

MEMORANDUM OF AGREEMENT FOR COORDINATING TRANSIT OPERATIONS

THIS MEMORANDUM OF AGREEMENT FOR COORDINATING TRANSIT OPERATIONS (“Agreement”) is made and entered into by and between the City of Lawrence, Kansas, a city of the first class under the laws of the State of Kansas, (hereinafter referred to as the “City”) and the University of Kansas, an educational institution, public body, and agency of the State of Kansas (hereinafter referred to as the “University”), as of the _____ day of _____, 2013.

WHEREAS, the University and the City (“the parties”) have been working to identify opportunities to achieve increased coordination between their transit systems, including coordination of routes; and

WHEREAS, the University and the City operate their coordinated transit systems through separate but substantially similar contracts with the same independent contractor (“Contractor”) (currently MV Contract Transportation, Inc.); and

WHEREAS, the parties are also parties to that certain Memorandum of Understanding Concerning Transit Facility and Bus Acquisitions dated February 23, 2010 (2010 MOU) and to an agreement entitled “LEASE” executed by the parties in December 2010 (“Facility Agreement”); and

WHEREAS, the City and University desire to further define their existing coordination efforts and implement new coordination efforts regarding their respective transit systems, as described further below;

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and covenants hereinafter contained, the parties agree as follows:

- 1. Prior Agreements.** It is the intent of the parties that this Agreement be subject to and interpreted consistently with the 2010 MOU and the Facility Agreement. In the event of a conflict between this Agreement and the 2010 MOU or Facility Agreement, the terms of the 2010 MOU shall prevail.
- 2. Contractor.** To continue achieving savings by the close coordination of their transit systems, the City and University will endeavor to utilize the same Contractor to operate their respective transit systems and will cooperate in the bidding, evaluation, and negotiation of future contracts for transit operations such that their respective contracts will impose substantially similar obligations on the Contractor as it relates to the parties. Neither party,

however, will be required to enter into an agreement with a Contractor that is not in that party's best interests.

3. Coordinated Routes. When deemed appropriate by the parties, coordinated route(s) may be established to provide transit services to the Lawrence community. The parties shall mutually agree on route locations, stops, days and hours of operation, allocation of costs, and other matters relating to the coordinated route.

a. Allocation of Costs. The City and University shall negotiate, and direct their current Contractor to implement appropriate cost allocation percentages to be split between the City and University for coordinated routes. The Contractor will be directed to record hours of service to be charged to either the City or the University. If direct fuel costs cannot be determined, an agreed upon burn rate will be applied to charge for fuel use.

b. Buses. The parties shall mutually agree on which party's vehicle(s) shall be utilized for operation of a coordinated route. The party contributing use of a vehicle for coordinated route purposes shall maintain ownership of the vehicle and shall be responsible for maintaining appropriate registration and licensure. The vehicle owner shall also be responsible for obtaining vehicle maintenance and repair.

c. Future Coordination of Routes. Both parties agree to explore opportunities to coordinate the acquisition of vehicles by their respective transit systems, so as to maximize their efficiencies and reduce their costs.

4. Fares; Fare Media. Each party shall be responsible for sale and/or distribution of their respective fare media (KU Cards and T-Passes). All fares received in all bus fareboxes shall go to the City. Both parties agree to honor each other's fares and fare media as follows:

a. The University will not charge any riders on fixed routes for rides originating on campus. Valid T Pass holders will not be charged a fare on University buses for rides originating off campus. SafeBus is not public transit service and requires passengers to show a KU Card at boarding.

b. The City will not charge KU Card holders on any City fixed route bus or flex route that does not require subscription scheduling. Any service that requires subscription scheduling or has a fare greater than the usual fare ("premium fare") will require all passengers to pay at boarding regardless of location.

5. Shared Use of Vehicles.

a. Each party agrees to consider requests of the other party to borrow a vehicle on a mutually agreed upon basis for operation of the party's public transit fixed routes or paratransit service. Vehicles loaned by one party to the other shall be provided on an "as available" and "as is" basis at the discretion of the party loaning the vehicle. Each party reserves the right to refuse a request to borrow a vehicle for any reason.

