

**AIRLINE-AIRPORT LEASE AND OPERATING AGREEMENT**

**FOR**

**NORMAN Y. MINETA SAN JOSE INTERNATIONAL AIRPORT**

**BY AND BETWEEN**

**CITY OF SAN JOSE**

**AND**

**COMPANY NAME**

**DOCUMENT REFERENCE NO.**

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## AIRLINE-AIRPORT LEASE AND OPERATING AGREEMENT

THIS AIRLINE-AIRPORT LEASE AND OPERATING AGREEMENT (as amended, modified or altered from time to time, the "Agreement") is made and entered into this [REDACTED] day of [REDACTED], 20[REDACTED] by and between the City of San Jose, a municipal corporation of the State of California ("City"), and [REDACTED], a corporation organized and existing under the laws of [REDACTED] and authorized to do business in the State of California ("Airline").

### WITNESSETH:

WHEREAS, City has the ownership, custody, control and management of the Norman Y. Mineta San Jose International Airport (which, as it now exists or hereafter may be extended, is hereafter called the "Airport," the approximate boundaries of which are shown on **Exhibit A** attached hereto, including all real property easements or any other interest therein as well as all improvements and appurtenances thereto, structures, buildings, fixtures, and all tangible personal property or interest in any of the foregoing, now or hereafter owned, leased, or operated by City) located in Santa Clara County, State of California; and

WHEREAS, City has the legal and sole responsibility for the operation, maintenance, improvement and promotion of the Airport; 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 full power and authority to enter into this Agreement in respect thereof; and

WHEREAS, Airline is duly certificated by the United States Department of Transportation, Federal Aviation Administration, and is engaged in the business of transportation by air of persons, property, mail, parcels and/or cargo; and

WHEREAS, Airline desires to lease certain premises and obtain certain rights, services and privileges in connection with the use of the Airport and its facilities, and City is willing to grant and lease the same to Airline upon the terms and conditions hereinafter stated; and

WHEREAS, Airline and City agree to enter into this Agreement specifying the rights and obligations of the parties with respect to the use and occupancy of the Airport by Airline;

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained, City and Airline do hereby mutually undertake, promise and agree, each for itself and its successors and assigns, as follows:



## Article 1 Definitions

The following words, terms and phrases wherever used in this Agreement shall for the purposes of this Agreement have the following meanings:

1.01 Airport Living Wage Ordinance shall mean Chapter 25.11 of the Municipal Code, as amended from time to time.

1.02 Air Transportation Business shall mean that business operated by Airline at the Airport for the commercial transportation by air of persons, property, mail, parcels and/or cargo.

1.03 Air Transportation Company shall mean a legal entity certificated by the Secretary of Transportation and engaged in the business of scheduled or non-scheduled commercial transportation by air of persons, property, mail, parcels and/or cargo.

1.04 Airfield shall mean those portions of the Airport, including the Terminal Aircraft Aprons and the Cargo Aircraft Aprons, 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 airfield property purchased for noise or other environmental mitigation purposes.

1.05 Airfield Cost and Revenue Center shall include all Debt Service, all direct and indirect Operating Expenses, all Renewal and Replacement Costs and all Revenues attributable to the Airfield.

1.06 Airline Premises shall mean those areas in the Terminal assigned to Airline as Exclusive Use Premises, Preferential Use Premises and Common Use Premises, as defined herein and shown on **Exhibits B and D** attached hereto (when required, these exhibits will be revised in accordance with changes in the designation of Terminal areas as provided herein).

1.07 Airport-Airline Affairs Committee ("AAAC") shall mean collectively the authorized representatives of each Signatory Airline that shall meet from time to time with representatives of City to receive information and provide input from the Signatory Airlines with regard to selected operational and development matters at the Airport.

1.08 Bond Reserve Fund shall mean the fund created by Section 5.02 of the Master Agreement and each account therein.

1.09 Bonds shall mean City of San Jose Airport Revenue Bonds issued pursuant to the Master Agreement.

1.10 Capital Expenditure shall mean an expenditure made to acquire, purchase or construct a single capital item or project for the purpose(s) of improving, maintaining or developing the Airport and shall include expenses incurred for acquisition, development, study, analysis, review, design, or capital planning efforts.

1.11 Cargo Aircraft Aprons shall mean those areas of the Airport that are primarily designated for the parking of cargo aircraft and support vehicles and the loading and unloading of cargo aircraft.

1.12 Chargeable Landings shall mean all Revenue Landings and Non-Revenue Landings except for those Non-Revenue Landings which are of an emergency nature.

1.13 City shall mean the City of San Jose and the person, division, department, bureau, or agency as may from time to time be expressly designated by the City to exercise functions equivalent or similar to those now exercised by the City with respect to rights and obligations of City under this Agreement.

1.14 City Council shall mean the City Council of City.

1.15 Common Use Premises shall mean those areas of the Airport, including without limitation Common Use Gates, Common Use Ticket Counters, Common Use Skycap Positions and baggage areas, not assigned on a preferential use basis (excluding Public Space) but rather used in common by Airline and one or more other Air Transportation Companies.

1.16 Cost and Revenue Centers shall mean those areas or functional activities of the Airport used for the purposes of accounting for Revenues, Operating Expenses, Renewal and Replacement Costs and Debt Service.

1.17 Cost Centers shall mean those areas or functional activities of the Airport used for the purposes of accounting for Operating Expenses, Renewal and Replacement Costs and Debt Service.

1.18 Coverage Amount shall mean: (i) with respect to any Debt Service on Bonds, an amount equal to twenty-five percent (25%) of such Debt Service, and (ii) with respect to Debt Service on Subordinated Indebtedness, an amount equal to the amount by which the Revenues available to pay such Subordinated Indebtedness are required to exceed the Debt Service on such Subordinated Indebtedness pursuant to the applicable Subordinated Financing Agreement.

1.19 Customer Facility Charges ("CFCs") shall mean the fees authorized by Calif. Civil Code § 1936 as such statute currently exists or may be amended during the Term of this Agreement.

1.20 Debt Service shall mean, with respect to outstanding Bonds and Subordinated Indebtedness, any principal, interest, premium, and any other fee or amount (including, without limitation, credit enhancement or liquidity costs, payments with respect to interest rate swaps or other hedging agreements, remarketing and broker-dealer fees, payments required to be made to the United States Treasury for arbitrage rebates [including the cost of calculation of same], and trustee or other fiduciary fees) either paid or accrued for such Bonds and Subordinated Indebtedness, exclusive of amounts funded by PFCs (as defined in Section 1.43), CFCs (as defined in Section 1.19) or federal grants. Except for the purposes of calculating the Coverage Amount (as defined in Section 1.18), Debt Service also shall be exclusive of amounts funded by CFCs (as defined in Section 1.19) or federal grants.

1.21 Deplaned Passenger shall mean any passenger disembarking an aircraft, including any such passenger that shall subsequently board another aircraft of the same or a different Air Transportation Company or the same aircraft previously operating under a different flight number.

1.22 Director shall be the Director of Aviation of City and shall include such person or persons as may from time to time be authorized in writing by City or by the Director or applicable law to act for the Director with respect to any or all matters pertaining to this Agreement.

1.23 Enplaned Passenger shall mean any passenger boarding an aircraft, including any such passenger that previously disembarked from another aircraft of the same or a different Air Transportation Company or from the same aircraft previously operating under a different flight number.

1.24 Environmental Laws shall mean and include all federal, state, and local laws, statutes, ordinances, regulations, resolutions, decrees, and/or rules now or hereinafter in effect, as may be amended from time to time, and all implementing regulations, directives, orders, guidelines, and federal or state court decisions, interpreting, relating to, regulating or imposing liability (including, but not limited to, response, removal, remediation and damage costs) or standards of conduct or performance relating to industrial hygiene, occupational health and/or safety conditions, environmental conditions, or exposure to, contamination by, or clean-up of, any and all Hazardous Materials, including without limitation, all federal or state superlien or environmental clean-up statutes.

1.25 Exclusive Use Premises shall mean any office space, storage area, VIP lounge, employee break room or other area of the Terminal designated by City for exclusive use by Airline as shown on **Exhibit B**.

1.26 FAA shall mean the Federal Aviation Administration or its authorized successor(s).

1.27 Fiscal Year shall mean the annual accounting period of City for its general accounting purposes which, at the time of entering into this Agreement, is the period of twelve (12) consecutive months ending with the last day of June of any year.

1.28 Gate shall mean those portions of the Terminal individually comprised of a passenger loading bridge, if any, a passenger holdroom and a Gate Ramp.

1.29 Gate Ramp shall mean the ramp area associated with the Gate.

1.30 Hazardous Materials shall mean any and all (a) substances, products, by-products, waste, or other materials of any nature or kind whatsoever which are or become listed or regulated under any Environmental Laws, and (b) any materials, substances, products, by-products, 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 Laws 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 or environment or affect industrial hygiene, occupational health or safety, including without limitation, petroleum and/or asbestos materials, products, by-products, or waste.

1.31 Landing Fee shall mean a fee expressed in dollars and cents per thousand pounds of the Maximum Gross Landed Weight of each type of Airline's aircraft and shall be multiplied by the total of all Maximum Gross Landed Weight for all Chargeable Landings of each type of aircraft landed at the Airport by Airline.

1.32 Majority In Interest ("MII") for the Airfield Cost and Revenue Center shall mean such group of Signatory Airlines representing at least fifty percent (50%) of the Signatory Airlines and who together have paid at least fifty percent (50%) of the total Landing Fees paid by Signatory Airlines during the immediately preceding Fiscal Year. MII for the Terminal Cost and Revenue Center shall mean such group of Signatory Airlines representing at least fifty percent (50%) of the Signatory Airlines and who together have (a) paid at least fifty percent (50%) of the total Signatory Airline Terminal Rents for the immediately preceding Fiscal Year and (b) carried at least fifty percent (50%) of the Enplaned Passengers in the immediately preceding Fiscal Year.

1.33 Master Agreement shall mean the Master Trust Agreement which was made and entered into as of July 1, 2001 by and between City and Bank of New York Trust Company, N.A. (successor to BNY Western Trust Company), as Trustee. On June 26, 2001, the City Council adopted Resolution No. 70532 amending and restating the Resolution in the form of the Master Agreement. The Master Agreement provides for the issuance of City of San Jose Airport Revenue Bonds, as supplemented by additional or supplemental resolutions and supplemental trust agreements.

1.34 Maximum Gross Landed Weight shall mean the maximum gross certificated landing weight in one thousand pound units for each aircraft operated at the Airport by Airline as certificated by the FAA or its successor.

1.35 Net Bond Proceeds shall mean the amount of the proceeds of any Bonds which is available for construction or acquisition of projects, net of costs of issuance, reserve amounts, capitalized interest, discount or other amounts paid from Bond proceeds.

1.36 Net Remaining Revenues shall mean, for a given Fiscal Year, the amount equal to Revenues plus Other Available Funds less Operating Expenses less Debt Service less the Coverage Amount (for the current Fiscal Year) less other required fund deposits or payments pursuant to Section 5.02 of the Master Agreement (including required renewal and replacement expenditures and Subordinated Indebtedness, if any).

1.37 Non-Revenue Landing shall mean any aircraft landed by Airline at the Airport for a flight for which Airline receives no revenue, including without limitation emergency flights that shall include any flight that after having taken off from the Airport and without making a landing at any other airport returns to land at the Airport because of meteorological conditions, mechanical or operating causes, or any other reason of emergency or precaution.

1.38 Non-Signatory Airline shall mean any Air Transportation Company that has not entered into an Airline-Airport Lease and Operating Agreement, substantially similar to this Agreement, with City.

1.39 Non-Signatory Operating Agreement shall mean the agreement executed by City and any Non-Signatory Airline pertaining to such Non-Signatory Airline's operations and use of certain facilities at the Airport.

1.40 Operating Expenses shall mean the current expenses, paid or accrued, of operation, maintenance, and ordinary current repairs of the Airport (calculated in accordance with sound accounting principles) and shall include, but not be limited to, insurance premiums, reserves and estimated costs; salaries and wages; benefits; fees for services; costs of materials, supplies and fuel; overhead; letter of credit fees; broker-dealer fees; auction agent fees; trustee fees; bond administration expenses; arbitrage rebate calculation and payment requirements and other similar costs; administrative expenses of City relating solely to the Airport, including engineering, architectural, legal, consultants, and accounting fees and expenses; and other reasonable current expenses calculated in accordance with sound accounting principles as provided above. Operating Expenses shall not include depreciation and obsolescence charges or reserves therefor, amortization of intangibles or other bookkeeping entries of a similar nature, costs of capital additions, replacements, betterments, extensions or improvements to the Airport (which under generally accepted accounting principles are

chargeable to a capital account or to a reserve for depreciation), charges for the payment of principal and interest on any indebtedness heretofore or hereafter issued for Airport purposes, or any operating expenses of special purpose facilities buildings where the lessees thereof are obligated to pay such operating expenses.

1.41 Other Available Funds shall mean amounts (other than Revenues or PFC Revenues) made available to pay Debt Service in any period pursuant to Section 5.03(a) of the Master Agreement and restrictions contained therein. Other Available Funds includes, but is not limited to, rolling debt service coverage amounts, revenue sharing amounts credited to the Terminal Cost and Revenue Center, and grant funds used to pay Debt Service.

1.42 Other Indebtedness shall mean any debt incurred by City for Airport purposes which is outstanding and not authenticated and delivered under and pursuant to the Master Agreement or any Subordinated Financing Agreement.

1.43 Passenger Facility Charges (“PFCs”) shall mean the fees authorized by 49 U.S.C. § 40117 and regulated by 14 CFR Part 158 as such statute and regulations currently exist or as they may be amended during the Term of this Agreement.

1.44 Preferential Use Premises shall mean those portions of the Terminal and Terminal Aircraft Aprons, as shown in **Exhibit D** attached hereto, to which Airline shall have priority of use over other Air Transportation Companies, subject to the provisions of Articles 5 and 6 hereof.

1.45 Public Space shall mean all utility rooms, ductways, janitorial rooms and closets, stairways, hallways, elevators, escalators, entrance-ways, public lobbies and areas, public toilet areas and other areas used for the operation, maintenance or security of the Terminal, even if used solely by City, as shown on **Exhibit C** attached hereto.

1.46 Rentable Terminal Space shall mean the number of square feet of space in the Terminal that is rentable to tenants, including office and administrative space used by the City. Untenantable areas committed for leasing to a future tenant when renovated shall not be considered rentable during the period of such commitment until the applicable lease period commences.

1.47 Renewal and Replacement Costs shall mean the costs for the renewal and replacement of existing facilities at the Airport in accordance with the Master Agreement.

1.48 Resolution shall mean, collectively, that Resolution No. 57794 adopted by the City Council on October 2, 1984, which said Resolution was amended by Resolution No. 57838 on October 16, 1984, and which said Resolution, as amended, provides for the issuance of City of San Jose Airport revenue bonds, as supplemented by additional

or supplemental Resolutions adopted thereafter, and also includes any Resolutions of the City authorizing the issuance of bonds, notes or obligations payable from Airport Revenues on a basis subordinate to any bonds that are outstanding.

1.49 Revenue Landing shall mean a landing of any aircraft by Airline at the Airport for which Airline receives revenue.

1.50 Revenues shall mean income, revenues, receipts and moneys accrued by City in accordance with generally accepted accounting practices, including investment earnings, from or in connection with the ownership or operation of the Airport or any part thereof or the leasing or use thereof, but excluding:

1.50.1 any money received by or for the account of City from the levy or collection of taxes;

1.50.2 moneys received from the State of California or the United States of America to the extent required to be deposited in restricted funds and used for purposes inconsistent with their use as "General Airport Revenues" under the terms of the Master Agreement;

1.50.3 lease deposits and security deposits;

1.50.4 moneys required to be paid to the State of California or the United States of America pursuant to agreements with City;

1.50.5 moneys received from insurance proceeds or settlements or the sale of or upon the taking by or under the threat of eminent domain of all or any part of the Airport;

1.50.6 proceeds from Bonds or Subordinated Indebtedness issued by City or proceeds from loans, indebtedness or other obligations entered into by City;

1.50.7 moneys or securities received by City as gifts or grants, to the extent the use of such moneys or securities is restricted by the donor or grantor to purposes inconsistent with their use as "General Airport Revenues" under the terms of the Master Agreement;

1.50.8 CFC revenues;

1.50.9 PFC revenues;

1.50.10 any revenues from special purpose facilities;

1.50.11 cargo facility charges or similar fees imposed on any cargo operators, cargo facilities or cargo parcels;

1.50.12 the amount of any net positive Landing Fee Estimated Variance and Landing Fee Actual Variance included in the City's budget for subsequent Fiscal Years pursuant to Section 9.06 hereof; and

1.50.13 the amount of any net positive Terminal Rent Estimated Variance and Terminal Rent Actual Variance included in the City's budget for subsequent Fiscal Years pursuant to Section 9.06 hereof.

1.51 Rules and Regulations shall mean Airport's Rules and Regulations governing the conduct of operations at the Airport as well as the City's Terminal Resource Use, Assignment and Scheduling Procedures, as such Rules and Regulations and the City's Terminal Resource Use, Assignment and Scheduling Procedures currently exist or as they may be amended or supplemented during the Term of this Agreement. A copy of City's current Terminal Resource Use, Assignment and Scheduling Procedures is attached as **Exhibit E** to this Agreement.

1.52 Scheduled Airline shall mean an Air Transportation Company performing Scheduled Operations at the Airport.

1.53 Scheduled Operation shall mean a Scheduled 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 so long as such schedule is made available to City at least forty-five (45) days prior to the commencement or rescheduling of the operation.

1.54 Signatory Airline shall mean an Air Transportation Company that (a) signs an agreement with City substantially similar to this Agreement, (b) provides passenger service, (c) leases from City an amount of Exclusive Use Premises in the Terminal deemed sufficient by the Director to support its operation, and (d) at the time it executes its agreement with the City, operates at least one (1) Scheduled Operation, scheduled year round, at least three (3) days per week. An all-cargo Air Transportation Company shall be considered a Signatory Airline if it (a) signs an agreement with City substantially similar to this Agreement, (b) leases from City cargo support space on the Airport for a term at least equal to the Term of this Agreement, (c) guarantees a minimum of 142,000 pounds of Maximum Gross Landed Weight per Scheduled Operation, and (d) at the time it executes its agreement with City, operates at least five (5) Scheduled Operations per week.

1.55 Skycap Positions shall mean areas designated by the Airport on the Terminal departure curb for the passenger and baggage check-in process.

1.56 Subordinated Financing Agreement shall mean a bond resolution, trust agreement, indenture or other financing agreement providing for or authorizing the issuance by City of Subordinated Indebtedness, including an agreement related to the



security or credit enhancement for the Subordinated Indebtedness, as each may be supplemented or amended from time to time.

1.57 Subordinated Indebtedness shall mean any bonds or other financing instrument or obligation subordinate to the Bonds issued pursuant to any Subordinated Financing Agreement.

1.58 Term shall mean the period of time during which Airline's activities at the Airport shall be governed by this Agreement. Said Term shall begin on the Effective Date (as set forth in Article 2 hereof), and, except as otherwise set forth herein, terminate on the termination date set forth in Article 3.

1.59 Terminal Aircraft Aprons shall mean those areas of the Airport that are primarily designated for the parking of passenger aircraft and support vehicles and the loading and unloading of passenger aircraft.

1.60 Terminal shall mean the passenger terminal buildings as set forth in **Exhibit A** attached hereto.

1.61 Terminal Cost and Revenue Center shall include all Debt Service, all direct, indirect and general administrative Operating Expenses, Renewal and Replacement Costs and all Revenues attributable to the Terminal.

1.62 Terminal Rents shall mean the rents effective July 1<sup>st</sup> of each Fiscal Year as determined according to the methods set forth in Section 9.03 hereof.

1.63 Ticket Counter shall mean those areas made available by the Airport for ticketing passengers and receiving baggage. Each Ticket Counter shall consist of one (1) counter capable of processing two (2) passengers simultaneously.

1.64 Turn shall mean the arrival and subsequent departure of an aircraft at a Gate at the Airport for any reason, including any tow to or from a Gate.

Additional words and phrases used in this Agreement but not defined herein shall have the meanings set forth in the Master Agreement or, if not so set forth, shall have their usual and customary meanings.

## Article 2 Effective Date

2.01 Effective Date. This Agreement, along with the determinations of rentals, fees, and charges set forth herein, shall be effective on [REDACTED] (the "Effective Date").

2.02 Cancellation of Prior Agreements. (If applicable) At the Effective Date the following agreement(s) between Airline and City shall terminate: [REDACTED]

### Article 3 Term

3.01 Termination Date. This Agreement shall commence on the Effective Date and shall terminate at midnight on [REDACTED], unless canceled sooner as provided herein.

### Article 4 Premises

4.01 Airline Premises. City does hereby lease and demise to Airline and Airline does hereby lease and accept from City the Exclusive Use Premises, Preferential Use Premises and Common Use Premises designated in **Exhibits B and D** as well as certain Baggage Claim and Baggage Make-up Areas used jointly with other Air Transportation Companies.

4.02 Terminal Equipment. Terminal equipment owned or acquired by City for use by Airline shall remain the property and under the control of City.

4.03 Employee Parking. City will make reasonable efforts to make available area(s) at the Airport for vehicular parking for Airline's personnel employed at the Airport; provided, however, such area(s) shall not be used for: (a) vehicle parking or storage for any period other than such personnel's performance of employment for Airline at the Airport, or (b) parking or storage of trailers, recreational vehicles (RVs) or other oversized vehicles at any time. Usage of any parking area(s) made available by City at the Airport is subject to Article 7 and to the Rules and Regulations. City may impose parking fees for any such employee parking as established by the City Council and as amended by the City Council from time to time.

4.04 Federal Inspection Facilities. City shall designate areas in the Terminal, or elsewhere on the Airport, to be used by agencies of the United States for the inspection of international passengers and their baggage and for the exercise of the responsibilities of said agencies with respect to the movement of persons, property, and cargo to and from the United States.

#### 4.05 Transfer of Operations.

4.05.1 From time to time during the term of this Agreement, part or all of the Airline Premises may be required (1) for implementation of improvements at the Airport; (2) for accommodation of the traveling public; or (3) in order to maximize the use of the Terminal and related facilities by Air Transportation Companies (including Airline) and other tenants, lessees, permittees, and users thereof. In said event, City shall provide thirty (30) days advance written notice of the Director's decision regarding such reallocation and of the schedule for implementation of such reallocation. Director and Airline may agree to reasonable extensions of time necessary to accommodate said reallocation. Airline hereby agrees to comply with any reallocation requirements. In any such reallocation, the actual, reasonable requirements of Airline for terminal

space to accommodate its operations at the Airport shall be given consideration. All moving costs resulting from relocation of Airline in a City-imposed reallocation of space shall be funded by City, subject to rate recovery under Article 9. With respect to any Airline trade fixture and other movable property, if removal from the existing premises and reinstallation at Airline's new premises is possible and not unreasonable, Airline shall not be entitled to a new fixture or to new property. Notwithstanding any provision of this Section to the contrary, Airline shall not be entitled to reimbursement for relocation of or within Common Use Premises.

4.05.2 Amendments to this Agreement which change or modify the description of the Airline Premises only, with no changes to the rates and charges methods set out in Article 9 below, may be executed on behalf of City by the Director.

## **Article 5 Assignment And Use Of Gates**

5.01 No Exclusive Use Gates. All Gates within the Terminal will be for either common use or preferential use in accordance with the terms of this Article. Airline's use of all Gates shall at all times be subject to the Airport Rules and Regulations, which Rules and Regulations include the City's Terminal Resource Use, Assignment and Scheduling Procedures attached as **Exhibit E** to this Agreement and which Rules and Regulations may be amended from time to time after consultation with the Signatory Airlines.

5.02 Definitions. For the purposes of this Article 5, the following terms shall have the following meanings:

5.02.1 "Period of Use" for a Scheduled Operation means the period of time that an Airline is authorized to use a Gate for a scheduled arrival and/or departure pursuant to the Rules and Regulations.

There shall be no Period of Use for which Airline has a scheduling preference under this Article 5 with respect to any operation of Airline that occurs at the Airport pursuant to a published schedule that is not made available to City by Airline within the time limits required for a Scheduled Operation.

5.02.2 "Preferential Use" of a Gate means scheduling preference, over similar operations by another Scheduled Airline, given to a Signatory Airline for the use of a Gate during applicable Periods of Use for its Scheduled Operations.

5.02.3 "Requesting Airline" means a Scheduled Airline without adequate Gate access desirous of operating from the Airport.

5.02.4 "Scheduled Seats" means the average daily number of outbound seats on an Air Transportation Company's Scheduled Operations for the

month of August of each year which is computed by dividing total outbound seats for an Air Transportation Company's Scheduled Operations for the month of August by thirty-one (31).

5.03 Annual Determination by City of the Total Number of Common Use Gates. Airline acknowledges that as of the Effective Date, City has made the annual determination of the number of Common Use Gates for the current Fiscal Year listed on the attached **Exhibit D.** Effective July 1<sup>st</sup> of each Fiscal Year during the Term, the Director shall have sole discretion to determine the total number of Gates to be reserved for use as Common Use Gates during that year (after taking into consideration any recommendations by the Resource Management Advisory Committee, defined in Section 5.09 below). All remaining Gates available for use on July 1<sup>st</sup> of each Fiscal Year will be offered by City to Signatory Airlines for use as Preferential Use Gates to be allocated in accordance with Section 5.04. (Any Gate first becoming available for use after July 1<sup>st</sup> of each Fiscal Year shall be reserved for use as a Common Use Gate for the remainder of that Fiscal Year unless, after taking into consideration any recommendation of the Resource Management Advisory Committee, the Director, in the Director's sole discretion, assigns the Gate to a Signatory Airline as a Preferential Use Gate.) The City shall notify in writing all Signatory Airlines, including Airline, of its determination under this Section 5.03 no fewer than ninety (90) days before July 1<sup>st</sup> of each Fiscal Year during the Term.

5.04 Annual Determination of the Number and Locations of Preferential Use Gates to be Offered to Airline. Airline acknowledges that as of the Effective Date, City has made the annual determination of the number and locations of Preferential Use Gates for the current Fiscal Year, and City has provided Airline with notice of such determination and Gate assignment. Airline has accepted assignment of the Preferential Use Gates listed on the attached **Exhibit D.** Effective July 1<sup>st</sup> of each Fiscal Year, City shall apply the following methodology to determine the total number of Gates that will be offered to each Signatory Airline, including Airline, for its Preferential Use during the following Fiscal Year:

5.04.1 The City shall first divide the number of Scheduled Seats for Airline by the total number of Scheduled Seats for all Signatory Airlines to determine Airline's percentage share of all Scheduled Seats ("Scheduled Seats Percentage").

5.04.2 The City shall then calculate the number of Preferential Use Gates to be offered to Airline by multiplying Airline's Scheduled Seats Percentage by the total number of Gates to be made available for Preferential Use, rounding the product to the nearest whole number; provided, however, that a product less than 0.5 shall not be eligible for rounding under this subsection.

5.04.3 If as a result of rounding, the total number of Preferential Use Gates to be offered to all Signatory Airlines as computed in subsection 5.04.2 is less than the total number of Gates available for Preferential Use as determined under

Section 5.03, City shall offer additional Preferential Use Gates to Signatory Airlines based on the unrounded results of the computations under subsection 5.04.2. The unallocated Preferential Use Gates shall be offered in priority order by first increasing by one (1) the number of Preferential Use Gates to be offered to the Signatory Airline whose unrounded subsection 5.04.2 product is nearest to 0.5 without equaling or exceeding 0.5 and next proceeding to increase by one (1) the number of Preferential Use Gates to be offered to the Signatory Airline whose unrounded subsection 5.04.2 product is second nearest to 0.5 without equaling or exceeding 0.5 and so on until the total number of Preferential Use Gates to be made available to all Signatory Airlines by City is reached.

5.04.4 If as a result of rounding, the total number of Preferential Use Gates to be offered to all Signatory Airlines as computed in subsection 5.04.2 exceeds the total number of Gates available for Preferential Use as determined under Section 5.03, City shall reduce the number of calculated Preferential Use Gates to be offered to Signatory Airlines based on the unrounded results of the computations under subsection 5.04.2. The number of over-allocated Preferential Use Gates shall be reduced in priority order by first reducing by one (1) the number of allocated Preferential Use Gates to the Signatory Airline whose unrounded subsection 5.04.2 product is nearest to 0.5 without being less than 0.5 and next proceeding to reduce by one (1) the number of Preferential Use Gates to be offered to the Signatory Airline whose unrounded subsection 5.04.2 product is second nearest 0.5 without being less than 0.5 and so on until the total number of Preferential Use Gates to be made available to all Signatory Airlines by City is reached.

5.04.5 If any Signatory Airline does not accept assignment of a Preferential Use Gate such Preferential Use Gate shall be designated as a Common Use Gate. In such a situation, City may elect to reassign a Preferential Use Gate not accepted by a Signatory Airline to another Signatory Airline if City determines the number of Common Use Gates determined in Section 5.03 is adequate to accommodate all Air Transportation Company operations needing to use Gates at the Airport. The City may reallocate such Gates using the methodology described in subsection 5.04.3 until all Gates available for assignment as Preferential Use Gates are allocated to Signatory Airlines or rejected for assignment as a Preferential Use Gate. Any Gate rejected for assignment as a Preferential Use Gate by all eligible Signatory Airlines under this subsection will become a Common Use Gate.

5.04.6 If a Preferential Use Gate is designated as a Common Use Gate by operation of subsection 5.04.5 and is not reassigned to a Signatory Airline for Preferential Use, the costs that would otherwise have been assigned to such Gate for rate-setting purposes under subsection 9.03.3 shall be evenly redistributed among all of the other rented Group A Holdroom space as defined in subsection 9.03.2; provided, however, that any Common Use Gate charges paid to City for use of such Gate shall be credited against such redistributed costs.

5.04.7 The City shall in its sole discretion determine the locations of any Preferential Use Gates to be offered to Airline, after taking into consideration the desirability of assigning contiguous Gates for Preferential Use by any given Signatory Airline and minimizing the frequency of changes in the locations of Preferential Use Gates, as well as any recommendations by the Resource Management Advisory Committee.

5.04.8 No later than October 1<sup>st</sup> of each Fiscal Year during the Term, City shall provide written notice to all Signatory Airlines, including Airline, of its annual determination under this Section 5.04 and shall offer Airline the opportunity to be assigned the number of Preferential Use Gates indicated by these calculations. Airline shall provide written notice to City no later than forty-five (45) days after October 1<sup>st</sup> of each Fiscal Year during the Term if it wishes to reject any or all of that number of Gates offered by City for Preferential Use. **Exhibit D** attached to this Agreement displays the assignments (if any) of Preferential Use Gates to each Signatory Airline effective July 1<sup>st</sup> of the current Fiscal Year, including Airline. The City shall update **Exhibit D** by February 1<sup>st</sup> of each Fiscal Year to display the assignments of Preferential Use Gates and the locations of Common Use Gates, effective July 1<sup>st</sup> of each Fiscal Year.

