

Order 7-15/16

Passage: 9-0 on 7/6/2015

MICHAEL F. BRENNAN (MAYOR)
KEVIN J. DONOGHUE (1)
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**CITY OF PORTLAND
IN THE CITY COUNCIL**

Effective 7/16/2015

DAVID H. BRENERMAN (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER APPROVING ONE-YEAR EXTENSION OF STANDARD
OPERATING AND BUILDING LEASE AGREEMENT
WITH JETPORT SIGNATORY AIRLINES**

ORDERED, that one-year extension of the standard operating and building lease agreement for Signatory Airlines at the Portland International Jetport is hereby approved substantially in the form attached hereto; and

BE IT FURTHER ORDERED, that the City Council hereby authorizes the Acting City Manager or City Manager to execute said documents and any other related documents necessary or convenient to carry out the intent of said documents.

**FIRST AMENDMENT OF
AIRLINE SIGNATORY OPERATING AGREEMENT
AND LEASE AT THE
PORTLAND INTERNATIONAL JETPORT**

THIS FIRST AMENDMENT is made as of this ____ day of _____, 2015, to the **AIRLINE SIGNATORY OPERATING AGREEMENT AND LEASE AT THE PORTLAND INTERNATIONAL JETPORT** dated May 19, 2010 (hereinafter, the "**Lease**") by and between the **CITY OF PORTLAND**, a body politic and corporate located in Cumberland County, Maine (hereinafter the "**City**"), and <<**AIRLINE**>>, a _____ corporation with a mailing address of _____, _____, _____ (hereinafter referred to as the "**Airline**").

W I T N E S S E T H:

WHEREAS, the Airline is operating at the Portland International Jetport under the Lease;
and

WHEREAS, the Lease has a five year term, which terminates on May 18, 2015; and

WHEREAS, the parties desire to extend the termination date of the Lease by one (1)
year.

NOW, THEREFORE, in consideration of the mutual obligations contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. The termination date of the Lease, which, pursuant to section 2.01 of the Lease, is May 18, 2015, shall be extended to May 18, 2016.
2. Any and all terms of the Lease not herein amended shall remain in full force and effect for the duration of the Lease as amended.

IN WITNESS WHEREOF, the said **CITY OF PORTLAND** has caused this
Amendment to Airline Signatory Operating Agreement And Lease to be signed and sealed by
Michael J. Sauschuck, its Acting City Manager, thereunto duly authorized, and <<**AIRLINE**>>
has caused it to be signed by _____, its

_____, thereunto duly authorized, the day and year first
above written.

WITNESS:

CITY OF PORTLAND

By: _____
Michael J. Sauschuck
Its: Acting City Manager

WITNESS:

<<<**AIRLINE**>>>

By: _____
Printed Name: _____
Its: _____

Approved as to form:

Corporation Counsel's Office

CITY OF PORTLAND, MAINE
DEPARTMENT OF AVIATION
AND TRANSPORTATION



AIRLINE SIGNATORY
OPERATING AGREEMENT AND LEASE
AT THE
PORTLAND INTERNATIONAL JETPORT



MAY 19, 2010

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**PORTLAND INTERNATIONAL JETPORT
AIRLINE OPERATING AGREEMENT AND
TERMINAL BUILDING LEASE**

THIS AGREEMENT AND LEASE (hereinafter referred to as the "Agreement"), entered into this _____ day of _____, 2010, by and between the CITY OF PORTLAND, a body politic and corporate, located in the County of Cumberland, State of Maine (hereinafter "City"), and «Airline Name», a corporation organized and existing under the laws of the State of «State» (hereinafter "Airline"), with a principal office located at _____.

WITNESSETH:

WHEREAS, City owns and operates Portland International Jetport (hereinafter "Airport" or "Jetport") and

WHEREAS, City has the right to lease premises and facilities at the Airport and to grant rights, licenses, and privileges on and in connection therewith, and

WHEREAS, Airline desires to lease from City certain premises and facilities and acquire certain rights, licenses, and privileges in connection with its use of the Airport, and City is willing to lease and grant the same to Airline in accordance with the terms, provisions, and conditions hereinafter set forth in this Agreement;

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

NOW, THEREFORE, for and in consideration of the mutual covenants, agreements, and conditions contained herein, the parties hereto agree as follows:

ARTICLE 1
DEFINITIONS

Section 1.01 Definitions

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

1. "Aircraft Arrival" means any aircraft arrival at the Airport, including, without limitation, scheduled, charter, or any other flights operated by an Air Transportation Company. Aircraft Arrivals exclude flights which are forced to return and "land" at the Airport because of meteorological conditions, mechanical or operating causes, or for a similar emergency or precautionary reason.

2. "Airline" means «Airline Name», a corporation organized and existing by virtue of the laws of «State».

3. "Airport" or "Jetport" means Portland International Jetport, as shown on Exhibit A, "Airport Layout and Cost Center Plan", and as it may be modified or expanded from time to time in accordance with this Agreement.

4. "Airport Cost Centers" means the following cost centers, more fully depicted on Exhibit A, to be used in accounting for Airport revenues and expenses and for calculating and adjusting certain rentals, fees, and charges described herein as they now exist or may hereafter be modified, changed, or developed with the approval of the Majority in Interest, as applicable, (also referred to herein as "MII") as more particularly described below:

a. Direct Cost Centers

- ☐ "Terminal Building" means the passenger terminal building, its curbside, and landscaped areas adjacent to the Terminal Building (also referred to in City Budget documents as "Jetport Terminal")
- ☐ "Airport Airfield" means the airfield at the Airport, including runways, taxiways, aprons, approach and runway protection zones, safety areas, infield areas, City-owned landing and navigational aids, perimeter fences and gates, service roads, airfield maintenance facility, airfield drainage system, and land areas at the Airport required by or related to aircraft operations (landings, take-offs, and taxiing) (also referred to in City Budget documents as "Jetport Field").

- "General Aviation Terminal" means the hangars, buildings, and exclusively leased apron areas occupied by the Airport's fixed base operators, corporate/private aircraft operators, and cargo operators (also referred to in City Budget documents as "Jetport GAT"). During the term of this Agreement, the City may rename this cost center.

b. Indirect Cost Centers, including all personnel, services, equipment, and facilities used to provide support to the Airport for the following services:

- "Jetport/City Administration"
- "Police and Security"
- "Aircraft Rescue and Fire Fighting"
- "Roadways" (which means the terminal frontage, access and circulation roads).

5. "Air Transportation" means the carriage of persons, property, cargo, express, or mail by aircraft.

6. "Air Transportation Company" means any person which engages in the carriage of persons, property, cargo, express, or mail by aircraft.

7. "Bonds" means airport revenue bonds, general obligation bonds, or any other similar or substitute financing instrument that might be issued for Airport purposes under and pursuant to authorizing legislation.

8. "Capital Improvement Program" means a program of Capital Improvements as outlined on Exhibit B, attached hereto and made part hereof, or any hereafter approved.

9. "Capital Improvements" means any single item costing more than \$50,000 (net of grants-in-aid as filed with the FAA as a project Pre-application for funding) that is acquired, purchased, and/or constructed by City to improve, maintain, preserve, or develop the Airport. Capital Improvements shall include but not be limited to (1) the acquisition of land or easements; (2) the purchase of machinery, equipment or rolling stock; (3) the planning, engineering, design, and construction of new

facilities; (4) the renovation of existing facilities, or (5) the performance of any extraordinary, nonrecurring major maintenance of existing facilities. The City shall amortize the cost over the useful life of the capital improvement.

10. "Code Share Airline" means an Air Transportation Company which operates any aircraft at the Airport and has a marketing agreement with a Signatory Airline for shared ticketing in which its passenger tickets for travel to and from the Airport are written designating the Signatory Airline code.

11. "Common Use Facilities" means any City owned or controlled facilities including but not limited to ticket counters, baggage make-up, baggage claim, gate areas and aprons, holding rooms and loading bridges used for providing services to the traveling public (also referred to herein as "Common Use Space"), unless such space or spaces are specifically included in an airline's exclusive use space in the Current Terminal.

12. "Consumer Price Index or CPI" The Consumer Price Index, all Urban Consumers, Northeast Urban, base period 1982-84, published by the U.S. Department of Labor, Bureau of Labor Statistics or successor index if the CPI is discontinued. For purposes of this Agreement, all changes to the CPI shall be calculated based on the change in the CPI during the 12 months immediately preceding the month of adjustment. The referenced Consumer Price Index may be located at: <http://data.bls.gov/cgi-bin/surveymost/> (United States Department of Labor).

12.5. "Current Terminal" refers to the Jetport Terminal Building in place as of the date of execution of this Agreement, as it may be modified prior to substantial completion of the Terminal Expansion Project defined below.

13. "Department" means the Department of Aviation and Transportation of the City of Portland, or successor department thereto which includes the Airport.

14. "Deplaned Passenger" means all local disembarking, interline transfer, and intraline transfer revenue passengers of all Air Transportation Companies and of other airlines handled by Airline at the Airport.

15. "Director" means the Director of the Portland International Jetport, or his or her duly authorized designee.

16. "Enplaned Passenger" means all local boarding, interline transfer, and intraline transfer passengers of all Air Transportation Companies and of other airlines handled by Airline at the Airport pursuant to Section 3.02, Paragraph G. "Passengers" means and includes all those who are reported to the DOT on form 298-C, T-100, or similar form.

17. "Equipment and Capital Outlay" means any single item required by the City for the operation of the Airport and not included in Maintenance and Operating Expenses, costing \$50,000 or less (net of grants in-aid) . In the event that in any fiscal year, the aggregate amount of expenditures for equipment and capital outlays exceeds \$250,000, then each such item proposed thereafter in that fiscal year shall be subject to approval of the MII pursuant to the process for approval of Capital Improvements in Section 5.02.

17.5. "Expanded Terminal" refers to the terminal to be built as provided in Section 5.04 and attached exhibits.

18. "FAA" means the Federal Aviation Administration of the U.S. Department of Transportation or any federal agencies succeeding to its jurisdiction.

19. "FIS" means the Federal Inspection Services at the Airport used by agencies of the United States government for the inspection of passengers and their baggage, and for the exercise of their responsibilities with respect to movement of persons and property to and from the United States. The FIS shall not include aircraft parking aprons, loading bridges, holdroom, ticket counters or facilities for handling baggage after federal inspection.

20. "Fiscal Year" means the City's Fiscal Year, which is the twelve-month period commencing July 1 and extending to June 30 of the following year, or such other twelve-month period as may be adopted for the operation of the Airport.

21. "Hazardous Material or Materials" means any hazardous or toxic substances, materials, or wastes, including, but not limited to, those substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) and amendments thereto, or such substances, materials, and wastes that are or become regulated under any law

applicable to the Airport including, without limitation, any material, waste or substance which is petroleum or a petroleum distillate, asbestos, polychlorinated biphenyls, or which is defined as a "hazardous waste" pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. §6901, *et seq.* or defined as a "hazardous substance" pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601, *et seq.*

22. "International Arrivals Area" means that area in the Terminal Building designated for U.S. Government federal inspection services for the processing of arriving international passengers.

23. "Leased Premises" means the areas in the Current Terminal Building leased to or used by Airline under this Agreement, comprised of the following categories (Exhibit C), as further described in Section 4.01, and as they may be modified in the Expanded Terminal:

- a. "Exclusive Use Space"-- space leased exclusively to Airline.
- b. "Common Use Facilities"-- space used by Airline in common with all other airlines using the space.
- c. "Preferential Use Gate" – gate or gates equipped with either a regional boarding bridge or a full-service boarding bridge and associated boarding counters and assigned to Airline by the Director, to be used on a preferential basis by Airline as provided in paragraph 29 below.
- d. "Preferential Use Ticket Counter" –ticket counter(s) and queuing area(s) in the Expanded Terminal and assigned to Airline by Director to be used on a preferential basis by Airline as provided in paragraph 29 below.

24. "Maintenance and Operating Expenses" (or "M&O Expenses") means, for any Fiscal Year, all reasonable expenses necessary to maintain, repair, operate and administer the Airport, including, but not limited to, bad debt expense, taxes and assessments, if any, and expenses for defending, settling, or satisfying litigation.

25. "Majority-in-Interest" ("MII") means, for the Airport Airfield Cost Center, fifty percent (50%) in number of all Signatory Airlines which, in the aggregate, paid fifty percent (50%) or more of Landing Fees (see Section 6.05) paid by all Signatory Airlines for the preceding Fiscal Year, and for

the Terminal Building Cost Center (see paragraph 4 and Exhibit A) fifty percent (50%) in number of all Signatory Airlines which, in the aggregate, paid fifty percent (50%) or more of the terminal building rentals paid by all Signatory Airlines for the preceding Fiscal Year. Solely for the purpose of determining a Majority-in-Interest, no airline shall be deemed to be a Signatory Airline (a) so long as any Event of Default with respect to such airline has occurred and is continuing, (b) airline has been a Signatory Airline for less than six months, or (c) Airline operates less than one daily weekday (M-F) flight. For the Terminal Building Cost Center, Signatory Airlines must be leasing and occupying terminal space in order to vote on MII projects.

26. "Maximum Gross Landed Weight" means the maximum landed weight that each aircraft operated by Airline at the Airport is certified by the FAA to land, as recited in Airline's flight manual governing that aircraft.

27. "Non-signatory Airline" means an airline that has entered into a non-signatory Airline Operating Agreement with the City.

28. "Person" means an individual, corporation, partnership, limited liability company, association or any entity, however formed.

29. "Preferential" means Airline's use of gate(s) and boarding bridges on a non-exclusive, preferential basis. Airline shall have priority in using gate(s) and bridges assigned to it by the Director on a preferential basis to accommodate its flights; however, the Director may authorize other airlines to use Airline's preferentially assigned aircraft gate(s) or bridges in periods when not in use by Airline, pursuant to Section 4.03. In the Expanded Terminal, Airline's ticket counter and queuing areas shall also be available on a Preferential basis.

29.5 "Regional gate" shall mean the gates designated as Gates 2a, 2b and 2c in the Current Terminal which gates shall be considered as one gate for cost center purposes.

30. "RON" or "Long Term Parking" shall mean Remain Overnight or Remain on Gate and shall apply to any aircraft approved to occupy a gate or parking position in excess of five (5) hours.

31. "Rules and Regulations" means those written rules, regulations, policies, and procedures that have been established by City or the Department, which are reasonable and non-discriminatory,

for the orderly and efficient use of the Airport by airlines and other tenants and users of the Airport as the same may be amended, modified, or supplemented from time to time.

32. "Service Provider" means any company permitted by the City to provide aircraft services in accordance with ground and passenger handling services for a carrier(s).

33. "Signatory Airline" means an airline providing scheduled Air Transportation of passengers, property, cargo, express, and/or mail by air to and from the Airport that has executed this Agreement with the City covering the use and occupancy of facilities at the Airport.

34. "Terminal Building Subcost Centers" means areas within the Terminal Building to be used for calculating and adjusting Terminal Building rental rates described herein, as shown on Exhibit D, as such areas now exist or, subject to the approval of MII, may hereafter be modified or developed, including:

- a. Terminal Space - Common Use Facilities
- b. Terminal Space – Exclusive Use
- c. Terminal Space – Preferential Use
- d. International Arrivals Area
- e. Public Space

35. "Terminal Expansion Project" or "Project" means the project to expand the existing terminal, including but not limited to the terminal building, as such Project is described in Section 5.04 and in Exhibit C-2. "Terminal" or "Terminal Building" means either the Current Terminal or the Expanded Terminal after occupancy, as applicable, unless otherwise specifically designated.

36. "Total Airline Landed Weight" means the sum of the Maximum Certificated Gross Landing Weights for all Aircraft Arrivals of an airliner over a stated period of time.

37. "Total Airline Landed Weight of the Signatory Airlines" means the sum of the Maximum Certificated Gross Landing Weights for all Aircraft Arrivals of all Signatory Airlines over a stated period of time.

38. "Unassigned Facilities" means facilities which are available for lease.

Section 1.02 Cross-References

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

ARTICLE 2

TERM

Section 2.01 Term

This Agreement shall become effective on the date of execution and continue for a term of five (5) years, subject to prior termination as provided in Section 14 herein.

Section 2.02 Holding Over

Should Airline use the Leased Premises without the written consent of City after this Agreement has expired or terminated, Airline shall be deemed a tenant at sufferance during the period of such use and subject to fees, charges, and provisions as set forth in this Agreement, other than Article II "Term". In such event, City and Airline shall have all of the remedies provided under applicable laws.

ARTICLE 3

RIGHTS AND SPECIFIC PRIVILEGES

Section 3.01 Use of the Airport

Airline, its employees, passengers, guests, patrons, agents, independent contractors, suppliers, and invitees shall have the right to the use (in common with other duly authorized users) of those portions of the Airport and appurtenances, together with all facilities, improvements, equipment, and services that have been or may hereafter be provided for their common use at or in connection

with the Airport, subject to the Rules and Regulations. In addition, Airline shall have the right to exclusive use of areas so designated as its Exclusive Use premises and its Preferential Use areas as provided in Section 4.01.

