

**Term Sheet for
Memorandum of Understanding
(Terminal Modernization Project)**

The following is a summary of the principal terms with respect to certain proposed transactions to be entered into by the parties identified below. The summary of terms set forth in this Term Sheet is intended solely as a basis for further discussions and is not intended to be and does not constitute a legally binding obligation. A legally binding obligation will only be made pursuant to mutually acceptable definitive transaction documents executed by the parties. In the event of any inconsistency between this term sheet and the definitive transaction documents, the transaction documents shall govern.

A. **Parties:**

1. City of Kansas City, Missouri (the "City")
2. Terminal Developer, LLC, or its designee ("Developer")
3. Burns & McDonnell Engineering Company, Inc. ("Contractor")
4. The airlines ("Airlines") signatory to the existing Use and Lease Agreement (the "Existing Use Agreement") effective May 1, 2017 at Kansas City International Airport ("Airport"). The Airlines are not parties to this Term Sheet, and it is not intended that they will be parties to the New MOU (as defined herein), but it is anticipated that they will be parties to certain of the Definitive Agreements.

B. **Factual Background:**

1. The City owns and operates the Airport.
2. The City and the Airlines previously negotiated, but did not enter into, a Memorandum of Understanding (the "Prior MOU"). The implementation of the Terminal Modernization Program ("TMP") described in the Prior MOU has not moved forward.
3. The City desires to proceed with improvements to the Airport (the "Project") in substantial conformance with those described in the Prior MOU.
4. Developer and Contractor have proposed that City enter into a transaction (the "Proposed Transaction") to implement the Project without financial risk or exposure to the City, as more fully outlined in this Term Sheet, and City and Developer desire to proceed to negotiate a memorandum of understanding (the "New MOU"), as provided in this Term Sheet, setting forth the terms and conditions of a framework for the preparation of definitive agreements (the "Definitive Agreements"). The Definitive Agreements will include:

- a. A Development Agreement between the City and the Developer;
- b. A Lease (the "Lease") between the City, as landlord, and Developer, as tenant;
- c. A Sublease (the "Sublease") between the Developer, as sublandlord and City, as subtenant, whereby the City is granted both the possession of the newly constructed terminal facility and its newly constructed appurtenances and the authority and obligation to operate the same;
- d. An Amended and Restated Use and Lease Agreement (the "New Use Agreement") between the City and the Airlines; and
- e. Such other agreements agreed to by the Parties as shall be necessary to carry out the Proposed Transaction.

5. Contractor, a Kansas City based, world-wide major construction contractor, has indicated a willingness, at its sole risk, to devote extraordinary resources to design and prepare detailed construction cost estimates and obtain critical third party bids to establish a 'not to exceed' construction cost, and then to act as the general contractor to build the terminal at no more than that maximum cost. As a sign of good faith, the Contractor has begun its efforts prior to the approval of the New MOU as an aid in speeding the analysis to determine the feasibility of the Project.

6. Contractor has indicated a willingness, as a member of Developer, to contribute substantial private equity to the development of the Project (subject to final budgets and construction cost estimates that in its judgment warrant the investment on the merits). Contractor has also indicated a willingness to provide the City and the Airlines with meaningful opportunities for review of architectural design, engineering and construction specifications and cost estimation during its planning and development of the TMP and to provide the City and the Airlines with information as to the nature of, and valuation of, any equity contribution to the TMP.

