

CITY OF ALBUQUERQUE
Albuquerque, New Mexico
Office of the Mayor

EC-17-383

Mayor Richard J. Berry

INTER-OFFICE MEMORANDUM

June 12, 2017

TO: Isaac Benton, President, City Council

FROM: Richard J. Berry, Mayor

SUBJECT: Scheduled Airline Operating Agreement and Terminal Building Lease with American Airlines, Inc., Delta Airlines, Inc., Jet Blue Airways, Inc., Southwest Airlines Co., and United Airlines, Inc., and the Scheduled Cargo Airline Operating Agreement and Cargo Building Lease with Federal Express Corp., and United Parcel Services

Attached for Council action is a copy of the Scheduled Airline Operating Agreement and Terminal Building Lease with American Airlines, Inc., Delta Airlines, Inc., Jet Blue Airways, Inc., Southwest Airlines Co., and United Airlines, Inc., and the Scheduled Cargo Airline Operating Agreement and Cargo Building Lease with Federal Express Corp., and United Parcel Services

Purpose: This Agreement will allow American Airlines, Inc., Delta Airlines, Inc., Jet Blue Airways, Inc., Southwest Airlines Co., United Airlines, Inc., Federal Express Corp., and United Parcel Services to lease certain premises and use certain facilities at the airport to provide air carrier service to and from the Albuquerque International Airport, as well as, provide air transportation of property, cargo small packages, mail and express package delivery and freight forwarding services to residents and business in Albuquerque and New Mexico, a much needed service as well as a significant source of revenue for the City.


Term: Five (5) years commencing on July 1, 2016. The Agreements have been in negotiations with the Airlines for a year, and all parties agree that the start date for all charges will be retroactive to the start of FY17, July 1, 2016.

Revenue Amount: Approximately \$26,000,000.00 per year.

The attached transmittal of the Scheduled Airline Operating Agreement and Terminal Building Lease and the Scheduled Cargo Airline Operating Agreement and Cargo Building Lease are submitted for consideration and Immediate Action by the City Council.

Subject: Scheduled Airline Operating Agreement and Terminal Building Lease with American Airlines, Inc., Delta Airlines, Inc., Jet Blue Airways, Inc., Southwest Airlines Co., and United Airlines, Inc., and the Scheduled Cargo Airline Operating Agreement and Cargo Building Lease with Federal Express Corp., and United Parcel Services

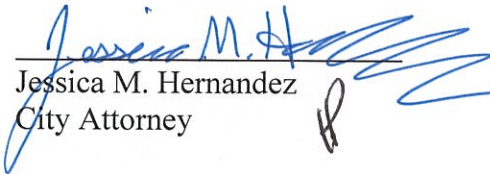
Approved:



Robert J. Perry
Chief Administrative Officer

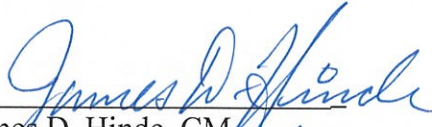
7/5/17

Approved as to Legal Form:



Jessica M. Hernandez
City Attorney


Approved:



James D. Hinde, CM
Director of Aviation

6-13-17

Approved:



Michael J. Riordan, P.E.
Chief Operating Officer

6-30-17



Cover Analysis

1. What is it?

These Agreements are the Scheduled Airline Operating Agreement and Terminal Building Lease with American Airlines, Inc., Delta Airlines, Inc., Jet Blue Airways, Inc., Southwest Airlines Co., and United Airlines, Inc., and the Scheduled Cargo Airline Operating Agreement and Cargo Building Lease with Federal Express Corp., and United Parcel Services. The Agreements have been in negotiations with the Airlines for a year, and all parties agree that the start date for all charges will be retroactive to the start of FY17, July 1, 2016. A draft copy of each type of Agreement is enclosed with this Executive Communication. Each passenger airline will sign identical versions of the Scheduled Airline Operating Agreement and Terminal Building Lease, and each cargo airline will sign identical versions of the Scheduled Cargo Airline Operating Agreement and Cargo Building Lease.

2. What will this piece of legislation do?

This legislation will allow the City to enter into five (5) year Agreements with American Airlines, Inc., Delta Airlines, Inc., Jet Blue Airways, Inc., Southwest Airlines Co., United Airlines, Inc., Federal Express Corp., and United Parcel Services to lease certain premises and use certain facilities at the airport to provide air carrier service to and from the Albuquerque International Airport, as well as, provide air transportation of property, cargo small packages, mail and express package delivery and freight forwarding services to residents and business in Albuquerque and New Mexico, a much needed service as well as a significant source of revenue for the City.

3. Why is this project needed?

These Agreements enable the airport and the airline to provide air carrier service to both business and pleasure travelers to Albuquerque, as well as, provide air transportation of property, cargo small packages, mail and express package delivery and freight forwarding services to residents and business in Albuquerque and New Mexico, a much needed service, as well as a significant source of revenue for the City.

4. How much will it cost and what is the funding source?

There is no cost to the City as it is a revenue contract.

5. Is there a revenue source associated with this Plan? If so, what level of income is projected?

The Agreements are estimated to bring in annual revenue to the airport of twenty-six million dollars per year (\$26,000,000.00 per year) over a five (5) year period for a total of one hundred thirty million dollars (\$130,000,000.00).

6. What will happen if this project is not approved?

The airport will no longer be able to provide these much needed services to the community, resulting in loss of business and jobs in the City.

7. Is this a service already provided by another entity?

No.

FISCAL IMPACT ANALYSIS

TITLE: Scheduled Airline Operating Agreements and Terminal Building Leases -American Airlines, Inc., Delta, Airlines, Inc., JetBlue Airways, Corp., Southwest Airlines, Co., United Airlines, Inc., Federal Express Corp., and United Parcel Services

R: O:
FUND: 611

DEPT: AVIATION

- No measurable fiscal impact is anticipated, i.e., no impact on fund balance over and above existing appropriations.
- (If Applicable) The estimated fiscal impact (defined as impact over and above existing appropriations) of this legislation is as follows:

	Fiscal Years			
	2017	2018	2019	Total
Base Salary/Wages	-	-	-	-
Fringe Benefits at	-	-	-	-
Subtotal Personnel	-	-	-	-
Operating Expenses	-	-	-	-
Property	-	-	-	-
Indirect Costs	-	-	-	-
Total Expenses	\$ -	\$ -	\$ -	\$ -
[] Estimated revenues not affected				
[x] Estimated revenue impact				
Revenue from program	26,000,000	26,000,000	26,000,000	78,000,000
Amount of Grant	-	-	-	-
City Cash Match	-	-	-	-
City Inkind Match	-	-	-	-
City IDOH	-	-	-	-
Total Revenue	\$ 26,000,000	\$ 26,000,000	\$ 26,000,000	\$ 78,000,000

These estimates do not include any adjustment for inflation.

* Range if not easily quantifiable.

Number of Positions created - - - -

COMMENTS:

COMMENTS ON NON-MONETARY IMPACTS TO COMMUNITY/CITY GOVERNMENT:

PREPARED BY:

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FISCAL ANALYST

APPROVED:

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DIRECTOR (date)

REVIEWED BY:

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EXECUTIVE BUDGET ANALYST

Debbie Rom Jacques Blair
BUDGET OFFICER (date) CITY ECONOMIST

ALBUQUERQUE INTERNATIONAL SUNPORT
SCHEDULED CARGO AIRLINE OPERATING AGREEMENT
AND CARGO BUILDING LEASE

CARGO AIRLINE

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ALBUQUERQUE INTERNATIONAL SUNPORT
SCHEDULED CARGO AIRLINE OPERATING AGREEMENT
AND CARGO BUILDING LEASE

CARGO AIRLINE

This Scheduled Cargo Airline Operating Agreement and Cargo Building Lease ("Agreement"), is made and entered into by and between the **City of Albuquerque**, a New Mexico municipal corporation ("City"), and **CARGO AIRLINE**, a corporation organized and existing under the laws of the state of _____ ("Airline").

In consideration of the rights, privileges, and mutual obligations contained in this Agreement, City and Airline agree as follows:

ARTICLE 1
RECITALS AND DEFINITIONS

Section 1.01. Recitals.

A. City owns and operates, through its Aviation Department, the Albuquerque International Sunport ("Airport") as shown in **Exhibit A** located in the County of Bernalillo, State of New Mexico.

B. Airline is engaged in the business of air transportation of property, cargo, small packages, mail, and express package delivery and freight forwarding services.

C. Airline desires to lease certain premises, use certain facilities, acquire certain rights and privileges from City in connection with its use of the Airport, and Airline does not have any past due debts under any lease or contract with City when this Agreement is executed by City, and City is willing to lease and grant the same to Airline upon the terms and conditions hereinafter stated.

D. City and Airline have the power and authority to enter into this Agreement.

Section 1.02. Definitions. The following words and phrases, wherever used in this Agreement, shall, for the purpose of this Agreement, have the following meanings:

- 1. "Affiliate" or "Affiliate Airline"** means any Cargo Airline operating Affiliate Airline Qualifying Flights.
- 2. "Affiliate Airline Qualifying Flights"** means those flights that have been

approved by City in writing pursuant to this definition and (1) are flights at the Airport that are operated pursuant to a cargo capacity purchase agreement or, if applicable, an aircraft dry lease and service agreement, with a Signatory Airline, on which all flights into and out of the Airport are under the exclusive control of Signatory Airline or (2) are flights by Cargo Airline that is wholly owned by Signatory Airline or Signatory Airline's parent company. At least thirty (30) days prior to the start of new Affiliate Airline Qualifying Flights, Signatory Airline shall provide City with written notice designating new Affiliate Airline Qualifying Flights, which designation is subject to City approval solely based on the requirements that the Cargo Airline providing such Affiliate Airline Qualifying Flights holds an operating certificate in good standing from the FAA and: (1) meets the criteria established above, (2) establishes a mechanism with Airline to ensure Landing Fees and Miscellaneous Fees are paid by Airline, and (3) does not have an outstanding notice of default from City.

Airline shall provide City with written notice prior to the cancellation of any designation of an Affiliate Airline Qualifying Flight.

3. **"Agreement"** and **"Scheduled Cargo Airline Operating Agreement and Cargo Building Lease"** shall be interchangeable terms and both terms shall mean this Scheduled Cargo Airline Operating Agreement and Cargo Building Lease.
4. **"Aircraft Arrival"** means any Cargo Airline aircraft arrival at the Airport other than an unscheduled arrival of an aircraft that, having taken off from the Airport, is required to land at the Airport because of mechanical or operating problems or for any other reason of precaution or emergency.
5. **"Airline"** means the individual Signatory Airline that is a party to this Agreement.
6. **"Airport"** means Albuquerque International Sunport, Albuquerque, Bernalillo County, New Mexico, including but not limited to those areas shown on **Exhibit A** attached hereto and incorporated herein as though set forth in full.
7. **"Airport Bonds"** means Airport revenue bonds which include senior, subordinate, and junior lien obligations issued under any Bond Ordinance enacted by City.
8. **"Airport Cost Centers"** means direct cost areas to be used in accounting for airport revenues and expenses and for calculating and adjusting certain rates, fees, and charges described herein, as shown in **Exhibit B** (Airport Cost Center Plan), attached hereto and incorporated herein as though set forth in full as such

areas now exist or may hereafter be modified or extended, and as more particularly described below.

- A. “Terminal Building”** means the passenger terminal building and related facilities at the Airport, including but not limited to associated curbside, canopy, and landscaped areas, together with any additions or changes thereto.
 - B. “Airfield”** means all facilities and land areas at the Airport required by or related to aircraft landings, takeoffs, taxiing, and passenger airline aircraft parking, including runways, taxiways, approach and clear zones, aprons serving the Terminal Building, safety areas, in-field areas, landing and navigational aids.
 - C. “Reliever Airport”** means Double Eagle II Airport, the general aviation airport owned and operated by City.
 - D. “Landside Area”** means the commercial lane, and automobile parking areas at the Airport.
 - E. “Cargo Area”** means the ground and the subcost centers listed hereafter used by Cargo Airlines for Cargo Operations and as shown in **Exhibit C**.
 - 1. “Cargo Building”** means the joint use cargo building, which is shown in **Exhibit C**.
 - 2. “Cargo Apron”** means the aircraft apron, which is shown in **Exhibit C**.
 - F. “Other Areas”** means all other areas of the Airport used for general aviation, hotels, rental cars, and other aviation and non-aviation related activities.
- 9. “Airport System”** means the Airport and the Reliever Airport.
- 10. “Bad Debt Expense”** means a past due amount that has been classified by City as uncollectible according to generally accepted accounting principles. Bad Debt Expense shall be adjusted by (a) Security Deposit withdrawals and (b) any amounts historically classified as Bad Debt Expense that were subsequently recovered through the rentals, fees and charges pursuant to this Agreement.
- 11. “Bond Ordinances”** means the ordinances adopted by City authorizing the issuance and sale of the outstanding Airport Bonds, and any additional successor bond ordinance(s) that may be enacted by City with respect to future series of Airport Bonds.

12. **"Capital Costs"** means all capital costs of the Airport, including the following:
- A. Debt service (net of PFC's) allocable to bond-funded Capital Improvements upon their Substantial Completion Date.
 - B. Debt service coverage allocated in accordance with stated bond covenant requirements (equal to twenty percent (20%) for senior lien obligations and ten percent (10%) for all Airport Bonds).
 - C. Amortization allocable to Capital Improvements funded with airport revenues other than the proceeds of Airport Bonds, PFC revenues, Grants-in-aid, or the Airline Coverage Account, based on the economic life for each Capital Improvement and calculated using an interest rate set to equal the average all-in cost of Airport debt sold by Airport during the calendar year when the Substantial Completion Date of a Capital Improvement is reached, or if no Airport debt was sold, set to equal comparable published average borrowing costs.
13. **"Capital Improvement"** means (1) the acquisition of land or easements; (2) the purchase of machinery, equipment, or rolling stock; (3) the planning, engineering, design, and/or construction of new facilities; (4) the performance of any extraordinary, non-recurring major maintenance of existing facilities that may be acquired, purchased, or constructed by City to improve, maintain, or develop the Airport; or (5) any single item which has a cost of \$100,000.00 or more and a useful life in excess of one year.
14. **"Cargo Airlines"** means Signatory Airlines, Non-Signatory Airlines, and Affiliate Airlines providing Cargo Operations.
15. **"Cargo Operations"** means conducting the business of air transportation of property, cargo, small packages, freight, and mail and express package delivery, and freight forwarding services with aircraft, which are used specifically for such purpose and for no other purpose.
16. **"City"** means the City of Albuquerque, a municipal corporation organized and existing under the laws of the State of New Mexico.
17. **"Director"** means City's Director of Aviation or such other person designated by City to exercise functions with respect to the rights and obligations of City under this Agreement.
18. **"Effective Date"** means July 1, 2016.

19. **"Environmental Laws"** shall be interpreted in the broadest sense to include any and all federal, state and local statutes, ordinances, regulations, rules, policies, procedures or guidelines having the force and effect of law now or hereafter in effect during the term of this agreement, as the same may be amended from time to time, which govern Hazardous Substances or relate to the protection of human health, safety or the environment, without limitation.
20. **"Extended Aircraft Parking Fee"** means the fee established in subsection 6.03.C.
21. **"FAA"** means the Federal Aviation Administration of the U.S. Government or any federal agencies succeeding to its jurisdiction.
22. **"Fiscal Year"** refers to City's fiscal year and means the twelve (12) month period commencing each July 1 and extending through June 30 of the following year.
23. **"Grants-in-aid"** means grants received from the Federal Aviation Administration, the Transportation Security Administration, the State of New Mexico, or other federal, state, or local entities to fund in all or in part Capital Improvements or O&M Expenses.
24. **"Ground Handling Service"** means services or contracting for services that include any of the following: on and off loading of mail, freight, and other materials included in Cargo Operations, cleaning the interior of aircraft, and emergency or required minor maintenance of aircraft.
25. **"Hazardous Substances"** shall be interpreted in the broadest sense to include any and all substances, materials, wastes, pollutants, oils or governmental regulated substances or contaminants as defined or designated as hazardous, toxic, radioactive, dangerous, or any other similar term in or under any of the Environmental Laws, including but not limited to asbestos and asbestos containing materials, petroleum products including crude oil or any fraction thereof, gasoline, aviation fuel, jet fuel, diesel fuel, lubricating oils and solvents, urea formaldehyde, flammable explosives, PCBs, radioactive materials or waste, or any other substance that, because of its quantity, concentration, physical, chemical, or infectious characteristics may cause or threaten a present or potential hazard to human health, the environment, or public welfare when improperly generated, used, stored, handled, treated, discharged, distributed, disposed, or released. Hazardous Substances shall also mean any substances regulated or defined as hazardous materials, hazardous wastes, toxic substances, or regulated substances under any applicable Environmental Laws.

26. **"Maximum Certificated Gross Landing Weight"** means the FAA certificated maximum gross landing weight in thousand-pound units of each aircraft operated by Airline at the Airport.
27. **"Non-Signatory Airline"** means a Cargo Airline holding an operating certificate in good standing from the FAA that has not executed this Agreement.
28. **"Operation and Maintenance Expenses" or "O&M Expenses"** mean the total operation and maintenance expenses of the Airport.
29. **"Passenger Facility Charges" or "PFC"** means the federally approved Passenger Facility Charge remitted to Airport pursuant to PFC Regulations, as authorized by an approval from the City Council and the FAA to impose and use a PFC at a certain level and use the revenues collected from the PFC for FAA-approved projects, bond financing and interest costs at the Airport.
30. **"PFC Regulations"** means the regulations under 14 CFR Part 158 as authorized by 49 U.S.C. § 40117, as they currently exist or may be amended during the Term of this Agreement.
31. **"Premises"** means the space in the Cargo Building and any other areas leased to or used by Airline as shown on **Exhibit C**, separated into two (2) categories:
- A. **"Exclusive Use Space"** means the space leased to Airline for its exclusive use and which is under its direct control.
 - B. **"Preferential Use Space"** means the space leased to or used by Airline on a preferential basis.
32. **"Rules and Regulations"** means those lawful rules and regulations, pursuant to Section 16.01 of this Agreement.
33. **"Security Deposit"** means the amount reasonably estimated by City equal to the most recent three (3) months of revenue due to City, for Airline's rentals, fees and charges pursuant to this Agreement. Notwithstanding the foregoing, upon written notification by City, Airline shall modify the amount of such Security Deposit to a dollar amount equal to three (3) months of the reasonably estimated amount to be invoiced to Airline in the same Fiscal Year.
34. **"Signatory Airline"** means an entity holding an operating certificate in good standing from the FAA providing scheduled air transportation of passengers, property, or mail by air to and from the Airport, that have executed agreements with City substantially the same as this Agreement covering the use and occupancy of facilities at the Airport. To qualify as a Signatory Airline, a Cargo

Airline shall lease no less than two (2) Cargo Building bays and one (1) Cargo Apron aircraft position at the Airport air cargo facility and pay landing fees as provided under Section 7.05.

35. "**Subcontractors**" means subcontractors that provide services to Airline related to Cargo Operations that include the transportation of Airline's airfreight, airmail, and cargo either by air or ground, and such other services related to Cargo Operations.
36. "**Substantial Completion Date**" means the date that a project is ready to be used for its intended purpose, as determined by City.
37. "**Total Landed Weight**" means the sum of the Maximum Certificated Gross Landing Weight for all Aircraft Arrivals of an airline over a stated period of time. Said sum shall be rounded to the nearest thousand pounds for all landing fees.
38. "**Triggering Event**" means (1) Airline has failed to make payments to City of any rental, fee, or charge, or file with City any report required by this Agreement within thirty (30) days after the due date for payment and reporting pursuant to this Agreement, or (2) Airline has failed to pay to City any rental, fee, or charge for its Affiliate Airline Qualifying Flights within thirty (30) days after the due date of such payment pursuant to Section 7.12 of this Agreement.

ARTICLE 2 TERM

Section 2.01. Term. The Term of this Agreement shall begin July 1, 2016, and end June 30, 2021 (hereafter the "Term"), and the rentals, fees and charges established in this Agreement shall apply to said Term regardless of the Effective Date of this Agreement.

Section 2.02. Holding Over. Holding over by Airline following the expiration of the Term without the consent of City, shall not operate to extend or renew this Agreement. Any such holding over shall be construed as a month-to-month tenancy and shall be on the same terms and conditions in effect on the expiration date of this Agreement; provided, however, that Airline shall not be entitled to Signatory Airline rentals, fees and charges during said month-to-month tenancy and shall pay the non-signatory rentals, fees and charges established by City.

ARTICLE 3 RIGHTS AND PRIVILEGES OF AIRLINE

Section 3.01. Use of the Airport. Airline, its employees, guests, patrons, and invitees shall have the right to the use in common with other duly authorized users of

the Airport and appurtenances, together with all facilities, improvements, equipment, and services that have been or may hereafter be provided for common use at or in connection with the Airport, subject to the Rules and Regulations.

Section 3.02. Rights of Airline at the Airport.

A. Rights of Airline in Connection with the Operation of its Air Transportation System. Airline shall have the right, subject to specific limitations or requirements contained in this Agreement, to use the Airport for the following purposes:

1. Conducting Cargo Operations at the Airport.
2. The landing, taking off, flying over, taxiing, pushing, towing, fueling, loading, unloading, repairing, maintaining, conditioning, servicing, and parking of aircraft or other equipment of or operated by Airline or its Affiliate Airline Qualifying Flights. Exterior cleaning of aircraft is limited to instances when special advance written approval of the time and place of such cleaning is given by City.
3. The documentation of shipments, and the loading and unloading of property, cargo, and mail at the Airport by such motor vehicles or other means of conveyance as Airline may desire to use in the operation of its air transportation system. However, any ground transportation commercial carrier (including Airline, except for such ground transportation as Airline or its nominee may provide solely for the benefit of its employees) regularly transporting persons to and from the Airport shall first secure and thereafter hold a valid lease, license, or other agreement with City for the right to carry persons to and from the Airport and shall pay City such rentals, fees or percentages of the fares of such ground transportation commercial carrier for such right as established by City.
4. The training at the Airport of persons and testing of aircraft and other equipment, such training and testing to be limited to that incidental to Airline's air transportation business at the Airport. Flight training and testing shall be undertaken by Airline only to the extent permitted by, and subject to the conditions of, the Rules and Regulations.
5. The use and employ of Subcontractors and contractors in support of Airline's Cargo Operations at the Airport.
6. The purchase of Airline's requirements of personal property or services, including fuel, into-plane fueling services, lubricants, food, beverage, and other supplies, and any other materials and supplies used by Airline from any person or company of Airline's choice.

7. The Subcontractors and contractors described in subsections 3.02.A.4 and 5 above, shall enter into an operating agreement or lease with City prior to commencing services to Airline or its Affiliate Airline Qualifying Flights. In the event services commence without said operating agreement or lease, Airline or its Affiliate Airline Qualifying Flights shall be primarily responsible for payment of Subcontractor's and contractor's fees and charges owing to City, and Airline's insurance, or its Affiliate Airline Qualifying Flights' insurance, as applicable, pursuant to Article 11 below, shall insure Subcontractor's and contractor's activities at the Airport.

8. The sale, disposal, and exchange of Airline's aircraft, engines, accessories, fuel, oil, lubricants, other equipment, and materials or supplies. Such right shall not be construed as authorizing the conduct of a separate regular business by Airline, but as permitting Airline to perform only such functions as are incidental to the operation of its air transportation system.

9. The servicing by Airline, by its Affiliate Airline Qualifying Flights, or by its suppliers of materials or its furnishers of services, of aircraft and other equipment, operated by Airline, or its Affiliate Airline Qualifying Flights with line maintenance or other materials or supplies, at its assigned aircraft parking positions or other aircraft parking positions designated by City. City reserves the right to designate other locations reasonably accessible from the Cargo Building for performance of aircraft maintenance and service activities if such activities would interfere with aircraft operations of other aircraft on the Cargo Apron.

10. The installation, maintenance, and operation of radio, communication, meteorological, and aerial navigation equipment and facilities at suitable locations on the Airport as may be necessary or convenient in the opinion of Airline for its operations; provided that such equipment and facilities do not interfere with other Airport communication, meteorological, or aerial navigation systems. The location of such equipment and facilities in areas other than Airline's Premises shall be subject to the prior written approval of City.

11. The installation and operation in Airline's Exclusive Use Space in the Cargo Building of pay telephones or coin vending machines for the sale of soft drinks and foodstuffs to its employees; however, Airline agrees to allow City's vending machine concessionaire the right to submit a bid or proposal to provide vending machines in such Exclusive Use Space at competitive rates.

B. Right of City to Charge for Facilities Leased to or Used by Airline's Suppliers and Affiliate Airlines. It is understood that if Airline's suppliers, Subcontractors, contractors, furnishers of services, and Affiliate Airlines lease for its or for their exclusive use any portion of Airport or facilities of City, except as provided herein, then City may charge appropriate rentals, fees and charges for such facilities.

Affiliate Airlines using the Premises of a Signatory Airline shall not pay to City any rentals, fees or charges for such Premises.

Section 3.03. Limitations on Use by Airline. In connection with the exercise of its rights under this Agreement, Airline:

A. Use of Facilities. Shall not do or permit to be done anything at or about the Airport that may interfere with the effectiveness or accessibility of the drainage and sewage system, electrical system, air conditioning system, fire protection system, sprinkler system, alarm system, fire hydrants and hoses, if any, installed or located on or within the Premises or the Airport.

B. Insurance Requirements Compliance. Shall not do or permit to be done any act upon the Airport that will invalidate or conflict with any fire or other casualty insurance policies covering the Airport or any part thereof.

C. Waste Disposal. Shall not dispose of or permit any other person to dispose of any waste material taken from or products used (whether liquid or solid) with respect to its aircraft into the sanitary or storm sewers at the Airport unless such waste material or products first be properly treated if required under applicable Environmental Laws, by equipment installed for that purpose or otherwise disposed of pursuant to law. Airline shall also obtain all government agency approvals, which are required under applicable Environmental Laws for disposal of such waste material, and shall immediately notify City's Aviation Department if a governmental agency approval is required for such disposal. All such disposal shall comply with applicable regulations of the United States Department of Agriculture and shall be in compliance with Section 16.03 of this Agreement.

D. Flammable Liquids. Shall not keep or store, during any 24-hour period, flammable liquids within the enclosed portion of the Premises in excess of Airline's working requirements during said 24-hour period, except in storage facilities especially constructed for such purposes in accordance with standards established by the National Board of Fire Underwriters and approved by a governmental agency with authority to inspect such facilities for safety compliance. Any such liquids having a flash point of less than 100 degrees Fahrenheit shall be kept and stored in safety containers of a type approved by the Underwriters Laboratories.

E. Food Sales or Distribution. Except as allowed in subsection 3.02.A.11 above, all serving, distribution or sale of food or drink by Airline is prohibited.

F. Aircraft Limited to Cargo Area. Airline shall be allowed to conduct all Cargo Operations in the Cargo Area as to all aircraft used by Airline or its Affiliate Airline Qualifying Flights. Such aircraft shall not be loaded, unloaded, serviced, repaired,

parked or stored at any area of the airport other than the Cargo Apron unless specifically authorized in advance in writing by City's Aviation Department.

G. Storage of Ground Vehicles and Equipment. Ground support vehicles and equipment shall be stored within Airline's preferential aircraft parking positions on the Cargo Apron or such other area leased for the exclusive use of Airline when said vehicles and equipment are not in use.

H. Truck Staging. The following shall apply to all ground equipment operated by Airline or its Subcontractors:

1. Drivers shall have any and all necessary driver's or motor vehicle operator's licenses or permits and shall not be under the influence of alcoholic beverages or drugs.

2. Every driver employed by Airline while on duty shall remain in his/her vehicle, except to assist with loading or unloading in the immediate vicinity of the vehicle.

3. No maintenance or repair work on vehicles shall be conducted on the Airport. Vehicles shall be removed from the Airport for repairs. If necessary, vehicles shall be towed off the Airport, at no expense to City, for maintenance or repair.

4. All laws, ordinances, and Rules and Regulations, which may be applicable to operations or conduct while at or on any part of the Airport shall be obeyed.

5. Directions as may be given by City regarding vehicular traffic in and around the truck staging area shall be obeyed. Drivers shall attend their vehicles at all times.

6. Airline shall not block access to loading docks of other tenants or City controlled loading docks at the Cargo Building nor shall access thereto be limited by ground vehicles or equipment used by Airline or its Subcontractors.

ARTICLE 4 PREMISES

Section 4.01. Cargo Building Space. City, for and in consideration of the rentals, fees and charges reserved in this Agreement and each of the covenants, conditions, and agreements set forth in this Agreement to be kept and performed by Airline, hereby leases to Airline for its exclusive use, and Airline hires and takes from City, upon the conditions, covenants, and terms set forth in this Agreement, all of which Airline accepts, twenty-nine thousand seven hundred twelve (29,712) square feet of space

inside the Cargo Building as shown in **Exhibit C** attached hereto and incorporated herein.

Revisions to **Exhibit C** shall be made by City from time to time during the Term and the revised exhibit shall replace the then current exhibit without an amendment to this Agreement. City shall provide Airline with a copy of the revised exhibit within thirty (30) days of such revision.

Section 4.02. Accommodation of Airline and Other Airlines. To maximize the use of all facilities at the Airport and to facilitate the entry of new Cargo Airlines, and the expansion plans of present Cargo Airlines ("Requesting Airlines"), Airline agrees, upon the request of Director, to accommodate such Requesting Airline in its leased Premises including its preferential aircraft parking position(s) on the Cargo Apron. To ensure compliance with this obligation and to provide open access and uniform treatment for all Cargo Airline tenants, the following procedure is hereby established.

A. In order to secure the use of the Cargo Area, a Requesting Airline shall:

1. Contact City to use the City-controlled Cargo Area including its aircraft parking position(s); or

2. Contact Airline and other Cargo Airlines to request the use of such Airline's leased Premises including its preferential aircraft parking position(s) under a sublease or handling arrangement pursuant to Article 12.

B. In the event no City-controlled Cargo Area or aircraft parking positions are available and the Requesting Airline has demonstrated to City that it has contacted all Cargo Area lessees and has pursued all reasonable efforts to secure accommodations without success, such Requesting Airline shall notify Director of its desire to be accommodated in the Cargo Area including the Cargo Apron.

C. Director shall then notify all Cargo Airlines in writing that, if Requesting Airline is not accommodated within fifteen (15) days from the receipt of said notice, Director shall select one of the Cargo Airlines to comply with the request for accommodation.

D. At the end of said fifteen (15) day period, if Requesting Airline has not been accommodated, Director will select Airline or another Cargo Airline ("Accommodating Airline") to accommodate the Requesting Airline, taking into consideration such factors as current utilization of Accommodating Airline's leased Premises, cargo apron facilities, schedule compatibility, union work rules, competitive relationships, and peak operational times. In that event, Director shall send written notice to such Accommodating Airline to begin accommodating the Requesting Airline

within thirty (30) days from the receipt of said notice. Director shall include in such notice the reason or reasons why such Accommodating Airline was selected.

E. Upon receipt of said notice, the selected Accommodating Airline may submit written comments to Director contesting its selection. Director shall reasonably consider any comments submitted, but the decision of Director shall be final.

F. Unless Director rescinds such selection within said thirty (30) day period, the Accommodating Airline shall accommodate the Requesting Airline by sharing its leased Premises including its preferential aircraft parking position(s), subject to the following conditions:

1. In case of a conflict between schedules of the Accommodating Airline or its Affiliate Airline Qualifying Flight, and the Requesting Airline, the Accommodating Airline and its Affiliate Airline Qualifying Flight shall have preferential use of its leased Premises including its preferential aircraft parking position(s).

2. The Accommodating Airline may assess the Requesting Airline reasonable fees and charges under an appropriate contract for services rendered to, or its leased Premises shared with, Requesting Airline, which fees and charges shall be based on Accommodating Airline's direct and indirect costs plus a reasonable allowance for administration and profit. If so requested by the Accommodating Airline, any such agreement shall (a) provide for appropriate indemnities from Requesting Airline in favor of the Accommodating Airline, to protect, defend, indemnify and make the Accommodating Airline whole from all losses, damages, costs and liabilities resulting from or arising out of the accommodation of the Requesting Airline by the Accommodating Airline, and (b) require the Requesting Airline to obtain the same levels and types of insurance as the City requires under this Agreement, and name the Accommodating Airline as an additional insured party.

3. City agrees that the Accommodating Airline shall have no duty to accommodate a Requesting Airline that either (a) refuses to enter into such agreement, or (b) having entered into such agreement, fails to discharge any payment obligation provided thereunder, and which failure is not remedied within ten (10) business days of receipt of Accommodating Airline's written notice.

4. Subject to the foregoing, Airline agrees that, if requested to accommodate another Cargo Airline, it will effect such accommodation on a timely, good faith basis and in a reasonable manner.

G. A Requesting Airline that does not qualify under Section 4.03 below for preferential aircraft parking position(s) may request the use of Accommodating Airline's preferential aircraft parking position(s). However, the Requesting Airline shall not be entitled to use the Accommodating Airline's preferential aircraft parking position(s) at

any time such preferential aircraft parking position(s) is in use by the Accommodating Airline or its Affiliate Airline Qualifying Flights.

Section 4.03. Aircraft Parking Positions.

A. Preferential Aircraft Parking Positions. Cargo Airline aircraft parking positions shall be assigned on a preferential use basis only to Signatory Airlines, subject to specific procedures to be established by City through subsequent written directives or Rules and Regulations, for use in the event of off-schedule flights (ground delays, air traffic control delays, extended ground time etc.) In developing such procedures for off-schedule flights, priority will be given to assigning Airline aircraft parking positions in closest proximity to Airline's preferential aircraft parking position(s).

Airline, and its Affiliate Airline Qualifying Flights, will have priority in using aircraft parking position(s) assigned to it on a preferential basis to accommodate its scheduled flights. However, City may assign such preferential aircraft parking position(s) for use by others in periods when not in use by Airline or its Affiliate Airline Qualifying Flight, so long as the preferential aircraft parking position(s) will be vacated in sufficient time to accommodate Airline's, or its Affiliate Airline Qualifying Flight, scheduled flights. Such sufficient time shall include such reasonable time Airline indicates it needs to prepare for its incoming scheduled flight.

The aircraft parking position(s) to be preferentially assigned to Airline on the Cargo Apron are designated in **Exhibit C** attached hereto and incorporated herein. City reserves the right to reassign one or more of Airline's preferential aircraft parking positions to another Signatory Airline if (1) Airline's scheduled average utilization for each such preferential aircraft parking position falls below one (1) flight per day, not including its Affiliate Airline Qualifying Flight, for the days Monday through Friday, and (2) City determines that there is a reasonable need for the preferential use of each such aircraft parking position by another Signatory Airline, and (3) City shall require such Signatory Airline to indemnify, defend, and hold harmless Airline and its Affiliate Airline Qualifying Flight from and against all losses, claims, and damages, including attorneys' fees and court costs, caused by that Signatory Airline, including claims attributable to that Signatory Airline's use of Hazardous Substances. Such reassignment will be evidenced by written notice from Director transmitting a revised **Exhibit C**.

In addition, City shall also be entitled to reallocate preferentially assigned aircraft parking positions if, based on operational conditions, there is a need for such reassignment. Such reassignment shall not result in the elimination of the number of preferential aircraft parking positions identified in **Exhibit C**. Such reassignment shall be evidenced by written notice from Director at least thirty (30) days prior to such change.

Revisions to **Exhibit C** shall be made by City from time to time during the Term and the revised exhibit shall replace the then current exhibit without an amendment to this Agreement. City shall provide Airline with a copy of the revised exhibit within thirty (30) days of such revision.

B. Non-Preferential Aircraft Parking Positions.

1. Two (2) Hour Initial Parking Period. Airline's aircraft, or its Affiliate Airline Qualifying Flights, parked at aircraft parking positions on the Cargo Apron, other than at its preferential aircraft parking position(s), shall be entitled to use such aircraft parking position(s) for a period of two (2) consecutive hours subject to the fee for such use calculated pursuant to Section 7.03 below.

2. Twenty-four (24) Hour Extended Parking Period. Following the two (2) hour initial parking period as described above, Airline and its Affiliate Airline Qualifying Flights shall be entitled to use non-preferential aircraft parking position(s) for extended parking periods of twenty-four (24) consecutive hours each, subject to the fee for such use calculated pursuant to Section 7.02 below, provided however that City shall be entitled to re-designate aircraft parking positions based on operational conditions during each twenty-four (24) hour extended parking period.

Section 4.04. Surrender of Premises. Airline covenants and agrees that on expiration or earlier termination of this Agreement, as hereinafter provided, it will peaceably surrender possession of its leased Premises in good condition, reasonable wear and tear, changes occasioned by condemnation, acts of God, fire, and other casualties excepted, and City shall have the right to take possession of said Premises. City shall not be required to give notice to quit possession at the expiration of this Agreement.

A. Removal of Personal Property. Airline shall have the right, on expiration or early termination of this Agreement and within thirty (30) days thereafter, to remove or dispose of all trade fixtures and equipment and other personal property placed by it at its expense, in, on, or about the Airport, subject to any valid lien that City may have thereon for unpaid rentals, fees or charges. Airline shall not be entitled to remove non-trade fixtures without the advance written consent of City, which consent shall not be unreasonably withheld or delayed.

B. Removal Damages. In the event Airline removes its trade fixtures and equipment and other personal property described in subsection 4.04.A above, or is allowed to remove its non-trade fixtures and removes such fixtures, Airline shall repair any damage caused by such removal. Removal shall be at Airline's sole expense.

C. Ownership of Fixtures Not Removed. In the event Airline fails to remove its property, City shall have the option of (1) removing Airline property at

Airline's expense, but only in the event Airline takes possession of such property immediately upon such removal; or (2) taking title to Airline property in lieu of removal on behalf of Airline. In the event City takes title to such property, City shall be entitled to all proceeds of sale of such Airline property as liquidated damages for the breach of this covenant to remove.

Section 4.05. Employee Parking Facilities. Airline shall have the right to the use of automobile parking facilities for its employees employed at the Airport in common with other employees. Such facilities shall be located in an area designated by Director.

Section 4.06. Access. Subject to the provisions hereof, the Rules and Regulations, and such restrictions as Airline may impose with respect to its Exclusive Use Premises, City hereby grants to Airline, its agents, suppliers, employees, contractors, , guests, and invitees, the right and privilege of free and unrestricted access, ingress, and egress to Airline's Premises. However, Airline's ingress and egress privileges shall not be used, enjoyed, or extended to any person engaging in any activity or performing any act or furnishing any service for or on behalf of Airline if that person is not specifically authorized to engage in such activity or perform such act or furnish such service under the provisions of this Agreement or the Rules and Regulations unless expressly authorized in writing by City in advance of such activity.

Section 4.07. Construction and Airport Expansion and Inconvenience. City shall have the right, at such times as may be reasonable under certain circumstances, to close, relocate, reconstruct, change, alter, or modify Airline's Premises or the means of access to Airline's Premises pursuant to this Agreement or otherwise, either temporarily or permanently for purposes of maintaining or constructing improvements, modifications, or expansions to the Cargo Building, including construction of Capital Improvements; provided, however, that City shall provide: (1) reasonable notice of the construction activities to Airline and (2) adequate alternative means of ingress and egress for Airline's Premises or, in lieu thereof, alternate premises with adequate means of ingress and egress. In the event that the construction constitutes a substantial obstruction to or impairment of Airline's use of its Premises or such alternate premises provided by City for more than thirty (30) consecutive calendar days, then Airline shall be entitled to an abatement of the rent for the days such obstruction exists. The amount of such abatement shall be the cost Airline incurs in additional expenses in order to continue operating its business at the adversely impacted location in substantially the same manner as it operated prior to such disruption. In the event alternate premises are provided to Airline by City, City shall pay all costs resulting from such relocation and the remaining rent abatement shall be limited to a reduction of rent based on the smaller square footage, should any reduction occur, charged at the same rate per square foot required pursuant to this Agreement for space Airline occupied prior to any move required under this Section. All costs of relocation or additional operating costs described above shall be considered a cost of the Capital Improvement and recovered through rates and charges calculated under the procedures of Article 7

of this Agreement. Such additional expenses shall include, by way of example only, the costs of any additional security services necessary and the costs associated with any additional manpower required to perform the functions of automated equipment that is temporarily unavailable for use by Airline. City agrees further that it shall use its best efforts to ensure that any alternative premises or alternative means of access, ingress and egress is similar in character, condition, size, and utility value to the Premises being vacated by Airline.