Section 3.02 Specific Rights of Airline at the Airport.

Airline shall have the right, subject to limitations and conditions contained in this Agreement and in addition to all rights elsewhere granted in this Agreement, to use the Airport for the following purposes, subject to the Rules and Regulations:

- A. The operation of its commercial transportation system by aircraft for the carriage of persons, property, cargo, express, and mail, including all activities reasonably necessary to such operation.
- B. The landing, taking off, flying over, taxiing, pushing, towing, loading, unloading, deicing, repairing, maintaining, conditioning, servicing, parking, storing, and testing of aircraft or other equipment owned or operated by Airline.
- C. The sale of Airline tickets, documentation of Airline shipments, handling of Airline reservations, and the loading and unloading of persons, property, cargo, express, and mail at the Airport by such motor vehicles or other means of conveyance as Airline may desire to use in the operation of its Air Transportation system. However, City reserves the right to require any ground transportation commercial carrier (including Airline, except for such ground transportation as Airline or its nominee may provide solely for the benefit of its employees) regularly transporting persons to and from the Airport to first secure and thereafter hold a valid lease, license, or other agreement with City for the right to carry persons to and from the Airport and shall pay City such rentals, fees and/or percentages of the fares of such ground transportation commercial carrier for such right as City may set. City further reserves the right to approve the location and type of any ticket dispensing machines which are outside of Airline's exclusive leased space
- D. Airline may use the Leased Premises for the training of Airline persons and testing of Airline's aircraft and other equipment at the Airport, provided that such training and testing are

limited to that incidental to Airline's Air Transportation business. Flight training shall be undertaken by Airline only to the extent permitted by and subject to the Rules and Regulations.

E. Airline may use the Leased Premises for the servicing by Airline, or by its suppliers of materials or Service Providers, of aircraft and other equipment operated by Airline with line maintenance or other materials or supplies, at its assigned aircraft parking positions or other aircraft parking positions designated by the Director. Department reserves the right at any time to designate other locations reasonably accessible from the Terminal Building for performance of aircraft maintenance and service activities if City believes that such activities would interfere with aircraft operations of other airlines in the Terminal Building. Aircraft engine run-ups shall not be allowed between the hours of 10 p.m. and 7 a.m., except when necessary due to an extraordinary and non-recurring circumstance. Aircraft engine run-ups shall be performed only in specific engine run-up area, as designated by Director.

F. Subject to Sections 304(F) herein, the purchase of Airline's requirements of personal property or services, including fuel, lubricants, food, beverage, and other passenger supplies, and any other materials and supplies used by Airline, from any person or company of Airline's choice for services to be performed for Airline that are incidental to the operation of Airline's Air Transportation business. Nothing herein shall restrict City from levying a reasonable and non-discriminatory concession fee on any person or company for conducting non-air transportation business at the Airport.

G. The sale, disposal, and exchange of Airline's aircraft, engines, accessories, oil, lubricants, other equipment, and materials or supplies to Code Share Airlines and Air Transportation Companies that Airline may ground handle at the Airport, and such sales, disposal or exchanges are not subject to the City's right to charge and collect fees or commissions for such sales, disposals or exchanges. Such sale, disposal, and exchange to any other Air Transportation company shall be subject to the City's right to charge and collect reasonable and non-discriminatory fees or commissions for such sales or exchanges, except for such sales under extraordinary, nonrecurring circumstances. Such right shall not be construed as authorizing the conduct of a separate regular business by Airline, but as permitting Airline to

perform only those functions that are incidental to the operation of its Air Transportation business

H. The installation and operation of Airline's standard corporate identifying signs and graphics on Airline's Exclusive Leased Premises; provided, however, all other signs and graphics shall be subject to the prior written approval of City.

I. The installation, maintenance, and operation of such radio, communication, meteorological, and aerial navigation equipment and facilities at suitable locations on the Airport, including computer equipment at passenger check in counters in the terminal building, as may be necessary for Airline's operations; provided that such equipment and facilities do not interfere with other airline or Airport communication, meteorological, or aerial navigation systems. The location of such equipment and facilities, method of installation and type of equipment shall be subject to the prior written approval of City and shall conform to all applicable federal, state, and local requirements.

J. The provision of baggage porter skycap service and curbside airline baggage check-in. Airline may arrange with other airlines to provide such services or may provide such services on its own behalf.

K. The use of City-owned passenger loading bridges at Airline's preferentially assigned gate(s) or ticket counter(s) subject to the following:

Airline has the right to assess and collect reasonable charges from others for the use of any systems, equipment (including passenger loading bridges) or furnishings purchased and installed by Airline. L. The right to the use of the International Arrival Area, subject to availability and payment of then-current use charges.

M. The rights and privileges granted Airline under this Agreement with respect to the performance of ground services and activities in connection with its Air Transportation operation at the Airport may be exercised by Airline only for and on behalf of Airline for its regularly scheduled service or unscheduled service or Code Share Airline(s) and Airline shall not be subject to the payment of fees or commissions in performing ground services for such

Code Share Airline(s). However, City has the right to charge Airline reasonable and non-discriminatory fees or commissions for such ground services to Air Transportation companies that are not Code Share Airline(s).

Section 3.03 Employee Parking Facilities

City shall develop or cause to be developed for Airline's employees working at the Airport an area or areas for common vehicular parking facilities at locations reasonably convenient to the Terminal Building. Such facilities shall be located in an area designated by City. A reasonable fee, which does not exceed the cost of providing the vehicular parking facility, for the use of such facilities shall be charged to Airline or its employees by City or City's contracted parking manager. The current charge is \$15.00 per month for full-time employees based at Portland, \$7.00 per month for part-time employees based at Portland, and \$30.00 per month for all employees based elsewhere, which charges are below the City's current costs of providing the facility. Such fees may be adjusted annually beginning July 1, 2010, so long as they do not exceed the cost of providing the vehicular parking facility.

Section 3.04 Limitation on Use by Airline

In connection with the exercise of its rights under this Agreement, Airline:

- A. Shall not do ~~or~~ and shall use commercially reasonable efforts not to permit to be done anything at or about the Airport that may interfere with the effectiveness or accessibility of the water system, drainage and sewage system, fire protection system, sprinkler system, alarm system, fire hydrants and hoses, heating or ventilation system, air conditioning system, electrical system, natural gas, or other Airport systems installed or located on or within the Leased Premises or the Airport.
- B. Shall not do or permit to be done any act or thing upon the Airport that will invalidate or conflict with any fire or other casualty insurance policies covering the Airport or any part thereof.
- C. Shall not dispose of nor permit any employee, agent or contractor to dispose of any waste material taken from, or products used with respect to, its aircraft into the sanitary or storm sewers at the Airport or any other location on the Airport (whether liquid or solid), including but

not limited to Hazardous Materials, unless such waste material or products first be properly treated by equipment installed with the approval of City and any other administrative body having appropriate jurisdiction or are otherwise disposed of in compliance with applicable Environmental Laws.

D. Shall not keep or store, during any twenty-four (24) hour period, Hazardous Materials, including but not limited to, hazardous articles and materials such as flammable liquids and solids, corrosive liquids, compressed gasses, and magnetized or radioactive materials on the Airport in excess of Airline's working requirements during said twenty-four (24) hour period, except when the following conditions are met: (1) in accordance with standards established by the National Board of Fire Underwriters, any such liquids having a flash point of less than one hundred degrees (100°) Fahrenheit shall be kept and stored in safety containers of a type approved by the Underwriters Laboratories; (2) said material shall be under the control and care of designated Airline personnel; (3) said material shall be packaged and handled in compliance with applicable U.S. Department of Transportation, Environmental Protection Agency, and/or other such applicable regulations for transport and pretransport of hazardous articles and materials; and (4) said materials shall be stored in special storage areas designated by the Director while on the Airport.

E. Shall not install fuel storage tanks and/or pumping facilities for use in fueling any aircraft at the Airport without prior written approval of City.

F. Shall not maintain nor operate in the Terminal Building or elsewhere at the Airport a cafeteria, restaurant, bar or cocktail lounge for the purpose of selling or dispensing food or beverages to the public or to its employees or passengers; nor shall Airline in any manner otherwise provide for the sale or dispensing of food and beverages at the Airport, except that the Airline may provide vending machines solely for the sale of hot and cold beverages, food, and confections to Airline employees in areas not accessible to the general public. Airline may, by separate agreement with the City and to the extent it does not conflict with any pre-existing terminal concession agreements or extensions thereof, engage in the sale of food or beverages at any "V.I.P. Room" or similar private club at the Airport.

G. Shall comply with the FAA-approved Airport Security Plan as amended from time to time for the Airport. Any fines and/or penalties levied against the City for security violations at Portland International Jetport caused by Airline or any of its officers, employees, agents, or suppliers while under its control, shall be due and payable to the City by Airline.

H. It is understood and agreed that City reserves the right to charge a fee reflecting the City's reasonable costs of controlling access to restricted areas in the event that any government agency, having jurisdiction over airport, imposes a Security Mandate which increases the cost of providing access to the restricted areas. Airline shall have a thirty (30) day comment period prior to the effective date of any new fee proposed by City for controlling access to restricted areas.

I. Except as provided in Section 3.02, paragraph H, for standard corporate signs and graphics, Airline shall not engage in any form of advertising in its Leased Premises without the approval of the Director.

J. De-icing is allowed only at the de-icing capture ramp and City reserves the right to enter into a single vendor aircraft de-icing contract through the City's procurement process. Selection of such a vendor will be made by a committee comprised of one representative from each signatory airline and one representative from the City who is designated by the Director.

Section 3.05 Airport Use Summary

A. At the request of City, Airline shall file an Airport Use Summary, herein referred to as the "Summary," with the Director within 30 days of the date hereof. Department shall provide Airline with a Summary report form requesting information specified below in regard to Airline's operation at the Airport. Airline shall maintain a current summary on file with the Director.

B. Accordingly, the Summary shall provide the following, subject to updates which are required to reflect any material changes:

1. Names, addresses, e-mail, and telephone numbers of Airline officials responsible for station operations, flight operations, properties, and facilities.

2. The current and proposed schedules of Airline's flight activity at the Airport. Airline shall make reasonable effort to notify the Director of significant schedule changes or the addition of flights at the Airport prior to or no later than, when the public announcement thereof is made.
3. The description of Airline's fleet and identification of the class of Airline's aircraft that will serve the Airport. Airline shall provide reasonable notice of the introduction of an aircraft that is not being operated by Airline at the Airport on the date of this Agreement.
4. The identification of all of Airline's Code Share Airlines and the contact information as described in Paragraph 1 above for such Code Share Airlines and a copy of their scheduled flights.
4. The identification of Airline's anticipated facilities requirements at the Airport.

ARTICLE 4

PREMISES

Section 4.01 Premises in the Terminal Building

A. Categories of space.

Airline shall lease the areas in the terminal building on an Exclusive, Preferential, and Common Use basis as follows, as more particularly delineated on Exhibit C, and as may hereafter be modified, changed or developed by mutual agreement between City and Airline.

1. Exclusive Use Space
 - ☐ Ticket counter and queuing (Current Terminal)
 - ☐ Office
 - ☐ Outbound baggage area
 - ☐ Baggage office
2. Preferential Use Space
 - ☐ Airline Gates
 - ☐ Ticket counter and queuing (Expanded Terminal)
3. Common Use Space
 - ☐ Holdrooms
 - ☐ Baggage claim
 - ☐ Outbound baggage (Expanded Terminal)
 - ☐ Security screening

B. Space in the Terminal Building.

Airline shall lease or use the areas in the Current Terminal building as shown on Exhibit C. Exhibit C may be amended from time to time by mutual agreement of the parties as evidenced by the signature of an Airline representative and the Director on the replacement Exhibit C. Pursuant to Section 5.04, a new Exhibit C will be attached upon final completion of the Terminal Expansion Project with occupancy of the Expanded Terminal to take place as provided in Section 5.04.

Section 4.02 Aircraft Parking Positions and Holdrooms

Airline agrees to work together with other airlines to park aircraft and ground service equipment in a safe manner. In the event of a dispute, the Director will be the final arbiter of the dispute.

Section 4.03 Accommodation of Airline and Other Airlines

A. To maximize the use of all facilities at the Airport and to facilitate the entry of new airlines, as well as the expansion of present airlines (hereinafter referred to as "requesting airlines"), Airline agrees, upon the request of Director, to accommodate such requesting airlines in its use of the preferentially assigned gate(s) or counter(s). To ensure compliance with this obligation and to provide open access and uniform treatment for all airline tenants, the following procedure is hereby established.

1. In order to secure the use of the terminal facilities, a requesting airline may:
 - a. Arrange to use City-controlled terminal space, common use space, and non-preferentially assigned gates (if any) or ticket counter(s) on a permit basis, or if no such space or gate(s) or ticket counters are available, then
 - b. Contact Airline and other airlines to request the use of such airline's preferentially assigned gate(s) or ticket counter(s) in accordance with this section.
2. In the event the requesting airline has demonstrated to City that it has contacted all airline lessees and has pursued all reasonable efforts to secure accommodations

without success, such requesting airline shall notify the Director of its desire to be accommodated in the Terminal Building.

3. The Director shall then notify all airlines in writing that, if requesting airline is not accommodated within fifteen (15) days from the receipt of said notice, Director shall select one of the airlines to comply with the request for accommodation.
4. At the end of said fifteen (15) day period, if requesting airline has not been accommodated, Director will select Airline or another airline to accommodate the requesting airline, taking into consideration such factors as current utilization of preferentially assigned gate(s) or ticket counter(s), schedule compatibility, union work rules, competitive relationships, etc. In that event, Director shall send written notice to such airline (the "accommodating airline") to begin accommodating the requesting airline within thirty (30) days from the receipt of said notice. Director's judgment shall be final.
5. Unless Director rescinds such selection within said thirty (30) day period, the accommodating airline shall accommodate the requesting airline by sharing its preferentially assigned gate(s) or ticket counter(s), subject to the following conditions:
 - a. In case of a conflict between schedules of the accommodating airline and the requesting airline, the accommodating airline shall have preferential use of its preferentially assigned gate or ticket counter.
 - b. The accommodating airline may assess the requesting airline reasonable fees and charges under an appropriate contract for services rendered to, or premises shared with, requesting airline, which fees and charges shall be limited to Airline's direct and indirect costs plus a reasonable allowance for administration and profit not to exceed 15% of such costs. The accommodating airline shall have the right to require the requesting airline to indemnify it against liability arising out of such use.

Airline agrees that, if requested to accommodate another airline pursuant to this section, it will effect such accommodation on a timely, good faith basis and in a reasonable and equitable manner.

B. Without utilizing the above process, City reserves the right to reassign one or more of Airline's Preferentially assigned gate(s) (and/or ticket counter(s) and queuing area(s) in the Expanded Terminal) to another Signatory Airline(s) if: (1) Airline's scheduled average gate utilization falls below two [2] flights per gate per weekday (M-F); and (2) City determines that there is a reasonable need for the Preferential use of such gate(s) (and/or preferential ticket counter(s) or queuing area(s) in the Expanded Terminal) by another Signatory Airline(s).

Section 4.04 Use of City Loading Bridges

A. Loading bridges financed and maintained by City shall be made available to all airlines serving the Airport on a common use basis, unless assigned for preferential use.

B. The use of City-owned passenger loading bridges by Airline shall be subject to the following terms and conditions:

1. The bridges shall be operated only by employees or agents of Airline which shall be responsible for ensuring that all such employees or agents are trained and qualified to operate the bridges. City reserves the right to audit and evaluate such training and qualifications.
2. Airline shall be solely responsible for any and all damages, claims or injuries which may be caused by the operation of the bridges by its employees, agents, or servants, and shall defend, indemnify, and hold the City harmless for such operations in accordance with Section 11.02.
3. Airline shall be solely responsible for any damage to bridges caused by the action of its employees, agents or servants to the extent such damage is not collected under City's insurance, including without limitation, any deductible under such insurance.

4. City, during the term of this Agreement, shall maintain and keep in good repair the loading bridges referred to herein, and the cost of such maintenance shall be solely payable by the preferential use airline. Airline is responsible for promptly reporting to City any repair or maintenance which is needed to the loading bridges.

5. City shall maintain and keep in good repair a handicapped lift for use by Airline, but City prefers that all flights be handled through the passenger loading bridges which are handicapped accessible. Airline shall be responsible for operation of the handicapped lift, and for the training of employees and agents in the use of such lift and for leaving it after use in condition to be used by others. Airline is responsible for promptly reporting to City any repair or maintenance which is needed to the lift.

Section 4.05 Requirement to Remain in Confines of Exclusive Use Space

With respect to Exclusive Use Space, Airline shall at all times occupy and use only that space within the confines of its Exclusive Use Space. City shall notify Airline in writing of any infraction of this provision for the first offense. Failure of Airline to remain within the confines of its Exclusive Use Space shall be a breach of this Agreement, pursuant to Section 13.01 hereafter.

