

REQUEST FOR ACTION

AGENDA: Mayor Council DATE: January 24, 2000

OTHER: DTU MTTA RMUA TAEMA TARE TDA TMAPC

TMUA TPA TPFA Utility Bd Airport Auth Airport Impv Trust Other

FOR INFORMATION CONTACT:

NAME: Michael P. Kier, Director of Finance

ADDRESS: 200 Civic Center, Room 1006

TELEPHONE: 596-7522

SUBJECT: Lease Agreement with American Transportation Corp. for Air Force Plant #3

Note: All City Council Agenda items, including appropriate backup materials, must be submitted to the Council Secretary, Office of the City Council, not later than 3:00 pm Thursdays preceding Tuesday committee meetings, and not later than 5:00 pm Mondays preceding Thursday, 6:00 p.m. meetings.

SUMMARY:

Attached is a lease agreement with American Transportation Corporation for Air Force Plant No. 3, commencing at 12:01 a.m. on January 1, 2000 and expiring on December 31, 2015.

BUDGET: FINANCE DIRECTOR APPROVAL:

80043

REQUEST FOR ACTION: All department items requiring Council approval must be submitted through the Mayor's Office.

Request Mayor sign all five duplicate originals.

RETURN DOCUMENTS TO:

City Clerk's Office to retain one original executed document. Two duplicate originals of document to be forwarded to Mr. Robert Perna, General Counsel's Office, Navistar International Transportation Corporation, 455 North Cityfront Plaza Drive, Chicago, IL 60611. The remaining two duplicate originals to be returned to Mike Kier, Room 1006.

DEPARTMENT HEAD APPROVAL: Michael P. Kier DATE: January 24, 2000

ATTORNEY APPROVAL: _____

BOARD APPROVAL: _____

MAYORAL APPROVAL: _____

OTHER: _____

APPROVED BY MAYOR
CITY OF TULSA
JAN 24 2000

FOR CITY COUNCIL OFFICE USE: DATE RECEIVED: _____ APPROVED: _____

FIRST AGENDA DATE: _____ SECOND AGENDA DATE: _____

HEARING: _____ ORDINANCE/RESOLUTION: _____

FILED
CITY OF TULSA

LEASE AGREEMENT

by and between

THE CITY OF TULSA

AND

AMERICAN TRANSPORTATION CORPORATION

LEASE AGREEMENT
CITY OF TULSA, OKLAHOMA
AND
AMERICAN TRANSPORTATION CORPORATION

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LEASE AGREEMENT

This Agreement is entered into by and between the City of Tulsa, Oklahoma, a municipal corporation, organized and existing under the laws of the State of Oklahoma (herein called "City") and American Transportation Corporation, a corporation duly organized and existing under the laws of the State of Arkansas and qualified to do business in the State of Oklahoma (herein called the "Lessee").

RECITALS

WHEREAS, the City owns certain property formerly known as Air Force Plant No. 3 located contiguous to Tulsa International Airport. Such property was conveyed to City by Quit-Claim Deed dated December 1, 1999, from the United States of America acting by and through the Secretary of the Air Force under and pursuant to powers and authority of Federal law, rule and regulation and accepted by the City of Tulsa on December 2, 1999; and

WHEREAS, the United States Government has conveyed such property to the City for economic redevelopment use for the benefit of the citizens of the City of Tulsa and the Tulsa Metropolitan Area; and

WHEREAS, the Lessee has requested that it be permitted to lease certain land and facilities constituting a part of Air Force Plant No. 3 as hereinafter defined for commercial manufacturing purposes; and

WHEREAS, City desires to enter into this Agreement with Lessee to effectuate the lease of the designated land and facilities for economic redevelopment of the property.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained to be kept and performed by the parties hereto and upon the provisions and conditions hereinafter set forth, City and Lessee hereby do agree as follows:

ARTICLE I.

Definitions

Section 1.1 Definitions. In addition to terms defined elsewhere herein, throughout this Agreement, the following words shall have the following meanings, respectively, unless the context clearly shall indicate some other meaning:

- (a) Agreement means this Agreement between City and Lessee;
- (b) Airport means Tulsa International Airport;
- (c) Authority means the Tulsa Airport Authority, a charter agency of the City of Tulsa;

- (d) City means the City of Tulsa, Oklahoma;
- (e) Governmental Requirements means all federal, state and local laws, policies, rules, regulations, security plans, and rulings, including all amendments, now in effect or hereinafter enacted;
- (f) Leased Premises means collectively the land areas (constituting approximately 125.94 acres) including facilities (constituting approximately 955,600 square feet) located thereon described and illustrated on Exhibit "A";
- (g) TAIT means the Tulsa Airports Improvement Trust, an Oklahoma public trust, the beneficiary of which is the City. TAIT is the Lessor of the Airport and City has contracted with TAIT to manage, operate, maintain, develop, restore and improve Air Force Plant No. 3 and to advise City on all issues of leasing said facility.
- (h) Term means the periods of time that this Agreement shall be in effect, as set forth in Sections 2.1 and 2.2 hereof.

Section 1.2 Rules of Construction. Throughout this Agreement, unless the context clearly shall require otherwise:

- (a) The singular includes the plural and vice versa;
- (b) The words "and" and "or", shall be both conjunctive and disjunctive;
- (c) The words "all" and "any" mean "any and all";
- (d) The word "including" means "including without limitation";
- (e) The word "he" or any other masculine pronoun includes any individual regardless of sex;
- (f) Reference to any exhibits shall mean exhibits attached to this Agreement which shall be deemed incorporated by reference and made an integral part hereof; and
- (g) Reference to articles or sections respectively shall mean articles or sections of this Agreement.

Section 1.3 Representation and Covenants by City. The City makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) The City is a public and governmental body politic created and existing pursuant to the laws of the State of Oklahoma; has the power to enter into the transaction contemplated by this Agreement and to carry out its obligations hereunder; and has taken all action necessary to enter into this Agreement.

(b) The Leased Premises subject to this Agreement is a portion of the property formerly known as Air Force Plant No. 3 the title to which has been conveyed to City by the United States Government and is subject to certain grants, assignments, reservations, restrictive covenants, and exceptions, as set forth in the Quit-Claim Deed from the United States Government to the City dated December 1, 1999. A copy of said Quit-Claim Deed has been furnished to the Lessee.

(c) City is not aware of any major structural problems nor has City received any notice of any violations from any governmental entities concerning the Leased Premises.

(d) The execution and delivery of this Agreement, and compliance by the City with the provisions thereof, do not and will not conflict with or constitute, a breach of or default under any judgment, decree, loan agreement, indenture, bond, note, resolution, agreement, deed, or other instrument to which the City is a party or to which the City or any of its property or assets are otherwise subject.

Section 1.4 Representations and Warranties by the Lessee. The Lessee makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) The Lessee is a wholly owned subsidiary of Navistar International Transportation Corp.; is duly organized and existing under the laws of the State of Arkansas; is authorized to do business and is in good standing under the laws of Arkansas; is qualified to do business and is in good standing under the laws of the State of Oklahoma; and has power to enter into this Agreement and by proper corporate action has been duly authorized to execute and deliver this Agreement.

(b) The Lessee agrees that during the Term or any extended Term of this Agreement it will be qualified to do business under the laws of the State of Oklahoma.

(c) The execution and delivery of this Agreement and the consummation of the transactions herein contemplated will not conflict with or constitute a breach of or default under the Lessee's articles of incorporation or by-laws or any bond, debenture, note or other evidence of indebtedness or any contract, loan agreement or lease to which the Lessee is a party.

(d) Lessee hereby acknowledges receipt of a copy of the Quit-Claim Deed by and between the United States Government and the City setting forth certain use restrictions and

covenants affecting Air Force Plant No. 3 and including notification that a full and correct copy of the 1995 Environmental Baseline Study (EBS), as supplemented and amended in 1999, is on file in the office of the City Clerk of Tulsa and available for public inspection.

ARTICLE II.

Term

Section 2.1 Term of Agreement.

(a) The Term of this Agreement shall commence as of 12:01 a.m. January 1, 2000, and shall expire December 31, 2015, unless otherwise terminated or canceled; provided, as of the effective date of termination or cancellation of this Agreement, all obligations which have been incurred by Lessee or City, or with respect to which Lessee or City shall be in default, shall survive such termination or cancellation.

(b) In addition to any other rights Lessee may have under this Agreement, upon the condition that Lessee shall have complied with and performed the conditions, covenants and agreements of this Agreement to be observed and performed by it without any default having occurred which has not been cured, under Article X hereof, Lessee shall have and is hereby granted the option to extend the Term of this Agreement upon the expiration of the initial Term hereof for five (5) renewal periods of five (5) years each. Each option period may be exercised by notice in writing to City at least one hundred twenty (120) days prior to the expiration of the initial Term or any extended five (5) year period of the Term hereof. Lessee may only exercise a single renewal option within each option period.

