

MEMORANDUM

TO: MAYOR AND CITY COMMISSION

FROM: CITY ATTORNEY'S OFFICE

DATE: December 18, 2023

RE: **Airline Operating Agreement with Avelo Airlines, Inc.**

Attached hereto for your consideration is a proposed Airline Operating Agreement between the City and Avelo Airlines, Inc. (Avelo) setting forth the operational terms and conditions related to commercial air service commencing at Lakeland Linder International Airport (Airport). Avelo is an ultra low-cost air carrier focused on efficient asset utilization through unbundled revenue sources aside from its base fares by offering multiple products and services for additional fees. Avelo began operations on April 28, 2021, and has grown its fleet of aircraft to sixteen (16) Boeing 737's. Avelo currently serves forty-four (44) destinations throughout the United States.

The term of this Agreement shall commence on May 1, 2024 and, unless otherwise terminated or cancelled, shall continue for an initial term of fifteen (15) years. The Agreement may also be renewed for one (1) additional successive five (5) year term upon mutual written agreement of the parties. The Airline may terminate the Agreement upon 180 days prior written notice to the City. The City may terminate the Agreement if Avelo defaults on any of its obligations under the Agreement, including, but not limited to, filing for bankruptcy, corporate dissolution, failure to pay fees/charges, failure to maintain required insurance coverage or engaging in unauthorized business activities at the Airport.

Pursuant to the Agreement, Avelo will be granted preferential use of three (3) of the four (4) aircraft parking positions, four (4) of the five (5) ticket counters, and the one (1) passenger hold room. While the Airport currently only has one (1) hold room, Avelo can provide the Airport with 286 days prior written notice of its need for a second temporary hold room that can then be constructed.

The fees Avelo will pay the City for use of the Airport will be adjusted based on the number of monthly enplanements for the calendar quarter. The fees paid by Avelo will be firm for a period of five (5) years. Thereafter, those fees are subject to an adjustment every five (5) years by a percentage not to exceed the percentile change in the Consumer Price Index, All Urban Consumers (the "CPI-U"), using August 2023 as the "Base Index" for such determination. Avelo will be responsible for payment of all taxes and/or assessments during the term of the Agreement. The City reserves the right to waive any fees pursuant to this Agreement upon implementation of an air carrier incentive program, which will result in a separate agreement between Avelo and the City. Set forth in the table below are the applicable fees Avelo will pay for the use of the Airport:

PER TURN FEE	LANDING FEE PER 1,000lbs	FUEL FLOWAGE FEE PER GAL.	MONTHLY ENPLANEMENT QTR. AVERAGE (CY)	
\$225	\$0.85	\$0.03	0	8,819
\$175	\$0.70	\$0.03	8,820	13,229
\$125	\$0.50	\$0.03	13,230	17,639
\$75	\$0.30	\$0.03	17,640	22,049
\$0	\$0	\$0.03	22,050	+

Additionally, the City reserves the right to charge Federal Inspection Station and Passenger Facility Charges in the future. However, pursuant to the Agreement, the City has agreed not to impose any new fees during the term of the Agreement unless federally or state mandated rules cause the City to incur additional expenses due to Avelo's operations at the Airport.

In accordance with the Agreement, the City will provide all maintenance and repairs of the Airport premises utilized by Avelo, including janitorial services during the term of the Agreement. The City is also responsible for providing utilities to the public areas of the Airport. However, Avelo will be responsible for payment of any applicable taxes incurred as a result of its use of utilities. Avelo will also be responsible for any expenses related to the maintenance/repair of its own equipment or connections to the City's installed utility systems.

As the home of the annual SUN 'n FUN Aerospace Expo, and its resulting positive impact on the Lakeland and Polk County community, the Agreement requires Avelo to suspend its flight operations at the Airport during specified days and hours in the month of March or April unless otherwise coordinated and approved by the SUN 'n FUN Airshow Director. Additionally, the City reserves the right to relocate the premises used by Avelo to another location at the Airport when necessary for terminal expansion, rehabilitation or repair.

During the term of this Agreement and any renewals thereof, Avelo is required to indemnify and hold harmless the City for any claims or liabilities resulting in personal injury or property damage arising out of Avelo's use or occupancy with the Airport premises or in connection with its airline passenger service. Avelo is also required to procure and maintain extensive insurance coverage during the term of the Agreement that includes workers' compensation, automobile liability and airline liability coverage of \$250,000,000.

Nothing contained in the Agreement grants or authorizes Avelo to have an exclusive right to provide commercial air transportation services to the public at the Airport. As such, the City reserves the right to grant the privileges and right of conducting any or all activities related to the operation of Airline Passenger Service at the Airport in the future.

It is recommended that the City Commission approve this Agreement with Avelo for commercial air service and authorize the appropriate City officials to execute the the Agreement and all corresponding documents with Avelo.

Attachment

**AIRLINE OPERATING AGREEMENT
LAKELAND LINDER INTERNATIONAL AIRPORT**

AIRLINE OPERATING AGREEMENT

This Airline Operating Agreement, hereinafter referred to as the “Agreement”, made and entered into this 18th day of December 2023, by and between the City of Lakeland (“City”), a municipality organized and existing in accordance with the laws of the State of Florida on behalf of its municipal Airport, Lakeland Linder International Airport (“Airport”), and Avelo Airlines, Inc. (“Airline”), a corporation authorized to do business in the State of Florida, collectively referred to as “Parties”).

WITNESSETH:

WHEREAS, the City of Lakeland is the owner and operator of Lakeland Linder International Airport located in Lakeland, Florida in Polk County, Florida and has the right to grant operating privileges and lease portions of such Airport subject to the terms and conditions set forth in this Agreement; and

WHEREAS, City has the right to lease, license or otherwise provide for the use of land, property and facilities of the Airport and has the full power and authority to enter into this Agreement; and

WHEREAS, Airline is a corporation primarily engaged in the business of providing Air Transportation; and

WHEREAS, City and Airline seek to enter into this Agreement to set forth the rights, privileges and obligations of both Parties with respect to the use and occupancy of the Airport by the Airline and to facilitate the development, promotion and improvement of air commerce for the benefit of the public.

NOW THEREFORE, in consideration of the mutual covenants and considerations herein contained, City and Airline agree as follows:

ARTICLE 1 DEFINITIONS AND INCORPORATION OF EXHIBITS

Section 1.1 Definitions. The capitalized words and phrases defined in this section shall have the following meanings when used elsewhere in this Agreement:

“Affiliate” shall mean an Air Carrier that is (i) a parent or subsidiary of the Airline, or (ii) that shares the same parent as the Airline, or (iii) operates under essentially the same trade name as the Airline (e.g., “XXX Express”) and uses essentially the same livery as the Airline, or (iv) any contracted Air Carrier operating on behalf of the Airline.

“Air Carrier” means any air carrier or foreign air carrier, as defined in 49 U.S.C. § 40102, as amended, operating Airline Passenger Service from time to time at the Airport.

“Airline Passenger Service” means the commercial transportation by air of persons, as a common carrier for compensation or hire to and from the Airport. Airline Passenger Service includes

the transportation of property, cargo, or mail incidental to the transportation of persons, including belly-cargo. All carriers conducting all-cargo air transportation are required to execute a separate Cargo Operating Agreement with the City, in the form and manner prescribed by the City.

“Airfield” means the portions of the Airport, excluding the Terminal Apron, provided for the landing, taking off, and taxiing of aircraft, including without limitation, approach and turning zones, clear zones, avigation, or other easements, runways, a fully integrated taxiway system, runway and taxiway lights, and other appurtenances related to the aeronautical use of the Airport, including any property purchased for noise mitigation purposes, as set forth in **Exhibit A**, Airport Boundaries, attached hereto, and as may be revised from time to time.

“Airline Parties” means, collectively, Airline, and any of its Affiliates, and their officers, volunteers, representatives, agents, employees, contractors, subcontractors, licensees, subtenants, or suppliers.

“Airline Rentals, Fees, and Charges” or **“Rentals, Fees, and Charges”** means for any Fiscal Year the rentals, fees, and charges estimated, calculated, and payable pursuant to the City’s *Schedule of Rates and Charges* and as further described in Article 4.

“Airline” means the Air Carrier which is named on the signature page to this Agreement.

“Airport” means the Lakeland Linder International Airport, which is operated by the City, as such Airport may hereafter be modified, changed or developed from time to time.

“Applicable Law” means all laws, statutes, ordinances, rules, and regulations (including without limitation Environmental Laws) lawfully issued or promulgated by any Governmental Authority, as any of the same may now exist or may hereafter be adopted or amended, modified, extended, re-enacted, re-designated, or replaced from time to time and judicial interpretations thereof.

“City” means the City of Lakeland, Florida, the owner, operator and legal sponsor of the Airport.

“City Commission” means the governing body with the authority to pass ordinances, adopt regulations, approve contracts and exercise all powers on behalf of the City of Lakeland, Florida, as specifically granted by the charter of the City of Lakeland.

“Common Use Area” means those portions of the Premises which are not designated as Preferential Use Areas, and are generally designated by the City for Airline’s use in common with others, including passenger holdrooms, ticket counter, internal airport roadways, vehicle curb, terminal entrance lobby, security checkpoint, restrooms, baggage claim areas.

“Deplaned Passengers” means all passengers disembarking an aircraft from a flight operated by an Air Carrier or its Affiliates, including all connecting passengers.

“Director” means the Director of the Airport, or his or her designee, or any successor or successors to the duties of such official.

“Effective Date” means the date set forth in Section 2.1 and when this Agreement has been executed by all Parties.

“Enplaned Passengers” means all ticketed originating and on-line or off-line transfer passengers of Airline enplaned at the Airport.

“Environmental Laws” shall mean and include all Federal, State of Florida, and local statutes, ordinances, regulations, permits or permit conditions, orders, directives, and rules regulating or relating to environmental quality, health, safety, contamination, and clean-up, as they currently exist or may exist in the future, including, without limitation, those relating to fines, orders, injunctions, penalties, damages, losses, or injuries resulting from the release or threatened release of Hazardous Materials and to the generation, use, storage, transportation, or disposal of Hazardous Materials, and including, without limitation, the applicable ordinances of the City, Clean Air Act, 42 U.S.C. § 7401, *et seq.*; the Clean Water Act, 33 U.S.C. § 1251, *et seq.*, the Water Quality Act of 1987; the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), 7 U.S.C. § 136, *et seq.*; the Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. § 1401, *et seq.*; the Noise Control Act, 42 U.S.C. § 4901, *et seq.*; the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6901, *et seq.*, as amended by the Hazardous and Solid Waste Amendments of 1984; the Safe Drinking Water Act, 42 U.S.C. § 300f, *et seq.*; the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. § 9601, *et seq.*, as amended by the Superfund Amendments and Reauthorization Act, and the Emergency Planning and Community Right to Know Act, and the Radon Gas and Indoor Air Quality Research Act; the Hazardous Material Transportation Act; the Toxic Substance Control Act (“TSCA”), 15 U.S.C. § 2601, *et seq.*; the Atomic Energy Act, 42 U.S.C. § 2011, *et seq.*; and the Nuclear Waste Policy Act of 1982, 42 U.S.C. § 1010, *et seq.*; all state environmental protection, superlien and environmental clean-up statutes, with implementing regulations and guidelines and all local laws, regulations, and ordinances insofar as they are equivalent or similar to the Federal laws recited above or purport to regulate Hazardous Materials, and judicial interpretations of each of the foregoing.

“Environmental Permit” means any and all permits, licenses, approvals, authorizations, consents, or registrations required by applicable Environmental Laws, whether Federal, State, or local, which pertain to the production, use, treatment, generation, transportation, processing, handling, disposal, or storage of Hazardous Materials.

“Event of Default” means each of the events defined in Section 9.1 of this Agreement.

“FAA” means the Federal Aviation Administration or any successor agency thereto.

“Gate(s)” means that portion of the Terminal consisting of a Holdroom and all appropriate appurtenant space plus the appurtenant Terminal Apron.

“Governmental Authority” means any federal, state, county, municipal, or other governmental entity), or any subdivision thereof, with authority over the Airport, Air Carriers, or Airline.

“Hazardous Materials” means any and all (a) substances, products, by-products, waste, or other materials of any nature or kind whatsoever which is or becomes listed, regulated or addressed under any Environmental Laws, and (b) any materials, substances, products, byproducts, waste, or other materials of any nature or kind whatsoever whose presence in and of itself or in combination with other materials, substances, products, by-products, or waste may give rise to liability under any Environmental Law or any statutory or common law theory based on negligence, trespass, intentional tort, nuisance, strict or absolute liability or under any reported decisions of any state or federal court; and (c) any substance, product, by-product, waste or any other material which may be hazardous or harmful to the air, water, soil, environment or affect industrial hygiene, occupational, health, safety and/or general welfare conditions, including, without limitation, fuel, petroleum based and/or asbestos based materials, products, by-products, or waste, radioactive materials or waste, lead or lead-containing materials, urea formaldehyde foam insulation, MBTE, perfluoroalkyl and polyfluoroalkyl substances, and polychlorinated biphenyls.

“Holdroom” means that area in the Terminal used for the staging of passengers waiting to board an aircraft available for Airline’s and other Air Carriers’ use.

“Indemnified Party” or **“Indemnified Parties”** means the City of Lakeland, its successors and assigns, the City Commission and each of its Commissioners. Indemnified Party or Indemnified Parties also shall mean the Airline or City as defined in this Agreement.

“Landing Fee(s)” has the meaning defined as the weight used to determine the landing fee for any particular aircraft shall be its maximum certificated gross landing weight (MGLW), as certified by the Federal Aviation Administration. Landing Fee rates for the term of this agreement are defined in the City’s *Schedule of Rates and Charges*, attached as **Exhibit D** hereto, and as it may from time to time be amended in accordance with Section 4.3 in this Agreement.

“Minimum Standards” shall mean those reasonable and not unjustly discriminatory standards promulgated by the City establishing certain minimum requirements to conduct commercial aeronautical activities at the Airport as they may be amended from time to time.

“Passenger Facility Charge” or **“PFC”** means moneys derived from charges imposed by the City pursuant to 49 U.S.C. § 40117, as amended or supplemented from time to time, and 14 CFR Part 158, as amended or supplemented from time to time.

“Person” means a firm, association, partnership, limited liability company, trust, corporation, and other legal entities, including Governmental Authorities, as well as a natural person.

“Preferential Use Area” means those portions of the Premises specifically identified on **Exhibit B** to this Agreement, wherein the Airline has priority use for supporting its flight schedule in accordance with the terms of this Agreement. Including but not limited to, passenger holdrooms, aircraft parking positions, and ticket counters.