Section 4.06 Surrender of the Premises

A. Airline covenants and agrees that on expiration of the term of this Agreement, or on earlier termination as hereinafter provided, or on reassignment of the Leased Premises as hereunder provided, including but not limited to relocation to the Expanded Terminal, it will peaceably surrender possession of the Leased Premises hereunder in the same condition received, reasonable wear and tear, original construction defects, structural problems, acts of God, fire, and other casualties excepted, and City shall have the right to take possession of said Leased Premises. City shall not be required to give notice to quit possession at the expiration date of the term of this Agreement.

B. Airline shall have the right, on expiration, reassignment or early termination and within thirty (30) calendar days thereafter, to remove or dispose of all trade fixtures and equipment and other personal property installed or placed by Airline at its expense, in, on, or about the Airport, subject to any valid lien that City may have thereon for unpaid rents or fees. Airline shall repair, at its expense, any damage to the Leased Premises or the Terminal Building resulting from such removal.

Airline agrees to reimburse City for any net costs incurred by City if City elects to remove or dispose of Airline's property after such thirty (30) day period.

C. Any and all property not removed by Airline within the said thirty (30) day period shall, at the option of City, thereupon become a part of the land on which it is located, and title thereto shall thereupon vest in City unless otherwise agreed to in writing by the parties.

Section 4.07 Access

A. Subject to the provisions hereof, other applicable Rules and Regulations, and such restrictions as City may impose with respect to Airline's use of Leased Premises, City hereby grants to Airline, affiliates, code sharing airlines, its agents, suppliers, employees, baggage handlers, contractors, passengers, guests, and invitees, the right and privilege of free and unrestricted access, ingress, and egress to Airline's Leased Premises and to public areas and public facilities of the terminal building.

B. The ingress and egress provided for in Section 4.07(A) shall not be used, enjoyed, or extended to any person engaging in any activity or performing any act or furnishing any service for or on behalf of Airline that Airline is not authorized to engage in or perform under the provisions hereof, unless expressly authorized in writing by City.

C. City shall have the right at any time or times to close, relocate, reconstruct, change, alter, or modify any such means of access provided for Airline's use pursuant to this Agreement or otherwise, either temporarily or permanently, provided that reasonable notice to Airline and a reasonably convenient and adequate means of access, ingress, and egress shall exist or be provided in lieu thereof. Provided that City provides Airline with reasonable notice and a reasonably convenient and adequate means of access, ingress, and egress exists or is provided in lieu thereof, City shall suffer no liability by reason thereof and such action shall in no way alter or affect any of Airline's obligations under this Agreement.

D. Airline agrees that all of its tenants, subtenants, patrons, invitees, agents, employees, servants or independent contractors must be authorized by the City prior to entry in restricted areas. Airline agrees that no person authorized by the City to enter a restricted area by virtue of this Agreement shall permit any person who is not otherwise authorized to enter a restricted area unless

such unauthorized person is, at all times while in the restricted area, in the company of an authorized person.

E. Airline understands and agrees that, in the event the Federal Aviation Administration or the Department of Homeland Security or Transportation Security Administration assesses a civil penalty against the City or Airport for any violation of Transportation Security Administration Regulation 14 CFR Parts 1520 and CFR Part 1542 or any successor or additional regulation pertaining to security at the Airport, as a result of any act or failure to act on part of Airline, its tenants, subtenants, patrons, agents, servants, employees, invitees, or independent contractors, Airline shall, upon demand of City, immediately reimburse the City in the amount of the civil penalty assessed. Airline is permitted to pass on such costs to its tenants and subtenants.

ARTICLE 5

CONSTRUCTION OF CAPITAL IMPROVEMENTS

Section 5.01 Capital Improvements

City may undertake certain Capital Improvements at the Airport as more particularly described on Exhibit B. City and Airline agree that these Capital Improvements shall be constructed substantially in accordance with Exhibit B.

By execution of this Agreement, Airline evidences its willingness and intent to pay the rentals, fees, and charges established hereunder for use of the Airport and occupancy of the facilities to be developed as a result of Capital Improvements described on Exhibit B. In accordance with the provisions of and procedures established under Articles 6 and 7 of this Agreement, said rentals, fees, and charges will be established, in part, to amortize the cost of planning, constructing, and financing Capital Improvements.

Section 5.02 Additional Capital Improvements

A. From time to time during the term of this Agreement, City may undertake additional Capital Improvements to the Airport. Airport Director shall notify Signatory Airlines of the estimated purchase price/construction cost and schedule of such additional Capital Improvements and the schedule of costs to be added to the rate base, pursuant to Article 7, for Capital Improvements that are to be included in the next year's rental requirements.

The notice shall include, for each additional Capital Improvement, the following:

1. A description of the proposed Capital Improvements, together with cost estimates.
2. A statement of justification.
3. The allocation of the costs thereof within the Airport.
4. The Director's preferred means of financing.
5. Impact on airline rates and charges.

B. Within a reasonable time, but no sooner than fifteen (15) days after the notice is issued, Director shall, at the request of the Airline or at his or her own desire, convene a meeting to review and discuss any proposed Capital Improvement(s) and means of financing the cost thereof. The Capital Improvement (s) shall be deemed approved unless (1) within thirty (30) calendar days after the meeting or (2) sixty (60) calendar days after the notice is issued if no meeting is held, concurrence is specifically withheld, in writing, by a Majority-in-Interest of the Signatory Airlines, stating the reason(s) for such non concurrence. If said proposed Capital Improvement is contingent upon receipt of an Airport Improvement Program or other grant or funding source, then Airlines' approval shall be conditional upon approval of said grant or funding source. City shall not proceed with such Capital Improvement until such approval is granted. Nothing herein shall limit the City's right to proceed with a Capital Improvement which shall not be included in the Airline's rate base.

C. If concurrence on a Capital Improvement is specifically withheld as set forth in Section 5.02(B); Director shall have the option to convene a second meeting of the Signatory Airlines. The second meeting shall be held within thirty (30) calendar days after receipt of notice of non-concurrence from the Signatory Airlines, upon notice by Director. At the second meeting, City shall respond to any questions raised during the first meeting and the stated reason(s) for non-concurrence and shall ask for reconsideration of the Capital Improvement. Upon reconsideration, the proposed Capital Improvement shall be deemed approved unless, within 30 calendar days after such second meeting, concurrence is specifically withheld, in writing, by a Majority-in-Interest of the Signatory Airlines, stating the reason(s) for such non-concurrence.

D. Notwithstanding the foregoing, City may include the direct cost of a Capital Improvement (amortized over its useful life) in the calculation of the Terminal Building rental rate or Landing Fee Rate of the Signatory Airlines, if such Capital Improvement is necessary or prudent to:

1. Maintain and operate the Airport to ensure compliance with any rule, regulation, or order of any federal, state, or other governmental agency that has jurisdiction over the operations of the Airport.
2. Satisfy judgments against City rendered by a court of competent jurisdiction.
3. Repair casualty damage net of insurance proceeds to Airport property.

Section 5.03 Majority-in-Interest Approval

Airline approval of proposed Capital Improvements described in Section 5.02 applies to projects in the Airport Airfield and Terminal Building only. City may undertake any Capital Improvement that it wishes not to include in the airline rate base.

Section 5.04 Approved Capital Improvements

A. The Capital Improvements listed on Exhibit B hereof are consistent with the 2006 Airport Master Plan and have been reviewed and approved by Airline and other Signatory Airlines as provided by Section 5.01 herein. It is agreed and understood that the initiation of Capital Projects will be activity based. At the time the Airport Master Plan is updated, all Capital Improvements may be reviewed by Signatory Airlines. City shall use its best efforts to obtain federal and state grants-in-aid for such Capital Improvements. Airline understands and agrees that all costs shown on Exhibit B are calculated in 2009 dollars and Airline agrees that all such costs are subject to adjustment by the engineer's estimates at the time of project design. Any increase in the total project cost which exceeds the amount of the grant application shall be subject to MII approval.

B. The Airline specifically understands and agrees that the City Council has approved the Jetport Terminal Expansion Project to be funded in part with federal ARRA funding and revenue bonds. The \$75 million dollar Project will nearly double the size of the terminal and add more capacity for screening baggage and passengers, and for ticketing. The Project has a projected start date in the spring of 2010 with a target date for completion in January 2012. A copy of the approved plan is attached as Exhibit C-1, which shall be updated with a revised "as built" plan upon final

completion of the Expanded Terminal. A general description of the Project is attached as Exhibit C-2 and Estimated Project Schedule as Exhibit C-3.

C. Except in an emergency, such Terminal Expansion Project shall be managed by the City and its construction manager and contractors in order to prevent delay or interruption in Airline's operations hereunder, including the operations of any Code Share Airlines. The City's construction manager and all contractors will be provided with relevant information as to Airlines' operations and shall be required to schedule their work in order to avoid conflict with such operations to the maximum extent feasible. It shall be Airline's responsibility to provide City with up to date information as to its operations on an ongoing basis. In the event of an emergency, which may include a financial emergency, or in the event of a conflict which cannot feasibly be avoided, Airline agrees to cooperate with City and its construction manager and contractors to accommodate both Airline's needs and the needs of the Project. Airline agrees that it will not, except in an emergency, interfere with or interrupt the work on the Terminal Expansion Project.

D. Throughout the Project, City and its construction manager agree to meet with representatives of all airlines operating at the Airport at minimum on a monthly basis, with other meetings scheduled as needed or upon reasonable request, either with all or some of the airlines. The City contact during the Project shall be:

Roy Williams, Deputy Director for Facilities & Engineering

RSW@portlandmaine.gov

207-756-8026

207-317-1648

or if unavailable

Paul Bradbury, Director

PHB@portlandmaine.gov

207-756-8029

or via Comm Center 207-756-8310 (available 24/7)

On or about April 2010, Gate 11 will be moved to a new location at the Current Terminal in order to permit construction of the Expanded Terminal. During such move, Gate 11 will be unavailable for use for approximately one (1) week.

E. No less than ninety (90) days prior to substantial completion of the Preferential gate, ticketing and queuing areas in the Expanded Terminal, all signatory airlines shall meet with the City and discuss the assignment of such Exclusive and Preferential Use space in the Expanded Terminal

area. City shall assign such space based upon agreement of the Airlines. If such agreement cannot be reached no less than sixty (60) days prior to substantial completion of the ticketing and queuing areas, then the Director shall assign the Exclusive and Preferential Use space in the Expanded Terminal based upon the number of enplanements by each Airline during the immediately past twelve (12) month period, with the Airline with the most enplanements having first choice of the space, the Airline with the second most enplanements having second choice, and so forth. The expected date of substantial completion and occupancy of the ticketing and queuing areas in the Expanded Terminal is on or about October 3, 2011.

Within thirty(30) days of notification of substantial completion of the Exclusive and Preferential Use space in the Expanded Terminal, U.S. Airways and JetBlue shall move into the Expanded Terminal and abandon its space in the Current Terminal. All other airlines shall move into the Expanded Terminal and abandon its space in the Current Terminal within thirty (30) days of substantial completion of the Project, on or about the end of January, 2012. Airline shall return its Exclusive and Preferential Use space in the Current Terminal in good condition as provided in Section 4.06.

F. Airline may request an extension of time to move into the new Exclusive and Preferential Use space of up to thirty (30) days, which extension may be granted or denied in the reasonable discretion of the Director. Should Airline fail to move into its new Exclusive and Preferential Use space by the conclusion of the days and any extension thereto, City reserves the right to terminate this Agreement.

G. Project bond assurances:

1. Airline hereby irrevocably elects not to claim depreciation or an investment credit for federal income tax purposes with respect to any portion of the Project (or any other property financed with the proceeds of any tax-exempt bond issued by the City to finance improvements leased to the airlines). The Airline will take all actions necessary to make this election binding on all its successors in interest under the Agreement. This election shall be irrevocable. Furthermore, the Airline covenants that no portion of the Project (or any other property financed with the proceeds of any tax-exempt bond issued by the City to finance improvements leased to the Airline) will be removed by the Airline upon the termination of the Lease.

2. The Airline does not have any option to purchase the Project. In the event that the Airline obtains such a purchase option, the option will not permit the Airline to purchase the Project other than at fair market value (as of the time such option is exercised).

ARTICLE 6

REPORTS, RENTALS, CHARGES, AND FEES

Section 6.01 General

In return for use of the premises, facilities, rights, licenses, and privileges granted hereunder and for the undertakings of City, Airline agrees to pay City during the term of this Agreement, without deduction or set-off, certain rentals, charges, and fees to be calculated as set forth herein.

Section 6.02 Monthly Activity Report

Airline shall furnish to City on or before the tenth (10th) day of each month, an accurate report of Airline's operations at the Airport during the preceding month, setting forth all data necessary to calculate the rentals, fees, and charges due under this Agreement. Said report shall include, but shall not necessarily be limited to: (1) Airline's total number of Aircraft Arrivals for the month by type of aircraft, the Maximum Gross Landed Weight of each aircraft, and the Total Airline Landed Weight for the month; (2) the total number of Enplaned Passengers and Deplaned Passengers including a breakdown of passenger totals for each class of aircraft (Jet, Regional Jet, Propeller); (3) the number of arriving international passengers using the International Arrivals Area; and (4) the amount of cargo freight, mail, and express for such month. Airline shall include in its report the activities for any nonscheduled or charter which is handled by or uses the Leased Premises of Airline. Airline agrees to cooperate with City in establishing procedures for electronic submission of reports required in this Section.

Section 6.03 Terminal Building Rentals

A. Airline shall pay to City for its Exclusive Use, Common Use, and Preferential Use Space in the Terminal Building, as set forth in Section 4.01 and Exhibit C, monthly rentals based on annual rental rates to be calculated each Fiscal Year, as set forth in Section 7.04.

B. Rentals for Exclusive Use space shall be determined by multiplying the exclusive space square footage by the exclusive use terminal rent per square foot.

C. Rentals for Common Use, holdroom, security space and Preferential Use gates shall be determined in accord with the following formula:

- 20% of the cost of the space is divided evenly among the number of gates and allocated to each airline based upon the number of assigned gates. The three regional gates are considered one gate. However, if assigned to different airlines, the total cost of the regional gates would be divided by three, and then allocated to each airline based upon the number of assigned regional gates.
- 80% of the cost of the space is divided proportionally among the signatory airlines, based upon the proportion of each airline's number of annual Enplaned Passengers to the Airport's total number of annual Enplaned Passengers.

D. Rentals for Preferential Use Ticketing Counter(s), queuing and kiosks in the Expanded Terminal shall be determined by multiplying the square footage by the preferential use terminal rent per square foot.

E. Common Use Outbound and Inbound Baggage space rental shall be divided among the signatory airlines, based upon the proportion of each airline's number of annual Enplaned Passengers to the Airport's total number of annual Enplaned Passengers.

F. Code Share Airline(s) shall be counted as a single airline (with Airline) for purposes of prorating the allocations.

Section 6.04 Electricity Charges

Airline shall pay all charges for electrical power for electrical power units in its Exclusive Use Space and preferentially assigned passenger loading bridges for the amount of electricity used by Airline and arrived at through separate metering directly to the electric utility company.

Section 6.05 Landing Fees

A. Airline shall pay to City monthly Landing Fees to be determined by multiplying the number of one thousand (1,000) pound units of Total Airline Certified Landed Weight for Airline during the month by the then-current Landing Fee Rate established pursuant to Section 7.05 herein. A Code Share Airline will pay the Signatory Landing Fee rate provided the Signatory Airline with which it has a code share agreement agrees in writing with the City to assume full financial responsibility for such Code Share Airline's landing fee in the event of non-payment by the Code Share Airline. If not, the Code Share Airlines shall pay the premium landing fee in paragraph D below.

B. Notwithstanding the foregoing, Airline agrees to pay to City a minimum Landing Fee based upon an annual landed weight of twenty-four million (24,000,000) pounds MGLW. Said payments shall be made within 30 days of the end of each calendar year in which Airline's annual landed weight is less than 24,000,000 pounds (pro-rated for any period less than one year at the beginning or end of this Agreement). Said payment shall be calculated as follows: 24,000 pounds x landing fee rate (which is expressed per thousand pounds).

C. The class of passenger carrier airlines which are designated as Air Taxi/Commercial Operators which file the FAA Form 1800-31 (the carriers who are exempted from paying PFC's at the Airport) which provide scheduled daily passenger service shall be charged a signatory landing fee if they sign this Agreement. Such Carrier airlines will not have MII voting powers nor will they be required to pay a minimum landed weight as listed in 6.05 B. Additionally, should this class of Carrier at any time be 60 days delinquent in paying its fees, Carrier may be subject to paying the Non Signatory landing fee for a period which shall include two months after account is current.

D. Non Signatory airlines will pay a premium landing fee, which fee shall not be less than 125% of the Signatory Airlines' fee.

E. Charter airlines will pay landing fee rates, as set by the Director, subject to change from time to time. At no time will the charter airlines' landing fee rate be less than the non-signatory airlines' landing fee rate.

Section 6.06 International Arrivals Area Charges

Airline shall pay amounts for the use of the common-use FISs Area as set forth by Airport Rule or Regulation.

Section 6.07 Trash Collection

City with its own forces, or by contract, shall provide for appropriate and adequate waste removal and recycling, the cost of which shall be reimbursed to the City, calculated as follows: forty (40) percent of the monthly cost shall be borne by the City and other tenants; the remaining sixty (60) percent of the monthly cost will be prorated among the Signatory Airlines based on their percentage of total passenger boardings for the month.