Section 2.2 Surrender of Possession; Holding Over. Except as otherwise expressly provided in this Agreement, at the expiration or sooner termination of the Agreement, or any extension hereof, Lessee agrees to surrender possession of Leased Premises peacefully and promptly to City in as good condition as existed at the effective date of this Agreement except for: (1) reasonable wear and tear; (2) losses due to casualty insured under Section 8.3 hereof; (3) alterations which Lessee is not required to remove or restore pursuant to this Agreement; and (4) loss, damage, or alteration due to condemnation by any governmental authority.

If Lessee shall hold over after the termination of this Agreement, City may allow Lessee to remain on the premises as a tenant at will. During such tenancy, Lessee shall pay to City the rentals, fees and charges as then set forth by City in its sole discretion and determination, and Lessee shall be bound by all of the additional provisions of this Agreement insofar as they may be pertinent.

ARTICLE III.

City's Grants; Reservations

Section 3.1 Lease. City hereby offers and leases to Lessee, and Lessee hereby accepts and leases from City, the Leased Premises for the Term or extended Term(s) of this Agreement

pursuant to the provisions and conditions herein set forth. Lessee has comprehensively inspected the Leased Premises and accepts the Leased Premises in the condition in which they exist at the commencement of this Agreement. City makes no warranty, either express or implied, as to the condition of the Leased Premises or that the Leased Premises will be suitable for Lessee's needs and purposes or for the commercial or industrial business purposes contemplated by the Lessee.

Section 3.2 Aviation Easement. City (or TAIT for the benefit of City) reserves the right to take such action as may be necessary to protect the aerial approaches of the Airport against obstruction in accordance with applicable standards or requirements, including but not limited to FAR Part 77 (14 CFR Part 77), together with the right to prevent Lessee or any other person from erecting or permitting to be erected any equipment, building, facility or other structure on the Leased Premises (other than any buildings to be constructed in compliance with and pursuant to plans and specifications approved by City as hereinafter set forth), which would conflict with such standards and requirements. City also reserves for itself, the Authority, and TAIT and their licensees, an aviation easement in, over and across the air space above the Leased Premises and the unrestricted right to subject the Leased Premises to such Airport noise and vibrations as may result now or hereafter from the flight of aircraft, warm up of engines, testing of motors and other aviation related activities.

Section 3.3 Reservation of Mineral Rights. City reserves all right, title and interest in and to all minerals in, on or under the Leased Premises. Lessee shall not engage in any mining activities in, on or under the Leased Premises during the Term of this Agreement. "Minerals" as used herein shall mean all mineral substances and deposits whether solid, gaseous, or liquid.

Section 3.4 Title to Existing Improvements. Title to all improvements which have been made to the Leased Premises as of the execution hereof shall be and remain in the City during the Term or any extended Term of this Agreement.

Section 3.5 Quiet Enjoyment. Unless Lessee shall have defaulted in its obligations hereunder, it shall have quiet enjoyment of the Leased Premises. The City hereby represents and warrants that it is solely vested with fee simple title to the Leased Premises, free and clear of all liens and encumbrances, except as set forth herein. **HOWEVER, CITY MAKES NO REPRESENTATIONS OR WARRANTIES, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION OF THE LEASED PREMISES OR THAT THEY WILL BE SUITABLE FOR LESSEE'S PURPOSES AND NEEDS. Be it further provided,** that the City reserves the right to further develop, improve, rehabilitate, repair, reconstruct, alter or expand Air Force Plant No. 3 and all roadways, parking areas, facility and improvements located thereon as it may reasonably see fit, free from any and all liability to Lessee for loss of business or damages of any nature whatsoever to Lessee occasioned during the making of such improvements, repairs, alterations, reconstructions and additions to said property; provided, however, City will use its best efforts to minimize any interference with Lessee's business use of or access to the Leased Premises and in no event shall any such development, improvement, rehabilitation, repair, alteration or expansion materially and adversely affect Lessee's use or occupation of, or access to, the Leased Premises.

Section 3.6 License. City hereby grants to Lessee, and Lessee hereby accepts from City for the Term and any extended Term of this Agreement, subject to the provisions and conditions herein set forth, a license to use the Leased Premises as manufacturing or industrial facilities and offices directly related to Lessee's business and its day to day operations thereof including the right to construct improvements desired by Lessee for said purposes, subject to the conditions pertaining to said improvements hereinafter set forth, together with the non-exclusive license to use, in common with others, the access roads or other public use areas for purposes of ingress and egress to the Leased Premises.

Section 3.7 No Joint Venture or Partnership. This Agreement shall not be deemed or construed (a) to create any relationship of joint venture or partnership between City and Lessee, (b) to give City any interest in the business of Lessee, or (c) to grant to Lessee any powers as an agent or representative of the City (or TAIT for the benefit of City) for any purpose or to have any authority to bind the City or TAIT. Lessee shall be an independent contractor owning and operating its business as herein described.

ARTICLE IV.

Use

Section 4.1 Use of Leased Premises. Lessee shall be entitled to use and occupy or cause to be used and occupied, subject to the terms and conditions of this Agreement, the Leased Premises for the lawful purposes related to the manufacturing and industrial activities which Lessee is licensed to conduct under this Agreement. Lessee, its representatives, agents, invitees and licensees, shall have the right of ingress and egress to and from the Leased Premises. City reserves the right to close any means of ingress and egress, so long as other reasonable means of ingress and egress to the Leased Premises are available to Lessee as determined in the sole discretion of City.

Section 4.2 Security Plan. If during the Term of this Agreement the Leased Premises or any expansion thereof become contiguous to the Airport, then in that event, Lessee at its sole cost and expense, shall comply with all security requirements imposed pursuant to the then existing Airport security plan and Federal Aviation Regulations.

Section 4.3 Limitations on Signage. Without the prior, written approval of City (or TAIT for the benefit of City), Lessee shall not erect, maintain or display signs of advertising or advertising graphics at or on the exterior parts of the Leased Premises, or in or on the Leased Premises, so as to be visible outside the Leased Premises. Exterior signs affecting public safety and security shall be in accordance with established City standards. If the City (or TAIT for the benefit of City) has not given approval within five days of receipt of written notice, Lessee shall remove, obliterate, or paint out any and all advertising signs, posters, and similar devices placed by Lessee on the Leased Premises. In event of a failure by Lessee to so remove, obliterate or paint out each and every sign or piece of advertising and to restore the Leased Premises to its prior condition, City (or TAIT for the benefit of City) may perform the necessary work and Lessee shall pay the cost thereof to City on demand.

ARTICLE V.
Improvements to the Leased Premises

Section 5.1 Title. Lessee shall be entitled, subject to the terms and conditions of this Agreement, to construct new improvements or modify or rehabilitate existing improvements to the Leased Premises. Title to all improvements constructed by Lessee shall be and remain in Lessee during the Term or any extended Term of this Agreement. Upon termination of this Agreement, title to such improvements or modifications shall pass to City free and clear of all right, title and interest of Lessee. However, on or before termination of this Agreement, Lessee may remove all improvements (which may be removed without material damage or destruction to the Leased Premises) which it may make during the Term of this Agreement or any extensions thereof. After termination hereof, City (or TAIT for the benefit of City) may require Lessee to remove the same, in which event, at Lessee's sole cost and expense, Lessee shall restore the Leased Premises to the condition in which it existed at the commencement of this Agreement, except for ordinary wear and tear; damage or loss due to casualty insured under Section 8.3 hereof; loss, damage or alteration due to condemnation by any governmental authority; or alterations which Lessee is not required to remove as acknowledged by written notice to Lessee from City (or TAIT for the benefit of City).

Section 5.2 Plans and Specifications. All plans and specifications for Lessee's new improvements, (construction, alterations, additions, modifications, improvements, or installations to the buildings or facilities), on the Leased Premises shall be prepared by Lessee in compliance with all Governmental Requirements. A Construction Application, in a form prepared by TAIT, and plans and specifications shall be submitted by Lessee to TAIT for approval. Thereafter, City (or TAIT for the benefit of City) shall have ten (10) days after receipt within which to approve the plans and specifications, or to notify Lessee of any objections thereto.

Each objection and the grounds therefor shall be stated separately. Lessee shall have a reasonable time thereafter within which to make any revisions to remove City's (or TAIT's for the benefit of City) objections. Upon City's (or TAIT's for the benefit of City) receipt of the final plans and specifications, City shall have ten (10) days within which to approve or reject Lessee's revised proposal. Lessee shall furnish to City (or TAIT for the benefit of City) copies of all permits and licenses needed for construction. After City's (or TAIT's for the benefit of City) approval of the final plans and specifications, Lessee may proceed with construction. Construction shall be substantially in accordance with the approved plans and specifications. Upon completion of construction, Lessee shall furnish to City (or TAIT for the benefit of City) one (1) complete set of reproducible "as built" plans and specifications.