“Premises” means those areas, facilities, and equipment made available by the City for airline use, including without limitation: ticket counters, counter support space, bag handling systems, gate counters, lighting, employee parking, common-use computer systems (hardware,

software, licenses, maintenance), public information systems (PA, FID, GIDs, etc.), ramp facilities (including aircraft gate parking positions, apron, RON parking, aircraft parking, aircraft run up pad, and ground service equipment parking areas), City-supplied ground service equipment (if any), support systems such as ramp lighting, trash disposal facilities, sanitary waste disposal, potable water supply, current or new required glycol recovery and common storage systems, and related utilities, custodial, and maintenance.

“Rules and Regulations” means those reasonable and not unjustly discriminatory rules and regulations, including but not limited to those governing the conduct, use, and operation of the Airport and promulgated by the City, and as may be revised from time to time.

“Term” means the period of time during which Airline’s activities at the Airport shall be governed by this Agreement and as described further in Article 2.

“Terminal” means the passenger terminal building, including all landside and airside passenger terminal facilities, and, to the degree appropriate, access roadways, tunnels, and sidewalks used to access the terminal, and such appurtenant areas of the Terminal Apron upon which aircraft are parked to allow passengers to enplane and deplane at the Terminal, as such building may be modified in the future and as such may be designated from time to time by the City.

“Terminal Apron” means the paved area surrounding the concourse of the Terminal, designed and constructed for parking of aircraft, as modified from time to time.

“TSA” means the Transportation Security Administration created under the Aviation and Transportation Security Act (“ATSA”), Public Law 107-71 of 2001, as amended, or any successor agency thereto.

Section 1.2 Incorporation of Exhibits.

(a) The following Exhibits attached hereto are hereby incorporated and made a part of this Agreement:

- Exhibit A** Airport Boundaries
- Exhibit B** Premises and Designation of Preferential Use Areas
- Exhibit C** Federally Required Contract Provisions
- Exhibit D** Schedule of Rates and Charges
- Exhibit E** Policy Regarding Assignment and Use of Gates and Terminal Facilities

(b) Any changes to the Exhibits that occur from time to time consistent with the terms of this Agreement, and when related to Airline exclusive space, preferential space or space impacting Airline operations requires written concurrence with the Airline, shall be reflected in revised Exhibits provided by the City to Airline. Such revised Exhibits shall be deemed to be effective without requiring a formal amendment to this Agreement.

Section 1.3 Headings. The headings of the several sections 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 hereof or the interpretation or construction hereof.

Section 1.4 Cross-References. All references in the text of this Agreement to Articles, Sections and Exhibits pertain to those in this Agreement unless otherwise specified.

Section 1.5 Conflicts and Order of Precedence. In the event of a conflict in the terms of this Agreement the Airline Facilities Construction and Lease Agreement dated December 18, 2023 and the Air Carrier Incentive Program Agreement dated December 18, 2023, the rights and privileges granted to the Airline pursuant to this Agreement shall control. However, in the event of conflict between this Agreement and the Air Carrier Incentive Program Agreement as it specifically relates to waiver of certain fees and charges, the Air Carrier Incentive Program Agreement shall control to the extent that this Agreement remains in full force and effect.

ARTICLE 2 TERM

Section 2.1 Effective Date; Initial Term.

The term of this Agreement shall commence on May 1, 2024 (“Effective Date”) and, unless otherwise terminated or cancelled earlier as provided herein, shall continue for an Initial Term of fifteen (15) years. This Agreement may be renewed for one (1) successive five (5) year period upon mutual written agreement of the Parties where the City will not unreasonably withhold agreement to the extension. Airline shall provide written notice of its intent to exercise its renewal option not later than one hundred and eighty (180) days prior to the expiration of the Initial Term of the Agreement.

Section 2.2 Airline Right to Terminate.

Airline may terminate this Agreement without cause, including all obligations hereunder, by providing not less than one hundred eighty (180) days’ written notice to the City.

Section 2.3 Holding Over.

In the event Airline shall continue to occupy the leased Premises beyond the Initial Term of the Agreement or any renewal thereof, such holding over shall not constitute an extension or renewal of this Agreement, but shall create a tenancy from month to month that may be terminated at any time by the City or Airline by giving thirty (30) days prior written notice to the other Party.

ARTICLE 3 USES, RIGHTS, AND PRIVILEGES

Section 3.1 Use of the Airport.

Subject to the terms of this Agreement and all Applicable Laws and Minimum Standards, and in accordance with the *Policy Regarding Assignment and Use of Gates and Terminal Facilities*

(attached hereto as **Exhibit E**), the City hereby grants Airline the right to use, in common with others so authorized by the City, the Premises, including those facilities, equipment, and improvements at the Airport from time to time designated by the City, for the operation of Airline's Airline Passenger Service and all activities reasonably necessary to such operations, including but not limited to:

(a) The landing, taking off, flying over, taxiing, towing, and conditioning of Airline's aircraft and, in areas designated by the City, the extended parking, servicing, deicing, loading or unloading, storage, or maintenance of Airline's aircraft and support equipment subject to Sections 3.1(f), 3.1(g), and 3.11, and to the availability of space, and subject to the rates and charges defined within this Agreement; provided, however, Airline shall not be permitted the use of the Airfield by any aircraft operated or controlled by Airline which exceeds the design strength or capability of the Airfield as described in the then-current FAA approved Airport Layout Plan (ALP) or other engineering evaluations performed subsequent to the then-current ALP, including the then-current Airport Certification Manual unless a specific written weight waiver is granted by the Airport Director.

(b) The sale of air transportation tickets and services, the processing of passengers and their baggage for air travel, the sale, handling, and providing of mail, freight, and express services, and other reasonable and customary airline activities.

(c) The training of personnel in the employ of or to be employed by Airline and the testing of aircraft and other equipment being utilized at the Airport in the operation of Airline's Airline Passenger Service; provided, however, said training and testing shall be incidental to the use of the Airport in the operation by Airline of its Airline Passenger Service and shall not unreasonably hamper or interfere with the use of the Airport and its facilities by others entitled to the use of same. The City reserves the right to restrict or prohibit such training and testing operations which it deems to unreasonably interfere with the use of the Airport.

(d) The sale, disposition, or exchange of Airline's aircraft, engines, accessories, gasoline, oil, grease, lubricants, fuel, or other similar equipment or supplies; provided, however, Airline shall not sell or permit to be sold aviation fuels or propellants except (i) to such Air Transportation Company which is a successor company to Airline, (ii) for use in aircraft of others which are being used solely in the operation of Airline's Airline Passenger Service, including, but not limited to, Airline's Affiliate(s), or (iii) when a comparable grade and type of fuel desired by others is not available at the Airport except from Airline.

(e) The purchase at the Airport or elsewhere, of fuels, lubricants, and any other supplies and services, from any person or company, subject to Section 3.1(d) and to the City's right to require that each on-Airport provider of services and/or supplies to Airline abides by the Rules and Regulations and Minimum Standards. No discriminatory limitations or restrictions shall be imposed by the City that interfere with such purchases; provided, however, nothing herein shall be construed to permit Airline to store aviation fuels at the Airport. The granting of any right to store aviation fuels shall be subject to the execution of a separate agreement between Airline and the City.

(f) The servicing by Airline or its suppliers of aircraft and other equipment being utilized at the Airport by Airline on the Terminal Apron or such other locations as may be designated by the Airport Director.

(g) The loading and unloading of persons, property, cargo, parcels and mail by motor vehicles or other means of conveyance, and if outside of industry standard airline operating procedures requires approval by the City on the Terminal Apron or such other locations as may be designated by the Airport Director; provided Airline shall not use the Terminal Apron to load or unload all-cargo aircraft unless otherwise authorized in writing by the City.

(h) The provision, either alone or in conjunction with other Air Transportation Companies, of porter/skycap service for the convenience of the public, at no cost to the City.

(i) Subject to Section 3.6 the installation, maintenance, and operation, at no cost to the City, of such radio communication, computer, meteorological and aerial navigation equipment, and facilities for Airline's exclusive use as may be necessary or convenient for the operation of its Airline Passenger Service, in Airline's reasonable discretion; provided, however, that such installations shall be subject to the prior written approval of the Airport Director; and such equipment and facilities installed and maintained by Airline shall not interfere with any radio communication, computer, meteorological and aerial navigation equipment and facilities of the City. Prior to any written approval, Airline shall provide the Airport Director with all necessary supporting documentation related to such installations.

(j) Ingress to and egress from the Airport and Premises for Airline's officers, employees, agents, and invitees, including passengers, suppliers of materials, furnishers of services, aircraft, equipment, vehicles, machinery, and other property. Such right shall be subject to 14 C.F.R. Part 1542, Applicable Laws, and the City's right to establish Rules and Regulations governing (i) the general public, including Airline's passengers, and (ii) access to non-public areas at the Airport by Airline's employees, suppliers of materials, and furnishers of services; provided, however, any such Rules and Regulations shall not unreasonably interfere with the operation of Airline's Airline Passenger Service. Further, the City may at any time, temporarily or permanently close, re-route, or consent to or request the closing or re-routing of any roadway or access to the Airport. In the event of such restrictions, and if necessary, the City shall ensure the availability of a reasonably equivalent means of ingress and egress.

(k) Airline shall not provide for the complimentary offering of food and beverages to passengers at the Airport. Notwithstanding the foregoing, in the event of irregular operations where the City's food and beverage concessionaire(s), if any, are unable to provide reasonable and economically viable food and beverage services as defined by the Airline, Airline may request to provide complimentary food and beverages to its passengers on a limited and temporary basis during such irregular operations, and the City shall not unreasonably withhold its approval of such request. Airline may also obtain preapproval for providing complimentary food and beverages to its passengers during irregular operations through the submission of an irregular operations contingency plan to the City for approval, which approval shall not be unreasonably withheld.

(l) The rights and privileges granted to Airline pursuant to this Article 3 may be exercised on behalf of Airline by other Air Carriers or contractors to provide such services at the

Airport, subject to all laws, rules, and regulations, and the payment of fees and charges specified herein.

(m) Airline may exercise on behalf of any other Air Carrier any of the rights granted Airline herein, so long as Airline is concurrently exercising those same rights in the operation of Airline's own Airline Passenger Service at the Airport.

Section 3.2 Preferential Use Areas.

Airline is granted priority use of the Preferential Use Areas identified in **Exhibit B**. In the event the City constructs additional Preferential Use Areas, those areas shall be assigned in accordance with Section 3.5(b). Airline shall provide the City with at least 286 days' prior written notice of its anticipated date to use Holdroom #2 as specifically identified in **Figure 1** of **Exhibit B**. The City shall not begin design, permitting or construction until Airline provides City with written confirmation to proceed with the construction of the additional Preferential Use Areas. In the event of a conflict between Airline and any other air carrier authorized to use the Premises, Airline's use of such areas shall be in accordance with the *Policy Regarding Assignment and Use of Gates and Terminal Facilities* which is attached hereto as **Exhibit E**.

Section 3.3 Restrictions and Reservations.

(a) The City specifically reserves and retains all rights not specifically granted herein, including but not limited to those with respect to licensing or contracting for concessions, consumer services, fixed base operators, or other commercial aeronautical services, and related aviation services at the Airport, including, but not limited to food, beverage, retail, advertising, and vending, within the Terminal.

(b) The City retains sole discretion to deny Airline the right to offer or sell materials, items or services at the Airport that are not considered to be in the best interest of the City or that are not reasonably related to Airline Passenger Service. Airline shall be permitted sell and market materials, items or services customarily incident to Airline Passenger Service, including credit card partnerships, frequent flier programs, and vacation, hotel, and rental car packages.

(c) The City reserves the right to continue hosting the SUN 'n FUN Aerospace Expo annually for a period of seven (7) days to be held in the months of March or April (the "Expo"). During the Expo, the City will host a daily airshow from approximately 1:00pm to 5:30pm local time, not more than two nighttime airshows from approximately 7:00pm to 10:30pm local time, inclusive of clean-up times (the "Air Show Blocks"). The City may modify the days and time of the Air Show Blocks from year to year, provided that the Air Show Blocks are not materially longer than provided herein. Airline agrees to modify its scheduled operations so that no arrivals or departures will occur during the Air Show Blocks; provided, however, that arrivals during the Air Show Blocks may be permitted with the express written approval of the Expo's Airshow Director. Airline shall under no circumstances be permitted to conduct scheduled operations during the City's clean-up activities following the nightly airshows. To allow the Airline time to develop their future schedules for public sale, the City agrees to notify Airline no later than June 30th of the preceding year of the specific days and times of the Air Show Blocks associated with the Expo.

Section 3.4 Employee Parking.

Airline employee vehicle parking shall be permitted only in areas designated by the Airport Director. Airline’s permitted use of the parking area(s) shall be at the direction of City and subject to change to facilitate the general development, operation and safety of the Airport. Airline will assist City to the full extent necessary to limit vehicle parking in the designated area(s) to authorized users only. City will make every effort to ensure employee parking is designated equitably between all employee groups notwithstanding the provisions outlined above at no cost to airline.

Section 3.5 Assignment of Premises.

(a) The City shall retain sole discretion to designate areas of the Premise, not currently assigned to Airline as Preferential, for use by others in accordance with the specific provisions of this Agreement, including but not limited to, Preferential Use Areas. Any modifications to Airline’s Preferential Use Areas as outlined in Exhibit B shall be in accordance with Section 1.2.B and Section 3.5 (b).

(b) If the City constructs new facilities and/or expands existing facilities at the Airport, the City will offer and make additional space available to Airline on a preferential use basis, subject to the City retaining not less than twenty percent (20%) of the total expanded aircraft parking positions, hold rooms and ticket counter positions as Common Use Areas, only after each type of facility expansion which meets the expansion scenarios define herein, in no instance shall the City retain less than one (1) gate parking position, one (1) gate podium, and one (1) ticket counter position as Common Use Areas. Airline shall have the option to expand and utilize such additional space as its Preferential Use Areas when compared to other airlines then operating at the Airport, based upon the average number of departed seats per month over the previous twelve (12) months. In the event of a conflict between Airline and another airline regarding specific assignment of expanded space or other dispute, Preferential Use Areas will be first be assigned by the City to that airline which has operated continuous scheduled service for the prior twelve (12) months and had the most departed seats during the prior twelve (12) months. The chart below gives examples of expansion scenarios and anticipated division of space between Common Use Areas and Preferential Use Areas:

EXPANSION SCENARIOS - HOLD ROOMS				
Total Available	Offered for Preferential Use	%	Minimum Common Use	%
3	2	67%	1	33%
4	3	75%	1	25%
5	4	80%	1	20%
6	4	67%	2	33%
7	5	71%	2	29%
8	6	75%	2	25%
9	7	78%	2	22%
10	8	80%	2	20%

EXPANSION SCENARIOS - AIRCRAFT PARKING POSITIONS

Total Available	Offered for Preferential Use	%	Minimum Common Use	%
5	4	80%	1	20%
6	4	67%	2	33%
7	5	71%	2	29%
8	6	75%	2	25%
9	7	78%	2	22%
10	8	80%	2	20%

EXPANSION SCENARIOS – TICKET COUNTERS				
Total Available	Offered for Preferential Use	%	Minimum Common Use	%
6	4	67%	2	33%
7	5	71%	2	29%
8	6	75%	2	25%
9	7	78%	2	22%
10	8	80%	2	20%

Section 3.6 Installation and Management of Equipment.

