

Re: Wichita Dwight D. Eisenhower National Airport  
Neutral Host Distributed Antenna System Services

March 22, 2016

**I. INTRODUCTION:**

The Wichita Airport Authority (Owner) plans to have installed a Neutral Host Distributed Antenna System (NHDAS) and e911 services at the terminal and parking garage on Wichita Dwight D. Eisenhower National Airport. If your firm is interested in providing design, installation, commissioning, operations and maintenance services for a NH-DAS, please submit nine (9) hard copies and one electronic copy on a thumb drive of your proposal outlining your experience and capabilities to the City of Wichita Purchasing Manager. See Exhibit B for an Airport Layout Plan.

The Wichita Dwight D. Eisenhower National Airport (ICT) serves nearly 1.6 million passengers annually and is the state's largest commercial airport. The airlines serving ICT are American, Allegiant, Delta, Southwest and United with 36 flights a day serving approximately 240 non and one stop destinations in the US and 104 international destinations. The 275,200 s. f. terminal opened in 2015 containing 12 gates, three baggage carousels and a variety of food, beverage and retail spaces. Wi-Fi internet access is available free of charge. Also in 2015 a four level parking garage/rental car customer service center opened. This facility has public parking on Levels 2-4 with the rental cars using Level 1. The Airport encompasses approximately 3350 acres of land.

Commercial airline departures begin at 5:00 a. m. and continue until approximately 6:30 p. m. and arrivals begin approximately at 9:30 a. m. and continue until around midnight. The most recent passenger survey indicated 56% described their travel as leisure, 24% a combination of leisure and business and 20% as business. Employees working in the terminal and the parking garage/rental car customer service center number approximately 500 although not all are on duty at the same time.

**II. INITIAL SCHEDULE:**

Request for Proposals Advertised	Week of March 21, 2016
Pre-Proposal Meeting and Tour, 2:00 p. m. CT (this meeting is not mandatory but attendance is strongly recommended)	April 12, 2016
Last day for addenda, 5:00 p. m. CT	April 27, 2016
Proposals due, 2:00 p. m. CT	May 4, 2016
Interviews	May 23, 2016
Pre-contract meeting	Week of May 30, 2016

### **III. PROJECT DETAILS:**

- Specific project details and existing condition information are provided in NHDAS Scope of Work and Requirements, Exhibit B and the Plans (Exhibit C).
- Provide on-going technical support services for the NHDAS.
- Actively market the NHDAS to all cellular carriers.

### **IV. SUBMITTAL**

Your Proposal will be evaluated based on criteria that includes, but not limited to:

- Recent experience of the firm and key staff with similar projects. As a minimum identify three (3) and as a maximum six (6) similar, relevant projects, at least two (2) of which should be airport projects. Identify the key staff that worked these projects, when the projects occurred and current points of contact for those projects with their contact information.
- Approach to the project including the marketing plan for the NHDAS, specifically outlining how the proposer will attract and retain wireless carriers to utilize the system.
- Schedule for implementation, specifically highlighting key milestone dates, shown in Exhibit A, Appendix A.
- Pro-forma sheet outlined in Exhibit A, Appendix A.
- Identify the City of Wichita Emerging Business Enterprise (EBE) effort (reference Section VII of this RFP).
- Evidence the Proposer has or can obtain the required insurance (reference the Use and Lease Agreement, Exhibit C).
- Requested modifications to the Use and Lease Agreement, Exhibit C. Provide specifics.

Your Proposal shall not exceed 20 - 8 ½ x 11 pages equivalent. Excluded from this count is the transmittal letter, the tabs and resumes. The submittal shall not contain electronic media. The submittals shall be comb or spiral bound.

The transmittal letter shall not exceed two pages, include the relevant information for the contact person, be signed by an official of the Proposer and shall summarize the key points of the submittal. Tab pages shall be blank except for the section name. The resume for the lead person shall not exceed two pages and other resumes shall not exceed one page per person. The transmittal letter shall acknowledge the issued addenda.

## **V. SELECTION PROCESS**

A City of Wichita Screening and Selection Committee will evaluate proposals. At the discretion of the Committee, short-listed proposers will be interviewed either via telephone or in person.

Proposal Evaluation Criteria:

- |   |       |
|---|-------|
| A. Approach to the Project and Understanding Objectives     | (35%) |
| B. Expertise of the Project Team and Lead Firm              | (35%) |
| C. Proposed Revenue Share, Capital Expenditure and Schedule | (25%) |
| D. EBE participation  | (5%)  |

## **VI. OPEN RECORDS**

Pursuant to Kansas Statutes Annotated (K.S.A.) 45-215 et. seq. all proposals become a public record once there is an award of contract by the Wichita Airport Authority. Information that is strictly proprietary and not subject to release as a component of an open records request shall be marked on each page on which the information appears.

## **VII. EMERGING BUSINESS ENTERPRISE PARTICIPATION**

The City of Wichita encourages proposers to include Emerging Business Enterprise (EBE) participation on their team which is a City program to enhance opportunities for emerging and disadvantaged businesses by increasing their representation and utilization. The Proposer shall specifically identify the participation of EBE firms in the project and identify the work they will perform. The City policy may be found at:

<https://ep.wichita.gov/Final%20Emerging%20and%20DBE%20Manual%20revision%202015.pdf>

A list of EBE firms is available upon request from the City of Wichita Purchasing staff at 316-268-4636 or at <https://ep.wichita.gov/>.

## **VIII. GENERAL**

The Owner reserves the right to modify the scope of the project as determined to be in the best interest of the Owner. Modifications to the project will be negotiated with the selected Proposer, as applicable. Proposers shall monitor the City of Wichita web site for changes to this Request for Proposals. Changes shall be made via addenda and become a part of the Request for Proposals and acknowledged in your Proposal on the transmittal letter. The web site is:

<https://ep.wichita.gov/e-proc/venSolicitationsAll.asp?link=Open+Solicitations>

Before a contract is executed the Proposer must have on file with the City of Wichita an approved Equal Employment Opportunity/Affirmative Action Plan (reference Exhibit E).

It is understood that no portion of the work will be assigned, transferred, conveyed, sublet or otherwise disposed of without the prior, written approval of the Owner.

The contract will follow the concession contract provided with this RFP. The proposer waives any rights to proposed modifications to this concession contract unless addressed, in detail, within the Proposal.

By submission of a Proposal, the Proposer agrees that it and/or its subcontractors do not have any conflict of interest with regard to any officer or employee of the companies involved with the City of Wichita.

By submission of a Proposal, the Proposer agrees they and/or their subcontractors have not or will not employ or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for the Proposer) to solicit or secure the project.

The Owner shall not be responsible for any cost or expense associated with the preparation, submission and/or presentation in response to this Request for Proposals.

The Owner reserves the right to copy and/or otherwise use information within a proposal without payment of any kind or liability therefore.

The Owner reserves the right to terminate this process at any time.

The Owner reserves the right to reject any and all Proposals and waive any irregularities therein.

Should you have questions and/or wish to visit the project site please e-mail Brendan Gelinas, at [bgelinas@wichita.gov](mailto:bgelinas@wichita.gov). All questions shall be in writing.

Proposals shall be delivered to:

City Purchasing Manager  
City Hall, 12<sup>th</sup> Floor  
455 N. Main  
Wichita, Kansas 67202  
316-268-443

ATTACHMENTS:

Exhibit A:	NHDAS Scope of Work and Requirements
Exhibit B:	Airport Layout Plan
Exhibit C:	Plans (20 sheets)
Exhibit D:	Use and Lease Agreement
Exhibit E:	Equal Employment Opportunity

**Neutral Host Distributed Antenna System  
(NHDAS) Scope of Work and Requirements**

**March 2016**

## **1. SCOPE OF WORK**

The selected Proposer will act as a Service Provider for NHDAS service offerings, including services needed to fully install, implement, operate and maintain the system(s) described herein for the Wichita Airport Authority (Authority or WAA) at the Wichita Dwight D. Eisenhower National Airport (Airport or ICT). The Authority desires to select a qualified Proposer to implement and manage a vendor-neutral DAS service offering at the Airport.

This service shall provide an infrastructure for wireless frequencies to be distributed throughout the Airport and shall generate revenue for the Authority through a revenue sharing agreement. The DAS service offerings shall meet or exceed the specifications and requirements listed throughout this RFP. The Authority requires the proposed solution be capable of providing full operation and support to Authority staff, tenants, and the traveling public throughout specified areas of the Airport.

### **1.1 Scope of Work - DAS**

The DAS shall provide enhanced cellular coverage throughout all public and operational areas of the terminal facilities. Exact coverage locations and associated square feet are provided in Attachment A. The successful proposer shall be responsible for the following:

- 1.1.1 Design of a neutral host DAS to support multiple cellular carriers including all current, future wireless communications and broadband data requirements.
- 1.1.2 Coordinating and provisioning of additional cellular carriers, that desire to provide coverage at the Airport during the agreed upon contract term.
- 1.1.3 Performing all necessary coordination, including attendance at project meetings, with any adjacent Authority projects.
- 1.1.4 Furnishing of all equipment, not provided by WAA, that is required to support the installation and operation of the DAS.
- 1.1.5 Coordinating and provisioning of all system modifications throughout the life of the contract to support cellular carrier enhancements to services (e.g. support of new technologies).
- 1.1.6 Coordinating with the various mobile carriers desiring to provide service at the Airport and facilitating their inclusion in the DAS.
- 1.1.7 Installation of the DAS equipment and all supporting components, including cabling infrastructure and fiber optic infrastructure required to support the operation of the DAS, as defined by this RFP.
- 1.1.8 Providing the Authority with monthly reports detailing DAS uptime and maintenance performed (both scheduled and non-scheduled) on the DAS service via the system's

reporting capabilities. The information contained in the monthly reports shall be coordinated with the Authority's designated representative.

- 1.1.9 Providing all preventative maintenance and system repairs, including system updates throughout the term of the contract, as required for the normal operation of the DAS.
- 1.1.10 Performing system updates/upgrades throughout the life of the lease to ensure the systems are supporting the most current technologies and frequencies that carriers wish to utilize. The Authority reserves the right to adjust minimum requirements as advancements in technology become available.
- 1.1.11 Installation of all software and hardware components necessary for the DAS to function as specified.
- 1.1.12 Providing ongoing support and other requirements that are listed in the technical specifications.
- 1.1.13 Any and all electrical work, including installation of new electrical outlets required to support the DAS equipment. All electrical installations shall conform to the latest Authority standards as well as NEC and local codes and requirements.
- 1.1.14 The successful proposer shall be responsible for participating in all Authority safety and security programs and adhering to the established safety guidelines.
- 1.1.15 The successful proposer, at the end of the lease term, shall turn over ownership of all DAS equipment to the Authority, or will remove all equipment at the proposers

expense, and will update the location to a similar state before installation. This equipment includes, but is not limited to:

- A. Optical Master Units
- B. Fiber Distribution Hubs
- C. Remote Fiber Distribution Units
- D. Coax Cabling
- E. Ceiling Antennas

1.1.16 The successful proposer shall secure any required permits and licenses necessary for the execution of work as needed for the project.

1.1.17 The successful proposer shall provide all required notices prior to performing any work that may affect Airport operations and/or the availability of the system(s).

1.1.18 The successful proposer shall comply with all codes, ordinances, regulations, and any other legal requirements of public authorities which will bear on the implementation of work for the project.

## **1.2 BASE STATION LOCATION INSTALLATION REQUIREMENTS AND EXISTING INFRASTRUCTURE**

1.2.1 The Airport wishes to utilize Mechanical Room 201, shown in drawing T6.003, for all base station equipment. If this room is found to be unsuitable as is, then the successful proposer must provide enhancements to Mechanical Room 201 or provide another suitable location. This must be coordinated with the Authority to identify a suitable location for cellular carriers' equipment on the Airport campus and providing any space enhancements (e.g. Power, communications cabling, HVAC, etc.) to support the DAS and carriers' equipment.

