

FIXED-BASE OPERATOR AGREEMENT

THIS FIXED-BASE OPERATOR AGREEMENT is made this 14 day of December, 2018, by and between the City of Lawrence, Kansas, a municipal corporation, and Hetrick Air Services, Inc., a Kansas corporation.

RECITALS

- A.** The City of Lawrence, Kansas, a municipal corporation ("City"), owns and operates the Lawrence Municipal Airport ("LWC").
- B.** Hetrick Air Services, Inc., a Kansas corporation ("Hetrick") -- including various predecessors-in-interest thereof -- pursuant to various agreements with the City, has operated as a fixed-based operator (FBO) at LWC since 1983.
- C.** Pursuant to that Agreement, dated January 13, 1999, as amended, Hetrick, as successor-in-interest to Hetrick Aircraft, Inc., currently operates as an FBO at LWC, which Agreement will expire December 31, 2023.
- D.** Additionally, that Agreement, dated January 13, 1999, as amended, provides that, in exchange for the payment of rent and certain other fees, the City recognizes Hetrick as an FBO at LWC and grants to Hetrick the right to lease certain premises at LWC, the right of access to and the right to use the City's fuel farm for the sale of aircraft fuel and aircraft jet fuel at LWC, and the right to perform and to maintain other aeronautical-related uses at LWC.
- E.** Hetrick now wishes to expand its operations at LWC, which expansion will require Hetrick to enter into a new Fixed-Base Operator Agreement with the City, which will permit the parties to alter some of the terms of that Agreement, dated January 13, 1999, as amended, and which will extend, beyond December 31, 2023, the term that Hetrick serves as an FBO at LWC.
- F.** The City, having reviewed Hetrick's proposal and proposed expansion of operations at LWC, hereby agrees that, by way of this Fixed-based Operator Agreement ("Agreement"), contingent upon the proposed expansion proceeding, Hetrick may, subject to the terms and conditions hereof, continue operating as an FBO at LWC.

NOW, THEREFORE, in light of the mutual promises and obligations contained herein, and in exchange for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties agree as follows:

TERMS

1. **Leased Premises.** The City hereby agrees that, in exchange for the payment of Rent and the giving of other good and valuable consideration, it will lease to Hetrick certain areas of LWC, including: **(a)** 570 square feet (approximately 12.5%) of the LWC terminal building; **(b)** the community hangar, and **(c)** the maintenance hangar (respectively referred to herein as "the LWC Terminal Building," "the LWC Community Hangar," and "the LWC Maintenance Hangar" and collectively as "the Leased Premises")(maps showing the Leased Premises are affixed hereto as Exhibits A and B and are incorporated herein by reference).

2. **Rent.**
 - (a) Hetrick hereby agrees that, in exchange for use of the Leased Premises and other good and valuable consideration, Hetrick agrees to pay to the City Rent, on a monthly basis (each Year shall commence at 12:00 a.m. on January 1 and end at 11:59 p.m. on December 31 of that year), as follows:

	<u>Monthly</u>	<u>Annually</u>
Year 1 (2019):	\$2,450.00	\$29,400.00
Year 2 (2020):	\$3,950.00	\$47,400.00
Year 3 (2021):	\$4,030.00	\$48,360.00
Year 4 (2022):	\$4,110.00	\$49,320.00
Year 5 (2023):	\$4,190.00	\$50,280.00
Year 6 (2024):	\$4,275.00	\$51,300.00
Year 7 (2025):	\$4,360.00	\$52,320.00
Year 8 (2026):	\$4,450.00	\$53,400.00
Year 9 (2027):	\$4,535.00	\$54,420.00
Year 10 (2028):	\$4,630.00	\$55,560.00
Year 11 (2029):	\$4,720.00	\$56,640.00
Year 12 (2030):	\$4,815.00	\$57,780.00
Year 13 (2031):	\$4,910.00	\$58,920.00
Year 14 (2032):	\$5,010.00	\$60,120.00
Year 15 (2033):	\$5,110.00	\$61,320.00
Year 16 (2034):	\$5,210.00	\$62,520.00
Year 17 (2035):	\$5,315.00	\$63,780.00
Year 18 (2036):	\$5,420.00	\$65,040.00
Year 19 (2037):	\$5,530.00	\$66,360.00
Year 20 (2038):	\$5,640.00	\$67,680.00
Year 21 (2039):	\$5,755.00	\$69,060.00
Year 22 (2040):	\$5,870.00	\$70,440.00
Year 23 (2041):	\$5,985.00	\$71,820.00
Year 24 (2042):	\$6,105.00	\$73,260.00
Year 25 (2043):	\$6,230.00	\$74,760.00