Section 5.3 Effect of New Improvements. Construction of new improvements as set forth in Section 5.1 and Section 5.2 hereof on the Leased Premises shall not be permitted to adversely affect existing improvements, other tenants of Air Force Plant No. 3, Airport property or other property contiguous to the Airport.

Section 5.4 Removal and Ownership of Structures on Leased Premises. Lessee may not remove or otherwise alter any improvements, facilities or equipment, to or on the Leased Premises owned by City without prior written consent of City. Lessee may request, in writing, permission to remove or alter such improvements, facilities or equipment. Within thirty (30) days of receipt of such written request, City (or TAIT for the benefit of City) shall notify Lessee of either the rejection or approval of the request. Ownership and title to all such improvements, facilities or equipment, removed from or altered on the Leased Premises shall remain in the City. Removal, storage, maintenance, transportation and disposal of any improvements, facilities or equipment, shall be made at Lessee's sole cost and expense.

Section 5.5 Removal of Lessee's Property. On expiration or early termination or cancellation of this Agreement, Lessee shall forthwith, at its own expense remove its personal property, equipment, trade fixtures, devises and appurtenances thereto and any other portions of the facility or structure components installed by Lessee which are readily removable from the Leased Premises without damage to the Leased Premises, provided, however, that no installed or extended utility lines or facilities or any other structures or appurtenances permanently affixed to the Leased Premises which are not removable without damage to the Leased Premises shall be removed therefrom unless City (or TAIT for the benefit of City) expressly directs Lessee to do so.

Section 5.6 Damage to Leased Premises. Any damage incurred to the Leased Premises on account of removal by Lessee of any item of equipment or portion of the facilities or appurtenances thereto or otherwise caused by Lessee or its agents, employees, invitees and licensees shall be promptly repaired by Lessee at its sole and own expense and the Leased Premises restored to the condition at which it was received by Lessee at the commencement of this Agreement, ordinary wear and tear excepted.

Section 5.7 Fences and Gates. If any part of the Leased Premises, or the improvements thereon, are enclosed within the secure area ("the Security Line") of the Airport, City (or TAIT for the benefit of City) shall install and Lessee shall pay for materials and labor necessary to comply with the Airport Security Plan and any Federal Aviation Regulation ("FAR") promulgated by the FAA and contained in FAR Part 107, Airport Security. Lessee also shall pay for the cost of all additional gates or doors if any are required for access by Lessee and its employees, business invitees, or others from the landside of the Airport to the airside of the Airport through the Security Line. At all security gates or doors on the Leased Premises which allow access to Airport premises, Lessee shall pay for installation of (a) communication devices which shall be connected to the Airport phone system; and (b) an entry card system approved by the Authority pursuant to the Airport Security Plan submitted to and approved by the FAA. Any alteration of the communication devices or entry card system, which may be necessitated by a change in Authority or FAA requirements shall be made by Authority at the sole expense of Lessee.

Section 5.8 Inspection. Except for emergencies which would require immediate access, City (or TAIT for the benefit of City) and their authorized agents and representatives, shall have the right to inspect the Leased Premises with reasonable notice during all reasonable hours.

Section 5.9 Improvements by City.

(a) City (or TAIT for the benefit of City) as promptly as practicable, after execution of this Agreement hereby agrees, at its cost and expense subject to the fiscal limitations as hereinafter set forth, to activate the Leased Premises and to make certain improvements and modifications thereto and to undertake certain rehabilitation, reconstruction, repairs and equipping of the Leased Premises as set forth on Exhibit "B" or such additional reconstruction repairs, rehabilitation and equipping of the Leased Premises as may be designated from time to time by Lessee up to the Maximum Project Funding (as defined below) (the activation of the Leased Premises and the improvements, modifications, rehabilitating, reconstructing, repairs and equipping thereof are hereinafter collectively referred to as the "Project");

(b) City (or TAIT for the benefit of City) shall proceed with the Project with all reasonable speed and dispatch. City (or TAIT for the benefit of City) shall cause to be prepared preliminary plans and outline specifications for the Project. The preliminary plans and outline specifications shall be submitted to Lessee for Lessee's review and approval. Lessee or its authorized representatives shall either consent to or disapprove the same in writing within twenty (20) days after submission. If Lessee disapproves the preliminary plans and outline specifications or any changes or revisions thereto, it shall include as part of such disapproval a statement of the reasons for its disapproval. Unless such disapproval shall be unreasonable, City (or TAIT for the benefit of City) shall cause to be prepared such revisions to the preliminary plans and outline specifications as shall reasonably satisfy Lessee's prior objections. If Lessee shall fail to approve or disapprove any changes or revisions to the preliminary plans and outline specifications submitted to it within ten (10) days after submission, approval shall be conclusively presumed. Provided, however, Lessee may request permission in writing to prepare such preliminary plans and outline specifications for one or more of the Project components as set forth on Exhibit "B". Said preliminary plans and outline specifications shall be in a form consistent with City's (or TAIT's for the benefit of City) competitive bidding process for construction of the Project. If Lessee prepares preliminary plans and outline specifications to activate the Leased Premises or to make certain improvements and modification thereto to rehabilitate, reconstruct, repair or equip the Leased Premises as a component of the Project, then in that event, City (or TAIT for the benefit of City) shall have the same rights of review and approval for said preliminary plans and outline specifications as heretofore set forth for Lessee.

(c) City (or TAIT for the benefit of City) shall notify Lessee in writing of its receipt of proposals and/or competitive bids for the component parts or contract(s) for the activation of the Leased Premises and construction of the Project. Lessee shall have five (5) days to approve or recommend rejection of said proposals or competitive bids as the case may be. City has authorized a not to exceed funding for the Project of Four Million Two Hundred Thousand Dollars (\$4,200,000.00) in addition to necessary funds to be received

from the United States of America required to be utilized for asbestos removal or encapsulation up to six hundred seven thousand dollars (\$607,000) (collectively the "Maximum Project Funding"). Lessee acknowledges the Project is being undertaken at Lessee's request and that City (or TAIT for the benefit of City), will use its best efforts and proceed with reasonable dispatch to activate the Leased Premises and to cause the Project to be completed in a first-class workmanlike manner, substantially in accordance with the plans and specifications approved by the City (or TAIT for the benefit of the City) and Lessee in accordance with the respective completion dates set forth in Exhibit B, and in compliance with all applicable building codes and all applicable federal, state, or local laws, rules and regulations including any and all supplements or amendments thereto, and any changes and additions proposed by Lessee and approved by City (or TAIT for the benefit of the City) or prepared by City (or TAIT for the benefit of City) and approved by Lessee.

If the cost(s) for the Project shall exceed, or it is reasonably anticipated they will exceed, the Maximum Project Funding, Lessee may request a modification or reduction in the scope of any contract or contracts to insure completion of the Project within the Maximum Project Funding. In the alternative, Lessee may notify City (or TAIT for the benefit of City) in writing that Lessee assumes responsibility for and shall provide all additional funds required for the Project (including all costs and expenses) above the Maximum Project Funding. Lessee shall pay such additional funds to City within thirty (30) days of City's (or TAIT's on behalf of the City), award of the contract or contracts for the Project. Lessee's failure to make payment of the additional funds within the required thirty day period may prevent the City's execution of the contract(s) within statutory time frames.

ARTICLE VI. Rentals, Fees and Charges

Section 6.1 Consideration for Agreement.

(a) Rental and Maintenance Responsibility. City has determined that economic and public benefits to the City and the agreed comprehensive maintenance responsibilities assumed by Lessee hereunder constitute an integral part of the consideration for this Agreement. The economic factors considered in making this determination include, without limitation, increased sales, income, and property tax bases resulting from any capital investments made by Lessee in addition to the payroll attributable to new jobs created by Lessee, the decreased public assistance payments resulting from the creation of new jobs, and the intangible benefit of the addition of a substantial new corporate citizen. For such consideration and One Dollar (\$1.00) and such additional consideration as hereinafter set forth, during the Term or extended Term of this Agreement, and as an integral part of the consideration for the use, lease and occupancy of the Leased Premises, Lessee hereby agrees that it shall perform and be responsible for all services and costs in the operation, maintenance, repair and protection of the Leased Premises, including all capital maintenance as set forth herein.