1.2.2 Available Supporting Infrastructure and associated scope of work within Mechanical Room 201, which can be utilized for the DAS head end equipment:

- A. Mechanical-The existing IT rooms have a mechanical room located on both sides. Each mechanical room houses a handling unit serving the garage administration areas. The IT room is conditioned by a 12 ton (5500 CFM) Liebert CRAC unit located in the east mechanical room. Any additional DAS equipment will require a maximum of approximately 16-20 tons of air conditioning. This will require the addition of one large or two smaller units of approximately the same capacity. This may be one 16-20 ton CRAC unit or two 8-10 ton CRAC units. Chilled water is not available but the roof is directly available above, which has room for the heat rejection equipment for

additional direct expansion (DX) heat rejection equipment for the DAS cooling systems.

- B. Electrical- This space holds transformer TS-2EMS, a 45kva dry type transformer. 480V 54 amps primary, 208/120V 125amps secondary. Transformer 2EMS, feeds panel 2EMS, a 120/208V 3 Phase 4-Wire 150 amp 42 pole panel. This transformer is fed from Panel EMDP. Panel 2EMS supplies power to door controls, the emergency phone, cameras, receptacles for the 2<sup>nd</sup> level and the elevator cab. Adjacent to this space are two storage rooms which house electrical distribution equipment and mechanical equipment for the facility. The storage rooms hold several 480V/277V and 120/208V three phase distribution panels and equipment ranging from 100-400 amp capacity.
- C. Emergency Power- This space has emergency power available. An estimated 400KW 500KVA, 277/480V generator serves a 200A main distribution panel (EMDP).
- D. Plumbing/Fire Protection- Plumbing floor drains are available in each mechanical room for CRAC condensate. The IT rooms have neither a sprinkler system nor a clean agent fire protection system but do have a fire alarm panel. A FM-200 clean agent fire protection system is recommended. This can be located in either mechanical room or within the IT/DAS space
- E. Communications Infrastructure: The authority has (2) 12-Strand bundles of Single Mode Fiber Optic cable that run from the adjacent IT room to the Airports East Data Center, and (2) 12-Strand bundles of Single Mode Fiber Optic cable that run from the adjacent IT room to the Airports west data center. Additional detail on the existing and available fiber optic infrastructure can be found on drawing T6.001 and T6.002.

### **1.3 GROSS REVENUE PROJECTIONS/PRO FORMA STATEMENTS**

The Proposer shall provide Gross Revenue Projection/Pro Forma Statements (“Projections”). The Projections shall be evaluated by the Authority in terms of practicality, demonstrated understanding of the proposed agreement, viability of the proposed operation, financial offer and ability to fund continuing operations from cash flows generated by the business. In evaluating proposals, the Authority reserves the right to evaluate the proposal using alternative sales projections.

- 1.3.1 The Proposer shall include, as part of the revenue sharing proposal, a line item(s) for the anticipated capital expenditures that the proposer will incur to provide and refresh the system(s). The Proposer shall submit their Pro forma statements using the form provided in appendix A.

- A. Appendix A contains the pro forma and schedule outline.
- B. The Proposer shall state the assumptions in the number of carriers that will utilize the system at the Airport as part of the proposal.

The Authority understands that there are often unknowns when projecting long term cash flows, and proposers should provide their best estimate of carrier involvement.

## **2. REQUIREMENTS**

### **2.1 TECHNICAL OVERVIEW**

#### **2.1.1 Design Approach**

- A. The Proposer may propose alternative solutions to any of the design requirements. These alternatives shall be clearly delineated and shall be proposed as options, in addition to the base design, and shall clearly explain advantages over the design requested herein.
- B. The system shall, to the greatest extent possible, use off-the-shelf systems (software and hardware components) and shall embrace systems and technologies that have been developed and successfully implemented.

### **2.2 GENERAL REQUIREMENTS**

#### **2.2.1 Contractor Submittals**

- A. Pre-Award Submittals (submitted with proposal documentation)
  - 1. Refer to the base RFP for all submittals that are required to be included with the proposal.
- B. The delivery dates of submittals will be negotiated unless specified herein. The Proposer shall supply any submittal within five (5) working days if requested by the WAA.
- C. The Proposer shall provide the following submittals in addition to those already required throughout the document.
  - 1. Project Schedule
  - 2. System Environmental Requirements: Provide the environmental specifications for each system component that will be located in an Airport communications room. This information shall include heat load documentation, electrical requirements, equipment dimensions and weight, and any special requirements or limitations of each system component.
  - 3. System Drawings: The Proposer shall submit drawings that clearly illustrate the proposed system architecture and show the normal flow of data throughout the system. These drawings shall be submitted at the 50% and 100% design levels.
  - 4. As-built drawings: The Proposer shall supply system as-built drawings prior to final system acceptance. These drawings shall be in AutoCAD .dwg drawing format and shall detail system component interconnectivity, component locations, and room/rack layouts.

5. Head-end Configuration: The Proposer shall submit drawings and documentation clearly indicating the DAS head-end configuration. Configuration details shall include rack layouts and other installed components.
6. System Administration Documentation: After the termination of the agreement, if WAA chooses to perform management of the DAS in-house, the Proposer shall supply System Administration documentation that details the operation of the DAS. This documentation shall provide complete information on the operation, maintenance, and trouble-shooting of the systems and shall include a parts list and sources of supply for parts. If the WAA requires it, the successful proposer shall provide training to WAA staff for the operation and maintenance of the DAS. The manuals shall be provided in an electronic format that is approved by WAA.
7. Documentation Reference: The Proposer shall supply a complete list and cross-reference of all supplied documents (i.e., name, brief description, and document number).
8. Maintenance Manuals: Manuals including maintenance instructions and other descriptive material as received from the manufacturers shall be provided that will enable WAA personnel to maintain equipment and test equipment per lease agreement. This documentation shall include descriptions, specifications, theory of operation (where applicable), layout drawings (showing component types, positions and locations), and back-panel and assembly wiring diagrams. In addition, electronic copies of all documentation shall be provided on CD.
9. Preventative Maintenance: If, after the original agreement expires and the WAA chooses to retain the equipment and perform management of the DAS in-house, the Contractor shall supply instructions for preventive maintenance procedures that include examinations, tests, adjustments, and periodic cleaning. The manuals shall provide guidelines for isolating the causes of hardware malfunctions and for localizing faults. The manuals shall provide thorough instructions on the use of any specialized test equipment needed for hardware maintenance. In addition, electronic copies of all documentation shall be provided on CD.
10. Disaster Recovery Plan: Due to the critical nature of airport operations, the Proposer shall prepare a primary disaster recovery plan for the DAS. The Proposer shall include a description of how the Proposer will be able to respond with the necessary labor, hardware, software, technical support, materials, equipment and other requirements to ensure that the DAS is up and running properly throughout a disaster scenario. Provide a time-table detailing actions in a "cause and event" scenario. A summary description of the Proposer's plan shall be provided with the proposal response, a detailed "disaster recovery plan" shall be delivered to the WAA within 90 days of notice to proceed.

## 2.2.2 Delivery and Storage

- A. Store products in accordance with manufacturer's instructions, within Proposer's staging area (as identified by the WAA) and with seals and labels intact and legible. Store sensitive products in weather-tight enclosures; maintain within temperature and humidity ranges required by manufacturer's instructions. Storage containers shall include adequate security mechanisms to safeguard all equipment.
- B. After installation, provide coverings to protect products from damage from traffic and construction operations, remove when no longer needed.

## 2.3 DAS REQUIREMENTS

### 2.3.1 Functional Requirements

- A. The DAS shall be a host-neutral solution which supports the various wireless carriers desiring to supply wireless service on the Airport campus.
  - 1. The DAS shall have adequate capacity to support the estimated 2016 passenger forecast of 1,556,985 travelers, while not requiring or utilizing coverage and capacity from nearby cellular towers. The DAS should also be able to support the 1,200 airport community employees. The DAS shall also have sufficient expansion capacity to support future growth projections at the Airport.
  - 2. The DAS shall allow all cellular carriers, who wish to participate at the Airport, to utilize the system. This will require the DAS to accommodate all spectrums that cellular carriers are currently utilizing and shall adapt to support future spectrums that cellular carriers may utilize, as approved by the FCC, throughout the length of the lease. The successful proposer must support all carriers who wish to utilize the system, in mutually agreeable terms. The Authority does not wish to install multiple DAS in their facility, and wish to utilize a single infrastructure for all carriers.
  - 3. The DAS shall support e911 location services, which must be developed as a part of this project. The airport currently has an existing Public Safety Answering Point on campus, and the system should route all 911 calls to this location.
- B. Cellular providers and other vendors who participate as part of the DAS service shall provide only direct connections to the DAS, no off air systems will be permitted for data backhaul.
- C. The DAS service agreement shall be for a term of 10 years, with an optional 5 year extension, to be mutually agreed upon by WAA and the successful proposer.

### 2.3.2 Wireless Requirements

- A. Non-Interference

1. The DAS service offering shall not interfere or hinder the operation of any other wireless system on the Airport campus. The DAS service offering shall not interfere with the communications among aircraft and the FAA traffic controllers, or any other WAA or tenant owned and operated wireless system.

### 2.3.3 Architecture Requirements

- A. The architecture of the DAS should allow for quick and cost effective adaptation to new radio frequency bands being supported.
- B. The DAS antennas shall be placed throughout the Airport campus so as to satisfy the following coverage requirements:
  1. 98% or better signal coverage in all areas outlined in Airport site plan drawings T 2.101 and T 2.201 detailing coverage areas, potential locations of equipment, and existing fiber availability.
- C. The DAS shall utilize a fault tolerant design, avoiding single points of failure in the system

### 2.3.4 Hardware Requirements

#### A. General Requirements

1. The DAS service offering, as defined in this RFP document, shall include all configured hardware necessary for a fully functional system. The Proposer shall supply all cabling, connectors, adapters, and termination equipment necessary to interconnect all system hardware. All hardware and materials shall be new. The airport will be providing a significant amount of SM Fiber-Optic Cable, as detailed on drawing T6.001 and T6.002.
2. Hardware requirements given are the minimum requirements. The Proposer's product shall meet or exceed these requirements. The hardware selected shall meet the operational, functional, and performance requirements specified herein.
3. Refer to Airport site drawings in Attachment A for estimation of hardware quantities.
4. The Proposer is responsible for providing fans, shelves, drawers, special power wiring, ground connections, cables, connectors, appurtenances, and adapters of any kind necessary to accommodate the system installation, operation, testing, and maintenance.

## B. Supporting Infrastructure

1. **Passive Infrastructure:** Provide final equipment connection to the cabling infrastructure. Provide the necessary patch cables, equipment cables, and work area cables. It is the Proposer's responsibility to fully review the passive infrastructure components not provided by this project and identify in writing where the infrastructure does not meet requirements.
2. **Hardware Structures:** The Proposer is responsible for providing all hardware and associated appurtenances required for final installation. The Proposer shall be responsible for performing the appropriate coordination with the WAA to ensure all DAS equipment will be accommodated.
3. **Equipment racks:** The Proposer shall be responsible for supply and installation of any additional equipment racks that may be required for equipment installation. The existing mechanical room 201 has space available for new racks and it is desired that all base station equipment be installed in this room. As such, the Proposer shall coordinate with the WAA's designated Project Manager to determine installation location and specifications.
  - i The Proposer shall coordinate with WAA to ensure that all proposed equipment is compatible with the existing architecture, or proposed expanded architecture, of mechanical room 201 and the airports telecom rooms.

## C. Environmental Rating

1. Equipment shall be rated for continuous operation under the ambient environmental temperature, humidity, and vibration conditions encountered at the installed location. For devices located in harsh environments such as interior uncontrolled or exterior environments, the Proposer shall provide the necessary hardening to ensure proper equipment operation and performance.

## D. Uninterruptible Power Supplies

1. All equipment installed in communications rooms shall be UPS backed to prevent unnecessary service interruptions.
2. The UPS equipment shall have batteries that are capable of being replaced in the field.
3. The UPS interface port shall have a 10 Base-T Ethernet for management.
4. The control panel shall have a LED status display for load and battery bar-graphs in addition to replace battery and overload indicators.

5. Each UPS shall include software and interface card to provide Web/SNMP management through the Ethernet port, which will provide access to the WAA.

E. Antennas

1. Proposer shall propose antenna alternatives with explanation and sample antenna images. All antennas used will require airport authority approval.