	<u>Monthly</u>	<u>Annually</u>
Year 26 (2044):	\$6,350.00	\$76,200.00
Year 27 (2045):	\$6,480.00	\$77,760.00
Year 28 (2046):	\$6,610.00	\$79,320.00
Year 29 (2047):	\$6,740.00	\$80,880.00
Year 30 (2048):	\$6,880.00	\$82,560.00

- (b) Rent shall be payable to the City in monthly installments, due and payable in advance, without notice or demand, on the first day of each month during the Term or any Option Term of this Agreement and according to the preceding schedule. Rent payments shall be made in the form and at the place designated by the City. Payments received after the 10th day of the month will be subject to a 1.5% late fee.
3. **Term.** The Initial Term of this Agreement shall be five (5) years, commencing at 12:00 a.m. on January 1, 2019, and terminating at 11:59 p.m. on December 31, 2023, unless this Agreement is otherwise terminated earlier or extended beyond that time and date.
4. **Option Terms.**
- (a) Hetrick shall have the option to extend the Initial Term of this Agreement for five (5) additional and successive five-year terms (individually, "the Option Term" and, collectively, "the Option Terms"). The Agreement shall, at the end of the Initial Term or any Option Term, unless it is the fifth Option Term, automatically be extended an additional Option Term, unless, at least one hundred eighty (180) days prior to the termination of the then-current Term, Hetrick notifies the City of its intent to terminate this Agreement or unless either party notifies the other of its intent to renegotiate this Agreement. If the parties renegotiate this Agreement, then an amendment will be prepared and executed by the parties; but if they are unable to reach an agreement regarding renegotiation, then the terms of this Agreement will remain unchanged. Option Terms shall be deemed a continuation of this Agreement and shall not be considered a new Agreement or an amendment hereto.
- (b) The Term of this Agreement shall, in no event, extend beyond December 31, 2048.
5. **The City's Covenants Regarding Hetrick's Use of the Leased Premises.** In addition to granting to Hetrick the Leased Premises and other covenants set forth elsewhere herein, the City agrees as follows:

- (a)** The City agrees that Hetrick shall have the right of ingress and egress to the Leased Premises, which right shall extend to Hetrick's employees, passengers, guest, invitees, and patrons.
- (b)** The City agrees that Hetrick shall have the non-exclusive right, in common with all others, to use LWC parking areas, including all appurtenances and improvements thereto, as shown on Exhibit A.
- (c)** The City agrees that Hetrick shall have the non-exclusive right to use, in common with all others, common areas of LWC, including runways, taxiways, aprons, roadways, floodlights, landing lights, signals, and other conveniences for the takeoff, flying, and landing of aircraft.
- (d)** The City agrees that Hetrick shall have the right to install, operate, maintain, repair, and store all equipment necessary for Hetrick to operate as FBO at LWC.
- (e)** The City agrees that Hetrick shall have the right, subject to prior written approval of the City and the FAA, to erect hangars on the Leased Premises. Any such hangar shall be removed by Hetrick or shall become the property of the City upon the expiration or termination of this Agreement.
- (f)** The City agrees that it will be responsible for all obstruction lights on structures at LWC as may be required by the FAA. The City also agrees that it will be responsible for all beacons, runway lights, clearance lights, and all other lights necessary for the operation of LWC and shall also furnish and provide the electricity therefor.
- (g)** The City will be responsible for routine maintenance of LWC, except for those areas of the Leased Premises for which Hetrick is responsible, including all snow removal and all mowing. The City will also provide police and fire protection at LWC.
- (h)** The City agrees that it will furnish and maintain a fuel farm facility at LWC with at least a 10,000-gallon capacity with pumps and meters for use by Hetrick for storing and dispensing aircraft fuel, together with a storage tank with at least a 10,000-gallon capacity with pumps and meters for use by Hetrick for storing and dispensing jet aircraft fuel.
- (i)** The City shall provide customer seating in the LWC Terminal Building.
- (j)** The City shall be responsible for maintaining the runways, taxiways, tie-down areas and for all other areas of LWC, except those portions of the Leased Premises for which, as set forth herein, Hetrick is responsible.