5.04.9 If the numbers or locations of Preferential Use Gates offered to Airline are changed during the Term of this Agreement for any reason other than a year-to-year decrease in the number of Airline's Scheduled Seats as provided in Section 5.04.10 below, Airline may, upon thirty (30) days written notice to City, terminate its rights to those portions of the Exclusive Use Premises that are no longer proximate to the Preferential Use Gates offered to Airline. Upon Airline's request, City shall use reasonable efforts to provide Airline with substitute Exclusive Use Premises more proximate to newly assigned Preferential Use Gates assigned to Airline for the remaining Term. City shall issue a revised premises notice to Airline documenting the deletion or substitution of any Exclusive Use Premises under this Section. In such a situation, the reasonable costs of relocating the Preferential Use Gates assigned to Airline or any Signatory Airline plus the reasonable costs of Airline's or each Signatory Airline's tenant improvements at the substitute Exclusive Use Premises when constructed with City's consent under Section 12.04 of this Agreement shall be paid by City and included in the Airline Terminal Revenue Requirement calculated under subsection 9.03.1 of this Agreement.

5.04.10 If the number of Preferential Use Gates offered to Airline is reduced during the Term of this Agreement as the result of a year-to-year decrease in Airline's Scheduled Seats Percentage, City may, upon thirty (30) days written notice to Airline, terminate Airline's rights to use those portions of the Exclusive Use Premises that are no longer proximate to the Preferential Use Gates offered to Airline and that are no longer necessary, in the Director's reasonable discretion, to support Airline's operations at Airline's remaining Preferential Use Gates. In such a situation, City shall issue a revised premises notice to Airline documenting the termination of any portion of

Airline's Exclusive Use Premises under this section. Airline's surrender of any such Exclusive Use Premises shall be subject to the terms of Article 7 of this Agreement.

5.05 City Scheduling Rights at Preferential Use Gates. The City shall have the right, upon reasonable notice to Airline, to schedule at a Preferential Use Gate arrivals and departures by a Requesting Airline at all periods of time other than Airline's Periods of Use of that Preferential Use Gate. In accommodating City in its right to schedule such operations, Airline shall allow and provide for use of its facilities or equipment (not including ground service equipment or other proprietary equipment) at the Preferential Use Gate or permit use of City equipment and podiums as may be required for the efficient use of the Preferential Use Gate by a Requesting Airline. The City shall, whenever it is practical to do so, consider the availability of Common Use Gates and any recommendations by the Resource Management Advisory Committee before scheduling Requesting Airline arrivals and departures at any Preferential Use Gates. Notwithstanding the foregoing and any other provision of this Article 5, City shall have the right, upon reasonable notice to Airline, to accommodate at a Preferential Use Gate arrivals and departures by a Requesting Airline during Airline's Periods of Use of that Preferential Use Gate if Airline is not utilizing the Preferential Use Gate during the Period of Use for a Scheduled Operation. If an arrival or departure of Airline that would have utilized one of Airline's Preferential Use Gates is early or late and Airline is prevented from utilizing any of its Preferential Use Gates because they are already being utilized by Requesting Airlines, City shall, whenever possible, accommodate Airline's arrival or departure on a Common Use Gate at no additional charge to Airline for its use of the Common Use Gate, and Airline shall continue to be entitled to the credit referenced in Section 5.06 below.

5.06 Charges for Use of Gate by Another Carrier. Any Requesting Airline that is accommodated at any of Airline's Preferential Use Gates shall be required to pay City the same charges for use of the Gate that it would have been required to pay for use of a Common Use Gate. The City shall provide a credit to Airline for one-half of the amount of any such Gate-use payment. As a condition of accommodation on any of Airline's Preferential Use Gates, the Requesting Airline shall pay all reasonable towing, Remain Overnight (RON) fees and other charges related to the accommodations that are assessed by Airline.

5.07 Gate Accommodation Conditions. As a condition of accommodation on any of Airline's Preferential Use Gates, the Requesting Airline shall have executed an agreement that is substantially in the form of this Agreement or a Non-Signatory Operating Agreement, as applicable, through which the Requesting Airline is bound by insurance and indemnification obligations that are substantially similar to the obligations set forth herein. These insurance and indemnification obligations shall inure to the benefit of the Airline as a third-party beneficiary for any period of accommodation, and Airline shall not be required to accommodate a Requesting Airline at its Preferential Use

Gates if the Requesting Airline's insurance and indemnification obligations are not satisfied.

5.08 City's Control of Common Use Gates. The City shall retain exclusive control of the use of all Common Use Gates.

5.09 Resource Management Advisory Committee. The Director shall establish a Resource Management Advisory Committee (the "Committee") that is composed of representatives designated by City and representatives of the Signatory Airlines designated by the AAAC. The Committee shall review and make recommendations to City about the numbers of Gates to be reserved for use as Common Use Gates during any Fiscal Year, about the locations within the Terminal of Common Use Gates and Preferential Use Gates, about the numbers and locations within the Terminal of Common Use Ticket Counters and Preferential Use Ticket Counters (in accordance with Article 6 below) and about the numbers and locations of Common Use and Preferential Use Skycap Positions (in accordance with Section 6.10 below). The Committee shall consider both the operational efficiency (from the perspectives of City, the Signatory Airlines and any Non-Signatory Airlines) and the customer service implications of its recommendations. The final recommendations of the Committee shall be advisory only, and all final determinations with respect to the items listed above shall be made by the Director in the Director's sole discretion.

5.10 Gate Podium Equipment. The City reserves the right to install shared use equipment for passenger processing ("Shared Use Equipment") at all Common Use and Preferential Use Gates. Notwithstanding the foregoing, City will not install Shared Use Gate Podium Equipment at the counter at any of Airline's Preferential Use Gates where Airline objects, in writing, no later than thirty (30) days after receiving City's notice of intent to install Shared Use Gate Podium Equipment; provided, however, that if Airline fails to object, City may proceed with the installation. Notwithstanding the foregoing, if Airline objects to the installation of Shared Use Gate Podium Equipment at the counter at any of Airline's Preferential Use Gates, City shall be entitled to install Shared Use Gate Podium Equipment (including an adequate computer connection) at a roll-away counter that may be used at Airline's Preferential Use Gates so that any Preferential Use Gate may be used by any Air Transportation Company at the Airport.

## **Article 6 Assignment And Use Of Ticket Counters**

6.01 No Exclusive Use of Ticket Counters. All Ticket Counters within the Terminal will be for either common use or preferential use in accordance with the terms of this Article. Airline's use of all Ticket Counters shall at all times be subject to the Airport Rules and Regulations, which Rules and Regulations include the City's Terminal Resource Use, Assignment and Scheduling Procedures attached as **Exhibit E** to this Agreement and which Rules and Regulations may be amended from time to time after consultation with the Signatory Airlines.



6.02 Definitions. For the purposes of this Article 6, the definitions that are set forth in Section 6.02 hereof shall apply, except as specified otherwise below.

6.02.1 “Period of Use” for a Scheduled Operation means the period of time that an Airline is authorized to use a Ticket Counter for a scheduled departure pursuant to the Rules and Regulations.

There shall be no Period of Use for which Airline has a scheduling preference under this Article 6 with respect to any departure of Airline that occurs at the Airport pursuant to a published schedule that is not made available to City by Airline within the time limits required for a Scheduled Operation.

6.02.2 “Preferential Use” of a Ticket Counter means scheduling preference over similar operations by another Scheduled Airline given to a Signatory Airline for the use of a Ticket Counter during applicable Periods of Use for its Scheduled Operations.

6.02.3 “Requesting Airline” means a Scheduled Airline without adequate Ticket Counter access desirous of operating from the Airport.

6.03 Annual Determination by City of the Total Number of Common Use Ticket Counters. Airline acknowledges that as of the Effective Date, City has made the annual determination of the number of Common Use Ticket Counters for the current Fiscal Year listed on the attached **Exhibit D**, and City has provided Airline with notice of such determination. Effective July 1<sup>st</sup> of each Fiscal Year during the Term, the Director shall have sole discretion to determine the total number of Ticket Counters to be reserved for use as Common Use Ticket Counters during that year (after taking into consideration any recommendations by the Resource Management Advisory Committee). All remaining Ticket Counters available for use on July 1<sup>st</sup> of each Fiscal Year will be offered by City to Signatory Airlines for use as Preferential Use Ticket Counters to be allocated in accordance with Section 6.04. (Any Ticket Counter first becoming available for use after July 1<sup>st</sup> of each Fiscal Year shall be reserved for use as a Common Use Ticket Counter for the remainder of that Fiscal Year unless, after taking into consideration any recommendation of the Resource Management Advisory Committee, the Director, in the Director’s sole discretion, assigns the Ticket Counter to a Signatory Airline as a Preferential Use Ticket Counter.) The City shall notify in writing all Signatory Airlines, including Airline, of its determination under this Section 6.03 no fewer than ninety (90) days before July 1<sup>st</sup> of each Fiscal Year during the Term.

6.04 Annual Determination of the Number and Locations of Preferential Use Ticket Counters to be Offered to Airline. Airline acknowledges that as of the Effective Date, City has made the annual determination of the number and locations of Preferential Use Ticket Counters for current Fiscal Year, and City has provided Airline with notice of such determination and Ticket Counter assignment. Airline has accepted assignment of the Preferential Use Ticket Counters listed on the attached **Exhibit D**.

Effective July 1<sup>st</sup> of each Fiscal Year, City shall apply the following methodology to determine the total number of Ticket Counters that will be offered to each Signatory Airline, including Airline, for its Preferential Use during the following Fiscal Year:

6.04.1 City shall allocate two (2) Ticket Counters for the Airline's first Preferential Use Gate under Article 5, and the City shall allocate one (1) additional Ticket Counter for each additional Preferential Use Gate granted to Airline under this Agreement. This same method shall be applied to all Signatory Airlines.

6.04.2 If additional Preferential Use Ticket Counters remain available after the allocation for all Signatory Airlines that is detailed in Section 6.04.1 above, Airline shall be entitled to one (1) additional Preferential Use Ticket Counter for each unallocated Preferential Use Gate that Airline is entitled to accept under Section 5.04.3 regardless of whether Airline accepts the allocation of any such Preferential Use Gate under this Agreement.

6.04.3 If the total number of Preferential Use Ticket Counters to be offered to all Signatory Airlines as computed in subsection 6.04.1 exceeds the total number of Ticket Counters available for Preferential Use as determined under Section 6.03, City shall reduce the number of calculated Preferential Use Ticket Counters to match the available Preferential Use Ticket Counters. The allocation of the over-allocated Preferential Use Ticket Counters shall be reduced accordingly based on the over-allocation process for Preferential Use Gates that is detailed in Section 5.04.4 until the total number of Preferential Use Ticket Counters offered to all Signatory Airlines by City matches the total number of Preferential Use Ticket Counters that are available.

6.04.4 If any Signatory Airline does not accept assignment of a Preferential Use Ticket Counter, such Preferential Use Ticket Counter shall be designated as a Common Use Ticket Counter. In such a situation, City may elect to reassign a Preferential Use Ticket Counter not accepted by a Signatory Airline to another Signatory Airline if City determines the number of Common Use Ticket Counters determined in Section 6.03 is adequate to accommodate all Air Transportation Company operations needing to use Ticket Counters at the Airport. The City may reallocate such Ticket Counters using the methodology described in subsection 6.04.2 until all Ticket Counters available for assignment as Preferential Use Ticket Counters are allocated to Signatory Airlines or rejected for assignment as a Preferential Use Ticket Counter. Any Ticket Counter rejected for assignment as a Preferential Use Ticket Counter by all eligible Signatory Airlines under this subsection will become a Common Use Ticket Counter.

6.04.5 If a Preferential Use Ticket Counter is designated as a Common Use Ticket Counter by operation of subsection 6.04.4 and is not reassigned to a Signatory Airline for Preferential Use, the costs that would otherwise have been assigned to such Ticket Counter for rate-setting purposes under subsection 9.03.4 shall be evenly redistributed among all of the other rented Group A Ticket Counter space as

defined in subsection 9.03.2; provided, however, that any Common Use Ticket Counter charges paid to City for use of such Ticket Counter shall be credited against such redistributed costs.

6.04.6 The City shall in its sole discretion determine the locations of any Preferential Use Ticket Counters to be offered to Airline, after taking into consideration the desirability of assigning contiguous Ticket Counters for Preferential Use by any given Signatory Airline and minimizing the frequency of changes in the locations of Preferential Use Ticket Counters as well as any recommendations by the Resource Management Advisory Committee.

6.04.7 No later than October 1<sup>st</sup> of each Fiscal Year during the Term, City shall provide written notice to all Signatory Airlines, including Airline, of its annual determination under this Section 6.04 and shall offer Airline the opportunity to be assigned the number of Preferential Use Ticket Counters indicated by these calculations. Airline shall provide written notice to City no later than forty-five (45) days after October 1<sup>st</sup> of each Fiscal Year during the Term if it wishes to reject any or all of that number of Ticket Counters offered by City for Preferential Use. **Exhibit D** attached to this Agreement displays the assignments (if any) of Preferential Use Ticket Counters to each Signatory Airline, including Airline. The City shall update **Exhibit D** by February 1<sup>st</sup> of each Fiscal Year to display the assignments of Preferential Use Ticket Counters and the locations of Common Use Ticket Counters, effective July 1<sup>st</sup> of each Fiscal Year.

6.05 City Scheduling Rights at Preferential Use Ticket Counters. City shall have the right, upon reasonable notice to Airline, to schedule at a Preferential Use Ticket Counter departures by a Requesting Airline at all periods of time other than Airline's Periods of Use of that Preferential Use Ticket Counter. In accommodating City in its right to schedule such operations, Airline shall allow and provide for use of its facilities or equipment at the Preferential Use Ticket Counter or permit use of City equipment and podiums as may be required for the efficient use of the Preferential Use Ticket Counter by a Requesting Airline. The City shall, whenever it is practical to do so, consider the availability of Common Use Ticket Counters and any recommendations by the Resource Management Advisory Committee before scheduling Requesting Airline arrivals and departures at any Preferential Use Ticket Counters. Notwithstanding the foregoing and any other provision of this Article 6, City shall have the right, upon reasonable notice to Airline, to accommodate at a Preferential Use Ticket Counter arrivals and departures by a Requesting Airline during Airline's Periods of Use of that Preferential Use Ticket Counter if Airline is not utilizing that Preferential Use Ticket Counter during the Period of Use for a Scheduled Operation. If a departure of Airline that would have utilized one of Airline's Preferential Use Ticket Counters is early or late and Airline is prevented from utilizing any of its Preferential Use Ticket Counters because they are already being utilized by Requesting Airlines, City shall, whenever possible, accommodate Airline's departure on a Common Use Ticket Counter at no

additional charge to Airline for its use of the Common Use Ticket Counter, and Airline shall continue to be entitled to the credit referenced in Section 6.06 below.

6.06 Charges for Use of Ticket Counter by Another Carrier. Any Requesting Airline that is accommodated at any of Airline's Preferential Use Ticket Counters shall be required to pay City the same charges for use of the Ticket Counters that it would have been required to pay for use of a Common Use Ticket Counter. The City shall provide a credit to Airline for one-half of the amount of any such Ticket Counter-use payment.

6.07 Ticket Counter Accommodation Conditions. As a condition of accommodation on any of Airline's Preferential Use Ticket Counters, the Requesting Airline shall have executed an agreement that is substantially in the form of this Agreement or a Non-Signatory Operating Agreement, as applicable, through which the Requesting Airline is bound by insurance and indemnification obligations that are substantially similar to the obligations set forth in this Agreement. These obligations shall inure to the benefit of the Airline as a third-party beneficiary during any period of accommodation, and Airline shall not be required to accommodate a Requesting Airline at its Preferential Use Ticket Counters if the Requesting Airline's obligations are not satisfied.

6.08 City's Control of Common Use Ticket Counters. The City shall retain exclusive control of the use of all Common Use Ticket Counters.

6.09 Ticket Counter Computer Equipment. The City reserves the right to install Shared Use Equipment at all Common Use and Preferential Use Ticket Counters on a position-by-position basis; provided, however, that before installing Shared Use Equipment at any Common Use or Preferential Use Ticket Counters, the Director shall ask the Resource Management Advisory Committee for a non-binding recommendation with respect to the positions to be selected for installation. Airline shall remove any Ticket Counter Computer Equipment installed by Airline at Preferential Use Ticket Counters upon thirty (30) days written notice from Director. Any removal of Ticket Counter Computer Equipment installed by Airline during the Term of this Agreement shall be subject to the provisions of Section 17.03.2 hereof.

6.10 Skycap Positions.

6.10.1 Each Fiscal Year during the Term hereof the Director shall assign Skycap Positions to each Signatory Airline in approximately the same proportions as Ticket Counters have been assigned, and Preferential Use Skycap Positions and Common Use Skycap Positions shall be assigned by the Director in approximately the same proportions as Preferential Use and Common Use Ticket Counters have been assigned.

6.10.2 Before assigning Skycap Positions, the Director shall ask the Resource Management Advisory Committee for a recommendation with respect to the assignments, but the final determination with respect to the assignment of Skycap Positions shall be made by the Director in the Director's sole discretion.

6.10.3 City reserves the right to install Shared Use Equipment at all Skycap Positions on a position-by-position basis; provided, however, that before installing Shared Use Equipment at any Skycap Positions, the Director shall ask the Resource Management Advisory Committee for a non-binding recommendation with respect to the Skycap Positions to be selected for installation. In conjunction with any such installation, the City may require the removal of Airline's proprietary self-service equipment by Airline from the Skycap Positions.

6.11 Self-Service Devices. Airline may only install proprietary Self-Service Devices for passenger processing at the Airport with the Director's approval. Airline shall remove any proprietary Self-Service Devices installed by Airline at the Airport upon thirty (30) days written notice from Director. Any removal of Self-Service Devices installed during the Term of this Agreement shall be subject to the provisions of Section 17.03.2 hereof.

## **Article 7 Grant Of Rights To Use Airport**

7.01 Airline Rights and Privileges. In addition to all rights granted elsewhere in this Agreement, Airline shall have the right to use, in common with others so authorized by City, areas (other than areas leased preferentially or exclusively to others), facilities, equipment, and improvements at the Airport for the operation of Airline's Air Transportation Business and all activities reasonably necessary for such operations, including but not limited to:

7.01.1 The landing, taking off, flying over, taxiing, towing, and conditioning of Airline's aircraft and, in areas designated by City, the extended parking, servicing, deicing, loading or unloading, storage, or maintenance of Airline's aircraft and support equipment subject to the availability of space and subject to such reasonable charges and regulations as City may establish; provided, however, Airline shall not permit 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.

7.01.2 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, cargo, and express services, and reasonable and customary airline activities.

7.01.3 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 Air Transportation Business; provided, however, said training and testing shall be incidental to the use of the Airport in the operation by Airline of its Air Transportation Business and shall not hamper or interfere with the use of the Airport and its facilities by others entitled to the use of same. City reserves the right to restrict or prohibit such training and testing operations which it deems to interfere with the use of the Airport, including excessive noise as reasonably determined by City.

7.01.4 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 Air Transportation Business, including, but not limited to, Airline's code sharing partner(s), or (iii) when a comparable grade and type of fuel desired by others is not available at the Airport except from Airline.

7.01.5 The purchase at the Airport or elsewhere of fuels, lubricants, and any other supplies and services from any person or company, subject to City's right to require that each provider of services and/or supplies to Airline secures a permit from City to conduct such activity at the Airport, pays required fees, and abides by all reasonable rules and regulations established by City. No discriminatory limitations or restrictions shall be imposed by City that interfere with such purchases; provided, however, nothing herein shall be construed to permit Airline to store aviation fuels at the Airport. This Agreement grants no right to store aviation fuels; the granting of any right to store aviation fuels shall be subject to the execution of a separate agreement between Airline and City.

7.01.6 The servicing by Airline or its suppliers of aircraft and other equipment being utilized at the Airport by Airline on the Terminal Aircraft Aprons or such other locations as may be designated by the Director.

7.01.7 The loading and unloading of persons, property, cargo, parcels and mail by motor vehicles or other means of conveyance reasonably approved by City at Terminal Aircraft Aprons or such other locations as may be designated by the Director; provided Airline shall not use Terminal Aircraft Aprons immediately adjacent to the passenger Terminal to load or unload all-cargo aircraft unless otherwise authorized in writing by the Director.

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

7.01.9 The installation, maintenance, and operation, at no cost to City, of such radio communication, company telephone system, computer, meteorological and aerial navigation equipment and facilities on Airline's Exclusive Use or Preferential Use Premises as may be necessary or convenient for the operation of its Air Transportation Business; provided, however, that except for equipment and facilities already in place, such installations shall be subject to the prior written approval of the Director. Prior to any written approval, Airline shall provide the Director with all necessary supporting documentation related to such installations. Notwithstanding anything set forth herein to the contrary, the Director may at any time during the Term hereof require Airline to utilize the City's data communications system at the Airport to link Airline's separate operating locations within the Airport.

7.01.10 Such rights of way as may reasonably be required by Airline for communications, computer equipment, teletype, telephone, interphone, conveyor systems and power, and other transmission lines in areas preferentially-leased by Airline, subject to the availability of space and/or ground areas as determined by the Director. City reserves the right to require the execution of a separate agreement between City and Airline for the lease and use of such space and/or ground area outside Terminal areas or to provide such service directly to Airline.

7.01.11 The installation of personal property, including furniture, furnishings, supplies, machinery, and equipment, in Airline's Exclusive Use Premises as Airline may deem necessary, useful or prudent for the operation of its Air Transportation Business (the installation of such personal property in Airline's Preferential Use Premises shall be permitted only as provided in the Airport Rules and Regulations). Title to any such personal property (including removable trade fixtures but excluding other fixtures and improvements to the Terminal) shall remain with Airline, subject to the provisions of this Agreement.

7.01.12 The construction of modifications, finishes, and improvements in Airline's Exclusive Use and Preferential Use Premises as Airline may deem necessary or prudent for the operation of its Air Transportation Business, subject to the provisions of Article 12.

7.01.13 Airline shall have the right to ingress to and egress from the Airport and Airline 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 49 CFR Part 1542, applicable laws, and City's right in accordance with its applicable law to establish reasonable and nondiscriminatory Rules and Regulations governing (i) access by 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 of City shall not unreasonably interfere with the operation of Airline's Air Transportation Business. 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, so long as a means of ingress and egress reasonably equivalent is concurrently made available to Airline. Notwithstanding the foregoing, as part of the obligations of Airline set forth in Article 14, Airline hereby releases and discharges City from any and all claims, demands, or causes of action which Airline may now or at any time hereafter have arising or alleged to arise out of such a closing or re-routing.

7.01.14 Subject to any applicable Airport Rules and Regulations, nothing in this paragraph shall prohibit Airline from (i) providing food and beverages, at Airline's sole cost and expense, in its non-public Exclusive Use Premises solely for Airline's employees, (ii) installing or maintaining vending machines in Airline's non-public Exclusive Use Premises solely for Airline's employees, the type, kind, and locations of which shall be subject to the approval of the Director and (iii) providing under a separate agreement with City for its own flight kitchen for catering services to its passengers and crews for consumption aboard aircraft or (iv) selling or providing food and beverages in a "VIP room" or similar private club at the Airport so long as Airline (A) purchases all alcoholic beverages or other beverages and any related food service items sold at or within any such area from an Airport concessionaire or (B) pays a concession fee related for the sale of all alcoholic beverages or other beverages and any related food service items sold at or within any such area (such concession fee shall be equal to the concession fee(s) for related items in the other areas of the Terminal).

7.01.15 The rights and privileges granted to Airline pursuant to this Article 7 may be exercised on behalf of Airline by other Signatory Airlines or contractors authorized by City to provide such services at the Airport, subject to the prior written approval of City and further subject to all laws, rules, regulations, fees and charges and the terms hereof as may be applicable to the activities undertaken.

7.01.16 Airline may exercise on behalf of any other Air Transportation Company having an operating agreement or permit with City any of the rights granted to Airline herein, so long as Airline is concurrently exercising those same rights in the operation of Airline's own Air Transportation Business at the Airport, subject to the provisions hereof.

7.01.17 Airline may only enter into agreements providing for pay telephones or internet access for the public in its airline clubs and VIP rooms, and Airline shall not enter into any agreements providing for pay telephones or internet access for the public anywhere else within the Airport.

## 7.02 Exclusions and Reservations.

7.02.1 Nothing in this Article 7 shall be construed as authorizing Airline to conduct any business separate and apart from the conduct of its Air Transportation Business.



7.02.2 Airline shall not knowingly interfere or permit interference with the use, operation, or maintenance of the Airport, including but not limited to, the effectiveness or accessibility of the drainage, sewerage, water, communications, fire protection, utility, electrical, or other systems installed or located from time to time at the Airport.

7.02.3 Airline shall not engage in any activity prohibited by City's approved FAR Part 150 Noise Compatibility Study and Preferential Runway Use Program as amended or supplemented from time to time in accordance with applicable law.

7.02.4 As soon as possible after release from proper authorities, Airline shall remove any of its disabled aircraft from the Airfield or Terminal Aircraft Aprons, shall place any such disabled aircraft only in such storage areas as may be reasonably designated by the Director, and shall store such disabled aircraft only upon such terms and conditions as may be reasonably established by City. In the event Airline shall fail to remove any of its disabled aircraft as expeditiously as possible, City may, but shall not be obligated to, cause the removal of such disabled aircraft. Airline shall pay to City, upon receipt of an invoice, the costs incurred for such removal plus fifteen percent (15%). Nonpayment of such invoice shall be deemed a default of this Agreement pursuant to Article 15.

7.02.5 Airline shall not do or permit to be done anything, either by act or failure to act, that shall cause the cancellation or violation of the provisions, or any part thereof, of any policy of insurance for the Airport or that shall cause a hazardous condition so as to increase the risks normally attendant upon operations permitted by this Agreement. If Airline shall do or permit to be done any act not permitted under this Agreement, or fail to do any act required under this Agreement, regardless of whether such act shall constitute a breach of this Agreement, which act or failure, in and of itself, causes an increase in City's insurance premiums, Airline shall immediately remedy such actions and/or pay the increase in premiums, upon notice from City to do so.

7.02.6 Airline shall not maintain or operate in the Terminal or elsewhere at the Airport a cafeteria, restaurant, bar, or cocktail lounge for the purpose of selling food and beverages to the public or to Airline's employees and passengers, except as may be permitted under 7.01.14 above.

7.02.7 City may, at its sole option, install or cause to be installed advertising and revenue generating devices, including vending machines, in Common Use and Preferential Use Premises; provided, however, that to the extent permitted by law City shall not install or cause to be installed advertising for Airline's direct competitors in Airline's Preferential Use Premises (Airline shall purchase all advertising for any product or service other than air service arriving at or departing from the Airport from the Airport's advertising concessionaire). City may also, at its sole option, install pay telephones or internet access in any part of the Terminal excluding airline clubs and

VIP rooms. City shall be entitled to reasonable access upon Airline Premises to install or service such telephones, internet access and devices. Income generated by such telephones, internet access and devices shall be accounted for in the same manner as other non-airline Revenues of the Airport.

7.02.8 Airline shall not dispose of nor permit any other person to dispose of any waste material into the sanitary or storm sewers at the Airport or elsewhere (whether liquid or solid) unless such waste materials or products are first properly treated. Nothing herein shall prohibit Airline from disposing of human waste taken from its aircraft in proper designated sanitary sewer facilities.

7.02.9 Except as otherwise provided in Section 7.01.14 above, Airline shall not install or operate amusement machines or vending machines.

7.02.10 Airline shall not disturb any asbestos at the Airport without first obtaining all permits and approvals as required by applicable Environmental Laws or by the City.

7.02.11 The rights and privileges granted Airline pursuant to this Article 7 shall be subject to any and all reasonable and nondiscriminatory Rules and Regulations established by City, as such Rules and Regulations may be amended from time to time, and to the provisions of this Agreement. Airline covenants and agrees that it will not violate or permit its agents, contractors or employees to violate any such Rules and Regulations. City may prescribe civil penalties and injunctive remedies for violations of any Rules and Regulations, and the same may be applied to Airline for violations of Airline's agents, contractors or employees.

7.02.12 Airline acknowledges and agrees that Shared Use Equipment shall be used in all Common Use Premises, except as otherwise provided herein.

7.02.13 Any and all rights and privileges not specifically granted to Airline for its use of and operations at the Airport pursuant to this Agreement are hereby reserved for and to City.

### 7.03 Affiliates.

7.03.1 For purposes of this Agreement, one or more other Air Transportation Companies may be designated as an "Affiliate" by a Signatory Airline provided that each such other Air Transportation Company (a) is a wholly-owned subsidiary or code-share partner of the Signatory Airline and (b) is party to a Non-Signatory Operating Agreement with City.

7.03.2 Airline may request designation of another Air Transportation Company as an Affiliate by submitting to the City the designation form attached as **Exhibit F-1** with sufficient documentation to demonstrate to the satisfaction of the

Director that the conditions for designating the Affiliate have been met. The designation of an Affiliate shall become effective on the first day of the calendar month following at least 15 (fifteen) days from receipt by City of the designation in the form of **Exhibit F-1**. The designation shall remain in effect for so long as the conditions for designating the Affiliate continue to be met and until Airline withdraws its designation of the Affiliate by submitting to City the withdrawal of designation form attached as **Exhibit F-2**. A withdrawal of designation of an Affiliate shall become effective on the last day of the calendar month following at least 15 (fifteen) days from receipt by City of the withdrawal of designation in the form of **Exhibit F-2**.

7.03.3 If Airline designates one or more other Air Transportation Companies as its Affiliate, Airline shall be responsible for the actions and obligations of each of its Affiliates, including without implied limitation the obligation to pay all charges owed to City on account of Affiliate activities at the Airport and the duty to provide information, insurance and indemnification. Airline will be responsible for ensuring that each of its Affiliates complies with all terms and conditions of this Agreement to the same extent that Airline is responsible for compliance, including without implied limitation compliance with the environmental provisions of this Agreement. Airline shall be the financial guarantor of all amounts owed to City by each of Airline's Affiliates.

7.03.4 For so long as Airline is a Signatory Airline and the conditions of this Section 7.03 are satisfied, each of Airline's Affiliates shall be treated as if it were Airline for purposes of Article 5, Article 6, Article 9 and Article 12 of this Agreement.

## **Article 8 Operation And Maintenance Of The Airport**

8.01 Designation of Operation and Maintenance Responsibilities. In addition to the obligations of Airline and City set forth in this Article 8, responsibilities for maintenance, cleaning, and operation of the Airport shall be as set forth in **Exhibit G**, attached hereto and made a part hereof.

### 8.02 City Obligations.

8.02.1 City shall, with reasonable diligence, prudently develop, improve, and at all times maintain and operate the Airport in a manner consistent with airports of similar size with qualified personnel and keep the Airport in an orderly, clean, neat and sanitary condition and good repair, unless such maintenance, operation, or repair shall be Airline's obligation pursuant to Section 8.03 and **Exhibit G**.

8.02.2 City shall, to the extent it is legally able so to do, use reasonable efforts to keep the Airport and its aerial approaches free from ground obstruction for the safe and proper use thereof by Airline.

8.02.3 City shall provide facilities for and the delivery of heating and air conditioning to those areas of the Terminal presently having facilities for the same and to such additional areas as may be agreed upon by the parties from time to time and permitted by appropriate authority. City shall also provide electricity for illumination and shall replace lamps where appropriate in the Airport other than in the Exclusive Use Premises, which shall be the responsibility of Airline. Finally, City shall provide water and sanitary sewer connections to those areas of the Terminal presently having facilities for the same and to such additional areas as may be agreed upon by the parties from time to time. Water and sanitary sewer connections are for normal domestic usage. In the event Airline requires water for commercial or maintenance purposes, the same may be furnished to and paid for by Airline as mutually agreed upon by Airline and City.

8.02.4 Notwithstanding the foregoing, as part of the obligations of Airline set forth in Article 14, Airline hereby releases and discharges City from any and all claims, demands, or causes of action which Airline may now or at any time hereafter have arising or alleged to arise out of City's failure to furnish all or any of such services to be provided in accordance with this Section 8.02 and **Exhibit G**.

