

COMMUNICATION EQUIPMENT  
EQUIPMENT LEASE AGREEMENT

BETWEEN

**KANSAS DEPARTMENT OF TRANSPORTATION**  
AS LESSOR

AND

**\*[LESSEE NAME]\*, KANSAS**  
AS LESSEE

Dated: \*[dated date]\*

(KANSAS DEPARTMENT OF TRANSPORTATION  
COMMUNICATIONS SYSTEM INFRASTRUCTURE)

**CSEL Project No. \*[CSEL No.]\***

**KANSAS DEPARTMENT OF TRANSPORTATION  
COMMUNICATION SYSTEM INFRASTRUCTURE**

**COMMUNICATION EQUIPMENT**

**EQUIPMENT LEASE AGREEMENT**

This Equipment Lease Agreement, hereinafter referred to as the "Lease Agreement" and dated the Effective Date as hereinafter defined is between the **KANSAS DEPARTMENT OF TRANSPORTATION** as Lessor ("Lessor") and the \*[LESSEE NAME]\*, KANSAS, as Lessee ("Lessee"), and a Public Safety Agency as defined in K.S.A. 2009 Supp. 75-5073.

**WITNESSETH:**

**WHEREAS**, Lessor, pursuant to K.S.A. 2009 Supp. 75-5073 *et seq.*, hereinafter referred to as the "Act," does hereby propose to lease certain Communication Equipment to Lessee for the lease payments and upon the terms and conditions hereinafter set forth; and

**WHEREAS**, pursuant to the foregoing, Lessor desires to lease the Communication Equipment to Lessee and Lessee desires to lease the Communication Equipment from Lessor, for the Lease Payments and upon the terms and conditions hereinafter set forth.

**NOW, THEREFORE**, in consideration of the premises and the mutual representations, covenants, and agreements herein contained, Lessor and Lessee do hereby represent, covenant, and agree as follows:

**ARTICLE I  
DEFINITIONS**

**Section 1.1. Definitions of Words and Terms.** In addition to any words and terms defined elsewhere in this Lease Agreement, capitalized words and terms used in this Lease Agreement shall have the meanings given to such words and terms in this **Section 1.1**.

**"Additional Lease Payments"** means those payments required to be made by Lessee by **Section 4.2**.

**"Authority"** means the Kansas Development Finance Authority.

**"Bond Counsel"** means the firm of Gilmore & Bell, P.C. or any other attorney or firm of attorneys whose expertise in matters relating to the issuance of obligations by states and their political subdivisions is nationally recognized and acceptable to the Authority and KDOT.

**"Bonds"** means tax-exempt revenue bonds anticipated to be issued by the Authority to finance the Communication Equipment with an interest rate not to exceed the maximum rate permitted under K.S.A. 10-1009, as amended.

**"County"** means \*[Lessee Name]\*, Kansas.

**"Communication Equipment"** means the Department's facilities, improvements, fixtures, equipment, furnishings and related support facilities constituting the communication equipment described on *Exhibit A*, attached to this Lease Agreement and incorporated herein and referred to in **Article VI**, and to be located on a site including either real property or personal property, or both, owned or leased by Lessee or which may be subject to a shared use agreement or other use agreement in favor of the Lessee.

**"Communication Equipment Documents"** means this Lease Agreement and all documents necessarily related thereto that are required by the Department to complete and close the transaction

contemplated by this Lease Agreement.

“**Cost**” or “**Costs**” means all reasonable or necessary expenses incidental to the acquisition, of the Communication Equipment, including the expenses of studies, surveys, architectural and engineering services, legal and other special services related thereto and all other necessary and incidental expenses.

“**Counsel**” means an attorney duly admitted to practice law before the highest court of any state and, without limitation, may include legal counsel for either Lessee or Lessor.

“**Department**” means the Kansas Department of Transportation.

“**Department Communication System**” means that certain communication system owned, operated and maintained to support the purposes of the Department and Public Safety Agencies.

“**Effective Date**” means \*[dated date]\*.

“**FCC**” means the United States Federal Communications Commission.

“**Event of Default**” or “**Default**” means any Event of Default as defined in **Section 13.1**.

“**Fiscal Year**” means the fiscal year of Lessee for financial and budgetary purposes as set forth on *Exhibit B*.

“**Impositions**” means those Impositions defined as such in **Article VII**.

“**Lease Agreement**” means this Equipment Lease Agreement between Lessor and Lessee, as from time to time supplemented and amended in accordance with **Article XIV**.

“**Lease Payment Date**” means the date during the Lease Term on which a Lease Payment is due as set forth on *Exhibit B*.

“**Lease Payments**” means those payments required to be made by Lessee by **Section 4.1** as described on *Exhibit B*.

“**Lease Term**” means the Original Term and any Renewal Terms.

“**Lessee Representative**” means the person or persons at the time designated to act on behalf of Lessee in matters relating to the Communication Equipment and this Lease Agreement as evidenced by a written certificate furnished to Lessor containing the specimen signature of such person or persons and signed on behalf of Lessee by its presiding official. Such certificate may designate an alternate or alternates each of whom shall be entitled to perform all duties of Lessee Representative.

“**Lessor Representative**” means the person or persons at the time designated to act on behalf of Lessor in matters relating to the Communication Equipment and this Lease Agreement as evidenced by a written certificate furnished to Lessee containing the specimen signature of such person or persons and signed on behalf of Lessor by its authorized officer. Such certificate may designate an alternate or alternates, each of whom shall be entitled to perform all duties of the Lessor Representative.

“**Maximum Lease Term**” means the Original Term and all Renewal Terms through the final Lease Payment Date listed on *Exhibit B*.

“**Net Proceeds**” when used with respect to any insurance proceeds or any condemnation award or amounts received from the sale of property under the threat of condemnation, means the amount remaining after deducting all expenses (including attorneys’ fees and any expenses of Lessee and Lessor) incurred in the collection of such proceeds or award from the gross proceeds thereof.

**“Notice Address”** means:

- (1). With respect to the Lessor:

Attention: Deputy Secretary for Finance and Administration  
Kansas Department of Transportation  
700 SW Harrison Street  
Topeka, Kansas 66612-3754

with a copy to its Chief Counsel at the same address; and

- (2). With respect to the Lessee:

That address as provided at *Exhibit B*, attached hereto.

**“Original Term”** means the initial term of this Lease Agreement beginning as of the Effective Date and ending on the last day of Lessee's current Fiscal Year, subject to earlier termination as provided herein.

**“Opinion of Bond Counsel”** means the written opinion of Bond Counsel, which must conclude that the action or proposed action for which an opinion is required will not adversely affect the exclusion of interest on the Bonds from gross income for federal income tax purposes.

**“Public Safety Agency”** means any governmental agency providing law enforcement, emergency management, fire fighting, ambulance, emergency medical, or other emergency services as described in the Act.

**“Purchase Price”** means the amount designated as such on *Exhibit B* that Lessee may, in its discretion, pay to Lessor to purchase the Communication Equipment free and clear of any interest of Lessor (and, after the Bonds are issued, the Authority and the owners of the Bonds) pursuant to **Section 11.1**.

**“Qualified User”** means a state, territory, possession of the United States, the District of Columbia, or any political subdivision thereof, or any instrumentality of such entity, but which does not include the United States or any agency or instrumentality of the United States.

**“Renewal Terms”** means the renewal terms of this Lease Agreement during which the Lease Term is extended in accordance with **Section 3.2**, each having a duration of one year and a term coextensive with Lessee's Fiscal Year except as otherwise provided in said **Section 3.2**, subject to earlier termination as provided herein.

**“Secretary”** means the Kansas Secretary of Transportation.

**“State”** means the State of Kansas.

#### **Section 1.2. Rules of Interpretation.**

- a. Unless the context shall otherwise indicate, words importing the singular number shall include the plural and vice versa, and words importing persons shall include firms, associations, and corporations, including public bodies, as well as natural persons.