ARTICLE 5 CONSTRUCTION OF CAPITAL IMPROVEMENTS

Section 5.01. General. City has undertaken certain Capital Improvements at the Airport and the Reliever Airport and has financed these Capital Improvements in part with the net proceeds of Airport Bonds and may undertake additional Capital Improvements in accordance with the provisions of Section 5.02 below, and finance such additional Capital Improvements in part with the net proceeds of additional Airport Bonds. Rentals, fees and charges shall be calculated in accordance with the provisions of Article 7 of this Agreement to recover in part Capital Costs associated with funding sources to pay the costs of planning, designing, constructing, and financing Capital Improvements.

Section 5.02. Additional Capital Improvements and Sources of Funding. From time to time during the Term, City may undertake additional Capital Improvements to the Airport System. City intends to finance such additional Capital Improvements at City's discretion, from (1) the Capital Fund (as defined in subsection 5.02.B below), (2) the Airline Coverage Account (as defined in subsection 5.02.C below), (3) annual PFC revenues, (4) Grants-in-aid, and/or (5) the net proceeds of Airport Bonds, subject to the provisions of this Section 5.02 as set forth below. City shall use its best efforts to obtain federal Grants-in-aid for such additional Capital Improvements.

A Coordination Procedures for Future Improvements. Except for Capital Improvements approved by the Signatory Airlines prior to the Effective Date and those Capital Improvements listed in **Exhibit D**, as part of the annual budget process described in Section 7.09 below, or at such other time during a given Fiscal Year as circumstances may warrant, City shall notify the Signatory Airlines in writing of its intent to undertake additional Capital Improvements. Such notice shall include a general description of the proposed Capital Improvements; general information regarding the need for and benefits to be derived from the Capital Improvements; cost estimates; and the source of financing to be used. If requested by Airline or other Signatory Airlines, City shall convene a meeting to discuss its plans regarding such Capital Improvements. City acknowledges its intent to keep Airline and other Signatory Airlines fully informed with respect to its plans for additional Capital Improvements to the Airport System and

to give due consideration to Airline's comments and suggestions regarding such additional Capital Improvements.

B. Capital Fund. City shall maintain a Capital Fund for the deposit of all net revenues of the Airport System remaining after payment of Operation and Maintenance Expenses, debt service on Airport Bonds, and any other payments or fund deposits required by the Bond Ordinances. City shall use the Capital Fund for any lawful Airport System purpose including, at its discretion, payment of the costs of additional Capital Improvements. Amortization of Capital Improvements funded from the Capital Fund will be included in the recalculation of rentals, fees and charges as set forth in Article 7 below. Interest income on monies on deposit in the Capital Fund shall remain in the Capital Fund.

C. Airline Coverage Account. City shall maintain an Airline Coverage Account within the Capital Fund for the deposit of that portion of the Signatory Airline rentals, fees and charges paid to City attributable to the funding of twenty percent (20%) senior lien bond debt service coverage by the Signatory Airlines. City shall use the Airline Coverage Account on a priority basis to pay the costs of budgeted equipment purchases and capital outlays in the Terminal Building, Airfield, Cargo Area and Reliever Airport of the Other Areas' cost centers -- expenditures that would otherwise be charged to the rate base pursuant to the provisions of Article 7 below. To the extent available, monies on deposit in the Airline Coverage Account may also be used to pay the costs of additional Capital Improvements in said cost centers, or to redeem bonds allocable to, said cost centers. No amortization or other capital charges associated with expenditures from the Airline Coverage Account will be included in the recalculation of Signatory Airline rentals, fees and charges hereunder. Interest on monies in the Airline Coverage Account shall remain in the Capital Fund.

D. Airline Approvals. In the event, in any given Fiscal Year, City decides to fund any additional Capital Improvement not previously approved by the Signatory Airlines and not listed in **Exhibit D** from (1) the net proceeds of additional series of Airport Bonds or (2) the Capital Fund, and in the event such funding and Operation and Maintenance Expenses associated with such Capital Improvement, as estimated by City, would cause a projected increase in Cargo Airline rental rates or landing fee rates of more than ten percent (10%) over and above the rates of the impacted cost center(s) which would otherwise be projected if the Capital Improvement(s) was not undertaken (as reasonably projected by City for the first full Fiscal Year following completion of said Capital Improvement(s)), the following procedures shall apply:

1 City will notify Signatory Airlines of its intent to issue Airport Bonds or use the Capital Fund for the purpose of financing such Capital Improvement(s), as provided in subsection 5.02.A above. Within sixty (60) days of such notice, the Signatory Airlines shall meet and provide City with their concurrence or non-concurrence with respect to the proposed Capital Improvement(s) to be financed with

such bonds or the Capital Fund. Concurrence shall be deemed to have been received unless, within sixty (60) days of the date given in the original notice, concurrence is specifically withheld, in writing, with explanation by Signatory Airlines that represented sixty-six and seven tenths percent (66.7%) of the rentals, fees and charges paid by Signatory Airlines in the immediately preceding Fiscal Year.

When the Capital Improvement is an Airfield or Reliever Airport Capital Improvement, the rentals, fees, and charges used to determine the sixty-six and seven tenths percent (66.7%) referenced above shall consist of only the landing fees paid by the airlines who have entered into this Agreement and Signatory Airlines that have entered into the Scheduled Airline Operating Agreement and Terminal Building Lease.

For Capital Improvements in the Cargo Area, sixty-six and seven tenths percent (66.7%) of the rentals, fees and charges in the immediately preceding Fiscal Year from the Signatory Airlines who have entered into this Agreement.

No landing fees of Affiliate Airline Qualifying Flights paid directly by the operator of such Affiliate Airline Qualifying Flights to City shall be included in the concurrence process or the written disapproval process of Signatory Airlines under this subsection.

2. If concurrence is specifically withheld, City may at its discretion either abandon or proceed with the Capital Improvement(s). If City proceeds with the Capital Improvement(s), it may issue Airport Bonds or use balances available in the Capital Fund for such Capital Improvement(s). However, if City proceeds with the Capital Improvement(s), City shall not: (a) include debt service for such Airport Bonds; or, (b) include amortization for such Capital Fund balances used to finance the Capital Improvement(s) in the recalculation of Signatory Airline rentals, fees and charges under Article 7 below.

E **Substitution of Capital Improvements by City.** City shall provide the Signatory Airlines with written notification of any Capital Improvement that (1) is being substituted for a previously approved Capital Improvement on **Exhibit D**, as amended from time to time, or (2) is being substituted in the same Airport Cost Center as the Capital Improvement being replaced, or (3) has an estimated cost to be included in the Airport Cost Center rate base which is less than or equal to the Capital Improvement being replaced. The written notification will provide an opportunity for consultation, if requested by any Signatory Airline within thirty (30) days of the issuance of the written notification.

Each substituted Capital Improvement shall be considered approved by the Signatory Airlines unless fifty percent (50%) of the Signatory Airlines in number requests in writing to City that a substituted Capital Improvement be subject to the provisions of subsection 5.02.D above. For Cargo Area substituted Capital Improvements, only the Airlines executing this Agreement shall be included when determining if fifty percent

(50%) of the Signatory Airlines in number have requested that a substituted Capital Improvement be subject to the provisions of subsection 5.02.D above.

F. Capital Improvements Excluded from Signatory Airline Approval Procedures. Notwithstanding anything in this Article 5 to the contrary, the following classes of Capital Improvements are not subject to the procedures outlined in subsection 5.02.D above:

1. Any Capital Improvement required by any agency of the United States government having jurisdiction over activities at the Airport or by federal law or executive order;

2. Any Capital Improvement whose principal purpose is to repair casualty damage at the Airport or to Airport property;

3. Any Capital Improvement required to settle claims, satisfy judgments, or comply with judicial orders against the State or City by reason of ownership, operation, or maintenance of the Airport; and

4. Any Capital Improvement that is of an emergency nature as it relates to operational, security, or safety matters, as determined by City, in its sole and reasonable discretion.

5. Any Capital Improvement to Landside or Other Areas.

G. Aircraft Rescue Fire Fighting Facilities, Vehicles, Equipment, and Systems. Airline acknowledges that Aircraft Rescue Fire Fighting services required by 14 CFR Part 139 are provided at will by the United States Air Force (USAF) at no cost to City. Airline acknowledges that the USAF could cease provision of some or all of such services during the agreement term, thereby causing City to assume responsibility for such services. Such assumption of responsibility could result in City incurring capital expenditures for planning studies, buildings, vehicles, equipment, and/or related systems for the operation by City, the USAF or other third party. Although Capital Improvements related to meeting requirements described under this subsection shall be excluded from Signatory Airline Approval as provided in subsection 5.02.F above, City agrees to collaborate with the Signatory Airlines to determine the most appropriate and cost-effective manner to achieve the services required by 14 CFR Part 139.

ARTICLE 6 REPORTS AND RECORDS

Section 6.01. General. During the Term of this Agreement Airline agrees to provide all reports, and to retain all records as required hereunder.

Section 6.02. Monthly Activity Report. Airline shall furnish to City on or before the tenth (10th) day of each month, an accurate report of Airline's operations at the Airport during the preceding month, setting forth all data necessary to calculate the fees and charges due under this Agreement. Said report shall be in a format prescribed by City and shall include, but not necessarily be limited to: (1) Airline's total number of Aircraft Arrivals for the month by type of aircraft, the Maximum Certificated Gross Landing Weight of each aircraft, and the Total Landed Weight for the month; and (2) the total amount in pounds of cargo, mail, small package, and express delivery for such month. Airline agrees to cooperate with City in establishing procedures for electronic submission of the reports required in this Section.

A. Failure to Report. For any month Airline fails to furnish City with the Monthly Activity Report required in this Section 6.02 as necessary to calculate fees pursuant to subsection 7.12.A.2. below, such fees and charges, as provided for hereinafter, shall be determined by assuming that Airline's activity for such month was one hundred percent (100%) of activity during the most recent month for which such data are available for Airline. City shall provide Airline with an invoice for such fees and charges which shall be calculated based on this most recent data, provided however, that any necessary adjustment in such fees and charges shall be calculated after an accurate report is delivered to City by Airline for the month in question. Resulting surpluses or deficits shall be applied as credits or charges to the appropriate invoices in the next succeeding month. Failure to submit reports required in this Section 6.02 shall be a material breach of this Agreement.

B. Inspection and Maintenance of Records. All records, accounts, books, and data with respect to Airline's operations at the Airport maintained by Airline shall be subject to inspection and audit by City at all reasonable times upon reasonable notice. Such records shall be maintained by Airline for a period of not less than three (3) years beyond the end of Airline's fiscal year in which such records were created.

ARTICLE 7 RENTALS, FEES, CHARGES, AND PAYMENT PROVISIONS

Section 7.01. General. During the Term of this Agreement, in return for use of the Premises, facilities, rights, licenses, and privileges granted herein, Airline agrees to pay to City certain rentals, fees, and charges as set forth in this Article. Effective July 1, 2016, for Fiscal Year 2017, and for each Fiscal Year thereafter, rentals, fees, and charges will be reviewed and recalculated based on the principles and procedures set forth in this Article, as illustrated in **Exhibit E**, entitled "Illustrative Calculation of Airline Rentals, Fees, and Charges," attached hereto and incorporated herein as though set forth in full.

Section 7.02. Cargo Building Space Rentals. Airline shall pay to City for its Exclusive Use Space in the Cargo Building as shown in **Exhibit C**, monthly rents based

on the annual rental rates. Airline's Affiliate Airline Qualifying Flights shall not pay to City any Cargo Building Space Rental for the use of the Airline's Premises.

7.02.01 Calculation of Cargo Building Rental Rate. The Cargo Building Rental Rate that is in effect for Fiscal Year 2017 shall be ten and 75/100 dollars (\$10.75) per square foot per year. The Cargo Building Rental Rate shall be adjusted each Fiscal Year during the Term by an amount equal to the lesser of the increase in the Consumer Price Index for All Urban Consumers ("CPI-U") for the immediately preceding calendar year or 5%. In no event shall the Cargo Building Rental Rate for any subsequent Fiscal Year be less than the Cargo Building Rental Rate for the immediately preceding Fiscal Year.

Section 7.03. Extended Aircraft Parking Fee. All aircraft parked on the Cargo Apron, other than Airline's aircraft or its Affiliate Airline Qualifying Flights parked at its preferential aircraft parking positions, shall be subject to an Extended Aircraft Parking Fee in the amount of Fifty and 00/100 Dollars (\$50.00) for Airline or its Affiliate Airline Qualifying Flights. The Extended Aircraft Parking Fee shall be charged for each twenty-four (24) hour period after the initial two (2) hour period pursuant to subsection 4.03.B above.

7.03.01 Adjustment to the Extended Aircraft Parking Fee. The Signatory Airline Extended Aircraft Parking Fee shall be adjusted by City at the beginning of each Fiscal Year according to the percent change in the Cargo Apron Fee for the budgeted Fiscal Year when compared to the rate in use for the then-current Fiscal Year.

Section 7.04. Cargo Apron Fees. Airline shall pay to City monthly Cargo Apron Fees to be determined by multiplying the total square footage of Airline's preferential aircraft parking positions by the then current Cargo Apron Fee divided by twelve (12). Airline's Affiliate Airline Qualifying Flights shall not pay to City any Cargo Apron Fees for use of Airline's preferential aircraft parking positions.

7.04.01 Calculation of Cargo Apron Fee. Cargo Apron Fees shall be calculated in the following manner and as illustrated in **Exhibit E**.

A. City's estimated total "Cargo Apron Cost" for the Fiscal Year shall be calculated by totaling the following allocable amounts:

1. The total of estimated direct and indirect Operation and Maintenance Expenses.

2. The cost of any equipment purchases, capital outlays and unscheduled maintenance (net of any federal Grants-in-aid or PFCs received by City for

such purposes) to the extent such costs are not otherwise funded from the Airline Coverage Account.

3. An amount equal to Capital Costs.
4. An amount equal to the Bad Debt Expense.

B. The Cargo Apron Cost shall be divided by the total area available for all aircraft parking positions (exclusive of the perimeter taxiway and vehicle access areas) to determine the annual Cargo Apron Fee.

Section 7.05. Landing Fees. Airline and Airline's Affiliate Airlines shall pay to City monthly Landing Fees to be determined by multiplying the number of 1,000-pound units of Total Landed Weight for Airline during the month by the then-current Landing Fee Rate.

7.05.01 Calculation of Landing Fee Rates. Landing Fee Rates shall be calculated as illustrated in **Exhibit E** and described as follows.

A. City's estimated total "Airfield Cost" for each Fiscal Year shall be calculated by totaling the following allocable amounts:

1. The total of estimated direct and allocated indirect Operation and Maintenance Expenses.

2. The cost of any equipment purchases, capital outlays, and unscheduled maintenance (net of any federal Grants-in-aid or PFC revenues received by City for such purposes) allocable to the Airfield to the extent such costs are not otherwise funded from the Airline Coverage Account.

3. An amount equal to Capital Costs less the amount of any Airfield PFC revenue offset.

4. An amount equal to the Bad Debt Expense, if any.

5. The "Reliever Airport Deficit" calculated in accordance with subsection 7.05.01.B below.

6. The amount of any fine, assessment, judgment, settlement or extraordinary charge (net of insurance proceeds) required to be paid by City in connection with airline operations at the Airport, to the extent not otherwise covered by the indemnity provisions of Section 16.04 below, and to the extent that such amounts do not result from the negligence or willful misconduct of City; provided, however, that if such charge to the Airfield rate base would result in a material increase in landing fee

rates, City will use its best efforts to finance such amount from the Capital Fund or the net proceeds of additional Airport Bonds and recover through amortization charges or debt service, as appropriate.

7. The amounts required to be deposited to reserve accounts established under the Bond Ordinances.

8. The allocable portion of the Cargo Apron used as a taxilane.

B. The Reliever Airport Deficit shall be calculated by first totaling the following allocable amounts ("Reliever Airport Costs"):

1. The total of estimated direct and allocated indirect Operation and Maintenance Expenses.

2. The cost of any equipment purchases, capital outlays, and unscheduled maintenance (net of any Grants-in-aid or PFC revenues received by City) to the extent such costs are not otherwise funded from the Airline Coverage Account.

3. An amount equal to Capital Costs on Airport Bonds.

The Reliever Airport operating revenue will then be deducted from the Reliever Airport Costs to determine the Reliever Airport Deficit for each Fiscal Year, subject to the following additional provisions in this subsection 7.05.01.B:

4. Reliever Airport Costs shall not include those costs pursuant to subsections 7.05.01.B.1 through B.3 that are directly allocable to the commercial development of the aerospace technology park and/or the midfield area of the Reliever Airport ("Excluded Reliever Airport Costs").

5. Reliever Airport operating revenue shall not include the revenue received by City from the development of the aerospace technology park or the midfield area of the Reliever Airport ("Excluded Reliever Airport Revenue").

6. To the extent that the annual Excluded Reliever Airport Revenue is equal to or greater than the annual Excluded Reliever Airport Costs for the current fiscal year or the most recent historical year during the Term of this Agreement, City and Signatory Airlines mutually agree to discuss revisions to the calculation of the Reliever Airport Deficit to include the Excluded Reliever Airport Revenue and Excluded Reliever Airport Costs for the then remaining Term of the Agreement.

C. The total Airfield Cost shall be reduced by Non-Signatory Airline Airfield revenues (comprised of general aviation fuel flowage fees, non-scheduled airline flight fees, and U.S. Air Force flight fees) to determine the "Net Airfield Cost."

D. The Net Airfield Cost shall then be divided by the estimated Total Landed Weight of the Signatory Airlines and of Affiliate Airlines to determine the Landing Fee Rate per 1,000 pounds of aircraft weight for each Fiscal Year.

Section 7.06. Miscellaneous Fees. Airline shall pay to City reasonable "Miscellaneous Fees" for the following services provided by City to Airline and its Affiliates, and for those services as described below provided by Airline to other airlines:

A. Airline's use of City's U.S. Agricultural Department pathogen destructor, at the rates established by City as such rates exist at the time of the use.

B. Airline's subletting as outlined in Article 11 below, and Airline's provision of Ground Handling services, as outlined in Article 12 below, which fees shall be paid at the rate of five percent (5%) of the gross revenue derived by Airline from applicable subleases or provision of Ground Handling Services.

C. Office services, such as facsimile, photocopying, or telephone provided by City to Airline and all costs for Airport Identification (ID)/Access cards shall be paid to City by Airline upon receipt of invoices sent by City. Fees for such items shall be at the rate customarily charged by City's Aviation Department at the time such services or materials are obtained by Airline.

D. City reserves the right to assess a reasonable monthly fee for employee parking facilities. Except for parking designated by City that is within the Cargo cost center, no free parking privileges or reduced parking rates shall be provided by City to Airline or its employees. Such fees shall be subject to review and adjustment by City in consultation with Airline and other Signatory Airlines each Fiscal Year.

E. Lease of space as referenced in subsection 3.03.G. for storage of ground support vehicles and equipment, to be adjusted each fiscal year based on the Consumer Price Index methodology referenced in subsection 7.02.01.

F. Services provided by City to Airline other than those expressly provided for in this Agreement following Airline's written request for such services and agreement as to the cost of such services. Airline shall pay to City all fees associated with such services within thirty (30) days following receipt of invoice from City.

Section 7.07. Fees and Charges for Services Provided by Others. Except as expressly provided for herein, no further rentals, fees or charges shall be charged against or collected from Airline, its shippers and receivers of freight and express, and its suppliers of material, contractors, or furnishers of services, by City for the Premises, facilities, rights, licenses, and privileges granted to Airline in this Agreement. However, City expressly reserves the right to assess and collect reasonable fees from such

concessionaires and operators for vending, ground transportation, and other services provided for Airline by other concessionaires and operators (other than by another Signatory Airline or by its Affiliate Airlines).

Section 7.08. Accounting Records.

City shall establish and maintain accounting records that will document the following items for each of the Airport Cost Centers: (1) Revenues, (2) Operation and Maintenance Expenses, (3) Capital Costs, and (4) any other annual funding requirements pursuant to the Bond Ordinances.

Section 7.09. Coordination Procedures -- Budget Review and Calculation of Rentals, Fees and Charges.

A. Each year on or before January 1, Airline will submit to City its forecast Maximum Certificated Gross Landing Weight for the next Fiscal Year. If such forecast is not submitted by Airline, City will develop its own forecast of Airline's Maximum Certified Gross Landing Weight for use in the process of calculating rentals, fees, and charges for the next Fiscal Year.

B. City's annual budget, pursuant to City's budget process, shall be the basis for the estimates of Operation and Maintenance Expenses used in the final calculation of airline rentals, fees and charges for the next Fiscal Year.

C. Each year on or before February 1, if requested by the Signatory Airlines, City will submit to Airline a copy of its preliminary operating budget for the Airport for the next Fiscal Year. Airline will submit any comments it may have with respect to the preliminary operating budget on or before March 1 and City will give consideration to such comments in the course of City's annual budget process.

D. No later than June 15 of each year, the Director shall provide each Signatory Airline then currently operating scheduled passenger or cargo service at the Airport with a complete copy of the then proposed rates and charges, calculated in accordance with this Article, for the succeeding Fiscal Year. The Director shall consult with the airlines concerning the then proposed rates and charges. After giving due consideration to any comments provided by the airlines, the Director shall make any revisions to the proposed rates and charges as the Director determines, in his or her sole discretion, to be warranted as a result of consultation with the airlines or otherwise, and shall provide written notice to each airline then currently operating scheduled passenger or cargo service at the Airport of the new rates and charges to be effective on July 1 of the next fiscal year.

E. If, for any reason, the annual budget has not been adopted by City as of the first day of any Fiscal Year, airline rentals, fees and charges for that Fiscal Year will

be initially established based on the estimates provided by City in subsection 7.09.C above (or as may be adjusted based on comments and suggestions provided by Airline or other Signatory Airlines under subsection 7.09.D above). Such rentals, fees and charges will continue in effect until the annual budget has been adopted by City, at which time such rentals, fees and charges will be recalculated, if necessary, based on the approved annual budget of City and made retroactive to the first day of such Fiscal Year.

Section 7.10. Extraordinary Rate Adjustments of Cargo Apron Fees and Landing Fees. In the event that, at any time during a Fiscal Year, any of the components of Net Cargo Apron Cost or Net Airfield Cost, or the aggregate Total Landed Weight of all Signatory Airlines and Affiliate Airline Qualifying Flights, is estimated by City to vary ten percent (10%) or more from the estimates used in setting Cargo Apron Fees or Landing Fee Rates, such rates may be adjusted either up or down for the balance of such Fiscal Year, provided that such adjustment is deemed necessary by City to ensure that adequate revenues will be available from such fees to cover the estimated Net Cargo Apron Cost or Net Airfield Cost for such Fiscal Year.

Section 7.11. Year-End Adjustments of Cargo Apron Fees and Landing Fees to Reflect Actual Costs and Revenues. As soon as practical following the close of each Fiscal Year during the term of this Agreement, City shall furnish Airline with an accounting of the costs actually incurred, and revenues and other credits actually realized, during such Fiscal Year with respect to each of the components of the calculation of Cargo Apron Fees and Landing Fees in this Article 7.

The rentals, fees and charges associated with Affiliate Airline Qualifying Flights that were paid by the Signatory Airline to City shall be included in the calculation of the year-end adjustment pursuant to this Section. Signatory Airline Landing Fees paid by that airline providing the Affiliate Airline Qualifying Flights shall be subject to the provisions of this Section and such airline shall receive the year-end credit pursuant to subsection 7.11.A below or pay to City the year-end deficit pursuant to subsection 7.11.B below.

A Year-End Credit. In the event that Airline's rentals, fees and charges billed during the Fiscal Year exceed the amount of Airline's rentals, fees and charges required (as recalculated based on actual costs and revenues), such excess amount shall be credited to Airline in equal monthly installments over the remaining months of the then-current Fiscal Year. If a credit is due based on the final year of this Agreement and Airline terminates Airport service, the credit shall be paid in a lump sum in accordance with this subsection. Airline shall receive the credit under this subsection unless (1) there is a past due amount owed by Airline as determined by City or (2) Airline has not provided a Security Deposit to City pursuant to Section 6.10 above. Airline shall receive its year-end credit following payment of the past due amount to City or Airline has provided the Security Deposit, as determined by City.

B. Year-End Deficit. In the event that Airline's rentals, fees and charges billed during the Fiscal Year are less than the amount of Airline's rentals, fees and charges required (as recalculated based on actual costs and revenues), such deficiency shall be charged to Airline in equal monthly installments over the remaining months of the then-current Fiscal Year. If a deficiency is charged based on the final year of this Agreement and Airline terminates Airport service, Airline shall pay the deficiency in a lump sum in accordance with this subsection.

Section 7.12. Payment Provisions.

A. Time of Payment.

1. Cargo Building Space Rentals and Cargo Apron Fees pursuant to Sections 7.02 and 7.04 above, shall be due and payable on the first day of each month in advance without invoice from City.

2. Within fifteen (15) days following the last day of each month, Airline shall transmit to City payment for the amount of Landing Fees and Extended Aircraft Parking Fees pursuant to Sections 7.03 and 7.05 above, incurred by Airline during said month, as computed by Airline without invoice from City.

3. All other rentals, fees or charges set forth herein shall be due within thirty (30) days of the date of City's invoice for such rentals, fees or charges.

4. The acceptance by City of any payment made by Airline shall not preclude City from verifying the accuracy of Airline's report and computations or from recovering any additional payment actually due from Airline.

5. If the expiration or earlier termination of this Agreement occurs on a date other than the first or last day of a calendar month, rentals, fees and charges shall be prorated according to the number of days in that month during which all rights and privileges were enjoyed by Airline.

B. Place of Payment. Airline shall deliver payments of rentals, fees and charges to the office of Director, or at such other place as may be designated by City from time to time. Payment shall be made to the order of the "City of Albuquerque." Airline agrees to cooperate with City in the development of electronic transfer of funds as the preferred method of payment.

C. Late Payment Fees. If rentals, fees and charges required by this Agreement are not received by City on or before the date specified in this Agreement, Airline shall pay an interest charge to City of one and one-half percent (1½%) per

month (18% annually) for each month or partial month that any payment due is not received.

D. Charging Non-Signatory Airline Rates and Charges. Sixty (60) days from the date that written notification was sent to Airline of a Triggering Event, City shall have the right to impose Non-Signatory Airline rates and charges on Airline until the past due amounts owed to City have been received in full and Airline has provided a Security Deposit pursuant to Section 7.13 below.

E. Guarantee of Payment. Airline shall guarantee the payment of all rentals, fees and charges for its Affiliate Airline Qualifying Flights, and shall pay any amounts that are past due to City. Failure of Airline to pay any past due amounts pursuant to this Section shall (1) require Airline to submit a Security Deposit to City pursuant to Section 7.13 below, or (2) be an event of default pursuant to Section 14.01 below.

Section 7.13. Security Deposit. Airline shall be required to submit a Security Deposit in the event that it (1) has operated at the Airport for less than twelve (12) consecutive months from the Effective Date of this Agreement or (2) has received a written notice from City that a Triggering Event has occurred and sixty (60) days have passed since Airline has received such notice, and Airline has not cured the Triggering Event.

Such Security Deposit shall be in the form of a Bond or an irrevocable Letter of Credit ("LOC") issued exclusively to City, as required in **Exhibit F** attached hereto and incorporated herein.

Section 7.14. Net Agreement. This is a net agreement with reference to rentals, fees and charges paid to City. Airline shall pay all taxes of whatever character that may be lawfully levied, assessed, or charged by any governmental entity upon the property, real and personal, occupied, used, or owned by Airline, or upon the rights of Airline to occupy and use the Premises received hereby, or upon Airline's improvements, fixtures, equipment, or other property thereon, or upon Airline's rights or operations hereunder. Airline shall have the right at its sole cost and expense to contest the amount or validity of any tax or license as may have been or may be levied, assessed, or charged.

Section 7.15. Cargo Facility Charges. In the event that cargo facility charges or similar charges are enacted in accordance with Federal law, Airline agrees that this Agreement shall be amended, allowing such charges and providing a remedy for City if Airline fails to remit to City such charges under the implementing Federal regulations.

Section 7.16. Non-Waiver. The acceptance of rentals, fees and charges by City for any period or periods after a default of any of the terms, covenants, and conditions herein contained to be performed, kept, and observed by Airline, shall not be deemed a

waiver of any right on the part of City to terminate this Agreement for failure by Airline to perform, keep, or observe any of the terms, covenants, or conditions of this Agreement, and shall not be construed to be or act as a waiver by City of any subsequent default of any of the terms, covenants, and conditions herein contained to be performed, kept, and observed by Airline, and shall not be deemed a waiver of the right of City to terminate this Agreement pursuant to Article 15 of this Agreement.

ARTICLE 8 AUTHORIZING LEGISLATION FOR SALE OF BONDS

Section 8.01. General. In the event of conflicts between this Agreement and the Bond Ordinances, the Bond Ordinances shall govern.

Subject to the terms and provisions of the Bond Ordinances, it is mutually understood and agreed that, so long as any Airport Bonds are outstanding, the deposit and application of Airport Revenues shall be governed by the Bond Ordinances.

ARTICLE 9 OPERATION AND MAINTENANCE OF AIRPORT

Section 9.01. General. City agrees that it will, with reasonable diligence, prudently develop, improve, and at all times maintain and operate with adequate, efficient, and qualified personnel and keep the Airport in good repair including, without limitation, the Cargo Area and Airfield, and all appurtenances, facilities, and services now or hereafter connected therewith as the same relate to Airline's air transportation system; will keep the Airport and its aerial approaches free from obstruction and interference for the safe and proper use thereof by Airline; and will develop, maintain, and operate the Airport in all respects in a manner at least equal to the standards or rating established by the FAA and any other governmental agency having jurisdiction thereof, except for conditions beyond the control of City.

Section 9.02. Cargo Building.

A. City shall be responsible for maintenance of the roadway, water and sewer utilities to the Premises, truck staging area, Cargo Apron, and the roof, foundation, structural members, and exterior of the Cargo Building, except any improvements, facilities, and equipment constructed or installed by Airline.

B. City shall at all times maintain the public area of the Cargo Building in a neat, orderly, sanitary, and presentable condition, and shall keep such area adequately supplied, equipped (including directional signs), furnished, and decorated.

C. Airline shall at all times keep its Premises neat, orderly, sanitary, and presentable. Airline shall pay for all electric power used in its Exclusive Use Space, and

shall be responsible for relamping such Exclusive Use Space. Airline shall furnish its own janitorial service for such Exclusive Use Space and shall cause to be removed at Airline's own expense from such Exclusive Use Space all waste, garbage, and rubbish, and agrees not to deposit the same on any part of the Airport, except that Airline may deposit same temporarily in its Exclusive Use Space or in space designated by City in connection with collection for removal. Airline shall, at its own expense, transport all refuse from temporary storage to central depositories at locations designated by City.

D. Airline shall maintain the Cargo Apron Area contiguous to its preferentially assigned parking area in a neat, clean, and orderly condition, free from litter, debris, refuse, petroleum products, or grease that may result from activities of its employees, agents, or suppliers, and remove all oil and grease spillage, as is reasonably possible, that is attributable to Airline's aircraft or equipment from its aircraft parking positions.

E. Airline shall perform, at its sole expense, ordinary preventive maintenance and ordinary upkeep and repair of all facilities, personal property, trade fixtures, and equipment located in its Exclusive Use Space, including, but not limited to, fixtures, interior doors and windows, baggage conveyors and belts, floor coverings, and service counters.

Section 9.03. City's Right to Inspect and Make Repairs. City, by its authorized officers, employees, agents, contractors, subcontractors, and other representatives, shall have the right, upon reasonable notice, at such times as may be reasonable under the circumstances and with as little interruption of Airline's operations as is reasonably practicable, to enter upon Airline's Exclusive Use Space, accompanied by an authorized Airline representative, if practicable, for the following purposes:

A. City shall have the right but not the obligation to inspect such space to determine whether Airline has complied and is in compliance with the terms and conditions of this Agreement. Such inspections shall not constitute an inspection for safety, fire protection or security purposes. Inspection for safety, fire protection or security purposes shall be governed by Section 16.16 below.

B. Upon thirty (30) days' notice, but subject to force majeure delays pursuant to Section 10.04 below, to perform such maintenance, cleaning, or repair as City reasonably deems necessary, if Airline fails to perform its obligations under this Article 9. City shall be entitled to recover the reasonable cost of such maintenance, cleaning, or repair from Airline, plus a fifteen percent (15%) administrative charge by providing a reasonably detailed invoice to Airline for such services.

Section 9.04. Alterations, Improvements, Payment Bond.

A. Alterations and Improvements. Airline shall make no alterations, additions, improvements to, or installations on its Premises under this Agreement

without the prior written approval of City, which shall not be unreasonably withheld, conditioned, or delayed. Airline shall be solely responsible for payment of all such alterations, additions, improvements, or installations made by Airline.

Plans and specifications for such work shall be filed with and subject to the reasonable approval of Director and all work shall be done in accordance with local ordinances and state law.

All alterations, additions, improvements, or installations other than trade fixtures, equipment and other personal property shall become part of the realty and title shall vest with City upon completion of the installation or construction of such alterations, additions, improvements, or installations. Removal of trade fixtures, equipment, and other personal property shall be allowed only pursuant to subsections 4.04.A, B, and C above.

B. Payment Bond. Airline shall prior to erecting or placing improvements on its Premises, execute and deliver to City a payment bond with good and sufficient surety to be approved by City in a sum equal to the full contractual amount for such improvements, to insure City against loss by reason of any lien or liens that may be filed against the Premises or Airport property for the construction of such improvements.

Section 9.05. Debts, Liens, Mortgages. Airline shall pay promptly when due, all bills, debts and obligations incurred by Airline in connection with its operations or activities on its Premises, and shall not permit the same to become delinquent. Except as expressly approved by City, Airline shall not permit any mechanics' lien or materialmen's lien or any other lien to be attached to or be foreclosed upon the Premises or improvements thereto. Airline shall suffer no lien, mortgage, judgment, or execution to be filed against the Premises or improvements thereon. Notwithstanding the foregoing, Airline will have the right to contest, in good faith and with reasonable diligence, the validity of any lien or claimed lien, if Airline shall give to City such security as may be reasonably satisfactory to City to assure payment thereof and any interest thereon and to prevent any foreclosure of the lien or sale of the Premises or the Airport by reason of nonpayment thereof; provided further, however, that on final determination of the lien or claim for lien, Airline shall immediately pay any judgment rendered with all proper costs and charges and shall have the lien released and any judgment satisfied.

ARTICLE 10 DAMAGE OR DESTRUCTION OF PREMISES

Section 10.01. Damage or Destruction. If, for any reason Airline's Premises are damaged to such an extent that they are untenable in whole or in substantial part, then:

A. Minor Damage. If the repairs, rebuilding, or construction necessary to restore the Premises to its condition prior to the occurrence of the damage can, in the reasonable judgment of City, be completed within ninety (90) consecutive calendar days from the date on which the damage occurred (including time required for design, bidding, and award of a construction contract pursuant to City procedures), City shall so notify Airline, in writing, consult with Airline, and shall proceed promptly with such repairs, rebuilding, or construction at City's sole cost and expense, provided that Airline shall be responsible for, and bear the cost of, replacing and rebuilding all Airline improvements. In such event, Airline shall receive a pro rata abatement of the rental fees for the Premises under Section 7.02 above, based only on the reduction of usable square feet in Airline's Premises. If applicable, this abatement shall be allowed only for the period from the date of the occurrence of the damage to the date the Premises is ready for occupancy upon completion of repairs, rebuilding, or construction. Thereafter, the rental fees due under Section 7.02 above, shall be calculated without regard for the period such rental fees were reduced.

Notwithstanding the above provisions, if the damage is caused by the intentional or negligent act or omission of Airline, its officers, agents, employees, contractors, subcontractors, licensees or invitees, Airline shall be responsible for reimbursing City for the cost and expense incurred in such repair, rebuilding, or construction. In order to expedite such repair, rebuilding, or construction, Airline shall apply all insurance proceeds paid on account of such damage or destruction under the policies of insurance required in Section 16.04 below. If the insurance proceeds are not sufficient to pay the entire cost of such repairs, rebuilding, or construction, Airline shall pay the amount of any such deficiency and shall apply the same to the payment of the cost of the repairs, rebuilding, or construction. In the event the cause of the damage or destruction is by risk, which is or was uninsurable, then Airline shall have the same responsibility to provide the funds necessary to pay the cost of the repairs, rebuilding, or construction. In the event of such minor damage, there shall be no abatement of the rental fees payable by Airline to City under this Agreement.

B. Extensive Damage. If such repairs, rebuilding, or construction cannot, in the reasonable judgment of City, be completed within ninety (90) consecutive calendar days from the date on which the damage occurred (including time required for design, bidding, and award of a construction contract pursuant to City procedures), City, at its option, to be evidenced by notice in writing to Airline following consultation with Airline, may:

1. Seek Airline's consent and cooperation, and proceed promptly with said repairs, rebuilding, or construction at City's sole cost and expense, in which event abatement of rental fees shall be allowed, as described in subsection 10.01.A above.

Notwithstanding the above provision, in the event the Premises are destroyed or so damaged and rendered untenable as a result of the intentional or negligent act or

omission of Airline, its officers, agents, servants, employees, contractors, subcontractors, licensees, or invitees, City may repair, rebuild, or construct the Premises, and Airline shall be responsible for reimbursing City for the costs and expenses incurred in such repair, rebuilding, or construction. In order to expedite such repair, rebuilding, or construction, Airline shall apply all insurance proceeds paid on account of such damage or destruction under the policies of insurance required in Section 16.04 below. If the insurance proceeds are not sufficient to pay the entire cost of such repairs, rebuilding, or construction, Airline shall pay the amount of any such deficiency and shall apply the same to the payment of the cost of the repairs, rebuilding, or construction. In the event the cause of the damage or destruction is by risk, which is or was uninsurable, then Airline shall have the same responsibility to provide the funds necessary to pay the cost of the repairs, rebuilding, or construction. In the event of such extensive damage, there shall be no abatement of the rental fees payable by Airline to City under this Agreement.

2. Terminate the letting of the Premises, in which event the rental fees due under Section 7.02 above, shall be eliminated beginning from the date of the occurrence of the damage. City shall not be deemed in default under this Agreement in the event it elects to terminate the letting of the damaged or destroyed Premises, but if desired by Airline, City shall enter into negotiations with Airline for a new lease of another premises.

Section 10.02. Alternative Space. In the event repairs, rebuilding, or construction is required pursuant to Section 10.01 above, City shall use reasonable efforts to provide Airline with comparable alternative space, if necessary, during any repairs, rebuilding, or construction of the Premises. City shall advise Airline as soon as may be practicable regarding City's intention with respect to any necessary repairs, rebuilding, or construction.

In the event City provides alternative space to Airline, City shall be responsible for those costs directly associated with moving Airline to the temporary space and back to its restored Premises, except in the event where such repair, rebuilding, or construction is required as a result of the intentional or negligent act or omission of Airline, its officers, agents, employees, contractors, subcontractors, licensees, or invitees, in which case Airline shall bear entire cost of moving. Should larger square footage space be provided by City to Airline, rent shall not be greater than rent for Airline's space prior to relocation, unless Airline specifically requests a larger alternative space. Should smaller square footage space be provided by City to Airline, the rental fees due under Section 7.2 above, shall be reduced pro rata to the reduction of square footage of the alternative space. All reductions of rental fees shall be allowed only for the period from the date of the occurrence of the damage to the date the space is ready for occupancy upon completion of repairs, rebuilding, or construction. Thereafter, the rental fees due under Section 7.02 above, shall be calculated without regard for the period such rental fees were reduced.

Section 10.03. Limits of City's Obligations Defined. In the application of the provisions of Sections 10.01 and 10.02 above, City shall in no event be obligated to repair, rebuild, or construct the Premises to an extent greater than its original obligation to provide facilities and service to the Premises as set forth in this Agreement.

Section 10.04. Force Majeure. Except as expressly provided in this Agreement, neither City nor Airline shall be deemed to be in default hereunder if either party is prevented from performing any of the obligations, other than payment of rentals, fees and charges hereunder, by reason of strikes, boycotts, labor disputes, embargoes, shortages of energy or materials, acts of the public enemy, terrorism or threats of terrorism, weather conditions and the results of acts of nature, riots, rebellion, sabotage, or any other similar circumstances for which it is not responsible or which are not within its control.

ARTICLE 11 TRANSFER OF PREMISES BY ASSIGNMENT OR SUBLETTING

Section 11.01. General. Airline shall not assign, transfer, convey, sell, mortgage, pledge or encumber (hereinafter collectively referred to as "Assignment") or sublet its Premises without the advance written approval of City, which approval shall not be unreasonably withheld or delayed, and except as provided herein for Affiliate Airline Qualifying Flights.

If Airline fails to obtain advance written approval of any such Assignment or sublease, City, in addition to the rights and remedies set forth in Article 15 below, shall have the right to refuse to recognize such Assignment or sublease, and the assignee or sublessee shall acquire no interest in this Agreement or any rights to use the Premises.