Section 6.08 Payment Provisions/Interest on Overdue Amounts

Exclusive Use Terminal Building rentals and City-owned loading bridge charges for preferentially assigned gates, and in the Expanded Terminal for the preferentially assigned ticket and queuing areas, shall be due and payable the first day of each month, in advance. City shall provide an invoice for such monthly charge. All other fees and charges shall be due and payable on invoice within thirty (30) days of the date of the invoice. The acceptance by City of any payment made by Airline shall not preclude City from identifying the accuracy of computations in Airline's Monthly Activity Report, submitted to City as provided in Section 6.02, or from recovering any additional payment actually due from Airline.

Any payment not received by the due date shall accrue interest at the rate of eighteen percent (18%) per year calculated on a monthly basis at the rate of one and one-half of a percent (1.50%) per month from the due date until paid in full.

Section 6.09 Taxes and Other Charges

The Airline shall pay all taxes and governmental charges of any kind whatsoever that may be lawfully assessed against the Airline or the City, with respect to the Leased Premises or any improvements thereon, during the term of this Agreement, including any extensions or option periods granted thereto.

The Airline in good faith may contest any tax or governmental charge; provided that the Airline may not permit such tax or governmental charge to remain unpaid during the period of such contest and any appeal therefrom unless, in the opinion of counsel satisfactory to the City, such action will not adversely affect any right or interest of the City and is not in violation of any applicable law or ordinance.

Section 6.10 Passenger Facility Charge

A. City shall have the right to assess airline passengers a passenger facility charge (PFC) for the use of the Airport in accordance with the requirements of 14 CFR Part 158. Airline shall collect on behalf of and remit to the Department any such charges in accordance with the requirements of 14 CFR Part 158. Any charges collected by the Airline shall, pending remittance to City, be held in trust for the benefit of City. City shall have the right to use all such passenger facility charges collected in any lawful manner.

B. Airline and City shall be bound by and shall observe all of the provisions of 14 CFR Part 158 as they apply to either or both parties.

C. If any extension of this Agreement makes the term of this Agreement five (5) years or more, this Agreement shall not apply to any part of the Airport funded in whole or in part with passenger facility charge revenue and exclusively leased to a Signatory Airline.

D. If Airline fails to remit PFC revenue to the City within the time limits established by federal regulation, Airline shall be deemed to be in default pursuant to Section 13.01.

Section 6.11 Records of Airline

Airline shall keep and maintain a complete and adequate set of all of the records required under Section 6.02, for the use of the Airport and payment of fees required under this Agreement for

the preceding Fiscal Year, and shall make such records available for inspection by City or its authorized representative at any and all reasonable hours and times.

Section 6.12 No Other Fees and Charges

Except as provided in this Agreement, no further rentals, fees, or charges shall be charged against or collected from Airline, its passengers, employees, shippers and receivers of freight and express, suppliers of material, contractors or furnishers of services, by City for the premises, facilities, rights, licenses, and privileges granted to Airline in this Agreement. However, City expressly reserves the right to assess and collect reasonable and non-discriminatory fees for inflight catering, vending (other than in Airline's Exclusive Use Space), ground transportation, and other services provided (1) by Airline for another airline (other than a Code Share Airline and other than for services provided on an extraordinary, nonrecurring basis to other Signatory Airlines) and (2) for Airline by other concessionaires, vendors and operators.

Section 6.13 Right of Set Off

The City shall have the right to set off any past due amount(s) by applying all or a portion of current payments to such past due amount(s). Past due amounts may include sums due on prior agreements, this Agreement, or for usage of the Airport as a non signatory airline. In the event the City exercises the right, it shall notify Airline. Airline shall be responsible for immediately submitting such a sum as will reflect the total amount needed to satisfy current amounts due.

Section 6.14 Security Deposit

A. Airline agrees to pay a security deposit to City subject to the following conditions:

Unless Airline has provided regularly scheduled weekday passenger or cargo flights to and from the Airport for the eighteen (18) months prior to Airline's execution of this Agreement (or prior to the assignment of the Agreement to Airline) without committing an act or omission that would have been an Event of Default under Section 13.01 of this Agreement, the City shall have the right to require Airline to provide to City an irrevocable letter of credit, or other surety acceptable to City, ("Security Deposit") in an amount equal to three (3) months estimated fees and charges payable by Airline under Article 6 of this Agreement, to guarantee the faithful performance by Airline of its obligations under this Agreement and the payment of all fees and

charges due hereunder. Airline shall be obligated to maintain such Security Deposit in effect until the expiration of eighteen (18) consecutive months (including any period prior to Airline's execution of this Agreement or prior to the assignment of this Agreement to Airline during which Airline provided regularly scheduled passenger flights to and from the Airport) during which Airline commits no Event of Default under Section 13.01 of this Agreement (and for any such prior period, no act or omission that would have been such an Event of Default hereunder). City shall provide Airline with written notice that Airline must provide the Security Deposit required hereunder and Airline shall provide the Security Deposit within ten (10) days of issuance of the notice. Such Security Deposit shall be in such form as shall be acceptable to City in its reasonable discretion. In the event that any such Security Deposit shall be for a period of less than the full period required by this Agreement, or if such Security Deposit is canceled, Airline shall provide a renewal or replacement Security Deposit for the period following the expiration or cancellation of such Security Deposit previously provided at least sixty (60) days prior to the date on which such previous Security Deposit expires or at least sixty (60) days prior to the effective date of such cancellation. The City's rights under this Section 6.14 shall be in addition to all other rights and remedies provided to the City under this Agreement.

B. If Airline shall commit an Event of Default under Section 13.01 in the payment of any fees due under this Agreement, the Department shall have the right, by written notice to Airline given at any time, to impose or reimpose the requirements of Section 6.1 4(A) on Airline. In such event, Airline shall within ten (10) days from its receipt of such written notice, provide the Department with the required Security Deposit and shall thereafter maintain such Security Deposit in effect until the expiration of a period of eighteen (18) consecutive months during which Airline commits no Event of Default under Section 13.01 of this Agreement. The Department shall have the right to reimpose the requirements of Section 6.14(A) on Airline each time Airline commits such an Event of Default during the term of this Agreement. The Department's rights under Section 6.14(B) shall be in addition to all other rights and remedies provided to the Department under this Agreement. City will also have the option to charge non-signatory landing fee rates if carrier does not comply with Section 6.14(A). above when required to do so.

ARTICLE 7
CALCULATION OF RENTALS, CHARGES, AND FEES

Section 7.01 Rentals, Charges, and Fees

Rentals, charges, and fees will be reviewed and recalculated annually based on the principles and procedures set forth in this Article 7, and set by October 1 of each calendar year.

Section 7.02 Accounting Records

A. City shall maintain accounting records that will document the following items for each of the Airport Cost Centers: (1) revenues, (2) Maintenance and Operating Expenses, (3) annual debt service on Bonds, (4) amortization of the cost of Capital Improvements financed by City from other than Bonds or grants-in-aid, (5) Equipment and Capital Outlays, (6) any annual funding requirements pursuant to the applicable bond requirements, and (7) any other funding requirements imposed by law or judgments.

B. City shall provide to Airline its annual budget and any supplemental financial data required to assess the adequacy of rates and charges established under this Agreement.

Section 7.03 Coordination Procedures—Budget Review and Calculation of Rentals, Charges, and Fees

A. On or before September 1 or as soon thereafter as possible prior to the beginning of each annual adjustment on October 1, City shall submit to Airline the following reports:

1. The Airport's annual budget for the most recent past two, current and the next immediate Fiscal Years, including all estimated Airport Operating Revenues; estimated Maintenance and Operating Expenses; estimated annual debt service on Bonds; expenditures for Equipment and Capital Outlays; and expenditures for Capital Improvements for the Airport, all allocated to Airport Cost Centers as provided herein on a consistent basis from year to year.
2. The adjustment of Allowable Airfield M&O Expenses in accordance with Section 7.06.

3. City's calculation of proposed airline rentals, charges, and fees for the Fiscal Year, based on the procedures set forth in this Agreement.

4. City's calculation of the annual adjustment for the immediately prior Fiscal Year's budget versus the actual rentals, charges, and fees for said Fiscal Year.

B. Within thirty (30) calendar days after receipt of the reports, a meeting shall be held between Director and the Signatory Airlines to discuss the proposed rentals, charges, and fees. Director shall give due consideration to any comments and suggestions of Airline regarding the annual budget for the calculations of the proposed rentals, charges, and fees.

C. The City shall adopt a rates and charges schedule that may, in the discretion of City, include revisions made as a result of Director's discussions with Airline. City shall promptly furnish Airline with a copy of the final calculation of rentals, charges, and fees.

D. Prior to the adoption of a new rates and charges schedule in accordance with Section 7.03(C), the rentals, charges, and fees in effect during the preceding Fiscal Year shall continue in effect until the City has finalized the calculation of the rentals, charges, and fees in accordance therewith, to be effective October 1.

Section 7.04 Calculation of Terminal Building Rental Rates

Terminal building rental rates for each Terminal Building Subcost Center shall be calculated for each Fiscal Year in the following manner, as illustrated on Exhibit E:

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

1. The total of estimated direct Maintenance and Operating Expenses allocable to the Terminal Building Subcost Center (allocated on the basis of space; provided, however, that for Airline Exclusive Use Space, the airlines are directly responsible for the provision and cost of janitorial service and electricity).

2. Indirect Maintenance and Operating Expenses allocable to the Terminal Building Subcost Center pursuant to Section 7.07.

3. Equipment and Capital Outlays allocable to the Terminal Building Subcost Center (allocated on the basis of space). Any single Equipment and Capital Outlay item which is in excess of \$50,000 (net of grants-in-aid received) shall be amortized over its useful life, but not less than a two (2) year period by the City.

4. The annual amortization on the amount of any expenditures made by City before July 1 of the adjustment year for Capital Improvements or Equipment and Capital Outlays placed in service which were not disapproved by an MII in the Terminal Building Subcost Center that are funded by City from funds other than Bonds, grants in-aid, or Passenger Facility Charges shall be computed at interest (based on the rate of interest of an A rated municipal bond for a comparable purpose at the time of expenditure at another small-hub airport) using economic lives for each capital item determined by City in accordance with generally accepted accounting practices.

5. The difference between the actual Terminal Building Cost and the budgeted Terminal Building Cost for the prior Fiscal Year.

6. The estimated amount of any assessment, judgment, or settlement payable by the City relating directly to the Airport or its operations and allocable to the Terminal Building Subcost Center.

B. The estimated Terminal Building Cost for each Terminal Building Subcost Center for the Fiscal Year shall then be divided by the total amount of space in the Subcost Center to determine an average rental rate per square foot.

Section 7.05 Calculation of Landing Fee Rates

A Landing Fee Rate per one thousand (1,000) pounds of landed weight shall be calculated in each Fiscal Year in the following manner, as illustrated on Exhibit F. For purposes of calculating each year's estimated Landing Fee, the City will use, at its option and within its discretion, either A) the prior year's total landed weight or B) the Airlines' estimated total landed weight for the coming year, if such estimates are submitted to the City no later than August 1st of each year.

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

1. The total of estimated direct Allowable Airfield M&O Expenses calculated pursuant to Section 7.06.
2. Indirect Maintenance and Operating Expenses allocable to the Airport Airfield calculated pursuant to Section 7.07.
3. Equipment and Capital Outlays allocable to the Airport Airfield. Any single Equipment and Capital Outlay item which is in excess of \$50,000 (net of grants-in-aid received) shall be amortized over its useful life but, not less than a two (2) year period by the City.
4. The pro rata portion of annual debt service on Bonds allocable to the Airport Airfield.
5. The annual amortization on the amount of any expenditures made by City before July 1 of the adjustment year for Capital Improvements or Equipment and Capital Outlays placed in service which were not disapproved by an MII in the Airport Airfield that are funded by City from funds other than Bonds, grants in-aid, or Passenger Facility Charges shall be computed at interest (based on the rate of interest of an A rated municipal bond for a comparable purpose at the time of expenditure at another small-hub airport) using economic lives for each capital item determined by City in accordance with generally accepted accounting practices.
6. The difference between actual Signatory Airline landing fees and invoiced landing fees for the prior Fiscal Year.
7. The estimated amount of any assessment, judgment, or settlement to become payable by the City relating directly to the Airport or its operation and allocable to the Airport Airfield.

B. The Airport Airfield Cost shall be calculated at 100% recovery of the total Airfield Cost and then be multiplied by the following percentage to determine the "Landing Fee Requirement" for such Fiscal Year: fifty percent (50%).

C. City retains the option to negotiate with Airline to increase the Landing Fee rate up to a sixty percent (60%) rate.

D. The Landing Fee Requirement shall then be divided by the estimated Total Airline Certified Landed Weight of all passenger and cargo airlines, to determine the Landing Fee Rate per one thousand pound unit.

Section 7.06 Allowable Airfield Maintenance and Operating Expenses

For purposes of determining the "Allowable Airfield M&O Expenses" that may be included in the calculation of the Landing Fee Rate in accordance with Section 7.05(A)(1), the following procedures shall be followed:

A. The FY 2010 budget of direct Airfield M&O Expenses shall be the base year costs as set forth in Exhibit E.

B. For Fiscal Years after FY 2010, Allowable Airfield M&O Expenses shall not exceed lesser of the percentage increase in the CPI Index (for the most recent 12-month period) or five percent (5%) per year over the preceding year's actual costs; provided however, the costs for snow removal, security, incremental expenses to maintain and operate the CAT II approach and centerline/TDZ lighting on Runway 11, and costs associated with governmental mandates shall not be limited to such percentage increase.

Section 7.07 Allocation of Indirect Expenses

A. City shall allocate the expenses of the Indirect Cost Centers as follows:

<u>Indirect Cost Center</u>	<u>Airfield</u>	<u>Terminal</u>
Jetport/City Administration	50%	50%
Police and Security	10%	90%
Aircraft Rescue and Fire Fighting	95%	5%
Roadways	50%	50%

Section 7.08 Extraordinary Rate Adjustments

A. In the event that, at any time during a Fiscal Year, any of the components of Terminal Building Cost, Airfield Cost, or the Total Airline Landed Weight of all Signatory Airlines varies materially (upward or downward thirty percent (30%) or more) from the estimates used in setting the average rental rate and/or Landing Fee Rate, such rates may be adjusted either upward or downward for the balance of such Fiscal Year, in the event that such adjustment is deemed necessary by City to ensure that adequate revenues will be available from such fees to cover the estimated Terminal Building Cost and/or Airfield Cost for the Fiscal Year. City agrees to give no less than thirty (30) days prior written notice to Airline of any such adjustment.

B. In addition to all other rentals, fees and charges in this Agreement, the Airline shall make payment in the rates for rentals, fees and charges of the Airport in any fiscal year in which the amount in which the revenues less operating and maintenance expenses and the operating and maintenance reserve requirement are projected to be less than 125 percent of the debt service coverage (the "extraordinary coverage protection"). Should extraordinary coverage protection payments be made, the Airport will refund such payments to the signatory airlines as soon as uncommitted funds become available in the surplus fund.

ARTICLE 8

BOND REQUIREMENTS AND FLOW OF FUNDS

Section 8.01 Subordination to Bond Requirements

A. This Agreement and all rights of Airline hereunder are expressly subordinated and subject to the lien and provisions of any pledge, transfer, hypothecation, or assignment made at any time by City pursuant to the terms, covenants, and conditions of present and future bond requirements.

B. In conflicts between this Agreement and the bond requirements, the bond requirements shall govern.

C. All definitional terms that are not specifically defined herein are to have the meanings set forth in the bond requirements.

D. Notwithstanding the foregoing, City shall not enact any bond requirements or subsequently amend any bond requirements so as to require a material change in the method of calculation of rentals and fees payable hereunder or so as to materially adversely affect the rights or enlarge the duties of Airline hereunder.

Section 8.02 Creation of and Flow of Funds

A. Subject to the terms and provisions of the bond requirements and other related instruments, it is mutually understood and agreed that, as long as any Bonds secured by the bond requirements are outstanding, bond proceeds and all Airport revenues shall be deposited, maintained, and paid as set forth in the bond requirements.

ARTICLE 9

MAINTENANCE AND OPERATION OF AIRPORT

Section 9.01 City's Responsibilities

A. City agrees that it will, with reasonable diligence, prudently develop, improve, and at all times maintain and operate with adequate, efficient, and qualified personnel, keep the Airport in good repair including without limitation, the Terminal Building, Airport Airfield, all appurtenances, facilities, and services now or hereafter connected with the foregoing; will keep the Airport and its aerial approaches reasonably free from obstruction and interference for the safe and proper use thereof by Airline; and will develop, maintain, and operate the Airport in all respects in a manner at least equal to the standards or rating established by the FAA and any other governmental agency having jurisdiction thereof, except for conditions beyond the control of City. City shall not be liable to Airline for temporary failure to furnish all or any such services to be provided by City, whether due to mechanical breakdown or for any other causes beyond the reasonable control of City.

