SECTION 3. Section 4.16.050 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

"**License required – sale of liquor by the drink prohibited.** (a) No person shall maintain or operate a drinking establishment, drinking establishment/restaurant, drinking establishment/restaurant/event center, drinking establishment/hotel, class A club, or class B club within the corporate limits of the City of Wichita without having in such person's possession for the location of the establishment a valid unexpired and unrevoked license issued under the provisions of K.S.A. Chapter 41 and this chapter.

(b) No person shall act as a caterer within the corporate limits of the City of Wichita without having in such person's possession a valid unexpired and unrevoked license issued under the provisions of K.S.A. Chapter 41 and this chapter.

(c) No person or organization shall sponsor, conduct or hold an event within the corporate limits of the City of Wichita which requires a temporary permit unless such person or organization has in such person or organization's possession a temporary permit issued under the provisions of K.S.A. Chapter 41 and this chapter.

(d) Violation of any of the provisions of this section is a misdemeanor and shall be punished as set forth in Section 4.16.190 and amendments thereto."

SECTION 4. 4.16.055 of the Code of the City of Wichita, Kansas is hereby created to read as follows:

"**Premises licensed; zoning compliance.** (a) Any drinking establishment, drinking establishment/restaurant, drinking establishment/restaurant/event center, drinking establishment/hotel, class A club, or class B club license issued pursuant to this chapter shall be for one particular premises which shall be stated in the application and in

the license. Not more than one premises licensed under this chapter shall exist at a single legal address.

(b) No license shall be issued pursuant to this chapter unless a club or drinking establishment of any kind is allowed or provided for at such location by the Wichita/Sedgwick County Unified Zoning Code."

SECTION 5. Section 4.16.060 of the Code of the City of Wichita, Kansas is hereby created to read as follows:

"**License application; fees.** (a) Application for all licenses required by this Chapter shall be upon forms provided by the City Treasurer's office and shall be filed with the City's Licensing Section. The applicant shall provide all information requested by such forms and pursuant to the provisions of this title.

(b) At the time application is made to the City Treasurer's office for a license pursuant to this section, the following fees shall accompany the application:

(1) Class A private club, any category ……..……..$500.00
(fraternal/veterans; social, 500 members or less; social, over 500 members)

(2) Class B private club …….……..$500.00

(3) Drinking establishment, any category….…….....$500.00
(restaurant; event center, entire hotel)

(4) Drinking establishment (any category)/caterer.……...…….…....$500.00

(5) Caterer…….……$500.00

(6) Temporary permit, per day..……...$ 80.00
(maximum 3 consecutive days, 4 times per year, may be for duration of a community event)

Provided, however, this section shall become effective only upon the effective date of the ordinance repealing Charter Ordinance No. 105. Prior to that date, the fees

that are currently set by the City Council in Resolution R-95-549, dated November 28, 1995, shall remain in effect. Since the fees currently in effect are annual fees, the amounts shall be doubled for all biennial licenses issued upon the effective date of this ordinance.

No fee required by this chapter or any portion thereof shall be pro-rated or refunded for any reason except if, in the determination of the City Treasurer, the application of this section would result in a substantial and unfair burden upon the applicant."

SECTION 6. Section 4.16.065 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

"**Term of license.** (a) The license required by Section 4.16.050(a) or (b) shall be issued for a term of two years and shall extend for the time period covered by the state license for the same premises.

(b) All city licenses required by Section 4.16.050(a) or (b) that are in existence upon the effective date of this ordinance shall be subject to the following procedure:

(1) Any city license expiring prior to the expiration date of the state license for the same premises shall be extended for a period not to exceed one year or until the renewal date of the state license, upon payment of a $250 renewal fee. No application is required to be submitted for this extension. After one extension, the city license will expire on the same date as the state license expires and subsequent renewals shall be subject to the procedures set forth in subsection (2) herein.

(2) Any city license expiring on the same date as the state license for the same premises shall be renewed and the fees required by Section 4.16.060 paid no later than 10 business days after any renewal of the state license and shall remain in effect during this time period. The licensee shall be responsible for submitting an application for renewal of the city license at least 30 days in advance of the renewal date to allow time for the renewal process.

(c) Any establishment or business that comes into existence after the effective date of this ordinance that is required to be licensed by the city as set forth in Section 4.16.050 (a) or (b) must obtain such license and pay the fee required in Section 4.16.060 before the establishment opens for business under the original state license. Any subsequent renewal of such license shall be subject to the procedures set for in subsection (b)(2) herein.

(d) Any extension of the effective term of the state license issued for an establishment or business shall extend the term of the city license that is issued pursuant to this chapter for the same premises. The city license shall extend for the same period of time as the state license extension, provided, however, the licensee shall be responsible for providing proof of any extension of the license by the state to the City Treasurer's office."

SECTION 7. Section 4.16.074 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

"**Denial of License – Appeal.** The denial of any license or permit application issued pursuant to this chapter shall be subject to the appeal process and provisions set forth in Section 4.16.095(d) and (e), except that the notice of appeal shall include the

name and address of the appellant, the date of the license or permit application, the date of the denial of the application or permit and the factual basis for the appeal. The review conducted by the City Council shall be of the facts and circumstances of the license or permit denial."

SECTION 8. Section 4.16.080 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Unlawful acts of licensee or permit holder.** It is unlawful for any licensee or holder of a temporary permit under this chapter to:

(a) Employ any person under the age of 21 years in connection with the mixing or dispensing of alcoholic liquor;

(b) Knowingly employ or continue to employ any person in connection with the dispensing or serving of alcoholic liquor or the mixing of drinks containing alcoholic liquor who has been adjudged guilty of a felony or of any crime involving a morals charge in the court of this city, or of this state or any other state, or of the United States;

(c) Knowingly employ or continue to employ any person in connection with the dispensing or serving of alcoholic liquor, or the mixing of drinks containing alcoholic liquor, who has been adjudged guilty of two or more violations of K.S.A. 21-5607, and amendments thereto, furnishing alcoholic liquor to minors, or a similar law of the City of Wichita, any other municipality, any other state, or of the United States, pertaining to furnishing alcoholic liquor to minors within the immediately preceding five years, or who has been adjudged guilty of three or more violations of any intoxicating liquor law of the City of Wichita, any other municipality, any other state, or of the United States, not

involving the furnishing of alcoholic liquor to minors within the immediately preceding five years;

(d) In the case of a club, fail to maintain at the licensed premises a current list of all club members and their residences addresses or refuse to allow the City Attorney, the City Attorney's designee or any law enforcement officer to inspect such list;

(e) Purchase alcoholic liquor from any person except from a person authorized by law to sell such alcoholic liquor to such licensee or permit holder;

(f) Permit any employee of the licensee or permit holder who is under the age of 21 years of age to work on the premises where alcoholic liquor is sold by such licensee or permit holder at any time when not under the on-premises supervision of either the licensee or permit holder, or an employee who is 21 years of age or over;

(g) Employ any person under the age of 18 years in connection with the serving of alcoholic liquor."

SECTION 9. Section 4.16.090 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Revocation of license.** (a) The City Council shall immediately revoke the license of any licensee whenever the state license of the licensee is revoked by the state for any reason.

(b) The City Council, upon five days written notice to a person holding a license to sell alcoholic liquor, may assess an administrative penalty not to exceed $1,000, may assess such penalty and/or suspension for a period not to exceed 30 days or may revoke such license for any of the following reasons:

(1) If the licensee has fraudulently obtained the license by giving false information in the application therefor or any hearing thereon;

(2) If the licensee, manager, employee or agent has violated any of the provisions of this Title, Chapter 3.30 of the Code of the City of Wichita, any rule or regulation by the City Council of the city, or the licensed premises are in violation of the health, housing or fire codes of the City of Wichita or any provision of the Wichita-Sedgwick County Uniform Building and Trade Code, or any provision of the Wichita-Sedgwick County Unified Zoning Code, or any law of the State of Kansas, or of the maximum occupant load of such building;

(3) If the licensee has become ineligible to obtain a license or permit under this title;

(4) The licensee's manager or employee has been intoxicated while on duty;

(5) If the licensee or his manager or employee has permitted any disorderly person to remain on premises where alcoholic liquor is sold by such licensee;

(6) If there has been a violation of a provision of the laws of this city or of this state or of any other state or the United States pertaining to the sale of intoxicating or alcoholic liquors or cereal malt beverages, or any crime involving a morals charge on premises where alcoholic liquor is sold by such licensee;

(7) If the licensee or his managing officers or any employee, has purchased or displayed, on premises where alcoholic liquor is sold by such

licensee, a federal waging occupational stamp issued by the United States Treasury Department;

(8) If the licensee or his managing officers or any employee, has purchased and displayed, on premises where alcoholic liquor is sold by such licensee, a federal coin-operated gambling device stamp for the premises issued by the United States Treasury Department;

(9) If the licensee holds a license as a Class B Club, drinking establishment or caterer and has been found guilty of a violation of Article 10 of Chapter 44 of the Kansas Statutes Annotated under a decision or order of the Civil Rights Commission which has become final or such licensee has been found guilty of a violation of K.S.A. 21-4003 and amendments thereto;

(10) For failure to maintain sufficient records to determine the percentage of gross business obtained from the sale of cereal malt beverages or alcoholic liquor;

(11) For failure to permit the inspection of such records at all times during business hours by proper agents of the city;

(12) There has been a violation of K.S.A. 21-4106 (maintaining a public nuisance) or 21-4107 (permitting a public nuisance) prior to their repeal, or K.S.A. 2012 Supp. 21-6204 (maintaining, permitting a public nuisance) and amendments thereto, in or upon the licensee's place of business.

(c) In any hearing before the City Council pursuant to this section, a certified copy of conviction from any local, state, or federal court, for any violation contained within subsection (b) of this section, is prima facia evidence of violation. For the

purposes of this section, 'conviction' shall include being adjudged guilty upon entering a plea of no contest.

(d) Within 20 days after the order of the City Council revoking or suspending any license, the licensee may appeal from such order to the Sedgwick County District Court in the manner as provided by law; provided that any appeal taken from an order revoking any such license shall not suspend the order of revocation during the pendency of such appeal. In case of the revocation of a license of any licensee, no new license shall be issued to such person or to any person acting for or on his behalf, for a period of six months after the revocation becomes effective."

SECTION 10. Section 4.16.095 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Suspension or reclassification of license by Chief of Police.** (a) The Chief of Police, upon five days written notice to the person holding a license issued pursuant to this Chapter, shall have the authority to suspend such license for a period of not to exceed 30 days for any of the reasons set forth at Section 4.16.090(b) (2), (4), (5), (6), (9), (10), (11) and (12), which reason does not, in the judgment of the chief of police, justify a recommendation of revocation.

(b) The Chief of Police, upon five days written notice to the person holding any license issued pursuant to this Chapter, shall have the authority to suspend such license if the licensee, the licensee's manager, employee, or agent, or any person under the direction and control of the licensee has committed a violation of Sections 7.41.010 or 7.41.030 (noise) of this Code, or any amendments thereto. Within any two-year period of time, upon a first violation of said sections, the Chief of Police shall issue a written

warning to the licensee; upon a second violation, shall suspend such license for a period of one day; upon a third violation, shall suspend such license for a period of one week; and upon a fourth or subsequent violation shall suspend such license for the period of one year.

(c) The Chief of Police upon five days written notice to the person holding a drinking establishment/restaurant license shall reclassify the premises to a drinking establishment if the licensee fails to provide information showing the required amount of gross revenues from sales of food and the service of food for consumption on the licensed premises, or has been convicted of three violations of Section 4.16.130 of this Code. In the event of such reclassification by the Chief of Police, the licensee shall be ineligible to apply for, hold or have any interest in any business licensed as a drinking establishment/restaurant for a period of one year from the date of the reclassification, and shall have 30 days within which to apply for the appropriate zoning which may be required as a result of the change in classification and shall be permitted a reasonable time thereafter within which to complete the process. For the purpose of determining whether a conviction is a third or subsequent conviction under this section, all convictions for violation of Section 4.16.130 occurring within the immediately preceding twenty-four months, including those prior to the effective date of this section, shall be aggregated and considered together and it is irrelevant whether an offense occurred before or after conviction for a prior offense.

(d) The licensee may appeal any order of suspension or reclassification issued pursuant to this section by filing with the City Clerk a written notice of appeal to the City

Council within 20 days of the decision to suspend a license by the Chief of Police. Notice of Appeal shall specify:

(1) the name and address of the appellant;

(2) the date of the suspension or reclassification of the license; and

(3) the factual basis for the appeal.

Upon receipt of a complete and timely filed Notice of Appeal, the City Clerk shall schedule a hearing before the City Council, no later than 30 days from the date of the filing of the Notice of Appeal with the City Clerk. Any appeal shall stay the suspension or reclassification of the license until the matter is heard by the City Council. The City Council may approve or overrule the suspension or reclassification of a license or may modify the decision to suspend or reclassify a license, and in addition, may impose an administrative penalty of up to $1,000. In any hearing before the City Council pursuant to this section, a certified copy of a conviction from any local, state, or federal court for any violation is prima facia evidence of such violation.

(e) The Council's decision may be appealed to the Eighteenth Judicial District Court of the State of Kansas pursuant to K.S.A. 60-2101 and any amendments thereto. Any such appeal to the District Court shall not stay the suspension or reclassification of the license or any modification imposed thereupon by the City Council.

(f) The Chief of Police shall notify the City Manager prior to making a suspension or reclassification hereunder.

(g) As used in this Section, any authority granted to the Chief of Police shall include his or her designee."

SECTION 11. Section 4.16.130 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Permitting consumption by minors; minors prohibited from entering or remaining in drinking establishments; exceptions; penalties.** (a) No licensee, permit holder, or any owner, officer, or employee thereof, shall knowingly or unknowingly permit the possession or consumption of alcoholic liquor or cereal malt beverages by a minor on premises where alcoholic beverages are sold by such licensee or permit holder, except that a licensee's or permit holder's employee who is not less than 18 years of age may serve alcoholic liquor or cereal malt beverage under the on-premises supervision of the licensee or permit holder, or an employee who is 21 years of age or older.

(b) No licensee, owner, officer, or employee of a drinking establishment shall knowingly or unknowingly allow a minor to enter or remain on the premises of a drinking establishment and no minor shall enter or remain on the premises of a drinking establishment.

(c) It shall be a defense to a prosecution of a licensee, permit holder, or any owner, officer, or employee thereof, under subsection (a) or (b) if:

(1) The defendant allowed the possession or consumption of the alcoholic liquor or cereal malt beverage by the minor or allowed the minor to enter or remain upon the premises of a drinking establishment with reasonable cause to believe that the minor was 21 or more years of age; and

(2) To possess or consume the alcoholic liquor or cereal malt beverage, or to enter or remain upon the premises of a drinking establishment, the minor exhibited to the defendant a driver's license, Kansas non-driver's

identification card or other official or apparently official document that reasonably appears to contain a photograph of the minor and purporting to establish that such minor was 21 or more years of age.

(d) Violation of this section is a misdemeanor punishable by a fine of not less than $100 and not more than $500 or imprisonment not exceeding 30 days, or by both such fine and imprisonment.

(e) Violation of this section by a person 18 or more years of age but less than 21 years of age is a misdemeanor punishable by a fine of not less than $200 and not more than $500. In addition to such fine the court may order the offender to perform 40 hours of public service. Further, any person less than 18 years of age who violates this section is a juvenile offender under the Kansas Juvenile Offenders Code and upon adjudication thereof shall be required as a condition of disposition to pay the fine or perform the public service, or both, as set forth in herein.

(f) The provisions of subsection (b) of this section apply only to drinking establishments, as defined in Section 4.04.010 and amendments thereto and not to any other license issued under this chapter.

(g) The provisions of subsection (b) of this section shall not apply to a business licensed as a drinking establishment for the purpose of allowing a customer to bring onto the licensed premises bottles of the customer's own alcoholic liquor to be consumed by the customer and the customer's invited guests and the business meets all of the following conditions:

(1) The business is not open past 11:00 p.m.;

(2) the business is not licensed as an Entertainment Establishment under Chapter 3.30 of the Code of the City of Wichita;

(3) other than employees of the business, no minors are present at times when consumption of alcoholic liquor by customers is allowed to occur or consumption of alcoholic liquor takes place in a separate room or space physically separated from areas where minors are present and the licensee complies with all conditions set forth in Section 4.16.080; and

(4) the licensee complies with all statutes and administrative regulations of the State of Kansas pertaining to customers providing their own alcoholic liquor on licensed premises."

SECTION 12. Section 4.16.150 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Class A club license; rights of licensee.** A license for a class A club shall allow the licensee to:

(a) Offer for sale, sell and serve alcoholic liquor for consumption on the licensed premises by members and their families and guests accompanying them and to any reciprocal member as provided by K.S.A. 41-2637,and any amendments thereto; and

(b) Serve samples of alcoholic liquor free of charge for consumption by members and their families and guests accompanying them and to any reciprocal member as provided by K.S.A. 41-2637 and any amendments thereto. No charge of any sort may be made for a sample serving. A person may be served no more than five samples per visit. Samples may not be served to a minor. No samples may be removed from the licensed premises. No consideration shall be requested or required for entry onto the

premises, participation in any event taking place on the premises or to remain on the premises.

(c) A licensee is further authorized to engage in activities as set forth in K.S.A. 41-2637 and amendments thereto."

SECTION 13. Section 4.16.152 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

"**Class B club license; rights of licensee.** A license for a class B club shall allow the licensee to: (a) Offer for sale, sell and serve alcoholic liquor for consumption on the licensed premises by members of such club, family members and guests accompanying members, and to any reciprocal member as provided by K.S.A. 41-2641 and any amendments thereto; and

(b) Serve samples of alcoholic liquor free of charge on the licensed premises for consumption by such members and their families and guests accompanying them. No charge of any sort may be made for a sample serving. A person may be served no more than five samples per visit. Samples may not be served to a minor. No samples may be removed from the licensed premises. Providing samples is prohibited for any licensee who charges a cover charge or entry fee at any time during the business day. No consideration shall be requested or required for entry onto the premises, participation in any event taking place on the premises or to remain on the premises.

(c) A licensee is further authorized to engage in activities as set forth in K.S.A. 41-2641 and amendments thereto."

SECTION 14. Section 4.16.153 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

"Caterers. (a) A caterer's license shall allow the licensee to offer for sale, sell and serve alcoholic liquor for consumption on unlicensed premises which may be open to the public.

(b) Every licensee shall cause the caterer's license to be placed in plain view on any premises within the City where the caterer is serving or mixing alcoholic liquor for consumption on the premises.

(c) Prior to any event at which a caterer will sell or serve alcoholic liquor by the individual drink, the caterer shall provide written notice to the Chief of Police, or the Chief's designee, at least three business days prior to the event if the event will take place within the City. The notice shall contain the location, name of the group sponsoring the event, and the exact date and times the caterer will be serving alcoholic liquor.

(d) A licensee is further authorized to engage in activities as set forth in K.S.A. 41-2643 and amendments thereto."

SECTION 15. Section 4.16.154 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

"Temporary permits. (a) A temporary permit shall allow the permit holder to offer for sale, sell and serve alcoholic liquor for consumption on unlicensed premises, which may be open to the public, subject to the terms of the permit.

(b) A temporary permit shall specify the premises for which such permit is issued and shall be issued only for premises as allowed by the Wichita-Sedgwick County Unified Zoning Code.

(c) A temporary permit shall be issued for a period of time not to exceed three consecutive days, the dates and hours of which will be specified in the permit. Not more

than four temporary permits may be issued to any one applicant in a calendar year. Provided, however, that, pursuant to K.S.A. 41-2645 and amendments thereto, the director may issue a temporary permit for a special event which, in the director's discretion, may last no more than 30 days in duration.

(d) A holder of a temporary permit is further authorized to engage in activities as set forth in K.S.A. 41-2645 and amendments thereto."

SECTION 16. Section 4.16.155 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**No drinks promotion, allowing removal of alcoholic liquor from certain licensed premises.** (a) No club, drinking establishment, drinking establishment/ restaurant or drinking establishment/restaurant/event center, drinking establishment/hotel, caterer or holder of a temporary permit, nor any person acting as an employee or agent thereof shall:

(1) Offer or serve any free drink of cereal malt beverage or alcoholic liquor in any form to any person;

(2) Offer or serve to any person an individual drink at a price that is less than the acquisition cost of the individual drink to the licensee or permit holder;

(3) Sell, offer to sell or serve to any person an unlimited number of individual drinks during any set period of time for a fixed price, except at private functions not open to the general public or to the general membership of a club;

(4) Encourage or permit, on the licensed premises, any game or contest which involves drinking alcoholic liquor or cereal malt beverage or the awarding of individual drinks as prizes;

(5) Advertise or promote in any way, whether on or off the licensed premises, any of the practices prohibited under subsections (a)(1) through (4);

(6) Sell, offer to sell or serve any drink of alcoholic liquor or cereal malt beverage for consumption off of the licensed premises;

(7) Recklessly allow or permit any person to remove a drink of alcoholic liquor from the licensed premises or from the caterer's premises, except as allowed in subsection (c).

(b) A club, drinking establishment, drinking establishment/restaurant or drinking establishment/restaurant/event center, caterer or holder of a temporary permit may:

(1) Offer free food or entertainment at any time;

(2) Sell or deliver wine by the bottle or carafe;

(3) Sell, offer to sell and serve individual drinks at different prices throughout any day; or

(4) Sell or serve beer or cereal malt beverage in a pitcher capable of containing not more than 64 fluid ounces.

(5) Sell or serve margarita, sangria, daiquiri, mojito or other mixed alcoholic beverages as approved by the director in a pitcher containing not more than 64 fluid ounces.

(c) Notwithstanding the provisions in subsection (a), a class A club license, class B club license, drinking establishment, drinking establishment/restaurant or drinking establishment/ restaurant/event center shall allow the licensee to allow legal patrons of the club or drinking establishment to remove from the licensed premises one or more opened containers of alcoholic liquor, subject to the following conditions:

(1) It must be legal for the licensee to sell the alcoholic liquor in its original container;

(2) The alcoholic liquor must be in its original container;

(3) Each container of alcoholic liquor must have been purchased by a patron and the alcoholic liquor in each container must have been partially consumed on the licensed premises;

(4) The licensee or the licensee's employee must provide the patron with a dated receipt for the unfinished container or containers of alcoholic liquor; and

(5) Before the container of alcoholic liquor is removed from the licensed premises, the licensee or the licensee's employee must securely reseal each container, place the container in a tamper-proof, transparent bag which is sealed in a manner that makes it visibly apparent if the bag is subsequently tampered with or opened.

(d) A hotel of which the entire premises is licensed as a drinking establishment may distribute coupons to its guests redeemable on the hotel premises for drinks containing alcoholic liquor as allowed and approved by the Kansas Secretary of Revenue.

(e) A hotel of which the entire premises is not licensed as a drinking establishment may distribute coupons to its guests redeemable with one or more clubs or drinking establishments for drinks containing alcoholic liquor as allowed and approved by the Kansas Secretary of Revenue.

(f) Violation of any provision of this section is a misdemeanor and punishable by a fine of not more than $500 or imprisonment not to exceed six months or by both such fine and imprisonment.

(g) Violation of any provision of this act shall be grounds for suspension or revocation of the retailer's license as provided by this title."

SECTION 17. Section 4.16.160 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

"Drinking establishments, drinking establishment/restaurants, drinking establishment/restaurants/event centers – allowing serving of samples. Any drinking establishment, drinking establishment/restaurant or drinking establishment/restaurant/ event center license shall allow the licensee to offer for sale, sell and serve alcoholic liquor for consumption on the licensed premises which may be open to the public, and to serve samples of alcoholic liquor free of charge on licensed premises.

No charge of any sort may be made for a sample serving. A person may be served no more than five samples per visit. Samples may not be served to a minor. No samples may be removed from the licensed premises. Providing samples is prohibited for any licensee who charges a cover charge or entry fee at any time during the business day. No consideration shall be requested or required for entry onto the premises, participation in any event taking place on the premises or to remain on the premises.

Alcoholic liquor and cereal malt beverage for the sampling as provided in this section shall be withdrawn from the inventory of the licensee. A person other than the licensee or the licensee's agent or employee may not dispense or participate in the dispensing of alcoholic beverages under this section, except that the holder of a supplier's permit or such permit holder's agent or employee may participate in and conduct product tastings of alcoholic beverages upon a licensee's premises as provided in K.S.A. 41-2656 and amendments thereto."

SECTION 18. Section 4.16.165 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

"**Possession of alcoholic liquor or cereal malt beverage on licensed premises.**

(a) Nothing in this title shall be construed to prohibit a person from possessing, on premises licensed pursuant to this Chapter, alcoholic liquor or cereal malt beverage not purchased from the licensee.

(b) Nothing in this section shall prevent a licensee under this Chapter from adopting a policy prohibiting the possession, on the licensee's licensed premises, of alcoholic liquor or cereal malt beverage not purchased from the licensee."

SECTION 19. Section 4.16.180 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Persons and entities ineligible for ~~club~~ license**. (a) No license shall be issued under the provisions of this chapter to:

(1) A person who has not been a citizen of the United States for at least 10 years, except that the spouse of a deceased licensee may receive and renew a license issued under the provisions of this chapter notwithstanding the

provisions of this subsection if such spouse is otherwise qualified to hold a license and is a United States citizen or becomes a United States citizen within one year after the deceased licensee's death;

(2) A person who has been convicted of or has pled guilty to a felony under the laws of this state or any other state or of the United States;

(3) A person who has had a license revoked for cause under the provisions of Article 26 of Chapter 41 of the Kansas Statutes Annotated;

(4) A person who has been convicted of being the keeper or is keeping or has forfeited bond to appear in court to answer charges of being a keeper of any property, whether real or personal, where sexual relations are being sold or offered for sale by a person who is 18 years of age or older;

(5) A person who has been convicted of or has pled guilty to being a proprietor of a gambling house or of pandering or other crimes or misdemeanors opposed to decency and morality or shall have forfeited bond to appear in court to answer charges for any such violations;

(6) A person who is not at least 21 years of age;

(7) A person who, other than as a member of the governing body of the City of Wichita or of Sedgwick County, appoints or supervises any law enforcement officer, who is a law enforcement official or who is an employee of the director, except that the provisions of this subsection shall not apply to prohibit the issuance of a license for a class A club to an officer of a post home of a congressionally chartered service or fraternal organization, or a benevolent association or society thereof;

(8) A person who intends to carry on the business authorized by the license as agent of another;

(9) A person who at the time of application for renewal of any license issued hereunder would not be eligible for such license upon a first application except as provided by subsection (11);

(10) A person who has not been a resident of the State of Kansas for a period of at least one year immediately preceding the date of application;

(11) Any person if the spouse of such person would be ineligible to receive such a license hereunder for any reason other than citizenship, residence requirements or age, except that this subsection shall not apply in determining eligibility for a renewal license;

(12) A person who has a beneficial interest in the manufacture, preparation or wholesaling or the retail sale of alcoholic liquor or a beneficial interest in any other club, drinking establishment or caterer licensed pursuant to Article 26 of Chapter 41 of the Kansas Statutes Annotated and this title, except that:

(a) A license for premises located in a hotel may be granted to a person who has a beneficial interest in one or more clubs or drinking establishments licensed hereunder if such other clubs or establishments are located in hotel;

(b) A license for a club or drinking establishment which is a restaurant may be issued to a person who has a beneficial interest in other clubs or drinking establishments which are restaurants;

(c) A caterer's license may be issued to a person who has a beneficial interest in a club or drinking establishment and a license for a club or drinking establishment may be issued to a person who has a beneficial interest in a caterer;

(d) A license for a class A club may be granted to an organization of which an officer, director or board member is a distributor or retailer licensed under the liquor control act if such distributor or retailer sells no alcoholic liquor to such club;

(e) Any person who has a beneficial interest in a microbrewery, microdistillery or farm winery licensed pursuant to the Kansas Liquor Control Act may be issued any or all of the following: (1) class B club license; (2) any drinking establishment license; and (3) caterer's license;

(13) A copartnership, unless all of the copartners are qualified to obtain a license;

(14) A corporation, if any officer, manager, or director thereof, or any stockholder owning in the aggregate more than 5% of the common or preferred stock of such corporation would be ineligible to receive a club license hereunder for any reason other than citizenship and residence requirements;

(15) A corporation, if any officer, manager or director thereof, or any stockholder owning in the aggregate more than 5% of the common or preferred stock of such corporation has been an officer, manager or director, or a

stockholder owning in the aggregate more than five percent of the common or preferred stock, of a corporation which:

(a) Has had a license revoked under the provisions of the club and drinking establishment act of the State of Kansas,

(b) Has been convicted of a violation of the club and drinking establishment act or the cereal malt beverage laws of the State of Kansas;

(16) A corporation organized under the laws of any state other than the State of Kansas;

(17) A trust, if any grantor, beneficiary or trustee would be ineligible to receive a license under this chapter for any reason, except that the provisions of subsection (6) shall not apply in determining whether a beneficiary would be eligible for a license; or

(18) A person who has failed to pay any outstanding administrative penalty imposed pursuant to Section 4.12.090(c) or Section 4.16.095(d) of the City Code.

(b) No club or drinking establishment license shall be issued under the provisions of the club and drinking establishment act to:

(1) A person who does not own the premises for which a license is sought, or does not, at the time the application is submitted, have a written lease thereon, except that an applicant seeking a license for a premises which is owned by a city or county, or is a stadium, arena, convention center, theater, museum, amphitheater or other similar premises may submit an executed agreement to

provide alcoholic beverage services at the premises listed in the application in lieu of a lease.

(2) A person who is not a resident of the county in which the premises sought to be licensed are located."

SECTION 20. Section 4.16.190 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Penalty for violation.** Violation of any provision of this chapter and amendments thereto, for which a penalty is not otherwise specifically provided is punishable by a fine not to exceed $500 or imprisonment not to exceed six months, or both such fine and imprisonment."

SECTION 21. The originals of Sections 4.16.020, 4.16.030, 4.16.040, 4.16.075, 4.16.080, 4.16.090, 4.16.095, 4.16.130, 4.16.150, 4.16.155, 4.16.170, 4.16.180 and 4.16.190 of the Code of the City of Wichita, Kansas, are hereby repealed, and Resolution R-95-549 shall be repealed upon the effective date of the Charter Ordinance repealing Charter Ordinance No. 105 of the Code of the City of Wichita, Kansas.

SECTION 22. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper, except that Section 4.16.060 shall become effective upon the effective date of the Charter Ordinance repealing Charter Ordinance No. 105.

PASSED by the governing body of the City of Wichita, Kansas, this 24th day of March, 2015.

_____

Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to Form:

_____
Sharon L. Dickgrafe, Interim City Attorney and
Director of Law

First Published in The Wichita Eagle on _____

DELINEATED 02/25/15

ORDINANCE NO._____

AN ORDINANCE AMENDING SECTIONS 4.16.040, 4.16.080, 4.16.090, 4.16.095, 4.16.130, 4.16.150, 4.16.155, 4.16.180 AND 4.16.190; CREATING SECTIONS 4.16.050, 4.16.055, 4.16.060, 4.16.065, 4.16.074, 4.16.152, 4.16.153, 4.16.154, 4.16.160, AND 4.16.165, AND REPEALING SECTIONS 4.16.020 4.16.030, 4.16.075 AND 4.16.170 OF THE CODE OF THE CITY OF WICHITA, KANSAS, AND REPEALING RESOLUTION R-95-549 PERTAINING TO LICENSING THE SALE OF ALCOHOLIC LIQUOR BY THE DRINK, FEES AND OTHER REQUIREMENTS OF LICENSURE, AND PROHIBITED ACTS BY LICENSEES.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. The title to Chapter 4.16 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

Chapter 4.16. Drinking Establishments, Private Clubs and Sale of Liquor By the Drink

SECTION 2. Section 4.16.040 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"~~**Owner allowing violation**~~ **Allowing illegal consumption of alcoholic liquor.** (a) No person shall allow consumption of alcoholic liquor in violation of this chapter on any property owned, leased or otherwise under ~~his~~ such person's control. Any person allowing such consumption shall be guilty of a misdemeanor and upon conviction thereof shall be subject to a fine not to exceed $500 or by imprisonment not to exceed six months or by both such fine and imprisonment.

(b) The property on which the violation takes place is declared to be a common nuisance and as such is subject to abatement as provided for any other

common nuisance by city ordinance or as provided in K.S.A. 41-805 and amendments thereto."

SECTION 3. Section 4.16.050 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

"**License required – sale of liquor by the drink prohibited.** (a) No person shall maintain or operate a drinking establishment, drinking establishment/restaurant, drinking establishment/restaurant/event center, drinking establishment/hotel, class A club, or class B club within the corporate limits of the City of Wichita without having in such person's possession for the location of the establishment a valid unexpired and unrevoked license issued under the provisions of K.S.A. Chapter 41 and this chapter.

(b) No person shall act as a caterer within the corporate limits of the City of Wichita without having in such person's possession a valid unexpired and unrevoked license issued under the provisions of K.S.A. Chapter 41 and this chapter.

(c) No person or organization shall sponsor, conduct or hold an event within the corporate limits of the City of Wichita which requires a temporary permit unless such person or organization has in such person or organization's possession a temporary permit issued under the provisions of K.S.A. Chapter 41 and this chapter.

(d) Violation of any of the provisions of this section is a misdemeanor and shall be punished as set forth in Section 4.16.190 and amendments thereto."

SECTION 4. 4.16.055 of the Code of the City of Wichita, Kansas is hereby created to read as follows:

"**Premises licensed; zoning compliance.** (a) Any drinking establishment, drinking establishment/restaurant, drinking establishment/restaurant/event center,

drinking establishment/hotel, class A club, or class B club license issued pursuant to this chapter shall be for one particular premises which shall be stated in the application and in the license. Not more than one premises licensed under this chapter shall exist at a single legal address.

(b) No license shall be issued pursuant to this chapter unless a club or drinking establishment of any kind is allowed or provided for at such location by the Wichita/Sedgwick County Unified Zoning Code."

SECTION 5. Section 4.16.060 of the Code of the City of Wichita, Kansas is hereby created to read as follows:

"**License application; fees.** (a) Application for all licenses required by this Chapter shall be upon forms provided by the City Treasurer's office and shall be filed with the City's Licensing Section. The applicant shall provide all information requested by such forms and pursuant to the provisions of this title.

(b) At the time application is made to the City Treasurer's office for a license pursuant to this section, the following fees shall accompany the application:

(1) Class A private club, any category ……..……..$500.00
(fraternal/veterans; social, 500 members or less; social, over 500 members)

(2) Class B private club ……..……..$500.00

(3) Drinking establishment, any category…….....$500.00
(restaurant; event center, entire hotel)

(4) Drinking establishment (any category)/caterer……..…….....$500.00

(5) Caterer…….……$500.00

(6) Temporary permit, per day..……...$ 80.00
(maximum 3 consecutive days, 4 times per year, may be for duration of a community event)

Provided, however, this section shall become effective only upon the effective date of the ordinance repealing Charter Ordinance No. 105. Prior to that date, the fees that are currently set by the City Council in Resolution R-95-549, dated November 28, 1995, shall remain in effect. Since the fees currently in effect are annual fees, the amounts shall be doubled for all biennial licenses issued upon the effective date of this ordinance.

No fee required by this chapter or any portion thereof shall be pro-rated or refunded for any reason except if, in the determination of the City Treasurer, the application of this section would result in a substantial and unfair burden upon the applicant."

SECTION 6. Section 4.16.065 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

"**Term of license.** (a) The license required by Section 4.16.050(a) or (b) shall be issued for a term of two years and shall extend for the time period covered by the state license for the same premises.

(b) All city licenses required by Section 4.16.050(a) or (b) that are in existence upon the effective date of this ordinance shall be subject to the following procedure:

(1) Any city license expiring prior to the expiration date of the state license for the same premises shall be extended for a period not to exceed one year or until the renewal date of the state license, upon payment of a $250 renewal fee. No application is required to be submitted for this extension. After one extension, the city license will expire on the same

date as the state license expires and subsequent renewals shall be subject to the procedures set forth in subsection (2) herein.

(2) Any city license expiring on the same date as the state license for the same premises shall be renewed and the fees required by Section 4.16.060 paid no later than 10 business days after any renewal of the state license and shall remain in effect during this time period. The licensee shall be responsible for submitting an application for renewal of the city license at least 30 days in advance of the renewal date to allow time for the renewal process.

(c) Any establishment or business that comes into existence after the effective date of this ordinance that is required to be licensed by the city as set forth in Section 4.16.050 (a) or (b) must obtain such license and pay the fee required in Section 4.16.060 before the establishment opens for business under the original state license. Any subsequent renewal of such license shall be subject to the procedures set for in subsection (b)(2) herein.

(d) Any extension of the effective term of the state license issued for an establishment or business shall extend the term of the city license that is issued pursuant to this chapter for the same premises. The city license shall extend for the same period of time as the state license extension, provided, however, the licensee shall be responsible for providing proof of any extension of the license by the state to the City Treasurer's office."

SECTION 7. Section 4.16.074 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

"**Denial of License – Appeal.** The denial of any license or permit application issued pursuant to this chapter shall be subject to the appeal process and provisions set forth in Section 4.16.095(d) and (e), except that the notice of appeal shall include the name and address of the appellant, the date of the license or permit application, the date of the denial of the application or permit and the factual basis for the appeal. The review conducted by the City Council shall be of the facts and circumstances of the license or permit denial."

SECTION 8. Section 4.16.080 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"~~**Compliance**~~ **Unlawful acts of licensee or permit holder.** It is unlawful for ~~a~~ any licensee or holder of a temporary permit under this chapter to:

(a) Employ any person under the age of ~~twenty-one~~ 21 years in connection with the mixing or dispensing of alcoholic liquor;

(b) Knowingly employ ~~knowingly~~ or continue ~~in employment~~ to employ any person in connection with the dispensing or serving of alcoholic liquor or the mixing of drinks containing alcoholic liquor who has been adjudged guilty of a felony or of any crime involving a morals charge in the court of this city, or of this state or any other state, or of the United States~~; provided that the term "conviction" shall include being placed on diversion~~;

(c) ~~Employ knowingly or continue in employment any person in connection with the dispensing or serving of alcoholic liquor or mixing of drinks containing alcoholic liquor who has been adjudged guilty or placed on diversion on a violation of any intoxicating liquor law of this or any other municipality, this or any other state, or of~~

~~the United States during the two-year period immediately following such adjudging;~~ Knowingly employ or continue to employ any person in connection with the dispensing or serving of alcoholic liquor, or the mixing of drinks containing alcoholic liquor, who has been adjudged guilty of two or more violations of K.S.A. 21-5607, and amendments thereto, furnishing alcoholic liquor to minors, or a similar law of the City of Wichita, any other municipality, any other state, or of the United States, pertaining to furnishing alcoholic liquor to minors within the immediately preceding five years, or who has been adjudged guilty of three or more violations of any intoxicating liquor law of the City of Wichita, any other municipality, any other state, or of the United States, not involving the furnishing of alcoholic liquor to minors within the immediately preceding five years;

(d) In the case of a club, fail to maintain at the licensed premises a current list of all club members and their residences addresses or refuse to allow the City Attorney, ~~or any of his authorized agents~~ the City Attorney's designee or any law enforcement officer to inspect such list;

(e) Purchase alcoholic liquor from any person except from a person authorized by law to sell such alcoholic liquor to such licensee or permit holder;

(f) Permit any employee of the licensee or permit holder who is under the age of ~~twenty-one~~ 21 years of age to work on the premises where alcoholic liquor is sold by such licensee or permit holder at any time when not under the on-premises supervision of either the licensee or permit holder, or an employee who is ~~twenty-one~~ 21 years of age or over;

(g) Employ any person under the age of ~~eighteen~~ 18 years in connection with the serving of alcoholic liquor."

SECTION 9. Section 4.16.090 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Revocation of license.** (a) The City Council shall immediately revoke the license of any licensee whenever the state license of the licensee is revoked by the state for any reason.

(b) The City Council, upon five days written notice to a person holding a license to sell alcoholic liquor, may assess ~~a fine~~ an administrative penalty not to exceed ~~five hundred dollars~~ $1,000, may assess such ~~fine~~ penalty and/or suspension for a period not to exceed ~~thirty~~ 30 days or may revoke such license for any of the following reasons:

(1) If the licensee has fraudulently obtained the license by giving false information in the application therefor or any hearing thereon;

(2) If the licensee, manager, employee or agent has violated any of the provisions of this Title~~, Chapter 3.28~~, Chapter 3.30 ~~or Section 3.08.030~~ of the Code of the City of Wichita, ~~or~~ any rule or regulation by the City Council of the city, or the licensed premises are in violation of the health, housing~~,~~ or fire~~, zoning, or building~~ codes of the City of Wichita ~~or the State of Kansas,~~ or any provision of the Wichita-Sedgwick County Uniform Building and Trade Code, or any provision of the Wichita-Sedgwick County Unified Zoning Code, or any law of the State of Kansas, or of the maximum occupant load of such building;

(3) If the licensee has become ineligible to obtain a license or permit under this title;

(4) ~~Drunkenness of a person holding such license, drunkenness of licensee's manager or employee while on the premises for which said license is issued, or for a licensee, whose manager or employee permits any intoxicated person to remain in such place selling alcoholic liquor;~~ The licensee's manager or employee has been intoxicated while on duty; ~~(5) The sale or gift of cereal malt beverage or alcoholic liquor to a minor by a licensee, his manager or employee;~~

~~(6) The nonpayment of any license fee payable pursuant to this title;~~

~~(7) For a licensee, his manager or employee to permit gambling in or upon premises selling alcoholic liquor;~~

~~(8)~~(5) If the licensee or his manager or employee has permitted any disorderly person to remain on premises where alcoholic liquor is sold by such licensee;

~~(9)~~(6) If there has been a violation of a provision of the laws of this city or of this state or of any other state or the United States pertaining to the sale of intoxicating or alcoholic liquors or cereal malt beverages, or any crime involving a morals charge ~~or moral turpitude~~ on premises where alcoholic liquor is sold by such licensee;

~~(10)~~(7) If the licensee or his managing officers or any employee, has purchased or displayed, on premises where alcoholic liquor is sold by such

licensee, a federal waging occupational stamp issued by the United States Treasury Department;

~~(11)~~(8) If the licensee or his managing officers or any employee, has purchased and displayed, on premises where alcoholic liquor is sold by such licensee, a federal coin-operated gambling device stamp for the premises issued by the United States Treasury Department;

~~(12)~~(9) If the licensee holds a license as a Class B Club, drinking establishment or caterer and has been found guilty of a violation of Article 10 of Chapter 44 of the Kansas Statutes Annotated under a decision or order of the Civil Rights Commission which has become final or such licensee has been found guilty of a violation of K.S.A. 21-4003 and amendments thereto;

~~(13) For employing a person who has been adjudged guilty of a felony, a violation of an offense involving a morals charge or a crime of moral turpitude, or a violation of intoxicating liquor or drug law; provided that the term "adjudged guilty" shall include being placed on diversion. The Chief of Police may require any employee to submit to fingerprinting to determine if a violation of this section has occurred, and the failure of an employee to submit to fingerprinting if required by the chief of police shall be prima facie evidence that the employee is ineligible for employment under the provisions of this section;~~

(~~14~~10) For failure to maintain sufficient records to determine the percentage of gross business obtained from the sale of cereal malt beverages or alcoholic liquor;

(~~15~~11) For failure to permit the inspection of such records at all times during business hours by proper agents of the city;

~~(16) For knowingly allowing or permitting any known felon to loiter upon or about the licensed premises;~~

~~(17) For selling or providing alcoholic liquor to any person who is intoxicated who thereafter and by reason of such intoxication or where such intoxication is a contributing factor violates any ordinance of the City of Wichita, laws of the State of Kansas, or the federal government;~~

~~(18) Failure to pay a fine assessed by the City Council within thirty days of the date such fine was imposed~~.

(12) There has been a violation of K.S.A. 21-4106 (maintaining a public nuisance) or 21-4107 (permitting a public nuisance) prior to their repeal, or K.S.A. 2012 Supp. 21-6204 (maintaining, permitting a public nuisance) and amendments thereto, in or upon the licensee's place of business.

(c) In any hearing before the City Council pursuant to this section ~~or upon appeal from a suspension or reclassification of license by the chief of police pursuant to Section 4.16.095~~, a certified copy of conviction from any local, state, or federal court, for any violation contained within subsection (b) of this section, is prima facia evidence of

violation. For the purposes of this section, 'conviction' shall include being ~~placed on diversion or being~~ adjudged guilty upon entering a plea of no contest.

~~(d) If any of the grounds for revocation enumerated in subsection (b) of this section are violated by an employee or manager, then in the absence of proof of knowledge by the licensee, there shall be no revocation, except as herein provided, but there may be a suspension of not more than thirty days; it being further provided that in the event any licensee is subject to more than two such suspensions in any twelve-month period, his license may be revoked on the third such violation.~~

~~(e)~~(d) Within ~~twenty~~ 20 days after the order of the City Council revoking or suspending any license, the licensee may appeal from such order to the Sedgwick County District Court ~~district court of the county~~ in the manner as provided by law; provided that any appeal taken from an order revoking any such license shall not suspend the order of revocation during the pendency of such appeal. In case of the revocation of a license of any licensee, no new license shall be issued to such person or to any person acting for or on his behalf, for a period of six months after the revocation becomes effective."

SECTION 10. Section 4.16.095 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Suspension or reclassification of license by Chief of Police.** (a) The Chief of Police, upon five days written notice to the person holding a ~~drinking establishment license or a drinking establishment/restaurant~~ license issued pursuant to this Chapter, shall have the authority to suspend such license for a period of not to exceed ~~thirty~~ 30 days for any of the reasons set forth at Section 4.16.090(b) (2), (4),

(5), (6) ~~(7), (8)~~, (9), (10), (11) and (12), ~~(14), (15), (16) and (17),~~ which reason does not, in the judgment of the chief of police, justify a recommendation of revocation.

(b) The Chief of Police, upon five days written notice to the person holding any ~~drinking establishment license or drinking establishment/restaurant~~ license issued pursuant to this Chapter, shall have the authority to suspend such license if the licensee, the licensee's manager, employee, or agent, or any person under the direction and control of the licensee has committed a violation of Sections 7.41.010 or 7.41.030 (noise) of this Code, or any amendments thereto. Within any two-year period of time, upon a first violation of said sections, the Chief of Police shall issue a written warning to the licensee; upon a second violation, ~~the chief~~ shall suspend such license for a period of one day; upon a third violation, ~~the chief~~ shall suspend such license for a period of one week; and upon a fourth or subsequent violation, ~~the chief~~ shall suspend such license for the period of one year.

(c) The Chief of Police upon five days written notice to the person holding a drinking establishment/restaurant license shall reclassify the premises to a drinking establishment if the licensee fails to provide information showing ~~either~~ the required amount of gross revenues from sales ~~or~~ of food ~~or the percentage of floor space devoted to designated seating according to the floor plan~~ and the service of food for consumption on the licensed premises, or has been convicted of three violations of Section 4.16.130 of this Code. In the event of such reclassification by the ~~chief of police~~ Chief of Police, the licensee shall be ineligible to apply for, hold or have any interest in any business licensed as a drinking establishment/restaurant for a period of one year from the date of the reclassification, and shall have ~~thirty~~ 30 days within which to apply for the appropriate

zoning which may be required as a result of the change in classification and shall be permitted a reasonable time thereafter within which to complete the process. For the purpose of determining whether a conviction is a third or subsequent conviction under this section, all convictions for violation of Section 4.16.130 occurring within the immediately preceding twenty-four months, including those prior to the effective date of this section, shall be aggregated and considered together and it is irrelevant whether an offense occurred before or after conviction for a prior offense.

(d) The licensee may appeal any order of suspension or reclassification issued pursuant to this section ~~to the city council within seven days from the date of such order, and in the event such order of suspension or reclassification is upheld by the city council, the licensee may appeal to the district court of the county in the manner now provided by K.S.A. 41-2708 and any amendments thereto. Any appeal taken from an order of the chief of police shall stay the order of suspension or reclassification until the matter is resolved by the city council. Any appeal to the district court shall not stay the order of the city council.~~ by filing with the City Clerk a written notice of appeal to the City Council within 20 days of the decision to suspend a license by the Chief of Police. Notice of Appeal shall specify:

(1) the name and address of the appellant;

(2) the date of the suspension or reclassification of the license; and

(3) the factual basis for the appeal.

Upon receipt of a complete and timely filed Notice of Appeal, the City Clerk shall schedule a hearing before the City Council, no later than 30 days from the date of the filing of the Notice of Appeal with the City Clerk. Any appeal shall stay the

suspension or reclassification of the license until the matter is heard by the City Council. The City Council may approve or overrule the suspension or reclassification of a license or may modify the decision to suspend or reclassify a license, and in addition, may impose an administrative penalty of up to $1,000. In any hearing before the City Council pursuant to this section, a certified copy of a conviction from any local, state, or federal court for any violation is prima facia evidence of such violation.

(e) The Council's decision may be appealed to the Eighteenth Judicial District Court of the State of Kansas pursuant to K.S.A. 60-2101 and any amendments thereto. Any such appeal to the District Court shall not stay the suspension or reclassification of the license or any modification imposed thereupon by the City Council.

(f) The ~~chief of police~~ Chief of Police shall notify the ~~city manager~~ City Manager prior to making a suspension or reclassification hereunder.

(g) As used in this Section, any authority granted to the Chief of Police shall include his or her designee."

SECTION 11. Section 4.16.130 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Permitting consumption by minors; minors prohibited from entering or remaining in drinking establishments; exceptions; penalties.** (a) No licensee, permit holder, or any owner, officer, or employee thereof, shall knowingly or unknowingly permit the possession or consumption of alcoholic liquor or cereal malt beverages ~~on premises licensed as a drinking establishment or drinking establishment/restaurant~~ by

a ~~person under legal age,~~ minor on premises where alcoholic beverages are sold by such licensee or permit holder, except that a licensee's or permit holder's employee who is not less than ~~eighteen~~ 18 years of age may serve alcoholic liquor or cereal malt beverage under the on-premises supervision of the licensee or permit holder, or an employee who is ~~twenty-one~~ 21 years of age or older.

(b) No licensee, ~~permit holder, or any~~ owner, officer, or employee of a drinking establishment shall knowingly or unknowingly ~~permit a person under the legal age for consumption of alcoholic liquor~~ allow a minor to enter or remain on the premises of a drinking establishment and no ~~person under the legal age for consumption of alcoholic liquor~~ minor shall enter or remain on the premises of a drinking establishment.

(c) It shall be a defense to a prosecution of a licensee, permit holder, or any owner, officer, or employee thereof, under subsection (a) or (b) if:

(1) ~~The defendant is a licensed retailer, club, drinking establishment or caterer or holds a temporary permit, or an employee thereof; and~~

~~(2)~~ The defendant ~~sold~~ allowed the possession or consumption of the alcoholic liquor or cereal malt beverage ~~to~~ by the minor or allowed the minor to enter or remain upon the premises of a drinking establishment with reasonable cause to believe that the minor was ~~twenty-one~~ 21 or more years of age; and

~~(3)~~(2) To ~~purchase~~ possess or consume the alcoholic liquor or cereal malt beverage, or to enter or remain upon the premises of a drinking establishment, the minor exhibited to the defendant a driver's license, Kansas non-driver's identification card or other official or apparently

official document that reasonably appears to contain a photograph of the minor and purporting to establish that such minor was ~~twenty-one~~ 21 or more years of age.

(d) ~~Any licensee, permit holder, or any owner, officer or employee thereof who violates any provision~~ Violation of this section is ~~guilty of~~ a misdemeanor ~~and upon conviction shall be punished as provided in Section 4.16.190 and amendments thereto~~ punishable by a fine of not less than $100 and not more than $500 or imprisonment not exceeding 30 days, or by both such fine and imprisonment.

(e) Violation of this section by a person ~~eighteen~~ 18 or more years of age but less than ~~twenty-one~~ 21 years of age is a misdemeanor punishable by a fine of not less than ~~two hundred dollars~~ $200 and not more than ~~five hundred dollars~~ $500. In addition to such fine the court may order the offender to perform ~~forty~~ 40 hours of public service. Further, any person less than ~~eighteen~~ 18 years of age who violates this section is a juvenile offender under the Kansas Juvenile Offenders Code and upon adjudication thereof shall be required as a condition of disposition to pay the fine or perform the public service, or both, ~~specified as punishment in this sub-section for the offense~~ as set forth in herein.

(f) The provisions of subsection (b) of this section ~~applies~~ apply only to drinking establishments ~~and not to drinking establishment/restaurants~~, as ~~those terms are~~ defined in Section 4.04.010 and amendments thereto and not to any other license issued under this chapter. ~~Be it provided, however, the provisions of subsection (b) of this section shall not apply to a drinking establishment when the licensed premises are leased to a bona fide religious organization for the purpose of conducting religious services, but~~

~~only during the actual time when such religious services are being held. During the time when religious services are being held, all alcoholic liquor must be removed from the licensed premises, or secured behind locked cabinets, and no alcoholic liquor or cereal malt beverage shall be available to any participants in the religious services, except that nothing contained in this subsection shall prevent the possession and dispensation of wine by an authorized representative of any church for the purpose of conducting any bona fide rite or religious ceremony conducted by such church~~.

(g) The provisions of subsection (b) of this section shall not apply to a business licensed as a drinking establishment for the purpose of allowing a customer to bring onto the licensed premises bottles of the customer's own alcoholic liquor to be consumed by the customer and the customer's invited guests and the business meets all of the following conditions:

(1) The business is not open past 11:00 p.m.;

(2) the business is not licensed as an Entertainment Establishment under Chapter 3.30 of the Code of the City of Wichita;

(3) other than employees of the business, no minors are present at times when consumption of alcoholic liquor by customers is allowed to occur or consumption of alcoholic liquor takes place in a separate room or space physically separated from areas where minors are present and the licensee complies with all conditions set forth in Section 4.16.080; and

(4) the licensee complies with all statutes and administrative regulations of the State of Kansas pertaining to customers providing their own alcoholic liquor on licensed premises."

SECTION 12. Section 4.16.150 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"~~**Member must be present**~~ **Class A club license; rights of licensee.** A ~~club~~ license for a class A club shall allow the licensee to:

(a) Offer for sale, sell and serve alcoholic liquor for consumption on the licensed premises by members and their families and guests accompanying them and to any reciprocal member as provided by ~~Article 26 of Chapter 41 of Kansas Statutes Annotated~~ K.S.A. 41-2637,and any amendments thereto; and

(b) Serve samples of alcoholic liquor free of charge for consumption by members and their families and guests accompanying them and to any reciprocal member as provided by K.S.A. 41-2637 and any amendments thereto. No charge of any sort may be made for a sample serving. A person may be served no more than five samples per visit. Samples may not be served to a minor. No samples may be removed from the licensed premises. No consideration shall be requested or required for entry onto the premises, participation in any event taking place on the premises or to remain on the premises.

(c) A licensee is further authorized to engage in activities as set forth in K.S.A. 41-2637 and amendments thereto."

SECTION 13. Section 4.16.152 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

"**Class B club license; rights of licensee.** A license for a class B club shall allow the licensee to: (a) Offer for sale, sell and serve alcoholic liquor for consumption on the licensed premises by members of such club, family members and guests accompanying

members, and to any reciprocal member as provided by K.S.A. 41-2641 and any amendments thereto; and

(b) Serve samples of alcoholic liquor free of charge on the licensed premises for consumption by such members and their families and guests accompanying them. No charge of any sort may be made for a sample serving. A person may be served no more than five samples per visit. Samples may not be served to a minor. No samples may be removed from the licensed premises. Providing samples is prohibited for any licensee who charges a cover charge or entry fee at any time during the business day. No consideration shall be requested or required for entry onto the premises, participation in any event taking place on the premises or to remain on the premises.

(c) A licensee is further authorized to engage in activities as set forth in K.S.A. 41-2641 and amendments thereto."

SECTION 14. Section 4.16.153 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

"**Caterers.** (a) A caterer's license shall allow the licensee to offer for sale, sell and serve alcoholic liquor for consumption on unlicensed premises which may be open to the public.

(b) Every licensee shall cause the caterer's license to be placed in plain view on any premises within the City where the caterer is serving or mixing alcoholic liquor for consumption on the premises.

(c) Prior to any event at which a caterer will sell or serve alcoholic liquor by the individual drink, the caterer shall provide written notice to the Chief of Police, or the Chief's designee, at least three business days prior to the event if the event will take place

within the City. The notice shall contain the location, name of the group sponsoring the event, and the exact date and times the caterer will be serving alcoholic liquor.

(d) A licensee is further authorized to engage in activities as set forth in K.S.A. 41-2643 and amendments thereto."

SECTION 15. Section 4.16.154 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

"**Temporary permits.** (a) A temporary permit shall allow the permit holder to offer for sale, sell and serve alcoholic liquor for consumption on unlicensed premises, which may be open to the public, subject to the terms of the permit.

(b) A temporary permit shall specify the premises for which such permit is issued and shall be issued only for premises as allowed by the Wichita-Sedgwick County Unified Zoning Code.

(c) A temporary permit shall be issued for a period of time not to exceed three consecutive days, the dates and hours of which will be specified in the permit. Not more than four temporary permits may be issued to any one applicant in a calendar year. Provided, however, that, pursuant to K.S.A. 41-2645 and amendments thereto, the director may issue a temporary permit for a special event which, in the director's discretion, may last no more than 30 days in duration.

(d) A holder of a temporary permit is further authorized to engage in activities as set forth in K.S.A. 41-2645 and amendments thereto."

SECTION 16. Section 4.16.155 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**No drinks promotion, allowing removal of alcoholic liquor from certain licensed premises.** (a) No club, drinking establishment, drinking establishment/ restaurant or drinking establishment/restaurant/event center, drinking establishment/hotel, caterer or holder of a temporary permit, nor any person acting as an employee or agent thereof ~~pursuant to Title 4~~ shall:

(1) Offer or serve any free drink of cereal malt beverage or alcoholic liquor in any form to any person;

(2) Offer or serve to any person an individual drink at a price that is less than the acquisition cost of the individual drink to the licensee or permit holder;

(3) Sell, offer to sell or serve to any person an unlimited number of individual drinks during any set period of time for a fixed price, except at private functions not open to the general public or to the general membership of a club;

(4) Encourage or permit, on the licensed premises, any game or contest which involves drinking alcoholic liquor or cereal malt beverage or the awarding of individual drinks as prizes;

(5) Advertise or promote in any way, whether on or off the licensed premises, any of the practices prohibited under subsections (a)(1) through (4);

(6) Sell, offer to sell or serve any drink of alcoholic liquor or cereal malt beverage for consumption off of the licensed premises;

(7) Recklessly allow or permit any person to remove a drink of alcoholic liquor from the licensed premises or from the caterer's premises, except as allowed in subsection (c).

(b) A club, drinking establishment, drinking establishment/restaurant or drinking establishment/restaurant/event center, caterer or holder of a temporary permit may:

(1) Offer free food or entertainment at any time;

(2) Sell or deliver wine by the bottle or carafe;

(3) Sell, offer to sell and serve individual drinks at different prices throughout any day; or

(4) Sell or serve beer or cereal malt beverage in a pitcher capable of containing not more than 64 fluid ounces.

(5) Sell or serve margarita, sangria, daiquiri, mojito or other mixed alcoholic beverages as approved by the director in a pitcher containing not more than 64 fluid ounces.

(c) Notwithstanding the provisions in subsection (a), a class A club license, class B club license, drinking establishment, drinking establishment/restaurant or drinking establishment/ restaurant/event center shall allow the licensee to allow legal patrons of the club or drinking establishment to remove from the licensed premises one or more opened containers of alcoholic liquor, subject to the following conditions:

(1) It must be legal for the licensee to sell the alcoholic liquor in its original container;

(2) The alcoholic liquor must be in its original container;

(3) Each container of alcoholic liquor must have been purchased by a patron and the alcoholic liquor in each container must have been partially consumed on the licensed premises;

(4) The licensee or the licensee's employee must provide the patron with a dated receipt for the unfinished container or containers of alcoholic liquor; and

(5) Before the container of alcoholic liquor is removed from the licensed premises, the licensee or the licensee's employee must securely reseal each container, place the container in a tamper-proof, transparent bag which is sealed in a manner that makes it visibly apparent if the bag is subsequently tampered with or opened.

(d) A hotel of which the entire premises is licensed as a drinking establishment may distribute coupons to its guests redeemable on the hotel premises for drinks containing alcoholic liquor as allowed and approved by the Kansas Secretary of Revenue.

(e) A hotel of which the entire premises is not licensed as a drinking establishment may distribute coupons to its guests redeemable with one or more clubs or drinking establishments for drinks containing alcoholic liquor as allowed and approved by the Kansas Secretary of Revenue.

(~~d~~f) Violation of any provision of this section is a misdemeanor and punishable by a fine of not more than ~~five hundred dollars~~ $500 or imprisonment not to exceed six months or by both such fine and imprisonment.

(~~e~~g) Violation of any provision of this act shall be grounds for suspension or revocation of the retailer's license as provided by ~~Title 4~~ this title.

~~(f) Every licensee subject to the provisions of this section shall make available at any time upon request a price list showing the licensee's current prices per individual drink for all individual drinks.~~"

SECTION 17. Section 4.16.160 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

"Drinking establishments, drinking establishment/restaurants, drinking establishment/restaurants/event centers – allowing serving of samples. Any drinking establishment, drinking establishment/restaurant or drinking establishment/restaurant/ event center license shall allow the licensee to offer for sale, sell and serve alcoholic liquor for consumption on the licensed premises which may be open to the public, and to serve samples of alcoholic liquor free of charge on licensed premises.

No charge of any sort may be made for a sample serving. A person may be served no more than five samples per visit. Samples may not be served to a minor. No samples may be removed from the licensed premises. Providing samples is prohibited for any licensee who charges a cover charge or entry fee at any time during the business day. No consideration shall be requested or required for entry onto the premises, participation in any event taking place on the premises or to remain on the premises.

Alcoholic liquor and cereal malt beverage for the sampling as provided in this section shall be withdrawn from the inventory of the licensee. A person other than the licensee or the licensee's agent or employee may not dispense or participate in the dispensing of alcoholic beverages under this section, except that the holder of a supplier's permit or such permit holder's agent or employee may participate in and conduct product

tastings of alcoholic beverages upon a licensee's premises as provided in K.S.A. 41-2656 and amendments thereto."

SECTION 18. Section 4.16.165 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

"**Possession of alcoholic liquor or cereal malt beverage on licensed premises.**

(a) Nothing in this title shall be construed to prohibit a person from possessing, on premises licensed pursuant to this Chapter, alcoholic liquor or cereal malt beverage not purchased from the licensee.

(b) Nothing in this section shall prevent a licensee under this Chapter from adopting a policy prohibiting the possession, on the licensee's licensed premises, of alcoholic liquor or cereal malt beverage not purchased from the licensee."

SECTION 19. Section 4.16.180 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Persons and entities ineligible for ~~club~~ license**. (a) No license shall be issued under the provisions of this chapter to:

~~(a)~~(1) A person who has not been a citizen of the United States for at least ~~ten~~ 10 years, except that the spouse of a deceased licensee may receive and renew a license issued under the provisions of this chapter notwithstanding the provisions of this subsection if such spouse is otherwise qualified to hold a license and is a United States citizen or becomes a United States citizen within one year after the deceased licensee's death;

~~(b)~~(2) A person who has been convicted of or has pled guilty to ~~or has been placed on diversion for~~ a felony under the laws of this state or any other state or of the United States;

~~(c)~~(3) A person who has had a license revoked for cause under the provisions of Article 26 of Chapter 41 of the Kansas Statutes Annotated;

~~(d)~~(4) A person who has been convicted of being the keeper or is keeping ~~a house of prostitution~~ or has forfeited bond to appear in court to answer charges of being a keeper of any property, whether real or personal, where sexual relations are being sold or offered for sale by a person who is 18 years of age or older ~~or has forfeited bond to appear in court to answer charges of being a keeper of a house of prostitution~~;

~~(e)~~(5) A person who has been convicted of or has pled guilty to ~~or has been placed on diversion for~~ being a proprietor of a gambling house or of pandering or other crimes or misdemeanors opposed to decency and morality or shall have forfeited ~~his~~ bond to appear in court to answer charges for any such violations; ~~be a person or is a law enforcement official or who is an employee of the Director of the Alcoholic Beverage Control Board of the State of Kansas or the Alcoholic Beverage Control Board;~~

~~(f)~~(6) A person who is not at least ~~twenty-one~~ 21 years of age;

~~(g)~~(7) A person who, other than as a member of the governing body of the City of Wichita or of Sedgwick County, appoints or supervises any law enforcement officer, who is a law enforcement official or who is an

employee of the director, except that the provisions of this subsection shall not apply to prohibit the issuance of a license for a class A club to an officer of a post home of a congressionally chartered service or fraternal organization, or a benevolent association or society thereof;

~~(h)~~(8) A person who intends to carry on the business authorized by the license as agent of another;

~~(i)~~(9) A person who at the time of application for renewal of any license issued hereunder would not be eligible for such license upon a first application except as provided by subsection ~~(l)~~(11);

~~(j)~~(10) A person who has not been a resident of the State of Kansas for a period of at least one year immediately preceding the date of application;

~~(k) A person who does not own the premises for which a license is sought, or does not have a written lease thereon for at least three-fourths of the period for which the license is to be issued except that this subsection shall only apply to applicants of club and drinking establishment licenses;~~

~~(l)~~(11) Any person if the spouse of such person would be ineligible to receive such a license hereunder for any reason other than citizenship, residence requirements or age, except that this subsection shall not apply in determining eligibility for a renewal license;

~~(m) A person who is not a resident of Sedgwick County, Kansas;~~

~~(n)~~(12) A person who has a beneficial interest in the manufacture, preparation or wholesaling or the retail sale of alcoholic liquor or a beneficial interest in any other club, drinking establishment or caterer

licensed pursuant to Article 26 of Chapter 41 of the Kansas Statutes Annotated and this title, except that:

~~(1)~~(a) A license for premises located in a hotel may be granted to a person who has a beneficial interest in one or more clubs or drinking establishments licensed hereunder if such other clubs or establishments are located in hotel;

~~(2)~~(b) A license for a club or drinking establishment which is a restaurant may be issued to a person who has a beneficial interest in other clubs or drinking establishments which are restaurants;

~~(3)~~(c) A caterer's license may be issued to a person who has a beneficial interest in a club or drinking establishment and a license for a club or drinking establishment may be issued to a person who has a beneficial interest in a caterer;

~~(4)~~(d) A license for a class A club may be granted to an organization of which an officer, director or board member is a distributor or retailer licensed under the liquor control act if such distributor or retailer sells no alcoholic liquor to such club;

~~(5)~~(e) ~~A license for a class B club or drinking establishment may be granted to a~~ Any person who has a beneficial interest in a microbrewery, microdistillery or farm winery~~, or winery outlet~~ licensed pursuant to the Kansas Liquor Control Act may be issued any or all of the following: (1) class B club license; (2) any drinking establishment license; and (3) caterer's license;

~~(o)~~(13) A copartnership, unless all of the copartners are qualified to obtain a license;

~~(p)~~(14) A corporation, if any officer, manager, or director thereof, or any stockholder owning in the aggregate more than ~~five percent~~ 5% of the common or preferred stock of such corporation would be ineligible to receive a club license hereunder for any reason other than citizenship and residence requirements;

~~(q)~~(15) A corporation, if any officer, manager or director thereof, or any stockholder owning in the aggregate more than ~~five percent~~ 5% of the common or preferred stock of such corporation has been an officer, manager or director, or a stockholder owning in the aggregate more than five percent of the common or preferred stock, of a corporation which:

~~(1)~~(a) Has had a license revoked under the provisions of the club and drinking establishment act of the State of Kansas,

~~(2)~~(b) Has been convicted of a violation of the club and drinking establishment act or the cereal malt beverage laws of the State of Kansas;

~~(r)~~(16) A corporation organized under the laws of any state other than the State of Kansas;

~~(s) Subsections (j); (m); and (t) shall not apply to the tenth or subsequent consecutive renewal of a license if the applicant has appointed an agent and received approval from the director pursuant to K.S.A. 41-311(g);~~

~~(t)~~(17) A trust, if any grantor, beneficiary or trustee would be ineligible to receive a license under this chapter for any reason, except that the provisions of subsection ~~(f)~~(6) shall not apply in determining whether a beneficiary would be eligible for a license; or

(18) A person who has failed to pay any outstanding administrative penalty imposed pursuant to Section 4.12.090(c) or Section 4.16.095(d) of the City Code.

(b) No club or drinking establishment license shall be issued under the provisions of the club and drinking establishment act to:

(1) A person who does not own the premises for which a license is sought, or does not, at the time the application is submitted, have a written lease thereon, except that an applicant seeking a license for a premises which is owned by a city or county, or is a stadium, arena, convention center, theater, museum, amphitheater or other similar premises may submit an executed agreement to provide alcoholic beverage services at the premises listed in the application in lieu of a lease.

(2) A person who is not a resident of the county in which the premises sought to be licensed are located."

SECTION 20. Section 4.16.190 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Penalty for violation.** ~~(a) Any person violating any provision of this chapter (4.16) is guilty of a misdemeanor. Except as provided in~~ Section 4.16.130~~(e), a person convicted of violating any of the provisions of this chapter shall be published as follows:~~

~~Upon a first conviction the person shall be sentenced to a fine of not less than five hundred dollars nor more than one thousand dollars; and upon a second conviction, the person shall be sentenced to a fine of not less than one thousand dollars nor more than two thousand dollars; and upon a third or subsequent conviction the person shall be sentenced to a fine of not less than one thousand five hundred dollars nor more than two thousand five hundred dollars.~~

~~(b) For the purpose of determining whether a conviction is a second, third or subsequent conviction under this section, all convictions for violation of the sections and chapters enumerated herein occurring within the immediately preceding twenty-four months, including those prior to the effective date of this section, shall be aggregated and considered together and it is irrelevant whether an offense occurred before or after conviction for a prior offense.~~ Violation of any provision of this chapter and amendments thereto, for which a penalty is not otherwise specifically provided is punishable by a fine not to exceed $500 or imprisonment not to exceed six months, or both such fine and imprisonment."

SECTION 21. The originals of Sections 4.16.020, 4.16.030, 4.16.040, 4.16.075, 4.16.080, 4.16.090, 4.16.095, 4.16.130, 4.16.150, 4.16.155, 4.16.170, 4.16.180 and 4.16.190 of the Code of the City of Wichita, Kansas, are hereby repealed, and Resolution R-95-549 shall be repealed upon the effective date of the Charter Ordinance repealing Charter Ordinance No. 105 of the Code of the City of Wichita, Kansas.

SECTION 22. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper, except that Section 4.16.060 shall become effective upon the effective date of the Charter

Ordinance repealing Charter Ordinance No. 105.

PASSED by the governing body of the City of Wichita, Kansas, this _____ day of _____, 2015.

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to Form:

_____
Sharon L. Dickgrafe, Interim City Attorney and
Director of Law

Wichita, Kansas
March 9, 2015
10:00 a.m., Monday
Conference Room, 12th Floor

MINUTES - BOARD OF BIDS AND CONTRACTS*

The Board of Bids and Contracts met with Marty Strayer, Administrative Assistant, Public Works Engineering in the Chair; Fanny Chan, Senior Accountant, Finance, representing the Director of Finance, Elizabeth Goltry-Wadle, Senior Budget Analyst, Budget Office, Clarence Rose, Senior Buyer, representing Purchasing, Zack Daniel Fellow representing the City Manager's Office and Janis Edwards, Deputy City Clerk, present.

Minutes of the regular meeting dated March 2, 2015, were read and on motion approved.

Bids were opened March 6, 2015, pursuant to advertisements published on:

2015 Outsourced Maintenance Preservative Seal (Various locations) (472-85204/132726/) Traffic to be maintained during construction using flag persons and barricades. (District I, II, III, IV, VI)

Proseal Inc.* - $315,588.00 * Engineer's Estimate- Base Bid

2015 Outsourced Maintenance Street Repairs Phase 1 (Various locations) (472-85199/132726/ 636246/620701/133116/132726/771633/664006/133116) Traffic to be maintained during construction using flag persons and barricades. (District I, II, III, IV, VI)

PPJ Construction Inc.* - $420,913.00 * Engineer's Estimate

2015 Outsourced Maintenance Slurry Seal, Micro surfacing, Scrub Seal and Fiber Reinforced Micro surfacing (north of 63rd St South, east of 135th St West) (472-85201/132726/) Traffic to be maintained during construction using flag persons and barricades. (District I, II, III, IV, VI)

Vance Brothers Inc.* - $1,601,451.30 * Engineer's Estimate

Fairmount Park Basketball Court Reconstruction 472-85198(796008) Friendship Park Basketball Court Construction 472-85212 (092422)

Bids rejected

Georgia Avenue Paving (south of MacArthur, west of Hydraulic) 472-85107 (766299/636313)

Cornejo & Sons, LLC* - $378,832.30

* Award 3/24/2015 subject to City Council approval of new Engineer's Estimate and budget authorization.

Purchasing Manager recommended that the contracts be awarded/rejected as outlined above, subject to check, same being the lowest and best bids within the Engineer's construction estimate.

On motion the Board recommended that the contracts be awarded/rejected as outlined above, subject to check, same being the lowest and best bids within the Engineer's construction estimate.

PUBLIC WORKS AND UTILITIES DEPARTMENT/FLEET AND FACILITIES DIVISION:
Demolition and Site Clearing Services.

Bradburn Wrecking Company - $11,050.00		Group 1- Primary Contractor
	-	Group 2- Unit Costs*
HD Mills and Sons Inc.	-	Group 2 Secondary Contractor - *Unit Costs
		*Refer to attachments

The Purchasing Division recommended that the contracts be awarded as outlined above, same being the lowest and best bid.

On motion the Board recommended that the contracts be awarded as outlined above, same being the lowest and best bid.

On motion the Board of Bids adjourned.

Marty Strayer, Administrative Assistant
Department of Public Works

Janis Edwards, CMC
Deputy City Clerk

Wichita, Kansas
March 16, 2015
10:00 a.m., Monday
Conference Room, 12th Floor

MINUTES - BOARD OF BIDS AND CONTRACTS*

The Board of Bids and Contracts met with Marty Strayer, Administrative Assistant, Public Works Engineering in the Chair; Fanny Chan, Senior Accountant, Finance, representing the Director of Finance, Troy Tillotson, Budget Analyst, Budget Office, Clarence Rose, Senior Buyer, representing Purchasing, Zack Daniel Fellow representing the City Manager's Office and Janis Edwards, Deputy City Clerk, present.

Minutes of the regular meeting dated March 9, 2015, were read and on motion approved.

Bids were opened March 13, 2015, pursuant to advertisements published on:

Schweiter Bikeway - Phase I (Ash Street & Rivera to Central & Poplar) (87TE-0620-01/472-85112/ 707055/211516) Traffic to be maintained during construction using flag persons and barricades. (District I)

Traffic Control Services Inc. - $95,722.28

Planeview Area Sanitary Sewer Improvements/2015 Phase 1 (north of 31st Street South, east of Hillside) (468-84838/624101/652019) Traffic to be maintained during construction using flagpersons and barricades. (District III)

Dondlinger and Sons - $146,777.00

Water Distribution System to serve Falcon Falls 5th Addition (north of 45th Street North, west of Hillside) (448-90650/735521/470194) Traffic to be maintained during construction using flagpersons and barricades. (District I)

Dutton Construction and Plumbing LLC - $17,175.00

Lateral 15, Main 13, Sanitary Sewer #23; Falcon Falls 5th Addition 468-84666 (744382)

Bids rejected

2015 Outsourced Maintenance Street Repairs Phase 2 (Various Locations) (472-85200/ 132726/636246/620701/133116/132726/771633/664006/133116) Traffic to be maintained during construction using flag persons and barricades. (District I, IV, VI)

Conspec Inc. dba Kansas Paving* - $314,914.50 *Engineer's Estimate

Water Distribution System to serve The Steppes at Ark Valley Addition (north of Harry, east of 127th Street) (448-90642/735519/470192) Traffic to be maintained during construction using flag persons and barricades. (District II)

Dutton Construction and Plumbing LLC - $53,294.00

Lateral 11, Main 18, Four Mile Creek Sewer to serve The Steppes at Ark Valley Addition (north of Harry, east of 127th Street) (468-84979/744377/480069) Traffic to be maintained during construction using flag persons and barricades. (District II)

McCullough Excavation - $101,569.10

Storm Water Sewer #689 to serve Tyler's Landing 5th Addition (east of Tyler, south of 37th Street North) (468-85007/751532/485423) Does not affect existing traffic. (District V)

Mies Construction - $31,324.00

Purchasing Manager recommended that the contracts be awarded/rejected as outlined above, subject to check, same being the lowest and best bids within the Engineer's construction estimate.

On motion the Board recommended that the contracts be awarded/rejected as outlined above, subject to check, same being the lowest and best bids within the Engineer's construction estimate.

PUBLIC WORKS AND UTILITIES DEPARTMENT/FLEET AND FACILITIES DIVISION: 58,000 GVWR TRUCKS.

Roberts Truck Center LLC - $434,640.00 – Base Bid
Included - Option 1
$20,254.00 - Option 2 (Each)
$8,105.00 - Option 3 (Each)
Included - Option 6
$615.00 - Option 7 (Each)

POLICE DEPARTMENT: Portable Radios- State of Kansas Contract #39052.

Harris Corporation* - $59,274.40

*Purchases utilizing Government Entities Contracts, Cooperative Contracts and Agreements - Ordinance No. 38-122 Section 2.64.020 (j).

The Purchasing Division recommended that the contracts be awarded as outlined above, same being the lowest and best bid.

On motion the Board recommended that the contracts be awarded as outlined above, same being the lowest and best bid.

On motion the Board of Bids adjourned.

Marty Strayer, Administrative Assistant
Department of Public Works

Janis Edwards, CMC
Deputy City Clerk

EXHIBIT A

FORMAL BID REPORT

TO: Robert Layton, City Manager
DATE: March 16, 2015

ENGINEERING BIDS – GARY JANZEN, CITY ENGINEER

March 6, 2015

2015 OM Preservative Seal (Various Locations) – Public Works & Utilities Department/Engineering Division
Proseal, Inc. **(Engineer's Estimate – Base Bid)** **$315,588.00**

2015 OM Street Repairs Phase 1 (Various Locations) – Public Works & Utilities Dept./Engineering Division
PPJ Construction, Inc. **(Engineer's Estimate)** **$420,913.00**

2015 OM Slurry, Micro, Scrub Seal and Fiber Reinforced Microsurfacing (north of 63rd Street South, east of 135th Street West) – Public Works & Utilities Department/Engineering Division
Vance Brothers, Inc. **(Engineer's Estimate)** **$1,601,451.30**

Fairmount Park Basketball Court Reconstruction; Friendship Park Basketball Court Reconstruction – Public Works & Utilities Department/Engineering Division **(All Bids Rejected)**

Georgia Avenue Paving (south of MacArthur, west of Hydraulic) – Public Works & Utilities Department/Engineering Division
Cornejo & Sons, LLC **(Award 3/24/15 subject to City Council Approval of New Engineer's Estimate and Budget Authorization)** **$378,832.30**

March 13, 2015

Schweiter Bikeway (Ash Street & Rivera to Central & Poplar) – Public Works & Utilities Department/Engineering Division
Traffic Control Services, Inc. **$95,722.28**

Planeview Area Sanitary Sewer Improvements / 2015 Phase 1 to serve Planeview Addition – Public Works & Utilities Department/Engineering Division
Dondlinger & Sons **$146,777.00**

Water Distribution System to serve Falcon Falls 5th Addition – Public Works & Utilities Dept./Engineering Div.
Dutton Construction and Plumbing, LLC **$17,175.00**

Lateral 15, Main 13, Sanitary Sewer #23 to serve Falcon Falls 5th Addition – Public Works & Utilities Department/Engineering Division **(All Bids Rejected)**

2015 OM Street Repairs Phase 2 (Various Locations) – Public Works & Utilities Department/Engineering Div.
Conspec, Inc. dba Kansas Paving **(Engineer's Estimate)** **$314,914.50**

Water Distribution System to serve The Steppes at Ark Valley Addition – Public Works & Utilities Department/Engineering Division
Dutton Construction and Plumbing, LLC **$53,294.00**

Lateral 11, Main 18, Four Mile Creek Sewer to serve The Steppes at Ark Valley Addition – Public Works & Utilities Department/Engineering Division
McCullough Excavation **$101,569.10**

Storm Water Sewer #689 to serve Tylers's Landing 5th Addition – Public Works & Utilities Department/Engineering Division
Mies Construction **$31,324.00**

PURCHASING BIDS – MELINDA A. WALKER, PURCHASING MANAGER

March 6, 2015

Demolition & Site Clearing Services – Public Works & Utilities Department/Fleet & Facilities Division
(See Exhibit B for Itemized Pricing in the Formal Bid Report)

Bradburn Wrecking Co.	**Group 1**	**$11,050.00**
	Award as Primary Contractor Group 1 and 2 *	
	Award Group 2 Unit Cost*	
H. D. Mills and Sons, Inc.	**Award as Secondary Contractor Group 2***	
	Award Group 2 Unit Cost*	

March 13, 2015

58,000 GVWR Dump Trucks – Public Works & Utilities Department/Fleet & Facilities Division

Roberts Truck Center, LLC dba Summit Truck Group	**Base Bid**	**$434,640.00***
	Option 1	**Included**
	Option 2 (Add) (Per Each)	**$20,254.00**
	Option 3 (Add) (Per Each)	**$8,105.00**
	Option 6	**Included**
	Option 7 (Add) (Per Each)	**$615.00**

***Award Three Additional Units at Same Unit Cost**

Portable Radios – Police Department

Harris Corporation	**Cooperative Contracts and Agreements, Ordinance No. 38-122, Section 2.64.020(j); State of Kansas Contract #39052**	**$59,274.40**

ITEMS TO BE PURCHASED AS ADVERTISED IN THE OFFICIAL CITY NEWSPAPER.

Melinda A. Walker

Melinda A. Walker
Purchasing Manager

PAVING BID TABULATION SUMMARY

BOARD OF BIDS - March 6, 2015

RQ540241

FB540028		Engineer's Construction Estimate	APAC - Kansas Inc	Barkley Construction	Cornejo & Sons, LLC
2015 OM Preservative Seal	BASE BID	$315,588.00			
(Various locations)	Add Alt				
	BID BOND				
472-85204 (132726)	ADDENDA	0			
BID TOTAL		$315,588.00			
		Engineer's Construction Estimate	Dondlinger & Sons	Kansas Paving Company	Proseal Inc
2015 OM Preservative Seal	BASE BID	$315,588.00			$265,200.00
(Various locations)	Add Alt				$23,868.00
	BID BOND				X
472-85204 (132726)	ADDENDA	0			
BID TOTAL		$315,588.00			
		Engineer's Construction Estimate	McConnell Construction		
2015 OM Preservative Seal	BASE BID	$315,588.00	$0.00		
(Various locations)	Add Alt		$0.00		
	BID BOND				
472-85204 (132726)	ADDENDA	0			
BID TOTAL		$315,588.00			
		Engineer's Construction Estimate			
2015 OM Preservative Seal	BASE BID	$315,588.00			
(Various locations)	Add Alt				
	BID BOND				
472-85204 (132726)	ADDENDA	0			
BID TOTAL		$315,588.00			

CONTRACT AWARDED FOR ENGINEER'S BASE BID $315,588.00

CHECKED BY: WJ

REVIEWED BY: RS

PAVING BID TABULATION SUMMARY

BOARD OF BIDS - March 6, 2015

RQ540242

FB540029		Engineer's Construction Estimate	APAC - Kansas Inc	Barkley Construction	Cornejo & Sons, LLC
2015 OM Street Repairs Ph 1		$420,913.00		$311,657.00	
	BID BOND				
(Various Locations)	ADDENDA	1			
472-85199 (132726/636246/620701/133116)					
		Engineer's Construction Estimate	Dondlinger & Sons	Kansas Paving Company	PPJ Construction, Inc.
2015 OM Street Repairs Ph 1		$420,913.00		$312,310.00	$311,310.00
	BID BOND				X
(Various Locations)	ADDENDA	1			X
472-85199 (132726/636246/620701/133116)					
		Engineer's Construction Estimate			
2015 OM Street Repairs Ph 1		$420,913.00			
	BID BOND				
(Various Locations)	ADDENDA	1			
472-85199 (132726/636246/620701/133116)					
		Engineer's Construction Estimate			
2015 OM Street Repairs Ph 1		$420,913.00			
	BID BOND				
(Various Locations)	ADDENDA	1			
472-85199 (132726/636246/620701/133116)					

CONTRACT AWARDED FOR ENGINEER'S ESTIMATE $420,913.00

CHECKED BY: MD

REVIEWED BY: PJH

PAVING BID TABULATION SUMMARY

BOARD OF BIDS - March 6, 2015

RQ540243

FB540030		Engineer's Construction Estimate	APAC - Kansas Inc	Barkley Construction	Cornejo & Sons, LLC
2015 OM Slurry, Micro, Scrub Seal and Fiber Reinforced Microsurfacing		$1,601,451.30			
(north of 63rd St South, east of 135th St West)	BID BOND				
	ADDENDA	2			
472-85201 (132726)					
		Engineer's Construction Estimate	Dondlinger & Sons	Kansas Paving Company	Vance Brothers Inc.
2015 OM Slurry, Micro, Scrub Seal and Fiber Reinforced Microsurfacing		$1,601,451.30			$1,385,502.91
(north of 63rd St South, east of 135th St West)	BID BOND				X
	ADDENDA	2			
472-85201 (132726)					
		Engineer's Construction Estimate	Intermountain Slurry Seal Inc.		
2015 OM Slurry, Micro, Scrub Seal and Fiber Reinforced Microsurfacing		$1,601,451.30	$1,636,577.68		
(north of 63rd St South, east of 135th St West)	BID BOND		X		
	ADDENDA	2	X		
472-85201 (132726)					
		Engineer's Construction Estimate			
2015 OM Slurry, Micro, Scrub Seal and Fiber Reinforced Microsurfacing		$1,601,451.30			
(north of 63rd St South, east of 135th St West)	BID BOND				
	ADDENDA	2			
472-85201 (132726)					

CONTRACT AWARDED FOR ENGINEER'S ESTIMATE $1,601,451.30

CHECKED BY: _____

REVIEWED BY: _____

PAVING BID TABULATION SUMMARY

BOARD OF BIDS - March 6, 2015

RQ540244

FB540031		Engineer's Construction Estimate	APAC - Kansas Inc	Barkley Construction	Cornejo & Sons, LLC
Fairmount Park Basketball Court Reconstruction 472-85198 (796008)	Group 1				
Friendship Park Basketball Court Construction 472-85212 (092422)	Group 2				
	BID BOND				
	ADDENDA	0			
BID TOTAL		$0.00			
		Engineer's Construction Estimate	Dondlinger & Sons	Kansas Paving Company	Danco Enterprises
Fairmount Park Basketball Court Reconstruction 472-85198 (796008)	Group 1			$53,125.00	$58,970.00
Friendship Park Basketball Court Construction 472-85212 (092422)	Group 2			$47,800.00	$53,900.00
	BID BOND				
	ADDENDA	0			
BID TOTAL		$0.00		100,925.00	112,870.00
		Engineer's Construction Estimate	Dutton Construction		
Fairmount Park Basketball Court Reconstruction 472-85198 (796008)	Group 1		$74,000.00		
Friendship Park Basketball Court Construction 472-85212 (092422)	Group 2		$59,000.00		
	BID BOND				
	ADDENDA	0			
BID TOTAL		$0.00	133,000.00		
		Engineer's Construction Estimate			
Fairmount Park Basketball Court Reconstruction 472-85198 (796008)	Group 1				
Friendship Park Basketball Court Construction 472-85212 (092422)	Group 2				
	BID BOND				
	ADDENDA	0			
BID TOTAL		$0.00			
REJECT BIDS					

CHECKED BY: MJ

REVIEWED BY: PJ

PAVING BID TABULATION SUMMARY

BOARD OF BIDS - March 6, 2015

RQ540245

FB540032		Engineer's Construction Estimate	APAC - Kansas Inc	Barkley Construction	Comejo & Sons, LLC
Georgia Avenue Paving			$490,983.00		$378,832.30
(south of MacArthur, west of Hydraulic)	BID BOND				
472-85107 (766299/636313)	ADDENDA	1			
		Engineer's Construction Estimate	Dondlinger & Sons	Kansas Paving Company	
Georgia Avenue Paving				$395,147.70	
(south of MacArthur, west of Hydraulic)	BID BOND				
472-85107 (766299/636313)	ADDENDA	1			
		Engineer's Construction Estimate			
Georgia Avenue Paving					
(south of MacArthur, west of Hydraulic)	BID BOND				
472-85107 (766299/636313)	ADDENDA	1			
		Engineer's Construction Estimate			
Georgia Avenue Paving					
(south of MacArthur, west of Hydraulic)	BID BOND				
472-85107 (766299/636313)	ADDENDA	1			

Award 3/24/15 subject to City Council approval of new Engineer's Estimate and budget authorization

CHECKED BY: MD

REVIEWED BY: DSF

PAVING BID TABULATION SUMMARY

BOARD OF BIDS - January 16, 2015

RQ441352

FB440247		Engineer's Construction Estimate	Traffic Control Services Inc.	Cillessen & Sons	Cornejo & Sons, LLC
Schweiter Bikeway		$113,630.00	$95,722.28	$68,295.00	
(Ash Street & Rivera to Central & Poplar)	BID BOND		X	X	
	ADDENDA	0			
87TE-0620-01/472-85112 (707055)					
		Engineer's Construction Estimate	Dondlinger & Sons	Kansas Paving Company	
Schweiter Bikeway		$113,630.00			
(Ash Street & Rivera to Central & Poplar)	BID BOND				
	ADDENDA	0			
87TE-0620-01/472-85112 (707055)					
		Engineer's Construction Estimate			
Schweiter Bikeway		$113,630.00			
(Ash Street & Rivera to Central & Poplar)	BID BOND				
	ADDENDA	0			
87TE-0620-01/472-85112 (707055)					
		Engineer's Construction Estimate			
Schweiter Bikeway		$113,630.00			
(Ash Street & Rivera to Central & Poplar)	BID BOND				
	ADDENDA	0			
87TE-0620-01/472-85112 (707055)					

Cillessen & Sons was not on KDOT's Pre-Qualified Vendors List. Contract was awarded to Traffic Control Services, Inc.

CHECKED BY: MS

REVIEWED BY: PH

SANITARY SEWER BID TABULATION SUMMARY

BOARD OF BIDS - March 13, 2015

RQ540276

FB540035		Engineer's Construction Estimate	Dondlinger & Sons	Wildcat Construction	Stannard Construction d/b/a WB Carter
Planeview Area Sanitary Sewer Improvements / 2015 Phase 1		$251,775.00	$146,777.00	$272,255.00	$160,000.00
Planeview Addition	BID BOND				X
468-84838	ADDENDA	0			
(624101)					
		Engineer's Construction Estimate	Danco Enterpises Inc.	Dutton	Utilities Plus
Planeview Area Sanitary Sewer Improvements / 2015 Phase 1		$251,775.00	$242,480.00	$179,485.00	
Planeview Addition	BID BOND		X	X	
468-84838	ADDENDA	0			
(624101)					
		Engineer's Construction Estimate			
Planeview Area Sanitary Sewer Improvements / 2015 Phase 1		$251,775.00			
Planeview Addition	BID BOND				
468-84838	ADDENDA	0			
(624101)					
		Engineer's Construction Estimate			
Planeview Area Sanitary Sewer Improvements / 2015 Phase 1		$251,775.00			
Planeview Addition	BID BOND				
468-84838	ADDENDA	0			
(624101)					

CHECKED BY: KP

REVIEWED BY: DJ

WATER BID TABULATION SUMMARY

BOARD OF BIDS - March 13, 2015

RQ540277

FB540036		Engineer's Construction Estimate	Dondlinger & Sons	Duling Construction	Mies Construction
Water Distribution System		$23,570.00	$22,193.00	$17,880.00	$20,572.00
Falcon Falls 5th Addition	*BID BOND*				
448-90650	ADDENDA	0			
(735521)					
		Engineer's Construction Estimate	McCullough Excavation	Nowak Construction	Utilities Plus
Water Distribution System		$23,570.00	$18,220.00	$17,250.00	$20,367.50
Falcon Falls 5th Addition	BID BOND				
448-90650	ADDENDA	0			
(735521)					
		Engineer's Construction Estimate	Dutton Construction and Plumbing LLC	Stannard Construction d/b/a WB Carter	
Water Distribution System		$23,570.00	$17,175.00		
Falcon Falls 5th Addition	BID BOND		X		
448-90650	ADDENDA	0			
(735521)					
		Engineer's Construction Estimate			
Water Distribution System		$23,570.00			
Falcon Falls 5th Addition	BID BOND				
448-90650	ADDENDA	0			
(735521)					

CHECKED BY: KP

REVIEWED BY: KJ

SANITARY SEWER BID TABULATION SUMMARY

BOARD OF BIDS - March 13, 2015

RQ540278

FB540037		Engineer's Construction Estimate	Dondlinger & Sons	Duling Construction	Mies Construction
Lateral 15, Main 13, Sanitary Sewer #23			$244,885.50	$232,387.00	$225,338.00
Falcon Falls 5th Addition	BID BOND				
468-84999	ADDENDA	1			
(744382)					
		Engineer's Construction Estimate	McCullough Excavation	Nowak Construction	Danco Enterprises Inc.
Lateral 15, Main 13, Sanitary Sewer #23			$184,883.50	$207,953.75	$286,748.60
Falcon Falls 5th Addition	BID BOND				X
468-84999	ADDENDA	1			
(744382)					
		Engineer's Construction Estimate	Wildcat Construction	Stannard Construction d/b/a WB Carter	
Lateral 15, Main 13, Sanitary Sewer #23					
Falcon Falls 5th Addition	BID BOND				
468-84999	ADDENDA	1			
(744382)					
		Engineer's Construction Estimate			
Lateral 15, Main 13, Sanitary Sewer #23					
Falcon Falls 5th Addition	BID BOND				
468-84999	ADDENDA	1			
(744382)					
REJECT BIDS					

CHECKED BY: KP

REVIEWED BY: GJ

PAVING BID TABULATION SUMMARY

BOARD OF BIDS - March 13, 2015

RQ540279

FB540038		Engineer's Construction Estimate	Conspec Inc. DBA Kansas Paving	Barkley Construction	PPJ Construction Inc.
2015 OM Street Repairs Ph 2		$314,914.50	$243,175.00	$256,000.00	$288,600.00
	BID BOND				
(Various Locations)	ADDENDA	0			
472-85200(132726/636246/620701/133116)					
		Engineer's Construction Estimate	Dondlinger & Sons		
2015 OM Street Repairs Ph 2		$314,914.50			
	BID BOND				
(Various Locations)	ADDENDA	0			
472-85200(132726/636246/620701/133116)					
		Engineer's Construction Estimate			
2015 OM Street Repairs Ph 2		$314,914.50			
	BID BOND				
(Various Locations)	ADDENDA	0			
472-85200(132726/636246/620701/133116)					
		Engineer's Construction Estimate			
2015 OM Street Repairs Ph 2		$314,914.50			
	BID BOND				
(Various Locations)	ADDENDA	0			
472-85200(132726/636246/620701/133116)					

CONTRACT AWARDED FOR ENGINEER'S ESTIMATE $314,914.50

CHECKED BY: KD

REVIEWED BY: [signature]

WATER BID TABULATION SUMMARY

BOARD OF BIDS - March 13, 2015

RQ#540280

FB#540039		Engineer's Construction Estimate	Dondlinger & Sons	Duling Construction	Mies Construction
Water Distribution System		$59,794.00	$65,960.70	$58,962.00	$62,126.80
The Steppes at Ark Valley Addition	BID BOND				
448-90642	ADDENDA	2			
(735519)					
		Engineer's Construction Estimate	McCullough Excavation	Nowak Construction	Utilities Plus
Water Distribution System		$59,794.00	$55,608.00	$62,101.50	$67,794.50
The Steppes at Ark Valley Addition	BID BOND				
448-90642	ADDENDA	2			
(735519)					
		Engineer's Construction Estimate	Danco Enterprises Inc.	Dutton Construction and Plumbing LLC	
Water Distribution System		$59,794.00	$87,412.00	$53,294.00	
The Steppes at Ark Valley Addition	BID BOND		X	X	
448-90642	ADDENDA	2		X	
(735519)					
		Engineer's Construction Estimate			
Water Distribution System		$59,794.00			
The Steppes at Ark Valley Addition	BID BOND				
448-90642	ADDENDA	2			
(735519)					

CHECKED BY: _____

REVIEWED BY: _____

SANITARY SEWER BID TABULATION SUMMARY

BOARD OF BIDS - March 13, 2015

RQ540281

FB540040		Engineer's Construction Estimate	Dondlinger & Sons	Duling Construction	Mies Construction
Lateral 11, Main 18, Four Mile Creek Sewer		$137,707.00	$163,256.10	$116,521.00	$132,637.00
The Steppes at Ark Valley Addition	BID BOND				
468-84979	ADDENDA	1			
(744377)					
		Engineer's Construction Estimate	McCullough Excavation	Nowak Construction	Danco Enterprises Inc.
Lateral 11, Main 18, Four Mile Creek Sewer		$137,707.00	$101,569.10	$117,674.25	$260,013.00
The Steppes at Ark Valley Addition	BID BOND				X
468-84979	ADDENDA	1			
(744377)					
		Engineer's Construction Estimate	Wildcat Construction	Stannard Construction d/b/a WB Carter	
Lateral 11, Main 18, Four Mile Creek Sewer		$137,707.00			
The Steppes at Ark Valley Addition	BID BOND				
468-84979	ADDENDA	1			
(744377)					
		Engineer's Construction Estimate			
Lateral 11, Main 18, Four Mile Creek Sewer		$137,707.00			
The Steppes at Ark Valley Addition	BID BOND				
468-84979	ADDENDA	1			
(744377)					

CHECKED BY: KP

REVIEWED BY: DM

STORM SEWER BID TABULATION SUMMARY

BOARD OF BIDS - March 13, 2015

RQ540282

FB540041		Engineer's Construction Estimate	Dondlinger & Sons	Duling Construction	Mies Construction
Storm Water Sewer #689		$82,600.00	$35,444.00	$38,276.00	$31,324.00
Tyler's Landing 5th Addition	BID BOND				
468-85007	ADDENDA	0			
(751532)					
		Engineer's Construction Estimate	McCullough Excavation	Nowak Construction	Utilities Plus
Storm Water Sewer #689		$82,600.00	$33,880.00	$37,168.00	$36,482.00
Tyler's Landing 5th Addition	BID BOND				
468-85007	ADDENDA	0			
(751532)					
		Engineer's Construction Estimate	Danco Enterprises LLC.	Dutton Construction & Plumbing LLC	
Storm Water Sewer #689		$82,600.00	$42,590.00	$35,988.00	
Tyler's Landing 5th Addition	BID BOND		X	X	
468-85007	ADDENDA	0			
(751532)					
		Engineer's Construction Estimate			
Storm Water Sewer #689		$82,600.00			
Tyler's Landing 5th Addition	BID BOND				
468-85007	ADDENDA	0			
(751532)					

CHECKED BY: _____

REVIEWED BY: _____

City of Wichita, Kansas

BID RESULTS

This page summarizes vendor responses by the bid total. Awarded vendors will be notified of their respective purchase orders/contracts.

Vendor Group Line

Solicitation: FB540027 **Demolition & Site Clearing Services** **Close Date/Time:** 3/6/2015 10:00 AM CST

Solicitation Type: Formal Bid

Award Method: Group

Department: Central Inspection

Return to the Bid List

Responses: 5

Vendors	Complete	Bid Total	City Comments
BRADBURN WRECKING CO	Complete	$11,405.00	Award 3/17/15 Groups 1 & 2, Public Works & Utilities Department/Fleet & Facilities Division
H D MILLS AND SONS INC.	Complete	$21,979.00	Award 3/17/15 Secondary Contractor-Group 2, Public Works & Utilities Dept/Fleet & Facilities Div
PEARSON CONSTRUCTION LLC	*Complete*	$26,800.00	
NATIONAL BUILDERS INC	Complete	$38,085.00	
ARAMBULA CONSTRUCTION CO INC	Complete	$71,019.50	

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POWERED BY COGSDALE

City of Wichita, Kansas

BID RESULTS

This page summarizes bids by the totals for each group listed on the solicitation.

Vendor Group Line

Solicitation: FB540027 **Demolition & Site Clearing Services** **Close Date/Time:** 3/6/2015 10:00 AM CST

Solicitation Type: Formal Bid
Award Method: Group
Department: Central Inspection
Go to: 1

Return to the Bid List

Responses: 5

Group 1

Vendors	Complete	Group Total Net Bid
BRADBURN WRECKING CO	Complete	$11,050.00
H D MILLS AND SONS INC.	Complete	$21,564.00
PEARSON CONSTRUCTION LLC	Complete	$26,450.00
NATIONAL BUILDERS INC	Complete	$37,700.00
ARAMBULA CONSTRUCTION CO INC	Complete	$70,606.00

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Group 2

Vendors	Complete	Group Total Net Bid
PEARSON CONSTRUCTION LLC	Complete	$350.00
BRADBURN WRECKING CO	Complete	$355.00
NATIONAL BUILDERS INC	Complete	$385.00
ARAMBULA CONSTRUCTION CO INC	Complete	$413.50
H D MILLS AND SONS INC.	Complete	$415.00

Top of the Page

City of Wichita, Kansas

BID RESULTS

This page summarizes vendor bids by the extended cost for each commodity line on the solicitation.

Vendor Group Line

Solicitation: FB540027 **Demolition & Site Clearing Services** **Close Date/Time:** 3/6/2015 10:00 AM CST

Solicitation Type: Formal Bid **Return to the Bid List**

Award Method: Group

Department: Central Inspection **Responses:** 5

Go to: 001

Line 001 | GROUP 1: Furnish all labor, materials, services, permits, haulage, and equipment necessary to provide demolition and removal of the property, outbuildings and all area improvements as per specifications at: 1932 S. Meridian, Wichita, KS 67213; two story, single family dwelling, 1400 square feet, full basement.

Vendors	QTY	UOM	Price	Extended Cost	Complete	Comments
BRADBURN WRECKING CO	1	Lump Sum	$1,100.0000	$1,100.00	Complete	
PEARSON CONSTRUCTION LLC	1	Lump Sum	$3,250.0000	$3,250.00	Complete	
H D MILLS AND SONS INC.	1	Lump Sum	$3,350.0000	$3,350.00	Complete	
NATIONAL BUILDERS INC	1	Lump Sum	$4,200.0000	$4,200.00	Complete	
ARAMBULA CONSTRUCTION CO INC	1	Lump Sum	$6,283.0000	$6,283.00	Complete	

Line 002 | Furnish all labor, materials, services, permits, haulage, and equipment necessary to provide demolition and removal of the property, outbuildings and all area improvements as per specifications at: 1928 S. Meridian, Wichita, KS 67213; two story, sigle family dwelling, 1848 square feet

Vendors	QTY	UOM	Price	Extended Cost	Complete	Comments
BRADBURN WRECKING CO	1	Lump Sum	$1,470.0000	$1,470.00	Complete	
PEARSON CONSTRUCTION LLC	1	Lump Sum	$3,200.0000	$3,200.00	Complete	
H D MILLS AND SONS INC.	1	Lump Sum	$3,350.0000	$3,350.00	Complete	
NATIONAL BUILDERS INC	1	Lump Sum	$4,600.0000	$4,600.00	Complete	
ARAMBULA CONSTRUCTION CO INC	1	Lump Sum	$6,386.0000	$6,386.00	Complete	

Line 003 | Furnish all labor, materials, services, permits, haulage, and equipment necessary to provide demolition and removal of the property, outbuildings and all area improvements as per specifications at: 2922 E. Mossman, Wichita; KS 67214; two story, frame, single family dwelling, 1081 square feet, full basement

Vendors	QTY	UOM	Price	Extended Cost	Complete	Comments
BRADBURN WRECKING CO	1	Lump Sum	$750.0000	$750.00	Complete	

EXHIBIT B

PEARSON CONSTRUCTION LLC	1	Lump Sum	$2,500.0000	$2,500.00	Complete
NATIONAL BUILDERS INC	1	Lump Sum	$3,000.0000	$3,000.00	Complete
H D MILLS AND SONS INC.	1	Lump Sum	$3,350.0000	$3,350.00	Complete
ARAMBULA CONSTRUCTION CO INC	1	Lump Sum	$4,480.0000	$4,480.00	Complete

Line 004 | GROUP 2: 1/2 Ton Pickup Truck

Vendors	QTY	UOM	Price	Extended Cost	Complete	Comments
PEARSON CONSTRUCTION LLC	1	Hour	$25.0000	$25.00	Complete	
NATIONAL BUILDERS INC	1	Hour	$25.0000	$25.00	Complete	
BRADBURN WRECKING CO	1	Hour	$35.0000	$35.00	Complete	*
H D MILLS AND SONS INC.	1	Hour	$35.0000	$35.00	Complete	*
ARAMBULA CONSTRUCTION CO INC	1	Hour	$60.0000	$60.00	Complete	

Line 005 | Dump Truck

Vendors	QTY	UOM	Price	Extended Cost	Complete	Comments
PEARSON CONSTRUCTION LLC	1	Hour	$75.0000	$75.00	Complete	
BRADBURN WRECKING CO	1	Hour	$80.0000	$80.00	Complete	*
ARAMBULA CONSTRUCTION CO INC	1	Hour	$85.0000	$85.00	Complete	
H D MILLS AND SONS INC.	1	Hour	$100.0000	$100.00	Complete	*
NATIONAL BUILDERS INC	1	Hour	$100.0000	$100.00	Complete	

Line 006 | Excavator

Vendors	QTY	UOM	Price	Extended Cost	Complete	Comments
PEARSON CONSTRUCTION LLC	1	Hour	$120.0000	$120.00	Complete	
BRADBURN WRECKING CO	1	Hour	$125.0000	$125.00	Complete	*
NATIONAL BUILDERS INC	1	Hour	$125.0000	$125.00	Complete	
ARAMBULA CONSTRUCTION CO INC	1	Hour	$157.0000	$157.00	Complete	

H D MILLS AND SONS INC.	1	Hour	$175.0000	$175.00	Complete	*

Line 007 | Skid Steer

Vendors	QTY	UOM	Price	Extended Cost	Complete	Comments
H D MILLS AND SONS INC.	1	Hour	$50.0000	$50.00	Complete	*
BRADBURN WRECKING CO	1	Hour	$50.0000	$50.00	Complete	*
PEARSON CONSTRUCTION LLC	1	Hour	$55.0000	$55.00	Complete	
ARAMBULA CONSTRUCTION CO INC	1	Hour	$73.0000	$73.00	Complete	
NATIONAL BUILDERS INC	1	Hour	$75.0000	$75.00	Complete	

Line 008 | Supervisor

Vendors	QTY	UOM	Price	Extended Cost	Complete	Comments
ARAMBULA CONSTRUCTION CO INC	1	Hour	$24.0000	$24.00	Complete	
NATIONAL BUILDERS INC	1	Hour	$35.0000	$35.00	Complete	
H D MILLS AND SONS INC.	1	Hour	$35.0000	$35.00	Complete	*
BRADBURN WRECKING CO	1	Hour	$40.0000	$40.00	Complete	*
PEARSON CONSTRUCTION LLC	1	Hour	$55.0000	$55.00	Complete	

Line 009 | Laborer

Vendors	QTY	UOM	Price	Extended Cost	Complete	Comments
ARAMBULA CONSTRUCTION CO INC	1	Hour	$14.5000	$14.50	Complete	
H D MILLS AND SONS INC.	1	Hour	$20.0000	$20.00	Complete	*
PEARSON CONSTRUCTION LLC	1	Hour	$20.0000	$20.00	Complete	
NATIONAL BUILDERS INC	1	Hour	$25.0000	$25.00	Complete	
BRADBURN WRECKING CO	1	Hour	$25.0000	$25.00	Complete	*

Line 010 | Furnish all labor, materials, services, permits, haulage, and equipment necessary to provide demolition and removal of the property, outbuildings and all area improvements as per specifications at: 9601 E. Kellogg, Wichita, KS 67207; former Groves Liquor building, single story, 7800 square feet.

Vendors	QTY	UOM	Price	Extended Cost	Complete	Comments

BRADBURN WRECKING CO	1	Lump Sum	$5,630.0000	$5,630.00	Complete
H D MILLS AND SONS INC	1	Lump Sum	$6,837.0000	$6,837.00	Complete
PEARSON CONSTRUCTION LLC	1	Lump Sum	$12,500.0000	$12,500.00	Complete
NATIONAL BUILDERS INC	1	Lump Sum	$18,500.0000	$18,500.00	Complete
ARAMBULA CONSTRUCTION CO INC	1	Lump Sum	$33,372.0000	$33,372.00	Complete

Line 011 | Furnish all labor, materials, services, permits, haulage, and equipment necessary to provide demolition and removal of the property, outbuildings and all area improvements as per specifications at: 10909 E. Kellogg, Wichita, KS 67207; former Absolute Stone building, single story, 3000 square feet.

Vendors	QTY	UOM	Price	Extended Cost	Complete	Comments
BRADBURN WRECKING CO	1	Lump Sum	$2,100.0000	$2,100.00	Complete	
H D MILLS AND SONS INC.	1	Lump Sum	$4,677.0000	$4,677.00	Complete	
PEARSON CONSTRUCTION LLC	1	Lump Sum	$5,000.0000	$5,000.00	Complete	
NATIONAL BUILDERS INC	1	Lump Sum	$7,400.0000	$7,400.00	Complete	
ARAMBULA CONSTRUCTION CO INC	1	Lump Sum	$20,085.0000	$20,085.00	Complete	

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POWERED BY COGSDALE

City of Wichita, Kansas

BID RESULTS

This page summarizes vendor responses by the bid total. Awarded vendors will be notified of their respective purchase orders/contracts.

Vendor Group Line

Solicitation: FB540016 **58,000 GVWR Dump Trucks** **Close Date/Time:** 2/20/2015 10:00 AM CST

Solicitation Type: Formal Bid

Award Method: Aggregate Cost

Department: Public Works Fleet & Facilities

Return to the Bid List

Responses: 1

Vendors	Complete	Bid Total	City Comments
ROBERTS TRUCK CENTER LLC DBA SUMMIT TRUCK GROUP	Complete	$324,626.00	Award 2-24-15 Base Bid with Options 1,2,3,6 & 7 Public Works & Utilities Dept/Fleet & Facilities Div Award 3-17-15 Base Bid with Options 1,2,3,6 & 7 Three (3) Additional Dump Trucks at the Same Unit Cost for a Total Cost of $521,562.00 Public Works & Utilities Dept./ Fleet & Facilities Division

City of Wichita, Kansas

BID RESULTS

This page summarizes vendor bids by the extended cost for each commodity line on the solicitation.

Vendor Group Line

Solicitation: FB540016 **58,000 GVWR Dump Trucks** **Close Date/Time:** 2/20/2015 10:00 AM CST

Solicitation Type: Formal Bid **Return to the Bid List**

Award Method: Aggregate Cost

Department: Public Works Fleet & Facilities **Responses:** 1

Go to: 001

Line 001 | Base Bid: New Current Model 58,000 GVWR Cab & Chassis with New Current Model Eighteen (18) Cubic Yard Slope Sided Dump Bed with Eighteen (18) Cubic Yard Ends to be Installed Complete (Supplement A) Cab & Chassis Manufacturer:_____ Model:_____ Year:_____

Vendors	QTY	UOM	Price	Extended Cost	Complete	Comments
ROBERTS TRUCK CENTER LLC	2	Each	$144,880.0000	$289,760.00	Complete	2016 International 7400

Line 002 | Option 1: Air Operated Tailgate. Cost per Vehicle.

Vendors	QTY	UOM	Price	Extended Cost	Complete	Comments
ROBERTS TRUCK CENTER LLC	1	Each	$0.0000	$0.00	Complete	Included

Line 003 | Option 2: Spreader with Pre Wet System (Supplement B). Cost per Vehicle.

Vendors	QTY	UOM	Price	Extended Cost	Complete	Comments
ROBERTS TRUCK CENTER LLC	1	Each	$20,254.0000	$20,254.00	Complete	Each location must have a drive by access point module. $393ea. Main system one only $9124.

Line 004 | Option 3: 10' Power Reversing Snow Plow (Supplement C). Cost per Vehicle.

Vendors	QTY	UOM	Price	Extended Cost	Complete	Comments
ROBERTS TRUCK CENTER LLC	1	Each	$8,105.0000	$8,105.00	Complete	per spec

Line 005 | Option 4: Additional Cost to Option 3 (Supplement C) to Provide Plow with Discharge Wings. Lump Sum Additional Cost to Option 3 per Vehicle.

Vendors	QTY	UOM	Price	Extended Cost	Complete	Comments
ROBERTS TRUCK CENTER LLC	1	Lump Sum	$963.0000	$963.00	Complete	per spec

Line 006 | Option 5: Cirus Spreadmart RX Electronic Controller, Dash Mounted (Supplement D). Cost per Vehicle.

Vendors	QTY	UOM	Price	Extended Cost	Complete	Comments
ROBERTS TRUCK CENTER LLC	1	Each	$4,552.0000	$4,552.00	Complete	per spec

Line 007 | Option 6: Engine Programmed to Shut Off After Five Minutes of Idling. Cost per Vehicle.

Vendors	QTY	UOM	Price	Extended Cost	Complete	Comments
ROBERTS TRUCK CENTER LLC	1	Each	$0.0000	$0.00	Complete	included

Line 008 | Option 7: Chalmers Rear Suspension System (No Leaf Spring Type Suspension Allowed)

Vendors	QTY	UOM	Price	Extended Cost	Complete	Comments
ROBERTS TRUCK CENTER LLC	1	Each	$615.0000	$615.00	Complete	

Line 009 | Option 8: Haul Max Rear Suspension System (No Leaf Spring Type Suspension Allowed)

Vendors	QTY	UOM	Price	Extended Cost	Complete	Comments
ROBERTS TRUCK CENTER LLC	1	Each	$377.0000	$377.00	Complete	

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March 16, 2015

Purchases Utilizing Government Entities Contracts
Cooperative Contracts and Agreements
Ordinance No. 38-122 Section 2.64.020 (j)

SUBJECT: Portable Radios utilizing State of Kansas Contract 39052.

Qty 20, $32,634.00, EVXG-PF78M Portable, XG-75, 764-870MHz, SYS, MIDNT BLK
Qty 20, $0.20, MAEV-NPL3R, Feature, Max (1024+) System/Groups
Qty 20, $0.20, EV-PL4U, Feature, Single-Key DES Encryption
Qty 20, $3,552.00, MAEV-PKGPT, Feature Package, P25 Trunking
Qty 20, $3,552.00, MAEV-PKGMR, Option, Immersible Radio Operation
Qty 40, $2,368.00, EV-PA3R, Battery, Li-ION, 2400 MAH
Qty 20, $2,368.00, MAEV-NAE6A, SPEAKERMIC, COILED
Qty 20, $296.00, MAEV-NHC2G, Belt Clip, Standard, P7300
Qty 20, $1,776.00, MAEV-NCH9T, Charger, Single, Tri-Chem

Department: Police Department

Vendor	Reference Authority	Total Cost
Harris Corporation, per the State of Kansas Contract #39052 for Public Safety Communication Equipment	Ordinance No. 38-122 Section 2.64.020 (j)	$59,274.40

THE CITY OF WICHITA Wichita, Kansas
Department of Public Works

PRELIMINARY ESTIMATES
FOR CITY COUNCIL MARCH 17, 2015

a. 2015 Sanitary Sewer Rehabilitation Phase A (north of 31st Steet South, east of Hillside) (468-85018/620736/665006) Traffic to be maintained during construction using flagpersons and barricades. (District I,II,III) - $325,600.00

b. K-96 & Hoover Interchange (K-96, west of West Street) (472-84780/706999/636310/209464/774079) See Special Provisions. (District V, VI) - $6,920,000.00

c. Oliver Street Water Main Extension between 37th Street North and Willow Point (along Oliver, north of 37th Steet) (448-90608/636315/774084) Traffic to be maintained during construction using flagpersons and barricades. (District I) - $375,000.00

City of Wichita
City Council Meeting
March 17, 2015

TO: Mayor and City Council

SUBJECT: Design Agreement for Paving Improvements along Dora and Everett Streets (District IV)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendation: Approve the agreement.

Background: Dora, from Everett to St. Clair, and Everett, from Dora to May, are currently unpaved streets located east of Meridian and north of Pawnee. On December 9, 2014, the City Council approved an amendment to the 2014-15 First Program Action to utilize unexpended Community Development Block Grant (CDBG) funds for neighborhood stabilization projects. One of the three projects identified was District IV Street Paving, which includes this proposed project area.

On January 23, 2015, the Staff Screening and Selection Committee reviewed proposals from the four consulting firms that responded to the City's Request for Proposals. The committee selected Ruggles & Bohm to design the paving improvements. The selection was based on the firm's previous design work on projects of similar size and nature, as well as the proposed overall plan and well-tailored schedule.

Analysis: The proposed agreement between the City and Ruggles & Bohm provides for design paving, curb and gutter, and drainage improvements for both streets.

Financial Considerations: The design fee is $17,800. The use of CDBG funds for this project was approved by the City Council on January 13, 2015, as part of the second amendment to the 2014-15 First Program Action plan.

Legal Considerations: The agreement has been reviewed and approved as to form by the Law Department.

Recommendation/Action: It is recommended that the City Council approve the agreement and authorize the necessary signatures, including those for the acquisition or granting of easements, utility relocation agreements, and required permits.

Attachments: Agreement.

AGREEMENT

for

PROFESSIONAL SERVICES

between

THE CITY OF WICHITA, KANSAS

and

RUGGLES & BOHM, P.A.

for

DORA AVENUE AND EVERETT AVENUE

THIS AGREEMENT, made this 10th day of February, 2015, by and between the CITY OF WICHITA, KANSAS, party of the first part, hereinafter called the "CITY" and RUGGLES & BOHM, P.A., party of the second part, hereinafter called the "ENGINEER".

WHEREAS, the CITY intends to construct;

Paving **DORA** from Everett to St. Clair and **EVERETT** from Dora to May (south of Kellogg, east of Meridian) (Project No. 472-85194).

NOW, THEREFORE, the parties hereto do mutually agree as follows:

I. SCOPE OF SERVICES

The ENGINEER shall furnish professional services as required for designing paving improvements on Dora Avenue and Everett Avenue, and to perform the PROJECT tasks outlined in the SCOPE OF SERVICES (**Exhibit "A"**).

II. IN ADDITION, THE ENGINEER AGREES

A. To provide the various technical and professional services, equipment, material and transportation to perform the tasks as outlined in **Exhibit "A"**.
B. To attend meetings with the City and other local, state and federal agencies as necessitated by the SCOPE OF SERVICES.
C. To make available during regular office hours, all calculations, sketches and drawings such as the CITY may wish to examine periodically during performance of this agreement.
D. To save and hold CITY harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of ENGINEER, its agents,

servants, employees, or subcontractors occurring in the performance of its services under this contract.

E. To maintain books, documents, papers, accounting records and other evidence pertaining to costs incurred by ENGINEER and, where relevant to method of payment, to make such material available to the CITY.

F. To comply with all Federal, State and local laws, ordinances and regulations applicable to the work, including Title VI of the Civil Rights Act of 1964, and to comply with the CITY'S Affirmative Action Program as set forth in **Exhibit "B"** which is attached hereto and adopted by reference as though fully set forth herein.

G. To accept compensation for the work herein described in such amounts and at such periods as provided in Article IV and that such compensation shall be satisfactory and sufficient payment for all work performed, equipment or materials used and services rendered in connection with such work.

H. To complete the services to be performed by ENGINEER within the time allotted for the PROJECT in accordance with **Exhibit "A"**; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond control of the ENGINEER.

I. Covenants and represents to be responsible for the professional and technical accuracies and the coordination of all designs, drawings, specifications, plans and/or other work or material furnished by the ENGINEER under this agreement. ENGINEER further agrees, covenants and represents, that all designs, drawings, specifications, plans, and other work or material furnished by ENGINEER, its agents, employees and subcontractors, under this agreement, including any additions, alterations or amendments thereof, shall be free from negligent errors or omissions.

J. ENGINEER shall procure and maintain such insurance as will protect the ENGINEER from damages resulting from the negligent acts of the ENGINEER, its agents, officers, employees and subcontractors in the performance of the professional services rendered under this agreement. Such policy of insurance shall be in an amount not less than $500,000.00 subject to a deductible of $10,000.00. In addition, a Workman's Compensation and Employer's Liability Policy shall be procured and maintained. This policy shall include an "all state" endorsement. Said insurance policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment, which, for any reason, may not fall within the provisions of the Workman's Compensation Law. The liability limit shall be not less than:

Workman's Compensation – Statutory
Employer's Liability - $500,000 each occurrence.

Further, a comprehensive general liability policy shall be procured and maintained by the ENGINEER that shall be written in a comprehensive form and shall protect ENGINEER against all claims arising from injuries to persons (other than ENGINEER'S employees) or damage to property of the CITY or others arising out of any negligent act or omission of ENGINEER, its agents, officers, employees or subcontractors in the performance of the professional services under this agreement. The liability limit shall not be less than $500,000.00 per occurrence for bodily injury, death and property damage. Satisfactory Certificates of Insurance shall be filed with the CITY prior to the time ENGINEER starts any work under this agreement. In addition, insurance policies applicable hereto shall contain a provision that provides that the CITY shall be given thirty (30) days written notice by the insurance company before such policy is substantially changed or canceled.

K. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The ENGINEER agrees to advise the CITY, in writing, of the person(s) designated as Project Manager not later than five (5) days following issuance of the notice to proceed on the work required by this agreement. The ENGINEER shall also advise the CITY of any changes in the person designated Project Manager. Written notification shall be provided to the CITY for any changes exceeding one week in length of time.

III. THE CITY AGREES:

A. To furnish all available data pertaining to the PROJECT now in the CITY'S files at no cost to the ENGINEER. Confidential materials so furnished will be kept confidential by the ENGINEER.

B. To provide standards as required for the PROJECT; however, reproduction costs are the responsibility of the ENGINEER, except as specified in **Exhibit "A"**.

C. To pay the ENGINEER for his services in accordance with the requirements of this agreement.
D. To provide the right-of-entry for ENGINEER'S personnel in performing field surveys and inspections.
E. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The CITY agrees to advise, the ENGINEER, in writing, of the person(s) designated as Project Manager with the issuance of the notice to proceed on the work required by this agreement. The CITY shall also advise the ENGINEER of any changes in the person(s) designated Project Manager. Written notification shall be provided to the ENGINEER for any changes exceeding one week in length of time.
F. To examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by ENGINEER in a timely fashion.

IV. PAYMENT PROVISIONS

A. Payment to the ENGINEER for the performance of the professional services required by this agreement shall be made on the basis of the lump sum fee amount specified below:

Project No. 472 85194 $17,800.00

B. When requested by the CITY, the ENGINEER will enter into a Supplemental Agreement for additional services related to the PROJECT such as, but not limited to:
   1. Consultant or witness for the CITY in any litigation, administrative hearing, or other legal proceedings related to the PROJECT.
   2. Additional design services not covered by the scope of this agreement.
   3. Construction staking, material testing, inspection and administration related to the PROJECT.
   4. A major change in the scope of services for the PROJECT.

   If additional work should be necessary, the ENGINEER will be given written notice by the CITY along with a request for an estimate of the increase necessary in the not-to-exceed fee for performance of such additions. No additional work shall be performed nor shall additional compensation be paid except on the basis of a Supplemental Agreement duly entered into by the parties.

V. THE PARTIES HERETO MUTUALLY AGREE:

A. That the right is reserved to the CITY to terminate this agreement at any time, upon written notice, in the event the PROJECT is to be abandoned or indefinitely postponed, or because of the ENGINEER'S inability to proceed with the work.
B. That the field notes and other pertinent drawings and documents pertaining to the PROJECT shall become the property of the CITY upon completion or termination of the ENGINEER'S services in accordance with this agreement; and there shall be no restriction or limitation on their further use by the CITY. Provided, however, that CITY shall hold ENGINEER harmless from any and all claims, damages or causes of action which arise out of such further use when such further use is not in connection with the PROJECT.
C. That the services to be performed by the ENGINEER under the terms of this agreement are personal and cannot be assigned, sublet or transferred without specific consent of the CITY.
D. In the event of unavoidable delays in the progress of the work contemplated by this agreement, reasonable extensions in the time allotted for the work will be granted by the CITY, provided, however, that the ENGINEER shall request extensions, in writing, giving the reasons therefor.
E. It is further agreed that this agreement and all contracts entered into under the provisions of this agreement shall be binding upon the parties hereto and their successors and assigns.
F. Neither the CITY'S review, approval or acceptance of, nor payment for, any of the work or services required to be performed by the ENGINEER under this agreement shall be construed to operate as a waiver of any right under this agreement or any cause of action arising out of the performance of this agreement.
G. The rights and remedies of the CITY provided for under this agreement are in addition to any other rights and remedies provided by law.
H. It is specifically agreed between the parties executing this contract, that it is not intended by any of the provisions of any part of this contract to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this contract to maintain a suit for damages pursuant to the terms or provisions of this contract.

IN WITNESS WHEREOF, the CITY and the ENGINEER have executed this agreement as of the date first written above.

BY ACTION OF THE CITY COUNCIL

Robert Layton, City Manager

SEAL:

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Sharon Dickgrafe, Interim Director of Law

RUGGLES & BOHM, P.A.

(Name & Title)

Christopher M. Bohm
Pres.

ATTEST:

EXHIBIT "A"

SCOPE OF SERVICES

CAPITAL IMPROVEMENT PROGRAM (CIP) PROJECTS

Upon award of this project the ENGINEER will contact utility companies directly and determine from the existing records the location of all utilities. Coordination with the utility companies involved will include a conceptual plan jointly developed with the utility company indicating the methods employed to resolve utility conflicts. The conceptual plan should include elements of designing around the utility, analysis of construction expense vs. design expense, and utility company expenses to resolve conflicts.

On projects that disturb one acre or more, the ENGINEER will prepare a storm water pollution prevention plan, prepare the necessary permit application(s) and include any provisions or requirements in the project plans and special provisions. The storm water pollution prevention plan shall also include submittal of a Notice of Intent (NOI) prior to bidding; site-specific erosion control plan; and standard Best Management Practice (BMP) detail sheets per **Attachment No. 1 to Exhibit "A".**

Associated improvements as part of these projects will include, when applicable: permanent traffic signalization system improvements, permanent traffic signing, permanent pavement markings, construction traffic control, construction phasing, incidental drainage, sidewalk, identification of additional right-of-way and furnishing tract drawings and legal descriptions for such right-of-way.

The ENGINEER shall furnish engineering services as required for the best and most cost effective design for the development of the project and provide project alternatives where applicable, including landscaping and beautification provisions on streets where appropriate in available right-of-way; the project plans; supplemental specifications; quantities of work; and estimates of the cost for the PROJECT in the format and detail required by the City Engineer for the City of Wichita; and the Kansas Department of Transportation (KDOT); and the U.S. Army Corps of Engineers, or any other regulatory agency, when applicable. The project alternatives, including proposed landscaping, are to be presented to the City's Design Council, when directed by the Design Engineer, for concurrence in selection prior to progressing to detailed aspects of the work. ENGINEER should use plant material that is drought resistant and requires low maintenance in a xeriscape concept, and is consistent with the City of Wichita Landscape Policy for Arterial Streets. A landscape architect should be included on the ENGINEER's Design Team.

The ENGINEER should identify all trees that may be in conflict or jeopardy of damage by construction activities and then review with Park Department to determine if the trees can be saved and/or moved. In addition, the ENGINEER will notify the City Archaeologist at 316-978-3195 prior to beginning work on this project.

All references below to KDOT only apply to State and Federal Aid projects.

THIS IS NOT A STATE/FEDERAL AID CONTRACT.

In connection with the services to be provided, the ENGINEER shall:

A. PHASE I - PRELIMINARY CONCEPT DEVELOPMENT

When authorized by the CITY and where applicable, proceed with development of Study and Alternative Concepts for the PROJECT in the detail deemed necessary to permit the preparation of preliminary and final plans for construction of the improvements based on the preliminary information provided to the ENGINEER.

1. Review Alternative Design Concepts. Review alternative design concepts with the City Engineer or his designated representative prior to progressing to detail aspects of the work. Alternative concepts as ascertained shall be reviewed and discussed with the City Engineer or his designated representative for concurrence in determining the best horizontal and vertical alignments for the PROJECT. CITY'S concurrence in selection of an alternate or preliminary concept will be contingent on the accuracy and

completeness of the background information provided by the ENGINEER used in the evaluation process.

2. Review Preliminary Design Concepts. Review preliminary design concepts with the City Engineer for the City of Wichita prior to progressing to detail aspects of the work. Preliminary design concepts shall be provided on a strip map suitable for presentation at public meetings as required by the City Engineer of the City of Wichita.
3. Drainage Study. When authorized, conduct a detailed study to explore alternative design concepts concerning drainage for the PROJECT. Present the findings in writing identifying recommendations to the CITY, including preliminary cost estimates, prior to development of field check plans. Such written findings and recommendations must be in a format which is self-explanatory and readily understood by persons with average backgrounds for the technology involved.
4. Preliminary Street and Storm Water Sewer Alignments and Profiles. Prepare preliminary street geometrics/alignments with proposed street and storm water sewer grades to conform to the drainage plan for the PROJECT. The drainage plan and computations shall be submitted along with one (1) set of preliminary street and storm water sewer profiles to the CITY for review and approval prior to proceeding with development of field check plans.
5. Preliminary Water Line and Sanitary Sewer Alignments and Profiles. Preliminary water and sanitary sewer alignments and grades are to be reviewed with the CITY by the ENGINEER for approval prior to proceeding to detail aspects of the work. The ENGINEER shall verify and coordinate work to be completed with the Public Works & Utilities Department.
6. Right-of-Way & Temporary Construction Easements. Identify permanent right-of-way and temporary construction easement requirements for the preliminary concepts developed. Such right-of-way and temporary construction easement requirements shall be provided on a strip map suitable for presentation at public meetings as required by the City Engineer.
7. Public Hearings. Assist the City in the conduct of a public hearing(s) on the proposed improvements for the PROJECT as necessary to inform the public, governmental agencies, and affected parties as to construction traffic control, construction sequence and methods, estimated time and duration of project construction, environmental assessment, right-of-way requirements, estimated project costs, etc. Provide adequate visual displays for public presentations and in electronic format for use in Power Point presentation.
8. S. I. & A. for Existing Bridges. For the duration of the project, the ENGINEER shall perform National Bridge Inventory (NBI) inspections as per the KDOT Bridge Inspection Manual in addition to load rating and updating the Structural Inventory and Appraisal (S. I. & A.) form for submittal to KDOT for all existing bridges within the project limits as per regular City inspection schedule.
9. Landscape Plans. When the design has fulfilled the program requirements, submit a PDF set of landscape plans to the CITY'S project manager. After the project manager approves the plans, he/she will submit the same to the Park Department for review and comments. When the Park Department has approved the plans, the ENGINEER may proceed with placing them on the Design Council agenda for review and comment, as directed by the CITY.
10. Design Council. As requested, ENGINEER shall meet with the City's Design Council to review the PROJECT design and interpret engineering drawings. The first presentation should be made at the point when the ENGINEER has arrived at a design which meets all of the functional requirements of the program and has been tentatively approved by the City staff person in charge. Before authorization is given to the ENGINEER to move on to design development, the PROJECT should be presented to the Design Council for review.

B. PHASE II - PLAN DEVELOPMENT

When authorized by the CITY, proceed with development of Plans for the PROJECT based on the preliminary design concepts approved by the CITY.

1. Design Council. As requested, ENGINEER shall meet with the City's Design Council to review the PROJECT design and interpret engineering drawings. The PROJECT should be presented when the design of the PROJECT has been perfected to the point where all design factors (shape, size, materials, colors, landscape, exterior relationship, amenities, etc.) have been decided and tentatively approved by staff. It is at this point that the design can be considered "frozen" and will not be changed except for unforeseen conditions, which may arise. (It should be noted it is in the ENGINEER'S

best interest to reach design freeze and gain aesthetic approval as early in the project as possible. Whereas the Design Council does not presume to tell the ENGINEER or staff when in the planning process design freeze should take place, the amount of time and effort which the ENGINEER has invested in the development of construction documents or other activities will not be taken into consideration by the Design Council at the Design Freeze review.)

2. Field Check Plans. When authorized by the CITY, prepare field check plans and a preliminary cost estimate for the PROJECT based on approved preliminary concepts as required by the CITY. ENGINEER to submit one copy of preliminary cost estimate and two (2) sets of field check plans to the CITY and one copy of preliminary cost estimate and one electronic set of field check plans to KDOT, to be uploaded to the KDOT FTP site. ENGINEER to participate in a field check of the PROJECT with the CITY and with KDOT when required. Major items of work included in development of field check plans are:

   (a) Field Surveys. Provide engineering and technical personnel and equipment to obtain survey data as required for the engineering design. Utility companies shall be requested to flag or otherwise locate their facilities within the PROJECT limits prior to the ENGINEER conducting the field survey for the PROJECT. Utility information shall be clearly noted and identified on the plans.

   (b) Utility Coordination. Identify all potential utility conflicts and provide preliminary field check plans showing the problem locations, posted to the City's FTP site. **Plans will clearly identify specific utility company facilities by color and by name (i.e. not just "gas" or "fiber optic").** ENGINEER shall include a conflict list for each utility, also posted to the FTP site. ENGINEER shall meet with utility company representatives to review plans and utility verification forms **(Attachment No. 3 to Exhibit "A") at each milestone date and as directed by the CITY and as determined necessary by the ENGINEER.** This information will be compiled into a summary report **(Attachment No. 4 to Exhibit "A")** maintained and updated by ENGINEER as necessary to present a cohesive and reflective status of utilities, and provided to the City as necessary. **ENGINEER shall maintain involvement with utility companies until all conflicts have been resolved (not just identified).** When appropriate, the City Engineer will approve the identification on plans of conflicts to be resolved during construction. ENGINEER shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction.

   (c) Soils and Foundation Investigations. The CITY may authorize ENGINEER to direct an approved Testing Laboratory to perform subsurface borings and soils investigations for the PROJECT, which shall be reported in the format and detail required by the City Engineer for the City of Wichita. The Testing Laboratory shall be responsible for the accuracy and competence of their work. The ENGINEER'S contract with the Testing Laboratory shall provide that the Testing Laboratory is responsible to the City for the accuracy and competence of their work. The cost of soils and boring investigations shall be passed directly to the City of Wichita if not included in the ENGINEER'S fee estimate.

   (d) Property Acquisitions. Prepare right-of-way/easement tract maps and descriptions as required in clearly drawn detail and with sufficient reference to certificate of title descriptions. ENGINEER will perform all necessary survey work associated with marking the additional right-of-way or easements. This shall include the permanent monumentation of new corners for any additional right-of-way and a one-time marking of all the right-of-way for utility relocations at a time directed by the CITY. **The ENGINEER shall perform all necessary title work and sufficient research for determination of current right-of-way and easements.**

   (e) Temporary Construction Easements. Prepare legal descriptions for Temporary Construction Easements (TCE) for all parcels where the construction limits extend beyond the existing/proposed right-of-way, and submit tract maps to the City that are suitable for mailing to property owners. The tract maps should include all features shown on the plans, including but not limited to structures, trees, fences, signs, monuments, etc, and should indicate if such items will be impacted within the required easement. Incorporate TCE limits on the plans.

   (f) **ENGINEER shall provide a clearly defined list of known encroachments into the existing right-of-way, including but not limited to structures, fences, planters, walls, etc.**

The list shall be in tabular form and include the property address and owner information, approximate baseline station of the encroachment, and nature/description of the same.

(g) ENGINEER shall provide a list of proposed driveway closures, relocations or other changes. The list shall be in tabular form and include the property address and owner information, approximate baseline station of the approach, and nature/description of the same.

3. Office Check Plans. When authorized by the CITY prepare office check plans for the PROJECT based upon comments as agreed upon in field check review. Major items of work included in development of office check plans are:

(a) Plan Submittal. Submit two (2) sets of office check plans to the CITY, with one copy of supplemental specifications and one copy of cost estimates and quantities of work units of the PROJECT for office check. (Cost estimates to be based on current unit prices for similar work in the Wichita area unless otherwise directed by the CITY.) Field check plans marked with CITY and/or KDOT comments are to be returned to the CITY with office check plan submittals. ENGINEER to participate in an office check of the PROJECT with the CITY and KDOT when required.

(b) Utility Coordination. Identify all potential utility conflicts and provide preliminary office check plans showing the problem locations, posted to the City's FTP site. **Plans will clearly identify specific utility company facilities by color and by name (i.e. not just "gas" or "fiber optic").** ENGINEER shall include a conflict list for each utility, also posted to the FTP site. ENGINEER shall meet with utility company representatives to review plans and utility verification forms **(Attachment No. 3 to Exhibit "A") at each milestone date and as directed by the CITY and as determined necessary by the ENGINEER.** This information will be compiled into a summary report **(Attachment No. 4 to Exhibit "A" also available on the City's FTP site)** maintained and updated by ENGINEER as necessary to present a cohesive and reflective status of utilities, and provided to the City as necessary. **ENGINEER shall maintain involvement with utility companies until all conflicts have been resolved (not just identified).** When appropriate, the City Engineer will approve the identification on plans of conflicts to be resolved during construction. ENGINEER shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction.

(c) Plan Requirements. Office check plans shall include traffic signalization details, traffic signing details, pavement marking details, incidental drainage, construction phasing details (when applicable), construction traffic control details, and all other necessary construction details required for the PROJECT. The PROJECT'S plans and proposed special provisions shall address the requirements included in the City's Administrative Regulation 6.5, "Cleanup, Restoration or Replacement Following Construction."

(d) Permits. The ENGINEER shall prepare any and all necessary permits for this PROJECT, such as the preparation of applications for U.S. Army Corps of Engineers (404) permits, Division of Water Resources permit, Kansas Department of Wildlife and Parks permit and Kansas Department of Health and Environment permit. Also if requested by the CITY, obtain construction approval from the U.S. Army Corps of Engineers and assist the CITY in coordinating the archaeological review of the PROJECT. **The ENGINEER shall be responsible for the cost of all permit fees that are required to complete the PROJECT. The cost shall be included in the design fee submitted by the ENGINEER.**

4. Final Plans. When authorized by the CITY prepare final plans for the PROJECT based upon comments as agreed upon as a result of the office check review. Major items of work included in development of final plans are:

(a) Prepare engineering plans (which shall include construction sequencing and traffic control), supplemental specifications, special provisions and construction cost estimates, or estimates of the quantities of work for the PROJECT.

(b) Final Plan Submittals. Final plans, field notes and other pertinent project mapping records are to be submitted per **Attachment No. 1 to Exhibit "A"**.

(c) Technical construction specifications shall in general follow the City of Wichita's Standard Specifications and/or KDOT Standard Specifications supplemented as necessary to suit

PROJECT requirements. Plan profile sheets shall also be required for water distribution system/water supply line improvements.

(d) **ENGINEER shall provide a clearly defined list of known encroachments into the existing right-of-way, including but not limited to structures, fences, planters, walls, etc.** The list shall be in tabular form and include the property address and owner information, approximate baseline station of the encroachment, and nature/description of the same. **The list of encroachments should reflect conditions at the time of final plan submittal.**

(e) ENGINEER shall provide a list proposed driveway closures, relocations or other changes. The list shall be in tabular form and include the property address and owner information, approximate baseline station of the approach, and nature/description of the same.

(f) Engineer's cost estimate information shall be submitted in tabular form and on a unit cost basis, as approved by the CITY and as required by KDOT. Pay items of work shall conform to the CITY's Master Bid Item List.

(g) Final plans when submitted shall be complete and ready for reproducing for distribution to prospective bidders.

(h) All applicable coordinate control points and related project staking information shall be furnished on the plans in the form of a bubble map, as well as on a CD-ROM in a text format agreed upon by the CITY. This coordinate information will be used by the CITY for construction staking purposes. See **Attachment No. 2 to Exhibit "A"** for required coordinate information.

(i) The date identified as the date of CITY acceptance of final plans and other supplementary work will be that date upon which the City Engineer ascertains that such plans and work are in accordance with all provisions of the contract for design services.

(j) ENGINEER shall provide the CITY with electronic files suitable for power point presentations to the Design Council and City Council.

5. Staking and Inspection If requested by the CITY, the ENGINEER will enter into a Supplemental Agreement to complete construction staking, material testing, inspection and administration related to the PROJECT.

6. Post Letting.

(a) All shop drawings submitted by the contractor for the PROJECT shall be reviewed and, when acceptable, approved for construction by the ENGINEER for the PROJECT.

(b) The ENGINEER shall meet with effected property owners, along with City staff, at a preconstruction Public Information Meeting, as arranged by the City, to explain project design, including such issues as construction phasing and traffic control.

(c) New Right-of-Way Monumentation. The Engineer shall complete permanent monumentation of all new R/W after project completion, complete and submit all necessary legal documentation for same.

(d) Section Corner Monuments. The Engineer shall provide services required by KSA Chapter 58, Article 20, Statute 58-2011, any time a section corner or monument will be endangered, disturbed, or removed. The City of Wichita Construction Engineer will receive a copy of all Land Survey Reference Reports submitted to the Secretary of State Historical Society. All costs associated with this effort shall be the responsibility of the Engineer. The City will provide a three business day notice to the Engineer to mark the monument location for re-establishment after pavement work is completed. The City will then core and install a cast iron monument box and cover. The Engineer will be notified within three business days after the box is installed to reset the final monument.

(e) S. I. & A. for Bridges. Upon completion of any and all bridge construction, the ENGINEER shall perform the National Bridge Inventory (NBI) inspection as per KDOT Bridge Inspection Manual, in addition to load rating and updating the Structural Inventory and Appraisal (S. I. & A.) form for submittal to KDOT for all bridges within the project limits regardless of initial structure size.

Attachment No. 1 to Exhibit "A" – CIP Scope of Services

Plan Submittal

Water projects plans shall be submitted with (1) set of mylar plans; and a CD of the .dwgs and .pdfs. This includes projects that have the water plans incorporated into that project, for which the cover sheet should also be included.

Storm Sewer, Sanitary Sewer and Paving plans shall be submitted in a .dwg and .pdf format on a CD.

In addition, two (2) sets of 11"x17" plans will be submitted at the time of final .pdf submittal for ALL projects, regardless of the type.

Storm Water Pollution Prevention

For any project disturbing one acre of ground or more, the design Consultant must prepare a Notice of Intent and a Storm Water Pollution Prevention Plan and submit them to the KDHE for approval. Complete copies of the approved NOI and SWP3 must be provided to the City. One hard copy should be provided to the project engineer upon approval, one electronic copy should be included with your transmittal of PDF plan files, and one additional electronic copy should be sent to the attention of Mark Hall at the following address:

City of Wichita
Storm Water
455 N. Main 8th Floor
Wichita, KS 67202

THIS INCLUDES **ALL** PROJECTS DISTURBING ONE ACRE OR MORE – I.E. NEW DEVELOPMENT, ARTERIAL STREETS, DIRT STREETS, BIKE PATHS, SEWER MAINS, ETC.

The City of Wichita will, under no circumstance, bid any project without first receiving copies of the KDHE approved NOI and SWP3.

The design of all City of Wichita construction projects must include the development of a site-specific erosion control plan. The site-specific erosion control plan must be included in the project plans. Every component and requirement of the erosion control plan must be separately and accurately accounted as a measured quantity bid item in the engineer's estimate.

Please note that careful consideration must be given to the transition of BMP maintenance responsibilities throughout the course of multi-phased projects. All intended responsibilities must be clearly demonstrated by the bid items. For example, if it is intended that the contractor of a subsequent waterline project be responsible for the maintenance of silt fence installed with a preceding sanitary sewer project, a measured quantity bid item must be submitted for x-lf of silt fence maintenance.

The City's current BMP standard detail sheets shall be included in all plans. These five sheets must be included in every plan set developed for the City of Wichita, regardless of project size.

Attachment No. 2 to Exhibit "A" – CIP Scope of Services

Required Plan Coordinate Information

Arterial Street Projects & Infill (Existing Neighborhoods)

I. SANITARY SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments
- benchmarks, including TBM set with preliminary survey
- center of manholes
- end of manhole stubs (when longer than five feet)

II. WATER LINE

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- beginning and ends of pipe
- all P.I.'s/deflections (horizontal and vertical)
- FH's, tees, bends, air release, valves

III. STORM SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- for skewed inlets typically in intersection radii, or not parallel to baseline – center of curb inlet **AND** center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- end of end section, at CL of pipe
- center, end of pipe at outside face of headwall; if headwall not perpendicular to pipe, each corner of headwall at outside face
- center of all drop inlets, manholes, and other structures
- center of RCBC at each end (outside face of hubguard); if box rotated, each corner, outside face

IV. PAVING

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- center of signal poles, service and junction boxes, controller, etc.; ends and P.I.'s for retaining walls, at back of walls

THE SAME COORDINATE SYSTEM SHALL BE USED FOR ALL SEPARATE PHASES OF A LARGER INFILL OR ARTERIAL STREET PROJECT.

Sub-Division Projects

I. SANITARY SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- center of manholes
- back and/or front lot corners for specifically referenced easement grading, outside that included in mass grading projects; include coordinates for vertical P.I. locations not at lot corners
- end of manhole stubs (when longer than five feet)

II. WATER DISTRIBUTION SYSTEM

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- beginning and ends of pipe
- all P.I.'s/deflections (horizontal and vertical)
- FH's, tees, bends, air release, valves

III. WATER SUPPLY LINE

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- beginning and ends of pipe
- all P.I.'s/deflections (horizontal and vertical)
- FH's, tees, bends, air release, valves

IV. STORM SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- for skewed inlets typically in intersection radii, or not parallel to baseline – center of curb inlet **AND** center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- end of end section, at CL of pipe
- center, end of pipe at outside face of headwall; if headwall not perpendicular to pipe, each corner of headwall at outside face
- center of all drop inlets, manholes, and other structures
- center of RCBC at each end (outside face of hubguard); if box rotated, each corner, outside face

V. MASS GRADING

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- all lot corners
- any grade breaks between front & rear lot corners
- high points/low points within drainage easements
- street area
    - centerline @ 100' Sta on tangent sections
    - pc/pt points & 50' along curves
- special drainage swales
    - pc/pt points, pi's & 50' Sta in between
- ponds
    - any grades breaks between pond bottom and rear property line
    - pc/mid radius/pt around pond curves
- for irregular shaped lots (mainly commercial or industrial developments) provide TIN file

VI. PAVING

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey

In addition to the required coordinate information, the following shall be included in all plans, at a minimum, as needed for construction staking on all City projects.

- Include copy of plat(s) on all plans, as relevant and approved by the Design Engineer
- Benchmarks – minimum of two City standards, four total desirable; as close to project as possible, even if TBM set with preliminary survey.
- Benchmark elevations must be in the same datum as the design (i.e. NAV 88 design needs NAV 88 benchmarks, not NAV 29)
- All control irons/identified property irons shall be shown on plans, with BL stationing and offset
- Show deflection angles in BL, and/or bearing/azimuth of BL sections
- Arterial project side streets – provide BL station at CL of intersection of the two streets, on the BL; BL station and offset to CL of side street at removal limits; include deflection angle from BL to CL of side street
- Existing FL/pavement grades shown at all match points
- Top of curb grades and stationing at all ends-of-return and horizontal/vertical P.I.'s, not just even stationing
- CL top of pavement grades for arterial
- CL elevation for streets on mass grading work @ 100' Sta in tangent sections and 50' on curves. **ELEVATION SHALL BE TO TOP OF ROCK BASE.**
- BL station and offset at all R/W changes; include R/W corners at all intersections, even if no change in R/W
- Clearly show existing grades at R/W and beyond; identify removal limits beyond R/W (for grade purposes) with BL station and offset, or dimension from R/W
- Show offset distance between BL and proposed street CL when not the same; establish clear relationship between the two
- BL station and offset to center of signal poles, service and junction boxes, controllers, etc.
- BL station and offset to back of retaining walls, at ends of walls and all P.I.'s
- Concrete pavement – provide detailed joint pattern, dimensions, and elevations for all valley gutters, intersections, and mainline pavement; should be separate plan sheet(s) with clear and project-specific details
- Storm Sewer – BL station and offset for all curb inlets, drop inlets, manholes, and other structures (to the coordinate point locations detailed in previous sheets); same for SS and WL – pertinent facilities should be referenced to BL station and offset
- Sanitary Sewer – show deflection angles between MH's
- Flow line elevations for manhole stubs

- Curve Tables – should include bends, tees, valves, FH's etc. for waterlines; ends-of-return, P.I.'s, etc. for paving
- Should be able to accurately scale off of plans

Attachment No. 3 to Exhibit "A" – CIP Scope of Services

Project Name

Utility Location Verification for ULCC Sub-Committee (Date)

Field Check: ☐ **Office Check:** ☐

UTILITY: _____ **Checked by** _____ **on** _____

Utility Location:

☐ None in Project Limits
☐ In Project Limits, No Relocation Necessary
☐ Utility will need to relocate
☐ Utility is located in Private Easement
☐ Private Easement Documentation Attached
☐ Utility will need to relocate and is interested in **proposed** ROW (IF applicable)

Briefly Describe Type and Location of Facilities within Project:

_____

_____

Estimate Time for Relocation: ☐ < 3 months ☐ 3-6 months ☐ 6-9 months ☐ > 9 months

Weather Sensitive: ☐ Yes ☐ No If yes, please explain: _____

Factors prerequisite to or that could affect relocation process (i.e. Regulatory Requirements):

_____

_____

Utility Plan Review:

☐ Correct as Shown ☐ Corrections needed ☐ Attachments provided for Consultant

Corrections necessary on plan sheets:

_____

_____

Additional Information requested from Consultant: _____

_____

Utility Requests Paper Plans (choose one): ☐ Full Size ☐ Half Size ☐ Cross-Sections (Full Size)

Please email this form on or before Date to:

Project Engineer Consultant	Leslie Hicks
Company	City of Wichita
E-mail	lhicks@wichita.gov

Attachment No. 4 to Exhibit "A" – CIP Scope of Services

Individual Project Name (i.e., Amidon, 21st to 29th Street North)										
Current Date	KDOT Proj. NO/ City Proj. NO	City Design Manager	Consultant	Date of First ULCC	Date of Second ULCC	Date of Plan Revision Distribution	Date of Second Plan Revision Distribution	R/W Purchased Y/N	Date Utilities notified of R/W completion	Project Proposed Bid Date	Proposed Utility Clear Date (project)
2/21/2013	1111111/ 2222222	Kallman	Ken Lee/ Ruggles & Bohm	2/21/2013	2/21/2013			No			

	Utility Contact	Utility needs to relocate (Y/N)	Utility in Private Easement (Y/N)	Utility needs PROPOSED R/W to relocate (Y/N)	Relocation Weather Sensitive (Y/N)	Estimated Date of Utility Design Completion	Time needed for relocation after utility design complete	Individual Utility Clear Date
Westar (Distribution)								
Location in Project: (Describe Existing Facilities)								
Relocation Needs:								
Comments:								
Westar (Transmission)								
Location in Project: (Describe Existing Facilities)								
Relocation Needs:								
Comments:								

KGS
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
Black Hills
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
AT&T
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:

Cox
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
Water
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
Sewer
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:

Stormwater
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
Other
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:

EXHIBIT "B"

REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements:

A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.

B. Requirements of the State of Kansas:

1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.

C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:

1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;
2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be

deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;

4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.
5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars ($5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.
2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

City of Wichita
City Council Meeting
March 17, 2015

TO: Mayor and City Council

SUBJECT: Change Order No. 4 for the Douglas Avenue Bus Facility Improvements (Districts I and VI)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendations: Approve the change order.

Background: On July 1, 2014, the City Council approved a contract with Cornejo & Sons for improvements to Douglas Avenue for bus facilities. Construction began in July 2014 and the following change orders have been processed or approved by the City Council for this project to date. None of the change orders resulted in an extension of the contract completion time.

Change Order History

Change Order	Date Processed or Approved	What Was Provided	Cost
Original	July 1, 2014	Original construction contract.	$799,924
No. 1	August 14, 2014	Extended roof drainage system and replaced the connecting inlet to provide a better connection. Adjusted a manhole and installed additional piping to avoid a utility conflict.	$8,327
No. 2	August 29, 2014	Replaced an overflow drain with a storm water sewer manhole to prevent possible flooding of the nearby park.	$4,345
No. 3	December 12, 2014	Relocated a three piece sculpture on Market Street to maintain Americans with Disabilities Act compliance.	$1,960
		Total contract cost to date	$814,556

Analysis: The proposed change order is needed to provide adjustment of bid quantities based on final field measurements.

Financial Considerations: The cost of the adjustments is $39,604, which brings the total contract amount to $854,160. Funding is available in the existing budget, which was approved by the City Council on August 21, 2012, and is funded by general obligation bonds and Federal Transportation Assistance program grants.

Legal Considerations: The Law Department has reviewed and approved the change order as to form.

Recommendation/Action: It is recommended that the City Council approve the change order and authorize the necessary signatures.

Attachments: Change Order No. 4

4/24

CITY OF WICHITA

PUBLIC WORKS-ENGINEERING

February 3, 2015
CHANGE ORDER

To: Cornejo & Sons, LLC
Change Order No.: 4
Purchase Order No.: PO440615

Project: Douglas Ave Bus Facility Improvements
Project No.: 472-85080
OCA No.: 716138/716139/716140/716141
PPN: 716138/716139/716140/716141

Please perform the following extra work at a cost not to exceed $39,604.00

Work for this Change Order cannot be completed until approved by all. Contractor should expect approximately 6 weeks for approval.

CHARGE TO OCA No.:716138

Please perform the following extra work at a cost not to exceed $23,450.00

Additional Work: Adjust measured quantity paving items.

Reason for Additional Work: Adjust measured quantity paving items based on final field measurements.

Line #	KDOT #	Item	Negotiated/ Bid	Qty	Unit Price	Extension
31	N.A.	Concrete - 4" Non-Reinforced	Bid	(88) sf	$5.00	($440.00)
32	N.A.	Concrete, Colored - 4" Non-Reinf	Bid	201 sf	$8.00	$1,608.00
33	N.A.	Concrete Banding	Bid	7 sf	$80.00	$560.00
34	N.A.	Concrete Pavers on Concrete Base	Bid	66 sf	$26.00	$1,716.00
35	N.A.	Concrete Pavers on Aggregate	Bid	1,429 sf	$14.00	$20,006.00

CHARGE TO OCA No.:716141

Please perform the following extra work at a cost not to exceed $16,154.00

Additional Work: Adjust measured quantity paving items.

Reason for Additional Work: Adjust measured quantity paving items based on final field measurements.

Line #	KDOT #	Item	Negotiated/ Bid	Qty	Unit Price	Extension
22	N.A.	Water Service Adjustment	Bid	(2) ea	$1,500.00	($3,000.00)
26	N.A.	Sidewalk Paving Removal	Bid	1,136 sf	$4.00	$4,544.00
27	N.A.	Sidewalk Paver Removal	Bid	1,533 sf	$10.00	$15,330.00
48	N.A.	BMP, Curb Inlet Protection	Bid	(12) ea	$60.00	($720.00)

Total = $39,604.00

CIP Budget Amount:	**$234,500.00 (716138)** **$363,080.00 (716139)** **$52,420.00 (716140)** **$700,000.00 (716141)**	**Original Contract Amt.:**	**$799,924.00**
		Current CO Amt.:	**$39,604.00**
		Amt. of Previous CO's:	**$14,632.00**
Consultant:		**Total of All CO's:**	**$54,236.00**
(716138)			
Total Exp. & Encum. To Date:	**$208,916.11**	**Adjusted Contract Amt.:**	**$854,160.00**
CO Amount:	**$23,450.00**		
Unencum. Bal. After CO:	**$2,133.89**		
(716141)			
Total Exp. & Encum. To Date:	**$670,354.46**		
CO Amount:	**$16,154.00**		
Unencum. Bal. After CO:	**$13,491.54**		

Recommended By:

Steve Degenhardt, P.E. — Date 02/05/15
Construction Division Manager

Approved:

Gary Janzen, P.E. — Date 02/11/15
City Engineer

Approved:

Contractor — Date 2-9-15

Approved

Alan King — Date
Director of Public Works & Utilities

Approved as to Form:

Sharon L. Dickgrafe — Date
Interim Director of Law and City Attorney

By Order of the City Council:

Carl Brewer — Date
Mayor

Attest:
City Clerk

City of Wichita
City Council Meeting
March 17, 2015

TO: Mayor and City Council

SUBJECT: Change Order No. 7 for 29th Street North, Ridge to Hoover (Districts V and VI)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendations: Approve the change order.

Background: On March 4, 2014, the City Council approved a construction contract with Cornejo & Sons for improvements to 29th Street North, between Ridge and Hoover. Construction began in March 2014 and the following change orders have been processed or approved by the City Council to date. None of the change orders resulted in an extension of the contract completion time.

Change Order No.	Date processed or approved	What was provided	Cost
Original	March 4, 2014	Original construction contract.	$2,901,241
1	June 10, 2014	Removed and replaced a portion of an existing pipe to achieve positive drainage when it was discovered that record information used during design contained inaccurate elevation.	$32,757
2	June 13, 2014	Adjusted tree removal measured quantity bid items based on final field measurements.	$8,160
3	July 15, 2014	Removed excess debris along storm water sewer line that was discovered during trenching operations.	$4,696
4	July 22, 2014	Modified traffic signals at 29th Street and Ridge intersection to meet Americans with Disabilities Act (ADA) requirements for new crosswalk configuration, as well as to avoid construction conflicts with electrical conduits.	$7,607
5	September 19, 2014	Adjusted water line bid items based on final field measurements.	$4,154
6	February 2, 2015	Reinforced unstable soil required to support traffic signal pole; trimmed trees rather than removing as originally planned; installed detectable warning brick at railroad crossing to meet ADA requirements; modified a curb inlet to connect to an existing pipe; removed concrete aprons from plans and replaced with less expensive sod; adjusted sanitary sewer manhole in new pavement; and removed two trees which were not included on the original plans, but needed to be removed after sustaining heavy root damage during excavation operations. The combined total of all positive and negative dollar amount changes resulted in a decrease to the overall contract cost.	($291)

Total contract cost to date $2,958,324

Analysis: The proposed change order provides adjustment of measured quantity bid items based on final field measurements of concrete, tree removal, pipe, and erosion control items. It also provides a reduction of previously approved Change Order No. 1 as the existing pipe was able to be reused.

Financial Considerations: The cost of the adjustments is $6,535, which brings the contract total to $2,964,859. Funding is available in the existing budget, which was approved by the City Council on January 7, 2014, and is funded by general obligation bonds.

Legal Considerations: The Law Department has reviewed and approved the change order as to form.

Recommendation/Action: It is recommended that the City Council approve the change order and authorize the necessary signatures.

Attachments: Change Order No. 7

4/22

CITY OF WICHITA

PUBLIC WORKS-ENGINEERING

February 2, 2015

CHANGE ORDER

To: Cornejo & Sons, LLC
Change Order No.: 7
Purchase Order No.: PO440222
CHARGE TO OCA No.: 706989

Project: 29th St. N., Ridge to Hoover
Project No.: 472-84691/448-90545
OCA No.: 706989/635703
PPN: 208454/761749

Please perform the following extra work at a cost not to exceed $6,535.00
Work for this Change Order cannot be completed until approved by all. Contractor should expect approximately 6 weeks for approval.

Additional Work: Adjustment of measured bid items.

Reason for Additional Work: Adjust measured bid items based on final field measurements. Adjust deduction on Change Order #1 for reusing existing storm sewer pipe. .

Line #	KDOT #	Item	Negotiated/ Bid	Qty	Unit Price	Extension
86	N.A.	Concrete Driveway 8" (Reinforced)	Bid	(1,935) sf	$6.00	($11,610.000)
87	N.A.	Concrete Sidewalk, 4"	Bid	614 sf	$2.65	$1,627.10
89	N.A.	Concrete Sidewalk, 8" (Reinforced)	Bid	229 sf	$5.50	$1,259.50
90	N.A.	Retaining Wall, Modular Block	Bid	54 sff	$28.00	$1,512.00
91	N.A.	Concrete Sidewalk Protection Curb	Bid	(163) lf	$22.00	($3,586.00)
92	N.A.	AC Driveway 5"	Bid	(22) sy	$25.00	($550.00)
93	N.A.	Electronic Message Board	Bid	40 day	$25.00	$1,000.00
94	N.A.	Tree Removed (Large)	Bid	2 ea	$365.00	$730.00
95	N.A.	Tree Removed (Small)	Bid	4 ea	$215.00	$860.00
96	N.A.	Pipe, SWS PVC 4" Perforated (Underdrain)	Bid	(65) lf	$10.00	($650.00)
97	N.A.	Fill, Sand (Flushed & Vibrated)	Bid	411 lf	$3.00	$1,233.00
98	N.A.	BMP, Curb Inlet Protection	Bid	(3) ea	$55.00	($165.00)
99	N.A.	BMP, Ditch Check	Bid	(9) ea	$80.00	($720.00)
100	N.A.	BMP, Back of Curb Protection	Bid	(11,126) lf	$0.40	($4,450.40)
101	N.A.	BMP, Silt Fence	Bid	(197) lf	$1.60	($315.20)
102	N.A.	BMP, Construction Entrance	Bid	(1) ea	$600.00	($600.00)
118	N.A.	AC Temp. 6" (w/5" Rock Base, Unreinforced)	Bid	856 sy	$30.00	$25,680.00
120	N.A.	Pile Drive Analyzer (PDA)	Bid	(1) ea	$2,200.00	($2,200.00)
123	N.A.	Cost reduction to reuse existing pipe	Negot'd	(84) lf	$30.00	($2,520.00)

CIP Budget Amount:	$4,105,000.00 (706989) $74,300.00 (635703)	**Original Contract Amt.:**	$2,901,241.42
		Current CO Amt.:	$6,535.00
Consultant: Baughman		**Amt. of Previous CO's:**	$57,083.41
Exp. & Encum. To Date:	$3,765,629.50	**Total of All CO's:**	$63,618.41
CO Amount:	$6,535.00		
Unencum. Bal. After CO:	$332,835.50	**Adjusted Contract Amt.:**	$2,964,859.83

Recommended By: GB

Steve Degenhardt, P.E.
Construction Division Manager

02/05/15
Date

Approved:

Gary Janzen, P.E.
City Engineer

02/11/15
Date

Approved:

Contractor 2-9-15 Date

Approved as to Form:

Sharon L. Dickgrafe Date
Interim Director of Law and City Attorney

Approved

Alan King Date
Director of Public Works & Utilities

By Order of the City Council:

Carl Brewer Date
Mayor

Attest:
City Clerk

City of Wichita
City Council Meeting
March 17, 2015

TO: Mayor and City Council

SUBJECT: Change Order No. 10 for K-96 and Greenwich Interchange (District II)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendations: Approve the change order.

Background: On January 7, 2014, the City Council approved a final construction budget for improvements to the interchange at K-96 & Greenwich. A construction contract with Dondlinger & Sons Construction, Inc. was approved by the City Council on February 4, 2014. Construction began in March 2014. The following change orders have been processed or approved by the City Council for this project to date. None of the change orders resulted in an extension of the contract completion time.

Change Order History

Change Order	Date Processed or Approved	What Was Provided	Cost
No. 1	April 1, 2014	Installation of a concrete cap over NuStar Energy's high pressure gas main to provide minimum coverage as required by the Kansas Department of Transportation (KDOT) and the utility. Originally, the gas main was to be relocated by NuStar at a cost to the City of $30,000. The concrete cap method was determined feasible after field measurements were obtained, resulting in significant time and cost savings.	$8,545
No. 2	April 17, 2014	Changed overhead sign structure footings as required by KDOT. Incorrect footing details were provided during design and later revised by KDOT during review of shop drawings.	$9,575
No. 3	May 2, 2014	Installation of 50 additional feet of concrete cap over NuStar's high pressure gas main, granular backfill for wingwalls, and extension of a fire hydrant water main. The additional concrete cap and granular backfill were required due to adjusted measurements and the fire hydrant extension was required to maintain proper grade.	$4,754
No. 4	July 15, 2014	Construction of sanitary sewer main extensions required for two adjacent developments. The platting and utility plans for the developments were not finalized until after construction plans for the interchange were complete. Constructing these improvements with the interchange project will provide cost savings by preventing future damage to the new pavement.	$40,891

Change Order History Continued

Change Order	Date Processed or Approved	What Was Provided	Cost
No. 5	June 27, 2014	Installation of erosion wattles and filters to foster grass growth in the newly seeded, sloping areas of K-96. Sufficient grass coverage must be achieved before KDOT will assume responsibility for maintenance of these areas.	$9,655
No. 6	July 10, 2014	Adjustment of measured quantity for temporary asphalt bid item based on final field measurements.	$6,072
No. 7	September 16, 2014	Additional wire fabric for the concrete pavement intersections as needed to meet City standards and maintain proper load-bearing capacity.	$15,402
No. 8	October 10, 2014	Partial depth repairs needed to provide clean joints between the new and existing pavement.	$3,825
No. 9	November 5, 2014	Relocation of existing traffic signal conduit to required subgrade.	$3,524
		Original contract amount	$6,761,573
		Total contract cost to date	**$6,863,816**

Analysis: The development on the east side of Greenwich Road, north of K-96, requires a sanitary sewer extension to serve future development as approved in Change Order No. 4. Changes to the proposed plan and construction schedule of the development's sanitary sewer project now requires installation of a manhole. Additionally, the development requires sewer and water main extensions. Steel casing was found on the existing water main at the tap location. The proposed tap must be moved north of the existing casing, which requires an additional 56 feet of pipe. A change order has been prepared to authorize the additional work and materials. No adjustment to the contract completion time is necessary.

Financial Considerations: The cost of the change order is $5,802, which brings the contract total to $6,869,618. The additional work and materials will be funded through the Sales Tax and Revenue (STAR) bond district and special assessment funding available in the existing approved budget.

Legal Considerations: The Law Department has reviewed and approved the change order as to form.

Recommendation/Action: It is recommended that the City Council approve the change order and authorize the necessary signatures.

Attachments: Change Order No. 10.

4M

CITY OF WICHITA

PUBLIC WORKS-ENGINEERING

January 22, 2015

CHANGE ORDER

To: Dondlinger & Sons Construction Co., Inc.
Change Order No.: 10
Purchase Order No.: 440135
CHARGE TO OCA No.:707041

Project: K-96 & Greenwich Interchange
Project No.: 472-85066
OCA No.: 707041/620661
PPN: 211506/774069

Please perform the following extra work at a cost not to exceed $5,802.00
Work for this Change Order cannot be completed until approved by all. Contractor should expect approximately 6 weeks for approval.

Additional Work: Add a sanitary sewer manhole to the pipe extension at the east right-of-way of Greenwich Road, north of K-96.

Reason for Additional Work: The development on the east side of Greenwich Road and north of K-96, K-96 & Greenwich North Addition, requires a sanitary sewer extension to serve future development approved in Change Order #4. Changes to the proposed plan and construction schedule of the development's sanitary sewer project now requires installation of a 5' diameter sanitary sewer manhole to connect the development's sewer improvements.

The work will be funded through the approved Star Bond district and/or Special Assessments to the benefit district. No adjustment to contract completion date is required.

Line #	KDOT #	Item	Negotiated/ Bid	Qty	Unit Price	Extension
190	N.A.	K-96 & Greenwich North sewer extension	Negotiated	1 LS	$6,618.00	$6,618.00
					Total =	$6,618.00

Additional Work: Add additional pipe for water line extension and remove the sewer extension on Greenwich Road, south of K-96

Reason for Additional Work: The development on the east side of Greenwich Road and south of K-96, K-96 & Kensington Gardens Addition, requires sewer and water main extensions to serve the future development approved in Change Order #4. Steel casing was found on the existing water main at the tap location. The proposed tap must be moved north of the existing casing and will now requires 56 feet of additional pipe.

The development made changes to their construction schedule and completed the sewer extension privately.

The work will be funded through the approved Star Bond district and/or Special Assessments to the benefit district. No adjustment to contract completion date is required.

Line #	KDOT #	Item	Negotiated/ Bid	Qty	Unit Price	Extension
191	N.A.	Kensington Gardens Addition water extension	Negotiated	1 LS	$3,640.00	$3,640.00
192	N.A.	Kensington Gardens Addition sewer extension	Negotiated	(1) LS	$4,456.00	($4,456.00)
					Total =	($816.00)

CIP Budget Amount:	**$10,250,000.00 (707041)** **$90,000.00 (620661)**	**Original Contract Amt.:**	**$6,761,573.16**
Consultant: PEC			
Total Exp. & Encum. To Date:	**$8,874,549.04**	**Current CO Amt.:**	**$5,802.00**
CO Amount:	**$5,802.00**	**Amt. of Previous CO's:**	**$102,243.00**
Unencum. Bal. After CO:	**$1,369,648.96**	**Total of All CO's:**	**$108,045.00**
		Adjusted Contract Amt.:	**$6,869,618.16**

8
10

Recommended By: James Wagner

Steve Degenhardt, P.E. — Date 01/28/15
Construction Division Manager

Approved:

Contractor — Date 1-30-15

Approved as to Form:

Sharon L. Dickgrafe — Date 2-9-15
Interim Director of Law and City Attorney

Approved:

Gary Janzen, P.E. — Date 01/30/15
City Engineer

Approved

Alan King — Date 02/05/15
Director of Public Works & Utilities

By Order of the City Council:

_____ — Date _____
Carl Brewer
Mayor

Attest: _____
City Clerk

City of Wichita
City Council Meeting
March 17, 2015

TO: Mayor and City Council

SUBJECT: Change Order No. 18 for Central, 135th to 119th Streets West (District V)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendation: Approve the change order.

Background: On February 5, 2013, the City Council approved a contract with Cornejo & Sons for construction of improvements to Central Avenue from 135th to 119th Streets West. The following change orders have been processed or approved by the City Council to date.

No.	Date Processed or Approved	Work Provided	Amount
Original	February 5, 2013	Original construction contract.	$7,928,062
1	March 18, 2013	Installation of required T-WORKS signage	$3,000
2	April 19, 2013	Adjustment of measured quantity bid items required to widen Central to a temporary shoofly	$6,050
3	April 25, 2013	Removal of a septic tank and subsequent sand backfill within the new right-of-way	$2,015
4	May 9, 2013	Adjustment of flow line elevations, installation of a modified inlet top and permanent pipe, removal of trees, and additional erosion control measures	$2,551
5	June 12, 2013	Installation of structural headwall for storm sewer pipe penetration	$3,844
6	June 24, 2013	Installation of additional manholes to tie in to existing storm sewer lines	$6,350
7	July 8, 2013	Lowering of an existing water line which was in conflict with proposed storm sewer pipe	$9,900
8	August 13, 2013	Lowering of storm sewer elevation to allow clearance for a reinforced concrete box under the new pavement	$23,914
9	September 17, 2013	Trenchless installation of a water main below a channel crossing.	$22,660
10	November 19, 2013	Removal and replacement of pavement on Jennie Street due to increased traffic during construction.	$98,050
11	October 29, 2013	Restoration of areas disturbed by waterline construction.	$4,978
12	November 15, 2013	Installation of structural headwall for storm sewer pipe penetration of a retaining wall.	$9,554

Continued from previous page

No.	Date Processed or Approved	Work Provided	Amount
13	January 10, 2014	Adjustment of measured quantity bid items based on final field measurements.	($4,278)
14	April 23, 2014	Removal of median on Central due to newly platted development. Work will be reimbursed by the developer.	$8,195
15	May 9, 2014	Adjustment of measured quantity bid items, additional curb construction, replacement of trees and manhole, and grading of slope.	($2,029)
16	June 12, 2014	Adjustment of measured quantity waterline bid items and installation of ditch checks.	$600
17	June 27, 2014	Adjustment of measured quantity bid items and installation of additional sod.	($361)

Total of all change orders processed to date $194,993

Total contract cost to date $8,123,055

Analysis: Construction plans incorrectly called for installation of three W4-2L signs, rather than W2-4R signs, at Central and 135th Street West. These signs will be replaced as required by the Manual on Uniform Traffic Control Devices. Additionally, construction phasing was adjusted so that a permanent pipe could be installed under Central, rather than a temporary pipe. This adjustment eliminated the need for a concrete collar, causing an underrun of this bid item.

A change order has been prepared to authorize the sign corrections and provide adjustment of bid quantities based on final field measurements. The contract completion time was extended 20 days due to numerous delays encountered with utilities which have affected the completion of two bridges within the project area.

Financial Considerations: The cost of the additional work is $180, bringing the total contract amount to $8,123,235. Funding for the additional work is available within the existing budget, which was approved by the City Council on September 25, 2012, and is funded by general obligation bonds and federal grants.

Legal Considerations: The Law Department has reviewed and approved the change order as to form.

Recommendation/Action: It is recommended that the City Council approve the change order and authorize the necessary signatures.

Attachments: Change Order No. 18.

4123

CITY OF WICHITA

PUBLIC WORKS-ENGINEERING

January 30, 2015
CHANGE ORDER

To: Cornejo & Sons, LLC

Change Order No.: 18
Purchase Order No.: PO340429
CHARGE TO OCA No.: 706898

Project: Central Street from 135th St. W. to 119th St. W.
Project No.: 87N-0351-01/472-84017
OCA No.: (706898/635814)
PPN: 204364/752036

Please perform the following extra work at a cost not to exceed $ 180.05

Work for this Change Order cannot be completed until approved by all. Contractor should expect approximately 6 weeks for approval.

Additional Work:
Item #1: Install W4-2R signs.
Item #2: Delete Concrete Collar bid item.
Item #3: Adjust measured quantity bid items.
Item #4: Add a calendar day extension.

Reason for Additional Work:
Item #1: Three W4-2L signs were installed per plan at Central and 135th. These need to be replaced with W4-2R signs.
Item #2: Change Order #4 approved adjusting the construction phasing to allow the contractor to install the permanent 42" storm water sewer pipe on Line 1 in lieu of temporary pipe. The temporary pipe was underrun on Change Order #4, the underrun of the associated concrete collar was not included with that change order. The concrete collar was not used, the cost needs underrun.
Item #3: Adjust measured quantity bid items based upon final field measurements.
Item #4: Due to the numerous utility delays that were encountered, the construction of the bridges on both Central and 135th were delayed. The adjusted completion date shall be August 21, 2014.