(a) Subject to written approval from the City, and Section 9.2 of this Agreement (Removal of Airline Property) Airline may install, operate, maintain, repair and store, all equipment necessary to conduct Airline’s business in and on the Premises, in compliance with all Applicable Laws, Rules and Regulations, and the Airport Minimum Standards.

(b) Airline may at its own expense and with the Director’s prior written approval, install and maintain proprietary information technology systems and hardware to support passenger processing. However, following Airline’s confirmation of system compatibility, which shall not be unreasonably withheld, and upon not less than ninety (90) days’ notice from the City, Airline shall remove its proprietary equipment and systems, at no cost to the City, and allow the City to install common use passenger processing equipment and systems such as Common Use Terminal Equipment (CUTE), common use passenger processing systems (CUPPS), and Common Use Self-Service kiosks. The City shall use commercially reasonable efforts not to disrupt Airline operations during such installation, and the City’s installation and maintenance of such equipment shall not result in any fees or charges to Airline.

(c) City reserves the right to request, and Airline shall thereupon provide, information about its flight schedule at the Airport reasonably necessary to maintain and update the Airport’s gate management and passenger processing systems in the format prescribed by the City. The City gate management and passenger processing systems when implemented will be consistent with industry standard systems. The Airline will not be required to develop unique systems to meet the City’s format if the system is not consistent with industry standards.

Section 3.7 Relocation.

The City reserves the right to relocate part or all of the Premises or areas thereof designated for Airline's use, including without limitation Airline's Preferential Use Areas, to another location within the Airport when necessitated by terminal expansion, rehabilitation, or repair; compliance with federal regulation; or Airport operating considerations. The City will give Airline ninety (90) days advance written notice of its intent to relocate the certain portions of the Premises and will do all things reasonably necessary, as determined by City, to minimize the disruption to Airline's operations. To the extent the City relocates Airline's Preferential Use Areas, substitute Preferential Use Areas shall be of equal or greater size and quality, and shall not result in any changes to the rates and charges payable hereunder.

Section 3.8 Signage.

Airline shall not erect or allow to be erected any sign or similar device advertising any entity other than the Airline. Signage promoting Airline's on-Airport operation is only allowed upon prior written consent of the City and must be in compliance with all Applicable Laws and the Airport's Minimum Standards. Signs with flashing lights are not permitted. Airline, its agents, and employees shall not use vehicle signs for the purpose of soliciting the purchase of any good or service. Any sign or advertising approved by the City shall remain the property of the Airline and upon termination of the Agreement or any extension thereof must be removed at Airline's sole expense. City agrees to cooperate with Airline to install or affix, at Airline's sole expense, signage denoting its business and location; provided, however, that the location of any signage shall require final approval from the City.

Section 3.9 Employees of Airline.

Airline shall require all of its employees, subcontractors or independent contractors working in view of the public and about the Airport to wear clean and neat attire, to display appropriate identification, and to abide by all Applicable Laws and Airport's Minimum Standards.

Section 3.10 Removal of Disabled Aircraft.

As soon as reasonably possible after Airline's disabled aircraft is released from the control or jurisdiction of all applicable Governmental Authorities, Airline shall remove (or cause the removal of) 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 areas 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 City. If Airline fails to remove any of its disabled aircraft promptly, the Director may, after informing Airline of the Director's intent to do so, but shall not be obligated to, cause the removal of such disabled aircraft; provided, however, that the removal or storage of such disabled aircraft would not be inconsistent with Applicable Laws. Airline agrees to reimburse the City for all costs of such removal, and Airline further hereby releases the City from any and all claims for damage, except as the result of City's gross negligence or willful misconduct, to the disabled aircraft or otherwise arising from or in any way connected with such removal by the City.

Section 3.11 Parking of Aircraft or Ground Support Equipment (GSE).

Parking or storage of aircraft or GSE that in any way interferes with Airport operations, including the movement of passengers, cargo, or other aircraft, is prohibited. Airline must remove aircraft or GSE within forty-five (45) minutes, during normal staffed operations, or as soon as practical if outside of normal staffed operations, of notification by the City of its determination that: (i) an emergency exists requiring removal of said aircraft or ground support equipment; (ii) said aircraft or ground support equipment is interfering with Airport operations or the movement of passengers, cargo, or other aircraft; or (iii) the Terminal Apron is required for access by another air carrier, provided that the City has first determined that other suitable Terminal Apron space is not available.

ARTICLE 4
RENTALS, FEES, AND CHARGES

Section 4.1 Calculation of Rentals, Fees, and Charges.

Airline's Rentals, Fees, and Charges shall be calculated and owed to the City in accordance with the Airport's *Schedule of Rates and Charges*, attached as **Exhibit D**.

Section 4.2 Changes to Rentals, Fees and Charges.

During the Term of this Agreement, except as set forth in this Article 4, Airline shall not be subject to any City-imposed fees, charges, or rent structures other than those set forth herein and at **Exhibit D**, unless required by new federal or state law, nor shall Airline's Rentals, Fees, and Charges be increased, except as set forth in Section 4.3.

Section 4.3 Inflationary Adjustments.

The City reserves the right to increase Airline's Rentals, Fees, and Charges under this Operating Agreement no more frequently than once every five (5) years by a percentage not exceeding the percentile change in the Consumer Price Index, All Urban Consumers, U.S. City Average, All Items, as published by the Bureau of Labor Statistics, United States Department of Labor (the "CPI-U"), using August 2023 as the "Base Index" for such determination. In the event the CPI-U, or an equivalent or successor thereof, is not published at the time such adjustments are made, the City may use any other nationally recognized standard cost-of-living index issued and published by the United States Government; provided that if the CPI-U subsequently becomes available, any increase to Airline's Rentals, Fees, and Charges shall be adjusted, if necessary, so as not to exceed the percent change in the CPI-U.

Section 4.4 Other Rentals, Fees, and Charges.

The City expressly reserves the right to assess and collect the following:

(a) Reasonable and non-discriminatory fees and charges for the use of Federal Inspection Services (FIS) facilities; and

(b) Pro rata shares of any charges for the provision of any services or facilities which the City is first required or mandated to provide by any Governmental Authority due to the Airline's operations having jurisdiction over the Airport after the Effective Date of this Agreement; provided, however, that the City will first consult in good faith with Airline and other airlines serving the Airport to limit the financial impact of any such fees. For purposes of this Section, the Airline shall not be assessed pro rata shares of any charges that are implemented solely by the City acting in its proprietary capacity.

Section 4.5 Passenger Facility Charges.

(a) The City reserves the right to assess and collect PFCs subject to the terms and conditions set forth in 49 U.S.C. § 40117 and the rules and regulations thereunder, 14 C.F.R. Part 158, as they may be supplemented or amended from time to time. Airline will collect FAA-approved PFCs imposed by the City from all eligible passengers enplaned at the Airport. On or before the last day of each month, Airline will remit to the City all PFC revenue collected for the previous month, less any compensation provided for under 14 CFR § 158.53(a), together with all reports required under § 158.65.

(b) If Airline transports passengers from the Airport Passenger Terminal on Airline's aircraft chartered by another Air Carrier or tour operator issuing passenger tickets other than Airline's, Airline will provide City with a schedule detailing the date and time of the flight and the number of Enplaned Passengers. Airline agrees to pay the required PFC amount due the City in a timely manner and to seek reimbursement from the charter Air Carrier or tour operator with no liability to the City.

(c) Airline shall hold the net principal amount of all PFCs that are collected by Airline or its agents on behalf of the City in trust for the City. For purposes of this Section, net principal amount shall mean the total principal amount of all PFCs that are collected by Airline or its agents on behalf of the City, reduced by all amounts that Airline is permitted to retain pursuant to 14 C.F.R. § 158.53(a) (such net principal amount known as "PFC Revenue"). Airline acknowledges that all PFC Revenue collected for the City neither belongs to nor is owned by Airline except to the extent set forth in applicable federal law and, unless the status of PFC Revenue in the possession of Airline is characterized in a separate manner under FAA regulations (in which case such characterization shall prevail), that such PFC Revenue is held in trust by Airline for the exclusive use and benefit of the City. Airline shall not make any claim in any document or proceeding that, for PFC Revenue collected by Airline on behalf of the City, the Airline has any legal or equitable interest in such PFC Revenue, except to the extent Airline is specifically granted such interest by Federal statute or regulation, including the right of reimbursement from such PFC funds for the Airline's costs of collection.

(d) Any late payment of PFC Revenue may be subject to late fees computed at the rate of one percent (1.0%) per month or, if less, the highest rate permitted by Applicable Laws, from the due date until paid, to the extent allowed by Applicable Laws.

(e) Airline acknowledges that the City may give to the United States of America, acting by and through the FAA, certain assurances applicable to collection and use of PFCs (the "PFC Assurances"), and Airline agrees that this Agreement shall be subordinate and subject to all such

PFC Assurances. In the event the FAA requires any modification of this Agreement as a condition precedent to the City's collection or use of PFCs or as a means to affect the City's compliance with the Applicable Laws, or the PFC Assurances, Airline shall not withhold its consent to any modification of this Agreement as may reasonably be required for the City to collect PFCs or to comply with Applicable Laws, and/or PFC Assurances.

Section 4.6 Method of Payment.

(a) Airline agrees to pay all sums due under this Agreement, in lawful money of the United States of America, within thirty (30) days of receipt of invoice, by check made payable to the City, or electronic funds transfer (EFT) as may be mutually agreed. If payment is to be made by EFT, the terms and financial institution information shall be separately agreed upon by Airline and the City. If payment is made by check, check shall be delivered, postage or other charges prepaid, to:

Lakeland Linder International Airport
Attn: Accounts Receivable
3900 Don Emerson Dr., Ste. 210
Lakeland, FL 33811

(b) If Airline shall fail to make payment within five (5) days of the due date of the City's invoice, on the date otherwise due as provided herein, Airline shall pay to the City, in addition to all other remedies available to the City and all other payments to be made by Airline to the City, five percent (5%) interest on such amounts accruing from the date that the payment was due.

(c) Airline shall complete and file with the Director no later than the fifteenth (15th) day of each month, a Report of Airline Activity on such standard forms of the City, which summarizes the information necessary for the computation of Airline's Rentals, Fees, and Charges established under this Agreement for the prior month, including but not limited to the following data:

(i) Aircraft arrivals and departures and maximum gross landing weight of those aircraft arrivals;

(ii) Airline's Enplaned Passengers and Deplaned Passengers at the Airport, separately identified;

(iii) Airline's Enplaned Passengers and Deplaned Passengers at the Terminal, separately identified, if different from (ii) above;

(iv) The amount of freight, mail, and other cargo handled by Airline, through the Airport;

(v) Airline statistics on its use of Premises under this Agreement by Airline, including but not limited to statistics indicating gate utilization by aircraft type and duration; and

(d) If Airline shall fail to file reports required for invoicing, the City may invoice Airline based on the City's reasonable estimates of activity and adjust said billing at a later date.

(e) Airline shall provide City a detailed fueling report in a form specified by the Director reflecting all gallons disbursed into the aircraft on a flight-by-flight basis that reconciles with the Fixed Base Operator's (FBO's) into-plane fee report.

(f) Airline shall maintain such commercially reasonable books, records, and accounts as are relevant to the determination and verification of Airline Rentals, Fees, and Charges under this Agreement, including for the duration of the Term and a period of no less than five (5) years thereafter. The Director, and such independent auditors or financial consultants as may be designated thereby, shall have the right, during normal business hours, upon reasonable advance written notice, and at their sole cost and expense, to examine, audit, make copies of, and take extracts from such books, records, and accounts, including electronic records and accounts, but only as is necessary to verify or determine compliance by Airline with the terms of this Agreement relating to the calculation of Airline Rentals, Fees, Charges, and other payment. In the event that the afore-referenced books, records, and accounts are not maintained on the Airport premises, Airline shall, upon the City's request, make the same available within said premises or electronically for the afore-referenced purposes.

(g) If an audit conducted under this Section by the City determines that Airline has a deficiency equal to or exceeding three percent (3%) of the amounts due and payable to the City, Airline shall pay to the City the deficiency so determined within ten (10) days of receipt of an invoice therefor, and Airline shall then be responsible for the costs of said audit plus five (5%) annualized interest rate calculated from the date such amounts were discovered in the audit due to the City.

(h) The reporting requirements of this Section 4.4 shall not be waived due to the Airline's aircraft being ground-handled by a third-party contractor. The third-party contractor may submit the required statistical information to the City on behalf of Airline if Airline so chooses, provided, however, that Arline's obligations under this Agreement to submit such information shall not be changed in this case.

(i) The reporting requirements of this Section 4.4 shall still apply without modification even if Airline does not owe Airline Rentals, Fees, and Charges for any reason at any point during the Term.

Section 4.7 Timing of Payment.

(a) *Activity-Based Fees.* Payment of Landing Fees and Per Turn Fees (as defined in **Exhibit D**) shall be due and payable no later than fifteen (15) days after the end of each calendar quarter, together with the Report of Airline Activity described herein. Such payment shall be delinquent if payment is not received by the thirtieth (30th) day of the month.

(i) Landing Fees shall be calculated and paid based on actual landed weight reported on the Report of Airline Activity for the prior calendar quarter (the Report of Airline Activity shall include a monthly breakdown of the calendar quarter). The fee paid

will be adjusted based on the average number of enplanements for the calendar quarter (as defined in **Exhibit D**).

(ii) Per Turn Fees shall be calculated and paid based on actual number of originating flights (i.e. departures) reported on the Report of Airline Activity for the prior calendar quarter (the Report of Airline Activity shall include a monthly breakdown of the calendar quarter). The fee paid will be adjusted based on the average number of enplanements for the calendar quarter (as defined in **Exhibit D**).