B. City, with its own forces or by contract, shall operate and maintain and keep in good condition the Terminal Building and all additions, improvements, facilities, and equipment now or hereafter provided by City at or in connection with the Terminal Building, except any improvements, facilities, and equipment constructed or installed by Airline. City shall keep the Terminal Building, except Airline's Exclusive Use Space (as shown on Exhibit C and Exhibit C-___), in a neat, orderly, sanitary, and presentable condition. City shall be responsible for the maintenance and operation of Common Use Space (including provision

of electricity and cleaning), which costs shall be included in the calculation of Common Use Space terminal building rentals.

C. City, with its own forces or by contract, shall at all times maintain the public and Common Use spaces and passenger seating in the holdroom area of the Terminal Building so as to provide for reasonable unobstructed use thereof by passengers and invitees, and shall keep such area adequately supplied, equipped (including directional signs), furnished, and decorated.

D. City shall supply or cause to be supplied appropriate and adequate equipment and maintenance for air conditioning, lighting, ventilation, heat, electrical, water, and sewerage facilities for Terminal Building public use areas, Airline's Leased Premises; adequate illumination in Common Use Space; and janitorial service in the Terminal Building, excluding Airline Exclusive Use Space.

Section 9.02 Airline's Responsibilities

Subject to the provisions of Section 9.04:

A. Airline shall, at all times keep its Exclusive Leased Premises neat, orderly, sanitary, and presentable; and shall cause to be removed at Airline's own expense from such spaces all waste, garbage, and rubbish, and agrees not to deposit the same on any part of the Airport, except that Airline may deposit same temporarily in its Exclusive Use Space or in space designated by City in connection with collection for removal. B. Airline shall maintain the apron area contiguous to its assigned gates in a neat, clean, and orderly condition, free from litter, debris, refuse, petroleum products, or grease that may result from activities of its passengers, employees, agents, or suppliers, and remove and properly dispose of all oil and grease spillage that is attributable to Airline's aircraft or equipment from its aircraft parking positions.

B. Airline shall perform, at its sole expense, ordinary preventive maintenance and ordinary upkeep and repair of all facilities, personal property, trade fixtures, and equipment located in its Exclusive Use Space except structural repairs, conditions pre-existing execution of this Agreement and not reasonably discoverable by Airline, and repairs necessitated by latent defects of facilities provided by the City. Airline shall be responsible for providing, at its sole cost, all movable furniture, personal property, equipment, and trade fixtures in its Exclusive and Preferential Use Space at all times, whether in the Current Terminal or the Expanded Terminal.

C. Airline shall immediately repair any damage in any space at the Airport occasioned by the fault or negligence of Airline, its servants, agents, employees, licensees, and invitees.

D. Except as provided in Section 3.02 paragraph H, Airline shall not erect, maintain, or display on its Leased Premises in the public view any billboards, advertising, or materials without the prior written approval of the Director. It is the City's policy that no advertising of any pricing shall be permitted.

E. Airline expressly agrees that City shall not be liable to Airline, for bodily injury or for any loss or damage to real or personal property occasioned by flood, fire, earthquake, lightning, windstorm, hail, explosion, riot, strike, civil commotion, smoke, vandalism, malicious mischief, or acts of civil authority not caused by the negligence or willful acts or omissions of City.

F. Airline shall provide and maintain hand fire extinguishers for the interior of its Exclusive Use Space as required by applicable safety codes.

Section 9.03 City's Right to Inspect and Make Repairs

City, by its authorized officers, employees, agents, contractors, subcontractors, and other representatives, shall have the right at any time in the case of emergencies, otherwise during normal business hours upon reasonable notice, to enter upon Airline's Exclusive Use Space and Preferential Use Space, accompanied by an authorized Airline representative, if practicable, for the following purposes:

A. To inspect such space to determine whether Airline has complied and is in compliance with the terms and conditions of this Agreement.

B. Upon reasonable notice, except in emergencies, to perform such maintenance, cleaning, or repair as City reasonably deems necessary, if Airline fails to perform its obligations in a timely manner under this Article 9, and to recover the actual cost of such maintenance, cleaning, or repair from Airline, plus a fifteen-percent (15%) administrative charge from Airline on the next rent due.

C. Upon reasonable notice, except in emergencies, to perform such maintenance, cleaning, or repair as City reasonably deems necessary, and which is the responsibility of the City under this Agreement.

Section 9.04 Alterations and Improvements

A. Airline shall make no repairs, alterations, additions, improvements to, or installations on the space leased under this Agreement without the prior written approval of Director.

B. Plans and specifications for such work shall be filed with and subject to the approval of the Director and all work shall be done in accordance with local ordinances and State and federal laws and regulations.

C. All alterations and improvements other than movable furniture, personal property, equipment, and trade fixtures shall become part of the realty and title shall vest with City upon completion.

Section 9.05 Environmental Regulations

Airline shall comply with the following environmental regulations:

A. Airline shall not cause or permit any Hazardous Materials, as defined in applicable local, state or federal law, to be stored or used on or about the Airport by Airline, its affiliates, agents, or employees, except in compliance with Environmental Laws as described below and as permitted by the City.

B. Airline shall at all times and in all respects comply with all present and hereinafter enacted local, state, and federal laws, ordinances, regulations, orders, and any amendments thereto relating to industrial hygiene, environmental protection, or the use, generation, manufacture, storage, disposal, or transportation of Hazardous Materials on, about, or from the premises (collectively, "Environmental Laws").

C. Airline shall, at its sole expense, procure, maintain in effect, and comply with all conditions of any permits, licenses, and other governmental and regulatory approvals required by any environmental law or regulation for Airline's use of the Airport, including, without limitation, discharge of materials or wastes into or through any storm or sanitary sewer serving the Airport. If required by any environmental law or regulation, Airline shall cause any and all Hazardous Materials removed from the Airport to be removed and transported solely by duly licensed haulers to duly licensed facilities for disposal. Airline shall in all respects handle, treat and manage any and all Hazardous Materials on or about the Airport in conformity with all

applicable Environmental Laws or any successor laws thereto and prudent industry practices regarding the management of such Hazardous Materials. Upon the expiration or earlier termination of the term of its operating permit or this Agreement, Airline shall cause all of Airline's Hazardous Materials to be removed from the Airport and to be transported for use, storage, or disposal in accordance and compliance with all applicable Environmental Laws; provided, however, that Airline shall not take any remedial action in response to the presence of any Hazardous Materials on or about the Airport, nor enter into any settlement agreement, consent decree, or other compromise with respect to any claims relating to any Hazardous Materials in any way connected with the Airport without first notifying the City in writing of Airline's intention to do so and affording the City ample opportunity to appear, intervene, or otherwise appropriately assert and protect the City's interest with respect thereto. Any remedial action shall be conducted by the Airline as required by, and in compliance with, Environmental Laws.

D. If at any time Airline shall become aware that any Hazardous Material has come to be located on or about the Airport in violation or potential violation of Environmental Laws, Airline shall, immediately upon discovering such presence or suspected presence of the Hazardous Material, provide the City with written notice of that condition. In addition, to the extent that Airline has notice, Airline shall immediately notify the City in writing of (1) any enforcement, cleanup, removal, or other governmental or regulatory action instituted or threatened pursuant to any Environmental Laws, (2) any claim made or threatened by any person against Airline or the Jetport relating to damage, contribution, cost recovery, compensation, loss, or injury resulting from or claimed to result from any Hazardous Materials, and (3) any reports made to any local, state, or federal environmental agency arising out of or in connection with any Hazardous Materials on or removed from the Jetport, including any complaints, notices, warnings, or asserted violations in connection therewith. Airline shall also supply to the City as promptly as possible, and in any event within five (5) business days after Airline first receives or sends the same, copies of all claims, reports, complaints, notices, warnings, or asserted violations relating in any way to the Jetport or Airline's use thereof, and Airline shall promptly deliver to the City copies of hazardous waste manifests reflecting the legal and proper disposal of all Hazardous Materials removed from the premises.

E. Airline shall indemnify, defend and hold harmless the City, its officers, employees, successors and assigns, from and against any and all claims, liabilities, penalties, fines, judgments, forfeitures, losses, damages (including without limitation, damages for the loss or restriction on use of rentable or usable space or of any amenity of the premises) costs, or expenses (including without limitation reasonable attorneys' fees, consultant fees, and expert fees) for the death of or injury to any person or damage to the Leased Premises or any property whatsoever, arising from or caused in whole or in part, directly or indirectly, by the Airline's failure to comply with any Environmental Laws or any covenants, terms or conditions relating to environmental matters in its activities hereunder, except to the extent caused by the negligence or willful acts or omissions of the City. Airline's obligations under this Paragraph (E) shall include, without limitation, and whether foreseeable or enforceable, any and all costs incurred in connection with any investigation of the condition of Airport or other property, and any and all costs of any required or necessary repair, cleanup, decontamination or remediation of Airport or other property and the preparation and implementation of any closure, remedial action, or other required plans in connection therewith. Airline's obligations under this Paragraph (E) shall survive the expiration or earlier termination of the term of this Agreement.

F. Notwithstanding any provisions to the contrary, the City, at its sole discretion, shall have the right to enter and inspect the Leased Premises, including Airline's business operations thereon, upon reasonable notice and in a manner so as not to unreasonably interfere with the conduct of Airline's business, to investigate the presence or potential presence of Hazardous Materials on the premises in violation of Environmental Laws. During such inspection, the City shall have the right to visually inspect the Leased Premises and to take such soil, sludge or groundwater samples and conduct such tests as it may determine, in its sole discretion, to be necessary or advisable. City shall pay for the costs of such investigations; provided, however, that if the results of such investigation indicate the presence of Hazardous Materials on or about the Leased Premises in violation of Environmental Laws, then Airline shall fully reimburse the City for such expenses within ten (10) days of receiving the City's written request for reimbursement, unless Airline can provide reasonable evidence that such violation was not caused by Airline.

G. The provisions of this section 9.05 shall survive the expiration or early termination of this Agreement.

ARTICLE 10

DAMAGE OR DESTRUCTION OF PREMISES

Section 10.01 Damage or Destruction

A. If the Leased Premises or any portions thereof, or buildings or structures of which such space may be a part, be damaged by fire or other casualty not caused by Airline, City shall notify Airline within sixty (60) days whether the space shall be repaired. If the space is to be repaired, it shall be repaired with due diligence by City, and the rental allocable to the particular building, rooms, or other portion of the Leased Premises rendered untenable shall be abated for the period from the occurrence of the damage to the completion of the repairs, provided that City shall exert its best effort to provide Airline with temporary substitute space, if available, at a rental rate not to exceed that provided for in this Agreement for comparable space until such time as the repairs are completed.

B. If the City shall fail to notify Airline of its decision within sixty (60) days after destruction, City shall be deemed to have elected to terminate this Agreement as to the space damaged and destroyed, and the Agreement shall automatically terminate as to such space as of the date of the damage, with no further liability therefore by either City or Airline.

C. In the event City elects not to reconstruct or replace Airline's Leased Premises, City shall meet and consult with Airline on ways and means to permanently provide Airline with adequate replacement space for Airline's Leased Premises. In such event, City agrees to amend this Agreement to reflect related additions and deletions to Airline's Leased Premises. If, after such consultation, there is no adequate replacement space reasonably available and acceptable to Airline, then Airline reserves the right to terminate this Agreement upon 30 days prior written notice to City with no further liability of either party to the other.

D. The Parties hereby waive any and all rights of action for negligence against the other which may hereafter arise on account of damage to the Terminal or to the property of either Party, resulting from any fire, or other casualty of the kind covered by standard fire insurance policies with extended coverage, regardless of whether or not, or in what amounts, such insurance is now or hereafter carried

by the Parties, or either of them. Each Party shall be responsible for maintaining such casualty insurance on its property as it deems necessary and such policies shall waive any right of subrogation thereunder against the other Party.

ARTICLE 11 INSURANCE AND INDEMNIFICATION

Section 11.01 Insurance

A. Airline shall, without expense to City, and upon commencement of the term hereof, obtain and cause to be kept in force liability insurance coverage, with limits as hereinafter stated, insuring against the liabilities set forth in Section 11.02.

B. Such insurance shall include, by way of example but not by way of limitation, comprehensive general liability coverage and automobile liability insurance coverage and shall not be in amounts less than hereinafter stated. Such insurance coverage shall be provided by policies issued by a company or companies with A.M. Best ratings of A-VIII or better, or a comparable rating from a comparable rating service, and authorized to do business in the State of Maine. Such insurance policies shall contain an endorsement providing that City will be given not less than thirty (30) calendar days written notice prior to the cancellation or material adverse change of the provisions or coverages affecting the interest of City provided by said policies. The comprehensive general liability policies shall include contractual liability coverage and shall make reference to this Agreement.

C. Airline shall cause a certificate or certificates of insurance to be furnished to City evidencing such insurance coverage prior to execution of this Agreement. If City is notified that any of the coverage required herein is to be canceled or changed in such a manner as not to comply with the requirements of this Agreement, Airline shall, prior to the effective date of such cancellation or change, obtain and provide City with certificates evidencing the re-establishment of the insurance coverage required hereby. If Airline does not notify City by the effective date of such cancellation or change, this will constitute a breach by Airline and permit City to terminate this Agreement pursuant to Section 14.03, or to purchase such insurance and charge the cost thereof to Airline as additional rent.

D. The minimum limits of coverage shall be as follows:

1. Airline, at its own expense, shall procure and maintain for the benefit of the City and itself, as their respective interests shall appear, aviation general liability insurance, including bodily injury and property damage with A.M. Best rating of A-VIII or better, with A.M. Best ratings of A-VIII or better, or a comparable rating from a comparable rating service, with the following minimum limits:

\$1,000,000 per occurrence/\$5,000,000 general aggregate;
\$2,000,000 aggregate for products and completed operations;
\$1,000,000 personal and advertising injury;
\$50,000 fire legal liability;

Aircraft liability

- \$50,000,000 per occurrence for all-cargo operators using any aircraft of more than 50,000 pounds Maximum Gross Certificated Landed Weight ;
- \$5,000,000 per occurrence for all-cargo operators using any aircraft of less than 50,000 pounds Maximum Gross Certificated Landed Weight;
- \$1,500,000 per seat, including crew, for airlines exclusively using aircraft with 25 or fewer seats;
- \$100,000,000 per occurrence for all others

2. Comprehensive automobile liability policy in a minimum amount of one million dollars (\$1,000,000) for both bodily injury and property damage, combined single limit per occurrence.

3. Comprehensive general liability, including Products and Completed Operations, policy in minimum amount of one million dollars (\$1,000,000) for bodily injury and five hundred thousand dollars (\$500,000) for property damage, or combined single minimum amount of one and one-half million dollars (\$1,500,000) for both bodily injury and property damage.

4. Workers' compensation insurance in a minimum amount as required by State law and employer's liability in a minimum amount of one hundred thousand dollars (\$100,000) per accident and \$500,000 per disease.

E. Any insurance limits required hereunder are minimum limits only and are not intended to restrict liability imposed under this Agreement.

F. Insofar as said insurance provides protection against liability for damages to third parties for personal injury, death, and property damage, City shall be included as an additional insured

throughout the term of the Agreement; provided such liability insurance coverage shall also extend to damage, destruction, and injury to City-owned or City-leased property and City personnel, and caused by, any work, operations, activities or occupancy under this Agreement, except to the extent caused by the sole negligent act or omission or willful misconduct of City. Airline shall show City as an additional insured with respects to Airline's operations and activities at the Airport. Airline may then also show on the insurance certificate that liability insurance coverage also includes contractual liability.

G. Any and all of the above insurance coverages shall be on an "occurrence" basis, not on a "claims made" basis. All insurance provided by Airline hereunder shall be primary to any insurance or self-insurance of City.

H. City shall have no liability for any premiums charged for such coverage, and the inclusion of City as an additional insured is not intended to, and shall not, make City a partner or joint venture with Airline in its operations at the Airport.

Section 11.02 Indemnification

A. To the fullest extent permitted by law, Airline shall be responsible for all liability arising out of its operations under this Agreement except that resulting from the sole negligence or willful misconduct of City, and Airline shall indemnify, defend, and hold the City, and its officers, agents, and employees harmless from and against any and all liabilities, losses, suits, claims, judgments, fines, or demands arising by reason of injury or death of any person or damage to any property (including without limitation City property or personnel), including all reasonable costs for investigation and defense thereof (including but not limited to reasonable attorney fees, court costs, and expert fees), of any nature whatsoever arising out of or incident to this Agreement and/or Airline's negligent act or omission or willful misconduct in the use of, occupancy of, or operations of Airline at or about, the Airport or the negligent acts or omissions or willful misconduct of Airline's officers, agents, employees, contractors, subcontractors, licensees, or invitees, regardless of where the injury, death, or damage may occur, except Airline shall not be liable to the extent such loss or judgment is finally determined to result from the negligent act or omission of City. Airline shall maintain contractual liability insurance to cover this indemnification agreement. The Director shall give to Airline prompt notice of any such claims or actions. Airline shall also use counsel reasonably acceptable to City in

carrying out its obligations hereunder. The provisions of this section shall survive the expiration or early termination of this Agreement with respect to matters arising before such expiration or early termination.