- b. All references in this Lease Agreement to designated “Articles,” “Sections,” and other subdivisions are, unless otherwise specified, to the designated Articles, Sections, and subdivisions of this instrument as originally executed. The words “herein,” “hereof,” “hereunder,” and other words of similar import refer to this Lease Agreement as a whole and not to any particular Article, Section, or other subdivision.

**ARTICLE II  
REPRESENTATIONS**

**Section 2.1. Representations by the Lessor.** The Lessor makes the following representations:

a. Lessor is a duly created state agency existing under the Constitution and laws of the State. Under the provisions of the Act, Lessor has the power to enter into and perform the transactions contemplated by this Lease Agreement and to carry out its obligations hereunder and thereunder.

b. Lessor, except as and to the extent this Lease Agreement is pledged and a security interest in the Communication Equipment is granted or assigned in connection with the issuance of the Bonds, and except as otherwise provided herein, will not, during the Lease Term, in whole or in part, assign, lease, hypothecate, or otherwise create any other interest in, or dispose of, or cause or permit any lien, claim, or encumbrance to be placed against the leasehold interest in the Communication Equipment conveyed hereby to the Lessee, provided and for so long as Lessee's use of the leasehold interest in the Communication Equipment conveyed by Lessor hereunder does not interfere with or otherwise reduce Lessor's ability to use the Communication System, or any prior existing Public Safety Agency's use of the Communication System.

c. Lessor owns fee title to the Communication Equipment.

d. The Secretary has duly authorized the execution and delivery of this Lease Agreement.

e. The lease of the Communication Equipment by Lessor to Lessee, as provided in this Lease Agreement, is necessary, desirable and in the public interest.

**Section 2.2. Representations by the Lessee.** The Lessee makes the following representations as the basis for the undertakings on its part herein contained:

a. The Lessee is a Qualified User and Public Safety Agency as defined in the Act and is a public body corporate and politic duly organized and existing as a political subdivision of the State under the constitution and laws of the State with full power and authority to enter into each of the Communication Equipment Documents and the transactions contemplated hereby and to perform all of its obligations hereunder. During the Lease Term, the Lessee will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as a Public Safety Agency.

b. The Lessee by proper action of its duly elected or appointed governing body has lawfully authorized the execution and delivery of this Lease Agreement to the Lessor.

c. The Lessee will not use the Communication Equipment in any manner, whether directly or indirectly, which will or may tend to interfere with or otherwise reduce Lessor's or any prior existing Public Safety Agency's use of the Department's Communication System.

d. The lease of the Communication Equipment by Lessor to Lessee, as provided in this Lease Agreement, is necessary, desirable and in the public interest, and Lessee hereby declares its current need for the Communication Equipment;

e. Lessee has duly authorized the execution and delivery of each of the Communication Equipment Documents by proper action by its governing body at a meeting duly called, regularly convened and attended throughout by the requisite majority of the members thereof,

and all requirements have been met and procedures have occurred in order to ensure the validity and enforceability of each of the Communication Equipment Documents;

f. Neither the execution and delivery of any Communication Equipment Document, nor the fulfillment of or compliance with the terms and conditions thereof, nor the consummation of the transactions contemplated thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which Lessee is a party or by which Lessee is bound;

g. There is no proceeding pending or threatened in any court or before any governmental authority or arbitration board or tribunal challenging the validity of the authorization or the power or authority of Lessee to enter into any Communication Equipment Document or the validity or enforceability of any Communication Equipment Document or which, if adversely determined, would adversely affect the transactions contemplated by any Communication Equipment Document or the interest of Lessor or its assigns under any Communication Equipment Document;

h. Lessee has not made, done, executed or suffered, and warrants that it will not make, do, execute or suffer, any act or thing whereby Lessee's interests in any property now or hereafter included in the Communication Equipment shall be or may be impaired, changed or encumbered in any manner whatsoever, except as contemplated by this Lease Agreement;

j. No event or condition that constitutes, or with the giving of notice or the lapse of time or both would constitute, an Event of Default exists at the date hereof;

k. Lessee has, in accordance with the requirements of law, fully budgeted and appropriated sufficient funds for the current Fiscal Year to make the Lease Payments scheduled to come due during the Original Term, and to meet its other obligations for the Original Term, and such funds have not been expended for other purposes;

l. Lessee will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as a body corporate and politic and a municipal corporation of the State; and

m. Lessee has not failed to appropriate in the ten (10) years preceding the Effective Date of this Lease Agreement for any obligation of the Lessee subject to annual appropriation under the laws of the State.

### ARTICLE III GRANTING PROVISIONS

**Section 3.1. Granting of Leasehold Estate.** Lessor, subject to and in consideration of the Lease Payments, agreements, covenants, and terms of this Lease Agreement hereinafter set forth, does hereby rent, lease and let to Lessee, and Lessee does hereby rent, lease and take from Lessor, the Communication Equipment, as described at *Exhibit A* attached hereto and incorporated herein by reference

**Section 3.2. Lease Term.**

The Original Term shall commence as of the Effective Date and shall terminate on the last day of Lessee's current Fiscal Year. The Lease Term may be continued, at the option of Lessee, at the end of the Original Term or any Renewal Term for an additional one (1) year Renewal Term; provided that the final Renewal Term shall not extend beyond the final Lease Payment Date set forth on *Exhibit B*. Lessee shall be deemed to have exercised its option to continue this Lease Agreement for the next Renewal Term unless Lessee shall have terminated this Lease Agreement pursuant to **Section 3.3** or **11.1**. The terms and conditions during any Renewal Term shall be the same as the terms and conditions during the Original Term.

Lessee currently intends, subject to the provisions of **Section 3.3**, to continue this Lease Agreement through the Maximum Lease Term and to pay the Lease Payments hereunder. Lessee reasonably believes that legally available funds in an amount sufficient to pay all Lease Payments during the Original Term and each of the Renewal Terms through the Maximum Lease Term can be obtained. The responsible financial officer of Lessee shall do all things lawfully within his or her power to obtain and maintain funds from which the Lease Payments may be made, including making provision for such Lease Payments to the extent necessary in each proposed annual budget submitted for approval in accordance with applicable procedures of Lessee and to exhaust all available reviews and appeals in the event such portion of the budget is not approved. Notwithstanding the foregoing, the decision to budget and appropriate funds or to extend this Lease Agreement for any Renewal Term is to be made in accordance with Lessee's normal procedures for such decisions, and the then current governing body of Lessee will have the final responsibility for that decision.

**Section 3.3. Nonappropriation.** Lessee is obligated only to pay such Lease Payments under this Lease Agreement as may lawfully be made from funds budgeted and appropriated for that purpose during Lessee's then current Fiscal Year. Should Lessee fail to budget, appropriate or otherwise make available funds sufficient to pay Lease Payments following the then current Original Term or Renewal Term, this Lease Agreement shall be deemed terminated at the end of the then current Original Term or Renewal Term. Lessee agrees to deliver notice to Lessor of such termination at least ninety (90) days prior to the end of the then current Original Term or Renewal Term, but failure to give such notice shall not extend the term beyond such Original Term or Renewal Term. If this Lease Agreement is terminated in accordance with this Section, Lessee agrees to transfer possession of the Communication Equipment to Lessor at the end of the then current Original Term or Renewal Term.