### **3. IMPLEMENTATION**

#### **3.1 PHASES OF IMPLEMENTATION**

##### **A. General**

1. The implementation of the DAS service shall be phased as necessary in order to minimize any disruption of normal Airport operations. Proposer shall provide a detailed implementation and phasing plan for acceptance by the WAA prior to performing any work.
2. Within 30 days after Notice to Proceed the Proposer shall submit a detailed project schedule in accordance with the submittal requirements identified in this document.

##### **B. Phase One - Design**

1. The Proposer shall conduct a detailed Radio Frequency (RF) survey of the Airport campus to determine the DAS equipment locations and the layout necessary to account for the Airport's layout and buildings' composition. The survey should also include the Airport's existing infrastructure and available capacity for new infrastructure and routing. A copy of the survey shall be provided to WAA.
2. The Proposer shall conduct DAS workshops with stakeholders including cellular carriers and other wireless providers interested in participating in the Airport DAS. The Proposer shall work with each wireless provider's appointed lead contact to assist in facilitating the design, installation, and implementation of the DAS. The WAA may wish to participate in this process; however, it is the responsibility of the Proposer to ensure that all users of the system are fully accommodated.
3. The Proposer shall develop a DAS architecture and design for implementation, including all infrastructure components, system hardware and software, and other miscellaneous components required to meet the requirements defined in this RFP. The proposed architecture and design shall be submitted to the WAA for approval at a 50% and 100% design level, and must be approved in writing prior to installation.
4. The Proposer shall develop and submit an installation schedule for WAA approval.
5. The Proposer shall submit and receive written acceptance of the proposed architecture, design and schedule from the WAA before continuing on to phase two of the project.

##### **C. Phase Two - Installation**

1. The second phase of the implementation process will include the installation of the DAS head-end equipment and all distribution components. Coordination during this phase will be required to ensure that the required infrastructure will be in place to support the field device deployment.
2. Shop drawings and plans, in .dwg format, which depict all hardware deployed as a part of the installation phase.

D. Phase Three - Commissioning

1. This phase will consist of performance verification testing, formal cutover to the new system (as required), and final project close-out.

### **3.2 INSTALLATION REQUIREMENTS**

#### **3.2.1 General**

- A. System installation and construction methods shall conform to the requirements of the Federal Communications Commission, local building codes, and any Airport specific requirements.
- B. Where undefined by codes and standards, Proposer shall apply a safety factor of at least 2 times the rated load to all fastenings and supports of system components.
- C. The Proposer shall install all system components including furnished equipment in accordance with the manufacturer's instructions, NFPA 70, ANSI-C2 and shall furnish all cables, connectors, terminators, interconnections, services, and adjustments required for a complete and operable system.
- D. Grounding shall be installed as necessary to preclude ground loops, noise, and surges from adversely affecting system operation.
- E. For equipment mounted in drawers or on slides, provide the interconnecting cables with a service loop of not less than three feet and ensure that the cable is long enough to allow full extension of drawer or slide.
- F. The Proposer shall conduct a visual inspection of all installations to verify that the installations are in accordance with the WAA's and manufacturer's specifications. Records of the inspections, signed and dated, shall be provided to the WAA. The WAA shall be notified by the Proposer of any inspection(s) and the WAA may elect to participate in any inspection(s).

### **3.3 TESTING REQUIREMENTS**

#### **3.3.1 Performance Verification Testing**

- A. Complete operational testing of all components and systems shall be reviewed by designated WAA representatives.

- B. Schedule test with the WAA. Do not begin testing until:
1. All systems have been installed and individually and jointly tested to ensure they are operating properly.
  2. Written permission from the WAA has been received.
- C. Testing: As part of performance verification, test all components of system. The tests shall demonstrate system features, including coverage areas and signal strengths.
- D. Verification: Verify and document correct operation of the required system functionality as defined in these specifications, specifically signal strength in all required coverage areas (depicted in attachment A).
- E. Adjustment, Correction, and Completion:
1. Correct deficiencies and retest affected components.
  2. Make necessary adjustments and modification to system.
  3. Completion: Performance verification test shall be complete when testing or retesting of each component has produced a positive result, with required signal strength in all designated coverage areas and has been approved in writing by the WAA.
- F. Recording:
1. Describe actual operational tests performed and equipment used and list personnel performing tests.
  2. Record in tabular form all test results, deficiencies, and corrective measures.
- G. Termination
1. Performance verification test shall be terminated by the WAA when:
    - i Individual components, subsystems, or the DAS fail to perform as specified.
    - ii It is determined that system is missing components or installation is not complete.
  2. Upon termination, corrective work shall be performed and performance verification test rescheduled with the WAA.
  3. Retesting shall be performed by Proposer at no additional expense.
  4. Proposer shall continue to perform corrective actions and retest until system passes all tests to satisfaction of the WAA.

- 3.3.2 Each individual carrier must provide a Certification of System Operation and Acceptance. Compliance with requirements for coverage area is required.
- A. After testing is complete, review tabulated records with the WAA.
  - B. The Proposer will not be responsible for failures caused by:
    - 1. Outage of main power in excess of backup power capability provided that automatic initiation of all backup sources was accomplished and automatic shutdowns and restarts of systems performed as specified.
    - 2. Failure of any WAA furnished power, communications, and control circuits provided failure was not due to Proposer furnished equipment, installation, or software.
    - 3. Failure of existing WAA equipment provided failure was not due to Proposer furnished equipment, installation, or software.
  - C. When performance of the system does not fall within the above performance criteria, determine cause of deficiencies, correct, and retest.
  - D. The Proposer shall submit written certification that:
    - 1. The Contract Documents have been reviewed.
    - 2. All required as-built documentation has been submitted and approved by the WAA.
    - 3. The Project has been inspected for compliance with the Contract Documents.
    - 4. The Work has been completed in accordance with the Contract Documents.
    - 5. The equipment and systems have been tested and are shown operational in the presence of the WAA.
    - 6. The Project is completed, and is ready for final inspection.
  - E. When the WAA considers the work is complete and in accordance with the requirements of the Contract Documents, the WAA shall request the Proposer to provide Project Closeout submittals.

END OF SECTION

**APPENDIX A**

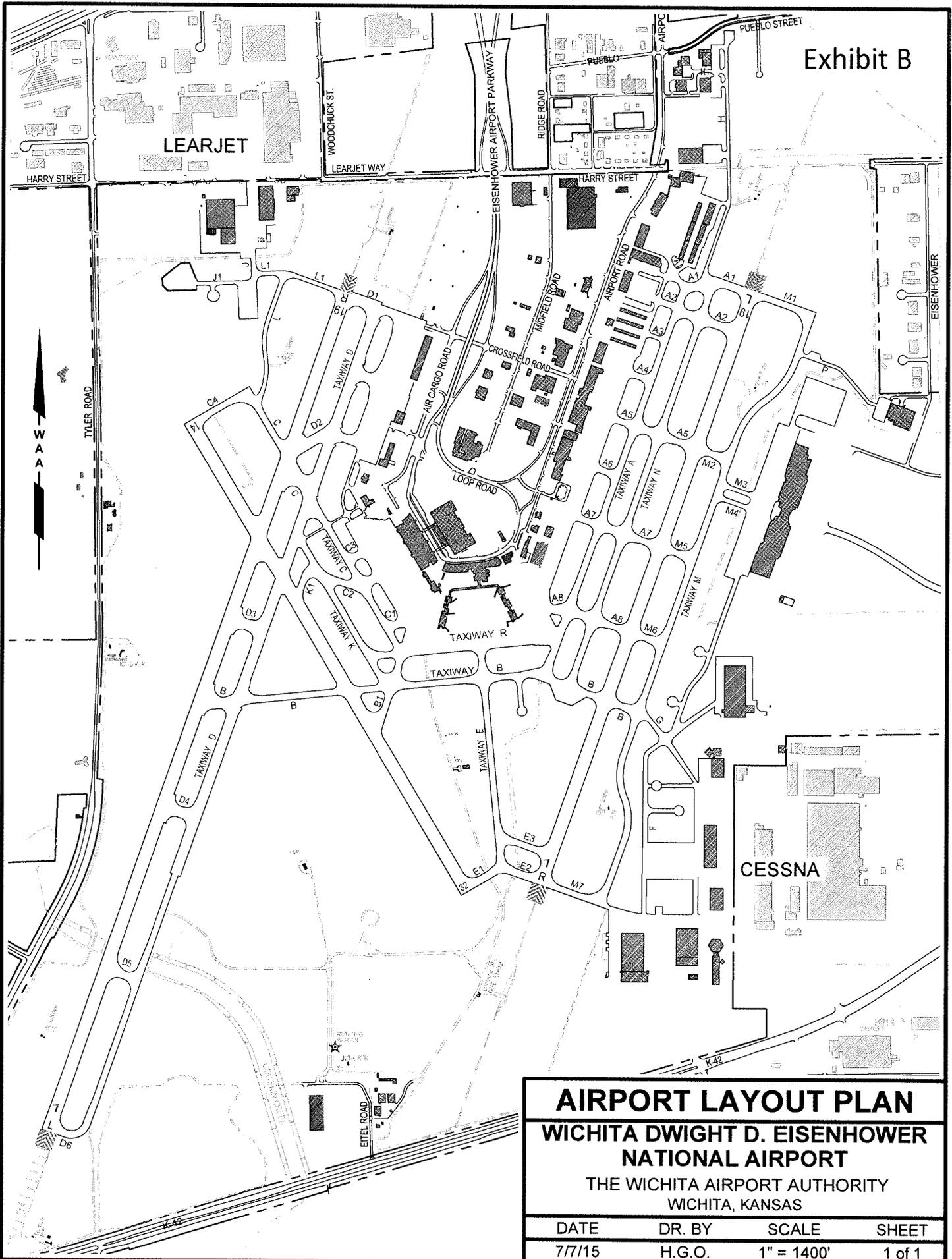
**A. Pro forma Statement**

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12	Year 13	Year 14	Year 15
<b>Total DAS Revenue</b>															
<b>Operating Expenses</b>															
<b>Fees to Authority</b>															
<b>Operating Income</b>															
<b>Capital Expenditures</b>															

Total DAS Revenue – Total amount received by the DAS Contractor from all participating Carriers  
 Operating Expenses – Any general O&M Fees projected by Contractor  
 Fees to Airport – Total Minimum Annual Guarantee to the WAA.  
 Operating Income – Total Income in Fiscal Year, after Operating Expenses and Airport Fees  
 Capital Expenditures – Any costs associated with system installation or upgrade

**B. Implementation Schedule**

<b>PRIORITY</b>	<b>TASK</b>	<b>PROJECTED COMPLETION DATE</b>
1	Design Completion	
2	Installation Completion	
3	Total System Acceptance	



**AIRPORT LAYOUT PLAN**  
**WICHITA DWIGHT D. EISENHOWER**  
**NATIONAL AIRPORT**  
 THE WICHITA AIRPORT AUTHORITY  
 WICHITA, KANSAS

DATE	DR. BY	SCALE	SHEET
7/7/15	H.G.O.	1" = 1400'	1 of 1































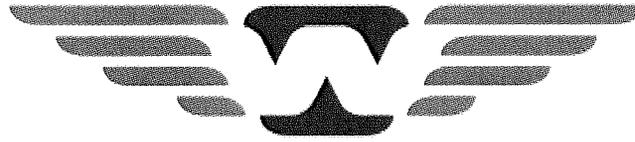












# **WICHITA AIRPORT AUTHORITY**

## **NEUTRAL HOST DISTRIBUTED ANTENNA SYSTEM USE AND LEASE AGREEMENT**

**and**

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Wichita Dwight D. Eisenhower National Airport  
Wichita, Kansas

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**NEUTRAL HOST DISTRIBUTED ANTENNA SYSTEM USE AND LEASE AGREEMENT  
FOR  
WICHITA DWIGHT D. EISENHOWER NATIONAL AIRPORT**

THIS AGREEMENT, made and entered into \_\_\_\_\_, 2016 by and between The Wichita Airport Authority, hereafter referred to as "AUTHORITY," and \_\_\_\_\_, Federal Tax Identification # \_\_\_\_\_, hereinafter referred to as "TENANT,"

WITNESSETH:

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, operates, regulates, administers, and maintains the campus of Wichita Dwight D. Eisenhower National Airport ("Airport"); and

WHEREAS, the AUTHORITY desires to lease to TENANT certain premises in the Terminal, Parking Garage and surrounding areas under the terms and conditions set forth below in this Use and Lease Agreement ("Agreement") for the purpose of operating a Neutral Host Distributed Antenna System and e911 services; and

WHEREAS, TENANT is an individual, or an entity authorized to operate in the State of Kansas ("State") that desires to lease from the AUTHORITY certain premises in the Terminal, Parking Garage and surrounding areas under the terms and conditions set forth below in this Agreement for the purpose of operating a Neutral Host Distributed Antenna System and e911 services on the Airport; and

WHEREAS, the AUTHORITY issued a Request for Proposals ("RFP") for the operation of a Neutral Host Distributed Antenna System in the Terminal, Parking Garage and the immediate surrounding areas; and

WHEREAS, the TENANT has been awarded the privilege of operating a Neutral Host Distributed Antenna System and e911 services in that being most advantageous to the AUTHORITY at the Airport;

NOW, THEREFORE, in consideration of the mutual promises and agreements herein set forth, AUTHORITY and TENANT do hereby agree as follows:

## 1. DEFINITIONS

The terms and phrases defined in this Section for all purposes of this Neutral Host Distributed Antenna System Use and Lease Agreement shall have the following meanings:

**Agreement** - shall mean this written Neutral Host Distributed Antenna System Use and Lease Agreement which creates rights and obligations of the parties to such Agreement.