Item #1			Negotiated/			
Line #	KDOT #	Item (Non-Participating)	Bid	Qty	Unit Price	Extension
N.A.	52	Signing	Negotiated	1.0 LS	$525.50	$525.50

Item #2			Negotiated/			
Line #	KDOT #	Item (Participating)	Bid	Qty	Unit Price	Extension
81	04	Concrete Collar	Bid	(1.0) ea	$1,700.00	($1,700.00)

Item #3			Negotiated/			
Line #	KDOT #	Item (Participating)	Bid	Qty	Unit Price	Extension
91	12	Reinforcing Steel (Epoxy Coated) (Grade 60)	Bid	1,176.0 lbs	$0.90	$1,058.40
102	12	Reinforcing Steel (Epoxy Coated) (Grade 60)	Bid	1,176.0 lbs	$0.90	$1,058.40
157	09	BMP, Construction Entrance	Bid	(2.0) ea	$650.00	($1,300.00)
155	09	BMP, Silt Fence	Bid	(1,053.0) lf	$0.85	($895.05)
Line #	KDOT #	Item (Non-Participating)	Bid	Qty	Unit Price	Extension
91	12	Reinforcing Steel (Epoxy Coated) (Grade 60)	Bid	796.0 lbs	$0.90	$716.40
102	12	Reinforcing Steel (Epoxy Coated) (Grade 60)	Bid	796.0 lbs	$0.90	$716.40

Item #4 Line #	KDOT #	Item (Participating)	Negotiated/ Bid	Qty	Unit Price	Extension
Add	04	Calendar Day Extension	Negotiated	1.0 LS	$0.00	$0.00

Total = $180.05

CIP Budget Amount:	**$12,287,000.00 (706898)** **$1,404,000.00 (635814)**
Consultant: MKEC	
Total Exp. & Encum. To Date:	**$10,939,215.46**
CO Amount:	**$180.05**
Unencum. Bal. After CO:	**$1,347,604.49**

Original Contract Amt.:	**$7,928,061.97**
Current CO Amt.:	**$180.05**
Amt. of Previous CO's:	**$194,993.41**
Total of All CO's:	**$195,173.46**
Adjusted Contract Amt.:	**$8,123,235.43**

Recommended By: KK

02/05/15
Steve Degenhardt, P.E. Date
Construction Division Manager

Approved:

2/9/15
Contractor Date

Approved:

02/11/15
Gary Janzen, P.E. Date
City Engineer

Approved:

Alan King Date
Director of Public Works & Utilities

Approved as to Form:

Sharon L. Dickgrafe Date
Interim Director of Law and City Attorney

By Order of the City Council:

Carl Brewer Date
Mayor

Attest:

City Clerk

City of Wichita
City Council Meeting
March 17, 2015

TO: Mayor and City Council

SUBJECT: Change Order No. 7 for 135th Street West, Maple to Central (District V)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendation: Approve the change order.

Background: On August 8, 2014, the City Council approved a contract with Kansas Paving for improvements to 135th Street West between Maple and Central. The following change orders have been processed for this project to date:

Change Order	Date Processed or Approved	Provided	Cost
Original	August 8, 2014	Original construction contract.	$3,332,339
No. 1	September 2, 2014	Internal record keeping purposes to separate the encumbrances for the waterline construction work from the paving improvements.	$0.00
No. 2	October 21, 2014	Lowered an existing waterline five feet below plan elevation to accommodate a storm sewer outfall within the project. The contract completion time was extended six days.	$23,727
No. 3	December 9, 2014	Construction of a new water main below the street and adjacent storm water sewer to avoid conflicts with the proposed pavement that were not identified during design due to inaccurate record information. The contract completion time was extended two weeks.	$28,514
No. 4	November 10, 2014	Installed new water service at 13602 West Hardtner due to conflicts with the proposed subgrade and retaining wall construction.	$4,255
No. 5	December 8, 2014	Installed a safety grate over a storm sewer and added an air release assembly to an existing water main.	$8,792
No. 6	March 17, 2015	Adjustment of measured quantity bid items based on final field measurements for driveways, drainage pipe, and sleeves below the pavement.	$41,870
		Total contract cost to date	$3,439,497

Analysis: The driveway elevation at 431 North 135th Street was lowered for a flatter slope and improved access, thus requiring additional grading on private property. Additionally, the City's Storm Water division is responsible for mowing and maintaining an existing drainage easement parallel to 135th Street. Proposed project improvements include a multi-use path, which must now be thickened to prevent damage from maintenance equipment crossing it to access the easement. The concrete will also be colored to aid in identification of the thickened area. The additional work is a result of conditions that were changed during the construction phase and could not be identified during design. The proposed change order does not extend the contract completion time, but the approval time required does result in delay charges due to remobilization of needed equipment and slower crew production.

Financial Considerations: The cost of the change order is $9,775, made up of $7,475 for the additional work and $2,300 for the delay charges. The change order brings the total contract amount to $3,449,272. Funding is available in the existing budget, which was approved by the City Council on August 5, 2014, and is funded by general obligation at-large bonds.

Legal Considerations: The Law Department has reviewed and approved the change order as to form.

Recommendations/Actions: It is recommended that the City Council approve the change order and authorize the necessary signatures.

Attachments: Change Order No. 7.

CITY OF WICHITA

PUBLIC WORKS-ENGINEERING

March 5, 2015

CHANGE ORDER

To: Conspec, Inc. d/b/a Kansas Paving

Project: 135th Street West, Maple to Central

Change Order No.: 7
Purchase Order No.: PO440669
CHARGE TO OCA No.: 706938

Project No.: 472-84308
OCA No.: 706938/636303
PPN: 205404/774072

Please perform the following extra work at a cost not to exceed $9,775.00

Work for this Change Order cannot be completed until approved by all. Contractor should expect approximately 6 weeks for approval.

Additional Work: Driveway grading at 431 N. 135th Street West.

Reason for Additional Work: The driveway at 431 N. 135th was lowered for a flatter slope and improved access resulting in additional grading work needed on private property.

This work is critical to complete the project on schedule. The contractor anticipates restoring two-way traffic before a fully executed change order is completed and will require additional delay costs for flaggers and slower work production.

Line #	KDOT #	Bid Item	Negotiated/ Bid	Qty	Unit Price	Extension
New	N.A.	Driveway grading	Negot'd	1 LS	$4,025.00	$4,025.00
New	N.A.	Delay costs	Negot'd	1 LS	$1,150.00	$1,150.00

Additional Work: Install thickened concrete sidewalk

Reason for Additional Work: The Storm Water Division is responsible for mowing and maintaining an existing drainage easement parallel to 135th Street. The proposed multi-purpose path must be thickened to prevent damage from maintenance equipment that must cross the path to access the easement. A dye additive will be added to the concrete to aide identifying the thickened concrete.

This work is critical to complete the project on schedule. The contractor anticipates restoring two-way traffic before a fully executed change order is completed and will require additional delay costs for flaggers and slower work production.

Line #	KDOT #	Bid Item	Negotiated / Bid	Qty	Unit Price	Extension
New	N.A.	Thicken & dye concrete	Negot'd	1 LS	$3,450.00	$3,450.00
New	N.A.	Delay costs	Negot'd	1 LS	$1,150.00	$1,150.00

CIP Budget Amount:	**$4,145,000.00 (706938)** $ 86,000.00 (636303)	**Original Contract Amt.:**	**$3,332,338.59**
Consultant: Schwab Eaton		**Current CO Amt.:**	**$9,775.00**
Total Exp. & Encum. To Date:	**$4,066,110.99**	**Amt. of Previous CO's:**	**$107,158.20**
		Total of All CO's:	**$116,933.20**
CO Amount:	**$9,775.00**		
Unencum. Bal. After Co:	**$69,114.01**	**Adjusted Contract Amt.:**	**$3,449,271.79**

Recommended By:

_____ _____

Steve Degenhardt, P.E. Date
Construction Division Manager

Approved:

_____ _____

Contractor Date

Approved as to Form:

_____ _____

Sharon L. Dickgrafe Date
Interim Director of Law and City Attorney

Approved:

_____ _____

Gary Janzen, P.E. Date
City Engineer

Approved

_____ _____

Alan King Date

Director of Public Works & Utilities

By Order of the City Council:

_____ _____

Carl Brewer Date
Mayor

Attest:_____

City Clerk

CITY OF WICHITA
City Council Meeting
March 17, 2015

TO: Mayor and City Council

SUBJECT: Acquisition of Utility Easement at 10314 E. Windemere Court (District II)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: On December 10, 2013, the City Council approved the funding to replace or rehabilitate failing water and sewer infrastructure using the Water Mains Replacement or Relocation Program or the Reconstruction or Rehabilitation of Aged Sanitary Sewers Program. The removal of the Windemere Lift Station and replacement with a gravity flow line is a project within the Reconstruction or Rehabilitation of Aged Sanitary Sewers Program. To facilitate the project, it is necessary to acquire land from five parcels, three utility easements and two temporary construction easements. A utility easement is required from the single-family residence at 10314 E. Windemere Court.

Analysis: The proposed easement from 10314 E. Windemere Court is an irregular shape and consists of 217.8 square feet. The taking impacts a portion of the yard in the most northern section of the yard. The improvements within the easement area are typical for residential. The easement was valued at $2,090. This amount includes $90 for the easement, or $.40 per square foot for the land; $500 for damages to trees; and $1,500 for damages to the privacy fence. This amount was offered to the owner and accepted.

Financial Considerations: The funding source for the project is Sewer Utility Funds. A budget of $2,265 is requested. This includes $2,090 for the acquisition, and $175 for title work and other administrative fees.

Legal Considerations: The Law Department has approved the real estate agreement as to form.

Recommendation/Action: It is recommended that the City Council; 1) approve the budget; 2) approve any necessary budget adjustments; 3) approve the real estate purchase agreement; and 4) authorize the necessary signatures.

Attachments: Real estate purchase agreement, tract map, and aerial map.

REAL ESTATE PURCHASE CONTRACT

THIS AGREEMENT, Made and entered into this 13 day of 2, 2015 by and between Farishta Behzadpour and Eraj Vessali, party of the First Part, hereinafter referred to as "Seller," whether one or more, and the City of Wichita, Kansas, a municipal corporation, party of the Second Part, hereinafter referred to as "Buyer," whether one or more.

WITNESSETH: That for and in consideration of the mutual promises, covenants and payments hereinafter set out, the parties hereto do hereby contract to and with each other, as follows:

1. The Seller does hereby agree to sell and convey to the Buyer by a good and sufficient perpetual easement for the purpose of constructing, operating, maintaining, and repairing a sewer system, over, along and under the following described real estate situated in Sedgwick County, Kansas, to wit:

   A Sanitary Sewer Easement described as follows:

   COMMENCING at the Northeast corner of Lot 38, Block 1, Tallgrass East 3rd Addition to Wichita, Sedgwick County, Kansas; Thence Bearing S48°26'47"W, along the westerly line of said Lot 38, a distance of 30.70 feet; Thence Bearing S41°33'13"E, a distance of 5.00 feet to the **POINT OF BEGINNING**; Thence Bearing S48°26'47"W, parallel with and 5' southeasterly of said westerly line a distance of 21.26 feet; Thence Bearing S57°03'01"E, a distance of 19.38 feet to a point that is 20' West of the East line of said Lot 38; Thence Bearing N00°49'15"W, parallel with and 20' West of said East line a distance of 24.65 feet to the **POINT OF BEGINNING**.

   (Said Sanitary Sewer Easement containing 0.005 acres, more or less)

2. The Buyer hereby agrees to purchase, and pay to the Seller, as consideration for the conveyance to him of the above-described real property, damages to trees and fencing, the sum of Two Thousand Ninety Dollars ($2,090) in the manner following to-wit: cash at closing.

3. A title insurance company's commitment to insure or a complete abstract of title certified to date, to the above described real property, showing a merchantable title vested in the seller, subject to easements and restrictions of record is required. The Title Evidence shall be sent to the Office of Property Management for the City of Wichita for examination by the Buyer as promptly and expeditiously as possible, and it is understood and agreed that the Seller shall have a reasonable time, but not to exceed thirty (30) days after said Title Evidence has been examined in which to correct any defects in title. If defects in title are not corrected to Buyer's satisfaction, Buyer, at Buyer's option, may cancel this contract. In the event an Owners title insurance policy is furnished, the total cost of the commitment to insure and the title insurance policy will be paid by Buyer.

4. A duly executed copy of this Purchase Agreement shall be delivered to the parties hereto.

5. It is further agreed by and between the parties hereto that all rentals, insurance (if policies acceptable to Buyer), and interest, if any shall be adjusted and prorated as of the closing date. Taxes and specials shall be pro-rated for calendar year on the basis of 100% of

taxes levied for the prior year. All prior years specials and taxes shall be current at time of closing.

6. The Seller further agrees to convey the above-described premises and deliver possession of the same in the same condition as they now are, reasonable wear and tear accepted.

7. Seller shall place no encumbrances on the property during the period from execution of this contract to closing. In addition, Seller shall be responsible for carrying such insurance as is reasonable on the improvements up until the closing date.

8. It is understood and agreed between the parties hereto that time is of the essence of this contract, and that this transaction shall be consummated on or before March 13, 2015.

9. Possession to be given to Buyer at closing

10. Closing costs shall be paid by Buyer.

11. Site Assessment

A. At any time prior to the closing of this agreement, Buyer shall have the right to conduct or cause to be conducted an environmental site assessment and/or testing on the property. If an environmental audit or test reveals the presence of a hazardous substance or waste, as defined by federal or state law, or that there has been a spill or discharge of a hazardous substance or waste on the property, Buyer shall have the right to void this agreement upon notice to Seller, in which event neither party shall be under any further obligation to the other, with the exception that Seller shall return to Buyer any deposit made hereunder.

B. Provided, however, Buyer shall in no event be obligated to close before the completion of a site assessment made pursuant to Paragraph A above. If a site assessment is completed after the closing date set herein, then Buyer and Seller shall close or Buyer shall advise Seller that this agreement is being voided pursuant to said paragraph within ten (10) days of the completion of the site assessment. Buyer shall, if Buyer determines a site assessment is necessary, exercise good faith in commencing and diligently completing such site assessment after this agreement is executed by all parties.

WITNESS OUR HANDS AND SEALS the day and year first above written.

SELLER:

Farishta Behzadpour

Farishta Behzadpour

Eraj Vessali

BUYER:

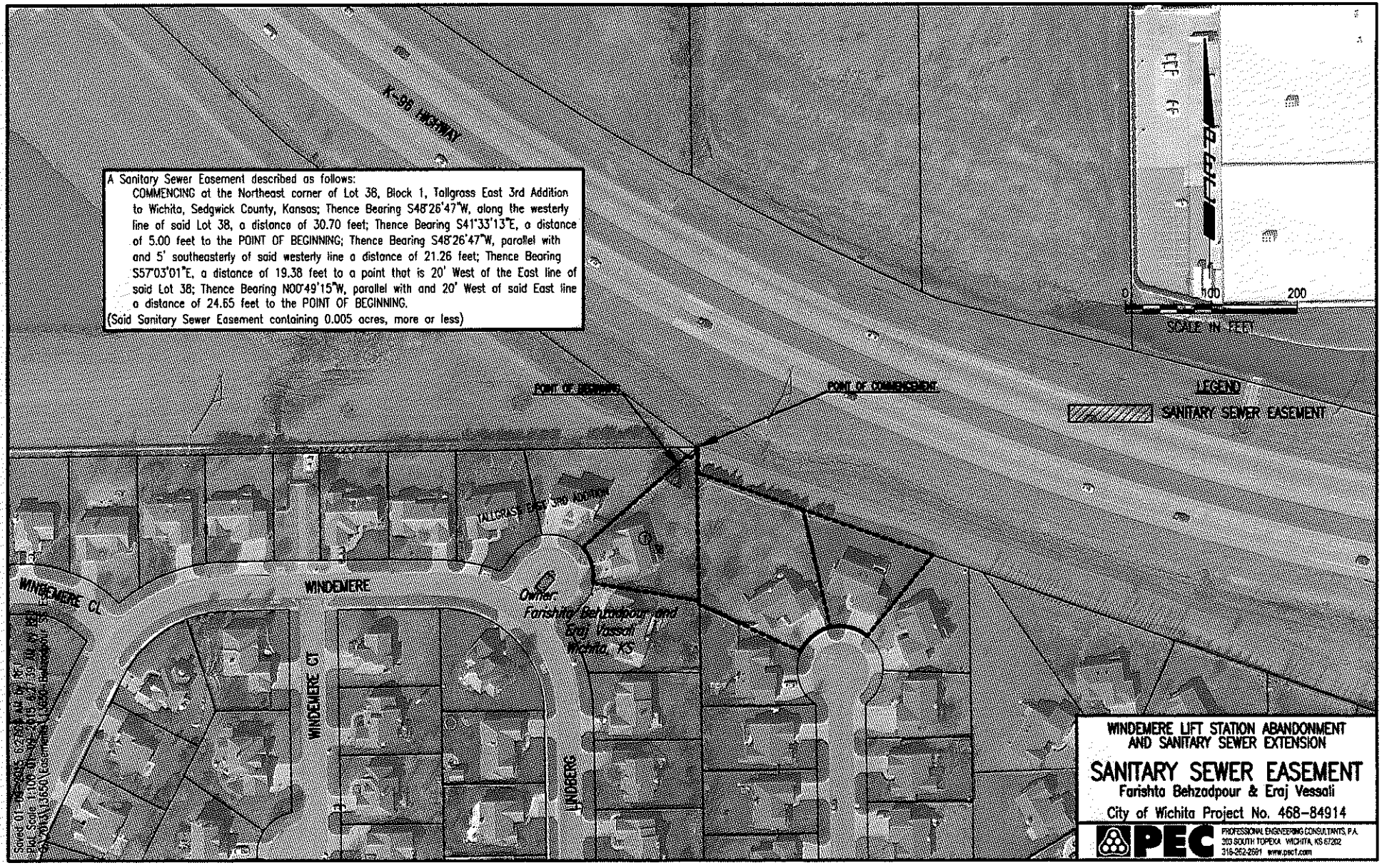
Carl Brewer, Mayor

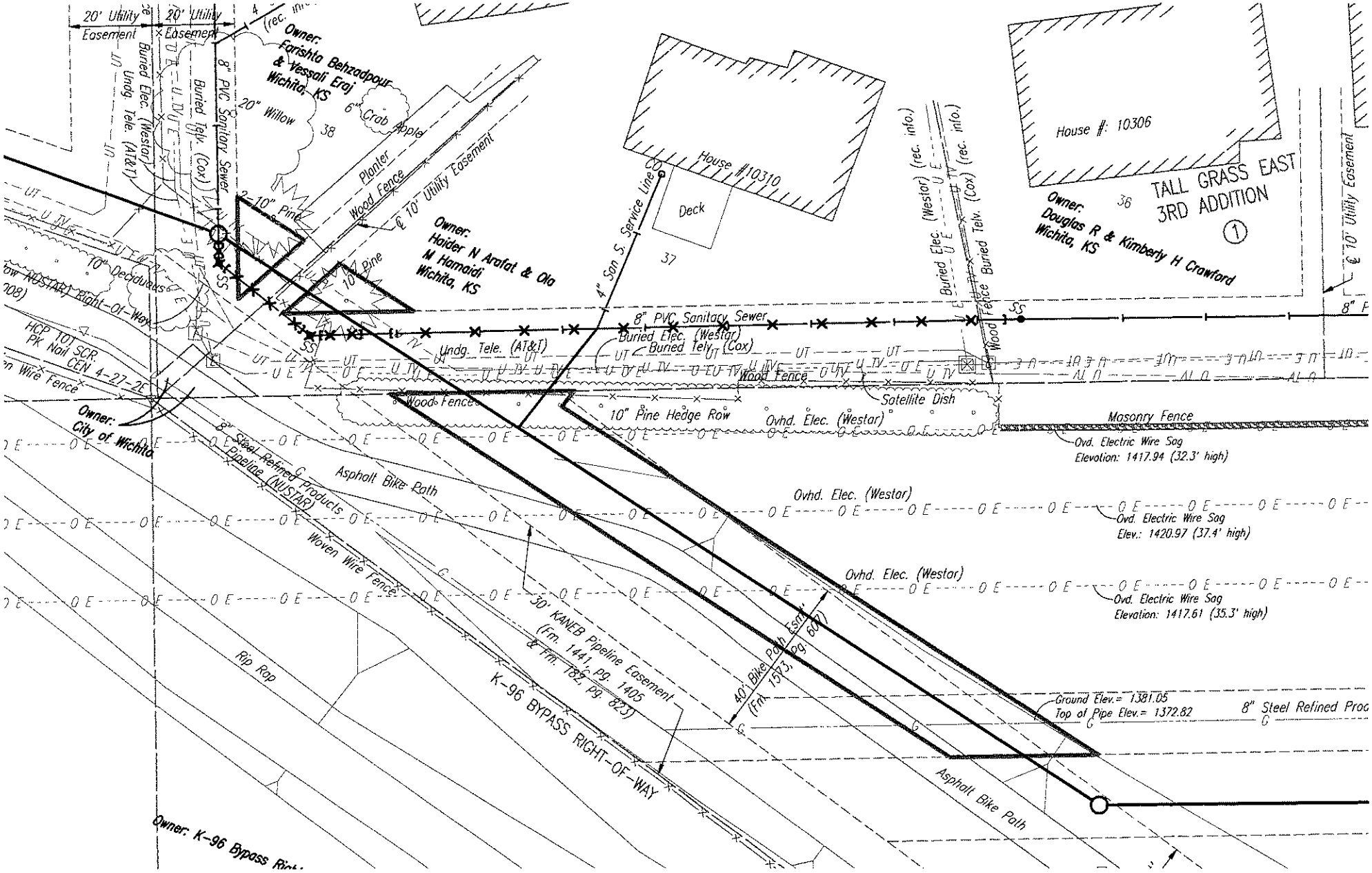
ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

Sharon Dickgrafe/MK
Sharon Dickgrafe, Interim City Attorney


A Sanitary Sewer Easement described as follows:
COMMENCING at the Northeast corner of Lot 38, Block 1, Tallgrass East 3rd Addition to Wichita, Sedgwick County, Kansas; Thence Bearing S48°26'47"W, along the westerly line of said Lot 38, a distance of 30.70 feet; Thence Bearing S41°33'13"E, a distance of 5.00 feet to the POINT OF BEGINNING; Thence Bearing S48°26'47"W, parallel with and 5' southeasterly of said westerly line a distance of 21.26 feet; Thence Bearing S57°03'01"E, a distance of 19.38 feet to a point that is 20' West of the East line of said Lot 38; Thence Bearing N00°49'15"W, parallel with and 20' West of said East line a distance of 24.65 feet to the POINT OF BEGINNING.
(Said Sanitary Sewer Easement containing 0.005 acres, more or less)
K-96 HIGHWAY
POINT OF BEGINNING
POINT OF COMMENCEMENT
TALLGRASS EAST 3RD ADDITION
WINDEMERE CL.
WINDEMERE
WINDEMERE CT.
LINDBERG
Owner
Farishta Behzadpour and
Eraj Vassali
Wichita, KS
0
100
200
SCALE IN FEET
LEGEND
SANITARY SEWER EASEMENT
WINDEMERE LIFT STATION ABANDONMENT
AND SANITARY SEWER EXTENSION
SANITARY SEWER EASEMENT
Farishta Behzadpour & Eraj Vessali
City of Wichita Project No. 468-84914
PEC
PROFESSIONAL ENGINEERING CONSULTANTS, P.A.
303 SOUTH TOPEKA WICHITA, KS 67202
316-262-2691 www.pec1.com


20' Utility Easement
20' Utility Easement
Owner: Farishta Behzadpour & Vessali Eraj Wichita, KS
8" PVC Sanitary Sewer
Buried Elec. (Westar)
Undg. Tele. (AT&T)
Buried Telv. (Cox)
20" Willow
6" Crab Apple
Planter
Wood Fence
2-10" Pine
10" Pine
10" Deciduous
Owner: Haider N Arafat & Ola M Hamaidi Wichita, KS
4" San S. Service Line
House #: 10310
Deck
37
38
House #: 10306
TALL GRASS EAST 3RD ADDITION
36
Owner: Douglas R & Kimberly H Crawford Wichita, KS
Buried Elec. (Westar) (rec. info.)
Buried Telv. (Cox) (rec. info.)
Wood Fence
8" PVC Sanitary Sewer
Undg. Tele. (AT&T)
Buried Elec. (Westar)
Buried Telv. (Cox)
Wood Fence
Satellite Dish
Masonry Fence
10" Pine Hedge Row
Ovhd. Elec. (Westar)
Ovd. Electric Wire Sag
Elevation: 1417.94 (32.3' high)
HCP TOT SCR. PK Nail CEN 4-27-2E
Owner: City of Wichita
8" Steel Refined Products Pipeline (NUSTAR)
Asphalt Bike Path
Woven Wire Fence
Ovhd. Elec. (Westar)
Ovd. Electric Wire Sag
Elev.: 1420.97 (37.4' high)
Ovhd. Elec. (Westar)
Ovd. Electric Wire Sag
Elevation: 1417.61 (35.3' high)
50' KANEB Pipeline Easement (Fm. 1441, pg. 1405 & Fm. 782, pg. 823)
40' Bike Path Esmt. (Fm. 1573, pg. 607)
Rip Rap
K-96 BYPASS RIGHT-OF-WAY
Ground Elev.= 1381.05
Top of Pipe Elev.= 1372.82
8" Steel Refined Prod
Asphalt Bike Path
Owner: K-96 Bypass

CONTRACTS & AGREEMENTS
BLANKET PURCHASE ORDERS RENEWAL OPTIONS
FEBRUARY 2015

COMMODITY TITLE	EXPIRATION DATE	VENDOR NAME	DEPARTMENT	ORIGINAL CONTRACT DATES	RENEWAL OPTIONS REMAINING
Airport/Air Service Consulting Services	2/28/2016	Seabury Airline Planning Group LLC	Airport	3/5/2013 - 2/28/2016	2 - 1 year options
Argon Gas, Liquid	2/29/2016	Lampton Welding Supply	Public Works & Utilities	3/1/2013 - 2/28/2014	Last option
Armored Car Services	2/28/2015	Garda CL Southwest, Inc.	Finance	3/1/2012 - 2/28/2013	2 - 1 year options
Ballast and Ballast Kits	2/29/2016	Star Electric Supply, Inc.	Various	3/1/2013 - 2/28/2014	Last option
Compactor Trucks and Open Dumpster Services for Neighborhood Cleanups - Primary Contractor (Furnish)	2/29/2016	Waste Connections of Kansas, Inc.	Public Works & Utilities	3/1/2013 - 2/28/2014	Last option
Compactor Trucks and Open Dumpster Services for Neighborhood Cleanups - Secondary Contractor (Furnish)	2/29/2016	Waste Management of Kansas Inc.	Public Works & Utilities	3/1/2013 - 2/28/2014	Last option
Concessions at Park Athletic Fields	2/29/2016	Joe Stevens Vending Co., Inc.	Park & Recreation	6/1/2014 - 2/28/2015	1 - 1 year option
Concessions at Park Athletic Fields	2/29/2016	Kona Ice NW Wichita LLC	Park & Recreation	6/1/2014 - 2/28/2015	1 - 1 year option
Concessions at Planeview Park Baseball Fields	2/29/2016	Juan Campos (Tiendita.La.Pelota)	Park & Recreation	6/1/2014 - 2/28/2015	1 - 1 year option
Ferrous Chloride	2/29/2016	OFS, Inc.	Public Works & Utilities	3/5/2013 - 2/28/2014	Last option
Fire Extinguisher Service	2/29/2016	Kansas Fire Equipment Co., Inc.	Various	3/1/2014 - 2/28/2015	1 - 1 year option
High Pressure Self-Contained Breathing Apparatus with Pass Associated Tools, Equipment and Software Personal SCBA Masks	2/28/2015	Municipal Emergency Services, Inc.	Fire	3/9/2010 - 2/28/2011	Last option
Horse Boarding Services	2/29/2016	Singletree Stables, Inc.	Police	3/1/2014 - 2/28/2015	3 - 1 year options
Lock Box Receipt Handling Services	2/29/2016	Intrust Bank NA	Finance	3/1/2012 - 2/28/2014	1 - 1 year option
Mow, Trim and Edge Residential Scattered Lots	2/29/2016	Dragonfly Lawn & Tree Care LLC	City Manager	3/1/2014 - 2/28/2015	1 - 1 year option
Paper Recycling	2/29/2016	International Paper	Various	3/1/2013- 2/28/2014	2 - 1 year options
Runway Broom Parts	2/29/2016	United Rotary Brush Corporation	Airport	3/1/2014 - 2/28/2015	1 - 1 year option
Special Waste Disposal Facility & Hauling	2/29/2016	Waste Connections of Kansas Inc. dba Plumb Thicket Landfill	Public Works & Utilities	3/1/2014 - 2/28/2015	1 - 1 year option
Substation Maintenance for ASR Phase II	2/13/2016	Utility Helpnet, Inc.	Public Works & Utilities	2/14/2012 - 2/13/2013	1 - 1 year option
Tow, Impound, Storage & On-Line Auction	2/29/2016	Arrow Wrecker Service Inc.	Police	3/1/2012 - 2/28/2013	Last option
Tow, Impound, Storage & On-Line Auction	2/29/2016	Bud Roat Towing & Repair	Police	3/1/2012 - 2/28/2013	Last option
Tow, Impound, Storage & On-Line Auction	2/29/2016	Happy Hooker Towing Inc.	Police	3/1/2012 - 2/28/2013	Last option
Tow, Impound, Storage & On-Line Auction	2/29/2016	Interstate Wrecker Service	Police	3/1/2012 - 2/28/2013	Last option
Tow, Impound, Storage & On-Line Auction	2/29/2016	Ken's Auto Tow Inc.	Police	3/1/2012 - 2/28/2013	Last option
Tow, Impound, Storage & On-Line Auction	2/29/2016	Tow Service Inc.	Police	3/1/2012 - 2/28/2013	Last option
Well Chemical Rehabilitation	2/29/2016	Layne Christensen Company	Public Works & Utilities	3/1/2013 - 2/28/2014	Last option
Workers Compensation Injuries Treatment	2/29/2016	Via Christi Rehabilitation Hospital, Inc.	Finance	3/1/2011 - 2/28/2012	Last option

PROFESSIONAL CONTRACTS UNDER $50,000
FEBRUARY 2015

VENDOR NAME	DOCUMENT NO	DOCUMENT TITLE	AMOUNT
Logic Inc.	DP540107	Software Maintenance/Support	42,621.72

ANNUAL MAINTENANCE CONTRACTS OVER $50,000
DIRECT PURCHASE ORDERS FOR FEBRUARY 2015

VENDOR NAME	DOCUMENT NO	DOCUMENT TITLE	AMOUNT		
Infor (US), Inc.	DP540116	Software Maintenance/Support	$77,916.04		

Agenda Item No. II-9

City of Wichita
City Council Meeting
March 17, 2015

TO: Mayor and City Council

SUBJECT: Payment for Settlement of Claim

INITIATED BY: Law Department

AGENDA: Consent

Recommendation: Authorize payment of $26,000 as a full settlement of the subject claim.

Background: This claim arises from a traffic accident which occurred on October 17, 2013, involving a City of Wichita bus.

Analysis: The claimant has offered to accept a lump sum payment of $26,000 as full settlement of all her claims against the City of Wichita. Due to the uncertainty and risk of an adverse judgment at trial, the Law Department recommends the settlement. The settlement of this claim does not constitute an admission of liability on the part of the City or the employee; rather, it is merely a settlement to resolve a disputed claim.

Financial Considerations: Funding for this settlement payment is available from the City's Self Insurance Fund. Finance is directed to make any budget adjustments required and to issue any general obligation bonds, as necessary, to provide for payment of the approved settlement.

Legal Considerations: The Law Department recommends settlement of this claim for the amount of $26,000. The bonding resolution has been prepared and approved as to form by the law department.

Recommendations/Actions: It is recommended that the City Council authorize payment of $26,000 as full settlement of all possible claims arising out of the events which are the subject of this claim and adopt the resolution.

Attachments: Bonding resolution.

RESOLUTION NO. 15-077

A RESOLUTION AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS OF THE CITY OF WICHITA, KANSAS TO FUND A CIVIL LITIGATION SETTLEMENT.

WHEREAS, K.S.A. 75-6113 (the "Act") provides that payment of any judgments, compromises or settlements for which a municipality is liable pursuant to K.S.A. 75-6101 *et seq.*, and amendments thereto, may be made from any funds or moneys of the municipality which lawfully may be utilized for such purpose or if the municipality is authorized by law to levy taxes upon property such payment may be made from moneys received from the issuance of no-fund warrants, temporary notes or general obligation bonds, provided that warrants or temporary notes issued shall mature serially at such yearly dates as to be payable by not more than 10 tax levies and any bonds shall be issued in accordance with the provisions of the general bond law and shall be in addition to and not subject to any bonded debt limitation prescribed by any other law of the state of Kansas; and

WHEREAS, the City of Wichita, Kansas (the "City"), is a municipality within the meaning of the Act; and

WHEREAS, the governing body of the City has heretofore approved a certain Settlement Agreement relating to an incident occurring on October 17, 2013, involving a City of Wichita bus, under which Settlement Agreement the City is liable pursuant to K.S.A. 75-6101 *et seq*. to pay a settlement in the amount of $26,000 and related expenses (the “Settlement”); and

WHEREAS, the governing body of the City hereby finds and determines it to be necessary to authorize the issuance of general obligation bonds of the City to finance the Settlement and related costs.

THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. Financing. The City is hereby authorized to issue general obligation bonds (the "Bonds") pursuant to the authority of the Act in an amount necessary to pay the costs of the Settlement, plus interest on interim financing and associated financing costs. Bonds may be issued to reimburse Settlement expenditures made on or after the date which is 60 days before the date of adoption of this Resolution, pursuant to Treasury Regulation §1.150-2.

SECTION 2. Effective Date. This Resolution shall take effect and be in full force from and after its adoption by the governing body of the City.

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ADOPTED by the City Council of the City of Wichita, Kansas, on March ____ 2015.

(SEAL)

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Sharon L. Dickgrafe,
Interim Director of Law

JLN\600809.053\\JUDGMENT AUTHORIZATION WPD

Agenda Item No. II-10

City of Wichita
City Council Meeting
March 17, 2015

TO: Mayor and City Council Members

SUBJECT: 2015 Property Crimes and Person Crimes Seizure Fund Budget

INITIATED BY: Police Department

AGENDA: Consent

Recommendation: Approve the establishment of the Property Crimes and Person Crimes seizure fund budget.

Background: Beginning in 2015, the Wichita Police Department will utilize the Property Crimes and Person Crimes Seizure Fund Budget to fund various police operations centered around property crimes and person crimes. The Property Crimes and Person Crimes Seizure Fund will consist of monies from Federal, State, and other agencies obtained as a result of investigations into illegal enterprises associated with property crimes (e.g. check fraud cases) and person crimes (e.g., gang-related cases). Monies will also be obtained from the sale of firearms associated with property crimes and person crimes, as mandated by state statute. After the judicial process is completed, the funds will be awarded to the Department. The Wichita Police Department will adhere to stringent Federal and State guidelines in accounting for and using the Property Crimes and Person Crimes Seizure Fund.

Analysis: The budget for the Property Crimes and Person Crimes seizure Fund is adopted to permit the expenditure of funds forfeited to the Wichita Police Department. Federal and State regulations require separate accounts for assets forfeited under different forfeiture programs.

Financial Considerations: As of February 19, 2015, the Property Crimes/Person Crimes seizure Fund Budget balance totaled $5,248.75. The budget in this amount in 2015 is recommended for police equipment.

Legal Consideration: Federal and State laws require local units of government to use forfeited assets to supplement the funds dedicated to law enforcement and prohibit substituting local funds with forfeited assets.

Recommendation/Action: It is recommended that the City Council approve and adopt the 2015 Property Crimes and Person Crimes Seizure Fund Budget.

Attachments: None.

City of Wichita
City Council Meeting
March 17, 2015

TO: Mayor and City Council

SUBJECT: Funding for Improvements to the Intersection of Mt. Vernon and Oliver (District III)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendations: Approve the revised budget, including the use of project savings, and adopt the amending resolution and place the amending ordinance on first reading.

Background: On August 5, 2014, the City Council approved a construction budget for improvements to the intersection of Mt. Vernon and Oliver. Improvements include pavement replacement, construction of a left turn lane on all approaches, and upgraded traffic signals. Construction began in August 2014.

Analysis: During construction additional work was needed to lower the existing curb line to provide positive drainage away from an existing garage and prevent flooding during heavy rain events. On the southeast corner of the intersection, low-hanging trees had to be removed from over the newly widened street to provide better sight visibility for adjacent driveways. Additionally, a traffic signal manhole had to be relocated and modified to avoid conflicts with existing utilities. Additional time was added to the contract to complete this work, which increased construction engineering and inspections costs. Final field measurements are currently underway and it is anticipated that additional funding will be needed to pay for overruns of some items, as well as the additional work, construction engineering, and inspection costs.

Financial Considerations: The existing budget of $1,550,000 is funded by $650,000 in general obligation (GO) at-large bonds and $900,000 in federal grants. Improvements to the intersection of Harry and Woodlawn were completed in 2014. Underruns of bid items resulted in project savings of over $500,000 in the GO-funded portion of the budget. Staff recommends transferring $100,000 of this available funding to the Mt. Vernon and Oliver project. Additionally, staff requests the City Council grant a waiver of City Council Policy No. 2 regarding the use of project savings to allow this transfer. This transfer would provide a total budget of $1,650,000 for construction, utility relocation, right-of-way acquisition, and Engineering staff costs for oversight and administration.

Legal Considerations: The amending resolution and amending ordinance has been reviewed and approved as to form by the Law Department.

Recommendation/Actions: It is recommended that the City Council approve the revised budget, including the use of project savings by waiving the applicable policy, adopt the amending resolution, place the amending ordinance on first reading, and authorize the necessary signatures.

Attachments: Budget sheets amending resolution and amending ordinance.

132019

First Published in the Wichita Eagle March 27, 2015

ORDINANCE NO. 49-961

AN ORDINANCE AMENDING ORDINANCE **NO. 49-096** OF THE CITY OF WICHITA, KANSAS WHICH AMENDED ORDINANCE NO. 48-693 OF THE CITY OF WOCHITA, KANSAS, DECLARING THE INTERSECTION OF **HARRY AND WOODLAWN (472-84882)** TO BE A MAIN TRAFFICWAY WITHIN THE CITY OF WICHITA, KANSAS; DECLARING THE NECESSITY OF AND AUTHORIZING CERTAIN IMPROVEMENTS TO SAID MAIN TRAFFICWAY; AND SETTING FORTH THE NATURE OF SAID IMPROVEMENTS, THE ESTIMATED COSTS THEREOF, AND THE MANNER OF PAYMENT OF SAME.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. SECTION 2 of Ordinance **No. 49-096** is hereby amended to read as follows:

"SECTION 2. SECTION 3 of Ordinance No. 48-693 is hereby amended to read as follows:

'SECTION 3. The cost of the construction of the above described improvement is estimated to be **One Million Nine Hundred Twenty-Nine Thousand Two Hundred Ninety-Seven Dollars ($1,929,297)** exclusive of the cost of interest on borrowed money. To the extent the cost of such improvements is not paid by Federal Grants administered by the Kansas Department of Transportation, the City of Wichita, Kansas, is authorized to issue general obligation bonds to pay such costs under the authority of K.S.A. 12-689 up to a maximum amount of $1,929,297, exclusive of the cost of interest on borrowed money.'"

SECTION 2. The prior version of SECTION 2 of Ordinance **No. 49-096** is hereby repealed.

SECTION 3. That the City Clerk shall make proper publication of this ordinance, which shall be published once in the official City Paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 24th day of March, 2015.

_____
CARL BREWER, MAYOR

ATTEST:

_____
KAREN SUBLETT, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

_____
SHARON L. DICKGRAFE
INTERIM DIRECTOR OF LAW AND CITY ATTORNEY

707074

RESOLUTION NO. 15-072

A RESOLUTION AMENDING AND SUPPLEMENTING RESOLUTION NO. 14-216 OF THE CITY OF WICHITA, KANSAS WHICH AUTHORIZED THE ISSUANCE OF GENERAL OBLIGATION BONDS TO PAY THE COSTS OF CERTAIN PUBLIC IMPROVEMENTS IN THE CITY.

WHEREAS, the City of Wichita, Kansas (the "City") is a municipal corporation, duly created, organized and existing under the Constitution and laws of the State; and

WHEREAS, the Governing Body is authorized, pursuant to K.S.A. 13-1024c, as amended by Charter Ordinance No. 156 of the City (the "Act") to issue general obligation bonds of the City without an election for the purpose of paying for the construction, purchase or improvement of any public improvement, including the land necessary therefore, and for the purpose of rebuilding, adding to or extending the same as the necessities of the City may require and for the purpose of paying for certain personal property therefore; and

WHEREAS, the Governing Body has heretofore by Resolution No. **14-216** of the City (the "Prior Resolution"), authorized the following described public improvements:

Design, acquisition of right-of-way, utility relocation, administration, and construction of improvements to Mt. Vernon and Oliver Intersection (472-85042).

(the "Project") and to provide for the payment of all or a portion of the costs thereof by the issuance of general obligation bonds of the City pursuant to the Act.

BE IS RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, AS FOLLOWS:

Section 1. Amendment. Section 1 of the Prior Resolution is hereby amended to read as follows:

> **Section 1. Project Authorization.** It is hereby authorized ordered and directed that the Project be acquired and/or constructed at an estimated cost of **$1,650,000** in accordance with prepared or approved by the City Engineer.

Section 2. Amendment. Section 2 of the Prior Resolution is hereby amended to read as follows:

> **Section 2. Project Financing.** All or a portion of the costs of the Project, interest on financing and administrative and financing costs shall be financed with the proceeds of general obligation bonds of the City (the "Bonds"). The Bonds may be issued to reimburse expenditures authorized herein on August 5, 2014 and made on or after June 6, 2014, and to reimburse additional expenditures authorized herein by amendment of March 3, 2015, and made on or after January 2, 2015, all pursuant to Treasury Regulation §1.150-2.

Section 3. Repealer; Ratification. Sections 1 and 2 of the Prior Resolution are hereby repealed; and the rest and remainder thereof is hereby ratified and confirmed.

Section 4. Effective Date. This Resolution shall be in full force and effect from and after its adoption by the Governing body.

ADOPTED by the City Council of the City of Wichita, Kansas, on March 17, 2015.

_____
CARL BREWER, MAYOR

(SEAL)

ATTEST:

_____
KAREN SUBLETT, CITY CLERK

APPROVED AS TO FORM:

_____
SHARON L. DICKGRAFE
INTERIM DIRECTOR OF LAW AND CITY ATTORNEY

Project Request

◉CIP ○Non-CIP CIP YEAR: 2015 CIP #:

☐ NEIGHBORHOOD IMPROVEMENT

DEPARTMENT: 13 Public Works & Utilities DIVISION: Engineering RESOLUTION/ORDINANCE #: 15-

ENGINEERING REFERENCE #: 472-85042

FUND: 400 Street Improvements SUBFUND: 405 Arterial Paving

COUNCIL DISTRICT: 03 Council District 3 DATE COUNCIL APPROVED: Mar 3, 2015 REQUEST DATE:

PROJECT # : 211502 PROJECT TITLE: Mt Vernon & Oliver Intersection

PROJECT DETAIL # : 01 PROJECT DETAIL DESCRIPTION: Mt Vernon & Oliver Intersection

OCA # : 707037 OCA TITLE: Mt Vernon & Oliver Intersection

PERSON COMPLETING FORM: Joni Chamberlain PHONE #: 268-4548

PROJECT MANAGER: Paul Gunzelman PHONE #: 268-4236

○NEW BUDGET ◉REVISED BUDGET

Revenue Object Level 3	Original Budget	Adjustment	New Budget
8062 Federal pass thru State	$900,000.00	$0.00	$900,000.00
9720 G.O. Bonds	$650,000.00	$100,000.00	$750,000.00
	$0.00	$0.00	$0.00
	$0.00	$0.00	$0.00
	$1,550,000.00	$100,000.00	$1,650,000.00

Expense Object Level 3			
2999 Contractuals	$1,550,000.00	$100,000.00	$1,650,000.00
	$0.00	$0.00	$0.00
	$0.00	$0.00	$0.00
	$0.00	$0.00	$0.00
Total Expense:	$1,550,000.00	$100,000.00	$1,650,000.00

NOTES:

Transfer in from Harry & Woodlawn project savings

Print Form

SIGNATURES REQUIRED

DIVISION HEAD: _____ DATE: _____

DEPARTMENT HEAD: _____ DATE: _____

BUDGET OFFICER: _____ DATE: _____

CITY MANAGER: _____ DATE: _____

Project Request

◉CIP ○Non-CIP CIP YEAR: [ ] CIP #: _____

☐ NEIGHBORHOOD IMPROVEMENT

DEPARTMENT: 13 Public Works & Utilities DIVISION: Engineering RESOLUTION/ORDINANCE #: 15-

ENGINEERING REFERENCE #: 472-84882

FUND: 400 Street Improvements SUBFUND: 405 Arterial Paving

COUNCIL DISTRICT: 14 Council Districts 2, 3 DATE COUNCIL APPROVED: Mar 3, 2015 REQUEST DATE: _____

PROJECT # : 210480 PROJECT TITLE: Harry & Woodlawn Intersection Improvements

PROJECT DETAIL # : 01 PROJECT DETAIL DESCRIPTION: Harry & Woodlawn Intersection Improvements

OCA # : 707015 OCA TITLE: Harry & Woodlawn Intersection Improvements

PERSON COMPLETING FORM: Joni Chamberlain PHONE #: 268-4548

PROJECT MANAGER: Paul Gunzelman PHONE #: 268-4393

○ NEW BUDGET ◉ REVISED BUDGET

Revenue Object Level 3	Original Budget	Adjustment	New Budget
8062 Federal pass thru State	$954,297.00	$0.00	$954,297.00
9720 G.O. Bonds	$1,075,000.00	($100,000.00)	$975,000.00
	$0.00	$0.00	$0.00
	$0.00	$0.00	$0.00
	$2,029,297.00	($100,000.00)	$1,929,297.00

Expense Object Level 3			
2999 Contractuals	$2,029,297.00	($100,000.00)	$1,929,297.00
	$0.00	$0.00	$0.00
	$0.00	$0.00	$0.00
	$0.00	$0.00	$0.00
Total Expense:	$2,029,297.00	($100,000.00)	$1,929,297.00

NOTES:

Transfer out to Mt Vernon & Oliver 707037

Print Form

SIGNATURES REQUIRED

DIVISION HEAD: _____ DATE: _____

DEPARTMENT HEAD: _____ DATE: _____

BUDGET OFFICER: _____ DATE: _____

CITY MANAGER: _____ DATE: _____

City of Wichita
City Council Meeting
March 17, 2015

TO: Mayor and City Council

SUBJECT: Agreement with YMCA for Improvements at 3300 South Meridian (District III)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendations: Approve the agreement, place the amending ordinance on first reading and adopt the resolution.

Background: The YMCA recently completed reconstruction of the entrance to the South campus off of Meridian, just south of 33rd Street South. Improvements included a wider and reconfigured drive, drainage modifications, sidewalks, and lighting to improve vehicular and pedestrian traffic flow. A portion of the improvements are located in public right-of-way and will be funded by the City through reimbursement to the YMCA. In addition, the City constructed a new traffic signal at the entrance, which was funded by the 2014-2015 Traffic Signalization Program.

Analysis: The proposed agreement between the City and the YMCA provides that the City will reimburse the YMCA for expenses incurred as a result of the required driveway modifications, and other associated improvements. The agreement also provides that the YMCA shall be responsible for maintenance and repair of the drive and sidewalk, while the City shall be responsible for maintenance and repair of the curb cut entrance serving the adjacent fire station.

In addition to, and as a condition of the agreement, an easement has been prepared which grants the YMCA access to a portion of the Alford Library property, for sidewalk construction.

Financial Considerations: The total cost of the YMCA's improvements was $613,845, and the portion for which the City is responsible is $119,022. Payment in full is due to the YMCA within 30 days of the approval date of the proposed agreement.

Funding is available in the Pawnee Bridge at Arkansas River project, which was put on hold in early 2014 due to a failed construction bid and is pending reprogramming in the proposed Capital Improvement Program for 2015. Staff requests the City Council approve the transfer of $120,000 from the Pawnee Bridge project to the 2014-2015 Traffic Signalization Program to allow for payment towards the proposed agreement. This will bring the total Traffic Signal budget to $1,170,000, and the Pawnee Bridge budget to $308,500. The funding source is general obligation at-large bonds.

Legal Considerations: The Law Department has reviewed and approved the agreement, easement, and amending resolutions as to form.

Recommendation/Actions: It is recommended that the City Council approve the agreement and easement, place the amending ordinance on first reading and adopt the resolution, and authorize the necessary signatures.

Attachments: Agreement, easement, budget sheets, amending ordinance and amending resolution.

AGREEMENT

This Agreement is made and effective this _____ day of _____, 2015, by and between the City of Wichita, a municipal corporation ("The City") and The Young Men's Christian Association, Wichita, Kansas, a Kansas not-for-profit corporation ("YMCA").

WHEREAS, The City is the owner of real property legally described as Lot 1, Block 1, YMCA South Addition, an Addition to Wichita, Sedgwick County, Kansas; and

WHEREAS, the YMCA is the owner of real property legally described as Lot 4, Block 1, YMCA South Addition, an Addition to Wichita, Sedgwick County, Kansas; and

WHEREAS, the YMCA has incurred expenses of $613,845.00 to construct and install a new private drive, sidewalks and lighting to improve vehicular and pedestrian ingress and egress from Meridian Avenue to the YMCA property and The City property; and

WHEREAS, The City at its own cost has installed a traffic signal on Meridian Avenue at the private drive to improve traffic flow on Meridian Avenue and to and from Meridian Avenue and the YMCA South Branch Campus and The City property; and

WHEREAS, some of the expenses incurred by the YMCA are associated with the public traffic signal and modification of the drive within the public right of way to accommodate the traffic signal for improving traffic flow on Meridian Avenue; and

WHEREAS, The City and YMCA desire to enter into this Agreement regarding sharing the costs incurred by the YMCA associated with the new public traffic signal and modification of the new private drive and sidewalks within the public right of way that benefit and provide improved access to and from the parties' property from Meridian Avenue as well as improving traffic flow on Meridian Avenue.

NOW, THEREFORE, for valuable consideration, receipt of which is hereby acknowledged, as well as the mutual and reciprocal promises of the parties, it is agreed as follows:

1. **Cost Sharing**. The City shall contribute the sum of $119,022.40 for costs incurred by the YMCA associated with the public traffic signal and modification of the drive within the public right of way to accommodate the traffic signalization. The City shall pay this amount directly to YMCA within 30 days of the effective date of this Agreement.

2. **Maintenance**. The YMCA shall maintain and keep in good repair the drive and sidewalk and shall keep such area and right of way clear and free of snow, ice, rubbish and other obstructions. The City shall be responsible for maintenance and repair of the existing curbcut entrance serving the municipal fire station. GraceMed's obligations to contribute to the cost of maintenance and repair of the drive and sidewalk shall be the subject of a separate agreement between GraceMed and the YMCA.

3. **Miscellaneous**.

a. Oral agreements in conflict with any term of this Agreement shall be without force and effect. Any amendments or modifications of this Agreement must be in writing and executed by the parties or their successors, if any.

b. The parties represent that the individuals executing this agreement on their behalf are duly authorized to bind the respective party to the terms of this Agreement.

c. The parties shall contemporaneously approve the Easement of Access Agreement which provides for an easement for the new private drive on City property and a grant of use to The City to use the private drive for access to and from the municipal fire station.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year set forth above.

Approved as to form:

City Attorney

By_____

The City of Wichita, Kansas

By_____
Name:
Title:

The Young Men's Christian Association,
Wichita, Kansas

By_____
Dennis Schoenebeck, President

EASEMENT OF ACCESS

THIS EASEMENT OF ACCESS made this _____ day of _____, 2015, by and between The City of Wichita, a municipal corporation ("The City"), and The Young Mens Christian Association, Wichita, Kansas, a Kansas not-for-profit corporation ("**YMCA**").

WHEREAS, The City is the owner of real property legally described as Lot 1, Block 1, YMCA South Addition, an Addition to Wichita, Sedgwick County, Kansas (the "Burdened Property");

WHEREAS, the YMCA is the owner of real property legally described as Lot 4, Block 1, YMCA South Addition, an Addition to Wichita, Sedgwick County, Kansas (the "Benefitted Property");

WHEREAS, the YMCA has installed a private drive for vehicular ingress and egress from Meridian Avenue to the Benefitted Property; and a portion of the private drive is located upon the Burdened Property;

WHEREAS, the City desires to utilize the private drive for purposes of vehicular access to and from the municipal fire station located upon the Burdened Property;

WHEREAS, the portion of the private drive located upon the Burdened Property is more particularly described on Exhibit "A" and Exhibit "A-1" attached hereto and incorporated by reference (the "Easement Tract");

WHEREAS, The City is willing to grant a perpetual, non-exclusive easement to the YMCA, its successors in interest and assigns, for the purpose of pedestrian and vehicular ingress and egress benefitting the Benefitted Property over and across the Easement Tract, and the YMCA is willing to grant The City the non-exclusive right and license to utilize the private drive for vehicular access to and from the municipal fire station, on the terms more particularly set forth below.

NOW THEREFORE, for valuable consideration, receipt of which is hereby acknowledged, as well as the mutual and reciprocal promises of the parties, it is agreed as follows:

1. Grant of Easement Over Easement Tract. The City hereby grants and conveys to the YMCA a non-exclusive easement and right of access over the Easement Tract, and declares that the YMCA, along with its business invitees, licensees, employees, tenants and successors in interest shall have the right to use and maintain the drive, adjacent sidewalk and related structures which now exists and as may hereafter be improved or replaced from time to time on the Easement Tract.

2. Construction of Roadway Improvements. It is understood and agreed that the YMCA will be responsible for the construction of the drive and sidewalk within the Easement Tract with the YMCA bearing responsibility for the costs of construction attributable to those roadway improvements located within the Easement Tract. The drive and sidewalk shall be of good and workmanlike quality and in compliance with applicable laws and all material government regulations applicable to the subject properties.

3. Maintenance. The YMCA shall maintain and keep in good repair the drive and sidewalk within the Easement Tract and shall keep such area and right of way clear and free of snow, ice, rubbish and other obstructions. The City shall be responsible for maintenance and repair of the existing curbcut entrance serving the municipal fire station.

4. Grant of Use. The YMCA hereby grants to The City the non-exclusive right to access the private drive within the Easement Tract for the limited purpose of vehicular ingress and egress to and from the municipal fire station. Notwithstanding the foregoing, such grant is not intended to and shall not constitute a dedication of the private drive to the public.

5. Restriction on Additional Curbcuts Within the Easement Tract. No additional curbcuts or entrances to the private drive shall be installed on the Easement Tract without the express prior written consent of the YMCA.

6. Term; Covenant Running with the Land. The easement and grant of use granted hereunder shall be non-exclusive and shall be perpetual in duration. The easement, grant of use and restrictions hereby imposed and the agreements herein contained shall be covenants running with the land, which shall be binding upon and inure to the benefit of the parties and their respective business invitees, licensees, employees, tenants and successors and assigns.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

The City of Wichita, a municipal corporation

By _____
Name:
Title:

The Young Mens Christian Association, Wichita, Kansas, a Kansas not-for-profit corporation

By _____
Name:
Title:

STATE OF KANSAS)
) SS:
COUNTY OF SEDGWICK)

BE IT REMEMBERED, that on this _____ day of _____, 2015, before me a Notary Public, in and for said county and state, came _____, to me personally known to be the same person who executed the within and foregoing instrument and duly acknowledged the execution of the same, on behalf of _____.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal, the day and year last written.

_____
Notary Public

My appointment expires:

STATE OF KANSAS)
) SS:
COUNTY OF SEDGWICK)

BE IT REMEMBERED, that on this _____ day of _____, 2015, before me a Notary Public, in and for said county and state, came _____ to me personally known to be the same person who executed the within and foregoing instrument and duly acknowledged the execution of the same, on behalf of _____.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal, the day and year last written.

_____
Notary Public

My appointment expires:

EXHIBIT “A”

[Easement Tract Legal Description]

A parcel of land lying in Lot 1, Block 1, YMCA South Addition, an Addition to Wichita, Sedgwick County, Kansas, being more particularly described as follows:

Beginning at the Northwest corner of said Lot 1; thence along the north line of said Lot 1, on a platted bearing, S89°33'17"E, 381.49 feet to a point of intersection in said north line; thence continuing along said north line S65°09'07"E, 64.94 feet; thence S82°26'27"W, 144.60 feet to a point on curve to the left with a radius of 773.83 feet, a central angle of 8°53'14" and a chord bearing S77°24'24"W, 119.91 feet; thence along said curve 120.03 feet; thence S69°32'43"W, 149.41 feet; thence S45°16'08"W, 56.92 feet to the west line of said Lot 1; thence along the west line of said Lot 1 N00°00'00"E, 166.83 feet to the Point of Beginning.

Said parcel contains 31,089 sq. ft.

EXHIBIT "A-1"

SEE ATTACHED

715726

(Published in ***The Wichita Eagle*** on March 27, 2015.)

ORDINANCE NO. 49-959

AN ORDINANCE AMENDING SECTION 2 OF ORDINANCE NO. 49-672 OF THE CITY OF WICHITA, KANSAS, AND REPEALING THE PRIOR VERSION OF SUCH SECTION.

WHEREAS, the City of Wichita, Kansas (the "City") is a municipal corporation, duly created, organized and existing under the Constitution and laws of the State; and

WHEREAS, K.S.A. 12-685 *et seq*. (the "Act") provides that the governing body of any city is authorized and empowered to designate and establish, by ordinance, as a main trafficway, any existing or proposed street, boulevard, avenue or part thereof, within such city, the primary function of which is, or shall be, the movement of through traffic between areas of concentrated activity within the city or between such areas within the city and traffic facilities outside the city performing the function of a major trafficway; and such designation by the governing body shall be final and conclusive; and

WHEREAS, in Section 2 of Ordinance No. 48-817 of the City of Wichita, Kansas, as amended by Section 1 of Ordinance No. 49-672 of the City of Wichita, Kansas, the City Council of the City (the "Governing Body") declared the necessity of improvements to the Pawnee Bridge at the Arkansas River in the form of design, acquisition of right of way, utility relocation and construction as necessary for a major traffic facility, all as provided by and under the authority of the Act; and,

WHEREAS, Section 3 of Ordinance No. 48-817, as amended by Section 2 of Ordinance No. 49-672, estimated the cost of such improvements to be in the amount of $1,578,000, and authorized bond financing based on such amount, but the Governing Body now finds it necessary and desirable to reduce the amount authorized for bond financing.

THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, AS FOLLOWS:

Section 1. Section 2 of Ordinance No. 49-672 of the City of Wichita, Kansas, is hereby amended to read as follows:

SECTION 2. SECTION 3 of Ordinance No. 48-817 is hereby amended to as follows:

> SECTION 3. The costs of the construction of the above described improvements is estimated to be **Three Hundred and Eight Thousand Dollars ($308,000)** exclusive of the cost of interest on financing and administrative and financing costs, with the total paid by the City of Wichita. Said City cost, when ascertained, shall be borne by the City of Wichita at large by the issuance of General Obligation Bonds under the authority of K.S.A. l2-689. The Bonds may be issued to reimburse expenditures authorized by this ordinance and made on or after the date which was 60 days before the date of adoption of Ordinance No. 48-817, all pursuant to Treasury Regulation § 1.150-2.

Section 2. The prior version of Section 2 of Ordinance 49-672 is hereby repealed and replaced with the foregoing amended version set forth in Section 1 hereof, and Ordinance No. 49-672 shall remain in all other respects unaltered and in effect as originally adopted.

Section 3. **Effective Date**. This Ordinance shall take effect and be of force from and after its passage by the Governing Body and publication in the official City newspaper.

PASSED by the City Council of the City of Wichita, Kansas, on March 24, 2015.

(SEAL)

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

Sharon L. Dickgrafe, Interim Director of
Law and City Attorney

707074

RESOLUTION NO. 15-073

A RESOLUTION AMENDING AND REPEALING SECTION 2 OF RESOLUTION NO. 14-217 OF THE CITY OF WICHITA, KANSAS AND SECTION 1 OF RESOLUTION NO. 14-258 OF THE CITY OF WICHITA, KANSAS WHICH AMENDED AND REPEALED SECTION 1 OF RESOLUTION NO. 14-217 OF THE CITY OF WICHITA, KANSAS, AUTHORIZINGTHE ISSUANCE OF GENERAL OBLIGATION BONDS TO PAY THE COSTS OF CERTAIN PUBLIC IMPROVEMENTS IN THE CITY.

WHEREAS, the City of Wichita, Kansas (the "City") is a municipal corporation, duly created, organized and existing under the Constitution and laws of the State; and

WHEREAS, the Governing Body is authorized, pursuant to K.S.A. 13-1024c, as amended by Charter Ordinance No. 156 of the City (the "Act") to issue general obligation bonds of the City without an election for the purpose of paying for the construction, purchase or improvement of any public improvement, including the land necessary therefore, and for the purpose of rebuilding, adding to or extending the same as the necessities of the City may require and for the purpose of paying for certain personal property therefore; and

WHEREAS, the Governing Body has heretofore by Resolution No. **14-217** of the City of Wichita, Kansas ("Resolution No. 14-217") and Resolution No. **14-258** of the City of Wichita, Kansas ("Resolution No. 14-258"), authorized the following described public improvements:

Construction of traffic signals at K96 and Hillside, K96 and Oliver, 27th Street North and Hillside, and 3300 South Meridian; design of improvements to signalized intersections; completion of traffic studies; and maintenance of the traffic signal radio network.

(the "Project") and to provide for the payment of all or a portion of the costs thereof by the issuance of general obligation bonds of the City pursuant to the Act.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, AS FOLLOWS:

Section 1. Amendment of Resolution No. 14-258. Section 1 of Resolution No. 14-258 is hereby amended to read as follows:

"**Section 1. Amendment.** Section 1 of Resolution No. 14-217 is hereby amended to read as follows:

'**Section 1. Project Authorization.** It is hereby authorized ordered and directed that the Project be acquired and/or constructed at an estimated cost of **$1,170,000** in accordance with prepared or approved by the City Engineer.'"

Section 2. Amendment of Resolution No. 14-217. Section 2 of Resolution No. 14-217 of the City of Wichita, Kansas, is hereby amended to read as follows:

'**Section 2. Project Financing.** All or a portion of the costs of the Project, interest on financing and administrative and financing costs, shall be financed with the proceeds of general obligation bonds of the City pursuant to K.S.A. 13-1024c and City of Wichita Charter Ordinance No. 156 (the "Bonds"). The Bonds may be issued to reimburse expenditures made on or after the date which is 60 days before the date of adoption of Resolution No. 14-217 to the extent of Bonds authorized thereunder and 60 days before the date of adoption of Resolution No. 14-258 to the extent of increased authorization contained therein, and 60 days before the date of adoption of Resolution 15-___, to the extent of the increased authority contained therein, all pursuant to Treasury Regulation §1.150-2.'"

Section 3. Repealer; Ratification. Section 1 of Resolution No. 14-258 and Section 2 of Resolution No. 14-217, as they heretofore existed, are hereby repealed and replaced with the amended versions set forth above; and the rest and remainder of the operative text of such resolutions is hereby ratified and confirmed.

Section 4. Effective Date. This Resolution shall be in full force and effect from and after its adoption by the Governing body.

ADOPTED by the City Council of the City of Wichita, Kansas, on March 17, 2015.

_____
CARL BREWER, MAYOR

(SEAL)

ATTEST:

_____
KAREN SUBLETT, CITY CLERK

APPROVED AS TO FORM:

_____
SHARON L. DICKGRAFE
INTERIM DIRECTOR OF LAW AND CITY ATTORNEY

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City of Wichita
City Council Meeting
March 17, 2015

TO: Mayor and City Council

SUBJECT: 17th Street Sanitary Sewer Design for Wichita State University Innovation Campus (District I)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendations: Ratify and approve the project, approve the direct hire of MKEC Engineering, Inc. (MKEC), approve the budget, adopt the resolution, and approve the design agreement.

Background: Wichita State University (WSU) is anticipating breaking ground on the first phase of the Innovation Campus Master Plan in the spring of 2015, with occupancy of the first building in late 2016. Infrastructure improvements, including sanitary sewer, water and street geometrics will be needed to accommodate the new Innovation Campus.

WSU anticipates opening bids for the Experiential Engineering Building on March 8, 2015, with construction of the building beginning June 1, 2015. The sanitary sewer improvements are the most critical improvements to be made, prior to the foundation of the building being constructed, due to the depth of the line. In addition to the sanitary sewer improvements on campus, approximately 1,550 feet of sanitary sewer line will need to be constructed in 17th Street to provide the needed capacity for the Innovation Campus.

Analysis: MKEC completed the sanitary sewer capacity analysis and water utility modeling for the WSU Innovation Campus Master Plan. With MKEC's knowledge of the new campus, and to meet WSU's aggressive schedule, staff recommends the direct hire of MKEC to complete the sanitary sewer design work in 17th Street.

Financial Considerations: The estimated cost of design is $82,140. Temporary funding is currently available in the 2015 Collection Mains Replacement Project. Staff anticipates that full funding for this project will be included in the Capital Improvement Program, which is currently being developed, with any temporary costs transferred to the final approved project budget.

Legal Considerations: City Ordinance 2.64.020(c), "Public Exigency," allows the City Manager to authorize work to be performed by a contractor without formal bidding. The City Manager approved proceeding with the design of the improvements on January 5, 2015. The design agreement has been reviewed and approved as to form by the Law Department.

Recommendation/Actions: It is recommended that the City Council ratify the City Manager's approval of the project, approve the direct hire of MKEC, approve the budget, adopt the resolution, approve the design agreement, and authorize the necessary signatures.

Attachments: Memo to City Manager, budget sheet, design agreement, resolution, and notice of intent.

CITY OF WICHITA

PUBLIC WORKS & UTILITIES **INTEROFFICE MEMORANDUM**

TO: Robert Layton, City Manager

FROM: Alan King, Director of Public Works & Utilities ADK

DATE: January 5, 2015

SUBJECT: Sanitary Sewer Design – Adjacent to Wichita State University Campus

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Wichita State University (WSU) is anticipating breaking ground on the first phase of their proposed Innovation Campus Master Plan in the spring of 2015 with occupancy of the first building in late 2016. Infrastructure improvements, including sanitary sewer, water, and street geometrics will be needed to accommodate the new Innovation Campus. WSU has contracted with MKEC for the Discovery Phase of the Innovation Campus, including utility, drainage, and traffic impact analysis. MKEC completed sanitary sewer capacity analysis and water utility modeling to be sure the proposed utilities are properly sized. The sanitary sewer improvements are the most critical improvements to be made prior to the foundation of buildings being constructed due to the depth of the line. Approximately 1,550' of 15" sanitary sewer will need to be constructed in 17th Street to provide the needed capacity for the Innovation Campus. To meet WSU's aggressive schedule, Public Works & Utilities is recommending contracting with MKEC to design the sanitary sewer improvements in 17th Street. The estimated cost to design these improvements is $82,140. Attached are their Scope of Services and Fee estimate.

Funds are available from the 2015 Collection Mains Replacement Project for design. However, it is desired to have this funding replaced by the WSU Innovation Campus line item in the proposed CIP. Your signature below will indicate concurrence to authorize the work. An agenda report will then be prepared for the City Council.

I request that you declare this a Public Exigency, which is defined under City Code, Section 2.64.020(c), as an instance when public exigency will not permit the delay incident to advertising, as determined and approved by the City Manager. An approval line has been provided if you concur with this request. A subsequent agenda item will be prepared to obtain Council acknowledgement of this declaration action.

Robert Layton, City Manager

468-85021

AGREEMENT

for

PROFESSIONAL SERVICES

between

THE CITY OF WICHITA, KANSAS

and

MKEC ENGINEERING, INC.

for

17th STREET SANITARY SEWER IMPROVEMENTS (WSU INNOVATION CAMPUS)

THIS AGREEMENT, made this _____ day of _____, 2015, by and between the CITY OF WICHITA, KANSAS, party of the first part, hereinafter called the "CITY" and MKEC ENGINEERING, INC., party of the second part, hereinafter called the "ENGINEER".

WHEREAS, the CITY intends to construct;

17th Street Sanitary Sewer improvements to support the proposed Wichita State University Innovation Campus (see attached Scope and Fee Proposal letter).

NOW, THEREFORE, the parties hereto do mutually agree as follows:

I. SCOPE OF SERVICES

The ENGINEER shall furnish professional services as required for designing sewer improvements to support the proposed Wichita State University Innovation Campus, and to perform the PROJECT tasks outlined in the SCOPE OF SERVICES (**Exhibit "A"**).

II. IN ADDITION, THE ENGINEER AGREES

A. To provide the various technical and professional services, equipment, material and transportation to perform the tasks as outlined in **Exhibit "A"**.
B. To attend meetings with the City and other local, state and federal agencies as necessitated by the SCOPE OF SERVICES.
C. To make available during regular office hours, all calculations, sketches and drawings such as the CITY may wish to examine periodically during performance of this agreement.

D. To save and hold CITY harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of ENGINEER, its agents, servants, employees, or subcontractors occurring in the performance of its services under this contract.

E. To maintain books, documents, papers, accounting records and other evidence pertaining to costs incurred by ENGINEER and, where relevant to method of payment, to make such material available to the CITY.

F. To comply with all Federal, State and local laws, ordinances and regulations applicable to the work, including Title VI of the Civil Rights Act of 1964, and to comply with the CITY'S Affirmative Action Program as set forth in **Exhibit "B"** which is attached hereto and adopted by reference as though fully set forth herein.

G. To accept compensation for the work herein described in such amounts and at such periods as provided in Article IV and that such compensation shall be satisfactory and sufficient payment for all work performed, equipment or materials used and services rendered in connection with such work.

H. To complete the services to be performed by ENGINEER within the time allotted for the PROJECT in accordance with **Exhibit "A"**; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond control of the ENGINEER.

I. Covenants and represents to be responsible for the professional and technical accuracies and the coordination of all designs, drawings, specifications, plans and/or other work or material furnished by the ENGINEER under this agreement. ENGINEER further agrees, covenants and represents, that all designs, drawings, specifications, plans, and other work or material furnished by ENGINEER, its agents, employees and subcontractors, under this agreement, including any additions, alterations or amendments thereof, shall be free from negligent errors or omissions.

J. ENGINEER shall procure and maintain such insurance as will protect the ENGINEER from damages resulting from the negligent acts of the ENGINEER, its agents, officers, employees and subcontractors in the performance of the professional services rendered under this agreement. Such policy of insurance shall be in an amount not less than $500,000.00 subject to a deductible of $10,000.00. In addition, a Workman's Compensation and Employer's Liability Policy shall be procured and maintained. This policy shall include an "all state" endorsement. Said insurance policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment, which, for any reason, may not fall within the provisions of the Workman's Compensation Law. The liability limit shall be not less than:

Workman's Compensation – Statutory
Employer's Liability - $500,000 each occurrence.

Further, a comprehensive general liability policy shall be procured and maintained by the ENGINEER that shall be written in a comprehensive form and shall protect ENGINEER against all claims arising from injuries to persons (other than ENGINEER'S employees) or damage to property of the CITY or others arising out of any negligent act or omission of ENGINEER, its agents, officers, employees or subcontractors in the performance of the professional services under this agreement. The liability limit shall not be less than $500,000.00 per occurrence for bodily injury, death and property damage. Satisfactory Certificates of Insurance shall be filed with the CITY prior to the time ENGINEER starts any work under this agreement. In addition, insurance policies applicable hereto shall contain a provision that provides that the CITY shall be given thirty (30) days written notice by the insurance company before such policy is substantially changed or canceled.

K. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The ENGINEER agrees to advise the CITY, in writing, of the person(s) designated as Project Manager not later than five (5) days following issuance of the notice to proceed on the work required by this agreement. The ENGINEER shall also advise the CITY of any changes in the person designated Project Manager. Written notification shall be provided to the CITY for any changes exceeding one week in length of time.

III. THE CITY AGREES:

A. To furnish all available data pertaining to the PROJECT now in the CITY'S files at no cost to the ENGINEER. Confidential materials so furnished will be kept confidential by the ENGINEER.

B. To provide standards as required for the PROJECT; however, reproduction costs are the responsibility of the ENGINEER, except as specified in **Exhibit "A"**.
C. To pay the ENGINEER for his services in accordance with the requirements of this agreement.
D. To provide the right-of-entry for ENGINEER'S personnel in performing field surveys and inspections.
E. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The CITY agrees to advise, the ENGINEER, in writing, of the person(s) designated as Project Manager with the issuance of the notice to proceed on the work required by this agreement. The CITY shall also advise the ENGINEER of any changes in the person(s) designated Project Manager. Written notification shall be provided to the ENGINEER for any changes exceeding one week in length of time.
F. To examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by ENGINEER in a timely fashion.

IV. PAYMENT PROVISIONS

A. Payment to the ENGINEER for the performance of the professional services required by this agreement shall be made on the basis of the lump sum fee amount specified below:

Project No. 468 85021 $82,140.00

B. When requested by the CITY, the ENGINEER will enter into a Supplemental Agreement for additional services related to the PROJECT such as, but not limited to:
   1. Consultant or witness for the CITY in any litigation, administrative hearing, or other legal proceedings related to the PROJECT.
   2. Additional design services not covered by the scope of this agreement.
   3. Construction staking, material testing, inspection and administration related to the PROJECT.
   4. A major change in the scope of services for the PROJECT.

   If additional work should be necessary, the ENGINEER will be given written notice by the CITY along with a request for an estimate of the increase necessary in the not-to-exceed fee for performance of such additions. No additional work shall be performed nor shall additional compensation be paid except on the basis of a Supplemental Agreement duly entered into by the parties.

V. THE PARTIES HERETO MUTUALLY AGREE:

A. That the right is reserved to the CITY to terminate this agreement at any time, upon written notice, in the event the PROJECT is to be abandoned or indefinitely postponed, or because of the ENGINEER'S inability to proceed with the work.
B. That the field notes and other pertinent drawings and documents pertaining to the PROJECT shall become the property of the CITY upon completion or termination of the ENGINEER'S services in accordance with this agreement; and there shall be no restriction or limitation on their further use by the CITY. Provided, however, that CITY shall hold ENGINEER harmless from any and all claims, damages or causes of action which arise out of such further use when such further use is not in connection with the PROJECT.
C. That the services to be performed by the ENGINEER under the terms of this agreement are personal and cannot be assigned, sublet or transferred without specific consent of the CITY.
D. In the event of unavoidable delays in the progress of the work contemplated by this agreement, reasonable extensions in the time allotted for the work will be granted by the CITY, provided, however, that the ENGINEER shall request extensions, in writing, giving the reasons therefor.
E. It is further agreed that this agreement and all contracts entered into under the provisions of this agreement shall be binding upon the parties hereto and their successors and assigns.
F. Neither the CITY'S review, approval or acceptance of, nor payment for, any of the work or services required to be performed by the ENGINEER under this agreement shall be construed to operate as a waiver of any right under this agreement or any cause of action arising out of the performance of this agreement.
G. The rights and remedies of the CITY provided for under this agreement are in addition to any other rights and remedies provided by law.

H. It is specifically agreed between the parties executing this contract, that it is not intended by any of the provisions of any part of this contract to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this contract to maintain a suit for damages pursuant to the terms or provisions of this contract.

IN WITNESS WHEREOF, the CITY and the ENGINEER have executed this agreement as of the date first written above.

BY ACTION OF THE CITY COUNCIL

_____
Carl Brewer, Mayor

SEAL:

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

Sharon Dickgrafe / SDW
Sharon Dickgrafe, Interim Director of Law

MKEC ENGINEERING, INC.

_____
(Name & Title)
Jay Anglemyer, P.E., Principal

ATTEST:

Cynthia A. Womack
Cynthia A. Womack, Admin. Asst.

EXHIBIT "A"

SCOPE OF SERVICES

CAPITAL IMPROVEMENT PROGRAM (CIP) PROJECTS

Upon award of this project the ENGINEER will contact utility companies directly and determine from the existing records the location of all utilities. Coordination with the utility companies involved will include a conceptual plan jointly developed with the utility company indicating the methods employed to resolve utility conflicts. The conceptual plan should include elements of designing around the utility, analysis of construction expense vs. design expense, and utility company expenses to resolve conflicts.

On projects that disturb one acre or more, the ENGINEER will prepare a storm water pollution prevention plan, prepare the necessary permit application(s) and include any provisions or requirements in the project plans and special provisions. The storm water pollution prevention plan shall also include submittal of a Notice of Intent (NOI) prior to bidding; site-specific erosion control plan; and standard Best Management Practice (BMP) detail sheets per **Attachment No. 1 to Exhibit "A".**

Associated improvements as part of these projects will include, when applicable: permanent traffic signalization system improvements, permanent traffic signing, permanent pavement markings, construction traffic control, construction phasing, incidental drainage, sidewalk, identification of additional right-of-way and furnishing tract drawings and legal descriptions for such right-of-way.

The ENGINEER shall furnish engineering services as required for the best and most cost effective design for the development of the project and provide project alternatives where applicable, including landscaping and beautification provisions on streets where appropriate in available right-of-way; the project plans; supplemental specifications; quantities of work; and estimates of the cost for the PROJECT in the format and detail required by the City Engineer for the City of Wichita; and the Kansas Department of Transportation (KDOT); and the U.S. Army Corps of Engineers, or any other regulatory agency, when applicable. The project alternatives, including proposed landscaping, are to be presented to the City's Design Council, when directed by the Design Engineer, for concurrence in selection prior to progressing to detailed aspects of the work. ENGINEER should use plant material that is drought resistant and requires low maintenance in a xeriscape concept, and is consistent with the City of Wichita Landscape Policy for Arterial Streets. A landscape architect should be included on the ENGINEER's Design Team.

The ENGINEER should identify all trees that may be in conflict or jeopardy of damage by construction activities and then review with Park Department to determine if the trees can be saved and/or moved. In addition, the ENGINEER will notify the City Archaeologist at 316-978-3195 prior to beginning work on this project.

All references below to KDOT only apply to State and Federal Aid projects.

THIS IS / IS NOT A STATE/FEDERAL AID CONTRACT.

In connection with the services to be provided, the ENGINEER shall:

A. PHASE I - PRELIMINARY CONCEPT DEVELOPMENT

When authorized by the CITY and where applicable, proceed with development of Study and Alternative Concepts for the PROJECT in the detail deemed necessary to permit the preparation of preliminary and final plans for construction of the improvements based on the preliminary information provided to the ENGINEER.

1. Review Alternative Design Concepts. Review alternative design concepts with the City Engineer or his designated representative prior to progressing to detail aspects of the work. Alternative concepts as ascertained shall be reviewed and discussed with the City Engineer or his designated representative for concurrence in determining the best horizontal and vertical alignments for the PROJECT. CITY'S concurrence in selection of an alternate or preliminary concept will be contingent on the accuracy and

completeness of the background information provided by the ENGINEER used in the evaluation process.

2. Review Preliminary Design Concepts. Review preliminary design concepts with the City Engineer for the City of Wichita prior to progressing to detail aspects of the work. Preliminary design concepts shall be provided on a strip map suitable for presentation at public meetings as required by the City Engineer of the City of Wichita.
3. Drainage Study. When authorized, conduct a detailed study to explore alternative design concepts concerning drainage for the PROJECT. Present the findings in writing identifying recommendations to the CITY, including preliminary cost estimates, prior to development of field check plans. Such written findings and recommendations must be in a format which is self-explanatory and readily understood by persons with average backgrounds for the technology involved.
4. Preliminary Street and Storm Water Sewer Alignments and Profiles. Prepare preliminary street geometrics/alignments with proposed street and storm water sewer grades to conform to the drainage plan for the PROJECT. The drainage plan and computations shall be submitted along with one (1) set of preliminary street and storm water sewer profiles to the CITY for review and approval prior to proceeding with development of field check plans.
5. Preliminary Water Line and Sanitary Sewer Alignments and Profiles. Preliminary water and sanitary sewer alignments and grades are to be reviewed with the CITY by the ENGINEER for approval prior to proceeding to detail aspects of the work. The ENGINEER shall verify and coordinate work to be completed with the Public Works & Utilities Department.
6. Right-of-Way & Temporary Construction Easements. Identify permanent right-of-way and temporary construction easement requirements for the preliminary concepts developed. Such right-of-way and temporary construction easement requirements shall be provided on a strip map suitable for presentation at public meetings as required by the City Engineer.
7. Public Hearings. Assist the City in the conduct of a public hearing(s) on the proposed improvements for the PROJECT as necessary to inform the public, governmental agencies, and affected parties as to construction traffic control, construction sequence and methods, estimated time and duration of project construction, environmental assessment, right-of-way requirements, estimated project costs, etc. Provide adequate visual displays for public presentations and in electronic format for use in Power Point presentation.
8. S. I. & A. for Existing Bridges. For the duration of the project, the ENGINEER shall perform National Bridge Inventory (NBI) inspections as per the KDOT Bridge Inspection Manual in addition to load rating and updating the Structural Inventory and Appraisal (S. I. & A.) form for submittal to KDOT for all existing bridges within the project limits as per regular City inspection schedule.
9. Landscape Plans. When the design has fulfilled the program requirements, submit a PDF set of landscape plans to the CITY'S project manager. After the project manager approves the plans, he/she will submit the same to the Park Department for review and comments. When the Park Department has approved the plans, the ENGINEER may proceed with placing them on the Design Council agenda for review and comment, as directed by the CITY.
10. Design Council. As requested, ENGINEER shall meet with the City's Design Council to review the PROJECT design and interpret engineering drawings. The first presentation should be made at the point when the ENGINEER has arrived at a design which meets all of the functional requirements of the program and has been tentatively approved by the City staff person in charge. Before authorization is given to the ENGINEER to move on to design development, the PROJECT should be presented to the Design Council for review.

B. PHASE II - PLAN DEVELOPMENT

When authorized by the CITY, proceed with development of Plans for the PROJECT based on the preliminary design concepts approved by the CITY.

1. Design Council. As requested, ENGINEER shall meet with the City's Design Council to review the PROJECT design and interpret engineering drawings. The PROJECT should be presented when the design of the PROJECT has been perfected to the point where all design factors (shape, size, materials, colors, landscape, exterior relationship, amenities, etc.) have been decided and tentatively approved by staff. It is at this point that the design can be considered "frozen" and will not be changed except for unforeseen conditions, which may arise. (It should be noted it is in the ENGINEER'S

best interest to reach design freeze and gain aesthetic approval as early in the project as possible. Whereas the Design Council does not presume to tell the ENGINEER or staff when in the planning process design freeze should take place, the amount of time and effort which the ENGINEER has invested in the development of construction documents or other activities will not be taken into consideration by the Design Council at the Design Freeze review.)

2. Field Check Plans. When authorized by the CITY, prepare field check plans and a preliminary cost estimate for the PROJECT based on approved preliminary concepts as required by the CITY. ENGINEER to submit one copy of preliminary cost estimate and two (2) sets of field check plans to the CITY and one copy of preliminary cost estimate and one electronic set of field check plans to KDOT, to be uploaded to the KDOT FTP site. ENGINEER to participate in a field check of the PROJECT with the CITY and with KDOT when required. Major items of work included in development of field check plans are:

   (a) Field Surveys. Provide engineering and technical personnel and equipment to obtain survey data as required for the engineering design. Utility companies shall be requested to flag or otherwise locate their facilities within the PROJECT limits prior to the ENGINEER conducting the field survey for the PROJECT. Utility information shall be clearly noted and identified on the plans.

   (b) Utility Coordination. Identify all potential utility conflicts and provide preliminary field check plans showing the problem locations, posted to the City's FTP site. **Plans will clearly identify specific utility company facilities by color and by name (i.e. not just "gas" or "fiber optic").** ENGINEER shall include a conflict list for each utility, also posted to the FTP site. ENGINEER shall meet with utility company representatives to review plans and utility verification forms **(Attachment No. 3 to Exhibit "A") at each milestone date and as directed by the CITY and as determined necessary by the ENGINEER.** This information will be compiled into a summary report **(Attachment No. 4 to Exhibit "A")** maintained and updated by ENGINEER as necessary to present a cohesive and reflective status of utilities, and provided to the City as necessary. **ENGINEER shall maintain involvement with utility companies until all conflicts have been resolved (not just identified).** When appropriate, the City Engineer will approve the identification on plans of conflicts to be resolved during construction. ENGINEER shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction.

   (c) Soils and Foundation Investigations. The CITY may authorize ENGINEER to direct an approved Testing Laboratory to perform subsurface borings and soils investigations for the PROJECT, which shall be reported in the format and detail required by the City Engineer for the City of Wichita. The Testing Laboratory shall be responsible for the accuracy and competence of their work. The ENGINEER'S contract with the Testing Laboratory shall provide that the Testing Laboratory is responsible to the City for the accuracy and competence of their work. The cost of soils and boring investigations shall be passed directly to the City of Wichita if not included in the ENGINEER'S fee estimate.

   (d) Property Acquisitions. Prepare right-of-way/easement tract maps and descriptions as required in clearly drawn detail and with sufficient reference to certificate of title descriptions. ENGINEER will perform all necessary survey work associated with marking the additional right-of-way or easements. This shall include the permanent monumentation of new corners for any additional right-of-way and a one-time marking of all the right-of-way for utility relocations at a time directed by the CITY. **The ENGINEER shall perform all necessary title work and sufficient research for determination of current right-of-way and easements.**

   (e) Temporary Construction Easements. Prepare legal descriptions for Temporary Construction Easements (TCE) for all parcels where the construction limits extend beyond the existing/proposed right-of-way, and submit tract maps to the City that are suitable for mailing to property owners. The tract maps should include all features shown on the plans, including but not limited to structures, trees, fences, signs, monuments, etc, and should indicate if such items will be impacted within the required easement. Incorporate TCE limits on the plans.

   (f) **ENGINEER shall provide a clearly defined list of known encroachments into the existing right-of-way, including but not limited to structures, fences, planters, walls, etc.**

The list shall be in tabular form and include the property address and owner information, approximate baseline station of the encroachment, and nature/description of the same.

(g) ENGINEER shall provide a list of proposed driveway closures, relocations or other changes. The list shall be in tabular form and include the property address and owner information, approximate baseline station of the approach, and nature/description of the same.

3. Office Check Plans. When authorized by the CITY prepare office check plans for the PROJECT based upon comments as agreed upon in field check review. Major items of work included in development of office check plans are:

(a) Plan Submittal. Submit two (2) sets of office check plans to the CITY, with one copy of supplemental specifications and one copy of cost estimates and quantities of work units of the PROJECT for office check. (Cost estimates to be based on current unit prices for similar work in the Wichita area unless otherwise directed by the CITY.) Field check plans marked with CITY and/or KDOT comments are to be returned to the CITY with office check plan submittals. ENGINEER to participate in an office check of the PROJECT with the CITY and KDOT when required.

(b) Utility Coordination. Identify all potential utility conflicts and provide preliminary office check plans showing the problem locations, posted to the City's FTP site. **Plans will clearly identify specific utility company facilities by color and by name (i.e. not just "gas" or "fiber optic").** ENGINEER shall include a conflict list for each utility, also posted to the FTP site. ENGINEER shall meet with utility company representatives to review plans and utility verification forms **(Attachment No. 3 to Exhibit "A") at each milestone date and as directed by the CITY and as determined necessary by the ENGINEER.** This information will be compiled into a summary report **(Attachment No. 4 to Exhibit "A" also available on the City's FTP site)** maintained and updated by ENGINEER as necessary to present a cohesive and reflective status of utilities, and provided to the City as necessary. **ENGINEER shall maintain involvement with utility companies until all conflicts have been resolved (not just identified).** When appropriate, the City Engineer will approve the identification on plans of conflicts to be resolved during construction. ENGINEER shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction.

(c) Plan Requirements. Office check plans shall include traffic signalization details, traffic signing details, pavement marking details, incidental drainage, construction phasing details (when applicable), construction traffic control details, and all other necessary construction details required for the PROJECT. The PROJECT'S plans and proposed special provisions shall address the requirements included in the City's Administrative Regulation 6.5, "Cleanup, Restoration or Replacement Following Construction."

(d) Permits. The ENGINEER shall prepare any and all necessary permits for this PROJECT, such as the preparation of applications for U.S. Army Corps of Engineers (404) permits, Division of Water Resources permit, Kansas Department of Wildlife and Parks permit and Kansas Department of Health and Environment permit. Also if requested by the CITY, obtain construction approval from the U.S. Army Corps of Engineers and assist the CITY in coordinating the archaeological review of the PROJECT. **The ENGINEER shall be responsible for the cost of all permit fees that are required to complete the PROJECT. The cost shall be included in the design fee submitted by the ENGINEER.**

4. Final Plans. When authorized by the CITY prepare final plans for the PROJECT based upon comments as agreed upon as a result of the office check review. Major items of work included in development of final plans are:

(a) Prepare engineering plans (which shall include construction sequencing and traffic control), supplemental specifications, special provisions and construction cost estimates, or estimates of the quantities of work for the PROJECT.

(b) Final Plan Submittals. Final plans, field notes and other pertinent project mapping records are to be submitted per **Attachment No. 1 to Exhibit "A"**.

(c) Technical construction specifications shall in general follow the City of Wichita's Standard Specifications and/or KDOT Standard Specifications supplemented as necessary to suit

PROJECT requirements. Plan profile sheets shall also be required for water distribution system/water supply line improvements.

(d) **ENGINEER shall provide a clearly defined list of known encroachments into the existing right-of-way, including but not limited to structures, fences, planters, walls, etc.** The list shall be in tabular form and include the property address and owner information, approximate baseline station of the encroachment, and nature/description of the same. **The list of encroachments should reflect conditions at the time of final plan submittal.**

(e) ENGINEER shall provide a list proposed driveway closures, relocations or other changes. The list shall be in tabular form and include the property address and owner information, approximate baseline station of the approach, and nature/description of the same.

(f) Engineer's cost estimate information shall be submitted in tabular form and on a unit cost basis, as approved by the CITY and as required by KDOT. Pay items of work shall conform to the CITY's Master Bid Item List.

(g) Final plans when submitted shall be complete and ready for reproducing for distribution to prospective bidders.

(h) All applicable coordinate control points and related project staking information shall be furnished on the plans in the form of a bubble map, as well as on a CD-ROM in a text format agreed upon by the CITY. This coordinate information will be used by the CITY for construction staking purposes. See **Attachment No. 2 to Exhibit "A"** for required coordinate information.

(i) The date identified as the date of CITY acceptance of final plans and other supplementary work will be that date upon which the City Engineer ascertains that such plans and work are in accordance with all provisions of the contract for design services.

(j) ENGINEER shall provide the CITY with electronic files suitable for power point presentations to the Design Council and City Council.

5. Staking and Inspection If requested by the CITY, the ENGINEER will enter into a Supplemental Agreement to complete construction staking, material testing, inspection and administration related to the PROJECT.

6. Post Letting.

(a) All shop drawings submitted by the contractor for the PROJECT shall be reviewed and, when acceptable, approved for construction by the ENGINEER for the PROJECT.

(b) The ENGINEER shall meet with effected property owners, along with City staff, at a pre-construction Public Information Meeting, as arranged by the City, to explain project design, including such issues as construction phasing and traffic control.

(c) New Right-of-Way Monumentation. The Engineer shall complete permanent monumentation of all new R/W after project completion, complete and submit all necessary legal documentation for same.

(d) Section Corner Monuments. The Engineer shall provide services required by KSA Chapter 58, Article 20, Statute 58-2011, any time a section corner or monument will be endangered, disturbed, or removed. The City of Wichita Construction Engineer will receive a copy of all Land Survey Reference Reports submitted to the Secretary of State Historical Society. All costs associated with this effort shall be the responsibility of the Engineer. The City will provide a three business day notice to the Engineer to mark the monument location for re-establishment after pavement work is completed. The City will then core and install a cast iron monument box and cover. The Engineer will be notified within three business days after the box is installed to reset the final monument.

(e) **S. I. & A. for Bridges. Upon completion of any and all bridge construction, the ENGINEER shall perform the National Bridge Inventory (NBI) inspection as per KDOT Bridge Inspection Manual, in addition to load rating and updating the Structural Inventory and Appraisal (S. I. & A.) form for submittal to KDOT for all bridges within the project limits regardless of initial structure size.**

Attachment No. 1 to Exhibit "A" – CIP Scope of Services

Plan Submittal

Water projects plans shall be submitted with (1) set of mylar plans; and a CD of the .dwgs and .pdfs. This includes projects that have the water plans incorporated into that project, for which the cover sheet should also be included.

Storm Sewer, Sanitary Sewer and Paving plans shall be submitted in a .dwg and .pdf format on a CD.

In addition, two (2) sets of 11"x17" plans will be submitted at the time of final .pdf submittal for ALL projects, regardless of the type.

Storm Water Pollution Prevention

For any project disturbing one acre of ground or more, the design Consultant must prepare a Notice of Intent and a Storm Water Pollution Prevention Plan and submit them to the KDHE for approval. Complete copies of the approved NOI and SWP3 must be provided to the City. One hard copy should be provided to the project engineer upon approval, one electronic copy should be included with your transmittal of PDF plan files, and one additional electronic copy should be sent to the attention of Mark Hall at the following address:

City of Wichita
Storm Water
455 N. Main 8th Floor
Wichita, KS 67202

THIS INCLUDES **ALL** PROJECTS DISTURBING ONE ACRE OR MORE – I.E. NEW DEVELOPMENT, ARTERIAL STREETS, DIRT STREETS, BIKE PATHS, SEWER MAINS, ETC.

The City of Wichita will, under no circumstance, bid any project without first receiving copies of the KDHE approved NOI and SWP3.

The design of all City of Wichita construction projects must include the development of a site-specific erosion control plan. The site-specific erosion control plan must be included in the project plans. Every component and requirement of the erosion control plan must be separately and accurately accounted as a measured quantity bid item in the engineer's estimate.

Please note that careful consideration must be given to the transition of BMP maintenance responsibilities throughout the course of multi-phased projects. All intended responsibilities must be clearly demonstrated by the bid items. For example, if it is intended that the contractor of a subsequent waterline project be responsible for the maintenance of silt fence installed with a preceding sanitary sewer project, a measured quantity bid item must be submitted for x-lf of silt fence maintenance.

The City's current BMP standard detail sheets shall be included in all plans. These five sheets must be included in every plan set developed for the City of Wichita, regardless of project size.

Attachment No. 2 to Exhibit "A" – CIP Scope of Services

Required Plan Coordinate Information

Arterial Street Projects & Infill (Existing Neighborhoods)

I. SANITARY SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments
- benchmarks, including TBM set with preliminary survey
- center of manholes
- end of manhole stubs (when longer than five feet)

II. WATER LINE

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- beginning and ends of pipe
- all P.I.'s/deflections (horizontal and vertical)
- FH's, tees, bends, air release, valves

III. STORM SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- for skewed inlets typically in intersection radii, or not parallel to baseline – center of curb inlet **AND** center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- end of end section, at CL of pipe
- center, end of pipe at outside face of headwall; if headwall not perpendicular to pipe, each corner of headwall at outside face
- center of all drop inlets, manholes, and other structures
- center of RCBC at each end (outside face of hubguard); if box rotated, each corner, outside face

IV. PAVING

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- center of signal poles, service and junction boxes, controller, etc.; ends and P.I.'s for retaining walls, at back of walls

THE SAME COORDINATE SYSTEM SHALL BE USED FOR ALL SEPARATE PHASES OF A LARGER INFILL OR ARTERIAL STREET PROJECT.

Sub-Division Projects

I. SANITARY SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- center of manholes
- back and/or front lot corners for specifically referenced easement grading, outside that included in mass grading projects; include coordinates for vertical P.I. locations not at lot corners
- end of manhole stubs (when longer than five feet)

II. WATER DISTRIBUTION SYSTEM

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- beginning and ends of pipe
- all P.I.'s/deflections (horizontal and vertical)
- FH's, tees, bends, air release, valves

III. WATER SUPPLY LINE

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- beginning and ends of pipe
- all P.I.'s/deflections (horizontal and vertical)
- FH's, tees, bends, air release, valves

IV. STORM SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- for skewed inlets typically in intersection radii, or not parallel to baseline – center of curb inlet **AND** center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- end of end section, at CL of pipe
- center, end of pipe at outside face of headwall; if headwall not perpendicular to pipe, each corner of headwall at outside face
- center of all drop inlets, manholes, and other structures
- center of RCBC at each end (outside face of hubguard); if box rotated, each corner, outside face

V. MASS GRADING

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- all lot corners
- any grade breaks between front & rear lot corners
- high points/low points within drainage easements
- street area
    - centerline @ 100' Sta on tangent sections
    - pc/pt points & 50' along curves
- special drainage swales
    - pc/pt points, pi's & 50' Sta in between
- ponds
    - any grades breaks between pond bottom and rear property line
    - pc/mid radius/pt around pond curves
- for irregular shaped lots (mainly commercial or industrial developments) provide TIN file

VI. PAVING

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey

In addition to the required coordinate information, the following shall be included in all plans, at a minimum, as needed for construction staking on all City projects.

- Include copy of plat(s) on all plans, as relevant and approved by the Design Engineer
- Benchmarks – minimum of two City standards, four total desirable; as close to project as possible, even if TBM set with preliminary survey.
- Benchmark elevations must be in the same datum as the design (i.e. NAV 88 design needs NAV 88 benchmarks, not NAV 29)
- All control irons/identified property irons shall be shown on plans, with BL stationing and offset
- Show deflection angles in BL, and/or bearing/azimuth of BL sections
- Arterial project side streets – provide BL station at CL of intersection of the two streets, on the BL; BL station and offset to CL of side street at removal limits; include deflection angle from BL to CL of side street
- Existing FL/pavement grades shown at all match points
- Top of curb grades and stationing at all ends-of-return and horizontal/vertical P.I.'s, not just even stationing
- CL top of pavement grades for arterial
- CL elevation for streets on mass grading work @ 100' Sta in tangent sections and 50' on curves. **ELEVATION SHALL BE TO TOP OF ROCK BASE**.
- BL station and offset at all R/W changes; include R/W corners at all intersections, even if no change in R/W
- Clearly show existing grades at R/W and beyond; identify removal limits beyond R/W (for grade purposes) with BL station and offset, or dimension from R/W
- Show offset distance between BL and proposed street CL when not the same; establish clear relationship between the two
- BL station and offset to center of signal poles, service and junction boxes, controllers, etc.
- BL station and offset to back of retaining walls, at ends of walls and all P.I.'s
- Concrete pavement – provide detailed joint pattern, dimensions, and elevations for all valley gutters, intersections, and mainline pavement; should be separate plan sheet(s) with clear and project-specific details
- Storm Sewer – BL station and offset for all curb inlets, drop inlets, manholes, and other structures (to the coordinate point locations detailed in previous sheets); same for SS and WL – pertinent facilities should be referenced to BL station and offset
- Sanitary Sewer – show deflection angles between MH's
- Flow line elevations for manhole stubs

- Curve Tables – should include bends, tees, valves, FH's etc. for waterlines; ends-of-return, P.I.'s, etc. for paving
- Should be able to accurately scale off of plans

Attachment No. 3 to Exhibit "A" – CIP Scope of Services

Project Name

Utility Location Verification for ULCC Sub-Committee (Date)

Field Check: ☐ **Office Check:** ☐

UTILITY: _____ **Checked by**_____ **on** _____

Utility Location:

☐ None in Project Limits
☐ In Project Limits, No Relocation Necessary
☐ Utility will need to relocate
☐ Utility is located in Private Easement
☐ Private Easement Documentation Attached
☐ Utility will need to relocate and is interested in **proposed** ROW **(IF applicable)**

Briefly Describe Type and Location of Facilities within Project:

_____

_____

Estimate Time for Relocation: ☐ < 3 months ☐ 3-6 months ☐ 6-9 months ☐ > 9 months

Weather Sensitive: ☐ Yes ☐ No If yes, please explain: _____

Factors prerequisite to or that could affect relocation process (i.e. Regulatory Requirements):

_____

_____

Utility Plan Review:
☐ Correct as Shown ☐ Corrections needed ☐ Attachments provided for Consultant

Corrections necessary on plan sheets:

_____

_____

Additional Information requested from Consultant: _____

_____

Utility Requests Paper Plans (choose one): ☐ Full Size ☐ Half Size ☐ Cross-Sections (Full Size)

Please email this form on or before Date to:

Project Engineer Consultant	Leslie Hicks
Company	City of Wichita
E-mail	lhicks@wichita.gov

Attachment No. 4 to Exhibit "A" – CIP Scope of Services

Individual Project Name (i.e., Amidon, 21st to 29th Street North)												
Current Date	KDOT Proj. NO/ City Proj. NO	City Design Manager	Consultant	Date of First ULCC	Date of Second ULCC	Date of Plan Revision Distribution	Date of Second Plan Revision Distribution	R/W Purchased Y/N	Date Utilities notified of R/W completion		Project Proposed Bid Date	Proposed Utility Clear Date (project)
2/21/2013	11111111/ 2222222	Kallman	Ken Lee/ Ruggles & Bohm	2/21/2013	2/21/2013			No				
			Utility Contact	Utility needs to relocate (Y/N)	Utility in Private Easement (Y/N)			Utility needs PROPOSED R/W to relocate (Y/N)	Relocation Weather Sensitive (Y/N)	Estimated Date of Utility Design Completion	Time needed for relocation after utility design complete	Individual Utility Clear Date
Westar (Distribution)												
Location in Project: (Describe Existing Facilities)												
Relocation Needs:												
Comments:												
Westar (Transmission)												
Location in Project: (Describe Existing Facilities)												
Relocation Needs:												
Comments:												

KGS
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
Black Hills
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
AT&T
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:

Gas
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
Water
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
Sewer
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:

Stormwater
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
Other
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:

EXHIBIT "B"

REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements:

A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.

B. Requirements of the State of Kansas:

1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.

C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:

1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;
2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be

deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;

4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.
5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars ($5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.
2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

MKEC ENGINEERING SUCCESS

December 16, 2014

Mr. Paul Gunzelman, P.E.
Assistant City Engineer, City of Wichita
455 N. Main, 7th Floor
Wichita, KS 67202

Reference: Scope and Fee Proposal for 17th Street Sanitary Sewer and Bike Lane Addition Improvements

Dear Mr. Gunzelman:

MKEC is pleased to present this proposal for design services associated with the construction of approximately 1500 linear feet of sanitary sewer and the replacement of 17th Street North pavement above the sewer. The purpose of the proposed improvements is to provide necessary infrastructure to support the proposed Wichita State University Innovation Campus. This proposal acknowledges that our design will be consistent with the Innovation Campus Master Plan, City of Wichita design standards for street and sanitary sewer, and the latest edition of the Manual on Uniform Traffic Control Devices.

MKEC understands the requirements of this project based on our understanding of the typical scope of services required by the City. MKEC's proposed scope of services is outlined below.

Sanitary Sewer Improvement Scope of Services:

1. Meet with City staff to review site related issues. Work with staff to resolve issues and make decisions related to the scope of the proposed improvements.

2. Perform design surveys of the project corridor not previously surveyed for the design of the proposed improvements.

3. Gather additional information pertinent to the design of the project. Such information will include utility information, property line and right-of-way information, location and information of the existing sanitary sewer system adjacent to the project area, and information related to the new buildings being served by the new sewer to allow proper sizing of the new system.

4. Determine the alignment of the new sanitary sewer within the 17th Street corridor.

5. Design appropriate vehicular traffic control and pedestrian access through and around construction activities including provisions for contractor staging and storage areas. Various traffic and property access scenarios will be explored which may include detour routes.

6. Determine sanitary sewer flow rates produced within the proposed sewer service basins and size the sewer lines accordingly in conformance with the Kansas Department of Health & Environment. Provide information to the City for purposes of obtaining sanitary sewer extension permits as necessary.

411 N. Webb Rd. • Wichita, KS 67206 • T 316.684.9600 • F 316.684.5100 • MKEC.COM

7. Design replacement pavement above the sanitary sewer trench. Replacement pavement will be concrete pavement and may include median islands. The design will include efforts to work with the City to determine potential median locations and will include finish pavement grades and concrete jointing plans.

8. Coordinate with public and private utility companies to identify utilities within the corridor, determine utility conflicts between existing utilities and proposed improvements and work with the utility companies to resolve identified conflicts.

9. Prepare construction drawings, specifications and estimates for the proposed improvements. Plans will include provisions for traffic control during construction, pedestrian accessibility around and through construction zones during construction, erosion control plan and details, site restoration plans, median construction details and geometric staking information, median pavement and/or landscape plans, utility adjustment and temporary support details required due to sanitary sewer conflicts and median additions, and all necessary pavement marking and signing.

10. Prepare and submit stormwater permitting and all necessary erosion control plans as required.

11. Assist the City with the preparation for meetings with the public and project stakeholders to present the proposed design.

MKEC proposes a lump sum fee of $82,140.00 to perform the services outlined above for the design of the proposed sanitary sewer improvements.

Thank you for this opportunity to serve the City of Wichita. Please contact me or Greg Allison if you wish to discuss this proposal in greater detail.

Sincerely,

MKEC ENGINEERING, INC.

Jay Anglemyer, P.E.

RESOLUTION NO. 15-074

A RESOLUTION DECLARING IT NECESSARY TO CONSTRUCT, RECONSTRUCT, ALTER, REPAIR, IMPROVE, EXTEND AND ENLARGE THE WATER AND SEWER UTILITY OWNED AND OPERATED BY THE CITY OF WICHITA, KANSAS, TO ISSUE REVENUE BONDS FOR THE PURPOSE OF PAYING CERTAIN COSTS THEREOF, AND PROVIDING FOR THE GIVING OF NOTICE OF SUCH INTENTION IN THE MANNER REQUIRED BY LAW.

WHEREAS, the City of Wichita, Kansas (the "City") is a municipal corporation, duly created, organized and existing under the Constitution and laws of the State; and

WHEREAS, the City Council of the City (the "Governing Body"), has heretofore by Ordinance No. 39-888, passed May 26, 1987 and published in the official newspaper of the City on May 29, 1987, as required by law, authorized the combining of the City-owned and operated municipal water utility and municipal sewer utility thereby creating the City of Wichita, Kansas Water and Sewer Utility (the "Utility"); and

WHEREAS, the City is authorized under the Constitution and laws of the State of Kansas, including K.S.A. 10-1201 *et seq*., as amended and supplemented by Charter Ordinance No. 211 of the City (collectively, the "Act"), to issue revenue bonds to construct, reconstruct, alter, repair, improve, extend and enlarge the Utility;

WHEREAS, the Governing Body hereby finds and determines that it is necessary and advisable to construct, reconstruct, alter, repair, improve, extend and enlarge the Utility in the following manner:

17th Street Sanitary Sewer Design for WSU Innovation Campus (W-54)

(the "Project") and to provide for the payment of all or a portion of the costs thereof by the issuance of revenue bonds of the City pursuant to the Act; said bonds to be payable from the revenues of the Utility.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, AS FOLLOWS:

Section 1. **Project Authorization**. It is hereby authorized, ordered and directed that the Project be acquired, constructed and/or installed in accordance with plans and specifications therefor prepared under the direction of the City Engineer or designate and approved by the Governing Body; said plans and specifications to be placed on file in the offices of the Utility. The estimated cost of the Project, including related design and engineering expenses is $82,140. The Project will not cause duplication of any existing water or sewer utility service furnished by a private utility in the City.

Section 2. **Project Financing**. It is hereby found and determined to be necessary and advisable to issue revenue bonds of the City under the authority of the Act, in an aggregate principal amount not to exceed $88,711 in order to pay all or a portion of the costs of the Project and related reserves, interest on financing and administrative and financing costs (the "Bonds"). The Bonds shall not be general obligations of the City payable from taxation, but shall be payable from the revenues derived from the operations of the Utility. Costs of the Project in excess of the proceeds of the Bonds, if any, shall be paid

from unencumbered moneys of the Utility which will be available for that purpose. The Bonds may be issued to reimburse expenditures made on or after the date which is 60 days before the date of this Resolution, pursuant to Treasury Regulation 1.150-2.

Section 3. **Notice**. Before issuing the Bonds, there shall be published one (1) time in the official newspaper of the City, a notice of the intention of the Governing Body to undertake the Project and to issue the Bonds (the "Notice"); and if within fifteen (15) days after the publication of such Notice, there shall be filed with the City Clerk, a written protest against the Project or the issuance of the Bonds, signed by not less than twenty per cent (20%) of the qualified electors of the City, the Governing Body shall thereupon submit such proposed Project and the Bonds to the electors of the City at a special election to be called for that purpose as provided by the Act. If no sufficient protest is filed with the City Clerk within the period of time hereinbefore stated, then the Governing Body shall have the authority to proceed with the Project and issuance of the Bonds.

Section 4. **Effective Date**. This Resolution shall be in full force and effect from and after its adoption by the Governing Body.

ADOPTED by the City Council of the City of Wichita, Kansas, by not less than two-thirds of the members voting in favor thereof, on March 17, 2015.

(SEAL)

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Sharon Dickgrafe, Interim Director of Law

(Published in ***The Wichita Eagle***, on March 20,2015.)

NOTICE

TO: THE RESIDENTS OF THE CITY OF WICHITA, KANSAS

You are hereby notified that the City Council (the "Governing Body") of the City of Wichita, Kansas (the "City"), by Resolution No. 15-074, duly adopted March 17, 2015, has found and determined it to be necessary and declared its intention to construct, reconstruct, alter, repair, improve, extend and enlarge the City of Wichita, Kansas Water and Sewer Utility, which is owned and operated by the City (the "Utility"), in the following manner:

17th Street Sanitary Sewer Design for WSU Innovation Campus (W-54)

(the "Project") at an estimated cost, including related design and engineering expenses of $82,140.

In order to finance all or a portion of the costs of the Project and related reserves, interest on financing and administrative and financing costs, the Governing Body has further found and determined it to be necessary and declared its intention to issue revenue bonds an aggregate principal amount not to exceed $88,711 under the authority of K.S.A. 10-1201 *et seq*., as amended and supplemented by Charter Ordinance No. 211 of the City (the "Bonds"). The Bonds shall not be general obligation bonds of the City payable from taxation, but shall be payable only from the revenues derived from the operations of the Utility. Costs of the Project in excess of the proceeds of the Bonds shall be paid from unencumbered moneys of the Utility which will be available for that purpose.

This Notice shall be published one time in the official newspaper of the City; and if, within fifteen (15) days from and after the publication date hereof, there shall be filed in the Office of the City Clerk a written protest against the Project and the issuance of the Bonds, which protest is signed by not less than twenty percent (20%) of the qualified electors of the City, then the question of the Project and the issuance of the Bonds shall be submitted to the electors of the City at a special election which shall be called for that purpose as provided by law. If no sufficient protest to the Project and the issuance of the Bonds is filed within said period, then the Governing Body shall have the authority to proceed with the Project and issuance of the Bonds.

BY ORDER of the Governing Body of the City of Wichita, Kansas, on March 17, 2015.

/s/ CARL BREWER, Mayor

ATTEST:
/s/ Karen Sublett, City Clerk

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City of Wichita
City Council Meeting
March 17, 2015

TO: Mayor and City Council

SUBJECT: Improvements to the John Mack Bridge (District III)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendation: Ratify and approve the direct hire of TranSystems, adopt the resolution, and approve the design agreement.

Background: The John Mack Bridge carries southbound Broadway traffic over the Arkansas River, south of Pawnee. The Kansas Department of Transportation (KDOT) recently completed an in-depth inspection of the bridge and uncovered a number of potential issues. As a result, southbound truck traffic is now being detoured to Seneca Street.

Analysis: Although the bridge is not in immediate danger, it is essential that the issues identified by KDOT be further investigated and evaluated now, so that repair work can be expedited. The City's last inspection of the bridge was performed by TranSystems in 2013. TranSystems is in the unique position of having performed that inspection work, as well as being involved with KDOT's detailed bridge inspection program, making it possible to expedite the investigation, analysis, and preliminary design work that is needed. Staff requests the City Council approve a waiver of the standard solicitation process and that TranSystems be hired directly. An agreement has been prepared for TranSystems to provide the necessary investigation, analysis, and preliminary design work.

Financial Considerations: The cost of the proposed agreement is $48,765. General obligation bond funding in the amount of $1,000,000 has been recommended for programming in the proposed 2015-2024 Capital Improvement Program in 2015 for design and construction. Staff requests approval of a $60,000 budget at this time for the discovery phase and concept design development, including staff oversight costs. Approval of the final design and available construction funding will be requested from the City Council at a later date.

Legal Considerations: City Ordinance 2.64.020(c), "Public Exigency," expressly authorizes the City Manager to approve work to be performed without formal bidding when the situation will not permit the delay incident to advertising. The City Manager approved proceeding with the direct hire of TranSystems on February 5, 2015.

Recommendations/Actions: It is recommended that the City Council ratify the City Manager's approval to directly hire TranSystems, adopt the resolution, approve the agreement, and authorize the necessary signatures.

Attachments: Public exigency memo, budget sheet, resolution, and agreement.

AGREEMENT

for

PROFESSIONAL SERVICES

between

THE CITY OF WICHITA, KANSAS

and

TRANSYSTEMS CORPORATION

for

JOHN MACK BRIDGE IMPROVEMENTS

THIS AGREEMENT, made this _____ day of _____, 2015, by and between the CITY OF WICHITA, KANSAS, party of the first part, hereinafter called the "CITY" and TRANSYSTEMS CORPORATION, party of the second part, hereinafter called the "ENGINEER".

WHEREAS, the CITY intends to construct;

JOHN MACK BRIDGE IMPROVEMENTS (on Broadway, between Pawnee and 31st St S) Project No. 472-85210_715733. (See **Exhibit "C"** for more detail).

NOW, THEREFORE, the parties hereto do mutually agree as follows:

I. SCOPE OF SERVICES

The ENGINEER shall furnish professional services as required for designing improvements for John Mack Bridge and to perform the PROJECT tasks outlined in the SCOPE OF SERVICES (**Exhibit "A"**).

II. IN ADDITION, THE ENGINEER AGREES

A. To provide the various technical and professional services, equipment, material and transportation to perform the tasks as outlined in **Exhibit "A"**.
B. To attend meetings with the City and other local, state and federal agencies as necessitated by the SCOPE OF SERVICES.
C. To make available during regular office hours, all calculations, sketches and drawings such as the CITY may wish to examine periodically during performance of this agreement.

D. To save and hold CITY harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of ENGINEER, its agents, servants, employees, or subcontractors occurring in the performance of its services under this contract.

E. To maintain books, documents, papers, accounting records and other evidence pertaining to costs incurred by ENGINEER and, where relevant to method of payment, to make such material available to the CITY.

F. To comply with all Federal, State and local laws, ordinances and regulations applicable to the work, including Title VI of the Civil Rights Act of 1964, and to comply with the CITY'S Affirmative Action Program as set forth in **Exhibit "B"** which is attached hereto and adopted by reference as though fully set forth herein.

G. To accept compensation for the work herein described in such amounts and at such periods as provided in Article IV and that such compensation shall be satisfactory and sufficient payment for all work performed, equipment or materials used and services rendered in connection with such work.

H. To complete the services to be performed by ENGINEER within the time allotted for the PROJECT in accordance with **Exhibit "A"**; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond control of the ENGINEER.

I. Covenants and represents to be responsible for the professional and technical accuracies and the coordination of all designs, drawings, specifications, plans and/or other work or material furnished by the ENGINEER under this agreement. ENGINEER further agrees, covenants and represents, that all designs, drawings, specifications, plans, and other work or material furnished by ENGINEER, its agents, employees and subcontractors, under this agreement, including any additions, alterations or amendments thereof, shall be free from negligent errors or omissions.

J. ENGINEER shall procure and maintain such insurance as will protect the ENGINEER from damages resulting from the negligent acts of the ENGINEER, its agents, officers, employees and subcontractors in the performance of the professional services rendered under this agreement. Such policy of insurance shall be in an amount not less than $500,000.00 subject to a deductible of $10,000.00. In addition, a Workman's Compensation and Employer's Liability Policy shall be procured and maintained. This policy shall include an "all state" endorsement. Said insurance policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment, which, for any reason, may not fall within the provisions of the Workman's Compensation Law. The liability limit shall be not less than:

Workman's Compensation – Statutory
Employer's Liability - $500,000 each occurrence.

Further, a comprehensive general liability policy shall be procured and maintained by the ENGINEER that shall be written in a comprehensive form and shall protect ENGINEER against all claims arising from injuries to persons (other than ENGINEER'S employees) or damage to property of the CITY or others arising out of any negligent act or omission of ENGINEER, its agents, officers, employees or subcontractors in the performance of the professional services under this agreement. The liability limit shall not be less than $500,000.00 per occurrence for bodily injury, death and property damage. Satisfactory Certificates of Insurance shall be filed with the CITY prior to the time ENGINEER starts any work under this agreement. In addition, insurance policies applicable hereto shall contain a provision that provides that the CITY shall be given thirty (30) days written notice by the insurance company before such policy is substantially changed or canceled.

K. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The ENGINEER agrees to advise the CITY, in writing, of the person(s) designated as Project Manager not later than five (5) days following issuance of the notice to proceed on the work required by this agreement. The ENGINEER shall also advise the CITY of any changes in the person designated Project Manager. Written notification shall be provided to the CITY for any changes exceeding one week in length of time.

III. THE CITY AGREES:

A. To furnish all available data pertaining to the PROJECT now in the CITY'S files at no cost to the ENGINEER. Confidential materials so furnished will be kept confidential by the ENGINEER.

B. To provide standards as required for the PROJECT; however, reproduction costs are the responsibility of the ENGINEER, except as specified in **Exhibit "A"**.
C. To pay the ENGINEER for his services in accordance with the requirements of this agreement.
D. To provide the right-of-entry for ENGINEER'S personnel in performing field surveys and inspections.
E. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The CITY agrees to advise, the ENGINEER, in writing, of the person(s) designated as Project Manager with the issuance of the notice to proceed on the work required by this agreement. The CITY shall also advise the ENGINEER of any changes in the person(s) designated Project Manager. Written notification shall be provided to the ENGINEER for any changes exceeding one week in length of time.
F. To examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by ENGINEER in a timely fashion.

IV. PAYMENT PROVISIONS

A. Payment to the ENGINEER for the performance of the professional services required by this agreement (see **Exhibit "D"**) shall be made on the basis of the lump sum fee amount specified below:

Project No. 472-85210 $48,765.09

B. When requested by the CITY, the ENGINEER will enter into a Supplemental Agreement for additional services related to the PROJECT such as, but not limited to:
   1. Consultant or witness for the CITY in any litigation, administrative hearing, or other legal proceedings related to the PROJECT.
   2. Additional design services not covered by the scope of this agreement.
   3. Construction staking, material testing, inspection and administration related to the PROJECT.
   4. A major change in the scope of services for the PROJECT.

   If additional work should be necessary, the ENGINEER will be given written notice by the CITY along with a request for an estimate of the increase necessary in the not-to-exceed fee for performance of such additions. No additional work shall be performed nor shall additional compensation be paid except on the basis of a Supplemental Agreement duly entered into by the parties.

V. THE PARTIES HERETO MUTUALLY AGREE:

A. That the right is reserved to the CITY to terminate this agreement at any time, upon written notice, in the event the PROJECT is to be abandoned or indefinitely postponed, or because of the ENGINEER'S inability to proceed with the work.
B. That the field notes and other pertinent drawings and documents pertaining to the PROJECT shall become the property of the CITY upon completion or termination of the ENGINEER'S services in accordance with this agreement; and there shall be no restriction or limitation on their further use by the CITY. Provided, however, that CITY shall hold ENGINEER harmless from any and all claims, damages or causes of action which arise out of such further use when such further use is not in connection with the PROJECT.
C. That the services to be performed by the ENGINEER under the terms of this agreement are personal and cannot be assigned, sublet or transferred without specific consent of the CITY.
D. In the event of unavoidable delays in the progress of the work contemplated by this agreement, reasonable extensions in the time allotted for the work will be granted by the CITY, provided, however, that the ENGINEER shall request extensions, in writing, giving the reasons therefor.
E. It is further agreed that this agreement and all contracts entered into under the provisions of this agreement shall be binding upon the parties hereto and their successors and assigns.
F. Neither the CITY'S review, approval or acceptance of, nor payment for, any of the work or services required to be performed by the ENGINEER under this agreement shall be construed to operate as a waiver of any right under this agreement or any cause of action arising out of the performance of this agreement.
G. The rights and remedies of the CITY provided for under this agreement are in addition to any other rights and remedies provided by law.

H. It is specifically agreed between the parties executing this contract, that it is not intended by any of the provisions of any part of this contract to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this contract to maintain a suit for damages pursuant to the terms or provisions of this contract.

IN WITNESS WHEREOF, the CITY and the ENGINEER have executed this agreement as of the date first written above.

BY ACTION OF THE CITY COUNCIL

Carl Brewer, Mayor

SEAL:

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Sharon L. Dickgrafe, Interim Director of Law

TRANSYSTEMS CORPORATION

(Name & Title)
BRETT A. LIETKOWSKI, PE
SENIOR VICE PRESIDENT

ATTEST:

JEFFREY R. LACUEY, P.E.
ASSOCIATE

EXHIBIT "A"

SCOPE OF SERVICES

CAPITAL IMPROVEMENT PROGRAM (CIP) PROJECTS

Upon award of this project the ENGINEER will contact utility companies directly and determine from the existing records the location of all utilities. Coordination with the utility companies involved will include a conceptual plan jointly developed with the utility company indicating the methods employed to resolve utility conflicts. The conceptual plan should include elements of designing around the utility, analysis of construction expense vs. design expense, and utility company expenses to resolve conflicts.

On projects that disturb one acre or more, the ENGINEER will prepare a storm water pollution prevention plan, prepare the necessary permit application(s) and include any provisions or requirements in the project plans and special provisions. The storm water pollution prevention plan shall also include submittal of a Notice of Intent (NOI) prior to bidding; site-specific erosion control plan; and standard Best Management Practice (BMP) detail sheets per **Attachment No. 1 to Exhibit "A".**

Associated improvements as part of these projects will include, when applicable: permanent traffic signalization system improvements, permanent traffic signing, permanent pavement markings, construction traffic control, construction phasing, incidental drainage, sidewalk, identification of additional right-of-way and furnishing tract drawings and legal descriptions for such right-of-way.

The ENGINEER shall furnish engineering services as required for the best and most cost effective design for the development of the project and provide project alternatives where applicable, including landscaping and beautification provisions on streets where appropriate in available right-of-way; the project plans; supplemental specifications; quantities of work; and estimates of the cost for the PROJECT in the format and detail required by the City Engineer for the City of Wichita; and the Kansas Department of Transportation (KDOT); and the U.S. Army Corps of Engineers, or any other regulatory agency, when applicable. The project alternatives, including proposed landscaping, are to be presented to the City's Design Council, when directed by the Design Engineer, for concurrence in selection prior to progressing to detailed aspects of the work. ENGINEER should use plant material that is drought resistant and requires low maintenance in a xeriscape concept, and is consistent with the City of Wichita Landscape Policy for Arterial Streets. A landscape architect should be included on the ENGINEER's Design Team.

The ENGINEER should identify all trees that may be in conflict or jeopardy of damage by construction activities and then review with Park Department to determine if the trees can be saved and/or moved. In addition, the ENGINEER will notify the City Archaeologist at 316-978-3195 prior to beginning work on this project.

All references below to KDOT only apply to State and Federal Aid projects.

THIS IS NOT A STATE/FEDERAL AID CONTRACT.

In connection with the services to be provided, the ENGINEER shall:

A. PHASE I - PRELIMINARY CONCEPT DEVELOPMENT

When authorized by the CITY and where applicable, proceed with development of Study and Alternative Concepts for the PROJECT in the detail deemed necessary to permit the preparation of preliminary and final plans for construction of the improvements based on the preliminary information provided to the ENGINEER.

1. Review Alternative Design Concepts. Review alternative design concepts with the City Engineer or his designated representative prior to progressing to detail aspects of the work. Alternative concepts as ascertained shall be reviewed and discussed with the City Engineer or his designated representative for concurrence in determining the best horizontal and vertical alignments for the PROJECT. CITY'S concurrence in selection of an alternate or preliminary concept will be contingent on the accuracy and

completeness of the background information provided by the ENGINEER used in the evaluation process.

2. Review Preliminary Design Concepts. Review preliminary design concepts with the City Engineer for the City of Wichita prior to progressing to detail aspects of the work. Preliminary design concepts shall be provided on a strip map suitable for presentation at public meetings as required by the City Engineer of the City of Wichita.
3. Drainage Study. When authorized, conduct a detailed study to explore alternative design concepts concerning drainage for the PROJECT. Present the findings in writing identifying recommendations to the CITY, including preliminary cost estimates, prior to development of field check plans. Such written findings and recommendations must be in a format which is self-explanatory and readily understood by persons with average backgrounds for the technology involved.
4. Preliminary Street and Storm Water Sewer Alignments and Profiles. Prepare preliminary street geometrics/alignments with proposed street and storm water sewer grades to conform to the drainage plan for the PROJECT. The drainage plan and computations shall be submitted along with one (1) set of preliminary street and storm water sewer profiles to the CITY for review and approval prior to proceeding with development of field check plans.
5. Preliminary Water Line and Sanitary Sewer Alignments and Profiles. Preliminary water and sanitary sewer alignments and grades are to be reviewed with the CITY by the ENGINEER for approval prior to proceeding to detail aspects of the work. The ENGINEER shall verify and coordinate work to be completed with the Public Works & Utilities Department.
6. Right-of-Way & Temporary Construction Easements. Identify permanent right-of-way and temporary construction easement requirements for the preliminary concepts developed. Such right-of-way and temporary construction easement requirements shall be provided on a strip map suitable for presentation at public meetings as required by the City Engineer.
7. Public Hearings. Assist the City in the conduct of a public hearing(s) on the proposed improvements for the PROJECT as necessary to inform the public, governmental agencies, and affected parties as to construction traffic control, construction sequence and methods, estimated time and duration of project construction, environmental assessment, right-of-way requirements, estimated project costs, etc. Provide adequate visual displays for public presentations and in electronic format for use in Power Point presentation.
8. S. I. & A. for Existing Bridges. For the duration of the project, the ENGINEER shall perform National Bridge Inventory (NBI) inspections as per the KDOT Bridge Inspection Manual in addition to load rating and updating the Structural Inventory and Appraisal (S. I. & A.) form for submittal to KDOT for all existing bridges within the project limits as per regular City inspection schedule.
9. Landscape Plans. When the design has fulfilled the program requirements, submit a PDF set of landscape plans to the CITY'S project manager. After the project manager approves the plans, he/she will submit the same to the Park Department for review and comments. When the Park Department has approved the plans, the ENGINEER may proceed with placing them on the Design Council agenda for review and comment, as directed by the CITY.
10. Design Council. As requested, ENGINEER shall meet with the City's Design Council to review the PROJECT design and interpret engineering drawings. The first presentation should be made at the point when the ENGINEER has arrived at a design which meets all of the functional requirements of the program and has been tentatively approved by the City staff person in charge. Before authorization is given to the ENGINEER to move on to design development, the PROJECT should be presented to the Design Council for review.

B. PHASE II - PLAN DEVELOPMENT

When authorized by the CITY, proceed with development of Plans for the PROJECT based on the preliminary design concepts approved by the CITY.

1. Design Council. As requested, ENGINEER shall meet with the City's Design Council to review the PROJECT design and interpret engineering drawings. The PROJECT should be presented when the design of the PROJECT has been perfected to the point where all design factors (shape, size, materials, colors, landscape, exterior relationship, amenities, etc.) have been decided and tentatively approved by staff. It is at this point that the design can be considered "frozen" and will not be changed except for unforeseen conditions, which may arise. (It should be noted it is in the ENGINEER'S

best interest to reach design freeze and gain aesthetic approval as early in the project as possible. Whereas the Design Council does not presume to tell the ENGINEER or staff when in the planning process design freeze should take place, the amount of time and effort which the ENGINEER has invested in the development of construction documents or other activities will not be taken into consideration by the Design Council at the Design Freeze review.)

2. Field Check Plans. When authorized by the CITY, prepare field check plans and a preliminary cost estimate for the PROJECT based on approved preliminary concepts as required by the CITY. ENGINEER to submit one copy of preliminary cost estimate and two (2) sets of field check plans to the CITY and one copy of preliminary cost estimate and one electronic set of field check plans to KDOT, to be uploaded to the KDOT FTP site. ENGINEER to participate in a field check of the PROJECT with the CITY and with KDOT when required. Major items of work included in development of field check plans are:

   (a) Field Surveys. Provide engineering and technical personnel and equipment to obtain survey data as required for the engineering design. Utility companies shall be requested to flag or otherwise locate their facilities within the PROJECT limits prior to the ENGINEER conducting the field survey for the PROJECT. Utility information shall be clearly noted and identified on the plans.

   (b) Utility Coordination. Identify all potential utility conflicts and provide preliminary field check plans showing the problem locations, posted to the City's FTP site. **Plans will clearly identify specific utility company facilities by color and by name (i.e. not just "gas" or "fiber optic").** ENGINEER shall include a conflict list for each utility, also posted to the FTP site. ENGINEER shall meet with utility company representatives to review plans and utility verification forms **(Attachment No. 3 to Exhibit "A") at each milestone date and as directed by the CITY and as determined necessary by the ENGINEER.** This information will be compiled into a summary report **(Attachment No. 4 to Exhibit "A")** maintained and updated by ENGINEER as necessary to present a cohesive and reflective status of utilities, and provided to the City as necessary. **ENGINEER shall maintain involvement with utility companies until all conflicts have been resolved (not just identified).** When appropriate, the City Engineer will approve the identification on plans of conflicts to be resolved during construction. ENGINEER shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction.

   (c) Soils and Foundation Investigations. The CITY may authorize ENGINEER to direct an approved Testing Laboratory to perform subsurface borings and soils investigations for the PROJECT, which shall be reported in the format and detail required by the City Engineer for the City of Wichita. The Testing Laboratory shall be responsible for the accuracy and competence of their work. The ENGINEER'S contract with the Testing Laboratory shall provide that the Testing Laboratory is responsible to the City for the accuracy and competence of their work. The cost of soils and boring investigations shall be passed directly to the City of Wichita if not included in the ENGINEER'S fee estimate.

   (d) Property Acquisitions. Prepare right-of-way/easement tract maps and descriptions as required in clearly drawn detail and with sufficient reference to certificate of title descriptions. ENGINEER will perform all necessary survey work associated with marking the additional right-of-way or easements. This shall include the permanent monumentation of new corners for any additional right-of-way and a one-time marking of all the right-of-way for utility relocations at a time directed by the CITY. **The ENGINEER shall perform all necessary title work and sufficient research for determination of current right-of-way and easements.**

   (e) Temporary Construction Easements. Prepare legal descriptions for Temporary Construction Easements (TCE) for all parcels where the construction limits extend beyond the existing/proposed right-of-way, and submit tract maps to the City that are suitable for mailing to property owners. The tract maps should include all features shown on the plans, including but not limited to structures, trees, fences, signs, monuments, etc, and should indicate if such items will be impacted within the required easement. Incorporate TCE limits on the plans.

   (f) **ENGINEER shall provide a clearly defined list of known encroachments into the existing right-of-way, including but not limited to structures, fences, planters, walls, etc.**

The list shall be in tabular form and include the property address and owner information, approximate baseline station of the encroachment, and nature/description of the same.

(g) ENGINEER shall provide a list of proposed driveway closures, relocations or other changes. The list shall be in tabular form and include the property address and owner information, approximate baseline station of the approach, and nature/description of the same.

3. Office Check Plans. When authorized by the CITY prepare office check plans for the PROJECT based upon comments as agreed upon in field check review. Major items of work included in development of office check plans are:

(a) Plan Submittal. Submit two (2) sets of office check plans to the CITY, with one copy of supplemental specifications and one copy of cost estimates and quantities of work units of the PROJECT for office check. (Cost estimates to be based on current unit prices for similar work in the Wichita area unless otherwise directed by the CITY.) Field check plans marked with CITY and/or KDOT comments are to be returned to the CITY with office check plan submittals. ENGINEER to participate in an office check of the PROJECT with the CITY and KDOT when required.

(b) Utility Coordination. Identify all potential utility conflicts and provide preliminary office check plans showing the problem locations, posted to the City's FTP site. **Plans will clearly identify specific utility company facilities by color and by name (i.e. not just "gas" or "fiber optic").** ENGINEER shall include a conflict list for each utility, also posted to the FTP site. ENGINEER shall meet with utility company representatives to review plans and utility verification forms **(Attachment No. 3 to Exhibit "A") at each milestone date and as directed by the CITY and as determined necessary by the ENGINEER.** This information will be compiled into a summary report **(Attachment No. 4 to Exhibit "A" also available on the City's FTP site)** maintained and updated by ENGINEER as necessary to present a cohesive and reflective status of utilities, and provided to the City as necessary. **ENGINEER shall maintain involvement with utility companies until all conflicts have been resolved (not just identified).** When appropriate, the City Engineer will approve the identification on plans of conflicts to be resolved during construction. ENGINEER shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction.

(c) Plan Requirements. Office check plans shall include traffic signalization details, traffic signing details, pavement marking details, incidental drainage, construction phasing details (when applicable), construction traffic control details, and all other necessary construction details required for the PROJECT. The PROJECT'S plans and proposed special provisions shall address the requirements included in the City's Administrative Regulation 6.5, "Cleanup, Restoration or Replacement Following Construction."

(d) Permits. The ENGINEER shall prepare any and all necessary permits for this PROJECT, such as the preparation of applications for U.S. Army Corps of Engineers (404) permits, Division of Water Resources permit, Kansas Department of Wildlife and Parks permit and Kansas Department of Health and Environment permit. Also if requested by the CITY, obtain construction approval from the U.S. Army Corps of Engineers and assist the CITY in coordinating the archaeological review of the PROJECT. **The ENGINEER shall be responsible for the cost of all permit fees that are required to complete the PROJECT. The cost shall be included in the design fee submitted by the ENGINEER.**

4. Final Plans. When authorized by the CITY prepare final plans for the PROJECT based upon comments as agreed upon as a result of the office check review. Major items of work included in development of final plans are:

(a) Prepare engineering plans (which shall include construction sequencing and traffic control), supplemental specifications, special provisions and construction cost estimates, or estimates of the quantities of work for the PROJECT.

(b) Final Plan Submittals. Final plans, field notes and other pertinent project mapping records are to be submitted per **Attachment No. 1 to Exhibit "A"**.

(c) Technical construction specifications shall in general follow the City of Wichita's Standard Specifications and/or KDOT Standard Specifications supplemented as necessary to suit

PROJECT requirements. Plan profile sheets shall also be required for water distribution system/water supply line improvements.

(d) **ENGINEER shall provide a clearly defined list of known encroachments into the existing right-of-way, including but not limited to structures, fences, planters, walls, etc.** The list shall be in tabular form and include the property address and owner information, approximate baseline station of the encroachment, and nature/description of the same. **The list of encroachments should reflect conditions at the time of <u>final</u> plan submittal.**

(e) ENGINEER shall provide a list proposed driveway closures, relocations or other changes. The list shall be in tabular form and include the property address and owner information, approximate baseline station of the approach, and nature/description of the same.

(f) Engineer's cost estimate information shall be submitted in tabular form and on a unit cost basis, as approved by the CITY and as required by KDOT. Pay items of work shall conform to the CITY's Master Bid Item List.

(g) Final plans when submitted shall be complete and ready for reproducing for distribution to prospective bidders.

(h) All applicable coordinate control points and related project staking information shall be furnished on the plans in the form of a bubble map, as well as on a CD-ROM in a text format agreed upon by the CITY. This coordinate information will be used by the CITY for construction staking purposes. See **<u>Attachment No. 2 to Exhibit "A"</u>** for required coordinate information.

(i) The date identified as the date of CITY acceptance of final plans and other supplementary work will be that date upon which the City Engineer ascertains that such plans and work are in accordance with all provisions of the contract for design services.

(j) ENGINEER shall provide the CITY with electronic files suitable for power point presentations to the Design Council and City Council.

5. <u>Staking and Inspection</u> If requested by the CITY, the ENGINEER will enter into a Supplemental Agreement to complete construction staking, material testing, inspection and administration related to the PROJECT.

6. <u>Post Letting.</u>

(a) All shop drawings submitted by the contractor for the PROJECT shall be reviewed and, when acceptable, approved for construction by the ENGINEER for the PROJECT.

(b) The ENGINEER shall meet with effected property owners, along with City staff, at a pre-construction Public Information Meeting, as arranged by the City, to explain project design, including such issues as construction phasing and traffic control.

(c) <u>New Right-of-Way Monumentation.</u> The Engineer shall complete permanent monumentation of all new R/W after project completion, complete and submit all necessary legal documentation for same.

(d) <u>Section Corner Monuments</u>. The Engineer shall provide services required by KSA Chapter 58, Article 20, Statute 58-2011, any time a section corner or monument will be endangered, disturbed, or removed. The City of Wichita Construction Engineer will receive a copy of all Land Survey Reference Reports submitted to the Secretary of State Historical Society. All costs associated with this effort shall be the responsibility of the Engineer. The City will provide a three business day notice to the Engineer to mark the monument location for re-establishment after pavement work is completed. The City will then core and install a cast iron monument box and cover. The Engineer will be notified within three business days after the box is installed to reset the final monument.

(e) <u>S. I. & A. for Bridges.</u> Upon completion of any and all bridge construction, the ENGINEER shall perform the National Bridge Inventory (NBI) inspection as per KDOT Bridge Inspection Manual, in addition to load rating and updating the Structural Inventory and Appraisal (S. I. & A.) form for submittal to KDOT for all bridges within the project limits regardless of initial structure size.

Attachment No. 1 to Exhibit "A" – CIP Scope of Services

Plan Submittal

Water projects plans shall be submitted with (1) set of mylar plans; and a CD of the .dwgs and .pdfs. This includes projects that have the water plans incorporated into that project, for which the cover sheet should also be included.

Storm Sewer, Sanitary Sewer and Paving plans shall be submitted in a .dwg and .pdf format on a CD.

In addition, two (2) sets of 11"x17" plans will be submitted at the time of final .pdf submittal for ALL projects, regardless of the type.

Storm Water Pollution Prevention

For any project disturbing one acre of ground or more, the design Consultant must prepare a Notice of Intent and a Storm Water Pollution Prevention Plan and submit them to the KDHE for approval. Complete copies of the approved NOI and SWP3 must be provided to the City. One hard copy should be provided to the project engineer upon approval, one electronic copy should be included with your transmittal of PDF plan files, and one additional electronic copy should be sent to the attention of Mark Hall at the following address:

City of Wichita
Storm Water
455 N. Main 8th Floor
Wichita, KS 67202

THIS INCLUDES ALL PROJECTS DISTURBING ONE ACRE OR MORE – I.E. NEW DEVELOPMENT, ARTERIAL STREETS, DIRT STREETS, BIKE PATHS, SEWER MAINS, ETC.

The City of Wichita will, under no circumstance, bid any project without first receiving copies of the KDHE approved NOI and SWP3.

The design of all City of Wichita construction projects must include the development of a site-specific erosion control plan. The site-specific erosion control plan must be included in the project plans. Every component and requirement of the erosion control plan must be separately and accurately accounted as a measured quantity bid item in the engineer's estimate.

Please note that careful consideration must be given to the transition of BMP maintenance responsibilities throughout the course of multi-phased projects. All intended responsibilities must be clearly demonstrated by the bid items. For example, if it is intended that the contractor of a subsequent waterline project be responsible for the maintenance of silt fence installed with a preceding sanitary sewer project, a measured quantity bid item must be submitted for x-lf of silt fence maintenance.

The City's current BMP standard detail sheets shall be included in all plans. These five sheets must be included in every plan set developed for the City of Wichita, regardless of project size.

Attachment No. 2 to Exhibit "A" – CIP Scope of Services

Required Plan Coordinate Information

Arterial Street Projects & Infill (Existing Neighborhoods)

I. SANITARY SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments
- benchmarks, including TBM set with preliminary survey
- center of manholes
- end of manhole stubs (when longer than five feet)

II. WATER LINE

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- beginning and ends of pipe
- all P.I.'s/deflections (horizontal and vertical)
- FH's, tees, bends, air release, valves

III. STORM SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- for skewed inlets typically in intersection radii, or not parallel to baseline – center of curb inlet **AND** center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- end of end section, at CL of pipe
- center, end of pipe at outside face of headwall; if headwall not perpendicular to pipe, each corner of headwall at outside face
- center of all drop inlets, manholes, and other structures
- center of RCBC at each end (outside face of hubguard); if box rotated, each corner, outside face

IV. PAVING

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- center of signal poles, service and junction boxes, controller, etc.; ends and P.I.'s for retaining walls, at back of walls

THE SAME COORDINATE SYSTEM SHALL BE USED FOR ALL SEPARATE PHASES OF A LARGER INFILL OR ARTERIAL STREET PROJECT.

Sub-Division Projects

I. SANITARY SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- center of manholes
- back and/or front lot corners for specifically referenced easement grading, outside that included in mass grading projects; include coordinates for vertical P.I. locations not at lot corners
- end of manhole stubs (when longer than five feet)

II. WATER DISTRIBUTION SYSTEM

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- beginning and ends of pipe
- all P.I.'s/deflections (horizontal and vertical)
- FH's, tees, bends, air release, valves

III. WATER SUPPLY LINE

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- beginning and ends of pipe
- all P.I.'s/deflections (horizontal and vertical)
- FH's, tees, bends, air release, valves

IV. STORM SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- for skewed inlets typically in intersection radii, or not parallel to baseline – center of curb inlet **AND** center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- end of end section, at CL of pipe
- center, end of pipe at outside face of headwall; if headwall not perpendicular to pipe, each corner of headwall at outside face
- center of all drop inlets, manholes, and other structures
- center of RCBC at each end (outside face of hubguard); if box rotated, each corner, outside face

V. MASS GRADING

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- all lot corners
- any grade breaks between front & rear lot corners
- high points/low points within drainage easements
- street area
    - centerline @ 100' Sta on tangent sections
    - pc/pt points & 50' along curves
- special drainage swales
    - pc/pt points, pi's & 50' Sta in between
- ponds
    - any grades breaks between pond bottom and rear property line
    - pc/mid radius/pt around pond curves
- for irregular shaped lots (mainly commercial or industrial developments) provide TIN file

VI. PAVING

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey

In addition to the required coordinate information, the following shall be included in all plans, at a minimum, as needed for construction staking on all City projects.

- Include copy of plat(s) on all plans, as relevant and approved by the Design Engineer
- Benchmarks – minimum of two City standards, four total desirable; as close to project as possible, even if TBM set with preliminary survey.
- Benchmark elevations must be in the same datum as the design (i.e. NAV 88 design needs NAV 88 benchmarks, not NAV 29)
- All control irons/identified property irons shall be shown on plans, with BL stationing and offset
- Show deflection angles in BL, and/or bearing/azimuth of BL sections
- Arterial project side streets – provide BL station at CL of intersection of the two streets, on the BL; BL station and offset to CL of side street at removal limits; include deflection angle from BL to CL of side street
- Existing FL/pavement grades shown at all match points
- Top of curb grades and stationing at all ends-of-return and horizontal/vertical P.I.'s, not just even stationing
- CL top of pavement grades for arterial
- CL elevation for streets on mass grading work @ 100' Sta in tangent sections and 50' on curves. **ELEVATION SHALL BE TO TOP OF ROCK BASE**.
- BL station and offset at all R/W changes; include R/W corners at all intersections, even if no change in R/W
- Clearly show existing grades at R/W and beyond; identify removal limits beyond R/W (for grade purposes) with BL station and offset, or dimension from R/W
- Show offset distance between BL and proposed street CL when not the same; establish clear relationship between the two
- BL station and offset to center of signal poles, service and junction boxes, controllers, etc.
- BL station and offset to back of retaining walls, at ends of walls and all P.I.'s
- Concrete pavement – provide detailed joint pattern, dimensions, and elevations for all valley gutters, intersections, and mainline pavement; should be separate plan sheet(s) with clear and project-specific details
- Storm Sewer – BL station and offset for all curb inlets, drop inlets, manholes, and other structures (to the coordinate point locations detailed in previous sheets); same for SS and WL – pertinent facilities should be referenced to BL station and offset
- Sanitary Sewer – show deflection angles between MH's
- Flow line elevations for manhole stubs

- Curve Tables – should include bends, tees, valves, FH's etc. for waterlines; ends-of-return, P.I.'s, etc. for paving
- Should be able to accurately scale off of plans

Attachment No. 3 to Exhibit "A" – CIP Scope of Services

Project Name

Utility Location Verification for ULCC Sub-Committee (Date)

Field Check: ☐ **Office Check:** ☐

UTILITY: _____ **Checked by**_____ **on** _____

Utility Location:

☐ None in Project Limits
☐ In Project Limits, No Relocation Necessary
☐ Utility will need to relocate
☐ Utility is located in Private Easement
☐ Private Easement Documentation Attached
☐ Utility will need to relocate and is interested in **proposed** ROW **(IF applicable)**

Briefly Describe Type and Location of Facilities within Project:

_____

_____

Estimate Time for Relocation: ☐ < 3 months ☐ 3-6 months ☐ 6-9 months ☐ > 9 months

Weather Sensitive: ☐ Yes ☐ No If yes, please explain: _____

Factors prerequisite to or that could affect relocation process (i.e. Regulatory Requirements):

_____

_____

Utility Plan Review:
☐ Correct as Shown ☐ Corrections needed ☐ Attachments provided for Consultant

Corrections necessary on plan sheets:

_____

_____

Additional Information requested from Consultant: _____

_____

Utility Requests Paper Plans (choose one): ☐ Full Size ☐ Half Size ☐ Cross-Sections (Full Size)

Please email this form on or before Date to:

Project Engineer Consultant — Leslie Hicks
Company — City of Wichita
E-mail — lhicks@wichita.gov

Attachment No. 4 to Exhibit "A" – CIP Scope of Services

Individual Project Name (i.e., Amidon, 21st to 29th Street North)													
Current Date	ADOT Proj. no/ City Proj. no	City Design Manager	Consultant	Date of First UUCC	Date of Second UUCC	Date of Plan Revision Distribution	Date of Second Plan Revision Distribution	R/W Purchased Y/N	Date Utilities notified of R/W completion			Project Proposed bid Date	Proposed Utility Clear Date (project)
2/21/2013	111111/ zzzzzz	Kallman	Rea Lee/ Riggs & Eaton	2/21/2013	2/21/2013			No					
			Utility Contact	Utility needs to relocate (Y/N)	Utility in Private Easement (Y/N)			Utility needs PROPOSED R/W to relocate (Y/N)	Relocation Weather Sensitive (Y/N)	Estimated Date of Utility Design Completion	Time needed for relocation after utility design complete		Individual Utility Clear Date
Westar (Distribution)													
Location in Project: (Describe Existing Facilities)													
Relocation Needs:													
Comments:													
Westar (Transmission)													
Location in Project: (Describe Existing Facilities)													
Relocation Needs:													
Comments:													

KGS
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
Black Hills
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
AT&T
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:

Gas
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
Water
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
Sewer
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:

Stormwater
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
Other
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:

EXHIBIT "B"

REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements:

A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.

B. Requirements of the State of Kansas:

1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.

C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:

1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;
2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be

deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;

4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.

5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars ($5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.

2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

EXHIBIT "C"
Scope of Services
John Mack Bridge Repairs

PROPOSAL FOR ENGINEERING SERVICES
City of Wichita, Kansas
Assessment of SB South Broadway – the John Mack Bridge (NBI 53040087000AR30) – over the Arkansas River

PROJECT LOCATION, DESCRIPTION & OVERVIEW

Southbound Broadway over the Arkansas River in Wichita, KS is carried by two structures – one for northbound and one for southbound. The southbound structure is an eight-span tied March arch. This structure was recently inspected under the Kansas Local Bridge Evaluation Program. This hands-on special inspection utilized an under-bridge vehicle and provided up-close inspection findings of the whole structure. This special inspection and report were followed by a live load rating that resulted in a maximum operating rating of 5 Tons. The City of Wichita has posted the bridge for 5 Tons; which prior to the load rating was open with no restrictions.

At the request of the City, TranSystems has prepared an approach and a scope to complete an assessment of the bridge to determine what repairs are necessary to return the load carrying capacity of the structure legal loads.

APPROACH

TranSystems will review the inspection records, the as-built plans, the rehabilitation plans, and the recent live load rating report. After reviewing these documents we have assumed an inspection team of two for one day utilizing ropes or ladders to gain access to key elements will be needed to complete the site visit.

TranSystems understands that the end floor beams at Piers 3, 4, and 5 are driving the 5T load rating. These areas, along with the same location in other spans will be assessed for deterioration and their extents will be documented with measurements and photos. The documents review will determine what other areas of the bridge will need a closer look and these areas will also be documented with measurements and photos at their specific locations.

After the field assessment of the bridge is complete, a report will be generated with a summary of findings, and a list of recommended repairs will be developed and prioritized. A probable cost of construction for the repairs will be developed as well. At this time a review meeting will be held with the City to discuss the repair prioritization. Since we understand the end floor beams are controlling the load rating, repair plans for these locations only will be developed. An estimate of design fee associated with other recommended repairs will be developed but plans will not be developed at this time.

Tasks and activities include:

- Project management
- Documents review – inspection records, plans, load rating reports
- Site visit and documentation
- Reporting findings and recommendations
- Developing repair plans for end floor beams only
- One (1) Review Meeting with City staff
- Developing probable cost of construction
- Developing additional design fee for additional recommended repairs

ASSUMPTIONS

This scope and fee has been assembled using the following assumptions:

- An under-bridge vehicle will not be required for the site visit
- Plan preparation will be for the end floor beams only; any additional plans will be developed under a supplement to this scope
- Floor beam repair plans for all seven (7) piers are assumed to be 6 pages – title, general notes, plan and profile, details (2), quantities
- Travel to and from Wichita from Kansas City for one person on two separate occasions is required

SCHEUDULE

The duration of this contract is anticipated to be two months. TranSystems understands the City would like to begin work on this assessment and subsequent steps as soon as possible.

Field work and associated reporting is anticipated to be completed in one month, while plan preparation is anticipated to be completed in an additional month.

EXHIBIT "D"
Design Fee
February 9, 2015

Made by:	LCM	2/9/2015	Job No: P125130021
Checked by:	BAL/MJJ		
Project:	John Mack Bridge Assessment		
Subject:	Fee Estimate		

			Bridge Assessment				Plan Preparation & Estimates			
	Principal	Admin	Project Manager	Team Leader	Bridge Inspector	T3	Project Manager	Structural Enginner	T3	I3
	$340.79	$86.21	$143.69	$175.33	$82.48	$89.12	$143.69	$175.33	$89.12	$82.48
Field Work	2	4		18	8					
Office Work	22	4	12	33	13	8	47	49	108	12
Total	**24**	**8**	**12**	**51**	**21**	**8**	**47**	**49**	**108**	**12**

	Total	
Field Work	32	$ 4,842.20
Office Work	308	$ 43,096.91
Total Labor	**340**	**$ 47,939.11**

Expense			rate	Total
Mileage *	1113	miles @	$0.575	$ 639.98
Lodging **	2	nights @	$93.00	$ 186.00
		Total Expenses		**$ 825.98**

Total Lump Sum Price	**$ 48,765.09**

Assumptions:

Bridge site visit will be one 8-hour day, estimate includes travel time for TL to travel to Wichita. Access gained by rope access or on foot and ladder.

Repair plans will be 6 pages and will only address the repairs for the end floor beams. Piers 3, 4 and 5 have been identified as the most severe locations, but assume a repair of similar design will be applied at the same location of all piers.

* 15 miles travel to site plus mileage for two trips to Wichita.

** 2 nights lodging, one for site visit trip, one for City review meeting trip

RESOLUTION NO. 15-075

A RESOLUTION AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS OF THE CITY OF WICHITA, KANSAS TO PAY THE COSTS OF CERTAIN PUBLIC IMPROVEMENTS IN THE CITY.

WHEREAS, the City of Wichita, Kansas (the "City") is a municipal corporation, duly created, organized and existing under the Constitution and laws of the State; and

WHEREAS, the Governing Body is authorized, , pursuant to K.S.A. 13-1024c, as amended by Charter Ordinance No. 156 of the City (the "Act") to issue general obligation bonds of the City without an election for the purpose of paying for the construction, purchase or improvement of any public improvement, including the land necessary therefore, and for the purpose of rebuilding, adding to or extending the same as the necessities of the City may require and for the purpose of paying for certain personal property therefore; and

WHEREAS, the Governing Body hereby finds and determines that it is necessary and advisable to make certain public improvements described as follows:

Investigation, analysis, preliminary design, and oversight to the John Mack Bridge (472-85210).

(collectively, the "Project") and to provide for the payment of all or a portion of the costs thereof by the issuance of general obligation bonds of the City pursuant to the Act.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, AS FOLLOWS:

Section 1. **Project Authorization**. It is hereby authorized, ordered and directed that the Project be acquired and/or constructed at an estimated cost of $60,000 in accordance with plans and specifications therefor prepared under the direction of the City Engineer and approved by the Governing Body; said plans and specifications to be placed on file in the office of the City Engineer.

Section 2. **Project Financing**. All or a portion of the costs of the Project, interest on financing and administrative and financing costs shall be financed with the proceeds of general obligation bonds of the City (the "Bonds"). The Bonds may be issued to reimburse expenditures made on or after the date which is 60 days before the date of adoption of this Resolution, pursuant to Treasury Regulation §1.150-2.

Section 3. **Effective Date**. This Resolution shall be in full force and effect from and after its adoption by the Governing Body.

ADOPTED by the City Council of the City of Wichita, Kansas, on March 17, 2015.

(SEAL)

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Sharon L. Dickgrafe
Interim Director of Law and City Attorney

Please wait...

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CITY OF WICHITA

PUBLIC WORKS & UTILITIES **INTEROFFICE MEMORANDUM**

TO: Robert Layton, City Manager

FROM: Gary Janzen, P.E., City Engineer

THROUGH: Alan King, Director of Public Works & Utilities

DATE: February 5, 2015

SUBJECT: John Mack Bridge, Assessment and Recommendation of Repairs

The John Mack Bridge carries southbound traffic on Broadway over the Arkansas River, south of Pawnee. The bridge was originally constructed in 1931 with significant rehabilitation completed in 1996, and carries approximately 12,000 vehicles per day, southbound only, including large trucks. The Kansas Department of Transportation (KDOT) contracted with TranSystems Corporation to complete special up-close inspections on all fracture-critical and Marsh arch bridges in the state. The John Mack Bridge is a Marsh arch bridge and subsequently was inspected on June 30, 2014. Results and analysis of that inspection were presented to the City Engineer's office on December 18, 2014. The inspection showed that numerous floor beams are in need of repair and are limiting the load rating of the bridge. The bridge has now been signed to restrict loads and a heavy truck detour is in place along Pawnee, Seneca, and 31st Street South. The report does not portray any imminent danger of collapse, however, it does effectively limit most truck traffic. Since TranSystems performed the last general inspection of the bridge and were involved with KDOT on the special up-close inspection, they are the most familiar and can act the most quickly to evaluate the severity of the degradation. Therefore, Engineering staff recommends contracting with TranSystems to determine the full extent of the problem and estimated repair costs, such that formal repairs can be made as soon as possible and the bridge reopened to truck traffic. The estimated cost for their preliminary design work is $47,939.11. The Scope of Services and Fee Estimate are attached.

General Obligation (GO) bond funding in the amount of $1,000,000 has been recommended for programming in the proposed 2015-2024 Capital Improvement Program (CIP), in 2015, for design and construction. Staff requests approval of a $60,000 budget at this time for the discovery phase and concept design development, including oversight costs by the City Engineer's office. Your signature below will indicate concurrence to authorize the work. An agenda report will then be prepared for the City Council.

I request that you declare this a Public Exigency, which is defined under City Code, Section 2.64.020(c), as an instance when public exigency will not permit the delay incident to advertising, as determined and approved by the City Manager. An approval line has been provided if you concur with this request. A subsequent agenda item will be prepared to obtain Council acknowledgement of this declaration action.

Robert Layton, City Manager

City of Wichita
City Council Meeting
March 17, 2015

TO: Mayor and City Council

SUBJECT: City Buildings and Facilities - Americans with Disabilities Act Compliance (All Districts)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendation: Approve the revised budget and adopt the amending resolution.

Background: Federal Law requires that public buildings, facilities, and programs meet the requirements of Americans with Disability Act (ADA). In 2005, the City contracted with an ADA consultant to review all City buildings, facilities, and programs for ADA compliance. The consultant documented and prioritized all issues of noncompliance and assisted in creating a 10-year corrective action plan (Transition Plan). The City Council adopted this ADA Transition Plan on June 3, 2008.

Analysis: Funding is required to continue with the implementation of the Transition Plan (design and construction) as well as ensuring that all new remodel projects meet the requirements of the ADA. Facilities targeted for full ADA compliance in the next two years include but not limited to: O. J. Watson Park transition plan improvements; City Hall Police Records, Warrant Office improvements, fitness locker area improvements, and selected office improvements in the Crime Investigations bureau; selected swimming pools; and public curb ramps.

Financial Considerations: The 2011-2020 Capital Improvements Program approved by the City Council allocates $300,000 in General Obligation bonds per year in both 2015 and 2016. The current approved budget is $2,550,000 in General Obligation bonds. The addition of $600,000 brings the total budget to $3,150,000.

Legal Considerations: The Law Department has reviewed and approved the amending resolution as to form.

Recommendation/Action: It is recommended that the City Council approve the revised budget, adopt the amending resolution, and authorize the necessary signatures.

Attachment: Budget Sheet and amending resolution.

Project Request

(•) CIP ( ) Non-CIP CIP YEAR: 2015-2016 CIP #: 2011-2020 CIP

[ ] NEIGHBORHOOD IMPROVEMENT

DEPARTMENT: 13 Public Works & Utilities DIVISION: Fleet & Bldings RESOLUTION/ORDINANCE #:

ENGINEERING REFERENCE #:

FUND: 435 Public Improvements

COUNCIL DISTRICT: 07 All Districts DATE COUNCIL APPROVED: REQUEST DATE: Feb 11, 2015

PROJECT # : 435486 PROJECT TITLE: City Buildings and Facilities- ADA Compliance

PROJECT DETAIL # : 01 PROJECT DETAIL DESCRIPTION: City Buildings and Facilities- ADA Compliance

OCA # : 795009 OCA TITLE: City Buildings and Facilities- ADA Compliance

PERSON COMPLETING FORM: Megan McCall PHONE #: 268-4093

PROJECT MANAGER: Migwi Karugu PHONE #: 268-4492

( ) NEW BUDGET (•) REVISED BUDGET

Revenue Object Level 3	Original Budget	Adjustment	New Budget
9720 G.O. Bonds	$2,550,000.00	$600,000.00	$3,150,000.00
	$0.00	$0.00	$0.00
	$0.00	$0.00	$0.00
	$0.00	$0.00	$0.00
	$2,550,000.00	$600,000.00	$3,150,000.00

Expense Object Level 3			
2999 Contractuals	$2,550,000.00	$600,000.00	$3,150,000.00
	$0.00	$0.00	$0.00
	$0.00	$0.00	$0.00
	$0.00	$0.00	$0.00
Total Expense:	$2,550,000.00	$600,000.00	$3,150,000.00

NOTES:

SIGNATURES REQUIRED

Print Form

DIVISION HEAD: _____ DATE: 2-11-15

DEPARTMENT HEAD: _____ DATE: 2-19-15

BUDGET OFFICER: _____ DATE: 20 Feb 2015

CITY MANAGER: _____ DATE: _____

792409

First Published in the Wichita Eagle on March 20, 2015

RESOLUTION NO. 15-076

A RESOLUTION AMENDING RESOLUTION NO. R-13-029 OF THE CITY OF WICHITA, KANSAS TO PAY ALL OR A PORTION OF THE COSTS OF CONDUCTING A SURVEY OF EXISTING CITY BUILDINGS AND FACILITIES TO DETERMINE WHAT MODIFICATIONS ARE REQUIRED TO BRING EACH SUCH BUILDING AND/OR FACILITY IN COMPLIANCE WITH THE CURRENT ADA ACCESSIBILITY GUIDELINES AND COMPLETE SAID MODIFICATIONS, AND AUTHORIZING THE ISSUANCE OF BONDS BY THE CITY OF WICHITA AT LARGE.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WICHITA, KANSAS;

SECTION 1: That Section 1 of Resolution No. R-13-029 of the City of Wichita, Kansas is hereby amended to read as follows:

"The governing body hereby declares it to be its intention to issue and sell, in the manner provided by law, general obligation bonds under the authority of K.S.A. 13-1024c, as amended by City of Wichita Charter Ordinance No. 156, to pay all or a portion of the cost of modifications and construction to bring City buildings and facilities into compliance with ADA guidelines. The costs of such repair shall be paid by the issuance of general obligation bonds as aforesaid in an amount not to exceed $3,150,000, exclusive of the costs of interest on borrowed money."

SECTION 2: Section 2 of Resolution No. R-13-029 is hereby rescinded.

SECTION 3: This resolution shall take effect and be in force from and after its passage and publication once in the official City paper.

ADOPTED At Wichita, Kansas, this 17th day of March, 2015.

_____

CARL BREWER, MAYOR

ATTEST:

_____
KAREN SUBLETT, CITY CLERK

(SEAL)

APPROVED AS TO FORM:
_____
SHARON L. DICKGRAFE
INTERIM DIRECTOR OF LAW AND CITY ATTORNEY

CITY OF WICHITA
City Council Meeting
March 17, 2015

TO: Mayor and City Council

SUBJECT: Lease Termination – 2130 and 2220 E. 21st Street (District I)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the lease termination.

Background: In 1996, the City and Cessna entered into a development agreement and lease to construct two buildings located at 2130 and 2220 E. 21st Street. The building at 2130 was developed as a subassembly facility and training site. The building at 2220 was developed as a life skill training facility and day care. Cessna operated the buildings for these purposes for several years until the program was relocated to its main facility when business slowed due to the recession. Cessna has been marketing the properties for sublease for several years with any request for purchase directed to the City. The buildings are under lease to Cessna through November 2017.

Analysis: The City has received an offer of $725,000 for the building at 2130 E. 21st. A prerequisite of the sale is the termination of the lease with Cessna. Rent is $31,500 per month. Cessna has agreed to pay $610,000 to terminate the lease. This amount equates to the present value of the remaining lease payments and estimated utility costs for 2220 E. 21st Street plus cash compensation of $74,000 for repairs that the building requires. The facility at 2220 E. 21st will be evaluated for potential City uses. If none are identified, it will be marketed for sale.

Financial Considerations: The project was primarily financed with a HUD 108 loan. This loan has been repaid from lease payments. The City will receive cash consideration for the termination of the lease. The net proceeds from the sale will be deposited to the General Fund.

Legal Considerations: The Law Department has approved the lease termination as to form.

Recommendation/Action: It is recommended that the City Council approve the termination of lease agreement and authorize all necessary signatures.

Attachments: Termination of Lease agreement and aerial.

2130 and 2220 East 21st

Legend

- ☐ Parcels

This information is not an official record, and cannot be used as such. The user should rely only upon official records available from the custodian of records in the appropriate City and/or County department. Some data provided here and used for the preparation of these maps has been obtained from public records not created or maintained by the City of Wichita.

1: 1,712

TERMINATION OF LEASE AGREEMENT

This Termination of Lease Agreement ("Termination") is made this _____ day of _____, 2015, between The City of Wichita, Kansas a municipal corporation of the State of Kansas ("Lessor") and Cessna Aircraft Company, a Kansas corporation ("Lessee").

RECITALS

Whereas Lessor and Lessee previously entered into a lease agreement dated the 25th day of June, 1996 (the "Lease") as amended by that certain Amendment to the Lease dated as of May 6, 2003 and that certain Lease Agreement Amendment No. Two dated November 1, 2007, covering the Leased Premises all as more particularly described in the Lease; and

Whereas the current term of the Lease will expires by its terms on November 6, 2017; and

Whereas the Lessor and Lessee desire to terminate the Lease on or before May 19, 2015.

Now therefore, Lessor and Lessee do hereby covenant and agree as follows:

1. The expiration date of the Lease is modified to be April 30, 2015 or such earlier date as agreed in writing to by the parties ("Termination Date").

2. As consideration for the early termination of the lease, Lessee agrees to pay Lessor Six Hundred Ten Thousand Dollars and Zero Cents ($610,000.00) (the "Termination Payment") to Lessor on or before the Termination Date.

3. Lessor acknowledges that the heating and cooling units serving 2220 East 21st Street of the Leased Premises are in need of repair. Seventy-four Thousand Dollars and Zero Cents ($74,000.00) of the Termination Payment is paid to Lessor in lieu of requiring Lessee to repair said units.

4. Lessee represents that except for the repairs noted in paragraph 3 of this Termination, Lessee will surrender possession of the Leased Premises in good condition and repair, ordinary wear and tear excepted.

5. Pursuant to Section 8.3 of the Lease, Lessee shall be responsible for all ad valorem taxes and assessments levied upon the Leased Premises up to the Termination Date. Taxes and assessments shall be prorated at termination based upon 2014 taxes and assessments. Lessor will provide Lessee with a calculation of the amount owed based on the termination date. Lessor and Lessee shall agree on the amount owed. Lessee shall reimburse Lessor for its prorated portion of the taxes contemporaneously with the Termination Payment.

6. Prior to the Termination Date, Lessee shall remove all machines, equipment and all other personal property located on the Leased Premises in compliance with Section 10.2 of the Lease. Any personal property not removed by the Termination Date shall become property of the Lessor.

7. Lessee shall accept the surrender of the Leased Premises as of the Termination Date and in consideration of such surrender by Lessee and of the acceptance of such surrender by Lessor, Lessee and Lessor do hereby mutually release each other, their respective successors and assigns of and from

any and all claims, damages, obligations, liabilities, actions and causes of action, of every kind and nature whatsoever arising under or in connection with the Lease from and after the Termination Date, except that nothing herein contained shall be deemed to constitute a release or discharge of Lessor or Lessee with respect to any obligation or liability (a) accrued or incurred under the Lease and outstanding and unsatisfied on the Termination Date, and (b) to a third party (under the insurance and indemnification provisions of the Lease or otherwise) arising prior to, on or after the Termination Date as a result of an event occurring or condition existing prior to or on the Termination Date and (c) accrued or incurred under this Termination.

8. (a) Except as set forth herein, nothing contained in this Termination shall be deemed to amend or modify in any respect the terms of the Lease.

(b) This Termination contains the entire agreement of the parties with respect to its subject matter and all prior negotiations, discussions, representations, agreements and understandings heretofore had among the parties with respect thereto are merged herein.

(c) This Termination may be executed in duplicate counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument.

(d) This Termination shall not be binding upon Lessor or Lessee unless and until Lessor shall have delivered a fully executed counterpart of this Termination to Lessee.

(e) This Termination shall be governed by the laws of the State of Kansas without giving effect to conflict of laws principles thereof.

(f) This Termination shall be binding upon and inure to the benefit of Lessor and Lessee and their successors and permitted assigns.

(g) The terms and provisions of this Termination shall survive the expiration or earlier termination of the Lease.

(h) All capitalized terms used and not otherwise defined in this Termination shall have the respective meanings ascribed to them in the Lease.

IN WITNESS WHEREOF, the parties have respectively executed this Agreement as of the day and year first above written.

LESSOR

CITY OF WICHITA, KANSAS

By _____
CARL BREWER, Mayor

ATTEST:

By _____
KAREN SUBLETT, City Clerk

APPROVED AS TO FORM:

By _____
Sharon L. Dickgrafe, Interim Director of Law and City Attorney

LESSEE

Cessna Aircraft Company

By _____
Ronald W. Draper
Senior Vice President, Integrated Supply Chain

CITY OF WICHITA
City Council Meeting
March 17, 2015

TO: Mayor and City Council

SUBJECT: Sale of City-owned Building at 2130 E. 21st Street (District I)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the sale.

Background: In 1996, the City and Cessna entered into a development agreement and lease to construct two buildings located at 2130 and 2220 E. 21st Street. 2130 E. 21st Street was developed as a subassembly facility and training site. The building at 2220 was developed as a life skill training facility and day care. The facility at 2130 E. 21st is an approximately 23,873 square foot, single-story manufacturing facility on a 164,576 square foot site. The site is zoned general commercial. There is approximately 4,600 square feet finished as office space with the rest of the building developed as high ceiling manufacturing/warehouse space.

Cessna operated the training program for several years until the program was relocated to its main facility when business slowed due to the recession. Cessna has been marketing the properties for sublease for several years with any request for purchase directed to the City. The buildings are under lease to Cessna through November 2017.

Analysis: The City has received an offer of $725,000 for the property. The buyer intends to lease the site to Open Door, which will renovate the building and use it as a food storage and distribution facility. Cessna has marketed the property for sublease since the properties were vacated several years ago. Any offers to purchase were forwarded to the City. The property has been advertised by Cessna in mailers, on the Internet and in print advertisements.

Financial Considerations: The City will receive cash consideration for the sale of the property. The improvements were primarily financed with a Housing and Urban Development (HUD) 108 loan. This loan has been repaid from lease payments. The site itself was acquired with a HUD Special Purpose Grant and Community Development Block Grant (CDBG) funds. Per rules applicable to the use of CDBG funds for the purchase of real property, a prorata share of proceeds from any sale of such property must be allocated as program income to the community development program. Approximately nine percent of the grant funds are applicable to the site being sold. Nine percent of the sales price, $65,250, will be redirected for reprogramming by City community development staff. This property is also located within the 21st and Grove Tax Increment Financing (TIF) District which was established in 1995. A shortfall of TIF revenue in relation to debt service payments made to date currently exists in the amount of $236,469. Staff recommends that available proceeds from the sale of this property be applied to the 21st and Grove TIF fund to cover the current debt service shortfall. Finally, after payment of a 4% sales commission and closing and other costs associated with the sale estimated at $77,500, the estimated remaining net proceeds of $316,781 from the sale of this property may be deposited to the General Fund or as otherwise directed by the City Council.

Legal Considerations: The Law Department has approved the contract as to form.

Recommendation/Action: It is recommended that the City Council approve the real estate purchase agreement and authorize all necessary signatures.

Attachments: Real estate purchase agreement and aerial.

REAL ESTATE PURCHASE AGREEMENT

"AS IS", "WHERE IS" SALE

This Real Estate Purchase Agreement ("Agreement") is made by and between **City of Wichita, Kansas,** as "Seller," and **Great Plains Annual Conference of The United Methodist Church,** or assigns, as "Buyer," and is effective on the last date this Agreement is signed by all the parties ("Effective Date").

1. **Property.** Buyer agrees to purchase and Seller agrees to sell and convey to the Buyer, by a good and sufficient Special Warranty Deed ("Deed") and Bill of Sale for any non-realty portion, subject only to the Permitted Exceptions (as defined in the paragraph entitled "Title Evidence"), unpaid taxes and assessments not yet due and payable, and zoning ordinances, the real property as described on the attached Exhibit "A", such to be verified by the Title Company, which is commonly known as 2130 E. 21st Street North, Wichita, Kansas, together with all buildings and improvements and all personal property, if any, used in the operation of the building and improvements, including, if any, all mechanical systems, fixtures and equipment, heating, ventilating and air conditioning equipment, electrical systems and lighting, plumbing equipment and fixtures, floor coverings, and appurtenances thereon or attached thereto (the "Property").

2. **Purchase Price.** The purchase price for the Property is **Seven Hundred Twenty Five Thousand** Dollars ($725,000.00) (the "Purchase Price"). Buyer agrees to pay an earnest money deposit in the amount of Five Thousand Dollars ($5,000.00) (the "Deposit") to Security 1st Title Company, as Escrow Agent for the parties, within five (5) business days after the Effective Date. The Deposit will be applied to the Purchase Price at Closing, and the balance of the Purchase Price (subject to credits and prorations pursuant to this Agreement) will be paid in immediately available funds at Closing.

3. **Due Diligence and Inspections.** Seller agrees to allow Buyer reasonable access to the Property to inspect the Property. Buyer will have until 5 PM CST on the 60th day after the Effective Date (the "Inspection Period"), in which to inspect the Property (including but not limited to: structural, mechanical, engineering, geological, ecological, environmental, soil, and survey inspections), and otherwise conduct diligence in Buyer's sole discretion to verify if Buyer desires to acquire the Property. All such inspections and testing will be conducted at Buyer's sole cost and expense. Buyer agrees to repair any damage caused to the Property while completing said inspections and testing. If Buyer is not satisfied for any reason with the Property or otherwise elects to not acquire the Property, then Buyer will have the right to terminate this Agreement by delivering to Seller written notice of the termination by no later than the end of the Inspection Period and Buyer will be entitled to a full refund of the Deposit. To Seller's actual knowledge, Seller has no knowledge or has not received any written notice from any governmental authority of (a) any release, spill or discharge of any hazardous material on or from the Property, (b) any violation or alleged violation of any environmental laws at the Property, and (c) changes, violations and/or alleged violation regarding applicable laws, ordinances, regulations, statutes, rules or restrictions affecting the Property.

4. **Seller Documents**. Seller agrees to provide Buyer with any documents or information in the possession of Seller related to the Property as may be reasonably requested by Buyer during the Inspection Period including but not limited to plans, permits, reports, surveys, and leases. Seller warrants that the existing lease of the Property with Cessna Aircraft Company ("Cessna") shall be terminated no later than the Closing date, and Cessna shall peacefully surrender possession of the Property no later than the Closing date; BUT OTHERWISE Seller does not make any express or implied, written or oral, representation or warranty with respect to any documents or information provided to Buyer.

5. **Title Evidence.** Seller shall deliver an Owner's ALTA Title Insurance Policy insuring marketable fee simple title in Buyer in the amount of the Purchase Price as of the time and date of recording of Seller's Special Warranty Deed, subject only to the Permitted Exceptions defined below. Seller shall, as soon as possible and not later than ten (10) days after the Effective Date of this Agreement, cause to be furnished to Buyer a current commitment to issue the Title Policy ("Title Commitment"), to be issued through Security 1st Title Company (the "Title Company") or such other title company to which Seller and Buyer mutually agree. Buyer shall have fifteen

(15) days after its receipt of the Title Commitment (the "Title Review Period") in which to notify Seller in writing of any objections Buyer has regarding any matters shown or referred to in the Title Commitment. Any matters which are set forth in the Title Commitment and to which Buyer does not object within the Title Review Period shall be deemed to be permitted exceptions to the status of Seller's Title (the "Permitted Exceptions"). With regard to items to which Buyer does object within the Title Review Period, Seller shall have fifteen (15) days after receipt of Buyer's written notice of objections to cure such objections ("Title Cure Period"). If Seller does not cure the objections by the end of the Title Cure Period or if Seller and Buyer have not agreed to extend the Title Cure Period by amending this Agreement, then this Agreement shall automatically be terminated unless Buyer waives, in writing, the objections no later than ten (10) days after the end of the Title Cure Period. Upon any such termination Buyer shall be entitled to a full refund of the Deposit.