**Section 3.4. Use of Equipment.**

a. Lessee shall have the right to use the Communication Equipment for any essential governmental or proprietary purpose of Lessee, subject to the limitations contained in the Communication Equipment Documents.

b. Lessee acknowledges, understands, and agrees that the Department's Communication System was built and is operated by the Department to support the Department and public safety communication for the citizens of the State and Lessee's interest shall be subordinate to that public interest.

c. Lessor reserves the right to terminate this Lease Agreement and may exercise such right to so terminate at its sole discretion if Lessee fails to comply with FCC regulations or if Lessee's use of the Communication Equipment interferes with Lessor's or any other prior existing Public Safety Agency's use of the Department's Communication System; provided, however, Lessor shall notify Lessee in writing of any failure under this subsection and if Lessee fails within thirty (30) days after the date Lessor deposits in United States Mail, postage prepaid and restricted delivery addressed to Lessee a notice to cure such failure, Lessor will notify the Lessee that this Lease Agreement will be terminated thirty (30) days from the date of such. If this Lease Agreement is terminated in accordance with this Section, Lessee agrees to transfer possession of the Communication Equipment to Lessor on the date of such termination.

d. Lessor covenants and agrees that as long as the Lessee is not in default under this Lease Agreement and an event of nonappropriation under **Section 3.3** has not occurred, the Lessee shall have sole and exclusive possession of the Communication Equipment and shall and may peaceably and quietly have, hold, and enjoy the Communication Equipment during the Lease Term.

e. Lessee hereby consents to the location of the Communication Equipment on the sites whether real or personal property, owned by Lessee (the "*Sites*") and agrees, that the Lessor (and/or, after the Bonds are issued, the Authority) may, at any time after the occurrence and during the continuation of an Event of Default or an event of nonappropriation under this Lease

Agreement, enter upon the Sites and remove and use the Communication Equipment located there without any liability whatsoever to Lessee, except for any damages caused to Lessee's buildings, equipment, furnishings or other improvements on the Sites directly caused by any failure of the Lessor (and/or the Authority) to remove and use the Communication Equipment with reasonable care. Lessee hereby waives, relinquishes and releases all interest in, right or claim to or lien on the Communication Equipment, including (without limitation) any right of levy or distraint upon the Communication Equipment for rent with respect to the Sites.

**Section 3.5. Pledge and Assignment by Lessor.** Lessee hereby acknowledges that Lessor intends to (i) pledge its rights to receive the Lease Payments and the Late Payment Charges to the Authority for the benefit of the owners of the Bonds, (ii) to grant to the Authority a security interest constituting a first lien on the Communication Equipment financed with the proceeds of the Bonds, including all additions, attachments and accessions thereto and substitutions thereof, and proceeds therefrom, and (iii) to assign the security interest that Lessor retains pursuant to **Section 14.4** hereof in the Communication Equipment financed with the proceeds of the Bonds to the Authority for the benefit of the owners of the Bonds. Lessee hereby consents to such pledge and grant and assignment of security interests as provided in this **Section 3.5**.

#### **ARTICLE IV PROVISIONS FOR PAYMENT OF LEASE PAYMENTS**

**Section 4.1. Lease Payments.**

a. Lessee shall promptly make Lease Payments, exclusively from legally available funds, in lawful money of the United States of America to Lessor on each Lease Payment Date in such amounts as are described on *Exhibit B*. Lessee shall pay Lessor a charge on any Lease Payment not paid on the Lease Payment Date such Lease Payment is due at the rate of (i) the annual average effective interest rate (as described on *Exhibit B-1* attached hereto) plus 2% per annum or (ii) the maximum rate permitted by law, whichever is less, from such due date until paid. A portion of each Lease Payment is paid as, and represents payment of, interest, as set forth on *Exhibit B*.

b. Lessee understands that: (1) the Lessor intends to fully finance the acquisition of the Communication Equipment with the proceeds of the Bonds on a future date not determined as of the date of this Lease Agreement; (2) the cost of the Communication Equipment is to be paid for by the Lessor from monies it has on hand and available for such use until said bond issue is undertaken; (3) upon the issuance of the Bonds, Lease Payments (as identified on *Exhibit B-1*) shall be modified to be equal to the sum of (A) the amount of interest becoming due on the Bonds then outstanding on the next bond payment date, (B) the amount of principal becoming due on the Bonds then outstanding by maturity, mandatory redemption or otherwise on the next succeeding bond payment date, (C) the amount of moneys required to redeem Bonds then outstanding on the next succeeding bond payment date to the extent the Bonds have been called for redemption pursuant to the resolution of the Authority under which the Bonds were issued and (D) the amount of all fees and expenses of the bond registrar and paying agent relating to the Bonds and any other fees and expenses relating to the Bonds due on or before the next succeeding bond payment date; and (4) upon the issuance of the Bonds, the annual average effective interest rate (as described on *Exhibit B-1* attached hereto) shall be modified to be equal to the annual average effective interest rate on the Bonds.

c. Lessee agrees to take all such action and execute all such documents, including any amendments to this Lease Agreement, as Lessor shall deem appropriate and necessary to make the modifications contemplated by subsection (b) above.

d. Upon the issuance of the Bonds, the Lessor shall prepare a theoretical Lease Payment schedule providing for semi-annual lease payments based on the annual average effective interest rate on the Bonds (the "Alternate Amortization Schedule"). If the annual average effective interest rate on the Bonds is less than 4.61%, the Lessee shall be entitled to a credit on its next Lease Payment for the difference between (i) the sum of the Lease Payments actually paid by the Lessee prior to the date of issuance of the Bonds and (ii) the sum of the Lease Payments that would have been due prior to the date of

issuance of the Bonds under the Alternate Amortization Schedule. If the annual average effective interest rate on the Bonds is greater than 4.61%, the Lessee shall pay the Lessor an additional payment equal to the difference between (i) the sum of the Lease Payments that would have been due prior to the date of issuance of the Bonds under the Alternate Amortization Schedule and (ii) the sum of the Lease Payments actually paid by the Lessee prior to the date of issuance of the Bonds.

**Section 4.2. Additional Lease Payments.** Lessee shall pay, subject to the provisions of **Section 3.3**, as Additional Lease Payments (i) all Impositions (as defined in **Article VII**); (ii) all amounts required under **Section 4.5** or **14.5** and all other payments of whatever nature which Lessee has agreed to pay or assume under this Lease Agreement; (iii) all expenses, including attorneys' fees, incurred in connection with the enforcement of any rights under this Lease Agreement by or on behalf of Lessor; and (iv) the Annual Servicing Fee described at *Exhibit A*. Amounts required to be paid under this Section shall be paid directly by Lessee to the person or entity owed.

**Section 4.3. Lease Payments and Additional Lease Payments Constitute Current Expense.** The obligation of Lessee to pay the Lease Payments and the Additional Lease Payments and other amounts payable hereunder is subject to the provisions of **Section 3.3**, constitutes a current expense of Lessee and does not constitute a general obligation or indebtedness of Lessee for which Lessee is obligated to levy or pledge any form of taxation or for which Lessee has levied or pledged any form of taxation; such obligation shall not be construed to be a debt of Lessee in contravention of any applicable constitutional or statutory limitation or requirement, but in each Fiscal Year shall be payable solely from the amounts budgeted or appropriated therefor out of the income and revenue provided for such Fiscal Year, any proceeds of the Communication Equipment and the Net Proceeds of any insurance or condemnation awards.

**Section 4.4. Lease Payments and Additional Lease Payments Payable without Abatement or Set-Off; Lessee's Obligations.** Subject to the provisions of **Section 3.3**, Lessee covenants and agrees that all payments of Lease Payments and Additional Lease Payments shall be made by Lessee on or before the date the same become due, and Lessee shall perform all of its other obligations, covenants and agreements hereunder (including the obligation to pay Lease Payments and Additional Lease Payments) without notice or demand and without abatement, deduction, setoff, counterclaim, recoupment or defense or any right of termination or cancellation arising from any circumstance whatsoever, whether now existing or hereafter arising and irrespective of whether the acquisition or construction of the Communication Equipment shall have been started or completed.

