

FACILITY USAGE AGREEMENT

This FACILITY USAGE AGREEMENT (this "Agreement") by and between **THE CITY OF COLUMBIA, MISSOURI** (the "City"), and **UNITED PARCEL SERVICE, INC.**, an Ohio corporation ("UPS") is made and entered into as of the date of the last signatory noted below ("Effective Date"). UPS and City are individually referred to herein as a "Party" and collectively as the "Parties."

RECITALS:

WHEREAS, Boone County, Missouri (as predecessor-in-interest to the City), and UPS entered into the certain Facility Usage Agreement dated June 25, 2019 (the "2019 Agreement"), related to certain real property located in Boone County, Missouri, as more particularly described in this Agreement (the "Demised Premises").

WHEREAS, on or about May 5, 2020, Boone County, Missouri, transferred ownership of a tract of land, which included the Demised Premises, to the City of Columbia, Missouri. The contract for the sale of the real estate included a requirement for the City to honor the 2019 Agreement.

WHEREAS, the term of the 2019 Agreement expired on December 31, 2022; however, despite such expiration, UPS, with the City's permission, has continued to use and occupy the Demised Premises, and pay rent therefor, on a month-to-month basis, and the City acknowledges and agrees that, as of the Effective Date, UPS is not in arrears with regard to rent payment.

WHEREAS, the City and UPS desire to enter into a new facility usage agreement related to the Demised Premises.

NOW, THEREFORE, for and in consideration of the premises, the mutual covenants contained herein, and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged by the Parties, the Parties, intending to be legally bound, hereby agree as follows:

1. Term; Renewal Terms.

- a. Initial Term. The term of this Agreement (the "Initial Term") commences on the Effective Date and extends through **December 31, 2023** (the "Expiration Date"), unless terminated earlier or further extended in accordance with the terms of this Agreement.
- b. First Renewal Term. The period beginning on January 1, 2024, and thereafter continuing through December 31, 2024 is hereinafter referred to as the "First Renewal Term". UPS has the right to extend the term of this agreement for the First Renewal Term by providing notice to the City at least thirty (30) days prior to the then-scheduled expiration of the term.
- c. Second Renewal Term. The period beginning on January 1, 2025, and thereafter continuing through December 31, 2025 is hereafter referred to as the "Second Renewal Term." UPS has the right to extend the term of this agreement for the Second Renewal Term by providing notice to the City at least thirty (30) days prior to the then-scheduled expiration of the term.
- d. Thereafter, following the Second Renewal Term, the Parties' Designated Representatives (as hereinafter defined) may mutually agree in writing to up to five consecutive one year extensions, with each one year extension period a "Renewal Term".

2. Rent. The monthly rent payable by UPS shall be as follows:

<u>PERIOD</u>	<u>ANNUAL RENT</u>	<u>MONTHLY RENT</u>
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Initial Term	\$12,295.28	\$1,024.61
First Renewal Term	\$12,664.14	\$1,055.35
Second Renewal Term	\$13,297.35	\$1,108.12

3. **Rent Adjustment for Additional Renewal Term(s).** All terms and conditions of this Agreement shall be applicable during each Renewal Term, except that the annual rent for each Renewal Term shall be determined as follows: on January 1st of each calendar year during each Renewal Term, rent shall be increased, by five percent (5%) over the annual rent for the immediately preceding year. For example, the Annual Rent for 2025 is \$13,297.35 and the Annual Rent (if extended) for 2026 would be \$13,962.21.
4. **Demised Premises.** The Demised Premises are depicted in Exhibit A attached hereto and shall be used for trailer staging. UPS shall prepare the Demised Premises for use as a trailer staging area, it being understood that the area is provided in an "as-is" condition.
- a. During all times during the term excluding the Non-Exclusive Period (as hereinafter defined), UPS shall be entitled to the exclusive use of the entire Demised Premises at all times during the Term, as the same may be extended.
 - b. During the Non-Exclusive Period, UPS shall be entitled to use the alternative location designated in Exhibit B, or other alternative locations as determined in writing by the Parties' Designated Representatives (either of which is hereinafter referred to as "Alternative Location" or "Alternative Premises"). UPS shall prepare the Alternative Location for use as a trailer staging area, it being understood that the area used as an Alternative Location is provided in an "as-is" condition. If the Alternative Location is to be any location other than the location designated on Exhibit B, then the City shall give UPS at least 180 days prior notice of such location, as well as an opportunity for UPS to evaluate the suitability of such alternative location, and if such alternative location is not reasonably suitable for UPS, the Parties will cooperate in good faith to identify and select a different Alternative Location that is mutually agreeable to the Parties.
5. **Periods of Exclusive and Non-Exclusive Use.**
- a. Periods of Non-Exclusive Use of Demised Premises. The Parties agree that there is a fourteen (14)-day period in December of each year (the "VU Non-Exclusive Period") and a fourteen (14)-day period for the Boone County Fair each year (the "Boone County Fair Non-Exclusive Period"). In addition, the Parties Designated Representatives may agree in writing to add additional dates as "Non-Exclusive Period" should the location be needed for large events. Collectively, the VU Non-Exclusive Period, the Boone County Fair Non-Exclusive Period, and any other period which may be mutually agreed upon in writing by the City and UPS are each hereinafter referred to as a "Non-Exclusive Period".
 - b. The City shall give notice to UPS of the exact dates of each Non-Exclusive Period (the "Non-Exclusive Period Notice") at least thirty (30) days prior to the first day of such Non-Exclusive Period.
 - c. Throughout the entirety of each Non-Exclusive Period, UPS shall have the right to use and occupy, on an exclusive basis, 24 hours per day, 7 days per week, at no additional rent, and otherwise upon the same terms and conditions as this Agreement, the property designated as the Alternative Premises. UPS shall have the right to enter upon and begin its use of the Alternative Premises no later than the date which is fourteen (14) days prior