- b. Neither party will charge the other for vehicle depreciation or similar costs.
- c. While in possession of the borrowing party, the borrowing party shall have control and direction of the vehicle and shall be responsible for determining that the vehicle has been duly registered, licensed and put in operating condition as required for the borrowing party's use. Only trained and properly licensed drivers of the borrowing party's transit Contractor shall be permitted to drive the borrowed vehicles, and the borrowed vehicle shall only be used in the operation of the borrowing party's public transit fixed routes or paratransit services. The borrowing party will comply with all limitations on vehicle use imposed by funding or other regulatory requirements.
- d. The borrowed vehicle shall be returned to the loaning party in the condition in which it was received, reasonable wear and tear excepted.
- e. Notwithstanding the provisions above in this section 5, the University may also from time to time assign buses to the city for long-term use. Such buses are vehicles the University no longer intends to use for revenue service. The following terms shall apply to such "Assigned Buses," the first of which are identified in Exhibit A attached hereto, and such terms shall apply for the duration of the City's use of any Assigned Bus and until or the City returns the Assigned Bus to the University.
 - i. Assigned Buses shall be assigned "as is," and only with the City's consent and/or acceptance. The University will give the City reasonable notice of its intent to assign a bus to the City for long-term use by, identifying it by model and vehicle identification number. The City shall be provided reasonable opportunity to inspect those buses prior to acceptance. The City shall document its acceptance of such buses in writing.
 - ii. Unless otherwise agreed to between the parties, the Assigned Buses shall be used to provide public transit services to the Lawrence community. The City shall be responsible for the operations of Assigned Buses and shall have exclusive control and direction of such Assigned Buses, including but not limited to control over fares, routes and schedules. The City shall cause the Assigned Buses to be duly registered, licensed, and insured. The City shall be permitted to subcontract operation and maintenance of the Assigned Buses, provided such contractor shall be required to provide such services in accordance with the requirements of the 2010 MOU and applicable state and Federal law. Housing for the Assigned Buses shall be the responsibility of the City, unless otherwise agreed to by the parties. The city is allowed to rebrand the buses for their service.
 - iii. The City shall, at its own expense, maintain the Assigned Buses in good repair for the duration of their use by the City and in compliance with applicable laws and regulations. The City assumes all costs and expenses in connection with the operation, use, maintenance and repair of the Assigned Buses,

including repairs, fuel, oil, fines or penalties for speeding and/or reckless or careless driving or other violation in the use or operation of the Assigned Bus, taxes, license plates, wages and all contributions and taxes growing out of the relationship of employer/employee, and the insurance types and levels set forth in Exhibit B to the 2010 MOU. Any subcontract of/for bus operations may also include provisions addressing responsibility for the foregoing costs and expenses, including insurance.

- iv. As between the parties, the City assumes the risk of loss of or damage to, or destruction of the Assigned Buses, resulting from accident, collision, theft, fire, lightning, windstorm, earthquake, flood, explosion, hail, riot or civil commotion, aircraft, water damage, vandalism and malicious mischief or from any other cause whatsoever, and the University shall have no liability or responsibility therefore; excepting, however, that if the loss or damage to the Assigned Buses shall result from a collision with a bus or other motor vehicle owned or operated by an employee, agent or contractor of the University in the course of conducting University business, the liability therefore shall be determined in accordance with applicable law.
- v. The City shall give the University reasonable advance notice, in writing, of its intent to return any Assigned Bus, but not less than 15 days' notice. The City's obligations for any Assigned Bus shall end upon the return of the Assigned Bus. The Assigned Bus shall be returned in the mechanical condition in which it was received, reasonable wear and tear excepted.
- f. If the City wishes to make a long-term assignment of any of its buses to the University, the same terms of section 5(e) shall apply to the respective assignor and assignee.

6. Fuel. The University will procure and store fuel to be used by both the City and the University. The University will bill the City monthly for the cost of either the actual fuel used or, if not able to be determined, an agreed upon burn rate. An annual true-up of fuel used to fuel acquired will be calculated to share the cost of any shortage due to fuel shrinkage. The cost due to shrinkage will be apportioned to the parties in the same manner as Allocation Costs under the Facility Agreement.

7. Consumer Information.

- a. Call Center.** The University agrees to provide telephone customer information services to all riders of the University and City transit systems on days and during hours when the KU Parking and Transit office is open. Such services shall consist of answering calls regarding bus routes, bus schedules, fares, bus passes, paratransit services and other issues relating to riders of the City and University transit systems. When KU Parking and Transit offices are closed, calls will be routed to the transit service Contractor for handling. In the event that transit service Contractor allocates

costs for such services to the parties, the costs shall be allocated in the same manner as Allocation Costs under the Facility Agreement.