Nothing in this Lease Agreement shall be construed as a waiver by Lessee of any rights or claims Lessee may have against Lessor under this Lease Agreement or otherwise, but any recovery upon such rights and claims shall be from Lessor separately, it being the intent of this Lease Agreement that Lessee shall be unconditionally and absolutely obligated to perform fully all of its obligations, agreements and covenants under this Lease Agreement, including its obligation to pay Lease Payments and Additional Lease Payments when due. Lessee may, however, at its own cost and expense and in its own name or in the name of Lessor, prosecute or defend any action or proceeding or take any other action involving third persons which Lessee deems reasonably necessary in order to secure or protect its right of possession, occupancy and use hereunder or Lessor's use of the Sites for purposes of location of the Communication Equipment, and in such event Lessor hereby agrees to reasonably cooperate with Lessee, at the expense of the Lessee, and to take all action necessary to effect the substitution of Lessee for Lessor in any such action or proceeding if Lessee shall so request.

**Section 4.5. Advances.** In the event Lessee shall fail to either maintain the insurance required by this Lease Agreement or keep the Communication Equipment in good repair, Lessor may, but shall be under no obligation to, purchase the required insurance and pay the cost of the premiums therefor and maintain and repair the Communication Equipment and pay the cost thereof. All amounts so advanced by Lessor shall constitute Additional Lease Payments for the then current Original Term or Renewal Term and Lessee covenants and agrees to pay such amounts so advanced by Lessor with interest thereon from the date advanced by Lessor until paid at the rate of "annual average effective interest rate" described at *Exhibit B-1* plus two percent (2%) or (ii) the maximum rate permitted by law, whichever is less, from such date until paid.

**Section 4.6. Prepayments.** The Lessee may prepay from time to time the Lease Payments. The Lessee acknowledges and agrees that the Lessee's interest in the Communication Equipment shall continue to be governed by the terms of this Lease Agreement following any prepayments that may be made by the Lessee under this **Section 4.6**, and no portion of the Lessor's interest in the Communication Equipment shall be transferred to the Lessee as a result of any such prepayment.

## ARTICLE V OBLIGATIONS OF LESSOR AND LESSEE

### **Section 5.1. Obligations or Requirements of Lessor.**

a. Lessor during the Lease Term at Lessee's cost shall keep the Communication Equipment in compliance with all applicable FCC rules and regulations or the rules and regulations of any other agency having proper jurisdiction over said Communication Equipment.

b. Lessor during the Lease Term agrees to coordinate manufacturer's warranty repairs, including shipping the Communication Equipment back to the manufacturer thereof, and provide comparable loaner communication equipment to Lessee if available but all expenses incurred by Lessor which are related thereto shall be paid for by Lessee.

c. Lessor agrees to provide initial programming of the leased Communication Equipment and any reprogramming of leased Communication Equipment, at no charge to the Lessee, when updates are issued from the manufacturer thereof.

### **Section 5.2. Obligations or Requirements of Lessee.**

a. Lessee shall bear the risk of any loss or damage to any of the Communication Equipment during the Lease Term and, in the event of loss or damage to any of the Communication Equipment during the Lease Term, Lessee shall remain obligated pursuant to the terms of this Lease Agreement.

b. Lessee shall make no alteration, addition, or improvement to the Communication Equipment in any way without the prior written approval and authorization of Lessor (and, after the Bonds are issued, the Authority). Any such alterations, additions, and/or improvements made by the Lessee shall be paid for by Lessee and shall become the property of the Lessor upon termination of this Lease Agreement pursuant to **Section 3.3 or Section 13.2** hereof, but otherwise shall be and remain the property of Lessee upon payment of all Lease Payments pursuant to **Section 4.1** for the Maximum Lease Term or purchase of the Communication Equipment pursuant to **Section 11.1** hereof. Lessor shall have the right to remove, or require Lessee to remove, all alterations, fixtures, and improvements at the Lessee's cost upon termination of this Lease Agreement pursuant to **Section 3.3 or Section 13.2** hereof.

c. Subsequent to the expiration of any applicable warranty period, Lessee shall be responsible for and shall pay the costs incurred by it in operating or using the Communication Equipment and for all necessary maintenance and repairs to the Communication Equipment, except such maintenance and repairs as may be necessitated by or as a result of the fault or negligence during the Lease Term of Lessor or any agent of Lessor.

d. Lessee during the Lease Term shall be responsible for paying all of any costs necessary to keep the Communication Equipment in compliance with all applicable FCC rules and regulations or the rules and regulations of any other agency having proper jurisdiction over said Communication Equipment.

e. At any times after the Bonds are issued, the Lessee will not permit the use of any portion of the Communication Equipment in a trade or business carried on by any person other than a Qualified User without first obtaining an Opinion of Bond Counsel.

f. The Lessee (to the extent within its power or direction) shall not use or permit the use of the Communication Equipment, directly or indirectly, in any manner, and shall not take or permit to be taken any other action or actions, which would adversely affect the exclusion of the interest on any of the Bonds from gross income for federal income tax purposes.

g. Neither the Lessee nor any related party to the Lessee shall purchase any of the Bonds during the Lease Term.

## **ARTICLE VI COMMUNICATION EQUIPMENT**

**Section 6.1. Warranties.** Lessor shall convey to Lessee at the termination of the Lease Term and upon full compliance by Lessee of all of its duties, obligations and responsibilities under this Lease Agreement, all of its interest in all warranties, guarantees or other contract rights against any contractor, subcontractor or supplier, expressed or implied, issued on or applicable to the Communication Equipment, and Lessor hereby authorizes Lessee to obtain the customary services furnished in connection with such warranties, guarantees or other contract rights at Lessee's expense. Lessee's sole remedy for the breach of such warranties, guarantees or other contract rights shall be against any contractor, subcontractor or supplier, and not against Lessor, nor shall such matter have any effect whatsoever on the rights of Lessor with respect to this Lease Agreement, including the right to receive full and timely Lease Payments, Additional Lease Payments and other payments hereunder. Lessee expressly acknowledges that Lessor does not make nor has it made any representation or warranty whatsoever as to the existence or availability of such warranties, guarantees or other contract rights of the manufacturer or supplier of any portion of the Communication Equipment.

### **Section 6.2. DISCLAIMER OF WARRANTIES.**

**THE COMMUNICATION EQUIPMENT IN ITS ENTIRETY, THE SUBJECT OF THIS LEASE AGREEMENT, IS PROVIDED "AS IS" WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NOTHING IN THIS LEASE AGREEMENT SHALL BE CONSTRUED AS A REPRESENTATION OR WARRANTY BY LESSOR THAT LESSOR WILL MAINTAIN THE OPERATIONAL CAPABILITY OF THE COMMUNICATION EQUIPMENT THROUGHOUT THE TERM OF THIS LEASE AGREEMENT. LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION OR FITNESS FOR PARTICULAR PURPOSE OR FITNESS FOR USE OF THE COMMUNICATION EQUIPMENT OR ANY PART THEREOF, OR WARRANTY WITH RESPECT THERETO. IN NO EVENT SHALL LESSOR BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGE IN CONNECTION WITH OR ARISING OUT OF THIS LEASE AGREEMENT OR THE EXISTENCE, FURNISHING, FUNCTIONING OR LESSEE'S USE OF THE COMMUNICATION EQUIPMENT OR ANY PART THEREOF.**

## **ARTICLE VII IMPOSITIONS**

**Section 7.1. Impositions.** Lessee shall bear, pay and discharge, before the delinquency thereof, as Additional Lease Payments, all taxes and assessments, general and special, if any, which may be lawfully taxed, charged, levied, assessed or imposed upon or against or be payable for or in respect of the Communication Equipment, including any taxes and assessments not of the kind enumerated above to the extent that the same are lawfully made, levied or assessed in lieu of or in addition to taxes or assessments now customarily levied against real or personal property, and further including all water and sewer charges,

assessments and other general governmental charges and impositions whatsoever, foreseen or unforeseen, which if not paid when due would impair the security of Lessor or encumber the Communication Equipment (all of the foregoing being herein referred to as "Impositions").