(b) Additional Consideration. The level of consideration required to be paid by Lessee pursuant to Section 6.1(a) hereof has been established by City based on the representations and covenants of Lessee concerning employment levels to be achieved by Lessee, by the dates certain as set forth below, on the Leased Premises of One Thousand Two Hundred (1,200) employees by no later than December 31, 2005. Lessee represents the agreed upon employment level shall be achieved by the points in time as follows:

Time Period	Employees
12/31/2001	500
12/31/2002	200 additional
12/31/2003	200 additional
12/31/2004	200 additional
12/31/2005	<u>100</u> additional
	1,200 total

Lessee hereby unequivocally agrees that in the event that Lessee shall not achieve employment levels as set forth above, except for delays caused by "Force Majeure Events" (as defined below), as consideration for the reduced rentals set forth in Section 6.1(a), then in that event, Lessee shall make a one-time only additional lease payment equal to One Dollar (\$1.00) per square feet of buildings and facilities leased hereunder, which payment shall be paid by January 31 of the year subsequent to the date for which Lessee did not achieve the required cumulative employment level set forth above. The additional lease payment required hereunder shall not be prorated based upon a partial fulfillment of Lessee's commitment to achieve the required employment levels. The additional lease payment may be used by the City (or a trust authority acting on behalf of the City) or Lessee for either capital infrastructure improvements at Air Force Plant No. 3 or as a payment to reduce the principal on any outstanding trust authority financing used for such improvements. In the event the additional lease payment is used to reduce any existing principal outstanding as the result of the existing debt, the additional lease payment will be in addition to, and not a replacement for, payments already due to retire the existing debt. Notwithstanding anything to the contrary contained in this Section 6.1, Lessee shall not be deemed to have failed to meet the employment levels set forth above if its failure to meet the required employment levels results from strike, embargoes, shortages of labor or materials, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, floods, riots, rebellions, sabotage or any other circumstances for which it is not responsible or which are not within its control (each a "Force Majeure Event"), and the time to achieve such employment levels automatically shall be extended by the period the Lessee is prevented from achieving the same due to such Force Majeure Event.

Section 6.2 License Contingent Upon Payment. The grant of the rights, licenses, facilities, services and privileges to Lessee under this Agreement shall be subject, in each case, to the payment of, or performance by, Lessor of the additional consideration required by Section 6.1 hereof.

Section 6.3 Place of Payments. Unless otherwise provided, all sums payable by Lessee hereunder shall be delivered to:

City of Tulsa
200 Civic Center
Tulsa, Oklahoma 74103

Attention: Director of Finance

Section 6.4 Landlord's Lien. City shall have all rights of a landlord given under the laws of the State of Oklahoma, including, without limitation, a statutory landlord's lien, paramount to all others, on every right and interest of Lessee in this Agreement, on all improvements, equipment and fixtures to the Leased Premises for the purpose of securing the payment of any rentals, fees or charges, taxes, assessments, liens, penalties, and damages herein covenanted to be paid by Lessee and for the purpose of securing the performance, all and singular, of the covenants, conditions and obligations of this Agreement to be performed and reserved by Lessee.

Section 6.5 Utility Service. During the Terms or extended Term of this Agreement, the supply and maintenance of all utility services to the Leased Premises shall be the responsibility of and at the sole expense of the Lessee. This shall include janitorial service, power, telephone, electricity, gas, heating, water, sewer and all other utility services, and the Lessee shall pay, as the same becomes due, all utility and other charges incurred in the operation, maintenance, use, occupancy, repair and upkeep of the Leased Premises (including capital improvements thereto). The Lessee shall have the right, if necessary, with the written approval of, and at locations reasonably acceptable to City, to locate pipes, mains, ducts, conduits and other equipment for the supply of utility services on or under Air Force Plant No. 3 for the exclusive purpose of accessing utility systems for the Leased Premises.

No failure, delay or interruption in any utility service or services, whether such are supplied by City or others, shall relieve or be construed to relieve the Lessee of any of its obligations hereunder, or shall be or construed to be an eviction of the Lessee, or shall constitute grounds for any diminution or abatement of the consideration to be provided by Lessee herein, or grounds for any claim by the Lessee against the City for damages, actual, consequential or otherwise.

In any event where damage to any utility service line is caused by City, its employees, contractors, suppliers, agents or invitees, as between City and the Lessee, City shall be responsible for the cost of repairs.

Section 6.6 Taxes and Assessments. During the Term or extended Term of this Agreement, the Lessee shall pay, as the same respectively become due, all taxes and governmental or public charges of any kind whatsoever, including ad valorem taxes, that may at any time hereafter be lawfully assessed or levied against or arising with respect to this Agreement, the leasehold interest

created hereby, the land, any reversionary interest of City in the Leased Premises, any taxable possessory rights which the Lessee may have in or to the Leased Premises by reason of its occupancy thereof, the financing thereof, or any machinery, equipment or other property installed or brought by the Lessee therein or thereon, and all assessments and charges lawfully made by any governmental body for public improvements and interest thereon that may be secured by lien on the Leased Premises, or are otherwise payable by the Lessee under the applicable laws of the State of Oklahoma, provided, that with respect to special assessments or taxes or other governmental charges that may lawfully be paid in installments over a period of years, the Lessee shall be obligated to pay only such installments and interest thereon, if any, as are required to be paid during the term of this Agreement and provided further that Lessee shall not be responsible for taxes or governmental or public charges with respect to the Leased Premises or this Agreement attributable to periods prior to commencement or after termination of this Agreement.

The Lessee may at its expense, in its own name and behalf, or in the name and behalf of City, in good faith and with due diligence contest any assessed valuation or the amount or the legality of any tax, other governmental or public charge or assessment, without paying the same, or bring suit to recover any taxes, other governmental or public charges or assessments paid. The Lessee, if it elects so to do, may file all protests or other instruments, and institute and prosecute proceedings, for the purpose of any such contest. In the event of any contest permitted by this section, other than a suit to recover any taxes, other government or public charges or assessments paid, the Lessee shall first furnish City indemnity in form and amount reasonably satisfactory to City against any loss or liability by reason of such contest or by reason of any lien or charge arising out of the tax, governmental or public charge or assessment contested; provided, however, any such tax, governmental or public charge or assessment (other than a tax, governmental or public charge or assessment already paid) may be contested only if and so long as such contest or suit shall prevent or stay the execution or enforcement or foreclosure of any lien or charge, and, if such lien or charge is so stayed and such stay thereafter expires, then the Lessee shall forthwith pay and discharge such lien or charge. City will cooperate fully with the Lessee in any such contest or suit. The Lessee agrees to reimburse the City upon demand for any and all costs and expenses thus incurred by City.

In the event the Lessee shall fail to pay any of the foregoing items required by this section to be paid by it, the City may (but shall be under no obligation to) pay the same and any amount so advanced therefor by the City shall become an additional obligation of the Lessee to the City, which amount, together with interest thereon at a rate equal to twelve percent (12%) per annum, but not exceeding the maximum rate permitted by law, from the date of payment thereof by City, the Lessee agrees to pay.

If any of the foregoing taxes, assessments or nongovernmental charges are billed or mailed directly to the Lessee, the Lessee will pay the same, and in any such event shall deliver to the City a receipt evidencing such payment. If any of said taxes, assessments or governmental charges are billed to the City, the City shall submit the same to the Lessee for payment by it in accordance with the next preceding sentence.

Section 6.7 Discharge of Liens by the Lessee. The Lessee agrees to pay when due, all sums of moneys that may become due for any labor, services, materials, supplies, utilities, furnishings, machinery or equipment furnished or alleged to have been furnished or to be furnished to, or for the Lessee in, upon, or about the Leased Premises except for such labor, services, materials, supplies, utilities, furnishings, machines or equipment furnished by City. The Lessee will cause any lien securing the payment of the aforesaid sums, and any other liens upon the Leased Premises or the interests of the Lessee or City therein, to be fully discharged and released at the time the performance of any obligation secured by any such lien matures or becomes due.

The Lessee may, however, in good faith and with due diligence, contest any mechanic's or other liens filed or established against the Leased Premises, (i) if the Lessee prior to any such refusal to pay and contest shall first furnish City indemnity in a form and amount reasonably satisfactory to City against any loss or liability by reason of such contest or lien, and shall effectively prevent or stay the execution or foreclosure or enforcement thereof, and (ii) if and so long as such contest shall prevent or stay the execution or enforcement or foreclosure of such lien, provided, however, that if such lien is stayed and such stay thereafter expires, then the Lessee shall forthwith pay and discharge such lien. City will cooperate fully with the Lessee in any such contest.

ARTICLE VII.

Maintenance and Care of Leased Premises

Section 7.1 Maintenance and Care of Leased Premises. Lessee shall perform all repairs, maintenance, and preventive maintenance, including capital maintenance and repair to the Leased Premises which shall include all repairs relative to the structure, roof, heating, electrical, plumbing and air conditioning systems. Lessee at all times shall keep in a clean and orderly condition and appearance all of the Leased Premises and all of Lessee's fixtures, equipment and personal property which are located thereon. Lessee shall perform moving of, and snow removal from, the Leased Premises. Lessee shall not commit or suffer to be committed any nuisance on the Leased Premises. Lessee shall not permit the accumulation of any rubbish, trash or other waste material. Except in tanks and in the manner approved by appropriate governmental authorities, Lessee shall not store any gasoline or other material likely to give off fumes or gases or any material likely to constitute a fire, safety or security hazard on the Leased Premises.

ARTICLE VIII.