Airline, furthermore, shall indemnify, defend and hold the City and its officers, agents and employees harmless, from and against any and all liabilities, losses, suits, claims, judgments, fines, or demands of any character, name or description, arising out of, brought for or pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, the Superfund Amendments and Reauthorization Act, the Resource Conservation and Recovery Act, the Solid Waste Management Act, the Solid Waste Disposal Act, the Hazardous Sites Cleanup Act, the Clean Water Act, all applicable OSHA Regulations, or any other state or federal environmental law or regulation or any liabilities that may be imposed pursuant thereof, as a result of or incident to this Agreement and/or the use of occupancy of or operations of Airline, its officers, agents, employees, contractors, subcontractors, licensees, or invitees at or about the Airport.

B. Airline shall, at its own cost and expense defend any and all suits or actions, just or unjust, which may be brought against City or in which City may be impleaded with others upon any such above-mentioned matters, claim or claims, including claims of contractors, employees, laborers, material men, and suppliers. City shall have the right to participate in such suits and no action shall be settled without prior consent of the City. Such obligation of indemnity and defense shall not be construed to negate nor abridge any other right of indemnification or contribution running to the City which would otherwise exist. The extent of this indemnity provision shall not be limited by any requirement of insurance contained herein.

C. Airline hereby, expressly and without reservation, waives any defense or immunity to which it might otherwise be entitled under Workers' Compensation laws, the general statutes of Maine or judicial decisions, disallowing or limiting the foregoing indemnification, and consents to a cause of action for indemnity. Airline further waives subrogation rights against the City pursuant to Workers Compensation laws and will defend and indemnify the City from any such subrogation claims.

D. Any Mechanic's Lien or any other lien which may be filed against City property as a result of the any act or omission of Airline, its officers, agents, employees, contractors, subcontractors or anyone for whose action Airline may be legally liable, and arising out of any activities under this

Agreement shall be defended (by counsel reasonably acceptable the City) and promptly discharged by Airline at its own expense. If the Airline should fail, either to defend the City against the lien or to discharge it, then the City may do so at Airline's expense. In the event of such an undertaking by the City, the Airline will promptly reimburse the City for all of its costs and expenses in so doing, including, but not limited to, reimbursement of the City's reasonable counsel fees, as well as costs which may be incurred by it in substituting a bond in place of the lien.

E. Airline agrees to require all independent contractors that enter the Airport to perform work for, or to supply to, Airline to maintain liability and workers compensation insurance coverage in the amounts provided in Section 11.01 (D) (2)-(4) and to name the City of Portland as an additional insured on such liability policies.

F. Airline agrees to assume all risks of loss to its property resulting from any fire, theft, and/or vandalism, occurring in the Airline's Exclusive Use space.

ARTICLE 12 ASSIGNMENT OR SUBLEASE

Section 12.01 General

Airline shall not at any time transfer, convey, assign, sublet, mortgage, pledge, or encumber its interest under this Agreement, or any part of the Leased Premises without the prior written approval of the City; provided however Airline may assign its entire interest to an entity which merges with or succeeds to the business of the Airline without need for prior City approval provided that Airline is not in default in any of the terms hereunder. Airline shall provide City with written notice of any such merger or succession. Any failure of Airline to obtain City's prior approval is a material breach of this Agreement.

Section 12.02 Relinquishment of Space

If Airline desires to relinquish any of its Exclusive or Preferential Use Space, Airline will notify City in writing of the space available, and City shall make a good faith effort to reassign the space to another airline. No relinquishment, assignment, transfer, conveyance, or sublease by Airline shall relieve Airline of its responsibility for payment of rent, utilities, fees and other charges and performance of all

other obligations provided in this Agreement, without specific written consent by City to such assignment, transfer, conveyance or sublease.

Section 12.03 Consent

Consent by City to any type of transfer provided for by this Article 12 shall not in any way be construed to relieve Airline from obtaining further consent for any subsequent transfer or assignment of any nature whatsoever.

ARTICLE 13

DEFAULTS

Section 13.01 Default

If Airline (1) fails to pay rent or any other payment due hereunder within ten (10) calendar days after receipt of written notice of a past due account, or (2) fails to commence immediately to keep and perform any of its other covenants and agreements within thirty (30) calendar days after receipt of written notice, provided, however, that if such default cannot reasonably be cured in such thirty (30) calendar day period, then Airline shall have additional reasonable time to cure such default so long as Airline diligently proceeds to cure; or (3) fails to continue to complete, in a timely manner, any of its covenants and agreements after performance is commenced, or after the filing of any petition, proceedings, or action by, for, or against Airline under any insolvency, bankruptcy, or reorganization act of law, then, at the election of City:

A. Without terminating this Agreement, City may reenter the space and improve and relet all or any part of it to others, for the account of Airline, including costs of renovation necessitated by the neglect of Airline, its agents, or its employees, for all sublease rentals received, and Airline shall promptly reimburse City for any deficiency in rentals or other payments received under such subletting, as compared to Airline's obligations hereunder.

B. At any time before or after a reentry and reletting as provided in Section 13.01(A), City may terminate Airline's rights under this Agreement as provided in Section 14.03, without any restriction upon recovery by City for past due rentals and other obligations of Airline. City shall have all additional rights and remedies as may be provided to landlords by lawC. In the event

of Airline default hereunder, nothing herein is intended nor shall it be deemed to waive, amend, or modify Airline's duty to pay all rents, fees, expenses and other sums due hereunder.

ARTICLE 14 TERMINATION

Section 14.01 Events Permitting Termination by Airline

Airline may terminate this Agreement and all of its future obligations hereunder, at any time that Airline is not in default in its payments or other obligations to City hereunder, by giving City sixty (60) calendar days advance written notice only if (1) Airline is prohibited by lawful authority from using the Airport for a period exceeding sixty (60) consecutive calendar days because of any deficiency of the Airport or an unsafe operating condition existing at the Airport and not attributable to the act or omission of the Airline, or (2) City is in breach of any of the covenants or agreements contained in this Agreement for a period exceeding sixty (60) consecutive calendar days after receipt of written notice of such breach from Airline and City's failure to cure such breach, or if such breach cannot be cured within sixty (60) days, City fails to diligently proceed to cure such breach.

Section 14.02 Conditions of Premises at Termination

Upon termination of this Agreement, Airline shall yield and deliver to City the Leased Premises promptly and in a clean, sanitary condition, and, if necessary, restored to the satisfaction of City, reasonable wear and tear, and damage due to any structural defects or casualty loss not the fault of Airline excepted.

Section 14.03 Events Permitting Termination by City

A. City, at its option and in its discretion, may terminate this Agreement upon sixty (60) calendar days' written notice and all of its obligations hereunder and may exercise all rights of entry and reentry upon the demised premises, with or without process of law, upon or after the occurrence of any one of the following events:

1. Airline is in arrears in the payment of the whole or any part of the amounts agreed upon hereunder for a period of ten (10) days after City has notified Airline in writing that payment was not received when due;

2. Airline files in any court a petition in bankruptcy or insolvency or for the appointment of a receiver or trustee of all or a portion of Airline's property to the extent such termination is permitted by law;
3. Airline makes any general assignment for the benefit of creditors;
4. Airline abandons the Leased Premises for a period of thirty (30) consecutive days;
5. Airline defaults in the performance of any of the covenants and conditions required herein (except rental payments) to be kept and performed by Airline, and such default continues for a period of thirty (30) days after receipt of written notice from City to cure such default, or if such default cannot be cured within thirty (30) days, Airline fails to diligently proceed to cure such default upon receipt of City's written notice;
6. Airline is adjudged as bankrupt in involuntary bankruptcy procedures;
7. Airline is made a party to any receivership proceeding in which a receiver is appointed for the property or affairs of Airline where such receivership is not vacated within sixty (60) days after the appointment of such receiver;
8. Airline reduces its scheduled service at the Airport to less than one (1) flight per weekday unless such reduction of service is directly attributable to circumstances for which Airline is not responsible, and which are totally beyond its control; or
9. Airline has its FAA Operating Certificate revoked for a period of thirty (30) consecutive days.

B. In any of the aforesaid events, City may take immediate possession of the Leased Premises including any and all improvements thereon and remove Airline's effects. Airline shall be liable to City for any costs of cleanup, storage, removal, or disposition of Airline's effects and for restoration of the Leased Premises and for any costs incurred by City, including without limitation, attorneys' fees in enforcing its rights under this Section 14.03.

C. Failure of City to declare this Agreement canceled upon the default of Airline for any of the reasons set out shall not operate to bar or destroy the right of City to cancel this Agreement by reason of any subsequent violation of the terms of this Agreement.

D. No receipt or acceptance of money by City from Airline after the expiration or cancellation of this Agreement or after the service of any notice, after the commencement of any suit, or after final judgment for possession of the Leased Premises, shall reinstate, continue, or extend the terms of this Agreement, or affect any such notice, demand or suit or imply consent for any action for which City's consent is required or operate as a waiver of any right of the City to retake and resume possession of the Leased Premises.

Section 14.04. "Days" defined.

Unless otherwise specified, all reference to "days" in this Article shall mean calendar days.

ARTICLE 15
GENERAL PROVISIONS

Section 15.01 Rules and Regulations

A. Airline shall observe and obey all reasonable and non-discriminatory lawful Rules and Regulations established, promulgated, and/or adopted consistent with this Agreement from time to time during the term hereof by City, governing conduct on and operations at the Airport and use of its facilities. Copies of the Rules and Regulations, as adopted, shall be forwarded to Airline's local manager.

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

Section 15.02 Compliance with Law

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

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

1. Comply with and conform to all present and future statutes and ordinances, rules and regulations promulgated thereunder, of all federal, state, and other government bodies of competent jurisdiction that apply to or affect, either directly or indirectly, Airline or Airline's operations and activities under this Agreement.
2. Make, at its own expense, all nonstructural improvements, repairs, and alterations to its Exclusive Use Space (subject to prior written approval of City), and Airline's personal property that are required to comply with or conform to any such statutes and ordinances, and regulations which are promulgated or enacted by City. City represents that at the beginning of this Lease Term, all Exclusive Use Space complies with applicable statutes, ordinances and regulations.
3. Be and remain an independent contractor with respect to all installations, construction, and services performed by or on behalf of Airline hereunder.

Section 15.03 Nondiscrimination.

Airline, for itself, its heirs, personal representatives, successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree as follows:

- A. That no person on the grounds of race, creed, color, sex, age, disability, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Leased Premises.
- B. That in the construction of any improvements on, over, or under the Leased Premises and the furnishing of services thereon, no person on the grounds of race, creed, color, sex, or national origin shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination.
- C. That Airline shall use the Leased Premises in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, 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 Regulation may be amended. Airline shall also comply with the applicable provisions of Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112) and 49 CFR Part 27.

D. That, in the event of breach of any of the above nondiscrimination covenants, City shall have the right to terminate this Agreement.

Section 15.04 Affirmative Action

Airline assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, and any amendments thereto, and any other federal statutes or regulations applicable to the receipt of federal assistance from the federal Department of Transportation by local governments for Airport use, or otherwise applicable to persons leasing premises from the City of Portland, to insure that no person shall, on the grounds of race, creed, color, sex, age, disability, or national origin be excluded from participating in or receiving the services or benefits of any program of activity covered by this Subpart. Airline assures that it will require that its covered sub organizations (sublessees) provide assurances to City, as set forth herein, that they similarly will undertake affirmative action programs, and that they will require assurance from their sub organizations (subleassees) to the same effect.

Section 15.05 Successors and Assigns Bound

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

Section 15.06 Subordination to Agreements with U.S. Government

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

Section 15.07 Nonwaiver of Rights

The non-enforcement by either party of the breach of any term, covenant or condition herein stipulated, shall never be construed to be a waiver of any other or succeeding breach of any term, covenant or condition herein imposed upon the other party, and the acceptance of payments of any amounts due or to become due hereunder in any other way or manner, or at any other time than herein provided, shall never be construed as a waiver of the right of City of any of the provisions herein imposed upon Airline.

Section 15.08 Federal Aviation Act, Section 308

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

Section 15.09 Severability

If any provision of this Agreement is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Agreement will not be affected, and in lieu of each provision which is found to be illegal, invalid, or unenforceable, there will be added as part of this Agreement a provision as similar to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

Section 15.10 Headings

The headings of the several articles and sections of this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

Section 15.11 Assignment by City or Other Successor in Interest

City may assign or otherwise convey its interest, rights, duties and/or obligations hereunder to any airport authority or other successor in interest. City, airport authority or other successor in interest may assign, pledge or take other appropriate action with respect to this Agreement and their rights

and interests hereunder for any purpose relating to the issuance of bonds or other revenue generating devices.

Section 15.12 Removal of Disabled Aircraft

Airline shall promptly remove any of its disabled aircraft from any part of the Airport (including, without limitation, runways, taxiways, aprons, and aircraft parking positions) and place any such disabled aircraft in such storage areas as may be designated by Director. Airline may store such disabled aircraft only for such length of time and on such terms and conditions as may be established by the Director. If Airline fails to remove any of its disabled aircraft promptly, the Director may, but shall not be obligated to, cause the removal of such disabled aircraft, provided, however, the obligation to remove or store such disabled aircraft shall be consistent with federal laws and regulations, including those of the FAA and the National Transportation Safety Board (NTSB). Airline agrees to reimburse City for all costs of such removal and/or storage within thirty (30) days of receipt of an invoice thereof; and Airline, furthermore, hereby releases City from any and all claims for damage to the disabled aircraft or otherwise arising from or in any connected with such removal by City, except to the extent caused by the negligence or willful misconduct of City, its agents, or its employees.

Section 15.13 Quiet Enjoyment

City covenants and agrees that Airline on paying the rent (and other charges herein provided for) and observing and keeping the covenants, conditions, and terms of this Agreement, shall lawfully and quietly hold, occupy and enjoy the Leased Premises during the term of this Agreement without hindrance or molestation by City or any person claiming under City.

Section 15.14 Agreement Subject to Covenants in Deed

It is mutually agreed that this Agreement is made subject to the covenants, requirements and restrictions contained in the Deed or Deeds by which City obtained title to said Portland International Jetport.

Section 15.15 Force Majeure

No party to this Agreement is responsible to the other party for nonperformance or delay in performance of the terms and conditions herein due to acts of God, acts of government, wars, riots,

strikes, accidents in transportation, fuel or materials shortages, or other causes beyond the control of the parties.

Section 15.16 Entire Agreement

This Agreement, together with all exhibits attached hereto, constitutes the entire agreement between the parties hereto, and all other representations or statements heretofore made, verbal or written, are merged herein, and this Agreement may be amended only in writing, and executed by duly authorized representatives of the parties hereto.

Section 15.17 Time is of the Essence

Time is and shall be deemed of the essence in respect to the performance of each provision of this Agreement.

Section 15.18 Agreement Made in Maine

The laws of the State of Maine shall govern the validity, interpretation, performance and enforcement of this Agreement. Venue shall be in the State courts in Cumberland County, Maine.

Section 15.19 Cumulative Rights and Remedies.

All rights and remedies of City and Airline here enumerated shall be cumulative and none shall exclude any other right or remedy allowed by law. Likewise, the exercise by City and Airline of any remedy provided for herein or allowed by law shall not be to the exclusion of any other remedy. Notwithstanding the foregoing, neither party shall be liable to the other party for incidental, special, punitive or consequential damages hereunder.

Section 15.20 Interpretation

Words of gender used in this Agreement shall be held and construed to include any other gender, and words in the singular shall be held to include the plural and vice versa unless the context otherwise requires.

Section 15.21 Agreement Made in Writing

This Agreement contains all of the agreements and conditions made between the parties hereto and may not be modified orally or in any manner other than by agreement in writing signed by the parties hereto or their respective successors in interest.

Section 15.22 Successors and Assigns

All of the terms, provisions, covenants and conditions of this Agreement shall inure to the benefit of and be binding upon City and Airline and their successors, assigns, legal representatives, heirs, executors and administrators.

Section 15.23 Authorization to Enter Agreement

If Airline signs this Agreement as a corporation, each of the persons executing this Agreement on behalf of Airline warrants to City that Airline is a duly authorized and existing corporation, that Airline has full right and authority to enter into this Agreement, and that each and every person signing on behalf of Airline is authorized to do so. Upon City's request, Airline will provide evidence satisfactory to City confirming these representations.

Section 15.24 Approvals

Wherever approval of City or Airline is required hereunder, such approval shall not be unreasonably delayed or withheld.

Section 15.25 Favored Nations

City shall not enter into any written or oral lease, contract or other agreement with any other Air Transportation Company providing service at the Airport, or which may provide service at the Airport, which contains any rights, licenses, privileges, rates or charges more favorable to such carrier than the rights, licenses, privileges, rates and charges granted to or payable hereunder by Airline, or containing any other material terms which are more favorable to said carrier than those afforded to Airline hereunder unless City also makes those more favorable terms available to Airline; and provided further, that City reserves the right to charge for the use of the International Facilities Area on a per use basis.

