

PARKING LOT LEASE AGREEMENT

This Parking Lot Lease Agreement (this "Agreement") is made and entered into this 1st day of January, 2018,

BY AND BETWEEN

City of Wichita, Kansas,
a municipal corporation,
455 North Main Street
Wichita, Kansas 67202

"LESSOR,"

AND

Sedgwick County, Kansas
Sedgwick County Courthouse
525 N. Main
Wichita, Kansas 67203

"LESSEE."

WITNESSETH THAT:

WHEREAS, LESSOR is the owner of the following described real property, and in consideration of rents to be paid and the covenants to be observed as herein set forth, and each and every one of them, does hereby lease and rent to LESSEE, for the term and under the conditions herein set forth, a portion of the premises described as follows, to-wit:

Lot 1, Block 1, City Hall Complex Addition to Wichita, Sedgwick County, Kansas ("City Hall Complex")

and

WHEREAS, it is not LESSOR's practice to allow employees of LESSOR who are not officed at the City Hall Complex to purchase parking in the parking garage structure located west of the building at 455 North Main ("City Hall Parking Garage") of the surface lot east of Waco ("Rounds and Porter Parking Lot") and

WHEREAS, LESSEE has requested that the LESSOR allow employees of LESSOR that are officed in the building located at 271 West 3rd be allowed to rent parking in City Hall Parking Garage or in the Rounds and Porter Parking Lot, and

WHEREAS, the above named parties desire to enter into this Agreement on the terms set forth herein;

NOW, THEREFORE, for and in consideration of the premises and rent provided herein and the mutual covenants and agreements recited herein, the above named parties do hereby agree and shall be bound as follows:

1. **TERM.** LESSOR hereby demises, lets and leases a portion of the above real property, together with the improvements thereon (the "leased premises") to LESSEE for a perpetual term, or until a breach of this Agreement has occurred as provided herein under paragraph 20 or until this Agreement is terminated as provided herein under paragraph 21.

2. **LEASED PREMISES.** LESSOR shall lease Forty (40) parking spaces to LESSEE. Said spaces shall be utilized only by employees of the LESSOR who are located in the building located at 271 West 3rd. LESSEE shall determine and advise LESSOR how many of the spaces shall be located in the Rounds and Porter Lot and how many of the spaces are located in the City Hall Parking Garage.

2. **RENT.** As consideration for this Agreement and as rent for the use of the leased premises, LESSEE agrees to pay unto LESSOR the sum of Twenty Dollars and No Cents (\$20.00) per month per space occupied in the City Hall Parking Garage and Zero Dollars and No Cents (\$0.00) per month per space occupied in the Rounds and Porter Lot. These amounts reflect the amounts currently being charged to employees of LESSOR to park at the respective facilities. If these amounts change, the amount charged pursuant to the agreement will change accordingly. Such payment shall be made monthly. Any proration of this amount shall be determined by the termination provision contained in paragraph 21. All payments shall be made by check and shall be made payable to the order of: **City of Wichita, Kansas.** All payment installments shall be mailed or hand delivered to the Office of Property Management, 13th Floor, City Hall, 455 North Main Street, Wichita, Kansas 67202.

3. **SECURITY DEPOSIT.** None

4. **LIABILITY.** LESSEE acknowledges that LESSEE has examined the leased premises and, by acceptance thereof, acknowledges that there is in and about the leased premises no apparent condition that would be a danger to life, limb, health, or property. LESSEE agrees to enter into possession of the leased premises in its current "as-is" condition.

LESSOR shall not be liable to LESSEE for any damage done to or loss of personal property or for damage or loss suffered by the business or occupation of LESSEE arising from any willful act or negligence of any co-tenants or other occupants of the parking lot, or of the employees or customers of LESSEE.