Indemnity and Insurance

Section 8.1 Indemnity - General. Lessee shall indemnify, protect, and hold the City and TAIT, and their trustees, councilors, officers, agents and employees (hereinafter "Indemnatee" or "Indemnitees") completely harmless from and against all liability, losses, suits, claims, judgments, fines or demands resulting from an occurrence during the Term and any extended Term of this Agreement (hereinafter "Claim" or "Claims") and arising from (a) any condition of the Leased Premises during the Term and any extended Term of this Agreement and not existing as of the time of execution hereof, (b) any breach or default on the part of the Lessee in the performance of any of

its obligations under this Agreement, (c) any fault or act of negligence of the Lessee or its agents, contractors, servants, employees or licenses, or (d) injury or death of any person or loss of or damage to any property resulting from Lessee's use of the Leased Premises or from the conduct of Lessee's business or from any activity, work, or thing done, permitted or suffered by Lessee, its employees, agents, contractors or invitees in or about the Leased Premises. The foregoing indemnification shall not apply to the extent any claim arises out of the negligence on the part of an Indemnitee or Indemnitees. The foregoing indemnity is conditioned upon the Indemnitee or Indemnitees providing notice to Lessee within ninety (90) days after such Indemnitee or Indemnitees receives notice of any such Claim that will fall within the scope of the foregoing indemnity, and cooperating fully with Lessee in the defense or settlement of the Claim. In the absence of any negligence, on the part of any Indemnitee, this indemnification shall include all reasonable costs, attorneys' fees and expenses incurred in the defense of any such Claim (or any action or proceeding brought thereon) by counsel reasonably satisfactory to the Indemnitee or Indemnitees. The provisions of this section shall survive the expiration or early termination of the Agreement.

Nothing contained in this Article shall forgive or release Lessee from any liability or obligation it may have or which may accrue to it for acts taken by Lessee prior to the execution and delivery of this Agreement on all or any portion of the Leased Premises or on property not constituting a part of the Leased Premises but resulting in liability arising with respect to the Leased Premises.

Section 8.2 Regulated Substance Compliance and Indemnity. Lessee shall not cause or permit any "Regulated Substance" as hereinafter defined, to be brought upon, generated, stored, or used in or about the Leased Premises by Lessee, its agents, employees, contractors, or invitees, except for such Regulated Substance of the type and quantity as is necessary to Lessee's business. Any Regulated Substance permitted on the Leased Premises as provided herein, and all containers therefor, shall be used, kept, stored, and disposed of in a manner that complies with all federal, state and local laws or regulations applicable to this Regulated Substance.

Lessee shall not, except as specifically permitted by law or regulation, cause or permit, release, discharge, leak, or emit, nor permit to be discharged, leaked, released, or emitted, any Regulated Substance into the atmosphere, ground, storm or sewer system, or any body of water, ditch, stream, if that Regulated Substance (as is reasonably determined by City (or TAIT for the benefit of City), or any governmental authority) does or may pollute or contaminate the same, or may adversely affect (a) the health, welfare, or safety of persons, whether located on the Leased Premises or elsewhere, or (b) the condition, use or enjoyment of the building, facilities or any other real or personal property. Lessee shall fully and timely comply with all applicable federal, state and local statutes, ordinances and regulations relating to protection of the environment, including, without limitation, 42 U.S.C. §6991-6991i, in connection with its use or occupancy of the Leased Premises.

- (a) Disclosure. At the commencement of each year of the term hereof, Lessee shall disclose to City (or TAIT for the benefit of City) the names and approximate amounts of all Regulated Substance that Lessee intends to store, use, or dispose of on the

Leased Premises in the first year of the Term hereof. In addition, at the commencement of each additional year of the Term hereof, beginning with the second year, Lessee shall disclose to City (or TAIT for the benefit of City) the names and amounts of all Regulated Substances that were actually used, stored, or disposed of on the Leased Premises if those materials were not previously identified to City (or TAIT for the benefit of City) at the commencement of the previous lease year.

- (b) Compliance Action. Lessee shall, at Lessee's sole expense, clean-up, remove, and remediate (1) any Regulated Substances in, on, or under the Leased Premises in excess of allowable levels established by all applicable federal, state and local laws and regulations, and (2) all contaminants and pollutants, in, on, or under the Leased Premises that create or threaten to create a substantial threat to human health or the environment and that are required to be moved, cleaned up, or remediated by any applicable federal, state, or local law, regulation, standard or order. This obligation does not apply to a release of Regulated Substances, pollutants, contaminants, or petroleum products that existed on the Leased Premises prior to the execution of the agreement caused solely by the act or omission of the City, TAIT, Authority or a third party for whom the operator is not responsible (e.g. not a customer, invitee, employee, agent, or person having any contractual or business relationship with Lessee).
- (c) Definition of Regulated Substances. Regulated Substances: As used herein, the term "Regulated Substances" means and includes any and all substances, chemicals, waste, sewage or other materials, which are now or hereafter regulated, controlled or prohibited by any local, state, or federal law or regulation requiring removal, warning or restrictions on the use, generation, disposal or transportation thereof, including, without limitation (a) any substance defined as a "hazardous substance", "hazardous material", "hazardous waste", "toxic substance", or "air pollutant" in the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), 42 U.S.C. §9601 et seq., The Hazardous Materials Transportation Act (HMTA), 49 U.S.C. §1801 et seq., The Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6901 et seq., Federal Water Pollution Control Act (FWPC), 33 U.S. §1251 et seq., or the Clean Air Act (CAA), 42 U.S.C. §7401 et seq., all as amended and amended hereafter; (b) any substance defined as a "hazardous substance", "hazardous waste", "toxic substance", "extremely hazardous waste", "RCRA hazardous waste", "waste", "hazardous material" or "controlled industrial waste", as defined in the Oklahoma Industrial Waste Disposal Act, 63 O.S. §1-2000 et seq.; (c) any Regulated Substance, hazardous substance, hazardous waste, toxic substance, toxic waste, hazardous material, waste, chemical, or compound described in any other federal, state, or local statute, ordinance, code, rule, regulation, order, decree, or other law now or at any time hereafter in effect, regulating, relating to or imposing liability or standards of conduct concerning any hazardous, toxic, or dangerous substance, chemical, material, compound or waste. As used herein, the

term Regulated Substance or "hazardous substances" also means and includes, without limitation, asbestos, flammable, explosive or radioactive materials; gasoline; oil; motor oil; waste oil; petroleum (including without limitation, crude oil, or any fraction thereof); petroleum based products; paints and solvents; leads; cyanide; DDT; printing inks; acids; pesticides; ammonium compounds; polychlorobiphenyls; and other regulated chemical products.

- (d) Indemnity Non-Compliance/Notice of Violation. Lessee hereby fully agrees that it shall be fully liable for all costs and expenses related to the use, storage, and disposal of Regulated Substances kept on the Leased Premises by Lessee, and the Lessee shall give prompt notice to City (or TAIT for the benefit of City) of any violation or potential violation of the provisions hereof. Without limiting any provisions of this Agreement, Lessee shall defend, indemnify, and hold harmless the City and TAIT and their trustees, councilors, officers, agents, and employees from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs, or expenses (including, without limitation, attorneys' and consultants' fees, court costs, and litigation expenses) of whatever kind or nature, known or unknown, contingent or otherwise, arising out of or in any way related to (a) any liabilities, damages, suits, penalties, judgments and environmental cleanup, removal, response, assessment, or remediation costs, arising from actual, threatened or alleged contamination of the Leased Premises by Lessee, its agents, employees, contractors or invitees); (b) the presence, disposal, release, or threatened release of any such Regulated Substance that is on, from, or affecting the soil, water, vegetation, buildings, personal property, persons, animals, or otherwise; (c) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to that Regulated Substance; (d) any lawsuit brought or threatened, settlement reached, or government order relating to that Regulated Substance; or (e) any violation of any laws applicable thereto. The provisions hereof shall be in addition to any other obligations and liabilities Lessee may have to City at law or equity and shall survive the transactions contemplated herein and shall survive the termination or expiration of this Agreement; provided, however, the indemnification set forth herein does not apply to a release of Regulated Substances, pollutants, contaminants or petroleum products that existed on the Leased Premises prior to the execution of this Agreement or that is caused by the City or any other third party not in privity of contract or other business relationship with Lessee.

Section 8.3 Insurance. Lessee shall maintain in full force and effect during the Term and any extended Term hereof commercial general liability insurance which shall include premises/operations contractual liability, independent contractors, broad form property damage, personal injury and auto liability, including hired autos and non-owned autos, in no event less than the sum of Ten Million Dollars (\$10,000,000.00) combined single limit in excess of Lessee's self-insurance coverage (of up to ten million dollars (\$10,000,000.00)). Said excess or supplemental insurance may be in umbrella form. Insurance shall be carried with a reputable insurer with a Best

Insurance Rating of A-12 or better. Lessee also shall provide worker's compensation and employer's liability insurance as required by law.