**Section 7.2. Contest of Impositions.** Lessee shall have the right, in its own name or in Lessor's name, to contest the validity or amount of any Imposition which Lessee is required to bear, pay and discharge pursuant to the terms of this Article by appropriate legal proceedings instituted at least ten (10) days before the Imposition complained of becomes delinquent and may permit the Imposition so contested to remain unpaid during the period of such contest and any appeal therefrom unless Lessor shall notify Lessee that, in the opinion of Counsel, by nonpayment of any such items the interest of Lessor in the Communication Equipment will be materially endangered or the Communication Equipment or any part thereof will be subject to loss or forfeiture, in which event Lessee shall promptly pay such taxes, assessments or charges or provide Lessor with full security against any loss which may result from nonpayment, in form satisfactory to Lessor. Lessor agrees to cooperate with Lessee in connection with any and all administrative or judicial proceedings related to Impositions. Lessee shall hold Lessor whole and harmless from any costs and expenses Lessor may incur with respect to any Imposition.

## **ARTICLE VIII INSURANCE; INDEMNITY**

**Section 8.1. Insurance Required.** Lessee shall, during the Lease Term, cause the Communication Equipment to be kept continuously insured against such risks customarily insured against for facilities and equipment such as the Communication Equipment and shall pay (except as otherwise provided herein), as the same become due, all premiums in respect thereof, such insurance to include the following policies of insurance:

a. Insurance insuring the Communication Equipment against loss or damage by fire, lightning and all other risks covered by the extended coverage insurance endorsement then in use in the State in an amount not less than the lesser of an amount equal to the full insurable value thereof or the then applicable purchase price under **Section 11.1** (subject to reasonable loss deductible clauses) issued by such insurance company or companies authorized to do business in the State as may be selected by Lessee. The full insurable value of the Communication Equipment may be determined from time to time at the request of Lessee or Lessor (but not less frequently than every five years) by an architect, contractor, appraiser, appraisal company or one of the insurers, to be selected, subject to Lessor's approval, and paid by Lessee. The policy or policies of such insurance shall name Lessee and Lessor as insureds and loss payees. All proceeds from such policies of insurance shall be applied as provided in **Article XII; and**

b. Comprehensive general accident and public liability insurance (including coverage for all losses whatsoever arising from the ownership, maintenance, operation or use of any automobile, truck or other motor vehicle), under which Lessee and Lessor are named as insureds, in an amount not less than the amount which the Lessor shall reasonably request for a combined single limit for bodily injuries and property damage.

Not less than fifteen (15) days prior to the expiration dates of the expiring policies, originals or copies of the policies required by this Section or certificates evidencing such insurance shall be delivered by Lessee to Lessor. All policies of such insurance, and all renewals thereof, shall contain a provision that such insurance may not be cancelled by the issuer thereof without at least ten (10) days written notice to Lessee and Lessor.

Nothing in this Lease Agreement shall be construed as preventing Lessee from satisfying the insurance requirements herein set forth by using blanket policies of insurance provided each and all of the requirements and specifications of this Lease Agreement respecting insurance are complied with.

**Section 8.2. Release and Indemnification.** To the extent permitted by law, Lessee shall indemnify, protect, hold harmless, defend, save and keep Lessor harmless from and against any and all

liability, obligation, loss, claim, tax and damage whatsoever, regardless of cause thereof, and all expenses in connection therewith (including counsel fees and expenses) arising out of or as the result of (i) the entering into of this Lease Agreement or any sublease, (ii) the acquisition, construction, equipping and installation of the Communication Equipment, (iii) injury, actual or claimed, of whatsoever kind or character, to property or persons, occurring or allegedly occurring in, on or about the Communication Equipment during the Lease Term or otherwise arising during the Lease Term because of Lessor's interest in the Communication Equipment, and/or (iv) the breach of any covenant by Lessee herein or any material misrepresentation by Lessee contained herein. The indemnification arising under this section shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease Agreement or the termination of this Lease Agreement for any reason.

## **ARTICLE IX ASSIGNMENT AND SUBLEASING**

**Section 9.1. Assignment by Lessor.** Lessor's right, title and interest in, to and under this Lease Agreement and the Communication Equipment may be assigned and pledged solely to the Authority for the benefit of the owners of the Bonds and shall not otherwise be assigned, pledged, transferred or otherwise disposed of by Lessor so long as any of the Bonds are outstanding. Lessee shall not have the right to and shall not assert against any assignee any claim, counterclaim or other right Lessee may have against Lessor.

**Section 9.2 Assignment and Subleasing by Lessee.** None of Lessee's right, title and interest in, to and under this Lease Agreement and in the Communication Equipment may be assigned or encumbered by Lessee for any reason to any person or entity without first obtaining Lessor's (and, after the Bonds are issued, the Authority's) prior written consent and an Opinion of Bond Counsel. Any sublease of all or part of the Communication Equipment shall be subject to this Lease Agreement and the rights of Lessor in, to and under this Lease Agreement and the Communication Equipment and, after the Bonds are issued, the rights and interests of the Authority and the owners of the Bonds with respect thereto.

## **ARTICLE X MAINTENANCE, REPAIRS AND MODIFICATIONS**

**Section 10.1. Maintenance, Repairs and Modifications.** Lessee shall, at its own expense, maintain, preserve and keep the Communication Equipment in good repair, working order and condition, and shall from time to time make all repairs, replacements and improvements necessary to keep the Communication Equipment in such condition. Lessor shall have no responsibility for any repairs, replacements or improvements to the Communication Equipment except as shall be expressly set forth in this Lease Agreement. All such repairs, replacements and improvements shall thereafter comprise part of the Communication Equipment and be subject to the provisions of this Lease Agreement. Such repairs, replacements and improvements shall not in any way damage the Communication Equipment nor cause it to be used for purposes other than those permitted by this Lease Agreement and authorized under the provisions of municipal, state and federal law. The Communication Equipment, upon completion of any additions, modifications and improvements made pursuant to this Section, shall be of a value which is not substantially less than the value of the Communication Equipment immediately prior to the making of such additions, modifications and improvements. Any property for which a substitution or replacement is made pursuant to this Section with Lessor's prior express written consent may be disposed of by Lessee in such manner and on such terms as are determined by Lessee. Lessee will not permit any mechanic's or other lien to be established or remain against the Communication Equipment for labor or materials furnished in connection with any remodeling, additions, modifications, improvements, repairs, renewals or replacements made by Lessee pursuant to this Section; provided that if any such lien is established and Lessee shall first notify Lessor (and, after the Bonds are issued, the Authority) of Lessee's intention to do so, Lessee may in good faith contest any lien filed or established against the Communication Equipment, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal there from unless Lessor (or, after the Bonds are issued, the Authority) shall notify Lessee that, in the opinion of Counsel, by nonpayment of any such item the interest of Lessor (or, after the Bonds are issued, the Authority) in the Communication Equipment will be materially endangered or the

Communication Equipment or any part thereof will be subject to loss or forfeiture, in which event Lessee shall promptly pay and cause to be satisfied and discharged all such unpaid items or provide Lessor with full security against any such loss or forfeiture, in form satisfactory to Lessor. Lessor will cooperate fully with Lessee in any such contest, upon request and at the expense of Lessee.

**Section 10.2. Liens.** Lessee shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Communication Equipment, other than the respective rights of Lessor and Lessee as herein provided and, after the Bonds are issued, the respective rights and interests of the Authority and the owners of the Bonds as provided in the documents pursuant to which the Bonds are issued. Except as expressly provided in this Article, Lessee shall promptly, at its own expense, take such action as may be necessary to duly discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim if the same shall arise at any time. Lessee shall reimburse Lessor (and, after the Bonds are issued, the Authority) for any expense incurred by Lessor (or the Authority) in order to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim.

