

TRANSPORTATION SERVICES AGREEMENT

This Transportation Services Agreement (this "Agreement") made and entered into this ____ day of _____, 2015, by and between Southwest Airlines Co. ("Southwest"), and Sedgwick County, Kansas (the "County"; and together with Southwest, the "Parties", and each a "Party").

WITNESSETH:

WHEREAS, the County has requested that Southwest operate flight services between Mid Continent Airport in Wichita, Kansas ("ICT") and certain other airports that Southwest serves, to be agreed upon by the County and Southwest; and

WHEREAS, Southwest has agreed to operate flight services between ICT and (a) Chicago Midway International Airport in Chicago, Illinois ("MDW"), (b) Dallas Love Field in Dallas, Texas ("DAL"), and (c) McCarran International Airport in Las Vegas, Nevada ("LAS", and together with MDW and DAL, the "Destinations", and each a "Destination"), subject to and upon the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the mutual obligations and undertakings hereinafter set forth, the Parties agree as follows:

1. Effective July 1, 2015, Southwest will operate daily scheduled flight service between ICT and (a) MDW, (b) DAL, and (c) LAS, initially, as outlined on Exhibit A (the "Services"). The Parties agree that the Timetable attached hereto as Exhibit A sets forth the model of the services to be provided hereunder. The flight frequencies set forth in Exhibit A shall be the number of flights initially to be provided between each Destination and ICT and may be adjusted by Southwest to address market, weekend, and seasonal changes in demand. The flight times and aircraft type set forth in Exhibit A may be varied by Southwest from time-to-time.
2. Southwest will determine the fare levels and inventory allocations by fare level for all Services. Southwest agrees to use its normal marketing, promotion, revenue management systems, and passenger services at ICT and in-flight passenger amenities for the Services.
3. Southwest will include the Services provided herein in its published flight schedules and in its regular marketing, advertising, and distribution programs.
4. Southwest agrees to periodically consult with the County on the promotional efforts and performance of the Services.
5. The County shall not use the name, logo, or any other identifying images or marks of Southwest in any advertising material, promotional material, or other similar promotional activity of any sort or kind, whether undertaken directly or indirectly by the County, without the prior written consent of Southwest.
6. Southwest will be responsible for all operating expenses related to the Services provided herein, including, but not limited to, aircraft, crew, maintenance, insurance, fuel, ground services, reservations, and normal distribution. Southwest's operations pursuant to this Agreement, and its continuing obligations hereunder will be conducted under the authority of Southwest's air carrier certificate or operating certificate issued by the Federal Aviation Administration ("FAA") and under the economic authority issued to Southwest by the Department of Transportation. Southwest may and will only operate the Services in accordance with rules and regulations issued by the FAA, as such may be amended from time to time. Southwest will at all times have operational control of the aircraft.

7. In exchange for the Services, as provided in Paragraph 1, the County shall guarantee to Southwest the following minimum gross passenger revenues for each Block Hour (as hereinafter defined) (the "Block Hour Guarantee"):

- A. For Services between ICT and DAL, the Block Hour Guarantee shall not be less than (i) Seven Thousand Eight Hundred Twenty Five and No/100 Dollars (\$7,825.00), (ii) plus the applicable Fuel Adjustment or less the applicable Fuel Credit, (iii) plus five percent (5%) of the combined amount of 7.A(i) and (ii).
- B. For Services between ICT and MDW, the Block Hour Guarantee shall not be less than (i) Six Thousand Three Hundred Forty Nine and No/100 Dollars (\$6,349.00), (ii) plus the applicable Fuel Adjustment or less the applicable Fuel Credit, (iii) plus five percent (5%) of the combined amount of 7.B(i) and (ii).
- C. For Services between ICT and LAS, the Block Hour Guarantee shall not be less than (i) Six Thousand Eighty One and No/100 Dollars (\$6081.00), (ii) plus the applicable Fuel Adjustment or less the applicable Fuel Credit, (iii) plus five percent (5%) of the combined amount of 7.C(i) and (ii).

Such amounts may be adjusted from time to time in accordance with Paragraph 9 of this Agreement.

8. Subject to any weekend or seasonal changes in demand, Southwest agrees to provide a minimum of four (4) flights each day, total, between ICT and one of more of the Destinations.