8.02.5 City shall maintain (i) loading bridges owned by City; (ii) preconditioned air systems owned by City; (iii) associated 400 Hertz units owned by City; (iv) baggage conveyors owned by City; and (v) other systems that may be acquired by City in the future.

8.02.6 City shall, in the operation of the Airport, comply with all applicable local, state and federal laws, rules and regulations.

8.02.7 City shall use reasonable efforts to manage and control the growth of operation and maintenance expenses for the Airport. City will set as its goal a limit of five percent (5%) in growth for "controllable" expenses in any given year. City shall have no obligation, however, to keep "controllable" expenses below this goal if, in Director's sole discretion, this is impractical during the Term hereof.

### 8.03 Airline Obligations.

8.03.1 Notwithstanding anything set forth herein to the contrary, Airline shall keep its Exclusive Use Premises in an orderly, clean, neat and sanitary condition and shall be responsible for the repair and maintenance thereof.

8.03.2 In addition, Airline shall keep all of its Airline Premises free of debris and in an orderly condition; provided, however, this requirement shall not be construed to mean Airline shall have those janitorial or other responsibilities designated to be those of City pursuant to Section 8.02 above and **Exhibit G**.

8.03.3 Airline shall keep, at its own expense, the Terminal Aircraft Aprons and Cargo Aircraft Aprons free of fuel, oil, debris and other foreign objects during Airline's use thereof.

8.03.4 Notwithstanding anything set forth herein to the contrary, Airline shall operate and maintain, at its own expense, any improvements and/or equipment installed by Airline or City for the exclusive use of Airline.

8.03.5 Should Airline fail to perform its material obligations hereunder, City shall have the right to perform such activities and to enter the Airline Premises as required to do so; provided, however, other than in a case of emergency, City shall give Airline reasonable advance written notice of non-compliance, not to exceed ten (10) days, prior to the exercise of this right. If such right is exercised, Airline shall pay City, upon receipt of invoice, the cost of such services plus fifteen percent (15%). Nonpayment of such invoice shall be deemed a default of this Agreement, pursuant to Article 15.

8.03.6 Airline shall keep its flight information on the multi-user flight information display system ("MUFIDS") at the Airport current in the manner that best suits Airline's operations. At the request of Airline, City shall provide a computer connection to Airline so that Airline can access and update this system.

## Article 9 Rates And Charges

9.01 Rate-Setting Methods. The Landing Fees and Terminal Rents to be charged by City and paid by Airline (and by all other Signatory Airlines) for its use of the Airport from the Effective Date until the expiration or earlier termination of this Agreement shall be calculated using the rate-setting methods set forth in this Article. All rates and charges shall be at reasonable and non-discriminatory rates based on City's costs, as defined in this Agreement, for the facility or service provided to and used by Airline.

9.02 Landing Fee. The Landing Fee effective July 1<sup>st</sup> of each Fiscal Year shall be determined according to the method set forth in this Section.

9.02.1 Airfield Revenue Requirement. The City will calculate the Airfield Revenue Requirement by computing the sum of the following budgetary items for each Fiscal Year:

(a) Debt Service allocable to Airfield capital projects funded from Bonds or Subordinated Indebtedness; *plus*

(b) the Coverage Amount applicable to the Debt Service amount calculated pursuant to subsection (a) above; *plus*

(c) the annual Operating Expenses allocable to the Airfield;  
*plus*

(d) an amount equal to (i) the total deposits needed to replenish the Bond Reserve Fund to required levels times (ii) a fraction, the numerator of which is the total amount of Net Bond Proceeds allocable to the Airfield and the denominator of which is the total amount of Net Bond Proceeds; *plus*

(e) the share of annual costs for renewal and replacement allocable to the Airfield; *less*

(f) Revenues (other than Landing Fees charged to Air Transportation Companies) that are accrued by City for the use of the Airfield, including Revenue accrued from Landing Fee premiums paid by Non-Signatory Airlines under Section 9.09, and Revenue accrued from charges paid for parking aircraft at Common Use Gates; *less*

(g) the Coverage Amount calculated pursuant to subsection (b) above for the immediately preceding Fiscal Year.

9.02.2 Projected Landed Weight. The City will project the aggregate Maximum Gross Landed Weight for all aircraft carrying passengers or cargo in commercial service that are expected to land at the Airport during the year.

9.02.3 Calculation of Landing Fee. The City will calculate the Landing Fee by dividing the Airfield Revenue Requirement by the projected landed weight, yielding a Landing Fee to be expressed in dollars and cents per one thousand pounds in landed weight. Landing Fees will be levied upon Airline based upon the aggregate Maximum Gross Landed Weight of all Chargeable Landings for aircraft operated by Airline that land at the Airport during the year.

9.03 Terminal Rents. The Terminal Rents effective July 1<sup>st</sup> of each Fiscal Year shall be determined according to the method set forth in this Section.

9.03.1 Airline Terminal Revenue Requirement. The City will begin to calculate the aggregate Airline Terminal Revenue Requirement by computing the sum of the following budgetary items for each Fiscal Year:

(a) Debt Service allocable to Terminal capital projects funded from Bonds or Subordinated Indebtedness; *plus*

(b) the Coverage Amount applicable to the Debt Service amount calculated pursuant to subsection (a) above; *plus*

(c) the annual Operating Expenses allocable to the Terminal;  
*plus*

(d) an amount equal to (i) the total deposits needed to replenish the Bond Reserve Fund to required levels times (ii) a fraction, the numerator of which is the total amount of Net Bond Proceeds allocable to the Terminal and the denominator of which is the total amount of Net Bond Proceeds; *plus*

(e) the share of annual costs for renewal and replacement allocable to the Terminal, *less*

(f) the Coverage Amount calculated pursuant to subsection (b) above for the immediately preceding Fiscal Year.

The City will then divide that sum by the total amount of Rentable Terminal Space and multiply the resulting quotient by the total square feet of Airline Premises at the Airport, yielding the revenue requirement (the "Airline Terminal Revenue Requirement") to be met by all Airlines. In accordance with Section 9.10 of this Agreement, the City shall credit the Air Transportation Company share of any Net Remaining Revenues against the Airline Terminal Revenue Requirement, yielding the "Net Airline Terminal Revenue Requirement."

9.03.2 Distribution of the Net Airline Terminal Revenue Requirement.

The City will distribute the aggregate Net Airline Terminal Revenue Requirement calculated in accordance with subsection 9.03.1 into three cost assignment groups: Group A (Ticket Counters, Holdrooms, Skycap Positions, VIP Rooms and Airline Ticket Offices); Group B (Baggage Claim and Other Offices); and Group C (Baggage Make-up and Operations). The costs assigned to the rented space within each of these groups shall bear the following relativities to each other on a square foot basis:

Group A (Ticket Counters, Holdrooms, Skycap Positions, VIP Rooms and Airline Ticket Offices):	1.00
Group B (Baggage Claim and Other Offices):	0.80
Group C (Baggage Make-up and Operations):	0.50

For rate-setting purposes, the costs per square foot of rented space in each of these three groups will be normalized so that the aggregate costs assigned to all three groups will equal the Net Airline Terminal Revenue Requirement.

9.03.3 Charges for Use of Gates.

(a) Calculation of the Gate Revenue Requirement. The City will calculate the Gate Revenue Requirement applicable to each Gate by multiplying the total square footage of all holdrooms associated with all Common Use and Preferential Use Gates by the per-square foot costs for Group A space and then dividing that product by the total number of Gates.

(b) Calculation of Common Use Gate Charges. The City will calculate the rate for use of Common Use Gates by multiplying the Gate Revenue Requirement by the total number of Common Use Gates and then dividing that product by the total number of Turns on all Common Use Gates during the Fiscal Year. Common Use Gate charges will be levied upon Airline on the basis of the total number of Turns it makes at Common Use Gates during the Fiscal Year.

(c) Calculation of Preferential Gate Use Charges. The rate for use of Preferential Use Gates will equal the Gate Revenue Requirement. Preferential Gate use charges will be levied upon Airline on the basis of the total number of Preferential Use Gates assigned to Airline for the Fiscal Year.

(d) Aircraft Parking Charges. In addition to the charges for the use of Common Use Gates calculated in accordance with subsection 9.03.3(b) above, City will levy upon Airline an aircraft parking charge, as established by resolution of the City Council and as amended by the City Council from time to time, for each aircraft that parks at a Common Use Gate for more than the minimum periods as specified in the City Council resolution.

#### 9.03.4 Charges for Use of Ticket Counters.

(a) Calculation of the Ticket Counter Revenue Requirement. The City will calculate the Ticket Counter Revenue Requirement applicable to each Ticket Counter by multiplying the total square footage of all Ticket Counters (both Common Use and Preferential Use Ticket Counters) by the per-square foot costs for Group A space and then dividing that product by the total number of active Ticket Counters (Ticket Counters that are neither reserved for Common Use nor assigned for Preferential Use will not be included in the active Ticket Counter figure).

(b) Calculation of Common Use Ticket Counter Charges. The City will calculate the rate for use of Common Use Ticket Counters by multiplying the Ticket Counter Revenue Requirement by the total number of active Common Use Ticket Counters and then dividing that product by the total number of hours of use of all Common Use Ticket Counters during the Fiscal Year. Common Use Ticket Counter charges will be levied upon Airline on the basis of the total number of hours of use it makes of Common Use Ticket Counters during the Fiscal Year (any portion of any hour shall be rounded up).

(c) Calculation of Preferential Use Ticket Counter Charges. The rate for use of Preferential Use Ticket Counters will equal the Ticket Counter Revenue Requirement. Preferential Ticket Counter charges will be levied upon Airline on the basis of the total number of Preferential Use Ticket Counters assigned to Airline for the Fiscal Year.



9.03.5 Charges for Use of Baggage Areas.

(a) Calculation of Baggage Make-up Charges. The City will calculate the Revenue requirement applicable to Baggage Make-up Areas by multiplying the square footage of all Baggage Make-up Areas by the per-square foot cost for Group C space. The City will then calculate charges for the use of Baggage Make-up Areas by allocating twenty percent (20%) of that Revenue requirement equally among all Airlines and by dividing eighty percent (80%) of that Revenue requirement by the total number of passengers enplaning during the Fiscal Year to determine the Baggage Make-up charge per Enplaned Passenger. Charges for the use of Baggage Make-up Areas will be levied upon Airline on the basis of the sum of its equal share of twenty percent (20%) of the Revenue requirement plus the product of the total number of passengers it enplanes during the Fiscal Year times the per-passenger Baggage Make-up charge.

(b) Calculation of Domestic Baggage Claim Charges. The City will calculate the Revenue requirement applicable to Baggage Claim Areas serving domestic Scheduled Operations by multiplying the square footage of all such Baggage Claim Areas by the per-square foot cost for Group B space. The City will then calculate charges for the use of domestic Baggage Claim Areas by allocating twenty percent (20%) of that Revenue requirement equally among all Airlines with scheduled domestic service and by dividing eighty percent (80%) of that Revenue requirement by the total number of passengers deplaning from domestic flights arriving during the Fiscal Year to determine the Domestic Baggage Claim charge per Deplaned Passenger. Charges for the use of domestic Baggage Claim Areas will be levied upon Airline on the basis of the sum of its equal share of twenty percent (20%) of the Revenue requirement plus the product of the total number of passengers it deplanes from domestic Scheduled Operations arriving during the Fiscal Year times the per-passenger Domestic Baggage Claim charge.

9.03.6 Charges For Use of Exclusive Use Premises. The City will calculate the annual rental rate for the use of office space, Airline Ticket Offices, VIP lounges and other Exclusive Use Premises by multiplying the square footage of such space by the per-square foot cost for the applicable Group. Charges for the use of such Exclusive Use Premises will be levied upon Airline on the basis of the total square footage of such space assigned to Airline.

9.03.7 Charges for Use of the FIS Facility and International Baggage Claim Area. City will levy upon Airline charges for the use of the FIS Facility and the Baggage Claim Area serving international Scheduled Operations as established by the City Council and as amended by the City Council from time to time.

9.03.8 Charges for the Use of Storage Space. The annual rental rate for the use of storage space will equal the per-square foot costs for Group C space.

Charges for the use of storage space shall be levied upon Airline on the basis of the total square footage of such space assigned to Airline.

9.04 Illustration of Calculations. **Exhibit H** attached to and incorporated in this Agreement illustrates the calculation of rates and charges in accordance with the methods set forth in this Article based upon the budget and projected levels of airport activity for Fiscal Year **Enter Year**.

9.05 Mid-year Adjustments.

9.05.1 If it appears to City, on the basis of information it is able to accumulate during the course of a Fiscal Year during the Term, including information pursuant to Section 9.07 of the Agreement, that the budgeted Airfield or Terminal costs or projected landed aircraft weight or rented Terminal space it used in calculating the Landing Fees or Terminal Rents then in effect are likely to vary by more than ten percent (10%) from actual results at the Airport, or if changes in Landing Fees or Terminal Rents are required by the terms and conditions of the Master Agreement or any Subordinated Financing Agreement, City may make adjustments to the Landing Fees or Terminal Rents (or both) at mid-year or at such other time during the Fiscal Year as the need for such an adjustment becomes apparent to City.

9.05.2 The City shall provide Airline with a minimum of thirty (30) days advance written notice of any adjustments under this Section 9.05.

9.06 Adjustments-to-Actual. The Landing Fees and Terminal Rents established by City at the inception of each Fiscal Year will be separately recalculated by City during its budget cycle for the following Fiscal Year in accordance with the methods set forth in this Article and on the basis of then-current estimates of cost and activity levels ("Estimated Variance"). Any resulting Estimated Variance will be included in City's budget for the following Fiscal Year ("Estimated Variance Fiscal Year"). The City will use reasonable efforts by no later than October 31 of the Estimated Variance Fiscal Year to recalculate the Landing Fees and Terminal Rents of the Estimated Variance in accordance with the methods set forth in this Article. If it is determined that the indicated actual Landing Fees or Terminal Rents of the Estimated Variance would vary from the Landing Fees or Terminal Rents initially calculated for that Fiscal Year ("Actual Variance"), City shall include the Actual Variance into City's budget for the Fiscal Year following the Estimated Variance Fiscal Year; provided, however, that where the Actual Variance exceeds the Estimated Variance, City may adjust the Landing Fees and Terminal Rents (or both) for the current Fiscal Year in accordance with subsection 9.05.1. By way of example: if during the budget cycle for Fiscal Year **Enter Year**, the City's recalculations of the Fiscal Year 2008 Landing Fee on the basis of then-current, but preliminary information showed that the Revenue from the Fiscal Year **Enter Year** Landing Fee would exceed the Airfield Revenue Requirement by \$1,000,000 as a result of unanticipated growth in landed weights during Fiscal Year **Enter Year**, this "Estimated Variance" of \$1,000,000 would be included as a credit in prospectively setting the

Landing Fee for Fiscal Year **Enter Year**, the “Estimated Variance Fiscal Year.” If, during Fiscal Year **Enter Year**, the City’s further recalculation of the Fiscal Year **Enter Year** Landing Fee on the basis of actual cost and activity levels showed that Revenue from the Fiscal Year Landing Fee would actually exceed the Airfield Revenue Requirement by \$1,500,000 as a result of unanticipated growth in landed weights during Fiscal Year **Enter Year**, this “Actual Variance” would yield an additional credit of \$500,000 to be given in setting the Landing Fee for Fiscal Year **Enter Year** .

## 9.07 Activity Reports.

### 9.07.1 Information to be Supplied by Airline.

(a) Not later than the tenth (10<sup>th</sup>) day of each month, Airline shall file with City separate written reports (“Activity Reports”) on forms provided by City and included as samples in **Exhibit I**, attached hereto, for activity conducted by Airline during said month and for activity handled by Airline for each Air Transportation Company not having an agreement with City providing for its own submission of activity data to City. Such Activity Reports shall include, but not be limited to, operations data; revenue Enplaned Passengers; Deplaned Passengers; connecting passengers; through-passengers; and pounds of cargo, mail, and express shipments. City shall have the right to rely on said Activity Reports in determining rentals and charges due hereunder. Airline shall have full responsibility for the accuracy of said reports. Payment deficiencies due to incomplete or inaccurate Activity Reports shall be subject to interest charges as set forth in Section 10.04. If the monthly Activity Reports are not provided on or before the tenth (10<sup>th</sup>) day of each month as required herein, Airline shall pay as a delinquency fee for administrative expenses incurred by City an amount of Twenty-Five Dollars (\$25.00) (as established by, and as may be amended by, City Council resolution) per day for each day that the report is late until such date as the monthly Activity Report is submitted to the Director. City’s assessment of the delinquency fee shall be in addition to any other remedies that City may have in law or in equity, including termination and revocation of this Agreement and all rights and privileges granted herein.

(b) Airline shall at all times maintain and keep records reflecting the activity statistics of Airline’s activities at the Airport to be reported pursuant to subsection 9.07.1(a). Such records shall be retained by Airline for a period of four (4) years subsequent to the activities reported therein, or such other retention period as set forth in applicable Federal Aviation Regulations, and upon prior written notice to Airline shall be made available, at no cost to City, at San Jose, California for audit and/or examination by City or its duly authorized representative during all normal business hours. Airline shall produce such books and records within thirty (30) calendar days of City’s notice to do so or pay all reasonable expenses, including but not limited to transportation, food, and lodging, necessary for an auditor selected by City to audit said books and records.

(c) The cost of an audit, with the exception of the aforementioned expenses, shall be borne by City; provided, however, the total cost of said audit shall be borne by Airline if either or both of the following conditions exist:

(i) The audit reveals an underpayment of more than one percent (1%) of rentals, fees, and charges due on an annual basis hereunder, as determined by said audit; or

(ii) Airline has failed to maintain true and complete records in accordance with Section 9.07.1(b).

(d) City may elect to collect Airport activity information using an electronic reporting system rather than the system that is described above. If City elects to utilize such a system during the Term of this Agreement, Airline shall make every reasonable effort to comply with the reporting requirements applicable thereto. Airline shall continue to provide Activity Reports as described above until such time as Airline commences use of any such electronic reporting system as implemented by City.

#### 9.08 Consultation.

9.08.1 Landing Fees and Terminal Rents. No later than May 1 of each year during the Term City shall disclose to all Signatory Airlines the revised Landing Fees and Terminal Rents that City expects to charge for the next Fiscal Year, effective July 1. No later than June 1 of each year during the Term City shall consult with the Signatory Airlines to discuss the proposed revised Landing Fees and Terminal Rents. In connection with this consultation, City shall provide to Airline the calculations City has made in determining the revised charges with reasonable supporting documentation. The City's obligation to consult with Airline shall not limit in any way City's rate-setting powers under this Agreement or otherwise cause any delay in the effectiveness of revised charges. No later than June 10th of each year during the Term, City shall notify Airline of the actual Landing Fees and Terminal Rents it will charge for the next Fiscal Year, effective July 1.

9.08.2 Renewal and Replacement Costs. As part of its budgeting and rate-setting process, City shall determine the annual Renewal and Replacement Costs (including the renewal and replacement costs that are the subject of subsections 9.02.1(e) and 9.03.1(e) above). City shall include descriptions of renewal and replacement projects with the revised Landing Fee and Terminal Rent disclosure described in subsection 9.08.1. As part of the consultation process described in that subsection, City agrees to fully consider the comments and recommendations of the Signatory Airlines prior to finalizing the allowance for renewal and replacement for the ensuing Fiscal Year.

9.09 Non-Signatory Premium. City shall charge Non-Signatory Airlines a twenty-five percent (25%) premium on all rates and charges set forth under this Article 9.

9.10 Revenue-Sharing. In any Fiscal Year in which there are Net Remaining Revenues generated at the Airport and all requirements of the Master Agreement and any Subordinated Financing Agreement have been satisfied, including the minimum rate covenant requirement, the Net Remaining Revenues shall be divided 50/50 between the Airport and all Air Transportation Companies. If the actual Net Remaining Revenues exceed the projected Net Remaining Revenues in the forecast shown in **Exhibit J** attached hereto (the "Airport Forecast") that was created at the inception of this Agreement by the Airport's consultants, the Air Transportation Company share of the difference will be deposited into the Rate Stabilization Fund up to a cap of \$9 million. Once the Rate Stabilization Fund has been fully funded or in the event that the actual Net Remaining Revenues do not exceed the projected Net Remaining Revenues, the Air Transportation Company share of the balance of the Net Remaining Revenues shall be applied as a credit to the Airline Terminal Revenue Requirement for the following year, thus reducing Terminal Rents for the following year as provided in Section 9.03.1 above. The first \$1 million of City's share of any Net Remaining Revenues shall be retained by the Airport in a discretionary fund to be used for any lawful Airport purpose. The remaining balance of City's share shall (at least during the initial Term of this Agreement) be applied to the capital costs of Phase I or Phase II of City's Master Plan Program (see Article 12 hereof).

9.11 Rate Stabilization Fund.

9.11.1 The "Rate Stabilization Fund" shall be a fund of up to \$9 million that is maintained by City. Notwithstanding anything set forth herein to the contrary, once the Rate Stabilization Fund reaches a balance of \$9 million City shall not deposit any additional sums into this fund until the balance falls below \$9 million. Interest earned on the Rate Stabilization Fund will be credited to the Fund until the total in the Fund reaches \$9 million. So long as the Rate Stabilization Fund contains \$9 million, any interest earned on the sum that would otherwise be credited to the Fund will be deposited into the "Revenue Fund" established pursuant to the Master Agreement.

9.11.2 As part of City's rate-setting process, the budgeted cost per Enplaned Passenger ("CPE") for each Fiscal Year (the "Budgeted CPE") will be compared to the applicable CPE in the Airport Forecast (the "Projected CPE"). In any year in which the Budgeted CPE is higher than the Projected CPE, the amount needed to lower the Budgeted CPE to the Projected CPE will be deducted from the Rate Stabilization Fund and credited against Landing Fees or Terminal Rents as part of the rate-setting process to the extent that funds are available in the Rate Stabilization Fund for this purpose. In any year in which (a) the Budgeted CPE is lower than the Projected CPE; and (b) the Rate Stabilization Fund contains less than \$9 million, City may increase the Budgeted CPE up to the Projected CPE to fund the Rate Stabilization Fund

up to \$9 million by raising the otherwise-determined Airline Terminal Revenue Requirement or Airfield Revenue Requirement.

9.12 Extraordinary Coverage Protection. Airline acknowledges that in order to satisfy the Coverage Amount for Debt Service on Bonds and Subordinated Indebtedness, Airline shall be required to make extraordinary coverage protection payments in addition to the Landing Fees and Terminal Rents otherwise established by this Article 9 in any Fiscal Year in which the amount of Revenues (less any credits for Landing Fees and Terminal Rents as set forth in Sections 9.10 and 9.11 above) less Operating Expenses is projected to be less than the sum of the Debt Service plus the Coverage Amount applicable thereto. Any amounts that must be collected for such extraordinary coverage protection payments shall be allocated to the Airfield Revenue Requirement or the Airline Terminal Revenue Requirement.

## Article 10 Payments

10.01 Terminal Rent. Payments of one-twelfth (1/12) of the total annual Terminal Rent for Airline's Preferential Use and Exclusive Use Premises shall be due in advance, without demand or invoice, on the first day of each month. Said Terminal Rent shall be deemed delinquent if payment is not received by the tenth (10) day of the month. With the written approval of the Director, in the Director's sole discretion, Airline may submit payments of Terminal Rent in accordance with a written payment plan to be prepared by Airline.

10.02 Landing Fees. Payment of Airline's Landing Fees shall be due fifteen (15) days from City's issuance of an invoice and shall be deemed delinquent if not received within ten (10) days of the due date.

10.03 Other Fees and Charges. Payment for all other fees and charges due hereunder shall be due as of the due date stated on City's invoice. Said fees and charges shall be deemed delinquent if payment is not received within thirty (30) days of the stated date of such invoice.

10.04 Payment Delinquencies. City shall provide notice of any and all payment delinquencies, including payments of any deficiencies which may be due as a result of City's estimates of activity pursuant to Section 10.05 below or due to an audit performed pursuant to subsection 9.07.1(b) herein; provided, however, interest at the rate of eighteen percent (18%) per annum shall accrue against any and all delinquent payment(s) from the due date until the date payments are received by City. This provision shall not preclude City from canceling this Agreement for default in the payment of rentals, fees, or charges, as provided for in Article 15 hereof, or from exercising any other rights contained herein or provided by law.

10.05 Estimates. In the event Airline fails to submit its monthly Activity Reports as required in Section 9.07.1, City shall estimate the rentals, fees, and charges due from Airline based upon the highest month of the previous twelve (12) month's activity reported by Airline and issue an invoice to Airline for same. If no activity data is available, City shall reasonably estimate such activity and invoice Airline for same. Airline shall be liable for any deficiencies in payments based on estimates made under this provision; payment for said deficiencies shall be deemed due as of the date such rental fee or charge was due and payable. If such estimate results in an overpayment by Airline, City shall apply such overpayment as a credit against subsequent amounts due for such rentals, fees, and charges from Airline; provided, however, Airline shall not be entitled to any credit for interest on payments of such estimated amounts.

10.06 Proration. In the event Airline's obligations with respect to Airline Premises or any rights, licenses, or privileges granted hereunder shall commence or terminate on any date other than the first or last day of the month, Airline's rentals, fees, and charges shall be prorated on the basis of the number of days such premises, facilities, rights, licenses, services, or privileges were enjoyed during that month.

10.07 Payment Process. All payments due and payable hereunder shall be paid in lawful money of the United States of America, without deduction or set off, by check made payable to City and delivered to:

Payment Processing – Airport  
Finance Department  
City of San Jose  
200 East Santa Clara Street  
San Jose, CA 95113-1905

10.08 Payment Acceptance. The acceptance by City of any payments hereunder shall not preclude City from verifying the accuracy of any reports submitted by Airline to City or recovering from Airline any additional payments to City that are actually due.

10.09 Security for Performance.

10.09.1 Airline shall provide City on the Effective Date of this Agreement with an irrevocable letter of credit or other security acceptable to City in City's sole discretion ("Contract Security") in an amount equal to the estimate of two (2) months' rentals, fees and charges payable by Airline (excluding PFCs) pursuant to this Article 10 to guarantee the faithful performance by Airline of its obligations under this Agreement and the payment of all rentals, fees and charges due hereunder. City may use the Contract Security to pay delinquent rentals, fees and charges (including but not limited to PFCs) resulting from Airline's operations at the Airport in order to ensure prompt payment of required fees and charges. The Director may adjust such Contract Security requirement from time to time upon a determination that an additional amount

is warranted to protect City and the Airport. Airline shall be obligated to maintain such Contract Security during the Term hereof. Such Contract Security shall be in a form and with a company reasonably acceptable to City and licensed to do business in the State of California. In the event that any such Contract Security shall be for a period less than the full period required by this Section 10.9.1 or if Contract Security shall be canceled, Airline shall provide renewal or replacement Contract Security for the remaining required period at least sixty (60) days prior to the date of such expiration or cancellation. Airline's obligation to obtain and/or keep in force the Contract Security required hereunder shall be a condition precedent to City's obligation to perform hereunder. Notwithstanding anything set forth herein to the contrary, if Airline shall fail to obtain and/or keep in force the Contract Security required hereunder, City shall no longer be required to perform under the terms of this Agreement and, subject to the notice and cure periods set forth in Section 15.01.2 hereof, this Agreement shall automatically terminate unless City waives the automatic termination provision mentioned above in writing. In the event that City waives the automatic termination requirement, City shall not be obligated to perform under the terms of this Agreement so long as Airline is not in compliance with the terms hereof with respect to the Contract Security. As provided in Section 20.02, any waiver by City of the automatic termination provision hereunder shall not be construed to be a waiver of any subsequent automatic termination hereof. City's rights under this Section 10.9.1 shall be in addition to all other rights and remedies provided to City under this Agreement.

10.09.2 Any obligation of Airline to provide and maintain the Contract Security mentioned above shall be a continuing obligation in the nature of a payment obligation. In the event City is required to draw down or collect against Airline's Contract Security for any reason, Airline shall, within ten (10) business days after City's written notice to Airline of such draw down or collection, take such action as may be necessary to replenish the existing Contract Security to its original amount (two months' estimated rentals, fees, and charges) or to provide additional or supplemental Contract Security from another source so that the aggregate of all Letters of Credit is equal to two months' estimated rentals, fees, and charges payable by Airline pursuant to this Article 10. Notwithstanding anything set forth herein to the contrary, City shall not be barred from drawing down or collecting against Airline's Contract Security by (i) the insolvency of Airline, (ii) the election of Airline to take the benefit of any present or future insolvency statute, (iii) a general assignment by Airline for the benefit of creditors, or (iv) any action of Airline to seek a reorganization or the readjustment of its indebtedness under any law or statute of the United States or of any state thereof including the filing by Airline of a voluntary petition of bankruptcy or the institution of proceedings against Airline or the adjudication of Airline as a bankrupt pursuant thereto.

10.09.3 Airline and City agree that this Agreement is intended by the parties to constitute and does constitute an "executory contract" for the purposes of Section 365 of the United States Bankruptcy Code (Title 11 U.S.C.) subject to assumption or rejection, and subject to the terms and conditions of assumption or



rejection, as provided in said Section 365. Furthermore, Airline and City agree that any Contract Security provided by Airline is not “property of the estate” for purposes of Section 541 of the United States Bankruptcy Code (Title 11 U.S.C.), it being understood that any Contract Security is property of the third party providing it (subject to City’s ability to draw against the Contract Security) and that all PFCs collected by Airline with respect to Enplaned Passengers at the Airport shall be held by Airline, until the collected PFCs are delivered to City, in trust for City. Any such trust for the collected PFCs shall not be invalidated or defeated if the funds held in trust are not segregated by Airline and rather are commingled with Airline’s other assets.

### **Article 11 Municipally-Funded Air Service Incentive Program**

Because the operation and management of the Airport is supported by a number of City departments, employees and resources that are not directly charged to the Airport operating budget, City allocates a percentage of its total indirect overhead expenses to the Airport operating budget. If in any year during the Term of the Agreement the percentage growth in annual enplanements at the Airport exceeds that growth in annual enplanements nationwide, City shall reduce the amount of its indirect overhead expenses that would otherwise be allocated to the Airport’s operating budget for the next succeeding Fiscal Year by a corresponding percentage, thereby reducing the otherwise-indicated Landing Fee and Terminal Rents. City shall use annual enplanement data published in the annual FAA Aviation Forecast to determine nationwide enplanements for each Fiscal Year. If the above-described enplanement data is no longer published, another resource generally recognized as authoritative shall be substituted by the Director. For example, if in a given year the rate of growth in annual enplanements at the Airport (for purposes of illustration, 6%) exceeds the national growth rate (4%) by two percentage points, City shall reduce the percentage share of total City indirect overhead expenses allocated to the Airport for the next year (for purposes of illustration, 22%) by two percentage points (to 20%). Notwithstanding the foregoing, in no event will the indirect overhead expenses of City allocated to the Airport’s operating budget exceed twenty-five percent (25%) or be less than fifteen percent (15%) during the Term hereof. In addition, City reserves the sole right to reassess, amend or terminate the incentive program that is set forth in this section after any increase in the number of gates at the Airport (including without limitation the completion of Phase II of City’s Master Plan Program).

### **Article 12 Capital Expenditures**

12.01 Need for Capital Expenditures. The parties hereto recognize that Capital Expenditures to preserve, protect, enhance, expand, or otherwise improve the Airport, or part thereof, will be required during the Term of this Agreement. Any such Capital Expenditures to be paid for or financed with Revenues shall be subject to the provisions of Sections 12.02 and 12.03 below.