## **ARTICLE XI LESSEE'S OPTION TO PURCHASE THE COMMUNICATION EQUIPMENT**

**Section 11.1. Lessee's Option to Purchase the Communication Equipment.** Lessee shall have the option to purchase Lessor's interest in the Communication Equipment, free and clear of any right or interest of Lessor, the Authority or the owners of the Bonds, upon giving written notice to Lessor at least thirty (30) days before the date of purchase (which notice shall state the date of purchase), at the following times and upon the following terms:

- a. On any Lease Payment Date upon payment in full of the Lease Payments then due hereunder plus the then applicable Purchase Price to Lessor; or
- b. In the event of substantial damage to or destruction or condemnation (other than condemnation by Lessee or any entity controlled by or otherwise affiliated with Lessee) of substantially all of the Communication Equipment, on the Lease Payment Date Lessee specifies as the purchase date in Lessee's notice to Lessor of its exercise of the purchase option given pursuant to **Section 12.1**, upon payment in full of the Lease Payments then due hereunder plus the Purchase Price to Lessor.

**Section 11.2. Determination of Fair Purchase Price.** Lessee and Lessor hereby agree and determine that the Lease Payments hereunder during the Original Term and any Renewal Term represent the fair value of the use of the Communication Equipment, and that the amount required to exercise Lessee's option to purchase Lessor's interest in the Communication Equipment pursuant to **Section 11.1** represents, as of the end of the applicable Lease Payment Date, the fair purchase price of the Communication Equipment. Lessee hereby determines that the Lease Payments do not exceed a reasonable amount so as to place Lessee under an economic practical compulsion to renew this Lease Agreement or to exercise its option to purchase the Communication Equipment hereunder. In making such determinations, Lessee and Lessor have given consideration to the Costs of the Communication Equipment, the uses and purposes for which the Communication Equipment will be employed by Lessee, the benefit to Lessee by reason of the acquisition, construction, equipping and installation of the Communication Equipment and the use and occupancy of the Communication Equipment pursuant to the terms and provisions of this Lease Agreement and Lessee's option to purchase the Communication Equipment. Lessee hereby determines and declares that the acquisition, construction, equipping and installation of the Communication Equipment and the leasing of the Communication Equipment pursuant to this Lease Agreement will result in a Communication Equipment of comparable quality and meeting the same requirements and standards as would be necessary if the acquisition, construction, equipping and installation of the Communication Equipment were performed by Lessee other than pursuant to this Lease Agreement. Lessee hereby determines and declares that the Maximum Lease Term does not exceed the useful life of the Communication Equipment.

**Section 11.3. Delivery of Communication Equipment upon Payment of Purchase Price.** Upon payment in full of all Lease Payments due hereunder plus the then applicable Purchase Price to Lessor the Communication Equipment shall be delivered to Lessee free and clear of any right or interest of Lessor.

**ARTICLE XII  
DAMAGE, DESTRUCTION AND CONDEMNATION;  
USE OF NET PROCEEDS**

**Section 12.1. Damage, Destruction and Condemnation.** Unless Lessee shall have exercised its option to purchase the Communication Equipment and terminate this Lease Agreement as provided in **Article XI**, if (i) any component of the Communication Equipment is destroyed (in whole or in part) or is damaged by fire or other casualty or (ii) title to or the temporary use of such component of the Communication Equipment or the interest of Lessee or Lessor in the component of the Communication Equipment, shall be taken under the exercise of the power of eminent domain, or the threat of such exercise, by any governmental body or by any person, firm or corporation acting under governmental authority, Lessee shall cause the Net Proceeds of any insurance or condemnation award or any sale under threat of condemnation to be applied to the prompt replacement, repair, restoration, modification or improvement of the Communication Equipment by Lessee. Any balance of the Net Proceeds remaining after such work has been completed shall be held and appropriated by Lessee for the exclusive purpose of paying Lease Payments under this Lease Agreement.

If Lessee determines that the replacement, repair, restoration, modification or improvement of the Communication Equipment is not economically feasible or in the best interest of Lessee, then, in lieu of making such replacement, repair, restoration, modification or improvement, and if permitted by law and the Bond Resolution, Lessee shall purchase the Communication Equipment by promptly giving Lessor the required notice as provided in **Section 11.1** and paying the Purchase Price to Lessor on the purchase date specified in such notice, and the Net Proceeds shall be applied by Lessee to such payment to the extent required for such payment. Any balance of the Net Proceeds remaining after paying the Purchase Price shall belong to Lessee.

**Section 12.2. Insufficiency of Net Proceeds.** If the Net Proceeds are insufficient to pay in full the cost of any repair, restoration, modification or improvement of any component of the Communication Equipment in accordance with **Section 12.1**, subject to appropriation of sufficient funds, Lessee shall complete the work and pay any cost in excess of the amount of the Net Proceeds, and Lessee agrees that if by reason of any such insufficiency of the Net Proceeds Lessee shall make any payments pursuant to the provisions in this **Section 12.2**, Lessee shall not be entitled to any reimbursement therefor from Lessor or to any reduction in Lease Payments then due or thereafter coming due.

**Section 12.3. Cooperation of Lessor.** Lessor shall cooperate fully with Lessee, at the expense of Lessee, in filing any proof of loss with respect to any insurance policy covering the events described in **Section 12.1** and in the prosecution or defense of any prospective or pending condemnation proceeding with respect to the Communication Equipment or any part thereof and will, to the extent it may lawfully do so, permit Lessee to litigate in any proceeding resulting there from in the name of and on behalf of Lessor.

**ARTICLE XIII  
DEFAULT PROVISIONS**

**Section 13.1. Events of Default Defined.** The following shall be "Events of Default" under this Lease Agreement and the term "Events of Default" shall mean, whenever it is used in this Lease Agreement, any one or more of the following events:

- a. Failure by Lessee to pay any Lease Payment or other payment required to be paid hereunder at the time specified herein;
- b. Failure by Lessee to observe and perform any covenant, condition or agreement under any Communication Equipment Document on its part to be observed or performed, other than as referred to in clause (a) of this Section, for a period of thirty (30) days after written notice

specifying such failure and requesting that it be remedied has been given to Lessee by Lessor; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, Lessor shall consent to an extension of such time if Lessee certifies that corrective action has been instituted by Lessee within the applicable period and will be diligently pursued until such failure is corrected;

c. Any statement, representation or warranty made by Lessee in or pursuant to any Communication Equipment Document or any instrument or certificate related thereto or to the Communication Equipment shall be incorrect, untrue or misleading in any material respect;

d. Any provision of any Communication Equipment Document shall at any time for any reason cease to be valid and binding on Lessee, or shall be declared to be null and void, or the validity or enforceability thereof shall be contested by Lessee or any governmental agency or authority if the loss of such provision would materially adversely affect the rights or security of Lessor, or Lessee shall deny that it has any further liability or obligation under this Lease Agreement; or

e. The filing by Lessee of a voluntary petition in bankruptcy, or failure by Lessee to promptly lift any execution, garnishment or attachment of such consequence as would impair the ability of Lessee to carry on its essential functions, or adjudication of Lessee as a bankrupt, or assignment by Lessee for the benefit of creditors, or the entry by Lessee into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to Lessee in any proceedings instituted under the provisions of any applicable federal bankruptcy law.

