

AIRLINE-AIRPORT LEASE AND OPERATING AGREEMENT

FOR

NORMAN Y. MINETA SAN JOSE INTERNATIONAL AIRPORT

BY AND BETWEEN

CITY OF SAN JOSE

AND

BRITISH AIRWAYS PLC

DOCUMENT REFERENCE NO. 10721-OA-21

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CORPORATE SECRETARY CERTIFICATE

Airline-Airport Lease and Operating Agreement

THIS AIRLINE-AIRPORT LEASE AND OPERATING AGREEMENT (as amended, modified or altered from time to time, this "Agreement") is made and entered into this 28th day of June, 2022 by and between the City of San José, a municipal corporation of the State of California ("City"), and British Airways PLC, a corporation organized and existing under the laws of the United Kingdom and authorized to do business in the State of California ("Airline").

WITNESSETH:

WHEREAS, City has the ownership, custody, control and management of the Norman Y. Mineta San José International Airport (the "Airport"); and

WHEREAS, City has the legal and sole responsibility for the operation, maintenance, improvement and promotion of the Airport; and

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

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

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

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

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

Article 1 Definitions

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

1.01 Affiliate shall mean a Passenger Carrier that meets the requirements described in Section 7.03.1.

1.02 Air Carrier shall mean a Cargo Carrier or a Passenger Carrier.

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

1.04 Airfield shall mean those portions of the Airport, including the Terminal Aircraft Aprons and the Cargo Aircraft Aprons, provided for the landing, taking off, and taxiing of aircraft, including without limitation approach and turning zones, clear zones, aviation or other easements, runways, a fully integrated taxiway system, runway and taxiway lights, and other appurtenances related to the aeronautical use of the Airport, including any airfield property purchased for noise or other environmental mitigation purposes, all as shown on **Exhibits A-1, A-2 and A-3**.

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

1.06 Airfield Revenue Requirement shall mean the sum of the budgetary items for each Fiscal Year described in Section 9.02.1.

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

1.08 Airline Rented Space shall mean any space in the Terminal that is rented by Passenger Carriers on an exclusive, preferential or common use basis, except for FIS Facilities.

1.09 Airline Terminal Revenue Requirement shall mean the sum of the budgetary items for each Fiscal Year described in Section 9.03.1.

1.10 Airport shall mean the Norman Y. Mineta San José International Airport, as it now exists or hereafter may be modified, the approximate boundaries of which are shown on **Exhibits A-1, A-2 and A-3** attached hereto, including all real property easements or any other interest therein as well as all improvements and appurtenances thereto, structures, buildings, fixtures, and all tangible personal property or interest in any of the foregoing, now or hereafter owned, leased, or operated by City located in Santa Clara County, State of California.

1.11 Airport Living Wage Ordinance shall mean Chapter 25.11 of the City of San José Municipal Code, as amended from time to time.

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

1.13 Amortization Amount shall mean, with respect to a capital project to be paid or financed with internal airport cash (as opposed to Bonds), an amount based on the economic life of the project and calculated using an interest rate set to equal comparable published average borrowing costs for debt financings by comparable public entities during the calendar year when such project is first financed by City.

1.14 Applicable Laws shall mean, collectively, all applicable present and future federal, state and local laws, rules, regulations and ordinances, as they may be amended from time to time, whether foreseen or unforeseen, ordinary as well as extraordinary, including without implied limitation those relating to (i) health, sanitation and safety; (ii) the environment, including without limitation the Environmental Laws; (iii) access for persons with disabilities, including without limitation the Americans with Disabilities Act, 42 U.S.C. §§ 12101 et seq.; and (iv) airport security, including without limitation the regulations of the Transportation Security Administration, 49 CFR Parts 1540, 1542, 1544 et seq.

1.15 Arriving Domestic Passengers shall mean passengers arriving at the Airport on domestic flights or international flights who are not required to use FIS Facilities.

1.16 Bad Debt shall mean a monetary amount owed to City by a Passenger Carrier or a Cargo Carrier or any contractor working for a Passenger Carrier or a Cargo Carrier at the Airport that, after commercially reasonable collection efforts, is unlikely to be paid as it is beyond the collectible period as set by City policy.

1.17 Bad Debt Recovery shall mean the recapture of Bad Debt that has previously been allocated to a Cost and Revenue Center.

1.18 Baggage Claim Areas shall mean those areas at the Airport sufficient to accommodate the equipment that delivers luggage from inbound aircraft to arriving passengers through and including baggage claim devices and non-public conveyance equipment, as well as proximate circulation space.

1.19 Baggage Make-up Areas shall mean those areas at the Airport sufficient to accommodate the equipment that delivers luggage from passenger check-in areas through and including checked bag security screening conveyors, baggage make-up devices and interline belts, as well as proximate circulation space.

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

1.21 Bonds shall mean City of San José Airport Revenue Bonds issued pursuant to the Master Agreement.

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

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

1.24 Cargo Carrier shall mean a carrier certificated by the Secretary of the U.S. Department of Transportation as a Cargo Carrier under 49 U.S.C. § 41103.

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

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

1.27 City Council shall mean the City Council of City.

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

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

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

1.31 Customer Facility Charges (“CFCs”) shall mean the fees authorized by Calif. Government Code §§ 50474.1, 50474.21 and 50474.3, as such statutes currently exist or may be amended during the Term of this Agreement.

1.32 Date of Beneficial Occupancy (“DBO”) shall mean the date when a project or phased component of a project has been completed and the Director determines that it is available for use by Passenger Carriers or Cargo Carriers.

1.33 Debt Service shall mean, with respect to outstanding Bonds and Subordinated Indebtedness, any principal, interest, premium, and any other fee or amount (including, without limitation, credit enhancement or liquidity costs, payments with respect to interest rate swaps or other hedging agreements, remarketing and broker-dealer fees, payments required to be made to the United States Treasury for arbitrage rebates [including the cost of calculation of same], and trustee or other fiduciary fees) either paid or accrued for such Bonds and Subordinated Indebtedness, exclusive of amounts funded by PFCs, CFCs, federal grants or other forms of financial assistance; provided, however, that the amounts of Debt Service funded by CFCs, federal grants or other forms of financial assistance shall be included in determining the amount of Debt Service and the Coverage Amount for purposes of Section 9.12.

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

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

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

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

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

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

1.40 FIS Facilities shall mean the federal inspection services facilities designated by City under Section 4.06, wherever located in the Terminal, including the sterile corridors connecting any such facilities to International Gates.

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

1.42 Gate shall mean those portions of the Terminal individually comprised of a passenger loading bridge, if any, and a passenger holdroom, as well as the ramp parking position adjacent to the Gate.

1.43 Hardstand shall mean a paved area on the Airfield reinforced for heavy aircraft parking that may be utilized as a ground boarding aircraft parking spot.

1.44 Hazardous Materials shall mean any and all (a) substances, products, by-products, waste, or other materials of any nature or kind whatsoever which are or become listed or regulated under any Environmental Laws, and (b) any materials, substances, products, by-products, waste, or other materials of any nature or kind whatsoever whose presence in and of itself or in combination with other materials, substances, products, by-products, or waste may give rise to liability under any Environmental Laws or any statutory or common law theory based on negligence, trespass, intentional tort, nuisance, strict or absolute liability or under any reported decisions of any state or federal court; and (c) any substance, product, by-product, waste or any other material which may be hazardous or harmful to the air, water, soil or environment or affect industrial hygiene, occupational health or safety, including without limitation, petroleum and/or asbestos materials, products, by-products, or waste.

1.45 International Gate shall mean any Gate with direct passenger access to FIS Facilities.

1.46 Landing Fee shall mean the landing fee effective July 1st of each Fiscal Year as determined according to the methods set forth in Section 9.02 hereof.

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

1.48 Master Agreement shall mean the Master Trust Agreement which was made and entered into as of July 1, 2001 by and between City and Bank of New York

Trust Company, N.A. (successor to BNY Western Trust Company), as Trustee, as it may be amended, supplemented or restated from time to time. On June 26, 2001, the City Council adopted Resolution No. 70532 amending and restating the Resolution in the form of the Master Agreement. The Master Agreement provides for the issuance of City of San José Airport Revenue Bonds, as supplemented by additional or supplemental resolutions and supplemental trust agreements.

1.49 Maximum Gross Landed Weight shall mean the highest maximum gross certificated landing weight for the aircraft model operated at the Airport by Airline as listed in the manufacturer's Characteristics or Planning Manual. If the manufacturer's Characteristics or Planning Manual is not available, the FAA Type Certificate Data Sheet will be used. The Airport may annually review and update the highest maximum gross landing weight based on any changes to the Characteristics or Planning Manual, or the FAA Type Certificate Data Sheet, as applicable.

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

1.51 Net Remaining Revenues shall mean, for a given Fiscal Year, the amount equal to Revenues less Operating Expenses, less Debt Service, less the Amortization Amount, less the changes in the Coverage Amount, less other required fund deposits or payments pursuant to Section 5.02 of the Master Agreement (including required renewal and replacement expenditures and Subordinated Indebtedness, if any), calculated after completing annual adjustments-to-actual for such Fiscal Year in accordance with Section 9.06.

1.52 New Terminal Project shall mean the project described in **Exhibit J**.

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

1.54 Non-Signatory Airline shall mean any Passenger Carrier that has not entered into an Airline-Airport Lease and Operating Agreement, substantially similar to this Agreement, with City.

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

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

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

1.58 Passenger Carrier shall mean a Passenger Carrier certificated by the Secretary of the U.S. Department of Transportation under 49 U.S.C. § 41102.

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

1.60 PFC Act shall mean 49 U.S.C. § 40117, as it may be amended from time to time.

1.61 PFC Regulations shall mean 14 CFR Part 158, as it may be amended from time to time.

1.62 Preferential Use Premises shall mean those portions of the Terminal and Terminal Aircraft Aprons, as shown in **Exhibit D**, to which Airline shall have priority of use over other Passenger Carriers, subject to the provisions of Articles 5 and 6 hereof.

1.63 Public Space shall mean all utility rooms, ductways, janitorial rooms and closets, stairways, hallways, elevators, escalators, entrance-ways, public lobbies and areas, public toilet areas and other areas used for the operation, maintenance or security of the Terminal, even if used solely by City.

1.64 Renewal and Replacement Costs shall mean the costs for the renewal and replacement of existing facilities at the Airport in accordance with the Master Agreement. This amount shall not exceed Ten Million Dollars (\$10,000,000) annually, in the aggregate, for the Terminal and Airfield, excluding any costs funded with PFCs, CFCs, federal grants and other forms of financial assistance as well as the local share, if any, of projects funded with PFCs, CFCs, federal grants and other forms of financial assistance.

1.65 Rentable Terminal Space shall mean the number of square feet of space in the Terminal that is rentable to tenants, excluding (a) office and administrative space used by City (including City contractor space), (b) space in the basement of the Terminals, (c) the FIS Facilities and the Baggage Claim Area serving international Scheduled Operations, (d) security checkpoints and other space used by federal agencies for which City receives no rent, (e) the military lounge and (f) temporary concessions space. Rentable Terminal Space is shown on Exhibit C, which may be amended by City from time to time, after consultation with the AAAC, to reflect additions to or deletions of space, or other structural changes within the Terminal.

1.66 Resolution shall mean, collectively, that Resolution No. 57794 adopted by the City Council on October 2, 1984, which said Resolution was amended by Resolution No. 57838 on October 16, 1984, and which said Resolution, as amended, provides for the issuance of City of San José Airport revenue bonds, as supplemented by additional or supplemental Resolutions adopted thereafter, and also includes any Resolutions of City authorizing the issuance of bonds, notes or obligations payable from Airport Revenues on a basis subordinate to any bonds that are outstanding.

1.67 Resource Management Advisory Committee shall mean the Committee described in Section 5.09.

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

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

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

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

1.69.3. lease deposits and security deposits;

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

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

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

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

1.69.8. CFC revenues;

1.69.9. PFC revenues;

1.69.10. any revenues from special purpose facilities;

1.69.11. Unrealized Items;

1.69.12. Qualified Hedge Termination Payments;

1.69.13. any revenues from City's commercial development of the land depicted as for commercial development in **Exhibit A-2**; and

1.69.14. cargo facility charges or similar fees imposed on any cargo operators, cargo facilities or cargo parcels (other than Landing Fees paid by Cargo Carriers).

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

1.71 **Scheduled Airline** shall mean a Passenger Carrier performing Scheduled Operations at the Airport.

1.72 **Scheduled Operation** shall mean a Scheduled Airline's operation (arrival or departure) that occurs pursuant to a schedule that is published in the Official Airline Guide (OAG) or any successor publication so long as such schedule is made available to City at least forty-five (45) days prior to the commencement or rescheduling of the operation.

1.73 Self-Service Devices shall mean self-service kiosks or other equipment for passengers to obtain boarding passes and bag tags.

1.74 Signatory Airline shall mean (a) a Passenger Carrier that has executed an agreement with City substantially similar to this Agreement and pays to City at least \$500,000 per year in Terminal Rents and other charges due for its use of the Terminal, excluding PFC payments or (b) a Cargo Carrier that has executed an Airline-Airport Cargo Operating Agreement. A Passenger Carrier cannot become a Signatory Airline within three (3) years of the expiration of this Agreement, except that new entrants to the Airport that have not operated at the Airport at any other time during the Term may become a Signatory Airline at any time.

1.75 Signatory Passenger Carrier shall mean a Passenger Carrier that is a Signatory Airline within the meaning of Section 1.74.

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

1.77 Subordinated Financing Agreement shall mean a bond resolution, trust agreement, indenture or other financing agreement providing for or authorizing the issuance by City of Subordinated Indebtedness, including an agreement related to the security or credit enhancement for the Subordinated Indebtedness, as each may be supplemented or amended from time to time.

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

1.79 Ten-Year Lookback shall mean the one-time credit given to Signatory Passenger Carriers with respect to Terminal Rents paid under the 2007 Airline-Airport Lease and Operating Agreement, as set forth in **Exhibit K**.

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

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

1.82 Terminal shall mean the passenger terminal buildings as set forth in **Exhibit A-1**.

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

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

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

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

1.87 VIP Lounge shall mean those Exclusive Use Premises used by Airline to provide premium services to its passengers.

1.88 2007 Airline-Airport Lease and Operating Agreement shall mean the Airline-Airport Lease and Operating Agreement between City and various Signatory Passenger Carriers, as amended, that first took effect on December 1, 2007 and terminated at midnight on June 30, 2019.

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

Article 2 Effective Date

2.01 Effective Date

This Agreement, along with the determinations of rentals, fees, and charges set forth herein, shall be effective June 1, 2022 (the "Effective Date").

Article 3 Term

3.01 Termination Date

This Agreement shall commence on June 1, 2022 and shall terminate at midnight on June 30, 2029, unless canceled sooner as provided herein.

3.02 Extension

The Term of this Agreement may be extended for two (2) consecutive five-year renewal periods, from July 1, 2029 to June 30, 2034 and from July 1, 2034 to June 30, 2039, by the mutual written agreement of Airline and City; provided, however, that the Term of this Agreement may only be so extended with the approval of both a Majority-in-

Interest for the Airfield Cost and Revenue Center (as defined in Section 1.47) and the Director.

Article 4 Premises

4.01 Airline Premises

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

4.02 Airfield

City grants to Airline a nonexclusive license to use the Airfield, in common with others, for the purposes described in Section 7.01.1 hereof, subject at all times to City's exclusive control and management of the Airfield in accordance with the terms hereof.

4.03 Public Space

City grants to Airline a nonexclusive license to use the Public Space within the Terminal, in common with others, subject at all times to City's exclusive control and management of the Public Space. City shall have the right, in its sole and complete discretion, to relocate, change, or discontinue the use of one or more Public Spaces from time to time during the Term in accordance with the terms hereof.

4.04 Terminal Equipment

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

4.05 Employee Parking

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

4.06 Federal Inspection Services (FIS) Facilities

City shall designate areas in the Terminal, or elsewhere on the Airport, to be used by agencies of the United States for the inspection of international passengers and their

baggage and for the exercise of the responsibilities of said agencies with respect to the movement of persons, property, and cargo to and from the United States.

4.07 Transfer of Operations

4.07.1 From time to time during the term of this Agreement, part or all of the Airline Premises may be required (1) for implementation of improvements at the Airport; (2) for accommodation of the traveling public; or (3) in order to maximize the use of the Terminal and related facilities by Passenger Carriers (including Airline) and other tenants, lessees, permittees, and users thereof. In said event, City shall consult with all affected Signatory Airlines and provide sixty (60) days' advance written notice of the Director's decision regarding such reallocation and of the schedule for implementation of such reallocation. Director and Airline may agree to reasonable extensions of time necessary to accommodate said reallocation. Airline hereby agrees to comply with any reasonable reallocation requirements. In any such reallocation, the actual, reasonable requirements of Airline for terminal space to accommodate its operations at the Airport shall be given consideration. All moving costs resulting from relocation of Airline in a City-imposed reallocation of space, as well as the costs of tenant improvements to the new space necessary to make such new space comparable to the space being vacated, shall be funded by City, subject to rate recovery under Article 9. With respect to any Airline trade fixture and other movable property, if removal from the existing premises and reinstallation at Airline's new premises is possible and not unreasonable, Airline shall not be entitled to a new fixture or to new property. Notwithstanding any provision of this Section to the contrary, Airline shall not be entitled to reimbursement for relocation of or within Common Use Premises.

4.07.2 The Director may, on behalf of the City, execute amendments to this Agreement that change or modify only the description of the Airline Premises, with no changes to the rates and charges methods set out in Article 9 below.

Article 5 Assignment And Use Of Gates

5.01 No Exclusive Use Gates

All Gates within the Terminal will be for either common use or preferential use in accordance with the terms of this Article. Airline's use of all Gates shall at all times be subject to the Airport Rules and Regulations, which Rules and Regulations include City's Terminal Resource Use, Assignment and Scheduling Procedures attached as **Exhibit E** to this Agreement and which Rules and Regulations may be amended from time to time after consultation with the Signatory Passenger Carriers.

5.02 Definitions

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

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

5.02.2 “Preferential Use” of a Gate means scheduling preference, over similar operations by another Scheduled Airline, given to a Signatory Passenger Carrier for the use of a Gate during applicable Periods of Use for its Scheduled Operations. Notwithstanding the previous sentence, Airline will not have a scheduling preference under this Article 5 with respect to any operation of Airline that occurs at the Airport pursuant to a published schedule unless the schedule for such Airline is made available to City by Airline within the time limits required for a Scheduled Operation.

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

5.02.4 “Scheduled Seats” means the average daily number of outbound seats on a Passenger Carrier’s Scheduled Operations for the preceding twelve (12) month period of October through September (including nine (9) months of actual data for October through June and three (3) months of forecast data for July through September), to be computed by dividing total outbound seats for a Passenger Carrier’s Scheduled Operations for those twelve (12) months by three-hundred and sixty-five (365).

5.03 Annual Determination by City of the Total Number of Common Use Gates

Airline acknowledges that as of the Effective Date, City has made the annual determination of the number of Common Use Gates listed on the attached **Exhibit D**. As of August 1, 2019 and August 1st of each year thereafter during the Term, the Director shall have sole discretion to determine the total number of Gates to be reserved for use as Common Use Gates for one year beginning the following February 1 (after taking into consideration any recommendations by the Resource Management Advisory Committee); provided, however, that all International Gates (including new International Gates to become available in the New Terminal Project) shall be and remain Common Use Gates throughout the Term (except as provided in Section 5.04.6); and further provided that when making annual determinations under this Section 5.03 the Director shall not in any single year increase the total number of Common Use Gates which are not International Gates by more than two (2) from what the Director had determined the total number of such Common Use Gates to be for the immediately preceding year under this Section 5.03, except that the Director shall always have discretion to determine that at least three (3) Gates other than International Gates shall be reserved for use as Common Use Gates; and further provided that no more than twenty percent (20%), rounding to the nearest whole number, of all Gates which are not International Gates may be designated as Common Use Gates. All remaining Gates available for use on February 1st of each year will be offered by City to Signatory Passenger Carriers for use as Preferential Use Gates to be allocated in accordance with Section 5.04. (Any Gate first becoming available for use after February 1st of each year shall be reserved for use as a Common Use Gate through the following January 31st unless, after taking into

consideration any recommendation of the Resource Management Advisory Committee, the Director, in the Director's reasonable discretion, assigns the Gate to a Signatory Passenger Carrier as a Preferential Use Gate.) City shall notify in writing all Signatory Passenger Carriers, including Airline, of its determination under this Section 5.03 no fewer than ninety (90) days before February 1, 2020 and February 1st of each year thereafter during the Term.

5.04 Annual Determination of the Number and Locations of Preferential Use Gates to be Offered to Airline

Airline acknowledges that as of the Effective Date, City has made the annual determination of the number and locations of Preferential Use Gates, and City has provided Airline with notice of such determination and Gate assignment. Airline has accepted assignment of the Preferential Use Gates listed on the attached **Exhibit D**. As of August 1, 2019 and August 1st of each year thereafter, City shall apply the following methodology to determine the total number of Gates that will be offered to each Signatory Passenger Carrier, including Airline, for its Preferential Use for one year beginning the following February 1:

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

5.04.2 City shall then calculate the number of Preferential Use Gates to be offered to Airline by multiplying Airline's Scheduled Seats Percentage by the total number of Gates to be made available for Preferential Use, rounding the product to the nearest whole number.

5.04.3 If as a result of rounding, the total number of Preferential Use Gates to be offered to all Signatory Passenger Carriers as computed in Section 5.04.2 is less than the total number of Gates available for Preferential Use as determined under Section 5.03, City shall offer additional Preferential Use Gates to Signatory Passenger Carriers based on the unrounded results of the computations under Section 5.04.2. The unallocated Preferential Use Gates shall be offered in priority order by first increasing by one (1) the number of Preferential Use Gates to be offered to the Signatory Passenger Carrier whose unrounded Section 5.04.2 product is nearest to 0.5 without equaling or exceeding 0.5 and next proceeding to increase by one (1) the number of Preferential Use Gates to be offered to the Signatory Passenger Carrier whose unrounded Section 5.04.2 product is second nearest to 0.5 without equaling or exceeding 0.5 and so on until the total number of Preferential Use Gates to be made available to all Signatory Passenger Carriers by City is reached.

