

MEMORANDUM OF UNDERSTANDING  
BETWEEN CITY OF KANSAS CITY, MISSOURI AND  
EDGEMOOR INFRASTRUCTURE & REAL ESTATE

KANSAS CITY INTERNATIONAL AIRPORT TERMINAL MODERNIZATION PROJECT

FEBRUARY \_\_, 2018

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RE: TERMINAL MODERNIZATION PROJECT

This Memorandum of Understanding (“**MOU**”) is entered as of this \_\_\_\_ day of February, 2018 (the “**Effective Date**”) between the City of Kansas City, Missouri (“**City**”) and Edgemoor Infrastructure & Real Estate LLC (“**Developer**”), a Maryland limited liability company registered to do business in Missouri, for a terminal modernization project at the Kansas City International Airport (the “**Airport**”). This MOU outlines certain terms and conditions under which Developer would finance and develop such a project.

**RECITALS**

A. City issued a “Request for Qualifications/Proposals for Design, Construct and Private Financing of KCI/ Request #062017” (as amended, the “RFQ/P”) on May 30<sup>th</sup>, 2017 to identify a potential developer for development of a single terminal Airport improvement project (the “Project”).

B. Culminating City’s selection process, City determined to advance discussions with Developer related to the Project.

C. City and Developer desire to enter into this MOU to further establish a framework for negotiations of the Transaction Documents to effectuate the contemplated Project, including Developer’s responsibility to finance and develop the Project.

D. Understanding that only Airport Revenue, not taxpayer dollars, will be used to pay for the Project, the parties nonetheless acknowledge that the Project was approved by a majority of City voters in an election conducted on November 7, 2017, as required by Section 6-50 of City’s Code of Ordinances.

E. The City Council authorized the City Manager’s execution of this MOU with its passage of Ordinance No. 180\_\_\_\_.

## UNDERSTANDING

### **I. Defined Terms**

1. “Airlines” means those airlines that are signatories to use and lease agreements with City related to the Airport.
2. “Airline Technical Representative” or “ATR” means an Airline-procured consultant who serves as a single point of contact to coordinate with and represent the Airlines on specific Project-related matters.
3. “Airport” refers to Kansas City International Airport, located in the City of Kansas City, Missouri.
4. “Airport Revenue” means the revenues generated by or in connection with the operation of the Airport System, as more specifically defined in the Master Bond Ordinance.
5. “Airport System” means the Airport and the Downtown Airport.
6. “Aviation Director” means the then-current director of the Aviation Department of the City of Kansas City.
7. “CFR” means the Code of Federal Regulations.
8. “City” means the City of Kansas City, Missouri.
9. “City Council” means the City Council of the City of Kansas City, Missouri.
10. “City Funding Conditions” has the meaning set forth in Section IV(B)(2).
11. “Community Benefit Agreement” has the meaning set forth in Section X(H).
12. “Developer” means Edgemoor Infrastructure & Real Estate LLC.
13. “Developer Financing Agreements” means agreements Developer may enter into with lenders or equity providers to obtain all or a portion of the financing for the Project.
14. “Developer’s Proposal” means Developer’s proposal submitted in response to the RFQ/P.
15. “Development Agreement” means the agreement to be entered into between City and Developer for the design, construction and financing of the Project.
16. “Downtown Airport” refers to the Kansas City Charles B. Wheeler Downtown Airport.
17. “Exclusive Period” means the period of exclusive negotiations between City and Developer, as described in Section VI.

18. "FAA" means the Federal Aviation Administration.
19. "Federal Funding Sources" has the meaning set forth in Section IV(B)(2).
20. "Finance Agreement" means an agreement to be entered into by and between Developer and City and any other necessary third parties governing all or a portion of the financing of the Project, as more particularly set forth in the Transaction Documents.
21. "Financial Model" means the financial model for the Project submitted by Developer and approved by City in accordance with the Transaction Documents.
22. "Funding Agreement" means the agreement between Developer and City, to be executed in conjunction with the Development Agreement, outlining Developer's obligation to reimburse City following the Project's financial close for certain Project-related costs incurred by City for services performed by City's outside consultants.
23. "Funding Sources" means the Federal Funding Sources and the Airport Revenue.
24. "HRD" means City's Human Relations Department.
25. "KCAD" means the Kansas City Aviation Department.
26. "Key Contract(s)" means those contracts for work related to the Project between Developer and its design-builder and between the Developer's design-builder and its design professional.
27. "Key Project Personnel" shall mean those key Project personnel, as shown on Exhibit D, so identified in the Development Agreement, consistent with Developer's Proposal, whose substitution is restricted in accordance with Section X(A) herein.
28. "Lease" means a Lease that may be entered into between City, as landlord, and Developer, as tenant, for the Property, as may be more particularly set forth in the Transaction Documents.
29. "Master Bond Ordinance" means City's Committee Substitute for Ordinance No. 130081, as the same may be amended and supplemented by Supplemental Ordinance, as defined in the Master Bond Ordinance.
30. "MBE" means Minority Business Enterprise certified with the City.
31. "New Use Agreement" means either a new Use and Lease Agreement or an Amended and Restated Use and Lease Agreement, to be entered into prior to financial close, between City and at least 50% of the Airlines, which Airlines collectively account for at least 50% of rates, fees and charges paid by Airlines during the twelve months ending December 31, 2017; financial close of

the transaction will be conditioned on City and Airlines having entered into such New Use Agreement.

32. “Out-of-Pocket Project Costs” means those costs incurred by Developer that are direct expenses incurred by Developer for services or materials provided by third parties that are not increased by any dollar or percentage amount representing added profit, fee, or administrative or other charge and which have been documented by Developer and approved by the Aviation Director. For purposes hereof, Out-of-Pocket Project Costs shall be limited to and include only those costs related to the Project and incurred by Developer for contractors (and their subcontractors), design professionals, consultants (and their subconsultants), attorneys, other architectural and engineering design professionals (including costs of preconstruction services of third-party project contractor(s)), Loan principal, interest, and fees pursuant to the terms of the Out-of-Pocket Project Cost Agreement attached hereto as Exhibit F, and other City-approved Project-related costs. As used herein, “Loan” shall have the meaning given in the Out-of-Pocket Project Cost Agreement.

33. “Passenger Facility Charge” or “PFC” means the fees authorized by 49 U.S.C. 40117 and regulated by 14 CFR Part 158, as collected pursuant to the FAA’s Passenger Facility Charge program.

34. “PFC Revenues” means PFCs collected pursuant to the FAA’s PFC program and potentially available to KCAD as Airport Sponsor (as defined under federal law).

35. “Project” means the proposed improvements to the Airport, as more fully described in Section II, as expressly approved by City.

36. “Project Site” means the area more particularly depicted on Exhibit A.

37. “Property” means the portion of the Airport lands and facilities upon which the Project will be constructed and operated.

38. “RFQ/P” has the meaning given in Recital A above.

39. “SDVOSB” means a Service-Disabled Veteran-Owned Small Business certified with the federal Department of Veterans Affairs.

40. “SLBE” means Small Local Business Enterprise certified with the City.

41. “Sublease” means a sublease agreement that may be entered into between Developer, as sublandlord, and City, as subtenant, whereby City leases back from Developer the Property and

the completed Project, with City's unrestrained authority to operate and maintain the same, as may be more particularly set forth in the Transaction Documents.

42. "Substantial Completion" means the date the Project is certified to be substantially complete so as to permit use and occupancy sufficient for the Project's intended use.

43. "Transaction Documents" refers to those documents necessary to set forth the agreements between the parties to develop, finance and construct the Project, including, without limitation, the Funding Agreement, the Development Agreement, the Finance Agreement, the Lease, the Sublease, and the Community Benefit Agreement.

44. "TSA" means the Transportation Security Administration.

45. "VOSB" means a Veteran-Owned Small Business certified with the federal Department of Veterans Affairs.

46. "WBE" means a Women's Business Enterprise certified with the City.

## **II. The Project**

A. Project Description. The Project includes the design, construction and financing of a new single terminal, parking garage, and other improvements at the Airport, as more generally set forth on Exhibit B.

B. Project Scope. Except as otherwise agreed by the parties, subject to City's obtaining all necessary consents and executing all required agreements with the Airlines, and further subject to such changes as shall be agreed to by the parties pursuant to the processes and procedures outlined in the Development Agreement and the New Use Agreement, the Project will: (i) be designed to LEED Gold standards; (ii) rely as a general starting point on the project scope set forth on Exhibit B; (iii) include a consolidated tenant improvement program.

C. Initial Conceptual Design. City acknowledges that Developer has delivered to City an initial conceptual design of the Project, including both exterior elevations and representative interior schemes. The parties expressly understand and agree that such conceptual design is intended as an illustrative example for discussion purposes only, and that all Project design remains subject to the design development and review process and approved Project budget, as set forth in the Transaction Documents.

D. Transaction Structure. As shall be more fully set forth in the Transaction Documents, City currently contemplates that it shall lease the Property to Developer and, upon Developer's completion of the Project in accordance with the Transaction Documents, City shall sublease the Property from Developer, all for a term to be mutually agreed upon by the parties in the Lease and Sublease. Notwithstanding the above, other transaction structures may be considered by the parties, provided that City shall maintain ownership of the Property at all times. The respective roles and obligations of the parties, as envisioned under the transaction, are described in Section IV below.

E. Project Ownership.

1. City shall own the fee simple interest in the Property and all improvements thereon, including the Project, at all times, free and clear, subject to no encumbrances or other obligations except as expressly agreed by City in the Transaction Documents, and KCAD shall be responsible for operation and maintenance of the Project following successful turnover of the Project from Developer to KCAD after Substantial Completion.

2. Inasmuch as City shall at all times own the Property and all improvements thereon, including the Project, it is not anticipated that the Project will be subject to ad valorem taxes. Nonetheless, for the avoidance of all doubt, in the event an assertion is made that ad valorem taxes should be assessed on the Project, subject to City's receipt from Developer of a legal opinion in form and content satisfactory to City that ad valorem taxes do not apply to the Project, City will reasonably cooperate in Developer's pursuit of exemption from ad valorem taxes on the Project.

3. City shall grant Developer a non-exclusive right of access, ingress and egress to and from all real property comprising Project-related rights-of-way, to the extent City owns the real property or has acquired rights of access in the same.

4. City shall provide a usual and customary legal opinion that City has legal authority to enter into the Transaction Documents and that obligations set forth therein are legally binding on City.

### **III. Project Cost**

A. Cost. The total cost to design, build and finance the Project shall be as set forth in the Transaction Documents; the parties acknowledge that preliminary estimates, as initially scoped in 2015, would cost approximately \$964 million. City and Developer acknowledge and agree that, concurrent with negotiation of the Transaction Documents, City desires Developer to engage such design and development professionals as may be necessary to further validate Project programming and advance Project design, consistent with the Out-of-Pocket Project Cost Agreement, in order to refine Project costs and to enable Developer to provide a lump sum fee for the Project, it being acknowledged and agreed that the Airlines will not enter into New Use and Lease Agreements with City, and thus the Project will not achieve financial close, until Developer provides such cost certainty. The final budget, and any updates thereto made during the course of Project design and construction, shall be subject to any approvals City is required to obtain, including, but not limited to, approval from the Airlines pursuant to the New Use Agreement. Developer shall be required to enter into a lump sum agreement, consistent with the Development Agreement and Financial Model, for Project design, construction and financing.

B. Cost Savings. As shall be more fully set forth in the Development Agreement, City and Developer shall share in any cost savings generated through value engineering initiatives, significant scope changes or other cost reduction strategies, and Developer acknowledges that City's portion of such cost savings shall be retained by KCAD, provided that KCAD may elect to allocate all or a portion of its share of such cost savings to the Airlines, pursuant to the New Use Agreement.

C. Contingency. As shall be more fully set forth in the Development Agreement, City and Developer shall establish a contingency fund to be used by City, with counsel from the Developer, to cover additional scope added by City. Following Project final completion, any unspent contingency amounts shall be shared by the Developer and City as set forth in the Development Agreement, and Developer acknowledges that City's portion of such unspent contingency amounts shall be retained by KCAD, provided that KCAD may elect to allocate all or a portion of its share of such amounts to the Airlines, pursuant to the New Use Agreement.

#### **IV. Roles and Obligations**

A. Developer Role. Developer shall be responsible for delivery of the Project in accordance with the Transaction Documents, including:

1. Designing, developing and constructing the Project, substantially in accordance with Developer's Proposal, to be delivered no later than a date as mutually agreed by City and Developer:

- i. Developer shall perform or cause to be performed all design work, including technical studies, geotechnical, seismic, flooding and biological investigations, right-of-way mapping, surveying, hazardous materials investigations, environmental and historical assessments and design and construction surveys.
- ii. Through the Project Management Committee, Developer shall work collaboratively with City, Airlines and key stakeholders to finalize a Project design that showcases the unique culture of Kansas City and that reflects iconic elements of Kansas City architecture while meeting City's and Airlines' respective operational requirements.
- iii. As between City and Developer, Developer bears the risk of an incorrect or incomplete review, examination or investigation of the Project Site or existing improvements, provided City provides Developer with adequate access to conduct such investigations.
- iv. As between City and Developer, Developer bears the risk of all conditions occurring on, under, or at the Project Site and the existing improvements, except for such risks specifically retained by City.
- v. Developer shall obtain all governmental and environmental approvals and, all third party approvals and agreements required in connection with the Project, except as expressly provided in the Transaction Documents. City shall have the right to approve any application for governmental approval before Developer submission.

2. Assuming responsibility for costs and delays associated with obtaining necessary permits and closing transaction costs;

3. Contributing any equity funding and obtaining all debt financing required for the Project, as applicable, pursuant to the Financial Model and Finance Agreement and other applicable Transaction Documents approved by City;

4. Entering into and managing all design and construction contracts for the Project, consistent with the Development Agreement. Developer shall have the right to select and contract for the required Project work, subject to City's approval of the form and substance of Key Contracts;

5. Using good faith efforts, as defined in Section 3-441 of the Kansas City Code of Ordinances, Developer shall comply with City's Minority and Women's Business Enterprises program, as set out in Sections 3-421 through 3-469, Code of Ordinances, as the same may be amended from time to time, among the following expressed standards: (i) in accordance with the goals established pursuant to the Minority and Women's Business Enterprises ordinances; and (ii) as described in Section X(G);

6. If and to the extent the goals set by HRD for construction and professional services are less than 20% MBE and 15% WBE construction services and 20% MBE and 15% WBE professional services commitment made by the Developer in its proposal and otherwise, Developer shall achieve the above-referenced construction and professional services participation cumulatively for all tiers pursuant to a separate contract commitment of Developer established in accordance with Section X(G);

7. Complying with City's Small Local Business Enterprise policy, as codified in Section 3-601 et seq. of the Kansas City Code of Ordinances;

8. Complying with City's One Percent for Art program;

9. Diligently negotiating the Transaction Documents;

10. Supporting City's PFC application to the FAA to maximize PFC eligibility and funding and documenting PFC-eligible costs at the end of Project construction;

11. Complying with all applicable laws, including, without limitation, all requirements pursuant to the Americans with Disabilities Act;

12. Collaborating with City and Airlines, including the ATR, throughout the Project development process;

13. Maintaining Key Personnel, consistent with Section X(A);

14. Preparing Project status reports not less than quarterly for the City Council Airport Committee and all City entities involved in the Project, with information including but not limited to: Project progress and milestones, budget, explanations regarding any delays or schedule compression, progress on MBE/WBE and workforce goals, and status of implementation of Community Benefit Agreement;

15. Hiring an outside monitor to work with HRD staff to track Developer's compliance with the Project's prevailing wage/MBE/WBE construction employment program requirements, pursuant to Section X(G) of this Agreement; and

16. Complying with the City's Construction Employment Program, as codified in Section 3-501 et seq. of the Kansas City Code of Ordinances, as applicable.