**Airport** - shall mean the Dwight D. Eisenhower National Airport under the ownership, control and jurisdiction of the Wichita Airport Authority.

**Airport Property** - shall mean the Terminal and Parking Garage, and any other property, facilities, and Improvements owned, leased and/or under the control and jurisdiction of the AUTHORITY, including all roads and streets contained thereon.

**Airside** - shall mean the airfield and the areas beyond security checkpoints and passport and customs control in the Airport terminal and other building(s) at the Airport.

**City** - shall mean the City of Wichita, Kansas.

**Commencement Date** - shall mean the date the Agreement is effective, which shall be \_\_\_\_\_.

**Common Use** - shall mean those areas shared and used in common and conjunction with others in an undivided fashion and not intended or used for the exclusive business activity of a single party.

**Contract Year** - shall mean the twelve (12) month period of time which shall start on the Opening Day of the Term of this Agreement, and shall continue thereafter for twelve (12) month periods. The first day of the Term, as defined in Section 3, Initial Term, shall mark the commencement of the first Contract Year. However, if the Term commences on a date other than the first day of a calendar month, the first Contract Year shall include that fractional portion of the calendar month in which the Term commences (“the Fractional First Month”) and the first full twelve (12) calendar months thereafter.

**Day** - shall mean a calendar day of twenty-four (24) hours measured from midnight to the next midnight.

**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. Said term shall also 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.

**DOT** - shall mean the Department of Transportation of the United States government and any federal agency succeeding to its jurisdiction.

**FAA** – shall mean the Federal Aviation Administration of the United States government and any federal agency succeeding to its jurisdiction.

**Hazardous Materials** - shall mean any hazardous or toxic substance, material or waste, including, but not limited to, those substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) or by the Environmental Protection Agency as Hazardous Material(s) (40 CFR Part 302) and amendments thereto, or such substances, materials and wastes that are or become regulated under any applicable local, state or federal law.

**HVAC** - shall mean heating, ventilating and air-conditioning systems.

**Improvements** - shall mean any construction, addition, alteration or betterment to real estate or to any existing Improvement on any part thereof that is affixed in such manner that it cannot be easily removed without damaging the property.

**Landside** - shall mean all areas of the Airport not located on the Airside, as defined herein.

**Neutral Host Distributed Antenna System (NHDAS)** – any cellular provider to using a Distributed Antenna System to support multiple cellular carriers including all current and future wireless communications and broadband data requirements.

**Property** – shall mean locations designated by the AUTHORITY on Airport Property for the transmission and reception of communications signals, described in Section 2, Premises and shown on Exhibit B of this Agreement.

**Rent Fees** - shall mean a monetary amount charged by AUTHORITY as compensation for an act, service or privilege provided by AUTHORITY as described in Section 5 hereof.

**Rules, Regulations and Code** - shall mean those codes established and set forth under Chapter 9.35 AIRPORTS, of the Code of City Ordinances of the City of Wichita; Airport Standard Operating Procedures establishing certain policies and procedures on Airport Property; and applicable state law and federal statutes and regulations.

**Sign** - shall mean any advertising sign, billboard, identification sign or symbol, poster, or other similar device, regardless of content.

**Subtenant** - shall mean any individual, company, corporation, partnership or other entity entering into an agreement with TENANT, with the written approval of the AUTHORITY.

**Tax** - shall mean and includes any assessment, charge, imposition, or levy imposed by any governmental body pursuant to its taxing power.

**Tenant Improvements** - shall mean any Improvements done by TENANT, its agents, employees, Subtenants, contractors, subcontractors, licensees and/or representatives. Tenant Improvements must be approved in writing by the AUTHORITY.

**Terminal** - shall mean the new passenger terminal that replaces the existing passenger terminal building at the Airport, and is situated immediately adjacent to the new Parking Garage.

**TSA** - shall mean the Transportation Security Administration of the United States government, and any federal agency succeeding to its jurisdiction.

**Wireless Internet Service Providers (Subtenant)** – shall mean any Internet service provider (ISP) that allows subscribers to connect to a server at designated access points using a wireless connection such as Wi-Fi.

## **2. PREMISES**

AUTHORITY agrees to let to TENANT, and TENANT does hereby rent from AUTHORITY located at 2280 S. Eisenhower Airport Parkway, a portion of Room 201 (“Premises), as set forth and shown on the attached Exhibit “A”, which may be amended by consent of both parties from time to time without requiring formal approval.

AUTHORITY agrees to let to TENANT certain locations designated by the AUTHORITY on Airport Property (“Property”) for the transmission and reception of communications signals, as set forth and shown on Exhibit B of this Agreement. TENANT may add locations with prior written approval by the Director, without requiring formal amendment to this Agreement.

The taking of possession of the Premises by TENANT shall in itself constitute acknowledgement that the Premises are in good and tenantable condition, and TENANT agrees to accept Premises in its presently existing condition, “as is,” “where is,” and that AUTHORITY shall not be obligated to make any improvements or modifications to the Premises.

TENANT shall have access to the Premises and Airport Property for the installation, operation, maintenance, repair, and replacement 24 hours a day, seven days a week except in the event of an emergency temporarily delaying such access. TENANT grants the AUTHORITY full and free access to all improvements for the purposes of examining the same and insuring all obligations of the TENANT are being met and performed. TENANT agrees, to make an authorized agent of the TENANT available upon 48 hours’ notice to accompany the AUTHORITY onto the Premises, if requested, unless an emergency situation exists whereby the AUTHORITY may enter Premises without prior notice.

### **3. INITIAL TERM**

The term of this Agreement shall commence on \_\_\_\_\_, 2016, and shall continue for a period of ten (10) years (“Term”), with the Term expiring on \_\_\_\_\_, unless otherwise terminated or extended under provisions agreed to herein.

### **4. OPTIONAL TERM**

This Agreement may be renewed as mutually agreed by and between AUTHORITY and TENANT for one (1), five (5) year period (“Optional Term”), provided TENANT is not in default hereunder beyond any applicable grace or cure periods in Rent or other payments to AUTHORITY at the time notice requesting exercising an Optional Term is given.

If TENANT wishes to exercise the Optional Term, written notice shall be submitted to AUTHORITY no less than ninety (90) days prior to the expiration of the Initial Term. If TENANT is in default of any obligation under this Agreement then any notice attempting to exercise the Optional Term shall be void.

The Initial Term and Optional Term are sometimes collectively referred to herein as the "Term."

## **5. PERMITTED USE**

The purpose of this Agreement is to grant to TENANT the right and privilege of the use and occupancy of the Premises for its conduct of a NHDAS and e911 services on Airport Property. TENANT may use the Premises and Property for the transmission and reception of communications signals and the installation, construction, maintenance, operation, repair, replacement, and upgrade of its communications fixtures and related equipment, cables, accessories and improvements, which may include a suitable support structure, associated antennas, I beams, equipment shelters or cabinets and fencing and any other items necessary to the successful and secure use of the Premises. During the term of this Agreement, the TENANT further has the right but not the obligation to add, modify and/or replace equipment, with express approval by the AUTHORITY, in order to be in compliance with any current or future federal state or local mandated application, including, but not limited to, e911 services, at no additional cost to AUTHORITY. TENANT agrees to comply with all applicable governmental laws, rules, statutes, regulations, relating to its use of the Premises.

TENANT shall have the right of ingress and egress on Airport Property consistent with Section 31, Rules and Regulations in common with others for the benefit of its employees, customers, contractors, subcontractors, agents and representatives, to be exercised in a reasonable manner. This right of ingress and egress is granted for activities incidental or related to TENANT's approved activities, and for no other purposes except as may be approved in writing by AUTHORITY. TENANT shall not interfere with the rights, privileges and access of other tenants, tenant employees, patrons and invitees on the Airport. This right is subject to federal, State and local security and safety requirements and standards.

Visiting service personnel and product deliveries shall be permitted to park or unload in areas designated for temporary vendor parking or unloading, or at other locations as may from time-to-time be designated by AUTHORITY.

TENANT recognizes that other tenants now and hereafter may occupy other portions of the Airport Property, and that such other tenants shall have the right to use public roadways, streets, restrooms, walkways, ramps, taxiways, runways, access gates, lighting, beacons, navigational aids, or other conveniences for aeronautical operations, and these common facilities are not under an exclusive use lease; and TENANT shall conduct its operations in such a manner as to not block, impair or 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 on Airport Property.

TENANT, its affiliated entities, subsidiaries, 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 or elsewhere on the Airport, 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.

## **6. PROHIBITED USE**

The Premises and Property shall not be used for any purpose not expressly authorized in Section 5, Permitted Use and Section 7, Functional Requirements. TENANT, its affiliated entities, subsidiaries, 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 and Property, except as described in this Agreement, unless such is provided for by a separate written approval, or amendment to this Agreement, and subject to approval by AUTHORITY.

## **7. FUNCTIONAL REQUIREMENTS**

The NHDAS antennas shall be placed so as to satisfy 99% or better signal coverage in the required coverage area. The e911 and cellular services shall be fully and completely operational and available 24 hours a day, seven days a week and 365 days a year.

The equipment, cabling, infrastructure, etc. shall be mounted and installed in a manner that is aesthetically pleasing and blends into its surroundings. All proposed installations shall receive AUTHORITY approval prior to installation. Should TENANT installed infrastructure and/or equipment be removed or replace repairs to the facility shall be made by the TENANT to restore the facility to pre-installation conditions. If dead zones are identified with either or both, the e911 or the cellular services, in the required coverage areas the AUTHORITY may direct the TENANT to make improvements to the systems to eliminate such dead zones at no cost to the AUTHORITY.

The TENANT shall allow all cellular carriers who wish to participate in providing service within the required coverage areas to utilize the NHDAS. This will require the NHDAS to

accommodate all spectrums both that current cellular carriers are utilizing and shall support future spectrums, as approved by the FCC, throughout the Term. The TENANT shall support all carriers who wish to utilize the system in mutually agreeable terms and conditions.

The TENANT shall perform system updates/upgrades throughout the Term to ensure the systems are supporting the most current technologies at a maximum of five year intervals.

## **8. RENT AND OTHER PAYMENT OBLIGATIONS**

### **Rent Fees:**

During the Term of this Agreement, the TENANT shall pay to AUTHORITY Rent Fees in the amount of \_\_\_ percent (\_\_\_%) annual Gross Revenues duly reported by TENANT to AUTHORITY.

The applicable Rent Fee shall be due and payable by TENANT to AUTHORITY on the fifteenth (15th) day of each and every month following the month of activity and shall be delinquent if not received by AUTHORITY on or before the last day of the month following the month of activity.