6. **Condition of Property; Condemnation; Insurance; Casualty.** The Property is being sold in its "as-is" and "where-is" condition and Seller makes no representation or warranty to Buyer unless and except as expressly provided in this Agreement. Seller agrees to convey the Property with all the improvements located thereon and deliver possession of the same in the same condition as they exist on the Effective Date, reasonable wear and tear excepted. All risk of loss or damage to the Property prior to Closing shall remain with Seller. If, before Closing, all or any part of the Property is taken by eminent domain, or if a condemnation proceeding has been filed or is threatened against the Property or any part thereof, or if all or any part of the Property is destroyed or damaged by fire or other casualty, Seller shall promptly provide notice to Buyer of any such event, including the amount of or Seller's best estimate of any award to be made for any taking and any insurance proceeds payable on account of casualty. Upon such notice, Buyer may re-inspect the Property and may, by written notice to Seller within ten (10) days after receiving Seller's notice, terminate this Agreement. Upon any such termination, Buyer shall be entitled to a full refund of the Deposit. Unless this Agreement is so terminated, it shall remain in full force and effect and Seller shall, at Closing, assign and transfer to Buyer all of Seller's right, title and interest in and to any awards that may be made for any taking and any insurance proceeds payable on account of casualty. Prior to Closing, in the event of any damage to or loss of the Property caused by uninsured casualty, either Buyer or Seller may terminate this Agreement, and Buyer shall be entitled to a full refund of the Deposit.

BUYER HAS CAREFULLY INSPECTED THE PROPERTY, AND SUBJECT TO ANY INSPECTIONS ALLOWED UNDER THIS AGREEMENT, BUYER AGREES TO PURCHASE THE PROPERTY IN ITS PRESENT CONDITION ONLY, WITHOUT WARRANTIES OR GUARANTIES OF ANY KIND BY SELLER OR ANY BROKER CONCERNING THE CONDITION OR VALUE OF THE PROPERTY, EXCEPT AS TO TITLE TO THE PROPERTY, AS SET FORTH IN PARAGRAPHS 1 AND 5. BUYER AGREES TO VERIFY ANY INFORMATION THAT IS IMPORTANT TO BUYER BY AN INDEPENDENT INVESTIGATION OF ITS OWN. BUYER HAS BEEN ADVISED TO HAVE THE PROPERTY EXAMINED BY PROFESSIONAL INSPECTORS. BUYER ACKNOWLEDGES THAT NEITHER SELLER NOR ANY BROKER INVOLVED IN THIS TRANSACTION IS AN EXPERT AT DETECTING OR REPAIRING PHYSICAL OR ENVIRONMENTAL DEFECTS IN THE PROPERTY. BUYER STATES THAT NO IMPORTANT REPRESENTATIONS CONCERNING THE CONDITION OF THE PROPERTY ARE BEING RELIED UPON BY BUYER EXCEPT AS DISCLOSED IN THIS AGREEMENT.

7. **Closing.** It is understood and agreed between the parties hereto that time is of the essence with respect to this Agreement, and that this transaction will be consummated (the "Closing") on or before May 19, 2015 (the "Closing Date") at the corporate offices of Security 1st Title Company, and at a date and time mutually agreed upon by the parties. Should this date, or the time for performance or doing an act, a deadline or date hereunder fall on a Saturday, Sunday or legal holiday, such time, deadline or date shall be automatically extended to the next successive business day. Possession shall be given to Buyer at Closing. Following execution of this Agreement, and prior to Closing or termination, Buyer shall have the right to approve new leases (if any).

8. **Proration.** All expenses and income arising from the Property will be prorated as of the Closing Date. At or before Closing, Seller will pay all taxes, assessments, utilities and other charges that accrue prior to and including the date of Closing and will be entitled to all income that accrues from the Property before the Closing Date. Buyer will pay all taxes, assessments, utilities and other charges and will be entitled to all income that accrues from the Property after

the Closing Date. The parties agree to use good faith in negotiating the prorations and allocations on the closing statement using their best efforts to accurately allocate expenses for the Property.

9. **Costs.** Seller and Buyer will equally share all closing costs and charges, any escrow fees, costs to record the Deed, and costs for the Title Commitment and Owner's ALTA Title Insurance Policy for Buyer. Buyer shall pay for any endorsements to the Title Insurance Policy that Buyer requests. Unless expressly provided otherwise in this Agreement, each party will pay its own costs and fees to perform its rights or obligations herein, including each party's attorney fees and legal expenses.

10. **Deposit and Default.** In the event the Buyer fails to fulfill its obligation hereunder, the Seller may, at its option, cancel this Agreement, and thereupon the Deposit will become the property of the Seller, not as a penalty but as liquidated damages. In the event the Seller is unable to furnish and insure marketable fee simple title to the Property, the full Deposit shall be returned to Buyer, and this Agreement shall be null and void and have no further force and effect. If Seller defaults on this Agreement, or if any representation or warranty made by Seller herein fails to be true and such default or failure continues for five (5) business days after Seller receives written notice from Buyer identifying such failure, Buyer shall have the option of either (i) terminating this agreement in its entirety and receiving back the full Deposit, or (ii) pursuing an action for specific performance and its actual damages and costs including but not limited to its reasonable attorney fees, attorney expenses, and court costs.

Notwithstanding any other terms of this Agreement providing for forfeiture or refund of the Deposit, the parties understand that applicable Kansas real estate laws prohibit the Escrow Agent from distributing the Deposit without the consent of all parties to this Agreement. A party's signature on a closing statement prepared by the Closing Agent or Title Company shall constitute such consent. Buyer and Seller agree that failure by either to respond in writing to a certified letter from the Escrow Agent within seven (7) days of receipt thereof or failure to make written demand for return or forfeiture of the Deposit within thirty (30) days of notice of termination of this Agreement will constitute consent to distribution of the Deposit as suggested in any such certified letter or as demanded by the other party hereto.

11. **Brokerage Disclosure.** Pursuant to the Kansas Real Estate Brokers' and Salesperson's License Act, the Buyer and Seller have been notified that NAI Martens is agent for BUYER. Seller and Buyer represent and warrant that there are no claims for broker, finder or leasing fees and/or commissions in connection with the execution of this Agreement except as set forth as follows: NAI Martens is to be paid a commission equal to 4% of the gross sales price from the Seller's proceeds at closing.

12. **Representations and Recommendations.** Unless otherwise stated in writing, no broker involved in this transaction has made, on his or her own behalf, any representations or warranties, express or implied, with respect to any element of the Property, including, but not limited to, the legal sufficiency, legal effect, or tax consequences of this transaction. Buyer and Seller are fully authorized to enter into and perform their obligations under this Agreement, and the execution, delivery and performance of this Agreement has been duly and validly authorized. All parties to this document are advised to seek legal, tax and other professional advice relating to any proposed real estate transaction.

13. **Special Assessments.** The following is Seller's best information as of the Effective Date regarding special assessments or fees regarding the Property, or location of the Property in an improvement district (none if left blank): _____. Seller does not warrant this information as all of the information is of public record. Buyer acknowledges that the above information has been provided to Buyer and that Buyer is aware of such special assessments or fees regarding the Property or location of the Property in an improvement district.

14. Buyer also covenants and agrees that Buyer, his agents, successors and assigns that any future use of the property as described above for the following uses shall be prohibited:

A. Adult Book and Video Stores
B. Community Correctional Facilities
C. Half-way Houses
D. Drug or Alcohol Rehabilitation Facilities

E. Multi-game, Casino-style Gambling Facilities
F. New or Used Car Sales
G. Commercial Billboards

15. **Notices.** All notices, requests, claims, demands and other communications hereunder shall be in writing. Such notices shall be given (i) by delivery in person (ii) by a nationally recognized and reputable next-day delivery service guaranteeing next-day delivery and providing a receipt, or (iii) by first class, registered or certified mail, postage prepaid, to the address of the party as set forth below, except that any party may, by notice in the manner provided above, change this address for all subsequent notices. Notices so given shall be effective upon (i) receipt by the party to which notice is given, or (ii) on the fifth (5th) day following mailing, whichever occurs first.

BUYER:
c/o Mike Dillmon, Trustee
and c/o Patrick McKaig, Property Manager
Board of Trustees of Great Plains Annual Conference
of The United Methodist Church
9440 E. Boston, Suite 140
Wichita, KS 67207

SELLER:
City of Wichita
Attn.: John Philbrick, Real Estate Administrator
455 North Main, 13th Floor
Wichita, Kansas 67202

With a copy to:

NAI Martens
435 S. Broadway
Wichita, Kansas 67202

16. **Assignment; Binding Effect; Entire Agreement; Amendment; Cumulative Rights.** Seller shall not assign or subcontract this Agreement. Buyer may assign or subcontract this Agreement without the consent of Seller. This Agreement will extend to and become binding upon the heirs, executors and administrators, successors and assigns of the respective parties hereto. This Agreement may be executed in counterparts, each of which will be an original, but all of which together will constitute one and the same Agreement. Signatures transmitted by fax or electronic mail are permitted as binding signatures to this Agreement. This Agreement contains the entire and complete agreement of the parties with respect to the subject matter and the terms hereof, and supersedes all other agreements as to the subject matter and the terms hereof. This Agreement may not be amended, altered, or waived except in writing signed by all of the parties. Any specific right or remedy provided in this Agreement will not be exclusive but will be cumulative of all other rights and remedies.

17. **Further Assurances**. The parties shall execute such further documents and do any and all such further things as may be necessary to implement and carry out the intent of this Agreement.

18. **Survival.** All covenants, agreements, representations and warranties made hereunder or pursuant hereto or in connection with the transaction contemplated by this Agreement shall survive Closing.

19. **Execution**. A duly executed copy of this Agreement shall be delivered to each of the parties.

20. **Governing Law**. This Agreement shall be governed by the laws of the State of Kansas.

21. **Deadline for Acceptance.** Buyer's offer to purchase the Property from Seller shall expire if Seller has not accepted this Agreement by signing hereon and delivering to Buyer on or before the earlier of (a) March 20, 2015 or (b) Buyer's delivery of notice to Seller that Buyer's offer is withdrawn.

20. **Time of Essence.** TIME IS OF THE ESSENCE OF THIS AGREEMENT.

WITNESS OUR SIGNATURES effective as of the Effective Date:

BUYER:

Great Plains Annual Conference of The United Methodist Church

By: Steve Flader

Printed Name: Steve Flader

Title: President, Board of Trustees

Date: Mar 4, 2015

By: _____

Printed Name: Mike Dillmon

Title: Trustee, Board of Trustees

Date: _____

SELLER:

By Direction of the City Council

By: _____

Printed Name: Carl Brewer

Title: Mayor

Date: _____

Attest:

By: _____

Printed Name: Karen Sublett

Title: City Clerk

Date: _____

Approved as to Form

By: _____

Printed Name: Sharon L. Dickgrafe

Title: Interim Director of Lawn and City Attorney

21. **Deadline for Acceptance.** Buyer's offer to purchase the Property from Seller shall expire if Seller has not accepted this Agreement by signing hereon and delivering to Buyer on or before the earlier of (a) March 20, 2015 or (b) Buyer's delivery of notice to Seller that Buyer's offer is withdrawn.

20. **Time of Essence.** TIME IS OF THE ESSENCE OF THIS AGREEMENT.

WITNESS OUR SIGNATURES effective as of the Effective Date:

BUYER:

Great Plains Annual Conference of The United Methodist Church

By: _____

Printed Name: Steve Flader

Title: President, Board of Trustees

Date: _____

By: _____

Printed Name: Mike Dillmon

Title: Trustee, Board of Trustees

Date: _____

SELLER:

By Direction of the City Council

By: _____

Printed Name: Carl Brewer

Title: Mayor

Date: _____

Attest:

By: _____

Printed Name: Karen Sublett

Title: City Clerk

Date: _____

Approved as to Form

By: _____

Printed Name: Sharon L. Dickgrafe

Title: Interim Director of Law and City Attorney

Exhibit "A"

EXHIBIT A

That part of Block 1 beginning at the Southwest corner thence North 685 feet; thence East 90 feet; thence South 43 feet; thence East 168.37 feet to the east line of Block 1; thence South 642 feet; thence West 258.37 feet to the point of beginning except the south 20 feet thereof for street, Logopedics Addition to Wichita, Sedgwick County, Kansas

2130 East 21st Street

Legend

- ☐ Parcels

This information is not an official record, and cannot be used as such. The user should rely only upon official records available from the custodian of records in the appropriate City and/or County department. Some data provided here and used for the preparation of these maps has been obtained from public records not created or maintained by the City of Wichita.

1: 1,427

CITY OF WICHITA
City Council Meeting
March 17, 2015

TO: Mayor and City Council

SUBJECT: Grant of Right-of-Way across City-Owned Property Located Between Hillside, 29th Street North, I-135 and 33rd Street North (District I)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the grants of right-of-way.

Background: Westar, also known as Kansas Gas and Electric (KG&E), has an existing transmission line located from Hillside west through Dr. Glen Dey Park to approximately Grove Street then north along Grove to 33rd Street North and west to I-135. KG&E has a project to upgrade and replace the poles in the corridor. The existing easement is not wide enough to accommodate the planned work. KG&E has proposed acquiring a new easement sufficient to accommodate the proposed project as well as temporary easements where necessary for access.

Analysis: The easements are approximately 50 feet wide and impact a total of 307,675 square feet. Of this total, 131,555 square feet are in Dr. Glen Dey Park and are controlled by the Board of Park Commissioners. The remaining 176,120 square feet are owned by the City of Wichita. The temporary easement areas total 103,613 square feet with 28,211 square feet in park area and 75,402 square feet owned by the City. The new easements are expansions of an existing easement therefore there no impact the future use of the tracts beyond what already exists. If any future public use requires the relocation of the lines, KG&E will relocate the lines at its own cost. The easement areas were valued based on estimated fee simple values of similar property in the area. KG&E has offered $266,400 for the easements. This equates to approximately $.80 per square foot.

Financial Considerations: The City shall receive $266,400 less expenses associated with the transaction. Of this amount, $150,000 will be allocated to the forestry account for the purchase of trees and the remainder will be deposited into the General Fund.

Legal Considerations: The Law Department has reviewed and approved the contract and grant of right-of-way agreements as to form.

Recommendation/Action: It is recommended that the City Council approve the contract and authorize all necessary signatures.

Attachments: Real estate contract, aerial, and tract maps.

REAL ESTATE SALE CONTRACT

THIS AGREEMENT, Made and entered into this____ day of _____, 2015 by and between the City of Wichita, a municipal corporation and the Board of Park Commissioners, a municipal corporation, parties of the First Part, hereinafter referred to as "Grantor," whether one or more, and Kansas Gas and Electric Company, Inc. a wholly owned subsidiary of Westar Energy, Inc., party of the Second Part, hereinafter referred to as "Grantee," whether one or more.

WITNESSETH: That for and in consideration of the mutual promises, covenants and payments hereinafter set out, the parties hereto do hereby contract to and with each other, as follows:

1. The Grantor does hereby agree to sell and convey to the Grantee by a good and sufficient grant of right of way and/or temporary easement the following described real property, situated in Sedgwick County, Kansas, to-wit:

   See Exhibit A which includes Exhibits SG-016A, SG-017A, SG-018, SG-018A, SG-019, SG-020, SG-020A, SG-020A-T, SG-020and SG-020B, SG-021, SG-021A, SG-022, SG-022A, SG-023, SG-023T, SG-023A, SG-023B, SG-024, and SG-024T

2. The Grantee hereby agrees to purchase, and pay to the Grantor, as consideration for the conveyance to him of the above-described real property, the sum of Two Hundred Sixty-six Thousand Four Hundred Dollars and Zero Cents ($266,400.00) in the manner following to-wit: cash at closing.

3. A duly executed copy of this agreement shall be delivered to the parties hereto.

4. Grantee agrees that the areas described above to be transferred by grant of right of way shall be used to erect, install, alter, reconstruct, operate, and maintain under varying conditions of operation, renew, replace, relocate, and remove electric and communication transmission and distribution lines, the wood and steel poles and towers, anchors, guys, crossarms, insulators, conductors, underground conduit, ducts, cables, and other equipment appurtenant thereto for the transmission and distribution of electric energy and communications. Said grant of right of way will be in the format of Exhibit B attached hereto.

5. The term of the temporary easement shall be three (3) years after acquisition or 60 days after completion of construction, whichever is sooner. Grantee will not utilize the Temporary Easement Area for staging or allow vehicles to be parked on the easement area during construction. In addition, Grantee agrees that it will exercise its rights in the easement area in a manner that minimizes, to the best of the Grantee's ability, interference with the Grantor's use and enjoyment of the Grantor's property for its existing use. The temporary easement documents will be in the format of Exhibit C attached hereto.

6. It is understood and agreed between the parties hereto that time is of the essence of this contract, and that this transaction shall be consummated on or before March 31, 2015.

7. Possession to be given to Grantee at closing.

8. The parties covenant and agree that except for closing, title insurance and commissions referenced elsewhere herein, each is solely responsible for the payment of any fee for brokerage, technical or other professional services relating to the execution and performance of this Contract incurred by such party.

9. Grantor makes no warranty or guarantee as to the suitability of the real property proposed for trade for the intended use of Grantee. Therefore, Grantee covenants and agrees that Grantee at Grantee's own expense, shall examine the real property in order to determine such suitability including but not limited to:
   A. Soils data and geology, drainage, hydrology and topographical features that would affect any present or future intended use;
   B. The presence or absence of any contamination by any hazardous substance;
   C. The quality and quantity of water available by on-site water wells, and the availability of a permit or permits therefore;
   D. The nature, extent, and cost of public utilities needed to serve all or a portion of such real property;
   E. The extent and cost of compliance with subdivision regulations, building codes and other applicable rules and regulations involving public improvements, private improvements, access, building setbacks, public dedications, platting and replatting requirements of such real property;
   F. The nature and extent of zoning and subdivision statutes, laws, ordinances and regulations affecting the present use, and the ease or difficulty involved in the zone-change and subdivision approval procedures necessary or desirable to allow for the Grantee's intended use or uses.

10. The covenants and agreements contained in Paragraph 10 shall survive the closing of the transaction intended hereby, and they shall bind the Grantee as fully after the sale as they do before.

WITNESS OUR HANDS AND SEALS the day and year first above written.

BUYER
Kansas Gas and Electric Company

Eric T. Adcock, Real Estate Coordinator

ATTEST:

_____

SELLER
By Direction of the City Council

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

SELLER
The Board of Park Commissioners

_____
Bryan Frye, President

APPROVED AS TO FORM:

_____

Sharon L. Dickgrafe, Interim Director of Law

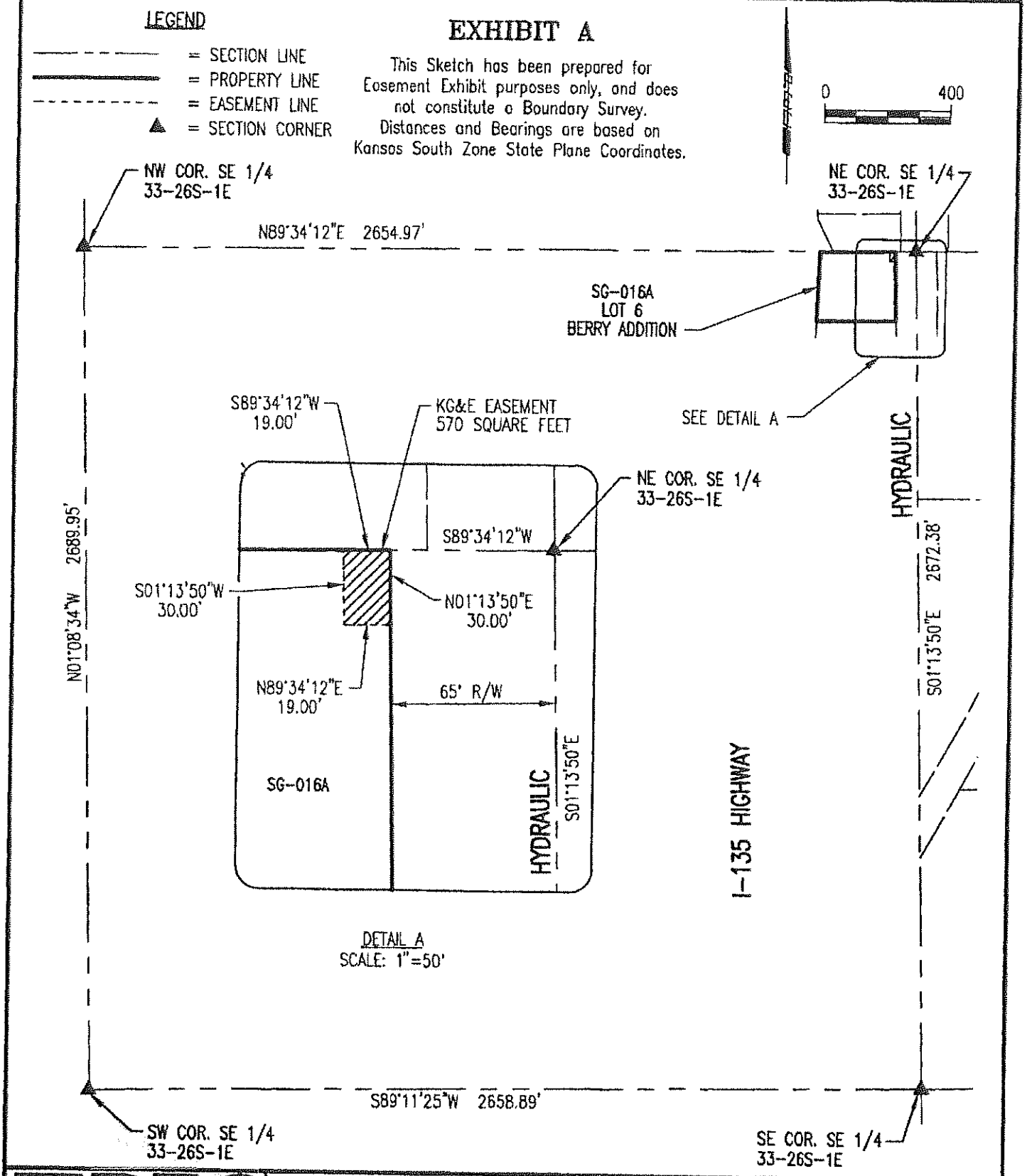
EXHIBIT A
TRACT MAPS AND
DESCRIPTIONS

EXHIBIT A

LEGEND

= SECTION LINE
= PROPERTY LINE
= EASEMENT LINE
▲ = SECTION CORNER

This Sketch has been prepared for Easement Exhibit purposes only, and does not constitute a Boundary Survey. Distances and Bearings are based on Kansas South Zone State Plane Coordinates.



DETAIL A
SCALE: 1"=50'

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PROFESSIONAL ENGINEERING CONSULTANTS, P.A.
303 SOUTH TOPEKA WICHITA, KS 67202
316-262-2691 www.pec1.com

69.88
COLEMAN TO CRESTVIEW
TRANSMISSION LINE

Westar Energy.

COUNTY	OWNER	TRACT. NO.	PROJ. NO. 14-066
SEDGWICK	CITY OF WICHITA	SG-016A	DATE: SEPT. 03, 2014

September 3, 2014

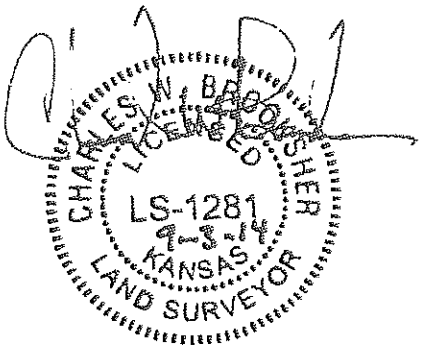
KANSAS GAS AND ELECTRIC COMPANY
69.88 COLEMAN TO CRESTVIEW
TRANSMISSION LINE
TRACT SG-016A
OWNER: CITY OF WICHITA

EASEMENT DESCRIPTION

A tract of land in the Southeast Quarter of Section 33, Township 26 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas, described as:

Beginning at the northeast corner of Lot 6, Berry Addition, Wichita, Kansas; thence bearing South 89°34'12" West along the north line of said Lot 6 for a distance of 19.00 feet; thence bearing South 1°13'50" West, parallel with the east line of said Lot 6 for a distance of 30.00 feet; thence bearing North 89°34'12" East, parallel with the north line of said Lot 6, for a distance of 19.00 feet to the east line of said Lot 6; thence bearing North 1°13'50" East along the east line of said Lot 6 for a distance of 30.00 feet to the Point of Beginning.

Encompassing 570 square feet, more or less.



Prepared by: Charles W. Brooksher P.S. #1281
PEC Project No. 14200-048

EXHIBIT A

LEGEND

= SECTION LINE
= PROPERTY LINE
= EASEMENT LINE
▲ = SECTION CORNER

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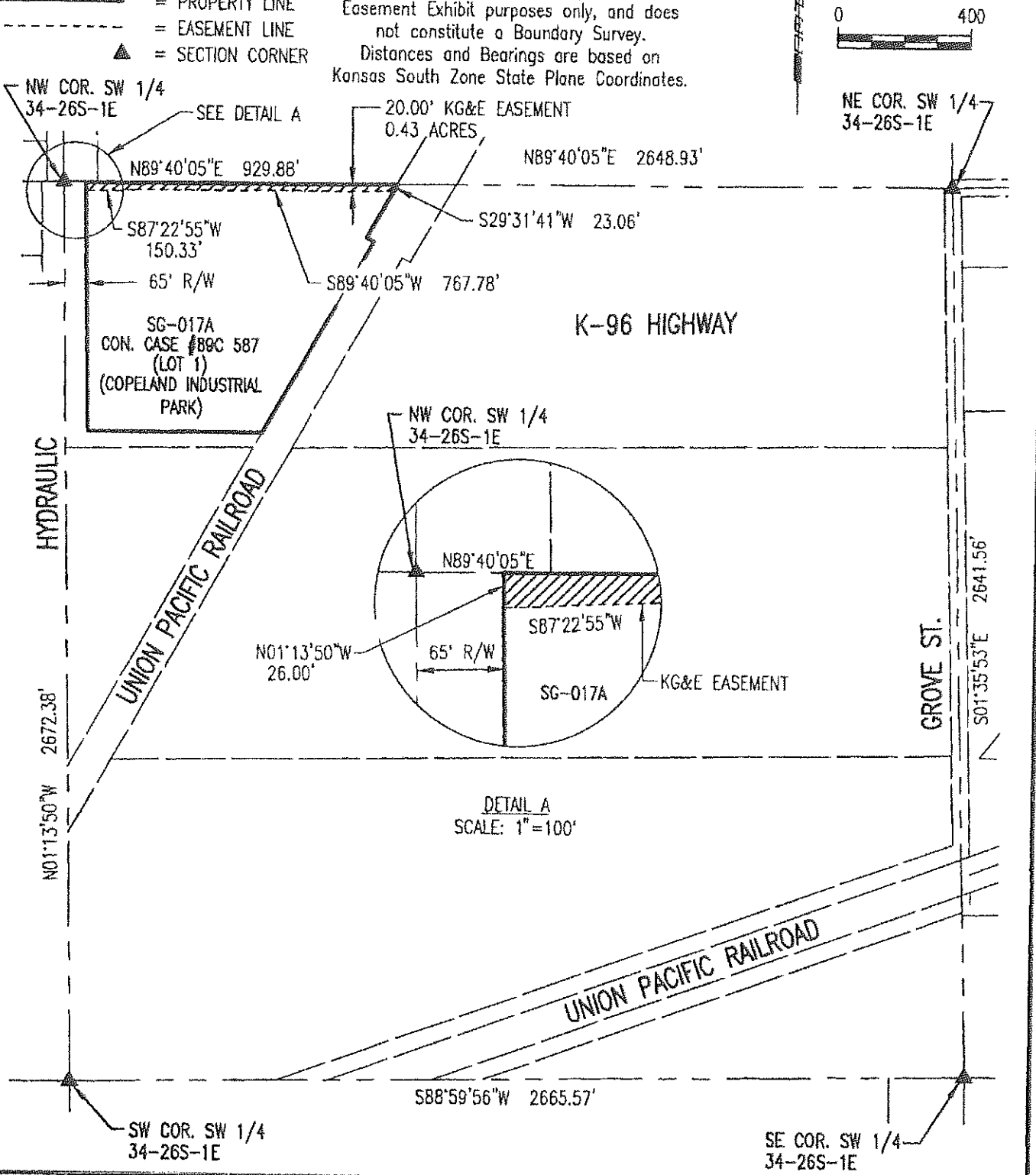

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303 SOUTH TOPEKA WICHITA, KS 67202
316-262-2691 www.pec1.com

69.86
COLEMAN TO CRESTVIEW
TRANSMISSION LINE

Westar Energy.

COUNTY	OWNER	TRACT. NO.	PROJ. NO. 14-066
SEDGWICK	CITY OF WICHITA	SG-017A	DATE: SEPT. 05, 2014

September 3, 2014

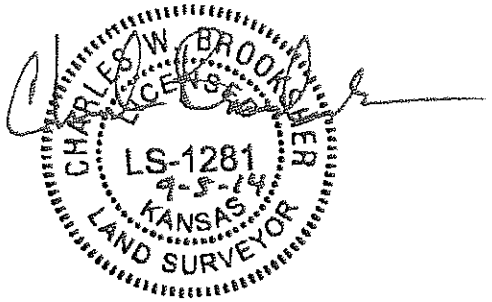
KANSAS GAS AND ELECTRIC COMPANY
69.88 COLEMAN TO CRESTVIEW
TRANSMISSION LINE
TRACT SG-017A
OWNER: CITY OF WICHITA

EASEMENT DESCRIPTION

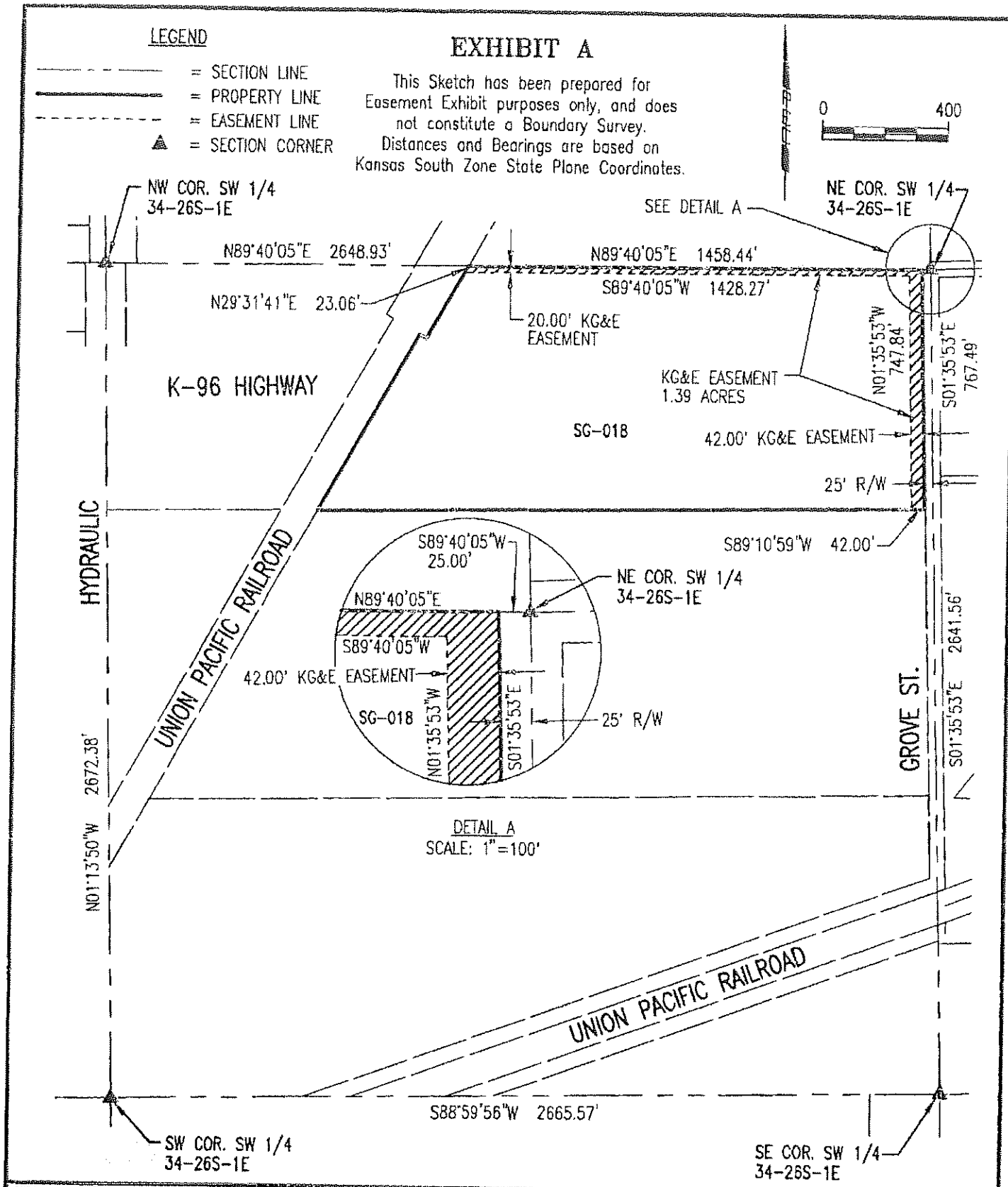
A tract of land in the Southwest Quarter of Section 34, Township 26 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas, described as:

Commencing at the Northwest Corner of the Southwest Quarter of Section 34, Township 26 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas; thence bearing North 89°40'05" East along the north line of said Southwest Quarter for a distance of 65.00 feet to the east right of way of Hydraulic Ave. and the Point of Beginning; thence continuing said bearing of North 89°40'05" East along said north line of said Southwest Quarter for a distance of 929.88 feet to the westerly right of way of the Union Pacific Railroad; thence bearing South 29°31'41" West along said westerly right of way of the Union Pacific Railroad for a distance of 23.06 feet; thence bearing South 89°40'05" West parallel with the north line of said Southwest Quarter for a distance of 767.78 feet; thence bearing South 87°22'55" West for a distance of 150.33 feet to the east right of way of Hydraulic Ave.; thence bearing North 01°13'50" West and parallel with the west line of said Southwest Quarter a distance of 26.00 feet to the Point of Beginning.

Encompassing 0.43 acres more or less.



Prepared by: Charles W. Brooksher P.S. #1281
PEC Project No. 14200-048



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69.88
COLEMAN TO CRESTVIEW
TRANSMISSION LINE

Westar Energy.

COUNTY	OWNER	TRACT. NO.	PROJ. NO. 14-066
SEDGWICK	CITY OF WICHITA	SG-018	DATE: SEPT. 03, 2014

September 3, 2014

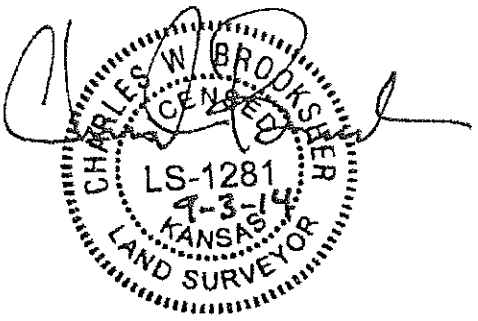
KANSAS GAS AND ELECTRIC COMPANY
69.88 COLEMAN TO CRESTVIEW
TRANSMISSION LINE
TRACT SG-018
OWNER: CITY OF WICHITA

EASEMENT DESCRIPTION

A tract of land in the Southwest Quarter of Section 34, Township 26 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas, described as:

Commencing at the Northeast Corner of the Southwest Quarter of Section 34, Township 26 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas; thence bearing South 89°40'05" West along the north line of said Southwest Quarter for a distance of 25.00 feet to the west right of way of Grove St. and the Point of Beginning; thence bearing South 01°35'53' East along said west right of way of Grove St. for a distance of 767.49 feet; thence bearing South 89°10'59" West for a distance of 42.00 feet; thence bearing North 01°35'53" West and parallel with the west right of way of Grove St. for a distance of 747.84 feet; thence bearing South 89°40'05" West and parallel with the north line of said Southwest Quarter for a distance of 1428.27 feet to the easterly right of way of the Union Pacific Railroad; thence bearing North 29°31'41"East along said easterly right of way of the Union Pacific Railroad for a distance of 23.06 feet to the north line of said Southwest Quarter; thence bearing North 89°40'05" East along the north line of said Southwest Quarter for a distance of 1458.44 feet to the Point of Beginning.

Encompassing 1.39 acres more or less.



Prepared by: Charles W. Brooksher P.S. #1281
PEC Project No. 14200-048

EXHIBIT A

PAGE 1 OF 2

LEGEND

= SECTION LINE
= PROPERTY LINE
= EASEMENT LINE
▲ = SECTION CORNER

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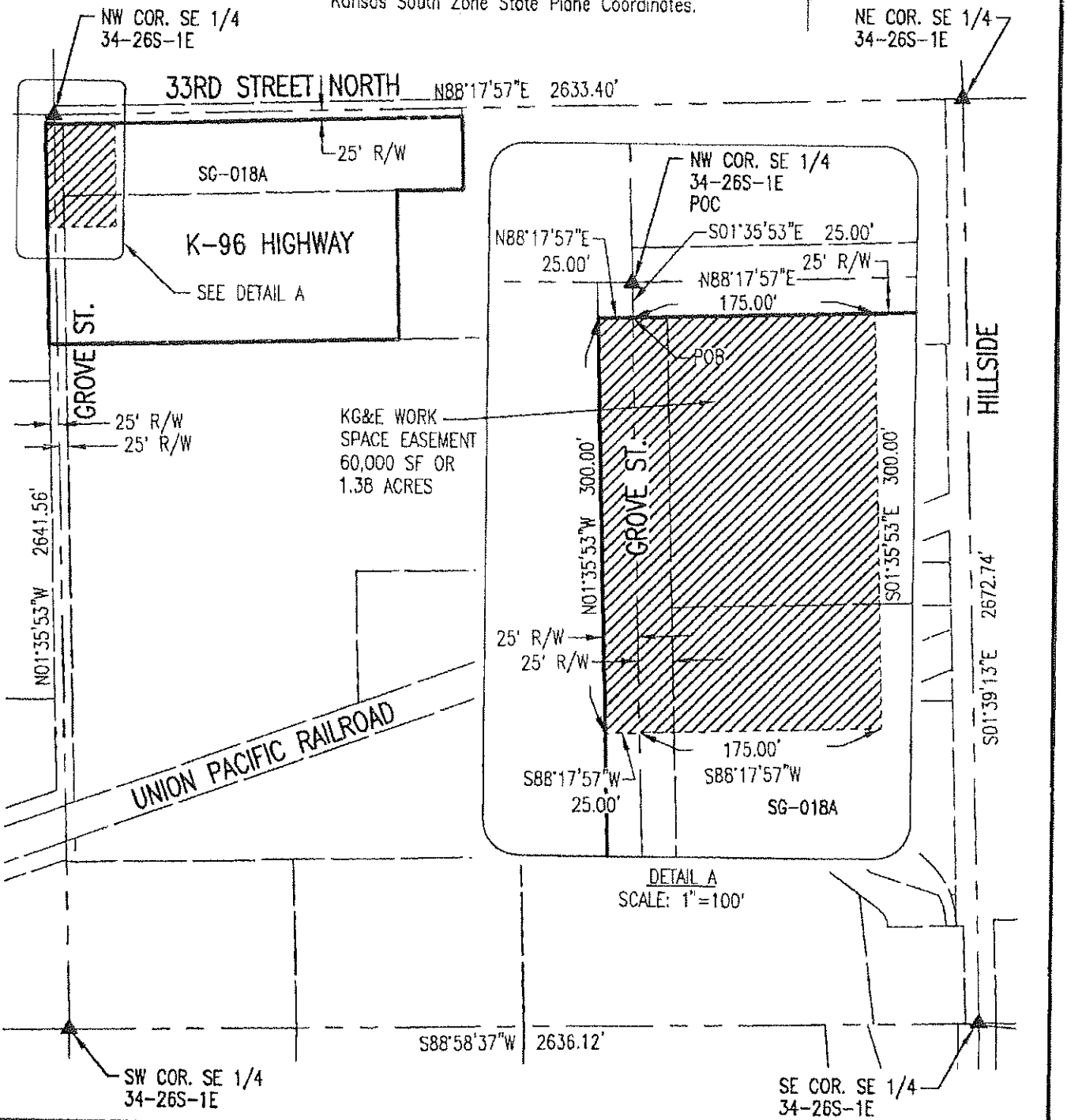


PEC PROFESSIONAL ENGINEERING CONSULTANTS, P.A. 303 SOUTH TOPEKA WICHITA, KS 67202 316-262-2691 www.pec1.com	69.88 COLEMAN TO CRESTVIEW TRANSMISSION LINE			Westar Energy.
	COUNTY	OWNER	TRACT. NO.	PROJ. NO. 14-066
	SEDGWICK	CITY OF WICHITA	SG-018A	DATE: DEC. 15, 2014

December 15, 2014

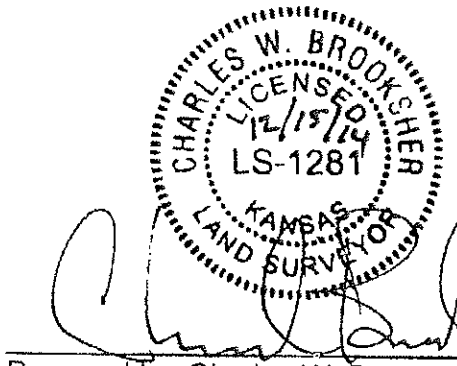
KANSAS GAS AND ELECTRIC COMPANY
CRESTVIEW TO NORTHEAST 69.88
TRACT SG-018A
OWNER: CITY OF WICHITA

WORK SPACE EASEMENT DESCRIPTION

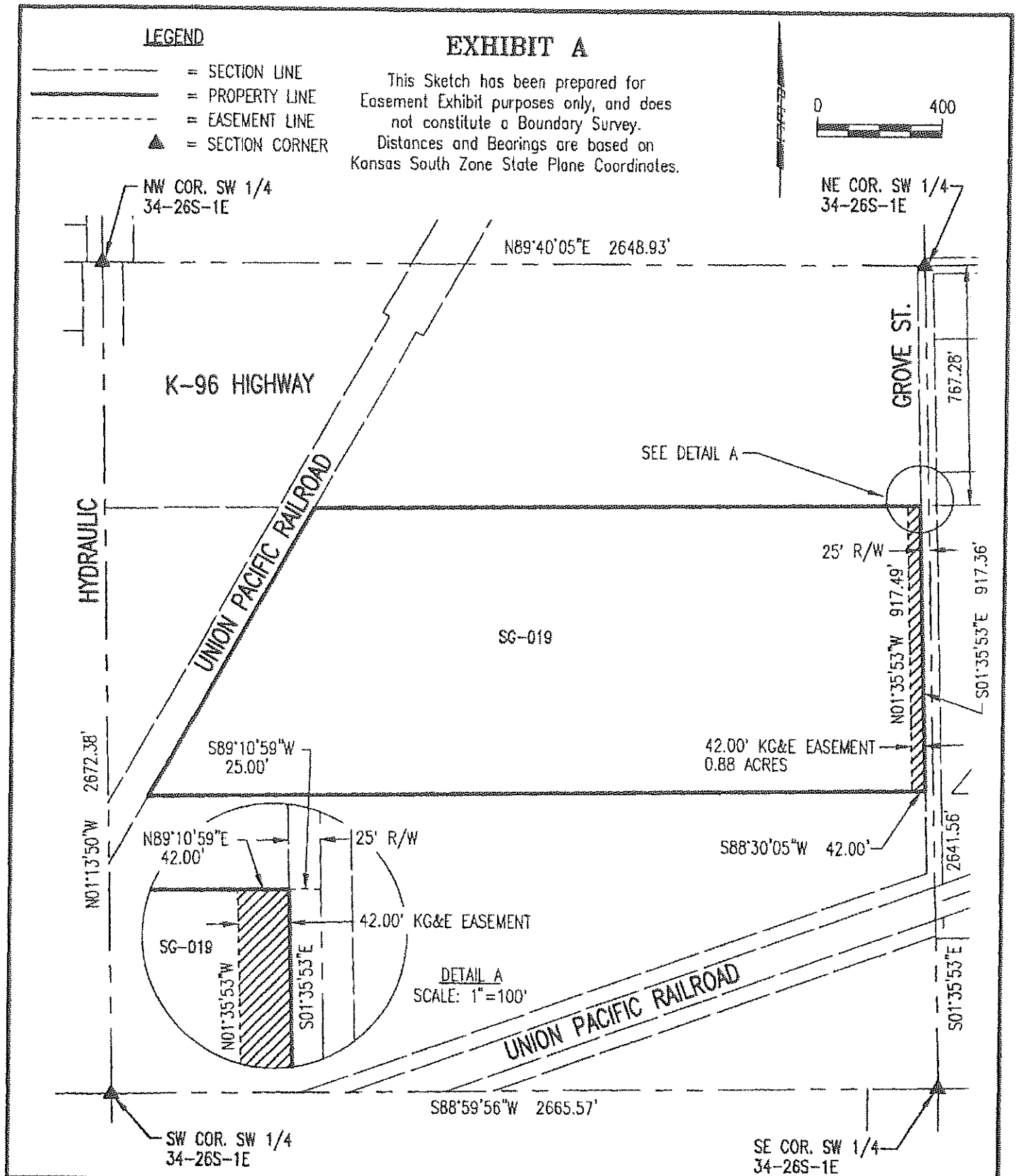
A tract of land in the Southeast and Southwest Quarters of Section 34, Township 26 South, Range 1 East of the Sixth Principle Meridian, Sedgwick County, Kansas described as follows:

Commencing at the Northwest corner of said Southeast Quarter of Section 34; thence bearing South 01°35'53" East along the West line of said Southeast Quarter of Section 34 for a distance of 25.00 feet to the South right-of-way line of 33rd Street North, being the Point of Beginning; thence bearing North 88°17'57" East parallel with the North line of said Southeast Quarter of Section 34 for a distance of 175.00 feet; thence bearing South 01°35'53" East parallel with the West line of said Southeast Quarter of Section 34 for a distance of 300.00 feet; thence bearing South 88°17'57" West parallel with the North line of said Southeast Quarter of Section 34 for a distance of 175.00 feet to the West line of said Southeast Quarter of Section 34; thence continuing bearing South 88°17'57" West for a distance of 25.00 feet; thence bearing North 01°35'53" West parallel with the East line of said Southwest Quarter of Section 34 for a distance of 300.00 feet; thence bearing North 88°17'57" East for a distance of 25.00 feet to the Point of Beginning.

Encompassing 1.38 acres more or less (60,000 square feet more or less).



Prepared by: Charles W. Brooksher P.S. #1281
PEC Project No. 14200-048



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316-262-2691 www.pec1.com

69.88
COLEMAN TO CRESTVIEW
TRANSMISSION LINE

Westar Energy.

COUNTY	OWNER	TRACT. NO.	PROJ. NO. 14-066
SEDGWICK	CITY OF WICHITA	SG-019	DATE: SEPT. 05, 2014

September 5, 2014

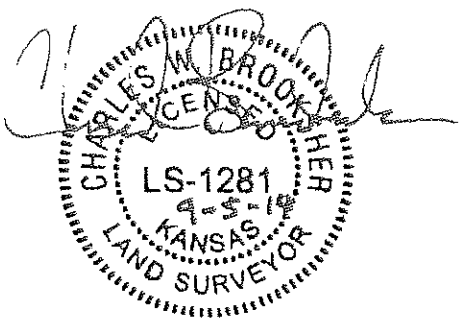
KANSAS GAS AND ELECTRIC COMPANY
69.88 COLEMAN TO CRESTVIEW
TRANSMISSION LINE
TRACT SG-019
OWNER: CITY OF WICHITA

EASEMENT DESCRIPTION

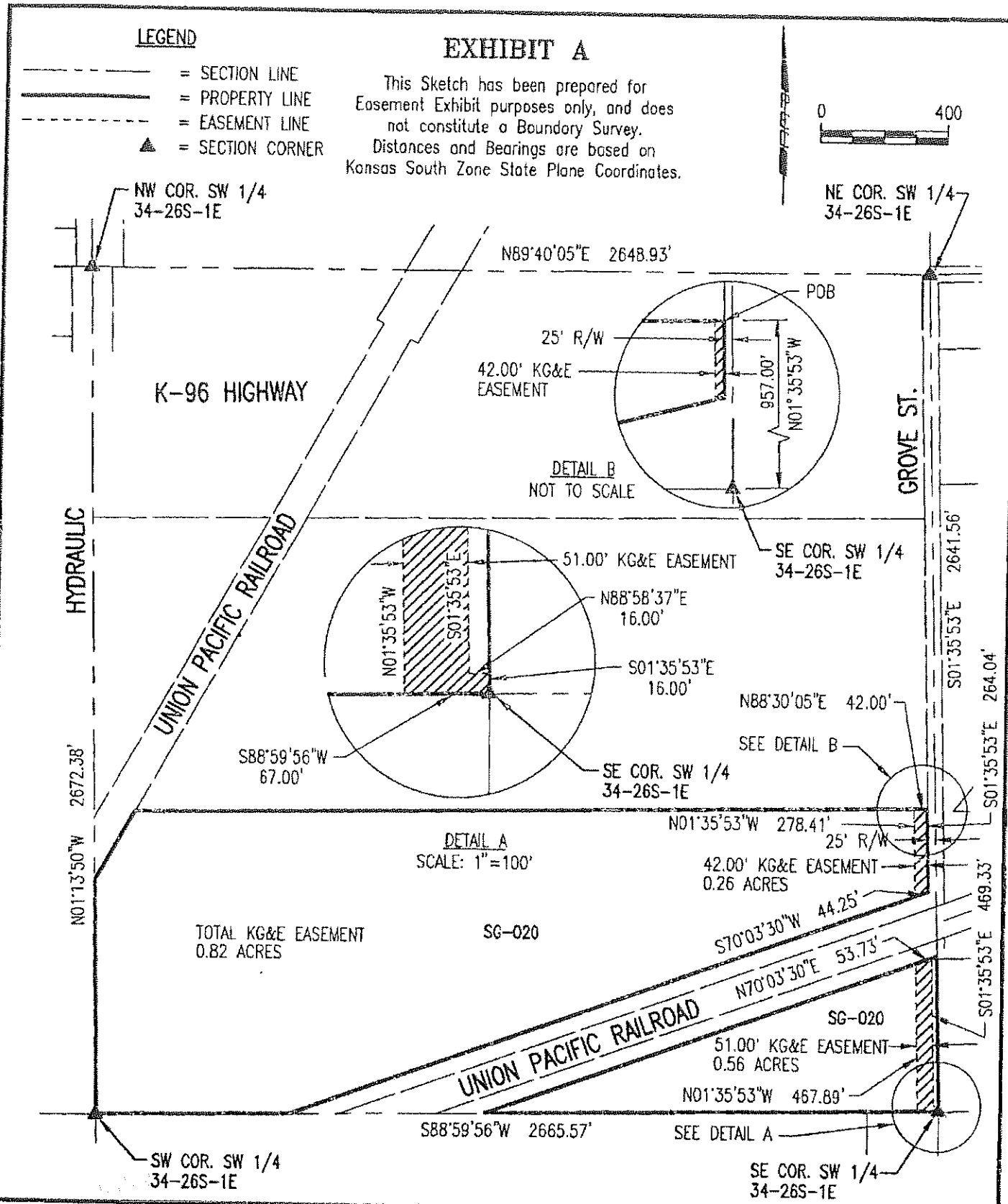
A tract of land in the Southwest Quarter of Section 34, Township 26 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas, described as:

Commencing at the Northeast corner of the Southwest Quarter of Section 34, Township 26 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas; thence bearing South 01°35'53" East along the east line of said Southwest Quarter for a distance of 767.28 feet; thence bearing South 89°10'59" West for a distance of 25.00 feet to the west right of way of Grove St. and the Point of Beginning; thence bearing South 01°35'53" East along said west right of way of Grove St. and parallel with the east line of said Southwest Quarter for a distance of 917.36 feet; thence bearing South 88°30'05" West for a distance of 42.00 feet; thence bearing North 01°35'53" West and parallel with said west right of way of Grove St. for a distance of 917.49 feet; thence bearing North 89°10'59" East for a distance of 42.00 feet to the Point of Beginning.

Encompassing 0.88 acres more or less.



Prepared by: Charles W. Brooksher P.S. #1281
PEC Project No. 14200-048



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69.88
COLEMAN TO CRESTVIEW
TRANSMISSION LINE

Westar Energy.

COUNTY	OWNER	TRACT. NO.	PROJ. NO. 14-066
SEDGWICK	CITY OF WICHITA	SG-020	DATE: SEPT. 03, 2014

September 3, 2014

KANSAS GAS AND ELECTRIC COMPANY
69.88 COLEMAN TO CRESTVIEW
TRANSMISSION LINE
TRACT SG-020
OWNER: CITY OF WICHITA

EASEMENT DESCRIPTION

A tract of land in the Southwest Quarter of Section 34, Township 26 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas, described as:

Beginning at the Southeast corner of the Southwest Quarter of Section 34, Township 26 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas; thence bearing South 88°59'56" West along the south line of said Southwest Quarter for a distance of 67.00 feet; thence bearing North 01°35'53" West and parallel with the east line of said Southwest Quarter for a distance of 467.89 feet to the southerly right of way of the Union Pacific Railroad; thence bearing North 70°03'30" East along said southerly right of way for a distance of 53.73 feet; thence bearing South 01°35'53" East parallel and 16.00 feet distant west of the east line of the said Southwest Quarter for a distance of 469.33 feet; thence bearing North 88°58'37" East for a distance of 16.00 feet to the east line of said Southwest Quarter; thence bearing South 01°35'53" East along said east line a distance of 16.00 feet to the Point of Beginning.

Together with:

A tract of land in the Southwest Quarter of Section 34, Township 26 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas, described as:

Commencing at the Southeast corner of the Southwest Quarter of Section 34, Township 26 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas; thence bearing North 01°35'53" West along the east line of said Southwest Quarter for a distance of 957.00 feet; thence bearing South 88°30'05" West for a distance of 25.00 feet to the west right of way of Grove St. and the Point of Beginning; thence bearing South 01°35'53" East along said west right of way of Grove St. and parallel with the east line of said Southwest Quarter for a distance of 264.04 feet to the northerly right of way of the Union Pacific Railroad; thence bearing South 70°03'30" West along said northerly right of way for a distance of 44.25 feet; thence bearing North 01°35'53" West and parallel with the westerly right of way of Grove St. for a distance of 278.41 feet; thence bearing North 88°30'05" East for a distance of 42.00 feet the Point of Beginning.

Encompassing a total of 0.82 acres more or less.

CHARLES W. BROOKSHER
LS-1281
9-5-14
KANSAS
LAND SURVEYOR

Prepared by: Charles W. Brooksher P.S. #1281
PEC Project No. 14200-048

EXHIBIT A

LEGEND

= SECTION LINE
= PROPERTY LINE
= EASEMENT LINE
= SECTION CORNER

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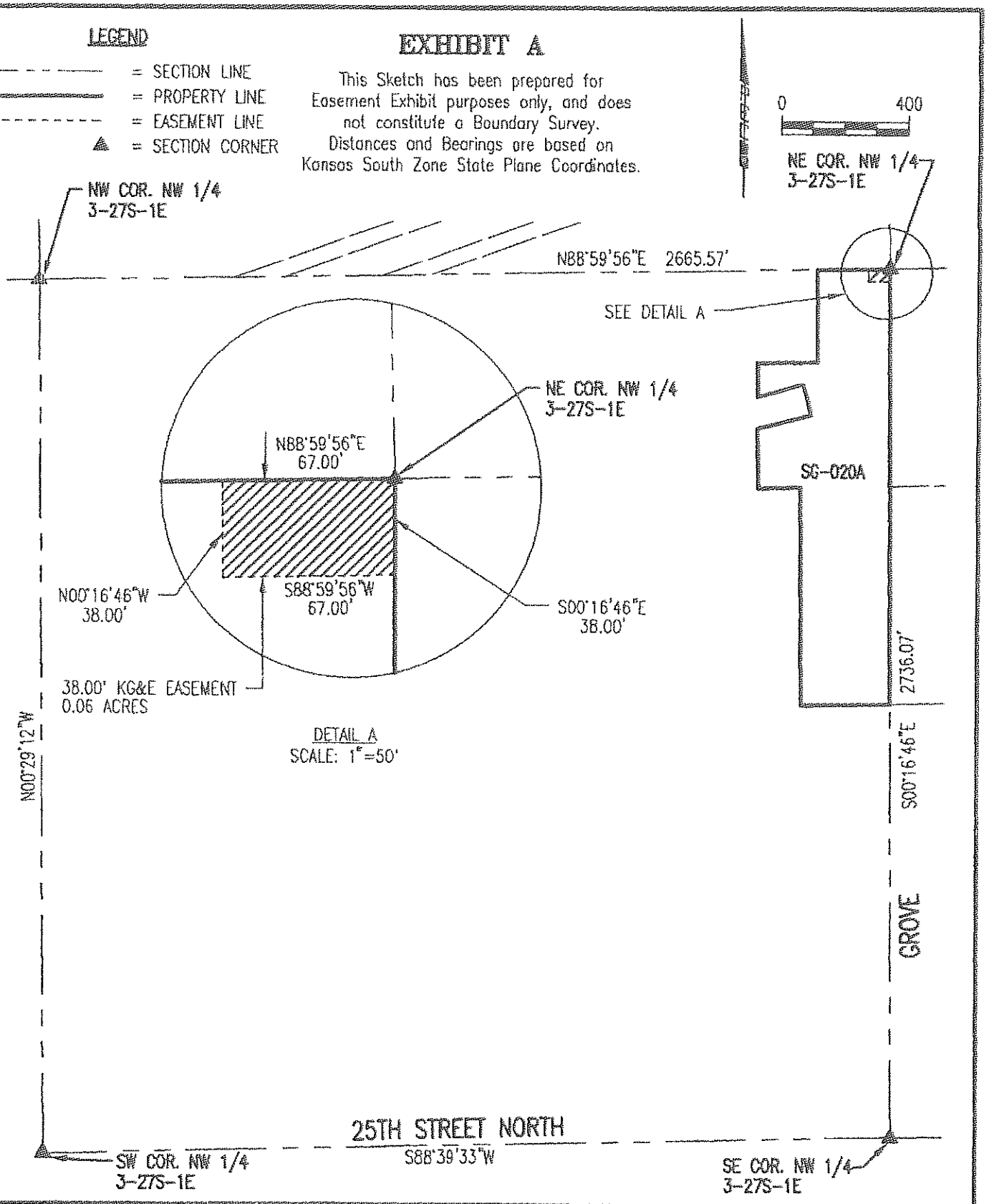


PROFESSIONAL ENGINEERING CONSULTANTS, P.A. 303 SOUTH TOPEKA WICHITA, KS 67202 316-262-2691 www.pec1.com	69.88 COLEMAN TO CRESTVIEW TRANSMISSION LINE			Westar Energy.
	COUNTY	OWNER	TRACT. NO.	PROJ. NO. 14-066
	SEDGWICK	BOARD OF PARK COMMISSIONERS	SG-020A	DATE: SEPT. 03, 2014

September 3, 2014

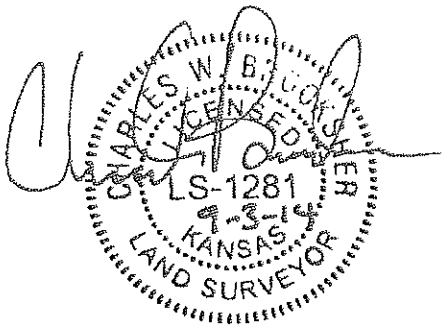
KANSAS GAS AND ELECTRIC COMPANY
69.88 COLEMAN TO CRESTVIEW
TRANSMISSION LINE
TRACT SG-020A
OWNER: BOARD OF PARK COMMISSIONERS

EASEMENT DESCRIPTION

A tract of land in the Northwest Quarter of Section 3, Township 27 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas, described as:

Beginning at the Northeast corner of the Northwest Quarter of Section 3, Township 27 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas; thence bearing South 00°16'46" East along the east line of the Northwest Quarter for distance of 38.00 feet; thence bearing South 88°59'56" West and parallel with the north line of said Northwest Quarter for a distance of 67.00 feet; thence bearing North 00°16'46" West and parallel with the east line of said Northwest Quarter for a distance of 38 feet to the north line of said Northwest Quarter; thence bearing North 89°59'56" East along the north line of said Northwest Quarter for a distance of 67.00 feet to the Point of Beginning

Encompassing 0.06 acres more or less.



Prepared by: Charles W. Brooksher P.S. #1281
PEC Project No. 14200-048

EXHIBIT A

PAGE 1 OF 2

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LEGEND

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= EASEMENT LINE
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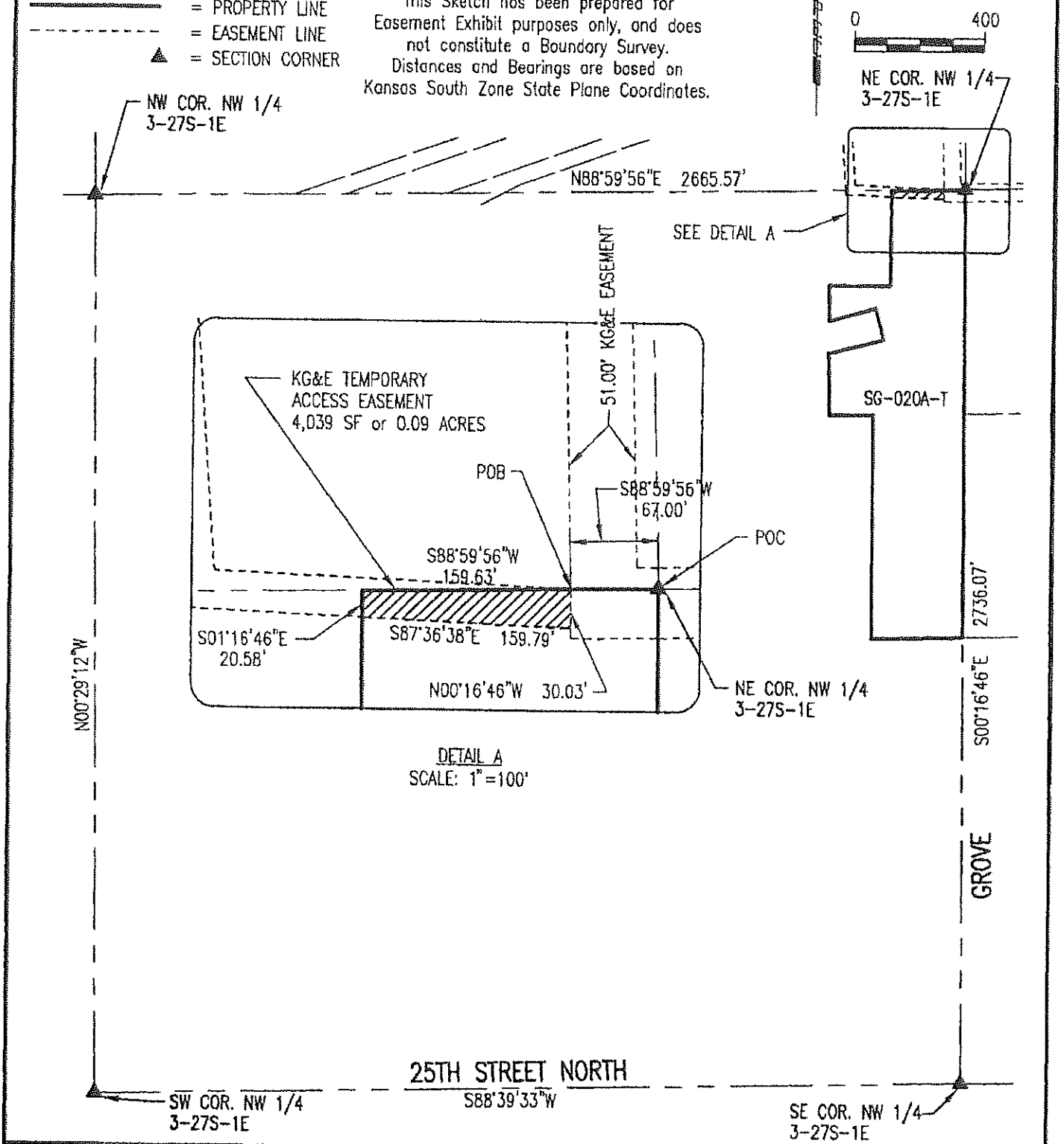

DETAIL A
SCALE: 1"=100'

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PROFESSIONAL ENGINEERING CONSULTANTS, P.A.
303 SOUTH TOPEKA WICHITA, KS 67202
316-262-2691 www.pec1.com

69.88
COLEMAN TO CRESTVIEW
TRANSMISSION LINE

Westar Energy

COUNTY	OWNER	TRACT. NO.	PROJ. NO. 14-066
SEDGWICK	BOARD OF PARK COMMISSIONERS	SG-020A-T	DATE: OCT. 30, 2014

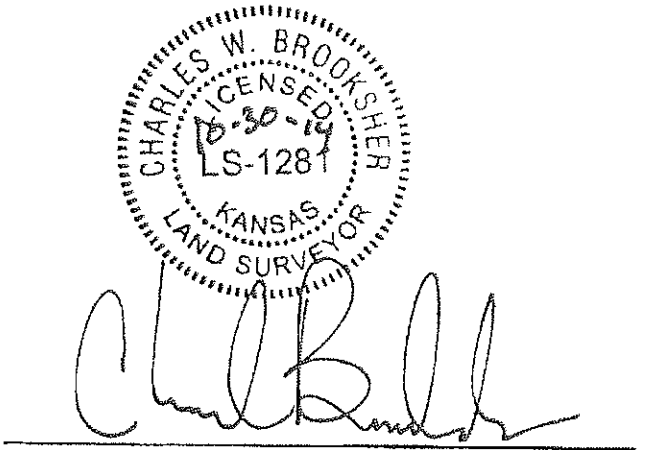
October 30, 2014

KANSAS GAS AND ELECTRIC COMPANY
COLEMAN TO CRESTVIEW
TRACT SG-020A-T
OWNER: BOARD OF PARK COMMISSIONERS

TEMPORARY ACCESS EASEMENT DESCRIPTION

A tract of land in the Northwest Quarter of Section 3, Township 27 South, Range 1 East of the Sixth Principle Meridian, Sedgwick County, Kansas described as follows:

Commencing at the Northeast corner of the Northwest Quarter of said Section 3; thence bearing South 88°59'56" West along the north line of said Northwest Quarter for a distance of 67.00 feet to the Point of Beginning; thence continuing on said bearing of South 88°59'56" West for a distance of 159.63 feet; thence bearing South 01°16'46" East for a distance of 20.58 feet; thence bearing South 87°36'38" East for a distance of 159.79 feet; thence bearing North 00°16'46" West for a distance of 30.03 feet to the Point of Beginning. Encompassing a total of 4,039 square feet or 0.09 acres more or less.



Prepared by: Charles W. Brooksher P.S. #1281
PEC Project No. 14200-048

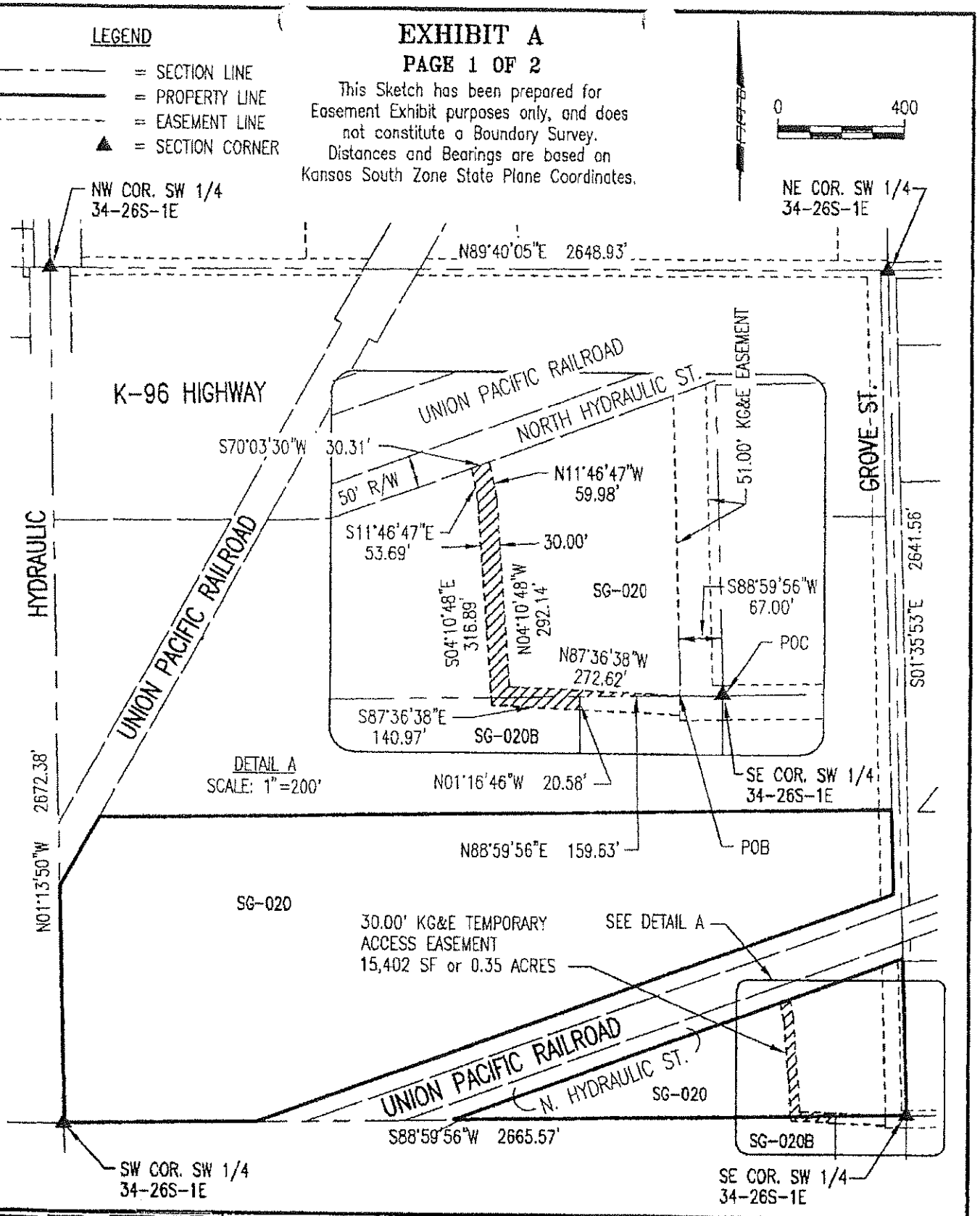
EXHIBIT A

PAGE 1 OF 2

This Sketch has been prepared for Easement Exhibit purposes only, and does not constitute a Boundary Survey. Distances and Bearings are based on Kansas South Zone State Plane Coordinates.

LEGEND

= SECTION LINE
= PROPERTY LINE
= EASEMENT LINE
▲ = SECTION CORNER



PEC
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303 SOUTH TOPEKA WICHITA, KS 67202
316-262-2691 www.pec1.com

69.88
COLEMAN TO CRESTVIEW
TRANSMISSION LINE

Westar Energy

COUNTY	OWNER	TRACT. NO.	PROJ. NO. 14-066
SEDGWICK	CITY OF WICHITA	SG-020 and SG-020B	DATE: OCT. 30, 2014

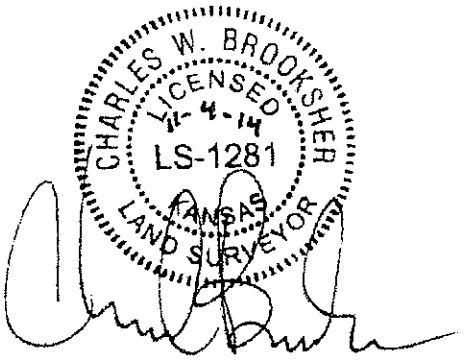
October 30, 2014

KANSAS GAS AND ELECTRIC COMPANY
COLEMAN TO CRESTVIEW
TRACT SG-020 AND SG-020B
OWNER: CITY OF WICHITA

TEMPORARY ACCESS EASEMENT DESCRIPTION

A tract of land in the Southwest Quarter of Section 34, Township 26 South, Range 1 East and in the Northwest Quarter of Section 3, Township 27 South, Range 1 East of the Sixth Principle Meridian, Sedgwick County, Kansas described as follows:

Commencing at the Southeast corner of the Southwest Quarter of said Section 34; thence bearing South 88°59'56" West along the South line of said Southwest Quarter also being the North line of said Northwest Quarter for a distance of 67.00 feet to the Point of Beginning; thence bearing North 87°36'38" West for a distance of 272.62 feet; thence bearing North 04°10'48" West for a distance of 292.14 feet; thence bearing North 11°46'47" West for a distance of 59.98 feet; thence bearing South 70°03'30" West for a distance of 30.31 feet; thence bearing South 11°46'47" East for a distance of 53.69 feet; thence bearing South 04°10'48" East for a distance of 316.89 feet to a point in the Northwest Quarter of said Section 3; thence bearing South 87°36'38" East for a distance of 140.97 feet; thence bearing North 01°16'46" West for a distance of 20.58 feet to a point on the South line of said Southwest Quarter also being the North line of said Northwest Quarter; thence bearing North 88°59'56" East on said North line and said South line for a distance of 159.63 feet to the Point of Beginning. Encompassing a total of 15,402 square feet or 0.35 acres more or less.



Prepared by: Charles W. Brooksher P.S.#1281
PEC Project No. 14200-048

EXHIBIT A

LEGEND

= SECTION LINE
= PROPERTY LINE
= EASEMENT LINE
= SECTION CORNER

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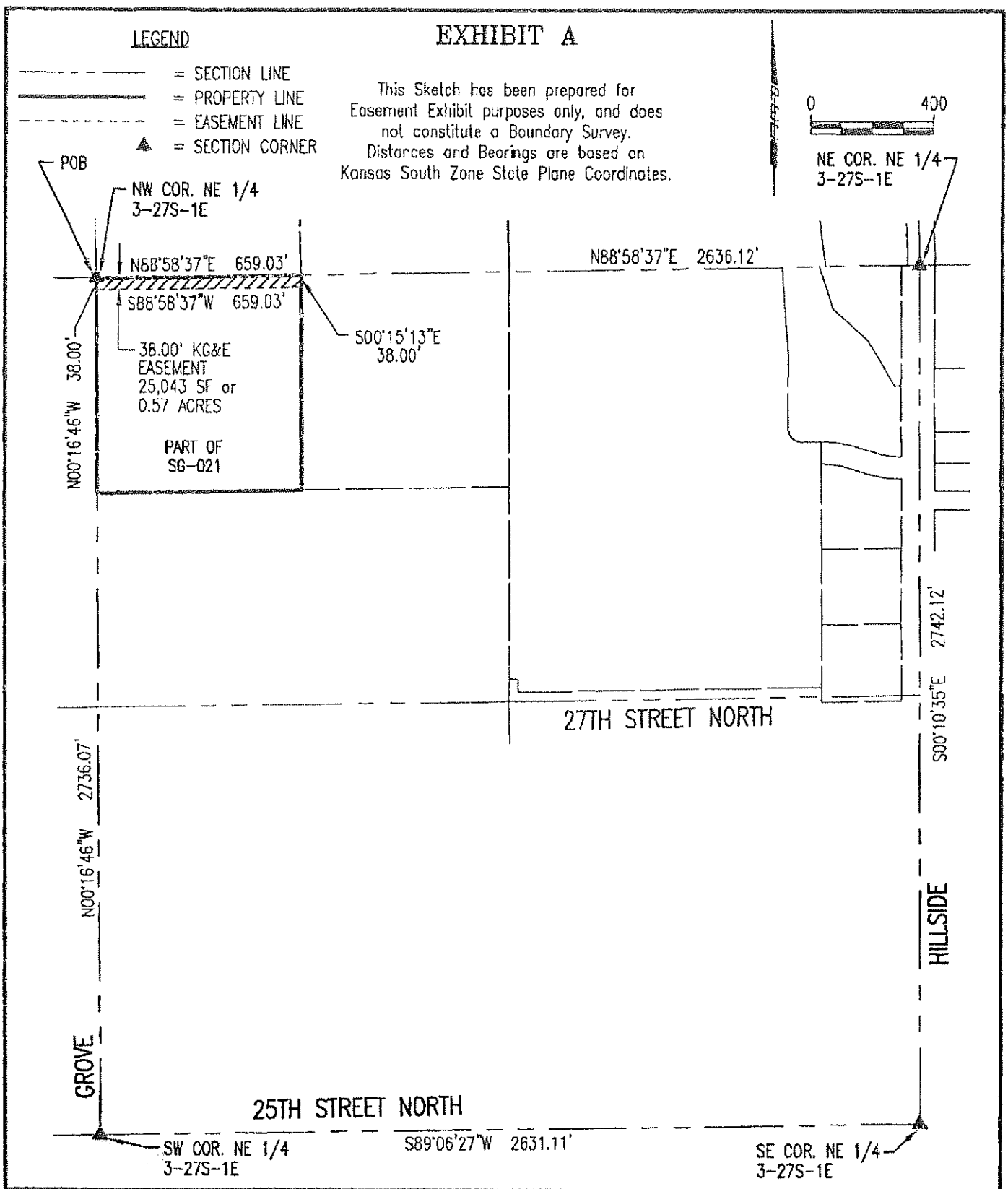


PEC PROFESSIONAL ENGINEERING CONSULTANTS, P.A. 303 SOUTH TOPEKA WICHITA, KS 67202 316-262-2691 www.pec1.com	69.88 COLEMAN TO CRESTVIEW TRANSMISSION LINE			Westar Energy.
	COUNTY	OWNER	TRACT. NO.	PROJ. NO. 14-066
	SEDGWICK	BOARD OF PARK COMMISSIONERS	SG-021	DATE: SEPT. 03, 2014

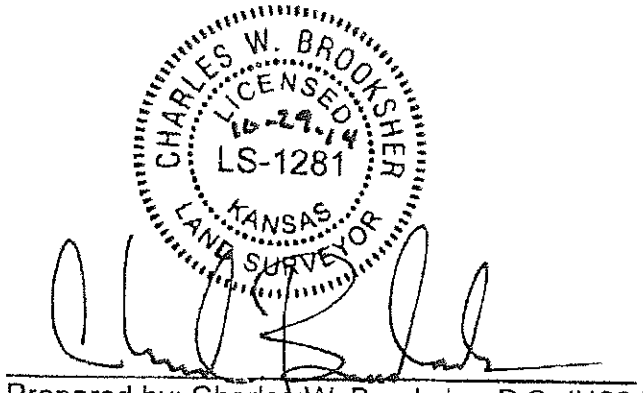
September 3, 2014

KANSAS GAS AND ELECTRIC COMPANY
69.88 COLEMAN TO CRESTVIEW
TRANSMISSION LINE
TRACT SG-021
OWNER: BOARD OF PARK COMMISSIONERS

EASEMENT DESCRIPTION

A tract of land in the Northeast Quarter of Section 3, Township 27 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas, described as:

Beginning at the Northwest corner of the Northeast Quarter of Section 3, Township 27 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas; thence bearing North 88°58'37" East along the north line of said Northeast Quarter for a distance of 659.03 feet; thence bearing South 00°15'13" East for a distance of 38.00 feet; thence bearing South 88°58'37" West and parallel with the north line of said Northeast Quarter for a distance of 659.03 feet to the west line of said Northeast Quarter; thence bearing North 00°16'46" West along the west line of said Northeast Quarter for a distance of 38.00 feet to the Point of Beginning. Encompassing 25,043 square feet or 0.57 acres more or less.



Prepared by: Charles W. Brooksher P.S. #1281
PEC Project No. 14200-048

EXHIBIT A

LEGEND

= SECTION LINE
= PROPERTY LINE
= EASEMENT LINE
= SECTION CORNER

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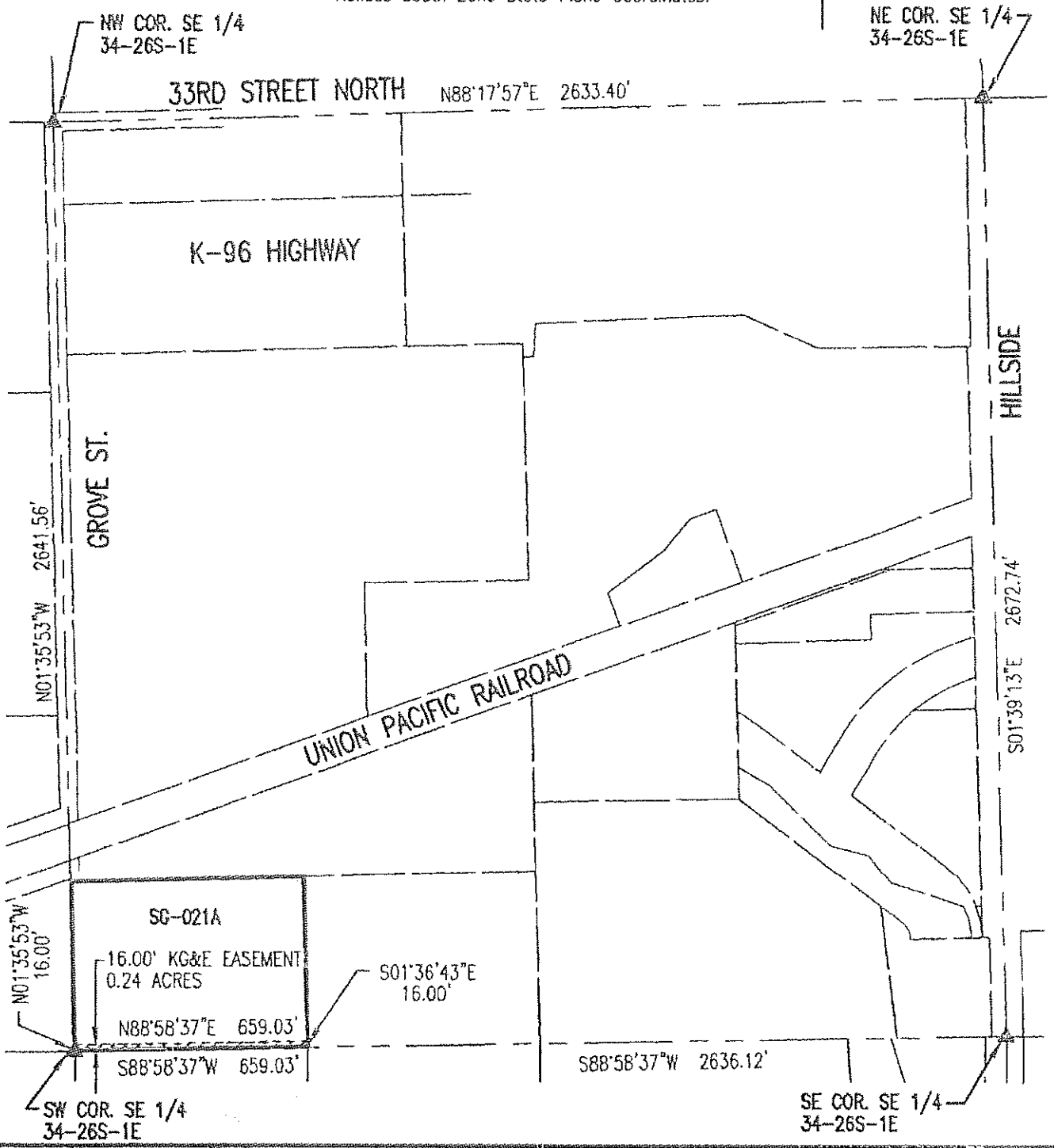
0 400



PEC PROFESSIONAL ENGINEERING CONSULTANTS, P.A. 303 SOUTH TOPEKA WICHITA, KS 67202 316-262-2691 www.pec1.com	69.88 COLEMAN TO CRESTVIEW TRANSMISSION LINE			Westar Energy
	COUNTY	OWNER	TRACT. NO.	PROJ. NO. 14-066
	SEDGWICK	CITY OF WICHITA	SG-021A	DATE: SEPT. 03, 2014

September 3, 2014

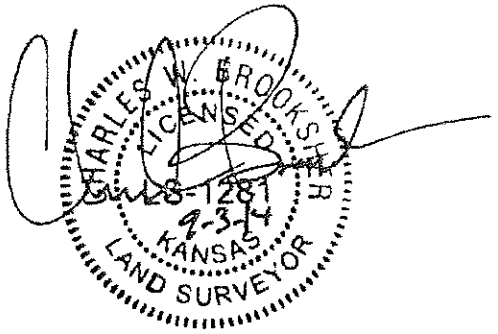
KANSAS GAS AND ELECTRIC COMPANY
69.88 COLEMAN TO CRESTVIEW
TRANSMISSION LINE
TRACT SG-021A
OWNER: CITY OF WICHITA

EASEMENT DESCRIPTION

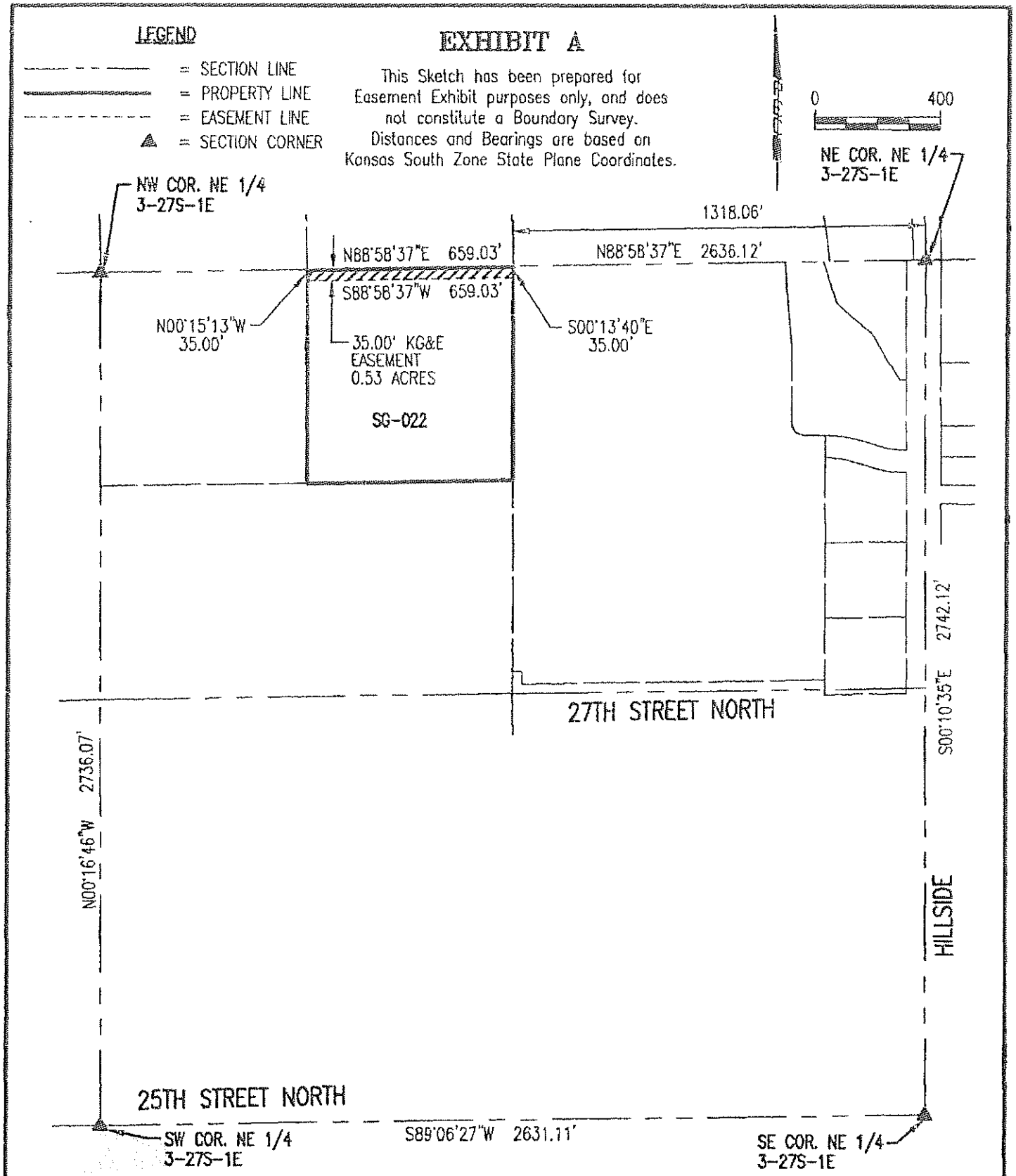
A tract of land in the Southeast Quarter of Section 34, Township 26 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas, described as:

Beginning at the Southwest corner of the Southeast Quarter of Section 34, Township 26 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas; thence bearing North 01°35'53" West along the west line of said Southeast Quarter a distance of 16.00 feet; thence bearing North 88°58'37" East and parallel with the south line of said Southeast Quarter for a distance of 659.03 feet; thence bearing South 01°36'43" East for a distance of 16.00 feet to the south line of said Southeast Quarter; thence bearing South 88°58'37" West along said south line for a distance of 659.03 feet to the Point of Beginning.

Encompassing 0.24 acres more or less.



Prepared by: Charles W. Brooksher P.S. #1281
PEC Project No. 14200-048



PEC PROFESSIONAL ENGINEERING CONSULTANTS, P.A. 303 SOUTH TOPEKA WICHITA, KS 67202 316-262-2691 www.pec1.com	69.88 COLEMAN TO CRESTVIEW TRANSMISSION LINE		Westar Energy.
COUNTY	OWNER	TRACT. NO.	PROJ. NO. 14-066
SEDGWICK	CITY OF WICHITA	SG-022	DATE: SEPT. 03, 2014

September 3, 2014

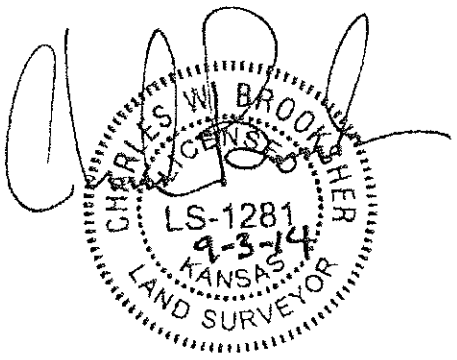
KANSAS GAS AND ELECTRIC COMPANY
69.88 COLEMAN TO CRESTVIEW
TRANSMISSION LINE
TRACT SG-022
OWNER: CITY OF WICHITA

EASEMENT DESCRIPTION

A tract of land in the Northeast Quarter of Section 3, Township 27 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas, described as:

Commencing at the Northeast corner of the Northeast Quarter of Section 3, Township 27 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas; thence bearing South 88°58'37" West along the north line of said Northeast Quarter for a distance of 1318.06 feet to the Point of Beginning; thence bearing South 00°13'40" East for a distance of 35.00 feet; thence bearing South 88°58'37" West and parallel with the north line of said Northeast Quarter for a distance of 659.03 feet; thence bearing North 00°15'13" West for a distance of 35.00 feet to the north line of said Northeast Quarter; thence bearing North 88°58'37" East along said north line for a distance of 659.03 feet to the Point of Beginning.

Encompassing 0.53 acres more or less.



Prepared by: Charles W. Brooksher P.S. #1281
PEC Project No. 14200-048

EXHIBIT A

PAGE 1 OF 2

LEGEND

= SECTION LINE
= PROPERTY LINE
= EASEMENT LINE
▲ = SECTION CORNER

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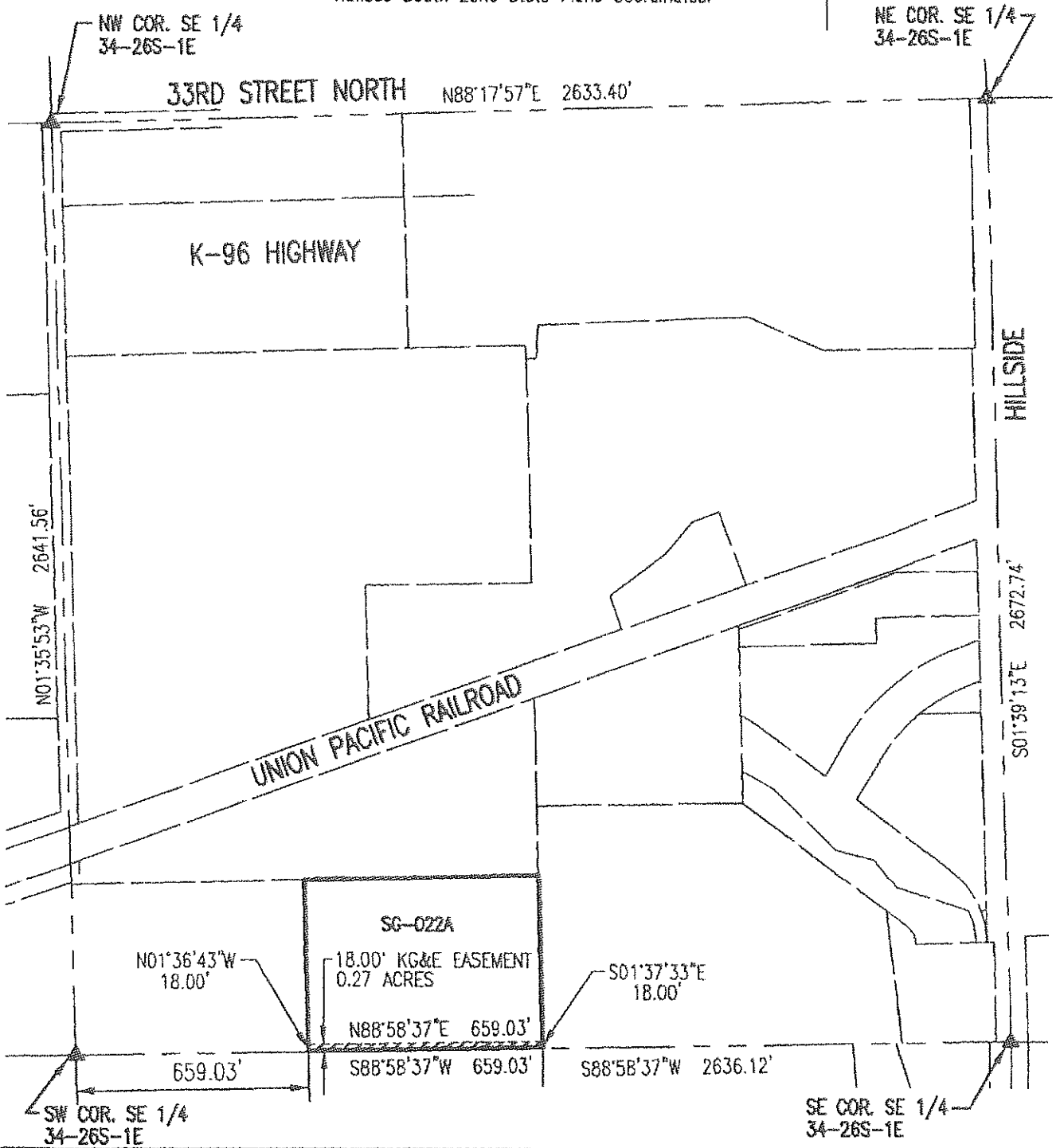
0 400



PROFESSIONAL ENGINEERING CONSULTANTS, P.A. 303 SOUTH TOPEKA WICHITA, KS 67202 316-262-2691 www.pec1.com	69.66 COLEMAN TO CRESTVIEW TRANSMISSION LINE		Westar Energy.
COUNTY	OWNER	TRACT. NO.	PROJ. NO. 14-066
SEDGWICK	CITY OF WICHITA	SG-022A	DATE: SEPT. 03, 2014

September 3, 2014

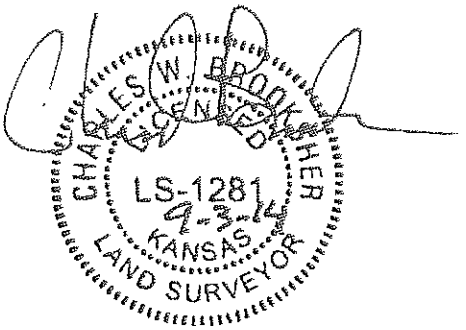
KANSAS GAS AND ELECTRIC COMPANY
69.88 COLEMAN TO CRESTVIEW
TRANSMISSION LINE
TRACT SG-022A
OWNER: CITY OF WICHITA

EASEMENT DESCRIPTION

A tract of land in the Southeast Quarter of Section 34, Township 26 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas, described as:

Commencing at the Southwest corner of the Southeast Quarter of Section 34, Township 26 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas; thence bearing North 88°58'37" East along the south line of said southeast Quarter for a distance of 659.03 feet to the Point of Beginning; thence bearing North 01°36'43" West for a distance of 18.00 feet; thence bearing North 88°58'37" East and parallel with the south line of said Southeast Quarter for a distance of 659.03 feet; thence bearing South 01°37'33" East for a distance of 18.00 feet to the south line of said Southeast Quarter; thence bearing South 88°58'37" West along said south line for a distance of 659.03 feet to the Point of Beginning.

Encompassing 0.27 acres more or less.



Prepared by: Charles W. Brooksher P.S. #1281
PEC Project No. 14200-048

EXHIBIT A

LEGEND

= SECTION LINE
= PROPERTY LINE
= EASEMENT LINE
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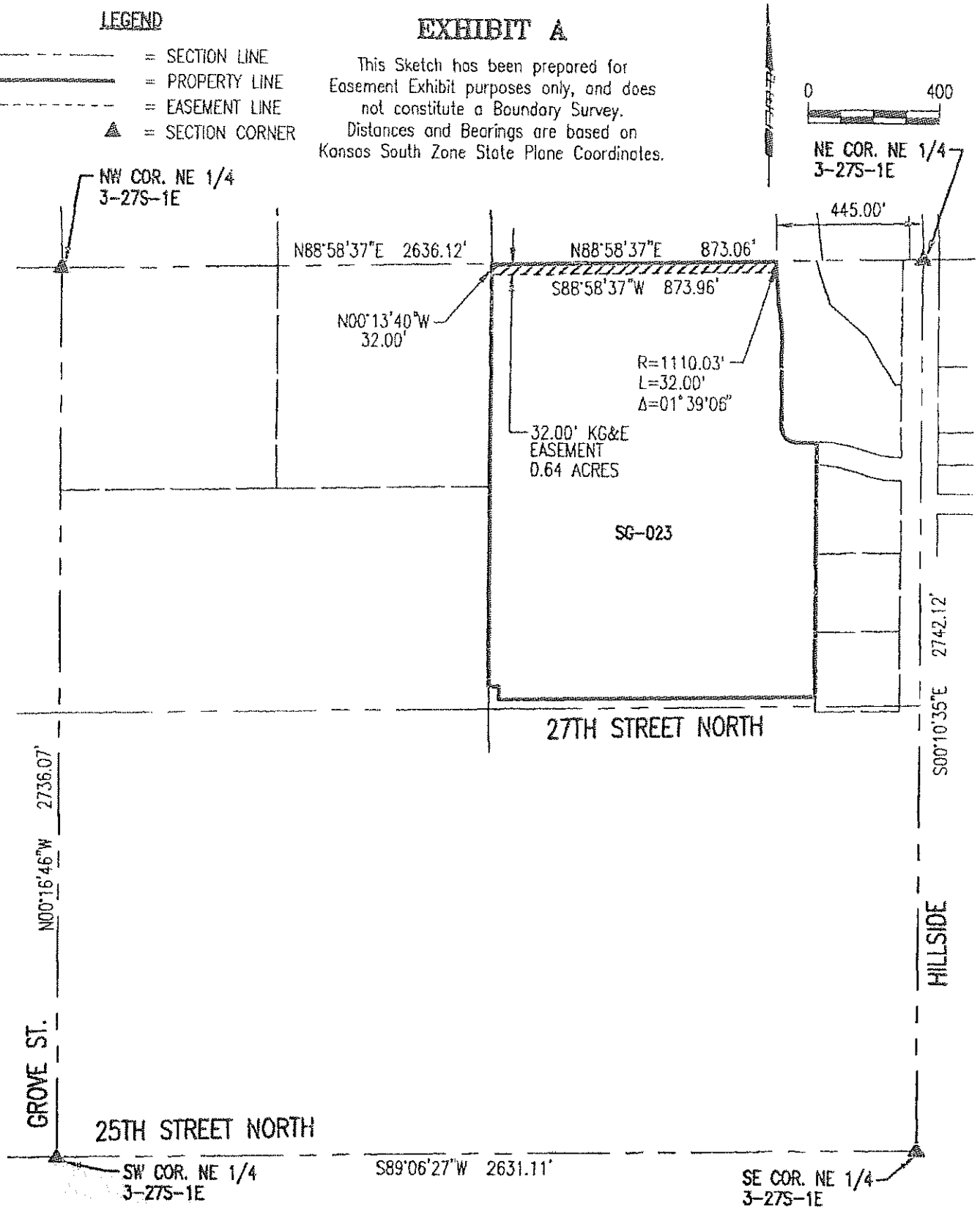

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69.88
COLEMAN TO CRESTVIEW
TRANSMISSION LINE

Westar Energy.

COUNTY	OWNER	TRACT. NO.	PROJ. NO. 14-066
SEDGWICK	CITY OF WICHITA	SG-023	DATE: SEPT. 03, 2014

September 3, 2014

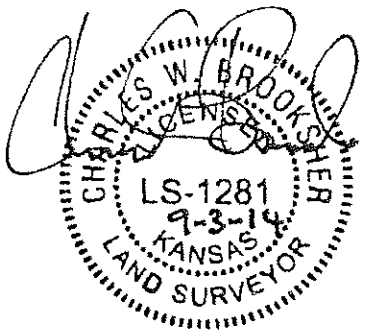
KANSAS GAS AND ELECTRIC COMPANY
69.88 COLEMAN TO CRESTVIEW
TRANSMISSION LINE
TRACT SG-023
OWNER: CITY OF WICHITA

EASEMENT DESCRIPTION

A tract of land in the Northeast Quarter of Section 3, Township 27 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas, described as:

Commencing at the Northeast corner of the Northeast Quarter of Section 3, Township 27 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas; thence bearing South 88°58'37" West along the north line of said Northeast Quarter for a distance of 445.00 feet to the Northwest Corner of Lot 1, Block B, University Terrace Park Addition to Wichita, Sedgwick County, Kansas and the Point of Beginning and to a Non-tangent curve to the left having a radius of 1110.03 feet, a central angle of 01°39'06", a chord that bears South 01°51'01" East, a chord distance of 32.00 feet; thence southerly along said curve and along the west line of said Lot 1 for a distance of 32.00 feet; thence bearing South 88°58'37" West and parallel with the north line of said Northeast Quarter for a distance of 873.96 feet; thence bearing North 00°13'40" West for a distance of 32.00 feet to the north line of said Northeast Quarter; thence bearing North 88°58'37" East along said north line for a distance of 873.06 feet to the Point of Beginning.

Encompassing 0.64 acres more or less.



Prepared by: Charles W. Brooksher P.S. #1281
PEC Project No. 14200-048

EXHIBIT A

PAGE 1 OF 2

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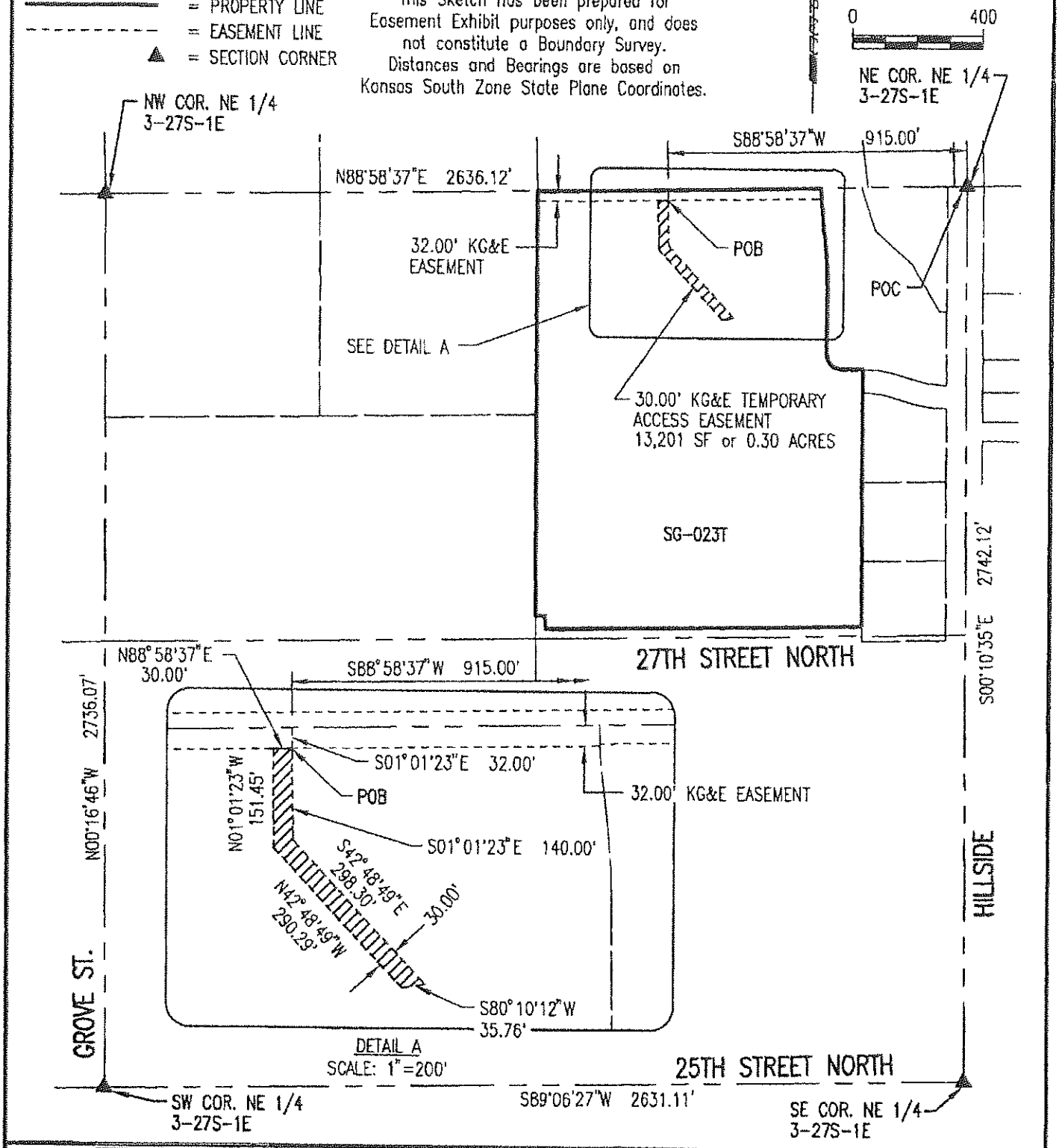
LEGEND

= SECTION LINE
= PROPERTY LINE
= EASEMENT LINE
▲ = SECTION CORNER



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303 SOUTH TOPEKA WICHITA, KS 67202
316-262-2691 www.pec1.com

69.88
COLEMAN TO CRESTVIEW
TRANSMISSION LINE

Westar Energy

COUNTY	OWNER	TRACT. NO.	PROJ. NO. 14-066
SEDGWICK	CITY OF WICHITA	SG-023T	DATE: OCT. 30, 2014

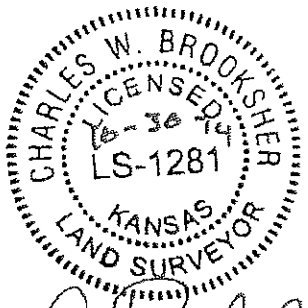
October 30, 2014

KANSAS GAS AND ELECTRIC COMPANY
COLEMAN TO CRESTVIEW
TRACT SG-023T
OWNER: CITY OF WICHITA

TEMPORARY ACCESS EASEMENT DESCRIPTION

A tract of land in the Northeast Quarter of Section 3, Township 27 South, Range 1 East of the Sixth Principle Meridian, Sedgwick County, Kansas described as follows:

Commencing at the Northeast corner of the Northeast Quarter of said Section 3; thence bearing South 88°58'37" West along the North line of said Northeast Quarter for a distance of 915.00 feet; thence bearing South 01°01'23" East for a distance of 32.00 feet to the Point of Beginning; thence continuing on said bearing of South 01°01'23" East for a distance of 140.00 feet; thence bearing South 42°48'49" East for a distance of 298.30 feet; thence bearing South 80°10'12" West for a distance of 35.76 feet; thence bearing North 42°48'49" West for a distance of 290.29 feet; thence bearing North 01°01'23" West for a distance of 151.45 feet; thence bearing North 88°58'37" East for a distance of 30.00 feet to the Point of Beginning. Encompassing a total of 13,201 square feet or 0.30 acres more or less.



Prepared by: Charles W. Brooksher P.S. #1281
PEC Project No. 14200-048

EXHIBIT A

LEGEND

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= PROPERTY LINE
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= SECTION CORNER

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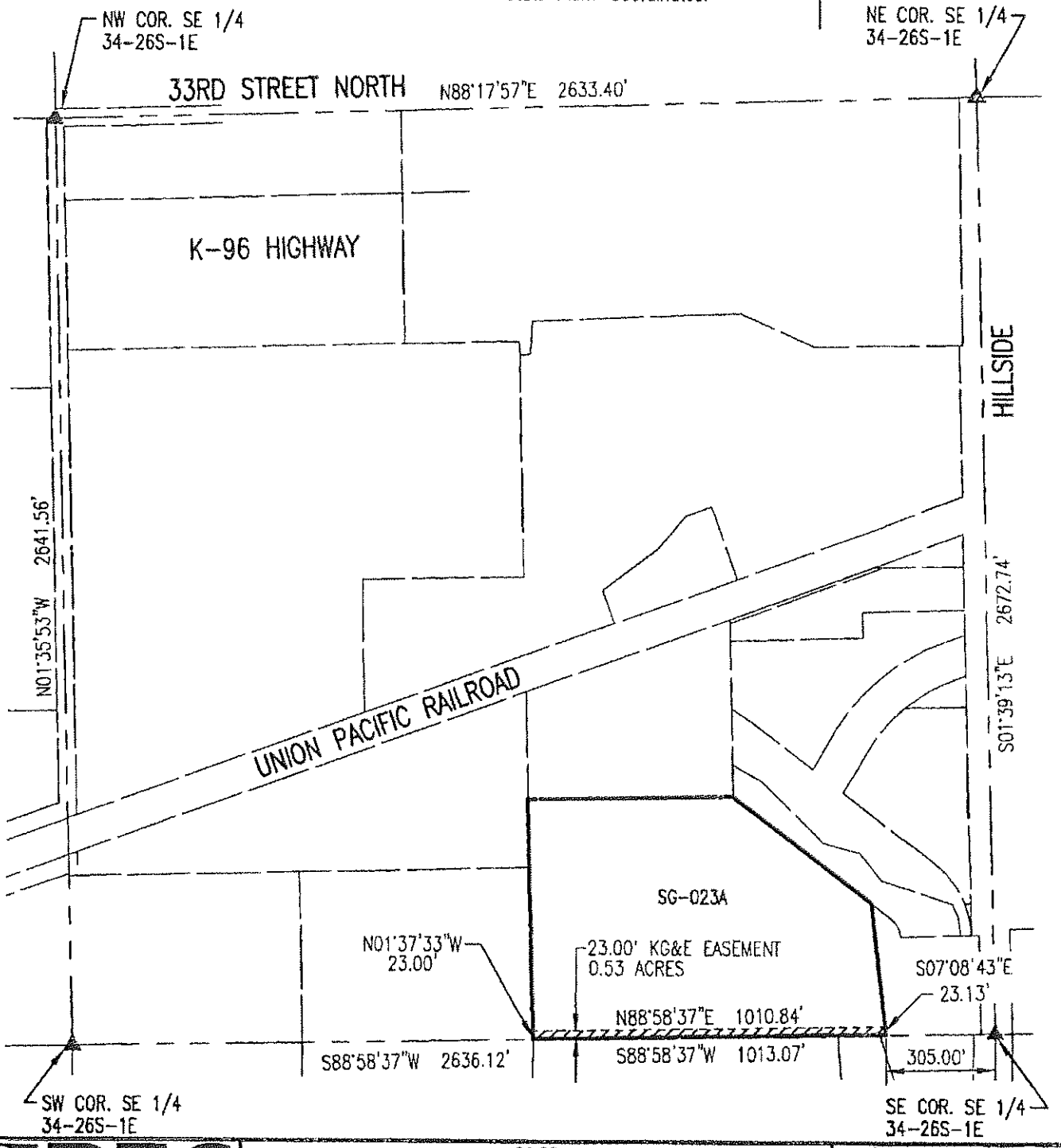


PEC
PROFESSIONAL ENGINEERING CONSULTANTS, P.A.
303 SOUTH TOPEKA WICHITA, KS 67202
316-262-2691 www.pec1.com

69.88
COLEMAN TO CRESTVIEW
TRANSMISSION LINE

Westar Energy

COUNTY	OWNER	TRACT. NO.	PROJ. NO. 14-066
SEDGWICK	CITY OF WICHITA	SG-023A	DATE: SEPT. 03, 2014

September 3, 2014

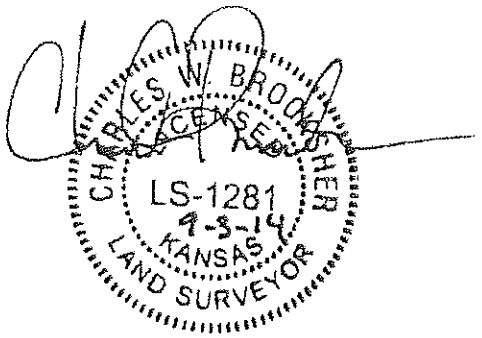
KANSAS GAS AND ELECTRIC COMPANY
69.88 COLEMAN TO CRESTVIEW
TRANSMISSION LINE
TRACT SG-023A
OWNER: CITY OF WICHITA

EASEMENT DESCRIPTION

A tract of land in the Southeast Quarter of Section 34, Township 26 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas, described as:

Commencing at the Southeast corner of the Southeast Quarter of Section 34, Township 26 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas; thence bearing South 88°58'37" West along the south line of said Southeast Quarter for a distance of 305.00 feet to the Point of Beginning; thence continuing said bearing of South 88°58'37" West along the south line of said Southeast Quarter for a distance of 1013.07 feet; thence bearing North 01°37'33" West for a distance of 23.00 feet; thence bearing North 88°58'37" East and parallel with the south line of said Southeast Quarter for a distance of 1010.84 feet; thence bearing South 07°08'43" East for a distance of 23.13 feet to the Pont of Beginning.

Encompassing 0.53 acres more or less.



Prepared by: Charles W. Brooksher P.S. #1281
PEC Project No. 14200-048

EXHIBIT A

LEGEND

= SECTION LINE
= PROPERTY LINE
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▲ = SECTION CORNER

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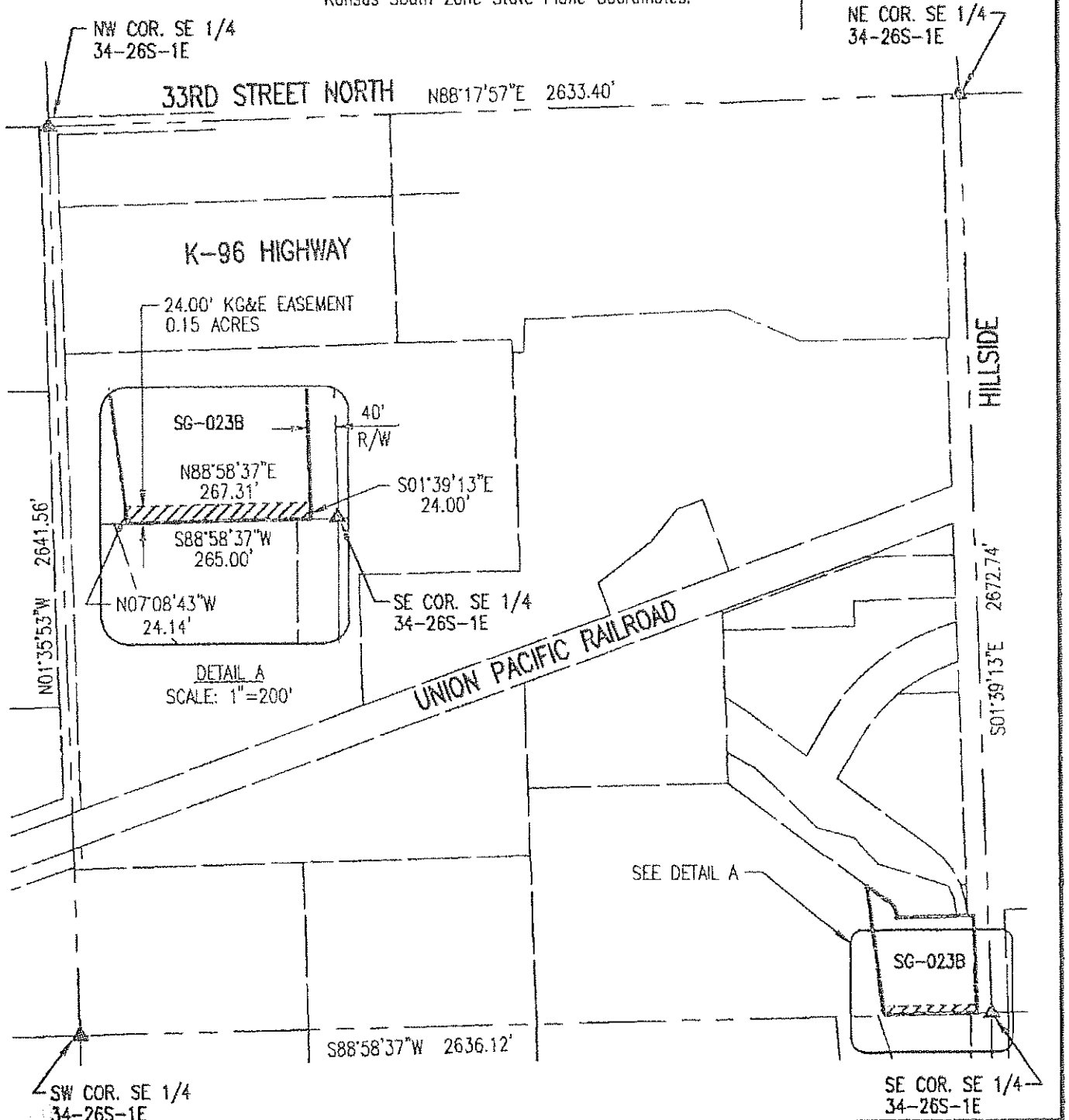
0 400



PEC PROFESSIONAL ENGINEERING CONSULTANTS, P.A. 303 SOUTH TOPEKA WICHITA, KS 67202 316-262-2691 www.pec1.com	69.88 COLEMAN TO CRESTVIEW TRANSMISSION LINE		Westar Energy
COUNTY	OWNER	TRACT. NO.	PROJ. NO. 14-066
SEDGWICK	CITY OF WICHITA	SG-023B	DATE: SEPT. 03, 2014

September 3, 2014

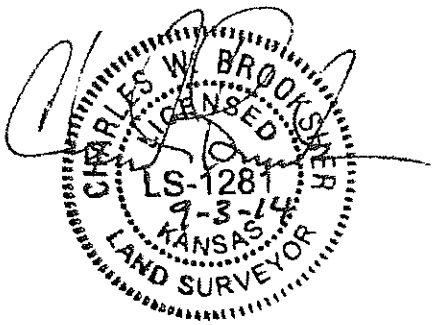
KANSAS GAS AND ELECTRIC COMPANY
69.88 COLEMAN TO CRESTVIEW
TRANSMISSION LINE
TRACT SG-023B
OWNER: CITY OF WICHITA

EASEMENT DESCRIPTION

A tract of land in the Southeast Quarter of Section 34, Township 26 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas, described as:

Commencing at the Southeast corner of the Southeast Quarter of Section 34, Township 26 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas; thence bearing South 88°58'37" West along the south line of said Southeast Quarter for a distance of 40.00 feet to the westerly right of way of Hillside Ave. and the Point of Beginning; thence continuing said bearing of South 88°58'37" West along the South line of said Southeast Quarter for a distance of 265.00 feet; thence bearing North 07°08'43" West for a distance of 24.14 feet; thence bearing North 88°58'37" East and parallel with the south line of said Southeast Quarter for a distance of 267.31 feet to the westerly right of way of Hillside Ave.; thence bearing South 01°39'13" East along said right of way for a distance of 24.00 feet to the Point of Beginning.

Encompassing 0.15 acres more or less.



Prepared by: Charles W. Brooksher P.S. #1281
PEC Project No. 14200-048

EXHIBIT A

LEGEND

= SECTION LINE
= PROPERTY LINE
= EASEMENT LINE
▲ = SECTION CORNER

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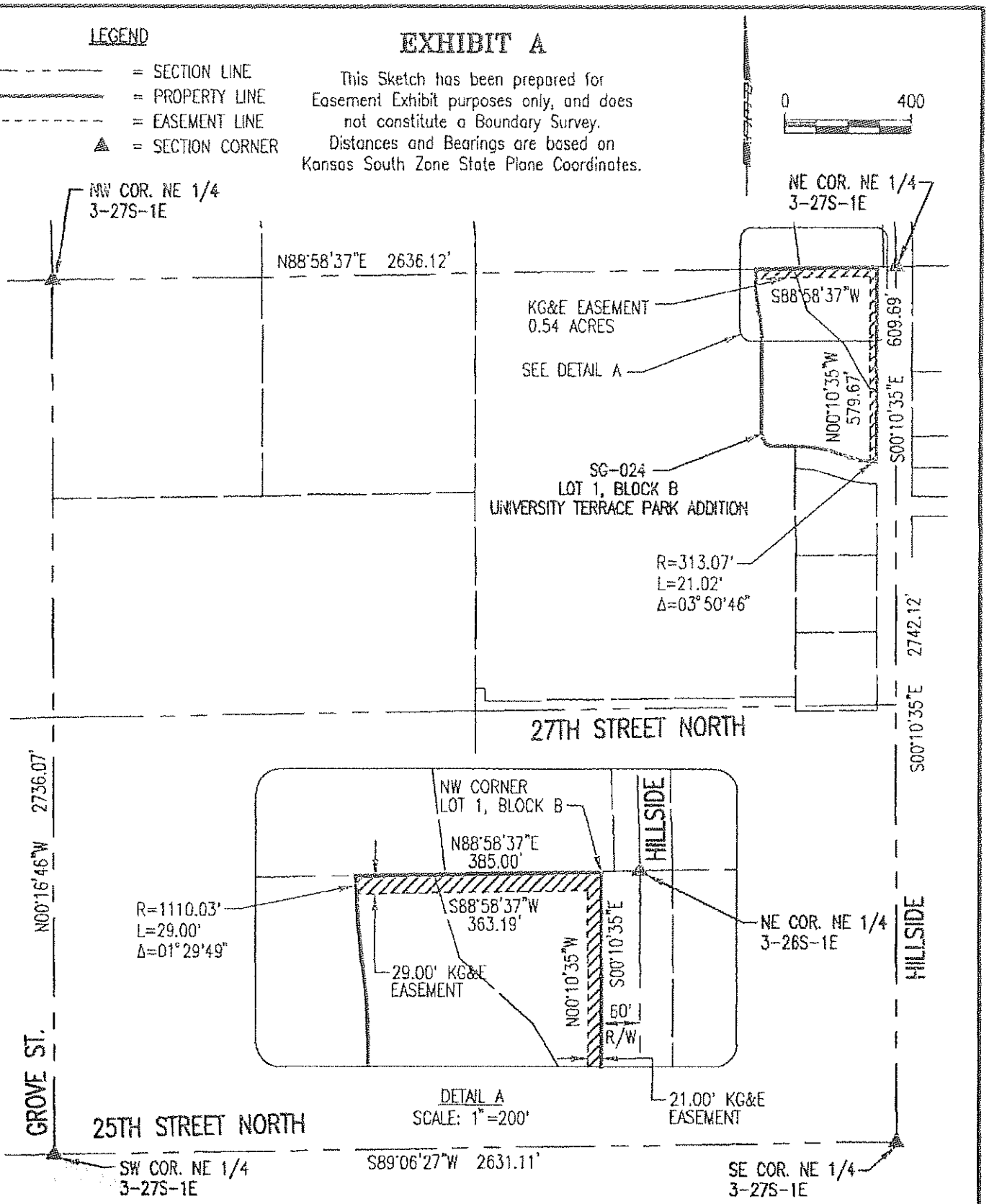


PEC PROFESSIONAL ENGINEERING CONSULTANTS, P.A. 303 SOUTH TOPEKA WICHITA, KS 67202 316-262-2691 www.pec1.com	69.88 COLEMAN TO CRESTVIEW TRANSMISSION LINE			Westar Energy.
	COUNTY	OWNER	TRACT. NO.	PROJ. NO. 14-066
	SEDGWICK	CITY OF WICHITA	SG-024	DATE: SEPT. 03, 2014

September 3 , 2014

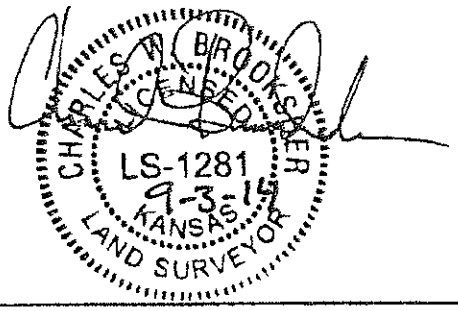
KANSAS GAS AND ELECTRIC COMPANY
69.88 COLEMAN TO CRESTVIEW
TRANSMISSION LINE
TRACT SG-024
OWNER: CITY OF WICHITA

EASEMENT DESCRIPTION

A tract of land in the Northeast Quarter of Section 3, Township 27 South, Range 1 East of the 6th P.M., being a Portion of Lot 1, Block B, University Terrace Park Addition to Wichita, Sedgwick County, Kansas, described as:

Beginning at the Northeast Corner of Lot 1, Block B, University Terrace Park Addition to Wichita, Sedgwick County, Kansas; thence bearing South 00°10'35" East along the east line of said Lot 1 for a distance of 609.69 feet to the Southeast Corner of said Lot 1 and to a non-tangent curve to the right having a radius of 313.07 feet, a central angle of 03°50'46", a chord that bears North 88°15'12" West and a chord distance of 21.01 feet; thence westerly along said curve to the right for a distance of 21.01 feet; thence bearing North 00°10'35" West parallel with the east line of said Lot 1 for a distance of 579.67 feet to a point 29.00 feet distant south of the north line of said Lot 1; thence bearing South 88°58'37" West and parallel with the north line of said Lot 1 for a distance of 363.19 feet to the west line of said Lot 1 and to a non-tangent curve to the right having a radius of 1110.03 feet, a central angle of 01°29'49", a chord that bears North 01°46'23" West and a chord distance of 29.00 feet; thence northerly along said curve and along the west line of said Lot 1 for a distance of 29.00 feet to the north line of said Lot 1; thence bearing North 88°58'37" East along the North line of said Lot 1 for a distance of 385.00 feet to Northeast Corner of said Lot 1 and the Point of Beginning.

Encompassing 0.54 acres more or less.

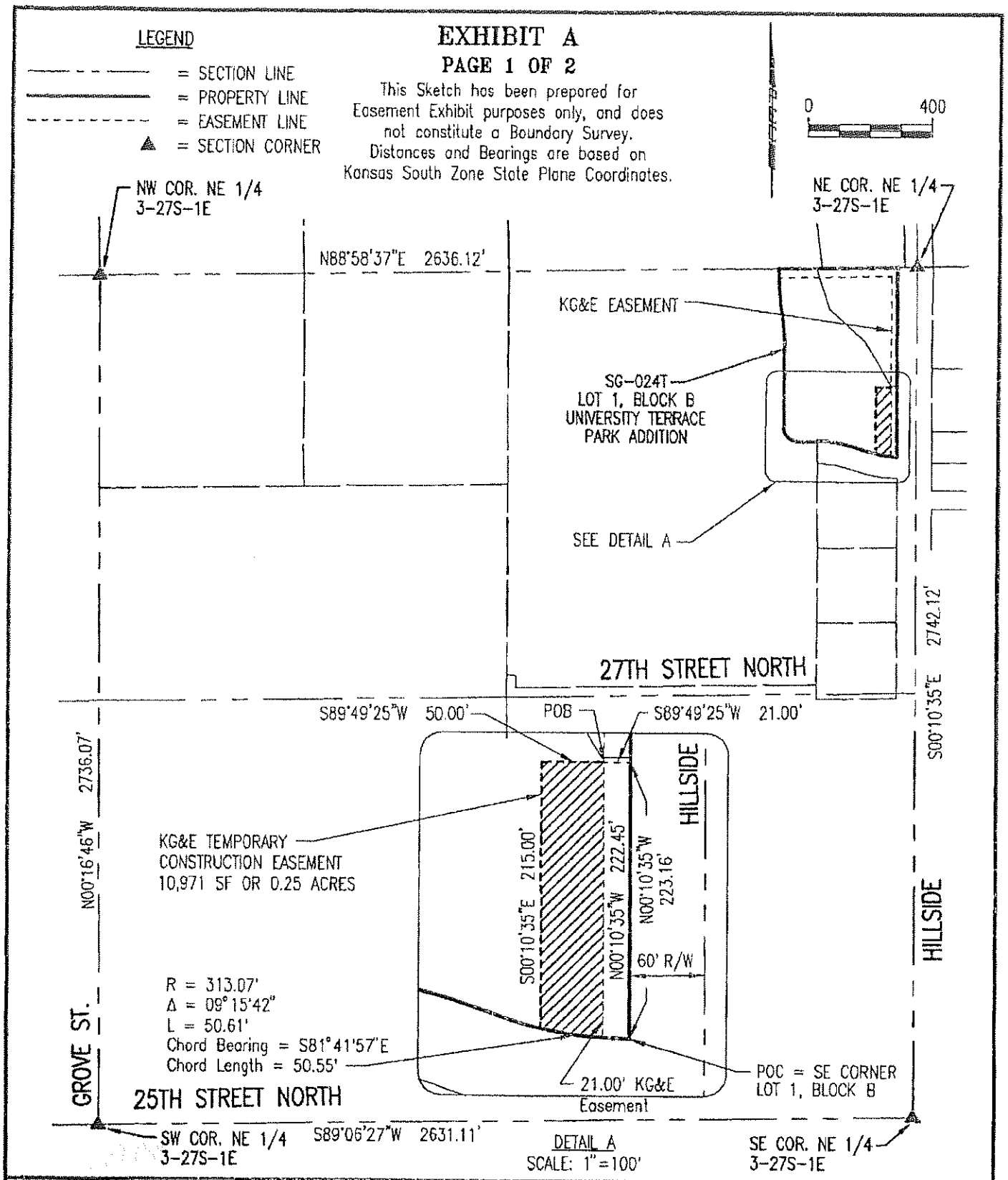


Prepared by: Charles W. Brooksher P.S. #1281
PEC Project No. 14200-048

EXHIBIT A

PAGE 1 OF 2

This Sketch has been prepared for Easement Exhibit purposes only, and does not constitute a Boundary Survey. Distances and Bearings are based on Kansas South Zone State Plane Coordinates.



DETAIL A
SCALE: 1"=100'

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69.88
COLEMAN TO CRESTVIEW
TRANSMISSION LINE

Westar Energy

COUNTY	OWNER	TRACT. NO.	PROJ. NO. 14-066
SEDGWICK	CITY OF WICHITA	SG-024T	DATE: OCT. 28, 2014

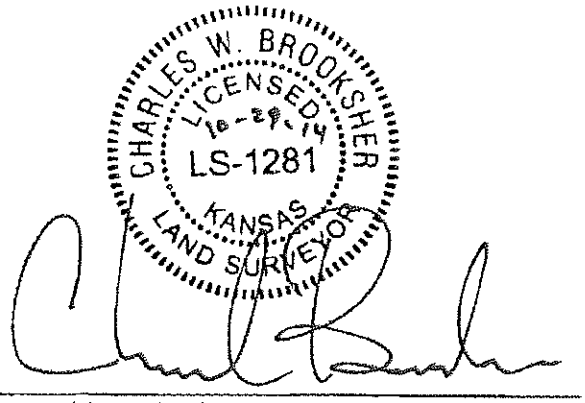
October 28, 2014

KANSAS GAS AND ELECTRIC COMPANY
COLEMAN TO CRESTVIEW
TRACT SG-024T
OWNER: CITY OF WICHITA

TEMPORARY CONSTRUCTION EASEMENT DESCRIPTION

A tract of land in the Northeast Quarter of Section 3, Township 27 South, Range 1 East of the Sixth Principle Meridian, Sedgwick County, Kansas described as follows:

Commencing at the Southeast corner of Lot 1, Block B, University Terrace Park Addition to Wichita, Sedgwick County, Kansas; thence bearing North 00°10'35" West along the East line of said Lot 1 for a distance of 223.16 feet; thence bearing South 89°49'25" West for a distance of 21.00 feet to the Point of Beginning; thence continuing on said bearing of South 89°49'25" West for a distance of 50.00 feet; thence bearing South 00°10'35" East, parallel with the East line of said Lot 1 for a distance of 215.00 feet to a point on the South line of said Lot 1, being a curve to the left having a radius of 313.07 feet, a central angle of 09°15'42", a chord that bears South 81°41'57" East and a chord distance of 50.55 feet; thence southeasterly along said curve to the left for a distance of 50.61 feet; thence bearing North 00°10'35" West, parallel with the East line of said Lot 1 for a distance of 222.45 feet to the Point of Beginning. Encompassing 10,971 square feet or 0.25 acres more or less.



Prepared by: Charles W. Brooksher P.S. #1281
PEC Project No. 14200-048

EXHIBIT B
GRANT OF RIGHT OF
WAY

For and in consideration of the sum of One Dollar ($1.00) and other valuable consideration, the receipt of which is hereby acknowledged, the City of Wichita, Kansas, hereinafter referred to as Grantor, does hereby grant, convey and warrant unto Kansas Gas and Electric Company, Inc., hereinafter referred to as Grantee, its successors, assigns, and lessees the right and easement to erect, install, alter, reconstruct, operate, and maintain under varying conditions of operation, renew, replace, relocate, and remove electric and communication transmission and distribution lines, the wood and steel poles and towers, anchors, guys, crossarms, insulators, conductors, underground conduit, ducts, cables, and other equipment appurtenant thereto for the transmission and distribution of electric energy and communications (the "Work") in, along, under, across, and over certain lands owned by Grantor situated in Sedgwick County, State of Kansas, and described as follows:

SEE EXHIBITS SG-016A, SG-017A, SG-018, SG-019, SG-020, SG-021A, and SG-022A attached hereto and made a part hereof.

together with the right of ingress to and egress from the above described land and contiguous land owned by Grantor for the purpose of surveying, erecting, constructing, maintaining, inspecting, rebuilding, replacing and repairing Grantee's lines which shall be located upon the land specifically described above.

Grantee shall have the further rights to erect, maintain and use gates in all fences which cross or which shall hereafter cross the route of said lines together with the right to trim, remove, eradicate, cut and clear away any trees, limbs and brush on above described land now or at any future time. Grantee shall have the further right to trim and clear away any trees, limbs, and brush on lands adjacent to above described right of way whenever in its judgment such will interfere with or endanger the construction, operation or maintenance of said lines subject to the approval of the Grantor. Grantee shall at its election have the right to remove said trees, limbs, and brush. All logs, limbs and brush shall be burned or removed by the Grantee unless otherwise agreed to by Grantor. In exercising its right of ingress and egress the Grantee shall, whenever practicable, use existing roads or lanes, and shall repair any damage caused by its use thereof.

All materials and construction methods used on Work shall be equal to or better than that required by the "Westar Transmission Line Construction Specification Manual", current edition. Grantee agrees that highway traffic will be free of interference unless specifically provided for as part of this Grant of Right of Way. Traffic protection shall be in accordance with the "Manual on Uniform Traffic Control Devices", current edition.

GRANTEE AGREES TO NOTIFY THE CITY AT LEAST 24 HOURS BEFORE THE WORK IS INITIATED AND AGAIN WITHIN FIVE (5) DAYS OF WHEN THE WORK IS COMPLETED. The Work hereunder shall be performed to the satisfaction of the City of Wichita. Grantee will at all times comply with and abide by all rules, notices and regulations of the City of Wichita.

Grantee hereby assumes all risk for liability and damages that may occur to persons or property on account of the Work; and Grantee does hereby indemnify and hold the Grantor harmless from any and all costs, liabilities, expenses, suits, judgments or damages to persons or property or claims of any nature whatsoever (including reasonable attorneys' fees) arising out of or in connection with the Work and with Grantee's occupation of the right-of-way hereunder. Grantee shall procure and maintain liability insurance to protect the public from injuries occurring as a result of the Work and to protect the Grantor from all liability and damages on account of injuries to workers, as provided by law, and to protect the City from all liability and damages occasioned by the Work. Grantee agrees, to file with the City of Wichita, prior to commencement of any work, a "Certificate of Insurance" or other satisfactory evidence to show that Grantee carries Worker's Compensation Insurance, Employer's Liability Insurance, Commercial general liability and/or excess liability, and Commercial Automobile Liability covering Owned, Non-owned and Hired vehicles as recognized by the Commissioner of Insurance of the State of Kansas. All insurance coverage is to be a minimum of $500,000.00.

This easement is granted by Grantor subject to the following condition and covenant:

At any time in the future, should any public entity require the real property subject to the easement herein granted for any public purpose, the Grantee shall promptly remove and or relocate its facilities at the request of said public entity. Any such relocation and or removal shall be at the sole cost and expense of the Grantee. Furthermore, said public entity shall not be required to provide any substitute real property or easements to accommodate the removal and or relocation of Grantee's facilities.

The Grantor, his heirs or assigns, may cultivate, use and enjoy the land above described, provided such use shall not in the judgment of Grantee, interfere with or endanger the construction, operation or maintenance of said lines, and provided further that no improvements or buildings shall be constructed or placed on the said right of way without the prior written consent of the Grantee.

Grantee shall repair any physical damage to property of Grantor, or pay any substantial damages on account of physical injury to property of Grantor by the erection, installation, reconstruction, operation, and maintenance under varying conditions of operation, renewal, and removal of said lines, said damages, if not mutually agreed upon, shall be ascertained by three disinterested persons, one of whom shall be selected by each, Grantor and Grantee, their heirs or successors, assigns or lessees, and the third by the two so selected. The damages determined by such persons, or a majority of them, shall be conclusive as to the facts.

This grant shall be binding upon the heirs, successors and assigns of the undersigned.

WITNESS the hand of the Grantor this _____ day of _____, 2015.

City of Wichita
By Direction of the City Council

By:_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

STATE OF KANSAS)
) SS:
SEDGWICK COUNTY)

This instrument was acknowledged, before me this_____Day of_____, 2015, by Carl Brewer, Mayor and Karen Sublett, City Clerk, of the City of Wichita.

_____
Notary Public

SEAL

My Appointment Expires:

APPROVED AS TO FORM:

_____
Sharon L. Dickgrafe, Interim Director of Law

EXHIBIT A

LEGEND

= SECTION LINE
= PROPERTY LINE
= EASEMENT LINE
▲ = SECTION CORNER

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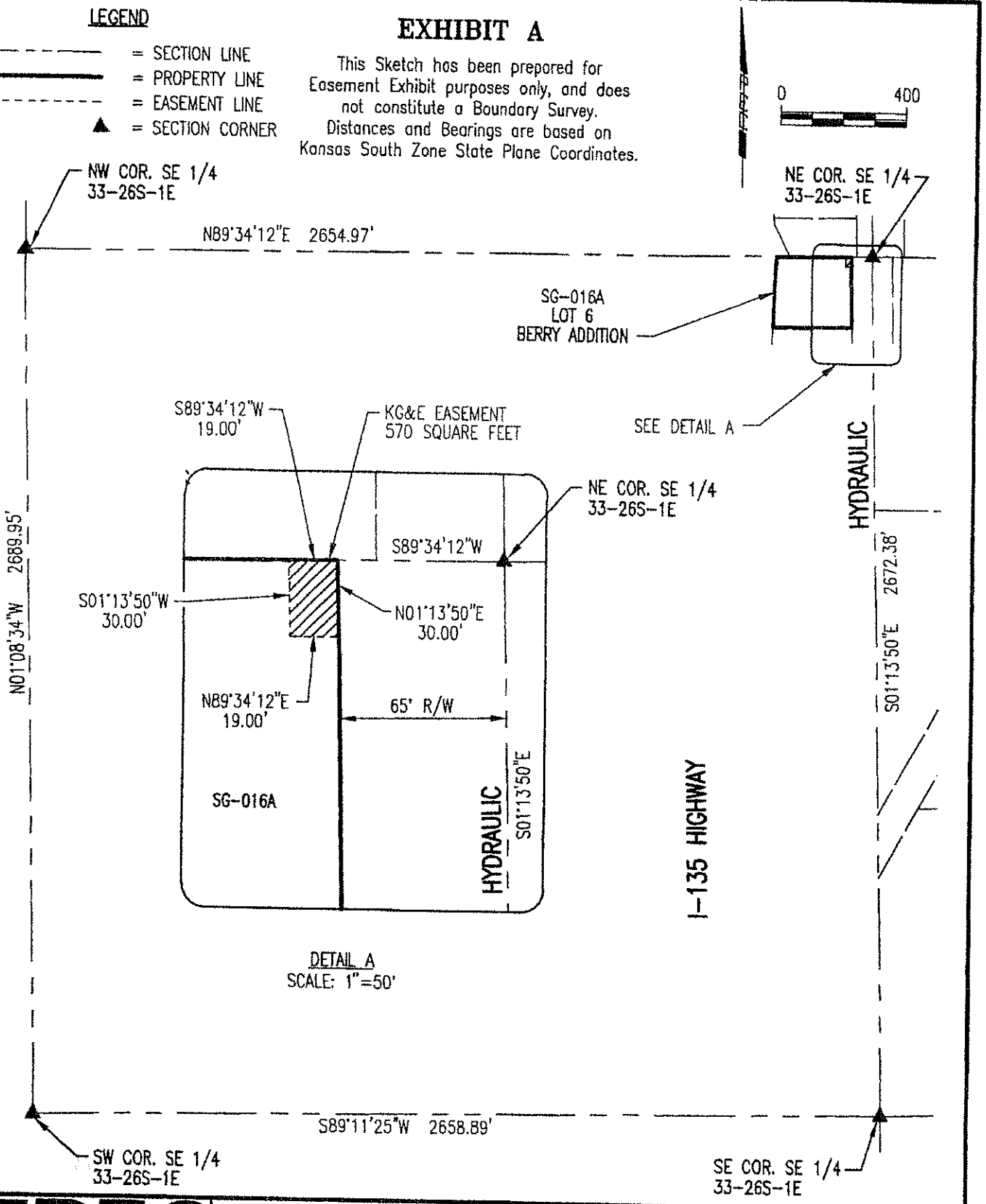

DETAIL A
SCALE: 1"=50'

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69.88
COLEMAN TO CRESTVIEW
TRANSMISSION LINE

Westar Energy

COUNTY	OWNER	TRACT. NO.	PROJ. NO. 14-066
SEDGWICK	CITY OF WICHITA	SG-016A	DATE: SEPT. 03, 2014

September 3, 2014

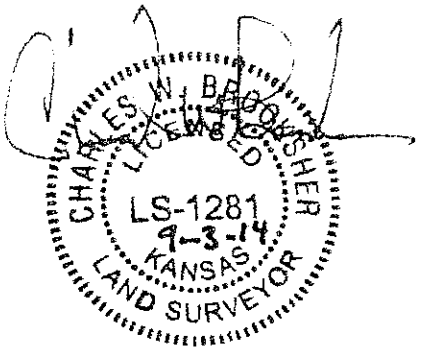
KANSAS GAS AND ELECTRIC COMPANY
69.88 COLEMAN TO CRESTVIEW
TRANSMISSION LINE
TRACT SG-016A
OWNER: CITY OF WICHITA

EASEMENT DESCRIPTION

A tract of land in the Southeast Quarter of Section 33, Township 26 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas, described as:

Beginning at the northeast corner of Lot 6, Berry Addition, Wichita, Kansas; thence bearing South 89°34'12" West along the north line of said Lot 6 for a distance of 19.00 feet; thence bearing South 1°13'50" West, parallel with the east line of said Lot 6 for a distance of 30.00 feet; thence bearing North 89°34'12" East, parallel with the north line of said Lot 6, for a distance of 19.00 feet to the east line of said Lot 6; thence bearing North 1°13'50" East along the east line of said Lot 6 for a distance of 30.00 feet to the Point of Beginning.

Encompassing 570 square feet, more or less.



Prepared by: Charles W. Brooksher P.S. #1281
PEC Project No. 14200-048

EXHIBIT A

LEGEND

= SECTION LINE
= PROPERTY LINE
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▲ = SECTION CORNER

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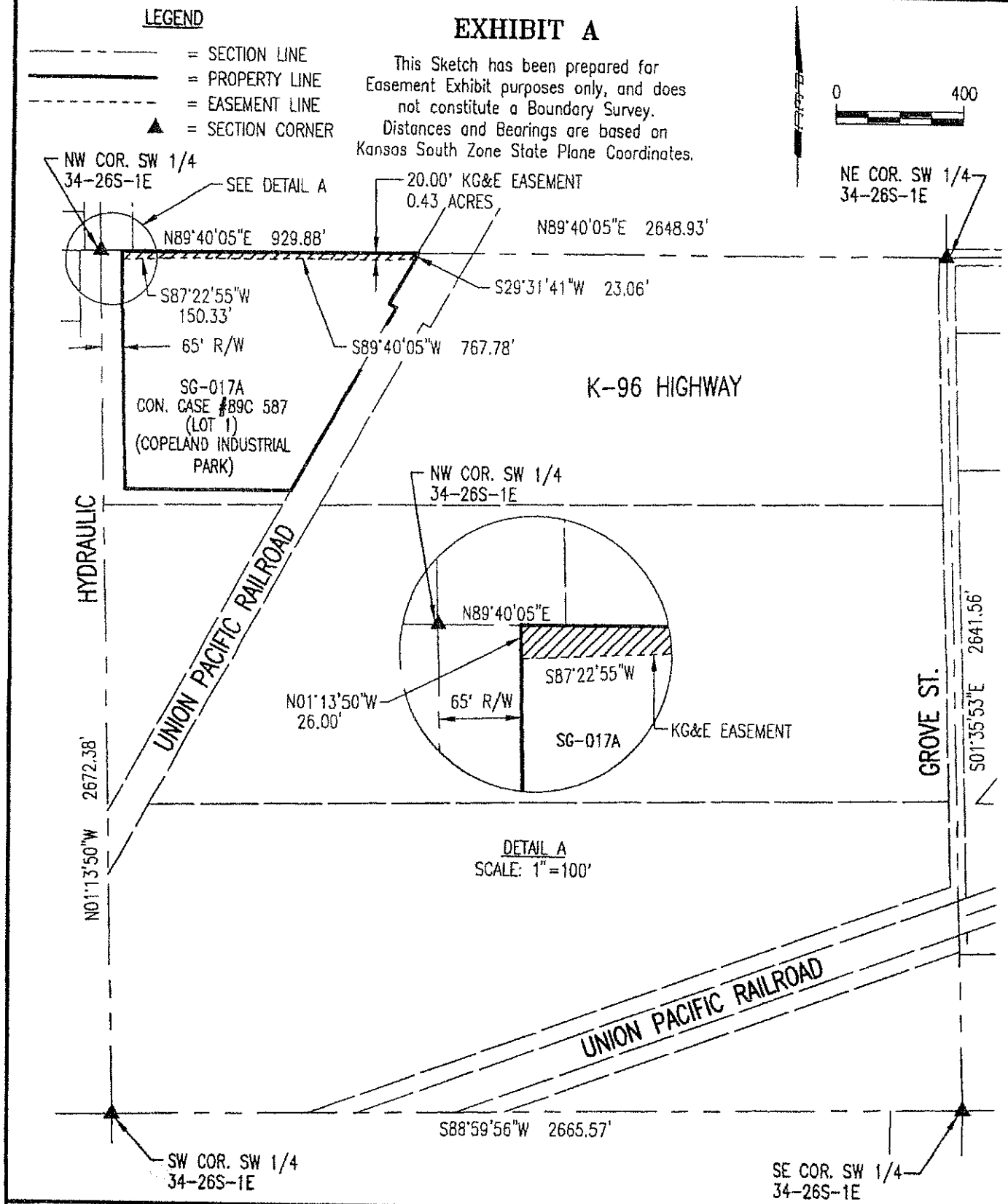


PEC PROFESSIONAL ENGINEERING CONSULTANTS, P.A. 303 SOUTH TOPEKA WICHITA, KS 67202 316-262-2691 www.pec1.com	69.88 COLEMAN TO CRESTVIEW TRANSMISSION LINE			Westar Energy
	COUNTY	OWNER	TRACT. NO.	PROJ. NO. 14-066
	SEDGWICK	CITY OF WICHITA	SG-017A	DATE: SEPT. 05, 2014

September 5, 2014

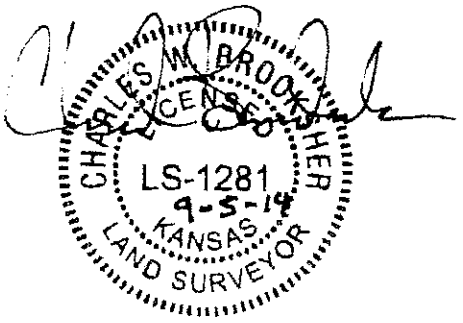
KANSAS GAS AND ELECTRIC COMPANY
69.88 COLEMAN TO CRESTVIEW
TRANSMISSION LINE
TRACT SG-019
OWNER: CITY OF WICHITA

EASEMENT DESCRIPTION

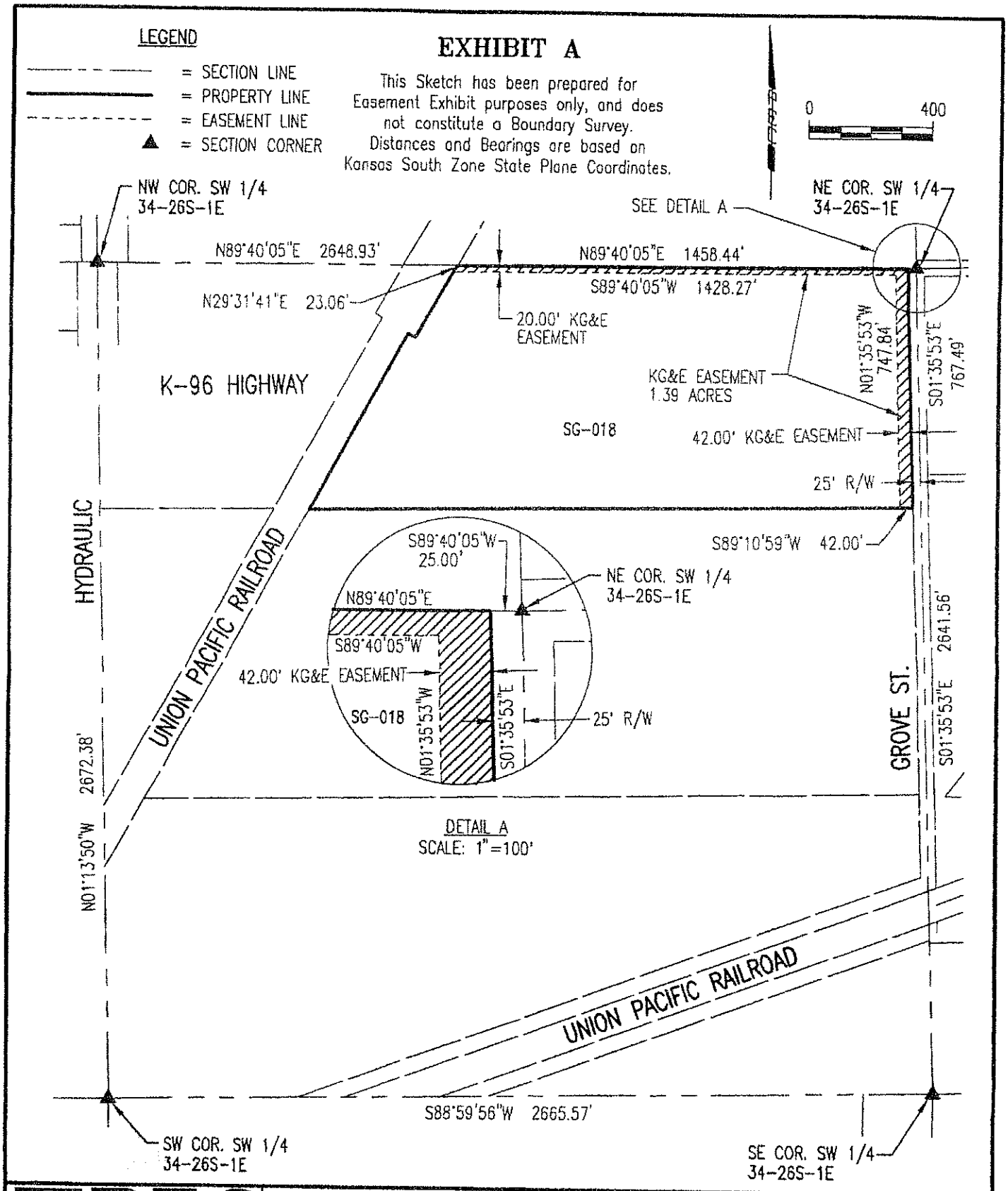
A tract of land in the Southwest Quarter of Section 34, Township 26 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas, described as:

Commencing at the Northeast corner of the Southwest Quarter of Section 34, Township 26 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas; thence bearing South 01°35'53" East along the east line of said Southwest Quarter for a distance of 767.28 feet; thence bearing South 89°10'59" West for a distance of 25.00 feet to the west right of way of Grove St. and the Point of Beginning; thence bearing South 01°35'53" East along said west right of way of Grove St. and parallel with the east line of said Southwest Quarter for a distance of 917.36 feet; thence bearing South 88°30'05" West for a distance of 42.00 feet; thence bearing North 01°35'53" West and parallel with said west right of way of Grove St. for a distance of 917.49 feet; thence bearing North 89°10'59" East for a distance of 42.00 feet to the Point of Beginning.

Encompassing 0.88 acres more or less.



Prepared by: Charles W. Brooksher P.S. #1281
PEC Project No. 14200-048



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69.86
COLEMAN TO CRESTVIEW
TRANSMISSION LINE

Westar Energy.

COUNTY	OWNER	TRACT. NO.	PROJ. NO. 14-066
SEDGWICK	CITY OF WICHITA	SG-018	DATE: SEPT. 03, 2014

September 3, 2014

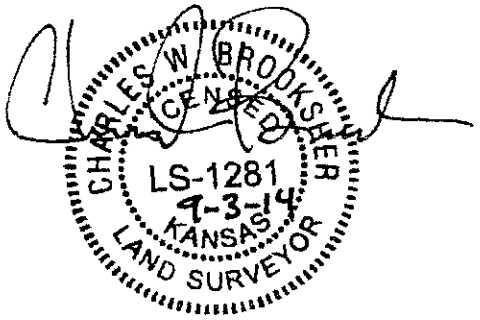
KANSAS GAS AND ELECTRIC COMPANY
69.88 COLEMAN TO CRESTVIEW
TRANSMISSION LINE
TRACT SG-018
OWNER: CITY OF WICHITA

EASEMENT DESCRIPTION

A tract of land in the Southwest Quarter of Section 34, Township 26 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas, described as:

Commencing at the Northeast Corner of the Southwest Quarter of Section 34, Township 26 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas; thence bearing South 89°40'05" West along the north line of said Southwest Quarter for a distance of 25.00 feet to the west right of way of Grove St. and the Point of Beginning; thence bearing South 01°35'53' East along said west right of way of Grove St. for a distance of 767.49 feet; thence bearing South 89°10'59" West for a distance of 42.00 feet; thence bearing North 01°35'53" West and parallel with the west right of way of Grove St. for a distance of 747.84 feet; thence bearing South 89°40'05" West and parallel with the north line of said Southwest Quarter for a distance of 1428.27 feet to the easterly right of way of the Union Pacific Railroad; thence bearing North 29°31'41"East along said easterly right of way of the Union Pacific Railroad for a distance of 23.06 feet to the north line of said Southwest Quarter; thence bearing North 89°40'05" East along the north line of said Southwest Quarter for a distance of 1458.44 feet to the Point of Beginning.

Encompassing 1.39 acres more or less.



Prepared by: Charles W. Brooksher P.S. #1281
PEC Project No. 14200-048

EXHIBIT A

LEGEND

= SECTION LINE
= PROPERTY LINE
= EASEMENT LINE
▲ = SECTION CORNER

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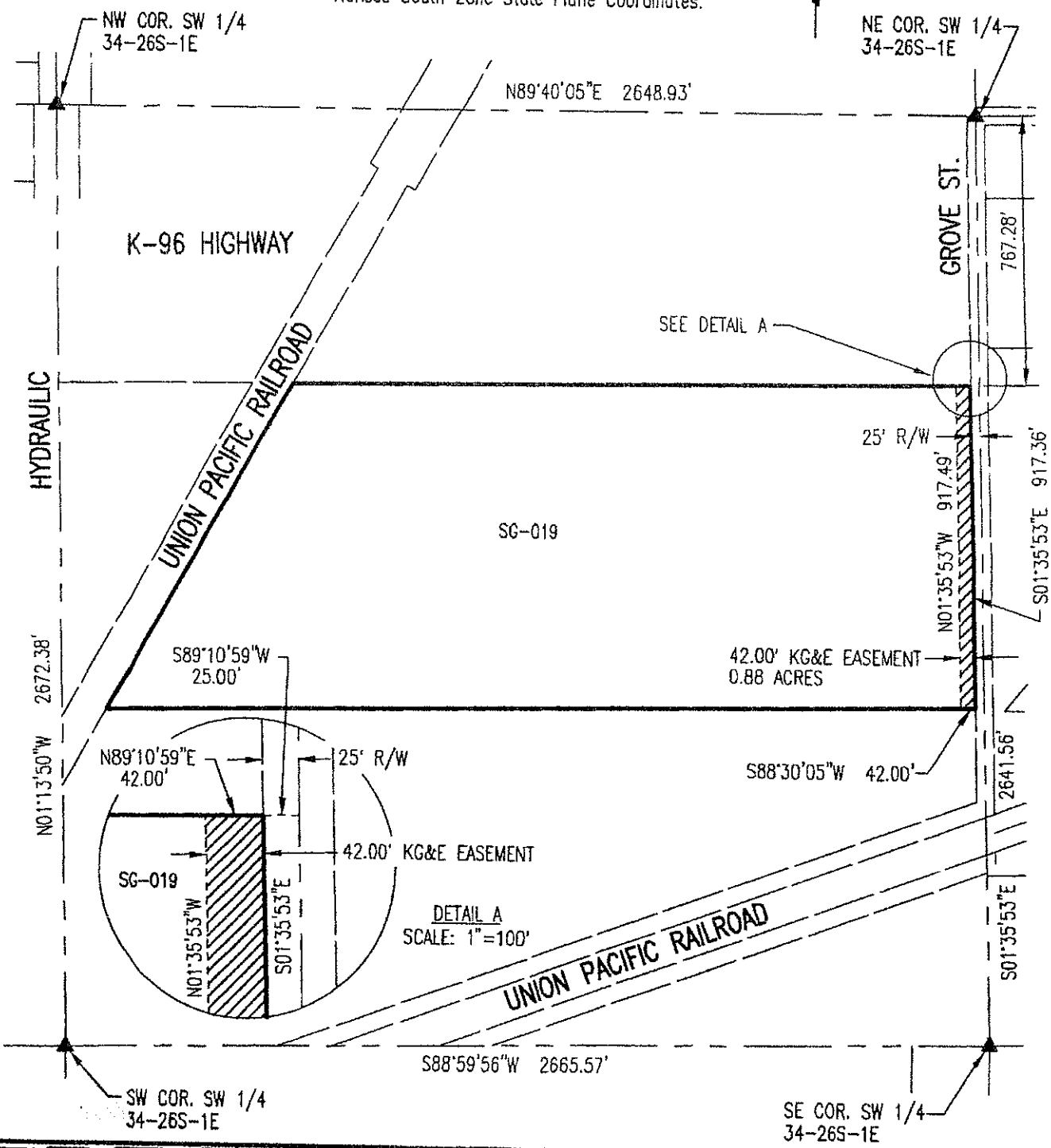

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COLEMAN TO CRESTVIEW
TRANSMISSION LINE

Westar Energy

COUNTY	OWNER	TRACT. NO.	PROJ. NO. 14-066
SEDGWICK	CITY OF WICHITA	SG-019	DATE: SEPT. 05, 2014

September 3, 2014

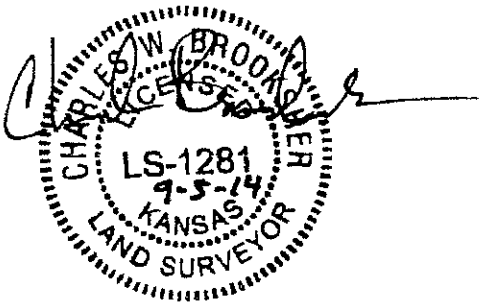
KANSAS GAS AND ELECTRIC COMPANY
69.88 COLEMAN TO CRESTVIEW
TRANSMISSION LINE
TRACT SG-017A
OWNER: CITY OF WICHITA

EASEMENT DESCRIPTION

A tract of land in the Southwest Quarter of Section 34, Township 26 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas, described as:

Commencing at the Northwest Corner of the Southwest Quarter of Section 34, Township 26 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas; thence bearing North 89°40'05" East along the north line of said Southwest Quarter for a distance of 65.00 feet to the east right of way of Hydraulic Ave. and the Point of Beginning; thence continuing said bearing of North 89°40'05" East along said north line of said Southwest Quarter for a distance of 929.88 feet to the westerly right of way of the Union Pacific Railroad; thence bearing South 29°31'41" West along said westerly right of way of the Union Pacific Railroad for a distance of 23.06 feet; thence bearing South 89°40'05" West parallel with the north line of said Southwest Quarter for a distance of 767.78 feet; thence bearing South 87°22'55" West for a distance of 150.33 feet to the east right of way of Hydraulic Ave.; thence bearing North 01°13'50" West and parallel with the west line of said Southwest Quarter a distance of 26.00 feet to the Point of Beginning.

Encompassing 0.43 acres more or less.



Prepared by: Charles W. Brooksher P.S. #1281
PEC Project No. 14200-048

EXHIBIT A

LEGEND

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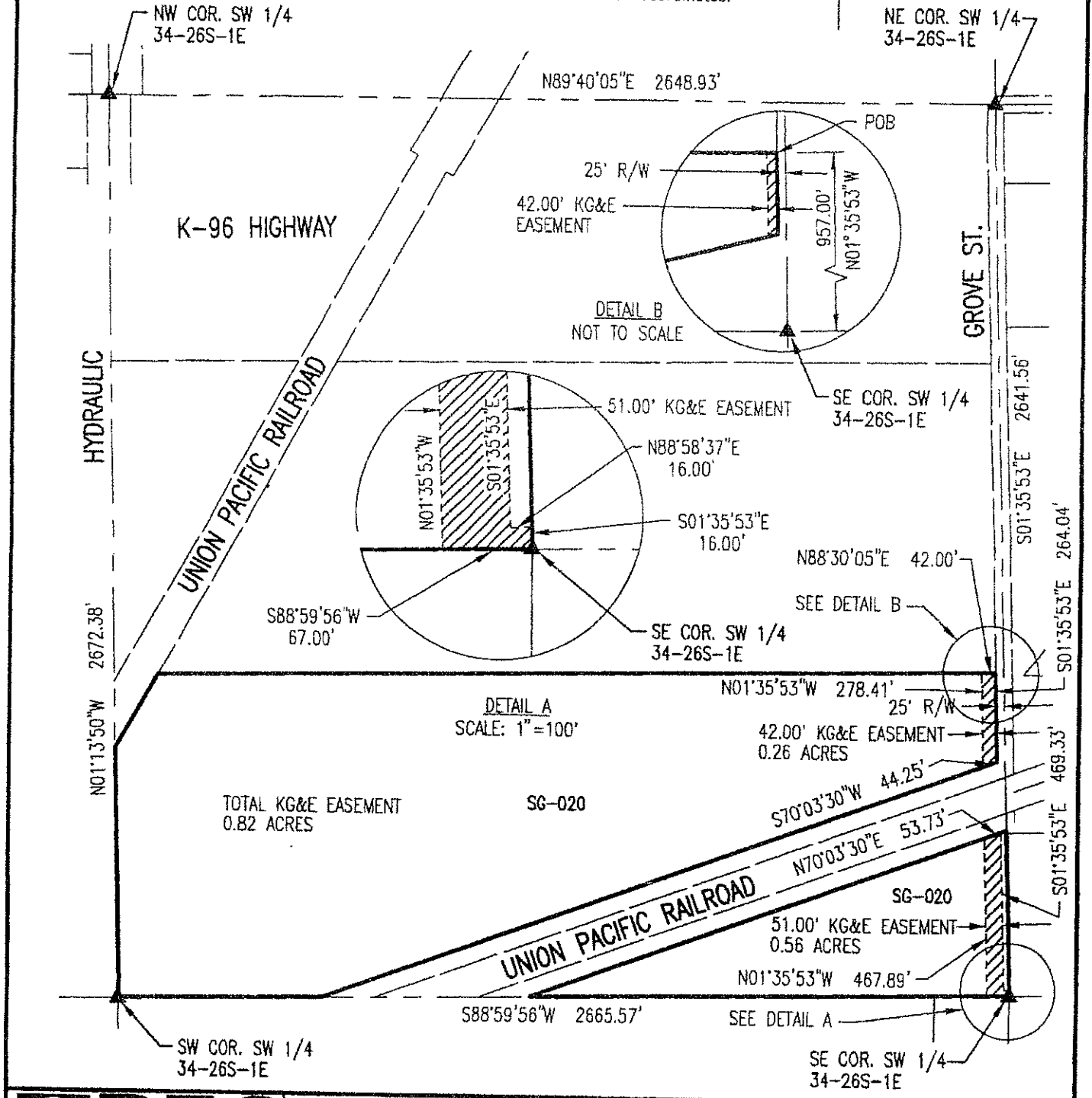

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COUNTY	OWNER	TRACT. NO.	PROJ. NO. 14-066
SEDGWICK	CITY OF WICHITA	SG-020	DATE: SEPT. 03, 2014

September 3, 2014

KANSAS GAS AND ELECTRIC COMPANY
69.88 COLEMAN TO CRESTVIEW
TRANSMISSION LINE
TRACT SG-020
OWNER: CITY OF WICHITA

EASEMENT DESCRIPTION

A tract of land in the Southwest Quarter of Section 34, Township 26 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas, described as:

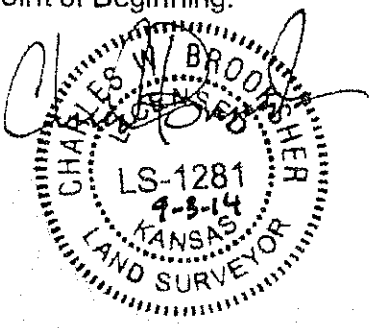
Beginning at the Southeast corner of the Southwest Quarter of Section 34, Township 26 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas; thence bearing South 88°59'56" West along the south line of said Southwest Quarter for a distance of 67.00 feet; thence bearing North 01°35'53" West and parallel with the east line of said Southwest Quarter for a distance of 467.89 feet to the southerly right of way of the Union Pacific Railroad; thence bearing North 70°03'30" East along said southerly right of way for a distance of 53.73 feet; thence bearing South 01°35'53" East parallel and 16.00 feet distant west of the east line of the said Southwest Quarter for a distance of 469.33 feet; thence bearing North 88°58'37" East for a distance of 16.00 feet to the east line of said Southwest Quarter; thence bearing South 01°35'53" East along said east line a distance of 16.00 feet to the Point of Beginning.

Together with:

A tract of land in the Southwest Quarter of Section 34, Township 26 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas, described as:

Commencing at the Southeast corner of the Southwest Quarter of Section 34, Township 26 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas; thence bearing North 01°35'53" West along the east line of said Southwest Quarter for a distance of 957.00 feet; thence bearing South 88°30'05" West for a distance of 25.00 feet to the west right of way of Grove St. and the Point of Beginning; thence bearing South 01°35'53" East along said west right of way of Grove St. and parallel with the east line of said Southwest Quarter for a distance of 264.04 feet to the northerly right of way of the Union Pacific Railroad; thence bearing South 70°03'30" West along said northerly right of way for a distance of 44.25 feet; thence bearing North 01°35'53" West and parallel with the westerly right of way of Grove St. for a distance of 278.41 feet; thence bearing North 88°30'05" East for a distance of 42.00 feet the Point of Beginning.

Encompassing a total of 0.82 acres more or less.



Prepared by: Charles W. Brooksher P.S. #1281
PEC Project No. 14200-048

EXHIBIT A

LEGEND

= SECTION LINE
= PROPERTY LINE
= EASEMENT LINE
▲ = SECTION CORNER

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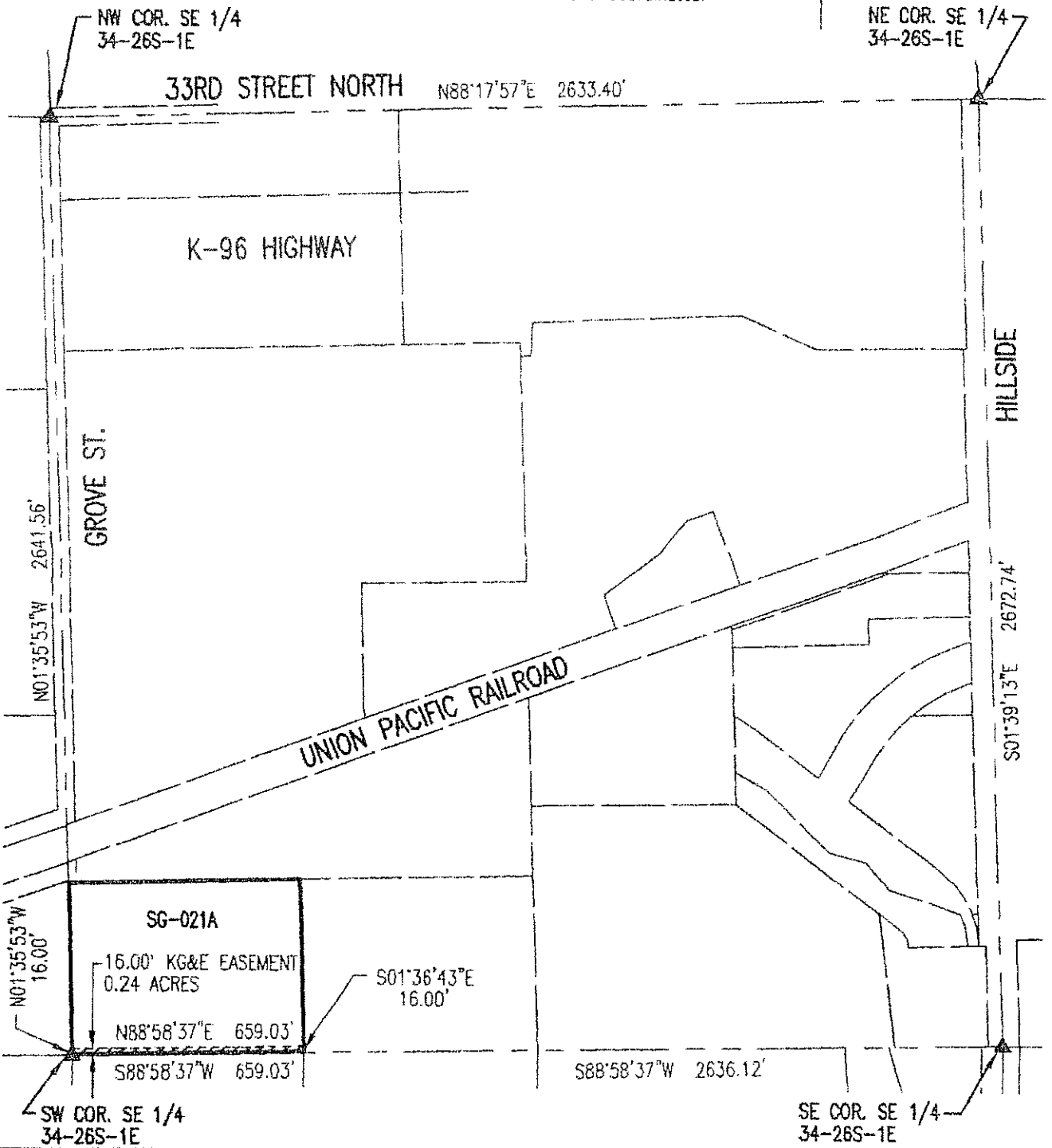

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316-262-2691 www.pec1.com

69.88
COLEMAN TO CRESTVIEW
TRANSMISSION LINE

Westar Energy

COUNTY	OWNER	TRACT. NO.	PROJ. NO. 14-066
SEDGWICK	CITY OF WICHITA	SG-021A	DATE: SEPT. 03, 2014

September 3, 2014

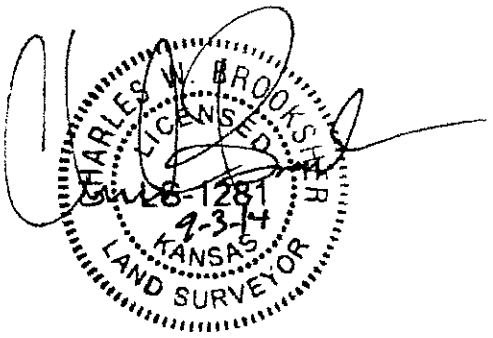
KANSAS GAS AND ELECTRIC COMPANY
69.88 COLEMAN TO CRESTVIEW
TRANSMISSION LINE
TRACT SG-021A
OWNER: CITY OF WICHITA

EASEMENT DESCRIPTION

A tract of land in the Southeast Quarter of Section 34, Township 26 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas, described as:

Beginning at the Southwest corner of the Southeast Quarter of Section 34, Township 26 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas; thence bearing North 01°35'53" West along the west line of said Southeast Quarter a distance of 16.00 feet; thence bearing North 88°58'37" East and parallel with the south line of said Southeast Quarter for a distance of 659.03 feet; thence bearing South 01°36'43" East for a distance of 16.00 feet to the south line of said Southeast Quarter; thence bearing South 88°58'37" West along said south line for a distance of 659.03 feet to the Point of Beginning.

Encompassing 0.24 acres more or less.