C. **The Project:**

1. Except as otherwise agreed by the Parties, the Project will generally consist of:
 - a. Terminal access to be provided from the existing airport roadway system.
 - b. A two-level terminal roadway serving arriving and departing passengers achieving required curb length; with separate commercial curbs being provided to serve courtesy shuttle services, rental car buses, public buses and other commercial ground transportation requirements.
 - c. An approximate 750,000 square foot terminal facility with at least 35 gates, 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 (“**FIS**”)) with expansion option to 42 gates and Airline operational support facilities incorporated to successfully operate and maintain terminal-related functions; and approximately 6,500 parking spaces.

d. 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.

e. Terminal aircraft apron and non-movement areas sized to accommodate aircraft fleet, dual taxilanes as appropriate, to accommodate B757 aircraft, connections to taxiways, adequate remaining overnight (“**RON**”) aircraft parking positions, and approximately eight (8) common use deicing pads and associated collection system.

f. 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.

g. 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.

h. Close-in public surface parking with approximately 2,000 parking spaces within walking distance of the terminal.

i. Associated site development, including relocation of pipelines, natural gas lines, communications facilities, and electronic transmission lines; environmental mitigation (if any); site grading and drainage; fencing; construction access roads and staging areas, among other things.

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

k. Demolition of existing Terminals A and B and the existing Terminal A parking garage.

2. The Project will be as generally described in the TMP and previously recommended by the Airlines pursuant to the Prior MOU, subject to such changes as shall be agreed to by the Parties during the course of Project design.

3. A general depiction of the potential layout of the Project, as currently contemplated, is attached to this Term Sheet as **Exhibit A**. It is acknowledged and agreed by City and Developer that, so long as the Project parameters as set forth in Section C.1. are substantially complied with (subject to the right of City and Developer to mutually agree to changes to such parameters), there may be changes to the contemplated Project scope components and the Project depiction as set forth on **Exhibit A**, provided such changes are acceptable to Developer, the Airlines and the City.

4. Developer will obtain the equity funding required for the Project, will work with the Contractor to supervise the construction of the Project and will be the tenant under the Lease with the City for the Project.

D. The Proposed Transaction:

1. The City will lease to Developer a portion of the Airport (including the land upon which the Project is to be located and the improvements constructed as part of the Project; the exact boundaries of the property to be leased will be mutually agreed to by City and Developer and included in the Lease) for a term of thirty (30) to thirty-five (35) years, or such other term as is stated in the Definitive Agreements and agreed to by City and Developer, pursuant to the Lease. Except as otherwise agreed by the Parties, the Lease will:

a. Require Developer and Contractor to:

i. Design and construct the Project as provided herein at a total development cost (the "Total Project Cost") to be set forth in the Definitive Agreements; the budget estimate developed in connection with the negotiations on the Prior MOU (attached to the Prior MOU as Attachment B) totaled \$964,000,000.00 (in 2015 dollars). Contractor is evaluating the current estimated construction costs to establish a budget for the Project (the "Budget") which shall be set forth in the Definitive Agreements and shall be subject to the approval of the Parties;

ii. Enter into design and construction contracts, or a design-build contract, including a guaranteed maximum price consistent with the Budget. Developer has engaged Contractor as the contractor for the construction of the Project. Developer shall have the exclusive right to select and contract (directly or through the Contractor) for all of the work needed for the Project;

iii. Obtain or provide all funding for the design, financing and construction of the Project, subject only to City's obligation under the Operations Sublease to remit to Developer, or otherwise make available for the Project, funds actually received by the City from the Funding Sources (as defined below);

iv. Use good faith efforts to achieve the City Aviation Department's current MBE/WBE/DBE professional services and construction services and workforce goals, as applicable;

v. Complete construction of the Project, subject to delays from causes beyond the control of the parties, not later than a date mutually agreed to by the Parties. Developer and Contractor currently anticipate the construction of the Project will be completed within 48 months after commencement of work; and

vi. Comply with all applicable laws, including without limitation Missouri prevailing wage law.

b. Require City to:

i. Act as Airport Sponsor (as defined under Federal law) with respect to, and ensure that to the maximum extent permitted by law all available funds from the following sources (the following sources, together with the PFC Revenues, are referred to herein as the "Federal Funding Sources") are used for the Project or as otherwise provided herein (subject to currently approved or pending applications providing for or proposing other uses of the Federal Funding Sources):