### **Annual Reconciliation and Adjustment of Rent Fees**

The Rent Fees as set forth in this Section shall be subject to reconciliation at the end of each Contract Year pursuant to the terms of this Agreement. If said reconciliation shows a balance due to AUTHORITY or an excess paid by TENANT, the appropriate adjustment, either payment by TENANT of the balance due or credit by AUTHORITY to TENANT of the excess payment, shall be made within thirty (30) Days after an approved Annual Report. TENANT shall not be entitled to interest on the amount credited or owed by AUTHORITY to TENANT.

### **Additional Support Space**

TENANT shall be charged the standard rental rates according to the rates established by AUTHORITY's Schedule of Fees and Charges as adopted for a given year for any amount of Additional Support Space leased to TENANT after the commencement of the Term. The AUTHORITY may, at its sole discretion, require TENANT to rent Additional Support Space if the TENANT is unable to keep its equipment, goods and supplies within the Premises. Such Schedule of Fees and Charges shall be amended from time to time by action of the AUTHORITY or its delegates.

### **Other Fees and Charges**

It is understood and agreed by TENANT that AUTHORITY may assess fees and charges to TENANT according to rates established by AUTHORITY's Schedule of Fees and Charges as adopted for a given year. Such Schedule shall be amended from time to time by action of the AUTHORITY or its delegates.

## 9. PAYMENT PROCEDURE

TENANT shall pay to AUTHORITY within thirty (30) days of the date of invoice of all amounts, except Rent Fees, due as set forth in this Agreement. In the event TENANT fails to make payment within ten (10) days of the dates due as set forth in this Agreement, and after AUTHORITY has provided TENANT with written notice and TENANT does not make payment within seven (7) calendar days after the date said notice is received, then AUTHORITY, may charge TENANT a monthly service charge of twelve percent (12%) on an annual basis for any such overdue amount, unless a lesser sum is set as the maximum allowable under state statutes on any such overdue amount, plus reasonable attorneys' and administrative fees incurred by AUTHORITY in attempting to obtain payment. If AUTHORITY does not receive payment within seven (7) days of the date of receipt of said written notice, then the monthly service charge shall retroactively commence on the date the payment was originally due.

TENANT shall make all payments to the 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.

Bills, notices and invoices may be delivered to the TENANT by mail or personal delivery at:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Or

\_\_\_\_\_ (Email address)

or such other address as designated in writing.

## **10. MONTHLY REPORTS**

### **Revenue Report**

A report of TENANT's Gross Revenues for the previous month shall be due and submitted to the AUTHORITY on or before the fifteenth (15<sup>th</sup>) day of the following month. The parties acknowledge that the AUTHORITY incurs additional administrative effort if TENANT's reports are not complete and received by the due date of each report. To compensate the AUTHORITY for this administrative effort, TENANT agrees to pay the AUTHORITY fifty dollars (\$50) monthly for each monthly report which is not complete, accurate, and received by its due date. Moreover, said amount shall be considered additional compensation and shall become due and payable to, and received by, AUTHORITY on or before the last day of each month of the Term hereof until the monthly report is received.

Such report shall be in form and substance satisfactory to the Director.

## **11. AUDIT**

TENANT agrees to give AUTHORITY or its designated examiner(s) access during reasonable hours for inspection of TENANT'S books and records as it relates to this Agreement. The AUTHORITY shall have the right at any time and from time to time to inspect all of the records and books of account of TENANT as it relates to this Agreement. The subject of the audit shall include, but is not limited to, Gross Revenues, and the TENANT, upon request, shall make all such information available for such inspection. Such books, ledgers, accounts and records shall be available for inspection by AUTHORITY at all reasonable business hours for a period of three (3) years from the date of such activity. TENANT shall produce such books and records for inspection at its Premises or within the City of Wichita ("City") within fourteen (14) Days of AUTHORITY'S written notice to do so. If TENANT fails to produce all of the requested books or records on a timely basis, TENANT shall pay a fifty dollar (\$50) penalty per Day for each Day in excess of the fourteenth (14<sup>th</sup>) Day after AUTHORITY's written notice up until the books and records are produced. As an alternative, TENANT may elect to pay all reasonable expenses including, but not limited to, professional fees, transportation, food and lodging necessary for an examiner selected by AUTHORITY to inspect said books and records at a site other than

Wichita, Kansas if AUTHORITY is notified in writing of TENANT'S option to elect the alternative by doing so within ten (10) Days from date of notice.

If, as a result of such inspection, it is established that TENANT has understated Gross Revenues or business transacted for any Contract Year by three percent (3%) or more (after deductions and exclusions provided for herein), the TENANT shall promptly pay to AUTHORITY the full cost of such inspection in addition to any additional Rent Fees owed but not theretofore paid, with any applicable interest thereon at the rate of one and one-half percent (1.5%) per month from the end of the month in which the discrepancy(ies) occurred. If, as a result of such inspection, it is established that TENANT has overstated Gross Revenues, any overpayment of Rent Fees theretofore made by TENANT shall be credited against Rent Fees next becoming due hereunder or otherwise refunded if this Agreement has ended.

## **12. MAINTENANCE AND REPAIRS**

TENANT, at its sole cost and expense, shall maintain and keep in good repair the entirety of the leased Premises and within all improvements placed thereon subject to reasonable wear and tear, and keep the Premises free of trash, debris and obstructions.

## **13. INTERFERENCE**

AUTHORITY shall not knowingly grant, after the date of this Agreement, a lease, license or any other right to any third party for the use of the Premises, if such use creates radio frequency interference with the NHDAS.

AUTHORITY shall not knowingly use, nor will AUTHORITY permit its employees, tenants, licensees, invitees or agents to use, any portion of the Premises or Property in any way which interferes with NHDAS operations in FCC licensed frequencies allocated for cellular communications.

## **14. UTILITIES**

TENANT shall pay all costs for utility services (whether for installation, service, administration, connection, or maintenance thereof) used by TENANT at or upon the Premises with no responsibility or expense accruing or ascribed to AUTHORITY, including all permits, licenses or

authorizations necessary in connection therewith. Such payments by TENANT shall be made directly to the utility supplier or service provider, except that if such utilities should be supplied by the AUTHORITY, then in this event, TENANT shall pay those costs to AUTHORITY within thirty (30) days after receipt of AUTHORITY'S invoice. AUTHORITY agrees that any such costs invoiced to TENANT will be based on the rates charged to AUTHORITY by utility supplier, plus reasonable capital and administrative recovery costs.

Unless otherwise agreed upon in writing, if TENANT requires utilities beyond that currently provided or that are available to be extended to the Premises boundary, TENANT agrees to pay the full cost and expense associated with the upgrade/extension/installation of all such utilities related to its use of the Premises, and to comply with all provisions for maintaining such utilities.

The AUTHORITY reserves for itself the right to upgrade, extend, install, maintain and repair all utilities and services on or across the Premises, whether or not such services or utilities are for the benefit of TENANT. The AUTHORITY shall take all reasonable care and diligence to protect existing improvements and utilities, and shall avoid to the greatest extent possible any unreasonable interference or interruption to TENANT'S operations.

TENANT shall design and install all utilities used by TENANT subject to the express approval of the AUTHORITY prior to installation.

## **15. ENVIRONMENTAL COVENANTS**

AUTHORITY represents and warrants that the Premises and Property is free of hazardous substances as of the date of this Agreement, and, to the best of AUTHORITY'S knowledge, the Premises and the Property has never been subject to any contamination or hazardous conditions resulting in any environmental investigation, inquiry or remediation. AUTHORITY and TENANT agree that each will be responsible for compliance with any and all environmental and industrial hygiene laws, including any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene condition or other matters as may now or at any time hereafter be in effect, that are now or were related to that party'S activity conducted in or on the Premises and Property.

AUTHORITY and TENANT agree to hold harmless and indemnify the other from, and to assume all duties, responsibilities and liabilities at the sole cost and expense of the indemnifying party for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for

responding to any action, notices, claim, order, summons, citation, directive, litigation, investigation or proceeding which is related to (i) the indemnifying party's failure to comply with any environmental or industrial hygiene law, including without limitation any regulations, guidelines, standards or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene condition or matters as may now or hereafter be in effect, or (ii) any environmental or industrial hygiene conditions that arise out of or are in any way related to the condition of the Premises and Property and activities conducted by the party thereon, unless the environmental conditions are caused by the other party.

The indemnifications of this Section specifically include reasonable costs, expenses and fees incurred in connection with any investigation of Premises and Property conditions or any clean-up, remediation, removal or restoration work required by any governmental authority. The provisions of this Section will survive the expiration or termination of this Agreement.

In the event TENANT becomes aware of any hazardous materials on the Premises or Property, or any environmental or industrial hygiene condition or matter relating to the Premises and Property that, in TENANT's sole determination, renders the condition of the Premises or Property unsuitable for TENANT's use, or if TENANT believes that the leasing or continued leasing of the Premises and Property would expose TENANT to undue risks of government action, intervention or third-party liability, TENANT will have the right, in addition to any other rights it may have at law or in equity, to terminate this Agreement upon notice to AUTHORITY.

## **16. SURRENDER OF POSSESSION AND RESTORATION**

The TENANT, at the end of the Term, shall either turn over ownership of all equipment, systems, cabling, etc. installed by the TENANT to the AUTHORITY or remove all equipment, systems, cabling, etc. and restore the Premises and Property to a pre-installation condition, at the discretion of the AUTHORITY. All costs to accomplish either of these situations shall be at no cost to the AUTHORITY.

## **17. PERSONAL PROPERTY**

For purposes of this Agreement, "Personal Property" shall mean any property, furnishings and equipment which are placed upon or within the Premises in such a manner that are not permanently affixed and can be readily removed without damage to the Premises and Property and without substantially changing the character of the facilities and Improvements thereon, and

that are the removable property that TENANT places upon or within the Premises and Property for use in the operation of a NHDAS. All point-of-sale equipment, moveable furnishings, signs, tables, chairs, appliances, safes, display racks, and any other non-affixed property, shall be deemed to be the Personal Property of the TENANT.

Any Personal Property of TENANT or others placed in or upon the Premises and Property shall be at the sole risk of the TENANT, and AUTHORITY shall not be responsible or liable for any loss, damage and replacement thereto, regardless of the cause of such loss or damage, and the TENANT waives all rights of subrogation against recovery from the AUTHORITY for such loss or damage.

The parties agrees that all Personal Property owned and placed upon or within the Premises and Property by the TENANT shall be removed by the TENANT in accordance with Section 16 at the termination or expiration of this Agreement subject to any valid lien which AUTHORITY may have on that Personal Property for unpaid rents, expenses or fees; provided the TENANT shall not then be in default in performance of the covenants hereof.

## **18. TAXES**

TENANT agrees to pay all present and future taxes or, in lieu of taxes, special assessments now or hereafter levied, assessed, or passed-through: (1) upon the Premises, Property and facilities; (2) upon Personal Property owned or possessed by TENANT and situated upon or within the Premises; and (3) upon TENANT'S interest in or use of the Premises. TENANT shall defend, indemnify and save AUTHORITY and the City harmless from any claims or liens in connection with such taxes, obligations in lieu of taxes or assessments.

TENANT shall promptly pay all taxes, excises, license fees and permit fees of whatever nature applicable to its operation of the Premises and property. TENANT may elect, however, at its own cost and expense, to contest any such tax, excise, levy, or assessment. TENANT shall keep current all federal, State and local licenses, operating certificates and permits required for the conduct of its operations. TENANT represents and warrants to AUTHORITY that it has obtained all license, franchise, operating certificates or other agreements or permits necessary to operate TENANT's operation in accordance with the terms of this Agreement, and TENANT covenants to keep all such licenses, franchises, permits, operating certificates and other agreements in full force and effect during the Term of this Agreement.

TENANT shall pay all lawful taxes and assessments which, during the Term hereof, may become a lien upon or which may be levied by the State, County, City or any other tax levying body, upon the Premises or upon any taxable interest of TENANT acquired in this Agreement, or any taxable possessory right which TENANT may have in or to the Premises, including any Improvements or facilities located on the Premises. TENANT shall also pay all lawful taxes and assessments on taxable property, real or personal, owned by TENANT in and about said Premises. Nothing in this Section shall prevent TENANT from contesting the legality, validity or application of any such tax or assessment to the full extent TENANT may be lawfully entitled so to do.