A. Parent, Subsidiary or Merged Company Exception. The foregoing and the following provisions of this Article 11 shall not be interpreted to preclude the Assignment of this Agreement to a parent, subsidiary, Affiliate Airline, or merged company of Airline if such parent, subsidiary, Affiliate Airline, or merged company conducts an air transportation business at the Airport at which Airline is a Signatory Airline and such parent, subsidiary, Affiliate, or merged company assumes all rights and obligations hereunder. Written notice of such Assignment and assumption shall be provided by Airline to City, for City's approval that the Assignment and assumption is compliant with this subsection 11.01A, at least thirty (30) days prior to the effective date of such Assignment.

Section 11.02. City Approval of Assignments. City shall grant Airline the authority to assign its Premises, rights, and obligations hereunder, provided that, among other considerations:

A. The Assignment is for the entire leased Premises and is for the full remainder of the Term; and

B. The Assignment must require the assignee to accept and comply with all provisions of this Agreement, including but not limited to accepting Signatory Airline status; and.

C. City, in its sole discretion, determines that the proposed assignee is substantially as creditworthy as Airline.

Section 11.03. City Approval of Subleases. City shall grant Airline the authority to sublease a portion of its Premises to a Requesting Airline (not including Airline's Affiliate Airline Qualifying Flights, for which no consent is required), provided that, among other considerations:

A. The Requesting Airline is willing to become a Signatory Airline; and

B. The terms of the sublease do not conflict with the terms of this Agreement, and Requesting Airline is willing to provide Airline with a reasonable security deposit not to exceed three (3) month's rental, fees, and charges; and

C. City has determined that there is no available space or aircraft parking positions for lease directly from City by the Requesting Airline and the sublease contains a provision which permits the sublease to be terminated upon notice from City to the parties thereto of the availability of City controlled space or aircraft parking positions; and

D. Airline agrees to pay monthly to City an administrative fee of five percent (5%) of the gross revenue derived from such sublease pursuant to subsection 7.06.B. above.

Section 11.04. Assignment or Sublease Approval Process. Airline, when requesting an approval of an Assignment or sublease pursuant to Sections 11.02 and 11.3 above, shall include with its written request, a copy of the proposed Assignment or sublease. Any proposed Assignment or sublease shall provide, at a minimum, the following information: (1) the Premises to be assigned or sublet ; (2) if a sublease, the rentals, fees and charges required, provided however, that Airline may charge no more than one hundred fifteen percent (115%) of Airline's rentals for such portion of the Premises to be sublet; and (3) all other material terms and conditions of the Assignment or sublease. If approved by City, Airline shall submit a fully executed copy of such Assignment or sublease to City prior to the commencement of the Assignment or sublease.

Section 11.05. Airline to Remain Liable. Although City may approve Airline's request to sublease, Airline shall remain fully liable during the Term for the payment of all rentals, fees and charges due and payable to City for the subleased Premises, and fully responsible for the performance of all other obligations hereunder, unless otherwise agreed to by City.

ARTICLE 12 GROUND HANDLING SERVICES

Section 12.01. Ground Handling Services by Airline. City shall grant Airline the authority to provide Ground Handling Services for its own aircraft, for its Affiliate Airline Qualifying Flights, for other Signatory Airlines and their Affiliate Airline Qualifying Flights, for Non-Signatory Airlines, and for non-scheduled airlines, provided that, among other considerations:

A. Airline has received prior written consent of City to provide such services, which consent shall not be unreasonably withheld or delayed, provided however, that no consent shall be required from City for Airline to provide Ground Handling Services to its Affiliate Airline Qualifying Flights; and

B. Airline agrees to pay monthly to City, pursuant to subsection 7.06.B. above, an administrative fee of five percent (5%) of the gross revenues derived from such Ground Handling Services performed for Non-Signatory Airlines or non-scheduled airlines, provided however, that no administrative fee shall be required for Ground Handling Services performed for Airline's Affiliate Airline Qualifying Flights or for other Signatory Airlines and their Affiliate Airline Qualifying Flights; and

C. Airline guarantees payment of all Fees and Charges established by City for the aircraft operations of the Non-Signatory Airlines and non-scheduled airlines for which it provides Ground Handling Services at the Airport

In the event Airline provides Ground Handling Services to an aircraft without advance written consent of City, then Airline's insurance, as required in this Agreement, shall provide insurance coverage for all such aircraft operations, and such event shall constitute a material breach of this Agreement, and City shall have the right to terminate this Agreement based upon such breach, pursuant to the requirements of Article 15 of this Agreement.

Section 12.02. Ground Handling Services by Others. City shall grant Airline the right to contract with other companies, including Signatory Airlines, for Ground Handling Services for Airline's aircraft, provided that, among other considerations:

A. Airline has received advance written consent of City, which consent shall not be unreasonably withheld or delayed; and

B. Such other company, unless such company is a Signatory Airline, has entered into a Ground Handling Services operating agreement with City prior to the commencement of such Ground Handling Services.

ARTICLE 13 RELINQUISHMENT OF PREMISES

Section 13.01. Notice of Intent to Relinquish Premises. In the event Airline desires to relinquish any of its Premises, Airline shall provide written notice to City thirty (30) days in advance of such relinquishment and shall identify in such notice all areas it wishes to relinquish. City shall use its best efforts to lease such areas to another tenant, to the extent the proposed relinquished Premises is suitable for another tenant, or to allow an assignment or sublease of this Agreement as provided in Article 11 above.

Section 13.02. Non-Waiver of Responsibility. Airline shall continue to be solely responsible pursuant to this Agreement for the payment of all rentals, fees and charges related to the relinquished Premises pursuant to Section 13.01 above, until such time that another tenant commences payment for Premises pursuant to Section 13.03 below.

Section 13.03. Reduction of Rentals, Fees and Charges. Airline's rentals, fees and charges related to that portion of Airline's Premises taken by another airline or non-airline tenant, pursuant to such other tenant's agreement with City, shall be reduced in the amount of the rentals, fees and charges paid by such other tenant. This reduction shall begin only when such other tenant begins payment for the relinquished portion of Airline's Premises.

ARTICLE 14 DEFAULT BY AIRLINE

Section 14.01. Default by Airline: Fifteen (15) Day Cure Period. This Section shall govern Airline's failure to comply with the following provisions (hereafter "Events of Default"):

A. Payment of Airline's Rentals, Fees and Charges pursuant to Article 7 above;

B. Payment of Rentals, Fees and Charges for Airline's Affiliate Airline Qualifying Flights, if applicable, pursuant to Article 7 above;

C. Provide the Reports required in Article 7 above;

D. Provide and maintain the Security Deposit, if applicable, pursuant to Article 7 above;

- E.** Provide and maintain Insurance pursuant to Section 16.04 below.

In the event Airline fails to comply with any or all of the above provisions for a period of fifteen (15) days after receipt from City of written notice of an Event of Default, City may, without terminating this Agreement, enter upon Airline's Premises and shall have the right to improve and relet all or any part of it to others. Airline shall continue to be responsible for and shall pay all rentals, fees and charges required pursuant to this Agreement, provided, however, that Airline shall receive a credit for rentals, fees and charges received by City for the relet premises after first deducting all cost incurred by City for renovations and administrative fees not to exceed fifteen percent (15%) of all rentals, fees and charges received for the relet premises.

Section 14.02. City's Right of Recovery. At any time before or after City's entry upon Airline's Premises and the reletting of such Premises pursuant to Section 14.01 above, City may terminate Airline's rights under this Agreement pursuant to Section 15.1 below, without any restriction upon recovery by City for past due rentals, fees and charges or other obligations of Airline. City shall have all additional rights and remedies as may be provided to City by law.

ARTICLE 15 TERMINATION OF AGREEMENT

Section 15.01. Termination by City: Forty-five (45) Day Cure Period. City shall be entitled to terminate this Agreement for Airline's failure to cure the following:

- A.** Events of Default pursuant to Article 14 above;
- B.** Default by Airline in the performance of any covenant, agreement, or condition contained in this Agreement;
- C.** The cessation by Airline of the conduct of scheduled air service at the Airport unless such cessation of service is directly attributable to circumstances for which Airline is not responsible, and which are not within its control.

If Airline fails to cure any or all of the above provisions for a period of forty-five (45) days after receipt from City of written Notice to Cure, City shall have the right to terminate this Agreement by sending Airline written Notice of Termination. Termination of this Agreement shall take effect immediately upon Airline's receipt of the Notice of Termination, unless stated otherwise in the Notice of Termination. If, however, Airline shall have cured the deficiencies identified in City's Notice to Cure prior to Airline's receipt of City's Notice of Termination, then such Notice of Termination shall be of no force or effect.

Section 15.02. Right of Termination by Airline. Airline shall be entitled to terminate this Agreement at any time that Airline is not in default in its payments or other obligations to City hereunder, upon or after the occurrence of any of the following events, by sending City a written Notice of Termination:

A. Default by City in the performance of any covenant or agreement herein required to be performed by City and the failure of City to remedy such default for a period of sixty (60) days following receipt of Airline's written Notice of Termination for same;

B. The issuance by any court of competent jurisdiction of an injunction in any way preventing or restraining Airline's use of the Airport or any part thereof, for a period exceeding sixty (60) consecutive calendar days;

C. City's Abandonment of Airport for all scheduled airline service for the remaining Term.

**ARTICLE 16
GENERAL PROVISIONS**

Section 16.01. Rules and Regulations. Airline shall observe and obey all lawful and applicable executive instructions, administrative instructions, Airport security requirements, access control procedures, and other rules and regulations governing conduct on and operations at the Airport and use of its facilities promulgated by City from time to time during the Term hereof; provided, however, that all such Rules and Regulations shall be reasonable, and shall not be inconsistent with or contravene or limit any of the rights granted to Airline under this Agreement. City will provide Airline a reasonable opportunity to comment on new or revised Rules and Regulations prior to final promulgation. Copies of the Rules and Regulations, as adopted, shall be forwarded to Airline's properties representative. City additionally agrees that all Rules and Regulations so promulgated shall not conflict with any law or legally authorized rule or regulation of the FAA, or any other Federal or State agency, which is binding in law on Airline, as the same now are or may from time to time be amended or supplemented. City shall not unjustly discriminate against Airline in the enforcement of its Rules and Regulations.

Airline shall not violate, nor knowingly permit its agents, contractors, or employees acting on Airline's behalf to violate any such Rules and Regulations.

Nothing in this section or Section 16.02 below shall require Airline to comply with a local or state regulation, law, or other provision having the force and effect of law which is preempted by the federal Airline Deregulation Act, with the understanding that such

preemption, if any, would not limit City from carrying out its proprietary powers and rights as indicated in 49 U.S.C. §41713(b)(3).

Section 16.02. Compliance with Law. Airline shall not use the Airport or any part thereof, or knowingly permit the same to be used by any of its employees, officers, agents, sublessees, invitees, or licensees for any illegal purposes and shall, at all times during the Term of this Agreement, comply with all applicable regulations, ordinances, and laws of any city, county, or state government or of the U.S. Government, and of any political division or subdivision or agency, authority, or commission thereof which may have jurisdiction to pass laws or ordinances or to make and enforce rules or regulations with respect to the uses hereunder or the Premises.

Airline shall comply with and conform to all present and future statutes and ordinances, and regulations promulgated thereunder, of all federal, state, and other government bodies of competent jurisdiction that apply to or affect, either directly or indirectly, Airline or Airline's operations and activities under this Agreement.

Section 16.03. Environmental Requirements. Throughout the term of this Agreement, Airline shall comply with the environmental requirements as provided in **Exhibit G** attached hereto and incorporated herein.

Section 16.04. Insurance and Indemnification. Throughout the term of this Agreement, Airline shall procure and maintain insurance and shall indemnify City as required in **Exhibit H** attached hereto and incorporated herein.

Section 16.05. Non-Discrimination.

A. State and Local Compliance. Airline agrees that no person, on the grounds of race, color, religion, national origin, ancestry, sex, sexual orientation, gender identity, spousal affiliation, age, or physical or mental handicap, shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of the Airport or any improvements thereon or the furnishing of services thereon, and shall use the premises in compliance with all other requirements which are or may be imposed in the future by or pursuant to provisions of New Mexico statutes and City ordinances relating to the enforcement of civil rights and affirmative action programs, including but not limited to the New Mexico Human Rights Act and the Albuquerque Human Rights Ordinance, and City's affirmative action policies and practices.

B. Federal Compliance.

1. Airline, for itself, its heirs, personal representatives, 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 (a) no person on the grounds of race,

creed, color, national origin, sex, age, or disability will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (b) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, creed, color, national origin, sex, age, or disability will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, and (c) that Airline will use the premises in compliance with all other requirements imposed by or pursuant to the Nondiscrimination Acts and Regulations listed in the Title VI List of Pertinent Nondiscrimination Acts and Authorities attached hereto as **Exhibit I**.

2. In the event of breach of any of the above Nondiscrimination covenants, City will have the right to terminate this Agreement and to enter, re-enter, and repossess the premises and facilities thereon, and hold the same as if the Agreement had never been made or issued.

3. Airline will undertake any affirmative action program as required by 14 C.F.R. Part 152, Subpart E, as amended, to ensure that no person is excluded from participating in any employment, contracting, or leasing activity on the grounds of race, creed, color, national origin, or sex. Airline agrees that no person may be excluded on those grounds from participating in or receiving the services or benefits of any program or activity covered by the regulation. Airline will require its covered sub-organizations to provide assurance that they will also undertake affirmative action programs and require assurances from their sub-organizations, as required by 14 C.F.R. Part 152.

Section 16.06. Disability Laws and Accessibility Requirements. Airline shall comply with provisions of the Americans with Disabilities Act of 1990 ("ADA"), and federal regulations promulgated thereunder. Airline agrees to be responsible for knowing all applicable rules and requirements of the ADA and to defend, indemnify and hold harmless the City, its officials, agents and employees from and against any and all claims, actions, suits or proceedings of any kind brought against City as a result of any activities of Airline or its employees in violation of the ADA. When required by 14 C.F.R. Part 382 or any other laws, rules or applicable regulations, now or hereafter adopted by federal, state or city governments, Airline shall provide certain facilities for the movement of passengers with disabilities when enplaning and deplaning its aircraft. Airline shall be responsible for acquiring or making arrangement for the use of boarding assistance devices, when applicable, for its aircraft. Airline shall ensure that all lifts and other accessibility equipment used by it are maintained in proper working condition. Airline shall ensure that those personnel involved in providing boarding assistance through the use of lifts or other accessibility equipment are properly trained in the use and operation of the devices and appropriate boarding assistance procedures that safeguard the safety and dignity of passengers. Airline shall be solely responsible for and shall pay all costs related to its compliance with the boarding assistance requirements as well as any other requirements of the ADA.

Section 16.07. Security. Throughout the term of this Agreement, Airline and its employees shall strictly comply with the Airport Security Plan and all other Airport security regulations, as from time to time may be adopted or required by the TSA or other governmental agencies. If a breach of the Airport Security Plan or such other Airport security regulation occurs as a result of the acts or omissions of Airline and its employees in any manner or form at any time during the term of this Agreement, Airline shall immediately remedy such breach or assist City, TSA, or other governmental agencies in remedying such breach, regardless of the circumstances.

A. Airport Security Access Media (Card and/or Keys). As a requirement for the execution of this Agreement by Airline, and in order to perform the duties and obligations pursuant to the terms of this Agreement, Airline and its employees shall be required to obtain Airport Security Access Media (card and/or keys). Individuals who have been convicted of certain categories of crimes during the past ten (10) years will not be issued Airport Security Access Media. In addition, individuals who have been charged with any of these crimes will not be issued an ID/Access card until disposition of the charges has been resolved to the Director's satisfaction. Airline and its employees may not begin any work of any nature until the required Airport ID/Access Media has been issued. All persons who are issued an Airport ID/Access card must display it at all times while at the Airport.

All persons applying for Airport Security Access Media must pass a 10 year FBI fingerprint-based Criminal History Records Check ("CHRC"), a Security Threat Assessment ("STA"), and attend a security/ramp driving training class sponsored by City before such Airport Security Access Media will be issued. In conjunction with Airline's right and privilege to use the Airport, unescorted access may be authorized for Airline and its employees via card reader-controlled doors and gates to the AOA, the Airport's Security Identification Display Area ("SIDA"), and all secured areas of the Airport.

All Airport Security Access Media issued to Airline and its employees/contractors are the property of City. Airline shall be obligated to return to City all Airport Security Access Media in the event of: a) the termination of this Agreement, or b) the termination of employment or resignation of Airline's employee/contractor, or c) the suspension of Airline employee/contractor. Airline requesting Airport Security Access Media shall be fully responsible for the replacement cost of all lost, stolen, or non-returned Airport Security Access Media.

City reserves the right to confiscate or suspend any Airport Security Access Media of any person allegedly involved in any of the criminal acts enumerated under 49 C.F.R. Part 1542, or for a violation of the Airport Security Plan or other Airport security regulations, as from time to time may be promulgated. In addition, City, TSA, or other governmental agencies as may be authorized, shall have the right to search any person, including Airline and its employees who have been issued an Airport ID/Access card.

Airline shall implement and maintain, and shall cause its personnel (employees and contractors) to implement and maintain, at a minimum, the following security measures with regard to access control to and from the secured areas of the Airport:

- 1.** During all hours, access points to secure areas of the airport shall be secured and locked.
- 2.** Airline's personnel shall challenge any person in the SIDA not properly displaying an Airport ID/Access card.
- 3.** Airline shall restrict the activities of its personnel who are authorized to be on the AOA to the portion of those areas in which Airline is authorized to operate.
- 4.** Airline is responsible for ensuring that all of its personnel attend Airport Security Training, that they comply with all Airport security requirements and access control procedures outlined in the training, and, because security requirements and access control procedures change, that Airline's personnel are made aware of, and comply with, all changes to Airport security requirements and access control procedures of which the Airline is made aware.
- 5.** Airline shall not allow any non-badged person under its control to enter the AOA unless that person is properly escorted at all times.
- 6.** Airline shall participate in the Airport's Security Program and comply with applicable security procedures including, but not limited to, the wearing of Airport ID/Access cards by Airline's personnel.
- 7.** Airline shall immediately notify the aviation police of any suspicious activity observed on the AOA of the Airport.
- 8.** Any unresolved questions concerning Airport security shall be directed to the Aviation Department's Airport Security Coordinator.
- 9.** Airline agrees to pay City for any and all applicable Airport Security Access Media fees incurred in connection with Airline's use of the Airport.
- 10.** Airline further agrees to reimburse City for any and all penalties or fines levied against City by the Federal Aviation Administration, Transportation Security Administration, or successor agency due to Airline's failure to abide by the security measures described herein, provided however, Airline shall have the right, to the extent allowed pursuant to federal regulations, to defend against such agency action.

B. Director or his designated representative will periodically evaluate the procedures set forth in this Section, and make revisions as required to comply with federal regulations. Failure of Airline or Airline's personnel to fully comply with the procedures set forth in this Section or as later revised, shall be sufficient grounds for City to immediately take any necessary corrective measures until security acceptable to City is restored.

Section 16.08. Subordination to Agreements with the U.S. Government.

This Agreement is subject and subordinate to the provisions of any agreements heretofore or hereafter made between City and the United States, relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of federal rights or property to City for Airport purposes, or to the expenditure of federal funds for the improvement or development of the Airport, including the expenditure of federal funds for the development of the Airport in accordance with the provisions of the Federal Aviation Act of 1958, as amended, or in accordance with successive airport development acts. City covenants that it has no existing agreements with the United States in conflict with the express provisions hereof.

Section 16.09. Other Subordination. The Premises are, and this Operating Agreement is, subject to and subordinate to the terms of that certain deed from the United States of America to City dated December 15, 1962, and filed for record on December 19, 1962 in Volume 672 of Records, Folio 469 with the records of the County Clerk of the County of Bernalillo, New Mexico, wherein City agreed to hold title to certain property upon certain terms and which also provides that the United States may regain title should City not cure any default within sixty (60) days of notice thereof.

This Agreement is subject to and subordinate to any and all Bond Ordinances pertaining to Airport Bonds.

Section 16.10. No Exclusive Rights. Nothing herein contained shall be deemed to grant to Airline any exclusive right or privilege within the meaning of 49 U.S.C. § 40103(e) and FAA Advisory Circular 150/5190-6 or the most recent versions thereof for the conduct of any activity on the Airport, except that, subject to the terms and provisions hereof, Airline shall have the right to exclusive possession of the Exclusive Use Space leased to Airline under the provisions of this Agreement.

Section 16.11. Economic Non-Discrimination. In connection with the conduct of any aeronautical activity that involves furnishing services to the public at the Airport Airline agrees: (1) to furnish said services on a fair, equal and not unjustly discriminatory basis to all users, and (2) to charge fair, reasonable and not unjustly discriminatory prices for each unit or service, provided that Airline may make reasonable and non-discriminatory discounts, rebates or other similar price reductions to volume purchasers.

Section 16.12. Granting of More Favorable Terms.

A. General. Except as provided in subsection B below, City covenants and agrees not to enter into any lease, contract, or any other agreement with any other Cargo Airline providing scheduled cargo service at the Airport containing substantially more favorable terms than this Agreement, or to grant to any tenant engaged in scheduled air transportation, rights or privileges with respect to the Airport that are not accorded Airline hereunder, unless the same rights, terms, and privileges are concurrently made available to Airline.

B. Exceptions. Notwithstanding the above, City may:

1. permit non-scheduled itinerant aircraft operators to use the Cargo Area on a charge-per-use basis which charges may equate to less than Airline's effective cost per use;
2. reduce or waive fees and rentals for flights that provide air service between the Airport and another airport in the State of New Mexico; and
3. offer air service incentive programs and marketing programs for air service to points not in the State of New Mexico, consistent with FAA guidelines.

Section 16.13. Amendment and Waiver. This Agreement may be amended in writing as allowed by City Ordinance, except that Director shall have the authority to waive requirements and prohibitions or otherwise modify this Agreement by written supplement signed by the parties, to address changes in circumstances which will benefit the parties and the traveling public, provided that such modifications are non-discriminatory, and do not extend the term of the Agreement or modify rent and fee provisions. No custom or practice, or waiver of default, which may evolve between the parties in the administration of the terms of this Agreement, may be construed to waive or lessen the right of either party to insist upon the performance of the other party in strict accordance with the terms of this Agreement.

Section 16.14. Consents, Approvals, and Notices. All consents, approvals, and notices required by this Agreement shall be in writing and shall be given by registered or certified mail by depositing the same in the U.S. mail in the continental United States, postage prepaid, return receipt requested, or by personal delivery, or by facsimile transmission to the "FAX" number given below, provided that the completed transmission is electronically verified. Either party shall have the right, by giving written notice to the other, to change the address at which its notices are to be received. Until any such change is made, notices shall be delivered as follows:

City: Director of Aviation
Albuquerque International Sunport

Certified Mail: PO Box 9948
Albuquerque, New Mexico 87119-1048

Personal Delivery: 2200 Sunport Blvd. SE, 3rd Floor
Albuquerque, NM 87106

Telephone: (505) 244-7700
FAX: (505) 244-7793
Email Address: jhinde@cabq.gov

Airline:

**Certified Mail and
Personal Delivery:**

Telephone:
FAX:

With a copy to:

Telephone:

If consent, approval, or notice is given in any other manner or at any other place, it will also be given at the place and in the manner specified above.

The effective date of such consent, approval, or notice shall be the date of the receipt or refusal as shown by the U.S. Postal Service Return Receipt, or the date personal delivery is certified, or the date of electronic verification of the facsimile transmission, unless provided otherwise in this Agreement.

Section 16.15. Contract Interpretation.

A Severability. In the event any covenant, condition or provision herein is held to be invalid, illegal, or unenforceable by any court of competent jurisdiction, such covenant, condition or provision shall be deemed amended to conform to applicable laws so as to be valid or enforceable or, if it cannot be so amended without materially

altering the intention of the parties, it shall be stricken. If stricken, all other covenants, conditions and provisions of this Agreement shall remain in full force and effect provided that the striking of such covenants, conditions or provisions does not materially prejudice either City or Airline in its respective rights and obligations contained in the valid covenants, conditions or provisions of this Agreement.

B. Non-waiver of Rights. No waiver of default by either party of any of the terms, covenants, and conditions hereof to be performed, kept and observed by the other party shall be construed as, or shall operate as, a waiver of any subsequent default of any of the terms, covenants, or conditions herein contained, to be performed, kept and observed by the other party.

C. Gender, Singular/Plural. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

D. Captions and Section Headings. The captions, section headings, and table of contents contained in this Agreement are for convenience of reference only, and in no way limit, define, or enlarge the terms, scope, and conditions of this Agreement.

E. Entire Agreement. This Agreement represents the entire contract between the parties and, except as otherwise provided herein, may not be amended, changed, modified, or altered without the written consent of the parties hereto. This Agreement incorporates all of the conditions, agreements, and understandings between the parties concerning the subject matter of this contract, and all such conditions, understandings and agreements have been merged into this written Agreement. No prior condition, agreement, or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this written Agreement.

F. Relationship of Contract Documents. All documents attached to this Agreement or incorporated into this Agreement are complementary, and any requirement of one contract document shall be as binding as if required by all.

G. Exhibits, Certificates, Documents Incorporated and Attachments. Incorporation by Reference: All certificates, documents, exhibits, attachments, riders, and addenda referred to in this Agreement, including but not limited to the exhibits referred to in this Agreement, are hereby incorporated into this Agreement by reference and made a part hereof as though set forth in full in this Agreement to the extent they are consistent with its conditions and terms.

H. Applicable Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New Mexico, and the laws, rules and regulations of the City of Albuquerque.

L Successors. All covenants, stipulations and agreements in this Agreement shall extend to and bind the legal representatives, successors, and assigns of the respective parties hereto.

J Governmental Rights and Powers. Nothing in this Agreement shall be construed or interpreted as limiting, relinquishing or waiving any rights of ownership enjoyed by City in the Airport property, or waiving or limiting City's control over the management, operations or maintenance of property, except as specifically provided in this Agreement, or impairing, exercising, waiving, or defining governmental rights and the police powers of City.

K Cross References. References in the text of this Agreement to articles, sections or exhibits pertain to articles, sections or exhibits of this Agreement, unless otherwise specified.

Section 16.16. Inspection. City shall have the right, but not the obligation or duty, to inspect Airline's operations at all reasonable times for any purpose connected with this Agreement, in the exercise of City's governmental functions, and for fire protection, safety or security purposes.

The failure of City to inspect or monitor or give Airline notice of a default or a notice of a hazardous or unsafe condition with respect to Airline's operations under this Agreement shall not release Airline from its liability to perform its obligations under this Agreement or impose any liability on City.

Section 16.17. Quiet Enjoyment. Airline shall, upon payment of the rentals, fees and charges required hereunder and upon compliance with the terms, covenants, conditions, and obligations on the part of Airline to be performed and complied with hereunder, peaceably have and enjoy the rights, uses, and privileges of the Airport, its appurtenances, and facilities as granted herein and by the Rules and Regulations.

Section 16.18. Non-liability of Agents and Employees. No member, officer, agent, director, or employee of City or Airline shall be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement or because of any breach thereof or because of its or their execution or attempted execution.

Section 16.19. No Partnership or Agency. Nothing contained in this Agreement is intended or shall be construed in any respect to create or establish any relationship other than that of lessor and lessee, and nothing herein shall be construed to establish any partnership, joint venture or association or to make Airline the general representative or agent of City for any purpose whatsoever.

Section 16.20. Prudent Operation. City shall operate the Airport with due regard for the interests of the public and in such a manner as to produce revenues from concessionaires, other Airlines, public parking operations, and other commercial users of the Airport of a nature and amount as would reasonably be produced by a prudent operator of an Airport of similar size, use and activity, consistent with sound management principles and applicable law, in the interest of protecting the financial integrity of the Airport. City hereby acknowledges its obligation under the Bond Ordinances to apply and use all Airport revenues for the operation, maintenance, administration, development, financing, and retirement of debt of the Airport System.

Section 16.21. Generally Accepted Accounting Principles. Whenever any report or disclosure referred to in this Agreement consists, either in whole or in part, of actual, year-end financial information, said financial information shall be prepared in accordance with generally accepted accounting principles consistently applied, if applicable.

Section 16.22. Concerning Depreciation and Investment Credit. Neither Airline nor any successor of Airline under this Agreement may claim depreciation or an investment credit under the Internal Revenue Code, as amended, with respect to the Premises. Airline represents that it has made an election under Proposed Treasury Regulations Sections 1.103(n)-1T through 1.103(n)-6T not to claim such depreciation or investment credit with respect to the Premises and agrees that it will retain copies of said election in its records and will not claim any such depreciation or investment credit. City acknowledges receipt of a copy of said election and agrees that it will retain copies of said election in its records.

Section 16.23. Forum Selection. Any cause of action, claim, suit, demand, or other case or controversy arising from or related to this Agreement shall only be brought in a state district court located in Bernalillo County, New Mexico or in a federal district court located in New Mexico. The parties irrevocably admit themselves to, and consent to, the jurisdiction of either or both of said courts. The provisions of this Section shall survive the termination of this Agreement.

Section 16.24. Ethics and Campaign Practices. Airline agrees to provide the Board of Ethics and Campaign Practices of City of Albuquerque or its investigator (the "Board") with any records or information pertaining in any manner to this Agreement, whenever such records or information are within Airline's custody and are not confidential business records, or are not protected under attorney/client privilege, are germane to an investigation authorized by the Board, and are requested by the Board. Airline further agrees to appear as a witness before the Board as required by the Board in hearings concerning ethics or campaign practices charges heard by the Board. Airline agrees to require that all subcontractors employed by Airline for services performed for this Agreement shall agree to comply with the provisions of

this Section. Airline and its subcontractors shall not be compensated under this Agreement for its time or any costs incurred in complying with this Section.

Section 16.25. Fair Dealing. Airline covenants and warrants that the only person or firm interested in this Agreement as principal or principals is named in this Agreement and that no other person or firm has any interest in this Agreement, and this Agreement is entered into by Airline without collusion on the part of Airline with any person or firm, without fraud and in good faith. Airline also covenants and warrants that no gratuities, in the form of entertainment, gifts or otherwise, were, or during the Term of this Agreement, will be, offered or given by Airline, or any agent or representative of Airline, to any officer or employee of City with a view towards securing this Agreement or for securing more favorable treatment with respect to making any determinations with respect to performing this Agreement.

Section 16.26. Conflict of Interest. Upon execution of this Agreement, or within five (5) days after the acquisition of any interest described in this Section during the Term, Airline shall disclose in writing to City whether any City Councilor, Albuquerque Airport Advisory Board member, officer or employee of City has or hereafter acquires any direct, indirect, legal, or beneficial interest in Airline (not including stock ownership in Airline if Airline is a publicly traded company) or in any contract, lease, or agreement between City and Airline, or in any franchise, concession, right, or privilege of any nature granted by City to Airline in this Agreement or otherwise.

Section 16.27. Administration of Agreement. The Chief Administrative Officer or his authorized representative shall administer this Agreement for City.

Section 16.28. Approval of Agreement. This Agreement shall not become effective or binding until approved by the Albuquerque City Council and signed by the City of Albuquerque's Chief Administrative Officer.

Section 16.29. Savings. City and Airline acknowledge that they have thoroughly read this Agreement, including all exhibits thereto, and have sought and received whatever competent advice and counsel was necessary for them to form a full and complete understanding of all rights and obligations herein. City and Airline further acknowledge that this Agreement is the result of extensive negotiations between them and that this Agreement shall not be construed against either party by reason of that party's preparation of all or part of this Agreement.

{INTENTIONALLY LEFT BLANK}

IN WITNESS WHEREOF, City has caused this Agreement to be executed by its Chief Administrative Officer and Airline has caused the same to be executed by its appropriate and authorized officer.

City of Albuquerque:

By: _____

Robert J. Perry
Chief Administrative Officer

Date: _____

Recommended:

By: _____

James D. Hinde, C.M.
Director of Aviation

Date: _____

Airline: Cargo Airline

By: _____

Date: _____

Exhibit A
Albuquerque International Sunport ("Airport")



ALBUQUERQUE INTERNATIONAL SUNPORT

DATE OF PHOTOGRAPHY: DECEMBER 2013

Exhibit B
Airport Cost Center Plan



Airline Cost Centers

Airfield

Terminal Building

Loading Bridges

Baggage Claim

Cargo Building

Cargo Apron

Reliever Airport
(Airfield)

*Roadway and
other indirect
costs are shared
between the City
and the airlines*

Exhibit B

City Cost Centers

Landside Areas

Rental Car Center

Fuel Facility*

Reliever Airport
(Commercial
development)

Other Areas

*Airlines bear full financial responsibility through the terms of the Fuel Facility Lease and Agreement.

Exhibit C
Cargo Area and Premises

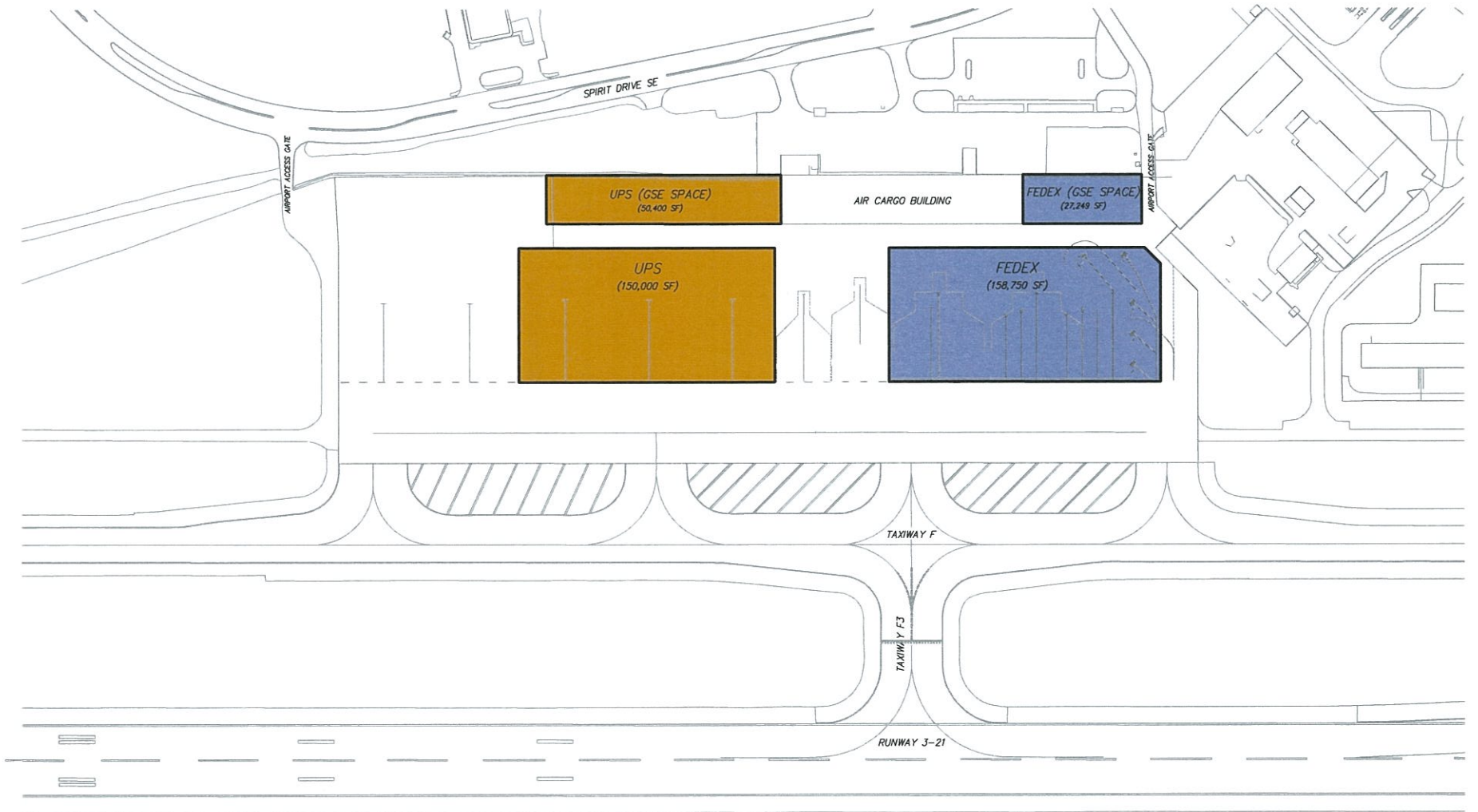


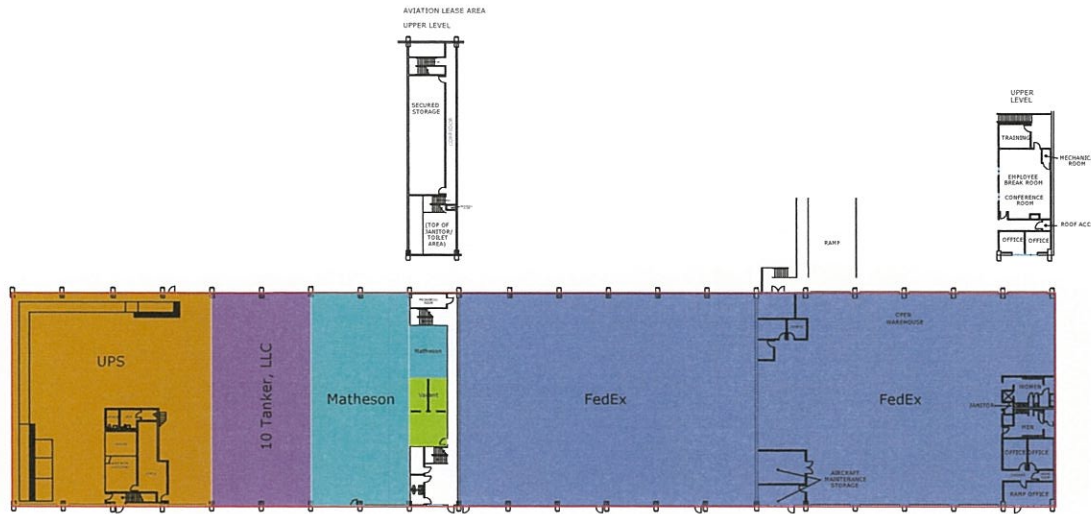
Exhibit C-1

Cargo Apron Area

July 2016

Albuquerque International Sunport





- UPS - 9,827 sq. ft.
 - 10 Tanker, LLC - 4,881 sq. ft.
 - Matheson - 4,823 sq. ft., 433 sq. ft.
- Vacant - 576 sq. ft.
 - FedEx - 14,842 sq. ft., 14,870 sq. ft.

Total Leased Space - 50,252 sq. ft.
 (Actual Square Footage)

Exhibit D
Capital Improvements

CAPITAL IMPROVEMENT PROGRAM

Fiscal Years 2016 to 2021

City of Albuquerque Aviation Department

	Project costs (escalated)	Percent of total	AIP grants (a)	Other grants	PFC revenues paygo (b)	Capital Fund (c)
Airfield projects						
Runway 3-21 high-speed turnout	\$4,228,000	2.9%	\$3,564,000	\$0	\$664,000	\$0
Taxiway A reconstruction	2,566,000	1.8%	2,163,000	-	403,000	-
Taxiway B reconstruction	12,835,000	8.9%	10,819,000	-	2,016,000	-
Taxiway E reconstruction	19,066,000	13.2%	16,071,000	-	2,995,000	-
Perimeter road reconstruction	4,701,000	3.3%	-	-	-	4,701,000
Sunport master plan update	1,213,000	0.8%	1,022,000	-	-	191,000
Purchase of new fire/rescue equipment (d)	3,713,000	2.6%	3,130,000	-	583,000	-
Subtotal	\$48,322,000	33.5%	\$36,769,000	\$0	\$6,661,000	\$4,892,000
Apron projects						
NW terminal/commuter apron reconstruction	\$3,409,000	2.4%	\$2,873,000	\$0	\$536,000	\$0
Pad 35 and RON ramp	12,665,000	8.8%	10,675,000	-	1,990,000	-
West ramp	4,727,000	3.3%	3,984,000	-	743,000	-
Subtotal	\$20,801,000	14.4%	\$17,532,000	\$0	\$3,269,000	\$0
Double Eagle II airfield projects						
Master plan update	\$1,045,000	0.7%	\$941,000	\$0	\$0	\$104,000
Runway 17-35 and Taxiway B extension	7,551,000	5.2%	7,173,000	194,500	-	183,500
Runway 17-35 ILS upgrades	2,251,000	1.6%	2,138,000	58,000	-	55,000
Runway 4-22 rehabilitation	265,000	0.2%	239,000	-	-	26,000
Airfield lighting upgrade	255,000	0.2%	230,000	-	-	25,000
Perimeter fence upgrade	260,000	0.2%	234,000	-	-	26,000
Snow removal equipment	124,000	0.1%	118,000	3,000	-	3,000
Subtotal	\$11,751,000	8.1%	\$11,073,000	\$255,500	\$0	\$422,500
Terminal Improvement Pre-Security (TIP) projects						
Mechanical upgrades	\$4,397,000	3.0%	\$0	\$0	\$3,737,000	\$660,000
Core terminal building improvements	29,900,000	20.7%	-	-	14,950,000	14,950,000
Police office renovation	1,442,000	1.0%	-	-	-	1,442,000
Fitness Center	212,000	0.1%	-	-	-	212,000
Subtotal	\$35,951,000	24.9%	\$0	\$0	\$18,687,000	\$17,264,000
Other terminal projects						
Access control improvements	\$13,793,000	9.6%	\$0	\$0	\$11,724,000	\$2,069,000
New federal inspection station	6,556,000	4.5%	-	-	4,917,000	1,639,000
Common use systems	240,000	0.2%	-	-	-	240,000
Access control office expansion	784,000	0.5%	-	-	-	784,000
IT office relocation	631,000	0.4%	-	-	-	631,000
Family assistance center	364,000	0.3%	-	-	-	364,000
Subtotal	\$22,368,000	15.5%	\$0	\$0	\$16,641,000	\$5,727,000
Roadway projects (e)						
Spirit Drive reconstruction	\$3,791,000	2.6%	\$0	\$0	\$0	\$3,791,000
Roadways signage replacement	1,306,000	0.9%	-	-	1,306,000	-
Subtotal	\$5,097,000	3.5%	\$0	\$0	\$1,306,000	\$3,791,000
Total	\$144,290,000	100.0%	\$65,374,000	\$255,500	\$46,564,000	\$32,096,500

(a) Including FAA Airport Improvement Program (AIP) Voluntary Air Low Emissions (VALE) program grants.

