

**AIRLINE OPERATING AGREEMENT**

**AND**

**TERMINAL BUILDING LEASE**

by and between

THE CITY OF PENSACOLA, FLORIDA

and

UNITED PARCEL SERVICE CO.

DATE OF EXECUTION:

\_\_\_\_\_

EFFECTIVE DATE:

OCTOBER 1, 2017

DATE OF EXPIRATION:

SEPTEMBER 30, 2022

**TABLE OF CONTENTS**

<b>ARTICLE 1. DEFINITIONS</b>	<b>11</b>
Section 1.01 DEFINITIONS	11
Section 1.02 CROSS-REFERENCES	25
<b>ARTICLE 2. TERM</b>	<b>26</b>
Section 2.01 TERM	26
Section 2.02 PRIOR AGREEMENTS AND LEASES	26
Section 2.03 TERM EXTENSION BY MUTUAL AGREEMENT	26
Section 2.04 AIRLINE'S RIGHTS UPON EXPIRATION OR EARLY TERMINATION OF AGREEMENT	26
Section 2.05 SURRENDER OF LEASED PREMISES	26
<b>ARTICLE 3. LEASED PREMISES</b>	<b>28</b>
Section 3.01 AIRLINE LEASED PREMISES	28
EXCLUSIVE USE SPACE	28
PREFERENTIAL USE SPACE AND EQUIPMENT	29
JOINT USE SPACE	30
Section 3.02 SELF-TICKET MACHINES	30
Section 3.03 TRANSITION SPACE	30
Section 3.04 RIGHT TO PREFERENTIAL USE OF GATES	30
Section 3.05 EMPLOYEE PARKING	32
<b>ARTICLE 4. USES OF THE AIRPORT</b>	<b>33</b>
Section 4.01 PERMISSIBLE USES	33
Section 4.02 RESTRICTIONS	36
Section 4.03 INGRESS AND EGRESS	38
Section 4.04 CONCESSION SERVICES RIGHTS RESERVED BY CITY	39
Section 4.05 GROUND HANDLING SERVICES BY AIRLINE OR OTHERS	40
Section 4.06 REMOVAL OF DISABLED AIRCRAFT	41
SECTION 4.07 AIRLINE PRECAUTIONS	42

<b>ARTICLE 5.</b>	<b>AIRLINE AFFILIATES</b>	<b>43</b>
Section 5.01	DESIGNATION OF AFFILIATES	43
Section 5.02	RIGHTS OF AFFILIATES	43
Section 5.03	MULTIPLE AFFILIATES	44
Section 5.04	TERMINATION OF AFFILIATE	44
Section 5.05	SIGNATORY AIRLINE AS AFFILIATE	45
<b>ARTICLE 6.</b>	<b>RENTS AND FEES</b>	<b>46</b>
Section 6.01	CONSIDERATION	46
Section 6.02	TERMINAL BUILDING RENTS	46
Section 6.03	LOADING BRIDGE FEES	46
Section 6.04	BAGGAGE HANDLING SYSTEM FEE	46
Section 6.05	APRON AREA FEES	46
Section 6.06	CARGO APRON AREA FEES	47
Section 6.07	LANDING FEES	47
Section 6.08	CITY GATE PER USE CHARGES	47
Section 6.09	OTHER CHARGES	47
Section 6.10	TIME OF PAYMENT	48
Section 6.11	PFC COLLECTION AND HANDLING	50
Section 6.12	PLACE OF PAYMENT	50
Section 6.13	ADDITIONAL RENT	51
Section 6.14	LIQUIDATED DAMAGE ON OVERDUE PAYMENTS	51
Section 6.15	PERFORMANCE GUARANTEE —AIRLINE RENTS AND FEES	51
<b>ARTICLE 7.</b>	<b>CALCULATION OF RENTS, FEES, AND OTHER CHARGES</b>	<b>54</b>
Section 7.01	ANNUAL CALCULATIONS	54
Section 7.02	CALCULATION OF TERMINAL BUILDING RENTAL RATES	54
Section 7.03	CALCULATION OF APRON AREA FEES	56
Section 7.04	CALCULATION OF CARGO APRON AREA FEES	56
Section 7.05	CALCULATION OF LOADING BRIDGE FEE	57
Section 7.06	CALCULATION OF BAGGAGE HANDLING SYSTEM FEE	58
Section 7.07	CALCULATION OF LANDING FEE RATE	59
Section 7.08	ADJUSTMENTS	60

MIDYEAR ADJUSTMENT.	60
EXTRAORDINARY ADJUSTMENTS OF RENTS, FEES, AND CHARGES	61
LANDING FEE VARIANCE ADJUSTMENT	61
<b><u>ARTICLE 8. MONTHLY ACTIVITY REPORTS</u></b>	<b>62</b>
<b>Section 8.01 REQUIRED MONTHLY ACTIVITY REPORTS</b>	<b>62</b>
<b>Section 8.02 FAILURE TO FURNISH REPORT</b>	<b>62</b>
<b><u>ARTICLE 9. CAPITAL IMPROVEMENTS</u></b>	<b>63</b>
<b>Section 9.01 CAPITAL IMPROVEMENT COORDINATION WITH AIRLINE</b>	<b>63</b>
<b>Section 9.02 CAPITAL IMPROVEMENT NOT SUBJECT TO DEFERRAL</b>	<b>64</b>
<b><u>ARTICLE 10. BOND RESOLUTION SUBORDINATION AND APPLICATION OF REVENUES</u></b>	<b>67</b>
<b>Section 10.01 SUBORDINATION TO BOND RESOLUTION</b>	<b>67</b>
<b>Section 10.02 DISPOSITION OF AIRPORT REVENUE, PASSENGER FACILITY CHARGE, AND CUSTOMER FACILITY CHARGE PROCEEDS</b>	<b>67</b>
<b>Section 10.03 REVENUES AND EXPENSE RECORDS</b>	<b>68</b>
<b><u>ARTICLE 11. MAINTENANCE, REPAIR, AND OPERATION OF THE AIRPORT</u></b>	<b>69</b>
<b>Section 11.01 CITY'S RESPONSIBILITIES</b>	<b>69</b>
AIRPORT FACILITIES - GENERAL	69
AIRFIELD AREA MAINTENANCE	69
APRON AREA	69
BAGGAGE HANDLING SYSTEM	69
CARGO APRON AREA	70
LOADING BRIDGES	70
TERMINAL BUILDING - GENERAL	70
TERMINAL BUILDING PUBLIC VIEW AREAS	70
TERMINAL BUILDING JOINT USE SPACE	71
<b>Section 11.02 AIRLINE'S RESPONSIBILITIES</b>	<b>71</b>
EXCLUSIVE USE SPACE AND PREFERENTIAL USE SPACE	71
PREFERENTIAL USE APRON AREA	72
PREFERENTIAL USE CARGO APRON AREA	72



PASSENGER LOADING BRIDGES	72
AIRLINE-CONSTRUCTED IMPROVEMENTS	72
MAINTENANCE RESPONSIBILITIES	73
PERFORMANCE BY CITY UPON FAILURE OF AIRLINE TO MAINTAIN	73
<b>Section 11.03 ALTERATIONS AND IMPROVEMENTS</b>	<b>73</b>
<b>Section 11.04 REPAIR DAMAGE</b>	<b>74</b>
<b>Section 11.05 CITY NON-LIABILITY</b>	<b>74</b>
<b>Section 11.06 CITY'S RIGHT TO INSPECT AND MAKE REPAIRS</b>	<b>74</b>
<b><u>Article 12. DAMAGE OR DESTRUCTION OF LEASED PREMISES</u></b>	<b><u>76</u></b>
<b>Section 12.01 LEASED PREMISES INHABITABLE</b>	<b>76</b>
<b>Section 12.02 LEASED PREMISES UNINHABITABLE</b>	<b>76</b>
<b>Section 12.03 AUTOMATIC DELETION OF UNREPAIRED DAMAGED PREMISES</b>	<b>77</b>
<b>Section 12.04 AIRLINE IMPROVEMENTS AND TRADE FIXTURES REPLACEMENT</b>	<b>77</b>
<b><u>ARTICLE 13. INSURANCE</u></b>	<b><u>79</u></b>
<b>Section 13.01 CITY INSURANCE</b>	<b>79</b>
<b>Section 13.02 AIRLINE INSURANCE</b>	<b>79</b>
<b><u>ARTICLE 14. INDEMNIFICATION</u></b>	<b><u>84</u></b>
<b>Section 14.01 COMPREHENSIVE INDEMNIFICATION</b>	<b>84</b>
<b>Section 14.02 49 CFR PART 1542 AIRPORT SECURITY INDEMNIFICATION</b>	<b>85</b>
<b>Section 14.03 SOVEREIGN IMMUNITY.</b>	<b>85</b>
<b><u>ARTICLE 15. FEDERAL, STATE, AND LOCAL REGULATIONS</u></b>	<b><u>87</u></b>
<b>Section 15.01 RULES AND REGULATIONS</b>	<b>87</b>
<b>Section 15.02 NO ILLEGAL PURPOSE</b>	<b>88</b>
<b>Section 15.03 COMPLIANCE WITH STATUTES, ORDINANCES, AND REGULATIONS</b>	<b>88</b>
<b>Section 15.04 COMPLIANCE WITH ENVIRONMENTAL LAWS</b>	<b>89</b>
<b>Section 15.05 ENVIRONMENTAL REPORTS</b>	<b>90</b>
<b>Section 15.06 SURVIVAL OF OBLIGATIONS</b>	<b>91</b>
<b>Section 15.07 NONDISCRIMINATION</b>	<b>91</b>
<b>Section 15.08 BREACH OF NONDISCRIMINATION</b>	<b>92</b>

<b>Section 15.09</b>	<b>FAIR AND EQUAL FURNISHING OF SERVICES</b>	<b>92</b>
<b>Section 15.10</b>	<b>AFFIRMATIVE ACTION PROGRAM</b>	<b>92</b>
<b>Section 15.11</b>	<b>MINORITY BUSINESS ENTERPRISE</b>	<b>93</b>
<b>Section 15.12</b>	<b>RIGHTS OF FEDERAL GOVERNMENT</b>	<b>93</b>
<b>Section 15.13</b>	<b>SUBORDINATION OF AGREEMENT</b>	<b>93</b>
<b><u>ARTICLE 16. DEFAULT AND REMEDIES</u></b>		<b><u>95</u></b>
<b>Section 16.01</b>	<b>DEFAULT BY AIRLINE AND REMEDIES OF CITY</b>	<b>95</b>
<b>Section 16.02</b>	<b>DEFAULT BY CITY AND TERMINATION BY AIRLINE</b>	<b>98</b>
<b><u>ARTICLE 17. ASSIGNMENT AND SUBLETTING</u></b>		<b><u>102</u></b>
<b><u>ARTICLE 18. MISCELLANEOUS</u></b>		<b><u>103</u></b>
<b>Section 18.01</b>	<b>ACKNOWLEDGMENT</b>	<b>103</b>
<b>Section 18.02</b>	<b>AIRPORT ACCESS LICENSE/PERMIT</b>	<b>103</b>
<b>Section 18.03</b>	<b>AMENDMENTS</b>	<b>103</b>
<b>Section 18.04</b>	<b>ATTORNEYS' FEES</b>	<b>103</b>
<b>Section 18.05</b>	<b>AUTHORITY OF DIRECTOR</b>	<b>104</b>
<b>Section 18.06</b>	<b>BUSINESS PRIVILEGE FEES</b>	<b>104</b>
<b>Section 18.07</b>	<b>CAPACITY TO EXECUTE</b>	<b>104</b>
<b>Section 18.08</b>	<b>CITY NOT LIABLE</b>	<b>105</b>
<b>Section 18.09</b>	<b>COMPLIANCE BY OTHER TENANTS.</b>	<b>105</b>
<b>Section 18.10</b>	<b>COMPLIANCE WITH FAR PART 77</b>	<b>105</b>
<b>Section 18.11</b>	<b>DELIVERY OF NOTICES</b>	<b>105</b>
<b>Section 18.12</b>	<b>DISTRIBUTION OF FUNDS UPON TERMINATION.</b>	<b>106</b>
<b>Section 18.13</b>	<b>EMPLOYEES OF AIRLINE</b>	<b>107</b>
<b>Section 18.14</b>	<b>ENERGY CONSERVATION</b>	<b>107</b>
<b>Section 18.15</b>	<b>ENTIRE AGREEMENT</b>	<b>107</b>
<b>Section 18.16</b>	<b>EXCLUSIVENESS OF AIRLINE'S RIGHTS</b>	<b>107</b>
<b>Section 18.17</b>	<b>FAVORED NATIONS</b>	<b>108</b>
<b>Section 18.18</b>	<b>FORCE MAJEURE</b>	<b>108</b>
<b>Section 18.19</b>	<b>GENERAL INTERPRETATION</b>	<b>108</b>
<b>Section 18.20</b>	<b>GOVERNING LAW</b>	<b>109</b>

<b>Section 18.21</b>	<b>HOLDING OVER</b>	<b>109</b>
<b>Section 18.22</b>	<b>HEADINGS</b>	<b>109</b>
<b>Section 18.23</b>	<b>INCORPORATION OF EXHIBITS</b>	<b>109</b>
<b>Section 18.24</b>	<b>INCORPORATION OF REQUIRED PROVISIONS</b>	<b>109</b>
<b>Section 18.25</b>	<b>INDEPENDENT CONTRACTOR</b>	<b>109</b>
<b>Section 18.26</b>	<b>NO AGENCY</b>	<b>110</b>
<b>Section 18.27</b>	<b>INVALID PROVISIONS</b>	<b>110</b>
<b>Section 18.28</b>	<b>LICENSES, FEES, AND PERMITS</b>	<b>110</b>
<b>Section 18.29</b>	<b>LIENS</b>	<b>110</b>
<b>Section 18.30</b>	<b>NATIONAL EMERGENCY</b>	<b>111</b>
<b>Section 18.31</b>	<b>NO AUTOMATIC RENEWALS</b>	<b>111</b>
<b>Section 18.32</b>	<b>NONLIABILITY OF INDIVIDUALS</b>	<b>111</b>
<b>Section 18.33</b>	<b>NONINTERFERENCE WITH AIRPORT OPERATIONS</b>	<b>111</b>
<b>Section 18.34</b>	<b>NOTICE OR CONSENT</b>	<b>112</b>
<b>Section 18.35</b>	<b>OBTAINING FEDERAL AND STATE FUNDS</b>	<b>112</b>
<b>Section 18.36</b>	<b>OPERATION OF AIRPORT</b>	<b>112</b>
<b>Section 18.37</b>	<b>OTHER LAND AND BUILDINGS EXCLUDED</b>	<b>112</b>
<b>Section 18.38</b>	<b>OWNERSHIP OF IMPROVEMENTS</b>	<b>112</b>
<b>Section 18.39</b>	<b>PAYMENT OF TAXES</b>	<b>113</b>
<b>Section 18.40</b>	<b>PUBLIC ADDRESS SYSTEM</b>	<b>113</b>
<b>Section 18.41</b>	<b>PUBLIC RECORDS LAWS</b>	<b>113</b>
<b>Section 18.42</b>	<b>PRUDENT OPERATOR</b>	<b>114</b>
<b>Section 18.43</b>	<b>REMEDIES TO BE NONEXCLUSIVE</b>	<b>114</b>
<b>Section 18.44</b>	<b>RIGHT TO AUDIT BOOKS AND RECORDS</b>	<b>114</b>
<b>Section 18.45</b>	<b>RIGHT TO LEASE TO UNITED STATES GOVERNMENT</b>	<b>114</b>
<b>Section 18.46</b>	<b>RIGHTS RESERVED TO CITY</b>	<b>115</b>
<b>Section 18.47</b>	<b>SEC RULE 15c2-12.</b>	<b>115</b>
<b>Section 18.48</b>	<b>SUBORDINATION TO AGREEMENTS WITH THE U.S. GOVERNMENT</b>	<b>115</b>
<b>Section 18.49</b>	<b>SUCCESSORS AND ASSIGNS</b>	<b>116</b>
<b>Section 18.50</b>	<b>TRIAL BY JURY</b>	<b>116</b>
<b>Section 18.51</b>	<b>THIRD PARTIES</b>	<b>117</b>
<b>Section 18.52</b>	<b>TIME IS OF THE ESSENCE</b>	<b>117</b>

## LIST OF EXHIBITS

Exhibit A – Airport Layout Plan

Exhibit B – Terminal Layout Plan

Exhibit C – Airline Rented Space

Exhibit D – Baggage Handling System

Exhibit E – Terminal Building Aircraft Parking Positions

Exhibit F – Cargo Apron Aircraft Parking Positions

Exhibit G – Rental Car Service Facilities

Exhibit H – Capital Improvement

Exhibit I – Airline Affiliate Operating Permit

**AIRLINE OPERATING AGREEMENT  
AND TERMINAL BUILDING LEASE**

This Airline Operating Agreement and Terminal Building Lease (“Agreement”), made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2017, by and between the **City of Pensacola**, a municipal corporation of the State of Florida (hereinafter referred to as “City”), and **United Parcel Service Co.**, a corporation organized and existing under the laws of the State of Delaware and authorized to do business in the State of Florida (hereinafter referred to as “Airline”):

WITNESSETH:

WHEREAS, City is the owner of Pensacola International Airport (hereinafter defined and referred to as "Airport" and more completely identified on Exhibit A attached hereto and made a part hereof), which is located in the City of Pensacola, Escambia County, Florida; and

WHEREAS, Airline is engaged in the business of commercial air transportation of persons, property, cargo, and mail as a scheduled air carrier and is certificated or otherwise authorized by the United States Government to engage in such business; and

WHEREAS, Airline has requested that City grant it certain rights, privileges, and services in connection with the use of said Airport and its facilities in the conduct of Airline's business as a scheduled air carrier; and

WHEREAS, City is willing to grant Airline such rights, privileges, and services upon the terms and conditions and for the consideration hereinafter stated; and

WHEREAS, City and Airline deem it desirable to enter into a written agreement setting forth the respective rights, privileges, obligations, and duties of the parties hereto and defining the rights, services, and privileges granted and the terms, conditions, and consideration on which they are granted;

NOW, THEREFORE, for and in consideration of the Leased Premises and the mutual covenants herein contained and the rents, fees, and charges to be paid by Airline, it is agreed and understood by and between City and Airline as follows:

## ARTICLE 1. DEFINITIONS

### Section 1.01 DEFINITIONS

The capitalized terms used in the Agreement shall have the meanings indicated in this Article 1 unless the context clearly indicates otherwise. Words used in this Agreement in the present tense include the future as well as the present. Words used in the masculine gender include the feminine and neuter. The singular number includes the plural, and the plural includes the singular. The word "person" means a corporation, limited liability company, partnership or other legal entity, as well as a natural person. Additional words and phrases used in this Agreement shall have the meanings set forth in the Bond Resolution (as defined below) or, if not so set forth, shall have their usual and customary meanings.

**"Affiliate"** shall mean any Air Transportation company providing air service at the Airport that: (i) has been properly designated by Airline as an Affiliate in a fully executed Affiliate Operating Permit (a copy of City's Affiliate Operating Permit is attached as Exhibit XXX to this Agreement); (ii) (a) is a parent, has a common parent with or is a subsidiary of Airline designating such Air Transportation company as its Affiliate or (b) otherwise operates under the same or a similar trade name at the Airport as Airline designating such Air Transportation company as its Affiliate or (c) operates flights under the same International Air Transport Association (IATA) flight designator code of such Signatory Airline at the Airport; and (iii) is not a Signatory Airline.

**"Agreement"** shall mean this Airline Operating Agreement and Terminal Building Lease between City and Airline, as the same may be amended, modified or altered from time to time pursuant to the terms hereof.

**"Aircraft Arrivals"** shall mean any aircraft arrivals at the Airport (including, without limitation, scheduled, charter, sightseeing, training, test, ferry, courtesy, and inspection flights, or any other flights) operated by an Air Transportation company. Aircraft Arrivals shall not include any flight

by aircraft owned or operated by the U.S. Government or flights that immediately return to the Airport because of mechanical, meteorological, or other precautionary reasons.

**“Aircraft Parking Positions”** shall mean the positions in the Airport’s Apron Area designated on Exhibit E where aircraft are required to park in order to receive and discharge passengers.

**“Air Transportation”** shall mean the carriage of persons, property, cargo, or mail by aircraft to and from the Airport.

**“Airline”** shall mean the entity that has executed this Agreement and is identified in the first paragraph of this Agreement.

**“Airline Space”** shall mean the total number of square feet in the Terminal Building that are designed and designated for airline use.

**“Airline Rented Space”** shall mean the total number of square feet in the Terminal Building for which the airlines are obligated to pay rent to the Airport.

**“Airport”** shall mean Pensacola International Airport as it now exists or as it shall be or may be modified in the future, currently as shown on Exhibit A.

**“Airport Budget”** shall mean the Airport capital and operating budgets and allocated administrative costs prepared and periodically revised and updated by the Mayor and duly adopted by Pensacola City Council for a Fiscal Year.

**“Airport Cost Centers”** shall mean the following cost centers, to be used in accounting for Airport revenues and expenses and for calculating and adjusting certain rentals and fees described herein:



1. **“Terminal Building”** shall mean the terminal building serving the airlines as it now exists or as it may hereafter be reconstructed, modified, changed, or developed in accordance with the terms hereof, currently as shown on Exhibits A, B, C, and E.
2. **“Baggage Handling System”** shall mean the Baggage Handling System located in the Terminal Building that serves the airlines as it now exists or as it may hereafter be reconstructed, modified, changed, or developed in accordance with the terms hereof, currently as shown on Exhibit D.
3. **“Terminal Area”** shall mean the landside access roads and parking areas surrounding the Terminal Building, as such areas now exist or as they may hereafter be modified, changed, or developed in accordance with the terms hereof, currently as shown on Exhibit A.
4. **“Airfield Area”** shall mean those areas of the Airport, as such areas now exist or as they may hereafter be modified, changed, or developed in accordance with the terms hereof, that provide for landing and takeoff, taxiing, parking, or other operations or aircraft but excluding the Apron Area, Cargo Apron Area, and Remote Parking Area, currently as shown on Exhibit A.
5. **“Apron Area”** shall mean the areas, as such areas now exist or as they may hereafter be modified, changed, or developed in accordance with the terms hereof, dedicated to parking, servicing, and ground handling of passenger aircraft at the Terminal Building, currently as shown on Exhibits A and E.
6. **“Cargo Apron Area”** shall mean the areas, as such areas now exist or as they may hereafter be modified, changed, or developed in accordance with the terms hereof, dedicated to parking, servicing, and ground handling of cargo aircraft or other aircraft currently as shown on Exhibit F.

7. **“Loading Bridges”** shall mean the passenger loading bridges owned and maintained by City serving aircraft parked at the Gates as they now exist or as they may be modified, changed, or relocated from time to time, currently as shown on Exhibit E.
8. **“Rental Car Service Facilities”** shall mean the areas, as such areas now exist or as they may hereafter be modified, changed, or developed, dedicated to rental car service facilities, currently as shown on Exhibit G.
9. **“Other Buildings and Areas”** shall mean those portions of the Airport not included in the preceding Airport Cost Centers, including the facilities, installations, and improvements thereon as they now exist or as they may hereafter be modified, changed, or developed in accordance with the terms hereof.

**“Airport Layout Plan”** shall mean the plan, as it may be amended from time to time, required to be submitted by Airport to the Federal Aviation Administration for review and acceptance showing the layout of the Airport and the current uses of the facilities at the Airport. The current version of the Airport Layout Plan is shown on Exhibit A.

**“Airport Purposes”** shall mean actions or undertakings by City reasonably relating to the development, operation, maintenance and preservation of the Airport for air commerce.

**“Airport Revenue”** shall mean all income, receipts, earnings, and revenues received by or accrued to City from the ownership or operation of the Airport, excluding, except to the extent deposited in the Airport Revenue Fund: (a) gifts, grants, and other funds that are restricted by their terms to purposes inconsistent with the payment of Maintenance and Operating Expenses or payment of Obligations; (b) net insurance proceeds, to the extent that the use of such net insurance proceeds is restricted to a use inconsistent with the payment of Maintenance and Operating Expenses or the payment of Obligations; (c) any transfer from the Capital Fund to the Revenue Fund, except for transfers from the Prepaid Revenue Account; (d) revenues derived from or with respect to any Special Purpose Facility; (e) any gain from the sale, exchange, or other disposition of capital assets of the Airport; (g) any unrealized gains on securities held for

investment by or on behalf of City; (h) any gains resulting from changes in valuation of any financial “SWAP” instruments; (i) any unrealized gains from the write-down, reappraisal, or revaluation of assets; (j) the proceeds of Obligations; (k) facilities construction credits; (l) Passenger Facility Charges unless specifically pledged by City; (m) Customer Facility Charges (except to the extent they are used to reimburse the Airport for rental car facility operating and maintenance expenses); (n) investment income derived from any moneys or securities that may be placed in escrow or trust to defease Obligations; (o) any arbitrage earnings required to be paid to the United States of America pursuant to Section 148 of the United States Code; and (p) interest earnings or other investment earnings on any account in the Construction Fund established by any Bond Resolution unless otherwise provided in such Bond Resolution.

“**Baggage Claim Area**” shall mean the areas, as they now exist or as they may hereafter be modified, changed or developed in accordance with the terms hereof, used by passengers for baggage claim and pick-up. The current Baggage Claim Area is shown on Exhibits C and D.

“**Baggage Handling Areas**” shall mean the areas supporting the Baggage Handling System as shown on Exhibit D as they now exist or as they may hereafter be modified, changed, or developed in accordance with the terms hereof. The Baggage Handling Areas include the areas occupied by baggage conveyor systems, baggage screening areas, baggage makeup, tug lanes for transporting baggage, baggage breakdown areas, and the Baggage Claim Area as shown on Exhibits C and D.

“**Baggage Handling System**” shall mean the baggage handling system shown on Exhibit D as it now exists or as it may hereafter be modified, changed or redeveloped in accordance with the terms hereof.

**“Bond Funds”** shall mean those funds and accounts established by and funded in accordance with the Bond Resolution and described herein:

1. **“Airport Revenue Fund.”** All Airport Revenue derived from operation of the Airport is deposited as received into the Airport Revenue Fund. All moneys shall be used and applied in the priority indicated below.
2. **“Rebate Fund.”** Amounts in the Rebate Fund shall be used to make payments to the United States Treasury in the amounts and at the times required by Section 148 of the Internal Revenue Code of 1986, as amended from time to time.
3. **“Maintenance and Operating Fund.”** Amounts shall be used to make payments out of the Maintenance and Operating Fund by City from time to time for the necessary expenses for the maintenance, operation, repair, and ordinary replacement of the Airport.
4. **“Bond Fund.”** Amounts shall be paid out of the Bond Fund from time to time as necessary for the payment of required interest and principal due on any Bonds outstanding and payable from Airport Revenue.
5. **“Debt Service Reserve Fund.”** Amounts shall be paid out of the Debt Service Reserve Fund from time to time as necessary for the payment of interest and principal due on any Bonds outstanding and payable from Airport Revenue to the extent that other moneys are not available within the Bond Fund.
6. **“Maintenance and Operating Reserve Fund.”** Amounts shall (1) be paid out of the Maintenance and Operating Reserve Fund for the necessary expenses for the maintenance, operation, repair, and ordinary replacement of the Airport to the extent that other moneys are not available in the Maintenance and Operating Fund for such purposes and (2) also be

used to cure deficiencies in the Rebate Fund or the Bond Fund in accordance with the Bond Resolution.

7. **“Renewal and Replacement Fund.”** Amounts shall (1) be paid out of the Renewal and Replacement Fund from time to time for the costs of unanticipated or emergency repairs, renewals, and replacements to the Airport and (2) also be applied to deficiencies in the Rebate Fund, Maintenance and Operating Fund, and the Bond Fund in accordance with the Bond Resolution.
8. **“Subordinate Securities Fund.”** Amounts shall be paid out of the Subordinate Securities Fund from time to time as necessary for the payment of any obligations or indebtedness of the Airport payable from Airport Net Revenues junior and subordinate to the Bonds.
9. **“Capital Fund.”** Amounts in the Capital Fund shall be available for any lawful Airport purpose as permitted by the Bond Resolution and shall be applied during the term of this Agreement in the following priority:
  - a. **“PFC Capital Account.”** Amounts shall be paid out for PFC approved Pay/Go projects and debt service on bonds, loans, or notes the proceeds of which were used to pay the cost of PFC approved projects.
  - b. **“Customer Facility Charge Capital Account.”** Amounts shall be paid out from time to time for rental car “Pay/Go” capital projects, maintenance and operation expenses allocable to rental car facilities, and debt service on bonds, loans, or notes the proceeds of which were used to pay the costs of rental car facilities.
  - c. **“Capital Improvement Account.”** Amounts shall be paid out of the Capital Improvement Account from time to time for Capital Improvements at the Airport.

- d. **“Prepaid Revenue Account.”** The balance in the Prepaid Revenue Account at the beginning of each Fiscal Year shall be transferred to the Airport Revenue Fund and used as a credit in calculating the landing fee rate for the Signatory Airlines.

**“Bonds”** shall mean Airport Revenue Bonds as authorized by the Bond Resolution, both serial and term, heretofore and hereafter issued by City or any other similar or substitute debt financing instrument (including but not limited to notes, certificates, and commercial paper) which may or may not be junior or subordinate to Airport Revenue Bonds that might be issued and secured by Airport Revenue.

**“Bond Resolution”** shall mean Resolution No. 59-88, adopted September 8, 1988, as it has been or may be amended or supplemented from time to time, and any other Resolution of City regulating or authorizing the issuance of Bonds, as amended or supplemented from time to time, other than Special Purpose Facility Bonds, payable from Airport Revenue.

**“Business Privilege Fee”** shall mean a nondiscriminatory fee levied on any person or company for the privilege of conducting business at the Airport and included in the Airport Budget after consultation with the airlines in accordance with the procedures set out in Section 18.06 below. The Business Privilege Fee shall be based on a percentage of gross revenues derived by third party contractors or Airline, as the case may be. Airline’s Air Transportation business at the Airport shall not be subject to the Business Privilege Fee. As the term is used in the Agreement, Airline’s Air Transportation business does not include the sale of ground handling and other services. Airline handling and servicing of its Affiliates is not subject to the Business Privilege Fee.

**“Capital Improvement”** shall mean any single item having a cost of at least One Hundred Fifty Thousand Dollars (\$150,000) and a useful life in excess of five (5) years, acquired, purchased, or constructed to improve, maintain, or develop the Airport as well as any extraordinary or substantial expenditure whose object is to preserve, enhance, or protect the Airport.

**“Capital Outlay”** shall mean equipment and capital outlays for individual items costing less than one hundred fifty thousand dollars (\$150,000) and with a useful life of five (5) years or less.

**“Competitive Credit”** shall mean a credit to the calculation of airline rents, fees, and charges. The purpose of the Competitive Credit is to keep Airline’s Airport cost per Enplaned Passenger competitive with that of other airports similarly situated for the development and retention of air service. Determination of the amount of this credit will be incorporated in the Airport Budget and is subject to the availability of funds.

**“Customer Facility Charges” or “CFCs”** shall mean charges collected or to be collected by the rental car companies and remitted to City pursuant to the Airport Rental Car Concession Agreement and the Rental Car Policy in the City Code. CFCs are not Airport Revenue and are dedicated for paying the capital and operating costs of rental car facilities. This term includes interest earnings on Customer Facility Charge proceeds.

**“Debt Service”** shall with respect to any outstanding or contemplated Obligations, the amount of principal and interest on such Obligations due and expected to be due during the Fiscal Year, excluding interest payable from capitalized interest.

**“Director”** shall mean the Airport Director, being the person currently authorized by the Mayor to exercise functions with respect to the rights and obligations of City under this Agreement, or such other person or persons authorized by the Mayor from time to time to exercise functions with respect to the rights and obligations of City under this Agreement. The term also includes any person expressly designated from time to time by the Director or the Mayor to exercise functions with respect to the rights and obligations of the Director under this Agreement.

**“Enplaned Passengers”** shall mean the total number of passengers boarding aircraft at the Airport.

**“Environmental Laws”** shall mean, collectively, all federal, state, water management district, and local environmental, land use, occupational safety, and health laws, rules, regulations, and ordinances, and common law, applicable to City, the Airport, the Leased Premises, or Airline, including, but not limited to, the Occupational Safety and Health Act of 1970 (29 U.S.C. § 651 et seq.); the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9601 et seq.); the Hazardous Materials Transportation Act (49 U.S.C. § 5101 et seq.); the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.); the Toxic Substances Control Act of 1976 (15 U.S.C. § 2601 et seq.); the Clean Air Act (42 U.S.C. § 7401 et seq.) (“CAA”); the Safe Drinking Water Act (42 U.S.C. §§ 300f-300j), the Federal Water Pollution Control Act (commonly known as the Clean Water Act) (33 U.S.C. §§ 1251-1387), and Sections 253, 373, 376 and 403, Florida Statutes, as any of the foregoing may hereafter be amended, any rule or regulation pursuant thereto, and any other present or future law, ordinance, rule, regulation, code, permit or permit condition, order, notice of violation, decree, consent agreement, or directive addressing any environmental, safety, or health issue of or by the federal government, or of or by any state or other political subdivision thereof, or any agency, court, or body of the federal government or any state or other political subdivision thereof, exercising executive, legislative, judicial, regulatory, or administrative functions.

**“Exclusive Use Space”** shall mean the space leased under this Agreement by City to Airline for Airline’s exclusive use, currently as shown on Exhibits B and C.

**“FAA” or “Federal Aviation Administration”** shall mean the Federal Aviation Administration created by the federal government under the Federal Aviation Agency Act of 1958 or such similar federal agency as may from time to time have similar jurisdiction over Airline or its business.

**“Fiscal Year”** shall mean the twelve (12) month period beginning October 1 of any year and ending September 30 of the following year or any other period adopted by City as its fiscal year for its financial affairs.



**“Gate”** shall mean each portion of the Terminal Building consisting of a Passenger Holdroom and associated Apron Area and Loading Bridge.

**“Ground Handling Services”** shall mean cabin services, aircraft catering, ramp services, refueling, passenger services, and field operations services.

**“Hazardous Substances”** shall mean any hazardous, toxic, or harmful substances, wastes, materials, pollutants, or contaminants (including, without limitation, asbestos, polychlorinated biphenyls, petroleum products, flammable explosives, radioactive materials, paint containing more than 0.5% lead by dry weight (“Lead Based Paint”), infectious substances, or raw materials which include hazardous constituents), or any other substances or materials that are regulated by Environmental Laws.

**“Joint Use Formula”** shall mean a formula that is used to prorate the specified charge for Joint Use Space or services or facilities leased or used by Airline and one or more other Signatory Airlines as follows: For purposes of the Joint Use Formula, Affiliates of a Signatory Airline are included in the term “Signatory Airline”. Before applying the Joint Use Formula, the Director will deduct, from the Joint Use requirement, use fees obtained from other than Signatory Airline users. The net Joint Use requirement shall be prorated as follows: Ten percent (10.0%) of the specified charge shall be prorated equally among the Signatory Airline using the applicable space, services or facilities and ninety percent (90.0%) of such charge shall be prorated among such Signatory Airline based on the number of Enplaned Passengers of each Signatory Airline. For invoicing, the Director will use the most recent month’s information available to calculate the ninety percent (90.0%).

**“Joint Use Space”** shall mean the premises leased by City to Airline and one or more other of the airlines, currently as shown on Exhibits A, B, and C.

**“Landed Weight”** shall mean the maximum gross certificated landed weight, in thousand (1,000) pound units, that Aircraft Arrivals operated by Airline is authorized by the FAA to land

at Airport, as recited in each Airline's flight manual governing that aircraft type. For all Landed Weight computations, said sum shall be rounded up to the nearest thousand (1,000) pound unit.

**"Landing Fee Credits"** shall mean the total of the following:

1. Non-Airline Airport Revenue.
2. A Competitive Credit if, as, and when the Director determines the credit is necessary to keep Airline's cost per Enplaned Passenger competitive. A Competitive Credit will not be available in most Fiscal Years.
3. A credit equal to the balance available in the Airport's Prepaid Revenue Account.

**"Leased Premises"** shall mean the Exclusive Use Space, Preferential Use Space, Joint Use Space and Loading Bridges leased by Airline.

**"Maintenance and Operating Expenses"** shall, as further described in the Bond Resolution, mean City's annual expenses of maintaining, operating, repairing, and administering the Airport, including City overhead reasonably allocable to the Airport; taxes, and assessments, if any; and expenses for defending, settling, or satisfying litigation, as set forth in the Airport Budget determined in accordance with generally accepted accounting. The categories of overhead expense allocable by City to the Airport shall also be determined in accordance with generally accepted accounting principles.