## **19. MISCELLANEOUS COVENANTS**

TENANT shall observe and comply with any and all present and future requirements of the constituted public authorities and with all Federal, State, or local statutes, ordinances, regulations and standard rules applicable to TENANT or its use of the Premises, including by way of example but not of limitation, all general rules and regulations promulgated from time to time by the Director in connection with the administration of the Airport.

TENANT shall bear all operating expenses, including but not limited to: employees' salaries, taxes, licenses and fees required by governmental agencies.

TENANT hereby agrees to make no claims or file or cause to be filed any legal or equitable actions against AUTHORITY or the City for any kind of damages which result from the operation of the Airport, including noise or sound shock waves due to aircraft use of said Airport's facilities.

## **20. INDEMNITY**

TENANT hereby agrees to release, to defend, to indemnify and to save harmless the AUTHORITY and the City of Wichita, Kansas, and their officers, agents and employees, (i) from and against any and all loss of or damage to property, or injuries to or death of any person or persons, as well as (ii) from and against any and all claims, damages, suits, costs, expense, liability, actions or proceedings of any kind or nature whatsoever (including, without limiting the generality of the foregoing, Workers Compensation and any assessments resulting from civil or regulatory penalties), of or by anyone whomever in matters resulting from or arising out of, or alleged to have resulted from or to have arisen out of, directly or indirectly, TENANT's

operations or activities under or in connection with this Agreement, or TENANT's use and occupancy of any portion of the Airport, and including, without limiting the generality of the foregoing, acts and omissions of TENANT's officers, employees, representatives, Subtenants, suppliers, customers, contractors or agents. Provided, however, TENANT shall not be liable for any loss occasioned by the sole negligence or misconduct of the AUTHORITY, The City of Wichita, Kansas or their officers, agents, and employees. AUTHORITY covenants to give TENANT prompt notice of any claims. The foregoing indemnity shall survive the expiration or earlier termination of this Agreement.

In the event, however, the certificates of insurance which are provided by TENANT as described otherwise in this Agreement are void of any mention of coverage for its obligations to indemnify, TENANT irrefutably covenants and agrees that TENANT has the maximum allowed insurance for its obligations to indemnify and AUTHORITY may rely on said covenant. The coverage for indemnification given by TENANT under this Agreement shall not in any way limit TENANT'S indemnification obligations hereunder. The minimum insurance requirements set forth below shall not be deemed to limit the obligations of TENANT hereunder.

Should TENANT, its employees, Subtenants, subcontractors, suppliers, agents, customers, and/or representatives cause any violations of federal, State or local law, regulation or ordinance, and should AUTHORITY be cited for a fine or penalty for such violation, TENANT agrees to reimburse AUTHORITY for any monetary fine or penalty which may be imposed on AUTHORITY. However, nothing herein shall prevent the TENANT from contesting the legality, validity or application of such fine or penalty to the full extent TENANT may lawfully be entitled, nor require AUTHORITY to pursue such a contest on TENANT's behalf.

## **21. INSURANCE BY TENANT**

TENANT shall procure, maintain and carry, at its sole cost, in accordance with and/or until completion of this Agreement all insurance, as required per the amounts as set forth below. Insurance shall be furnished by a company licensed to do business in the State of Kansas.

Insurance certificates shall be issued on a standard ACORD form or such other documentation as may be acceptable to AUTHORITY in its discretion and include the NAIC number of the insuring company. Each insurance company's rating, as shown in the latest Best's Key Rating Guide, shall be no less than A-VII, unless otherwise approved by the AUTHORITY, or from a Workers' Compensation pool approved by the State of Kansas. Insurance certificates must be received and approved by the AUTHORITY prior to occupancy but failure to provide approved

certificates shall not delay Opening Day for purposes of Rent Fees or rent accrual. AUTHORITY retains the right to require changes in the character, coverages and amounts of coverage commensurate with changes in the TENANT's use of the Premises.

The failure of AUTHORITY to reject the TENANT'S proffered insurance shall not be deemed to constitute an acceptance by the AUTHORITY of deficient insurance coverage. If the TENANT fails to procure or maintain any of the specified coverages the AUTHORITY has the right, but not the obligation, to secure the coverage and charge the cost to the TENANT along with a 20% administrative fee.

The TENANT shall be responsible for determining the types and limits of insurance coverage required by any approved Subtenants. At a minimum, such Subtenants shall carry Workers' Compensation, general liability (minimum of \$1,000,000 per occurrence). TENANT shall require in any approved sublease that the Wichita Airport Authority and the City of Wichita shall be added as primary and non-contributory additional insureds on the Subtenant's general liability policy.

The requirements, procurement and carrying of the required insurance shall not limit any of the TENANT's obligations or liability under this Agreement or as a matter of law.

Where "minimum limits" of insurance are specified in this Section, such minimum insurance limits are required and considered by AUTHORITY to be the lowest insured amounts acceptable under this Agreement. The TENANT is not limited or restricted whatsoever in securing additional insurance coverage and higher insured limits than those specified herein if, at the TENANT's determination and discretion and commensurate with the type of activity and associated business and operational risk, additional coverage and higher limits are necessary and appropriate.

Insurance shall include the following terms, conditions and minimum limits:

a) WORKERS' COMPENSATION

TENANT shall maintain Workers' Compensation insurance to cover the statutory requirements of the Workers' Compensation laws of the State of Kansas for its operations on the Premises and elsewhere at the Airport, and when applicable, to Federal Laws and Voluntary Compensation and Employer's Liability (including occupational disease) coverage.

b) COMMERCIAL GENERAL LIABILITY

TENANT shall maintain Commercial General Liability Insurance on an occurrence form. Minimum limits, as outlined herein, shall be:

Each Occurrence	\$1,000,000 Combined Single Limit for bodily injury, property damage and other liability loss. Coverage thereunder shall include contractual liability, personal injury, owners' and contractors' protection, fire legal, products/completed operations, and broad form property damage coverage.
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The Wichita Airport Authority and the City of Wichita shall be added as primary and non-contributory additional insureds. The policy shall also provide coverage for TENANT's contractual obligations created in this Agreement.

c) UMBRELLA/EXCESS LIABILITY COVERAGE

The TENANT shall provide minimum Umbrella/Excess liability limits (excess of all coverages other than Workers' Compensation) of:

Each Occurrence Limit	\$1,000,000
Annual Aggregate Limit	\$1,000,000

The Wichita Airport Authority and the City of Wichita shall be added as primary and non-contributory additional insureds covered under this umbrella/excess liability coverage.

TENANT agrees that in the event of future changes in the law or upon notice by the AUTHORITY, the minimum levels of insurance required by this Section may be increased within the bounds of commercial reasonableness.

TENANT agrees, prior to the commencement of this Agreement, to provide AUTHORITY with copies of certificates, and if requested, of all policies evidencing that such insurance is in full force and effect, and stating the terms thereof. This Agreement shall not commence until policies of insurance satisfactory to AUTHORITY are supplied by TENANT. TENANT shall provide AUTHORITY updated certificates of insurance the earlier of annually, or upon renewal, which certificate shall demonstrate the coverage required in this Section for the ensuing twelve (12) month period. Failure to maintain satisfactory insurance policies in force shall constitute

grounds for cancellation of this Agreement as set forth in Section 22, Termination By AUTHORITY In Event Of Default.

TENANT shall be solely responsible for obtaining insurance policies that provide coverage for losses of TENANT-owned property. Authority shall not be required to provide such insurance coverage or be responsible for payment of TENANT's cost for such insurance.

**Subrogation of Insurance:**

AUTHORITY hereby waives any and all rights of recovery against TENANT for or arising out of damage or destruction of the Terminal, or the demised Premises, or any other property of AUTHORITY, from causes then included under any of its property insurance policies, to the extent such damage or destruction is covered by the proceeds of such policies, whether or not such damage or destruction shall have been caused by the negligence of TENANT, its Subtenants, agents, servants or employees or otherwise, but only to the extent that its insurance policies then in force permit such waiver without diminution of AUTHORITY coverage.

TENANT hereby waives any and all rights of recovery against AUTHORITY for or arising out of damage to or destruction of any property of TENANT from causes then included under any of its property insurance policies, to the extent such damage or destruction is covered by the proceeds of said policies, whether or not such damage or destruction shall have been caused by the negligence of AUTHORITY, its agents, servants or employees or otherwise, but only to the extent that its insurance policies then in force permit such waiver.

**Loss of Personal Property:**

Any personal property of TENANT or third parties placed in or upon the Premises shall be at the sole risk of the TENANT, and AUTHORITY shall not be responsible or liable for any loss, damage and replacement thereto, regardless of the cause of such loss or damage, and the TENANT waives all rights of subrogation against recovery from the AUTHORITY for such loss or damage unless such loss or damage is the result of the AUTHORITY's negligence.

**22. TERMINATION BY AUTHORITY IN EVENT OF DEFAULT**

The AUTHORITY, in addition to any other rights to which it may be entitled by law or otherwise, may terminate this Agreement by giving TENANT written notice in the event of default by TENANT under this Agreement failing to be resolved in less than sixty (60) days after the TENANT's receipt of written notice of such event of default and opportunity to cure from the AUTHORITY, upon or after the happening of any one of the following events

- (a) TENANT shall file a voluntary petition in bankruptcy or that proceedings in bankruptcy shall be instituted against it and TENANT is thereafter adjudicated bankrupt pursuant to such proceedings;
- (b) A court shall take jurisdiction of TENANT and its assets pursuant to proceedings brought under the provisions of any Federal reorganization act;
- (c) Receiver of TENANT's assets shall be appointed;
- (d) TENANT shall be divested of its estate herein by other operation of law;
- (e) TENANT shall fail to perform, keep and observe any of the obligations, terms, warranties or conditions contained in this Agreement that on the part of TENANT are to be performed, kept or observed.

If any such condition or default cannot reasonably be corrected within the sixty (60) day period and TENANT has demonstrated due diligence with respect to curing said default, then, at the AUTHORITY's sole discretion, such cure period may be extended for consecutive periods of thirty (30) days, as long as diligent progress is made toward cure, with a reasonably foreseeable resolution date. Under such circumstances, default may be treated as cured until cured. Should diligent progress cease, or the reason for default become apparent as insoluble, then the Term shall cease and expire at the end of the thirty (30) day extension then in effect.

Acceptance of rental by AUTHORITY for any period or periods after a notice of default is issued by AUTHORITY of any of the obligations, terms, warranties and conditions herein contained to be performed, kept and observed by TENANT shall not be deemed a waiver of any other right on the part of AUTHORITY to terminate this Agreement for failure by TENANT so to perform, keep and observe any of the obligations, terms, warranties, or conditions hereof to be performed, kept and observed. No waiver of default by AUTHORITY of any of the obligations, terms, warranties or conditions hereof to be performed, kept and observed by TENANT, shall be construed to be or act as a waiver of any subsequent default of any of the obligations, terms, warranties or conditions herein contained to be performed, kept and observed by TENANT.

### **23. TERMINATION BY TENANT IN THE EVENT OF DEFAULT**

The TENANT, in addition to any other rights to which it may be entitled by law or otherwise, may terminate this Agreement by giving AUTHORITY written notice in the event of default by

AUTHORITY under this Agreement continuing for more than sixty (60) days after the AUTHORITY's receipt of written notice of such event of default and opportunity to cure from the TENANT, upon or after the happening of any one of the following events:

(a) Issuance by any court of competent jurisdiction of a permanent injunction in any way preventing or restraining the use of the Airport or any major part thereof for Airport purposes and the remaining in full force of such permanent injunction for a period of at least one hundred and eighty (180) days.

(b) Inability of the TENANT to use, for a period in excess of one hundred and eighty (180) days, the Airport or any part of the facility because of any law, order, rule, regulation or other action or non-action of the Federal Aviation Administration or any other governmental authority, or because of fire, earthquake, other casualties or acts of God or the public enemy.