B. City Role. City's responsibilities, pursuant to the Transaction Documents, shall include:

1. Acting as Airport Sponsor (as defined under federal law);

2. Using best efforts to obtain funding from federal sources, including, where applicable, FAA Airport Improvement Program ("AIP") grants-in-aid and TSA grants (collectively, "Federal Funding Sources"), and to comply in all material respects with federal funding requirements, and to make such Federal Funding Sources available for the Project, subject to City's prior obligations, including without limitation (i) all existing and presently contemplated funded debt and funding sources (including Federal Funding Sources), (ii) City's authority to direct such funds, (iii) reservation of sufficient funding to support the ongoing operations and maintenance of the Airport, and (iv) City's express approval of any specified funds and payments to be made or applied to the Project (collectively, "City Funding Conditions"); all City obligations in this Section IV shall be subject in all instances to all City Funding Conditions; Developer and City further acknowledge that to the extent federal funds, including, but not limited to, PFC Revenues and AIP grants, are applied to the Project, the relevant sections of the CFR will apply;

3. Making available the PFC Revenues, subject to FAA regulations and approvals, it being acknowledged that the Transaction Documents may include a cap on the amount of PFC Revenues to be applied to the Project;

4. Making available other funding derived from Airport Revenue, as appropriate, consistent with City's Master Bond Ordinance;

5. Diligently negotiating the Transaction Documents and pursuing all necessary approvals of the same;

6. Reasonably cooperating with Developer in obtaining all approvals from FAA, TSA, U.S. Customs and Border Protection, and all other state or federal governmental authorities, consistent with City's role as Airport Sponsor, as deemed necessary by and acceptable to City;

7. Reasonably cooperating with Developer to arrange financing for the Project. Without limitation of the foregoing, in no event shall such financing be or constitute a general indebtedness of City. Neither the full faith and credit nor taxing power of City will be pledged to the payment of such financing;

8. Seeking authorization to impose and use PFC Revenues at a level to be determined by City during the financing of the Project; City will work cooperatively with Developer to optimize PFC pay-as-you-go and leveraging for Project financing;

9. Cooperating with Developer to establish, and adhering to, a defined process for reviewing, commenting on, and approving, as appropriate, all permit applications for Project construction, in accordance with the terms and conditions set forth in the Transaction Documents;

10. Inasmuch as City shall at all times own the Property and all improvements thereon, including the Project, it is not anticipated that the Project will be subject to sales and use taxes for the acquisition of construction materials and all tangible personal property and equipment related to the Project. Nonetheless, for the avoidance of all doubt, in the event an assertion is made that such sales and use taxes should be assessed on the Project, City's responsibilities shall include cooperating with Developer's efforts to seek exemption from sales and use taxes for the acquisition of construction materials and all tangible personal property and equipment related to the Project, to the extent permitted by state law and City ordinances, and subject to City's receipt from Developer of a legal opinion in form and content satisfactory to City that such exemptions apply to Developer and the Project, provided, that under no circumstances will City be liable to Developer if the State of Missouri denies such sales and use tax exemption;

11. Diligently negotiating and pursuing all required approvals for a New Use Agreement with the Airlines, which will establish the amount of funds the Airlines will pay to

City for use of the Airport. These amounts are expected to reflect any cost savings generated through value engineering or other cost reduction initiatives. Developer acknowledges that City's entering into a New Use Agreement with the Airlines will be a condition precedent to financial close of the Project, and that such New Use Agreement is expressly subject to approval by the City Council;

12. Remitting payments pursuant to the Development Agreement, consistent with the Finance Agreement, the other Transaction Documents and the Master Bond Ordinance; and

13. Providing Developer with all studies and other documents in City's possession, including site environmental studies, without waiving privilege or confidentiality related thereto, as necessary for Developer to perform its due diligence investigations of the Property, provided that City makes no representations or warranties regarding the completeness or accuracy of such information and subject to Developer's own analysis.

## **V. Project Oversight**

A. General. The Project will be guided by three committees: a Project Management Committee, which will focus on guiding the overall Project development process; a Project Finance Subcommittee to the Project Management Committee, which will guide development and implementation of the Project's finance structure; and a Steering Oversight Committee that will provide direction on Threshold Issues (as defined below) brought forward by the Project Management Committee.

B. Project Management Committee. The parties intend to work cooperatively in scoping and designing the Project and overseeing the Project's development. To further such ends, upon the Effective Date, a Project management committee (the "Project Management Committee") will be formed comprising Developer, City and Airlines. The Project Management Committee's responsibilities will include establishing processes for soliciting and addressing feedback from various stakeholder groups; guiding the design process, including refining the scope, developing and approving Project design, reviewing and approving construction drawings, developing the Project budget; and, following financial close, overseeing execution and administration of the Project, including managing and recommending changes.

1. The Project Management Committee will provide direction and guidance to day-to-day project managers for each respective represented party, in accordance with the committee's recommendations, and will oversee the activities of and obtain guidance and recommendations from the Project Finance Subcommittee, pursuant to Section V(C) below.

2. Each of Developer, City and Airlines will designate one respective representative who will participate in the decision-making and recommendations process, provided that the Project Management Committee may, in its discretion, invite the participation of additional representatives from each entity as it deems necessary to obtain appropriate input on specific matters considered by the committee. Each designated representative of the Project Management Committee must have the authority to provide binding guidance and consents on behalf of the entity such representative has been appointed to represent, subject to Section V(B)(4) below.

3. Initial members of the Project Management Committee will be as designated by Developer, City and Airlines, respectively, upon the Effective Date.

4. Developer must concur with all Project Management Committee recommendations before submission to the Steering Oversight Committee; provided, that in the event Developer does not concur with any recommendation, the matter will be taken up by the Steering Oversight Committee, which will have full authority to research and resolve, cooperatively with Developer, any areas of disagreement or dispute.

5. The Project Management Committee shall have three (3) City business days once all relevant information has been presented, unless otherwise consented to by Developer, in which to make decisions and provide guidance and direction on issues raised by the Project team.

C. Project Finance Subcommittee. The Project Finance Subcommittee will provide guidance and recommendations to the Project Management Committee regarding the Project's finance structure and will develop the Financial Model for the Project.

1. The Project Finance Subcommittee shall comprise six members: a Developer representative, a City representative, a KCAD representative, an Airline representative, a City external financial advisor, and a Developer external financial advisor.

2. Developer shall be responsible for leading the process of obtaining competitive bids for financial service providers, including, but not limited to, obtaining bids for Project underwriters and participating in work for rating agency presentations. The subcommittee will establish criteria for evaluating proposals received; will review proposals; and will recommend proposers for approval by the Project Management Committee and Steering Oversight Committee, all subject to City approval.

3. Recommendations promulgated by the Project Finance Subcommittee remain subject to City's approval of the Financial Model in all respects, and to Steering Oversight Committee action with respect to any Threshold Issues (as defined below).

D. Steering Oversight Committee. For any decisions that would materially affect Airline operations, Project schedule, or Project scope, or that would affect the payments required of the Airlines under the New Use Agreement, as affirmed by the Airlines ("Threshold Issues"), additional consent and approval is required from the Aviation Director and the Airlines (the "Steering Oversight Committee"). In addition, the Steering Oversight Committee will research and resolve, cooperatively with Developer, any disputed matters arising from the Project Management Committee. Although the Airlines' approval is not required for matters that are not Threshold Issues, the Airlines shall have the opportunity to provide input on such matters.

1. Aviation Director and the Airlines shall have an additional two (2) City business days to review and approve or disapprove Threshold Issues.

2. The parties agree and acknowledge that the Project Management Committee's and the Steering Oversight Committee's scope, responsibilities and processes and Threshold Matters shall be more fully set forth in the Development Agreement.

## **VI. Exclusivity**

A. Exclusive Dealings and Consideration. City and Developer agree that City will negotiate exclusively with Developer in good faith to develop the Transaction Documents and will not engage, negotiate with, solicit or accept proposals from any party other than Developer for any terminal modernization program at the Airport, until and unless the parties, in good faith, fail to successfully negotiate the Transaction Documents, subject to Section XIII. The term of the Exclusive Period shall commence as of the Effective Date of this Memorandum of Understanding

and continue, unless extended by written agreement of the parties or earlier terminated, until September 30, 2018. In addition to other rights and considerations contained herein, in exchange for being granted the exclusive right to negotiate with City for the development of the Project, Developer agrees to enter into the Funding Agreement upon mutually agreeable terms.

B. Timeline for Development of Transaction Documents. City and Developer shall establish a mutually agreeable timeline for development of the Transaction Documents. Contemporaneously with execution of this MOU, the parties will begin negotiation of Development Agreement, which shall form the basis for negotiation of each of the other Transaction Documents and which shall govern the relationship of the parties. Upon execution of the Development Agreement, this MOU shall terminate.

C. Process for Development of Financial Model. The parties will set forth in the Development Agreement the process, inputs, participants and review and approval milestones that the parties will follow to develop the Project Financial Model, as guided by the Project Finance Subcommittee as set forth in Section V(C) above.

## **VII. Project Finance**

A. Finance Agreement. Terms and conditions of Project finance provided herein are intended only to outline the contemplated financial structure of the Project. Specific Project finance terms and conditions shall be governed by and subject to the Finance Agreement and other applicable Transaction Documents.

B. Limitations of City Liability. City shall cooperate with Developer in Developer's efforts to obtain financing for the Project, as mutually agreed by the parties. No financing obtained by Developer for the Project shall be or constitute a general indebtedness of City. Neither the full faith and credit nor taxing power (including ad valorem taxes) of City will be pledged to the repayment of such financing.

C. Project Financial Structure. The Project will be 100% debt financed and is currently anticipated to utilize conduit bond financing, with no equity contribution from Developer, in accordance with City's determination that such a structure is more financially beneficial to City. Any bonds issued pursuant to such a structure shall comply in all respects with City's Master Bond Ordinance. City and Developer currently contemplate that all financing will be fixed rate debt,

with interest rates set when the bonds are sold; only Airport revenues shall be used to repay the debt, pursuant to Section VII(B) above. An illustrative timeline for Project financing milestones, to be more fully set forth in the Development Agreement, is attached as Exhibit C.

D. Developer Obligations.

1. Developer, as a member of the Project Finance Subcommittee, will be responsible for participating in the development of the financing structure for the Project in accordance with the Financial Model and with the Transaction Documents, all subject to City approval, provided that KCAD shall retain responsibility for forecasting Airport revenues and expenses and shall provide such forecasts to Developer as inputs to the Financial Model.

2. Developer, as a member of the Project Finance Subcommittee will participate in the selection of all consultants (including financial advisors, underwriters and legal counsel) participating in Project financing. Further, Developer acknowledges that City's consultants (including financial advisors and legal counsel) will be reimbursed pursuant to the Funding Agreement.

3. Developer agrees that the Transaction Documents will require that, in connection with Project financial close, Developer will deliver to City such usual and customary legal and tax opinions desired by City in connection with matters covered by the Transaction Documents from law firms approved by City, including, but not limited to, an opinion from nationally recognized bond counsel acceptable to City that the proposed financing does not adversely affect the tax exempt status of City's existing tax exempt bonds issued with respect to the Airport System, nor City's ability, under then-current law, to issue future tax exempt bonds with respect to the Airport System. Likewise, City will provide usual and customary legal and tax opinions required under the financing documentation to enable the issuance of debt financing.

4. Developer is solely responsible for satisfying its obligations under any Developer Financing Agreements and for all payment obligations with respect thereto.

5. Developer may (i) grant security interests in or assign the Developer's interest in the Transaction Documents to lenders for purposes of securing the financing for the Project or (ii) sell, pledge or assign all of its rights, title and interest in and to payments due under the Transaction Documents. Developer is prohibited from pledging or encumbering its interest, or

any portion thereof, to secure any indebtedness of any person other than (a) Developer, (b) any special purpose entity that owns Developer but no other assets and has powers limited to Developer, the Project and the work, (c) a special purpose entity subsidiary owned by Developer or by an entity described in clause (b) above or (d) the bond issuer.

6. Developer shall comply with all financing requirements and limitations as expressly set forth in the Transaction Documents.

E. Airline Contribution. City anticipates entering into a New Use Agreement with the Airlines during the Exclusive Period or a mutually agreed timeframe. The New Use Agreement will establish the amount of Airline funds the Airlines will pay to City for use of the Airport, as may be adjusted by mutual agreement of the parties, which funding source is expected to comprise a portion of Airport Revenue. Developer acknowledges that City's entering into a New Use Agreement with the Airlines will be a condition precedent to financial close of the Project, and further acknowledges that the Airlines must affirm and approve the Airline payments as reflected in the New Use Agreement prior to financial close.

F. Financial Model. The Financial Model shall be updated whenever a relevant event occurs to reflect changes in the Development Agreement, including schedule and budget changes. City must approve all updates to the Financial Model and is responsible for ensuring consistency of the Financial Model with the New Use Agreement at financial close. If Developer reaches financial close under a financial approach different than that reflected in the Financial Model, City is entitled to share the benefit of any reduced financing costs and shall share the risk of any increased financing costs, as set forth in the Transaction Documents.

G. Refinancing. City approval is required for refinancing, provided City shall have no obligations or liability with respect to refinancing and Developer shall reimburse City for fees incurred in connection therewith; and City shall share in any gains from a decrease in debt service/financing costs or from an increase in Developer financing, with Project payments lowered or increased accordingly. Developer acknowledges that City may share with the Airlines any gains or costs City shares with Developer, via the New Use Agreement.