(b) Projects included in PFC application 4 and proposed to be included in a new future application subject to approval by the FAA.

Assumes continuation of \$4.50 PFC rate per eligible enplaned passenger.

(c) Includes amounts paid from the Airport Improvement and Airline Coverage accounts of the Capital Fund.

(d) Pending renegotiation of contract with U.S. Air Force and approval by the FAA.

(e) The roadway project costs are allocated to the terminal building (45%), the landside area (45%), and other areas (10%). Only costs allocated to the terminal building affect the airline rate base.

Exhibit E
Illustrative Calculation of
Airline, Rentals, Fees and Charges

Exhibit E.1
CALCULATION OF CARGO APRON FEE
 Albuquerque International Sunport
 Fiscal Years ending June 30

		Estimated 2017
Calculation of Cargo Apron Cost		
Operation and Maintenance Expenses	[A]	\$ 284,119
Equipment purchases, capital outlays, and unscheduled maintenance (a)	[B]	-
Capital Costs		
Debt Service (b)		\$ -
Amortization Charges		-
Capital Cost	[C]	\$ -
Bad Debt Expense	[D]	-
Cargo Apron Cost	[E=A+B+C+D]	\$ 284,119
Total area available for all aircraft parking positions (c)	[F]	482,630
Cargo Apron Fee	[G=E/F]	\$ 0.59

 Note: Capitalized terms are used as defined in the Cargo Airline Agreement.

(a) Net of any Grants-in-Aid or PFC revenues received by City for such purpose.

(b) Includes debt service coverage.

(c) Excludes the perimeter taxilane and vehicle access areas.

Exhibit E.2
CALCULATION OF LANDING FEE RATES
 Albuquerque International Sunport
 Fiscal Years ending June 30

		Estimated 2017
Calculation of Airfield Cost		
Operation and Maintenance Expenses (Direct and Indirect)	[A]	\$ 6,920,632
Equipment purchases, capital outlays, and unscheduled maintenance (a)	[B]	-
Capital Cost		
Debt Service		\$ 140,329
less: Airfield PFC Revenue Offset		-
Net Debt Service (b)		\$ 140,329
Amortization Charges		528,201
Capital Cost	[C]	\$ 668,530
Bad Debt Expense	[D]	-
Reliever Airport Deficit	[E]	836,000
Fines, assessments, judgements, settlements, extraordinary charge	[F]	-
O&M Reserve Account deposit		-
less: Amount paid with CFCs		-
O&M Reserve Account deposit paid with landing fees	[G]	-
Air Cargo Apron taxilane costs	[H]	-
Airfield Cost	[I=A+B+C+D+E+F+G+H]	\$ 8,425,162
Less: Nonsignatory Airline Airfield revenues		
Non-Signatory Airline Landing Fees		\$ (303,048)
U.S. Air Force flight fees		(50,000)
General aviation fuel flowage fees		(250,000)
Commuter apron fees		(4,000)
Subtotal	[J]	\$ (607,048)
Net Airfield Cost	[K=I+J]	\$ 7,818,114
Total Landed Weight of Signatory Airlines (1,000 lb. units) (c)	[L]	3,210,000
Signatory Airline Landing Fee Rate (per 1,000 lb. units)	[M=K/L]	\$ 2.44
Non-Signatory Airline Landing Fee Rate @ 115%	[=M*115%]	\$ 2.81

(a) Net of any Grants-in-Aid or PFC revenues received by City for such purpose.

(b) Includes debt service coverage.

(c) Includes Landed Weight for Affiliate Airline Qualifying Flights.

Exhibit F
Security Deposit Provisions

Exhibit F
Scheduled Cargo Airline Operating Agreement
and Cargo Building Lease

Security Deposit Provisions

Security Deposit Requirement. Airline shall be required to submit a Security Deposit in the event that it (1) has operated at the Airport for less than twelve (12) consecutive months from the Effective Date of this Agreement or (2) has received a written notice from City that a Triggering Event has occurred and sixty (60) days have passed since Airline has received such notice, and Airline has not cured the Triggering Event.

Form of Security Deposit. Such Security Deposit shall be a Bond or an irrevocable Letter of Credit ("LOC") in a form substantially the same as attached hereto and incorporated herein. The Bond or LOC shall expressly permit partial payment. The Bond or LOC shall be issued exclusively to City. When a bond is provided, such Bond shall be issued with City as obligee by a surety licensed to conduct business in the State of New Mexico and which has sufficient bonding capacity for the amount of the Bond and is named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in the Federal Register by the U.S. Treasury Department or its successor agency.

Document(s) evidencing this deposit shall provide that the same shall remain in full force and effect for a period of sixty (60) days following termination or cancellation of this Agreement as is herein provided. If payments required by Airline are not made in accordance with the payment provisions set forth in Section 7.15 of the Agreement, City shall have the right to forfeit, take, and use so much of such Security Deposit as may be necessary to make such payment in full and to exercise any other legal remedies to which it may be entitled. In the event of a partial draw, Airline shall immediately reinstate the Security Deposit to the full amount required herein.

Duration of Security Deposit Requirement. If Airline is required to provide a Security Deposit as indicated herein, this requirement shall remain in effect until the later of (a) twelve (12) months following City's receipt of full payment of any and all past due amounts from Airline following a Triggering Event, or (b) a twelve (12) month period during which Airline has remained current on all amounts due under this Agreement, as determined by City. In no case shall a Security Deposit requirement be in place for less than twelve (12) months.

PERFORMANCE BOND
(sample format)

Bond No. _____

KNOW ALL MEN BY THESE PRESENTS, that we _____, as Principal, and _____, as Surety, are held and firmly bound unto the **City of Albuquerque**, New Mexico, in the penal sum of _____ **Dollars (\$_____)** lawful money of the United States, to the payment of which well and truly to be made we bind ourselves and our heirs, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the above bonded Principal has signed a _____ ("Agreement") with the City of Albuquerque, dated _____.

NOW, THEREFORE, the condition of this obligation is such that, if the above bonded Principal shall faithfully perform each and every provision of the Agreement, then this obligation shall be void; otherwise, to remain in full force and effect.

This Performance Bond is to remain in force and to be binding upon Surety for a period of _____ year(s) from the date hereof, but may be continued from year to year by delivery of Continuation Certificate signed by Attorney-in-Fact and under seal of said Surety. City of Albuquerque is allowed to make a partial draw on this Bond, pursuant to Section ___ of the above-referenced Agreement. Further, this Performance Bond shall remain in full force and effect for a period of sixty (60) days following termination or cancellation of the above-referenced Agreement. The Surety shall have the right to terminate their liability upon giving the City of Albuquerque thirty (30) days notice by registered mail of its intention to so terminate, but said Surety shall remain liable for all sums due under the provision of this Bond up to and including the effective date of such termination and liability.

IN WITNESS WHEREOF, the Principal and Surety have hereunto set their Bonds and seals this _____ day of _____, _____.

ATTEST: Principal

By: _____
Title: _____

ATTEST: Surety

By: _____
Title: _____

Irrevocable Letter Of Credit
(sample format)

Letter of Credit No. _____

Date: _____

Amount: \$ _____

City of Albuquerque
Aviation Department
Albuquerque International Sunport
P. O. Box 9948
Albuquerque, NM 87119-1048

We hereby establish an Irrevocable Letter of Credit in your favor in the amount of:

_____ Dollars (\$ _____) for the account of

_____ available by your draft at sight when accompanied by:

[name of Airline]

A certificate signed by the Director of Aviation of the City of Albuquerque to the effect that _____ [name of Airline] _____ has failed to perform the terms, covenants and conditions to be performed as required by the _____ [exact title of the agreement] _____ ("Agreement") dated _____.

This Letter of Credit shall remain in full force and effect for a period of sixty (60) days following termination or cancellation of the Agreement.

Drafts under this credit must bear upon their face the words:

Drawn under _____ Bank

Letter of Credit No. _____ Dated _____.

We hereby agree with drawers, endorsers and bona fide holders of drafts negotiated under and in compliance with the terms of this credit that the same will be duly honored upon presentation to Drawee if drawn and negotiated on or before _____.

This credit is subject to the "Uniform Customs and Practice for Documentary Credits" as established by the International Chamber of Commerce, and such revisions thereof as are in effect as of the date of issuance.

[name of bank]

By: _____
Authorized Signature

Exhibit G
Environmental Requirements

Exhibit G
Scheduled Cargo Airline Operating Agreement
and Cargo Building Lease

Environmental Requirements

Section 1. Compliance with Environmental Laws. In connection with its operations or any other activity at the Airport, Airline shall at all times and in all respects comply with all applicable Environmental Laws including Federal, State and local laws, ordinances and regulations pertaining to Hazardous Substances, which are applicable to the Premises and Airline's operations at the Airport. Upon expiration or earlier termination of this Agreement, Airline shall cause all Hazardous Substances introduced to the Premises and the Airport by Airline or its agents or invitees to be removed from the Premises and the Airport as required by and in compliance with applicable Environmental Laws, and transported for use, storage, or disposal in accordance and in compliance with all applicable Environmental Laws.

Section 2. Waste Disposal. Shall not dispose of or permit any other person to dispose of any waste material taken from or products used (whether liquid or solid) with respect to its aircraft into the sanitary or storm sewers at the Airport unless such waste material or products first be properly treated if required under applicable Environmental Laws, by equipment installed for that purpose or otherwise disposed of pursuant to law. Airline shall also obtain all government agency approvals, which are required under applicable Environmental Laws for disposal of such waste material, and shall immediately notify City's Aviation Department if a governmental agency approval is required for such disposal. All such disposal shall comply with applicable regulations of the United States Department of Agriculture and shall be in compliance with Section 1 above or Section 3 below of this Agreement.

Section 3. Federal Stormwater Regulations.

A. Notwithstanding any other provisions or terms of this Agreement, Airline acknowledges that the Airport is subject to all applicable Federal, state, and local stormwater regulations. Airline further acknowledges that it is familiar with these stormwater regulations; that it may conduct or operate from time to time aircraft, vehicle, or ground support equipment maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling and lubrication), equipment cleaning operations, deicing activities, or other activities as defined in the federal stormwater regulations; and that it is aware that there are significant penalties for submitting false information, including fines and imprisonment for knowing violations.

B. Notwithstanding any other provisions or terms of this Agreement, including Airline's right to quiet enjoyment, City and Airline both acknowledge that close cooperation is necessary to ensure compliance with any stormwater discharge permit

terms and conditions, as well as to ensure safety and to minimize costs. Airline acknowledges that it may be necessary to undertake measures to minimize the exposure of stormwater to significant materials generated, stored, handled or otherwise used by Airline as defined in the federal stormwater regulations, by implementing and maintaining best management practices.

C. Airline acknowledges that City's stormwater discharge permit ("Stormwater Permit") is incorporated by reference into this Agreement and any subsequent renewals. Airline agrees to be bound by all applicable portions of said permit. The City agrees to utilize its best efforts to obtain reasonable and cost-effective terms and conditions, provide an opportunity for Airline to participate in the development of the terms of the Stormwater Permit and follow the procedures provided below in subsection D.

D. City shall provide Airline with written notice of those Stormwater Permit requirements that Airline shall be obligated to perform from time to time, including, but not limited to: certification of non-stormwater discharges; preparation of stormwater pollution prevention or similar plans; implementation of "good housekeeping" measures or Best Management Practices; corrective actions to identified findings or noted violations as a result of an inspection; and maintenance of necessary records. Such written notice shall include applicable deadlines. Airline within twenty (20) days of receipt of such written notice, shall notify City in writing if it disputes any of the Stormwater Permit requirements it is being directed to undertake. If Airline does not provide such timely notice, it is deemed to assent to undertake such requirements. If Airline provides City with written notice, as required above, that it disputes such Stormwater Permit requirements, City and Airline agree to negotiate a prompt resolution of their differences. Airline warrants that it will not object to City notices required pursuant to this paragraph for purposes of delay or avoiding compliance.

E. Subject to the dispute resolution provision of subsection D above, Airline agrees to undertake at its sole expense, unless otherwise agreed to in writing between City and Airline, those Stormwater Permit requirements for which it has received written notice from City. Airline warrants that it shall meet any and all deadlines that may be imposed on or agreed to by City and Airline. Airline agrees that time is of the essence.

F. City and Airline agree to provide each other upon request with any non-privileged information collected and submitted to any government entity(ies) pursuant to applicable stormwater regulations.

G. Airline agrees that the terms and conditions of City's Stormwater Permit may change from time to time. City will notify Airline and provide Airline with an opportunity to confer with City on any proposed changes to City's Stormwater Permit.

H. Airline agrees to participate, to the extent reasonably possible, in any City organized task force or other work group established to coordinate stormwater activities at the Airport.

I. All such remedies of City with regard to environmental requirements as set forth herein shall be deemed cumulative in nature and shall survive termination of this Agreement.

NOTE: For ease of reference, the definitions in the Agreement of "Environmental Laws" and Hazardous Substances are copied below.

Section 1.02. Definitions. The following words and phrases, wherever used in this Agreement, shall, for the purpose of this Agreement, have the following meanings:

- 19. "Environmental Laws"** shall be interpreted in the broadest sense to include any and all federal, state, and local statutes, ordinances, regulations, rules, policies, procedures, or guidelines having the force and effect of law now or hereafter in effect during the term of this agreement, as the same may be amended from time to time, which govern Hazardous Substances or relate to the protection of human health, safety or the environment, without limitation.
- 25. "Hazardous Substances"** shall be interpreted in the broadest sense to include any and all substances, materials, wastes, pollutants, oils or governmental regulated substances or contaminants as defined or designated as hazardous, toxic, radioactive, dangerous, or any other similar term in or under any of the Environmental Laws, including but not limited to asbestos and asbestos containing materials, petroleum products including crude oil or any fraction thereof, gasoline, aviation fuel, jet fuel, diesel fuel, lubricating oils and solvents, urea formaldehyde, flammable explosives, PCBs, radioactive materials or waste, or any other substance that, because of its quantity, concentration, physical, chemical, or infectious characteristics may cause or threaten a present or potential hazard to human health, the environment, or public welfare when improperly generated, used, stored, handled, treated, discharged, distributed, disposed, or released. Hazardous Substances shall also mean any substances regulated or defined as hazardous materials, hazardous wastes, or toxic substances under any applicable Environmental Laws.

EXHIBIT H
Insurance and Indemnification Provisions

Exhibit H
Scheduled Cargo Airline Operating Agreement
and Cargo Building Lease

Insurance and Indemnification

I. Insurance

A. General Requirements. For the term of this Agreement Airline shall, at its sole cost and expense, procure and maintain insurance in conformance with the requirements set forth in this Section. Airline will use insurance companies authorized to do business in the State of New Mexico and with a minimum A.M. Best rating of A-VII or its equivalent, or as approved by City, covering all operations under this Agreement, whether performed by it or its agents. Various types of required insurance may be written in one or more policies.

When requested by City, Airline shall allow City to review in the presence of Airline's insurance representatives any or all policies of insurance for the insurance coverage required herein. Policies of insurance shall be procured for all insurance required and coverage limits of such policies of insurance shall not be reduced or replaced in part or in whole by self-insurance, including self-insurance retention amounts, except as provided in subsection F below.

Airline shall not violate the terms or prohibitions of insurance policies required to be furnished by Airline. Airline shall promptly notify City of any claim or loss at the airport exceeding the amount of the deductible under any liability insurance policies, and certify that proper notice has been given the appropriate insurance carrier.

B. Additional Insured. With respect to all coverage required other than workers' compensation, the City shall be a certificate holder and endorsed as an additional insured or loss payee. All coverage afforded shall be primary and non-contributory with respect to operations provided. City shall have no liability for any premiums charged for such coverage, and the inclusion of City as an additional insured is not intended to, and shall not make City a partner or joint venturer with Airline in its operations on the Airport.

Coverage for an additional insured shall **not** be limited to its vicarious liability, and coverage shall extend to damage, destruction, and injury to City-owned or City-leased property and City personnel, and caused by or resulting from work, acts, operations, or omissions of Airline, its officers, agents, employees, and independent contractors on the Airport, notwithstanding City's status as an additional insured.

C. Insurance Certificates and Endorsements. Before commencing the Services and on the renewal of all coverage, Airline shall furnish to the Director of

Aviation, Albuquerque International Sunport, P.O. Box 9948, Albuquerque, New Mexico 87119-1048, all necessary certificates and additional insured endorsements in form satisfactory to the City showing that it has complied with this Section. All insurance certificates shall provide that thirty (30) days written notice, (7) days in the case of War & Allied Perils, ten (10) days for non-payment of premium, be given to the Director of Aviation before a policy is canceled, materially changed, or not renewed. Acceptance of the Certificates of Insurance and endorsements by City shall not relieve Airline of any of the insurance requirements set forth herein, nor decrease the liability of Airline. Neither Airline nor any contractors, assignees or other transferees of Airline shall begin any operations pursuant to this Agreement until the required insurance has been obtained and proper certificates of insurance delivered to the Director.

Airline agrees to provide written notice to the City of any material changes in coverage including cancellation and non-renewal as soon as possible.

D. Types and Amounts of Insurance. Types and amounts of insurance required in this Agreement are as follows:

1. Aircraft Liability Insurance in an amount not less than One Million Dollars (\$1,000,000.00) multiplied by the largest number of available passenger and airline crew seats on any single aircraft operated by Airline at the Airport, but no less than One Hundred Million Dollars (\$100,000,000.00) per occurrence, single limit for bodily injury and property damage including passengers, which shall include but not necessarily be limited to all of the following coverages: Liquor Liability, Contractual Liability, Hangarkeepers Legal Liability, Motor Vehicle Liability within the confines of the Airport, Mail and Cargo Legal Liability, and Fueling and Refueling (if such operations are conducted by Airline). Such coverage shall include War & Allied Perils.

2. Aviation Commercial General Liability Insurance including bodily injury and property damage, Premises, Products, Completed Operations, Mobile Equipment, Independent Contractors, Personal and Advertising Injury and Contractual Liability in an amount not less than such limit specified under paragraph D.1. Aircraft Liability above, except applicable market sub-limit for Personal and Advertising Injury. Such coverage shall include War & Allied Perils.

3. Commercial Automobile Liability Insurance covering owned, non-owned and hired autos in an amount not less than \$5,000,000 per occurrence, for bodily injury and property damage arising from activities on, or operations with respect to Airport premises, both on and off work.

4. Environmental Impairment Liability Insurance in an amount not less than \$5,000,000 per occurrence, as necessary to insure the indemnification provisions of this Agreement.

City reserves the right to review and modify the limits stated above at one-year intervals to give effect to the changing risk management environment, statutory requirements, and inflationary trends.

The liability insurance required in paragraphs 1-4 above must:

- a) be written on an occurrence basis.
- b) include coverage for Airline's contractual liability to City hereunder. Contractual liability coverage shall specifically insure the Indemnification provisions of this Agreement.
- c) include a severability of interest provision applicable to all insureds and additional insureds separately, except with respect to the insurer's limits of liability.

5. Workers' Compensation and Employers Liability Insurance.

Airline shall comply with the provisions of the New Mexico Workers' Compensation Act, the Subsequent Injury Act, and the New Mexico Occupational Disease Disablement Law. Airline shall procure and maintain during the term of this Agreement complete Workers' and Employer's Liability Insurance in accordance with New Mexico laws and regulations. Coverage shall include coverage permitted under NMSA 1978 § 52-1-10 for safety devices. The insurance shall also include a waiver of subrogation against the City and its employees and agents.

With respect to Workers' Compensation Insurance, if Airline elects to be self-insured, Airline shall comply with the applicable requirements of law. If any portion of the work is to be sublet, Airline shall require the subtenants similarly to provide such coverage (or qualify as a self-insured) for all the latter's employees to be engaged in such work. Airline hereby covenants and agrees that City, its officers, or employees will not be liable or responsible for any claims or actions occasioned by Airline's failure to comply with the provisions of this subparagraph and that the Indemnification provision of this Agreement shall apply to this paragraph. It is expressly agreed that the employees of Airline are not City employees for any purpose.

6. Commercial Property Insurance in an amount equal to the replacement cost of Airline's improvements and all personal property situated on the Airline's Premises.

7. Builders Risk Insurance during any period of construction or reconstruction for which Airline contracts. Airline shall carry, or shall require its contractor or contractors to carry, Builders Risk Insurance in an amount sufficient to insure the value of the work.

E. Minimum Insurance. The insurance requirements of this Agreement shall be the greater of (1) the minimum coverage limits specified in this Agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured. It is agreed that these insurance requirements shall not in any way act to reduce coverage that is broader or that includes higher limits than the minimums required here. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of Airline under this Agreement.

F. Self-Insurance Retention. In the event any of the insurance policies required in this Section (except as allowed by New Mexico law regarding Workers' Compensation) contain a self-insurance retention provision, for each such amount, Airline shall post a bond or an irrevocable letter of credit made exclusively for the benefit of City and held by a bank authorized to do business in New Mexico which is acceptable to City, or provide City with evidence that its net worth (as shown by independently audited financial statements) is in excess of the amount of the total self-insurance retentions.

II. Indemnification

A. General Indemnification. Airline agrees to defend, indemnify and hold harmless City and its officers, employees, and agents from and against all suits, actions, claims, demands, penalties, fines, liabilities, damages, costs and expenses (including but not limited to consultants' fees, reasonable fees of attorneys, court costs and litigation expenses) of whatever kind or nature, known or unknown, contingent or otherwise, brought against City because of any injury, including death at any time resulting from bodily injury, damages for care and loss of services, or damage received or sustained by any person, persons or property arising out of or resulting from any negligent act, error, or omission of Airline, its agents or its employees arising out of the operations of Airline under this Agreement, all except to the extent caused by the negligence, error, omission, or willful misconduct on the part of City, its officers, employees, or agents.

B. Environmental Harm Indemnification. Without limiting any provisions of this Agreement, Airline shall also defend, indemnify and hold City and its officers and employees harmless from and against all suits, actions, claims, demands, penalties, fines, liabilities, damages, costs and expenses (including but not limited to reasonable attorneys' and consultants' fees, court costs and litigation expenses) of whatever kind or nature, known or unknown, contingent or otherwise, brought against City arising out of or in any way related to the operations under this Agreement, all except to the extent caused by the negligence, error, omission, or willful misconduct on the part of the City, its officers, employees, or agents as follows:

1. any actual or alleged contamination by Hazardous Substances of the Premises or the Airport by Airline or its agents;
2. the presence, disposal, or release of Hazardous Substances by Airline or its agents at the Airport that is on, from or affects the soil, air, water, vegetation, buildings, personal property, persons, animals or otherwise;
3. any bodily injury (including wrongful death), property damage, or personal injury arising out of or related to the use of Hazardous Substances by Airline at the Airport;
4. any violation by Airline of any Environmental Laws.

Airline's obligations and liabilities under this subsection shall survive the termination of this Agreement and the transactions contemplated in this Agreement.

C. Limitations. To the extent, if at all, NMSA 1978 § 56-7-1 is applicable to this Agreement, this indemnification agreement shall not extend to or be construed to require Airline to, defend, indemnify and hold harmless City, its officers, employees, and agents from and against liability, claims, damages, losses or expenses, including attorneys fees, arising out of bodily injury to persons or damage to or contamination of property caused by, resulting from, or arising out of the negligence, error, omission, or willful misconduct of City, its officers, employees, or agents.

D. Scope of Indemnification. In addition, with respect to any claims, actions, suits, damages or judgments caused by or resulting from the negligent acts, omissions or operations of Airline, its agents, servants, or employees, Airline shall (1) investigate or cause the investigation of accidents involving such injuries; (2) negotiate or cause to be negotiated all claims made as may be deemed expedient by Airline, and defend, or cause to be defended, suits for damages, even if groundless, false or fraudulent, brought on account of such injuries or damages, in the name and on behalf of City; (3) pay and satisfy judgments finally establishing the liability of City in all actions defended by Airline pursuant to this Section 11.02; (4) resolve claims by performing remediation activities, to the extent authorized and required by applicable Environmental Laws, utilizing commercial/industrial cleanup standards and other engineered barriers and institutional controls; and (5) pay or cause to be paid: a) all costs taxed against City in any legal proceeding defended or caused to be defended by Airline as aforesaid; b) any interest accruing up to the date of payment by Airline; c) all premiums charged upon appeal bonds required in such proceedings; and d) all expenses incurred by City for investigation, negotiation, and defense, including but not limited to reasonable expert witnesses' and attorneys' fees incurred, should Airline fail to provide the defense and indemnification required herein.

By way of further clarification, these requirements do not apply to the extent the claims, actions, suits, damages, or judgments are caused by the negligence, error, omission, or willful misconduct on the part of City, its officers, employees, or agents.

E. Miscellaneous. City shall, promptly upon receipt, give Airline every demand, notice, summons, or other process received in any claim or legal proceeding contemplated herein. In the event City shall fail to give Airline notice of any such demand, notice, summons, or other process received by City and such failure to give notice shall result in prejudice to Airline in the defense of any action or legal proceeding contemplated herein, such failure or delay shall release Airline of its liability as set forth in this paragraph insofar as only the particular claim or legal proceeding is concerned, and only to the extent of such prejudice. Nothing herein shall be deemed a change or modification in any manner whatsoever of the method or conditions of preserving, asserting, or enforcing any claim or legal liability against City. This Section shall not be construed as a waiver of City's immunity. The provisions of this Section shall not be construed to prohibit Airline from seeking contribution or indemnity from any third party which may have caused or contributed to the event for which Airline indemnified City.

III. Non-liability of City. City shall not in any event be liable for any acts or omissions of Airline, or its agents, servants, employees, or independent contractors, or for any condition resulting from the operations or activities of Airline, Airline's agents, servants, employees, or independent contractors working for, or on behalf of, Airline.

City shall not be liable for Airline's failure to perform any of its obligations under this Agreement or for any delay in the performance thereof, nor shall any such delay or failure be deemed a default by City.

EXHIBIT I
Title VI List of Pertinent Nondiscrimination
Acts and Authorities

Exhibit I

Title VI List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this Agreement, Airline, for itself, its assignees, and successors in interest agrees to comply with federally mandated non-discrimination statutes and authorities, including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

(Source: Appendix E of Appendix 4 of FAA Order 1400.11, Nondiscrimination in Federally-Assisted Programs at the Federal Aviation Administration)

**ALBUQUERQUE INTERNATIONAL SUNPORT
SCHEDULED AIRLINE OPERATING AGREEMENT AND
TERMINAL BUILDING LEASE
AIRLINE**

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ALBUQUERQUE INTERNATIONAL SUNPORT
SCHEDULED AIRLINE OPERATING AGREEMENT AND
TERMINAL BUILDING LEASE

AIRLINE

This Scheduled Airline Operating Agreement and Terminal Building Lease ("Agreement"), is made and entered into by and between the **City of Albuquerque**, a New Mexico municipal corporation ("City") and **AIRLINE**, a corporation organized and existing under the laws of the state of _____ ("Airline").

In consideration of the rights, privileges, and mutual obligations contained in this Agreement, City and Airline agree as follows:

ARTICLE 1
RECITALS AND DEFINITIONS

Section 1.01. Recitals.

A. City owns and operates through its Aviation Department, the Albuquerque International Sunport ("Airport") as shown in **Exhibit A** located in the County of Bernalillo, State of New Mexico.

B. Airline is engaged in the business of air transportation of persons, property, cargo, small packages, and mail.

C. Airline desires to lease certain premises, use certain facilities, acquire certain rights and privileges from City in connection with its use of the Airport, and Airline does not have any past due debts under any lease or contract with the City when this Agreement is executed by the City, and City is willing to lease and grant the same to Airline upon the terms and conditions hereinafter stated.

D. City and Airline have the power and authority to enter into this Agreement.

Section 1.02. Definitions. The following words and phrases, wherever used in this Agreement, shall, for the purpose of this Agreement, have the following meanings:

- 1. "Accommodating Airline"** means those airlines described in Section 4.02.
- 2. "Affiliate" or "Affiliate Airline"** means any airline operating Affiliate Airline Qualifying Flights.

3. **"Affiliate Airline Qualifying Flights"** means those flights that have been approved by City in writing pursuant to this definition and (1) are flights at the Airport that are operated pursuant to a code-share or capacity purchase agreement with a Signatory Airline, on which all seats sold into and out of the Airport are under the exclusive control of Signatory Airline or (2) are flights by an airline that is wholly owned by Signatory Airline or Signatory Airline's parent company. At least thirty (30) days prior to the start of new Affiliate Airline Qualifying Flights, Signatory Airline shall provide City with written notice designating new Affiliate Airline Qualifying Flights, which designation is subject to City approval solely based on the requirements that the airline providing such Affiliate Airline Qualifying Flights holds an operating certificate in good standing from the FAA and: (1) meets the criteria established above, (2) establishes a mechanism with Airline to ensure Landing Fees and Miscellaneous Fees are paid by Airline, and (3) does not have an outstanding notice of default from City.
4. **"Agreement"** and **"Scheduled Airline Operating Agreement and Terminal Building Lease"** shall be interchangeable terms and both terms shall mean this Airline Operating Agreement and Terminal Building Lease.
5. **"Aircraft Arrival"** means any airline aircraft arrival at the Airport other than an unscheduled arrival of an aircraft that, having taken off from the Airport, is required to land at the Airport because of mechanical or operating problems or for any other reason of precaution or emergency.
6. **"Airline"** means the individual Signatory Airline that is a party to this Agreement.
7. **"Airline Terminal Building Revenue Credit"** means all revenue earned in the Terminal Building for food and beverage, retail, advertising and five percent (5%) of the rental car privilege fee.
8. **"Airline Terminal Building Revenue Credit Formula"** means the amount equal to the Airline Terminal Building Revenue Credit, excluding the five percent (5%) of the rental car privilege fee, multiplied by the ratio of Passenger Airline Rented Space to total Passenger Airline Rentable Space, which result plus the five percent (5%) of the rental car privilege fee will be allocated to Signatory Airlines as follows: (a) seventy percent (70%) to each Signatory Airline on the basis of the Enplaned Passengers for the Airline and its Affiliate Airline Qualifying Flights to the total amount of Enplaned Passengers for all Signatory Airlines and Affiliate Airline Qualifying Flights and (b) thirty percent (30%) to each Signatory Airline on the basis of the Rented Space for the Airline to the total Rented Space of all Signatory Airlines.

9. **"Airport"** means Albuquerque International Sunport, Albuquerque, Bernalillo County, New Mexico, including but not limited to those areas shown on **Exhibit A** attached hereto and incorporated herein as though set forth in full.
10. **"Airport Bonds"** means Airport revenue bonds which include senior, subordinate, and junior lien obligations issued under any Bond Ordinance enacted by City.
11. **"Airport Cost Centers"** means direct cost areas to be used in accounting for airport revenues and expenses and for calculating and adjusting certain rates, fees, and charges described herein, as shown in **Exhibit B** (Airport Cost Center Plan) attached hereto and incorporated herein as though set forth in full, as such areas now exist or may hereafter be modified or extended, and as more particularly described below.
 - A. **"Terminal Building"** means the passenger terminal building and related facilities at the Airport, including but not limited to associated curbside, canopy and landscaped areas, together with any additions and/or changes thereto.
 - B. **"Airfield"** means all facilities and land areas at the Airport required by or related to aircraft landings, take-offs, taxiing, and passenger airline aircraft parking, including runways, taxiways, approach and clear zones, aprons serving the Terminal Building, safety areas, in-field areas, landing and navigational aids.
 - C. **"Reliever Airport"** means Double Eagle II Airport, the general aviation airport owned and operated by City.
 - D. **"Landside Area"** means the commercial lane and automobile parking areas at the Airport.
 - E. **"Other Areas"** means all other areas of the Airport used for general aviation, hotels, rental cars, cargo, and other aviation- and non-aviation-related activities not included in any other Airport Cost Center.
12. **"Airport System"** means the Airport and the Reliever Airport.
13. **"Assigned Gates"** means those Gates described in subsection 4.03.C.
14. **"Bad Debt Expense"** means a past due amount that has been classified by City as uncollectible according to generally accepted accounting principles. Bad Debt Expense shall be adjusted by (a) Security Deposit withdrawals and (b) any

amounts historically classified as Bad Debt Expense that were subsequently recovered through the rentals, fees, and charges pursuant to this Agreement.

15. **"Bond Ordinances"** means the ordinances adopted by City authorizing the issuance and sale of the outstanding Airport Bonds, and any additional successor bond ordinance(s) that may be enacted by City with respect to future series of Airport Bonds.
16. **"Capital Costs"** means all capital costs of the Airport, including the following:
 - A. Debt service (net of PFC's) allocable to bond-funded Capital Improvements upon their Substantial Completion Date.
 - B. Debt service coverage allocated in accordance with stated bond covenant requirements (equal to twenty percent (20%) for senior lien obligations and ten percent (10%) for all Airport Bonds).
 - C. Amortization allocable to Capital Improvements funded with airport revenues other than the proceeds of Airport Bonds, PFC revenues, Grants-in-aid, or the Airline Coverage Account, based on the economic life for each Capital Improvement and calculated using an interest rate set to equal the average all-in cost of Airport debt sold by Airport during the calendar year when the Substantial Completion Date of a Capital Improvement is reached, or if no Airport debt was sold, set to equal comparable published average borrowing costs.
17. **"Capital Improvement"** means (1) the acquisition of land or easements; (2) the purchase of machinery, equipment, or rolling stock; (3) the planning, engineering, design, and/or construction of new facilities; (4) the performance of any extraordinary, non-recurring major maintenance of existing facilities that may be acquired, purchased, or constructed by City to improve, maintain, or develop the Airport; or (5) any single item which has a cost of \$100,000 or more and a useful life in excess of one year.
18. **"City"** means the City of Albuquerque, a municipal corporation organized and existing under the laws of the State of New Mexico.
19. **"Commuter Airline"** means any air transportation company holding an operating certificate in good standing from the FAA providing passenger service from the Terminal Building and operating aircraft of less than 25,000 pounds gross landing weight.

20. **"Departing Flight"** means an aircraft departure of any airline using a loading bridge in the Terminal Building and shall include an aircraft departure for each Affiliate Airline Qualifying Flight.
21. **"Deplaned Passengers"** means all Passenger Airline passengers deplaning and terminating at the Airport. Until actual passenger amounts are reported by Passenger Airlines, City will use originating passengers as a proxy for Deplaned Passengers.
22. **"Director"** means City's Director of Aviation or such other person designated by City to exercise functions with respect to the rights and obligations of City under this Agreement.
23. **"Effective Date"** means July 1, 2016.
24. **"Enplaned Passengers"** means all originating and connecting passengers boarded at the Airport.
25. **"Environmental Laws"** shall be interpreted in the broadest sense to include any and all federal, state and local statutes, ordinances, regulations, rules, policies, procedures, or guidelines having the force and effect of law now or hereafter in effect during the term of this agreement, as the same may be amended from time to time, which govern Hazardous Substances or relate to the protection of human health, safety or the environment, without limitation.
26. **"FAA"** means the Federal Aviation Administration of the U.S. Government or any federal agencies succeeding to its jurisdiction.
27. **"Federal Inspection Services Area or FIS Area"** means the area of the Terminal Building designated for use by the Federal Inspection Services of the United States Government, together with any additions and/or changes thereto.
28. **"Fiscal Year"** refers to City's fiscal year and means the twelve (12) month period commencing each July 1 and extending through June 30 of the following year.
29. **"Gate" or "Gates"** means Concourse A and Concourse B aircraft parking positions at the Terminal Building together with any additions and/or changes thereto.
30. **"Grants-in-aid"** means grants received from the Federal Aviation Administration, the Transportation Security Administration, the State of New Mexico, or other federal, state, or local entities to fund in all or in part Capital Improvements or O&M Expenses.

31. **"Ground Handling Service"** means services or contracting for services that include any of the following: on and off loading of passengers, baggage, mail or freight, servicing lavatory potable water and preconditioned air, cleaning the interior of aircraft, and emergency or required maintenance of aircraft.
32. **"Hazardous Substances"** shall be interpreted in the broadest sense to include any and all substances, materials, wastes, pollutants, oils or governmental regulated substances or contaminants as defined or designated as hazardous, toxic, radioactive, dangerous, or any other similar term in or under any of the Environmental Laws, including but not limited to asbestos and asbestos containing materials, petroleum products including crude oil or any fraction thereof, gasoline, aviation fuel, jet fuel, diesel fuel, lubricating oils and solvents, urea formaldehyde, flammable explosives, PCBs, radioactive materials or waste, or any other substance that, because of its quantity, concentration, physical, chemical, or infectious characteristics may cause or threaten a present or potential hazard to human health, the environment, or public welfare when improperly generated, used, stored, handled, treated, discharged, distributed, disposed, or released. Hazardous Substances shall also mean any substances regulated or defined as hazardous materials, hazardous wastes, or toxic substances under any applicable Environmental Laws.
33. **"Holdroom"** means those areas of Concourse A and Concourse B in the Terminal Building as shown in **Exhibit C** attached hereto and incorporated herein.
34. **"Maximum Certificated Gross Landing Weight"** means the FAA certificated maximum gross landing weight in thousand-pound units of each aircraft operated by Airline at the Airport.
35. **"Non-Preferential Gate Use"** means the use of any Gate by a Passenger Airline when the Gate is not an Assigned Gate or Preferential Use Gate of a Signatory Airline.
36. **"Non-Signatory Airline"** means a Passenger Airline holding an operating certificate in good standing from the FAA that has not executed this Agreement.
37. **"Operation and Maintenance Expenses"** or **"O&M Expenses"** means all reasonable and necessary current expenses of City, paid or accrued, of operating, maintaining, and repairing the Airport; and the term may include at City's option (except as limited by law), without limiting the generality of the foregoing, legal and overhead expenses of the various City departments directly related and reasonably allocable to the administration of the Airport (which expenses, if so charged as an operation and maintenance expense by City, shall be determined in accordance with City-wide administrative cost allocation plan

then in effect), insurance premiums, the reasonable charges of any paying agents and any other depository bank appertaining to the Airport, contractual services, professional services required by the Bond Ordinances, salaries and administrative expenses, labor, and the cost of materials and supplies used for current operation, but shall not include any allowance for depreciation, payments in lieu of taxes, liabilities incurred by City as the result of its negligence or willful misconduct in the operation of the Airport, or other ground of legal liability not based on contract, and shall not include the costs of improvements, extensions, enlargements or betterments, or any charges for the accumulation of reserves for capital replacements.