- b. Maps and Brochures.** In order to improve public communications regarding City and University transit systems, the City and University will cooperate in the further development of shared transit-related information resources such as the “Transit Guide” and other maps or brochures, as deemed appropriate by the parties. The City and University will share responsibility for distribution of these joint print resources as deemed appropriate by the City and University. The city and University will be jointly responsible for development of a common websites for on-line information, however, the parties may have their own separate web sites that link to the common site.
 - c. Lost and Found.** The University agrees to manage a joint City and University “lost and found,” to be located at the KU Parking and Transit office. University agrees to accept from the transit service Contractor, items found by the Contractor on City buses, and to be the point of contact for riders of both transit systems attempting to locate lost items. Such items will be handled in accordance with a mutually agreeable policy.
- 8. Radio Service.** The parties agree that, to the extent permissible under applicable state and federal law, radios used on City and University fixed route buses will operate on a frequency held by KU. Radios used on City and University paratransit vehicles will operate on a frequency held by the City. Each party shall remain solely responsible for licensing and other requirements associated with their respective frequencies. In addition, each party shall remain solely responsible for the provision of appropriate radio equipment to vehicles owned by the party, or operated by Contractor on behalf of the party.
- 9. NTD Reporting.** Both City and University data and information will be reported under a single National Transit Database (NTD) reporting number. The University will be responsible for providing the City with pertinent data and information required under the NTD reporting requirements. The City will be responsible for maintaining access to the NTD reporting system and to providing data submission under FTA guidelines.
- 10. Other Shared Expenditures.** The parties may mutually agree to share other reasonable expenses of equipment and services that benefit both parties. Typically costs will be shared in the same manner as Allocation Costs under the Facility Agreement

11. General Provisions.

- A. Term; Termination; Renewal.** This Agreement shall be effective as of the date first written above and shall have a term of one (1) year. The term of the Agreement shall automatically renew for additional subsequent terms of one (1) year, unless one party gives notice of non-renewal to the other within one hundred eighty (180) days of the end of the current term. In the event of termination, the

parties shall cooperate as reasonably necessary to achieve an orderly transition and minimize negative impacts to their respective transit systems and riders.

- B. **Federal and State Provisions.** The parties agree that if the City or the University is notified by a state or federal regulatory agency that the other party, or the transit operator performing work in connection with this Agreement, has failed to comply with applicable state and/or federal standards, regulations, and statutes, and/or any applicable provisions of the an agreement with KDOT or the FTA, the non-complying party shall obtain compliance or address the situation to the satisfaction of the regulatory agency within the time frame reasonably set forth by said regulatory agency. If compliance is not obtained or the situation is not timely addressed to the satisfaction of the regulatory agency, then, to the extent such violation is a material violation impacting City's or University's transit operations, the City and University shall each have the right to immediately terminate this agreement by providing written notice of termination to the other.
- C. **Funding.** The University and the City agree that any allocation of costs shall recognize applicable restrictions on sources of funding. The University and the City agree that neither party shall be required to subsidize the provision of transit services to the other. Any state or federal funds generated as a result of increased ridership or other transit-related statistic shall be shared by the City and University. City and University staff will prepare a mutually agreed upon annual plan for expending those funds for presentation to the City Commission. In general, the City will have first claim on funds it would have generated on its own and funds beyond that will be made available for University transit projects. The City and University may jointly expend funds for mutually beneficial projects.
- D. **Amendments.** Subject to section 1, this Agreement represents the entire understanding of the parties as to the subject matter hereof. Any amendments or additions hereto shall be only in writing executed by the parties. The parties agree to cooperate and take such action as is necessary to update and amend this Agreement as needed to address the issues outlined herein.
- E. **Claims.** Each party shall be responsible for its own negligence, or that of its employees or agents, but only in the manner and to the extent provided by applicable State laws, and nothing in the Agreement shall create any obligation to defend or indemnify the other party. The parties will cooperate in defense of claims by third parties arising from the parties' coordinated transit activities.
- F. **Assignment.** This Agreement may not be assigned without the written consent of the other party.
- G. **Applicable Law.** This Agreement shall be governed by the laws of the State of Kansas.

- H. **Venue.** It is agreed by and between the parties that, should any dispute arise that cannot be resolved through negotiations and mutual consent, concerning the validity and effect of this Agreement, or of any breach of the Agreement herein, venue of action concerning such dispute shall be in the District Court of Douglas County.

- I. **Severability.** Each provision of this Agreement shall be considered separable and if for any reason a provision which is not essential to the effectuation of the basic purposes of the Agreement is determined to be invalid or contrary to any existing or future law, such validity shall not impair the operation of or effect of those provisions of this Agreement that are valid.

- J. **Contractual Provisions Attachment.** The Provisions found in the Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this Agreement and made a part thereof.

IN WITNESS WHEREOF, the parties hereto have caused this Memorandum of Agreement to be executed in duplicate as of the date and year hereinafter written.

CITY OF LAWRENCE

UNIVERSITY OF KANSAS

By:

By:

Date

Date

CONTRACTUAL PROVISIONS ATTACHMENT

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 etseq.).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 etseq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 etseq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 etseq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Contractor agrees to comply with all applicable state and federal anti-discrimination laws.

The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total \$5,000 or less during the fiscal year of such agency.
6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 etseq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 etseq.
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."
13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.