9. In order to reflect changes in the cost of providing the Services due to variations of fuel prices, the Block Hour Guarantee will be adjusted as follows:

- A. The Parties hereby establish a base "all-in" fuel price of Two and 60/100 Dollars (\$2.60) per gallon (the "Base Fuel Price").
- B. Each month, Southwest shall determine whether the actual all-in price of a gallon of fuel for each Block Hour was more or less than the Base Fuel Price, and shall make the following adjustments:
 - i. if the actual all-in price of a gallon of fuel for a Block Hour was more than the Base Fuel Price, Southwest shall add Eight Dollars (\$8.00) to the Block Hour Guarantee for each cent (\$0.01) for which the actual fuel price was more than the Base Fuel Price for that Block Hour (the "Fuel Adjustment"); or
 - ii. if the actual all-in price of a gallon of fuel for a Block Hour is less than the Base Fuel Price, Southwest shall subtract Eight Dollars (\$8.00) from the Block Hour Guarantee for each cent (\$0.01) for which the actual fuel price was less than the Base Fuel Price for that Block Hour (the "Fuel Credit").

10. Southwest shall calculate each "Block Hour" in accordance with its standard procedures. The estimated Block Hours between each Destination and ICT is as follows:

- A. Between DAL and ICT, Seventy (70) minutes (1 and 1/6 Block Hours);
- B. Between MDW and ICT, One Hundred Ten (110) minutes (1 and 5/6 Block Hours); and
- C. Between LAS and ICT, One Hundred Fifty (150) minutes (2 and 1/2 Block Hours).

Southwest and County agree that the estimated Block Hours for each Destination are based on optimum routings, forecast winds, and historical taxi times. The Parties agree that the above Block Hours are a seasonal estimate only and that actual Block Hours will vary by date and time due to uncontrollable factors such as weather conditions and air traffic control. Southwest reserves the right to adjust Block Hours as necessary to ensure schedule integrity. County agrees that Southwest's determination of actual Block Hours will be the basis for the Block Hour Guarantee, subject to periodic audits by the County as herein provided.

11. In addition to or in combination with those Destinations specified in Exhibit A, County agrees that Southwest may provide flights between ICT and other cities served by Southwest. Such flights will be included in the definitions of Services in this Agreement and shall be included in the Block Hour Guarantee. The amount of the Block Hour Guarantee and any other specific terms for each additional destination shall be set forth in a letter amendment to this Agreement, which shall be executed by Southwest and the County. The County agrees that with respect to any additional Services provided under this Agreement, Southwest will have the right to establish the initial scheduled Block Hours for the purposes of determining the Block Hour Guarantee and that all such scheduled Block Hours may be adjusted under the terms set forth herein.

12. At the end of each calendar month, Southwest will determine whether its actual, aggregate gross passenger revenues from ticket sales for Services between ICT the Destinations were less than the aggregate Block Hour Guarantee amounts ("Block Hour Shortfall") or greater than the aggregate Block Hour Guarantee amounts ("Block Hour Surplus"). The Block Hour Shortfall and Block Hour Surplus will be calculated by comparing the actual, monthly aggregate gross passenger revenue to aggregate Block Hour Guarantee amounts.

- A. In the event a Block Hour Shortfall occurs in any calendar month during the term of this Agreement, Southwest will provide a written report to the County setting forth the Block Hour Shortfall and the date(s) and route(s), associated with the Block Hour Shortfall. The report will contain the total gross passenger segment revenue and actual Block Hours per such flight(s) determined in accordance with Southwest's standard accounting procedures. Within thirty (30) days of its receipt of the Block Hour Shortfall report, the County will remit, in U.S. dollars, by wire transfer to Southwest, an amount equal to the Block Hour Shortfall.
- B. For any month in which there is a Block Hour Surplus, the amount of the Block Hour Surplus will be carried forward as a credit and applied to any Block Hour Shortfalls in subsequent months and/or contract periods.

Notwithstanding any other provision herein to the contrary, the County's obligations hereunder to remit to Southwest the Block Hour Shortfall(s) shall not exceed \$6,500,000.00 per year during the term of this Agreement.