H. Financial Close.

1. Conditions to financial close shall be as set forth in the Transaction Documents, and are expected to include, at a minimum, requirements similar to the following:

- i. Developer has delivered initial drafts of Developer Financing Agreements 60 days prior to proposed financial close with subsequent drafts delivered no later than 45 days prior to proposed financial close;
  - ii. Developer will deliver all debt and equity financing, as appropriate;
  - iii. All necessary parties have executed the Transaction Documents;
  - iv. Developer and City have delivered bringdown of legal opinions; and
  - v. Developer and City have provided notice of satisfaction of all conditions precedent as set forth in the Transaction Documents.
2. Financial close will occur on a date mutually agreed by the parties, as set forth in the Transaction Documents.

### **VIII. Project Security.**

Developer shall be required to furnish security for development and completion of the Project, which is anticipated to include all or some of the following, as set forth in the Transaction Documents, commensurate with airport projects of similar value and complexity: payment and performance bonds, bid bonds, guaranties, and letters of credit. Developer and its owners will provide financial information satisfactory to City to evidence Developer's ability to perform and deliver the Project. Developer acknowledges that City may use a third party to verify Developer's financial information; to the extent City, rather than a third party, receives any Developer financial information, City agrees to keep, and shall cause its vendors to keep, such information confidential to the extent permitted by law.

### **IX. Development Agreement/Project Management.**

A. Development Agreement Process. The Development Agreement will outline the design, construction, and finance of the Project including, without limitation, provisions addressing: responsibilities and processes of the Project Management Committee to guide Project development and construction; a Project management plan; design and materials standards and guidelines; sizing requirements; sustainability standards; a permit review and approval process with respect to City-issued permits; Key Project Personnel; contracting requirements, including flowdown provisions and promulgation of a MBE/WBE plan and Community Benefit Agreement; a Funding Agreement, consistent with the RFQ/P; Project security and specific lender requirements; submittal, review and approval processes and requirements; Project management software requirements; Project Site security; obligations of City and

Developer with respect to Project Site access and integration with existing facilities; OSHA-compliant HASP; environmental compliance and standards and hazardous material handling, including risk allocation for pre-existing conditions and hazardous materials; payment processes and procedures; changes to the work by both City and Developer, including directives issued by City; shared cost savings and windfall provisions; defective work and remedies; relief events and force majeure; substantial and final completion of the Project; “Operational Readiness and Transition” plans; defaults and remedies; termination; liquidated damages; dispute resolution; insurance requirements; indemnification; audit rights; and intellectual property.

B. Project Reporting Status. No later than July 1, 2018, Developer and KCAD shall jointly develop and provide to City a comprehensive report and presentation regarding the status of: (i) the negotiation of the Development Agreement, including key provisions addressed and those outstanding, with a timeline for addressing any outstanding issues and concluding negotiations; (ii) design development, with a discussion of key issues and milestones prior to financial close; (iii) Developer’s ability to fulfill all its obligations to meet schedule and deliverable requirements pursuant to this Agreement; and (iv) committee progress toward advancing Project development, including a review of the work of the Project Management Committee, Steering Oversight Committee and Project Finance Subcommittee.

## **X. Contracting**

A. Key Project Personnel. Developer shall be required to retain Key Project Personnel for the duration of the Project, as defined and set forth in the Development Agreement, and may not substitute Key Project Personnel except due to termination of employment, retirement, death, injury or other similar circumstances without City’s express written prior approval, which may be withheld for any reason. Developer’s preliminary schedule of executive team Key Personnel is shown on Exhibit D, followed by a matrix of qualification standards for key Project team positions.

B. Compliance with Laws. Pursuant to the Development Agreement, Developer must comply with all applicable federal, state and local laws, regulations, ordinances, rules, orders and other requirements; all individuals performing the work on the Project must have required licenses or certifications.

C. Prevailing Wage. Developer agrees to comply with, and cause all contractors and subcontractors to comply with, all applicable provisions of the Missouri Prevailing Wage Act (as

used in this Section X(C), the “Act”), Employee Classification Act, and other applicable labor laws for construction of the Project, and to grant City’s prevailing wage monitors (i) access to those documents relating to prevailing wage, and (ii) access to Project workers for interview purposes. The parties intend that the Project will be subject to the Act or any other prevailing wage laws and regulations. In the event the Act ceases to remain in force throughout Project development and construction, Developer agrees it will comply with, and cause all contractors and subcontractors to comply with, the higher of the prevailing wage rates in effect upon the Act’s termination or the scheduled wage rates incorporated in the Development Agreement.

D. Davis Bacon. Developer agrees to comply with the Davis Bacon Act for those portions of the Project that are funded in whole or in part with federal funds, or whenever federal funds are used on the Project. Developer agrees to work with City to determine in advance, to the extent feasible, which components of the Project work will be subject to Davis Bacon requirements.

E. Affirmative Action. Pursuant to the Development Agreement, Developer shall adopt an affirmative action program consistent with City’s Affirmative Action ordinance set out in Sections 3-401 through 3-409, Code of Ordinances, and shall cause all contractors and subcontractors to similarly comply with the requirements of City’s Affirmative Action ordinance.

F. Construction Employment Program. Pursuant to the Development Agreement, Developer agrees to establish and maintain a construction employment program for the Project, consistent with City’s Construction Workforce Program ordinances (the “Construction Employment Ordinances”), as set out in Sections 3-501 through 3-527, Code of Ordinances, and consistent with Sections X(F)(1)-(3) below. Developer’s Construction Employment Program shall include the following:

1. Developer shall cooperate with City to monitor compliance with hiring goals for the Project;
2. Developer shall submit to City a workforce preparedness plan to actively seek participation of minorities and women and provide them with the resources necessary to enter a program for training and employment to learn a skilled construction trade. Such plan shall include, as appropriate, (i) partnering with community-based organizations and post-secondary educational institutions to create programs that facilitate entry into the construction industry by providing job readiness training, construction trades awareness and training, skills

assessment testing to increase the ability to pass construction trades entrance examinations, (ii) conducting recruitment efforts targeting City residents, minority and women community-based organizations, schools with significant minority student populations, and training organizations serving the recruitment area, (iii) supporting training programs that facilitate entry into the construction industry and which may include an on-the-job or in-house training program, and (iv) utilizing Clark Construction Company's Strategic Partnership Program.

**G. Minority and Women's Business Enterprises Participation.** Pursuant to the Development Agreement, Developer shall use good faith efforts to meet or exceed the MBE and WBE participation goals for the Project, as established in coordination with HRD upon Developer's validation of Project scope and estimated budget, or as set forth in this Section X:

**1. Construction Services.**

- i. City Goals.** In accordance with HRD's mandated procedures set forth in City Code Section 3-421 through 3-469, HRD shall, upon review and analysis of Developer's budget for the Project, establish M/WBE construction utilization goals for the Project. Pursuant to the Development Agreement, Developer shall use good faith efforts to meet or exceed the MBE and WBE participation goals set by HRD for the Project, cumulatively for all tiers, subject to availability and opportunity, and shall be based on subprime and/or subcontract cost, as established in coordination with HRD upon Developer's validation of Project scope and estimated budget, or as set forth in this Section X.
- ii. Developer Commitments.** In addition to the foregoing City Goals, Developer has committed to use good faith efforts to achieve construction services utilization of 20% MBE and 15% WBE construction participation cumulatively for all tiers. City and Developer acknowledge and agree that Developer's commitment to use good faith efforts to achieve a construction utilization of 20% MBE and 15% WBE is a material provision to Developer's selection by the City as the developer for the Project. Developer agrees that, if and to the extent the City goals set by HRD for construction services are less than Developer's proposed 20% MBE and

15% WBE construction services commitment, Developer shall nonetheless agree in the Transaction Documents to use good faith efforts to achieve 20% MBE and 15% WBE construction services participation cumulatively for all tiers (such number defined as the “Developer Construction Commitment”). The standards by which Developer’s efforts to achieve the Developer Construction Commitment shall be evaluated utilizing criteria set forth in the Transaction Documents, and shall incorporate, among other terms, financial offsets or penalties for any failure of Developer to use good faith efforts to meet the Developer Construction Commitment.

2. Professional Services.

- i. City Goals. In accordance with HRD’s mandated procedures set forth in City Code Section 3-421 through 3-469, HRD shall, upon review and analysis of Developer’s budget for the Project, establish M/WBE professional services utilization goals for the Project. Pursuant to the Development Agreement, Developer shall use good faith efforts to meet or exceed the MBE and WBE professional services participation goals set by HRD for the Project, cumulatively for all tiers, subject to availability and opportunity, and shall be based on subcontractor and/or subcontract cost, as established in coordination with HRD upon Developer’s validation of Project scope and estimated budget, or as set forth in this Section X.
- ii. Developer Commitments. In addition to the foregoing City Goals, Developer has committed to use good faith efforts to achieve MBE and WBE professional services utilization equal to 20% MBE and 15% WBE construction participation cumulatively for all tiers. City and Developer acknowledge and agree that Developer’s commitment to using good faith effort to achieve a combined professional utilization of 20% MBE and 15% WBE is a material provision to Developer’s selection by the City as the developer for the Project. Developer agrees that, if and to the extent the goals set by HRD are less than Developer’s proposed 20% MBE and 15% WBE professional services utilization, Developer shall nonetheless agree in

the Transaction Documents to use good faith efforts to achieve 20% MBE and 15% WBE professional services participation cumulatively for all tiers (such number defined as the “Developer Professional Services Commitment”). The standards by which Developer’s efforts to achieve the Developer Professional Services Commitment shall be evaluated utilizing criteria set forth in the Transaction Documents, and shall incorporate, among other terms, financial offsets or penalties for any failure of Developer to use good faith efforts to meet the Developer Professional Services Commitment.

3. Developer and HRD agree to work cooperatively to gather and analyze workforce data that will be used as the foundation for establishing the Project workforce participation goals, to be set forth in the Development Agreement, and Developer agrees to make good faith efforts to achieve workforce participation goals greater than 10% minority participation and 2% female participation, to the extent reasonably feasible;

4. Developer shall incorporate flowdown provisions in all subcontracts to require all subcontractors to (i) make good faith efforts to achieve the City Participation Goals and (ii) achieve Developer’s Contract Pledge as set forth in this Agreement; and

5. Developer will hire an outside monitor to work with HRD staff to track Developer’s compliance with the Project’s prevailing wage/MBE/WBE construction employment program requirements, and to ensure utilization of City’s compliance monitoring program, including using City’s online diversity management system and labor compliance management electronic tracking tool; Developer will require its General Contractor(s) and subcontractors for professional services and construction services to similarly utilize City’s compliance monitoring program.

H. Community Benefit Agreement. Developer shall propose a community benefit agreement that sets forth provisions through which it will provide specific opportunities, benefits and/or mitigation to designated City communities (the “Community Benefit Agreement”), in coordination with the FAA and City to determine Project funding eligibility. If an FAA Determination or any other regulatory authority prohibits Developer from allocating Project funds or resources for any of the programs identified in the Community Benefit Agreement, then Developer shall work

cooperatively with City to identify alternative funding sources for any program for which the FAA has prohibited expenditures. Funds secured from alternative sources under this provision shall not reduce any Developer funding commitments otherwise made under the Community Benefit Agreement, and, should no alternative funding sources be identified, then Developer shall be solely responsible for funding, or causing to be funded, such programs. The Community Benefit Agreement, proposed terms and implementation structure for which are more fully set forth in Exhibit E, is valued at \$28.85 million and is expected to include:

1. Free or subsidized transportation options to Project workers;
2. Availability of licensed childcare during Project development;
3. An on-site health clinic for Project workers;
4. Low-interest working capital loan program to provide working capital to MBE/WBE/SLBE/SDVOSB/VOSB businesses that seek to perform Airport- or Project-related work and /or provide services in Airport facilities;
5. Accelerated payment program to enable Kansas City MBE/WBE/SLBE/SDVOSB/VOSB certified firms to be paid within fourteen (14) business days after submitting a properly documented request for payment;
6. Financial guidance for MBE/WBE/SLBE/SDVOSB/VOSB businesses to facilitate access to independent bonding lines;
7. A self-bonding program to provide payment and performance bonding for MBE/WBE/SLBE/SDVOSB/VOSB businesses to participate in the Project;
8. Making available up to 5,000 SF of business incubator space at the Project site for MBE/WBE/SLBE/SDVOSB/VOSB construction- or airport-related businesses during Project construction; and
9. Workforce training, pre-apprenticeship and mentorship programs, general contractor training, strategic partnerships and internships.

In addition, Developer will support programs that benefit the broader City community by investing in the Love Thy Neighbor Fund and Shared Success Fund, as well as in programs or organizations whose purpose is to preserve culturally significant historical properties, and programs to benefit Northland communities and to support Northland infrastructure development near the airport, all as set forth in Exhibit E.

I. Local Hiring Preference. Consistent with applicable law, Developer agrees to work with City to determine appropriate local hiring preference goals for hiring within the Kansas City metropolitan statistical area, to be set forth in the Development Agreement, and agrees to make good faith efforts to achieve such local hiring preference goals.

## **XI. Insurance**

A. General. Developer shall provide and maintain throughout the Project such insurance coverage as is required pursuant to the Transaction Documents. City reserves the right to approve all Project-specific insurance policies and any Developer-supplied insurance program. If Developer Financing Agreements require higher limits or broader coverage than required by City pursuant to the Development Agreement, Developer's provision of such insurance pursuant to the Financing Agreements shall satisfy the applicable requirements of the Development Agreement.

B. Provisions. Insurance requirements will be set forth in the Development Agreement and are expected to provide, in part:

1. Developer's insurance provider must be qualified, licensed in Missouri, category rating of A or better, and otherwise approved in writing by City;
2. City will have no liability for insurance deductibles except as otherwise provided in the Transaction Documents;
3. Each policy will provide that coverage is primary and non-contributory coverage;
4. Where customary for projects similar to the Project, and for the type of coverage obtained, policies will identify City as an additional insured;
5. Developer's delivery of certificates of insurance and written evidence of insurance for each insurance policy to City, as well as complete certified copy within 120 days of issuance or renewal. Failure to deliver notice will trigger City's right to obtain such policy at Developer's cost and to suspend work until proofs of coverage are received;
6. Except as expressly provided in the Development Agreement, all insurance policies shall be purchased specifically and exclusively for the Project;
7. All policies required to insure additional persons shall comply with the following:
  - i. General Liability and Builders Risk shall be written so no acts of an insured shall vitiate coverage of other insureds;

- ii. Insurance shall apply separately to each named insured and additional insured against whom a claim is made or suit is brought, except with respect to limits of insurer's liability;
- iii. Each policy, except for professional liability insurance, shall provide coverage on occurrence basis and not "claims made" basis;

8. Insurance policies shall support but are not intended to limit Developer's indemnification obligations under the Transaction Documents.