5.04.4 If as a result of rounding, the total number of Preferential Use Gates to be offered to all Signatory Passenger Carriers as computed in Section 5.04.2 exceeds the total number of Gates available for Preferential Use as determined under Section 5.03, City shall reduce the number of calculated Preferential Use Gates to be

offered to Signatory Passenger Carriers based on the unrounded results of the computations under Section 5.04.2. The number of over-allocated Preferential Use Gates shall be reduced in priority order by first reducing by one (1) the number of allocated Preferential Use Gates to the Signatory Passenger Carrier whose unrounded Section 5.04.2 product is nearest to 0.5 without being less than 0.5 and next proceeding to reduce by one (1) the number of Preferential Use Gates to be offered to the Signatory Passenger Carrier whose unrounded Section 5.04.2 product is second nearest to 0.5 without being less than 0.5 and so on until the total number of Preferential Use Gates to be made available to all Signatory Passenger Carriers by City is reached.

5.04.5 If any Signatory Passenger Carrier does not accept assignment of a Preferential Use Gate, such Preferential Use Gate shall be designated as a Common Use Gate.

5.04.6 City may elect to reassign any Common Use Gate, including Preferential Use Gates not accepted by a Signatory Passenger Carrier and International Gates, to any other Signatory Passenger Carrier for Preferential Use, at City's sole discretion. City may revoke a reassignment of an International Gate pursuant to this Section 5.04.6 if that International Gate subsequently is needed to accommodate arriving international passengers.

5.04.7 If a Preferential Use Gate is designated as a Common Use Gate by operation of Section 5.04.5 and is not reassigned to a Signatory Passenger Carrier for Preferential Use, the costs that would otherwise have been assigned to such Gate for rate-setting purposes under Section 9.03.3 shall be evenly redistributed among all of the other rented passenger holdroom space; provided, however, that any Common Use Gate charges paid to City for use of such Gate shall be credited against such redistributed costs.

5.04.8 City shall in its reasonable discretion determine the locations of any Preferential Use Gates to be offered to Airline, after consultation with Airline and taking into consideration the desirability of assigning contiguous Gates for Preferential Use by any given Signatory Passenger Carrier and its Affiliates, if any, and minimizing the frequency of changes in the locations of Preferential Use Gates, as well as any recommendations by the Resource Management Advisory Committee.

5.04.9 No later than August 1st of each year during the Term, City shall provide written notice to all Signatory Passenger Carriers, including Airline, of its annual determination under this Section 5.04 and shall offer Airline the opportunity to be assigned the number of Preferential Use Gates indicated by these calculations. Airline shall provide written notice to City by September 15th of each year during the Term if it wishes to reject any or all of that number of Gates offered by City for Preferential Use. **Exhibit D** displays the assignments (if any) of Preferential Use Gates to each Signatory Passenger Carrier, including Airline, effective July 1, 2019. City shall update **Exhibit D** by November 1, 2020 and November 1st of each year thereafter to display the

assignments of Preferential Use Gates and the locations of Common Use Gates, effective February 1, 2020 and February 1st of each year thereafter.

5.04.10 If the numbers or locations of Preferential Use Gates offered to Airline are changed during the Term of this Agreement for any reason other than a year-to-year decrease in the number of Airline's Scheduled Seats as provided in Section 5.04.11 below, Airline may, upon thirty (30) days' written notice to City, terminate its rights to those portions of the Exclusive Use Premises that are no longer proximate to the Preferential Use Gates offered to Airline. Upon Airline's request, City shall use commercially reasonable efforts to provide Airline with substitute Exclusive Use Premises more proximate to newly assigned Preferential Use Gates assigned to Airline for the remaining Term. City shall issue a revised premises notice to Airline documenting the deletion or substitution of any Exclusive Use Premises under this Section. In such a situation, the reasonable costs of relocating the Preferential Use Gates assigned to Airline or any Signatory Passenger Carrier plus the reasonable costs of Airline's or each Signatory Passenger Carrier's tenant improvements at the substitute Exclusive Use Premises when constructed with City's consent under Section 12.05.2 of this Agreement shall be paid by City and included in the Airline Terminal Revenue Requirement calculated under Section 9.03.1 of this Agreement.

5.04.11 If the number of Preferential Use Gates offered to Airline is reduced during the Term of this Agreement as the result of a year-to-year decrease in Airline's Scheduled Seats Percentage, City may, upon thirty (30) days' written notice to Airline, terminate Airline's rights to use those portions of the Exclusive Use Premises that are no longer proximate to the Preferential Use Gates offered to Airline and that are no longer necessary, in the Director's reasonable discretion, to support Airline's operations at Airline's remaining Preferential Use Gates. In such a situation, City shall issue a revised premises notice to Airline documenting the termination of any portion of Airline's Exclusive Use Premises under this section. Airline's surrender of any such Exclusive Use Premises shall be subject to the terms of Article 8 of this Agreement. City shall pay Airline for the unamortized costs, if any, of tenant improvements made by Airline in any such Exclusive Use Premises terminated by City, for the remaining useful life of such improvements or through the remainder of the Term (whichever is shorter), subject to rate recovery under Article 9.

5.05 City Scheduling Rights at Preferential Use Gates

City shall have the right, upon reasonable notice to Airline, to schedule at a Preferential Use Gate arrivals and departures by a Requesting Airline at all periods of time other than Airline's Periods of Use of that Preferential Use Gate. In accommodating City in its right to schedule such operations, Airline shall allow and provide for use of its facilities or equipment (not including ground service equipment or other proprietary equipment) at the Preferential Use Gate or permit use of City equipment and podiums as may be required for the efficient use of the Preferential Use Gate by a Requesting Airline. City shall, whenever it is practical to do so, schedule such operations by a Requesting

Airline at Common Use Gates and shall consider the recommendations, if any, by the Resource Management Advisory Committee before scheduling Requesting Airline arrivals and departures at any Preferential Use Gates. Notwithstanding the foregoing and any other provision of this Article 5, City shall have the right, upon reasonable notice to Airline, to accommodate at a Preferential Use Gate arrivals and departures by a Requesting Airline during Airline's Periods of Use of that Preferential Use Gate if Airline is not utilizing the Preferential Use Gate during the Period of Use for a Scheduled Operation. If an arrival or departure of Airline that would have utilized one of Airline's Preferential Use Gates is early or late and Airline is prevented from utilizing any of its Preferential Use Gates because they are already being utilized by Requesting Airlines, City shall, whenever possible, accommodate Airline's arrival or departure on a Common Use Gate at no additional charge to Airline for its use of the Common Use Gate, and Airline shall continue to be entitled to the credit referenced in Section 5.06 below.

5.06 Charges for Use of Gate by Another Carrier

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

5.07 Gate Accommodation Conditions

As a condition of accommodation on any of Airline's Preferential Use Gates, the Requesting Airline shall have executed an agreement that is substantially in the form of this Agreement or a Non-Signatory Operating Agreement, as applicable, through which the Requesting Airline is bound by insurance and indemnification obligations that are substantially similar to the obligations set forth herein. These insurance and indemnification obligations shall inure to the benefit of Airline as a third-party beneficiary for any period of accommodation, and Airline shall not be required to accommodate a Requesting Airline at its Preferential Use Gates if the Requesting Airline's insurance and indemnification obligations are not satisfied. The Requesting Airline shall have no right to use any of Airline's proprietary equipment and may not alter any millwork in Airline's Preferential Use Gates.

5.08 City's Control of Common Use Gates

City shall retain exclusive control of the use of all Common Use Gates in accordance with the terms hereof.

5.09 Resource Management Advisory Committee

5.09.1 The Director shall establish a Resource Management Advisory Committee (the "Committee") that is composed of members designated as follows:

(a) Up to five (5) members, including the chairperson, shall be designated by the Director;

(b) Up to five (5) members representing the domestic Signatory Passenger Carriers shall be designated by the AAAC, provided that at least one (1) of those members shall be from a Signatory Passenger Carrier with less than ten percent (10%) of the Scheduled Seats at the Airport, and that at least one (1) of those members shall be from a Signatory Passenger Carrier with Affiliates. Any Airline wishing to observe the deliberations of the Committee shall be permitted to do so.

5.09.2 Committee members shall serve for a period of twelve (12) months, beginning July 1 and ending June 30 of each Fiscal Year.

5.09.3 Committee members designated by the AAAC may designate a member of their local management team to represent them during local monthly or otherwise scheduled gate scheduling Committee meetings.

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

5.10 Gate Podium Equipment

City reserves the right to install shared use equipment for passenger processing ("Shared Use Equipment") at all Common Use and Preferential Use Gates. Notwithstanding the foregoing, City will not install Shared Use Gate Podium Equipment at the counter at any of Airline's Preferential Use Gates where Airline objects, in writing, no later than thirty (30) days after receiving City's notice of intent to install Shared Use Gate Podium Equipment; provided, however, that if Airline fails to object, City may proceed with the installation. Notwithstanding the foregoing, if Airline objects to the installation of Shared Use Gate Podium Equipment at the counter at any of Airline's

Preferential Use Gates, City shall be entitled to install Shared Use Gate Podium Equipment (including an adequate computer connection) at a roll-away counter that may be used at Airline's Preferential Use Gates so that any Preferential Use Gate may be used by any Passenger Carrier at the Airport.

Article 6 Assignment And Use Of Ticket Counters

6.01 No Exclusive Use of Ticket Counters

All Ticket Counters within the Terminal will be for either common use or preferential use in accordance with the terms of this Article. Airline's use of all Ticket Counters shall at all times be subject to the Airport Rules and Regulations, which Rules and Regulations include City's Terminal Resource Use, Assignment and Scheduling Procedures attached as **Exhibit E** to this Agreement and which Rules and Regulations may be amended from time to time after consultation with the Signatory Passenger Carriers.

6.02 Definitions

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

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

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

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

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

6.03 Redetermination by City of the Total Number of Common Use Ticket Counters

Airline acknowledges that as of the Effective Date, City has made the determination of the number of Common Use Ticket Counters listed on the attached **Exhibit D**, and City has provided Airline with notice of such determination. As of August 1, 2019 and August 1st of each year thereafter during the Term, the Director shall have sole discretion to determine the total number of Ticket Counters to be reserved for use as

Common Use Ticket Counters for one year beginning the following February 1st (after taking into consideration any recommendations by the Resource Management Advisory Committee). All remaining Ticket Counters available for use on February 1st of each year will be offered by City to Signatory Passenger Carriers for use as Preferential Use Ticket Counters to be allocated in accordance with Section 6.04. (Any Ticket Counter first becoming available for use after February 1st of each year shall be reserved for use as a Common Use Ticket Counter for the remainder of that Fiscal Year unless, after taking into consideration any recommendation of the Resource Management Advisory Committee, the Director, in the Director's reasonable discretion, assigns the Ticket Counter to a Signatory Passenger Carrier as a Preferential Use Ticket Counter.) City shall notify in writing all Signatory Passenger Carriers, including Airline, of its determination under this Section 6.03 no fewer than ninety (90) days before February 1, 2019 and February 1st of each year thereafter during the Term.

6.04 Redeterminations of the Number and Locations of Preferential Use Ticket Counters to be Offered to Airline

Airline acknowledges that as of the Effective Date, City has made the determination of the number and locations of Preferential Use Ticket Counters, and City has provided Airline with notice of such determination and Ticket Counter assignment. Airline has accepted assignment of the Preferential Use Ticket Counters listed on the attached **Exhibit D**. As of August 1, 2019 and August 1st of each year thereafter, City shall apply the following methodology to determine the total number of Ticket Counters that will be offered to each Signatory Passenger Carrier, including Airline, for its Preferential Use for one year beginning the following February 1st if, but only if, (a) City has determined that the number or locations of Ticket Counters to be reserved for use as Common Use Ticket Counters should be changed for that year or (b) a Signatory Passenger Carrier requests additional Preferential Use Ticket Counters that would be available to such Signatory Passenger Carrier if City made a redetermination of Ticket Counter assignments in accordance with this Section 6.04.

6.04.1 City shall allocate two (2) Ticket Counters for the Airline's first Preferential Use Gate under Article 5, and City shall allocate one (1) additional Ticket Counter, if available, for each two (2) additional Preferential Use Gate granted to Airline under this Agreement. Airline's total number of Ticket Counters shall be limited to no more than thirty percent (30%) of all Ticket Counters in any ticket lobby, provided that the Director shall have sole discretion to waive this limit. This same method shall be applied to all Signatory Passenger Carriers.

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

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

6.04.4 If any Signatory Passenger Carrier does not accept assignment of a Preferential Use Ticket Counter, such Preferential Use Ticket Counter shall be designated as a Common Use Ticket Counter. City may elect to reassign any Common Use Ticket Counter, including Preferential Use Ticket Counters not accepted by a Signatory Passenger Carrier, to any other Signatory Passenger Carrier for Preferential Use, at City's sole discretion.

6.04.5 If a Preferential Use Ticket Counter is designated as a Common Use Ticket Counter by operation of Section 6.04.4 and is not reassigned to a Signatory Passenger Carrier for Preferential Use, the costs that would otherwise have been assigned to such Ticket Counter for rate-setting purposes under Section 9.03.4 shall be evenly redistributed among all of the other rented Group A Ticket Counter space as defined in Section 9.03.2; provided, however, that any Common Use Ticket Counter charges paid to City for use of such Ticket Counter shall be credited against such redistributed costs.

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

6.04.7 No later than August 1st of each year during the Term, City shall provide written notice to all Signatory Passenger Carriers, including Airline, of its annual determination under this Section 6.04 and shall offer Airline the opportunity to be assigned the number of Preferential Use Ticket Counters indicated by these calculations. Airline shall provide written notice to City no later than September 15th of each year during the Term if it wishes to reject any or all of that number of Ticket Counters offered by City for Preferential Use. **Exhibit D** attached to this Agreement displays the assignments (if any) of Preferential Use Ticket Counters to each Signatory Passenger Carrier, including Airline, effective July 1, 2019. City shall update **Exhibit D** by November 1st of each year thereafter if City changes the number or locations of Common Use Ticket Counters or alters the assignments of Preferential Use Ticket Counters in accordance with this

Section 6.04, to display the assignments of Preferential Use Ticket Counters and the locations of Common Use Ticket Counters, effective February 1st of each such year.

6.05 City Scheduling Rights at Preferential Use Ticket Counters

City shall have the right, upon reasonable notice to Airline, to schedule at a Preferential Use Ticket Counter departures by a Requesting Airline at all periods of time other than Airline's Periods of Use of that Preferential Use Ticket Counter. In accommodating City in its right to schedule such operations, Airline shall allow and provide for use of its facilities or equipment at the Preferential Use Ticket Counter or permit use of City equipment and podiums as may be required for the efficient use of the Preferential Use Ticket Counter by a Requesting Airline. City shall, whenever it is practical to do so, schedule such operations by a Requesting Airline at Common Use Ticket Counters and shall consider the recommendations, if any, by the Resource Management Advisory Committee before scheduling Requesting Airline arrivals and departures at any Preferential Use Ticket Counters. Notwithstanding the foregoing and any other provision of this Article 6, City shall have the right, upon reasonable notice to Airline, to accommodate at a Preferential Use Ticket Counter arrivals and departures by a Requesting Airline during Airline's Periods of Use of that Preferential Use Ticket Counter if Airline is not utilizing that Preferential Use Ticket Counter during the Period of Use for a Scheduled Operation. If a departure of Airline that would have utilized one of Airline's Preferential Use Ticket Counters is early or late and Airline is prevented from utilizing any of its Preferential Use Ticket Counters because they are already being utilized by Requesting Airlines, City shall, whenever possible, accommodate Airline's departure on a Common Use Ticket Counter at no additional charge to Airline for its use of the Common Use Ticket Counter, and Airline shall continue to be entitled to the credit referenced in Section 6.06 below.

6.06 Charges for Use of Ticket Counter by Another Carrier

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

6.07 Ticket Counter Accommodation Conditions

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

Requesting Airline at its Preferential Use Ticket Counters if the Requesting Airline's obligations are not satisfied.

6.08 City's Control of Common Use Ticket Counters

City shall retain exclusive control of the use of all Common Use Ticket Counters in accordance with the terms hereof.

6.09 Ticket Counter Computer Equipment

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

6.10 Skycap Positions

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

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

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

6.10.4 If a Skycap Position is not assigned to any Signatory Passenger Carrier, the costs that would otherwise have been assigned to such Skycap Position for rate-setting purposes under Section 9.03.4 shall be evenly redistributed among all of the other Skycap Positions as defined in Section 9.03.2.

6.11 Self-Service Devices

Airline may only install proprietary Self-Service Devices for passenger processing at the Airport with the Director's approval. Airline shall remove any proprietary Self-Service Devices installed by Airline at the Airport upon thirty (30) days' written notice from Director. Any removal of Self-Service Devices installed during the Term of this Agreement shall be subject to the provisions of Section 17.03.2 hereof. City acknowledges that Airline's Self-Service Devices installed as of the Effective Date have been approved by the Director, but City reserves the right to require Airline to remove such Self-Service Devices in the future in accordance with this Section 6.11.

Article 7 Grant Of Rights To Use Airport

7.01 Airline Rights and Privileges

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

7.01.1 The landing, taking off, flying over, taxiing, towing, and conditioning of Airline's aircraft and, in areas designated by City, the extended parking, servicing, deicing, loading or unloading, storage, or maintenance of Airline's aircraft and support equipment subject to the availability of space and subject to such reasonable charges and regulations as City may establish; provided, however, Airline shall not permit the use of the Airfield by any aircraft operated or controlled by Airline which exceeds the design strength or capability of the Airfield as described in the then-current FAA-approved Airport Layout Plan ("ALP") or other engineering evaluations performed subsequent to the then-current ALP, including the then-current Airport Certification Manual.

7.01.2 The sale of air transportation tickets and services; the processing of passengers and their baggage for air travel; the sale, handling, and providing of mail, cargo, and express services; and reasonable and customary airline activities.

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

7.01.4 The sale, disposition, or exchange of Airline's aircraft, engines, accessories, gasoline, oil, grease, lubricants, fuel, or other similar equipment or supplies;

provided, however, Airline shall not sell or permit to be sold aviation fuels or propellants except (i) to such Passenger Carrier which is a successor company to Airline, (ii) for use in aircraft of others which are being used solely in the operation of Airline's Air Transportation Business, including, but not limited to, Airline's code sharing partner(s), or (iii) when a comparable grade and type of fuel desired by others is not available at the Airport except from Airline.

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

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

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

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

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

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

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

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

7.01.13 Airline shall have the right to ingress to and egress from the Airport and Airline Premises for Airline's officers, employees, agents, and invitees, including passengers, suppliers of materials, furnishers of services, aircraft, equipment, vehicles, machinery and other property. Such right shall be subject to 49 CFR Part 1542, Applicable Laws, and City's right in accordance with Applicable Laws to establish reasonable and nondiscriminatory Rules and Regulations governing (i) access by the general public, including Airline's passengers, and (ii) access to non-public areas at the Airport by Airline's employees, suppliers of materials, and furnishers of services; provided, however, any such Rules and Regulations of City shall not unreasonably interfere with the operation of Airline's Air Transportation Business. City may at any time temporarily or permanently close, re-route, or consent to or request the closing or re-routing of any roadway or access to the Airport, so long as a means of ingress and egress reasonably equivalent is concurrently made available to Airline. Notwithstanding the foregoing, as part of the obligations of Airline set forth in Article 14, Airline hereby releases and discharges City from any and all claims, demands, or causes of action which Airline may now or at any time hereafter have arising or alleged to arise out of such a closing or re-routing so long as City complies with the terms of this Section 7.01.13.

7.01.14 Subject to any applicable Airport Rules and Regulations, nothing in this paragraph shall prohibit Airline from (i) providing food and beverages, at Airline's sole cost and expense, in its non-public Exclusive Use Premises solely for Airline's employees, (ii) installing or maintaining vending machines in Airline's non-public Exclusive Use Premises solely for Airline's employees, the type, kind, and locations of

which shall be subject to the approval of the Director, (iii) providing under a separate agreement with City for its own flight kitchen for catering services to its passengers and crews for consumption aboard aircraft, or (iv) selling or providing food and beverages in a VIP Lounge or similar private club at the Airport, so long as Airline (A) purchases all alcoholic beverages or other beverages and any related food service items sold at or within any such area from an Airport concessionaire or (B) pays a concession fee for the sale of all alcoholic beverages or other beverages and any related food service items sold at or within any such area (such concession fee shall be equal to the concession fee(s) for related items in the other areas of the Terminal). Airline may provide to its passengers, at no charge, food and beverages when there are delays in service, in accordance with the Airport's Delay Service Delivery Policy.

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

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

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

7.02 Exclusions and Reservations

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

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

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

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

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

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

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

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

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

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

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

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

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

7.03 Affiliates

7.03.1 For purposes of this Agreement, one or more other Passenger Carriers may be designated as an "Affiliate" by a Signatory Airline provided that each such other Passenger Carrier is (a)(i) flying in or out of the Airport solely for the benefit of a Signatory Airline and providing transportation of property or passengers for the Signatory Airline under the name of the Signatory Airline, (ii) if flying under its own name, not selling any seats in its own name and all seats are being sold in the name of the Signatory Airline or (iii) a wholly-owned subsidiary of the Signatory Airline or the Signatory Airline's parent company, and (b) is party to a Non-Signatory Operating Agreement with City.

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

fifteen (15) days from receipt by City of the withdrawal of designation in the form of **Exhibit F-2**.

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

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

Article 8 Operation And Maintenance Of The Airport

8.01 Designation of Operation and Maintenance Responsibilities

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

8.02 City Obligations

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

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

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

event Airline requires water for commercial or maintenance purposes, the same may be furnished to and paid for by Airline as mutually agreed upon by Airline and City. City shall charge Airline such amounts with respect to such utilities as City pays the provider of such utilities, on a pass-through basis with no up-charge. Where feasible, City shall install meters to measure Airline's utility usage. The City's costs of such utilities shall otherwise be reasonably allocated among all users.

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

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

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

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

8.03 Airline Obligations

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

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

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

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

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

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

Article 9 Rates And Charges

9.01 Rate-Setting Methods

The Landing Fees and Terminal Rents to be charged by City and paid by Airline (and by all other Signatory Airlines) for its use of the Airport from the Effective Date until the expiration or earlier termination of this Agreement shall be calculated using the rate-setting methods set forth in this Article 9. City shall not include costs paid by PFCs, federal grants and other forms of financial assistance in calculating the Airfield Revenue Requirement or the Airline Terminal Revenue Requirement. City may add to the revenue requirements any Bad Debt caused by the failure of any Passenger Carrier or Cargo Carrier or any contractor working for a Passenger Carrier or Cargo Carrier to pay fees and rents charged by City under this Article 9. Illustrative calculations displaying how rates and charges will be calculated under the methodology set forth in this Article 9 are attached as **Exhibit H**.