1. Federal Aviation Administration ("FAA") Airport Improvement Program ("AIP") grants-in-aid;
2. Transportation Security Administration ("TSA") grants; and
3. All other funding available from FAA, TSA or any other federal agency or authority for airport construction and development.

ii. Make available revenues generated from the Passenger Facility Charge ("PFC") program ("PFC Revenues"), it being acknowledged that, with the agreement of City, the Airlines and Developer, the Definitive Agreements may include a cap upon the amount of PFC charges included in the Federal Funding Sources;

iii. Comply with all grant assurance and PFC assurances relating to the Federal Funding Sources.

iv. Pay to Developer, or otherwise make available for the Project, any and all funds actually received by the City from the following sources (the "Airport Revenue Sources"), all in conformance with the provisions and requirements of the City's Committee Substitute for Ordinance No. 130081 (hereinafter "Master Bond Ordinance") or as otherwise approved by City, Developer or as otherwise approved by City and Developer and consented to by all necessary parties under all existing outstanding financings pursuant to the Master Bond Ordinance:

1. Net (as defined in the Master Bond Ordinance or as otherwise approved by City and Developer and consented to by all necessary parties

under all existing outstanding financings pursuant to the Master Bond Ordinance) City/Airport revenues from parking operations;

2. Net (as defined in the Master Bond Ordinance or as otherwise approved by City and Developer and consented to by all necessary parties under all existing outstanding financings pursuant to the Master Bond Ordinance) City/Airport revenues from concession operations;

3. Net (as defined in the Master Bond Ordinance or as otherwise approved by City and Developer and consented to by all necessary parties under all existing outstanding financings pursuant to the Master Bond Ordinance) City/Airport revenues from rental car operations;

4. To the extent needed to achieve the Target Total Annual Airline Requirement (as defined below), rent and other amounts paid by the Airlines pursuant to the New Use Agreement; and

5. Net (as defined in the Master Bond Ordinance or as otherwise approved by City and Developer and consented to by all necessary parties under all existing outstanding financings pursuant to the Master Bond Ordinance) fueling revenues and fees (including, without limitation, flowage fees);

6. Any other funding paid to City by the Airlines, Airport users, concessionaires, vendors and any other party;

7. Any funding provided to the Airport by the State of Missouri; and

8. Any other Airport-designated funds or funding sources agreed to by City and Developer.

The Airport Revenue Sources, together with the Federal Funding Sources, are hereinafter referred to as the "Funding Sources."

v. To the maximum extent allowed by law and by the Master Bond Ordinance (or as otherwise approved by City and Developer and consented to by all necessary parties under all existing outstanding financings pursuant to the Master Bond Ordinance), upon request from Developer, pledge the Funding Sources to the payment of debt to be incurred to pay for the cost of the Project;

vi. Cooperate with Developer in obtaining all necessary approvals from FAA, TSA and all other state or federal governmental authorities for the construction and financing of the Project.

vii. Cooperate with Developer in arranging the financing for the Project. No such financing shall be or constitute a general indebtedness of the City. Neither the general faith nor taxing power (including ad valorem taxes) of the City will be pledged to the payment of such financing, and the City shall not be under any obligation to pay the principal or interest of any such financing except from revenues of the Airport System (as defined in the Master Bond Ordinance or as otherwise approved by City and Developer and consented to by all necessary parties under all existing outstanding financings pursuant to the Master Bond

Ordinance) as committed to such payment as provided in the Definitive Agreements; and

viii. Seek authorization to apply for PFC funding at the highest PFC level generally allowable (i.e., excluding pilot programs) during the financing of the Project. City will work with Developer to optimize PFC pay-as-you-go and leveraging for the financing of the Project to achieve the most advantageous outcome.