**"Mayor"** shall mean the elected officer serving as the Chief Executive of the City of Pensacola, Florida, pursuant to its charter.

**"Obligations"** shall mean any debt or obligation of City with respect to the Airport, including any Bonds issued pursuant to the Bond Resolution or other issuing instrument, as applicable.

**"Passenger Facility Charges" or "PFCs"** shall mean those charges due and payable to City pursuant to the authority granted by 49 U.S.C. Section 40117 and 14 Code of Federal Regulations (CFR) Part 158, as amended from time to time, in respect of any component of the

Airport and interest earnings thereon, net of amounts that collecting air carriers are entitled to retain for collecting, handling, and remitting such PFC revenues.

**“Passenger Holdrooms”** shall mean the Preferential Use passenger waiting rooms located inside the Terminal Building adjacent to the associated Preferential Use Apron Area Aircraft Parking Position.

**“Personal Property”** shall mean the equipment, inventory, furniture, trade fixtures, and supplies owned or leased by Airline, and installed or used at the Airport in accordance with this Agreement in the conduct of Airline’s Air Transportation business, which is removable without material permanent injury or damage to the Leased Premises or any other portion of City-owned property.

**“Preferential Use”** shall mean the nonexclusive use, to which Airline has priority over all other users, subject to the applicable provisions of this Agreement and applicable Rules and Regulations.

**“Preferential Use Space”** shall mean the premises leased under this Agreement by City to Airline for Preferential Use as more particularly set forth on Exhibits B, C, and E. Preferential Use Space consists of the following: Passenger Holdrooms, Apron Area and Cargo Apron Area. In addition, Loading Bridges shall be treated as Preferential Use Space.

**“Reasonable Wear and Tear”** shall mean the deterioration resulting from normal use and that could not be prevented by routine maintenance.

**“Remote Parking Area”** shall mean those Aircraft Parking Positions designated for the parking of aircraft that cannot be accommodated at the Terminal Building, Apron Area or the Cargo Apron Area as set forth on Exhibit A. From a financial management standpoint, the Remote Parking Area is in the Other Buildings and Areas Cost Center.

**“Rules and Regulations”** shall mean those rules and regulations promulgated by City or the Director governing the use of facilities, conduct, and operations at the Airport by both the airlines and other Airport tenants as they are on the date of this Agreement and as amended, modified, changed or supplemented from time to time after reasonable notice to Airlines; provided, however, that such Rules and Regulations do not conflict with the applicable provisions of federal, local or state law or the provisions of this Agreement or increase Airline’s obligations under this Agreement.

**“Signatory Airlines”** shall mean Airline and those airlines providing Air Transportation to and from the Airport that have executed agreements with City substantially similar to this Agreement covering such airline’s use and occupancy of facilities at the Airport.

**“Special Purpose Facility”** shall mean capital improvements or facilities located on any property owned or leased by City and located at Airport that are financed by the issuance of Special Facilities Revenue Bonds, bank loans, note, or other debt instruments or financing mechanisms.

**“Special Facilities Revenue Bonds”** shall mean bonds, bank loans, notes, other debt instruments or financing mechanisms and other debt of City which is secured by and payable solely from rentals or other charges derived by City under a lease, sale or other agreement (or any document securing the same) between City and the person, firm or corporation utilizing the Special Purpose Facilities financed thereby.

**“SWAP”** shall mean a derivative agreement that includes, without limitation, (i) any contract known as or referred to or which performs the function of an interest rate swap or exchange agreement, currency swap agreement, forward payment conversion agreement or futures contract; (ii) any contract providing for payments based on levels of, or changes or differences in, interest rates, currency exchange rates, or stock or other indices; (iii) any contract to exchange cash flows or payments or series of payments; (iv) any type of contract called, or designed to perform the function of, interest rate floors or caps, options, puts or calls, to hedge or minimize any type of financial risk, including, without limitation, payment, currency, rate or other

financial risk; and (v) any other type of contract or arrangement that City entering into such contract or arrangement determines is to be used, or is intended to be used, to manage or reduce the cost of Obligations incurred or anticipated to be incurred, to convert any element of Obligations incurred or anticipated to be incurred from one form to another, to maximize or increase investment return, to minimize investment return risk or to protect against any type of financial risk or uncertainty and, in each case, which is designated by City as a Swap for purposes of this Agreement.

“**TSA**” shall mean the Transportation Security Administration of the Department of Homeland Security, or its authorized successor.

“**Term**” shall mean the period defined in Article 2.

“**Total Landed Weight**” shall mean the sum of the aggregate Landed Weights for all Signatory Airline Aircraft Arrivals over a stated period of time. Said sum shall be rounded up to the nearest thousand (1,000) pound unit for all landing fee computations.

“**Total Space**” shall mean the total square feet in the Terminal Building.

#### **Section 1.02 CROSS-REFERENCES**

All references to articles, sections, and exhibits in this Agreement relate to material in this Agreement, unless specifically noted otherwise.

END OF ARTICLE

## **ARTICLE 2. TERM**

### **Section 2.01 TERM**

This Agreement shall become effective at 12:01 a.m. on October 1, 2017, and continue for a period of five (5) years until midnight September 30, 2022 ("Term").

### **Section 2.02 PRIOR AGREEMENTS AND LEASES**

All agreements and leases between Airline and City, written or verbal, other than this Agreement, shall be deemed terminated as of at midnight on September 30, 2017.

### **Section 2.03 TERM EXTENSION BY MUTUAL AGREEMENT**

Provided that Airline is not in default of the terms of this Agreement, Airline agrees to meet with the Director and other Signatory Airlines no later than twelve (12) months prior to the expiration of this Agreement to determine whether this Agreement should be extended or whether a new agreement should be negotiated.

### **Section 2.04 AIRLINE'S RIGHTS UPON EXPIRATION OR EARLY TERMINATION OF AGREEMENT**

Upon expiration or early termination of this Agreement, all of Airline's rights, authority, and privileges to use the Leased Premises, services, and facilities of the Airport as herein granted shall cease, unless otherwise agreed by Director in writing or governed by a general operating policy of City.

### **Section 2.05 SURRENDER OF LEASED PREMISES**

Upon expiration or early termination of this Agreement, Airline shall surrender the Leased Premises to City in substantially the same condition as such Leased Premises were in on the Effective Date of this Agreement, excepting, however, (a) Reasonable Wear and Tear, (b) damage by fire or other casualty not required by this Agreement to be repaired by Airline, its agents or employees, or by condemnation, (c) conditions existing prior to Airline's occupancy of Leased Premises, and (d) acts of God or the public enemy.

Except as otherwise provided in this Article, Airline's Personal Property shall remain the property of Airline unless otherwise provided in subsequent agreements between Airline and City and Airline shall have the right at any time during the Term of this Agreement and prior to its expiration or early termination to remove any and all Personal Property from the Leased Premises or Airport. Airline agrees to repair or pay for all damages and repairs, if any, resulting from or necessitated by such removal. All City property damaged by or as a result of the removal of Airline's property shall be restored by Airline at Airline's expense to the same condition as, or better condition than, it was prior to such damage, Reasonable Wear and Tear excepted.

Any and all Personal Property not removed by Airline within thirty (30) days after the expiration or early termination of this Agreement shall be conclusively deemed to be abandoned property (provided that Airline and City do not enter into subsequent agreement for Airline to continue operating at the Airport). Airline hereby authorizes the Director to remove and dispose of its abandoned Personal Property. Airline agrees to reimburse City, promptly upon demand, for the cost of removing and disposing of its abandoned property.

Airline's obligations under this Section 2.05 shall survive the expiration or early termination of this Agreement.

END OF ARTICLE

### **ARTICLE 3. LEASED PREMISES**

The Leased Premises consist of Exclusive Use Space, Preferential Use Space and Joint Use Space and Loading Bridges as more particularly described in Exhibits B, C, D and E attached hereto and made a part hereof for all purposes. Airline hereby leases from City, and City hereby leases to Airline, the Leased Premises for the uses and purposes set forth below and for no other use or purpose without the Director's prior written consent. Exhibits B, C, D and E can be changed from time-to-time based on changes to the Leased Premises of Airline that are approved by Airline and the Director or otherwise permitted hereunder; provided that there shall be no reductions in Airline's Leased Premises unless otherwise permitted under this Agreement.

#### **Section 3.01 AIRLINE LEASED PREMISES**

The Airline Leased Premises consist of the following categories of space:

##### ***Exclusive Use Space***

The following are the categories of Exclusive Use Space and the permitted uses of the space:

1. Ticketing
  - a. For reserving space and selling, transferring, issuing, changing, and providing other services related to tickets for Air Transportation of passengers and the processing of small package delivery by Airline.
  - b. For furnishing information to such passengers and the general public.
  - c. For checking baggage of Airline's Enplaned Passengers.
  - d. For handling lost and found articles.
2. Ticket Offices
  - a. For administrative, customer service, and other office purposes in connection with Airline's Air Transportation business.
  - b. For passenger and customer relations.
  - c. For handling lost and found articles.
3. Operations
  - a. For Airline operations office.
  - b. For a baggage hold area.
  - c. For storage of equipment and catering supplies.



- d. For crew space and weather, dispatch, and communications functions.
  - e. For handling lost and found articles.
4. Baggage Services Offices
- a. For storage of, and processing claims for, mishandled, damaged, or misplaced baggage.
  - b. Unclaimed baggage must be stored in designated areas in the baggage service offices.
  - c. For other services related to baggage.

### ***Preferential Use Space and Equipment***

The following are the categories of Preferential Use Space and the permitted uses of the space:

1. Passenger Holdrooms
  - a. For selling, issuing, changing, and collecting passenger tickets and for issuing seat assignments.
  - b. For a waiting area for passengers boarding an aircraft.
  - c. For check-in passengers and Gate check-in of baggage.
  - d. For furnishing information to passengers and the general public.
  - e. For installing and displaying Airline corporate identification on the check-in podium and background screen.
2. Apron Area
  - a. For the proper parking of one aircraft per Gate in a manner that will not impede the movement of aircraft and ground equipment of other airlines.
  - b. For loading and unloading of passengers, cargo, and mail.
  - c. For servicing of aircraft with ground equipment.
3. Cargo Apron Area
  - a. For the parking of aircraft in assigned areas in a manner that will not impede the movement of aircraft and ground equipment of other airlines.
  - b. For loading and unloading of cargo and mail.
  - c. For servicing of aircraft.
4. Loading Bridges
  - a. For aircraft passenger boarding and deboarding.
  - b. For aircraft boarding of Airline personnel, contractors, and furnishers of services.
  - c. For providing Airline's aircraft with air-conditioning and 400 Hz and 28 volts ground power.

### *Joint Use Space*

The Joint Use Space consists of the Baggage Handling Areas of the Terminal Building all as more particularly set forth on Exhibit B.

#### **Section 3.02 SELF-TICKET MACHINES**

Airline self-ticket machines shall only be installed, operated, or maintained with the prior written approval of the Director, and will be installed within Airline's Exclusive Use Space or Preferential Use Space in specific locations as approved by the Director.

#### **Section 3.03 TRANSITION SPACE**

Airline acknowledges and agrees that at various times during the Term of this Agreement, Airline may be required, upon written notice from the Director, to relocate to and operate out of space different from that shown in Exhibit C to facilitate the construction of projects or installation of fixtures and equipment. Such relocation shall be at the cost of the requesting party. If Airline is required to temporarily relocate to and operate out of different space, Airline's Exhibit C will be temporarily modified to reflect such transition change in square footage and space location in writing. Best efforts will be made to relocate Airline to space of a comparable size and finish. If Airline did not request the transition move, Airline shall not pay for more square footage than what is leased to Airline under this Agreement prior to the transition period during the transition period.

#### **Section 3.04 RIGHT TO PREFERENTIAL USE OF GATES**

Airline is herein granted the Preferential Use, but not the exclusive use, of its assigned Gate(s). At those times that Airline and its Affiliates have no scheduled use (scheduled service of airlines having a Ground Handling Services agreement with Airline will be taken into consideration and treated the same as Airline's and its Affiliates schedule use) for one or more of its assigned Gate(s), Airline shall allow other scheduled or nonscheduled airlines authorized by City to use Airport facilities to use such Gate(s), as circumstances and the public interest may require if non-Preferential Use gates are not reasonably available, for loading and unloading only, but in no event shall said use by others take precedence over Airline's scheduled use.

The Director shall use commercially reasonable efforts to utilize unused Gates or common use Gates prior to allowing such airlines to utilize Airline's Preferential Use gates. The Preferential Use rights of Airline and other airlines to use Gates shall be governed by Airport's aircraft operations and Gate assignment metrics to the extent such metrics are not inconsistent with the rights granted Airline herein, but the Director shall provide Airline priority use of its leased gate a minimum of one hour prior and one hour after Airline's scheduled arrivals and departures, as more particularly described in the Rules and Regulations.

In the event the Director assigns third parties to use Airline's Gates, City will collect a per turn use fee from the third party user and credit Airline's rental obligation with actual per turn revenue received by City from third parties for the use of Airline's facilities, less ten percent (10.0%) for City's handling of transactions. The City will charge the third party user a rate equal to the highest per turn rate charged on City Gates. The City will deposit the ten percent (10.0%) for City's handling of transactions into the Airport's Capital Improvement Account and use the deposits to fund Airport Capital Improvements.

Further, Airline may require such non-preferential airline user to enter into an agreement to provide for reimbursement rents, fees, and charges for the use of its Preferential Use Gates. Airline agrees that the per turn charge for the use of Airline's Gate will not exceed the Airport's per turn charge for a Gate.

**Section 3.05 EMPLOYEE PARKING**

Airline and its Airport employees shall have the right to use the vehicular parking facilities at the Airport, in common with employees of other airlines, tenants, and Airport-related services. Use of the employee parking facilities is subject to the payment of such employee parking fees as may be established from time to time by the Director after review and discussion with the airlines. Such facilities shall be "Well-Lit" and shall be located in an area designated by the Director. Well-Lit is defined as lit to the same standard as non-structural public parking at the Airport.

Airline shall, on request of the Director, provide verification that it is only providing parking for its own employees employed at the Airport.

END OF ARTICLE

## **ARTICLE 4. USES OF THE AIRPORT**

### **Section 4.01 PERMISSIBLE USES**

Subject to the terms and provisions of this Agreement and lawful ordinances of City, and the Rules and Regulations, Airline, by paying all rents, fees, and charges due and otherwise complying with all terms of this Agreement, shall be entitled to the use the Airport, in common with other duly authorized users of the Airport, for the sole purpose of providing Air Transportation. Such use may include the following purposes:

1. The operation of an Air Transportation business by Airline for the carriage by aircraft of persons, property, cargo, and mail, including all activities reasonably necessary to such operation.
2. The landing, taking off, flying over, taxiing, pushing, towing, loading, unloading, delivering fuel to aircraft, repairing, maintaining, conditioning, servicing, parking, storing, and testing of aircraft or other equipment of or operated by Airline or others, including the right to provide or handle all or part of the operations or services of such others.
3. Nothing herein shall restrict the Director from levying a Business Privilege Fee for operations handled by Airline on behalf of others or service provided to others. Airline shall pay City a Business Privilege Fee as established by the Director pursuant to Section 18.07 below based on the gross revenues derived by Airline from such others. This Business Privilege Fee, however, shall not apply to an Airline providing services to its Affiliates or providing services for itself. Services provided to Airline by third-party contractors will be subject to the Business Privilege Fee but Ground Handling services provided to Airline by its affiliate or Affiliate airline shall not be subject to such fee. If Airlines' Affiliate provides services of any nature to other airlines, the gross revenue received for such service are subject to the Business Privilege Fee.
4. The sale of tickets, documentations 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 business. Any ground commercial carrier (including Airline, except for such ground transportation as Airline may provide solely for the benefit of its employees and passengers without charge) regularly transporting persons or their baggage to and from the

Airport shall first secure and thereafter hold a valid permit, lease, license, or other agreement with City for the right to carry persons or their baggage to and from the Airport and shall pay City such rentals, fees, and percentages of the fares of such ground transportation commercial carrier for such right, as City or Director may set by agreements, ordinances, or Rules and Regulations.

5. The training of personnel in the employment of or to be employed by Airline and the testing of aircraft and other equipment utilized at the Airport in the operation of Airline's Air Transportation business; provided, however, that said training and testing shall be incidental to the use of the Airport in the operation by Airline of its Air Transportation business and shall not unreasonably hamper or interfere with the use of the Airport and its facilities by others entitled to use of same. The Director may restrict or prohibit such training and testing operations if, in the Director's reasonable discretion, the Director deems them to interfere with the use of the Airport. Flight training and testing of aircraft and other equipment shall be undertaken by Airline only with the prior written approval of the Director, and to the extent permitted by, and subject to, the Rules and Regulations.
6. The purchase of Airline's requirements of Personal Property or services, including fuel, 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 business. Storage of fuel at the Airport is not permitted by this Agreement, but Airline and the Director, on behalf of City, may negotiate a separate agreement regarding the storage of fuel at the Airport. Nothing herein shall restrict the Director from levying a Business Privilege Fee on any person or company for conducting business at the Airport. Airline, Airline Affiliates, and related organizations and subsidiaries' (e.g., Delta Global Services) sale of ground service, other services, and goods to others airlines and organizations shall be subject to the Business Privilege Fee. Airline and City agree that the proceeds from the Business Privilege Fee constitute Airport Revenue and may only be used for Airport purposes. The sale, disposal, and exchange of Airline's aircraft, engines, accessories and other equipment, and materials or supplies, provided that 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 business at the Airport.

7. The servicing by Airline, or by its suppliers of materials or furnishers of services, of aircraft and other equipment operated by Airline and its Affiliates, including the provision of line maintenance or other materials or supplies, on Exclusive Use Space or Preferential Use Space or at assigned Gates or other locations designated by the Director.

8. The installation and operation of identifying signs, posters, and graphics on Airline's Exclusive Use and Preferential Use Premises, subject to the prior written approval of the Director. Such signs shall be substantially uniform in size, type, and location with those of other airlines, consistent with Airport's graphic standards, the Rules and Regulations, and in compliance with all applicable laws and ordinances.

9. The installation, maintenance, and operation of such radio, 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: (i) the location of such equipment and facilities shall be subject to the prior written approval of the Director; (ii) the use and location of such equipment and facilities shall not conflict with other equipment and facilities at the Airport; and (iii) the use and location of such equipment and facilities on the Airport shall be subject to the payment of standard rental rates established for such use.

10. The installation, maintenance, and operation of computer data lines, non-revenue generating Wi-Fi networks, telephone communications equipment, associated cables, associated conduits, and telephone communications switchgear and support computers at suitable locations on the Airport as may be necessary or convenient in the opinion of Airline for its operations; provided that: (i) the location of such equipment shall be subject to the prior written approval of the Director; (ii) the use and location of such equipment shall not interfere with the use of other equipment on the Airport; (iii) the use and location of such equipment, except for cables, on the Airport shall be only in Exclusive Use Space and Preferential Use Space for which rents, fees and charges are being timely paid by Airline pursuant to this Agreement; (iv) all cables are installed in conduits, and when such cables are no longer needed, they are promptly removed by Airline without damage to the space and the conduits are also promptly removed by Airline if so

required by the Director; and (v) all installation and/or removal is performed in accordance with the Airport's telecommunications infrastructure and security requirements.

11. The installation, maintenance, and operation of passenger clubs, lounges, or VIP rooms in Airline's Exclusive Use Space, subject to the approval of the Director and provided that 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 conduct or operation of its Air Transportation business.

12. Airline will require its contractors to obtain required permits from the Director and pay Business Privilege Fees promptly.

13. The storage and parking of equipment, cargo, and vehicles, but only at such locations as specifically designated by the Director.

14. The maintenance and repair of equipment and vehicles, but only at such locations as specifically designated by the Director.

#### **Section 4.02 RESTRICTIONS**

In connection with the exercise of Airline's rights under this Agreement, Airline or any of its agents, employees, directors, officers, contractors, invitees, licensees, or representatives shall not do any of the following, notwithstanding any contrary provision in this Agreement:

1. Do or permit its agents, employees, directors, or officers to do 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 of the Airport.
2. Do anything that may invalidate or conflict with any fire or other casualty insurance policies covering the Airport or any part thereof.
3. Keep or store, at any time, flammable or combustible liquids except in accordance with federal, State, and City laws, including the Uniform Fire Code and the Uniform Building



Code. For purposes of this Agreement, flammable or combustible liquids shall have the same definitions as set forth in the Uniform Fire Code, as that Code may be amended from time to time.

4. Do anything that may be in conflict with 14 CFR Part 139 Airport Certification as that regulation may be amended from time to time, or jeopardize the operating certificate of the Airport.
5. Do anything that may be in conflict with 49 CFR Part 1542 Airport Security or the TSA-approved security plan for the Airport.
6. Permit any amusement machine, vending machine, public pay telephone, facsimile machine, copy machine, or other machine operated by coins, tokens, or credit cards to be installed or maintained in any publicly accessible area without the express written determination of the Director in his discretion. Airline or its nominee may, however, install, maintain, and operate vending machines in Airline's Exclusive Use Space not accessible to the public for the purpose of providing and making available foods, beverages and sundry food items to Airline's employees only.
7. Provide commercial ground transportation services to any person upon payment of any fee or charge. However, Airline is expressly excluded from the requirements of any Rules and Regulations promulgated, so long as this ground transportation is provided free of any fee or charge to any passenger (as a result of irregular operations) or employee.
8. Dispose of or permit its agents, employees, directors or officers 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 by equipment installed with the approval of the Director for that purpose. Such disposal shall take place only after receipt by Airline of written permission from the Director.

9. Perform aircraft engine run-ups except at locations and during time periods approved in writing in advance by the Director.
10. Enter into activities that compete with City in City's development of any non-airline revenue from Airport passengers, tenants, and other users. Should the Director allow Airline to engage in non-airline business activities not specifically permitted in this Agreement, the Director may levy a Business Privilege Fee.

#### **Section 4.03    INGRESS AND EGRESS**

Subject to the other provisions hereof and to the Rules and Regulations, and laws and regulations of federal authorities such as the TSA or the Department of Homeland Security, the following privileges of ingress and egress with respect to the Airport are hereby granted:

1. For Airline, its agents, employees, contractors, subcontractors, and permitted sublessees and assigns, access to the Exclusive Use Space, Preferential Use Space, and Joint Use Space and to space used by Airline in common with other airlines. This right shall extend to Airline's aircraft, vehicles, machinery, and equipment used in its Air Transportation business.
2. For Airline's passengers, guests, and invitees, access to the public facing Exclusive Use Space and to other Airport areas provided for the use of Airline's passengers, guests, and invitees in common with those of other airlines, and to public facilities.
3. For Airline's suppliers of materials and furnishers of service, access to the Exclusive Use Space, Preferential Use Space, and the Joint Use Space.

The ingress and egress provided for above shall not be used, enjoyed, or extended to any person, airline, or vehicle engaging in any activity or performing any act or furnishing any service for or on behalf of Airline that Airline is not authorized to engage in or perform under the provisions hereof unless expressly authorized by the Director.

#### **Section 4.04 CONCESSION SERVICES RIGHTS RESERVED BY CITY**

Except as otherwise expressly provided herein, City reserves the exclusive right to itself, its agents, and its franchisees to operate all concession services (including, but not limited to, food/beverage and news/gift concessions, specialty retail shops and carts, vending machines, pay telephones, facsimile machines, and other voice and data telecommunications systems, advertising displays, baggage lockers, and baggage carts) in the Terminal Building including Leased Premises, such as Passenger Holdrooms and loading bridge interiors and exterior areas, and to retain the revenue there from; provided, however, that City agrees that no concession services shall be located or operated by City or its nominees in any Exclusive Use Space or Preferential Use Space without Airline's prior consent and providing that City shall not exercise such right in a manner that will materially impede passenger ingress or egress or Airline's business operations. Any concession services in Airlines' Leased Premises must be approved by Airline.

After notice and consultation with Airline, the Director may place advertising in Preferential Use and Joint Use Space and on the Loading Bridge exteriors. The notice will include information about the advertiser, illustration of the advertising to be installed, and information concerning the duration of advertising in Airline's Preferential Use and Joint Use Space and on the Loading Bridge exterior. The notice to Airline will precede scheduled advertising installation by at least thirty (30) days. The Director will not allow airlines competing with Airline to advertise in Airline's in Preferential Use and Joint Use Space and on the Loading Bridge interiors or exteriors surfaces.

City shall operate all concessions and provide such other services (with reasonable consideration to requests made by Airline) for scheduled airline passenger operations at the Airport, as it deems necessary or appropriate.

The distribution, serving or sale of food and/or beverages (including alcoholic beverages) meant to be consumed aboard Airline's aircraft by Airline or its in-flight catering provider shall be limited to Airline's passengers who are in the passenger loading bridge or entrance to the passenger loading bridge and in the process of boarding Airline's aircraft, unless in Airline's

clubroom, otherwise agreed in writing by the Director, or in the event of irregular operations as described above and below. The provisions of this Section notwithstanding, all distribution of alcoholic beverages shall comply with applicable laws.

Airline may provide food and beverages, at no cost, to Airline's customers and passengers in the Passenger Holdrooms during irregular operations. For purposes of this section irregular operations are defined as situations in which actual flight operations vary materially from schedule flight operations. The provision of food and refreshments during irregular operations are not subject to the Business Privilege Fee discussed above so long as food and beverages are disseminated by Airline to Airline's ticketed passengers.

Airline shall have the right to utilize its Exclusive Use Space for the purpose of maintaining and operating club rooms for its guests, invitees, and passengers and may serve beverages, including alcoholic beverages, and appetizers therein with or without charge and subject to all applicable laws, regulations and ordinances; provided, however, that City reserves the right to charge Airline applicable percentages of its gross revenues from the sale of food and beverages consistent with the percentages charged to its food and beverage concessionaires at the Airport, not to exceed 12% on the sale of food and nonalcoholic beverages and 14% on the sale of alcoholic beverages, provided that no such payment shall be required with respect to items obtained from concessionaires already obligated to make such payments to City with respect to such obtained items.

Except as expressly allowed in this Section or approved in writing by the Director, all other serving, distribution or sale of food or beverages by Airline at the Airport is prohibited, except in Airlines' Exclusive Space.

#### **Section 4.05 GROUND HANDLING SERVICES BY AIRLINE OR OTHERS**

Airline may contract with or receive from other airlines serving the Airport or other companies Ground Handling Services (both above and below the wing services) for Airline's and its Affiliates' aircraft, provided that Airline provides advance written notice to the Director (or his

designated representative) of such arrangements and uses reasonable efforts to ensure that such other airline or other company shall have entered into an operating permit or agreement or other similar contract with City prior to commencing Ground Handling Services with Airline. Nothing herein shall restrict City from requiring the service provider to have a Permit with City or the Director from levying a Business Privilege Fee for Ground Handling Services on any person or company (including Airline when Airline is providing these services to other non-Affiliate airlines).

Airline may provide Ground Handling Services to aircraft of other airlines (other than its Affiliates) operating at the Airport provided that Airline provides advance written notice to the Director (or his designated representative) of such arrangements and uses commercially reasonable efforts to ensure that such other airline has entered into an operating permit or agreement or similar contract with City prior to conducting its operations at the Airport. Airline's insurance, as required in this Agreement, shall provide insurance coverage for such Ground Handling Services.

#### **Section 4.06      REMOVAL OF DISABLED AIRCRAFT**

Upon release of Airline's disabled aircraft by the proper authorities, Airline shall promptly remove any such disabled aircraft from any part of the Airport (including, without limitation, runways, taxiways, aprons, and Gate positions) and place any such disabled aircraft in such storage area as may be designated by the Director.

Airline may store such disabled aircraft only for such length of time and on such terms and conditions as may be established by the Director. If Airline fails to remove any of its disabled aircraft promptly in accordance with this Section, the Director may, but shall not be obligated to, cause the removal of such disabled aircraft. However, City's election to remove or store such disabled aircraft shall not be inconsistent with federal laws and regulations. Airline agrees to reimburse City for all costs of such removal.

Alternatively, at the discretion of Airline, the disabled aircraft can be stored at an Off-Airport location.

**SECTION 4.07 AIRLINE PRECAUTIONS**

Precaution shall be exercised at all times by Airline for the protection of all persons, including employees, and property. Airline shall make special effort to detect hazardous conditions and shall take prompt action where loss control/safety measures shall reasonably be expected.

END OF ARTICLE

## **ARTICLE 5. AIRLINE AFFILIATES**

### **Section 5.01 DESIGNATION OF AFFILIATES**

Airline may designate one or more Affiliates to operate at the Airport. In the event Airline designates an Affiliate, the following provisions shall apply to Airline and the Affiliate:

a. The Airline may not use an Affiliate at Airport without first (i) designating the Affiliate on the form — Airline Affiliate Operating Permit, attached as Exhibits I; (ii) submitting an Affiliate Operating Permit that has been executed by duly authorized officials of Airline and the Affiliate and by the Director on behalf of City; and (iii) confirming for City, in writing that by executing the Affiliate Operating Permit, Airline will pay Affiliate's Landing Fees, Terminal Building Rents, Loading Bridge Rees, Baggage Handling Systems Fees, Apron Fees, and Cargo Apron Fees due to City on account of the Affiliate's use of any Airport facilities or services as an Affiliate of Airline.

b. Each Affiliate of Airline shall report and pay to City all PFCs that it collects on account of enplaning passengers at the Airport at which it is operating as an Affiliate of Airline. The Airline shall pay to City all Landing Fees, Terminal Building Rents, Loading Bridge Fees, Baggage Handling Systems Fees, Apron Fees, and Cargo Apron Fees, and submit all activity reports, that are due to City on account of the Affiliate's use of any Airport facilities or services as an Affiliate of Airline; provided, however, that both Airline and the Affiliate shall remain fully responsible and liable to City for the payment of all Landing Fees, Terminal Building Rents, Loading Bridge Rees, Baggage Handling Systems Fees, Apron Fees, and Cargo Apron Fees, and the preparation of all activity reports, that are due to City on account of the use of any Airport facilities or services by the Affiliate.

### **Section 5.02 RIGHTS OF AFFILIATES**

For so long as there does not exist an uncured Airline Event of Default, then:

a. Each Affiliate shall have the same rights as Airline to use Leased Premises.

b. The Landing Fees, Terminal Building Rents, Loading Bridge Fees, Baggage Handling Systems Fees, Apron Fees, and Cargo Apron Fees due on account of each Affiliate's use of Airport facilities or services shall be calculated as if the Affiliate were a Signatory Airline; provided, however, that the Affiliate's activity as an Affiliate of Airline shall be treated as activity of Airline in calculating Airline's total passengers for the Joint Use Formula and provided, further, that in calculating the Joint Use Formula, the Affiliate shall be treated as if it were Airline and shall not be counted as a separate Signatory Airline for purposes of proration. The Airline shall pay the rents, fees, and charges owed by its Affiliate.

c. For purposes of calculating the percentage in Section 9.01 Capital Improvement Coordination, Airline's payments of Affiliate's Landing Fees, Terminal Building Rents, Loading Bridge Fees, Baggage Handling Systems Fees, Apron Fees, and Cargo Apron Fees on account of the Affiliate's use of the Airport's facilities or services as an Affiliate of Airline shall be treated as Airline's payments.

#### **Section 5.03 MULTIPLE AFFILIATES**

More than one Signatory Airline may from time to time designate the same Air Transportation Company as its Affiliate, and each such Signatory Airline shall only be responsible for such Air Transportation Company's operations as its Affiliate.

#### **Section 5.04 TERMINATION OF AFFILIATE**

An Air Transportation Company's status as an Affiliate of Airline at the Airport may be terminated by Airline upon not less than thirty (30) days written notice to City. The Airline's liability to City for the payment of all Landing Fees, Terminal Building Rents, Loading Bridge Fees, Baggage Handling Systems Fees, Apron Fees, and Cargo Apron Fees, and other charges (including PFCs), and the submission of all activity reports, that are due to City on account of the use of any Airport facilities or services by the terminated Affiliate shall survive the termination of its Affiliate status; provided, however, that Airline shall only be responsible for such payments and reports as relate to the terminated Affiliate's operations before its proper termination by Airline took effect.



**Section 5.05 SIGNATORY AIRLINE AS AFFILIATE**

If an Air Transportation Company operating at the Airport as an Affiliate of Airline becomes a Signatory Airline, such Air Transportation Company must immediately terminate its status as an Affiliate of Airline.

END OF ARTICLE

## **ARTICLE 6. RENTS AND FEES**

### **Section 6.01 CONSIDERATION**

In consideration for use of the Leased Premises, facilities, rights, and privileges granted hereunder and for the undertakings of City, Airline agrees to pay City during the Term of this Agreement, without deduction or set-off those certain rents, fees, and other charges as set forth in this Article and as recalculated from time to time according to the procedures of Article 7 hereof.

### **Section 6.02 TERMINAL BUILDING RENTS**

Airline shall pay City for its Exclusive Use Space, Preferential Use Space, and Joint Use Space in the Terminal Building monthly rent based on the annual rental rates for areas calculated each Fiscal Year in accordance with Article 7 hereof.

### **Section 6.03 LOADING BRIDGE FEES**

Airline shall pay City a monthly fee for its Preferential Use of City-owned passenger Loading Bridges at the Terminal Building. Such fee shall be calculated each Fiscal Year in accordance with Article 7 hereof.

### **Section 6.04 BAGGAGE HANDLING SYSTEM FEE**

Airline shall pay City a monthly fee for its use of the Baggage Handling System. The Baggage Handling System Fee will be the sum of the operation and maintenance expenses of the Baggage Handling System. Such fee shall be calculated each Fiscal Year in accordance with Article 7 hereof.

### **Section 6.05 APRON AREA FEES**

Airline shall pay City for its Preferential Use of the Apron Area, a monthly fee based on the annual rental rates for such areas calculated each Fiscal Year in accordance with Article 7 hereof.

**Section 6.06 CARGO APRON AREA FEES**

Airline shall pay City for its Preferential Use of the Cargo Apron Area a monthly fee based on the annual rental rates for such areas calculated each Fiscal Year in accordance with Article 7 hereof.

**Section 6.07 LANDING FEES**

Airline shall pay City for its use of the Airfield Area monthly Landing Fees based on the annual Landing Fee rate calculated each Fiscal Year in accordance with Article 6 hereof. City will use commercially reasonable efforts to charge and collect Landing Fees from all commercial Air Transportation users of the Airfield Area.

At no time during the term of this Agreement shall the landing fee rate per 1,000 pounds of landed weight be less than twenty-five cents (\$0.25).

**Section 6.08 CITY GATE PER USE CHARGES**

Airline shall pay City for its use of the Remote Parking Area and the un-leased Passenger Holdrooms, Loading Bridges, and Aircraft Apron parking positions. The charges for these items will be based on the annual per use charges calculated each Fiscal Year in accordance with Article 7 hereof.

**Section 6.09 OTHER CHARGES**

City reserves the right to assess, and Airline agrees to pay other reasonable charges that include but would not be limited to the following:

1. Rents, fees, and charges for land, facilities, and equipment the use of which has not conveyed above. This category of charges would include, but is not limited to, the use of Airport controlled un-leased Passenger Holdrooms, Apron Areas, Cargo Apron Areas, Loading Bridges, Remote Aircraft Parking Area, Airport's Triturator, Airport aircraft de-icing equipment, and potable water cabinets.

2. Interest and penalties on Airline's delinquent rents, fees, and charges.
3. Fines levied by the Director for Airline's violations of the Rules and Regulations, lost badges, etc. per the schedule of fines set forth in the Rules and Regulations.
4. Fines levied by government authorities against the Airport for Airline's acts or failure to act.
5. Telecommunications trunk equipment charges.
6. Charges for employee parking facilities.
7. Charges for security processing and the issuance of security identification badges for Airline's employees.

#### **Section 6.10 TIME OF PAYMENT**

The following sets forth the time of Airline payments of rents, fees, and charges to City.