**Section 13.2. Remedies.** Whenever any Event of Default shall have happened and be continuing, Lessor shall have the right, at its option and without any further demand or notice, to take any one or more of the following remedial steps:

a. By written notice to Lessee, Lessor may declare all Lease Payments and other amounts payable by Lessee hereunder to the end of the then current Original Term or Renewal Term to be due;

b. With or without terminating this Lease Agreement, take possession of the Communication Equipment or sell or lease the Communication Equipment to a third party Public Safety Agency and Qualified User and collect lease payments therefor for all or any portion of the remainder of the Original Lease Term or then current Renewal Term upon such terms and conditions as it may deem satisfactory in its sole discretion, with Lessee remaining liable for the difference between the Lease Payments, Additional Lease Payments and other amounts payable by Lessee hereunder during the Original Term or then current Renewal Term, as the case may be, and the net proceeds of any purchase price, rents or other amounts paid by a purchaser, new lessee or sublessee of the Communication Equipment, and, provided further, that, in such event, if Lessor shall receive a payment for sale of the Communication Equipment or total Lease Payments for lease of the Communication Equipment that are, after payment of Lessor's expenses in connection therewith, in excess of the then applicable Purchase Price, then such excess shall be paid to Lessee either by Lessor, its assigns, or by its sublessee; or

c. Take whatever action at law or in equity may appear necessary or desirable to collect the Lease Payments then due and thereafter to become due during the Original Term or then current Renewal Term, or enforce performance and observance of any obligation, agreement or covenant of Lessee under this Lease Agreement.

**Section 13.3. No Remedy Exclusive.** No remedy herein conferred upon or reserved to Lessor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or

shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle Lessor or Lessee to exercise any remedy reserved to it in this Article it shall not be necessary to give any notice, other than such notice as may be required in this Article or by law.

**Section 13.4. No Additional Waiver Implied by One Waiver.** In the event any agreement contained in this Lease Agreement shall be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

#### **ARTICLE XIV MISCELLANEOUS PROVISIONS**

**Section 14.1. Kansas Required Statements Pursuant to K.S.A. 10-1116c(d).** The following is provided at *Exhibit B*:

- a. The amount of capital cost required to acquire the Communication Equipment if paid for by cash;
- b. The annual average effective interest cost for the Lease Payments; and
- c. The amount included in the Lease Payments and Additional Lease Payments for service, maintenance, insurance or other charges exclusive of the capital cost and interest cost

**Section 14.2. Notices.** It shall be sufficient service of any notice, request, complaint, demand or other paper required by this Lease Agreement to be given or filed with Lessor or Lessee if the same shall be duly mailed by registered or certified mail with postage prepaid addressed to the Notice Address for Lessor and Lessee may provide in writing to the parties hereto. Lessor and Lessee may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

**Section 14.3. Title to Personal Property.** Lessor and Lessee intend that all of the Communication Equipment constitutes personal property, and as such, title to the Communication Equipment shall vest immediately upon installation in Lessee subject to Lessor's rights under this Lease Agreement and subject to the rights and interests of the Authority and the owners of the Bonds as provided in this Lease Agreement including (without limitation) **Section 3.5** and **Section 14.4** hereof; provided that title thereto shall thereafter immediately and without any action by Lessee vest in Lessor (subject to the rights and interests of the Authority and the owners of the Bonds as provided in this Lease Agreement, including **Section 3.5** hereof) and Lessee shall immediately surrender possession thereof to Lessor or the Authority, as the case may be, upon (i) any termination of this Lease Agreement without Lessee exercising its option to purchase pursuant to **Section 10.1(ii)** the occurrence of an Event of Default or (iii) the occurrence of an event of nonappropriation as provided in **Section 3.3** hereof. It is the intent of the parties hereto that any transfer of title to Lessor or the Authority pursuant to this Section shall occur automatically without the necessity of any deed, bill of sale, certificate of title or other instrument of conveyance. Nevertheless, Lessee shall execute and deliver any such instruments as Lessor or the Authority may request to evidence such transfer.

**Section 14.4. Security Interest.** To secure the payment of all of Lessee's obligations under this Lease Agreement, Lessor retains a security interest in the Communication Equipment and on all additions, attachments, accessions thereto, substitutions therefor and on any proceeds therefrom. Lessee consents to the filing and recording of financing statements with respect to the Communication Equipment and shall execute such additional documents, including affidavits, notices and similar instruments, in form satisfactory to Lessor, which Lessor deems necessary or appropriate to establish and maintain its security interest.

**Section 14.5. Net Lease.** It is the understanding and agreement of the parties hereto that, subject to **Sections 3.3** and **4.3**, this is a clear "net" lease obligation and that Lessee shall bear all expenses and make

all payments consistent with the principle of the “net” Lease Agreement. Lessee hereby assumes and agrees to perform all duties and obligations relating to the Communication Equipment, as well as the use, operation, and maintenance thereof, even though such duties and obligations may otherwise be construed to be those of Lessor.

**Section 14.6. No Pecuniary Liability.** No provision, covenant or agreement contained in this Lease Agreement or any obligation herein imposed upon Lessor, or the breach thereof, shall constitute or give rise to or impose upon Lessor a pecuniary liability.

**Section 14.7. Access to Communication Equipment.** Lessee agrees that Lessor (and, after the Bonds are issued, the Authority) or any agent or representative of Lessor (or Authority) shall have the right at all reasonable times to examine and inspect the Communication Equipment. Lessee further agrees that Lessor, and any such agent or representative of Lessor (or Authority) shall have such rights of access to the Communication Equipment as may be reasonably necessary (i) to cause the proper maintenance of the Communication Equipment in the event of failure by Lessee to perform its obligations hereunder and (ii) for any other reason Lessor (or Authority) determines appropriate and necessary, including removal of the Communication Equipment, after failure by Lessee to perform its obligations hereunder

**Section 14.8. Financial Statements.** Throughout the Lease Term, Lessee shall deliver to Lessor (and, after the Bonds are issued, the Authority), upon request, as soon as available, a copy of Lessee’s annual audited statement of income and expense and Lessee’s annual audited balance sheet.

**Section 14.9. Surrender of Possession.** Upon accrual of the Lessor’s right of possession to the Communication Equipment because of the Lessee’s default or nonappropriation hereunder or upon the cancellation or termination of this Lease Agreement for any reason prior to the payment or prepayment in full of all Lease Payments hereunder, the Lessee shall peacefully surrender possession of the Communication Equipment to the Lessor or the Authority, as the case may be, in good condition and repair, ordinary wear and tear excepted.

**Section 14.10. Liability for Damages and Losses.** Notwithstanding any language to the contrary, Lessor shall not be responsible for any damages or economic or non-economic losses, including, but not limited to, loss of profits, caused by the public, Lessor’s employees, agents, or contractors, or use or failure of the Lessor’s Communication System or Equipment, except as provided in the Kansas Tort Claims Act, K.S.A. 75-6101 *et seq.*, as amended.

**Section 14.11. Responsibility for Impositions.** Lessor shall not be responsible for, nor indemnify Lessee for, any Impositions which may be imposed or levied upon the subject matter of the Lease Agreement. Lessee shall be solely responsible for any Impositions which may be imposed or levied upon the subject matter of the Lease Agreement, and shall promptly pay and discharge the same when due.

**Section 14.12. Third Party Beneficiaries.** Except for the Authority and the owners of the Bonds, it is expressly agreed that no third party beneficiaries are intended to be created by this Lease Agreement, nor do the parties herein authorize anyone not a party to this Lease Agreement to maintain a suit for damages pursuant to the terms or provisions of this Lease Agreement.

**Section 14.13. Binding Effect.** This Lease Agreement shall inure to the benefit of and shall be binding upon Lessor and the Lessee and their respective successors and permitted assigns.

**Section 14.14. Severability.** In the event any provision of this Lease Agreement shall be held illegal, invalid, or unenforceable by any court of competent jurisdiction, such holding shall not invalidate, render unenforceable, or otherwise affect any other provision hereof.