Prepared by: Charles W. Brooksher P.S. #1281
PEC Project No. 14200-048

EXHIBIT A

PAGE 1 OF 2

LEGEND

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= EASEMENT LINE
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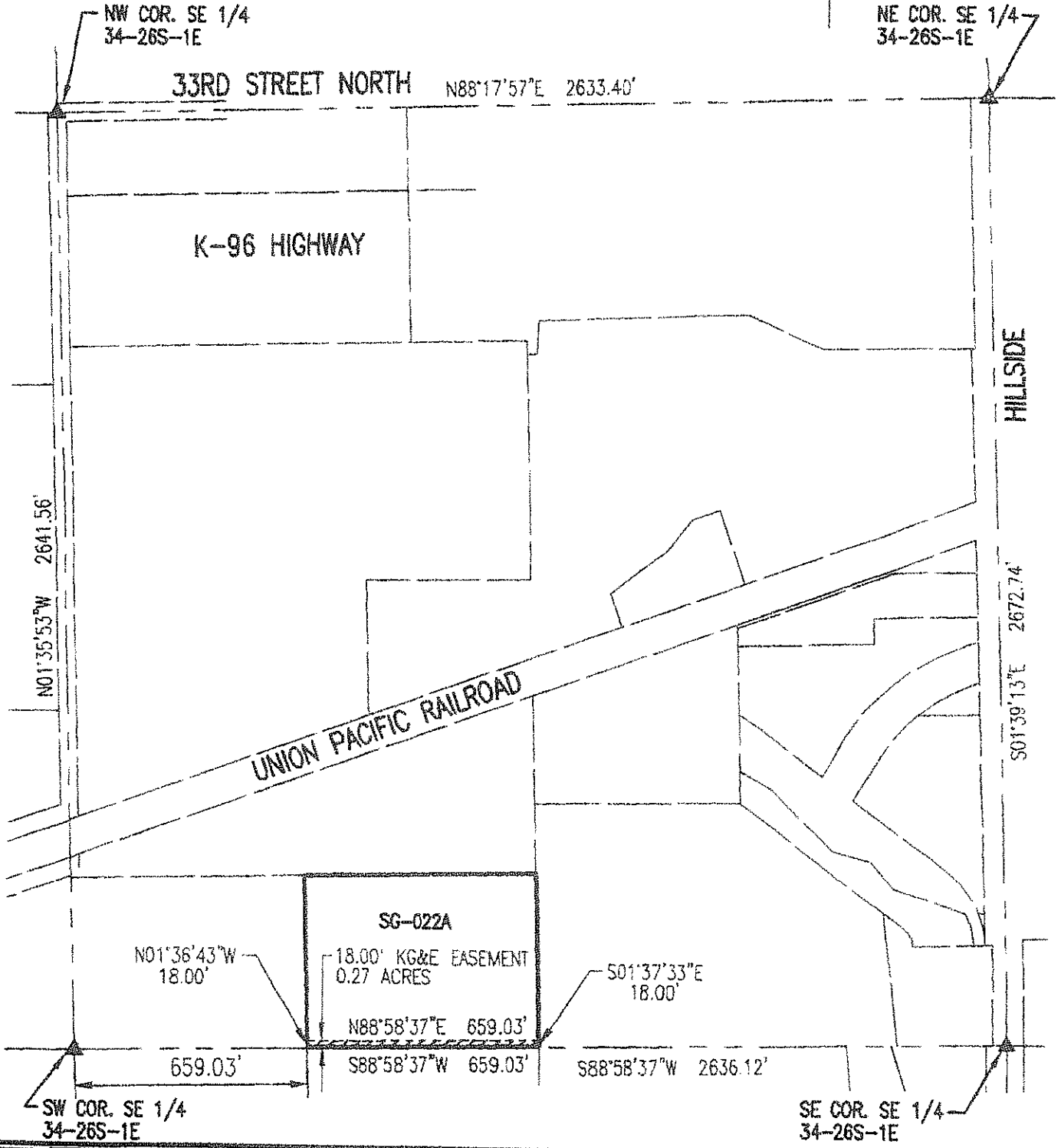

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69.88
COLEMAN TO CRESTVIEW
TRANSMISSION LINE

Westar Energy

COUNTY	OWNER	TRACT. NO.	PROJ. NO. 14-066
SEDGWICK	CITY OF WICHITA	SG-022A	DATE: SEPT. 03, 2014

September 3, 2014

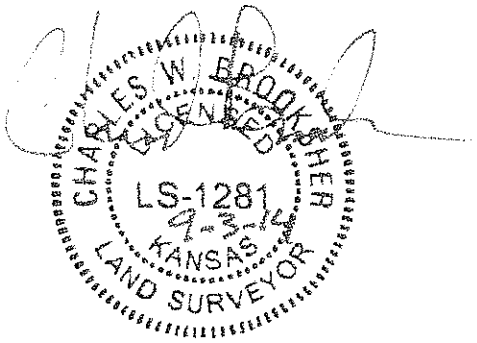
KANSAS GAS AND ELECTRIC COMPANY
69.88 COLEMAN TO CRESTVIEW
TRANSMISSION LINE
TRACT SG-022A
OWNER: CITY OF WICHITA

EASEMENT DESCRIPTION

A tract of land in the Southeast Quarter of Section 34, Township 26 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas, described as:

Commencing at the Southwest corner of the Southeast Quarter of Section 34, Township 26 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas; thence bearing North 88°58'37" East along the south line of said southeast Quarter for a distance of 659.03 feet to the Point of Beginning; thence bearing North 01°36'43" West for a distance of 18.00 feet; thence bearing North 88°58'37" East and parallel with the south line of said Southeast Quarter for a distance of 659.03 feet; thence bearing South 01°37'33" East for a distance of 18.00 feet to the south line of said Southeast Quarter; thence bearing South 88°58'37" West along said south line for a distance of 659.03 feet to the Point of Beginning.

Encompassing 0.27 acres more or less.



Prepared by: Charles W. Brooksher P.S. #1281
PEC Project No. 14200-048

GRANT OF RIGHT OF
WAY

For and in consideration of the sum of One Dollar ($1.00) and other valuable consideration, the receipt of which is hereby acknowledged, the Board of Park Commisioners, hereinafter referred to as Grantor, does hereby grant, convey and warrant unto Kansas Gas and Electric Company, Inc., hereinafter referred to as Grantee, its successors, assigns, and lessees the right and easement to erect, install, alter, reconstruct, operate, and maintain under varying conditions of operation, renew, replace, relocate, and remove electric and communication transmission and distribution lines, the wood and steel poles and towers, anchors, guys, crossarms, insulators, conductors, underground conduit, ducts, cables, and other equipment appurtenant thereto for the transmission and distribution of electric energy and communications (the "Work") in, along, under, across, and over certain lands owned by Grantor situated in Sedgwick County, State of Kansas, and described as follows:

SEE EXHIBITS SG020A, SG-021, SG-022, SG-023, SG-023A, SG-023B, and SG-024 attached hereto and made a part hereof.

together with the right of ingress to and egress from the above described land and contiguous land owned by Grantor for the purpose of surveying, erecting, constructing, maintaining, inspecting, rebuilding, replacing and repairing Grantee's lines which shall be located upon the land specifically described above.

Grantee shall have the further rights to erect, maintain and use gates in all fences which cross or which shall hereafter cross the route of said lines together with the right to trim, remove, eradicate, cut and clear away any trees, limbs and brush on above described land now or at any future time. Grantee shall have the further right to trim and clear away any trees, limbs, and brush on lands adjacent to above described right of way whenever in its judgment such will interfere with or endanger the construction, operation or maintenance of said lines subject to the approval of the Grantor. Grantee shall at its election have the right to remove said trees, limbs, and brush. All logs, limbs and brush shall be burned or removed by the Grantee unless otherwise agreed to by Grantor. In exercising its right of ingress and egress the Grantee shall, whenever practicable, use existing roads or lanes, and shall repair any damage caused by its use thereof.

All materials and construction methods used on Work shall be equal to or better than that required by the "Westar Transmission Line Construction Specification Manual", current edition. Grantee agrees that highway traffic will be free of interference unless specifically provided for as part of this Grant of Right of Way. Traffic protection shall be in accordance with the "Manual on Uniform Traffic Control Devices", current edition.

GRANTEE AGREES TO NOTIFY THE CITY AT LEAST 24 HOURS BEFORE THE WORK IS INITIATED AND AGAIN WITHIN FIVE (5) DAYS OF WHEN THE WORK IS COMPLETED. The Work hereunder shall be performed to the satisfaction of the City of Wichita. Grantee will at all times comply with and abide by all rules, notices and regulations of the City of Wichita.

Grantee hereby assumes all risk for liability and damages that may occur to persons or property on account of the Work; and Grantee does hereby indemnify and hold the Grantor harmless from any and all costs, liabilities, expenses, suits, judgments or damages to persons or

property or claims of any nature whatsoever (including reasonable attorneys' fees) arising out of or in connection with the Work and with Grantee's occupation of the right-of-way hereunder. Grantee shall procure and maintain liability insurance to protect the public from injuries occurring as a result of the Work and to protect the Grantor from all liability and damages on account of injuries to workers, as provided by law, and to protect the City from all liability and damages occasioned by the Work. Grantee agrees, to file with the City of Wichita, prior to commencement of any work, a "Certificate of Insurance" or other satisfactory evidence to show that Grantee carries Worker's Compensation Insurance, Employer's Liability Insurance, Commercial general liability and/or excess liability, and Commercial Automobile Liability covering Owned, Non-owned and Hired vehicles as recognized by the Commissioner of Insurance of the State of Kansas. All insurance coverage is to be a minimum of $500,000.00.

This easement is granted by Grantor subject to the following condition and covenant:

At any time in the future, should any public entity require the real property subject to the easement herein granted for any public purpose, the Grantee shall promptly remove and or relocate its facilities at the request of said public entity. Any such relocation and or removal shall be at the sole cost and expense of the Grantee. Furthermore, said public entity shall not be required to provide any substitute real property or easements to accommodate the removal and or relocation of Grantee's facilities.

The Grantor, his heirs or assigns, may cultivate, use and enjoy the land above described, provided such use shall not in the judgment of Grantee, interfere with or endanger the construction, operation or maintenance of said lines, and provided further that no improvements or buildings shall be constructed or placed on the said right of way without the prior written consent of the Grantee.

Grantee shall repair any physical damage to property of Grantor, or pay any substantial damages on account of physical injury to property of Grantor by the erection, installation, reconstruction, operation, and maintenance under varying conditions of operation, renewal, and removal of said lines, said damages, if not mutually agreed upon, shall be ascertained by three disinterested persons, one of whom shall be selected by each, Grantor and Grantee, their heirs or successors, assigns or lessees, and the third by the two so selected. The damages determined by such persons, or a majority of them, shall be conclusive as to the facts.

This grant shall be binding upon the heirs, successors and assigns of the undersigned.

WITNESS the hand of the Grantor this _____ day of _____, 2015.

Board of Park Commissioners

By:_____
Bryan Frye, President

STATE OF KANSAS)
) SS:
SEDGWICK COUNTY)

This instrument was acknowledged, before me this_____Day of_____, 2015, by Bryan Frye, President, of the Board of Park Commissioners.

_____
Notary Public

SEAL

My Appointment Expires:

APPROVED AS TO FORM:

_____
Sharon L. Dickgrafe, Interim Director of Law

EXHIBIT A

LEGEND

= SECTION LINE
= PROPERTY LINE
= EASEMENT LINE
▲ = SECTION CORNER

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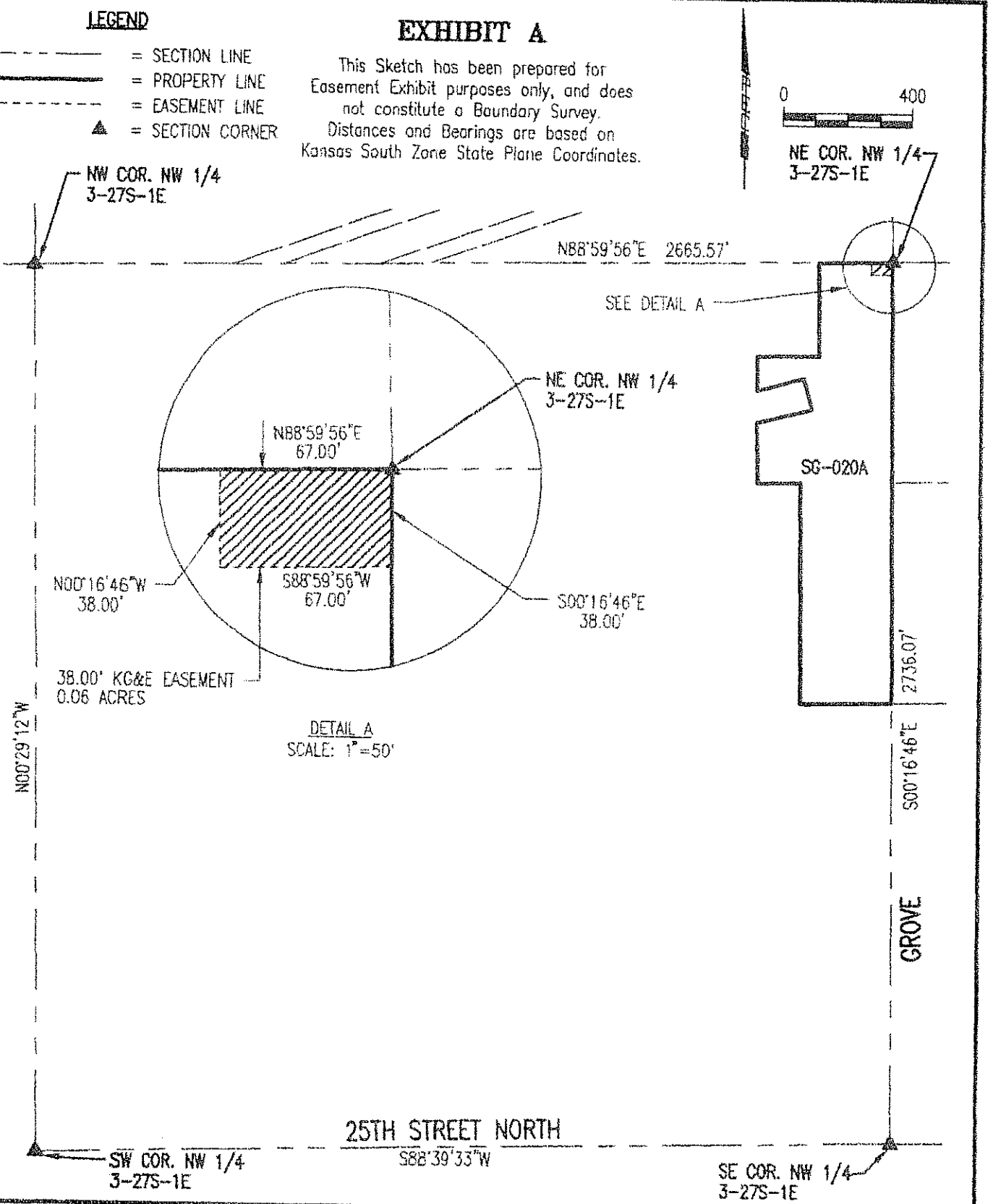

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69.88
COLEMAN TO CRESTVIEW
TRANSMISSION LINE

Westar Energy

COUNTY	OWNER	TRACT. NO.	PROJ. NO. 14-066
SEDGWICK	BOARD OF PARK COMMISSIONERS	SG-020A	DATE: SEPT. 03, 2014

September 3, 2014

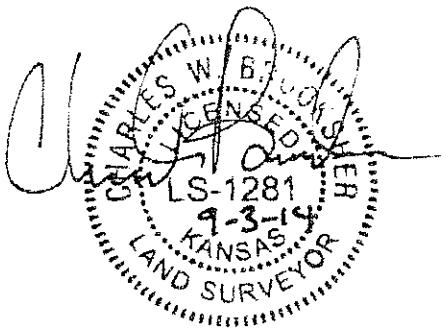
KANSAS GAS AND ELECTRIC COMPANY
69.88 COLEMAN TO CRESTVIEW
TRANSMISSION LINE
TRACT SG-020A
OWNER: BOARD OF PARK COMMISSIONERS

EASEMENT DESCRIPTION

A tract of land in the Northwest Quarter of Section 3, Township 27 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas, described as:

Beginning at the Northeast corner of the Northwest Quarter of Section 3, Township 27 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas; thence bearing South 00°16'46" East along the east line of the Northwest Quarter for distance of 38.00 feet; thence bearing South 88°59'56" West and parallel with the north line of said Northwest Quarter for a distance of 67.00 feet; thence bearing North 00°16'46" West and parallel with the east line of said Northwest Quarter for a distance of 38 feet to the north line of said Northwest Quarter; thence bearing North 89°59'56" East along the north line of said Northwest Quarter for a distance of 67.00 feet to the Point of Beginning

Encompassing 0.06 acres more or less.



Prepared by: Charles W. Brooksher P.S. #1281
PEC Project No. 14200-048

EXHIBIT A

LEGEND

= SECTION LINE
= PROPERTY LINE
= EASEMENT LINE
▲ = SECTION CORNER

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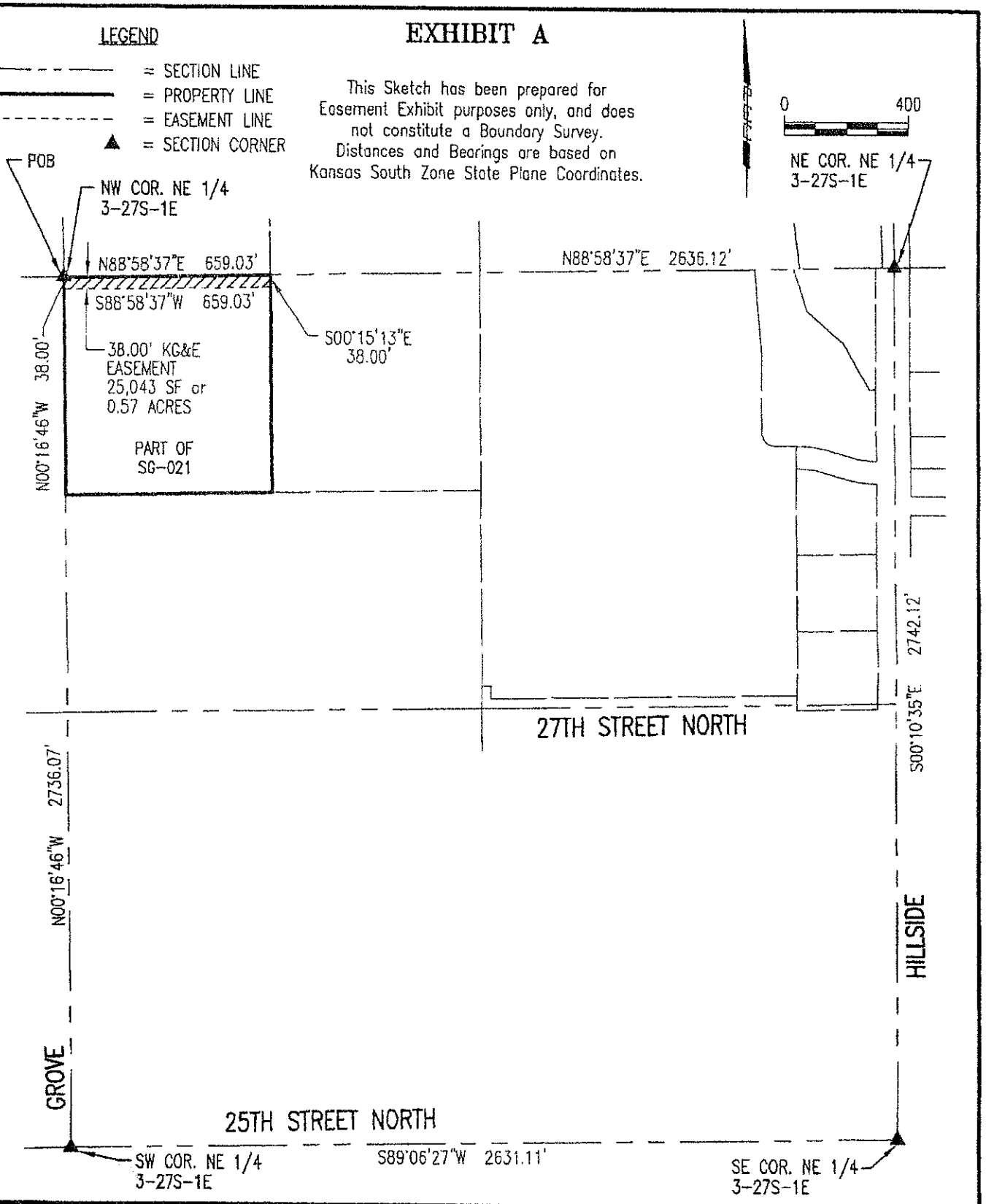

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	COUNTY	OWNER	TRACT. NO.	PROJ. NO. 14-066
	SEDGWICK	BOARD OF PARK COMMISSIONERS	SG-021	DATE: SEPT. 03, 2014

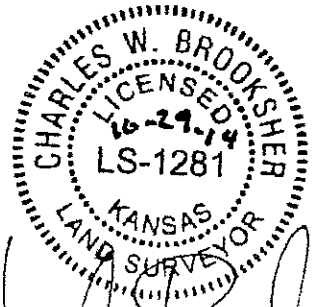
September 3, 2014

KANSAS GAS AND ELECTRIC COMPANY
69.88 COLEMAN TO CRESTVIEW
TRANSMISSION LINE
TRACT SG-021
OWNER: BOARD OF PARK COMMISSIONERS

EASEMENT DESCRIPTION

A tract of land in the Northeast Quarter of Section 3, Township 27 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas, described as:

Beginning at the Northwest corner of the Northeast Quarter of Section 3, Township 27 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas; thence bearing North 88°58'37" East along the north line of said Northeast Quarter for a distance of 659.03 feet; thence bearing South 00°15'13" East for a distance of 38.00 feet; thence bearing South 88°58'37" West and parallel with the north line of said Northeast Quarter for a distance of 659.03 feet to the west line of said Northeast Quarter; thence bearing North 00°16'46" West along the west line of said Northeast Quarter for a distance of 38.00 feet to the Point of Beginning. Encompassing 25,043 square feet or 0.57 acres more or less.



Prepared by: Charles W. Brooksher P.S. #1281
PEC Project No. 14200-048

EXHIBIT A

LEGEND

= SECTION LINE
= PROPERTY LINE
= EASEMENT LINE
▲ = SECTION CORNER

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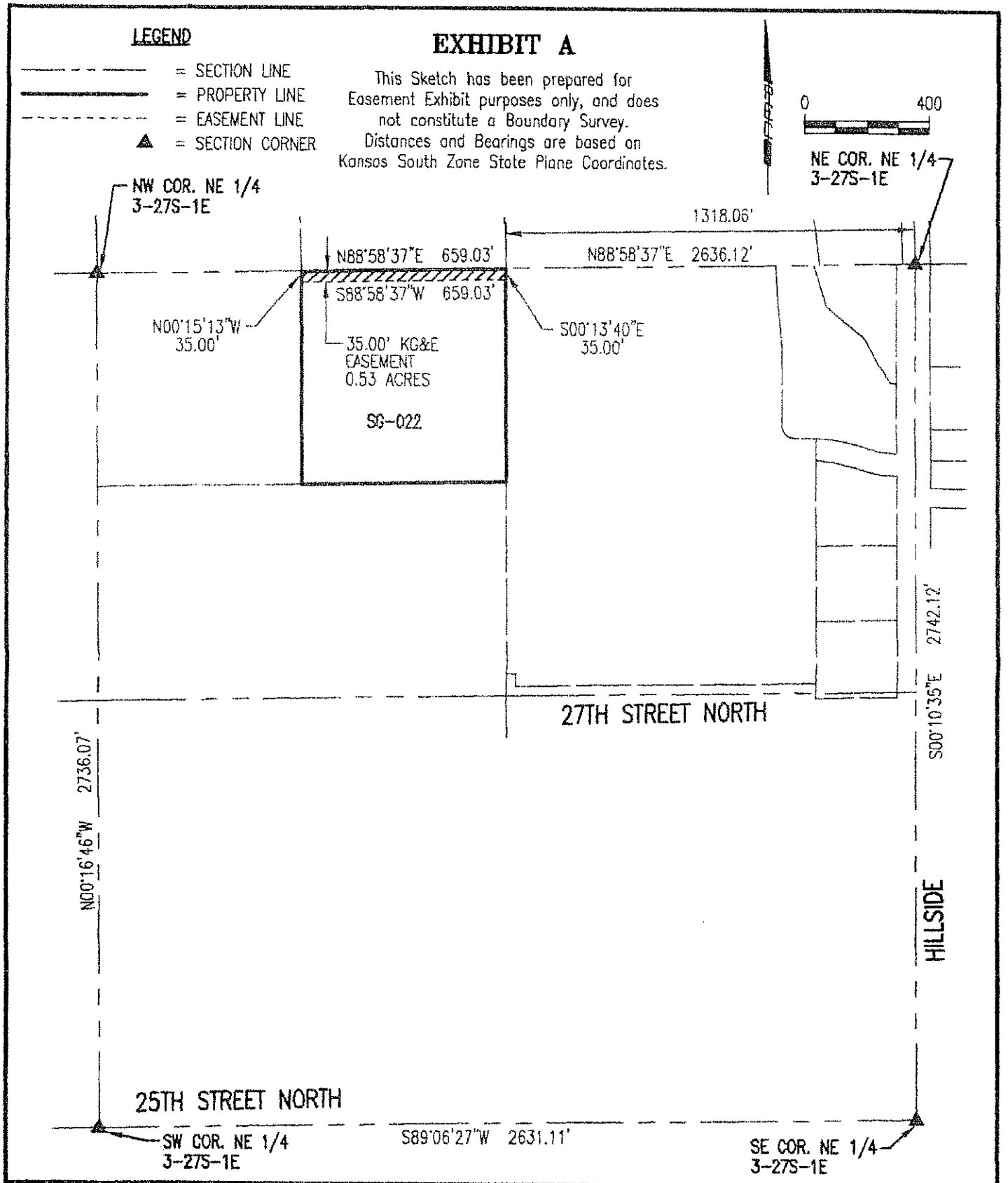

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COLEMAN TO CRESTVIEW
TRANSMISSION LINE

Westar Energy

COUNTY	OWNER	TRACT. NO.	PROJ. NO. 14-066
SEDGWICK	CITY OF WICHITA	SG-022	DATE: SEPT. 03, 2014

September 3, 2014

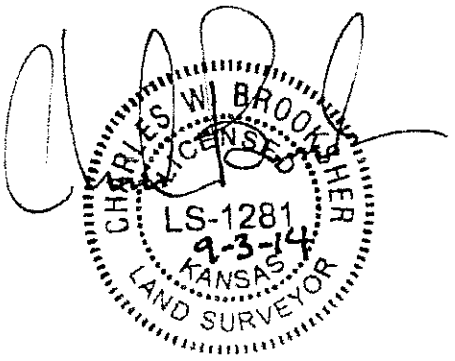
KANSAS GAS AND ELECTRIC COMPANY
69.88 COLEMAN TO CRESTVIEW
TRANSMISSION LINE
TRACT SG-022
OWNER: CITY OF WICHITA

EASEMENT DESCRIPTION

A tract of land in the Northeast Quarter of Section 3, Township 27 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas, described as:

Commencing at the Northeast corner of the Northeast Quarter of Section 3, Township 27 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas; thence bearing South 88°58'37" West along the north line of said Northeast Quarter for a distance of 1318.06 feet to the Point of Beginning; thence bearing South 00°13'40" East for a distance of 35.00 feet; thence bearing South 88°58'37" West and parallel with the north line of said Northeast Quarter for a distance of 659.03 feet; thence bearing North 00°15'13" West for a distance of 35.00 feet to the north line of said Northeast Quarter; thence bearing North 88°58'37" East along said north line for a distance of 659.03 feet to the Point of Beginning.

Encompassing 0.53 acres more or less.



Prepared by: Charles W. Brooksher P.S. #1281
PEC Project No. 14200-048

EXHIBIT A

LEGEND

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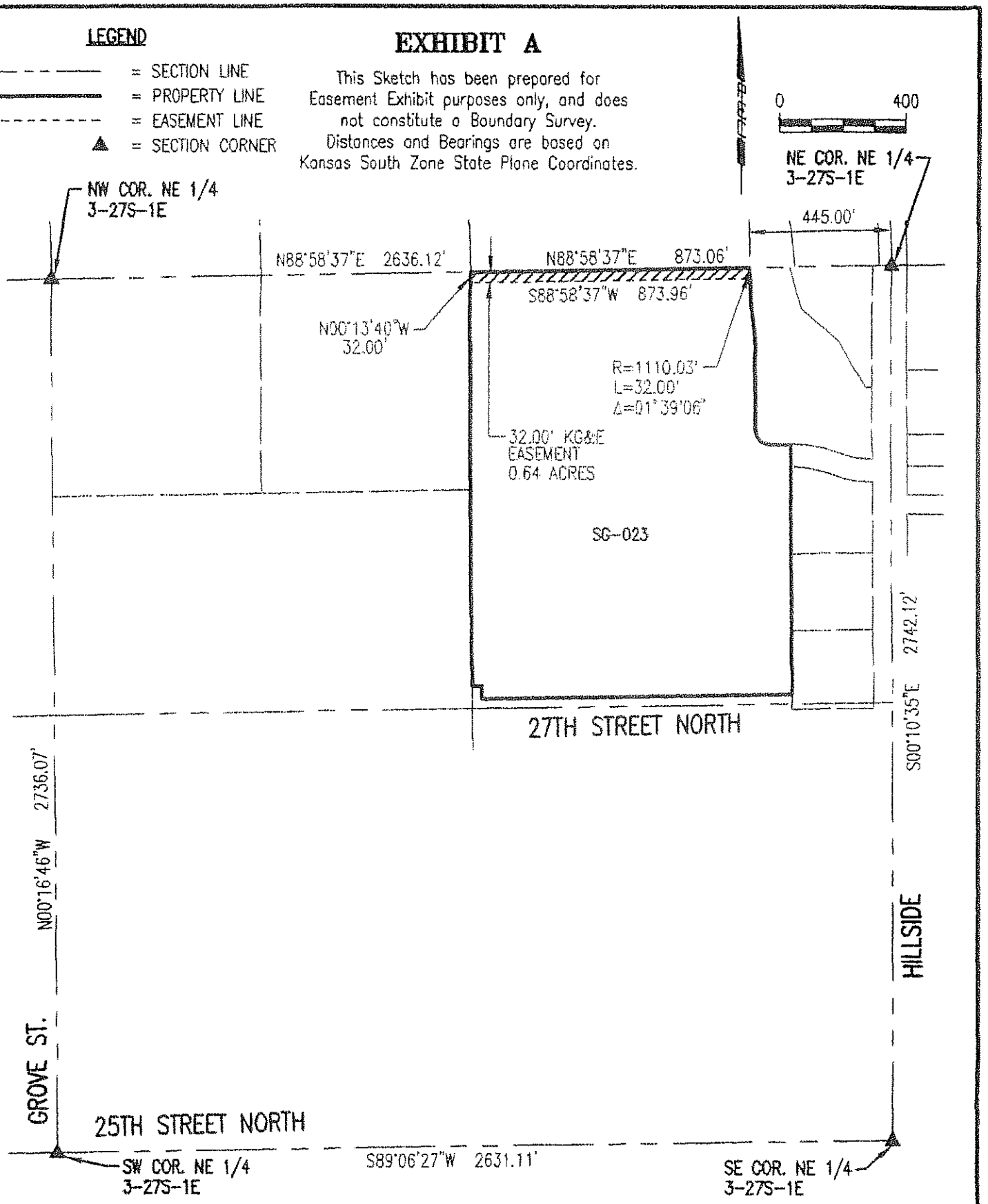

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	COUNTY	OWNER	TRACT. NO.	PROJ. NO. 14-066
	SEDGWICK	CITY OF WICHITA	SG-023	DATE: SEPT. 03, 2014

September 3, 2014

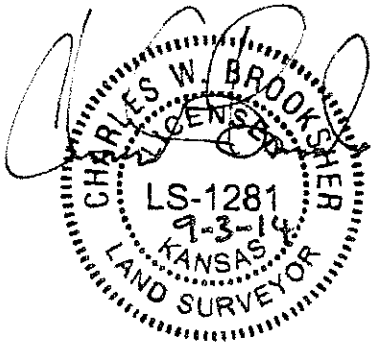
KANSAS GAS AND ELECTRIC COMPANY
69.88 COLEMAN TO CRESTVIEW
TRANSMISSION LINE
TRACT SG-023
OWNER: CITY OF WICHITA

EASEMENT DESCRIPTION

A tract of land in the Northeast Quarter of Section 3, Township 27 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas, described as:

Commencing at the Northeast corner of the Northeast Quarter of Section 3, Township 27 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas; thence bearing South 88°58'37" West along the north line of said Northeast Quarter for a distance of 445.00 feet to the Northwest Corner of Lot 1, Block B, University Terrace Park Addition to Wichita, Sedgwick County, Kansas and the Point of Beginning and to a Non-tangent curve to the left having a radius of 1110.03 feet, a central angle of 01°39'06", a chord that bears South 01°51'01" East, a chord distance of 32.00 feet; thence southerly along said curve and along the west line of said Lot 1 for a distance of 32.00 feet; thence bearing South 88°58'37" West and parallel with the north line of said Northeast Quarter for a distance of 873.96 feet; thence bearing North 00°13'40" West for a distance of 32.00 feet to the north line of said Northeast Quarter; thence bearing North 88°58'37" East along said north line for a distance of 873.06 feet to the Point of Beginning.

Encompassing 0.64 acres more or less.



Prepared by: Charles W. Brooksher P.S. #1281
PEC Project No. 14200-048

EXHIBIT A

LEGEND

= SECTION LINE
= PROPERTY LINE
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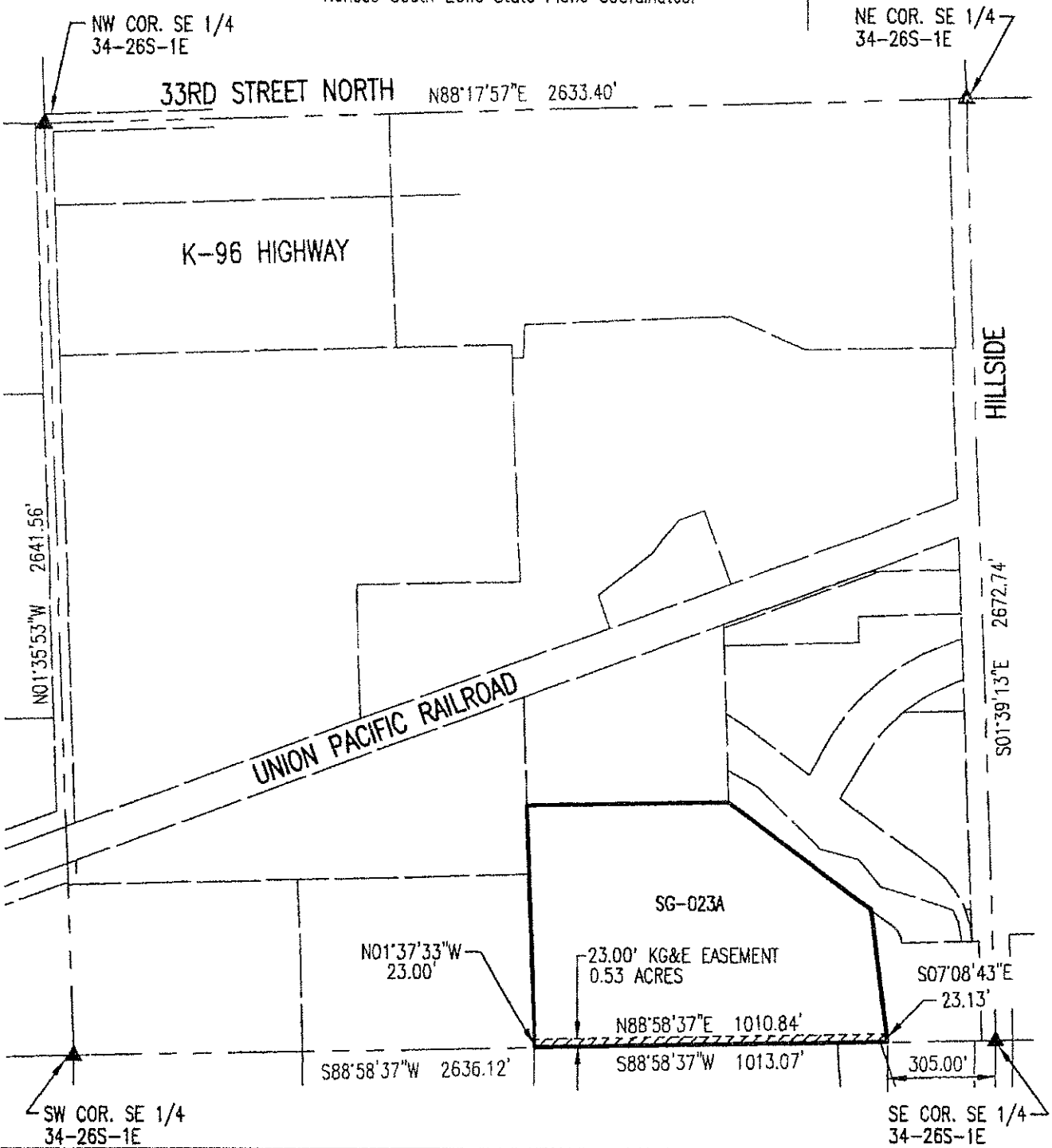

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COUNTY	OWNER	TRACT. NO.	PROJ. NO. 14-066
SEDGWICK	CITY OF WICHITA	SG-023A	DATE: SEPT. 03, 2014

September 3, 2014

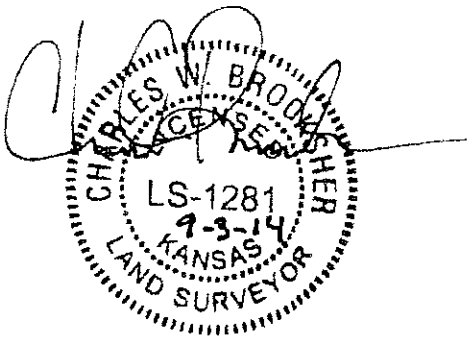
KANSAS GAS AND ELECTRIC COMPANY
69.88 COLEMAN TO CRESTVIEW
TRANSMISSION LINE
TRACT SG-023A
OWNER: CITY OF WICHITA

EASEMENT DESCRIPTION

A tract of land in the Southeast Quarter of Section 34, Township 26 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas, described as:

Commencing at the Southeast corner of the Southeast Quarter of Section 34, Township 26 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas; thence bearing South 88°58'37" West along the south line of said Southeast Quarter for a distance of 305.00 feet to the Point of Beginning; thence continuing said bearing of South 88°58'37" West along the south line of said Southeast Quarter for a distance of 1013.07 feet; thence bearing North 01°37'33" West for a distance of 23.00 feet; thence bearing North 88°58'37" East and parallel with the south line of said Southeast Quarter for a distance of 1010.84 feet; thence bearing South 07°08'43" East for a distance of 23.13 feet to the Pont of Beginning.

Encompassing 0.53 acres more or less.



Prepared by: Charles W. Brooksher P.S. #1281
PEC Project No. 14200-048

EXHIBIT A

LEGEND

= SECTION LINE
= PROPERTY LINE
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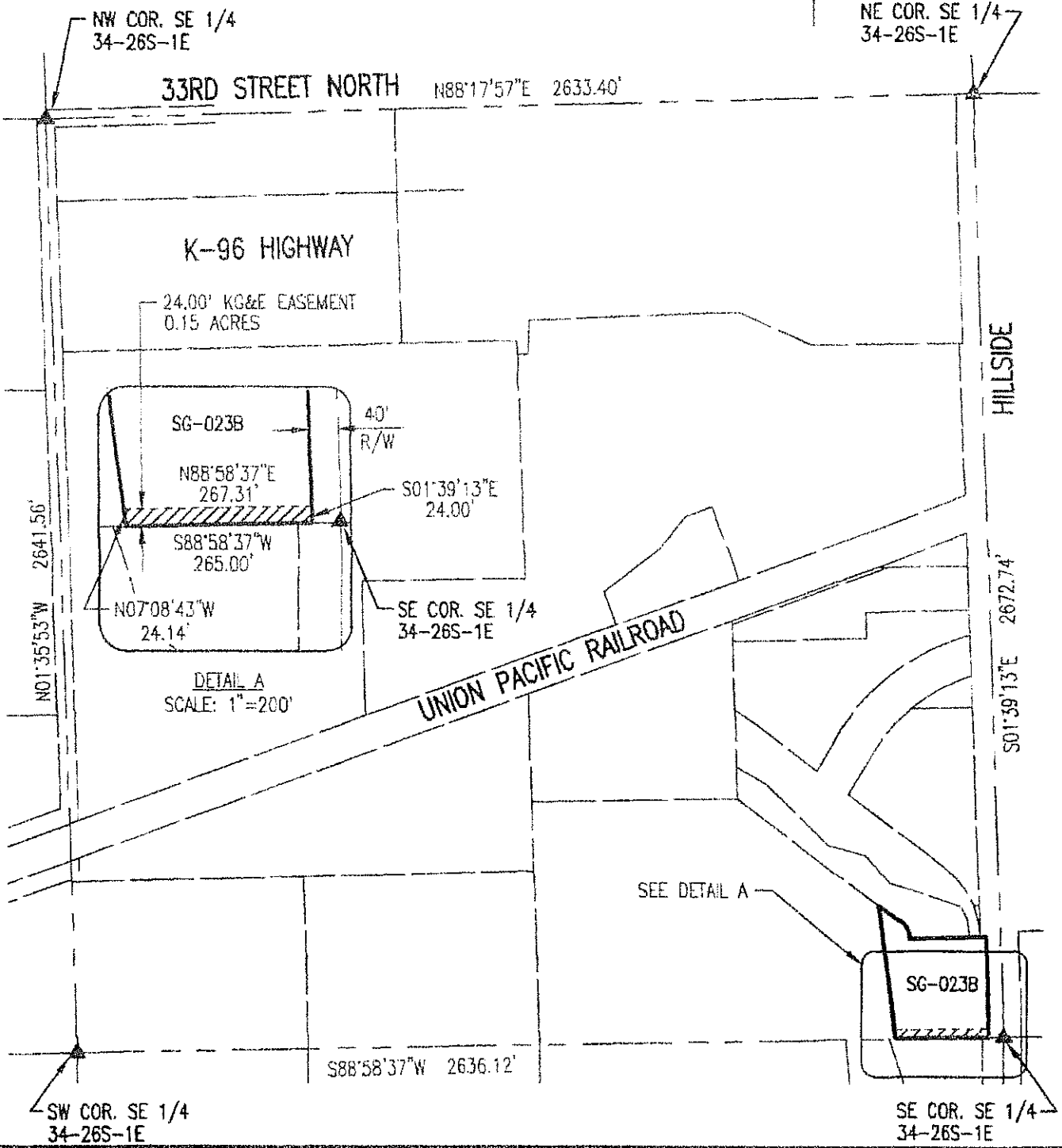

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69.88
COLEMAN TO CRESTVIEW
TRANSMISSION LINE

Westar Energy

COUNTY	OWNER	TRACT. NO.	PROJ. NO. 14-066
SEDGWICK	CITY OF WICHITA	SG-023B	DATE: SEPT. 03, 2014

September 3, 2014

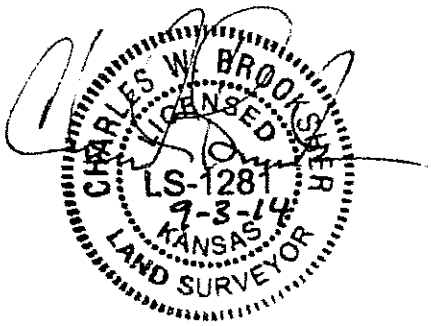
KANSAS GAS AND ELECTRIC COMPANY
69.88 COLEMAN TO CRESTVIEW
TRANSMISSION LINE
TRACT SG-023B
OWNER: CITY OF WICHITA

EASEMENT DESCRIPTION

A tract of land in the Southeast Quarter of Section 34, Township 26 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas, described as:

Commencing at the Southeast corner of the Southeast Quarter of Section 34, Township 26 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas; thence bearing South 88°58'37" West along the south line of said Southeast Quarter for a distance of 40.00 feet to the westerly right of way of Hillside Ave. and the Point of Beginning; thence continuing said bearing of South 88°58'37" West along the South line of said Southeast Quarter for a distance of 265.00 feet; thence bearing North 07°08'43" West for a distance of 24.14 feet; thence bearing North 88°58'37" East and parallel with the south line of said Southeast Quarter for a distance of 267.31 feet to the westerly right of way of Hillside Ave.; thence bearing South 01°39'13" East along said right of way for a distance of 24.00 feet to the Point of Beginning.

Encompassing 0.15 acres more or less.



Prepared by: Charles W. Brooksher P.S. #1281
PEC Project No. 14200-048

EXHIBIT A

LEGEND

= SECTION LINE
= PROPERTY LINE
= EASEMENT LINE
▲ = SECTION CORNER

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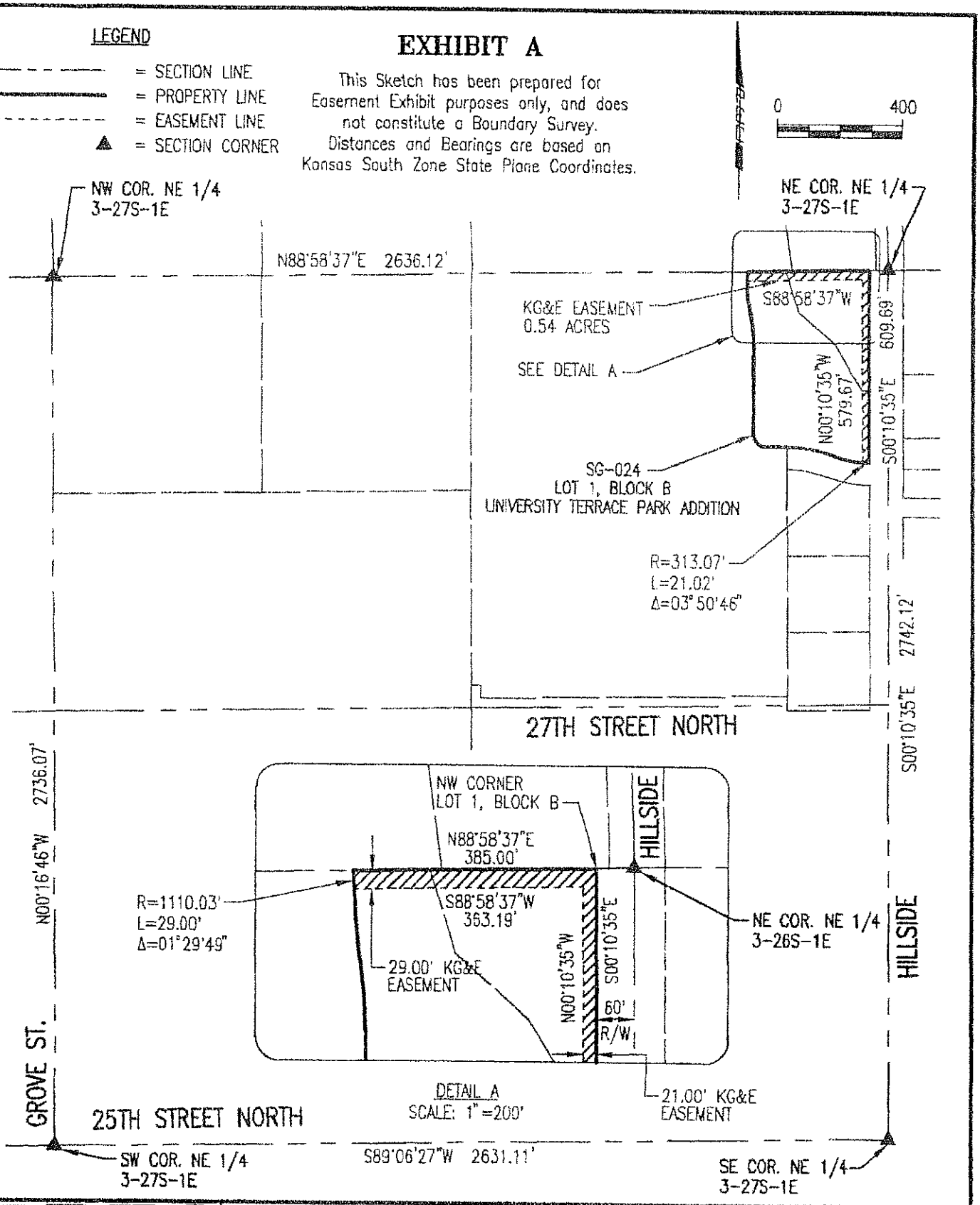


PROFESSIONAL ENGINEERING CONSULTANTS, P.A. 303 SOUTH TOPEKA WICHITA, KS 67202 316-262-2691 www.pec1.com	69.88 COLEMAN TO CRESTVIEW TRANSMISSION LINE		Westar Energy
COUNTY	OWNER	TRACT. NO.	PROJ. NO. 14-066
SEDGWICK	CITY OF WICHITA	SG-024	DATE: SEPT. 03, 2014

September 3 , 2014

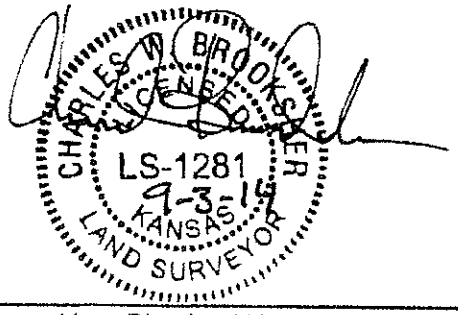
KANSAS GAS AND ELECTRIC COMPANY
69.88 COLEMAN TO CRESTVIEW
TRANSMISSION LINE
TRACT SG-024
OWNER: CITY OF WICHITA

EASEMENT DESCRIPTION

A tract of land in the Northeast Quarter of Section 3, Township 27 South, Range 1 East of the 6th P.M., being a Portion of Lot 1, Block B, University Terrace Park Addition to Wichita, Sedgwick County, Kansas, described as:

Beginning at the Northeast Corner of Lot 1, Block B, University Terrace Park Addition to Wichita, Sedgwick County, Kansas; thence bearing South 00°10'35" East along the east line of said Lot 1 for a distance of 609.69 feet to the Southeast Corner of said Lot 1 and to a non-tangent curve to the right having a radius of 313.07 feet, a central angle of 03°50'46", a chord that bears North 88°15'12" West and a chord distance of 21.01 feet; thence westerly along said curve to the right for a distance of 21.01 feet; thence bearing North 00°10'35" West parallel with the east line of said Lot 1 for a distance of 579.67 feet to a point 29.00 feet distant south of the north line of said Lot 1; thence bearing South 88°58'37" West and parallel with the north line of said Lot 1 for a distance of 363.19 feet to the west line of said Lot 1 and to a non-tangent curve to the right having a radius of 1110.03 feet, a central angle of 01°29'49", a chord that bears North 01°46'23" West and a chord distance of 29.00 feet; thence northerly along said curve and along the west line of said Lot 1 for a distance of 29.00 feet to the north line of said Lot 1; thence bearing North 88°58'37" East along the North line of said Lot 1 for a distance of 385.00 feet to Northeast Corner of said Lot 1 and the Point of Beginning.

Encompassing 0.54 acres more or less.



Prepared by: Charles W. Brooksher P.S. #1281
PEC Project No. 14200-048

EXHIBIT C
City of Wichita, Kansas

TEMPORARY EASEMENT

THIS AGREEMENT Made and entered into this _____day of_____, 2015, by and between the City of Wichita, Kansas, hereinafter referred to as Grantor and Kansas Gas and Electric Company, Inc., hereinafter referred to as Grantee,

For consideration as hereinafter set forth, Grantor agrees to grant to Grantee, its duly authorized agents, contractors and assigns the right to enter upon the following described real estate in the County of Sedgwick, State of Kansas:

See exhibits SG-018A-T

For the purposes of construction and related activities for the construction of a 69 Kilovolt electric transmission line

Grantee agrees to pay Grantor a lump sum of One and no/100 ($1.00) Dollars for the temporary easement over and upon the above described property.

It is understood and agreed that the consideration for said temporary easement is in full payment for the purchase of said easement and all damages arising from the transfer of said property interest and its use for the purpose above set out.

This easement expires sixty days (60) after completion of the construction project for which this easement is acquired or three (3) years after the date first signed, whichever occurs sooner.

WITNESS the hand of the Grantor this _____ day of _____, 2015.

City of Wichita
By Direction of the City Council

By:_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

STATE OF KANSAS)
) SS:
SEDGWICK COUNTY)

This instrument was acknowledged, before me this_____Day of_____, 2015, by Carl Brewer, Mayor and Karen Sublett, City Clerk, of the City of Wichita.

_____
Notary Public

SEAL

My Appointment Expires:

APPROVED AS TO FORM:

_____
Sharon L. Dickgrafe, Interim Director of Law

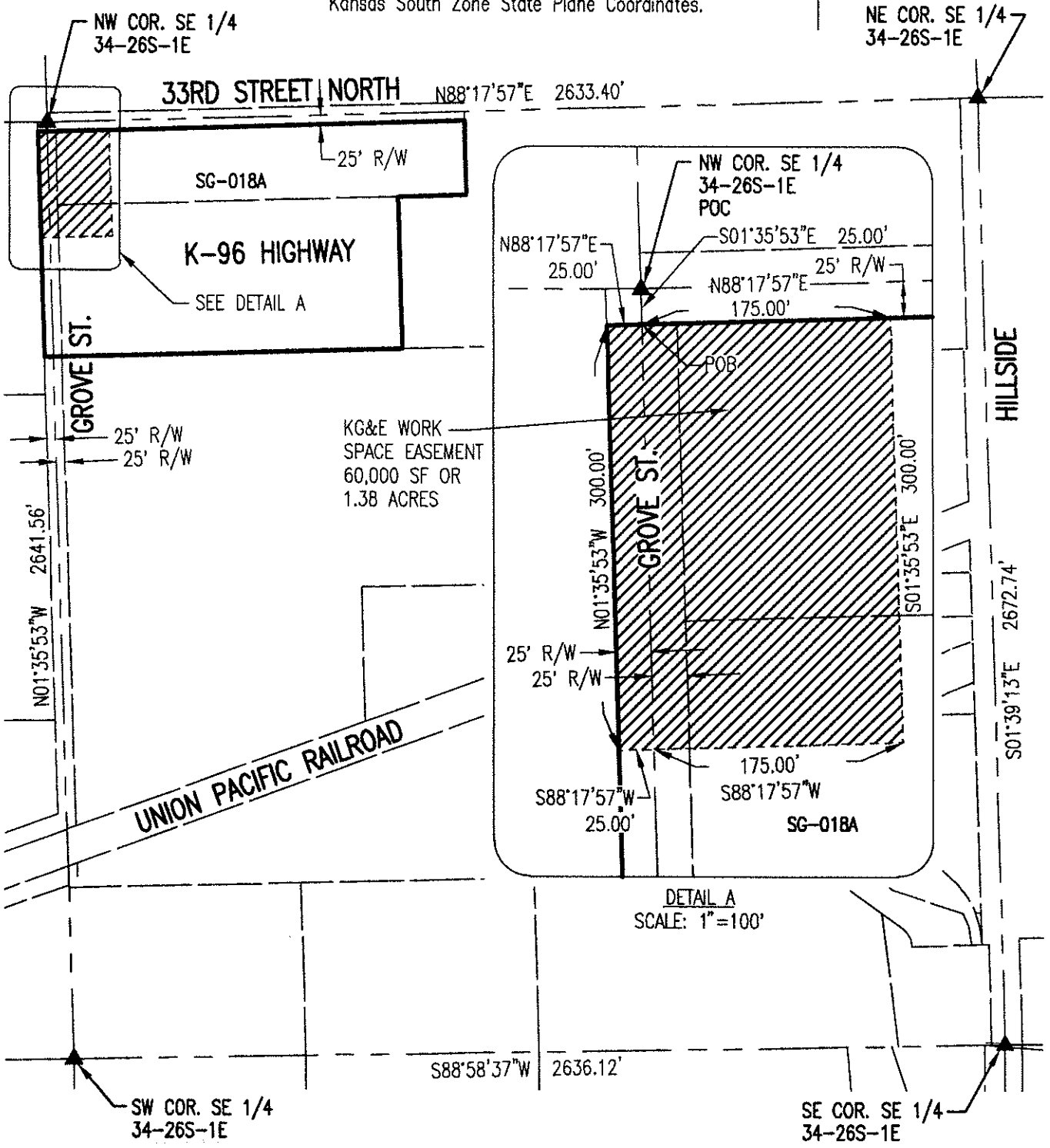
EXHIBIT A

LEGEND

= SECTION LINE
= PROPERTY LINE
= EASEMENT LINE
▲ = SECTION CORNER

This Sketch has been prepared for Easement Exhibit purposes only, and does not constitute a Boundary Survey. Distances and Bearings are based on Kansas South Zone State Plane Coordinates.

0 400



DETAIL A
SCALE: 1"=100'

PEC PROFESSIONAL ENGINEERING CONSULTANTS, P.A. 303 SOUTH TOPEKA WICHITA, KS 67202 316-262-2691 www.pec1.com	69.88 COLEMAN TO CRESTVIEW TRANSMISSION LINE		Westar Energy
COUNTY	OWNER	TRACT. NO.	PROJ. NO. 14-066
SEDGWICK	CITY OF WICHITA	SG-018A	DATE: DEC. 15, 2014

December 15, 2014

KANSAS GAS AND ELECTRIC COMPANY
CRESTVIEW TO NORTHEAST 69.88
TRACT SG-018A
OWNER: CITY OF WICHITA

WORK SPACE EASEMENT DESCRIPTION

A tract of land in the Southeast and Southwest Quarters of Section 34, Township 26 South, Range 1 East of the Sixth Principle Meridian, Sedgwick County, Kansas described as follows:

Commencing at the Northwest corner of said Southeast Quarter of Section 34; thence bearing South 01°35'53" East along the West line of said Southeast Quarter of Section 34 for a distance of 25.00 feet to the South right-of-way line of 33rd Street North, being the Point of Beginning; thence bearing North 88°17'57" East parallel with the North line of said Southeast Quarter of Section 34 for a distance of 175.00 feet; thence bearing South 01°35'53" East parallel with the West line of said Southeast Quarter of Section 34 for a distance of 300.00 feet; thence bearing South 88°17'57" West parallel with the North line of said Southeast Quarter of Section 34 for a distance of 175.00 feet to the West line of said Southeast Quarter of Section 34; thence continuing bearing South 88°17'57" West for a distance of 25.00 feet; thence bearing North 01°35'53" West parallel with the East line of said Southwest Quarter of Section 34 for a distance of 300.00 feet; thence bearing North 88°17'57" East for a distance of 25.00 feet to the Point of Beginning.

Encompassing 1.38 acres more or less (60,000 square feet more or less).

Prepared by: Charles W. Brooksher P.S. #1281
PEC Project No. 14200-048

City of Wichita, Kansas

TEMPORARY EASEMENT

THIS AGREEMENT Made and entered into this _____day of_____, 2015, by and between the Board of Park Commissioners, hereinafter referred to as Grantor and Kansas Gas and Electric Company, Inc., hereinafter referred to as Grantee,

For consideration as hereinafter set forth, Grantor agrees to grant to Grantee, its duly authorized agents, contractors and assigns the right to enter upon the following described real estate in the County of Sedgwick, State of Kansas:

See exhibits SC-20, SG-020A-T, SG-20B, SG-023T, and SG-024T

For the purposes of construction and related activities for the construction of a 69 Kilovolt electric transmission line

Grantee agrees to pay Grantor a lump sum of One and no/100 ($1.00) Dollars for the temporary easement over and upon the above described property.

It is understood and agreed that the consideration for said temporary easement is in full payment for the purchase of said easement and all damages arising from the transfer of said property interest and its use for the purpose above set out.

This easement expires sixty days (60) after completion of the construction project for which this easement is acquired or three (3) years after the date first signed, whichever occurs sooner.

WITNESS the hand of the Grantor this _____ day of _____, 2015.

Board of Park Commissioners

By:_____
Bryan Frye, President

STATE OF KANSAS)
) SS:
SEDGWICK COUNTY)

This instrument was acknowledged, before me this_____Day of_____, 2015, by Bryan Frye, President of the Board of Park Commissioners.

_____
Notary Public

SEAL

My Appointment Expires:

APPROVED AS TO FORM:

_____
Sharon L. Dickgrafe, Interim Director of Law

EXHIBIT A

PAGE 1 OF 2

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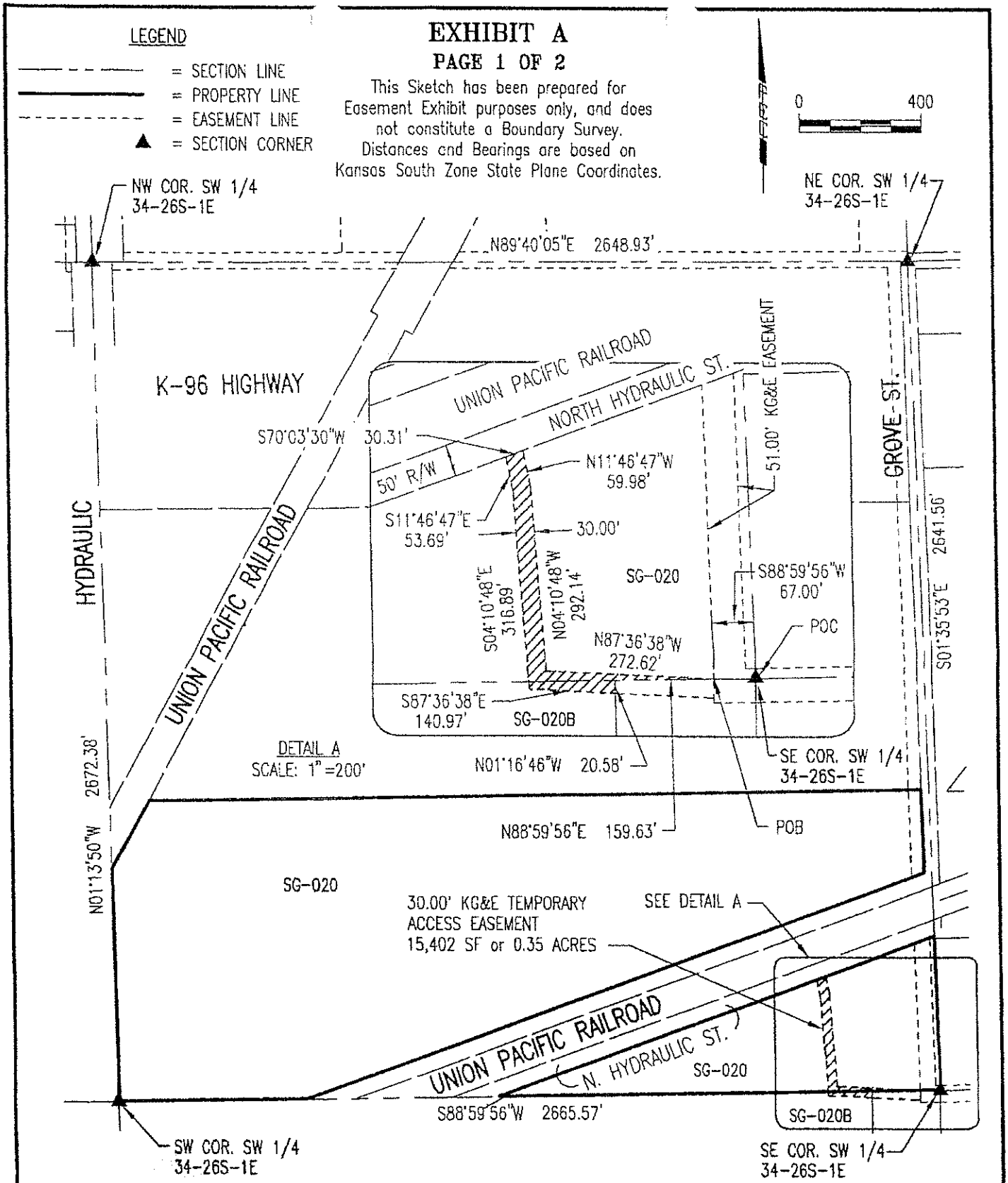


PEC
PROFESSIONAL ENGINEERING CONSULTANTS, P.A.
303 SOUTH TOPEKA WICHITA, KS 67202
316-262-2691 www.pec1.com

69.88
COLEMAN TO CRESTVIEW
TRANSMISSION LINE

Westar Energy.

COUNTY	OWNER	TRACT. NO.	PROJ. NO. 14-066
SEDGWICK	CITY OF WICHITA	SG-020 and SG-020B	DATE: OCT. 30, 2014

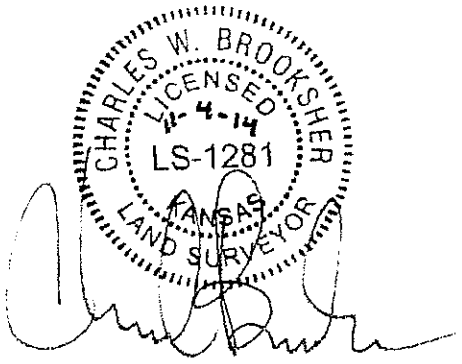
October 30, 2014

KANSAS GAS AND ELECTRIC COMPANY
COLEMAN TO CRESTVIEW
TRACT SG-020 AND SG-020B
OWNER: CITY OF WICHITA

TEMPORARY ACCESS EASEMENT DESCRIPTION

A tract of land in the Southwest Quarter of Section 34, Township 26 South, Range 1 East and in the Northwest Quarter of Section 3, Township 27 South, Range 1 East of the Sixth Principle Meridian, Sedgwick County, Kansas described as follows:

Commencing at the Southeast corner of the Southwest Quarter of said Section 34; thence bearing South 88°59'56" West along the South line of said Southwest Quarter also being the North line of said Northwest Quarter for a distance of 67.00 feet to the Point of Beginning; thence bearing North 87°36'38" West for a distance of 272.62 feet; thence bearing North 04°10'48" West for a distance of 292.14 feet; thence bearing North 11°46'47" West for a distance of 59.98 feet; thence bearing South 70°03'30" West for a distance of 30.31 feet; thence bearing South 11°46'47" East for a distance of 53.69 feet; thence bearing South 04°10'48" East for a distance of 316.89 feet to a point in the Northwest Quarter of said Section 3; thence bearing South 87°36'38" East for a distance of 140.97 feet; thence bearing North 01°16'46" West for a distance of 20.58 feet to a point on the South line of said Southwest Quarter also being the North line of said Northwest Quarter; thence bearing North 88°59'56" East on said North line and said South line for a distance of 159.63 feet to the Point of Beginning. Encompassing a total of 15,402 square feet or 0.35 acres more or less.



Prepared by: Charles W. Brooksher P.S.#1281
PEC Project No. 14200-048

EXHIBIT A

PAGE 1 OF 2

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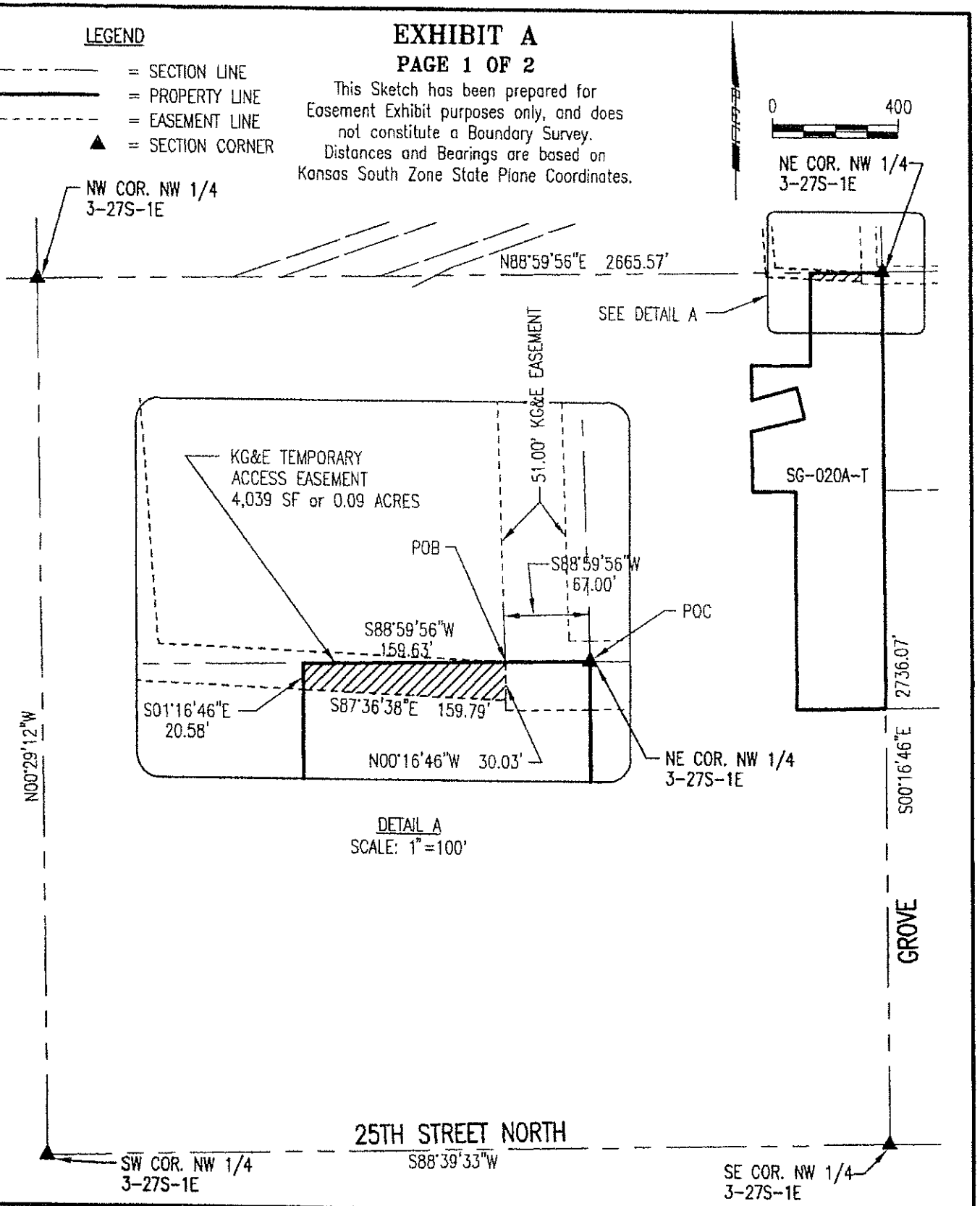


DETAIL A
SCALE: 1"=100'

PEC PROFESSIONAL ENGINEERING CONSULTANTS, P.A. 303 SOUTH TOPEKA WICHITA, KS 67202 316-262-2691 www.pec1.com	69.88 COLEMAN TO CRESTVIEW TRANSMISSION LINE			Westar Energy
	COUNTY	OWNER	TRACT. NO.	PROJ. NO. 14-066
	SEDGWICK	BOARD OF PARK COMMISSIONERS	SG-020A-T	DATE: OCT. 30, 2014

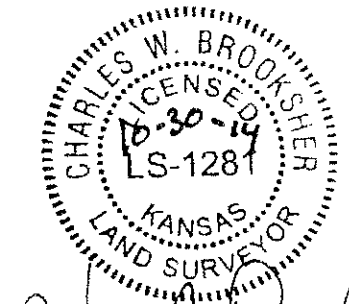
October 30, 2014

KANSAS GAS AND ELECTRIC COMPANY
COLEMAN TO CRESTVIEW
TRACT SG-020A-T
OWNER: BOARD OF PARK COMMISSIONERS

TEMPORARY ACCESS EASEMENT DESCRIPTION

A tract of land in the Northwest Quarter of Section 3, Township 27 South, Range 1 East of the Sixth Principle Meridian, Sedgwick County, Kansas described as follows:

Commencing at the Northeast corner of the Northwest Quarter of said Section 3; thence bearing South 88°59'56" West along the north line of said Northwest Quarter for a distance of 67.00 feet to the Point of Beginning; thence continuing on said bearing of South 88°59'56" West for a distance of 159.63 feet; thence bearing South 01°16'46" East for a distance of 20.58 feet; thence bearing South 87°36'38" East for a distance of 159.79 feet; thence bearing North 00°16'46" West for a distance of 30.03 feet to the Point of Beginning. Encompassing a total of 4,039 square feet or 0.09 acres more or less.



Prepared by: Charles W. Brooksher P.S. #1281
PEC Project No. 14200-048

EXHIBIT A

PAGE 1 OF 2

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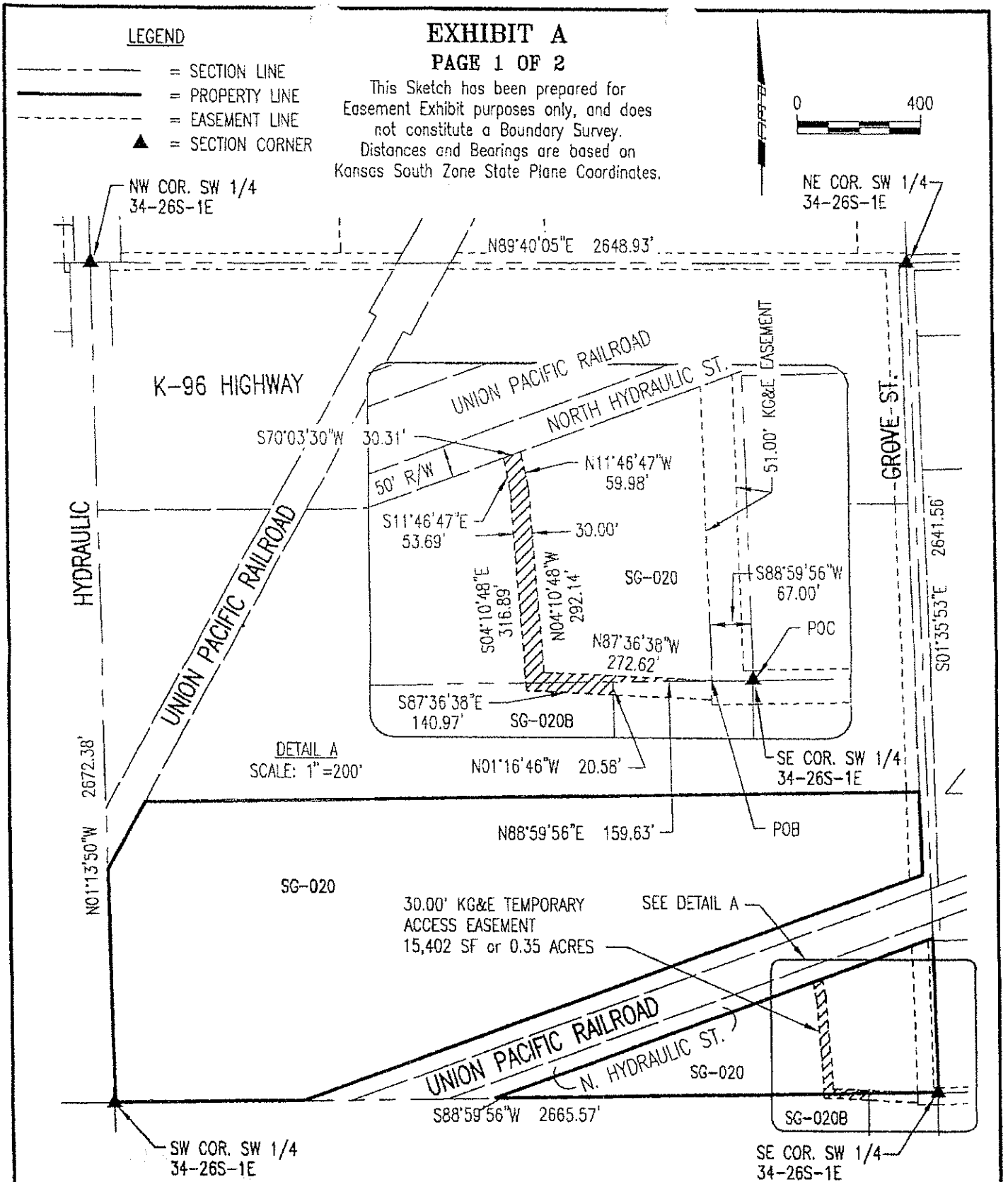


PEC
PROFESSIONAL ENGINEERING CONSULTANTS, P.A.
303 SOUTH TOPEKA WICHITA, KS 67202
316-262-2691 www.pec1.com

69.88
COLEMAN TO CRESTVIEW
TRANSMISSION LINE

Westar Energy.

COUNTY	OWNER	TRACT. NO.	PROJ. NO. 14-066
SEDGWICK	CITY OF WICHITA	SG-020 and SG-020B	DATE: OCT. 30, 2014

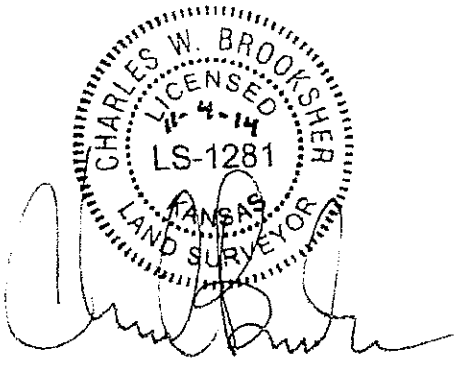
October 30, 2014

KANSAS GAS AND ELECTRIC COMPANY
COLEMAN TO CRESTVIEW
TRACT SG-020 AND SG-020B
OWNER: CITY OF WICHITA

TEMPORARY ACCESS EASEMENT DESCRIPTION

A tract of land in the Southwest Quarter of Section 34, Township 26 South, Range 1 East and in the Northwest Quarter of Section 3, Township 27 South, Range 1 East of the Sixth Principle Meridian, Sedgwick County, Kansas described as follows:

Commencing at the Southeast corner of the Southwest Quarter of said Section 34; thence bearing South 88°59'56" West along the South line of said Southwest Quarter also being the North line of said Northwest Quarter for a distance of 67.00 feet to the Point of Beginning; thence bearing North 87°36'38" West for a distance of 272.62 feet; thence bearing North 04°10'48" West for a distance of 292.14 feet; thence bearing North 11°46'47" West for a distance of 59.98 feet; thence bearing South 70°03'30" West for a distance of 30.31 feet; thence bearing South 11°46'47" East for a distance of 53.69 feet; thence bearing South 04°10'48" East for a distance of 316.89 feet to a point in the Northwest Quarter of said Section 3; thence bearing South 87°36'38" East for a distance of 140.97 feet; thence bearing North 01°16'46" West for a distance of 20.58 feet to a point on the South line of said Southwest Quarter also being the North line of said Northwest Quarter; thence bearing North 88°59'56" East on said North line and said South line for a distance of 159.63 feet to the Point of Beginning. Encompassing a total of 15,402 square feet or 0.35 acres more or less.



Prepared by: Charles W. Brooksher P.S.#1281
PEC Project No. 14200-048

EXHIBIT A

PAGE 1 OF 2

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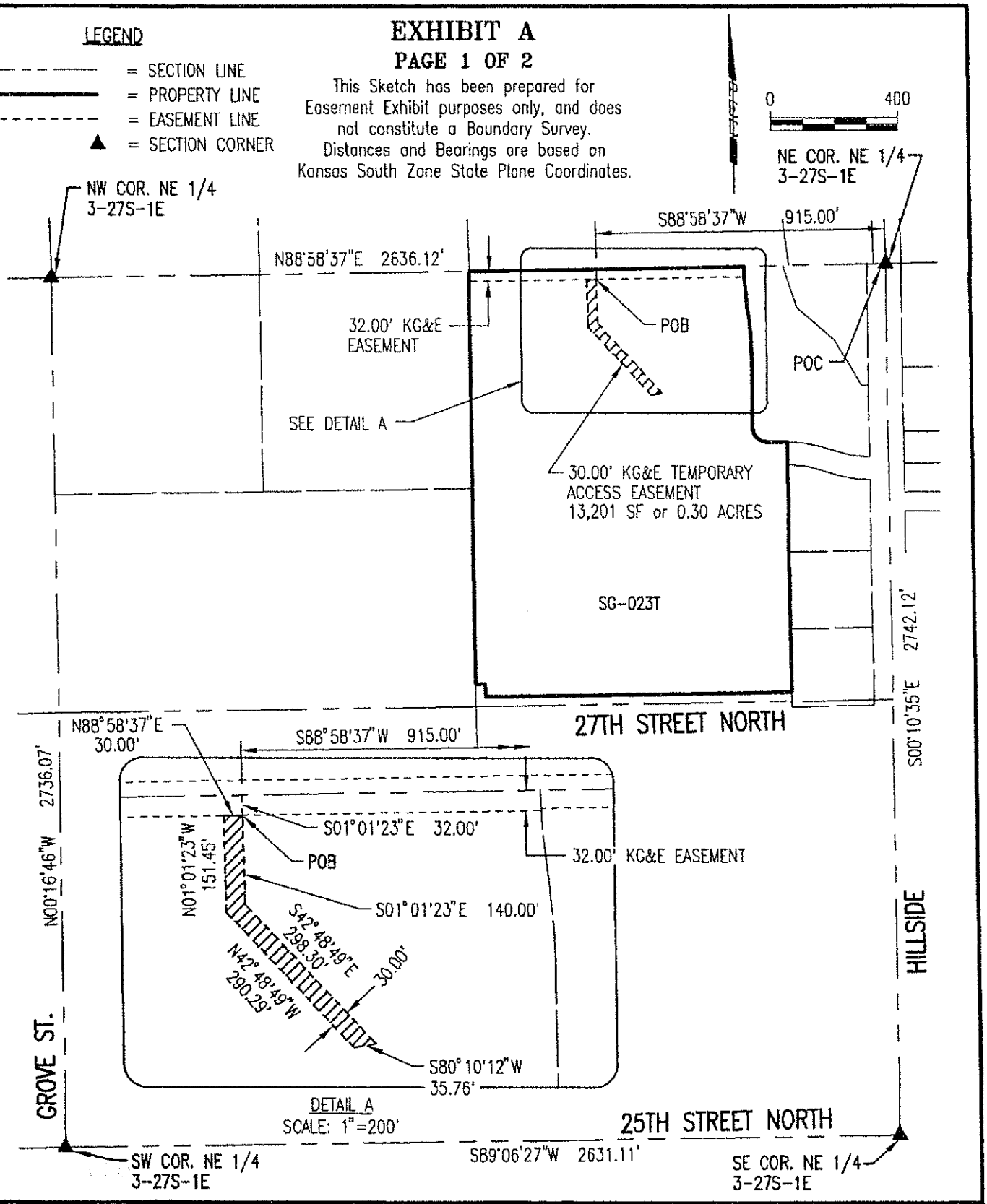


PEC PROFESSIONAL ENGINEERING CONSULTANTS, P.A. 303 SOUTH TOPEKA WICHITA, KS 67202 316-262-2691 www.pec1.com	69.88 COLEMAN TO CRESTVIEW TRANSMISSION LINE			Westar Energy.
	COUNTY	OWNER	TRACT. NO.	PROJ. NO. 14-066
	SEDGWICK	CITY OF WICHITA	SG-023T	DATE: OCT. 30, 2014

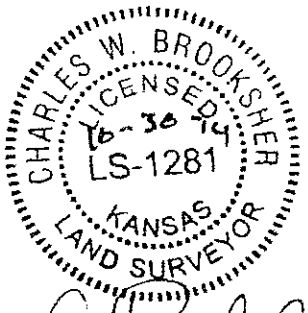
October 30, 2014

KANSAS GAS AND ELECTRIC COMPANY
COLEMAN TO CRESTVIEW
TRACT SG-023T
OWNER: CITY OF WICHITA

TEMPORARY ACCESS EASEMENT DESCRIPTION

A tract of land in the Northeast Quarter of Section 3, Township 27 South, Range 1 East of the Sixth Principle Meridian, Sedgwick County, Kansas described as follows:

Commencing at the Northeast corner of the Northeast Quarter of said Section 3; thence bearing South 88°58'37" West along the North line of said Northeast Quarter for a distance of 915.00 feet; thence bearing South 01°01'23" East for a distance of 32.00 feet to the Point of Beginning; thence continuing on said bearing of South 01°01'23" East for a distance of 140.00 feet; thence bearing South 42°48'49" East for a distance of 298.30 feet; thence bearing South 80°10'12" West for a distance of 35.76 feet; thence bearing North 42°48'49" West for a distance of 290.29 feet; thence bearing North 01°01'23" West for a distance of 151.45 feet; thence bearing North 88°58'37" East for a distance of 30.00 feet to the Point of Beginning. Encompassing a total of 13,201 square feet or 0.30 acres more or less.



Prepared by: Charles W. Brooksher P.S. #1281
PEC Project No. 14200-048

EXHIBIT A

PAGE 1 OF 2

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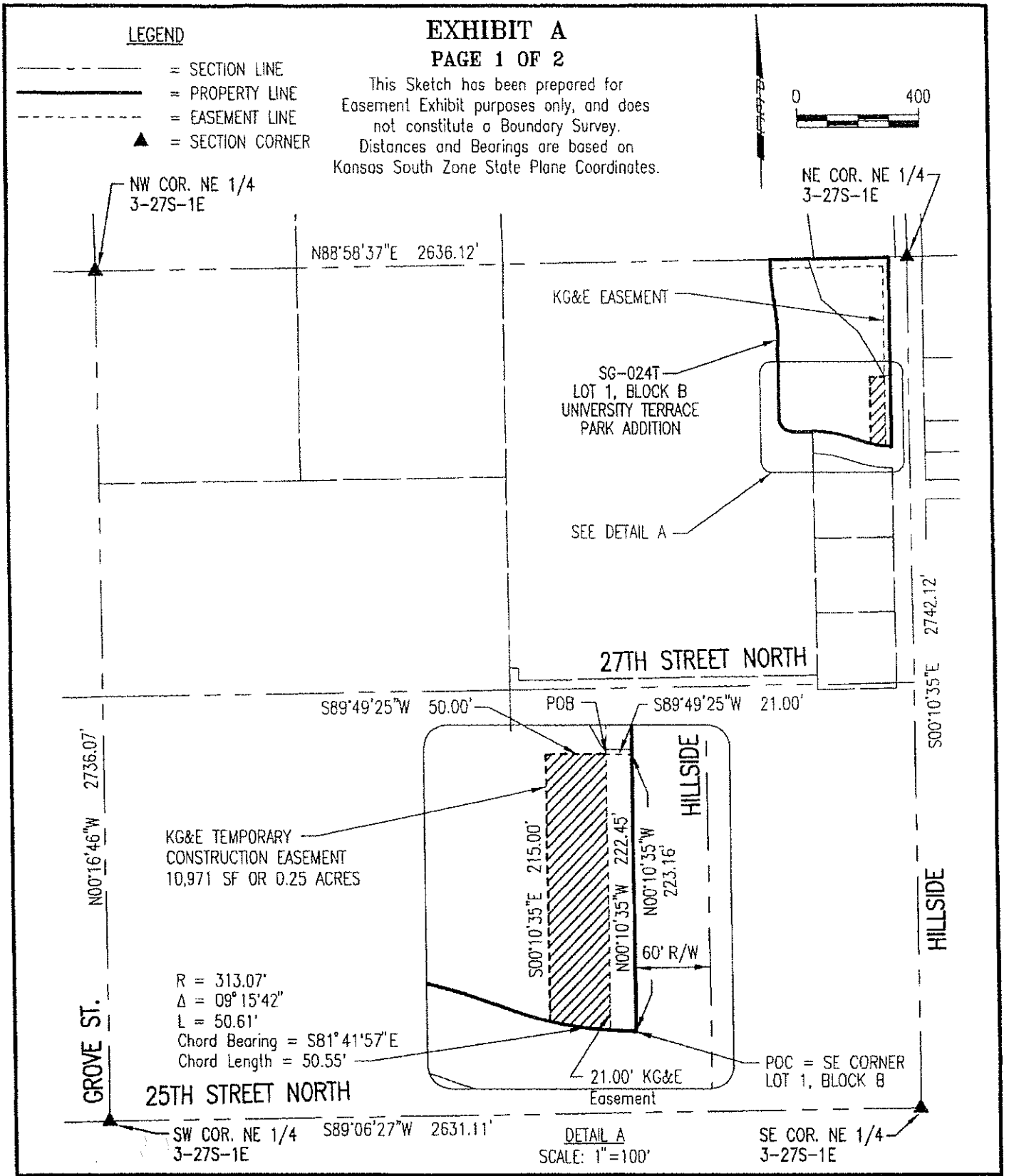


PEC PROFESSIONAL ENGINEERING CONSULTANTS, P.A. 303 SOUTH TOPEKA WICHITA, KS 67202 316-262-2691 www.pec1.com	69.88 COLEMAN TO CRESTVIEW TRANSMISSION LINE		Westar Energy.
COUNTY	OWNER	TRACT. NO.	PROJ. NO. 14-066
SEDGWICK	CITY OF WICHITA	SG-024T	DATE: OCT. 28, 2014

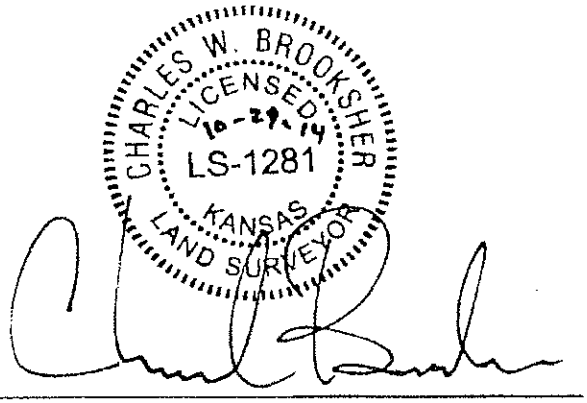
October 28, 2014

KANSAS GAS AND ELECTRIC COMPANY
COLEMAN TO CRESTVIEW
TRACT SG-024T
OWNER: CITY OF WICHITA

TEMPORARY CONSTRUCTION EASEMENT DESCRIPTION

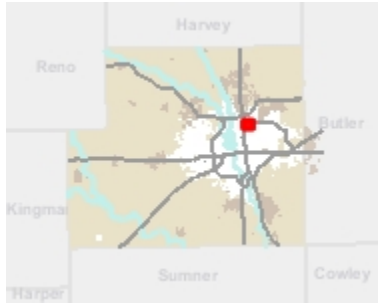
A tract of land in the Northeast Quarter of Section 3, Township 27 South, Range 1 East of the Sixth Principle Meridian, Sedgwick County, Kansas described as follows:

Commencing at the Southeast corner of Lot 1, Block B, University Terrace Park Addition to Wichita, Sedgwick County, Kansas; thence bearing North 00°10'35" West along the East line of said Lot 1 for a distance of 223.16 feet; thence bearing South 89°49'25" West for a distance of 21.00 feet to the Point of Beginning; thence continuing on said bearing of South 89°49'25" West for a distance of 50.00 feet; thence bearing South 00°10'35" East, parallel with the East line of said Lot 1 for a distance of 215.00 feet to a point on the South line of said Lot 1, being a curve to the left having a radius of 313.07 feet, a central angle of 09°15'42", a chord that bears South 81°41'57" East and a chord distance of 50.55 feet; thence southeasterly along said curve to the left for a distance of 50.61 feet; thence bearing North 00°10'35" West, parallel with the East line of said Lot 1 for a distance of 222.45 feet to the Point of Beginning. Encompassing 10,971 square feet or 0.25 acres more or less.



Prepared by: Charles W. Brooksher P.S. #1281
PEC Project No. 14200-048

Westar Transmission Line



Legend

This information is not an official record, and cannot be used as such. The user should rely only upon official records available from the custodian of records in the appropriate City and/or County department. Some data provided here and used for the preparation of these maps has been obtained from public records not created or maintained by the City of Wichita.

1: 10,751

CITY OF WICHITA
City Council Meeting
March 17, 2014

TO: Mayor and City Council

SUBJECT: Eminent Domain Appeal Settlement – Ronald H. Groves (District II)

INITIATED BY: Law Department

AGENDA: Consent

Recommendation: Authorize the settlement in the amount of $1,450,000.

Background: On February 8, 2011, the City Council approved the design for the improvement of Kellogg Avenue (US Highway 54) from Cypress to Chateau. The project calls for the improvement of Kellogg to a six lane, limited access highway with one way frontage roads on each side of the highway and interchanges at the intersections of Webb Road and the Kansas Turnpike (Interstate Highway 35). The project will require the acquisition of all or part of approximately 40 parcels. The properties consist of a mix of retail and commercial uses. On November 20, 2012, the City Council approved a resolution and ordinance authorizing the initiation of an eminent domain action to acquire the parcels that were unable to be acquired through negotiations.

Analysis: On or about November 22, 2013, the court appointed appraisers filed their award to the property owner in the amount of $2,250,000. The City filed an appeal of the award of the appraisers. The City's outside counsel and its current appraisers believe that a jury could award the landowner a sum between $850,000 and $3,090,000, based upon the lowest to highest appraisal valuation of the parties. The reason for such a large spread in valuations is due to the landowner's appraisers giving considerable value to issues such as impact to access, parking, and traffic flow which the City would argue in court as not compensable.

Financial Considerations: The City has already paid into the Court the amount of $2,250,000. The approval of this settlement will result in the property owner refunding to the City the sum of $800,000.

Legal Considerations: The Law Department will approve as to form the necessary legal documents to effectuate this settlement with the District Court.

Recommendation/Action: It is recommended that the City Council authorize the settlement of $1,450,000.

Attachments: None

Second Reading Ordinances for March 17, 2015 (first read on March 3, 2015)

A. **Mosley Avenue Project Plan (Tax Increment Financing) and Development Agreement (District VI)**

ORDINANCE NO. 49-948

AN ORDINANCE AUTHORIZING THE EXECUTION OF A DEVELOPMENT AGREEMENT AND AUTHORIZING THE ISSUANCE OF BONDS OF THE CITY OF WICHITA, KANSAS TO PAY ALL OR A PORTION OF THE COSTS OF CERTAIN IMPROVEMENTS RELATED TO THE MOSLEY AVENUE PROJECT AREA LOCATED WITHIN THE OLD TOWN CINEMA REDEVELOPMENT DISTRICT.

B. SUB2014-00039 -- Plat of JBAR Addition Located South of 13th Street North, East of Hoover Road (District VI)

ORDINANCE NO. 49-950

AN ORDINANCE CHANGING THE ZONING CLASSIFICATIONS OR DISTRICTS OF CERTAIN LANDS LOCATED IN THE CITY OF WICHITA, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-C, AS ADOPTED BY SECTION 28.04.010, AS AMENDED.

City of Wichita
City Council Meeting
March 17, 2015

TO: Mayor and City Council

SUBJECT: ZON2014-00033 – Request for TF-3 Two-Family Residential Zoning on SF-5 Single-Family Residential Zoned Property Generally Located South of Central Avenue, East of Ridge Road, on the West Side of Wayside Lane's Intersection with Newell Street and Frazier Lane (District V)

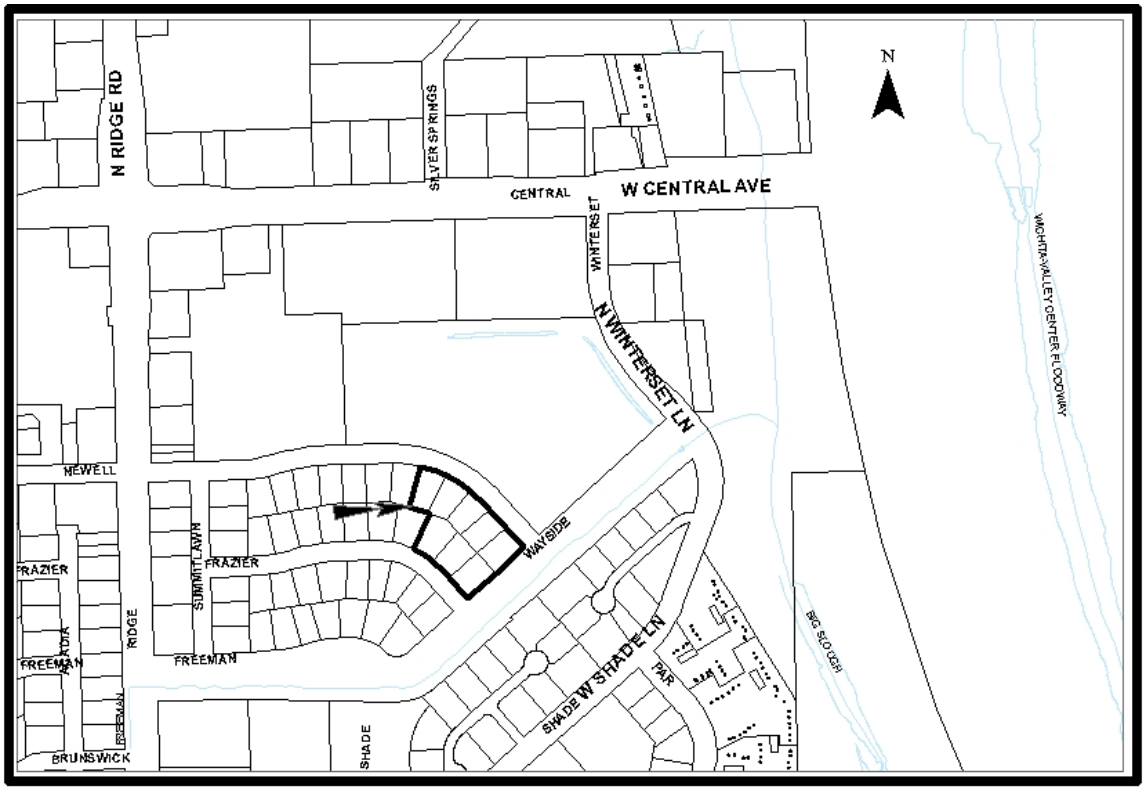
INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Consent)

MAPC Recommendation: The MAPC recommended approval of the request (12-0).

DAB Recommendation: District Advisory Board V recommended approval of the request (7-0).

MAPD Staff Recommendation: The Metropolitan Area Planning Department staff recommended approval of the request.



Background: The applicant is requesting TF-3 Two-Family Residential zoning on the undeveloped, platted 1.77-acre SF-5 Single-Family Residential zoned site; Lots 1, 2, 3, 4, 5, 23, 24 and 25, Block E, Country Acres 6th Addition. The applicant proposes to build a duplex on each lot. Each of the eight ~~(8)~~ lots exceeds the Unified Zoning Code's (UZC) minimum standards for lot size for a duplex. The site is located south of Central Avenue, between Ridge Road and the Big Ditch, on the west side of Wayside Lane's intersections of Newell Street and Frazier Lane.

The SF-5 zoned site is located in a neighborhood of predominately low to high density residential development and zoning. The neighborhood is located south of (and behind) the commercial development and zoning along Central Avenue. A small SF-5 zoned public park abuts the west side of the site. The park separates the site from the adjacent west SF-5 zoned single-family residences (built in the early 1970s). A small GO General Office zoned office is located further west of the site along Ridge Road, marking the end of most of the area's SF-5 zoning. South of the site are SF-5 zoned single-family residences (built in the early 1970s). Further south and east of the site are MF-18 Multi-family Residential and TF-3 zoned duplexes, apartments and townhouses, all part of a residential Community Unit Plan, CUP DP-59. The duplexes appear to be some of the most recent residential development in the area, being built in the mid-2000s. A GC General Commercial zoned self-storage warehouse is also located in this area south of the site. North of the site is the LC Limited Commercial zoned YMCA, retail, a cosmetology school, a bank, restaurants, and other commercial uses. Most of this development is part of the commercial CUP DP-39.

Analysis: On January 26, 2015, District Advisory Board (DAB) V considered the request. DAB V voted 7-0 to approve the request. There were no protests against the request at the DAB V meeting.

On, February 5, 2015, the Metropolitan Area Planning Commission (MAPC) considered the request. The MAPC voted 12-0 to approve the request. There were no protests against the request at the MAPC meeting. Planning staff has received no valid protests and received no calls protesting the request.

Financial Considerations: Approval of this request will not create any financial obligations for the City.

Legal Considerations: The Law Department has reviewed and approved the ordinance as to form.

Recommendation/Actions: It is recommended that the City Council concur with the findings of the MAPC and approve the zoning and place the ordinance on first reading (simple majority vote required).

Attachments:

- MAPC minutes
- DAB memo
- Ordinance

OCA 150004

ORDINANCE NO. 49-960

AN ORDINANCE CHANGING THE ZONING CLASSIFICATIONS OR DISTRICTS OF CERTAIN LANDS LOCATED IN THE CITY OF WICHITA, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-C, AS ADOPTED BY SECTION 28.04.010, AS AMENDED.

BE IT ORDAINED BY THE GOVERNING BODY
OF THE CITY OF WICHITA, KANSAS.

SECTION 1. That having received a recommendation from the Planning Commission, and proper notice having been given and hearing held as provided by law and under authority and subject to the provisions of The Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by Section 28.04.010, as amended, the zoning classification or districts of the lands legally described hereby are changed as follows:

Case No. ZON2014-00033

Zone change from SF-5 Single-Family Residential ("SF-5") to TF-3 Two-Family Residential ("TF-3") zoning on an approximately 1.77-acre property described as:

Lots 1, 2, 3, 4, 5, 23, 24 and 25, Block E, Country Acres 6th Addition to Wichita, Sedgwick County, Kansas; generally located south of Central Avenue, east of Ridge Road on the west side of Wayside Lane's intersection with Newell Street and Frazier Lane.

SECTION 2. That upon the taking effect of this ordinance, the above zoning changes shall be entered and shown on the "Official Zoning Map" previously adopted by reference, and said official zoning map is hereby reincorporated as a part of the Wichita -Sedgwick County Unified Zoning Code as amended.

SECTION 3. That this Ordinance shall take effect and be in force from and after its adoption and publication in the official City paper.

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

(SEAL)

Approved as to form: _____
Sharon Dickgrafe, Interim City Attorney

(6) Provide County Fire and Public Works with any needed improvements, per County Standards and at the applicants' expense.

(7) Per MAPC Policy Statement #7, all conditions are to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County

Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

MOTION: To approve subject to the recommendation of the Subdivision Committee and staff recommendation.

B. JOHNSON moved, **RAMSEY** seconded the motion, and it carried (12-0).

PUBLIC HEARINGS

4. **Case No.: ZON2014-00033** - BATC, LLC (applicant/owner) Timothy Chadd (agent) request a City Zone change from SF-5 Single-family Residential to TF-3 Two-family Residential on property on property legally described as:

Lots 1, 2, 3, 4, 5, 23, 24 and 25, Block E, Country Acres 6th Addition to Wichita, Sedgwick County, Kansas.

BACKGROUND: The applicant is requesting TF-3 Two-Family Residential zoning on the undeveloped, platted 1.77-acre SF-5 Single-Family Residential zoned site; Lots 1, 2, 3, 4, 5, 23, 24 and 25, Block E, Country Acres 6th Addition. The applicant proposes to build a duplex on each lot. Each of the eight (8) lots exceeds the Unified Zoning Code's (UZC) minimum standards for lot size for a duplex. The site is located south of Central Avenue, between Ridge Road and the Big Ditch, on the west side of Wayside Lane's intersections of Newell Street and Frazier Lane.

The SF-5 zoned site is located in a neighborhood of predominately low to high density residential development and zoning. The neighborhood is located south of (and behind) the commercial development and zoning along Central Avenue. A small SF-5 zoned public park abuts the west side of the site. The park separates the site from the adjacent west SF-5 zoned single-family residences (built in the early 1970s). A small GO General Office zoned office is located further west of the site along Ridge Road, marking the end of most of the area's SF-5 zoning. South of the site are SF-5 zoned single-family residences (built in the early 1970s). Further south and east of the site are MF-18 Multi-family Residential and TF-3 zoned duplexes, apartments and townhouses, all part of a residential Community Unit Plan, CUP DP-59. The duplexes appear to be some of the most recent residential development in the area, being built in the mid-2000s. A GC General Commercial zoned self-storage warehouse is also located in this area south of the site. North of the site is the LC Limited Commercial zoned YMCA, retail, a cosmology school, a bank, restaurants, and other commercial uses. Most of this development is part of the commercial CUP DP-39.

CASE HISTORY: The subject site was platted as, Lots 1, 2, 3, 4, 5, 23, 24 and 25, Block E, Country Acres 6th Addition, which was recorded with the Sedgwick County Register of Deeds February 8, 1960. DAB V considered this request at their January 26, 2015 meeting and recommended approval, 7-0. No one protested the request at the DAB V meeting.

ADJACENT ZONING AND LAND USE:

NORTH: LC	YMCA, retail strips, restaurants, cosmology school
SOUTH: SF-5, MF-18, LC, GC	Single-family residences, apartments, duplexes, self-storage
WEST: SF-5, GO	Public park, single-family residences, office strip
EAST: MF-18, TF-3	Duplexes, townhouses

PUBLIC SERVICES: Newell Street, Frazier Lane and Wayside Lane are paved residential streets. All utilities are available to the site.

CONFORMANCE TO PLANS/POLICIES: The "2013 Land Use Guide of the Comprehensive Plan" (Plan) identifies the SF-5 zoned site as "urban residential." The urban residential category encompasses areas that reflect the full diversity of residential development densities and types typically found in large urban municipality. The Plan identifies SF-5 zoning as being compatible with the urban residential category. The SF-5 zoning district allows single-family residences and institutional uses such as a parks, schools and churches, but not duplexes, by right. The site's requested TF-3 zoning is compatible with the Plan's urban residential category and allows duplexes as well as single-family residential development and institutional uses such as a parks, schools and churches.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be **APPROVED**.

This recommendation is based on the following findings:

(1) **The zoning, uses and character of the neighborhood:** The SF-5 zoned site is located in a neighborhood of predominately low to high density residential development and zoning. The neighborhood is located south of (and behind) the commercial development and zoning along Central Avenue. A small SF-5 zoned public park abuts the west side of the site. The park separates the site from the adjacent west SF-5 zoned single-family residences (built in the early 1970s). A small GO General Office zoned office is located further west of the site along Ridge Road, marking the end of most of the area's SF-5 zoning. South of the site are SF-5 zoned single-family residences (built in the early 1970s). Further south and east of the site are MF-18 Multi-family Residential and TF-3 zoned duplexes, garden apartment, townhouse and apartments, part of a mixed residential Community Unit Plan, CUP DP-59. The duplexes appear to be some of the most recent residential development in the area, being built in mid-2000. A GC General Commercial zoned self-storage warehouse is also located in this area south of the site. North of the site is the LC Limited Commercial zoned YMCA, retail, a cosmology school, a bank, restaurants, and other commercial uses. Most of this development is part of the commercial CUP DP-39.

(2) **The suitability of the subject property for the uses to which it has been restricted:** The site is currently zoned SF-5 and is vacant.

(3) **Extent to which removal of the restrictions will detrimentally affect nearby property:** The requested TF-3 zoning allows duplexes as well as single-family residences by right. It also permits institutional uses such as parks, schools and churches by right. The request would not introduce TF-3 zoning or duplex development into the area as the most recent development in the area may be some TF-3 zoned duplexes (built in mid-2000) located east of the site.

(4) **Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant:** Approval of the request would limit development by right to single-family residential, duplex, and institutional uses such as a parks, schools and churches. Denial of the request could impose a financial hardship on the owner.

(5) **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The "2013 Land Use Guide of the Comprehensive Plan" (Plan) identifies the SF-5 zoned site as "urban residential." The urban residential category encompasses areas that reflect the full diversity of residential development densities and types, including duplexes, typically found in large urban municipality. The Plan identifies SF-5 zoning as being compatible with the urban residential category. The SF-5 zoning district allows single-family residential uses and parks, but not duplexes, by right. The site's requested TF-3 zoning and proposed duplex development is compatible with the Plan's urban residential category.

(6) **Impact of the proposed development on community facilities:** All services are in place, and any increased demand on community facilities can be handled by current infrastructure.

BILL LONGNECKER, Planning Staff presented the Staff Report.

FOSTER pointed out several typographical errors on the Staff Report regarding "cosmetology".

MOTION: To approve subject to staff recommendation.

MCKAY moved, **J. JOHNSON** seconded the motion, and it carried (12-0).

NON-PUBLIC HEARING ITEMS

5. **Case No.: DER2015-00002** - Proposed Amendments to the "U" University Zoning District.

Background: Wichita State University has developed an Innovation Campus Master Plan (see attached) to redevelop Braeburn Golf Course with:

- An Experiential Engineering Building with engineering laboratories and a maker space
- Partnership Buildings, constructed with private funds by developers who will lease space to companies that want to work with WSU students and faculty
- A new home for the W. Frank Barton School of Business, with an adjacent Innovation Center
- A new residence hall
- Mixed-use buildings, built by private developers along 17th and 21st Streets, near Oliver, that would include retail stores and restaurants on the first level and apartments on upper levels
- A hotel, built by a private developer, on the southwest corner of 21st and Oliver

INTEROFFICE MEMORANDUM

TO: MAPC

FROM: Martha Sanchez, Community Liaison, District V

SUBJECT: ZON2014-00033

DATE: January 26, 2015

On Monday, January 26, 2015, the District V Advisory Board considered a request from applicant BATC, LLC (applicant/owner) Timothy Chadd (agent) to rezone to (TF-3) Two-Family Residential zoning. The propose site is currently zoned as (SF-5) Single-Family Residential.

The DAB members were provided with the MAPD staff report with a recommendation to approve.

The DAB members voted (6-0) to recommend approval for rezoning to TF-3 Two-Family Residential zoning with the following conditions listed in the staff report.

Please review this information when **ZON2014-00033** is considered.

City of Wichita
City Council Meeting
March 17, 2015

TO: Wichita Airport Authority

SUBJECT: Airline Use Agreements
Wichita Dwight D. Eisenhower National Airport

INITIATED BY: Department of Airports

AGENDA: Wichita Airport Authority (Consent)

Recommendation: Approve the agreements.

Background: The Wichita Airport Authority (WAA) has an existing uniform lease and use agreement with the signatory commercial passenger airlines serving the Wichita Dwight D. Eisenhower National Airport. These agreements are for the following airlines: American Airlines, Inc.; Delta Air Lines, Inc.; Southwest Airlines Co.; and United Air Lines, Inc. These airline agreements will expire at the time the existing terminal ceases to be used by the public and the transition is made to the new terminal.

Analysis: It is necessary for the WAA and the airlines to enter into a new uniform lease and use agreement in order to establish a business relationship and a basis for rentals, fees, and charges. The new agreement is effective when the new terminal opens for public use, and includes a five-year initial term with an option to renew for another five-year period. This agreement is the end product of several years of negotiations between the WAA staff, its financial consultants, and the airlines.

Financial Considerations: Under the new contract methodology, signatory passenger airlines serving Wichita Dwight D. Eisenhower National Airport will pay a proportionate share of the maintenance, operation, and debt service associated with the airfield and new terminal building. The ensuing rates and charges are determined pursuant to U.S. Department of Transportation Policy, Federal Code, U. S. Supreme Court rulings, and negotiations with the airlines. The estimated initial annual revenue from these agreements is approximately $5.78 million. This is a 15 percent increase compared to the previous year, largely due to the increase in rates and fees and the rate methodology of the new agreement.

Legal Considerations: The agreements have been reviewed and approved as to form by the Law Department.

Recommendations/Actions: It is recommended that the WAA approve the agreements, and authorize the necessary signatures.

Attachments: American Airlines, Inc.
Delta Air Lines, Inc.
Southwest Airlines Co.
United Air Lines, Inc.

AIRLINE AIRPORT USE AND LEASE AGREEMENT

BY AND BETWEEN

WICHITA AIRPORT AUTHORITY

AND

AMERICAN AIRLINES, INC.

FOR

WICHITA DWIGHT D. EISENHOWER NATIONAL AIRPORT

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LIST OF EXHIBITS

A Affiliate Airline Notification

B Aircraft Parking Apron

C Airport Boundaries

D Premises

E Monthly Activity Report

F Tenant Construction and Alteration Process Manual (Incorporated by reference)

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H Snow Removal

I Maintenance Matrix

THIS AGREEMENT, dated March 17, 2015, between The Wichita Airport Authority, hereafter referred to as "AUTHORITY," and American Airlines, Inc., a corporation organized and existing under the laws of the State of Delaware, hereinafter referred to as "AIRLINE," acting by and through its designated officers with the express authority of its Board of Directors;

W I T N E S S E T H:

WHEREAS, AUTHORITY is a governmental entity authorized under the laws of the State of Kansas to own and operate one or more airports, with full, lawful power and authority to enter into binding legal instruments by and through its governing body; and

WHEREAS, AUTHORITY owns and operates the commercial service airport with FAA designation of ICT operated by the Wichita Airport Authority (hereinafter referred to as "Airport"); and

WHEREAS, AIRLINE is a corporation primarily engaged in the business of transportation by Aircraft for the carriage of persons, property, and mail; and

WHEREAS, AIRLINE desires to use certain premises and facilities, and to exercise certain rights and privileges at Airport in connection with the operation of its Air Transportation Business, and AUTHORITY is willing to agree to such use, rights and privileges as set forth herein; and

WHEREAS, the intent of the parties is to enter into an agreement which will specify the rights and obligations of the parties with respect to the operation of Airport by AUTHORITY and the use and occupancy of Airport by AIRLINE, and this Agreement is responsive to and in accordance with that intent;

NOW, THEREFORE, AUTHORITY and AIRLINE for, and in consideration of the covenants and mutual promises hereinafter contained, agree as follows:

1. DEFINITIONS

The terms and phrases defined in this Section for all purposes of this Airline Use and Lease Agreement shall have the following meanings:

Affiliate shall mean any Air Transportation Company that is either a (1) wholly-owned subsidiary of AIRLINE or AIRLINE's parent company or (2) operates under essentially the same trade name as AIRLINE at the Airport, uses essentially the same livery as AIRLINE, and does not sell any seats in its own name. AIRLINE shall provide AUTHORITY with a completed Exhibit A, attached hereto, for each Affiliate active as of the Commencement Date of this Agreement.

Air Operations Area (AOA) shall mean those portions of the Airport provided for the landing, take-off, taxiing and parking of Aircraft, including, without limitation, runways, taxiways, runway and taxiway safety areas and protection zones, Aircraft Parking Aprons, service roads, and other related and supporting appurtenances.

Air Transportation Business shall mean the business of an Air Transportation Company for the commercial transportation by air of persons, property, mail, and/or cargo.

Air Transportation Company shall mean a company engaged in the business of scheduled or nonscheduled commercial transportation by air of persons, property, mail, and/or cargo.

Aircraft shall mean a vehicle that is capable of traveling through the air, as defined in the Federal Aviation Act of 1958, as same may be amended or supplemented from time to time.

Aircraft Parking Apron shall mean that square footage of the AOA measured from the abutting face of the Terminal to the Aircraft parking limit line immediately adjacent to the Terminal that is used for the parking of Aircraft and support vehicles and the loading and unloading of passengers, baggage, and other mail or cargo, the boundaries of which are shown in Exhibit B attached hereto. Changes may be made to Exhibit "B", under the authority of the Director, without requiring formal amendment to the Agreement.

Airfield shall mean the AOA, approach and turning zones, aviation or other easements, and other appurtenances.

Airfield Requirement is that requirement established in Section 5.5(a).

Airline Net Revenue Sharing shall mean an amount determined by AUTHORITY in accordance with Section 6.3.

Airport shall mean the Mid-Continent Airport under the ownership, control and jurisdiction of the AUTHORITY. The current name of the airport is now known as the Mid-Continent Airport. The name will change to Wichita Dwight D. Eisenhower National Airport during the Initial Term of this Agreement. Current boundaries are shown on Exhibit C attached hereto.

Airport System shall include the airports under the ownership, control and jurisdiction of the AUTHORITY.

Amortization shall mean the principal and interest cost on a Capital Improvement financed by the AUTHORITY from its own cash. Amortization shall be calculated using (i) the interest rate paid by the City of Wichita, Kansas on its most recent comparable issuance of Bonds and (ii) the economic useful life of the Capital Improvement, as determined by the AUTHORITY in accordance with generally accepted accounting principles. Amortization shall begin in the Fiscal Year following when the Capital Improvement is ready for its intended use.

Authority Net Revenue Sharing shall mean an amount determined by AUTHORITY in accordance with Section 6.3.

Aviation Fuel Storage Facilities shall mean the fuel storage facilities owned by the AUTHORITY for the purpose of receiving, storing, and dispensing aviation fuel.

Bonds shall mean any bonds or other financing instrument or obligation issued by the City of Wichita, Kansas issued for the purposes of improving the Airport System or on behalf of AUTHORITY.

Capital Improvement shall mean (i) the acquisition of land or easements; (ii) the planning, design, or construction of new facilities; and (iii) the performance of any extraordinary, non-recurring major maintenance of existing facilities that may be acquired, purchased, or constructed by AUTHORITY to improve, maintain, or develop the Airport System.

Commencement Date shall mean the date on which the Terminal opens for commercial business to the general public.

Common Use Gate shall mean any AUTHORITY-controlled Gate in the Terminal not directly leased to an individual Signatory Airline on a Preferential Use basis, which AUTHORITY reserves for use of any Air Transportation Company.

Cost Center(s) shall mean the cost centers representing the areas and facilities operated by AUTHORITY, and as such cost centers may be modified, changed, or developed by AUTHORITY to be used in accounting for items including, but not limited to Revenues, Operation and Maintenance Expenses, Debt Service, Coverage Requirement, Operation and Maintenance Reserve Requirement, and Amortization and for calculating and adjusting the Rental and Fee Rates. Cost Centers shall collectively include the Airfield Cost Center, Jabara Cost Center, Other Aviation Buildings and Areas Cost Center, Landside Cost Center, and Terminal Cost Center.

Coverage Requirement shall mean, for any Fiscal Year, the amount equal to ten percent (10%) of Debt Service, for all series of Bonds plus such other amount as may be established by any financing agreement. If, in any given Fiscal Year, the Authority Net Revenue Sharing is insufficient to meet both the Coverage Requirement and Operation and Maintenance Reserve Requirement for that Fiscal Year, any shortfall shall be included in the Airfield Requirement under

Section 5.5(a)(v).

Debt Service shall mean the required amounts to be deposited within the principal and interest accounts related to Bonds during any period for the payment, when due, of principal of, interest on, and other fees and amounts associated with such debt.

Director shall mean the Director of Airports, who is the person designated by the AUTHORITY to exercise functions with respect to the rights and obligations of the AUTHORITY under this Agreement, and shall include any person expressly delegated by the Director of Airports to exercise functions with respect to the rights and obligations of the Director of Airports under this Agreement.

Electronic Visual Information Display Systems (EVIDS) shall mean the AUTHORITY owned Flight Information Display System (FIDS), the Baggage Information Display System (BIDS) and Gate Information Display System (GIDS) provided for passenger information.

Enplaned Passengers shall mean all (i) originating; (ii) on-line transfer; and (iii) off-line transfer passengers boarded at the Airport.

Exclusive Use Premises shall mean Terminal space leased to AIRLINE for its exclusive use as shown on Exhibit D attached hereto, as such may be amended from time to time.

Fiscal Year shall mean the then current annual accounting period of AUTHORITY for its general accounting purposes which, at the time of entering into this Agreement, is the period of twelve (12) consecutive calendar months ending with the last day of December of any year.

Fixtures shall mean all structures and fixed systems and equipment erected or installed upon the Premises, shelves, cabinets, counters, all fencing, grading, landscaping and pavement, all underground wires, cables, pipes, conduits, tanks, drains and drainages; and all other property of every kind and nature which is permanently affixed to the Premises.

Gate when referenced in this Agreement shall mean the contiguous and mutually supporting facilities consisting of hold rooms(s), Aircraft Parking Apron, passenger boarding bridge(s), and appurtenant furnishings within these areas that are necessary for the use thereof. The term Gate as used in this Agreement shall specifically exclude any space leased by AIRLINE in the first (lower) level of the Terminal.

Ground Handling Services shall mean services provided to Air Transportation Companies to include, but not necessarily be limited to, fueling services; loading and unloading of passengers, baggage and freight into Aircraft; providing passenger service agents; assisting in processing of passengers and crews; furnishing and operating ground support equipment in support of Aircraft operations; Aircraft cleaning and lavatory service activities; deicing; and Aircraft maintenance activities.

Hold Rooms or Passenger Hold Rooms shall mean the areas specifically designed and designated for the sole purpose of Airline passenger waiting prior to enplaning.

Improvements shall mean any construction, or addition, alteration or betterment, to real estate new or existing, including structures, paved surfaces and other ancillary and supporting areas.

Joint Use Cost shall mean the Terminal Rental Rate multiplied by the square footage of the Joint Use Premises plus the cost of providing services as may be requested by the AIRLINE or as may be required by the AUTHORITY, if any, less any fees collected by AUTHORITY from Non-Signatory Airlines for the use of Joint Use Premises for any given Fiscal Year.

Joint Use Fee shall mean the fee payable by AIRLINE under this Agreement for use of the Joint Use Premises at the Airport.

Joint Use Formula shall mean the formula used to prorate the Joint Use Cost on the basis of ten percent (10%) of the total annual rental divided equally among all Signatory Airlines. The remaining ninety percent (90%) of the total annual rental shall be apportioned among all Signatory Airlines on the basis of the number of each Signatory Airline's Enplaned Passengers at the Airport to the total number of Enplaned Passengers of all Signatory Airlines at the Airport.

Joint Use Premises shall mean those Terminal areas assigned to two or more Air Transportation Companies, as shown on Exhibit D " attached hereto.

Landing shall mean any landing at the Airport by an Aircraft operated by any Air Transportation Company., but shall not include an unscheduled landing by an Aircraft operated by an Air Transportation Company that returns to the Airport because of weather, mechanical, operational, or other emergency or precautionary reasons.

Landing Fee shall mean the fee payable by AIRLINE under this Agreement for Landings at the Airport.

Landing Fee Rate shall mean that rate, established in Section 5.5, for each one thousand (1,000) pounds of Maximum Gross Landing Weight.

Maximum Gross Landed Weight shall mean the maximum gross certificated landing weight in one thousand pound units for which each Aircraft operated by AIRLINE is certified by the Federal Aviation Administration ("FAA"), or any successor agency thereto.

Monthly Activity Report shall mean the reporting form required to be completed and submitted by AIRLINE to AUTHORITY each month attached hereto as Exhibit E, as may be amended from time to time by the Director upon thirty (30) days prior written notice to AIRLINE. Any modification to this Monthly Activity Report shall automatically become a part of this Agreement, without formal amendment hereto.

Non-Revenue Landing shall mean any Aircraft landing by AIRLINE at Airport for which AIRLINE receives no revenue, and shall include irregular and occasional ferry, test, courtesy, inspection, or other similar flights.

Non-Signatory Airline shall mean any Air Transportation Company operating at the Airport that has entered into a non-signatory agreement with the AUTHORITY.

Normal Wear and Tear shall mean the physical deterioration which occurs resulting from the normal, customary and reasonable operation and use for which the property is intended, without negligence, carelessness, or intentional abuse of the property or Premises.

Operation and Maintenance Expenses (O&M Expenses) shall mean, for any period, all expenses accrued by AUTHORITY in accordance with generally accepted accounting practices for airports of similar characteristics for the operation, maintenance, administration and ordinary current repairs of the Airport System in order to maintain and operate the Airport System in a reasonable and prudent manner.

Operation and Maintenance Reserve Account (O&M Reserve Account) shall mean an account established to pay for extraordinary or unanticipated Operation and Maintenance Expenses to the extent that other funds are not available for such purposes.

Operation and Maintenance Reserve Requirement (O&M Reserve Requirement) shall mean an amount required to maintain a balance of the following percentage of O&M Expenses in each Fiscal Year, net of existing O&M Reserve Account balances and allocated to the Cost Centers on the basis of O&M Expenses:

Fiscal Year 2015: zero percent (0%)
Fiscal Year 2016: zero percent (0%)
Fiscal Year 2017: five percent (5%)
Fiscal Year 2018: ten percent (10%)
Fiscal Year 2019: fifteen percent (15%)
Option Term Fiscal Year 2020: twenty percent (20%)
Option Term Fiscal Year 2021 and thereafter: twenty five percent (25%)

If, in any given Fiscal Year, the AUTHORITY Net Revenue Sharing is insufficient to meet both the Coverage Requirement and Operation and Maintenance Reserve Requirement for that Fiscal Year, any shortfall shall be included in the Airfield Requirement under Section 5.5(a)(v).

Preferential Use Premises shall mean Aircraft Parking Apron(s), hold room(s), ticket counter(s), and passenger boarding bridges, assigned to AIRLINE, as set forth in Section 2.1 and to which AIRLINE shall have preferential use, defined herein as the unrestricted higher and continuous priority over all other users, subject to the provisions of Section 2.2(b) herein. The Director may, with notice appropriate under the circumstances, authorize another Air Transportation Company pursuant to Section 16 to utilize AIRLINE's hold rooms, passenger boarding bridges, and Aircraft Parking Apron when such use does not conflict with AIRLINE's scheduled flight activities, including a period of forty-five (45) minutes after any of AIRLINE's scheduled departure times

and forty-five (45) minutes prior to any of AIRLINE's scheduled arrival times and during AIRLINE's Aircraft parking overnight, or for the scheduled flight activities of an Affiliate(s) approved subleases, or handling agreements.

Premises shall mean those areas leased for use by AIRLINE herein, which are comprised of Exclusive Use, Preferential Use, and Joint Use Premises.

Personal Property shall mean AIRLINE's removable trade fixtures as allowed by this Agreement, furniture, furnishings, draperies, decorations, signs, appliances, equipment, and any other similar items or supplies owned by AIRLINE.

Rate Stabilization Fund shall mean an account established within the flow of funds prescribed in Section 6.3 of this Agreement to offset Signatory Airline Rental and Fee Payments at the AUTHORITY's discretion. Annual deposits to the Rate Stabilization Fund shall not exceed the annual Amortization allocated to the Airfield and the airline's portion of the Terminal Cost Centers. The maximum balance in the Rate Stabilization Fund shall not exceed one million five hundred thousand dollars ($1,500,000).

Rental and Fee Rates shall mean all rentals and fees payable under the terms of this Agreement.

Requesting Transportation Company shall mean an Air Transportation Company desiring to provide new or expanded commercial passenger air transportation service to and from Airport, and which is unable to obtain adequate Aircraft Parking Apron and/or Terminal space from AUTHORITY.

Revenues shall mean income and revenue derived by AUTHORITY in connection with the operation of the Airport System. The term "Revenues" shall not include passenger facility charges, customer facility charges, insurance proceeds, restricted land sale proceeds or any local, state or federal assistance, or any interest earned thereon.

Revenue Landing shall mean an Aircraft landing by AIRLINE at Airport in conjunction with a flight for which AIRLINE makes a charge or for which revenue is derived for the transportation by air of persons, property or mail, but Revenue Landings shall not include any landing of an Aircraft which, after having taken off from Airport and without making a landing at any other airport, returns to land at Airport because of meteorological conditions, mechanical or operating causes, or any other reason of emergency or precaution.

Signatory Airlines shall mean those airlines which provide scheduled commercial passenger air transportation to and from the Airport and which have executed substantially similar agreements to this Agreement, including term, with AUTHORITY for the lease, use, and occupancy of facilities at the Airport, including the lease of at least one (1) holdroom and associated Aircraft Parking Apron.

Term shall mean the express time period during which AIRLINE has rights and obligations to the Premises as established under Section 3 of this Agreement.

Tenant Construction and Alteration Process Manual (TCAP Manual) shall be the guidance document describing acceptable standards for any construction, alteration or improvements made to AIRLINE's Premises. All tenant improvements shall conform to the AUTHORITY's TCAP Manual, which is attached hereto as Exhibit F and incorporated herein by this reference. TCAP Manual may be amended from time to time.

Terminal shall mean the airline terminal building owned and operated by AUTHORITY at Airport, as shown on Exhibit C hereof.

Terminal Rental shall mean the annual rent payable by AIRLINE under this Agreement for the use of the Terminal.

Terminal Rental Rate shall mean the rate, established in Section 5.4, for each square foot of the Terminal.

Terminal Requirement shall mean that requirement established in Section 5.4(a).

Usable Space shall mean those areas in the Terminal that are available for use by Air Transportation Companies or the general public, including, but not limited to, ticket counter, holdroom, offices, operations, baggage make-up, baggage claim, concessions, passenger screening, baggage screening, and public circulation space. Usable Space shall not include mechanical, electrical, plumbing, or other facility support space.

2. PREMISES

2.1 **Premises**

a. **Terminal Space.** AUTHORITY does hereby lease and demise to AIRLINE, and AIRLINE does hereby lease and accept from AUTHORITY, Exclusive Use Premises, Preferential Use Premises, and Joint Use Premises, as set forth on Exhibit D.

AUTHORITY agrees to grant AIRLINE a nonexclusive right to use the Joint Use Premises and Preferential Use Premises for conducting its Air Transportation Business.

b. **Aircraft Parking Apron Space.** AUTHORITY leases to AIRLINE and AIRLINE leases from AUTHORITY space in the Aircraft Parking Apron on a Preferential Use basis and illustrated on Exhibits B and D.

c. **Use of AIRLINE's Aircraft Parking Apron within the Premises.** AIRLINE shall have Preferential Use of the AIRLINE's Aircraft Parking Apron Premises for the loading and unloading of AIRLINE's passenger Aircraft, or the passenger Aircraft of AIRLINE's Affiliate(s) and Air Transportation Companies operating from AIRLINE's Premises under AUTHORITY-approved subleases and ground handling agreements with AIRLINE. AIRLINE's use of said AIRLINE's Aircraft Parking Apron Premises shall be limited to (i)

the loading and unloading of persons, property, cargo, parcels, mail and in-flight food and related supplies on passenger Aircraft, as well as (ii) the parking, refueling, interior cleaning and minor mechanical maintenance of AIRLINE's passenger Aircraft, and the Aircraft of AIRLINE's Affiliate(s) and Air Transportation Companies operating from AIRLINE's Premises under AUTHORITY-approved subleases and ground handling agreements with AIRLINE.

2.2 Use of Premises

AIRLINE shall use the various types of space leased only for such purposes as are typical for that type of space in the sole judgment of AUTHORITY not to be exercised arbitrarily.

a. **AIRLINE's Exclusive Use Premises.** AIRLINE will have exclusive use of that portion of AIRLINE's Premises labeled as airline ticketing office (ATO), baggage storage lockers, and operations space on Exhibit D.

b. **AIRLINE's Preferential Use Premises.** AIRLINE will have preferential use of that portion of AIRLINE's Premises labeled as ticket counter, Aircraft Parking Apron, and holdrooms on Exhibit D. AIRLINE's Preferential Use Premises are subject to reassignment in accordance with Section 16.2 of this Agreement.

c. **Joint Use Premises.** AIRLINE has the right to use the Joint Use Premises, in conjunction with other Air Transportation Companies, labeled as baggage claim, outbound baggage, passenger screening, baggage service offices, and hold baggage screening on Exhibit D.

2.3 Condition of Premises and Airport

AIRLINE expressly acknowledges that it has inspected the Premises, including, but not limited to, all finishes, furniture, fixtures and equipment therein, and accepts the same "As Is" in the condition existing as of the Commencement Date with the exception of those facilities and fixtures that AUTHORITY is required by this Agreement to maintain and repair. The parties acknowledge that the Premises is being newly constructed at the time this Agreement is being negotiated and AIRLINE is responsible to complete its build-out of the Premises in accordance of the TCAP. The Premises is located within the Terminal, which AUTHORITY operates as part of a Part 139 airport subject to FAA regulations and grant assurances. By this Agreement, AIRLINE obtains the right to operate its Air Transportation Business within the limitations created by those FAA regulations, grant assurances and the AUTHORITY's rules and regulations and Standard Operating Procedures.

2.4 Employee Parking

AUTHORITY shall use reasonable efforts to ensure that parking facilities are sufficient for all of AIRLINE's personnel employed on the Airport. Employee parking shall be subject to reasonable rules and regulations of AUTHORITY. AUTHORITY may update these rules and regulations as needed. Use of the employee parking areas is subject to payment of reasonable fees and charges, further described in Section 4.8, Other Fees and Charges.

2.5 Public Address System

AUTHORITY shall provide and maintain a public address system in the Terminal, which AIRLINE and others similarly authorized by AUTHORITY shall have the right to use for flight announcements and paging. Use of the public address system shall be subject to reasonable rules and regulations established by AUTHORITY, as may be amended from time-to-time.

2.6 Reserved from Premises

AUTHORITY expressly reserves from the Premises:

a. **Mineral Rights.** All gas, oil and mineral rights in and under the soil;

b. **Water Rights.** All statutory, exempt, vested, and granted appropriation rights for the use of water, and all rights to request further appropriations for the Premises;

c. **Airspace.** A public right of flight through the airspace above the surface of the Premises. This public right of flight shall include the right to cause or allow in said airspace, any noise inherent in the operation of any Aircraft used for navigation or flight through said airspace or landing at, taking off from, or operation on the Airport. No liability on the part of AUTHORITY or any Tenant shall result from the exercise of this right;

d. **Navigational Aids.** The right to install, maintain and modify and/or permit others to install, maintain and modify on the Premises visual and electronic navigational aids;

e. **Radio/Wireless Communication Systems.** The right to approve or withhold approval of any use of fixed RF Systems for the transmission of radio frequency signals in/on the Premises;

f. **General Provisions.** The right to exercise any and all rights set out in Section 44, General Provisions; and

g. **Entry and Inspection of Premises.** The right of AUTHORITY, its authorized officers, employees, agents, contractors, subcontractors, authorized government agents, or other representatives to enter upon the Premises:

    i. With twenty-four (24) hours advance notice, and accompanied by an AIRLINE representative to inspect at reasonable intervals during regular business hours (or any time without prior notice in case of emergency or lawful investigation) to determine whether AIRLINE has complied, and is complying with the terms and conditions of this Agreement;

    ii. With twenty-four (24) hours' advance notice and accompanied by an AIRLINE representative (or any time without prior notice in case of emergency or reasonably suspected violation), to inspect Premises, facilities, and equipment for compliance with laws, regulations and/or codes of the federal, state or local government, airport rules and regulations and airport standard operating procedures; and

iii. Within thirty (30) calendar days advance notice (or any time without prior notice in case of emergency or critical system repairs) to construct new facilities, or to perform maintenance, repair, or replacement relating to the AUTHORITY's support of the Premises or any facility thereon, as may be required and necessary, but AUTHORITY shall not be obligated to exercise this option.

Provided that exercise by AUTHORITY of any such reserved rights shall be without expense to the AIRLINE and shall not unreasonably or materially interfere with AIRLINE's use of the Premises and shall not delay AIRLINE in the exercise of its rights or the performance of its duties hereunder or increase the costs of such performance.

Any and all rights and privileges not granted to AIRLINE in this Agreement are hereby reserved for and to AUTHORITY.

2.7 **Adjustments to AIRLINE Premises.**

During the Term of this Agreement, AUTHORITY may re-measure various areas in the Terminal, including those areas located within the Premises, in an effort to more accurately reflect Improvements, additions and modifications to the Terminal. In the event the square footage of the Premises identified herein differs from the Premises square footage determined by such re-measurement, the parties agree to enter into an amendment to this Agreement to modify the Premises description to reflect the actual square footage of the Premises subject to the provisions of this Agreement. If the actual square footage of the Premises is determined to differ from than the square footage of the defined Premises the current fees and charges shall be re-calculated. If, based on such re-measurement, the increase in AIRLINE's monthly fees and charges would exceed five percent (5%), AUTHORITY agrees that the increase in AIRLINE's monthly fees and charges payable hereunder shall be capped at five percent (5%) for the remainder of the current Term. The parties agree that any increase or decrease in the monthly fees and charges payable resulting from re-measurement of the Premises shall not be applied retroactively. The Director may execute an amendment to this Agreement on behalf of AUTHORITY to reflect the adjusted monthly fees and charges.

Notwithstanding the foregoing, the square footage associated with AIRLINE's Gate(s) is equalized among all Gates at the Airport. Remeasurement of AIRLINE's Gate(s) shall not result in any changes in AIRLINE's monthly fees and charges.

2.8 **Relocation**

AUTHORITY shall have the right after consultation with AIRLINE, at such times as may be reasonable under the circumstances, to close, relocate, reconstruct, change, alter, or modify the Premises or the means of access to the Premises either temporarily or permanently for purposes of maintaining or constructing improvements, modifications, or expansions to the Terminal and/or the Airport; provided, however, that (i) reasonable notice, not less than thirty (30) days, is given to AIRLINE and (ii) reasonably convenient alternative and substantially equivalent Premises and adequate means of access are provided and (iii) AUTHORITY shall pay all costs of such relocation.

2.9 Utilization of Facilities

During periods of operational inconvenience, including but not limited to, weather delays, the temporary non-availability of facilities for maintenance purposes, or Aircraft mechanical delays, and if accommodation at a Common Use Gate(s) is not readily available, AIRLINE shall make all reasonable efforts to accommodate other Air Transportation Company's operations on AIRLINE's Premises in such instances.

3. TERM

3.1 Term

The Term of this Agreement shall begin on the Commencement Date and shall continue until December 31, 2019, unless terminated earlier under other terms of this Agreement.

3.2 Option Term

The Term of this Agreement may be extended by either Party for one, five (5) year renewal option from January 1, 2020 through December 31, 2024 and thereafter by the mutual written agreement of AIRLINE and AUTHORITY.

3.3 Hold Over

In the event that AIRLINE, without request or objection by AUTHORITY, shall continue to occupy its Premises and conduct its AIRLINE operations beyond the Term of this Agreement, such holding over shall not constitute a renewal of this Agreement, but shall be considered a month-to-month tenancy only, incorporating all terms and conditions of this Agreement, unless otherwise agreed to by both parties in writing. In such event, AIRLINE shall be assessed those same rental and fee rates as are applied to Non-Signatory Airlines during such holding over period unless otherwise agreed by AUTHORITY. No such holding over shall be deemed to operate as a renewal or extension of the Term. Such month-to-month tenancy may be terminated by AUTHORITY or AIRLINE by giving thirty (30) days prior written notice of said termination to the other party at any time.

4. RENTS, FEES AND CHARGES

In return for the use of the Premises and the Airport, the rights granted in this Agreement, and the undertakings of AUTHORITY in this Agreement, AIRLINE agrees to pay AUTHORITY during the term of this Agreement, without deduction or set-off, certain rentals and fees as set forth in this Section 4. Estimated Fiscal Year 2015 Rental and Fee Rates are shown in Exhibit G.

4.1 Terminal Rentals

AIRLINE shall pay one-twelfth (1/12) of its annual Terminal Rentals for its Preferential Use Premises and Exclusive Use Premises in the Terminal on the first day of each month in advance without notice. The Terminal Rental Rate per square foot shall be recalculated annually in

accordance with Section 5.4. AIRLINE shall pay a pro rata amount for any partial month possession of the AIRLINE's Premises.

4.2 Joint Use Fees

AIRLINE shall pay one-twelfth (1/12) of its 10% share and estimated 90% share of the Joint Use Fees on the first day of each month in advance without notice. Joint Use Fees shall be recalculated annually in accordance with Section 5.4. AIRLINE shall pay a pro rata amount for any partial month possession of the AIRLINE's Premises. Rentals for the 90% share of the Joint Use Fees shall be estimated each Fiscal Year based on AIRLINE's Enplaned Passengers for the most recent twelve (12) month period.

4.3 Landing Fees

AIRLINE shall pay to AUTHORITY by the fifteenth (15th) day of each calendar month during the Term hereof Landing Fees at the Landing Fee Rate calculated in accordance with Section 5.5 based on the Maximum Gross Landed Weight of each Revenue Landing by AIRLINE at the Airport during the previous calendar month.

4.4 Aircraft Parking Apron Rentals

AIRLINE shall pay one-twelfth (1/12) of its annual Aircraft Parking Apron Rentals on the first day of each month in advance without notice.

4.5 Utility Services

Utility services shall be provided to the AIRLINE as additional charges, which may include but not limited to: phone, data, electricity, gas, water, sewer, and trash disposal service. Payments for utility services used by AIRLINE shall be made directly to the AUTHORITY, utility supplier or service provider, as applicable. If utility service is supplied by the AUTHORITY, then AIRLINE shall pay those costs to AUTHORITY within thirty (30) days after receipt of AUTHORITY'S invoice. AUTHORITY agrees that any such costs invoiced to AIRLINE shall be based upon the uniform rates charged by the AUTHORITY to other Airport users. AIRLINE shall be responsible to pay separately, not as a component of rent.

4.6 Aviation Fuel Storage Facility Charges

AIRLINE shall pay charges as determined by the AUTHORITY for the AIRLINE's pro-rata share of operation, maintenance, upkeep, replacement, permitting, insurance and administration of the Aviation Fuel Storage Facility, which shall include storage tanks, plumbing, piping, valves, meters, filtration systems, monitoring and alarm systems, testing, product supply (input and off-load) and user delivery (output/loading racks) systems, pavements, security, lighting, electrical, containment, oil/water separators and costs of lawful compliance programs. AIRLINE's pro-rata share of gallons shall be determined based on the gallons used by AIRLINE compared to the gallons passed through the Facility. Facility charges shall be assessed by and paid to the AUTHORITY as a value per gallon of fuel product passing through the facility and to the AIRLINE. Such charges shall be based upon the AUTHORITY's actual costs as described herein.

4.7 Schedule of Fees and Charges

AUTHORITY may assess fees and charges to AIRLINE according to rates established by AUTHORITY in AUTHORITY's Schedule of Fees and Charges. Such Schedule may be amended from time-to-time at the discretion of the AUTHORITY.

4.8 Other Fees and Charges

AUTHORITY shall provide to AIRLINE and charge to AIRLINE for services, such as: badges, ramp permits, employee parking spaces and maintenance services or repairs requested by AIRLINE. AIRLINE shall be responsible to pay these charges separately and not as a component of rent. AIRLINE shall pay all charges other than rent within thirty (30) days after receipt.

5. ADJUSTMENT OF RATES FOR RENTS, FEES AND CHARGES

5.1 Effective Date of Adjustments

The Terminal Rental Rates, the Aircraft Parking Apron Rental Rate, the Joint Use Fees, and the Landing Fee Rate shall be adjusted on the Commencement Date during Fiscal Year 2015. For Fiscal Year 2016 onwards, such rates and fees shall be effective on the first day of the Fiscal Year to which they apply.

5.2 AUTHORITY Records

AUTHORITY shall maintain (and make reasonably available for review and inspection by AIRLINE) accounting records that document the following items for each Cost Center:

a. Revenues

b. Operation and Maintenance Expenses

c. Documented expenses of AUTHORITY incurred for Capital Improvements

d. AUTHORITY shall further maintain records evidencing the allocation of Debt Service based on the use of Bond proceeds or other funding sources to each Cost Center. Included in the allocation to each Cost Center shall be its proportionate share of any Bond issuance expenses and capitalized interest.

5.3 Reports

a. On or before the first day of the fourth (4th) month prior to the start of each Fiscal Year, AIRLINE shall submit to AUTHORITY a written estimate of the estimated total Maximum Gross Landed Weight for AIRLINE for the succeeding Fiscal Year. If no estimate is received, the reasonable estimate of AUTHORITY may be used.

b. Forty-five (45) days prior to the start of the Fiscal Year, AUTHORITY shall submit to AIRLINE at a meeting between the various airlines and AUTHORITY, AUTHORITY's proposed Annual Budget for the succeeding Fiscal Year, which shall include:

   i. Estimated Operation and Maintenance Expenses

   ii. Debt Service or other debt installments, if any, and any other deposits required for any Bonds

   iii. A preliminary calculation of the Terminal Rental Rate, Landing Fee Rate, and Joint Use Fees for the succeeding Fiscal Year, calculated in accordance with Sections 5.4 and 5.5.

c. Each year AUTHORITY shall adopt an Annual Budget for the Airport and establish Terminal Rental Rates, an Aircraft Parking Apron Rental Rate, Joint Use Fees, and a Landing Fee Rate. Such budget and rates shall take into account AUTHORITY's discussions with AIRLINE. AUTHORITY shall give consideration to any suggestions, comments, or requests of Signatory Airlines, but shall retain the right for AUTHORITY to make all final decisions with respect to the Annual Budget and fees.

d. If, for any reason, the Annual Budget has not been adopted as of the first day of any Fiscal Year, the Rental and Fee Rates in effect during the preceding Fiscal Year shall continue in effect until a new Annual Budget has been adopted by AUTHORITY and AUTHORITY has calculated the Rental and Fee Rates in accordance therewith. The new Rental and Fee Rates shall then be made effective retroactive to the first day of such Fiscal Year.

5.4 Calculation of Terminal Rental Rate and Joint Use Fees

During each Fiscal Year of the Term hereof, the Terminal Rental Rate shall be adjusted annually in the following manner. Whenever the adjustment calculation involves an estimate, the reasonable estimate of AUTHORITY shall be used.

a. Each year AUTHORITY shall calculate the Terminal Requirement for the succeeding Fiscal Year by totaling the following amounts, as set forth in AUTHORITY's Annual Budget:

   i. The total of direct and allocated indirect estimated Operation and Maintenance Expenses allocable to the Terminal Cost Center less the cost of providing services as may be requested by the AIRLINE or as may be required by the AUTHORITY, if any, as determined and documented by the AUTHORITY;

   ii. The total portion of the Annual Debt Service, net of Passenger Facility Charges, if any, allocable to the Terminal Cost Center;

iii. The estimated amount, if any, for required deposits to funds and accounts allocable to the Terminal Cost Center, including, but not limited to the Operation and Maintenance Reserve Requirement;

iv. The annual Amortization of the total amount of any expenditures made by AUTHORITY for Capital Improvements in the Terminal Cost Center.

b. The total Net Terminal Requirement is calculated by crediting amounts totaled pursuant to Section 5.4(a) by withdrawals from the Rate Stabilization Fund for the Terminal Requirement, if any.

c. The Terminal Rental Rate shall then be calculated by dividing the Net Terminal Requirement computed pursuant to Section5.4(b) by the total Usable Space. An example of the methodology used to calculate Terminal Rental Rates is provided in Exhibit G estimated for Fiscal Year 2015.

d. The Joint Use Fees shall be collectively equal to (i) the Terminal Rental Rate computed pursuant to Section 5.4(c) times the square footage of Joint Use Premises, plus (ii) the cost of providing services as may be requested by the AIRLINE or as may be required by the AUTHORITY, if any, as determined and documented by the AUTHORITY less (iii) any fees collected by AUTHORITY from Non-Signatory Airlines for use of the Joint Use Premises. Joint Use Fees shall be allocated according to the Joint Use Formula.

5.5 Calculation of Landing Fee Rate

During each Fiscal Year of the Term hereof, the Landing Fee Rate shall be adjusted annually in the following manner. Whenever the adjustment involves an estimate, the estimate of AUTHORITY shall be used.

a. Each year AUTHORITY shall calculate the total Airfield Requirement for the succeeding Fiscal Year by totaling the following amounts, as set forth in AUTHORITY's Annual Budget:

i. The total of the direct and allocated indirect estimated Operation and Maintenance Expenses allocable to the Airfield Cost Center;

ii. The total portion of the Debt Service, net of Passenger Facility Charges, if any, allocable to the Airfield Cost Center;

iii. The estimated amount, if any, for required deposits to funds and accounts allocable to the Airfield Cost Center, including, but not limited to the Operation and Maintenance Reserve Requirement;

iv. The annual Amortization of the total amount of any expenditures made by AUTHORITY for Capital Improvements in the Airfield Cost Center; and

v. Any supplemental amounts needed, if any, to meet the Coverage Requirement or Operation and Maintenance Reserve Requirement for the Airport System.

b. The total Net Airfield Requirement is calculated by crediting amounts totaled pursuant to Section 5.5(a) by: (i) Aircraft Parking Apron Rentals, (ii) Revenues allocable to the Airfield Cost Center, except Signatory Airline Landing Fees, (iii) withdrawals from the Rate Stabilization Fund for the Airfield Requirement, if any, and (iv) Airline Net Revenue Sharing for that Fiscal Year, if any.

c. The Landing Fee Rate for Signatory Airlines for the succeeding Fiscal Year shall be calculated by dividing the Net Airfield Requirement computed pursuant to Section 5.5(b) by the composite estimate of the total Maximum Gross Landed Weight (MGLW) of all Signatory Airlines at the Airport for the succeeding Fiscal Year as projected by AUTHORITY using, in part, the estimates provided by AIRLINE pursuant to Section 5.3(a). An example of the methodology used to calculate Landing Fee Rates per 1,000 pounds of MGLW is provided in Exhibit G estimated for Fiscal Year 2015.

5.6 Aircraft Parking Apron Rental Rate

During each Fiscal Year of the Term hereof, the Aircraft Parking Apron Rental Rate shall be equal to fourteen thousand four hundred dollars ($14,400) for each Aircraft Parking Apron in AIRLINE's Premises.

5.7 Mid-year Adjustments

If total Landing Fees, Terminal Rentals, and Joint Use Fees for any quarter vary by more than five percent (5%) from the projected total Landing Fees, Terminal Rentals, and Joint Use Fees for such quarter, the Landing Fee Rate, Terminal Rental Rate, and Joint Use Fees shall, if deemed necessary by AUTHORITY, be adjusted for the balance of such Fiscal Year. AUTHORITY will notify the Signatory Airlines at least thirty (30) days prior to the implementation of a mid-year adjustment of the Terminal Rental Rate, Joint Use Fees, or Landing Fee Rate.

5.8 Budget versus Actual Reconciliation

Within ninety (90) days after the completion of AUTHORITY's annual audited financial statements, AUTHORITY shall reconcile Rental and Fee Payments in the following manner:

a. **Terminal Rentals for Exclusive Use and Preferential Use Space.** AUTHORITY shall determine the Terminal Rental Rate per square foot using audited financial results and Usable Space for the preceding Fiscal Year. The Terminal Rental Rate calculated based on the Annual Budget shall be compared to the Terminal Rental Rate calculated based on actual financial results. Any credit or deficit in the Terminal Rental Rate per square foot shall be allocated to AIRLINE per square foot of its Exclusive Use and Preferential Use premises.

b. **Joint Use Fees.** Using the Terminal Rental Rate calculated in Section 5.8(a) and the actual cost of providing services as may be requested by the AIRLINE or as may be required by the AUTHORITY, if any, and any fees collected by AUTHORITY from Non-Signatory

Airlines for use of the Joint Use Premises, AUTHORITY shall determine the Joint Use Cost. The Joint Use Cost shall be allocated among the Signatory Airlines on the basis of the Joint Use Formula. The allocated Joint Use Cost shall then be compared to the Joint Use Fees received from AIRLINE.

c. **Landing Fees.** Using audited financial results for the preceding Fiscal Year, AUTHORITY shall determine the actual Net Airfield Requirement. This amount shall be compared to the Landing Fees paid by Signatory Airlines during the preceding Fiscal Year. Any deficit or credit in Landing Fees shall be allocated based on AIRLINE's share of the Maximum Gross Landed Weight of Signatory Airlines in the preceding Fiscal Year.

d. Any credit or deficit in the Terminal Rentals, Landing Fees, and Joint Use Fees shall be calculated in aggregate and, as applicable, either AIRLINE shall pay AUTHORITY directly in a lump sum or AUTHORITY shall credit AIRLINE's invoices. The application of any year-end credit, determined in accordance with this Section 5.8 shall be withheld to AIRLINE if AIRLINE has an undisputed outstanding past due balance.

e. While the Commencement Date of this Agreement is during Fiscal Year 2015, the budget versus actual reconciliation for Fiscal Year 2015 shall be done for the entire Fiscal Year.

6. FLOW OF FUNDS

6.1 Internal Revenue Code of 1986

AIRLINE understands that the City of Wichita, Kansas has and will be the issuer of Bonds to fund projects at the Airport. Bonds that may be issued will bear the interest which is intended to be excludable from gross income of the holders for Federal income tax purposes under the Code. AIRLINE agrees that it will not act, or fail to act (and will immediately cease and desist from any action, or failure to act) with respect to the use of its AIRLINE's Premises, if the act or failure to act may cause the City of Wichita, Kansas to be in noncompliance with the provisions of the Code, and AIRLINE will not take or persist in any action or omission which may cause the interest on such Bonds to be includable in the gross income of the holders thereof for Federal income tax purposes.

6.2 SEC Rule 15c2-12

Upon AUTHORITY's written request, AIRLINE shall provide AUTHORITY with such information with respect to AIRLINE as AUTHORITY or the City of Wichita, Kansas may require in writing in order for AUTHORITY or the City of Wichita, Kansas to comply with its continuing disclosure obligations under Securities and Exchange Commission Rule 15c2-12, as it may be amended from time to time. Satisfaction of such obligation may be met by AIRLINE referring AUTHORITY to the SEC's website, where such requested information about AIRLINE may be publicly-available. To the extent that AIRLINE is an "Obligated Party" with respect to the Bonds as per Securities and Exchange Commission Rule 15c2-12, AIRLINE agrees to execute the Continuing Disclosure Agreement incident to such financing.

6.3 **Flow of Funds and Application of Airport System Revenues**

The application of Airport System Revenues (including Airline Net Revenue Sharing), excluding Passenger Facility Charge and Customer Facility Charge revenues, shall be the following:

a. Payment of Operation and Maintenance Expenses,

b. Payment of Debt Service on any outstanding obligations for that Fiscal Year, offset by Passenger Facility Charge and Customer Facility Charge revenues pledged to the payment of Debt Service for that Fiscal Year,

c. Amortization allocable to the Airfield and the airline's portion of the Terminal Cost Centers in such Fiscal Year shall be deposited into the Rate Stabilization Fund, up to a maximum balance of one million five hundred thousand dollars ($1,500,000),

d. Deposit of up to one million dollars ($1,000,000) into the Authority Net Revenue Sharing Fund,

e. Any Airport System Revenues remaining after the Authority Net Revenue Sharing reaches one million dollars ($1,000,000) are to be divided as follows: sixty percent (60%) to the Airline Net Revenue Sharing and forty percent (40%) to the Authority Net Revenue Sharing.

7. PAYMENT TO AUTHORITY

AIRLINE shall make all payments to the Wichita Airport Authority and in a form acceptable to AUTHORITY. ACH direct deposit is preferred. Bank account and routing information is available upon request. Payments made by check shall be delivered or mailed to:

Wichita Airport Authority
2173 Air Cargo Road
Wichita, Kansas 67209

or such other address as designated in writing.

In the event AIRLINE fails to make payment within ten (10) calendar days of the dates due as set forth in this Agreement, then AUTHORITY may charge AIRLINE a service charge at an annual interest rate equal to twelve percent (12%), such charge to accrue from the date upon which such payment was due and until paid. AIRLINE is responsible to AUTHORITY for reasonable attorneys' and administrative fees and third party collection agency fees incurred by AUTHORITY in attempting to collect payment.

8. ACTIVITY REPORTS SUPPLIED BY AIRLINE

Within five (5) working days after the end of each month, AIRLINE shall file with AUTHORITY a Monthly Activity Report, shown on the attached Exhibit E.

Within five (5) working days after the end of each month, AIRLINE shall file with AUTHORITY separate reports for other aircraft operators handled by AIRLINE not having an agreement with the AUTHORITY with reporting obligations.

If AIRLINE fails to submit the reports required by this Section, AUTHORITY shall base AIRLINE's current rentals, fees and charges upon the most recent data transmitted by AIRLINE to AUTHORITY, with such charges to be adjusted as necessary after submission of the missing activity report. Rentals, fees and charges based upon estimates shall be binding on AIRLINE if not reconciled by use of actual data within three (3) months of any report's due date.

The acceptance by AUTHORITY of any AIRLINE payment shall not preclude AUTHORITY from verifying the accuracy of AIRLINE's reports on which AIRLINE's rentals, fees and charges are based, and shall not be construed as a waiver of interest penalty due, if any. AUTHORITY is not bound by prior estimates used to calculate rentals, fees and charges if examination or audit demonstrates that such estimates fell short of actual data calculations. Any shortfall determined by AUTHORITY examination of AIRLINE's records shall be paid in full within thirty (30) days after receipt of AUTHORITY's invoice.

9. SECURITY DEPOSIT

To provide security for the rentals, fees, and charges due hereunder, AIRLINE shall comply with either of the following two options within fourteen (14) days following the execution of this Agreement:

a. Post with the AUTHORITY a surety bond, to be maintained throughout the term hereof. Such bond shall be issued by a sound indemnity company and shall be in a form and content satisfactory to AUTHORITY.

b. Deliver to AUTHORITY an irrevocable letter of credit drawn in favor of AUTHORITY upon a bank satisfactory to AUTHORITY. This irrevocable letter of credit shall be kept in force throughout the term of this Agreement and shall contain terms and conditions reasonably satisfactory to AUTHORITY. AUTHORITY shall promptly return any such irrevocable letter of credit to AIRLINE after the termination or expiration of this Agreement.

The security instrument selected by AIRLINE shall be conditioned on the timely and complete payment of all rentals, fees and charges during the Term of this Agreement. These charges and fees shall be payable within thirty (30) days after receipt of AUTHORITY's invoice.

Whichever option is selected, the security for payments shall be in an amount equal to two months' rentals for Exclusive Use Premises and Preferential Use Premises, plus estimated landing fees for the same period, all as reasonably estimated by the Director. Security for payment shall also reflect the estimated landing fees for the AIRLINE's Affiliate(s).

10. PASSENGER FACILITY CHARGES

AUTHORITY shall have the right to assess airline passengers a Passenger Facility Charge in accordance with the requirements of 14 CFR Part 158. AIRLINE shall collect on behalf of, and remit to AUTHORITY any such Passenger Facility Charge revenue in accordance with the requirements of 14 CFR Part 158. Any Passenger Facility Charge revenue collected by AIRLINE shall, pending remittance to AUTHORITY, be held in trust for the benefit of AUTHORITY. AUTHORITY shall have the right to use all such Passenger Facility Charge revenue collected in any lawful manner. As of the date of this Agreement, the PFC is $4.50.

AIRLINE and AUTHORITY shall be bound by and shall observe all of the provisions of 14 CFR Part 158 as they apply to either or both parties.

11. AUDIT

AIRLINE shall maintain comprehensive records accurately recording the total number of Revenue and Non-Revenue Landings at the Airport, the Maximum Gross Landed Weight of each Aircraft, the total number of Enplaned Passengers and Deplaned Passengers, and all other traffic and activity statistics that AUTHORITY requires. Such records shall be available in electronic format to AUTHORITY for a period of three (3) years after occurrence of the activities reported. All records made available shall be certified by an officer of AIRLINE as accurate and complete.

The Director or a duly authorized representative may examine any records relating to activity at the Airport during all reasonable business hours, at a place at the Airport agreed to between AIRLINE and AUTHORITY. Upon AUTHORITY's written request for examination of such records, AIRLINE shall produce them to AUTHORITY within ten (10) Business Days or pay all reasonable transportation, food, and lodging expenses, for AUTHORITY's auditor(s) to perform the audit outside of the Airport.

The initial cost of an audit outside of the Airport, shall be borne by AUTHORITY; with the exception of the auditor(s) transportation, food and lodging expenses. However, that the full cost of the audit shall be borne by AIRLINE if the audit reveals any of the following conditions:

a. Underpayment of more than ten percent (10%) of the fees and charges due hereunder, unless such underpayment is the result of a demonstrable miscalculation by AUTHORITY; or

b. Failure to maintain accurate and complete records and supportive source documentation required in this Section; or

c. Failure to file Monthly Activity Reports during four (4) or more months of any consecutive eighteen (18) month period.

Any underpayment of amounts due AUTHORITY disclosed in an audit conducted pursuant to this Section shall accrue including interest of twelve percent (12%) annual percentage rate computed from the original due date of each such amount due. The full amount due plus interest and audit fees shall be paid to AUTHORITY within thirty (30) days from receipt of AUTHORITY's invoice. Such payment by AIRLINE shall not abrogate AIRLINE's right to contest the validity of said underpayments. AUTHORITY shall credit to AIRLINE valid overpayments made by AIRLINE other than those made binding under Section 10 due to delinquent reports.

12. SIGNATORY AIRLINE AFFILIATE(S)

12.1 Notification

AIRLINE shall provide AUTHORITY with a completed Exhibit A, attached hereto, for each Affiliate active as of the effective date of this Agreement, subsequently AIRLINE shall provide an updated Exhibit A thirty (30) days prior to AIRLINE designating a new Affiliate, which designation is subject to AUTHORITY approval.

12.2 Fees

Affiliate(s) shall be charged the Signatory Airline Landing Fee Rate. AIRLINE and any Affiliate(s) shall be counted as one entity for the purposes of computing the Joint Use Formula. AIRLINE is exempt from any Ground Handling Services fees related to its AUTHORITY-approved Affiliate(s).

12.3 Payments

An Affiliate shall be primarily liable for the payment of Landing Fees and other fees incurred at the Airport; provided, however, that AIRLINE shall be secondarily liable as a guarantor for all unpaid fees or charges incurred by such Affiliate while such Affiliate operates at the Airport.

AIRLINE may elect to pay an Affiliate's rentals, fees, and charges. However, if an Air Transportation Company is designated as an Affiliate of more than one Signatory Airline, the Signatory Airline shall not have the option to pay a portion of the Affiliate's rentals, fees and charges or to report partial statistics and activities on behalf of the Affiliate unless otherwise agreed to by AUTHORITY.

12.4 Facility Utilization

In determining AIRLINE's utilization of facilities pursuant to Section 16.2, AUTHORITY shall include the activities of the Affiliate(s) in AIRLINE's use calculations. If an Air Transportation

Company is designated as an Affiliate of more than one Signatory Airline, AIRLINE may only include in its use calculations the Aircraft departures conducted from AIRLINE's Premises.

13. USE OF AIRPORT AND RELATED FACILITIES

13.1 Use of the Airport

Subject to the terms and conditions of this Agreement, AIRLINE shall have the nonexclusive right to use the Airport for the conduct of AIRLINE's Air Transportation Business at the Airport in common with other Air Transportation Companies operating at the Airport, which includes the nonexclusive right to: (1) use the Airport's AOA; (2) the use of the public common areas within the Terminal; and (3) the use of all other facilities and Improvements that have been provided for common use at the Airport. The rights provided for herein shall be subject to reasonable and nondiscriminatory rules and regulations established by the Department, as may be amended from time-to-time, and subject to payment of all applicable fees and charges.

AIRLINE, its Affiliates, subsidiaries, partners, employees, agents, representatives, contractors, and subcontractors, shall not transact or otherwise engage in any other activities, business, and/or services on or from the Premises, except as described in this Agreement, unless such is provided by a separate written approval, or amendment to this Agreement, and subject to approval by AUTHORITY.

13.2 Equipment

AIRLINE acknowledges that equipment and furnishings owned or acquired by AUTHORITY for use by AIRLINE, shall remain the property and under the control of AUTHORITY. AUTHORITY shall provide the following equipment and furnishings in, attached to or adjacent to the Terminal for AIRLINE's nonexclusive use to provide the services of its Air Transportation Business:

a. One (1) passenger boarding bridge attached to each of AIRLINE's holdroom(s), including auxiliary conditioned air and power source;

b. Disabled passenger boarding equipment;

c. Conveyor systems and devices for outbound baggage and baggage claim activities;

d. Electronic Visual Information Display System (EVIDS); and

e. Holdroom finishes and furnishings, including gate counter shell, gate backwall, podium, and chairs, but excluding any other equipment or furnishings required by AIRLINE for its operations hereunder such as counter and podium inserts.

13.3 **Equipment Training**

AIRLINE, its employees or designated and authorized agents or contractors may operate AUTHORITY owned facilities and equipment subject to the rules and regulations and Standard Operating Procedures issued by the AUTHORITY, or as may be revised or amended from time-to-time. AIRLINE, its employees or designated and authorized agents or contractors shall receive training from the AUTHORITY in the correct operation and use of AUTHORITY owned facilities and equipment. AIRLINE agrees that only its employees or designated and authorized agents or contractors who have received specific AUTHORITY provided or approved training, and demonstrated competency in their use and operation shall be permitted to operate such facilities and equipment.

AIRLINE, or its designated and authorized agents or contractors requiring the use and operation of AUTHORITY owned facilities and equipment shall request training from the AUTHORITY, and AUTHORITY shall provide such training upon request. Upon successful completion of training, the AUTHORITY shall grant access and authorization for the AIRLINE employee, agent or contractor.

The AUTHORITY reserves the sole right to determine if facility and equipment training is to be provided directly by the AUTHORITY, or if authorized employees, agents or contractors of the AIRLINE will be trained and designated as approved trainers.

Training and authorization shall be recorded and maintained by both the AIRLINE and the AUTHORITY. The AUTHORITY reserves the right to temporarily suspend, pending completion of re-training, or permanently revoke access and use privileges to any AIRLINE employee, agent or contractor found to be in violation of rules and regulations or Standard Operating Procedures established for the operation and use of AUTHORITY owned facilities and equipment.

AIRLINE, or its employees or designated and authorized agents or contractors shall promptly notify AUTHORITY of any facility or equipment malfunctions, discrepancies or safety hazards it observes.

13.4 **Aviation Fuel Storage Facilities**

AIRLINE shall have the right to use the Aviation Fuel Storage Facilities owned by the AUTHORITY. This right is subject to (i) reasonable rules and regulations established by the Director; (ii) the payment of charges for such use of the facility as set forth in Section 4 of this Agreement; and (iii) the terms of agreements between the AUTHORITY and any agent operating the AUTHORITY's facilities.

13.5 **Entry and Exit Rights**

AIRLINE shall have the right of entry and exit on Airport, in common with other authorized users of Airport. This use must comply with the AUTHORITY's rules and regulations. AIRLINE may exercise these rights for the benefit of its employees, customers, passengers, and business associates. This right of entry and exit is granted only the activities related to AIRLINE'S approved activities. AIRLINE shall not interfere with the equal rights of and access provided to

other tenants on the Airport. This right is subject to federal, state and local security and safety requirements and standards. As required by Kansas state statute, the Premises shall be used and occupied for aviation purposes or purposes incidental or related thereto.

13.6 Other Airport Tenants

AIRLINE recognizes that other tenants may occupy other portions of Airport, and that all tenants have the right to use public roadways, streets, ramps, taxiways, runways, access gates, lighting, beacons, navigational aids, or other conveniences for aeronautical operations, and these common facilities are not a part of AIRLINE's Premises; and AIRLINE shall conduct its operations in such a manner as to not impede access by others to these common facilities, nor in any other way interfere with, nor disrupt the business of other tenants or the quiet enjoyment of their leasehold interests at the Airport.

13.7 Quiet Enjoyment

AUTHORITY agrees that, upon payment of the rentals, fees, and charges and performance of the covenants and agreements on the part of AIRLINE to be performed hereunder, AIRLINE shall peaceably have and enjoy the Premises and all rights, licenses, services, and privileges of the Airport and its appurtenances granted herein.

AIRLINE recognizes that this right of quiet enjoyment and unimpeded access extends to all tenants equally. No tenant has the right to overhang or otherwise invade by vegetation, equipment, Improvements, any part of an Aircraft, or other means the leasehold premises of any other tenant. This limitation includes the vertical plane commencing at the property lease line and all areas therein. This prohibition applies to both permanent and transitory invasions. The sole exception to this provision shall be for the navigational easement, described in the Airspace and Easement for Flight provisions of Section 44 General Provisions, granted to airborne aircraft.

13.8 Other Parties

AUTHORITY reserves the right to grant and/or permit other parties the right to use any portion of Airport, except AIRLINE's Exclusive Use Premises, for any permitted purpose and upon any fair and non-discriminatory terms established by the AUTHORITY.

14. AIRLINE OBLIGATIONS, RIGHTS AND PRIVILEGES

AIRLINE may, on behalf of any other Air Transportation Company, exercise any of the rights granted AIRLINE herein, so long as AIRLINE is concurrently exercising those same rights in the operation of AIRLINE's own Air Transportation Business at the Airport.

AIRLINE shall have the right, in addition to all rights granted elsewhere in this Agreement, to use areas of Airport as designated in this Agreement for the following purposes:

a. The operation of its Air Transportation Business including all activities reasonably necessary to such operations;

b. The landing, taking off, flying over, taxiing, towing, parking, loading and unloading, conditioning and servicing of Aircraft of AIRLINE;

c. The extended parking, servicing, loading or unloading, storage or maintenance of AIRLINE's Aircraft, subject to availability of space approved by AUTHORITY and to such reasonable charges and regulations as AUTHORITY may determine for areas not part of Premises;

d. The sale of air transportation tickets and services, the processing of passengers and their baggage for air travel; and

e. The sale, handling, and providing of mail, freight, and express services.

The rights and privileges granted to AIRLINE pursuant to this Section may be exercised on behalf of AIRLINE by its Affiliates and other Signatory Airlines or contractors authorized by AUTHORITY to provide such services at the Airport. Exercise of these rights and privileges by any entity other than AIRLINE is subject to the prior written approval of AUTHORITY and further subject to all applicable laws, rules, regulations and fees and charges.

14.1 **Training**

AIRLINE shall have the right to conduct the training at Airport of AIRLINE personnel and the testing of Aircraft and other equipment used on the Airport by the Air Transportation Company. This training and testing must be incidental to the use of Airport in the operation by AIRLINE. Flight training is not allowed between the hours of 10:00 p.m. and 7:00 a.m., and will not unreasonably interfere with the use of Airport by others. In the event the number of training and testing flights by AIRLINE exceeds ten percent (10%) of Revenue Landings by AIRLINE in any single calendar month, then AIRLINE shall pay for such excess flights Landing Fees for that month at current rates for all flights exceeding the ten percent (10%) Revenue Landing allowance.

14.2 **Professional Operations**

AIRLINE shall: (i) comply with applicable fire codes and regulations, (ii) accurately and timely input flight information into flight information displays and baggage information displays, (iii) use commercially reasonable efforts to notify AUTHORITY at least thirty days (30) in advance of planned schedule changes, including but not limited to equipment changes, flight times, and number of flights, (iv) comply with TSA regulations regarding inbound baggage, and (v) notify AUTHORITY of disruptions and operational or equipment changes that may materially impact AUTHORITY.

14.3 **Non-Disturbance and Conduct of Employees**

AIRLINE shall exercise reasonable control over the conduct, demeanor and appearance of its employees, agent, representatives, contractors, suppliers and vendors in an orderly and proper manner and in accordance with the AUTHORITY's rules and regulations and Airport Security Program but only to the extent permitted by law or any applicable collective bargaining agreements or applicable contracts.

14.4 Sale of Equipment and Supplies

AIRLINE shall have the right to sell, dispose, or exchange its Aircraft, engines, accessories, gasoline, oil, grease, lubricants, fuel and other equipment, or supplies, subject to any limitations contained herein. AIRLINE shall not conduct a separate business at the Airport, but shall only perform such functions as are incidental to the operation of its Air Transportation Business. AIRLINE shall not sell aviation fuels or propellants except (i) to a wholly owned subsidiary company, parent company, or a successor company; (ii) for use in Aircraft of others which are being used solely in the operations of AIRLINE; or (iii) to others when a comparable grade and type of fuel desired by others is not available at Airport except from AIRLINE.

14.5 Purchase of Supplies or Services

AIRLINE shall purchase supplies or services from persons or companies subject to the AUTHORITY's right to require said providers to secure a permit to conduct such commercial activity at the Airport, pay the required fees, and abide by all reasonable rules and regulations established by AUTHORITY. No discriminatory limitations or restrictions shall be imposed by AUTHORITY that interfere with such purchases. However, nothing in this Agreement shall be construed to permit AIRLINE to store fuels at the Airport. The granting of the right to store fuels shall be subject to the execution of a separate agreement between AIRLINE and AUTHORITY.

14.6 Off-Gate Service, Repair and Storage

AIRLINE shall only engage in the servicing, maintenance and repair, remote "off-gate" overnight, and extended duration storage of AIRLINE's Aircraft in areas on the Airport designated by AUTHORITY for such purposes. Use of the areas shall be subject to availability and to payment of applicable fees and charges established for their use.

14.7 Loading and Unloading

AIRLINE may load and unload persons, property, cargo and mail by motor vehicles or other means of conveyance as AIRLINE may desire in the operation of its Air Transportation Business, at locations designated by AUTHORITY. AIRLINE may designate the particular carrier or carriers which are legally authorized to conduct such services to, from, and the Premises on the Airport. However, AUTHORITY reserves the right to require such carrier or carriers to secure a permit from AUTHORITY to conduct such activity at Airport and to abide by all reasonable rules and regulations established by AUTHORITY.

14.8 Signs

At AIRLINE's sole cost and expense, AIRLINE may install on the walls behind ticket counters leased by AIRLINE, identifying and company logo signs customarily installed by AIRLINE in such areas at comparable airport facilities. All such signs of whatever number, size, design, color, nature or location shall require the written approval of Director, not to be unreasonably withheld prior to their installation. Signs of any type may not be attached or affixed in any fashion to the front of ticket counters or upon glass surfaces. The general type and design of such signs shall be harmonious and in keeping with the pattern and decor of the Terminal areas and shall conform to the TCAP Manual. Installation of such signs shall not damage walls, and wall penetrations are subject to the prior coordination and approval of the AUTHORITY.

AIRLINE shall not erect, install, operate, nor cause or permit to be erected, installed, or operated upon any non-leased premises of the Airport, any signs, banners, branding or other similar contrivances for its own business, or the business of others without the AUTHORITY's prior written approval. This provision shall not have the effect of limiting or restricting AIRLINE's right to enter into an agreement with AUTHORITY'S authorized and permitted advertising contractor for the display of informational, marketing or advertising media at approved designated locations on Airport.

14.9 **Communications**

AIRLINE may install, maintain and operate such radio, communication, computer, meteorological and aerial navigation equipment and facilities in, on and about the Premises as may be reasonably necessary in the opinion of AIRLINE for operation of its Air Transportation Business. The location and installation of such equipment and facilities shall require the prior written approval of Director. The placement and type of installations which may be authorized by the Director shall not interfere with air navigational aids, frequencies or signals, create an airspace obstruction hazard to air navigation, void/nullify roofing or other warranties, or interfere with similar rights granted to other tenants or governmental agencies. The Director may require immediate removal, relocation, or modification at the sole cost of AIRLINE to eliminate such interference or obstruction.

AUTHORITY will grant such rights of way as may reasonably be required by AIRLINE for communications, computer equipment, telephone, power and other transmission lines in and between the Premises of the Terminal and other areas of Airport under exclusive control through a separate agreement. The location of and changes for such rights of way shall be designated by Director and may be subject to rates and charges.

14.10 **In-Flight Food and Beverage Preparation**

Subject to any restrictions in AUTHORITY's existing agreement(s) with its food and beverage service provider(s), the right to prepare and package food and beverages to be consumed on aircraft operated by AIRLINE.

14.11 **Other Rights.**

AIRLINE, its affiliated entities, subsidiaries, partners, employees, agents, representatives, contractors, and subcontractors, shall not transact or otherwise engage in any other activities, business, and/or services on or from the Premises, except as described in this Agreement, unless such is provided by a separate written approval, or amendment to this Agreement, and subject to approval by AUTHORITY.

14.12 **Right to Charge Fees**

AUTHORITY expressly reserves the right to assess and collect reasonable fees from third parties operating at the Airport and providing commercial services to AIRLINE including, but not limited to, in-flight catering, vending, ground transportation, ground equipment maintenance and service, aircraft maintenance and service, fueling, aircraft deicing/anti-icing, aircraft ground handling,

baggage delivery, wheelchair services, curbside check-in, and other services provided to AIRLINE.

15. EXCLUSIONS AND RESERVATIONS

15.1 Advertising

AUTHORITY reserves the right to install advertising and revenue generating devices, including vending machines, in Joint Use Premises. Such installations shall not unreasonably interfere with AIRLINE's operations or substantially diminish the square footage contained in Premises.