Section 15.26 Effective Date

This Agreement shall be effective as of the date of execution on the front page.

Section 15.27 Existing Agreements Terminated

All agreements between the parties in effect prior to execution of this Agreement and covering the subject matter of this Agreement are terminated as of the effective date of this Agreement.

Section 15.28 Notices

- A. Any notice under the terms of this Agreement shall be in writing and sent by certified mail, return receipt requested, or by overnight courier service. If such notice is given by Airline, it shall be submitted to the Director of Aviation and Transportation, Portland International Jetport, 1001 Westbrook Street, Portland, Maine 04102, with a copy to the City Manager, 389 Congress Street, Portland, ME 04101, or to such revised address as notified by City. If given by City, such notice shall be submitted to the address of Airline at the following address:

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

- C. Any notice so given shall be deemed properly delivered, given, served, or received on the date shown for delivery or rejection on the return receipt. Any party may change the address to which notices shall thereafter be given upon five (5) days prior written notice to all other parties in the manner set forth in this Section.

Section 15.29 Capacity.

Each party represents to the other that: Such party has full power and authority to perform its obligations hereunder and that any person or entity executing this Agreement by or on behalf of the

representing party has the authority to act on behalf of and bind the representing party, and that the performance of this Agreement will not be in violation of the representing party's charter or any law, ordinance, rule, regulation or order of any governmental body having jurisdiction, or the provisions of any agreements to which the representing party is a party or by the terms of which it is bound and, if requested, each party shall furnish to any other party reasonably satisfactory evidence of such authority and approval.

IN WITNESS WHEREOF, the parties hereto, through their duly authorized representatives,
have executed this Agreement on the day and year first above written.

CITY OF PORTLAND

AIRLINES

By: _____

Joseph E. Gray, Jr., City Manager

By: _____

(Please print name)

Its _____
(Title)

Table C-1
City of Portland
Portland International Jetport
FY 2010 Budgeted Rates and Charges
M&O EXPENSES

	A	B	C	D	Variance			
	Actual 2008	Budget 2009	Actual 2009	Budget 2010	C - B	% Change	D - C	% Change
Summary by Line Item								
Payroll	\$2,081,778	\$2,125,006	\$2,039,809	\$2,287,704	(\$85,196)	-4.0%	\$247,895	12.2%
Benefits	1,132,304	1,088,067	1,070,198	1,171,272	(17,869)	-1.6%	101,074	9.4%
Administrative Services	487,479	516,538	474,465	543,411	(42,073)	-8.1%	68,946	14.5%
Contractual Services	2,220,911	2,354,394	2,359,083	2,451,949	4,689	0.2%	92,865	3.9%
Maintenance & Repairs	857,465	900,530	881,123	994,158	(19,407)	-2.2%	113,036	12.8%
Rentals	310,543	22,391	11,168	18,805	(11,222)	-50.1%	7,637	68.4%
Insurance	139,174	136,269	140,659	140,181	4,390	3.2%	(478)	-0.3%
Supplies	562,494	603,443	615,756	1,026,360	12,313	2.0%	410,605	66.7%
Utilities	791,472	814,370	843,498	810,455	29,128	3.6%	(33,043)	-3.9%
Contributions	1,908,979	1,967,528	1,822,962	2,014,746	(144,566)	-7.3%	191,784	10.5%
TOTAL	\$10,492,597	\$10,528,535	\$10,258,721	\$11,459,041	(\$269,815)	-2.6%	\$1,200,320	11.7%
Summary by Cost Center								
Jetport Administration (01)	\$1,710,889	\$1,586,049	\$1,494,870	\$1,647,756	(\$91,179)	-5.7%	\$152,887	10.2%
Jetport Field (02)	2,038,693	2,064,686	1,899,019	2,668,517	(165,668)	-8.0%	769,498	40.5%
General Aviation (03)	3,594	7,620	2,619	31,656	(5,001)	-65.6%	29,037	1108.8%
Fringe & Indirect Costs (04)	0	0	(0)	0	(0)	0.0%	0	-100.0%
Security (05)	1,665,807	1,807,818	1,726,007	1,844,900	(81,810)	-4.5%	118,892	6.9%
Terminal (06)	2,720,313	2,782,275	2,934,975	2,868,909	152,700	5.5%	(66,066)	-2.3%
Marketing (08)	241,119	256,633	247,299	437,842	(9,334)	-3.6%	190,543	77.0%
Parking (09)	343,707	355,511	364,908	225,624	9,397	2.6%	(139,284)	-38.2%
ARFF	1,768,474	1,667,944	1,589,025	1,733,838	(78,919)	-4.7%	144,813	9.1%
Roadways	0	0	0	0	0	0.0%	0	0.0%
TOTAL	\$10,492,597	\$10,528,535	\$10,258,721	\$11,459,041	(\$269,815)	-2.6%	\$1,200,320	11.7%

EXHIBIT B

CAPITAL IMPROVEMENT PROGRAM

PORTLAND INTERNATIONAL JETPORT - AIP/CIP PROJECT SUMMARY Updated 12/7/09									
Federal Fiscal Year ¹	Project	Total Cost	FAA	PFC	TSA	State	Airport	Total	
F.Y. 2009	Runway 18-38 Wetlands Mitigation - Phase 1 (Grant filed by 2/10/09)	\$ 1,521,667	\$ 1,445,584	\$ -	\$ -	\$ 36,042	\$ 36,042	\$1,521,667	
AIP 64	Runway 18-38 Improvements - Final Design includes Reimb. Agmt \$165k	\$ 1,297,115	\$ 1,292,250	\$ -	\$ -	\$ 32,428	\$ 32,428	\$1,297,115	
AIP 65	Terminal Apron Phase 1a & Deicing Capture Apron	\$ 2,139,016	\$ 2,139,016	\$ -	\$ -	\$ -	\$ -	\$2,139,016	
AIP 66 ²	Runway 18-38 Wetlands Mitigation - Phase 2 (Grant filed post March 09) & Habitat Mitigation	\$ 2,757,469	\$ 2,648,058	\$ -	\$ -	\$ 69,667	\$ 69,667	\$2,757,469	
AIP 67		\$ 7,744,268	\$ 7,463,955	\$ -	\$ -	\$ 140,156	\$ 140,156	\$7,744,268	
Subtotal 2009									
F.Y. 2010	Terminal Apron Phase 1b - Deicing Capture (\$8.126 million reimbursed FY 11, 12, 13, 14)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$0	
2010	Runway 18-38 Safety Area Construction (Pre-load and initial site work only)	\$ 5,140,092	\$ 4,883,050	\$ -	\$ -	\$ 128,502	\$ 128,502	\$5,140,092	
2010	Runway 11-29 Safety Area Construction (Includes Service Access Road Relocation)	\$ 2,794,396	\$ 2,626,176	\$ -	\$ -	\$ 69,110	\$ 69,110	\$2,794,396	
2010	North General Aviation Tiedown Pavement Rehabilitation	\$ 300,000	\$ -	\$ -	\$ -	\$ -	\$ 300,000	\$300,000	
2010	Terminal Expansion VALE Grant for Geothermal System	\$ 3,000,000	\$ 2,850,000	\$ -	\$ -	\$ 75,000	\$ 75,000	\$3,000,000	
2010	Terminal Expansion (includes inline EDS baggage system)	\$ 72,698,000	\$ -	\$ 55,150,000	\$ 9,191,250	\$ -	\$ 8,356,750	\$72,698,000	
Subtotal 2010		\$ 83,962,488	\$ 10,369,235	\$ 55,150,000	\$ 9,191,250	\$ 272,611	\$ 8,356,750	\$83,962,488	
F.Y. 2011	Runway 18-38 Safety Area Construction (All work outside of Pre-Lead in FY 2010)	\$ 5,747,015	\$ 5,459,684	\$ -	\$ -	\$ 143,675	\$ 143,675	\$5,747,015	
2011	Runway 18-38 Reconstruction (Includes RSA completion, TWY J Recn, and TWY C ext.)	\$ 7,263,417	\$ 6,904,986	\$ -	\$ -	\$ 181,710	\$ 181,710	\$7,263,417	
2011	Taxiway C Rehabilitation (Includes TWY C south and section from G to 18 END)	\$ 1,464,938	\$ 1,410,091	\$ -	\$ -	\$ 37,123	\$ 37,123	\$1,464,938	
2011	Terminal Apron Phase 2 - Aircraft Apron Construction (\$3.769M reimbursed FY 13, 14, 15)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$0	
Subtotal 2011		\$ 14,500,370	\$ 13,775,352	\$ -	\$ -	\$ 362,509	\$ 362,509	\$14,500,370	
F.Y. 2012	Terminal Apron Phase 1b Deicing Capture - Reimbursement #1 (\$5.74M remaining)	\$ 2,393,333	\$ 2,393,166	\$ -	\$ -	\$ 59,583	\$ 59,583	\$2,393,333	
2012	Snow Removal Equipment	\$ 1,500,000	\$ 1,425,000	\$ -	\$ -	\$ 37,500	\$ 37,500	\$1,500,000	
Subtotal 2012		\$ 3,893,333	\$ 3,699,166	\$ -	\$ -	\$ 97,083	\$ 97,083	\$3,893,333	
F.Y. 2013	Replacement AREF fire truck	\$ 1,000,000	\$ 950,000	\$ -	\$ -	\$ 25,000	\$ 25,000	\$1,000,000	
2013	Terminal Apron Phase 1b Deicing Capture - Reimbursement #2 (\$2.89M remaining)	\$ 2,893,333	\$ 2,738,166	\$ -	\$ -	\$ 72,083	\$ 72,083	\$2,893,333	
Subtotal 2013		\$ 3,893,333	\$ 3,689,166	\$ -	\$ -	\$ 97,083	\$ 97,083	\$3,893,333	
F.Y. 2014	Snow Removal Equipment	\$ 1,023,898	\$ 972,768	\$ -	\$ -	\$ 25,600	\$ 25,600	\$1,023,898	
2014	Terminal Apron Phase 1b Deicing Capture - Reimbursement #3 (Final)	\$ 2,859,335	\$ 2,716,369	\$ -	\$ -	\$ 71,463	\$ 71,463	\$2,859,335	
Subtotal 2014		\$ 3,883,333	\$ 3,689,166	\$ -	\$ -	\$ 97,083	\$ 97,083	\$3,883,333	
F.Y. 2015	Terminal Apron Phase 2 - Reimbursement #1 (Final)	\$ 3,769,658	\$ 3,581,175	\$ -	\$ -	\$ 94,241	\$ 94,241	\$3,769,658	
2015	Master Plan	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$0	
2015	North G.A. Ramp	\$ 1,761,031	\$ 1,672,979	\$ -	\$ -	\$ 44,026	\$ 44,026	\$1,761,031	
Subtotal 2015		\$ 5,530,689	\$ 5,254,154	\$ -	\$ -	\$ 138,267	\$ 138,267	\$5,530,689	
F.Y. 2016	Terminal Apron Phase 3 - Gate 2 Ramp	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$0	
2016		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$0	
2016		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$0	
Subtotal 2016		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$0	
TOTAL SHORT TERM PLANNING HORIZON		\$ 121,566,752	\$ 46,247,215	\$ 55,150,000	\$ 9,191,250	\$ 1,150,768	\$ 9,817,518	\$121,566,752	

EXHIBIT C-2

TERMINAL PROJECT GENERAL DESCRIPTION OVERVIEW
PORTLAND INTERNATIONAL JETPORT

The proposed terminal expansion will result in approximately 145,000 additional and renovated useable square feet including a new airline ticketing area, a bridge connecting the parking garage and the terminal, an addition of 3 airline gates, refurbishment of existing airline gate area, additional security lanes, and additional concession areas. The project will include an in- line baggage screening system. A new recycling center will also be included.

Construction of the new terminal will commence in April 2010 and is scheduled to be occupied and operational by October 2011. The total cost of the project is 74.9 million dollars and is partly funded using FAA grant money and PFC funds. The remainder is captured by Jetport funds on hand.

The architect is Gensler and the construction manager will be Turner Construction. Turner Construction has been advised that communications with tenants of the Jetport are critical and the operations of the Jetport are to be maintained at all times. Turner has this as their top priority. During the first stage of the construction, Gate 11 has to be relocated and U.S. Air will need to be coordinated during this move. Through the duration of the construction, the effect on operations should be minimal until the transfer of all airlines over to the new terminal in October 2011. During the construction period, however, Turner construction will have regular update meeting to coordinate any effect on operations of the airport. The frequency of these meeting is on an as needed basis.

Once phase one of the constructions is over and the airlines are moved over then phase two will commence. At this time the makeup bag area will have only two carousels in operation. Two additional carousels will come on line within 6 weeks to finalize the project.

EXHIBIT C-3

ESTIMATED CONSTRUCTION SCHEDULE OVERVIEW

WEEK OF MARCH 23, 2010:	CONSTRUCTION OF FOUNDATION BASE
WEEK OF MARCH 30, 2010:	REMOVAL AND REPLACEMENT OF WINDOW SYSTEM
WEEK OF APRIL 13, 2010:	REMOVAL AND RELOCATION OF JETWAY GATE 11
OCTOBER 1, 2011:	COMPLETION OF PHASE 1 OF PROJECT
WEEK OF OCTOBER 3, 2011:	U.S. AIRWAYS AND JETBLUE TO RELOCATE TO NEW TERMINAL
WEEK OF OCTOBER 3, 2011 AND ONGOING :	INSTALLATION OF ADDITIONAL CAROUSELS
END OF JANUARY, 2012:	RELOCATION OF ALL OTHER AIRLINES TO NEW TERMINAL; PROJECT COMPLETION

EXHIBIT D
TERMINAL BUILDING SUBCOST CENTERS

Table D-2
City of Portland
Portland International Jetport
FY 2010 Budgeted Rates and Charges
PRORATION OF TERMINAL CHARGES (EXCLUDING CLEANING AND ELECTRICITY EXPENSES)
(Page 1 of 2)

	Actual 2008	Budget 2009	Actual 2009	Budget 2010
<u>Space</u>				
Airline Exclusive Use	30,133	30,133	30,133	30,133
Common Use	42,859	42,859	42,859	42,859
Preferential Use (Outbound Baggage)	0	0	0	0
Public/City	57,808	57,808	57,808	57,808
	130,799	130,799	130,799	130,799
<u>Percentage Allocation</u>				
Airline Exclusive Use	23.0%	23.0%	23.0%	23.0%
Common Use	32.8%	32.8%	32.8%	32.8%
Preferential Use (Outbound Baggage)	0.0%	0.0%	0.0%	0.0%
Public/City	44.2%	44.2%	44.2%	44.2%
	100.0%	100.0%	100.0%	100.0%
Terminal M&O Expense	\$2,720,313	\$2,782,275	\$2,934,975	\$2,868,909
Less: Building Maintenance	(751,540)	(752,740)	(763,654)	(775,335)
Less: Electricity	(385,132)	(334,851)	(370,286)	(384,315)
Less: Inline Baggage Amount	0	0	0	0
TML M&O Expense (Excl Bldg Maint & Electric)	\$1,583,641	\$1,694,684	\$1,801,035	\$1,709,259
<u>Alloc of M&O Exp (Excl Cleaning & Electricity)</u>				
Airline Exclusive Use	\$364,829	\$390,410	\$414,911	\$393,768
Common Use	518,908	555,293	590,140	560,068
Preferential Use (Outbound Baggage)	0	0	0	0
Public/City	699,905	748,981	795,984	755,423
	\$1,583,641	\$1,694,684	\$1,801,035	\$1,709,259
Administration Expense	\$976,004	\$921,341	\$871,084	\$1,042,799
<u>Allocation of Administration</u>				
Airline Exclusive Use	\$224,845	\$212,252	\$200,675	\$240,233
Common Use	319,805	301,893	285,426	341,691
Preferential Use (Outbound Baggage)	0	0	0	0
Public/City	431,354	407,195	384,984	460,875
	\$976,004	\$921,341	\$871,084	\$1,042,799
Security Expense	\$1,499,226	\$1,627,036	\$1,553,407	\$1,660,410
<u>Allocation of Security</u>				
Airline Exclusive Use	\$345,382	\$374,826	\$357,864	\$382,514
Common Use	491,248	533,127	509,001	544,062
Preferential Use (Outbound Baggage)	0	0	0	0
Public/City	662,597	719,083	686,542	733,833
	\$1,499,226	\$1,627,036	\$1,553,407	\$1,660,410
ARFF Expense	\$88,424	\$83,397	\$79,451	\$86,692
<u>Allocation of ARFF</u>				
Airline Exclusive Use	\$20,370	\$19,212	\$18,303	\$19,972
Common Use	28,974	27,327	26,034	28,406
Preferential Use (Outbound Baggage)	0	0	0	0
Public/City	39,080	36,858	35,114	38,314
	\$88,424	\$83,397	\$79,451	\$86,692
Roadways Expense	\$0	\$0	\$0	\$0
<u>Allocation of Roadways</u>				
Airline Exclusive Use	\$0	\$0	\$0	\$0
Common Use	0	0	0	0
Preferential Use (Outbound Baggage)	0	0	0	0
Public/City	0	0	0	0
	\$0	\$0	\$0	\$0