## 12.02 Expenditures Subject to Signatory Airline Consideration.

12.02.1 City shall notify Airline in writing of its intent to undertake Capital Expenditures not excluded from MII consideration pursuant to Section 12.03. City shall provide Airline with the following information associated therewith:

- (a) A description of the proposed Capital Expenditure(s), together with cost estimates, scheduling, and any preliminary drawings, if applicable;
- (b) A statement of the need for the proposed Capital Expenditure(s), along with the planned benefits to be derived from such expenditures;
- (c) City's preferred means of financing or paying the costs of the proposed Capital Expenditure(s); and
- (d) The anticipated allocation of the costs thereof to the Airfield Cost and Revenue Center or the Terminal Cost and Revenue Center and the projected impact on Airline's rates and charges.

12.02.2 Within twenty (20) days after City's delivery of said notice, Airline may request in writing a meeting with City and all Signatory Airlines for the purpose of discussing proposed Capital Expenditure(s). Should such a request be made, City shall meet with Signatory Airlines collectively within sixty (60) days of City's original notice. City agrees to consider comments and recommendations of the Signatory Airlines with respect to proposed Capital Expenditure(s).

12.02.3 Unless Signatory Airlines constituting an MII shall issue written disapprovals for a particular Capital Expenditure in the Airfield Cost and Revenue Center or the Terminal Cost and Revenue Center for those Capital Expenditures in the Airfield Cost and Revenue Center or the Terminal Cost and Revenue Center requiring MII consideration within thirty (30) days of the date of City's meeting with the Signatory Airlines as provided above, City may proceed with said Capital Expenditures. City may also proceed at any time with Capital Expenditures not requiring MII consideration, as set forth in Section 12.03, and with any other improvements or developments not defined as a Capital Expenditure herein.

12.02.4 In the event of an MII disapproval of a proposed Capital Expenditure subject to MII consideration in the time period specified above, City shall defer the project for one (1) year (a disapproval of a Capital Expenditure may be reversed by an MII at any time). Notwithstanding anything set forth herein to the contrary, City shall be entitled to move forward with any disapproved Capital Expenditure after the one-year waiting period described above.

12.02.5 City may issue Bonds, Subordinated Indebtedness, or Other Indebtedness to finance any Capital Expenditures permitted by this Article 12.

12.02.6 Notwithstanding anything set forth herein to the contrary, while all Signatory Airlines will have MII participation rights with respect to Capital Expenditures in the Airfield Cost and Revenue Center, only Signatory Airlines that are passenger airlines shall have MII participation rights with respect to Capital Expenditures in the Terminal Cost and Revenue Center.

12.03 Capital Expenditures Not Subject to Signatory Airline Consideration. The following Capital Expenditures may be undertaken by City at any time and shall not be subject to consideration by the Signatory Airlines:

12.03.1 New development, planning or expansion projects in the Airfield Cost and Revenue Center or the Terminal Cost and Revenue Center, other than projects identified in the Airport Master Plan Program, that have a gross project cost of less than \$5 million; provided, however, that the City shall not unreasonably segment these development, planning or expansion projects for the purpose of avoiding the foregoing \$5 million threshold.

12.03.2 Phase I of the Airport Master Plan Program, as identified in **Exhibit K.**

12.03.3 Phase II of the Airport Master Plan Program, as identified in **Exhibit K,** so long as either one of the following activity triggers (the "Activity Triggers") has been met:

(a) 217 Scheduled Operations at the Airport on any one day;  
or

(b) 12.2 million total Enplaned Passengers and Deplaned Passengers at the Airport in any given Fiscal Year. For the purpose of this Section 12.03.3 only, the total number of Enplaned Passengers and Deplaned Passengers at the Airport for any given Fiscal Year shall be determined by City within one hundred eighty (180) days after the end of each Fiscal Year.

In the event that either of these Activity Triggers is met and, subsequent to the attainment of such Activity Trigger: (a) the number of Scheduled Operations per day falls below 163 for a period of at least one hundred eighty (180) days; or (b) total Enplaned Passenger and Deplaned Passenger levels fall below 9.15 million passengers for any Fiscal Year (collectively, the "Reduced Activity Triggers"), the Phase II projects shall once again be expenditures subject to Signatory Airline consideration under Section 12.02 above until such time as either Activity Trigger is once again attained. Notwithstanding the preceding sentence, any Phase II project, or portion thereof, for which City proceeds to issue bonds, commercial paper or

Subordinated Indebtedness or for which City has awarded a construction contract after the attainment of either Activity Trigger shall not be subject to further consideration by the Signatory Airlines, regardless of whether either or both Reduced Activity Triggers subsequently occur.

12.03.4 Projects required by the FAA, U.S. Department of Transportation (the "DOT"), Transportation Security Administration, or similar governmental authority, other than City, having jurisdiction over the Airport.

12.03.5 Projects to repair casualty damage to Airport property that must be rebuilt or replaced in order for City to meet its obligations pursuant to this Agreement, the Master Agreement, or agreements with other lessees at the Airport.

12.03.6 Projects undertaken in Cost and Revenue Centers other than the Airfield Cost and Revenue Center and the Terminal Cost and Revenue Center.

12.03.7 Reasonable repairs, rebuilding, improvements or additions, including the associated costs therefor, necessary to comply with this Agreement or applicable law or to settle lawful claims, satisfy judgments, or comply with judicial orders against City by reason of its ownership, operation, maintenance or use of the Airport.

12.03.8 Expenditures of an emergency nature which, if not made within forty-eight (48) hours, would result in the closing of any portion of the Airport.

12.03.9 Projects funded directly or indirectly by PFCs, CFCs or grants.

12.03.10 Projects that are undertaken to satisfy the increased requirements of any Signatory Airline so long as such Signatory Airline agrees to pay all increased rentals, fees, charges and operating and maintenance costs that are sufficient to cover the annual debt service and operating and maintenance costs associated with the project.

12.03.11 Projects related to special purpose facilities for which the user agrees to pay or reimburse the Airport.

12.03.12 Notwithstanding anything set forth in subsections 12.03.2 and 12.03.3 above, in the event that the CPE for a Fiscal Year is projected to exceed \$9 (in 2005 dollars) after the application of available funds from the Rate Stabilization Fund (as defined in Section 9.11), City shall consult with the Signatory Airlines before commencing with design or construction for Phase II of the Airport Master Plan Program unless City has already proceeded to issue applicable Bonds, commercial paper or Subordinated Indebtedness or City has awarded any applicable construction contract(s). Notwithstanding the preceding sentence, City shall not be obligated to consult with the Signatory Airlines before commencing with design or construction for Phase II of the Airport Master Plan Program if the CPE for a Fiscal Year is projected to

exceed \$9 (in 2005 dollars) after the application of available funds from the Rate Stabilization Fund (as defined in Section 9.11), solely as the result of the inclusion of costs for the Additional Approved Improvement Projects listed in **Exhibit K** in the calculation of the CPE.

#### 12.04 Alterations and Improvements by Airline.

12.04.1 Except as expressly provided herein, Airline shall make no alterations, additions, improvements to, or installations in the Airline Premises without the prior written approval of the Director.

12.04.2 Should Airline from time to time require alterations, additions, improvements to, or installations in the Airline's Exclusive Use or Preferential Use Premises, it may make alterations, additions, improvements to or installation in the Airline's Exclusive Use or Preferential Use Premises if Airline complies with the following conditions:

(a) Before the commencement of any such work, plans and specifications shall be approved by and filed with the Director and all governmental departments or authorities having jurisdiction. The contractors performing the work shall be specified to the Director, and all work shall be subject to and in accordance with (i) Airport's Tenant Design and Construction Guidelines, (ii) requirements of law, and (iii) applicable regulations of all applicable governmental departments or authorities and, where required, each affected public utility company.

(b) Airline shall also, prior to the commencement of any work, provide City with a cost estimate of such work, and upon City's request, provide funds not less than ten percent (10%) of that estimate to cover City's engineering and inspection costs. Any moneys so initially provided by Airline shall be an estimate only, and Airline shall be required to pay, upon City's request, any additional City engineering and inspection costs incurred for such work. Payment shall be promptly made to City upon the receipt of an invoice submitted by City for such costs.

(c) Such work shall be performed in a first class workmanlike manner and in accordance with the plans and specifications approved for the same. Airline shall redo or replace, at its sole cost and expense, any work that is not performed in this manner and in accordance with such plans and specifications as approved by the Director. Airline shall notify the Director within ten (10) days of final cessation of any work, and the Director will make a final inspection and will issue a letter of approval or disapproval. Any request to redo or replace any such work shall be made by the Director within forty-five (45) days after receipt of notice of completion from Airline.

12.04.3 Subject to Section 17.03, all alterations, additions, or improvements placed at any time upon the Airport by Airline shall be deemed to be and become a part of the realty and the sole and absolute property of City upon termination or cancellation of Airline's lease of the premises where the same is located; provided, however, movable furniture, movable personal property, and other removable trade fixtures, including but not limited to passenger loading bridges or baggage conveyor systems put in at the expense of Airline or at the expense of third parties leasing such property to Airline, shall not be deemed to become the property of City at the termination or cancellation of this Agreement, and Airline shall have the right to remove said property from the Exclusive Use Premises and Preferential Use Premises on or about the time of termination of this Agreement, subject to any valid lien which City may have thereon. Any damage to the Airport, including the Exclusive Use Premises and the Preferential Use Premises, caused by such removal shall be repaired at Airline's expense.

12.04.4 Airline shall promptly pay all lawful claims and discharge all liens made against it or against City by Airline's contractors, subcontractors, materialmen, and workmen and all such claims and liens made against Airline or City by other third parties arising out of or in connection with, whether directly or indirectly, any work done by or for Airline, its contractors, subcontractors, or materialmen; provided, however, that Airline shall have the right to contest the amount or validity of any such claim or lien without being in default of this Agreement upon furnishing security satisfactory to the Director guaranteeing that such claim or lien will be properly and fully discharged forthwith in the event that such contest is finally determined against Airline or City.

12.04.5 Airline shall procure and maintain during construction of any and all improvements by Airline comprehensive public liability insurance, or if the work is to be done by an independent contractor, Airline shall require such contractor to procure and maintain such insurance in Airline's name. In either case, insurance shall be procured and maintained in limits and meeting requirements reasonably satisfactory to the City, and Airline shall defend, indemnify and hold harmless City and its officers, agents, and employees for all loss, cost damage, or expense arising out of or relating in any way to such construction, except such loss, cost, damage, or expense arising from or caused by the negligence of City. Airline, on work in excess of \$25,000, shall require contractors to procure and maintain a payment bond in the face amount of the cost of improvements and in a form satisfactory to the City's attorney.

12.04.6 If, in the construction of any improvements to or upon the Airline's Exclusive Use Premises or Preferential Use Premises, Airline causes disturbance to or damage of any asbestos and/or asbestos-containing materials, Airline shall be solely responsible for the costs of remedying the disturbance or damage, including, without limitation, the removal of any asbestos and asbestos-containing materials.

## Article 13 Damage Or Destruction

13.01 Partial Damage and Repair. If the Airline Premises shall be partially damaged by fire, flood, windstorm, earthquake, or other casualty but said damage shall not render the Airline Premises untenable as reasonably determined by City, there shall be no abatement or reduction in the rates and charges payable by Airline hereunder so long as Debt Service payments are required; and (1) the portion of the Airline Premises so damaged shall be promptly repaired, rebuilt, or restored by City with such changes, alterations, and modifications (including the substitution and addition of other property) as may be agreed upon by City and Airline as shall not impair the character of the Airline Premises; and (2) there shall be applied for such purpose so much as may be necessary of any net proceeds received by City under insurance policies covering such losses, after payment of any expenses of obtaining or recovering such net proceeds, as well as any moneys which City determines to make available from the sale of Bonds or Subordinated Indebtedness. In the event that such net proceeds are insufficient to pay in full the costs of such repair, rebuilding, or restoration, City will endeavor to arrange financing through the issuance of Bonds, Subordinated Indebtedness or other means and complete such repair, rebuilding, or restoration.

13.02 Substantial or Complete Damage and Repair. If the Airline Premises shall be substantially or completely damaged or destroyed by fire, flood, windstorm, earthquake, or other casualty and said damage or destruction renders the Airline Premises untenable as reasonably determined by City, there shall be an equitable and proportional abatement or reduction in the rates and charges payable by Airline hereunder based on the degree to which the portion of the Airline Premises rendered untenable is related to the total Airline Premises until such time as such affected Airline Premises shall be restored for Airline's use; and (1) the portion of the Airline Premises so damaged or destroyed shall be promptly repaired, rebuilt, or restored by City with such changes, alterations, and modifications (including the substitution and addition of other property) as may be agreed upon by City and Airline as shall not impair the character of the Airline Premises; and (2) there shall be applied for such purpose so much as may be necessary of any net proceeds received by City under insurance policies covering such losses, after payment of any expenses of obtaining or recovering such net proceeds, as well as any moneys which City determines to make available from the sale of Bonds or Subordinated Indebtedness. In the event that such net proceeds are insufficient to pay in full the costs of such repair, rebuilding, or restoration, City will endeavor to arrange financing through the issuance of Bonds, Subordinated Indebtedness or other means and complete such repair, rebuilding, or restoration.

13.03 Damage Caused by Airline. Notwithstanding the provisions of this Article 13, in the event that due to the negligence or willful act or omission of Airline, its employees, its agents, or licensees, Airline Premises shall be damaged or destroyed by fire, other casualty or otherwise, there shall be no abatement of rent during the repair or replacement of said Airline Premises. To the extent that the costs of repairs shall

exceed the amount of any insurance proceeds payable to City by reason of such damage or destruction, Airline shall pay the amount of such additional costs to City.

## **Article 14 Indemnification, Waiver Of Claims and Insurance**

### **14.01 Indemnification.**

14.01.1 Airline agrees to protect, defend, reimburse, indemnify and hold City, its agents, employees, board members and elected officers and each of them, free and harmless at all times from and against any and all claims, liability, expenses, losses, costs, fines and damages (including actually incurred reasonable attorney's fees) and causes of action of every kind and character, whether or not meritorious, against or from City by reason of any damage to property or bodily injury (including death) incurred or sustained by any party hereto, any agent or employee of any party hereto, and any third or other party whomsoever or any governmental agency, arising out of or incident to or in connection with Airline's performance under this Agreement, Airline's use or occupancy of the Airline Premises, Airline's negligent acts, omissions or operations hereunder or the performance, non-performance or purported performance of Airline or any breach of the terms of this Agreement by Airline; provided, however, that Airline shall not be so obligated to protect, defend, reimburse, indemnify and hold City free and harmless when the applicable claim, liability, expense, loss, cost, fine, damage or cause of action is caused by the negligence of the agents, employees, contractors, officers or boards of City (but only to the extent of the portion of the claim, liability, expense, loss, cost, fine, damage or cause of action caused by such negligence). Upon the filing by anyone of a claim with City for damages arising out of incidents for which Airline herein agrees to indemnify and hold City harmless, City shall promptly notify Airline of such claim and, in the event that Airline does not settle or compromise such claim, then Airline shall undertake the legal defense of such claim both on behalf of Airline and on behalf of City. It is specifically agreed, however, that City, at its option and at its own expense, may participate in the legal defense of such claim. Any final judgment against City from which no appeals remain for any cause for which Airline is liable hereunder shall be conclusive against Airline as to liability and amount upon the expiration of the time for appeal therefrom. Airline recognizes the broad nature of this indemnification and hold harmless clause and voluntarily makes this covenant and expressly acknowledges that the terms and conditions of this Agreement constitute good and valuable consideration provided by City in support of this indemnification in accordance with laws of the State of California.

14.01.2 If City and Airline are jointly, concurrently or successively liable for an actionable wrong to an injured person, each party shall have a right to contribution from the other party. The right of contribution shall be limited to the amounts paid by a party in excess of that party's share of liability, based upon principles of equity (including the principle of comparative fault). If either party receives any claim, demand, suit or judgment for which the other party is or may be jointly, concurrently or



successively liable, that other party shall be given prompt notice thereof. If City and Airline become co-defendants, either may file a cross-complaint against the other for a declaration of rights respecting the relative responsibility of each for contribution. If either City or Airline becomes a defendant in an action or proceeding in which the other is a non-party, the defendant therein may either file a cross-complaint against the non-party for a declaration of rights of contribution or may bring a separate and independent action against the non-party for contribution.

14.01.3 This Section 14.01 shall survive the termination of this Agreement as to claims arising during the Term thereof. Compliance with the insurance requirements of this Article 14 shall not relieve Airline of its liability or obligation to indemnify City as set forth in this Article 14.

14.02 Waiver of Claims. Airline, as a material part of the consideration to be rendered to City under this Agreement, hereby waives all claims or causes of action against City, its officers, or employees which it may now or hereafter have for damages to any property on, about, or related to the Airport, and for injuries or death to persons on, about, or related to the Airport, from any cause or causes arising at any time, except from the negligent or willful act or omission of City, its officers, or employees. By way of example and not limitation, save and except as arises out of the negligent or willful act of City, its officers, or employees, Airline hereby waives any and all claims or causes of action which it may now or hereafter have against City, its officers, or employees (a) for loss, injury, or damage sustained by reason of any deficiency, impairment, and interruption of any water, electrical, gas, plumbing, air conditioning, or sewer service or system serving any portion of the Airport; (b) for any loss, injury, or damage arising or resulting from any act or neglect or omission of any other tenant, subtenant, permittee, concessionaire, or occupant of the Airport, or any person who uses the Airport with authorization or permission of the City (City agrees to use its best efforts to control tenants, subtenants, permittees, concessionaires, occupants, or Airport users to prevent loss, injury, or damage); and (c) for any loss or damage to the property of, or injury or damage to Airline, its officers, employees, agents, contractors, or any other person whomsoever, from any cause or causes arising at any time because of Airline's use or occupancy of the Airline Premises or of the Airport, or its operations thereon (City will use its best efforts to control the activities of other users).

#### 14.03 Insurance.

14.03.1 Airline, at its sole cost and expense, and for the full Term of this Agreement or any renewal thereof, shall obtain and maintain all of the following minimum insurance:

(a) An Aircraft Liability policy, with coverage of One Hundred Million Dollars (\$100,000,000) combined single limit for bodily injury and property damage, which shall include but not necessarily be limited to all of the following coverages: Aircraft Liability, including General Liability, Aircraft Products and

Completed Operations, Liquor Liability, Premises Liability, Products & Completed Operations, Contractual Liability, Hangarkeepers Liability, Motor Vehicle Liability within the confines of the Airport, Cargo Legal Liability and Fueling and Refueling (if such operations are conducted by Airline).

(b) Fifty Million Dollars (\$50,000,000) War and Named Perils coverage for bodily injury and property damage, each occurrence and annual aggregate, or the U.S. Government equivalent.

(c) A Workers' Compensation and Employers' Liability policy written in accordance with the laws of the State of California providing coverage for any and all employees of Airline and providing coverage as follows:

- (i) Workers' Compensation (Coverage A);
- (ii) One Million Dollars (\$1,000,000) in Employers' Liability (Coverage B);
- (iii) Broad Form All States Endorsement;
- (iv) Voluntary Compensation Endorsement; and
- (v) Waiver of Subrogation in favor of City.

(d) A Commercial Business Auto policy with a minimum limit of not less than One Million Dollars (\$1,000,000) combined single limit for bodily injury and property damage providing that coverages shall be applicable to any and all leased, owned, hired or non-owned vehicles used in pursuit of any of the activities associated with this Agreement. Any and all mobile equipment, including cranes, which is not covered under the Comprehensive Business Auto policy shall have said coverage provided for under the Comprehensive General Liability policy required above.

(e) Property Insurance in an amount equal to "Value of Airline Improvements and Betterments" during the course of construction and after completion. Coverage shall include Replacement Value, covering Airline improvements and betterments, for Fire & Extended Coverage, including Sprinkler Leakage, Vandalism & Malicious Mischief, and Debris Removal.

14.03.2 Any deductibles or self-insured retentions must be declared and accepted by City. At the option of City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to City, its officers, officials, and employees, or Airline shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

14.03.3 Except for U.S. government equivalent War and Named Perils coverage, Workers Compensation/Employer's Liability Insurance and Property Coverage, the insurance policies are to contain, or be endorsed to contain, the following provisions:

(a) City and its officials, employees, agents and contractors are to be covered as an additional insured with respect to (i) liability arising out of activities performed by, or on behalf of, Airline, (ii) the products and completed operations of Airline, (iii) premises owned, leased or used by Airline, or (iv) automobiles owned, leased, hired or borrowed by Airline. The coverage shall contain no special limitations on the scope of protection afforded to City, its officials, employees, agents and contractors.

(b) Airline's insurance coverage shall be primary insurance with respect to City, its officials, employees, agents and contractors. Any insurance or self-insurance maintained by City, its officials, employees, agents or contractors, shall be excess of Airline's insurance and shall not contribute with it.

14.03.4 Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its officials, employees, agents or contractors.

14.03.5 Coverage shall state that Airline's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

14.03.6 City shall retain the right at any time to review the coverage, form, and amount of the insurance required hereby. If, in the opinion of City, the insurance provisions in this Agreement do not provide adequate protection for City and/or for members of the public, City may require Airline to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. City's requirements shall be commercially reasonable but shall be designed to assure protection from and against the kind and extent of risk which exists at the time a change in insurance is required (provided such protection is available on commercially reasonable terms), and Airline agrees to provide same within (30) days of receiving notice from City.

14.03.7 Provisions of this paragraph as to maintenance of insurance shall not be construed as limiting in any way the extent to which Airline may be held responsible for the payment of damages to persons or property resulting from its activities or of any person or persons for which it is otherwise responsible.

14.03.8 Each insurance policy required by this Section shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in limits except after thirty (30) days' prior written notice has been given to City (notwithstanding the foregoing, the notice period for War Risks and Named Allied Perils

insurance may be seven [7] days or such lesser period as may be customarily available).

14.03.9 Insurance is to be placed with insurers reasonably acceptable to City's Risk Manager.

14.03.10 Airline shall furnish City with certificates of insurance, and "Additional Insured" endorsements where appropriate, as required by this clause. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

14.03.11 Proof of insurance shall be mailed to the following address or any subsequent address as may be directed in writing by the Risk Manager:

City of San Jose – Finance  
Risk Management  
200 East Santa Clara Street, 14th  
San Jose, CA 95113-1905  
Fax No.: (408) 292-6489

With a copy to:

Property Manager  
Norman Y. Mineta San Jose International Airport  
1701 Airport Blvd., Suite B-1130  
San Jose, CA 95110  
Fax No.: (408) 441-4588

14.03.12 City shall, during the term of this Agreement, procure and maintain liability and fire and extended coverage insurance for the Airport, Terminal, and other facilities at the Airport in such amounts and for such insured coverages as City may determine as being reasonably required and in the prudent operation of the Airport.

14.03.13 Airline shall self-insure (by establishing reserves in accordance with accepted accounting practices) or procure and keep in force fire and extended coverage insurance upon its leasehold improvements located within its Exclusive Use Premises or Preferential Use Premises, to the full replacement-cost, insurable value thereof and shall furnish City, upon execution of this Agreement, with evidence that such self-insurance reserves have been established or such coverage has been procured and is being maintained in full force and effect. Said evidence of insurance shall be endorsed to require (30) days written notice to City of cancellation or material change and to provide that any insurance carried by City be excess insurance only.

14.03.14 City and Airline agree to have all property insurance carried with respect to the Airport, the Airline Premises or any property therein endorsed with a

clause that waives all rights of subrogation that the insurer of one party may have against the other party hereto. To that effect, City and Airline will respectively employ diligent efforts to cause their insurance companies to endorse the affected property insurance policies with a waiver of subrogation clause as required herein.

## Article 15 City Remedies

15.01 Events of Default. The events described below shall be deemed events of default by Airline hereunder. Upon the occurrence of any one of the following events of default, City may immediately issue written notice of default.

15.01.1 The conduct of any business or performance by Airline of any acts at the Airport not specifically authorized herein or by other agreements between City and Airline, and said business or acts do not cease within thirty (30) days of receipt of City's written notice to cease said business or acts.

15.01.2 The failure to cure a default in the performance of any of the terms, covenants, and conditions required herein (except insurance requirements as set forth in Section 14.03, and payment of rentals, fees, and charges, as provided for in Article 10) within thirty (30) days of receipt of written notice by City to do so; or if by reason of the nature of such default, the same cannot be remedied within thirty (30) days following receipt by Airline of written demand from City to do so, Airline fails to commence the remedying of such default within said thirty (30) days following such written notice, or having so commenced, shall fail thereafter to continue with diligence the curing thereof. Airline shall have the burden of proof to demonstrate (i) that the default cannot be cured within thirty (30) days, and (ii) that it is proceeding with diligence to cure said default and that such default will be cured within a reasonable period of time.

15.01.3 The failure by Airline to pay any part of the rentals, fees, and charges due hereunder and the continued failure to pay said amounts in full within thirty (30) days of City's written notice of payments past due; provided, however, if a dispute arises between City and Airline with respect to any obligation or alleged obligation of Airline to make payments to City, payments under protest by Airline of the amount due shall not waive any of Airline's rights to contest the validity or amount of such payment.

15.01.4 The failure by Airline to provide and keep in force insurance coverage in accordance with Article 14.

15.01.5 The appointment of a trustee, custodian, or receiver of all or a substantial portion of Airline's assets.

15.01.6 The divestiture of Airline's estate herein by operation of law, by dissolution, or by liquidation (not including a merger or sale of assets).

15.01.7 The abandonment by Airline of the Airline Premises, or its conduct of business at the Airport; and, in this connection, suspension of operations for a period of sixty (60) days will be considered abandonment in the absence of a labor dispute or other governmental action in which Airline is directly involved.

15.01.8 The failure by Airline to remit PFCs in accordance with Section 20.03.

15.02 Continuing Responsibilities of Airline. Notwithstanding the occurrence of any event of default, Airline shall remain liable to City for all rentals, fees, and charges payable hereunder and for all preceding breaches of any covenant of this Agreement. Furthermore, unless City elects to cancel this Agreement, Airline shall remain liable for and promptly pay all rentals, fees, and charges accruing hereunder for the Term of this Agreement.

15.03 Remedies. Upon the occurrence of any event enumerated in Sections 15.01 and after any applicable notice and cure periods, the following remedies shall be available to City:

15.03.1 City may exercise any remedy provided by law or in equity, including but not limited to the remedies hereinafter specified.

15.03.2 City may cancel this Agreement, effective upon the date specified in the notice of cancellation. Upon such date, Airline shall be deemed to have no further rights hereunder and City shall have the right to take immediate possession of the Airline Premises.

15.03.3 City may reenter the Airline Premises and may remove all Airline persons and property. Upon any removal of Airline property by City hereunder, Airline property may be stored at a public warehouse or elsewhere at Airline's sole cost and expense.

15.03.4 City may relet Airline Premises and any improvements thereon or any part thereof, at such rentals, fees, and charges and upon such other terms and conditions as City, in its sole discretion, may deem advisable, with the right to make alterations, repairs of improvements on said Airline Premises.

15.03.5 In the event that City relets Airline Premises, rentals, fees, and charges received by City from such reletting shall be applied: (i) to the payment of any indebtedness, other than rentals, fees, and charges due hereunder, from Airline to City; (ii) to the payment of any cost of such reletting; and (iii) to the payment of rentals, fees, and charges due and unpaid hereunder. The residue, if any, shall be held by City and applied in payment of future rentals, fees, and charges as the same may become due and payable hereunder. If that portion of such rentals, fees, and charges received from such reletting and applied to the payment of rentals, fees, and charges hereunder is

less than the rentals, fees, and charges as would have been payable during applicable periods by Airline hereunder, then Airline shall pay such deficiency to City whenever rentals, fees or charges are due to City hereunder. Airline shall also pay to City, as soon as ascertained, any reasonable costs and expenses incurred by City in such reletting not covered by the rentals, fees, and charges received from such reletting.

15.03.6 No reentry or reletting of Airline Premises by City shall be construed as an election on City's part to cancel this Agreement unless a written notice of cancellation is given to Airline.

15.04 Remedies Under Federal Bankruptcy Laws. Notwithstanding the foregoing, upon the filing by or against Airline of any proceeding under Federal bankruptcy laws, this Agreement shall automatically terminate (unless such termination is affirmatively waived at the time of the filing or subsequently by City) in addition to other remedies provided under provisions of the Federal Bankruptcy Rules and Regulations and Federal Judgeship Act of 1984, as such may be subsequently amended, supplemented, or replaced. Notwithstanding the foregoing, City shall be entitled to waive the automatic termination provision mentioned above in writing. In the event that City waives the automatic termination requirement, City shall not be obligated to perform under the terms of this Agreement so long as any proceeding under Federal bankruptcy laws remains outstanding. As provided in Section 20.02 hereof, any waiver by City of the automatic termination provision in this Section 15.04 shall not be construed to be a waiver of any subsequent automatic termination hereof. City's rights under this Section 15.04 shall be in addition to all other rights and remedies provided to City under this Agreement.

15.05 Customer Service Standards. Airline shall appoint a customer service representative who will work with (a) representatives from the Airport's Customer Service and Operations Divisions and (b) representatives from the other Air Transportation Companies that provide passenger service at the Airport to voluntarily and collectively set minimum performance standards to provide passengers at the Airport with the highest and best customer service possible. These standards will be self-imposed and self-policed by the Airport and the Air Transportation Companies that provide passenger service at the Airport. The Airport reserves the right to disclose the success of the Air Transportation Companies that provide passenger service at the Airport in meeting these standards.

## **Article 16 Environmental**

### 16.01 Hazardous Materials.

16.01.1 Standards of Operation – Disposal, Use and Storage of Hazardous Materials. The voluntary or involuntary release or discharge of Hazardous Materials on the Airport is strictly prohibited (except to the extent, if any, that disposal of

Hazardous Materials through the City's sewerage system complies with all applicable Environmental Laws). Storage and use of Hazardous Materials on the Airport is prohibited, except:

(a) Airline may store and use Hazardous Materials on the Airline Premises in a safe and prudent manner and in accordance with the requirements of all applicable Environmental Laws but only for those kinds and quantities of Hazardous Materials that are normally used in conducting the activities permitted under this Agreement. Airline shall provide Director with a copy of any application for a permit, if required, for use or storage of Hazardous Materials on the Airline Premises from any regulatory agency responsible for enforcement of Environmental Laws and shall also provide a copy of any permit received from such agency; and

(b) Airline may use Hazardous Materials on the Airport other than the Airline Premises only in a safe and prudent manner and in accordance with the requirements of all applicable Environmental Laws but only for those kinds and quantities of Hazardous Materials which are commonly used in conducting the activities permitted under this Agreement and for which no permit is required to be obtained from any regulatory agency under any Environmental Law.

16.01.2 Liability. Airline shall be solely and fully responsible and liable for:

(a) Storage, use or disposal of Hazardous Materials on the Airline Premises or the Airport by Airline, Airline's officers, agents, employees, contractors, permittees or invitees; or

(b) Any Hazardous Material release or discharge which is caused by or results from the activities of Airline, Airline's officers, agents, employees, contractors, permittees or invitees on the Airline Premises or the Airport.

16.01.3 Prevention of Release or Discharge. Airline shall take all reasonable precautions to prevent its activities from causing any Hazardous Material release or discharge to occur on the Airline Premises or the Airport and shall take all reasonable precautions to prevent any unlawful release or discharge into soil, groundwater, or City's sewage or storm drainage system.