## **XII. Indemnification**

A. Developer Indemnity. Developer shall indemnify, hold harmless and defend City, its affiliates, officers, trustees, elected or appointed officials, agents, volunteers and employees, from and against any and all claims, liability (including judgments and settlements), damages and expenses (including reasonable attorneys' fees) involving a third party claim, arising out of or resulting from: all acts or omissions in connection with the Project, this MOU, or any Transaction Document but only to the extent caused by Developer or Developer's agents, contractors, officers, affiliates, subcontractors, and employees. Developer is not obligated under this section to indemnify City for the sole negligence of City; or a breach of any of the representations, covenants, provisions, terms, obligations or duties contained in this MOU.

## **XIII. Termination**

A. Termination of MOU by City. City shall have the right to terminate this MOU no sooner than ten (10) days after giving Developer written notice of such termination, with no further rights or obligations owing to Developer, if: (i) the Project is the subject of a legal challenge or citizen referendum; (ii) the Project is determined to adversely impact City's existing bond obligations or City's bonding capacity; (iii) Developer has failed to engage in good faith efforts to negotiate the Development Agreement during the Exclusive Period; (iv) any aspect of Developer's Proposal is determined to have been intentionally false, fraudulent or misleading; or (v) for City's convenience. In the event of such termination, Developer will have no right, and will expressly waive the right, to seek monetary damages of any kind, including but not limited to: actual damages, economic damages, consequential damages, lost profits or any other damages from City under the MOU or any action related to the MOU, except as otherwise stated herein. The

Developer will have no other right or remedy against City, including any action for specific performance, the filing of a *lis pendens* or otherwise.

B. Termination of MOU by Developer. Developer may not terminate this MOU except (i) if City has failed to engage in good faith efforts to negotiate the Transaction Documents during the Exclusive Period, or (ii) if City has materially breached any of the terms and conditions of this MOU. In the event of (i) or (ii) above, the Developer may, at its option, terminate this MOU upon ten (10) days' written notice to City and City shall pay to Developer the Out-of-Pocket Project Costs incurred beginning November 8, 2017 through the date of termination, pursuant to the terms of the Out-of-Pocket Project Cost Agreement. Upon such termination, neither City nor Developer shall have any further rights or obligations hereunder except as otherwise provided in this Section XIII and the Transaction Documents.

C. Termination of MOU by Execution of the Development Agreement. Upon execution of the Development Agreement, this MOU shall automatically terminate, shall be of no further force or effect, and the parties shall have no further obligation under this MOU except as specifically set forth in the Development Agreement.

D. Termination of Development Agreement. City's and Developer's respective rights to terminate the Development Agreement shall be as set forth in the Development Agreement.

E. Payment of Out-of-Pocket Project Costs Upon Termination. Notwithstanding anything in this MOU to the contrary, if the parties fail to achieve financial close for any reason, including termination of this MOU or, once executed, the Development Agreement, other than as a result of Developer's fraudulent act or willful misconduct, City shall pay Developer's Out-of-Pocket Project Costs incurred beginning November 8, 2017 through the date of termination, pursuant to the terms of the Out-of-Pocket Project Cost Agreement, attached hereto as Exhibit F. In such event, neither City nor Developer shall have any further rights or obligations under this MOU or any other Transaction Document except as otherwise expressly set forth herein or therein, or as provided in the Out-of-Pocket Project Cost Agreement.

#### **XIV. Assignment/Change in Control**

A. Developer Assignment and Transfer. Developer shall not assign or transfer any of Developer's interest in this MOU or any Transaction Documents except to an affiliate entity of the

Developer or as provided in the Transaction Documents. Developer's right of assignment is anticipated to be limited to Developer-controlled entities until after Substantial Completion is achieved and thereafter, only with City's express prior written approval.

B. Assignment by City. City may assign all or any portion of its rights in the MOU or Transaction Documents, without Developer's consent, to any other entity that succeeds to governmental powers of City and has the sources of funding for Project payments, and to any other party with the prior written consent of Developer.

## **XV. Miscellaneous**

A. Open Records. Developer acknowledges that all Project-related records and documents in City possession are subject to the Missouri Sunshine Law, subject only to certain exceptions for proprietary information protected from public disclosure by law. Each page of each document containing such proprietary information shall be marked prominently in at least 16 point font with the words "Proprietary Information". Developer also acknowledges that all Project-related records and documents in its possession are subject to audit and may also be subject to the Missouri Sunshine Law. Developer will designate a point of contact for all Missouri Sunshine Law requests, in conjunction with City's Aviation Department.

B. Authorities. City's City Manager shall be City's signatory solely for purposes of providing all consents and approvals provided for herein, subject to City Manager's receipt of all necessary authorizations and subject to City Council approval of all Transaction Documents and any other documents City deems necessary, and, further provided, City Manager may delegate certain authorities related to implementation of the Transaction Documents. Notwithstanding anything to the contrary in this MOU, nothing herein shall be construed in a way that would limit, usurp or otherwise impair the governmental authority and police power of City or otherwise waive or modify any provision of law.

C. Counterparts. This MOU may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

D. Approval and Consents. Wherever one of the parties has the ability under this MOU to grant some right, make a determination, or approve or consent to an action, document, undertaking

or other request, such grant, determination, or approval or consent shall not be unreasonably withheld, conditioned, or delayed.

E. Dispute Resolution. The parties acknowledge that the Development Agreement will provide for a dispute resolution process the parties will agree to implement if a dispute cannot be solved through good faith discussions, notwithstanding City's reservation of rights to litigate certain disputes, as shall be set forth more fully in the Development Agreement. The parties' dispute resolution process is expected to include multiple levels, potentially including elevation of matters within each party's leadership structure, mediation, and other potential vehicles for resolving disputes.

F. Mutual Waiver. In no event shall either party be liable to the other for any economic damages, consequential damages, lost profits, or other special, indirect, or punitive damages arising or resulting from this MOU.

G. Applicable Law. The applicable laws of the State of Missouri shall govern the validity, construction and effect of this MOU. All disputes arising under or relating to this MOU shall be filed, maintained, and resolved in accordance with the laws of the State of Missouri without regard to its conflict of law rules.

H. Notices. A notice or communication under this MOU by either Party to the other shall be sufficiently given or delivered if dispatched by hand, national courier services, or by registered or certified mail, postage prepaid, addressed as follows:

a. If to City:

City Attorney's Office  
City Hall, 28<sup>th</sup> Floor  
414 E 12<sup>th</sup> St.  
Kansas City, MO 64106  
Telephone: (816) 513-3122

Director of Aviation Department  
601 Brasilia Avenue  
Kansas City, MO 64153  
Attn: Pat Klein  
Telephone: (816) 243-3107

With a copy to:

Husch Blackwell LLP

4801 Main Street, Ste. 1000  
Kansas City, MO 64112  
Attn: Charles Renner  
Telephone: (816) 329-4702

b. If to Developer:

Edgemoor Infrastructure & Real Estate LLC  
7500 Old Georgetown Rd.  
Bethesda, MD 20814  
Attn: Geoffrey Stricker  
Telephone: (301) 272-2990

With a copy to:

Edgemoor Infrastructure & Real Estate LLC  
7500 Old Georgetown Rd., 3<sup>rd</sup> Floor  
Bethesda, MD 20814  
Attn: Frank J. Baltz  
Facsimile: (301) 272-1916  
Telephone: (301) 272-8181

IN WITNESS WHEREOF, the parties hereto have caused this MOU to be executed as of the Effective Date.

DEVELOPER:

EDGEMOOR INFRASTRUCTURE & REAL ESTATE  
LLC

By: \_\_\_\_\_

Name: Neal Fleming

Title: President

By: \_\_\_\_\_

Name: Geoffrey Stricker

Title: Managing Director

CITY:

CITY OF KANSAS CITY, MISSOURI

By: \_\_\_\_\_

Name: Troy M. Schulte

Title: City Manager

APPROVED AS TO FORM:

By: \_\_\_\_\_

Name: Galen P. Beaufort

Title: Senior Associate City Attorney

**EXHIBIT A:**

**Project Site**

[Attached]

## **EXHIBIT B:**

### **Project Scope**

The initial Project scope outlined below is as provided in a referendum approved by a majority of Kansas City, Missouri voters on November 7, 2017. The final Project Scope will be mutually agreed upon prior to financial close by the Developer, City, and Airlines after Program validation and schematic design is completed, and will become the design basis for the Project.

1. Terminal access will be provided from the existing airport roadway system.
2. A two-level terminal roadway serving arriving and departing passengers achieving required curb length. Separate commercial curbs will be provided to serve courtesy shuttle services, rental car buses, public buses and other commercial ground transportation requirements.
3. Approximate 750,000 square foot terminal facility, including curbside, ticketing lobby, TSA compliant security screening checkpoint, TSA compliant in-line Checked Baggage Inspection System and associated support areas, baggage claim areas, and associated support functions. Facility to include secure concourses providing concessions and customer amenities, capable of providing 35 ADG III aircraft (including 4 City-controlled, internationally capable gates and associated Federal Inspection Services) with expansion option to 42 gates and Airline operational support facilities incorporated to successfully operate and maintain terminal-related functions.
4. Airline equipment to address air carrier operations in the terminal, including passenger boarding bridges, aircraft support systems (e.g., pre-conditioned air, ground power, potable water, etc.), communications infrastructure, common use communications system for City-controlled gates, information display systems (e.g., flight information display systems, baggage information display systems, etc.), inbound and outbound baggage handling systems, and applicable tenant finishes.
5. Terminal aircraft apron and non-movement areas sized to accommodate aircraft fleet, dual taxi lanes as appropriate to accommodate B757 aircraft, connections to taxiways, adequate remaining overnight aircraft parking positions, and approximately eight (8) common use deicing pads and associated collection system.
6. Aircraft in-ground hydrant fueling system to service the 35 gates with a connection to the existing aviation fuel farm system. New system will include piping, isolation valves, fuel pits, emergency shut-offs and meet current environmental requirements.
7. Multi-level public parking structure with approximately 6,500 parking spaces adjacent to the terminal, and connected to the landside terminal via pedestrian walkways and a pedestrian tunnel. Covered pedestrian walkway from Terminal B garage to terminal.
8. Close-in public surface parking with approximately 2,000 parking spaces within walking distance of the terminal.
9. Associated site development, including relocation of pipelines, natural gas lines, communications facilities, and electronic transmission lines; demolish existing terminals as

necessary; environmental mitigation (if any); site grading and drainage; fencing; construction access roads and staging areas, among other things.

10. Plan will incorporate maintenance of operations and phasing plan to ensure operations in Terminals B & C are maintained during construction.

**EXHIBIT C:**

**Illustrative Timeline and Activities for Project Financing Assuming January MOU**

KCI Airport 2018 Weekly Schedule to Financial Close						
Week ending	Development Loan	Long Term Financing	Conduit	Underwriter, Bond Counsel, Disclosure Counsel, Trustee	Underwriter's Counsel, Issuer Counsel	Rating Process
11/3/2017		Finance call with KCAD and Advisors on financial model				
11/17/2017		Finance call to discuss roles -				
12/8/2017		Finance call with KCAD and City to discuss financing strategies				
12/29/2017		Finance call to discuss financial structure language for MOU				
1/5/2018	Appoint development loan lenders' counsel					
1/12/2018	Receive Ashurst comments on MOU, RA; circulate summary term sheet to KCI					
1/19/2018	Banks initiate credit process			KCDA to send sample RFPs to Edgemoor/PFAL		
1/26/2018	Banks receive credit approval; credit agreement agreed		Circulate Conduit Issuer RFP, list of potential recipients			
2/2/2018	Development loan credit agreement executed		Receive comments on Conduit RFP and recipient			
2/9/2018			Release conduit issuer RFP	Circulate draft RFPs		
2/16/2018			Receive conduit responses	Receive KCDA comments on		
2/23/2018				Circulate proposed list of recipients for each RFP		
3/2/2018			Circulate evaluation of conduit responses	Agree list of recipients		
3/9/2018		Circulate shortlist of viable financing options	Select conduit issuer	Release RFPs		PFAL - introductions to rating agencies
3/16/2018				Receive responses		
3/23/2018				Circulate evaluations		
3/30/2018				Select senior manager, bond counsel, disclosure counsel, trustee	Circulate draft RFPs, potential recipients	
4/6/2018					Receive comments on RFP, release to recipients	
4/13/2018					Receive responses	
4/20/2018						Complete Rating Agency Diligence Package and Strategy
4/27/2018					Circulate evaluations	
5/4/2018					Select underwriter counsel, issuer counsel	
5/11/2018						
5/18/2018						Approach Rating Agencies; agree pricing
5/25/2018		Finalize Financial Plan				Circulate Rating Agency Presentation
6/1/2018						
6/8/2018						
6/15/2018						Finalize Rating Agency Presentation
6/22/2018		Trust indenture issued				Run Rating Process; Kick off presentations
6/29/2018		POS circulated				
7/6/2018		Comments on POS, comments				
7/13/2018		2nd draft POS, comments on POS; 2nd draft indenture,				
7/20/2018		3rd draft POS, comments on POS; 3rd draft indenture,				Receive ratings
7/27/2018		Bond road show kick off				
8/3/2018			Conduit resolution of intent			
8/10/2018		Finalize Finance Docs, Final POS				
8/17/2018		Final indenture issued;	Conduit ordinance as			
8/24/2018		Receive approvals from KC City Council as needed				
8/31/2018						
9/7/2018		TEFRA hearings				
9/14/2018						
9/21/2018		Pricing, Bond Purchase				
9/28/2018		Financial Close				

**EXHIBIT D:**

**Developer's Key Project Personnel and Qualifications for Key Positions [to be attached]**

<b>PERSONNEL</b>	<b>ROLE</b>
<b>Geoff Stricker, Project Executive</b>	Geoff will provide executive level oversight for the planning and execution of the entire KCI Airport Project. Geoff will use his extensive experience in a similar role on other large scale P3s to ensure timely and costly delivery of this unique and complex Project.
<b>Greg Colevas, Construction Executive In Charge</b>	Greg will serve as the lead construction executive, providing project management direction, leading labor relations activities, and implementing initiatives to achieve MBE/WBE participation goals.
<b>Dan Moylan, Project Director</b>	Dan will serve as the on-site, day-today point of contact for the Airport. Throughout the life of the Project, he will provide overall management direction for the project along with Clark/Weitz/Clarkson and SOM management.
<b>Lou Palandrani, Lead Contractor</b>	Using his extensive airport experience, Lou will provide leadership and maintain responsibility of the overall performance of the design-build team. Lou is a design-build expert who is currently partnering with SOM on the Sea-Tac IAF progressive design-build project.
<b>Derek Moore, Lead Design Team</b>	Derek specializes in the strategic planning, architectural layout, and design of major international terminals. As Lead Design Team, he will partner with Lou Palandrani to lead all phases planning, design and construction administration, and will ensure that the KCI airport remains operational throughout phased construction.
<b>Wes Stith, Small Business Director</b>	Wes will oversee Developer's good faith efforts to achieve the goals of KCI's MBE/WBE plans. Wes will develop bid packages specific for small businesses, coordinate opportunity fairs, small business workshops and seminars and is committed to working cooperatively with M/WBE firms to provide meaningful roles on this Project.