to the first day of the applicable Non-Exclusive Period (the "Alternative Premises Access Date"). The City represents and warrants to UPS that (i) the City is the sole owner of the Alternative Premises, it has the requisite power and authority to grant to UPS the exclusive use of the Alternative Premises, and it has not, and will not, grant to any other person or entity the right to use or occupy the Alternative Premises during any Non-Exclusive Period; and (ii) the use by UPS, as described in this Agreement, of the Alternative Premises is permitted, and not prohibited, by any applicable law, code, rule, ordinance, regulation, permit or approval, and the Alternative Premises has (and, at all times during any Non-Exclusive Period, will have) direct access to and from public rights-of-way on a 24 hours per day, 7 days per week basis.

6. **Notices.** Notwithstanding anything to the contrary set forth in this Agreement, notices given or permitted under this Agreement shall be effective only if delivered in writing to the applicable party at the following address:

If to the City: City of Columbia Department of Parks and Recreation
P.O. Box 6015
Columbia, Missouri 65205
Attn: Director Gabe Huffington

If to UPS: United Parcel Service, Inc.
55 Glenlake Parkway NE
Atlanta, Georgia 30328
Attn: Real Estate Contract Administration

With a copy to:

United Parcel Service, Inc.
55 Glenlake Parkway NE
Atlanta, Georgia 30328
Attn: Real Estate Coordinator

And with copy by e-mail to:

josephkenney@ups.com

7. **Designated Representatives.** The Parties hereby designate the following representatives:

- a. City of Columbia's Designated Representative: Gabe Huffington, Parks and Recreation Director.
- b. United Parcel Service, Inc.'s Designated Representative: Joe Kenney, Real Estate Manager.
- c. Either Party may change its Designated Representative from time to time by written notice to the other party.

8. **Insurance.** UPS shall carry public liability insurance on the Demised Premises and shall name the City of Columbia as an additional insured under that policy. Said insurance shall be at the following minimum amounts: Workers Compensation coverage per Missouri statutory limits; Commercial General Liability in an aggregate amount of \$3,000,000; and Automobile Liability in an aggregate amount of \$3,000,000. UPS shall also carry the required insurance set forth herein when UPS uses the Alternative Premises. The insurance is required in the public interest and the City does not assume any liability for acts of UPS, their employees, and/or their subcontractors.

9. **Authority.** Each party hereby represents and warrants to the other that (i) it has been and is qualified to do business in the state in which the Demised Premises is located, (ii) it has the full right and

authority to enter into this Agreement and has obtained any and all consents or approvals necessary or required for it to do so, and (iii) all persons signing this Agreement on its behalf are authorized to do so by appropriate actions, and are so authorized to bind such party to the terms and conditions hereof. The City hereby represents and warrants that it is the sole owner of the Demised Premises.

10. Entire Agreement; Successors and Assigns. This Agreement constitutes the complete and entire understanding between the Parties with respect to the subject matter hereof and supersedes all other prior or contemporaneous agreements and representations concerning same. This Agreement, and all of the terms and provisions hereof, shall be binding upon, and inure to the benefit of, the City and UPS and each of their respective executors, administrators, heirs, transfers, successors, assigns and legal representatives.