15.2 Capacity and Capability

Director may prohibit the use of the AOA and any paved surface thereon by any Aircraft operated or controlled by AIRLINE which exceeds any design strength, capacity or limitations of the surface.

15.3 Disabled Aircraft

AIRLINE shall promptly remove its disabled Aircraft from the AOA and Terminal Aircraft Parking Aprons as soon as proper clearance is obtained from the appropriate governmental authorities, if applicable. AIRLINE shall then place such disabled aircraft in a storage area designated by AUTHORITY on the Airport. In the event AIRLINE fails to remove its disabled aircraft as expeditiously as possible under the circumstances, AUTHORITY may cause the removal and storage of such aircraft. AIRLINE shall only store disabled aircraft in areas on the Airport designated by AUTHORITY for storage of such aircraft and for such length of time as authorized by AUTHORITY. In the event AIRLINE fails to remove its disabled aircraft from a designated storage area on or before the expiration of the period of time authorized by AUTHORITY, AUTHORITY shall advise AIRLINE of AUTHORITY's intent to remove such disabled aircraft no less than thirty (30) days prior to the written notification. In the event AUTHORITY causes AIRLINE's disabled aircraft to be removed from Aircraft Parking Apron or from storage, AIRLINE shall pay AUTHORITY for the costs of removing the disabled aircraft, plus a twelve percent (12%) administrative fee, which shall be payable within thirty (30) days of the date of AUTHORITY's invoice.

15.4 Interference

AIRLINE shall not do or permit to be done anything that may interfere with the effectiveness or accessibility of the drainage, sewerage, water, communications, or fire protection systems or any other part of the utility, electrical, or other systems installed or located from time to time at Airport.

15.5 Public Communications

AUTHORITY further reserves the right to install pay telephones and public access, internet facilities in any part of Terminal. AUTHORITY shall be entitled to all income generated by such telephones, devices and services and to reasonable access upon Premises to install or service such telephones and devices. AUTHORITY shall coordinate with AIRLINE as to the location of such

devices and consent of AIRLINE shall not be unreasonably withheld.

15.6 **Risk**

AIRLINE shall not, by act or failure to act, shall cause the termination or violate the provisions of any policy of insurance for AUTHORITY. AIRLINE shall not cause a hazardous condition so as to increase the risks normally associated with operations permitted by this Agreement. If AIRLINE shall cause an increase in the premiums for insurance for AUTHORITY, then AIRLINE shall immediately upon demand by Director pay the amount of such increase. If such AIRLINE's act or failure to act shall cause termination of any policy, then AIRLINE shall immediately upon notification by Director to obtain reinstatement or reasonable replacement of said insurance. If such coverage is not commercially feasible, AIRLINE shall mitigate the effects of its action or inaction to the extent reasonably possible.

15.7 **Third Parties**

The rights and privileges granted to AIRLINE in this Agreement to contract with third parties for obtaining services and materials are subject to restrictive agreements, franchises, licenses, and other rights previously granted by AUTHORITY to fixed base operators, ground transportation carriers and other providers of services and materials. Copies of such agreements are available for inspection by AIRLINE at the office of the Director.

15.8 **Persons Other Than AIRLINE**

No right granted to AIRLINE under this Agreement shall authorize any other entity to occupy space or provide services on the Airport without first obtaining the written permission from AUTHORITY allowing such space to be occupied or service to be provided and the payment of all applicable rentals, fees, and charges. AUTHORITY shall have the right to charge any entity leasing space or providing services on the Airport appropriate rentals, fees, and charges whether such services are provided to AIRLINE or to other Airport tenants.

15.9 **Waste Material**

AIRLINE, its employees, agents or contractors shall not dispose of any waste material taken from Aircraft or products used (whether liquid or solid) with respect to its Aircraft into the sanitary or storm sewers at the Airport unless such waste material or products are first properly treated by, or are processed in equipment installed or approved by AUTHORITY for such purposes.

15.10 **Food and Beverage**

Except for any sales that may occur on AIRLINE's Aircraft, AIRLINE shall not maintain or operate in the Terminal or elsewhere at Airport a cafeteria, restaurant, bar or cocktail lounge for the purpose of selling food and beverages to the public or to its employees and passengers, nor shall AIRLINE in any manner otherwise provide for the sale of food and beverages at Airport.

15.11 **Vending Machines**

AIRLINE shall not be allowed to install any type of vending machines in AIRLINE's non-public, Exclusive Use Premises or elsewhere on the Airport, without prior written approval by the Director.

15.12 **General Public**

AUTHORITY reserves the right to establish lawful rules and regulations governing access of the general public, including AIRLINE's passengers, to public areas in the Terminal. Such rules and regulations shall not unreasonably interfere with the operation of AIRLINE's Air Transportation Business, or alter the access rights provided for elsewhere in this Agreement. The parties agree that lawful and reasonable rules and regulations imposed for the safety and security of passengers do not unreasonably interfere with AIRLINE's operations.

16. ACCOMODATION OF REQUESTING AIR TRANSPORTATION COMPANIES

16.1 **Accommodation in Preferential Use Gates and Aircraft Parking Apron.**

In order to maximize the use of all leased gates and Aircraft Parking Apron, and to facilitate the entry of new and the expansion of existing Air Transportation Companies at the Airport, AIRLINE shall, on the direction of the Director, accommodate Requesting Air Transportation Companies in AIRLINE's Preferential Use Premises. In order to ensure uniform treatment of all Air Transportation Company tenants at the Airport, the following procedure shall be observed in the accommodation of Requesting Air Transportation Companies:

a. In order to secure the use of terminal facilities, a Requesting Air Transportation Company shall notify the Director of its wish to be accommodated on the Airport. AUTHORITY shall attempt to accommodate the Requesting Air Transportation Company on a Common Use Gate.

b. If the Requesting Air Transportation Company was not accommodated at a Common Use Gate or other facilities, the Director shall notify the Signatory Airlines that the Requesting Air Transportation Company is seeking accommodation at the Airport. If the Requesting Air Transportation Company is not accommodated by an Air Transportation Company tenant within fifteen (15) days, the Director shall select AIRLINE or another Air Transportation Company tenant at the Airport to accommodate the Requesting Air Transportation Company, taking into consideration all relevant factors, including, but not limited to, current utilization of Preferential Use Gates pursuant to the Departures/Gate calculation in Section16.2, schedule compatibility, and union work rules. Once a decision is made, the Director shall send written notice to the Air Transportation Company selected to accommodate the Requesting Air Transportation Company to begin accommodating such Requesting Air Transportation Company within thirty (30) business days of receiving notice directing such accommodation unless it can be shown to the satisfaction of the Director that a longer period of time will be necessary in order to accommodate schedule or other operational changes. The Director shall include in such notice the basis for its decision. The decision of the Director shall be final.

   If the Requesting Air Transportation Company cannot be accommodated as so described, the Director may reallocate an airline's premises as described in Section 16.2. The decision

to accommodate or relocate is at the sole discretion of the Director.

c. AIRLINE shall, if selected to accommodate a Requesting Air Transportation Company, begin accommodating such Requesting Air Transportation Company's operations on the specified Preferential Use Premises within the period described in Section 16.1(b). AIRLINE shall perform such accommodation in good faith and in a reasonable and equitable manner; provided, however, in case of a conflict between the schedules of AIRLINE and the Requesting Air Transportation Company; AIRLINE shall have priority in the use of its Preferential Use Premises during periods of Active Loading and Active Unloading. Requesting Air Transportation Company shall not have the rights to use AIRLINE's Personal Property. AIRLINE shall remove its Aircraft promptly from its Gates (if such Gates must accommodate a Requesting Air Transportation Company, when they are not being loaded or unloaded, in order to make such Gates available for the use of the Requesting Air Transportation Company. AUTHORITY shall require the Requesting Air Transportation Company to minimize its use of Gates at which it is accommodated and shall remove its Aircraft promptly, when they are not being loaded or unloaded, in order to make such Gates available for use by AIRLINE.

   i. **Indemnification.** During the period of and in connection with any such accommodation, AUTHORITY shall require the Requesting Air Transportation Company to agree in writing to indemnify AUTHORITY and AIRLINE in the manner and to the extent required of AIRLINE pursuant to Section 31 and name AIRLINE as an additional insured on its liability insurance.

   ii. **Payment by Requesting Air Transportation Company**. AIRLINE may assess the Requesting Air Transportation Company reasonable rentals, fees, and charges for an accommodation which rentals, fees, and charges shall be no more than one hundred and fifteen percent (115%) of AIRLINE's costs for the Premises. AIRLINE may require a reasonable security deposit from the Requesting Air Transportation Company not to exceed two (2) months of payments from the Requesting Air Transportation Company. In the event of a payment default by the Requesting Air Transportation Company, AIRLINE shall institute termination procedures in the following manner: (i) AIRLINE shall certify such payment default to AUTHORITY; (ii) AUTHORITY shall have fifteen (15) days in which to pursue appropriate remedies against the Requesting Air Transportation Company; and (iii) if, after such fifteen (15) day period, the Requesting Air Transportation Company remains in default, AIRLINE may terminate the Requesting Air Transportation Company's use of AIRLINE's Premises immediately.

16.2 **Reallocation of Premises**

In the event a Requesting Air Transportation Company cannot be accommodated under Section 16.1, AUTHORITY may reallocate an AIRLINE's Premises. For the most recent monthly period for which Aircraft departures data is available, AUTHORITY will calculate the average jet aircraft departures-per-gate per day (Departures/Gate) index for each Signatory Airline that has Preferential Use holdroom space, including its approved subtenants if that subtenant notifies AUTHORITY that it seeks to have its departures included in the tenant Signatory Airline's

Departures/Gate calculation. Departures shall be calculated by AUTHORITY using Aircraft departures as reported by the AIRLINE to AUTHORITY and the AIRLINE's number of Preferential Use holdroom(s) and co-located passenger boarding bridge(s). Signatory Airline productivity will be ranked from most productive to least productive according to this index. AUTHORITY shall have the right to reallocate any part of or all of the Premises leased to AIRLINE taking into consideration all relevant factors, including, but not limited to, co-located Gates leased by AIRLINE or AIRLINE's code-share Air Transportation Companies, if (i) AUTHORITY determines that there is a reasonable need for the use of such space by another Air Transportation Company, and (ii) AIRLINE has a Departure/Gate ranking less than the fiftieth (50th) percentile for the group of Signatory Airlines subject to the Departure/Gate ranking. AUTHORITY shall notify AIRLINE thirty (30) days in advance of any reallocation of AIRLINE's Premises.

16.3 Reimbursement for Investment in Reallocated Space

In the event of a reallocation of AIRLINE's Premises, AUTHORITY shall reimburse AIRLINE for the undepreciated or unamortized capital cost of any Improvements or Fixtures made by AIRLINE in such reallocated space and for reasonable moving expenses.

17. NON-EXCLUSIVE USE OF CERTAIN FACILITIES

AUTHORITY grants the AIRLINE, in common with other users, the non-exclusive use of all facilities, improvements and services which are provided at the Airport in common use areas. This use is limited to the purposes for which such facilities were designed and constructed and is available only from time to time and on a non-exclusive use basis, according to the discretionary operational decisions of AUTHORITY. These facilities include, but are not limited to roadways, streets, ramps, taxiways, runways, access gates, lighting, beacons, navigational aids, or other conveniences for aeronautical operations.

18. MAINTENANCE AND REPAIRS

18.1 AIRLINE'S Maintenance and Repair Obligations

Except as set forth in Section 18.3, AIRLINE shall be obligated, without cost to the AUTHORITY, to maintain the Premises, Improvements, facilities and equipment therein, together with all Personal Property in good repair, safe condition, and in a clean and orderly condition and appearance at all times. AIRLINE shall keep the areas immediately adjacent to the exits and entrances of the Premises clean, safe, orderly and free of obstructions, impediments or safety hazards, and shall promptly notify AUTHORITY of any safety hazards it observes within or near such exit/entrance surfaces that are the responsibility of the AUTHORITY to maintain.

AIRLINE shall be responsible at its sole cost and expense for repair or replacement of any facilities, fixtures, equipment or systems due to damage caused by the AIRLINE, its officers, partners, employees, agents, contractors, subcontractors, licensees, sub-lessees or invitees and not considered Normal Wear and Tear, whether such damage occurs within the Exclusive Premises or Preferential Use Premises or otherwise in the Airport.

AIRLINE shall be responsible for payment of all maintenance, repair and cleaning as required under Exhibit I unless covered by AUTHORITY's insurance or warranty.

Any doors, hardware, equipment, electrical components, bulbs, ballast, tubes, switches, or any other fixtures which may be repaired or replaced by the AIRLINE must be equal and identical to that replaced, or if different, shall be approved in advance by the AUTHORITY.

In addition to the other obligations of AIRLINE set forth in this Agreement, with respect to the AIRLINE's Aircraft Parking Apron, AIRLINE agrees to promptly remove any spilled or deposited petroleum products and the accumulation of oil and grease caused by Aircraft and ground support equipment of AIRLINE, its Affiliate(s) and other Air Transportation Companies operating from AIRLINE's Premises, except those Air Transportation Companies operating on the AIRLINE's Aircraft Parking Apron under a AUTHORITY-designated Accommodation per Section 16.1 hereof. AIRLINE shall also maintain the AIRLINE's Aircraft Parking Apron of the Airport in a safe, neat, clean and orderly manner and place all trash and debris in proper containers approved by AUTHORITY, until properly disposed of in a manner acceptable to AUTHORITY.

The AUTHORITY shall be the sole judge of the quality and timeliness of AIRLINE's maintenance and repairs. The AUTHORITY may at any reasonable time, with prior notice, enter the Premises to determine if satisfactory maintenance and repairs are being performed. If AUTHORITY determines that maintenance and repairs are not satisfactory, AUTHORITY shall so notify AIRLINE in writing. If said maintenance and repairs are not properly performed by AIRLINE within ten (10) calendar days after receipt of written notice from AUTHORITY, or such longer time as may be reasonably required, then AUTHORITY or its agents shall have the right to enter upon the Premises and perform the maintenance and repairs therefore and AIRLINE agrees to reimburse AUTHORITY for the direct costs thereof, plus twelve percent (12%) for administrative fee within thirty (30) days after receipt of AUTHORITY's invoice. In case AUTHORITY observes or receives notification of emergency action necessary to be taken in order to protect against personal injury, property damage or other irreparable harm, AUTHORITY may react without prior notice given to AIRLINE.

Notwithstanding the above provision, any hazardous or potentially hazardous condition shall be corrected immediately when detected by AIRLINE or upon receipt by AIRLINE of verbal or written notice given by AUTHORITY. At the direction of the AUTHORITY or other proper authorities, AIRLINE shall close the Premises (or the affected portion thereof) until such hazardous or potentially hazardous condition is removed, without abatement of rents, fees and charges.

If AUTHORITY must respond to maintenance or repairs of Premises or other Airport property

made the responsibility of the AIRLINE and not considered "Normal Wear and Tear" as AIRLINE's obligations, or responds upon the request of the AIRLINE to the AUTHORITY to perform AIRLINE's obligations contained in this Section, the AUTHORITY shall have the right to invoice a minimum of four (4) hours labor fees for each maintenance staff reasonably required for maintenance or repairs performed outside the hours of 8:00 a.m. to 4:30 p.m. Monday through Friday and holidays, and the AIRLINE shall pay such fees within thirty (30) days after receipt of AUTHORITY's invoice. Labor rates shall be applied in accordance with the then-current published labor rates of the AUTHORITY. Minimum labor fees, and materials, parts or supplies shall also be subject to the administrative overhead fees.

AIRLINE shall be responsible for the removal and disposal of garbage, debris, contaminants and any other waste material (whether solid or liquid) arising out of its occupancy of the Premises, inside or outside the Premises or resulting from its activities and operation anywhere on the Airport. Such removal shall conform to all governmental requirements and regulations, and is understood to include routine clean-up of the Premises. Upon AUTHORITY's demand, AIRLINE shall take prompt corrective actions to remove and dispose of waste material on Premises, and outside the Premises when resulting from its activities and operations.

AIRLINE shall not store materials, equipment or other personal property on, about or adjacent to the Premises or Aircraft Parking Apron if any such items are not fully functional and operational. This includes but is not limited to automobiles, tugs, bag carts, belt loaders, mobile boarding/de-boarding devices, deicing equipment, equipment parts, barrels, tires, empty deicing material containers, and other container or ground service equipment articles similar in nature.

18.2 **Condition of Premises**

AIRLINE agrees to make all repairs (except for the repairs or work which are the specific responsibility of the AUTHORITY pursuant to this Agreement) to the Premises, including the Improvements and Personal Property thereon, and to maintain and keep the Premises in good and safe condition and repair, and to surrender and deliver up the same at the termination of this Agreement in as good order and condition as the same existed at the commencement of the Initial Term of this Agreement or as subsequently improved, Normal Wear and Tear and casualty excepted.

18.3 **AUTHORITY's Maintenance Responsibilities**

AUTHORITY shall be responsible for maintenance, repair and cleaning as required under Exhibit I except for any damage caused by the AIRLINE, its officers, partners, employees, agents, contractors, subcontractors, licensees, sub-lessees or customers, and not considered Normal Wear and Tear:

If repair or replacement is required within areas or to property made the responsibility of AUTHORITY, and the damage was caused or allowed to be caused by the acts or omissions of AIRLINE, its officers, partners, employees, agents, contractors, subcontractors, licensees, sub-lessees or customers and not considered Normal Wear and Tear, the AUTHORITY may charge the cost to the expense of the AIRLINE plus twelve percent (12%) administrative fee after

reasonable notice and the opportunity to dispute such charges or damages. The administrative fee shall be applied to the total cost incurred by the AUTHORITY in performing the task. The administrative fee represents the AUTHORITY's cost to manage the task including procurement services, approval processes, management staff time, supervision and overhead. It does not include a profit component. In case of emergency action taken in order to protect against personal injury, property damage or other irreparable harm, AUTHORITY is authorized to act without notice and shall charge the same cost to the expense of AIRLINE and a twenty percent (20%) administrative fee. These costs and fees shall be paid within thirty (30) days of invoice date.

The AIRLINE shall give the AUTHORITY written notice (or verbal notice in the event of any emergency conditions which may result in harm to the patrons of the Terminal, in which case notice shall be followed by written notice within twenty-four (24) hours) describing any repair, which is the responsibility of the AUTHORITY. The AUTHORITY shall commence the repair process promptly after its receipt of such written notice if the AUTHORITY agrees that such repair is required and is the AUTHORITY's responsibility hereunder.

AUTHORITY shall provide suitable covered dumpsters for the common use of all tenants and concessionaires for disposal of all garbage, trash and other refuse. Piling of boxes, cartons, barrels, pallets or other similar items in an unsightly or unsafe manner on or about the Premises is forbidden. Dumpster lids shall remain closed and secured at all times when garbage disposal is not in progress.

AUTHORITY shall provide suitable exterior storage in a location and size at its sole option for automobiles, tugs, bag carts, belt loaders, mobile boarding/de-boarding devices, deicing equipment, deicing material containers, and other container or ground service equipment articles similar in nature.

19. SNOW REMOVAL

AIRLINE and AUTHORITY agree to remove snow and ice from their respective areas of responsibility shown on Exhibit H. Both parties shall maintain their respective surfaces to a winter surface condition safe for Aircraft operations, and safe for customers and employees moving and working on the ramp. At no time shall AIRLINE engage in snow and ice removal beyond its area of responsibility depicted on Exhibit H without the prior approval of and coordination with the AUTHORITY.

Upon reasonable advance notice given to the AIRLINE by the AUTHORITY, and subject to the AIRLINE's operational need for the Gate, the AIRLINE shall be responsible to remove, relocate or reposition all personal property on the Aircraft Parking Apron to a location that will not block, hinder or preclude the AUTHORITY to perform snow and ice removal on the surfaces for which it is responsible. The AUTHORITY shall provide as much advance notice as reasonably possible during or after a winter precipitation event of its intent to perform snow and ice removal at Aircraft Parking Apron areas. AUTHORITY will be mindful of the AIRLINE's demand for the Gate and

aircraft parking. AIRLINE shall exercise all diligence within its reasonable control to remove, relocate or reposition personal property on the Aircraft Parking Apron, including but not limited to: retracting/repositioning passenger boarding bridge(s); ground service equipment, parking chalks and electrical cables so the AUTHORITY may perform its snow and ice removal obligations. Failure of the AIRLINE to remove, relocate or reposition personal property in the manner and conditions specified in this Section shall relieve the AUTHORITY from its obligations to remove snow and ice at the Aircraft Parking Apron until such time as such property is moved.

Snow piles, windrows or other accumulations of snow shall not:

a. Be closer than twenty five feet from any security fence;

b. Block any access gates or controls;

c. Block or impede any taxiway or taxi lane;

d. Impose an obstruction within the object free area (OFA) of any taxiway or taxi lane;

e. Infringe upon, block or interrupt the business activity or operations of other airport tenants or the AUTHORITY.

Snow piles and accumulations requiring removal may be stored on pre-approved/arranged paved or non-paved areas.

Only FAA approved dry and liquid chemicals may be used for de-icing or snow removal on aircraft operating surfaces, as set forth in Advisory Circular 150/5200-30, current edition, Airport Winter Operations and Safety, Section 4-6 Approved Chemicals, current edition.

AIRLINE use of snow and ice removal contractors may be authorized subject to prior approval of and coordination with the AUTHORITY, and subject to acceptable completion of contractor employee training, and other reasonable safety and security requirements that AUTHORITY may impose, including but not limited to compliance with Airport rules and regulations, and Standard Operating Procedures. All such snow and ice removal contractors shall maintain a general liability insurance policy of not less than two million dollar ($2,000,000) limit, naming AIRLINE, AUTHORITY, and the City of Wichita as additional insureds.

20. CAPITAL IMPROVEMENTS

20.1 Improvements and Development by AUTHORITY

AUTHORITY shall consult with the Signatory Airlines at least annually regarding AUTHORITY's capital improvement plans. AUTHORITY shall give appropriate consideration to the comments and suggestions of the Signatory Airlines with respect to such proposed capital improvements.

On or before October 15 of each Fiscal Year, and at other times prior to the AUTHORITY undertaking capital improvements with a cost in excess of five hundred thousand dollars ($500,000) and allocated to the Airfield or Terminal Cost Centers, AUTHORITY shall provide a briefing to the Signatory Airlines regarding its capital improvement plans. The briefing shall include (i) a description of each proposed capital improvement, together with any available capital and/or operating cost estimates and any available preliminary drawings, (ii) the proposed means and terms of any required financing and the resultant annual Amortization or Debt Service, if any, and (iii) the estimated impact of the proposed capital improvements on Signatory Airline rentals, fees, and charges.

If requested by two (2) or more of the Signatory Airlines, Director shall schedule a meeting, to be held between fifteen (15) days and thirty (30) days after the briefing, to discuss the proposed capital improvements. AUTHORITY shall consider Signatory Airline comments prior to finalizing its capital improvement plans. In any event, AUTHORITY shall have the right to proceed as it, in its sole discretion (duly considering the Signatory Airlines' comments and concerns), believes appropriate.

20.2 Alterations and Improvements by AIRLINE

AIRLINE shall provide, construct and install on the AIRLINE's Premises, at its sole cost and expense, all Improvements (except Improvements to be provided by AUTHORITY pursuant to this Agreement, if any) as AIRLINE deems necessary and appropriate to operate its Air Transportation Business. The quality level, design and appearance of such AIRLINE's Improvements shall conform to the TCAP Manual.

Whenever consistent with this Agreement, AIRLINE shall have the right to construct and install, at its sole expense, Improvements within the Exclusive Use Premises as AIRLINE deems to be necessary for its operations. The plans and specifications, location, and construction schedule for such Improvements shall be approved by Director in writing prior to the commencement of any construction or installation.

Any construction or installation shall be at the sole risk of AIRLINE and shall be in accordance with all applicable state and local codes and laws and subject to inspection by Director.

Any work associated with such construction or installation shall not interfere with the operation of the Terminal or Aircraft Parking Apron.

AIRLINE shall deliver to Director reproducible "as builts", construction documents in electronic form, of AIRLINE Improvements and additions no later than thirty (30) days following the substantial completion of any such Improvements and additions.

All Improvements made to the Premises by AIRLINE shall immediately become the property of AUTHORITY. Any signs and other Personal Property of AIRLINE to Premises shall remain the property of AIRLINE. Removal of these items shall be at AIRLINE's' expense and the methods, means and results shall be subject to Director's approval to protect the operation, integrity and

aesthetics of the Terminal.

20.3 Construction Costs

Prior to the commencement of any such Improvements, AIRLINE shall require contractors to furnish satisfactory evidence of statutory Workers' Compensation insurance, commercial general liability insurance, business automobile insurance, and physical property damage insurance, and builder's risk insurance in such amounts and in such manner as Director may reasonably require. Director may require additional insurance for any alterations or Improvements approved hereunder, in such limits as Director reasonably determines to be necessary. AUTHORITY shall be endorsed in such policies as an additional, non-contributing insured.

21. SUBSEQUENT ALTERATIONS AND IMPROVEMENTS

AIRLINE may, with prior written approval of AUTHORITY, and by lease amendment, if appropriate, add to, improve, or alter, at its own expense, the Premises subject to all conditions set forth herein; provided, however, that the plans and specifications, location, and construction schedule for such improvements shall be approved by AUTHORITY in writing prior to the commencement of any and all such construction or installation. No reduction or abatement of rentals, fees, and charges shall be allowed for any interference with AIRLINE's operations by such construction, and no interference shall be caused with the normal operation of the Airport's other tenants and users. Any such addition or alteration must be designed and constructed in a manner that will not weaken or impair the structural strength or reduce the value or functionality of the Premises or existing improvements thereon and shall be completed in conformity with the TCAP Manual. It shall be the responsibility of AIRLINE to file all necessary alteration and construction forms with the Director of Airports, as the AUTHORITY's representative, for submission to the Federal Aviation Administration for approval.

Any construction or installation shall be at the sole risk of AIRLINE and shall be in accordance with all applicable State and local codes and laws and subject to inspection by AUTHORITY or its designees.

Any improvements made to Exclusive and Preferential Use Premises and additions and alterations thereto made by AIRLINE shall become the property of AUTHORITY on their installation or construction on the Premises; provided, however, that AIRLINE shall have the use of such improvements until this Agreement expires or is terminated. Notwithstanding the foregoing, any trade fixtures, signs, equipment, and other movable Personal Property of AIRLINE not permanently affixed to Exclusive and Preferential Use Premises shall remain the property of AIRLINE.

22. NON-INTERFERENCE WITH AIRPORT OPERATIONS

AIRLINE shall not allow any condition on the Premises, nor permit the conduct of any activity on such Premises, which materially or adversely affects the development, improvement, operation, or maintenance of the Airport or its facilities. AIRLINE shall not use or permit the Premises to be used in any manner which might interfere with the landing and take-off of Aircraft from the Airport or otherwise constitute a hazard to the general public, or to AUTHORITY's tenants or the customers, agents, invitees, contractors, representatives and employees of those tenants.

23. COOPERATION WITH AIRPORT DEVELOPMENT

AIRLINE understands and agrees that AUTHORITY may pursue Airport development, Improvements and maintenance activities from time-to-time that may affect the Premises and other areas of the Airport. AIRLINE agrees to work cooperatively and in good faith with the AUTHORITY and other tenants and contractors in development, Improvement and maintenance activities to minimize any disruptions. If requested by the AUTHORITY, AIRLINE shall cooperate with and assist the AUTHORITY to the greatest extent possible in the development and implementation of any plans, designs, ingress/egress, or transition that may arise in connection with such Airport development, Improvement, and maintenance activities. AUTHORITY may temporarily or permanently close, re-route, or consent to the closing or re-routing of any method of ingress or egress on the Airport, so long as the means of ingress and egress are reasonably equivalent to current access available to AIRLINE. AUTHORITY may temporarily close paved surfaces or portions thereof for purposes of maintenance, replacement, re-construction or expansion. Exercise by AUTHORITY of any such Airport development, Improvement, or maintenance activities shall be without direct expense to the AIRLINE. AUTHORITY retains the absolute right to maintain, repair, develop, expand or replace utilities, ramps, taxiways, runways, streets, sidewalks and any other Airport facility or Improvement. AIRLINE accepts the need for such activities and agrees that it will not assert a claim for consequential damages arising from these activities for loss of business or damage of any nature.

24. SURRENDER OF PREMISES

24.1 Surrender and Delivery

AIRLINE shall promptly yield and deliver to AUTHORITY possession of the Premises at the expiration or termination of this Agreement in good condition in accordance with AIRLINE's obligations in this Agreement, except for reasonable wear and tear, or fire or other casualty. Before delivering the Premises to AUTHORITY, AIRLINE shall, at its expense, deliver the Premises in good order and condition, including, but not limited to:

a. clean and remove from the Premises all waste and refuse generated by AIRLINE;

b. remove from the Premises all of AIRLINE's Personal Property;

c. comply with all environmental covenants;

d. leave in operating condition all bulbs and ballasts; and

e. replace all broken glass.

24.2 **Removal of Property**

AIRLINE shall have the right at any time during the term of this Agreement to remove from Airport its Aircraft, tools, equipment, and other Personal Property, title to which shall remain in AIRLINE unless otherwise set forth in this Agreement. AIRLINE and shall remove such Aircraft, tools, equipment, and other Personal Property within fifteen (15) days following termination of this Agreement, whether by expiration of time or otherwise on such property subject to any valid statutory or contractual landlord's liens which AUTHORITY may have for unpaid rentals, fees and charges. Notwithstanding anything in this Agreement to the contrary, AUTHORITY hereby (a) waives its rights to any statutory and contractual landlord's liens on Aircraft and (b) subordinates all statutory and contractual landlord's liens to any liens or security interests covering tools, equipment, and other Personal Property in favor of third-party lenders providing financing to AIRLINE or its Affiliates (including purchase-money financing). AIRLINE shall not abandon any portion of its property without the written consent of AUTHORITY.

Any and all property not removed by AIRLINE within fifteen (15) days following termination of this Agreement shall, at the option of AUTHORITY, become the property of AUTHORITY at no cost to AUTHORITY. All AUTHORITY's property damaged by or as a result of the removal of Personal Property shall be restored by AIRLINE to the condition existing before such damage at AIRLINE's expense.

25. REMOVAL AND DEMOLITION

AIRLINE shall not remove or demolish, in whole or in part, any Improvements upon the Premises without the prior written consent of the AUTHORITY. AUTHORITY may, at its discretion, condition such consent upon the obligation of AIRLINE to replace the Improvements with another reasonable Improvement specified in such consent. AIRLINE shall obtain written consent before commencing demolition and restoration as described under Section 45. Failure to obtain this consent shall entitle the AUTHORITY to such compensation as is necessary to restore the affected Improvements, plus additional twenty percent (20%) administrative fees, payable as additional rent within thirty (30) days after receipt of AUTHORITY's invoice.

26. DAMAGE OR DESTRUCTION

In the event that facilities or Improvements on the Premises are substantially damaged during the term of this Agreement, this Agreement shall remain in full force and effect and AUTHORITY shall proceed with due diligence to repair, restore, rebuild or replace said damaged property to its condition immediately prior to such damage. AUTHORITY may receive AIRLINE's approval to replace damaged Improvements with Improvements of a different design or character.

In the event the Improvements are damaged by casualty and such damage, exceeds fifty five percent (55%) of the value of the property as it existed prior to the casualty loss, AUTHORITY shall have the choice not to repair, restore, rebuild or replace the Improvements. AUTHORITY shall give written notice of this choice to AIRLINE within 180 calendar days after the occurrence of such event. Upon this written notice, this Agreement shall be terminated effective as of the date the notice is delivered. AIRLINE shall continue to have the obligation to pay any sums due to the date of termination, and the obligation to satisfy damages arising from any negligent or intentional action of itself, its employees, agents, contractors, or customers to the extent not covered by insurance proceeds. Otherwise, neither party shall have any further rights or obligations under this Agreement. All of the insurance proceeds shall be paid to AIRLINE and AUTHORITY in pro-rata distributions as their interests may appear based upon the fair market value of each party's interest at the time the proceeds are received. Where allowed by the insurance policy, insurance proceeds shall first be applied to removal of damaged Improvements from the Premises before such distribution.

27. PERSONAL PROPERTY

Any Personal Property of AIRLINE or others placed in or upon the Premises shall be at the sole risk of the AIRLINE. AUTHORITY shall not be responsible or liable for any loss, damage and replacement of personal property, unless caused by AUTHORITY, its officers, agents, or employees, and the AIRLINE waives all rights of subrogation against recovery from the AUTHORITY for such loss or damage.

28. TITLE TO FACILITIES, IMPROVEMENTS AND FIXTURES

Title to all Improvements, structures, fixtures and facilities, constructed or permanently affixed to the Premises shall be, and shall remain, exclusively with AUTHORITY.

29. TAXES

AIRLINE agrees to pay all and special assessments levied or assessed now or in the future:

a. upon taxable property owned or possessed by AIRLINE and situated on the Premises; and

b. upon AIRLINE's interest in or its use of the Premises. AIRLINE shall defend, indemnify and save the Wichita Airport Authority and the City of Wichita, Kansas harmless from any claims or liens in connection with such taxes, obligations in lieu of taxes or assessments.

AIRLINE shall promptly pay all taxes, excises, assessments and fees and permit fees of whatever nature that apply to its operation of Premises. AIRLINE may choose at its own cost and expense, to contest any such tax, excise, fee, or assessment. AIRLINE shall keep current all Federal, State or local licenses, operating certificates or permits required for the conduct of its operations. AIRLINE warrants to AUTHORITY that it has obtained all license, franchise, operating certificates or other agreements or permits necessary to operate AIRLINE's operation in accordance with the terms of this Agreement. AIRLINE shall keep all such licenses, franchises, permits, operating certificates and other agreements in full force during the Term of this Agreement.

30. LIENS

AIRLINE shall take commercially reasonable steps to avoid the imposition of any lien upon the Premises. Should any lien be placed on the Premises, AIRLINE shall remove any and all liens of any nature. This obligation includes, but is not limited to, tax liens and liens arising out of or because of any financing, construction or installation, whether labor or materials, performed for the benefit of AIRLINE by any of its contractors or subcontractors or their vendors. Should any such lien be filed, AIRLINE shall bond against or discharge the same within thirty (30) calendar days after actual notice of the same from any source, and provide written proof of discharge or bonding to AUTHORITY within that time. AIRLINE acknowledges that its interest in the Premises is a leasehold, and that notwithstanding its construction of Improvements on the Premises, the AUTHORITY holds title to the Improvements, and that AIRLINE has no equity interest in the Premises which can support a mortgage lien. However, any Improvement constructed shall be deemed to be for the exclusive benefit of AIRLINE. AIRLINE shall not mortgage or pledge as collateral its leasehold interest without the prior written consent of the AUTHORITY.

AUTHORITY may consent, upon AIRLINE's written request, to an assignment of rents to a governmentally regulated and insured commercial lender as partial security for financing of AIRLINE's activities on the Premises. Any such assignment is intended to be a present transfer to such lender of all of AIRLINE's rights to collect and receive rents and charges from approved users, operators, and permitees. Lender(s) shall have no rights to assign this Agreement or sublease the Premises without the prior written consent of the AUTHORITY. Upon AIRLINE's written

consent, AUTHORITY agrees to give Lender(s) notice of any default or termination of the Agreement, and allow Lender(s) the same opportunity as the AIRLINE under the Agreement to correct any condition or cure any default. Nothing in this Section relieves the AIRLINE of its obligations under this Agreement.

31. INDEMNITY

AIRLINE shall indemnify, hold harmless, and defend AUTHORITY, the City, and their respective officials, agents, employees, successors and assigns (collectively, the "Indemnified Parties") from and against all liability for any claims, loss, damage, liability and actions by reason of injury or death of any person, or damage to any property, or other liability loss including all reasonable expenses incidental to the investigation and defense thereof, arising out of or resulting from any intentional or negligent acts or omissions of AIRLINE, its Affiliates, agents, employees, licensees, successors assigns, and customers while in, on or about the Premises or Airport; or in connection with AIRLINE's use and occupancy of or operations on the Premises or from its use of the Airport, except to the extent such injury, damage, or loss arises from the negligence or willful misconduct of AUTHORITY, its agents or employees, licensees, successors and assigns.

AIRLINE shall indemnify, hold harmless, and defend the Indemnified Parties from and against all liability for any claims, loss, damage, liability and all expenses incidental to the investigation and defense thereof, including all fines or penalties in any way arising out of or resulting from the violation of any federal, state, or municipal laws, statutes, ordinances, or regulations, by AIRLINE or its Affiliates, agents, employees, licensees, successors and assigns, or those under its control.

The provisions of this Section shall survive the expiration, termination or termination of this Agreement, with respect to occurrences during the term of this Agreement.

32. INSURANCE AND SUBROGATION

During the Term of this Agreement, AIRLINE shall provide, pay for and maintain with companies reasonably satisfactory to AUTHORITY, the types of insurance described in this Agreement. All insurance shall be issued by responsible insurance companies eligible to do business in the State of Kansas.

All liability policies shall provide that the City of Wichita, the AUTHORITY, and its directors, officers and employees as Additional Insured to the extent of AIRLINE's contractual obligations hereunder. The insurance coverage and limits required shall be evidenced by properly executed certificates of insurance. In addition, certified copies or originals of AIRLINE's insurance policies

providing the coverage required by this Agreement shall be made available for AUTHORITY's inspection in AIRLINE's offices in the Terminal upon reasonable request by AUTHORITY, subject to AIRLINE's prior receipt of appropriate confidentiality assurances from AUTHORITY and its representatives to protect AIRLINE's proprietary interest in such policies. The required policies of insurance shall be construed in accordance with the laws of the State of Kansas.

If at any time AUTHORITY requests a written statement as to any impairments to the aggregate limit, AIRLINE shall promptly authorize and have delivered such statement to AUTHORITY. AIRLINE authorizes AUTHORITY and its insurance consultant to confirm with AIRLINE's insurance agents or brokers all information furnished AUTHORITY, as to its compliance with its insurance requirements.

All required insurance coverage of AIRLINE shall be primary to any insurance or self-insurance program of AUTHORITY.

The acceptance of or delivery to AUTHORITY of any certificate of insurance evidencing the insurance coverages and limits required in this Agreement does not constitute approval or acceptance by AUTHORITY that the insurance requirements in this Agreement have been met.

No operations shall commence at the Airport unless and until the required certificates of insurance are in effect and approved by AUTHORITY.

The insurance coverages and limits required of AIRLINE under this Agreement are designed to meet the minimum requirements of AUTHORITY. They are not designed as a recommended insurance program for AIRLINE. AIRLINE alone shall be responsible for the sufficiency of its own insurance program. Should AIRLINE have any question concerning its exposures to loss under this Agreement, or the possible insurance coverages needed therefor, it should seek professional advice.

AIRLINE and AUTHORITY mutually understand and agree in accordance with industry standards that the minimum limits of the insurance herein required may from time to time become inadequate, and AIRLINE agrees that it will increase such minimum limits upon receipt of written notice. AIRLINE shall furnish AUTHORITY, within sixty (60) days of the effective date thereof, a certificate of insurance evidencing such insurance is in force.

AIRLINE's insurance companies or its authorized representative shall give AUTHORITY prior written notice of any termination, intent not to renew, or adverse reduction in any policy's coverage equal to that owed to AIRINE under the policy terms, except in the application of the Aggregate Limits Provisions. In the event of a reduction to the Aggregate Limit, it is agreed that immediate steps will be taken to have it reinstated. Said notices shall be sent pursuant to Section 45 of this Agreement.

Renewal Certificates of Insurance must be provided to AUTHORITY as soon as practical. AIRLINE shall maintain continuous insurance coverage as required by this Agreement, and such coverage shall be listed on the certificate provided.

Should at any time AIRLINE fail to provide or maintain the insurance coverages required in this Agreement, AUTHORITY may terminate or suspend this Agreement at AUTHORITY's sole discretion.

The amounts and types of insurance shall conform to the following minimum requirements. The wording of all policies, forms and endorsements must be reasonably acceptable to AUTHORITY.

Workers Compensation and Employer's Liability Insurance shall be maintained in force by AIRLINE during the Term of this Agreement for all employees engaged in the operations under this Agreement. The limits of coverage shall not be less than:

Workers Compensation	Kansas Statutory
Employer's Liability	$1,000,000 Limit Each Accident
	$1,000,000 Limit Disease Aggregate
	$1,000,000 Limit Disease Each Employee

Airline/General Liability Insurance shall be maintained by AIRLINE for the life of this Agreement. Coverage shall include, but not be limited to, Premises, Personal Injury, Contractual for this Agreement, Independent Contractors, Broad Form Property Damage, Products and Completed Operations Coverage and shall not exclude the (XCU) Explosion, Collapse and Underground Property Damage Liability Coverage. Coverage shall be applicable to the operation of all licensed and unlicensed motor vehicles and ground equipment operating within the AOA at the Airport. The Completed Operations Coverage shall be maintained for a period of not less than three (3) years following final operations of AIRLINE under this Agreement. The limits of coverage shall not be less than:

Bodily & Personal Injury	$100,000,000 Combined Single Limit
& Property Damage Liability	Each Occurrence & Aggregate
Personal Injury (non-passengers)	$25,000,000 Each Occurrence & Aggregate

Aircraft Liability Insurance shall be maintained by AIRLINE during the Term of this Agreement for all owned, non-owned, leased or hired Aircraft, including passenger coverage. The limits of coverage shall not be less than:

Bodily & Personal Injury	$100,000,000 Combined Single Limit
& Property Damage Liability	Each Occurrence & Aggregate
Personal Injury (non-passengers)	$25,000,000 Each Occurrence & Aggregate

Business Automobile Liability Insurance shall be maintained by AIRLINE during the Term of this Agreement as to the ownership, maintenance, and use of all owned, non-owned, leased or hired vehicles. The limits of coverage shall not be less than:

Bodily & Personal Injury	$5,000,000 Combined Single Limit
& Property Damage Liability	Each Occurrence & Aggregate

Umbrella Liability Insurance or Excess Liability Insurance may be used to reach the limits of liability as stated above for the Airline/General Liability Policy, Aircraft Liability and the Business Automobile Policy. Without regard to drop down coverage, the Umbrella or Excess Coverage for General and Airline or Aircraft Liability shall be not less than:

Umbrella or Excess Liability Policy	$200,000,000 Combined Single Limit Each Occurrence & Aggregate-Not Specific for this Agreement
Personal Injury (non-passengers)	$25,000,000 Each Occurrence & Aggregate

If Excess Liability or Umbrella Liability Insurance is used to reach the required limits of liability above, the Primary Liability Limits for the underlying Airline/General Liability Coverage shall be no less than:

Bodily & Personal Injury & Property Damage Liability	$10,000,000 Combined Single Limit Each Occurrence & Aggregate

Furniture, Fixtures and Equipment (FF&E) Insurance shall be maintained by AIRINE during the Term of this Agreement for all leasehold improvements used in or on the Premises and for personal property maintained or used on the Premises. The limits of coverage shall be at the discretion of AIRLINE, but AIRLINE expressly waives all right of repair or replacement from AUTHORITY on such property due to casualty loss caused by persons other than AUTHORITY's employees, agents or contractors.

All insurance policies other than Worker's Compensation coverage above shall contain a standard cross-liability provision and the inclusion of AUTHORITY and the City of Wichita, Ks. as an additional insureds. This Agreement is not intended to, and shall not, make AUTHORITY a partner or joint venturer with AIRLINE in AIRLINE's operations on the Airport. For all policies listed above, AUTHORITY shall have no liability for any premiums charged for such coverage and such policies shall also insure AIRLINE against the risks to which it is exposed as the operator of the business authorized under this Agreement.

33. ENVIRONMENTAL COVENANTS

AIRLINE represents, warrants, and covenants the following:

AIRLINE has obtained and throughout the term of this Agreement shall obtain and maintain all applicable licenses, permits, registrations and other authorizations and approvals for AIRLINE's operations on the Premises as required under applicable environmental laws and shall provide any notices required under environmental laws for conducting its operations at the Airport during the term of this Agreement. AIRLINE shall require its employees, contractors, subcontractors, agents,

licensees, and other parties under AIRLINE's direction or control to obtain and maintain all applicable licenses, permits, registrations and other authorizations required by environmental laws in order to conduct their operations and activities at the Airport, including but not limited to construction, and to comply with all applicable environmental laws pertaining to its and their use of and operations at the Airport.

AIRLINE's environmental compliance shall include compliance with any current or future federal, state, or local law, statute or regulation pertaining to protection of the environment that is applicable of AIRLINE's operation, storage or use of substances (hazardous or otherwise), or to the activities of AIRLINE's employees or contracted vendor's on the Premises or the Airport. AIRLINE shall provide AUTHORITY upon request copies of any plan, training program, training records, safety data sheets or any other documentation required by said laws. In addition, a copy of AIRLINE's Stormwater Pollution Prevention Plan and/or Spill Prevention Control and Countermeasure Plan to the extent such plans are required under applicable law, shall be submitted to the AUTHORITY upon request. If needed, Stormwater best management practices (BMPs) shall be installed and maintained as described under AIRLINE's Stormwater Pollution Prevention Plan and Countermeasure Plan.

Neither AIRLINE nor AUTHORITY shall install or permit to be installed in the Premises friable asbestos, electrical equipment containing polychlorinated biphenyls (PCBs), or any substance containing asbestos and deemed hazardous by federal or state regulations applicable to the Premises and respecting such material.

If, during the term of this Agreement, the AIRLINE receives any notice of (i) the happening of any event (other than in the ordinary course of business and in compliance with all applicable laws), involving the spill, release, leak, seepage, discharge or cleanup of any substance (hazardous or otherwise) on the Premises or in connection with the AIRLINE's operations thereon or (ii) any complaint, order, citation or notice with regard to air emissions, water discharges, or any other environmental, health, or safety matter affecting the AIRLINE's operations on the Premises or the Airport from any persons or entity (including, without limitation, the United States Environmental Protection Agency (the "EPA") or the Kansas Department of Health and Environment ("KDHE")), the AIRLINE shall promptly notify the AUTHORITY in writing of said notice.

AIRLINE further agrees to provide to AUTHORITY and/or AUTHORITY's designated representatives, upon request, copies of all applicable safety data sheets for materials stored on the Premises, as required by applicable law and applicable to AIRLINE's operations on the Premises.

AIRLINE shall indemnify, save, hold harmless, and defend AUTHORITY, the City of Wichita, their officials, agents, and employees, their successors and assigns, individually or collectively, from and against any claim, action, loss, damage, injury, liability, and the reasonable cost and expenses (including, but not limited to, reasonable attorney's fees, disbursements, court costs, and expert fees; unless defended by AIRLINE) of any environmental claim arising out of or resulting from AIRLINE's use and occupancy of Premises or use of the Airport, including, but not limited to any claim for (i) discharge or release of pollutants, hazardous materials, hazardous substances or solid waste, hazardous wastes or toxic materials at or on the Airport, including the air, surface

water, ground water, storm sewer, sanitary sewer, or soil from any source, including underground storage tanks, (ii) generation, handling, treatment, storage, disposal, or transportation of solid, gaseous, or liquid waste at the Airport, facility or location, (iii) electromagnetic or other radiation or noise, (iv) exposure of any person to any hazardous material, (v) manufacture, processing, distribution, use, or storage of any hazardous material, (vi) the release or threatened release of any pollutant, contamination or hazardous material to, from or through the Airport, or (vii) any of the foregoing, related to, caused by or arising from AIRLINE's operations on the Premises or activities on the Airport, to non-Airport property, including the air, surface water, ground water, or soil. Notwithstanding the above, AIRLINE shall not be liable for any environmental claim, including but not limited to claims listed in (i) – (vii) above, to the extent attributable to a pre-existing condition on any Airport property not caused or previously occupied by AIRLINE or any corporate predecessor to AIRLINE at any prior time. AIRLINE shall not be liable for any environmental claim arising out of or resulting from the AUTHORITY's conduct or those of a third party not related to AIRLINE.

AIRLINE shall, at AIRLINE's sole expense, clean up, remove and remediate, in accordance with applicable law, to the extent caused by AIRLINE or its employees, agents, licensees, contractors or customers (1) any Hazardous substances in, on, or under the AIRLINE's Premises in excess of allowable levels established by all applicable federal, state and local laws and regulations and (2) all contaminants and pollutants, in, on, or under the AIRLINE's Premises that create or threaten to create a substantial threat to human health or the environment and that are required to be removed, cleaned up, or remediated by any applicable federal, state, or local law, regulations, standard or order.

The provisions of this Section shall survive the termination of this Agreement.

34. TERMINATION BY AUTHORITY: EVENTS OF DEFAULT BY AIRLINE

34.1 Events of Default by AIRLINE

If any of the following events of default occur, AUTHORITY will issue a thirty (30) day written notice to AIRLINE to cure.

a. Conducting any business or performing any acts at Airport not specifically authorized in this Agreement or other agreements between AUTHORITY and AIRLINE.

b. Failing to cure a default in the performing any of the terms, covenants and conditions of this Agreement.

The written notice to cure shall allow AIRLINE thirty (30) calendar days to remedy the described problem or breach causing the default. If AIRLINE fails to cure within this thirty (30) day period, AUTHORITY may give written notice of default and take any action allowed in this Section.

Before the end of the thirty (30) day notice, AIRLINE may show AUTHORITY that its default

referred to in Paragraph (a) and (b) above cannot be remedied within thirty (30) days before the end of the thirty (30) day written notice and/or AIRLINE may show AUTHORITY that its default is a Force Majeure conditions described in Section 44.19. AUTHORITY will not declare a default if AIRLINE reasonably demonstrates (i) that the default cannot be cured within thirty (30) days, (ii) that it is proceeding with diligence to cure said default, and (iii) that such default will be cured within a reasonable period of time. In addition, the thirty (30) day notice period shall be tolled for a Force Majeure condition for such time as the Force Majeure condition reasonably prevents performance by AIRLINE. If AIRLINE stops its remedial efforts, no new notice to cure is needed to reinstate default actions allowed in this Section.

If under this Agreement any one of the following events of default occur, AUTHORITY may immediately issue written notice of default, without notice to cure being necessary:

a. AIRLINE fails to pay any part of the rentals, fees, and charges due under this Agreement in full within ten (10) days of the date of AUTHORITY's written notice of payments being past due. If AIRLINE disputes any obligation to make payments to AUTHORITY, AIRLINE shall pay the amount due and contest the validity or amount of such payment. In the event any court or other body having jurisdiction determines all or any part of the contested payment is not due, then AUTHORITY shall apply for the benefit of AIRLINE any amount determined as not due at the conclusion of the case to future AIRLINE obligations to AUTHORITY as AIRLINE may direct or the payments made by AIRLINE may be returned promptly to AIRLINE at its request. Further, during any legal contest of any fees or charges by AIRLINE, AIRLINE will not be held in default under the provisions of this paragraph. AUTHORITY shall use due diligence to collect any past due rentals, fees, and charges from any Air Transportation Company providing air service at the Airport, including AIRLINE.

b. AIRLINE fails to provide and keep in force contract security as required by Section 9.

c. AIRLINE fails to provide and keep in force insurance coverage as required by Section 32.

d. The appointment of a trustee, custodian, or receiver of all or a substantial portion of AIRLINE's assets.

e. Any legal corporate action that reduces or eliminates AIRLINE's continued right to participate and fulfill this Agreement.

f. AIRLINE is declared insolvent or takes the benefit of any present or future insolvency statute, makes a general assignment for the benefit of creditors, or seeks a reorganization or the readjustment of its indebtedness under any law or statute of the United States or of any state.

g. AIRLINE voluntarily discontinues its operations at the Airport for a period of at least thirty (30) consecutive days unless AUTHORITY approves this action in advance, in writing.

34.2 Continuing Responsibilities of AIRLINE

Notwithstanding the occurrence of any event of default, AIRLINE remains liable to AUTHORITY for all rentals, fees, and charges payable under this Agreement, including all preceding breaches of this Agreement even in the event of default. Furthermore, unless AUTHORITY terminates this Agreement, AIRLINE shall remain liable for and promptly pay all rentals, fees, and charges as they accrue until the expiration of this Agreement or until this Agreement is terminated by AIRLINE as allowed by this Agreement.

34.3 Remedies of AUTHORITY for AIRLINE's Default

Upon the occurrence of any default the following remedies shall be available to AUTHORITY:

a. AUTHORITY may terminate this Agreement, effective upon the date specified in the written notice of termination. The termination such date shall be not less than thirty (30) calendar days from said notice. Upon such date, AIRLINE shall have no further rights under this Agreement and AUTHORITY can take immediate possession of AIRLINE's Premises.

b. AUTHORITY may reenter the Premises any time after the default date and may remove all AIRLINE persons and property from the Premises. AIRLINE's Personal Property may be stored at AIRLINE's sole cost and expense. AUTHORITY shall not be liable for its condition or return.

c. AUTHORITY may relet all or part of the Premises at such rentals, fees, and charges and upon such other terms as AUTHORITY, believes appropriate. AUTHORITY may make alterations, repairs or Improvements on said Premises. In reletting the Premises, AUTHORITY shall be obligated to make a good faith effort to obtain terms no less favorable to AUTHORITY than those contained herein and otherwise seek to mitigate any damages it may suffer as a result of AIRLINE's default.

d. In the event that AUTHORITY relets Premises, rentals, fees, and charges received by AUTHORITY from such reletting shall be applied: (i) to the payment of any indebtedness other than rentals, fees, and charges due hereunder from AIRLINE to AUTHORITY; (ii) to the payment of any cost of such reletting; and (iii) to the payment of rentals, fees, and charges due and unpaid hereunder. The residue, if any, shall be held by AUTHORITY and applied in payment of future rentals, fees, and charges as the same may become due and payable hereunder. If that portion of such rentals, fees, and charges received from such reletting and applied to the payment of rentals, fees, and charges hereunder is less than the rentals, fees, and charges payable during applicable periods by AIRLINE hereunder, then AIRLINE shall pay such deficiency to AUTHORITY. AIRLINE shall also pay to AUTHORITY, as soon as ascertained, any costs and expenses incurred by AUTHORITY in such reletting not covered by the rentals, fees, and charges received from such reletting.

e. No reentry or reletting of Premises by AUTHORITY shall be construed as an election on AUTHORITY's part to terminate this Agreement unless a written notice of termination is given to AIRLINE.

f. AIRLINE shall pay to AUTHORITY all other costs incurred by AUTHORITY in the exercise of any remedy in this Section, including, but not limited to, reasonable attorney's fees, disbursements, court costs, and expert fees.

g. AUTHORITY may exercise any other legal or equitable remedy, including but not limited to the remedies hereinafter specified.

34.4 Remedies Under Federal Bankruptcy Laws

Notwithstanding the foregoing, upon the filing by or against AIRLINE of any proceeding under Federal bankruptcy laws, if AIRLINE has defaulted in the performance of any provision of this Agreement within the six (6) months preceding such filing, AUTHORITY shall have the right to terminate this Agreement, in addition to other remedies provided under provisions of the Federal Bankruptcy Rules and Regulations and Federal Judgeship Act of 1984, or any successor statute, as such may be subsequently amended, supplemented, or replaced. Such termination shall be by written notice to AIRLINE within sixty (60) days from the date of AIRLINE's initial filing in bankruptcy court.

35. TERMINATION BY AIRLINE: EVENTS OF DEFAULT BY AUTHORITY

35.1 Events of Default by AUTHORITY

Each of the following events shall constitute an "Event of Default by AUTHORITY":

a. AUTHORITY fails after receipt of written notice from AIRLINE to keep, perform or observe any term, covenant or condition herein contained to be kept, performed, or observed by AUTHORITY and such failure continues for thirty (30) days, or if by its nature such Event of Default by AUTHORITY cannot be cured within such thirty (30) day period, AUTHORITY fails to commence to cure or remove such Event of Default by AUTHORITY within said thirty (30) days and to cure or remove the same as promptly as reasonably practicable.

b. AUTHORITY closes Airport to flights in general or to the flights of AIRLINE, for reasons other than weather, acts of God or other reasons beyond its control, and fails to reopen Airport to such flights within sixty (60) days of such closure.

c. The Airport is permanently closed as an air carrier airport by act of any federal, state or local government agency having competent jurisdiction.

d. AIRLINE is unable to use Airport for a period of at least sixty (60) days due to any law or any order, rule or regulation of any appropriate governmental authority having jurisdiction over the operations of Airport, or any court of competent jurisdiction issues an injunction in any way preventing or restraining the use of Airport or any part thereof for Airport purposes, and such injunction remains in force for a period of a least sixty (60) days.

e. The United States Government or any authorized agency of the same (by executive order or otherwise) assumes the operation, control or use of Airport and its facilities in such a manner as to substantially restrict AIRLINE from conducting its operations, and such restriction shall continue for a period of at least sixty (60) days.

35.2 **Remedies of AIRLINE for AUTHORITY's Defaults.**

Upon the occurrence of an Event of Default by AUTHORITY and after appropriate notice by AIRLINE to AUTHORITY, AIRLINE shall have the right to terminate this Agreement and all rentals, fees and charges payable by AIRLINE under this Agreement shall terminate. In the event that AIRLINE's operations at Airport should be restricted substantially by action of any governmental agency having jurisdiction thereof, then AIRLINE shall, in addition to the rights of termination herein granted, have the right to a suspension of this Agreement, or part thereof, and abatement of an equitable proportion of the payments due hereunder, from the time of giving written notice of such election until such restrictions shall have been remedied and normal operations restored.

36. WAIVER OF STATUTORY NOTICE

In the event either party exercises its option to terminate this Agreement any notice of termination given pursuant to the provisions shall be sufficient to terminate this Agreement. Upon such termination, AIRLINE hereby agrees that it shall promptly surrender possession of the Premises to the AUTHORITY. Each party hereby expressly waives the receipt of any additional notice to quit or notice of termination which would otherwise be required to given by AUTHORITY or AIRLINE under any provisions of the laws of the State of Kansas.

37. AFFILIATES, SUBLETTING, AND HANDLING AGREEMENTS

37.1 **Rights of Affiliates**

The rights, privileges, and obligations granted AIRLINE hereunder with respect to the use of the Airport, its appurtenances, and facilities, or in which AIRLINE leases space, shall accrue to any Affiliate to the same extent and degree that such rights and privileges are possessed by AIRLINE hereunder without the requirement for the Affiliate to enter into any written agreement with the AUTHORITY. The exercise of such rights and privileges shall be subject to prior written notice by AIRLINE documenting (a) the relationship of the Affiliate which shall be in compliance with the definition of Affiliate in Section 1.1, and (b) AIRLINE's agreement that AIRLINE shall report all activity and pay charges and fees provided for under this Agreement should Affiliate fail to do so. Upon receipt of such notice by AUTHORITY, AUTHORITY shall confirm in writing the receipt of the required notice and such rights and privileges shall take effect the first day of the month following the month in which AUTHORITY receives the required notice by AIRLINE. No additional fees or charges other than those specifically set forth and payable by AIRLINE

hereunder shall be assessed against AIRLINE or such other Affiliate. Provided, however, it is understood and agreed that should an Affiliate lease space directly from the AUTHORITY, such space shall not be considered to be included in the rights and privileges under this Agreement and AIRLINE shall not be responsible to insure such space or indemnify for its use, and such space shall therefore be leased to the Affiliate as non-signatory. Notwithstanding anything to the contrary contained herein, the Affiliate shall have the opportunity to become a Signatory Airline at Airport by agreeing to the terms of and entering into an Agreement.

37.2 **Assignment and Subletting by AIRLINE**

AIRLINE shall not sell, convey, transfer, mortgage, pledge, or assign this Agreement, or any part thereof, or any rights created thereby or the leasing thereunder in any manner whatsoever or sublet Premises or any part thereof or any of the privileges recited herein without prior written consent of the Director, which consent shall not be unreasonably withheld. However, AIRLINE shall have the right to sublease all or any part of its Premises or assign all or any part of its rights and interests under this Agreement to any affiliated Air Transportation Company (i.e., affiliated through common ownership) or to any successor to its business through merger or consolidation. Consent of AUTHORITY for such assignment shall not be required; provided, however, due notice of any such assignment shall be given to the Director at least thirty (30) days prior to such assignment hereunder.

In the event AIRLINE, using large jet-loader aircraft, intends to assign all or part of its Premises to an Affiliate using smaller Aircraft that cannot be served by a passenger boarding bridge, then in such an event Director may re-assign Gates as appropriate to ensure the highest and best use of Gates and ramp safety.

Any such successor corporation no later than thirty (30) days after the date of such merger, consolidation or succession shall acknowledge in writing satisfactory in form and content to AUTHORITY that it has assumed all obligations of AIRLINE and will fully honor all the terms and conditions set forth in this Agreement. Failure to do so shall be cause for termination by AUTHORITY.

AIRLINE shall not, without the prior written consent of Director, sublease Premises. The parties hereto agree that Director may reasonably withhold such consent if AUTHORITY has substantially similar space available but unleased or if AUTHORITY can make such space available for lease within a reasonable time. In making such decision, the Director shall consider the full needs and plans of any Air Transportation Company seeking to sublease space from AIRLINE, including whether said operator desires to be handled by AIRLINE. Exclusive or preferential use of AIRLINE's Exclusive Use Premises, or any part thereof, or preferential use of AIRLINE's Preferential Use Premises, or any part thereof, by anyone other than AIRLINE or its Affiliates shall be considered a sublease.

In the event AIRLINE requests permission to sublease, the request shall be accompanied by a copy of the proposed sublease agreement, if prepared. In the event such proposed sublease agreement has not been prepared, a written summary of the material terms and conditions to be contained in such sublease agreement shall be included with AIRLINE's request for tentative approval by

Director. The area or space to be subleased and the rental to be charged shall be specified and all other information reasonably requested by AUTHORITY pertaining to said sublease shall be promptly provided. If AIRLINE is currently in default with respect to the payment of rentals, fees and charges due herein, any such sublease agreement shall provide for the direct payment to AUTHORITY by sublessee of rentals, fees and charges due AUTHORITY pursuant to this Agreement. A fully executed copy of such sublease shall be submitted to Director for final review no later than thirty (30) days following occupancy of Premises, or any portion thereof, by the sublessee.

In the event the rentals, fees and charges for subleased premises exceed the rentals, fees and charges payable by AIRLINE for said premises pursuant to this Agreement, AIRLINE shall pay to AUTHORITY the excess of the rentals, fees and charges received from the sublessee over that specified to be paid by AIRLINE herein, provided that AIRLINE may charge a reasonable fee for administrative costs, not to exceed fifteen (15) percent of the specified sublease rental, and such fifteen (15) percent shall not be considered excess rentals, fees, and charges. AIRLINE shall also have the right to charge a reasonable fee to others for the use of AIRLINE's capital equipment and to charge for use of utilities and other services being paid for by AIRLINE.

37.3 **Ground Handling Services**

a. **Ground Handling Services by AIRLINE.** AIRLINE shall not ground handle another Air Transportation Company, without the prior written approval of the Director. Should AIRLINE wish to handle any portion of the operations of another Air Transportation Company, AIRLINE shall provide AUTHORITY with advance written notice of such proposed activities, including a description of the type and extent of services offered. AIRLINE agrees to pay monthly to AUTHORITY, a fee as established in AUTHORITY's Schedule of Fees and Charges derived from such Ground Handling Services performed for Non-Signatory Airlines or non-scheduled airlines, provided however, that no fee shall be required for Ground Handling Services performed for AIRLINE's Affiliate(s) and other Signatory Airlines.

b. **Ground Handling Services by Others.** AUTHORITY shall grant AIRLINE the right to contract with other companies, including Signatory Airlines, for Ground Handling Services for AIRLINE's aircraft, provided that, among other considerations: (i) AIRLINE has received advance written consent of AUTHORITY; and (ii) such other company, unless such company is a Signatory Airline, has entered into a Ground Handling Services operating agreement with AUTHORITY prior to the commencement of such Ground Handling Services.

37.4 **Release of Space.**

If AIRLINE wishes to release part of the Premises to AUTHORITY, AIRLINE shall notify AUTHORITY in writing of the space AIRLINE wishes to release and AUTHORITY shall use its best efforts to reassign such space to another Air Transportation Company; provided, however, AUTHORITY shall not be obligated to take back the space AIRLINE wishes to release and AIRLINE shall remain responsible for all obligations regarding such space under this Agreement. If AUTHORITY agrees to take back space released by AIRLINE, AUTHORITY shall amend this

Agreement to relieve AIRLINE of its obligations in regard to the space released.

37.5 **Nonwaiver of Responsibility.**

No assignment, transfer, conveyance, sale, mortgage, pledge, encumbrance, or sublease by AIRLINE shall relieve AIRLINE of its responsibility for the payment of rentals and fees or the performance of all other obligations provided for in this Agreement, without the prior written approval of the Director to such relief.

37.6 **Assignment by AUTHORITY.**

AUTHORITY shall have the right to transfer or assign this Agreement without limitation to another public or quasi-public entity. This entity to which this Agreement is transferred or assigned shall be bound by all of the rights and obligations contained herein. If such public or quasi-public entity either refuses to accept one or more of AUTHORITY's obligations or does not recognize one or more of AIRLINE's rights in this Agreement, then AIRLINE may terminate this Agreement pursuant to Section 35.

38. RULES AND REGULATIONS

AIRLINE, its agents and employees, shall be subject to any and all applicable rules, regulations, Airport Standard Operating Procedures, orders and restrictions which are now in force or which may hereafter be adopted by the Wichita Airport Authority or the City of Wichita, Kansas, in respect to the operation of the Airport, provided that the foregoing are reasonable, nondiscriminatory, and neither impair, limit, nor extinguish the rights of AIRLINE under this Agreement; and shall also be subject to any and all applicable laws, statutes, rules, regulations or orders of any governmental authority, federal or state, which are now in force or which may hereafter be promulgated, lawfully exercising authority over the Airport or AIRLINE 's operations conducted hereunder. AUTHORITY shall provide AIRLINE reasonable notice before the enactment or modification of any rules, regulations, Airport Standard Operating Procedures, orders and restrictions, and shall duly consider AIRLINE's input.

AUTHORITY shall not be liable to AIRLINE for any diminution or deprivation of its rights hereunder on account of the exercise of any such authority is in this Section provided, nor shall AIRLINE be entitled to terminate this Agreement by reason thereof unless exercise of such authority shall so interfere with AIRLINE 's exercise of the rights hereunder as to constitute a termination of this Agreement by operation of law in accordance with the laws of the State of Kansas, or as set out in Section 35.

AUTHORITY shall whenever possible make reasonable efforts to obtain uniform compliance with its rules and regulations; provided, however, AUTHORITY shall not be liable to AIRLINE for any violation or non-observance of such rules and regulations by any other tenant, operator or Air Transportation Company at the Airport.

39. ENCROACHERS, TRESPASSERS AND OTHER THIRD PARTY HAZARDS

AIRLINE shall lawfully remove, or cause to be removed by AUTHORITY or other official law enforcement agency, all encroachers, trespassers and other third parties violating laws of the federal, state or local government, or who are not on the Premises for legitimate purposes.

40. AIRPORT SECURITY PROGRAM COMPLIANCE

AIRLINE must obtain Airport Security Identification and Access Media (I.D. Media) for its employees, subcontractors, sublessees, suppliers, agents, and representatives requiring access to the sterile areas, secured AOA, and Security Identification Display Area (SIDA), or other secured areas as may be identified in the Airport Security Program, and pay any related costs associated with the privileges as set forth under this Section. With respect to the issuance, maintenance, and administration of I.D. Media, the AIRLINE shall pay or cause to be paid to the AUTHORITY all charges as may be established from time to time by the AUTHORITY. Such costs may include, but are not limited to: (i) the initial issuance of I.D. Media; (ii) the replacement of lost or stolen I.D. Media; (iii) administrative costs with respect to those I.D. Media not returned to the AUTHORITY.

Said I.D. Media will be valid as set forth under the Airport Security Program, and must be returned to the Airport Police and Fire Division, at 2193 Air Cargo Road within twenty-four (24) hours after expiration, suspension, and/or termination of this Agreement. Said I.D. Media will be valid for no longer than the period of this Agreement. The AIRLINE shall be responsible for requesting the issuance of I.D. Media to employees or other authorized representatives of the AIRLINE who require access to secured areas on the Airport due to operational need and necessity. In addition, AIRLINE shall be responsible for the immediate reporting of all lost or stolen I.D. Media and the immediate return of the I.D. Media of AIRLINE's personnel transferred from the Airport, or separated from the employ of AIRLINE.

AIRLINE warrants that it will comply with of the Airport Security Program and comply with all applicable regulations of the FAA and Transportation Security Administration ("TSA"), 49 CFR Parts 1500, 1542, 1544, 1546, 1548, and 1550 as amended or promulgated, and that it will always maintain the security of the Airport, Premises, and/or any AOA access for which AIRLINE is responsible. The AUTHORITY shall have the right to require the AIRLINE to conduct background investigations and to furnish certain data on such employees or other persons before the issuance of I.D. Media, which data may include the fingerprinting of any and all of its employees, subcontractors, suppliers, agents, and/or representatives. AIRLINE also hereby agrees that it shall be responsible for any and all of the actions on the Premises of its employees, subcontractors, suppliers, agents, customers, invitees, and/or representatives and shall provide any and all necessary escorts, as outlined in the Airport Security Program. AIRLINE hereby agrees that it will immediately implement any and all security changes that are required either directly or indirectly by the TSA, FAA, or AUTHORITY. AIRLINE further agrees to correct any security deficiency or other deficiency as may be determined as such by the AUTHORITY, the Department

of Transportation ("DOT"), the FAA, or the TSA, or any other federal or state agency with jurisdiction. In the event AIRLINE fails to remedy any such deficiency, the AUTHORITY may do so at the sole cost and expense of AIRLINE the cost of which, plus an additional twenty percent (20%) administrative fee, is payable to the AUTHORITY within thirty (30) days after the AUTHORITY's invoice. The AUTHORITY reserves the right to take whatever lawful action is necessary to correct and remedy any security deficiency or other deficiency. When the AUTHORITY takes actions to remedy deficiencies of any kind, it shall be done in a reasonable and cost-conscious manner.

Should AIRLINE, its employees, subcontractors, suppliers, agents, customers, invitees, and/or representatives cause any security violations, and should AUTHORITY be cited for a civil fine or penalty for such security violation, AIRLINE agrees to reimburse AUTHORITY for any monetary civil fine or penalty which may be imposed on AUTHORITY. However, nothing herein shall prevent the AIRLINE from contesting the legality, validity or application of such fine or penalty to the full extent AIRLINE may be lawfully entitled, nor require AUTHORITY to pursue such a contest on AIRLINE'S behalf. AIRLINE may have I.D. Media/access privileges immediately suspended and/or revoked by AUTHORITY for failure to adhere to the Airport Security Program, or for failure to return all I.D. Media within the time-frames specified herein.

The AIRLINE agrees that information concerning the location, type, nature, capabilities, application and use of the AUTHORITY's security system is considered Sensitive Security Information (SSI) as defined by TSR 1520, and shall restrict the distribution, disclosure and availability of SSI only to persons with a need to know. All requests for SSI by persons not directly employed by the AIRLINE, and deemed to have a need to know shall be referred to AUTHORITY for consideration and determination of whether such information is legal and appropriate for dissemination.

Before the AIRLINE shall permit any employee, subcontractor, sublessees, supplier, agents, customer, invitee, and/or representative to operate a motor vehicle of any kind or type on the AOA of Airport (unless such employee is escorted by a AUTHORITY-approved escort), the AIRLINE shall ensure that all such vehicle operators have completed required AOA access and driver training, possess a current, valid, and appropriate driver's license, appropriate Airport issued I.D. Media, and a Vehicle Ramp Permit. AIRLINE company vehicles prominently displaying a permanently affixed company name and/or logo on vehicles and equipment are excluded from the requirement of displaying a Vehicle Ramp Permit.

The AIRLINE agrees that its vehicles, cargo, product deliveries, and other personal property are subject to being inspected and searched when entering, exiting and while on the AOA.

41. SECURITY SYSTEMS

AUTHORITY may at its sole discretion install, operate and maintain a computer controlled access and monitoring system on the Airport. The purpose of said security systems is for the provision of safety and security to the general public, airport employees, tenants and permitees and their employees and invitees, primarily within and upon public areas, and not for the exclusive benefit of any single party or category of airport user. AIRLINE may, at its sole option and cost, install, operate and maintain private security systems within interior or exterior areas of the Premises; however, any such private security systems shall not interfere with, interrupt, impair or block the security systems or effectiveness of the AUTHORITY's security surveillance systems.

AUTHORITY shall not install security surveillance systems for the exclusive benefit of the AIRLINE. AIRLINE shall not rely on the surveillance cameras owned and operated by the AUTHORITY for purposes of risk management or private security from property loss, theft or other criminal activity.

42. PORTABLE STORAGE CONTAINERS/STRUCTURES

Unless specifically approved in writing, and under only conditions specified by AUTHORITY, AIRLINE shall not place or allow to be placed upon Premises, any type of portable storage container, trailer, unit, box, or barrel which is used to store merchandise and/or equipment and supplies outside of an enclosed permanent building or structure. Unless specifically approved, and only under conditions specified by AUTHORITY, AIRLINE shall not place or allow to be placed upon Premises, any type of portable or temporary structure, trailer, mobile home, modular structure or device.

AUTHORITY shall not unreasonably withhold approval of such container(s) and structure(s) if placement is of a temporary nature for the purpose of supporting construction, alterations, improvement activity, or other approved project.

43. NONDISCRIMINATION

The AIRLINE shall comply with all the following nondiscrimination provisions to the extent that AIRLINE's activities shall be subject to the same:

43.1 Nondiscrimination in Employment

The AIRLINE agrees not to discriminate against any employee or applicant for employment because of race, creed, color, sex, religion, national origin, ancestry, age or disability. The AIRLINE shall take affirmative action to insure that employees are treated without regard to their race, creed, color, national origin, sex, religion, ancestry, age or disability. Such actions shall

include, but not be limited to, the following: employment, promotion demotion or transfer, recruitment, advertising, lay-off or termination, and selection for training, including apprenticeship. The AIRLINE hereby agrees to post, in a conspicuous place, available to employees and applicants for employment, notices setting forth the provisions of this Section, in compliance with federal and state laws.

43.2 Facilities Nondiscrimination

AIRLINE shall make its accommodations and/or services available to the public on fair and reasonable terms without discrimination on the basis of sex, age, race, religion, creed, ancestry, color, national origin, or disability, provided, however, nothing herein shall require the furnishing to the general public of the use of any facilities or accommodations customarily furnished by AIRLINE solely to its employees, customers, clients, guests, and invitees; and AIRLINE may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar type of price reductions to volume purchasers.

a. Noncompliance with any nondiscrimination provision imposed by law related to the accommodations and/or services provide under this Agreement, or noncompliance with any nondiscrimination within this Agreement shall constitute a material breach of this Agreement and, in the event of such noncompliance, AUTHORITY shall have the right to terminate this Agreement without liability therefore.

b. AIRLINE agrees to insert or incorporate by reference nondiscrimination language in any leases, agreements, or contracts, etc. by which said AIRLINE grants a right or privilege to any person, firm, or corporation to render accommodations and/or services to the public on the Premises.

44. GENERAL PROVISIONS

44.1 Operation of Airport by the United States of America

This Agreement and all the provisions hereof shall be subject to whatever right the United States of America now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of the Airport or the exclusive or nonexclusive use of the Airport by the United States during the time of war or national emergency.

44.2 14 CFR Part 77 of Federal Aviation Regulations

AIRLINE agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event future construction or addition of a building, structure is planned for the Premises, or in the event of any planned modification or alteration of any present or future building or structure situated on the Airport. AIRLINE by accepting this Agreement expressly agrees for itself, its successors and assigns that it shall not erect nor permit the erection of any unapproved structure or object, nor permit the growth of any tree on the Airport which shall exceed such maximum height as may be stipulated by AUTHORITY. Applicable laws,

codes, regulations or agreements concerning height restrictions shall govern the maximum height to be stipulated by AUTHORITY. In the event this covenant is breached, AUTHORITY reserves the right to enter upon the Premises and to remove the offending structure or object, and cut down the offending tree, all of which shall be at the expense of AIRLINE and without liability to AUTHORITY. This expense plus an administrative fee of twenty percent (20%) shall be payable within thirty (30) days after AUTHOIRTY's invoice.

44.3 Airspace

There is hereby reserved to AUTHORITY, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of Aircraft in the airspace above the surface of the Premises. This public right of flight shall include the right to cause or allow in said airspace, any noise inherent in the operation of any Aircraft used for navigation or flight through the said airspace or landing at, taking off from or operation on the Airport. No liability on the part of AUTHORITY shall result from the exercise of this right.

44.4 Easement for Flight

AIRLINE releases AUTHORITY from any present or future liability whatsoever and covenants not to sue AUTHORITY for damages or any other relief based directly or indirectly upon noise, light, vibrations, smoke, fumes, odors, air currents, shock waves, electronic or other emissions occurring as a result of aviation or airport related operations at or otherwise associated with the Airport. This release and covenant includes but is not limited to claims for damages for physical or emotional injuries, discomfort, inconvenience, property damage, death, interference with use and enjoyment of property, nuisance, loss of income or business opportunity, inverse condemnation or for injunctive or other extraordinary or equitable relief. It is further agreed that AUTHORITY shall have no duty to avoid or mitigate such damages by, without limitation, setting aside or condemning buffer lands, rerouting air traffic, erecting sound or other barriers, establishing curfews, noise or other regulations, relocating airport facilities or operations or taking other measures, except to the extent, if any, that such actions are validly required by official federal agency action. AUTHORITY reserves from the Premises an easement for flight of Aircraft in or adjacent to the airspace above the Premises and for the existence and imposition over, on and upon said Premises of noise, light, vibrations, smoke, fumes, odors, air currents, electronic or other emissions, discomfort, inconvenience, interference with use and enjoyment, and any consequent reduction in market value which may occur directly or indirectly as a result of aviation, airport or airport-related operations at or otherwise associated with use of the Airport. AIRLINE accepts the Premises subject to the risks and activities hereinabove described.

44.5 Airport Hazards

AIRLINE by accepting this Agreement agrees for itself, its successors and assignees, that it shall not make use of the Premises in any manner which might interfere with the landing and taking off of Aircraft from the Airport or otherwise constitute a hazard. If during the Term of this Agreement the condition is breached, AUTHORITY reserves the right to enter upon the Premises and cause the abatement of such interference at the expense of AIRLINE without liability to AUTHORITY, except to the extent such liability arises from the negligence or willful misconduct of AUTHORITY. The expense of this action plus an administrative fee of twenty percent (20%)

shall be payable within thirty (30) days after AUTHOIRTY's invoice.

44.6 **Federal Aviation Administration Requirements**

AUTHORITY and AIRLINE agree that the requirements of the FAA set out below are approved by both parties, and if applicable, AIRLINE agrees to comply with all FAA requirements with respect to its operations, use of the Airport and this Agreement:

a. The AIRLINE, for itself and its representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained or otherwise operated on said property described in this Agreement for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the AIRLINE shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

b. The AIRLINE, for itself and its representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any Improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the AIRLINE shall use the Premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

c. The AIRLINE assures that it shall undertake an affirmative action program if required by 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. The AIRLINE assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. The AIRLINE assures that it shall require that its covered sub-organizations provide assurances to the AIRLINE that they similarly shall undertake affirmative action programs, and that they shall require assurances from their sub-organizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

d. Nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308 of the Federal Aviation Act of 1958.

e. AIRLINE agrees to furnish service on a fair, equal and not unjustly discriminatory basis to all users thereof, and to charge fair, reasonable and not unjustly discriminatory prices for

each unit or service; provided that AIRLINE may make reasonable and nondiscriminatory discounts, rebates or other similar types of price reductions to volume purchasers.

f. AUTHORITY reserves the right (but shall not be obligated to AIRLINE) to maintain and keep in repair the AOA of the airport and all publicly-owned facilities of the airport, together with the right to direct and control all activities of AIRLINE in this regard.

g. AUTHORITY reserves the right further to develop or improve the Airfield and all publicly-owned air navigation facilities of the airport as it sees fit, regardless of the desires or views of AIRLINE, and without interference or hindrance.

h. AUTHORITY 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 AIRLINE from erecting, or permitting to be erected, any building or other structure on the airport which, in the opinion of AUTHORITY, would limit the usefulness of the airport or constitute a hazard to Aircraft.

i. During time of war or national emergency AUTHORITY 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 Airfield, 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.

j. Rights granted by this Agreement shall not be exercised in such a way as to interfere with or adversely affect the use, operation, maintenance or development of the Airport.

k. There is hereby reserved to AUTHORITY, its successors and assigns, for the use and benefit of the public, a free and unrestricted right of flight for the passage of Aircraft in the air space above the surface of the Premises herein conveyed, together with the right to cause in said airspace such noise as may be inherent in the operation of Aircraft now known or hereafter used for navigation of or flight in the air, using said airspace or landing at, taking off from or operating on or about the Airport.

l. This Agreement shall become subordinate to provisions of any existing or future agreement between the AUTHORITY and the United States of America or any agency thereof relative to the operation, development or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport.

44.7 **Modifications for Granting of FAA Funds**

In the event that the AUTHORITY determines the FAA requirements call for modifications or changes to this Agreement as a condition precedent to granting of funds for the Improvement of the Airport, these modifications or changes shall supersede this Agreement and AIRLINE agrees to consent to such amendments, modifications, revisions, supplements or deletions of any of the terms, conditions or requirements of this Agreement as may be reasonably required by the

AUTHORITY to fully comply with federal grant assurances and directives and to obtain FAA grants-in-aid, provided that no such changes shall materially alter the rights or obligations of AIRLINE hereunder.

44.8 Subordination to Agreements with the U.S. Government

This Agreement is subject and subordinate to the provisions of any agreements heretofore or hereafter made between AUTHORITY and the United States Government relative to the operation or maintenance of Airport, the execution of which has been required as a condition precedent to the transfer of federal rights or property to AUTHORITY for Airport purposes, or the expenditure of federal funds for the improvement or development of Airport, including the expenditure of federal funds for the development of Airport in accordance with the provisions of the Federal Aviation Act of 1958, as it has been amended from time to time. AUTHORITY covenants that it has no existing agreements with the United States Government in conflict with the express provisions hereof.

44.9 Non-Waiver of Rights

No waiver or default by either party of any of the terms, warranties, covenants and conditions hereof to be performed, kept and observed by the other party shall be construed as, or shall operate as, a waiver of any subsequent default of any of the terms, warranties, covenants or conditions herein contained, to be performed, kept and observed by the other party.

44.10 Severability and Invalid Provisions

In the event any term, covenant, condition or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of any such term, covenant, condition or provision shall in no way affect any other term, covenant, condition or provision herein contained. The parties agree if such invalid provision is essential to this Agreement, they will promptly begin negotiations for a suitable replacement provision so as to give force to the intent of the parties.

44.11 Waiver of Claims

Each party hereby waives any claim against the other party and such other party's officers or employees for loss of anticipated profits, consequential or incidental damages, or claim for attorney fees caused by or resulting any suit or proceedings directly or indirectly attacking the validity of Agreement or any part thereof, or the manner in which it is executed or performed, or by any judgment or award in any legal proceeding declaring this Agreement null, void or voidable, or delaying the same of any part thereof, from being carried out. This waiver extends to all claims, whether the supporting legal theory lies in common law or has a statutory basis.

44.12 Incorporation of Exhibits

All exhibits referred to in this Agreement are intended to be and are hereby specifically made a part of this Agreement.

44.13 Non-Liability of Agents and Employees

No member, officer, agent or employee of either party to this Agreement shall be charged personally, or held contractually liable by or to the other party under the terms or provisions of

this Agreement, or because of any breach thereof or because of its or their execution or attempted execution.

44.14 **Successors and Assigns Bound.**
This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties.

44.15 **Time of Essence**
Time is of the essence in this Agreement.

44.16 **Relationship of the Parties**
AIRLINE is not in any way or for any purpose a partner or joint venturer with or an agent of AUTHORITY. AIRLINE shall act as an independent contractor in the performance of its duties pursuant to this Agreement.

44.17 **Interpretation**
AUTHORITY and AIRLINE agree that this Agreement shall not be construed or interpreted in favor of either party on the basis of preparation.

44.18 **Kansas Laws to Govern**
This Agreement and the terms and conditions herein contained shall at all times be governed, interpreted and construed under and in accordance with the laws of the State of Kansas, and venue for resolution of any issue pertaining to this Agreement shall be in Sedgwick County, Kansas.

44.19 **Force Majeure**
Neither the AUTHORITY nor the AIRLINE shall be deemed in violation of this Agreement if it is prevented from performing any of the obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortages of material, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, riots, rebellion, sabotage, acts of terrorism or the results therefrom, or any other circumstances for which it is not responsible or which is not within its control.

45. NOTICES, CONSENTS, AND APPROVALS

Notices or other communications to AUTHORITY pursuant to the provisions hereof shall be sufficient and irrefutably deemed received if sent regular mail, postage prepaid, or by a nationally recognized overnight courier, or facsimile transmission, addressed to:

Attention: Director
Wichita Airport Authority
2173 Air Cargo Road
Wichita, Kansas 67209;

Fax: (316) 946-4793

and bills, statements, and notices or communications to AIRLINE shall be sufficient and irrefutably deemed received if sent regular mail, postage prepaid, or by a nationally recognized overnight courier addressed to:

Regional Manager, Real Estate
American Airlines/US Airways
4000 E. Sky Harbor Blvd
Phoenix, AZ 85034

or to such respective addresses as the parties may designate in writing from time to time.

46. INTENTION OF PARTIES

This Agreement is intended solely for the benefit of AUTHORITY and AIRLINE and is not intended to benefit, either directly or indirectly, any third party or member(s) of the public at large. Any work done or inspection of the Premises performed by AUTHORITY is solely for the benefit of AUTHORITY and AIRLINE.

47. AMENDMENT OR MODIFICATION

This Agreement constitutes the entire Agreement between the parties for the lease of Premises set forth and identified under Section 2. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless the same is in writing, dated subsequent to the date hereof, and duly executed by the parties hereto.

This Agreement shall not be modified or amended unless in writing with formality equal to this Agreement, executed by the AIRLINE and AUTHORITY on a date subsequent to the execution of this Agreement.

48. APPROVAL, CONSENT, DIRECTION OR DESIGNATION BY AUTHORITY

Wherever under this Agreement, approvals, consents, directions, or designations are required or permitted, such approvals, consents, directions, or designations required or permitted under this Agreement shall be performed by the Director of Airports, or his/her authorized representative and, unless otherwise expressly stated in this Agreement, approvals and consents shall not be unreasonably withheld.

The parties agree that this Agreement may be signed in multiple counterparts, and that when signed by all parties, shall be effective upon the execution latest in time. Each shall be deemed an original, but taken together, shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.

ATTEST:

THE WICHITA AIRPORT AUTHORITY
WICHITA, KANSAS

By _____
Karen Sublett, City Clerk

By _____
Carl Brewer, President
"AUTHORITY"

By _____
Victor D. White, Director of Airports

ATTEST:

AMERICAN AIRLINES

By _____

By _____
"AIRLINE"

APPROVED AS TO FORM: _____ Date: _____
Sharon Dickgrafe, Interim Director of Law

AIRLINE AIRPORT USE AND LEASE AGREEMENT

BY AND BETWEEN

WICHITA AIRPORT AUTHORITY

AND

DELTA AIR LINES

FOR

WICHITA DWIGHT D. EISENHOWER NATIONAL AIRPORT

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A Affiliate Airline Notification

B Aircraft Parking Apron

C Airport Boundaries

D Premises

E Monthly Activity Report

F Tenant Construction and Alteration Process Manual (Incorporated by reference)

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H Snow Removal

I Maintenance Matrix

THIS AGREEMENT, dated March 17, 2015, between The Wichita Airport Authority, hereafter referred to as "AUTHORITY," and Delta Air Lines, a corporation organized and existing under the laws of the State of Delaware, hereinafter referred to as "AIRLINE," acting by and through its designated officers with the express authority of its Board of Directors;

W I T N E S S E T H:

WHEREAS, AUTHORITY is a governmental entity authorized under the laws of the State of Kansas to own and operate one or more airports, with full, lawful power and authority to enter into binding legal instruments by and through its governing body; and

WHEREAS, AUTHORITY owns and operates the commercial service airport with FAA designation of ICT operated by the Wichita Airport Authority (hereinafter referred to as "Airport"); and

WHEREAS, AIRLINE is a corporation primarily engaged in the business of transportation by Aircraft for the carriage of persons, property, and mail; and

WHEREAS, AIRLINE desires to use certain premises and facilities, and to exercise certain rights and privileges at Airport in connection with the operation of its Air Transportation Business, and AUTHORITY is willing to agree to such use, rights and privileges as set forth herein; and

WHEREAS, the intent of the parties is to enter into an agreement which will specify the rights and obligations of the parties with respect to the operation of Airport by AUTHORITY and the use and occupancy of Airport by AIRLINE, and this Agreement is responsive to and in accordance with that intent;

NOW, THEREFORE, AUTHORITY and AIRLINE for, and in consideration of the covenants and mutual promises hereinafter contained, agree as follows:

1. DEFINITIONS

The terms and phrases defined in this Section for all purposes of this Airline Use and Lease Agreement shall have the following meanings:

Affiliate shall mean any Air Transportation Company that is either a (1) wholly-owned subsidiary of AIRLINE or AIRLINE's parent company or (2) operates under essentially the same trade name as AIRLINE at the Airport, uses essentially the same livery as AIRLINE, and does not sell any seats in its own name. AIRLINE shall provide AUTHORITY with a completed Exhibit A, attached hereto, for each Affiliate active as of the Commencement Date of this Agreement.

Air Operations Area (AOA) shall mean those portions of the Airport provided for the landing, take-off, taxiing and parking of Aircraft, including, without limitation, runways, taxiways, runway and taxiway safety areas and protection zones, Aircraft Parking Aprons, service roads, and other related and supporting appurtenances.

Air Transportation Business shall mean the business of an Air Transportation Company for the commercial transportation by air of persons, property, mail, and/or cargo.

Air Transportation Company shall mean a company engaged in the business of scheduled or nonscheduled commercial transportation by air of persons, property, mail, and/or cargo.

Aircraft shall mean a vehicle that is capable of traveling through the air, as defined in the Federal Aviation Act of 1958, as same may be amended or supplemented from time to time.

Aircraft Parking Apron shall mean that square footage of the AOA measured from the abutting face of the Terminal to the Aircraft parking limit line immediately adjacent to the Terminal that is used for the parking of Aircraft and support vehicles and the loading and unloading of passengers, baggage, and other mail or cargo, the boundaries of which are shown in Exhibit B attached hereto. Changes may be made to Exhibit "B", under the authority of the Director, without requiring formal amendment to the Agreement.

Airfield shall mean the AOA, approach and turning zones, aviation or other easements, and other appurtenances.

Airfield Requirement is that requirement established in Section 5.5(a).

Airline Net Revenue Sharing shall mean an amount determined by AUTHORITY in accordance with Section 6.3.

Airport shall mean the Mid-Continent Airport under the ownership, control and jurisdiction of the AUTHORITY. The current name of the airport is now known as the Mid-Continent Airport. The name will change to Wichita Dwight D. Eisenhower National Airport during the Initial Term of this Agreement. Current boundaries are shown on Exhibit C attached hereto.

Airport System shall include the airports under the ownership, control and jurisdiction of the AUTHORITY.

Amortization shall mean the principal and interest cost on a Capital Improvement financed by the AUTHORITY from its own cash. Amortization shall be calculated using (i) the interest rate paid by the City of Wichita, Kansas on its most recent comparable issuance of Bonds and (ii) the economic useful life of the Capital Improvement, as determined by the AUTHORITY in accordance with generally accepted accounting principles. Amortization shall begin in the Fiscal Year following when the Capital Improvement is ready for its intended use.

Authority Net Revenue Sharing shall mean an amount determined by AUTHORITY in accordance with Section 6.3.

Aviation Fuel Storage Facilities shall mean the fuel storage facilities owned by the AUTHORITY for the purpose of receiving, storing, and dispensing aviation fuel.

Bonds shall mean any bonds or other financing instrument or obligation issued by the City of Wichita, Kansas issued for the purposes of improving the Airport System or on behalf of AUTHORITY.

Capital Improvement shall mean (i) the acquisition of land or easements; (ii) the planning, design, or construction of new facilities; and (iii) the performance of any extraordinary, non-recurring major maintenance of existing facilities that may be acquired, purchased, or constructed by AUTHORITY to improve, maintain, or develop the Airport System.

Commencement Date shall mean the date on which the Terminal opens for commercial business to the general public.

Common Use Gate shall mean any AUTHORITY-controlled Gate in the Terminal not directly leased to an individual Signatory Airline on a Preferential Use basis, which AUTHORITY reserves for use of any Air Transportation Company.

Cost Center(s) shall mean the cost centers representing the areas and facilities operated by AUTHORITY, and as such cost centers may be modified, changed, or developed by AUTHORITY to be used in accounting for items including, but not limited to Revenues, Operation and Maintenance Expenses, Debt Service, Coverage Requirement, Operation and Maintenance Reserve Requirement, and Amortization and for calculating and adjusting the Rental and Fee Rates. Cost Centers shall collectively include the Airfield Cost Center, Jabara Cost Center, Other Aviation Buildings and Areas Cost Center, Landside Cost Center, and Terminal Cost Center.

Coverage Requirement shall mean, for any Fiscal Year, the amount equal to ten percent (10%) of Debt Service, for all series of Bonds plus such other amount as may be established by any financing agreement. If, in any given Fiscal Year, the Authority Net Revenue Sharing is insufficient to meet both the Coverage Requirement and Operation and Maintenance Reserve Requirement for that Fiscal Year, any shortfall shall be included in the Airfield Requirement under

Section 5.5(a)(v).

Debt Service shall mean the required amounts to be deposited within the principal and interest accounts related to Bonds during any period for the payment, when due, of principal of, interest on, and other fees and amounts associated with such debt.

Director shall mean the Director of Airports, who is the person designated by the AUTHORITY to exercise functions with respect to the rights and obligations of the AUTHORITY under this Agreement, and shall include any person expressly delegated by the Director of Airports to exercise functions with respect to the rights and obligations of the Director of Airports under this Agreement.

Electronic Visual Information Display Systems (EVIDS) shall mean the AUTHORITY owned Flight Information Display System (FIDS), the Baggage Information Display System (BIDS) and Gate Information Display System (GIDS) provided for passenger information.

Enplaned Passengers shall mean all (i) originating; (ii) on-line transfer; and (iii) off-line transfer passengers boarded at the Airport.

Exclusive Use Premises shall mean Terminal space leased to AIRLINE for its exclusive use as shown on Exhibit D attached hereto, as such may be amended from time to time.

Fiscal Year shall mean the then current annual accounting period of AUTHORITY for its general accounting purposes which, at the time of entering into this Agreement, is the period of twelve (12) consecutive calendar months ending with the last day of December of any year.

Fixtures shall mean all structures and fixed systems and equipment erected or installed upon the Premises, shelves, cabinets, counters, all fencing, grading, landscaping and pavement, all underground wires, cables, pipes, conduits, tanks, drains and drainages; and all other property of every kind and nature which is permanently affixed to the Premises.

Gate when referenced in this Agreement shall mean the contiguous and mutually supporting facilities consisting of hold rooms(s), Aircraft Parking Apron, passenger boarding bridge(s), and appurtenant furnishings within these areas that are necessary for the use thereof. The term Gate as used in this Agreement shall specifically exclude any space leased by AIRLINE in the first (lower) level of the Terminal.

Ground Handling Services shall mean services provided to Air Transportation Companies to include, but not necessarily be limited to, fueling services; loading and unloading of passengers, baggage and freight into Aircraft; providing passenger service agents; assisting in processing of passengers and crews; furnishing and operating ground support equipment in support of Aircraft operations; Aircraft cleaning and lavatory service activities; deicing; and Aircraft maintenance activities.

Hold Rooms or Passenger Hold Rooms shall mean the areas specifically designed and designated for the sole purpose of Airline passenger waiting prior to enplaning.

Improvements shall mean any construction, or addition, alteration or betterment, to real estate new or existing, including structures, paved surfaces and other ancillary and supporting areas.

Joint Use Cost shall mean the Terminal Rental Rate multiplied by the square footage of the Joint Use Premises plus the cost of providing services as may be requested by the AIRLINE or as may be required by the AUTHORITY, if any, less any fees collected by AUTHORITY from Non-Signatory Airlines for the use of Joint Use Premises for any given Fiscal Year.

Joint Use Fee shall mean the fee payable by AIRLINE under this Agreement for use of the Joint Use Premises at the Airport.

Joint Use Formula shall mean the formula used to prorate the Joint Use Cost on the basis of ten percent (10%) of the total annual rental divided equally among all Signatory Airlines. The remaining ninety percent (90%) of the total annual rental shall be apportioned among all Signatory Airlines on the basis of the number of each Signatory Airline's Enplaned Passengers at the Airport to the total number of Enplaned Passengers of all Signatory Airlines at the Airport.

Joint Use Premises shall mean those Terminal areas assigned to two or more Air Transportation Companies, as shown on Exhibit D " attached hereto.

Landing shall mean any landing at the Airport by an Aircraft operated by any Air Transportation Company., but shall not include an unscheduled landing by an Aircraft operated by an Air Transportation Company that returns to the Airport because of weather, mechanical, operational, or other emergency or precautionary reasons.

Landing Fee shall mean the fee payable by AIRLINE under this Agreement for Landings at the Airport.

Landing Fee Rate shall mean that rate, established in Section 5.5, for each one thousand (1,000) pounds of Maximum Gross Landing Weight.

Maximum Gross Landed Weight shall mean the maximum gross certificated landing weight in one thousand pound units for which each Aircraft operated by AIRLINE is certified by the Federal Aviation Administration ("FAA"), or any successor agency thereto.

Monthly Activity Report shall mean the reporting form required to be completed and submitted by AIRLINE to AUTHORITY each month attached hereto as Exhibit E, as may be amended from time to time by the Director upon thirty (30) days prior written notice to AIRLINE. Any modification to this Monthly Activity Report shall automatically become a part of this Agreement, without formal amendment hereto.

Non-Revenue Landing shall mean any Aircraft landing by AIRLINE at Airport for which AIRLINE receives no revenue, and shall include irregular and occasional ferry, test, courtesy, inspection, or other similar flights.

Non-Signatory Airline shall mean any Air Transportation Company operating at the Airport that has entered into a non-signatory agreement with the AUTHORITY.

Normal Wear and Tear shall mean the physical deterioration which occurs resulting from the normal, customary and reasonable operation and use for which the property is intended, without negligence, carelessness, or intentional abuse of the property or Premises.

Operation and Maintenance Expenses (O&M Expenses) shall mean, for any period, all expenses accrued by AUTHORITY in accordance with generally accepted accounting practices for airports of similar characteristics for the operation, maintenance, administration and ordinary current repairs of the Airport System in order to maintain and operate the Airport System in a reasonable and prudent manner.

Operation and Maintenance Reserve Account (O&M Reserve Account) shall mean an account established to pay for extraordinary or unanticipated Operation and Maintenance Expenses to the extent that other funds are not available for such purposes.

Operation and Maintenance Reserve Requirement (O&M Reserve Requirement) shall mean an amount required to maintain a balance of the following percentage of O&M Expenses in each Fiscal Year, net of existing O&M Reserve Account balances and allocated to the Cost Centers on the basis of O&M Expenses:

Fiscal Year 2015: zero percent (0%)
Fiscal Year 2016: zero percent (0%)
Fiscal Year 2017: five percent (5%)
Fiscal Year 2018: ten percent (10%)
Fiscal Year 2019: fifteen percent (15%)
Option Term Fiscal Year 2020: twenty percent (20%)
Option Term Fiscal Year 2021 and thereafter: twenty five percent (25%)

If, in any given Fiscal Year, the AUTHORITY Net Revenue Sharing is insufficient to meet both the Coverage Requirement and Operation and Maintenance Reserve Requirement for that Fiscal Year, any shortfall shall be included in the Airfield Requirement under Section 5.5(a)(v).

Preferential Use Premises shall mean Aircraft Parking Apron(s), hold room(s), ticket counter(s), and passenger boarding bridges, assigned to AIRLINE, as set forth in Section 2.1 and to which AIRLINE shall have preferential use, defined herein as the unrestricted higher and continuous priority over all other users, subject to the provisions of Section 2.2(b) herein. The Director may, with notice appropriate under the circumstances, authorize another Air Transportation Company pursuant to Section 16 to utilize AIRLINE's hold rooms, passenger boarding bridges, and Aircraft Parking Apron when such use does not conflict with AIRLINE's scheduled flight activities, including a period of forty-five (45) minutes after any of AIRLINE's scheduled departure times

and forty-five (45) minutes prior to any of AIRLINE's scheduled arrival times and during AIRLINE's Aircraft parking overnight, or for the scheduled flight activities of an Affiliate(s) approved subleases, or handling agreements.

Premises shall mean those areas leased for use by AIRLINE herein, which are comprised of Exclusive Use, Preferential Use, and Joint Use Premises.

Personal Property shall mean AIRLINE's removable trade fixtures as allowed by this Agreement, furniture, furnishings, draperies, decorations, signs, appliances, equipment, and any other similar items or supplies owned by AIRLINE.

Rate Stabilization Fund shall mean an account established within the flow of funds prescribed in Section 6.3 of this Agreement to offset Signatory Airline Rental and Fee Payments at the AUTHORITY's discretion. Annual deposits to the Rate Stabilization Fund shall not exceed the annual Amortization allocated to the Airfield and the airline's portion of the Terminal Cost Centers. The maximum balance in the Rate Stabilization Fund shall not exceed one million five hundred thousand dollars ($1,500,000).

Rental and Fee Rates shall mean all rentals and fees payable under the terms of this Agreement.

Requesting Transportation Company shall mean an Air Transportation Company desiring to provide new or expanded commercial passenger air transportation service to and from Airport, and which is unable to obtain adequate Aircraft Parking Apron and/or Terminal space from AUTHORITY.

Revenues shall mean income and revenue derived by AUTHORITY in connection with the operation of the Airport System. The term "Revenues" shall not include passenger facility charges, customer facility charges, insurance proceeds, restricted land sale proceeds or any local, state or federal assistance, or any interest earned thereon.

Revenue Landing shall mean an Aircraft landing by AIRLINE at Airport in conjunction with a flight for which AIRLINE makes a charge or for which revenue is derived for the transportation by air of persons, property or mail, but Revenue Landings shall not include any landing of an Aircraft which, after having taken off from Airport and without making a landing at any other airport, returns to land at Airport because of meteorological conditions, mechanical or operating causes, or any other reason of emergency or precaution.

Signatory Airlines shall mean those airlines which provide scheduled commercial passenger air transportation to and from the Airport and which have executed substantially similar agreements to this Agreement, including term, with AUTHORITY for the lease, use, and occupancy of facilities at the Airport, including the lease of at least one (1) holdroom and associated Aircraft Parking Apron.

Term shall mean the express time period during which AIRLINE has rights and obligations to the Premises as established under Section 3 of this Agreement.

Tenant Construction and Alteration Process Manual (TCAP Manual) shall be the guidance document describing acceptable standards for any construction, alteration or improvements made to AIRLINE's Premises. All tenant improvements shall conform to the AUTHORITY's TCAP Manual, which is attached hereto as Exhibit F and incorporated herein by this reference. TCAP Manual may be amended from time to time.

Terminal shall mean the airline terminal building owned and operated by AUTHORITY at Airport, as shown on Exhibit C hereof.

Terminal Rental shall mean the annual rent payable by AIRLINE under this Agreement for the use of the Terminal.

Terminal Rental Rate shall mean the rate, established in Section 5.4, for each square foot of the Terminal.

Terminal Requirement shall mean that requirement established in Section 5.4(a).

Usable Space shall mean those areas in the Terminal that are available for use by Air Transportation Companies or the general public, including, but not limited to, ticket counter, holdroom, offices, operations, baggage make-up, baggage claim, concessions, passenger screening, baggage screening, and public circulation space. Usable Space shall not include mechanical, electrical, plumbing, or other facility support space.

2. PREMISES

2.1 **Premises**

a. **Terminal Space.** AUTHORITY does hereby lease and demise to AIRLINE, and AIRLINE does hereby lease and accept from AUTHORITY, Exclusive Use Premises, Preferential Use Premises, and Joint Use Premises, as set forth on Exhibit D.

AUTHORITY agrees to grant AIRLINE a nonexclusive right to use the Joint Use Premises and Preferential Use Premises for conducting its Air Transportation Business.

b. **Aircraft Parking Apron Space.** AUTHORITY leases to AIRLINE and AIRLINE leases from AUTHORITY space in the Aircraft Parking Apron on a Preferential Use basis and illustrated on Exhibits B and D.

c. **Use of AIRLINE's Aircraft Parking Apron within the Premises.** AIRLINE shall have Preferential Use of the AIRLINE's Aircraft Parking Apron Premises for the loading and unloading of AIRLINE's passenger Aircraft, or the passenger Aircraft of AIRLINE's Affiliate(s) and Air Transportation Companies operating from AIRLINE's Premises under AUTHORITY-approved subleases and ground handling agreements with AIRLINE. AIRLINE's use of said AIRLINE's Aircraft Parking Apron Premises shall be limited to (i)

the loading and unloading of persons, property, cargo, parcels, mail and in-flight food and related supplies on passenger Aircraft, as well as (ii) the parking, refueling, interior cleaning and minor mechanical maintenance of AIRLINE's passenger Aircraft, and the Aircraft of AIRLINE's Affiliate(s) and Air Transportation Companies operating from AIRLINE's Premises under AUTHORITY-approved subleases and ground handling agreements with AIRLINE.

2.2 Use of Premises

AIRLINE shall use the various types of space leased only for such purposes as are typical for that type of space in the sole judgment of AUTHORITY not to be exercised arbitrarily.

a. **AIRLINE's Exclusive Use Premises.** AIRLINE will have exclusive use of that portion of AIRLINE's Premises labeled as airline ticketing office (ATO), baggage storage lockers, and operations space on Exhibit D.

b. **AIRLINE's Preferential Use Premises.** AIRLINE will have preferential use of that portion of AIRLINE's Premises labeled as ticket counter, Aircraft Parking Apron, and holdrooms on Exhibit D. AIRLINE's Preferential Use Premises are subject to reassignment in accordance with Section 16.2 of this Agreement.

c. **Joint Use Premises.** AIRLINE has the right to use the Joint Use Premises, in conjunction with other Air Transportation Companies, labeled as baggage claim, outbound baggage, passenger screening, baggage service offices, and hold baggage screening on Exhibit D.

2.3 Condition of Premises and Airport

AIRLINE expressly acknowledges that it has inspected the Premises, including, but not limited to, all finishes, furniture, fixtures and equipment therein, and accepts the same "As Is" in the condition existing as of the Commencement Date with the exception of those facilities and fixtures that AUTHORITY is required by this Agreement to maintain and repair. The parties acknowledge that the Premises is being newly constructed at the time this Agreement is being negotiated and AIRLINE is responsible to complete its build-out of the Premises in accordance of the TCAP. The Premises is located within the Terminal, which AUTHORITY operates as part of a Part 139 airport subject to FAA regulations and grant assurances. By this Agreement, AIRLINE obtains the right to operate its Air Transportation Business within the limitations created by those FAA regulations, grant assurances and the AUTHORITY's rules and regulations and Standard Operating Procedures.

2.4 Employee Parking

AUTHORITY shall use reasonable efforts to ensure that parking facilities are sufficient for all of AIRLINE's personnel employed on the Airport. Employee parking shall be subject to reasonable rules and regulations of AUTHORITY. AUTHORITY may update these rules and regulations as needed. Use of the employee parking areas is subject to payment of reasonable fees and charges, further described in Section 4.8, Other Fees and Charges.

2.5 Public Address System

AUTHORITY shall provide and maintain a public address system in the Terminal, which AIRLINE and others similarly authorized by AUTHORITY shall have the right to use for flight announcements and paging. Use of the public address system shall be subject to reasonable rules and regulations established by AUTHORITY, as may be amended from time-to-time.

2.6 Reserved from Premises

AUTHORITY expressly reserves from the Premises:

a. **Mineral Rights.** All gas, oil and mineral rights in and under the soil;

b. **Water Rights.** All statutory, exempt, vested, and granted appropriation rights for the use of water, and all rights to request further appropriations for the Premises;

c. **Airspace.** A public right of flight through the airspace above the surface of the Premises. This public right of flight shall include the right to cause or allow in said airspace, any noise inherent in the operation of any Aircraft used for navigation or flight through said airspace or landing at, taking off from, or operation on the Airport. No liability on the part of AUTHORITY or any Tenant shall result from the exercise of this right;

d. **Navigational Aids.** The right to install, maintain and modify and/or permit others to install, maintain and modify on the Premises visual and electronic navigational aids;

e. **Radio/Wireless Communication Systems.** The right to approve or withhold approval of any use of fixed RF Systems for the transmission of radio frequency signals in/on the Premises;

f. **General Provisions.** The right to exercise any and all rights set out in Section 44, General Provisions; and

g. **Entry and Inspection of Premises.** The right of AUTHORITY, its authorized officers, employees, agents, contractors, subcontractors, authorized government agents, or other representatives to enter upon the Premises:

    i. With twenty-four (24) hours advance notice, and accompanied by an AIRLINE representative to inspect at reasonable intervals during regular business hours (or any time without prior notice in case of emergency or lawful investigation) to determine whether AIRLINE has complied, and is complying with the terms and conditions of this Agreement;

    ii. With twenty-four (24) hours' advance notice and accompanied by an AIRLINE representative (or any time without prior notice in case of emergency or reasonably suspected violation), to inspect Premises, facilities, and equipment for compliance with laws, regulations and/or codes of the federal, state or local government, airport rules and regulations and airport standard operating procedures; and

iii. Within thirty (30) calendar days advance notice (or any time without prior notice in case of emergency or critical system repairs) to construct new facilities, or to perform maintenance, repair, or replacement relating to the AUTHORITY's support of the Premises or any facility thereon, as may be required and necessary, but AUTHORITY shall not be obligated to exercise this option.

Provided that exercise by AUTHORITY of any such reserved rights shall be without expense to the AIRLINE and shall not unreasonably or materially interfere with AIRLINE's use of the Premises and shall not delay AIRLINE in the exercise of its rights or the performance of its duties hereunder or increase the costs of such performance.

Any and all rights and privileges not granted to AIRLINE in this Agreement are hereby reserved for and to AUTHORITY.

2.7 Adjustments to AIRLINE Premises.

During the Term of this Agreement, AUTHORITY may re-measure various areas in the Terminal, including those areas located within the Premises, in an effort to more accurately reflect Improvements, additions and modifications to the Terminal. In the event the square footage of the Premises identified herein differs from the Premises square footage determined by such re-measurement, the parties agree to enter into an amendment to this Agreement to modify the Premises description to reflect the actual square footage of the Premises subject to the provisions of this Agreement. If the actual square footage of the Premises is determined to differ from than the square footage of the defined Premises the current fees and charges shall be re-calculated. If, based on such re-measurement, the increase in AIRLINE's monthly fees and charges would exceed five percent (5%), AUTHORITY agrees that the increase in AIRLINE's monthly fees and charges payable hereunder shall be capped at five percent (5%) for the remainder of the current Term. The parties agree that any increase or decrease in the monthly fees and charges payable resulting from re-measurement of the Premises shall not be applied retroactively. The Director may execute an amendment to this Agreement on behalf of AUTHORITY to reflect the adjusted monthly fees and charges.

Notwithstanding the foregoing, the square footage associated with AIRLINE's Gate(s) is equalized among all Gates at the Airport. Remeasurement of AIRLINE's Gate(s) shall not result in any changes in AIRLINE's monthly fees and charges.

2.8 Relocation

AUTHORITY shall have the right after consultation with AIRLINE, at such times as may be reasonable under the circumstances, to close, relocate, reconstruct, change, alter, or modify the Premises or the means of access to the Premises either temporarily or permanently for purposes of maintaining or constructing improvements, modifications, or expansions to the Terminal and/or the Airport; provided, however, that (i) reasonable notice, not less than thirty (30) days, is given to AIRLINE and (ii) reasonably convenient alternative and substantially equivalent Premises and adequate means of access are provided and (iii) AUTHORITY shall pay all costs of such relocation.

2.9 Utilization of Facilities

During periods of operational inconvenience, including but not limited to, weather delays, the temporary non-availability of facilities for maintenance purposes, or Aircraft mechanical delays, and if accommodation at a Common Use Gate(s) is not readily available, AIRLINE shall make all reasonable efforts to accommodate other Air Transportation Company's operations on AIRLINE's Premises in such instances.

3. TERM

3.1 Term

The Term of this Agreement shall begin on the Commencement Date and shall continue until December 31, 2019, unless terminated earlier under other terms of this Agreement.

3.2 Option Term

The Term of this Agreement may be extended by either Party for one, five (5) year renewal option from January 1, 2020 through December 31, 2024 and thereafter by the mutual written agreement of AIRLINE and AUTHORITY.

3.3 Hold Over

In the event that AIRLINE, without request or objection by AUTHORITY, shall continue to occupy its Premises and conduct its AIRLINE operations beyond the Term of this Agreement, such holding over shall not constitute a renewal of this Agreement, but shall be considered a month-to-month tenancy only, incorporating all terms and conditions of this Agreement, unless otherwise agreed to by both parties in writing. In such event, AIRLINE shall be assessed those same rental and fee rates as are applied to Non-Signatory Airlines during such holding over period unless otherwise agreed by AUTHORITY. No such holding over shall be deemed to operate as a renewal or extension of the Term. Such month-to-month tenancy may be terminated by AUTHORITY or AIRLINE by giving thirty (30) days prior written notice of said termination to the other party at any time.

4. RENTS, FEES AND CHARGES

In return for the use of the Premises and the Airport, the rights granted in this Agreement, and the undertakings of AUTHORITY in this Agreement, AIRLINE agrees to pay AUTHORITY during the term of this Agreement, without deduction or set-off, certain rentals and fees as set forth in this Section 4. Estimated Fiscal Year 2015 Rental and Fee Rates are shown in Exhibit G.

4.1 Terminal Rentals

AIRLINE shall pay one-twelfth (1/12) of its annual Terminal Rentals for its Preferential Use Premises and Exclusive Use Premises in the Terminal on the first day of each month in advance without notice. The Terminal Rental Rate per square foot shall be recalculated annually in

accordance with Section 5.4. AIRLINE shall pay a pro rata amount for any partial month possession of the AIRLINE's Premises.

4.2 Joint Use Fees

AIRLINE shall pay one-twelfth (1/12) of its 10% share and estimated 90% share of the Joint Use Fees on the first day of each month in advance without notice. Joint Use Fees shall be recalculated annually in accordance with Section 5.4. AIRLINE shall pay a pro rata amount for any partial month possession of the AIRLINE's Premises. Rentals for the 90% share of the Joint Use Fees shall be estimated each Fiscal Year based on AIRLINE's Enplaned Passengers for the most recent twelve (12) month period.

4.3 Landing Fees

AIRLINE shall pay to AUTHORITY by the fifteenth (15th) day of each calendar month during the Term hereof Landing Fees at the Landing Fee Rate calculated in accordance with Section 5.5 based on the Maximum Gross Landed Weight of each Revenue Landing by AIRLINE at the Airport during the previous calendar month.

4.4 Aircraft Parking Apron Rentals

AIRLINE shall pay one-twelfth (1/12) of its annual Aircraft Parking Apron Rentals on the first day of each month in advance without notice.

4.5 Utility Services

Utility services shall be provided to the AIRLINE as additional charges, which may include but not limited to: phone, data, electricity, gas, water, sewer, and trash disposal service. Payments for utility services used by AIRLINE shall be made directly to the AUTHORITY, utility supplier or service provider, as applicable. If utility service is supplied by the AUTHORITY, then AIRLINE shall pay those costs to AUTHORITY within thirty (30) days after receipt of AUTHORITY'S invoice. AUTHORITY agrees that any such costs invoiced to AIRLINE shall be based upon the uniform rates charged by the AUTHORITY to other Airport users. AIRLINE shall be responsible to pay separately, not as a component of rent.

4.6 Aviation Fuel Storage Facility Charges

AIRLINE shall pay charges as determined by the AUTHORITY for the AIRLINE's pro-rata share of operation, maintenance, upkeep, replacement, permitting, insurance and administration of the Aviation Fuel Storage Facility, which shall include storage tanks, plumbing, piping, valves, meters, filtration systems, monitoring and alarm systems, testing, product supply (input and off-load) and user delivery (output/loading racks) systems, pavements, security, lighting, electrical, containment, oil/water separators and costs of lawful compliance programs. AIRLINE's pro-rata share of gallons shall be determined based on the gallons used by AIRLINE compared to the gallons passed through the Facility. Facility charges shall be assessed by and paid to the AUTHORITY as a value per gallon of fuel product passing through the facility and to the AIRLINE. Such charges shall be based upon the AUTHORITY's actual costs as described herein.

4.7 Schedule of Fees and Charges

AUTHORITY may assess fees and charges to AIRLINE according to rates established by AUTHORITY in AUTHORITY's Schedule of Fees and Charges. Such Schedule may be amended from time-to-time at the discretion of the AUTHORITY.

4.8 Other Fees and Charges

AUTHORITY shall provide to AIRLINE and charge to AIRLINE for services, such as: badges, ramp permits, employee parking spaces and maintenance services or repairs requested by AIRLINE. AIRLINE shall be responsible to pay these charges separately and not as a component of rent. AIRLINE shall pay all charges other than rent within thirty (30) days after receipt.

5. ADJUSTMENT OF RATES FOR RENTS, FEES AND CHARGES

5.1 Effective Date of Adjustments

The Terminal Rental Rates, the Aircraft Parking Apron Rental Rate, the Joint Use Fees, and the Landing Fee Rate shall be adjusted on the Commencement Date during Fiscal Year 2015. For Fiscal Year 2016 onwards, such rates and fees shall be effective on the first day of the Fiscal Year to which they apply.

5.2 AUTHORITY Records

AUTHORITY shall maintain (and make reasonably available for review and inspection by AIRLINE) accounting records that document the following items for each Cost Center:

a. Revenues

b. Operation and Maintenance Expenses

c. Documented expenses of AUTHORITY incurred for Capital Improvements

d. AUTHORITY shall further maintain records evidencing the allocation of Debt Service based on the use of Bond proceeds or other funding sources to each Cost Center. Included in the allocation to each Cost Center shall be its proportionate share of any Bond issuance expenses and capitalized interest.

5.3 Reports

a. On or before the first day of the fourth (4th) month prior to the start of each Fiscal Year, AIRLINE shall submit to AUTHORITY a written estimate of the estimated total Maximum Gross Landed Weight for AIRLINE for the succeeding Fiscal Year. If no estimate is received, the reasonable estimate of AUTHORITY may be used.

b. Forty-five (45) days prior to the start of the Fiscal Year, AUTHORITY shall submit to AIRLINE at a meeting between the various airlines and AUTHORITY, AUTHORITY's proposed Annual Budget for the succeeding Fiscal Year, which shall include:

   i. Estimated Operation and Maintenance Expenses

   ii. Debt Service or other debt installments, if any, and any other deposits required for any Bonds

   iii. A preliminary calculation of the Terminal Rental Rate, Landing Fee Rate, and Joint Use Fees for the succeeding Fiscal Year, calculated in accordance with Sections 5.4 and 5.5.

c. Each year AUTHORITY shall adopt an Annual Budget for the Airport and establish Terminal Rental Rates, an Aircraft Parking Apron Rental Rate, Joint Use Fees, and a Landing Fee Rate. Such budget and rates shall take into account AUTHORITY's discussions with AIRLINE. AUTHORITY shall give consideration to any suggestions, comments, or requests of Signatory Airlines, but shall retain the right for AUTHORITY to make all final decisions with respect to the Annual Budget and fees.

d. If, for any reason, the Annual Budget has not been adopted as of the first day of any Fiscal Year, the Rental and Fee Rates in effect during the preceding Fiscal Year shall continue in effect until a new Annual Budget has been adopted by AUTHORITY and AUTHORITY has calculated the Rental and Fee Rates in accordance therewith. The new Rental and Fee Rates shall then be made effective retroactive to the first day of such Fiscal Year.

5.4 Calculation of Terminal Rental Rate and Joint Use Fees

During each Fiscal Year of the Term hereof, the Terminal Rental Rate shall be adjusted annually in the following manner. Whenever the adjustment calculation involves an estimate, the reasonable estimate of AUTHORITY shall be used.

a. Each year AUTHORITY shall calculate the Terminal Requirement for the succeeding Fiscal Year by totaling the following amounts, as set forth in AUTHORITY's Annual Budget:

   i. The total of direct and allocated indirect estimated Operation and Maintenance Expenses allocable to the Terminal Cost Center less the cost of providing services as may be requested by the AIRLINE or as may be required by the AUTHORITY, if any, as determined and documented by the AUTHORITY;

   ii. The total portion of the Annual Debt Service, net of Passenger Facility Charges, if any, allocable to the Terminal Cost Center;

iii. The estimated amount, if any, for required deposits to funds and accounts allocable to the Terminal Cost Center, including, but not limited to the Operation and Maintenance Reserve Requirement;

iv. The annual Amortization of the total amount of any expenditures made by AUTHORITY for Capital Improvements in the Terminal Cost Center.

b. The total Net Terminal Requirement is calculated by crediting amounts totaled pursuant to Section 5.4(a) by withdrawals from the Rate Stabilization Fund for the Terminal Requirement, if any.

c. The Terminal Rental Rate shall then be calculated by dividing the Net Terminal Requirement computed pursuant to Section5.4(b) by the total Usable Space. An example of the methodology used to calculate Terminal Rental Rates is provided in Exhibit G estimated for Fiscal Year 2015.

d. The Joint Use Fees shall be collectively equal to (i) the Terminal Rental Rate computed pursuant to Section 5.4(c) times the square footage of Joint Use Premises, plus (ii) the cost of providing services as may be requested by the AIRLINE or as may be required by the AUTHORITY, if any, as determined and documented by the AUTHORITY less (iii) any fees collected by AUTHORITY from Non-Signatory Airlines for use of the Joint Use Premises. Joint Use Fees shall be allocated according to the Joint Use Formula.

5.5 Calculation of Landing Fee Rate

During each Fiscal Year of the Term hereof, the Landing Fee Rate shall be adjusted annually in the following manner. Whenever the adjustment involves an estimate, the estimate of AUTHORITY shall be used.

a. Each year AUTHORITY shall calculate the total Airfield Requirement for the succeeding Fiscal Year by totaling the following amounts, as set forth in AUTHORITY's Annual Budget:

i. The total of the direct and allocated indirect estimated Operation and Maintenance Expenses allocable to the Airfield Cost Center;

ii. The total portion of the Debt Service, net of Passenger Facility Charges, if any, allocable to the Airfield Cost Center;

iii. The estimated amount, if any, for required deposits to funds and accounts allocable to the Airfield Cost Center, including, but not limited to the Operation and Maintenance Reserve Requirement;

iv. The annual Amortization of the total amount of any expenditures made by AUTHORITY for Capital Improvements in the Airfield Cost Center; and

v. Any supplemental amounts needed, if any, to meet the Coverage Requirement or Operation and Maintenance Reserve Requirement for the Airport System.

b. The total Net Airfield Requirement is calculated by crediting amounts totaled pursuant to Section 5.5(a) by: (i) Aircraft Parking Apron Rentals, (ii) Revenues allocable to the Airfield Cost Center, except Signatory Airline Landing Fees, (iii) withdrawals from the Rate Stabilization Fund for the Airfield Requirement, if any, and (iv) Airline Net Revenue Sharing for that Fiscal Year, if any.

c. The Landing Fee Rate for Signatory Airlines for the succeeding Fiscal Year shall be calculated by dividing the Net Airfield Requirement computed pursuant to Section 5.5(b) by the composite estimate of the total Maximum Gross Landed Weight (MGLW) of all Signatory Airlines at the Airport for the succeeding Fiscal Year as projected by AUTHORITY using, in part, the estimates provided by AIRLINE pursuant to Section 5.3(a). An example of the methodology used to calculate Landing Fee Rates per 1,000 pounds of MGLW is provided in Exhibit G estimated for Fiscal Year 2015.

5.6 Aircraft Parking Apron Rental Rate

During each Fiscal Year of the Term hereof, the Aircraft Parking Apron Rental Rate shall be equal to fourteen thousand four hundred dollars ($14,400) for each Aircraft Parking Apron in AIRLINE's Premises.

5.7 Mid-year Adjustments

If total Landing Fees, Terminal Rentals, and Joint Use Fees for any quarter vary by more than five percent (5%) from the projected total Landing Fees, Terminal Rentals, and Joint Use Fees for such quarter, the Landing Fee Rate, Terminal Rental Rate, and Joint Use Fees shall, if deemed necessary by AUTHORITY, be adjusted for the balance of such Fiscal Year. AUTHORITY will notify the Signatory Airlines at least thirty (30) days prior to the implementation of a mid-year adjustment of the Terminal Rental Rate, Joint Use Fees, or Landing Fee Rate.

5.8 Budget versus Actual Reconciliation

Within ninety (90) days after the completion of AUTHORITY's annual audited financial statements, AUTHORITY shall reconcile Rental and Fee Payments in the following manner:

a. **Terminal Rentals for Exclusive Use and Preferential Use Space.** AUTHORITY shall determine the Terminal Rental Rate per square foot using audited financial results and Usable Space for the preceding Fiscal Year. The Terminal Rental Rate calculated based on the Annual Budget shall be compared to the Terminal Rental Rate calculated based on actual financial results. Any credit or deficit in the Terminal Rental Rate per square foot shall be allocated to AIRLINE per square foot of its Exclusive Use and Preferential Use premises.

b. **Joint Use Fees.** Using the Terminal Rental Rate calculated in Section 5.8(a) and the actual cost of providing services as may be requested by the AIRLINE or as may be required by the AUTHORITY, if any, and any fees collected by AUTHORITY from Non-Signatory

Airlines for use of the Joint Use Premises, AUTHORITY shall determine the Joint Use Cost. The Joint Use Cost shall be allocated among the Signatory Airlines on the basis of the Joint Use Formula. The allocated Joint Use Cost shall then be compared to the Joint Use Fees received from AIRLINE.

c. **Landing Fees.** Using audited financial results for the preceding Fiscal Year, AUTHORITY shall determine the actual Net Airfield Requirement. This amount shall be compared to the Landing Fees paid by Signatory Airlines during the preceding Fiscal Year. Any deficit or credit in Landing Fees shall be allocated based on AIRLINE's share of the Maximum Gross Landed Weight of Signatory Airlines in the preceding Fiscal Year.

d. Any credit or deficit in the Terminal Rentals, Landing Fees, and Joint Use Fees shall be calculated in aggregate and, as applicable, either AIRLINE shall pay AUTHORITY directly in a lump sum or AUTHORITY shall credit AIRLINE's invoices. The application of any year-end credit, determined in accordance with this Section 5.8 shall be withheld to AIRLINE if AIRLINE has an undisputed outstanding past due balance.

e. While the Commencement Date of this Agreement is during Fiscal Year 2015, the budget versus actual reconciliation for Fiscal Year 2015 shall be done for the entire Fiscal Year.

6. FLOW OF FUNDS

6.1 Internal Revenue Code of 1986

AIRLINE understands that the City of Wichita, Kansas has and will be the issuer of Bonds to fund projects at the Airport. Bonds that may be issued will bear the interest which is intended to be excludable from gross income of the holders for Federal income tax purposes under the Code. AIRLINE agrees that it will not act, or fail to act (and will immediately cease and desist from any action, or failure to act) with respect to the use of its AIRLINE's Premises, if the act or failure to act may cause the City of Wichita, Kansas to be in noncompliance with the provisions of the Code, and AIRLINE will not take or persist in any action or omission which may cause the interest on such Bonds to be includable in the gross income of the holders thereof for Federal income tax purposes.

6.2 SEC Rule 15c2-12

Upon AUTHORITY's written request, AIRLINE shall provide AUTHORITY with such information with respect to AIRLINE as AUTHORITY or the City of Wichita, Kansas may require in writing in order for AUTHORITY or the City of Wichita, Kansas to comply with its continuing disclosure obligations under Securities and Exchange Commission Rule 15c2-12, as it may be amended from time to time. Satisfaction of such obligation may be met by AIRLINE referring AUTHORITY to the SEC's website, where such requested information about AIRLINE may be publicly-available. To the extent that AIRLINE is an "Obligated Party" with respect to the Bonds as per Securities and Exchange Commission Rule 15c2-12, AIRLINE agrees to execute the Continuing Disclosure Agreement incident to such financing.

6.3 **Flow of Funds and Application of Airport System Revenues**

The application of Airport System Revenues (including Airline Net Revenue Sharing), excluding Passenger Facility Charge and Customer Facility Charge revenues, shall be the following:

a. Payment of Operation and Maintenance Expenses,

b. Payment of Debt Service on any outstanding obligations for that Fiscal Year, offset by Passenger Facility Charge and Customer Facility Charge revenues pledged to the payment of Debt Service for that Fiscal Year,

c. Amortization allocable to the Airfield and the airline's portion of the Terminal Cost Centers in such Fiscal Year shall be deposited into the Rate Stabilization Fund, up to a maximum balance of one million five hundred thousand dollars ($1,500,000),

d. Deposit of up to one million dollars ($1,000,000) into the Authority Net Revenue Sharing Fund,

e. Any Airport System Revenues remaining after the Authority Net Revenue Sharing reaches one million dollars ($1,000,000) are to be divided as follows: sixty percent (60%) to the Airline Net Revenue Sharing and forty percent (40%) to the Authority Net Revenue Sharing.

7. PAYMENT TO AUTHORITY

AIRLINE shall make all payments to the Wichita Airport Authority and in a form acceptable to AUTHORITY. ACH direct deposit is preferred. Bank account and routing information is available upon request. Payments made by check shall be delivered or mailed to:

Wichita Airport Authority
2173 Air Cargo Road
Wichita, Kansas 67209

or such other address as designated in writing.

In the event AIRLINE fails to make payment within ten (10) calendar days of the dates due as set forth in this Agreement, then AUTHORITY may charge AIRLINE a service charge at an annual interest rate equal to twelve percent (12%), such charge to accrue from the date upon which such payment was due and until paid. AIRLINE is responsible to AUTHORITY for reasonable attorneys' and administrative fees and third party collection agency fees incurred by AUTHORITY in attempting to collect payment.

8. ACTIVITY REPORTS SUPPLIED BY AIRLINE

Within five (5) working days after the end of each month, AIRLINE shall file with AUTHORITY a Monthly Activity Report, shown on the attached Exhibit E.

Within five (5) working days after the end of each month, AIRLINE shall file with AUTHORITY separate reports for other aircraft operators handled by AIRLINE not having an agreement with the AUTHORITY with reporting obligations.

If AIRLINE fails to submit the reports required by this Section, AUTHORITY shall base AIRLINE's current rentals, fees and charges upon the most recent data transmitted by AIRLINE to AUTHORITY, with such charges to be adjusted as necessary after submission of the missing activity report. Rentals, fees and charges based upon estimates shall be binding on AIRLINE if not reconciled by use of actual data within three (3) months of any report's due date.

The acceptance by AUTHORITY of any AIRLINE payment shall not preclude AUTHORITY from verifying the accuracy of AIRLINE's reports on which AIRLINE's rentals, fees and charges are based, and shall not be construed as a waiver of interest penalty due, if any. AUTHORITY is not bound by prior estimates used to calculate rentals, fees and charges if examination or audit demonstrates that such estimates fell short of actual data calculations. Any shortfall determined by AUTHORITY examination of AIRLINE's records shall be paid in full within thirty (30) days after receipt of AUTHORITY's invoice.

9. SECURITY DEPOSIT

To provide security for the rentals, fees, and charges due hereunder, AIRLINE shall comply with either of the following two options within fourteen (14) days following the execution of this Agreement:

a. Post with the AUTHORITY a surety bond, to be maintained throughout the term hereof. Such bond shall be issued by a sound indemnity company and shall be in a form and content satisfactory to AUTHORITY.

b. Deliver to AUTHORITY an irrevocable letter of credit drawn in favor of AUTHORITY upon a bank satisfactory to AUTHORITY. This irrevocable letter of credit shall be kept in force throughout the term of this Agreement and shall contain terms and conditions reasonably satisfactory to AUTHORITY. AUTHORITY shall promptly return any such irrevocable letter of credit to AIRLINE after the termination or expiration of this Agreement.

The security instrument selected by AIRLINE shall be conditioned on the timely and complete payment of all rentals, fees and charges during the Term of this Agreement. These charges and fees shall be payable within thirty (30) days after receipt of AUTHORITY's invoice.

Whichever option is selected, the security for payments shall be in an amount equal to two months' rentals for Exclusive Use Premises and Preferential Use Premises, plus estimated landing fees for the same period, all as reasonably estimated by the Director. Security for payment shall also reflect the estimated landing fees for the AIRLINE's Affiliate(s).

10. PASSENGER FACILITY CHARGES

AUTHORITY shall have the right to assess airline passengers a Passenger Facility Charge in accordance with the requirements of 14 CFR Part 158. AIRLINE shall collect on behalf of, and remit to AUTHORITY any such Passenger Facility Charge revenue in accordance with the requirements of 14 CFR Part 158. Any Passenger Facility Charge revenue collected by AIRLINE shall, pending remittance to AUTHORITY, be held in trust for the benefit of AUTHORITY. AUTHORITY shall have the right to use all such Passenger Facility Charge revenue collected in any lawful manner. As of the date of this Agreement, the PFC is $4.50.

AIRLINE and AUTHORITY shall be bound by and shall observe all of the provisions of 14 CFR Part 158 as they apply to either or both parties.

11. AUDIT

AIRLINE shall maintain comprehensive records accurately recording the total number of Revenue and Non-Revenue Landings at the Airport, the Maximum Gross Landed Weight of each Aircraft, the total number of Enplaned Passengers and Deplaned Passengers, and all other traffic and activity statistics that AUTHORITY requires. Such records shall be available in electronic format to AUTHORITY for a period of three (3) years after occurrence of the activities reported. All records made available shall be certified by an officer of AIRLINE as accurate and complete.

The Director or a duly authorized representative may examine any records relating to activity at the Airport during all reasonable business hours, at a place at the Airport agreed to between AIRLINE and AUTHORITY. Upon AUTHORITY's written request for examination of such records, AIRLINE shall produce them to AUTHORITY within ten (10) Business Days or pay all reasonable transportation, food, and lodging expenses, for AUTHORITY's auditor(s) to perform the audit outside of the Airport.

The initial cost of an audit outside of the Airport, shall be borne by AUTHORITY; with the exception of the auditor(s) transportation, food and lodging expenses. However, that the full cost of the audit shall be borne by AIRLINE if the audit reveals any of the following conditions:

a. Underpayment of more than ten percent (10%) of the fees and charges due hereunder, unless such underpayment is the result of a demonstrable miscalculation by AUTHORITY; or

b. Failure to maintain accurate and complete records and supportive source documentation required in this Section; or

c. Failure to file Monthly Activity Reports during four (4) or more months of any consecutive eighteen (18) month period.

Any underpayment of amounts due AUTHORITY disclosed in an audit conducted pursuant to this Section shall accrue including interest of twelve percent (12%) annual percentage rate computed from the original due date of each such amount due. The full amount due plus interest and audit fees shall be paid to AUTHORITY within thirty (30) days from receipt of AUTHORITY's invoice. Such payment by AIRLINE shall not abrogate AIRLINE's right to contest the validity of said underpayments. AUTHORITY shall credit to AIRLINE valid overpayments made by AIRLINE other than those made binding under Section 10 due to delinquent reports.

12. SIGNATORY AIRLINE AFFILIATE(S)

12.1 Notification

AIRLINE shall provide AUTHORITY with a completed Exhibit A, attached hereto, for each Affiliate active as of the effective date of this Agreement, subsequently AIRLINE shall provide an updated Exhibit A thirty (30) days prior to AIRLINE designating a new Affiliate, which designation is subject to AUTHORITY approval.

12.2 Fees

Affiliate(s) shall be charged the Signatory Airline Landing Fee Rate. AIRLINE and any Affiliate(s) shall be counted as one entity for the purposes of computing the Joint Use Formula. AIRLINE is exempt from any Ground Handling Services fees related to its AUTHORITY-approved Affiliate(s).

12.3 Payments

An Affiliate shall be primarily liable for the payment of Landing Fees and other fees incurred at the Airport; provided, however, that AIRLINE shall be secondarily liable as a guarantor for all unpaid fees or charges incurred by such Affiliate while such Affiliate operates at the Airport.

AIRLINE may elect to pay an Affiliate's rentals, fees, and charges. However, if an Air Transportation Company is designated as an Affiliate of more than one Signatory Airline, the Signatory Airline shall not have the option to pay a portion of the Affiliate's rentals, fees and charges or to report partial statistics and activities on behalf of the Affiliate unless otherwise agreed to by AUTHORITY.

12.4 Facility Utilization

In determining AIRLINE's utilization of facilities pursuant to Section 16.2, AUTHORITY shall include the activities of the Affiliate(s) in AIRLINE's use calculations. If an Air Transportation

Company is designated as an Affiliate of more than one Signatory Airline, AIRLINE may only include in its use calculations the Aircraft departures conducted from AIRLINE's Premises.

13. USE OF AIRPORT AND RELATED FACILITIES

13.1 Use of the Airport

Subject to the terms and conditions of this Agreement, AIRLINE shall have the nonexclusive right to use the Airport for the conduct of AIRLINE's Air Transportation Business at the Airport in common with other Air Transportation Companies operating at the Airport, which includes the nonexclusive right to: (1) use the Airport's AOA; (2) the use of the public common areas within the Terminal; and (3) the use of all other facilities and Improvements that have been provided for common use at the Airport. The rights provided for herein shall be subject to reasonable and nondiscriminatory rules and regulations established by the Department, as may be amended from time-to-time, and subject to payment of all applicable fees and charges.

AIRLINE, its Affiliates, subsidiaries, partners, employees, agents, representatives, contractors, and subcontractors, shall not transact or otherwise engage in any other activities, business, and/or services on or from the Premises, except as described in this Agreement, unless such is provided by a separate written approval, or amendment to this Agreement, and subject to approval by AUTHORITY.

13.2 Equipment

AIRLINE acknowledges that equipment and furnishings owned or acquired by AUTHORITY for use by AIRLINE, shall remain the property and under the control of AUTHORITY. AUTHORITY shall provide the following equipment and furnishings in, attached to or adjacent to the Terminal for AIRLINE's nonexclusive use to provide the services of its Air Transportation Business:

a. One (1) passenger boarding bridge attached to each of AIRLINE's holdroom(s), including auxiliary conditioned air and power source;

b. Disabled passenger boarding equipment;

c. Conveyor systems and devices for outbound baggage and baggage claim activities;

d. Electronic Visual Information Display System (EVIDS); and

e. Holdroom finishes and furnishings, including gate counter shell, gate backwall, podium, and chairs, but excluding any other equipment or furnishings required by AIRLINE for its operations hereunder such as counter and podium inserts.

13.3 **Equipment Training**

AIRLINE, its employees or designated and authorized agents or contractors may operate AUTHORITY owned facilities and equipment subject to the rules and regulations and Standard Operating Procedures issued by the AUTHORITY, or as may be revised or amended from time-to-time. AIRLINE, its employees or designated and authorized agents or contractors shall receive training from the AUTHORITY in the correct operation and use of AUTHORITY owned facilities and equipment. AIRLINE agrees that only its employees or designated and authorized agents or contractors who have received specific AUTHORITY provided or approved training, and demonstrated competency in their use and operation shall be permitted to operate such facilities and equipment.

AIRLINE, or its designated and authorized agents or contractors requiring the use and operation of AUTHORITY owned facilities and equipment shall request training from the AUTHORITY, and AUTHORITY shall provide such training upon request. Upon successful completion of training, the AUTHORITY shall grant access and authorization for the AIRLINE employee, agent or contractor.

The AUTHORITY reserves the sole right to determine if facility and equipment training is to be provided directly by the AUTHORITY, or if authorized employees, agents or contractors of the AIRLINE will be trained and designated as approved trainers.

Training and authorization shall be recorded and maintained by both the AIRLINE and the AUTHORITY. The AUTHORITY reserves the right to temporarily suspend, pending completion of re-training, or permanently revoke access and use privileges to any AIRLINE employee, agent or contractor found to be in violation of rules and regulations or Standard Operating Procedures established for the operation and use of AUTHORITY owned facilities and equipment.

AIRLINE, or its employees or designated and authorized agents or contractors shall promptly notify AUTHORITY of any facility or equipment malfunctions, discrepancies or safety hazards it observes.

13.4 **Aviation Fuel Storage Facilities**

AIRLINE shall have the right to use the Aviation Fuel Storage Facilities owned by the AUTHORITY. This right is subject to (i) reasonable rules and regulations established by the Director; (ii) the payment of charges for such use of the facility as set forth in Section 4 of this Agreement; and (iii) the terms of agreements between the AUTHORITY and any agent operating the AUTHORITY's facilities.

13.5 **Entry and Exit Rights**

AIRLINE shall have the right of entry and exit on Airport, in common with other authorized users of Airport. This use must comply with the AUTHORITY's rules and regulations. AIRLINE may exercise these rights for the benefit of its employees, customers, passengers, and business associates. This right of entry and exit is granted only the activities related to AIRLINE'S approved activities. AIRLINE shall not interfere with the equal rights of and access provided to

other tenants on the Airport. This right is subject to federal, state and local security and safety requirements and standards. As required by Kansas state statute, the Premises shall be used and occupied for aviation purposes or purposes incidental or related thereto.

13.6 Other Airport Tenants

AIRLINE recognizes that other tenants may occupy other portions of Airport, and that all tenants have the right to use public roadways, streets, ramps, taxiways, runways, access gates, lighting, beacons, navigational aids, or other conveniences for aeronautical operations, and these common facilities are not a part of AIRLINE's Premises; and AIRLINE shall conduct its operations in such a manner as to not impede access by others to these common facilities, nor in any other way interfere with, nor disrupt the business of other tenants or the quiet enjoyment of their leasehold interests at the Airport.

13.7 Quiet Enjoyment

AUTHORITY agrees that, upon payment of the rentals, fees, and charges and performance of the covenants and agreements on the part of AIRLINE to be performed hereunder, AIRLINE shall peaceably have and enjoy the Premises and all rights, licenses, services, and privileges of the Airport and its appurtenances granted herein.

AIRLINE recognizes that this right of quiet enjoyment and unimpeded access extends to all tenants equally. No tenant has the right to overhang or otherwise invade by vegetation, equipment, Improvements, any part of an Aircraft, or other means the leasehold premises of any other tenant. This limitation includes the vertical plane commencing at the property lease line and all areas therein. This prohibition applies to both permanent and transitory invasions. The sole exception to this provision shall be for the navigational easement, described in the Airspace and Easement for Flight provisions of Section 44 General Provisions, granted to airborne aircraft.

13.8 Other Parties

AUTHORITY reserves the right to grant and/or permit other parties the right to use any portion of Airport, except AIRLINE's Exclusive Use Premises, for any permitted purpose and upon any fair and non-discriminatory terms established by the AUTHORITY.

14. AIRLINE OBLIGATIONS, RIGHTS AND PRIVILEGES

AIRLINE may, on behalf of any other Air Transportation Company, exercise any of the rights granted AIRLINE herein, so long as AIRLINE is concurrently exercising those same rights in the operation of AIRLINE's own Air Transportation Business at the Airport.

AIRLINE shall have the right, in addition to all rights granted elsewhere in this Agreement, to use areas of Airport as designated in this Agreement for the following purposes:

a. The operation of its Air Transportation Business including all activities reasonably necessary to such operations;

b. The landing, taking off, flying over, taxiing, towing, parking, loading and unloading, conditioning and servicing of Aircraft of AIRLINE;

c. The extended parking, servicing, loading or unloading, storage or maintenance of AIRLINE's Aircraft, subject to availability of space approved by AUTHORITY and to such reasonable charges and regulations as AUTHORITY may determine for areas not part of Premises;

d. The sale of air transportation tickets and services, the processing of passengers and their baggage for air travel; and

e. The sale, handling, and providing of mail, freight, and express services.

The rights and privileges granted to AIRLINE pursuant to this Section may be exercised on behalf of AIRLINE by its Affiliates and other Signatory Airlines or contractors authorized by AUTHORITY to provide such services at the Airport. Exercise of these rights and privileges by any entity other than AIRLINE is subject to the prior written approval of AUTHORITY and further subject to all applicable laws, rules, regulations and fees and charges.

14.1 Training

AIRLINE shall have the right to conduct the training at Airport of AIRLINE personnel and the testing of Aircraft and other equipment used on the Airport by the Air Transportation Company. This training and testing must be incidental to the use of Airport in the operation by AIRLINE. Flight training is not allowed between the hours of 10:00 p.m. and 7:00 a.m., and will not unreasonably interfere with the use of Airport by others. In the event the number of training and testing flights by AIRLINE exceeds ten percent (10%) of Revenue Landings by AIRLINE in any single calendar month, then AIRLINE shall pay for such excess flights Landing Fees for that month at current rates for all flights exceeding the ten percent (10%) Revenue Landing allowance.

14.2 Professional Operations

AIRLINE shall: (i) comply with applicable fire codes and regulations, (ii) accurately and timely input flight information into flight information displays and baggage information displays, (iii) use commercially reasonable efforts to notify AUTHORITY at least thirty days (30) in advance of planned schedule changes, including but not limited to equipment changes, flight times, and number of flights, (iv) comply with TSA regulations regarding inbound baggage, and (v) notify AUTHORITY of disruptions and operational or equipment changes that may materially impact AUTHORITY.

14.3 Non-Disturbance and Conduct of Employees

AIRLINE shall exercise reasonable control over the conduct, demeanor and appearance of its employees, agent, representatives, contractors, suppliers and vendors in an orderly and proper manner and in accordance with the AUTHORITY's rules and regulations and Airport Security Program but only to the extent permitted by law or any applicable collective bargaining agreements or applicable contracts.

14.4 Sale of Equipment and Supplies

AIRLINE shall have the right to sell, dispose, or exchange its Aircraft, engines, accessories, gasoline, oil, grease, lubricants, fuel and other equipment, or supplies, subject to any limitations contained herein. AIRLINE shall not conduct a separate business at the Airport, but shall only perform such functions as are incidental to the operation of its Air Transportation Business. AIRLINE shall not sell aviation fuels or propellants except (i) to a wholly owned subsidiary company, parent company, or a successor company; (ii) for use in Aircraft of others which are being used solely in the operations of AIRLINE; or (iii) to others when a comparable grade and type of fuel desired by others is not available at Airport except from AIRLINE.

14.5 Purchase of Supplies or Services

AIRLINE shall purchase supplies or services from persons or companies subject to the AUTHORITY's right to require said providers to secure a permit to conduct such commercial activity at the Airport, pay the required fees, and abide by all reasonable rules and regulations established by AUTHORITY. No discriminatory limitations or restrictions shall be imposed by AUTHORITY that interfere with such purchases. However, nothing in this Agreement shall be construed to permit AIRLINE to store fuels at the Airport. The granting of the right to store fuels shall be subject to the execution of a separate agreement between AIRLINE and AUTHORITY.

14.6 Off-Gate Service, Repair and Storage

AIRLINE shall only engage in the servicing, maintenance and repair, remote "off-gate" overnight, and extended duration storage of AIRLINE's Aircraft in areas on the Airport designated by AUTHORITY for such purposes. Use of the areas shall be subject to availability and to payment of applicable fees and charges established for their use.

14.7 Loading and Unloading

AIRLINE may load and unload persons, property, cargo and mail by motor vehicles or other means of conveyance as AIRLINE may desire in the operation of its Air Transportation Business, at locations designated by AUTHORITY. AIRLINE may designate the particular carrier or carriers which are legally authorized to conduct such services to, from, and the Premises on the Airport. However, AUTHORITY reserves the right to require such carrier or carriers to secure a permit from AUTHORITY to conduct such activity at Airport and to abide by all reasonable rules and regulations established by AUTHORITY.

14.8 Signs

At AIRLINE's sole cost and expense, AIRLINE may install on the walls behind ticket counters leased by AIRLINE, identifying and company logo signs customarily installed by AIRLINE in such areas at comparable airport facilities. All such signs of whatever number, size, design, color, nature or location shall require the written approval of Director, not to be unreasonably withheld prior to their installation. Signs of any type may not be attached or affixed in any fashion to the front of ticket counters or upon glass surfaces. The general type and design of such signs shall be harmonious and in keeping with the pattern and decor of the Terminal areas and shall conform to the TCAP Manual. Installation of such signs shall not damage walls, and wall penetrations are subject to the prior coordination and approval of the AUTHORITY.

AIRLINE shall not erect, install, operate, nor cause or permit to be erected, installed, or operated upon any non-leased premises of the Airport, any signs, banners, branding or other similar contrivances for its own business, or the business of others without the AUTHORITY's prior written approval. This provision shall not have the effect of limiting or restricting AIRLINE's right to enter into an agreement with AUTHORITY'S authorized and permitted advertising contractor for the display of informational, marketing or advertising media at approved designated locations on Airport.

14.9 **Communications**

AIRLINE may install, maintain and operate such radio, communication, computer, meteorological and aerial navigation equipment and facilities in, on and about the Premises as may be reasonably necessary in the opinion of AIRLINE for operation of its Air Transportation Business. The location and installation of such equipment and facilities shall require the prior written approval of Director. The placement and type of installations which may be authorized by the Director shall not interfere with air navigational aids, frequencies or signals, create an airspace obstruction hazard to air navigation, void/nullify roofing or other warranties, or interfere with similar rights granted to other tenants or governmental agencies. The Director may require immediate removal, relocation, or modification at the sole cost of AIRLINE to eliminate such interference or obstruction.

AUTHORITY will grant such rights of way as may reasonably be required by AIRLINE for communications, computer equipment, telephone, power and other transmission lines in and between the Premises of the Terminal and other areas of Airport under exclusive control through a separate agreement. The location of and changes for such rights of way shall be designated by Director and may be subject to rates and charges.

14.10 **In-Flight Food and Beverage Preparation**

Subject to any restrictions in AUTHORITY's existing agreement(s) with its food and beverage service provider(s), the right to prepare and package food and beverages to be consumed on aircraft operated by AIRLINE.

14.11 **Other Rights.**

AIRLINE, its affiliated entities, subsidiaries, partners, employees, agents, representatives, contractors, and subcontractors, shall not transact or otherwise engage in any other activities, business, and/or services on or from the Premises, except as described in this Agreement, unless such is provided by a separate written approval, or amendment to this Agreement, and subject to approval by AUTHORITY.

14.12 **Right to Charge Fees**

AUTHORITY expressly reserves the right to assess and collect reasonable fees from third parties operating at the Airport and providing commercial services to AIRLINE including, but not limited to, in-flight catering, vending, ground transportation, ground equipment maintenance and service, aircraft maintenance and service, fueling, aircraft deicing/anti-icing, aircraft ground handling,

baggage delivery, wheelchair services, curbside check-in, and other services provided to AIRLINE.

15. EXCLUSIONS AND RESERVATIONS

15.1 Advertising

AUTHORITY reserves the right to install advertising and revenue generating devices, including vending machines, in Joint Use Premises. Such installations shall not unreasonably interfere with AIRLINE's operations or substantially diminish the square footage contained in Premises.

15.2 Capacity and Capability

Director may prohibit the use of the AOA and any paved surface thereon by any Aircraft operated or controlled by AIRLINE which exceeds any design strength, capacity or limitations of the surface.

15.3 Disabled Aircraft

AIRLINE shall promptly remove its disabled Aircraft from the AOA and Terminal Aircraft Parking Aprons as soon as proper clearance is obtained from the appropriate governmental authorities, if applicable. AIRLINE shall then place such disabled aircraft in a storage area designated by AUTHORITY on the Airport. In the event AIRLINE fails to remove its disabled aircraft as expeditiously as possible under the circumstances, AUTHORITY may cause the removal and storage of such aircraft. AIRLINE shall only store disabled aircraft in areas on the Airport designated by AUTHORITY for storage of such aircraft and for such length of time as authorized by AUTHORITY. In the event AIRLINE fails to remove its disabled aircraft from a designated storage area on or before the expiration of the period of time authorized by AUTHORITY, AUTHORITY shall advise AIRLINE of AUTHORITY's intent to remove such disabled aircraft no less than thirty (30) days prior to the written notification. In the event AUTHORITY causes AIRLINE's disabled aircraft to be removed from Aircraft Parking Apron or from storage, AIRLINE shall pay AUTHORITY for the costs of removing the disabled aircraft, plus a twelve percent (12%) administrative fee, which shall be payable within thirty (30) days of the date of AUTHORITY's invoice.

15.4 Interference

AIRLINE shall not do or permit to be done anything that may interfere with the effectiveness or accessibility of the drainage, sewerage, water, communications, or fire protection systems or any other part of the utility, electrical, or other systems installed or located from time to time at Airport.

15.5 Public Communications

AUTHORITY further reserves the right to install pay telephones and public access, internet facilities in any part of Terminal. AUTHORITY shall be entitled to all income generated by such telephones, devices and services and to reasonable access upon Premises to install or service such telephones and devices. AUTHORITY shall coordinate with AIRLINE as to the location of such

devices and consent of AIRLINE shall not be unreasonably withheld.

15.6 **Risk**

AIRLINE shall not, by act or failure to act, shall cause the termination or violate the provisions of any policy of insurance for AUTHORITY. AIRLINE shall not cause a hazardous condition so as to increase the risks normally associated with operations permitted by this Agreement. If AIRLINE shall cause an increase in the premiums for insurance for AUTHORITY, then AIRLINE shall immediately upon demand by Director pay the amount of such increase. If such AIRLINE's act or failure to act shall cause termination of any policy, then AIRLINE shall immediately upon notification by Director to obtain reinstatement or reasonable replacement of said insurance. If such coverage is not commercially feasible, AIRLINE shall mitigate the effects of its action or inaction to the extent reasonably possible.

15.7 **Third Parties**

The rights and privileges granted to AIRLINE in this Agreement to contract with third parties for obtaining services and materials are subject to restrictive agreements, franchises, licenses, and other rights previously granted by AUTHORITY to fixed base operators, ground transportation carriers and other providers of services and materials. Copies of such agreements are available for inspection by AIRLINE at the office of the Director.

15.8 **Persons Other Than AIRLINE**

No right granted to AIRLINE under this Agreement shall authorize any other entity to occupy space or provide services on the Airport without first obtaining the written permission from AUTHORITY allowing such space to be occupied or service to be provided and the payment of all applicable rentals, fees, and charges. AUTHORITY shall have the right to charge any entity leasing space or providing services on the Airport appropriate rentals, fees, and charges whether such services are provided to AIRLINE or to other Airport tenants.

15.9 **Waste Material**

AIRLINE, its employees, agents or contractors shall not dispose of any waste material taken from Aircraft or products used (whether liquid or solid) with respect to its Aircraft into the sanitary or storm sewers at the Airport unless such waste material or products are first properly treated by, or are processed in equipment installed or approved by AUTHORITY for such purposes.

15.10 **Food and Beverage**

Except for any sales that may occur on AIRLINE's Aircraft, AIRLINE shall not maintain or operate in the Terminal or elsewhere at Airport a cafeteria, restaurant, bar or cocktail lounge for the purpose of selling food and beverages to the public or to its employees and passengers, nor shall AIRLINE in any manner otherwise provide for the sale of food and beverages at Airport.

15.11 **Vending Machines**

AIRLINE shall not be allowed to install any type of vending machines in AIRLINE's non-public, Exclusive Use Premises or elsewhere on the Airport, without prior written approval by the Director.

15.12 **General Public**

AUTHORITY reserves the right to establish lawful rules and regulations governing access of the general public, including AIRLINE's passengers, to public areas in the Terminal. Such rules and regulations shall not unreasonably interfere with the operation of AIRLINE's Air Transportation Business, or alter the access rights provided for elsewhere in this Agreement. The parties agree that lawful and reasonable rules and regulations imposed for the safety and security of passengers do not unreasonably interfere with AIRLINE's operations.

16. ACCOMODATION OF REQUESTING AIR TRANSPORTATION COMPANIES

16.1 **Accommodation in Preferential Use Gates and Aircraft Parking Apron.**

In order to maximize the use of all leased gates and Aircraft Parking Apron, and to facilitate the entry of new and the expansion of existing Air Transportation Companies at the Airport, AIRLINE shall, on the direction of the Director, accommodate Requesting Air Transportation Companies in AIRLINE's Preferential Use Premises. In order to ensure uniform treatment of all Air Transportation Company tenants at the Airport, the following procedure shall be observed in the accommodation of Requesting Air Transportation Companies:

a. In order to secure the use of terminal facilities, a Requesting Air Transportation Company shall notify the Director of its wish to be accommodated on the Airport. AUTHORITY shall attempt to accommodate the Requesting Air Transportation Company on a Common Use Gate.

b. If the Requesting Air Transportation Company was not accommodated at a Common Use Gate or other facilities, the Director shall notify the Signatory Airlines that the Requesting Air Transportation Company is seeking accommodation at the Airport. If the Requesting Air Transportation Company is not accommodated by an Air Transportation Company tenant within fifteen (15) days, the Director shall select AIRLINE or another Air Transportation Company tenant at the Airport to accommodate the Requesting Air Transportation Company, taking into consideration all relevant factors, including, but not limited to, current utilization of Preferential Use Gates pursuant to the Departures/Gate calculation in Section16.2, schedule compatibility, and union work rules. Once a decision is made, the Director shall send written notice to the Air Transportation Company selected to accommodate the Requesting Air Transportation Company to begin accommodating such Requesting Air Transportation Company within thirty (30) business days of receiving notice directing such accommodation unless it can be shown to the satisfaction of the Director that a longer period of time will be necessary in order to accommodate schedule or other operational changes. The Director shall include in such notice the basis for its decision. The decision of the Director shall be final.

   If the Requesting Air Transportation Company cannot be accommodated as so described, the Director may reallocate an airline's premises as described in Section 16.2. The decision

to accommodate or relocate is at the sole discretion of the Director.

c. AIRLINE shall, if selected to accommodate a Requesting Air Transportation Company, begin accommodating such Requesting Air Transportation Company's operations on the specified Preferential Use Premises within the period described in Section 16.1(b). AIRLINE shall perform such accommodation in good faith and in a reasonable and equitable manner; provided, however, in case of a conflict between the schedules of AIRLINE and the Requesting Air Transportation Company; AIRLINE shall have priority in the use of its Preferential Use Premises during periods of Active Loading and Active Unloading. Requesting Air Transportation Company shall not have the rights to use AIRLINE's Personal Property. AIRLINE shall remove its Aircraft promptly from its Gates (if such Gates must accommodate a Requesting Air Transportation Company, when they are not being loaded or unloaded, in order to make such Gates available for the use of the Requesting Air Transportation Company. AUTHORITY shall require the Requesting Air Transportation Company to minimize its use of Gates at which it is accommodated and shall remove its Aircraft promptly, when they are not being loaded or unloaded, in order to make such Gates available for use by AIRLINE.

   i. **Indemnification.** During the period of and in connection with any such accommodation, AUTHORITY shall require the Requesting Air Transportation Company to agree in writing to indemnify AUTHORITY and AIRLINE in the manner and to the extent required of AIRLINE pursuant to Section 31 and name AIRLINE as an additional insured on its liability insurance.

   ii. **Payment by Requesting Air Transportation Company**. AIRLINE may assess the Requesting Air Transportation Company reasonable rentals, fees, and charges for an accommodation which rentals, fees, and charges shall be no more than one hundred and fifteen percent (115%) of AIRLINE's costs for the Premises. AIRLINE may require a reasonable security deposit from the Requesting Air Transportation Company not to exceed two (2) months of payments from the Requesting Air Transportation Company. In the event of a payment default by the Requesting Air Transportation Company, AIRLINE shall institute termination procedures in the following manner: (i) AIRLINE shall certify such payment default to AUTHORITY; (ii) AUTHORITY shall have fifteen (15) days in which to pursue appropriate remedies against the Requesting Air Transportation Company; and (iii) if, after such fifteen (15) day period, the Requesting Air Transportation Company remains in default, AIRLINE may terminate the Requesting Air Transportation Company's use of AIRLINE's Premises immediately.

16.2 Reallocation of Premises

In the event a Requesting Air Transportation Company cannot be accommodated under Section 16.1, AUTHORITY may reallocate an AIRLINE's Premises. For the most recent monthly period for which Aircraft departures data is available, AUTHORITY will calculate the average jet aircraft departures-per-gate per day (Departures/Gate) index for each Signatory Airline that has Preferential Use holdroom space, including its approved subtenants if that subtenant notifies AUTHORITY that it seeks to have its departures included in the tenant Signatory Airline's

Departures/Gate calculation. Departures shall be calculated by AUTHORITY using Aircraft departures as reported by the AIRLINE to AUTHORITY and the AIRLINE's number of Preferential Use holdroom(s) and co-located passenger boarding bridge(s). Signatory Airline productivity will be ranked from most productive to least productive according to this index. AUTHORITY shall have the right to reallocate any part of or all of the Premises leased to AIRLINE taking into consideration all relevant factors, including, but not limited to, co-located Gates leased by AIRLINE or AIRLINE's code-share Air Transportation Companies, if (i) AUTHORITY determines that there is a reasonable need for the use of such space by another Air Transportation Company, and (ii) AIRLINE has a Departure/Gate ranking less than the fiftieth (50th) percentile for the group of Signatory Airlines subject to the Departure/Gate ranking. AUTHORITY shall notify AIRLINE thirty (30) days in advance of any reallocation of AIRLINE's Premises.

16.3 Reimbursement for Investment in Reallocated Space

In the event of a reallocation of AIRLINE's Premises, AUTHORITY shall reimburse AIRLINE for the undepreciated or unamortized capital cost of any Improvements or Fixtures made by AIRLINE in such reallocated space and for reasonable moving expenses.

17. NON-EXCLUSIVE USE OF CERTAIN FACILITIES

AUTHORITY grants the AIRLINE, in common with other users, the non-exclusive use of all facilities, improvements and services which are provided at the Airport in common use areas. This use is limited to the purposes for which such facilities were designed and constructed and is available only from time to time and on a non-exclusive use basis, according to the discretionary operational decisions of AUTHORITY. These facilities include, but are not limited to roadways, streets, ramps, taxiways, runways, access gates, lighting, beacons, navigational aids, or other conveniences for aeronautical operations.

18. MAINTENANCE AND REPAIRS

18.1 AIRLINE'S Maintenance and Repair Obligations

Except as set forth in Section 18.3, AIRLINE shall be obligated, without cost to the AUTHORITY, to maintain the Premises, Improvements, facilities and equipment therein, together with all Personal Property in good repair, safe condition, and in a clean and orderly condition and appearance at all times. AIRLINE shall keep the areas immediately adjacent to the exits and entrances of the Premises clean, safe, orderly and free of obstructions, impediments or safety hazards, and shall promptly notify AUTHORITY of any safety hazards it observes within or near such exit/entrance surfaces that are the responsibility of the AUTHORITY to maintain.

AIRLINE shall be responsible at its sole cost and expense for repair or replacement of any facilities, fixtures, equipment or systems due to damage caused by the AIRLINE, its officers, partners, employees, agents, contractors, subcontractors, licensees, sub-lessees or invitees and not considered Normal Wear and Tear, whether such damage occurs within the Exclusive Premises or Preferential Use Premises or otherwise in the Airport.

AIRLINE shall be responsible for payment of all maintenance, repair and cleaning as required under Exhibit I unless covered by AUTHORITY's insurance or warranty.

Any doors, hardware, equipment, electrical components, bulbs, ballast, tubes, switches, or any other fixtures which may be repaired or replaced by the AIRLINE must be equal and identical to that replaced, or if different, shall be approved in advance by the AUTHORITY.

In addition to the other obligations of AIRLINE set forth in this Agreement, with respect to the AIRLINE's Aircraft Parking Apron, AIRLINE agrees to promptly remove any spilled or deposited petroleum products and the accumulation of oil and grease caused by Aircraft and ground support equipment of AIRLINE, its Affiliate(s) and other Air Transportation Companies operating from AIRLINE's Premises, except those Air Transportation Companies operating on the AIRLINE's Aircraft Parking Apron under a AUTHORITY-designated Accommodation per Section 16.1 hereof. AIRLINE shall also maintain the AIRLINE's Aircraft Parking Apron of the Airport in a safe, neat, clean and orderly manner and place all trash and debris in proper containers approved by AUTHORITY, until properly disposed of in a manner acceptable to AUTHORITY.

The AUTHORITY shall be the sole judge of the quality and timeliness of AIRLINE's maintenance and repairs. The AUTHORITY may at any reasonable time, with prior notice, enter the Premises to determine if satisfactory maintenance and repairs are being performed. If AUTHORITY determines that maintenance and repairs are not satisfactory, AUTHORITY shall so notify AIRLINE in writing. If said maintenance and repairs are not properly performed by AIRLINE within ten (10) calendar days after receipt of written notice from AUTHORITY, or such longer time as may be reasonably required, then AUTHORITY or its agents shall have the right to enter upon the Premises and perform the maintenance and repairs therefore and AIRLINE agrees to reimburse AUTHORITY for the direct costs thereof, plus twelve percent (12%) for administrative fee within thirty (30) days after receipt of AUTHORITY's invoice. In case AUTHORITY observes or receives notification of emergency action necessary to be taken in order to protect against personal injury, property damage or other irreparable harm, AUTHORITY may react without prior notice given to AIRLINE.

Notwithstanding the above provision, any hazardous or potentially hazardous condition shall be corrected immediately when detected by AIRLINE or upon receipt by AIRLINE of verbal or written notice given by AUTHORITY. At the direction of the AUTHORITY or other proper authorities, AIRLINE shall close the Premises (or the affected portion thereof) until such hazardous or potentially hazardous condition is removed, without abatement of rents, fees and charges.

If AUTHORITY must respond to maintenance or repairs of Premises or other Airport property

made the responsibility of the AIRLINE and not considered "Normal Wear and Tear" as AIRLINE's obligations, or responds upon the request of the AIRLINE to the AUTHORITY to perform AIRLINE's obligations contained in this Section, the AUTHORITY shall have the right to invoice a minimum of four (4) hours labor fees for each maintenance staff reasonably required for maintenance or repairs performed outside the hours of 8:00 a.m. to 4:30 p.m. Monday through Friday and holidays, and the AIRLINE shall pay such fees within thirty (30) days after receipt of AUTHORITY's invoice. Labor rates shall be applied in accordance with the then-current published labor rates of the AUTHORITY. Minimum labor fees, and materials, parts or supplies shall also be subject to the administrative overhead fees.

AIRLINE shall be responsible for the removal and disposal of garbage, debris, contaminants and any other waste material (whether solid or liquid) arising out of its occupancy of the Premises, inside or outside the Premises or resulting from its activities and operation anywhere on the Airport. Such removal shall conform to all governmental requirements and regulations, and is understood to include routine clean-up of the Premises. Upon AUTHORITY's demand, AIRLINE shall take prompt corrective actions to remove and dispose of waste material on Premises, and outside the Premises when resulting from its activities and operations.

AIRLINE shall not store materials, equipment or other personal property on, about or adjacent to the Premises or Aircraft Parking Apron if any such items are not fully functional and operational. This includes but is not limited to automobiles, tugs, bag carts, belt loaders, mobile boarding/de-boarding devices, deicing equipment, equipment parts, barrels, tires, empty deicing material containers, and other container or ground service equipment articles similar in nature.

18.2 **Condition of Premises**

AIRLINE agrees to make all repairs (except for the repairs or work which are the specific responsibility of the AUTHORITY pursuant to this Agreement) to the Premises, including the Improvements and Personal Property thereon, and to maintain and keep the Premises in good and safe condition and repair, and to surrender and deliver up the same at the termination of this Agreement in as good order and condition as the same existed at the commencement of the Initial Term of this Agreement or as subsequently improved, Normal Wear and Tear and casualty excepted.

18.3 **AUTHORITY's Maintenance Responsibilities**

AUTHORITY shall be responsible for maintenance, repair and cleaning as required under Exhibit I except for any damage caused by the AIRLINE, its officers, partners, employees, agents, contractors, subcontractors, licensees, sub-lessees or customers, and not considered Normal Wear and Tear:

If repair or replacement is required within areas or to property made the responsibility of AUTHORITY, and the damage was caused or allowed to be caused by the acts or omissions of AIRLINE, its officers, partners, employees, agents, contractors, subcontractors, licensees, sub-lessees or customers and not considered Normal Wear and Tear, the AUTHORITY may charge the cost to the expense of the AIRLINE plus twelve percent (12%) administrative fee after

reasonable notice and the opportunity to dispute such charges or damages. The administrative fee shall be applied to the total cost incurred by the AUTHORITY in performing the task. The administrative fee represents the AUTHORITY's cost to manage the task including procurement services, approval processes, management staff time, supervision and overhead. It does not include a profit component. In case of emergency action taken in order to protect against personal injury, property damage or other irreparable harm, AUTHORITY is authorized to act without notice and shall charge the same cost to the expense of AIRLINE and a twenty percent (20%) administrative fee. These costs and fees shall be paid within thirty (30) days of invoice date.

The AIRLINE shall give the AUTHORITY written notice (or verbal notice in the event of any emergency conditions which may result in harm to the patrons of the Terminal, in which case notice shall be followed by written notice within twenty-four (24) hours) describing any repair, which is the responsibility of the AUTHORITY. The AUTHORITY shall commence the repair process promptly after its receipt of such written notice if the AUTHORITY agrees that such repair is required and is the AUTHORITY's responsibility hereunder.

AUTHORITY shall provide suitable covered dumpsters for the common use of all tenants and concessionaires for disposal of all garbage, trash and other refuse. Piling of boxes, cartons, barrels, pallets or other similar items in an unsightly or unsafe manner on or about the Premises is forbidden. Dumpster lids shall remain closed and secured at all times when garbage disposal is not in progress.

AUTHORITY shall provide suitable exterior storage in a location and size at its sole option for automobiles, tugs, bag carts, belt loaders, mobile boarding/de-boarding devices, deicing equipment, deicing material containers, and other container or ground service equipment articles similar in nature.

19. SNOW REMOVAL

AIRLINE and AUTHORITY agree to remove snow and ice from their respective areas of responsibility shown on Exhibit H. Both parties shall maintain their respective surfaces to a winter surface condition safe for Aircraft operations, and safe for customers and employees moving and working on the ramp. At no time shall AIRLINE engage in snow and ice removal beyond its area of responsibility depicted on Exhibit H without the prior approval of and coordination with the AUTHORITY.

Upon reasonable advance notice given to the AIRLINE by the AUTHORITY, and subject to the AIRLINE's operational need for the Gate, the AIRLINE shall be responsible to remove, relocate or reposition all personal property on the Aircraft Parking Apron to a location that will not block, hinder or preclude the AUTHORITY to perform snow and ice removal on the surfaces for which it is responsible. The AUTHORITY shall provide as much advance notice as reasonably possible during or after a winter precipitation event of its intent to perform snow and ice removal at Aircraft Parking Apron areas. AUTHORITY will be mindful of the AIRLINE's demand for the Gate and

aircraft parking. AIRLINE shall exercise all diligence within its reasonable control to remove, relocate or reposition personal property on the Aircraft Parking Apron, including but not limited to: retracting/repositioning passenger boarding bridge(s); ground service equipment, parking chalks and electrical cables so the AUTHORITY may perform its snow and ice removal obligations. Failure of the AIRLINE to remove, relocate or reposition personal property in the manner and conditions specified in this Section shall relieve the AUTHORITY from its obligations to remove snow and ice at the Aircraft Parking Apron until such time as such property is moved.

Snow piles, windrows or other accumulations of snow shall not:

a. Be closer than twenty five feet from any security fence;

b. Block any access gates or controls;

c. Block or impede any taxiway or taxi lane;

d. Impose an obstruction within the object free area (OFA) of any taxiway or taxi lane;

e. Infringe upon, block or interrupt the business activity or operations of other airport tenants or the AUTHORITY.

Snow piles and accumulations requiring removal may be stored on pre-approved/arranged paved or non-paved areas.

Only FAA approved dry and liquid chemicals may be used for de-icing or snow removal on aircraft operating surfaces, as set forth in Advisory Circular 150/5200-30, current edition, Airport Winter Operations and Safety, Section 4-6 Approved Chemicals, current edition.

AIRLINE use of snow and ice removal contractors may be authorized subject to prior approval of and coordination with the AUTHORITY, and subject to acceptable completion of contractor employee training, and other reasonable safety and security requirements that AUTHORITY may impose, including but not limited to compliance with Airport rules and regulations, and Standard Operating Procedures. All such snow and ice removal contractors shall maintain a general liability insurance policy of not less than two million dollar ($2,000,000) limit, naming AIRLINE, AUTHORITY, and the City of Wichita as additional insureds.

20. CAPITAL IMPROVEMENTS

20.1 Improvements and Development by AUTHORITY

AUTHORITY shall consult with the Signatory Airlines at least annually regarding AUTHORITY's capital improvement plans. AUTHORITY shall give appropriate consideration to the comments and suggestions of the Signatory Airlines with respect to such proposed capital improvements.

On or before October 15 of each Fiscal Year, and at other times prior to the AUTHORITY undertaking capital improvements with a cost in excess of five hundred thousand dollars ($500,000) and allocated to the Airfield or Terminal Cost Centers, AUTHORITY shall provide a briefing to the Signatory Airlines regarding its capital improvement plans. The briefing shall include (i) a description of each proposed capital improvement, together with any available capital and/or operating cost estimates and any available preliminary drawings, (ii) the proposed means and terms of any required financing and the resultant annual Amortization or Debt Service, if any, and (iii) the estimated impact of the proposed capital improvements on Signatory Airline rentals, fees, and charges.

If requested by two (2) or more of the Signatory Airlines, Director shall schedule a meeting, to be held between fifteen (15) days and thirty (30) days after the briefing, to discuss the proposed capital improvements. AUTHORITY shall consider Signatory Airline comments prior to finalizing its capital improvement plans. In any event, AUTHORITY shall have the right to proceed as it, in its sole discretion (duly considering the Signatory Airlines' comments and concerns), believes appropriate.

20.2 Alterations and Improvements by AIRLINE

AIRLINE shall provide, construct and install on the AIRLINE's Premises, at its sole cost and expense, all Improvements (except Improvements to be provided by AUTHORITY pursuant to this Agreement, if any) as AIRLINE deems necessary and appropriate to operate its Air Transportation Business. The quality level, design and appearance of such AIRLINE's Improvements shall conform to the TCAP Manual.

Whenever consistent with this Agreement, AIRLINE shall have the right to construct and install, at its sole expense, Improvements within the Exclusive Use Premises as AIRLINE deems to be necessary for its operations. The plans and specifications, location, and construction schedule for such Improvements shall be approved by Director in writing prior to the commencement of any construction or installation.

Any construction or installation shall be at the sole risk of AIRLINE and shall be in accordance with all applicable state and local codes and laws and subject to inspection by Director.

Any work associated with such construction or installation shall not interfere with the operation of the Terminal or Aircraft Parking Apron.

AIRLINE shall deliver to Director reproducible "as builts", construction documents in electronic form, of AIRLINE Improvements and additions no later than thirty (30) days following the substantial completion of any such Improvements and additions.