<u>Key Positions</u>	<u>Experience Required For This Position</u>
<b><u>DEVELOPER</u></b>	
<b>Finance Manager</b>	The Finance Manager will provide management and oversight of the KCI new Terminal financing. The Finance Manager will have significant experience with large-scale project financing and infrastructure projects. The individual will be experienced in transaction structuring, rating agency strategy, and financial modeling.
<b>Marketing Manager</b>	The Marketing Manager will be responsible for coordinating communications and outreach for the Edgemoor team. The individual will interact with media, prepare quarterly update reports, develop newsletters, and plan project milestone events.
<b>Development Manager</b>	The Development Manager will have experience developing complicated infrastructure and/or master development projects. The Manager will have a strong knowledge of the construction and delivery process spanning from project conceptualization through permits and construction management.
<b>Accounting Manager</b>	The Accounting Manager will be responsible for all of the financial and administrative reporting for the project. This individual will prepare monthly pay reqs, validate invoices from contractors and consultants, and be responsible for all accounts payable and receivable activities. In addition, the accounting manager will be responsible for preparing and distributing monthly reports to the owner that include project progress, upcoming schedule, cost tracking, and other project issues.
<b><u>DESIGN-BUILDER</u></b>	
<b>Design Project Manager</b>	This member of the team will work for SOM and will bring to this project the ability to manage the entire design team on large, technically complex airport projects with critical construction, phasing, and operational requirements while fostering a high level of teamwork coupled with effective communications skills. The design team will be made up of more than 20 firms specializing in different disciplines of architecture and engineering, and this individual will coordinate and lead the design team to ensure that the work product is achieving the requirements for quality, schedule, and budget. This individual will have performed this same role successfully on several large aviation projects. He or she will be experienced in working on design-build projects in a co-located office approach, and also in working with design-build and design-assist subcontractors.
<b>Design Quality Control Manager</b>	Our Design Quality Control Manager will supervise the Design Quality technical services of all disciplines of the design team during the schematic design, design development, and contract document phases. This individual will have successfully performed this same role on several large, design-build aviation projects. This team member will work for SOM and will be well trained in quality management and the detailed processes established for producing a coordinated set of documents throughout the design process.

<b>Design-Build Integration Manager</b>	Our Design-Build Integration Manager will serve as the critical link between the design and construction teams. This individual will bring successful experience working as a design manager for the Architect, and also for the Contractor, so that he or she is well prepared to integrate the processes between design and construction. A specific skill for this position is the professional and personal ability to solicit input from various stakeholders, listen fully and actively, and then convert that information into actionable direction.
<b>Preconstruction Manager</b>	The role of our Preconstruction Manager will be to work with the design-build team during this project's earliest stages to maximize constructability, evaluate building materials and systems, value engineer early designs, integrate sustainable elements, and provide an accurate budget and schedule. This individual will have successfully performed this role on several large public projects with similar procurement goals and requirements. He or she will be experienced in budgeting of airport projects, as well as design-build and design-assist procurement methods where a fixed price is established on an incomplete set of documents.
<b>Contracting Procurement Manager</b>	This member of our team will oversee the procurement of the construction subcontracts that CWC will execute on the project. This includes drafting the exhibits to ensure that the project requirements are being met and the contracts are all coordinated. He or she will bring experience from having performed this role on several large public projects with similar procurement goals and requirements. This individual will also be experienced in the procurement of design-build and design-assist subcontractors.
<b>Design-Build Project Manager</b>	Our Design-Build Project Manager will lead the design-build team and will be responsible for all aspects of CWC's performance on the project. This individual will have extensive experience with successfully managing on-site operations for large, complex projects, many of which include planning construction operations that minimize interruptions to both regular facility operations and the public.
<b>Construction Superintendent</b>	As the Construction Superintendent, this individual will apply his planning, logistics, and phasing experience and will lead all operations in the field. This includes the responsibility for management of the schedule, quality, and safety programs being implemented in the field. This individual will be experienced in planning and leading all of the field operations on a large-scale, technically complex, design-build project.
<b>Construction Quality Control Manager</b>	Our Construction Quality Control Manager will participate in design review, work with the team to write and implement the Quality Control plan, and will be actively involved in on-site quality control, mock-ups, punch list and warranty inspections. This individual will be trained in the processes for Quality Management Planning and he or she will bring successful experience in leading and managing the quality control program for a large, complex, design-build project.

<b>Airport Operations Liaison</b>	This member of our team will be responsible for coordinating with the airlines and acting as a liaison to ensure that there is no impact to ongoing airline operations and to ensure that all transitions are well coordinated so they are implemented without any surprises. He or she will bring experience from having successfully performed this role on a previous project.
<b>Safety Manager</b>	This individual will have a proven track record of effective risk management in large-scale jobs and will provide safety management and compliance review for the entire KCI Airport Project. He or she will have their OSHA-30 hour training certificate.

**EXHIBIT E:**

**Proposed Community Benefit Agreement Terms and Implementation Structure**

<b>I. Introduction</b>	This term sheet sets forth a range of community benefits, valued at \$28.85 million, that will be provided via a Community Benefit Agreement that Developer will implement, or will cause to be implemented, as part of the KCI Terminal Modernization Program for the duration of the Project’s construction, through Final Completion, or for such term as otherwise specified herein. Developer shall have sole responsibility for funding, or causing to be funded, the programs and benefits identified herein, to the extent alternative funding sources are unavailable and/or such benefits and programs are not deemed qualified Project costs by the FAA, pursuant to Section IV below.
<b>II. Definitions</b>	<p>As used in the Agreement, the following capitalized terms shall have the following meanings. All definitions include both the singular and plural form.</p> <p>“Agreement” means a Community Benefit Agreement to be entered into concurrently with the Transaction Documents.</p> <p>“Airport Contract” means a contract awarded by the Developer and pertaining to KCI and subcontracts of any level under such a contract.</p> <p>“Airport Job” means a job for which the employer is the Kansas City Aviation Department, an airport contractor, an airport lessee, or an airport licensee, and either (1) the job is performed on-site, or (2) the job is related to an airport-related contract, lease, licensing arrangement, or permitting arrangement.</p> <p>“Aviation-Related Job” means a job other than an Airport Job that is on-airport or off-airport and that the FAA approves pursuant to the provisions of the Agreement.</p> <p>“City” means the City of Kansas City, Missouri.</p> <p>“Development Agreement” means the Development Agreement entered into between Developer and City, to which the Agreement is attached.</p> <p>“FAA” means the Federal Aviation Administration.</p> <p>“FAA Determination” means an advisory opinion from the FAA indicating that the use of airport revenues for any particular program would constitute revenue diversion or other impropriety contrary to FAA program requirements and regulations.</p> <p>“KCI” means the Kansas City International Airport.</p> <p>“Low Income Individual” means an individual whose household income is no greater than 80% of the median income, adjusted for household size, for the primary Metropolitan Statistical Area.</p> <p>“MBE/WBE” means a Minority or Women-owned Business Enterprise certified with the City.</p>

	<p>“Nonprofit” means an existing 501(c)(3) or 501(c)(4) organization or a 501(c)(3) or 501(c)(4) organization established by Developer to facilitate the purposes of the Agreement.</p> <p>“Project” means the proposed improvements to KCI, as more fully described in the Development Agreement.</p> <p>“SDVOSB” means a Service-Disabled Veteran-Owned Small Business certified with the Department of Veterans Affairs.</p> <p>“SLBE” means a Small Local Business Enterprise certified with the City.</p> <p>“VOSB” means a Veteran-Owned Small Business certified with the Department of Veterans Affairs.</p>
<p><b>III. Agreement Focus Areas</b></p>	<p>The Agreement will set forth policy objectives, processes, and responsibilities for the program areas listed below.</p>
<p><b>1. Transportation to and From Project Site</b></p> <p><b>VALUE: \$3M</b></p>	<p>Developer will partner with the Kansas City Area Transportation Authority (KCATA) and other area organizations to provide, or cause to be provided, free or subsidized transportation options to Project workers, which may include offering bus service with multiple routes and stops, van pooling, car sharing, and/or a guaranteed-ride-home program.</p> <p>As part of “introductory packet,” workers will have the opportunity to receive a badge that will allow them to swipe on a bus for free transit. Developer will make available two buses AM/PM, 5 days a week, with the capacity for 30-35 workers per bus. Other free transit options (van pooling, guaranteed ride home etc.) will also be available.</p> <p>Cost: Buses \$700K for 4 years + \$200K to administer program</p>
<p><b>2. Licensed Child Care</b></p> <p><b>VALUE: \$2.5M</b></p>	<p>As part of an “introductory packet,” workers will receive names of strategically located licensed child care centers that are participating in an extended hour program. The cost is to cover the extra cost to licensed child care providers for opening the facility earlier (and potentially open later) than current operations. Funding covers costs including, but not limited to, salaries, utilities, insurance.</p>
<p><b>3. On-site Health Care</b></p> <p><b>VALUE: \$400,000</b></p>	<p>Developer will make available, or cause to be made available, a local healthcare provider to operate an on-site health clinic for workers to treat any on-the-job injuries sustained on the Project and get basic medical services such as flu shots etc., through Project final completion. Developer will cause to be provided a full-time Emergency Medical Technician/Paramedic (EMT) to operate out of a dedicated medical trailer on-site. Cost is \$100,000/year inclusive of a medical technician, medical supplies and trailer. Trailer will be open to workers during Project operating hours.</p>
<p><b>4. Low-Interest Loan Program</b></p>	<p>Developer will partner with Liberty Bank to implement a low-interest working capital loan program to assist SLBE/MBE/WBE/SDVOSB/VOSB businesses in the City seeking to perform KCI- or Project-related work and /or provide services in KCI</p>

<p><b>VALUE: \$1M</b></p>	<p>facilities. Developer will deposit \$1 million into an account with Liberty Bank. As Liberty Bank, after completing its customary due diligence, makes loans to businesses working on the Project, Developer will use deposited funds to pay for a portion of the interest payments, so the borrower receives the benefits of lower financing costs and monthly payments and Liberty Bank is not negatively impacted.</p>
<p><b>5. Pay Without Delay</b></p> <p><b>VALUE: \$1.5M</b></p>	<p>Developer will partner with Liberty Bank to implement a pay without delay program, an accelerated payment program ensuring that all certified Kansas City SLBE/MBE/WBE/ SDVOSB/VOSB firms are paid within fourteen (14) business days after submitting a properly documented request for payment, including verification of the work. Contractors who want to take advantage of the program would either (i) open an account at Liberty Bank, and Developer will cause funds to be transferred directly into their accounts, at no transaction cost to the contractors, or (ii) obtain prepaid debit cards loaded with the amount of their pay, for contractors without accounts.</p>
<p><b>6. Financial Guidance for SLBE/MBE/WBE/ SDVOSB/VOSB Businesses and Bonding Support</b></p> <p><b>VALUE: \$3M</b></p>	<p>Developer will implement a Bond Assistance Program (BAP) wherein graduating participants enter into a direct relationship with a commercial surety. The program begins with a “Boot Camp” seminar for the participating firms. The Boot Camp seminar is conducted by a local KCMO insurance broker who will also serve in a mentor and support function for the participating firms throughout the process. The participating firms will be guided through the process, which includes: collection of personal and corporate financial information, questionnaires from the surety, performing credit analysis, site visits by the surety to the participants’ facilities and credit reports. Participants’ strengths and weaknesses will be reviewed, with tools and resources being provided to improve weak areas. Program graduates secure the required surety General Agreement of Indemnity. The program’s cost includes the surety’s requirement that Clark/Weitz/Clarkson provide a 30% indemnity of the bond premium written. This program will allow aggregate contract value of \$30 million to be enrolled in the program at any point in time.</p>
<p><b>7. Self-Bonding Program</b></p> <p><b>VALUE: \$2M</b></p>	<p>The Self-Bonding Program will allow SLBE/MBE/ WBE/ SDVOSB/VOSB firms that historically have been unable to obtain a bond, yet have the capacity to perform, to participate on the Project. Firms will submit the Subcontractor Qualification Application (see the Clark/Weitz/Clarkson website <a href="http://www.cwcjv.com">www.cwcjv.com</a>), and eligible firms will be awarded scopes of work without the need to obtain payment and performance bonds, as the Developer team will self-bond these firms. A full-time liaison at the project site will be available to assist interested firms with the application submittal process and to advise Developer on program implementation issues.</p>
<p><b>8. Small Business Incubator Space</b></p> <p><b>VALUE: \$300,000</b></p>	<p>Developer will cause to be made available up to a total of 5,000 SF of officing space at the Project site, inclusive of free access to an onsite plan room and electronic plans, to be used free of charge as business incubator space by SLBE/MBE/WBE/ SDVOSB/VOSB construction- or airport-related businesses. In addition, Developer will explore the feasibility of making available preferred pricing to such enterprises for printing plans. Cost is \$75K/year for 4 years.</p>
<p><b>9. Workforce Training</b></p> <p><b>VALUE: \$8.9M</b></p>	<p>Enrollment in job training programs shall be predominantly offered to Low Income Individuals living in communities within Kansas City, Missouri; ex-offenders shall</p>

also be targeted for participation. Developer will cause to be made available the following job training opportunities:

a) Training Program Details.