- 6. Hetrick's Covenants Regarding its Use of the Leased Premises.** In addition to paying Rent to the City for the Leased Premises and other covenants set forth elsewhere herein, Hetrick agrees to use the Leased Premises solely for the performance of its duties as FBO under this Agreement.
- (a)** Hetrick's duties as FBO at LWC include but are not limited to the following:
 - (i)** Hetrick agrees to provide aviation fuels and oil dispensing.
 - (ii)** Hetrick agrees to provide aircraft tie-downs.
 - (iii)** Hetrick agrees to provide, as available, hangar storage and rentals.
 - (iv)** Hetrick agrees to provide aircraft maintenance.
 - (v)** Hetrick agrees to provide flight instruction.
 - (vi)** Hetrick may provide new and used aircraft sales.
 - (vii)** Hetrick may provide aircraft rentals and charters.
 - (viii)** Hetrick may provide aircraft parts sales.
 - (b)** Hetrick agrees to operate LWC for the use and benefit of the public. LWC shall be open from 8:00 a.m. until 6:00 p.m. Absent emergency or catastrophe, LWC shall be open seven days a week.
 - (c)** Hetrick agrees to monitor standard airport activities and uses at LWC, including but not limited to scheduling, landings, take-offs, skydiving, maintenance reporting, accident reporting, and the like.
 - (d)** Hetrick agrees that, in addition to being trained for their duties as employees, all employees shall be trained in airport operations and shall be capable of providing prompt and efficient service to the public. Hetrick agrees to staff LWC with a line serviceman during all hours that LWC is open and operational.
 - (e)** Hetrick agrees to provide all vehicular equipment necessary for the effective and efficient operation of LWC. Also, Hetrick shall provide, at a minimum, at least one vehicle capable of towing aircraft.
 - (f)** Hetrick agrees to provide, subject to availability from suppliers, sufficient aircraft fuel and jet aircraft fuel sufficient to meet the needs of LWC and its users.

- (g)** Hetrick agrees to provide, install, maintain, and operate UNICOM radio equipment for communications between aircraft and the airport office. The City acknowledges that the UNICOM license is currently maintained in its name. Upon renewal of the license, Hetrick shall use good faith efforts to obtain renewal in Hetrick's name.
- (h)** Hetrick agrees that all fees that it charges its customers will be commercially reasonable and will be based on fees charged by comparable hard-surface airports in the Kansas City-Topeka region. Additionally, Hetrick agrees that, at the time of execution of this Agreement, it shall file with the City's Airport Manager, or his or her designee, a schedule of fees for hangar and tie-down fees ("Listed Fees")(excluding fees for the sale of aircraft fuel and jet aircraft fuel or other miscellaneous fees), charged for those services. Hetrick further agrees to give written notice to the City Clerk and shall post in a conspicuous place in LWC Terminal Building, at least 30 days prior to any change in the Listed Fees, any changes to the schedule of Listed Fees. Once the thirty-day period has passed, Hetrick shall file with the Airport Manager, or his or her designee, its new schedule of Listed Fees. At that time, the new Listed Fees shall become effective.
- (i)** Hetrick acknowledges that the FAA requires that LWC provide a no-fee, tie-down area, upon which any transient aircraft operator, not wishing to engage Hetrick's services, may park or tie-down his, her, or its aircraft without the assistance of Hetrick and at no charge.
- (i)** Hetrick agrees that it will not, on the grounds of race, sex, religion, color, national origin, age, ancestry, familial status, disability, sexual orientation, or gender identity, discriminate against any person or group of persons in providing FBO services at LWC. The City reserves the right to take whatever action the United States, the State of Kansas, or the City's Governing Body directs to enforce this covenant.
- (j)** Hetrick understands and acknowledges that its Agreement herein with the City is non-exclusive and that the City herein reserves the right to grant others the privilege and right to conduct aeronautical and other related activities at LWC.
- (k)** Hetrick understands and acknowledges that the City may take any action it considers necessary to protect aerial approaches to LWC against obstruction and may prevent Hetrick from erecting any building or structure at LWC that, in its opinion, would limit the usefulness of LWC or would constitute a hazard to aircraft.

- (l) Hetrick agrees that it will comply with the City's Rules and Regulations and any future amendments thereto. A copy of the City's Rules and Regulations is affixed hereto as Exhibit B and is incorporated herein as if set forth in full.