(b) *Fuel Flowage Fees.* Payment of Fuel Flowage Fees (as defined in **Exhibit D**) shall be due and payable no later than the fifteenth (15th) day of each month, together with the fueling report described herein. Fuel Flowage Fees will be calculated and paid based on the actual fuel uploaded to an aircraft by the Airline reported on the fueling report for the prior month. Such payment shall be delinquent if payment is not received by the thirtieth (30th) day of the month.

(c) *Other Rentals, Fees, and Charges.* Payment for all other Airline Rentals, Fees, and Charges due the City shall be due upon the City's issuance of an invoice therefore and shall be deemed delinquent if payment is not received within thirty (30) days after the due date for such amounts.

Section 4.8 Taxes.

(a) Airline shall pay all taxes (including any possessory interest tax), assessments, and charges of a like nature, if any, which during the term of this Agreement may be levied or become a lien by virtue of any levy, assessment, or charge by the federal government, the State of Florida, any municipal corporation, any local government entity, any government successor in authority to the foregoing, or any other tax or assessment levying bodies, in whole or in part, upon or in respect to any personal property belonging to Airline situated on the Premises or Airport facilities. Payment of such taxes, assessments, and charges, when and if levied or assessed, shall be made by Airline directly to the taxing or assessing authority charged with collection thereof.

(b) Airline may, at its own expense, contest the amount or validity of any tax or assessment directly with the taxing or assessing authority. Airline shall indemnify the City from all taxes, penalties, costs, expenses, and attorney's fees incurred by the City resulting directly or indirectly from all such contests, except where Airline prevails in contesting a tax that is assessed directly by the City.

(c) Upon termination of this Agreement, all lawful taxes then levied or a lien upon any such property or taxable interest therein shall be paid in full by Airline forthwith, or as soon as a statement thereof has been issued by the tax collector if termination occurs during the interval between attachment of the lien and issuance of a statement.

(d) Under existing laws, all property of every kind belonging to an airport and used for airport purposes is exempt from taxation. To date, property at the Airport has been exempted from such taxes. In the event that the taxing authorities (local or state) impose a tax on the property or the leasehold interest created hereby, Airline will be responsible for paying same as additional fee payments. If the amount of property taxes levied upon the City is not imposed in a manner that

clearly identifies the portion applicable to Airline, the City reserves the right to allocate the total amount using reasonable criteria.

Section 4.9 Air Carrier Incentive Program.

During the Term of this Agreement the City may, at its discretion, waive any fee required pursuant to this Agreement upon implementation of an air carrier incentive program meeting the requirements of the FAA's Air Carrier Incentive Program Guidebook.

ARTICLE 5 OBLIGATIONS OF THE CITY

Section 5.1 Operation and Maintenance.

(a) The City will provide janitorial services for the Premises. Except as otherwise specifically provided herein, City, during the term of this Agreement, shall, within its financial ability, operate, maintain, and keep in good repair all appurtenances, facilities and services now or hereafter connected with the City, including, without limiting the generality hereof, all field lighting and other appurtenances, facilities and services which City has agreed to furnish and supply hereunder; provided, however, that City shall not be required to perform maintenance and make repairs occasioned by the negligence of Airline, its employees, invitees or agents. If the Airline does not make repairs caused by its negligence in a reasonable timeframe, the City may, at its discretion perform such maintenance or make such repairs and charge the cost of same to Airline, and Airline hereby agrees to reimburse City for all costs incurred by City in performing such maintenance and repair work. The City agrees that it will use its best efforts as dictated by industry standards, during the term of this Agreement, to maintain and keep the Airport facilities in good repair.

(b) City shall be responsible for all maintenance of the Premises, excepting damage that is caused by negligence of the Airline or another party, including without limitation roof maintenance, structural maintenance, exterior siding, exterior painting, windows and doors, heating, ventilating, and air conditioning systems, the electrical system, and the plumbing and sewage system, baggage systems, potable water, glycol recovery, loading bridges, including the ground power and conditioned air equipment attached thereto, if any, and any support systems or equipment to be used in common with others, except for those parts of the Premises and those maintenance obligations for which Airline is responsible pursuant to Article 6 herein.

(c) City shall be responsible for the removal of snow and ice from runways, taxiways, and ramps within the Terminal Apron area and other common use aircraft movement areas of the Airfield Area, except for those areas exclusively leased to an Air Carrier or another tenant. Airline recognizes and acknowledges, however, that the City will not always be able to immediately accomplish such snow and ice removal from the ramps within the Terminal Apron area, since the City's priority will be the runway and taxiway system of the Airport.

(d) City and its authorized officers, employees, agents, contractors and subcontractors shall have the right, on reasonable advance written notice to Airline and with as little interruption

of Airline's operations as is reasonably practicable, or at any time in case of emergency, to enter Airline's leased Premises for the following purposes:

(i) To inspect such Premises during regular business hours or at any time in case of emergency to determine whether Airline is in compliance with the terms and conditions of this Agreement with respect to such Premise.

(ii) To perform maintenance and make repairs and replacements in any case where Airline is obligated to do so and has failed after reasonable notice to do so, in which event Airline shall reimburse City for the cost thereof.

(iii) To perform maintenance and make repairs and replacements in any case where the City is obligated to do so and where City, in its reasonable judgment, determines that it is necessary to do so in order to preserve the structural safety of such Premises or the building in which Airline is located or to correct any condition likely to cause injury or damage to persons or property.

(iv) In exercise of the City's police power to protect the health, safety and general welfare of the public.

Section 5.2 Utilities.

(a) The City shall provide, or through arrangement with the appropriate utility provider, where applicable, cause gas, electricity, air conditioning, heat, sewage disposal, and water service to be supplied to the Premises and to such public areas of the Airport presently having such service.

(b) The City is not responsible for disruptions in service due to failure of utility suppliers or other causes beyond the City's control and the City reserves the right to impose such utility conservation measures as it deems reasonable from time to time.

(c) Airline shall be responsible for any applicable taxes for its use of utilities.

ARTICLE 6 OBLIGATIONS OF AIRLINE

Section 6.1 Maintenance, Replacement, and Repair.

(a) Airline shall, at its own cost and expense, maintain, and repair Airline's equipment, fixtures, personal property, any Airline-installed connections to the City's installed utility systems, and all of Airline's equipment attached or connected to the City's utility systems whether or not any of the same is affixed or attached to the Premises.

(b) Airline shall provide cleaning, lavatory service, and disposal from its aircraft to the Airport's designated facility.

(c) Airline shall perform all maintenance on any improvements made by the Airline to the Premises at its own expense. Airline shall, at its own expense and at all times, keep in a clean

and orderly condition and appearance the Premises and all Airline's fixtures, equipment, and personal property which are located in any parts of the Premises which are open to or visible by the general public. Airline shall at its own expense repair, replace, or rebuild all or any part of the Premises which may be damaged or destroyed by the negligent acts or omissions of Airline or by those of its employees, guests, or invitees or of other persons doing business with Airline. Should Airline fail to keep the Premises in good order and repair, as is reasonably required in order to preserve and protect the general appearance and value of City's improvements on the Premises, and if such maintenance and repair is not undertaken by Airline within thirty (30) days after receipt of written notice, City shall have the right to enter on the Premises and perform the necessary maintenance, the cost of which shall be borne by Airline.

(d) Airline agrees to promptly discard acceptable refuse at the centralized collection point as provided for and designated by the City. The Airline shall promptly dispose of any refuse unacceptable at the centralized collection point in the manner specified by the City.

Section 6.2 Security.

(a) *Generally.* Airline and its Airline Parties shall comply with (i) the provisions of the City's TSA-approved Airport Security Program for the Airport as from time to time existing, and (ii) applicable regulations of the TSA, as from time to time existing and amended. If Airline shall fail or refuse to comply with said measures and such non-compliance results in a monetary penalty being assessed against the City, then, in addition to any other terms of this Agreement, Airline shall be responsible and shall reimburse the City in the full amount of any such monetary penalty or other damages. Without limiting the foregoing, with respect to the portion of the Premise that it occupies, Airline shall, under any Airport Security Plan filed by the City under 49 CFR Part 1542, be responsible, during times of Airline's use of the Premises, for the monitoring and control of doorways and other access ways to the Airfield, air operations areas and be liable to the City for any fine, penalty, or charge imposed by TSA resulting from security violations with respect thereto.

(b) *Badging.*

(i) Unless exempted by Applicable Laws, any Airline employee, or any employee of its contractors or agents, that requires unescorted access to the Security Identification Display Area (SIDA) must first obtain a badge provided by the City. Each person prior to receiving a badge will be subject to a criminal history records check and security threat assessment. A new or renewed badge will not be issued to an individual until the results of the criminal history records check and security threat assessment are completed and indicate that the applicant has not been convicted of a disqualifying criminal offense. If the criminal history records check and security threat assessment discloses a disqualifying criminal offense, the individual's badge application will be rejected. The direct costs of each criminal history records check and security threat assessment requested by the Airline will be paid by Airline. These costs are subject to change without notice. The City reserves the right to collect all reasonable costs related to badging at the time badging service is provided. All badged employees of Airline shall comply with the City Rules and Regulations regarding the use and display of badges. The City reserves the right to require renewal of the badges at any time but will not do so in a discriminatory manner.

If Airline fails to comply with renewal requirements, as directed by the City, the existing badge privileges of the applicable badged person may be suspended.

(ii) Unless exempted by Applicable Laws, in order to work on Airport property, an employee, agent, or contractor must have a valid and active badge allowing access to that employee's work area. Persons who have badge privileges revoked or suspended may not be escorted on Airport property.

Section 6.3 Prohibited Acts.

(a) Airline shall not take any action inconsistent with normal airline operations, or permit to be done, anything which may interfere with the effectiveness or accessibility of the utility, mechanical, electrical, drainage and sewer systems, fire-protection system and other systems installed or located on, in or near the Premises.

(b) Airline shall not store or introduce into the ground, or in or about the Premises, Hazardous Materials, including oil, gasoline, aviation fuel, or other flammable materials defined as hazardous under federal and state environmental protection acts. This provision shall not apply to the storage of flammable liquids necessary for the operation of aircraft, provided that such flammable materials are stored in approved safety cans kept in a steel cabinet in accordance with National Fire Protection Association Standards Numbers 30 and 409, and further provided that the storage of any such flammable fluids shall be limited to the maximum quantities allowed by statute, law and/or regulation and Airline shall be solely responsible for abiding with all laws, statutes and/or regulations in this regard.

ARTICLE 7 RULES & REGULATIONS; COMPLIANCE WITH LAWS

Section 7.1 Rules & Regulations.

Airline shall comply with, and shall cause its employees, agents, contractors, or other persons over which the Airline has control, to comply with, all of the City's written or published Rules and Regulations, including Airport operating directives with respect to the safe, prudent, or orderly conduct, use, or operation at the Airport, as such Rules and Regulations currently exist and as they may be enacted, published, or amended from time to time in the future. Except in cases of emergency, as determined by the City in its sole discretion, the City shall give at least thirty (30) days prior notice to the Airline of all newly proposed rules, regulations, and Airport operating directives. Upon Airline's request, the City shall provide a written copy of rules and regulations, which are then current.

Section 7.2 Observance and Compliance with Laws.

Airline shall, in connection with its rights and obligations hereunder, observe, comply, and use commercially reasonable efforts to cause employees, agents, contractors, or any other person over which Airline has control, to observe and comply with all Applicable Laws (as they may exist now or hereafter), and shall pay all taxes and obtain and strictly comply with all licenses, permits, certificates, and other authorizations required by all Applicable Laws, and including but not limited

to all rules, regulations, and directives of the FAA. Airline agrees to make part of and incorporate into this Agreement by reference any and all statutes, assurances, and covenants which may now or hereafter be required by the FAA or other federal agency or by the State of Florida; provided, however, that nothing herein shall be construed to limit or diminish the right of Airline, at its own cost, risk, and expense, to contest the same, by appropriate judicial or administrative proceeding. Airline shall, in connection with its rights and obligations hereunder, observe, and comply with, those requirements of the FAA set forth in Exhibit C, *Federally Required Contract Provisions*, as such requirements may be amended or interpreted by the FAA from time to time.

ARTICLE 8 INDEMNIFICATION AND INSURANCE

Section 8.1 Indemnification.

(a) Airline shall assume, protect, defend, reimburse, and indemnify the Indemnified Parties, and shall hold each and all of them harmless at all times from and against any and all liabilities (including without limitation statutory liability and liability under workers' compensation laws), losses, fines, damages of whatever nature, causes of action of every kind and character, whether or not meritorious, suits, claims, demands, judgments, awards, settlements, costs, reasonable attorney fees and expenses including without limitation payments of claims or liabilities resulting from any injury or death of any person or any damage to or destruction of any property resulting from, arising out of, or in connection with Airline's use or occupancy of the Premises or any other area or facility at the Airport during the Term of this Agreement or resulting from, arising out of, or in connection with the conduct of Airline's Airline Passenger Service under this Agreement or any of its obligations or covenants under this Agreement, including, but not limited to:

(i) The willful misconduct, negligence, or other tortious act or omission by Airline or any of its agents, employees, licensees, contractors, or subcontractors in its use or occupancy of the Airport or the Premises or in any of Airline's operations under or pursuant to this Agreement; and

(ii) The violation by Airline of any provision or other liability, covenant, or condition of this Agreement; except to the extent any such loss, fine, damage, cause of action, suit, claim, demand, judgment, award, settlement, cost, or expense is caused by the negligence or willful act or omission of the Indemnified Parties.

Section 8.2 Additional Indemnifications.

(a) Without limiting the generality or the scope of any other provision hereof, Airline shall reimburse the City for any and all reasonable attorneys' fees and investigation expenses incurred by the City in the defense and handling of said causes of action, suits and claims of every kind and character arising under the provisions of this Agreement, and in enforcing the provisions of this Agreement, excepting those expenses incurred by the City in the defense and handling of said causes of action, suits, and claims resulting from the negligence or willful act or omission of the Indemnified Parties.

(b) To the extent permitted by law, the City shall defend, indemnify, and hold harmless the Airline from and against all liabilities, damages, losses, and costs (including reasonable attorneys' fees) arising out of or resulting from any acts of negligence, recklessness or intentional wrongful misconduct by the City in connection with Airline's use or occupancy of Premises or any other area or facility at the Airport during the Term of this Agreement or resulting from, arising out of, or in connection with the conduct of Airline's Airline Passenger Service. Notwithstanding the above, the City's indemnification hereunder is subject to the extent and limitations provided in Florida Statute § 768.28. Nothing herein shall be construed to waive the City's sovereign immunity.