38. **"Overnight Aircraft Parking Fee"** means the fee established in Section 7.04.
39. **"Passenger Airlines"** means Signatory Airlines, Non-Signatory Airlines, and Affiliate Airlines providing air transportation of passengers, excluding Commuter Airlines.
40. **"Passenger Facility Charges"** or **"PFC"** means the federally approved Passenger Facility Charge remitted to Airport pursuant to PFC Regulations, as authorized by an approval from the City Council and the FAA to impose and use a PFC at a certain level and use the revenues collected from the PFC for FAA-approved projects, bond financing and interest costs at the Airport.
41. **"Passenger Security Screening Fee"** means the fee established in Section 7.07.
42. **"PFC Regulations"** means the regulations under 14 CFR Part 158 as authorized by 49 U.S.C. § 40117, as they currently exists or may be amended during the Term of this Agreement.
43. **"Preferential Use Gates"** means those gates described in subsection 4.03.A.
44. **"Premises"** means the space in the Terminal Building and any other areas leased to or used by Airline under this Agreement, separated into five categories described in Section 4.01 of this Agreement.
45. **"Rentable Space"** means the space in the Terminal Building available for lease, as determined by the City, to Passenger Airlines, concessionaires, and other rent-paying tenants. Rentable Space does not include any space available for lease by Commuter Airlines, curbside check-in space unless the space is leased by an airline, or any space used by governmental agencies (such as U. S. Customs and Border Protection, Transportation Security Administration, or local law enforcement agencies) to carry out their operations at the Airport for which the City receives no rent.

46. **"Rented Gates"** means Preferential Use Gates that are rented by Signatory Airlines on Concourse A and Concourse B in the Terminal Building.
47. **"Rented Space"** means the portion of Rentable Space in the Terminal Building leased to airlines, concessionaires and other tenants. Rented Space for airlines shall exclude areas for explosive detection and explosive trace detection systems.
48. **"Requesting Airline"** means those airlines described in Section 4.02.
49. **"Rules and Regulations"** means those lawful rules and regulations, pursuant to Section 16.01 of this Agreement.
50. **"Security Deposit"** means the amount reasonably estimated by the City equal to the most recent three (3) months of revenue due to City, for (1) Airline's rentals, fees, and charges pursuant to this Agreement plus (2) Airline's PFC revenues. Notwithstanding the foregoing, upon written notification of City, Airline shall modify the amount of such Security Deposit to a dollar amount equal to three (3) months of the reasonably estimated amount to be invoiced to the Airline plus PFC revenues to be received by Airline in the same Fiscal Year.
51. **"Signatory Airline"** means an entity holding an operating certificate in good standing from the FAA providing scheduled air transportation of passengers, property, and/or mail by air to and from the Airport, that has executed an Agreement with the City similar to this Agreement. To qualify as a Signatory Airline, a Passenger Airline must lease enough Terminal Building premises to process its passengers with reasonable efficiency, to include at least one gate and associated Holdroom space, one ticket counter position and associated office space, and one half of a baggage room makeup area.
52. **"Substantial Completion Date"** means the date that a project is ready to be used for its intended purpose, as determined by City.
53. **"Terminal Building Space Rental Rate"** means the per square foot rate defined in Section 7.02.02 of this Agreement.
54. **"Total Landed Weight"** means the sum of the Maximum Certificated Gross Landing Weight for all Aircraft Arrivals of an airline over a stated period of time. Said sum shall be rounded to the nearest thousand pounds for all landing fees.
55. **"Triggering Event"** means (1) Airline has failed to make payments to City of any rental, fee, or charge, or file with City any report within thirty (30) days after the due date for payment and reporting pursuant to this Agreement, or (2) Airline has failed to pay to City any rental, fee, or charge for its Affiliate Airline Qualifying Flights within thirty (30) days after the due date of such payment pursuant to Section 7.15 of this Agreement.

ARTICLE 2 TERM

Section 2.01. Term. The Term of this Agreement shall begin on July 1, 2016, and end June 30, 2021 (hereafter the "Term"), and the rentals, fees, and charges established in this Agreement shall apply to said Term regardless of the Effective Date of this Agreement.

Section 2.02. Holding Over. Holding over by Airline following the expiration of the Term, without the consent of City, shall not operate to extend or renew this Agreement. Any such holding over shall be construed as a month-to-month tenancy and shall be on the same terms and conditions in effect on the expiration date of this Agreement; provided, however, that Airline shall not be entitled to Signatory Airline rentals, fees, and charges during said month-to-month tenancy and shall pay the non-signatory rentals, fees and charges established by City.

ARTICLE 3 RIGHTS AND PRIVILEGES OF AIRLINE

Section 3.01. Use of the Airport. Airline, its employees, passengers, guests, patrons, and invitees shall have the right to the use in common with other duly authorized users of the Airport and appurtenances, together with all facilities, improvements, equipment, and services that have been or may hereafter be provided for common use at or in connection with the Airport, subject to the Rules and Regulations.

Section 3.02. Rights of Airline at the Airport.

A. Rights of Airline in Connection with the Operation of its Air Transportation System. Airline shall have the right, subject to specific limitations or requirements contained in this Agreement, to use the Airport for the following purposes:

1. The operation of a public transportation system by aircraft for the carriage of persons, property, cargo, and mail, including all activities reasonably necessary to such operation.

2. The landing, taking off, flying over, taxiing, pushing, towing, fueling, loading, unloading, repairing, maintaining, conditioning, servicing, parking, and storing of aircraft or other equipment of or operated by Airline. Exterior cleaning of aircraft is limited to instances when special advance written approval of the time and place of such cleaning is given by City.

3. The sale of tickets, documentation of shipments, handling of reservations, and the loading and unloading of persons, property, cargo, and mail at the Airport by such motor vehicles or other means of conveyance as Airline may desire to use in the operation of its air transportation system. However, any ground transportation commercial carrier (including Airline, except for such ground transportation as Airline or its nominee may provide solely for the benefit of its employees) regularly transporting persons to and from the Airport shall first secure and thereafter hold a valid lease, license, or other agreement with City for the right to carry persons to and from the Airport and shall pay City such rentals, fees and/or percentages of the fares of such ground transportation commercial carrier for such right as established by City.

4. The training at the Airport of persons and testing of aircraft and other equipment, such training and testing to be limited to that incidental to Airline's air transportation business at the Airport. Flight training and testing shall be undertaken by Airline only to the extent permitted by, and subject to the conditions of, the Rules and Regulations.

5. The purchase of Airline's requirements of personal property or services, including fuel, into-plane fueling services, lubricants, food, beverage, and other passenger supplies, and any other materials and supplies used by Airline from any person or company of Airline's choice, and the making of agreements with any person or company of Airline's choice for services to be performed for Airline that are incidental to the operation of Airline's air transportation system. However, City reserves the right to levy a reasonable concession fee against contractors and suppliers of in-flight food and beverage catering to Airline based on such contractor's gross annual sales to Airline for use or delivery at the Airport. Such contractor shall enter into an operating agreement or lease with City prior to commencing services to Airline. In the event services commence without said operating agreement or lease, Airline shall be primarily responsible for payment of contractor's fees and charges owing to City, and Airline's insurance (as required in Section 16.04) shall insure contractor's activities at the Airport.

6. The sale, disposal, and exchange of Airline's aircraft, engines, accessories, fuel, oil, lubricants, other equipment, and materials or supplies. Such right shall not be construed as authorizing the conduct of a separate regular business by Airline, but as permitting Airline to perform only such functions as are incidental to the operation of its air transportation system.

7. The servicing by Airline, or by its suppliers of materials or its furnishers of services, of aircraft and other equipment, operated by Airline with line maintenance or other materials or supplies, at its assigned aircraft parking positions or other aircraft parking positions designated by City. City reserves the right to designate other locations reasonably accessible from the Terminal Building for performance of

aircraft maintenance and service activities if such activities would interfere with aircraft operations of other airlines in the Terminal Building.

8. The installation and operation of Airline ticket counter back wall treatment and identifying signs in Airline's Premises, subject to the prior written approval of City, which approval shall not be unreasonably withheld or delayed and provided that such signs shall be: (1) substantially uniform in size, type, and location with those of other airlines; and (2) consistent with City's Rules and Regulations or other directives. Signs in areas other than the ticket counter back wall shall not be allowed, except that signs consistent with the above which promote new service or Airline's frequent flier program may be allowed in Airline's Exclusive Use Space upon approval of the Director, not to be unreasonably withheld.

9. The installation, maintenance, and operation of such radio, communication, meteorological, and aerial navigation equipment and facilities at suitable locations on the Airport, including computer equipment at passenger check-in counters in the Terminal Building, as may be necessary or convenient in the opinion of Airline for its operations; provided that such equipment and facilities do not interfere with other Airport communication, meteorological, or aerial navigation systems. The location of such equipment and facilities in areas other than Airline's Premises shall be subject to the prior written approval of City.

10. The installation and operation in Airline's Exclusive Use Space in the Terminal Building of pay telephones or coin vending machines for the sale of soft drinks and foodstuffs to its employees; however, Airline agrees to allow City's vending machine concessionaire the right to submit a bid or proposal to provide vending machines in Exclusive Use Space at competitive rates.

11. The provision of porter services and such other assistance as Airline may deem necessary for the convenience of airline passengers in checking and transporting baggage at the Terminal Building.

12. The leasing of space in the Terminal Building as Exclusive Use Space for the purpose of maintaining and operating club rooms for its guests, invitees, and passengers and serving alcoholic and non-alcoholic beverages and appetizers therein with and without charge.

B. Right of City to Charge for Facilities Leased to or Used by Airline's Suppliers and Affiliate Airlines. It is understood that if Airline's suppliers, contractors, furnishers of services, and Affiliate Airlines lease for its or for their exclusive use any portion of Airport or facilities from City, except as provided herein, then City may charge appropriate rentals, fees, and charges for such facilities. Affiliate Airlines using the Premises of a Signatory Airline shall not pay to City any rentals, fees, or charges for such Premises.

Section 3.03. Limitations on Use by Airline. In connection with the exercise of its rights under this Agreement, Airline:

A. Use of Facilities. Shall not do or permit to be done anything at or about the Airport that may interfere with the effectiveness or accessibility of the drainage and sewage system, electrical system, air conditioning system, fire protection system, sprinkler system, alarm system, fire hydrants and hoses, if any, installed or located on or within the Premises or the Airport.

B. Insurance Requirements Compliance. Shall not do or permit to be done any act upon the Airport that will invalidate or conflict with any fire or other casualty insurance policies covering the Airport or any part thereof.

C. Waste Disposal. Shall not dispose of or permit any other person to dispose of any waste material taken from or products used (whether liquid or solid) with respect to its aircraft into the sanitary or storm sewers at the Airport unless such waste material or products first be properly treated if required under applicable Environmental Laws, by equipment installed for that purpose or otherwise disposed of pursuant to law. Airline shall also obtain all government agency approvals, which are required under applicable Environmental Laws for disposal of such waste material, and shall immediately notify City's Aviation Department if a governmental agency approval is required for such disposal. All such disposal shall comply with applicable regulations of the United States Department of Agriculture and shall be in compliance with Section 16.03 of this Agreement.

D. Flammable Liquids. Shall not keep or store, during any 24-hour period, flammable liquids within the enclosed portion of the Premises in excess of Airline's working requirements during said 24-hour period, except in storage facilities especially constructed for such purposes in accordance with standards established by the National Board of Fire Underwriters and approved by a governmental agency with authority to inspect such facilities for safety compliance. Any such liquids having a flash point of less than 100 degrees Fahrenheit shall be kept and stored in safety containers of a type approved by the Underwriters Laboratories.

E. Food/Liquor Sales or Distribution. Airline shall be entitled to provide in-flight catering for its air passengers, either with its own staff or by contract with others. In-flight catering companies serving Airline at the Airport shall enter into an operating agreement or the equivalent thereof with City prior to commencing in-flight catering services to Airline.

The distribution, serving or sale of food and/or drink (including alcoholic beverages) by Airline or its in-flight catering company shall be limited to Airline's passengers who are in the jetway or entrance to the jetway and in the process of boarding Airline's aircraft.

Such food and/or drink shall be consumed only on board Airline's aircraft. The provisions of this Section notwithstanding, all distribution of alcoholic beverages shall comply with applicable laws.

All other serving, distribution or sales of food or drink by Airline at the Airport are prohibited, except as allowed in subsections 3.02.A.10 and 12 above, and except that during irregular operations, distribution of food or drink by Airline in passenger Holdrooms shall be allowed, but only upon permission of Director, in advance. Such permission shall not be unreasonably withheld or delayed, but may be conditioned upon requirements that Airline assist City in paying for extra or unusual custodial costs due to such food and drink distribution. All such food and/or drinks shall be purchased only from retail restaurants operating in the Airport Terminal Building, provided, however, that such requirement can be waived in extraordinary circumstances at the discretion of the Director.

ARTICLE 4 PREMISES

Section 4.01. Terminal Building Space. Space leased to or used by Airline under this Agreement in the Terminal Building or any other areas, is separated into five categories:

- A. "Exclusive Use Space"** means the space leased to Airline for its exclusive use and which is under its direct control, including space used for the following purposes: ticket counter and ticket office, baggage make-up, curbside check-in, covered storage/operations, unenclosed equipment storage, and bag claim room.
- B. "Non-Preferential Use Space"** means the space, if any, used by Airline on a non-preferential basis.
- C. "Preferential Use Space"** means the space leased to Airline on a preferential basis.
- D. "Baggage Claim Area"** means the space and equipment used by airlines that delivers inbound baggage to Deplaned Passengers.
- E. "Passenger Circulation Area"** means the passenger circulation area used jointly by Airline and other airlines using or having the right to use the passenger circulation area.

During the Term of this Agreement, Airline shall lease or use the areas in and about the Terminal Building as shown in **Exhibit C**, and Gates as shown in **Exhibit D**.

Revisions to **Exhibit C** or **Exhibit D** shall be made by City from time to time during the Term of this Agreement and the revised exhibits shall replace the then current exhibits without an amendment to this Agreement. City shall provide Airline with a copy of the revised exhibits within thirty (30) days of such revision.

Section 4.02. Accommodation of Airline and Other Airlines. To maximize the use of all facilities at the Airport and to facilitate the entry of new airlines, and the expansion plans of present airline lessees ("Requesting Airlines"), Airline agrees, upon the request of Director, to accommodate such Requesting Airline in its leased Premises. To ensure compliance with this obligation and to provide open access and uniform treatment for all airline tenants, the following procedure is hereby established.

A. In order to secure the use of Terminal Building facilities, a Requesting Airline shall:

- 1.** Contact City to use City-controlled Terminal Building space and Gate(s); or
- 2.** Contact Airline and other airlines to request the use of Airline's leased Premises under a sublease or handling arrangement pursuant to Article 12.

B. In the event no City controlled Terminal Building space and/or Gates are available and the Requesting Airline has demonstrated to City that it has contacted all airline lessees and has pursued all reasonable efforts to secure accommodations without success, such Requesting Airline shall notify Director of its desire to be accommodated in the Terminal Building.

C. Director shall then notify all airline lessees in writing that, if Requesting Airline is not accommodated within fifteen (15) days from the receipt of said notice, Director shall select one of the airline lessees to comply with the request for accommodation.

D. At the end of said fifteen (15) day period, if Requesting Airline has not been accommodated, Director will select Airline and/or another airline ("Accommodating Airline") to accommodate the Requesting Airline, taking into consideration such factors as current utilization of Accommodating Airline's leased Premises, schedule compatibility, union work rules, competitive relationships, etc. In that event, Director shall send written notice to such Accommodating Airline to begin accommodating the Requesting Airline within thirty (30) days from the receipt of said notice. Director shall include in such notice the reason or reasons why such Accommodating Airline was selected.

E. Upon receipt of said notice, the selected Accommodating Airline may submit written comments to Director contesting its selection. Director shall reasonably consider any comments submitted, but the decision of Director shall be final.

F. Unless Director rescinds such selection within said thirty (30) day period, the Accommodating Airline shall accommodate the Requesting Airline by sharing its leased Premises, subject to the following conditions:

1. In case of a conflict between schedules of the Accommodating Airline and the Requesting Airline, the Accommodating Airline shall have preferential use of its leased premises.

2. The Accommodating Airline may assess the Requesting Airline reasonable fees and charges under an appropriate agreement for services rendered to, or Premises shared with, Requesting Airline, which fees and charges shall be based on Accommodating Airline's direct and indirect costs plus a reasonable allowance for administration and profit. If so requested by the Accommodating Airline, any such agreement shall (a) provide for appropriate indemnities from Requesting Airline in favor of the Accommodating Airline, to protect, defend, indemnify and make the Accommodating Airline whole from all losses, damages, costs and liabilities resulting from or arising out of the accommodation of the Requesting Airline by the Accommodating Airline, and (b) require the Requesting Airline to obtain the same levels and types of insurance as the City requires under this Agreement, and name the Accommodating Airline as an additional insured party.

3. City agrees that the Accommodating Airline shall have no duty to accommodate a Requesting Airline that either (a) refuses to enter into such agreement, or (b) having entered into such agreement, fails to discharge any payment obligation provided thereunder, and which failure is not remedied within ten (10) business days of receipt of Accommodating Airline's written notice.

4. Subject to the foregoing, Airline agrees that, if requested to accommodate another airline, it will effect such accommodation on a timely, good faith basis and in a reasonable manner.

G. A Requesting Airline that does not qualify under Section 4.03 below for preferential use of a gate, may request the use of Accommodating Airline's Assigned Gate(s). However, the Requesting Airline shall not be entitled to use the Accommodating Airline's Assigned Gate(s) at any time such Gate(s) is in use by Accommodating Airline or by its Affiliate Airline Qualifying Flights assigned to such Gate.

Section 4.03. Terminal Building Gates.

A. Preferential Use of Gates. Gates shall be assigned to Signatory Airlines on a preferential use basis only. In the event Airline has non-scheduled flights, priority will be given to assigning Airline Gate(s) in closest proximity to Airline's Preferential Use Gate.

Airline's preferential use of a Gate shall include preferential use of the podium and associated facilities for the Gate, provided however, that passenger Holdroom seating shall be available to the public regardless of the airline using such Holdroom.

Airline will have priority in using Gates assigned to it on a preferential basis to accommodate its scheduled flights and its scheduled Affiliate Airline Qualifying Flights. However, City may assign such Preferential Use Gate for use by others in periods when not in use by Airline or its Affiliate Airline Qualifying Flights so long as the Preferential Use Gate is scheduled to be vacated to accommodate Airline's scheduled flights or its scheduled Affiliate Airline Qualifying Flights.

1. City reserves the right to reassign one or more of Airline's Preferential Use Gates to another Signatory Airline if:

(a) Airline's scheduled average utilization, based on the most recent Airline and Airline Affiliate Qualifying Flight schedule data available for each Preferential Use Gate, falls below an average of four (4) departing flights per day for the days Monday through Friday, and

(b) City determines that there is a reasonable need for the preferential use of each such gate by another Signatory Airline.

2. Such reassignment will be evidenced by written notice from Director transmitting a revised **Exhibit D**.

When determining if Airline has met the four (4) departing flights per Preferential Use Gate requirement, City shall calculate Affiliate Airline Qualifying Flights by

(a) multiplying the number of departures in jet aircraft with less than seventy (70) seats by fifty percent (50%) and

(b) multiplying the number of departures in jet aircraft with seventy (70) or more seats by one hundred percent (100%).

All departures by Airline, including Affiliate Airline Qualifying Flights, but excluding aircraft subject to Airline's Ground Handling Service, shall be included in the calculation of the four (4) flights per day requirement, even if two (2) or more such departures are using a Gate simultaneously.

B. Use of Preferential Use Gates by Others. In the event Airline authorizes or allows the use of any of its Preferential Use Gates by another scheduled or unscheduled airline, other than for its Affiliate Airline Qualifying Flights, then Airline shall require such other airline to remit directly to City the Non-Preferential Gate Use Fee. This subsection 4.03.B shall not be applicable in instances where Preferential Use

Gate usage by another airline is by a Requesting Airline, pursuant to Section 4.02 above. In the event a Requesting Airline obtains the use of Airline's Preferential Use Gate, the rental for such Gate shall consist of an apportionment of the total costs related to such Gate among all airlines assigned to the Gate. Apportionment shall be based on the number of aircraft using the Gate for each airline.

C. Other Gate Assignments. Signatory Airlines not leasing a Preferential Use Gate pursuant to subsection 4.03.A above, shall use Gates assigned by City for such aircraft ("Assigned Gates"). More than one airline may be assigned to an Assigned Gate by City. Rental for Assigned Gates shall consist of an apportionment of the total costs related to such Gate among all airlines assigned to the Gate. Apportionment shall be based on the number of aircraft using the Gate for each airline.

D. Overnight Aircraft Parking. Airline shall be entitled to park its aircraft overnight at its Preferential Use Gates and/or at its Assigned Gates. City shall determine if Airline's aircraft may be parked overnight in a hard stand position behind an aircraft at a Gate. Aircraft in excess of the number allowed by City at Gates shall be parked overnight at a parking location, if any exist, approved by City. All aircraft parked at a location other than a Preferential Use Gate or Assigned Gate shall be subject to the Overnight Aircraft Parking Fee established in subsection 7.04 below. Where Assigned Gates are shared by Signatory Airlines, priority for aircraft parked overnight at each Gate shall be given to the aircraft that departs first the next morning. The Signatory Airline that has been assigned to the Assigned Gate for the longest continuous period of time shall not be subject to the Overnight Aircraft Parking Fee if the aircraft of that Signatory Airline departs first the next morning; however, all other airlines shall be subject to such fee. Signatory Airlines shall be entitled to park their aircraft overnight at Gates that are not Preferential Use Gates or Assigned Gates with the advance authorization of City, subject to the Overnight Aircraft Parking Fee established in subsection 7.04 below. When more than one (1) Signatory Airline requests such use of such Gate, assignment shall be made by City.

Section 4.04. Surrender of Premises. Airline covenants and agrees that on expiration or early termination of this Agreement as hereinafter provided, it will peaceably surrender possession of its leased Premises in good condition, reasonable wear and tear, changes occasioned by condemnation and acts of God, fire, and other casualties excepted, and City shall have the right to take possession of said Premises. City shall not be required to give notice to quit possession at the expiration of this Agreement.

A. Removal of Personal Property. Airline shall have the right, on expiration or earlier termination of this Agreement and within thirty (30) days thereafter, to remove or dispose of all trade fixtures and equipment and other personal property placed by it at its expense, in, on, or about the Airport, subject to any valid lien that City may have thereon for unpaid rentals, fees, and charges provided,

however, that City reserves the right to purchase from Airline, ticket counter inserts and baggage conveyors at Airline's book value for such inserts and conveyors as of the date of such expiration or earlier termination. Airline shall not be entitled to remove non-trade fixtures without the advance written consent of City, which consent shall not be unreasonably withheld or delayed.

B. Removal Damages. In the event Airline removes its trade fixtures and equipment and other personal property described in this subsection, and/or is allowed to remove its non-trade fixtures and removes such fixtures, Airline shall repair any damage caused by such removal. Removal shall be at Airline's sole expense.

C. Ownership of Fixtures Not Removed. In the event Airline fails to remove its property, City shall have the options of (1) removing Airline property at Airline's expense, but only in the event Airline takes possession of such property immediately upon such removal; or (2) taking title to Airline property in lieu of removal on behalf of Airline. In the event City takes title to such property, City shall be entitled to all proceeds of sale of such Airline property as liquidated damages for the breach of this covenant to remove.

Section 4.05. Employee Parking Facilities. Airline shall have the right to the use of automobile parking facilities for its employees employed at the Airport in common with other employees. Such facilities shall be located in an area designated by Director.

Section 4.06. Access. Subject to the provisions of this Agreement, the Rules and Regulations, and such restrictions as Airline may impose with respect to its Exclusive Use Premises, City hereby grants to Airline, its agents, suppliers, employees, contractors, passengers, guests, and invitees, the right and privilege of free and unrestricted access, ingress, and egress to Airline's Premises and to public areas and public facilities of the Terminal Building. However, Airline's ingress and egress privileges shall not be used, enjoyed, or extended to any person engaging in any activity or performing any act or furnishing any service for or on behalf of Airline if that person is not specifically authorized to engage in such activity or perform such act or furnish such service under the provisions of this Agreement or the Rules and Regulations unless expressly authorized in writing by City in advance of such activity.

Section 4.07. Construction and Airport Expansion and Inconvenience. City shall have the right, at such times as may be reasonable under certain circumstances, to close, relocate, reconstruct, change, alter, or modify Airline's Premises and/or the means of access to Airline's Premises pursuant to this Agreement or otherwise, either temporarily or permanently for purposes of maintaining or constructing improvements, modifications, or expansions to the Terminal Building, including construction of Capital Improvements; provided, however, that rent shall not be greater than rent for Airline's space prior to relocation, and City shall provide: (1) reasonable notice of the construction activities to Airline and (2) adequate alternative means of ingress and

egress for Airline's Premises or, in lieu thereof, alternate premises with adequate means of ingress and egress. In the event that the construction constitutes a substantial obstruction to or impairment of Airline's use of its Premises or such alternate premises provided by City for more than thirty (30) consecutive calendar days, then Airline shall be entitled to an abatement of the rent for the days such obstruction exists. The amount of such abatement shall be the cost Airline incurs in additional expenses in order to continue operating its business at the adversely impacted location in substantially the same manner as it operated prior to such disruption. In the event alternate premises are provided to Airline by City, City shall pay all costs resulting from such relocation and the remaining rent abatement shall be limited to a reduction of rent based on the smaller square footage, should any reduction occur, charged at the same rate per square foot required pursuant to this Agreement for space Airline occupied prior to any move required under this Section. All costs of relocation or additional operating costs described above shall be considered a cost of the Capital Improvement and recovered through rates and charges calculated under the procedures of Article 7 of this Agreement. Such additional expenses shall include, by way of example only, the costs of any additional security services necessary and the costs associated with any additional manpower required to perform the functions of automated equipment that is temporarily unavailable for use by Airline. City agrees further that it shall use its best efforts to ensure that any alternative premises or alternative means of access, ingress and egress is similar in character, condition, size, and utility value to the Premises being vacated by Airline.

ARTICLE 5 CONSTRUCTION OF CAPITAL IMPROVEMENTS

Section 5.01. General. City has undertaken certain Capital Improvements at the Airport and the Reliever Airport and has financed these Capital Improvements in part with the net proceeds of Airport Bonds and may undertake additional Capital Improvements in accordance with the provisions of Section 5.02 below, and finance such additional Capital Improvements in part with the net proceeds of additional Airport Bonds. Rentals, fees, and charges shall be calculated in accordance with the provisions of Article 7 of this Agreement to recover in part Capital Costs associated with funding sources to pay the costs of planning, designing, constructing, and financing Capital Improvements.

Section 5.02. Additional Capital Improvements and Sources of Funding. From time to time during the Term, City may undertake additional Capital Improvements to the Airport System. City intends to finance such additional Capital Improvements, at City's discretion, from (1) the Capital Fund (as defined in subsection 5.02.B below), (2) the Airline Coverage Account (as defined in subsection 5.02.C below), (3) annual PFC revenues, (4) Grants-in-aid, and/or (5) the net proceeds of Airport Bonds, subject to the provisions of this Section 5.02 as set forth below. City

shall use its best efforts to obtain Grants-in-aid for such additional Capital Improvements.

A. Coordination Procedures for Future Improvements. Except for Capital Improvements approved by the Signatory Airlines prior to the Effective Date and those Capital Improvements listed in **Exhibit E**, as part of the annual budget process described in Section 7.12 below, or at such other time during a given Fiscal Year as circumstances may warrant, City shall notify the Signatory Airlines in writing of its intent to undertake additional Capital Improvements. Such notice shall include a general description of the proposed Capital Improvements; general information regarding the need for and benefits to be derived from the Capital Improvements; cost estimates; and the source of financing to be used. If requested by Airline or other Signatory Airlines, City shall convene a meeting to discuss its plans regarding such Capital Improvements. City acknowledges its intent to keep Airline and other Signatory Airlines fully informed with respect to its plans for additional Capital Improvements to the Airport System and to give due consideration to Airline's comments and suggestions regarding such additional Capital Improvements.

B. Capital Fund. City shall maintain a Capital Fund for the deposit of all net revenues of the Airport System remaining after payment of Operation and Maintenance Expenses, debt service on Airport Bonds, and any other payments or fund deposits required by the Bond Ordinances. City shall use the Capital Fund for any lawful Airport System purpose including, at its discretion, payment of the costs of additional Capital Improvements. Amortization of Capital Improvements funded from the Capital Fund will be included in the recalculation of rentals, fees, and charges as set forth in Article 7 below. Interest income on monies on deposit in the Capital Fund shall remain in the Capital Fund.

C. Airline Coverage Account. City shall maintain an Airline Coverage Account within the Capital Fund for the deposit of that portion of the Signatory Airline rentals, fees, and charges paid to City attributable to the funding of twenty percent (20%) senior lien bond debt service coverage by the Signatory Airlines. City shall use the Airline Coverage Account on a priority basis to pay the costs of budgeted equipment purchases and capital outlays in the Terminal Building, Airfield, Reliever Airport and the cargo area of the Other Areas' cost centers -- expenditures that would otherwise be charged to the rate base pursuant to the provisions of Article 7 below. To the extent available, monies on deposit in the Airline Coverage Account may also be used to pay the costs of additional Capital Improvements in said cost centers, or to redeem bonds allocable to, said cost centers. No amortization or other capital charges associated with expenditures from the Airline Coverage Account will be included in the recalculation of Signatory Airline rentals, fees, and charges hereunder. Interest on monies in the Airline Coverage Account shall remain in the Capital Fund.

D. Airline Approvals. In the event, in any given Fiscal Year, City decides to fund any additional Capital Improvement not previously approved by the Signatory Airlines and not listed in **Exhibit E** from (1) the net proceeds of additional series of Airport Bonds or (2) the Capital Fund, and in the event such funding and Operation and Maintenance Expenses associated with such Capital Improvement, as estimated by City would cause a projected increase in airline rental rates or landing fee rates of more than ten percent (10%) over and above the rates of the impacted cost center(s) which would otherwise be projected if the Capital Improvement(s) was not undertaken (as reasonably projected by City for the first full Fiscal Year following completion of said Capital Improvement(s)), the following procedures shall apply:

1. City will notify Signatory Airlines of its intent to issue Airport Bonds or use the Capital Fund for the purpose of financing such Capital Improvement(s), as provided in subsection 5.02.A above. Within sixty (60) days of such notice, the Signatory Airlines shall meet and provide City with their concurrence or non-concurrence with respect to the proposed Capital Improvement(s) to be financed with such bonds or the Capital Fund. Concurrence shall be deemed to have been received unless, within sixty (60) days of the date given in the original notice, concurrence is specifically withheld, in writing, with explanation by Signatory Airlines that represented sixty-six and seven tenths percent (66.7%) of the rentals, fees, and charges paid by Signatory Airlines in the immediately preceding Fiscal Year.

When the Capital Improvement is an Airfield or Reliever Airport Capital Improvement, the rentals, fees, and charges used to determine the sixty-six and seven tenths percent (66.7%) referenced above shall consist of only the landing fees paid by the airlines who have entered into this Agreement and airlines that have entered into the Scheduled Cargo Airline Operating Agreement and Cargo Building Lease ("Signatory Cargo Airlines").

No landing fees of Affiliate Airline Qualifying Flights paid directly by the operator of such Affiliate Airline Qualifying Flights to the City shall be included in the concurrence process or the written disapproval process of Signatory Airlines under this subsection.

2. If concurrence is specifically withheld, City may at its discretion either abandon or proceed with the Capital Improvement(s). If City proceeds with the Capital Improvement(s), it may issue Airport Bonds or use balances available in the Capital Fund for such Capital Improvement(s). However, if City proceeds with the Capital Improvement(s), City shall not (a) include debt service for such Airport Bonds, or (b) include amortization for such Capital Fund balances used to finance the Capital Improvement(s) in the recalculation of Signatory Airline rentals, fees, and charges under Article 7 below.

E. Substitution of Capital Improvements by City. City shall provide the Signatory Airlines with written notification of any Capital Improvement that (1) is being substituted for a previously approved Capital Improvement on **Exhibit E**, as amended from time to time, or (2) is being substituted in the same Airport Cost Center as the Capital Improvement being replaced, or (3) has an estimated cost to be included in the Airport Cost Center rate base which is less than or equal to the Capital Improvement being replaced. The written notification will provide an opportunity for consultation, if requested by any Signatory Airline within thirty (30) days of the issuance of the written notification.

Each substituted Capital Improvement shall be considered approved by the Signatory Airlines unless fifty percent (50%) of the Signatory Airlines in number requests in writing to City that a substituted Capital Improvement be subject to the provisions of subsection 5.02. D above.

F. Capital Improvements Excluded from Signatory Airline Approval Procedures. Notwithstanding anything in this Article 5 to the contrary, the following classes of Capital Improvements are not subject to the procedures outlined in subsection 5.02. D above:

1. Any Capital Improvement required by any agency of the United States government having jurisdiction over activities at the Airport or by federal law or executive order;

2. Any Capital Improvement whose principal purpose is to repair casualty damage at the Airport or to Airport property;

3. Any Capital Improvement required to settle claims, satisfy judgments, or comply with judicial orders against the State or City by reason of ownership, operation, or maintenance of the Airport; and

4. Any Capital Improvement that is of an emergency nature as it relates to operational, security, or safety matters, as determined by City, in its sole and reasonable discretion.

5. Any Capital Improvement to Landside or Other Areas.

G. Aircraft Rescue Fire Fighting Facilities, Vehicles, Equipment, and Systems. Airline acknowledges that Aircraft Rescue Fire Fighting services required by 14 CFR Part 139 are provided at will by the United States Air Force (USAF) at no cost to City. Airline acknowledges that the USAF could cease provision of some or all of such services during the agreement term, thereby causing City to assume responsibility for such services. Such assumption of responsibility could result in City incurring capital expenditures for planning studies, buildings, vehicles, equipment, and/or related

systems for the operation by City, the USAF or other third party. Although Capital Improvements related to meeting requirements described under this subsection shall be excluded from Signatory Airline Approval as provided in subsection 5.02.F above, City agrees to collaborate with the Signatory Airlines to determine the most appropriate and cost-effective manner to achieve the services required by 14 CFR Part 139.

ARTICLE 6 REPORTS AND RECORDS

Section 6.01. General. During the Term of this Agreement Airline agrees to provide all reports and retain all records as required hereunder.

Section 6.02. Monthly Activity Report. Airline shall furnish to City on or before the tenth (10th) day of each month, an accurate report of Airline's operations at the Airport during the preceding month, setting forth all data necessary to calculate the fees and charges due under this Agreement. Said report shall be in a format prescribed by City and shall include, but not necessarily be limited to: (1) Airline's total number of Aircraft Arrivals by Gate for the month by type of aircraft, the Maximum Certificated Gross Landing Weight of each aircraft, and the Total Landed Weight for the month; (2) the total number of Enplaned and Deplaned Passengers, with Deplaned Passengers separated into terminating and connecting passengers; and (3) the amount of cargo, mail, and express (in pounds) for such month. Airline agrees to cooperate with City in establishing procedures for electronic submission of the report required in this Section.

A. Failure to Report. For any month Airline fails to furnish City with the Monthly Activity Report required in this Section 6.02 as necessary to calculate fees pursuant to subsection 7.15.A.2. below, such fees and charges, as provided for hereinafter, shall be determined by assuming that Airline's activity for such month was one hundred percent (100%) of activity during the most recent month for which such data are available for Airline. City shall provide Airline with an invoice for such fees and charges which shall be calculated based on this most recent data, provided however, that any necessary adjustment in such fees and charges shall be calculated after an accurate report is delivered to City by Airline for the month in question. Resulting surpluses or deficits shall be applied as credits or charges to the appropriate invoices in the next succeeding month. Failure to submit reports required in this Section 6.02 shall be a material breach of this Agreement.

B. Inspection and Maintenance of Records. All records, accounts, books and data with respect to Airline's operations at the Airport maintained by Airline shall be subject to inspection and audit by City at all reasonable times upon reasonable notice. Such records shall be maintained by Airline for a period of not less than three (3) years beyond the end of Airline's fiscal year in which such records were created.

ARTICLE 7
RENTALS, FEES, CHARGES, AND PAYMENT PROVISIONS

Section 7.01. General. During the Term of this Agreement, in return for use of the Premises, facilities, rights, licenses, and privileges granted herein, Airline agrees to pay to City certain rentals, fees, and charges as set forth in this Article. Effective July 1, 2016, for Fiscal Year 2017, and for each Fiscal Year thereafter, rentals, fees, and charges will be reviewed and recalculated based on the principles and procedures set forth in this Article, as illustrated in **Exhibit F**, entitled "Illustrative Calculation of Airline Rentals, Fees, and Charges," attached hereto and incorporated herein as though set forth in full.

Section 7.02. Terminal Building Space Rentals.

7.02.01 Exclusive, Preferential, and Non-Preferential Use Space. Airline shall pay to City for its Exclusive Use Space, Preferential Use Space, and Non-Preferential Use Space in the Terminal Building as shown in **Exhibits C and D** monthly rents based on the Terminal Building Space Rental Rate for each type of space less the Airline Terminal Building Revenue Credit.

If a new airline begins service at the Airport or if an existing airline ceases serving the Airport, the resulting changes in total Enplaned Passengers and Deplaned Passengers, and the changes in the utilization of Preferential Use Gates, and Assigned Gates, shall be used by City to recalculate rentals, fees, and charges.

Airline's Affiliate Airlines shall not pay to City any Terminal Building Space Rental for the use of Airline's Premises.

7.02.02 Calculation of Exclusive, Preferential, and Non-Preferential Use Space Rental Rates. Terminal Building Exclusive, Preferential, and Non-Preferential Use Space Rental Rates shall be calculated as illustrated in **Exhibit F** and described as follows.

A. City's estimated total "Terminal Building Cost" for each Fiscal Year shall be calculated by totaling the following allocable amounts:

1. The total of estimated direct and allocated indirect Operation and Maintenance Expenses.

2. The estimated costs of any equipment purchases, capital outlays, and unscheduled maintenance (net of any Grants-in-aid or PFC revenues received by City for such purposes) to the extent such costs are not otherwise funded from the Airline Coverage Account.

3. An amount equal to Capital Costs.
4. An amount equal to the Bad Debt Expense, if any.

B. The estimated revenue from Passenger Security Screening Fees and FIS Area Fees will be deducted from the estimated Terminal Building Cost to determine the estimated "Net Terminal Building Cost" for the next Fiscal Year.

C. The estimated Net Terminal Building Cost for the next Fiscal Year will then be divided by the total amount of Rentable Space to determine the "Terminal Building Space Rental Rate" per square foot of Rentable Space.

D. The Terminal Building Space Rental Rate will then be multiplied by the amount of Signatory Airline Rentable Space, which for purposes of this calculation shall exclude any Rentable Space leased to Non-Signatory Airlines, to determine the "Signatory Airline Rental Requirement."

E. The Airline Terminal Building Revenue Credit will be subtracted from the Signatory Airline Rental Requirement to obtain the "Net Signatory Airline Rental Requirement."

F. The Net Signatory Airline Rental Requirement will be divided by the amount of Signatory Airline Rentable Space in the Terminal Building to determine the effective Signatory Airline rental rate per square foot.

7.02.03 Passenger Circulation Area Charges. Airline shall pay monthly to City, Passenger Circulation Area Charges using statistics for Enplaned Passengers, Preferential Use Gates, and Assigned Gates for the second preceding month.

7.02.04 Calculation of Passenger Circulation Area Charges. The Passenger Circulation Area Charges shall be calculated as illustrated in **Exhibit F** and described as follows.

A. City's estimated total "Passenger Circulation Area Cost" for each Fiscal Year shall be calculated by totaling the following allocable amounts:

1. The product of the Terminal Building Space Rental Rate times the square footage of the Passenger Circulation Area.
2. An amount equal to the Bad Debt Expense, if any.

Charges for the use of the Passenger Circulation Area shall be calculated by allocating fifty (50%) of that cost on the basis of the share of each Passenger Airline's Gates to the total number of Preferential Use and Assigned Gates and fifty percent (50%) of that

cost shall be divided by the number of Enplaned Passengers of all Passenger Airlines during the same Fiscal Year to determine the Passenger Circulation Area charge per Enplaned Passenger.

The Enplaned Passengers of a Signatory Airline shall include the Enplaned Passengers of its Affiliate Airline Qualifying Flights when determining the fifty percent (50%) share that is allocated on the basis of Enplaned Passengers.

7.02.05 Baggage Claim Area Charges. Airline shall pay monthly to City, Baggage Claim Area Charges using Deplaned Passenger statistics for the second preceding month.

7.02.06 Calculation of Baggage Claim Area Charges. The Baggage Claim Area Charges shall be calculated as illustrated in **Exhibit F** and described as follows.

A. City's estimated total "Baggage Claim Area Cost" for each Fiscal Year shall be calculated by totaling the following allocable amounts:

1. The product of the Terminal Building Space Rental Rate times the square footage of the Baggage Claim Area.

2. The total of estimated direct and allocated indirect Operation and Maintenance Expenses.

3. The estimated costs of any equipment purchases, capital outlays, and unscheduled maintenance (net of any Grants-in-aid or PFC revenues received by City for such purposes) to the extent such costs are not otherwise funded from the Airline Coverage Account.