LESSEE agrees to indemnify LESSOR and hold LESSOR harmless from any loss, liability, damage, cost and expense of investigating or defending any claim therefor occurring on or about the leased premises or arising in any way as a result of LESSEE's occupancy of the leased premises. By so agreeing, LESSOR and LESSEE acknowledge that LESSEE will not so indemnify and hold harmless LESSOR from any loss, liability, damage, cost and expense of investigating or defending any claim therefor occurring elsewhere in the parking lot or that does not arise as a result of LESSEE'S occupancy

of the portion of the parking lot herein defined as the leased premises.

5. **WAIVER OF ANY BREACH.** Any waiver of any breach hereof or indulgence as to the payment of any installment of rent at any time, or from time to time, shall not be construed to be a waiver of any subsequent breach or imply any future indulgence.

6. **USE OF PREMISES.** The leased premises may be used and occupied only as parking for individuals working in the LESSEE's building at 271 West 3rd Street unless prior written permission for other use is obtained from LESSOR. LESSEE shall have use of the leased premises Monday through Friday from 8:00 A.M. to 6:00 P.M. LESSEE recognizes that the leased premises could be used for other uses outside the above times. LESSEE shall not commit, or suffer to be committed, any waste upon the leased premises and LESSEE further agrees not to connect with electric wires, water, gas or sewer pipes, or any apparatus, machinery or device without the consent of LESSOR.

LESSEE expressly recognizes that the leased premises are publicly owned and that LESSOR desires that the leased premises be used in such a manner that gives the appearance of impartiality in political campaigns and on public issues; as such, LESSEE will not use the leased premises for any partisan or political activity or for overt public activities that take a position on policy issues before LESSOR and its agencies, provided that this provision shall not prevent LESSEE from taking positions in newsletters, correspondence, internal meetings, etc. that otherwise are in accordance with the purposes of LESSEE'S organization.

LESSEE shall neither use nor occupy the leased premises for any unlawful, disreputable or ultra hazardous business purpose or activity, nor operate or conduct its business in a manner constituting a nuisance of any kind. Upon notice or discovery, LESSEE agrees to immediately take action and cease any activity or use in violation of this Agreement.

7. **CONDUCT OF BUSINESS.** LESSEE will conduct its business, and control its agents, employees, and invitees in such a manner as to not create any nuisance, or interfere with, annoy or disturb other occupants, guests, neighbors, or LESSOR in the management of the parking lot.

8. **LESSEE'S INDEMNIFICATION AND NON-LIABILITY OF LESSOR.** LESSOR shall not be liable to LESSEE or to LESSEE's employees, patrons, guests or visitors in or upon the leased premises for theft or any damage to person or property caused or claimed to have been caused by the negligence of LESSEE, the LESSEE's agents, employees, or invitees.

9. **PUBLIC LIABILITY INSURANCE.** LESSEE agrees to self-insure or carry public liability insurance on the leased premises covering both LESSOR and LESSEE, with a company licensed to do business in the State of Kansas, for limits of not less than \$500,000 for injury or death of any one person, \$500,000 for any one occurrence, \$500,000 property damage insurance, and contractual liability coverage recognizing this Agreement.

10. **LESSOR'S COVENANTS.** It is agreed by the parties hereto that it shall be the duty and obligation of LESSOR herein:

- a. To deliver the leased premises to LESSEE, at commencement of the term of this Agreement, in "as-is" condition.
- b. To provide LESSEE with hang tags, proximity cards or other items needed access the leased space and to prove authorized use of same.
- c. To provide to LESSEE, contingent upon LESSEE's compliance with it covenants, duties and obligations herein, the right to the quiet and peaceful possession of the leased premises for the full term of this Agreement.

11. **LESSEE'S COVENANTS.** In consideration of the foregoing, LESSEE hereby agrees:

- a. To promptly pay the specified rents for the leased premises in the manner and at the times as herein provided to the LESSOR, its successors and assigns, or to its agent.
- b. To notify LESSOR immediately of any major problem relative to the leased premises.

12. **MUTUAL WAIVERS OF SUBROGATION.** Each party hereby waives any and all claims against the other party for any and all liability or responsibility for any loss, injury or damage to any person(s) or the leased premises, which may be caused by fire, casualty, accident, or otherwise during the term of the Agreement if, but only if, and only to the extent that, such loss or damage is covered by and recoverable under valid and collectible insurance carried by the waiving party.