(c) AUTHORITY shall fail to perform, keep and observe any of the obligations, terms, warranties or conditions contained in this Agreement that on the part of AUTHORITY are to be performed, kept or observed:

- 1) TENANT may give AUTHORITY written notice to correct such condition or cure such default, and if any such condition or default shall continue for sixty (60) days after receipt of such notice by AUTHORITY, TENANT may terminate this Agreement and the Term hereof shall cease and expire at the end of such sixty (60) days in the same manner and to the same effect as if it were the expiration of the Term, unless such condition or default cannot reasonably be corrected within the sixty (60) day period and AUTHORITY has demonstrated due diligence with respect to curing said default, then such cure period may be extended for consecutive periods of 30 days, as long as diligent progress is made toward cure, with a reasonably foreseeable resolution date. Under such circumstances, default may be treated as cured until cured. Should diligent progress cease, or the reason for default become apparent as insoluble, then the Term shall cease and expire at the end of the thirty (30) day extension then in effect;

(d) Assumption by the United States Government or any other authorized agency thereof of the operation, control or use of the Airport and the facility herein described, or of any substantial part or parts thereof in such a manner as to substantially restrict the TENANT for a period of one hundred and eighty (180) days from operating on and within the facility.

(e) In the event of destruction of the facilities, improvements, or the demised Premises as more fully described in Section 37, Damage or Destruction.

## **24. WAIVER OF STATUTORY NOTICE**

In the event AUTHORITY exercises its option to terminate this Agreement upon the happenings of any or all of the events set forth in Section 22, "Termination by AUTHORITY in Event of Default," any notice of termination given pursuant to the provisions of said Section 22, Termination by AUTHORITY in Event of Default, shall be sufficient to cancel and terminate this Agreement; and, upon such termination, TENANT hereby agrees that it shall forthwith surrender possession of the demised Premises to the AUTHORITY. In this connection, TENANT hereby expressly waives the receipt of any notice to quit or notice of termination which would otherwise be given by AUTHORITY under any provisions of the laws of the State of Kansas, including, but not limited to, notices required to be given under any section of the Kansas Statutes.

## **25. TRANSFER OF OWNERSHIP**

As of the Commencement Date of this Agreement and thereafter throughout the Term, an equity transfer of a majority or more of the interest of TENANT without the prior written approval of AUTHORITY, which shall not be unreasonably withheld, shall constitute a material breach of this Agreement for which AUTHORITY may terminate the same under the provisions of Section 22, Termination by AUTHORITY in Event of Default. Moreover, at least ninety (90) Days prior to any contemplated ownership transfer, TENANT shall submit a written request to AUTHORITY showing good and sufficient financial worth and adequate experience in the operation of NHDAS on the part of the contemplated purchaser or purchasers and evidencing the intent of such contemplated purchaser or purchasers to expressly assume in writing and agree to be bound by and fulfill all of the terms, covenants, obligations and agreements contained in this Agreement.

## **26. ASSIGNMENT AND SUBLETTING**

This Agreement is entered into by TENANT through the competitive public solicitation which includes essential and exacting specifications, and insofar as this Agreement is a service agreement that relies upon the past performance, personal integrity, trust, financial worth and unique expertise of the TENANT to operate a sound NHDAS that provides service to the public,

and insofar as this Agreement provides for the AUTHORITY to extend financial accommodation for the benefit of the TENANT, the TENANT shall not, without the prior written consent of AUTHORITY, assign or sublet any portion of the Premises or Property; provided that if an assignment or sublease is approved by AUTHORITY, the term of any such assignment or sublease shall not extend beyond the Term of this Agreement. In the event of any conflicts between the terms and conditions of this Agreement and those of a sublease or assignment, the terms and conditions of this Agreement shall control.

Except as specifically provided above, TENANT shall not assign this Agreement or any interest therein by an operation of law, process or proceeding of any Court or otherwise, or sublet the Premises and Property or any portion thereof and/or the operation or maintenance of the Premises and Property without first obtaining the prior written approval of the AUTHORITY; moreover, at least ninety (90) Days prior to any contemplated assignment of this Agreement by any operation of law, process or proceeding of any Court or otherwise, TENANT shall submit a written request to the AUTHORITY, and TENANT shall submit evidence showing good and sufficient financial worth and adequate experience in the operation of a NHDAS and e911 on the part of the contemplated assignee. In any event, no assignment shall be made or shall be effective unless TENANT shall not be in default on any of the terms, provisions, covenants and conditions herein contained. Further, in no event shall any assignment be effective, regardless of any submissions to the AUTHORITY, without the prior written approval of the AUTHORITY. The party to whom such assignment is made shall expressly assume in writing and agree to be bound by and fulfill all of the terms, covenants, obligations and agreements contained in this Agreement.

In the event of any approved assignment, TENANT shall remain liable to AUTHORITY to pay to AUTHORITY any portion of the Rent Fees and other payments provided for herein upon failure of the assignee to pay the same when due; moreover, no subleasing shall release the TENANT from its obligations to pay all Rent Fees and other amounts due hereunder or release TENANT from any of the terms, covenants or conditions herein contained on the part of the TENANT to be performed, kept and observed. Further, in the event of an approved assignment or subleasing, neither assignee nor its Subtenant shall assign or sublet any portion of the Premises except with the prior approval of AUTHORITY and TENANT herein, and any sublease or assignment by TENANT shall contain a clause to this effect.

In the event of an approved assignment, the assignee shall provide the AUTHORITY with a letter of credit or performance bond pursuant to the requirements of the Agreement. Upon receipt of such required acceptable letter of credit or performance bond by the AUTHORITY, the AUTHORITY may thereupon return the assignor's letter of credit or permit performance bond cancellation. Provided, however, in the event of default by the assignee, wherein the Agreement

reverts back to the assignor, in accordance with the above referenced paragraph of this Section, then and in that event the assignor shall provide the AUTHORITY with a required, acceptable letter of credit or performance bond.

TENANT will not sublease, rent or permit any persons, firms or corporations to occupy any part of the Premises, or to provide any type of commercial operation, aviation or otherwise, on the Premises without having first received the prior written consent of AUTHORITY, such consent not to be unreasonably withheld or unduly delayed and granted only under the following conditions:

- a) Any arrangements must be in the form of a written instrument and must be for purposes and uses of the Premises as authorized under this Agreement, and shall be subject to the provisions of this Agreement. TENANT shall submit a copy of such proposed instrument at the time of requesting consent of AUTHORITY.
- b) All subleases must comply with this Agreement, and will be reviewed for compliance by AUTHORITY to that end. Any arrangement for the subleasing of space must be in conformance with the use of the Premises outlined in this Agreement, unless expressly approved otherwise in writing by AUTHORITY.
- c) TENANT must keep current records on file and available for AUTHORITY's inspection that describe the nature and document the legitimacy of the Subtenant's business, including all current municipal, State, or local licenses or permits required for the conduct of Subtenant's business.
- d) TENANT hereby agrees that it shall incorporate language acceptable to AUTHORITY into all of its sublease agreements, placing on any Subtenant and that Subtenant's affiliated entities, customers, employees, invitees, contractors, and subcontractors similar restrictions, as may be appropriate to its approved uses as those which bind TENANT and its use of the Premises through this Agreement. TENANT shall also incorporate and make reference to this Agreement, as may be amended from time to time, to ensure Subtenant's operations and conduct are subject to and are in compliance with the terms and conditions of this Agreement, as may be amended from time to time. Any sublease agreement shall explicitly state that it is subordinate to this Agreement, and that the Subtenant shall never obtain rights in the Premises greater than those held by TENANT under this Agreement, as amended. Any Subtenant shall be specifically subject to eviction from the Premises as a result of

termination, cancellation, or expiration of this Agreement, irrespective of Subtenant's state of compliance with the terms of its sublease.

- e) TENANT shall at all times during the term(s) of approved sublease(s), remain responsible to AUTHORITY for the compliance of its Subtenants with the terms and conditions of any approved sublease and with this Agreement. AUTHORITY may look to TENANT directly to satisfy any failure of Subtenant to comply with these documents.
- f) Consent to one sublease permit or subcontract shall not be deemed consent to any subsequent sublease permit or subcontract. Prior written consent of the AUTHORITY shall be required for each sublease permit or subcontract executed by the TENANT.

## **27. NON-INTERFERENCE WITH AIRPORT OPERATIONS**

TENANT covenants and agrees that it shall not allow any condition on the Airport, nor permit the conduct of any activity on such premises, which shall materially or adversely affect the development, improvement, operation, or maintenance of the Airport or its facilities, nor shall TENANT use or permit the Airport 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.

TENANT covenants and agrees that it shall not allow any condition on the Airport, nor permit the conduct of any activity on such Airport, which shall materially or adversely affect, infringe upon, block or interrupt the operations or business activity of other airport tenant leaseholds.

## **28. COOPERATION WITH AIRPORT DEVELOPMENT**

TENANT 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. TENANT 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, TENANT 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 TENANT.

## **29. TITLE TO FACILITIES, IMPROVEMENTS AND FIXTURES**

Unless otherwise permitted under this Agreement, title/ownership to the Premises and Property, and to all existing structures, fixtures, facilities and Improvements, or future structures, fixtures, facilities and Improvements constructed and permanently affixed to the Premises and Property shall be, and shall remain, exclusively with AUTHORITY. Such structures, fixtures, facilities and Improvements shall include, but may not be limited to permanently affixed shelves, cabinets, counters, light fixtures, conduit, wiring and cabling, and all other property of every kind and nature which is permanently affixed.

TENANT shall, without cost to AUTHORITY, furnish and install all non-affixed furniture, movable partitions, decorations, accessories, equipment and tools, and all other Personal Property on the Premises and Property necessary to conduct its business, which shall retain its status as Personal Property even though temporarily placed within or upon the Premises and Property. Title/ownership to non-affixed Personal Property shall remain with TENANT.

## **30. LIENS**

TENANT shall take or cause to be taken all steps that are required or permitted by law in order to avoid the imposition of any lien upon the Premises, Property or any Improvements thereon. Should any lien be placed on the Premises, Property or any Improvements thereon, TENANT shall cause to be removed 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 performed by or on behalf of TENANT or any of its contractors or subcontractors upon Premises and Property or arising out of or because of the performance of any work or labor to it at said Premises and Property or the furnishing of any materials to it for use at said Premises and Property. Should any such lien be made or filed, TENANT shall bond against or discharge the same within thirty (30) days after actual notice of the same from any source, whether from AUTHORITY or otherwise, and provide written proof of discharge or bonding to AUTHORITY within that time. TENANT acknowledges that its interest in the Premises and Property is a

leasehold, and that notwithstanding its construction of TENANT Improvements on the Premise and Property, such Improvements accrue to the AUTHORITY and that it has no equity interest in the Premises which can support a mortgage lien. TENANT shall not mortgage or pledge as collateral its leasehold interest herein without the prior written consent of the AUTHORITY. TENANT acknowledges that all Improvements to the Premises are for its benefits solely, and are not made at the request of the AUTHORITY or for the benefit of the AUTHORITY, regardless of AUTHORITY's approval of such Improvements.

AUTHORITY may consent, upon TENANT's written request, to an assignment of rents to a governmentally regulated and insured commercial lender as partial security for financing of TENANT's activities on the Premises, which assignment is intended to be a present transfer to such lender of all of TENANT's rights to collect and receive rents and charges from approved users, operators, Subtenants and permittees. Lender(s) shall have no rights to assign this Agreement or sublease the Premises without the prior written consent of the AUTHORITY as required under Section 26, Assignment And Subletting. Upon TENANT's written consent, AUTHORITY agrees to give lender(s) notice of any default or cancellation of the Agreement, and allow lender(s) the same opportunity as the TENANT under this Agreement to correct any condition or cure any default. Nothing in this Section is intended to relieve the TENANT of its obligations under this Agreement.

### **31. RULES AND REGULATIONS**

TENANT, its agents and employees, shall be subject to any and all applicable rules, regulations, Airport Standard Operating Procedures, Job Site Requirements, 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; and shall also be subject to any and all applicable laws, statutes, rules, regulations or orders of any governmental authority, federal or state, lawfully exercising authority over the Wichita Dwight D. Eisenhower National Airport or TENANT's operations conducted hereunder.