9.02 Landing Fee

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

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

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

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

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

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

(e) the share of annual Renewal and Replacement Costs allocable to the Airfield; *minus*

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

(g) Bad Debt allocable to the Airfield; *minus*

(h) Bad Debt Recovery allocable to the Airfield; *minus*

(i) the Coverage Amount calculated pursuant to subsection (b) above for the immediately preceding Fiscal Year; *plus or minus*

(j) Landing Fee True-ups for the preceding Fiscal Year pursuant to Section 9.06.2.

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

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

9.03 Terminal Rents

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

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

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

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

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

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

(e) the share of annual Renewal and Replacement Costs allocable to the Terminal, *minus*

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

(g) the amounts, if any, paid to City to lease or use space in the basement of the Terminals.

City will then divide that sum by the total amount of Rentable Terminal Space and multiply the resulting quotient by the total square feet of Airline Rented Space at the Airport, and then add any Bad Debt and subtract any Bad Debt Recovery allocable to the Terminal, yielding the Airline Terminal Revenue Requirement to be met by all Airlines.

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

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

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

9.03.3 Charges for Use of Gates

(a) Calculation of the Gate Revenue Requirement. City will calculate the Gate Revenue Requirement applicable to each Gate by multiplying the total square footage of all holdrooms associated with all Common Use and Preferential Use Gates by the per-square foot costs for Group A space, then adding any costs and subtracting any credit provided for by Section 5.06, and finally dividing that product by the total number of active Gates (Gates that are neither active Common Use Gates nor assigned for Preferential use will not be included in the active Gate figure).

(b) Calculation of Common Use Gate Charges. City will calculate the rate for use of Common Use Gates by multiplying the Gate Revenue Requirement by the total number of Common Use Gates, subtracting any fees paid for the use of Hardstands, and then dividing that amount by the estimated total number of Turns on all Common Use Gates during the Fiscal Year. Common Use Gate charges will be levied upon Airline on the basis of the total number of Turns, if any, it makes at Common Use Gates and Hardstands during the Fiscal Year.

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

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

9.03.4 Charges for Use of Ticket Counters

(a) Calculation of the Ticket Counter Revenue Requirement. City will calculate the Ticket Counter Revenue Requirement applicable to each Ticket Counter by multiplying the total square footage of all Ticket Counters (both Common Use and Preferential Use Ticket Counters and including space of Skycap Positions and ticket counter queuing space) by the per-square foot costs for Group A space, then adding any costs and subtracting any credits provided for by Sections 6.04.5 and 6.06, and finally dividing that product by the total number of active Ticket Counters (Ticket Counters that are neither reserved for Common Use nor assigned for Preferential Use will not be included in the active Ticket Counter figure).

(b) Calculation of Common Use Ticket Counter Charges. City will calculate the rate for use of Common Use Ticket Counters by multiplying the Ticket Counter Revenue Requirement by the total number of active Common Use Ticket Counters and then dividing that product by the total number of hours of use of all

Common Use Ticket Counters during the Fiscal Year. Common Use Ticket Counter charges will be levied upon Airline on the basis of the total number of hours of use it makes of Common Use Ticket Counters during the Fiscal Year (any portion of any hour shall be rounded up).

(c) Calculation of Preferential Use Ticket Counter Charges.

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

9.03.5 Charges for Use of Baggage Areas

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

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

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

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

9.03.8 Charges for Use of Storage Space. The annual rental rate for the use of storage space will equal the per-square foot costs for Group C space. Charges for the use of storage space shall be levied upon Airline on the basis of the total square footage of such space assigned to Airline.

9.04 Illustration of Calculations

Exhibit H attached to and incorporated in this Agreement offers for illustrative purposes only the calculation of rates and charges in accordance with the methods set forth in this Article based upon current estimates of costs and projected levels of airport activity for Fiscal Year 2020.

9.05 Mid-year Adjustments

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

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

9.06 Adjustments-to-Actual

9.06.1 Final Accounting. By December 31st after the close of each Fiscal Year, City shall provide to Airline (and all other Scheduled Airlines that paid Landing Fees or Terminal Rents to City during such preceding Fiscal Year) a final accounting of the Airport's operations for such preceding Fiscal Year. Such final accounting shall contain information sufficient to (a) allow City to recalculate the rates and charges as set forth in Sections 9.02 and 9.03 on the basis of actual Operating Expenses, Air Carrier activity and other factors affecting the prescribed calculations (or, if such information is unavailable, on the basis of City's then-current best estimates) and (b) determine the amount of any overpayment (credit) or underpayment (debit) due to or from such Scheduled Airlines for their use of the Airfield and the Terminal. If City is not able to make such a final accounting on the basis of actual Operating Expenses, Air Carrier activity and

other factors affecting the prescribed calculations by December 31st after the close of any given Fiscal Year, City shall promptly provide a further accounting after such actual data have become available to City.

9.06.2 Landing Fee True-up. The aggregate credit or debit (if any) due to or from all payors of Landing Fees resulting from recalculations in accordance with Section 9.06.1 shall be applied to the Airfield Revenue Requirement for the following Fiscal Year under Section 9.02.1. If future interpretations of or revisions to federal income tax laws would, in the opinion of City's bond counsel, permit City to make settlements of Landing Fees with Airline and other individual Scheduled Airlines by issuing credits or invoicing debits without adversely affecting the tax-exempt character of Bonds issued or to be issued to finance Capital Improvement Projects allocated to the Airfield Cost and Revenue Center, City shall offer to amend this Agreement to provide for such settlements, and this Agreement shall be so amended if City's offer is accepted by a Majority-in-Interest for the Airfield Cost and Revenue Center.

9.06.3 Settlements of Terminal Rents

(a) Any credit for Terminal Rents resulting from recalculations in accordance with Section 9.06.1 shall be issued to Airline in the form of a check, wire transfer through the Automatic Clearing House ("ACH") or electronic funds transfer ("EFT") (subject to City's ability to make these payments using EFT or ACH), and any resulting debit will be invoiced to and payable by Airline. If the Terminal Rents actually paid by Airline were greater than the corresponding amounts chargeable to Airline, City shall remit the amount of such overpayment to Airline within thirty (30) days of the final accounting. If Terminal Rents paid by Airline were less than the corresponding amounts chargeable to Airline, City shall apply the amount of such deficiency to the account of Airline within thirty (30) days of the final accounting, and invoice Airline, which amount shall be due and payable within sixty (60) days of invoice.

(b) At the same time City issues Airline a credit or invoices a debit under Section 9.06.3(a), City shall issue Airline its respective share of Net Remaining Revenues, if any, calculated in accordance with Section 9.10, in the form of a check, wire transfer through the Automatic Clearing House ("ACH") or electronic funds transfer ("EFT") (subject to City's ability to make these payments using EFT or ACH).

(c) City shall, in addition to all other rights under this Agreement, have the right to set off against any credits otherwise due Airline under this Section 9.06.3 the amounts, if any, then due and owing by Airline to City under this Agreement.

9.06.4 Final True-up under the 2007 Airline-Airport Lease and Operating Agreement. For Fiscal Year 2019, the final year of the Term of the 2007 Airline-Airport Lease and Operating Agreement: (i) City shall calculate adjustments-to-actual in

accordance with Section 9.06 of that Agreement, except that the Actual Variance resulting from that calculation (as defined in the 2007 Airline-Airport Lease and Operating Agreement) shall be applied to the Airfield Revenue Requirement for the 2020 Fiscal Year, and credits or debits for Terminal Rents resulting from the calculation of the Actual Variance will be issued to Airline or invoiced to and payable by Airline, and (ii) any Net Remaining Revenues shall be divided pursuant to Section 9.10 of the 2007 Airline-Airport Lease and Operating Agreement, and any credits due to Airline will be issued to Airline.

9.06.5 Final True-up under this Agreement. For Fiscal Year 2029, the final year of the Term, or such Fiscal Year as may be the final year of any extension, City shall calculate adjustments-to-actual in accordance with this Section 9.06. The aggregate Landing Fee credit or debit (if any) resulting from recalculations in accordance with Section 9.06.1 shall be applied to the Airfield Revenue Requirement for the following Fiscal Year (however it may otherwise be determined), and credits or debits for Terminal Rents resulting from such recalculations will be issued to Airline or invoiced to and payable by Airline notwithstanding the expiration of the Agreement.

9.07 Activity Reports

9.07.1 Information to be Supplied by Airline.

(a) Not later than the tenth (10th) day of each month, Airline shall file with City separate written reports (“Activity Reports”) on forms provided by City and included as samples in Exhibit I for activity conducted by Airline during said month and for activity handled by Airline for each Passenger Carrier not having an agreement with City providing for its own submission of activity data to City. Such Activity Reports shall include, but not be limited to, operations data; revenue Enplaned Passengers; Deplaned Passengers; connecting passengers; through-passengers; and pounds of cargo, mail, and express shipments. City shall have the right to rely on said Activity Reports in determining rentals and charges due hereunder. Airline shall have full responsibility for the accuracy of said reports. Payment deficiencies due to incomplete or inaccurate Activity Reports shall be subject to interest charges as set forth in Section 10.04. If the monthly Activity Reports are not provided on or before the tenth (10th) day of each month as required herein, Airline shall pay as a delinquency fee for administrative expenses incurred by City an amount of Fifty Dollars (\$50.00) (as established by, and as may be amended by, City Council resolution) per day for each day that the report is late until such date as the monthly Activity Report is submitted to the Director. City’s assessment of the delinquency fee shall be in addition to any other remedies that City may have in law or in equity, including termination and revocation of this Agreement and all rights and privileges granted herein.

(b) Airline shall at all times maintain and keep records reflecting the activity statistics of Airline’s activities at the Airport to be reported pursuant to Section 9.07.1(a). Such records shall be retained by Airline for a period of four (4) years subsequent to the activities reported therein, or such other retention

period as set forth in applicable Federal Aviation Regulations, and upon prior written notice to Airline shall be made available, at no cost to City, at San José, California for audit and/or examination by City or its duly authorized representative during all normal business hours. Airline shall produce such books and records within thirty (30) calendar days of City's notice to do so or pay all reasonable expenses, including but not limited to transportation, food, and lodging, necessary for an auditor selected by City to audit said books and records.

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

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

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

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

9.08 Consultation

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

9.08.2 Renewal and Replacement Costs. As part of its budgeting and rate-setting process, City shall determine the annual allowances for Renewal and Replacement Costs (including the renewal and replacement costs that are the subject of Sections 9.02.1(e) and 9.03.1(e)), provided that the annual allowances for Renewal and Replacement Costs for the Terminal and Airfield shall not exceed Ten Million Dollars

(\$10,000,000), in the aggregate, excluding any costs funded with PFCs, CFCs, federal grants and other forms of financial assistance as well as the local share, if any, of projects funded with PFCs, CFCs, federal grants and other forms of financial assistance. City shall include descriptions of renewal and replacement projects with the revised Landing Fee and Terminal Rent disclosure described in Section 9.08.1. As part of the consultation process described in that Section, City agrees to fully consider the comments and recommendations of the Signatory Airlines prior to finalizing the allowance for renewal and replacement for the ensuing Fiscal Year. Any allowances for Renewal and Replacement Costs remaining at the end of each Fiscal Year shall be carried forward, except that City cannot accumulate more than Ten Million Dollars (\$10,000,000) for the Terminal and Airfield Cost and Revenue Centers in allowances reserved for such costs. Any amount over Ten Million Dollars (\$10,000,000) shall be held in a capital projects fund to be used for airfield or terminal projects and to reduce the otherwise-determined airfield or terminal revenue requirements, by paying down Debt Service or otherwise.

9.09 Non-Signatory Premium

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

9.10 Revenue-Sharing

In any Fiscal Year in which there are Net Remaining Revenues generated at the Airport and all requirements of the Master Agreement and any Subordinated Financing Agreement have been satisfied, including the minimum rate covenant requirement, the Net Remaining Revenues shall be divided between the City and all Signatory Passenger Carriers as follows:

9.10.1 Until the first Fiscal Year after the DBO of the New Terminal Project, the first Four Million Dollars (\$4,000,000) shall be retained by the City and the balance of Net Remaining Revenues, if any, shall be divided sixty percent (60%) to the Signatory Passenger Carriers and forty percent (40%) to the City.

9.10.2 In Fiscal Years beginning after the DBO of the New Terminal Project, the first Two Million Dollars (\$2,000,000) shall be retained by the City and the balance of Net Remaining Revenues, if any, shall be divided sixty percent (60%) to the Signatory Passenger Carriers and forty percent (40%) to the City.

9.10.3 In all Fiscal Years, each Signatory Passenger Carrier's share of the balance of the Net Remaining Revenues shall be a function of its proportionate share of total Enplaned Passengers for all Signatory Passenger Carriers for that Fiscal Year.

9.10.4 The City's share of any Net Remaining Revenues shall be retained by the Airport in a discretionary fund to be used by the City for any lawful Airport purpose.

9.11 Rate Stabilization Fund and Ten-Year Lookback Distributions

City shall distribute the entire balance remaining in the “Rate Stabilization Fund” created under Section 9.11 of the 2007 Airline-Airport Lease and Operating Agreement among all the Signatory Airlines under the 2007 Airline-Airport Lease and Operating Agreement in proportion to each such Signatory Passenger Carrier’s share, if any, of Enplaned Passengers for all Signatory Airlines for Fiscal Year 2015, and shall distribute any credits arising from the Ten-Year Lookback among all of the Signatory Airlines to the 2007 Airline-Airport Lease and Operating Agreement, all as shown on **Exhibit K**.

9.11.1 As a condition of distribution of the Rate Stabilization Fund and the Ten-Year Lookback, and provided that City has delivered an executable version of this Agreement to Airline on or before March 31, 2019, Airline shall execute an agreement that is substantially in the form of this Agreement or a Non-Signatory Operating Agreement, as applicable, and shall deliver the executed agreement to City on or before June 30, 2019. City shall distribute Airline’s portion of the Rate Stabilization Fund and the Ten-Year Lookback within sixty (60) days after the delivery by Airline of such executed agreement. As a further condition of distribution of the Ten-Year Lookback, Airline hereby releases City from any claims arising from or based upon the City’s past calculations of rates and charges under the 2007 Airline-Airport Lease and Operating Agreement. Under this release, Airline understands and agrees that Airline is hereby waiving all rights under Section 1542 of the Civil Code of California and any similar law of any state or territory of the United States. Said section reads as follows:

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

9.11.2 Any amount remaining in the Rate Stabilization Fund or the Ten-Year Lookback after the distribution described in this Section 9.11 shall be retained by the Airport in a discretionary fund to be used by the City for any lawful Airport purpose.

9.12 Extraordinary Coverage Protection

9.12.1 Airline acknowledges that in order to satisfy the Coverage Amount for Debt Service on Bonds and Subordinated Indebtedness, Airline shall be required to make extraordinary coverage protection payments in addition to the Landing Fees and Terminal Rents otherwise established by this Article 9 in any Fiscal Year in which the amount of Revenues less Operating Expenses is projected to be less than the amount required by Section 7.13 of the Master Agreement, as such rate covenant may be amended, supplemented or restated from time to time. Any amounts that must be collected for such extraordinary coverage protection payments shall be allocated to the Airfield Revenue Requirement or the Airline Terminal Revenue Requirement. Should Extraordinary Coverage Protection payments be made in any given Fiscal Year, City shall in subsequent Fiscal Years refund to Airline its proportionate share of such payments as

soon as there are sufficient Net Remaining Revenues available under Section 9.10 to first allow City to retain Four Million Dollars (\$4,000,000) (until the first Fiscal Year after the DBO of the New Terminal Project) or Two Million Dollars (\$2,000,000) (in Fiscal Years beginning after the DBO of the New Terminal Project), as provided by Section 9.10. The refund of Extraordinary Coverage Protection payments shall occur before the remaining balance of Net Remaining Revenue, if any, is divided sixty percent (60%) to the Signatory Passenger Carriers and forty percent (40%) to City in accordance with Section 9.10.

9.13 Air Service Incentive Programs

9.13.1 Subject to applicable federal laws and policies, and in order to enhance existing air service or attract new air service to the Airport, City reserves the right to maintain, adopt and implement one or more air service incentive programs. Each air service incentive program, if implemented, shall be offered to all eligible Air Carriers on a nondiscriminatory basis.

9.14 Commercial Development Revenues

Twenty percent (20%) of the net revenues from City's commercial development of the land depicted as for commercial development in **Exhibit A-2** shall be used by City, after consultation with AAAC, to offset charges to the Airfield and Terminal for capital costs, with ten percent (10%) of such net revenues allocated to the Airfield and the remaining ten percent (10%) of such net revenues allocated to the Terminal. The remaining eighty percent (80%) of the net revenues from City's commercial developments shall be retained by the Airport in a discretionary fund to be used by City for any lawful Airport purpose.

Article 10 Payments

10.01 Terminal Rent

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

10.02 Landing Fees

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

10.03 Other Fees and Charges

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

10.04 Payment Delinquencies

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

10.05 Estimates

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

10.06 Proration

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

10.07 Payment Process

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

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

10.08 Payment Acceptance

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

10.09 Security for Performance

10.09.1 Subject to Section 10.09.5, City shall not require a Signatory Airline under this Agreement to provide Contract Security under this Section 10.09 if such Signatory Airline was also a Signatory Airline under the 2007 Airline-Airport Lease and Operating Agreement and has not been defaulted by City after any applicable notice and cure period under that 2007 Agreement for failure to make timely payments due to City during the preceding thirty-six (36) months.

10.09.2 Subject to Section 10.09.5, City may, in the Director's discretion, choose not to require a Signatory Airline under this Agreement to provide Contract Security under this Section 10.09 if such Signatory was not a Signatory Airline under the 2007 Airline-Airport Lease and Operating Agreement and such new Signatory Airline (a) has not in the past failed to make timely payments, if any, due to City and (b) demonstrates to the Director's satisfaction that it has an established track record of making timely payments to at least three (3) other large-hub or medium-hub airports (selected at the discretion of the Director) during at least the preceding thirty-six (36) months and has not been defaulted for untimely payment at any such airports during the preceding thirty-six (36) months.

10.09.3 Except as provided in Sections 10.09.1 and 10.09.2, Airline shall provide City on the Effective Date of this Agreement with an irrevocable letter of credit or other security reasonably acceptable to City in City's sole discretion ("Contract Security") in an amount equal to the estimate of two (2) months' rentals, fees and charges payable by Airline (excluding PFCs) pursuant to this Article 10 to guarantee the faithful performance by Airline of its obligations under this Agreement and the payment of all rentals, fees and charges due hereunder. City may use the Contract Security to pay delinquent rentals, fees and charges (including but not limited to PFCs) resulting from Airline's operations at the Airport in order to ensure prompt payment of required fees and charges. The Director may adjust such Contract Security requirement from time to time upon a determination that an additional amount is warranted to protect City and the Airport. Airline shall be obligated to maintain such Contract Security during the Term hereof. Such Contract Security shall be in a form and with a company reasonably acceptable to City and licensed to do business in the State of California. In the event that

any such Contract Security shall be for a period less than the full period required by this Section 10.09.3 or if Contract Security shall be canceled, Airline shall provide renewal or replacement Contract Security for the remaining required period at least sixty (60) days prior to the date of such expiration or cancellation. Airline's obligation to obtain and/or keep in force the Contract Security required hereunder shall be a condition precedent to City's obligation to perform hereunder. Notwithstanding anything set forth herein to the contrary, if Airline shall fail to obtain and/or keep in force the Contract Security required hereunder, City shall no longer be required to perform under the terms of this Agreement and, subject to the notice and cure periods set forth in Section 15.01.2 hereof, this Agreement shall automatically terminate unless City waives the automatic termination provision mentioned above in writing. In the event that City waives the automatic termination requirement, City shall not be obligated to perform under the terms of this Agreement so long as Airline is not in compliance with the terms hereof with respect to the Contract Security. As provided in Section 20.02, any waiver by City of the automatic termination provision hereunder shall not be construed to be a waiver of any subsequent automatic termination hereof. City's rights under this Section 10.09.3 shall be in addition to all other rights and remedies provided to City under this Agreement.

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

10.09.5 Even if Airline has previously been relieved of its obligation to provide Contract Security by reason of Section 10.09.1 or Section 10.09.2, City shall require Airline to provide Contract Security under this Section 10.09 if Airline commits an act of default described in Section 15.01.3 after any applicable notice and cure period by reason of its failure to timely make full payment of all rentals, fees, and charges due hereunder. In such event, Airline shall, within ten (10) days from its receipt of written notice of default, provide Contract Security to City in such form and amounts, and subject to such terms and conditions, as are specified in Sections 10.09.3 and 10.09.4.

10.09.6 In its Non-Signatory Operating Agreements, City shall require all Non-Signatory Airlines to provide Contract Security to City in such form and amounts, and subject to such terms and conditions, as are specified in Sections 10.09.3 and 10.09.4.

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

Article 11 City Indirect Overhead

Because the operation and management of the Airport is supported by a number of City departments, employees and resources that are not directly charged to the Airport operating budget, City allocates a percentage of its total indirect overhead expenses to the Airport operating budget. In no event will the indirect overhead expenses of City allocated to the Airport's operating budget exceed twenty-five percent (25%) or be less than fifteen percent (15%) during the Term hereof.

Article 12 Capital Expenditures

12.01 Need for Capital Expenditures

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

12.02 Expenditures Subject to Signatory Airline Consideration

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

- (a) A description of the proposed Capital Expenditure(s), together with cost estimates, scheduling, and any preliminary drawings, if applicable;

(b) A statement of the need for the proposed Capital Expenditure(s), along with the planned benefits to be derived from such expenditures;

(c) City's preferred means of financing or paying the costs of the proposed Capital Expenditure(s); and

(d) The anticipated allocation of the costs thereof to the Airfield Cost and Revenue Center or the Terminal Cost and Revenue Center and the projected impact on Airline's rates and charges.