Lessee shall, at Lessee's expense, procure and maintain at all times during the Term and any extended Term of this Agreement a policy or policies of insurance covering loss of or damage to the Leased Premises in the amount of the full insurable value thereof (exclusive of Lessee's trade fixtures and equipment) providing protection against all perils included in an "all risk" form, except perils of earthquake and flood. Such insurance shall provide for payment of loss hereunder to City, Lessee or any mortgagee and/or financial institutions as their respective interests may appear who shall use the insurance proceeds to rebuild the Leased Premises or replace damaged or destroyed equipment. Provided, that any claim under One Million Dollars (\$1,000,000.00) may be adjusted by and will be payable solely to Lessee who shall use said insurance proceeds to restore any damage to the Leased Premises. City will notify Lessee on or before the commencement date of this Agreement, and from time to time thereafter at intervals no more frequent than annually, of the amount of insurance coverage required hereunder and Lessee may rely on said amount as being the full insurable value for the purpose of this Agreement. Such insurance policies shall provide that such policies may not be canceled without thirty (30) days prior written notice to City. In no event shall Lessee's liability to City for loss of or damage to the Leased Premises exceed the full insurable value as provided by the City as required herein. In the event of a total loss, the Leased Premises may be replaced with an asset of sufficient size and type to permit the continued operation of the Lessee's business at the Leased Premises at the target employment levels set forth in Section 6.1(b), provided, however, if the Leased Premises are not replaced, such insurance shall only provide proceeds in an amount not to exceed the lesser of the insurable value or Twenty Million Dollars (\$20,000,000.00).

Concurrent with the execution of this Agreement, Lessee shall provide proof of insurance coverage by providing a certificate of Lessee's insurance coverage as required herein. The certificates of insurance shall provide that (a) insurance coverage shall not be canceled, or materially changed in coverage that adversely affects compliance with the requirements of this Agreement, without at least thirty (30) days prior written notice to City, (b) with regard to general liability insurance policies required hereunder, the City and their councilors, trustees, agents, officers, servants, and employees are named as additional insureds to the extent of the indemnity obligation set forth in Section 8.1 of this Agreement, (c) to the extent of the indemnity obligation set forth in Section 8.1, such general liability policy or policies shall be considered primary as regards any other insurance coverage the City may possess, including any self-insured retention or deductible City may have, and any other insurance coverage City may possess shall be considered excess insurance only, (d) the limits of liability required therein are on an occurrence basis, and (e) the policy shall be endorsed with a severability of interest or cross-liability endorsement, providing that the coverage shall act for each insured and each additional insured, against whom a claim is or may be made in the same manner as though a separate policy had been written for each insured or additional insured; provided, however, nothing contained herein shall act to increase the limits of liability of the insurance company.

Any self insured retention, deductibles, and exclusions in coverage in the policies required under this Section 8.3 shall be assumed by, for the account of, and at the sole risk of Lessee and, to the extent applicable, shall be paid by Lessee.

If the insurance coverage required herein is canceled, or materially changed such that it adversely affects compliance with the requirements of this Agreement, Lessee shall, within fifteen (15) days of receipt of notice from City, but in no event later than the effective date of cancellation, change or reduction of said coverage, provide to City a certificate showing that insurance coverage has been reinstated or provided through another insurance company in compliance with this section. Upon failure to provide such certificate, without further notice and at its option, City either may, in addition to all its other remedies (a) exercise City's rights as provided in the default provision of this Agreement, or (b) procure insurance coverage at Lessee's expense and charge Lessee an additional fee in an amount equal to the premium plus fifteen percent (15%) to be paid in the month or months the premium or premiums are paid by City whereupon Lessee shall promptly, (within thirty (30) days), reimburse City for such expense.

ARTICLE IX.

Governmental Requirements

Section 9.1 Governmental Requirements - General. Lessee shall comply with all laws, regulations and ordinances and all published rules and policies of the United States of America, the State of Oklahoma, the County of Tulsa and the City of Tulsa applicable to Lessee's use and operation of the Leased Premises.

Lessee shall procure, and require all its subsidiaries or assignees to procure, from all governmental authorities having jurisdiction over the operation of Lessee hereunder, all licenses, franchises, certificates, permits or other authorizations which may be necessary for the conduct of Lessee's business on the Leased Premises.

Lessee shall require its guests and invitees and those doing business with it to comply with all Governmental Requirements relating to the conduct and operation of Lessee's business on the Leased Premises.

Section 9.2 No Liability for Exercise of Powers. Neither the City or TAIT shall be liable to Lessee for any diminution or deprivation of its rights which may result from the proper exercise of any power reserved to the City or TAIT in this Agreement; Lessee shall not be entitled to terminate this Agreement by reason thereof, unless the exercise of such power shall interfere with Lessee's rights hereunder so as to constitute a termination of this Agreement by operation of law.

Section 9.3 Nondiscrimination. Lessee, and its successors in interest, and assigns, as a part of the consideration hereof, does covenant and agree hereby, as a covenant running with the land, that in the event facilities are constructed, maintained or otherwise operated on property described in this Agreement for a purpose for which a Department of Transportation program or

activity is extended or for another purpose involving the provisions of similar services or benefits, Lessee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, as said regulations may be amended.

Lessee, and its successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that (1) no person shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of said facilities on the grounds of race, color, creed or national origin, (2) in the construction of any improvements on, over or under such land, and the furnishings of services thereon, no person shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of said facilities, on the grounds of race, color, creed or national origin (3) Lessee shall use the Leased Premises in compliance with all other requirements imposed by or pursuant to Title 49 CFR Part 21, Nondiscrimination in Federally-Assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, as said regulations may be amended. To the extent applicable and required by law, Lessee, any subsidiary or affiliated company or assignee permitted pursuant to Section 11.2 hereof, assures that it will undertake an Affirmative Action Program to ensure that, on the grounds of race, color, creed, national origin or sex, no person shall be excluded from participating in any employment opportunities at the Leased Premises.

Section 9.4 ADA Compliance. Lessee shall take the necessary actions to insure its facilities and employment practices are in compliance with the requirements of the Americans With Disabilities Act. Any costs of such compliance shall be the sole cost and responsibility of Lessee.

Section 9.5 Domestication. If Lessee is a foreign corporation, it shall qualify to do business as a foreign corporation within the State of Oklahoma, and obtain a certificate of foreign qualification from the Secretary of the State of Oklahoma and provide to City such evidence of foreign qualification as City from time to time reasonably may require.

Section 9.6 Open Records Act. Lessee understands and acknowledges City and TAIT's legal requirements to comply with the Open Records Act (51 O.S. 1991 §24A.1 et seq.). Lessee understands and acknowledges that persons who submit information to public bodies have no right to keep this information from public access nor have a reasonable expectation that the information will be kept from public access.

ARTICLE X.
Events of Default

Section 10.1 Events of Default Defined. The following shall be "events of default" under this Agreement, and the terms "events of default" or "default" shall mean, whenever they are used herein, any one or more of the following:

(a) Lessee shall fail to pay when due and owing any rentals, fees or charges payable hereunder and such nonpayment shall continue for ten (10) days after written notice thereof by City;

(b) Lessee shall (1) mortgage, pledge or encumber, any portion of its interest in this Agreement; (2) subject the Leased Premises to any lien of whatsoever nature, or (3) transfer, sublease or assign, either voluntarily or by operation of law, any portion of its interest in this Agreement, except in accordance with the provisions hereof;

(c) Lessee shall terminate its corporate structure, except as permitted herein;

(d) Lessee shall file a petition requesting relief or institute a proceeding under any act, state or federal, relating to the subject of bankruptcy or insolvency; or an involuntary petition in bankruptcy or any other similar proceeding shall be instituted against Lessee and continued for ninety (90) days; or a receiver of all or substantially all of the property of Lessee shall be appointed and the receiver shall not be dismissed for 60 days; or the Lessee shall make any assignment for the benefit of the Lessee's creditors;

(e) Lessee voluntarily shall abandon, desert, or vacate the Leased Premises other than as a result of a force majeure event; provided, however, Lessee may temporarily abandon, desert, or vacate the Leased Premises for business reasons for a period of up to six (6) months to reorganize, restructure or re-tool its business operation located thereon;

(f) Lessee shall fail to comply with insurance requirements imposed hereunder.;
or

(g) Lessee shall breach any term, provision, condition, obligation or covenant under this Agreement.

If Lessee commits an event of default as set forth in Subsections 10.1(b) through (g) hereof, and such failure shall continue unremedied for thirty (30) days after City (or TAIT for the benefit of City) shall have given to the Lessee written notice specifying such default; then City (or TAIT for the benefit of City) may proceed in accordance with Section 10.2 of this Agreement. Provided, City (or TAIT for the benefit of City) may grant Lessee (in writing) such additional time as is reasonably required to correct any such default, if Lessee has instituted corrective action and is diligently pursuing the same.