- a. Exclusive Use Space and Preferential Use Space rents shall be paid on or before the first day of each month in advance. The Airport's invoice for monthly Exclusive Use Space and Preferential Use Space rent will be transmitted to Airline by the fifteenth (15<sup>th</sup>) day of each month and is payable on or before the first day of the following month.
- b. The Joint Use Space rents shall be paid on or before the first day of each month in advance based on an Airport invoice that will calculate the amount due based on the Joint Use Formula proration utilizing the most recent month's enplanement statistics available. The Airport's invoice for monthly Joint Use Space rent will be transmitted to Airline by the fifteenth (15<sup>th</sup>) day of each month and is payable on or before the first day of the following month.
- c. The Loading Bridge Fees shall be paid on or before the first day of each month in advance. The Airport's invoice for the monthly Loading Bridges Fee will be transmitted to Airline by the fifteenth (15<sup>th</sup>) day of each month and is payable on or before the first day of the following month.

d. The Baggage Handling System Fee shall be paid on or before the first day of each month in advance based on a Airport invoice that will calculate the amount due based on the Joint Use Formula proration utilizing the most recent month's enplanement statistics available. The Airport's invoice for monthly Baggage Handling System Fee will be transmitted to Airline by the fifteenth (15<sup>th</sup>) day of each month and is payable on or before the first day of the following month.

e. The Apron Area Fees shall be paid on or before the first day of each month in advance. The Airport's invoice for the monthly Apron Area Fee will be transmitted to Airline by the fifteenth (15<sup>th</sup>) day of each month and is payable on or before the first day of the following month.

f. The Cargo Apron Area Fees shall be paid on or before the first day of each month in advance. The Airport's invoice for the monthly Cargo Apron Area Fee will be transmitted to Airline by the fifteenth (15<sup>th</sup>) day of each month and is payable on or before the first day of the following month.

g. Landing Fees shall be due and payable without deduction or setoff within fifteen (15) days after the last day of the month after such month of operations and shall be transmitted to the Director together with Airline's monthly statistical report.

h. The Airport's invoice for the monthly charges for use of the Remote Parking Area and un-leased Passenger Holdrooms, Loading Bridges, and Apron Area and Cargo Apron Area Aircraft Parking Positions for each month of operations shall be due and payable without deduction or setoff within fifteen (15) days after the last day of the month after such month of operations.

- i. Rents, fees, and charges not described in paragraphs (a) through (h) above shall be due and payable within thirty (30) days after transmittal of an invoice therefor by the Director.
- j. The acceptance 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 or preclude Airline from later demonstrating that Airline's report was inaccurate and that a lesser amount was properly owed (and to recover any such overpayment).

#### **Section 6.11 PFC COLLECTION AND HANDLING**

Airline shall faithfully collect and promptly remit to City, and cause its Affiliates to faithfully collect and promptly remit to City, not less than monthly (without notice or demand by City and in accordance with 14 CFR 158 Passenger Facility Charges as this regulation may be amended from time to time) the proceeds of City's PFCs and shall punctually file, and cause its Affiliates to punctually file, quarterly reports in accordance with 49 U.S.C. 40177 and the requirements of 14 CFR 158, so long as City has an approved PFC in effect. Airline shall keep and maintain, and shall cause its Affiliates to keep and maintain, all of City's PFCs in a separate account used solely for such purpose and shall not commingle the proceeds of City's PFCs with any other monies or funds of Airline, its Affiliates or any other person or entity. The PFCs shall at all times be the sole and separate property of City, and all PFCs collected by Airline or its Affiliates shall be held in trust by Airline and its Affiliates for the sole use and benefit of City until remitted to City. In no event shall the PFCs constitute property of the estate of Airline or its Affiliates under 11 U.S.C. Section 541 in the event of the filing of a petition in bankruptcy by or against Airline, its Affiliates or any other person or entity.

#### **Section 6.12 PLACE OF PAYMENT**

Rents, fees, and charges shall be paid in United States Dollars by wire, electronic funds transfer, or check payable to City of Pensacola, Florida, which shall be delivered or mailed, postage prepaid, to City of Pensacola, Pensacola International Airport, 2430 Airport Blvd., Ste. 225, Pensacola, FL 32504 or which may be paid by wire transfers to accounts of the Airport

designated in writing by the Director. To arrange payment by wire or electronic funds transfer, Airline shall contact the Director at (850) 436-5000 for further information.

**Section 6.13     ADDITIONAL RENT**

City, after written notice to Airline, may, but is not obligated to, cure any default on Airline's part in fulfilling Airline's covenants and obligations under this Agreement. Actual amounts paid or costs incurred by City to cure any such default, together with an administration fee equal to fifteen percent (15%) of such actual amounts paid or costs incurred, are hereby agreed on and declared to be additional rent. Unless otherwise provided herein, all additional rent shall be due and payable on the later of either fifteen (15) days after receipt by Airline of an invoice therefor or with the next succeeding installment of monthly rent due under this Agreement. This Section will not apply in the case of a default where Airline is diligently acting to cure the default; provided that Airline is proceeding in good faith with reasonable dispatch to cure same.

**Section 6.14     LIQUIDATED DAMAGE ON OVERDUE PAYMENTS**

Without waiving any other right available to City in the event of a default in Airline's payment of any rents, fees, and charges under this Agreement, including Passenger Facility Charge proceeds, which continues for a period of thirty (30) calendar days or more from the date when such payment is due to City, Airline shall pay City late fees thereon, from the date such rents, fees, or charges become payable to the date of payment at the rate of one and one-half percent (1.5%) per month; provided, however, that if the maximum rate then provided by law is less than 1.5% per month, then the rate shall be such maximum legal rate. City may, but is not obligated to provide Airline with a written reminder when invoiced rents, fees, or charges have not been received within thirty (30) calendar days of transmittal of the invoice therefor.

**Section 6.15     PERFORMANCE GUARANTEE — AIRLINE RENTS AND FEES**

To guarantee and secure Airline's faithful performance of all terms and conditions contained herein, including but not limited to the timely payment of all rents, fees, and charges, Airline shall deliver to City upon the execution of this Agreement, and shall thereafter continuously

maintain in effect until the expiration or termination of this Agreement, a "Performance Guarantee" in the aggregate amount of:

- a. Airline's and its Affiliates estimated rents for Exclusive Use Space, Preferential Use Space, and Joint Use Space for two (2) months;
- b. Airline's and its Affiliates estimated Loading Bridge Fee for two (2) months;
- c. Airline's and its Affiliates estimated Apron Use Fee for two (2) months;
- d. Airline's and its Affiliates estimated Cargo Apron Use Fee for two (2) months;
- e. Airline's and its Affiliates estimated Baggage Handling System Fee for two (2) average months (as determined using activity data for the most recent twelve (12) calendar months to determine Airline's obligation using the Joint Use Formula); and
- f. Airline's and its Affiliates estimated Landing Fees for two (2) average months (determined by multiplying Airline's estimated landed weight each year by sixteen and two thirds (16.667%) percent and then multiplying such product by the actual Landing Fee rate effective for the Fiscal Year).

The amount of the Performance Guarantee may be adjusted by the Director annually, or more frequently to maintain an average two (2) months rents and fees Performance Guarantee based on current rent and fee levels. Such Performance Guarantee shall be in the form of a Letter of Credit, quick pay bond (i.e., payable within ten (10) days of demand), or other instrument reasonably satisfactory in all respects to the Director, in a form reasonably acceptable to the Director. The Performance Guarantee must provide that it shall automatically renew and remain in full force and effect for a period extending two (2) months following the expiration or early termination of this Agreement.

In the event City is required to draw down or collect against Airline's Performance Guarantee for any reason, Airline shall, within ten (10) business days after City's written demand, take such action as may be necessary to replenish the existing Performance Guarantee to its original value



or to provide a replacement Performance Guarantee from another source so that the aggregate of Performance Guarantee (s) is equal to the total amount required above.

In the event that any such Performance Guarantee shall be for a period less than the full period required above or if the Performance Guarantee will be cancelled, then not less than fifteen (15) days prior to the termination or cancellation of the Performance Guarantee, Airline shall provide a renewal or replacement Performance Guarantee for the remaining required period so that there is no interruption in coverage.

Airline and City agree that this Agreement constitutes an 'unexpired lease' for the purposes of Section 365 of the United States Bankruptcy Code (Title 11 U.S.C.) subject to assumption or rejection, and subject to the terms and conditions of assumption or rejection, as provided in said Section 365. Upon Airline's election to assume this Agreement under the United States Bankruptcy Code (Title 11 U.S.C.) or any successor statute, as such may be amended, supplemented, or replaced, City, by written notice to Airline given at any time within ninety (90) days of the date that such election becomes known to City, may impose or re-impose the Performance Guarantee requirements on Airline. In such event, Airline shall provide City with the required Performance Guarantee within ten (10) days from its receipt of such written notice and shall thereafter maintain such Performance Guaranty in effect until the expiration or termination of this Agreement. Furthermore, Airline and City agree that if Airline provides a Performance Guarantee in the form of a bond or irrevocable letter of credit, whether before or after the commencement of any bankruptcy or insolvency proceeding by or against Airline, such Performance Guarantee provided by Airline is not 'property of the estate' for purposes of Section 541 of the United States Bankruptcy Code (Title 11 U.S.C.), it being understood that any Performance Guarantee is the property of the third (3rd) party providing it (subject to City's ability to draw against the Performance Guarantee) and that all PFCs, less the allowable collection fees, collected by Airline with respect to Enplaned Passengers at the Airport are the property of City.

END OF ARTICLE

## **ARTICLE 7. CALCULATION OF RENTS, FEES, AND OTHER CHARGES**

### **Section 7.01 ANNUAL CALCULATIONS**

Each Fiscal Year, beginning with Fiscal Year 2018, the Terminal Building Rental Rates, the Apron Area Fee, the Cargo Apron Fee, the Loading Bridge Fee, the Baggage Handling System Fee, and the Landing Fee rate will be calculated by the Director as provided in this Article 7. Any such calculation of rents, fees, and other charges will be effective on the first day of the applicable Fiscal Year or the first day of the month during the Fiscal Year following a midyear rate adjustment.

By July 15th of each year, or as soon as practical thereafter, the Director will provide each airline then currently engaged in Air Transportation at the Airport with a complete copy of the proposed Airport Budget and exhibits showing proposed rents, fees, and charges, calculated in accordance with Article 7 of this Agreement, for the succeeding Fiscal Year. The Director will consult with such airlines concerning the proposed Airport Budget and the proposed rents, fees, and charges.

By September 1<sup>st</sup> of each year, or as soon as practical thereafter, the Director will make any revisions to the proposed rents, fees, and charges as the Director determines, in its reasonable discretion, to be warranted as a result of consultation with the airlines or otherwise, and will provide written notice to each airline then currently engaged in Air Transportation at the Airport of new rents, fees, and charges to be effective as of October 1st of that year, contingent upon the Pensacola City Council's adoption of the Budget.

### **Section 7.02 CALCULATION OF TERMINAL BUILDING RENTAL RATES**

- a. Each year, the Director will calculate the "Terminal Building Requirement" for the applicable Fiscal Year by totaling the following estimated amounts:
  1. The total of direct and indirect estimated Maintenance and Operating Expenses allocable to the Terminal Building.

2. The total of Capital Outlays allocable to the Terminal Building
  3. An amount equal to 1.25 times the Annual Debt Service Requirement on all Bonds and or other obligations and or indebtedness allocable to the Terminal Building or such other amount as may be required by a Bond Resolution or loan document, less amounts paid by other sources (e.g. PFC revenues).
  4. The amount of any deposit to the Maintenance and Operating Reserve Fund allocable to the Terminal Building required by a Bond Resolution.
  5. The estimated amount of any assessment, judgment, or charge (net of insurance proceeds) to become payable by City relating directly to the Airport, or its operation, allocable to the Terminal Building.
  6. The amount required to replenish any Bond Fund allocable to the Terminal Building.
  7. Any other expenses allocable to the Terminal Building not included above.
- b. The sum of items 1 through 7 is the Terminal Building Requirement. The Terminal Building Requirement will be reduced by the estimated amount of Revenue from the Terminal Building Food/Beverage concession (currently operated by OHM, Incorporated) and News/Gift concession (currently operated by Paradies Lagardere) resulting in the Net Terminal Building Requirement.
- c. The average rental rate per square foot will then be calculated by dividing the Net Terminal Building Requirement by the Total Space. The average rental rate per square foot will be multiplied by Airline Space to determine the Airline Terminal Building Rental Requirement. The Airline Terminal Building Rental Requirement will be divided by Airline Rented Space to determine the Airline rental rate per square foot.
- d. The rents for Airline's Exclusive Use Space and Preferential Use Space in the Terminal Building will be computed as the product of the Airline rental rate per square foot and the total amount of square footage of Airline's Exclusive Use Space and Preferential Use Space in the Terminal Building.

**Section 7.03     CALCULATION OF APRON AREA FEES**

- a. Each year, the Director will calculate the Apron Area Requirement for the applicable Fiscal Year by totaling the following estimated amounts:
  1. The total of direct and indirect estimated Maintenance and Operating Expenses allocable to the Apron Area.
  2. The total of Capital Outlays allocable to the Apron Area.
  3. An amount equal to 1.25 times the Annual Debt Service Requirement on all Bonds or other obligations or indebtedness allocable to the Apron Area or such other amount as may be required by a Bond Resolution or loan document, less amounts paid by other sources (e.g. PFC revenues).
  4. The amount of any deposit to the Maintenance and Operating Reserve Fund allocable to the Apron Area required by a Bond Resolution.
  5. The estimated amount of any assessment, judgment, or charge (net of insurance proceeds) to become payable by City relating directly to the Airport or its operation allocable to the Apron Area.
  6. The amount required to replenish any Bond Fund allocable to the Apron Area.
  7. Any other expenses allocable to the Apron Area not included above.
- b. The Apron Area Fee will then be calculated by dividing the Apron Area Requirement by the total linear feet in the Apron Area measured 100 feet from the Terminal Building.
- c. The rents for any Apron Area assigned to Airline on a Preferential Use basis will be computed as the product of the Apron Area Fee and the linear feet assigned to Airline.

**Section 7.04     CALCULATION OF CARGO APRON AREA FEES**

- a. Each year, the Director will calculate the Cargo Apron Area Requirement for the applicable Fiscal Year by totaling the following estimated amounts:
  1. The total of direct and indirect estimated Maintenance and Operating Expenses allocable to the Cargo Apron Area.

2. The total of Capital Outlays allocable to the Cargo Apron Area.
  3. An amount equal to 1.25 times the Annual Debt Service Requirement on all Bonds or other obligations or indebtedness allocable to the Cargo Apron Area or such other amount as may be required by a Bond Resolution or loan document, less amounts paid by other sources (e.g. PFC revenues).
  4. The amount of any deposit to the Maintenance and Operating Reserve Fund allocable to the Cargo Apron Area required by a Bond Resolution.
  5. The estimated amount of any assessment, judgment, or charge (net of insurance proceeds) to become payable by City relating directly to the Airport or its operation allocable to the Cargo Apron Area.
  6. The amount required to replenish any Bond Fund allocable to the Cargo Apron Area.
  7. Any other expenses allocable to the Cargo Apron Area not included above.
- b. The Cargo Apron Area Fee will then be calculated by dividing the Cargo Apron Area Requirement by the total linear feet in the Cargo Apron Area.
  - c. The rents for any Cargo Apron Area assigned to Airline on a Preferential Use basis will be computed as the product of the Cargo Apron Area Fee and the linear feet of Cargo Apron assigned to Airline.

**Section 7.05      CALCULATION OF LOADING BRIDGE FEE**

- a. Each year, the Director will calculate the Loading Bridge Requirement for the applicable Fiscal Year by totaling the following amounts:
  1. The total of direct and indirect estimated Maintenance and Operating Expenses allocable to the Loading Bridges.
  2. The total of Capital Outlays allocable to the Loading Bridges.
  3. An amount equal to 1.25 times the Annual Debt Service Requirement on all Bonds or other obligations or indebtedness allocable to the Loading Bridges or

such other amount as may be required by a Bond Resolution or loan document, less amounts paid by other sources (e.g. PFC revenues).

4. The amount of any deposit to the Maintenance and Operating Reserve Fund allocable to the Loading Bridges required by a Bond Resolution.
  5. The estimated amount of any assessment, judgment, or charge (net of insurance proceeds) to become payable by City relating directly to the Airport or its operation allocable to the Loading Bridges.
  6. The amount required to replenish any Bond Fund allocable to the Loading Bridges.
  7. Any other expenses allocable to the Loading Bridges not included above.
- b. The Loading Bridge Fee per Loading Bridge will then be calculated by dividing the Loading Bridge Requirement by the total number of Loading Bridges at the Terminal Building. The fees for all Loading Bridges associated with Gates assigned to Airline on a Preferential Use basis will be computed as the product of the Loading Bridge Fee and the number of Loading Bridges so assigned to Airline.

#### **Section 7.06      CALCULATION OF BAGGAGE HANDLING SYSTEM FEE**

- a. Each year, the Director will calculate the Baggage Handling System Fee Requirement for the applicable Fiscal Year by totaling the following estimated amounts:
  1. The total of direct and indirect estimated Maintenance and Operating Expenses allocable to the Baggage Handling System.
  2. The total of Capital Outlays allocable to the Baggage Handling System.
  3. An amount equal to 1.25 times the Annual Debt Service Requirement on all Bonds or other obligations or indebtedness allocable to the Baggage Handling System or such other amount as may be required by a Bond Resolution or loan document, less amounts paid by other sources (e.g. PFC revenues).
  4. The amount of any deposit to the Maintenance and Operating Reserve Fund allocable to the Baggage Handling System required by a Bond Resolution.

5. The estimated amount of any assessment, judgment, or charge (net of insurance proceeds) to become payable by City relating directly to the Airport or its operation allocable to the Baggage Handling System.
  6. The amount required to replenish any Bond Fund allocable to the Baggage Handling System.
  7. Any other expenses allocable to the Baggage Handling System not included above.
- b. The sum of items 1 through 7 above, less revenue from users of the Baggage Handling System from users other than Signatory Airlines, is the Baggage Handling System Fee Requirement. The Baggage Handling System Fee Requirement will be prorated monthly among all airlines using the Joint Use Formula.

**Section 7.07      CALCULATION OF LANDING FEE RATE**

- a. Each year, the Director will calculate the Airport Landing Fee Requirement for the applicable Fiscal Year by totaling the following amounts:
1. The total of direct and indirect estimated Maintenance and Operating Expenses of the Airport.
  2. The total of Airport Capital Outlays.
  3. An amount equal to 1.25 times the Annual Debt Service Requirement on all Bonds and other obligations and indebtedness, or if the aggregate of the amounts payable by Signatory Airlines under this Article 7, plus other available revenue (e.g. PFC revenues) of the Airport, are less than 1.25 times Maximum Annual Debt Service then the amounts calculated under this Section shall be 1.25 times Maximum Annual Debt Service, less amounts payable from other source (e.g. PFC revenues), or such other amount as may be required by a Bond Resolution or loan document.
  4. The amount of any deposit to the Airport Maintenance and Operating Reserve Fund required by a Bond Resolution.
  5. The estimated amount of any assessment, judgment, or charge (net of insurance proceeds) to become payable by City relating directly to the Airport, or its operation.
  6. The amount required to replenish any Airport Bond Fund.
  7. Any other Airport expenses.

8. An amount equal to seventeen and one-half percent (17.5%) of Non-Airline Revenues derived by City during the Fiscal Year Non-Airline Revenue is defined as Airport Revenue from sources other than from Airline and other airlines with agreements substantially the same as this Agreement.
  9. Any overpayment or underpayment for the operation of the Airport during the then-current Fiscal Year or any adjustment carried over from preceding Fiscal Years (including adjustment [actual versus estimate] for the deposit to the Capital Improvement Account so that this account only receives a deposit of seventeen and one-half percent (17.5%) of the projection of Non-Airline Revenue in any Fiscal Year) to reflect any difference between actual versus estimated revenues or expenses.
- b. From this total, the Director will deduct the estimated Landing Fee Credits from the Landing Fee Requirement to yield the Net Landing Fee Requirement. The Landing Fee rate per one thousand (1,000) pound units of Landed Weight will then be calculated by dividing the Net Landing Fee Requirement by Total Landed Weight. The Landing Fee for each airline will be calculated by multiplying Airline's Landed Weight for the month by the Landing Fee rate then in effect.

#### **Section 7.08 ADJUSTMENTS**

The adjustments that the Director may make to the foregoing rents, fees and charges are as described in the following paragraphs.

##### ***Midyear Adjustment.***

The Director will provide quarterly budget updates to airlines. If it appears to the Director during the course of any Fiscal Year, that the budgeted expenses or projected levels of airline activity the Director used to calculate the rents, fees, and charges set forth above are likely to vary by more than ten percent (10%) from actual results, the Director may make adjustments to such rents, fees, and charges at midyear. The Director shall provide Airline with at least thirty (30) days' advance written notice of any adjustments to be made under this paragraph, which shall include accompanying budget variances and calculations to demonstrate need for adjustment and



resulting change in rates, fees and charges. Any such mid-year adjustment will be effective the first day of the month following the notification period.

***Extraordinary Adjustments of Rents, Fees, and Charges***

Notwithstanding any other provisions hereof, if, at any time during the term of this Agreement, Airport Revenue (and the reserves designated for such purposes) is not sufficient to pay when due Airport obligations, including, without limitation, emergency repairs or expenses that relate to the Airport or any aspect thereof, the Director may, with thirty (30) days' advance written notice to and in consultation with Airline and other airlines, implement recalculated rents, fees, and charges in accordance with this Article 6 using revised Airport operating costs and expenses formulated to recover all expenses for that Fiscal Year in that Fiscal Year.

***Landing Fee Variance Adjustment***

If total Landing Fees of all airlines for any calendar quarter vary more than ten percent (10%) from the projected total Landing Fees for such quarter (adjusted for seasonality), the Landing Fee rate shall, if deemed necessary by the Director, with thirty (30) days' notice to and in consultation with the airlines, be adjusted for the balance of such Fiscal Year by an amount equal to the difference between projected and actual total Landing Fees divided by the estimated Total Landed Weight of the airlines during the balance of such Fiscal Year.

END OF ARTICLE

## **ARTICLE 8. MONTHLY ACTIVITY REPORTS**

### **Section 8.01 REQUIRED MONTHLY ACTIVITY REPORTS**

Airline shall furnish to the Director, on or before the tenth (10th) day of each month, an accurate verified report detailing its operations for the previous month on forms prescribed by the Director. Said report shall include, but shall not be limited to:

- a. Airline's total number of Aircraft Arrivals by type of aircraft and Maximum Gross Landing Weight of each type of aircraft.
- b. The total number of Enplaned Passengers and deplaned passengers of Airline and its Affiliates.
- c. The total weight of freight, mail, and other cargo, enplaned and deplaned for such month.

The Monthly Activity Reports can be submitted electronically at [RC@cityofpensacola.com](mailto:RC@cityofpensacola.com) or such other email address as the Director may designate from time to time.

City reserves the right to periodically audit these reports to verify the accuracy of the information.

### **Section 8.02 FAILURE TO FURNISH REPORT**

If Airline fails to furnish the Director with the report described above, Airline's Landing Fee shall be determined by assuming that the Total Landed Weight for Airline during the preceding month was one hundred percent (100.0%) of the Total Landed Weight for the most recent month for which such figure is available or other available data. Any necessary adjustment in such Landing Fee shall be calculated after an accurate report is delivered to the Director by Airline for the month in question, and resulting surpluses or deficits shall be applied to Airline's Landing Fee for the next succeeding month. An accounting fee of fifteen percent (15%) of the amount due as shown on such statement, or such lesser accounting fee as may be determined by the Director to be sufficient to reimburse City, shall be payable by Airline for the additional services required by City pursuant to this paragraph.

END OF ARTICLE

## **ARTICLE 9. CAPITAL IMPROVEMENTS**

The parties hereto recognize that Capital Improvements to preserve, protect, enhance, expand, or otherwise improve the Airport, or any part thereof, will be required during the Term of this Agreement. Any such Capital Improvement shall be subject to the provisions of this Article.

### **Section 9.01 CAPITAL IMPROVEMENT COORDINATION WITH AIRLINE**

On or about July 1, or approximately ninety (90) days prior to the end of the then-current Fiscal Year, the Director shall notify Airline in writing of the Airport's proposed Capital Improvement program for the subsequent Fiscal Year, as contained in the Airport's proposed Capital Improvement budget for the Fiscal Year. Also, the Director may notify Airline in writing at any other time of proposed Capital Improvements.

The Director will provide Airline a written description of such Capital Improvements, such description to include the purpose, method of financing, and any reasonably anticipated effect on Airline rents, fees, and charges hereunder and, to meet with Airline and other airlines within thirty (30) days after notification to Airline of said Capital Improvement to further discuss the proposed Capital Improvement.

The Director will give due consideration to the comments and recommendation of Airline with respect to the proposed Capital Improvements. Certain Capital Improvements are subject to deferral if Airline, together with other airlines, requests a deferral of a proposed Capital Improvement as set forth herein.

If at least seventy-five percent (75%) in number of the Signatory Airlines currently operating at the Airport (excluding Affiliates), and representing at least seventy-five percent (75%) of airline rents, fees, and charges paid during the previous Fiscal Year request deferral of a particular Capital Improvement not excluded below, it will be deferred for a period of twelve (12) months. Any such request for deferral must be in writing and submitted to the Director by Airline within

thirty (30) days following the meeting as described above in accordance with Section 18.11 below.

For Capital Improvements in the Terminal Building, Apron Area, Baggage Handling System, Cargo Apron Area, and Loading Bridge cost centers, only Signatory Airlines that are projected to pay the costs of these Capital Improvements through rents and fees will be considered in the above calculation of “seventy-five percent (75%)” in number and representing “seventy-five percent (75%)” of Signatory Airline rents, fees, and charges paid during the previous Fiscal Year.

In the event of a Capital Improvement deferral, the Capital Improvement will be deferred for twelve (12) months following the deferral request. Following the twelve (12) months deferral period, the Capital Improvement may be constructed and the capital, operating, and maintenance costs and expenses will be included in airline’s rents, fees and charges upon the Capital Improvement’s completion.

#### **Section 9.02 CAPITAL IMPROVEMENT NOT SUBJECT TO DEFERRAL**

The following types of Capital Improvements are not subject to deferral by the airlines:

1. Capital Improvements, as described in Exhibit H, under way as of the effective date of this Agreement.
2. Acquisition of land that is identified in the Airport’s Master Plan or is determined to be required for the efficient operation and maintenance Airport.
3. Capital Improvements that are planning projects.
4. Any Capital Improvements having a net cost to City of less than One Million Dollars (\$1 million), provided that such Capital Improvement shall be for a functionally complete project.

5. Projects required for public safety or air transportation security when directed by the governmental authority having jurisdiction over the Airport, airlines' operations, or the safety and security aspect of the Airport's operations.
6. Casualty damage to the Airport that exceeds the proceeds of insurance, which property must be rebuilt in kind or replaced in kind to satisfy City's obligations or maintain a source of revenue.
7. Special Purpose Facilities as defined herein, provided, that in all cases, the tenant or other users of such Special Purpose Facilities shall be required to pay directly or reimburse City for all costs associated with such Special Facilities.
8. Capital Improvements or additions necessary to ensure compliance with lawful orders or requirements of other authorities and that are necessary for aircraft operations or are related to the issuance of federal or State grants to City.
9. Capital Improvements or expenditures necessary to settle claims, satisfy judgments, or comply with orders against City by reason of its ownership, operation, maintenance, or use of the Airport.
10. Capital Improvements or expenditures of an emergency nature, which, if not made, would result in the closing of the Airport.
11. Any financially self-supporting projects, which will not impact airlines' rents, charges, and fees.
12. Capital Improvements to the Airport necessitated by the unique requirements of an airline for which such airline has agreed to pay all costs thereof.

13. Capital Improvements to be funded in whole or in part with the proceeds of the Passenger Facility Charge, which will be subject to the FAA required consultation, review, and approval process for application and use of such funds.
  
14. Capital Improvements to be funded with balances available in the Airport's Capital Improvement Account in the Capital Fund.

END OF ARTICLE

## **ARTICLE 10. BOND RESOLUTION SUBORDINATION AND APPLICATION OF REVENUES**

### **Section 10.01 SUBORDINATION TO BOND RESOLUTION**

This Agreement and the terms hereof, and all rights of Airline hereunder are expressly subordinated and subject to the lien and provisions of any pledge, transfer, hypothecation, or assignment made (at any time) by City to secure Airport Bonds or other types of financing. This Agreement is subject and subordinate to the terms, covenants, and conditions of the Bond Resolution, other types of financing documents authorizing the issuance of Airport Bonds and other forms of debt by City. City may amend or modify the Bond Resolution or other financing documents or make any change thereto that does not materially or adversely affect Airline rights under this Agreement. Conflicts between this Agreement and the Bond Resolution or other financing documents shall be resolved in favor of the Bond Resolution or other financing documents.

The City represents and warrants that to the best of its knowledge the provisions hereof relating to the Airport Bonds are consistent with the Bond Resolutions and financing documents and that there are no conflicts between the terms hereof and the Bond Resolutions or any such financing documents.

All definitional terms that are not specifically defined herein are to have the meanings set forth in the Bond Resolution.

### **Section 10.02 DISPOSITION OF AIRPORT REVENUE, PASSENGER FACILITY CHARGE, AND CUSTOMER FACILITY CHARGE PROCEEDS**

All Airport Revenue shall be deposited, applied, and allocated to the funds and accounts in the manner and according to the priority provided for in the applicable Bond Resolution(s) or other financing documents.

All Passenger Facility Charge proceeds shall be deposited, applied, and allocated in a manner consistent with applicable federal laws and regulations. If Passenger Facility Charge proceeds

are pledged to repay Bonds, then those proceeds shall be deposited, applied, and allocated in the funds and accounts in the manner and according to the priority provided for in the applicable Bond Resolution(s).

All Customer Facility Charge proceeds are not Airport Revenue and are restricted to pay the costs of rental car and related facilities. They shall be deposited, applied, and allocated in a manner consistent with applicable agreements, financing documents, laws and regulations.

### **Section 10.03 REVENUES AND EXPENSE RECORDS**

City will maintain an Airport accounting system and will maintain accounting records that document the following items: (a) Annual Airport Revenue, (b) Maintenance and Operating Expenses, (c) Capital Outlays, (d) Annual Debt Service, (e) Amortization, and (f) Capital Improvements and income received from City in connection with the operation of the Airport and other expenses incurred by City for the improvement, renovation, or enhancement of the Airport as they may be charged directly or allocated to each Airport Cost Center.

END OF ARTICLE



## **ARTICLE 11. MAINTENANCE, REPAIR, AND OPERATION OF THE AIRPORT**

### **Section 11.01 CITY'S RESPONSIBILITIES**

The following are City's responsibilities.

#### ***Airport Facilities - General***

Except as otherwise provided in this Agreement, and subject to applicable laws governing City's right to budget, appropriate and spend money, City agrees to maintain, operate, and keep in good repair the areas and facilities required by this Agreement to be maintained, operated and repaired by City in accordance with the practices of a reasonably prudent airport operator operating an airport comparable and similarly situated to the Airport. City agrees to use commercially reasonable efforts to keep the Airport free from obstructions and to provide for the safe, convenient, and proper use of the Airport by those who are authorized to use same.

#### ***Airfield Area Maintenance***

Subject to Airline's obligations in Section 11.02, City will maintain, operate, and keep in good repair the areas and facilities in the Airfield Area provided by City for use by the airlines in accordance with the practices of a reasonably prudent airport operator operating an airport comparable and similar situated to the Airport.

#### ***Apron Area***

Subject to Airline's obligations in Section 11.02, City will provide maintenance for the Apron Area (as shown on Exhibit E), drainage maintenance, and Apron Area lighting. City will provide electricity for Apron Area lighting and will include the cost of electricity in City's fees for use of the Apron Area.

#### ***Baggage Handling System***

City shall be responsible for maintenance and operation of the Baggage Handling System (as shown in Exhibit D) including, without limitation, the maintenance of all equipment, systems

and fixtures. City will provide electricity to the Baggage Handling System. The cost of electricity shall be included in City's fees for use of the Baggage Handling System.

### ***Cargo Apron Area***

Subject to Airline's obligations in Section 11.02, City will provide maintenance for the Cargo Apron Area (as shown on Exhibit F) and drainage maintenance. City will provide electricity for Cargo Apron Area lighting and will include the cost of electricity in City's fees for use of the Cargo Apron Area. Cargo Apron Area lighting will be provided by the airline requiring such lighting.

### ***Loading Bridges***

City will provide maintenance, janitorial, and electricity to the Loading Bridges. The cost of maintenance, janitorial, and electricity shall be included in City's fees for use of the Loading Bridges.

### ***Terminal Building - General***

Except as otherwise provided in this Agreement, and subject to applicable laws governing City's right to budget, appropriate and spend money, City will: (a) furnish structural maintenance (including maintenance of the roof) of City-owned facilities including the Terminal Building; (b) provide maintenance and operation of City-installed equipment and systems; (c) install and furnish electrical power for interior area lighting throughout the Terminal Building, Apron Area, Loading Bridges and Baggage Handling System; (d) provide heating and air conditioning in enclosed interior areas of the Terminal Building, Loading Bridges and Baggage Handling System; (e) provide lighting fixture repair in Public View Areas and the unrented areas of the Terminal Building; (f) provide maintenance of City installed plumbing lines (but excluding plumbing fixtures); and (g) provide drinking water in the Terminal Building.

### ***Terminal Building Public View Areas***

The City will keep in good repair and provide janitorial services in the areas of the Terminal Building in public view (the "Public View Areas") in both Exclusive Use and Preferential Use

Spaces, as shown on Exhibits B and C and all additions, improvements, and facilities now or hereafter provided by City at or in connection with the Terminal Building for use by all airlines and the public, excepting any improvements or facilities constructed or installed by Airline, either individually or jointly with others, and those that Airline has agreed under the provisions hereof to operate and maintain. City shall be responsible for interior and exterior window cleaning in Public View Areas of the Terminal Building.

### ***Terminal Building Joint Use Space***

In the Joint Use Space, in addition to any other obligations set forth herein, City will furnish janitorial services, repair, maintenance, electricity, and area lighting. In enclosed areas, where appropriate, City will provide heating and air conditioning. The Maintenance and Operating Expenses of the Joint Use Space shall be included in City's rent for the use of the Joint Use Space.

If it is determined by City that the negligent acts or omissions of Airline have caused the need for maintenance as described in this Section 11.01 or repairs to facilities or systems, Airline agrees to pay the cost of maintenance or repair plus fifteen (15%) percent for administration provided Airline has not elected to make the repair itself in a manner approved by the Director.

### **Section 11.02 AIRLINE'S RESPONSIBILITIES**

The following are responsibilities of Airline and may be performed by Airline or Airline's third party service provider, but it is understood that performance by Airline's third party service provider shall not relieve Airline of its responsibilities under this Section.

### ***Exclusive Use Space***

Airline, at Airline's sole cost and expense, shall provide all maintenance and janitorial services to the non-Public View Areas of its Exclusive Use Space. Airline shall furnish all janitorial services and all maintenance and operation of Airline-installed improvements and systems in the non-Public View Areas of its Exclusive Use Space. Airline shall provide electrical relamping in the non-Public View Areas of its Exclusive Use Space and all decorating and redecorating when

required in its Exclusive Use Space. Airline shall maintain the non-Public View Areas of its Exclusive Use Space in a neat, clean, sanitary, and operable condition.

***Preferential Use Apron Area***

Subject to City's obligations in Section 11.01, Airline, at Airline's sole cost and expense, shall perform or cause to be performed all services necessary to keep Airline's Preferential Use Apron Area in a clean, neat and orderly condition and free of foreign objects.

***Preferential Use Cargo Apron Area***

Subject to Airline's obligations in Section 11.01, Airline, at Airline's sole cost and expense, shall perform or cause to be performed all services necessary to keep Airline's Preferential Use Cargo Apron Area in a clean, neat and orderly condition and free of foreign objects.

***Passenger Loading Bridges***

Airline shall not modify or attach Personal Property or signage to City-owned passenger Loading Bridges without the advanced written approval of the Director (which approval may be withheld at Director's sole discretion).

***Airline-Constructed Improvements***

Airline shall cause all improvements and facilities, and additions thereto, constructed or installed by Airline, either alone or in conjunction with others, and all vehicles and equipment operated by Airline on the Airport to be kept and maintained in a safe condition and in good repair in accordance with uniform standards applicable to all similarly situated Airport tenants as established from time to time by the Director. Subject to City's obligations in Section 11.01, Airline shall keep its Exclusive Use Space and Preferential Use Space and improvements thereon in a sanitary and neat condition.

### ***Maintenance Responsibilities***

Subject to City's obligations in Section 11.01, Airline shall perform commercially reasonable routine and preventive maintenance of all equipment and facilities located in its Exclusive Use Space and shall maintain such equipment and facilities in good condition and appearance and make all needed nonstructural repairs. Airline shall be responsible for interior window cleaning for its nonpublic view Exclusive Use Space.