13. The County shall have the right to require an audit of only those records of Southwest which relate to the accuracy of the Block Hour Shortfall, as calculated by Southwest. Such audits shall be performed by an independent third party audit firm, selected by mutual agreement of the Parties. The firm shall be engaged by Southwest, and the County shall reimburse Southwest the cost of such audit, up to an aggregate amount of \$25,000.00 per year. All such records of Southwest are proprietary materials of Southwest and the County shall keep any and all information contained therein confidential to the fullest extent permissible under the statutes of the State of Kansas relating to open records and open meetings. In the event of an audit, both the third party audit firm and County shall sign separate confidentiality agreements provided by Southwest, and Southwest shall determine what confidential information may be given to the County.

14. Southwest may terminate this Agreement upon thirty (30) calendar days' written notice if the County fails to remit the Block Hour Shortfall in substantial compliance with the terms of this Agreement and/or if changes in any applicable governmental regulations preclude operations with Southwest's existing fleet of aircraft.

15. The County may terminate this Agreement upon written notice to Southwest if Southwest reduces service

below the level described herein; if more than fifty percent (50%) of the outstanding voting stock of Southwest is sold to another airline; if Southwest files a voluntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtor's rights; if Southwest consents to an involuntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtor's rights; or if an order is entered for relief against Southwest or a receiver, trustee or custodian is appointed for all or a substantial part of the property or assets of Southwest in any involuntary proceeding, and such order and/or appointment continues unstayed for any period of ninety (90) consecutive calendar days.

16. Either Party may terminate this Agreement upon written notice to the other Party in the event this Agreement is found to violate any laws, rules, regulations, or ordinances applicable to the County, Southwest, or the City of Wichita or any airport authority, or in the event any suit or other proceeding is brought which seeks or threatens to restrain or prohibit the transactions contemplated by this Agreement, seeks to obtain damages, or involves a claim that the consummation of which would result in the violation of any law, decree, or regulation of any governmental authority having appropriate jurisdiction.

17. The County or Southwest may terminate this Agreement at any time upon seventy five (75) calendar days' written notice.

18. The term of this Agreement shall commence on July 1, 2015, and shall terminate on June 30, 2016.

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

20. Southwest and County each agree to defend, indemnify and hold harmless the other, and each other's respective officers, directors and employees from and against any and all claims, damages, liabilities, losses, proceedings, judgments, costs and expenses (including without limitation reasonable attorney's fees) arising out of the performance by each of its obligations hereunder, except that, any indemnification by the County or Southwest pursuant to this provision shall not exceed 1.5 times the maximum annual contribution of \$6,500,000 by the County set out in Paragraph 13 above. The foregoing indemnity shall survive any expiration or termination of this Agreement.

21. All notices, demands, requests, consents, and approvals by either Party to this agreement shall be made in writing and sent by U.S. mail, or by recognized overnight courier, or by hand delivery, or by facsimile transmission (if confirmed by mail, overnight courier or hand delivery). All such notices shall be addressed as follows:

If to the County:

Chief Financial Officer
Sedgwick County
525 N. Main, Ste. 823
Wichita, KS67203
Tel: (316) 660-7591
Fax.: (316) 383-7729

With a copy to:

Sedgwick County Counselor
525 N. Main, Suite 359
Wichita, Kansas 67203
Tel: (316) 660-9340
Fax: (316) 383-7007

If to Southwest:

Southwest Airlines, Co.
Vice President-Airport Affairs
P.O. Box 36611
Dallas, TX 75235
Tel: (214)-792-4365
Fax: (214)-792-4224

22. This Agreement and any issue arising out of or relating to the Parties' relationship hereunder shall be governed by, and construed in accordance with the laws of the State of Kansas.

23. This Agreement constitutes the entire agreement and understanding between the Parties relating to the subject matter hereof, and any and all prior agreements, arrangements, understandings, or representations, oral or written, are merged into and superseded by the terms of this Agreement. This Agreement cannot be altered, amended or modified except by a writing signed by an authorized representative of each Party.

24. The obligations and undertakings set forth herein are severable, such that if any provision hereof is found to be invalid or unenforceable, such invalid or unenforceable provisions shall not affect the validity or enforceability of the remaining provisions.

25. Failure to insist on strict compliance with any provisions hereof by either Party shall not constitute a waiver of compliance with such provision nor preclude either Party from demanding strict compliance in the future.