c. Provide:

i. That the acquisition of construction materials and all tangible personal property and equipment for the Project will be exempt from sale and use taxes to the extent permitted by state law, and the City will issue to Developer and, upon request, Contractor or subcontractors or vendors, a project exemption certificate evidencing such sales and use tax exemption, subject to approval by the State of Missouri and the agreement by Developer and Contractor that the City will, under no circumstances, be liable to Developer and Contractor if the State of Missouri denies such sales and use tax exemption. City will support the application for such exemption with the State of Missouri;

ii. That Developer shall not be responsible for payment of any ad valorem taxes applicable to the Project.

iii. That Developer's obligations under the Lease are contingent upon the closing of financing determined by Developer to be sufficient to complete the Project;

iv. For a designation of the premises leased to Developer acceptable to Developer so as to protect the integrity of the Project investment, financing, operations and potential direct and ancillary expansion; and

v. Limitations upon the development of facilities by the City or the City's Aviation Department on or adjacent to the Airport that would adversely affect the operation of the Airport or that, in the reasonable judgment of Developer (and any lenders or equity investors in the Project), would reduce any sources of revenue that are part of the Funding Sources.

The Lease will also include such other terms and provisions as may be mutually agreed to by the parties.

2. Developer will sublease the Airport to City pursuant to the Sublease. Except as otherwise agreed by the Parties, the Sublease will require City to:

a. Operate the Airport and the ancillary facilities;

b. Maintain the Airport in good condition and repair; and

- c. Comply with all of City's obligations under the Lease.

The Sublease will also include such other terms and provisions as may be mutually agreed to by the parties.

3. City and the Airlines will enter into an Amended and Restated Use and Lease Agreement (the "New Use Agreement"). Except as otherwise agreed by the Parties, the New Use Agreement will:

- a. Provide for an initial term to begin on or about the date of beneficial occupancy of the Project ("DBO") and to continue after DBO for an initial term of five (5) to seven (7) years, unless otherwise agreed by the Parties. The New Use Agreement may provide for periodic opportunities for each of the Airlines to adjust its usage of the Airport, provided, however, that the aggregate rent paid by the Airlines at all times shall equal the Target Total Annual Airline Requirement (as defined herein) and shall adjust with any rise in operational costs of the Airport;

- b. Require the Airlines to pay an amount (the "Target Total Annual Airline Requirement"), which together with all other Funding Sources, generates an amount sufficient to provide approximately \$85,200,000 per annum to repay the Project financing, recognizing that such Target Total Annual Airline Requirement may be adjusted in the New Use Agreement with the mutual agreement of the Parties. The New Use Agreement will also include a mechanism to adjust the Target Total Annual Airline Requirement based on mutually agreed-upon scope and Budget changes. Such annual amount shall be recalculated and amended based upon actual federal or state grants and grant-in-aid received for the Project and provided for use in the Project;

- c. Provide for an Airport System residual-cost ratemaking methodology to establish the rent to be paid by the Airlines following the DBO. The City owns both the Airport and Kansas City Charles B. Wheeler Downtown Airport (identified as Exhibit "H" in the Existing Use Agreement) (the Airport and the Kansas City Charles B. Wheeler Downtown Airport are collectively referred to as the "Airport System"). The City will cap the amount of net expenses attributed to the operation, maintenance, and development of Kansas City Charles B. Wheeler Downtown Airport as recovered from Airlines at the Airport, which amount will be indexed for inflation. Under this residual-cost ratemaking approach, the Airlines collectively agree to assume significant financial risk. The Airlines will keep the Airport System financially self-sustaining by making up any deficit, the residual cost, remaining after the costs identified for all airport users have been offset by non-Airline sources of revenue, and to further insure that Airport System revenues, including the Airline rent established as provided herein, are sufficient to:

- i. Pay operation and maintenance costs of the Airport System, as well as the costs of capital projects (other than the Project) in accordance with a budget established by the City and approved by the Airlines;
 - ii. Pay when due all principal and interest on the existing Airport System bonds and all debt incurred for the financing of the Project; and
 - iii. Pay to Developer its return on equity invested and the return of such equity investment over the term of the financing, at such rate and in accordance with a schedule approved as part of the financing.
- d. Grant the Airlines approval rights over additional capital expenditures in excess of \$5,000,000.00 (or such other amount as agreed to by City and the Airlines) not included as part of the Project;
- e. Provide for an Airline consolidated tenant improvement ("CTI") program, including an amount of funding in the Budget for the CTI program agreeable to the Parties, to allow the costs of finishing Airline spaces, exclusive, preferential and common, to be included in the cost of the Project.
- f. Require Airlines to support the City's efforts to pursue an AIP Letter of Intent and TSA grant funding for the Project, if such option is available;
- g. Provide for a Capital Improvement Program ("CIP") acceptable to the Parties for other relevant and necessary capital projects ("Additional Capital Projects") in addition to the Project. Developer will have no responsibility to fund or construct Additional Capital Projects under the CIP. As Additional Capital Projects are completed, needs change and other Additional Capital Projects are warranted, City shall present a Revised CIP at least annually. If the Airlines do not agree with the Revised CIP proposed by the City, City may request approval of the Revised CIP by a majority in interest of the Airlines, and if such Revised CIP is approved by a majority in interest of the Airlines, then such Revised CIP will be deemed approved and authorized;
- h. Provide that, in addition to Additional Capital Projects in the CIP or a Revised CIP approved by the Airlines, certain capital expenditures shall be permitted to be undertaken by City at any time and shall not be subject to consideration or disapproval by Airlines as is otherwise provided, including but not limited to, projects that have been pre-approved in the New Use Agreement, projects that are necessary or prudent to ensure compliance with a rule, regulation, or order of any federal, state, or other governmental agency, and projects that would not impact the calculation of airline rates and charges;
- i. Provide for the establishment of an Annual Renewal and Replacement Fund ("R&R Fund") which shall be used to pay for (1) renewals, reconstruction and replacement of any facilities and other reasonable expenses (engineering) incurred in

connection therewith, (2) acquiring and installing or replacing equipment, (3) unusual or extraordinary maintenance or repairs, (4) and premiums on insurance carried under the provisions of the New Use Agreement. Developer will have no responsibility with respect to the R&R Fund or any funding to be provided for the R&R Fund; and

j. Provide, except to the extent prohibited by the City's Master Bond Ordinance, that Developer is an intended third party beneficiary of the New Use Agreement, and that none of the following may occur with respect to the New Use Agreement except with the prior written consent of Developer (and any lenders or equity investors in the Project):

- i. City and the Airlines (or any Airline) will not amend or otherwise modify the New Use Agreement;
- ii. City will not release any Airline from any of its obligations under the New Use Agreement;
- iii. City will not enter into any document terminating the New Use Agreement; and
- iv. City and the Airlines (or any Airline) will not reduce or reallocate any of the Funding Sources.

The New Use Agreement will also include such other terms and provisions as may be mutually agreed to by the Parties.

E. **Project Financing:**

1. Developer will be responsible for developing the financing structure for the Project, which may include, without limitation, equity contributions by Developer or third parties, tax-exempt bonds or leasehold certificates of participation, taxable bonds or leasehold certificates of participation, conventional loans or other sources, all as Developer shall determine in its discretion.

2. City agrees that, so long as the financing structure does not impose any obligation upon City to pay the principal or interest of any such financing except from revenues of the Airport System as committed to such payment as provided herein, City will provide all reasonable cooperation to Developer to assist in obtaining such financing.

3. Developer shall have the right to select all providers of all of the financing, and to select all consultants (including financial advisors, underwriters and legal counsel) participating in the financing of the Project.

4. Developer agrees that the Definitive Agreements will require that, in connection with the closing of the proposed financing, Developer will deliver to City an opinion from nationally recognized bond counsel mutually acceptable to City and Developer that the proposed financing

does not materially adversely affect the tax exempt status of the City's existing tax exempt bonds issued with respect to the Airport System, nor the City's ability, under then-current law, to issue future tax exempt bonds with respect to the Airport System.