### ***Performance by City Upon Failure of Airline to Maintain***

In the event Airline fails within thirty (30) days after receipt of written notice from the Director to perform any obligation required hereunder, the Director may enter the Leased Premises involved, without such entering causing or constituting a termination of this Agreement or an interference with the possession of said Leased Premises by Airline, and do all things reasonably necessary to perform such obligation. Director may charge Airline the reasonable cost and expense of performing such obligation plus a fifteen percent (15%) administration charge as additional rent, and Airline agrees to pay to City upon demand such charge in addition to any other amounts payable by Airline hereunder; provided, however, that if Airline's failure to perform any such obligation endangers the safety of the public, the employees or property of City, or other tenants of the Airport and the Director so states in its written notice to Airline, City may perform such obligation of Airline at any time after the giving of such notice and charge to Airline the reasonable cost and expense of such performance plus a fifteen percent (15%) administration charge as additional rent, and Airline agrees to pay to City upon demand such charge in addition to any other amounts payable by Airline hereunder.

### **Section 11.03 ALTERATIONS AND IMPROVEMENTS**

Airline shall make no alterations, additions, improvements, or installations to, in or on any portion of the Leased Premises or to, in or on any other space assigned or allocated to it by the Director without prior written approval from the Director and without obtaining all permits required under applicable law.

**Section 11.04 REPAIR DAMAGE**

Airline shall promptly repair any damage in any space at the Airport caused by Airline, its servants, agents, employees, licensees, guests or invitees for which City does not receive reimbursement or payment from City's insurance carrier.

**Section 11.05 CITY NON-LIABILITY**

Airline expressly agrees that City shall not be liable to Airline, its employees, passengers, business visitors, guests or invitees for bodily injury, or death, or for any loss or damage to real or Personal Property occasioned by flood, fire, earthquake, lightning, windstorm, hail, explosion, riot, strike, civil commotion, smoke, vandalism, malicious mischief, roof leaks, sprinkler system breakage, or acts of civil authority and other events not caused by the negligence or willful acts or omissions of City. In no event whatsoever, however, shall City be liable for special, consequential, exemplary or punitive damages, including without limitation any loss of business, revenues or profits by Airline or any damage to or loss of Airline's reputation.

**Section 11.06 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 prior notice and 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 Airline's Exclusive Use Space or Preferential Use Space when accompanied by an Airline employee except in case of emergency for the following purposes:

1. To inspect such space to determine whether Airline has complied and is complying with the terms and conditions of this Agreement.
2. To accomplish repairs or replacements by City or in any case where Airline is obligated to make repairs or replacements and has failed to do so, after notice, make such repairs or replacements on Airline's behalf in accordance with the last paragraph of Section 11.02 above.
3. In the exercise of City's governmental functions and police powers.

No such entry by or on behalf of City upon any of the Leased Premises shall cause or constitute a termination of the letting thereof or be deemed to constitute an interference with possession thereof by Airline.

END OF ARTICLE

## **Article 12. DAMAGE OR DESTRUCTION OF LEASED PREMISES**

### **Section 12.01 LEASED PREMISES INHABITABLE**

Subject to Section 11.02 below, if any of the Leased Premises shall be partially damaged by fire or other casualty, but the remainder of the Leased Premises remains inhabitable for the purposes allowed by this Agreement, the Leased Premises shall be repaired with due diligence by City to substantially the same condition existing just prior to such casualty, but City's responsibility in this regard shall be limited to the extent of the net insurance proceeds actually received by City with respect to such casualty and to the extent of the funds, if any, that are appropriated for such repair by City's governing body in its sole discretion. Rent allocable to the particular space, rooms, or other portions of the Leased Premises rendered untenable shall be abated for the period from the occurrence of the damage to the substantial completion of repairs. City will make good faith efforts to provide to Airline temporary substitute space for any uninhabitable portion of Airline's space, if available, during such period of repair, at a rental rate for comparable space based on the rents, fees, and charges principles set forth in this Agreement.

### **Section 12.02 LEASED PREMISES UNINHABITABLE**

If any of the Leased Premises shall be completely destroyed or partially damaged by fire or other casualty rendering all or a substantial portion of the Leased Premises uninhabitable for the purposes allowed by this Agreement and it is reasonably estimated by City that it will take more than one hundred eighty (180) days to repair, the Director will notify Airline in writing within ninety (90) days of such casualty whether and to what extent, if any, the damaged or destroyed Leased Premises will be repaired. If City, in its sole discretion, elects to repair all or any portion of the damage to the Leased Premises, such repairs shall be made with due diligence by City, and the rent allocable to the particular space, rooms, or other portions of the Leased Premises rendered untenable will be abated for the period from the occurrence of the damage to the substantial completion of the repairs. If City elects to repair, City will make good faith efforts to re-locate Airline to temporary substitute space, if available, during such period of repair, at a



rental rate for comparable space based on the rents, fees, and charges principles set forth in this Agreement. If Airline's Leased Premises have been reduced due to City's election not to repair damaged premises:

1. Airline shall be entitled to request and the Director shall consider further proportionate reductions in Leased Premises and the leased premises of all Signatory Airlines so that Airline has use of an operative remainder.
2. Airline hereby agrees that in the event that an airline's leased premises are reduced due to City's election not to repair damage to such leased premises, the Director may realign the leased premises of all airlines to permit all airlines to operate at respective levels of service as similar as reasonably practicable to their respective levels of service immediately prior to such damage.
3. The City will issue new exhibits to each Signatory Airline showing it realigned Leased Premises

#### **Section 12.03 AUTOMATIC DELETION OF UNREPAIRED DAMAGED PREMISES**

If the Director shall fail to notify Airline of City's decision as set forth in Section 12.02 (or gives written notice of its intent not to repair), City will be deemed to have elected to not repair the damaged premises, and the damaged premises shall be automatically deleted from the Leased Premises as of the date of the damage or destruction, with no further liability therefor by either City or Airline except those liabilities that accrued, including rent, prior to such damage or destruction.

#### **Section 12.04 AIRLINE IMPROVEMENTS AND TRADE FIXTURES REPLACEMENT**

If and to the extent that City is obligated or elects to do so, City shall repair City installed improvements in Airline's Leased Premises to substantially the same condition existing just prior to fire or other casualty, but City's responsibility in this regard shall be limited to the extent of the net insurance proceeds.

Airline is responsible for replacing its trade fixtures. For Airline installed tenant improvements, at its discretion, Airline may replace or reconstruct all its tenant improvements in the damaged or destroyed Leased Premises necessary for the conduct of Airline's business operations in the manner existing just prior to the casualty.

END OF ARTICLE

## **ARTICLE 13. INSURANCE**

### **Section 13.01 CITY INSURANCE**

The Terminal Building, exclusive of Airline's property, shall be insured by City under a policy of fire, flood and extended coverage insurance to the extent of not less than eighty percent (80%) of the insurable value of such property if such percentage of coverage is available. Insurance moneys and funds received on account of the damage to or destruction of such property shall be applied by City to the repair, construction, or replacement of such damaged or destroyed property unless City, in its sole discretion, elects not to repair the damaged premises. Premiums paid by City for insurance provided in compliance herewith shall be included by City as a part of the Maintenance and Operating Expenses. Nothing herein shall be deemed to prohibit City from having a self-insurance program designed to provide for property, casualty, and other losses in lieu of commercial insurance. Airline will be advised in writing if City utilizes self-insurance for the Terminal Building property insurance.

### **Section 13.02 AIRLINE INSURANCE**

By use and occupancy of Airport premises, Airline understands and agrees that at all times during the Term, Airline shall, at its sole expense and in a manner acceptable to City, purchase and maintain or caused to be maintained in force the following insurance coverages:

1. Aircraft Airline Liability insurance including Aircraft Liability and broad form Commercial General Liability insurance, including, but not limited to, coverage for death, bodily injury, personal injury, property damage, products/completed operations liability, independent contractors, premises liability, premises operations, damage to Leased Premises, loss of use and contractual liability, with a liability limit of not less than One Hundred Fifty Million Dollars (\$150,000,000.00) combined single limit per occurrence and in the aggregate, on an occurrence form policy. Said limit shall be reduced to One Hundred Million Dollars (\$100,000,000.00) where Airline's maximum seating capacity on the largest aircraft operated at the Airport by Airline is between 99 and 60. Said limit shall be reduced to Fifty Million Dollars (\$50,000,000.00) where Airlines' maximum seating capacity on the

- largest aircraft operated at the Airport by Airline is 59 or less. With respect to coverage for products/completed operations and personal injury, except with respect to passengers, a sublimit of not less than Twenty-Five Million Dollars (\$25,000,000.00) per occurrence and in the annual aggregate, shall be permitted with the approval of the Director. Said aircraft liability shall be applicable to owned, non-owned, and hired aircraft. Fire Legal Liability shall be endorsed on the policy with a minimum limit of \$100,000.00 per occurrence.
2. Automobile liability insurance (any automobile) with combined single limit for bodily injury and property damage of not less than Five Million Dollars (\$5,000,000.00) per occurrence for all owned, non-owned, and hired vehicles operated by or on behalf of Airline at the Airport, including any additional or replacement vehicles.
  3. Liquor liability insurance in an amount not less than Ten Million Dollars (\$10,000,000.00) per occurrence.
  4. Employer's liability insurance in an amount not less than One Million Dollars (\$1,000,000.00) each common cause. Airline shall likewise maintain workers' compensation insurance or evidence of self-insurance, in accordance with the laws of the State of Florida, covering all of its employees who may from time to time be at the Airport in such capacity. Airline shall require each of its agents, licensees, contractors, subcontractors, and suppliers to maintain such workers' compensation insurance covering their employees coming on Airport premises in connection with Airline's operations. The workers' compensation policy(s) required hereunder shall be endorsed to state that the workers' compensation carrier waives its right of subrogation against City, its officers, agents, elected and appointed officials, representatives, volunteers, and employees. Upon request by the Director, Airline shall furnish the Director with evidence of such workers' compensation insurance in a form acceptable to City.
  5. Pollution legal liability for transporting or handling hazardous materials or regulated substances and environmental impairment liability coverage of \$2,000,000.00 per occurrence, with an annual aggregate of not less than \$4,000,000.00. This coverage may be self-insured by Airline upon reasonably satisfactory evidence of Airline's financial ability to self-insure, if requested by City.

6. Liability coverage for acts of war, civil war, terrorism and insurrection of \$100,000,000.00 per occurrence, with an annual aggregate of not less than \$100,000,000.00.

All liability insurance policies, except employer's liability shall provide coverage that includes, or has the same substantive effect as, the following wording:

1. "City of Pensacola and each of its departments, divisions, enterprises, officers, representatives, agents, elected and appointed representatives, volunteers, and employees, in their respective capacities as such, shall be additional insureds hereunder with respect to the products, premises, and operations of the named insured to the full limits of liability required by this Lease."
2. "Airline's insurance shall be primary insurance and non-contributory with respect to all other available sources."
3. "This insurance shall not be materially changed, altered, canceled, or non-renewed until after thirty (30) days advance written notice has been given to City of Pensacola except that only seven (7) days' notice of cancellation of war risk coverage and only ten (10) days' notice of cancellation due to non-payment of premium or non-renewal shall be required."

Required insurance shall be evidenced by Certificates of Insurance. Each such Certificate of Insurance shall be on the appropriate ACORD form or its substantial equivalent. The "Certificate Holder" address shall read: City of Pensacola, Department of Risk Management, Post Office Box 12910, Pensacola, FL 32521. An additional copy of the Certificate shall be sent to Pensacola International Airport, Attn: Airport Director, 2430 Airport Boulevard, Suite 225, Pensacola, FL 32504.

At least ten (10) calendar days prior to the Effective Date of this Agreement, Airline shall furnish the Director with Certificates of Insurance for all insurance policies required hereunder and copies of all insurance endorsements. Thereafter, current Certificates of Insurance and copies of endorsements shall be provided promptly upon the Director's request from time to time, but in no event less than annually. Further, at least three (3) business days prior to the expiration of

any then-current policy of insurance, Airline shall deliver to the Director a current Certificate of Insurance showing that such insurance coverage has been renewed, and at least three (3) business days prior to the date of cancellation or reduction of coverage, as received in a written notice from the insurer, Airline shall deliver to the Director a current Certificate of Insurance showing reinstatement or other provision for the required insurance. In addition, upon any change in any insurance policy coverage or endorsement which adversely affects the requirements of this Agreement, Airline shall promptly deliver to the Director revised Certificates of Insurance and a copy of each such changed endorsement.

In addition to the foregoing, at least ten (10) calendar days prior to the Effective Date of this Agreement and annually thereafter upon each anniversary of such Effective Date, Airline shall furnish to the Director the written, signed opinion of Airline's independent insurance broker confirming that such broker has reviewed (i) Airline's insurance policies and endorsements and (ii) Airline's insurance obligations under this Agreement and that Airline is in compliance with its insurance obligations under this Agreement.

Further, upon the Director's written requests from time to time, Airline shall allow City's representatives to inspect, in the presence of Airline's representatives, the complete originals of all insurance policies, including but not limited to declaration pages and endorsements, pertaining to the coverages required to be maintained by Airline pursuant to this Agreement. Airline shall allow City's representatives to inspect such insurance documents at Airline's corporate office located closest to Pensacola, Florida, within ten (10) business days after the Director's written request for such inspection.

During the Term, the insurance coverages and/or the minimum limits of the insurance herein required may become inadequate, as reasonably determined by City. Accordingly, City hereby reserves the right to review all coverages and limits and to require adjustments, changes and additions to commercially reasonable and commercially available levels to be effective on the next policy renewal date after City provides at least ninety (90) days prior written notice to Airline to make such adjustments, changes or additions.

If, at any time, Airline fails to obtain or maintain in force the insurance required by this Section, the Director may immediately suspend Airline's use of the space and Airline's operations and activities in regard to the Airport until the required insurance is provided.

END OF ARTICLE

## ARTICLE 14. INDEMNIFICATION

### Section 14.01 COMPREHENSIVE INDEMNIFICATION

Airline shall INDEMNIFY, DEFEND and HOLD HARMLESS, City and its divisions, departments, enterprises, subsidiaries, affiliates, elected and appointed officials, officers, employees, volunteers, agents and representatives, individually and collectively, from and against any and all costs (including, but not limited to, costs of investigation, reasonable attorneys' fees, court costs, and expert fees), claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of actions, liability and suits of any kind and nature, including but not limited to personal or bodily injury, death and property damage, including loss of use thereof, directly or indirectly arising out of, resulting from or related to Airline's use of the Airport, or Airline's activities in, on or about the Airport or the Leased Premises, or any operation or activity of Airline upon the Airport, or in connection with its use of the Leased Premises, including but not limited to any acts or omissions of Airline, any agent, officer, director, representative, employee, consultant or subcontractor of Airline, or their respective officers, agents, employees, directors or representatives, all without City waiving any governmental immunity available to City under Florida Law and without waiving any defenses of the parties under Florida Law.

The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Airline shall promptly advise City in writing of any claim or demand against City or Airline known to Airline related to or arising out of Airline's activities under this Agreement and shall see to the investigation and defense of such claim or demand at Airline's cost. City shall have the right, at its option and at its own expense, to participate in such defense without relieving Airline of any of its obligations under this Section 14.01.

It is the express intent of the parties to this Agreement, that the indemnity provided for in this Article, shall extend to and include Airline's obligation to indemnify, protect, defend and hold harmless City from the consequences of City's own negligence; provided however, that the indemnity provided for in this Article with respect to City's own negligence shall apply only



when the negligent act of City is a contributory cause of the resultant injury, death, or damage, and shall have no application when the negligent act of City is the sole cause of the resultant injury, death or damage. Notwithstanding anything in this Article to the contrary, the indemnity liability of Airline for City's own negligence, inclusive of all defense costs expended solely for City's defense by reason of City's own negligence, under this Article and shall not exceed \$1,000,000 per occurrence. Nothing herein shall require Airline to indemnify City from the gross negligence or willful misconduct of City or any of its employees, officers, agents, or subcontractors.

Airline further agrees, upon City's request, to defend, at Airline's own expense and on behalf of City and in the name of City, and by and through legal counsel reasonably acceptable to City, any claim, proceeding or litigation, at each and all of administrative, trial and appellate levels, brought against City and/or any other person or party indemnified under this Article in connection with any claim, cause of action, liability, injury, death, damage or other matter that is subject to Airline's indemnity obligation under this Article.

**Section 14.02 49 CFR PART 1542 AIRPORT SECURITY INDEMNIFICATION**

In furtherance of the provisions of Section 13.1 above and not in limitation thereof, Airline understands and agrees that it shall fully indemnify, defend, and hold harmless City, its divisions, departments, enterprises, subsidiaries, affiliates, elected and appointed officials, representatives, officers, agents, volunteers, and employees from and against all penalties, fines, and demands of any kind (including, but not limited to, costs of investigation, reasonable attorney fees, court costs, and expert fees) arising out of Airline's acts or omissions resulting in alleged violations of 49 CFR Part 1542 Airport Security or any successor regulations related to airport security.

**Section 14.03 SOVEREIGN IMMUNITY.**

Nothing in this Article or elsewhere in this Agreement shall in any way constitute or be construed as a waiver, in whole or in part, of City's sovereign immunity under the Constitution, statutes and case law of the State of Florida.

Further, nothing in this Article or elsewhere in this Agreement 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.

END OF ARTICLE

## **ARTICLE 15. FEDERAL, STATE, AND LOCAL REGULATIONS**

### **Section 15.01 RULES AND REGULATIONS**

City, in its governmental capacity, and/or the Director have adopted, and may from time to time modify, amend and adopt, and will enforce Rules and Regulations with respect to the occupancy and use of the Airport, its services, and facilities by persons, vehicles, aircraft, and equipment that in the opinion of City or the Director will reasonably ensure the safe, efficient, and economically practicable operation of the Airport and provide for the safety and convenience of those using the Airport.

The Director may promulgate, adopt, modify, amend and enforce the Rules and Regulations from time to time in furtherance of said purposes and/or that the Director deems are necessary to implement the intent and terms of this Agreement. All such Rules and Regulations, promulgated through the Director's authority but without governmental action or mandate, shall be reasonable and not unjustly discriminatory, and shall not be inconsistent with any legally authorized rule or regulation of the FAA, or any other federal or State agency, which is binding in law on Airline or City, as the same now are or may from time to time be amended or supplemented nor inconsistent with the reasonable exercise by Airline of any right or privilege granted under this Agreement. City shall provide Airline with reasonable notice prior to adoption of any new or amended Rules or Regulations in order to provide Airline with the opportunity to comment on same prior to adoption. Airline, upon written request to the Director, shall be furnished (at the notice address provided herein and to Airline's on-Airport manager) a current copy of the Rules and Regulations and any amendments thereto.

Airline agrees to observe and obey all Rules and Regulations as are currently in place and as may be reasonably established from time to time, and to require its officers, agents, employees, contractors, and suppliers to observe and obey the same. It shall be a violation of this Agreement for Airline, or any of its officers, representatives, agents, employees, guests, contractors, subcontractors, licensees, subtenants, invitees, or suppliers to violate, or to cause another person

to violate, any Rule or Regulation. Airline shall make reasonable efforts to cause its passengers, guests, and invitees to comply with the Rules and Regulations.

City reserves the right to deny access to the Airport or its facilities to any person, firm, corporation or entity that fails or refuses to obey and comply with the Rules and Regulations.

**Section 15.02 NO ILLEGAL PURPOSE**

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, subtenants, contractors, invitees, or licensees, for any illegal purposes.

**Section 15.03 COMPLIANCE WITH STATUTES, ORDINANCES, AND REGULATIONS**

At all times during the Term of this Agreement, Airline shall, in connection with its activities and operations at the Airport:

1. Comply with and conform to all applicable present and future statutes and ordinances, codes 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. Airline shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101), as may be amended from time to time, and federal regulations promulgated there under that may be made applicable as a result of construction activities conducted by Airline.
2. Make, at its own expense, all non-structural improvements, repairs, and alterations to its Exclusive Use Space, equipment, and Personal Property that are required to comply with or conform to any of such statutes, ordinances, codes or regulations. Airline shall secure the

written approval of the Director before proceeding to make any improvements, repairs or alterations under this paragraph.

#### **Section 15.04 COMPLIANCE WITH ENVIRONMENTAL LAWS**

Airline shall at all times abide by all Environmental Laws applicable to Airline's occupancy or use, of the Leased Premises. At the beginning of any lease term, Airline shall identify in writing to the Director and its Fire Department all Hazardous Substances (with the exception of any small quantities of household chemicals Airline uses for general office purposes) that are used or stored or that Airline expects to use or store in or on the Leased Premises. This list shall be updated by Airline in March of each year and shall include the quantities used or stored in or on the Leased Premises. City shall have the right to inspect the Leased Premises at any reasonable time, upon prior written notice to Airline, to ensure compliance with Environmental Laws and the provisions of this Article.

Airline shall not allow the disposal or discharge, whether accidental or intentional, of Hazardous Substances on the Leased Premises or other Airport property.

Airline shall comply with the Airport's Spill Prevention, Control, and Countermeasure Plan ("SPCC") and all future amendments thereto and the Airport's Storm Water Pollution Prevention Plan ("SWPPP") and all future amendments thereto.

City represents and warrants to Airline, and Airline represents to City, that, on the Effective Date of this Agreement, the Leased Premises are not subject to any existing, pending, or threatened investigation or inquiry by any governmental authority for any response costs or remedial obligations under any Environmental Laws, no release of Hazardous Substances is known to have occurred in or around the Leased Premises, and that this representation and warranty would continue to be true and correct following disclosure to the applicable governmental authorities of all relevant facts, conditions, and circumstances, if any, known to City or Airline which are pertaining to the Leased Premises.

The Triturator Facility is an airport facility built specifically to grind aircraft lavatory waste prior to entry of such waste into the sanitary sewer system. Airline is authorized to dispose of aircraft lavatory waste that has been processed in the Triturator Facility to the sanitary sewer system. Prior to any other waste disposal including waste disposal in contravention of this section or which could have a corrosive or degrading effect on the Facility, Airline is required to obtain prior written approval of the Director and a waste water pre-treatment permit if such is necessary or required by any environmental regulatory authority or any Environmental Law. The written approval of the Director shall not relieve Airline of full responsibility and liability for the disposal of any waste materials or products. The Director may withhold approval for any reason under this provision.

In the event City identifies the presence of Hazardous Substances on the Leased Premises in violation of applicable Environmental Law that (a) did not exist prior to Airline's occupation of the Leased Premises, (b) is the result of Airline's use of the Leased Premises, and (c) requires assessment or remediation, City shall perform such assessment or remediation at Airline's sole cost and expense, provided that City has given Airline at least thirty (30) days prior written notice and opportunity to object or perform the requested work itself. If City performs the assessment and/or remediation, Airline shall pay or reimburse to City the reasonable cost of such assessment or remediation, plus an administrative fee of fifteen percent (15%) of such cost, promptly upon demand. Notwithstanding the foregoing, the provisions of this paragraph shall not be construed or operate to alter in any way Airline's obligations under Environmental Laws, including but not limited to Airline's reporting obligations under Airport's SPCC and SWPPP, or under any other provision of this Agreement, including without limitation Section 15.05 below.

#### **Section 15.05 ENVIRONMENTAL REPORTS**

Within fifteen (15) days of receipt by Airline or within fifteen (15) days prior to any response that is due from City, whichever is shorter, Airline shall provide to the Director complete copies of all environmental permits and reports related to the Leased Premises and all notices, orders, decrees, citations, and inspection reports issued to Airline or its Affiliate by any environmental regulatory authority related to the Leased Premises. Within fifteen (15) days of receipt by City

or within fifteen (15) days prior to any response that is due from Airline, whichever is shorter, the Director shall provide to Airline, on an ongoing basis and as updates are required, copies of all City environmental permits and reports related to the Leased Premises and all notices, orders, decrees, citations, and inspection reports issued to City by environmental regulatory authorities related to the Leased Premises.

#### **Section 15.06 SURVIVAL OF OBLIGATIONS**

The obligations of this Article shall survive the expiration, termination, sublease, or assignment of this Agreement.

#### **Section 15.07 NONDISCRIMINATION**

As a condition of the use of Airport services and facilities, Airline shall be subject to the following:

1. In the event facilities are constructed, maintained, or otherwise operated on the space assigned to Airline for a purpose for which a U.S. Department of Transportation (USDOT) program or activity is extended or for another purpose involving the provision of similar services or benefits, Airline shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, USDOT, Subtitle A, Office of the Secretary, Part 21, "Nondiscrimination in Federally Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964," and as such regulations may be amended from time to time.
2. No person shall be excluded by Airline from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the facilities assigned to Airline on the grounds of race, creed, color, national origin, sex, handicap, or religion.
3. No person shall be excluded by Airline from participation in, denied the benefits of, or otherwise be subject to discrimination in the construction of any improvements on, over, or under the space assigned to Airline, or the furnishing of services thereon, on the grounds of race, creed, color, national origin, sex, handicap or religion.

4. Airline shall use the premises assigned to it in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, "Nondiscrimination in Federally Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964," and as such regulations may be amended.

Airline shall insert the substance of the provisions of these paragraphs on nondiscrimination in any lease, agreement, or contract by which Airline grants a right or privilege to any person, firm, or corporation to render accommodations or services to the public on the space assigned to it at the Airport.

#### **Section 15.08 BREACH OF NONDISCRIMINATION**

In the event of a breach of any of the nondiscrimination covenants set forth above, City shall have the right to terminate Airline's right to use Airport services and facilities and to re-enter and repossess the space and the facilities thereon that had been assigned to Airline, and hold the same as if such assignment had never been made. This provision regarding the termination of Airline's rights to use Airport services and facilities shall not become effective until the procedures of Title 49, Code of Federal Regulations, Part 21, are followed and completed, including the expiration of appeal rights, by either Airline or City.

#### **Section 15.09 FAIR AND EQUAL FURNISHING OF SERVICES**

As a condition of the use of Airport services and facilities, Airline shall furnish its accommodations or services on a fair, equal, and not unjustly discriminatory basis to all users thereof, and it shall charge fair, reasonable, and not unjustly discriminatory prices for each unit or service. In the event of noncompliance with this paragraph, City may terminate Airline's right to use Airport services and facilities.

#### **Section 15.10 AFFIRMATIVE ACTION PROGRAM**

As a condition of the use of Airport services and facilities, Airline shall undertake an affirmative action program as required by FAA regulations, Title 14, Code of Federal Regulations, Part 152,



Subpart E, entitled “Nondiscrimination in Airport Aid Program,” or as otherwise approved by the FAA, to ensure that no person shall on the grounds of race, creed, color, national origin, sex, or handicap be excluded from participation in any employment activities covered in such Subpart E. Airline shall not exclude any person on such grounds from participating in or receiving the services or benefits of any program or activity covered by such Subpart E. Airline shall require that its covered suborganizations provide assurances to Airline that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by Title 14, Code of Federal Regulations, Part 152, Subpart E, to the same effect.

**Section 15.11 MINORITY BUSINESS ENTERPRISE**

As a condition of its use of Airport services and facilities, Airline shall comply with the requirements of Title 49 of the Code of Federal Regulations, Part 23, and entitled “Participation by Minority Business Enterprise in Department of Transportation Programs” as this Part may be amended from time to time.

**Section 15.12 RIGHTS OF FEDERAL GOVERNMENT**

Any use of Airport services and facilities by Airline shall be subject to whatever right the U.S. government now has or in the future may have or acquire affecting the control, operation, regulation, and taking over of the Airport or the exclusive or nonexclusive use of the Airport by the United States during the time of war or national emergency.

**Section 15.13 SUBORDINATION OF AGREEMENT**

The use of Airport services and facilities by Airline, pursuant to this Agreement, is subordinated to City’s existing and future obligations and agreements with or to the federal government including, but not limited to, federal grant assurances.

Nothing contained in this Agreement is intended, nor shall be construed, as a waiver by either party of any right to assert any claim or defense, or raise any issue in any context or forum including, but not limited to, a court or administrative forum, regarding the preemption by

federal law, including but not limited to Airline Deregulation Act (49 U.S.C. § 41713), of any state or local law or ordinance, or the Rules and Regulations.

END OF ARTICLE

## **ARTICLE 16. DEFAULT AND REMEDIES**

### **Section 16.01 DEFAULT BY AIRLINE AND REMEDIES OF CITY**

The occurrence of any one or more of the following events (each an "Airline Event of Default") shall constitute a material default and breach of this Agreement by Airline:

1. The filing by Airline of a voluntary petition in bankruptcy or any assignment for benefit of creditors of all or any part of Airline's assets; or
2. Any institution of proceedings in bankruptcy against Airline, and such proceedings are not dismissed within sixty (60) days after commencement; or
3. The taking of jurisdiction by a court of competent jurisdiction of Airline or its assets pursuant to proceedings brought under the provisions of any state or federal insolvency or reorganization act and such proceedings are not dismissed within sixty (60) days after commencement; or
4. The appointment of a receiver or trustee of Airline's assets by a court of competent jurisdiction or by a voluntary agreement with Airline's creditors; or
5. The abandonment by Airline of its conduct of its Air Transportation business at the Airport and in this context, suspension of operations for a period of ninety (90) consecutive days will be deemed abandonment in the absence of an explanation satisfactory to and accepted in writing by the Director; or
6. The failure of Airline to pay any sum of money due to City under this Agreement, as and when due, and such failure continues uncured for fifteen (15) days after written notice thereof from City; or
7. The failure of Airline to maintain any of the insurance coverages required by this Agreement; or
8. The failure of Airline to provide copies of certificates of insurance and copies of endorsements and such failure continues uncured for fifteen (15) days after written notice thereof from City; or

9. Except as provided in the preceding paragraphs of this Section, the failure by Airline to perform any other covenant, obligation, or condition herein required to be performed by Airline and such failure continues uncured for thirty (30) days after written notice thereof from the Director; provided, however, that if such failure cannot reasonably be cured within such 30-day period, such failure shall not constitute an Airline Event of Default if within such 30-day period Airline substantially commences to cure such failure and thereafter continuously and diligently prosecutes such cure to completion within a reasonable time.

Upon the occurrence of any Airline Event of Default, City shall be entitled to terminate this Agreement, without prejudice to and without thereby waiving any other rights or remedies arising by reason of such Airline Event of Default, and shall be entitled to exercise all other rights and remedies available to City under this Agreement, at law, in equity and otherwise. Without limiting the generality of the foregoing, in the event that City terminates this Agreement upon the occurrence of an Airline Event of Default, City shall be entitled to recover from Airline all direct damages incurred by City by reason of Airline's default, including but not limited to the cost of recovering possession of the Leased Premises; reasonable expenses of re-letting, including necessary repairs, renovation and/or alteration of the Leased Premises; reasonable attorney's fees and any real estate commission actually paid; the amount of unpaid rent, charges, fees and other amounts which were due and payable by Airline under the terms of this Agreement at the time of termination; and the worth at the time of award by a court having jurisdiction thereof of the amount of rent, charges, fees and other amounts which would have become due and payable by Airline under the terms of this Agreement after the time of termination during the balance of the Term of this Agreement. For purposes of the preceding sentence, the annual amount of rent, charges, fees and other amounts for each year or portion thereof during the balance of the Term of this Agreement shall be deemed to be the same annual amount that was due and payable by Airline for the Fiscal Year immediately preceding the time of termination of this Agreement.

Alternatively, City may, without terminating this Agreement, enter and repossess the Leased Premises, remove Airline's property and signs therefrom, and re-let the same for such rent, charges, fees and other amounts and upon such terms as shall be satisfactory to City without such re-entry and repossession working a forfeiture of the rent, charges, fees and other amounts to be paid and the covenants to be performed by Airline during the remaining Term of this Agreement. For the purpose of such re-letting, City shall be entitled to make any repairs, changes, alterations or additions in or to the Leased Premises that may be necessary or convenient, and City shall be entitled to recover from Airline the cost of such repairs, changes, alterations and additions; the expenses of such re-letting; the amount of unpaid rent, charges, fees and other amounts which were due and payable by Airline under the terms of this Agreement at the time of re-letting; and the difference in value between the rent, charges, fees and other amounts payable by Airline hereunder for the remainder of the Term of this Agreement and the rent, charges, fees and other amounts actually realized from such re-letting. For purposes of the preceding sentence, the annual amount of the rent, charges, fees and other amounts payable by Airline hereunder for the remainder of the Term of this Agreement shall be deemed to be the same annual amount that was due and payable by Airline for the fiscal year of the Airport immediately preceding such re-letting.

Further, if rents, fees, and charges are not paid when due by Airline, subject to the notice and cure provisions of this Section 16.01 or elsewhere in this Agreement, the Director is authorized to seek any necessary legal and administrative remedy to collect unpaid rents, fees, and charges and to assure timely payment of future rents, fees, and charges. These remedies shall be in addition to remedies provided elsewhere in this Article and may include any of the following:

1. Seeking a review of Airline's credit rating from one or more nationally recognized credit rating agencies.
2. Seeking administrative relief through appropriate federal agencies, including the FAA.
3. Such other legal and administrative remedies as permitted by law.

Failure by City to take any authorized action upon the occurrence of any default or Airline Event of Default by Airline with respect to any of the terms, covenants, or conditions required to be performed, kept, and observed by Airline shall not be construed to be or act as a waiver of said default or Airline Event of Default or of any subsequent default or Airline Event of Default with respect to the same or any of the other terms, covenants, and conditions herein contained to be performed, kept, and observed by Airline. The acceptance by City of rents or any other performance of this Agreement from or by Airline for any period or periods after the occurrence of a default or Airline Event of Default (whether or not City has notice or knowledge thereof) by Airline with respect to any of the terms, covenants, and conditions herein required to be performed, kept, and observed by Airline shall not be deemed a waiver of or estoppel to enforce such default or Airline Event of Default or any right or remedy arising by reason thereof, nor any waiver of or estoppel to enforce any other default by Airline, Airline Event of Default, right or remedy.

In addition to the foregoing, and not in limitation thereof, City shall be entitled to terminate this Agreement, without prejudice to and without thereby waiving any other rights or remedies available to City under this Agreement, at law, in equity and otherwise, if Airline shall be prevented, for a period of ninety (90) consecutive days, by any action of any governmental authority, board, agency, or officer having jurisdiction thereof, from conducting its Air Transportation business at the Airport, or it is so prevented from conducting its Air Transportation business, either by (i) reason of the United States or any agency thereof, acting directly or indirectly, taking possession of, in whole or substantial part, the Leased Premises or premises required for the actual operation of Airline's aircraft to and from the Airport; or (ii) if all or a substantial part of the Leased Premises shall be acquired through the process of eminent domain.

#### **Section 16.02 DEFAULT BY CITY AND TERMINATION BY AIRLINE**

The occurrence of the following (a "City Event of Default") shall constitute a material default and breach of this Agreement by City: The failure by City to perform any covenant or condition under this Agreement within the control of City and herein required to be performed by City and

failure of City to use commercially reasonable efforts to remedy such default within thirty (30) days after receipt from Airline of written notice to remedy the same; provided, however, that if such failure cannot reasonably be remedied within such 30-day period, such failure shall not constitute a City Event of Default if within such 30-day period City substantially commences to cure such failure and thereafter continuously and diligently prosecutes such cure to completion within a reasonable time.

Upon the occurrence of a material City Event of Default and if Airline is not in default in payment to City of any amounts due City under this Agreement or otherwise, Airline shall be entitled to exercise all rights and remedies available to Airline under this Agreement, at law, in equity and otherwise; provided, however, that Airline shall be entitled to terminate this Agreement if and only if such City Event of Default results in a constructive eviction of Airline under Florida law, in which event such termination shall be without prejudice to and without Airline thereby waiving any other rights or remedies arising by reason of such City Event of Default. Failure by Airline to take any authorized action upon the occurrence of any default or City Event of Default by Airline with respect to any of the terms, covenants, or conditions required to be performed, kept, and observed by City shall not be construed to be or act as a waiver of said default or City Event of Default or of any subsequent default or City Event of Default with respect to the same or any of the other terms, covenants, and conditions herein contained to be performed, kept, and observed by City.

The performance by Airline of all or any part of this Agreement for or during any period or periods after the occurrence of a default or City Event of Default (whether or not Airline has notice or knowledge thereof) by City with respect to any of the terms, covenants, and conditions herein required to be performed, kept, and observed by City shall not be deemed a waiver of or estoppel to enforce such default or City Event of Default or any right or remedy arising by reason thereof, nor any waiver of or estoppel to enforce any other default by City, City Event of Default, right or remedy.