16.01.4 Obligation to Investigate and Remediate. Airline, at Airline's sole cost and expense, shall promptly investigate and remediate, in accordance with requirements of all applicable Environmental Laws, any release or discharge or threat of release or discharge of Hazardous Materials on the Airline Premises or the Airport, including but not limited to any release or discharge or threat of release or discharge into soil or groundwater which was caused or results in whole or in part from the activities of Airline, Airline's officers, agents, employees, contractors, permittees or



invitees but excluding the disposal of Hazardous Materials through the City's sewerage system so long as such disposal complies with all applicable Environmental Laws.

In addition to all other rights and remedies of City hereunder, if Airline does not promptly commence investigation of any such release or discharge or threat of release or discharge or diligently pursue appropriate remedial activities as required by applicable Environmental Laws, City, in its discretion, may pay to have same investigated and remediated as required by applicable Environmental Laws, and Airline shall reimburse City for its share of the costs within thirty (30) days of City's demand for payment. The failure to commence investigation and provide City with a schedule for diligent completion of any required remediation within thirty (30) business days after (a) Airline's discovery of such release or discharge or threat of release or discharge or (b) notice of such release or discharge or threat of release or discharge to Airline shall constitute prima facie evidence of failure to promptly commence investigation and remediation.

16.01.5 Indemnification. In addition to the obligations of Airline as set forth in Section 14.01 hereof, Airline shall defend (with counsel acceptable to City in City's reasonable discretion), indemnify and hold City harmless from and against all loss, damage, liability (including all consequential damages) and expense (including, without limitation, the reasonable and necessary costs of any cleanup and remediation of Hazardous Materials as required by applicable Environmental Laws) which City may sustain as a result of:

(a) Storage, use or disposal of Hazardous Materials on the Airline Premises or the Airport by Airline, Airline's officers, agents, employees, contractors, permittees or invitees; or

(b) Any Hazardous Material release or discharge on the Airline Premises or the Airport other than the Exclusive Use Premises, including but not limited to any release or discharge into soil or groundwater, or City's sewage or storm drainage system, which is caused by or results from the activities of Airline, Airline's officers, agents, employees, contractors, permittees or invitees.

16.01.6 Release of Claims Against City. Airline releases, acquits and forever discharges City from any and all claims, actions, causes of action, demands, rights, damages, costs, including but not limited to loss of use, lost profits, or expenses, which Airline may now have, or which may hereafter accrue on account of or in any way growing out of all known and unknown, foreseen and unforeseen bodily and personal injuries and property damage, and the consequences thereof resulting or arising out of the presence or cleanup of any Hazardous Material on the Airline Premises or the Airport, but only to the extent the presence of such Hazardous Materials was not caused by or did not result from the negligence, willful misconduct, acts or omissions of City, City's officers, agents, employees contractors, permittees or invitees. This release shall not apply to any claims for contribution that Airline may have against City in the event that Airline incurs any cost in undertaking any cleanup of Hazardous Material from

the Airline Premises or the Airport ordered by a governmental agency, to the extent that the cleanup order and costs result from a release or discharge of Hazardous Material for which Airline is not responsible and liable under this Agreement. Airline understands and agrees that Airline is hereby waiving all such rights under Section 1542 of the Civil Code of California and any similar law of any state or territory of the United States. Said section reads as follows:

“1542. Certain claims not affected by general release. A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.”

16.01.7 Cessation of Activities. Airline shall cease its activities on the Airline Premises and the Airport, to the extent requested by City, if City determines, in its sole discretion, that such cessation is necessary to investigate, cure or remediate any release or discharge of Hazardous Materials or any threat of a release or discharge thereof. In such a situation, City shall use reasonable efforts to attempt to temporarily accommodate Airline at suitable substitute space in the Airport during the required cessation of Airline activities. Airline shall not recommence its activities on the Airline Premises or the Airport, as appropriate, until notified by City that such release or discharge or threat of release or discharge of Hazardous Material has been investigated, cured and remediated in a manner satisfactory to City.

16.01.8 Abatement of Fees and Charges on Airport. Airline shall not be charged fees or charges for use of the Airline Premises or the Airport to the extent that Airline is required to cease activities on that portion of the Airline Premises or the Airport due to City's efforts to investigate, cure or remediate contamination, unless the release or discharge is one for which Airline is responsible under this Agreement.

16.01.9 Records and Inspections

(a) If Airline makes any written disclosure, or provides any report, to any governmental agency concerning Hazardous Materials at the Airport, Airline shall concurrently also provide a copy of such disclosure or report to City.

(b) Airline shall promptly deliver to City all notices that Airline receives from any governmental agency or third party concerning Hazardous Materials at the Airport.

(c) Airline shall maintain, during the term of this Agreement and for a period of not less than four (4) years after the expiration or termination of this Agreement, or for any longer period of time required by any applicable law, regulation, policy, order or decree, separate and accurate daily records pertaining to the use, handling and disposal of any Hazardous Material(s) by Airline, Airline's

officers, agents, employees, contractors, permittees or invitees on or from the Airport.

(d) Upon request by City, Airline shall furnish City with copies of such daily records, and such other documentation or reports as the Director, from time to time, and at any time during the term of this Agreement, may reasonably require pertaining to the use, handling, disposal, release or discharge of any Hazardous Materials by Airline, Airline's officers, agents, employees, contractors, permittees or invitees on or from the Airport. Notwithstanding the foregoing, Airline shall not be required to furnish City with copies of records that would be protected from disclosure under the California Evidence Code (except to the extent that portions of documents, including but not limited to testing and sampling data, are not so protected).

(e) After the expiration of four (4) years following the termination of this Agreement, Airline may destroy the records pertaining to the use, handling, disposal, release or discharge of any Hazardous Materials by Airline, Airline's officers, agents, employees, contractors, permittees or invitees on or from the Airport unless Airline is otherwise reasonably directed by City.

(f) City shall have the right, under the terms hereof (and at City's sole expense, except when any release or discharge of Hazardous Materials or threat of release or discharge of Hazardous Materials is caused by Airline or Airline's officers, agents, employees, contractors, permittees or invitees), to enter the Airline Premises during the Term hereof to conduct periodic environmental inspections and testing. Prior to conducting environmental testing, City shall provide written notice to Airline concerning the planned testing procedures and locations. However, in the event of an emergency, no written notice shall be required prior to access to the Airline Premises for any necessary environmental response activities, including environmental testing needed in response to the emergency. City shall conduct each inspection or test in a manner that does not unreasonably interfere with Airline's operations.

16.01.10 No Third Party Beneficiaries. Nothing contained in this Article 16 shall be construed as conferring any benefit on any person not a party to this Agreement, nor as creating any right in any person not a party to this Agreement to enforcement of any obligation created under this Agreement.

16.01.11 Airline Obligations Upon Termination. Prior to vacating the Airline Premises, and in addition to all other requirements under this Agreement and without limiting Airline's indemnification obligations under Section 16.01.5, Airline shall remove any Hazardous Materials placed on the Airline Premises during the Term by Airline or as a result of Airline's use or occupancy of the Airline Premises during the Term and shall demonstrate to City's reasonable satisfaction that such removal is in compliance with all applicable Environmental Laws, including without limitation

conducting any environmental audits as may be required by City to demonstrate such removal has been completed according to the terms of this Agreement. This removal and demonstration shall be a condition precedent to City's return of the Contract Security to Airline upon termination or expiration of this Agreement.

16.01.12 Survival of Obligations. Airline's obligations under this Section 16.01 shall survive the expiration or earlier revocation or suspension of this Agreement.

## 16.02 Stormwater.

16.02.1 Notwithstanding any other provisions or terms of this Agreement, Airline acknowledges that certain properties within the Airport, or on City-owned land, are subject to federal and state stormwater rules and regulations. Airline agrees to observe and abide by such stormwater rules and regulations as may be applicable to City's property and Airline's uses thereof.

16.02.2 Airline acknowledges that any stormwater discharge permit issued to City may name Airline as a co-permittee. City and Airline both acknowledge that cooperation is necessary to insure compliance with any stormwater discharge permit terms and conditions, as well as to insure safety and to minimize cost of compliance. Airline acknowledges further that it may be necessary to undertake such actions to minimize the exposure of stormwater to "significant materials" generated, stored, handled or otherwise used by Airline, as such term may be defined by applicable stormwater rules and regulations, by implementing and maintaining "best management practices" as that term may be defined in applicable stormwater rules and regulations.

16.02.3 City will provide Airline with written notice of any stormwater discharge permit requirements applicable to Airline and with which Airline may be obligated to comply from time-to-time, including but not limited to: certification of non-stormwater discharges; collection of stormwater samples; preparation of stormwater pollution prevention or similar plans; implementation of best management practices; and maintenance of necessary records. Such written notice shall include applicable deadlines. Airline agrees that within thirty (30) days of receipt of such written notice it shall notify City in writing if it disputes any of the stormwater permit requirements it is being directed to undertake. If Airline does not provide such timely notice, Airline will be deemed to assent to undertake such stormwater permit requirements. In that event, Airline agrees to undertake, at its sole expense, unless otherwise agreed to in writing between City and Airline, those stormwater permit requirements for which it has received written notice from City, and Airline agrees that it will hold harmless and indemnify City for any violations or non-compliance with any such permit requirements.

## Article 17 Surrender Of Airline Premises

17.01 Surrender and Delivery. Upon termination or cancellation of this Agreement, Airline shall promptly and peaceably surrender to City its Airline Premises and all alterations, additions or improvements thereon to which City elects to retain as provided in Section 17.03 below in good and fit condition, reasonable wear and tear as well as damage or repair which is the responsibility of City excepted. In the event the Airline Premises are not so yielded or delivered to City, City shall remedy said Airline Premises and the cost thereof will be invoiced to Airline as other fees and charges under Section 10.03. The Director shall determine the condition of the Airline Premises at the termination of this Agreement by expiration or otherwise.

17.02 Removal of Property. Provided Airline is not in default for payment of rentals, fees and charges hereunder, Airline shall have the right at any time during the Term of this Agreement to remove from the Airport its aircraft, tools, equipment, removable trade fixtures and other personal property, title to which shall remain in Airline, unless otherwise set forth in Sections 7.01.11 and 12.04.3 of this Agreement. Airline shall remove such aircraft, tools, equipment, removable trade fixtures and other personal property within fifteen (15) business days following termination of this Agreement, whether by expiration of time or otherwise, as provided herein, subject to any valid lien which City may have thereon for unpaid rentals, fees and charges. Airline shall not abandon any portion of its property at the Airport without the written consent of City. Any and all property not removed by Airline within fifteen (15) business days following the date of termination of this Agreement shall, at the option of City, (i) become the property of City at no cost to City; (ii) be stored by City at no cost to City or (iii) be sold at public or private sale at no cost to City. Except as may be agreed to otherwise by City and Airline, all City property damaged by or as a result of the removal of Airline's property shall be restored by Airline to the condition existing before such damage at Airline's expense.

### 17.03 Removal of Alterations, Additions or Improvements.

17.03.1 Upon termination or expiration of this Agreement, City shall have the right, in the Director's sole discretion, to require Airline to remove any or all alterations, additions or improvements installed at the Airline Premises pursuant to Section 12.04. Airline shall remove any such alterations, additions or improvements from the Airport upon termination or expiration of this Agreement unless Airline obtains Director's written consent to leave Airline's alterations, additions or improvements at the Airport. Airline shall ascertain from the Director, at least eight (8) months prior to the Termination Date (or as soon as possible if this Agreement is terminated earlier than the Termination Date), whether City will require Airline to remove any alterations, additions or improvements or, if Airline desires to leave the alterations, additions or improvements, whether the City will accept such alterations, additions or improvements. If the Director determines that all or any portion of the alterations, additions or improvements shall be removed, Airline shall, by no later than six (6) months prior to the

Termination Date, provide a demolition plan to the Director, which shall include a timeline for completion.

17.03.2 In the event Airline fails to remove, or expresses an intention not to remove, any alterations, additions or improvements installed at the Airline Premises pursuant to Section 12.04 required by the Director to be removed pursuant to this Section 17.03, City may enter upon the Airline Premises and remove such alterations, additions or improvements at the sole cost and expense of Airline. Airline agrees to promptly reimburse City for all costs and expenses of removal, plus ten percent (10%) thereof for administrative overhead, or such percentage as approved and established from time to time by the City Council. The obligation to reimburse City for such expenditures shall survive the termination of this Agreement. Any receipt showing payment by City of expenditures associated with the removal of Airline's alterations, additions or improvements shall be prima facie evidence that the amount of such payment was necessary and reasonable and made by City on Airline's behalf.

17.04 Holding Over. In the event Airline uses its Airline Premises without the written consent of City after this Agreement has been canceled or expires, Airline shall be deemed a month to month tenant during the period of such use and shall pay the Non-Signatory Premium as provided in Section 9.09 for any such holdover period.

## **Article 18 Assignment, Subletting, And Handling Agreements**

### **18.01 Assignment and Subletting by Airline.**

18.01.1 Airline shall not assign or transfer this Agreement or any interest therein nor sublet the whole or any portion of the Airline Premises without first obtaining City's written consent, nor shall this Agreement or any interest thereunder be assignable or transferable by operation of law or by any process or proceeding of any court or otherwise without the consent of City first had and obtained, which consent shall not be unreasonably withheld. Airline further agrees that if at any time during the Term more than one-half (1/2) of the outstanding shares of any class of stock of Airline's corporation shall belong to any stockholders other than those who own more than one-half (1/2) of the outstanding shares of that class of stock at the time of the execution of this Agreement or to members of their immediate families, such change in ownership of the stock of Airline shall be deemed an assignment of this Agreement within the meaning of this Section (unless Airline is a corporation whose stock is listed on the New York Stock Exchange or other major stock exchange, in which case such an event will not be considered an assignment of this Agreement). Airline's entering into any operating agreement, license or other agreement where a third party, other than a subsidiary, affiliate, or code share partner of Airline, is given rights or privileges to utilize portions of the Airline Premises shall be considered an attempted assignment or subletting within the meaning of this Section.

18.01.2 Notwithstanding anything set forth herein to the contrary, Airline shall have the right, without first obtaining City's written consent, to assign or transfer this Agreement to (a) an entity controlling, controlled by or under common control with Airline or (b) a successor by merger, consolidation or acquisition to all or substantially all of the assets of Airline.

18.01.3 In the event that Airline shall, directly or indirectly, assign, sell, hypothecate, or otherwise transfer this Agreement, or any portion of Airline Premises, in contravention hereof without the prior written consent of City, City in its sole discretion may terminate this Agreement upon thirty (30) days written notice.

18.01.4 Airline shall include with any request for consent to assign or sublease a copy of the proposed assignment or sublease agreement. The assignment or sublease agreement submitted with Airline's request shall include the following information: (i) the term; (ii) the area or space to be assigned or subleased; (iii) the sublease rental to be charged; and (iv) the provision that assignee or sublessee must execute a separate agreement with City for operating at the Airport. Any other information reasonably requested by City pertaining to said sublease or assignment shall be promptly provided by Airline. A fully executed copy of such sublease or assignment shall be submitted to City for final approval within sixty (60) days of the occupancy of Airline Premises, or any portion thereof, by the assignee or sublessee. Such sublease or assignment shall be substantially similar to the sublease or assignment that was submitted by Airline to City prior to such sublease or assignment for approval.

18.01.5 Nothing in this Article 18 shall be construed to release Airline from its obligations under this Agreement, including but not limited to, the payment of rentals, fees, and charges provided herein.

18.02 Handling Agreements. In the event Airline agrees to ground handle any portion of the operations of another Air Transportation Company, Airline shall provide City advance written notice of such proposed activities, including a description of the type and extent of services to be provided and a ground handling agreement between Airline and the Air Transportation Company, and Airline shall pay ten percent (10%) of its gross revenue from any ground handling agreement (other than a ground handling agreement with an Affiliate of Airline) to City. Notwithstanding the foregoing, Airline shall not ground handle any Air Transportation Company which does not have consent of City for the operation of its Air Transportation Business at the Airport.

## **Article 19 Government Inclusion**

19.01 Government Agreements. This Agreement shall be subordinate to the provisions of any existing or future agreements between City and the United States Government or other governmental authority relative to the operation or maintenance of the Airport or the execution of which has been or will be required as a condition

precedent to the granting of Federal or other governmental funds for the development of the Airport to the extent that the provisions of any such existing or future agreements are generally required by the United States or other governmental authority. City agrees to provide Airline with written advance notice of any provisions that would adversely modify the material terms of this Agreement.

19.02 Federal Government's Emergency Clause. All provisions of this Agreement shall be subordinate to the rights of the United States of America to operate the Airport or any part thereof during time of war or national emergency. Such rights shall supersede any provisions of this Agreement inconsistent with the operations of the Airport by the United States of America.

19.03 Nondiscrimination.

19.03.1 Airline for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby agree as a covenant running with the land that (i) no person on the grounds of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity disability, ethnicity or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of Airline Premises, and (ii) in the construction of any improvements on, over, or under Airline Premises and the furnishing of services thereon, no person on the grounds of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity disability, ethnicity or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination.

19.03.2 In the event of a breach of any of the above nondiscrimination covenants which is not cured, City shall have the right to cancel this Agreement.

19.04 Security. Airline, its officers, employees, agents, and those under its control, shall comply with security measures (a) required of Airline by the FAA or the Transportation Security Administration (the "TSA") or by the City in accordance with applicable requirements of the FAA or the TSA or their authorized successor(s) or (b) contained in any Airport master security plan approved by the FAA or the TSA or their authorized successor(s). If Airline, its officers, employees, agents, or those under its control, shall fail or refuse to comply with said measures and such non-compliance results in a monetary penalty being assessed against City, then, in addition to the provisions of Section 15.01, Airline shall be responsible for and shall reimburse City in the full amount of any such monetary penalty or other damages.



## Article 20 General Provisions

### 20.01 Subordination to Master Agreement and Subordinated Financing Agreements.

20.01.1 This Agreement and all rights granted to Airline hereunder are expressly subordinated and subject to the lien, covenants (including the rate covenants), and provisions of the pledges, transfer, hypothecation, or assignment made by City in the Master Agreement and any Subordinated Financing Agreements. City and Airline agree that to the extent required by the Master Agreement, any Subordinated Financing Agreements or law, the holders of the Bonds or Subordinated Indebtedness or their designated representatives shall have the right to exercise any and all rights of City hereunder.

20.01.2 City shall notify Airline in advance of any amendments or supplements to the Master Agreement or any Subordinated Financing Agreements that would materially alter the terms and provisions of this Agreement or materially impact the levels of rentals, fees, and charges paid by Airline (herein referred to as "Material Amendments").

20.01.3 With respect to property leased by City to Airline hereunder which was or is to be acquired by City with proceeds of Bonds or Subordinated Indebtedness, the interest on which is, or is intended to be, excludable from the gross income of the holders of such Bonds or Subordinated Indebtedness for federal income tax purposes, the parties hereby covenant not to take or fail to take any action that would impair the tax-exempt status of such Bonds and Subordinated Indebtedness. In particular, Airline shall make an irrevocable election not to claim depreciation or an investment credit with respect to any property leased to Airline hereunder.

20.01.4 Airline agrees to execute all instruments, certificates, or other documents reasonably requested by City to assist City and bond counsel in determining and assuring that Bonds and Subordinated Indebtedness are issued in compliance with applicable rules and regulations of the Internal Revenue Service and the Securities and Exchange Commission, and Airline shall provide whatever additional relevant information is reasonably requested by City initially or on an ongoing basis in connection with complying with any of those rules and regulations.

20.02 Nonwaiver. No waiver of default by either party of any of the terms, covenants, or conditions of this Agreement to be performed, kept, and observed by the other party shall be construed to be or act as a waiver of any subsequent default of any of the terms, covenants, and conditions to be performed, kept, and observed by the other party and shall not be deemed a waiver of any right on the part of the other party to cancel this Agreement as provided herein.

20.03 Passenger Facility Charge. City reserves the right to assess and collect PFCs subject to the terms and conditions set forth in the Aviation Safety and Capacity Expansion Act of 1990, Section 9110 (the "PFC Act") and implementing regulations as may be supplemented or amended from time to time. Airline shall collect and pay all PFCs for which it is responsible under the provisions of 14 CFR Part 150. Failure by Airline to remit PFCs within the time frame required by 14 CFR Part 158 shall be grounds for immediate cancellation of this Agreement pursuant to Section 15.03.

20.04 Quiet Enjoyment.

20.04.1 City agrees that, so long as Airline's payment of rentals, fees, and charges is timely and Airline keeps all covenants and agreements contained herein, Airline shall peaceably have and enjoy its Airline Premises and all rights, privileges, and licenses of the Airport, its appurtenances and facilities granted herein, subject to the terms and conditions herein contained.

20.04.2 Consistent with the nature of Airline's business, Airline agrees that occupancy of its Airline Premises will be lawful and quiet and that it will not knowingly use or permit the use of Airline Premises in any way that would violate the terms of this Agreement, create a nuisance, or disturb other tenants or the general public. Airline shall be responsible for the activity of its officers, employees, agents, and others under its control with respect to this provision.

20.05 Performance. The parties expressly agree that time is of the essence in this Agreement. Failure by a party to complete performance within the time specified, or within a reasonable time if no time is specified herein, shall relieve the other party, without liability, of any obligation to accept such performance.

20.06 Avigation Rights. City reserves unto itself and its successors and assigns for the use and benefit of the public a right of flight for the passage of aircraft in the airspace above the surface of the Airport, including the Airline Premises, for navigation or flight in the said airspace for landing on, taking off from, or operating at the Airport.

20.07 Rules and Regulations.

20.07.1 Airline and its officers, employees, agents, and others under its control shall observe and obey all laws, regulations, and orders of the federal, state, county and municipal governments and City (acting in its governmental capacity) which may be applicable to Airline's operations at the Airport.

20.07.2 City, acting in its governmental capacity, may from time to time adopt, amend, or revise the Rules and Regulations for reasons of safety, health, preservation of property, or for the maintenance of the good and orderly appearance or operation of the Airport (in adopting, amending or revising the Rules and Regulations, City shall consult with the Signatory Airlines and shall give the Signatory Airlines 30-

days' notice of any proposed change, except with respect to emergency changes to the Rules and Regulations). Airline and its officers, employees, agents, and others under its control shall faithfully comply with and observe such reasonable and non-discriminatory Rules and Regulations, except as they may conflict with the terms and provisions of this Agreement, or the regulations of another governmental entity having appropriate jurisdiction.

20.07.3 Airline shall be strictly liable and responsible for obtaining, maintaining current, and fully complying with, any and all permits, licenses, and other governmental authorizations, however designated, as may be required at any time throughout the entire Term of this Agreement by any federal, state, or local governmental entity or any court of law having jurisdiction over Airline or Airline's operations and activities.

20.08 Airport Living Wage Ordinance. Airline is an "Airport Business" as defined in the Airport Living Wage Ordinance and Airline shall, at its sole cost and expense, promptly and faithfully observe and comply with all applicable requirements of the Airport Living Wage Ordinance now in force or which may hereafter be in force, pertaining to Airline's employees, the Premises and Airline's operations and activities thereon. Prior to the Effective Date, Airline shall provide to the City the employee work environment information and labor peace assurances as required under the Airport Living Wage Ordinance

20.09 Inspection. Airline shall allow City's authorized representatives access to the Airline Premises for the purpose of examining and inspecting said premises; for purposes necessary, incidental to, or connected with the performance of City's obligations under this Agreement; or, in the exercise of City's governmental functions. Except in the case of an emergency, City shall conduct such inspections during reasonable business hours, after reasonable prior notice to Airline and in the presence of Airline's representative.

#### 20.10 Airline Operations Information and Planning.

20.10.1 For planning purposes, Airline shall upon request cooperate to the greatest extent possible to furnish to City any and all pertinent information regarding Airline's current and future operations (including forecasts) at Airport. City will not disclose such information unless required to by law without first having Airline's consent, unless disclosure of such information is, in the Director's sole discretion, required for the sale of Bonds or Subordinated Indebtedness. Notwithstanding the foregoing, City shall be entitled, from time to time, to release consolidated statistics for all Air Transportation Companies providing Scheduled Operations at the Airport.

20.10.2 Airline shall discuss with City at the earliest date possible its consideration of changes to its operations or the type and series of aircraft used at the Airport (other than equipment substitution necessitated by occurrences beyond the

control of Airline). City will not disclose such information unless required to by law without first having Airline's consent, unless disclosure of such information is, in the Director's sole discretion, required for the sale or issuance of Bonds, Subordinated Indebtedness or Other Indebtedness. Notwithstanding the foregoing, City shall be entitled, from time to time, to release consolidated statistics for all Air Transportation Companies providing Scheduled Operations at the Airport.

20.11 No Individual Liability. No member, officer, agent, director, or employee of City or Airline shall be charged personally or held contractually liable by or to the other party under the terms or provisions of this Agreement or because of any breach thereof or because of its or their execution or attempted execution.

20.12 Relationship of Parties. Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint venturers, or any other similar such relationship between the parties hereto. It is understood and agreed that neither the method of computation of rentals, fees, and charges, nor any other provisions contained herein, nor any acts of the parties hereto, creates a relationship other than the relationship of landlord and tenant.

20.13 Capacity to Execute. Airline shall submit a copy of any corporate resolution, if requested by City, which authorizes any director or officer to act on behalf of Airline or which authorizes Airline to enter into this Agreement.

20.14 Savings. The parties hereto acknowledge that they have thoroughly read this Agreement, including any exhibits or attachments hereto, and have sought and received whatever competent advice and counsel was necessary for them to form a full and complete understanding of all rights and obligations herein. The parties further acknowledge that this Agreement is the result of extensive negotiations between the parties and shall not be construed against City by reason of the preparation of this Agreement by City.

20.15 Successors and Assigns Bound. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

20.16 Incorporation of Exhibits. All exhibits and attachments referred to in this Agreement are intended to be and are hereby specifically made a part of this Agreement.

20.17 Titles. Paragraph titles are inserted only as a matter of convenience and for reference. They in no way define, limit, or describe the scope or extent of any provision of this Agreement.

20.18 Severability. In the event that any covenant, condition, or provision of this Agreement is held to be invalid by any court of competent jurisdiction, the invalidity of

such covenant, condition, or provision shall not materially prejudice either City or Airline in their respective rights and obligations contained in the valid covenants, conditions, or provisions of this Agreement.

20.19 Amendments. Except as otherwise provided herein, no amendment, modification or alteration of the terms of this Agreement shall be binding unless the same shall be in writing, dated subsequent to the date hereof, and duly executed by the parties hereto.

20.20 Other Agreements. Other than as set forth herein, nothing contained in this Agreement shall be deemed or construed to nullify, restrict, or modify in any manner the provisions of any other lease or contract between City and Airline authorizing the use of the Airport, its facilities, and appurtenances.

20.21 Approvals.

20.21.1 Unless otherwise stated, whenever this Agreement calls for approval by City, such approval shall be evidenced by the written approval of the Director.

20.21.2 Except as otherwise provided herein, any approval required by either party to this Agreement shall not be unreasonably withheld, conditioned or delayed.

20.22 Notice.

20.22.1 All notices, requests, consents, and approvals served or given under this Agreement shall be served or given in writing with proof of delivery. If intended for City, notices shall be delivered to:

Norman Y. Mineta San Jose International Airport  
Director of Aviation  
1701 Airport Blvd., Suite B-1130  
San Jose, CA 95112-4538  
Facsimile: (408) 441-4588

or to such other address as may be designated by City by written notice to Airline.

20.22.2 Notices to Airline shall be delivered to:

**ENTER AIRLINE ADDRESS, EMAIL, PHONE & FAX HERE**

or to such other address as may be designated by Airline by written notice to City.

20.23 Agent For Service. It is expressly understood and agreed that if Airline is not a resident of the State of California, 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 immediately, 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 California for service upon a non-resident engaging in business in the State. It is further expressly agreed, covenanted, and stipulated that, if for any reason, such service of process is not possible, as an alternative method of service of process, Airline may be personally served out of the State of California by the registered mailing of such service at the address set forth in Section 20.22.

20.24 Governing Law and Legal Forum. This Agreement is to be read and construed in accordance with the laws of the State of California. In the event that suit shall be brought by either party, the parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.

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

20.26 Americans with Disabilities Act. Airline shall be solely and fully responsible for ensuring that Airline's operations, wherever they may occur at the Airport, and any improvements made by Airline pursuant to Section 12.04, shall comply with the Americans with Disabilities Act of 1990, as this act may be amended from time to time ("ADA"). Airline shall develop a workplan to correct or avoid any violations or non-compliance with the ADA. Airline shall deliver to the City, upon City's request, a copy of each such report and workplan. City's approval of or acceptance of any aspect of Airline's activities under this Agreement shall not be deemed or construed in any way as a representation that such item, activity or practice complies with the ADA. Airline agrees to indemnify, defend, and hold the City harmless from any and all costs incurred by City with respect to Airline's failure to comply with the ADA for Airline's operations or any improvements made by Airline at the Airport.

City shall comply with the ADA as applicable to any facilities constructed by City and any improvements made by City at the Airport.

20.27 Federal Grant Agreement Covenants. Airline acknowledges that City is subject to Federal Grant Agreement obligations as a condition precedent to granting of funds for improvement of the Airport, and, accordingly, agrees to be bound by the following covenants provided by the FAA, as they may apply to Airline.

20.27.1 Airline for itself, its personal representatives, successors in interest, and assigns, as part of the consideration hereof, does hereby covenant and agree that in the event facilities are constructed, maintained, or otherwise operated at the Airport for a purpose for which a DOT program or activity is extended, or for another purpose involving the provision of similar services or benefits, Airline shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, DOT, Sub-title A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended.

20.27.2 Airline for itself, its personal representatives, successors in interest, and assigns, as part of the consideration hereof, does hereby covenant and agree that (1) no person on the grounds of race, color, or national origin shall be excluded from participation, 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 the Airport and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation or denied the benefits of, or otherwise be subjected to discrimination, (3) that Airline shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, DOT, Sub-title A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

20.27.3 That in the event of breach of any of the above nondiscrimination covenants, City shall have the right to terminate this Agreement, to re-enter and repossess any of said Airport premises and the facilities thereon, and to hold the same as if this Agreement had never been made or issued. This provision shall not become effective until the procedures of 49 CFR Part 21 are followed and completed including expiration of appeal rights.

20.27.4 Airline shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service; provided, that Airline may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar types of price reductions to volume purchasers.

20.27.5 Non-compliance with subsection 20.27.4 above shall constitute a material breach of this Agreement and in the event of such non-compliance City shall have the right to terminate this Agreement and any estate hereby created without liability therefor or, at the election of City or the United States, either or both said governments shall have the right to judicially enforce subsections 20.27.1, 20.27.2, 20.27.3, and 20.27.4 of this Section 20.27.

20.27.6 Airline agrees that it shall insert the above five provisions 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 at the Airport.

20.27.7 Airline assures that it will comply with pertinent statutes, executive orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap, be excluded from participating in any activity conducted with or benefiting from Federal assistance. This paragraph obligates Airline or its transferee for the period during which Federal assistance is extended to the airport program, except where Federal assistance is to provide, or is in the form of, personal property or real property or interests therein or structures or improvements thereon. In these cases, this paragraph obligates the party or any transferee for the longer of the following periods: (i) the period during which the property is used by the sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (ii) the period during which the airport sponsor or any transferee retains ownership or possession of the property. In the case of contractors, this paragraph binds the contractors from the bid solicitation period through the completion of the contract.