(c) Without in any way limiting any other provision on the subject matter contained elsewhere in this Agreement, Airline and the City agrees that each party's obligations of indemnity specified in Section 8.1 and Section 8.2 hereof shall survive the expiration or termination of this Agreement.

Section 8.3 Insurance.

(a) Airline shall, at its own cost and expense, procure and maintain in effect, the following minimum insurance coverage at all times during the term of this Agreement, and, prior to or contemporaneously with the execution of this Agreement, shall deliver to the Airport Director certificates of insurance for such coverage, issued by an appropriate company of recognized financial responsibility authorized to do business in the State of Florida with an A.M. Best's rating of not less than A-7, and reasonably satisfactory to the City, evidencing the following coverage for Airline and naming the City and the Indemnified Parties as additional insured:

(i) Workers' Compensation and Employer's Liability Insurance for all employees engaged in operations under this Agreement. The limits of coverage shall be not less than:

(A) Workers' Compensation - \$1,000,000 per employee

(B) Employers' Liability - \$1,000,000 per employee

(ii) Airline Liability Insurance coverage which shall include, without limitation, the following common coverage endorsements: Premises and Operations, Personal Injury, Fire Legal (\$1,000,000 each occurrence), Contractual for this Agreement, Independent Contractors, Advertising Injury, Broad Form Property Damage, Products, and Completed Operations (which shall not exclude Explosion, Collapse, or Underground Property Damage, Liability Coverage). Coverage shall be applicable to, among other matters, Airline's operations and the operations of all Airline's mobile and ground equipment at the Airport. The Completed Operations Coverage shall not be less than the following:

Bodily and Personal Injury
\$250,000,000 Combined Single Limit
and Property Damage Liability Each Occurrence

(iii) Aircraft Liability Insurance for all owned, non-owned, leased, or hired aircraft, including passenger coverage. Limits of coverage shall not be less than the following:

Bodily and Personal Injury
\$250,000,000 Combined Single Limit
and Property Damage Liability Each Occurrence

(iv) Comprehensive Automobile Liability Insurance covering the ownership, maintenance, and use of all owned, non-owned, leased, and hired vehicles. Limits of coverage shall be not less than the following:

Bodily and Personal Injury
\$10,000,000 Combined Single Limit
and Property Damage Liability Each Accident

(v) Property Insurance covering Airline's improvements, fixtures, and personal property, including Airline's motor vehicles and mobile equipment, on the Premises shall be provided, insuring against all risk of physical loss. The amount of physical damage insurance for all perils, save flood and earthquake, shall be not less than the replacement cost of the property insured. The perils of flood and earthquake shall be insured for not less than the replacement cost of the property insured.

(b) Each certificate of insurance required and provided hereunder shall be provided on a standard insurance certificate form provided by the insuring company, shall be signed by the authorized representative of the insurance company shown on the certificate, and shall provide that the coverage referred to therein shall not be terminated, modified, or not renewed unless the City has received thirty (30) days advance written notice thereof. In the event an insurance carrier should terminate, modify, or not renew any of the above insurance coverage, Airline shall contract with another insurance carrier to provide the requisite coverage and shall deliver to the City a replacement certificate. Airline shall deliver to the City, thirty (30) days before the date of the renewal of any policy of insurance required hereunder, a renewal certificate meeting the requirements herein specified.

(c) Airline shall provide notice within five (5) days for non-payment of premium. Any and all deductibles in the insurance policies described above shall be assumed by and be for the account of, and at the sole risk of, Airline.

(d) The acceptance by, or delivery to, the City of any certificate of insurance evidencing the insurance coverage and limits required in this Agreement does not constitute approval or acceptance by the City that the insurance requirements in this Agreement have been met.

(e) Waiver of Subrogation. Airline, for itself and on behalf of its insurers, to the fullest extent permitted by Applicable Laws without voiding the insurance required by this Agreement, waives all rights against the City and its Indemnified Parties for damages or loss to the extent covered and paid for by any insurance maintained by Airline.

(f) No operations shall commence or continue by Airline at the Airport unless and until the required certificates of insurance have been received by the City.

(g) Failure by Airline to obtain or maintain any insurance required hereunder shall not relieve Airline from any liability under this Agreement, nor shall the insurance requirements hereof be construed to conflict with or otherwise limit any contractual obligations (including but not limited to those of indemnification) of Airline contained in this Agreement.

(h) Airline shall not do or permit to be done anything, either by act or failure to act, which shall cause cancellation of any City policy of insurance for the Premises or any other part of the Airport. If Airline shall do or permit to be done anything, either by act or failure to act, that shall cause an increase in the premiums for insurance for such Premises or the Airport, Airline shall pay the amount of such increase, pursuant to invoices, whether from the City or otherwise.

(i) Each certificate of insurance shall provide that such policies shall be primary to any other policies of insurance maintained by the City.

ARTICLE 9 TERMINATION AND DEFAULT UNDER AGREEMENT

Section 9.1 Events of Default and Remedies.

(a) If any one or more of the following events of default (each an “Event of Default”) shall occur, then upon the occurrence of any such event, following any applicable cure period, or at any time thereafter during the continuance thereof, the City may, at its option, upon prior written notice as set forth herein, terminate this Agreement and the rights of Airline hereunder by sending written notice of termination by certified mail or receipted overnight delivery to Airline at its address, with copy to Airline at its electronic mailing address, as set forth in Section 12.5.

(i) Airline becomes insolvent (as such term is defined in the Federal Bankruptcy Code, 11 U.S.C. § 101, *et seq.* (the “Code”), or any successor statute thereto; or shall fail to pay its debts generally as they mature; or shall take the benefit of any present or future federal or state insolvency statute; or shall make a general assignment for the benefit of creditors;

(ii) Airline files a voluntary petition in bankruptcy or a petition or answer seeking an arrangement of its indebtedness under the Code or under any other law or statute of the United States or of any state thereof, or consent to the appointment of a receiver, trustee, custodian, liquidator, or other similar official, of all or substantially all of its property; or an order for relief shall be entered by or against Airline under any chapter of the Code;

(iii) By order or decree of a court, Airline is adjudged a debtor or bankrupt or an order shall be made approving a petition filed by any of its creditors or by any of its stockholders, seeking its reorganization or the readjustment of its indebtedness under the Code or under any other law or statute of the United States or any state thereof and such order or decree shall not be stayed or vacated within ten (10) business days of its issuance;

(iv) A petition under any chapter of the Code or an action under any federal or state insolvency law or statute is filed against Airline and not dismissed or stayed within ten (10) business days after the filing thereof;

(v) Airline becomes a corporation in dissolution;

(vi) The failure by Airline to duly and punctually pay any Airline Rentals, Fees, and Charges required to be paid to the City hereunder or the failure to make payment of any other sum required to be paid to the City pursuant to this Agreement (including, without limitation, the failure to transmit to the City PFC Revenue on a timely basis in accordance with the PFC Regulations) on or prior to the date such payment is due or, with respect to any amount for which no payment date is provided herein, then thirty (30) business days after written notice of the amount of such payment has been given to Airline or an invoice for such payment has been submitted to Airline and Airline fails to cure such failure to make payment within sixty (60) days;

(vii) Airline fails to maintain in effect, or fails to evidence to the City upon request that it has in effect, the insurance coverage required by Section 8.3 of thereof;

(viii) The attempted or purported assignment, sublease, transfer, conveyance, mortgage, grant of security interest, hypothecation, or other encumbrance of all or any part of Airline's rights of interests under this Agreement or in the Premises without the City's consent which would not be unreasonably withheld.;

(ix) Airline conducts business activities at the Airport that are not permitted hereby, and that have not been approved in writing by the City, and Airline has not ceased such unauthorized business activities within five (5) days of written notice from the City; or

(x) Airline fails to keep, perform, and observe the provisions of this Agreement, and Airline does not cure such failure within thirty (30) days of City's written notice thereof or, if Airline's failure is not capable of cure within thirty (30) days, Airline does not commence its cure within thirty (30) days and thereafter diligently proceeds to complete such cure.

(b) In the event of any of the foregoing Events of Default enumerated in this Article, and following written notice by City and Airline's failure to cure during any applicable cure period, the City, at its election, may exercise any one or more of the following options or remedies, the exercise of any of which will not be deemed to preclude the exercise of any other remedy herein listed or otherwise provided by Applicable Laws:

(i) Terminate this Agreement without discharging any of Airline's obligations hereunder and exclude Airline from the Terminal; or

(ii) From time to time, take whatever action at law or in equity appears necessary or desirable to collect Airline Rentals, Fees, and Charges, PFCs and any other amounts payable by Airline hereunder then due and thereafter to become due, and to

enforce the performance and observance of any obligation, agreement, or covenant of Airline under this Agreement.

(c) The City shall be under no obligation to observe or perform any covenant of this Agreement on its part to be observed or performed for the benefit of Airline after the Event of Default and any applicable cure period, unless and until such Event of Default is cured by Airline or waived (in writing) by the City.

(d) No termination of this Agreement or the taking or recovering of the Premises shall deprive the City of any of the City's rights or remedies or actions against Airline for Airline Rentals, Fees and Charges, PFC Revenue, and any other payment due hereunder or for damages or for the breach of any covenant herein contained, or both.

Section 9.2 Removal of Airline Property.

(a) All personal property placed or installed by Airline on the Premises or elsewhere at the Airport including, but not limited to, trade fixtures and trade equipment, shall remain the property of Airline and must be removed within fifteen (15) calendar days after the expiration of the Term or the expiration of any extension or renewal hereof at Airline's sole risk and expense. Airline shall not abandon any portion of its personal property at the Airport without the City's written consent. Any damage to the Airport or any portion thereof resulting from such removal shall be paid for by Airline. In the event of an early termination of this Agreement, Airline shall have forty-five (45) days after such termination during which to remove its personal property. So long as any personal property remains in the Premises, Airline's obligation to pay Airline Rentals, Fees, and Charges, and other payments due the City shall continue with respect to such Premises.

(b) If Airline's property (other than Airline's aircraft) is not removed as herein provided, the City may, at its option, after written notice to Airline and at Airline's sole risk and expense, take possession and thereafter remove such property to a public warehouse for deposit, or retain the same in the City's possession and, in the City's discretion and after the expiration of sixty (60) days, sell the same, the proceeds of which shall be applied first to the expenses of such removal and sale, second to any sum owed by Airline to the City, and any balance remaining shall be paid to Airline.

Section 9.3 No Waiver by the City.

A failure by the City to take any action with respect to any default or violation by Airline of any of the terms, covenants, or conditions of this Agreement shall not in any respect limit, prejudice, diminish, or constitute a waiver of any rights or remedies of the City to act with respect to any prior, current, or subsequent violation or default or with respect to any continuation or repetition of the original violation or default. The acceptance by the City of payment for any period or periods after a default or violation of any of the terms, conditions, and covenants of this Agreement shall not constitute a waiver or diminution of, nor create any limitation upon, any right of the City pursuant to this Agreement to terminate this Agreement for subsequent violation, default, or for continuation or repetition of the original violation or default.

Section 9.4 Agreement to Pay Attorneys' Fees and Expenses.

When an Event of Default by Airline has occurred and the City retains attorneys or incurs other costs and expenses for the collection of Airline Rentals, Fees, and Charges, PFCs, or other payments due hereunder, or for the enforcement, performance, or observance of any covenant or obligation or agreement on the part of Airline herein contained, and if the City is successful in obtaining judgment against Airline, or in obtaining a settlement with the Airline, Airline shall pay to the City the reasonable fees and expenses of such attorneys and such other costs and expenses incurred by the City.

ARTICLE 10
RESERVATION OF RIGHTS, SUBORDINATION, AND GOVERNMENTAL COVENANTS

Section 10.1 City's Right of Entry.

The City shall have the right at all times to enter the Premises to perform any of the City's obligations hereunder, exercise any of its rights hereunder, exercise any of its governmental functions, or for any other purpose necessary for or incidental to or connected with the performance of the Airline's obligations hereunder, or in the City's capacity as Airport proprietor, including in the event of any alteration, improvement, or construction on, adjacent to, or in the vicinity of the Premises, for purposes related thereto.

Section 10.2 Right to Protect Aeronautical Approaches.

City reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstruction, together with the right to prevent Airline from erecting, or permitting to be erected, any building or other structure on Airport property, which, in the sole opinion of the City, would limit the usefulness of the Airport, constitute a hazard to aircraft or create some other safety issue.

Section 10.3 Avigation Easement.

City hereby reserves for the use and benefit of the public, the right of aircraft to fly in the airspace lying over the Premises, together with the right of said aircraft to cause such noise as may be inherent in the operation of aircraft landing at, taking off from, or operating on or in the vicinity of the Airport, and the right to pursue all operations of the Airport.

Section 10.4 Right of Further Development.

City reserves the right to further develop or improve the Airport, landing, public areas, including ramp space, of the Airport as it sees fit, regardless of the desires or views of Airline, and without interference or hindrance by Airline. City shall attempt to mitigate any adverse impact to the Airline's business if such actions can be accomplished without materially and significantly impacting the cost, quality, or schedule of the development(s). The City will solicit and consider input from the Airline for passenger terminal expansion and modification efforts. However, Airline does not have any right to modify design or construction elements.

Section 10.5 Right to Construct Utilities.

It is further agreed that City shall have the right, without cost to Airline, to install and maintain in, on or across the Premises, sewer, water, gas, electric and telephone lines, electric substations, street widening or other installations necessary to the operation of the Airport, or to service other tenants at the Airport. It is provided, however, that City shall carry out such work and locate any above-ground structures in a manner so as not to unreasonably interfere with Airline's use of the Premises.

Section 10.6 Right to Remove City's Airport Improvements.

Subject to Section 3.8, City reserves the right to remove City-owned improvements from the Premises if required for the orderly development of the Airport or in order to comply with FAA directives. Such removal will be at no cost to Airline; and charges, if any, for any such removed improvements shall cease at the time of removal from Airline's use.

Section 10.7 Accessibility.

(a) To the extent the requirements of Section 504 of the Rehabilitation Act of 1973, 49 CFR Part 27, and Titles II and III of the Americans with Disabilities Act of 1990 apply to the Premises and Airline's facilities thereon or to the operation and/or construction or acquisition of any improvement, equipment, or facilities by Airline on the Premises or any part thereof, such improvement and equipment shall be provided and improvement and facilities shall be designed, constructed, and operated, so that the improvement, equipment or facility is accessible to and usable by handicapped persons. To assure such design, construction and use, Airline will design and construct the improvement, equipment or facility in accordance with the Uniform Federal Accessibility Standards ("UFAS"), as applicable, which standards are incorporated herein and made a part of this Agreement.