All Improvements made to the Premises by AIRLINE shall immediately become the property of AUTHORITY. Any signs and other Personal Property of AIRLINE to Premises shall remain the property of AIRLINE. Removal of these items shall be at AIRLINE's' expense and the methods, means and results shall be subject to Director's approval to protect the operation, integrity and

aesthetics of the Terminal.

20.3 Construction Costs

Prior to the commencement of any such Improvements, AIRLINE shall require contractors to furnish satisfactory evidence of statutory Workers' Compensation insurance, commercial general liability insurance, business automobile insurance, and physical property damage insurance, and builder's risk insurance in such amounts and in such manner as Director may reasonably require. Director may require additional insurance for any alterations or Improvements approved hereunder, in such limits as Director reasonably determines to be necessary. AUTHORITY shall be endorsed in such policies as an additional, non-contributing insured.

21. SUBSEQUENT ALTERATIONS AND IMPROVEMENTS

AIRLINE may, with prior written approval of AUTHORITY, and by lease amendment, if appropriate, add to, improve, or alter, at its own expense, the Premises subject to all conditions set forth herein; provided, however, that the plans and specifications, location, and construction schedule for such improvements shall be approved by AUTHORITY in writing prior to the commencement of any and all such construction or installation. No reduction or abatement of rentals, fees, and charges shall be allowed for any interference with AIRLINE's operations by such construction, and no interference shall be caused with the normal operation of the Airport's other tenants and users. Any such addition or alteration must be designed and constructed in a manner that will not weaken or impair the structural strength or reduce the value or functionality of the Premises or existing improvements thereon and shall be completed in conformity with the TCAP Manual. It shall be the responsibility of AIRLINE to file all necessary alteration and construction forms with the Director of Airports, as the AUTHORITY's representative, for submission to the Federal Aviation Administration for approval.

Any construction or installation shall be at the sole risk of AIRLINE and shall be in accordance with all applicable State and local codes and laws and subject to inspection by AUTHORITY or its designees.

Any improvements made to Exclusive and Preferential Use Premises and additions and alterations thereto made by AIRLINE shall become the property of AUTHORITY on their installation or construction on the Premises; provided, however, that AIRLINE shall have the use of such improvements until this Agreement expires or is terminated. Notwithstanding the foregoing, any trade fixtures, signs, equipment, and other movable Personal Property of AIRLINE not permanently affixed to Exclusive and Preferential Use Premises shall remain the property of AIRLINE.

22. NON-INTERFERENCE WITH AIRPORT OPERATIONS

AIRLINE shall not allow any condition on the Premises, nor permit the conduct of any activity on such Premises, which materially or adversely affects the development, improvement, operation, or maintenance of the Airport or its facilities. AIRLINE shall not use or permit the Premises to be used in any manner which might interfere with the landing and take-off of Aircraft from the Airport or otherwise constitute a hazard to the general public, or to AUTHORITY's tenants or the customers, agents, invitees, contractors, representatives and employees of those tenants.

23. COOPERATION WITH AIRPORT DEVELOPMENT

AIRLINE understands and agrees that AUTHORITY may pursue Airport development, Improvements and maintenance activities from time-to-time that may affect the Premises and other areas of the Airport. AIRLINE agrees to work cooperatively and in good faith with the AUTHORITY and other tenants and contractors in development, Improvement and maintenance activities to minimize any disruptions. If requested by the AUTHORITY, AIRLINE shall cooperate with and assist the AUTHORITY to the greatest extent possible in the development and implementation of any plans, designs, ingress/egress, or transition that may arise in connection with such Airport development, Improvement, and maintenance activities. AUTHORITY may temporarily or permanently close, re-route, or consent to the closing or re-routing of any method of ingress or egress on the Airport, so long as the means of ingress and egress are reasonably equivalent to current access available to AIRLINE. AUTHORITY may temporarily close paved surfaces or portions thereof for purposes of maintenance, replacement, re-construction or expansion. Exercise by AUTHORITY of any such Airport development, Improvement, or maintenance activities shall be without direct expense to the AIRLINE. AUTHORITY retains the absolute right to maintain, repair, develop, expand or replace utilities, ramps, taxiways, runways, streets, sidewalks and any other Airport facility or Improvement. AIRLINE accepts the need for such activities and agrees that it will not assert a claim for consequential damages arising from these activities for loss of business or damage of any nature.

24. SURRENDER OF PREMISES

24.1 Surrender and Delivery

AIRLINE shall promptly yield and deliver to AUTHORITY possession of the Premises at the expiration or termination of this Agreement in good condition in accordance with AIRLINE's obligations in this Agreement, except for reasonable wear and tear, or fire or other casualty. Before delivering the Premises to AUTHORITY, AIRLINE shall, at its expense, deliver the Premises in good order and condition, including, but not limited to:

a. clean and remove from the Premises all waste and refuse generated by AIRLINE;

b. remove from the Premises all of AIRLINE's Personal Property;

c. comply with all environmental covenants;

d. leave in operating condition all bulbs and ballasts; and

e. replace all broken glass.

24.2 **Removal of Property**

AIRLINE shall have the right at any time during the term of this Agreement to remove from Airport its Aircraft, tools, equipment, and other Personal Property, title to which shall remain in AIRLINE unless otherwise set forth in this Agreement. AIRLINE and shall remove such Aircraft, tools, equipment, and other Personal Property within fifteen (15) days following termination of this Agreement, whether by expiration of time or otherwise on such property subject to any valid statutory or contractual landlord's liens which AUTHORITY may have for unpaid rentals, fees and charges. Notwithstanding anything in this Agreement to the contrary, AUTHORITY hereby (a) waives its rights to any statutory and contractual landlord's liens on Aircraft and (b) subordinates all statutory and contractual landlord's liens to any liens or security interests covering tools, equipment, and other Personal Property in favor of third-party lenders providing financing to AIRLINE or its Affiliates (including purchase-money financing). AIRLINE shall not abandon any portion of its property without the written consent of AUTHORITY.

Any and all property not removed by AIRLINE within fifteen (15) days following termination of this Agreement shall, at the option of AUTHORITY, become the property of AUTHORITY at no cost to AUTHORITY. All AUTHORITY's property damaged by or as a result of the removal of Personal Property shall be restored by AIRLINE to the condition existing before such damage at AIRLINE's expense.

25. REMOVAL AND DEMOLITION

AIRLINE shall not remove or demolish, in whole or in part, any Improvements upon the Premises without the prior written consent of the AUTHORITY. AUTHORITY may, at its discretion, condition such consent upon the obligation of AIRLINE to replace the Improvements with another reasonable Improvement specified in such consent. AIRLINE shall obtain written consent before commencing demolition and restoration as described under Section 45. Failure to obtain this consent shall entitle the AUTHORITY to such compensation as is necessary to restore the affected Improvements, plus additional twenty percent (20%) administrative fees, payable as additional rent within thirty (30) days after receipt of AUTHORITY's invoice.

26. DAMAGE OR DESTRUCTION

In the event that facilities or Improvements on the Premises are substantially damaged during the term of this Agreement, this Agreement shall remain in full force and effect and AUTHORITY shall proceed with due diligence to repair, restore, rebuild or replace said damaged property to its condition immediately prior to such damage. AUTHORITY may receive AIRLINE's approval to replace damaged Improvements with Improvements of a different design or character.

In the event the Improvements are damaged by casualty and such damage, exceeds fifty five percent (55%) of the value of the property as it existed prior to the casualty loss, AUTHORITY shall have the choice not to repair, restore, rebuild or replace the Improvements. AUTHORITY shall give written notice of this choice to AIRLINE within 180 calendar days after the occurrence of such event. Upon this written notice, this Agreement shall be terminated effective as of the date the notice is delivered. AIRLINE shall continue to have the obligation to pay any sums due to the date of termination, and the obligation to satisfy damages arising from any negligent or intentional action of itself, its employees, agents, contractors, or customers to the extent not covered by insurance proceeds. Otherwise, neither party shall have any further rights or obligations under this Agreement. All of the insurance proceeds shall be paid to AIRLINE and AUTHORITY in pro-rata distributions as their interests may appear based upon the fair market value of each party's interest at the time the proceeds are received. Where allowed by the insurance policy, insurance proceeds shall first be applied to removal of damaged Improvements from the Premises before such distribution.

27. PERSONAL PROPERTY

Any Personal Property of AIRLINE or others placed in or upon the Premises shall be at the sole risk of the AIRLINE. AUTHORITY shall not be responsible or liable for any loss, damage and replacement of personal property, unless caused by AUTHORITY, its officers, agents, or employees, and the AIRLINE waives all rights of subrogation against recovery from the AUTHORITY for such loss or damage.

28. TITLE TO FACILITIES, IMPROVEMENTS AND FIXTURES

Title to all Improvements, structures, fixtures and facilities, constructed or permanently affixed to the Premises shall be, and shall remain, exclusively with AUTHORITY.

29. TAXES

AIRLINE agrees to pay all and special assessments levied or assessed now or in the future:

a. upon taxable property owned or possessed by AIRLINE and situated on the Premises; and

b. upon AIRLINE's interest in or its use of the Premises. AIRLINE shall defend, indemnify and save the Wichita Airport Authority and the City of Wichita, Kansas harmless from any claims or liens in connection with such taxes, obligations in lieu of taxes or assessments.

AIRLINE shall promptly pay all taxes, excises, assessments and fees and permit fees of whatever nature that apply to its operation of Premises. AIRLINE may choose at its own cost and expense, to contest any such tax, excise, fee, or assessment. AIRLINE shall keep current all Federal, State or local licenses, operating certificates or permits required for the conduct of its operations. AIRLINE warrants to AUTHORITY that it has obtained all license, franchise, operating certificates or other agreements or permits necessary to operate AIRLINE's operation in accordance with the terms of this Agreement. AIRLINE shall keep all such licenses, franchises, permits, operating certificates and other agreements in full force during the Term of this Agreement.

30. LIENS

AIRLINE shall take commercially reasonable steps to avoid the imposition of any lien upon the Premises. Should any lien be placed on the Premises, AIRLINE shall remove any and all liens of any nature. This obligation includes, but is not limited to, tax liens and liens arising out of or because of any financing, construction or installation, whether labor or materials, performed for the benefit of AIRLINE by any of its contractors or subcontractors or their vendors. Should any such lien be filed, AIRLINE shall bond against or discharge the same within thirty (30) calendar days after actual notice of the same from any source, and provide written proof of discharge or bonding to AUTHORITY within that time. AIRLINE acknowledges that its interest in the Premises is a leasehold, and that notwithstanding its construction of Improvements on the Premises, the AUTHORITY holds title to the Improvements, and that AIRLINE has no equity interest in the Premises which can support a mortgage lien. However, any Improvement constructed shall be deemed to be for the exclusive benefit of AIRLINE. AIRLINE shall not mortgage or pledge as collateral its leasehold interest without the prior written consent of the AUTHORITY.

AUTHORITY may consent, upon AIRLINE's written request, to an assignment of rents to a governmentally regulated and insured commercial lender as partial security for financing of AIRLINE's activities on the Premises. Any such assignment is intended to be a present transfer to such lender of all of AIRLINE's rights to collect and receive rents and charges from approved users, operators, and permitees. Lender(s) shall have no rights to assign this Agreement or sublease the Premises without the prior written consent of the AUTHORITY. Upon AIRLINE's written

consent, AUTHORITY agrees to give Lender(s) notice of any default or termination of the Agreement, and allow Lender(s) the same opportunity as the AIRLINE under the Agreement to correct any condition or cure any default. Nothing in this Section relieves the AIRLINE of its obligations under this Agreement.

31. INDEMNITY

AIRLINE shall indemnify, hold harmless, and defend AUTHORITY, the City, and their respective officials, agents, employees, successors and assigns (collectively, the "Indemnified Parties") from and against all liability for any claims, loss, damage, liability and actions by reason of injury or death of any person, or damage to any property, or other liability loss including all reasonable expenses incidental to the investigation and defense thereof, arising out of or resulting from any intentional or negligent acts or omissions of AIRLINE, its Affiliates, agents, employees, licensees, successors assigns, and customers while in, on or about the Premises or Airport; or in connection with AIRLINE's use and occupancy of or operations on the Premises or from its use of the Airport, except to the extent such injury, damage, or loss arises from the negligence or willful misconduct of AUTHORITY, its agents or employees, licensees, successors and assigns.

AIRLINE shall indemnify, hold harmless, and defend the Indemnified Parties from and against all liability for any claims, loss, damage, liability and all expenses incidental to the investigation and defense thereof, including all fines or penalties in any way arising out of or resulting from the violation of any federal, state, or municipal laws, statutes, ordinances, or regulations, by AIRLINE or its Affiliates, agents, employees, licensees, successors and assigns, or those under its control.

The provisions of this Section shall survive the expiration, termination or termination of this Agreement, with respect to occurrences during the term of this Agreement.

32. INSURANCE AND SUBROGATION

During the Term of this Agreement, AIRLINE shall provide, pay for and maintain with companies reasonably satisfactory to AUTHORITY, the types of insurance described in this Agreement. All insurance shall be issued by responsible insurance companies eligible to do business in the State of Kansas.

All liability policies shall provide that the City of Wichita, the AUTHORITY, and its directors, officers and employees as Additional Insured to the extent of AIRLINE's contractual obligations hereunder. The insurance coverage and limits required shall be evidenced by properly executed certificates of insurance. In addition, certified copies or originals of AIRLINE's insurance policies

providing the coverage required by this Agreement shall be made available for AUTHORITY's inspection in AIRLINE's offices in the Terminal upon reasonable request by AUTHORITY, subject to AIRLINE's prior receipt of appropriate confidentiality assurances from AUTHORITY and its representatives to protect AIRLINE's proprietary interest in such policies. The required policies of insurance shall be construed in accordance with the laws of the State of Kansas.

If at any time AUTHORITY requests a written statement as to any impairments to the aggregate limit, AIRLINE shall promptly authorize and have delivered such statement to AUTHORITY. AIRLINE authorizes AUTHORITY and its insurance consultant to confirm with AIRLINE's insurance agents or brokers all information furnished AUTHORITY, as to its compliance with its insurance requirements.

All required insurance coverage of AIRLINE shall be primary to any insurance or self-insurance program of AUTHORITY.

The acceptance of or delivery to AUTHORITY of any certificate of insurance evidencing the insurance coverages and limits required in this Agreement does not constitute approval or acceptance by AUTHORITY that the insurance requirements in this Agreement have been met.

No operations shall commence at the Airport unless and until the required certificates of insurance are in effect and approved by AUTHORITY.

The insurance coverages and limits required of AIRLINE under this Agreement are designed to meet the minimum requirements of AUTHORITY. They are not designed as a recommended insurance program for AIRLINE. AIRLINE alone shall be responsible for the sufficiency of its own insurance program. Should AIRLINE have any question concerning its exposures to loss under this Agreement, or the possible insurance coverages needed therefor, it should seek professional advice.

AIRLINE and AUTHORITY mutually understand and agree in accordance with industry standards that the minimum limits of the insurance herein required may from time to time become inadequate, and AIRLINE agrees that it will increase such minimum limits upon receipt of written notice. AIRLINE shall furnish AUTHORITY, within sixty (60) days of the effective date thereof, a certificate of insurance evidencing such insurance is in force.

AIRLINE's insurance companies or its authorized representative shall give AUTHORITY prior written notice of any termination, intent not to renew, or adverse reduction in any policy's coverage equal to that owed to AIRINE under the policy terms, except in the application of the Aggregate Limits Provisions. In the event of a reduction to the Aggregate Limit, it is agreed that immediate steps will be taken to have it reinstated. Said notices shall be sent pursuant to Section 45 of this Agreement.

Renewal Certificates of Insurance must be provided to AUTHORITY as soon as practical. AIRLINE shall maintain continuous insurance coverage as required by this Agreement, and such coverage shall be listed on the certificate provided.

Should at any time AIRLINE fail to provide or maintain the insurance coverages required in this Agreement, AUTHORITY may terminate or suspend this Agreement at AUTHORITY's sole discretion.

The amounts and types of insurance shall conform to the following minimum requirements. The wording of all policies, forms and endorsements must be reasonably acceptable to AUTHORITY.

Workers Compensation and Employer's Liability Insurance shall be maintained in force by AIRLINE during the Term of this Agreement for all employees engaged in the operations under this Agreement. The limits of coverage shall not be less than:

Workers Compensation	Kansas Statutory
Employer's Liability	$1,000,000 Limit Each Accident
	$1,000,000 Limit Disease Aggregate
	$1,000,000 Limit Disease Each Employee

Airline/General Liability Insurance shall be maintained by AIRLINE for the life of this Agreement. Coverage shall include, but not be limited to, Premises, Personal Injury, Contractual for this Agreement, Independent Contractors, Broad Form Property Damage, Products and Completed Operations Coverage and shall not exclude the (XCU) Explosion, Collapse and Underground Property Damage Liability Coverage. Coverage shall be applicable to the operation of all licensed and unlicensed motor vehicles and ground equipment operating within the AOA at the Airport. The Completed Operations Coverage shall be maintained for a period of not less than three (3) years following final operations of AIRLINE under this Agreement. The limits of coverage shall not be less than:

Bodily & Personal Injury	$100,000,000 Combined Single Limit
& Property Damage Liability	Each Occurrence & Aggregate
Personal Injury (non-passengers)	$25,000,000 Each Occurrence & Aggregate

Aircraft Liability Insurance shall be maintained by AIRLINE during the Term of this Agreement for all owned, non-owned, leased or hired Aircraft, including passenger coverage. The limits of coverage shall not be less than:

Bodily & Personal Injury	$100,000,000 Combined Single Limit
& Property Damage Liability	Each Occurrence & Aggregate
Personal Injury (non-passengers)	$25,000,000 Each Occurrence & Aggregate

Business Automobile Liability Insurance shall be maintained by AIRLINE during the Term of this Agreement as to the ownership, maintenance, and use of all owned, non-owned, leased or hired vehicles. The limits of coverage shall not be less than:

Bodily & Personal Injury	$5,000,000 Combined Single Limit
& Property Damage Liability	Each Occurrence & Aggregate

Umbrella Liability Insurance or Excess Liability Insurance may be used to reach the limits of liability as stated above for the Airline/General Liability Policy, Aircraft Liability and the Business Automobile Policy. Without regard to drop down coverage, the Umbrella or Excess Coverage for General and Airline or Aircraft Liability shall be not less than:

Umbrella or Excess Liability Policy	$200,000,000 Combined Single Limit Each Occurrence & Aggregate-Not Specific for this Agreement
Personal Injury (non-passengers)	$25,000,000 Each Occurrence & Aggregate

If Excess Liability or Umbrella Liability Insurance is used to reach the required limits of liability above, the Primary Liability Limits for the underlying Airline/General Liability Coverage shall be no less than:

Bodily & Personal Injury & Property Damage Liability	$10,000,000 Combined Single Limit Each Occurrence & Aggregate

Furniture, Fixtures and Equipment (FF&E) Insurance shall be maintained by AIRINE during the Term of this Agreement for all leasehold improvements used in or on the Premises and for personal property maintained or used on the Premises. The limits of coverage shall be at the discretion of AIRLINE, but AIRLINE expressly waives all right of repair or replacement from AUTHORITY on such property due to casualty loss caused by persons other than AUTHORITY's employees, agents or contractors.

All insurance policies other than Worker's Compensation coverage above shall contain a standard cross-liability provision and the inclusion of AUTHORITY and the City of Wichita, Ks. as an additional insureds. This Agreement is not intended to, and shall not, make AUTHORITY a partner or joint venturer with AIRLINE in AIRLINE's operations on the Airport. For all policies listed above, AUTHORITY shall have no liability for any premiums charged for such coverage and such policies shall also insure AIRLINE against the risks to which it is exposed as the operator of the business authorized under this Agreement.

33. ENVIRONMENTAL COVENANTS

AIRLINE represents, warrants, and covenants the following:

AIRLINE has obtained and throughout the term of this Agreement shall obtain and maintain all applicable licenses, permits, registrations and other authorizations and approvals for AIRLINE's operations on the Premises as required under applicable environmental laws and shall provide any notices required under environmental laws for conducting its operations at the Airport during the term of this Agreement. AIRLINE shall require its employees, contractors, subcontractors, agents,

licensees, and other parties under AIRLINE's direction or control to obtain and maintain all applicable licenses, permits, registrations and other authorizations required by environmental laws in order to conduct their operations and activities at the Airport, including but not limited to construction, and to comply with all applicable environmental laws pertaining to its and their use of and operations at the Airport.

AIRLINE's environmental compliance shall include compliance with any current or future federal, state, or local law, statute or regulation pertaining to protection of the environment that is applicable of AIRLINE's operation, storage or use of substances (hazardous or otherwise), or to the activities of AIRLINE's employees or contracted vendor's on the Premises or the Airport. AIRLINE shall provide AUTHORITY upon request copies of any plan, training program, training records, safety data sheets or any other documentation required by said laws. In addition, a copy of AIRLINE's Stormwater Pollution Prevention Plan and/or Spill Prevention Control and Countermeasure Plan to the extent such plans are required under applicable law, shall be submitted to the AUTHORITY upon request. If needed, Stormwater best management practices (BMPs) shall be installed and maintained as described under AIRLINE's Stormwater Pollution Prevention Plan and Countermeasure Plan.

Neither AIRLINE nor AUTHORITY shall install or permit to be installed in the Premises friable asbestos, electrical equipment containing polychlorinated biphenyls (PCBs), or any substance containing asbestos and deemed hazardous by federal or state regulations applicable to the Premises and respecting such material.

If, during the term of this Agreement, the AIRLINE receives any notice of (i) the happening of any event (other than in the ordinary course of business and in compliance with all applicable laws), involving the spill, release, leak, seepage, discharge or cleanup of any substance (hazardous or otherwise) on the Premises or in connection with the AIRLINE's operations thereon or (ii) any complaint, order, citation or notice with regard to air emissions, water discharges, or any other environmental, health, or safety matter affecting the AIRLINE's operations on the Premises or the Airport from any persons or entity (including, without limitation, the United States Environmental Protection Agency (the "EPA") or the Kansas Department of Health and Environment ("KDHE")), the AIRLINE shall promptly notify the AUTHORITY in writing of said notice.

AIRLINE further agrees to provide to AUTHORITY and/or AUTHORITY's designated representatives, upon request, copies of all applicable safety data sheets for materials stored on the Premises, as required by applicable law and applicable to AIRLINE's operations on the Premises.

AIRLINE shall indemnify, save, hold harmless, and defend AUTHORITY, the City of Wichita, their officials, agents, and employees, their successors and assigns, individually or collectively, from and against any claim, action, loss, damage, injury, liability, and the reasonable cost and expenses (including, but not limited to, reasonable attorney's fees, disbursements, court costs, and expert fees; unless defended by AIRLINE) of any environmental claim arising out of or resulting from AIRLINE's use and occupancy of Premises or use of the Airport, including, but not limited to any claim for (i) discharge or release of pollutants, hazardous materials, hazardous substances or solid waste, hazardous wastes or toxic materials at or on the Airport, including the air, surface

water, ground water, storm sewer, sanitary sewer, or soil from any source, including underground storage tanks, (ii) generation, handling, treatment, storage, disposal, or transportation of solid, gaseous, or liquid waste at the Airport, facility or location, (iii) electromagnetic or other radiation or noise, (iv) exposure of any person to any hazardous material, (v) manufacture, processing, distribution, use, or storage of any hazardous material, (vi) the release or threatened release of any pollutant, contamination or hazardous material to, from or through the Airport, or (vii) any of the foregoing, related to, caused by or arising from AIRLINE's operations on the Premises or activities on the Airport, to non-Airport property, including the air, surface water, ground water, or soil. Notwithstanding the above, AIRLINE shall not be liable for any environmental claim, including but not limited to claims listed in (i) – (vii) above, to the extent attributable to a pre-existing condition on any Airport property not caused or previously occupied by AIRLINE or any corporate predecessor to AIRLINE at any prior time. AIRLINE shall not be liable for any environmental claim arising out of or resulting from the AUTHORITY's conduct or those of a third party not related to AIRLINE.

AIRLINE shall, at AIRLINE's sole expense, clean up, remove and remediate, in accordance with applicable law, to the extent caused by AIRLINE or its employees, agents, licensees, contractors or customers (1) any Hazardous substances in, on, or under the AIRLINE's Premises in excess of allowable levels established by all applicable federal, state and local laws and regulations and (2) all contaminants and pollutants, in, on, or under the AIRLINE's Premises that create or threaten to create a substantial threat to human health or the environment and that are required to be removed, cleaned up, or remediated by any applicable federal, state, or local law, regulations, standard or order.

The provisions of this Section shall survive the termination of this Agreement.

34. TERMINATION BY AUTHORITY: EVENTS OF DEFAULT BY AIRLINE

34.1 Events of Default by AIRLINE

If any of the following events of default occur, AUTHORITY will issue a thirty (30) day written notice to AIRLINE to cure.

a. Conducting any business or performing any acts at Airport not specifically authorized in this Agreement or other agreements between AUTHORITY and AIRLINE.

b. Failing to cure a default in the performing any of the terms, covenants and conditions of this Agreement.

The written notice to cure shall allow AIRLINE thirty (30) calendar days to remedy the described problem or breach causing the default. If AIRLINE fails to cure within this thirty (30) day period, AUTHORITY may give written notice of default and take any action allowed in this Section.

Before the end of the thirty (30) day notice, AIRLINE may show AUTHORITY that its default

referred to in Paragraph (a) and (b) above cannot be remedied within thirty (30) days before the end of the thirty (30) day written notice and/or AIRLINE may show AUTHORITY that its default is a Force Majeure conditions described in Section 44.19. AUTHORITY will not declare a default if AIRLINE reasonably demonstrates (i) that the default cannot be cured within thirty (30) days, (ii) that it is proceeding with diligence to cure said default, and (iii) that such default will be cured within a reasonable period of time. In addition, the thirty (30) day notice period shall be tolled for a Force Majeure condition for such time as the Force Majeure condition reasonably prevents performance by AIRLINE. If AIRLINE stops its remedial efforts, no new notice to cure is needed to reinstate default actions allowed in this Section.

If under this Agreement any one of the following events of default occur, AUTHORITY may immediately issue written notice of default, without notice to cure being necessary:

a. AIRLINE fails to pay any part of the rentals, fees, and charges due under this Agreement in full within ten (10) days of the date of AUTHORITY's written notice of payments being past due. If AIRLINE disputes any obligation to make payments to AUTHORITY, AIRLINE shall pay the amount due and contest the validity or amount of such payment. In the event any court or other body having jurisdiction determines all or any part of the contested payment is not due, then AUTHORITY shall apply for the benefit of AIRLINE any amount determined as not due at the conclusion of the case to future AIRLINE obligations to AUTHORITY as AIRLINE may direct or the payments made by AIRLINE may be returned promptly to AIRLINE at its request. Further, during any legal contest of any fees or charges by AIRLINE, AIRLINE will not be held in default under the provisions of this paragraph. AUTHORITY shall use due diligence to collect any past due rentals, fees, and charges from any Air Transportation Company providing air service at the Airport, including AIRLINE.

b. AIRLINE fails to provide and keep in force contract security as required by Section 9.

c. AIRLINE fails to provide and keep in force insurance coverage as required by Section 32.

d. The appointment of a trustee, custodian, or receiver of all or a substantial portion of AIRLINE's assets.

e. Any legal corporate action that reduces or eliminates AIRLINE's continued right to participate and fulfill this Agreement.

f. AIRLINE is declared insolvent or takes the benefit of any present or future insolvency statute, makes a general assignment for the benefit of creditors, or seeks a reorganization or the readjustment of its indebtedness under any law or statute of the United States or of any state.

g. AIRLINE voluntarily discontinues its operations at the Airport for a period of at least thirty (30) consecutive days unless AUTHORITY approves this action in advance, in writing.

34.2 Continuing Responsibilities of AIRLINE

Notwithstanding the occurrence of any event of default, AIRLINE remains liable to AUTHORITY for all rentals, fees, and charges payable under this Agreement, including all preceding breaches of this Agreement even in the event of default. Furthermore, unless AUTHORITY terminates this Agreement, AIRLINE shall remain liable for and promptly pay all rentals, fees, and charges as they accrue until the expiration of this Agreement or until this Agreement is terminated by AIRLINE as allowed by this Agreement.

34.3 Remedies of AUTHORITY for AIRLINE's Default

Upon the occurrence of any default the following remedies shall be available to AUTHORITY:

a. AUTHORITY may terminate this Agreement, effective upon the date specified in the written notice of termination. The termination such date shall be not less than thirty (30) calendar days from said notice. Upon such date, AIRLINE shall have no further rights under this Agreement and AUTHORITY can take immediate possession of AIRLINE's Premises.

b. AUTHORITY may reenter the Premises any time after the default date and may remove all AIRLINE persons and property from the Premises. AIRLINE's Personal Property may be stored at AIRLINE's sole cost and expense. AUTHORITY shall not be liable for its condition or return.

c. AUTHORITY may relet all or part of the Premises at such rentals, fees, and charges and upon such other terms as AUTHORITY, believes appropriate. AUTHORITY may make alterations, repairs or Improvements on said Premises. In reletting the Premises, AUTHORITY shall be obligated to make a good faith effort to obtain terms no less favorable to AUTHORITY than those contained herein and otherwise seek to mitigate any damages it may suffer as a result of AIRLINE's default.

d. In the event that AUTHORITY relets Premises, rentals, fees, and charges received by AUTHORITY from such reletting shall be applied: (i) to the payment of any indebtedness other than rentals, fees, and charges due hereunder from AIRLINE to AUTHORITY; (ii) to the payment of any cost of such reletting; and (iii) to the payment of rentals, fees, and charges due and unpaid hereunder. The residue, if any, shall be held by AUTHORITY and applied in payment of future rentals, fees, and charges as the same may become due and payable hereunder. If that portion of such rentals, fees, and charges received from such reletting and applied to the payment of rentals, fees, and charges hereunder is less than the rentals, fees, and charges payable during applicable periods by AIRLINE hereunder, then AIRLINE shall pay such deficiency to AUTHORITY. AIRLINE shall also pay to AUTHORITY, as soon as ascertained, any costs and expenses incurred by AUTHORITY in such reletting not covered by the rentals, fees, and charges received from such reletting.

e. No reentry or reletting of Premises by AUTHORITY shall be construed as an election on AUTHORITY's part to terminate this Agreement unless a written notice of termination is given to AIRLINE.

f. AIRLINE shall pay to AUTHORITY all other costs incurred by AUTHORITY in the exercise of any remedy in this Section, including, but not limited to, reasonable attorney's fees, disbursements, court costs, and expert fees.

g. AUTHORITY may exercise any other legal or equitable remedy, including but not limited to the remedies hereinafter specified.

34.4 Remedies Under Federal Bankruptcy Laws

Notwithstanding the foregoing, upon the filing by or against AIRLINE of any proceeding under Federal bankruptcy laws, if AIRLINE has defaulted in the performance of any provision of this Agreement within the six (6) months preceding such filing, AUTHORITY shall have the right to terminate this Agreement, in addition to other remedies provided under provisions of the Federal Bankruptcy Rules and Regulations and Federal Judgeship Act of 1984, or any successor statute, as such may be subsequently amended, supplemented, or replaced. Such termination shall be by written notice to AIRLINE within sixty (60) days from the date of AIRLINE's initial filing in bankruptcy court.

35. TERMINATION BY AIRLINE: EVENTS OF DEFAULT BY AUTHORITY

35.1 Events of Default by AUTHORITY

Each of the following events shall constitute an "Event of Default by AUTHORITY":

a. AUTHORITY fails after receipt of written notice from AIRLINE to keep, perform or observe any term, covenant or condition herein contained to be kept, performed, or observed by AUTHORITY and such failure continues for thirty (30) days, or if by its nature such Event of Default by AUTHORITY cannot be cured within such thirty (30) day period, AUTHORITY fails to commence to cure or remove such Event of Default by AUTHORITY within said thirty (30) days and to cure or remove the same as promptly as reasonably practicable.

b. AUTHORITY closes Airport to flights in general or to the flights of AIRLINE, for reasons other than weather, acts of God or other reasons beyond its control, and fails to reopen Airport to such flights within sixty (60) days of such closure.

c. The Airport is permanently closed as an air carrier airport by act of any federal, state or local government agency having competent jurisdiction.

d. AIRLINE is unable to use Airport for a period of at least sixty (60) days due to any law or any order, rule or regulation of any appropriate governmental authority having jurisdiction over the operations of Airport, or any court of competent jurisdiction issues an injunction in any way preventing or restraining the use of Airport or any part thereof for Airport purposes, and such injunction remains in force for a period of a least sixty (60) days.

e. The United States Government or any authorized agency of the same (by executive order or otherwise) assumes the operation, control or use of Airport and its facilities in such a manner as to substantially restrict AIRLINE from conducting its operations, and such restriction shall continue for a period of at least sixty (60) days.

35.2 **Remedies of AIRLINE for AUTHORITY's Defaults.**

Upon the occurrence of an Event of Default by AUTHORITY and after appropriate notice by AIRLINE to AUTHORITY, AIRLINE shall have the right to terminate this Agreement and all rentals, fees and charges payable by AIRLINE under this Agreement shall terminate. In the event that AIRLINE's operations at Airport should be restricted substantially by action of any governmental agency having jurisdiction thereof, then AIRLINE shall, in addition to the rights of termination herein granted, have the right to a suspension of this Agreement, or part thereof, and abatement of an equitable proportion of the payments due hereunder, from the time of giving written notice of such election until such restrictions shall have been remedied and normal operations restored.

36. WAIVER OF STATUTORY NOTICE

In the event either party exercises its option to terminate this Agreement any notice of termination given pursuant to the provisions shall be sufficient to terminate this Agreement. Upon such termination, AIRLINE hereby agrees that it shall promptly surrender possession of the Premises to the AUTHORITY. Each party hereby expressly waives the receipt of any additional notice to quit or notice of termination which would otherwise be required to given by AUTHORITY or AIRLINE under any provisions of the laws of the State of Kansas.

37. AFFILIATES, SUBLETTING, AND HANDLING AGREEMENTS

37.1 **Rights of Affiliates**

The rights, privileges, and obligations granted AIRLINE hereunder with respect to the use of the Airport, its appurtenances, and facilities, or in which AIRLINE leases space, shall accrue to any Affiliate to the same extent and degree that such rights and privileges are possessed by AIRLINE hereunder without the requirement for the Affiliate to enter into any written agreement with the AUTHORITY. The exercise of such rights and privileges shall be subject to prior written notice by AIRLINE documenting (a) the relationship of the Affiliate which shall be in compliance with the definition of Affiliate in Section 1.1, and (b) AIRLINE's agreement that AIRLINE shall report all activity and pay charges and fees provided for under this Agreement should Affiliate fail to do so. Upon receipt of such notice by AUTHORITY, AUTHORITY shall confirm in writing the receipt of the required notice and such rights and privileges shall take effect the first day of the month following the month in which AUTHORITY receives the required notice by AIRLINE. No additional fees or charges other than those specifically set forth and payable by AIRLINE

hereunder shall be assessed against AIRLINE or such other Affiliate. Provided, however, it is understood and agreed that should an Affiliate lease space directly from the AUTHORITY, such space shall not be considered to be included in the rights and privileges under this Agreement and AIRLINE shall not be responsible to insure such space or indemnify for its use, and such space shall therefore be leased to the Affiliate as non-signatory. Notwithstanding anything to the contrary contained herein, the Affiliate shall have the opportunity to become a Signatory Airline at Airport by agreeing to the terms of and entering into an Agreement.

37.2 **Assignment and Subletting by AIRLINE**

AIRLINE shall not sell, convey, transfer, mortgage, pledge, or assign this Agreement, or any part thereof, or any rights created thereby or the leasing thereunder in any manner whatsoever or sublet Premises or any part thereof or any of the privileges recited herein without prior written consent of the Director, which consent shall not be unreasonably withheld. However, AIRLINE shall have the right to sublease all or any part of its Premises or assign all or any part of its rights and interests under this Agreement to any affiliated Air Transportation Company (i.e., affiliated through common ownership) or to any successor to its business through merger or consolidation. Consent of AUTHORITY for such assignment shall not be required; provided, however, due notice of any such assignment shall be given to the Director at least thirty (30) days prior to such assignment hereunder.

In the event AIRLINE, using large jet-loader aircraft, intends to assign all or part of its Premises to an Affiliate using smaller Aircraft that cannot be served by a passenger boarding bridge, then in such an event Director may re-assign Gates as appropriate to ensure the highest and best use of Gates and ramp safety.

Any such successor corporation no later than thirty (30) days after the date of such merger, consolidation or succession shall acknowledge in writing satisfactory in form and content to AUTHORITY that it has assumed all obligations of AIRLINE and will fully honor all the terms and conditions set forth in this Agreement. Failure to do so shall be cause for termination by AUTHORITY.

AIRLINE shall not, without the prior written consent of Director, sublease Premises. The parties hereto agree that Director may reasonably withhold such consent if AUTHORITY has substantially similar space available but unleased or if AUTHORITY can make such space available for lease within a reasonable time. In making such decision, the Director shall consider the full needs and plans of any Air Transportation Company seeking to sublease space from AIRLINE, including whether said operator desires to be handled by AIRLINE. Exclusive or preferential use of AIRLINE's Exclusive Use Premises, or any part thereof, or preferential use of AIRLINE's Preferential Use Premises, or any part thereof, by anyone other than AIRLINE or its Affiliates shall be considered a sublease.

In the event AIRLINE requests permission to sublease, the request shall be accompanied by a copy of the proposed sublease agreement, if prepared. In the event such proposed sublease agreement has not been prepared, a written summary of the material terms and conditions to be contained in such sublease agreement shall be included with AIRLINE's request for tentative approval by

Director. The area or space to be subleased and the rental to be charged shall be specified and all other information reasonably requested by AUTHORITY pertaining to said sublease shall be promptly provided. If AIRLINE is currently in default with respect to the payment of rentals, fees and charges due herein, any such sublease agreement shall provide for the direct payment to AUTHORITY by sublessee of rentals, fees and charges due AUTHORITY pursuant to this Agreement. A fully executed copy of such sublease shall be submitted to Director for final review no later than thirty (30) days following occupancy of Premises, or any portion thereof, by the sublessee.

In the event the rentals, fees and charges for subleased premises exceed the rentals, fees and charges payable by AIRLINE for said premises pursuant to this Agreement, AIRLINE shall pay to AUTHORITY the excess of the rentals, fees and charges received from the sublessee over that specified to be paid by AIRLINE herein, provided that AIRLINE may charge a reasonable fee for administrative costs, not to exceed fifteen (15) percent of the specified sublease rental, and such fifteen (15) percent shall not be considered excess rentals, fees, and charges. AIRLINE shall also have the right to charge a reasonable fee to others for the use of AIRLINE's capital equipment and to charge for use of utilities and other services being paid for by AIRLINE.

37.3 **Ground Handling Services**

a. **Ground Handling Services by AIRLINE.** AIRLINE shall not ground handle another Air Transportation Company, without the prior written approval of the Director. Should AIRLINE wish to handle any portion of the operations of another Air Transportation Company, AIRLINE shall provide AUTHORITY with advance written notice of such proposed activities, including a description of the type and extent of services offered. AIRLINE agrees to pay monthly to AUTHORITY, a fee as established in AUTHORITY's Schedule of Fees and Charges derived from such Ground Handling Services performed for Non-Signatory Airlines or non-scheduled airlines, provided however, that no fee shall be required for Ground Handling Services performed for AIRLINE's Affiliate(s) and other Signatory Airlines.

b. **Ground Handling Services by Others.** AUTHORITY shall grant AIRLINE the right to contract with other companies, including Signatory Airlines, for Ground Handling Services for AIRLINE's aircraft, provided that, among other considerations: (i) AIRLINE has received advance written consent of AUTHORITY; and (ii) such other company, unless such company is a Signatory Airline, has entered into a Ground Handling Services operating agreement with AUTHORITY prior to the commencement of such Ground Handling Services.

37.4 **Release of Space.**

If AIRLINE wishes to release part of the Premises to AUTHORITY, AIRLINE shall notify AUTHORITY in writing of the space AIRLINE wishes to release and AUTHORITY shall use its best efforts to reassign such space to another Air Transportation Company; provided, however, AUTHORITY shall not be obligated to take back the space AIRLINE wishes to release and AIRLINE shall remain responsible for all obligations regarding such space under this Agreement. If AUTHORITY agrees to take back space released by AIRLINE, AUTHORITY shall amend this

Agreement to relieve AIRLINE of its obligations in regard to the space released.

37.5 **Nonwaiver of Responsibility.**

No assignment, transfer, conveyance, sale, mortgage, pledge, encumbrance, or sublease by AIRLINE shall relieve AIRLINE of its responsibility for the payment of rentals and fees or the performance of all other obligations provided for in this Agreement, without the prior written approval of the Director to such relief.

37.6 **Assignment by AUTHORITY.**

AUTHORITY shall have the right to transfer or assign this Agreement without limitation to another public or quasi-public entity. This entity to which this Agreement is transferred or assigned shall be bound by all of the rights and obligations contained herein. If such public or quasi-public entity either refuses to accept one or more of AUTHORITY's obligations or does not recognize one or more of AIRLINE's rights in this Agreement, then AIRLINE may terminate this Agreement pursuant to Section 35.

38. RULES AND REGULATIONS

AIRLINE, its agents and employees, shall be subject to any and all applicable rules, regulations, Airport Standard Operating Procedures, orders and restrictions which are now in force or which may hereafter be adopted by the Wichita Airport Authority or the City of Wichita, Kansas, in respect to the operation of the Airport, provided that the foregoing are reasonable, nondiscriminatory, and neither impair, limit, nor extinguish the rights of AIRLINE under this Agreement; and shall also be subject to any and all applicable laws, statutes, rules, regulations or orders of any governmental authority, federal or state, which are now in force or which may hereafter be promulgated, lawfully exercising authority over the Airport or AIRLINE 's operations conducted hereunder. AUTHORITY shall provide AIRLINE reasonable notice before the enactment or modification of any rules, regulations, Airport Standard Operating Procedures, orders and restrictions, and shall duly consider AIRLINE's input.

AUTHORITY shall not be liable to AIRLINE for any diminution or deprivation of its rights hereunder on account of the exercise of any such authority is in this Section provided, nor shall AIRLINE be entitled to terminate this Agreement by reason thereof unless exercise of such authority shall so interfere with AIRLINE 's exercise of the rights hereunder as to constitute a termination of this Agreement by operation of law in accordance with the laws of the State of Kansas, or as set out in Section 35.

AUTHORITY shall whenever possible make reasonable efforts to obtain uniform compliance with its rules and regulations; provided, however, AUTHORITY shall not be liable to AIRLINE for any violation or non-observance of such rules and regulations by any other tenant, operator or Air Transportation Company at the Airport.

39. ENCROACHERS, TRESPASSERS AND OTHER THIRD PARTY HAZARDS

AIRLINE shall lawfully remove, or cause to be removed by AUTHORITY or other official law enforcement agency, all encroachers, trespassers and other third parties violating laws of the federal, state or local government, or who are not on the Premises for legitimate purposes.

40. AIRPORT SECURITY PROGRAM COMPLIANCE

AIRLINE must obtain Airport Security Identification and Access Media (I.D. Media) for its employees, subcontractors, sublessees, suppliers, agents, and representatives requiring access to the sterile areas, secured AOA, and Security Identification Display Area (SIDA), or other secured areas as may be identified in the Airport Security Program, and pay any related costs associated with the privileges as set forth under this Section. With respect to the issuance, maintenance, and administration of I.D. Media, the AIRLINE shall pay or cause to be paid to the AUTHORITY all charges as may be established from time to time by the AUTHORITY. Such costs may include, but are not limited to: (i) the initial issuance of I.D. Media; (ii) the replacement of lost or stolen I.D. Media; (iii) administrative costs with respect to those I.D. Media not returned to the AUTHORITY.

Said I.D. Media will be valid as set forth under the Airport Security Program, and must be returned to the Airport Police and Fire Division, at 2193 Air Cargo Road within twenty-four (24) hours after expiration, suspension, and/or termination of this Agreement. Said I.D. Media will be valid for no longer than the period of this Agreement. The AIRLINE shall be responsible for requesting the issuance of I.D. Media to employees or other authorized representatives of the AIRLINE who require access to secured areas on the Airport due to operational need and necessity. In addition, AIRLINE shall be responsible for the immediate reporting of all lost or stolen I.D. Media and the immediate return of the I.D. Media of AIRLINE's personnel transferred from the Airport, or separated from the employ of AIRLINE.

AIRLINE warrants that it will comply with of the Airport Security Program and comply with all applicable regulations of the FAA and Transportation Security Administration ("TSA"), 49 CFR Parts 1500, 1542, 1544, 1546, 1548, and 1550 as amended or promulgated, and that it will always maintain the security of the Airport, Premises, and/or any AOA access for which AIRLINE is responsible. The AUTHORITY shall have the right to require the AIRLINE to conduct background investigations and to furnish certain data on such employees or other persons before the issuance of I.D. Media, which data may include the fingerprinting of any and all of its employees, subcontractors, suppliers, agents, and/or representatives. AIRLINE also hereby agrees that it shall be responsible for any and all of the actions on the Premises of its employees, subcontractors, suppliers, agents, customers, invitees, and/or representatives and shall provide any and all necessary escorts, as outlined in the Airport Security Program. AIRLINE hereby agrees that it will immediately implement any and all security changes that are required either directly or indirectly by the TSA, FAA, or AUTHORITY. AIRLINE further agrees to correct any security deficiency or other deficiency as may be determined as such by the AUTHORITY, the Department

of Transportation ("DOT"), the FAA, or the TSA, or any other federal or state agency with jurisdiction. In the event AIRLINE fails to remedy any such deficiency, the AUTHORITY may do so at the sole cost and expense of AIRLINE the cost of which, plus an additional twenty percent (20%) administrative fee, is payable to the AUTHORITY within thirty (30) days after the AUTHORITY's invoice. The AUTHORITY reserves the right to take whatever lawful action is necessary to correct and remedy any security deficiency or other deficiency. When the AUTHORITY takes actions to remedy deficiencies of any kind, it shall be done in a reasonable and cost-conscious manner.

Should AIRLINE, its employees, subcontractors, suppliers, agents, customers, invitees, and/or representatives cause any security violations, and should AUTHORITY be cited for a civil fine or penalty for such security violation, AIRLINE agrees to reimburse AUTHORITY for any monetary civil fine or penalty which may be imposed on AUTHORITY. However, nothing herein shall prevent the AIRLINE from contesting the legality, validity or application of such fine or penalty to the full extent AIRLINE may be lawfully entitled, nor require AUTHORITY to pursue such a contest on AIRLINE'S behalf. AIRLINE may have I.D. Media/access privileges immediately suspended and/or revoked by AUTHORITY for failure to adhere to the Airport Security Program, or for failure to return all I.D. Media within the time-frames specified herein.

The AIRLINE agrees that information concerning the location, type, nature, capabilities, application and use of the AUTHORITY's security system is considered Sensitive Security Information (SSI) as defined by TSR 1520, and shall restrict the distribution, disclosure and availability of SSI only to persons with a need to know. All requests for SSI by persons not directly employed by the AIRLINE, and deemed to have a need to know shall be referred to AUTHORITY for consideration and determination of whether such information is legal and appropriate for dissemination.

Before the AIRLINE shall permit any employee, subcontractor, sublessees, supplier, agents, customer, invitee, and/or representative to operate a motor vehicle of any kind or type on the AOA of Airport (unless such employee is escorted by a AUTHORITY-approved escort), the AIRLINE shall ensure that all such vehicle operators have completed required AOA access and driver training, possess a current, valid, and appropriate driver's license, appropriate Airport issued I.D. Media, and a Vehicle Ramp Permit. AIRLINE company vehicles prominently displaying a permanently affixed company name and/or logo on vehicles and equipment are excluded from the requirement of displaying a Vehicle Ramp Permit.

The AIRLINE agrees that its vehicles, cargo, product deliveries, and other personal property are subject to being inspected and searched when entering, exiting and while on the AOA.

41. SECURITY SYSTEMS

AUTHORITY may at its sole discretion install, operate and maintain a computer controlled access and monitoring system on the Airport. The purpose of said security systems is for the provision of safety and security to the general public, airport employees, tenants and permitees and their employees and invitees, primarily within and upon public areas, and not for the exclusive benefit of any single party or category of airport user. AIRLINE may, at its sole option and cost, install, operate and maintain private security systems within interior or exterior areas of the Premises; however, any such private security systems shall not interfere with, interrupt, impair or block the security systems or effectiveness of the AUTHORITY's security surveillance systems.

AUTHORITY shall not install security surveillance systems for the exclusive benefit of the AIRLINE. AIRLINE shall not rely on the surveillance cameras owned and operated by the AUTHORITY for purposes of risk management or private security from property loss, theft or other criminal activity.

42. PORTABLE STORAGE CONTAINERS/STRUCTURES

Unless specifically approved in writing, and under only conditions specified by AUTHORITY, AIRLINE shall not place or allow to be placed upon Premises, any type of portable storage container, trailer, unit, box, or barrel which is used to store merchandise and/or equipment and supplies outside of an enclosed permanent building or structure. Unless specifically approved, and only under conditions specified by AUTHORITY, AIRLINE shall not place or allow to be placed upon Premises, any type of portable or temporary structure, trailer, mobile home, modular structure or device.

AUTHORITY shall not unreasonably withhold approval of such container(s) and structure(s) if placement is of a temporary nature for the purpose of supporting construction, alterations, improvement activity, or other approved project.

43. NONDISCRIMINATION

The AIRLINE shall comply with all the following nondiscrimination provisions to the extent that AIRLINE's activities shall be subject to the same:

43.1 Nondiscrimination in Employment

The AIRLINE agrees not to discriminate against any employee or applicant for employment because of race, creed, color, sex, religion, national origin, ancestry, age or disability. The AIRLINE shall take affirmative action to insure that employees are treated without regard to their race, creed, color, national origin, sex, religion, ancestry, age or disability. Such actions shall

include, but not be limited to, the following: employment, promotion demotion or transfer, recruitment, advertising, lay-off or termination, and selection for training, including apprenticeship. The AIRLINE hereby agrees to post, in a conspicuous place, available to employees and applicants for employment, notices setting forth the provisions of this Section, in compliance with federal and state laws.

43.2 Facilities Nondiscrimination

AIRLINE shall make its accommodations and/or services available to the public on fair and reasonable terms without discrimination on the basis of sex, age, race, religion, creed, ancestry, color, national origin, or disability, provided, however, nothing herein shall require the furnishing to the general public of the use of any facilities or accommodations customarily furnished by AIRLINE solely to its employees, customers, clients, guests, and invitees; and AIRLINE may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar type of price reductions to volume purchasers.

a. Noncompliance with any nondiscrimination provision imposed by law related to the accommodations and/or services provide under this Agreement, or noncompliance with any nondiscrimination within this Agreement shall constitute a material breach of this Agreement and, in the event of such noncompliance, AUTHORITY shall have the right to terminate this Agreement without liability therefore.

b. AIRLINE agrees to insert or incorporate by reference nondiscrimination language in any leases, agreements, or contracts, etc. by which said AIRLINE grants a right or privilege to any person, firm, or corporation to render accommodations and/or services to the public on the Premises.

44. GENERAL PROVISIONS

44.1 Operation of Airport by the United States of America

This Agreement and all the provisions hereof shall be subject to whatever right the United States of America now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of the Airport or the exclusive or nonexclusive use of the Airport by the United States during the time of war or national emergency.

44.2 14 CFR Part 77 of Federal Aviation Regulations

AIRLINE agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event future construction or addition of a building, structure is planned for the Premises, or in the event of any planned modification or alteration of any present or future building or structure situated on the Airport. AIRLINE by accepting this Agreement expressly agrees for itself, its successors and assigns that it shall not erect nor permit the erection of any unapproved structure or object, nor permit the growth of any tree on the Airport which shall exceed such maximum height as may be stipulated by AUTHORITY. Applicable laws,

codes, regulations or agreements concerning height restrictions shall govern the maximum height to be stipulated by AUTHORITY. In the event this covenant is breached, AUTHORITY reserves the right to enter upon the Premises and to remove the offending structure or object, and cut down the offending tree, all of which shall be at the expense of AIRLINE and without liability to AUTHORITY. This expense plus an administrative fee of twenty percent (20%) shall be payable within thirty (30) days after AUTHOIRTY's invoice.

44.3 **Airspace**

There is hereby reserved to AUTHORITY, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of Aircraft in the airspace above the surface of the Premises. This public right of flight shall include the right to cause or allow in said airspace, any noise inherent in the operation of any Aircraft used for navigation or flight through the said airspace or landing at, taking off from or operation on the Airport. No liability on the part of AUTHORITY shall result from the exercise of this right.

44.4 **Easement for Flight**

AIRLINE releases AUTHORITY from any present or future liability whatsoever and covenants not to sue AUTHORITY for damages or any other relief based directly or indirectly upon noise, light, vibrations, smoke, fumes, odors, air currents, shock waves, electronic or other emissions occurring as a result of aviation or airport related operations at or otherwise associated with the Airport. This release and covenant includes but is not limited to claims for damages for physical or emotional injuries, discomfort, inconvenience, property damage, death, interference with use and enjoyment of property, nuisance, loss of income or business opportunity, inverse condemnation or for injunctive or other extraordinary or equitable relief. It is further agreed that AUTHORITY shall have no duty to avoid or mitigate such damages by, without limitation, setting aside or condemning buffer lands, rerouting air traffic, erecting sound or other barriers, establishing curfews, noise or other regulations, relocating airport facilities or operations or taking other measures, except to the extent, if any, that such actions are validly required by official federal agency action. AUTHORITY reserves from the Premises an easement for flight of Aircraft in or adjacent to the airspace above the Premises and for the existence and imposition over, on and upon said Premises of noise, light, vibrations, smoke, fumes, odors, air currents, electronic or other emissions, discomfort, inconvenience, interference with use and enjoyment, and any consequent reduction in market value which may occur directly or indirectly as a result of aviation, airport or airport-related operations at or otherwise associated with use of the Airport. AIRLINE accepts the Premises subject to the risks and activities hereinabove described.

44.5 **Airport Hazards**

AIRLINE by accepting this Agreement agrees for itself, its successors and assignees, that it shall not make use of the Premises in any manner which might interfere with the landing and taking off of Aircraft from the Airport or otherwise constitute a hazard. If during the Term of this Agreement the condition is breached, AUTHORITY reserves the right to enter upon the Premises and cause the abatement of such interference at the expense of AIRLINE without liability to AUTHORITY, except to the extent such liability arises from the negligence or willful misconduct of AUTHORITY. The expense of this action plus an administrative fee of twenty percent (20%)

shall be payable within thirty (30) days after AUTHOIRTY's invoice.

44.6 **Federal Aviation Administration Requirements**

AUTHORITY and AIRLINE agree that the requirements of the FAA set out below are approved by both parties, and if applicable, AIRLINE agrees to comply with all FAA requirements with respect to its operations, use of the Airport and this Agreement:

a. The AIRLINE, for itself and its representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained or otherwise operated on said property described in this Agreement for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the AIRLINE shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

b. The AIRLINE, for itself and its representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any Improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the AIRLINE shall use the Premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

c. The AIRLINE assures that it shall undertake an affirmative action program if required by 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. The AIRLINE assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. The AIRLINE assures that it shall require that its covered sub-organizations provide assurances to the AIRLINE that they similarly shall undertake affirmative action programs, and that they shall require assurances from their sub-organizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

d. Nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308 of the Federal Aviation Act of 1958.

e. AIRLINE agrees to furnish service on a fair, equal and not unjustly discriminatory basis to all users thereof, and to charge fair, reasonable and not unjustly discriminatory prices for

each unit or service; provided that AIRLINE may make reasonable and nondiscriminatory discounts, rebates or other similar types of price reductions to volume purchasers.

f. AUTHORITY reserves the right (but shall not be obligated to AIRLINE) to maintain and keep in repair the AOA of the airport and all publicly-owned facilities of the airport, together with the right to direct and control all activities of AIRLINE in this regard.

g. AUTHORITY reserves the right further to develop or improve the Airfield and all publicly-owned air navigation facilities of the airport as it sees fit, regardless of the desires or views of AIRLINE, and without interference or hindrance.

h. AUTHORITY 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 AIRLINE from erecting, or permitting to be erected, any building or other structure on the airport which, in the opinion of AUTHORITY, would limit the usefulness of the airport or constitute a hazard to Aircraft.

i. During time of war or national emergency AUTHORITY 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 Airfield, 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.

j. Rights granted by this Agreement shall not be exercised in such a way as to interfere with or adversely affect the use, operation, maintenance or development of the Airport.

k. There is hereby reserved to AUTHORITY, its successors and assigns, for the use and benefit of the public, a free and unrestricted right of flight for the passage of Aircraft in the air space above the surface of the Premises herein conveyed, together with the right to cause in said airspace such noise as may be inherent in the operation of Aircraft now known or hereafter used for navigation of or flight in the air, using said airspace or landing at, taking off from or operating on or about the Airport.

l. This Agreement shall become subordinate to provisions of any existing or future agreement between the AUTHORITY and the United States of America or any agency thereof relative to the operation, development or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport.

44.7 **Modifications for Granting of FAA Funds**

In the event that the AUTHORITY determines the FAA requirements call for modifications or changes to this Agreement as a condition precedent to granting of funds for the Improvement of the Airport, these modifications or changes shall supersede this Agreement and AIRLINE agrees to consent to such amendments, modifications, revisions, supplements or deletions of any of the terms, conditions or requirements of this Agreement as may be reasonably required by the

AUTHORITY to fully comply with federal grant assurances and directives and to obtain FAA grants-in-aid, provided that no such changes shall materially alter the rights or obligations of AIRLINE hereunder.

44.8 Subordination to Agreements with the U.S. Government

This Agreement is subject and subordinate to the provisions of any agreements heretofore or hereafter made between AUTHORITY and the United States Government relative to the operation or maintenance of Airport, the execution of which has been required as a condition precedent to the transfer of federal rights or property to AUTHORITY for Airport purposes, or the expenditure of federal funds for the improvement or development of Airport, including the expenditure of federal funds for the development of Airport in accordance with the provisions of the Federal Aviation Act of 1958, as it has been amended from time to time. AUTHORITY covenants that it has no existing agreements with the United States Government in conflict with the express provisions hereof.

44.9 Non-Waiver of Rights

No waiver or default by either party of any of the terms, warranties, covenants and conditions hereof to be performed, kept and observed by the other party shall be construed as, or shall operate as, a waiver of any subsequent default of any of the terms, warranties, covenants or conditions herein contained, to be performed, kept and observed by the other party.

44.10 Severability and Invalid Provisions

In the event any term, covenant, condition or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of any such term, covenant, condition or provision shall in no way affect any other term, covenant, condition or provision herein contained. The parties agree if such invalid provision is essential to this Agreement, they will promptly begin negotiations for a suitable replacement provision so as to give force to the intent of the parties.

44.11 Waiver of Claims

Each party hereby waives any claim against the other party and such other party's officers or employees for loss of anticipated profits, consequential or incidental damages, or claim for attorney fees caused by or resulting any suit or proceedings directly or indirectly attacking the validity of Agreement or any part thereof, or the manner in which it is executed or performed, or by any judgment or award in any legal proceeding declaring this Agreement null, void or voidable, or delaying the same of any part thereof, from being carried out. This waiver extends to all claims, whether the supporting legal theory lies in common law or has a statutory basis.

44.12 Incorporation of Exhibits

All exhibits referred to in this Agreement are intended to be and are hereby specifically made a part of this Agreement.

44.13 Non-Liability of Agents and Employees

No member, officer, agent or employee of either party to this Agreement shall be charged personally, or held contractually liable by or to the other party under the terms or provisions of

this Agreement, or because of any breach thereof or because of its or their execution or attempted execution.

44.14 **Successors and Assigns Bound.**
This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties.

44.15 **Time of Essence**
Time is of the essence in this Agreement.

44.16 **Relationship of the Parties**
AIRLINE is not in any way or for any purpose a partner or joint venturer with or an agent of AUTHORITY. AIRLINE shall act as an independent contractor in the performance of its duties pursuant to this Agreement.

44.17 **Interpretation**
AUTHORITY and AIRLINE agree that this Agreement shall not be construed or interpreted in favor of either party on the basis of preparation.

44.18 **Kansas Laws to Govern**
This Agreement and the terms and conditions herein contained shall at all times be governed, interpreted and construed under and in accordance with the laws of the State of Kansas, and venue for resolution of any issue pertaining to this Agreement shall be in Sedgwick County, Kansas.

44.19 **Force Majeure**
Neither the AUTHORITY nor the AIRLINE shall be deemed in violation of this Agreement if it is prevented from performing any of the obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortages of material, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, riots, rebellion, sabotage, acts of terrorism or the results therefrom, or any other circumstances for which it is not responsible or which is not within its control.

45. NOTICES, CONSENTS, AND APPROVALS

Notices or other communications to AUTHORITY pursuant to the provisions hereof shall be sufficient and irrefutably deemed received if sent regular mail, postage prepaid, or by a nationally recognized overnight courier, or facsimile transmission, addressed to:

Attention: Director
Wichita Airport Authority
2173 Air Cargo Road
Wichita, Kansas 67209;

Fax: (316) 946-4793

and bills, statements, and notices or communications to AIRLINE shall be sufficient and irrefutably deemed received if sent regular mail, postage prepaid, or by a nationally recognized overnight courier addressed to:

DELTA AIR LINES
ATTN: Properties & Facilities Dept.
Department 877
1030 Delta Boulevard
Atlanta, GA 30354

or to such respective addresses as the parties may designate in writing from time to time.

46. INTENTION OF PARTIES

This Agreement is intended solely for the benefit of AUTHORITY and AIRLINE and is not intended to benefit, either directly or indirectly, any third party or member(s) of the public at large. Any work done or inspection of the Premises performed by AUTHORITY is solely for the benefit of AUTHORITY and AIRLINE.

47. AMENDMENT OR MODIFICATION

This Agreement constitutes the entire Agreement between the parties for the lease of Premises set forth and identified under Section 2. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless the same is in writing, dated subsequent to the date hereof, and duly executed by the parties hereto.

This Agreement shall not be modified or amended unless in writing with formality equal to this Agreement, executed by the AIRLINE and AUTHORITY on a date subsequent to the execution of this Agreement.

48. APPROVAL, CONSENT, DIRECTION OR DESIGNATION BY AUTHORITY

Wherever under this Agreement, approvals, consents, directions, or designations are required or permitted, such approvals, consents, directions, or designations required or permitted under this Agreement shall be performed by the Director of Airports, or his/her authorized representative and, unless otherwise expressly stated in this Agreement, approvals and consents shall not be unreasonably withheld.

The parties agree that this Agreement may be signed in multiple counterparts, and that when signed by all parties, shall be effective upon the execution latest in time. Each shall be deemed an original, but taken together, shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.

ATTEST:

THE WICHITA AIRPORT AUTHORITY
WICHITA, KANSAS

By _____
Karen Sublett, City Clerk

By _____
Carl Brewer, President
"AUTHORITY"

By _____
Victor D. White, Director of Airports

ATTEST:

DELTA AIR LINES

By _____

By _____
"AIRLINE"

APPROVED AS TO FORM: _____ Date: _____
Sharon Dickgrafe, Interim Director of Law

AIRLINE AIRPORT USE AND LEASE AGREEMENT

BY AND BETWEEN

WICHITA AIRPORT AUTHORITY

AND

SOUTHWEST AIRLINES CO.

FOR

WICHITA DWIGHT D. EISENHOWER NATIONAL AIRPORT

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A Affiliate Airline Notification

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C Airport Boundaries

D Premises

E Monthly Activity Report

F Tenant Construction and Alteration Process Manual (Incorporated by reference)

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H Snow Removal

I Maintenance Matrix

THIS AGREEMENT, dated March 17, 2015, between The Wichita Airport Authority, hereafter referred to as "AUTHORITY," and Southwest Airlines Co., a corporation organized and existing under the laws of the State of Texas, hereinafter referred to as "AIRLINE," acting by and through its designated officers with the express authority of its Board of Directors;

W I T N E S S E T H:

WHEREAS, AUTHORITY is a governmental entity authorized under the laws of the State of Kansas to own and operate one or more airports, with full, lawful power and authority to enter into binding legal instruments by and through its governing body; and

WHEREAS, AUTHORITY owns and operates the commercial service airport with FAA designation of ICT operated by the Wichita Airport Authority (hereinafter referred to as "Airport"); and

WHEREAS, AIRLINE is a corporation primarily engaged in the business of transportation by Aircraft for the carriage of persons, property, and mail; and

WHEREAS, AIRLINE desires to use certain premises and facilities, and to exercise certain rights and privileges at Airport in connection with the operation of its Air Transportation Business, and AUTHORITY is willing to agree to such use, rights and privileges as set forth herein; and

WHEREAS, the intent of the parties is to enter into an agreement which will specify the rights and obligations of the parties with respect to the operation of Airport by AUTHORITY and the use and occupancy of Airport by AIRLINE, and this Agreement is responsive to and in accordance with that intent;

NOW, THEREFORE, AUTHORITY and AIRLINE for, and in consideration of the covenants and mutual promises hereinafter contained, agree as follows:

1. DEFINITIONS

The terms and phrases defined in this Section for all purposes of this Airline Use and Lease Agreement shall have the following meanings:

Affiliate shall mean any Air Transportation Company that is either a (1) wholly-owned subsidiary of AIRLINE or AIRLINE's parent company or (2) operates under essentially the same trade name as AIRLINE at the Airport, uses essentially the same livery as AIRLINE, and does not sell any seats in its own name. AIRLINE shall provide AUTHORITY with a completed Exhibit A, attached hereto, for each Affiliate active as of the Commencement Date of this Agreement.

Air Operations Area (AOA) shall mean those portions of the Airport provided for the landing, take-off, taxiing and parking of Aircraft, including, without limitation, runways, taxiways, runway and taxiway safety areas and protection zones, Aircraft Parking Aprons, service roads, and other related and supporting appurtenances.

Air Transportation Business shall mean the business of an Air Transportation Company for the commercial transportation by air of persons, property, mail, and/or cargo.

Air Transportation Company shall mean a company engaged in the business of scheduled or nonscheduled commercial transportation by air of persons, property, mail, and/or cargo.

Aircraft shall mean a vehicle that is capable of traveling through the air, as defined in the Federal Aviation Act of 1958, as same may be amended or supplemented from time to time.

Aircraft Parking Apron shall mean that square footage of the AOA measured from the abutting face of the Terminal to the Aircraft parking limit line immediately adjacent to the Terminal that is used for the parking of Aircraft and support vehicles and the loading and unloading of passengers, baggage, and other mail or cargo, the boundaries of which are shown in Exhibit B attached hereto. Changes may be made to Exhibit "B", under the authority of the Director, without requiring formal amendment to the Agreement.

Airfield shall mean the AOA, approach and turning zones, aviation or other easements, and other appurtenances.

Airfield Requirement is that requirement established in Section 5.5(a).

Airline Net Revenue Sharing shall mean an amount determined by AUTHORITY in accordance with Section 6.3.

Airport shall mean the Mid-Continent Airport under the ownership, control and jurisdiction of the AUTHORITY. The current name of the airport is now known as the Mid-Continent Airport. The name will change to Wichita Dwight D. Eisenhower National Airport during the Initial Term of this Agreement. Current boundaries are shown on Exhibit C attached hereto.

Airport System shall include the airports under the ownership, control and jurisdiction of the AUTHORITY.

Amortization shall mean the principal and interest cost on a Capital Improvement financed by the AUTHORITY from its own cash. Amortization shall be calculated using (i) the interest rate paid by the City of Wichita, Kansas on its most recent comparable issuance of Bonds and (ii) the economic useful life of the Capital Improvement, as determined by the AUTHORITY in accordance with generally accepted accounting principles. Amortization shall begin in the Fiscal Year following when the Capital Improvement is ready for its intended use.

Authority Net Revenue Sharing shall mean an amount determined by AUTHORITY in accordance with Section 6.3.

Aviation Fuel Storage Facilities shall mean the fuel storage facilities owned by the AUTHORITY for the purpose of receiving, storing, and dispensing aviation fuel.

Bonds shall mean any bonds or other financing instrument or obligation issued by the City of Wichita, Kansas issued for the purposes of improving the Airport System or on behalf of AUTHORITY.

Capital Improvement shall mean (i) the acquisition of land or easements; (ii) the planning, design, or construction of new facilities; and (iii) the performance of any extraordinary, non-recurring major maintenance of existing facilities that may be acquired, purchased, or constructed by AUTHORITY to improve, maintain, or develop the Airport System.

Commencement Date shall mean the date on which the Terminal opens for commercial business to the general public.

Common Use Gate shall mean any AUTHORITY-controlled Gate in the Terminal not directly leased to an individual Signatory Airline on a Preferential Use basis, which AUTHORITY reserves for use of any Air Transportation Company.

Cost Center(s) shall mean the cost centers representing the areas and facilities operated by AUTHORITY, and as such cost centers may be modified, changed, or developed by AUTHORITY to be used in accounting for items including, but not limited to Revenues, Operation and Maintenance Expenses, Debt Service, Coverage Requirement, Operation and Maintenance Reserve Requirement, and Amortization and for calculating and adjusting the Rental and Fee Rates. Cost Centers shall collectively include the Airfield Cost Center, Jabara Cost Center, Other Aviation Buildings and Areas Cost Center, Landside Cost Center, and Terminal Cost Center.

Coverage Requirement shall mean, for any Fiscal Year, the amount equal to ten percent (10%) of Debt Service, for all series of Bonds plus such other amount as may be established by any financing agreement. If, in any given Fiscal Year, the Authority Net Revenue Sharing is insufficient to meet both the Coverage Requirement and Operation and Maintenance Reserve Requirement for that Fiscal Year, any shortfall shall be included in the Airfield Requirement under

Section 5.5(a)(v).

Debt Service shall mean the required amounts to be deposited within the principal and interest accounts related to Bonds during any period for the payment, when due, of principal of, interest on, and other fees and amounts associated with such debt.

Director shall mean the Director of Airports, who is the person designated by the AUTHORITY to exercise functions with respect to the rights and obligations of the AUTHORITY under this Agreement, and shall include any person expressly delegated by the Director of Airports to exercise functions with respect to the rights and obligations of the Director of Airports under this Agreement.

Electronic Visual Information Display Systems (EVIDS) shall mean the AUTHORITY owned Flight Information Display System (FIDS), the Baggage Information Display System (BIDS) and Gate Information Display System (GIDS) provided for passenger information.

Enplaned Passengers shall mean all (i) originating; (ii) on-line transfer; and (iii) off-line transfer passengers boarded at the Airport.

Exclusive Use Premises shall mean Terminal space leased to AIRLINE for its exclusive use as shown on Exhibit D attached hereto, as such may be amended from time to time.

Fiscal Year shall mean the then current annual accounting period of AUTHORITY for its general accounting purposes which, at the time of entering into this Agreement, is the period of twelve (12) consecutive calendar months ending with the last day of December of any year.

Fixtures shall mean all structures and fixed systems and equipment erected or installed upon the Premises, shelves, cabinets, counters, all fencing, grading, landscaping and pavement, all underground wires, cables, pipes, conduits, tanks, drains and drainages; and all other property of every kind and nature which is permanently affixed to the Premises.

Gate when referenced in this Agreement shall mean the contiguous and mutually supporting facilities consisting of hold rooms(s), Aircraft Parking Apron, passenger boarding bridge(s), and appurtenant furnishings within these areas that are necessary for the use thereof. The term Gate as used in this Agreement shall specifically exclude any space leased by AIRLINE in the first (lower) level of the Terminal.

Ground Handling Services shall mean services provided to Air Transportation Companies to include, but not necessarily be limited to, fueling services; loading and unloading of passengers, baggage and freight into Aircraft; providing passenger service agents; assisting in processing of passengers and crews; furnishing and operating ground support equipment in support of Aircraft operations; Aircraft cleaning and lavatory service activities; deicing; and Aircraft maintenance activities.

Hold Rooms or Passenger Hold Rooms shall mean the areas specifically designed and designated for the sole purpose of Airline passenger waiting prior to enplaning.

Improvements shall mean any construction, or addition, alteration or betterment, to real estate new or existing, including structures, paved surfaces and other ancillary and supporting areas.

Joint Use Cost shall mean the Terminal Rental Rate multiplied by the square footage of the Joint Use Premises plus the cost of providing services as may be requested by the AIRLINE or as may be required by the AUTHORITY, if any, less any fees collected by AUTHORITY from Non-Signatory Airlines for the use of Joint Use Premises for any given Fiscal Year.

Joint Use Fee shall mean the fee payable by AIRLINE under this Agreement for use of the Joint Use Premises at the Airport.

Joint Use Formula shall mean the formula used to prorate the Joint Use Cost on the basis of ten percent (10%) of the total annual rental divided equally among all Signatory Airlines. The remaining ninety percent (90%) of the total annual rental shall be apportioned among all Signatory Airlines on the basis of the number of each Signatory Airline's Enplaned Passengers at the Airport to the total number of Enplaned Passengers of all Signatory Airlines at the Airport.

Joint Use Premises shall mean those Terminal areas assigned to two or more Air Transportation Companies, as shown on Exhibit D " attached hereto.

Landing shall mean any landing at the Airport by an Aircraft operated by any Air Transportation Company., but shall not include an unscheduled landing by an Aircraft operated by an Air Transportation Company that returns to the Airport because of weather, mechanical, operational, or other emergency or precautionary reasons.

Landing Fee shall mean the fee payable by AIRLINE under this Agreement for Landings at the Airport.

Landing Fee Rate shall mean that rate, established in Section 5.5, for each one thousand (1,000) pounds of Maximum Gross Landing Weight.

Maximum Gross Landed Weight shall mean the maximum gross certificated landing weight in one thousand pound units for which each Aircraft operated by AIRLINE is certified by the Federal Aviation Administration ("FAA"), or any successor agency thereto.

Monthly Activity Report shall mean the reporting form required to be completed and submitted by AIRLINE to AUTHORITY each month attached hereto as Exhibit E, as may be amended from time to time by the Director upon thirty (30) days prior written notice to AIRLINE. Any modification to this Monthly Activity Report shall automatically become a part of this Agreement, without formal amendment hereto.

Non-Revenue Landing shall mean any Aircraft landing by AIRLINE at Airport for which AIRLINE receives no revenue, and shall include irregular and occasional ferry, test, courtesy, inspection, or other similar flights.

Non-Signatory Airline shall mean any Air Transportation Company operating at the Airport that has entered into a non-signatory agreement with the AUTHORITY.

Normal Wear and Tear shall mean the physical deterioration which occurs resulting from the normal, customary and reasonable operation and use for which the property is intended, without negligence, carelessness, or intentional abuse of the property or Premises.

Operation and Maintenance Expenses (O&M Expenses) shall mean, for any period, all expenses accrued by AUTHORITY in accordance with generally accepted accounting practices for airports of similar characteristics for the operation, maintenance, administration and ordinary current repairs of the Airport System in order to maintain and operate the Airport System in a reasonable and prudent manner.

Operation and Maintenance Reserve Account (O&M Reserve Account) shall mean an account established to pay for extraordinary or unanticipated Operation and Maintenance Expenses to the extent that other funds are not available for such purposes.

Operation and Maintenance Reserve Requirement (O&M Reserve Requirement) shall mean an amount required to maintain a balance of the following percentage of O&M Expenses in each Fiscal Year, net of existing O&M Reserve Account balances and allocated to the Cost Centers on the basis of O&M Expenses:

Fiscal Year 2015: zero percent (0%)
Fiscal Year 2016: zero percent (0%)
Fiscal Year 2017: five percent (5%)
Fiscal Year 2018: ten percent (10%)
Fiscal Year 2019: fifteen percent (15%)
Option Term Fiscal Year 2020: twenty percent (20%)
Option Term Fiscal Year 2021 and thereafter: twenty five percent (25%)

If, in any given Fiscal Year, the AUTHORITY Net Revenue Sharing is insufficient to meet both the Coverage Requirement and Operation and Maintenance Reserve Requirement for that Fiscal Year, any shortfall shall be included in the Airfield Requirement under Section 5.5(a)(v).

Preferential Use Premises shall mean Aircraft Parking Apron(s), hold room(s), ticket counter(s), and passenger boarding bridges, assigned to AIRLINE, as set forth in Section 2.1 and to which AIRLINE shall have preferential use, defined herein as the unrestricted higher and continuous priority over all other users, subject to the provisions of Section 2.2(b) herein. The Director may, with notice appropriate under the circumstances, authorize another Air Transportation Company pursuant to Section 16 to utilize AIRLINE's hold rooms, passenger boarding bridges, and Aircraft Parking Apron when such use does not conflict with AIRLINE's scheduled flight activities, including a period of forty-five (45) minutes after any of AIRLINE's scheduled departure times

and forty-five (45) minutes prior to any of AIRLINE's scheduled arrival times and during AIRLINE's Aircraft parking overnight, or for the scheduled flight activities of an Affiliate(s) approved subleases, or handling agreements.

Premises shall mean those areas leased for use by AIRLINE herein, which are comprised of Exclusive Use, Preferential Use, and Joint Use Premises.

Personal Property shall mean AIRLINE's removable trade fixtures as allowed by this Agreement, furniture, furnishings, draperies, decorations, signs, appliances, equipment, and any other similar items or supplies owned by AIRLINE.

Rate Stabilization Fund shall mean an account established within the flow of funds prescribed in Section 6.3 of this Agreement to offset Signatory Airline Rental and Fee Payments at the AUTHORITY's discretion. Annual deposits to the Rate Stabilization Fund shall not exceed the annual Amortization allocated to the Airfield and the airline's portion of the Terminal Cost Centers. The maximum balance in the Rate Stabilization Fund shall not exceed one million five hundred thousand dollars ($1,500,000).

Rental and Fee Rates shall mean all rentals and fees payable under the terms of this Agreement.

Requesting Transportation Company shall mean an Air Transportation Company desiring to provide new or expanded commercial passenger air transportation service to and from Airport, and which is unable to obtain adequate Aircraft Parking Apron and/or Terminal space from AUTHORITY.

Revenues shall mean income and revenue derived by AUTHORITY in connection with the operation of the Airport System. The term "Revenues" shall not include passenger facility charges, customer facility charges, insurance proceeds, restricted land sale proceeds or any local, state or federal assistance, or any interest earned thereon.

Revenue Landing shall mean an Aircraft landing by AIRLINE at Airport in conjunction with a flight for which AIRLINE makes a charge or for which revenue is derived for the transportation by air of persons, property or mail, but Revenue Landings shall not include any landing of an Aircraft which, after having taken off from Airport and without making a landing at any other airport, returns to land at Airport because of meteorological conditions, mechanical or operating causes, or any other reason of emergency or precaution.

Signatory Airlines shall mean those airlines which provide scheduled commercial passenger air transportation to and from the Airport and which have executed substantially similar agreements to this Agreement, including term, with AUTHORITY for the lease, use, and occupancy of facilities at the Airport, including the lease of at least one (1) holdroom and associated Aircraft Parking Apron.

Term shall mean the express time period during which AIRLINE has rights and obligations to the Premises as established under Section 3 of this Agreement.

Tenant Construction and Alteration Process Manual (TCAP Manual) shall be the guidance document describing acceptable standards for any construction, alteration or improvements made to AIRLINE's Premises. All tenant improvements shall conform to the AUTHORITY's TCAP Manual, which is attached hereto as Exhibit F and incorporated herein by this reference. TCAP Manual may be amended from time to time.

Terminal shall mean the airline terminal building owned and operated by AUTHORITY at Airport, as shown on Exhibit C hereof.

Terminal Rental shall mean the annual rent payable by AIRLINE under this Agreement for the use of the Terminal.

Terminal Rental Rate shall mean the rate, established in Section 5.4, for each square foot of the Terminal.

Terminal Requirement shall mean that requirement established in Section 5.4(a).

Usable Space shall mean those areas in the Terminal that are available for use by Air Transportation Companies or the general public, including, but not limited to, ticket counter, holdroom, offices, operations, baggage make-up, baggage claim, concessions, passenger screening, baggage screening, and public circulation space. Usable Space shall not include mechanical, electrical, plumbing, or other facility support space.

2. PREMISES

2.1 Premises

a. **Terminal Space.** AUTHORITY does hereby lease and demise to AIRLINE, and AIRLINE does hereby lease and accept from AUTHORITY, Exclusive Use Premises, Preferential Use Premises, and Joint Use Premises, as set forth on Exhibit D.

AUTHORITY agrees to grant AIRLINE a nonexclusive right to use the Joint Use Premises and Preferential Use Premises for conducting its Air Transportation Business.

b. **Aircraft Parking Apron Space.** AUTHORITY leases to AIRLINE and AIRLINE leases from AUTHORITY space in the Aircraft Parking Apron on a Preferential Use basis and illustrated on Exhibits B and D.

c. **Use of AIRLINE's Aircraft Parking Apron within the Premises.** AIRLINE shall have Preferential Use of the AIRLINE's Aircraft Parking Apron Premises for the loading and unloading of AIRLINE's passenger Aircraft, or the passenger Aircraft of AIRLINE's Affiliate(s) and Air Transportation Companies operating from AIRLINE's Premises under AUTHORITY-approved subleases and ground handling agreements with AIRLINE. AIRLINE's use of said AIRLINE's Aircraft Parking Apron Premises shall be limited to (i)

the loading and unloading of persons, property, cargo, parcels, mail and in-flight food and related supplies on passenger Aircraft, as well as (ii) the parking, refueling, interior cleaning and minor mechanical maintenance of AIRLINE's passenger Aircraft, and the Aircraft of AIRLINE's Affiliate(s) and Air Transportation Companies operating from AIRLINE's Premises under AUTHORITY-approved subleases and ground handling agreements with AIRLINE.

2.2 Use of Premises

AIRLINE shall use the various types of space leased only for such purposes as are typical for that type of space in the sole judgment of AUTHORITY not to be exercised arbitrarily.

a. **AIRLINE's Exclusive Use Premises.** AIRLINE will have exclusive use of that portion of AIRLINE's Premises labeled as airline ticketing office (ATO), baggage storage lockers, and operations space on Exhibit D.

b. **AIRLINE's Preferential Use Premises.** AIRLINE will have preferential use of that portion of AIRLINE's Premises labeled as ticket counter, Aircraft Parking Apron, and holdrooms on Exhibit D. AIRLINE's Preferential Use Premises are subject to reassignment in accordance with Section 16.2 of this Agreement.

c. **Joint Use Premises.** AIRLINE has the right to use the Joint Use Premises, in conjunction with other Air Transportation Companies, labeled as baggage claim, outbound baggage, passenger screening, baggage service offices, and hold baggage screening on Exhibit D.

2.3 Condition of Premises and Airport

AIRLINE expressly acknowledges that it has inspected the Premises, including, but not limited to, all finishes, furniture, fixtures and equipment therein, and accepts the same "As Is" in the condition existing as of the Commencement Date with the exception of those facilities and fixtures that AUTHORITY is required by this Agreement to maintain and repair. The parties acknowledge that the Premises is being newly constructed at the time this Agreement is being negotiated and AIRLINE is responsible to complete its build-out of the Premises in accordance of the TCAP. The Premises is located within the Terminal, which AUTHORITY operates as part of a Part 139 airport subject to FAA regulations and grant assurances. By this Agreement, AIRLINE obtains the right to operate its Air Transportation Business within the limitations created by those FAA regulations, grant assurances and the AUTHORITY's rules and regulations and Standard Operating Procedures.

2.4 Employee Parking

AUTHORITY shall use reasonable efforts to ensure that parking facilities are sufficient for all of AIRLINE's personnel employed on the Airport. Employee parking shall be subject to reasonable rules and regulations of AUTHORITY. AUTHORITY may update these rules and regulations as needed. Use of the employee parking areas is subject to payment of reasonable fees and charges, further described in Section 4.8, Other Fees and Charges.

2.5 Public Address System

AUTHORITY shall provide and maintain a public address system in the Terminal, which AIRLINE and others similarly authorized by AUTHORITY shall have the right to use for flight announcements and paging. Use of the public address system shall be subject to reasonable rules and regulations established by AUTHORITY, as may be amended from time-to-time.

2.6 Reserved from Premises

AUTHORITY expressly reserves from the Premises:

a. **Mineral Rights.** All gas, oil and mineral rights in and under the soil;

b. **Water Rights.** All statutory, exempt, vested, and granted appropriation rights for the use of water, and all rights to request further appropriations for the Premises;

c. **Airspace.** A public right of flight through the airspace above the surface of the Premises. This public right of flight shall include the right to cause or allow in said airspace, any noise inherent in the operation of any Aircraft used for navigation or flight through said airspace or landing at, taking off from, or operation on the Airport. No liability on the part of AUTHORITY or any Tenant shall result from the exercise of this right;

d. **Navigational Aids.** The right to install, maintain and modify and/or permit others to install, maintain and modify on the Premises visual and electronic navigational aids;

e. **Radio/Wireless Communication Systems.** The right to approve or withhold approval of any use of fixed RF Systems for the transmission of radio frequency signals in/on the Premises;

f. **General Provisions.** The right to exercise any and all rights set out in Section 44, General Provisions; and

g. **Entry and Inspection of Premises.** The right of AUTHORITY, its authorized officers, employees, agents, contractors, subcontractors, authorized government agents, or other representatives to enter upon the Premises:

    i. With twenty-four (24) hours advance notice, and accompanied by an AIRLINE representative to inspect at reasonable intervals during regular business hours (or any time without prior notice in case of emergency or lawful investigation) to determine whether AIRLINE has complied, and is complying with the terms and conditions of this Agreement;

    ii. With twenty-four (24) hours' advance notice and accompanied by an AIRLINE representative (or any time without prior notice in case of emergency or reasonably suspected violation), to inspect Premises, facilities, and equipment for compliance with laws, regulations and/or codes of the federal, state or local government, airport rules and regulations and airport standard operating procedures; and

iii. Within thirty (30) calendar days advance notice (or any time without prior notice in case of emergency or critical system repairs) to construct new facilities, or to perform maintenance, repair, or replacement relating to the AUTHORITY's support of the Premises or any facility thereon, as may be required and necessary, but AUTHORITY shall not be obligated to exercise this option.

Provided that exercise by AUTHORITY of any such reserved rights shall be without expense to the AIRLINE and shall not unreasonably or materially interfere with AIRLINE's use of the Premises and shall not delay AIRLINE in the exercise of its rights or the performance of its duties hereunder or increase the costs of such performance.

Any and all rights and privileges not granted to AIRLINE in this Agreement are hereby reserved for and to AUTHORITY.

2.7 Adjustments to AIRLINE Premises.

During the Term of this Agreement, AUTHORITY may re-measure various areas in the Terminal, including those areas located within the Premises, in an effort to more accurately reflect Improvements, additions and modifications to the Terminal. In the event the square footage of the Premises identified herein differs from the Premises square footage determined by such re-measurement, the parties agree to enter into an amendment to this Agreement to modify the Premises description to reflect the actual square footage of the Premises subject to the provisions of this Agreement. If the actual square footage of the Premises is determined to differ from than the square footage of the defined Premises the current fees and charges shall be re-calculated. If, based on such re-measurement, the increase in AIRLINE's monthly fees and charges would exceed five percent (5%), AUTHORITY agrees that the increase in AIRLINE's monthly fees and charges payable hereunder shall be capped at five percent (5%) for the remainder of the current Term. The parties agree that any increase or decrease in the monthly fees and charges payable resulting from re-measurement of the Premises shall not be applied retroactively. The Director may execute an amendment to this Agreement on behalf of AUTHORITY to reflect the adjusted monthly fees and charges.

Notwithstanding the foregoing, the square footage associated with AIRLINE's Gate(s) is equalized among all Gates at the Airport. Remeasurement of AIRLINE's Gate(s) shall not result in any changes in AIRLINE's monthly fees and charges.

2.8 Relocation

AUTHORITY shall have the right after consultation with AIRLINE, at such times as may be reasonable under the circumstances, to close, relocate, reconstruct, change, alter, or modify the Premises or the means of access to the Premises either temporarily or permanently for purposes of maintaining or constructing improvements, modifications, or expansions to the Terminal and/or the Airport; provided, however, that (i) reasonable notice, not less than thirty (30) days, is given to AIRLINE and (ii) reasonably convenient alternative and substantially equivalent Premises and adequate means of access are provided and (iii) AUTHORITY shall pay all costs of such relocation.

2.9 Utilization of Facilities

During periods of operational inconvenience, including but not limited to, weather delays, the temporary non-availability of facilities for maintenance purposes, or Aircraft mechanical delays, and if accommodation at a Common Use Gate(s) is not readily available, AIRLINE shall make all reasonable efforts to accommodate other Air Transportation Company's operations on AIRLINE's Premises in such instances.

3. TERM

3.1 Term

The Term of this Agreement shall begin on the Commencement Date and shall continue until December 31, 2019, unless terminated earlier under other terms of this Agreement.

3.2 Option Term

The Term of this Agreement may be extended by either Party for one, five (5) year renewal option from January 1, 2020 through December 31, 2024 and thereafter by the mutual written agreement of AIRLINE and AUTHORITY.

3.3 Hold Over

In the event that AIRLINE, without request or objection by AUTHORITY, shall continue to occupy its Premises and conduct its AIRLINE operations beyond the Term of this Agreement, such holding over shall not constitute a renewal of this Agreement, but shall be considered a month-to-month tenancy only, incorporating all terms and conditions of this Agreement, unless otherwise agreed to by both parties in writing. In such event, AIRLINE shall be assessed those same rental and fee rates as are applied to Non-Signatory Airlines during such holding over period unless otherwise agreed by AUTHORITY. No such holding over shall be deemed to operate as a renewal or extension of the Term. Such month-to-month tenancy may be terminated by AUTHORITY or AIRLINE by giving thirty (30) days prior written notice of said termination to the other party at any time.

4. RENTS, FEES AND CHARGES

In return for the use of the Premises and the Airport, the rights granted in this Agreement, and the undertakings of AUTHORITY in this Agreement, AIRLINE agrees to pay AUTHORITY during the term of this Agreement, without deduction or set-off, certain rentals and fees as set forth in this Section 4. Estimated Fiscal Year 2015 Rental and Fee Rates are shown in Exhibit G.

4.1 Terminal Rentals

AIRLINE shall pay one-twelfth (1/12) of its annual Terminal Rentals for its Preferential Use Premises and Exclusive Use Premises in the Terminal on the first day of each month in advance without notice. The Terminal Rental Rate per square foot shall be recalculated annually in

accordance with Section 5.4. AIRLINE shall pay a pro rata amount for any partial month possession of the AIRLINE's Premises.

4.2 Joint Use Fees

AIRLINE shall pay one-twelfth (1/12) of its 10% share and estimated 90% share of the Joint Use Fees on the first day of each month in advance without notice. Joint Use Fees shall be recalculated annually in accordance with Section 5.4. AIRLINE shall pay a pro rata amount for any partial month possession of the AIRLINE's Premises. Rentals for the 90% share of the Joint Use Fees shall be estimated each Fiscal Year based on AIRLINE's Enplaned Passengers for the most recent twelve (12) month period.

4.3 Landing Fees

AIRLINE shall pay to AUTHORITY by the fifteenth (15th) day of each calendar month during the Term hereof Landing Fees at the Landing Fee Rate calculated in accordance with Section 5.5 based on the Maximum Gross Landed Weight of each Revenue Landing by AIRLINE at the Airport during the previous calendar month.

4.4 Aircraft Parking Apron Rentals

AIRLINE shall pay one-twelfth (1/12) of its annual Aircraft Parking Apron Rentals on the first day of each month in advance without notice.

4.5 Utility Services

Utility services shall be provided to the AIRLINE as additional charges, which may include but not limited to: phone, data, electricity, gas, water, sewer, and trash disposal service. Payments for utility services used by AIRLINE shall be made directly to the AUTHORITY, utility supplier or service provider, as applicable. If utility service is supplied by the AUTHORITY, then AIRLINE shall pay those costs to AUTHORITY within thirty (30) days after receipt of AUTHORITY'S invoice. AUTHORITY agrees that any such costs invoiced to AIRLINE shall be based upon the uniform rates charged by the AUTHORITY to other Airport users. AIRLINE shall be responsible to pay separately, not as a component of rent.

4.6 Aviation Fuel Storage Facility Charges

AIRLINE shall pay charges as determined by the AUTHORITY for the AIRLINE's pro-rata share of operation, maintenance, upkeep, replacement, permitting, insurance and administration of the Aviation Fuel Storage Facility, which shall include storage tanks, plumbing, piping, valves, meters, filtration systems, monitoring and alarm systems, testing, product supply (input and off-load) and user delivery (output/loading racks) systems, pavements, security, lighting, electrical, containment, oil/water separators and costs of lawful compliance programs. AIRLINE's pro-rata share of gallons shall be determined based on the gallons used by AIRLINE compared to the gallons passed through the Facility. Facility charges shall be assessed by and paid to the AUTHORITY as a value per gallon of fuel product passing through the facility and to the AIRLINE. Such charges shall be based upon the AUTHORITY's actual costs as described herein.

4.7 Schedule of Fees and Charges

AUTHORITY may assess fees and charges to AIRLINE according to rates established by AUTHORITY in AUTHORITY's Schedule of Fees and Charges. Such Schedule may be amended from time-to-time at the discretion of the AUTHORITY.

4.8 Other Fees and Charges

AUTHORITY shall provide to AIRLINE and charge to AIRLINE for services, such as: badges, ramp permits, employee parking spaces and maintenance services or repairs requested by AIRLINE. AIRLINE shall be responsible to pay these charges separately and not as a component of rent. AIRLINE shall pay all charges other than rent within thirty (30) days after receipt.

5. ADJUSTMENT OF RATES FOR RENTS, FEES AND CHARGES

5.1 Effective Date of Adjustments

The Terminal Rental Rates, the Aircraft Parking Apron Rental Rate, the Joint Use Fees, and the Landing Fee Rate shall be adjusted on the Commencement Date during Fiscal Year 2015. For Fiscal Year 2016 onwards, such rates and fees shall be effective on the first day of the Fiscal Year to which they apply.

5.2 AUTHORITY Records

AUTHORITY shall maintain (and make reasonably available for review and inspection by AIRLINE) accounting records that document the following items for each Cost Center:

a. Revenues

b. Operation and Maintenance Expenses

c. Documented expenses of AUTHORITY incurred for Capital Improvements

d. AUTHORITY shall further maintain records evidencing the allocation of Debt Service based on the use of Bond proceeds or other funding sources to each Cost Center. Included in the allocation to each Cost Center shall be its proportionate share of any Bond issuance expenses and capitalized interest.

5.3 Reports

a. On or before the first day of the fourth (4th) month prior to the start of each Fiscal Year, AIRLINE shall submit to AUTHORITY a written estimate of the estimated total Maximum Gross Landed Weight for AIRLINE for the succeeding Fiscal Year. If no estimate is received, the reasonable estimate of AUTHORITY may be used.

b. Forty-five (45) days prior to the start of the Fiscal Year, AUTHORITY shall submit to AIRLINE at a meeting between the various airlines and AUTHORITY, AUTHORITY's proposed Annual Budget for the succeeding Fiscal Year, which shall include:

   i. Estimated Operation and Maintenance Expenses

   ii. Debt Service or other debt installments, if any, and any other deposits required for any Bonds

   iii. A preliminary calculation of the Terminal Rental Rate, Landing Fee Rate, and Joint Use Fees for the succeeding Fiscal Year, calculated in accordance with Sections 5.4 and 5.5.

c. Each year AUTHORITY shall adopt an Annual Budget for the Airport and establish Terminal Rental Rates, an Aircraft Parking Apron Rental Rate, Joint Use Fees, and a Landing Fee Rate. Such budget and rates shall take into account AUTHORITY's discussions with AIRLINE. AUTHORITY shall give consideration to any suggestions, comments, or requests of Signatory Airlines, but shall retain the right for AUTHORITY to make all final decisions with respect to the Annual Budget and fees.

d. If, for any reason, the Annual Budget has not been adopted as of the first day of any Fiscal Year, the Rental and Fee Rates in effect during the preceding Fiscal Year shall continue in effect until a new Annual Budget has been adopted by AUTHORITY and AUTHORITY has calculated the Rental and Fee Rates in accordance therewith. The new Rental and Fee Rates shall then be made effective retroactive to the first day of such Fiscal Year.

5.4 Calculation of Terminal Rental Rate and Joint Use Fees

During each Fiscal Year of the Term hereof, the Terminal Rental Rate shall be adjusted annually in the following manner. Whenever the adjustment calculation involves an estimate, the reasonable estimate of AUTHORITY shall be used.

a. Each year AUTHORITY shall calculate the Terminal Requirement for the succeeding Fiscal Year by totaling the following amounts, as set forth in AUTHORITY's Annual Budget:

   i. The total of direct and allocated indirect estimated Operation and Maintenance Expenses allocable to the Terminal Cost Center less the cost of providing services as may be requested by the AIRLINE or as may be required by the AUTHORITY, if any, as determined and documented by the AUTHORITY;

   ii. The total portion of the Annual Debt Service, net of Passenger Facility Charges, if any, allocable to the Terminal Cost Center;

iii. The estimated amount, if any, for required deposits to funds and accounts allocable to the Terminal Cost Center, including, but not limited to the Operation and Maintenance Reserve Requirement;

iv. The annual Amortization of the total amount of any expenditures made by AUTHORITY for Capital Improvements in the Terminal Cost Center.

b. The total Net Terminal Requirement is calculated by crediting amounts totaled pursuant to Section 5.4(a) by withdrawals from the Rate Stabilization Fund for the Terminal Requirement, if any.

c. The Terminal Rental Rate shall then be calculated by dividing the Net Terminal Requirement computed pursuant to Section5.4(b) by the total Usable Space. An example of the methodology used to calculate Terminal Rental Rates is provided in Exhibit G estimated for Fiscal Year 2015.

d. The Joint Use Fees shall be collectively equal to (i) the Terminal Rental Rate computed pursuant to Section 5.4(c) times the square footage of Joint Use Premises, plus (ii) the cost of providing services as may be requested by the AIRLINE or as may be required by the AUTHORITY, if any, as determined and documented by the AUTHORITY less (iii) any fees collected by AUTHORITY from Non-Signatory Airlines for use of the Joint Use Premises. Joint Use Fees shall be allocated according to the Joint Use Formula.

5.5 Calculation of Landing Fee Rate

During each Fiscal Year of the Term hereof, the Landing Fee Rate shall be adjusted annually in the following manner. Whenever the adjustment involves an estimate, the estimate of AUTHORITY shall be used.

a. Each year AUTHORITY shall calculate the total Airfield Requirement for the succeeding Fiscal Year by totaling the following amounts, as set forth in AUTHORITY's Annual Budget:

i. The total of the direct and allocated indirect estimated Operation and Maintenance Expenses allocable to the Airfield Cost Center;

ii. The total portion of the Debt Service, net of Passenger Facility Charges, if any, allocable to the Airfield Cost Center;

iii. The estimated amount, if any, for required deposits to funds and accounts allocable to the Airfield Cost Center, including, but not limited to the Operation and Maintenance Reserve Requirement;

iv. The annual Amortization of the total amount of any expenditures made by AUTHORITY for Capital Improvements in the Airfield Cost Center; and

v. Any supplemental amounts needed, if any, to meet the Coverage Requirement or Operation and Maintenance Reserve Requirement for the Airport System.

b. The total Net Airfield Requirement is calculated by crediting amounts totaled pursuant to Section 5.5(a) by: (i) Aircraft Parking Apron Rentals, (ii) Revenues allocable to the Airfield Cost Center, except Signatory Airline Landing Fees, (iii) withdrawals from the Rate Stabilization Fund for the Airfield Requirement, if any, and (iv) Airline Net Revenue Sharing for that Fiscal Year, if any.

c. The Landing Fee Rate for Signatory Airlines for the succeeding Fiscal Year shall be calculated by dividing the Net Airfield Requirement computed pursuant to Section 5.5(b) by the composite estimate of the total Maximum Gross Landed Weight (MGLW) of all Signatory Airlines at the Airport for the succeeding Fiscal Year as projected by AUTHORITY using, in part, the estimates provided by AIRLINE pursuant to Section 5.3(a). An example of the methodology used to calculate Landing Fee Rates per 1,000 pounds of MGLW is provided in Exhibit G estimated for Fiscal Year 2015.

5.6 Aircraft Parking Apron Rental Rate

During each Fiscal Year of the Term hereof, the Aircraft Parking Apron Rental Rate shall be equal to fourteen thousand four hundred dollars ($14,400) for each Aircraft Parking Apron in AIRLINE's Premises.

5.7 Mid-year Adjustments

If total Landing Fees, Terminal Rentals, and Joint Use Fees for any quarter vary by more than five percent (5%) from the projected total Landing Fees, Terminal Rentals, and Joint Use Fees for such quarter, the Landing Fee Rate, Terminal Rental Rate, and Joint Use Fees shall, if deemed necessary by AUTHORITY, be adjusted for the balance of such Fiscal Year. AUTHORITY will notify the Signatory Airlines at least thirty (30) days prior to the implementation of a mid-year adjustment of the Terminal Rental Rate, Joint Use Fees, or Landing Fee Rate.

5.8 Budget versus Actual Reconciliation

Within ninety (90) days after the completion of AUTHORITY's annual audited financial statements, AUTHORITY shall reconcile Rental and Fee Payments in the following manner:

a. **Terminal Rentals for Exclusive Use and Preferential Use Space.** AUTHORITY shall determine the Terminal Rental Rate per square foot using audited financial results and Usable Space for the preceding Fiscal Year. The Terminal Rental Rate calculated based on the Annual Budget shall be compared to the Terminal Rental Rate calculated based on actual financial results. Any credit or deficit in the Terminal Rental Rate per square foot shall be allocated to AIRLINE per square foot of its Exclusive Use and Preferential Use premises.

b. **Joint Use Fees.** Using the Terminal Rental Rate calculated in Section 5.8(a) and the actual cost of providing services as may be requested by the AIRLINE or as may be required by the AUTHORITY, if any, and any fees collected by AUTHORITY from Non-Signatory

Airlines for use of the Joint Use Premises, AUTHORITY shall determine the Joint Use Cost. The Joint Use Cost shall be allocated among the Signatory Airlines on the basis of the Joint Use Formula. The allocated Joint Use Cost shall then be compared to the Joint Use Fees received from AIRLINE.

c. **Landing Fees.** Using audited financial results for the preceding Fiscal Year, AUTHORITY shall determine the actual Net Airfield Requirement. This amount shall be compared to the Landing Fees paid by Signatory Airlines during the preceding Fiscal Year. Any deficit or credit in Landing Fees shall be allocated based on AIRLINE's share of the Maximum Gross Landed Weight of Signatory Airlines in the preceding Fiscal Year.

d. Any credit or deficit in the Terminal Rentals, Landing Fees, and Joint Use Fees shall be calculated in aggregate and, as applicable, either AIRLINE shall pay AUTHORITY directly in a lump sum or AUTHORITY shall credit AIRLINE's invoices. The application of any year-end credit, determined in accordance with this Section 5.8 shall be withheld to AIRLINE if AIRLINE has an undisputed outstanding past due balance.

e. While the Commencement Date of this Agreement is during Fiscal Year 2015, the budget versus actual reconciliation for Fiscal Year 2015 shall be done for the entire Fiscal Year.

6. FLOW OF FUNDS

6.1 Internal Revenue Code of 1986

AIRLINE understands that the City of Wichita, Kansas has and will be the issuer of Bonds to fund projects at the Airport. Bonds that may be issued will bear the interest which is intended to be excludable from gross income of the holders for Federal income tax purposes under the Code. AIRLINE agrees that it will not act, or fail to act (and will immediately cease and desist from any action, or failure to act) with respect to the use of its AIRLINE's Premises, if the act or failure to act may cause the City of Wichita, Kansas to be in noncompliance with the provisions of the Code, and AIRLINE will not take or persist in any action or omission which may cause the interest on such Bonds to be includable in the gross income of the holders thereof for Federal income tax purposes.

6.2 SEC Rule 15c2-12

Upon AUTHORITY's written request, AIRLINE shall provide AUTHORITY with such information with respect to AIRLINE as AUTHORITY or the City of Wichita, Kansas may require in writing in order for AUTHORITY or the City of Wichita, Kansas to comply with its continuing disclosure obligations under Securities and Exchange Commission Rule 15c2-12, as it may be amended from time to time. Satisfaction of such obligation may be met by AIRLINE referring AUTHORITY to the SEC's website, where such requested information about AIRLINE may be publicly-available. To the extent that AIRLINE is an "Obligated Party" with respect to the Bonds as per Securities and Exchange Commission Rule 15c2-12, AIRLINE agrees to execute the Continuing Disclosure Agreement incident to such financing.

6.3 **Flow of Funds and Application of Airport System Revenues**

The application of Airport System Revenues (including Airline Net Revenue Sharing), excluding Passenger Facility Charge and Customer Facility Charge revenues, shall be the following:

a. Payment of Operation and Maintenance Expenses,

b. Payment of Debt Service on any outstanding obligations for that Fiscal Year, offset by Passenger Facility Charge and Customer Facility Charge revenues pledged to the payment of Debt Service for that Fiscal Year,

c. Amortization allocable to the Airfield and the airline's portion of the Terminal Cost Centers in such Fiscal Year shall be deposited into the Rate Stabilization Fund, up to a maximum balance of one million five hundred thousand dollars ($1,500,000),

d. Deposit of up to one million dollars ($1,000,000) into the Authority Net Revenue Sharing Fund,

e. Any Airport System Revenues remaining after the Authority Net Revenue Sharing reaches one million dollars ($1,000,000) are to be divided as follows: sixty percent (60%) to the Airline Net Revenue Sharing and forty percent (40%) to the Authority Net Revenue Sharing.

7. PAYMENT TO AUTHORITY

AIRLINE shall make all payments to the Wichita Airport Authority and in a form acceptable to AUTHORITY. ACH direct deposit is preferred. Bank account and routing information is available upon request. Payments made by check shall be delivered or mailed to:

Wichita Airport Authority
2173 Air Cargo Road
Wichita, Kansas 67209

or such other address as designated in writing.

In the event AIRLINE fails to make payment within ten (10) calendar days of the dates due as set forth in this Agreement, then AUTHORITY may charge AIRLINE a service charge at an annual interest rate equal to twelve percent (12%), such charge to accrue from the date upon which such payment was due and until paid. AIRLINE is responsible to AUTHORITY for reasonable attorneys' and administrative fees and third party collection agency fees incurred by AUTHORITY in attempting to collect payment.

8. ACTIVITY REPORTS SUPPLIED BY AIRLINE

Within five (5) working days after the end of each month, AIRLINE shall file with AUTHORITY a Monthly Activity Report, shown on the attached Exhibit E.

Within five (5) working days after the end of each month, AIRLINE shall file with AUTHORITY separate reports for other aircraft operators handled by AIRLINE not having an agreement with the AUTHORITY with reporting obligations.

If AIRLINE fails to submit the reports required by this Section, AUTHORITY shall base AIRLINE's current rentals, fees and charges upon the most recent data transmitted by AIRLINE to AUTHORITY, with such charges to be adjusted as necessary after submission of the missing activity report. Rentals, fees and charges based upon estimates shall be binding on AIRLINE if not reconciled by use of actual data within three (3) months of any report's due date.

The acceptance by AUTHORITY of any AIRLINE payment shall not preclude AUTHORITY from verifying the accuracy of AIRLINE's reports on which AIRLINE's rentals, fees and charges are based, and shall not be construed as a waiver of interest penalty due, if any. AUTHORITY is not bound by prior estimates used to calculate rentals, fees and charges if examination or audit demonstrates that such estimates fell short of actual data calculations. Any shortfall determined by AUTHORITY examination of AIRLINE's records shall be paid in full within thirty (30) days after receipt of AUTHORITY's invoice.

9. SECURITY DEPOSIT

To provide security for the rentals, fees, and charges due hereunder, AIRLINE shall comply with either of the following two options within fourteen (14) days following the execution of this Agreement:

a. Post with the AUTHORITY a surety bond, to be maintained throughout the term hereof. Such bond shall be issued by a sound indemnity company and shall be in a form and content satisfactory to AUTHORITY.

b. Deliver to AUTHORITY an irrevocable letter of credit drawn in favor of AUTHORITY upon a bank satisfactory to AUTHORITY. This irrevocable letter of credit shall be kept in force throughout the term of this Agreement and shall contain terms and conditions reasonably satisfactory to AUTHORITY. AUTHORITY shall promptly return any such irrevocable letter of credit to AIRLINE after the termination or expiration of this Agreement.

The security instrument selected by AIRLINE shall be conditioned on the timely and complete payment of all rentals, fees and charges during the Term of this Agreement. These charges and fees shall be payable within thirty (30) days after receipt of AUTHORITY's invoice.

Whichever option is selected, the security for payments shall be in an amount equal to two months' rentals for Exclusive Use Premises and Preferential Use Premises, plus estimated landing fees for the same period, all as reasonably estimated by the Director. Security for payment shall also reflect the estimated landing fees for the AIRLINE's Affiliate(s).

10. PASSENGER FACILITY CHARGES

AUTHORITY shall have the right to assess airline passengers a Passenger Facility Charge in accordance with the requirements of 14 CFR Part 158. AIRLINE shall collect on behalf of, and remit to AUTHORITY any such Passenger Facility Charge revenue in accordance with the requirements of 14 CFR Part 158. Any Passenger Facility Charge revenue collected by AIRLINE shall, pending remittance to AUTHORITY, be held in trust for the benefit of AUTHORITY. AUTHORITY shall have the right to use all such Passenger Facility Charge revenue collected in any lawful manner. As of the date of this Agreement, the PFC is $4.50.

AIRLINE and AUTHORITY shall be bound by and shall observe all of the provisions of 14 CFR Part 158 as they apply to either or both parties.

11. AUDIT

AIRLINE shall maintain comprehensive records accurately recording the total number of Revenue and Non-Revenue Landings at the Airport, the Maximum Gross Landed Weight of each Aircraft, the total number of Enplaned Passengers and Deplaned Passengers, and all other traffic and activity statistics that AUTHORITY requires. Such records shall be available in electronic format to AUTHORITY for a period of three (3) years after occurrence of the activities reported. All records made available shall be certified by an officer of AIRLINE as accurate and complete.

The Director or a duly authorized representative may examine any records relating to activity at the Airport during all reasonable business hours, at a place at the Airport agreed to between AIRLINE and AUTHORITY. Upon AUTHORITY's written request for examination of such records, AIRLINE shall produce them to AUTHORITY within ten (10) Business Days or pay all reasonable transportation, food, and lodging expenses, for AUTHORITY's auditor(s) to perform the audit outside of the Airport.

The initial cost of an audit outside of the Airport, shall be borne by AUTHORITY; with the exception of the auditor(s) transportation, food and lodging expenses. However, that the full cost of the audit shall be borne by AIRLINE if the audit reveals any of the following conditions:

a. Underpayment of more than ten percent (10%) of the fees and charges due hereunder, unless such underpayment is the result of a demonstrable miscalculation by AUTHORITY; or

b. Failure to maintain accurate and complete records and supportive source documentation required in this Section; or

c. Failure to file Monthly Activity Reports during four (4) or more months of any consecutive eighteen (18) month period.

Any underpayment of amounts due AUTHORITY disclosed in an audit conducted pursuant to this Section shall accrue including interest of twelve percent (12%) annual percentage rate computed from the original due date of each such amount due. The full amount due plus interest and audit fees shall be paid to AUTHORITY within thirty (30) days from receipt of AUTHORITY's invoice. Such payment by AIRLINE shall not abrogate AIRLINE's right to contest the validity of said underpayments. AUTHORITY shall credit to AIRLINE valid overpayments made by AIRLINE other than those made binding under Section 10 due to delinquent reports.

12. SIGNATORY AIRLINE AFFILIATE(S)

12.1 Notification

AIRLINE shall provide AUTHORITY with a completed Exhibit A, attached hereto, for each Affiliate active as of the effective date of this Agreement, subsequently AIRLINE shall provide an updated Exhibit A thirty (30) days prior to AIRLINE designating a new Affiliate, which designation is subject to AUTHORITY approval.

12.2 Fees

Affiliate(s) shall be charged the Signatory Airline Landing Fee Rate. AIRLINE and any Affiliate(s) shall be counted as one entity for the purposes of computing the Joint Use Formula. AIRLINE is exempt from any Ground Handling Services fees related to its AUTHORITY-approved Affiliate(s).

12.3 Payments

An Affiliate shall be primarily liable for the payment of Landing Fees and other fees incurred at the Airport; provided, however, that AIRLINE shall be secondarily liable as a guarantor for all unpaid fees or charges incurred by such Affiliate while such Affiliate operates at the Airport.

AIRLINE may elect to pay an Affiliate's rentals, fees, and charges. However, if an Air Transportation Company is designated as an Affiliate of more than one Signatory Airline, the Signatory Airline shall not have the option to pay a portion of the Affiliate's rentals, fees and charges or to report partial statistics and activities on behalf of the Affiliate unless otherwise agreed to by AUTHORITY.

12.4 Facility Utilization

In determining AIRLINE's utilization of facilities pursuant to Section 16.2, AUTHORITY shall include the activities of the Affiliate(s) in AIRLINE's use calculations. If an Air Transportation

Company is designated as an Affiliate of more than one Signatory Airline, AIRLINE may only include in its use calculations the Aircraft departures conducted from AIRLINE's Premises.

13. USE OF AIRPORT AND RELATED FACILITIES

13.1 Use of the Airport

Subject to the terms and conditions of this Agreement, AIRLINE shall have the nonexclusive right to use the Airport for the conduct of AIRLINE's Air Transportation Business at the Airport in common with other Air Transportation Companies operating at the Airport, which includes the nonexclusive right to: (1) use the Airport's AOA; (2) the use of the public common areas within the Terminal; and (3) the use of all other facilities and Improvements that have been provided for common use at the Airport. The rights provided for herein shall be subject to reasonable and nondiscriminatory rules and regulations established by the Department, as may be amended from time-to-time, and subject to payment of all applicable fees and charges.

AIRLINE, its Affiliates, subsidiaries, partners, employees, agents, representatives, contractors, and subcontractors, shall not transact or otherwise engage in any other activities, business, and/or services on or from the Premises, except as described in this Agreement, unless such is provided by a separate written approval, or amendment to this Agreement, and subject to approval by AUTHORITY.

13.2 Equipment

AIRLINE acknowledges that equipment and furnishings owned or acquired by AUTHORITY for use by AIRLINE, shall remain the property and under the control of AUTHORITY. AUTHORITY shall provide the following equipment and furnishings in, attached to or adjacent to the Terminal for AIRLINE's nonexclusive use to provide the services of its Air Transportation Business:

a. One (1) passenger boarding bridge attached to each of AIRLINE's holdroom(s), including auxiliary conditioned air and power source;

b. Disabled passenger boarding equipment;

c. Conveyor systems and devices for outbound baggage and baggage claim activities;

d. Electronic Visual Information Display System (EVIDS); and

e. Holdroom finishes and furnishings, including gate counter shell, gate backwall, podium, and chairs, but excluding any other equipment or furnishings required by AIRLINE for its operations hereunder such as counter and podium inserts.

13.3 Equipment Training

AIRLINE, its employees or designated and authorized agents or contractors may operate AUTHORITY owned facilities and equipment subject to the rules and regulations and Standard Operating Procedures issued by the AUTHORITY, or as may be revised or amended from time-to-time. AIRLINE, its employees or designated and authorized agents or contractors shall receive training from the AUTHORITY in the correct operation and use of AUTHORITY owned facilities and equipment. AIRLINE agrees that only its employees or designated and authorized agents or contractors who have received specific AUTHORITY provided or approved training, and demonstrated competency in their use and operation shall be permitted to operate such facilities and equipment.

AIRLINE, or its designated and authorized agents or contractors requiring the use and operation of AUTHORITY owned facilities and equipment shall request training from the AUTHORITY, and AUTHORITY shall provide such training upon request. Upon successful completion of training, the AUTHORITY shall grant access and authorization for the AIRLINE employee, agent or contractor.

The AUTHORITY reserves the sole right to determine if facility and equipment training is to be provided directly by the AUTHORITY, or if authorized employees, agents or contractors of the AIRLINE will be trained and designated as approved trainers.

Training and authorization shall be recorded and maintained by both the AIRLINE and the AUTHORITY. The AUTHORITY reserves the right to temporarily suspend, pending completion of re-training, or permanently revoke access and use privileges to any AIRLINE employee, agent or contractor found to be in violation of rules and regulations or Standard Operating Procedures established for the operation and use of AUTHORITY owned facilities and equipment.

AIRLINE, or its employees or designated and authorized agents or contractors shall promptly notify AUTHORITY of any facility or equipment malfunctions, discrepancies or safety hazards it observes.

13.4 Aviation Fuel Storage Facilities

AIRLINE shall have the right to use the Aviation Fuel Storage Facilities owned by the AUTHORITY. This right is subject to (i) reasonable rules and regulations established by the Director; (ii) the payment of charges for such use of the facility as set forth in Section 4 of this Agreement; and (iii) the terms of agreements between the AUTHORITY and any agent operating the AUTHORITY's facilities.

13.5 Entry and Exit Rights

AIRLINE shall have the right of entry and exit on Airport, in common with other authorized users of Airport. This use must comply with the AUTHORITY’s rules and regulations. AIRLINE may exercise these rights for the benefit of its employees, customers, passengers, and business associates. This right of entry and exit is granted only the activities related to AIRLINE’S approved activities. AIRLINE shall not interfere with the equal rights of and access provided to

other tenants on the Airport. This right is subject to federal, state and local security and safety requirements and standards. As required by Kansas state statute, the Premises shall be used and occupied for aviation purposes or purposes incidental or related thereto.

13.6 Other Airport Tenants

AIRLINE recognizes that other tenants may occupy other portions of Airport, and that all tenants have the right to use public roadways, streets, ramps, taxiways, runways, access gates, lighting, beacons, navigational aids, or other conveniences for aeronautical operations, and these common facilities are not a part of AIRLINE's Premises; and AIRLINE shall conduct its operations in such a manner as to not impede access by others to these common facilities, nor in any other way interfere with, nor disrupt the business of other tenants or the quiet enjoyment of their leasehold interests at the Airport.

13.7 Quiet Enjoyment

AUTHORITY agrees that, upon payment of the rentals, fees, and charges and performance of the covenants and agreements on the part of AIRLINE to be performed hereunder, AIRLINE shall peaceably have and enjoy the Premises and all rights, licenses, services, and privileges of the Airport and its appurtenances granted herein.

AIRLINE recognizes that this right of quiet enjoyment and unimpeded access extends to all tenants equally. No tenant has the right to overhang or otherwise invade by vegetation, equipment, Improvements, any part of an Aircraft, or other means the leasehold premises of any other tenant. This limitation includes the vertical plane commencing at the property lease line and all areas therein. This prohibition applies to both permanent and transitory invasions. The sole exception to this provision shall be for the navigational easement, described in the Airspace and Easement for Flight provisions of Section 44 General Provisions, granted to airborne aircraft.

13.8 Other Parties

AUTHORITY reserves the right to grant and/or permit other parties the right to use any portion of Airport, except AIRLINE's Exclusive Use Premises, for any permitted purpose and upon any fair and non-discriminatory terms established by the AUTHORITY.

14. AIRLINE OBLIGATIONS, RIGHTS AND PRIVILEGES

AIRLINE may, on behalf of any other Air Transportation Company, exercise any of the rights granted AIRLINE herein, so long as AIRLINE is concurrently exercising those same rights in the operation of AIRLINE's own Air Transportation Business at the Airport.

AIRLINE shall have the right, in addition to all rights granted elsewhere in this Agreement, to use areas of Airport as designated in this Agreement for the following purposes:

a. The operation of its Air Transportation Business including all activities reasonably necessary to such operations;

b. The landing, taking off, flying over, taxiing, towing, parking, loading and unloading, conditioning and servicing of Aircraft of AIRLINE;

c. The extended parking, servicing, loading or unloading, storage or maintenance of AIRLINE's Aircraft, subject to availability of space approved by AUTHORITY and to such reasonable charges and regulations as AUTHORITY may determine for areas not part of Premises;

d. The sale of air transportation tickets and services, the processing of passengers and their baggage for air travel; and

e. The sale, handling, and providing of mail, freight, and express services.

The rights and privileges granted to AIRLINE pursuant to this Section may be exercised on behalf of AIRLINE by its Affiliates and other Signatory Airlines or contractors authorized by AUTHORITY to provide such services at the Airport. Exercise of these rights and privileges by any entity other than AIRLINE is subject to the prior written approval of AUTHORITY and further subject to all applicable laws, rules, regulations and fees and charges.

14.1 Training

AIRLINE shall have the right to conduct the training at Airport of AIRLINE personnel and the testing of Aircraft and other equipment used on the Airport by the Air Transportation Company. This training and testing must be incidental to the use of Airport in the operation by AIRLINE. Flight training is not allowed between the hours of 10:00 p.m. and 7:00 a.m., and will not unreasonably interfere with the use of Airport by others. In the event the number of training and testing flights by AIRLINE exceeds ten percent (10%) of Revenue Landings by AIRLINE in any single calendar month, then AIRLINE shall pay for such excess flights Landing Fees for that month at current rates for all flights exceeding the ten percent (10%) Revenue Landing allowance.

14.2 Professional Operations

AIRLINE shall: (i) comply with applicable fire codes and regulations, (ii) accurately and timely input flight information into flight information displays and baggage information displays, (iii) use commercially reasonable efforts to notify AUTHORITY at least thirty days (30) in advance of planned schedule changes, including but not limited to equipment changes, flight times, and number of flights, (iv) comply with TSA regulations regarding inbound baggage, and (v) notify AUTHORITY of disruptions and operational or equipment changes that may materially impact AUTHORITY.

14.3 Non-Disturbance and Conduct of Employees

AIRLINE shall exercise reasonable control over the conduct, demeanor and appearance of its employees, agent, representatives, contractors, suppliers and vendors in an orderly and proper manner and in accordance with the AUTHORITY's rules and regulations and Airport Security Program but only to the extent permitted by law or any applicable collective bargaining agreements or applicable contracts.

14.4 Sale of Equipment and Supplies

AIRLINE shall have the right to sell, dispose, or exchange its Aircraft, engines, accessories, gasoline, oil, grease, lubricants, fuel and other equipment, or supplies, subject to any limitations contained herein. AIRLINE shall not conduct a separate business at the Airport, but shall only perform such functions as are incidental to the operation of its Air Transportation Business. AIRLINE shall not sell aviation fuels or propellants except (i) to a wholly owned subsidiary company, parent company, or a successor company; (ii) for use in Aircraft of others which are being used solely in the operations of AIRLINE; or (iii) to others when a comparable grade and type of fuel desired by others is not available at Airport except from AIRLINE.

14.5 Purchase of Supplies or Services

AIRLINE shall purchase supplies or services from persons or companies subject to the AUTHORITY's right to require said providers to secure a permit to conduct such commercial activity at the Airport, pay the required fees, and abide by all reasonable rules and regulations established by AUTHORITY. No discriminatory limitations or restrictions shall be imposed by AUTHORITY that interfere with such purchases. However, nothing in this Agreement shall be construed to permit AIRLINE to store fuels at the Airport. The granting of the right to store fuels shall be subject to the execution of a separate agreement between AIRLINE and AUTHORITY.

14.6 Off-Gate Service, Repair and Storage

AIRLINE shall only engage in the servicing, maintenance and repair, remote "off-gate" overnight, and extended duration storage of AIRLINE's Aircraft in areas on the Airport designated by AUTHORITY for such purposes. Use of the areas shall be subject to availability and to payment of applicable fees and charges established for their use.

14.7 Loading and Unloading

AIRLINE may load and unload persons, property, cargo and mail by motor vehicles or other means of conveyance as AIRLINE may desire in the operation of its Air Transportation Business, at locations designated by AUTHORITY. AIRLINE may designate the particular carrier or carriers which are legally authorized to conduct such services to, from, and the Premises on the Airport. However, AUTHORITY reserves the right to require such carrier or carriers to secure a permit from AUTHORITY to conduct such activity at Airport and to abide by all reasonable rules and regulations established by AUTHORITY.

14.8 Signs

At AIRLINE's sole cost and expense, AIRLINE may install on the walls behind ticket counters leased by AIRLINE, identifying and company logo signs customarily installed by AIRLINE in such areas at comparable airport facilities. All such signs of whatever number, size, design, color, nature or location shall require the written approval of Director, not to be unreasonably withheld prior to their installation. Signs of any type may not be attached or affixed in any fashion to the front of ticket counters or upon glass surfaces. The general type and design of such signs shall be harmonious and in keeping with the pattern and decor of the Terminal areas and shall conform to the TCAP Manual. Installation of such signs shall not damage walls, and wall penetrations are subject to the prior coordination and approval of the AUTHORITY.

AIRLINE shall not erect, install, operate, nor cause or permit to be erected, installed, or operated upon any non-leased premises of the Airport, any signs, banners, branding or other similar contrivances for its own business, or the business of others without the AUTHORITY's prior written approval. This provision shall not have the effect of limiting or restricting AIRLINE's right to enter into an agreement with AUTHORITY'S authorized and permitted advertising contractor for the display of informational, marketing or advertising media at approved designated locations on Airport.

14.9 **Communications**

AIRLINE may install, maintain and operate such radio, communication, computer, meteorological and aerial navigation equipment and facilities in, on and about the Premises as may be reasonably necessary in the opinion of AIRLINE for operation of its Air Transportation Business. The location and installation of such equipment and facilities shall require the prior written approval of Director. The placement and type of installations which may be authorized by the Director shall not interfere with air navigational aids, frequencies or signals, create an airspace obstruction hazard to air navigation, void/nullify roofing or other warranties, or interfere with similar rights granted to other tenants or governmental agencies. The Director may require immediate removal, relocation, or modification at the sole cost of AIRLINE to eliminate such interference or obstruction.

AUTHORITY will grant such rights of way as may reasonably be required by AIRLINE for communications, computer equipment, telephone, power and other transmission lines in and between the Premises of the Terminal and other areas of Airport under exclusive control through a separate agreement. The location of and changes for such rights of way shall be designated by Director and may be subject to rates and charges.

14.10 **In-Flight Food and Beverage Preparation**

Subject to any restrictions in AUTHORITY's existing agreement(s) with its food and beverage service provider(s), the right to prepare and package food and beverages to be consumed on aircraft operated by AIRLINE.

14.11 **Other Rights.**

AIRLINE, its affiliated entities, subsidiaries, partners, employees, agents, representatives, contractors, and subcontractors, shall not transact or otherwise engage in any other activities, business, and/or services on or from the Premises, except as described in this Agreement, unless such is provided by a separate written approval, or amendment to this Agreement, and subject to approval by AUTHORITY.

14.12 **Right to Charge Fees**

AUTHORITY expressly reserves the right to assess and collect reasonable fees from third parties operating at the Airport and providing commercial services to AIRLINE including, but not limited to, in-flight catering, vending, ground transportation, ground equipment maintenance and service, aircraft maintenance and service, fueling, aircraft deicing/anti-icing, aircraft ground handling,

baggage delivery, wheelchair services, curbside check-in, and other services provided to AIRLINE.

15. EXCLUSIONS AND RESERVATIONS

15.1 Advertising

AUTHORITY reserves the right to install advertising and revenue generating devices, including vending machines, in Joint Use Premises. Such installations shall not unreasonably interfere with AIRLINE's operations or substantially diminish the square footage contained in Premises.

15.2 Capacity and Capability

Director may prohibit the use of the AOA and any paved surface thereon by any Aircraft operated or controlled by AIRLINE which exceeds any design strength, capacity or limitations of the surface.

15.3 Disabled Aircraft

AIRLINE shall promptly remove its disabled Aircraft from the AOA and Terminal Aircraft Parking Aprons as soon as proper clearance is obtained from the appropriate governmental authorities, if applicable. AIRLINE shall then place such disabled aircraft in a storage area designated by AUTHORITY on the Airport. In the event AIRLINE fails to remove its disabled aircraft as expeditiously as possible under the circumstances, AUTHORITY may cause the removal and storage of such aircraft. AIRLINE shall only store disabled aircraft in areas on the Airport designated by AUTHORITY for storage of such aircraft and for such length of time as authorized by AUTHORITY. In the event AIRLINE fails to remove its disabled aircraft from a designated storage area on or before the expiration of the period of time authorized by AUTHORITY, AUTHORITY shall advise AIRLINE of AUTHORITY's intent to remove such disabled aircraft no less than thirty (30) days prior to the written notification. In the event AUTHORITY causes AIRLINE's disabled aircraft to be removed from Aircraft Parking Apron or from storage, AIRLINE shall pay AUTHORITY for the costs of removing the disabled aircraft, plus a twelve percent (12%) administrative fee, which shall be payable within thirty (30) days of the date of AUTHORITY's invoice.

15.4 Interference

AIRLINE shall not do or permit to be done anything that may interfere with the effectiveness or accessibility of the drainage, sewerage, water, communications, or fire protection systems or any other part of the utility, electrical, or other systems installed or located from time to time at Airport.

15.5 Public Communications

AUTHORITY further reserves the right to install pay telephones and public access, internet facilities in any part of Terminal. AUTHORITY shall be entitled to all income generated by such telephones, devices and services and to reasonable access upon Premises to install or service such telephones and devices. AUTHORITY shall coordinate with AIRLINE as to the location of such

devices and consent of AIRLINE shall not be unreasonably withheld.

15.6 **Risk**

AIRLINE shall not, by act or failure to act, shall cause the termination or violate the provisions of any policy of insurance for AUTHORITY. AIRLINE shall not cause a hazardous condition so as to increase the risks normally associated with operations permitted by this Agreement. If AIRLINE shall cause an increase in the premiums for insurance for AUTHORITY, then AIRLINE shall immediately upon demand by Director pay the amount of such increase. If such AIRLINE's act or failure to act shall cause termination of any policy, then AIRLINE shall immediately upon notification by Director to obtain reinstatement or reasonable replacement of said insurance. If such coverage is not commercially feasible, AIRLINE shall mitigate the effects of its action or inaction to the extent reasonably possible.

15.7 **Third Parties**

The rights and privileges granted to AIRLINE in this Agreement to contract with third parties for obtaining services and materials are subject to restrictive agreements, franchises, licenses, and other rights previously granted by AUTHORITY to fixed base operators, ground transportation carriers and other providers of services and materials. Copies of such agreements are available for inspection by AIRLINE at the office of the Director.

15.8 **Persons Other Than AIRLINE**

No right granted to AIRLINE under this Agreement shall authorize any other entity to occupy space or provide services on the Airport without first obtaining the written permission from AUTHORITY allowing such space to be occupied or service to be provided and the payment of all applicable rentals, fees, and charges. AUTHORITY shall have the right to charge any entity leasing space or providing services on the Airport appropriate rentals, fees, and charges whether such services are provided to AIRLINE or to other Airport tenants.

15.9 **Waste Material**

AIRLINE, its employees, agents or contractors shall not dispose of any waste material taken from Aircraft or products used (whether liquid or solid) with respect to its Aircraft into the sanitary or storm sewers at the Airport unless such waste material or products are first properly treated by, or are processed in equipment installed or approved by AUTHORITY for such purposes.

15.10 **Food and Beverage**

Except for any sales that may occur on AIRLINE's Aircraft, AIRLINE shall not maintain or operate in the Terminal or elsewhere at Airport a cafeteria, restaurant, bar or cocktail lounge for the purpose of selling food and beverages to the public or to its employees and passengers, nor shall AIRLINE in any manner otherwise provide for the sale of food and beverages at Airport.

15.11 **Vending Machines**

AIRLINE shall not be allowed to install any type of vending machines in AIRLINE's non-public, Exclusive Use Premises or elsewhere on the Airport, without prior written approval by the Director.

15.12 **General Public**

AUTHORITY reserves the right to establish lawful rules and regulations governing access of the general public, including AIRLINE's passengers, to public areas in the Terminal. Such rules and regulations shall not unreasonably interfere with the operation of AIRLINE's Air Transportation Business, or alter the access rights provided for elsewhere in this Agreement. The parties agree that lawful and reasonable rules and regulations imposed for the safety and security of passengers do not unreasonably interfere with AIRLINE's operations.

16. ACCOMODATION OF REQUESTING AIR TRANSPORTATION COMPANIES

16.1 **Accommodation in Preferential Use Gates and Aircraft Parking Apron.**

In order to maximize the use of all leased gates and Aircraft Parking Apron, and to facilitate the entry of new and the expansion of existing Air Transportation Companies at the Airport, AIRLINE shall, on the direction of the Director, accommodate Requesting Air Transportation Companies in AIRLINE's Preferential Use Premises. In order to ensure uniform treatment of all Air Transportation Company tenants at the Airport, the following procedure shall be observed in the accommodation of Requesting Air Transportation Companies:

a. In order to secure the use of terminal facilities, a Requesting Air Transportation Company shall notify the Director of its wish to be accommodated on the Airport. AUTHORITY shall attempt to accommodate the Requesting Air Transportation Company on a Common Use Gate.

b. If the Requesting Air Transportation Company was not accommodated at a Common Use Gate or other facilities, the Director shall notify the Signatory Airlines that the Requesting Air Transportation Company is seeking accommodation at the Airport. If the Requesting Air Transportation Company is not accommodated by an Air Transportation Company tenant within fifteen (15) days, the Director shall select AIRLINE or another Air Transportation Company tenant at the Airport to accommodate the Requesting Air Transportation Company, taking into consideration all relevant factors, including, but not limited to, current utilization of Preferential Use Gates pursuant to the Departures/Gate calculation in Section16.2, schedule compatibility, and union work rules. Once a decision is made, the Director shall send written notice to the Air Transportation Company selected to accommodate the Requesting Air Transportation Company to begin accommodating such Requesting Air Transportation Company within thirty (30) business days of receiving notice directing such accommodation unless it can be shown to the satisfaction of the Director that a longer period of time will be necessary in order to accommodate schedule or other operational changes. The Director shall include in such notice the basis for its decision. The decision of the Director shall be final.

   If the Requesting Air Transportation Company cannot be accommodated as so described, the Director may reallocate an airline's premises as described in Section 16.2. The decision

to accommodate or relocate is at the sole discretion of the Director.

c. AIRLINE shall, if selected to accommodate a Requesting Air Transportation Company, begin accommodating such Requesting Air Transportation Company's operations on the specified Preferential Use Premises within the period described in Section 16.1(b). AIRLINE shall perform such accommodation in good faith and in a reasonable and equitable manner; provided, however, in case of a conflict between the schedules of AIRLINE and the Requesting Air Transportation Company; AIRLINE shall have priority in the use of its Preferential Use Premises during periods of Active Loading and Active Unloading. Requesting Air Transportation Company shall not have the rights to use AIRLINE's Personal Property. AIRLINE shall remove its Aircraft promptly from its Gates (if such Gates must accommodate a Requesting Air Transportation Company, when they are not being loaded or unloaded, in order to make such Gates available for the use of the Requesting Air Transportation Company. AUTHORITY shall require the Requesting Air Transportation Company to minimize its use of Gates at which it is accommodated and shall remove its Aircraft promptly, when they are not being loaded or unloaded, in order to make such Gates available for use by AIRLINE.

   i. **Indemnification.** During the period of and in connection with any such accommodation, AUTHORITY shall require the Requesting Air Transportation Company to agree in writing to indemnify AUTHORITY and AIRLINE in the manner and to the extent required of AIRLINE pursuant to Section 31 and name AIRLINE as an additional insured on its liability insurance.

   ii. **Payment by Requesting Air Transportation Company**. AIRLINE may assess the Requesting Air Transportation Company reasonable rentals, fees, and charges for an accommodation which rentals, fees, and charges shall be no more than one hundred and fifteen percent (115%) of AIRLINE's costs for the Premises. AIRLINE may require a reasonable security deposit from the Requesting Air Transportation Company not to exceed two (2) months of payments from the Requesting Air Transportation Company. In the event of a payment default by the Requesting Air Transportation Company, AIRLINE shall institute termination procedures in the following manner: (i) AIRLINE shall certify such payment default to AUTHORITY; (ii) AUTHORITY shall have fifteen (15) days in which to pursue appropriate remedies against the Requesting Air Transportation Company; and (iii) if, after such fifteen (15) day period, the Requesting Air Transportation Company remains in default, AIRLINE may terminate the Requesting Air Transportation Company's use of AIRLINE's Premises immediately.

16.2 Reallocation of Premises

In the event a Requesting Air Transportation Company cannot be accommodated under Section 16.1, AUTHORITY may reallocate an AIRLINE's Premises. For the most recent monthly period for which Aircraft departures data is available, AUTHORITY will calculate the average jet aircraft departures-per-gate per day (Departures/Gate) index for each Signatory Airline that has Preferential Use holdroom space, including its approved subtenants if that subtenant notifies AUTHORITY that it seeks to have its departures included in the tenant Signatory Airline's

Departures/Gate calculation. Departures shall be calculated by AUTHORITY using Aircraft departures as reported by the AIRLINE to AUTHORITY and the AIRLINE's number of Preferential Use holdroom(s) and co-located passenger boarding bridge(s). Signatory Airline productivity will be ranked from most productive to least productive according to this index. AUTHORITY shall have the right to reallocate any part of or all of the Premises leased to AIRLINE taking into consideration all relevant factors, including, but not limited to, co-located Gates leased by AIRLINE or AIRLINE's code-share Air Transportation Companies, if (i) AUTHORITY determines that there is a reasonable need for the use of such space by another Air Transportation Company, and (ii) AIRLINE has a Departure/Gate ranking less than the fiftieth (50th) percentile for the group of Signatory Airlines subject to the Departure/Gate ranking. AUTHORITY shall notify AIRLINE thirty (30) days in advance of any reallocation of AIRLINE's Premises.

16.3 Reimbursement for Investment in Reallocated Space

In the event of a reallocation of AIRLINE's Premises, AUTHORITY shall reimburse AIRLINE for the undepreciated or unamortized capital cost of any Improvements or Fixtures made by AIRLINE in such reallocated space and for reasonable moving expenses.

17. NON-EXCLUSIVE USE OF CERTAIN FACILITIES

AUTHORITY grants the AIRLINE, in common with other users, the non-exclusive use of all facilities, improvements and services which are provided at the Airport in common use areas. This use is limited to the purposes for which such facilities were designed and constructed and is available only from time to time and on a non-exclusive use basis, according to the discretionary operational decisions of AUTHORITY. These facilities include, but are not limited to roadways, streets, ramps, taxiways, runways, access gates, lighting, beacons, navigational aids, or other conveniences for aeronautical operations.

18. MAINTENANCE AND REPAIRS

18.1 AIRLINE'S Maintenance and Repair Obligations

Except as set forth in Section 18.3, AIRLINE shall be obligated, without cost to the AUTHORITY, to maintain the Premises, Improvements, facilities and equipment therein, together with all Personal Property in good repair, safe condition, and in a clean and orderly condition and appearance at all times. AIRLINE shall keep the areas immediately adjacent to the exits and entrances of the Premises clean, safe, orderly and free of obstructions, impediments or safety hazards, and shall promptly notify AUTHORITY of any safety hazards it observes within or near such exit/entrance surfaces that are the responsibility of the AUTHORITY to maintain.

AIRLINE shall be responsible at its sole cost and expense for repair or replacement of any facilities, fixtures, equipment or systems due to damage caused by the AIRLINE, its officers, partners, employees, agents, contractors, subcontractors, licensees, sub-lessees or invitees and not considered Normal Wear and Tear, whether such damage occurs within the Exclusive Premises or Preferential Use Premises or otherwise in the Airport.

AIRLINE shall be responsible for payment of all maintenance, repair and cleaning as required under Exhibit I unless covered by AUTHORITY's insurance or warranty.

Any doors, hardware, equipment, electrical components, bulbs, ballast, tubes, switches, or any other fixtures which may be repaired or replaced by the AIRLINE must be equal and identical to that replaced, or if different, shall be approved in advance by the AUTHORITY.

In addition to the other obligations of AIRLINE set forth in this Agreement, with respect to the AIRLINE's Aircraft Parking Apron, AIRLINE agrees to promptly remove any spilled or deposited petroleum products and the accumulation of oil and grease caused by Aircraft and ground support equipment of AIRLINE, its Affiliate(s) and other Air Transportation Companies operating from AIRLINE's Premises, except those Air Transportation Companies operating on the AIRLINE's Aircraft Parking Apron under a AUTHORITY-designated Accommodation per Section 16.1 hereof. AIRLINE shall also maintain the AIRLINE's Aircraft Parking Apron of the Airport in a safe, neat, clean and orderly manner and place all trash and debris in proper containers approved by AUTHORITY, until properly disposed of in a manner acceptable to AUTHORITY.

The AUTHORITY shall be the sole judge of the quality and timeliness of AIRLINE's maintenance and repairs. The AUTHORITY may at any reasonable time, with prior notice, enter the Premises to determine if satisfactory maintenance and repairs are being performed. If AUTHORITY determines that maintenance and repairs are not satisfactory, AUTHORITY shall so notify AIRLINE in writing. If said maintenance and repairs are not properly performed by AIRLINE within ten (10) calendar days after receipt of written notice from AUTHORITY, or such longer time as may be reasonably required, then AUTHORITY or its agents shall have the right to enter upon the Premises and perform the maintenance and repairs therefore and AIRLINE agrees to reimburse AUTHORITY for the direct costs thereof, plus twelve percent (12%) for administrative fee within thirty (30) days after receipt of AUTHORITY's invoice. In case AUTHORITY observes or receives notification of emergency action necessary to be taken in order to protect against personal injury, property damage or other irreparable harm, AUTHORITY may react without prior notice given to AIRLINE.

Notwithstanding the above provision, any hazardous or potentially hazardous condition shall be corrected immediately when detected by AIRLINE or upon receipt by AIRLINE of verbal or written notice given by AUTHORITY. At the direction of the AUTHORITY or other proper authorities, AIRLINE shall close the Premises (or the affected portion thereof) until such hazardous or potentially hazardous condition is removed, without abatement of rents, fees and charges.

If AUTHORITY must respond to maintenance or repairs of Premises or other Airport property

made the responsibility of the AIRLINE and not considered "Normal Wear and Tear" as AIRLINE's obligations, or responds upon the request of the AIRLINE to the AUTHORITY to perform AIRLINE's obligations contained in this Section, the AUTHORITY shall have the right to invoice a minimum of four (4) hours labor fees for each maintenance staff reasonably required for maintenance or repairs performed outside the hours of 8:00 a.m. to 4:30 p.m. Monday through Friday and holidays, and the AIRLINE shall pay such fees within thirty (30) days after receipt of AUTHORITY's invoice. Labor rates shall be applied in accordance with the then-current published labor rates of the AUTHORITY. Minimum labor fees, and materials, parts or supplies shall also be subject to the administrative overhead fees.

AIRLINE shall be responsible for the removal and disposal of garbage, debris, contaminants and any other waste material (whether solid or liquid) arising out of its occupancy of the Premises, inside or outside the Premises or resulting from its activities and operation anywhere on the Airport. Such removal shall conform to all governmental requirements and regulations, and is understood to include routine clean-up of the Premises. Upon AUTHORITY's demand, AIRLINE shall take prompt corrective actions to remove and dispose of waste material on Premises, and outside the Premises when resulting from its activities and operations.

AIRLINE shall not store materials, equipment or other personal property on, about or adjacent to the Premises or Aircraft Parking Apron if any such items are not fully functional and operational. This includes but is not limited to automobiles, tugs, bag carts, belt loaders, mobile boarding/de-boarding devices, deicing equipment, equipment parts, barrels, tires, empty deicing material containers, and other container or ground service equipment articles similar in nature.

18.2 **Condition of Premises**

AIRLINE agrees to make all repairs (except for the repairs or work which are the specific responsibility of the AUTHORITY pursuant to this Agreement) to the Premises, including the Improvements and Personal Property thereon, and to maintain and keep the Premises in good and safe condition and repair, and to surrender and deliver up the same at the termination of this Agreement in as good order and condition as the same existed at the commencement of the Initial Term of this Agreement or as subsequently improved, Normal Wear and Tear and casualty excepted.

18.3 **AUTHORITY's Maintenance Responsibilities**

AUTHORITY shall be responsible for maintenance, repair and cleaning as required under Exhibit I except for any damage caused by the AIRLINE, its officers, partners, employees, agents, contractors, subcontractors, licensees, sub-lessees or customers, and not considered Normal Wear and Tear:

If repair or replacement is required within areas or to property made the responsibility of AUTHORITY, and the damage was caused or allowed to be caused by the acts or omissions of AIRLINE, its officers, partners, employees, agents, contractors, subcontractors, licensees, sub-lessees or customers and not considered Normal Wear and Tear, the AUTHORITY may charge the cost to the expense of the AIRLINE plus twelve percent (12%) administrative fee after

reasonable notice and the opportunity to dispute such charges or damages. The administrative fee shall be applied to the total cost incurred by the AUTHORITY in performing the task. The administrative fee represents the AUTHORITY's cost to manage the task including procurement services, approval processes, management staff time, supervision and overhead. It does not include a profit component. In case of emergency action taken in order to protect against personal injury, property damage or other irreparable harm, AUTHORITY is authorized to act without notice and shall charge the same cost to the expense of AIRLINE and a twenty percent (20%) administrative fee. These costs and fees shall be paid within thirty (30) days of invoice date.

The AIRLINE shall give the AUTHORITY written notice (or verbal notice in the event of any emergency conditions which may result in harm to the patrons of the Terminal, in which case notice shall be followed by written notice within twenty-four (24) hours) describing any repair, which is the responsibility of the AUTHORITY. The AUTHORITY shall commence the repair process promptly after its receipt of such written notice if the AUTHORITY agrees that such repair is required and is the AUTHORITY's responsibility hereunder.

AUTHORITY shall provide suitable covered dumpsters for the common use of all tenants and concessionaires for disposal of all garbage, trash and other refuse. Piling of boxes, cartons, barrels, pallets or other similar items in an unsightly or unsafe manner on or about the Premises is forbidden. Dumpster lids shall remain closed and secured at all times when garbage disposal is not in progress.

AUTHORITY shall provide suitable exterior storage in a location and size at its sole option for automobiles, tugs, bag carts, belt loaders, mobile boarding/de-boarding devices, deicing equipment, deicing material containers, and other container or ground service equipment articles similar in nature.

19. SNOW REMOVAL

AIRLINE and AUTHORITY agree to remove snow and ice from their respective areas of responsibility shown on Exhibit H. Both parties shall maintain their respective surfaces to a winter surface condition safe for Aircraft operations, and safe for customers and employees moving and working on the ramp. At no time shall AIRLINE engage in snow and ice removal beyond its area of responsibility depicted on Exhibit H without the prior approval of and coordination with the AUTHORITY.

Upon reasonable advance notice given to the AIRLINE by the AUTHORITY, and subject to the AIRLINE's operational need for the Gate, the AIRLINE shall be responsible to remove, relocate or reposition all personal property on the Aircraft Parking Apron to a location that will not block, hinder or preclude the AUTHORITY to perform snow and ice removal on the surfaces for which it is responsible. The AUTHORITY shall provide as much advance notice as reasonably possible during or after a winter precipitation event of its intent to perform snow and ice removal at Aircraft Parking Apron areas. AUTHORITY will be mindful of the AIRLINE's demand for the Gate and

aircraft parking. AIRLINE shall exercise all diligence within its reasonable control to remove, relocate or reposition personal property on the Aircraft Parking Apron, including but not limited to: retracting/repositioning passenger boarding bridge(s); ground service equipment, parking chalks and electrical cables so the AUTHORITY may perform its snow and ice removal obligations. Failure of the AIRLINE to remove, relocate or reposition personal property in the manner and conditions specified in this Section shall relieve the AUTHORITY from its obligations to remove snow and ice at the Aircraft Parking Apron until such time as such property is moved.

Snow piles, windrows or other accumulations of snow shall not:

a. Be closer than twenty five feet from any security fence;

b. Block any access gates or controls;

c. Block or impede any taxiway or taxi lane;

d. Impose an obstruction within the object free area (OFA) of any taxiway or taxi lane;

e. Infringe upon, block or interrupt the business activity or operations of other airport tenants or the AUTHORITY.

Snow piles and accumulations requiring removal may be stored on pre-approved/arranged paved or non-paved areas.

Only FAA approved dry and liquid chemicals may be used for de-icing or snow removal on aircraft operating surfaces, as set forth in Advisory Circular 150/5200-30, current edition, Airport Winter Operations and Safety, Section 4-6 Approved Chemicals, current edition.

AIRLINE use of snow and ice removal contractors may be authorized subject to prior approval of and coordination with the AUTHORITY, and subject to acceptable completion of contractor employee training, and other reasonable safety and security requirements that AUTHORITY may impose, including but not limited to compliance with Airport rules and regulations, and Standard Operating Procedures. All such snow and ice removal contractors shall maintain a general liability insurance policy of not less than two million dollar ($2,000,000) limit, naming AIRLINE, AUTHORITY, and the City of Wichita as additional insureds.

20. CAPITAL IMPROVEMENTS

20.1 Improvements and Development by AUTHORITY

AUTHORITY shall consult with the Signatory Airlines at least annually regarding AUTHORITY's capital improvement plans. AUTHORITY shall give appropriate consideration to the comments and suggestions of the Signatory Airlines with respect to such proposed capital improvements.

On or before October 15 of each Fiscal Year, and at other times prior to the AUTHORITY undertaking capital improvements with a cost in excess of five hundred thousand dollars ($500,000) and allocated to the Airfield or Terminal Cost Centers, AUTHORITY shall provide a briefing to the Signatory Airlines regarding its capital improvement plans. The briefing shall include (i) a description of each proposed capital improvement, together with any available capital and/or operating cost estimates and any available preliminary drawings, (ii) the proposed means and terms of any required financing and the resultant annual Amortization or Debt Service, if any, and (iii) the estimated impact of the proposed capital improvements on Signatory Airline rentals, fees, and charges.

If requested by two (2) or more of the Signatory Airlines, Director shall schedule a meeting, to be held between fifteen (15) days and thirty (30) days after the briefing, to discuss the proposed capital improvements. AUTHORITY shall consider Signatory Airline comments prior to finalizing its capital improvement plans. In any event, AUTHORITY shall have the right to proceed as it, in its sole discretion (duly considering the Signatory Airlines' comments and concerns), believes appropriate.

20.2 Alterations and Improvements by AIRLINE

AIRLINE shall provide, construct and install on the AIRLINE's Premises, at its sole cost and expense, all Improvements (except Improvements to be provided by AUTHORITY pursuant to this Agreement, if any) as AIRLINE deems necessary and appropriate to operate its Air Transportation Business. The quality level, design and appearance of such AIRLINE's Improvements shall conform to the TCAP Manual.

Whenever consistent with this Agreement, AIRLINE shall have the right to construct and install, at its sole expense, Improvements within the Exclusive Use Premises as AIRLINE deems to be necessary for its operations. The plans and specifications, location, and construction schedule for such Improvements shall be approved by Director in writing prior to the commencement of any construction or installation.

Any construction or installation shall be at the sole risk of AIRLINE and shall be in accordance with all applicable state and local codes and laws and subject to inspection by Director.

Any work associated with such construction or installation shall not interfere with the operation of the Terminal or Aircraft Parking Apron.

AIRLINE shall deliver to Director reproducible "as builts", construction documents in electronic form, of AIRLINE Improvements and additions no later than thirty (30) days following the substantial completion of any such Improvements and additions.

All Improvements made to the Premises by AIRLINE shall immediately become the property of AUTHORITY. Any signs and other Personal Property of AIRLINE to Premises shall remain the property of AIRLINE. Removal of these items shall be at AIRLINE's' expense and the methods, means and results shall be subject to Director's approval to protect the operation, integrity and

aesthetics of the Terminal.

20.3 Construction Costs

Prior to the commencement of any such Improvements, AIRLINE shall require contractors to furnish satisfactory evidence of statutory Workers' Compensation insurance, commercial general liability insurance, business automobile insurance, and physical property damage insurance, and builder's risk insurance in such amounts and in such manner as Director may reasonably require. Director may require additional insurance for any alterations or Improvements approved hereunder, in such limits as Director reasonably determines to be necessary. AUTHORITY shall be endorsed in such policies as an additional, non-contributing insured.

21. SUBSEQUENT ALTERATIONS AND IMPROVEMENTS

AIRLINE may, with prior written approval of AUTHORITY, and by lease amendment, if appropriate, add to, improve, or alter, at its own expense, the Premises subject to all conditions set forth herein; provided, however, that the plans and specifications, location, and construction schedule for such improvements shall be approved by AUTHORITY in writing prior to the commencement of any and all such construction or installation. No reduction or abatement of rentals, fees, and charges shall be allowed for any interference with AIRLINE's operations by such construction, and no interference shall be caused with the normal operation of the Airport's other tenants and users. Any such addition or alteration must be designed and constructed in a manner that will not weaken or impair the structural strength or reduce the value or functionality of the Premises or existing improvements thereon and shall be completed in conformity with the TCAP Manual. It shall be the responsibility of AIRLINE to file all necessary alteration and construction forms with the Director of Airports, as the AUTHORITY's representative, for submission to the Federal Aviation Administration for approval.

Any construction or installation shall be at the sole risk of AIRLINE and shall be in accordance with all applicable State and local codes and laws and subject to inspection by AUTHORITY or its designees.

Any improvements made to Exclusive and Preferential Use Premises and additions and alterations thereto made by AIRLINE shall become the property of AUTHORITY on their installation or construction on the Premises; provided, however, that AIRLINE shall have the use of such improvements until this Agreement expires or is terminated. Notwithstanding the foregoing, any trade fixtures, signs, equipment, and other movable Personal Property of AIRLINE not permanently affixed to Exclusive and Preferential Use Premises shall remain the property of AIRLINE.

22. NON-INTERFERENCE WITH AIRPORT OPERATIONS

AIRLINE shall not allow any condition on the Premises, nor permit the conduct of any activity on such Premises, which materially or adversely affects the development, improvement, operation, or maintenance of the Airport or its facilities. AIRLINE shall not use or permit the Premises to be used in any manner which might interfere with the landing and take-off of Aircraft from the Airport or otherwise constitute a hazard to the general public, or to AUTHORITY's tenants or the customers, agents, invitees, contractors, representatives and employees of those tenants.

23. COOPERATION WITH AIRPORT DEVELOPMENT

AIRLINE understands and agrees that AUTHORITY may pursue Airport development, Improvements and maintenance activities from time-to-time that may affect the Premises and other areas of the Airport. AIRLINE agrees to work cooperatively and in good faith with the AUTHORITY and other tenants and contractors in development, Improvement and maintenance activities to minimize any disruptions. If requested by the AUTHORITY, AIRLINE shall cooperate with and assist the AUTHORITY to the greatest extent possible in the development and implementation of any plans, designs, ingress/egress, or transition that may arise in connection with such Airport development, Improvement, and maintenance activities. AUTHORITY may temporarily or permanently close, re-route, or consent to the closing or re-routing of any method of ingress or egress on the Airport, so long as the means of ingress and egress are reasonably equivalent to current access available to AIRLINE. AUTHORITY may temporarily close paved surfaces or portions thereof for purposes of maintenance, replacement, re-construction or expansion. Exercise by AUTHORITY of any such Airport development, Improvement, or maintenance activities shall be without direct expense to the AIRLINE. AUTHORITY retains the absolute right to maintain, repair, develop, expand or replace utilities, ramps, taxiways, runways, streets, sidewalks and any other Airport facility or Improvement. AIRLINE accepts the need for such activities and agrees that it will not assert a claim for consequential damages arising from these activities for loss of business or damage of any nature.

24. SURRENDER OF PREMISES

24.1 Surrender and Delivery

AIRLINE shall promptly yield and deliver to AUTHORITY possession of the Premises at the expiration or termination of this Agreement in good condition in accordance with AIRLINE's obligations in this Agreement, except for reasonable wear and tear, or fire or other casualty. Before delivering the Premises to AUTHORITY, AIRLINE shall, at its expense, deliver the Premises in good order and condition, including, but not limited to:

a. clean and remove from the Premises all waste and refuse generated by AIRLINE;

b. remove from the Premises all of AIRLINE's Personal Property;

c. comply with all environmental covenants;

d. leave in operating condition all bulbs and ballasts; and

e. replace all broken glass.

24.2 **Removal of Property**

AIRLINE shall have the right at any time during the term of this Agreement to remove from Airport its Aircraft, tools, equipment, and other Personal Property, title to which shall remain in AIRLINE unless otherwise set forth in this Agreement. AIRLINE and shall remove such Aircraft, tools, equipment, and other Personal Property within fifteen (15) days following termination of this Agreement, whether by expiration of time or otherwise on such property subject to any valid statutory or contractual landlord's liens which AUTHORITY may have for unpaid rentals, fees and charges. Notwithstanding anything in this Agreement to the contrary, AUTHORITY hereby (a) waives its rights to any statutory and contractual landlord's liens on Aircraft and (b) subordinates all statutory and contractual landlord's liens to any liens or security interests covering tools, equipment, and other Personal Property in favor of third-party lenders providing financing to AIRLINE or its Affiliates (including purchase-money financing). AIRLINE shall not abandon any portion of its property without the written consent of AUTHORITY.

Any and all property not removed by AIRLINE within fifteen (15) days following termination of this Agreement shall, at the option of AUTHORITY, become the property of AUTHORITY at no cost to AUTHORITY. All AUTHORITY's property damaged by or as a result of the removal of Personal Property shall be restored by AIRLINE to the condition existing before such damage at AIRLINE's expense.

25. REMOVAL AND DEMOLITION

AIRLINE shall not remove or demolish, in whole or in part, any Improvements upon the Premises without the prior written consent of the AUTHORITY. AUTHORITY may, at its discretion, condition such consent upon the obligation of AIRLINE to replace the Improvements with another reasonable Improvement specified in such consent. AIRLINE shall obtain written consent before commencing demolition and restoration as described under Section 45. Failure to obtain this consent shall entitle the AUTHORITY to such compensation as is necessary to restore the affected Improvements, plus additional twenty percent (20%) administrative fees, payable as additional rent within thirty (30) days after receipt of AUTHORITY's invoice.

26. DAMAGE OR DESTRUCTION

In the event that facilities or Improvements on the Premises are substantially damaged during the term of this Agreement, this Agreement shall remain in full force and effect and AUTHORITY shall proceed with due diligence to repair, restore, rebuild or replace said damaged property to its condition immediately prior to such damage. AUTHORITY may receive AIRLINE's approval to replace damaged Improvements with Improvements of a different design or character.

In the event the Improvements are damaged by casualty and such damage, exceeds fifty five percent (55%) of the value of the property as it existed prior to the casualty loss, AUTHORITY shall have the choice not to repair, restore, rebuild or replace the Improvements. AUTHORITY shall give written notice of this choice to AIRLINE within 180 calendar days after the occurrence of such event. Upon this written notice, this Agreement shall be terminated effective as of the date the notice is delivered. AIRLINE shall continue to have the obligation to pay any sums due to the date of termination, and the obligation to satisfy damages arising from any negligent or intentional action of itself, its employees, agents, contractors, or customers to the extent not covered by insurance proceeds. Otherwise, neither party shall have any further rights or obligations under this Agreement. All of the insurance proceeds shall be paid to AIRLINE and AUTHORITY in pro-rata distributions as their interests may appear based upon the fair market value of each party's interest at the time the proceeds are received. Where allowed by the insurance policy, insurance proceeds shall first be applied to removal of damaged Improvements from the Premises before such distribution.

27. PERSONAL PROPERTY

Any Personal Property of AIRLINE or others placed in or upon the Premises shall be at the sole risk of the AIRLINE. AUTHORITY shall not be responsible or liable for any loss, damage and replacement of personal property, unless caused by AUTHORITY, its officers, agents, or employees, and the AIRLINE waives all rights of subrogation against recovery from the AUTHORITY for such loss or damage.

28. TITLE TO FACILITIES, IMPROVEMENTS AND FIXTURES

Title to all Improvements, structures, fixtures and facilities, constructed or permanently affixed to the Premises shall be, and shall remain, exclusively with AUTHORITY.

29. TAXES

AIRLINE agrees to pay all and special assessments levied or assessed now or in the future:

a. upon taxable property owned or possessed by AIRLINE and situated on the Premises; and

b. upon AIRLINE's interest in or its use of the Premises. AIRLINE shall defend, indemnify and save the Wichita Airport Authority and the City of Wichita, Kansas harmless from any claims or liens in connection with such taxes, obligations in lieu of taxes or assessments.

AIRLINE shall promptly pay all taxes, excises, assessments and fees and permit fees of whatever nature that apply to its operation of Premises. AIRLINE may choose at its own cost and expense, to contest any such tax, excise, fee, or assessment. AIRLINE shall keep current all Federal, State or local licenses, operating certificates or permits required for the conduct of its operations. AIRLINE warrants to AUTHORITY that it has obtained all license, franchise, operating certificates or other agreements or permits necessary to operate AIRLINE's operation in accordance with the terms of this Agreement. AIRLINE shall keep all such licenses, franchises, permits, operating certificates and other agreements in full force during the Term of this Agreement.

30. LIENS

AIRLINE shall take commercially reasonable steps to avoid the imposition of any lien upon the Premises. Should any lien be placed on the Premises, AIRLINE shall remove any and all liens of any nature. This obligation includes, but is not limited to, tax liens and liens arising out of or because of any financing, construction or installation, whether labor or materials, performed for the benefit of AIRLINE by any of its contractors or subcontractors or their vendors. Should any such lien be filed, AIRLINE shall bond against or discharge the same within thirty (30) calendar days after actual notice of the same from any source, and provide written proof of discharge or bonding to AUTHORITY within that time. AIRLINE acknowledges that its interest in the Premises is a leasehold, and that notwithstanding its construction of Improvements on the Premises, the AUTHORITY holds title to the Improvements, and that AIRLINE has no equity interest in the Premises which can support a mortgage lien. However, any Improvement constructed shall be deemed to be for the exclusive benefit of AIRLINE. AIRLINE shall not mortgage or pledge as collateral its leasehold interest without the prior written consent of the AUTHORITY.

AUTHORITY may consent, upon AIRLINE's written request, to an assignment of rents to a governmentally regulated and insured commercial lender as partial security for financing of AIRLINE's activities on the Premises. Any such assignment is intended to be a present transfer to such lender of all of AIRLINE's rights to collect and receive rents and charges from approved users, operators, and permitees. Lender(s) shall have no rights to assign this Agreement or sublease the Premises without the prior written consent of the AUTHORITY. Upon AIRLINE's written

consent, AUTHORITY agrees to give Lender(s) notice of any default or termination of the Agreement, and allow Lender(s) the same opportunity as the AIRLINE under the Agreement to correct any condition or cure any default. Nothing in this Section relieves the AIRLINE of its obligations under this Agreement.

31. INDEMNITY

AIRLINE shall indemnify, hold harmless, and defend AUTHORITY, the City, and their respective officials, agents, employees, successors and assigns (collectively, the "Indemnified Parties") from and against all liability for any claims, loss, damage, liability and actions by reason of injury or death of any person, or damage to any property, or other liability loss including all reasonable expenses incidental to the investigation and defense thereof, arising out of or resulting from any intentional or negligent acts or omissions of AIRLINE, its Affiliates, agents, employees, licensees, successors assigns, and customers while in, on or about the Premises or Airport; or in connection with AIRLINE's use and occupancy of or operations on the Premises or from its use of the Airport, except to the extent such injury, damage, or loss arises from the negligence or willful misconduct of AUTHORITY, its agents or employees, licensees, successors and assigns.

AIRLINE shall indemnify, hold harmless, and defend the Indemnified Parties from and against all liability for any claims, loss, damage, liability and all expenses incidental to the investigation and defense thereof, including all fines or penalties in any way arising out of or resulting from the violation of any federal, state, or municipal laws, statutes, ordinances, or regulations, by AIRLINE or its Affiliates, agents, employees, licensees, successors and assigns, or those under its control.

The provisions of this Section shall survive the expiration, termination or termination of this Agreement, with respect to occurrences during the term of this Agreement.

32. INSURANCE AND SUBROGATION

During the Term of this Agreement, AIRLINE shall provide, pay for and maintain with companies reasonably satisfactory to AUTHORITY, the types of insurance described in this Agreement. All insurance shall be issued by responsible insurance companies eligible to do business in the State of Kansas.

All liability policies shall provide that the City of Wichita, the AUTHORITY, and its directors, officers and employees as Additional Insured to the extent of AIRLINE's contractual obligations hereunder. The insurance coverage and limits required shall be evidenced by properly executed certificates of insurance. In addition, certified copies or originals of AIRLINE's insurance policies

providing the coverage required by this Agreement shall be made available for AUTHORITY's inspection in AIRLINE's offices in the Terminal upon reasonable request by AUTHORITY, subject to AIRLINE's prior receipt of appropriate confidentiality assurances from AUTHORITY and its representatives to protect AIRLINE's proprietary interest in such policies. The required policies of insurance shall be construed in accordance with the laws of the State of Kansas.

If at any time AUTHORITY requests a written statement as to any impairments to the aggregate limit, AIRLINE shall promptly authorize and have delivered such statement to AUTHORITY. AIRLINE authorizes AUTHORITY and its insurance consultant to confirm with AIRLINE's insurance agents or brokers all information furnished AUTHORITY, as to its compliance with its insurance requirements.

All required insurance coverage of AIRLINE shall be primary to any insurance or self-insurance program of AUTHORITY.

The acceptance of or delivery to AUTHORITY of any certificate of insurance evidencing the insurance coverages and limits required in this Agreement does not constitute approval or acceptance by AUTHORITY that the insurance requirements in this Agreement have been met.

No operations shall commence at the Airport unless and until the required certificates of insurance are in effect and approved by AUTHORITY.

The insurance coverages and limits required of AIRLINE under this Agreement are designed to meet the minimum requirements of AUTHORITY. They are not designed as a recommended insurance program for AIRLINE. AIRLINE alone shall be responsible for the sufficiency of its own insurance program. Should AIRLINE have any question concerning its exposures to loss under this Agreement, or the possible insurance coverages needed therefor, it should seek professional advice.

AIRLINE and AUTHORITY mutually understand and agree in accordance with industry standards that the minimum limits of the insurance herein required may from time to time become inadequate, and AIRLINE agrees that it will increase such minimum limits upon receipt of written notice. AIRLINE shall furnish AUTHORITY, within sixty (60) days of the effective date thereof, a certificate of insurance evidencing such insurance is in force.

AIRLINE's insurance companies or its authorized representative shall give AUTHORITY prior written notice of any termination, intent not to renew, or adverse reduction in any policy's coverage equal to that owed to AIRINE under the policy terms, except in the application of the Aggregate Limits Provisions. In the event of a reduction to the Aggregate Limit, it is agreed that immediate steps will be taken to have it reinstated. Said notices shall be sent pursuant to Section 45 of this Agreement.

Renewal Certificates of Insurance must be provided to AUTHORITY as soon as practical. AIRLINE shall maintain continuous insurance coverage as required by this Agreement, and such coverage shall be listed on the certificate provided.

Should at any time AIRLINE fail to provide or maintain the insurance coverages required in this Agreement, AUTHORITY may terminate or suspend this Agreement at AUTHORITY's sole discretion.

The amounts and types of insurance shall conform to the following minimum requirements. The wording of all policies, forms and endorsements must be reasonably acceptable to AUTHORITY.

Workers Compensation and Employer's Liability Insurance shall be maintained in force by AIRLINE during the Term of this Agreement for all employees engaged in the operations under this Agreement. The limits of coverage shall not be less than:

Workers Compensation	Kansas Statutory
Employer's Liability	$1,000,000 Limit Each Accident
	$1,000,000 Limit Disease Aggregate
	$1,000,000 Limit Disease Each Employee

Airline/General Liability Insurance shall be maintained by AIRLINE for the life of this Agreement. Coverage shall include, but not be limited to, Premises, Personal Injury, Contractual for this Agreement, Independent Contractors, Broad Form Property Damage, Products and Completed Operations Coverage and shall not exclude the (XCU) Explosion, Collapse and Underground Property Damage Liability Coverage. Coverage shall be applicable to the operation of all licensed and unlicensed motor vehicles and ground equipment operating within the AOA at the Airport. The Completed Operations Coverage shall be maintained for a period of not less than three (3) years following final operations of AIRLINE under this Agreement. The limits of coverage shall not be less than:

Bodily & Personal Injury	$100,000,000 Combined Single Limit
& Property Damage Liability	Each Occurrence & Aggregate
Personal Injury (non-passengers)	$25,000,000 Each Occurrence & Aggregate

Aircraft Liability Insurance shall be maintained by AIRLINE during the Term of this Agreement for all owned, non-owned, leased or hired Aircraft, including passenger coverage. The limits of coverage shall not be less than:

Bodily & Personal Injury	$100,000,000 Combined Single Limit
& Property Damage Liability	Each Occurrence & Aggregate
Personal Injury (non-passengers)	$25,000,000 Each Occurrence & Aggregate

Business Automobile Liability Insurance shall be maintained by AIRLINE during the Term of this Agreement as to the ownership, maintenance, and use of all owned, non-owned, leased or hired vehicles. The limits of coverage shall not be less than:

Bodily & Personal Injury	$5,000,000 Combined Single Limit
& Property Damage Liability	Each Occurrence & Aggregate

Umbrella Liability Insurance or Excess Liability Insurance may be used to reach the limits of liability as stated above for the Airline/General Liability Policy, Aircraft Liability and the Business Automobile Policy. Without regard to drop down coverage, the Umbrella or Excess Coverage for General and Airline or Aircraft Liability shall be not less than:

Umbrella or Excess Liability Policy	$200,000,000 Combined Single Limit Each Occurrence & Aggregate-Not Specific for this Agreement
Personal Injury (non-passengers)	$25,000,000 Each Occurrence & Aggregate

If Excess Liability or Umbrella Liability Insurance is used to reach the required limits of liability above, the Primary Liability Limits for the underlying Airline/General Liability Coverage shall be no less than:

Bodily & Personal Injury & Property Damage Liability	$10,000,000 Combined Single Limit Each Occurrence & Aggregate

Furniture, Fixtures and Equipment (FF&E) Insurance shall be maintained by AIRINE during the Term of this Agreement for all leasehold improvements used in or on the Premises and for personal property maintained or used on the Premises. The limits of coverage shall be at the discretion of AIRLINE, but AIRLINE expressly waives all right of repair or replacement from AUTHORITY on such property due to casualty loss caused by persons other than AUTHORITY's employees, agents or contractors.

All insurance policies other than Worker's Compensation coverage above shall contain a standard cross-liability provision and the inclusion of AUTHORITY and the City of Wichita, Ks. as an additional insureds. This Agreement is not intended to, and shall not, make AUTHORITY a partner or joint venturer with AIRLINE in AIRLINE's operations on the Airport. For all policies listed above, AUTHORITY shall have no liability for any premiums charged for such coverage and such policies shall also insure AIRLINE against the risks to which it is exposed as the operator of the business authorized under this Agreement.

33. ENVIRONMENTAL COVENANTS

AIRLINE represents, warrants, and covenants the following:

AIRLINE has obtained and throughout the term of this Agreement shall obtain and maintain all applicable licenses, permits, registrations and other authorizations and approvals for AIRLINE's operations on the Premises as required under applicable environmental laws and shall provide any notices required under environmental laws for conducting its operations at the Airport during the term of this Agreement. AIRLINE shall require its employees, contractors, subcontractors, agents,

licensees, and other parties under AIRLINE's direction or control to obtain and maintain all applicable licenses, permits, registrations and other authorizations required by environmental laws in order to conduct their operations and activities at the Airport, including but not limited to construction, and to comply with all applicable environmental laws pertaining to its and their use of and operations at the Airport.

AIRLINE's environmental compliance shall include compliance with any current or future federal, state, or local law, statute or regulation pertaining to protection of the environment that is applicable of AIRLINE's operation, storage or use of substances (hazardous or otherwise), or to the activities of AIRLINE's employees or contracted vendor's on the Premises or the Airport. AIRLINE shall provide AUTHORITY upon request copies of any plan, training program, training records, safety data sheets or any other documentation required by said laws. In addition, a copy of AIRLINE's Stormwater Pollution Prevention Plan and/or Spill Prevention Control and Countermeasure Plan to the extent such plans are required under applicable law, shall be submitted to the AUTHORITY upon request. If needed, Stormwater best management practices (BMPs) shall be installed and maintained as described under AIRLINE's Stormwater Pollution Prevention Plan and Countermeasure Plan.

Neither AIRLINE nor AUTHORITY shall install or permit to be installed in the Premises friable asbestos, electrical equipment containing polychlorinated biphenyls (PCBs), or any substance containing asbestos and deemed hazardous by federal or state regulations applicable to the Premises and respecting such material.

If, during the term of this Agreement, the AIRLINE receives any notice of (i) the happening of any event (other than in the ordinary course of business and in compliance with all applicable laws), involving the spill, release, leak, seepage, discharge or cleanup of any substance (hazardous or otherwise) on the Premises or in connection with the AIRLINE's operations thereon or (ii) any complaint, order, citation or notice with regard to air emissions, water discharges, or any other environmental, health, or safety matter affecting the AIRLINE's operations on the Premises or the Airport from any persons or entity (including, without limitation, the United States Environmental Protection Agency (the "EPA") or the Kansas Department of Health and Environment ("KDHE")), the AIRLINE shall promptly notify the AUTHORITY in writing of said notice.

AIRLINE further agrees to provide to AUTHORITY and/or AUTHORITY's designated representatives, upon request, copies of all applicable safety data sheets for materials stored on the Premises, as required by applicable law and applicable to AIRLINE's operations on the Premises.

AIRLINE shall indemnify, save, hold harmless, and defend AUTHORITY, the City of Wichita, their officials, agents, and employees, their successors and assigns, individually or collectively, from and against any claim, action, loss, damage, injury, liability, and the reasonable cost and expenses (including, but not limited to, reasonable attorney's fees, disbursements, court costs, and expert fees; unless defended by AIRLINE) of any environmental claim arising out of or resulting from AIRLINE's use and occupancy of Premises or use of the Airport, including, but not limited to any claim for (i) discharge or release of pollutants, hazardous materials, hazardous substances or solid waste, hazardous wastes or toxic materials at or on the Airport, including the air, surface

water, ground water, storm sewer, sanitary sewer, or soil from any source, including underground storage tanks, (ii) generation, handling, treatment, storage, disposal, or transportation of solid, gaseous, or liquid waste at the Airport, facility or location, (iii) electromagnetic or other radiation or noise, (iv) exposure of any person to any hazardous material, (v) manufacture, processing, distribution, use, or storage of any hazardous material, (vi) the release or threatened release of any pollutant, contamination or hazardous material to, from or through the Airport, or (vii) any of the foregoing, related to, caused by or arising from AIRLINE's operations on the Premises or activities on the Airport, to non-Airport property, including the air, surface water, ground water, or soil. Notwithstanding the above, AIRLINE shall not be liable for any environmental claim, including but not limited to claims listed in (i) – (vii) above, to the extent attributable to a pre-existing condition on any Airport property not caused or previously occupied by AIRLINE or any corporate predecessor to AIRLINE at any prior time. AIRLINE shall not be liable for any environmental claim arising out of or resulting from the AUTHORITY's conduct or those of a third party not related to AIRLINE.