4. An amount equal to Capital Costs.

5. An amount equal to the Bad Debt Expense, if any.

B. The Net Baggage Claim Area Cost shall be equal to the Baggage Claim Area Cost less Baggage Claim fees from Passenger Airlines with Enplaned Passenger market share equal to three percent (3.0%) or less of total Enplaned Passengers of all Passenger Airlines, as provided hereunder.

Net Baggage Claim Area Charges for the use of the Baggage Claim Area shall be calculated by allocating twenty percent (20%) of that revenue requirement equally among all Passenger Airlines and eighty percent (80%) of that revenue requirement shall be divided by the number of all Passenger Airline passengers deplaning from

domestic flights arriving during the same Fiscal Year to determine the Baggage Claim charge per Deplaned Passenger.

The Deplaned Passengers of a Signatory Airline shall include the Deplaned Passengers of its Affiliate Airline Qualifying Flights when determining the eighty percent (80%) share that is allocated on the basis of Deplaned Passengers.

Except as provided hereunder, charges for the use of Baggage Claim Area will be levied upon Airline on the basis of the sum of its equal share of twenty percent (20%) of the revenue requirement plus the product of the total number of passengers it deplanes from domestic flights arriving during the Fiscal Year times the per passenger charge.

Any Passenger Airline with Enplaned Passenger market share equal to three percent (3.0%) or less of total Enplaned Passengers of all Passenger Airlines for the most recent twelve-month (12) period will not be included as a Passenger Airline for purposes of allocating twenty percent (20%) of the revenue requirement equally among all Passenger Airlines.

A Passenger Airline with Enplaned Passenger market share equal to three percent (3.0%) or less will pay the Baggage Claim Area Cost expressed per Deplaned Passenger of all Passenger Airlines plus twenty-five percent (25%).

Section 7.03. Loading Bridge Charges. Airline shall pay monthly to City, Loading Bridge Charges consisting of (1) a "Loading Bridge Operating Fee" per each operation of the loading bridge for Airline's aircraft and its Affiliate Airline Qualifying Flights, and (2) a "Loading Bridge Fixed Fee" per each Rented Gate.

7.03.01 Calculation of Loading Bridge Charges. Loading Bridge Charges will be calculated as illustrated in **Exhibit F** and described as follows.

A. Loading Bridge Operating Fee. City's estimated total "Loading Bridge Operating Cost" for each Fiscal Year shall include total estimated direct Operation and Maintenance Expenses allocable to the loading bridges and an amount equal to the Bad Debt Expense, if any, allocable to the loading bridge.

The Loading Bridge Operating Fee shall be determined by dividing the Loading Bridge Operating Cost by the estimated number of Departing Flights.

B. Loading Bridge Fixed Fee. City's total Capital Costs allocable to loading bridges shall be divided by the number of Rented Gates to determine the Loading Bridge Fixed Fee per Rented Gate for each Fiscal Year.

Section 7.04. Overnight Aircraft Parking Fee. Airline shall pay monthly to City, an Overnight Aircraft Parking Fee for aircraft parked at the Airport, pursuant to

subsection 4.03.D above, for each night for each aircraft of Airline and its Affiliate Airline Qualifying Flights, except those aircraft that are parked at a Preferential Use Gate or an Assigned Gate, pursuant to subsections 4.03.A and C above.

7.04.01 Calculation of the Overnight Aircraft Parking Fee. The Signatory Airline Overnight Aircraft Parking Fee shall be calculated by City at the beginning of each Fiscal Year according to the percent change in the Landing Fee Rate for the budgeted Fiscal Year when compared to the rate in use for the then-current Fiscal Year.

Section 7.05 Non-Preferential Gate Use Fee. Airline shall pay monthly to City, a "Non-Preferential Gate Use Fee" for each use of a Non-Preferential Gate by Airline and for each use by its Affiliate Airline Qualifying Flights. Neither Airline nor its Affiliate Airlines shall be charged a fee for the use of Airline's Preferential Use Gate(s) or its Assigned Gate(s).

7.05.01 Calculation of the Non-Preferential Gate Use Fee. The Non-Preferential Gate Use Fee for concourses A and B shall be calculated as illustrated on Exhibit F and described as follows.

A. City's estimated total "Non-Preferential Gate Use Cost" for each Fiscal Year shall be calculated by totaling the following allocable amounts:

1. The Terminal Building Space Rental Rate will be multiplied by the amount of all airline Holdroom space to determine the "Holdroom Space Requirement."

2. The estimated Loading Bridge Operating Cost.

3. The estimated cost of the passenger circulation area, which shall be determined by multiplying the Passenger Circulation Area by the Terminal Building Space Rental Rate.

B. The sum of the above will be divided by the number of Gates to determine a "Cost per Gate".

C. The Cost per Gate will be multiplied by 115% to determine the "Non-Preferential Gate Cost."

D. The Non-Preferential Gate Use Cost will be divided by 1,460, or such other amount determined by City based on the average number of Passenger Airline arrivals at Rented Gates for the most recent 12-month period, to determine the Non-Preferential Gate Use Fee per use of an arriving aircraft.

Section 7.06. Landing Fees. Airline and Airline's Affiliate Airlines shall pay to City monthly Landing Fees to be determined by multiplying the number of 1,000-pound units of Total Landed Weight for Airline during the month by the then-current "Landing Fee Rate."

7.06.01 Calculation of Landing Fee Rates. Landing Fee Rates shall be calculated as illustrated in **Exhibit F** and described as follows.

A. City's estimated total "Airfield Cost" for each Fiscal Year shall be calculated by totaling the following allocable amounts:

1. The total of estimated direct and allocated indirect Operation and Maintenance Expenses.

2. The cost of any equipment purchases, capital outlays, and unscheduled maintenance (net of any Grants-in-aid or PFC revenues received by City for such purposes) allocable to the Airfield to the extent such costs are not otherwise funded from the Airline Coverage Account.

3. An amount equal to Capital Costs less the amount of any Airfield PFC revenue offset.

4. An amount equal to the Bad Debt Expense, if any.

5. The "Reliever Airport Deficit" calculated in accordance with subsection 7.06.01.B below.

6. The amount of any fine, assessment, judgment, settlement or extraordinary charge (net of insurance proceeds) required to be paid by City in connection with airline operations at the Airport, to the extent not otherwise covered by the indemnity provisions of Section 16.04 below and to the extent that such amounts do not result from the negligence or willful misconduct of City; provided, however, that if such charge to the Airfield rate base would result in a material increase in landing fee rates, City will use its best efforts to finance such amount from the Capital Fund or the net proceeds of additional Airport Bonds and recover through amortization charges or debt service, as appropriate.

7. The amounts required to be deposited to reserve accounts established under the Bond Ordinances.

8. The allocable portion of the air cargo apron used as a taxilane.

B. The Reliever Airport Deficit shall be calculated by first totaling the following allocable amounts ("Reliever Airport Costs"):

1. The total of estimated direct and allocated indirect Operation and Maintenance Expenses.

2. The cost of any equipment purchases, capital outlays, and unscheduled maintenance (net of any Grants-in-aid or PFC revenues received by City) to the extent such costs are not otherwise funded from the Airline Coverage Account.

3. An amount equal to Capital Costs on Airport Bonds.

The Reliever Airport operating revenue will then be deducted from the Reliever Airport Costs to determine the Reliever Airport Deficit for each Fiscal Year, subject to the following additional provisions in this subsection 7.06.01.B.:

4. Reliever Airport Costs shall not include those costs pursuant to subsection 7.06.01.B.1 through B.3 that are directly allocable to the commercial development of the aerospace technology park and/or the midfield area of the Reliever Airport ("Excluded Reliever Airport Costs").

5. Reliever Airport operating revenue shall not include the revenue received by City from the development of the aerospace technology park or the midfield area of the Reliever Airport ("Excluded Reliever Airport Revenue").

6. To the extent that the annual Excluded Reliever Airport Revenue is equal to or greater than the annual Excluded Reliever Airport Costs for the current fiscal year or the most recent historical year during the Term of this Agreement, City and Signatory Airlines mutually agree to discuss revisions to the calculation of the Reliever Airport Deficit to include the Excluded Reliever Airport Revenue and Excluded Reliever Airport Costs for the then remaining Term of the Agreement.

C. The total Airfield Cost shall be reduced by Non-Signatory Airline Airfield revenues (comprised of general aviation fuel flowage fees, non-scheduled airline flight fees, and U.S. Air Force flight fees) to determine the "Net Airfield Cost."

D. The Net Airfield Cost shall then be divided by the estimated Total Landed Weight of the Signatory Airlines and of Affiliate Airline Qualifying Flights to determine the Landing Fee Rate per 1,000 pounds of aircraft weight for each Fiscal Year.

Section 7.07. Passenger Security Screening Fee. Airline shall pay monthly to City, a Passenger Security Screening Fee for Airline's and its Affiliate Airlines' use of the passenger screening area in the Terminal Building, at the per Enplaned Passenger rate established by City. Such fees shall be credited in the calculation of the Terminal Building Space Rental Rate, as shown in **Exhibit F**.

Section 7.08. Miscellaneous Fees. Airline shall pay to City reasonable "Miscellaneous Fees" for the following services provided by City to Airline and its Affiliates, and for those services as described below provided by Airline to other airlines:

A. Airline's use of City's U.S. Agricultural Department pathogen destructor, at the rates established by City as such rates exist at the time of the use.

B. Airline's use of the Federal Inspection Services Area, at the rates established by City as such rates exist at the time of the use.

C. Airline's subletting as outlined in Article 11 below and Airline's provision of Ground Handling Services as outlined in Article 12 below, which fees shall be paid at the rate of five percent (5%) of the gross revenue derived by Airline from applicable subleases or provision of Ground Handling Services.

D. Office services, such as facsimile, photocopying, or telephone provided by City to Airline and all costs for Airport Identification (ID)/Access cards shall be paid to City by Airline upon receipt of invoices sent by City. Fees for such items shall be at the rate customarily charged by City's Aviation Department at the time such services or materials are obtained by Airline.

E. City reserves the right to assess a reasonable monthly fee for employee parking facilities. No free parking privileges or reduced parking rates shall be provided by City to Airline or its employees.

F. Services provided by City to Airline other than those expressly provided for in this Agreement following Airline's written request for such services and agreement as to the cost of such services. Airline shall pay to City all fees associated with such services within thirty (30) days following receipt of invoice from City.

Section 7.09. Fees and Charges for Services Provided by Others. Except as expressly provided for herein, no further rentals, fees, or charges shall be charged against or collected from Airline, its passengers, shippers, and receivers of freight and express, and its suppliers of material, contractors, or furnishers of services, by City for the Premises, facilities, rights, licenses, and privileges granted to Airline in this Agreement. However, City expressly reserves the right to assess and collect reasonable fees from such concessionaires and operators for in-flight catering, vending, ground transportation, and other services provided for Airline by other concessionaires and operators (other than by another Signatory Airline or by its Affiliate Airlines).

Section 7.10. Passenger Facility Charges. City expressly reserves the right to assess and collect a PFC in accordance with the PFC Regulations. The following shall apply to the collection of PFCs:

A. Airline shall hold in trust for City, the net principal amount of all PFC revenues that are collected by Airline or its agents on behalf of City pursuant to the PFC Regulations. No trust account shall be required except as required by applicable law or as provided in the PFC Regulations. For purposes of this Section, "net principal amount" shall mean the total principal amount of all PFC revenues that are collected by Airline or its agents on behalf of City, reduced by all amounts that Airline is permitted to retain pursuant to the PFC Regulations.

B. In the event Airline fails to remit PFC revenues to City within the time limits established in the PFC Regulations, such event shall be an event of default subject to Section 14.01 of this Agreement.

Section 7.11. Accounting Records.

City shall establish and maintain accounting records that will document the following items for each of the Airport Cost Centers: (1) Revenues, (2) Operation and Maintenance Expenses, (3) Capital Costs, and (4) any other annual funding requirements pursuant to the Bond Ordinances.

Section 7.12. Coordination Procedures -- Budget Review and Calculation of Rentals, Fees, and Charges.

A. Each year on or before January 1, Airline will submit to City its forecast Maximum Certificated Gross Landing Weight for the next Fiscal Year. If such forecast is not submitted by Airline, City will develop its own forecast of Airline's Maximum Certified Gross Landing Weight for use in the process of calculating rentals, fees, and charges for the next Fiscal Year.

B. City's annual budget, pursuant to City's budget process, shall be the basis for the estimates of Operation and Maintenance Expenses used in the final calculation of airline rentals, fees and charges for the next Fiscal Year.

C. Each year on or before February 1, if requested by the Signatory Airlines, City will submit to Airline a copy of its preliminary operating budget for the Airport for the next Fiscal Year. Airline will submit any comments it may have with respect to the preliminary operating budget on or before March 1 and City will give consideration to such comments in the course of City's annual budget process.

D. No later than June 15 of each year, the Director shall provide each Signatory Airline then currently operating scheduled passenger or cargo service at the Airport with a complete copy of the then proposed rates and charges, calculated in accordance with this Article, for the succeeding Fiscal Year. The Director shall consult with the airlines concerning the then proposed rates and charges. After giving due consideration to any comments provided by the airlines, the Director shall make any

revisions to the proposed rates and charges as the Director determines, in his or her sole discretion, to be warranted as a result of consultation with the airlines or otherwise, and shall provide written notice to each airline then currently operating scheduled passenger or cargo service at the Airport of the new rates and charges to be effective on July 1 of the next fiscal year.

E. If, for any reason, the annual budget has not been adopted by City as of the first day of any Fiscal Year, airline rentals, fees, and charges for that Fiscal Year will be initially established based on the estimates provided by City in subsection 7.12.C above (or, as may be adjusted based on comments and suggestions provided by Airline or other Signatory Airlines under subsection 7.12.D above). Such rentals, fees, and charges will continue in effect until the annual budget has been adopted by City, at which time such rentals, fees, and charges will be recalculated, if necessary, based on the approved annual budget of City and made retroactive to the first day of such Fiscal Year.

Section 7.13. Extraordinary Rate Adjustments of Terminal Building Space Rentals, and Landing Fees. In the event that, at any time during a Fiscal Year, any of the components of Net Airline Rental Requirement or Net Airfield Cost, or the aggregate Total Landed Weight of all Signatory Airlines and Affiliate Airline Qualifying Flights, is estimated by City to vary ten percent (10%) or more from the estimates used in setting Terminal Building Space Rental Rates or Landing Fee Rates, such rates may be adjusted either up or down for the balance of such Fiscal Year, provided that such adjustment is deemed necessary by City to ensure that adequate revenues will be available from such fees to cover the estimated Net Airline Rental Requirement or Net Airfield Cost for each Fiscal Year.

Section 7.14. Year-End Adjustments of Airline Rentals, Fees, and Charges to Reflect Actual Costs and Revenues. As soon as practical following the close of each Fiscal Year during the term of this Agreement, City shall furnish Airline with an accounting of the costs actually incurred, and revenues and other credits actually realized, during such Fiscal Year with respect to each of the components of the calculation of Terminal Building Space Rentals, Passenger Circulation Area Charges, Baggage Claim Area Charges, Loading Bridge Charges, and Landing Fees in this Article 7.

The rentals, fees, and charges associated with Affiliate Airline Qualifying Flights that were paid by Signatory Airline to City shall be included in the calculation of the year-end adjustment pursuant to this Section 7.14. Signatory Airline Landing Fees paid by that airline providing the Affiliate Airline Qualifying Flights shall be subject to the provisions of this Section 7.14 and such airline shall receive the year-end credit pursuant to subsection 7.14.A below or pay to City the year-end deficit pursuant to subsection 7.14.B below.

A. Year-End Credit. In the event that Airline's rentals, fees, and charges billed during the Fiscal Year exceed the amount of Airline's rentals, fees, and charges required (as recalculated based on actual costs and revenues), such excess amount shall be credited to Airline in equal monthly installments over the remaining months of the then-current Fiscal Year. If a credit is due based on the final year of this Agreement and Airline terminates Airport service, the credit shall be paid in a lump sum in accordance with this subsection. Airline shall receive the credit under this subsection unless (1) there is a past due amount owed by Airline as determined by City or (2) Airline has not provided a Security Deposit to City pursuant to Section 7.16 below of this Agreement. Airline shall receive its year-end credit following payment of the past due amount to City or Airline has provided the Security Deposit, as determined by City.

B. Year-End Deficit. In the event that Airline's rentals, fees, and charges billed during the Fiscal Year are less than the amount of Airline's rentals, fees, and charges required (as recalculated based on actual costs and revenues), such deficiency shall be charged to Airline in equal monthly installments over the remaining months of the then-current Fiscal Year. If a deficiency is charged based on the final year of this Agreement and Airline terminates Airport service, Airline shall pay the deficiency in a lump sum in accordance with this subsection.

Section 7.15. Payment Provisions.

A. Time of Payment

1. Terminal Building Exclusive, Preferential and Non-Preferential Use Space Rentals pursuant to subsection 7.02.01 above, shall be due and payable the first day of each month in advance without invoice from City.

2. Within fifteen (15) days following the last day of each month, Airline shall transmit to City payment for the amount of Passenger Circulation Area Charges pursuant to subsection 7.02.03 above, Baggage Claim Area Charges pursuant to subsection 7.02.05 above, Loading Bridge Charges pursuant to Section 7.03 above, Overnight Aircraft Parking Fees pursuant to Section 7.04 above, Non-Preferential Gate Use Fees pursuant to Section 7.05 above, Landing Fees pursuant to Section 7.06 above, and Passenger Security Screening Fees pursuant to Section 7.07 above, as computed by Airline without invoice from City.

3. Within thirty (30) days of the date of invoice from City, Airline shall transmit to City payment for all other Fees pursuant to Section 7.08 above.

4. PFCs shall be remitted pursuant to PFC Regulations.

5. The acceptance by City of any payment made by Airline shall not preclude City from verifying the accuracy of Airline's report and computations or from recovering any additional payment actually due from Airline.

6. If the expiration or earlier termination of this Agreement occurs on a date other than the first or last day of a calendar month, rentals, fees, and charges shall be prorated according to the number of days in that month during which all rights and privileges were enjoyed by Airline.

B. Place of Payment. Airline shall deliver payments of rentals, fees, and charges to the office of Director, or at such other place as may be designated by City from time to time. Payment shall be made to the order of "City of Albuquerque." Airline agrees to cooperate with City in the development of electronic transfer of funds as the preferred method of payment.

C. Late Payment Fees. If rentals, fees, and charges required by this Agreement are not received by City on or before the date specified in this Agreement, Airline shall pay an interest charge to City of one and one-half percent (1½%) per month (18% annually) for each month or partial month that any payment due is not received.

D. Charging Non-Signatory Airline Rates and Charges. Sixty (60) days from the date that written notification was sent to Airline of a Triggering Event, City shall have the right to impose Non-Signatory Airline rates and charges on Airline until the past due amounts owed to City have been received in full and Airline has provided a Security Deposit pursuant to Section 7.16 below.

E. Guarantee of Payment. Airline shall guarantee the payment of all rentals, fees, and charges for its Affiliate Airline Qualifying Flights, and shall pay any amounts that are past due to City. Failure of Airline to pay any past due amounts pursuant to this Section shall (1) require Airline to submit a Security Deposit to City pursuant to Section 7.16 below, or (2) be an event of default pursuant to Section 14.01 below.

Section 7.16. Security Deposit. Airline shall be required to submit a Security Deposit in the event that it (1) has operated at the Airport for less than twelve (12) consecutive months from the Effective Date of this Agreement or (2) has received a written notice from City that a Triggering Event has occurred and sixty (60) days have passed since Airline has received such notice, and Airline has not cured the Triggering Event.

Such Security Deposit shall be in the form of a Bond or an irrevocable Letter of Credit ("LOC") issued exclusively to City, as required in **Exhibit G** attached hereto and incorporated herein.

Section 7.17. Net Agreement. This is a net agreement with reference to rentals, fees, and charges paid to City. Airline shall pay all taxes of whatever character that may be lawfully levied, assessed, or charged by any governmental entity upon the property, real and personal, occupied, used, or owned by Airline, or upon the rights of

Airline to occupy and use the Premises received hereby, or upon Airline's improvements, fixtures, equipment, or other property thereon, or upon Airline's rights or operations hereunder. Airline shall have the right at its sole cost and expense to contest the amount or validity of any tax or license as may have been or may be levied, assessed, or charged.

Section 7.18. Non-Waiver. The acceptance of rentals, fees, and charges by City for any period or periods after a default of any of the terms, covenants, and conditions herein contained to be performed, kept, and observed by Airline, shall not be deemed a waiver of any right on the part of City to terminate this Agreement for failure by Airline to perform, keep, or observe any of the terms, covenants, or conditions of this Agreement, and shall not be construed to be or act as a waiver by City of any subsequent default of any of the terms, covenants, and conditions herein contained to be performed, kept, and observed by Airline, and shall not be deemed a waiver of the right of City to terminate this Agreement pursuant to Article 15 of this Agreement.

ARTICLE 8 AUTHORIZING LEGISLATION FOR SALE OF BONDS

Section 8.01. General. In the event of conflicts between this Agreement and the Bond Ordinances, the Bond Ordinances shall govern.

Subject to the terms and provisions of the Bond Ordinances, it is mutually understood and agreed that, so long as any Airport Bonds are outstanding, the deposit and application of Airport Revenues shall be governed by the Bond Ordinances.

ARTICLE 9 OPERATION AND MAINTENANCE OF AIRPORT

Section 9.01. General. City agrees that it will, with reasonable diligence, prudently develop, improve, and at all times maintain and operate with adequate, efficient, and qualified personnel and keep the Airport in good repair including, without limitation, the Terminal Building, Terminal Apron and Airfield, and all appurtenances, facilities, and services now or hereafter connected therewith as the same relate to Airline's air transportation system; will keep the Airport and its aerial approaches free from obstruction and interference for the safe and proper use thereof by Airline; and will develop, maintain, and operate the Airport in all respects in a manner at least equal to the standards or rating established by the FAA and any other governmental agency having jurisdiction thereof, except for conditions beyond the control of City. City further agrees that it is responsible to maintain equipment that conveys potable water to Airline in good repair and such potable water will at all times be sanitary and suitable for human consumption as determined by City.

Section 9.02. Terminal Building.

A. City shall operate and maintain and keep in good condition and repair the Terminal Building and all additions, improvements, facilities, and equipment now or hereafter provided by City at or in connection with the Terminal Building, except any improvements, facilities, and equipment constructed or installed by Airline.

B. City shall at all times maintain the public area of the Terminal Building in a neat, orderly, sanitary, and presentable condition, and shall keep such area adequately supplied, equipped (including directional signs), furnished, and decorated.

C. City shall supply or cause to be supplied appropriate and adequate equipment and maintenance for air conditioning, ventilation, heat, water, and sewerage facilities for Terminal Building public use areas, Airline's Exclusive Use Space, Passenger Circulation Area, and Baggage Claim Area; adequate illumination in Passenger Circulation Area and Baggage Claim Area; and janitorial service in Terminal Building public use areas and Passenger Circulation Area and Baggage Claim Area.

D. Airline shall at all times keep its Premises neat, orderly, sanitary, and presentable. Airline shall pay for all electric power used in its Exclusive Use Space, and shall be responsible for relamping such Exclusive Use Space. Airline shall furnish its own janitorial service for such Exclusive Use Space and shall cause to be removed at Airline's own expense from such Exclusive Use Space all waste, garbage, and rubbish, and agrees not to deposit the same on any part of the Airport, except that Airline may deposit same temporarily in its Exclusive Use Space or in space designated by City in connection with collection for removal. Airline shall, at its own expense, transport all refuse from temporary storage to central depositories at locations designated by City.

E. Airline shall maintain the terminal apron contiguous to its Rented Gates and such other apron areas used by Airline from time to time in a neat, clean, and orderly condition, free from litter, debris, refuse, petroleum products, or grease that may result from activities of its passengers, employees, agents, or suppliers, and remove all oil and grease spillage, as is reasonably possible, that is attributable to Airline's aircraft or equipment from its aircraft parking positions.

F. Airline shall perform, at its sole expense, ordinary preventive maintenance and ordinary upkeep and repair of all facilities, personal property, trade fixtures, and equipment located in its Exclusive Use Space, including, but not limited to, fixtures, interior doors and windows, baggage conveyors and belts, floor coverings, and ticket counters.

Section 9.03. Lengthy Tarmac Delays. City agrees to assist Airline with minimizing passenger discomfort, inconvenience, and other hardships related to lengthy tarmac delays and to make all reasonable efforts to assist and support the implementation of

the Airline's FAA-approved Contingency Plan for Lengthy Tarmac Delays and Customer Service Plan as required by 14 CFR Part 259.

Section 9.04. City's Right to Inspect and Make Repairs. City, by its authorized officers, employees, agents, contractors, subcontractors, and other representatives, shall have the right, upon reasonable notice, at such times as may be reasonable under the circumstances and with as little interruption of Airline's operations as is reasonably practicable, to enter upon Airline's Exclusive Use Space, accompanied by an authorized Airline representative, if practicable, for the following purposes:

A. City shall have the right but not the obligation to inspect such space to determine whether Airline has complied and is in compliance with the terms and conditions of this Agreement. Such inspections shall not constitute an inspection for safety, fire protection or security purposes. Inspection for safety, fire protection or security purposes shall be governed by Section 16.16 below.

B. Upon thirty (30) days' notice, but subject to force majeure delays pursuant to Section 10.04 below, to perform such maintenance, cleaning, or repair as City reasonably deems necessary, if Airline fails to perform its obligations under this Article 9, City shall be entitled to recover the reasonable cost of such maintenance, cleaning, or repair from Airline, plus a fifteen percent (15%) administrative charge by providing an invoice to Airline for such services.

Section 9.05. Alterations, Improvements, Payment Bond.

A. Alterations and Improvements. Airline shall make no alterations, additions, improvements to, or installations on its Premises under this Agreement without the prior written approval of City, which shall not be unreasonably withheld, conditioned, or delayed. Airline shall be solely responsible for payment for all such alterations, additions, improvements, or installations made by Airline.

Plans and specifications for such work shall be filed with and subject to the reasonable approval of Director and all work shall be done in accordance with local ordinances and state law.

All alterations, additions, improvements, or installations other than trade fixtures, equipment and other personal property shall become part of the realty and title shall vest with City upon completion of the installation or construction of such alterations, additions, improvements, or installations. Removal of trade fixtures, equipment, and other personal property shall be allowed only pursuant to subsections 4.04.A, B, and C above.

B. Payment Bond. Airline shall, prior to erecting or placing improvements on its Premises, execute and deliver to City a payment bond with good and sufficient

surety to be approved by City in a sum equal to the full contractual amount for such improvements, to insure City against loss by reason of any lien or liens that may be filed against the Premises or Airport property for the construction of such improvements.

Section 9.06. Debts, Liens, Mortgages. Airline shall pay promptly when due, all bills, debts and obligations incurred by Airline in connection with its operations or activities on its Premises, and shall not permit the same to become delinquent. Except as expressly approved by City, Airline shall not permit any mechanics' lien, materialman's lien, or any other lien to be attached to or to be foreclosed upon the Premises or improvements thereto. Airline shall suffer no lien, mortgage, judgment, or execution to be filed against the Premises or improvements thereon. Notwithstanding the foregoing, Airline will have the right to contest, in good faith and with reasonable diligence, the validity of any lien or claimed lien, if Airline shall give to City such security as may be reasonably satisfactory to City to assure payment thereof and any interest thereon and to prevent any foreclosure of the lien or sale of the Premises or the Airport by reason of nonpayment thereof; provided further, however, that on final determination of the lien or claim for lien, Airline shall immediately pay any judgment rendered with all proper costs and charges and shall have the lien released and any judgment satisfied.

ARTICLE 10 DAMAGE OR DESTRUCTION OF PREMISES

Section 10.01. Damage or Destruction. If, for any reason Airline's Premises are damaged to such an extent that they are untenable in whole or in substantial part, then:

A. Minor Damage. If the repairs, rebuilding, or construction necessary to restore the Premises to its condition prior to the occurrence of the damage can, in the reasonable judgment of City, be completed within ninety (90) consecutive calendar days from the date on which the damage occurred (including time required for design, bidding, and award of a construction contract pursuant to City procedures), City shall so notify Airline, in writing, consult with Airline, and shall proceed promptly with such repairs, rebuilding, or construction at City's sole cost and expense, provided that Airline shall be responsible for, and bear the cost of, replacing and rebuilding all Airline improvements. In such event, Airline shall receive a pro rata abatement of the rentals for the Premises under subsection 7.02.01 above, based only on the reduction of usable square feet in Airline's Premises. If applicable, this abatement shall be allowed only for the period from the date of the occurrence of the damage to the date the Premises is ready for occupancy upon completion of repairs, rebuilding, or construction. Thereafter, the rentals due under subsection 7.02.01 above, shall be calculated without regard for the period such rentals were reduced.

Notwithstanding the above provisions, if the damage is caused by the intentional or negligent act or omission of Airline, its officers, agents, employees, contractors, subcontractors, licensees or invitees, Airline shall be responsible for reimbursing City for the cost and expense incurred in such repair, rebuilding, or construction. In order to expedite such repair, rebuilding, or construction, Airline shall apply all insurance proceeds paid on account of such damage or destruction under the policies of insurance required in Section 16.04 below. If the insurance proceeds are not sufficient to pay the entire cost of such repairs, rebuilding, or construction, Airline shall pay the amount of any such deficiency and shall apply the same to the payment of the cost of the repairs, rebuilding, or construction. In the event the cause of the damage or destruction is by risk, which is or was uninsurable, then Airline shall have the same responsibility to provide the funds necessary to pay the cost of the repairs, rebuilding, or construction. In the event of such minor damage, there shall be no abatement of the rentals payable by Airline to City under this Agreement.

B. Extensive Damage. If such repairs, rebuilding, or construction cannot, in the reasonable judgment of City, be completed within ninety (90) consecutive calendar days from the date on which the damage occurred (including time required for design, bidding, and award of a construction contract pursuant to City procedures), City, at its option, to be evidenced by notice in writing to Airline following consultation with Airline, may:

1. Seek Airline's consent and cooperation, and proceed promptly with said repairs, rebuilding, or construction at City's sole cost and expense, in which event abatement of rentals shall be allowed, as described in subsection 10.01.A above.

Notwithstanding the above provision, in the event the Premises are destroyed or so damaged and rendered untenable as a result of the intentional or negligent act or omission of Airline, its officers, agents, servants, employees, contractors, subcontractors, licensees, or invitees, City may repair, rebuild, or construct the Premises, and Airline shall be responsible for reimbursing City for the costs and expenses incurred in such repair, rebuilding, or construction. In order to expedite such repair, rebuilding, or construction, Airline shall apply all insurance proceeds paid on account of such damage or destruction under the policies of insurance required in Section 16.04 below. If the insurance proceeds are not sufficient to pay the entire cost of such repairs, rebuilding, or construction, Airline shall pay the amount of any such deficiency and shall apply the same to the payment of the cost of the repairs, rebuilding, or construction. In the event the cause of the damage or destruction is by risk, which is or was uninsurable, then Airline shall have the same responsibility to provide the funds necessary to pay the cost of the repairs, rebuilding, or construction. In the event of such extensive damage, there shall be no abatement of the rentals payable by Airline to City under this Agreement.

2. Terminate the letting of the Premises, in which event the rentals due under subsection 7.02.01 above, shall be eliminated beginning from the date of the occurrence of the damage. City shall not be deemed in default under this Agreement in the event it elects to terminate the letting of the damaged or destroyed Premises, but if desired by Airline, City shall enter into negotiations with Airline for a new lease of another premises.

Section 10.02. Alternative Space. In the event repairs, rebuilding, or construction is required pursuant to Section 10.01 above, City shall use reasonable efforts to provide Airline with comparable alternative space, if necessary, during any repairs, rebuilding, or construction of the Premises. City shall advise Airline as soon as may be practicable regarding City's intention with respect to any necessary repairs, rebuilding, or construction.

In the event City provides alternative space to Airline, City shall be responsible for those costs directly associated with moving Airline to the temporary space and back to its restored Premises, except in the event where such repair, rebuilding, or construction is required as a result of the intentional or negligent act or omission of Airline, its officers, agents, employees, contractors, subcontractors, licensees, or invitees, in which case Airline shall bear entire cost of moving. Should larger square footage space be provided by City to Airline, rent shall not be greater than rent for Airline's space prior to relocation, unless Airline specifically requests a larger alternative space. Should smaller square footage space be provided by City to Airline, the rentals due under subsection 7.02.01 above shall be reduced pro rata to the reduction of square footage of the alternative space. All reductions of rentals shall be allowed only for the period from the date of the occurrence of the damage to the date the space is ready for occupancy upon completion of repairs, rebuilding, or construction. Thereafter, the rentals due under subsection 7.02.01 above, shall be calculated without regard for the period such rentals were reduced.

Section 10.03. Limits of City's Obligations Defined. In the application of the provisions of Sections 10.01 and 10.02 above, City shall in no event be obligated to repair, rebuild, or construct the Premises to an extent greater than its original obligation to provide facilities and service to the Premises as set forth in this Agreement.

Section 10.04. Force Majeure. Except as expressly provided in this Agreement, neither City nor Airline shall be deemed to be in default hereunder if either party is prevented from performing any of the obligations, other than payment of rentals, fees and charges hereunder, by reason of strikes, boycotts, labor disputes, embargoes, shortages of energy or materials, acts of the public enemy, terrorism or threats of terrorism, weather conditions and the results of acts of nature, riots, rebellion, sabotage, or any other similar circumstances for which it is not responsible or which are not within its control.

ARTICLE 11
TRANSFER OF PREMISES BY ASSIGNMENT OR SUBLETTING

Section 11.01. General. Airline shall not assign, transfer, convey, sell, mortgage, pledge or encumber (hereinafter collectively referred to as "Assignment") or sublet its Premises without the advance written approval of City, which approval shall not be unreasonably withheld or delayed, and except as provided herein for Affiliate Airline Qualifying Flights.

If Airline fails to obtain advance written approval of any such Assignment or sublease, City, in addition to the rights and remedies set forth in Article 15 below, shall have the right to refuse to recognize such Assignment or sublease, and the assignee or sublessee shall acquire no interest in this Agreement or any rights to use the Premises.

A. Parent, Subsidiary or Merged Company Exception. The foregoing and the following provisions of this Article 11 shall not be interpreted to preclude the Assignment of this Agreement to a parent, subsidiary, or merged company of Airline if such parent, subsidiary, or merged company conducts an air transportation business at the Airport at which Airline is a Signatory Airline and such parent, subsidiary, or merged company assumes all rights and obligations hereunder. Written notice of such Assignment and assumption shall be provided by Airline to City, for City's approval that the Assignment and assumption are compliant with this subsection 11.01A, at least thirty (30) days prior to the effective date of such Assignment.

Section 11.02. City Approval of Assignments. City shall grant Airline the authority to assign its Premises, rights, and obligations hereunder, provided that, among other considerations:

A. The Assignment is for the entire leased Premises and is for the full remainder of the Term; and

B. The Assignment must require the assignee to accept and comply with all provisions of this Agreement, including but not limited to accepting Signatory Airline status; and

C. City, in its sole discretion, determines that the proposed assignee is substantially as creditworthy as Airline.

Section 11.03. City Approval of Subleases. City shall grant Airline the authority to sublease a portion of its Premises to a Requesting Airline (not including Airline's Affiliate Airline Qualifying Flights, for which no consent is required), provided that, among other considerations:

A. The Requesting Airline is willing to become a Signatory Airline; and

B. The terms of the sublease do not conflict with the terms of this Agreement, and Requesting Airline is willing to provide Airline with a reasonable security deposit not to exceed three (3) month's rentals, fees, and charges; and

C. City has determined that there is no available space and/or Gates for lease directly from City by the Requesting Airline and if the sublease contains a provision which permits the sublease to be terminated upon notice from City to the parties thereto of the availability of City controlled space; and

D. Airline agrees to pay monthly to City an administrative fee of five percent (5%) of the gross revenue derived from such sublease pursuant to subsection 7.08.C. above.

Section 11.04. Assignment or Sublease Approval Process. Airline, when requesting an approval of an Assignment or sublease pursuant to Sections 11.02 and 11.03 above, shall include with its written request, a copy of the proposed Assignment or sublease. Any proposed Assignment or sublease shall provide, at a minimum, the following information: (1) the Premises to be assigned or sublet; (2) if a sublease, the rentals, fees, and charges required, provided however, that Airline may charge no more than one hundred fifteen percent (115%) of Airline's rentals for such portion of the Premises to be sublet; and (3) all other material terms and conditions of the Assignment or sublease. If approved by City, Airline shall submit a fully executed copy of such Assignment or sublease to City prior to the commencement of the Assignment or sublease.

Section 11.05. Airline to Remain Liable. Although City may approve Airline's request to sublease, Airline shall remain fully liable during the Term for the payment of all rentals, fees, and charges due and payable to City for the subleased Premises, and fully responsible for the performance of all other obligations hereunder, unless otherwise agreed to by City.

ARTICLE 12 GROUND HANDLING SERVICES

Section 12.01. Ground Handling Services by Airline. City shall grant Airline the authority to provide Ground Handling Services for its own aircraft, for its Affiliate Airline Qualifying Flights, for other Signatory Airlines and their Affiliate Airline Qualifying Flights, for Non-Signatory Airlines, and for non-scheduled airlines, provided that, among other considerations:

A. Airline has received prior written consent of City to provide such services, which consent shall not be unreasonably withheld or delayed, provided however, that no consent shall be required from City for Airline to provide Ground Handling Services to its Affiliate Airline Qualifying Flights; and

B. Airline agrees to pay monthly to City, pursuant to subsection 7.08.C above, an administrative fee of five percent (5%) of the gross revenues derived from such Ground Handling Services performed for Non-Signatory Airlines or non-scheduled airlines, provided however, that no administrative fee shall be required for Ground Handling Services performed for Airline's Affiliate Airline Qualifying Flights or for other Signatory Airlines and their Affiliate Airline Qualifying Flights; and

C. Airline guarantees payment of all Fees and Charges established by City for the aircraft operations of the Non-Signatory Airlines and non-scheduled airlines for which it provides Ground Handling Services at the Airport.

In the event Airline provides Ground Handling Services to an aircraft without advance written consent of City, then Airline's insurance, as required in this Agreement, shall provide insurance coverage for all such aircraft operations, and such event shall constitute a material breach of this Agreement, and City shall have the right to terminate this Agreement based upon such breach, pursuant to the requirements of Article 15 of this Agreement.

Section 12.02. Ground Handling Services by Others. City shall grant Airline the right to contract with other companies, including Signatory Airlines, for Ground Handling Services for Airline's aircraft, provided that, among other considerations:

A. Airline has received advance written consent of City, which consent shall not be unreasonably withheld or delayed; and

B. Such other company, unless such company is a Signatory Airline, has entered into a Ground Handling Services operating agreement with City prior to the commencement of such Ground Handling Services.

ARTICLE 13 RELINQUISHMENT OF PREMISES

Section 13.01. Notice of Intent to Relinquish Premises. In the event Airline desires to relinquish any of its Premises, Airline shall provide written notice to City thirty (30) days in advance of such relinquishment and shall identify in such notice all areas it wishes to relinquish. City shall use its best efforts to lease such areas to another airline, to the extent the proposed relinquished Premises is suitable for another airline, or to allow an assignment or sublease of this Agreement as provided in Article 11 above.

Section 13.02. Non-Waiver of Responsibility. Airline shall continue to be solely responsible pursuant to this Agreement for the payment of all rentals, fees, and charges related to the relinquished Premises pursuant to Section 13.01 above, until such time that another airline commences payment for Premises pursuant to Section 13.03 below.

Section 13.03. Reduction of Rentals, Fees and Charges. Airline’s rentals, fees, and charges related to that portion of Airline’s Premises taken by another airline, pursuant to such other airline’s agreement with City, shall be reduced in the amount of the rentals, fees, and charges paid by such other airline. This reduction shall begin only when such other airline begins payment for the relinquished portion of Airline’s Premises.

**ARTICLE 14
DEFAULT BY AIRLINE**

Section 14.01. Default by Airline: Fifteen (15) Day Cure Period. This Section shall govern Airline’s failure to comply with the following provisions (hereafter “Events of Default”):

- A.** Payment of Airline’s Rentals, Fees, and Charges pursuant to Section 7.15 above;
- B.** Payment of Rentals, Fees, and Charges for Airline’s Affiliate Airline Qualifying Flights, if applicable, pursuant to Section 7.15 above;
- C.** Payment of Airline’s PFC revenue pursuant to Section 7.15 above;
- D.** Provide the Reports required in Article 6 above;
- E.** Provide and maintain the Security Deposit, if applicable, pursuant to Section 7.16 above;
- F.** Provide and maintain Insurance pursuant to Section 16.04 below.