11. OFAC; Patriot Act. Each party hereby represents, warrants and certifies that: (i) neither it nor its officers, directors, or controlling owners is acting, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order, the United States Department of Justice, or the United States Treasury Department as a terrorist, "Specifically Designated National or Blocked Person", or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control (or "OFAC"); (ii) neither it nor its officers, directors or controlling owners is engaged in this transaction, directly or indirectly on behalf of, or instigating or facilitating this transaction, directly or indirectly on behalf of, any such person, group, entity, or nation; and (iii) neither it nor its officers, directors or controlling owners is in violation of Presidential Executive Order 13224, the USA PATRIOT Act (Public Law 107-56), the Bank Secrecy Act, the Money Laundering Control Act or any regulations promulgated pursuant thereto. The provisions of this Section 11 shall survive the expiration or any earlier termination of this Agreement.

12. Interpretation; Governing Law. The various captions and headings used in this Agreement are for convenience only and do not, and shall not be deemed or construed to, limit or amplify any of the terms or provisions hereof. This Agreement is the product of the collective joint drafting by the City and UPS, and no provision of this Agreement shall be construed against or interpreted to the disadvantage of either party by reason of any rule of construction or by reason of such party's having or being deemed to have prepared, drafted or imposed such provision. This Agreement shall be governed by, and construed and interpreted under and in accordance with, the laws of the State of Missouri.

13. Execution; Counterparts. This Agreement may be executed in one or more signature page counterparts, each of which shall be effective as an original, and all of which, when taken together, shall constitute but one and the same instrument. Each of the City and UPS (i) hereby agrees that transmission by e-mail or other electronic means, by copy or attachment, of a PDF (or .pdf, .jpg, .tiff, or similar) version of an executed or electronically-executed (whether digital or encrypted, by use of DocuSign or other similar technology) signature page to this Agreement shall for all purposes be effective and legally binding with the same force and effect as an original, manually executed and delivered signature page; and (ii) hereby waives any and all defenses to the effectiveness or enforcement of the terms of this Agreement that may be available to it based on such form(s) of execution and/or delivery described hereinabove.

14. Indemnity. To the fullest extent permitted by law, UPS shall indemnify, hold harmless and defend the City of Columbia, its directors, officers, agents, and employees from and against all claims, damages, losses and expenses (including but not limited to attorney's fees) arising by reason of any act or failure to act, negligent or otherwise, of UPS, of any UPS subcontractor, of anyone directly or indirectly employed by UPS or by an UPS subcontractor, or of anyone for whose acts UPS or any UPS subcontractor may be liable in connection with this Agreement. This provision does not require UPS to indemnify, hold harmless or defend the City of Columbia from its own negligence or willful misconduct or from that of its employees, agents, contractors or invitees.

15. General Laws. UPS shall comply with all applicable federal, state, and local laws, rules, regulations, and ordinances.

16. **No Waiver of Immunities.** In no event shall the language of this Agreement constitute or be construed as a waiver or limitation for either party's rights or defenses with regard to each party's applicable sovereign, governmental, or official immunities and protections as provided by federal and state constitutions or laws.

17. **No Brokers.** Each party represents and warrants to the other that neither it nor anyone acting on its behalf has dealt with any broker or agent in connection with this Agreement.

18. **Recitals; Exhibits.** The Recitals set forth above and all exhibits attached hereto are true and correct and are hereby incorporated into and made a part of the body of this Agreement as if set forth herein in their entirety.

***[REMAINDER OF PAGE INTENTIONALLY BLANK;
SIGNATURES APPEAR ON FOLLOWING PAGE.]***

IN WITNESS WHEREOF, the City and UPS have each caused this Agreement to be executed by its respective duly authorized representative(s) as of the date and year last set forth below.

"CITY":

CITY OF COLUMBIA, MISSOURI

By: _____ 

Name: De'Carlton Seewood

Title: City Manager

Date: _____

ATTEST:

Sheela Amin, City Clerk

APPROVED AS TO FORM:

Nancy Thompson, City Counselor/rw

"UPS":

UNITED PARCEL SERVICE, INC.

DocuSigned by:

Stephen M. Slifer

By: _____

Name: Stephen M. Slifer

Title: Vice President

Date: 5/9/2023 | 9:08 AM PDT

EXHIBIT "A"

DEMISED PREMISES

Demised Premises – 5212 N. Oakland Gravel Road, Columbia, MO 65202:



EXHIBIT "B"

ALTERNATIVE PREMISES

Alternative Premises – 210 Orr Street, Columbia, MO 65201:

[all buildings will be removed from the lot]