(b) Airline, when required by 14 C.F.R. Part 382 or any other laws, rules, or applicable regulations, now or hereafter adopted by federal or state governments, shall provide certain facilities for the movement of passengers with disabilities while enplaning and deplaning its aircraft. To the extent required by law, Airline shall be responsible for acquiring or making arrangements for the use of boarding assistance devices, when applicable, for its aircraft. Airline shall ensure that all lifts and other accessibility equipment used by it are maintained in proper working condition. Airline shall ensure that those personnel involved in providing boarding assistance through the use of lifts or other accessibility equipment are properly trained in the use and operation of the devices and appropriate boarding assistance procedures that safeguard the safety and dignity of passengers. If the City provides a backup boarding assistance lift device, as it may from time to time under this Agreement, this device should not be considered the primary boarding assistance device and the City makes no warranty regarding its availability or condition.

Section 10.8 Prohibition Against Exclusive Rights.

It is hereby specifically understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right to Airline to provide air transportation services to the public at the City, and the City reserves the right to grant to others the privileges and right of conducting any or all activities related to the operation of Airline Passenger Service at the Airport.

Section 10.9 Subordination.

This Agreement shall be subject and subordinate to the provisions of any existing or future agreements between the City and the United States of America relative to the operation and maintenance of the Airport., the terms and execution of which have been or may be required as a condition precedent to the expenditure or reimbursement to the City of federal funds for the development of the Airport (“Grant Assurances”). In the event that this Agreement, either on its own terms or by any other reason, conflicts with or violates any such Grant Assurances, the City has the right to, amend, alter, or otherwise modify the terms of this Agreement, in order to resolve such conflict or violation. The City will under no circumstances be liable to Airline for any modification or termination of this Agreement reasonably determined to be necessary to comply with the Grant Assurances.

(a) During time of war, national emergency, civil unrest, or acts of foreign enemies, the City shall have the right to suspend or cancel any portion of this Agreement if deemed necessary in order to assist the City in complying with the directives of the federal, state and local governments.

(b) Nothing herein shall be construed to prevent the City from making, or complying with, commitments to the Federal Government or to the State of Florida in order to qualify for the expenditure of Federal or State funds on Airport.

(c) If it shall be in the public interest, the City shall have the power to condemn the Airport facilities and real property even though it is itself a party to the Agreement, in accordance with Applicable Laws.

ARTICLE 11 COMPLIANCE WITH ENVIRONMENTAL LAWS

Section 11.1 Compliance with Environmental Laws.

(a) Notwithstanding any other obligations in this Agreement, Airline covenants, represents, and warrants that in conducting any activity or business on the Premises or at the Airport, or in conducting any operation or performing any work pursuant to this Agreement, Airline shall comply with all applicable Environmental Laws. Airline further covenants, represents, and warrants that Airline shall obtain and maintain all Environmental Permits required for it to conduct its activities and business on the Premises and at the Airport.

(b) In the event of any release or threatened release of Hazardous Materials caused by Airline which is required by Environmental Law to be reported by Airline, at, on, under, or about the Premises or the Airport, or in the event any claim, demand, complaint, or action is made or taken against Airline that pertains to the environment at the Premises or the Airport, or if Airline receives any notice pertaining to Airline’s failure or alleged failure to comply with any Environmental Law or Environmental Permit, Airline shall promptly notify the City of all unprivileged known facts pertinent to such release, threatened release, claim, demand, complaint, action, or notice, and shall provide the City with a copy of each such claim, demand, complaint, notice, and action. If Airline is required by any Environmental Law, Environmental Permit, or governmental agency to file any notice or report of a release or threatened release of Hazardous

Materials at, on, under, or about the Premises or the Airport, Airline shall simultaneously provide a copy of such notice or report to the City.

(c) Airline shall undertake all necessary steps to remedy and remove any Hazardous Materials and any other environmental contamination to the extent caused by or resulting from the activities, conduct, or presence of Airline or any Airline Party on the Premises or at the Airport, whether resulting from negligent conduct or otherwise, as determined by the appropriate governmental agency to be necessary to reasonably protect the public health or safety to the extent required by Applicable Law, or to bring the Premises or the Airport into compliance with all Environmental Laws and Environmental Permits. Such work shall be performed at Airline's expense. Except in the event of an emergency, such work shall be after Airline submits to the City a written plan for completing such work and receives the prior approval of the City, which shall not be unreasonably withheld. The City shall have the right to review and inspect all such work at any time using consultants and representatives of its choice. The actual cost of such review and inspection shall be paid by Airline. Specific cleanup levels for any environmental remediation work Airline performs shall be designed to meet and satisfy the requirements of all applicable Environmental Laws and Environmental Permits.

(d) Notwithstanding the obligations imposed on Airline in this Section, the City, and other federal, state, and local agencies having jurisdiction shall at all times have the right, should Airline fail to respond to a notification, after a specified cure period, if any, or immediately if necessary to remediate further contamination, to take any and all actions as they may individually or collectively deem appropriate to cease, contain, investigate, remediate, and otherwise respond to a condition which results from, causes, or threatens to cause environmental pollution or contamination at, under, or about the Premises or otherwise at the Airport.

Section 11.2 Airline's Environmental Indemnity.

(a) With respect to Environmental Laws and Environmental Permits, Airline agrees as follows:

(i) Without in any way limiting Airline's obligations hereunder, Airline shall assume the risk of, be responsible for, protect, defend, indemnify, and hold harmless the Indemnified Parties, and each of them, and shall hold each and all of them harmless at all times from and against any and all losses, claims, liabilities, damages (except special, indirect or consequential damages), costs, and expenses, including reasonable attorneys' fees, which may be incurred in connection with any actual, threatened, or potential environmental pollution, contamination, condition, or damage to the extent caused by or resulting from any activity, conduct, or presence of Airline or any of Airline's directors, officers, agents, contractors, subcontractors, or employees at the Airport or from Airline's failure to comply with any Environmental Law or Environmental Permit.

(ii) All rights and remedies of the City as provided in this Agreement with regard to environmental pollution, contamination, damage, or any actual or threatened violations of any Environmental Law or Environmental Permit shall be deemed cumulative in nature; and the City's right to indemnification as provided under this Section shall survive the termination of this Agreement.

ARTICLE 12
GENERAL PROVISIONS

Section 12.1 Surrender.

Airline covenants and agrees to yield and deliver peaceably to the City possession of the Premises on the date of cessation of this Agreement, whether such cessation be by termination, expiration, or otherwise, promptly and in as good condition as at the commencement of this Agreement excepting reasonable wear and tear, or, if improved, in as good condition as of the completion date of the last improvement made to the Premises, excepting reasonable wear and tear.

Section 12.2 Co-Partnership or Agency.

It is understood and agreed that nothing herein contained is intended or shall be construed to in any respect create or establish the relationship of co-partners between the parties hereto, or as constituting either party as the general representative or agent of the other party for any purpose whatsoever. It is expressly understood and agreed by and between the parties hereto that Airline is and shall remain an independent contractor responsible to all parties for all of its acts or omissions and the City shall be in no way responsible for Airline's acts or omissions.

Section 12.3 Assignment and Subletting

Airline shall not assign or transfer this Agreement or any interest in this Agreement, and shall not sublet all or any portion of the Premises, including the Preferential Use Areas, without the prior written consent of the City, and this Agreement or any interest in this Agreement shall not be assignable or transferable by operation of law or by any process or proceeding of any court, or otherwise without the prior written consent of the City, which consent shall not be unreasonable withheld. Notwithstanding the foregoing, Airline may, without City's prior written consent, but upon reasonable notice to City, assign or otherwise transfer this Agreement to any entity (i) that results from any merger, consolidation, or reorganization of Airline, (ii) that acquires or succeeds to all or substantially all of the assets of Airline, or (iii) into which Airline may be merged or with which it may be consolidated; provided, however, that such successor executes and delivers to the City an instrument in writing assuming the terms and conditions of this Agreement; and provided further, that such assignment shall not be construed to release Airline from its obligations under this Agreement prior to such assignment, including but not limited to, the payment of rentals, fees, and charges provided herein.

Section 12.4 Personal Liability.

No past, present or future officer, member, official, director, agent, or employee of the Airline or the City shall be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement, because of any breach thereof, or because of its or their execution or approval of this Agreement.

Section 12.5 Representations and Warranties.

City represents and warrants that it has the right, power, and legal capacity to enter into and perform its obligations under this Agreement has duly executed and delivered this Agreement, and that this Agreement constitutes a legal, valid, and binding obligation of City.

THE CITY MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION OF THE PREMISES OR THAT THE SAME SHALL BE SUITABLE FOR AIRLINE'S PURPOSES OR NEEDS. THE CITY SHALL NOT BE RESPONSIBLE FOR ANY PATENT OR LATENT DEFECT AND AIRLINE SHALL NOT, UNDER ANY CIRCUMSTANCES, WITHHOLD ANY AMOUNTS PAYABLE TO THE CITY HEREUNDER ON ACCOUNT OF ANY DEFECT IN THE PREMISE. BY ITS ENTRY ONTO THE PREMISES, AIRLINE ACCEPTS IT IN "AS IS" CONDITION AND HEREBY WAIVES ALL CLAIMS AGAINST THE CITY ARISING ON OR AFTER THE EFFECTIVE DATE RELATING TO THE CONDITION OF THE PREMISES ARISING FROM THE USE THEREOF AND ALL OTHER CLAIMS AGAINST THE CITY RELATING TO THE CONDITION OF THE PREMISES OTHER THAN THOSE ARISING SOLELY FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CITY.

Airline represents and warrants that it has the right, power, and legal capacity to enter into and perform its obligations under this Agreement, has duly executed and delivered this Agreement, and that this Agreement constitutes a legal, valid, and binding obligation of Airline.

Section 12.6 Notices.

If Airline is not a resident of the State of Florida or is an association or partnership without a member or partner resident of said state, Airline shall appoint an agent for the purpose of service of process in any court action between it and City arising out of or based upon this Agreement. Airline shall, within ten (10) days of execution of this Agreement, notify City, in writing, of the name and address of said agent. Such service shall be made as provided by the laws of the State of Florida for service upon a non-resident engaging in business in the state.

Except as otherwise expressly provided in this Agreement, all notices, consents, approvals, and other communications provided for under this Agreement shall be in writing and will be deemed validly given, served, or delivered, upon receipt by the Party by hand delivery, or three (3) days after depositing such notice or communication in a postal receptacle, or one day after depositing such notice or communication with a reputable overnight courier service, to the City and Airline at the following addresses:

To the City: Lakeland Linder International Airport
Attn: Airport Director
3900 Don Emerson Dr., Ste. 210
Lakeland, FL 33811

with copy to:

lakelandairport@lakelandgov.net

To Airline: Avelo Airlines, Inc.
Attn: Airport Relations
12 Greenway Plaza, Suite 400
Houston, TX 77046

with copy to:

notices@aveloair.com

or to such other person or address as either the City or Airline may from time to time designate by notice to the other in accordance with this Section.

Section 12.7 Entire Agreement.

This Agreement, including the attached exhibits and any documents incorporated by reference, embodies the entire agreement between the City and Airline relating to the subject matter hereof, and supersedes all prior agreements and understandings, written or oral, expressed or implied, between the City and Airline relating thereto. Except as otherwise provided for herein, this Agreement, including the attached exhibits, may not be changed, modified, discharged, or extended except by written amendment duly and agreeably executed by both parties.

Section 12.8 No Third-Party Beneficiaries.

Each of the parties hereto has entered into this Agreement solely for its own benefit, and it is their intent that no third party shall have a right to claim damages or bring any suit, action, or other proceeding by or against either of the parties hereto because of any breach hereof. Except as otherwise provided for in Section 8.3 hereof, the foregoing provision shall not apply to insurance subrogation rights vested or arising in third parties resulting from insurance policies related to this Agreement.

Section 12.9 Construction of Agreement.

Regardless of which party hereto is responsible for the preparation and drafting of this Agreement, it shall not be construed more strictly against either party.

Section 12.10 Severability.

If any of the terms, conditions, provisions, warranties, or covenants of this Agreement, or any portions thereof, shall contravene or be determined to be invalid under the laws or regulations of the State of Florida or the United States of America, or any of their respective agencies, departments, or subdivisions, such contravention or invalidity shall not invalidate the whole Agreement, but this Agreement shall be construed as if not containing the particular term, condition, provision, warranty, or covenant or portion thereof held to be in contravention or invalid, and the rights and obligations of the parties shall be construed accordingly.

Section 12.11 Survival of Warranties.

All warranties and covenants set forth in this Agreement shall survive the execution, performance, and termination of this Agreement.

Section 12.12 Applicable Law.

This Agreement shall be deemed to have been made in and, shall be construed in accordance with the laws of the State of Florida. Venue for any action arising from this Agreement shall be in Polk County, Florida or United States District Court in and for the Middle District of Florida, Tampa Division.

Section 12.13 Time of Essence.

For purposes of performance and interpretation of compliance under this Agreement, it is agreed by the parties that time is of the essence under this Agreement.

Section 12.14 Counterparts.

This Agreement may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

Section 12.15 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, shortage of material, acts of god, acts of the public enemy, acts of Federal or State Government, weather conditions, riots, rebellion, sabotage, terrorism, pandemic, epidemics in the City, declaration of a state of emergency by a Federal or State Government, or any other circumstances for which it is not responsible or which is not within its control; provided, however, that nothing in this Section is intended or shall be construed to abate, postpone, or in any respect diminish Airline's obligations to make any payments due to the City pursuant to this Agreement. The City shall be under no obligation to supply any service if and to the extent and during any period that the supplying of any such service or the use of any component necessary therefor shall be prohibited, restricted, or rationed by any Governmental Authority or Applicable Laws.

Section 12.16 Liens and Security Interests.

Neither the Airline or anyone claiming by, through or under the Airline, shall have the right to file or place any mechanic's lien or other lien of any kind or character whatsoever, upon the Premises or upon any building or improvement thereon, or upon the interests of the Airline therein. Notice is hereby given that no contractor, subcontractor, or anyone else who may furnish any material, service or labor for any building, improvements, alteration, repairs or any part thereof, shall at any time be or become entitled to any lien thereon. The Airline covenants and agrees to give actual notice thereof in advance to any and all contractors and subcontractors who may furnish or agree to furnish any such material, service or labor. If any person or entity attempts to assert a mechanic's lien against the Premises for improvements made by the Airline, Airline shall hold the City harmless from such claim, including the cost of defense.