13. **IMPROVEMENTS AND ALTERATIONS.** LESSEE shall make no material changes or alterations to the leased premises unless it shall first have obtained LESSOR'S written consent thereto.

14. **SIGNS AND AWNINGS.** No sign, notice, awning, advertisement, picture or other inscription of any kind shall be placed or put upon any portion of the leased premises, unless the written consent of LESSOR shall first have been obtained.

15. **OWNERSHIP REPRESENTATION.** Under no circumstances shall LESSEE represent to any party that LESSEE is the owner of the parking lot or the leased premises covered by this Agreement or the agent or trustee of the LESSOR. LESSEE understands and agrees that no authorization to act for, on or in behalf of LESSOR is granted to LESSEE.

16. **NONDISCRIMINATION.** LESSEE agrees to comply with the requirements of City of Wichita Administrative Regulation #23, Nondiscrimination and Equal Opportunity Statement, which is marked Exhibit "B", attached hereto and incorporated herein.

17. **ASSIGNMENT AND SUBLEASE.**

- a. It is agreed that this Agreement, or any interest therein, shall not be assigned by LESSEE, nor the leased premises sublet in whole or in part, without the prior written consent of LESSOR, nor shall this Agreement, or any interest therein or thereunto be sold or assigned or passed by adjudication of LESSEE as bankrupt or through bankruptcy proceedings. In the event this Agreement is so assigned or the leased premises sublet in whole or in part, LESSEE is not relieved from any of its obligations and liabilities under this Agreement, but rather, remains

liable for performance under the Agreement.

b. In the event Lessee rents or subleases the premises in whole or in part with LESSOR'S consent as herein provided, and if any rents received by LESSEE under any such sublease are in excess of the rent amount payable by LESSEE under this Agreement, or any additional consideration is paid to LESSEE by the assignee under any such assignment, then said excess shall remain with LESSEE.

c. LESSOR shall have the right to transfer and assign, in whole or in part, any of its rights under this Agreement, and in the leased premises referred to herein; and, to the extent that such assignee assumes LESSOR'S obligations hereunder, LESSOR shall by virtue of such assignment be released for such obligations.

18. **RECEIPTS FROM ASSIGNEE OR SUBTENANT.** The receipt by the LESSOR of rent from any assignee, subtenant or occupant of the leased premises shall not be deemed a waiver of any of the provisions of paragraph 22 of this Agreement. No provision of this Agreement shall be deemed to have been waived by the LESSOR unless such waiver is in writing signed by the LESSOR.

19. **EVENT OF CASUALTY.** In the event the leased premises is damaged or destroyed by a casualty as to become unusable for its intended purpose, then either LESSOR or LESSEE may, upon proper notice and, if either LESSOR or LESSEE so elects, give notice in writing terminating this Agreement.

20. **EVENTS OF DEFAULT.** The following shall be considered, for all purposes, to be defaults under, and breaches of this Agreement by LESSEE:

a. Any failure of LESSEE to pay any rent installment hereby reserved and such failure shall continue for a period of twenty (20) days from the date such rent is due.

b. Failure of LESSEE to perform or observe any of the terms, provisions, conditions and covenants of this Agreement, other than the payment of rent, and shall not cure such failure within ten (10) days after written notice thereof to LESSEE.

c. LESSEE shall become bankrupt or insolvent, or file or have filed against it a petition in bankruptcy, or the reorganization or arrangement, or for the appointment of a receiver or trustee of all or a substantial portion of the LESSEE's property, or LESSEE makes an assignment for the benefit of creditors.

d. LESSEE abandons or vacates any substantial portion of the leased premises for a period of ten (10) days or more.

e. The leased premises come into the hands of any person other than is expressly permitted under this Agreement.

21. **TERMINATION.** This Agreement shall terminate without any further required notice

upon occurrence of the following.