7. Taxes.

- (a) Currently, according to a decision of the Board of Tax Appeals, the LWC Terminal Building, the LWC Community Hangar, and the LWC Maintenance Hangar are exempt from property taxation. Accordingly, no property taxes are assessed on that property or those improvements. The parties agree, however, that if, in the future, that should change, then Hetrick shall pay any and all real estate property taxes assessed to the City for the LWC Community Hangar and the LWC Maintenance Hangar. Hetrick shall also pay 12.5% of any and all real estate property taxes assessed to the City on the LWC Terminal Building. Within 20 days after the last day upon which any such taxes may be paid without penalty or interest, Hetrick shall submit to the City proof that it has paid all said taxes or assessments.
- (b) Additionally, Hetrick shall be solely responsible for all real estate property taxes that may be assessed on any structure that it constructs at LWC and for any property taxes assessed on its personal property and equipment located at LWC. Within 20 days after the last day upon which any such taxes may be paid without penalty or interest, Hetrick shall submit to the City proof that it has paid all said taxes or assessments.
- (c) In the event that taxes are assessed against any of the foregoing properties, Hetrick may, at its own cost and expense, with the written consent of the City, which consent may not unreasonably be withheld, contest the amount or validity of any assessment in any manner permitted by law in the City's name, provided Hetrick does so with due diligence and without cost, liability, or expense to the City. Notwithstanding the foregoing, Hetrick may pay the contested assessment in the manner and on the dates provided herein. Any refund, with respect to such taxes, obtained as a result of Hetrick's actions, shall be the property of Hetrick, but only to the extent that Hetrick has previously paid such taxes or assessments.
- (d) Upon the termination of this Agreement, for whatever reason, the City and Hetrick shall adjust any real estate tax assessment so that Hetrick will pay a *pro rata* share to the date of termination, but none thereafter.

- 8. Utilities.** Hetrick shall pay all utilities furnished to the LWC Community Hangar and to the LWC Maintenance Hangar. Hetrick shall also be responsible for 12.5% of the utilities furnished to the LWC Terminal Building. Hetrick shall further be responsible for all utilities serving any structure that it constructs at LWC.

9. Alterations; Maintenance and Repairs.

- (a) Except as specifically otherwise provided herein, Hetrick shall have the right, at its sole cost and expense, to alter the Leased Premises to suit its needs; however, any alteration costing more than \$5,000.00 shall require the prior written consent of the City, which consent shall not unreasonably be withheld. Likewise, except as otherwise provided herein, Hetrick shall, at its sole expense, maintain and repair the interior of the Leased Premises as would be required for the ordinary use of the Leased Premises. Upon any surrender of the Leased Premises, Hetrick shall redeliver the Leased Premises to the City in good condition and in a state of repair, ordinary wear and tear excepted.
- (b) Subject to the City's prior approval, Hetrick may install such business and trade fixtures, as it deems necessary, and such items shall remain the property of Hetrick and shall be removed by Hetrick at the termination of this Agreement. Hetrick shall repair any damage occasioned by said removal. If the City agrees, upon the termination of this Agreement Hetrick may abandon business and trade fixtures in the Leased Premises and such business and trade fixtures will become the property of the City.
- (c) Unless otherwise provided herein, the City shall keep and maintain in good condition and repair, the roofs, exterior walls, plumbing, HVAC systems, pipes and conduits, and other systems located on the exterior of the LWC Terminal Building, the LWC Community Hangar, and the LWC Maintenance Hangar that serve those structures (excluding those systems where such obligation is the duty of a utility provider). The City shall not be required to repair any damage caused by the negligence or the willful misconduct of the Hetrick.

10. Mechanics' Liens. Hetrick shall not permit any liens to stand against the Leased Premises for any labor or materials furnished to Hetrick in connection with alterations performed on the Leased Premises. Hetrick shall not be the agent of the City with respect to such liens, and no such liens shall attach to or affect the interest of the City.

11. Cleaning Services. Hetrick agrees to provide its own janitorial and cleaning services to the Leased Premises.

12. Trash Removal. All trash shall be contained within the Leased Premises or in a container furnished in a location provided by the City. Hetrick shall keep the Leased Premises free from filth, danger, or fire or any nuisance, and shall comply with all City ordinances, State laws, and regulations applicable thereto. All costs related to the removal of its own trash shall be borne by Hetrick.