Section 10.2 Remedies upon Lessee's Default. Whenever an event of default of Lessee shall occur, City may pursue any available right or remedy at law or equity, including:

(a) Termination. City may terminate this Agreement within twenty (20) days upon delivery of written notice to Lessee. In the event of termination, Lessee's rights to possession of the Leased Premises shall cease immediately. City may then reenter and take possession of the Leased Premises and Lessee forthwith shall surrender possession of the Leased Premises. Upon termination of this Agreement, Lessee shall be liable for payment of all sums accrued through the date of termination.

All rentals received by City from reletting the Leased Premises after the termination of this Agreement shall be credited against any outstanding rental balance. The acceptance by City of any rentals from Lessee after the termination of this Agreement shall not reinstate this Agreement.

(b) Nontermination. As an alternative remedy upon Lessee's default, City may elect not to terminate this Agreement in which event the Lessee shall continue to perform all conditions and obligations to be performed by Lessee hereunder, notwithstanding any entry or reentry by City, or commencement of any suit in unlawful detainer or other than brought by City for the purpose of effecting such entry or reentry or obtaining possession of the Leased Premises. After giving Lessee ten (10) days written notice, City may reenter the Leased Premises to take possession thereof. City shall use reasonable diligence to relet the Leased Premises upon such terms and conditions as City may deem advisable. Lessee agrees that this Agreement constitutes full and sufficient notice of the right of City to relet the Leased Premises in the event of such reentry, without effecting the surrender or termination of this Agreement. Rentals or other proceeds received by City from reletting the Leased Premises shall be credited against any rentals, fees or charges due and owing after deducting from such proceeds all of City's expenses in connection with such reletting, including, without limitation, all repossession costs, brokerage commissions, legal expenses, attorneys fees, expenses of employees, removal costs, alteration costs and expenses of preparation for reletting.

(c) Release of Liability; Waiver. If City takes possession of the Leased Premises upon Lessee's default, City may expel Lessee and those claiming through or under Lessee and remove their property. City may remove all Lessee's property in or upon the Leased Premises and place such property in storage for the account of and at the expense of Lessee.

(d) Remedies Cumulative. Each remedy available to City under this Section shall be cumulative and shall be in addition to every other remedy of City under this Agreement or existing at law or in equity.

Section 10.3 Nonwaiver. Neither the waiver by City of any breach of Lessee of any provision hereof nor any forbearance by City to seek a remedy for any such breach shall operate as a waiver of any other breach by Lessee.

Section 10.4 Event of Default by City, Lessee's Remedies. City shall not be in default in the performance of any of its obligations hereunder until City shall have failed to perform such obligations for thirty days or such additional time as is reasonably required to correct any such non-performance, after written notice by Lessee to City specifying wherein City has failed to perform any such obligations; neither the occurrence nor existence of any default by City shall relieve Lessee of its obligation hereunder to pay rentals, fees and charges. However, Lessee may institute such action against City as Lessee may deem necessary to compel performance or recover its damages for non-performance.

Section 10.5 Condemnation. If, at any time during the Term or any extended term, the Leased Premises or the improvements located thereon or any portion thereof shall be taken by exercise of the power of eminent domain by a governmental entity other than the City, the proceeds and awards in the condemnation proceedings shall be applied as the parties' respective interest may appear. If the Leased Premises are wholly taken by condemnation, this Agreement shall terminate.

ARTICLE XI. Transfer of Interests

Section 11.1 Assignments by the City. The City may transfer or assign this Agreement to TAIT or other public trust the beneficiary of which is the City, or to any successor in interest; however, the successor in interest shall execute and deliver to City, with a copy to Lessee, an instrument assuming the obligations of the City under this Agreement.

Section 11.2 Assigning, Subletting and Encumbering. Lessee shall not assign this Agreement in whole or in part, nor sublease all or any part of the Leased Premises, nor permit other persons to occupy said Leased Premises or any part thereof, nor grant any license or concession for all or any part of said Leased Premises without the prior written consent of City, which consent shall not be unreasonably withheld; provided, that City may specifically withhold consent if the proposed transferee's projected use of the premises involves the use, storage, generation, or disposal of either Regulated Substances or Regulated Materials as defined in Article VIII of this Agreement. Any consent by City to an assignment or subletting of this Agreement shall not constitute a waiver of the necessity of obtaining that consent as to any subsequent assignment. Any assignment for the benefit of Lessee's creditors or otherwise by operation of law shall not be effective to transfer or assign Lessee's interest under this Agreement unless City shall have first consented thereto in writing. Neither Lessee's interest in this Agreement, nor any estate created hereby in Lessee nor any interest herein or therein, shall pass to any trustee or receiver or assignee for the benefit of creditors or otherwise by operation of law except as may specifically be provided in the Bankruptcy Code. Notwithstanding the foregoing, Lessee may, with notice to City but without the City's consent, (i) collaterally assign, mortgage or grant security interests in all or any portion of its right, title or

interest in and to this Agreement to any lender or (ii) assign this Agreement or sublease the Leased Premises or any part thereof to (a) any corporation or other business entity which controls, is controlled by, or under common control with Lessee or in which Lessee has a substantial economic interest, or (b) any organization resulting from a merger or consolidation with Lessee or to which substantially of all Lessee's assets are transferred, provided that any transfer pursuant to clause (ii) above shall be subject to the condition that such assignee, sublessee or transferee shall expressly assume the obligations of Lessee under this Agreement. Nothing herein shall be deemed to relieve Lessee from liability under this Agreement.

ARTICLE XII.
Miscellaneous

Section 12.1 Corporate Existence. Lessee shall maintain its corporate existence, and Lessee shall not dispose of all or substantially all of its assets and shall not consolidate with or merge into another corporation or permit one or more other corporations to consolidate with or merge into it. However, Lessee may, without violating the prohibition contained in this section, consolidate with or merge into another corporation, or permit one or more other corporations to consolidate with or merge into it, or sell or otherwise transfer to another corporation all or substantially all of its assets as an entity and thereafter dissolve, if the survivor or transferee corporation (a) assumes in writing all of the obligations of Lessee herein, (b) has net assets and capital (both paid in and surplus) at least equal to the net assets and capital of Lessee immediately prior to such consolidation, merger, sale or transfer, and (c) is qualified to do business in Oklahoma.

Section 12.2 Notices. All notices, certificates, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments, designations or other communication which may be or are required to be given by either party thereto to the other shall be deemed to have been sufficiently given on the third day following the day on which the same are mailed by registered or certified mail, postage prepaid as follows, if to City:

City of Tulsa
c/o City Clerk
200 Civic Center, Room 903
Tulsa, OK 74103

and if to Lessee:

American Transportation Corporation
P. O. Box 6000
Conway, AR 72033
Attn: President

with a copy to:

Navistar International Transportation Corp.
455 North Cityfront Plaza Drive
Chicago, IL 60611
Attn: Vice President and Treasurer

and

Navistar International Transportation Corp.
455 North Cityfront Plaza Drive
Chicago, IL 60611
Attn: General Counsel

City or the Lessee may designate, by notice given hereunder, any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 12.3 Severability. In the event any provisions of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, unless such holding shall materially affect the rights of either party as set forth herein.

Section 12.4 Entire Agreement; Modification. This Agreement expresses the entire understanding of City and Lessee concerning the Leased Premises and all agreements of City and Lessee with each other concerning the subject matter hereof. Neither City nor Lessee has made or shall be bound by any agreement or any representation to the other concerning the Leased Premises or the subject matter hereof which is not set forth expressly in this Agreement. The parties hereto acknowledge that each has thoroughly read this Agreement, including exhibits thereto, and received whatever advice (including advice of an attorney) necessary to form a full and complete understanding of all rights and obligations hereunder. As a result, this Agreement shall be interpreted to achieve the intents and purposes of the parties, without any presumption against the party responsible for drafting any part of this Agreement. This Agreement may be modified only by a written agreement of subsequent date hereto signed by City and Lessee.

Section 12.5 Execution of Counterparts. This Agreement simultaneously may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 12.6 Effect of Sundays and Legal Holidays. Whenever this Agreement requires any action to be taken on a Sunday or a legal holiday, such action shall be taken on the first business day occurring thereafter. Whenever in this Agreement, the time within which any action is required to be taken, or within which any right will lapse or expire, shall terminate on Sunday or a legal holiday, such time shall continue to run until 11:59 p.m. on the next succeeding business day.

Section 12.7 Descriptive Headings and Interpretation of Agreement; Table of Contents. The descriptive headings of the Sections of this Agreement and any Table of Contents annexed hereto are inserted or annexed for convenience of reference only and do not constitute a part of this Agreement, and shall not affect the meaning, construction, interpretation or effect of this Agreement. This Agreement has been negotiated at arms length and between persons sophisticated and knowledgeable in the matters dealt with herein and shall be interpreted to achieve the intents and purposes of the parties, or that any presumption against the party responsible for drafting any part of this Agreement.