FY 10 Rates & Charges as of 9-10-09.xls-Table D

Table D-2
City of Portland
Portland International Jetport
FY 2010 Budgeted Rates and Charges
PRORATION OF TERMINAL CHARGES (EXCLUDING CLEANING AND ELECTRICITY EXPENSES)
(Page 2 of 2)

	Actual 2008	Budget 2009	Actual 2009	Budget 2010
EQUIPMENT & CAPITAL OUTLAY \$10,000 & UNDER Terminal (06)	\$13,909	\$0	\$0	\$9,000
<u>Allocation of Capital Outlays under \$10,000</u>				
Airline Exclusive Use	\$3,204	\$0	\$0	\$2,073
Common Use	4,557	0	0	2,949
Preferential Use (Outbound Baggage)	0	0	0	0
Public/City	6,147	0	0	3,978
	\$13,909	\$0	\$0	\$9,000
EQUIPMENT & CAPITAL OUTLAY \$10,000 & UNDER Terminal Piece of Security	\$0	\$15,750	\$6,688	\$0
<u>Allocation of Capital Outlays under \$10,000</u>				
Airline Exclusive Use	\$0	\$3,628	\$1,541	\$0
Common Use	0	5,161	2,191	0
Preferential Use (Outbound Baggage)	0	0	0	0
Public/City	0	6,961	2,956	0
	\$0	\$15,750	\$6,688	\$0
Amortization of Capital Costs	\$311,566	\$315,373	\$299,845	\$222,244
<u>Allocation</u>				
Airline Exclusive Use	\$71,776	\$72,654	\$69,076	\$51,199
Common Use	102,090	103,337	98,249	72,822
Preferential Use (Outbound Baggage)	0	0	0	0
Public/City	137,699	139,382	132,519	98,223
	\$311,566	\$315,373	\$299,845	\$222,244

EXHIBIT E

CALCULATION OF TERMINAL BUILDING RENTAL RATES – ILLUSTRATION

Table A
City of Portland
Portland International Jetport
FY 2010 Budgeted Rates and Charges
RATE SUMMARY

	A	B	C	D	Variance			
	Actual 2008	Budget 2009	Actual 2009	Budget 2010	C - B	% Change	D - C	% Change
Terminal Rental Rates								
Airline Exclusive Use	\$37.04	\$36.48	\$36.13	\$35.82	(\$0.35)	-1.0%	(\$0.31)	-0.9%
M&O Expenses (Less: Bldg Maint & Elec) Rate	\$12.11	\$12.96	\$13.77	\$13.07	\$0.81	6.2%	(\$0.70)	-5.1%
Building Maintenance Rate	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0.0%	\$0.00	0.0%
Electricity Rate	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0.0%	\$0.00	0.0%
Indirect M&O Rate (Excluding Security)	\$8.14	\$7.68	\$7.27	\$8.64	(\$0.41)	-5.3%	\$1.37	18.8%
Security M&O Rate	\$11.46	\$12.44	\$11.88	\$12.69	(\$0.56)	-4.5%	\$0.81	6.8%
Capital Projects Rate	\$2.49	\$2.53	\$2.34	\$1.77	(\$0.19)	-7.5%	(\$0.57)	-24.4%
Adjustment Rate (Prior Yr Actual Minus Prior Yr Budget)	\$2.84	\$0.87	\$0.87	(\$0.35)	\$0.00	N/A	(\$1.22)	N/A
Common Use	\$48.61	\$48.16	\$48.27	\$47.80	\$0.11	0.2%	(\$0.47)	-1.0%
M&O Expenses (Less: Bldg Maint & Elec) Rate	\$12.11	\$12.96	\$13.77	\$13.07	\$0.81	6.2%	(\$0.70)	-5.1%
Building Maintenance Rate	\$7.47	\$7.48	\$7.59	\$7.70	\$0.11	1.5%	\$0.11	1.4%
Electricity Rate	\$3.83	\$3.33	\$3.68	\$3.82	\$0.35	10.5%	\$0.14	3.8%
Indirect M&O Rate (Excluding Security)	\$8.14	\$7.68	\$7.27	\$8.64	(\$0.41)	-5.3%	\$1.37	18.8%
Security M&O Rate	\$11.46	\$12.44	\$11.88	\$12.69	(\$0.56)	-4.5%	\$0.81	6.8%
Capital Projects Rate	\$2.49	\$2.52	\$2.33	\$1.77	(\$0.19)	-7.5%	(\$0.56)	-24.0%
Adjustment Rate (Prior Yr Actual Minus Prior Yr Budget)	\$3.11	\$1.75	\$1.75	\$0.11	\$0.00	N/A	(\$1.64)	N/A
Public/City	\$48.67	\$48.17	\$48.28	\$47.80	\$0.11	0.2%	(\$0.48)	-1.0%
M&O Expenses (Less: Bldg Maint & Elec) Rate	\$12.11	\$12.96	\$13.77	\$13.07	\$0.81	6.2%	(\$0.70)	-5.1%
Building Maintenance Rate	\$7.47	\$7.48	\$7.59	\$7.70	\$0.11	1.5%	\$0.11	1.4%
Electricity Rate	\$3.83	\$3.33	\$3.68	\$3.82	\$0.35	10.5%	\$0.14	3.8%
Indirect M&O Rate (Excluding Security)	\$8.14	\$7.68	\$7.27	\$8.64	(\$0.41)	-5.3%	\$1.37	18.8%
Security M&O Rate	\$11.46	\$12.44	\$11.88	\$12.69	(\$0.56)	-4.5%	\$0.81	6.8%
Capital Projects Rate	\$2.49	\$2.53	\$2.34	\$1.77	(\$0.19)	-7.5%	(\$0.57)	-24.4%
Adjustment Rate (Prior Yr Actual Minus Prior Yr Budget)	\$3.17	\$1.75	\$1.75	\$0.11	\$0.00	N/A	(\$1.64)	N/A
Landing Fee	\$2.22	\$2.13	\$1.93	\$2.35	(\$0.20)	-9.4%	\$0.43	22.1%
Airline Cost Per Enplanement	\$6.02	\$6.45	\$6.35	N/A	(\$0.10)	-1.6%	N/A	N/A

Table B-1
City of Portland
Portland International Jetport
FY 2010 Budgeted Rates and Charges
TERMINAL RENTAL RATE
Exclusive Use

	A	B	C	D	Variance			
	Actual 2008	Budget 2009	Actual 2009	Budget 2010	C - B	% Change	D - C	% Change
Direct Expense								
M&O Expenses (Less: Bldg Maint & Elec)	\$364,829	\$390,410	\$414,911	\$393,768				
Building Maintenance	0	0	0	0				
Electricity	0	0	0	0				
	\$364,829	\$390,410	\$414,911	\$393,768	\$24,500	6.3%	(\$21,143)	-5.1%
Indirect Expense								
Administration	\$224,845	\$212,252	\$200,675	\$240,233				
Security	345,382	374,826	357,864	382,514				
ARFF	20,370	19,212	18,303	19,972				
Roadways	0	0	0	0				
	\$590,598	\$606,291	\$576,842	\$642,719	(\$29,449)	-4.9%	\$65,877	11.4%
Capital Expense								
Equipment & Capital Outlays < \$10K - Direct	\$3,204	\$0	\$0	\$2,073				
Equipment & Capital Outlays < \$10K - Security	0	3,628	1,541	0				
Amortization	71,776	72,654	69,076	51,199				
Debt Service	0	0	0	0				
	\$74,981	\$76,282	\$70,617	\$53,272	(\$5,665)	-7.4%	(\$17,345)	-24.6%
TOTAL REQUIREMENT	\$1,030,407	\$1,072,983	\$1,062,369	\$1,089,759	(\$10,613)	-1.0%	\$27,390	2.6%
Space	30,133	30,133	30,133	30,133	0	0.0%	0	0.0%
Average Rental Rate Prior to Adjustments	\$34.20	\$35.61	\$35.26	\$36.17	(\$0.35)	-1.0%	\$0.91	2.6%
M&O Expenses (Less: Bldg Maint & Elec) Rate	\$12.11	\$12.96	\$13.77	\$13.07	\$0.81	6.2%	(\$0.70)	-5.1%
Building Maintenance Rate	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0.0%	\$0.00	0.0%
Electricity Rate	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0.0%	\$0.00	0.0%
Indirect M&O Rate (Excluding Security)	\$8.14	\$7.68	\$7.27	\$8.64	(\$0.41)	-5.3%	\$1.37	18.8%
Security M&O Rate	\$11.46	\$12.44	\$11.88	\$12.69	(\$0.56)	-4.5%	\$0.81	6.8%
Capital Projects Rate	\$2.49	\$2.53	\$2.34	\$1.77	(\$0.19)	-7.5%	(\$0.57)	-24.4%
Adjustment Rate (Prior Yr Actual Minus Prior Yr Budget)	\$2.84	\$0.87	\$0.87	(\$0.35)	\$0.00	N/A	(\$1.22)	N/A
TOTAL RENTAL RATE	\$37.04	\$36.48	\$36.13	\$35.82	(\$0.35)		(\$0.31)	
Adjustment for Security	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		\$0.00	
RENTAL RATE CHARGED	\$37.04	\$36.48	\$36.13	\$35.82	(\$0.35)		(\$0.31)	

Table B-3
City of Portland
Portland International Jetport
FY 2010 Budgeted Rates and Charges
TERMINAL RENTAL RATE
Public/City

	A	B	C	D	Variance			
	Actual 2008	Budget 2009	Actual 2009	Budget 2010	C - B	% Change	D - C	% Change
Direct Expense								
M&O Expenses (Less: Bldg Maint & Elec)	\$699,905	\$748,981	\$795,984	\$755,423				
Building Maintenance	431,573	432,262	438,529	445,237				
Electricity	221,163	192,289	212,637	220,893				
	\$1,352,640	\$1,373,532	\$1,447,151	\$1,421,354	\$73,619	5.4%	(\$25,797)	-1.8%
Indirect Expense								
Administration	\$431,354	\$407,195	\$384,984	\$480,875				
Security	662,597	719,083	686,542	733,833				
ARFF	39,080	36,858	35,114	38,314				
Roadways	0	0	0	0				
	\$1,133,031	\$1,163,137	\$1,106,640	\$1,233,022	(\$56,496)	-4.9%	\$126,382	11.4%
Capital Expense								
Equipment & Capital Outlays < \$10K - Direct	\$6,147	\$0	\$0	\$3,978				
Equipment & Capital Outlays < \$10K - Security	0	6,961	2,956	0				
Amortization	137,699	139,382	132,519	98,223				
Debt Service	0	0	0	0				
Debt Service Coverage	0	0	0	0				
LESS: PFC Revenues for Eligible Debt Service	0	0	0	0				
	\$143,846	\$146,343	\$135,475	\$102,200	(\$10,868)	-7.4%	(\$33,275)	-24.6%
TOTAL REQUIREMENT	\$2,629,518	\$2,683,012	\$2,689,266	\$2,756,576	\$6,255	0.2%	\$67,310	2.5%
Space	57,808	57,808	57,808	57,808	0	0.0%	0	0.0%
Average Rental Rate Prior to Adjustments	\$45.49	\$46.41	\$46.52	\$47.69	\$0.11	0.2%	\$1.17	2.5%
M&O Expenses (Less: Bldg Maint & Elec) Rate	\$12.11	\$12.96	\$13.77	\$13.07	\$0.81	6.2%	(\$0.70)	-5.1%
Building Maintenance Rate	\$7.47	\$7.48	\$7.59	\$7.70	\$0.11	1.5%	\$0.11	1.4%
Electricity Rate	\$3.83	\$3.33	\$3.68	\$3.82	\$0.35	10.5%	\$0.14	3.8%
Indirect M&O Rate (Excluding Security)	\$8.14	\$7.68	\$7.27	\$8.64	(\$0.41)	-5.3%	\$1.37	18.8%
Security M&O Rate	\$11.46	\$12.44	\$11.88	\$12.69	(\$0.56)	-4.5%	\$0.81	6.8%
Capital Projects Rate	\$2.49	\$2.53	\$2.34	\$1.77	(\$0.19)	-7.5%	(\$0.57)	-24.4%
Adjustment Rate (Prior Yr Actual Minus Prior Yr Budget)	\$3.17	\$1.75	\$1.75	\$0.11	\$0.00	N/A	(\$1.64)	N/A
TOTAL RENTAL RATE	\$48.67	\$48.17	\$48.28	\$47.80	\$0.11		(\$0.48)	
Adjustment for Security	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		\$0.00	
RENTAL RATE CHARGED	\$48.67	\$48.17	\$48.28	\$47.80	\$0.11		(\$0.48)	

EXHIBIT F

CALCULATION OF LANDING FEE RATES – ILLUSTRATION

Table B-4
City of Portland
Portland International Jetport
FY 2010 Budgeted Rates and Charges
LANDING FEE CALCULATION

	A	B	C	D	Variance			
	Actual 2008	Budget 2009	Actual 2009	Budget 2010	C - B	% Change	D - C	% Change
Direct Expense								
Personnel Services	\$599,924	\$637,945	\$554,650	\$731,068				
Contractual Services	900,134	846,337	731,192	926,244				
Commodities	538,635	580,405	613,176	1,010,605				
	\$2,038,693	\$2,064,686	\$1,899,019	\$2,668,517	(\$165,668)	-8.0%	\$769,498	40.5%
Indirect Expense								
Administration	\$976,004	\$921,341	\$871,084	\$1,042,799				
Security	166,581	180,782	172,601	184,490				
ARFF	1,680,050	1,584,547	1,509,573	1,647,146				
Roadways	0	0	0	0				
	\$2,822,635	\$2,686,669	\$2,553,258	\$2,874,435	(\$133,411)	-5.0%	\$321,177	12.6%
Capital Expense								
Equipment & Capital Outlays < \$10K - Direct	\$0	\$19,500	\$14,547	\$9,000				
Equipment & Capital Outlays < \$10K - Security	0	1,750	743	0				
Amortization	241,184	237,878	189,592	231,189				
Debt Service	0	0	0	0				
Debt Service Coverage	0	0	0	0				
LESS: PFC Revenues for Eligible Debt Service	0	0	0	0				
	\$241,184	\$259,128	\$204,883	\$240,189	(\$54,245)	-20.9%	\$35,306	17.2%
TOTAL REQUIREMENT	\$5,102,512	\$5,010,483	\$4,657,160	\$5,783,141	(\$353,324)	-7.1%	\$1,125,981	24.2%
Landed Weight	1,123,149	1,123,150	1,148,037	1,080,000	24,887	2.2%	(68,037)	-5.9%
Average Rate Prior to Adjustments	\$4.54	\$4.46	\$4.06	\$5.35	(\$0.40)	-9.0%	\$1.29	31.8%
M&O Rate (Excluding Security)	\$1.82	\$1.84	\$1.65	\$2.47	(\$0.19)	-10.3%	\$0.82	49.7%
Indirect M&O Rate (Excluding Security)	\$2.36	\$2.23	\$2.07	\$2.49	(\$0.16)	-7.2%	\$0.42	20.3%
Security M&O Rate	\$0.15	\$0.16	\$0.15	\$0.17	(\$0.01)	-6.3%	\$0.02	13.3%
Capital Projects Rate	\$0.21	\$0.23	\$0.19	\$0.22	(\$0.04)	-17.4%	\$0.03	15.8%
BREAKEVEN LANDING FEE	\$4.54	\$4.46	\$4.06	\$5.35	(\$0.40)	-9.0%	\$1.29	31.8%
Landing Fee Reduction	50.0%	50.0%	50.0%	50.0%				
AIR CARRIER LANDING FEE	\$2.27	\$2.23	\$2.03	\$2.68	(\$0.20)		\$0.65	
Prior Period Adjustment	(\$0.05)	(\$0.10)	(\$0.10)	(\$0.32)	\$0.00		(\$0.22)	
LANDING FEE	\$2.22	\$2.13	\$1.93	\$2.35	(\$0.20)		\$0.43	
Actual Signatory Landed Weight	1,123,149		1,148,037					
Prior Year Settlement Amount	(\$0.05)		(\$0.10)					
Actual Prior Year Signatory Adjustment	(\$57,031)		(\$118,829)					
Actual Signatory Landing Fee Revenue	\$2,610,477		\$2,581,143					
LESS: Prior Year Signatory Adjustment	57,031		118,829					
Adjusted Actual Signatory Landing Fee Revenue	\$2,667,509		\$2,699,971					
Increased by Landing Fee Reduction	50.0%		50.0%					
Adjusted Actual Signatory Landing Fee Req't	\$5,335,017		\$5,399,942					
Adjusted Actual Prior Year Requirement	(\$5,335,017)		(\$5,399,942)					
LESS: Budgeted Prior Year Signatory Requirement	5,102,512		4,657,160					
Adjustment Amount	(\$232,505)		(\$742,783)					
Landing Fee Reduction	50.0%		50.0%					
Revised Adjustment Amount	(\$116,253)		(\$371,391)					
Actual Signatory Landed Weight	1,123,149		1,148,037					
Adjustment	(\$0.10)		(\$0.32)					