**Section 14.15. Amendments, Supplements, and Modifications.** This Lease Agreement may not be amended, supplemented, or modified without the prior written consent of the parties and, after the Bonds

are issued, the prior written consent of the Authority and the owners of not less than a majority in principal amount of Bonds then outstanding; provided, however, that in no event shall the consent of the Authority or the owners of the Bonds be required for any amendment that is not inconsistent with the terms and provisions hereof and is made to cure any ambiguity or formal defect or omission in this Lease Agreement or to make any other change not prejudicial to the Authority or the owners of the Bonds. The Lessee shall execute such amendments to this Lease Agreement as the Lessor and the Authority shall deem appropriate and necessary to accomplish the issuance and sale of the Bonds.

**Section 14.16. Execution in Counterparts.** This Lease Agreement may be executed in several counterparts, each of which shall be deemed to be an original and all of which shall constitute but one and the same instrument.

**Section 14.17. Governing Law and Regulations.** This Lease Agreement shall be governed by and construed in accordance with the laws of the State, including the Act and the Regulations that are incorporated herein as a part of this Lease Agreement.

**Section 14.18. Consents and Approvals.** Whenever the written consent or approval of the Lessor shall be required under the provisions of this Lease Agreement, such consent or approval may only be given by the Secretary, or his or her designee, in writing.

**Section 14.19. Further Assurances.** The Lessee shall, at the request of Lessor, authorize, execute, acknowledge, and deliver such further resolutions, conveyances, transfers, assurances, financing statements, continuation statements and other instruments as may be reasonably necessary or desirable for better assuring, conveying, granting, assigning, and confirming the rights, security interests, and agreements granted or intended to be granted by and pursuant to this Lease Agreement.

**Section 14.20. Waiver.** The waiver of any condition or of the breach of any condition of this Lease Agreement shall not be a waiver of any subsequent breach or condition. It is expressly understood if at any time Lessee is in default of any of the terms of this Lease Agreement, an acceptance by the Lessor of any Lease Payment, or part thereof, during such time of default shall not be construed as a waiver in any respect of the default.

**Section 14.21. Accounting Terms.** Accounting terms used herein and not otherwise specifically defined shall have the meaning ascribed to such terms by generally accepted accounting principles as from time to time in effect.

**Section 14.22. Form DA-146a.** The “*Contractual Provisions Attachment Form DA-146a*” is attached hereto, agreed to by the Lessee in total, and is incorporated herein by reference.

[BALANCE OF PAGE INTENTIONALL LEFT BLANK]

**IN WITNESS WHEREOF**, Lessor and Lessee have caused this Lease Agreement to be executed, sealed, and delivered, effective as of the Effective Date set forth above.

**THE KANSAS DEPARTMENT OF TRANSPORTATION**  
“Lessor”

(Seal)

By: \_\_\_\_\_  
Joseph J. Erskine  
Deputy Secretary for Finance and Administration  
Kansas Department of Transportation

APPROVED AS TO FORM  
AND LEGALITY.

---

Jonathan P. Small, Chtd.  
Special Counsel to Kansas  
Department of Transportation

Date: \_\_\_\_\_

DRAFT  
02/2010

**\*[LESSEE NAME]\*, KANSAS**  
“Lessee”

By: \_\_\_\_\_  
\*[Executing Officer]\*  
\*[Name of Governing Body - where applicable]\*  
\*[Lessee Name]\*, Kansas

Attest:

[Seal]

By: \_\_\_\_\_  
\*[Attesting Officer]\*  
\*[--- Clerk]\*  
\*[Lessee Name]\*, Kansas

DRAFT  
02/2010

**ACKNOWLEDGMENT**

STATE OF KANSAS            )  
  ) SS  
COUNTY OF SHAWNEE        )

**BE IT REMEMBERED**, that on this \_\_\_\_ day of July, 2009, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Joseph J. Erskine, Deputy Secretary for Finance and Administration, Kansas Department of Transportation, a duly recognized and existing agency of the State of Kansas under the constitution and laws of the state of Kansas, who is personally known to me to be such officer, and who is personally known to me to be the same person who executed, as such officer, the within instrument on behalf of said body, and such person duly acknowledged the execution of the same to be the act and deed of said body.

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

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Notary Public in and for said State  
Commissioned in Shawnee County

My commission expires: \_\_\_\_\_  
\_\_\_\_\_

DRAFT

02/2010

**ACKNOWLEDGMENT**

STATE OF KANSAS                    )  
  ) SS  
COUNTY OF \_\_\_\_\_            )

**BE IT REMEMBERED**, that on this \_\_\_\_ day of \*[month, year]\*, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came \*[Executing Officer]\*, \*[Lessee Name]\*, Kansas, a Public Safety Agency, and a duly recognized and existing \*[legal entity]\* of the State of Kansas under the constitution and laws of the state of Kansas, who is personally known to me to be such officer, and who is personally known to me to be the same person who executed, as such officer, the within instrument on behalf of said body, and such person duly acknowledged the execution of the same to be the act and deed of said body.

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

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Notary Public in and for said State  
Commissioned in \*[\_]\_\*

My commission expires: \_\_\_\_\_

DRAFT

02/2010

**ACKNOWLEDGMENT**

STATE OF KANSAS                    )  
  ) SS  
COUNTY OF \_\_\_\_\_            )

**BE IT REMEMBERED**, that on this \_\_\_\_ day of \*[month, year]\*, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came \*[Attesting Officer]\*, \*[-- Clerk]\*, \*[Lessee Name]\*, Kansas, a Public Safety Agency, and a duly recognized and existing \*[legal entity]\* of the State of Kansas under the constitution and laws of the state of Kansas, who is personally known to me to be such officer, and who is personally known to me to be the same person who executed, as such officer, the within instrument on behalf of said body, and such person duly acknowledged the execution of the same to be the act and deed of said body.

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

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Notary Public in and for said State  
Commissioned in \*[\_]\*

My commission expires: \_\_\_\_\_

DRAFT

02/2010



PRICING INFORMATION:

=====

Cost of Communication Equipment \$ \_\_\_\_\_  
Total cost of Lessor's Initial Administrative Fee \_\_\_\_\_  
Total amount \$ \_\_\_\_\_

Lessor / KDOT Annual Servicing Fee:

**.25%** (.0025) of the outstanding aggregate principal amount of the Lease Payments --  
----- Said Annual Servicing Fee shall be paid at each March 1

DRAFT  
02/2010



Exhibit B-2

COMMUNICATION EQUIPMENT  
EQUIPMENT LEASE AGREEMENT  
CSEL Project No. \*[CSEL No.]\*

*Lease Payments are the Principal and Interest component; 0.25% is Additional Lease Payment described in Section 4.2 and on Exhibit A, and is in addition to Lease Payment*

**KANSAS DEPARTMENT OF TRANSPORTATION**  
**Communication System Revolving Fund**

*Amortization Schedule Prepared For*  
*\*[Lessee Name]\*, EL\*[CSEL No.]\**  
*Interest Rate 4.86%*

Date	Pmt. No.	Draws	Beginning Balance	Payment	Principal	Interest	Service Fee	Ending Balance	Annual Payment
<hr/>									
Totals									
<hr/>									

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KDOT FORM CSEL DA-146a  
CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

**“The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 1-01), which is attached hereto, are hereby incorporated in this contract and made a part thereof”**

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being dated \*[dated date]\*.

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.
2. **Agreement With Kansas Law:** All contractual agreements shall be subject to, governed by, and construed according to the laws of 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 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:** Neither the State of Kansas nor any agency thereof shall hold harmless or indemnify any contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (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.  
  
Parties to this contract understand that 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 shall be allowed to find the State or any agency thereof has agreed to binding arbitration, or the payment of damages or penalties upon the occurrence of a contingency. Further, the State of Kansas shall not agree to pay attorney fees and late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit 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 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 shall not be required to purchase, any insurance against loss or damage to any personal property to which this contract relates, nor shall this contract require the State to establish a “self-insurance” fund to protect against any such loss of damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the vendor or Lessor shall bear the risk of any loss or damage to any personal property in which vendor or Lessor 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 et seq.
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.”