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

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

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

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

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

12.03 Capital Expenditures not Subject to Signatory Airline Consideration

The following Capital Expenditures may be undertaken by City at any time and shall not be subject to consideration by the Signatory Airlines:

12.03.1 New development, planning or expansion projects in the Airfield Cost and Revenue Center or the Terminal Cost and Revenue Center that have a project cost, net of any PFCs, CFCs, federal grants, and other forms of financial assistance, of less than Ten Million Dollars (\$10,000,000); provided, however, that City shall not unreasonably segment these development, planning or expansion projects for the purpose of avoiding the foregoing Ten Million Dollar (\$10,000,000) threshold.

12.03.2 The New Terminal Project, as described in **Exhibit J**.

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

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

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

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

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

12.03.8 Projects funded directly or indirectly by PFCs, CFCs, federal grants, or other forms of financial assistance.

12.03.9 Projects that are undertaken to satisfy the increased requirements of any Signatory Airline so long as such Signatory Airline agrees to pay all increased rentals, fees and charges that are sufficient to cover the annual Debt Service and Operating Expenses associated with the project.

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

12.04 Consultation on the New Terminal Project

12.04.1 Airline acknowledges that, based upon current forecasts of future Airport activity, the expansion of the Terminal and other capital improvements to be completed in Phase II of the Airport Master Plan Program (the “New Terminal Project”) will be needed during the Term. City acknowledges that the New Terminal Project will be expensive and, during construction, that the New Terminal Project will be disruptive to Airport operations. City shall consult with the AAAC during the programming, design, and construction phases of the New Terminal Project; provided, however, that City retains sole discretion to make all final decisions with respect to the financing, programming, design, and construction phases of the New Terminal Project.

12.04.2 City does not intend to proceed to construct the New Terminal Project unless, in City’s sole discretion, the increase in terminal capacity to be achieved by the New Terminal Project continues to be needed. To provide Signatory Airlines with an opportunity to share their then-current views and information about the continuing need for the New Terminal Project, City shall consult with the AAAC at least ninety (90) days before City issues a Request for Proposals (“RFP”) for the construction of the terminal expansion in the New Terminal Project. Before electing to proceed with the New Terminal Project, City shall give due consideration to whatever information the AAAC provides with respect to the following factors:

- (a) The historical, current and reasonably forecast number of daily Scheduled Operations at the Airport;
- (b) The historical, current and reasonably forecast total number of annual Enplaned Passengers and Deplaned Passengers at the Airport;
- (c) City’s options to finance the New Terminal Project on reasonable terms;
- (d) The expected impact of completing the New Terminal Project on Landing Fees and Terminal Rents;
- (e) City’s ability to accommodate expansion by incumbent airlines or new entrants;
- (f) The current and projected health of the local, regional and national economy;
- (g) The current and projected profitability of the airline industry;
- (h) The need to improve Terminal efficiency or flexibility; and

- (i) The quality of the passenger experience at the Airport.

After completing its consultation with the AAAC, and having given due consideration to the information provided by the AAAC, City may proceed with the New Terminal Project if City determines, in its sole discretion, that the New Terminal Project continues to be needed and can be financed on reasonable terms.

12.04.3 If, after completing its consultation with the AAAC under Section 12.04.2, City determines that the New Terminal Project should be deferred for more than three (3) years, City shall provide the AAAC with another opportunity to consult with City at least ninety (90) days before City issues an RFP for the construction of the terminal expansion in the New Terminal Project unless City and Signatory Airlines constituting an MII have agreed upon a revised schedule for the completion of the New Terminal Project.

12.04.4 City shall provide reports to the AAAC regarding the status of construction of the New Terminal Project no less than once each financial quarter, beginning ninety (90) days after City issues a Notice to Proceed for construction of the New Terminal Project. City shall consult with the AAAC in developing an activation plan for the relocation of Passenger Carriers throughout the Terminal during construction and when the New Terminal Project is completed.

12.04.5 To the full extent permitted by the PFC Act and the PFC Regulations, as they may be amended from time to time, and subject to Section 20.03, City agrees to use all PFC funds collected by City that are not, as of the Effective Date, already committed to PFC-eligible projects through applications approved by the FAA, and including PFC funds collected by City in the event that Congress authorizes an increase in the current maximum PFC of \$4.50 per passenger, for one or more of the following, as reasonably determined by City and without regard to any priority:

- (a) To fund the New Terminal Project on a pay-go basis or through PFC-backed bonds to the extent the New Terminal Project is PFC eligible.

- (b) To retain the PFC funds for future use on PFC-eligible projects approved by the FAA.

12.05 Alterations and Improvements by Airline

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

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

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

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

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

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

12.05.4 Airline shall promptly pay all lawful claims and discharge all liens made against it or against City by Airline's contractors, subcontractors, materialmen, and workmen and all such claims and liens made against Airline or City by other third parties arising out of or in connection with, whether directly or indirectly, any work done by or for Airline, its contractors, subcontractors, or materialmen; provided, however, that Airline

shall have the right to contest the amount or validity of any such claim or lien without being in default of this Agreement upon furnishing security satisfactory to the Director guaranteeing that such claim or lien will be properly and fully discharged forthwith in the event that such contest is finally determined against Airline or City.

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

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

Article 13 Damage or Destruction

13.01 Partial Damage and Repair

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

13.02 Substantial or Complete Damage and Repair

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

13.03 Damage Caused by Airline

Notwithstanding the provisions of this Article 13, in the event that due to the negligence or willful act or omission of Airline, its employees, its agents, or licensees, Airline Premises shall be damaged or destroyed by fire, other casualty or otherwise, there shall be no abatement of rent during the repair or replacement of said Airline Premises. To the extent that the costs of repairs shall exceed the amount of any insurance proceeds received by City by reason of such damage or destruction, Airline shall pay the amount of such additional costs to City.

Article 14 Indemnification, Waiver Of Claims And Insurance

14.01 Indemnification

14.01.1 Airline agrees to protect, defend, reimburse, indemnify and hold City, its agents, employees, board members and elected officers and each of them, free and harmless at all times from and against any and all claims, liability, expenses, losses, costs, fines and damages (including actually incurred reasonable attorney's fees) and causes of action of every kind and character, whether or not meritorious, against or from City by reason of any damage to property or bodily injury (including death) incurred or sustained by any party hereto, any agent or employee of any party hereto, and any third or other party whomsoever or any governmental agency, arising out of or incident to or in connection with Airline's performance under this Agreement, Airline's use or occupancy of the Airline Premises, Airline's negligent acts, omissions or operations hereunder or the

performance, non-performance or purported performance of Airline or any breach of the terms of this Agreement by Airline; provided, however, that Airline shall not be so obligated to protect, defend, reimburse, indemnify and hold City free and harmless when the applicable claim, liability, expense, loss, cost, fine, damage or cause of action is caused by the negligence of the agents, employees, contractors, officers or boards of City (but only to the extent of the portion of the claim, liability, expense, loss, cost, fine, damage or cause of action caused by such negligence). Upon the filing by anyone of a claim with City for damages arising out of incidents for which Airline herein agrees to indemnify and hold City harmless, City shall promptly notify Airline of such claim and, in the event that Airline does not settle or compromise such claim, then Airline shall undertake the legal defense of such claim both on behalf of Airline and on behalf of City. It is specifically agreed, however, that City, at its option and at its own expense, may participate in the legal defense of such claim. Any final judgment against City from which no appeals remain for any cause for which Airline is liable hereunder shall be conclusive against Airline as to liability and amount upon the expiration of the time for appeal therefrom. Airline recognizes the broad nature of this indemnification and hold harmless clause and voluntarily makes this covenant and expressly acknowledges that the terms and conditions of this Agreement constitute good and valuable consideration provided by City in support of this indemnification in accordance with laws of the State of California.

14.01.2 If City is alleged to be in non-compliance with Applicable Laws governing access to secure areas of the Airport or to the areas of the Airfield, and said non-compliance is the result of or due to the negligence or willful act or omission of Airline or any of Airline's officers, directors, employees, agents, contractors, consultants, representatives, or anyone else for whose acts Airline is responsible, and such breach of a secure area results in a civil penalty or other action against City, Airline agrees to reimburse City for all expenses, including reasonable attorneys' fees, incurred by City in defending against the civil penalty action or other action, and for any civil penalty or settlement amount paid by the as a result of being deemed in non-compliance as aforesaid. City shall give Airline reasonable notice of any allegation, investigation, or proposed or actual civil penalty or other action sought for such non-compliance

14.01.3 If City (or any Indemnified Party) and Airline are jointly, concurrently or successively liable for an actionable wrong to an injured person, each party shall have a right to contribution from the other party. The right of contribution shall be limited to the amounts paid by a party in excess of that party's share of liability, based upon principles of equity (including the principle of comparative fault). If either party receives any claim, demand, suit or judgment for which the other party is or may be jointly, concurrently or successively liable, that other party shall be given prompt notice thereof. If City (or any Indemnified Party) and Airline become co-defendants, either may file a cross-complaint against the other for a declaration of rights respecting the relative responsibility of each for contribution. If either City (or any Indemnified Party) or Airline becomes a defendant in an action or proceeding in which the other is a non-party, the defendant therein may either file a cross-complaint against the non-party for a declaration

of rights of contribution or may bring a separate and independent action against the non-party for contribution.

14.01.4 This Section 14.01 shall survive the expiration or earlier termination of this Agreement. The foregoing express obligation of indemnification shall not be construed to negate or abridge any other obligation of indemnification running to City or an Indemnified Party that would exist at common law or under other provisions of this Agreement, and the extent of the obligation of indemnification shall not be limited by any provision of insurance undertaken in accordance with this Agreement. City shall give Airline written notice of any claims threatened or made or any suit instituted against it that could result in a claim of indemnification hereunder.

14.02 Waiver of Claims

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

14.03 Insurance

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14.03.8 Each insurance policy required by this Section shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in limits except after thirty (30) days' prior written notice has been given to City by insurer or, if insurer will not provide such notice, by Airline (notwithstanding the foregoing, the notice period for War Risks and Named Allied Perils insurance may be seven [7] days or such lesser period as may be customarily available).

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

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

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

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

With a copy to:

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

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

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

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

Article 15 City Remedies

15.01 Events of Default

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

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

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

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

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

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

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

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

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

15.02 Continuing Responsibilities of Airline

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

15.03 Remedies

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

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

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

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

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

15.03.5 In the event that City relets Airline Premises, rentals, fees, and charges received by City from such reletting shall be applied: (i) to the payment of any indebtedness, other than rentals, fees, and charges due hereunder, from Airline to City; (ii) to the payment of any cost of such reletting; and (iii) to the payment of rentals, fees, and charges due and unpaid hereunder. The residue, if any, shall be held by City and applied in payment of future rentals, fees, and charges as the same may become due and payable hereunder. If that portion of such rentals, fees, and charges received from such reletting and applied to the payment of rentals, fees, and charges hereunder is less than the rentals, fees, and charges as would have been payable during applicable periods by Airline hereunder, then Airline shall pay such deficiency to City whenever rentals, fees or charges are due to City hereunder. Airline shall also pay to City, as soon as

ascertained, any reasonable costs and expenses incurred by City in such reletting not covered by the rentals, fees, and charges received from such reletting.

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

15.04 Remedies Under Federal Bankruptcy Laws

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

Article 16 Environmental

16.01 Hazardous Materials.

16.01.1 Standards of Operation – Disposal, Use and Storage of Hazardous Materials. The voluntary or involuntary release or discharge of Hazardous Materials on the Airport is strictly prohibited (except to the extent, if any, that disposal of Hazardous Materials through City's sewerage system complies with all applicable Environmental Laws). Storage and use of Hazardous Materials on the Airport is prohibited, except:

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

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

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

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

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

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

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

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

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

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

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

16.01.6 Release of Claims Against City. Airline releases, acquits and forever discharges City from any and all claims, actions, causes of action, demands, rights, damages, costs, including but not limited to loss of use, lost profits, or expenses, which Airline may now have, or which may hereafter accrue on account of or in any way growing out of all known and unknown, foreseen and unforeseen bodily and personal injuries and property damage, and the consequences thereof resulting or arising out of the presence or cleanup of any Hazardous Material on the Airline Premises or the Airport, but only to the extent the presence of such Hazardous Materials was not caused by or did not result from the negligence, willful misconduct, acts or omissions of City, City's officers, agents, employees contractors, permittees or invitees. This release shall not apply to any claims for contribution that Airline may have against City in the event that Airline incurs any cost in undertaking any cleanup of Hazardous Material from the Airline Premises or the Airport ordered by a governmental agency, to the extent that the cleanup order and costs result from a release or discharge of Hazardous Material for which Airline is not responsible and liable under this Agreement. Airline understands and agrees that Airline is hereby waiving all such rights under Section 1542 of the Civil Code of California and any similar law of any state or territory of the United States. Said section reads as follows:

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

16.01.7 Cessation of Activities. Airline shall cease its activities on the Airline Premises and the Airport, to the extent requested by City, if City determines, in its sole discretion, that such cessation is necessary to investigate, cure or remediate any release or discharge of Hazardous Materials or any threat of a release or discharge

thereof. In such a situation, City shall use reasonable efforts to attempt to temporarily accommodate Airline at suitable substitute space in the Airport during the required cessation of Airline activities. Airline shall not recommence its activities on the Airline Premises or the Airport, as appropriate, until notified by City that such release or discharge or threat of release or discharge of Hazardous Material has been investigated, cured and remediated in a manner satisfactory to City.

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

16.01.9 Records and Inspections

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

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

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

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

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

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

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

16.01.11 Airline Obligations Upon Termination. Prior to vacating the Airline Premises, and in addition to all other requirements under this Agreement and without limiting Airline's indemnification obligations under Section 16.01.5, Airline shall remove any Hazardous Materials placed on the Airline Premises during the Term by Airline or as a result of Airline's use or occupancy of the Airline Premises during the Term and shall demonstrate to City's reasonable satisfaction that such removal is in compliance with all applicable Environmental Laws, including without limitation conducting any environmental audits as may be required by City to demonstrate such removal has been completed according to the terms of this Agreement. This removal and demonstration shall be a condition precedent to City's return of the Contract Security to Airline upon termination or expiration of this Agreement.

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

16.02 Stormwater

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

16.02.2 Airline acknowledges that any stormwater discharge permit issued to City may name Airline as a co-permittee. City and Airline both acknowledge that cooperation is necessary to insure compliance with any stormwater discharge permit terms and conditions, as well as to insure safety and to minimize cost of compliance. Airline acknowledges further that it may be necessary to undertake such actions to

minimize the exposure of stormwater to “significant materials” generated, stored, handled or otherwise used by Airline, as such term may be defined by applicable stormwater rules and regulations, by implementing and maintaining “best management practices” as that term may be defined in applicable stormwater rules and regulations.

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

Article 17 Surrender Of Airline Premises

17.01 Surrender and Delivery

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

17.02 Removal of Property

Provided Airline is not in default for payment of rentals, fees and charges hereunder, Airline shall have the right at any time during the Term of this Agreement to remove from the Airport its aircraft, tools, equipment, removable trade fixtures and other personal property, title to which shall remain in Airline, unless otherwise set forth in Sections 7.01.11 and 12.05.3 of this Agreement. Airline shall remove such aircraft, tools, equipment, removable trade fixtures and other personal property within fifteen (15) business days following termination of this Agreement, whether by expiration of time or otherwise, as provided herein, subject to any valid lien which City may have thereon for unpaid rentals, fees and charges. Airline shall not abandon any portion of its property at the Airport without the written consent of City. Any and all property not removed by Airline

within fifteen (15) business days following the date of termination or cancellation of this Agreement shall, at the option of City, (i) except for aircraft, become the property of City at no cost to City; (ii) be stored by City at no cost to City or (iii) except for aircraft, be sold at public or private sale at no cost to City. The proceeds of such sale shall be applied, first, to the cost of the sale; second, to the payment of charges for storage and removal; third, to the payment of Airport Fees and Charges or any other obligation that may then be due from Airline to City; and the remaining balance, if any, shall be paid to City. If the expenses of such removal, storage, disposal and sale shall exceed the proceeds of sale, Airline shall pay such excess to City upon demand. Airline shall indemnify, defend, release, and hold harmless City from any and all damage, costs, and expenses related to said removal, storage, disposal, and sale, which obligations shall survive expiration or earlier termination of this Agreement. Except as may be agreed to otherwise by City and Airline, all City property damaged by or as a result of the removal of Airline's property shall be restored by Airline to the condition existing before such damage at Airline's expense.

17.03 Removal of Alterations, Additions or Improvements

17.03.1 Upon termination or expiration of this Agreement, City shall have the right, in the Director's sole discretion, to require Airline to remove any or all alterations, additions or improvements installed by Airline at the Airline Premises pursuant to Section 12.05. Airline shall remove any such alterations, additions or improvements from the Airport upon termination or expiration of this Agreement unless Airline obtains Director's written consent to leave Airline's alterations, additions or improvements at the Airport. Airline shall ascertain from the Director, at least eight (8) months prior to the Termination Date (or as soon as possible if this Agreement is terminated earlier than the Termination Date), whether City will require Airline to remove any alterations, additions or improvements or, if Airline desires to leave the alterations, additions or improvements, whether City will accept such alterations, additions or improvements. If the Director determines that all or any portion of the alterations, additions or improvements shall be removed, Airline shall, by no later than six (6) months prior to the Termination Date, provide a demolition plan to the Director, which shall include a timeline for completion.

17.03.2 In the event Airline fails to remove, or expresses an intention not to remove, any alterations, additions or improvements installed at the Airline Premises pursuant to Section 12.05 required by the Director to be removed pursuant to this Section 17.03, City may enter upon the Airline Premises and remove such alterations, additions or improvements at the sole cost and expense of Airline. Airline agrees to promptly reimburse City for all costs and expenses of removal, plus ten percent (10%) thereof for administrative overhead, or such percentage as approved and established from time to time by the City Council. The obligation to reimburse City for such expenditures shall survive the termination of this Agreement. Any receipt showing payment by City of expenditures associated with the removal of Airline's alterations, additions or improvements shall be prima facie evidence that the amount of such payment was necessary and reasonable and made by City on Airline's behalf.

17.04 Holding Over

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

Article 18 Assignment, Subletting, And Handling Agreements

18.01 Assignment and Subletting by Airline

18.01.1 Airline shall not assign or transfer this Agreement or any interest therein nor sublet the whole or any portion of the Airline Premises without first obtaining City's written consent, nor shall this Agreement or any interest thereunder be assignable or transferable by operation of law or by any process or proceeding of any court or otherwise without the consent of City first had and obtained, which consent shall not be unreasonably withheld. Airline further agrees that if at any time during the Term more than one-half (1/2) of the outstanding shares of any class of stock of Airline's corporation shall belong to any stockholders other than those who own more than one-half (1/2) of the outstanding shares of that class of stock at the time of the execution of this Agreement or to members of their immediate families, such change in ownership of the stock of Airline shall be deemed an assignment of this Agreement within the meaning of this Section 18.01 (unless Airline is a corporation whose stock is listed on the New York Stock Exchange or other major stock exchange, in which case such an event will not be considered an assignment of this Agreement). Airline's entering into any operating agreement, license or other agreement where a third party, other than a subsidiary, affiliate, or code share partner of Airline, is given rights or privileges to utilize portions of the Airline Premises shall be considered an attempted assignment or subletting within the meaning of this Section.

18.01.2 Notwithstanding anything set forth herein to the contrary, Airline shall have the right, without first obtaining City's written consent, to assign or transfer this Agreement to (a) an entity controlling, controlled by or under common control with Airline or (b) a successor by merger, consolidation or acquisition to all or substantially all of the assets of Airline, provided that such successor shall provide to City, within thirty (30) days after the effective date of such merger, consolidation, or acquisition, written confirmation (in form and substance reasonably satisfactory to City) that such successor-in-interest has assumed all of Airline's obligations under this Agreement.

18.01.3 This Article 18 shall not apply to any valid assumption or assignment of this Agreement, the Airline Premises, or any part thereof, by a trustee, or by Airline as a debtor-in-possession under Section 365 of the Bankruptcy Code of 1978, as amended, if adequate assurance of future performance under said Section 365 is to be provided, in writing, as a condition of the assumption or assignment of this Agreement. Such assurance shall include, without limitation:

(a) Adequate assurance of the reliability of the proposed source for the Airport Fees and Charges due under this Agreement upon the assumption or assignment of this Agreement; and

(b) Adequate assurance that all other consideration due under this Agreement shall be forthcoming after the assumption or assignment of this Agreement; and

(c) The procurement of Contract Security from a financially reputable surety in the amount of the Airport Fees and Charges allocated to the Airline Premises in the Fiscal Year prior to the year in which the assignment occurs to cover any costs or damages incurred by City if City, within five (5) years following the assumption or assignment of this Agreement, becomes entitled to any damages by reason of the breach of this Agreement.

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

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

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

18.02 Handling Agreements

In the event Airline agrees to ground handle any portion of the operations of another Passenger Carrier, Airline shall provide City advance written notice of such proposed activities, including a description of the type and extent of services to be provided and a ground handling agreement between Airline and the Passenger Carrier, and Airline shall pay ten percent (10%) of its gross revenue from any ground handling agreement (other than a ground handling agreement with an Affiliate of Airline) to City.

Notwithstanding the foregoing, Airline shall not ground handle any Passenger Carrier which does not have consent of City to operate at the Airport.

Article 19 Government Inclusion

19.01 Government Agreements

This Agreement shall be subordinate to the provisions of any existing or future agreements between City and the United States Government or other governmental authority relative to the operation or maintenance of the Airport or the execution of which has been or will be required as a condition precedent to the granting of Federal or other governmental funds for the development of the Airport to the extent that the provisions of any such existing or future agreements are generally required by the United States or other governmental authority. City agrees to provide Airline with written advance notice of any provisions that would adversely modify the material terms of this Agreement.

19.02 Federal Government's Emergency Clause

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

19.03 Nondiscrimination

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

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

19.04 Security

Airline, its officers, employees, agents, and those under its control, shall comply with security measures (a) required of Airline by the FAA, the Transportation Security Administration (the "TSA"), Customs and Border Protection ("CBP") or City in accordance with applicable requirements of the FAA, the TSA, CBP or their authorized successor(s)

or (b) contained in any Airport master security plan approved by the FAA, the TSA, CBP or their authorized successor(s) and applicable to Airline or its operations. If Airline, its officers, employees, agents, or those under its control, shall fail or refuse to comply with said measures and such non-compliance results in a monetary penalty being assessed against City, then, in addition to the provisions of Section 15.03, Airline shall be responsible for and shall reimburse City in the full amount of any such monetary penalty or other damages.