AIRLINE shall, at AIRLINE's sole expense, clean up, remove and remediate, in accordance with applicable law, to the extent caused by AIRLINE or its employees, agents, licensees, contractors or customers (1) any Hazardous substances in, on, or under the AIRLINE's Premises in excess of allowable levels established by all applicable federal, state and local laws and regulations and (2) all contaminants and pollutants, in, on, or under the AIRLINE's Premises that create or threaten to create a substantial threat to human health or the environment and that are required to be removed, cleaned up, or remediated by any applicable federal, state, or local law, regulations, standard or order.

The provisions of this Section shall survive the termination of this Agreement.

34. TERMINATION BY AUTHORITY: EVENTS OF DEFAULT BY AIRLINE

34.1 Events of Default by AIRLINE

If any of the following events of default occur, AUTHORITY will issue a thirty (30) day written notice to AIRLINE to cure.

a. Conducting any business or performing any acts at Airport not specifically authorized in this Agreement or other agreements between AUTHORITY and AIRLINE.

b. Failing to cure a default in the performing any of the terms, covenants and conditions of this Agreement.

The written notice to cure shall allow AIRLINE thirty (30) calendar days to remedy the described problem or breach causing the default. If AIRLINE fails to cure within this thirty (30) day period, AUTHORITY may give written notice of default and take any action allowed in this Section.

Before the end of the thirty (30) day notice, AIRLINE may show AUTHORITY that its default

referred to in Paragraph (a) and (b) above cannot be remedied within thirty (30) days before the end of the thirty (30) day written notice and/or AIRLINE may show AUTHORITY that its default is a Force Majeure conditions described in Section 44.19. AUTHORITY will not declare a default if AIRLINE reasonably demonstrates (i) that the default cannot be cured within thirty (30) days, (ii) that it is proceeding with diligence to cure said default, and (iii) that such default will be cured within a reasonable period of time. In addition, the thirty (30) day notice period shall be tolled for a Force Majeure condition for such time as the Force Majeure condition reasonably prevents performance by AIRLINE. If AIRLINE stops its remedial efforts, no new notice to cure is needed to reinstate default actions allowed in this Section.

If under this Agreement any one of the following events of default occur, AUTHORITY may immediately issue written notice of default, without notice to cure being necessary:

a. AIRLINE fails to pay any part of the rentals, fees, and charges due under this Agreement in full within ten (10) days of the date of AUTHORITY's written notice of payments being past due. If AIRLINE disputes any obligation to make payments to AUTHORITY, AIRLINE shall pay the amount due and contest the validity or amount of such payment. In the event any court or other body having jurisdiction determines all or any part of the contested payment is not due, then AUTHORITY shall apply for the benefit of AIRLINE any amount determined as not due at the conclusion of the case to future AIRLINE obligations to AUTHORITY as AIRLINE may direct or the payments made by AIRLINE may be returned promptly to AIRLINE at its request. Further, during any legal contest of any fees or charges by AIRLINE, AIRLINE will not be held in default under the provisions of this paragraph. AUTHORITY shall use due diligence to collect any past due rentals, fees, and charges from any Air Transportation Company providing air service at the Airport, including AIRLINE.

b. AIRLINE fails to provide and keep in force contract security as required by Section 9.

c. AIRLINE fails to provide and keep in force insurance coverage as required by Section 32.

d. The appointment of a trustee, custodian, or receiver of all or a substantial portion of AIRLINE's assets.

e. Any legal corporate action that reduces or eliminates AIRLINE's continued right to participate and fulfill this Agreement.

f. AIRLINE is declared insolvent or takes the benefit of any present or future insolvency statute, makes a general assignment for the benefit of creditors, or seeks a reorganization or the readjustment of its indebtedness under any law or statute of the United States or of any state.

g. AIRLINE voluntarily discontinues its operations at the Airport for a period of at least thirty (30) consecutive days unless AUTHORITY approves this action in advance, in writing.

34.2 Continuing Responsibilities of AIRLINE

Notwithstanding the occurrence of any event of default, AIRLINE remains liable to AUTHORITY for all rentals, fees, and charges payable under this Agreement, including all preceding breaches of this Agreement even in the event of default. Furthermore, unless AUTHORITY terminates this Agreement, AIRLINE shall remain liable for and promptly pay all rentals, fees, and charges as they accrue until the expiration of this Agreement or until this Agreement is terminated by AIRLINE as allowed by this Agreement.

34.3 Remedies of AUTHORITY for AIRLINE's Default

Upon the occurrence of any default the following remedies shall be available to AUTHORITY:

a. AUTHORITY may terminate this Agreement, effective upon the date specified in the written notice of termination. The termination such date shall be not less than thirty (30) calendar days from said notice. Upon such date, AIRLINE shall have no further rights under this Agreement and AUTHORITY can take immediate possession of AIRLINE's Premises.

b. AUTHORITY may reenter the Premises any time after the default date and may remove all AIRLINE persons and property from the Premises. AIRLINE's Personal Property may be stored at AIRLINE's sole cost and expense. AUTHORITY shall not be liable for its condition or return.

c. AUTHORITY may relet all or part of the Premises at such rentals, fees, and charges and upon such other terms as AUTHORITY, believes appropriate. AUTHORITY may make alterations, repairs or Improvements on said Premises. In reletting the Premises, AUTHORITY shall be obligated to make a good faith effort to obtain terms no less favorable to AUTHORITY than those contained herein and otherwise seek to mitigate any damages it may suffer as a result of AIRLINE's default.

d. In the event that AUTHORITY relets Premises, rentals, fees, and charges received by AUTHORITY from such reletting shall be applied: (i) to the payment of any indebtedness other than rentals, fees, and charges due hereunder from AIRLINE to AUTHORITY; (ii) to the payment of any cost of such reletting; and (iii) to the payment of rentals, fees, and charges due and unpaid hereunder. The residue, if any, shall be held by AUTHORITY and applied in payment of future rentals, fees, and charges as the same may become due and payable hereunder. If that portion of such rentals, fees, and charges received from such reletting and applied to the payment of rentals, fees, and charges hereunder is less than the rentals, fees, and charges payable during applicable periods by AIRLINE hereunder, then AIRLINE shall pay such deficiency to AUTHORITY. AIRLINE shall also pay to AUTHORITY, as soon as ascertained, any costs and expenses incurred by AUTHORITY in such reletting not covered by the rentals, fees, and charges received from such reletting.

e. No reentry or reletting of Premises by AUTHORITY shall be construed as an election on AUTHORITY's part to terminate this Agreement unless a written notice of termination is given to AIRLINE.

f. AIRLINE shall pay to AUTHORITY all other costs incurred by AUTHORITY in the exercise of any remedy in this Section, including, but not limited to, reasonable attorney's fees, disbursements, court costs, and expert fees.

g. AUTHORITY may exercise any other legal or equitable remedy, including but not limited to the remedies hereinafter specified.

34.4 Remedies Under Federal Bankruptcy Laws

Notwithstanding the foregoing, upon the filing by or against AIRLINE of any proceeding under Federal bankruptcy laws, if AIRLINE has defaulted in the performance of any provision of this Agreement within the six (6) months preceding such filing, AUTHORITY shall have the right to terminate this Agreement, in addition to other remedies provided under provisions of the Federal Bankruptcy Rules and Regulations and Federal Judgeship Act of 1984, or any successor statute, as such may be subsequently amended, supplemented, or replaced. Such termination shall be by written notice to AIRLINE within sixty (60) days from the date of AIRLINE's initial filing in bankruptcy court.

35. TERMINATION BY AIRLINE: EVENTS OF DEFAULT BY AUTHORITY

35.1 Events of Default by AUTHORITY

Each of the following events shall constitute an "Event of Default by AUTHORITY":

a. AUTHORITY fails after receipt of written notice from AIRLINE to keep, perform or observe any term, covenant or condition herein contained to be kept, performed, or observed by AUTHORITY and such failure continues for thirty (30) days, or if by its nature such Event of Default by AUTHORITY cannot be cured within such thirty (30) day period, AUTHORITY fails to commence to cure or remove such Event of Default by AUTHORITY within said thirty (30) days and to cure or remove the same as promptly as reasonably practicable.

b. AUTHORITY closes Airport to flights in general or to the flights of AIRLINE, for reasons other than weather, acts of God or other reasons beyond its control, and fails to reopen Airport to such flights within sixty (60) days of such closure.

c. The Airport is permanently closed as an air carrier airport by act of any federal, state or local government agency having competent jurisdiction.

d. AIRLINE is unable to use Airport for a period of at least sixty (60) days due to any law or any order, rule or regulation of any appropriate governmental authority having jurisdiction over the operations of Airport, or any court of competent jurisdiction issues an injunction in any way preventing or restraining the use of Airport or any part thereof for Airport purposes, and such injunction remains in force for a period of a least sixty (60) days.

e. The United States Government or any authorized agency of the same (by executive order or otherwise) assumes the operation, control or use of Airport and its facilities in such a manner as to substantially restrict AIRLINE from conducting its operations, and such restriction shall continue for a period of at least sixty (60) days.

35.2 **Remedies of AIRLINE for AUTHORITY's Defaults.**

Upon the occurrence of an Event of Default by AUTHORITY and after appropriate notice by AIRLINE to AUTHORITY, AIRLINE shall have the right to terminate this Agreement and all rentals, fees and charges payable by AIRLINE under this Agreement shall terminate. In the event that AIRLINE's operations at Airport should be restricted substantially by action of any governmental agency having jurisdiction thereof, then AIRLINE shall, in addition to the rights of termination herein granted, have the right to a suspension of this Agreement, or part thereof, and abatement of an equitable proportion of the payments due hereunder, from the time of giving written notice of such election until such restrictions shall have been remedied and normal operations restored.

36. WAIVER OF STATUTORY NOTICE

In the event either party exercises its option to terminate this Agreement any notice of termination given pursuant to the provisions shall be sufficient to terminate this Agreement. Upon such termination, AIRLINE hereby agrees that it shall promptly surrender possession of the Premises to the AUTHORITY. Each party hereby expressly waives the receipt of any additional notice to quit or notice of termination which would otherwise be required to given by AUTHORITY or AIRLINE under any provisions of the laws of the State of Kansas.

37. AFFILIATES, SUBLETTING, AND HANDLING AGREEMENTS

37.1 **Rights of Affiliates**

The rights, privileges, and obligations granted AIRLINE hereunder with respect to the use of the Airport, its appurtenances, and facilities, or in which AIRLINE leases space, shall accrue to any Affiliate to the same extent and degree that such rights and privileges are possessed by AIRLINE hereunder without the requirement for the Affiliate to enter into any written agreement with the AUTHORITY. The exercise of such rights and privileges shall be subject to prior written notice by AIRLINE documenting (a) the relationship of the Affiliate which shall be in compliance with the definition of Affiliate in Section 1.1, and (b) AIRLINE's agreement that AIRLINE shall report all activity and pay charges and fees provided for under this Agreement should Affiliate fail to do so. Upon receipt of such notice by AUTHORITY, AUTHORITY shall confirm in writing the receipt of the required notice and such rights and privileges shall take effect the first day of the month following the month in which AUTHORITY receives the required notice by AIRLINE. No additional fees or charges other than those specifically set forth and payable by AIRLINE

hereunder shall be assessed against AIRLINE or such other Affiliate. Provided, however, it is understood and agreed that should an Affiliate lease space directly from the AUTHORITY, such space shall not be considered to be included in the rights and privileges under this Agreement and AIRLINE shall not be responsible to insure such space or indemnify for its use, and such space shall therefore be leased to the Affiliate as non-signatory. Notwithstanding anything to the contrary contained herein, the Affiliate shall have the opportunity to become a Signatory Airline at Airport by agreeing to the terms of and entering into an Agreement.

37.2 **Assignment and Subletting by AIRLINE**

AIRLINE shall not sell, convey, transfer, mortgage, pledge, or assign this Agreement, or any part thereof, or any rights created thereby or the leasing thereunder in any manner whatsoever or sublet Premises or any part thereof or any of the privileges recited herein without prior written consent of the Director, which consent shall not be unreasonably withheld. However, AIRLINE shall have the right to sublease all or any part of its Premises or assign all or any part of its rights and interests under this Agreement to any affiliated Air Transportation Company (i.e., affiliated through common ownership) or to any successor to its business through merger or consolidation. Consent of AUTHORITY for such assignment shall not be required; provided, however, due notice of any such assignment shall be given to the Director at least thirty (30) days prior to such assignment hereunder.

In the event AIRLINE, using large jet-loader aircraft, intends to assign all or part of its Premises to an Affiliate using smaller Aircraft that cannot be served by a passenger boarding bridge, then in such an event Director may re-assign Gates as appropriate to ensure the highest and best use of Gates and ramp safety.

Any such successor corporation no later than thirty (30) days after the date of such merger, consolidation or succession shall acknowledge in writing satisfactory in form and content to AUTHORITY that it has assumed all obligations of AIRLINE and will fully honor all the terms and conditions set forth in this Agreement. Failure to do so shall be cause for termination by AUTHORITY.

AIRLINE shall not, without the prior written consent of Director, sublease Premises. The parties hereto agree that Director may reasonably withhold such consent if AUTHORITY has substantially similar space available but unleased or if AUTHORITY can make such space available for lease within a reasonable time. In making such decision, the Director shall consider the full needs and plans of any Air Transportation Company seeking to sublease space from AIRLINE, including whether said operator desires to be handled by AIRLINE. Exclusive or preferential use of AIRLINE's Exclusive Use Premises, or any part thereof, or preferential use of AIRLINE's Preferential Use Premises, or any part thereof, by anyone other than AIRLINE or its Affiliates shall be considered a sublease.

In the event AIRLINE requests permission to sublease, the request shall be accompanied by a copy of the proposed sublease agreement, if prepared. In the event such proposed sublease agreement has not been prepared, a written summary of the material terms and conditions to be contained in such sublease agreement shall be included with AIRLINE's request for tentative approval by

Director. The area or space to be subleased and the rental to be charged shall be specified and all other information reasonably requested by AUTHORITY pertaining to said sublease shall be promptly provided. If AIRLINE is currently in default with respect to the payment of rentals, fees and charges due herein, any such sublease agreement shall provide for the direct payment to AUTHORITY by sublessee of rentals, fees and charges due AUTHORITY pursuant to this Agreement. A fully executed copy of such sublease shall be submitted to Director for final review no later than thirty (30) days following occupancy of Premises, or any portion thereof, by the sublessee.

In the event the rentals, fees and charges for subleased premises exceed the rentals, fees and charges payable by AIRLINE for said premises pursuant to this Agreement, AIRLINE shall pay to AUTHORITY the excess of the rentals, fees and charges received from the sublessee over that specified to be paid by AIRLINE herein, provided that AIRLINE may charge a reasonable fee for administrative costs, not to exceed fifteen (15) percent of the specified sublease rental, and such fifteen (15) percent shall not be considered excess rentals, fees, and charges. AIRLINE shall also have the right to charge a reasonable fee to others for the use of AIRLINE's capital equipment and to charge for use of utilities and other services being paid for by AIRLINE.

37.3 **Ground Handling Services**

a. **Ground Handling Services by AIRLINE.** AIRLINE shall not ground handle another Air Transportation Company, without the prior written approval of the Director. Should AIRLINE wish to handle any portion of the operations of another Air Transportation Company, AIRLINE shall provide AUTHORITY with advance written notice of such proposed activities, including a description of the type and extent of services offered. AIRLINE agrees to pay monthly to AUTHORITY, a fee as established in AUTHORITY's Schedule of Fees and Charges derived from such Ground Handling Services performed for Non-Signatory Airlines or non-scheduled airlines, provided however, that no fee shall be required for Ground Handling Services performed for AIRLINE's Affiliate(s) and other Signatory Airlines.

b. **Ground Handling Services by Others.** AUTHORITY shall grant AIRLINE the right to contract with other companies, including Signatory Airlines, for Ground Handling Services for AIRLINE's aircraft, provided that, among other considerations: (i) AIRLINE has received advance written consent of AUTHORITY; and (ii) such other company, unless such company is a Signatory Airline, has entered into a Ground Handling Services operating agreement with AUTHORITY prior to the commencement of such Ground Handling Services.

37.4 **Release of Space.**

If AIRLINE wishes to release part of the Premises to AUTHORITY, AIRLINE shall notify AUTHORITY in writing of the space AIRLINE wishes to release and AUTHORITY shall use its best efforts to reassign such space to another Air Transportation Company; provided, however, AUTHORITY shall not be obligated to take back the space AIRLINE wishes to release and AIRLINE shall remain responsible for all obligations regarding such space under this Agreement. If AUTHORITY agrees to take back space released by AIRLINE, AUTHORITY shall amend this

Agreement to relieve AIRLINE of its obligations in regard to the space released.

37.5 **Nonwaiver of Responsibility.**

No assignment, transfer, conveyance, sale, mortgage, pledge, encumbrance, or sublease by AIRLINE shall relieve AIRLINE of its responsibility for the payment of rentals and fees or the performance of all other obligations provided for in this Agreement, without the prior written approval of the Director to such relief.

37.6 **Assignment by AUTHORITY.**

AUTHORITY shall have the right to transfer or assign this Agreement without limitation to another public or quasi-public entity. This entity to which this Agreement is transferred or assigned shall be bound by all of the rights and obligations contained herein. If such public or quasi-public entity either refuses to accept one or more of AUTHORITY's obligations or does not recognize one or more of AIRLINE's rights in this Agreement, then AIRLINE may terminate this Agreement pursuant to Section 35.

38. RULES AND REGULATIONS

AIRLINE, its agents and employees, shall be subject to any and all applicable rules, regulations, Airport Standard Operating Procedures, orders and restrictions which are now in force or which may hereafter be adopted by the Wichita Airport Authority or the City of Wichita, Kansas, in respect to the operation of the Airport, provided that the foregoing are reasonable, nondiscriminatory, and neither impair, limit, nor extinguish the rights of AIRLINE under this Agreement; and shall also be subject to any and all applicable laws, statutes, rules, regulations or orders of any governmental authority, federal or state, which are now in force or which may hereafter be promulgated, lawfully exercising authority over the Airport or AIRLINE 's operations conducted hereunder. AUTHORITY shall provide AIRLINE reasonable notice before the enactment or modification of any rules, regulations, Airport Standard Operating Procedures, orders and restrictions, and shall duly consider AIRLINE's input.

AUTHORITY shall not be liable to AIRLINE for any diminution or deprivation of its rights hereunder on account of the exercise of any such authority is in this Section provided, nor shall AIRLINE be entitled to terminate this Agreement by reason thereof unless exercise of such authority shall so interfere with AIRLINE 's exercise of the rights hereunder as to constitute a termination of this Agreement by operation of law in accordance with the laws of the State of Kansas, or as set out in Section 35.

AUTHORITY shall whenever possible make reasonable efforts to obtain uniform compliance with its rules and regulations; provided, however, AUTHORITY shall not be liable to AIRLINE for any violation or non-observance of such rules and regulations by any other tenant, operator or Air Transportation Company at the Airport.

39. ENCROACHERS, TRESPASSERS AND OTHER THIRD PARTY HAZARDS

AIRLINE shall lawfully remove, or cause to be removed by AUTHORITY or other official law enforcement agency, all encroachers, trespassers and other third parties violating laws of the federal, state or local government, or who are not on the Premises for legitimate purposes.

40. AIRPORT SECURITY PROGRAM COMPLIANCE

AIRLINE must obtain Airport Security Identification and Access Media (I.D. Media) for its employees, subcontractors, sublessees, suppliers, agents, and representatives requiring access to the sterile areas, secured AOA, and Security Identification Display Area (SIDA), or other secured areas as may be identified in the Airport Security Program, and pay any related costs associated with the privileges as set forth under this Section. With respect to the issuance, maintenance, and administration of I.D. Media, the AIRLINE shall pay or cause to be paid to the AUTHORITY all charges as may be established from time to time by the AUTHORITY. Such costs may include, but are not limited to: (i) the initial issuance of I.D. Media; (ii) the replacement of lost or stolen I.D. Media; (iii) administrative costs with respect to those I.D. Media not returned to the AUTHORITY.

Said I.D. Media will be valid as set forth under the Airport Security Program, and must be returned to the Airport Police and Fire Division, at 2193 Air Cargo Road within twenty-four (24) hours after expiration, suspension, and/or termination of this Agreement. Said I.D. Media will be valid for no longer than the period of this Agreement. The AIRLINE shall be responsible for requesting the issuance of I.D. Media to employees or other authorized representatives of the AIRLINE who require access to secured areas on the Airport due to operational need and necessity. In addition, AIRLINE shall be responsible for the immediate reporting of all lost or stolen I.D. Media and the immediate return of the I.D. Media of AIRLINE's personnel transferred from the Airport, or separated from the employ of AIRLINE.

AIRLINE warrants that it will comply with of the Airport Security Program and comply with all applicable regulations of the FAA and Transportation Security Administration ("TSA"), 49 CFR Parts 1500, 1542, 1544, 1546, 1548, and 1550 as amended or promulgated, and that it will always maintain the security of the Airport, Premises, and/or any AOA access for which AIRLINE is responsible. The AUTHORITY shall have the right to require the AIRLINE to conduct background investigations and to furnish certain data on such employees or other persons before the issuance of I.D. Media, which data may include the fingerprinting of any and all of its employees, subcontractors, suppliers, agents, and/or representatives. AIRLINE also hereby agrees that it shall be responsible for any and all of the actions on the Premises of its employees, subcontractors, suppliers, agents, customers, invitees, and/or representatives and shall provide any and all necessary escorts, as outlined in the Airport Security Program. AIRLINE hereby agrees that it will immediately implement any and all security changes that are required either directly or indirectly by the TSA, FAA, or AUTHORITY. AIRLINE further agrees to correct any security deficiency or other deficiency as may be determined as such by the AUTHORITY, the Department

of Transportation ("DOT"), the FAA, or the TSA, or any other federal or state agency with jurisdiction. In the event AIRLINE fails to remedy any such deficiency, the AUTHORITY may do so at the sole cost and expense of AIRLINE the cost of which, plus an additional twenty percent (20%) administrative fee, is payable to the AUTHORITY within thirty (30) days after the AUTHORITY's invoice. The AUTHORITY reserves the right to take whatever lawful action is necessary to correct and remedy any security deficiency or other deficiency. When the AUTHORITY takes actions to remedy deficiencies of any kind, it shall be done in a reasonable and cost-conscious manner.

Should AIRLINE, its employees, subcontractors, suppliers, agents, customers, invitees, and/or representatives cause any security violations, and should AUTHORITY be cited for a civil fine or penalty for such security violation, AIRLINE agrees to reimburse AUTHORITY for any monetary civil fine or penalty which may be imposed on AUTHORITY. However, nothing herein shall prevent the AIRLINE from contesting the legality, validity or application of such fine or penalty to the full extent AIRLINE may be lawfully entitled, nor require AUTHORITY to pursue such a contest on AIRLINE'S behalf. AIRLINE may have I.D. Media/access privileges immediately suspended and/or revoked by AUTHORITY for failure to adhere to the Airport Security Program, or for failure to return all I.D. Media within the time-frames specified herein.

The AIRLINE agrees that information concerning the location, type, nature, capabilities, application and use of the AUTHORITY's security system is considered Sensitive Security Information (SSI) as defined by TSR 1520, and shall restrict the distribution, disclosure and availability of SSI only to persons with a need to know. All requests for SSI by persons not directly employed by the AIRLINE, and deemed to have a need to know shall be referred to AUTHORITY for consideration and determination of whether such information is legal and appropriate for dissemination.

Before the AIRLINE shall permit any employee, subcontractor, sublessees, supplier, agents, customer, invitee, and/or representative to operate a motor vehicle of any kind or type on the AOA of Airport (unless such employee is escorted by a AUTHORITY-approved escort), the AIRLINE shall ensure that all such vehicle operators have completed required AOA access and driver training, possess a current, valid, and appropriate driver's license, appropriate Airport issued I.D. Media, and a Vehicle Ramp Permit. AIRLINE company vehicles prominently displaying a permanently affixed company name and/or logo on vehicles and equipment are excluded from the requirement of displaying a Vehicle Ramp Permit.

The AIRLINE agrees that its vehicles, cargo, product deliveries, and other personal property are subject to being inspected and searched when entering, exiting and while on the AOA.

41. SECURITY SYSTEMS

AUTHORITY may at its sole discretion install, operate and maintain a computer controlled access and monitoring system on the Airport. The purpose of said security systems is for the provision of safety and security to the general public, airport employees, tenants and permitees and their employees and invitees, primarily within and upon public areas, and not for the exclusive benefit of any single party or category of airport user. AIRLINE may, at its sole option and cost, install, operate and maintain private security systems within interior or exterior areas of the Premises; however, any such private security systems shall not interfere with, interrupt, impair or block the security systems or effectiveness of the AUTHORITY's security surveillance systems.

AUTHORITY shall not install security surveillance systems for the exclusive benefit of the AIRLINE. AIRLINE shall not rely on the surveillance cameras owned and operated by the AUTHORITY for purposes of risk management or private security from property loss, theft or other criminal activity.

42. PORTABLE STORAGE CONTAINERS/STRUCTURES

Unless specifically approved in writing, and under only conditions specified by AUTHORITY, AIRLINE shall not place or allow to be placed upon Premises, any type of portable storage container, trailer, unit, box, or barrel which is used to store merchandise and/or equipment and supplies outside of an enclosed permanent building or structure. Unless specifically approved, and only under conditions specified by AUTHORITY, AIRLINE shall not place or allow to be placed upon Premises, any type of portable or temporary structure, trailer, mobile home, modular structure or device.

AUTHORITY shall not unreasonably withhold approval of such container(s) and structure(s) if placement is of a temporary nature for the purpose of supporting construction, alterations, improvement activity, or other approved project.

43. NONDISCRIMINATION

The AIRLINE shall comply with all the following nondiscrimination provisions to the extent that AIRLINE's activities shall be subject to the same:

43.1 Nondiscrimination in Employment

The AIRLINE agrees not to discriminate against any employee or applicant for employment because of race, creed, color, sex, religion, national origin, ancestry, age or disability. The AIRLINE shall take affirmative action to insure that employees are treated without regard to their race, creed, color, national origin, sex, religion, ancestry, age or disability. Such actions shall

include, but not be limited to, the following: employment, promotion demotion or transfer, recruitment, advertising, lay-off or termination, and selection for training, including apprenticeship. The AIRLINE hereby agrees to post, in a conspicuous place, available to employees and applicants for employment, notices setting forth the provisions of this Section, in compliance with federal and state laws.

43.2 Facilities Nondiscrimination

AIRLINE shall make its accommodations and/or services available to the public on fair and reasonable terms without discrimination on the basis of sex, age, race, religion, creed, ancestry, color, national origin, or disability, provided, however, nothing herein shall require the furnishing to the general public of the use of any facilities or accommodations customarily furnished by AIRLINE solely to its employees, customers, clients, guests, and invitees; and AIRLINE may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar type of price reductions to volume purchasers.

a. Noncompliance with any nondiscrimination provision imposed by law related to the accommodations and/or services provide under this Agreement, or noncompliance with any nondiscrimination within this Agreement shall constitute a material breach of this Agreement and, in the event of such noncompliance, AUTHORITY shall have the right to terminate this Agreement without liability therefore.

b. AIRLINE agrees to insert or incorporate by reference nondiscrimination language in any leases, agreements, or contracts, etc. by which said AIRLINE grants a right or privilege to any person, firm, or corporation to render accommodations and/or services to the public on the Premises.

44. GENERAL PROVISIONS

44.1 Operation of Airport by the United States of America

This Agreement and all the provisions hereof shall be subject to whatever right the United States of America now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of the Airport or the exclusive or nonexclusive use of the Airport by the United States during the time of war or national emergency.

44.2 14 CFR Part 77 of Federal Aviation Regulations

AIRLINE agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event future construction or addition of a building, structure is planned for the Premises, or in the event of any planned modification or alteration of any present or future building or structure situated on the Airport. AIRLINE by accepting this Agreement expressly agrees for itself, its successors and assigns that it shall not erect nor permit the erection of any unapproved structure or object, nor permit the growth of any tree on the Airport which shall exceed such maximum height as may be stipulated by AUTHORITY. Applicable laws,

codes, regulations or agreements concerning height restrictions shall govern the maximum height to be stipulated by AUTHORITY. In the event this covenant is breached, AUTHORITY reserves the right to enter upon the Premises and to remove the offending structure or object, and cut down the offending tree, all of which shall be at the expense of AIRLINE and without liability to AUTHORITY. This expense plus an administrative fee of twenty percent (20%) shall be payable within thirty (30) days after AUTHOIRTY's invoice.

44.3 Airspace

There is hereby reserved to AUTHORITY, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of Aircraft in the airspace above the surface of the Premises. This public right of flight shall include the right to cause or allow in said airspace, any noise inherent in the operation of any Aircraft used for navigation or flight through the said airspace or landing at, taking off from or operation on the Airport. No liability on the part of AUTHORITY shall result from the exercise of this right.

44.4 Easement for Flight

AIRLINE releases AUTHORITY from any present or future liability whatsoever and covenants not to sue AUTHORITY for damages or any other relief based directly or indirectly upon noise, light, vibrations, smoke, fumes, odors, air currents, shock waves, electronic or other emissions occurring as a result of aviation or airport related operations at or otherwise associated with the Airport. This release and covenant includes but is not limited to claims for damages for physical or emotional injuries, discomfort, inconvenience, property damage, death, interference with use and enjoyment of property, nuisance, loss of income or business opportunity, inverse condemnation or for injunctive or other extraordinary or equitable relief. It is further agreed that AUTHORITY shall have no duty to avoid or mitigate such damages by, without limitation, setting aside or condemning buffer lands, rerouting air traffic, erecting sound or other barriers, establishing curfews, noise or other regulations, relocating airport facilities or operations or taking other measures, except to the extent, if any, that such actions are validly required by official federal agency action. AUTHORITY reserves from the Premises an easement for flight of Aircraft in or adjacent to the airspace above the Premises and for the existence and imposition over, on and upon said Premises of noise, light, vibrations, smoke, fumes, odors, air currents, electronic or other emissions, discomfort, inconvenience, interference with use and enjoyment, and any consequent reduction in market value which may occur directly or indirectly as a result of aviation, airport or airport-related operations at or otherwise associated with use of the Airport. AIRLINE accepts the Premises subject to the risks and activities hereinabove described.

44.5 Airport Hazards

AIRLINE by accepting this Agreement agrees for itself, its successors and assignees, that it shall not make use of the Premises in any manner which might interfere with the landing and taking off of Aircraft from the Airport or otherwise constitute a hazard. If during the Term of this Agreement the condition is breached, AUTHORITY reserves the right to enter upon the Premises and cause the abatement of such interference at the expense of AIRLINE without liability to AUTHORITY, except to the extent such liability arises from the negligence or willful misconduct of AUTHORITY. The expense of this action plus an administrative fee of twenty percent (20%)

shall be payable within thirty (30) days after AUTHOIRTY's invoice.

44.6 **Federal Aviation Administration Requirements**

AUTHORITY and AIRLINE agree that the requirements of the FAA set out below are approved by both parties, and if applicable, AIRLINE agrees to comply with all FAA requirements with respect to its operations, use of the Airport and this Agreement:

a. The AIRLINE, for itself and its representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained or otherwise operated on said property described in this Agreement for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the AIRLINE shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

b. The AIRLINE, for itself and its representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any Improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the AIRLINE shall use the Premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

c. The AIRLINE assures that it shall undertake an affirmative action program if required by 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. The AIRLINE assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. The AIRLINE assures that it shall require that its covered sub-organizations provide assurances to the AIRLINE that they similarly shall undertake affirmative action programs, and that they shall require assurances from their sub-organizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

d. Nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308 of the Federal Aviation Act of 1958.

e. AIRLINE agrees to furnish service on a fair, equal and not unjustly discriminatory basis to all users thereof, and to charge fair, reasonable and not unjustly discriminatory prices for

each unit or service; provided that AIRLINE may make reasonable and nondiscriminatory discounts, rebates or other similar types of price reductions to volume purchasers.

f. AUTHORITY reserves the right (but shall not be obligated to AIRLINE) to maintain and keep in repair the AOA of the airport and all publicly-owned facilities of the airport, together with the right to direct and control all activities of AIRLINE in this regard.

g. AUTHORITY reserves the right further to develop or improve the Airfield and all publicly-owned air navigation facilities of the airport as it sees fit, regardless of the desires or views of AIRLINE, and without interference or hindrance.

h. AUTHORITY 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 AIRLINE from erecting, or permitting to be erected, any building or other structure on the airport which, in the opinion of AUTHORITY, would limit the usefulness of the airport or constitute a hazard to Aircraft.

i. During time of war or national emergency AUTHORITY 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 Airfield, 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.

j. Rights granted by this Agreement shall not be exercised in such a way as to interfere with or adversely affect the use, operation, maintenance or development of the Airport.

k. There is hereby reserved to AUTHORITY, its successors and assigns, for the use and benefit of the public, a free and unrestricted right of flight for the passage of Aircraft in the air space above the surface of the Premises herein conveyed, together with the right to cause in said airspace such noise as may be inherent in the operation of Aircraft now known or hereafter used for navigation of or flight in the air, using said airspace or landing at, taking off from or operating on or about the Airport.

l. This Agreement shall become subordinate to provisions of any existing or future agreement between the AUTHORITY and the United States of America or any agency thereof relative to the operation, development or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport.

44.7 **Modifications for Granting of FAA Funds**

In the event that the AUTHORITY determines the FAA requirements call for modifications or changes to this Agreement as a condition precedent to granting of funds for the Improvement of the Airport, these modifications or changes shall supersede this Agreement and AIRLINE agrees to consent to such amendments, modifications, revisions, supplements or deletions of any of the terms, conditions or requirements of this Agreement as may be reasonably required by the

AUTHORITY to fully comply with federal grant assurances and directives and to obtain FAA grants-in-aid, provided that no such changes shall materially alter the rights or obligations of AIRLINE hereunder.

44.8 Subordination to Agreements with the U.S. Government

This Agreement is subject and subordinate to the provisions of any agreements heretofore or hereafter made between AUTHORITY and the United States Government relative to the operation or maintenance of Airport, the execution of which has been required as a condition precedent to the transfer of federal rights or property to AUTHORITY for Airport purposes, or the expenditure of federal funds for the improvement or development of Airport, including the expenditure of federal funds for the development of Airport in accordance with the provisions of the Federal Aviation Act of 1958, as it has been amended from time to time. AUTHORITY covenants that it has no existing agreements with the United States Government in conflict with the express provisions hereof.

44.9 Non-Waiver of Rights

No waiver or default by either party of any of the terms, warranties, covenants and conditions hereof to be performed, kept and observed by the other party shall be construed as, or shall operate as, a waiver of any subsequent default of any of the terms, warranties, covenants or conditions herein contained, to be performed, kept and observed by the other party.

44.10 Severability and Invalid Provisions

In the event any term, covenant, condition or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of any such term, covenant, condition or provision shall in no way affect any other term, covenant, condition or provision herein contained. The parties agree if such invalid provision is essential to this Agreement, they will promptly begin negotiations for a suitable replacement provision so as to give force to the intent of the parties.

44.11 Waiver of Claims

Each party hereby waives any claim against the other party and such other party's officers or employees for loss of anticipated profits, consequential or incidental damages, or claim for attorney fees caused by or resulting any suit or proceedings directly or indirectly attacking the validity of Agreement or any part thereof, or the manner in which it is executed or performed, or by any judgment or award in any legal proceeding declaring this Agreement null, void or voidable, or delaying the same of any part thereof, from being carried out. This waiver extends to all claims, whether the supporting legal theory lies in common law or has a statutory basis.

44.12 Incorporation of Exhibits

All exhibits referred to in this Agreement are intended to be and are hereby specifically made a part of this Agreement.

44.13 Non-Liability of Agents and Employees

No member, officer, agent or employee of either party to this Agreement shall be charged personally, or held contractually liable by or to the other party under the terms or provisions of

this Agreement, or because of any breach thereof or because of its or their execution or attempted execution.

44.14 **Successors and Assigns Bound.**
This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties.

44.15 **Time of Essence**
Time is of the essence in this Agreement.

44.16 **Relationship of the Parties**
AIRLINE is not in any way or for any purpose a partner or joint venturer with or an agent of AUTHORITY. AIRLINE shall act as an independent contractor in the performance of its duties pursuant to this Agreement.

44.17 **Interpretation**
AUTHORITY and AIRLINE agree that this Agreement shall not be construed or interpreted in favor of either party on the basis of preparation.

44.18 **Kansas Laws to Govern**
This Agreement and the terms and conditions herein contained shall at all times be governed, interpreted and construed under and in accordance with the laws of the State of Kansas, and venue for resolution of any issue pertaining to this Agreement shall be in Sedgwick County, Kansas.

44.19 **Force Majeure**
Neither the AUTHORITY nor the AIRLINE shall be deemed in violation of this Agreement if it is prevented from performing any of the obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortages of material, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, riots, rebellion, sabotage, acts of terrorism or the results therefrom, or any other circumstances for which it is not responsible or which is not within its control.

45. NOTICES, CONSENTS, AND APPROVALS

Notices or other communications to AUTHORITY pursuant to the provisions hereof shall be sufficient and irrefutably deemed received if sent regular mail, postage prepaid, or by a nationally recognized overnight courier, or facsimile transmission, addressed to:

Attention: Director
Wichita Airport Authority
2173 Air Cargo Road
Wichita, Kansas 67209;

Fax: (316) 946-4793

and bills, statements, and notices or communications to AIRLINE shall be sufficient and irrefutably deemed received if sent regular mail, postage prepaid, or by a nationally recognized overnight courier addressed to:

Southwest Airlines Co.
Manager – Airport Affairs
P.O. Box 36611, HDQ-4PF
2702 Love Field Drive
Dallas, Texas 75235

or to such respective addresses as the parties may designate in writing from time to time.

46. INTENTION OF PARTIES

This Agreement is intended solely for the benefit of AUTHORITY and AIRLINE and is not intended to benefit, either directly or indirectly, any third party or member(s) of the public at large. Any work done or inspection of the Premises performed by AUTHORITY is solely for the benefit of AUTHORITY and AIRLINE.

47. AMENDMENT OR MODIFICATION

This Agreement constitutes the entire Agreement between the parties for the lease of Premises set forth and identified under Section 2. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless the same is in writing, dated subsequent to the date hereof, and duly executed by the parties hereto.

This Agreement shall not be modified or amended unless in writing with formality equal to this Agreement, executed by the AIRLINE and AUTHORITY on a date subsequent to the execution of this Agreement.

48. APPROVAL, CONSENT, DIRECTION OR DESIGNATION BY AUTHORITY

Wherever under this Agreement, approvals, consents, directions, or designations are required or permitted, such approvals, consents, directions, or designations required or permitted under this Agreement shall be performed by the Director of Airports, or his/her authorized representative and, unless otherwise expressly stated in this Agreement, approvals and consents shall not be unreasonably withheld.

The parties agree that this Agreement may be signed in multiple counterparts, and that when signed by all parties, shall be effective upon the execution latest in time. Each shall be deemed an original, but taken together, shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.

ATTEST:

THE WICHITA AIRPORT AUTHORITY
WICHITA, KANSAS

By _____
Karen Sublett, City Clerk

By _____
Carl Brewer, President
"AUTHORITY"

By _____
Victor D. White, Director of Airports

ATTEST:

SOUTHWEST AIRLINES CO.

By _____

By _____
"AIRLINE"

APPROVED AS TO FORM: _____ Date: _____
Sharon Dickgrafe, Interim Director of Law

AIRLINE AIRPORT USE AND LEASE AGREEMENT

BY AND BETWEEN

WICHITA AIRPORT AUTHORITY

AND

UNITED AIRLINES, INC.

FOR

WICHITA DWIGHT D. EISENHOWER NATIONAL AIRPORT

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THIS AGREEMENT, dated March 17, 2015, between The Wichita Airport Authority, hereafter referred to as "AUTHORITY," and United Airlines, Inc., a corporation organized and existing under the laws of the State of Delaware, hereinafter referred to as "AIRLINE," acting by and through its designated officers with the express authority of its Board of Directors;

W I T N E S S E T H:

WHEREAS, AUTHORITY is a governmental entity authorized under the laws of the State of Kansas to own and operate one or more airports, with full, lawful power and authority to enter into binding legal instruments by and through its governing body; and

WHEREAS, AUTHORITY owns and operates the commercial service airport with FAA designation of ICT operated by the Wichita Airport Authority (hereinafter referred to as "Airport"); and

WHEREAS, AIRLINE is a corporation primarily engaged in the business of transportation by Aircraft for the carriage of persons, property, and mail; and

WHEREAS, AIRLINE desires to use certain premises and facilities, and to exercise certain rights and privileges at Airport in connection with the operation of its Air Transportation Business, and AUTHORITY is willing to agree to such use, rights and privileges as set forth herein; and

WHEREAS, the intent of the parties is to enter into an agreement which will specify the rights and obligations of the parties with respect to the operation of Airport by AUTHORITY and the use and occupancy of Airport by AIRLINE, and this Agreement is responsive to and in accordance with that intent;

NOW, THEREFORE, AUTHORITY and AIRLINE for, and in consideration of the covenants and mutual promises hereinafter contained, agree as follows:

1. DEFINITIONS

The terms and phrases defined in this Section for all purposes of this Airline Use and Lease Agreement shall have the following meanings:

Affiliate shall mean any Air Transportation Company that is either a (1) wholly-owned subsidiary of AIRLINE or AIRLINE's parent company or (2) operates under essentially the same trade name as AIRLINE at the Airport, uses essentially the same livery as AIRLINE, and does not sell any seats in its own name. AIRLINE shall provide AUTHORITY with a completed Exhibit A, attached hereto, for each Affiliate active as of the Commencement Date of this Agreement.

Air Operations Area (AOA) shall mean those portions of the Airport provided for the landing, take-off, taxiing and parking of Aircraft, including, without limitation, runways, taxiways, runway and taxiway safety areas and protection zones, Aircraft Parking Aprons, service roads, and other related and supporting appurtenances.

Air Transportation Business shall mean the business of an Air Transportation Company for the commercial transportation by air of persons, property, mail, and/or cargo.

Air Transportation Company shall mean a company engaged in the business of scheduled or nonscheduled commercial transportation by air of persons, property, mail, and/or cargo.

Aircraft shall mean a vehicle that is capable of traveling through the air, as defined in the Federal Aviation Act of 1958, as same may be amended or supplemented from time to time.

Aircraft Parking Apron shall mean that square footage of the AOA measured from the abutting face of the Terminal to the Aircraft parking limit line immediately adjacent to the Terminal that is used for the parking of Aircraft and support vehicles and the loading and unloading of passengers, baggage, and other mail or cargo, the boundaries of which are shown in Exhibit B attached hereto. Changes may be made to Exhibit "B", under the authority of the Director, without requiring formal amendment to the Agreement.

Airfield shall mean the AOA, approach and turning zones, aviation or other easements, and other appurtenances.

Airfield Requirement is that requirement established in Section 5.5(a).

Airline Net Revenue Sharing shall mean an amount determined by AUTHORITY in accordance with Section 6.3.

Airport shall mean the Mid-Continent Airport under the ownership, control and jurisdiction of the AUTHORITY. The current name of the airport is now known as the Mid-Continent Airport. The name will change to Wichita Dwight D. Eisenhower National Airport during the Initial Term of this Agreement. Current boundaries are shown on Exhibit C attached hereto.

Airport System shall include the airports under the ownership, control and jurisdiction of the AUTHORITY.

Amortization shall mean the principal and interest cost on a Capital Improvement financed by the AUTHORITY from its own cash. Amortization shall be calculated using (i) the interest rate paid by the City of Wichita, Kansas on its most recent comparable issuance of Bonds and (ii) the economic useful life of the Capital Improvement, as determined by the AUTHORITY in accordance with generally accepted accounting principles. Amortization shall begin in the Fiscal Year following when the Capital Improvement is ready for its intended use.

Authority Net Revenue Sharing shall mean an amount determined by AUTHORITY in accordance with Section 6.3.

Aviation Fuel Storage Facilities shall mean the fuel storage facilities owned by the AUTHORITY for the purpose of receiving, storing, and dispensing aviation fuel.

Bonds shall mean any bonds or other financing instrument or obligation issued by the City of Wichita, Kansas issued for the purposes of improving the Airport System or on behalf of AUTHORITY.

Capital Improvement shall mean (i) the acquisition of land or easements; (ii) the planning, design, or construction of new facilities; and (iii) the performance of any extraordinary, non-recurring major maintenance of existing facilities that may be acquired, purchased, or constructed by AUTHORITY to improve, maintain, or develop the Airport System.

Commencement Date shall mean the date on which the Terminal opens for commercial business to the general public.

Common Use Gate shall mean any AUTHORITY-controlled Gate in the Terminal not directly leased to an individual Signatory Airline on a Preferential Use basis, which AUTHORITY reserves for use of any Air Transportation Company.

Cost Center(s) shall mean the cost centers representing the areas and facilities operated by AUTHORITY, and as such cost centers may be modified, changed, or developed by AUTHORITY to be used in accounting for items including, but not limited to Revenues, Operation and Maintenance Expenses, Debt Service, Coverage Requirement, Operation and Maintenance Reserve Requirement, and Amortization and for calculating and adjusting the Rental and Fee Rates. Cost Centers shall collectively include the Airfield Cost Center, Jabara Cost Center, Other Aviation Buildings and Areas Cost Center, Landside Cost Center, and Terminal Cost Center.

Coverage Requirement shall mean, for any Fiscal Year, the amount equal to ten percent (10%) of Debt Service, for all series of Bonds plus such other amount as may be established by any financing agreement. If, in any given Fiscal Year, the Authority Net Revenue Sharing is insufficient to meet both the Coverage Requirement and Operation and Maintenance Reserve Requirement for that Fiscal Year, any shortfall shall be included in the Airfield Requirement under

Section 5.5(a)(v).

Debt Service shall mean the required amounts to be deposited within the principal and interest accounts related to Bonds during any period for the payment, when due, of principal of, interest on, and other fees and amounts associated with such debt.

Director shall mean the Director of Airports, who is the person designated by the AUTHORITY to exercise functions with respect to the rights and obligations of the AUTHORITY under this Agreement, and shall include any person expressly delegated by the Director of Airports to exercise functions with respect to the rights and obligations of the Director of Airports under this Agreement.

Electronic Visual Information Display Systems (EVIDS) shall mean the AUTHORITY owned Flight Information Display System (FIDS), the Baggage Information Display System (BIDS) and Gate Information Display System (GIDS) provided for passenger information.

Enplaned Passengers shall mean all (i) originating; (ii) on-line transfer; and (iii) off-line transfer passengers boarded at the Airport.

Exclusive Use Premises shall mean Terminal space leased to AIRLINE for its exclusive use as shown on Exhibit D attached hereto, as such may be amended from time to time.

Fiscal Year shall mean the then current annual accounting period of AUTHORITY for its general accounting purposes which, at the time of entering into this Agreement, is the period of twelve (12) consecutive calendar months ending with the last day of December of any year.

Fixtures shall mean all structures and fixed systems and equipment erected or installed upon the Premises, shelves, cabinets, counters, all fencing, grading, landscaping and pavement, all underground wires, cables, pipes, conduits, tanks, drains and drainages; and all other property of every kind and nature which is permanently affixed to the Premises.

Gate when referenced in this Agreement shall mean the contiguous and mutually supporting facilities consisting of hold rooms(s), Aircraft Parking Apron, passenger boarding bridge(s), and appurtenant furnishings within these areas that are necessary for the use thereof. The term Gate as used in this Agreement shall specifically exclude any space leased by AIRLINE in the first (lower) level of the Terminal.

Ground Handling Services shall mean services provided to Air Transportation Companies to include, but not necessarily be limited to, fueling services; loading and unloading of passengers, baggage and freight into Aircraft; providing passenger service agents; assisting in processing of passengers and crews; furnishing and operating ground support equipment in support of Aircraft operations; Aircraft cleaning and lavatory service activities; deicing; and Aircraft maintenance activities.

Hold Rooms or Passenger Hold Rooms shall mean the areas specifically designed and designated for the sole purpose of Airline passenger waiting prior to enplaning.

Improvements shall mean any construction, or addition, alteration or betterment, to real estate new or existing, including structures, paved surfaces and other ancillary and supporting areas.

Joint Use Cost shall mean the Terminal Rental Rate multiplied by the square footage of the Joint Use Premises plus the cost of providing services as may be requested by the AIRLINE or as may be required by the AUTHORITY, if any, less any fees collected by AUTHORITY from Non-Signatory Airlines for the use of Joint Use Premises for any given Fiscal Year.

Joint Use Fee shall mean the fee payable by AIRLINE under this Agreement for use of the Joint Use Premises at the Airport.

Joint Use Formula shall mean the formula used to prorate the Joint Use Cost on the basis of ten percent (10%) of the total annual rental divided equally among all Signatory Airlines. The remaining ninety percent (90%) of the total annual rental shall be apportioned among all Signatory Airlines on the basis of the number of each Signatory Airline's Enplaned Passengers at the Airport to the total number of Enplaned Passengers of all Signatory Airlines at the Airport.

Joint Use Premises shall mean those Terminal areas assigned to two or more Air Transportation Companies, as shown on Exhibit D " attached hereto.

Landing shall mean any landing at the Airport by an Aircraft operated by any Air Transportation Company., but shall not include an unscheduled landing by an Aircraft operated by an Air Transportation Company that returns to the Airport because of weather, mechanical, operational, or other emergency or precautionary reasons.

Landing Fee shall mean the fee payable by AIRLINE under this Agreement for Landings at the Airport.

Landing Fee Rate shall mean that rate, established in Section 5.5, for each one thousand (1,000) pounds of Maximum Gross Landing Weight.

Maximum Gross Landed Weight shall mean the maximum gross certificated landing weight in one thousand pound units for which each Aircraft operated by AIRLINE is certified by the Federal Aviation Administration ("FAA"), or any successor agency thereto.

Monthly Activity Report shall mean the reporting form required to be completed and submitted by AIRLINE to AUTHORITY each month attached hereto as Exhibit E, as may be amended from time to time by the Director upon thirty (30) days prior written notice to AIRLINE. Any modification to this Monthly Activity Report shall automatically become a part of this Agreement, without formal amendment hereto.

Non-Revenue Landing shall mean any Aircraft landing by AIRLINE at Airport for which AIRLINE receives no revenue, and shall include irregular and occasional ferry, test, courtesy, inspection, or other similar flights.

Non-Signatory Airline shall mean any Air Transportation Company operating at the Airport that has entered into a non-signatory agreement with the AUTHORITY.

Normal Wear and Tear shall mean the physical deterioration which occurs resulting from the normal, customary and reasonable operation and use for which the property is intended, without negligence, carelessness, or intentional abuse of the property or Premises.

Operation and Maintenance Expenses (O&M Expenses) shall mean, for any period, all expenses accrued by AUTHORITY in accordance with generally accepted accounting practices for airports of similar characteristics for the operation, maintenance, administration and ordinary current repairs of the Airport System in order to maintain and operate the Airport System in a reasonable and prudent manner.

Operation and Maintenance Reserve Account (O&M Reserve Account) shall mean an account established to pay for extraordinary or unanticipated Operation and Maintenance Expenses to the extent that other funds are not available for such purposes.

Operation and Maintenance Reserve Requirement (O&M Reserve Requirement) shall mean an amount required to maintain a balance of the following percentage of O&M Expenses in each Fiscal Year, net of existing O&M Reserve Account balances and allocated to the Cost Centers on the basis of O&M Expenses:

Fiscal Year 2015: zero percent (0%)
Fiscal Year 2016: zero percent (0%)
Fiscal Year 2017: five percent (5%)
Fiscal Year 2018: ten percent (10%)
Fiscal Year 2019: fifteen percent (15%)
Option Term Fiscal Year 2020: twenty percent (20%)
Option Term Fiscal Year 2021 and thereafter: twenty five percent (25%)

If, in any given Fiscal Year, the AUTHORITY Net Revenue Sharing is insufficient to meet both the Coverage Requirement and Operation and Maintenance Reserve Requirement for that Fiscal Year, any shortfall shall be included in the Airfield Requirement under Section 5.5(a)(v).

Preferential Use Premises shall mean Aircraft Parking Apron(s), hold room(s), ticket counter(s), and passenger boarding bridges, assigned to AIRLINE, as set forth in Section 2.1 and to which AIRLINE shall have preferential use, defined herein as the unrestricted higher and continuous priority over all other users, subject to the provisions of Section 2.2(b) herein. The Director may, with notice appropriate under the circumstances, authorize another Air Transportation Company pursuant to Section 16 to utilize AIRLINE's hold rooms, passenger boarding bridges, and Aircraft Parking Apron when such use does not conflict with AIRLINE's scheduled flight activities, including a period of forty-five (45) minutes after any of AIRLINE's scheduled departure times

and forty-five (45) minutes prior to any of AIRLINE's scheduled arrival times and during AIRLINE's Aircraft parking overnight, or for the scheduled flight activities of an Affiliate(s) approved subleases, or handling agreements.

Premises shall mean those areas leased for use by AIRLINE herein, which are comprised of Exclusive Use, Preferential Use, and Joint Use Premises.

Personal Property shall mean AIRLINE's removable trade fixtures as allowed by this Agreement, furniture, furnishings, draperies, decorations, signs, appliances, equipment, and any other similar items or supplies owned by AIRLINE.

Rate Stabilization Fund shall mean an account established within the flow of funds prescribed in Section 6.3 of this Agreement to offset Signatory Airline Rental and Fee Payments at the AUTHORITY's discretion. Annual deposits to the Rate Stabilization Fund shall not exceed the annual Amortization allocated to the Airfield and the airline's portion of the Terminal Cost Centers. The maximum balance in the Rate Stabilization Fund shall not exceed one million five hundred thousand dollars ($1,500,000).

Rental and Fee Rates shall mean all rentals and fees payable under the terms of this Agreement.

Requesting Transportation Company shall mean an Air Transportation Company desiring to provide new or expanded commercial passenger air transportation service to and from Airport, and which is unable to obtain adequate Aircraft Parking Apron and/or Terminal space from AUTHORITY.

Revenues shall mean income and revenue derived by AUTHORITY in connection with the operation of the Airport System. The term "Revenues" shall not include passenger facility charges, customer facility charges, insurance proceeds, restricted land sale proceeds or any local, state or federal assistance, or any interest earned thereon.

Revenue Landing shall mean an Aircraft landing by AIRLINE at Airport in conjunction with a flight for which AIRLINE makes a charge or for which revenue is derived for the transportation by air of persons, property or mail, but Revenue Landings shall not include any landing of an Aircraft which, after having taken off from Airport and without making a landing at any other airport, returns to land at Airport because of meteorological conditions, mechanical or operating causes, or any other reason of emergency or precaution.

Signatory Airlines shall mean those airlines which provide scheduled commercial passenger air transportation to and from the Airport and which have executed substantially similar agreements to this Agreement, including term, with AUTHORITY for the lease, use, and occupancy of facilities at the Airport, including the lease of at least one (1) holdroom and associated Aircraft Parking Apron.

Term shall mean the express time period during which AIRLINE has rights and obligations to the Premises as established under Section 3 of this Agreement.

Tenant Construction and Alteration Process Manual (TCAP Manual) shall be the guidance document describing acceptable standards for any construction, alteration or improvements made to AIRLINE's Premises. All tenant improvements shall conform to the AUTHORITY's TCAP Manual, which is attached hereto as Exhibit F and incorporated herein by this reference. TCAP Manual may be amended from time to time.

Terminal shall mean the airline terminal building owned and operated by AUTHORITY at Airport, as shown on Exhibit C hereof.

Terminal Rental shall mean the annual rent payable by AIRLINE under this Agreement for the use of the Terminal.

Terminal Rental Rate shall mean the rate, established in Section 5.4, for each square foot of the Terminal.

Terminal Requirement shall mean that requirement established in Section 5.4(a).

Usable Space shall mean those areas in the Terminal that are available for use by Air Transportation Companies or the general public, including, but not limited to, ticket counter, holdroom, offices, operations, baggage make-up, baggage claim, concessions, passenger screening, baggage screening, and public circulation space. Usable Space shall not include mechanical, electrical, plumbing, or other facility support space.

2. PREMISES

2.1 **Premises**

a. **Terminal Space.** AUTHORITY does hereby lease and demise to AIRLINE, and AIRLINE does hereby lease and accept from AUTHORITY, Exclusive Use Premises, Preferential Use Premises, and Joint Use Premises, as set forth on Exhibit D.

AUTHORITY agrees to grant AIRLINE a nonexclusive right to use the Joint Use Premises and Preferential Use Premises for conducting its Air Transportation Business.

b. **Aircraft Parking Apron Space.** AUTHORITY leases to AIRLINE and AIRLINE leases from AUTHORITY space in the Aircraft Parking Apron on a Preferential Use basis and illustrated on Exhibits B and D.

c. **Use of AIRLINE's Aircraft Parking Apron within the Premises.** AIRLINE shall have Preferential Use of the AIRLINE's Aircraft Parking Apron Premises for the loading and unloading of AIRLINE's passenger Aircraft, or the passenger Aircraft of AIRLINE's Affiliate(s) and Air Transportation Companies operating from AIRLINE's Premises under AUTHORITY-approved subleases and ground handling agreements with AIRLINE. AIRLINE's use of said AIRLINE's Aircraft Parking Apron Premises shall be limited to (i)

the loading and unloading of persons, property, cargo, parcels, mail and in-flight food and related supplies on passenger Aircraft, as well as (ii) the parking, refueling, interior cleaning and minor mechanical maintenance of AIRLINE's passenger Aircraft, and the Aircraft of AIRLINE's Affiliate(s) and Air Transportation Companies operating from AIRLINE's Premises under AUTHORITY-approved subleases and ground handling agreements with AIRLINE.

2.2 Use of Premises

AIRLINE shall use the various types of space leased only for such purposes as are typical for that type of space in the sole judgment of AUTHORITY not to be exercised arbitrarily.

a. **AIRLINE's Exclusive Use Premises.** AIRLINE will have exclusive use of that portion of AIRLINE's Premises labeled as airline ticketing office (ATO), baggage storage lockers, and operations space on Exhibit D.

b. **AIRLINE's Preferential Use Premises.** AIRLINE will have preferential use of that portion of AIRLINE's Premises labeled as ticket counter, Aircraft Parking Apron, and holdrooms on Exhibit D. AIRLINE's Preferential Use Premises are subject to reassignment in accordance with Section 16.2 of this Agreement.

c. **Joint Use Premises.** AIRLINE has the right to use the Joint Use Premises, in conjunction with other Air Transportation Companies, labeled as baggage claim, outbound baggage, passenger screening, baggage service offices, and hold baggage screening on Exhibit D.

2.3 Condition of Premises and Airport

AIRLINE expressly acknowledges that it has inspected the Premises, including, but not limited to, all finishes, furniture, fixtures and equipment therein, and accepts the same "As Is" in the condition existing as of the Commencement Date with the exception of those facilities and fixtures that AUTHORITY is required by this Agreement to maintain and repair. The parties acknowledge that the Premises is being newly constructed at the time this Agreement is being negotiated and AIRLINE is responsible to complete its build-out of the Premises in accordance of the TCAP. The Premises is located within the Terminal, which AUTHORITY operates as part of a Part 139 airport subject to FAA regulations and grant assurances. By this Agreement, AIRLINE obtains the right to operate its Air Transportation Business within the limitations created by those FAA regulations, grant assurances and the AUTHORITY's rules and regulations and Standard Operating Procedures.

2.4 Employee Parking

AUTHORITY shall use reasonable efforts to ensure that parking facilities are sufficient for all of AIRLINE's personnel employed on the Airport. Employee parking shall be subject to reasonable rules and regulations of AUTHORITY. AUTHORITY may update these rules and regulations as needed. Use of the employee parking areas is subject to payment of reasonable fees and charges, further described in Section 4.8, Other Fees and Charges.

2.5 Public Address System

AUTHORITY shall provide and maintain a public address system in the Terminal, which AIRLINE and others similarly authorized by AUTHORITY shall have the right to use for flight announcements and paging. Use of the public address system shall be subject to reasonable rules and regulations established by AUTHORITY, as may be amended from time-to-time.

2.6 Reserved from Premises

AUTHORITY expressly reserves from the Premises:

a. **Mineral Rights.** All gas, oil and mineral rights in and under the soil;

b. **Water Rights.** All statutory, exempt, vested, and granted appropriation rights for the use of water, and all rights to request further appropriations for the Premises;

c. **Airspace.** A public right of flight through the airspace above the surface of the Premises. This public right of flight shall include the right to cause or allow in said airspace, any noise inherent in the operation of any Aircraft used for navigation or flight through said airspace or landing at, taking off from, or operation on the Airport. No liability on the part of AUTHORITY or any Tenant shall result from the exercise of this right;

d. **Navigational Aids.** The right to install, maintain and modify and/or permit others to install, maintain and modify on the Premises visual and electronic navigational aids;

e. **Radio/Wireless Communication Systems.** The right to approve or withhold approval of any use of fixed RF Systems for the transmission of radio frequency signals in/on the Premises;

f. **General Provisions.** The right to exercise any and all rights set out in Section 44, General Provisions; and

g. **Entry and Inspection of Premises.** The right of AUTHORITY, its authorized officers, employees, agents, contractors, subcontractors, authorized government agents, or other representatives to enter upon the Premises:

    i. With twenty-four (24) hours advance notice, and accompanied by an AIRLINE representative to inspect at reasonable intervals during regular business hours (or any time without prior notice in case of emergency or lawful investigation) to determine whether AIRLINE has complied, and is complying with the terms and conditions of this Agreement;

    ii. With twenty-four (24) hours' advance notice and accompanied by an AIRLINE representative (or any time without prior notice in case of emergency or reasonably suspected violation), to inspect Premises, facilities, and equipment for compliance with laws, regulations and/or codes of the federal, state or local government, airport rules and regulations and airport standard operating procedures; and

iii. Within thirty (30) calendar days advance notice (or any time without prior notice in case of emergency or critical system repairs) to construct new facilities, or to perform maintenance, repair, or replacement relating to the AUTHORITY's support of the Premises or any facility thereon, as may be required and necessary, but AUTHORITY shall not be obligated to exercise this option.

Provided that exercise by AUTHORITY of any such reserved rights shall be without expense to the AIRLINE and shall not unreasonably or materially interfere with AIRLINE's use of the Premises and shall not delay AIRLINE in the exercise of its rights or the performance of its duties hereunder or increase the costs of such performance.

Any and all rights and privileges not granted to AIRLINE in this Agreement are hereby reserved for and to AUTHORITY.

2.7 Adjustments to AIRLINE Premises.

During the Term of this Agreement, AUTHORITY may re-measure various areas in the Terminal, including those areas located within the Premises, in an effort to more accurately reflect Improvements, additions and modifications to the Terminal. In the event the square footage of the Premises identified herein differs from the Premises square footage determined by such re-measurement, the parties agree to enter into an amendment to this Agreement to modify the Premises description to reflect the actual square footage of the Premises subject to the provisions of this Agreement. If the actual square footage of the Premises is determined to differ from than the square footage of the defined Premises the current fees and charges shall be re-calculated. If, based on such re-measurement, the increase in AIRLINE's monthly fees and charges would exceed five percent (5%), AUTHORITY agrees that the increase in AIRLINE's monthly fees and charges payable hereunder shall be capped at five percent (5%) for the remainder of the current Term. The parties agree that any increase or decrease in the monthly fees and charges payable resulting from re-measurement of the Premises shall not be applied retroactively. The Director may execute an amendment to this Agreement on behalf of AUTHORITY to reflect the adjusted monthly fees and charges.

Notwithstanding the foregoing, the square footage associated with AIRLINE's Gate(s) is equalized among all Gates at the Airport. Remeasurement of AIRLINE's Gate(s) shall not result in any changes in AIRLINE's monthly fees and charges.

2.8 Relocation

AUTHORITY shall have the right after consultation with AIRLINE, at such times as may be reasonable under the circumstances, to close, relocate, reconstruct, change, alter, or modify the Premises or the means of access to the Premises either temporarily or permanently for purposes of maintaining or constructing improvements, modifications, or expansions to the Terminal and/or the Airport; provided, however, that (i) reasonable notice, not less than thirty (30) days, is given to AIRLINE and (ii) reasonably convenient alternative and substantially equivalent Premises and adequate means of access are provided and (iii) AUTHORITY shall pay all costs of such relocation.

2.9 Utilization of Facilities

During periods of operational inconvenience, including but not limited to, weather delays, the temporary non-availability of facilities for maintenance purposes, or Aircraft mechanical delays, and if accommodation at a Common Use Gate(s) is not readily available, AIRLINE shall make all reasonable efforts to accommodate other Air Transportation Company's operations on AIRLINE's Premises in such instances.

3. TERM

3.1 Term

The Term of this Agreement shall begin on the Commencement Date and shall continue until December 31, 2019, unless terminated earlier under other terms of this Agreement.

3.2 Option Term

The Term of this Agreement may be extended by either Party for one, five (5) year renewal option from January 1, 2020 through December 31, 2024 and thereafter by the mutual written agreement of AIRLINE and AUTHORITY.

3.3 Hold Over

In the event that AIRLINE, without request or objection by AUTHORITY, shall continue to occupy its Premises and conduct its AIRLINE operations beyond the Term of this Agreement, such holding over shall not constitute a renewal of this Agreement, but shall be considered a month-to-month tenancy only, incorporating all terms and conditions of this Agreement, unless otherwise agreed to by both parties in writing. In such event, AIRLINE shall be assessed those same rental and fee rates as are applied to Non-Signatory Airlines during such holding over period unless otherwise agreed by AUTHORITY. No such holding over shall be deemed to operate as a renewal or extension of the Term. Such month-to-month tenancy may be terminated by AUTHORITY or AIRLINE by giving thirty (30) days prior written notice of said termination to the other party at any time.

4. RENTS, FEES AND CHARGES

In return for the use of the Premises and the Airport, the rights granted in this Agreement, and the undertakings of AUTHORITY in this Agreement, AIRLINE agrees to pay AUTHORITY during the term of this Agreement, without deduction or set-off, certain rentals and fees as set forth in this Section 4. Estimated Fiscal Year 2015 Rental and Fee Rates are shown in Exhibit G.

4.1 Terminal Rentals

AIRLINE shall pay one-twelfth (1/12) of its annual Terminal Rentals for its Preferential Use Premises and Exclusive Use Premises in the Terminal on the first day of each month in advance without notice. The Terminal Rental Rate per square foot shall be recalculated annually in

accordance with Section 5.4. AIRLINE shall pay a pro rata amount for any partial month possession of the AIRLINE's Premises.

4.2 Joint Use Fees

AIRLINE shall pay one-twelfth (1/12) of its 10% share and estimated 90% share of the Joint Use Fees on the first day of each month in advance without notice. Joint Use Fees shall be recalculated annually in accordance with Section 5.4. AIRLINE shall pay a pro rata amount for any partial month possession of the AIRLINE's Premises. Rentals for the 90% share of the Joint Use Fees shall be estimated each Fiscal Year based on AIRLINE's Enplaned Passengers for the most recent twelve (12) month period.

4.3 Landing Fees

AIRLINE shall pay to AUTHORITY by the fifteenth (15th) day of each calendar month during the Term hereof Landing Fees at the Landing Fee Rate calculated in accordance with Section 5.5 based on the Maximum Gross Landed Weight of each Revenue Landing by AIRLINE at the Airport during the previous calendar month.

4.4 Aircraft Parking Apron Rentals

AIRLINE shall pay one-twelfth (1/12) of its annual Aircraft Parking Apron Rentals on the first day of each month in advance without notice.

4.5 Utility Services

Utility services shall be provided to the AIRLINE as additional charges, which may include but not limited to: phone, data, electricity, gas, water, sewer, and trash disposal service. Payments for utility services used by AIRLINE shall be made directly to the AUTHORITY, utility supplier or service provider, as applicable. If utility service is supplied by the AUTHORITY, then AIRLINE shall pay those costs to AUTHORITY within thirty (30) days after receipt of AUTHORITY'S invoice. AUTHORITY agrees that any such costs invoiced to AIRLINE shall be based upon the uniform rates charged by the AUTHORITY to other Airport users. AIRLINE shall be responsible to pay separately, not as a component of rent.

4.6 Aviation Fuel Storage Facility Charges

AIRLINE shall pay charges as determined by the AUTHORITY for the AIRLINE's pro-rata share of operation, maintenance, upkeep, replacement, permitting, insurance and administration of the Aviation Fuel Storage Facility, which shall include storage tanks, plumbing, piping, valves, meters, filtration systems, monitoring and alarm systems, testing, product supply (input and off-load) and user delivery (output/loading racks) systems, pavements, security, lighting, electrical, containment, oil/water separators and costs of lawful compliance programs. AIRLINE's pro-rata share of gallons shall be determined based on the gallons used by AIRLINE compared to the gallons passed through the Facility. Facility charges shall be assessed by and paid to the AUTHORITY as a value per gallon of fuel product passing through the facility and to the AIRLINE. Such charges shall be based upon the AUTHORITY's actual costs as described herein.

4.7 Schedule of Fees and Charges

AUTHORITY may assess fees and charges to AIRLINE according to rates established by AUTHORITY in AUTHORITY's Schedule of Fees and Charges. Such Schedule may be amended from time-to-time at the discretion of the AUTHORITY.

4.8 Other Fees and Charges

AUTHORITY shall provide to AIRLINE and charge to AIRLINE for services, such as: badges, ramp permits, employee parking spaces and maintenance services or repairs requested by AIRLINE. AIRLINE shall be responsible to pay these charges separately and not as a component of rent. AIRLINE shall pay all charges other than rent within thirty (30) days after receipt.

5. ADJUSTMENT OF RATES FOR RENTS, FEES AND CHARGES

5.1 Effective Date of Adjustments

The Terminal Rental Rates, the Aircraft Parking Apron Rental Rate, the Joint Use Fees, and the Landing Fee Rate shall be adjusted on the Commencement Date during Fiscal Year 2015. For Fiscal Year 2016 onwards, such rates and fees shall be effective on the first day of the Fiscal Year to which they apply.

5.2 AUTHORITY Records

AUTHORITY shall maintain (and make reasonably available for review and inspection by AIRLINE) accounting records that document the following items for each Cost Center:

a. Revenues

b. Operation and Maintenance Expenses

c. Documented expenses of AUTHORITY incurred for Capital Improvements

d. AUTHORITY shall further maintain records evidencing the allocation of Debt Service based on the use of Bond proceeds or other funding sources to each Cost Center. Included in the allocation to each Cost Center shall be its proportionate share of any Bond issuance expenses and capitalized interest.

5.3 Reports

a. On or before the first day of the fourth (4th) month prior to the start of each Fiscal Year, AIRLINE shall submit to AUTHORITY a written estimate of the estimated total Maximum Gross Landed Weight for AIRLINE for the succeeding Fiscal Year. If no estimate is received, the reasonable estimate of AUTHORITY may be used.

b. Forty-five (45) days prior to the start of the Fiscal Year, AUTHORITY shall submit to AIRLINE at a meeting between the various airlines and AUTHORITY, AUTHORITY's proposed Annual Budget for the succeeding Fiscal Year, which shall include:

   i. Estimated Operation and Maintenance Expenses

   ii. Debt Service or other debt installments, if any, and any other deposits required for any Bonds

   iii. A preliminary calculation of the Terminal Rental Rate, Landing Fee Rate, and Joint Use Fees for the succeeding Fiscal Year, calculated in accordance with Sections 5.4 and 5.5.

c. Each year AUTHORITY shall adopt an Annual Budget for the Airport and establish Terminal Rental Rates, an Aircraft Parking Apron Rental Rate, Joint Use Fees, and a Landing Fee Rate. Such budget and rates shall take into account AUTHORITY's discussions with AIRLINE. AUTHORITY shall give consideration to any suggestions, comments, or requests of Signatory Airlines, but shall retain the right for AUTHORITY to make all final decisions with respect to the Annual Budget and fees.

d. If, for any reason, the Annual Budget has not been adopted as of the first day of any Fiscal Year, the Rental and Fee Rates in effect during the preceding Fiscal Year shall continue in effect until a new Annual Budget has been adopted by AUTHORITY and AUTHORITY has calculated the Rental and Fee Rates in accordance therewith. The new Rental and Fee Rates shall then be made effective retroactive to the first day of such Fiscal Year.

5.4 Calculation of Terminal Rental Rate and Joint Use Fees

During each Fiscal Year of the Term hereof, the Terminal Rental Rate shall be adjusted annually in the following manner. Whenever the adjustment calculation involves an estimate, the reasonable estimate of AUTHORITY shall be used.

a. Each year AUTHORITY shall calculate the Terminal Requirement for the succeeding Fiscal Year by totaling the following amounts, as set forth in AUTHORITY's Annual Budget:

   i. The total of direct and allocated indirect estimated Operation and Maintenance Expenses allocable to the Terminal Cost Center less the cost of providing services as may be requested by the AIRLINE or as may be required by the AUTHORITY, if any, as determined and documented by the AUTHORITY;

   ii. The total portion of the Annual Debt Service, net of Passenger Facility Charges, if any, allocable to the Terminal Cost Center;

iii. The estimated amount, if any, for required deposits to funds and accounts allocable to the Terminal Cost Center, including, but not limited to the Operation and Maintenance Reserve Requirement;

iv. The annual Amortization of the total amount of any expenditures made by AUTHORITY for Capital Improvements in the Terminal Cost Center.

b. The total Net Terminal Requirement is calculated by crediting amounts totaled pursuant to Section 5.4(a) by withdrawals from the Rate Stabilization Fund for the Terminal Requirement, if any.

c. The Terminal Rental Rate shall then be calculated by dividing the Net Terminal Requirement computed pursuant to Section5.4(b) by the total Usable Space. An example of the methodology used to calculate Terminal Rental Rates is provided in Exhibit G estimated for Fiscal Year 2015.

d. The Joint Use Fees shall be collectively equal to (i) the Terminal Rental Rate computed pursuant to Section 5.4(c) times the square footage of Joint Use Premises, plus (ii) the cost of providing services as may be requested by the AIRLINE or as may be required by the AUTHORITY, if any, as determined and documented by the AUTHORITY less (iii) any fees collected by AUTHORITY from Non-Signatory Airlines for use of the Joint Use Premises. Joint Use Fees shall be allocated according to the Joint Use Formula.

5.5 Calculation of Landing Fee Rate

During each Fiscal Year of the Term hereof, the Landing Fee Rate shall be adjusted annually in the following manner. Whenever the adjustment involves an estimate, the estimate of AUTHORITY shall be used.

a. Each year AUTHORITY shall calculate the total Airfield Requirement for the succeeding Fiscal Year by totaling the following amounts, as set forth in AUTHORITY's Annual Budget:

i. The total of the direct and allocated indirect estimated Operation and Maintenance Expenses allocable to the Airfield Cost Center;

ii. The total portion of the Debt Service, net of Passenger Facility Charges, if any, allocable to the Airfield Cost Center;

iii. The estimated amount, if any, for required deposits to funds and accounts allocable to the Airfield Cost Center, including, but not limited to the Operation and Maintenance Reserve Requirement;

iv. The annual Amortization of the total amount of any expenditures made by AUTHORITY for Capital Improvements in the Airfield Cost Center; and

v. Any supplemental amounts needed, if any, to meet the Coverage Requirement or Operation and Maintenance Reserve Requirement for the Airport System.

b. The total Net Airfield Requirement is calculated by crediting amounts totaled pursuant to Section 5.5(a) by: (i) Aircraft Parking Apron Rentals, (ii) Revenues allocable to the Airfield Cost Center, except Signatory Airline Landing Fees, (iii) withdrawals from the Rate Stabilization Fund for the Airfield Requirement, if any, and (iv) Airline Net Revenue Sharing for that Fiscal Year, if any.

c. The Landing Fee Rate for Signatory Airlines for the succeeding Fiscal Year shall be calculated by dividing the Net Airfield Requirement computed pursuant to Section 5.5(b) by the composite estimate of the total Maximum Gross Landed Weight (MGLW) of all Signatory Airlines at the Airport for the succeeding Fiscal Year as projected by AUTHORITY using, in part, the estimates provided by AIRLINE pursuant to Section 5.3(a). An example of the methodology used to calculate Landing Fee Rates per 1,000 pounds of MGLW is provided in Exhibit G estimated for Fiscal Year 2015.

5.6 Aircraft Parking Apron Rental Rate

During each Fiscal Year of the Term hereof, the Aircraft Parking Apron Rental Rate shall be equal to fourteen thousand four hundred dollars ($14,400) for each Aircraft Parking Apron in AIRLINE's Premises.

5.7 Mid-year Adjustments

If total Landing Fees, Terminal Rentals, and Joint Use Fees for any quarter vary by more than five percent (5%) from the projected total Landing Fees, Terminal Rentals, and Joint Use Fees for such quarter, the Landing Fee Rate, Terminal Rental Rate, and Joint Use Fees shall, if deemed necessary by AUTHORITY, be adjusted for the balance of such Fiscal Year. AUTHORITY will notify the Signatory Airlines at least thirty (30) days prior to the implementation of a mid-year adjustment of the Terminal Rental Rate, Joint Use Fees, or Landing Fee Rate.

5.8 Budget versus Actual Reconciliation

Within ninety (90) days after the completion of AUTHORITY's annual audited financial statements, AUTHORITY shall reconcile Rental and Fee Payments in the following manner:

a. **Terminal Rentals for Exclusive Use and Preferential Use Space.** AUTHORITY shall determine the Terminal Rental Rate per square foot using audited financial results and Usable Space for the preceding Fiscal Year. The Terminal Rental Rate calculated based on the Annual Budget shall be compared to the Terminal Rental Rate calculated based on actual financial results. Any credit or deficit in the Terminal Rental Rate per square foot shall be allocated to AIRLINE per square foot of its Exclusive Use and Preferential Use premises.

b. **Joint Use Fees.** Using the Terminal Rental Rate calculated in Section 5.8(a) and the actual cost of providing services as may be requested by the AIRLINE or as may be required by the AUTHORITY, if any, and any fees collected by AUTHORITY from Non-Signatory

Airlines for use of the Joint Use Premises, AUTHORITY shall determine the Joint Use Cost. The Joint Use Cost shall be allocated among the Signatory Airlines on the basis of the Joint Use Formula. The allocated Joint Use Cost shall then be compared to the Joint Use Fees received from AIRLINE.

c. **Landing Fees.** Using audited financial results for the preceding Fiscal Year, AUTHORITY shall determine the actual Net Airfield Requirement. This amount shall be compared to the Landing Fees paid by Signatory Airlines during the preceding Fiscal Year. Any deficit or credit in Landing Fees shall be allocated based on AIRLINE's share of the Maximum Gross Landed Weight of Signatory Airlines in the preceding Fiscal Year.

d. Any credit or deficit in the Terminal Rentals, Landing Fees, and Joint Use Fees shall be calculated in aggregate and, as applicable, either AIRLINE shall pay AUTHORITY directly in a lump sum or AUTHORITY shall credit AIRLINE's invoices. The application of any year-end credit, determined in accordance with this Section 5.8 shall be withheld to AIRLINE if AIRLINE has an undisputed outstanding past due balance.

e. While the Commencement Date of this Agreement is during Fiscal Year 2015, the budget versus actual reconciliation for Fiscal Year 2015 shall be done for the entire Fiscal Year.

6. FLOW OF FUNDS

6.1 Internal Revenue Code of 1986

AIRLINE understands that the City of Wichita, Kansas has and will be the issuer of Bonds to fund projects at the Airport. Bonds that may be issued will bear the interest which is intended to be excludable from gross income of the holders for Federal income tax purposes under the Code. AIRLINE agrees that it will not act, or fail to act (and will immediately cease and desist from any action, or failure to act) with respect to the use of its AIRLINE's Premises, if the act or failure to act may cause the City of Wichita, Kansas to be in noncompliance with the provisions of the Code, and AIRLINE will not take or persist in any action or omission which may cause the interest on such Bonds to be includable in the gross income of the holders thereof for Federal income tax purposes.

6.2 SEC Rule 15c2-12

Upon AUTHORITY's written request, AIRLINE shall provide AUTHORITY with such information with respect to AIRLINE as AUTHORITY or the City of Wichita, Kansas may require in writing in order for AUTHORITY or the City of Wichita, Kansas to comply with its continuing disclosure obligations under Securities and Exchange Commission Rule 15c2-12, as it may be amended from time to time. Satisfaction of such obligation may be met by AIRLINE referring AUTHORITY to the SEC's website, where such requested information about AIRLINE may be publicly-available. To the extent that AIRLINE is an "Obligated Party" with respect to the Bonds as per Securities and Exchange Commission Rule 15c2-12, AIRLINE agrees to execute the Continuing Disclosure Agreement incident to such financing.

6.3 **Flow of Funds and Application of Airport System Revenues**

The application of Airport System Revenues (including Airline Net Revenue Sharing), excluding Passenger Facility Charge and Customer Facility Charge revenues, shall be the following:

a. Payment of Operation and Maintenance Expenses,

b. Payment of Debt Service on any outstanding obligations for that Fiscal Year, offset by Passenger Facility Charge and Customer Facility Charge revenues pledged to the payment of Debt Service for that Fiscal Year,

c. Amortization allocable to the Airfield and the airline's portion of the Terminal Cost Centers in such Fiscal Year shall be deposited into the Rate Stabilization Fund, up to a maximum balance of one million five hundred thousand dollars ($1,500,000),

d. Deposit of up to one million dollars ($1,000,000) into the Authority Net Revenue Sharing Fund,

e. Any Airport System Revenues remaining after the Authority Net Revenue Sharing reaches one million dollars ($1,000,000) are to be divided as follows: sixty percent (60%) to the Airline Net Revenue Sharing and forty percent (40%) to the Authority Net Revenue Sharing.

7. PAYMENT TO AUTHORITY

AIRLINE shall make all payments to the Wichita Airport Authority and in a form acceptable to AUTHORITY. ACH direct deposit is preferred. Bank account and routing information is available upon request. Payments made by check shall be delivered or mailed to:

Wichita Airport Authority
2173 Air Cargo Road
Wichita, Kansas 67209

or such other address as designated in writing.

In the event AIRLINE fails to make payment within ten (10) calendar days of the dates due as set forth in this Agreement, then AUTHORITY may charge AIRLINE a service charge at an annual interest rate equal to twelve percent (12%), such charge to accrue from the date upon which such payment was due and until paid. AIRLINE is responsible to AUTHORITY for reasonable attorneys' and administrative fees and third party collection agency fees incurred by AUTHORITY in attempting to collect payment.

8. ACTIVITY REPORTS SUPPLIED BY AIRLINE

Within five (5) working days after the end of each month, AIRLINE shall file with AUTHORITY a Monthly Activity Report, shown on the attached Exhibit E.

Within five (5) working days after the end of each month, AIRLINE shall file with AUTHORITY separate reports for other aircraft operators handled by AIRLINE not having an agreement with the AUTHORITY with reporting obligations.

If AIRLINE fails to submit the reports required by this Section, AUTHORITY shall base AIRLINE's current rentals, fees and charges upon the most recent data transmitted by AIRLINE to AUTHORITY, with such charges to be adjusted as necessary after submission of the missing activity report. Rentals, fees and charges based upon estimates shall be binding on AIRLINE if not reconciled by use of actual data within three (3) months of any report's due date.

The acceptance by AUTHORITY of any AIRLINE payment shall not preclude AUTHORITY from verifying the accuracy of AIRLINE's reports on which AIRLINE's rentals, fees and charges are based, and shall not be construed as a waiver of interest penalty due, if any. AUTHORITY is not bound by prior estimates used to calculate rentals, fees and charges if examination or audit demonstrates that such estimates fell short of actual data calculations. Any shortfall determined by AUTHORITY examination of AIRLINE's records shall be paid in full within thirty (30) days after receipt of AUTHORITY's invoice.

9. SECURITY DEPOSIT

To provide security for the rentals, fees, and charges due hereunder, AIRLINE shall comply with either of the following two options within fourteen (14) days following the execution of this Agreement:

a. Post with the AUTHORITY a surety bond, to be maintained throughout the term hereof. Such bond shall be issued by a sound indemnity company and shall be in a form and content satisfactory to AUTHORITY.

b. Deliver to AUTHORITY an irrevocable letter of credit drawn in favor of AUTHORITY upon a bank satisfactory to AUTHORITY. This irrevocable letter of credit shall be kept in force throughout the term of this Agreement and shall contain terms and conditions reasonably satisfactory to AUTHORITY. AUTHORITY shall promptly return any such irrevocable letter of credit to AIRLINE after the termination or expiration of this Agreement.

The security instrument selected by AIRLINE shall be conditioned on the timely and complete payment of all rentals, fees and charges during the Term of this Agreement. These charges and fees shall be payable within thirty (30) days after receipt of AUTHORITY's invoice.

Whichever option is selected, the security for payments shall be in an amount equal to two months' rentals for Exclusive Use Premises and Preferential Use Premises, plus estimated landing fees for the same period, all as reasonably estimated by the Director. Security for payment shall also reflect the estimated landing fees for the AIRLINE's Affiliate(s).

10. PASSENGER FACILITY CHARGES

AUTHORITY shall have the right to assess airline passengers a Passenger Facility Charge in accordance with the requirements of 14 CFR Part 158. AIRLINE shall collect on behalf of, and remit to AUTHORITY any such Passenger Facility Charge revenue in accordance with the requirements of 14 CFR Part 158. Any Passenger Facility Charge revenue collected by AIRLINE shall, pending remittance to AUTHORITY, be held in trust for the benefit of AUTHORITY. AUTHORITY shall have the right to use all such Passenger Facility Charge revenue collected in any lawful manner. As of the date of this Agreement, the PFC is $4.50.

AIRLINE and AUTHORITY shall be bound by and shall observe all of the provisions of 14 CFR Part 158 as they apply to either or both parties.

11. AUDIT

AIRLINE shall maintain comprehensive records accurately recording the total number of Revenue and Non-Revenue Landings at the Airport, the Maximum Gross Landed Weight of each Aircraft, the total number of Enplaned Passengers and Deplaned Passengers, and all other traffic and activity statistics that AUTHORITY requires. Such records shall be available in electronic format to AUTHORITY for a period of three (3) years after occurrence of the activities reported. All records made available shall be certified by an officer of AIRLINE as accurate and complete.

The Director or a duly authorized representative may examine any records relating to activity at the Airport during all reasonable business hours, at a place at the Airport agreed to between AIRLINE and AUTHORITY. Upon AUTHORITY's written request for examination of such records, AIRLINE shall produce them to AUTHORITY within ten (10) Business Days or pay all reasonable transportation, food, and lodging expenses, for AUTHORITY's auditor(s) to perform the audit outside of the Airport.

The initial cost of an audit outside of the Airport, shall be borne by AUTHORITY; with the exception of the auditor(s) transportation, food and lodging expenses. However, that the full cost of the audit shall be borne by AIRLINE if the audit reveals any of the following conditions:

a. Underpayment of more than ten percent (10%) of the fees and charges due hereunder, unless such underpayment is the result of a demonstrable miscalculation by AUTHORITY; or

b. Failure to maintain accurate and complete records and supportive source documentation required in this Section; or

c. Failure to file Monthly Activity Reports during four (4) or more months of any consecutive eighteen (18) month period.

Any underpayment of amounts due AUTHORITY disclosed in an audit conducted pursuant to this Section shall accrue including interest of twelve percent (12%) annual percentage rate computed from the original due date of each such amount due. The full amount due plus interest and audit fees shall be paid to AUTHORITY within thirty (30) days from receipt of AUTHORITY's invoice. Such payment by AIRLINE shall not abrogate AIRLINE's right to contest the validity of said underpayments. AUTHORITY shall credit to AIRLINE valid overpayments made by AIRLINE other than those made binding under Section 10 due to delinquent reports.

12. SIGNATORY AIRLINE AFFILIATE(S)

12.1 Notification

AIRLINE shall provide AUTHORITY with a completed Exhibit A, attached hereto, for each Affiliate active as of the effective date of this Agreement, subsequently AIRLINE shall provide an updated Exhibit A thirty (30) days prior to AIRLINE designating a new Affiliate, which designation is subject to AUTHORITY approval.

12.2 Fees

Affiliate(s) shall be charged the Signatory Airline Landing Fee Rate. AIRLINE and any Affiliate(s) shall be counted as one entity for the purposes of computing the Joint Use Formula. AIRLINE is exempt from any Ground Handling Services fees related to its AUTHORITY-approved Affiliate(s).

12.3 Payments

An Affiliate shall be primarily liable for the payment of Landing Fees and other fees incurred at the Airport; provided, however, that AIRLINE shall be secondarily liable as a guarantor for all unpaid fees or charges incurred by such Affiliate while such Affiliate operates at the Airport.

AIRLINE may elect to pay an Affiliate's rentals, fees, and charges. However, if an Air Transportation Company is designated as an Affiliate of more than one Signatory Airline, the Signatory Airline shall not have the option to pay a portion of the Affiliate's rentals, fees and charges or to report partial statistics and activities on behalf of the Affiliate unless otherwise agreed to by AUTHORITY.

12.4 Facility Utilization

In determining AIRLINE's utilization of facilities pursuant to Section 16.2, AUTHORITY shall include the activities of the Affiliate(s) in AIRLINE's use calculations. If an Air Transportation

Company is designated as an Affiliate of more than one Signatory Airline, AIRLINE may only include in its use calculations the Aircraft departures conducted from AIRLINE's Premises.

13. USE OF AIRPORT AND RELATED FACILITIES

13.1 Use of the Airport

Subject to the terms and conditions of this Agreement, AIRLINE shall have the nonexclusive right to use the Airport for the conduct of AIRLINE's Air Transportation Business at the Airport in common with other Air Transportation Companies operating at the Airport, which includes the nonexclusive right to: (1) use the Airport's AOA; (2) the use of the public common areas within the Terminal; and (3) the use of all other facilities and Improvements that have been provided for common use at the Airport. The rights provided for herein shall be subject to reasonable and nondiscriminatory rules and regulations established by the Department, as may be amended from time-to-time, and subject to payment of all applicable fees and charges.

AIRLINE, its Affiliates, subsidiaries, partners, employees, agents, representatives, contractors, and subcontractors, shall not transact or otherwise engage in any other activities, business, and/or services on or from the Premises, except as described in this Agreement, unless such is provided by a separate written approval, or amendment to this Agreement, and subject to approval by AUTHORITY.

13.2 Equipment

AIRLINE acknowledges that equipment and furnishings owned or acquired by AUTHORITY for use by AIRLINE, shall remain the property and under the control of AUTHORITY. AUTHORITY shall provide the following equipment and furnishings in, attached to or adjacent to the Terminal for AIRLINE's nonexclusive use to provide the services of its Air Transportation Business:

a. One (1) passenger boarding bridge attached to each of AIRLINE's holdroom(s), including auxiliary conditioned air and power source;

b. Disabled passenger boarding equipment;

c. Conveyor systems and devices for outbound baggage and baggage claim activities;

d. Electronic Visual Information Display System (EVIDS); and

e. Holdroom finishes and furnishings, including gate counter shell, gate backwall, podium, and chairs, but excluding any other equipment or furnishings required by AIRLINE for its operations hereunder such as counter and podium inserts.

13.3 **Equipment Training**

AIRLINE, its employees or designated and authorized agents or contractors may operate AUTHORITY owned facilities and equipment subject to the rules and regulations and Standard Operating Procedures issued by the AUTHORITY, or as may be revised or amended from time-to-time. AIRLINE, its employees or designated and authorized agents or contractors shall receive training from the AUTHORITY in the correct operation and use of AUTHORITY owned facilities and equipment. AIRLINE agrees that only its employees or designated and authorized agents or contractors who have received specific AUTHORITY provided or approved training, and demonstrated competency in their use and operation shall be permitted to operate such facilities and equipment.

AIRLINE, or its designated and authorized agents or contractors requiring the use and operation of AUTHORITY owned facilities and equipment shall request training from the AUTHORITY, and AUTHORITY shall provide such training upon request. Upon successful completion of training, the AUTHORITY shall grant access and authorization for the AIRLINE employee, agent or contractor.

The AUTHORITY reserves the sole right to determine if facility and equipment training is to be provided directly by the AUTHORITY, or if authorized employees, agents or contractors of the AIRLINE will be trained and designated as approved trainers.

Training and authorization shall be recorded and maintained by both the AIRLINE and the AUTHORITY. The AUTHORITY reserves the right to temporarily suspend, pending completion of re-training, or permanently revoke access and use privileges to any AIRLINE employee, agent or contractor found to be in violation of rules and regulations or Standard Operating Procedures established for the operation and use of AUTHORITY owned facilities and equipment.

AIRLINE, or its employees or designated and authorized agents or contractors shall promptly notify AUTHORITY of any facility or equipment malfunctions, discrepancies or safety hazards it observes.

13.4 **Aviation Fuel Storage Facilities**

AIRLINE shall have the right to use the Aviation Fuel Storage Facilities owned by the AUTHORITY. This right is subject to (i) reasonable rules and regulations established by the Director; (ii) the payment of charges for such use of the facility as set forth in Section 4 of this Agreement; and (iii) the terms of agreements between the AUTHORITY and any agent operating the AUTHORITY's facilities.

13.5 **Entry and Exit Rights**

AIRLINE shall have the right of entry and exit on Airport, in common with other authorized users of Airport. This use must comply with the AUTHORITY's rules and regulations. AIRLINE may exercise these rights for the benefit of its employees, customers, passengers, and business associates. This right of entry and exit is granted only the activities related to AIRLINE'S approved activities. AIRLINE shall not interfere with the equal rights of and access provided to

other tenants on the Airport. This right is subject to federal, state and local security and safety requirements and standards. As required by Kansas state statute, the Premises shall be used and occupied for aviation purposes or purposes incidental or related thereto.

13.6 Other Airport Tenants

AIRLINE recognizes that other tenants may occupy other portions of Airport, and that all tenants have the right to use public roadways, streets, ramps, taxiways, runways, access gates, lighting, beacons, navigational aids, or other conveniences for aeronautical operations, and these common facilities are not a part of AIRLINE's Premises; and AIRLINE shall conduct its operations in such a manner as to not impede access by others to these common facilities, nor in any other way interfere with, nor disrupt the business of other tenants or the quiet enjoyment of their leasehold interests at the Airport.

13.7 Quiet Enjoyment

AUTHORITY agrees that, upon payment of the rentals, fees, and charges and performance of the covenants and agreements on the part of AIRLINE to be performed hereunder, AIRLINE shall peaceably have and enjoy the Premises and all rights, licenses, services, and privileges of the Airport and its appurtenances granted herein.

AIRLINE recognizes that this right of quiet enjoyment and unimpeded access extends to all tenants equally. No tenant has the right to overhang or otherwise invade by vegetation, equipment, Improvements, any part of an Aircraft, or other means the leasehold premises of any other tenant. This limitation includes the vertical plane commencing at the property lease line and all areas therein. This prohibition applies to both permanent and transitory invasions. The sole exception to this provision shall be for the navigational easement, described in the Airspace and Easement for Flight provisions of Section 44 General Provisions, granted to airborne aircraft.

13.8 Other Parties

AUTHORITY reserves the right to grant and/or permit other parties the right to use any portion of Airport, except AIRLINE's Exclusive Use Premises, for any permitted purpose and upon any fair and non-discriminatory terms established by the AUTHORITY.

14. AIRLINE OBLIGATIONS, RIGHTS AND PRIVILEGES

AIRLINE may, on behalf of any other Air Transportation Company, exercise any of the rights granted AIRLINE herein, so long as AIRLINE is concurrently exercising those same rights in the operation of AIRLINE's own Air Transportation Business at the Airport.

AIRLINE shall have the right, in addition to all rights granted elsewhere in this Agreement, to use areas of Airport as designated in this Agreement for the following purposes:

a. The operation of its Air Transportation Business including all activities reasonably necessary to such operations;

b. The landing, taking off, flying over, taxiing, towing, parking, loading and unloading, conditioning and servicing of Aircraft of AIRLINE;

c. The extended parking, servicing, loading or unloading, storage or maintenance of AIRLINE's Aircraft, subject to availability of space approved by AUTHORITY and to such reasonable charges and regulations as AUTHORITY may determine for areas not part of Premises;

d. The sale of air transportation tickets and services, the processing of passengers and their baggage for air travel; and

e. The sale, handling, and providing of mail, freight, and express services.

The rights and privileges granted to AIRLINE pursuant to this Section may be exercised on behalf of AIRLINE by its Affiliates and other Signatory Airlines or contractors authorized by AUTHORITY to provide such services at the Airport. Exercise of these rights and privileges by any entity other than AIRLINE is subject to the prior written approval of AUTHORITY and further subject to all applicable laws, rules, regulations and fees and charges.

14.1 **Training**

AIRLINE shall have the right to conduct the training at Airport of AIRLINE personnel and the testing of Aircraft and other equipment used on the Airport by the Air Transportation Company. This training and testing must be incidental to the use of Airport in the operation by AIRLINE. Flight training is not allowed between the hours of 10:00 p.m. and 7:00 a.m., and will not unreasonably interfere with the use of Airport by others. In the event the number of training and testing flights by AIRLINE exceeds ten percent (10%) of Revenue Landings by AIRLINE in any single calendar month, then AIRLINE shall pay for such excess flights Landing Fees for that month at current rates for all flights exceeding the ten percent (10%) Revenue Landing allowance.

14.2 **Professional Operations**

AIRLINE shall: (i) comply with applicable fire codes and regulations, (ii) accurately and timely input flight information into flight information displays and baggage information displays, (iii) use commercially reasonable efforts to notify AUTHORITY at least thirty days (30) in advance of planned schedule changes, including but not limited to equipment changes, flight times, and number of flights, (iv) comply with TSA regulations regarding inbound baggage, and (v) notify AUTHORITY of disruptions and operational or equipment changes that may materially impact AUTHORITY.

14.3 **Non-Disturbance and Conduct of Employees**

AIRLINE shall exercise reasonable control over the conduct, demeanor and appearance of its employees, agent, representatives, contractors, suppliers and vendors in an orderly and proper manner and in accordance with the AUTHORITY's rules and regulations and Airport Security Program but only to the extent permitted by law or any applicable collective bargaining agreements or applicable contracts.

14.4 Sale of Equipment and Supplies

AIRLINE shall have the right to sell, dispose, or exchange its Aircraft, engines, accessories, gasoline, oil, grease, lubricants, fuel and other equipment, or supplies, subject to any limitations contained herein. AIRLINE shall not conduct a separate business at the Airport, but shall only perform such functions as are incidental to the operation of its Air Transportation Business. AIRLINE shall not sell aviation fuels or propellants except (i) to a wholly owned subsidiary company, parent company, or a successor company; (ii) for use in Aircraft of others which are being used solely in the operations of AIRLINE; or (iii) to others when a comparable grade and type of fuel desired by others is not available at Airport except from AIRLINE.

14.5 Purchase of Supplies or Services

AIRLINE shall purchase supplies or services from persons or companies subject to the AUTHORITY's right to require said providers to secure a permit to conduct such commercial activity at the Airport, pay the required fees, and abide by all reasonable rules and regulations established by AUTHORITY. No discriminatory limitations or restrictions shall be imposed by AUTHORITY that interfere with such purchases. However, nothing in this Agreement shall be construed to permit AIRLINE to store fuels at the Airport. The granting of the right to store fuels shall be subject to the execution of a separate agreement between AIRLINE and AUTHORITY.

14.6 Off-Gate Service, Repair and Storage

AIRLINE shall only engage in the servicing, maintenance and repair, remote "off-gate" overnight, and extended duration storage of AIRLINE's Aircraft in areas on the Airport designated by AUTHORITY for such purposes. Use of the areas shall be subject to availability and to payment of applicable fees and charges established for their use.

14.7 Loading and Unloading

AIRLINE may load and unload persons, property, cargo and mail by motor vehicles or other means of conveyance as AIRLINE may desire in the operation of its Air Transportation Business, at locations designated by AUTHORITY. AIRLINE may designate the particular carrier or carriers which are legally authorized to conduct such services to, from, and the Premises on the Airport. However, AUTHORITY reserves the right to require such carrier or carriers to secure a permit from AUTHORITY to conduct such activity at Airport and to abide by all reasonable rules and regulations established by AUTHORITY.

14.8 Signs

At AIRLINE's sole cost and expense, AIRLINE may install on the walls behind ticket counters leased by AIRLINE, identifying and company logo signs customarily installed by AIRLINE in such areas at comparable airport facilities. All such signs of whatever number, size, design, color, nature or location shall require the written approval of Director, not to be unreasonably withheld prior to their installation. Signs of any type may not be attached or affixed in any fashion to the front of ticket counters or upon glass surfaces. The general type and design of such signs shall be harmonious and in keeping with the pattern and decor of the Terminal areas and shall conform to the TCAP Manual. Installation of such signs shall not damage walls, and wall penetrations are subject to the prior coordination and approval of the AUTHORITY.

AIRLINE shall not erect, install, operate, nor cause or permit to be erected, installed, or operated upon any non-leased premises of the Airport, any signs, banners, branding or other similar contrivances for its own business, or the business of others without the AUTHORITY's prior written approval. This provision shall not have the effect of limiting or restricting AIRLINE's right to enter into an agreement with AUTHORITY'S authorized and permitted advertising contractor for the display of informational, marketing or advertising media at approved designated locations on Airport.

14.9 **Communications**

AIRLINE may install, maintain and operate such radio, communication, computer, meteorological and aerial navigation equipment and facilities in, on and about the Premises as may be reasonably necessary in the opinion of AIRLINE for operation of its Air Transportation Business. The location and installation of such equipment and facilities shall require the prior written approval of Director. The placement and type of installations which may be authorized by the Director shall not interfere with air navigational aids, frequencies or signals, create an airspace obstruction hazard to air navigation, void/nullify roofing or other warranties, or interfere with similar rights granted to other tenants or governmental agencies. The Director may require immediate removal, relocation, or modification at the sole cost of AIRLINE to eliminate such interference or obstruction.

AUTHORITY will grant such rights of way as may reasonably be required by AIRLINE for communications, computer equipment, telephone, power and other transmission lines in and between the Premises of the Terminal and other areas of Airport under exclusive control through a separate agreement. The location of and changes for such rights of way shall be designated by Director and may be subject to rates and charges.

14.10 **In-Flight Food and Beverage Preparation**

Subject to any restrictions in AUTHORITY's existing agreement(s) with its food and beverage service provider(s), the right to prepare and package food and beverages to be consumed on aircraft operated by AIRLINE.

14.11 **Other Rights.**

AIRLINE, its affiliated entities, subsidiaries, partners, employees, agents, representatives, contractors, and subcontractors, shall not transact or otherwise engage in any other activities, business, and/or services on or from the Premises, except as described in this Agreement, unless such is provided by a separate written approval, or amendment to this Agreement, and subject to approval by AUTHORITY.

14.12 **Right to Charge Fees**

AUTHORITY expressly reserves the right to assess and collect reasonable fees from third parties operating at the Airport and providing commercial services to AIRLINE including, but not limited to, in-flight catering, vending, ground transportation, ground equipment maintenance and service, aircraft maintenance and service, fueling, aircraft deicing/anti-icing, aircraft ground handling,

baggage delivery, wheelchair services, curbside check-in, and other services provided to AIRLINE.

15. EXCLUSIONS AND RESERVATIONS

15.1 Advertising

AUTHORITY reserves the right to install advertising and revenue generating devices, including vending machines, in Joint Use Premises. Such installations shall not unreasonably interfere with AIRLINE's operations or substantially diminish the square footage contained in Premises.

15.2 Capacity and Capability

Director may prohibit the use of the AOA and any paved surface thereon by any Aircraft operated or controlled by AIRLINE which exceeds any design strength, capacity or limitations of the surface.

15.3 Disabled Aircraft

AIRLINE shall promptly remove its disabled Aircraft from the AOA and Terminal Aircraft Parking Aprons as soon as proper clearance is obtained from the appropriate governmental authorities, if applicable. AIRLINE shall then place such disabled aircraft in a storage area designated by AUTHORITY on the Airport. In the event AIRLINE fails to remove its disabled aircraft as expeditiously as possible under the circumstances, AUTHORITY may cause the removal and storage of such aircraft. AIRLINE shall only store disabled aircraft in areas on the Airport designated by AUTHORITY for storage of such aircraft and for such length of time as authorized by AUTHORITY. In the event AIRLINE fails to remove its disabled aircraft from a designated storage area on or before the expiration of the period of time authorized by AUTHORITY, AUTHORITY shall advise AIRLINE of AUTHORITY's intent to remove such disabled aircraft no less than thirty (30) days prior to the written notification. In the event AUTHORITY causes AIRLINE's disabled aircraft to be removed from Aircraft Parking Apron or from storage, AIRLINE shall pay AUTHORITY for the costs of removing the disabled aircraft, plus a twelve percent (12%) administrative fee, which shall be payable within thirty (30) days of the date of AUTHORITY's invoice.

15.4 Interference

AIRLINE shall not do or permit to be done anything that may interfere with the effectiveness or accessibility of the drainage, sewerage, water, communications, or fire protection systems or any other part of the utility, electrical, or other systems installed or located from time to time at Airport.

15.5 Public Communications

AUTHORITY further reserves the right to install pay telephones and public access, internet facilities in any part of Terminal. AUTHORITY shall be entitled to all income generated by such telephones, devices and services and to reasonable access upon Premises to install or service such telephones and devices. AUTHORITY shall coordinate with AIRLINE as to the location of such

devices and consent of AIRLINE shall not be unreasonably withheld.

15.6 **Risk**

AIRLINE shall not, by act or failure to act, shall cause the termination or violate the provisions of any policy of insurance for AUTHORITY. AIRLINE shall not cause a hazardous condition so as to increase the risks normally associated with operations permitted by this Agreement. If AIRLINE shall cause an increase in the premiums for insurance for AUTHORITY, then AIRLINE shall immediately upon demand by Director pay the amount of such increase. If such AIRLINE's act or failure to act shall cause termination of any policy, then AIRLINE shall immediately upon notification by Director to obtain reinstatement or reasonable replacement of said insurance. If such coverage is not commercially feasible, AIRLINE shall mitigate the effects of its action or inaction to the extent reasonably possible.

15.7 **Third Parties**

The rights and privileges granted to AIRLINE in this Agreement to contract with third parties for obtaining services and materials are subject to restrictive agreements, franchises, licenses, and other rights previously granted by AUTHORITY to fixed base operators, ground transportation carriers and other providers of services and materials. Copies of such agreements are available for inspection by AIRLINE at the office of the Director.

15.8 **Persons Other Than AIRLINE**

No right granted to AIRLINE under this Agreement shall authorize any other entity to occupy space or provide services on the Airport without first obtaining the written permission from AUTHORITY allowing such space to be occupied or service to be provided and the payment of all applicable rentals, fees, and charges. AUTHORITY shall have the right to charge any entity leasing space or providing services on the Airport appropriate rentals, fees, and charges whether such services are provided to AIRLINE or to other Airport tenants.

15.9 **Waste Material**

AIRLINE, its employees, agents or contractors shall not dispose of any waste material taken from Aircraft or products used (whether liquid or solid) with respect to its Aircraft into the sanitary or storm sewers at the Airport unless such waste material or products are first properly treated by, or are processed in equipment installed or approved by AUTHORITY for such purposes.

15.10 **Food and Beverage**

Except for any sales that may occur on AIRLINE's Aircraft, AIRLINE shall not maintain or operate in the Terminal or elsewhere at Airport a cafeteria, restaurant, bar or cocktail lounge for the purpose of selling food and beverages to the public or to its employees and passengers, nor shall AIRLINE in any manner otherwise provide for the sale of food and beverages at Airport.

15.11 **Vending Machines**

AIRLINE shall not be allowed to install any type of vending machines in AIRLINE's non-public, Exclusive Use Premises or elsewhere on the Airport, without prior written approval by the Director.

15.12 **General Public**

AUTHORITY reserves the right to establish lawful rules and regulations governing access of the general public, including AIRLINE's passengers, to public areas in the Terminal. Such rules and regulations shall not unreasonably interfere with the operation of AIRLINE's Air Transportation Business, or alter the access rights provided for elsewhere in this Agreement. The parties agree that lawful and reasonable rules and regulations imposed for the safety and security of passengers do not unreasonably interfere with AIRLINE's operations.

16. ACCOMODATION OF REQUESTING AIR TRANSPORTATION COMPANIES

16.1 **Accommodation in Preferential Use Gates and Aircraft Parking Apron.**

In order to maximize the use of all leased gates and Aircraft Parking Apron, and to facilitate the entry of new and the expansion of existing Air Transportation Companies at the Airport, AIRLINE shall, on the direction of the Director, accommodate Requesting Air Transportation Companies in AIRLINE's Preferential Use Premises. In order to ensure uniform treatment of all Air Transportation Company tenants at the Airport, the following procedure shall be observed in the accommodation of Requesting Air Transportation Companies:

a. In order to secure the use of terminal facilities, a Requesting Air Transportation Company shall notify the Director of its wish to be accommodated on the Airport. AUTHORITY shall attempt to accommodate the Requesting Air Transportation Company on a Common Use Gate.

b. If the Requesting Air Transportation Company was not accommodated at a Common Use Gate or other facilities, the Director shall notify the Signatory Airlines that the Requesting Air Transportation Company is seeking accommodation at the Airport. If the Requesting Air Transportation Company is not accommodated by an Air Transportation Company tenant within fifteen (15) days, the Director shall select AIRLINE or another Air Transportation Company tenant at the Airport to accommodate the Requesting Air Transportation Company, taking into consideration all relevant factors, including, but not limited to, current utilization of Preferential Use Gates pursuant to the Departures/Gate calculation in Section16.2, schedule compatibility, and union work rules. Once a decision is made, the Director shall send written notice to the Air Transportation Company selected to accommodate the Requesting Air Transportation Company to begin accommodating such Requesting Air Transportation Company within thirty (30) business days of receiving notice directing such accommodation unless it can be shown to the satisfaction of the Director that a longer period of time will be necessary in order to accommodate schedule or other operational changes. The Director shall include in such notice the basis for its decision. The decision of the Director shall be final.

   If the Requesting Air Transportation Company cannot be accommodated as so described, the Director may reallocate an airline's premises as described in Section 16.2. The decision

to accommodate or relocate is at the sole discretion of the Director.

c. AIRLINE shall, if selected to accommodate a Requesting Air Transportation Company, begin accommodating such Requesting Air Transportation Company's operations on the specified Preferential Use Premises within the period described in Section 16.1(b). AIRLINE shall perform such accommodation in good faith and in a reasonable and equitable manner; provided, however, in case of a conflict between the schedules of AIRLINE and the Requesting Air Transportation Company; AIRLINE shall have priority in the use of its Preferential Use Premises during periods of Active Loading and Active Unloading. Requesting Air Transportation Company shall not have the rights to use AIRLINE's Personal Property. AIRLINE shall remove its Aircraft promptly from its Gates (if such Gates must accommodate a Requesting Air Transportation Company, when they are not being loaded or unloaded, in order to make such Gates available for the use of the Requesting Air Transportation Company. AUTHORITY shall require the Requesting Air Transportation Company to minimize its use of Gates at which it is accommodated and shall remove its Aircraft promptly, when they are not being loaded or unloaded, in order to make such Gates available for use by AIRLINE.

   i. **Indemnification.** During the period of and in connection with any such accommodation, AUTHORITY shall require the Requesting Air Transportation Company to agree in writing to indemnify AUTHORITY and AIRLINE in the manner and to the extent required of AIRLINE pursuant to Section 31 and name AIRLINE as an additional insured on its liability insurance.

   ii. **Payment by Requesting Air Transportation Company**. AIRLINE may assess the Requesting Air Transportation Company reasonable rentals, fees, and charges for an accommodation which rentals, fees, and charges shall be no more than one hundred and fifteen percent (115%) of AIRLINE's costs for the Premises. AIRLINE may require a reasonable security deposit from the Requesting Air Transportation Company not to exceed two (2) months of payments from the Requesting Air Transportation Company. In the event of a payment default by the Requesting Air Transportation Company, AIRLINE shall institute termination procedures in the following manner: (i) AIRLINE shall certify such payment default to AUTHORITY; (ii) AUTHORITY shall have fifteen (15) days in which to pursue appropriate remedies against the Requesting Air Transportation Company; and (iii) if, after such fifteen (15) day period, the Requesting Air Transportation Company remains in default, AIRLINE may terminate the Requesting Air Transportation Company's use of AIRLINE's Premises immediately.

16.2 Reallocation of Premises

In the event a Requesting Air Transportation Company cannot be accommodated under Section 16.1, AUTHORITY may reallocate an AIRLINE's Premises. For the most recent monthly period for which Aircraft departures data is available, AUTHORITY will calculate the average jet aircraft departures-per-gate per day (Departures/Gate) index for each Signatory Airline that has Preferential Use holdroom space, including its approved subtenants if that subtenant notifies AUTHORITY that it seeks to have its departures included in the tenant Signatory Airline's

Departures/Gate calculation. Departures shall be calculated by AUTHORITY using Aircraft departures as reported by the AIRLINE to AUTHORITY and the AIRLINE's number of Preferential Use holdroom(s) and co-located passenger boarding bridge(s). Signatory Airline productivity will be ranked from most productive to least productive according to this index. AUTHORITY shall have the right to reallocate any part of or all of the Premises leased to AIRLINE taking into consideration all relevant factors, including, but not limited to, co-located Gates leased by AIRLINE or AIRLINE's code-share Air Transportation Companies, if (i) AUTHORITY determines that there is a reasonable need for the use of such space by another Air Transportation Company, and (ii) AIRLINE has a Departure/Gate ranking less than the fiftieth (50th) percentile for the group of Signatory Airlines subject to the Departure/Gate ranking. AUTHORITY shall notify AIRLINE thirty (30) days in advance of any reallocation of AIRLINE's Premises.

16.3 Reimbursement for Investment in Reallocated Space

In the event of a reallocation of AIRLINE's Premises, AUTHORITY shall reimburse AIRLINE for the undepreciated or unamortized capital cost of any Improvements or Fixtures made by AIRLINE in such reallocated space and for reasonable moving expenses.

17. NON-EXCLUSIVE USE OF CERTAIN FACILITIES

AUTHORITY grants the AIRLINE, in common with other users, the non-exclusive use of all facilities, improvements and services which are provided at the Airport in common use areas. This use is limited to the purposes for which such facilities were designed and constructed and is available only from time to time and on a non-exclusive use basis, according to the discretionary operational decisions of AUTHORITY. These facilities include, but are not limited to roadways, streets, ramps, taxiways, runways, access gates, lighting, beacons, navigational aids, or other conveniences for aeronautical operations.

18. MAINTENANCE AND REPAIRS

18.1 AIRLINE'S Maintenance and Repair Obligations

Except as set forth in Section 18.3, AIRLINE shall be obligated, without cost to the AUTHORITY, to maintain the Premises, Improvements, facilities and equipment therein, together with all Personal Property in good repair, safe condition, and in a clean and orderly condition and appearance at all times. AIRLINE shall keep the areas immediately adjacent to the exits and entrances of the Premises clean, safe, orderly and free of obstructions, impediments or safety hazards, and shall promptly notify AUTHORITY of any safety hazards it observes within or near such exit/entrance surfaces that are the responsibility of the AUTHORITY to maintain.

AIRLINE shall be responsible at its sole cost and expense for repair or replacement of any facilities, fixtures, equipment or systems due to damage caused by the AIRLINE, its officers, partners, employees, agents, contractors, subcontractors, licensees, sub-lessees or invitees and not considered Normal Wear and Tear, whether such damage occurs within the Exclusive Premises or Preferential Use Premises or otherwise in the Airport.

AIRLINE shall be responsible for payment of all maintenance, repair and cleaning as required under Exhibit I unless covered by AUTHORITY's insurance or warranty.

Any doors, hardware, equipment, electrical components, bulbs, ballast, tubes, switches, or any other fixtures which may be repaired or replaced by the AIRLINE must be equal and identical to that replaced, or if different, shall be approved in advance by the AUTHORITY.

In addition to the other obligations of AIRLINE set forth in this Agreement, with respect to the AIRLINE's Aircraft Parking Apron, AIRLINE agrees to promptly remove any spilled or deposited petroleum products and the accumulation of oil and grease caused by Aircraft and ground support equipment of AIRLINE, its Affiliate(s) and other Air Transportation Companies operating from AIRLINE's Premises, except those Air Transportation Companies operating on the AIRLINE's Aircraft Parking Apron under a AUTHORITY-designated Accommodation per Section 16.1 hereof. AIRLINE shall also maintain the AIRLINE's Aircraft Parking Apron of the Airport in a safe, neat, clean and orderly manner and place all trash and debris in proper containers approved by AUTHORITY, until properly disposed of in a manner acceptable to AUTHORITY.

The AUTHORITY shall be the sole judge of the quality and timeliness of AIRLINE's maintenance and repairs. The AUTHORITY may at any reasonable time, with prior notice, enter the Premises to determine if satisfactory maintenance and repairs are being performed. If AUTHORITY determines that maintenance and repairs are not satisfactory, AUTHORITY shall so notify AIRLINE in writing. If said maintenance and repairs are not properly performed by AIRLINE within ten (10) calendar days after receipt of written notice from AUTHORITY, or such longer time as may be reasonably required, then AUTHORITY or its agents shall have the right to enter upon the Premises and perform the maintenance and repairs therefore and AIRLINE agrees to reimburse AUTHORITY for the direct costs thereof, plus twelve percent (12%) for administrative fee within thirty (30) days after receipt of AUTHORITY's invoice. In case AUTHORITY observes or receives notification of emergency action necessary to be taken in order to protect against personal injury, property damage or other irreparable harm, AUTHORITY may react without prior notice given to AIRLINE.

Notwithstanding the above provision, any hazardous or potentially hazardous condition shall be corrected immediately when detected by AIRLINE or upon receipt by AIRLINE of verbal or written notice given by AUTHORITY. At the direction of the AUTHORITY or other proper authorities, AIRLINE shall close the Premises (or the affected portion thereof) until such hazardous or potentially hazardous condition is removed, without abatement of rents, fees and charges.

If AUTHORITY must respond to maintenance or repairs of Premises or other Airport property

made the responsibility of the AIRLINE and not considered "Normal Wear and Tear" as AIRLINE's obligations, or responds upon the request of the AIRLINE to the AUTHORITY to perform AIRLINE's obligations contained in this Section, the AUTHORITY shall have the right to invoice a minimum of four (4) hours labor fees for each maintenance staff reasonably required for maintenance or repairs performed outside the hours of 8:00 a.m. to 4:30 p.m. Monday through Friday and holidays, and the AIRLINE shall pay such fees within thirty (30) days after receipt of AUTHORITY's invoice. Labor rates shall be applied in accordance with the then-current published labor rates of the AUTHORITY. Minimum labor fees, and materials, parts or supplies shall also be subject to the administrative overhead fees.

AIRLINE shall be responsible for the removal and disposal of garbage, debris, contaminants and any other waste material (whether solid or liquid) arising out of its occupancy of the Premises, inside or outside the Premises or resulting from its activities and operation anywhere on the Airport. Such removal shall conform to all governmental requirements and regulations, and is understood to include routine clean-up of the Premises. Upon AUTHORITY's demand, AIRLINE shall take prompt corrective actions to remove and dispose of waste material on Premises, and outside the Premises when resulting from its activities and operations.

AIRLINE shall not store materials, equipment or other personal property on, about or adjacent to the Premises or Aircraft Parking Apron if any such items are not fully functional and operational. This includes but is not limited to automobiles, tugs, bag carts, belt loaders, mobile boarding/de-boarding devices, deicing equipment, equipment parts, barrels, tires, empty deicing material containers, and other container or ground service equipment articles similar in nature.

18.2 **Condition of Premises**

AIRLINE agrees to make all repairs (except for the repairs or work which are the specific responsibility of the AUTHORITY pursuant to this Agreement) to the Premises, including the Improvements and Personal Property thereon, and to maintain and keep the Premises in good and safe condition and repair, and to surrender and deliver up the same at the termination of this Agreement in as good order and condition as the same existed at the commencement of the Initial Term of this Agreement or as subsequently improved, Normal Wear and Tear and casualty excepted.

18.3 **AUTHORITY's Maintenance Responsibilities**

AUTHORITY shall be responsible for maintenance, repair and cleaning as required under Exhibit I except for any damage caused by the AIRLINE, its officers, partners, employees, agents, contractors, subcontractors, licensees, sub-lessees or customers, and not considered Normal Wear and Tear:

If repair or replacement is required within areas or to property made the responsibility of AUTHORITY, and the damage was caused or allowed to be caused by the acts or omissions of AIRLINE, its officers, partners, employees, agents, contractors, subcontractors, licensees, sub-lessees or customers and not considered Normal Wear and Tear, the AUTHORITY may charge the cost to the expense of the AIRLINE plus twelve percent (12%) administrative fee after

reasonable notice and the opportunity to dispute such charges or damages. The administrative fee shall be applied to the total cost incurred by the AUTHORITY in performing the task. The administrative fee represents the AUTHORITY's cost to manage the task including procurement services, approval processes, management staff time, supervision and overhead. It does not include a profit component. In case of emergency action taken in order to protect against personal injury, property damage or other irreparable harm, AUTHORITY is authorized to act without notice and shall charge the same cost to the expense of AIRLINE and a twenty percent (20%) administrative fee. These costs and fees shall be paid within thirty (30) days of invoice date.

The AIRLINE shall give the AUTHORITY written notice (or verbal notice in the event of any emergency conditions which may result in harm to the patrons of the Terminal, in which case notice shall be followed by written notice within twenty-four (24) hours) describing any repair, which is the responsibility of the AUTHORITY. The AUTHORITY shall commence the repair process promptly after its receipt of such written notice if the AUTHORITY agrees that such repair is required and is the AUTHORITY's responsibility hereunder.

AUTHORITY shall provide suitable covered dumpsters for the common use of all tenants and concessionaires for disposal of all garbage, trash and other refuse. Piling of boxes, cartons, barrels, pallets or other similar items in an unsightly or unsafe manner on or about the Premises is forbidden. Dumpster lids shall remain closed and secured at all times when garbage disposal is not in progress.

AUTHORITY shall provide suitable exterior storage in a location and size at its sole option for automobiles, tugs, bag carts, belt loaders, mobile boarding/de-boarding devices, deicing equipment, deicing material containers, and other container or ground service equipment articles similar in nature.

19. SNOW REMOVAL

AIRLINE and AUTHORITY agree to remove snow and ice from their respective areas of responsibility shown on Exhibit H. Both parties shall maintain their respective surfaces to a winter surface condition safe for Aircraft operations, and safe for customers and employees moving and working on the ramp. At no time shall AIRLINE engage in snow and ice removal beyond its area of responsibility depicted on Exhibit H without the prior approval of and coordination with the AUTHORITY.

Upon reasonable advance notice given to the AIRLINE by the AUTHORITY, and subject to the AIRLINE's operational need for the Gate, the AIRLINE shall be responsible to remove, relocate or reposition all personal property on the Aircraft Parking Apron to a location that will not block, hinder or preclude the AUTHORITY to perform snow and ice removal on the surfaces for which it is responsible. The AUTHORITY shall provide as much advance notice as reasonably possible during or after a winter precipitation event of its intent to perform snow and ice removal at Aircraft Parking Apron areas. AUTHORITY will be mindful of the AIRLINE's demand for the Gate and

aircraft parking. AIRLINE shall exercise all diligence within its reasonable control to remove, relocate or reposition personal property on the Aircraft Parking Apron, including but not limited to: retracting/repositioning passenger boarding bridge(s); ground service equipment, parking chalks and electrical cables so the AUTHORITY may perform its snow and ice removal obligations. Failure of the AIRLINE to remove, relocate or reposition personal property in the manner and conditions specified in this Section shall relieve the AUTHORITY from its obligations to remove snow and ice at the Aircraft Parking Apron until such time as such property is moved.

Snow piles, windrows or other accumulations of snow shall not:

a. Be closer than twenty five feet from any security fence;

b. Block any access gates or controls;

c. Block or impede any taxiway or taxi lane;

d. Impose an obstruction within the object free area (OFA) of any taxiway or taxi lane;

e. Infringe upon, block or interrupt the business activity or operations of other airport tenants or the AUTHORITY.

Snow piles and accumulations requiring removal may be stored on pre-approved/arranged paved or non-paved areas.

Only FAA approved dry and liquid chemicals may be used for de-icing or snow removal on aircraft operating surfaces, as set forth in Advisory Circular 150/5200-30, current edition, Airport Winter Operations and Safety, Section 4-6 Approved Chemicals, current edition.

AIRLINE use of snow and ice removal contractors may be authorized subject to prior approval of and coordination with the AUTHORITY, and subject to acceptable completion of contractor employee training, and other reasonable safety and security requirements that AUTHORITY may impose, including but not limited to compliance with Airport rules and regulations, and Standard Operating Procedures. All such snow and ice removal contractors shall maintain a general liability insurance policy of not less than two million dollar ($2,000,000) limit, naming AIRLINE, AUTHORITY, and the City of Wichita as additional insureds.

20. CAPITAL IMPROVEMENTS

20.1 Improvements and Development by AUTHORITY

AUTHORITY shall consult with the Signatory Airlines at least annually regarding AUTHORITY's capital improvement plans. AUTHORITY shall give appropriate consideration to the comments and suggestions of the Signatory Airlines with respect to such proposed capital improvements.

On or before October 15 of each Fiscal Year, and at other times prior to the AUTHORITY undertaking capital improvements with a cost in excess of five hundred thousand dollars ($500,000) and allocated to the Airfield or Terminal Cost Centers, AUTHORITY shall provide a briefing to the Signatory Airlines regarding its capital improvement plans. The briefing shall include (i) a description of each proposed capital improvement, together with any available capital and/or operating cost estimates and any available preliminary drawings, (ii) the proposed means and terms of any required financing and the resultant annual Amortization or Debt Service, if any, and (iii) the estimated impact of the proposed capital improvements on Signatory Airline rentals, fees, and charges.

If requested by two (2) or more of the Signatory Airlines, Director shall schedule a meeting, to be held between fifteen (15) days and thirty (30) days after the briefing, to discuss the proposed capital improvements. AUTHORITY shall consider Signatory Airline comments prior to finalizing its capital improvement plans. In any event, AUTHORITY shall have the right to proceed as it, in its sole discretion (duly considering the Signatory Airlines' comments and concerns), believes appropriate.

20.2 Alterations and Improvements by AIRLINE

AIRLINE shall provide, construct and install on the AIRLINE's Premises, at its sole cost and expense, all Improvements (except Improvements to be provided by AUTHORITY pursuant to this Agreement, if any) as AIRLINE deems necessary and appropriate to operate its Air Transportation Business. The quality level, design and appearance of such AIRLINE's Improvements shall conform to the TCAP Manual.

Whenever consistent with this Agreement, AIRLINE shall have the right to construct and install, at its sole expense, Improvements within the Exclusive Use Premises as AIRLINE deems to be necessary for its operations. The plans and specifications, location, and construction schedule for such Improvements shall be approved by Director in writing prior to the commencement of any construction or installation.

Any construction or installation shall be at the sole risk of AIRLINE and shall be in accordance with all applicable state and local codes and laws and subject to inspection by Director.

Any work associated with such construction or installation shall not interfere with the operation of the Terminal or Aircraft Parking Apron.

AIRLINE shall deliver to Director reproducible "as builts", construction documents in electronic form, of AIRLINE Improvements and additions no later than thirty (30) days following the substantial completion of any such Improvements and additions.

All Improvements made to the Premises by AIRLINE shall immediately become the property of AUTHORITY. Any signs and other Personal Property of AIRLINE to Premises shall remain the property of AIRLINE. Removal of these items shall be at AIRLINE's' expense and the methods, means and results shall be subject to Director's approval to protect the operation, integrity and

aesthetics of the Terminal.

20.3 Construction Costs

Prior to the commencement of any such Improvements, AIRLINE shall require contractors to furnish satisfactory evidence of statutory Workers' Compensation insurance, commercial general liability insurance, business automobile insurance, and physical property damage insurance, and builder's risk insurance in such amounts and in such manner as Director may reasonably require. Director may require additional insurance for any alterations or Improvements approved hereunder, in such limits as Director reasonably determines to be necessary. AUTHORITY shall be endorsed in such policies as an additional, non-contributing insured.

21. SUBSEQUENT ALTERATIONS AND IMPROVEMENTS

AIRLINE may, with prior written approval of AUTHORITY, and by lease amendment, if appropriate, add to, improve, or alter, at its own expense, the Premises subject to all conditions set forth herein; provided, however, that the plans and specifications, location, and construction schedule for such improvements shall be approved by AUTHORITY in writing prior to the commencement of any and all such construction or installation. No reduction or abatement of rentals, fees, and charges shall be allowed for any interference with AIRLINE's operations by such construction, and no interference shall be caused with the normal operation of the Airport's other tenants and users. Any such addition or alteration must be designed and constructed in a manner that will not weaken or impair the structural strength or reduce the value or functionality of the Premises or existing improvements thereon and shall be completed in conformity with the TCAP Manual. It shall be the responsibility of AIRLINE to file all necessary alteration and construction forms with the Director of Airports, as the AUTHORITY's representative, for submission to the Federal Aviation Administration for approval.

Any construction or installation shall be at the sole risk of AIRLINE and shall be in accordance with all applicable State and local codes and laws and subject to inspection by AUTHORITY or its designees.

Any improvements made to Exclusive and Preferential Use Premises and additions and alterations thereto made by AIRLINE shall become the property of AUTHORITY on their installation or construction on the Premises; provided, however, that AIRLINE shall have the use of such improvements until this Agreement expires or is terminated. Notwithstanding the foregoing, any trade fixtures, signs, equipment, and other movable Personal Property of AIRLINE not permanently affixed to Exclusive and Preferential Use Premises shall remain the property of AIRLINE.

22. NON-INTERFERENCE WITH AIRPORT OPERATIONS

AIRLINE shall not allow any condition on the Premises, nor permit the conduct of any activity on such Premises, which materially or adversely affects the development, improvement, operation, or maintenance of the Airport or its facilities. AIRLINE shall not use or permit the Premises to be used in any manner which might interfere with the landing and take-off of Aircraft from the Airport or otherwise constitute a hazard to the general public, or to AUTHORITY's tenants or the customers, agents, invitees, contractors, representatives and employees of those tenants.

23. COOPERATION WITH AIRPORT DEVELOPMENT

AIRLINE understands and agrees that AUTHORITY may pursue Airport development, Improvements and maintenance activities from time-to-time that may affect the Premises and other areas of the Airport. AIRLINE agrees to work cooperatively and in good faith with the AUTHORITY and other tenants and contractors in development, Improvement and maintenance activities to minimize any disruptions. If requested by the AUTHORITY, AIRLINE shall cooperate with and assist the AUTHORITY to the greatest extent possible in the development and implementation of any plans, designs, ingress/egress, or transition that may arise in connection with such Airport development, Improvement, and maintenance activities. AUTHORITY may temporarily or permanently close, re-route, or consent to the closing or re-routing of any method of ingress or egress on the Airport, so long as the means of ingress and egress are reasonably equivalent to current access available to AIRLINE. AUTHORITY may temporarily close paved surfaces or portions thereof for purposes of maintenance, replacement, re-construction or expansion. Exercise by AUTHORITY of any such Airport development, Improvement, or maintenance activities shall be without direct expense to the AIRLINE. AUTHORITY retains the absolute right to maintain, repair, develop, expand or replace utilities, ramps, taxiways, runways, streets, sidewalks and any other Airport facility or Improvement. AIRLINE accepts the need for such activities and agrees that it will not assert a claim for consequential damages arising from these activities for loss of business or damage of any nature.

24. SURRENDER OF PREMISES

24.1 Surrender and Delivery

AIRLINE shall promptly yield and deliver to AUTHORITY possession of the Premises at the expiration or termination of this Agreement in good condition in accordance with AIRLINE's obligations in this Agreement, except for reasonable wear and tear, or fire or other casualty. Before delivering the Premises to AUTHORITY, AIRLINE shall, at its expense, deliver the Premises in good order and condition, including, but not limited to:

a. clean and remove from the Premises all waste and refuse generated by AIRLINE;

b. remove from the Premises all of AIRLINE's Personal Property;

c. comply with all environmental covenants;

d. leave in operating condition all bulbs and ballasts; and

e. replace all broken glass.

24.2 **Removal of Property**

AIRLINE shall have the right at any time during the term of this Agreement to remove from Airport its Aircraft, tools, equipment, and other Personal Property, title to which shall remain in AIRLINE unless otherwise set forth in this Agreement. AIRLINE and shall remove such Aircraft, tools, equipment, and other Personal Property within fifteen (15) days following termination of this Agreement, whether by expiration of time or otherwise on such property subject to any valid statutory or contractual landlord's liens which AUTHORITY may have for unpaid rentals, fees and charges. Notwithstanding anything in this Agreement to the contrary, AUTHORITY hereby (a) waives its rights to any statutory and contractual landlord's liens on Aircraft and (b) subordinates all statutory and contractual landlord's liens to any liens or security interests covering tools, equipment, and other Personal Property in favor of third-party lenders providing financing to AIRLINE or its Affiliates (including purchase-money financing). AIRLINE shall not abandon any portion of its property without the written consent of AUTHORITY.

Any and all property not removed by AIRLINE within fifteen (15) days following termination of this Agreement shall, at the option of AUTHORITY, become the property of AUTHORITY at no cost to AUTHORITY. All AUTHORITY's property damaged by or as a result of the removal of Personal Property shall be restored by AIRLINE to the condition existing before such damage at AIRLINE's expense.

25. REMOVAL AND DEMOLITION

AIRLINE shall not remove or demolish, in whole or in part, any Improvements upon the Premises without the prior written consent of the AUTHORITY. AUTHORITY may, at its discretion, condition such consent upon the obligation of AIRLINE to replace the Improvements with another reasonable Improvement specified in such consent. AIRLINE shall obtain written consent before commencing demolition and restoration as described under Section 45. Failure to obtain this consent shall entitle the AUTHORITY to such compensation as is necessary to restore the affected Improvements, plus additional twenty percent (20%) administrative fees, payable as additional rent within thirty (30) days after receipt of AUTHORITY's invoice.

26. DAMAGE OR DESTRUCTION

In the event that facilities or Improvements on the Premises are substantially damaged during the term of this Agreement, this Agreement shall remain in full force and effect and AUTHORITY shall proceed with due diligence to repair, restore, rebuild or replace said damaged property to its condition immediately prior to such damage. AUTHORITY may receive AIRLINE's approval to replace damaged Improvements with Improvements of a different design or character.

In the event the Improvements are damaged by casualty and such damage, exceeds fifty five percent (55%) of the value of the property as it existed prior to the casualty loss, AUTHORITY shall have the choice not to repair, restore, rebuild or replace the Improvements. AUTHORITY shall give written notice of this choice to AIRLINE within 180 calendar days after the occurrence of such event. Upon this written notice, this Agreement shall be terminated effective as of the date the notice is delivered. AIRLINE shall continue to have the obligation to pay any sums due to the date of termination, and the obligation to satisfy damages arising from any negligent or intentional action of itself, its employees, agents, contractors, or customers to the extent not covered by insurance proceeds. Otherwise, neither party shall have any further rights or obligations under this Agreement. All of the insurance proceeds shall be paid to AIRLINE and AUTHORITY in pro-rata distributions as their interests may appear based upon the fair market value of each party's interest at the time the proceeds are received. Where allowed by the insurance policy, insurance proceeds shall first be applied to removal of damaged Improvements from the Premises before such distribution.

27. PERSONAL PROPERTY

Any Personal Property of AIRLINE or others placed in or upon the Premises shall be at the sole risk of the AIRLINE. AUTHORITY shall not be responsible or liable for any loss, damage and replacement of personal property, unless caused by AUTHORITY, its officers, agents, or employees, and the AIRLINE waives all rights of subrogation against recovery from the AUTHORITY for such loss or damage.

28. TITLE TO FACILITIES, IMPROVEMENTS AND FIXTURES

Title to all Improvements, structures, fixtures and facilities, constructed or permanently affixed to the Premises shall be, and shall remain, exclusively with AUTHORITY.

29. TAXES

AIRLINE agrees to pay all and special assessments levied or assessed now or in the future:

a. upon taxable property owned or possessed by AIRLINE and situated on the Premises; and

b. upon AIRLINE's interest in or its use of the Premises. AIRLINE shall defend, indemnify and save the Wichita Airport Authority and the City of Wichita, Kansas harmless from any claims or liens in connection with such taxes, obligations in lieu of taxes or assessments.

AIRLINE shall promptly pay all taxes, excises, assessments and fees and permit fees of whatever nature that apply to its operation of Premises. AIRLINE may choose at its own cost and expense, to contest any such tax, excise, fee, or assessment. AIRLINE shall keep current all Federal, State or local licenses, operating certificates or permits required for the conduct of its operations. AIRLINE warrants to AUTHORITY that it has obtained all license, franchise, operating certificates or other agreements or permits necessary to operate AIRLINE's operation in accordance with the terms of this Agreement. AIRLINE shall keep all such licenses, franchises, permits, operating certificates and other agreements in full force during the Term of this Agreement.

30. LIENS

AIRLINE shall take commercially reasonable steps to avoid the imposition of any lien upon the Premises. Should any lien be placed on the Premises, AIRLINE shall remove any and all liens of any nature. This obligation includes, but is not limited to, tax liens and liens arising out of or because of any financing, construction or installation, whether labor or materials, performed for the benefit of AIRLINE by any of its contractors or subcontractors or their vendors. Should any such lien be filed, AIRLINE shall bond against or discharge the same within thirty (30) calendar days after actual notice of the same from any source, and provide written proof of discharge or bonding to AUTHORITY within that time. AIRLINE acknowledges that its interest in the Premises is a leasehold, and that notwithstanding its construction of Improvements on the Premises, the AUTHORITY holds title to the Improvements, and that AIRLINE has no equity interest in the Premises which can support a mortgage lien. However, any Improvement constructed shall be deemed to be for the exclusive benefit of AIRLINE. AIRLINE shall not mortgage or pledge as collateral its leasehold interest without the prior written consent of the AUTHORITY.

AUTHORITY may consent, upon AIRLINE's written request, to an assignment of rents to a governmentally regulated and insured commercial lender as partial security for financing of AIRLINE's activities on the Premises. Any such assignment is intended to be a present transfer to such lender of all of AIRLINE's rights to collect and receive rents and charges from approved users, operators, and permitees. Lender(s) shall have no rights to assign this Agreement or sublease the Premises without the prior written consent of the AUTHORITY. Upon AIRLINE's written

consent, AUTHORITY agrees to give Lender(s) notice of any default or termination of the Agreement, and allow Lender(s) the same opportunity as the AIRLINE under the Agreement to correct any condition or cure any default. Nothing in this Section relieves the AIRLINE of its obligations under this Agreement.

31. INDEMNITY

AIRLINE shall indemnify, hold harmless, and defend AUTHORITY, the City, and their respective officials, agents, employees, successors and assigns (collectively, the "Indemnified Parties") from and against all liability for any claims, loss, damage, liability and actions by reason of injury or death of any person, or damage to any property, or other liability loss including all reasonable expenses incidental to the investigation and defense thereof, arising out of or resulting from any intentional or negligent acts or omissions of AIRLINE, its Affiliates, agents, employees, licensees, successors assigns, and customers while in, on or about the Premises or Airport; or in connection with AIRLINE's use and occupancy of or operations on the Premises or from its use of the Airport, except to the extent such injury, damage, or loss arises from the negligence or willful misconduct of AUTHORITY, its agents or employees, licensees, successors and assigns.

AIRLINE shall indemnify, hold harmless, and defend the Indemnified Parties from and against all liability for any claims, loss, damage, liability and all expenses incidental to the investigation and defense thereof, including all fines or penalties in any way arising out of or resulting from the violation of any federal, state, or municipal laws, statutes, ordinances, or regulations, by AIRLINE or its Affiliates, agents, employees, licensees, successors and assigns, or those under its control.

The provisions of this Section shall survive the expiration, termination or termination of this Agreement, with respect to occurrences during the term of this Agreement.

32. INSURANCE AND SUBROGATION

During the Term of this Agreement, AIRLINE shall provide, pay for and maintain with companies reasonably satisfactory to AUTHORITY, the types of insurance described in this Agreement. All insurance shall be issued by responsible insurance companies eligible to do business in the State of Kansas.

All liability policies shall provide that the City of Wichita, the AUTHORITY, and its directors, officers and employees as Additional Insured to the extent of AIRLINE's contractual obligations hereunder. The insurance coverage and limits required shall be evidenced by properly executed certificates of insurance. In addition, certified copies or originals of AIRLINE's insurance policies

providing the coverage required by this Agreement shall be made available for AUTHORITY's inspection in AIRLINE's offices in the Terminal upon reasonable request by AUTHORITY, subject to AIRLINE's prior receipt of appropriate confidentiality assurances from AUTHORITY and its representatives to protect AIRLINE's proprietary interest in such policies. The required policies of insurance shall be construed in accordance with the laws of the State of Kansas.

If at any time AUTHORITY requests a written statement as to any impairments to the aggregate limit, AIRLINE shall promptly authorize and have delivered such statement to AUTHORITY. AIRLINE authorizes AUTHORITY and its insurance consultant to confirm with AIRLINE's insurance agents or brokers all information furnished AUTHORITY, as to its compliance with its insurance requirements.

All required insurance coverage of AIRLINE shall be primary to any insurance or self-insurance program of AUTHORITY.

The acceptance of or delivery to AUTHORITY of any certificate of insurance evidencing the insurance coverages and limits required in this Agreement does not constitute approval or acceptance by AUTHORITY that the insurance requirements in this Agreement have been met.

No operations shall commence at the Airport unless and until the required certificates of insurance are in effect and approved by AUTHORITY.

The insurance coverages and limits required of AIRLINE under this Agreement are designed to meet the minimum requirements of AUTHORITY. They are not designed as a recommended insurance program for AIRLINE. AIRLINE alone shall be responsible for the sufficiency of its own insurance program. Should AIRLINE have any question concerning its exposures to loss under this Agreement, or the possible insurance coverages needed therefor, it should seek professional advice.

AIRLINE and AUTHORITY mutually understand and agree in accordance with industry standards that the minimum limits of the insurance herein required may from time to time become inadequate, and AIRLINE agrees that it will increase such minimum limits upon receipt of written notice. AIRLINE shall furnish AUTHORITY, within sixty (60) days of the effective date thereof, a certificate of insurance evidencing such insurance is in force.

AIRLINE's insurance companies or its authorized representative shall give AUTHORITY prior written notice of any termination, intent not to renew, or adverse reduction in any policy's coverage equal to that owed to AIRINE under the policy terms, except in the application of the Aggregate Limits Provisions. In the event of a reduction to the Aggregate Limit, it is agreed that immediate steps will be taken to have it reinstated. Said notices shall be sent pursuant to Section 45 of this Agreement.

Renewal Certificates of Insurance must be provided to AUTHORITY as soon as practical. AIRLINE shall maintain continuous insurance coverage as required by this Agreement, and such coverage shall be listed on the certificate provided.

Should at any time AIRLINE fail to provide or maintain the insurance coverages required in this Agreement, AUTHORITY may terminate or suspend this Agreement at AUTHORITY's sole discretion.

The amounts and types of insurance shall conform to the following minimum requirements. The wording of all policies, forms and endorsements must be reasonably acceptable to AUTHORITY.

Workers Compensation and Employer's Liability Insurance shall be maintained in force by AIRLINE during the Term of this Agreement for all employees engaged in the operations under this Agreement. The limits of coverage shall not be less than:

Workers Compensation	Kansas Statutory
Employer's Liability	$1,000,000 Limit Each Accident
	$1,000,000 Limit Disease Aggregate
	$1,000,000 Limit Disease Each Employee

Airline/General Liability Insurance shall be maintained by AIRLINE for the life of this Agreement. Coverage shall include, but not be limited to, Premises, Personal Injury, Contractual for this Agreement, Independent Contractors, Broad Form Property Damage, Products and Completed Operations Coverage and shall not exclude the (XCU) Explosion, Collapse and Underground Property Damage Liability Coverage. Coverage shall be applicable to the operation of all licensed and unlicensed motor vehicles and ground equipment operating within the AOA at the Airport. The Completed Operations Coverage shall be maintained for a period of not less than three (3) years following final operations of AIRLINE under this Agreement. The limits of coverage shall not be less than:

Bodily & Personal Injury	$100,000,000 Combined Single Limit
& Property Damage Liability	Each Occurrence & Aggregate
Personal Injury (non-passengers)	$25,000,000 Each Occurrence & Aggregate

Aircraft Liability Insurance shall be maintained by AIRLINE during the Term of this Agreement for all owned, non-owned, leased or hired Aircraft, including passenger coverage. The limits of coverage shall not be less than:

Bodily & Personal Injury	$100,000,000 Combined Single Limit
& Property Damage Liability	Each Occurrence & Aggregate
Personal Injury (non-passengers)	$25,000,000 Each Occurrence & Aggregate

Business Automobile Liability Insurance shall be maintained by AIRLINE during the Term of this Agreement as to the ownership, maintenance, and use of all owned, non-owned, leased or hired vehicles. The limits of coverage shall not be less than:

Bodily & Personal Injury	$5,000,000 Combined Single Limit
& Property Damage Liability	Each Occurrence & Aggregate

Umbrella Liability Insurance or Excess Liability Insurance may be used to reach the limits of liability as stated above for the Airline/General Liability Policy, Aircraft Liability and the Business Automobile Policy. Without regard to drop down coverage, the Umbrella or Excess Coverage for General and Airline or Aircraft Liability shall be not less than:

Umbrella or Excess Liability Policy	$200,000,000 Combined Single Limit Each Occurrence & Aggregate-Not Specific for this Agreement
Personal Injury (non-passengers)	$25,000,000 Each Occurrence & Aggregate

If Excess Liability or Umbrella Liability Insurance is used to reach the required limits of liability above, the Primary Liability Limits for the underlying Airline/General Liability Coverage shall be no less than:

Bodily & Personal Injury & Property Damage Liability	$10,000,000 Combined Single Limit Each Occurrence & Aggregate

Furniture, Fixtures and Equipment (FF&E) Insurance shall be maintained by AIRINE during the Term of this Agreement for all leasehold improvements used in or on the Premises and for personal property maintained or used on the Premises. The limits of coverage shall be at the discretion of AIRLINE, but AIRLINE expressly waives all right of repair or replacement from AUTHORITY on such property due to casualty loss caused by persons other than AUTHORITY's employees, agents or contractors.

All insurance policies other than Worker's Compensation coverage above shall contain a standard cross-liability provision and the inclusion of AUTHORITY and the City of Wichita, Ks. as an additional insureds. This Agreement is not intended to, and shall not, make AUTHORITY a partner or joint venturer with AIRLINE in AIRLINE's operations on the Airport. For all policies listed above, AUTHORITY shall have no liability for any premiums charged for such coverage and such policies shall also insure AIRLINE against the risks to which it is exposed as the operator of the business authorized under this Agreement.

33. ENVIRONMENTAL COVENANTS

AIRLINE represents, warrants, and covenants the following:

AIRLINE has obtained and throughout the term of this Agreement shall obtain and maintain all applicable licenses, permits, registrations and other authorizations and approvals for AIRLINE's operations on the Premises as required under applicable environmental laws and shall provide any notices required under environmental laws for conducting its operations at the Airport during the term of this Agreement. AIRLINE shall require its employees, contractors, subcontractors, agents,

licensees, and other parties under AIRLINE's direction or control to obtain and maintain all applicable licenses, permits, registrations and other authorizations required by environmental laws in order to conduct their operations and activities at the Airport, including but not limited to construction, and to comply with all applicable environmental laws pertaining to its and their use of and operations at the Airport.

AIRLINE's environmental compliance shall include compliance with any current or future federal, state, or local law, statute or regulation pertaining to protection of the environment that is applicable of AIRLINE's operation, storage or use of substances (hazardous or otherwise), or to the activities of AIRLINE's employees or contracted vendor's on the Premises or the Airport. AIRLINE shall provide AUTHORITY upon request copies of any plan, training program, training records, safety data sheets or any other documentation required by said laws. In addition, a copy of AIRLINE's Stormwater Pollution Prevention Plan and/or Spill Prevention Control and Countermeasure Plan to the extent such plans are required under applicable law, shall be submitted to the AUTHORITY upon request. If needed, Stormwater best management practices (BMPs) shall be installed and maintained as described under AIRLINE's Stormwater Pollution Prevention Plan and Countermeasure Plan.

Neither AIRLINE nor AUTHORITY shall install or permit to be installed in the Premises friable asbestos, electrical equipment containing polychlorinated biphenyls (PCBs), or any substance containing asbestos and deemed hazardous by federal or state regulations applicable to the Premises and respecting such material.

If, during the term of this Agreement, the AIRLINE receives any notice of (i) the happening of any event (other than in the ordinary course of business and in compliance with all applicable laws), involving the spill, release, leak, seepage, discharge or cleanup of any substance (hazardous or otherwise) on the Premises or in connection with the AIRLINE's operations thereon or (ii) any complaint, order, citation or notice with regard to air emissions, water discharges, or any other environmental, health, or safety matter affecting the AIRLINE's operations on the Premises or the Airport from any persons or entity (including, without limitation, the United States Environmental Protection Agency (the "EPA") or the Kansas Department of Health and Environment ("KDHE")), the AIRLINE shall promptly notify the AUTHORITY in writing of said notice.

AIRLINE further agrees to provide to AUTHORITY and/or AUTHORITY's designated representatives, upon request, copies of all applicable safety data sheets for materials stored on the Premises, as required by applicable law and applicable to AIRLINE's operations on the Premises.

AIRLINE shall indemnify, save, hold harmless, and defend AUTHORITY, the City of Wichita, their officials, agents, and employees, their successors and assigns, individually or collectively, from and against any claim, action, loss, damage, injury, liability, and the reasonable cost and expenses (including, but not limited to, reasonable attorney's fees, disbursements, court costs, and expert fees; unless defended by AIRLINE) of any environmental claim arising out of or resulting from AIRLINE's use and occupancy of Premises or use of the Airport, including, but not limited to any claim for (i) discharge or release of pollutants, hazardous materials, hazardous substances or solid waste, hazardous wastes or toxic materials at or on the Airport, including the air, surface

water, ground water, storm sewer, sanitary sewer, or soil from any source, including underground storage tanks, (ii) generation, handling, treatment, storage, disposal, or transportation of solid, gaseous, or liquid waste at the Airport, facility or location, (iii) electromagnetic or other radiation or noise, (iv) exposure of any person to any hazardous material, (v) manufacture, processing, distribution, use, or storage of any hazardous material, (vi) the release or threatened release of any pollutant, contamination or hazardous material to, from or through the Airport, or (vii) any of the foregoing, related to, caused by or arising from AIRLINE's operations on the Premises or activities on the Airport, to non-Airport property, including the air, surface water, ground water, or soil. Notwithstanding the above, AIRLINE shall not be liable for any environmental claim, including but not limited to claims listed in (i) – (vii) above, to the extent attributable to a pre-existing condition on any Airport property not caused or previously occupied by AIRLINE or any corporate predecessor to AIRLINE at any prior time. AIRLINE shall not be liable for any environmental claim arising out of or resulting from the AUTHORITY's conduct or those of a third party not related to AIRLINE.

AIRLINE shall, at AIRLINE's sole expense, clean up, remove and remediate, in accordance with applicable law, to the extent caused by AIRLINE or its employees, agents, licensees, contractors or customers (1) any Hazardous substances in, on, or under the AIRLINE's Premises in excess of allowable levels established by all applicable federal, state and local laws and regulations and (2) all contaminants and pollutants, in, on, or under the AIRLINE's Premises that create or threaten to create a substantial threat to human health or the environment and that are required to be removed, cleaned up, or remediated by any applicable federal, state, or local law, regulations, standard or order.

The provisions of this Section shall survive the termination of this Agreement.

34. TERMINATION BY AUTHORITY: EVENTS OF DEFAULT BY AIRLINE

34.1 Events of Default by AIRLINE

If any of the following events of default occur, AUTHORITY will issue a thirty (30) day written notice to AIRLINE to cure.

a. Conducting any business or performing any acts at Airport not specifically authorized in this Agreement or other agreements between AUTHORITY and AIRLINE.

b. Failing to cure a default in the performing any of the terms, covenants and conditions of this Agreement.

The written notice to cure shall allow AIRLINE thirty (30) calendar days to remedy the described problem or breach causing the default. If AIRLINE fails to cure within this thirty (30) day period, AUTHORITY may give written notice of default and take any action allowed in this Section.

Before the end of the thirty (30) day notice, AIRLINE may show AUTHORITY that its default

referred to in Paragraph (a) and (b) above cannot be remedied within thirty (30) days before the end of the thirty (30) day written notice and/or AIRLINE may show AUTHORITY that its default is a Force Majeure conditions described in Section 44.19. AUTHORITY will not declare a default if AIRLINE reasonably demonstrates (i) that the default cannot be cured within thirty (30) days, (ii) that it is proceeding with diligence to cure said default, and (iii) that such default will be cured within a reasonable period of time. In addition, the thirty (30) day notice period shall be tolled for a Force Majeure condition for such time as the Force Majeure condition reasonably prevents performance by AIRLINE. If AIRLINE stops its remedial efforts, no new notice to cure is needed to reinstate default actions allowed in this Section.

If under this Agreement any one of the following events of default occur, AUTHORITY may immediately issue written notice of default, without notice to cure being necessary:

a. AIRLINE fails to pay any part of the rentals, fees, and charges due under this Agreement in full within ten (10) days of the date of AUTHORITY's written notice of payments being past due. If AIRLINE disputes any obligation to make payments to AUTHORITY, AIRLINE shall pay the amount due and contest the validity or amount of such payment. In the event any court or other body having jurisdiction determines all or any part of the contested payment is not due, then AUTHORITY shall apply for the benefit of AIRLINE any amount determined as not due at the conclusion of the case to future AIRLINE obligations to AUTHORITY as AIRLINE may direct or the payments made by AIRLINE may be returned promptly to AIRLINE at its request. Further, during any legal contest of any fees or charges by AIRLINE, AIRLINE will not be held in default under the provisions of this paragraph. AUTHORITY shall use due diligence to collect any past due rentals, fees, and charges from any Air Transportation Company providing air service at the Airport, including AIRLINE.

b. AIRLINE fails to provide and keep in force contract security as required by Section 9.

c. AIRLINE fails to provide and keep in force insurance coverage as required by Section 32.

d. The appointment of a trustee, custodian, or receiver of all or a substantial portion of AIRLINE's assets.

e. Any legal corporate action that reduces or eliminates AIRLINE's continued right to participate and fulfill this Agreement.

f. AIRLINE is declared insolvent or takes the benefit of any present or future insolvency statute, makes a general assignment for the benefit of creditors, or seeks a reorganization or the readjustment of its indebtedness under any law or statute of the United States or of any state.

g. AIRLINE voluntarily discontinues its operations at the Airport for a period of at least thirty (30) consecutive days unless AUTHORITY approves this action in advance, in writing.

34.2 Continuing Responsibilities of AIRLINE

Notwithstanding the occurrence of any event of default, AIRLINE remains liable to AUTHORITY for all rentals, fees, and charges payable under this Agreement, including all preceding breaches of this Agreement even in the event of default. Furthermore, unless AUTHORITY terminates this Agreement, AIRLINE shall remain liable for and promptly pay all rentals, fees, and charges as they accrue until the expiration of this Agreement or until this Agreement is terminated by AIRLINE as allowed by this Agreement.

34.3 Remedies of AUTHORITY for AIRLINE's Default

Upon the occurrence of any default the following remedies shall be available to AUTHORITY:

a. AUTHORITY may terminate this Agreement, effective upon the date specified in the written notice of termination. The termination such date shall be not less than thirty (30) calendar days from said notice. Upon such date, AIRLINE shall have no further rights under this Agreement and AUTHORITY can take immediate possession of AIRLINE's Premises.

b. AUTHORITY may reenter the Premises any time after the default date and may remove all AIRLINE persons and property from the Premises. AIRLINE's Personal Property may be stored at AIRLINE's sole cost and expense. AUTHORITY shall not be liable for its condition or return.

c. AUTHORITY may relet all or part of the Premises at such rentals, fees, and charges and upon such other terms as AUTHORITY, believes appropriate. AUTHORITY may make alterations, repairs or Improvements on said Premises. In reletting the Premises, AUTHORITY shall be obligated to make a good faith effort to obtain terms no less favorable to AUTHORITY than those contained herein and otherwise seek to mitigate any damages it may suffer as a result of AIRLINE's default.

d. In the event that AUTHORITY relets Premises, rentals, fees, and charges received by AUTHORITY from such reletting shall be applied: (i) to the payment of any indebtedness other than rentals, fees, and charges due hereunder from AIRLINE to AUTHORITY; (ii) to the payment of any cost of such reletting; and (iii) to the payment of rentals, fees, and charges due and unpaid hereunder. The residue, if any, shall be held by AUTHORITY and applied in payment of future rentals, fees, and charges as the same may become due and payable hereunder. If that portion of such rentals, fees, and charges received from such reletting and applied to the payment of rentals, fees, and charges hereunder is less than the rentals, fees, and charges payable during applicable periods by AIRLINE hereunder, then AIRLINE shall pay such deficiency to AUTHORITY. AIRLINE shall also pay to AUTHORITY, as soon as ascertained, any costs and expenses incurred by AUTHORITY in such reletting not covered by the rentals, fees, and charges received from such reletting.

e. No reentry or reletting of Premises by AUTHORITY shall be construed as an election on AUTHORITY's part to terminate this Agreement unless a written notice of termination is given to AIRLINE.

f. AIRLINE shall pay to AUTHORITY all other costs incurred by AUTHORITY in the exercise of any remedy in this Section, including, but not limited to, reasonable attorney's fees, disbursements, court costs, and expert fees.

g. AUTHORITY may exercise any other legal or equitable remedy, including but not limited to the remedies hereinafter specified.

34.4 Remedies Under Federal Bankruptcy Laws

Notwithstanding the foregoing, upon the filing by or against AIRLINE of any proceeding under Federal bankruptcy laws, if AIRLINE has defaulted in the performance of any provision of this Agreement within the six (6) months preceding such filing, AUTHORITY shall have the right to terminate this Agreement, in addition to other remedies provided under provisions of the Federal Bankruptcy Rules and Regulations and Federal Judgeship Act of 1984, or any successor statute, as such may be subsequently amended, supplemented, or replaced. Such termination shall be by written notice to AIRLINE within sixty (60) days from the date of AIRLINE's initial filing in bankruptcy court.

35. TERMINATION BY AIRLINE: EVENTS OF DEFAULT BY AUTHORITY

35.1 Events of Default by AUTHORITY

Each of the following events shall constitute an "Event of Default by AUTHORITY":

a. AUTHORITY fails after receipt of written notice from AIRLINE to keep, perform or observe any term, covenant or condition herein contained to be kept, performed, or observed by AUTHORITY and such failure continues for thirty (30) days, or if by its nature such Event of Default by AUTHORITY cannot be cured within such thirty (30) day period, AUTHORITY fails to commence to cure or remove such Event of Default by AUTHORITY within said thirty (30) days and to cure or remove the same as promptly as reasonably practicable.

b. AUTHORITY closes Airport to flights in general or to the flights of AIRLINE, for reasons other than weather, acts of God or other reasons beyond its control, and fails to reopen Airport to such flights within sixty (60) days of such closure.

c. The Airport is permanently closed as an air carrier airport by act of any federal, state or local government agency having competent jurisdiction.

d. AIRLINE is unable to use Airport for a period of at least sixty (60) days due to any law or any order, rule or regulation of any appropriate governmental authority having jurisdiction over the operations of Airport, or any court of competent jurisdiction issues an injunction in any way preventing or restraining the use of Airport or any part thereof for Airport purposes, and such injunction remains in force for a period of a least sixty (60) days.

e. The United States Government or any authorized agency of the same (by executive order or otherwise) assumes the operation, control or use of Airport and its facilities in such a manner as to substantially restrict AIRLINE from conducting its operations, and such restriction shall continue for a period of at least sixty (60) days.

35.2 **Remedies of AIRLINE for AUTHORITY's Defaults.**

Upon the occurrence of an Event of Default by AUTHORITY and after appropriate notice by AIRLINE to AUTHORITY, AIRLINE shall have the right to terminate this Agreement and all rentals, fees and charges payable by AIRLINE under this Agreement shall terminate. In the event that AIRLINE's operations at Airport should be restricted substantially by action of any governmental agency having jurisdiction thereof, then AIRLINE shall, in addition to the rights of termination herein granted, have the right to a suspension of this Agreement, or part thereof, and abatement of an equitable proportion of the payments due hereunder, from the time of giving written notice of such election until such restrictions shall have been remedied and normal operations restored.

36. WAIVER OF STATUTORY NOTICE

In the event either party exercises its option to terminate this Agreement any notice of termination given pursuant to the provisions shall be sufficient to terminate this Agreement. Upon such termination, AIRLINE hereby agrees that it shall promptly surrender possession of the Premises to the AUTHORITY. Each party hereby expressly waives the receipt of any additional notice to quit or notice of termination which would otherwise be required to given by AUTHORITY or AIRLINE under any provisions of the laws of the State of Kansas.

37. AFFILIATES, SUBLETTING, AND HANDLING AGREEMENTS

37.1 **Rights of Affiliates**

The rights, privileges, and obligations granted AIRLINE hereunder with respect to the use of the Airport, its appurtenances, and facilities, or in which AIRLINE leases space, shall accrue to any Affiliate to the same extent and degree that such rights and privileges are possessed by AIRLINE hereunder without the requirement for the Affiliate to enter into any written agreement with the AUTHORITY. The exercise of such rights and privileges shall be subject to prior written notice by AIRLINE documenting (a) the relationship of the Affiliate which shall be in compliance with the definition of Affiliate in Section 1.1, and (b) AIRLINE's agreement that AIRLINE shall report all activity and pay charges and fees provided for under this Agreement should Affiliate fail to do so. Upon receipt of such notice by AUTHORITY, AUTHORITY shall confirm in writing the receipt of the required notice and such rights and privileges shall take effect the first day of the month following the month in which AUTHORITY receives the required notice by AIRLINE. No additional fees or charges other than those specifically set forth and payable by AIRLINE

hereunder shall be assessed against AIRLINE or such other Affiliate. Provided, however, it is understood and agreed that should an Affiliate lease space directly from the AUTHORITY, such space shall not be considered to be included in the rights and privileges under this Agreement and AIRLINE shall not be responsible to insure such space or indemnify for its use, and such space shall therefore be leased to the Affiliate as non-signatory. Notwithstanding anything to the contrary contained herein, the Affiliate shall have the opportunity to become a Signatory Airline at Airport by agreeing to the terms of and entering into an Agreement.

37.2 Assignment and Subletting by AIRLINE

AIRLINE shall not sell, convey, transfer, mortgage, pledge, or assign this Agreement, or any part thereof, or any rights created thereby or the leasing thereunder in any manner whatsoever or sublet Premises or any part thereof or any of the privileges recited herein without prior written consent of the Director, which consent shall not be unreasonably withheld. However, AIRLINE shall have the right to sublease all or any part of its Premises or assign all or any part of its rights and interests under this Agreement to any affiliated Air Transportation Company (i.e., affiliated through common ownership) or to any successor to its business through merger or consolidation. Consent of AUTHORITY for such assignment shall not be required; provided, however, due notice of any such assignment shall be given to the Director at least thirty (30) days prior to such assignment hereunder.

In the event AIRLINE, using large jet-loader aircraft, intends to assign all or part of its Premises to an Affiliate using smaller Aircraft that cannot be served by a passenger boarding bridge, then in such an event Director may re-assign Gates as appropriate to ensure the highest and best use of Gates and ramp safety.

Any such successor corporation no later than thirty (30) days after the date of such merger, consolidation or succession shall acknowledge in writing satisfactory in form and content to AUTHORITY that it has assumed all obligations of AIRLINE and will fully honor all the terms and conditions set forth in this Agreement. Failure to do so shall be cause for termination by AUTHORITY.

AIRLINE shall not, without the prior written consent of Director, sublease Premises. The parties hereto agree that Director may reasonably withhold such consent if AUTHORITY has substantially similar space available but unleased or if AUTHORITY can make such space available for lease within a reasonable time. In making such decision, the Director shall consider the full needs and plans of any Air Transportation Company seeking to sublease space from AIRLINE, including whether said operator desires to be handled by AIRLINE. Exclusive or preferential use of AIRLINE's Exclusive Use Premises, or any part thereof, or preferential use of AIRLINE's Preferential Use Premises, or any part thereof, by anyone other than AIRLINE or its Affiliates shall be considered a sublease.

In the event AIRLINE requests permission to sublease, the request shall be accompanied by a copy of the proposed sublease agreement, if prepared. In the event such proposed sublease agreement has not been prepared, a written summary of the material terms and conditions to be contained in such sublease agreement shall be included with AIRLINE's request for tentative approval by

Director. The area or space to be subleased and the rental to be charged shall be specified and all other information reasonably requested by AUTHORITY pertaining to said sublease shall be promptly provided. If AIRLINE is currently in default with respect to the payment of rentals, fees and charges due herein, any such sublease agreement shall provide for the direct payment to AUTHORITY by sublessee of rentals, fees and charges due AUTHORITY pursuant to this Agreement. A fully executed copy of such sublease shall be submitted to Director for final review no later than thirty (30) days following occupancy of Premises, or any portion thereof, by the sublessee.

In the event the rentals, fees and charges for subleased premises exceed the rentals, fees and charges payable by AIRLINE for said premises pursuant to this Agreement, AIRLINE shall pay to AUTHORITY the excess of the rentals, fees and charges received from the sublessee over that specified to be paid by AIRLINE herein, provided that AIRLINE may charge a reasonable fee for administrative costs, not to exceed fifteen (15) percent of the specified sublease rental, and such fifteen (15) percent shall not be considered excess rentals, fees, and charges. AIRLINE shall also have the right to charge a reasonable fee to others for the use of AIRLINE's capital equipment and to charge for use of utilities and other services being paid for by AIRLINE.

37.3 **Ground Handling Services**

a. **Ground Handling Services by AIRLINE.** AIRLINE shall not ground handle another Air Transportation Company, without the prior written approval of the Director. Should AIRLINE wish to handle any portion of the operations of another Air Transportation Company, AIRLINE shall provide AUTHORITY with advance written notice of such proposed activities, including a description of the type and extent of services offered. AIRLINE agrees to pay monthly to AUTHORITY, a fee as established in AUTHORITY's Schedule of Fees and Charges derived from such Ground Handling Services performed for Non-Signatory Airlines or non-scheduled airlines, provided however, that no fee shall be required for Ground Handling Services performed for AIRLINE's Affiliate(s) and other Signatory Airlines.

b. **Ground Handling Services by Others.** AUTHORITY shall grant AIRLINE the right to contract with other companies, including Signatory Airlines, for Ground Handling Services for AIRLINE's aircraft, provided that, among other considerations: (i) AIRLINE has received advance written consent of AUTHORITY; and (ii) such other company, unless such company is a Signatory Airline, has entered into a Ground Handling Services operating agreement with AUTHORITY prior to the commencement of such Ground Handling Services.

37.4 **Release of Space.**

If AIRLINE wishes to release part of the Premises to AUTHORITY, AIRLINE shall notify AUTHORITY in writing of the space AIRLINE wishes to release and AUTHORITY shall use its best efforts to reassign such space to another Air Transportation Company; provided, however, AUTHORITY shall not be obligated to take back the space AIRLINE wishes to release and AIRLINE shall remain responsible for all obligations regarding such space under this Agreement. If AUTHORITY agrees to take back space released by AIRLINE, AUTHORITY shall amend this

Agreement to relieve AIRLINE of its obligations in regard to the space released.

37.5 **Nonwaiver of Responsibility.**

No assignment, transfer, conveyance, sale, mortgage, pledge, encumbrance, or sublease by AIRLINE shall relieve AIRLINE of its responsibility for the payment of rentals and fees or the performance of all other obligations provided for in this Agreement, without the prior written approval of the Director to such relief.

37.6 **Assignment by AUTHORITY.**

AUTHORITY shall have the right to transfer or assign this Agreement without limitation to another public or quasi-public entity. This entity to which this Agreement is transferred or assigned shall be bound by all of the rights and obligations contained herein. If such public or quasi-public entity either refuses to accept one or more of AUTHORITY's obligations or does not recognize one or more of AIRLINE's rights in this Agreement, then AIRLINE may terminate this Agreement pursuant to Section 35.

38. RULES AND REGULATIONS

AIRLINE, its agents and employees, shall be subject to any and all applicable rules, regulations, Airport Standard Operating Procedures, orders and restrictions which are now in force or which may hereafter be adopted by the Wichita Airport Authority or the City of Wichita, Kansas, in respect to the operation of the Airport, provided that the foregoing are reasonable, nondiscriminatory, and neither impair, limit, nor extinguish the rights of AIRLINE under this Agreement; and shall also be subject to any and all applicable laws, statutes, rules, regulations or orders of any governmental authority, federal or state, which are now in force or which may hereafter be promulgated, lawfully exercising authority over the Airport or AIRLINE 's operations conducted hereunder. AUTHORITY shall provide AIRLINE reasonable notice before the enactment or modification of any rules, regulations, Airport Standard Operating Procedures, orders and restrictions, and shall duly consider AIRLINE's input.

AUTHORITY shall not be liable to AIRLINE for any diminution or deprivation of its rights hereunder on account of the exercise of any such authority is in this Section provided, nor shall AIRLINE be entitled to terminate this Agreement by reason thereof unless exercise of such authority shall so interfere with AIRLINE 's exercise of the rights hereunder as to constitute a termination of this Agreement by operation of law in accordance with the laws of the State of Kansas, or as set out in Section 35.

AUTHORITY shall whenever possible make reasonable efforts to obtain uniform compliance with its rules and regulations; provided, however, AUTHORITY shall not be liable to AIRLINE for any violation or non-observance of such rules and regulations by any other tenant, operator or Air Transportation Company at the Airport.

39. ENCROACHERS, TRESPASSERS AND OTHER THIRD PARTY HAZARDS

AIRLINE shall lawfully remove, or cause to be removed by AUTHORITY or other official law enforcement agency, all encroachers, trespassers and other third parties violating laws of the federal, state or local government, or who are not on the Premises for legitimate purposes.

40. AIRPORT SECURITY PROGRAM COMPLIANCE

AIRLINE must obtain Airport Security Identification and Access Media (I.D. Media) for its employees, subcontractors, sublessees, suppliers, agents, and representatives requiring access to the sterile areas, secured AOA, and Security Identification Display Area (SIDA), or other secured areas as may be identified in the Airport Security Program, and pay any related costs associated with the privileges as set forth under this Section. With respect to the issuance, maintenance, and administration of I.D. Media, the AIRLINE shall pay or cause to be paid to the AUTHORITY all charges as may be established from time to time by the AUTHORITY. Such costs may include, but are not limited to: (i) the initial issuance of I.D. Media; (ii) the replacement of lost or stolen I.D. Media; (iii) administrative costs with respect to those I.D. Media not returned to the AUTHORITY.

Said I.D. Media will be valid as set forth under the Airport Security Program, and must be returned to the Airport Police and Fire Division, at 2193 Air Cargo Road within twenty-four (24) hours after expiration, suspension, and/or termination of this Agreement. Said I.D. Media will be valid for no longer than the period of this Agreement. The AIRLINE shall be responsible for requesting the issuance of I.D. Media to employees or other authorized representatives of the AIRLINE who require access to secured areas on the Airport due to operational need and necessity. In addition, AIRLINE shall be responsible for the immediate reporting of all lost or stolen I.D. Media and the immediate return of the I.D. Media of AIRLINE's personnel transferred from the Airport, or separated from the employ of AIRLINE.

AIRLINE warrants that it will comply with of the Airport Security Program and comply with all applicable regulations of the FAA and Transportation Security Administration ("TSA"), 49 CFR Parts 1500, 1542, 1544, 1546, 1548, and 1550 as amended or promulgated, and that it will always maintain the security of the Airport, Premises, and/or any AOA access for which AIRLINE is responsible. The AUTHORITY shall have the right to require the AIRLINE to conduct background investigations and to furnish certain data on such employees or other persons before the issuance of I.D. Media, which data may include the fingerprinting of any and all of its employees, subcontractors, suppliers, agents, and/or representatives. AIRLINE also hereby agrees that it shall be responsible for any and all of the actions on the Premises of its employees, subcontractors, suppliers, agents, customers, invitees, and/or representatives and shall provide any and all necessary escorts, as outlined in the Airport Security Program. AIRLINE hereby agrees that it will immediately implement any and all security changes that are required either directly or indirectly by the TSA, FAA, or AUTHORITY. AIRLINE further agrees to correct any security deficiency or other deficiency as may be determined as such by the AUTHORITY, the Department

of Transportation ("DOT"), the FAA, or the TSA, or any other federal or state agency with jurisdiction. In the event AIRLINE fails to remedy any such deficiency, the AUTHORITY may do so at the sole cost and expense of AIRLINE the cost of which, plus an additional twenty percent (20%) administrative fee, is payable to the AUTHORITY within thirty (30) days after the AUTHORITY's invoice. The AUTHORITY reserves the right to take whatever lawful action is necessary to correct and remedy any security deficiency or other deficiency. When the AUTHORITY takes actions to remedy deficiencies of any kind, it shall be done in a reasonable and cost-conscious manner.

Should AIRLINE, its employees, subcontractors, suppliers, agents, customers, invitees, and/or representatives cause any security violations, and should AUTHORITY be cited for a civil fine or penalty for such security violation, AIRLINE agrees to reimburse AUTHORITY for any monetary civil fine or penalty which may be imposed on AUTHORITY. However, nothing herein shall prevent the AIRLINE from contesting the legality, validity or application of such fine or penalty to the full extent AIRLINE may be lawfully entitled, nor require AUTHORITY to pursue such a contest on AIRLINE'S behalf. AIRLINE may have I.D. Media/access privileges immediately suspended and/or revoked by AUTHORITY for failure to adhere to the Airport Security Program, or for failure to return all I.D. Media within the time-frames specified herein.

The AIRLINE agrees that information concerning the location, type, nature, capabilities, application and use of the AUTHORITY's security system is considered Sensitive Security Information (SSI) as defined by TSR 1520, and shall restrict the distribution, disclosure and availability of SSI only to persons with a need to know. All requests for SSI by persons not directly employed by the AIRLINE, and deemed to have a need to know shall be referred to AUTHORITY for consideration and determination of whether such information is legal and appropriate for dissemination.

Before the AIRLINE shall permit any employee, subcontractor, sublessees, supplier, agents, customer, invitee, and/or representative to operate a motor vehicle of any kind or type on the AOA of Airport (unless such employee is escorted by a AUTHORITY-approved escort), the AIRLINE shall ensure that all such vehicle operators have completed required AOA access and driver training, possess a current, valid, and appropriate driver's license, appropriate Airport issued I.D. Media, and a Vehicle Ramp Permit. AIRLINE company vehicles prominently displaying a permanently affixed company name and/or logo on vehicles and equipment are excluded from the requirement of displaying a Vehicle Ramp Permit.

The AIRLINE agrees that its vehicles, cargo, product deliveries, and other personal property are subject to being inspected and searched when entering, exiting and while on the AOA.

41. SECURITY SYSTEMS

AUTHORITY may at its sole discretion install, operate and maintain a computer controlled access and monitoring system on the Airport. The purpose of said security systems is for the provision of safety and security to the general public, airport employees, tenants and permitees and their employees and invitees, primarily within and upon public areas, and not for the exclusive benefit of any single party or category of airport user. AIRLINE may, at its sole option and cost, install, operate and maintain private security systems within interior or exterior areas of the Premises; however, any such private security systems shall not interfere with, interrupt, impair or block the security systems or effectiveness of the AUTHORITY's security surveillance systems.