Section 12.8 Choice of Law; Enforcement. This Agreement shall be construed and enforced in accordance with the laws of the State of Oklahoma. Whenever in this Agreement it is provided that either party shall make any payment or perform, or refrain from performing, any act or obligation, each such provision, even though not so expressed, shall be construed as an express covenant to make such payment or to perform or not to perform, as the case may be, such act or obligation.

Section 12.9 Force Majeure. Neither City nor Lessee shall be deemed in violation of this Agreement if it is prevented from performing any of the obligations hereunder by reason of strikes, embargoes, shortages or material, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, floods, riots, rebellions, sabotage, or any other circumstances for which it is not responsible or which are not within its control, and the time for performance automatically shall be extended by the period the party is prevented from performing its obligations hereunder; however, these provisions shall not excuse the failure of Lessee to pay the rentals and other charges required hereunder.

Section 12.10 Construction of Agreement. This Agreement and each provision and covenant hereof shall constitute both a contract and a lease by and between the parties hereto.

Section 12.11 Consent Not Unreasonably Withheld. Whenever it is provided herein that the consent of the City or Lessee is required, such consent shall not be unreasonably withheld, conditioned or delayed, except as provided herein.

Section 12.12 Non-Liability of Individuals/Public Officials. The City, TAIT, or Authority, or any councilor, trustee, agent, representative, officer, or employee thereof, shall not be charged personally by the Lessee with any liability, or be held liable to the Lessee under any term or provision of this Agreement, or because of its execution or attempted execution, or because of any breach, attempted or alleged, thereof, it being understood that in such matters they act only as agents or representatives of City, TAIT or Authority.

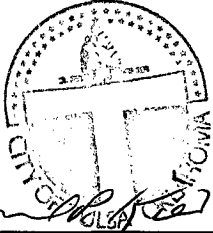
Section 12.13 Non Waiver of Rights. No Waiver of default or breach by either party of any of the terms, covenants and conditions hereof to be performed, kept and observed by the other parties shall be construed as, or shall operate as, a waiver of any subsequent default or breach of any of the

terms, covenants or conditions herein contained, to be performed, kept and observed by the other party.

Section 12.14 Time of the Essence. Time is expressed and acknowledged to be of the essence of this Agreement.

Section 12.15 Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon City, Lessee and their respective successors and assigns, if such assignment shall have been made in conformity with the provisions of this Agreement.

IN WITNESS WHEREOF, City and Lessee have entered into this Agreement at Tulsa, Oklahoma on the _____ day of _____, 2000.



ATTEST:

[Handwritten signature]

City Clerk

CITY OF TULSA, OKLAHOMA

BY: *[Handwritten signature]* **JAN 24 2000**
Mayor

APPROVED AS TO FORM:

[Handwritten signature]

City Attorney *[Handwritten initials]*

AMERICAN TRANSPORTATION CORPORATION

BY: *[Handwritten signature]*
Title: PRESIDENT C.E.O.

RSP

ATTEST:

Secretary



NOTE:

1. THE ONLY BUILDING LOCATED IN THE FIELD WAS THE SOUTHERLY END OF BUILDING #3 AT THE TULSA FACILITY PLANT AND MAY OR MAY NOT BE IN THE CORRECT LOCATION.
2. THE LEASE LINE FOR AIR FORCE PLANT #3 COMES FROM THE TULSA INTERNATIONAL AIRPORT SURVEY SHEETS THAT WERE PREPARED BY SENMORE, SACK & SENMORE DATED 1/9/83. THE GRANT TRACT LINES WERE PREPARED BY POE & ASSOCIATES. THESE ALSO USED TO UPDATE CERTAIN AREAS.
3. THE ROCKWELL LEASE LINE COMES FROM A LEGAL DESCRIPTION PROVIDED BY TULSA INTERNATIONAL AIRPORT BY FAX AND DATED 7/28/98.

AMTRAN
 125,9367 AC. / LAND
 955,600.00 S. F. ± / FACILITIES

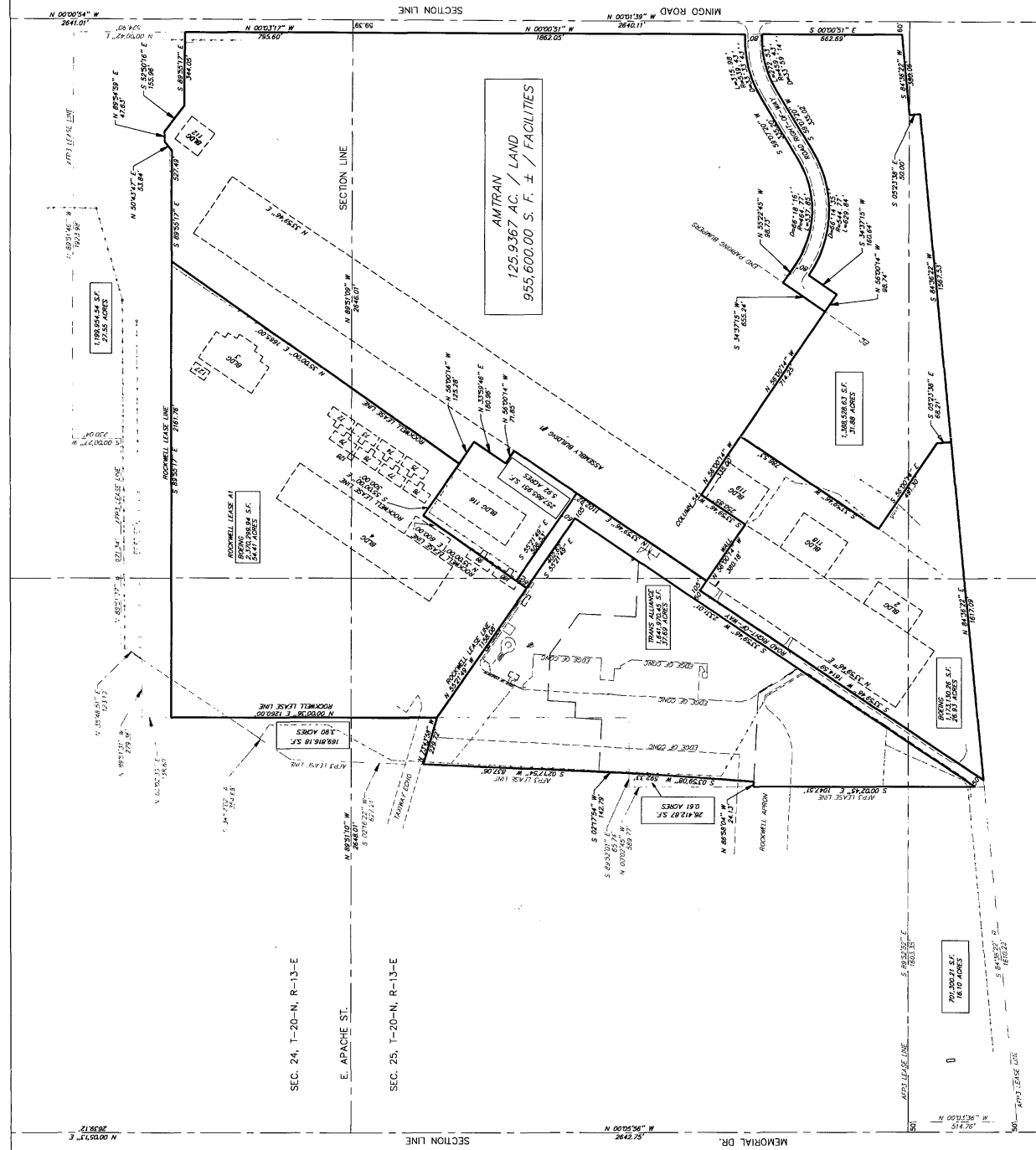


EXHIBIT "A"

DATE: 11-04-99	SHEET NO. _____
PROJECT NO. _____	
SHEET 1 OF 1	

TULSA AIRPORTS IMPROVEMENT TRUST
 TULSA INTERNATIONAL AIRPORT

 TULSURV

NICKLE & ASSOCIATES, INC.
 ENGINEERS & SURVEYORS
 6539 E. 31st. ST., SUITE 24
 TULSA, OKLAHOMA 74145
 C.A. - 1749. EXPIRES 06/2001

NO.	DATE	BY	APPROVED BY	REVISIONS

Exhibit "B"

PROJECT LIST

<u>Project</u>	<u>Completion Date</u>
Erect southern perimeter fence	5/1/00
Construction of administrative office (approximately 16,000 square feet)	1/1/01
Construction of finished product shipping center	1/1/01
Outside demolition on unwanted facilities	7/1/00
Construct material receiving docks and ramps	11/1/00
Removal or encapsulation of asbestos	7/1/00