Article 20 General Provisions

20.01 Subordination to Master Agreement and Subordinated Financing Agreements

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

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

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

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

20.02 Nonwaiver

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

20.03 Passenger Facility Charges

20.03.1 City reserves the right to assess and collect PFCs subject to the terms and conditions set forth in the PFC Act, 49 U.S.C. § 40117, and the PFC Regulations, 14 CFR Part 158, as they may be supplemented or amended from time to time. Airline shall collect and pay all PFCs for which it is responsible under the provisions of 14 CFR Part 158. Failure by Airline to remit PFCs within the time frame required by 14 CFR Part 158 shall be grounds for immediate cancellation of this Agreement pursuant to Section 15.03.

20.03.2 Notwithstanding anything to the contrary in this Agreement, no provision of this Agreement shall impair the authority of City to impose a Passenger Facility Charge or to use the Passenger Facility Charge revenue as provided in 49 U.S.C. § 40117.

20.03.3 Airline acknowledges that City has given to the United States of America, acting by and through the FAA, certain assurances set forth in the PFC Act and implementing regulations at 14 C.F.R. Part 158 ("PFC Assurances"), and Airline agrees that this Agreement shall be subordinate and subject to the PFC Assurances.

20.03.4 In the event that the FAA requires any modifications or changes in this Agreement as a condition precedent to the collection of PFCs or otherwise complying with the PFC Act, Airline shall not withhold its consent to such amendments, modifications, revisions, supplements or deletions of any of the terms, conditions or requirements of this Agreement as may reasonably be required to collect PFCs or comply with the PFC Act.

20.04 Quiet Enjoyment

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

20.04.2 Consistent with the nature of Airline's business, Airline agrees that occupancy of its Airline Premises will be lawful and that it will not knowingly use or

permit the use of Airline Premises in any way that would violate the terms of this Agreement, create a nuisance, or unreasonably disturb other tenants or the general public. Airline shall be responsible for the activity of its officers, employees, agents, and others under its control with respect to this provision.

20.05 Performance

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

20.06 Avigation Rights

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

20.07 Rules and Regulations

20.07.1 Airline and its officers, employees, agents, and others under its control shall observe and obey all Applicable Laws.

20.07.2 City, acting in its governmental capacity, may from time to time adopt, amend, or revise the Rules and Regulations for reasons of safety, health, preservation of property, or for the maintenance of the good and orderly appearance or operation of the Airport (in adopting, amending or revising the Rules and Regulations, City shall consult with the Signatory Airlines and shall give the Signatory Airlines 30-days' notice of any proposed change, except with respect to emergency changes to the Rules and Regulations). Airline and its officers, employees, agents, and others under its control shall faithfully comply with and observe such reasonable and non-discriminatory Rules and Regulations, except as they may conflict with the terms and provisions of this Agreement, or the regulations of another governmental entity having appropriate jurisdiction.

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

20.08 Airport Living Wage Ordinance

Airline is an “Airport Business” as defined in the Airport Living Wage Ordinance and Airline shall, at its sole cost and expense, promptly and faithfully observe and comply with all applicable requirements of the Airport Living Wage Ordinance now in force or which may hereafter be in force, pertaining to Airline’s employees, contractors, subcontractors, and any entity conducting commercial activity on the Premises. Prior to the Effective Date, Airline shall provide to City the employee work environment information and labor peace assurances as required under the Airport Living Wage Ordinance.

20.09 Inspection

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

20.10 Airline Operations Information and Planning

20.10.1 For planning purposes, Airline shall upon request cooperate to the greatest extent possible to furnish to City any and all information regarding Airline’s current and future operations (including forecasts) at Airport that is the type of information customarily disclosed by Airline to medium or large hub airports in the United States. City will not disclose such information unless required to by law without first having Airline’s consent, unless disclosure of such information is, in the Director’s sole discretion, required for the sale of Bonds or Subordinated Indebtedness. Notwithstanding the foregoing, City shall be entitled, from time to time, to release consolidated statistics for all Passenger Carriers providing Scheduled Operations at the Airport.

20.10.2 Airline shall discuss with City at the earliest date possible its consideration of changes to its operations or the type and series of aircraft used at the Airport (other than equipment substitution necessitated by occurrences beyond the control of Airline). City will not disclose such information unless required to by law without first having Airline’s consent, unless disclosure of such information is, in the Director’s sole discretion, required for the sale or issuance of Bonds, Subordinated Indebtedness or Other Indebtedness. Notwithstanding the foregoing, City shall be entitled, from time to time, to release consolidated statistics for all Passenger Carriers providing Scheduled Operations at the Airport.

20.11 No Individual Liability

No member, officer, agent, director, or employee of City or Airline shall be charged personally or held contractually liable by or to the other party under the terms or provisions

of this Agreement or because of any breach thereof or because of its or their execution or attempted execution.

20.12 Relationship of Parties

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

20.13 Capacity to Execute

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

20.14 Savings

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

20.15 Successors and Assigns Bound

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

20.16 Incorporation of Exhibits

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

20.17 Titles

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

20.18 Severability

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

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

20.19 Amendments

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

20.20 Other Agreements

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

20.21 Approvals

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

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

20.22 Notice

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

Norman Y. Mineta San José International Airport
Director of Aviation
1701 Airport Blvd., Suite B-1130
San José, CA 95110-1206
Facsimile: (408) 441-4588

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

20.22.2 Notices to Airline shall be delivered to:

British Airways PLC
Sr. Counsel Americas
11 West 42nd Street, 24th Floor
New York, NY 10036

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

20.23 Agent for Service

It is expressly understood and agreed that if Airline is not a resident of the State of California, or is an association or partnership without a member or partner resident of said state, Airline shall appoint an agent for the purpose of service of process in any court action between it and City arising out of or based upon this Agreement. Airline shall immediately, within ten (10) days of execution of this Agreement, notify City, in writing, of the name and address of said agent. Such service shall be made as provided by the laws of the State of California for service upon a non-resident engaging in business in the State. It is further expressly agreed, covenanted, and stipulated that, if for any reason, such service of process is not possible, as an alternative method of service of process, Airline may be personally served out of the State of California by the registered mailing of such service at the address set forth in Section 20.22.

20.24 Governing Law and Legal Forum

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

20.25 Force Majeure

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

20.26 Americans with Disabilities Act

Airline shall be solely and fully responsible for ensuring that Airline's operations, wherever they may occur at the Airport, and any improvements made by Airline pursuant to Section 12.05.2 shall comply with the Americans with Disabilities Act of 1990, as this act may be amended from time to time ("ADA"). Airline shall develop a workplan to correct or avoid any violations or non-compliance with the ADA. Airline shall deliver to City, upon City's request, a copy of each such report and workplan. City's approval of or acceptance of any aspect of Airline's activities under this Agreement shall not be deemed or construed in any way as a representation that such item, activity or practice complies with the ADA. Airline agrees to indemnify, defend, and hold City harmless from any and all costs

incurred by City with respect to Airline's failure to comply with the ADA for Airline's operations or any improvements made by Airline at the Airport.

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

20.27 Federal Grant Agreement Covenants

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

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

20.27.2 Airline for itself, its personal representatives, successors in interest, and assigns, as part of the consideration hereof, does hereby covenant and agree that (1) no person on the grounds of race, color, or national origin shall be excluded from participation, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under the Airport and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation or denied the benefits of, or otherwise be subjected to discrimination, (3) that Airline shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, DOT, Sub-title A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

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

20.27.4 Airline shall furnish its accommodations and/or services on a reasonable, and not unjustly discriminatory, basis to all users thereof and it shall charge

reasonable, and not unjustly discriminatory, prices for each unit or service; provided, that Airline may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

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

20.27.6 Airline agrees that it shall insert the above five provisions in any agreement by which Airline grants a right or privilege to any person, firm or corporation to render accommodations and/or services to the public at the Airport.

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

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

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

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

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

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

20.28 Modifications for Granting FAA Funds

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

20.29 Prohibition of Gifts

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

20.30 Taxes

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

Payment of such additional charges for all such taxes, assessments and charges, when and if levied or assessed, shall be made by Airline directly to the taxing or assessing authority charged with collection thereof, in which event Airline shall be responsible for obtaining bills for all of said taxes, assessments and charges and promptly providing City with evidence of payment therefor.

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

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

20.31 Waiver of Visual Artists Rights

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

20.32 Exclusiveness of Airline's Rights

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

20.33 Agreement Not to Grant More Favorable Terms

During the Term, City agrees not to enter into any lease, contract, or other agreement with any other Air Carrier conducting operations at the Airport that contains fees and charges more favorable to such Air Carrier than the fees and charges payable by Airline under this Agreement, unless City also makes those more favorable terms available to Airline. The provisions of this Section 20.33 shall in no way limit, impair, or interfere with City's ability to implement air service development programs in accordance

with Section 9.13 or to charge or establish such fees and charges as City may deem applicable or reasonable when entering into any lease, contract, or other agreement with any party that is not an Air Carrier.

20.34 No Third-Party Beneficiaries

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

20.35 Liens and Encumbrances

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

20.36 Labor Disputes

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

20.37 SEC Rule 15c2-12

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

20.38 Memorandum of Lease

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

20.39 Entire Agreement

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

20.40 Counterparts

This Agreement may be executed simultaneously in counterparts, each of which shall be deemed to be an original copy of this Agreement and, when taken together, shall be deemed to be one and the same Agreement.

Article 21 Additional Federal Requirements

21.01 General Civil Rights Provisions

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

21.02 Compliance with Nondiscrimination Requirements

During the performance of this contract, Airline, for itself, its assignees, and successors in interest (hereinafter referred to as the "Airline"), agrees as follows:

21.02.1 Compliance with Regulations: Airline (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

21.02.2 Nondiscrimination: Airline, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. Airline will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices

when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

21.02.3 Solicitations for Subcontracts, including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by Airline for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by Airline of the contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

21.02.4 Information and Reports: Airline will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by City or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of Airline is in the exclusive possession of another who fails or refuses to furnish the information, Airline will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

21.02.5 Sanctions for Noncompliance: In the event of Airline's noncompliance with the non-discrimination provisions of this contract, City will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

- (a) Withholding payments to Airline under the Agreement until the Airline complies; and/or
- (b) Cancelling, terminating, or suspending the Agreement, in whole or in part.

21.02.6 Incorporation of Provisions: Airline will include the provisions of Sections 21.02.1 through 21.02.5 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. Airline will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if Airline becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, Airline may request City to enter into any litigation to protect the interests of City. In addition, Airline may request the United States to enter into the litigation to protect the interests of the United States.

21.03 Title VI Clauses for Transfer of Real Property Acquired or Improved Under the Airport Improvement Program

21.03.1 Airline, for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

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

21.03.2 With respect to licenses, leases, permits, etc., in the event of breach of any of the above Nondiscrimination covenants, City will have the right to terminate the Agreement and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the Agreement had never been made or issued.

21.04 Clauses for Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program

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

21.04.2 With respect to this Agreement, in the event of breach of any of the above nondiscrimination covenants, City will have the right to terminate the lease and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said Agreement had never been made or issued.

21.05 Title VI List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this Agreement, Airline, for itself, its assignees, and successors in interest (hereinafter referred to as the “Airline”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

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

persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq.).

21.06 Occupational Safety and Health Act of 1970

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. The employer must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The employer retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). The employer must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

21.07 Federal Fair Labor Standards Act (Federal Minimum Wage)

All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR Part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part-time workers.

The Contractor has full responsibility to monitor compliance to the referenced statute or regulation. The Contractor must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

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

IN WITNESS WHEREOF, the parties hereto have set their hands and corporate seals on this _____ day of _____, 2022.

"CITY"

CITY OF SAN JOSE, a municipal corporation of the State of California

JOHN AITKEN, A.A.E.
Director of Aviation

Date: _____

APPROVED AS TO FORM

Jon Calegari

JON CALEGARI
Deputy City Attorney

Date: 6/28/22

"AIRLINE"

British Airways PLC, a corporation organized and existing under the laws of the United Kingdom and authorized to do business in the State of California

Richard Mendles

Signature

Richard Mendles

Print Name

General Counsel Americas + Officer

Title

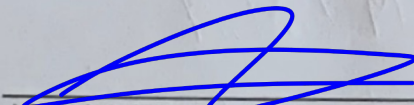
6/21/22

Date

IN WITNESS WHEREOF, the parties hereto have set their hands and corporate seals on this 28th day of June, 2022.

"CITY"

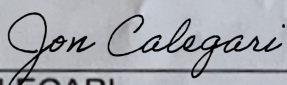
CITY OF SAN JOSE, a municipal corporation of the State of California



JOHN AITKEN, A.A.E.
Director of Aviation

Date: _____

APPROVED AS TO FORM

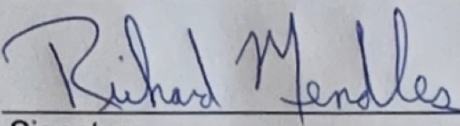


JON CALEGARI
Deputy City Attorney

Date: 6/28/22

"AIRLINE"

British Airways PLC, a corporation organized and existing under the laws of the United Kingdom and authorized to do business in the State of California



Signature

Richard Mendles

Print Name

General Counsel Americas + Officer

Title

6/21/22

Date

EXHIBIT A-1 AIRPORT SITE PLAN

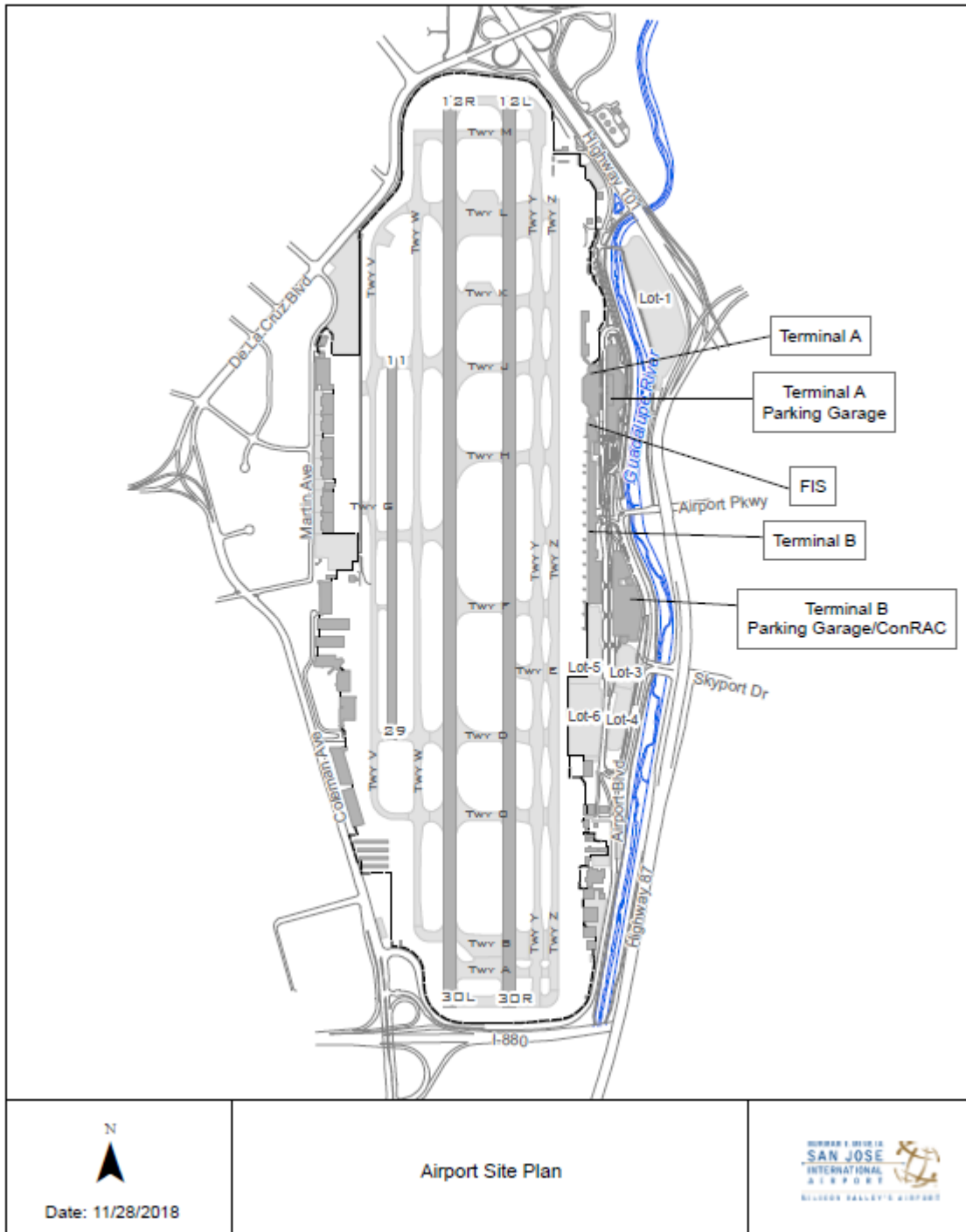


EXHIBIT A-2 GUADALUPE GARDENS AREA



EXHIBIT A-3 AIRPORT PROPERTY (VOR) NORTH OF AIRPORT



Service Layer Credits: Source: Esri, DigitalGlobe, GeoEye, Earthstar/Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community