13. Damage to or Destruction of Leased Premises.

- (a) If the Leased Premises, or any part of it, should be damaged or destroyed during the term of this Lease, by fire or other insurable casualty, without the fault or negligence of Hetrick, the City shall, subject to the time that elapses due to adjustment of insurance, repair and/or restore the same at substantially the condition it was in immediately prior to such damage or destruction, except as otherwise provided herein. The City shall not be required to replace or restore any trade fixtures, signs, personal property, or other installations theretofore installed by Hetrick; those items are the responsibility of Hetrick. Rent payable under this Agreement shall be abated proportionately according to the area of the Leased Premises which is useable by Hetrick. If the damage was caused by the fault or negligence of Hetrick, then there shall be no abatement of Rent. Any abatement shall continue for the period commencing with such damage or destruction and ending with the completion by the City of such work or repair or reconstruction as the City may be obligated.
- (b) Notwithstanding the foregoing, in the event that any such fire or other casualty causes substantial damage to the Leased Premises and the repair or restoration thereof is not economically practical, then the City shall have the option to terminate this Agreement by giving written notice thereof to Hetrick within sixty (60) days after the occurrence of such fire or other casualty, and thereupon this Agreement shall be deemed to have terminated as of the date of the fire or other casualty, and Hetrick shall immediately quit and surrender the Leased Premises to the City. The City shall refund to Hetrick, on a *pro rata* basis, any Rent paid after the date of the fire or other casualty event.

14. Abatement of Rent.

- (a) In the event that LWC shall be closed, for whatever reason, for a continuous period exceeding seven days, then Rent shall abate during the term of the closure.
- (b) In the event that the City reconstructs the main runway, the cross-wind runway, or the main terminal apron at LWC -- any of which will substantially affect the use of LWC -- then the parties agree that, during the period of reconstruction, the parties will negotiate a reasonable Rent abatement in an amount that is fair and agreeable to both parties.

15. Insurance.

- (a) During the Initial Term, any Option Term, or any other extension of this Agreement, Hetrick shall obtain and maintain insurance coverage, at its sole cost and expense, with financially reputable insurers that are licensed to do business in the State of Kansas. Hetrick shall file certificates of insurance with the City's Airport Manager or his or her designee. Hetrick shall provide not less than the following insurance:
- (i) Worker's compensation, as provided for under any workers' compensation laws of the state of Kansas, with an employers' liability limit equal to the amount required by law.
 - (ii) Commercial general liability, on an occurrence basis and not a claims-made basis, with a limit of not less than Two Million Dollars (\$2,000,000) combined single limit, per occurrence, for bodily injury, personal injury, and property damage liability. The City shall be named on all such policies as an additional insured.
 - (iii) Automobile insurance for each automobile and motor vehicle used at LWC with minimum limits of \$500,000/\$100,000. The City shall be named on all such policies as an additional insured.
- (b) Hetrick shall, as a material condition of this Agreement, at the time of execution of this Agreement, deliver to the City a certificate of insurance or evidencing that the above insurance is in force and will not be cancelled or materially changed with respect to areas and entities covered without first giving the City thirty (30) days prior written notice. Hetrick shall make available to the City, on request, the policy declarations page and a certified copy of the policy in effect so that limitations and exclusions can be evaluated for appropriateness of overall coverage.

16. Indemnification.

- (a) During the time that this Agreement is in effect, Hetrick agrees to indemnify, defend, save, and hold harmless the City, its officers, trustees, agents, employees, grantees, and assigns, from and against all claims, actions, liabilities, damages, costs, expenses, and judgments, including attorneys' fees, which relate to, arise out of, or are in any way related to Hetrick's use of the Leased Premises or any portion thereof or the maintenance thereof, on account of any injury to persons or damage to property. This indemnification clause shall not apply to any injury or damage caused by the City's own negligent, reckless, or willful actions, or that of its agents.

(b) During the time that this Agreement is in effect, the City agrees to indemnify, defend, save, and hold harmless Hetrick, its officers, trustees, agents, employees, grantees, and assigns, from and against all claims, actions, liabilities, damages, costs, expenses, and judgments, including attorneys' fees, which relate to, arise out of, or are in any way related to the City's operation of LWC, or any portion thereof or the maintenance thereof, on account of any injury to persons or damage to property. This indemnification clause shall not apply to any injury or damage caused by the Hetrick's own negligent, reckless, or willful actions, or that of its agents.

17. Signs. Any sign attached to the Leased Premises must be approved, in writing, by the City before the same can be installed. However, consent will not be unreasonably withheld if such sign does not impair LWC, complies with the City Code, and is not either offensive or inappropriate, as determined at the sole discretion of the City. The City shall have the sole right of approval for any sign proposed to be installed at LWC.