- i. Developer will establish an internship program project for both high school and college students from under-resourced communities in Kansas City, Missouri and a mentoring program, in partnership with the ACE Mentor Program or similar organization, for high school students interested in pursuing careers in design and construction. Internship opportunities are not capped, and Developer will work to accommodate all candidates.
- ii. Developer will work with labor, workforce and trade organizations to develop a 3-5 week construction trades and pre-apprenticeship training program offered for the duration of Project construction. The program will pay a stipend to program participants, who will be placed into in a trade job on the Project upon successful completion of the program. Participants will receive training in overall construction practices as well as training in specific trades. The program will also include a full-time pre-apprenticeship coordinator who will manage recruitment, selection, and monitoring of the pre-apprentices during their on-the-job training. Overseeing the program will be a committee comprised of the Developer, design-builder, labor, workforce and trade organizations, City representatives, and community partners. Pre-apprenticeship opportunities are not capped, and Developer will work to accommodate all candidates.
- iii. Developer will cause to be implemented a Small Business Strategic Partnership Program (the “**Program**”), a 5-to-10 month intensive training program, to support Developer’s MBE and WBE subcontracting plan for the Project and to support the MBE and WBE selected to participate on this Project. The Program aims to supplement the capabilities of local, small and/or disadvantaged businesses by offering training on core construction management competencies and business skill development. Courses will be taught by industry experts and include classroom learning, team projects, and participant presentations. In addition, several project management-related courses will be available to subcontractors, including CPM Scheduling, Estimating and Planning the Job. Training workshop topics to be provided include:
  - Construction Contracting and Requirements
  - Professional Services Contract Award Process and Requirements
  - Bonding and Insurance Requirements
  - Prequalification, Bidding and Invoicing
  - Financing/Access to Capital
- iv. Developer will cause to be offered a General Contractor Training Course, a comprehensive initiative to offer technical assistance in general contracting principles to small businesses in the greater KC-metropolitan area. The six month program will meet bi-weekly to explore different facets of the construction industry, including such topics as: *Know Your Contract, Learning The Basics Of Contract Law, Managing Change Orders,*

	<p><i>Understand The Estimate, Cash Management, Develop A Site Utilization Plan, CPM Scheduling, Monitor And Manage The Schedule, Keep Up With The Documentation, Developing A Project Safety Plan, Subcontractors Purchasing Process, and Quality Control on a Project Site.</i></p> <p>v. Developer will cooperate with KCAD to develop a training and pre-qualification program oriented to aviation-related employment opportunities addressing airport- and aviation-specific job skills and requirements, with one-on-one training and specific assistance helping job candidates with background check requirements and security test issues.</p> <p>vi. To the extent funds may be available, as determined through FAA Determinations and in consultation with City, Developer will consider supporting additional job training and pre-apprenticeship programs for FAA-approved Airport Jobs and Aviation-Related Jobs.</p>
<p><b>10. Supplier Support</b> <b>VALUE: \$250,000</b></p>	<p>Developer shall cause to be implemented a program whereby the Project general contractor will directly purchase certain materials and equipment for certain scopes of work, as yet to be determined, to enable SLBE/MBE/WBE/SDVOSB/VOSB contractors to leverage the general contractor’s purchasing power and to thus more effectively compete for work. Developer will cause to be hired a program coordinator to implement and facilitate access to the program.</p>
<p><b>11. On-Site Ombudsman and Program Coordinators</b> <b>VALUE: \$500,000</b></p>	<p>Developer will hire, or cause to be hired, a pre-apprenticeship coordinator responsible for recruitments, staying in touch with and helping guide pre-apprentices on site. The Developer will also hire a SLBE/MBE/WBE/SDVOSB/VOSB liaison to coordinate on administrative aspects to support such firms.</p>
<p><b>IV. FAA Prohibited Expenditures and Alternative Funding Sources</b></p>	<p>If an FAA Determination or any other regulatory authority prohibits the Developer from allocating Project funds or resources for any of the programs identified in the Agreement, or threatens to withhold federal funding if the Developer takes actions required the Agreement, then Developer shall work cooperatively with City to identify eligible and available funding sources for any program for which the FAA has prohibited expenditures. <b>Funds secured from alternative sources under this provision shall not reduce any Developer funding commitments otherwise made under the Agreement, and, should no alternative funding sources be identified, then Developer shall be solely responsible for funding, or causing to be funded, such programs.</b></p>
<p><b>V. Nonprofit Contributions</b> <b>VALUE: \$4.75M</b></p>	<p>In addition to supporting the programs identified above, Developer will support programs that benefit the broader Kansas City community, including the following:</p> <ol style="list-style-type: none"> <li>1. <u>Love Thy Neighbor</u>. City needs both funding and available volunteers to perform the program’s work, which typically includes light carpentry, painting, trash removal and landscaping. Developer will provide organized teams of volunteers over the duration of the Project construction period to perform program work at least semi-annually for the duration of the Project, in coordination with City, valued at \$250,000. In addition, Developer will</li> </ol>

**VI. Edgemoor  
Nonprofit Initiatives**

**VALUE: \$750,000**

facilitate donation of \$125,000 per year for eight (8) years, or a total of \$1 million, to the Nonprofit to supplement its volunteer efforts for Love Thy Neighbor.

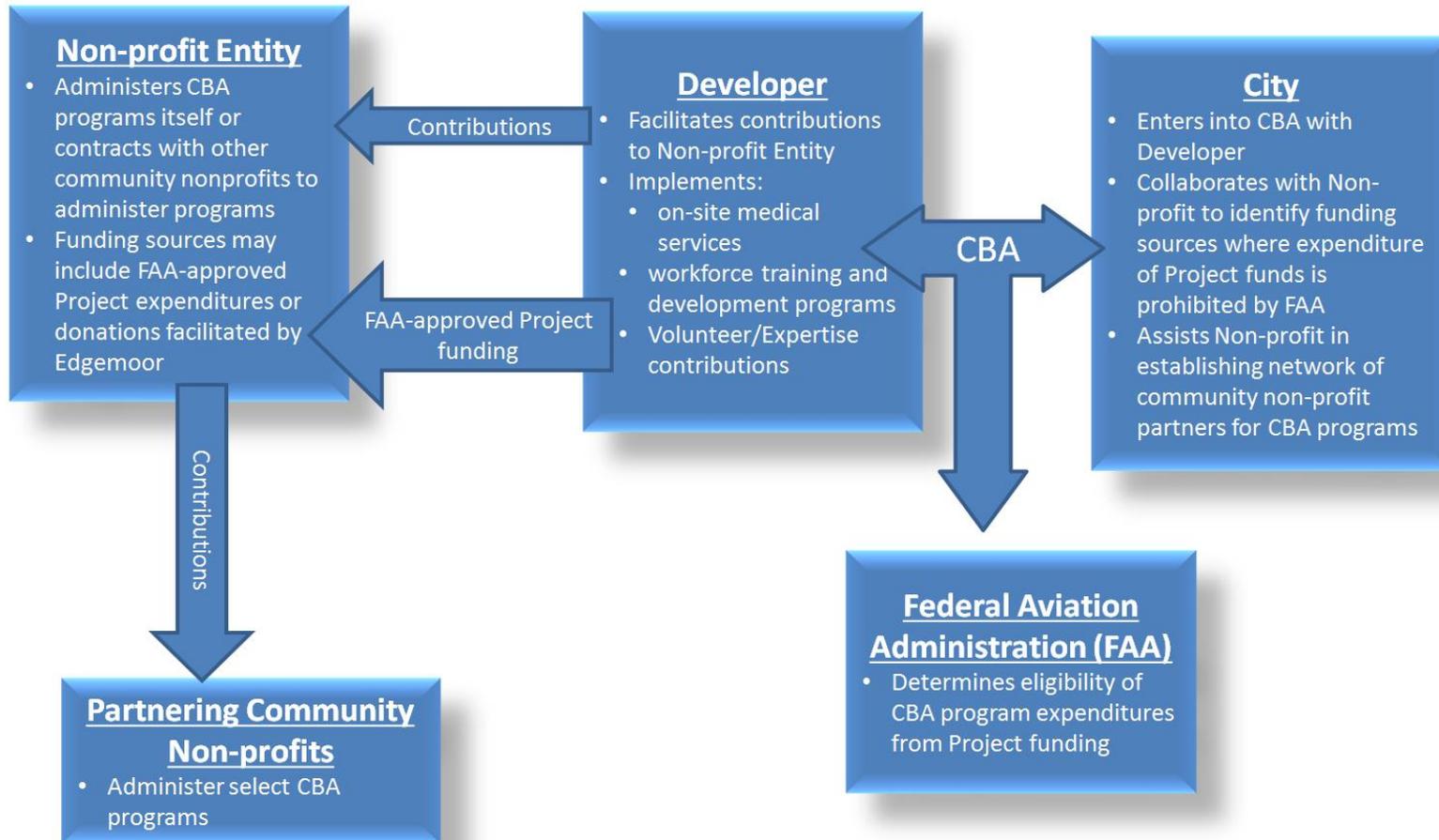
2. Shared Success Fund. Developer will contribute a total value of \$1 million toward the Shared Success Fund’s initiatives over six (6) years, comprising: (i) in-kind contributions, (ii) cash, or (iii) some combination thereof, as further determined in consultation with City.
3. Historic Preservation. Developer will contribute a total value of \$1 million over six (6) years toward the Historic Preservation Commission’s initiatives, comprising: (i) cash, (ii) in-kind contribution of expertise related to the preservation of culturally significant properties and other artifacts related to the airport, notable aviators, and aviation-related industries and industry leaders, or (iii) some combination thereof, as further determined in consultation with the Historic Preservation Commission.
4. Northland Fund. Developer will contribute a total of \$1.5 million toward a newly created “Northland Fund” over six (6) years, comprising: (i) in-kind contributions, (ii) cash, or (iii) some combination thereof, as further determined in consultation with City. Funds will be allocated towards various needs in the Northland, including but not limited to, workforce housing and other housing needs, mental health needs, programs at or near the airport, and other programs as determined by City.
5. Northland Infrastructure. Developer will partner with KCAD and local economic development organizations to provide in-kind technical expertise to help build infrastructure to support economic development on or near the airport property. Infrastructure may include such items as roads, utilities, grading property to create pad sites, etc.

The Nonprofit’s initiatives in support of the Agreement shall include: (i) working with City to identify alternative funding sources, where the FAA prohibits Project funds from being used to support the programs identified above; (ii) contributing funds to support the above programs; and (iii) supporting and assisting in coordinating volunteer efforts and conducting outreach campaigns that further galvanize community support for and contributions to the community-based programs identified above.

**CBA Implementation Structure**

The proposed structure for implementing the Community Benefit Agreement is provided on the following page.

# Proposed CBA Implementation Structure



**EXHIBIT F:**

**Form Out-of-Pocket Project Cost Agreement**

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**AGREEMENT FOR REIMBURSEMENT OF OUT-OF-POCKET PROJECT COSTS IN  
THE EVENT OF TERMINATION**

**BETWEEN CITY OF KANSAS CITY, MISSOURI AND  
EDGEMOOR INFRASTRUCTURE & REAL ESTATE LLC**

This Agreement for Reimbursement of Out-of-Pocket Project Costs in the Event of Termination (“**Agreement**”) is entered as of this \_\_\_\_ day of February, 2018 (the “**Effective Date**”) between the City of Kansas City, Missouri (“**City**”) and Edgemoor Infrastructure & Real Estate LLC (“**Developer**”), a Maryland limited liability company registered to do business in Missouri, for certain third-party expenses related to development of a terminal modernization program at the Kansas City International Airport (the “**Airport**”). This Agreement outlines the terms and conditions under which Developer would finance and incur such third-party expenses, subject to City approval, and the City would reimburse for such expenses in case of a termination event.

**RECITALS**

- A. City issued a “Request for Qualifications/Proposals for Design, Construct and Private Financing of KCI/ Request #062017” (as amended, the “**RFQ/P**”) on May 30<sup>th</sup>, 2017 to identify a potential developer for development of a single terminal Airport improvement project (the “**Project**”).
- B. City selected Developer for the Project and determined to advance negotiations with Developer to enter into a development agreement (the “**Development Agreement**”) for the Project.
- C. City and Developer have entered into that certain Memorandum of Understanding (the “**MOU**”) related to the Project with an Effective Date of February \_\_\_\_\_, 2018, which provides, in part, that City shall have the right to terminate the MOU at any time, for any reason or no reason.

D. City has determined that it is in City's best interests to establish and pursue a Project schedule to enable an estimated Project completion in 2021, with anticipated financial close by September 2018 (the "**Project Milestones**").

E. City recognizes that to obtain more detailed Project cost information necessary to meet the Project Milestones, Project scoping and design must be further advanced to reach approximately thirty percent (30%) completion. City further recognizes that it will not achieve financial close of the Project unless it enters into new "Use and Lease Agreements" with the airlines related to airlines' use of City's airport system, which agreements will establish funding streams for the Project and are predicated on having more refined Project cost information derived from 30% complete Project designs.

F. Developer is willing to obtain financing to pay for professional services and other third-party expenses directly related to developing more detailed Project cost information, and City desires Developer to take such actions to further City's interests in meeting Project Milestones.

G. City recognizes that deliverables developed pursuant to this Agreement will be provided to City, per the terms of this Agreement, and that such deliverables represent significant value to City in advancing the Project, notwithstanding any potential City termination of the MOU prior to financial close, because they serve as foundational documents and drawings that will allow City to efficiently pursue advanced Project design without having to begin the design process anew.

H. City acknowledges that Developer's willingness to obtain financing and incur Out-of-Pocket Project Costs (as further defined below) on behalf of City, in accordance with City's interests and consistent with Section 17(F) of Developer's proposal in response to City's RFQ/P, depends on City's willingness to reimburse Developer for such costs, notwithstanding any potential City termination of the MOU prior to financial close, and City desires to provide such assurance of reimbursement to Developer.

I. City and Developer agree that the only costs covered by this Agreement and subject to City reimbursement are those Out-of-Pocket Project Costs directly related to Project design and development, as reflected in Exhibit A and as reviewed and validated by City's Aviation Department, incurred during the period from November 8, 2017 through the date of financial close or the earlier termination of the MOU. City and Developer further acknowledge and agree

that the estimated total Out-of-Pocket Project Costs covered by this Agreement will not be exceeded, except as specifically authorized by City, and that Out-of-Pocket Project Costs will only be reimbursed from the Airport Revenue Fund and that no such costs will be reimbursed from City's General Fund.

J. City and Developer desire that City will review and approve in advance the scope, deliverables and cost of any Project design and development work Developer proposes to undertake to refine Project costs and to meet the Project Milestones, in accordance with this Agreement.

K. City and Developer acknowledge and agree that this Agreement confers on Developer no termination rights, and is intended only to set forth the process by which, and conditions under which, City agrees to be responsible for City-approved Out-of-Pocket Project Costs, pursuant to the terms of this Agreement.

L. City and Developer agree that City will audit Developer's Project-related expenses for the period from November 8, 2017 through the Effective Date to determine those costs validly incurred in furtherance of City's interests to advance the Project and which, under the terms of this Agreement, should be considered reimbursable Out-of-Pocket Project Costs.

M. City and Developer agree that although Out-of-Pocket Project Costs through financial close are estimated at \$28.3 million, City's obligations under this Agreement are capped at \$23.2 million, with Developer at risk for all amounts above such cap.

N. City and Developer wish to memorialize their agreement regarding these matters by executing this Agreement.

O. The City Council authorized the City Manager's execution of this Agreement with its passage of Ordinance No. \_\_\_\_\_.