- a. Any default or breach of any covenants and provisions of the Agreement by the LESSEE and failure to cure such breach by LESSEE after notice periods identified hereinbefore in Section 20. In which case, the LESSOR shall be entitled to possession of the leased premises, and LESSOR may distrain for rent due and damages and recover possession of said leased premises as provided by law.
- b. Upon sixty (60) days after declaration by LESSOR that the leased premises are needed for public purpose.
- c. Upon sixty (60) days after written notice by either LESSOR or LESSEE, for convenience.

22. **ENFORCEABILITY.** No waiver by LESSOR or LESSEE of any breach of any term, covenant or condition hereof shall be deemed to be a waiver of the same, or subsequent breach of the same, or any other term, covenant or condition. The acceptance of rent by LESSOR shall not be deemed a waiver of any earlier breach by LESSEE of any term, covenant, or condition hereof, regardless of LESSOR'S knowledge of such breach, when such rent is accepted, unless LESSOR specifically agrees thereto. No covenant, term or condition of this Agreement shall be deemed waived by LESSOR or LESSEE, unless waived in writing.

23. **BINDING ON PARTIES.** Subject to the limitations provided hereinbefore, this Agreement shall be jointly and severally binding on the parties hereto, their respective heirs, devisees, successors and assigns.

24. **NOTICE.** All LESSEE correspondence, notices and demands to LESSOR must given in writing to:

Office of Property Management
Attention: John C. Philbrick
City Hall - 13th Floor
455 North Main Street
Wichita, Kansas 67202

City Law Department
Attn: Jennifer Magana
Director of Law and City Attorney
455 N. Main, 13th Floor
Wichita, KS 67202

All LESSOR correspondence, notices and demands to LESSEE must be given in writing to:

Sedgwick County, Kansas
Attn: Tom Stolz
714 N. Main

Wichita, Kansas 67203

Sedgwick County Counselor's Office
Attn: Contract Notification
Sedgwick County Courthouse
525 N. Main, Suite 359
Wichita, KS 67203-3790

25. **EXHIBITS.** All exhibits referenced hereinabove are part of the Agreement as if fully set forth herein.

26. **CAPTIONS.** The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and conditions of this Agreement.

27. **SEPARABILITY.** If any clause or provision of this Agreement is determined to be illegal, invalid or unenforceable under present or future laws effective during the term of this Agreement, then, and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the parties to this Agreement that in lieu of each clause or provision of this Agreement that is illegal, invalid or unenforceable, there be added as a part of this Agreement a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

28. **AMENDMENTS; BINDING EFFECT.** This Agreement may not be altered, changed or amended, except by instrument in writing signed by the parties hereto. All terms, provisions, covenants and conditions contained in this Agreement shall apply to, inure to the benefit of, and be binding upon the parties hereto, and upon their respective successors in interest and legal representatives, except as otherwise herein expressly provided.

29. **PRIOR AGREEMENT.** Nothing in this Agreement shall be deemed and/or interpreted to change or modify in any way the Agreement for Use of Parking Lot dated December 17, 2014, by and between the parties hereto.

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

LESSOR
CITY OF WICHITA, KANSAS,
a municipal corporation

LESSEE
SEDGWICK COUNTY, KANSAS

Jeff Longwell, Mayor

David T. Dennis, Chairman
County Commissioner, Third District

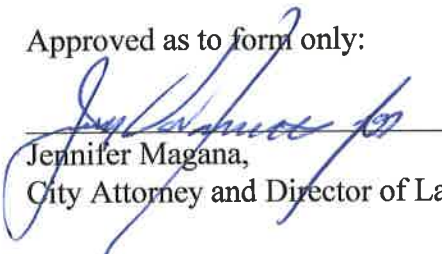
Attested to:

Karen Sublett
City Clerk

Attested to:

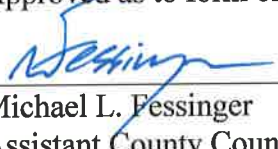
Kelly B. Arnold
County Clerk

Approved as to form only:



Jennifer Magana,
City Attorney and Director of Law

Approved as to form only:



Michael L. Fessinger
Assistant County Counselor