20.27.8 Notwithstanding anything set forth herein to the contrary, to the extent required: (a) under the Master Agreement; (b) under any Subordinated Financing Agreement; or (c) by the FAA, the DOT, the TSA or a similar governmental authority, other than City, having jurisdiction over the Airport, City reserves the right to further develop or improve the landing area of the Airport as required, regardless of the desires or views of Airline and without interference or hindrance.

20.27.9 This Agreement shall be subordinate to the provisions and requirements of any existing or future agreement between City and the United States relative to the development, operation or maintenance of the Airport.

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



20.27.11 Airline, by accepting this Agreement, agrees for itself and its successors and assigns that it will not make use of the Airport premises in any manner which might interfere with the landing and taking off of aircraft from the Airport or otherwise constitute a hazard. In the event the aforesaid covenant is breached, City reserves the right to enter upon the Airport premises and cause the abatement of such interference at the expense of Airline.

20.27.12 Airline, by accepting this Agreement, expressly agrees for itself and its successors and assigns that it will not erect nor permit the erection of any structure or object, nor permit the growth of any tree on the Airport premises, above the main sea level elevation that would exceed FAR Part 77 standards or elevations affecting the Airport navigable airspace. In the event the aforesaid covenants are breached, City reserves the right to enter upon the permitted premises and to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of Airline.

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

20.29 Prohibition of Gifts. Airline is familiar with City's prohibition against the acceptance of any gift by a City officer or employee, which prohibition is found in Chapter 12.08 of the San Jose Municipal Code, as such chapter may be amended. Airline agrees not to offer any City officer or employee any gift prohibited by Chapter 12.08 and agrees to abide by all laws applicable to it with respect to the making or offering of gifts or things of value to City officers or employees.

#### 20.30 Taxes.

20.30.1 Airline shall pay, but such payment shall not be considered part of Airport Revenue, all taxes, assessments and charges of a like nature, if any (including any possessory interest tax), which at any time during the term of this Agreement may be levied against Airline or become a lien by virtue of any levy, assessment or charge against Airline by the federal government, the State of California, Santa Clara County or any governmental successor in authority to the foregoing, or any other tax- or assessment-levying bodies, in whole or in part, upon or in respect to (a) the Airline Premises or such facilities of the Airport as are made available for use by Airline

hereunder or (b) any personal property belonging to Airline situated on or in the Airline Premises. The property interest of Airline, if any, created by this Agreement may be subject to property taxation, and Airline may be subject to the payment of property tax levied on such interest. Payment of such additional charges for all 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, in which event Airline shall be responsible for obtaining bills for all of said taxes, assessments and charges and promptly providing City with evidence of payment therefor.

20.30.2 Airline may, at its expense, contest the amount or validity of any tax or assessment or the inclusion of the Airline Premises as taxable or assessable property directly against the taxing or assessing authority. Airline shall indemnify City from all taxes, penalties, costs, expenses, and attorneys' fees incurred by City resulting directly or indirectly from all such tax contests other than contests of City-imposed taxes.

20.30.3 Upon any termination of this Agreement, all lawful taxes then levied or a lien upon any of 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 the attachment of the lien and the issuance of the statement.

20.31 Waiver of Visual Artists Rights. Airline shall not install any object in the Airline Premises that constitutes a work of visual art under the Visual Artists Rights Act of 1990 ("VARA") unless and until Airline has (a) obtained the prior written approval of the Director and (b) provided City with a written waiver from the author of such work of visual art, in form and substance reasonably satisfactory to City, which waiver shall identify specifically the work of visual art and the uses of that work to which the waiver applies in accordance with 17 U.S.C. § 106A(e)(1). Airline shall also provide City with a similar written waiver that is effective to bar any claim by an artist with respect to a work of fine art under the California Art Preservation Act, Cal. Civ. Code § 987.

20.32 Exclusiveness of Airline's Rights. Nothing contained in this Agreement shall be deemed to grant to Airline any exclusive right or privilege within the meaning of 49 U.S.C. § 40103(e) or 49 U.S.C. § 47107(a)(4) with respect to activity on the Airport, except that, subject to the terms and provisions of this Agreement, Airline shall have the right to exclusive possession of any Exclusive Use Premises made available to Airline under the provisions of this Agreement.

20.33 No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement other than as specifically provided in Sections 5.05, 5.06 and 5.07 and Sections 6.05, 6.06 and 6.07 hereof.

20.34 Liens and Encumbrances. Airline shall keep the Airline Premises free and clear of any liens and encumbrances arising or growing out of Airline's use and occupancy of the Airline Premises or activities at the Airport. Airline agrees to fully indemnify and defend City in connection with any such liens filed against the Airline Premises. At City's request, Airline shall furnish City with written proof of payment of any item that would or might constitute the basis for such a lien on the Airline Premises if not paid.

20.35 Labor Disputes. Airline agrees to use reasonable efforts to avoid disruption to City, its tenants or members of the public arising from labor disputes involving Airline, and in the event of a strike, picketing, demonstration or other labor difficulty involving Airline, to use its good offices, including the utilization of available legal remedies, to minimize or eliminate any disruption to City, its tenants or members of the public, arising from such strike, picketing, demonstration or other labor difficulty.

20.36 SEC Rule 15c2-12. Airline, upon request by City, shall provide City with such information as City may reasonably request in writing to comply with City's continuing disclosure requirements under SEC Rule 15c2-12 as it may be amended from time to time; provided, however, that Airline may in lieu of providing the requested information direct City to an Airline or SEC website where the requested information is then currently available. Airline covenants that any information so provided, either directly or by reference to any website, shall not misstate any material fact and shall not fail to state any fact necessary, in light of the circumstances under which the information is provided, in order to make the information provided not misleading.

20.37 Memorandum of Lease. In the event that City so requests, Airline shall execute, attest, acknowledge, and deliver for recording with the Recorder of Santa Clara County a short form Memorandum of Lease of this Agreement.

20.38 Entire Agreement. It is understood and agreed that this instrument contains the entire agreement between the parties hereto with respect to the subject matter hereof. It is further understood and agreed by Airline that City and City's agents have made no representations or promises with respect to this Agreement or the making or entry into this Agreement, except such as are in this Agreement expressly set forth, and no claim or liability or cause for termination shall be asserted by Airline against City for, and City shall not be liable by reason of, the breach of any representations or promises not expressly stated in this Agreement.

[The remainder of this page has been intentionally left blank.]

**IN WITNESS WHEREOF**, the parties hereto have set their hands and corporate seals on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**CITY OF SAN JOSE**

**AIRLINE NAME, entity type**

\_\_\_\_\_  
William F. Sherry, A. A. E.  
Director of Aviation

\_\_\_\_\_  
Signature

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

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

**APPROVED AS TO FORM**

\_\_\_\_\_  
Title

\_\_\_\_\_  
Kevin Fisher  
Senior Deputy City Attorney

\_\_\_\_\_  
Date

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

**CORPORATE SECRETARY CERTIFICATE**

This certificate shall be executed by the secretary or assistant secretary of the corporation.

I, \_\_\_\_\_ certify that I  
**Name of Secretary or Assistant Secretary**

am the  Secretary or  Assistant Secretary of the corporation named in the

attached agreement; that \_\_\_\_\_  
**Name of Person that Signed Agreement**

signed the agreement on behalf of the corporation as the \_\_\_\_\_  
**Title of Person that Signed the Agreement**

of the corporation; and that the agreement was duly signed for and in behalf of

the corporation by authority of its Board of Directors, and is within the scope of its

corporate powers.

\_\_\_\_\_  
**Signature of Secretary or Assistant Secretary**

\_\_\_\_\_  
Corporate Seal

\_\_\_\_\_  
Date

EXHIBIT A

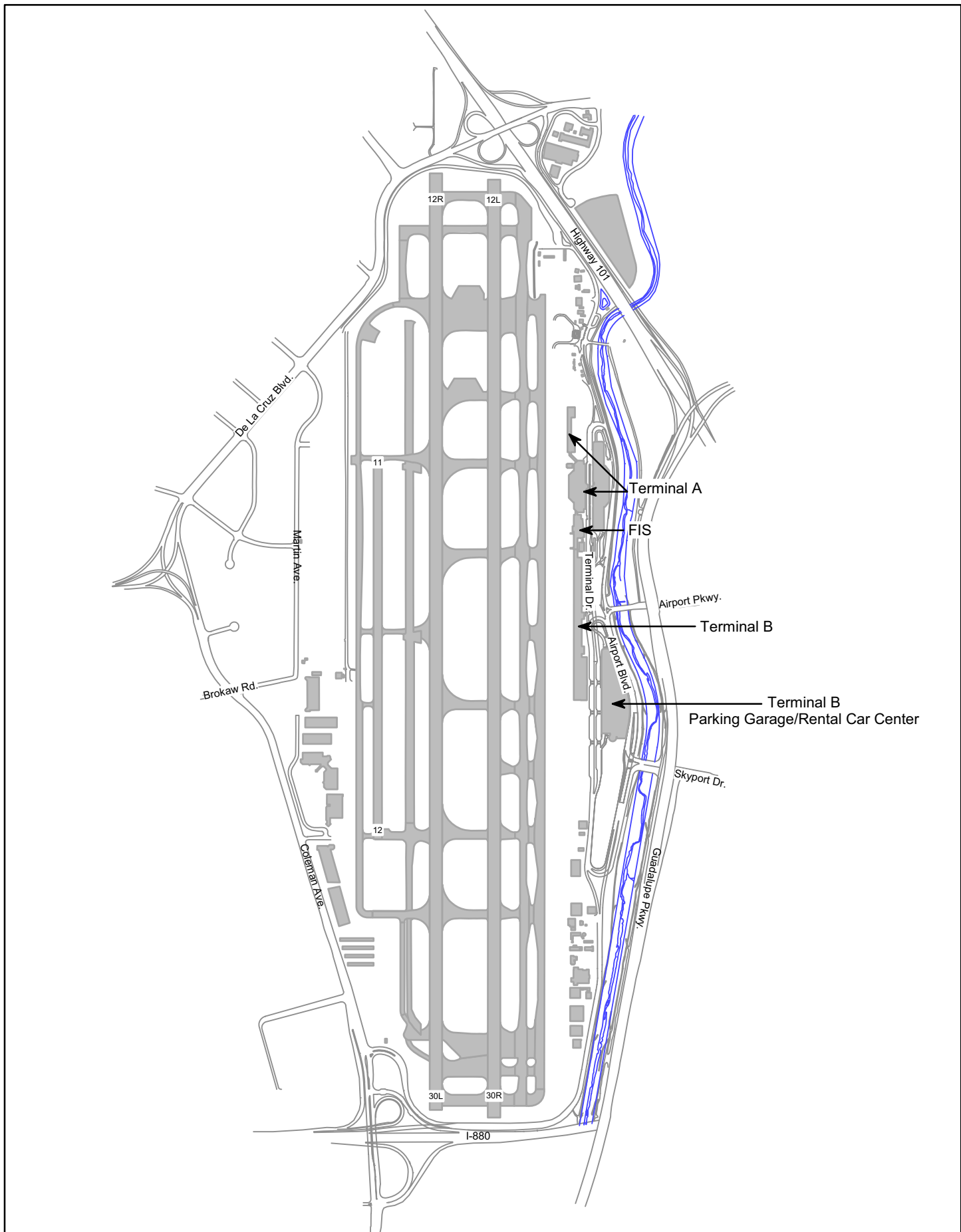
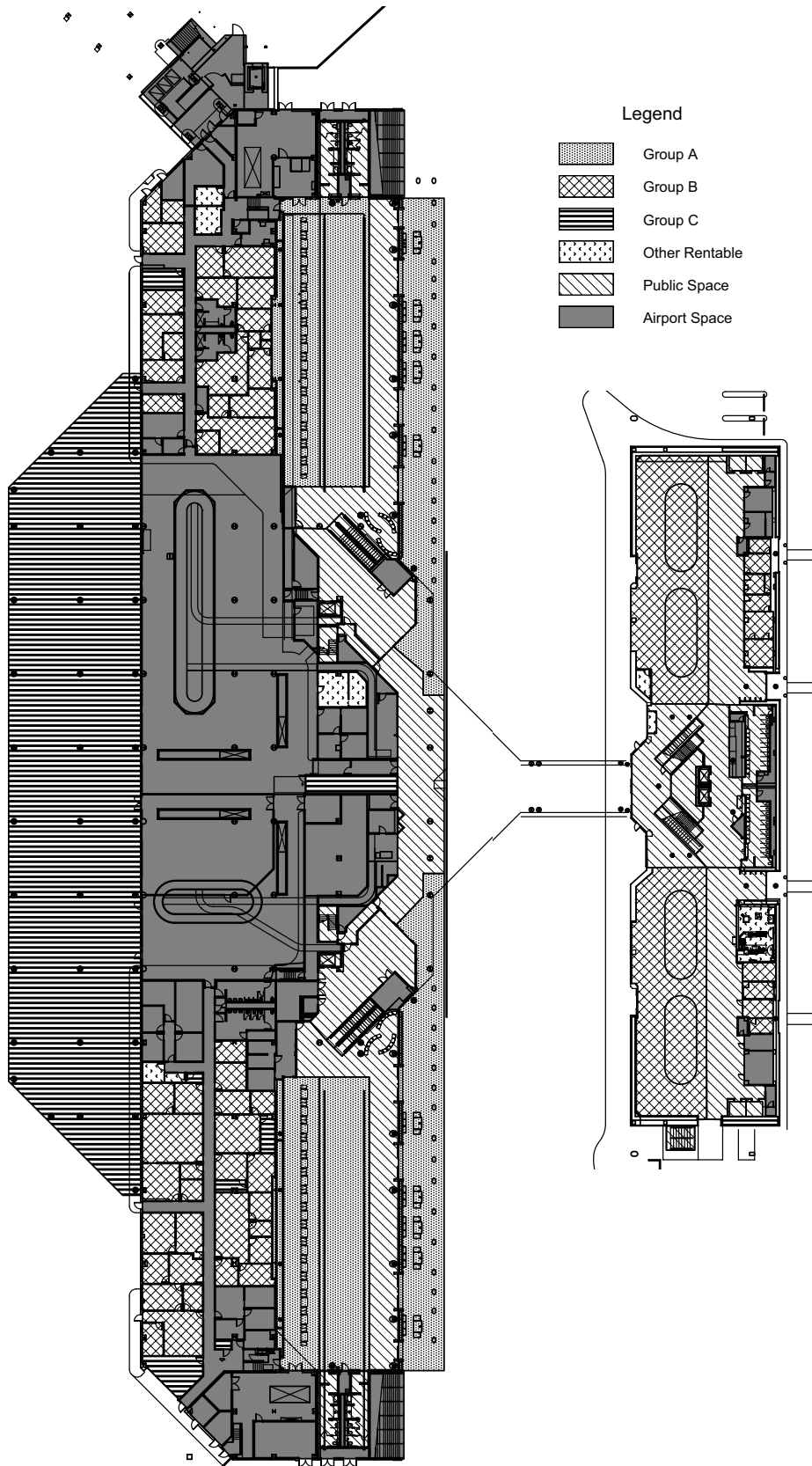
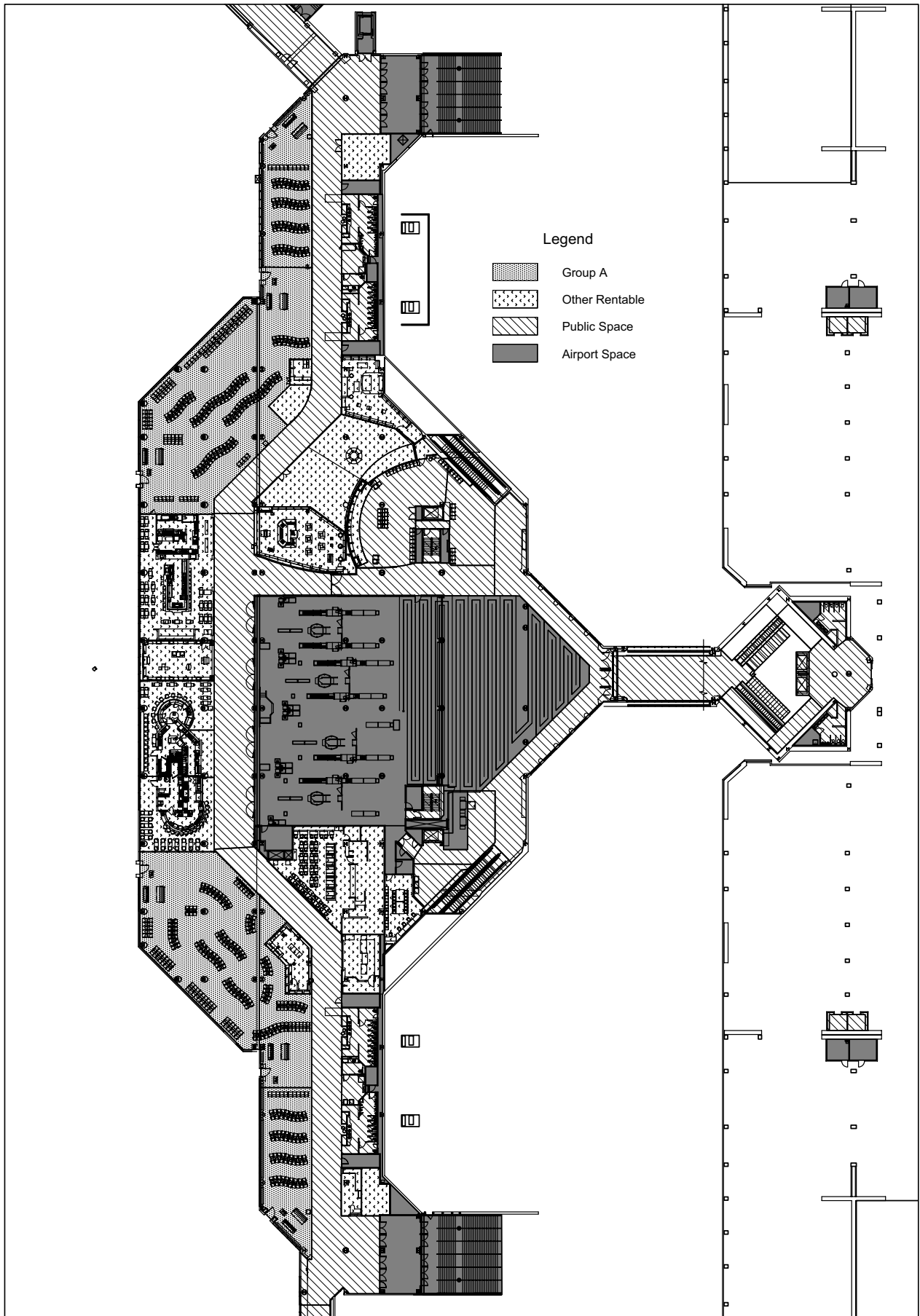


EXHIBIT B



EXHIBIT C





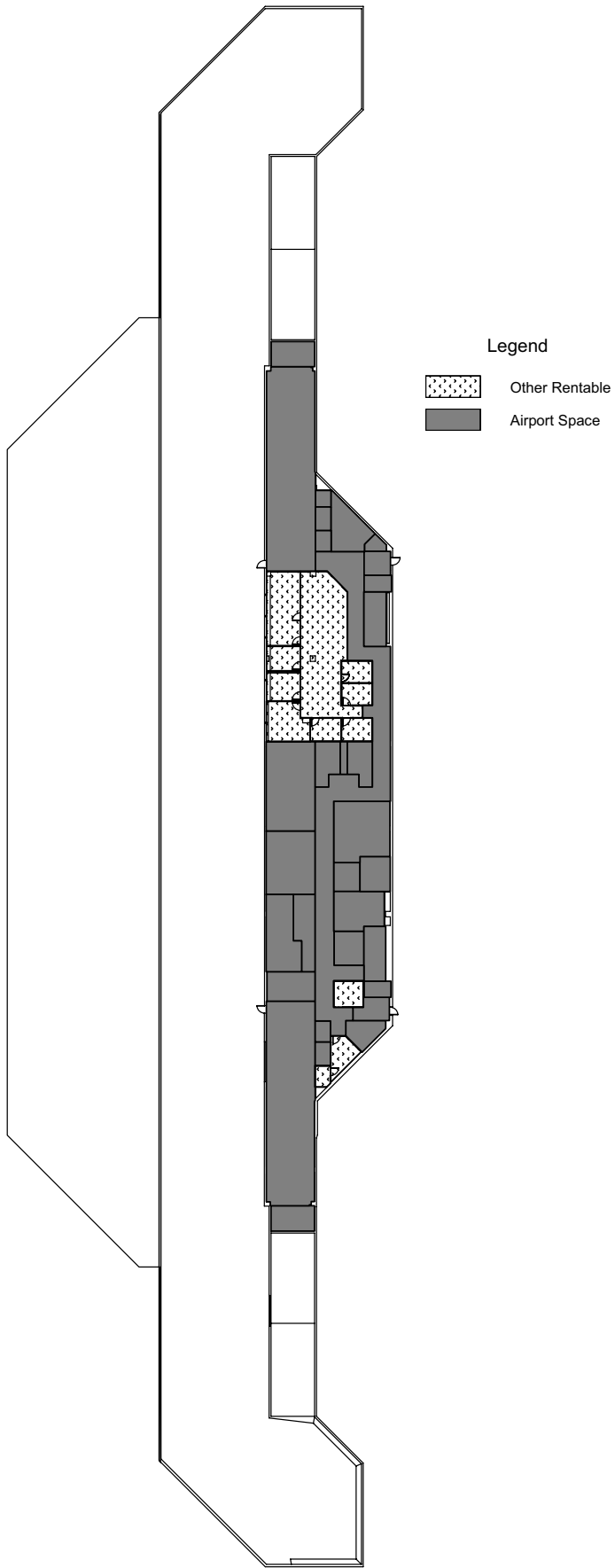
NORTH



Date: 2/8/2011

Summary of Terminal Area  
Terminal A Floor 2

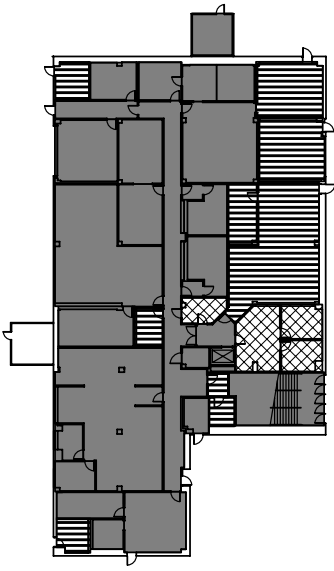









Date: 2/8/2011

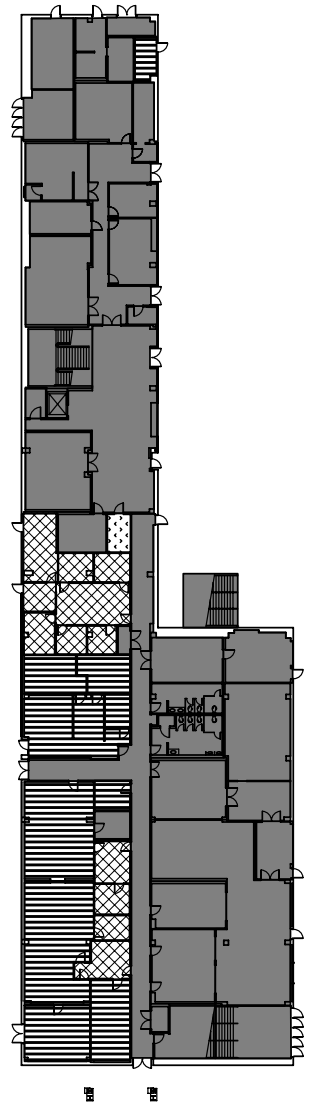
Summary of Terminal Area  
Terminal A Floor 3





Legend

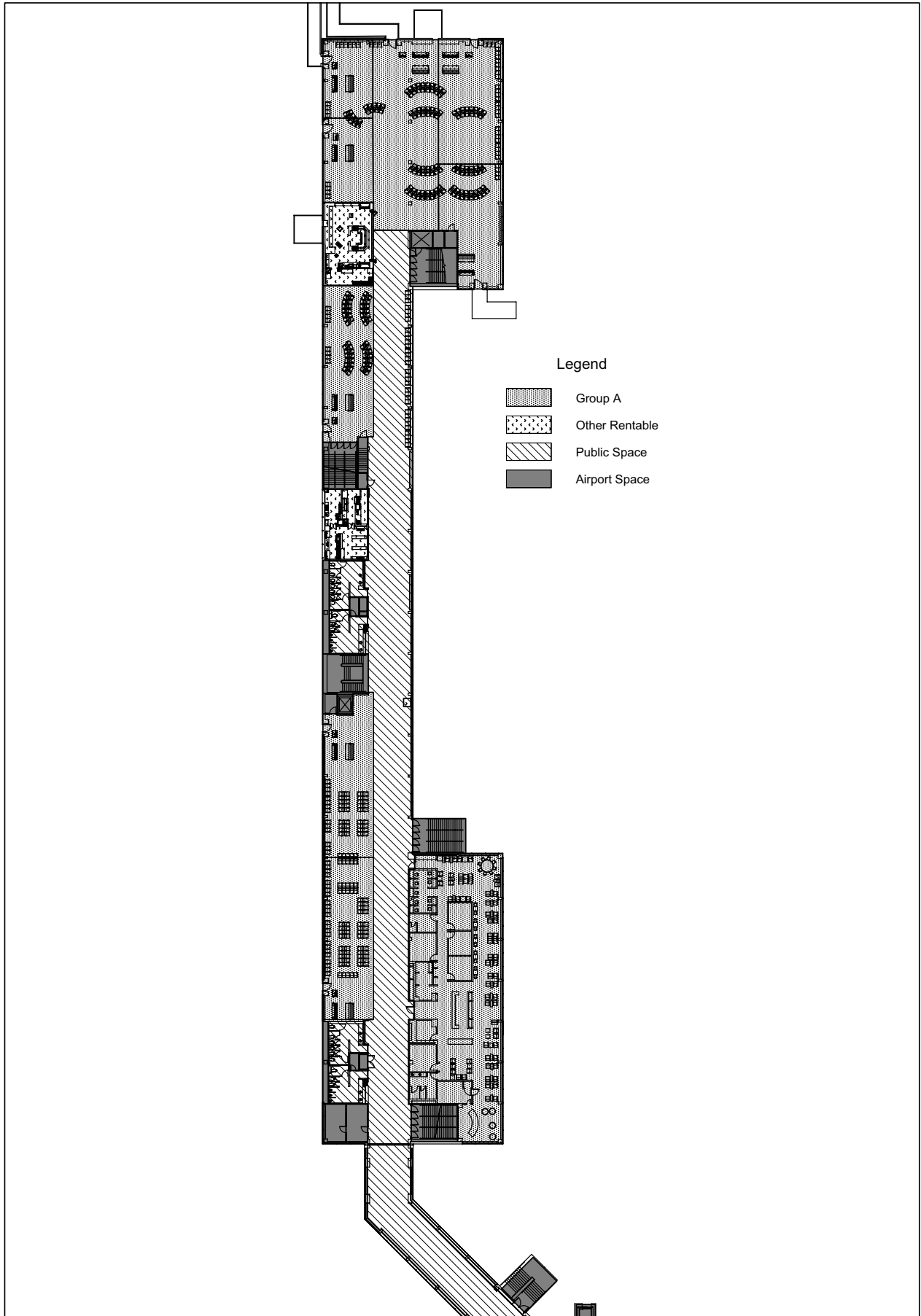
-  Group A
-  Group B
-  Group C
-  Other Rentable
-  Airport Space