18. Fuel Flowage Fee; Access to Information.

(a) Hetrick shall assess and collect a Fuel Flowage Fee on each gallon of aircraft fuel and jet aircraft fuel sold at LWC at the rate set forth in the following subsection. The collected Fuel Flowage Fee for each month shall be paid to the City as a Fuel Gallonage Fee on the 10th day of the following month (the first Fuel Gallonage Fee for a Year shall be paid February 10 of that year and the last shall be paid on January 10 of the following year). The Fuel Gallonage Fee shall be in addition to Rent and any other charges or fees required under this Agreement.

(b) Hetrick agrees to assess and collect the Fuel Flowage Fee as follows:

- (i) Initial Term (2019-2023): \$0.07 per gallon.
- (ii) Option Term 1 (2024-2028): \$0.08 per gallon.
- (iii) Option Term 2 (2029-2033): \$0.09 per gallon.
- (iv) Option Term 3 (2034-2038): \$0.10 per gallon.
- (v) Option Term 4 (2039-2043): \$0.11 per gallon.
- (vi) Option Term 5 (2044-2048): \$0.12 per gallon.

- (c) Hetrick further agrees that its records, as may reasonably be necessary for an effective audit of the Fuel Gallonage Fees paid under this Agreement, shall, upon reasonable notice being given by the City, be opened to the City, including its duly authorized agents, auditors, and employees, for inspection and examination for the purposes of verifying Hetrick's accounting. The City shall bear the costs of any such audit, unless, however, the audit discloses that Hetrick owes the City money and has failed to use commercially reasonable efforts in rendering its accounting. In that case, Hetrick shall be responsible to the City for the reasonable costs of the audit.
19. **Default.** If either Hetrick or the City fails to perform or observe any material term, covenant, provision, or condition of this Agreement, then that party will be in default under this Agreement. In the case of default, the other party shall send to the party in default a written Notice of Default, setting forth, with particularity, the nature of the complained of default.
20. **Right to Cure.** From the date of written Notice of Default from the City for the failure to pay Rent, Hetrick shall have five (5) days to cure the default. In all other cases, from the date of the written Notice of Default, the party in default shall have thirty (30) days to cure any default.
21. **Failure to Cure.** If the party in default fails to cure the default in the time prescribed above, then the other party shall have the right, by giving written notice, to terminate this Agreement and may, at its discretion, pursue any other remedies described in this Agreement or that may be available to it at law or in equity and which are not otherwise proscribed by the terms of this Agreement. If the City terminates this Agreement for Hetrick's failure to cure, then the City shall retain any Rent that Hetrick has paid that month. If Hetrick terminates this Agreement for the City's failure to cure a default, Hetrick shall be entitled to a refund from the City all Rent paid after the date of default.
22. **Termination and Removal of Hetrick's Property.** Upon the expiration or termination of this Lease, Hetrick shall quit and surrender the Leased Premises to the City. All improvements constructed by Hetrick shall be and become part of the property of the City, except equipment and business and trade fixtures installed by Hetrick in accordance with Section 9, *supra*, that are not so affixed to the Leased Premises as to damage the Leased Premises upon removal.
23. **Subordinate to Agreement with United States.**
- (a) This Agreement shall be subordinate to the provisions of any agreement between the City and the United States relative to the operation, maintenance, or development of LWC.

(b) During time of war or other national emergency, nothing in this Agreement shall prohibit the City from entering into an agreement with the United States for civil, military, or other uses of LWC. If any such agreement is executed, then the terms and conditions of this Agreement, insofar as they are inconsistent with such agreement with the United States, shall be suspended. In such case, Hetrick shall have the option to terminate this Agreement by giving the City thirty-days' written notice.

24. **Adherence to Laws.** Hetrick agrees to observe and obey, during the Term and any Option Term of this Agreement, all statutes, ordinances, rules, and regulations enacted or promulgated by the United States, the State of Kansas, or the City applicable to Hetrick's operations as FBO at LWC.

25. **Quiet Possession.** The City covenants that, except as otherwise provided herein, Hetrick, on paying the Rent and performing its obligations hereunder, shall and may peaceably and quietly have, hold, and enjoy the Leased Premises during the term of this Lease, free from any disturbance by the City, its agents or employees, or others acting within the control of the City. However, for the reasons of security and safety, the City reserves the right to enter the Leased Premises at any reasonable time to make any inspection that it deems expedient.

26. **Force Majeure.**

(a) A "*Force Majeure* Event" is any event or cause beyond the reasonable control of the party claiming relief, including any action by or omission of a governmental agency (not Hetrick) or authority, material shortages, third-party labor disputes, epidemic, war, riot, civil disturbance, act of public enemy or enemies, terrorist act, sabotage, any act of God, or any damage as a result of fire, floods, earthquakes, lightning, or other casualty.