In addition to the foregoing, and not in limitation thereof, so long as Airline is not in default in payment to City of any amounts due City under this Agreement or otherwise, Airline shall be entitled to terminate this Agreement, without prejudice to and without thereby waiving any other rights or remedies available to Airline under this Agreement, at law, in equity and otherwise, upon the occurrence of any of the following events:

1. Termination, suspension, revocation or cancellation, by any federal agency (including foreign government agency) with competent jurisdiction of Airline's right or authority to operate as a scheduled air carrier serving the Airport, if but only if such termination, suspension, revocation or cancellation is not necessitated by or the result of an act or omission of Airline; or
2. Issuance by a court of competent jurisdiction of an injunction that in any way substantially prevents or restrains the use of the Airport or any part thereof necessary for Airline's scheduled flight operations and which injunction remains in force for a period of at least thirty (30) days after City has exhausted or abandoned all appeals, if but only if such injunction is not necessitated by or the result of an act or omission of Airline; or
3. If, at any time during the Term of this Agreement, because of City's failure to provide within a reasonable time safe aircraft operating facilities, the Federal Aviation Administration or its successor fails or refuses to certify the Airport as adequate to accommodate aircraft that Airline is licensed to operate and is operating into and from all other airports of like size and character and with similar facilities and which aircraft are in general use on Airline's scheduled transportation route system and which Airline may reasonably desire to operate into or from the Airport, if but only if such refusal or failure is not necessitated by or the result of an act or omission of Airline; or
4. The inability of Airline for a continuing period in excess of ninety (90) days to use the Airport or to exercise any rights or privileges granted to Airline hereunder and necessary



to its scheduled flight operations because of any law or ordinance by any governmental authority having jurisdiction over the operations of the Airport or Airline, or because of any order, rule, regulation, or other action or any non-action of the Federal Aviation Administration, its successor, or any other authorized governmental agency prohibiting such use, if but only if Airline's inability is not necessitated by or the result of any act or omission of Airline; or

5. The assumption by the United States government or any authorized agency thereof of the operation, control, or use of the Airport and facilities, or any substantial part thereof, in such a manner as to substantially restrict Airline, for a continuous period of at least ninety (90) days, from operating its Air Transportation business; or
6. Termination, suspension, or discontinuation of Airline's services at the Airport by a governmental agency authorized to do so because of a war or national emergency declared by the government.

In any event where the use of the Airport by Airline is materially affected as provided herein through no fault of Airline and whether or not Airline is entitled to cancel this Agreement as herein provided, while such event is continuing, an equitable adjustment to the rents herein required to be paid by Airline shall be made by the Director.

END OF ARTICLE

## **ARTICLE 17. ASSIGNMENT AND SUBLETTING**

Airline shall not at any time assign this Agreement in whole or in part without the prior written consent of the Director; provided, however, that the foregoing shall not prevent the assignment of this Agreement to any corporation with which Airline may merge or consolidate or which may succeed to the business of Airline.

Airline may sublet all or any part of the Leased Premises only after obtaining the prior written consent of the Director, but if an Airline Event of Default shall occur and be continuing under this Agreement, City may collect rent from such sublessee or occupant and apply the amount collected to the extent possible to satisfy the obligations of Airline hereunder, but no such collection shall be deemed a waiver by City of the covenants contained herein or the acceptance by City of such sublessee or occupant as a successor to Airline or a release of Airline by City from its obligations hereunder.

All of the terms, provisions, covenants, stipulations, conditions, and consideration in this Agreement shall extend to and bind the legal representatives, successors, sublessees, and assigns of the respective parties hereto.

City hereby retains the right to assign and transfer this Agreement to another public body of the State of Florida pursuant to any applicable laws of the State. In such event, this Agreement shall be binding upon such successor, and City shall have no further obligation or liability under this Agreement arising after the date of such assignment.

END OF ARTICLE

## **ARTICLE 18. MISCELLANEOUS**

### **Section 18.01 ACKNOWLEDGMENT**

The parties hereto acknowledge that they have thoroughly read this Agreement, including any exhibits or attachments hereto, 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 hereunder. The parties further acknowledge that this Agreement is the result of extensive negotiations between the parties and shall not be construed against City by reason of the preparation of this Agreement by City.

### **Section 18.02 AIRPORT ACCESS LICENSE/PERMIT**

City reserves the right to establish a licensing or permit procedure for vehicles requiring access to the Airport operational areas and to levy directly against Airline or its suppliers a reasonable regulatory or administrative charge for issuance of such Airport access license or permit. The Director shall give reasonable notice to, and shall consult with, Airline prior to making any material change to such license or permit charges.

### **Section 18.03 AMENDMENTS**

This Agreement may be amended in whole or in part without further consideration upon mutual written consent of both parties.

### **Section 18.04 ATTORNEYS' FEES**

In the event of a dispute arising under this Agreement, whether or not a lawsuit or other proceeding is filed, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs, whether incurred without a lawsuit having been filed or incurred before suit, during suit or at the appellate level. The prevailing party shall also be entitled to recover any attorneys' fees and costs incurred in litigating the entitlement to attorneys' fees and costs, as well as in determining or quantifying the amount of attorneys' fees and costs due it. The reasonable costs to which a prevailing party is entitled shall include costs that are taxable under any applicable

statute, rule, or guideline, as well as non-taxable costs reasonably incurred by the prevailing party.

#### **Section 18.05 AUTHORITY OF DIRECTOR**

The Charter of the City of Pensacola provides that the Mayor shall serve as the City's Chief Executive Officer. Upon approval by the City Council of this Airline Operating Agreement and Terminal Building Lease, the Mayor shall be authorized and obligated to perform, discharge and enforce all of the obligations, rights and responsibilities of the City which are created by, referenced or expressly or implicitly contained in this Agreement. The Mayor may, in his discretion, enforce and perform the rights and obligations of the City through such designees as he may select and identify to the signatories herein, and until such notice to the contrary has been provided, the Mayor hereby designates the Airport Director as his designee, unless provided otherwise or required by law.

#### **Section 18.06 BUSINESS PRIVILEGE FEES**

The City has reserved the right to levy Business Privilege Fees on any person or company (including Airline as provided elsewhere in this Agreement) for conducting business at the Airport. If, as, and when the City decides to levy Business Privilege Fees, the Director shall first notify and consult with the Signatory Airlines on the salient elements and factors involved. Under the terms of this Agreement, the proceeds of Business Privilege Fees will be credited to reduce airline rents and fees. The Director will credit revenue from Business Privilege Fees levied to cost centers that relate to the services provided as determined by the Director in the Director's management discretion. The proceeds from Business Privilege Fees will be used as a credit in the calculation of rents and fees in the subsequent Fiscal Year.

#### **Section 18.07 CAPACITY TO EXECUTE**

The individuals executing this Agreement personally warrant that they have full authority to execute this Agreement on behalf of the entity for whom they are acting hereunder.

**Section 18.08 CITY NOT LIABLE**

Except as specifically provided for in this Agreement, City shall not be under any duty or obligation to Airline to repair or maintain the Leased Premises, or any portion thereof, or any facilities or equipment constructed thereon; provided that City shall repair damages to the Leased Premises caused solely by the negligence or willful misconduct of City, its employees, agents or contractors. The City shall not be responsible or liable to Airline for any claims for compensation for any losses, damages, or injury, including lost profits, sustained by Airline resulting from failure of any water supply, heat, air conditioning, electrical power, or sewage or drainage facility, or caused by the natural physical conditions on the Airport, whether on the surface or underground, including stability, moving, shifting, settlement of ground, or displacement of materials by fire, water, windstorm, tornado, act of God, or state of war, civilian commotion or riot, or any other cause or peril beyond the control of City.

**Section 18.09 COMPLIANCE BY OTHER TENANTS.**

The City shall, whenever possible, make reasonable efforts to obtain uniform compliance with the Rules and Regulations; however, City shall not be liable to Airline for any violation or non-observance of the Rules and Regulations by any user, tenant, concessionaire, other Air Transportation Company, invitee, licensee, or trespasser at the Airport nor shall such violation or non-observance by a user, tenant, concessionaire, other Air Transportation Company, invitee, licensee, or trespasser at the Airport, constitute a waiver of Airline's obligation to comply with the Rules and Regulations.

**Section 18.10 COMPLIANCE WITH FAR PART 77**

Airline agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event any future structure or building is planned for the Leased Premises, or in the event of any planned modification or alteration of any present or future building or structure on the Leased Premises.

**Section 18.11 DELIVERY OF NOTICES**

Any notice required or permitted by this Agreement shall be in writing and served personally or

sent by registered or certified mail (return receipt requested), postage prepaid, or by a nationally recognized courier service such as FedEx, or UPS. Any notice sent pursuant to this paragraph shall be deemed to have been received by the addressee on the earlier of (an) actual receipt or (5) five (5) business days after deposit of it in the U. S. mail or such courier service, as the case may be.

Notices to City shall be addressed to:

CITY OF PENSACOLA  
Airport Director  
Pensacola International Airport  
2430 Airport Blvd., Ste. 225  
Pensacola FL 32504

with copy to:

CITY OF PENSACOLA  
City Administrator  
222 W. Main Street  
Pensacola, Florida 32502

Notices to Airline shall be addressed to:

UNITED PARCEL SERVICE CO.  
Airport Properties – 3A  
1400 North Hurstbourne Parkway  
Louisville, KY 40223

**Section 18.12 DISTRIBUTION OF FUNDS UPON TERMINATION.**

All amounts remaining in any fund or account, including any debt service reserve, established under any Bond Resolution or other financing documents entered into by City shall be distributed or applied in accordance with the provisions of the Bond Resolution or other financing document under which such fund or account was established. All amounts in any other fund or account established in connection with this Agreement shall be distributed to City, which may use such amounts for any lawful Airport Purposes.

**Section 18.13 EMPLOYEES OF AIRLINE**

Airline shall require all of its employees and subcontractors and independent contractors hired by Airline working in view of the public and about the Terminal Building to wear clean and neat attire (as appropriate to the job duties performed) and to display appropriate identification. Airline employees shall obtain identification badges from the Director. Airline, or its employees, shall be responsible for paying the cost of Transportation Security Administration required employee background checks and badging.

**Section 18.14 ENERGY CONSERVATION**

Airline shall comply with the Rules and Regulations pertaining to energy conservation and management to the extent that such Rules and Regulations do not unreasonably infringe on the rights and privileges granted herein or place an undue financial or administrative burden on Airline.

**Section 18.15 ENTIRE AGREEMENT**

This Agreement constitutes the entire Agreement of the parties on the subject matter hereof and may not be changed, modified, discharged, or extended except by written instrument duly executed by City and Airline. This Agreement supersedes all prior agreements and understandings, written and oral, expressed or implied, between City and Airline related hereto. Airline agrees that no representations or grant of rights or privileges shall be binding upon City unless expressed in writing in this Agreement.

**Section 18.16 EXCLUSIVENESS OF AIRLINE'S RIGHTS**

Nothing herein contained shall be deemed to grant to Airline any exclusive right or privilege within the meaning of Section 308 of the Federal Aviation Act 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 18.17 FAVORED NATIONS**

Airline shall have the same rights and privileges and pay City-established fees and charges determined on the same basis, not to exceed those established under the provisions of this Agreement as periodically revised under the terms hereof, with respect to the use of the Airport as any other Signatory Airline. Notwithstanding the foregoing, it is understood that rents and fees established in this Agreement may, to the extent permitted under applicable federal law, vary among lessees on account of the different premises to be leased.

**Section 18.18 FORCE MAJEURE**

Neither City nor Airline shall be deemed in violation of this Agreement if it is prevented from performing any of its obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortages of material, acts of God, acts of the public enemy, acts of superior governmental authority, terrorism, weather conditions, tides, riots, rebellion, sabotage, or any other circumstances for which it is not responsible or which is not in its control; provided, however, that these provisions shall not excuse Airline from paying rents, fees, and charges; however, in the event of a Force Majeure that prevents Airline from paying rents, fees and charges as and when due under this Agreement, Airline may delay making such payments until such Force Majeure no longer exists but in no event for more than thirty (30) days after the first occurrence of such Force Majeure.

**Section 18.19 GENERAL INTERPRETATION**

Insofar as this Agreement grants, permits, or contemplates the use of space or facilities or the doing of any other act or thing at the Airport by Airline, such use or the doing of such act or thing by Airline is to be in connection with the operation of its Air Transportation on scheduled or nonscheduled flights, whether as a common carrier, a contract carrier, a private carrier, or otherwise. Each of the parties, however, has entered into this Agreement solely for its own benefit, and (without limiting the right of either party to maintain suits, actions, or other proceedings because of breaches of this Agreement) this Agreement does not grant to any third person (excepting a successor party to City or Airline) a right to claim damages or bring any suit, action, or other proceeding against either City or Airline because of any breach hereof.



**Section 18.20 GOVERNING LAW**

The laws of the State of Florida shall govern this Agreement and all disputes arising hereunder, with venue in a federal or state court in Escambia County, Florida.

**Section 18.21 HOLDING OVER**

If Airline remains in possession of the Leased Premises after the expiration of this Agreement without any written renewal thereof, such holding over shall not be deemed as a renewal or extension of this Agreement, but shall create only a tenancy at sufferance that may be terminated at any time by City. Such holding over shall otherwise be under the same terms and conditions as set forth in this Agreement.

**Section 18.22 HEADINGS**

The headings of the Articles and paragraphs of this Agreement are inserted only as a matter of convenience and for reference and do not define or limit the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions of this Agreement or of its interpretation.

**Section 18.23 INCORPORATION OF EXHIBITS**

All exhibits referred to in this Agreement are intended to be and hereby are specifically incorporated and made a part of this Agreement.

**Section 18.24 INCORPORATION OF REQUIRED PROVISIONS**

The parties incorporate herein by this reference all applicable provisions lawfully required to be contained herein by any governmental body or agency.

**Section 18.25 INDEPENDENT CONTRACTOR**

As respects City, Airline shall be and remain an independent contractor for all intents and purposes.

**Section 18.26 NO AGENCY**

Nothing in this Agreement shall be construed as making Airline an agent or representative of City for any purpose whatsoever.

**Section 18.27 INVALID PROVISIONS**

In the event any covenant, condition, or provision herein contained is held to be invalid by a court of competent jurisdiction, the invalidity of any such covenant, condition, or provision shall in no way affect any other covenant, condition, or provision herein contained, provided the invalidity of any such covenant, condition, or provision does not materially prejudice either City or Airline in its respective rights and obligations contained in the valid covenants, conditions, and provisions of this Agreement.

**Section 18.28 LICENSES, FEES, AND PERMITS**

Airline shall obtain and pay for all licenses, permits, fees, or other authorization or charges as required under federal, State, or local laws and regulations insofar as they are necessary to comply with the requirements of this Agreement and the privileges extended hereunder.

**Section 18.29 LIENS**

No person or entity performing or providing labor, work, services or materials to or upon the Leased Premises by, through or at the request of Airline shall be entitled to claim or assert any lien, statutory or otherwise, against City's fee simple estate and interest in the Leased Premises or any portion thereof. Airline shall not suffer or permit any construction, mechanics' or other lien to be filed against the fee of the Leased Premises or against Airline's leasehold interest in the Leased Premises by reason of any work, labor, services or materials supplied or claimed to have been supplied to Airline or to anyone holding the Leased Premises, or any part thereof, through or under Airline.

If any such construction lien shall be recorded against City's fee simple estate and interest in the Leased Premises or against Airline's leasehold interest in the Leased Premises, Airline shall

promptly cause the same to be removed or bonded against in accordance with applicable law and in any event within thirty (30) days after Airline receives notice of such filing.

In the event any person or corporation shall attempt to assert a construction lien or other lien against the Leased Premises for improvements made by Airline, Airline shall hold City harmless from such claim, including the cost of defense.

### **Section 18.30 NATIONAL EMERGENCY**

This Agreement and all the provisions hereof shall be subject to whatever right the U.S. Government now has, or in the future may have or acquire, affecting the control, operation, regulation, and taking over of the Airport or the exclusive or non-exclusive use of the Airport by the United States during the time of war or national emergency.

### **Section 18.31 NO AUTOMATIC RENEWALS**

This Agreement contains no automatic renewals of the Term.

### **Section 18.32 NONLIABILITY OF INDIVIDUALS**

No director, officer, agent, elected official, or employee of either party 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 18.33 NONINTERFERENCE WITH AIRPORT OPERATIONS**

Airline, by accepting this Agreement, expressly agrees for itself, its successors, and assigns that it will not make use of its Leased Premises in any manner that might interfere with the landing and taking off of aircraft at the Airport or otherwise constitute a hazard. In the event the aforesaid covenant is breached, on reasonable notice to Airline and opportunity to cure, City reserves the right, among others, to enter Airline Leased Premises and cause the abatement of such interference at the expense of Airline.

**Section 18.34 NOTICE OR CONSENT**

Any notice, consent or approval required herein to be obtained from or given by City (or the Director) may be given by the Director unless otherwise provided. Consent or approval of City or Airline when required herein shall not be unreasonably withheld, delayed, or conditioned.

**Section 18.35 OBTAINING FEDERAL AND STATE FUNDS**

City shall use its best efforts to maximize grants from State or federal agencies or other sources, when consistent with prudent management of the Airport.

**Section 18.36 OPERATION OF AIRPORT**

City agrees to maintain and operate the Airport in substantial compliance with all applicable standards, rules, and regulations of the Federal Aviation Administration or its successor. City shall exercise its rights hereunder and otherwise operate the Airport with due regard for the operational requirements and long-term interests of Airline and the interests of the traveling public, in a manner that is consistent with applicable laws, federal aviation regulations, federal grant assurances, and City Bond Ordinances.

**Section 18.37 OTHER LAND AND BUILDINGS EXCLUDED**

It is agreed and understood that it is not intended by this Agreement or any exhibit hereto to lease any building, space, or area or to set any rental rates for any building, space, or area other than what is specifically described herein.

**Section 18.38 OWNERSHIP OF IMPROVEMENTS**

Upon completion of or installation of any fixture, addition, or improvement, excluding Personal Property as defined in Article 1, on the Leased Premises, such addition, fixture, or improvement shall immediately become the property of City, as owner, subject only to the right of Airline to use same during the term of this Agreement and shall remain the property of City thereafter with the sole right, title, and interest thereto.

**Section 18.39 PAYMENT OF TAXES**

Airline shall pay all taxes and assessments that may be levied upon, assessed, or charged Airline or its property located on the Airport by the State of Florida or any of its political subdivisions or municipal corporations, and shall obtain and pay for all licenses and permits required by law. However, Airline shall have the right to contest, in good faith, the validity or application of any such tax, assessment, license, or permit and shall not be considered in default hereunder so long as such contest is in progress. Further, Airline agrees to diligently prosecute such contest.

**Section 18.40 PUBLIC ADDRESS SYSTEM**

Airline agrees that the use of Airport's public address system will be in accordance with Airport's written public address system policy. Airline shall not install, cause to be installed, or use any other public address system at the Terminal Building without the prior written approval of the Director.

**Section 18.41 PUBLIC RECORDS LAWS**

The Florida Public Records Law, as contained in Chapter 119, Florida Statutes, is very broad. As a result, any written communication created or received by City will be made available to the public and media, upon request, unless a statutory exemption from such disclosure exists. Airline shall comply with the Florida Public Records Law in effect from time to time if and to the extent that the Florida Public Records Law is applicable to Airline. Notwithstanding any contrary provision in this Agreement, any failure by Airline to comply with the Florida Public Records Law, if and to the extent that it is applicable to Airline, that continues for seven (7) days after written notice from City shall constitute an Airline Event of Default.

**IF AIRLINE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO AIRLINE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: THE OFFICE OF THE CITY ATTORNEY, 222 WEST MAIN STREET, PENSACOLA, FLORIDA 32502; PUBLICRECORDS@CITYOFPENSACOLA.COM; (850) 435-1715.**

**Section 18.42 PRUDENT OPERATOR**

City agrees to operate the Airport in a prudent manner to maximize nonairline revenues consistent with its obligations as a public airport sponsor.

**Section 18.43 REMEDIES TO BE NONEXCLUSIVE**

All remedies provided in this Agreement shall be deemed cumulative and additional and not in lieu of or exclusive of each other or of any other remedy available to City or Airline at law or in equity (to the extent not inconsistent with the express provisions hereof) and the exercise of any remedy or the existence herein of other remedies or indemnities shall not prevent the exercise of any other remedy.

**Section 18.44 RIGHT TO AUDIT BOOKS AND RECORDS**

Airline agrees to keep books and records on its operations at the Airport for a period of five (5) years, and the Director or any other authorized City representative, upon reasonable advance written notice to Airline, shall have the right to inspect and audit such books and records to ensure compliance with the prevailing municipal bond disclosure requirements and to determine that City has received from Airline all moneys due City under the terms hereof, including, but not limited to, rents, fees, and charges and PFCs (if applicable) payable to City by Airline. Likewise, Airline shall have the right to inspect the books and records of City relating to the provisions hereof.

**Section 18.45 RIGHT TO LEASE TO UNITED STATES GOVERNMENT**

During time of war or national emergency, City shall have the right to lease the Airport landing area or any part thereof to the United States government for use by the Armed Forces and, if any such lease is executed, the provisions of this Agreement insofar as they are inconsistent with the provisions of the lease to the Government shall be suspended; however, such suspension shall not extend the Term of this Agreement. If, as a result of any such lease, the rights or duties of

AD

Airline hereunder are materially affected, then Airline shall receive an equitable rental adjustment or the right to terminate as described herein.

**Section 18.46 RIGHTS RESERVED TO CITY**

Nothing contained herein shall unlawfully impair the right of City to exercise its governmental or legislative functions. This Agreement is made subject to the Constitution and laws of the State of Florida and to the Charter of City of Pensacola, Florida, and to the provisions of the Airport Improvement Program Grant Agreements applicable to the Airport and its operation, and the provisions of such agreements, insofar as they are applicable to the terms and provisions of this Agreement, shall be considered a part hereof to the same extent as though copied herein at length to the extent, but only to the extent, that the provisions of any such agreements are required generally by the United States at other civil airports receiving federal funds. To the best of City's knowledge, nothing contained in such laws or agreements conflicts with the express provisions of this Agreement.

**Section 18.47 SEC RULE 15c2-12.**

Airline, upon request by City, shall provide City with such information as City may reasonably request in writing to the extent such information is required to be provided by Airline for City to comply with City's continuing disclosure requirements under SEC Rule 15c2-12 as it may be amended from time to time, provided, however, that Airline may in lieu of providing the requested information direct City to an Airline or SEC website where the requested information is then currently available.

**Section 18.48 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 agreement 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, the Federal Aid to Airports Act, the Airport and Airway Development Act of 1970, and the Airport and Airway Improvement Act of 1982, as such acts have been amended from time to time. City covenants that it has no existing agreements with the United States in conflict with the express provisions hereof.

In the event that the FAA requires, as a condition precedent to the granting of funds for the improvement of the Airport, modifications or changes to this Agreement, Airline agrees to consent to such reasonable amendments, modifications, revisions, supplements, or deletions of any of the terms, conditions, or requirements of this Agreement as may be reasonably required to enable City to obtain such grant of funds, provided that in no event shall such changes materially impair the rights of Airline hereunder.

#### **Section 18.49 SUCCESSORS AND ASSIGNS**

The provisions of this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto; provided, however, this provision shall in no way whatsoever alter the restriction herein regarding assignment and subletting by Airline.

#### **Section 18.50 TRIAL BY JURY**

The parties to this Agreement desire to avoid the additional time and expense related to a jury trial of any disputes arising hereunder. Therefore, it is mutually agreed by and between the parties hereto, and for their successors, heirs and permitted assigns, that they shall and hereby do waive trial by jury of any claim, counterclaim, or third-party claim, including any and all claims of injury or damages, brought by either party against the other arising out of or in any way connected with this Agreement and/or the relationship which arises hereunder. The parties acknowledge and agree that this waiver is knowingly, freely, and voluntarily given, is desired by all parties, and is in the best interest of all parties.



**Section 18.51 THIRD PARTIES**

Nothing in this Agreement, express or implied, is intended to or shall confer upon any other person any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

**Section 18.52 TIME IS OF THE ESSENCE**

Time is of the essence in this Agreement.

\* \* \* \* \*

END OF ARTICLE

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement as of the dates set forth below.

**CITY:**  
**CITY OF PENSACOLA**

**AIRLINE:**  
**UNITED PARCEL SERVICE CO.**

By: \_\_\_\_\_

Ashton J. Hayward, III – Mayor

By: James T. Miller

Print Name: James T. Miller

Title: Vice President

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

Date: September 27, 2017

Attested by and signed and delivered in the presence of:

Signed and delivered in the presence of:

\_\_\_\_\_  
City Clerk

Kevin Hoffmann  
Print Name: Kevin Hoffmann

Signed and delivered in the presence of:

Sheila Cecil  
Print Name: Sheila Cecil

\_\_\_\_\_  
Print Name: \_\_\_\_\_

Approved as to content:

\_\_\_\_\_  
Daniel E. Flynn, Airport Director

Legal in form and valid as drawn:

\_\_\_\_\_  
Lysia H. Bowling, City Attorney

af

Exhibit A – Airport Layout Plan

**RUNWAY DATA TABLE**

	RUNWAY 17-35				RUNWAY 8-26			
	EXISTING		FUTURE		EXISTING		FUTURE	
<b>BEARING</b>	N 166°58'05" E		N 166°59'05" E		N 78°03'49" E		N 78°23'40" E	
<b>SLOPE</b>	7,004' / 150'		8,004' / 150'		7,003' / 150'		7,000' / 150'	
<b>WIDTH</b>	NONE		NONE		NONE		NONE	
<b>DEPTH</b>	0.23%		0.24%		0.23%		0.23%	
<b>CONCRETE</b>	CONCRETE		CONCRETE		ASPHALT		ASPHALT	
<b>WEIGHT</b>	MD-80 (C-II)		B-757 (C-IV)		ND-80 (C-III)		B-757 (C-IV)	
<b>WEIGHT</b>	85,000 LB.		85,000 LB.		85,000 LB.		85,000 LB.	
<b>WEIGHT</b>	150,000 LB.		150,000 LB.		150,000 LB.		150,000 LB.	
<b>WEIGHT</b>	270,000 LB.		270,000 LB.		270,000 LB.		270,000 LB.	
<b>PRECISION</b>	PRECISION		PRECISION		PRECISION		PRECISION	
<b>HRL</b>	35		17		26		28	
<b>POINT</b>	121.3'		103.4'		97.2'		113.5'	
<b>POINT</b>	30°28'58.471"		30°27'50.827"		30°28'18.801"		30°28'16.801"	
<b>POINT</b>	87°11'28.371"		87°11'26.371"		87°11'48.378"		87°11'45.378"	
<b>POINT</b>	50.1		34.1		34.1		50.1	
<b>POINT</b>	200'x200'		200'x200'		200'x200'		200'x200'	
<b>POINT</b>	I.S. NDB, GPS		I.S. NDB, GPS		VOR, GPS LOCALIZER/DME		VOR, GPS I.S. DOPS	
<b>POINT</b>	REIL, PAPI		REIL, PAPI		REIL, PAPI		REIL, PAPI	
<b>POINT</b>	MALSR		MALSR		NONE		MALSR	
<b>POINT</b>	200-1/2		400-1		200-1/2		200-1/2	

**RSA AND ROFA DATA TABLE**

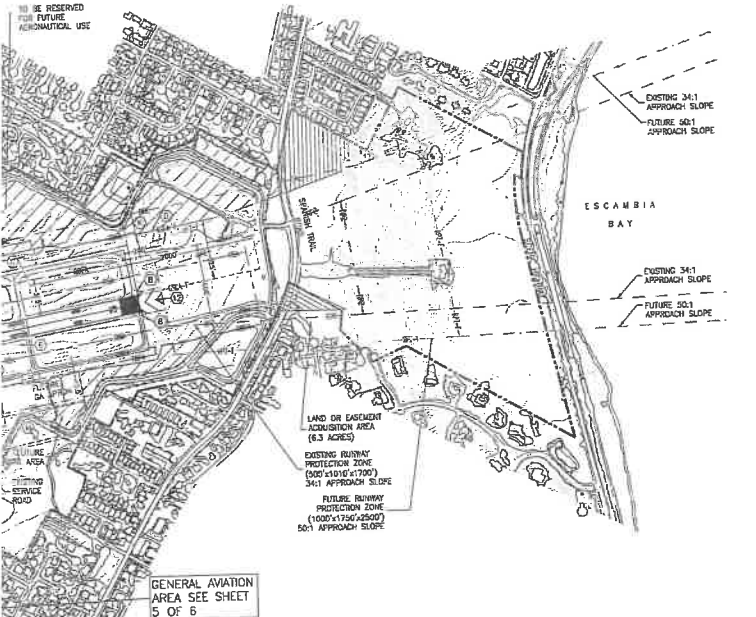
RUNWAY	RSA WIDTH	RSA LENGTH BEYOND R/W END
RUNWAY 17-35	500'	1,000'
RUNWAY 8-26	500'	1,000'

RUNWAY	ROFA WIDTH	ROFA LENGTH BEYOND R/W END
RUNWAY 17-35	800'	1,000'
RUNWAY 8-26	800'	1,000'

**AIRPORT DATA TABLE**

	EXISTING	FUTURE
<b>CODE (ARC)</b>	C-II	C-IV
<b>POINT ELEVATION</b>	121.3' MSL	103.4' MSL
<b>POINT</b>	30°28'58.471"	30°28'21.785"
<b>POINT</b>	87°11'28.371"	87°11'11.484"
<b>POINT</b>	1,474	1,540
<b>POINT</b>	BGF, JULY	SAWZ



**EXISTING AIRPORT FACILITIES**

BUILDING	ELEV.
(1) MAIN TERMINAL BUILDING	164.0
(2) AIRPORT TRACON (CITY OWNED)	184.5
(3) AIRFIELD ELECTRICAL VAULT	128.2
(4) AIR CARGO FACILITY	126.3
(5) PENNSACOLA AVIATION HANGAR	UNKNOWN
(6) AVIATION DISCOVERY PARK	UNKNOWN
(7) FAX ANTENNA VAULT (RTF)	128.4
(8) HELIWORKS HANGAR (CITY)	144.2
(9) FUEL FARM FACILITY	113.5
(10) AUTO PARKING GARAGE	125.0
(11) PARKING COLLECTION SOUTH	123.9
(12) TARD QUEUE FACILITY	123.9
(13) RENTAL CAR SERVICE FACILITY	UNKNOWN
(14) RENTAL CAR SERVICE FACILITY	UNKNOWN
(15) RENTAL CAR SERVICE FACILITY	UNKNOWN
(16) HELIWORKS HANGAR	115.0
(17) FAA EQUIPMENT BUILDING	121.8
(18) FAA EQUIPMENT SHED	115.0
(19) FERRISS HANGAR	UNKNOWN
(20) FAA AIR TRAFFIC CONTROL TOWER	149.0
(21) AIRPORT GARAGE FACILITY (STORAGE)	105.2
(22) AIRPORT GARAGE FACILITY (STORAGE)	105.3
(23) AIRCRAFT RESCUE AND FIRE FIGHTING (ARFF) STATION	131.5
(24) AIRPORT MAINTENANCE FACILITY	110.5
(25) PUMP HOUSE (EMERALD COAST UTILITY AUTHORITY)	112.9
(26) T-HANGAR	126.5
(27) T-HANGAR	117.7
(28) T-HANGAR	120.9
(29) PENNSACOLA AVIATION HANGAR AREA	149.2
(30) LIFEGUARD AIR AMBULANCE HANGAR	135.8
(31) RENTAL CAR SERVICE FACILITY	UNKNOWN
(32) EGO AIR HANGAR	133.8
(33) NAVY FUELING CLUB HANGAR	120.5
(34) PUMP HOUSE (EMERALD COAST UTILITY AUTHORITY)	111.0
(35) PUMP HOUSE (EMERALD COAST UTILITY AUTHORITY)	141.0
(36) FAA EQUIPMENT BUILDING (LOCALIZER)	94.9
(37) FAA EQUIPMENT BUILDING (LOCALIZER, DME)	126.5
(38) FAA ANTENNA VAULT (RTF)	135.0
(39) FAA ANTENNA VAULT (RTF)	122.9
(40) CITY OF PENNSACOLA FIRE STATION	107.0
(41) CITY OF PENNSACOLA FIRE STATION	112.0
(42) ASR-II FACILITY	UNKNOWN
(43) TERMINAL EDS FACILITY	UNKNOWN
(44) FAA TRACON	UNKNOWN
(45) RENTAL CAR SERVICE FACILITY	UNKNOWN

**FUTURE AIRPORT FACILITIES**

BUILDING	
(A) FUTURE TERMINAL EXPANSION	
(B) FUTURE TERMINAL CONCOURSE EXTENSION	
(C) FUTURE TERMINAL ADMIN/CHECK-IN EXPANSION	
(D) N/A	
(E) N/A	
(F) N/A	
(G) FUTURE AIR CARGO FACILITY	
(H) FUTURE AIR CARGO FACILITY	
(J) FUTURE AIR CARGO FACILITY	
(K) FUTURE AIR CARGO FACILITY	
(L) FUTURE FUEL FARM	
(M) FUTURE HANGAR	
(N) FUTURE T-HANGAR	
(P) FUTURE T-HANGAR	
(Q) FUTURE T-HANGAR	
(R) FUTURE MRO HANGAR	
(S) FUTURE MRO HANGAR	
(T) FUTURE WASHRACK	
(U) N/A	
(V) FUTURE CAR PARKING	



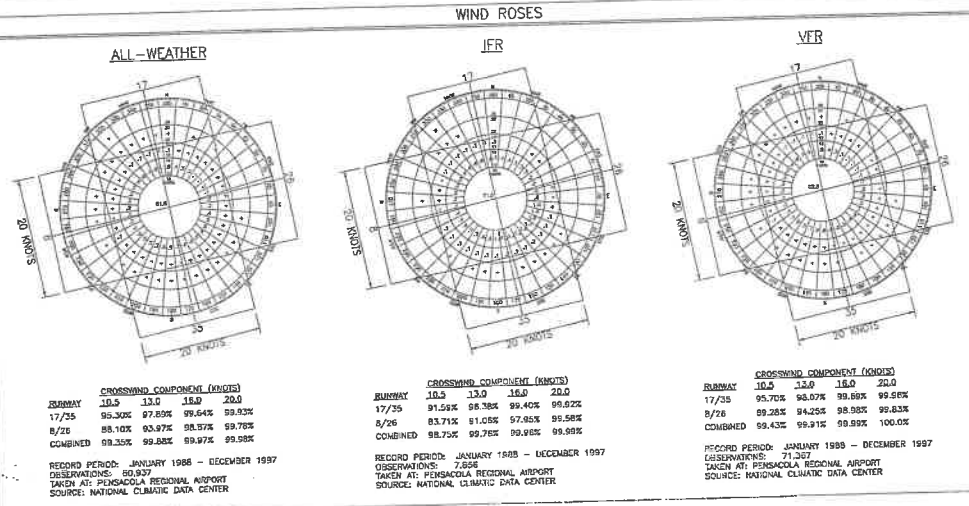
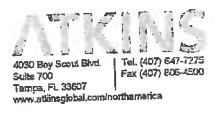
Reynolds, Smith and Hills, Inc.  
10748 Deerwood Park Blvd. South  
Jacksonville, Florida 32256  
904-296-2000 FAX 904-279-249  
www.rsandh.com  
FL Cert. Nos. AA0001888 • EB0005620 • LC0002010



PENSACOLA REGIONAL AIRPORT

AIRPORT LAYOUT PLAN UPDATE

CONSULTANTS



**CONSTRUCTION NOTICE REQUIREMENT**  
To protect operational safety and future development, all proposed construction on the airport must be coordinated by the airport owner with the FAA's District Office prior to construction. FAA's review takes approximately 80 days.

BASE MAP PROVIDED BY HAMILTON SMITH AND ASSOCIATES, INC. AND PINE DESIGN ENGINEERING SERVICES CO., DATED OCTOBER 6, 1988.  
BASE MAP WAS UPDATED FOR 2013 PEN AND INK ALP UPDATE BY ATKINS. UPDATE USED AS BUILT DATA SOURCED FROM RS&H UTILITY ATLAS DATED 2010.