AUTHORITY shall not install security surveillance systems for the exclusive benefit of the AIRLINE. AIRLINE shall not rely on the surveillance cameras owned and operated by the AUTHORITY for purposes of risk management or private security from property loss, theft or other criminal activity.

42. PORTABLE STORAGE CONTAINERS/STRUCTURES

Unless specifically approved in writing, and under only conditions specified by AUTHORITY, AIRLINE shall not place or allow to be placed upon Premises, any type of portable storage container, trailer, unit, box, or barrel which is used to store merchandise and/or equipment and supplies outside of an enclosed permanent building or structure. Unless specifically approved, and only under conditions specified by AUTHORITY, AIRLINE shall not place or allow to be placed upon Premises, any type of portable or temporary structure, trailer, mobile home, modular structure or device.

AUTHORITY shall not unreasonably withhold approval of such container(s) and structure(s) if placement is of a temporary nature for the purpose of supporting construction, alterations, improvement activity, or other approved project.

43. NONDISCRIMINATION

The AIRLINE shall comply with all the following nondiscrimination provisions to the extent that AIRLINE's activities shall be subject to the same:

43.1 Nondiscrimination in Employment

The AIRLINE agrees not to discriminate against any employee or applicant for employment because of race, creed, color, sex, religion, national origin, ancestry, age or disability. The AIRLINE shall take affirmative action to insure that employees are treated without regard to their race, creed, color, national origin, sex, religion, ancestry, age or disability. Such actions shall

include, but not be limited to, the following: employment, promotion demotion or transfer, recruitment, advertising, lay-off or termination, and selection for training, including apprenticeship. The AIRLINE hereby agrees to post, in a conspicuous place, available to employees and applicants for employment, notices setting forth the provisions of this Section, in compliance with federal and state laws.

43.2 Facilities Nondiscrimination

AIRLINE shall make its accommodations and/or services available to the public on fair and reasonable terms without discrimination on the basis of sex, age, race, religion, creed, ancestry, color, national origin, or disability, provided, however, nothing herein shall require the furnishing to the general public of the use of any facilities or accommodations customarily furnished by AIRLINE solely to its employees, customers, clients, guests, and invitees; and AIRLINE may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar type of price reductions to volume purchasers.

a. Noncompliance with any nondiscrimination provision imposed by law related to the accommodations and/or services provide under this Agreement, or noncompliance with any nondiscrimination within this Agreement shall constitute a material breach of this Agreement and, in the event of such noncompliance, AUTHORITY shall have the right to terminate this Agreement without liability therefore.

b. AIRLINE agrees to insert or incorporate by reference nondiscrimination language in any leases, agreements, or contracts, etc. by which said AIRLINE grants a right or privilege to any person, firm, or corporation to render accommodations and/or services to the public on the Premises.

44. GENERAL PROVISIONS

44.1 Operation of Airport by the United States of America

This Agreement and all the provisions hereof shall be subject to whatever right the United States of America now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of the Airport or the exclusive or nonexclusive use of the Airport by the United States during the time of war or national emergency.

44.2 14 CFR Part 77 of Federal Aviation Regulations

AIRLINE agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event future construction or addition of a building, structure is planned for the Premises, or in the event of any planned modification or alteration of any present or future building or structure situated on the Airport. AIRLINE by accepting this Agreement expressly agrees for itself, its successors and assigns that it shall not erect nor permit the erection of any unapproved structure or object, nor permit the growth of any tree on the Airport which shall exceed such maximum height as may be stipulated by AUTHORITY. Applicable laws,

codes, regulations or agreements concerning height restrictions shall govern the maximum height to be stipulated by AUTHORITY. In the event this covenant is breached, AUTHORITY reserves the right to enter upon the Premises and to remove the offending structure or object, and cut down the offending tree, all of which shall be at the expense of AIRLINE and without liability to AUTHORITY. This expense plus an administrative fee of twenty percent (20%) shall be payable within thirty (30) days after AUTHOIRTY's invoice.

44.3 **Airspace**

There is hereby reserved to AUTHORITY, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of Aircraft in the airspace above the surface of the Premises. This public right of flight shall include the right to cause or allow in said airspace, any noise inherent in the operation of any Aircraft used for navigation or flight through the said airspace or landing at, taking off from or operation on the Airport. No liability on the part of AUTHORITY shall result from the exercise of this right.

44.4 **Easement for Flight**

AIRLINE releases AUTHORITY from any present or future liability whatsoever and covenants not to sue AUTHORITY for damages or any other relief based directly or indirectly upon noise, light, vibrations, smoke, fumes, odors, air currents, shock waves, electronic or other emissions occurring as a result of aviation or airport related operations at or otherwise associated with the Airport. This release and covenant includes but is not limited to claims for damages for physical or emotional injuries, discomfort, inconvenience, property damage, death, interference with use and enjoyment of property, nuisance, loss of income or business opportunity, inverse condemnation or for injunctive or other extraordinary or equitable relief. It is further agreed that AUTHORITY shall have no duty to avoid or mitigate such damages by, without limitation, setting aside or condemning buffer lands, rerouting air traffic, erecting sound or other barriers, establishing curfews, noise or other regulations, relocating airport facilities or operations or taking other measures, except to the extent, if any, that such actions are validly required by official federal agency action. AUTHORITY reserves from the Premises an easement for flight of Aircraft in or adjacent to the airspace above the Premises and for the existence and imposition over, on and upon said Premises of noise, light, vibrations, smoke, fumes, odors, air currents, electronic or other emissions, discomfort, inconvenience, interference with use and enjoyment, and any consequent reduction in market value which may occur directly or indirectly as a result of aviation, airport or airport-related operations at or otherwise associated with use of the Airport. AIRLINE accepts the Premises subject to the risks and activities hereinabove described.

44.5 **Airport Hazards**

AIRLINE by accepting this Agreement agrees for itself, its successors and assignees, that it shall not make use of the Premises in any manner which might interfere with the landing and taking off of Aircraft from the Airport or otherwise constitute a hazard. If during the Term of this Agreement the condition is breached, AUTHORITY reserves the right to enter upon the Premises and cause the abatement of such interference at the expense of AIRLINE without liability to AUTHORITY, except to the extent such liability arises from the negligence or willful misconduct of AUTHORITY. The expense of this action plus an administrative fee of twenty percent (20%)

shall be payable within thirty (30) days after AUTHOIRTY's invoice.

44.6 **Federal Aviation Administration Requirements**

AUTHORITY and AIRLINE agree that the requirements of the FAA set out below are approved by both parties, and if applicable, AIRLINE agrees to comply with all FAA requirements with respect to its operations, use of the Airport and this Agreement:

a. The AIRLINE, for itself and its representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained or otherwise operated on said property described in this Agreement for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the AIRLINE shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

b. The AIRLINE, for itself and its representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any Improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the AIRLINE shall use the Premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

c. The AIRLINE assures that it shall undertake an affirmative action program if required by 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. The AIRLINE assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. The AIRLINE assures that it shall require that its covered sub-organizations provide assurances to the AIRLINE that they similarly shall undertake affirmative action programs, and that they shall require assurances from their sub-organizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

d. Nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308 of the Federal Aviation Act of 1958.

e. AIRLINE agrees to furnish service on a fair, equal and not unjustly discriminatory basis to all users thereof, and to charge fair, reasonable and not unjustly discriminatory prices for

each unit or service; provided that AIRLINE may make reasonable and nondiscriminatory discounts, rebates or other similar types of price reductions to volume purchasers.

f. AUTHORITY reserves the right (but shall not be obligated to AIRLINE) to maintain and keep in repair the AOA of the airport and all publicly-owned facilities of the airport, together with the right to direct and control all activities of AIRLINE in this regard.

g. AUTHORITY reserves the right further to develop or improve the Airfield and all publicly-owned air navigation facilities of the airport as it sees fit, regardless of the desires or views of AIRLINE, and without interference or hindrance.

h. AUTHORITY 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 AIRLINE from erecting, or permitting to be erected, any building or other structure on the airport which, in the opinion of AUTHORITY, would limit the usefulness of the airport or constitute a hazard to Aircraft.

i. During time of war or national emergency AUTHORITY 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 Airfield, 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.

j. Rights granted by this Agreement shall not be exercised in such a way as to interfere with or adversely affect the use, operation, maintenance or development of the Airport.

k. There is hereby reserved to AUTHORITY, its successors and assigns, for the use and benefit of the public, a free and unrestricted right of flight for the passage of Aircraft in the air space above the surface of the Premises herein conveyed, together with the right to cause in said airspace such noise as may be inherent in the operation of Aircraft now known or hereafter used for navigation of or flight in the air, using said airspace or landing at, taking off from or operating on or about the Airport.

l. This Agreement shall become subordinate to provisions of any existing or future agreement between the AUTHORITY and the United States of America or any agency thereof relative to the operation, development or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport.

44.7 **Modifications for Granting of FAA Funds**

In the event that the AUTHORITY determines the FAA requirements call for modifications or changes to this Agreement as a condition precedent to granting of funds for the Improvement of the Airport, these modifications or changes shall supersede this Agreement and AIRLINE agrees to consent to such amendments, modifications, revisions, supplements or deletions of any of the terms, conditions or requirements of this Agreement as may be reasonably required by the

AUTHORITY to fully comply with federal grant assurances and directives and to obtain FAA grants-in-aid, provided that no such changes shall materially alter the rights or obligations of AIRLINE hereunder.

44.8 Subordination to Agreements with the U.S. Government

This Agreement is subject and subordinate to the provisions of any agreements heretofore or hereafter made between AUTHORITY and the United States Government relative to the operation or maintenance of Airport, the execution of which has been required as a condition precedent to the transfer of federal rights or property to AUTHORITY for Airport purposes, or the expenditure of federal funds for the improvement or development of Airport, including the expenditure of federal funds for the development of Airport in accordance with the provisions of the Federal Aviation Act of 1958, as it has been amended from time to time. AUTHORITY covenants that it has no existing agreements with the United States Government in conflict with the express provisions hereof.

44.9 Non-Waiver of Rights

No waiver or default by either party of any of the terms, warranties, covenants and conditions hereof to be performed, kept and observed by the other party shall be construed as, or shall operate as, a waiver of any subsequent default of any of the terms, warranties, covenants or conditions herein contained, to be performed, kept and observed by the other party.

44.10 Severability and Invalid Provisions

In the event any term, covenant, condition or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of any such term, covenant, condition or provision shall in no way affect any other term, covenant, condition or provision herein contained. The parties agree if such invalid provision is essential to this Agreement, they will promptly begin negotiations for a suitable replacement provision so as to give force to the intent of the parties.

44.11 Waiver of Claims

Each party hereby waives any claim against the other party and such other party's officers or employees for loss of anticipated profits, consequential or incidental damages, or claim for attorney fees caused by or resulting any suit or proceedings directly or indirectly attacking the validity of Agreement or any part thereof, or the manner in which it is executed or performed, or by any judgment or award in any legal proceeding declaring this Agreement null, void or voidable, or delaying the same of any part thereof, from being carried out. This waiver extends to all claims, whether the supporting legal theory lies in common law or has a statutory basis.

44.12 Incorporation of Exhibits

All exhibits referred to in this Agreement are intended to be and are hereby specifically made a part of this Agreement.

44.13 Non-Liability of Agents and Employees

No member, officer, agent or employee of either party to this Agreement shall be charged personally, or held contractually liable by or to the other party under the terms or provisions of

this Agreement, or because of any breach thereof or because of its or their execution or attempted execution.

44.14 **Successors and Assigns Bound.**
This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties.

44.15 **Time of Essence**
Time is of the essence in this Agreement.

44.16 **Relationship of the Parties**
AIRLINE is not in any way or for any purpose a partner or joint venturer with or an agent of AUTHORITY. AIRLINE shall act as an independent contractor in the performance of its duties pursuant to this Agreement.

44.17 **Interpretation**
AUTHORITY and AIRLINE agree that this Agreement shall not be construed or interpreted in favor of either party on the basis of preparation.

44.18 **Kansas Laws to Govern**
This Agreement and the terms and conditions herein contained shall at all times be governed, interpreted and construed under and in accordance with the laws of the State of Kansas, and venue for resolution of any issue pertaining to this Agreement shall be in Sedgwick County, Kansas.

44.19 **Force Majeure**
Neither the AUTHORITY nor the AIRLINE shall be deemed in violation of this Agreement if it is prevented from performing any of the obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortages of material, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, riots, rebellion, sabotage, acts of terrorism or the results therefrom, or any other circumstances for which it is not responsible or which is not within its control.

45. NOTICES, CONSENTS, AND APPROVALS

Notices or other communications to AUTHORITY pursuant to the provisions hereof shall be sufficient and irrefutably deemed received if sent regular mail, postage prepaid, or by a nationally recognized overnight courier, or facsimile transmission, addressed to:

Attention: Director
Wichita Airport Authority
2173 Air Cargo Road
Wichita, Kansas 67209;

Fax: (316) 946-4793

and bills, statements, and notices or communications to AIRLINE shall be sufficient and irrefutably deemed received if sent regular mail, postage prepaid, or by a nationally recognized overnight courier addressed to:

Joanna Marten
Corporate Real Estate (HDQOU)
United Airlines
233 S. Wacker Dr., FL 11
Chicago, IL 60606

or to such respective addresses as the parties may designate in writing from time to time.

46. INTENTION OF PARTIES

This Agreement is intended solely for the benefit of AUTHORITY and AIRLINE and is not intended to benefit, either directly or indirectly, any third party or member(s) of the public at large. Any work done or inspection of the Premises performed by AUTHORITY is solely for the benefit of AUTHORITY and AIRLINE.

47. AMENDMENT OR MODIFICATION

This Agreement constitutes the entire Agreement between the parties for the lease of Premises set forth and identified under Section 2. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless the same is in writing, dated subsequent to the date hereof, and duly executed by the parties hereto.

This Agreement shall not be modified or amended unless in writing with formality equal to this Agreement, executed by the AIRLINE and AUTHORITY on a date subsequent to the execution of this Agreement.

48. APPROVAL, CONSENT, DIRECTION OR DESIGNATION BY AUTHORITY

Wherever under this Agreement, approvals, consents, directions, or designations are required or permitted, such approvals, consents, directions, or designations required or permitted under this Agreement shall be performed by the Director of Airports, or his/her authorized representative and, unless otherwise expressly stated in this Agreement, approvals and consents shall not be unreasonably withheld.

The parties agree that this Agreement may be signed in multiple counterparts, and that when signed by all parties, shall be effective upon the execution latest in time. Each shall be deemed an original, but taken together, shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.

ATTEST:

THE WICHITA AIRPORT AUTHORITY
WICHITA, KANSAS

By _____
Karen Sublett, City Clerk

By _____
Carl Brewer, President
"AUTHORITY"

By _____
Victor D. White, Director of Airports

ATTEST:

UNITED AIRLINES, INC.

By _____

By _____
"AIRLINE"

APPROVED AS TO FORM: _____ Date: _____
Sharon Dickgrafe, Interim Director of Law

Exhibit A

AFFILIATE AIRLINE NOTIFICATION

Wichita Airport Authority

AIRLINE: _____

AFFILIATE: _____

D/B/A: _____

AFFILIATE ADDRESS: _____

_____

_____

AFFILIATE CONTACT: _____

Telephone: _____

Fax: _____

Email: _____

Date of Notification: _____

Date of Termination: _____

AIRLINE and AFFILIATE acknowledge and agree that AFFILIATE will comply with all terms, conditions, covenants, and obligations as set forth in the Wichita Airport Authority Airline Use and Lease Agreement dated _____, 2015.

AIRLINE: _____

By: _____

AFFILIATE: _____

By: _____

EXHIBIT "E"

MONTHLY ACTIVITY REPORT

To be submitted within 5 days following the end of each month

A separate Exhibit should be submitted for each airline.

Reporting Month: _____ 2015

Airline Name or Affiliate: _____

Submit to:

ICT-AcctsRec@wichita.gov

Wichita Airport Authority

2173 Air Cargo Road

Wichita, KS 67209

1. AIRCRAFT LANDINGS

A. Landings NOT Subject to Landing Fees:

	Aircraft Type	FAA Certified Maximum Gross Landing Weight (lbs)	Number of Landings	Total Landed Weight
Training & Testing[a]				-
				-
Return Landings				-
				-
Total			0	0

B. Landings Subject to Landing Fees:

	Aircraft Type	FAA Certified Maximum Gross Landing Weight (lbs)	Number of Landings	Total Landed Weight
Revenue Landings				-
				-
				-
Training & Testing[a]				-
Other Non-Revenue Landings				-
				-
Total			0	0

Divided by:		**1,000**
Multiplied by the Signatory Landing Fee Rate of:	$	3.34
		-or-
Multiplied by the Non-Signatory Landing Fee Rate of:	$	4.18
Total Landing Fee:	$	-

(a) Training and Testing flights in excess of 10 percent of Revenue Landings by Airline in any one calendar month shall be included under Landings Subject to Landing Fees, pursuant to Section 14.1. of the Agreement.

2. USE OF UNLEASED AREAS

	Quantity	Rate	
Per Turn use by Signtory[b]		$ 66.00	$ -
Per Turn use by Non-Signatory[b]		$ 252.00	$ -
Aircraft Remote Parking/24 hours[c]		$ 50.00	$ -
Total Unleased Areas Use Charges:			$ -

(b) Per turn use of Ticket Counter and Gate or any portion thereof for no more than three hours.

(c) Including use of an unleased Aircraft Parking Apron longer than three hours.

EXHIBIT "E"

MONTHLY ACTIVITY REPORT

To be submitted within 5 days following the end of each month

A separate Exhibit should be submitted for each airline.

3. PASSENGERS

	Enplaned	Deplaned	Total
Revenue			-
Non-Revenue			-
Thru / Connecting			-
Total	0	0	-

4. CARGO & MAIL (LBS)

	Enplaned	Deplaned	Total
Cargo*			-
Mail			-
Total	0	0	-

* Cargo includes freight plus express.

5. CERTIFICATION

The undersigned certifies that the above information, according to the books and records of the Airline, is correct and that he/she is a corporate officer of Airline or has been authorized to provide the above information by a corporate officer.

Signature: _____ Title: _____

Printed Name: _____ Date: _____

EXHIBIT "E"

MONTHLY ACTIVITY REPORT

To be submitted within 5 days following the end of each month

A separate Exhibit should be submitted for each airline.

Reporting Month: _____ 2015

Airline Name or Affiliate: _____

Submit to:

ICT-AcctsRec@wichita.gov

Wichita Airport Authority

2173 Air Cargo Road

Wichita, KS 67209

1. AIRCRAFT LANDINGS

A. Landings NOT Subject to Landing Fees:

	Aircraft Type	FAA Certified Maximum Gross Landing Weight (lbs)	Number of Landings	Total Landed Weight
Training & Testing[a]				-
				-
Return Landings				-
				-
Total			0	0

B. Landings Subject to Landing Fees:

	Aircraft Type	FAA Certified Maximum Gross Landing Weight (lbs)	Number of Landings	Total Landed Weight
Revenue Landings				-
				-
				-
Training & Testing[a]				-
Other Non-Revenue Landings				-
				-
Total			0	0

Divided by:		**1,000**
Multiplied by the Signatory Landing Fee Rate of:	$	3.34
		-or-
Multiplied by the Non-Signatory Landing Fee Rate of:	$	4.18
Total Landing Fee:	$	-

(a) Training and Testing flights in excess of 10 percent of Revenue Landings by Airline in any one calendar month shall be included under Landings Subject to Landing Fees, pursuant to Section 14.1. of the Agreement.

2. USE OF UNLEASED AREAS

	Quantity	Rate	
Per Turn use by Signtory[b]		$ 66.00	$ -
Per Turn use by Non-Signatory[b]		$ 252.00	$ -
Aircraft Remote Parking/24 hours[c]		$ 50.00	$ -
Total Unleased Areas Use Charges:			$ -

(b) Per turn use of Ticket Counter and Gate or any portion thereof for no more than three hours.

(c) Including use of an unleased Aircraft Parking Apron longer than three hours.

EXHIBIT "E"

MONTHLY ACTIVITY REPORT

To be submitted within 5 days following the end of each month
A separate Exhibit should be submitted for each airline.

3. PASSENGERS

	Enplaned	Deplaned	Total
Revenue			-
Non-Revenue			-
Thru / Connecting			-
Total	0	0	-

4. CARGO & MAIL (LBS)

	Enplaned	Deplaned	Total
Cargo*			-
Mail			-
Total	0	0	-

* Cargo includes freight plus express.

5. CERTIFICATION

The undersigned certifies that the above information, according to the books and records of the Airline, is correct and that he/she is a corporate officer of Airline or has been authorized to provide the above information by a corporate officer.

Signature: _____ Title: _____

Printed Name: _____ Date: _____

EXHIBIT G-1

SUMMARY OF NON-AIRLINE OPERATING REVENUES, OPERATING EXPENSES, AND DEBT SERVICE

Wichita Airport Authority
Dwight D. Eisenhower National Airport
For Fiscal Years Ending December 31

		Budget 2015
NONAIRLINE REVENUES		
Other aviation	$	1,544,577
Terminal building		1,044,211
Parking and rental car		7,748,435
Hangars and buildings		5,595,637
Jabara		406,930
Other		620,935
Total nonairline revenues	$	16,960,725
OPERATING EXPENSES		
By Line Item		
Personal services	$	9,706,915
Utilities		2,456,389
Other contractual		2,937,492
Commodities		1,072,350
Capital outlay		243,000
Total operating expenses	$	16,416,146
By Cost Center		
Airfield	$	6,508,855
Terminal		5,586,863
Landside		2,111,710
Other aviation buildings and areas		1,811,301
Jabara		397,417
Total operating expenses	$	16,416,146
DEBT SERVICE		
By Series		
Series 2011A	$	435,609
Series 2011B		865,300
Series 2014A		462,541
Series 2015		3,813,502
Total debt service requirement	$	5,576,952
Less: transfer from the PFC revenue account		1,642,399
Less: transfer from the CFC revenue account		242,151
Net debt service requirement	$	3,692,402
By Cost Center		
Airfield	$	256,737
Terminal		1,048,743
Landside		982,761
Other aviation buildings and areas		1,176,207
Jabara		227,955
Net debt service requirement	$	3,692,402

EXHIBIT G-2

CALCULATION OF TERMINAL RENTALS
Wichita Airport Authority
Dwight D. Eisenhower National Airport
For Fiscal Years Ending December 31

		Budget 2015
Terminal Area Requirement		
Terminal operation and maintenance expenses	$	5,586,863
Operation and maintenance reserve fund deposit		-
Rate stabilization fund withdrawal		-
Net debt service requirement		1,048,743
Amortization of cash-funded assets		114,276
Terminal area requirement	$	6,749,882
Terminal Area Rental Rate		
Usable space (square feet)		217,955
Terminal area rental rate per square foot	$	30.97

EXHIBIT G-3

CALCULATION OF AIRLINE LANDING FEES
Wichita Airport Authority
Dwight D. Eisenhower National Airport
For Fiscal Years Ending December 31

		Budget 2015
Airfield Requirement		
Airfield operation and maintenance expenses	$	6,508,855
Operation and maintenance reserve fund deposit		-
Rate stabilization fund withdrawal		-
Net debt service requirement		256,737
Amortization of cash-funded assets		106,192
Airfield requirement	$	6,871,784
Less: airfield credits		(1,463,487)
Less: net revenue sharing		(2,221,699)
Net airfield requirement	$	3,186,598
Landing Fee Rate		
Signatory passenger airline aircraft landed weight (1,000 pounds)		955,325
Signatory landing fee rate (per 1,000 pounds)	$	3.34

EXHIBIT G-4

APPLICATION OF REVENUES
Wichita Airport Authority
Dwight D. Eisenhower National Airport
For Fiscal Years Ending December 31

		Budget 2015
Revenues		
Airline revenues		
Landing fees	$	3,186,598
Ramp area rentals		115,000
Terminal building rentals		2,476,416
Reconciliation amount		-
Total airline revenues	$	5,778,014
Signatory enplaned passengers		753,985
Signatory airline payments per enplaned passenger	$	7.66
Nonairline revenues		
Other aviation	$	1,544,577
Terminal building		1,044,211
Parking and rental car		7,748,435
Hangars and buildings		5,595,637
Jabara		406,930
Other		620,935
Total nonairline revenues	$	16,960,725
Total revenues	$	22,738,738
Plus: transfer from the PFC revenue account		1,642,399
Plus: transfer from the CFC revenue account		242,151
Total revenues available	$	24,623,288
Application of Revenues		
Operation and maintenance Expenses	$	16,416,146
Debt service fund		5,576,952
Subtotal	$	21,993,098
Net cash flow	$	2,630,190
Less: stabilization fund deposits		(149,057)
Authority net cash flow	$	2,481,133

EXHIBIT G-5

NET REVENUE SHARING
Wichita Airport Authority
Dwight D. Eisenhower National Airport
For Fiscal Years Ending December 31

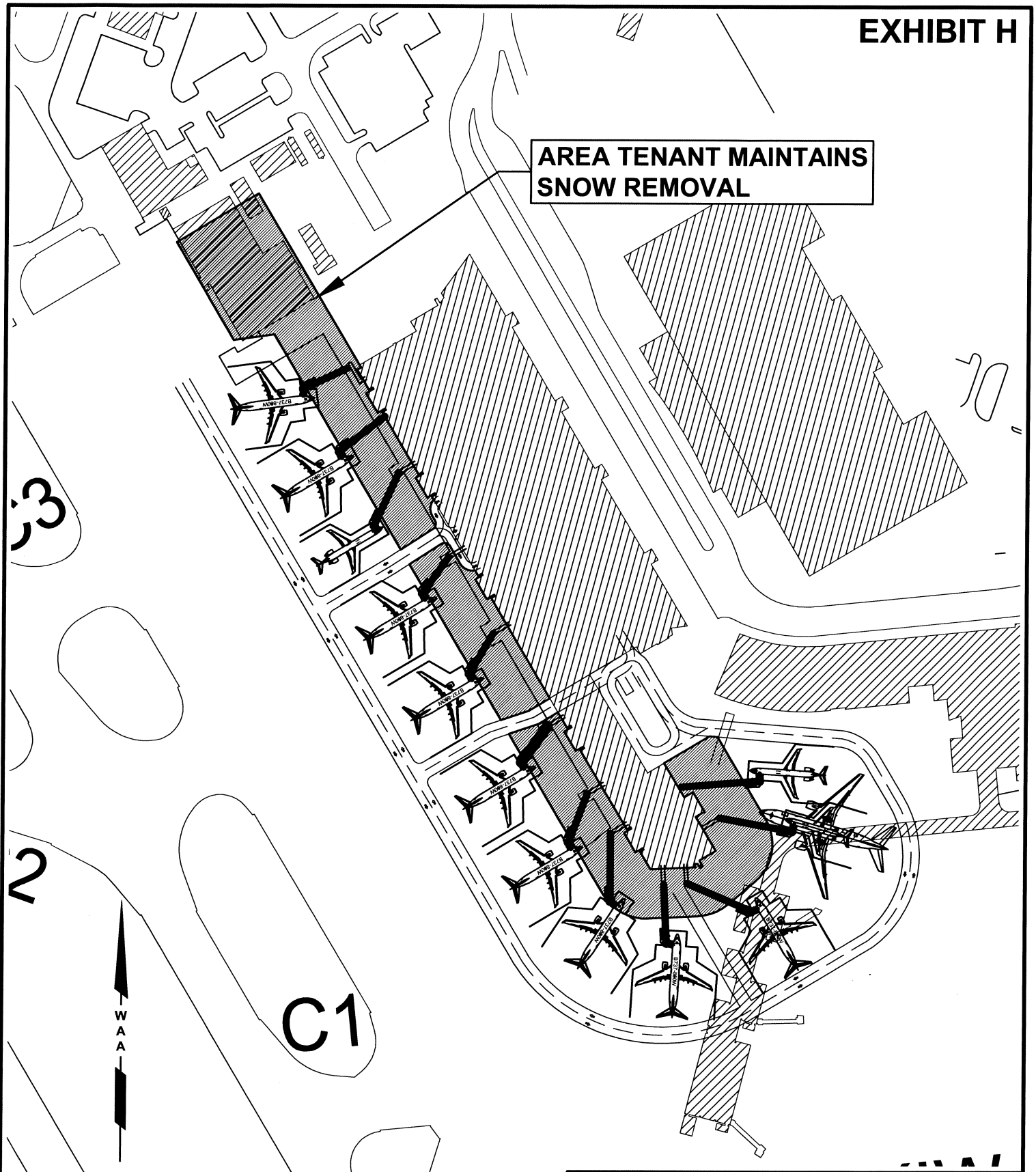
		Budget 2015
Net Revenue		
Authority revenues (before net revenue sharing)	$	24,960,438
Less: O&M expenses		(16,416,146)
Total net revenues	$	8,544,292
PFC revenues used for debt service		1,642,399
CFC revenues used for debt service		242,151
Total revenues available	$	10,428,842
Debt Service		
Series 2011A	$	435,609
Series 2011B		865,300
Series 2014A		462,541
Series 2015		3,813,502
Total debt service	$	5,576,952
Net Cash Flow		
Total revenues available	$	10,428,842
Less: debt service		(5,576,952)
Less: rate stabilization fund		(149,057)
Net cash flow	$	4,702,832
Net Revenue Sharing		
Authority (first $1m, then 40% of remainder)	$	2,481,133
Airlines (60% of remainder after first $1m)		2,221,699
Total net revenue sharing	$	4,702,832

EXHIBIT G-6

CALCULATION OF PER TURN FEE
Wichita Airport Authority
Dwight D. Eisenhower National Airport
For Fiscal Years Ending December 31

		Budget 2015
Space		
Holdroom		28,197
Ticket counter		5,592
Joint use		51,910
Total space		85,699
Annual Use Assumptions		
Number of gates		12
x Assumed turns per gate per day		3
x 365 days		365
Annual uses		13,140
Signatory Per Turn Fee		
Terminal rental rate	$	30.97
Signatory space (holdroom only)		28,197
Signatory annual requirement	$	873,237
Annual uses		13,140
Signatory per turn fee	$	66
Non-signatory Per Turn Fee		
Terminal rental rate	$	30.97
Non-signatory space (holdroom, ticket counter, joint use)		85,699
Signatory annual requirement	$	2,654,026
Annual uses		13,140
Non-signatory per turn fee before premium	$	202
Non-signatory premium		125%
Non-signatory per turn fee	$	252

EXHIBIT H



SNOW REMOVAL

Wichita Dwight D. Eisenhower National Airport

THE WICHITA AIRPORT AUTHORITY

WICHITA, KANSAS

DATE	DR. BY	SCALE	SHEET
9/30/14	H.G.O.	1" = 200'	1 of 2

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Wichita Airport Authority
Airline Use and Lease Agreement
Maintenance Matrix

		Airline Exclusive			Airline Preferential				Airline Joint Use							
		Airline Ticketing Offices	Operations Offices	Baggage Storage Lockers	Ticket Counters (Note A)	Holdrooms	Passenger Boarding Bridges	Aircraft Parking Apron	Baggage Claim (Note B)	Baggage Make-up (Note B)	Baggage Service Offices	Passenger Screening	Baggage Screening	Common Access Hallways	Airside Restrooms	Holdroom Vertical Circulation
A	Roof, roof structure, and ceiling tiles damaged by roof leaks	WAA	WAA	N/A	WAA	WAA	N/A	N/A	WAA	WAA	WAA	WAA	WAA	WAA	WAA	WAA
B	Load bearing structures, structural supports and foundations	WAA	WAA	N/A	WAA	WAA	WAA	N/A	WAA	WAA	WAA	WAA	WAA	WAA	WAA	WAA
C	Heating, ventilation and air conditioning and associated motors, pumps, distribution ducting, filtration system and filter media, and monitoring/control system	WAA	WAA	N/A	WAA	WAA	WAA	N/A	WAA	WAA	WAA	WAA	WAA	WAA	WAA	WAA
D	Maintenance, repair, upkeep, or replacement due to normal wear and tear, excluding snow removal	A	A	A	A	A	WAA	WAA	WAA	WAA	WAA	WAA	WAA	WAA	WAA	WAA
E	IT/data/communications conduit	WAA	WAA	N/A	WAA	WAA	WAA	N/A	WAA	WAA	WAA	WAA	WAA	WAA	WAA	WAA
F	Cabinets, walls, ceilings, surfaces and structures, not considered load bearing structures or foundations	A	A	A	A	WAA	WAA	N/A	WAA	WAA	WAA	WAA	WAA	WAA	WAA	WAA
G	Counter shells	N/A	N/A	N/A	WAA	WAA	N/A	N/A	N/A	N/A	WAA	N/A	N/A	N/A	N/A	N/A
H	Counter inserts	N/A	N/A	N/A	A	A	N/A	N/A	N/A	N/A	A	N/A	N/A	N/A	N/A	N/A
I	Glass and glass surfaces	A	A	N/A	N/A	WAA	WAA	N/A	WAA	WAA	WAA	WAA	WAA	WAA	WAA	WAA
J	Floor care	A	A	N/A	A	WAA	WAA	N/A	WAA	WAA	WAA	WAA	WAA	WAA	WAA	WAA
K	Doors, door frames, fixtures and hardware, except locks/cores	A	A	N/A	N/A	A	WAA	N/A	WAA	WAA	WAA	WAA	WAA	WAA	WAA	WAA
L	Door locks and cores	WAA	WAA	N/A	N/A	WAA	WAA	N/A	WAA	WAA	WAA	WAA	WAA	WAA	WAA	WAA
M	Fire monitoring and alarm systems and other fire code required facility systems	WAA	WAA	N/A	WAA	WAA	WAA	N/A	WAA	WAA	WAA	WAA	WAA	WAA	WAA	WAA
N	Public address system	WAA	WAA	N/A	WAA	WAA	N/A	N/A	WAA	N/A	WAA	WAA	WAA	WAA	N/A	WAA
O	Electronic Visual Information Display Systems (EVIDS) (Note C)	WAA	WAA	N/A	WAA	WAA	N/A	N/A	WAA	N/A	N/A	WAA	N/A	N/A	N/A	N/A
P	Security signage imposed on the AUTHORITY by the authority of any regulatory agency	N/A	N/A	N/A	WAA	WAA	WAA	WAA	WAA	WAA	WAA	WAA	WAA	WAA	WAA	WAA
Q	Way finding and facility identification signage.	WAA	WAA	N/A	WAA	WAA	N/A	WAA	WAA	WAA	WAA	WAA	WAA	WAA	WAA	WAA
R	Baggage and cargo scales	N/A	A	N/A	A	N/A	N/A	N/A	N/A	A	N/A	N/A	N/A	N/A	N/A	N/A
S	Electrical systems commencing at and within the Premises	A	A	N/A	A	A	WAA	A	WAA	WAA	WAA	WAA	WAA	WAA	WAA	WAA
T	Electrical system entering to and terminating at the breaker panel serving the Premises	WAA	WAA	N/A	WAA	WAA	WAA	WAA	WAA	WAA	WAA	WAA	WAA	WAA	WAA	WAA
U	Lighting and electrical fixtures and standards including bulbs, tubes, ballast, starters, switches and outlets	A	A	N/A	A	A	WAA	A	WAA	WAA	WAA	WAA	WAA	WAA	WAA	WAA
V	Fresh water and sanitary sewer plumbing commencing at and within the Premises, including plumbing fixtures, water supply lines and sanitary sewer lines	A	A	N/A	N/A	N/A	N/A	WAA	N/A	N/A	N/A	N/A	N/A	N/A	WAA	N/A
W	Fresh water and sanitary sewer plumbing entering to and terminating at the Premises	WAA	WAA	N/A	N/A	N/A	N/A	WAA	N/A	N/A	N/A	N/A	N/A	N/A	WAA	N/A
X	Gas utilities commencing at and within the Premises	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Y	Gas utilities entering to and terminating at the Premises	WAA	WAA	N/A	WAA	WAA	N/A	N/A	WAA	WAA	WAA	WAA	WAA	WAA	WAA	WAA

		Airline Exclusive			Airline Preferential				Airline Joint Use							
		Airline Ticketing Offices	Operations Offices	Baggage Storage Lockers	Ticket Counters (Note A)	Holdrooms	Passenger Boarding Bridges	Aircraft Parking Apron	Baggage Claim (Note B)	Baggage Make-up (Note B)	Baggage Service Offices	Passenger Screening	Baggage Screening	Common Access Hallways	Airside Restrooms	Holdroom Vertical Circulation
Z	Trash removal and disposal (from Premises to AUTHORITY's provided dumpsters)	A	A	N/A	A	A = Counter WAA = Public	A	A	WAA	WAA	A	WAA	WAA	WAA	WAA	WAA
AA	Pavement maintenance and replacement	N/A	N/A	N/A	N/A	N/A	N/A	WAA	WAA	WAA	N/A	N/A	N/A	N/A	N/A	N/A
AB	Pavement surface markings within and upon Aircraft Parking Apron	N/A	N/A	N/A	N/A	N/A	N/A	A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
AC	Stormwater drains and discharge system	N/A	N/A	N/A	N/A	N/A	N/A	WAA	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

A = Airline
WAA = Wichita Airport Authority
N/A = Not applicable

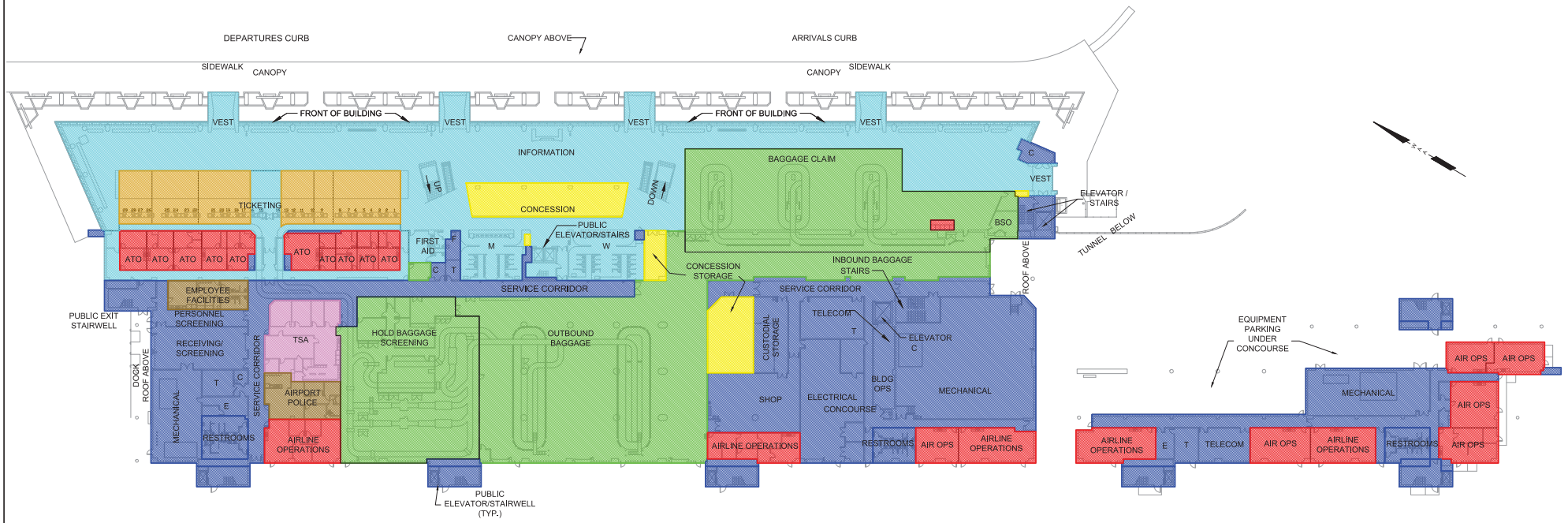
Note A: Ticket Counters = front edge of baggage belt to public face of ticket counter plus backwall.

Note B: Includes facilities and baggage conveyor systems.

Note C: Includes WAA owned FIDS, BIDS and GIDS. Does not include Airline owned systems.

PUBLIC, MECHANICAL, BUILDING SUPPORT and AUTHORITY SPACES - Will be maintained by the Wichita Airport Authority

EXHIBIT D



1st FLOOR PLAN

AREA TOTALS

14,395 S.F.	AIRLINE SPACE (EXCLUSIVE)
5,592 S.F.	AIRLINE SPACE (PREFERENTIAL)
41,993 S.F.	AIRLINE SPACE (JOINT USE AREAS)
4,177 S.F.	CONCESSIONS
2,402 S.F.	OTHER RENTABLE
(68,559 S.F.)	SUBTOTAL
34,381 S.F.	GENERAL TERMINAL (PUBLIC AREAS)
44,731 S.F.	GENERAL TERMINAL (FACILITY SUPPORT)
2,253 S.F.	GENERAL TERMINAL (AUTHORITY FUNCTIONS)
81,365 S.F.	SUBTOTAL
149,924 S.F.	TERMINAL 1ST FLOOR TOTAL

LEGEND

E	ELECTRICAL CLOSET
T	TELEPHONE CLOSET
C	CUSTODIAN CLOSET
BSO	BAG STORAGE OFFICE
M	MEN'S RESTROOM
W	WOMEN'S RESTROOM
F	FAMILY RESTROOM

1st FLOOR AREA	2nd FLOOR AREA	TOTAL AREA
14,395 S.F.	0 S.F.	14,395 S.F.
5,592 S.F.	28,197 S.F.	33,789 S.F.
41,993 S.F.	10,034 S.F.	52,027 S.F.
4,177 S.F.	17,769 S.F.	21,946 S.F.
2,402 S.F.	8,563 S.F.	10,965 S.F.
(68,559 S.F.)	(64,563 S.F.)	(133,122 S.F.)
34,381 S.F.	42,670 S.F.	77,051 S.F.
44,731 S.F.	9,166 S.F.	53,897 S.F.
2,253 S.F.	1,865 S.F.	4,118 S.F.
81,365 S.F.	53,701 S.F.	135,066 S.F.
149,924 S.F.	118,264 S.F.	268,188 S.F.

LEGEND

- AIRLINE SPACE (EXCLUSIVE)
- AIRLINE SPACE (PREFERENTIAL)
- AIRLINE SPACE (JOINT USE AREAS)
- CONCESSIONS
- OTHER RENTABLE
- SUBTOTAL (RENTABLE)
- GENERAL TERMINAL (PUBLIC AREAS)
- GENERAL TERMINAL (FACILITY SUPPORT)
- GENERAL TERMINAL (AUTHORITY FUNCTIONS)
- SUBTOTAL (GENERAL TERMINAL)
- TOTAL TERMINAL

AMERICAN AIRLINES

TERMINAL LEASE AREAS 1st FLOOR PLAN

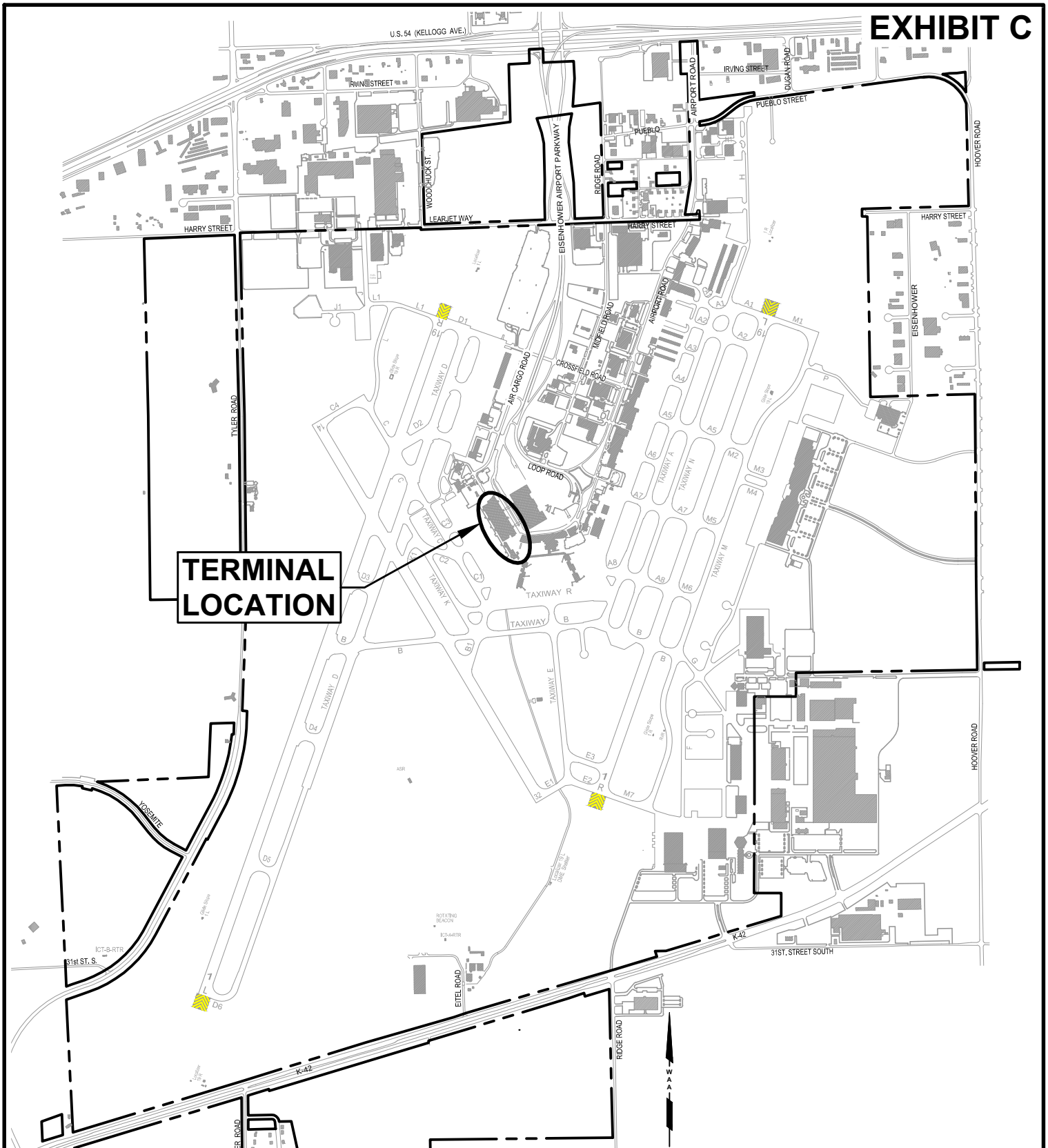
WICHITA DWIGHT D. EISENHOWER NATIONAL AIRPORT

THE WICHITA AIRPORT AUTHORITY

WICHITA, KANSAS

DATE	DR. BY	SCALE	SHEET
3/3/15		1" = 30'	1 of 5

EXHIBIT C



AMERICAN AIRLINES

AIRPORT LAYOUT MAP

WICHITA DWIGHT D. EISENHOWER NATIONAL AIRPORT

THE WICHITA AIRPORT AUTHORITY

WICHITA, KANSAS

DATE	DR. BY	SCALE	SHEET
2/23/15	H.G.O.	1" = 1900'	1 of 1

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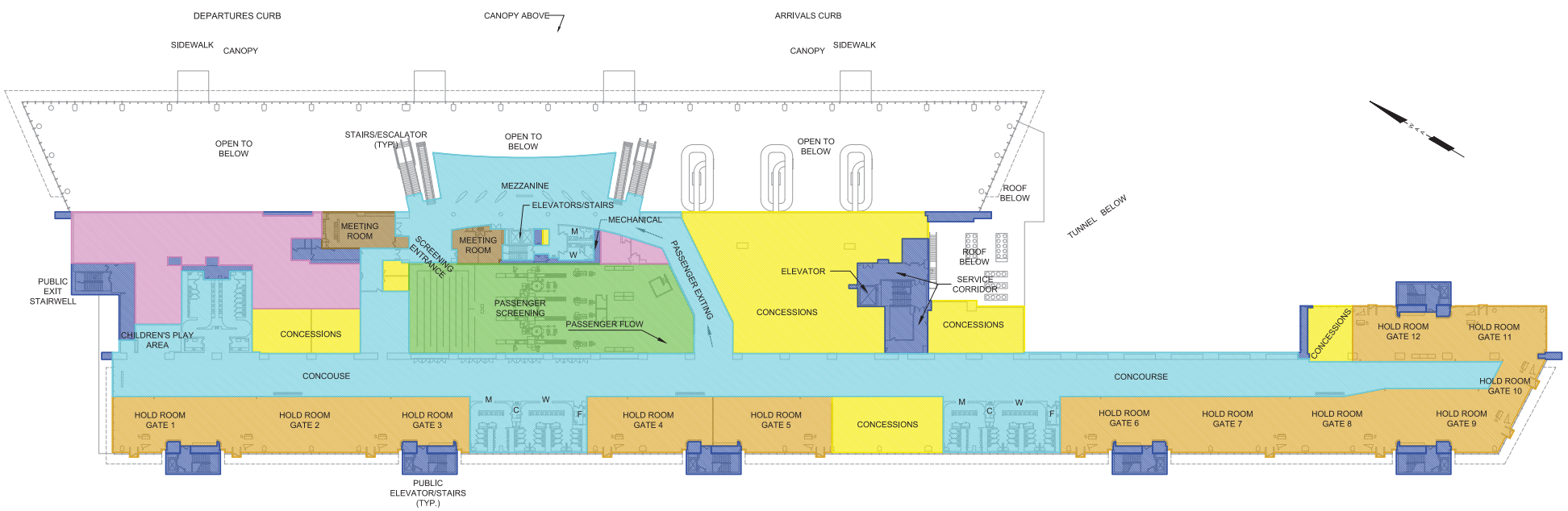


2nd FLOOR PLAN

AREA TOTALS		LEGEND
0 S.F.		AIRLINE SPACE (EXCLUSIVE)
28,197 S.F.		AIRLINE SPACE (PREFERENTIAL)
10,034 S.F.		AIRLINE SPACE (JOINT USE AREAS)
17,769 S.F.		CONCESSIONS
8,563 S.F.		OTHER RENTABLE
(64,563 S.F.)		SUBTOTAL
42,670 S.F.		GENERAL TERMINAL (PUBLIC AREAS)
9,166 S.F.		GENERAL TERMINAL (FACILITY SUPPORT)
1,865 S.F.		GENERAL TERMINAL (AUTHORITY FUNCTIONS)
53,701 S.F.		SUBTOTAL
118,264 S.F.		TERMINAL 2nd FLOOR TOTAL
	E	ELECTRICAL CLOSET
	T	TELEPHONE CLOSET
	C	CUSTODIAN CLOSET
	BSO	BAG STORAGE OFFICE
	M	MEN'S RESTROOM
	W	WOMEN'S RESTROOM
	F	FAMILY RESTROOM

AMERICAN AIRLINES

TERMINAL LEASE AREAS 2nd FLOOR PLAN

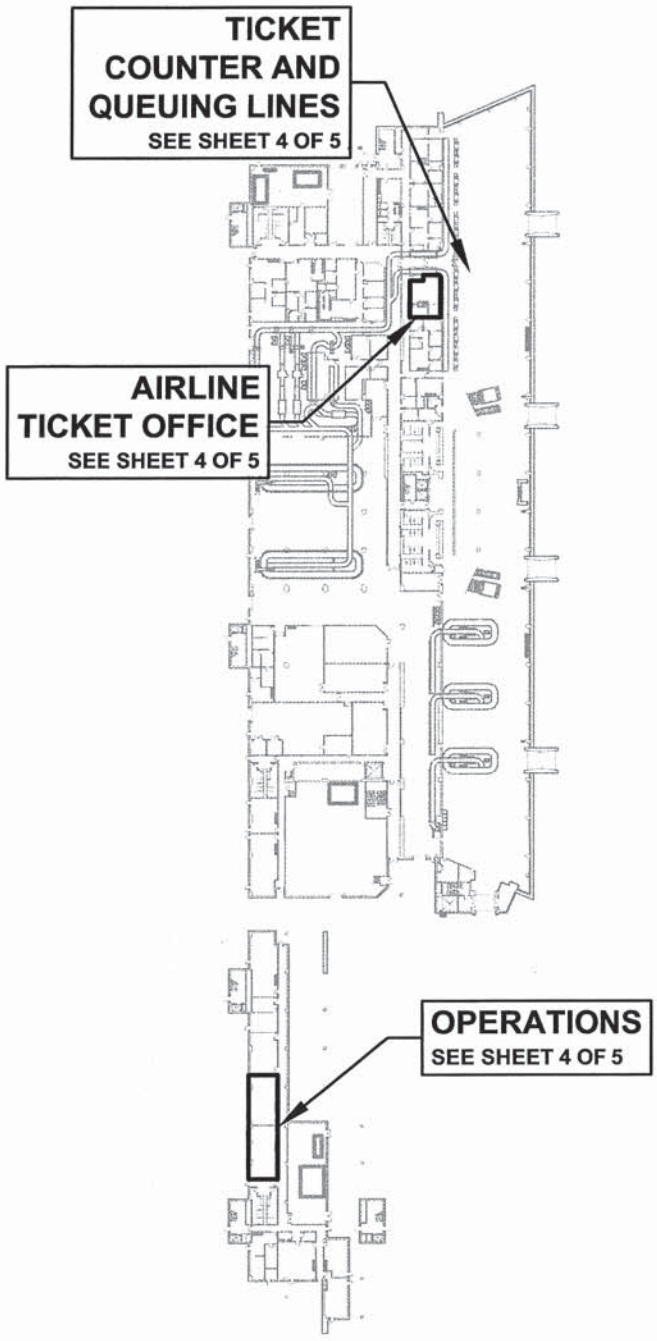
WICHITA DWIGHT D. EISENHOWER NATIONAL AIRPORT

THE WICHITA AIRPORT AUTHORITY

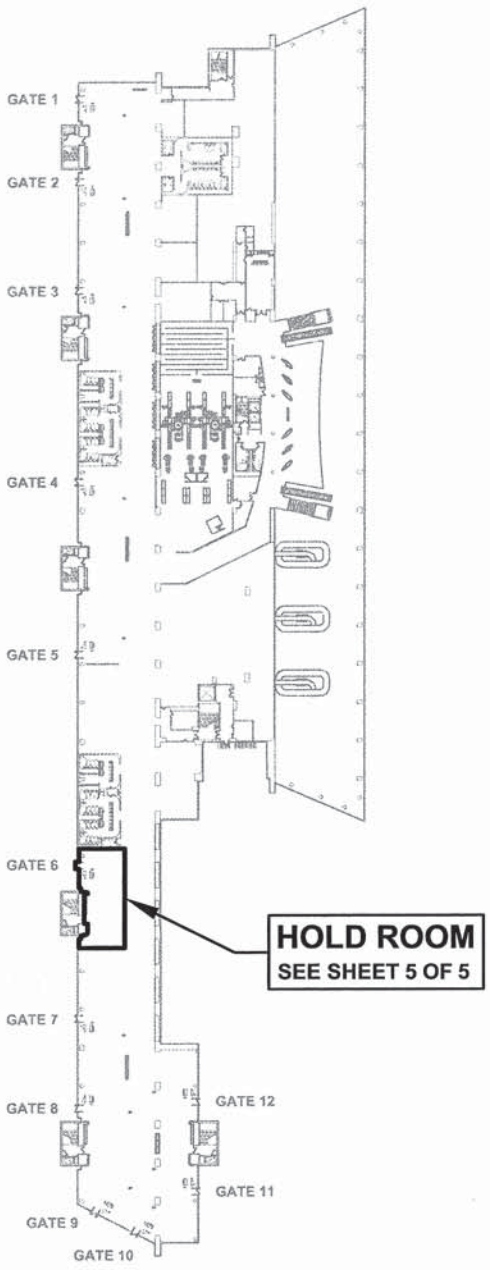
WICHITA, KANSAS

DATE	DR. BY	SCALE	SHEET
2/23/15		1" = 30'	2 of 5

EXHIBIT D



1ST FLOOR



2ND FLOOR

AMERICAN AIRLINES

TERMINAL LAYOUT

WICHITA DWIGHT D. EISENHOWER NATIONAL AIRPORT

THE WICHITA AIRPORT AUTHORITY

WICHITA, KANSAS

DATE	DR. BY	SCALE	SHEET
3/4/15	H.G.O.	1" = 150'	3 of 5

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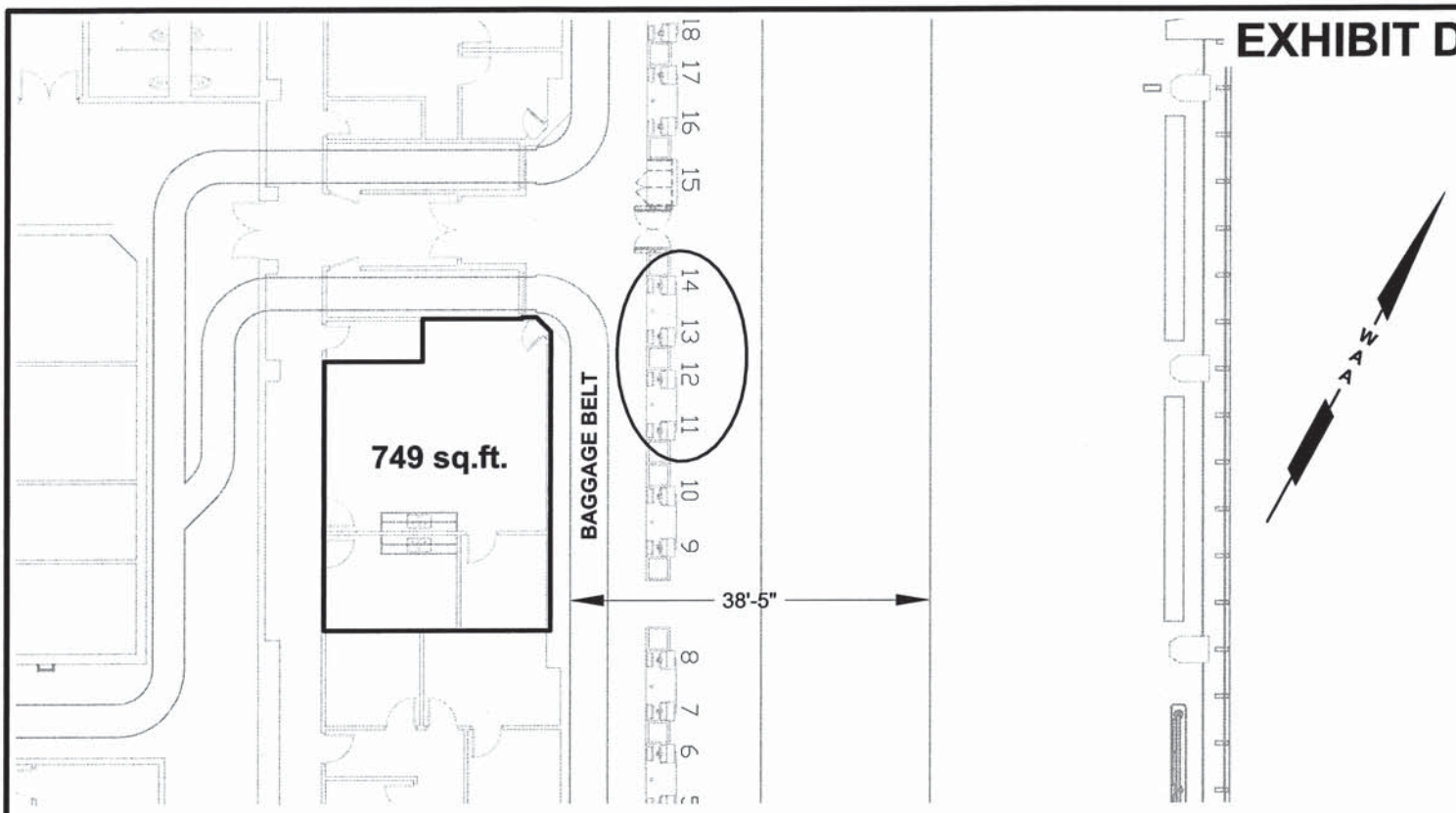
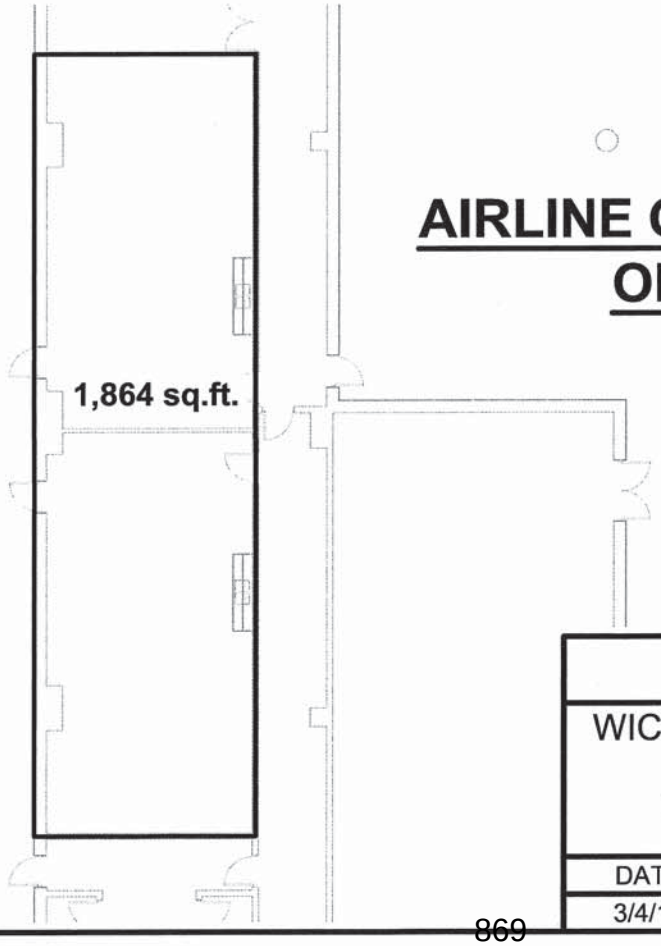


TICKET COUNTER AND AIRLINE TICKET OFFICE



AIRLINE OPERATIONS OFFICE

AMERICAN AIRLINES

1ST FLOOR

WICHITA DWIGHT D. EISENHOWER NATIONAL AIRPORT

THE WICHITA AIRPORT AUTHORITY

WICHITA, KANSAS

DATE	DR. BY	SCALE	SHEET
3/4/15	H.G.O.	1" = 20'	4 of 5

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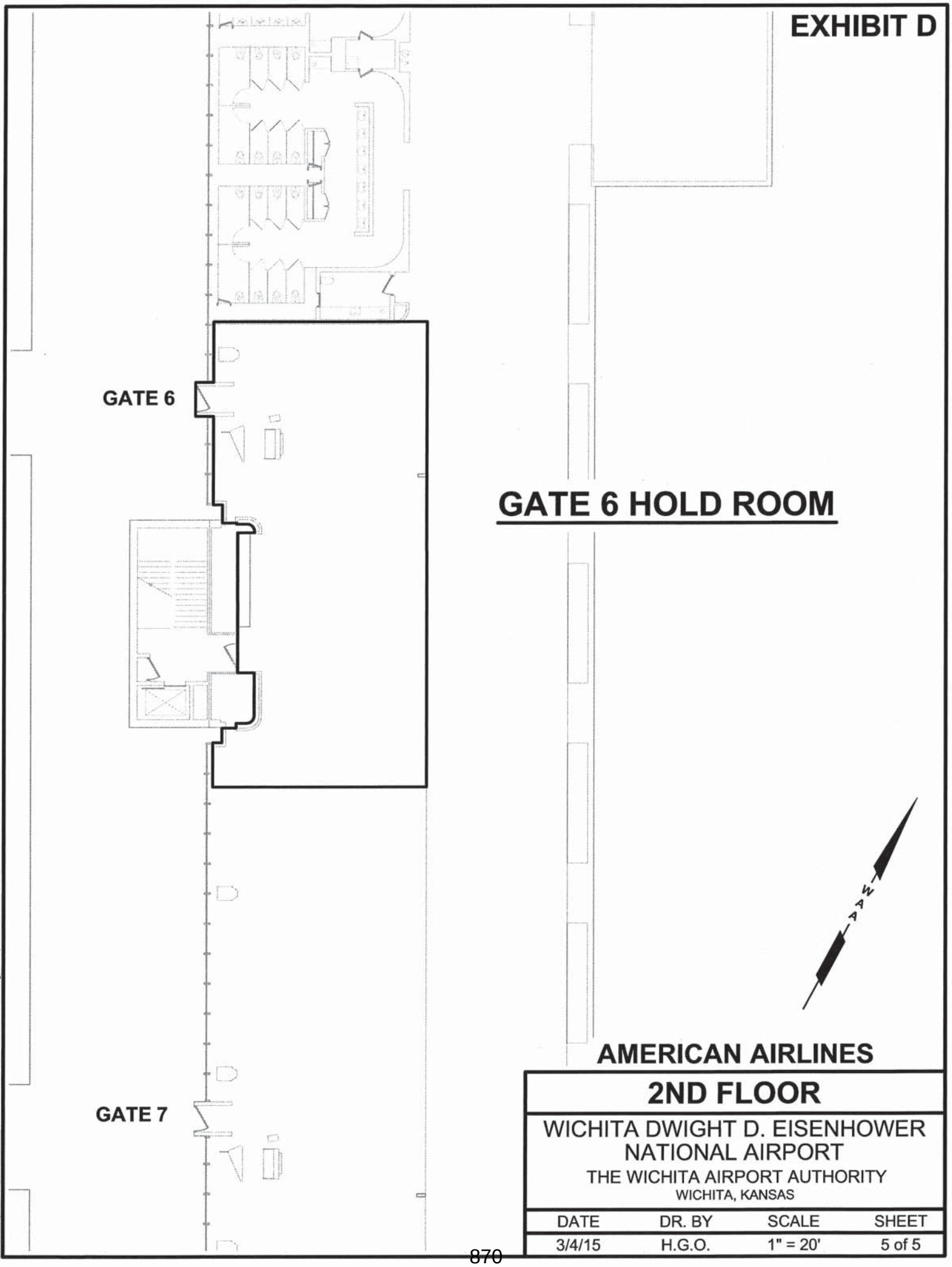

AMERICAN AIRLINES

2ND FLOOR

WICHITA DWIGHT D. EISENHOWER NATIONAL AIRPORT

THE WICHITA AIRPORT AUTHORITY

WICHITA, KANSAS

DATE	DR. BY	SCALE	SHEET
3/4/15	H.G.O.	1" = 20'	5 of 5

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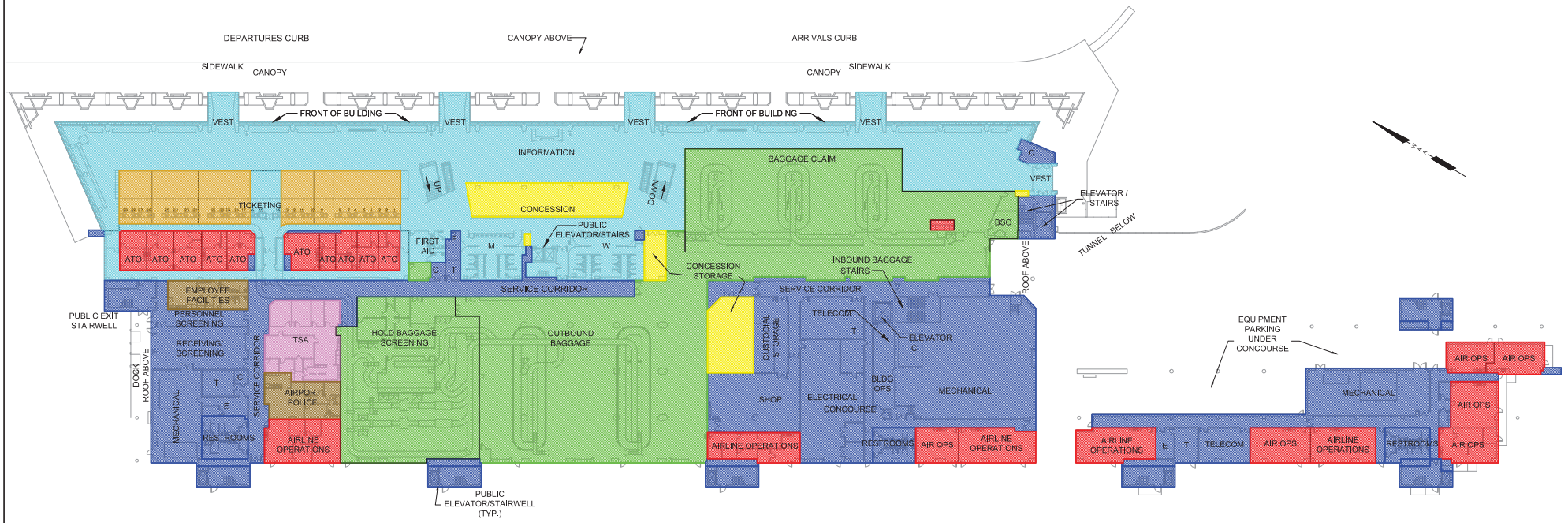
EXHIBIT D



1st FLOOR PLAN

AREA TOTALS

14,395 S.F.	AIRLINE SPACE (EXCLUSIVE)
5,592 S.F.	AIRLINE SPACE (PREFERENTIAL)
41,993 S.F.	AIRLINE SPACE (JOINT USE AREAS)
4,177 S.F.	CONCESSIONS
2,402 S.F.	OTHER RENTABLE
(68,559 S.F.)	SUBTOTAL
34,381 S.F.	GENERAL TERMINAL (PUBLIC AREAS)
44,731 S.F.	GENERAL TERMINAL (FACILITY SUPPORT)
2,253 S.F.	GENERAL TERMINAL (AUTHORITY FUNCTIONS)
81,365 S.F.	SUBTOTAL
149,924 S.F.	TERMINAL 1ST FLOOR TOTAL

LEGEND

E	ELECTRICAL CLOSET
T	TELEPHONE CLOSET
C	CUSTODIAN CLOSET
BSO	BAG STORAGE OFFICE
M	MEN'S RESTROOM
W	WOMEN'S RESTROOM
F	FAMILY RESTROOM

1st FLOOR AREA	2nd FLOOR AREA	TOTAL AREA
14,395 S.F.	0 S.F.	14,395 S.F.
5,592 S.F.	28,197 S.F.	33,789 S.F.
41,993 S.F.	10,034 S.F.	52,027 S.F.
4,177 S.F.	17,769 S.F.	21,946 S.F.
2,402 S.F.	8,563 S.F.	10,965 S.F.
(68,559 S.F.)	(64,563 S.F.)	(133,122 S.F.)
34,381 S.F.	42,670 S.F.	77,051 S.F.
44,731 S.F.	9,166 S.F.	53,897 S.F.
2,253 S.F.	1,865 S.F.	4,118 S.F.
81,365 S.F.	53,701 S.F.	135,066 S.F.
149,924 S.F.	118,264 S.F.	268,188 S.F.

LEGEND

- AIRLINE SPACE (EXCLUSIVE)
- AIRLINE SPACE (PREFERENTIAL)
- AIRLINE SPACE (JOINT USE AREAS)
- CONCESSIONS
- OTHER RENTABLE
- SUBTOTAL (RENTABLE)
- GENERAL TERMINAL (PUBLIC AREAS)
- GENERAL TERMINAL (FACILITY SUPPORT)
- GENERAL TERMINAL (AUTHORITY FUNCTIONS)
- SUBTOTAL (GENERAL TERMINAL)
- TOTAL TERMINAL

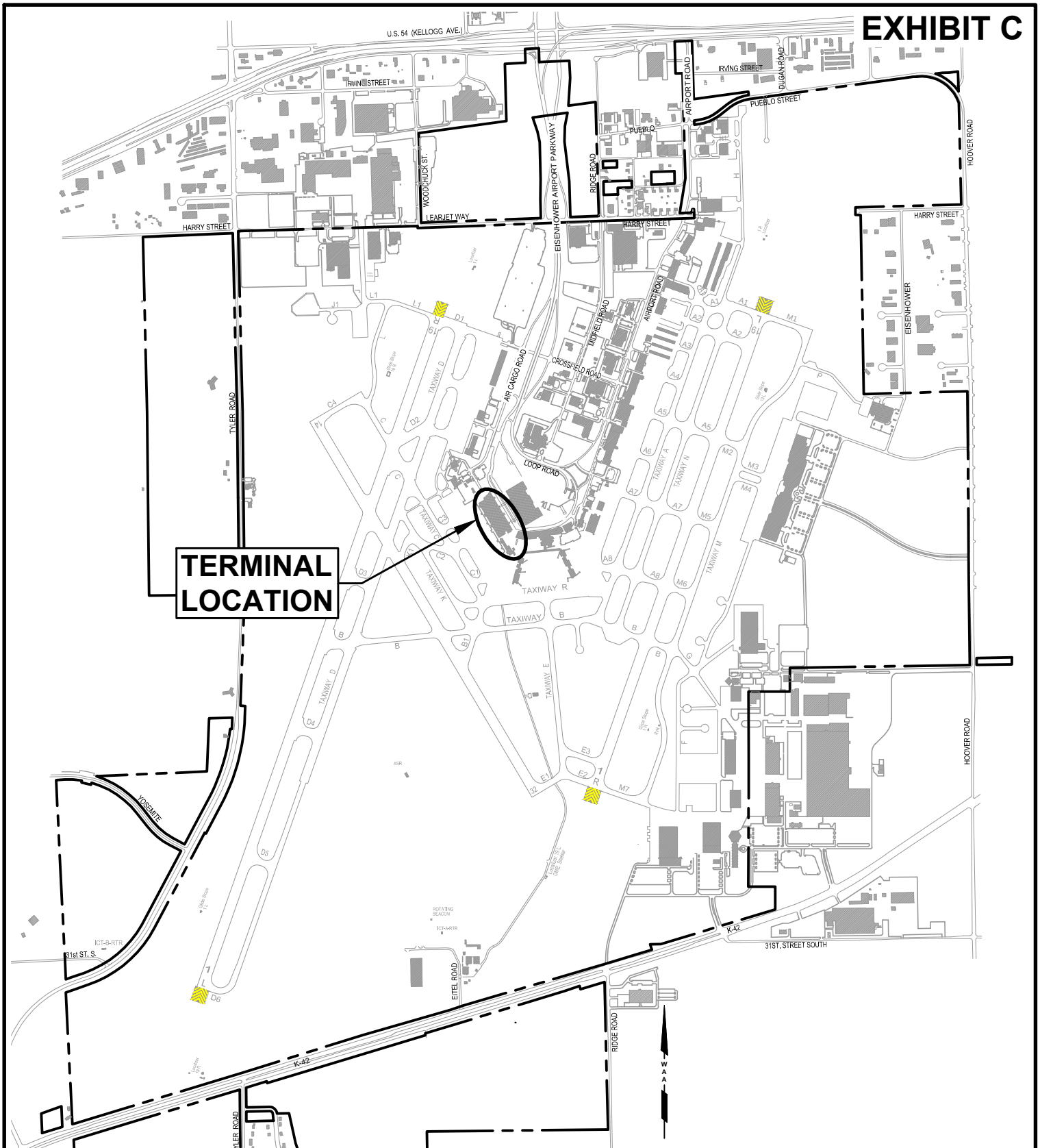
DELTA AIRLINE

TERMINAL LEASE AREAS 1st FLOOR PLAN

WICHITA DWIGHT D. EISENHOWER NATIONAL AIRPORT
THE WICHITA AIRPORT AUTHORITY
WICHITA, KANSAS

DATE	DR. BY	SCALE	SHEET
3/3/15		1" = 30'	1 of 5

EXHIBIT C



DELTA AIRLINE

AIRPORT LAYOUT MAP

WICHITA DWIGHT D. EISENHOWER NATIONAL AIRPORT

THE WICHITA AIRPORT AUTHORITY

WICHITA, KANSAS

DATE	DR. BY	SCALE	SHEET
2/23/15	H.G.O.	1" = 1900'	1 of 1

872

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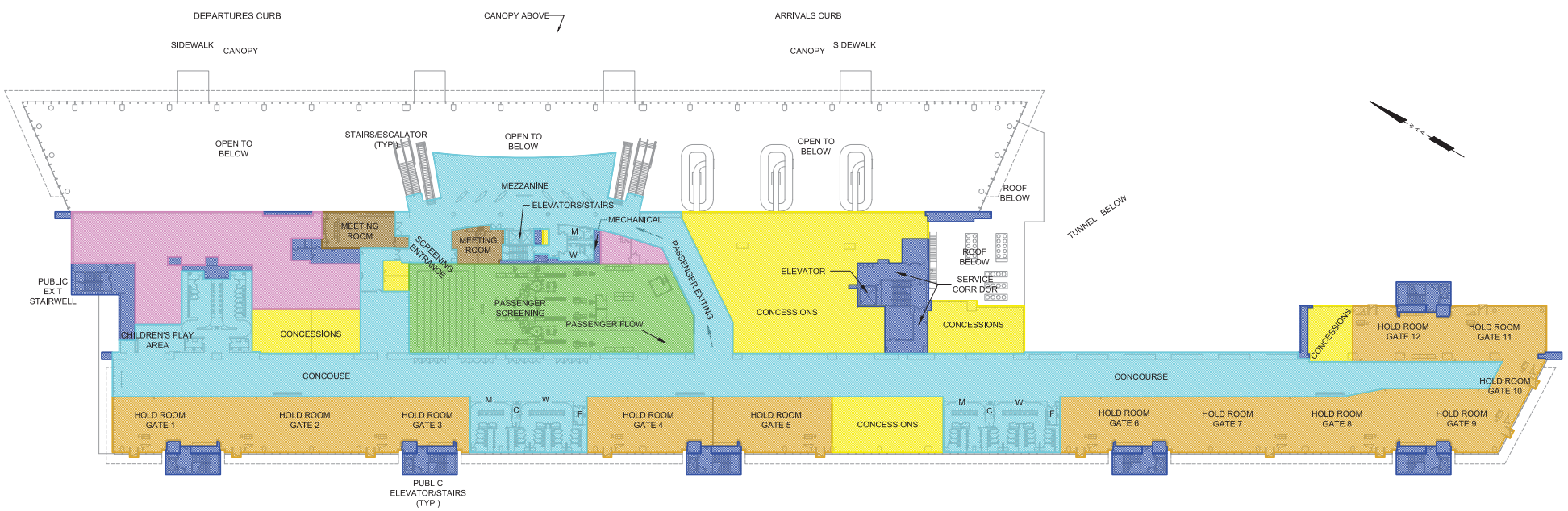


2nd FLOOR PLAN

AREA TOTALS		LEGEND
0 S.F.		AIRLINE SPACE (EXCLUSIVE)
28,197 S.F.		AIRLINE SPACE (PREFERENTIAL)
10,034 S.F.		AIRLINE SPACE (JOINT USE AREAS)
17,769 S.F.		CONCESSIONS
8,563 S.F.		OTHER RENTABLE
(64,563 S.F.)		SUBTOTAL
42,670 S.F.		GENERAL TERMINAL (PUBLIC AREAS)
9,166 S.F.		GENERAL TERMINAL (FACILITY SUPPORT)
1,865 S.F.		GENERAL TERMINAL (AUTHORITY FUNCTIONS)
53,701 S.F.		SUBTOTAL
118,264 S.F.		TERMINAL 2nd FLOOR TOTAL
	E	ELECTRICAL CLOSET
	T	TELEPHONE CLOSET
	C	CUSTODIAN CLOSET
	BSO	BAG STORAGE OFFICE
	M	MEN'S RESTROOM
	W	WOMEN'S RESTROOM
	F	FAMILY RESTROOM

DELTA AIRLINE

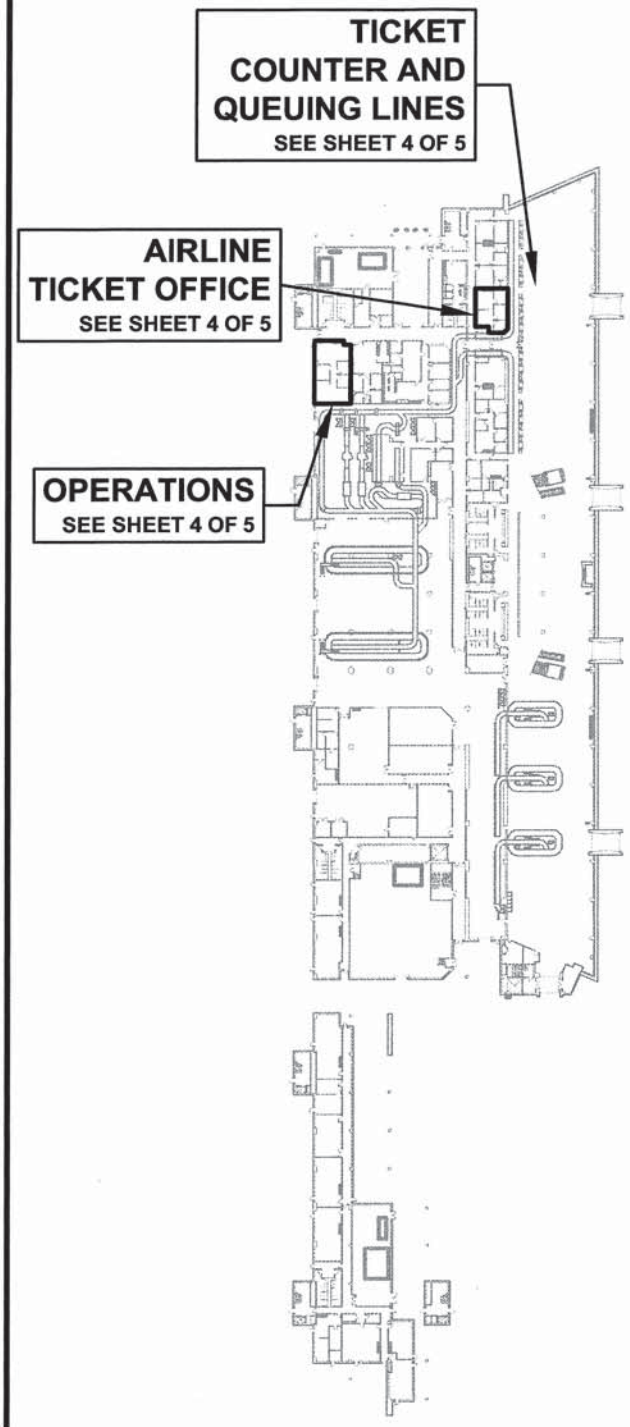
TERMINAL LEASE AREAS 2nd FLOOR PLAN

WICHITA DWIGHT D. EISENHOWER NATIONAL AIRPORT

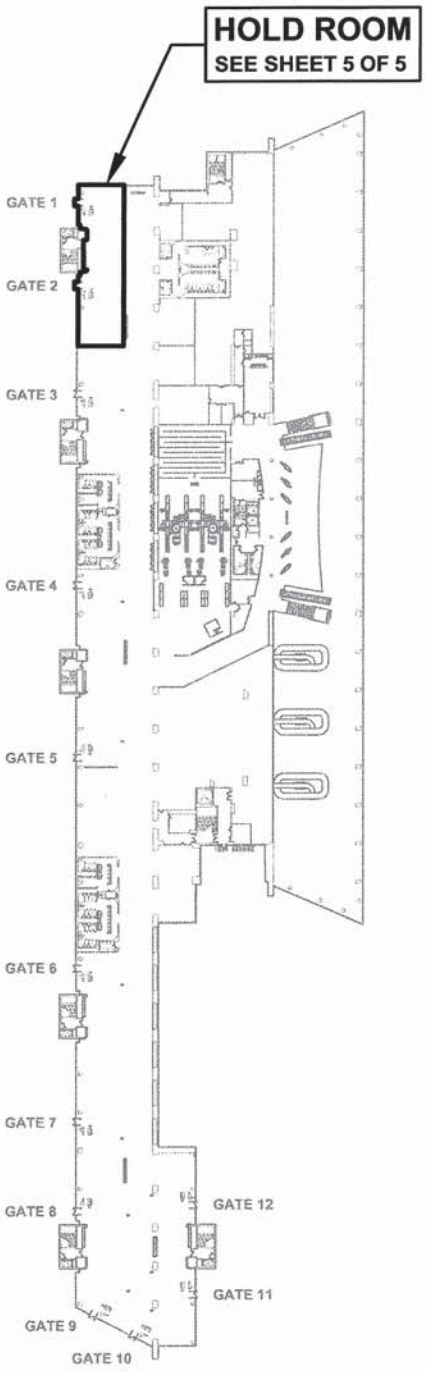
THE WICHITA AIRPORT AUTHORITY
WICHITA, KANSAS

DATE	DR. BY	SCALE	SHEET
2/23/15		1" = 30'	2 of 5

EXHIBIT D



1ST FLOOR



2ND FLOOR

DELTA AIRLINE

TERMINAL LAYOUT

WICHITA DWIGHT D. EISENHOWER NATIONAL AIRPORT

THE WICHITA AIRPORT AUTHORITY

WICHITA, KANSAS

DATE	DR. BY	SCALE	SHEET
3/4/15	H.G.O.	1" = 150'	3 of 5

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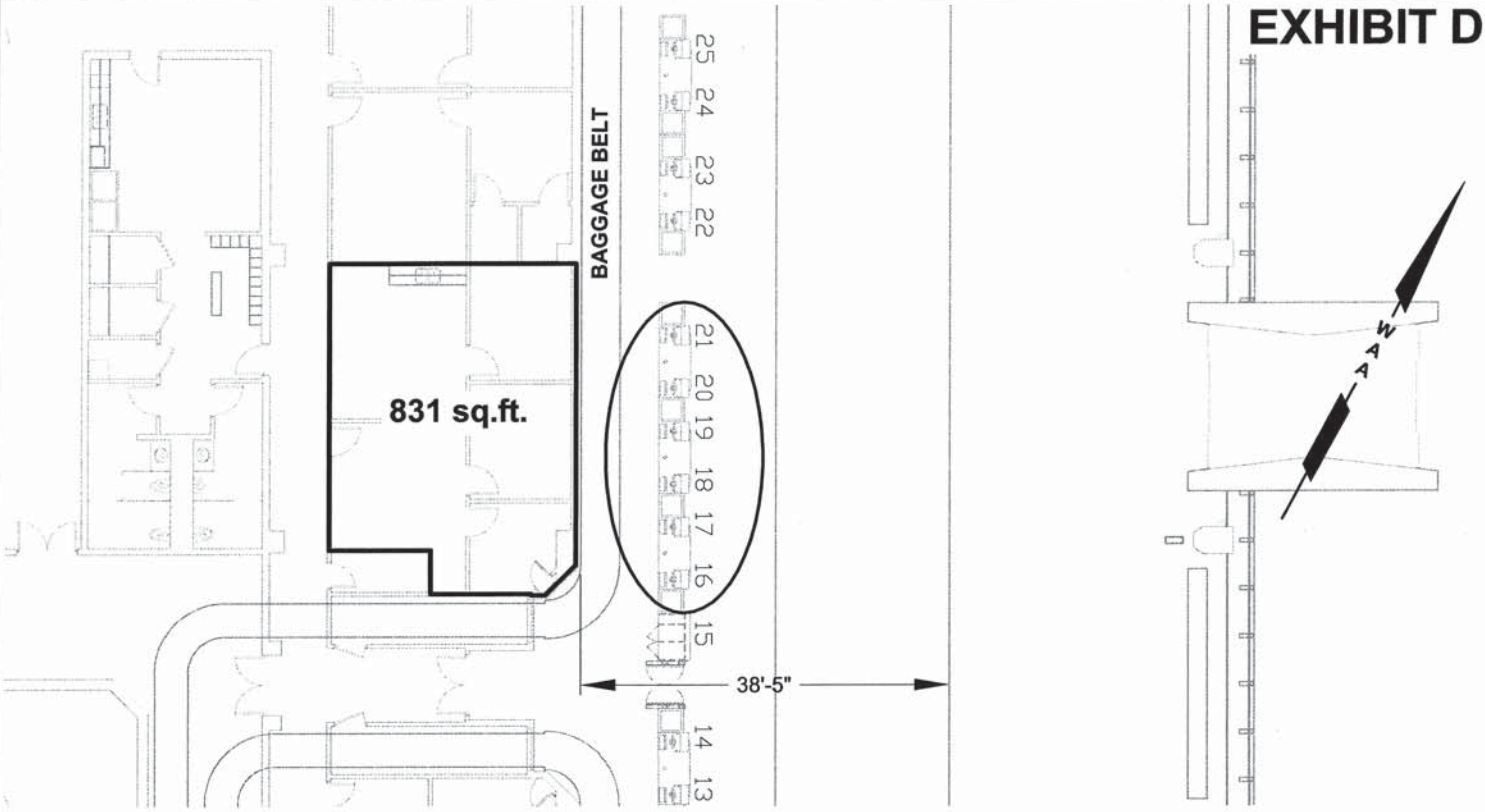
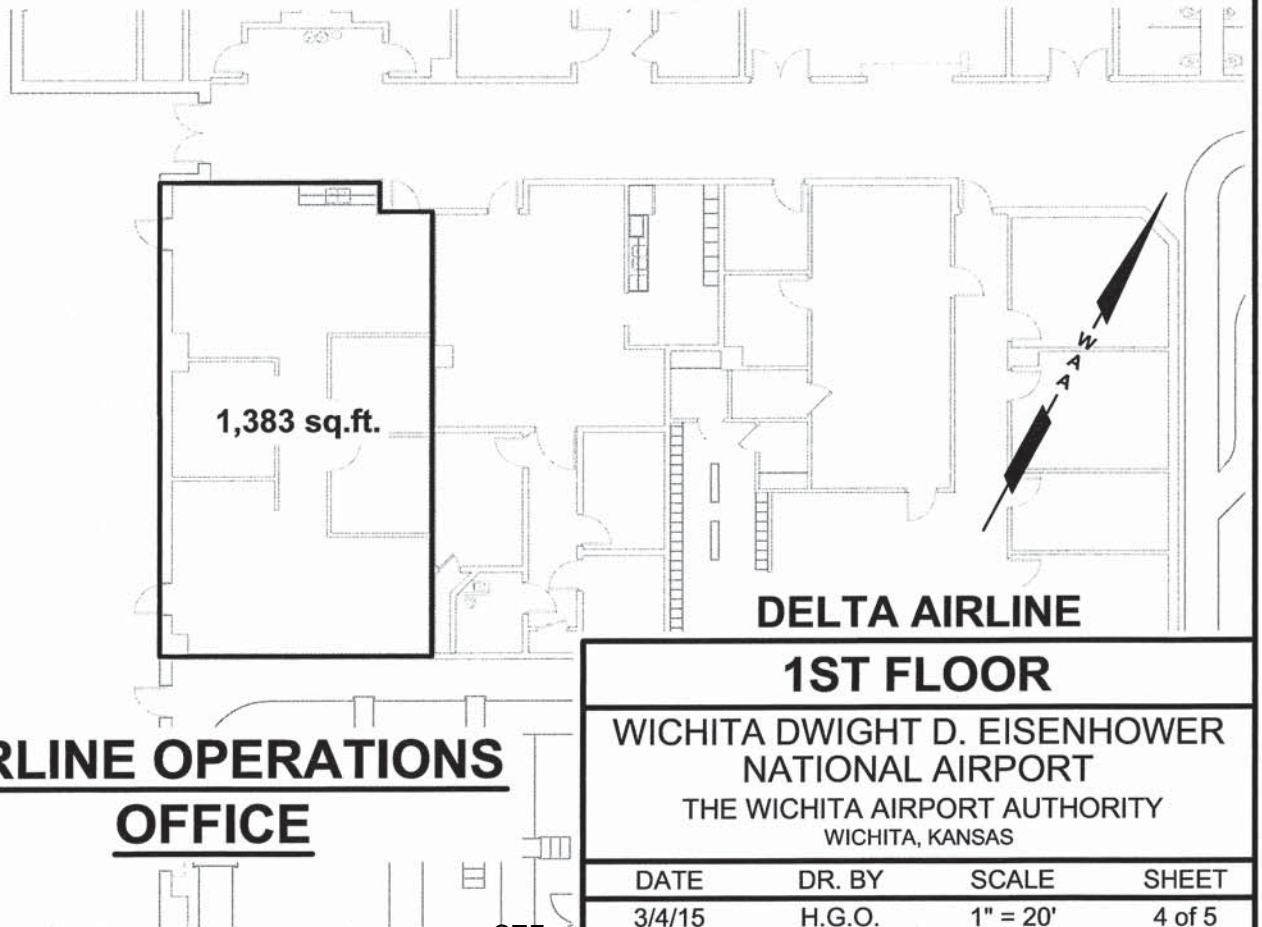


TICKET COUNTER AND AIRLINE TICKET OFFICE



AIRLINE OPERATIONS OFFICE

DELTA AIRLINE

1ST FLOOR

WICHITA DWIGHT D. EISENHOWER NATIONAL AIRPORT

THE WICHITA AIRPORT AUTHORITY

WICHITA, KANSAS

DATE	DR. BY	SCALE	SHEET
3/4/15	H.G.O.	1" = 20'	4 of 5

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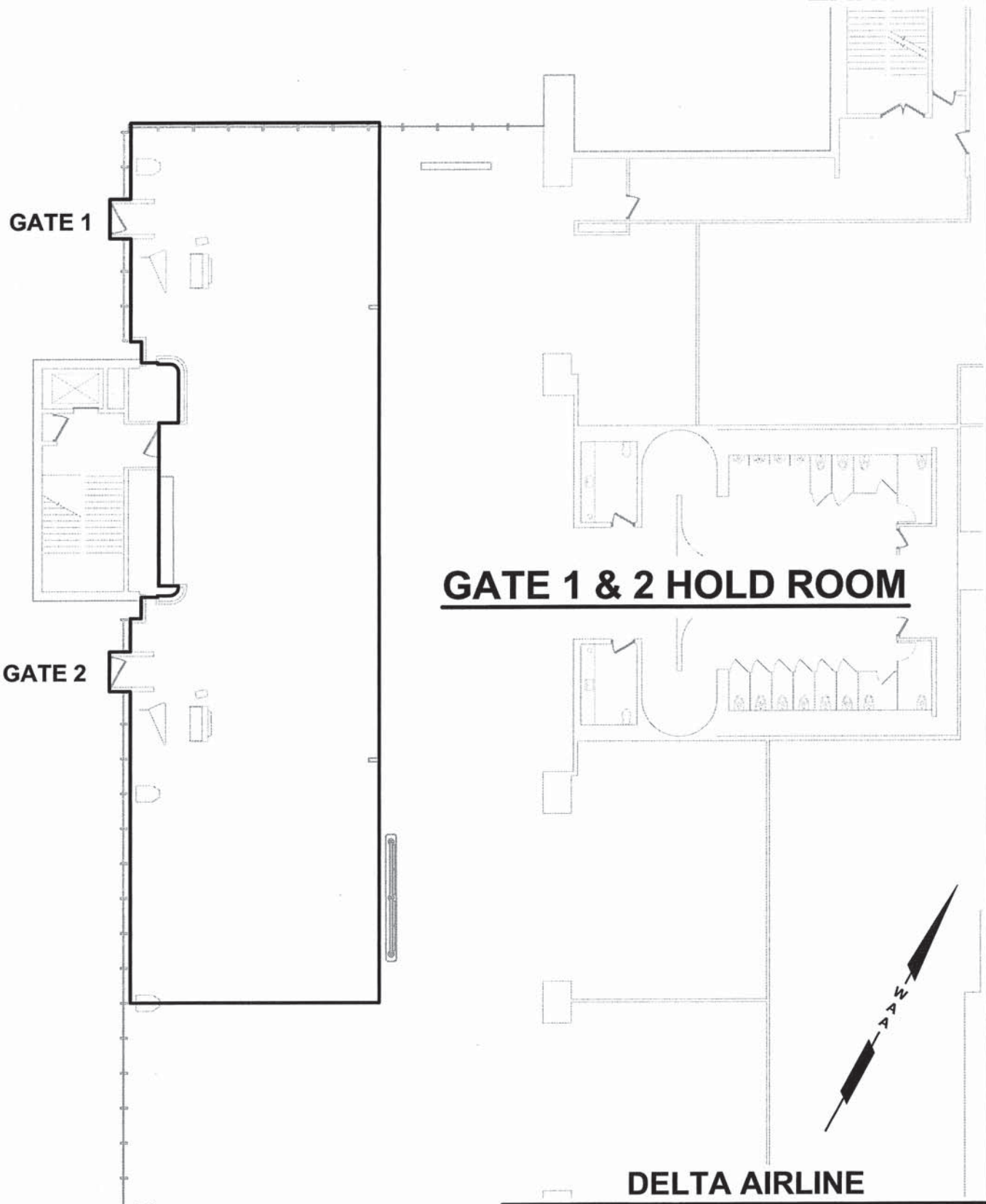

DELTA AIRLINE

2ND FLOOR

WICHITA DWIGHT D. EISENHOWER NATIONAL AIRPORT

THE WICHITA AIRPORT AUTHORITY

WICHITA, KANSAS

DATE	DR. BY	SCALE	SHEET
3/4/15	H.G.O.	1" = 20'	5 of 5

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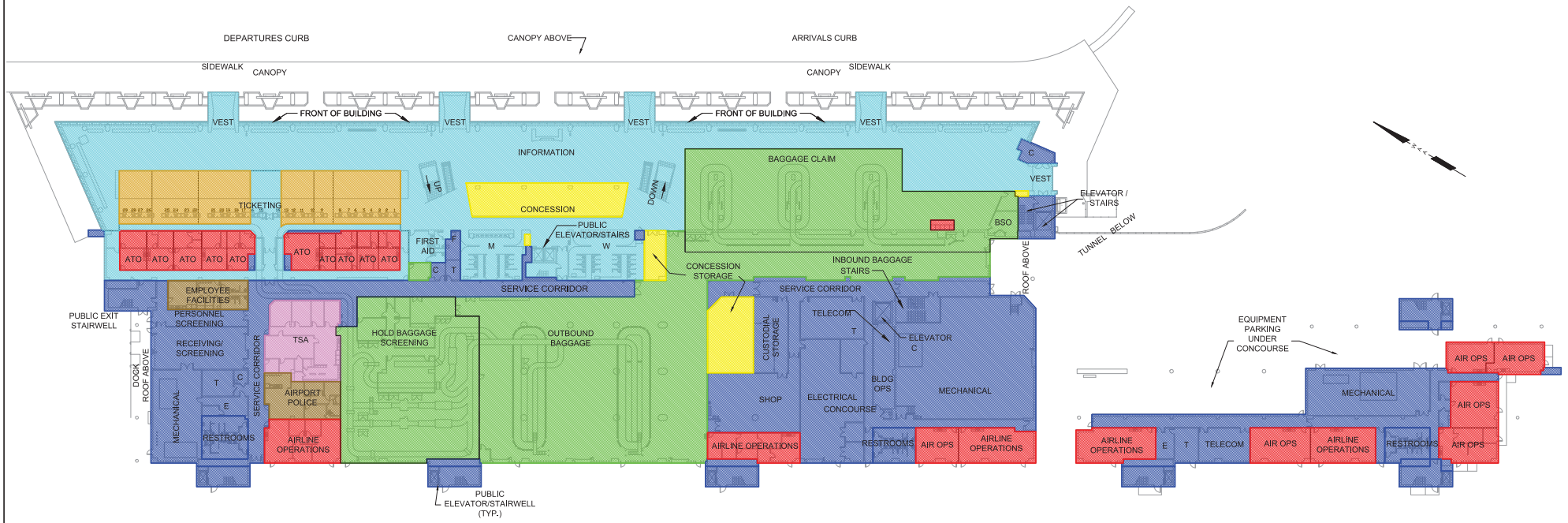


1st FLOOR PLAN

AREA TOTALS

14,395 S.F.	AIRLINE SPACE (EXCLUSIVE)
5,592 S.F.	AIRLINE SPACE (PREFERENTIAL)
41,993 S.F.	AIRLINE SPACE (JOINT USE AREAS)
4,177 S.F.	CONCESSIONS
2,402 S.F.	OTHER RENTABLE
(68,559 S.F.)	SUBTOTAL
34,381 S.F.	GENERAL TERMINAL (PUBLIC AREAS)
44,731 S.F.	GENERAL TERMINAL (FACILITY SUPPORT)
2,253 S.F.	GENERAL TERMINAL (AUTHORITY FUNCTIONS)
81,365 S.F.	SUBTOTAL
149,924 S.F.	TERMINAL 1ST FLOOR TOTAL

LEGEND

E	ELECTRICAL CLOSET
T	TELEPHONE CLOSET
C	CUSTODIAN CLOSET
BSO	BAG STORAGE OFFICE
M	MEN'S RESTROOM
W	WOMEN'S RESTROOM
F	FAMILY RESTROOM

1st FLOOR AREA	2nd FLOOR AREA	TOTAL AREA
14,395 S.F.	0 S.F.	14,395 S.F.
5,592 S.F.	28,197 S.F.	33,789 S.F.
41,993 S.F.	10,034 S.F.	52,027 S.F.
4,177 S.F.	17,769 S.F.	21,946 S.F.
2,402 S.F.	8,563 S.F.	10,965 S.F.
(68,559 S.F.)	(64,563 S.F.)	(133,122 S.F.)
34,381 S.F.	42,670 S.F.	77,051 S.F.
44,731 S.F.	9,166 S.F.	53,897 S.F.
2,253 S.F.	1,865 S.F.	4,118 S.F.
81,365 S.F.	53,701 S.F.	135,066 S.F.
149,924 S.F.	118,264 S.F.	268,188 S.F.

LEGEND

- AIRLINE SPACE (EXCLUSIVE)
- AIRLINE SPACE (PREFERENTIAL)
- AIRLINE SPACE (JOINT USE AREAS)
- CONCESSIONS
- OTHER RENTABLE
- SUBTOTAL (RENTABLE)
- GENERAL TERMINAL (PUBLIC AREAS)
- GENERAL TERMINAL (FACILITY SUPPORT)
- GENERAL TERMINAL (AUTHORITY FUNCTIONS)
- SUBTOTAL (GENERAL TERMINAL)
- TOTAL TERMINAL

SOUTHWEST AIRLINES

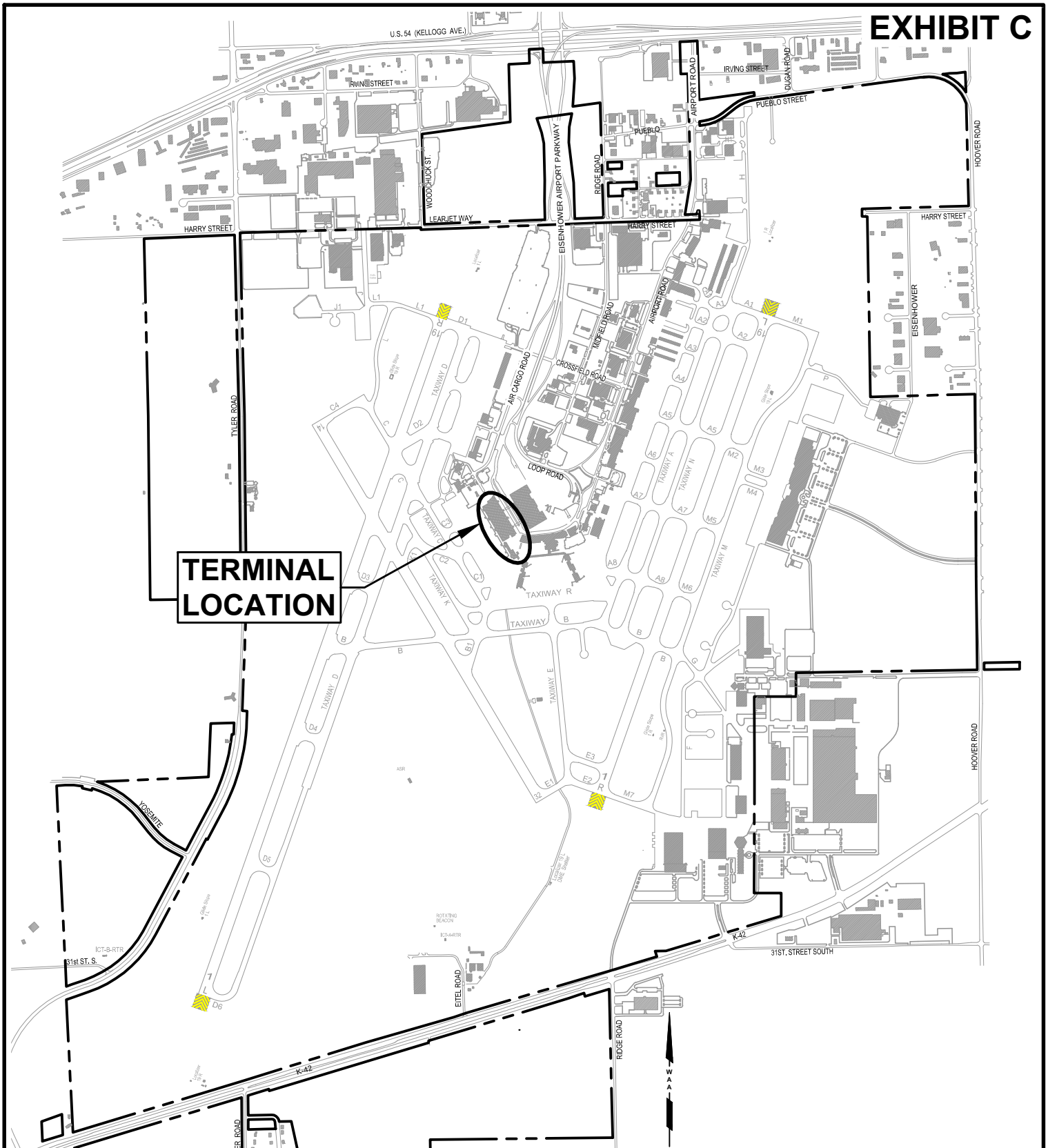
TERMINAL LEASE AREAS 1st FLOOR PLAN

WICHITA DWIGHT D. EISENHOWER NATIONAL AIRPORT
THE WICHITA AIRPORT AUTHORITY
WICHITA, KANSAS

DATE	DR. BY	SCALE	SHEET
3/3/15		1" = 30'	1 of 5

877

EXHIBIT C



SOUTHWEST AIRLINES

AIRPORT LAYOUT MAP

WICHITA DWIGHT D. EISENHOWER NATIONAL AIRPORT

THE WICHITA AIRPORT AUTHORITY

WICHITA, KANSAS

DATE	DR. BY	SCALE	SHEET
2/23/15	H.G.O.	1" = 1900'	1 of 1

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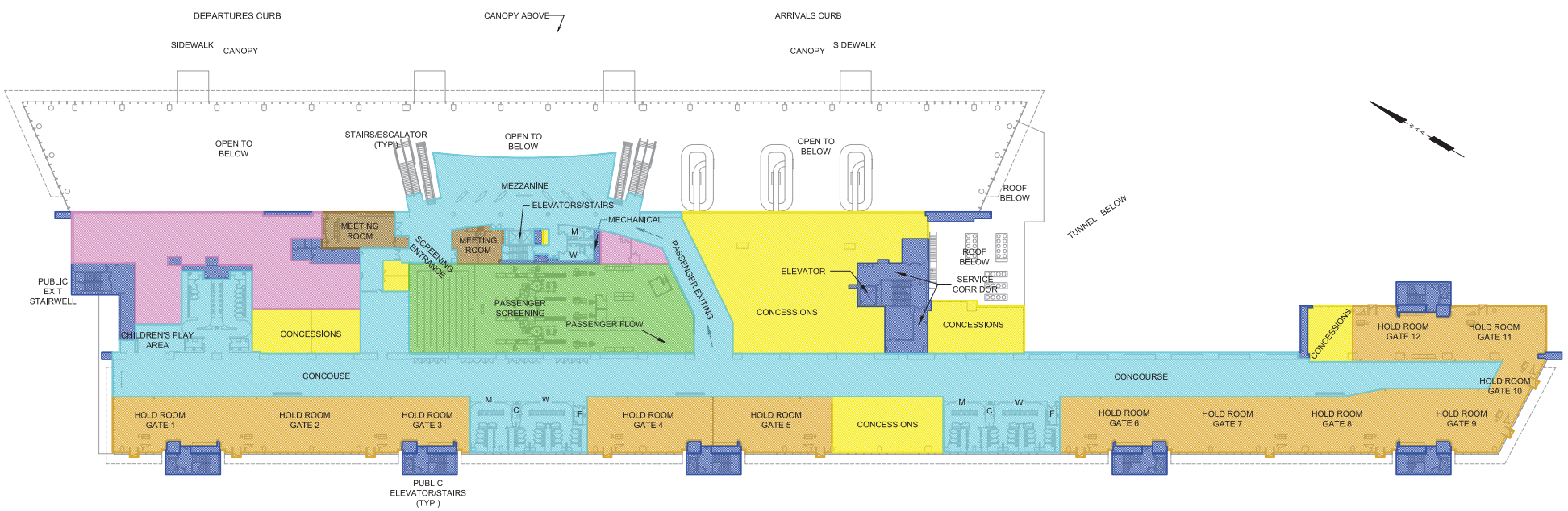


2nd FLOOR PLAN

AREA TOTALS		LEGEND
0 S.F.		AIRLINE SPACE (EXCLUSIVE)
28,197 S.F.		AIRLINE SPACE (PREFERENTIAL)
10,034 S.F.		AIRLINE SPACE (JOINT USE AREAS)
17,769 S.F.		CONCESSIONS
8,563 S.F.		OTHER RENTABLE
(64,563 S.F.)		SUBTOTAL
42,670 S.F.		GENERAL TERMINAL (PUBLIC AREAS)
9,166 S.F.		GENERAL TERMINAL (FACILITY SUPPORT)
1,865 S.F.		GENERAL TERMINAL (AUTHORITY FUNCTIONS)
53,701 S.F.		SUBTOTAL
118,264 S.F.		TERMINAL 2nd FLOOR TOTAL
	E	ELECTRICAL CLOSET
	T	TELEPHONE CLOSET
	C	CUSTODIAN CLOSET
	BSO	BAG STORAGE OFFICE
	M	MEN'S RESTROOM
	W	WOMEN'S RESTROOM
	F	FAMILY RESTROOM

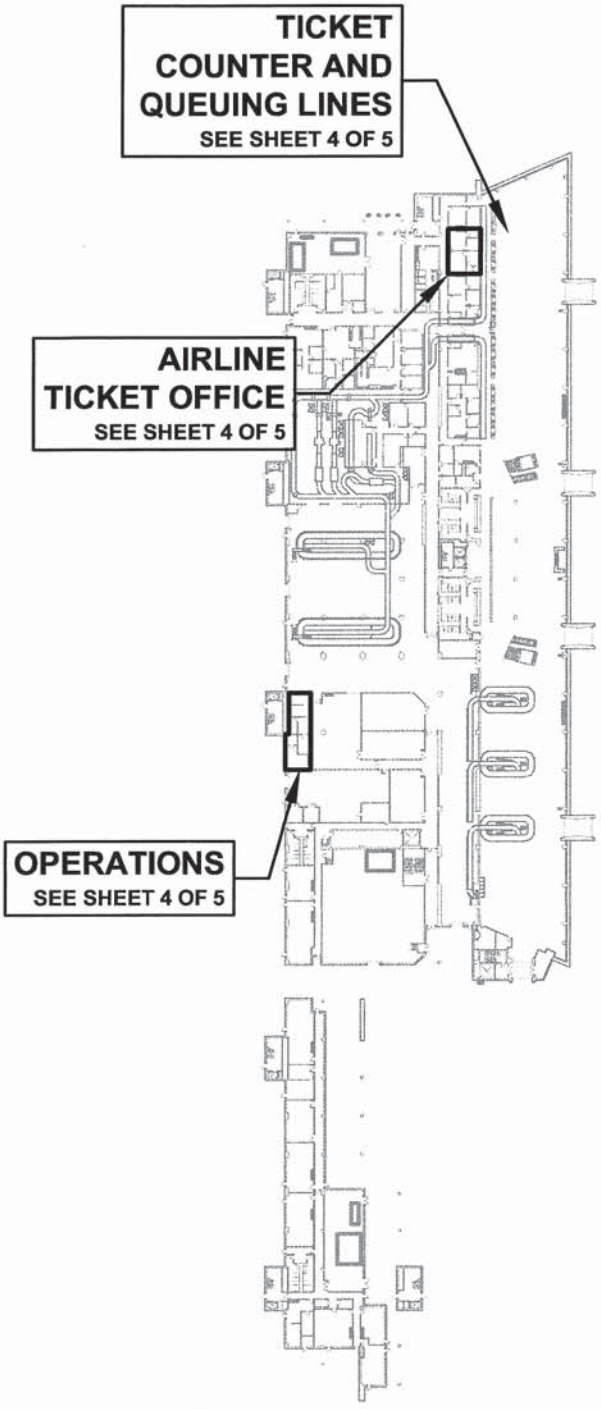
SOUTHWEST AIRLINES

TERMINAL LEASE AREAS 2nd FLOOR PLAN

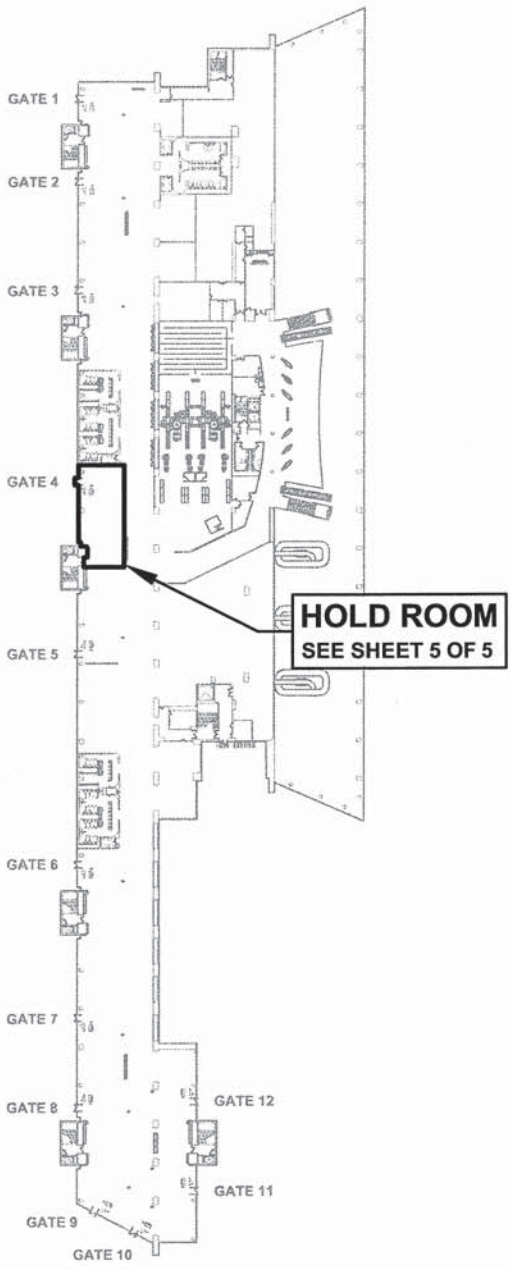
WICHITA DWIGHT D. EISENHOWER NATIONAL AIRPORT
THE WICHITA AIRPORT AUTHORITY
WICHITA, KANSAS

DATE	DR. BY	SCALE	SHEET
2/23/15		1" = 30'	2 of 5

EXHIBIT D



1ST FLOOR



2ND FLOOR

SOUTHWEST AIRLINES

TERMINAL LAYOUT

WICHITA DWIGHT D. EISENHOWER NATIONAL AIRPORT

THE WICHITA AIRPORT AUTHORITY

WICHITA, KANSAS

DATE	DR. BY	SCALE	SHEET
3/4/15	H.G.O.	1" = 150'	3 of 5

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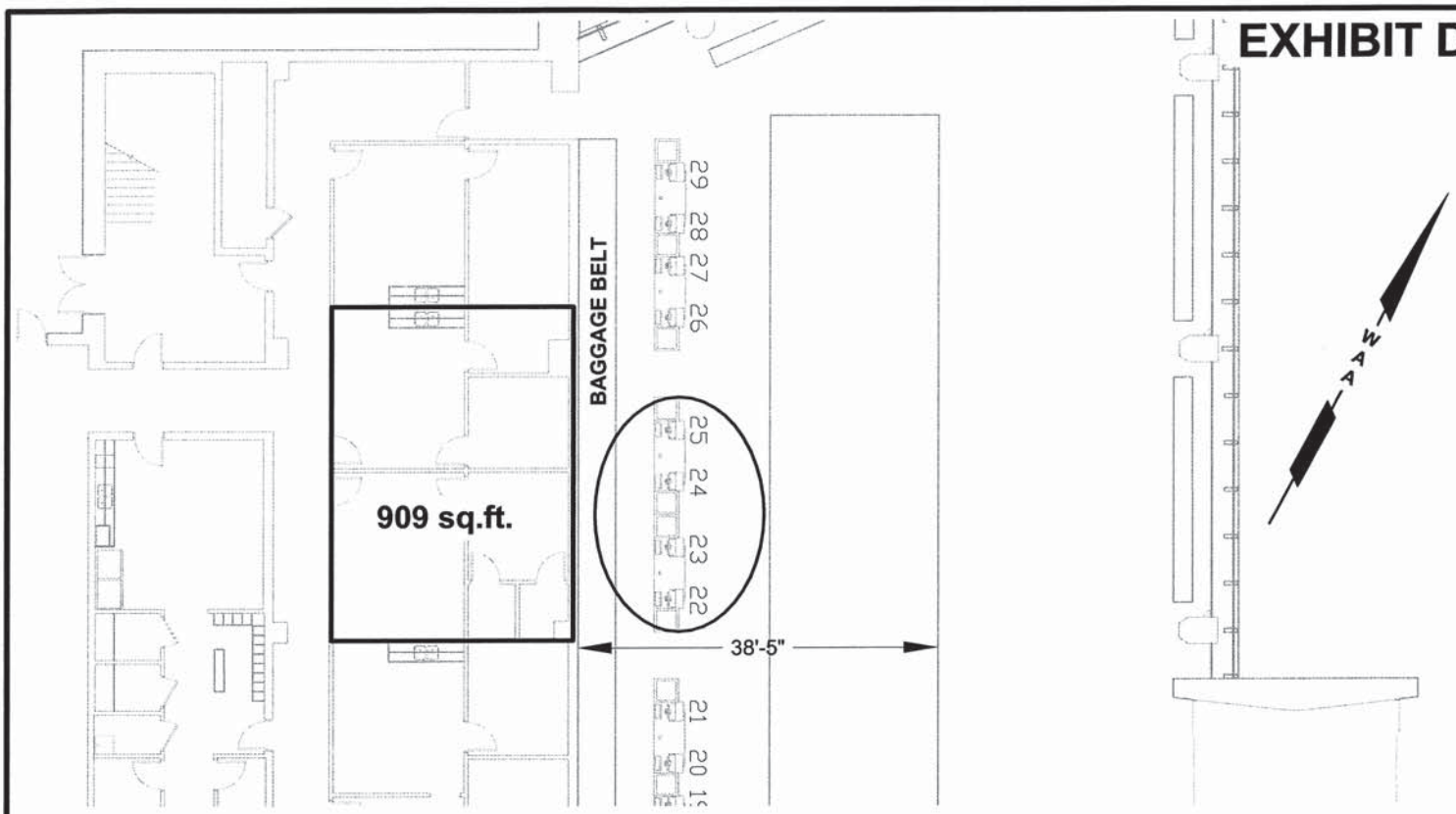
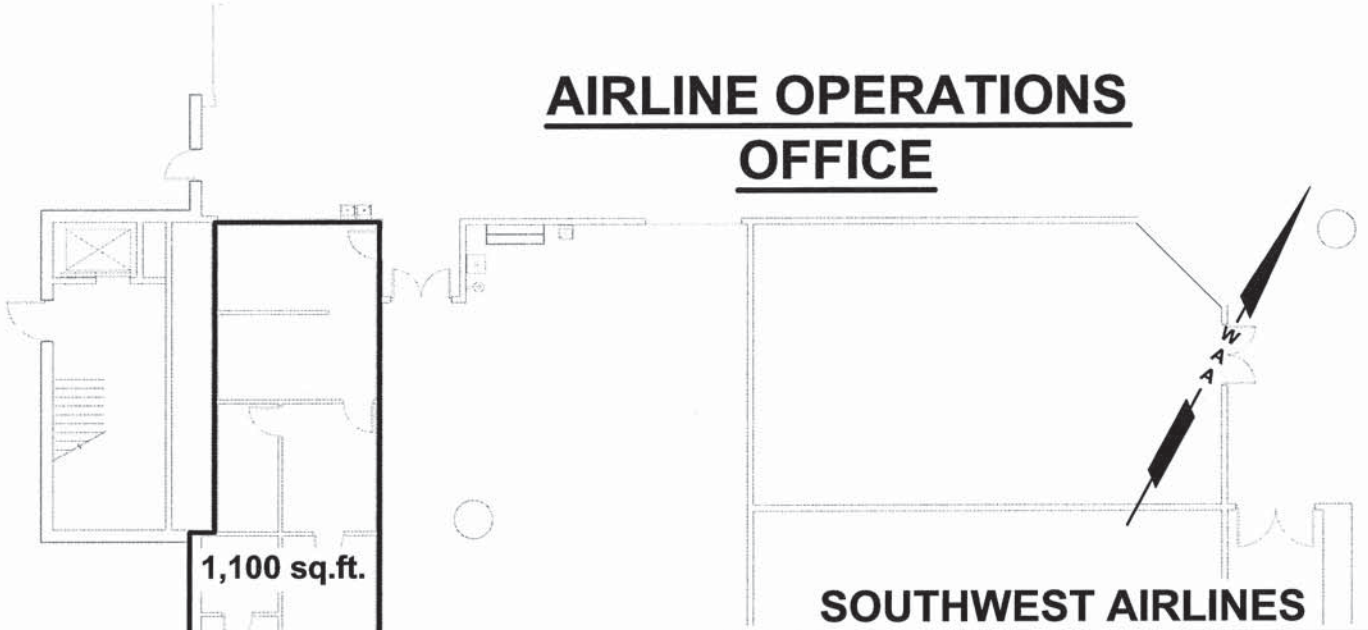


TICKET COUNTER AND AIRLINE TICKET OFFICE

AIRLINE OPERATIONS OFFICE



SOUTHWEST AIRLINES

1ST FLOOR

WICHITA DWIGHT D. EISENHOWER NATIONAL AIRPORT

THE WICHITA AIRPORT AUTHORITY

WICHITA, KANSAS

DATE	DR. BY	SCALE	SHEET
3/4/15	H.G.O.	1" = 20'	4 of 5

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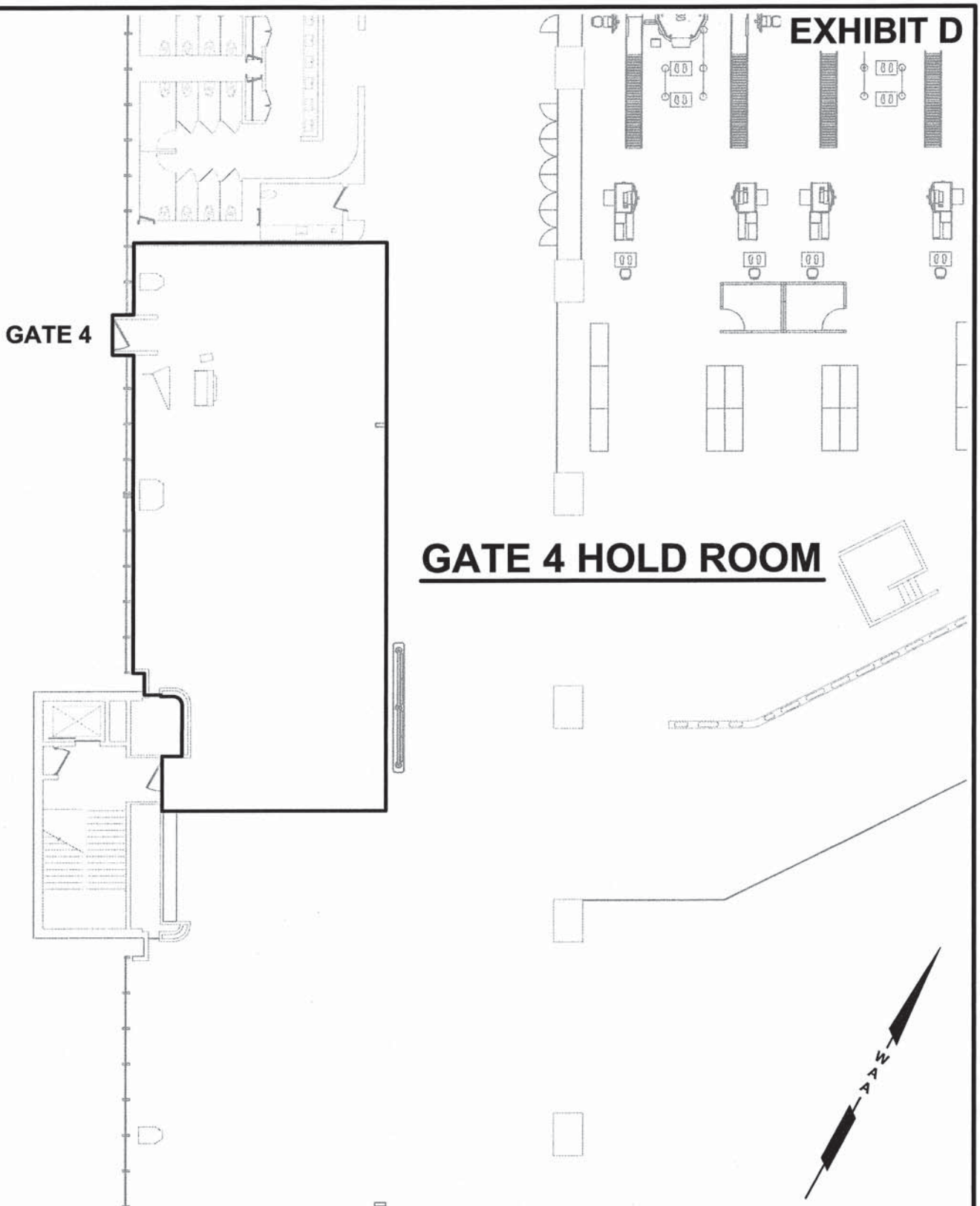

SOUTHWEST AIRLINES

2ND FLOOR

WICHITA DWIGHT D. EISENHOWER NATIONAL AIRPORT

THE WICHITA AIRPORT AUTHORITY

WICHITA, KANSAS

DATE	DR. BY	SCALE	SHEET
3/4/15	H.G.O.	1" = 20'	5 of 5

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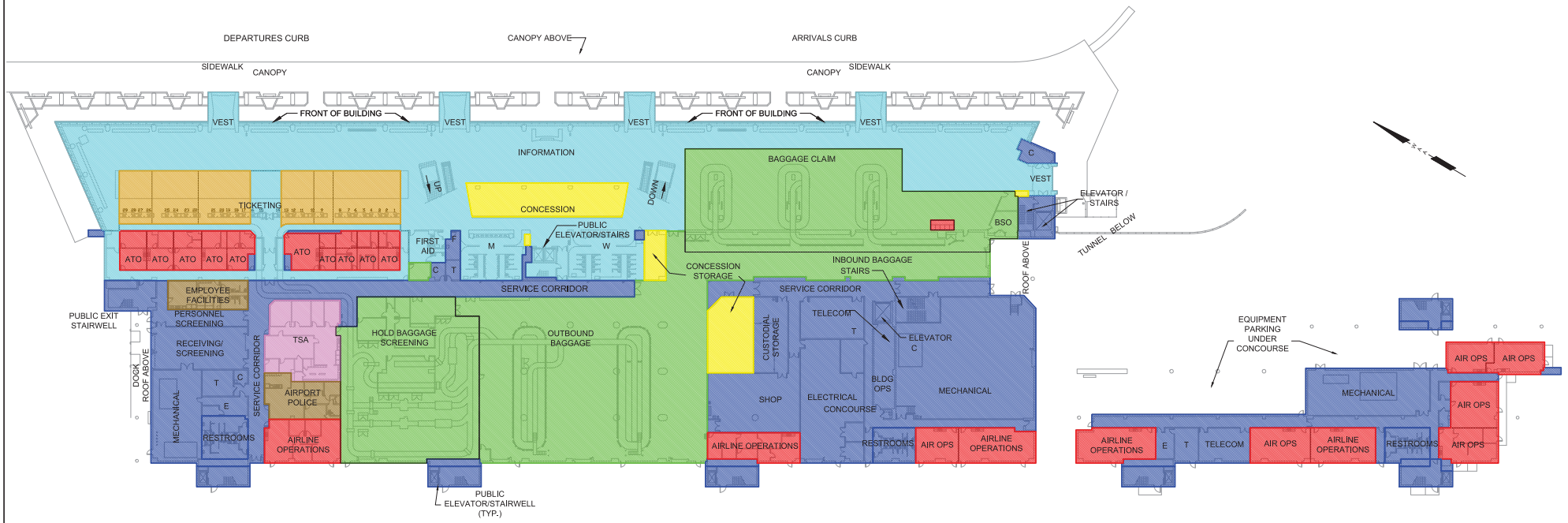


1st FLOOR PLAN

AREA TOTALS		LEGEND
14,395 S.F.		AIRLINE SPACE (EXCLUSIVE)
5,592 S.F.		AIRLINE SPACE (PREFERENTIAL)
41,993 S.F.		AIRLINE SPACE (JOINT USE AREAS)
4,177 S.F.		CONCESSIONS
2,402 S.F.		OTHER RENTABLE
(68,559 S.F.)		SUBTOTAL
34,381 S.F.		GENERAL TERMINAL (PUBLIC AREAS)
44,731 S.F.		GENERAL TERMINAL (FACILITY SUPPORT)
2,253 S.F.		GENERAL TERMINAL (AUTHORITY FUNCTIONS)
81,365 S.F.		SUBTOTAL
149,924 S.F.		TERMINAL 1ST FLOOR TOTAL
	E	ELECTRICAL CLOSET
	T	TELEPHONE CLOSET
	C	CUSTODIAN CLOSET
	BSO	BAG STORAGE OFFICE
	M	MEN'S RESTROOM
	W	WOMEN'S RESTROOM
	F	FAMILY RESTROOM

1st FLOOR AREA	2nd FLOOR AREA	TOTAL AREA	LEGEND
14,395 S.F.	0 S.F.	14,395 S.F.	AIRLINE SPACE (EXCLUSIVE)
5,592 S.F.	28,197 S.F.	33,789 S.F.	AIRLINE SPACE (PREFERENTIAL)
41,993 S.F.	10,034 S.F.	52,027 S.F.	AIRLINE SPACE (JOINT USE AREAS)
4,177 S.F.	17,769 S.F.	21,946 S.F.	CONCESSIONS
2,402 S.F.	8,563 S.F.	10,965 S.F.	OTHER RENTABLE
(68,559 S.F.)	(64,563 S.F.)	(133,122 S.F.)	SUBTOTAL (RENTABLE)
34,381 S.F.	42,670 S.F.	77,051 S.F.	GENERAL TERMINAL (PUBLIC AREAS)
44,731 S.F.	9,166 S.F.	53,897 S.F.	GENERAL TERMINAL (FACILITY SUPPORT)
2,253 S.F.	1,865 S.F.	4,118 S.F.	GENERAL TERMINAL (AUTHORITY FUNCTIONS)
81,365 S.F.	53,701 S.F.	135,066 S.F.	SUBTOTAL (GENERAL TERMINAL)
149,924 S.F.	118,264 S.F.	268,188 S.F.	TOTAL TERMINAL

UNITED AIRLINES

TERMINAL LEASE AREAS 1st FLOOR PLAN

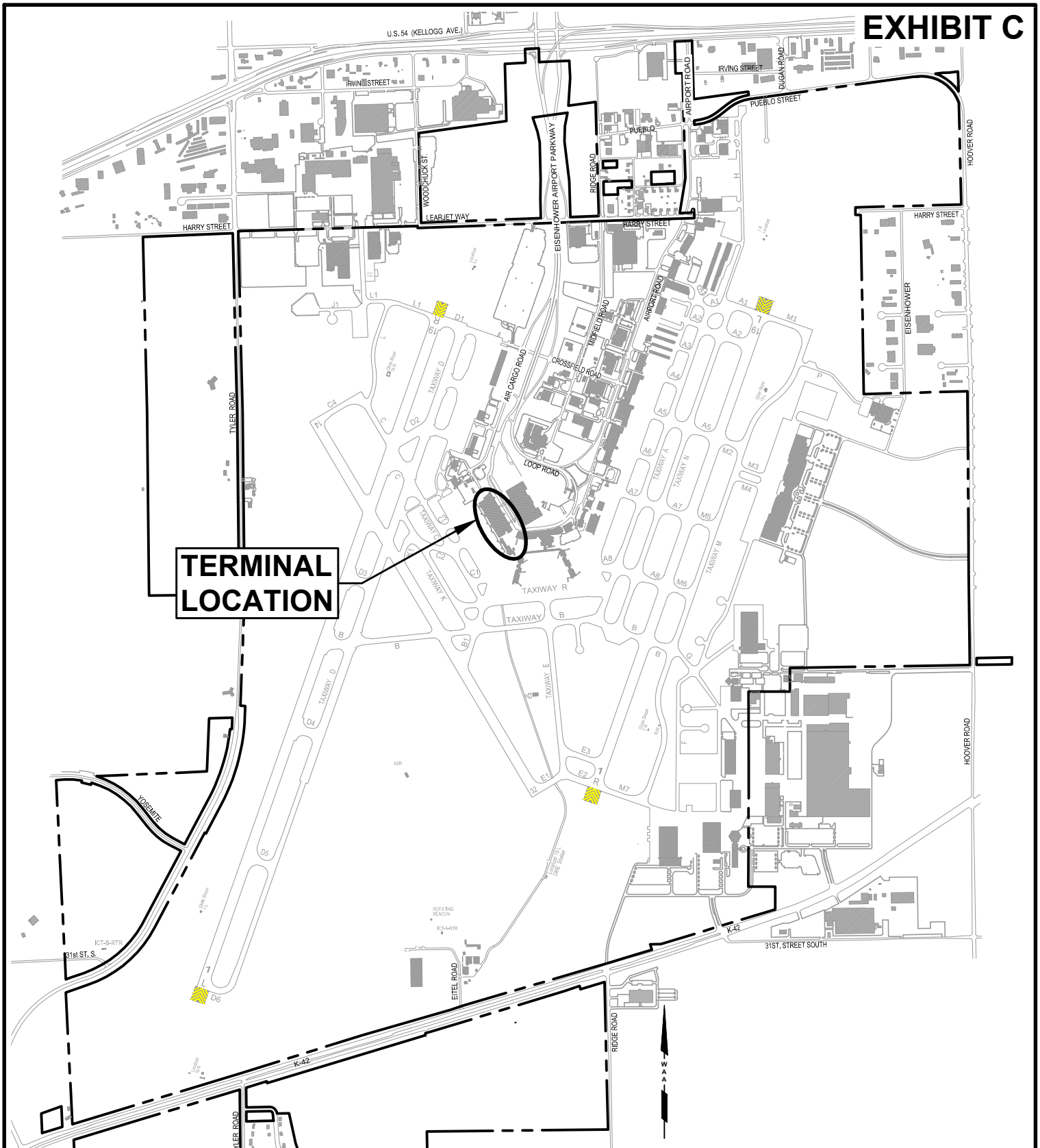
WICHITA DWIGHT D. EISENHOWER NATIONAL AIRPORT

THE WICHITA AIRPORT AUTHORITY

WICHITA, KANSAS

DATE	DR. BY	SCALE	SHEET
3/3/15		1" = 30'	1 of 5

EXHIBIT C



UNITED AIRLINES

AIRPORT LAYOUT MAP

WICHITA DWIGHT D. EISENHOWER NATIONAL AIRPORT

THE WICHITA AIRPORT AUTHORITY

WICHITA, KANSAS

DATE	DR. BY	SCALE	SHEET
2/23/15	H.G.O.	1" = 1900'	1 of 1

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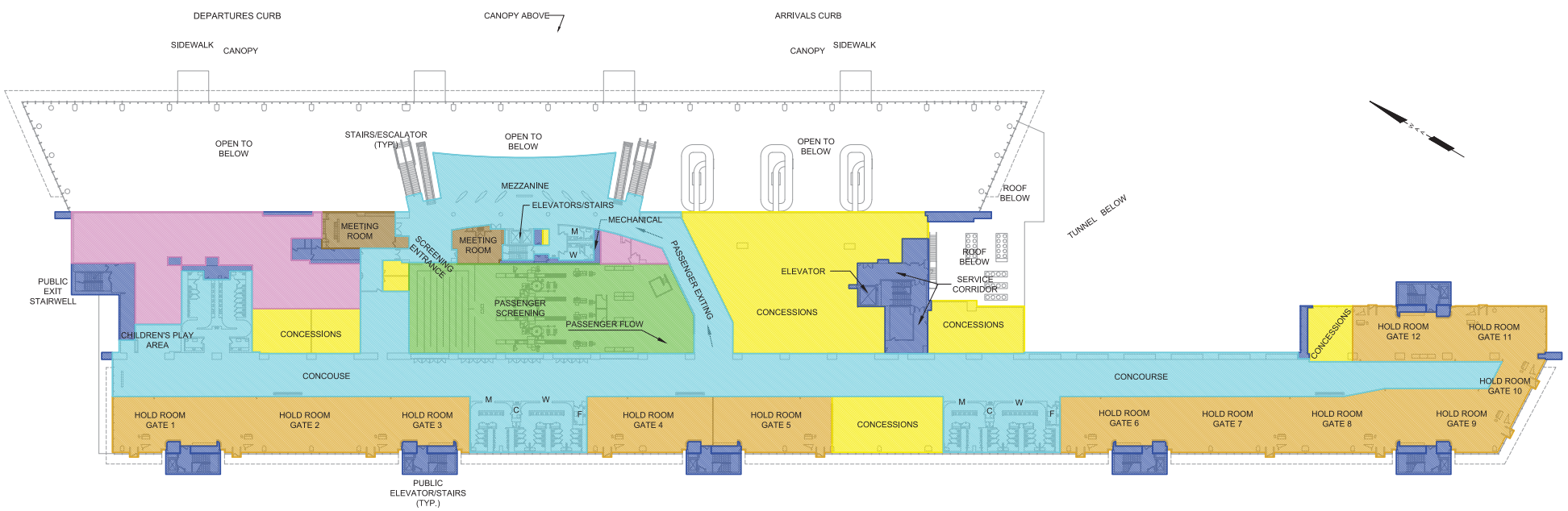


2nd FLOOR PLAN

AREA TOTALS		LEGEND
0 S.F.		AIRLINE SPACE (EXCLUSIVE)
28,197 S.F.		AIRLINE SPACE (PREFERENTIAL)
10,034 S.F.		AIRLINE SPACE (JOINT USE AREAS)
17,769 S.F.		CONCESSIONS
8,563 S.F.		OTHER RENTABLE
(64,563 S.F.)		SUBTOTAL
42,670 S.F.		GENERAL TERMINAL (PUBLIC AREAS)
9,166 S.F.		GENERAL TERMINAL (FACILITY SUPPORT)
1,865 S.F.		GENERAL TERMINAL (AUTHORITY FUNCTIONS)
53,701 S.F.		SUBTOTAL
118,264 S.F.		TERMINAL 2nd FLOOR TOTAL
	E	ELECTRICAL CLOSET
	T	TELEPHONE CLOSET
	C	CUSTODIAN CLOSET
	BSO	BAG STORAGE OFFICE
	M	MEN'S RESTROOM
	W	WOMEN'S RESTROOM
	F	FAMILY RESTROOM

UNITED AIRLINES

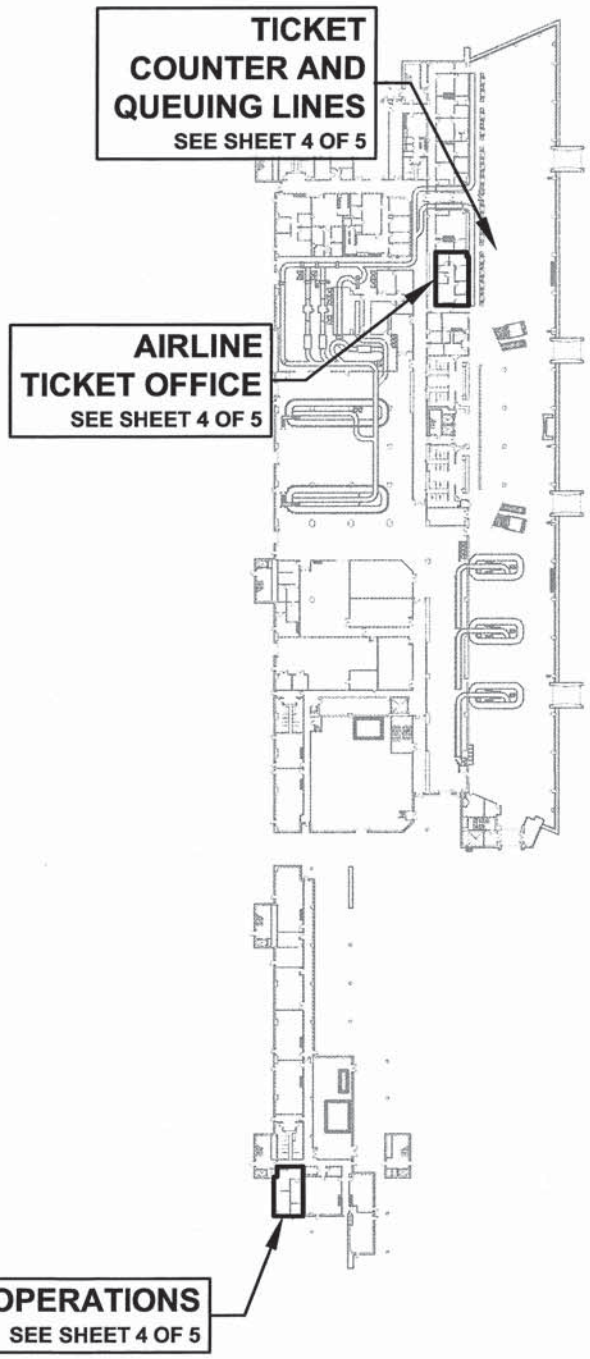
TERMINAL LEASE AREAS 2nd FLOOR PLAN

WICHITA DWIGHT D. EISENHOWER NATIONAL AIRPORT

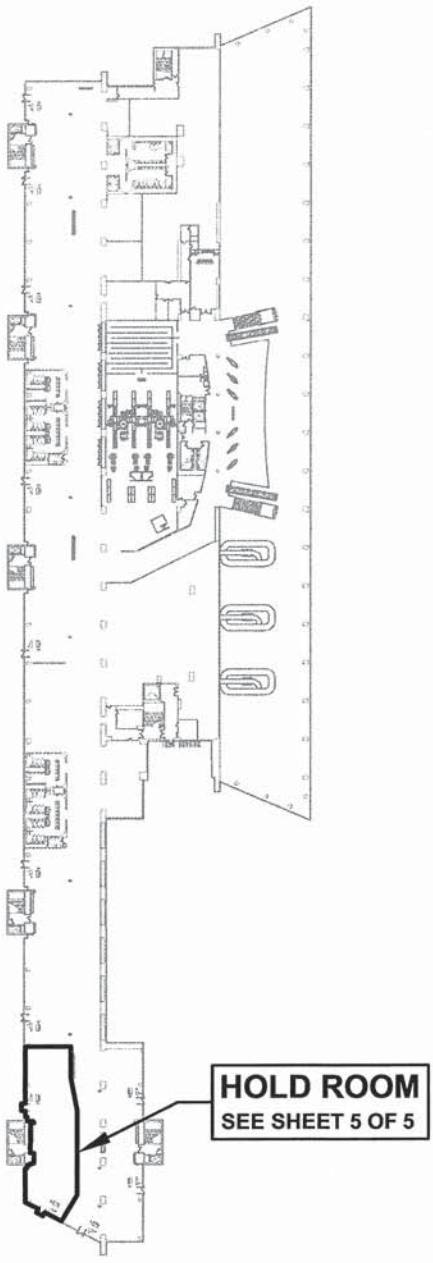
THE WICHITA AIRPORT AUTHORITY
WICHITA, KANSAS

DATE	DR. BY	SCALE	SHEET
2/23/15		1" = 30'	2 of 5

EXHIBIT D



1ST FLOOR



2ND FLOOR

UNITED AIRLINES

TERMINAL LAYOUT

WICHITA DWIGHT D. EISENHOWER NATIONAL AIRPORT

THE WICHITA AIRPORT AUTHORITY

WICHITA, KANSAS

DATE	DR. BY	SCALE	SHEET
3/4/15	H.G.O.	1" = 150'	3 of 5

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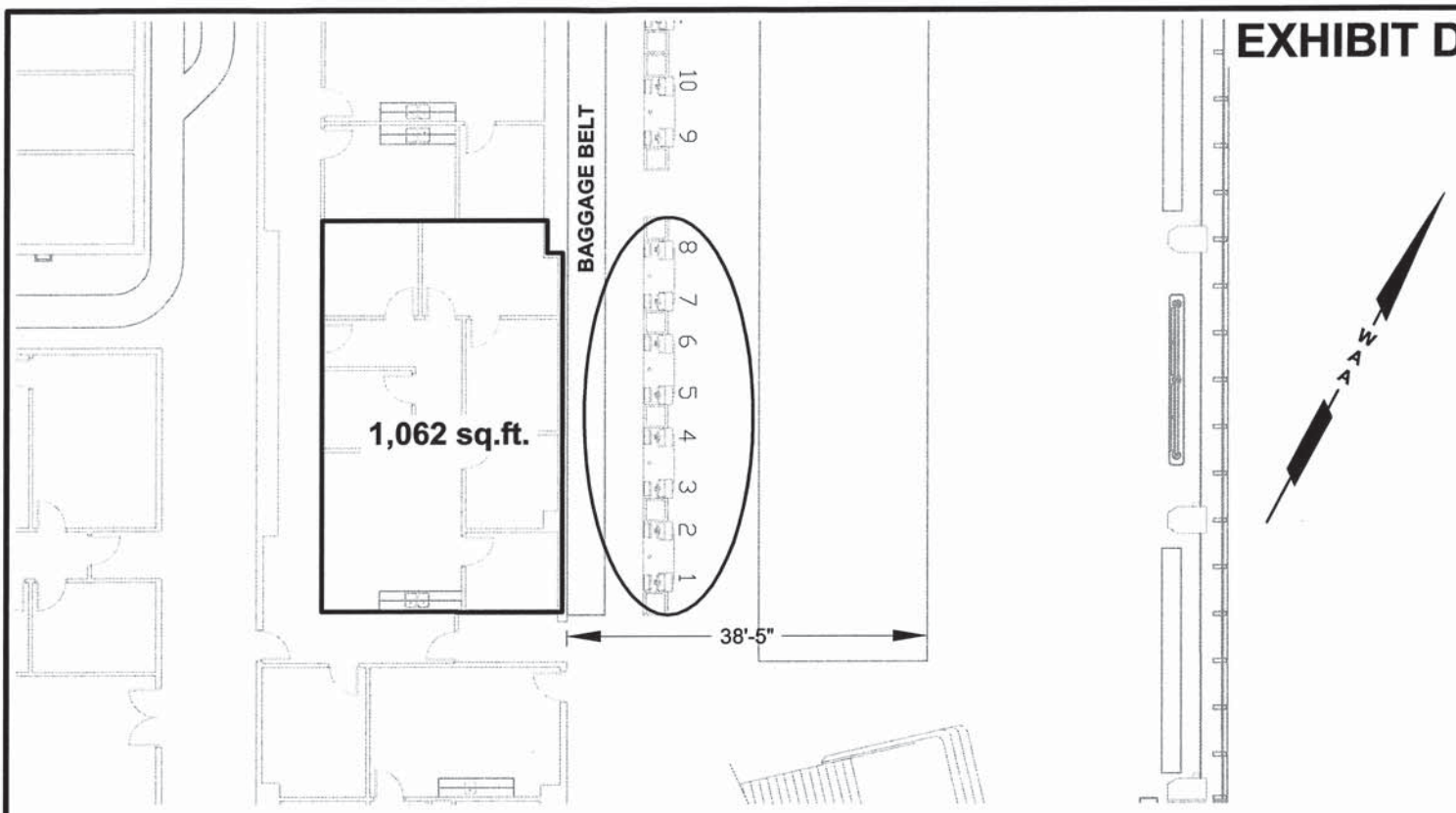
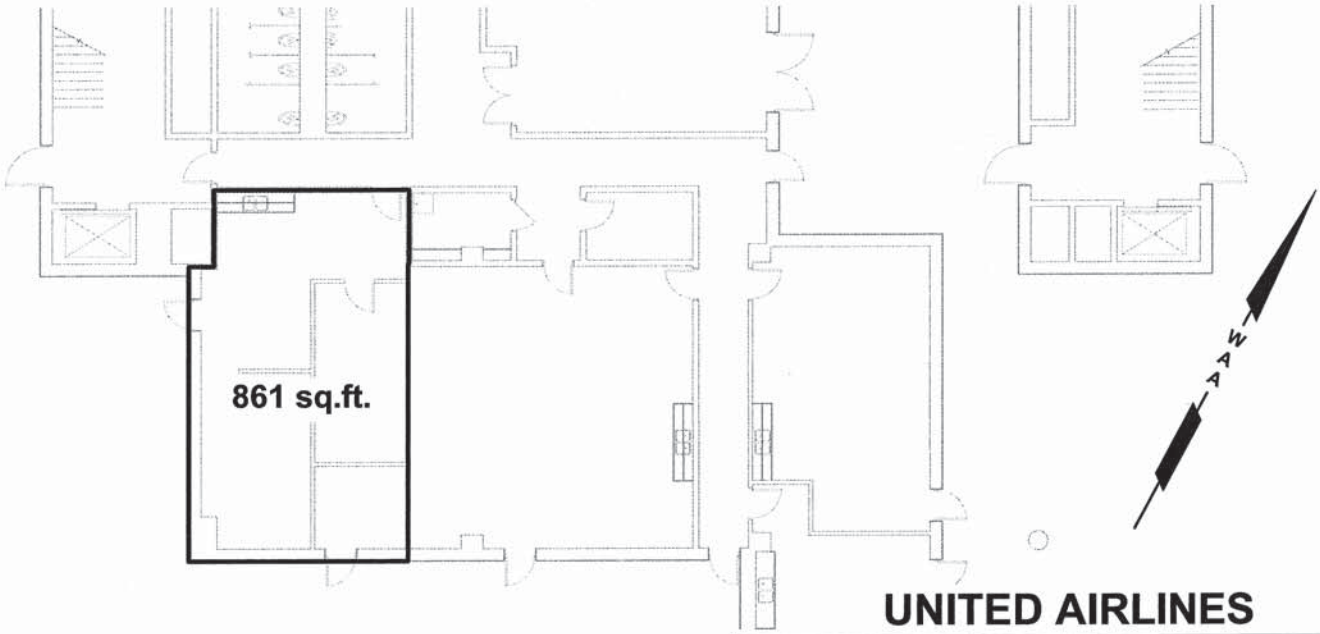
EXHIBIT D



TICKET COUNTER AND AIRLINE TICKET OFFICE



AIRLINE OPERATIONS OFFICE

UNITED AIRLINES

1ST FLOOR

WICHITA DWIGHT D. EISENHOWER NATIONAL AIRPORT

THE WICHITA AIRPORT AUTHORITY

WICHITA, KANSAS

DATE	DR. BY	SCALE	SHEET
3/4/15	H.G.O.	1" = 20'	4 of 5

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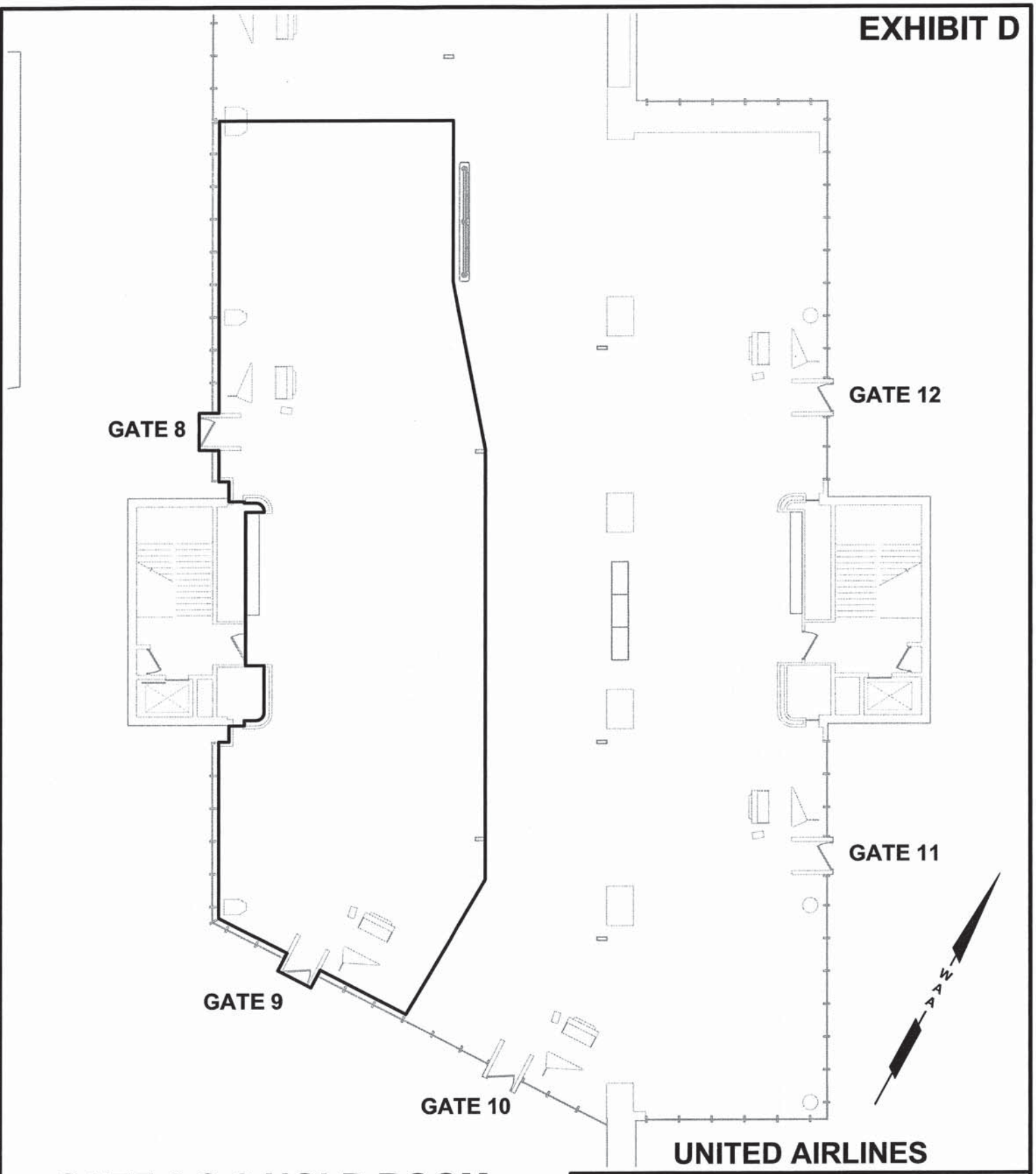

GATE 8 & 9 HOLD ROOM

UNITED AIRLINES

2ND FLOOR

WICHITA DWIGHT D. EISENHOWER NATIONAL AIRPORT

THE WICHITA AIRPORT AUTHORITY

WICHITA, KANSAS

DATE	DR. BY	SCALE	SHEET
3/4/15	H.G.O.	1" = 20'	5 of 5

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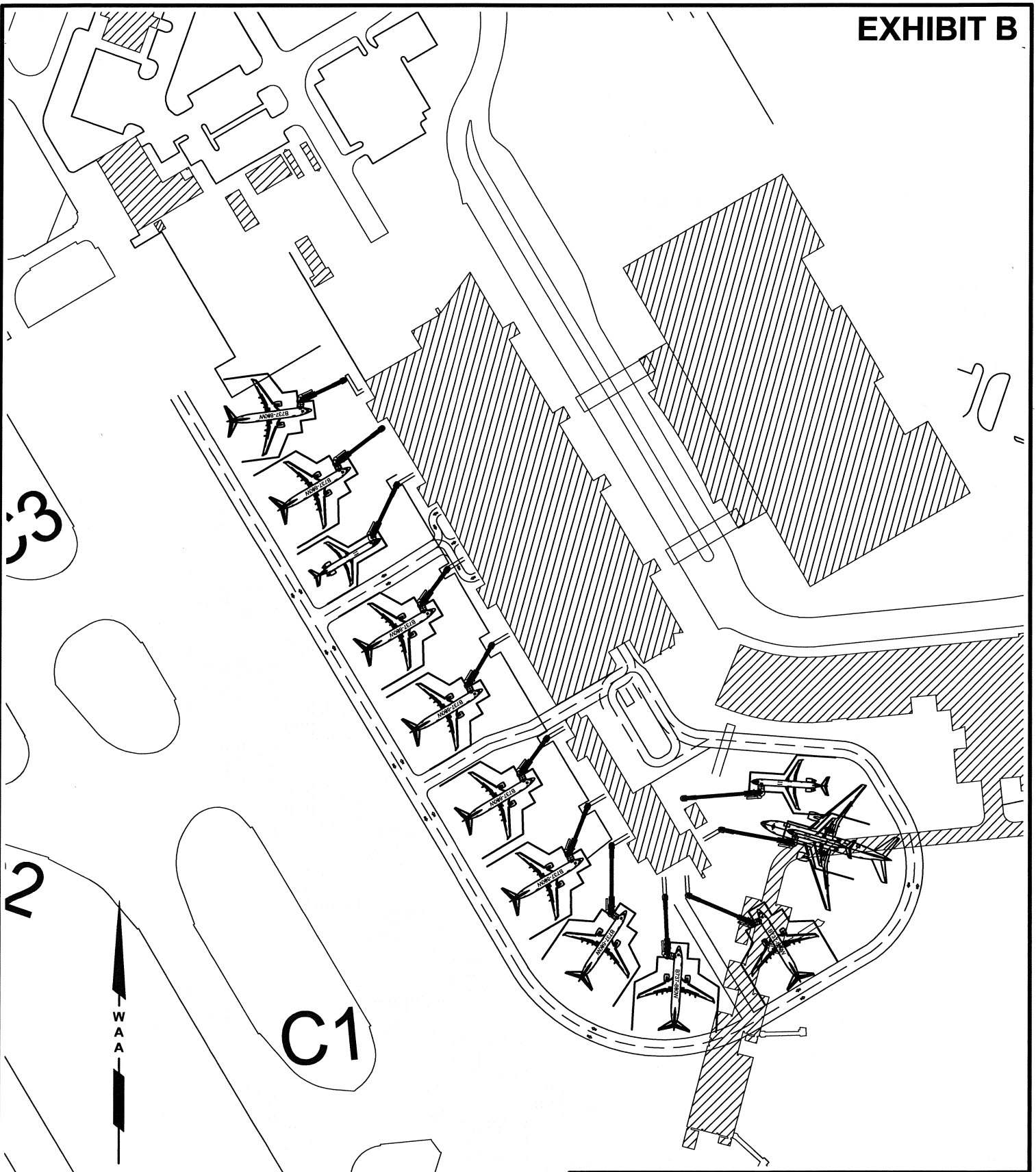
EXHIBIT B



TERMINAL APRON

Wichita Dwight D. Eisenhower National Airport

THE WICHITA AIRPORT AUTHORITY

WICHITA, KANSAS

DATE	DR. BY	SCALE	SHEET
3/5/15	H.G.O.	1" = 200'	2 of 2

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City of Wichita
City Council Meeting
March 17, 2015

TO: Wichita Airport Authority

SUBJECT: Tenant-Funded Improvements and Events

INITIATED BY: Department of Airports

AGENDA: Wichita Airport Authority (Consent)

Recommendation: Approve the project budget.

Background: The opening of the new terminal building and parking garage/rental car projects is slated for May 2015. The budgets for the two programs total approximately $200 million and are expected to complete within the identified budgets. However, these budgets were not intended to cover finish-out expenditures that are the responsibility of the tenants.

Analysis: Airport and AECOM program management staff have coordinated with tenant representatives to identify what finish-out requirements they desire and are willing to fund. The normal City of Wichita procurement processes will be followed to select vendors to perform the required work. This list of construction items has been combined with dedication and grand opening event expenses that are expected to be funded in part by sponsorships, donations, and ticket sales to produce the following project components:

Item	Amount	Funded by external sources	Funded from Airport sources
Transportation Security Administration (TSA) office space build-out (under the Wichita Airport Authority lease with the US General Services Administration)	$843,450	$768,450	$75,000
Data and electrical requirements beyond base building infrastructure for airline, concessionaire and rental car tenants	$156,550	$156,550	$0
Dedication and grand opening events	$250,000	$100,000 minimum	$150,000 maximum
Total	**$1,250,000**	**$1,025,000 minimum**	**$225,000 maximum**

Financial Considerations: A capital budget of $1,250,000 is requested. The majority of the tenant related portion ($925,000) will be reimbursed by the tenants in addition to a 12 percent administrative fee. The unreimbursed tenant related portion ($75,000) will be funded with available funds of the Airport and the issuance of general obligation bonds repaid with Airport revenue. The portion related to the

dedication and grand opening events will be funded with available funds of the Airport and reimbursements from the Wichita Airport Foundation, Inc., a non-profit charitable 501(c)(3) corporation.

Legal Considerations: The Wichita Airport Authority may legally pay directly for grand opening events with funds not tied to general obligation bond sources. As an enterprise fund and in accord with regulations of the Federal Aviation Administration, the Wichita Airport Authority may receive and retain reimbursement for any or all of these expenses from private donations.

Recommendations/Actions: It is recommended that the Wichita Airport Authority approve the project budget.

Attachments: None.

City of Wichita
City Council Meeting
March 17, 2015

TO: Wichita Airport Authority

SUBJECT: MSE Branded Foods of Wichita, LLC
Supplemental Agreement No. 1
Wichita Dwight D. Eisenhower National Airport

INITIATED BY: Department of Airports

AGENDA: Wichita Airport Authority (Consent)

Recommendation: Approve the supplemental agreement.

Background: Requests for Proposals (RFP) from experienced airport food and beverage (F&B) concessionaires were sought in spring 2014 to serve as the prime F&B operator for the new Airport terminal. In July 2014, MSE Branded Foods of Wichita, LLC (MSE) was awarded the Food and Beverage Concession and Lease Agreement for pre-checkpoint and post-checkpoint locations in the new terminal. In addition, an agreement between The Paradies Shops (Paradies) and the Wichita Airport Authority (WAA) was approved in October 2014 for Paradies to provide the airport retail, news and gift concessions in post-checkpoint locations.

Analysis: This supplemental agreement contains two items. The first permits additional customer services prior to the security checkpoint, such that MSE will offer limited retail, news and gift merchandise sales in the Aviators Café food and beverage shop. This additional service will enhance the Airport's customer experience in the new terminal. The second component of the supplemental agreement permits MSE to provide installation of specified base building infrastructure which is necessary for the completion of the terminal in the concession areas. These improvements were not able to be included in the design and construction of the terminal prior to knowing the types of facilities that would be provided by the selected F&B concessionaire. These infrastructure improvements will be done most cost effectively by MSE's contractor during its tenant build-out construction for all F&B locations throughout the terminal. Competitive bids were obtained by MSE for this construction, for which the WAA will reimburse MSE.

Financial Considerations: MSE has formed a Kansas corporation, MSE Branded Foods of Wichita, LLC, to construct and operate the facilities in the new terminal. WAA will pay MSE to do the necessary improvements to the base building infrastructure, which will include the following items: electric panel relocation and additional transformers; HVAC enhancements; underground plumbing extensions; stove-top and oven hoods venting to the outside the building; roof penetrations; fire protection sprinkler system extensions; and fire alarm system extension and programming. The total cost is $572,480, and will be paid from the current terminal program budget.

MSE's current commission schedule that includes a minimum annual guaranteed payment to the WAA of $300,000, or a concession fee of 10 percent of gross sales for food and non-alcoholic beverage items, and 12 percent on alcoholic beverages, whichever is higher, remains unchanged. For the new retail, news and gift merchandise sales, MSE will pay the WAA a commission of 8 percent of gross revenues up to $200,000 in annual sales, which increases to 10 percent for sales over $200,000. By enhancing the customer offerings at the pre-checkpoint location, the retail, news, and gift sales should create an additional projected amount for the first year of $10,000 in commissions to the WAA.

Legal Considerations: The Law Department has reviewed and approved the supplemental agreement as to form.

Recommendations/Actions: It is recommended that the WAA approve the supplemental agreement and authorize the necessary signatures.

Attachments: Supplemental Agreement No. 1.

SUPPLEMENTAL AGREEMENT NO. 1

By and Between

WICHITA AIRPORT AUTHORITY
Wichita, Kansas

and

MSE BRANDED FOODS OF WICHITA, LLC

for

Food and Beverage Concession and Lease Agreement
Wichita Dwight D. Eisenhower National Airport
Wichita, Kansas

THIS SUPPLEMENTAL AGREEMENT NO. 1, made and entered into this day of March 17, 2015, by and between The Wichita Airport Authority, (AUTHORITY), and MSE Branded Foods of Wichita, LLC, (CONCESSIONAIRE).

WHEREAS, AUTHORITY is a quasi-governmental entity authorized under the laws of the State of Kansas to own and operate one or more airports, with full, lawful power and authority to enter into binding legal instruments by and through its governing body; and

WHEREAS, AUTHORITY owns, operates, regulates, administers, and maintains the campus of Wichita Dwight D. Eisenhower National Airport (Airport);

WHEREAS, AUTHORITY is charged by the Federal Aviation Administration with the responsibility to maintain economic, self-sustaining operation, including maximizing potential income from federally, funded projects;

WHEREAS, an agreement was approved on July 1, 2014 between AUTHORITY and CONCESSIONAIRE for the purpose of operating a Food and Beverage Concession in the new Terminal under the terms and conditions set forth in the Concession and Lease Agreement ("Agreement");

WHEREAS the final allocation of retail concession space in the new Terminal has made available space adjacent to CONCESSIONAIRE's pre-security portion of the Premises;

WHEREAS AUTHORITY desires that some space in the Terminal be allocated to pre-security retail as a customer service and CONCESSIONAIRE is qualified and available to do so;

WHEREAS installation of additional infrastructure, done most cost effectively during initial construction, will enhance the operations for future profitability, in which the AUTHORITY will share;

WHEREAS AUTHORITY maintained the right under the competitive RFP process to negotiate with the selected CONCESSIONAIRE for the Scope of Services and leasehold allocated, and chooses to exercise that right to enhance the Terminal customer offerings; and

WHEREAS, the AUTHORITY and CONCESSIONAIRE now wish to enter into this Supplemental Agreement No. 1 for the purpose of modifying language and modifying the Concession Fee rent of this Agreement:

NOW, THEREFORE, in consideration of the mutual promises and agreements herein set forth, AUTHORITY and CONCESSIONAIRE do hereby covenant and agree as follows:

1. DEFINITIONS

Section 1 of the original Agreement, dated July 1, 2014 shall be **added** as follows:

Convenience Retail – shall mean offering for sale the merchandise commonly found in airport newsstands including, but not limited to, candy, unopened containerized non-alcoholic beverages, gum, health and beauty aids, magazines, newspapers, paperback books, pre-packaged snacks, and souvenirs.

2. SCOPE OF THE PROJECT

CONCESSIONAIRE shall, at its sole cost and expense, complete the construction of the Premises as defined by this Supplemental Agreement and as set forth and shown on the attached Exhibit "A", This construction shall be in accordance with the Agreement and the Tenant Construction and Alteration Process Manual (TCAP), which is attached hereto as Exhibit "C" and incorporated herein by this reference. The AUTHORITY agrees to reimburse the CONCESSIONAIRE for the cost of the Authority Improvements as outlined in Exhibit "B" and

described throughout this Supplemental Agreement ("Project"), which shall be completed in accordance with the Agreement and the TCAP. Ownership of the Authority Improvements shall be vested with the AUTHORITY, upon Project approval.

Any review or approval by the AUTHORITY of CONCESSIONAIRE's plans or an inspection by AUTHORITY of the Project work or materials shall not be deemed to constitute a waiver or release by AUTHORITY of any obligation or responsibility of CONCESSIONAIRE hereunder, or an assumption of any risk or liability by AUTHORITY with respect thereto, and CONCESSIONAIRE shall make no claim against AUTHORITY on account of such review, approval, or inspection.

3. OBJECTS AND PURPOSES OF AGREEMENT

Section 4.01 of the original Agreement, dated July 1, 2014 shall be **added** as follows:

The AUTHORITY does expressly grant to the CONCESSIONAIRE Exclusive Rights for Convenience Retail in CONCESSIONAIRE's pre-checkpoint portion of the Premises in the Terminal, as shown on Exhibit "A".

Section 4.02 of the original Agreement, dated July 1, 2014 shall be **replaced** as follows:

As consideration for this right and privilege, CONCESSIONAIRE agrees to reasonably use and is hereby obligated to maintain and operate said Premises in accordance with the terms and conditions set forth herein. The Premises shall not be used for any other Commercial Business or Commercial Activity not specifically authorized in this Agreement, unless approved in writing by the AUTHORITY. The following activities, operations, services and concessions shall be specifically prohibited on or from the Premises or any other location on Airport Property:

(a) Commercial (*for hire*) ground transportation;
(b) Automobile sales;
(c) Automated food and beverage or non-food and beverage vending machines *(excluding food and beverage vending machines within Exclusive Premises shielded from public view, and intended and used only for CONCESSIONAIRE's employee use and benefit)*;
(d) Commercial paid parking;
(e) Commercial hotel or lodging;
(f) Massage services;
(g) Shoe shine services;
(h) Sale of non-food and non-beverage gifts, sundries, news, except in CONCESSIONAIRE's pre-checkpoint portion of the Premises;

(i) Bag "skycap" porterage services;
(j) Storage or shipping services;
(k) Sale, trade or bartering of fuel or lubricant products;
(l) Revenue-producing communication systems or systems not directly applicable to CONCESSIONAIRE's operations on the Premises;
(m) Commercial advertising (*other than on Premises, and then only to the extent it is directly promoting CONCESSIONAIRE'S own products and services*);
(n) No banners shall be displayed or installed by CONCESSIONAIRE on Airport Property;
(o) Any activity considered by AUTHORITY to not be aviation purposes or purposes incidental or related thereto in connection with the Commercial Activity of a Food and Beverage Concession.

In addition to such other prohibitions as stated in this Agreement, CONCESSIONAIRE shall not (i) place a load on any floor in the Airport which exceeds the floor load per square foot which such floor was designed to carry; (ii) install any public address or paging or other audio system on the Premises (in order to avoid possible interference with Airport paging or other audio systems) without the prior written consent of the AUTHORITY; (iii) allow any smoking on the Premises; (iv) install any additional locks or security systems of any kind on doors or windows without the prior written consent of the AUTHORITY; (v) conduct its operations in a manner that deprives the public of its rightful, equal, and uniform use of the Airport Property; or (vi) conduct its operations in such a way as to hinder police, fire-fighting or other emergency personnel in the discharge of their duties or as to constitute a hazardous condition that would increase the risks normally attendant upon the operations contemplated under this Agreement.

The privilege to occupy the Premises is solely for the purpose of operating the Food and Beverage Concession described in this Agreement. Without prior written permission, CONCESSIONAIRE expressly agrees that it may under no circumstances sell or offer to sell, or otherwise provide any services, merchandise or products other than those permitted in this Agreement, and that breach of this restriction will place CONCESSIONAIRE in default hereunder.

4. CONCESSION FEES AND OTHER PAYMENT OBLIGATIONS

Section 5.01 (3) of the original Agreement, dated July 1, 2014 shall be **added** as follows:

Concession Fees for Convenience Retail sold in CONCESSIONAIRE's pre-checkpoint portion of the Premises in the amount of eight percent (8%) annual Gross Revenues of up to two-hundred thousand ($200,000) dollars and then the Concession Fees for Convenience Retail sold in CONCESSIONAIRE's pre-checkpoint portion of the Premises increase to the amount of ten percent (10%) of annual Gross Revenues of over two-hundred thousand and one ($200,001) dollars; duly reported by CONCESSIONAIRE to AUTHORITY.

5. PROJECT COSTS

CONCESSIONAIRE agrees to make direct payment to all vendors for materials, products and service providers for all such costs as they are incurred for the payment of labor or material or for any charge or expense incurred in the erection, construction, operation, or maintenance of Authority Improvements within the Premises. CONCESSIONAIRE shall not charge markup, overhead, or other costs to AUTHORITY, relative to the Authority Improvements.

AUTHORITY agrees to and shall pay the CONCESSIONAIRE for the items in the amounts set forth in Exhibit "B" at prices not to exceed the limits stated in that document. CONCESSIONAIRE shall provide copies of the vendor invoices to AUTHORITY, which AUTHORITY shall only pay such actual expenses up to the not to exceed as stated.

6. AUTHORITY IMPROVEMENTS PAYMENT PROCEDURE

AUTHORITY shall pay to CONCESSIONAIRE within thirty (30) days of receipt of invoice for the Project's costs associated to Exhibit "B", up to the not to exceed amounts as stated in that document.

All invoices to AUTHORITY shall be delivered or mailed to:

Wichita Airport Authority
2173 Air Cargo Road
Wichita, Kansas 67209

All payments to CONCESSIONAIRE shall be mailed to:

MSE Branded Foods
225 A Forrest Avenue
Gainesville, GA 30501

7. COMPENSATION

The parties anticipate that the Authority Improvements will enhance the gross revenues realized under the Agreement, encourages CONCESSIONAIRE to build-out additional facilities with greater variation in customer service offerings, and increase the facility rent paid under that Agreement. Therefore no compensation from CONCESSIONAIRE is due under this Supplemental Agreement beyond performance of the obligations set forth herein.

8. PROJECT INSURANCE

CONCESSIONAIRE shall procure, maintain and carry, at its sole cost, in accordance with and/or until completion of this Supplemental Agreement such additional insurance, beyond that required per the amounts as set forth in accordance with the Agreement and the TCAP as AUTHORITY may reasonably require.

CONCESSIONAIRE shall be solely responsible for obtaining insurance policies. AUTHORITY shall not be required to provide such insurance coverage or be responsible for payment of CONCESSIONAIRE's cost for such insurance.

9. OTHER TERMS

It is understood and agreed that all other terms and conditions of the existing Agreement between the parties hereto are incorporated herein and reaffirmed.

IN WITNESS WHEREOF, the parties hereto have executed this Supplemental Agreement the day and year first above written.

ATTEST:

THE WICHITA AIRPORT AUTHORITY
WICHITA, KANSAS

By _____
Karen Sublett, City Clerk

By _____
Carl Brewer, President
"AUTHORITY"

By _____
Victor D. White, Director of Airports

ATTEST:

MSE BRANDED FOOD OF WICHITA, LLC

By _____

By _____
Jack Hough, President
"CONCESSIONAIRE"

APPROVED AS TO FORM: _____ Date: _____
Director of Law