In the event Airline fails to comply with any or all of the above provisions for a period of fifteen (15) days after receipt from City of written notice of an Event of Default, City may, without terminating this Agreement, enter upon Airline’s Premises and shall have the right to improve and relet all or any part of it to others. Airline shall continue to be responsible for and shall pay all rentals, fees, and charges required pursuant to this Agreement, provided, however, that Airline shall receive a credit for rentals, fees, and charges received by City for the relet premises after first deducting all cost incurred by City for renovations and administrative fees not to exceed fifteen percent (15%) of all rentals, fees, and charges received for the relet premises.

Section 14.02. City’s Right of Recovery. At any time before or after City’s entry upon Airline’s Premises and the reletting of such Premises pursuant to Section 14.01 above, City may terminate Airline’s rights under this Agreement pursuant to Section 15.01 below, without any restriction upon recovery by City for past due rentals, fees, and charges or other obligations of Airline. City shall have all additional rights and remedies as may be provided to City by law.

ARTICLE 15
TERMINATION OF AGREEMENT

Section 15.01. Termination by City: Forty-five (45) Day Cure Period. City shall be entitled to terminate this Agreement for Airline's failure to cure the following:

- A.** Events of Default pursuant to Article 14 above;
- B.** Default by Airline in the performance of any covenant, agreement, or condition contained in this Agreement;
- C.** The cessation by Airline of the conduct of scheduled air service at the Airport unless such cessation of service is directly attributable to circumstances for which Airline is not responsible, and which are not within its control.

If Airline fails to cure any or all of the above provisions for a period of forty-five (45) days after receipt from City of written Notice to Cure, City shall have the right to terminate this Agreement by sending Airline written Notice of Termination. Termination of this Agreement shall take effect immediately upon Airline's receipt of the Notice of Termination, unless stated otherwise in the Notice of Termination. If, however, Airline shall have cured the deficiencies identified in City's Notice to Cure prior to Airline's receipt of City's Notice of Termination, then such Notice of Termination shall be of no force or effect.

Section 15.02. Right of Termination by Airline. Airline shall be entitled to terminate this Agreement at any time that Airline is not in default in its payments or other obligations to City hereunder, upon or after the occurrence of any of the following events, by sending City a written Notice of Termination:

- A.** Default by City in the performance of any covenant or agreement herein required to be performed by City and the failure of City to remedy such default for a period of sixty (60) days following receipt of Airline's written Notice of Termination for same;
- B.** The issuance by any court of competent jurisdiction of an injunction in any way preventing or restraining Airline's use of the Airport or any part thereof, for a period exceeding sixty (60) consecutive calendar days;
- C.** City's Abandonment of Airport for all scheduled airline service for the remaining Term.

ARTICLE 16 GENERAL PROVISIONS

Section 16.01. Rules and Regulations. Airline shall observe and obey all lawful and applicable executive instructions, administrative instructions, Airport security requirements, access control procedures, and other rules and regulations governing conduct on and operations at the Airport and use of its facilities promulgated by City from time to time during the Term hereof; provided, however, that all such Rules and Regulations shall be reasonable, and shall not be inconsistent with or contravene or limit any of the rights granted to Airline under this Agreement. City will provide Airline a reasonable opportunity to comment on new or revised Rules and Regulations prior to final promulgation. Copies of the Rules and Regulations, as adopted, shall be forwarded to Airline's properties representative. City additionally agrees that all Rules and Regulations so promulgated shall not conflict with any law or legally authorized rule or regulation of the FAA, or any other Federal or State agency, which is binding in law on Airline, as the same now are or may from time to time be amended or supplemented. City shall not unjustly discriminate against Airline in the enforcement of its Rules and Regulations.

Airline shall not violate, nor knowingly permit its agents, contractors, or employees acting on Airline's behalf to violate any such Rules and Regulations.

Nothing in this section or Section 16.02 below shall require Airline to comply with a local or state regulation, law, or other provision having the force and effect of law which is preempted by the federal Airline Deregulation Act, with the understanding that such preemption, if any, would not limit City from carrying out its proprietary powers and rights as indicated in 49 U.S.C. §41713(b)(3).

Section 16.02. Compliance with Law. Airline shall not use the Airport or any part thereof, or knowingly permit the same to be used by any of its employees, officers, agents, sublessees, invitees, or licensees for any illegal purposes and shall, at all times during the Term of this Agreement, comply with all applicable regulations, ordinances, and laws of any city, county, or state government or of the U.S. Government, and of any political division or subdivision or agency, authority, or commission thereof which may have jurisdiction to pass laws or ordinances or to make and enforce rules or regulations with respect to the uses hereunder or the Premises.

Airline shall comply with and conform to all present and future statutes and ordinances, and regulations promulgated thereunder, of all federal, state, and other government bodies of competent jurisdiction that apply to or affect, either directly or indirectly, Airline or Airline's operations and activities under this Agreement.

Section 16.03. Environmental Requirements. Throughout the term of this Agreement, Airline shall comply with the environmental requirements as provided in **Exhibit H** attached hereto and incorporated herein.

Section 16.04. Insurance and Indemnification. Throughout the term of this Agreement, Airline shall procure and maintain insurance and shall indemnify City as required in **Exhibit I** attached hereto and incorporated herein.

Section 16.05. Non-Discrimination.

A. State and Local Compliance. Airline agrees that no person, on the grounds of race, color, religion, national origin, ancestry, sex, sexual orientation, gender identity, spousal affiliation, age, or physical or mental handicap, shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of the Airport or any improvements thereon or the furnishing of services thereon, and shall use the premises in compliance with all other requirements which are or may be imposed in the future by or pursuant to provisions of New Mexico statutes and City ordinances relating to the enforcement of civil rights and affirmative action programs, including but not limited to the New Mexico Human Rights Act and the Albuquerque Human Rights Ordinance, and City's affirmative action policies and practices.

B. Federal Compliance.

1. Airline, for itself, its heirs, personal representatives, 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 (a) no person on the grounds of race, creed, color, national origin, sex, age, or disability will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (b) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, creed, color, national origin, sex, age, or disability will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, and (c) that Airline will use the premises in compliance with all other requirements imposed by or pursuant to the nondiscrimination acts and regulations identified in the Title VI List of Pertinent Nondiscrimination Acts and Authorities attached hereto as **Exhibit J**.

2. In the event of breach of any of the above Nondiscrimination covenants, City will have the right to terminate this Agreement and to enter, re-enter, and repossess the premises and facilities thereon, and hold the same as if the Agreement had never been made or issued.

3. Airline will undertake any affirmative action program as required by 14 C.F.R. Part 152, Subpart E, as amended, to ensure that no person is excluded from participating in any employment, contracting, or leasing activity on the grounds of race, creed, color, national origin, or sex. Airline agrees that no person may be excluded on those grounds from participating in or receiving the services or benefits of any program

or activity covered by the regulation. Airline will require its covered sub-organizations to provide assurance that they will also undertake affirmative action programs and require assurances from their sub-organizations, as required by 14 C.F.R. Part 152.

Section 16.06. Disability Laws and Accessibility Requirements. Airline shall comply with provisions of the Americans with Disabilities Act of 1990 ("ADA"), and federal regulations promulgated thereunder. Airline agrees to be responsible for knowing all applicable rules and requirements of the ADA and to defend, indemnify and hold harmless the City, its officials, agents and employees from and against any and all claims, actions, suits or proceedings of any kind brought against City as a result of any activities of Airline or its employees in violation of the ADA. When required by 14 C.F.R. Part 382 or any other laws, rules or applicable regulations, now or hereafter adopted by federal, state or city governments, Airline shall provide certain facilities for the movement of passengers with disabilities when enplaning and deplaning its aircraft. Airline shall be responsible for acquiring or making arrangement for the use of boarding assistance devices, when applicable, for its aircraft. Airline shall ensure that all lifts and other accessibility equipment used by it are maintained in proper working condition. Airline shall ensure that those personnel involved in providing boarding assistance through the use of lifts or other accessibility equipment are properly trained in the use and operation of the devices and appropriate boarding assistance procedures that safeguard the safety and dignity of passengers. Airline shall be solely responsible for and shall pay all costs related to its compliance with the boarding assistance requirements as well as any other requirements of the ADA.

Section 16.07. Security. Throughout the term of this Agreement, Airline and its employees shall strictly comply with the Airport Security Plan and all other Airport security regulations, as from time to time may be adopted or required by the TSA or other governmental agencies. If a breach of the Airport Security Plan or such other Airport security regulation occurs as a result of the acts or omissions of Airline and its employees in any manner or form at any time during the term of this Agreement, Airline shall immediately remedy such breach or assist City, TSA, or other governmental agencies in remedying such breach, regardless of the circumstances.

A. Airport Security Access Media (Card and/or Keys). As a requirement for the execution of this Agreement by Airline, and in order to perform the duties and obligations pursuant to the terms of this Agreement, Airline and its employees shall be required to obtain Airport Security Access Media (card and/or keys). Individuals who have been convicted of certain categories of crimes during the past ten (10) years will not be issued Airport Security Access Media. In addition, individuals who have been charged with any of these crimes will not be issued an ID/Access card until disposition of the charges has been resolved to the Director's satisfaction. Airline and its employees may not begin any work of any nature until the required Airport ID/Access Media has been issued. All persons who are issued an Airport ID/Access card must display it at all times while at the Airport.

All persons applying for Airport Security Access Media must pass a 10 year FBI fingerprint-based Criminal History Records Check ("CHRC"), a Security Threat Assessment ("STA"), and attend a security/ramp driving training class sponsored by City before such Airport Security Access Media will be issued. In conjunction with Airline's right and privilege to use the Airport, unescorted access may be authorized for Airline and its employees via card reader-controlled doors and gates to the AOA, the Airport's Security Identification Display Area ("SIDA"), and all secured areas of the Airport.

All Airport Security Access Media issued to Airline and its employees/contractors are the property of City. Airline shall be obligated to return to City all Airport Security Access Media in the event of: a) the termination of this Agreement, or b) the termination of employment or resignation of Airline's employee/contractor, or c) the suspension of Airline employee/contractor. Airline requesting Airport Security Access Media shall be fully responsible for the replacement cost of all lost, stolen, or non-returned Airport Security Access Media.

City reserves the right to confiscate or suspend any Airport Security Access Media of any person allegedly involved in any of the criminal acts enumerated under 49 C.F.R. Part 1542, or for a violation of the Airport Security Plan or other Airport security regulations, as from time to time may be promulgated. In addition, City, TSA, or other governmental agencies as may be authorized, shall have the right to search any person, including Airline and its employees who have been issued an Airport ID/Access card.

Airline shall implement and maintain, and shall cause its personnel (employees and contractors) to implement and maintain, at a minimum, the following security measures with regard to access control to and from the secured areas of the Airport:

1. During all hours, access points to secure areas of the airport shall be secured and locked.

2. Airline's personnel shall challenge any person in the SIDA not properly displaying an Airport ID/Access card.

3. Airline shall restrict the activities of its personnel who are authorized to be on the AOA to the portion of those areas in which Airline is authorized to operate.

4. Airline is responsible for ensuring that all of its personnel attend Airport Security Training, that they comply with all Airport security requirements and access control procedures outlined in the training, and because security requirements and access control procedures change, that Airline's personnel are made aware of, and comply with, all changes to Airport security requirements and access control procedures of which the Airline is made aware.

5. Airline shall not allow any non-badged person under its control to enter the AOA unless that person is properly escorted at all times.

6. Airline shall participate in the Airport's Security Program and comply with applicable security procedures including, but not limited to, the wearing of Airport ID/Access cards by Airline's personnel.

7. Airline shall immediately notify the Aviation Police of any suspicious activity observed on the AOA of the Airport.

8. Any unresolved questions concerning Airport security shall be directed to the Aviation Department's Airport Security Coordinator.

9. Airline agrees to pay City for any and all applicable Airport Security Access Media fees incurred in connection with Airline's use of the Airport.

10. Airline further agrees to reimburse City for any and all penalties or fines levied against City by the Federal Aviation Administration, Transportation Security Administration, or successor agency due to Airline's failure to abide by the security measures described herein, provided however, Airline shall have the right, to the extent allowed pursuant to federal regulations, to defend against such agency action.

B. Director or his designated representative will periodically evaluate the procedures set forth in this Section, and make revisions as required to comply with federal regulations. Failure of Airline or Airline's personnel to fully comply with the procedures set forth in this Section or as later revised, shall be sufficient grounds for City to immediately take any necessary corrective measures until security acceptable to City is restored.

Section 16.08. Subordination to Agreements with the U.S. Government.

This Agreement is subject and subordinate to the provisions of any agreements heretofore or hereafter made between City and the United States, relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of federal rights or property to City for Airport purposes, or to the expenditure of federal funds for the improvement or development of the Airport, including the expenditure of federal funds for the development of the Airport in accordance with the provisions of the Federal Aviation Act of 1958, as amended, or in accordance with successive airport development acts. City covenants that it has no existing agreements with the United States in conflict with the express provisions hereof.

Section 16.09. Other Subordination. The Premises are, and this Operating Agreement is, subject to and subordinate to the terms of that certain deed from the

United States of America to City dated December 15, 1962, and filed for record on December 19, 1962 in Volume 672 of Records, Folio 469 with the records of the County Clerk of the County of Bernalillo, New Mexico, wherein City agreed to hold title to certain property upon certain terms and which also provides that the United States may regain title should City not cure any default within sixty (60) days of notice thereof.

This Agreement is subject to and subordinate to any and all Bond Ordinances pertaining to Airport Bonds.

Section 16.10. No Exclusive Rights. Nothing herein contained shall be deemed to grant to Airline any exclusive right or privilege within the meaning of 49 U.S.C. § 40103(e) and FAA Advisory Circular 150/5190-6 or the most recent versions thereof for the conduct of any activity on the Airport, except that, subject to the terms and provisions hereof, Airline shall have the right to exclusive possession of the Exclusive Use Space leased to Airline under the provisions of this Agreement.

Section 16.11. Economic Non-Discrimination. In connection with the conduct of any aeronautical activity that involves furnishing services to the public at the Airport, Airline agrees: (1) to furnish said services on a fair, equal and not unjustly discriminatory basis to all users, and (2) to charge fair, reasonable and not unjustly discriminatory prices for each unit or service, provided that Airline may make reasonable and non-discriminatory discounts, rebates or other similar price reductions to volume purchasers.

Section 16.12. Granting of More Favorable Terms.

A. General. Except as provided in subsection B below, City covenants and agrees not to enter into any lease, contract, or any other agreement with any other Passenger Airline providing scheduled passenger service at the Airport containing substantially more favorable terms than this Agreement, or to grant to any tenant engaged in scheduled air transportation, rights or privileges with respect to the Airport that are not accorded Airline hereunder, unless the same rights, terms, and privileges are concurrently made available to Airline.

B. Exceptions. Notwithstanding the above, City may:

1. permit non-scheduled itinerant aircraft operators to use Terminal Building facilities on a charge-per-use basis which charges may equate to less than Airline's effective cost per use;

2. reduce or waive fees and rentals for Commuter Airlines and flights that provide air service between the Airport and another airport in the State of New Mexico; and

3. offer air service incentive programs and marketing support for air service to points not in the State of New Mexico. Independent of this Agreement, the City has designed an Airline Competition Incentive Program and an Airline Cooperative Marketing Program ("Incentive Programs"). The Incentive Programs will be administered by the Director in compliance with FAA guidelines, and at the discretion of the Director are subject to change or may be discontinued without amendment to this Agreement. To the extent the Incentive Programs continue to be offered, certain rentals, fees, and charges paid by Airline and other airlines may be reduced in accordance with the Incentive Program provisions. Airline must comply with Incentive Program requirements, and must apply for and receive Director approval to participate in the Incentive Programs.

Section 16.13. Amendment and Waiver. This Agreement may be amended in writing as allowed by City Ordinance, except that Director shall have the authority to waive requirements and prohibitions or otherwise modify this Agreement by written supplement signed by the parties, to address changes in circumstances which will benefit the parties and the traveling public, provided that such modifications are non-discriminatory, and do not extend the term of the Agreement or modify rent and fee provisions. No custom or practice which may evolve between the parties in the administration of the terms of this Agreement may be construed to waive or lessen the right of either party to insist upon the performance of the other party in strict accordance with the terms of this Agreement.

Section 16.14. Consents, Approvals, and Notices. All consents, approvals, and notices required by this Agreement shall be in writing and shall be given by registered or certified mail by depositing the same in the U.S. mail in the continental United States, postage prepaid, return receipt requested, or by personal delivery, or by facsimile transmission to the "FAX" number given below, provided that the completed transmission is electronically verified. Either party shall have the right, by giving written notice to the other, to change the address at which its notices are to be received. Until any such change is made, notices shall be delivered as follows:

City:	Director of Aviation Albuquerque International Sunport
Certified Mail:	PO Box 9948 Albuquerque, New Mexico 87119-1048
Personal Delivery:	2200 Sunport Blvd. SE, 3rd Floor Albuquerque, NM 87106
Telephone:	(505) 244-7700
FAX:	(505) 842-4278
E-mail:	jhinde@cabq.gov

Airline:

**Certified Mail and
Personal Delivery:**

Telephone:

FAX:

E-mail:

If consent, approval, or notice is given in any other manner or at any other place, it will also be given at the place and in the manner specified above.

The effective date of such consent, approval, or notice shall be the date of the receipt as shown by the U.S. Postal Service Return Receipt, or the date personal delivery is certified, or the date of electronic verification of the facsimile transmission, unless provided otherwise in this Agreement.

Section 16.15. Contract Interpretation.

A. Severability. In the event any covenant, condition or provision herein is held to be invalid, illegal, or unenforceable by any court of competent jurisdiction, such covenant, condition or provision shall be deemed amended to conform to applicable laws so as to be valid or enforceable or, if it cannot be so amended without materially altering the intention of the parties, it shall be stricken. If stricken, all other covenants, conditions and provisions of this Agreement shall remain in full force and effect provided that the striking of such covenants, conditions or provisions does not materially prejudice either City or Airline in its respective rights and obligations contained in the valid covenants, conditions or provisions of this Agreement.

B. Non-waiver of Rights. No waiver of default by either party of any of the terms, covenants, and conditions hereof to be performed, kept and observed by the other party shall be construed as, or shall operate as, a waiver of any subsequent default of any of the terms, covenants, or conditions herein contained, to be performed, kept and observed by the other party.

C. Gender, Singular/Plural. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

D. Captions and Section Headings. The captions, section headings, and table of contents contained in this Agreement are for convenience of reference only,

and in no way limit, define, or enlarge the terms, scope, and conditions of this Agreement.

E. Entire Agreement. This Agreement represents the entire contract between the parties and, except as otherwise provided herein, may not be amended, changed, modified, or altered without the written consent of the parties hereto. This Agreement incorporates all of the conditions, agreements, and understandings between the parties concerning the subject matter of this contract, and all such conditions, understandings and agreements have been merged into this written Agreement. No prior condition, agreement, or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this written Agreement.

F. Relationship of Contract Documents. All documents attached to this Agreement or incorporated into this Agreement are complementary, and any requirement of one contract document shall be as binding as if required by all.

G. Exhibits, Certificates, Documents Incorporated and Attachments. Incorporation by Reference: All certificates, documents, exhibits, attachments, riders, and addenda referred to in this Agreement, including but not limited to the exhibits referred to in this Agreement, are hereby incorporated into this Agreement by reference and made a part hereof as though set forth in full in this Agreement to the extent they are consistent with its conditions and terms.

H. Applicable Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New Mexico, and the laws, rules and regulations of the City of Albuquerque.

I. Successors. All covenants, stipulations and agreements in this Agreement shall extend to and bind the legal representatives, successors, and assigns of the respective parties hereto.

J. Governmental Rights and Powers. Nothing in this Agreement shall be construed or interpreted as limiting, relinquishing or waiving any rights of ownership enjoyed by City in the Airport property, or waiving or limiting City's control over the management, operations or maintenance of property, except as specifically provided in this Agreement, or impairing, exercising, waiving, or defining governmental rights and the police powers of City.

K. Cross References. References in the text of this Agreement to articles, sections or exhibits pertain to articles, sections or exhibits of this Agreement, unless otherwise specified.

Section 16.16. Inspection. City shall have the right, but not the obligation or duty, to inspect Airline's operations at all reasonable times upon reasonable notice for

any purpose connected with this Agreement, in the exercise of City's governmental functions, and for fire protection, safety or security purposes.

The failure of City to inspect or monitor or give Airline notice of a default or a notice of a hazardous or unsafe condition with respect to Airline's operations under this Agreement shall not release Airline from its liability to perform its obligations under this Agreement or impose any liability on City.

Section 16.17. Quiet Enjoyment. Airline shall, upon payment of the rentals, fees, and charges required hereunder and upon compliance with the terms, covenants, conditions, and obligations on the part of Airline to be performed and complied with hereunder, peaceably have and enjoy the rights, uses, and privileges of the Airport, its appurtenances, and facilities as granted herein and by the Rules and Regulations.

Section 16.18. Non-liability of Agents and Employees. No member, officer, agent, director, or employee of City or Airline shall be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement or because of any breach thereof or because of its or their execution or attempted execution.

Section 16.19. No Partnership or Agency. Nothing contained in this Agreement is intended or shall be construed in any respect to create or establish any relationship other than that of lessor and lessee, and nothing herein shall be construed to establish any partnership, joint venture or association or to make Airline the general representative or agent of City for any purpose whatsoever.

Section 16.20. Prudent Operation. City shall operate the Airport with due regard for the interests of the public and in such a manner as to produce revenues from concessionaires, other tenants, public parking operations, and other commercial users of the Airport of a nature and amount as would reasonably be produced by a prudent operator of an Airport of similar size, use and activity, consistent with sound management principles and applicable law, in the interest of protecting the financial integrity of the Airport. City hereby acknowledges its obligation under the Bond Ordinances to apply and use all Airport revenues for the operation, maintenance, administration, development, financing, and retirement of debt of the Airport System.

Section 16.21. Generally Accepted Accounting Principles. Whenever any report or disclosure referred to in this Agreement consists, either in whole or in part, of actual, year-end financial information, said financial information shall be prepared in accordance with generally accepted accounting principles consistently applied, if applicable.

Section 16.22. Concerning Depreciation and Investment Credit. Neither Airline nor any successor of Airline under this Agreement may claim depreciation or an

investment credit under the Internal Revenue Code, as amended, with respect to the Premises. Airline represents that it has made an election under Proposed Treasury Regulations Sections 1.103(n)-1T through 1.103(n)-6T not to claim such depreciation or investment credit with respect to the Premises and agrees that it will retain copies of said election in its records and will not claim any such depreciation or investment credit. City acknowledges receipt of a copy of said election and agrees that it will retain copies of said election in its records.

Section 16.23. Forum Selection. Any cause of action, claim, suit, demand, or other case or controversy arising from or related to this Agreement shall only be brought in a state district court located in Bernalillo County, New Mexico or in a federal district court located in New Mexico. The parties irrevocably admit themselves to, and consent to, the jurisdiction of either or both of said courts. The provisions of this Section shall survive the termination of this Agreement.

Section 16.24. Ethics and Campaign Practices. Airline agrees to provide the Board of Ethics and Campaign Practices of the City of Albuquerque or its investigator (the "Board") with any records or information pertaining in any manner to this Agreement, whenever such records or information are within Airline's custody, are germane to an investigation authorized by the Board, and are requested by the Board. Airline further agrees to appear as a witness before the Board as required by the Board in hearings concerning ethics or campaign practices charges heard by the Board. Airline agrees to require that all subcontractors employed by Airline for services performed for this Agreement shall agree to comply with the provisions of this Section. Airline and its subcontractors shall not be compensated under this Agreement for its time or any costs incurred in complying with this Section.

Section 16.25. Fair Dealing. Airline covenants and warrants that the only person or firm interested in this Agreement as principal or principals is named in this Agreement and that no other person or firm has any interest in this Agreement, and this Agreement is entered into by Airline without collusion on the part of Airline with any person or firm, without fraud and in good faith. Airline also covenants and warrants that no gratuities, in the form of entertainment, gifts or otherwise, were, or during the Term of this Agreement, will be, offered or given by Airline, or any agent or representative of Airline, to any officer or employee of City with a view towards securing this Agreement or for securing more favorable treatment with respect to making any determinations with respect to performing this Agreement.

Section 16.26. Conflict of Interest. Upon execution of this Agreement, or within five (5) days after the acquisition of any interest described in this Section during the Term, Airline shall disclose in writing to City whether any City Councilor, Albuquerque Airport Advisory Board member, officer or employee of City has or hereafter acquires any direct, indirect, legal, or beneficial interest in Airline (not including stock ownership in Airline if Airline is a publicly traded company) or in any contract, lease, or agreement

between City and Airline, or in any franchise, concession, right, or privilege of any nature granted by City to Airline in this Agreement or otherwise.

Section 16.27. Administration of Agreement. The Chief Administrative Officer or his authorized representative, shall administer this Agreement for City.

Section 16.28. Approval of Agreement. This Agreement shall not become effective or binding until approved by the City Council and signed by City's Chief Administrative Officer.

Section 16.29. Savings. City and Airline acknowledge that they have thoroughly read this Agreement, including all exhibits thereto, and have sought and received whatever competent advice and counsel was necessary for them to form a full and complete understanding of all rights and obligations herein. City and Airline further acknowledge that this Agreement is the result of extensive negotiations between them and that this Agreement shall not be construed against either party by reason of that party's preparation of all or part of this Agreement.

IN WITNESS WHEREOF, City has caused this Agreement to be executed by its Chief Administrative Officer, and Airline has caused the same to be executed by its appropriate and authorized officer.

CITY OF ALBUQUERQUE:

By: _____ Date: _____
Robert J. Perry
Chief Administrative Officer

Recommended:

By: _____ Date: _____
James D. Hinde, C.M.
Director of Aviation

AIRLINE:

By: _____ Date: _____

Exhibit A
Albuquerque International Sunport ("Airport")



ALBUQUERQUE INTERNATIONAL SUNPORT

DATE OF PHOTOGRAPHY: DECEMBER 2013

Exhibit B
Airport Cost Center Plan



Airline Cost Centers

- Airfield
- Terminal Building
- Loading Bridges
- Baggage Claim
- Cargo Building
- Cargo Apron
- Reliever Airport (Airfield)

Roadway and other indirect costs are shared between the City and the airlines

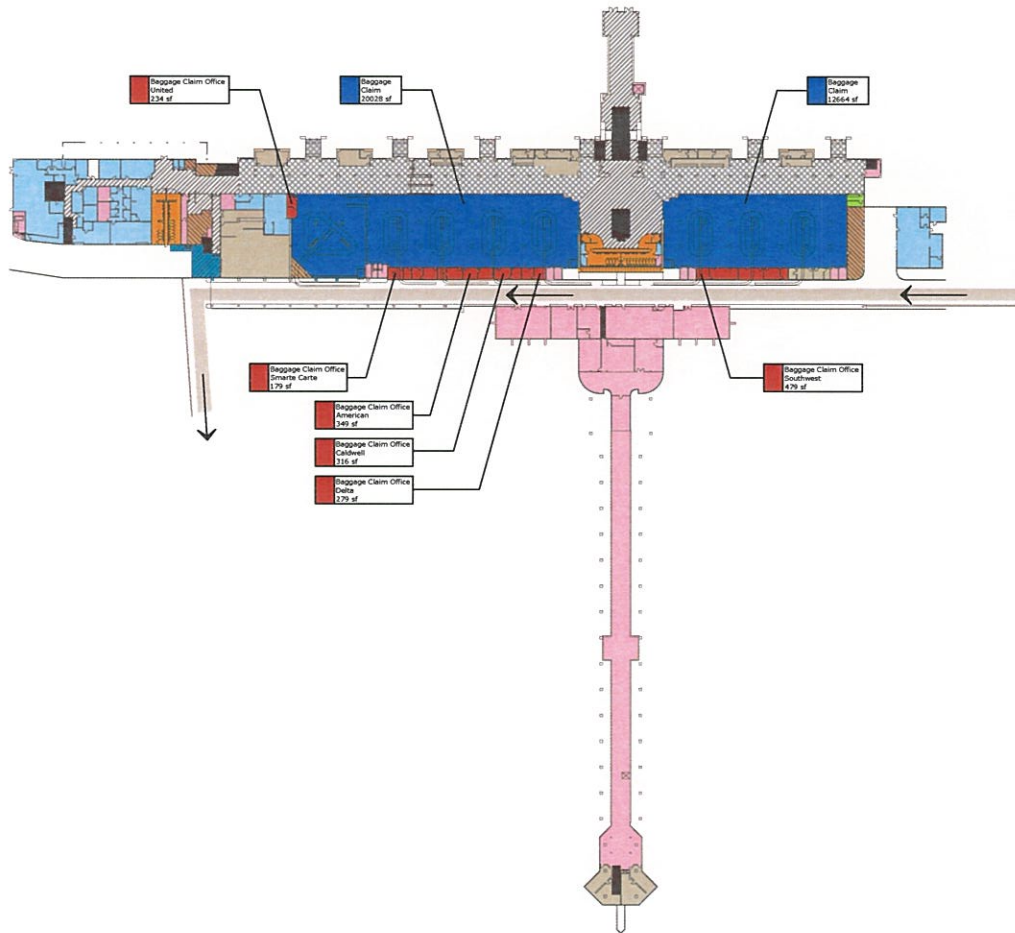
Exhibit B

City Cost Centers

- Landside Areas
- Rental Car Center
- Fuel Facility*
- Reliever Airport (Commercial development)
- Other Areas

*Airlines bear full financial responsibility through the terms of the Fuel Facility Lease and Agreement.

Exhibit C
Terminal Building Space

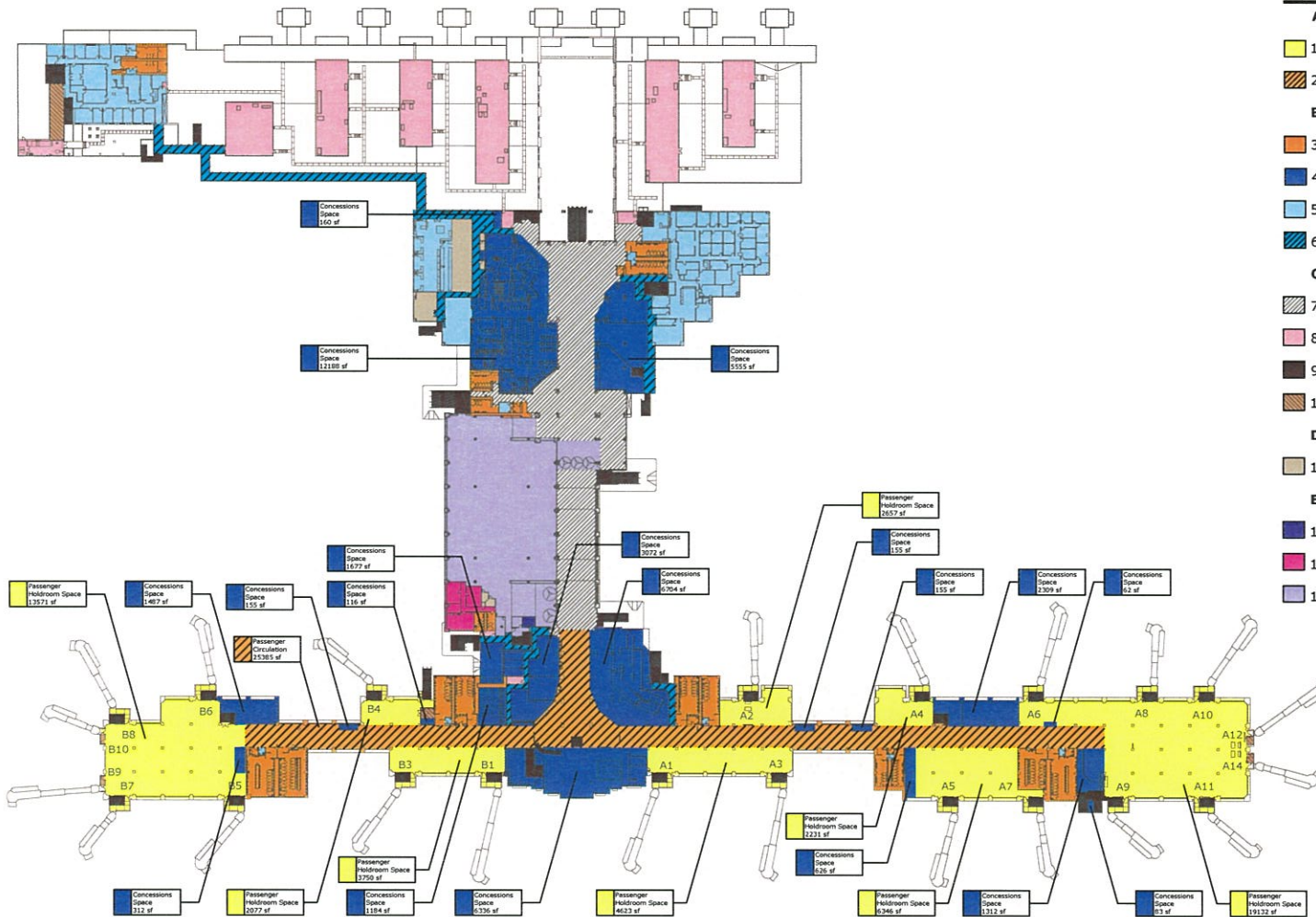


Lease Area Legend Terminal Level 1

- A. Departure Processing**
 - 1. Security Stations (212 sf)
- B. Arrival Processing**
 - 2. Baggage Claim (32,692 sf)
 - 3. Baggage Lobby Circulation (19,181 sf)
- C. Airline Operations**
 - 4. Baggage Claim Offices (3,083 sf)
- D. Public Spaces**
 - 5. Restrooms (3,610 sf)
 - 6. Airport Administration/Aviation Dept (13,079 sf)
 - 7. Aviation Dept Circulation (902 sf)
- E. Building Systems/Support**
 - 8. Public Circulation (11,479 sf)
 - 9. Mechanical/Electrical (23,926 sf)
 - 10. Vertical Circulation/Stairwell (3,219 sf)
 - 11. Storage (2,379 sf)
 - 12. Tug Drive (10,726 sf)
- F. Unclassified**
 - 13. Unclassified (9,014 sf)



Exhibit C
Terminal Building Space - Level 1
July 2016
Albuquerque International Sunport



Lease Area Legend Terminal Level 3

A. Concourse Facilities

- 1. Passenger Holdrooms (54,387 sf)
- 2. Passenger Circulation (25,385 sf)
- 3. Restrooms (17,617 sf)
- 4. Concessions (43,648 sf)
- 5. Airport Administration/Aviation Dept (25,257 sf)
- 6. Aviation Dept Circulation (8,860 sf)

B. Public Spaces

- 7. Public Circulation (23,898 sf)
- 8. Mechanical/Electrical (22,632 sf)
- 9. Vertical Circulation/Stairwell (10,889 sf)
- 10. Storage (1,355 sf)

C. Building Systems/Support

- 11. Unclassified (2,348 sf)

D. Unclassified

E. Public Spaces

- 12. TSA/Police Interview Area (154 sf)
- 13. TSA Office Space (1,868 sf)
- 14. TSA Screening Area (24,869 sf)

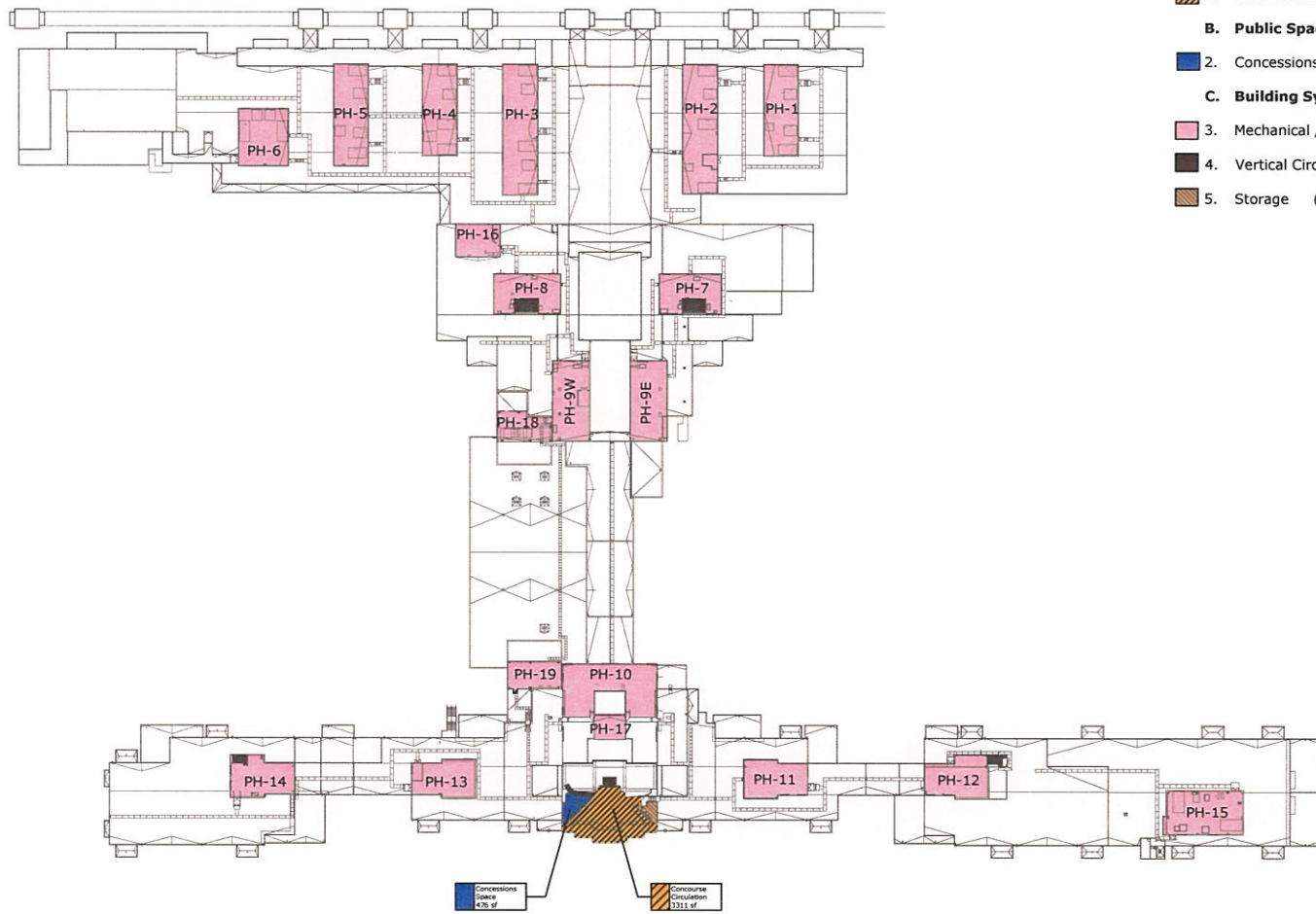
Exhibit C

Terminal Building Space - Level 3

July 2016

Albuquerque International Sunport





Lease Area Legend **Terminal Level Penthouse**

A. Concourse Facilities

1. Concourse Circulation (3,311 sf)

B. Public Spaces

2. Concessions (476 sf)

C. Building Systems/Support

3. Mechanical / Electrical (55,191 sf)

4. Vertical Circulation / Stairwell (1,272 sf)

5. Storage (268 sf)

Concessions Space 476 sf
Concourse Circulation 3311 sf

Exhibit C

Terminal Building Space - Penthouse Roof Plan
July 2016
Albuquerque International Sunport



Exhibit D
Preferential Use Gates and Assigned Gates

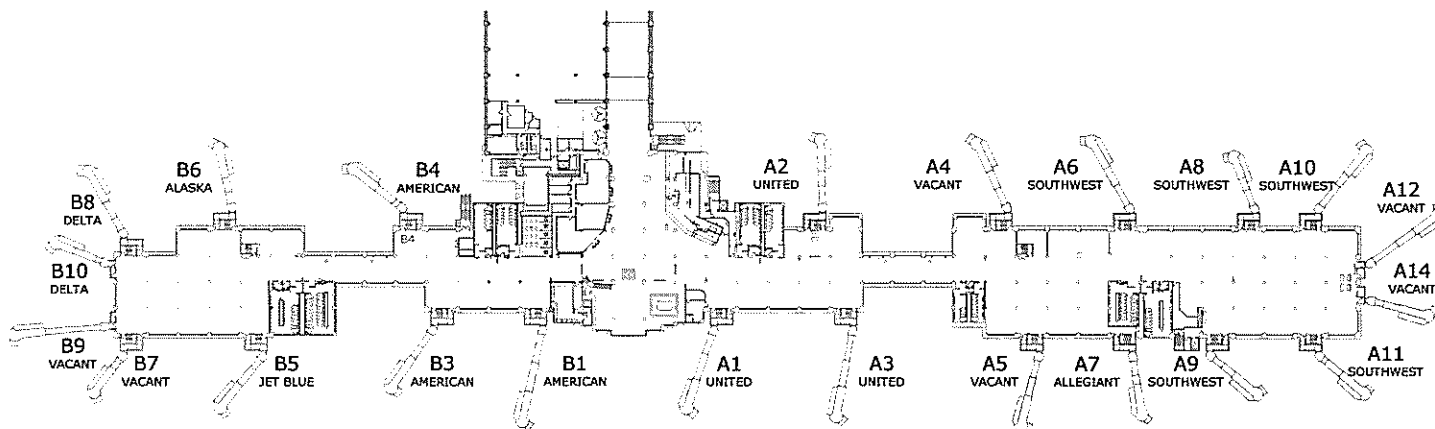


Exhibit D

Preferential Use Gates and Assigned Gates
 July 2016
 Albuquerque International Sunport



Exhibit E
Capital Improvements

Exhibit E

CAPITAL IMPROVEMENT PROGRAM

Fiscal Years 2016 to 2021

City of Albuquerque Aviation Department

	Project costs (escalated)	Percent of total	AIP grants (a)	Other grants	PFC revenues paygo (b)	Capital Fund (c)
Airfield projects						
Runway 3-21 high-speed turnout	\$4,228,000	2.9%	\$3,564,000	\$0	\$664,000	\$0
Taxiway A reconstruction	2,566,000	1.8%	2,163,000	-	403,000	-
Taxiway B reconstruction	12,835,000	8.9%	10,819,000	-	2,016,000	-
Taxiway E reconstruction	19,066,000	13.2%	16,071,000	-	2,995,000	-
Perimeter road reconstruction	4,701,000	3.3%	-	-	-	4,701,000
Sunport master plan update	1,213,000	0.8%	1,022,000	-	-	191,000
Purchase of new fire/rescue equipment (d)	3,713,000	2.6%	3,130,000	-	583,000	-
Subtotal	\$48,322,000	33.5%	\$36,769,000	\$0	\$6,661,000	\$4,892,000
Apron projects						
NW terminal/commuter apron reconstruction	\$3,409,000	2.4%	\$2,873,000	\$0	\$536,000	\$0
Pad 35 and RON ramp	12,665,000	8.8%	10,675,000	-	1,990,000	-
West ramp	4,727,000	3.3%	3,984,000	-	743,000	-
Subtotal	\$20,801,000	14.4%	\$17,532,000	\$0	\$3,269,000	\$0
Double Eagle II airfield projects						
Master plan update	\$1,045,000	0.7%	\$941,000	\$0	\$0	\$104,000
Runway 17-35 and Taxiway B extension	7,551,000	5.2%	7,173,000	194,500	-	183,500
Runway 17-35 ILS upgrades	2,251,000	1.6%	2,138,000	58,000	-	55,000
Runway 4-22 rehabilitation	265,000	0.2%	239,000	-	-	26,000
Airfield lighting upgrade	255,000	0.2%	230,000	-	-	25,000
Perimeter fence upgrade	260,000	0.2%	234,000	-	-	26,000
Snow removal equipment	124,000	0.1%	118,000	3,000	-	3,000
Subtotal	\$11,751,000	8.1%	\$11,073,000	\$255,500	\$0	\$422,500
Terminal Improvement Pre-Security (TIP) projects						
Mechanical upgrades	\$4,397,000	3.0%	\$0	\$0	\$3,737,000	\$660,000
Core terminal building improvements	29,900,000	20.7%	-	-	14,950,000	14,950,000
Police office renovation	1,442,000	1.0%	-	-	-	1,442,000
Fitness Center	212,000	0.1%	-	-	-	212,000
Subtotal	\$35,951,000	24.9%	\$0	\$0	\$18,687,000	\$17,264,000
Other terminal projects						
Access control improvements	\$13,793,000	9.6%	\$0	\$0	\$11,724,000	\$2,069,000
New federal inspection station	6,556,000	4.5%	-	-	4,917,000	1,639,000
Common use systems	240,000	0.2%	-	-	-	240,000
Access control office expansion	784,000	0.5%	-	-	-	784,000
IT office relocation	631,000	0.4%	-	-	-	631,000
Family assistance center	364,000	0.3%	-	-	-	364,000
Subtotal	\$22,368,000	15.5%	\$0	\$0	\$16,641,000	\$5,727,000
Roadway projects (e)						
Spirit Drive reconstruction	\$3,791,000	2.6%	\$0	\$0	\$0	\$3,791,000
Roadways signage replacement	1,306,000	0.9%	-	-	1,306,000	-
Subtotal	\$5,097,000	3.5%	\$0	\$0	\$1,306,000	\$3,791,000
Total	\$144,290,000	100.0%	\$65,374,000	\$255,500	\$46,564,000	\$32,096,500

(a) Including FAA Airport Improvement Program (AIP) Voluntary Air Low Emissions (VALE) program grants.