### **AGREEMENT**

I. **Recitals.** The recitals cited above are true as of the Effective Date and are hereby incorporated herein.

## II. **Out-of-Pocket Project Costs**

a. Out-of-Pocket Project Costs means those costs incurred by Developer that are direct expenses incurred by Developer for services or materials provided by a third party that are not increased by any dollar or percentage amount representing added profit, fee, or administrative or other charge and which have been documented by the Developer and approved by the Aviation Director. For purposes hereof, Out-of-Pocket Project Costs shall be limited to and include only those costs related to the Project and incurred by Developer for contractors (and their subcontractors), design professionals, consultants (and their subconsultants), attorneys, other architectural and engineering design professionals (including costs of preconstruction services of third party project contractor(s)), Loan principal, interest, and fees as described below, related financing costs and legal fees and other approved costs related to the Project.

b. An estimate of the total Out-of-Pocket Project Costs anticipated to be incurred under this Agreement is attached hereto as Exhibit A, which provides detailed costs outlays by month within each of the categories described in the accompanying narrative. Of the approximately \$28.3 million total for projected costs through September 2018, 87% of the costs are related to architect's design costs, geotechnical, surveys, preconstruction services and the like. No costs for Developer's labor are included as reimbursable expenses.

c. Actual costs to date versus costs subject to reimbursement under the Agreement are presented in Exhibit B, broken out by spend per member of Developer team. Developer's actual spend through year end 2017 totaled approximately \$2.3 million; \$1.1 million of that total is subject to reimbursement under this Agreement.

## III. **Funding of Out-of-Pocket Project Costs Through Financial Close**

a. Developer shall obtain a pre-construction loan or similar loan, which shall include loan principal, current and capitalized interest, and fees that have accrued to the loan ("**Loan**") from a lending institution reasonably acceptable to the City ("**Lender**") for purposes of funding Out-of-Pocket Project Costs through financial close of the Project. Developer shall advise the City as to the proposed Loan terms and shall use reasonable commercial efforts to address any comments raised by the City. The City shall

acknowledge the Loan terms as documented in the agreement between the Developer and the Lender. All Out-of-Pocket Project Costs shall be paid for and funded by the Loan. Upon the date of financial close, Developer shall wire funds directly to the lending institution to pay off all amounts due under the Loan.

b. Developer and City shall enter into such documents as the Lender may reasonably require in issuance of the Loan, including, but not limited to, an assignment of Developer's rights under this Agreement (an "Assignment") to the Lender, together with a collateral assignment of such rights. Developer acknowledges and agrees that under no circumstances will City enter into any documents with either Developer or the Lender whereby City would be obligated to pay the Lender any amount due on the Loan, except pursuant to an Assignment, in which event City shall have no obligation greater than it has to Developer.

#### **IV. Documentation and Approval of Out-of-Pocket Project Costs**

a. On or about the 25<sup>th</sup> day of each month, Developer shall provide City's Aviation Director with documentation detailing the services and related Out-of-Pocket Project Costs that Developer expects to be performed in the following month and which shall be subject to City approval under Section IV.b below.

b. Within five (5) business days after City's receipt of Developer's documentation under Section IV.a, City's Aviation Director shall approve in writing Out-of-Pocket Project Costs, in City's reasonable discretion. Loan costs shall not be subject to rejection by City if such costs are consistent with the loan documents entered into between Developer and Lender. In the event the Aviation Director rejects any Out-of-Pocket Project Costs documented in accordance with Section IV.a, the Aviation Director shall provide Developer with written notice giving reason for the rejection and stating any additional information needed by the Aviation Director to approve the cost. In such case, and in Developer's discretion, the services related to the rejected Out-of-Pocket Project Costs will not be performed until after financial close of the Project or will be performed by Developer at its own cost. For the avoidance of doubt, any Out-of-Pocket Project Costs rejected by the City shall be expressly excluded from any draw request under the Loan. Any and all

City-approved Out-of-Pocket Project Costs shall be a reimbursement obligation of City pursuant to Section V below.

c. On the 20<sup>th</sup> day of each subsequent month, Developer shall provide City's Aviation Director with a spreadsheet (and backup documentation upon request) detailing the actual Out-of-Pocket Project Costs incurred through the end of the immediately preceding calendar month.

**V. City's Obligation to Reimburse Developer for Out-of-Pocket Project Costs**

a. In the event the parties fail to achieve financial close of the Project for any reason, other than as set forth in Section V.b below, City shall reimburse Developer, including all documented Loan-related financing costs, for Developer's Out-of-Pocket Project Costs incurred by Developer from and after November 8, 2017 through the date City notifies Developer that it will no longer pursue the Project. Reimbursement of any and all City-approved Out-of-Pocket Project Costs shall not be subject to set-off, deductions, abatement, reduction or withholding for any reason by the City, provided the City receives all Instruments of Service (defined below) in accordance with Section V.c. Payment by City under this Section V.a shall be made to Developer within thirty (30) calendar days after Developer furnishes to City the Instruments of Service and any other documents required under Section V.c.

b. City shall have no obligation to reimburse Developer for Out-of-Pocket Project Costs in the event the Project fails to achieve financial close due to Developer's fraudulent act or willful misconduct.

c. Upon receipt of payment from the City in accordance with this Agreement, Developer shall grant or cause to be granted to City and its agent an irrevocable nonexclusive license to use, reproduce and distribute the instruments of service prepared by Developer's architect or other design professionals in connection with the Project (the "Instruments of Service"). Instruments of Service shall include any drawings, specifications, models, renderings or other materials prepared in connection with the Project, as well as any other documents related to the Project for which the City has an

obligation to reimburse the Developer, as prepared by Developer's contractors, consultants, attorneys, and other such entities.

d. Developer hereby irrevocably directs City to make any payments under this Reimbursement Agreement to the Lender, a Blocked or Lock-Box Account in which the Lender has a first-priority, perfected security interest, or alternatively as the Lender may direct. Developer and City agree and acknowledge that City will not accept any redirection of payments without Lender's written consent.

## VI. Termination

Upon the earlier to occur of Project financial close or full repayment of the Loan, this Agreement shall automatically terminate, without further instrument or action, and shall be of no force or effect.

## VII. Miscellaneous

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

b. Applicable Law. The applicable laws of Missouri shall govern the validity, construction and effect of this Agreement. All disputes arising under or relating to this Agreement shall be filed, maintained, and resolved in accordance with the laws of the State of Missouri without regard to its conflict of law rules.

c. Assignment. Neither party to this Agreement shall be permitted to assign or transfer its rights under this Agreement without the consent of the other party, except that Developer may assign or transfer its interest under this Agreement to an affiliate or subsidiary entity of Developer or as otherwise permitted by Section III.b.

d. Amendments. This Reimbursement Agreement may not be varied, amended or supplemented and any obligation, right, power or remedy shall not be waived except by an agreement in writing signed by duly authorized representatives of City and Developer and with Lender's prior written consent.

e. Notices. A notice or communication under this Agreement by either party to the other shall be sufficiently given or delivered if dispatched by hand, national courier services, or by registered or certified mail, postage prepaid, addressed as follows:

If to City:

Pat Klein  
Director, Aviation Department  
601 Brasilia Avenue  
Kansas City, Missouri  
Telephone: (816) 243-3107  
Facsimile: (816) 243-

With a copy to:

Galen P. Beaufort  
Senior Associate City Attorney  
City Attorney's Office  
2800 City Hall  
414 East 12<sup>th</sup> Street  
Kansas City, Missouri 64106  
Telephone: (816) 513-3122  
Facsimile: (816) 513-2716

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If to Developer:

Edgemoor Infrastructure & Real Estate LLC  
7500 Old Georgetown Rd.  
Bethesda, MD 20814  
Attn: Geoffrey Stricker  
Facsimile: (301) 272-1912  
Telephone: (301) 272-2990

With a copy to:

Edgemoor Infrastructure & Real Estate LLC  
7500 Old Georgetown Rd., 3<sup>rd</sup> Floor  
Bethesda, MD 20814  
Attn: Frank J. Baltz  
Facsimile: (301) 272-1916  
Telephone: (301) 272-8181

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date.

DEVELOPER:

EDGEMOOR INFRASTRUCTURE & REAL ESTATE  
LLC

By: \_\_\_\_\_

Name: Neal Fleming  
Title: President

By: \_\_\_\_\_

Name: Geoffrey Stricker  
Title: Managing Director

CITY:

CITY OF KANSAS CITY, MISSOURI

By: \_\_\_\_\_

Name: Troy M. Schulte  
Title: City Manager

APPROVED AS TO FORM:

By: \_\_\_\_\_

Name: Galen P. Beaufort  
Title: Senior Associate City Attorney

**CERTIFICATION OF AVAILABILITY OF FUNDS**

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

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Randall J. Landes  
Director of Finance

**EXHIBIT A to Exhibit F  
ESTIMATED OUT-OF-POCKET PROJECT COSTS**

**(ATTACHED)**

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## Out-of-Pocket Project Expenses – Detail

### Design-Build Costs

- SOM Team
  - This includes all design work by SOM and their consultants for the period up to the financial close
  - This work includes but is not limited to:
    - Program Validation – the process of reviewing the Project program documentation to confirm that KCAD and the Airlines have adequately communicated their intent for the design of the Project.
    - Review of the Design Day Flight Schedule (DDFS) – this document is to be provided to CWC/SOM by KCAD. The DDFS is the document that provides the data and recommendations that dictate many of the major design parameters of the Project including number of gates, number of security points, width of circulation spaces, size of baggage handling equipment, etc. It is the starting point for design of every airport facility.
    - Development of the conceptual design documents from which the Baseline Budget will be determined.
    - Meetings with design-assist subcontractors to develop the most economical design.
    - Develop all documentation to support the permitting, procurement, and construction of all early start work (utility relocation, HAZMAT abatement, demolition, etc.).
    - Development of pricing documents from which CWC will determine its lump sum price
    - Support the FAA, Environmental, and SHPO processes with documentation and studies
    - Produce documentation to support the acquisition of permits
    - Meet with KCAD & Airlines to ensure that the design meets the Project program
  - This work will need to be done by any design firm that ultimately completes the project, and SOM's work will be usable by a replacement firm in the event our team is terminated.
- Geotechnical Work
  - The existing geological conditions at the site must be evaluated. The evaluation is performed by drilling soil borings throughout the site using exploratory drilling equipment. The information gathered by the soil borings will be documented in the Geotechnical Report. The report is produced by the Geotechnical Engineer and will reflect the actual data collected by the soil borings such as: 1) the type of soils and soil strata, 2) depth of bedrock, 3) elevation of the water table, 4) the load bearing capacity of the soil and rock, 5) the existence of contaminated soil or water, and 6) any particular soil and rock characteristics that are unique to the site.
  - The Geotechnical Report will make recommendations of the types of foundations systems to be used given the information gathered by the soil borings. The recommendations are made by the Geotechnical Engineer of record for the project. The Geotechnical Engineer's recommendations will be used by the structural engineer when selecting the foundation systems, water proofing systems, and subsurface drainage systems for the new airport building. The recommendations will also be used by the civil engineer for pavement design, suitability of existing soils for backfill, and permeability of the existing soils.
  - The Geotechnical Report is the document that permits much of the structural and civil design to proceed. Its information is also critical in determining the extent and location of contaminated soil and water which impacts the cost and schedule of the project during the excavation, underground utility, utility relocation, and foundations phases of the Project.
  - TSI GEOTECHNICAL, INC. located in Kansas City, MO has been selected to be the Geotechnical Engineer of record for the Project. TSI GEOTECHNICAL, INC. will perform all of the soil borings and produce the Geotechnical Report for the Project.

- The Geotechnical Report is site specific and the information contained in it can be used and will be required by any team designing and constructing the Project.
- The Geotechnical Report will belong to the City in the event Developer is terminated and it will be used by any replacement team.
- Existing Conditions Surveying
  - Surveys of the existing buildings on the site must be performed to determine the scope of the demolition work, the scope of hazardous materials removal, and the existing condition of facilities to remain. This survey will be performed by Clark/Weitz/Clarkson (CWC), SOM (and its consultants), and hazardous materials (hazmat) consultants. The information gathered in the surveys will result in documents being produced 1) by CWC for the bidding of the demolition and hazmat removal work on the project, 2) by SOM to depict the extent of the existing facilities to be demolished, and 3) by the hazmat consultant to depict the location, type, and quantity of hazmats to be removed.
  - Surveys of the existing utilities (above and below ground) are especially important as the Project is being performed adjacent to an active airport that cannot experience utility service shutdown. Such existing utilities include but are not limited to: storm drains for the removal of water from runways and existing roofs, underground electrical power cables, FAA control cables, fiber optic communication cables, underground water service piping for domestic water and fire suppression, underground heating and cooling piping from the existing central plant, underground aviation fuel distribution piping, etc.
  - The surveys will be conducted by reviewing existing information provided by KCAD, excavation of exploratory holes (test pits) throughout the site, ground penetrating radar, and site observations. The surveys will be conducted by CWC and SOM (and its consultants). The resulting documentation will detail the type, location, and extent of the existing utilities in the area of the Project.
  - The documentation will then be used to develop utility relocation documents to permit the construction of the Project. The design of the utility relocation documents will require extensive coordination, approval, and permits from FAA, TSA, KC Power & Light (KCP&L), Time/Warner Cable, Google, Century Link, Level 3, AT&, City of Kansas City Missouri Water Services, KCAD Fire Dept, Spire (MGE), Allied Fuel (jet fuel), and KCAD. The utility relocation documents will need to contemplate the relocation of utilities without interruption of service to the active airport operations.
  - The existing building survey, existing utility survey, and the resulting documents are critical obtaining permits to proceeding with the work that enables the Project to proceed with construction.
  - The firms that have been engaged in the existing surveys work will be:
    - SOM – overall coordination and development of the documents that memorialize existing site conditions and demolition of existing facilities.
    - HENDERSON ENGINEERS, Kansas City, Missouri – development of existing utility survey and utility relocation plans (chilled and hot water, aviation fuel distribution, electrical power).
    - TALIAFERRO & BROWNE, INC. , Kansas City, Missouri – development of existing utility survey and utility relocation plans (water and sewer piping, storm water piping, natural gas).
    - ANLAB ENVIRONMENTAL, Kansas City, Missouri – conduct existing conditions survey, develop hazmat documents.
  - The existing building survey, existing utility survey, and resulting documentation is site specific and the information contained in them can be used and will be required by any team designing and constructing the Project.