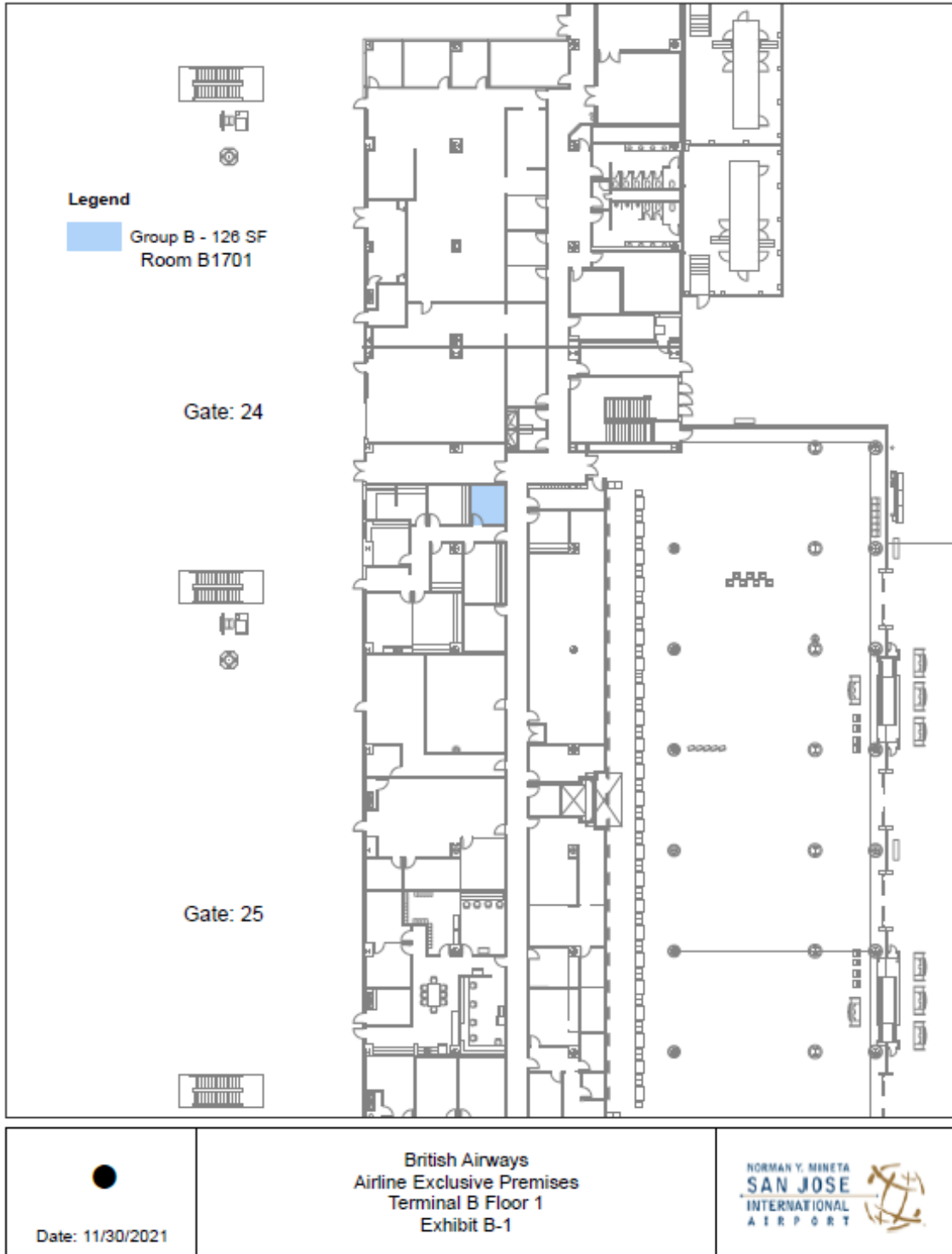
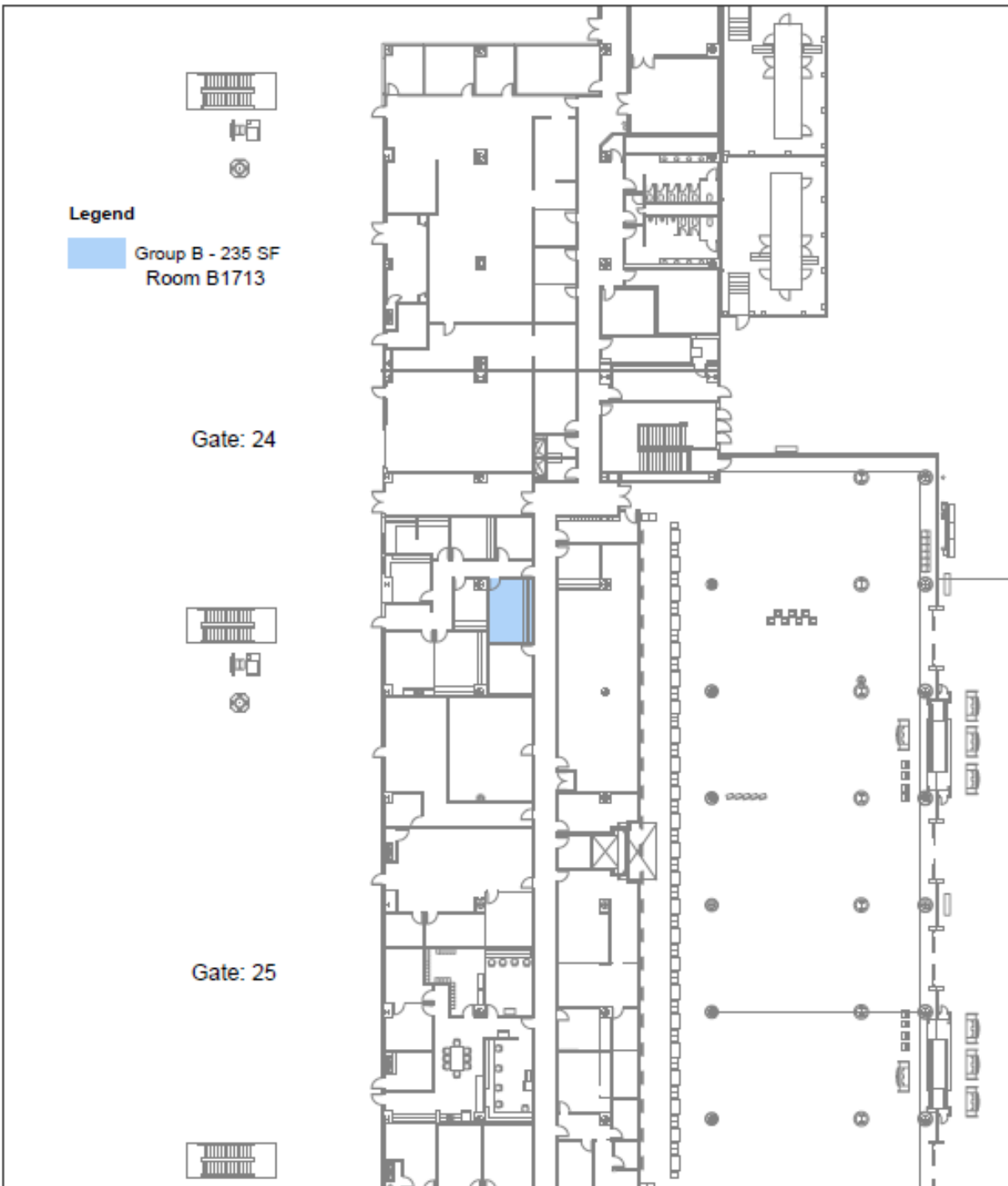
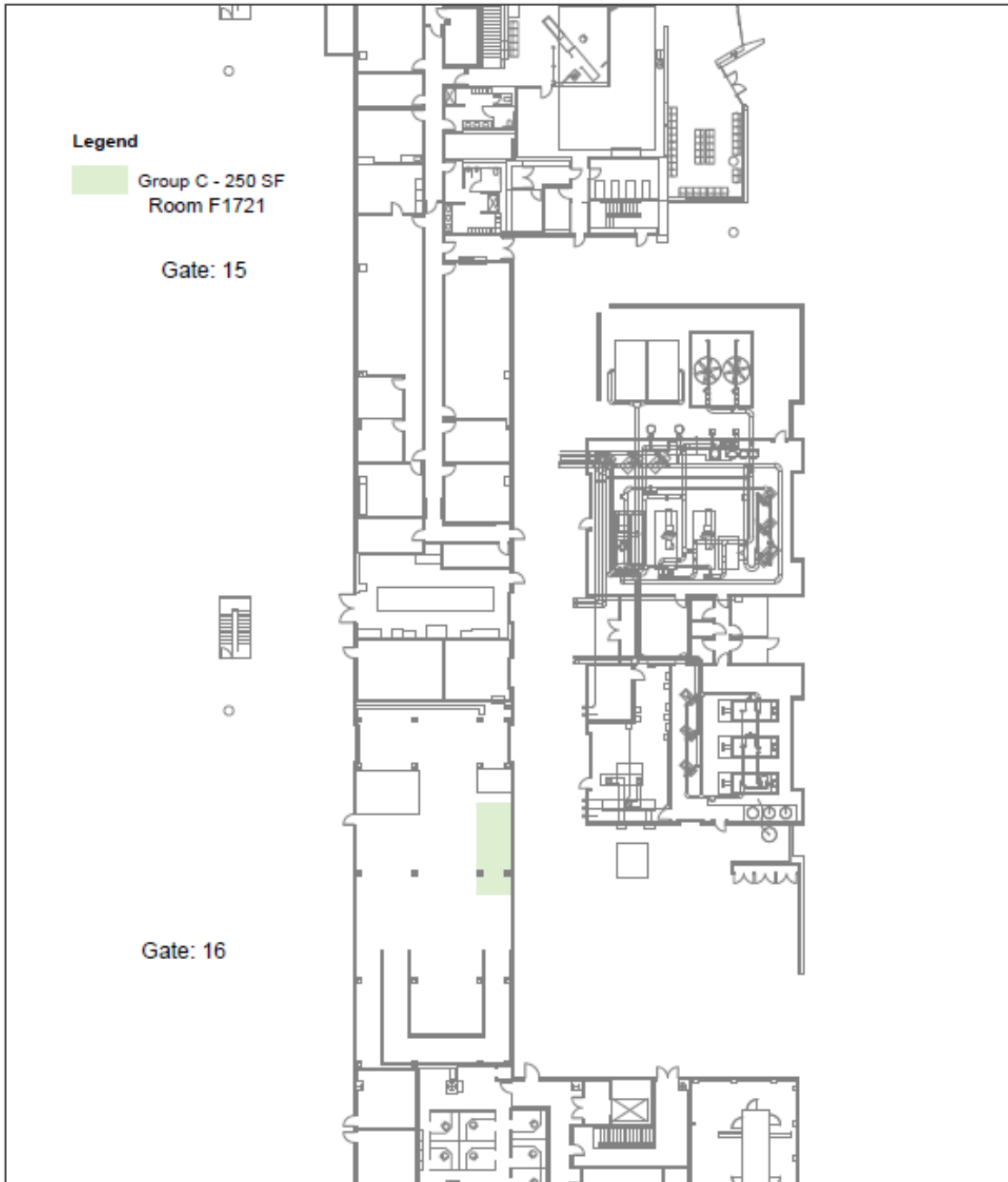
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EXHIBIT B
AIRLINE EXCLUSIVE USE PREMISES
To be based on specific Airline Exclusive Use Premises





 Date: 11/30/2021	<p>British Airways Airline Exclusive Premises Terminal B Floor 1 Exhibit B-2</p>	 <p>NORMAN Y. MINETA SAN JOSE INTERNATIONAL AIRPORT</p>
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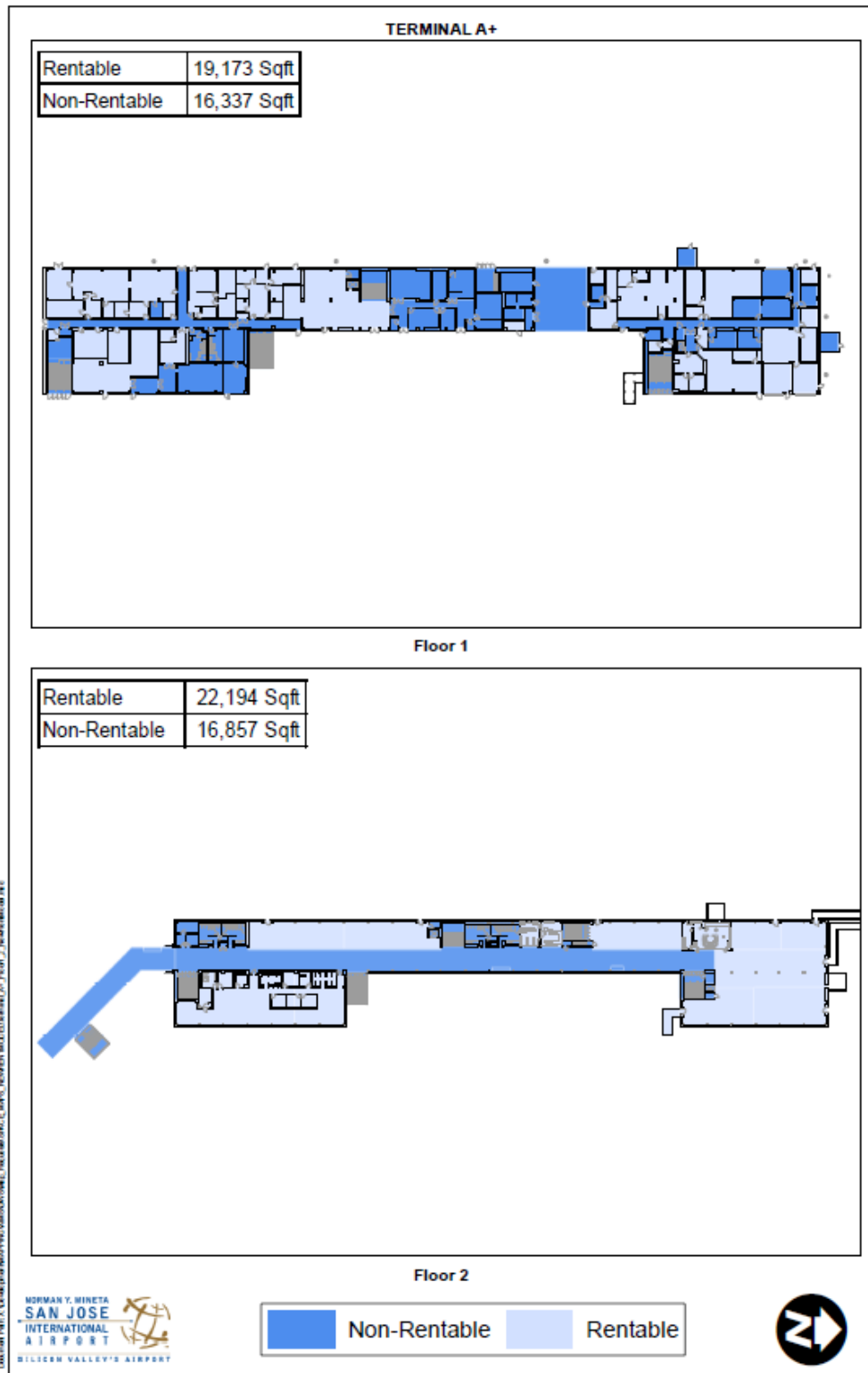
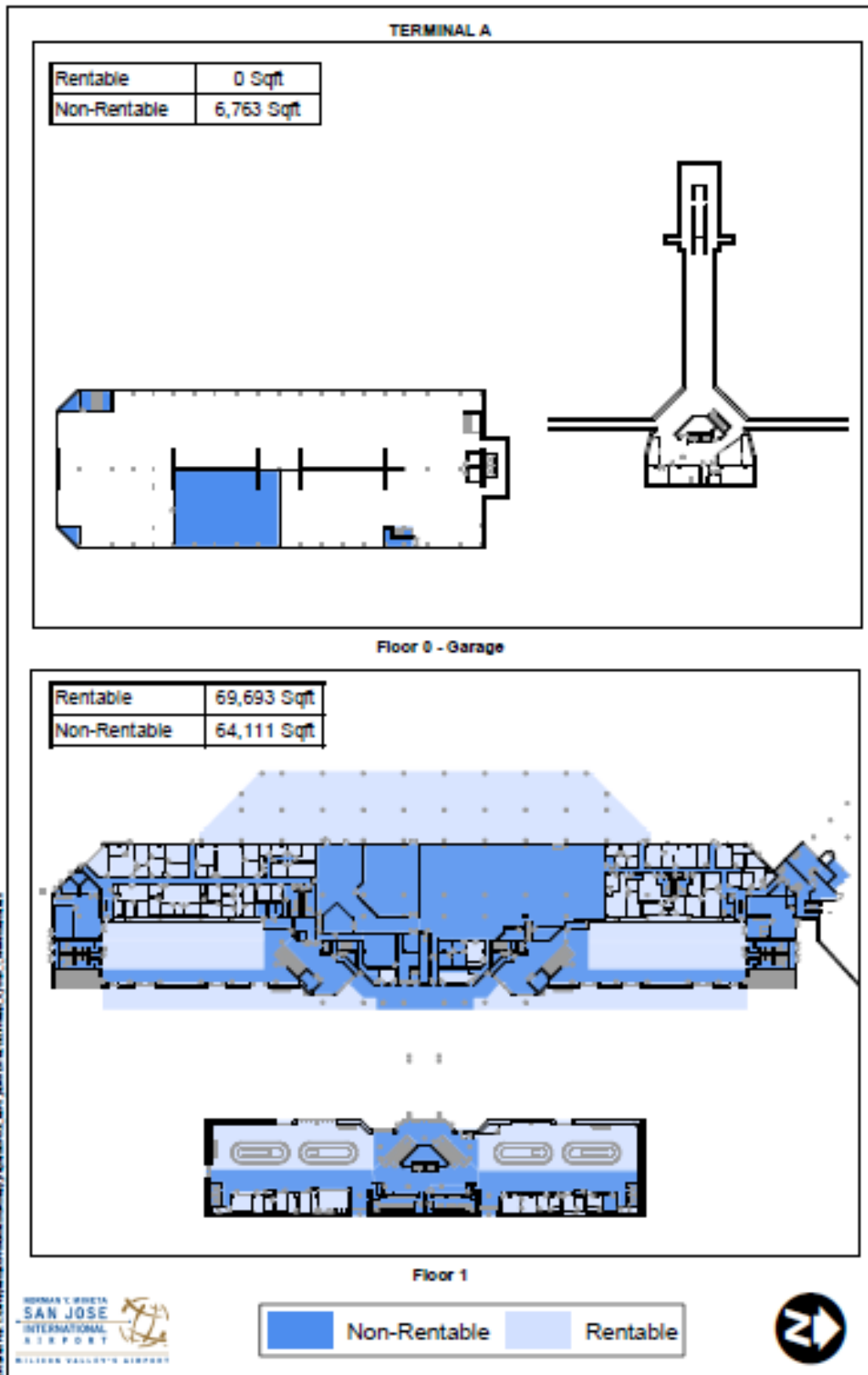
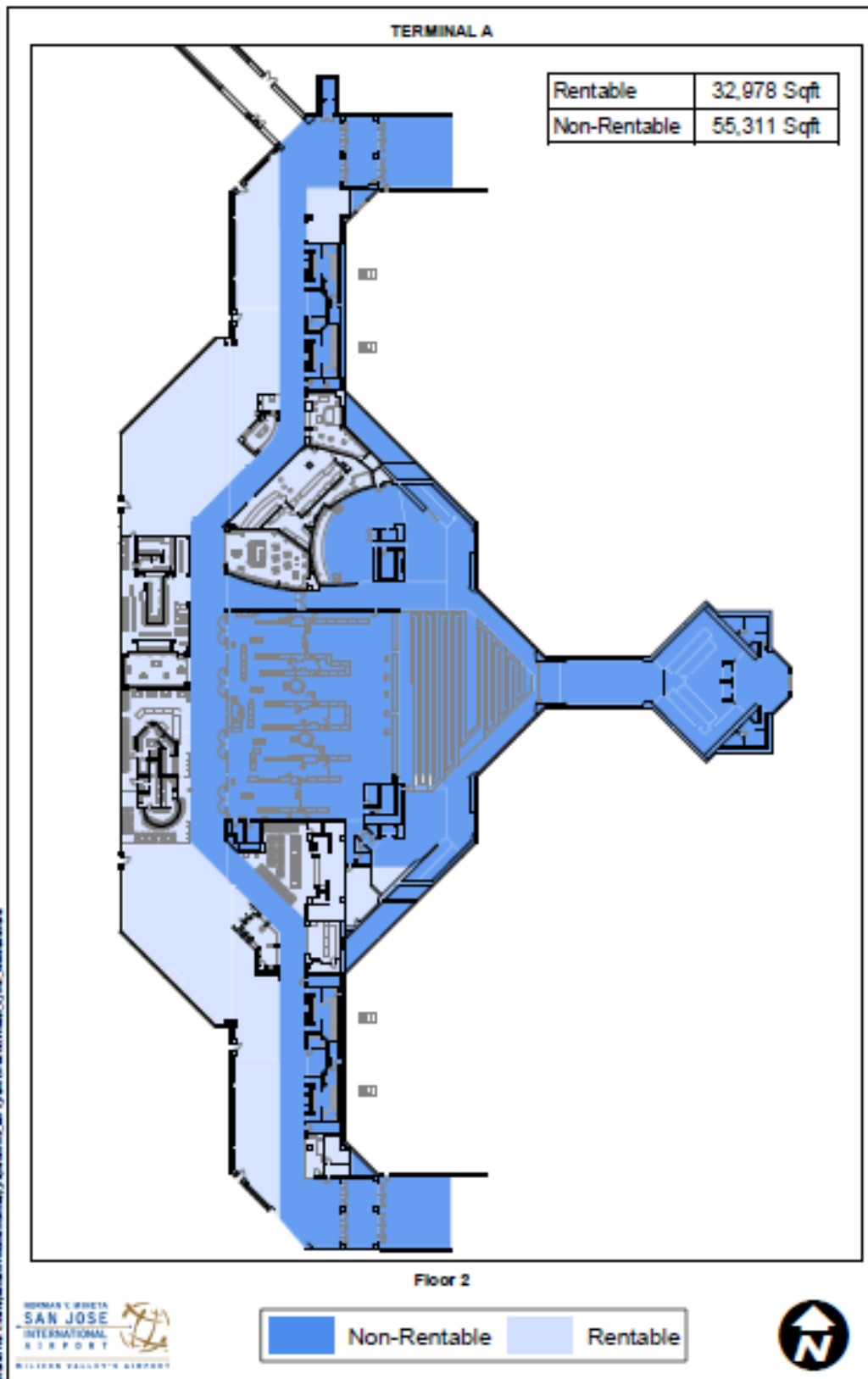
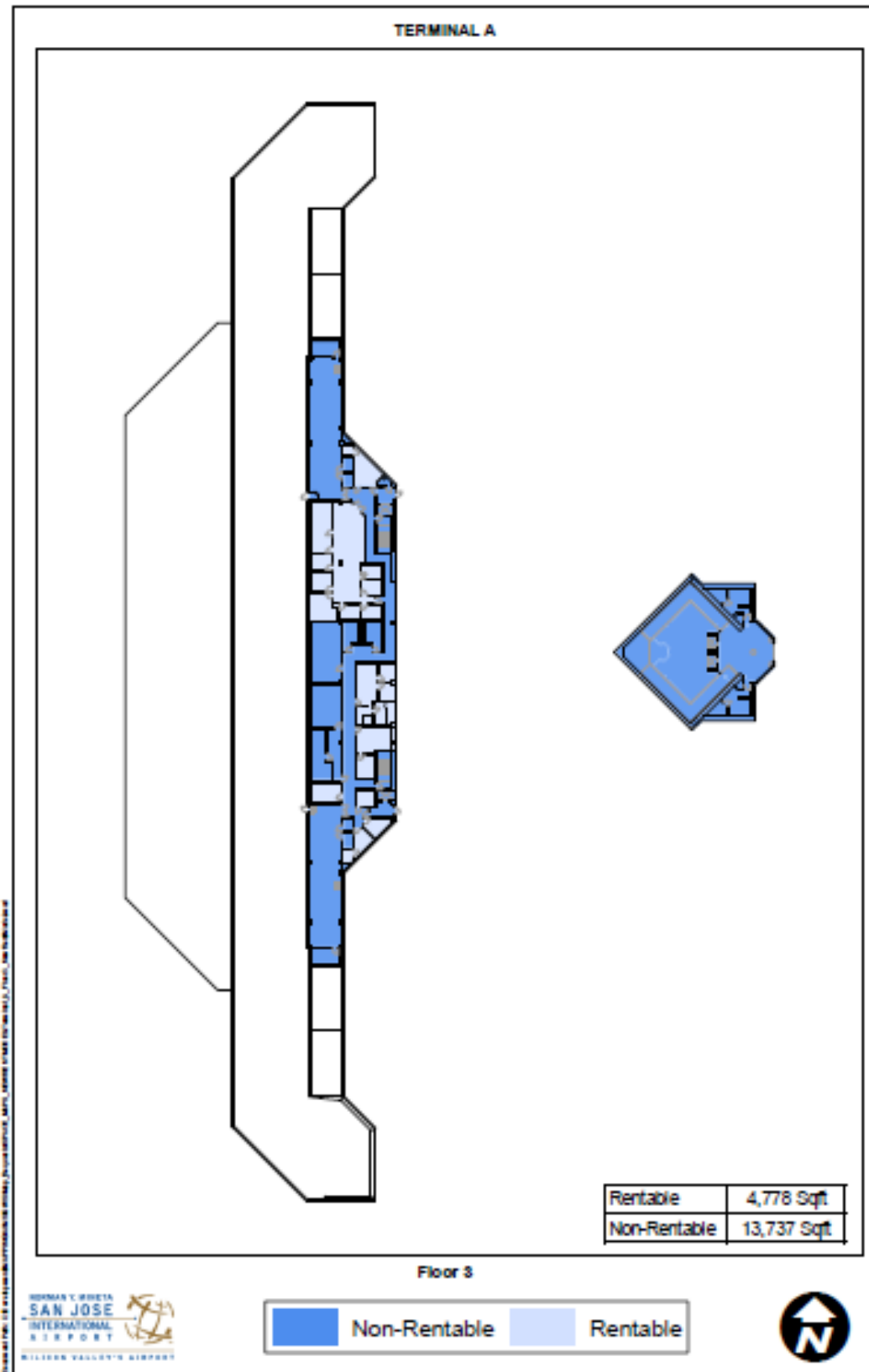
 Date: 11/30/2021	<p>British Airways Airline Exclusive Premises Terminal FIS Floor 1 Exhibit B-3</p>	<p>NORMAN Y. MINETA SAN JOSE INTERNATIONAL AIRPORT</p> 
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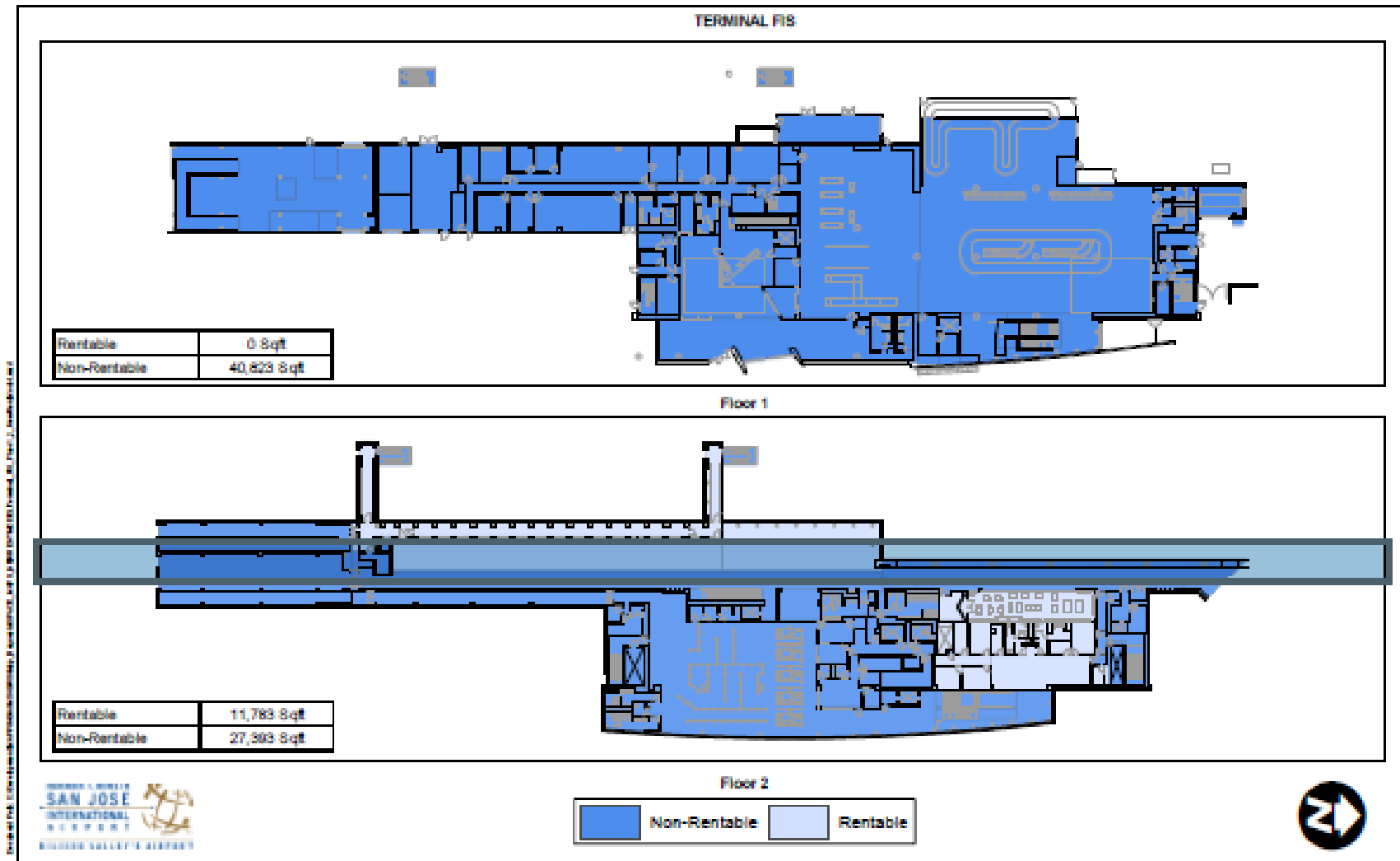
EXHIBIT C SUMMARY OF TERMINAL AREAS