(b) Projects included in PFC application 4 and proposed to be included in a new future application subject to approval by the FAA.

Assumes continuation of \$4.50 PFC rate per eligible enplaned passenger.

(c) Includes amounts paid from the Airport Improvement and Airline Coverage accounts of the Capital Fund.

(d) Pending renegotiation of contract with U.S. Air Force and approval by the FAA.

(e) The roadway project costs are allocated to the terminal building (45%), the landside area (45%), and other areas (10%). Only costs allocated to the terminal building affect the airline rate base.

Exhibit F
Illustrative Calculation of Airline Rentals, Fees and Charges

EXHIBIT F.1

CALCULATION OF EXCLUSIVE, PREFERENTIAL, AND NON-PREFERENTIAL TERMINAL BUILDING SPACE RENTAL RATES

Albuquerque International Sunport
Fiscal Years ending June 30

		<u>Estimated 2017</u>
Terminal Building Cost		
Allocated O&M Expenses		\$ 16,016,649
Allocated O&M Expenses (Roadway)		722,755
Equipment purchases, capital outlays, and unscheduled maintenance (a)		-
Capital Costs		
Debt Service (b)		\$ 2,412,706
Allocated Debt Service (Roadways) (b)		819,051
Amortization		2,779,505
Allocated Amortization (Roadways)		247,125
Capital Costs		<u>\$ 6,258,388</u>
Bad Debt Expense		-
Terminal Building Cost		<u>\$ 22,997,792</u>
Less: Passenger Security Screening Fees		(635,850)
Less: FIS Area Fees		-
Net Terminal Building Cost	[A]	<u>\$ 22,361,942</u>
Rentable Space (square feet)	[B]	249,059
Terminal Building Space Rental Rate	[C=A/B]	\$ 89.79

(a) Net of any Grants-in-Aid or PFC revenues received by City for such purpose.

(b) Net of any PFC contribution. Includes debt service coverage.

Exhibit F.2

CALCULATION OF PASSENGER CIRCULATION AREA CHARGES

Albuquerque International Sunport

Fiscal Years ending June 30

		<u>Estimated 2017</u>
Passenger Circulation Area Cost		
Terminal Building Space Rental Rate	[A]	\$ 89.79
Passenger Circulation Area	[B]	25,385
Passenger Circulation Area space requirement	[C=A*B]	<u>\$ 2,279,211</u>
Bad Debt Expense	[D]	-
Passenger Circulation Area Cost	[E=C+D]	\$ 2,279,211
Allocation of Passenger Circulation Area Cost		
Allocation according to total number of Preferential Use and Assigned Gates	[F]	50%
Allocation according to Enplaned Passengers	[G]	50%
Amount to allocate according to total number of Preferential Use and Assigned Gates	[H=E*F]	\$ 1,139,605
Amount to allocate according to number of Enplaned Passengers	[I=E*G]	<u>1,139,605</u>
Passenger Circulation Area Cost		\$ 2,279,211
Number of Preferential Use and Assigned Gates	[J]	14
Number of Enplaned Passengers	[K]	2,360,000
Passenger Circulation Area Cost per Preferential Use and Assigned Gate	[L=H/J]	\$ 81,400
Passenger Circulation Area Cost per Enplaned Passenger	[M=I/K]	\$ 0.48

Exhibit F.3
CALCULATION OF BAGGAGE CLAIM AREA CHARGES
 Albuquerque International Sunport
 Fiscal Years ending June 30

		Estimated 2017
Baggage Claim Area Cost		
Terminal Building Space Rental Rate	[A]	\$ 89.79
Baggage Claim Area	[B]	32,692
Baggage Claim Area space requirement	[C=A*B]	\$ 2,935,275
O&M Expenses	[D]	102,863
Equipment purchases, capital outlays, unscheduled maintenance (a)	[E]	-
Capital Costs		
Debt Service (b)		\$ 154,433
Amortization		63,865
Capital Costs	[F]	\$ 218,298
Bad Debt Expense	[G]	-
Baggage Claim Area Cost	[H=C+D+E+F+G]	\$ 3,256,436
Deplaned Passengers	[I]	2,270,000
Baggage Claim Area Cost per Deplaned Passenger	[J=H/I]	\$ 1.43
Premium for Passenger Airlines with Enplaned Passenger market share equal to 3.0% or less	[K]	25%
Baggage Claim Area Charge for Passenger Airlines with Enplaned Passenger market share equal to 3.0% or less	[L=J * (1+K)]	\$ 1.79
Deplaned Passengers from Passenger Airlines with Enplaned Passenger market share equal to 3.0% or less	[M]	110,600
Bag Claim charges from Passenger Airlines with Enplaned Passenger market share equal to 3.0% or less	[N=L*M]	\$ 198,327
Net Baggage Claim Area Cost	[O=H-N]	\$ 3,058,109
Allocation of Net Baggage Claim Area Cost		
Allocation equally to Passenger Airlines with Enplaned Passenger market share over 3.0%	[P]	20%
Allocation to Deplaned Passengers from Passenger Airlines with Enplaned Passenger market share over 3.0%	[Q]	80%
Amount to allocate equally to Passenger Airlines with Enplaned Passenger market share over 3.0%	[R=O*P]	\$ 611,622
Amount to allocate to Deplaned Passengers from Passenger Airlines with Enplaned Passenger market share over 3.0%	[S=O*Q]	2,446,487
Net Baggage Claim Area Cost		\$ 3,058,109
Number of Passenger Airlines with Enplaned Passenger market share over 3.0%	[T]	4
Number of Deplaned Passengers from Passenger Airlines with Enplaned Passenger market share over 3.0%	[U]	2,159,400
Net Baggage Claim Area Cost per Passenger Airline with Enplaned Passenger market share over 3.0%	[V=R/T]	\$ 152,905
Net Baggage Claim Area Cost per Deplaned Passenger for Passenger Airlines with Enplaned Passenger Market share over 3.0%	[W=S/U]	\$ 1.13

(a) Net of any Grants-in-Aid or PFC revenues received by City for such purpose.

(b) Net of any PFC contribution. Includes Debt Service Coverage.

Exhibit F.4

CALCULATION OF LOADING BRIDGE CHARGES

Albuquerque International Sunport
Fiscal Years ending June 30

		Estimated 2017
Loading Bridge Operating Cost		
O&M Expenses	[A]	\$ 589,855
Bad Debt Expense	[B]	-
Loading Bridge Operating Cost	[C=A+B]	<u>\$ 589,855</u>
Departing Flights	[D]	24,800
Loading Bridge Operating Fee (per Departing Flight)	[E=C/D]	<u>\$ 23.78</u>
Loading Bridge Fixed Fee		
Capital Costs		
Debt Service	[F]	\$ 384,881
Amortization	[G]	218,283
Capital Costs	[H=F+G]	<u>\$ 603,163</u>
Loading Bridge Fixed Fee Cost	=[H]	\$ 603,163
Rented Gates	[I]	14
Loading Bridge Fixed Fee (per Rented Gate)	[J=H/I]	<u>\$ 43,083</u>

Exhibit F.5

CALCULATION OF NON-PREFERENTIAL GATE USE FEE

Albuquerque International Sunport

Fiscal Years ending June 30

		<u>Estimated 2017</u>
Non-Preferential Gate Use Cost		
Holdroom Space Requirement		
Terminal Building Space Rental Rate	[A]	\$ 89.79
Airline Holdroom Space (Concourses A & B) (SqFt)	[B]	54,387
Holdroom Space Requirement	[C=AxB]	\$ 4,883,176
Loading Bridge Operating Cost	[D]	589,855
Passenger Circulation Area Cost		
Terminal Building Space Rental Rate	[A]	\$ 89.79
Passenger Circulation Area space (SqFt)	[E]	25,385
Passenger Circulation Area Cost	[F=A*E]	\$ 2,279,211
Non-Preferential Gate Use Cost	[G=C+D+F]	\$ 7,752,241
Total Number of Gates	[H]	22
Cost per Gate	[I=G/H]	\$ 352,375
Non-Preferential Gate premium	[J]	115%
Non-Preferential Gate Cost	[K=I*J]	\$ 405,231
Average Utilization of Rented Gates for most recent 12-month period	[L]	1,481
Non-Preferential Gate Use Fee per use of arriving or departing aircraft for Signatory Airlines (a)	[M=I/L]	\$ 237.89
Non-Preferential Gate Use Fee per use of arriving or departing aircraft for Non-Signatory Airlines	[N=K/L]	\$ 273.57

(a) Excludes the nonsignatory airline premium.

Exhibit F.6
LANDING FEE RATE
 Albuquerque International Sunport
 Fiscal Years ending June 30

		<u>Estimated 2017</u>
Calculation of Airfield Cost		
O&M Expenses	[A]	\$ 6,920,632
Equipment purchases, capital outlays, unscheduled maintenance (a)	[B]	-
Capital Cost		
Debt Service		\$ 140,329
less: Airfield PFC Revenue Offset		-
Net Debt Service (b)		<u>\$ 140,329</u>
Amortization Charges		<u>528,201</u>
Capital Cost	[C]	\$ 668,530
Bad Debt Expense	[D]	-
Reliever Airport Deficit	[E]	836,000
Fines, assessments, judgements, settlements, extraordinary charge	[F]	-
O&M Reserve Account deposit		-
less: Amount paid with CFCs		-
O&M Reserve Account deposit paid with landing fees	[G]	-
Air Cargo Apron taxilane costs	[H]	-
Airfield Cost	[I=A+B+C+D+E+F+G+H]	\$ 8,425,162
Less: Non-Signatory Airline Airfield revenues		
Non-Signatory Airline Landing Fees		\$ (303,048)
U.S. Air Force flight fees		(50,000)
General aviation fuel flowage fees		(250,000)
Commuter apron fees		(4,000)
Subtotal	[J]	<u>\$ (607,048)</u>
Net Airfield Cost	[K=I+J]	\$ 7,818,114
Total Landed Weight of Signatory Airlines (1,000 lb. units) (c)	[L]	<u>3,210,000</u>
Signatory Airline Landing Fee Rate (per 1,000 lb. units)	[M=K/L]	\$ 2.44
Non-Signatory Airline Landing Fee Rate @ 115%	[=M*115%]	\$ 2.81

(a) Net of any Grants-in-Aid or PFC revenues received by City for such purpose.

(b) Includes debt service coverage.

(c) Includes Landed Weight for Affiliate Airline Qualifying Flights.

AIRLINE TERMINAL BUILDING RENTAL CREDIT
 Albuquerque International Sunport
 Fiscal Years ending June 30

		<u>Estimated 2017</u>
Calculation of Airline Terminal Building Revenue Credit		
Net concession revenues to City		
News, gift, and specialty retail		\$ 1,887,000
Food and beverage		1,889,000
Advertising		250,000
Passenger Airline Terminal Building Revenue Credit	[A]	\$ 4,026,000
x Passenger Airline Rented Space as percent of Passenger Airline Rentable Space	[B]	76.1%
=Allocated Airline Terminal Building Revenue Credit	[C=A*B]	\$ 3,065,505
5% of Rental car privilege fees	[D]	492,000
Allocated Airline Terminal Building Rental Credit	[E=C+D]	\$ 3,557,505
Airline Terminal Building Rental Credit		
Allocation according to number of Enplaned Passengers	[F]	70.0%
Allocation according to share of Rented Space	[G]	30.0%
Amount to allocate according to number of Enplaned Passengers	[H=E*F]	\$ 2,490,254
Amount to allocate according to share of Rented Space	[I=E*G]	1,067,252
Total	[=H+I]	\$ 3,557,505
Total Airline Terminal Building Revenue Credit by Signatory Airline		
American		\$ 523,117
Delta		283,355
JetBlue		43,593
Southwest		1,362,283
United		277,906
Total		\$ 2,490,254

EXHIBIT F.7 (page 2 of 2)

AIRLINE TERMINAL BUILDING RENTAL CREDIT

Albuquerque International Sunport

Fiscal Years ending June 30

	<u>Forecast 2017</u>
Allocation according to number of Enplaned Passengers	
Amount to allocate	\$ 2,490,254
Airline share of Signatory Enplaned Passengers	
American	21.0%
Delta	11.4%
JetBlue	1.8%
Southwest	54.7%
United	11.2%
Total	<u>100.0%</u>
Allocation	
American	\$ 523,117
Delta	283,355
JetBlue	43,593
Southwest	1,362,283
United	277,906
Total	<u>\$ 2,490,254</u>
Allocation according to share of Rented Space	
Amount to allocate	\$ 1,067,252
Airline share of Rented Space	
American	21.3%
Delta	17.7%
JetBlue	7.1%
Southwest	35.9%
United	18.0%
Total	<u>100.0%</u>
Allocation	
American	\$ 227,194
Delta	189,360
JetBlue	76,171
Southwest	382,734
United	191,792
Total	<u>\$ 1,067,252</u>

Note: Capitalized terms are used as defined in the Airline Agreement.

Exhibit G
Security Deposit Provisions

Exhibit G
Airline Operating Agreement and Terminal Building Lease

Security Deposit Provisions

Security Deposit Requirement. Airline shall be required to submit a Security Deposit in the event that it (1) has operated at the Airport for less than twelve (12) consecutive months from the Effective Date of this Agreement or (2) has received a written notice from City that a Triggering Event has occurred and sixty (60) days have passed since Airline has received such notice, and Airline has not cured the Triggering Event.

Form of Security Deposit. Such Security Deposit shall be a Bond or an irrevocable Letter of Credit ("LOC") in a form substantially the same as attached hereto and incorporated herein. The Bond or LOC shall expressly permit partial payment. The Bond or LOC shall be issued exclusively to City. When a bond is provided, such Bond shall be issued with City as obligee by a surety licensed to conduct business in the State of New Mexico and which has sufficient bonding capacity for the amount of the Bond and is named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in the Federal Register by the U.S. Treasury Department or its successor agency.

Document(s) evidencing this deposit shall provide that the same shall remain in full force and effect for a period of sixty (60) days following termination or cancellation of this Agreement as is herein provided. If payments required by Airline are not made in accordance with the payment provisions set forth in Section 7.15 of the Agreement, City shall have the right to forfeit, take, and use so much of such Security Deposit as may be necessary to make such payment in full and to exercise any other legal remedies to which it may be entitled. In the event of a partial draw, Airline shall immediately reinstate the Security Deposit to the full amount required herein.

Duration of Security Deposit Requirement. If Airline is required to provide a Security Deposit as indicated herein, this requirement shall remain in effect until the later of (a) twelve (12) months following City's receipt of full payment of any and all past due amounts from Airline following a Triggering Event, or (b) a twelve (12) month period during which Airline has remained current on all amounts due under this Agreement, as determined by City. In no case shall a Security Deposit requirement be in place for less than twelve (12) months.

PERFORMANCE BOND
(sample format)

Bond No. _____

KNOW ALL MEN BY THESE PRESENTS, that we _____, as Principal, and _____, as Surety, are held and firmly bound unto the **City of Albuquerque**, New Mexico, in the penal sum of _____ **Dollars (\$_____)** lawful money of the United States, to the payment of which well and truly to be made we bind ourselves and our heirs, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the above bonded Principal has signed a _____ ("Agreement") with the City of Albuquerque, dated _____.

NOW, THEREFORE, the condition of this obligation is such that, if the above bonded Principal shall faithfully perform each and every provision of the Agreement, then this obligation shall be void; otherwise, to remain in full force and effect.

This Performance Bond is to remain in force and to be binding upon Surety for a period of _____ year(s) from the date hereof, but may be continued from year to year by delivery of Continuation Certificate signed by Attorney-in-Fact and under seal of said Surety. City of Albuquerque is allowed to make a partial draw on this Bond, pursuant to Section ___ of the above-referenced Agreement. Further, this Performance Bond shall remain in full force and effect for a period of sixty (60) days following termination or cancellation of the above-referenced Agreement. The Surety shall have the right to terminate their liability upon giving the City of Albuquerque thirty (30) days notice by registered mail of its intention to so terminate, but said Surety shall remain liable for all sums due under the provision of this Bond up to and including the effective date of such termination and liability.

IN WITNESS WHEREOF, the Principal and Surety have hereunto set their Bonds and seals this _____ day of _____, _____.

ATTEST: _____ Principal
By: _____
Title: _____

ATTEST: _____ Surety
By: _____
Title: _____

STATE OF _____)
) ss.
COUNTY OF _____)

I, _____, a Notary Public in and for the State and County aforesaid, do hereby certify that _____ of the _____ who is personally known to me, appeared before me this day and acknowledged that he/she signed, sealed and delivered the foregoing instrument as his/her free and voluntary act as _____ of the _____, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this _____ day of _____, _____.

Notary Public

My Commission Expires:

Irrevocable Letter Of Credit
(sample format)

Letter of Credit No. _____
Date: _____
Amount: \$ _____

City of Albuquerque
Aviation Department
Albuquerque International Sunport
P. O. Box 9948
Albuquerque, NM 87119-1048

We hereby establish an Irrevocable Letter of Credit in your favor in the amount of:

_____ Dollars (\$ _____) for the account of

_____ available by your draft at sight when accompanied by:

[name of Airline]

A certificate signed by the Director of Aviation of the City of Albuquerque to the effect that _____ [name of Airline] _____ has failed to perform the terms, covenants and conditions to be performed as required by the _____ [exact title of the agreement] _____ ("Agreement") dated _____.

This Letter of Credit shall remain in full force and effect for a period of sixty (60) days following termination or cancellation of the Agreement.

Drafts under this credit must bear upon their face the words:

Drawn under _____ Bank

Letter of Credit No. _____ Dated _____.

We hereby agree with drawers, endorsers and bona fide holders of drafts negotiated under and in compliance with the terms of this credit that the same will be duly honored upon presentation to Drawee if drawn and negotiated on or before _____.

This credit is subject to the "Uniform Customs and Practice for Documentary Credits" as established by the International Chamber of Commerce, and such revisions thereof as are in effect as of the date of issuance.

[name of bank]

By: _____
Authorized Signature

Exhibit H
Environmental Requirements Exhibit

Exhibit H
Airline Operating Agreement and Terminal Building Lease

Environmental Requirements

Section 1. Compliance with Environmental Laws. In connection with its operations or any other activity at the Airport, Airline shall at all times and in all respects comply with all applicable Environmental Laws including Federal, State and local laws, ordinances and regulations pertaining to Hazardous Substances, which are applicable to the Premises and Airline's operations at the Airport. Upon expiration or earlier termination of this Agreement, Airline shall cause all Hazardous Substances introduced to the Premises and the Airport by Airline or its agents or invitees to be removed from the Premises and the Airport as required by and in compliance with applicable Environmental Laws, and transported for use, storage, or disposal in accordance and in compliance with all applicable Environmental Laws.

Section 2. Waste Disposal. Shall not dispose of or permit any other person to dispose of any waste material taken from or products used (whether liquid or solid) with respect to its aircraft into the sanitary or storm sewers at the Airport unless such waste material or products first be properly treated if required under applicable Environmental Laws, by equipment installed for that purpose or otherwise disposed of pursuant to law. Airline shall also obtain all government agency approvals, which are required under applicable Environmental Laws for disposal of such waste material, and shall immediately notify City's Aviation Department if a governmental agency approval is required for such disposal. All such disposal shall comply with applicable regulations of the United States Department of Agriculture and shall be in compliance with Section 1 above or Section 3 below of this Agreement.

Section 3. Federal Stormwater Regulations.

A. Notwithstanding any other provisions or terms of this Agreement, Airline acknowledges that the Airport is subject to all applicable Federal, state, and local stormwater regulations. Airline further acknowledges that it is familiar with these stormwater regulations; that it may conduct or operate from time to time aircraft, vehicle, or ground support equipment maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling and lubrication), equipment cleaning operations, deicing activities, or other activities as defined in the federal stormwater regulations; and that it is aware that there are significant penalties for submitting false information, including fines and imprisonment for knowing violations.

B. Notwithstanding any other provisions or terms of this Agreement, including Airline's right to quiet enjoyment, City and Airline both acknowledge that close cooperation is necessary to ensure compliance with any stormwater discharge permit terms and conditions, as well as to ensure safety and to minimize costs. Airline

acknowledges that it may be necessary to undertake measures to minimize the exposure of stormwater to significant materials generated, stored, handled or otherwise used by Airline as defined in the federal stormwater regulations, by implementing and maintaining best management practices.

C. Airline acknowledges that City's stormwater discharge permit ("Stormwater Permit") is incorporated by reference into this Agreement and any subsequent renewals. Airline agrees to be bound by all applicable portions of said permit. The City agrees to utilize its best efforts to obtain reasonable and cost-effective terms and conditions, provide an opportunity for Airline to participate in the development of the terms of the Stormwater Permit and follow the procedures provided below in subsection D.

D. City shall provide Airline with written notice of those Stormwater Permit requirements that Airline shall be obligated to perform from time to time, including, but not limited to: certification of non-stormwater discharges; preparation of stormwater pollution prevention or similar plans; implementation of "good housekeeping" measures or Best Management Practices; corrective actions to identified findings or noted violations as a result of an inspection; and maintenance of necessary records. Such written notice shall include applicable deadlines. Airline within twenty (20) days of receipt of such written notice, shall notify City in writing if it disputes any of the Stormwater Permit requirements it is being directed to undertake. If Airline does not provide such timely notice, it is deemed to assent to undertake such requirements. If Airline provides City with written notice, as required above, that it disputes such Stormwater Permit requirements, City and Airline agree to negotiate a prompt resolution of their differences. Airline warrants that it will not object to City notices required pursuant to this paragraph for purposes of delay or avoiding compliance.

E. Subject to the dispute resolution provision of subsection D above, Airline agrees to undertake at its sole expense, unless otherwise agreed to in writing between City and Airline, those Stormwater Permit requirements for which it has received written notice from City. Airline warrants that it shall meet any and all deadlines that may be imposed on or agreed to by City and Airline. Airline agrees that time is of the essence.

F. City and Airline agree to provide each other upon request with any non-privileged information collected and submitted to any government entity(ies) pursuant to applicable stormwater regulations.

G. Airline agrees that the terms and conditions of City's Stormwater Permit may change from time to time. City will notify Airline and provide Airline with an opportunity to confer with City on any proposed changes to City's Stormwater Permit.

H. Airline agrees to participate, to the extent reasonably possible, in any City organized task force or other work group established to coordinate stormwater activities at the Airport.

I. All such remedies of City with regard to environmental requirements as set forth herein shall be deemed cumulative in nature and shall survive termination of this Agreement.

NOTE: For ease of reference, the definitions in the Agreement of "Environmental Laws" and Hazardous Substances are copied below.

Section 1.02. Definitions. The following words and phrases, wherever used in this Agreement, shall, for the purpose of this Agreement, have the following meanings:

- 26. "Environmental Laws"** shall be interpreted in the broadest sense to include any and all federal, state, and local statutes, ordinances, regulations, rules, policies, procedures, or guidelines having the force and effect of law now or hereafter in effect during the term of this agreement, as the same may be amended from time to time, which govern Hazardous Substances or relate to the protection of human health, safety or the environment, without limitation.
- 33. "Hazardous Substances"** shall be interpreted in the broadest sense to include any and all substances, materials, wastes, pollutants, oils or governmental regulated substances or contaminants as defined or designated as hazardous, toxic, radioactive, dangerous, or any other similar term in or under any of the Environmental Laws, including but not limited to asbestos and asbestos containing materials, petroleum products including crude oil or any fraction thereof, gasoline, aviation fuel, jet fuel, diesel fuel, lubricating oils and solvents, urea formaldehyde, flammable explosives, PCBs, radioactive materials or waste, or any other substance that, because of its quantity, concentration, physical, chemical, or infectious characteristics may cause or threaten a present or potential hazard to human health, the environment, or public welfare when improperly generated, used, stored, handled, treated, discharged, distributed, disposed, or released. Hazardous Substances shall also mean any substances regulated or defined as hazardous materials, hazardous wastes, or toxic substances under any applicable Environmental Laws.

Exhibit I
Insurance and Indemnification Provisions

Exhibit I
Airline Operating Agreement and Terminal Building Lease

Insurance and Indemnification

I. Insurance

A. General Requirements. For the term of this Agreement Airline shall, at its sole cost and expense, procure and maintain insurance in conformance with the requirements set forth in this Section. Airline will use insurance companies authorized to do business in the State of New Mexico and with a minimum A.M. Best rating of A-VII or its equivalent, or as approved by City, covering all operations under this Agreement, whether performed by it or its agents. Various types of required insurance may be written in one or more policies.

When requested by City, Airline shall allow City to review in the presence of Airline's insurance representatives any or all policies of insurance for the insurance coverage required herein. Policies of insurance shall be procured for all insurance required and coverage limits of such policies of insurance shall not be reduced or replaced in part or in whole by self-insurance, including self-insurance retention amounts, except as provided in subsection F below.

Airline shall not violate the terms or prohibitions of insurance policies required to be furnished by Airline. Airline shall promptly notify City of any claim or loss at the airport exceeding the amount of the deductible under any liability insurance policies, and certify that proper notice has been given the appropriate insurance carrier.

B. Additional Insured. With respect to all coverage required other than workers' compensation, the City shall be a certificate holder and endorsed as an additional insured or loss payee. All coverage afforded shall be primary and non-contributory with respect to operations provided. City shall have no liability for any premiums charged for such coverage, and the inclusion of City as an additional insured is not intended to, and shall not make City a partner or joint venturer with Airline in its operations on the Airport.

Coverage for an additional insured shall **not** be limited to its vicarious liability, and coverage shall extend to damage, destruction, and injury to City-owned or City-leased property and City personnel, and caused by or resulting from work, acts, operations, or omissions of Airline, its officers, agents, employees, and independent contractors on the Airport, notwithstanding City's status as an additional insured.

C. Insurance Certificates and Endorsements. Before commencing the Services and on the renewal of all coverage, Airline shall furnish to the Director of Aviation, Albuquerque International Sunport, P.O. Box 9948, Albuquerque, New Mexico

87119-1048, all necessary certificates and additional insured endorsements in form satisfactory to the City showing that it has complied with this Section. All insurance certificates shall provide that thirty (30) days written notice, seven (7) days in the case of War & Allied Perils, ten (10) days for non-payment of premium, be given to the Director of Aviation before a policy is canceled, materially changed, or not renewed. Acceptance of the Certificates of Insurance and endorsements by City shall not relieve Airline of any of the insurance requirements set forth herein, nor decrease the liability of Airline. Neither Airline nor any contractors, assignees or other transferees of Airline shall begin any operations pursuant to this Agreement until the required insurance has been obtained and proper certificates of insurance delivered to the Director.

Airline agrees to provide written notice to the City of any material changes in coverage including cancellation and non-renewal as soon as possible.

D. Types and Amounts of Insurance. Types and amounts of insurance required in this Agreement are as follows:

1. Aircraft Liability Insurance in an amount not less than One Million Dollars (\$1,000,000.00) multiplied by the largest number of available passenger and airline crew seats on any single aircraft operated by Airline at the Airport, but no less than One Hundred Million Dollars (\$100,000,000.00) per occurrence, single limit for bodily injury and property damage including passengers, which shall include but not necessarily be limited to all of the following coverages: Liquor Liability, Contractual Liability, Hangarkeepers Legal Liability, Motor Vehicle Liability within the confines of the Airport, Mail and Cargo Legal Liability, and Fueling and Refueling (if such operations are conducted by Airline). Such coverage shall include War & Allied Perils.

2. Aviation Commercial General Liability Insurance including bodily injury and property damage, Premises, Products, Completed Operations, Mobile Equipment, Independent Contractors, Personal and Advertising Injury and Contractual Liability in an amount not less than such limit specified under paragraph D.1. Aircraft Liability above, except applicable market sub-limit for Personal and Advertising Injury. Such coverage shall include War & Allied Perils.

3. Commercial Automobile Liability Insurance covering owned, non-owned and hired autos in an amount not less than \$5,000,000 per occurrence, for bodily injury and property damage arising from activities on, or operations with respect to Airport premises, both on and off work.

4. Environmental Impairment Liability Insurance in an amount not less than \$5,000,000 per occurrence, as necessary to insure the indemnification provisions of this Agreement.

City reserves the right to review and modify the limits stated above at one-year intervals to give effect to the changing risk management environment, statutory requirements, and inflationary trends.

The liability insurance required in paragraphs 1-4 above must:

- a) be written on an occurrence basis.
- b) include coverage for Airline's contractual liability to City hereunder. Contractual liability coverage shall specifically insure the Indemnification provisions of this Agreement.
- c) include a severability of interest provision applicable to all insureds and additional insureds separately, except with respect to the insurer's limits of liability.

5. Workers' Compensation and Employers Liability Insurance.

Airline shall comply with the provisions of the New Mexico Workers' Compensation Act, the Subsequent Injury Act, and the New Mexico Occupational Disease Disablement Law. Airline shall procure and maintain during the term of this Agreement complete Workers' and Employer's Liability Insurance in accordance with New Mexico laws and regulations. Coverage shall include coverage permitted under NMSA 1978 § 52-1-10 for safety devices. The insurance shall also include a waiver of subrogation against the City and its employees and agents.

With respect to Workers' Compensation Insurance, if Airline elects to be self-insured, Airline shall comply with the applicable requirements of law. If any portion of the work is to be sublet, Airline shall require the subtenants similarly to provide such coverage (or qualify as a self-insured) for all the latter's employees to be engaged in such work. Airline hereby covenants and agrees that City, its officers, or employees will not be liable or responsible for any claims or actions occasioned by Airline's failure to comply with the provisions of this subparagraph and that the Indemnification provision of this Agreement shall apply to this paragraph. It is expressly agreed that the employees of Airline are not City employees for any purpose.

6. Commercial Property Insurance in an amount equal to the replacement cost of Airline's improvements and all personal property situated on the Airline's Premises.

7. Builders Risk Insurance during any period of construction or reconstruction for which Airline contracts. Airline shall carry, or shall require its contractor or contractors to carry, Builders Risk Insurance in an amount sufficient to insure the value of the work.

E. Minimum Insurance. The insurance requirements of this Agreement shall be the greater of (1) the minimum coverage limits specified in this Agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured. It is agreed that these insurance requirements shall not in any way act to reduce coverage that is broader or that includes higher limits than the minimums required here. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of Airline under this Agreement.

F. Self-Insurance Retention. In the event any of the insurance policies required in this Section (except as allowed by New Mexico law regarding Workers' Compensation) contain a self-insurance retention provision, for each such amount, Airline shall post a bond or an irrevocable letter of credit made exclusively for the benefit of City and held by a bank authorized to do business in New Mexico which is acceptable to City, or provide City with evidence that its net worth (as shown by independently audited financial statements) is in excess of the amount of the total self-insurance retentions.

II. Indemnification

A. General Indemnification. Airline agrees to defend, indemnify and hold harmless City and its officers, employees, and agents from and against all suits, actions, claims, demands, penalties, fines, liabilities, damages, costs and expenses (including but not limited to consultants' fees, reasonable fees of attorneys, court costs and litigation expenses) of whatever kind or nature, known or unknown, contingent or otherwise, brought against City because of any injury, including death at any time resulting from bodily injury, damages for care and loss of services, or damage received or sustained by any person, persons or property arising out of or resulting from any negligent act, error, or omission of Airline, its agents or its employees arising out of the operations of Airline under this Agreement, all except to the extent caused by the negligence, error, omission, or willful misconduct on the part of City, its officers, employees, or agents.

B. Environmental Harm Indemnification. Without limiting any provisions of this Agreement, Airline shall also defend, indemnify and hold City and its officers and employees harmless from and against all suits, actions, claims, demands, penalties, fines, liabilities, damages, costs and expenses (including but not limited to reasonable attorneys' and consultants' fees, court costs and litigation expenses) of whatever kind or nature, known or unknown, contingent or otherwise, brought against City arising out of or in any way related to the operations under this Agreement, all except to the extent caused by the negligence, error, omission, or willful misconduct on the part of the City, its officers, employees, or agents as follows:

1. any actual or alleged contamination by Hazardous Substances of the Premises or the Airport by Airline or its agents;
2. the presence, disposal, or release of Hazardous Substances by Airline or its agents at the Airport that is on, from or affects the soil, air, water, vegetation, buildings, personal property, persons, animals or otherwise;
3. any bodily injury (including wrongful death), property damage, or personal injury arising out of or related to the use of Hazardous Substances by Airline at the Airport;
4. any violation by Airline of any Environmental Laws.

Airline's obligations and liabilities under this subsection shall survive the termination of this Agreement and the transactions contemplated in this Agreement.

C. Limitations. To the extent, if at all, NMSA 1978 § 56-7-1 is applicable to this Agreement, this indemnification agreement shall not extend to or be construed to require Airline to, defend, indemnify and hold harmless City, its officers, employees, and agents from and against liability, claims, damages, losses or expenses, including attorneys fees, arising out of bodily injury to persons or damage to or contamination of property caused by, resulting from, or arising out of the negligence, error, omission, or willful misconduct of City, its officers, employees, or agents.

D. Scope of Indemnification. In addition, with respect to any claims, actions, suits, damages or judgments caused by or resulting from the negligent acts, omissions or operations of Airline, its agents, servants, or employees, Airline shall (1) investigate or cause the investigation of accidents involving such injuries; (2) negotiate or cause to be negotiated all claims made as may be deemed expedient by Airline, and defend, or cause to be defended, suits for damages, even if groundless, false or fraudulent, brought on account of such injuries or damages, in the name and on behalf of City; (3) pay and satisfy judgments finally establishing the liability of City in all actions defended by Airline pursuant to this Section; (4) resolve claims by performing remediation activities, to the extent authorized and required by applicable Environmental Laws, utilizing commercial/industrial cleanup standards and other engineered barriers and institutional controls; and (5) pay or cause to be paid: a) all costs taxed against City in any legal proceeding defended or caused to be defended by Airline as aforesaid; b) any interest accruing up to the date of payment by Airline; c) all premiums charged upon appeal bonds required in such proceedings; and d) all expenses incurred by City for investigation, negotiation, and defense, including but not limited to reasonable expert witnesses' and attorneys' fees incurred, should Airline fail to provide the defense and indemnification required herein.

By way of further clarification, these requirements do not apply to the extent the claims, actions, suits, damages, or judgments are caused by the negligence, error, omission, or willful misconduct on the part of City, its officers, employees, or agents.

E. Miscellaneous. City shall, promptly upon receipt, give Airline every demand, notice, summons, or other process received in any claim or legal proceeding contemplated herein. In the event City shall fail to give Airline notice of any such demand, notice, summons, or other process received by City and such failure to give notice shall result in prejudice to Airline in the defense of any action or legal proceeding contemplated herein, such failure or delay shall release Airline of its liability as set forth in this paragraph insofar as only the particular claim or legal proceeding is concerned, and only to the extent of such prejudice. Nothing herein shall be deemed a change or modification in any manner whatsoever of the method or conditions of preserving, asserting, or enforcing any claim or legal liability against City. This Section shall not be construed as a waiver of City's immunity. The provisions of this Section shall not be construed to prohibit Airline from seeking contribution or indemnity from any third party which may have caused or contributed to the event for which Airline indemnified City.

III. Non-liability of City. City shall not in any event be liable for any acts or omissions of Airline, or its agents, servants, employees, or independent contractors, or for any condition resulting from the operations or activities of Airline, Airline's agents, servants, employees, or independent contractors working for, or on behalf of, Airline.

City shall not be liable for Airline's failure to perform any of its obligations under this Agreement or for any delay in the performance thereof, nor shall any such delay or failure be deemed a default by City.

Exhibit J
Title VI List of Pertinent Nondiscrimination
Acts and Authorities

Exhibit J

Title VI List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this Agreement, Airline, for itself, its assignees, and successors in interest agrees to comply with federally mandated non-discrimination statutes and authorities, including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

(Source: Appendix E of Appendix 4 of FAA Order 1400.11, Nondiscrimination in Federally-Assisted Programs at the Federal Aviation Administration)