- The surveys and resulting documentation will belong to the City in the event of termination and will be used by any replacement firm.
- Traffic Study
  - Traffic studies are required to establish traffic volumes and thereby properly demonstrate the design of roads system to carry traffic in and out of the airport and related structures. The report generated by the traffic study is critical to the civil engineering firm. The civil engineering firm, using the traffic study data, will design the traffic system for the new single terminal project. The traffic system will consist of traffic lights, pavement widths, pavement depths, signage, etc.
  - The results of this study will belong to the City in the event of termination and will be used by any replacement firm.
- Parking Study
  - From the data generated in the traffic study, the parking study establishes the overall need for the number of parking spaces, the requirements for loading and unloading the garage, etc. The parking garage designer will use the parking study as the basis of the parking garage design.
  - The results of this study will belong to the City in the event of termination and will be used by any replacement firm.
- Underground Investigation
  - The underground investigation is performed in conjunction with the geotechnical consultant's work and the existing conditions survey to help identify extraordinary underground conditions related to the site geology, existing underground utilities, and existing contaminated soil and ground water. The existing conditions will be documented in the form of a 3-D computer model. The 3-D model superimposes the new underground facilities to be installed for the Project (foundations, new underground utilities, relocated utilities, etc.) on the existing conditions to indicate constraints created. The 3-D computer model is an invaluable risk avoidance and planning tool for the Project.
  - The Underground Investigation 3-D model will be developed by a specialty consultant.
  - This will be required by any firm performing the work in order to fairly price the excavation of site.
  - The results of this investigation will belong to the City in the event of termination and will be used by any replacement firm.
- Asbestos Abatement
  - Due to the age of the existing facilities, they must be surveyed for the existence of hazardous materials (asbestos, lead paint, PCB's, etc.). The survey generates the HAZMAT report which will characterize the type, location, and quantity of hazardous materials in the existing facility. The HAZMAT report is the basis of the scope of work for the HAZMAT removal contractor. Further, it is used as a guide to determine that the HAZMAT removal contractor has completed the work thereby allowing demolition to commence.
  - This survey will belong to the City in the event of termination and will be used by any replacement firm.
- Construction Fencing
  - This refers to fencing required to separate the Project from the public and the air-side of the airport. The fence design, construction, access points, security procedures, and location will need to be approved by the FAA.
  - The documents produced for the construction fencing, once approved by the FAA, will belong to the City and could be used by any construction firm.

- Co-location Office
  - The costs associated with this item refer to the build-out of the space to be used as Developer’s site office. The following services will be performed at the site office:
    - SOM on-site design services staff
    - Collaboration among Developer team and KCAD
    - Procurement of subcontracts
    - Edgemoor management staff
    - CWC project management staff for preconstruction services
    - Subcontractor project management staff
  - The approximate number of staff occupying the site office to perform the above functions during the period prior to financial close will be 100.
  - The site office build-out would be usable by any replacement firm in the event of termination.
- Office Expense
  - Office expenses are those costs for operating the CWC site office. Such costs include office machines (copiers, printers, computers, wifi, telephones, etc.), office furniture, office supplies, cleaning service, etc.
- Travel
  - This covers travel (airlines, hotels, transportation, meals, etc.) for CWC, SOM, and SOM’s out-of-town consultants.
  - This does not include travel for Developer personnel—that is covered under “Developer costs”.
- Vehicles and Transportation
  - Cost of company owned vehicles used by authorized personnel.
- Information Technology
  - Cost to install company IT networks and servers
  - Monthly charges for telecommunications services
- Clark/Weitz/Clarkson Preconstruction:
  - The costs contained in this section are primarily for the CWC professional and administrative staff and some 3<sup>rd</sup> party consultants to perform the preconstruction services for the Project. The preconstruction services staff will be a combination of local Kansas City Area residents as well as support professionals that are located at CWC’s central offices. The primary function of the preconstruction services effort is to 1) develop a design that meets the program requirements of KCAD, 2) manage the design of the Project to meet the budget constraints of KCAD, and 3) develop and manage to a schedule that meets KCAD’s goals for the Project. Some of the activities that will be undertaken by the preconstruction services staff will be:
    - Establishing the Baseline Budget – the development of the Baseline Budget on any project is an iterative process. It begins with the Architect & Engineers working to develop a design that meets KCAD and the Airlines’ program requirements. Typically, the first designs developed are higher in cost than the owner requires. This begins an iterative budgeting process through value engineering, material selections, design alternatives, etc. to arrive at a design and budget that work for KCAD and the Airlines, i.e. the Baseline Budget.
    - Design Management – In order for the design to progress in a manner that facilitates the procurement of trade contractors and budget checkpoints, the CWC preconstruction team has full time design managers to oversee SOM and its consultants work. The design management process is twofold: 1) ensure that the design progresses in a manner that a lump sum price can be established for the financial close, 2) ensure that the design is progressing in accordance with KCAD’s program requirements.

- Periodic Budget Updates – periodic checkpoints are established as the design progresses to ensure that the design is staying within the Baseline Budget. During these design/budget checkpoints, the preconstruction team begins to engage major trade subcontractors as part of the design assist strategy. Part of controlling the overall cost of the project is to engage the major trades to capture current market conditions (pricing, material availability, labor availability, etc.). KCAD is provided a budget update report at each checkpoint.
- Constructability Studies – as part of the budget checkpoint process, CWC evaluates the design for constructability. Constructability reviews include such subjects as structural details, waterproofing details, availability of selected materials and any other elements of the design that could impact the efficiency of the construction in the field.
- Development of Trade Contractor RFP's – the preconstruction team will conduct the procurement process for the tradework on the project. The procurement process includes but is not limited to: advertising bid opportunities for contractors, conducting contracting opportunity events, developing the MWBE participation plan, conducting RFQ processes, issuing RFP's, evaluation of trade contractor proposals, award of trade contracts.
- Finalizing of the Design – the preconstruction team will continue its work until the construction documents are complete and all of the trade packages have been purchased.
- The document generated during the preconstruction process include:
  - Checkpoint budget update reports – these reports include: 1) updates of the budget based on the design as it stands at the checkpoint, 2) constructability reviews, and 3) value engineering reports.
  - SOM design documents
  - Design management update reports – status of KCAD comments being incorporated into the design.
- The documents generated will belong to the City and could be used by any construction firm.

### **Developer Costs**

*Costs below represent Developer's Non-Labor costs only.*

- Travel
  - This covers travel (airlines, hotels, transportation, meals, etc.) for Developer personnel.
- Community Relations
  - These are costs incurred working with local community groups to get input into the design and construction process, which will build community buy-in for the project.
  - This item also covers working to understand the community concerns so that we can plan construction to minimize impact on neighbors.
- Insurance Advisors
  - This is the cost of retaining insurance advisors to develop the proper insurance program for the project.
- Technical Advisors
  - This is the cost of hiring 3<sup>rd</sup>-party to independently evaluate project on behalf of rating agencies. Scope includes review of contracts, airport revenues, price, and schedule.
- Ratings Agency
  - This is the cost of engaging the ratings agencies who will rate the debt.
  - This rating must be obtained before the debt can be sold regardless of who constructs the project.
- Legal Costs
  - These are costs for counsel to negotiate and prepare the agreements.

- Agreements include MOU, Reimbursement Agreement, Pre-Development Loan, Development Agreement, Financing Documents, Contracts for Service Providers
- Financial Advisors
  - This is the cost of engaging PFAL to lead financing process for the deal.
  - Cost includes both monthly fee and reimbursable expenses
  - Scope of work will include both the pre-development loan and the permanent financing
  - The work to structure the financing will be used by the City even if we are terminated—the City might even want to assume this contract and use their work in event of termination.
- Consultants
  - Estimated costs to hire additional development consultants throughout the pre-development period. This could include O&M, environmental, commissioning, testing/inspections, and other development consultants.
- Costs through Referendum
  - These include, among other things, costs Developer team incurred supporting the referendum, and managing team.

### **Financing Costs**

- Cost for pre-development loan to fund development and design-build activities prior to financial close.
- Assumes Interest Expense of \$640K. Interest calculation includes interest costs, and commitment fee expenses. Interest expected to be LIBOR + 50 – 100 bps
- Assumes Upfront Fee Expense of \$930K
- Assumes Legal and other closing costs of \$1.25M

**EXHIBIT B to Exhibit F**  
**HISTORICAL OUT-OF-POCKET PROJECT COSTS:ESTIMATED VS. ACTUAL**  
**(ATTACHED)**

Edgemoor - Actual				
Company	Period 1 Costs Prior to 9/21/17	Period 2 Costs 09/22/17 to 11/07/17	Period 3 Costs 11/08/17 to 12/31/2017	Totals
<b>LABOR COSTS</b>				
Edgemoor	\$92,802.82	\$93,953.09	\$75,843.28	\$262,599.19
<b>SUB-TOTALS:</b>	<b>\$92,802.82</b>	<b>\$93,953.09</b>	<b>\$75,843.28</b>	<b>\$262,599.19</b>
<b>NON-LABOR COSTS</b>				
Edgemoor	\$12,096.39	\$45,787.59	\$33,623.10	\$91,507.08
<b>SUB-TOTALS:</b>	<b>\$12,096.39</b>	<b>\$45,787.59</b>	<b>\$33,623.10</b>	<b>\$91,507.08</b>
<b>TOTALS:</b>	<b>\$104,899.21</b>	<b>\$139,740.68</b>	<b>\$109,466.38</b>	<b>\$354,106.27</b>

Edgemoor - For Reimbursement Agreement				
Company	Period 1 Costs Prior to 9/21/17	Period 2 Costs 09/22/17 to 11/07/17	Period 3 Costs 11/08/17 to 12/31/2017	Totals
<b>LABOR COSTS</b>				
Edgemoor	\$0.00	\$0.00	\$0.00	\$0.00
<b>SUB-TOTALS:</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>NON-LABOR COSTS</b>				
Edgemoor	\$0.00	\$0.00	\$33,623.10	\$33,623.10
<b>SUB-TOTALS:</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$33,623.10</b>	<b>\$33,623.10</b>
<b>TOTALS:</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$33,623.10</b>	<b>\$33,623.10</b>

Clark/Weitz/Clarkson - A Joint Venture - Actual				
Company	Period 1 Costs Prior to 9/21/17	Period 2 Costs 09/22/17 to 11/07/17	Period 3 Costs 11/08/17 to 12/31/2017	Totals
<b>LABOR COSTS</b>				
Clark	\$72,756.18	\$92,703.51	\$177,563.49	\$343,023.18
Weitz	\$0.00	\$52,398.00	\$53,763.00	\$106,161.00
Clarkson	\$22,645.89	\$13,319.17	\$32,169.14	\$68,134.20
<b>SUB-TOTALS:</b>	<b>\$95,402.07</b>	<b>\$158,420.68</b>	<b>\$263,495.63</b>	<b>\$517,318.38</b>
<b>NON-LABOR COSTS</b>				
Clark	\$19,810.36	\$94,964.23	\$152,106.04	\$266,880.63
Weitz	\$3,569.41	\$13,420.31	\$297.00	\$17,286.72
Clarkson	\$1,403.26	\$80.84	\$0.00	\$1,484.10
<b>SUB-TOTALS:</b>	<b>\$24,783.03</b>	<b>\$108,465.38</b>	<b>\$152,403.04</b>	<b>\$285,651.45</b>
<b>TOTALS:</b>	<b>\$120,185.10</b>	<b>\$266,886.06</b>	<b>\$415,898.67</b>	<b>\$802,969.83</b>

Clark/Weitz/Clarkson - A Joint Venture - For Reimbursement Agreement				
Company	Period 1 Costs Prior to 9/21/17	Period 2 Costs 09/22/17 to 11/07/17	Period 3 Costs 11/08/17 to 12/31/2017	Totals
<b>LABOR COSTS</b>				
Clark	\$0.00	\$0.00	\$177,563.49	\$177,563.49
Weitz	\$0.00	\$0.00	\$53,763.00	\$53,763.00
Clarkson	\$0.00	\$0.00	\$32,169.14	\$32,169.14
<b>SUB-TOTALS:</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$263,495.63</b>	<b>\$263,495.63</b>
<b>NON-LABOR COSTS</b>				
Clark	\$0.00	\$0.00	\$152,106.04	\$152,106.04
Weitz	\$0.00	\$0.00	\$297.00	\$297.00
Clarkson	\$0.00	\$0.00	\$0.00	\$0.00
<b>SUB-TOTALS:</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$152,403.04</b>	<b>\$152,403.04</b>
<b>TOTALS:</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$415,898.67</b>	<b>\$415,898.67</b>

SOM - Actual				
Company	Period 1 Costs Prior to 9/21/17	Period 2 Costs 09/22/17 to 11/07/17	Period 3 Costs 11/08/17 to 12/31/2017	Totals
<b>LABOR COSTS</b>				
SOM	\$134,747.50	\$297,932.50	\$370,632.50	\$803,312.50
<b>SUB-TOTALS:</b>	<b>\$134,747.50</b>	<b>\$297,932.50</b>	<b>\$370,632.50</b>	<b>\$803,312.50</b>
<b>NON-LABOR COSTS</b>				
Reimbursables	\$9,593.45	\$35,734.95	\$23,291.22	\$68,619.62
Consultants	\$0.00	\$0.00	\$258,950.92	\$258,950.92
<b>SUB-TOTALS:</b>	<b>\$9,593.45</b>	<b>\$35,734.95</b>	<b>\$282,242.14</b>	<b>\$327,570.54</b>
<b>TOTALS:</b>	<b>\$144,340.95</b>	<b>\$333,667.45</b>	<b>\$652,874.64</b>	<b>\$1,130,883.04</b>
Labor	\$322,952.39	\$550,306.27	\$709,971.41	\$1,583,230.07
Non-Labor	\$46,472.87	\$189,987.92	\$468,268.28	\$704,729.07
<b>GRAND TOTALS:</b>	<b>\$369,425.26</b>	<b>\$740,294.19</b>	<b>\$1,178,239.69</b>	<b>\$2,287,959.14</b>

SOM - For Reimbursement Agreement				
Company	Period 1 Costs Prior to 9/21/17	Period 2 Costs 09/22/17 to 11/07/17	Period 3 Costs 11/08/17 to 12/31/2017	Totals
<b>LABOR COSTS</b>				
SOM	\$0.00	\$0.00	\$370,632.50	\$370,632.50
<b>SUB-TOTALS:</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$370,632.50</b>	<b>\$370,632.50</b>
<b>NON-LABOR COSTS</b>				
Reimbursables	\$0.00	\$0.00	\$23,291.22	\$23,291.22
Consultants	\$0.00	\$0.00	\$258,950.92	\$258,950.92
<b>SUB-TOTALS:</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$282,242.14</b>	<b>\$282,242.14</b>
<b>TOTALS:</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$652,874.64</b>	<b>\$652,874.64</b>
Labor	\$0.00	\$0.00	\$634,128.13	\$634,128.13
Non-Labor	\$0.00	\$0.00	\$468,268.28	\$468,268.28
<b>GRAND TOTALS:</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$1,102,396.41</b>	<b>\$1,102,396.41</b>