Date: 2/8/2011

Summary of Terminal Area  
Terminal A Plus Floor 1

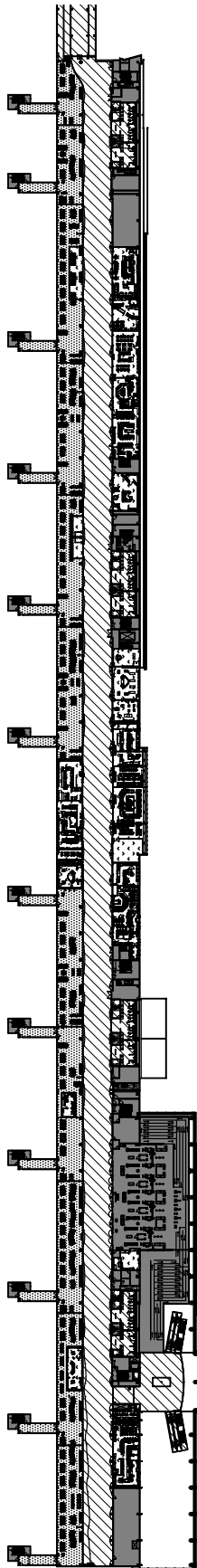








**NORTH**  
  
Date: 2/8/2011

Summary of Terminal Area  
Terminal A Plus Floor 2

NORMAN Y. MINETA  
**SAN JOSE**  
INTERNATIONAL  
AIRPORT



Legend

-  Group A
-  Other Rentable
-  Public Space
-  Airport Space

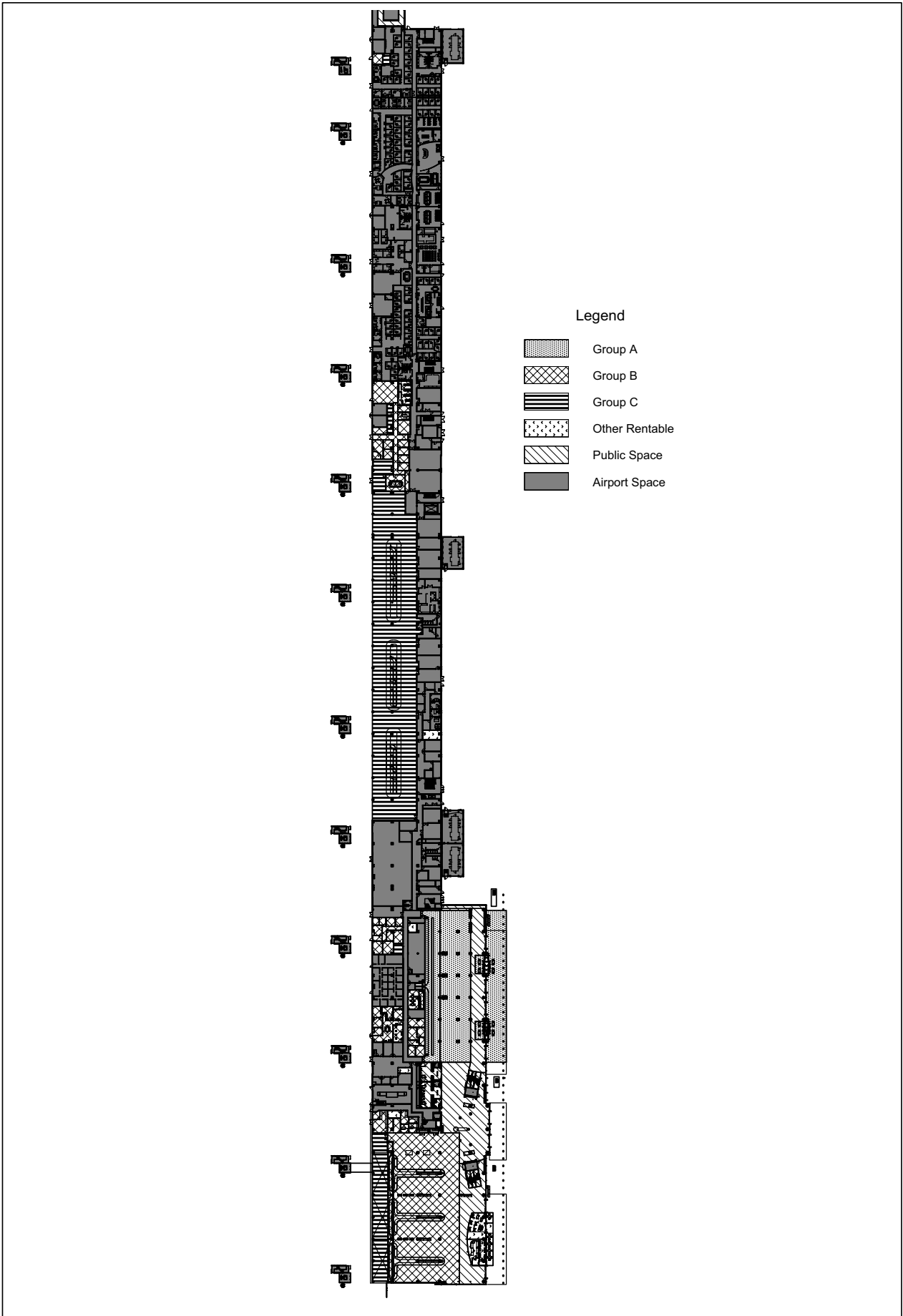
NORTH



Date: 2/8/2011

Summary of Terminal Area  
Terminal B Floor 2



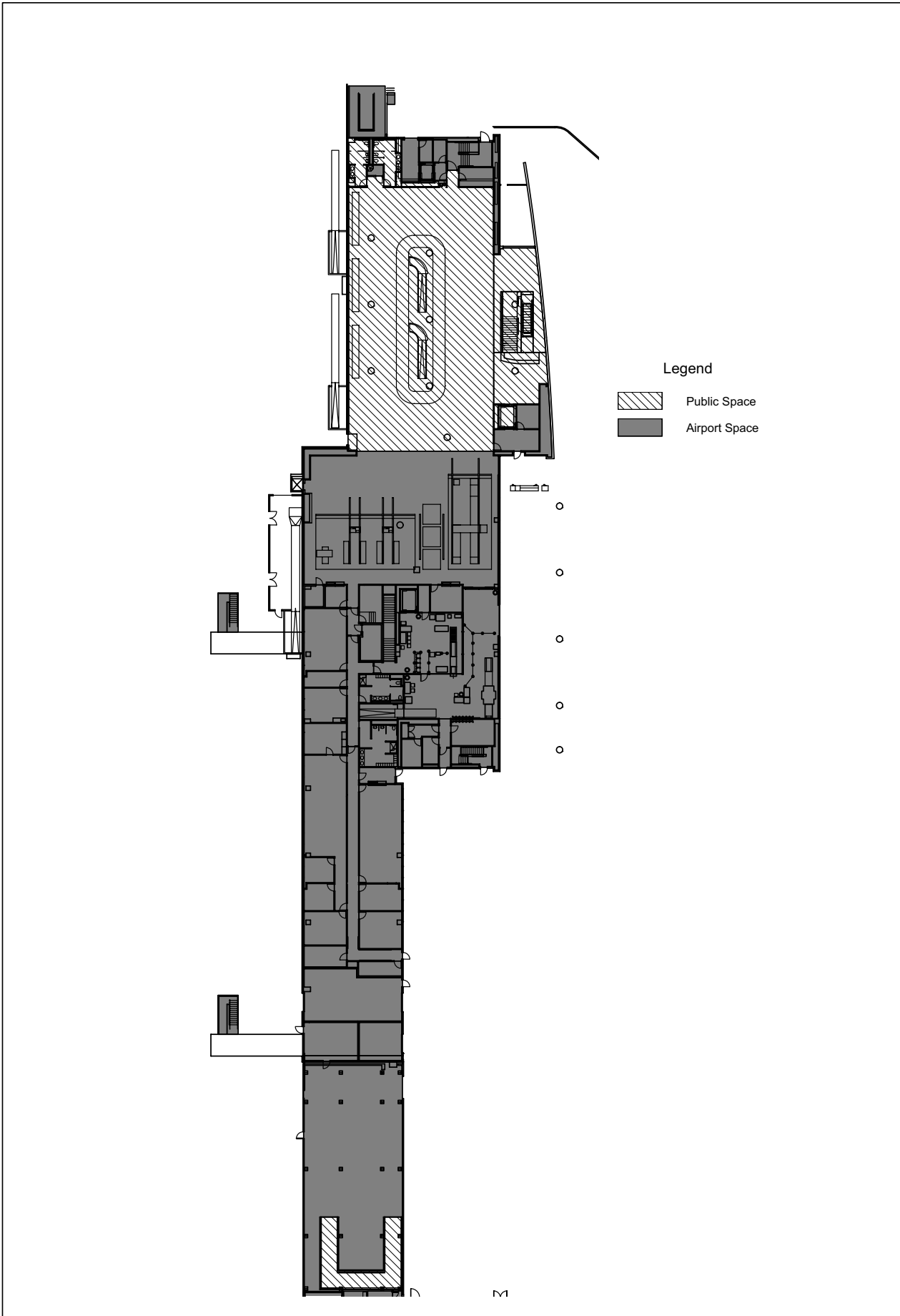


**NORTH**  
  
Date: 2/8/2011



Summary of Terminal Area  
Terminal B Floor 1

NORMAN V. MINETA  
**SAN JOSE**  
INTERNATIONAL  
AIRPORT 





Legend

-  Public Space
-  Airport Space

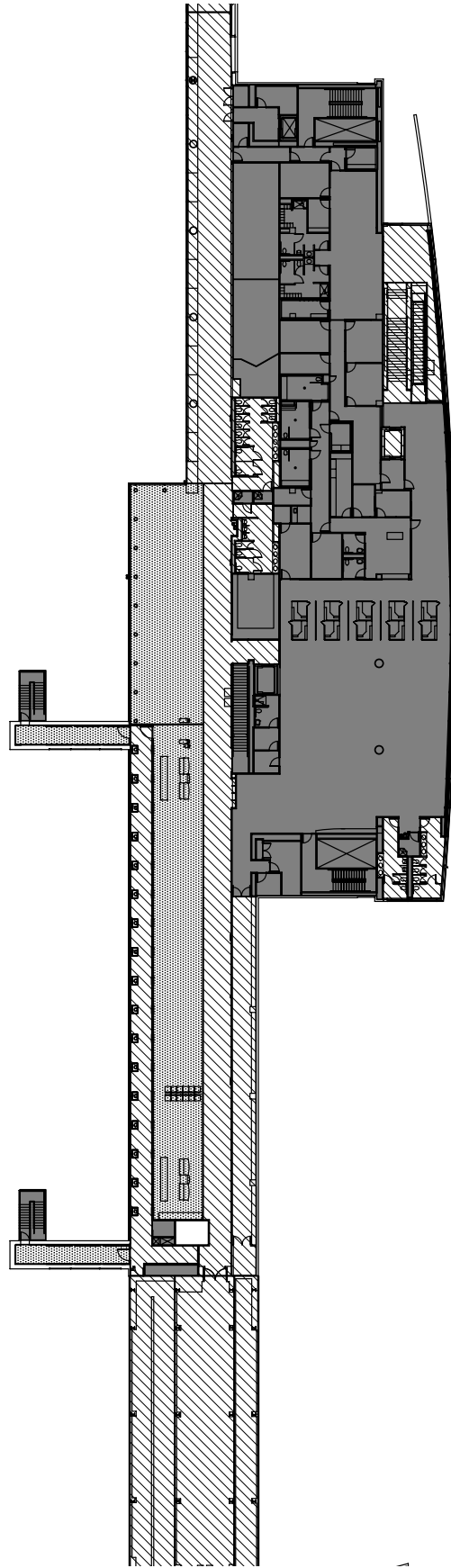
NORTH






Date: 2/8/2011

Summary of Terminal Area  
FIS Floor 1





Legend

-  Group A
-  Public Space
-  Airport Space

NORTH



Date: 2/8/2011

Summary of Terminal Area  
FIS Floor 2



EXHIBIT D

## 2012-2013 Preferential Gate and Ticket Counter FINAL OFFER

### Preferential Gate Assignments

Signatory Carrier	Scheduled Outbound Seats Aug. -2011	Percentage of Total Outbound Seats Aug. 2011	24 gates	Number of Preferential Gates Earned	Number of Preferential Gates Offered	Adjustments for Airline Rejection or Requests	Number of Preferential Gates Assigned	Gate Assignments
Alaska	64,765	12.83%	3.08	3	3	Accepts All	3	26,27,28
American	42,644	8.45%	2.03	2	2	Accepts All	2	9,10
Continental	13,565	2.69%	0.64	1	1	Reject -1	0	
Delta	24,867	4.92%	1.18	1	1	Accepts All	1	7
Hawaiian	8,060	1.60%	0.38	0	0		0	
JetBlue	9,300	1.84%	0.44	1	1	Reject - 1	0	
Southwest	290,591	57.55%	13.81	14	14	Reject -7	7	17,18,19,20,21,22,23
United	25,248	5.00%	1.20	1	1	Request +1	2	13,14
US Air	19,584	3.88%	0.93	1	1	Accepts All	1	11
Volaris	6,336	1.25%	0.30	0	0		0	
<b>Total</b>	<b>504,960</b>	<b>100.00%</b>		<b>24</b>	<b>24</b>		<b>16</b>	

Type of Gate	Totals
Common Use	2
Preferential	16
Unassigned	2
Rejected	8
<b>Total Gates</b>	<b>28</b>

## 2012-2013 Preferential Gate and Ticket Counter FINAL OFFER

### Preferential Ticket Counter Assignments

Signatory Carrier	Number of Preferential Gates Offered	Number of Preferential Ticket Counters Earned Based on Gates offered	Number of Preferential Ticket Counters Offered		Adjustments for Airline Rejection or Requests	Number of Preferential Ticket Counters Accepted	Ticket Counter Assignment
Alaska	3	4	4	8 Positions	Reject - 1	3	37,38,39
American	2	3	3	6 Positions	Accepts All	3	10,11,12
Continental	1	2	2	4 Positions	Reject -2	0	
Delta	1	2	2	4 Positions	Accepts All	2	5,6
Hawaiian	0	0	0	Common Use		0	
JetBlue	1	2	2	4 Positions	Reject -2	0	
Southwest	14	15	15	30 Positions	Reject -8	7	46 - 52
United	1	2	2	4 Positions	Request +2	4	16,17,18,19
US Air	1	2	2	4 Positions	Accepts All	2	28,29
Volaris	0	0	0	Common Use		0	
<b>Total</b>	<b>24</b>	<b>32</b>				<b>21</b>	

Type of Counter	Total Counters
Common Use	4
Preferential	21
Unassigned	17
Rejected	11
<b>Total Ticket counters</b>	<b>53</b>

EXHIBIT E

## EXHIBIT E

### NORMAN Y. MINETA SAN JOSE INTERNATIONAL AIRPORT TERMINAL RESOURCE USE, ASSIGNMENT AND SCHEDULING PROCEDURES

#### **PURPOSE:**

The City of San Jose (the "City") and the Air Transportation Companies agree that availability of Common Use and Preferential Use Premises at the Airport is limited and requires frequent coordination among the City and the Air Transportation Companies. In accordance with the Airline-Airport Lease and Operating Agreement (the "Airline Lease") between the City and certain Air Transportation Companies operating at the Airport with a term beginning on December 1, 2007 and any other agreements governing the use of the Airport, the following Terminal Resource Use, Assignment and Scheduling Procedures ("Procedures") are established to govern the use of all Preferential Use and Common Use Premises at the Airport by all Air Transportation Companies.

The terms and conditions of these Procedures are intended to be consistent with the Airline Lease and may be modified only with the approval of the Director of Aviation of the City (the "Director"), provided that such modifications are consistent with the Airline Lease. Where there is a conflict between the Procedures and the Airline Lease, the provisions of the Airline Lease shall apply. Where there is a conflict between the Procedures and any other agreement governing the use of the Airport, the provisions of these Procedures shall apply. Any capitalized terms in these Procedures that are not defined herein shall have the meanings assigned to them in the Airline Lease.

#### **EXCLUSION:**

These Procedures are not intended to include procedures for remain overnight ("RON") and remote/hardstand aircraft parking at the Airport; such procedures will be established in separate documents.

#### **EFFECTIVE DATE:**

These Procedures shall take effect on December 1, 2007 and shall remain in effect, as the same may be amended, until rescinded in writing by the Director.

#### **Section I – Definitions**

The following definitions shall be applicable whenever the specific term is used in these Procedures:

*Advance Schedule* - means an Air Transportation Company flight schedule submitted prior to, or on, the designated due date for participation in the Advanced Review set forth in Section 5.1 of these Procedures. Advanced Schedule(s) shall include for each flight: (a) the flight number, (b) the scheduled arrival and departure time, (c) the aircraft type,

(d) the frequency of operation, (e) the city of origin and destination and (f) the preferred Resources for each flight.

***Domestic Flight*** – means an aircraft: (a) arriving at the Airport from a city located within the United States of America or from a city located outside of the United States of America designated as a pre-clearance location and which has passengers and/or cargo on board that do not require clearance by the Federal Inspection Services at the Airport, or (b) departing from the Airport to a city located within the United States of America.

***Extended Ground Time*** – means a Domestic Flight scheduled to remain on the ground at the Airport for longer than ninety (90) minutes and a FIS Flight scheduled to remain on the ground at the Airport for longer than two (2) hours.

***FIS or Federal Inspection Services*** – means those services provided by federal agencies responsible for the inspection of passengers, baggage and cargo entering the United States including, but not limited to, U.S. Immigration and Customs Enforcement, U.S. Department of Agriculture and U.S. Department of Public Health.

***FIS Flight*** - means an aircraft arriving at the Airport that is not a Domestic Flight and with passengers and/or cargo on board that require clearance by the Federal Inspection Services at the Airport.

***Period of Use - Gate*** – means, for arrivals and departures of aircraft that are scheduled to arrive at the Airport and depart directly, from fifteen (15) minutes prior to the time of the scheduled arrival until the actual departure of the aircraft from the Gate or fifteen (15) minutes after the scheduled departure time, whichever is the earlier to occur, provided, however, that the Period of Use shall be extended if the aircraft is being boarded and actively prepared for departure, but only until the completion of the boarding process.

***Period of Use – Ticket Counter*** – means from two (2) hours prior to scheduled departure until scheduled departure for Domestic Flights and from three (3) hours prior to scheduled departure until scheduled departure for FIS Flights.

***Period of Use – Skycap Position*** - means from two (2) hours prior to scheduled departure until scheduled departure for Domestic Flights.

***Resource*** – means, collectively, the Gates, Ticket Counters and Skycap Positions at the Airport.

***Scheduled Seats*** - means the average daily number of outbound seats on an Air Transportation Company's Scheduled Operations for the month of August of each year, which is computed by dividing total outbound seats on an Air Transportation Company's Scheduled Operations for the month of August by thirty-one (31).



**Secondary User** – means an Air Transportation Company scheduled by the City to use a Preferential Use Gate that is preferentially assigned to another Air Transportation Company.

## **Section II – Procedures**

### **1.0 Authority and Implementation**

- 1.1 The City shall be responsible for the administration and implementation of these Procedures with input, if any, from the RMAC as set forth below.
- 1.2 The City, working cooperatively with the RMAC, will use its best efforts to allocate Gates, Ticket Counters, Skycap Positions and other shared resources in a fair manner pursuant to these Procedures.

### **2.0 RMAC**

- 2.1 The RMAC shall review and make recommendations to the City on the numbers of Gates, Ticket Counters and Skycap Positions to be reserved for use as Common Use Premises during any year and the locations within the Terminal of Common Use Premises and Preferential Use Premises. The RMAC shall consider both the operational efficiency (from the perspectives of the City, the Signatory Airlines and any Non-Signatory Airlines) and the customer service implications of its recommendations. The RMAC's recommendations regarding the numbers of Gates, Ticket Counters and Skycap Positions to be reserved for use as Common Use Premises shall take into account the expected Scheduled Seats to be accommodated by all Gates, Ticket Counters and Skycap Positions at the Airport during the coming year. The final numbers and locations of all Common Use and Preferential Use Premises shall be determined by the Director at his/her sole discretion, after taking account of the recommendations, if any, of the RMAC.
- 2.2 The RMAC may:
  - 2.2.1 Review scheduling plans;
  - 2.2.2 Recommend options for the resolution of conflicts in the application of these Procedures and the use of Resources; and
  - 2.2.3 Provide support to the City in ensuring the timely submittal of information required under these Procedures by all participating Air Transportation Companies.
- 2.3 RMAC representation will consist of the following:

2.3.1 Three (3) representatives designated by the Director or the Director's designee, one of whom shall serve as chairperson; and

2.3.2 Three (3) representatives from the domestic Signatory Airlines as designated by the AAAC, provided that at least one (1) of these carriers shall be a Signatory Airline with less than 10% of the outbound seats at the Airport and at least one (1) of these carriers shall be a Signatory Airline with regional Affiliates.

2.4 Air Transportation Company representation in the RMAC shall be for a period of twelve (12) months beginning July 1<sup>st</sup> and ending June 30<sup>th</sup> of each calendar year.

### **3.0 Airport Operations Staff Designations**

3.1 The City, in its sole discretion, shall designate the appropriate Airport Operations staff to perform the following duties:

3.1.1 Implement the Resource access priority system as further described in this document;

3.1.2 Communicate Resource assignments to all relevant parties;

3.1.3 Maintain Resource use records and statistics;

3.1.4 Receive Advance Schedules;

3.1.5 Evaluate and identify priorities in Resource/flight scheduling;

3.1.6 Identify Resource use conflicts with proposed schedules;

3.1.7 Ensure proper notification and distribution to Air Transportation Companies of these Procedures and associated procedures; and

3.1.8 Assist Air Transportation Companies in scheduling flights based on Resource availability.

### **4.0 Conflict Resolution**

4.1 The City, working in conjunction with the RMAC, will use its best efforts to resolve conflicts arising under these Procedures.

4.2 In the event conflicts under these Procedures are not resolved by the City in conjunction with the RMAC, the Director or the Director's designee shall have final authority for conflict resolution.

## **5.0 Resource Planning and Review Process**

The City shall conduct an Advance Review on a monthly basis to establish and identify flight schedules at an early date. Each Air Transportation Company must submit, in writing, an Advance Schedule to the City no later than forty-five (45) days prior to the commencement or rescheduling of any flights. The City will conduct a preliminary analysis of the Advanced Schedule to identify potential Resource scheduling conflicts, and the City shall review the Advanced Schedule and all scheduling conflicts with the RMAC. The City will publish a monthly master schedule for Common Use Premises allocation based on the results of this Advance Review at least two (2) weeks prior to the beginning of each upcoming month.

## **6.0 Common Use Resource Priority Allocation System**

The following flights are listed in descending order of priority for access to Common Use Premises.

- 6.1 Signatory FIS Flight on the Advance Schedule;
- 6.2 Non-Signatory FIS Flight on the Advance Schedule;
- 6.3 Signatory Domestic Flight on the Advance Schedule;
- 6.4 Non-Signatory Domestic Flight on the Advance Schedule;
- 6.5 Signatory FIS Flight not on the Advance Schedule;
- 6.6 Non-Signatory FIS Flight not on the Advance Schedule;
- 6.7 Signatory Domestic Flight not on the Advance Schedule; and
- 6.8 Non-Signatory Domestic Flight not on the Advance Schedule.

## **7.0 Preferential Use Resources**

- 7.1 Air Transportation Companies granted Preferential Use status shall have the right to add additional operations to Preferential Use Premises during available Periods of Use, after providing the City with forty-five (45) days prior written notice.
- 7.2 Notwithstanding anything set forth herein to the contrary, should an Air Transportation Company with Preferential Use status choose to add an operation on its Preferential Use Premises that conflicts with the Scheduled Operation of a Secondary User, the Air Transportation Company shall provide the City with at least sixty (60) days written notice of its intention, and the

City agrees to use its best efforts to accommodate the Secondary User at other Preferential Use Premises at the end of that notice period. If the City cannot so accommodate the Secondary User at that time, the Air Transportation Company with Preferential Use status will have to modify the time of the Scheduled Operation to a time that is consistent with an open Period of Use.

**7.3** The City has the right to assign Secondary User(s) to Preferential Use Premises in accordance with Article 5 of the Airline Lease.

**7.3.1** Secondary Users shall be permitted to remain at the assigned Preferential Use Premises for a complete operation, provided the operation does not exceed the Period of Use.

**7.3.2** Should the Secondary User's operation exceed the Period of Use, then the Secondary User may be required to vacate the Preferential Use Premises, at its sole expense, upon notification by the City. The Secondary User may be reassigned to any available Preferential or Common Use Premises to complete its operation.

**7.3.3** Notwithstanding anything set forth herein to the contrary, should a Secondary User choose to add operations at the Airport at any Preferential Use Premises, the Secondary User must provide the City with a minimum of sixty (60) days prior written notice, provided that there is time available at the Terminal acceptable to both the Airline and the City. The City agrees to use its best efforts, but shall not be obligated, to provide the Secondary User with alternate Preferential or Common Use Premises should the preferred Preferential Use Premises be unavailable for the desired Period of Use.

## **8.0 Ticket Counter Allocation Procedures**

**8.1** Within the Common Use Ticket Counter Periods of Use, Ticket Counter allocations may ramp up and down based on anticipated passenger arrival distributions. Common Use Ticket Counter allocations for the peak of passenger departures will be:

**8.1.1** Domestic narrow-body operations: two (2) counters, four (4) positions.

**8.1.2** Domestic wide-body operations: three (3) counters, six (6) positions.

**8.1.3** International narrow-body operations: three (3) counters, six (6) positions.

**8.1.4** International wide-body operations: four (4) counters, eight (8) positions.

**8.2** Air Transportation Companies using Common or Preferential Use Ticket Counters may request the use of additional ticket counters.

**8.2.1** When Common Use Ticket Counters have available Periods of Use, City will assign to requesting Air Transportation Companies for the period requested.

**8.2.2** If there are more requests than available Common Use Ticket Counters, the City will assign to the requesting Air Transportation Company with the greater perceived need and ability to staff the positions, as determined by the Director or the Director's designee.

**8.2.3** Assignment of additional Common Use Ticket Counters will be reviewed daily and can be reassigned based on changing needs and ability to staff.

## **9.0 General Resource Use and Allocation Procedures**

**9.1** The City shall implement the Resource assignments for Common Use Premises on a day-to-day basis.

**9.2** Unless previously agreed by the affected Air Transportation Companies with concurrence from the City or as provided in the Airline Lease, other aircraft must not be scheduled to use any portion of an Air Transportation Company's Period of Use.

**9.3** An Air Transportation Company may enter an assigned Resource at any time prior to scheduled Period of Use, provided the preceding Air Transportation Company assigned to that Resource has completed its operation and the Resource is available. The Air Transportation Company must notify the City when taking a Resource early.

**9.4** Air Transportation Companies will report their Estimated Time of Arrival to the City not less than one hour following the scheduled departure from the origin city and not less than one (1) hour prior to its scheduled arrival. The status of delayed flights thereafter will be reported to the City in thirty (30) minute increments. Flights with duration of less than one (1) hour shall report Estimated Time of Arrival as soon as possible after departure.

**9.5** Air Transportation Companies shall advise the City if a departing aircraft is delayed more than fifteen (15) minutes from its scheduled departure. The City may require an Air Transportation Company to tow-off a delayed aircraft from a Gate if there is no other reasonable way to accommodate the next Scheduled Operation to use that Gate.

- 9.6 An aircraft with Extended Ground Time may be required to be towed off a Gate to an alternative parking position if the City finds no alternative means to accommodate the next Scheduled Operation to use that Gate.
- 9.7 The City will attempt to re-assign an aircraft, which lost priority due to a delay, to another Common Use or Preferential Use Gate at the first available time at the highest level of priority that is consistent with the original priority level of the flight, provided, however, that such reassignment will not displace an Air Transportation Company operating on schedule. Reassignment of a pre-assigned Common Use Gate may be required to minimize the effects of the delayed flight. The reassignment of on-time flights will be limited to only those times when a higher priority flight is delayed or as such reassignment may be agreed upon by the affected carriers. The City will attempt to reassign an aircraft to a Gate in close proximity to the Air Transportation Company's normal operational area.

#### **10.0 C hanges and Revisions**

The RMAC may recommend changes to these Procedures. Such recommended changes can be approved and effected only in writing by the Director or Director's designee, in his or her sole discretion. All users will be notified in writing of any changes or revisions at least thirty (30) days prior to implementation.

EXHIBIT F-1

EXHIBIT F-1

AFFILIATE DESIGNATION

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

Airline: \_\_\_\_\_

Affiliate: \_\_\_\_\_

Airline hereby notifies the City of its designation of the Affiliate named above as an Affiliate of Airline within the meaning of Section 7.03.1 of the Airline-Airport Lease and Operating Agreement (the "Agreement"). In connection with such designation, Airline hereby certifies as follows:

1. Affiliate is either a wholly-owned subsidiary or code-share partner of Airline.
2. Affiliate is a party to a Non-Signatory Airline Operating Agreement with City.
3. Airline shall be responsible for the actions and obligations of Affiliate, including without implied limitation the obligation to pay all charges owed to City on account of Affiliate activities at the Airport and the duty to provide information, insurance and indemnification to City.
4. Airline shall be the financial guarantor of all amounts owed to City by Affiliate.
5. The Airline shall be responsible for ensuring that Affiliate complies with all of the terms and conditions of the Agreement to the same extent that Airline is responsible for compliance, including without implied limitation compliance with the environmental provisions of the with the terms and conditions of the Agreement.

Please return two (2) originals of this document to:  
City of San Jose

\_\_\_\_\_  
\_\_\_\_\_  
Attention \_\_\_\_\_

\_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



EXHIBIT F-2

EXHIBIT F-2

WITHDRAWAL OF AFFILIATE DESIGNATION

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

Airline: \_\_\_\_\_

Affiliate: \_\_\_\_\_

Airline hereby notifies City of its withdrawal of the designation of the Affiliate named above as an Affiliate of the Airline.

From and after the last day day of the calendar month following at least 15 (fifteen) days from City's receipt hereof, Airline's obligations pursuant to that certain Affiliate Designation dated as of \_\_\_\_\_, \_\_\_\_\_ shall be of no further force and effect.

All of Airline's obligations with respect to Affiliate which were incurred prior to the effective date hereof shall survive this Withdrawal of Affiliate Designation and shall be satisfied in full by Airline within thirty (30) days of the effective date hereof.

\_\_\_\_\_

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

Name:

Title:

City hereby acknowledges that Airline has given notice of withdrawal of its designation of \_\_\_\_\_ as an Affiliate as of the date first written above.

CITY OF SAN JOSE

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

Name:

Title

Please return two (2) originals of this document to:  
City of San Jose

\_\_\_\_\_

Attention \_\_\_\_\_

EXHIBIT G

EXHIBIT G  
Description of Operation And Maintenance Responsibilities

1. EXTERIOR AND STRUCTURE

*City Responsibility – All services, except as noted for Airline and except as provided in Article 8 of the Airline-Airport Lease and Operating Agreement, including without limitation:*

- Structural and roof maintenance and repair
- FIS and Terminal apron/ramp and aircraft parking areas
- Manual and automatic door maintenance
- Signage
- Perimeter wall and exterior metal panels cleaning and replacement
- Landscaping maintenance and policing
- Walkways and curbfront
  - Policing, sweeping, and trash collection, including removal of gum, oil, spots, and spills

2. INTERIOR

*Airline Responsibility within Exclusive Use Premises:*

- Plumbing – Maintenance, repair and cleaning of Airline-installed devices
- Electrical
  - Lamp and ballast replacement
  - Cleaning of fixtures
  - Repair, maintenance, and cleaning of Airline-installed devices/fixtures ie. plumbing, etc.
  - Cost of electrical power, hot and cold water, and other building utility use, determined by estimate or metering; uses other than normal building functions shall be metered and paid by Airline (Airline to pay cost of meter installation)
- Building HVAC – cleaning of diffusers, grates, etc., which provide final delivery and return of conditioned air
- Glass Breakage – replacement of any breakage within or bordering the Exclusive Use Premises; City may repair or replace any external glass panels bordering the Exclusive Use Premises on Airline's behalf and charge Airline the actual cost of such repair or replacement; interior glass cleaning
- Communications Systems – Operation, maintenance, repair and cleaning of dedicated systems installed by Airline for its sole use
- Custodial services –
  - Policing of publicly accessible Exclusive Use Premises, such as VIP Clubs, etc., at least once per day; this policing shall include the emptying of ashtrays and trash containers as required
  - Damp mop, scrub, strip, wax, and/or seal terrazzo or tile floors on a regular basis

- Vacuum, spot clean, and shampoo carpeted areas on a regular basis
- Dust, damp wipe, and wash furniture, railings, window sills, walls, ceilings, ashtrays, trash containers, counters and fixtures on a regular basis
- Clean and polish all metal surfaces on furniture, fixtures, and equipment
- Wash interior windows and glass partitions
- Removal of Airline trash from custodial activity in Exclusive Use Premises and from aircraft
- Airline locks, keys and key control
- Interior Decorating – Provision, installation, and maintenance of all furnishings (including seats, tables, counters, closets, etc.), wall coverings, floor finishes, window coverage (draperies, etc.), authorized signage and logos, and related items not included in the primary construction of the facility
- Mechanical Systems – Operations, maintenance and repair of all mechanical systems (except as noted as City responsibility), including manual and automatic doors, escalators and elevators, and airline equipment

*City Responsibility:*

- Plumbing – All services except as noted for Airline, and including:
  - Operation, maintenance, and repair of hot and cold domestic potable water service throughout the Terminal Area
  - Maintenance and repair of drainage and sewage systems throughout the Terminal Area
  - Maintenance and repair of plumbing fixtures, including restroom fixtures, drinking fountains, and janitorial sinks in the FIS and Terminal Facilities
  - Maintenance and repair of fire suppression (sprinkler) system
- Electrical – All services except as noted for Airline, and including maintenance and repair of all aspects of the electrical distribution systems, including meters, wiring, distribution and circuit protection boxes, outlets, primary lighting fixtures and outlets installed in primary construction of facility
- Heating, Ventilating and Air Conditioning – Operation and maintenance of all systems, except as noted for Airline, including
  - High temperature and chilled water distribution
  - Heat exchangers
  - Air handling units, including filter changing and coil cleaning
  - Ducting
  - Controls
- Glass Breakage – Replacement of broken glass in the Terminal Facilities, except as noted for Airline
- Communication Systems – Except as noted for Airline, maintenance of all systems used in common throughout the facility, such as flight information display systems, alarm systems, common use communications and public address systems
- Custodial Services – Provide facilities for trash disposal and provide custodial services in the FIS and Terminal Facilities (not including concession areas or airline Exclusive Use Premises and except as specified for Airline), including

restrooms; elevators; escalators; circulation space in ticketing, baggage claims, and public waiting areas; public telephones; drinking fountains; vestibules; corridors, stairwells and other amenities available to the general public; functions to include:

- Overseeing trash removal from public places
- Floor cleanings, with regularly scheduled vacuuming, spot cleaning, shampooing, sweeping, scrubbing, mopping, stripping, waxing, and/or sealing as appropriate
- Wall, ceiling, partition, and fixture cleaning, including dusting, spot cleaning, washing and polishing metal surfaces
- Washing interior and exterior windows and glass partitions within common areas
- Telephone and restroom sanitizing, including all fixtures
- Restroom stocking, including soap, paper products, and sanitary napkins
- Locks, keys and key control
- Repair and maintenance of people movers (elevators and escalators) in the FIS and Terminal Facilities
- Signage

### 3. COMMON USE EQUIPMENT

*City Responsibility – Maintenance and replacement of Common Use Equipment*  
*Airline Responsibility – Operation of Common Use Equipment*

NORMAN Y. MINETA SAN JOSE INTERNATIONAL AIRPORT  
OPERATIONS AND MAINTENANCE RESPONSIBILITIES

	<u>Exclusive Use Premises</u>	<u>Common, Preferential and Public Terminal Facilities</u>	<u>Equipment</u>
Structures and Building Exteriors	C	C	N/A
Loading Bridges	C	C	C
Landscaping	N/A	C	N/A
Walkway and Roadways	N/A	C	N/A
Security, Law Enforcement, Fire Protection, Emergency Medical Services	C	C	C
Passenger and Baggage Screening/Security	A	C	A
Plumbing Drainage	A(1)	C	C, A(1)
Electrical Service and Lighting	A(1)	C	C(6), A(1)
HVAC	A(2)	C	C(6), A(1)
Glass Breakage	A	C	N/A
Communications Systems	A(3)	C(4)	C(6)
Custodial Services, including trash removal	A	C	N/A
Locks, Keys, Key Control	A	C	C(6)
Interior Decorating	A	C	N/A
Baggage Handling Systems	A	C	C
People Movers (elevators and escalators)	A	C	
Signage	A	C	C(6)
Aircraft Fueling System	N/A	C(5)	N/A
Buses/Shuttles	N/A	C(5)	N/A

KEY A = Airline  
C = City

1. Airline-installed devices and lamp replacement
2. Cleaning of grates and diffusers only
3. Exclusive/joint use systems installed by Airline
4. Except as otherwise specified by the Director when the installation of a particular communications system is permitted.
5. Maintenance and replacement is the responsibility of the City.  
Operation of Common Use Equipment is the responsibility of the Consortium.
6. Except as specified for Airline with respect to Exclusive Use Premises.