26. This Agreement may not be assigned by either Party hereto.

27. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

28. **EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION.** In carrying out this Agreement, Southwest shall not deny any of the benefits or services of the program to any eligible participant pursuant to K.S.A. 44-1001 et seq.

- A. Southwest shall observe the provisions of the Kansas act against discrimination and shall not discriminate against any person in the performance of work under this agreement because of race, religion, color, sex, disability, national origin, or ancestry.
- B. In all solicitations or advertisements for employees, Southwest shall include the phrase "equal opportunity employer" or a similar phrase to be approved by the Kansas Human Rights Commission.
- C. If Southwest fails to comply with the provisions of K. S.A. 44-1031, requiring reports to be submitted to the Kansas Human Rights Commission when requested by that Commission, Southwest shall be deemed to have breached this contract and it may be canceled, terminated or

suspended, in whole or in part, by County.

- D. If Southwest is found guilty of a violation of the Kansas act against discrimination under a decision or order of the Kansas Human Rights Commission which has become final, Southwest shall be deemed to have breached this contract and it may be canceled, terminated or suspended, in whole or in part by County.
- E. Southwest shall include the provisions of Subparagraphs A through D inclusively of this Paragraph 28 in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.
- F. The provisions of this Paragraph 28 shall not apply to a contract entered into by a contractor who:
1) employs fewer than four employees during the term of this contract; or 2) whose contracts with the County cumulatively total \$5,000.00 or less during the fiscal year of the County pursuant to K.S.A. 44-1031(c).

29. Each Party's obligation to perform under this Agreement shall be suspended if and for so long as the non-performance of such obligation shall be directly caused by a strike, lockout, labor trouble, act of God, inability to secure materials, restrictive governmental laws or regulations, enemy action, war, national emergency, riot, fire, or other similar exigency not the fault of the Party obligated.

30. The Parties each represent to each other that they have the right, power, legal capacity, and authority to enter into and perform their respective obligations under this Agreement, and no approvals or consents of any persons other than the Parties hereto are necessary in connection with it. The execution and delivery of this Agreement by the Parties has been duly authorized by the Parties' respective boards of directors or commissioners.

Remainder of Page Intentionally Left Blank
Signature Page Follows

IN WITNESS WHEREOF, the Parties hereto affix their duly authorized signatures as of the date set forth on the first page of this Agreement.

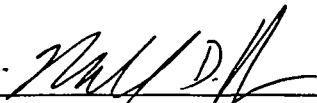
BOARD OF COUNTY COMMISSIONERS
OF SEDGWICK COUNTY, KANSAS

ATTEST:

RICHARD RANZAU, Chairman
Commissioner, Fourth District

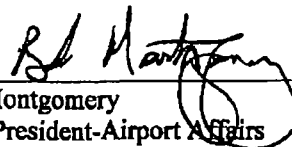
KELLY ARNOLD, County Clerk

APPROVED AS TO FORM:



MICHAEL D. PEGGION
Acting County Counselor

SOUTHWEST AIRLINES CO.



Bob Montgomery
Vice President-Airport Affairs

EXHIBIT "A"

Southwest will operate the following service between Wichita and Chicago, Dallas, and Las Vegas.

Wichita – Origin:

<u>FLT</u>	<u>ORIG</u>	<u>DEST</u>	<u>Dept</u>	<u>Arr</u>	<u>Frequency</u>
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3	ICT	DAL	0545	0655	12345 7
1636	ICT	MDW	0940	1125	12345 7
31	ICT	DAL	1215	1325	12345 7
310	ICT	LAS	1410	1441	12345 7
5363	ICT	MDW	1840	2025	12345 7

Wichita–Destination:

<u>FLT</u>	<u>ORIG</u>	<u>DEST</u>	<u>Dept</u>	<u>Arr</u>	<u>Frequency</u>
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1636	DAL	ICT	0755	0905	12345
398	LAS	ICT	0915	1335	12345
31	MDW	ICT	1000	1145	12345 7
5363	DAL	ICT	1700	1810	12345 7
1506	MDW	ICT	2030	2220	12345 7

The flight frequencies set out in the timetables are representative of the flights to be provided in the identified city pair markets and may be adjusted to address overall market, weekend and seasonal changes in demand. The flight times set out in the timetable may be varied from time-to-time in accordance with Southwest's usual procedures and operational requirements.