Section 12.17 Binding on Successors.

Except as herein otherwise provided, all the terms, covenants and conditions of this Agreement shall be binding upon and inure to the benefit of the legal representatives, successors, assigns, and subsidiaries respectively of the City and Airline.

[Signature Page(s) to Follow]

IN WITNESS WHEREOF, each of the parties hereto have caused their duly authorized representatives to execute this Agreement as of the day and year written below.

CITY OF LAKELAND

AVELO AIRLINES, INC.

H. William Mutz
Mayor

Trevor Yealy
Head of Commercial

ATTEST:

ATTEST:

Kelly S. Koos
City Clerk

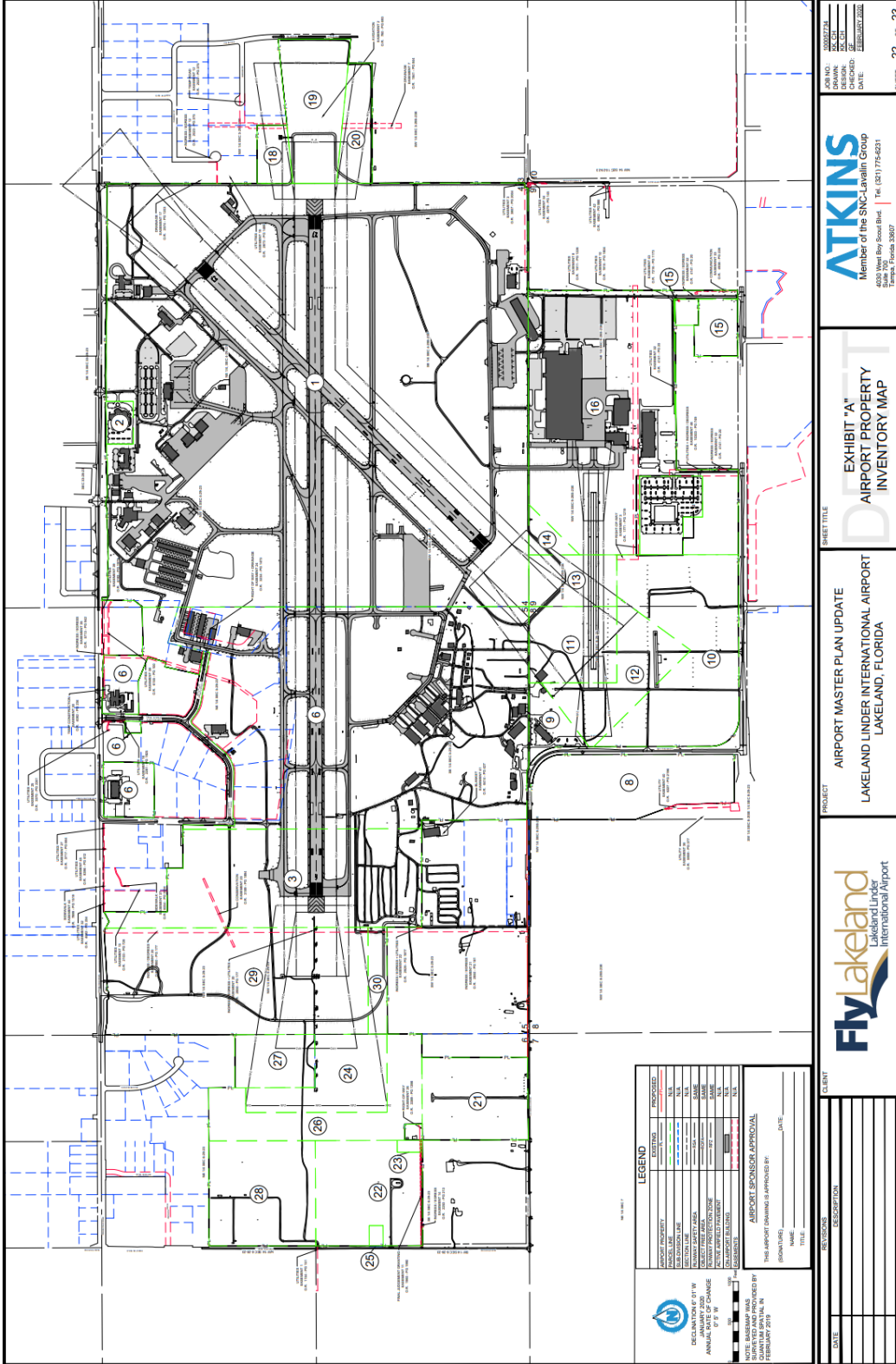
Name Print: _____
Title Print: _____

[SEAL]

Approved as to form and correctness:

Palmer C. Davis
City Attorney

Exhibit A Airport Boundaries



DATE	DESCRIPTION

REVISIONS	CLIENT

LEGEND

EXISTING	PROPOSED
AIRPORT PROPERTY	N/A
PERMITS	N/A
UNDEVELOPED AREAS	N/A
EXISTING RUNWAYS	N/A
EXISTING TAXIWAYS	N/A
EXISTING SAFETY AREAS	N/A
EXISTING OBSTACLE CLEARANCE	N/A
EXISTING PROTECTIVE ZONES	N/A
EXISTING EASEMENTS	N/A
EXISTING UTILITIES	N/A
EXISTING ROADS	N/A
EXISTING UTILITIES	N/A

AIRPORT SPONSOR APPROVAL

THIS AIRPORT DRAWING IS APPROVED BY:

NAME: _____ DATE: _____

SIGNATURE: _____

THIS AIRPORT DRAWING IS APPROVED BY:

NAME: _____ DATE: _____

SIGNATURE: _____

PROJECT: AIRPORT MASTER PLAN UPDATE
LAKELAND LINDER INTERNATIONAL AIRPORT
LAKELAND, FLORIDA

ATKINS
Member of the SNC-Lavalin Group
4050 West Bay Street Blvd. | Tel. (321) 775-4231
Tampa, Florida 33607
www.atkinsglobal.com/usa/america

EXHIBIT "A"
AIRPORT PROPERTY
INVENTORY MAP

PROJECT TITLE

FLY Lakeland
Lakeland Linder International Airport

CLIENT

JOB NO.: 180202724
DRAWN: SAC/CH
CHECKED: JRM/STW
DATE: FEBRUARY 2018
SHEET **22** OF **23**

Exhibit B Premises



Exhibit B (Cont.) Premises

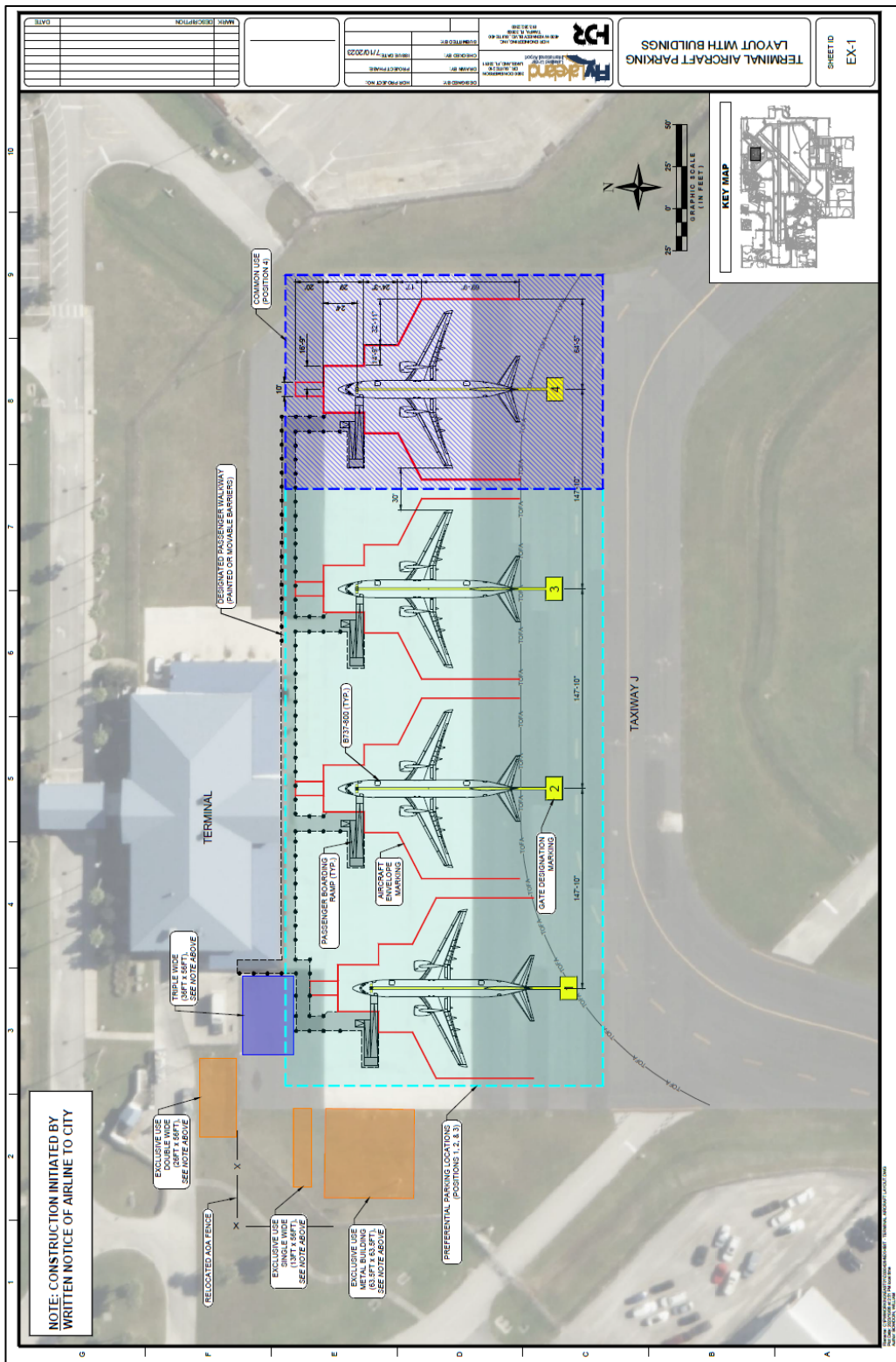


Exhibit C
Federally Required Contract Provisions

A. **Compliance with Nondiscrimination Requirements.** During the performance of this Agreement, Airline for itself, its assignees, and successors in interest (hereinafter collectively referred to as “Airline”) agrees as follows:

1. **Compliance with Regulations:** Airline will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.
2. **Non-discrimination:** Airline, with regard to the work performed by it during the term of this Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of contractors, including procurements of materials and leases of equipment. Airline will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Agreements, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by Airline for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential contractor or supplier will be notified by Airline of Airline’s obligations under this Agreement and the Nondiscrimination Acts And Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** Airline will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts And Authorities and instructions. Where any information required of Airline is in the exclusive possession of another who fails or refuses to furnish the information, Airline will so certify to the City or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of Airline’s noncompliance with the Non-discrimination provisions of this Agreement, the City will impose such sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to, cancelling, terminating, or suspending the Agreement, in whole or in part.
6. **Incorporation of Provisions:** Airline will include the provisions of paragraphs one through six of this Exhibit C in every contract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. Airline will take action with respect to any contract or procurement as the City or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if Airline becomes involved in, or

is threatened with litigation by a contractor, or supplier because of such direction, Airline may request the City to enter into any litigation to protect the interests of the City. In addition, Airline may request the United States to enter into the litigation to protect the interests of the United States.

B. Real Property Acquired or Improved Under the Airport Improvement Program.

Airline for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that in the event facilities are constructed, maintained, or otherwise operated on the property described in this Agreement for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, Airline will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

C. Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program.

Airline for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, and (3) that Airline will furnish its services in compliance with all other requirements imposed by or pursuant to the List of discrimination Acts And Authorities.

D. Title VI List of Pertinent Nondiscrimination Acts and Authorities. During the performance of this Agreement, Airline, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

1. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
2. 49 CFR Part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation-Effectuation of Title VI of The Civil Rights Act of 1964);
3. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
4. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;

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

E. **General Civil Rights Provision.** Airline agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If Airline transfers its obligation to another, the transferee is obligated in the same manner as Airline. This provision obligates Airline for the period during which the property is owned, used or possessed by Airline and the airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

F. **Right of Re-entry.** In the event of breach of any of the above Nondiscrimination covenants, and the City will have the right to terminate the Agreement and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the Agreement had never been made or issued.

G. **Subcontracts.** Airline agrees that it shall insert the above six provisions (Section (A) through Section (F)) in any agreement by which Airline grants a right or privilege to any person, firm, or corporation to render accommodations and/or services to the public under this Agreement.

H. **Fair Labor Standards Act.** This Agreement incorporates by reference the provisions of 29 CFR Part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers. Airline has full responsibility to monitor its own and its subcontractors' compliance with the referenced statute or regulation. Airline must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor - Wage and Hour Division.

I. **Occupational Safety and Health Act.** This Agreement incorporates by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Airline and its subcontractors must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. Airline retains full responsibility to monitor its compliance and any subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). Airline must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor - Occupational Safety and Health Administration.

Exhibit D
Schedule of Rates and Charges

The Landing Fee and Per Turn Fee described below are inclusive of all expenses associated with Airline’s use of the Terminal and Airfield known or anticipated as of the Effective Date, including those expenses associated with the planned future modification and expansion of the Terminal and/or Airfield during the Term of this Agreement, and includes, without limitation, Airline’s use of lobby, ticket counters, bag handling systems, hold room, gate counters, lighting, employee parking, services by third party providers, common use computer systems (hardware, software, licenses, maintenance), public information systems (PA, FID, GIDs, etc.), bag claim areas, common use areas, and related utilities, custodial, trash disposal, security, security services, emergency medical services, law enforcement services, aircraft rescues firefighting services equipment and facilities, and maintenance including but not limited to all buildings, mechanical systems, equipment, systems, surfaces and electrical systems identified in this paragraph. The Landing Fee and Per Turn Fee also includes the use of all ramp facilities including aircraft gate parking positions, apron use, preferential use areas, GSE parking areas, airport supplied GSE, support systems such as ramp lighting, potable water, triturator, current or new required glycol recovery and common storage systems, related utilities, custodial, and maintenance. Maintenance includes all elective and required ramp sealing, repairs, painting, sweeping, winter ops snow and ice clearing and care. The fee is inclusive of all current, temporary, and new ramp surfaces and facilities and ramp related systems.