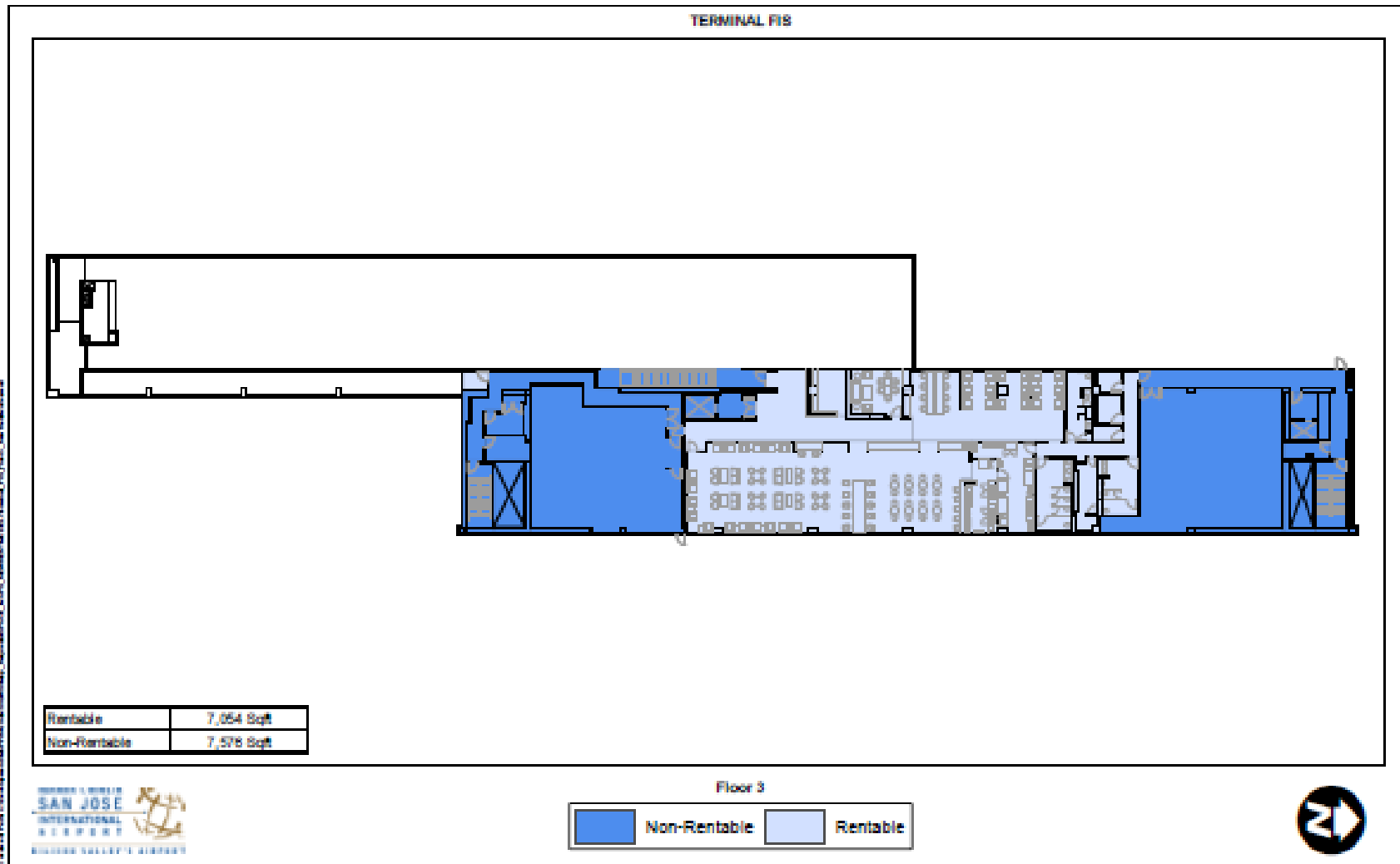


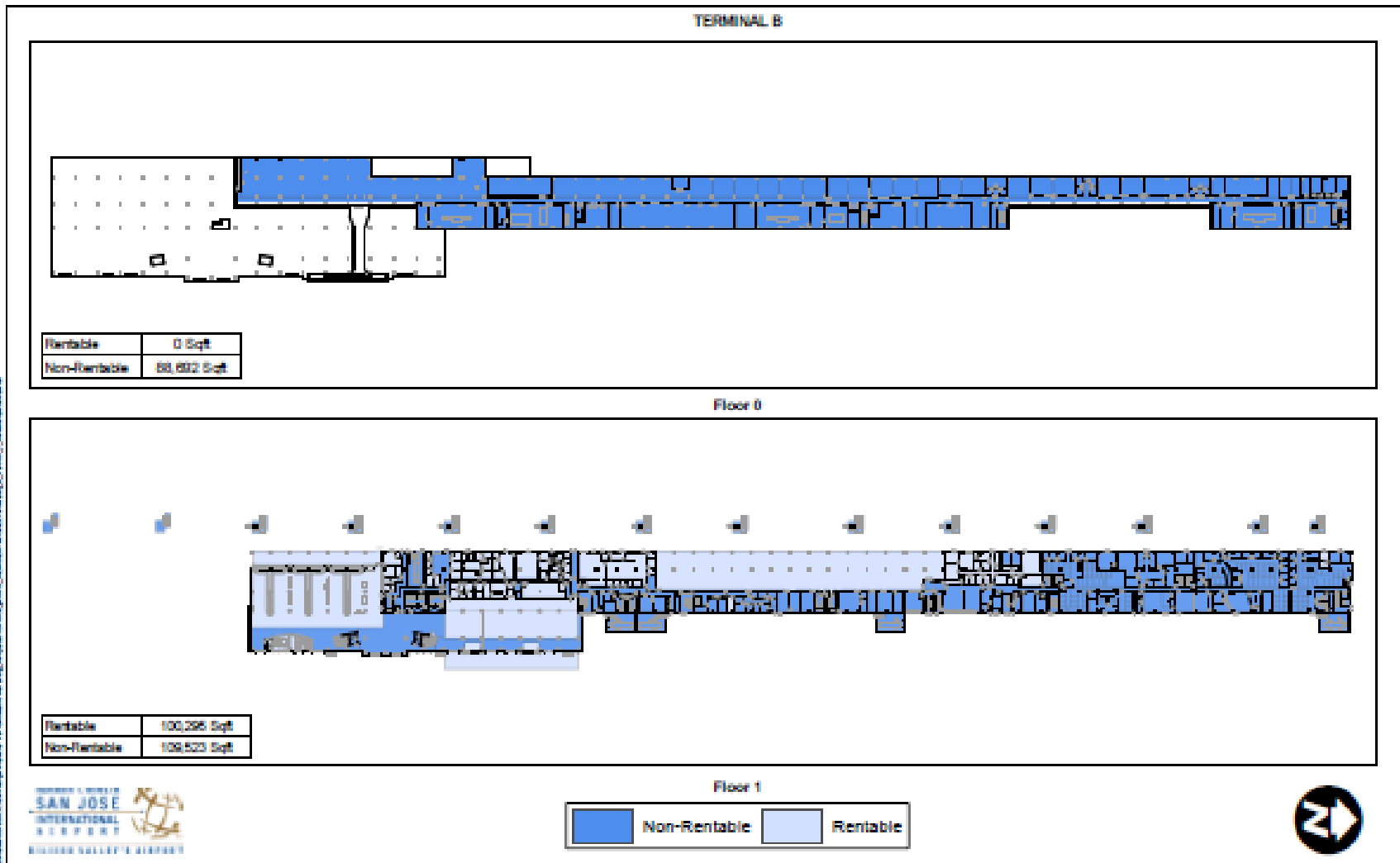




San Jose International Airport Authority, 1700 International Blvd., San Jose, CA 95119







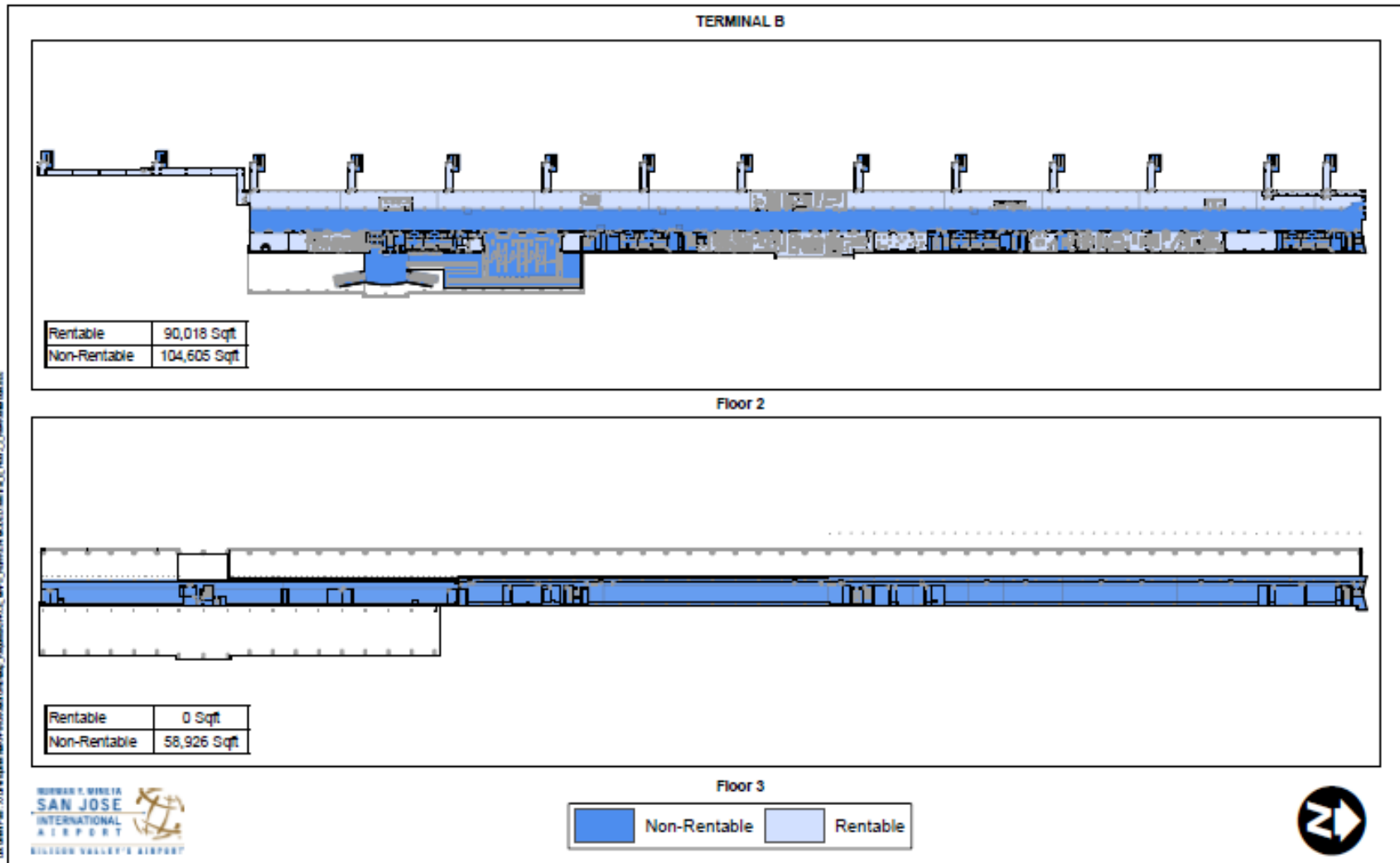
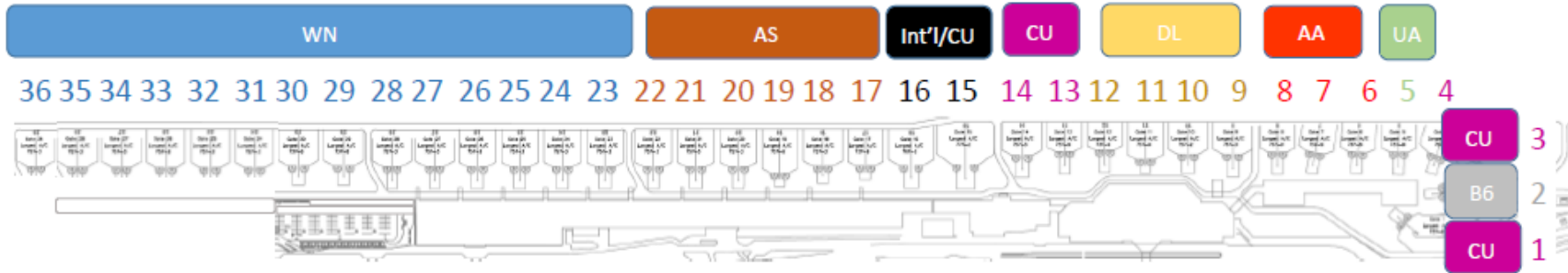


EXHIBIT D PREFERENTIAL AND COMMON USE PREMISES



2019-2020 Gate and Ticket Counter Allocation FINAL OFFER

Preferential Gate Assignments

Signatory Carrier	Scheduled Outbound Seats 10/2017-09/2018	Percentage of Total Outbound Seats 10/2017-09/2018	25 Gates	Number of Preferential Gates Offered	Adjustments for Airline Rejection of Gates	Number of Preferential Gates Assigned	Location of Gates
AA	755,095	8.51%	2.13	2	Accept All + 1	3*	6-8
AC	73,641	0.83%	0.21	0			
AM	76,008	0.86%	0.21	0			
AS	1,561,264	17.60%	4.40	5	Accept All + 1	6*	19-22 + (13,14,17,18**)
B6	310,900	3.51%	0.88	1	Accept All	1	2
BA	71,928	0.81%	0.20	0			
DL	848,916	9.57%	2.39	2	Accept 2 + 2	4*	9-12
F9	151,680	1.71%	0.43	1	Reject All		
HA	188,552	2.13%	0.53	1	Reject All		
HU	53,100	0.60%	0.15	0			
NH	64,996	0.73%	0.18	0			
UA	366,392	4.13%	1.03	1	Accept All	1*	5
WN	4,265,113	48.09%	12.02	12	Accept + 2	14*	23-36***
Y4	80,938	0.91%	0.23	0			
Total	8,868,523	100.00%		25		29	

Type of Gate	Total
Common Use Gates	5
Preferential Gates	29
International Gates	2
Rejected Gates	0
Total Gates	36

*Note: Gate Allocation Valid on July 1, 2019 or as gate move schedule allows.

**Note: Depending on gate availability

***Note: Gate 36 available 11/2019

**2019-2020 Gate and Ticket Counter Allocation FINAL OFFER
Preferential Ticket Counter Assignments**

Signatory Carrier	Number of Preferential Gates Offered	Number of Preferential Ticket Counters Earned Based on Gates Offered	Number of Preferential Ticket Counters Offered	Adjustments for Airline Rejection of Gates or Ticket Counters	Number of Preferential Ticket Counters Accepted	Terminal Location	Location of Ticket Counters
American	2	2	4 Positions	Accept All + 2	4	T/A	South Lobby: TK 27-30
Air Canada	0	0	0 Positions				
Aeromexico	0	0	0 Positions				
Alaska	5	4	8 Positions	Accept All + 1	5	T/B	TK 31-35
JetBlue	1	2	4 Positions	Accept All	2	T/A	North Lobby: TK 11-12
British Air	0	0	0 Positions				
Delta	2	2	4 Positions	Accept All + 2	4	T/A	North Lobby: TK 3-6
Frontier	1	2	4 Positions	Reject All			
Hawaiian	1	2	4 Positions	Reject All			
Hainan	0	0	0 Positions				
All Nippon	0	0	0 Positions				
United	1	2	4 Positions	Accept All + 1	3	T/A	South Lobby: TK 16-18
Southwest	12	7	14 Positions	Accept All + 1	8	T/B	TK 46-53
Volaris	0	0	0 Positions				
Total	25	23	46 Positions		26		

Type of Counter	Total
Common Use Counters	25
Preferential Counters	26
Unassigned Counters	2
Rejected Counters	0
Total Ticket Counters	53

Note: Ticket Counter Allocation Valid: July 1, 2019 – June 30, 2029 or triggering event as outlined in the Airport-Airline Lease Agreement, section 6.04

EXHIBIT E



NORMAN Y. MINETA
SAN JOSE
INTERNATIONAL
A I R P O R T

**Terminal Resource
Assignment, Use and
Scheduling
Procedures**

January 2019

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General Information

Section 1.1 - Purpose

City and Passenger Carriers agree that availability of Common Use and Preferential Use Gates, Ticket Counters, Skycap Positions, baggage areas and Aircraft Parking Spots at the Airport is limited and requires frequent coordination for use of these facilities among City and the Passenger Carriers. In accordance with the Airline-Airport Lease and Operating Agreement (the Lease), the following Terminal Resource Use, Assignment and Scheduling Procedures (the Procedures) are established to govern the use of all Preferential and Common Use Gates, Ticket Counters, Skycap Positions, Baggage Claim Areas, Baggage Make-up Areas, Aircraft Parking Spots, Hardstands and Remain Overnight (RON) Aircraft Parking Spots at the Norman Y. Mineta San José International Airport (the Airport) by all Passenger Carriers.

The terms and conditions of these Procedures are intended to be consistent with the Lease and may be modified only with the approval of the Director, provided that such modifications are consistent with the Lease. Where there is a conflict between the Procedures and the Lease, the provisions of the Lease shall apply.

Section 1.2 - Effective Date

The Procedures shall take effect on July 1, 2019 and shall remain in effect, as may be amended, until rescinded in writing by the Director.

Section 1.3 - Terms and Definitions

Active Flight shall mean an aircraft occupying or scheduled to occupy a Gate for a period not to exceed the applicable maximum occupancy period specified in Section 3.2 for the purpose of unloading or loading passengers, baggage, or cargo or allowing the aircraft to be refueled or serviced.

Advance Schedule shall mean a Passenger Carrier flight schedule submitted no later than 45 days in advance of the month in which the scheduled flight activity will take place.

Advanced Schedule(s) shall include for each flight: (a) arrival flight number and departure flight number, (b) the scheduled Arrival and Departure times, (c) the aircraft type, (d) the frequency of the operation, (e) the city of origin and destination and (f) the preferred resource for each flight.

Affiliate shall mean one or more other Passenger Carriers so designated by a Signatory Airline provided that each such other Passenger Carrier (a) is a wholly-owned subsidiary or code-share partner of the Signatory Airline or the Signatory Airline's parent company and (b) is party to a Non-Signatory Operating Agreement with City.

Aircraft Parking Spot shall mean any space an aircraft may be parked at, including cargo and remote areas.

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

Arrival shall mean a flight by a Passenger Carrier to deplane passengers, baggage and cargo at the Airport.

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

CUSS (Common Use Self Service Kiosks) shall mean the Airport systems which provide passengers the ability to check in for flights, print boarding passes and/or print bag tags, but not including any Airlines' proprietary equipment and systems.

Departure shall mean a flight by a Passenger Carrier to a destination other than the Airport.

Director shall mean the Director of Aviation of City and shall include such person or persons as may be from time to time be authorized by City or by the Director or applicable law to act for the Director with respect to any or all matters pertaining to these Procedures.

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

Extended Ground Time shall mean a Domestic Flight scheduled to remain on the ground at the Airport for longer than ninety (90) minutes and an International Flight scheduled to remain on the ground at the Airport for longer than two (2) hours.