(b) Neither the City nor Hetrick will be considered in default under this Agreement if such party's performance is delayed by virtue of a *Force Majeure* Event. Upon the occurrence of such event, the parties agree to confer in good faith and to agree upon an equitable, reasonable action to continue performance under this Lease, provided, however, that the Rent payable by Hetrick to the City shall abate for any period during which Hetrick's use of the Leased Premises is limited as a result of a *Force Majeure* Event. The City and Hetrick will use reasonable efforts to minimize the delay caused by any *Force Majeure* Event and to resume performance when possible. the City will be solely responsible for all repairs and reconstruction -- which repairs and reconstruction will be at its discretion -- of the Leased Premises, or any part thereof, following a *Force Majeure* Event.

- (c) In the event that a *Force Majeure* Event prevents either party from performing under the Agreement for a period of one hundred eighty (180) days, then either party, upon written notice to the other, may terminate this Agreement. In such event, the City shall pay to Hetrick a pro-rated share of any Rent paid by Hetrick for the month in which the *Force Majeure* Event occurred. Upon such termination and the refund of any Rent, if any, all parties will be relieved of performance under this Agreement, except that a party will continue to be liable for any breaches that occurred and were not cured prior to termination.

- 27. Right of First Refusal.** During the Initial Term of this Agreement, Hetrick shall have the right of first refusal to lease Lot 2, a lot east of the beacon area, as shown on Exhibit A, provided such use is consistent with the LWC development master plan. Hetrick shall have the exclusive first right, if it exercises this option and enters into a separate Ground Lease with the City, to construct a metal hangar, the size, configuration, and location of which shall be subject to approval by the FAA and the City.

- 28. Relationship of the Parties.** Nothing set forth herein shall be deemed or construed by the parties, nor by any third party, as creating the relationship of principal and agent, partnership, or joint venture between the parties hereto. At all times under this Agreement, Hetrick is and shall be an independent contractor.

- 29. Waiver of Subrogation.**

 - (a) The City hereby waives any and all rights of subrogation against Hetrick, its agents, servants, and employees, for any damage caused to the property of City located in and upon the Leased Premises, by reason of City's negligence, the same as though the City insured its property by a standard form policy of fire and extended coverage insurance, rather than being a self-insurer of its property.

 - (b) Hetrick hereby waives any and all rights of subrogation against the City, its officials, officers, agents, servants, and employees, for any damage caused to the property of Hetrick by reason of Hetrick's negligence, and Hetrick shall cause said waiver of subrogation rights to be endorsed upon the policy or policies of standard form fire and extended coverage insurance written to insure the City's said property, unless said policy(ies) do not require such endorsement.

- 30. Limitation of Liability.**

 - (a) Neither party shall be liable to the other for lost profits or special, incidental, collateral, punitive, exemplary, or consequential damages, including but not

limited to frustration of economic or business expectations, loss of profits, loss of capital, cost of substitute product(s), facilities, or services, or down time costs, even if advised of the possibility of such damages. Further, the liability of one party to the other for damages under this Agreement, excluding liabilities relating to a parties' indemnification obligations as set forth in Section 16, *supra*, or any other damages permitted under this Agreement, is limited to the total amount payable by Hetrick to the City under this Agreement to which the dispute relates.

- (b) The City shall not be liable to Hetrick or those claiming by, through, or under Hetrick, for any loss or damage occasioned by the acts, omission, or negligence of the legal occupants of LWC, outside the Leased Premises; provided, however, that the City shall be responsible for any loss or damage to Hetrick caused by the City's intentional acts, omissions, or negligence.

31. Assignment.

- (a) Hetrick shall not assign, transfer, or encumber this Agreement and shall not sublease a majority of the Leased Premises to a third party without the prior written consent of the City, which consent shall not unreasonably be withheld.
- (b) Notwithstanding any permitted assignment or subletting, Hetrick shall, at all times during the Term of this Lease, be responsible and liable for the payment of Rent as herein specified and for compliance with all of its other obligations under the terms and provisions of this Agreement.

32. Authorization. Each of the persons executing this Lease, in behalf of the respective parties, represents and warrants that he or she has the authority to bind the party in behalf of whom he or she has executed this Lease, and that all acts required and necessary for authorization to enter into and to execute this Agreement have been completed.