MAGNETIC DECLINATION 128°W  
DDBW / year (ANNO 2005)  
National Geophysical Data Center (NGDC)  
Scale in Feet: 1" = 500'

**REVISIONS**

NO.	DESCRIPTION	BY	DATE
1	BASE MAP UPDATED	ATKINS	FEB 2014
2	FUT MRO DEVELOPMENT ADDED	ATKINS	FEB 2014

DATE ISSUED: APRIL 2007  
REVIEWED BY: WCS  
DRAWN BY: DAB  
DESIGNED BY: WCS

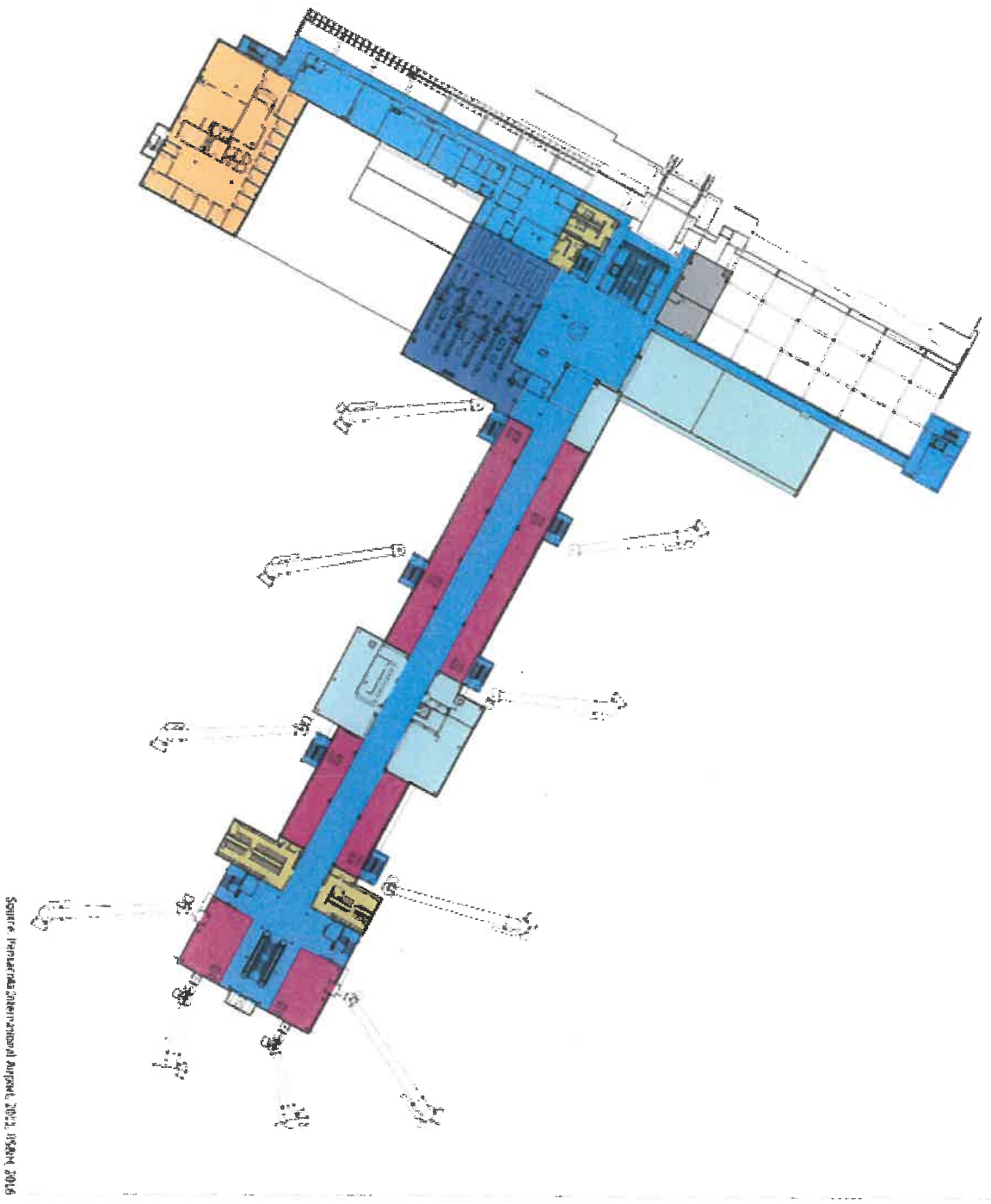
AEP PROJECT NUMBER  
2018240.243

© 1998 REYNOLDS, SMITH AND HILLS, INC.

SHEET TITLE  
AIRPORT LAYOUT PLAN

SHEET NUMBER  
2 OF 16

Exhibit B – Terminal Layout Plan

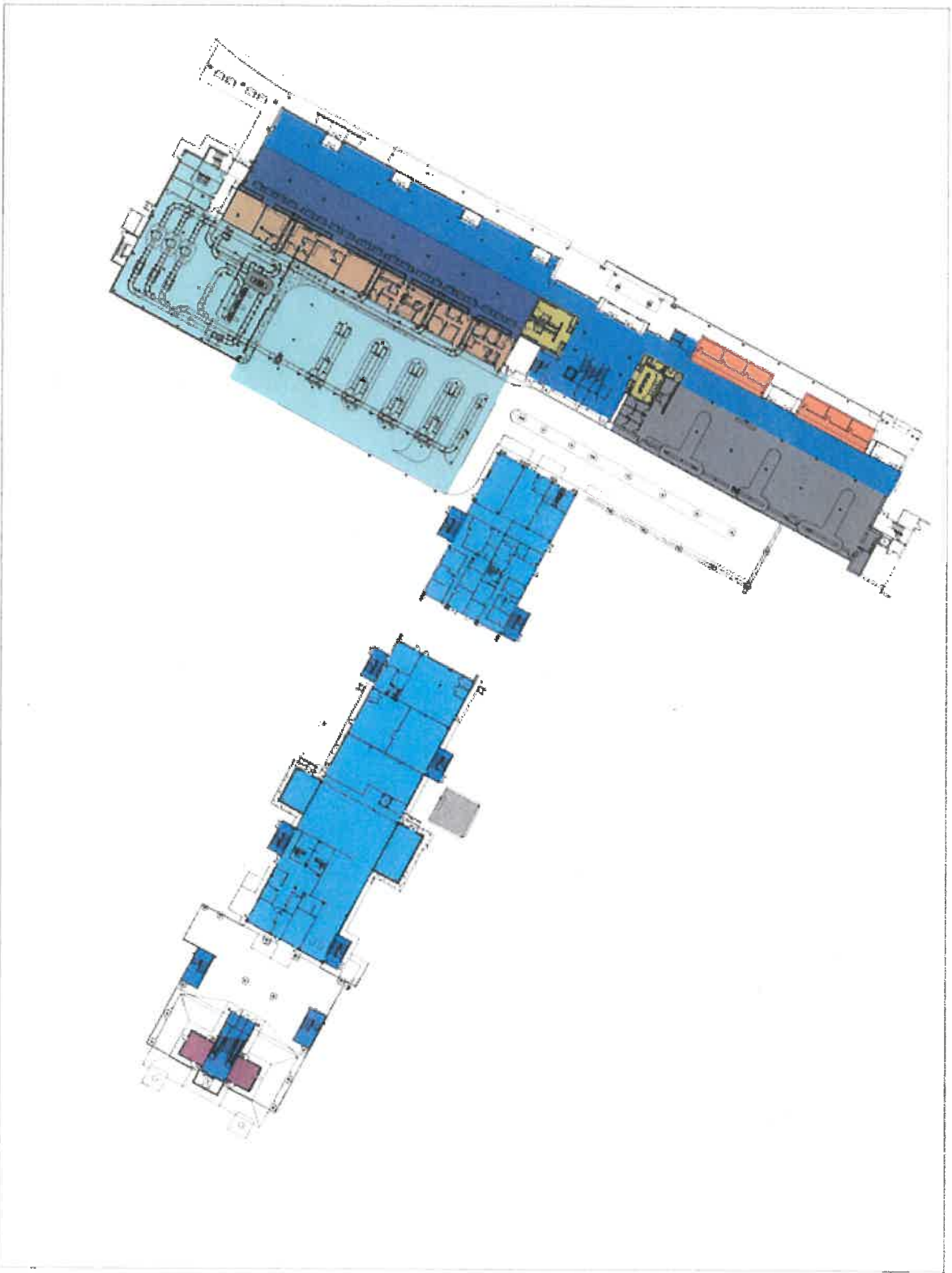


Source: Phoenix International Airport, 2013; RSCM, 2016

Legend

- Circulation
- Security Checkpoint
- Concessions
- Holdroom
- USO
- Airport Administration
- Office/Support
- Restroom





Source: Pensacola International Airport, 2011; RSCW, 2016

**LEGEND**

- Circulation
- Ticketing Lobby
- Outbound Bag Screening and Make-Up
- Bag Claim Lobby
- Holdroom
- Rental Car
- Airline Office
- Office/Support
- Restroom

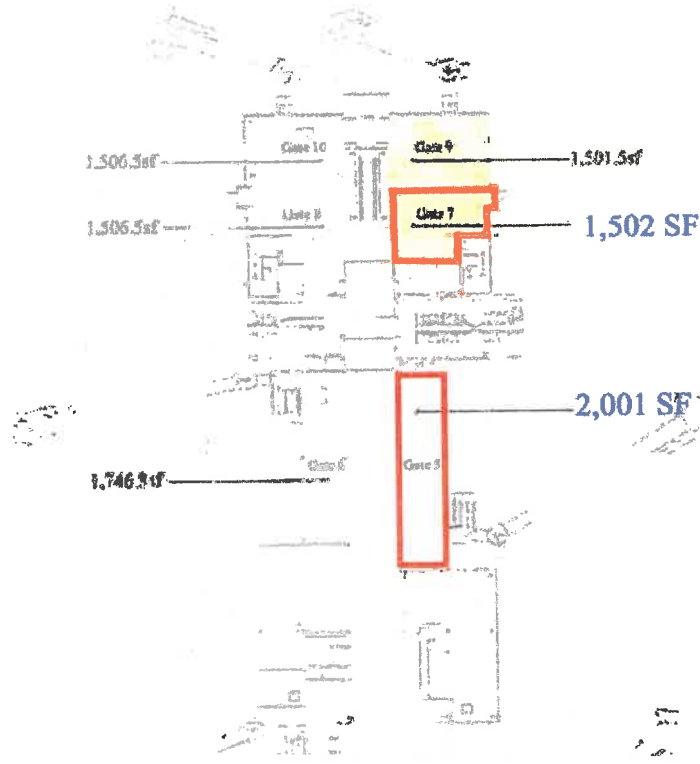


Exhibit C – Airline Rented Space



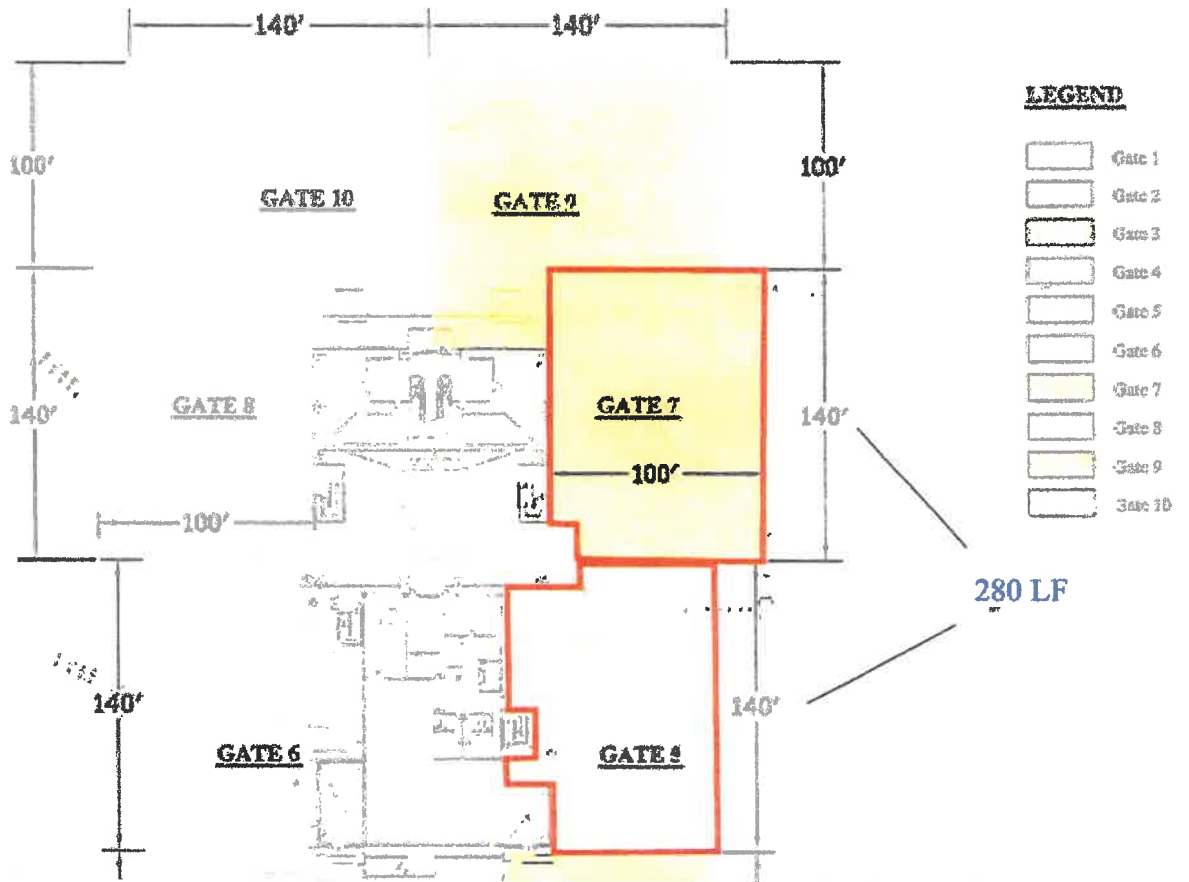
**PREFERENTIAL SPACE  
HOLDROOMS  
AMERICAN- 3,503 SF**

Category	In Square Feet			Total
	Rented	Not Rented	Non Rentable	
Preferential Use Space				
Airline Holdrooms & Gates				
American				
	Holdroom 5	2,001	-	2,001
	Holdroom 7	1,502	-	1,502
<b>Total Holdrooms &amp; Gates</b>		<b>3,503</b>		<b>3,503</b>



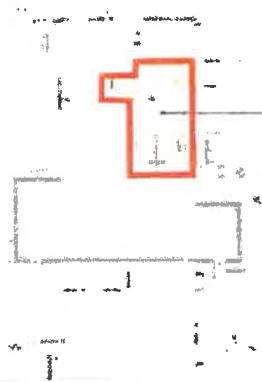
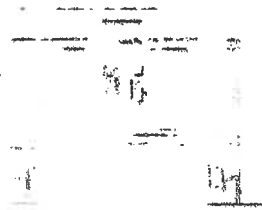
## AIR CARRIER RAMP AMERICAN- 280 LF

Category	In Linear Feet			
	Rented	Not Rented	Non Rentable	Total
Airline Air Carrier Ramp Space				
American				
Ramp 5	140	-		140
Ramp 7	140	-		140
ACR Total	280	-		280



**EXCLUSIVE USE  
TICKETING/OPERATIONS  
AMERICAN- 4,259 SF**

Category		In Square Feet			
		Rented	Not Rented	Non-Rentable	Total
Airline Exclusive Space					
Airline Ticketing, Operations, and Office Areas					
American	Ticketing	2,100		-	2,100
	Operations	2,000		-	2,000
	Bag Service Office	159			159
Ticketing, Operations, and Office Areas		4,259	-	-	4,259



**2,000 SF**

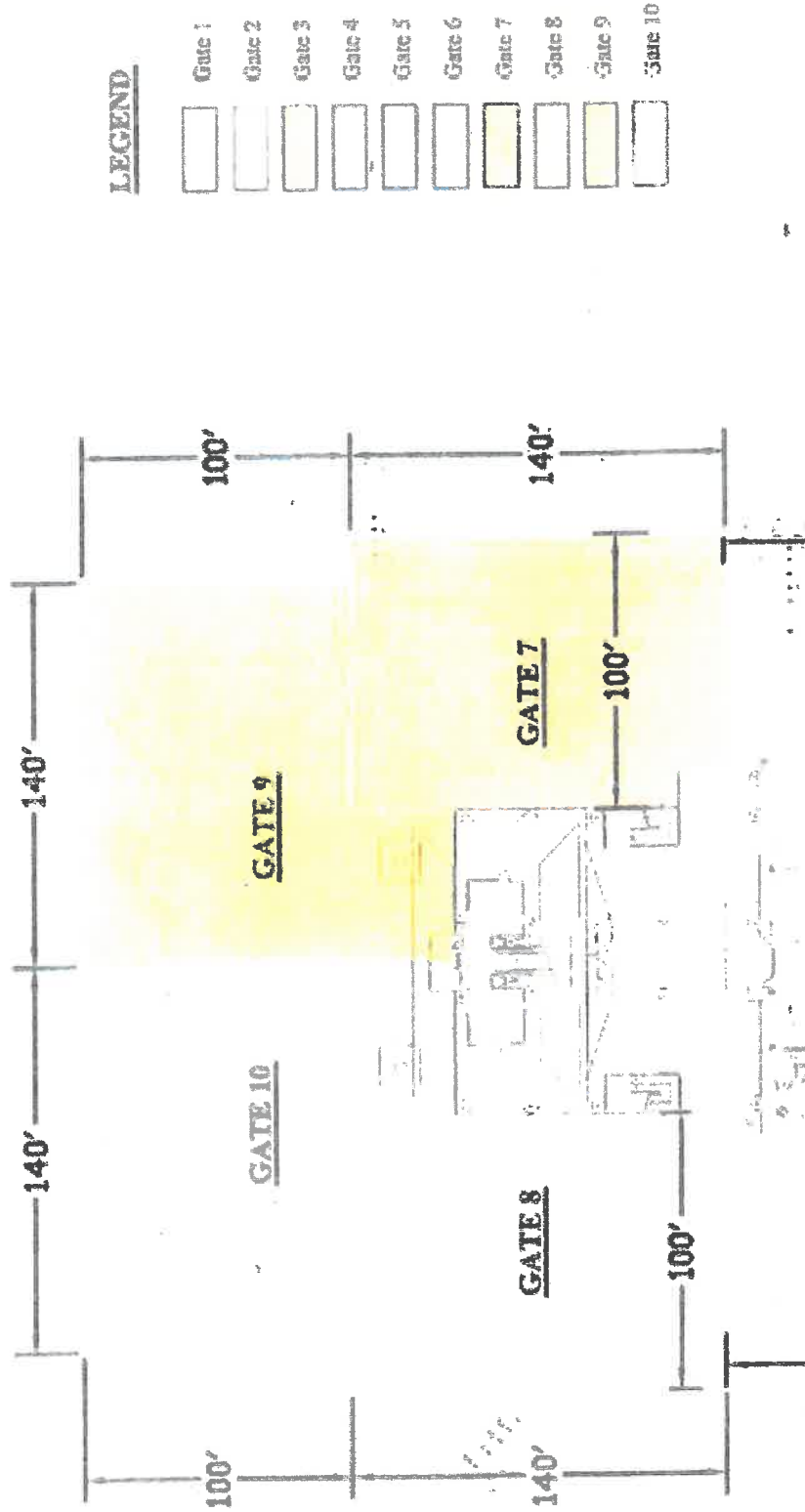
**EXCLUSIVE USE  
TICKETING/OPERATIONS  
DELTA- 6,927 SF**

Category	In Square Feet			Total
	Rented	Not Rented	Non Rentable	
Airline Exclusive Space				
Airline Ticketing, Operations, and Office Areas				
Delta				
	2,344	-	-	2,344
Ticketing	1,704	-	-	1,704
Operations/Bag Service Space 1	2,690	-	-	2,690
Operations/Bag Service Space 2	.189	-	-	.189
Bag Service Office				
Total Exclusive	6,927	-	-	6,927
Ticketing, Operations, and Office Areas				

2016

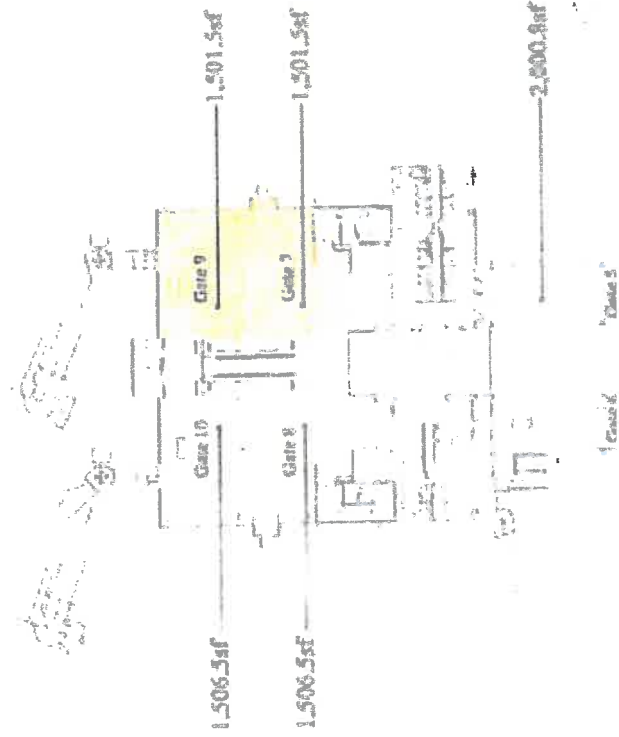
# AIR CARRIER RAMP DELTA- 280 LF

Category	In Linear Feet			
	Rented	Not Rented	Non Rentable	Total
Airline Air Carrier Ramp Space Delta	140	-	-	140
	140	-	-	140
<b>ACR Total</b>	<b>280</b>	<b>-</b>	<b>-</b>	<b>280</b>



**PREFERENTIAL SPACE  
HOLDROOMS  
DELTA- 4,231 SF**

Category	In Square Feet			Total
	Rented	Not Rented	Non Rentable	
Preferential Use Space Airline Holdrooms & Gates Delta	2,115	-	-	2,115
Holdroom 2 Holdroom 4	2,116	-	-	2,116
<b>Total Holdrooms &amp; Gates</b>	<b>4,231</b>	<b>-</b>	<b>-</b>	<b>4,231</b>



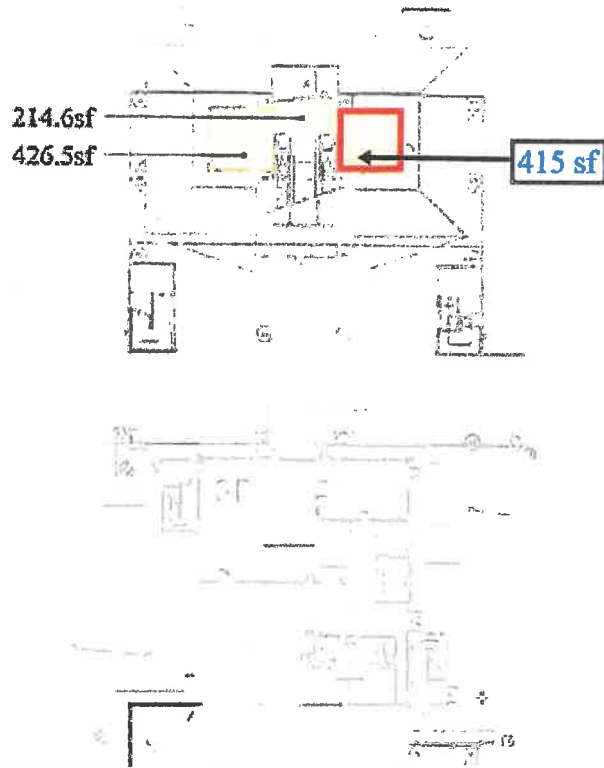
**EXCLUSIVE USE  
TICKETING/OPERATIONS  
SILVER- 1,416 SF**

Category		In Square Feet			
		Rented	Not Rented	Non Rentable	Total
Airline Exclusive Space					
Airline Ticketing, Operations, and Office Areas					
Silver	Ticketing	1,416	-	-	1,416
	Operations	-	-	-	-
Ticketing, Operations, and Office Areas		1,416	-	-	1,416
Total Exclusive		1,416	-	-	1,416



## HOLDROOM SILVER- 415 SF

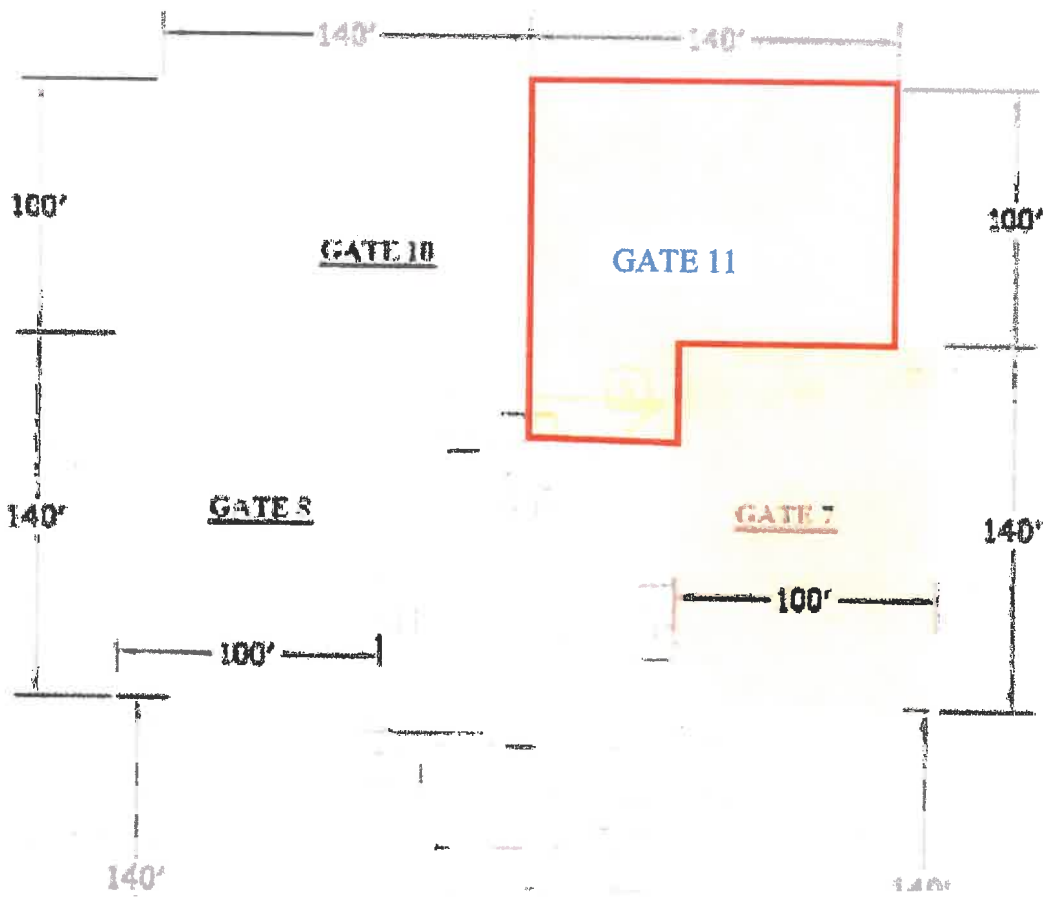
Category	In Square Feet			
	Rented	Not Rented	Non Rentable	Total
Preferential Use Space				
Airline Holdrooms & Gates				
Silver	415			415
<b>Total Holdrooms &amp; Gates</b>	<b>415</b>	-	-	<b>415</b>





## AIR CARRIER RAMP SILVER- 140 LF

Category	In Linear Feet			
	Rented	Not Rented	Non Rentable	Total
Airline Air Carrier Ramp Space Silver				
Ramp 11	140	-		140
<b>ACR Total</b>	<b>140</b>	<b>-</b>		<b>140</b>



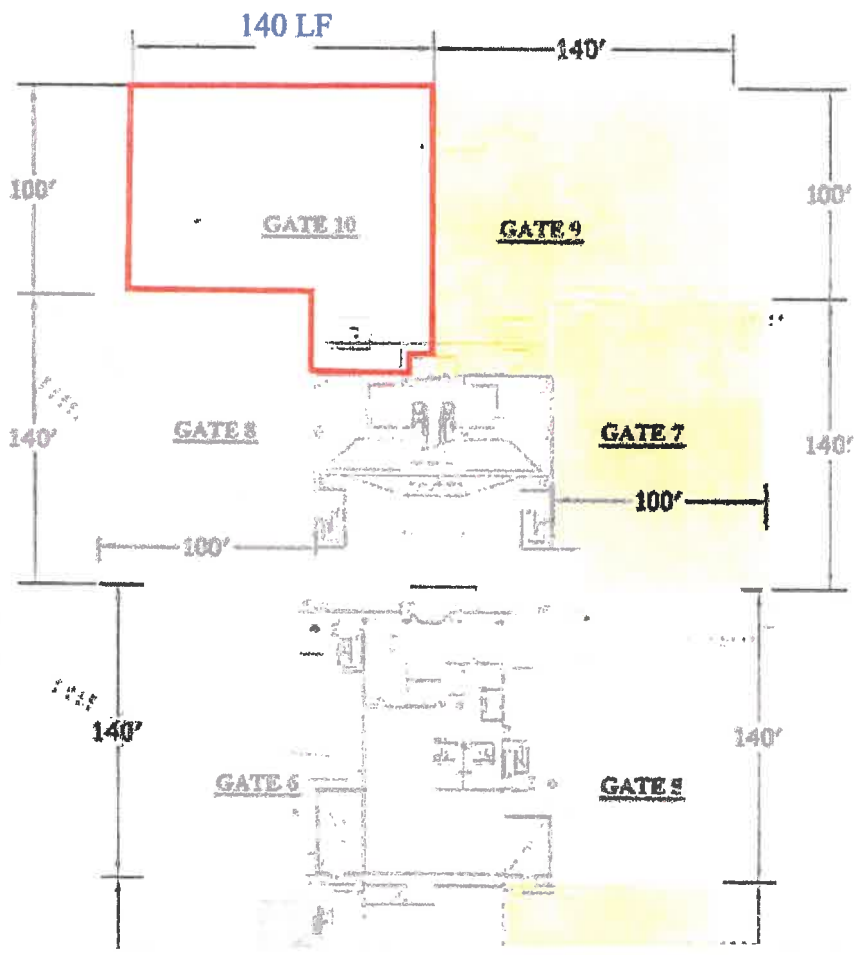
**EXCLUSIVE USE  
TICKETING/OPERATIONS  
SOUTHWEST- 2,036 SF**

Category		In Square Feet			
		Rented	Not Rented	Non Rentable	Total
Airline Exclusive Space					
Airline Ticketing, Operations, and Office Areas					
Southwest	Ticketing	1,541		-	1,541
	Operations Space 1	214		-	214
	Operations Space 2	80		-	80
	Bag Service Office	201		-	201
Ticketing, Operations, and Office Areas		2,036	-	-	2,036



## AIR CARRIER RAMP SOUTHWEST- 140 LF

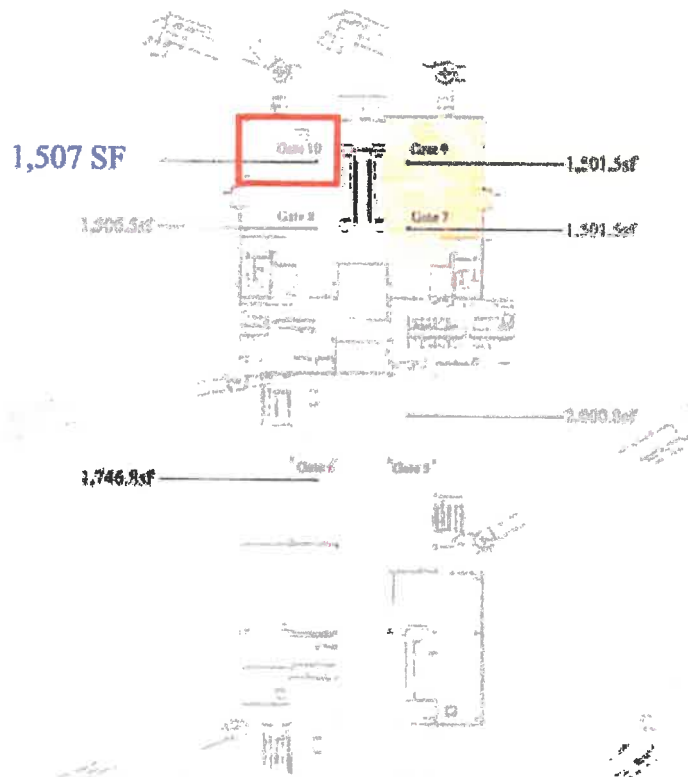
Category	In Linear Feet			
	Rented	Not Rented	Non Rentable	Total
Airline Air Carrier Ramp Space Southwest				
Ramp 10	140	-		140
<b>ACR Total</b>	<b>140</b>	-		<b>140</b>



- LEGEND**
- Gate 1
  - Gate 2
  - Gate 3
  - Gate 4
  - Gate 5
  - Gate 6
  - Gate 7
  - Gate 8
  - Gate 9
  - Gate 10

**PREFERENTIAL SPACE  
HOLDROOMS  
SOUTHWEST- 1,507 SF**

Category	In Square Feet			
	Rented	Not Rented	Non Rentable	Total
Preferential Use Space				
Airline Holdrooms & Gates				
Southwest	1,507	-	-	1,507
Total Holdrooms & Gates	1,507	-	-	1,507



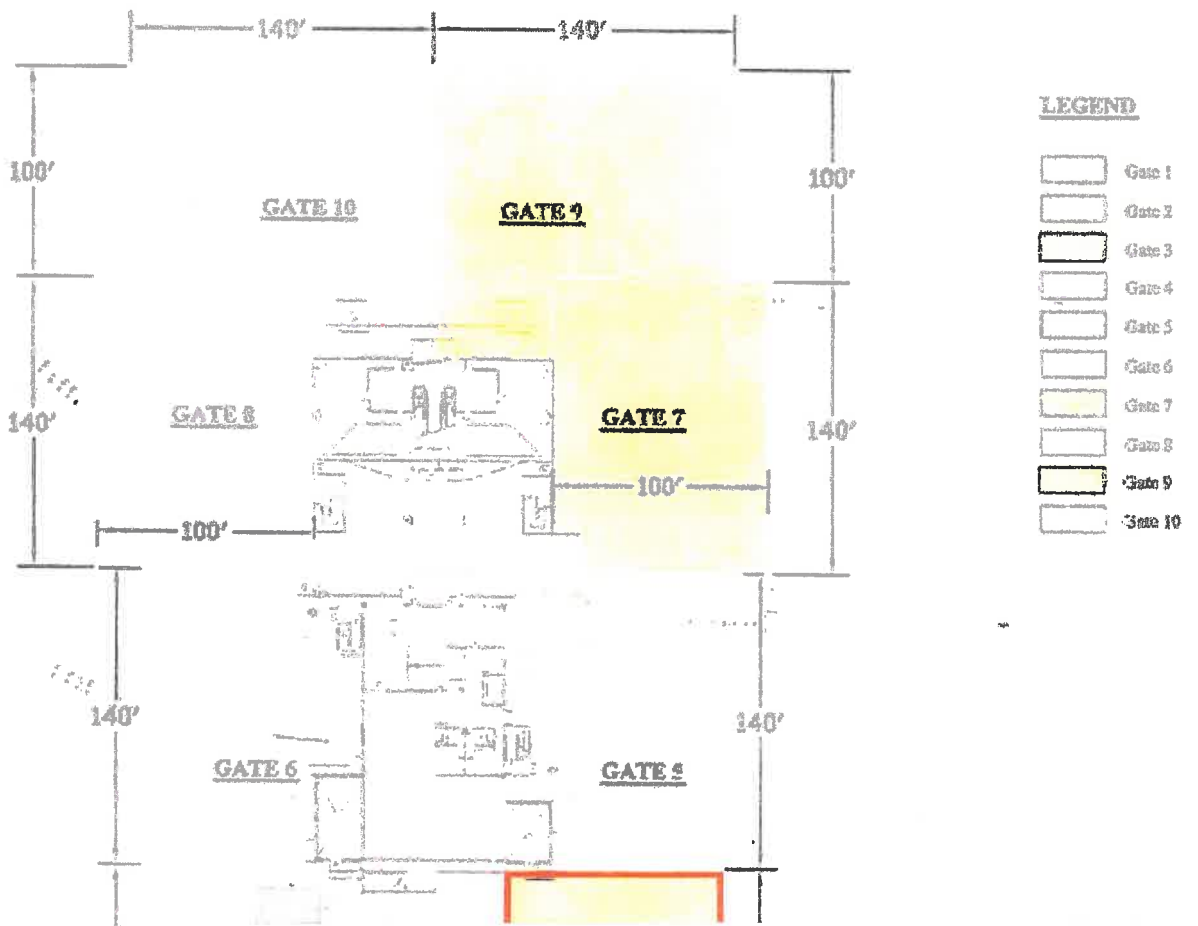
**EXCLUSIVE USE  
TICKETING/OPERATIONS  
UNITED- 2,084 SF**