AUTHORITY shall not be liable to TENANT for any diminution or deprivation of its rights hereunder on account of the exercise of any such authority as in this Section provided, nor shall TENANT be entitled to terminate this Agreement nor be entitled to seek any damages from AUTHORITY by reason thereof unless exercise of such authority shall so interfere with TENANT'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 23, Termination By Tenant.

### **32. ENCROACHERS, TRESSPASSERS AND OTHER THIRD PARTY HAZARDS**

TENANT 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.

### **33. SECURITY SYSTEMS**

AUTHORITY may at its sole discretion, install, operate and maintain a security monitoring system in non-exclusive use areas of the interior and exterior facilities. AUTHORITY may at its sole discretion install, operate and maintain a computer controlled access system at certain Exclusive Use or non-Exclusive Use door access points. The purpose of said security systems is for the provision of safety and security to the general public, Airport employees, tenants and permittees and their employees and invitees, primarily within non-exclusive common use areas. The AUTHORITY shall install, operate and maintain security systems in the interior and exterior of the Terminal. The purpose of these security systems is for the provision of safety and security to the general public, Airport employees, tenants, their employees and invitees. TENANT may not rely on the surveillance cameras and access control systems owned and operated by the AUTHORITY for purposes of risk management or private security from property loss or theft.

TENANT may, at its sole option, install, operate and maintain private security systems on the Premises, however, any such private security systems installed and operated by the TENANT shall not block, hinder, interfere, over-ride or obstruct any security system of the AUTHORITY.

### **34. SECURITY**

TENANT shall comply with all applicable regulations relating to Airport security. AUTHORITY shall be held harmless for any and all breaches of the Federal Aviation Administration or Transportation Security Administration's policies and regulations and AUTHORITY's security rules or regulations caused by the TENANT, its agents or employees, or that occur on the TENANT's Premises except to the extent caused by AUTHORITY. In the event the Federal Aviation Administration or the Transportation Security Administration imposes a fine or penalty for any such security violation, whether such fine or penalty is assessed to the AUTHORITY or the TENANT or their agents or employees, the penalty shall be paid by the TENANT, provided, however, that nothing herein shall prevent TENANT from contesting the

legality, validity or application of such fine or penalty to the full extent TENANT may be lawfully entitled so to do.

### **35. GENERAL PROVISIONS**

**Maintenance, Repair, Direction and Control.** AUTHORITY reserves the right, but is not obligated to exercise the right, to maintain and keep in repair the landing area of the Airport and all publicly owned facilities of the Airport, together with the right to direct and control all activities of TENANT in this regard. These areas shall include, but are not limited to, those areas which are necessary to serve the aeronautical users of the Airport, except that AUTHORITY shall not be obligated to maintain and keep in repair such areas of the Airport as may be leased to or under the control of Airport tenants, whether such area serves aeronautical users or otherwise.

**Brokerage Fees.** The Authority will not permit brokerage fees representing the TENANT for any Airport property or facilities. All brokerage fees shall be the responsibility of the TENANT.

**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 said Airport or the exclusive or nonexclusive use of the Airport by the United States during the time of war or national emergency.

**14 CFR Part 77 of Federal Aviation Regulations.** TENANT agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event future construction of a building, structure, or attachment thereto 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 Premises. TENANT by accepting this Agreement expressly agrees for itself, its successors and assigns, that it shall not erect nor permit the erection of any structure or object, nor permit the growth of any tree on the Premises which shall exceed such maximum height as may be stipulated by AUTHORITY. It is understood and agreed that applicable laws, codes, regulations or agreements concerning height restrictions shall govern the maximum height to be stipulated by AUTHORITY. In the event the aforesaid covenants are 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 TENANT and without liability to AUTHORITY.

**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.

**Easement for Flight.** TENANT 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, 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, or 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 government authority. AUTHORITY reserves these rights 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. TENANT accepts the Premises subject to the risks and activities hereinabove described.

**Airport Hazards.** TENANT by accepting this Agreement agrees for itself, its successors and assigns, that it shall not make use of the Premises in any manner which may interfere with the landing and taking off of aircraft from the Airport or otherwise constitute a hazard. In the event this Agreement Term is breached, AUTHORITY reserves the right to enter upon the Premises and cause the abatement of such interference at the expense of TENANT without liability to AUTHORITY of any kind.

**Airport Rules and Regulations, Policies, and Standard Operating Procedures.** AUTHORITY shall have the right to adopt, amend and enforce reasonable Airport rules and regulations, policies and standard operating procedures with respect to use of and the conduct and operation of the Airport, its buildings and facilities or any improvements within the present

or future boundaries of the Airport, which TENANT agrees to observe and obey.

**Federal Aviation Administration Requirements.** AUTHORITY and TENANT agree that the requirements of the FAA set out below are approved by both parties, and if applicable, TENANT agrees to comply with all FAA requirements with respect to its operations, use of the Airport and this Agreement:

(a) The TENANT, 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 TENANT 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 TENANT, 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 TENANT 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 TENANT 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 TENANT 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 TENANT assures that it shall require that its covered suborganizations provide assurances to the TENANT that they similarly shall undertake affirmative action programs, and that they shall require assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

(d) It is understood and agreed that 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) TENANT 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 TENANT 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 TENANT) to maintain and keep in repair the landing area of the Airport and all publicly-owned facilities of the airport, together with the right to direct and control all activities of TENANT in this regard.

(g) AUTHORITY reserves the right further to develop or improve the landing area and all publicly-owned air navigation facilities of the Airport as it sees fit, regardless of the desires or views of TENANT, and without interference or hindrance as long as the improvements do not interfere with the NHDAS services developed under this Agreement.

(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 TENANT 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 landing area, the publicly-owned air navigation facilities and/or other areas or facilities of the Airport. If any such agreement is executed, the provisions of this instrument, insofar as they are inconsistent with the provisions of the agreement with the Government, shall be suspended.

(j) It is understood and agreed that the 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.

**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.

**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.

**Captions.** The captions/headings of the Sections of this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope or intent of any provisions of this Agreement, and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

**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; provided, however, that the invalidity of any such term, covenant, condition or provision does not materially prejudice either the AUTHORITY or the TENANT in their respective rights and obligations contained in the valid terms, covenants, conditions or provisions in this Agreement.

**Waiver of Claims.** TENANT hereby waives any claim against AUTHORITY and its 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 this 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.

**Incorporation of Exhibits.** All exhibits referred to in this Agreement are intended to be and are hereby specifically made a part of this Agreement.

**Incorporation of Required Provisions.** The parties incorporate in this Agreement by this reference all provisions lawfully required to be contained herein by any governmental body or agency.

**Non-Liability of Agents and Employees.** No manager, 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.

**Successors and Assigns Bound.** This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto where permitted by this Agreement.

**Time of Essence.** Time is of the essence in this Agreement.

**Relationship of the Parties.** It is understood TENANT is not in any way or for any purpose a partner or joint venture with or an agent of AUTHORITY. TENANT shall act as an independent contractor in the performance of its duties pursuant to this Agreement.

**Interpretation.** AUTHORITY and TENANT hereby agree that this Agreement shall not be construed or interpreted in favor of either party on the basis of preparation.

**Kansas Laws to Govern.** This Agreement is created in the State of Kansas 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.

### **36. THIRD PARTY RIGHTS**

It is agreed between the parties that it is not intended by any of the provisions of this Agreement to create for the public or any member thereof the status of a third-party beneficiary, or to authorize anyone not a party to this Agreement to maintain a suit for damages pursuant to the terms or provisions of this Agreement.

### **37. DAMAGE OR DESTRUCTION**

In the event that facilities or improvements on the Premises are damaged or destroyed in whole or in part by fire, lightning or any other peril or other casualty during the Term of this Agreement, this Agreement shall remain in full force and effect and TENANT shall proceed with due diligence to repair, restore, rebuild or replace said damaged or destroyed property or parts thereof to as good a condition as all affected properties were in immediately prior to such damage or destruction, subject to such alterations as TENANT may elect to make and are permitted in this Agreement. All proceeds from the insurance policies related to such damage or destruction shall be first applied to cover the cost of such repairs or restoration. In alternative, and in AUTHORITY's discretion to allow and TENANT's election to exercise, TENANT may be released from this Agreement upon payment of all demolition and removal costs for damaged or destroyed improvements and payment therefor at the fair market value.

### **38. MODIFICATIONS FOR GRANTING FAA FUNDS**

In the event that the AUTHORITY determines the Federal Aviation Administration 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 TENANT 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 Federal Aviation Administration grants-in-aid, provided that no such changes shall materially alter the rights or obligations of TENANT hereunder.

### **39. QUIET ENJOYMENT**

AUTHORITY agrees that, on payment of the rentals and fees and performance of the terms, covenants, conditions and agreements on the part of TENANT to be performed in this Agreement, TENANT shall have the right to peaceably occupy and enjoy the Premises, subject however, to the provisions otherwise set out in this Agreement.

### **40. INTENTION OF PARTIES**

This Agreement is intended solely for the benefit of AUTHORITY and TENANT 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 TENANT.

### **41. FORCE MAJEURE**

Anything contained in this Agreement to the contrary notwithstanding, neither Party shall be deemed in default with respect to the performance of any of the terms, covenants, and conditions of this Agreement if non-performance shall be due to any "Act of God" or "Force Majeure" which terms are defined for purposes of this Agreement as strikes, lockouts, civil commotion, riots, material or labor restrictions by any governmental authority, explosions, earthquakes, fire, floods, catastrophic weather events, acts of the public enemy, wars, acts of terrorism, or insurrections. The occurrence of any Act of God or Force Majeure shall be excused for the period of the delay thus occasioned and the period for performance of any such acts shall be extended for a period equivalent to the period of such delay.

### **42. INCORPORATION OF PROPOSAL DOCUMENTS**

To the extent that the terms and provisions of the Request for Proposals ("RFP") and the TENANT's Proposal thereof are not in conflict with the provisions of this Agreement, such terms and provisions are made a part hereof as Exhibit "B"(incorporated by reference), and shall be fully binding on both parties as if fully set out herein. In the event of any conflict between the provisions of this Agreement and those of the RFP and/or TENANT's Proposal, said provisions shall be given effect in the following order: (1) this Agreement; (2) the RFP; and (3) the TENANT's Proposal in response to the RFP.

### **43. HOLDOVER**

In the event TENANT holds over the lease of the Premises, any rights granted after expiration of this Agreement without any written renewal of it shall not be deemed to operate as a renewal or extension of this Agreement, but shall only create a month-to-month arrangement, which may be terminated within thirty (30) days' notice by AUTHORITY or TENANT.

### **44. ENTIRE AGREEMENT**

The parties understand and agree that this instrument contains the entire Agreement between them. The parties hereto further understand and agree that the other party and its agents have made no representations or promises with respect to this Agreement or the making or entry into this Agreement, except as expressed in this Agreement, and that no claim or liability or cause for termination shall be asserted by either party against the other and such party shall not be liable by reason of, the making of any representations or promises not expressly stated in this Agreement, any other written or oral agreement with the other being expressly waived.

The individuals executing this Agreement personally warrant that they have full authority to execute this Agreement on behalf of the entity for which they are acting herein.

The parties hereto acknowledge that they have thoroughly read this Agreement, including any exhibits or attachments hereto, and have sought and received whatever competent advice and counsel deemed necessary for them to form a full and complete understanding of all rights and obligations herein.

### **45. AMENDMENT**

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.

**46. 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 by AUTHORITY, the same shall be performed by the Director, or his/her authorized representative. Approvals, consents, directions, or designations made at any time by the Director, and from time to time, may be withdrawn or modified by notice from AUTHORITY to TENANT.

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 \_\_\_\_\_  
Jeff Longwell, President  
"AUTHORITY"

By \_\_\_\_\_  
Victor D. White, Director of Airports

ATTEST:

\_\_\_\_\_ (Name of Company)

By \_\_\_\_\_

By \_\_\_\_\_  
\_\_\_\_\_, (Name of signee)  
"TENANT"

APPROVED AS TO FORM: \_\_\_\_\_ Date: \_\_\_\_\_

Jennifer Magana,  
City Attorney and Director of Law

**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.