33. Notice. Notice under this Agreement shall be provided in writing to the parties at the following addresses:

- (a) Notice to the City:
City of Lawrence, Kansas
City Manager's Office
6 East 6th Street
P.O. Box 768
Lawrence, Kansas 66044

With a copy to:
City Attorney's Office
6 East 6th Street
P.O. Box 768
Lawrence, Kansas 66044

(b) Notice to Hetrick:
Hetrick Air Services, Inc.
1930 Airport Road
Lawrence, Kansas 66044

- 34. Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties, their respective heirs, personal representatives, successors, and assigns.
- 35. Non-waiver.** Failure of either party to insist on strict performance of any of the conditions, covenants, terms, or provisions of this Agreement or to exercise any of its rights hereunder shall not waive such rights, but the party shall have the right to enforce such rights at any time and to take such action as might be lawful or authorized hereunder, whether in law or equity.
- 36. Severability.** If any section, sentence, clause, or phrase of this Agreement is found to be invalid by any court of competent jurisdiction, it shall not affect the validity of any remaining provision of this Agreement.
- 37. Venue.** The parties agree that the appropriate venues for any legal actions arising out of this Agreement are the District Court of Douglas County, Kansas, or, if federal jurisdiction exists, the United States District Court for the District of Kansas.
- 38. Governing Law.** This Agreement shall be governed by the laws of the State of Kansas.
- 39. Miscellaneous.**
- (a)** The existing Agreement between the parties, dated January 13, 1999, as amended (including that First Addendum to Agreement, dated September 17, 2009), is hereby rendered null and void. However, this Agreement, as set forth in the Recitals, is contingent upon Hetrick closing a deal that would permit Hetrick to complete the expansion of its operations at LWC, by constructing a hangar on Lot 1, Block 2 at LWC. If that deal does not close and the expansion project does not reach fruition, including commencement (*i.e.*, pulling a building permit) of the construction of a new hangar on or before 11:59 p.m. on December 31, 2019, and completion of construction of the new hangar on or before 11:59 p.m. on December 31,

2021, then this Agreement shall be deemed null and void and that Agreement, dated January 13, 1999, as amended (including that First Addendum to Agreement, dated September 17, 2009), shall be reinstated and the parties shall operate under the terms and conditions thereof as if this Agreement never happened. In the event that that occurs, that shall be no rebate of Rents paid, unless otherwise agreed upon by the parties.

- (b)** This Agreement supersedes all prior discussions and negotiations and contains all agreements and understandings between the City and Hetrick with respect to the subject matter hereof. This Agreement may only be amended by a writing signed by all parties.
- (c)** The provisions of the Agreement relating to indemnification shall survive any termination or expiration of this Agreement. Any provision of this Agreement that would require performance subsequent to the termination or expiration of this Agreement shall likewise survive any such termination or expiration.
- (d)** This Agreement may be executed in duplicate counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one (1) or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument.
- (e)** The recitals are incorporated herein by reference as if set forth herein in full.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the undersigned have caused this Fixed-base Operator Agreement to be executed as of the date noted above.

**CITY:
CITY OF LAWRENCE, KANSAS, a
municipal corporation**



THOMAS M. MARKUS
City Manager

ACKNOWLEDGMENT

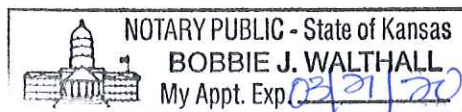
THE STATE OF KANSAS)
)
THE COUNTY OF DOUGLAS) ss:

BE IT REMEMBERED, that on this 14 day of December, 2018, before me the undersigned, a notary public in and for the County and State aforesaid, came Thomas M. Markus, as City Manager of the City of Lawrence, Kansas, who is personally known to me to be the same person who executed this instrument in writing, and said person fully acknowledged this instrument to be the act and deed of the aforementioned entity.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last written above.


Notary Public

My Appointment Expires:



**HETRICK:
HETRICK AIR SERVICES, INC., a Kansas corporation**




LLOYD A. HETRICK
President

ACKNOWLEDGMENT

THE STATE OF KANSAS)
)
THE COUNTY OF DOUGLAS) ss:

BE IT REMEMBERED, that on this 29th day of November, 2018, before me the undersigned, a notary public in and for the County and State aforesaid, came Lloyd A. Hetrick, as President of Hetrick Air Services, Inc., a Kansas corporation, who is personally known to me to be the same person who executed this instrument in writing, and said person fully acknowledged this instrument to be the act and deed of the aforementioned entity.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last written above.



Notary Public

My Appointment Expires:



FBO AGREEMENT - EXHIBIT A



FBO AGREEMENT - EXHIBIT B

Lawrence Municipal Airport Terminal