Category		In Square Feet			
		Rented	Not Rented	Non Rentable	Total
Airline Exclusive Space					
Airline Ticketing, Operations, and Office Areas					
United	Ticketing Space 1	1,416	-	-	1,416
	Ticketing Space 2	209	-	-	209
	Operations	300	-	-	300
	Bag Service Office	159	-	-	159
Ticketing, Operations, and Office Areas					
	<b>Total Exclusive</b>	<b>2,084</b>	-	-	<b>2,084</b>



## AIR CARRIER RAMP UNITED- 140 LF

Category	In Linear Feet			
	Rented	Not Rented	Non Rentable	Total
Airline Air Carrier Ramp Space United				
Ramp 3	140	-		140
<b>ACR Total</b>	<b>140</b>	<b>-</b>		<b>140</b>



**PREFERENTIAL SPACE  
HOLDROOMS  
UNITED- 2,089 SF**

Category	In Square Feet			
	Rented	Not Rented	Non Rentable	Total
Preferential Use Space				
Airline Holdrooms & Gates				
United	2,089	-	-	2,089
<b>Total Holdrooms &amp; Gates</b>	<b>2,089</b>	<b>-</b>	<b>-</b>	<b>2,089</b>

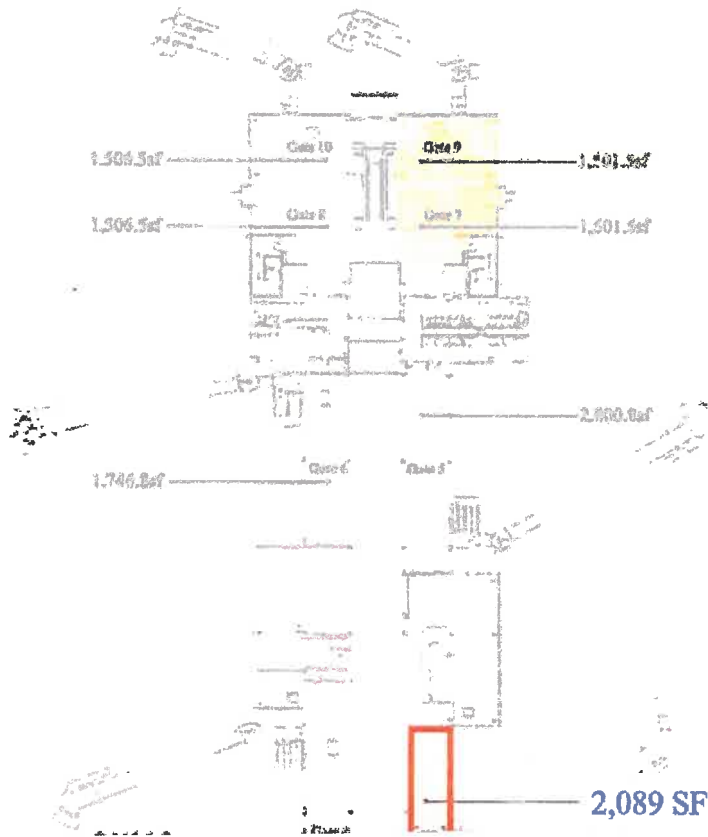


Exhibit D – Baggage Handling System



482 SF

Category	In Square Feet			
	Rented	Not Rented	Non Rentable	Total
Airline Joint Use Space				
Baggage Handling System and Areas				
Bag Claim	9,649	-	-	9,649
EDS Equipment Room	6,137	-	-	6,137
Tug Drive/Piers	35,534	-	-	35,534
BHS Control	197	-	-	197
BHS Parts	218	-	-	218
Airline Bag Belts	748	-	-	748
<b>BHS Total</b>	<b>52,482</b>	-	-	<b>52,482</b>

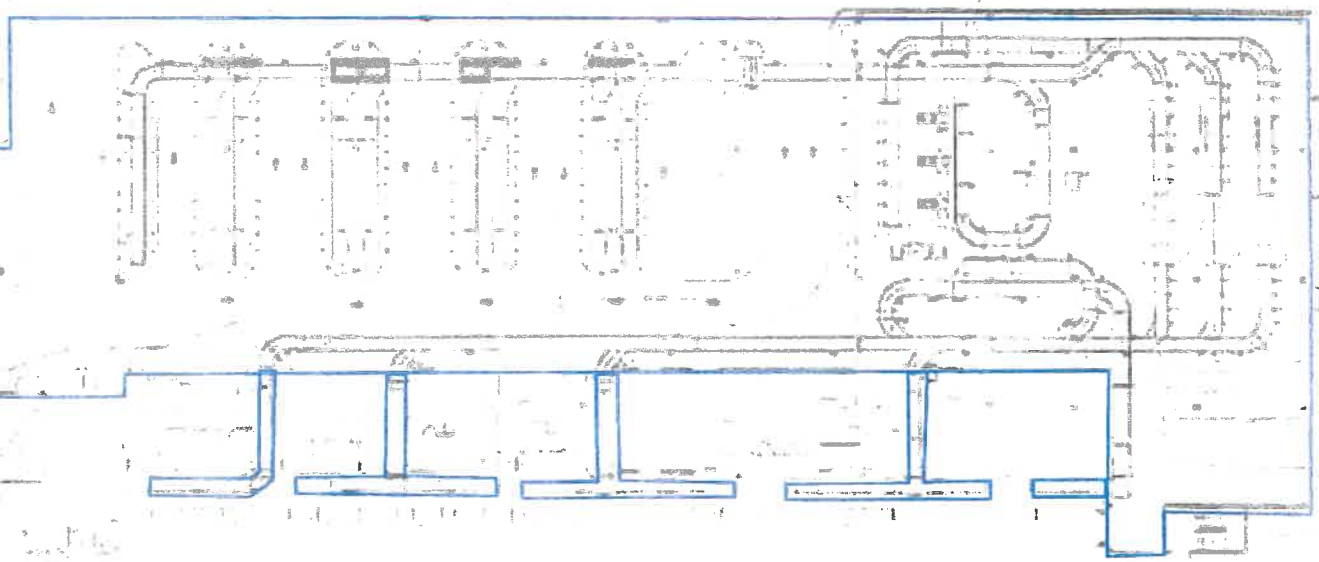


Exhibit E – Terminal Building Aircraft Parking Positions

**LEGEND**

- Gate 1
- Gate 2
- Gate 3
- Gate 4
- Gate 5
- Gate 6
- Gate 7
- Gate 8
- Gate 9
- Gate 10

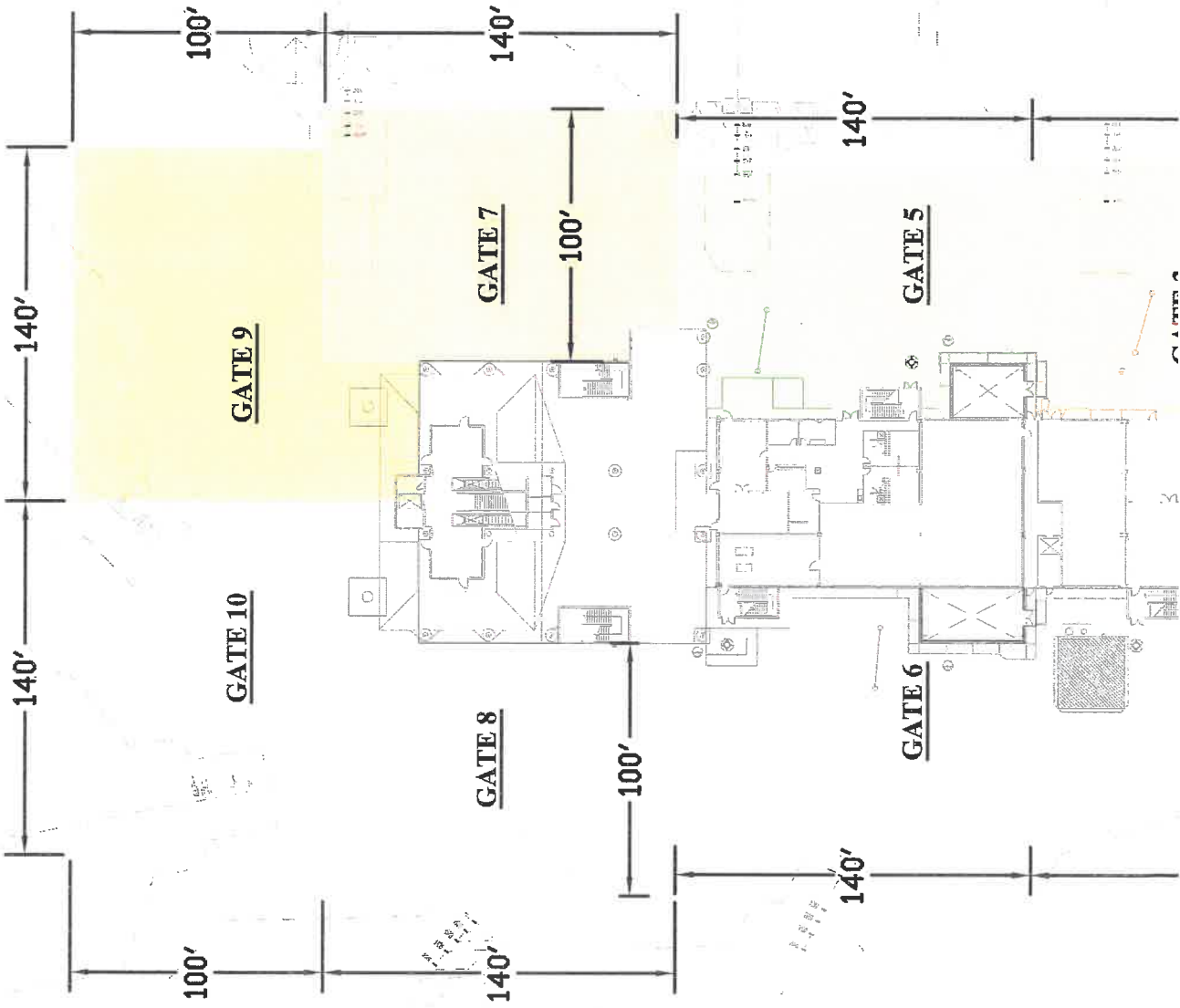


Exhibit F – Cargo Apron Aircraft Parking Positions

# CARGO RAMP

COMMON  
USE  
CARGO  
SUPPORT  
AREA

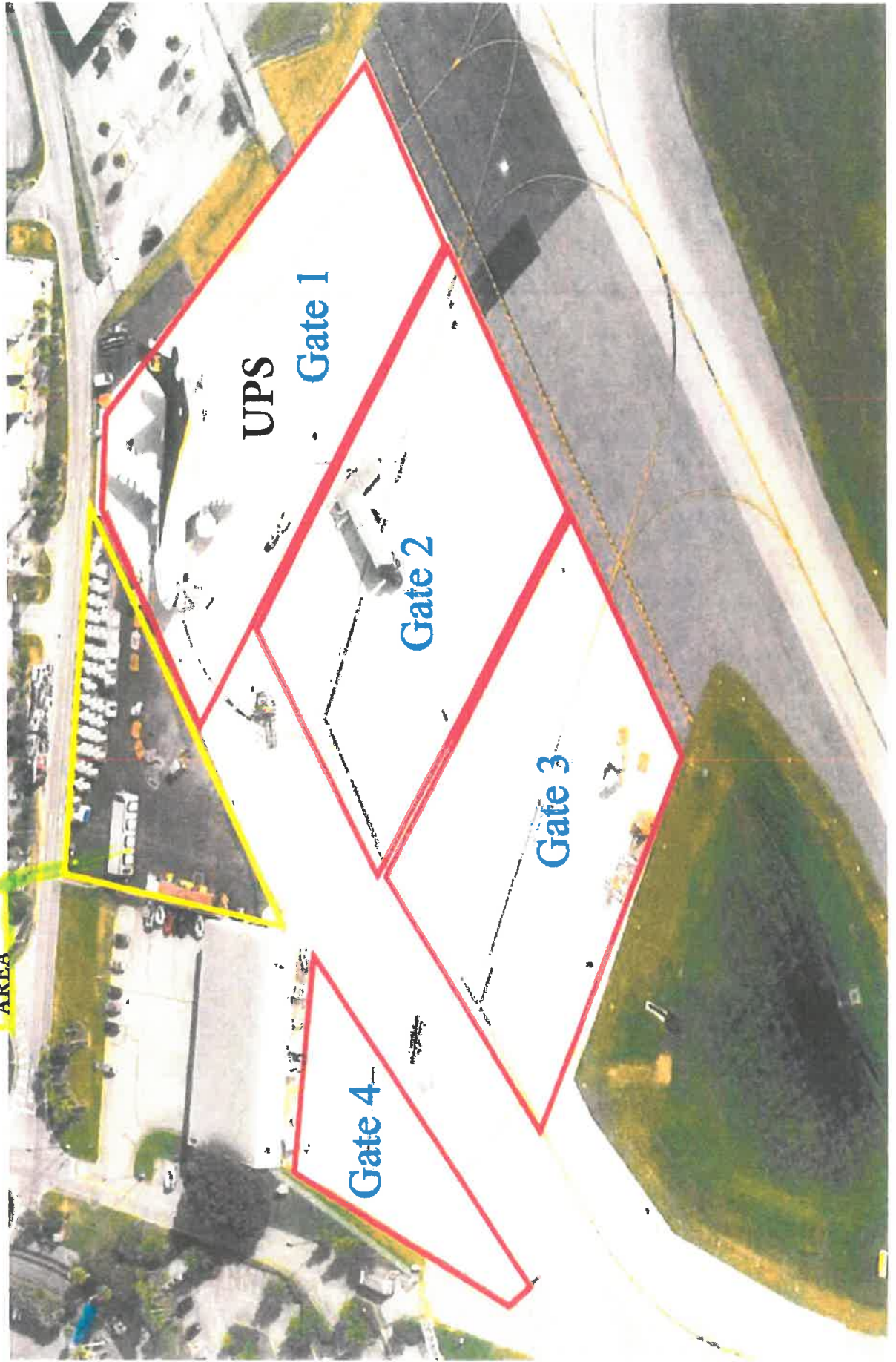


Exhibit G – Rental Car Service Facilities

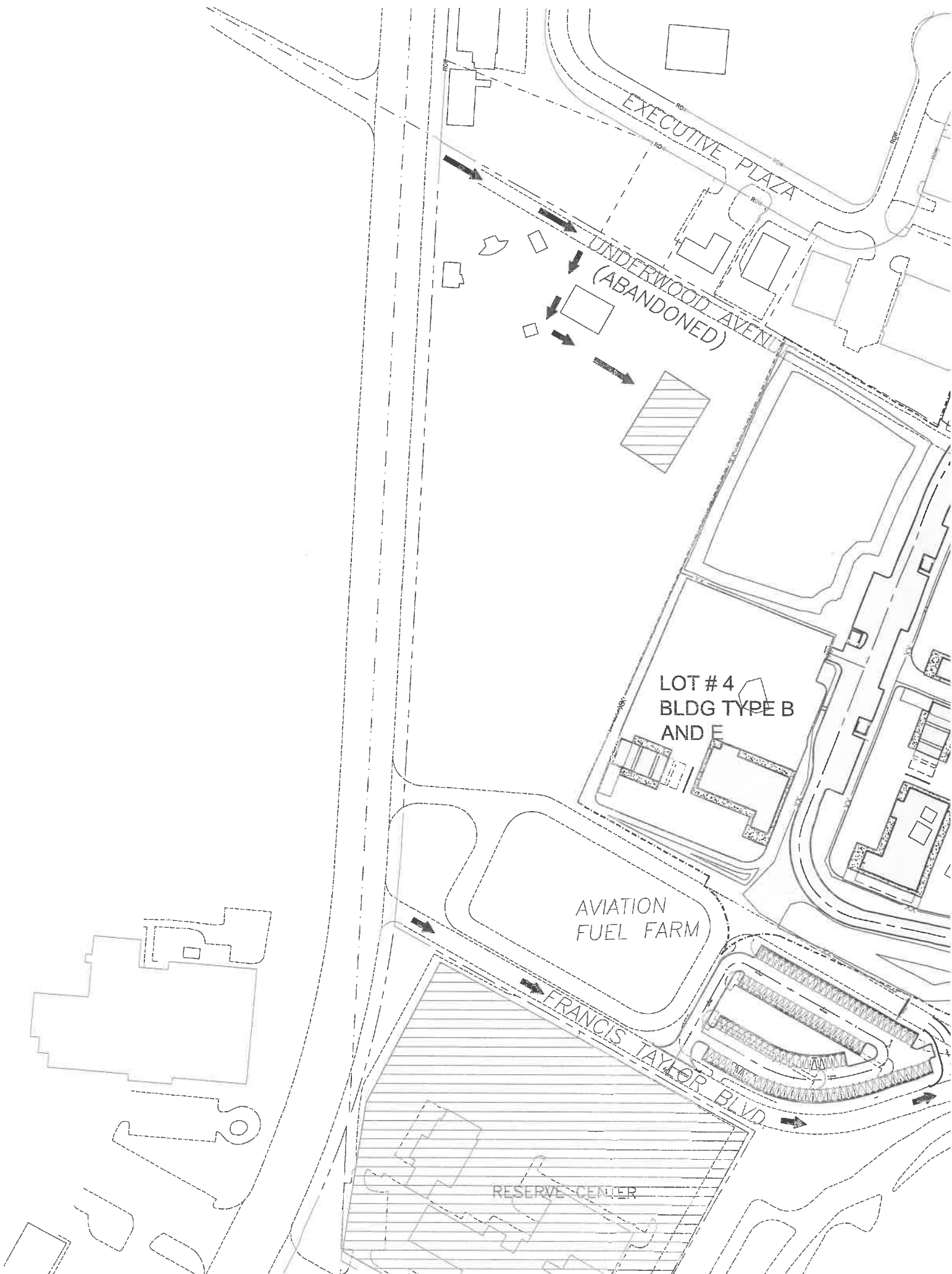


Exhibit H – Capital Improvement



PENSACOLA INTERNATIONAL AIR  
PROJECT PRIORITIES  
FY 2019 - 2023

Year	Priority	FM Item Description
2019	1	4357176 Construct Hangar Improvements
	2	4296094 Design/Construct Parallel Taxiway Extension - SE Quadrant
	3	4296095 Runway 17/35 Extension - Environmental Assessment
	4	TBA Purchase Replacement ARFF Vehicle
	5	TBA ARFF Rehabilitation
	6	4074361 Airfield Pavement and Lighting (LED) Rehabilitation - Design
2020	1	4357176 Construct Hangar Improvements
	2	4357173 ILS/GPS Approach Runway 17/35 Extension
	3	TBA Airfield Pavement and Lighting (LED) Rehabilitation - Construction
	4	TBA Taxiway A Rehabilitation - Design
	5	TBA Taxiway B Rehabilitation - Design
2021	1	4357175 Relocate Helicopter Operations
	2	TBA Taxiway A Rehabilitation Phase I - Construction
	3	TBA Rehabilitate SW Apron - Design
2022	1	TBA Taxiway B Rehabilitation Phase II - Construction
	2	TBA Rehabilitate SW Apron - Construction
	3	TBA Industrial Apron - Design
	4	TBA GA Ramp Expansion - Design
	5	TBA Runway 8/26 Pavement Rehabilitation - Design/Bid
2023	1	TBA Runway 17/35 Extension - Design
	2	TBA Taxiway C & D Rehabilitation - Design
	3	TBA Industrial Apron - Construction
	4	TBA GA Ramp Expansion - Construction

Exhibit I – Airline Affiliate Operating Permit

**SIGNATORY AIRLINE**

**AFFILIATE OPERATING PERMIT**

by and between

THE CITY OF PENSACOLA, FLORIDA

and

\_\_\_\_\_ [Airline]

and

\_\_\_\_\_ [Affiliate]

Date of Execution:

\_\_\_\_\_

Effective Date:

\_\_\_\_\_

## Table of Contents

<b>Article 1. ARTICLE 1--DEFINITIONS.....</b>	<b>7</b>
Section 1.01    Definitions.....	7
Section 1.02    Cross References.....	9
<b>Article 2. TERM AND AMENDMENT.....</b>	<b>10</b>
Section 2.01    Term.....	10
Section 2.02    Amendment.....	10
<b>Article 3. Affiliate’s Authority to Operate.....</b>	<b>11</b>
Section 3.01    Airline Designation of Affiliate.....	11
Section 3.02    Affiliate Airport Use Authorization.....	11
Section 3.03    Agreement Defines Rights.....	11
Section 3.04    Obligations Compliance.....	11
<b>Article 4. Responsibilities of airline and affiliate.....</b>	<b>13</b>
Section 4.01    Affiliate Operations.....	13
Section 4.02    Rents, Fee, and Charges.....	13
Section 4.03    Rents, Fee, and Charges Payment.....	13
Section 4.04    Performance Guarantee.....	14
Section 4.05    Passenger Facility Charges.....	14
<b>Article 5. Subordination to Bond Resolution.....</b>	<b>16</b>
<b>Article 6. AFFILIATE INSURANCE.....</b>	<b>16</b>
<b>Article 7. INDEMNIFICATION.....</b>	<b>21</b>
Section 7.01    Comprehensive Indemnification.....	21
Section 7.02    49 CFR Part 1542 Airport Security Indemnification.....	22
Section 7.03    Sovereign Immunity.....	22
<b>Article 8. Environmental covenants.....</b>	<b>24</b>
Section 8.01    Compliance With Environmental Laws.....	24
Section 8.02    Environmental Reports.....	25
Section 8.03    Survival of Obligations.....	25

<b>Article 9. COMPLIANCE WITH LAW AND NONDISCRIMINATION .....</b>	<b>26</b>
<b>Section 9.01 Rules And Regulations.....</b>	<b>26</b>
<b>Section 9.02 No Illegal Purpose .....</b>	<b>27</b>
<b>Section 9.03 Compliance With Statutes, Ordinances, And Regulations .....</b>	<b>27</b>
<b>Section 9.04 Nondiscrimination.....</b>	<b>28</b>
<b>Section 9.05 Breach of Nondiscrimination.....</b>	<b>29</b>
<b>Section 9.06 Fair And Equal Furnishing of Services.....</b>	<b>29</b>
<b>Section 9.07 Affirmative Action Program .....</b>	<b>29</b>
<b>Section 9.08 Minority Business Enterprise .....</b>	<b>30</b>
<b>Section 9.09 Rights of Federal Government.....</b>	<b>30</b>
<b>Section 9.10 Subordination of Permit.....</b>	<b>30</b>
<b>Section 9.11 Non-Waiver.....</b>	<b>30</b>
<b>Section 9.12 Survival of Obligations .....</b>	<b>30</b>
<b>Article 10. MISCELLANEOUS .....</b>	<b>31</b>
<b>Section 10.01 Acknowledgment.....</b>	<b>31</b>
<b>Section 10.02 Airport Access License/Permit.....</b>	<b>31</b>
<b>Section 10.03 Amendments.....</b>	<b>31</b>
<b>Section 10.04 Assignment not Permitted .....</b>	<b>31</b>
<b>Section 10.05 Attorneys' Fees.....</b>	<b>31</b>
<b>Section 10.06 Authority of Director.....</b>	<b>32</b>
<b>Section 10.07 Capacity To Execute.....</b>	<b>32</b>
<b>Section 10.08 City Not Liable.....</b>	<b>32</b>
<b>Section 10.09 Compliance By Other Tenants.....</b>	<b>32</b>
<b>Section 10.10 Compliance with FAR Part 77 .....</b>	<b>33</b>
<b>Section 10.11 Delivery Of Notices.....</b>	<b>33</b>
<b>Section 10.12 Employees of Affiliate .....</b>	<b>34</b>
<b>Section 10.13 Energy Conservation .....</b>	<b>34</b>
<b>Section 10.14 Entire Agreement .....</b>	<b>34</b>
<b>Section 10.15 Exclusiveness Of Airline's or Affiliate's Rights.....</b>	<b>35</b>
<b>Section 10.16 Governing Law.....</b>	<b>35</b>
<b>Section 10.17 Headings.....</b>	<b>35</b>
<b>Section 10.18 Licenses, Fees, and Permits .....</b>	<b>35</b>

**Section 10.19 Notice Or Consent..... 36**  
**Section 10.20 Payment Of Taxes..... 36**  
**Section 10.21 Public Records Laws..... 36**  
**Section 10.22 Removal of Disabled Aircraft..... 37**  
**Section 10.23 Subordination to Agreements With the U.S. Government ..... 37**  
**Section 10.24 Trial By Jury ..... 38**  
**Section 10.25 Time Is Of The Essence..... 38**

DRAFT

**PENSACOLA INTERNATIONAL AIRPORT  
SIGNATORY AIRLINE  
AFFILIATE OPERATING PERMIT**

This Signatory Airline Affiliate Permit Agreement ("Permit") is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_ 201\_, by and between the City of Pensacola, Florida, a municipal corporation of the State of Florida, (hereinafter referred to as "City"), \_\_\_\_\_ Inc. ("Airline"), a corporation organized and existing under the State of \_\_\_\_\_, and \_\_\_\_\_, Inc. ("Affiliate"), a corporation organized, existing and doing business under and by virtue of the laws of the State of \_\_\_\_\_.

**WITNESSETH:**

**WHEREAS**, City is the owner and operator of Pensacola International Airport (hereinafter referred to as the "Airport") located in Pensacola, Florida, and has the right to grant operating privileges on the Airport subject to certain terms and conditions; and

**WHEREAS**, Airline is engaged in the business of commercial air transportation of persons, property, cargo, and mail as a scheduled air carrier and is certificated or otherwise authorized by the United States Government to engage in such business; and

**WHEREAS**, City has entered into an Airline Operating Agreement and Terminal Building Lease ("Agreement") with Airline for the use and occupancy of certain facilities at the Airport and for the payment of certain Airport rentals, fees and charges in connection with the operation of its Air Transportation business (as hereinafter defined); and

**WHEREAS**, the Agreement authorized Airline to conduct its Air Transportation business, or any part thereof, at the Airport by and through another Air Transportation company or contractor; and

**WHEREAS**, Airline and Affiliate are parties to a certain aircraft lease, code-sharing, affiliation and/or other agreements (collectively "Operating Agreements"), under which Affiliate

operates flying services for Airline into and out of the Airport as \_\_\_\_\_ Airlines, Inc.;  
and

**WHEREAS**, under the Operating Agreements, Affiliate provides flying services on behalf of Airline transporting persons, property, cargo, and mail on behalf of Airline to and from the Airport, and Airline provides ground services and facilities to handle Affiliate's aircraft and load and unload Airline's passenger, baggage, cargo and mail through Airline's Leased Premises under the Agreement, including, but not limited to, Airline's ticketing, apron areas, cargo apron areas, loading bridges, passenger holdrooms, and use in common with other airlines of the joint use space and baggage handling system; and

**WHEREAS**, Affiliate does not currently have an agreement with City for the use and occupancy of facilities at the Airport which authorizes it to independently operate into and out of the Airport; and

**WHEREAS**, Airline has designated Affiliate, pursuant to the terms of the Agreement, as an affiliate or affiliated airline, in order to enable Affiliate to operate flying services for and on behalf of Airline at the Airport; and

**WHEREAS**, Airline has requested City to issue this Permit to Affiliate to recognize its right to use the Airport to conduct flying services for and on behalf of Airline pursuant to the Agreement;

**NOW, THEREFORE**, in consideration of the mutual covenants, promises and considerations herein contained, the parties agree as follows:



## ARTICLE 1. ARTICLE 1--DEFINITIONS

### Section 1.01 DEFINITIONS

The words and phrases defined in this section shall have the following meanings when used elsewhere in this Permit.

**"Affiliate"** shall mean the entity that is identified as "Affiliate" in the first paragraph of this Permit and has been designated by Airline in this Permit to provide flying services to and from the Airport on behalf of Airline.

**"Airline"** shall mean the entity that has executed an Agreement and is identified as "Airline" in the first paragraph of this Permit.

**"Agreement"** shall mean the Airline Operating Agreement and Terminal Building Lease between City and Airline, as the same may be amended, modified or altered from time to time pursuant to the terms thereof.

**"Air Transportation"** means the carriage of persons, property, cargo and mail by aircraft.

**"Bond Resolution"** means Resolution No. 59-88, adopted September 8, 1988, as it may be amended or supplemented from time to time, or any other Resolution of City regulating or authorizing issuance of Bonds, as amended or supplemented from time to time, other than Special Purpose Facility Bonds, payable from Airport Revenue.

**"Director"** shall mean the Airport Director, being the person currently authorized by the Mayor to exercise functions with respect to the rights and obligations of City under this Permit, or such other person or persons authorized by the Mayor from time to time to exercise functions with respect to the rights and obligations of City under this Permit. The term also includes any person expressly designated from time to time by the Director or the Mayor to exercise functions with respect to the rights and obligations of the Director under this Permit.

**“Environmental Laws”** shall mean, collectively, all federal, state, water management district, and local environmental, land use, occupational safety, and health laws, rules, regulations, and ordinances, and common law, applicable to City, the Airport, the Leased Premises, or Airline, including, but not limited to, the Occupational Safety and Health Act of 1970 (29 U.S.C. § 651 et seq.); the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9601 et seq.); the Hazardous Materials Transportation Act (49 U.S.C. § 5101 et seq.); the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.); the Toxic Substances Control Act of 1976 (15 U.S.C. § 2601 et seq.); the Clean Air Act (42 U.S.C. § 7401 et seq.) (“CAA”); the Safe Drinking Water Act (42 U.S.C. §§ 300f-300j), the Federal Water Pollution Control Act (commonly known as the Clean Water Act) (33 U.S.C. §§ 1251-1387), and Sections 253, 373, 376 and 403, Florida Statutes, as any of the foregoing may hereafter be amended, any rule or regulation pursuant thereto, and any other present or future law, ordinance, rule, regulation, code, permit or permit condition, order, notice of violation, decree, consent agreement, or directive addressing any environmental, safety, or health issue of or by the federal government, or of or by any state or other political subdivision thereof, or any agency, court, or body of the federal government or any state or other political subdivision thereof, exercising executive, legislative, judicial, regulatory, or administrative functions.

**“FAA”** means the Federal Aviation Administration of the U.S. Government, or any federal agencies succeeding to its jurisdiction.

**“Hazardous Substances”** shall mean any hazardous, toxic, or harmful substances, wastes, materials, pollutants, or contaminants (including, without limitation, asbestos, polychlorinated biphenyls, petroleum products, flammable explosives, radioactive materials, paint containing more than 0.5% lead by dry weight (“Lead Based Paint”), infectious substances, or raw materials which include hazardous constituents), or any other substances or materials that are regulated by Environmental Laws.

**“Leased Premises”** shall mean the Leased Premises (as defined in the Agreement) leased by City to Airline pursuant to the Agreement.

“**Mayor**” shall mean the elected officer serving as the Chief Executive of the City of Pensacola, Florida, pursuant to its charter.

“**Passenger Facility Charges**” or “**PFCs**” shall mean those charges due and payable to City pursuant to the authority granted by 49 U.S.C. Section 40117 and 14 Code of Federal Regulations (CFR) Part 158, as amended from time to time, in respect of any component of the Airport and interest earnings thereon, net of amounts that collecting air carriers are entitled to retain for collecting, handling, and remitting such PFC revenues.

“**Rules and Regulations**” mean those lawful and reasonable rules and regulations promulgated by City or the Director for the orderly use of the Airport or its facilities by both the airlines and other Airport tenants and users utilizing same pursuant to an agreement with City, as same may be amended, modified, or supplemented from time to time.

“**Signatory Airlines**” shall mean Airline and those airlines providing Air Transportation to and from the Airport that have executed agreements with City substantially similar to the Agreement covering such airline’s use and occupancy of facilities at the Airport.

All defined terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the Agreement.

**Section 1.02 CROSS REFERENCES**

References in the text of this Permit to articles or sections pertain to articles or sections of this Permit, unless otherwise specified.

END OF ARTICLE

## **ARTICLE 2. TERM AND AMENDMENT**

### **Section 2.01 TERM**

This Permit shall become effective at 12:01 AM on \_\_\_\_\_, 201\_\_ and shall continue on a month to month basis until canceled at any time and for any reason in writing by a party to this Permit upon thirty (30) days' prior written notice, or upon such longer period as may be provided in such notice.

This Permit shall automatically terminate:

1. Upon termination of the Agreement, or
2. Upon termination of the Operating Agreement between Affiliate and Airline providing for services for and on behalf of Airline at the Airport.

Termination shall not relieve Airline or Affiliate from any obligation that accrued hereunder prior to termination.

### **Section 2.02 AMENDMENT**

This Permit may be amended unilaterally by City, from time to time, upon provision of thirty (30) days' prior written notice to Airline and Affiliate.

END OF ARTICLE

## **ARTICLE 3. AFFILIATE'S AUTHORITY TO OPERATE**

### **Section 3.01 AIRLINE DESIGNATION OF AFFILIATE**

Airline and Affiliate hereby acknowledge and agree that pursuant to and in accordance with the Operating Agreements and pursuant to Article 5 of the Agreement that Affiliate is the duly designated "Affiliate" of Airline as the term "Affiliate" is defined in the Agreement and that Airline has authorized Affiliate to perform certain "flying services for and on behalf of Airline at, to and from the Airport.

### **Section 3.02 AFFILIATE AIRPORT USE AUTHORIZATION**

The City hereby acknowledges and agrees that pursuant to and in accordance with Article 5 of the Agreement and this Permit, Affiliate is hereby granted, during the term of this Permit, the right to use the Airport to provide flying services for and on behalf of Airline at, to and from the Airport. The Affiliate's right to use the Airport are the same as and do not exceed Airline's right to use the Airport.

### **Section 3.03 AGREEMENT DEFINES RIGHTS**

The Agreement defines and controls both Airline's and Affiliate's rights to use the Airport and occupy Airport facilities. In the event of a conflict between the Agreement and this Permit, the Agreement shall control. Further, as between City and Airline, nothing in this Permit shall operate or be construed to alter or amend any of the terms or provisions of the Agreement or to relieve City or Airline from any of their respective obligations to each other under the Agreement.

### **Section 3.04 OBLIGATIONS COMPLIANCE**

The Affiliate hereby acknowledges and agrees that with respect to its flying services for and on behalf of Airline authorized by the Operating Agreements, it shall observe, perform and comply with each and every obligation of Airline under its Agreement with City that is or may become applicable to Affiliate's flying services and Affiliate's operations at and use of the Airport as if Affiliate were

Airline performing said flying services. Affiliate acknowledges and agrees that it has received a copy of Airline's Agreement with City, it has read and reviewed the terms and conditions of said Agreement, and hereby agrees that the terms and conditions of said Agreement as applicable to Affiliate's flying services performed for and on behalf of Airline, and its operations at and use of the Airport are hereby incorporated by reference as obligations of Affiliate to City pursuant to this Permit.

END OF ARTICLE

DRAFT

## **ARTICLE 4. RESPONSIBILITIES OF AIRLINE AND AFFILIATE**

### **Section 4.01 AFFILIATE OPERATIONS**

All landings of aircraft, landed weights, and passengers associated with Affiliate's operations for and on behalf of Airline shall be attributable to and reported by Airline in accordance with the Agreement. Airline shall separately and independently report Airline's and Affiliate's operations for and on behalf of Airline to City monthly in accordance with the Agreement.

### **Section 4.02 RENTS, FEE, AND CHARGES**

The same rates, fees and charges applicable to Airline's operations shall apply to Affiliate's operations for and on behalf of Airline.

### **Section 4.03 RENTS, FEE, AND CHARGES PAYMENT**

Payment of rents, fees and charges associated with Affiliate's operations and activities at the Airport on behalf of Airline shall be made by Airline in accordance with and pursuant to the applicable provisions of the Agreement. As between City and Airline, Airline shall be responsible for the payment of all rents, fees, and charges related to both its operations and activities at the Airport and those of Affiliate for and on behalf of Airline before, during, and after the term of this Agreement.

If City allows Affiliate to pay such rents, fees, and charges in whole or in part separately to City, Airline shall, as between City and the Airline, remain liable for all unpaid rents, fees and charges incurred by Affiliate prior to and after any termination of this Permit so long as Affiliate is performing operations and activities at the Airport for and on behalf of Airline.

Notwithstanding the above, should the Affiliate continue to operate at the Airport as an affiliate of Airline after the termination of this Permit and if City allows the Affiliate to pay such rents, fees, and charges in whole or in part separately to City, Airline shall, as between City and the Airline, remain liable for all unpaid rents, fees and charges incurred by Affiliate after such termination so long as Affiliate is performing operations and activities at the Airport for and on behalf of Airline.