F. **Exclusivity:**

1. The New MOU and the Definitive Agreements shall provide that Developer shall have the exclusive right to proceed with the development of the Project, and that during the period commencing upon the execution of the New MOU and ending on December 31, 2018 (the "Exclusive Period"), City will negotiate exclusively with Developer in good faith to complete the Project, and will not engage, negotiate with, solicit or accept proposals from any party other than Developer for any modernization of the Airport, whether by renovation, new construction or any combination thereof.

2. The New MOU and the Definitive Agreements shall provide that Contractor shall have the exclusive right, to design and build the Project as the general contractor under the direction of the Developer, and City agrees that during the Exclusive Period City will not engage, negotiate with, solicit or accept proposals from any party other than Contractor for the design and construction of any proposed plan for the modernization of the Airport, whether by renovation, new construction or any combination thereof.

3. The New MOU and the Definitive Agreements shall provide for the extension of the Exclusive Period by mutual agreement of City, Developer and Contractor.

G. **Timing:**

City and Developer agree and acknowledge that the New MOU will require approval by the City of Kansas City, Missouri City Council ("Council"), and City and Developer agree to negotiate in good faith to finalize the terms of the New MOU, for presentation to the Council, not later than May 18, 2017.

H. **Contingencies:**

1. Approval by the City Council of the New MOU not later than June 15, 2017 (unless extended by agreement of Contractor and Developer);

2. Receipt by City and Developer from Airlines (a) representing at least 50% of the Airlines (in number) serving the Airport, and (b) that collectively account for at least 50% of rates, fees and charges paid by Airlines during the twelve (12) month period ending December 31, 2016, in form and substance acceptable to City and Developer, of written confirmation that the terms and conditions of the New MOU are acceptable in principle, subject to negotiation of the New Use

Agreement, and that the Airlines agree that the scope of the Project, as generally set forth herein, is acceptable to the Airlines; and

3. Approval by the voters of the City for the Project to the extent required by Section 6-50 of the City's Code of General Ordinances, together with any other approvals by the voters of the City deemed necessary by City or Developer to proceed with the Project, not later than November 7, 2017.

4. Approval by City and Developer of the terms of the Lease and Operations Sublease not later than March 31, 2018, and execution of the Lease and Operations Sublease not later than the closing of the financing for the Project.

5. Approval by City, the Airlines and Developer of the terms of the New Use Agreement not later than June 30, 2018, and execution of the New Use Agreement not later than the closing of the financing for the Project.

6. Completion of all components of the Financing of the Project, in amounts and upon terms acceptable to the Developer, the City and the Airlines, not later than June 30, 2018, and the closing of such financing not later than September 30, 2018.

I. **Miscellaneous:**

1. Notwithstanding anything to the contrary in this Term Sheet, nothing herein or in the New MOU shall be construed in a way that would limit, usurp or otherwise impair the governmental authority and police power of the City or otherwise waive or modify any provision of law.

2. The New MOU will require that the City provide, without cost to the Project, expedited review of all permit applications for the construction of the Project, and City agrees that no building permit or other similar fees shall be charged by the City in connection with the Project.

3. If Developer determines that, in order to make the Project financially feasible, it is necessary to form a community improvement district, transportation development district or other similar entity (the Special Taxing District") to impose an additional 1% sales tax on retail sales at the Airport, City agrees to consider in good faith approval of such Special Taxing District, with the understanding that any such decision shall be subject to all required legal approvals, including any necessary City Council approval.

4. City's City Manager shall be the City Representative for purposes of providing all consents and approvals provided for in the New MOU, subject, however, to the provisions of Section I.1. of this Term Sheet.

EXHIBIT A

(General Depiction of Potential Project Layout)

NT-A Concept