## EXHIBIT H



## EXHIBIT H

**Norman Y. Mineta San José International Airport  
Preliminary Airline Rates & Charges Analysis  
Historical Statement and Forecast of Revenue and Expense  
For Fiscal Years Ending June 30  
Summary**

	Historical 2010-11	Budget 2011-12	Forecast 2011-12	Budget 2012-13
<b>REVENUE</b>				
Airline Rates & Charges:				
Landing Fees	\$ 13,370,404	\$ 12,073,884	\$ 11,495,783	\$ 12,733,524
Terminal Rental	34,446,216	38,184,987	40,024,349	37,186,987
Other Revenues:				
Terminal Concessions	16,876,892	15,930,380	15,790,905	15,114,972
Airfield Area	2,924,976	2,983,703	2,760,206	2,762,590
Parking & Roadways	39,079,837	40,435,864	40,957,173	40,090,694
Other Cost Centers/Petroleum	8,182,478	8,289,765	8,569,162	7,720,495
Excess 2004 Bond Proceeds	-	5,498,849	5,498,849	1,148,000
Reimbursement of Equity	-	-	26,630,779	-
Transfer from Grant Fund	2,183,000	500,000	500,000	-
Transfers from Rate Stabilization Fund	1,200,000	-	-	-
Bond Debt Service Coverage, prior year	6,694,768	8,331,091	8,125,403	12,004,822
Commercial Paper Debt Service Coverage, prior year	-	1,059,656	1,059,657	777,006
Reserve for Future Deficit	10,405,742	-	-	-
Surplus in Excess of Revenue Sharing	10,570,617	-	11,227,485	-
Prior year surplus - Airlines	7,254,728	11,380,028	11,380,028	13,602,840
Prior year surplus - City	7,254,727	11,380,027	11,380,027	13,602,839
<b>TOTAL REVENUE</b>	<b>\$ 160,444,385</b>	<b>\$ 156,048,234</b>	<b>\$ 195,399,806</b>	<b>\$ 156,744,769</b>
<b>EXPENSE</b>				
Direct Expense:				
Terminal Building	\$ 18,356,091	\$ 22,111,804	\$ 19,746,357	\$ 21,456,999
Airfield Area	5,167,950	5,915,252	5,531,501	5,994,130
Parking & Roadways	17,568,402	18,069,112	17,113,075	15,443,698
Other Cost Centers/Petroleum	802,354	1,011,872	919,310	894,304
Indirect Expense:				
General & Administrative	17,733,589	18,777,944	17,769,585	18,847,433
Workers' Compensation	(580,216)	970,582	-	577,700
Other Postemployment Benefits Cost	1,518,924	1,000,000	1,000,000	1,500,000
ARFF	3,495,771	3,089,482	3,051,945	1,684,274
Police	10,692,557	5,003,514	5,394,346	5,342,084
<b>TOTAL OPERATING EXPENSES</b>	<b>\$ 74,755,422</b>	<b>\$ 75,949,562</b>	<b>\$ 70,526,119</b>	<b>\$ 71,740,622</b>
<b>DEBT SERVICE &amp; COVERAGE</b>				
Debt Service - Revenue Bonds	\$ 32,501,610	\$ 50,285,442	\$ 48,019,289	\$ 50,981,651
Debt Service - Commercial Paper	5,298,282	3,885,038	3,885,038	2,454,574
Coverage - Revenue Bonds	8,125,403	12,571,360	12,004,822	12,745,413
Coverage - Commercial Paper	1,059,657	777,008	777,006	490,915
<b>OTHER EXPENSES (USES)</b>				
Transfer to Renewal and Replacement Fund	4,000,000	4,000,000	4,000,000	4,000,000
Replenishment of Rate Stabilization Fund	-	100,000	100,000	4,526,000
Reserve for Future Budgets	-	-	26,630,779	-
Replenishment of Debt Service Reserve	-	-	469,526	-
Reserve for Discretionary Expenditures (Revenue Sharing)	1,000,000	1,000,000	1,000,000	1,000,000
Contingency Reserve	-	4,000,000	781,548	2,000,000
<b>TOTAL DEBT SERVICE &amp; OTHER EXPENSES</b>	<b>\$ 51,984,952</b>	<b>\$ 76,618,848</b>	<b>\$ 97,668,008</b>	<b>\$ 78,198,553</b>
<b>TOTAL EXPENSES</b>	<b>\$ 126,740,374</b>	<b>\$ 152,568,410</b>	<b>\$ 168,194,127</b>	<b>\$ 149,939,175</b>
<b>NET REVENUE</b>	<b>\$ 33,704,011</b>	<b>\$ 3,479,824</b>	<b>\$ 27,205,679</b>	<b>\$ 6,805,594</b>
Revenue Sharing				
Airlines (50%)	\$ 11,380,028	\$ 1,739,912	\$ 13,602,840	\$ 3,402,797
City (50%)	11,380,027	1,739,912	13,602,839	3,402,797
Surplus in Excess of Revenue Sharing	11,227,485	-	-	-
<b>TOTAL NET REVENUE</b>	<b>\$ 33,987,540</b>	<b>\$ 3,479,824</b>	<b>\$ 27,205,679</b>	<b>\$ 6,805,594</b>

## EXHIBIT H

**Norman Y. Mineta San José International Airport  
Calculation of Required Landing Fees  
Fiscal Years Ending June 30**

	<u>2012</u>	<u>2013</u>
Maintenance & Operating Expenses		
Direct Expenses	\$ 5,915,252	\$ 5,994,130
Workers' Compensation	217,726	141,042
OPEB Reserve	224,325	366,215
General & Administrative	3,549,031	3,562,165
ARFF	2,409,796	1,313,734
Police	600,422	641,050
	<u>\$ 12,916,551</u>	<u>\$ 12,018,335</u>
Annual Debt Service		
Revenue Bonds	1,723,825	3,622,205
Commercial Paper	292,483	190,599
Debt Service Coverage		
Revenue Bonds	430,956	905,551
Commercial Paper	58,497	38,120
Replenishment of the Rate Stabilization Fund	100,000	-
Renewal and Replacement Expenditures	1,952,775	1,774,043
Total Airfield Requirements	<u>\$ 17,475,088</u>	<u>\$ 18,548,852</u>
Credits:		
Other Airfield Revenue	3,945,419	\$ 3,193,590
Debt Service Coverage, prior year		
Revenue Bonds	899,715	364,025
Commercial Paper	56,070	34,478
Transfer from Grant Fund	500,000	-
Prior Year Surplus	-	2,223,235
Total Credits	<u>\$ 5,401,204</u>	<u>\$ 5,815,328</u>
Total Landing Fee Requirement	\$ 12,073,884	\$ 12,733,524
Total Landing Weight	5,654,396	5,354,390
<b>Calculated Landing Fee Rate per 1,000# MGLW</b>	<b>\$2.14</b>	<b>\$2.38</b>

## EXHIBIT H

**Norman Y. Mineta San José International Airport  
Average Terminal Rental Rate Calculation  
Fiscal Year Ending June 30**

	<u>2012</u>	<u>2013</u>
Maintenance and Operating Expenses:		
Direct Expenses	\$ 22,111,804	\$ 21,456,999
Workers' Compensation	481,906	267,051
OPEB Reserve	496,513	693,399
General & Administrative	7,830,403	7,859,380
Police	3,202,249	3,418,934
ARFF	278,053	151,585
	<u>\$ 34,400,928</u>	<u>\$ 33,847,348</u>
Annual Debt Service		
Revenue Bonds	32,724,508	31,876,740
Commercial Paper	1,290,698	918,337
Debt Service Coverage, current year		
Revenue Bonds	8,181,127	7,969,185
Commercial Paper	258,140	183,667
Debt Service Coverage, prior year		
Revenue Bonds	(3,615,129)	(7,778,851)
Commercial Paper	(668,132)	(372,966)
Excess 2004 Bond Proceeds	(4,451,554)	(717,000)
Renewal and Replacement Expenditures	<u>1,645,088</u>	<u>1,612,585</u>
Total Terminal Rental Requirement	\$ 69,765,674	\$ 67,539,046
Total Rentable Space (Sq.Ft.)	350,827.00	351,028.00
Average Cost per Sq. Ft.	\$198.86	\$192.40
Airline Space	249,245.00	240,452.00
Airline Requirement	\$ 49,565,015	\$ 46,263,827
Add: Replenishment of the Rate Stabilization Fund	-	4,526,000
Less: Prior Year Surplus	<u>(11,380,028)</u>	<u>(13,602,840)</u>
Net Airline Requirement	\$ 38,184,987	\$ 37,186,987
Airline Space	249,245.00	240,452.00
<b>Average Terminal Rental Rate per Sq. Ft.</b>	<b>\$153.20</b>	<b>\$154.65</b>
Terminal Rentals	\$ 38,184,987	\$ 37,186,987
Landing Fees	12,073,884	12,733,524
Less: Landing Fees - Cargo	(656,123)	(593,229)
Total Airline Rates and Charges (excluding Cargo)	\$ 49,602,748	\$ 49,327,282
Projected Enplanement	4,249,672	4,129,529
<b>Cost Per Enplaned Passenger</b>	<b>\$11.67</b>	<b>\$11.95</b>

EXHIBIT H

**Norman Y. Mineta San José International Airport  
Projected Allocation of Terminal Requirement  
Fiscal Year Ending June 30, 2013**

Terminal Requirement	\$ 37,186,987
Group A space (100% weighting)	
Ticket counter	9,760
Ticket counter queuing	14,821
Skycap/curbside check-in	15,214
Holdroom	85,529
Group A	<u>125,324</u>
Group B space (80% weighting)	
Bag claim space	30,470
Bag claim office and other office	24,364
Group B	<u>54,834</u>
Group C space (50% weighting)	
Bag makeup	52,367
Operations	7,927
Group C	<u>60,294</u>
Total space Groups A - C	<u>240,452</u>
Equivalent premium space	
Group A (100%)	125,324
Group B (80%)	43,867
Group C (50%)	30,147
	<u>199,338</u>
Rental revenue required	\$ 37,186,987
Equivalent premium space	199,338
Premium rate/sq. ft./year	\$186.55

EXHIBIT H

**Norman Y. Mineta San José International Airport  
Projected Allocation of Terminal Requirement  
Fiscal Year Ending June 30, 2013**

Required rate	Relative value	
<b>Group A</b>		
Ticket counter	100%	\$186.55
Ticket counter queuing	100%	\$186.55
Skycap/curbside check-in	100%	\$186.55
Airline ticket office & clubroom	100%	\$186.55
Holdroom	100%	\$186.55
<b>Group B</b>		
Bag claim space	80%	\$149.24
Bag claim office & other office	80%	\$149.24
<b>Group C</b>		
Bag makeup	50%	\$93.28
Operations	50%	\$93.28

Breakdown of Terminal Requirement

<b>Group A</b>		
Ticket counter and queuing, Skycap/curbside check-in		\$ 7,423,846
Holdroom		15,955,626
Group A		\$ 23,379,472
<b>Group B</b>		
Bag claim space		\$ 4,547,397
Bag claim office		3,636,127
Group B		\$ 8,183,524
<b>Group C</b>		
Bag makeup		\$ 4,884,590
Operations		739,400
Group C		\$ 5,623,990
Total		\$ 37,186,987

EXHIBIT H

**Norman Y. Mineta San José International Airport  
Projected Allocation of Terminal Requirement  
Fiscal Year Ending June 30, 2013**

**Allocation of Ticket Counter Requirement**

Requirement	\$ 7,423,846
Preferential ticket counters	21
Common use ticket counters	4
Unassigned ticket counters	17
Rejected ticket counters	11
	<u>53</u>
Preferential ticket counter %	39.6%
Common use ticket counter %	7.5%
Unassigned ticket counter %	32.1%
Rejected ticket counter %	20.8%
	<u>100.0%</u>
Preferential ticket counter requirement	\$ 2,941,524
Common use ticket counter requirement	560,290
Unassigned ticket counter requirement	2,381,234
Rejected ticket counter requirement	1,540,798
	<u>\$ 7,423,846</u>
Allocate unassigned & rejected requirement:	
Preferential ticket counter requirement without unassigned & rejected	84.0%
Common use ticket counter requirement without unassigned & rejected	16.0%
	<u>100.0%</u>
Preferential ticket counter requirement	\$ 6,236,031
Common use ticket counter requirement	1,187,815
	<u>\$ 7,423,846</u>
1. Allocation of preferential ticket counter requirement	\$ 6,236,031
<b>Rate per preferential ticket counter</b>	<b>\$296,954</b>
2. Allocation of common use ticket counter requirement	\$ 1,187,815
Hours spent on common use ticket counters	13,200
<b>Rate per hour</b>	<b>\$90</b>

EXHIBIT H

**Norman Y. Mineta San José International Airport  
Projected Allocation of Terminal Requirement  
Fiscal Year Ending June 30, 2013**

**Allocation of Gates/Holdroom Requirement**

Requirement	\$ 15,955,626
Preferential gates	16
Common use gates	2
Unassigned gates	2
Rejected gates	8
	<hr/> 28
Preferential gate %	57%
Common use gate %	7%
Unassigned gate %	7%
Rejected gates	29%
	<hr/> 100%
Preferential gate requirement	\$ 9,117,501
Common gate requirement	\$ 1,139,688
Unassigned gate requirement	\$ 1,139,688
Rejected gate requirement	\$ 4,558,750
	<hr/> \$ 15,955,626
Allocate unassigned requirement:	
Preferential gate requirement without unassigned & rejected	88.9%
Common gate requirement without unassigned & rejected	11.1%
	<hr/> 100.0%
Preferential gate requirement	\$ 14,182,779
Common use gate requirement	\$ 1,772,847
	<hr/> \$ 15,955,626
1. Allocation of preferential gate requirement	\$ 14,182,779
<b>Rate per preferential gate</b>	<b>\$886,424</b>
2. Allocation of common use gate requirement	\$ 1,772,847
Annual turns on common use gates	2,920
<b>Rate per turn</b>	<b>\$607</b>

EXHIBIT H

**Norman Y. Mineta San José International Airport  
Projected Allocation of Terminal Requirement  
Fiscal Year Ending June 30, 2013**

**Allocation of Baggage Claim Space Requirement**

Requirement	\$	4,547,397
20% share (to be allocated equally among the Airlines)	\$	909,479
80% share (to be allocated on the basis of deplaned pax)	\$	3,637,918

**Allocation of Baggage Makeup Space Requirement**

Requirement	\$	4,884,590
20% share (to be allocated equally among the Terminal A Airlines)	\$	976,918
80% share (to be allocated on the basis of Terminal A enplaned pax)	\$	3,907,672



EXHIBIT I



## DEFINITION OF TERMS

<b>Activity Report</b>	Not later than the tenth (10th) day of each month, Airline shall file with the City an "Activity Report" on the attached form. Report includes activity conducted by Airline during said month and activity handled by the Airline for each Air Transportation Company not having an agreement with City. City has the right to rely on Monthly Activity Reports to determine rentals and charges due. Airline shall have full responsibility for the accuracy of the reports. If the monthly Activity Reports are not provided on or before the tenth (10th) day of each month as required, Airline shall pay a delinquency fee of <b>\$25</b> per day for each day that the report is late until such date as the monthly activity report is submitted to the Director.
<b>Aircraft Make, Model &amp; Series</b>	Example: B737-300 = Make is Boeing, Model is B737 and Series is 300 List different aircraft on separate lines, for example: list B737-400 on one line, DC8-62 on another line etc. Please use additional sheets if necessary.
<b>MGLW</b>	Maximum gross landing weight means the maximum gross certificated landing weight, in one thousand pound units, for each aircraft operated at the Airport by Airline as certified by the FAA or its successor.
<b>Total Landed Weight</b>	Multiply landings by the maximum landing weight. Round to the nearest 1,000 lbs. Example: 21 revenue landings x 142,500 lbs = 2,992,500 or 2,993 lbs.
<b>Total Owed</b>	*Note: Only round to the nearest 1000 after multiplying revenue landings by maximum landing weight and multiplying by the appropriate fee (TOTAL OWED)
<b>Landing Fee</b>	The landing fee rate is based on per thousand pounds and varies, if you are unsure call Tish Ochoa at Accounts Receivable @ 408-501-7625.
<b>Landings</b>	Total number of landings per aircraft make/model and series.
<b>Chargeable Landings</b>	All Revenue Landings and "Non- Revenue Landings" except for those non-revenue landings which are of an emergency nature. (Non-Revenue Emergency flights include without limitation any flight that after having taken off from the Airport and without making a landing at any other airport returns to land at the Airport because of meteorological conditions, mechanical or operating causes or any other reason of emergency or precaution.)
<b>Deplaned</b>	Arriving passengers or cargo. <span style="float: right;"><u>Clarification for</u></span> <u>Passenger Data</u> : Include passengers from arriving International flights who cleared through the San Jose FIS facilities. DO NOT INCLUDE through passengers continuing on the same flight who may temporarily leave the aircraft to "stretch their legs," etc., or continuing passengers on international flights who were not cleared through FIS facilities at San Jose. Deplaned Passenger means any passenger disembarking an aircraft, not connecting on a flight by the same Air Transportation Company.
<b>Enplaned</b>	Departing passengers or cargo. <u>Clarification for Passenger Data</u> : Enter all passengers boarding flights at San Jose International Airport, including those passengers connecting from arriving flights of <u>another</u> airline. Also include passengers from arriving international flights who cleared through FIS facilities at San Jose even though they reboard same aircraft on which they arrived. Enplaned Passenger means any passenger boarding an aircraft.
<b>Connecting Passenger</b>	Connecting passengers include any passenger that shall subsequently board another aircraft of the <u>same</u> Air Transportation Company or the same aircraft previously operating under a different flight number. Also include any such passenger that previously disembarked from another aircraft of the <u>same</u> Air Transportation Company or from the <u>same</u> aircraft previously operating under a different flight number.
<b>Mail</b>	Domestic and International Airmail and First-Class Mail, which includes closed bags handed over by the postal service, loaded and unloaded (arriving or departing) at the Airport.
<b>Express</b>	Express is primarily packages/cargo loaded and unloaded (arriving or departing) at the airport, which is primarily classed as First Flight Specific or First Freight Priority. Measurement data should be in actual pounds.
<b>Cargo/Freight</b>	Cargo and Freight is domestic or international cargo (goods, packages) that is loaded and unloaded (arriving or departing) at the airport. Commercial Carriers provided freight service and Cargo Carriers provide cargo service. Measurement data should be in actual pounds.

EXHIBIT J

Table 11  
**SUMMARY OF AIRPORT REVENUES, EXPENSES, AND OTHER COSTS**  
 Fiscal Years Ending June 30

San Jose International Airport  
 City of San Jose

	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	
<b>GENERAL AIRPORT REVENUES</b>												
Active Rates & Charges:												
Landing Fees	\$ 16,345,000	\$ 17,742,000	\$ 17,804,000	\$ 17,244,000	\$ 16,400,000	\$ 20,000,000	\$ 21,307,000	\$ 22,392,000	\$ 23,172,000	\$ 24,020,000		
Terminal Rental	24,737,000	43,282,000	40,740,000	60,000,000	61,000,000	60,000,000	79,430,000	81,730,000	80,802,000	82,052,000		
Nonairline Revenues												
Terminal	16,141,000	14,600,000	17,714,000	16,831,000	16,207,000	20,287,000	22,472,000	23,886,000	25,740,000	27,006,000		
Ground Transportation	47,004,000	60,500,000	61,700,000	60,200,000	64,000,000	60,701,000	64,770,000	109,891,000	115,100,000	121,763,000		
Airfield	2,800,000	3,184,000	3,407,000	3,646,000	3,601,000	4,174,000	4,487,000	4,779,000	5,114,000	5,472,000		
Other	8,003,000	9,199,000	11,942,000	12,072,000	13,302,000	13,929,000	16,333,000	16,160,000	17,230,000	17,841,000		
<b>OTHER REVENUES</b>	\$ 109,059,000	\$ 138,060,000	\$ 161,435,000	\$ 187,858,000	\$ 201,591,000	\$ 216,982,000	\$ 233,666,000	\$ 257,476,000	\$ 277,267,000	\$ 288,154,000		
<b>OTHER REVENUES</b>	\$ 10,555,000	\$ 10,560,000	\$ 16,256,000	\$ 4,183,000	\$ 17,834,000	\$ 17,369,000	\$ 18,893,000	\$ 20,428,000	\$ 22,728,000	\$ 25,826,000		
Transfer from Grant Fund	5,209,000	5,759,000	8,935,000	16,086,000	3,111,000	4,839,000	6,244,000	6,772,000	10,378,000	10,420,000		
Debt service coverage from prior FY (a)	10,000,000	4,239,000	3,628,000	7,487,000	3,111,000	22,207,000	25,137,000	27,200,000	33,104,000	36,246,000		
Airline revenue sharing	25,784,000	20,557,000	28,819,000	27,736,000	20,945,000	22,207,000	25,137,000	27,200,000	33,104,000	36,246,000		
<b>TOTAL REVENUES</b>	\$ 134,823,000	\$ 158,617,000	\$ 180,254,000	\$ 215,595,000	\$ 222,536,000	\$ 239,059,000	\$ 259,003,000	\$ 284,678,000	\$ 310,371,000	\$ 324,400,000		
<b>EXPENSES</b>												
<b>Direct Expense:</b>												
Terminal Building	\$ 17,808,000	\$ 23,156,000	\$ 26,338,000	\$ 27,655,000	\$ 28,039,000	\$ 30,489,000	\$ 36,812,000	\$ 38,653,000	\$ 43,386,000	\$ 45,554,000		
Airfield Area	6,833,000	7,175,000	7,534,000	7,911,000	8,307,000	8,722,000	9,158,000	9,616,000	10,097,000	10,602,000		
Parking & Roadways	21,208,000	22,269,000	24,207,000	25,417,000	26,669,000	28,023,000	29,424,000	30,895,000	32,440,000	34,062,000		
General & Non Aviation	1,727,000	1,913,000	1,904,000	1,999,000	2,099,000	2,204,000	2,314,000	2,430,000	2,552,000	2,680,000		
Indirect Expense:												
General & Administration	30,511,000	32,037,000	33,638,000	35,321,000	37,088,000	38,943,000	40,890,000	42,934,000	45,082,000	47,337,000		
ARFF	4,535,000	4,762,000	5,000,000	5,260,000	5,513,000	5,789,000	6,078,000	6,382,000	6,701,000	7,036,000		
Police	10,828,000	11,474,000	12,048,000	12,650,000	13,283,000	13,947,000	14,644,000	15,376,000	16,145,000	16,952,000		
<b>TOTAL OPERATING EXPENSE</b>	\$ 93,551,000	\$ 102,686,000	\$ 110,669,000	\$ 116,203,000	\$ 122,018,000	\$ 128,117,000	\$ 139,320,000	\$ 146,286,000	\$ 156,403,000	\$ 164,223,000		
<b>DEBT SERVICE</b>												
Revenue bond debt service	\$ 23,037,000	\$ 35,741,000	\$ 48,521,000	\$ 61,336,000	\$ 68,474,000	\$ 75,571,000	\$ 81,711,000	\$ 90,810,000	\$ 103,303,000	\$ 103,388,000		
Debt service coverage, current FY	5,759,000	8,935,000	12,130,000	17,834,000	17,389,000	18,893,000	20,428,000	22,728,000	25,826,000	25,847,000		
<b>OTHER EXPENSES (USES)</b>	4,000,000	4,000,000	4,000,000	4,000,000	4,000,000	4,000,000	4,000,000	4,000,000	4,000,000	4,000,000		
Renewal and Replacement Expenditures												
<b>TOTAL EXPENSES, DEBT SERVICE AND OTHER EXPENSES</b>	\$ 126,347,000	\$ 151,362,000	\$ 175,320,000	\$ 208,373,000	\$ 212,861,000	\$ 226,581,000	\$ 245,459,000	\$ 263,924,000	\$ 289,532,000	\$ 297,458,000		
Remaining revenues	\$ 8,476,000	\$ 7,255,000	\$ 14,934,000	\$ 6,222,000	\$ 9,676,000	\$ 12,488,000	\$ 13,544,000	\$ 20,752,000	\$ 20,839,000	\$ 26,942,000		
Revenue sharing	\$ 4,238,000	\$ 3,628,000	\$ 7,467,000	\$ 3,111,000	\$ 4,838,000	\$ 6,244,000	\$ 6,772,000	\$ 10,376,000	\$ 10,420,000	\$ 13,471,000		
Airline City	4,239,000	3,627,000	7,467,000	3,111,000	4,837,000	6,244,000	6,772,000	10,376,000	10,419,000	13,471,000		
Airline City	50%	50%	50%	50%	50%	50%	50%	50%	50%	50%		

(a) FY 2011 amount includes rolling debt service coverage amount for CFC-supported bonds—funded with bond proceeds.

**Airline Cost Per Enplaned Passenger**  
**Mineta San Jose International Airport**  
 Fiscal Years Ending June 30

	PROJECTED										
	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	
Airline Payments (excludes Cargo)	\$ 38,937,000	\$ 59,681,000	\$ 65,229,000	\$ 71,117,000	\$ 78,653,000	\$ 87,099,000	\$ 95,203,000	\$ 102,420,000	\$ 112,337,000	\$ 114,274,000	
Enplaned Passengers	5,653,000	5,851,000	6,113,000	6,410,000	6,739,000	7,084,000	7,440,000	7,821,000	8,221,000	8,642,000	
Passenger Airline Payments - per enplaned passenger	\$ 6.89	\$ 10.20	\$ 10.67	\$ 11.09	\$ 11.67	\$ 12.30	\$ 12.80	\$ 13.10	\$ 13.66	\$ 13.22	
In 2005 Dollars	\$ 0.21	\$ 0.89	\$ 0.98	\$ 0.93	\$ 0.17	\$ 0.34	\$ 0.39	\$ 0.28	\$ 0.36	\$ 0.75	

EXHIBIT K

## Exhibit K - Capital Program

<u>Identifier</u>	<u>Name</u>
<b>PHASE 1 PROJECTS</b>	
CIP	Taxiway Y Reconstruction (includes Taxiway L Widening)
CIP	Airline Maintenance Facility
CIP	Central Plant Expansion
CIP	Relocate Parking Control Buildings
RAC 5	Develop FMC site for RAC storage
C 12	Temporary ticketing and bag claim for Terminal C
PARK 19	PARC System and Building
A+ 2	Rehab A+
GEN 3	Sealing/stripping
CIP	Taxiway 2 Alignment
C 7	Tear down north part of Terminal C
C 4	Tear down Conc. C bag claim only
C 13	Relocation of tenants/concessions into temporary terminal
C 3.1	IT project to replace connections when 1st half of Terminal C is torn down
CIP	Runway 11/29 RHL
A 7	Ground floor ticketing at North and South sides of Terminal A
A/A+	Terminal A Equity Improvements
AIR 4	West side--FBO taxiway access
CIP	Noise Attenuation Treatment--Category IB
Road 1	North Concourse roadway mitigation project
GEN 12	Art program as % function of qualifying funds
GEN 1	Landscaping
GEN 2	Signage
ROAD 4	Straighten roadway
PARK 5	Expand Red Lot to South
GEN 10	Stycheff Bldg renovation
GEN 11	Maintenance on warehouse bldgs in SE corner
NC 1	North Concourse
NC 11	Add costs for North Concourse redesign--for 1st half (for 14 gates)
PARK 20	Public parking deck
A 6	In-Line Baggage System
ROAD 19	Road and curb (new NC)
ROAD 18	At grade horsehoe with T/A flyover
GEN 6	ARFF facility on west side
AIR 2	Support 5 gate position areas
GEN 7	Clean up existing fuel farm area
NC	NC Tenant Finish
C 3	IT project to replace connections when Terminal C is torn down
CIP	Public Art
C 6	Tear down south part of Terminal C
ROAD 17	Curb improvements for Terminal A
GEN 4	International corridor in North Concourse
UTIL 18	Airside corridor
CIP	New Fuel Storage Facility (aka Fuel Farm Review/Fuel Storage Facility Phase I)
C 14	Relocation of tenants/concessions
RAC 8	RAC Garage (ready/vetara, storage, customer service facilities)
ROAD 21	Permanent construction of south end of terminal drive
GEN 13	Belly freight building
PARK 14	Green Island--Public parking on grade level lot
CIP	Off-Airport Traffic Mitigation (formerly Traffic Mitigation)
ROAD 22	Roadway improvements--second grade separation at south end
ROAD 23	Dedicated shuttle road
CIP	Airport Blvd - Terminal Drive (North) Traffic Mitigation (formerly Traffic Mitigation)
CIP	Advanced Planning
UTIL 3	Feasibility for replace trunk lines servicing Terminal area in road--south parkway
CIP	ACM Demo
CIP	APM Terminal Zone Refinement
UTIL 2	Feasibility for replace trunk lines servicing Terminal area in road--north parkway
CIP	Noise Attenuation Treatment--Category II/III
RAC 3	Build consolidated QTA facility
UTIL 1A	Airside corridor
NC 8	Design for Construct New Terminal C (5 gate concourse)
ROAD 20	Road and curb (new C)
UTIL	Feasibility for build new central plant
UTIL 1C	Airside corridor
NC 5	Design for Build 4 gate North Concourse extension
CIP	R&R Expenditures
<b>PHASE 2 PROJECTS</b>	
UTIL 3	Replace trunk lines servicing Terminal area in road for capacity--south parkway
UTIL 2	Replace trunk lines servicing Terminal area in road for capacity--north parkway
AIR 1	Support 4 gate position areas
NC 8	Construct New Terminal C (5 gate concourse)
UTIL	Build new central plant
NC 5	Build 4 gate North Concourse extension
AIR 3	Support 2 gate position areas--east of TW2, west of Term. C, bet. TW D&E

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