Notwithstanding the payment obligations set forth above and for purposes of this Permit only with respect to the Airline and Affiliate's obligations to City (and without affecting Airlines and Affiliate's rights and obligations to each other under the Operating Agreements to which the Airline and Affiliate are parties), Airline and Affiliate shall be jointly and severally liable for the payment of all rents, fees and charges associated with Affiliate's operations and activities at the Airport for and on behalf of Airline.

Affiliate and Airline agree that City may seek collection of the rents, fees, and charges from either Affiliate or Airline without the necessity of first proceeding against the other. Affiliate and Airline hereby waive any right to require City to exercise any right or remedy against the other party prior to seeking collection against either Airline or Affiliate, as applicable.

#### **Section 4.04 PERFORMANCE GUARANTEE**

In accordance with the Agreement, the rents, fees, and charges attributable to Affiliate's operations at the Airport will be included in the calculation of the Airline's Performance Guarantee requirement.

#### **Section 4.05 PASSENGER FACILITY CHARGES**

Airline and Affiliate shall be jointly and severally liable for the collection and remittance to City of all PFCs payable with respect to Affiliate's operations at and use of the Airport on behalf of Airline. If Airline does not collect and promptly remit PFCs to City, Affiliate shall faithfully collect and promptly remit to City not less than monthly (without notice or demand by City and in accordance with 14 CFR 158 Passenger Facility Charges as this regulation may be amended from time to time) the proceeds of City's Passenger Facility Charge and shall punctually file quarterly reports in accordance with 49 U.S. C. 40177 and the requirements of 14 CFR 158, so long as City has an approved Passenger Facility Charge in effect. If Affiliate collects the PFCs, Affiliate shall keep and maintain all of City's Passenger Facility Charges in a separate account used solely for such purpose and shall not commingle the proceeds of City's Passenger Facility Charges with any other monies or funds of Affiliate or any other person or entity. The Passenger Facility Charges shall at all times be



the sole and separate property of City, and all Passenger Facility Charges collected by Affiliate shall be held in trust by Affiliate for the sole use and benefit of City until remitted to City. In no event shall the Passenger Facility Charges constitute property of the estate under 11 U.S.C. Section 541 in the event of the filing of a petition in bankruptcy by or against Airline, Affiliate or any other person or entity.

END OF ARTICLE

DRAFT

## **ARTICLE 5. SUBORDINATION TO BOND RESOLUTION**

This Permit and the terms hereof, and all rights of Airline and Affiliate hereunder are expressly subordinated and subject to the lien and provisions of any pledge, transfer, hypothecation, or assignment made (at any time) by City to secure Airport Bonds or other types of financing. This Permit is subject and subordinate to the terms, covenants, and conditions of the Bond Resolution, other types of financing documents authorizing the issuance of Airport Bonds and other forms of debt by City.

## **ARTICLE 6. AFFILIATE INSURANCE**

By use and occupancy of Airport premises, Airline and Affiliate understand and agree that at all times during the Term, Airline and Affiliate shall, at their sole expense and in a manner acceptable to City, purchase and maintain or caused to be maintained in force the following insurance coverages:

1. Aircraft Airline Liability insurance including Aircraft Liability and broad form

Commercial General Liability insurance, including, but not limited to, coverage for death, bodily injury, personal injury, property damage, products/completed operations liability, independent contractors, premises liability, premises operations, damage to Leased Premises, loss of use and contractual liability, with a liability limit of not less than One Hundred Fifty Million Dollars (\$150,000,000.00) combined single limit per occurrence and in the aggregate, on an occurrence form policy. Said limit shall be reduced to One Hundred Million Dollars (\$100,000,000.00) where the maximum seating capacity on the largest aircraft operated at the Airport by Airline or Affiliate is between 99 and 60. Said limit shall be reduced to Fifty Million Dollars (\$50,000,000.00) where the maximum seating capacity on the largest aircraft operated at the Airport by Airline or Affiliate is 59 or less. With respect to coverage for products/completed operations and personal injury, except with respect to passengers, a sublimit of not less than Twenty-Five Million Dollars (\$25,000,000.00) per occurrence and in the annual aggregate, shall be permitted with the approval of the Director. Said aircraft liability shall be applicable to owned, non-owned, and hired aircraft. Fire Legal Liability shall be endorsed on the policy with a minimum limit of \$100,000 per occurrence.

2. Automobile liability insurance (any automobile) with combined single limit for bodily injury and property damage of not less than Five Million Dollars (\$5,000,000.00) per occurrence for all owned, non-owned, and hired vehicles operated by or on behalf of Airline or Affiliate at the Airport, including any additional or replacement vehicles.
3. Liquor liability insurance in an amount not less than Ten Million Dollars (\$10,000,000.00) per occurrence.
4. Employer's liability insurance in an amount not less than One Million Dollars (\$1,000,000.00) each common cause. Airline and Affiliate shall likewise maintain workers' compensation insurance or evidence of self-insurance, in accordance with the laws of the State of Florida, covering all of its employees who may from time to time be at the Airport in such capacity. Airline and Affiliate shall require each of its agents, licensees, contractors, subcontractors, and suppliers to maintain such workers' compensation insurance covering their employees coming on Airport premises in connection with Airline and Affiliate's operations. The workers' compensation policy(s) required hereunder shall be endorsed to state that the workers' compensation carrier waives its right of subrogation against City, its officers, agents, elected and appointed officials, representatives, and employees. Upon request by the Director, Airline and Affiliate shall furnish the Director with evidence of such workers' compensation insurance in a form acceptable to City.
5. Pollution legal liability for transporting or handling hazardous materials or regulated substances and environmental impairment liability coverage of \$2,000,000 per occurrence, with an annual aggregate of not less than \$4,000,000. This coverage may be self-insured by Airline and Affiliate upon reasonably satisfactory evidence of Airline and Affiliate's financial ability to self-insure, if requested by City.
6. Liability coverage for acts of war, civil war, terrorism and insurrection of \$100,000.00 per occurrence, with an annual aggregate of not less than \$100,000.00.

All liability insurance policies, except employer's liability shall provide coverage that includes, or has the same substantive effect as, the following wording:

1. "City of Pensacola and each of its departments, divisions, enterprises, officers, representatives, agents, elected and appointed representatives, volunteers, and employees, in their respective capacities as such, shall be additional insureds hereunder with respect to the products, premises, and operations of the named insured to the full limits of liability required by this Permit.
2. "Airline and Affiliate's insurance shall be primary insurance and non-contributory with respect to all other available sources."
3. "This insurance shall not be materially changed, altered, canceled, or non-renewed until after thirty (30) days' advance written notice has been given to City of Pensacola except that only seven (7) days' notice of cancellation of war risk coverage and only ten (10) days' notice of cancellation due to non-payment of premium or non-renewal shall be required."

Required insurance shall be evidenced by Certificates of Insurance. Each such Certificate of Insurance shall be on the appropriate ACORD form or its substantial equivalent. The "Certificate Holder" address shall read: City of Pensacola, Department of Risk Management, Post Office Box 12910, Pensacola, FL 32521. An additional copy of the Certificate shall be sent to Pensacola International Airport, Attn: Airport Director, 2430 Airport Boulevard, Suite 225, Pensacola, FL 32504.

At least ten (10) calendar days prior to the Effective Date of this Permit, Airline and Affiliate shall furnish the Director with Certificates of Insurance for all insurance policies required hereunder and copies of all insurance endorsements. Thereafter, current Certificates of Insurance and copies of endorsements shall be provided promptly upon the Director's request from time to time, but in no event less than annually. Further, at least three (3) business days prior to the expiration of any then-current policy of insurance, Airline and Affiliate shall deliver to City a current Certificate of Insurance showing that such insurance coverage has been renewed, and at least three (3) business days prior to the date of cancellation or reduction of coverage, as received in a written notice from the insurer, Airline and Affiliate shall deliver to the Director a current Certificate of Insurance showing reinstatement or other provision for the required insurance. In addition, upon any change in

any insurance policy coverage or endorsement which adversely affects the requirements of this Permit, shall promptly deliver to the Director revised Certificates of Insurance and a copy of each such changed endorsement.

In addition to the foregoing, at least ten (10) calendar days prior to the Effective Date of this Permit and annually thereafter upon each anniversary of such Effective Date, Airline and Affiliate shall furnish to the Director the written, signed opinion of Airline and Affiliate's independent insurance broker(s) confirming that such broker(s) has reviewed (i) Affiliate's insurance policies and endorsements and (ii) Airline and Affiliate's insurance obligations under this Permit and that Airline and Affiliate are in compliance with their insurance obligations under this Permit.

Further, upon the Director's written requests from time to time, Airline and Affiliate shall allow City's representatives to inspect, in the presence of Airline and Affiliate's representatives, the complete originals of all insurance policies, including but not limited to declaration pages and endorsements, pertaining to the coverages required to be maintained by Airline and Affiliate pursuant to this Permit. Airline and Affiliate shall allow City's representatives to inspect such insurance documents at Airline's corporate office located closest to Pensacola, Florida, within ten (10) business days after the Director's written request for such inspection.

During the Term, the insurance coverages and/or the minimum limits of the insurance herein required may become inadequate, as reasonably determined by City. Accordingly, City hereby reserves the right to review all coverages and limits and to require adjustments, changes and additions to commercially reasonable and commercially available levels to be effective on the next policy renewal date after City provides at least ninety (90) days prior written notice to make such adjustments, changes or additions.

Precaution shall be exercised at all times by Affiliate for the protection of all persons, including employees, and property. Affiliate shall make special effort to detect hazardous conditions and shall take prompt action where loss control/safety measures shall reasonably be expected.

If, at any time, Affiliate fails to obtain or maintain in force the insurance required by this Section, the Director may immediately suspend Affiliate's use of Airport space and Affiliate's operations and activities in regard to the Airport until the required insurance is provided.

END OF ARTICLE

DRAFT

## ARTICLE 7. INDEMNIFICATION

### Section 7.01 COMPREHENSIVE INDEMNIFICATION

Affiliate shall INDEMNIFY, DEFEND and HOLD HARMLESS City and its divisions, departments, enterprises, subsidiaries, affiliates, elected and appointed officials, officers, employees, volunteers, agents and representatives, individually and collectively, from and against any and all costs (including, but not limited to, costs of investigation, reasonable attorneys' fees, court costs, and expert fees), claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of actions, liability and suits of any kind and nature, including but not limited to personal or bodily injury, death and property damage, including loss of use thereof, directly or indirectly arising out of, resulting from or related to Affiliate's use of the Airport, or Affiliate's activities in, on or about the Airport or the Leased Premises, or any operation or activity of Affiliate upon the Airport, or in connection with its use of the Leased Premises, including but not limited to any acts or omissions of Affiliate, any agent, officer, director, representative, employee, consultant or subcontractor of Affiliate, or their respective officers, agents, employees, directors or representatives, all without City waiving any governmental immunity available to City under Florida law and without waiving any defenses of the parties under Florida law.

The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Affiliate shall promptly advise City in writing of any claim or demand against City or Affiliate known to Affiliate related to or arising out of Affiliate's activities under this Permit and shall see to the investigation and defense of such claim or demand at Affiliate's cost. City shall have the right, at its option and at its own expense, to participate in such defense without relieving Affiliate of any of its obligations under this Section 7.01.

It is the express intent of the parties to this Permit, that the indemnity provided for in this Article, shall extend to and include the Affiliate's obligation to indemnify, protect, defend and hold harmless City from the consequences of City's own negligence; provided however, that the indemnity provided for in this Article with respect to City's own negligence shall apply only when the negligent act of City is a contributory cause of the resultant injury, death, or damage, and shall have no

application when the negligent act of City is the sole cause of the resultant injury, death or damage. Notwithstanding anything in this Article to the contrary, the indemnity liability of Affiliate for City's own negligence, inclusive of all defense costs expended solely for City's defense by reason of City's own negligence, under this Article and shall not exceed \$1,000,000 per occurrence. Nothing herein shall require Affiliate to indemnify City from the gross negligence or willful misconduct of City or any of its employees, officers, agents, or subcontractors.

Affiliate further agrees, upon City's request, to defend, at Affiliate's own expense and on behalf of City and in the name of City, and by and through legal counsel reasonably acceptable to City, any claim, proceeding or litigation, at each and all of administrative, trial and appellate levels, brought against City and/or any other person or party indemnified under this Article in connection with any claim, cause of action, liability, injury, death, damage or other matter that is subject to Affiliate's indemnity obligation under this Article

**Section 7.02      49 CFR PART 1542 AIRPORT SECURITY INDEMNIFICATION**

In furtherance of the provisions of Section 7.01 above and not in limitation thereof, Affiliate understands and agrees that it shall fully indemnify, defend, and hold harmless City, its divisions, departments, enterprises, subsidiaries, affiliates, elected and appointed officials, representatives, officers, agents, volunteers, and employees from and against all penalties, fines, and demands of any kind (including, but not limited to, costs of investigation, reasonable attorney fees, court costs, and expert fees) arising out of Affiliate's acts or omissions resulting in alleged violations of 49 CFR Part 1542 Airport Security or any successor regulations related to airport security.

**Section 7.03      SOVEREIGN IMMUNITY.**

Nothing in this Article or elsewhere in this Permit shall in any way constitute or be construed as a waiver, in whole or in part, of City's sovereign immunity under the Constitution, statutes and case law of the State of Florida.



Further, nothing in this Article or elsewhere in this Permit 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.

END OF ARTICLE

DRAFT

## **ARTICLE 8. ENVIRONMENTAL COVENANTS**

### **Section 8.01 COMPLIANCE WITH ENVIRONMENTAL LAWS**

Affiliate shall at all times abide by all Environmental Laws applicable to Affiliate's operations at and use of the Airport. Prior to the Effective Date of this Permit, Affiliate shall identify in writing to the Director and the Airport Fire Department all Hazardous Substances (with the exception of any small quantities of household chemicals Affiliate uses for general office purposes) that are used or stored or that Affiliate expects to use or store in or on the Leased Premises. This list shall be updated by Affiliate in March of each year and shall include the quantities used or stored in or on the Leased Premises. City shall have the right to inspect the Leased Premises at any reasonable time, upon prior written notice to Affiliate to ensure compliance with Environmental Laws and the provisions of this Article.

Affiliate shall not allow the disposal or discharge, whether accidental or intentional, of Hazardous Substances on the Leased Premises or other Airport property.

Affiliate shall comply with the Airport's Spill Prevention, Control, and Countermeasure Plan ("SPCC") and all future amendments thereto and the Airport's Storm Water Pollution Prevention Plan ("SWPPP") and all future amendments thereto.

The Triturator Facility is an Airport facility built specifically to grind aircraft lavatory waste prior to entry of such waste into the sanitary sewer system. Affiliate is authorized to dispose of aircraft lavatory waste that has been processed in the Triturator Facility to the sanitary sewer system. Prior to any other waste disposal including waste disposal in contravention of this Section or which could have a corrosive or degrading effect on the Triturator Facility, Airline is required to obtain prior written approval of the Director and a waste water pre-treatment permit if such is necessary or required by any environmental regulatory authority or any Environmental Law. The written approval of the Director shall not relieve Airline of full responsibility and liability for the disposal of any waste materials or products. The Director may withhold approval for any reason under this provision.

In the event City identifies the presence of Hazardous Substances on the Leased Premises in violation of applicable Environmental Law that (a) did not exist prior to Affiliate's occupation of the Leased Premises, (b) is the result of Affiliate's use of the Leased Premises, and (c) requires assessment or remediation, City shall perform such assessment or remediation at Affiliate's sole cost and expense, provided that City has given Affiliate at least thirty (30) days' prior written notice and opportunity to object or perform the requested work itself. If City performs the assessment and/or remediation, Affiliate shall pay or reimburse to City the reasonable cost of such assessment or remediation, plus an administrative fee of fifteen percent (15%) of such cost, promptly upon demand. Notwithstanding the foregoing, the provisions of this paragraph shall not be construed or operate to alter in any way Affiliate's obligations under Environmental Laws, including but not limited to Affiliate's reporting obligations under Airport's SPCC and SWPPP, or under any other provision of this Permit, including without limitation Section 8.02 below.

#### **Section 8.02 ENVIRONMENTAL REPORTS**

Within fifteen (15) days of receipt by Affiliate or within fifteen (15) days prior to any response that is due from City, whichever is shorter, Affiliate shall provide to the Director complete copies of all environmental permits and reports related to the Leased Premises and all notices, orders, decrees, citations, and inspection reports issued to Affiliate by any environmental regulatory authority related to the Leased Premises. Within fifteen (15) days of receipt by City or within fifteen (15) days prior to any response that is due from Affiliate, whichever is shorter, the Director shall provide to Affiliate, on an ongoing basis and as updates are required, copies of all City environmental permits and reports related to the Leased Premises and all notices, orders, decrees, citations, and inspection reports issued to City by environmental regulatory authorities related to the Leased Premises.

#### **Section 8.03 SURVIVAL OF OBLIGATIONS**

The obligations of this Article 8 shall survive the expiration, termination, or assignment of this Permit.

## **ARTICLE 9. COMPLIANCE WITH LAW AND NONDISCRIMINATION**

### **Section 9.01 RULES AND REGULATIONS**

City, in its governmental capacity, and/or the Director have adopted, and may from time to time modify, amend and adopt, and will enforce Rules and Regulations with respect to the occupancy and use of the Airport, its services, and facilities by persons, vehicles, aircraft, and equipment that in the opinion of City or the Director will reasonably ensure the safe, efficient, and economically practicable operation of the Airport and provide for the safety and convenience of those using the Airport.

The Director may promulgate, adopt, modify, amend and enforce the Rules and Regulations from time to time in furtherance of said purposes and/or that the Director deems are necessary to implement the intent and terms of this Permit. All such Rules and Regulations, promulgated through the Director's authority but without governmental action or mandate, shall be reasonable and not unjustly discriminatory, shall be enforced in a reasonable and not unjustly discriminatory manner and shall not be inconsistent with any legally authorized rule or regulation of the FAA, or any other federal or State agency, which is binding in law on Airline, Affiliate or City, as the same now are or may from time to time be amended or supplemented nor inconsistent with the reasonable exercise by Airline of any right or privilege granted under this Permit. City shall provide Airline and Affiliate with reasonable notice prior to adoption of any new or amended Rules or Regulations in order to provide Airline and Affiliate with the opportunity to comment on same prior to adoption. Airline or Affiliate, upon written request to the Director, shall be furnished (at the notice address provided herein and to Airline's on-Airport manager) a current copy of the Rules and Regulations and any amendments thereto.

Airline and Affiliate agree to observe and obey all Rules and Regulations as are currently in place and as may be reasonably established from time to time, and to require their respective officers, agents, employees, contractors, and suppliers to observe and obey the same. It shall be a violation of this Permit for Airline or Affiliate, or any of their officers, representatives, agents, employees, contractors, subcontractors, licensees, subtenants, or suppliers to violate, or to cause another person

to violate, any Rule or Regulation. Airline and Affiliate shall make reasonable efforts to cause their passengers, guests, and invitees to comply with the Rules and Regulations.

City reserves the right to deny access to the Airport or its facilities to any person, firm, corporation or entity that fails or refuses to obey and comply with the Rules and Regulations.

**Section 9.02 NO ILLEGAL PURPOSE**

Affiliate shall not use the Airport or any part thereof, or knowingly permit the same to be used by any of its employees, officers, agents, subtenants, contractors, invitees, or licensees, for any illegal purposes.

**Section 9.03 COMPLIANCE WITH STATUTES, ORDINANCES, AND REGULATIONS**

At all times during the Term of this Permit, Affiliate shall, in connection with its activities and operations at the Airport:

1. Comply with and conform to all applicable present and future statutes and ordinances, codes and regulations promulgated thereunder, of all federal, State, and other government bodies of competent jurisdiction that apply to or affect, either directly or indirectly, Affiliate or Affiliate's operations and activities under this Permit. Affiliate shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101), as may be amended from time to time, and federal regulations promulgated there under that may be made applicable as a result of construction activities conducted by Affiliate.
2. Make, at its own expense, all non-structural improvements, repairs, and alterations to Airline's Exclusive Use Space used or occupied by Affiliate and to Affiliate's equipment and personal property that are required to comply with or conform to any of such statutes, ordinances, codes or regulations. Affiliate shall secure the written approval of the Director before proceeding to make any improvements, repairs or alterations under this paragraph.

#### **Section 9.04      NONDISCRIMINATION**

As a condition of the use of Airport services and facilities, Affiliate shall be subject to the following:

1. In the event facilities are constructed, maintained, or otherwise operated on the space assigned to Affiliate for a purpose for which a U.S. Department of Transportation (USDOT) program or activity is extended or for another purpose involving the provision of similar services or benefits, Affiliate shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, USDOT, Subtitle A, Office of the Secretary, Part 21, "Nondiscrimination in Federally Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964," and as such regulations may be amended from time to time.
2. No person shall be excluded by Affiliate from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the facilities assigned to Affiliate on the grounds of race, creed, color, national origin, sex, handicap, or religion.
3. No person shall be excluded by Affiliate from participation in, denied the benefits of, or otherwise be subject to discrimination in the construction of any improvements on, over, or under the space assigned to Affiliate, or the furnishing of services thereon, on the grounds of race, creed, color, national origin, sex, handicap or religion.
4. Affiliate shall use the premises assigned to it in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, "Nondiscrimination in Federally Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964," and as such regulations may be amended.

Affiliate shall insert the substance of the provisions of these paragraphs on nondiscrimination in any lease, agreement, or contract by which Affiliate grants a right or privilege to any person, firm, or corporation to render accommodations or services to the public on the space assigned to it at the Airport.

**Section 9.05 BREACH OF NONDISCRIMINATION**

In the event of a breach of any of the nondiscrimination covenants set forth above, City shall have the right to terminate Affiliate's right to use Airport services and facilities and to re-enter and repossess the space and the facilities thereon that had been assigned to Affiliate, and hold the same as if such assignment had never been made, subject to Airline's rights under the Agreement. This provision regarding the termination of Affiliate's rights to use Airport services and facilities shall not become effective until the procedures of Title 49, Code of Federal Regulations, Part 21, are followed and completed, including the expiration of appeal rights, by either Affiliate or City.

**Section 9.06 FAIR AND EQUAL FURNISHING OF SERVICES**

As a condition of the use of Airport services and facilities, Affiliate shall furnish its accommodations or services on a fair, equal, and not unjustly discriminatory basis to all users thereof, and it shall charge fair, reasonable, and not unjustly discriminatory prices for each unit or service. In the event of noncompliance with this paragraph, City may terminate Affiliate's right to use Airport services and facilities.

**Section 9.07 AFFIRMATIVE ACTION PROGRAM**

As a condition of the use of Airport services and facilities, Affiliate shall undertake an affirmative action program as required by FAA regulations, Title 14, Code of Federal Regulations, Part 152, Subpart E, entitled "Nondiscrimination in Airport Aid Program," or as otherwise approved by the FAA, to ensure that no person shall on the grounds of race, creed, color, national origin, sex, or handicap be excluded from participation in any employment activities covered in such Subpart E. Affiliate shall not exclude any person on such grounds from participating in or receiving the services or benefits of any program or activity covered by such Subpart E. Affiliate shall require that its covered suborganizations provide assurances to Affiliate that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by Title 14, Code of Federal Regulations, Part 152, Subpart E, to the same effect.

**Section 9.08 MINORITY BUSINESS ENTERPRISE**

As a condition of its use of Airport services and facilities, Affiliate shall comply with the requirements of Title 49 of the Code of Federal Regulations, Part 23, and entitled “Participation by Minority Business Enterprise in Department of Transportation Programs” as this Part may be amended from time to time.

**Section 9.09 RIGHTS OF FEDERAL GOVERNMENT**

Any use of Airport services and facilities by Affiliate shall be subject to whatever right the U.S. government now has or in the future may have or acquire affecting the control, operation, regulation, and taking over of the Airport or the exclusive or nonexclusive use of the Airport by the United States during the time of war or national emergency.

**Section 9.10 SUBORDINATION OF PERMIT**

The use of Airport services and facilities by Affiliate, pursuant to this Permit, is subordinated to City’s existing and future obligations and agreements with or to the federal government including, but not limited to, federal grant assurances.

**Section 9.11 NON-WAIVER**

Nothing contained in this Permit is intended, nor shall be construed, as a waiver by either party of any right to assert any claim or defense, or raise any issue in any context or forum including, but not limited to, a court or administrative forum, regarding the preemption by federal law, including but not limited to Airline Deregulation Act (49 U.S.C. § 41713), of any state or local law or ordinance, or the Rules and Regulations.

**Section 9.12 SURVIVAL OF OBLIGATIONS**

The obligations of this Article 9 shall survive the expiration, termination, or assignment of this Permit.

END OF ARTICLE



## **ARTICLE 10. MISCELLANEOUS**

### **Section 10.01 ACKNOWLEDGMENT**

The parties hereto acknowledge that they have thoroughly read this Permit, including any exhibits or attachments hereto, 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 hereunder. The parties further acknowledge that this Permit is the result of extensive negotiations between the parties and shall not be construed against City by reason of the preparation of this Permit by City.

### **Section 10.02 AIRPORT ACCESS LICENSE/PERMIT**

City reserves the right to establish a licensing or permit procedure for vehicles requiring access to the Airport operational areas.

### **Section 10.03 AMENDMENTS**

Except as provided in Section 2.02, this Permit may not be amended in whole or in part without the written consents of all parties.

### **Section 10.04 ASSIGNMENT NOT PERMITTED**

This Permit may not be assigned, in whole or in part, by Affiliate or Airline.

### **Section 10.05 ATTORNEYS' FEES**

In the event of a dispute arising under this Permit, whether or not a lawsuit or other proceeding is filed, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs, whether incurred without a lawsuit having been filed or incurred before suit, during suit or at the appellate level. The prevailing party shall also be entitled to recover any attorneys' fees and costs incurred in litigating the entitlement to attorneys' fees and costs, as well as in determining or quantifying the amount of attorneys' fees and costs due it. The reasonable costs to which a prevailing party is entitled shall include costs that are taxable under any applicable statute, rule, or guideline, as well as non-taxable costs reasonably incurred by the prevailing party.

**Section 10.06 AUTHORITY OF DIRECTOR**

The Charter of the City of Pensacola provides that the Mayor shall serve as the City's Chief Executive Officer. Upon approval by the City Council of the Agreement, the Mayor shall be authorized and obligated to perform, discharge and enforce all of the obligations, rights and responsibilities of the City which are created by, referenced or expressly or implicitly contained in this Permit. The Mayor may, in his discretion, enforce and perform the rights and obligations of the City through such designees as he may select and identify to the signatories herein, and until such notice to the contrary has been provided, the Mayor hereby designates the Airport Director as his designee, unless provided otherwise or required by law.

**Section 10.07 CAPACITY TO EXECUTE**

Each of the parties hereto warrants and represents that the execution and delivery of this Permit by the undersigned representatives has been duly authorized by all necessary corporate or municipal action, as applicable.

**Section 10.08 CITY NOT LIABLE**

City shall not be under any duty or obligation to the Affiliate to repair or maintain the Leased Premises, or any portion thereof, or any facilities or equipment constructed thereon; provided that, as between City and Airline, nothing in this Section shall relieve City of any of its obligations under the Agreement. The City shall not be responsible or liable to the Airline or Affiliate for any claims for compensation for any losses, damages, or injury, including lost profits, sustained by the Airline or Affiliate resulting from failure of any water supply, heat, air conditioning, electrical power, or sewage or drainage facility, or caused by the natural physical conditions on the Airports, whether on the surface or underground, including stability, moving, shifting, settlement of ground, or displacement of materials by fire, water, windstorm, tornado, act of God, or state of war, civilian commotion or riot, or any other cause or peril beyond the control of City,

**Section 10.09 COMPLIANCE BY OTHER TENANTS.**

City shall, whenever possible, make reasonable efforts to obtain uniform compliance with the Rules and Regulations; however, City shall not be liable to the Affiliate for any violation or non-observance of such Rules and Regulations by any user, tenant, concessionaire, other Air

Transportation company, invitee, licensee, or trespasser at the Airport nor shall such violation or non-observance by a user, tenant, concessionaire, other Air Transportation company, invitee, licensee, or trespasser at the Airport, constitute a waiver of the Affiliate's obligation to comply with the Rules and Regulations.

**Section 10.10 COMPLIANCE WITH FAR PART 77**

Affiliate agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event any future structure or building is planned for the Leased Premises, or in the event of any planned modification or alteration of any present or future building or structure on the Leased Premises.

**Section 10.11 DELIVERY OF NOTICES**

Any notice required or permitted by this Permit shall be in writing and served personally or sent by registered or certified mail (return receipt requested), postage prepaid, or by a nationally recognized courier service such as FedEx, or UPS. Any notice sent pursuant to this paragraph shall be deemed to have been received by the addressee on the earlier of (i) actual receipt or (ii) five (5)-business days after deposit of it in the U. S. mail or such courier service, as the case may be.

Notices to City shall be addressed to:

CITY OF PENSACOLA  
Airport Director  
Pensacola International Airport  
2430 Airport Blvd., Ste. 225  
Pensacola FL 32504

With copy to:

CITY OF PENSACOLA  
City Administrator  
222 W. Main Street  
Pensacola, Florida 32502

Notices to Airline shall be addressed to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone: ( ) \_\_\_\_\_

Telecopier: ( ) \_\_\_\_\_

Notices to Affiliate shall be addressed to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone: ( ) \_\_\_\_\_

Telecopier: ( ) \_\_\_\_\_

**Section 10.12 EMPLOYEES OF AFFILIATE**

Affiliate shall require all of its employees and subcontractors and independent contractors hired by Affiliate working in view of the public and about the Terminal Building to wear clean and neat attire (as appropriate to the job duties performed) and to display appropriate identification. Affiliate's employees shall obtain identification badges from the Director. Affiliate, or its employees, shall be responsible for paying the cost of Transportation Security Administration required employee background checks and badging.

**Section 10.13 ENERGY CONSERVATION**

Affiliate shall comply with the Rules and Regulations pertaining to energy conservation and management to the extent that such Rules and Regulations do not unreasonably infringe on the rights and privileges granted herein or place an undue financial or administrative burden on Affiliate.

**Section 10.14 ENTIRE AGREEMENT**

This Permit and the Agreement constitute the entire agreement and understanding of the parties with respect to Affiliate's operations at and use of the Airport for and on behalf of Airline and may not be

changed, modified, discharged, or extended except by written instrument duly executed by City, Affiliate and Airline. This Permit and the Agreement supersede all prior agreements and understandings, written and oral, expressed or implied, between or among City, Affiliate and Airline with respect to Affiliate's operations at and use of the Airport for and on behalf of Airline. Airline and Affiliate agree that no representations or grant of rights or privileges shall be binding upon City unless expressed in writing in this Permit or in the Agreement.

**Section 10.15 EXCLUSIVENESS OF AIRLINE'S OR AFFILIATE'S RIGHTS**

Nothing herein contained shall be deemed to grant to Airline or Affiliate any exclusive right or privilege within the meaning of Section 308 of the Federal Aviation Act for the conduct of any activity on the Airport, except that, subject to the terms and provisions hereof, Airline and Affiliate shall have the right to exclusive possession of the Exclusive Use Space leased to Airline under the provisions of the Agreement.

**Section 10.16 GOVERNING LAW**

The laws of the State of Florida shall govern this Permit and all disputes arising hereunder, with venue in a federal or state court in Escambia County, Florida.

**Section 10.17 HEADINGS**

The headings of the Articles and paragraphs of this Permit are inserted only as a matter of convenience and for reference and do not define or limit the scope or intent of any provisions of this Permit and shall not be construed to affect in any manner the terms and provisions of this Permit or of its interpretation.

**Section 10.18 HOLDING OVER**

If Affiliate remains in possession of the Leased Premises after the expiration of this Permit without any written renewal thereof, such holding over shall not be deemed as a renewal or extension of this Permit, but shall create only a tenancy at sufferance that may be terminated at any time by City. Such holding over shall otherwise be under the same terms and conditions as set forth in this Permit.

**Section 10.19 LICENSES, FEES, AND PERMITS**

Affiliate shall obtain and pay for all licenses, permits, fees, or other authorization or charges as required under federal, State, or local laws and regulations insofar as they are necessary to comply with the requirements of this Permit and the privileges extended hereunder.

**Section 10.20 NOTICE OR CONSENT**

Any notice, consent or approval required herein to be obtained from or given by City (or the Director) may be given by the Director unless otherwise provided. Consent or approval of City, Affiliate or Airline when required herein shall not be unreasonably withheld, delayed, or conditioned.

**Section 10.21 PAYMENT OF TAXES**

Affiliate shall pay all taxes and assessments that may be levied upon, assessed, or charged Affiliate on its operation and property located on the Airport by the State of Florida or any of its political subdivisions or municipal corporations, and shall obtain and pay for all licenses and permits required by law.

**Section 10.22 PUBLIC RECORDS LAWS**

The Florida Public Records Law, as contained in Chapter 119, Florida Statutes, is very broad. As a result, any written communication created or received by City will be made available to the public and media, upon request, unless a statutory exemption from such disclosure exists. Affiliate shall comply with the Florida Public Records Law in effect from time to time if and to the extent that the Florida Public Records Law is applicable to Affiliate. Notwithstanding any contrary provision in this Permit, any failure by Affiliate to comply with the Florida Public Records Law, if and to the extent that it is applicable to Affiliate, that continues for seven (7) days after written notice from City may, in City's sole discretion, result in immediate termination of this Permit.

**IF AFFILIATE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO AFFILIATE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS P, CONTACT THE**

**CUSTODIAN OF PUBLIC RECORDS AT: THE OFFICE OF THE CITY ATTORNEY, 222 WEST MAIN STREET, PENSACOLA, FLORIDA 32502; PUBLICRECORDS@CITYOFPENSACOLA.COM; (850) 435-1715.**

**Section 10.23 REMOVAL OF DISABLED AIRCRAFT**

Affiliate shall promptly remove any of its disabled aircraft (when released by appropriate federal authority) from any part of the Airport, including runways and taxiways, and place such disabled aircraft in such storage areas as may be designated by City. Affiliate may store such disabled aircraft only for such length of time and on such terms and conditions as may be established by City.

If Affiliate fails to remove any of its disabled aircraft promptly, City may, but shall not be obligated to, cause the removal of such disabled aircraft. Affiliate agrees to reimburse City for all costs of such removal, and Airline further hereby releases City from any and all claims for damage to the disabled aircraft or otherwise arising from or in any way connected with such removal by City.

**Section 10.24 SUBORDINATION TO AGREEMENTS WITH THE U.S. GOVERNMENT**

This Permit 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 agreement 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, the Federal Aid to Airports Act, the Airport and Airway Development Act of 1970, and the Airport and Airway Improvement Act of 1982, as such acts have been amended from time to time.

In the event that the FAA requires, as a condition precedent to the granting of funds for the improvement of the Airport, modifications or changes to this Permit, Airline and Affiliate agree to consent to such reasonable amendments, modifications, revisions, supplements, or deletions of any of the terms, conditions, or requirements of this Permit as may be reasonably required to enable City

to obtain such grant of funds, provided that in no event shall such changes materially impair the rights of Affiliate hereunder.

**Section 10.25 TRIAL BY JURY**

The parties to this Permit desire to avoid the additional time and expense related to a jury trial of any disputes arising hereunder. Therefore, it is mutually agreed by and between the parties hereto, and for their successors, heirs and permitted assigns, that they shall and hereby do waive trial by jury of any claim, counterclaim, or third-party claim, including any and all claims of injury or damages, brought by a party against another party arising out of or in any way connected with this Permit and/or the relationship which arises hereunder. The parties acknowledge and agree that this waiver is knowingly, freely, and voluntarily given, is desired by all parties, and is in the best interest of all parties.

**Section 10.26 TIME IS OF THE ESSENCE**

The parties hereto agree that time is of the essence in this Permit.

\* \* \* \* \*



IN WITNESS WHEREOF, the parties have executed this Permit as of the day and year first above written, intending themselves to be legally bound hereby.

**CITY OF PENSACOLA**

By: \_\_\_\_\_

Daniel E. Flynn, Airport Director  
Pensacola International Airport

**REQUESTING AIRLINE:**

\_\_\_\_\_ AIRLINE, INC.

ATTEST:

By: \_\_\_\_\_

Title: \_\_\_\_\_

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

By: \_\_\_\_\_

Title: \_\_\_\_\_

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

**AFFILIATE AIRLINE:**

\_\_\_\_\_ AIRLINE, INC.

ATTEST:

By: \_\_\_\_\_

Title: \_\_\_\_\_

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

By: \_\_\_\_\_

Title: \_\_\_\_\_

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