All fees identified in this schedule of Rates in Charges will only be modified as defined in Section 4.3 of this agreement during the term and extension, if any, of this agreement.

- Landing Fee. The Landing Fee will be calculated as follows: $(MGLW/1,000) \times FEE$. Should the Carrier reach a qualifying number of enplanements as outlined in the following table, the associated fee shall be applied.

Landing Fee (Per 1,000lbs)	Monthly Enplanement Range	
\$0.85	0	8,819
\$0.70	8,820	13,229
\$0.50	13,230	17,639
\$0.30	17,640	22,049
\$0.00	22,050	+

- Per Turn Fee. For the purpose of the Per Turn Fee calculation, each Turn shall be defined as an originating departure. Should the Carrier reach a qualifying number of enplanements as outlined in the following table the associated fee shall be applied.

Per Turn Fee	Monthly Enplanement Range	
\$225.00	0	8,819
\$175.00	8,820	13,229
\$125.00	13,230	17,639
\$75.00	17,640	22,049
\$0.00	22,050	+

- Fuel Flowage Fee. All aviation fuel uplifted to the Airline's aircraft at the Airport shall be subject to the following fuel flowage fee: **three cents (\$0.03) per gallon.**

Exhibit E

Policy Regarding Assignment and Use of Gates and Terminal Facilities

1. Policy Statement & Applicability.

- 1.1. The City is limited to four (4) aircraft parking positions, a permanent hold room and is committing to build a temporary modular hold room. Because of this constraint, the City can generally only accommodate up to two simultaneous or overlapping Airline operations. This policy is intended to maximize and facilitate the efficient use of the Terminal while ensuring the equitable treatment of all Airlines. The City intends to maintain a policy of providing open access to the Airport for Airlines and other aeronautical users of the Airport and achieving an effective utilization of Airport facilities.
- 1.2. The City shall manage the Airport and Terminal and accommodate requests by Airlines for use of the same in accordance with the provisions of this policy, as it may be amended from time to time in consultation with Airline and with written Airline agreement which would not be unreasonably withheld. The decisions of the City under this policy are final.
- 1.3. Airlines shall comply with the procedures, rules, and other provisions of this policy, and provide the most accurate and timely information and schedules possible.

2. Definitions. Except as otherwise provided in this Section, all capitalized terms used in this Policy shall have the meaning set forth in Airline Operating Agreement.

- 2.1. **Airline.** An air carrier providing scheduled or non-scheduled service at the Airport.
- 2.2. **Buffer Period.** The period between a scheduled departure and the next scheduled departure of an aircraft at the gate.
- 2.3. **Existing Scheduled Service.** Passenger service departures to/from any city pair already served by that Airline for at least twelve (12) continuous months except for seasonal service interruptions (not to exceed 150 days). Existing Scheduled Service shall also include service to/from a city pair that has been in continuous operation for less than 12 months so long as the Airline has submitted a Flight Schedule Submission to the City indicating that it intends to maintain the service.
- 2.4. **Flight Schedule Submissions.** A report, to be submitted in advance by an Airline in accordance with Section 3, providing such detail as the City may reasonably require regarding the Airline's requested schedule of flights.
- 2.5. **New Scheduled Service.** Passenger service other than Existing Scheduled Service.

- 2.6. **Operating Agreement.** The Airline Operating Agreement issued by the City to an Airline allowing the Airline to utilize the gates and terminal facilities at the Airport.
- 2.7. **Parking Position.** An apron area established by the City suitable for the parking of aircraft.
- 2.8. **Policy.** This policy for Assignment and Use of Gates and Terminal Facilities.
- 2.9. **Remain Overnight (RON).** An aircraft flight remaining or scheduled to remain at the Airport, after the end of the service day for that aircraft, typically occurring between the hours of 10:00 p.m. of one day and 6:00 a.m. of the following day.
- 2.10. **Scheduled Operation.** An Airline's operation (arrival or departure) that occurs pursuant to a schedule that is published in the Official Airline Guide (OAG) or any successor publication at least ninety (90) days prior to the first day of the month in which Airline's schedule would take effect, and that is also submitted to the City in a Flight Schedule Submission as required under Section 3.
- 2.11. **Terminal Facilities.** Those facilities within the Airport terminal owned by the City and utilized by Airlines during commercial operations, including but not limited to the ticketing counters and stanchions, self-service kiosks, computer terminals, queuing areas, and baggage makeup and handling areas.

3. Scheduling and Assignment Procedures.

- 3.1. All Airlines must make Flight Schedule Submissions quarterly to the City no later than the first (1st) day of the month, four (4) months prior to the quarter in which the requested schedule is to become effective. The flight schedule submission is to cover the subsequent ninety (90) day period, or next quarter. For example, Airlines must make Flight Schedule Submissions for their requested January schedule on or before September 1.
- 3.2. The Flight Schedule Submission shall be provided to the Airport Operations Department in electronic format readable in International Air Transportation Association (IATA) Standard Schedules Information Manual (SSIM) format, or as the City may otherwise reasonably request. Airlines shall identify any flight for which it is requesting any specific equipment or terminal facilities beyond those ordinarily used by the Airline. At a minimum, schedules must include the following information:
 - 3.2.1. Flight Number
 - 3.2.2. IATA 2 Letter Airline Code
 - 3.2.3. Aircraft Model and Series
 - 3.2.4. Origin\Departure Airport

3.2.5. Arrival\Departure Date

3.2.6. Arrival\Departure time in Eastern Standard Time (EST).

3.2.7. Schedule beginning and ending dates.

3.3. A Flight Schedule Submission submitted by an Airline shall be deemed to be effective until superseded by another Flight Schedule Submission or modified.

3.4. After receiving the Flight Schedule Submissions, the City will make reasonable efforts to, within thirty (30) days, notify Airlines if (i) the Flight Schedule Submissions can be accommodated and Airlines may operate the Scheduled Operations as proposed, or (ii) based on the criteria set forth in this policy, there are conflicts between the Flight Schedule Submissions of different Airlines. If the City determines that a conflict exists between the proposed Flight Schedule Submissions of different Airlines, the City will advise the Airlines in conflict and the Airlines shall use commercially reasonable efforts to resolve the conflict. If the Airlines cannot resolve the conflict, they must notify the City as soon as possible, and the City will resolve the conflict under the terms of this policy.

3.5. If an Airline requests changes to an already submitted Flight Schedule Submission (except in the case of a resubmission following a conflict with another Airline), then the provisions regarding late schedule submissions (Section 3.6) shall apply to flight(s) for which there is (i) a change of equipment type that impacts scheduling, or (ii) a change to the scheduled arrival or departure time that would cause the Buffer Period between such flight and the preceding or succeeding flight to be reduced below the Minimum Buffer Period.

3.6. If an Airline requests the use of the gate or terminal facilities with less than the notice required by Section 3.1, such flights will be treated as New Scheduled Service and accommodated only after all requests meeting the notice required by required by Section 3.1 have been accommodated.

3.7. After the Gate schedule is established by the City, Airlines shall not trade scheduled periods or Gates with one another unless they have provided notice to Airport Operations. An Airline may change gates among two of its own aircraft, as long as that change does not impact another Airline's gate assignment.

4. Gate Use and Terminal Facilities Scheduling Restrictions.

4.1. The City will determine if a conflict between two or more Airlines' Flight Schedule Submissions exists based upon the timeframes and periods set forth in this Section 4.

4.2. The Buffer Period between two Scheduled Operations shall not be less than sixty (60) minutes per hold room.

- 4.3. The following Maximum Parking Position Occupancy Periods apply to a Parking Position associated with the Gate(s):

Originating Flight:	60 Minutes
Terminating Flight:	45 Minutes
Through/Turn Flight:	90 Minutes

- 4.4. When in the sole discretion of the City it is necessary to accommodate a Scheduled Operation or emergency, the City may direct an Airline to relocate an aircraft capable of movement from a parking position at the gate to a different parking position if such aircraft (i) fails to depart the Gate at its scheduled time or (ii) occupies a parking position longer than the Maximum Parking Position Occupancy Period. To the extent possible, the City will first direct movement from Parking Positions which have not been designated as Preferential Use Areas. Airline shall ensure sufficient staffing and equipment to relocate, and shall relocate, an aircraft as directed by the City under this paragraph within one (1) hour of the City's request. If the Airline fails to comply with the City's directive, the City may, at its discretion, assess a fee of \$250 for each successive 15-minute period or fraction thereof until the aircraft is moved. After two hours, the fee shall increase to \$500 for each successive 15-minute period. A fee assessed under this paragraph shall not exceed \$5,000 per aircraft per day.

- 4.5. The following hold room Occupancy Periods apply to the Airline's use of the passenger hold room associated with the Gate:

Originating Flight:	90 minutes prior to the scheduled departure of the flight.
Terminating Flight:	N/A, hold room not used.
Through/Turn Flight:	90 minutes prior to the scheduled departure of the flight.

The City will open the Terminal Facilities not less than three hours before the first scheduled departure each day.

- 4.6. If an Airline exceeds the hold room Occupancy Period by more than fifteen (15) minutes because of a weather delay, mechanical problem, crew issue, or any other delay, the City reserves the right to require all of Airline's passengers to vacate the hold room if the hold room Occupancy Period for another, on-time operation is scheduled to begin. Upon the City's request, an Airline shall promptly make an announcement to its passengers and take other measures necessary to ensure the hold room is emptied in a timely manner.
- 4.7. The City reserves the right to extend the Maximum Parking Position Occupancy Period, hold room Occupancy Period, or Terminal Facility Use Periods due to adverse weather conditions, emergencies, or other reasons in its sole discretion.
- 4.8. Originating flights will be given priority assignment over terminating flights subject to Preferential Use Area rights provided for in the Airline's Operating Agreement.

5. Gate Use and Terminal Facility Priority.

- 5.1. Emergency flights shall have priority over all other flights. Every effort will be made to accommodate an emergency flight in a manner which will cause the least impact on the Airlines' operations.
- 5.2. The City will apply the following primary priorities in order to assign all flights to resolve any conflicting requests among or between Airlines:
 - 5.2.1. Airline's Existing Scheduled Service on its Preferential Use Areas.
 - 5.2.2. Airline's New Scheduled Service on its Preferential Use Areas.
 - 5.2.3. Existing Scheduled Service on Common Use Areas.
 - 5.2.4. New Scheduled Service on Common Use Areas.
 - 5.2.5. Charter, itinerant and other non-scheduled flight operations, including by an Airline that operates scheduled flight operations at the Airport, will be accommodated if possible. Any charter, itinerant or other nonscheduled flight operation is subject to reassignment (as to Gate, Terminal Facilities, and operating time) if Scheduled Operations require accommodation.
- 5.3. Flights having the same priority level shall be rescheduled by the City in accordance with the following secondary priorities in order:
 - 5.3.1. Flights will be assigned to the Airline with continuous service and the most departed seats during the prior 12-month period; then
 - 5.3.2. Flights will be assigned in order of largest seating capacity to smallest; then
 - 5.3.3. A turn flight will be assigned before a RON aircraft; then
 - 5.3.4. Flights of Airlines offering yearly service will be assigned before flights of Airlines offering seasonal service. For the purposes of this policy, seasonal service shall mean flight operations by an Airline covering a period of less than six months.
- 5.4. The City reserves the right to require an Airline to relocate its aircraft to another Parking Position or other location on the Airport after deplaning passengers and baggage at the Gate if it is necessary to accommodate the Scheduled Operations of another Airline. To the extent possible, the City will first direct movement from Parking Positions which have not been designated as Preferential Use Areas.
- 5.5. The City may, in its sole discretion, permit a RON flight to remain at a Parking Position or the Gate provided that such flight is the last scheduled arrival for the Gate and the first scheduled departure at the Gate is the following calendar day.

- 5.6. If necessary to accommodate flights from different Airlines, the City may require that Airlines reasonably share such Terminal Facilities for an overlapping period of time.

6. Off-Schedule and Irregular Operations (IROP).

- 6.1. Airlines experiencing an IROP, or other off-schedule operation shall coordinate with other Airlines in good faith to accommodate the IROPs. Airlines shall notify the Airport Director of any voluntary accommodation of IROPs as soon as possible.
- 6.2. In the event that Airlines cannot reach a voluntary accommodation of IROPs, any Airline may request the intervention of the Airport Director. The Airport Director shall make all Gate and Terminal Facility assignment decisions according to the priority levels listed in Section 5, provided that Scheduled Operations and charters operating on time will have priority use of the Gate and Terminal Facilities that have been previously scheduled for such operations. The Airport Director may in his/her discretion consider the secondary priorities listed in Paragraph 5.3 or any other factor (e.g., the severity of the flight delay) in making Gate or Terminal Facility assignment decisions during IROPs.

7. Facility Management.

- 7.1. All Airlines shall conduct their operations on the Gate and in the Terminal Facilities with good judgment and mindful of the operations of other Airlines utilizing the same Gate and Terminal Facilities.
- 7.2. All Airlines shall immediately remove ground support equipment to the approved apron staging area following the departure of their aircraft from the Gate where the next scheduled arrival is that of another Airline.
- 7.3. Prior to and after use, Airlines shall ensure the Gate is properly configured for use by their aircraft and is in a safe operating condition for use by others. This includes, but is not limited to, being clear of equipment and foreign object debris (FOD), and that all GPU cords and PC air hoses are properly stowed. No equipment, cords or hoses may block marked passenger walkways on the apron.
- 7.4. Airlines using the Terminal baggage claim at the same time must coordinate with each other regarding the use of the baggage belt(s). The City will assign baggage belts if the Airlines are unable to resolve use of baggage claim amongst themselves.
- 7.5. Airlines shall utilize the electronic signage provided by the City on the back wall behind the ticket counter and Gate counter for displaying the Airline's logo during its use of the Terminal Facilities. Airlines shall not display any additional signage at ticket counters, walls, or in the queue lines without the prior written permission of the City. Any such signage (including but not limited to bag sizers and Airline specific messaging) must be removed and relocated immediately after use of the Terminal Facilities if another Airline is scheduled to use the counters. Airlines shall ensure that common use Terminal Facilities are kept in neat and clean condition at all times. At

the end of each Terminal Facility Use Period, Airlines shall take reasonable efforts that the Terminal Facilities are available for use by any other Airline, including but not limited to logging out of common use computer terminals, removing Airline-branded signage and other materials, and safely stowing or removing lost passenger baggage.

- 7.6. Airlines shall immediately report any counter or digital display issues to Airport Operations at 863-834-4911.