FIS (Federal Inspection Services) shall mean those services provided by federal agencies responsible for the inspection of passengers, baggage and cargo entering the United States.

Gate shall mean these portions of the Terminal individually comprised of a passenger loading bridge, if any, and a passenger holdroom, as well as the ramp parking position adjacent to the Gate.

Gate Occupancy Time shall mean the time that exists between an aircraft actually blocking at the Gate and the time that the aircraft breaks and pushes back from the Gate.

Gate Planning Time shall mean the time between the scheduled Arrival time of an aircraft at a Gate and the scheduled Departure time from the Gate.

Hardstand shall mean a paved area on the airfield reinforced for heavy aircraft parking that may be utilized as a ground boarding Aircraft Parking Spot.

Inactive Flight shall mean an aircraft flight when it is occupying or scheduled to occupy a Gate during a period exceeding the applicable maximum occupancy period for an Active Flight specified in section 3.2.

International Flight shall mean an aircraft arriving from or departing to an Airport located outside of the United States, which has passengers and/or cargo onboard that require clearance by Federal Inspection Services.

International Gate shall mean any Gate with direct passenger access to FIS Facilities.

Originator shall mean the first segment of the first flight of the day.

On-block Time shall mean the actual time recorded by Airport Operations at which the aircraft arrives at the Gate.

Passenger Carrier shall mean a legal entity certificated by the Secretary of the U.S. Department of Transportation under 49 U.S.C. § 41102.

Period of Use – Gate shall mean, for Arrivals and Departures of aircraft that are scheduled to arrive at the Airport and directly, from fifteen (15) minutes prior to the time of the scheduled Arrival until the actual Departure of the aircraft from the Gate or fifteen (15) minutes after the scheduled Departure time, whichever is the earlier to occur, provided, however, that the Period of Use shall be extended in the aircraft is being boarded and actively prepared for Departure, but only until the completion of the boarding process.

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

Period of Use – Skycap Position shall mean from two (2) hours prior to scheduled departure until scheduled departure for Domestic or International Flights.

Precleared Flight shall mean an Arrival that originates from a destination wherein the passengers clear U.S. customs, immigration, and other federal inspections before boarding their flight to the Airport.

Preferential Use Premises shall mean those portions of the Terminal and Terminal Aircraft Aprons, as shown in Exhibit D to the Lease, to which Airline shall have priority use over other Passenger Carriers, subject to the provisions of Articles 5 and 6 of the Lease.

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

Push Back shall mean the actual time recorded at which time the aircraft leaves the Gate under its own or external power.

RMAC shall mean the Resource Management Advisory Committee as described in Section 5.09 of the Lease.

RON (Remain Overnight) shall mean a flight remaining or scheduled to remain at the Airport overnight for a next-day Departure or a flight that reaches an Extended Ground Time.

Scheduled Airline shall mean a Passenger Carrier performing Scheduled Operations at the Airport.

Scheduled Flight shall mean a regularly operated flight as submitted to the Airport in an Advance Schedule.

Scheduled Operation shall mean a Scheduled Airline's operation (Arrival or Departure) that occurs pursuant to a schedule that is published in the Official Airline Guide (OAG) or any successor publication so long as such schedule is made available to the Airport at least forty-five (45) days prior to the commencement or rescheduling of the operation.

Scheduled Seats shall mean the average daily number of outbound seats on a Passenger Carrier's Scheduled Operations for the preceding twelve (12) month period of October through September (including nine (9) months of actual data for October through June and three (3) months of forecast data for July through September), to be computed by dividing total outbound seats for a Passenger Carrier's Scheduled Operations for those twelve (12) months by three-hundred and sixty-five (365).

Secondary User shall mean a Passenger Carrier scheduled by the Airport to a Preferential Use Gate that is Preferentially assigned to another Passenger Carrier.

Signatory Airline shall mean a Passenger Carrier that has signed the Lease with the City.

Terminal shall mean the passenger terminal buildings as set forth in Exhibit A-1 of the Lease.

Turn-Around shall mean a flight by a Passenger Carrier that deplanes passengers, baggage and cargo upon Arrival, remains at the Gate and then enplanes passengers, baggage and cargo for the purposes of departing a flight to another destination.

Section 1.4 - Modification of the Terminal Resource Use, Assignment and Scheduling Procedures

As this Airport and our industry continue to change, the Procedures contained herein may also need to be periodically amended to ensure our continuous safe, efficient and cost effective operation.

As the need for a procedure change is identified, either by the Director or by a Passenger Carrier, the Director will utilize the following process to implement changes to these Procedures:

- The Director (or designee) will meet with the RMAC to determine who will be affected by the proposed procedure change. They will discuss the procedure in question (or lack thereof) so that all parties have a clear understanding of the issues.
- The Director (or designee) will work with the RMAC to develop the new procedure. Consensus on the new procedure is the goal of this process. However, if consensus cannot be reached, Airport staff will draft the proposed procedure and document all of the RMAC's concerns.
- The Director (or designee) will review the proposed procedure change or new procedure along with any concerns or comments provided by the RMAC.
- After reviewing the proposed procedure change or new procedure and considering the input from the RMAC, the Director, in his or her sole discretion, will determine the final change, if any, to the Procedures. Any such change(s) shall be made in writing and attached as an exhibit to these Procedures.

Section 1.5 - Authority and Implementation

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

Gate Procedures

Section 2.1 - Introduction

The following sections cover the Procedures governing Passenger Carriers' operations at the Airport. These Procedures are intended to ensure the safe, efficient and fair use of Airport Preferential and Common Use Gates, Ticket Counters, Skycap Positions, baggage areas, Aircraft Parking Spots, Hardstands or RON Aircraft Parking Spots at the Airport.

Section 2.2 - Resource Scheduling

These rules provide airline and Airport staff guidance on the assignment of all Gates to ensure airline schedule protection, stability of Gate assignments, and procedures for adjusting Gate assignments for newly scheduled, off-schedule or non-scheduled operations. Several Gates and Aircraft Parking Spots at the Airport are considered Common Use and are assigned by the Airport for airline use. If an airline is in need of space that cannot be accommodated by available Common Use space, they may coordinate with the Airport for other available resources.

Responsibilities

The following general responsibilities must be reasonably fulfilled for these Gate, Aircraft Parking Spot, Hardstand and RON parking assignment rules to be effectively, efficiently, and equitably applied:

RMAC

- Review scheduling plans.
- Recommend revisions to the Procedures.
- Recommend options for the resolution of conflicts in the application of these procedures and use of Gates.
- Provide support to the Airport in ensuring the timely submittal of information required under these procedures by all participating Passenger Carriers.

Passenger Carriers

- Participate in quarterly and/or unplanned RMAC meetings.
- Provide Advance Schedules no later than 45 days prior to the start of the new month or schedule change.
 - Provide Gate assignments for those flights operating on Preferential Gates.
 - Identify any flights that cannot be accommodated on Preferential Gates.
 - Provide number of scheduled seats for each aircraft type or outbound flight.

- For international carriers, submit Advance Schedules for summer months by February 15th (or 45 days prior to commencement of schedule) and Advance Schedules for winter months by October 1st (or 45 days prior to commencement of schedule).
- For all airlines, provide timely notification to Airport of flights operating at different times or spaces than are published in the Advance Schedule.

Airport

- Lead RMAC meetings as needed.
- Receive and compile Advance Schedules as provided by the airlines, outlined above.
- Identify and evaluate priorities in Gate scheduling.
- Develop monthly Common Use Gate assignment schedules based on forecasted schedules.
- Communicate Gate assignments to all relevant parties.

Requested flights scheduled with less than the required advance notice period specified above will be assigned to Common Use Gates only after all other requests have been accommodated in accordance with the procedures and priorities specified herein.

Section 2.3 - Conflict Resolution

The Director (or designee), working in conjunction with the RMAC, will use his or her best efforts to resolve conflicts arising under these procedures.

In the event conflicts under these procedures are not resolved by the Airport in conjunction with the RMAC, the Director (or designee) shall have final authority for conflict resolution.

Gate Planning and Review Process

Section 3.1 - Monthly Common Use Gate and Aircraft Parking Spot Schedule Review

The Airport and RMAC shall schedule regular meetings to review, discuss and adjust the draft schedule in an effort to schedule flights at Common Use Gates or Aircraft Parking Spots.

The Airport will publish a Common Use Gate schedule for those flights that cannot be accommodated on Preferential Gates. After review of the schedules has been completed by the RMAC and Airport, the Airport will publish a Common Use Gate and Aircraft Parking Spot Schedule at least two weeks prior to the start of the new month.

Section 3.2 - Allocation of Common Use Gates

The following is a list in descending order of priority for access to the Common Use Gates for Arriving flights:

1. Signatory FIS Flight on the Advance Schedule
2. Non-signatory FIS Flight on the Advance Schedule
3. Signatory Domestic Flight on the Advance Schedule
4. Non-signatory Domestic Flight on the Advance Schedule
5. Signatory FIS Flight not on the Advance Schedule
6. Non-Signatory FIS Flight not on the Advance Schedule
7. Signatory Domestic Flight not on the Advance Schedule
8. Non-Signatory Domestic Flight not on the Advance Schedule

Signatory Flights on the Advance Schedule will have priority access to Common Use Gates over FIS flights not on the Advance Schedule, whether they are Signatory or not.

Section 3.2.1 – Gate Occupancy Time

Should a conflict be forecasted or arise at a Common Use Gate, Aircraft Parking Spot or Hardstand, the Airport will allocate aircraft to use the Airport’s Common Use Gates, Aircraft Parking Spots and Hardstands as well as Preferential Gates, Aircraft Parking Spots and Hardstands (with availability) based on the Domestic / International gate times as outlined below:

<50 Seats	Domestic			Domestic/ International
	Precleared	International	International/Domestic	
Total Time on Gate	60	75	75	75
Arrival Gate	30	45	45	30
Departure Gate	30	30	30	45
150-200 Seats	Domestic			Domestic/ International
	Precleared	International	International/Domestic	
Total Time on Gate	60	90	80	80
Arrival Gate	30	60	50	30
Departure Gate	30	30	30	50
>200 Seats	Domestic			Domestic/ International
	Precleared	International	International/Domestic	
Total Time on Gate	90	120	105	120
Arrival Gate	45	75	75	45
Departure Gate	45	45	30	75

Those flights that remain overnight at the Airport will be allocated the time mentioned above at a Common Use Gate, Aircraft Parking Spot or Hardstand as the flight will be

treated as an independent Arrival or independent Departure if the aircraft is required to relocate from or to a Common Use Gate, Aircraft Parking Spot or Hardstand.

Section 3.2.2 - Flights on Submitted Monthly Flight Schedules

A flight scheduled to occupy a Gate for a period shorter than the maximum Gate occupancy period specified above shall have the right to occupy the Gate only for the period scheduled on the Airport's published Common Use Gate and Aircraft Parking Spot Schedule as outlined in section 3.1.

A flight with a scheduled ground time in excess of the maximum specified in the preceding table will be treated as two separate flights, an independent Arrival and an independent Departure. In this instance, Airline may have to tow the aircraft from the first Gate or Hardstand to the next Gate or Hardstand at Airline's expense.

Section 3.2.3 – Deviations from Prior Scheduled Gate Use

Airport Operations must be notified whenever a flight scheduled to a Common Use Gate deviates by more than 15 minutes of scheduled time, as soon as such information becomes known to the Airline.

Section 3.2.4 – Irregular Operations

Flights at a Common Use Gate beyond the prescribed Period of Use are required to maintain the ability to vacate the Gate upon reasonable notification by the Airport.

Air Carriers operating flights at Gates without Preferential status may be required to relocate the aircraft to a Hardstand in the event that the Air Carrier has canceled the flight occupying the Gate.

A RON flight or other extended-stay flight may be assigned to a Common Use Gate for a period longer than specified if such assignment does not prevent a requested Active Flight from being accommodated.

The Gate occupancy times do not apply to operations on Preferential Use Gates that are operated by the airline with Preferential Use rights except in those cases outlined in Section 4.1 in which the Airport has scheduled a secondary user at the Preferential Gate as indicated on the Common Use Gate schedule published by the Airport.

Section 3.3 Scheduling Conflict Resolution

In any case where two or more flights conflict with each other in terms of Gate occupancy, within each level of priority, flights will be given priority to use a Gate in the following order:

1. Turnaround Flight
2. Departure Only Flight
3. Arrival Only Flight

When two or more flights meet the description of any of the individual categories listed,

- a flight operated by an aircraft with a higher capacity has priority over a flight operated by an aircraft with a lower capacity where capacity is defined by the number of seats;
- an on-schedule flight has priority over an off-schedule flight; and
- where two flights are off-schedule, the flight whose estimated time is closest to its scheduled time has priority over the other flight.

New and/or revised flight schedules submitted to the Airport that propose an earlier Arrival, a later Departure, or a different type or size aircraft that create a conflict with other existing flights may require the Airport to move the newly proposed flight creating the conflict to a different Gate other than the Gate currently assigned.

In the event that a new flight is introduced to the schedule for the Airport, the new flight will not be prioritized above existing operations based on the existing flight operations on Common Use Gates, Aircraft Parking Spots and Hardstands as published in the Common Use Gate and Aircraft Parking Spot Schedule.

All Airport decisions concerning Common Use Gate and Aircraft Parking Spot assignments are final.

Gates – Use and Scheduling Rules

Section 4.1 Preferential Use Gates

Air Carriers assigned Preferential Use Gates shall have the right to add additional operations to their Preferential Use Gates during available Periods of Use, as that term is defined in section 5.02.1 of the Lease, after providing the Airport with forty-five (45) days prior written notice.

Should an Air Carrier assigned Preferential Use Gates choose to add an operation on any of its Preferential Use Gates that conflicts with the scheduled flight of a secondary user at that Preferential Use Gate, the Air Carrier shall provide the Airport with at least sixty

(60) days written notice of its schedule change. If the Airport is unable to accommodate the Secondary User at another Gate, the Air Carrier assigned to the Preferential Use Gate will have to modify the scheduled flight time of the proposed additional operation that is consistent with the open period of use.

The Airport has the right to assign Secondary User(s) to Preferential Use Gates and Aircraft Parking Spots in accordance with Article 5 of the Lease. In addition:

- Secondary Users shall be permitted to remain at the assigned Gate for a complete operation, provided the operation does not exceed the Period of Use.
- Should the Secondary User's operation exceed the Period of Use, then the Secondary User may be required to vacate the Gate, at its sole expense, upon notification by the Airport. The Secondary User may be reassigned to another Gate to complete its operation.
- Should a Secondary User choose to add operations at the Airport, the Secondary User must provide the Airport with a minimum of sixty (60) days prior written notice, provided that there is time available at the requested Gate, Aircraft Parking Spot, Hardstand and RON Aircraft Parking Spot. The Airport agrees to use its best efforts, but shall not be obligated, to provide the Secondary User with an alternate Gate should the preferred Gate(s) be unavailable for the desired Period of Use.
- Should a Preferential User's operation exceed the Period of Use, then the Preferential User may be required to vacate the Gate, Aircraft Parking Spot or Hardstand, at its sole expense, upon notification by the Airport.

Section 4.2 Common Use Gate Assignment Procedures

The Airport shall implement the Gate assignments for Common Use Gates on a day-to-day basis.

Unless previously agreed by the affected Air Carriers with concurrence from the Airport, other aircraft must not be scheduled to use any portion of an Air Carrier's Period of Use.

An early Arrival may enter an assigned Gate at any time prior to scheduled Arrival, provided the preceding aircraft assigned to that Gate has departed and the Gate is available.

Air Carriers will provide their estimated time of Arrival to the Airport not less than one hour following the scheduled Departure from the origin city, and not less than one hour prior to its scheduled Arrival. Status of delayed flights thereafter will be reported to the Airport in 30 minute increments. Flights with duration of less than one hour shall report estimated time of Arrival as soon as possible after Departure.

Air Carriers shall advise the Airport if a departing aircraft is delayed more than 15 minutes from its scheduled Departure. The Airport may require an Air Carrier to tow-off a delayed aircraft from a Gate if there is no other reasonable way to accommodate another scheduled flight.

In the event of disrupted airfield operations, an aircraft with a pre-approved Extended Ground Time may be required to be towed off a Gate to an alternative parking position, if the Airport finds no alternative means to accommodate another scheduled flight.

The Airport will attempt to re-assign an aircraft, which lost priority due to a delay, to another Common Use or Preferential Use Gate at the first available time, at the highest level of priority that is consistent with the original priority level of the flight, provided, however, that such reassignment will not displace an Air Carrier operating on schedule. Reassignment of a pre-assigned Common Use Gate may be required to minimize the effects of the delayed flight. The reassignment of on-time flights will be limited to only those times when a higher priority flight is delayed or, as agreed upon by the affected carriers. The Airport will attempt to re-assign an aircraft to a Gate in close proximity to the Air Carrier's normal operational area.

International airlines shall provide daily flight information via email to Airport Operations at AirportOperationsCenter@sanjoseca.gov to include; estimated time of Arrival, number of inbound, connecting and outbound passengers as well as estimated time of Departure.

Section 4.3 Unaccommodated Flights

In the event that an insufficient number of Gates exist to meet the demand for newly scheduled flights submitted to the Airport for incorporation into the Gate schedule, the following steps will be taken:

- A. The Airport will consult with the involved Airlines to seek flight changes to resolve the situation during the planning and review process described in Section 3.1.
- B. The Airport will consult with the airlines that have Preferential resources to find a suitable Gate, Aircraft Parking Spot or Hardstand for the flight. The Airport will follow the steps as outlined in Section 4.1.
- C. The Airport will ask any airline with scheduled flight activity during the conflict period, in which the flight requires a resource, if the air carrier prefers to utilize a Common Use Aircraft Parking Spot or Hardstand for passenger processing.
- D. If the Airport/Airline consultation fails to produce a solution to conflicts between two or more newly scheduled flights, the Airport will prioritize and assign Common Use Gates, Aircraft Parking Spots and Hardstands based on the priorities set in sections 3.2, 3.3 and by number of seats scheduled.

The following aircraft operations at Common Use Gates, Aircraft Parking Spots and Hardstands shall be assigned Aircraft Parking Spot or Hardstand locations in the order provided below until all aircraft are accommodated during the conflict period:

1. Non-signatory Domestic Arrival with fewer than 100 seats
2. Non-signatory Domestic Departure with fewer than 100 seats
3. Non-signatory Domestic Turn with fewer than 100 seats
4. Non-signatory Domestic Arrival with 100 or more seats and less than 151 seats
5. Non-signatory Domestic Departure with 100 or more seats and less than 151 seats
6. Non-signatory Domestic Turn with 100 or more seats and less than 151 seats
7. Non-signatory Domestic Arrival with 151 or more seats and less than 251 seats
8. Non-signatory Domestic Departure with 151 or more seats and less than 251 seats
9. Non-signatory Domestic Turn with 151 or more seats and less than 251 seats
10. Non-signatory Domestic Arrival with 251 or more seats and less than 300 seats
11. Non-signatory Domestic Departure with 251 or more seats and less than 300 seats
12. Non-signatory Domestic Turn with 251 or more seats and less than 300 seats
13. Non-signatory Domestic Arrival with 300 or more seats
14. Non-signatory Domestic Departure with 300 or more seats
15. Non-signatory Domestic Turn with 300 or more seats

16. Signatory Domestic Arrival with fewer than 100 seats
17. Signatory Domestic Departure with fewer than 100 seats
18. Signatory Domestic Turn with fewer than 100 seats
19. Signatory Domestic Arrival with 100 or more seats and less than 151 seats
20. Signatory Domestic Departure with 100 or more seats and less than 151 seats
21. Signatory Domestic Turn with 100 or more seats and less than 151 seats
22. Signatory Domestic Arrival with 151 or more seats and less than 251 seats
23. Signatory Domestic Departure with 151 or more seats and less than 251 seats
24. Signatory Domestic Turn with 151 or more seats and less than 251 seats
25. Signatory Domestic Arrival with 251 or more seats and less than 300 seats
26. Signatory Domestic Departure with 251 or more seats and less than 300 seats
27. Signatory Domestic Turn with 251 or more seats and less than 300 seats
28. Signatory Domestic Arrival with 300 or more seats
29. Signatory Domestic Departure with 300 or more seats
30. Signatory Domestic Turn with 300 or more seats

31. Non-signatory International Arrival with fewer than 100 seats
32. Non-signatory International Departure with fewer than 100 seats
33. Non-signatory International Turn with fewer than 100 seats
34. Non-signatory International Arrival with 100 or more seats and less than 151 seats
35. Non-signatory International Departure with 100 or more seats and less than 151 seats
36. Non-signatory International Turn with 100 or more seats and less than 151 seats
37. Non-signatory International Arrival with 151 or more seats and less than 251 seats

38. Non-signatory International Departure with 151 or more seats and less than 251 seats
39. Non-signatory International Turn with 151 or more seats and less than 251 seats
40. Non-signatory International Arrival with 251 or more seats and less than 300 seats
41. Non-signatory International Departure with 251 or more seats and less than 300 seats
42. Non-signatory International Turn with 251 or more seats and less than 300 seats
43. Non-signatory International Arrival with 300 or more seats
44. Non-signatory International Departure with 300 or more seats
45. Non-signatory International Turn with 300 or more seats

46. Signatory International Arrival with fewer than 100 seats
47. Signatory International Departure with fewer than 100 seats
48. Signatory International Turn with fewer than 100 seats
49. Signatory International Arrival with 100 or more seats and less than 151 seats
50. Signatory International Departure with 100 or more seats and less than 151 seats
51. Signatory International Turn with 100 or more seats and less than 151 seats
52. Signatory International Arrival with 151 or more seats and less than 251 seats
53. Signatory International Departure with 151 or more seats and less than 251 seats
54. Signatory International Turn with 151 or more seats and less than 251 seats
55. Signatory International Arrival with 251 or more seats and less than 300 seats
56. Signatory International Departure with 251 or more seats and less than 300 seats
57. Signatory International Turn with 251 or more seats and less than 300 seats
58. Signatory International Arrival with 300 or more seats
59. Signatory International Departure with 300 or more seats
60. Signatory International Turn with 300 or more seats

In the event that two or more unaccommodated flights fall within the same prioritization category listed above, the aircraft with the fewest number of seats scheduled will be provided an Aircraft Parking Spot or Hardstand for passenger processing over an aircraft with a larger number of seats. Should two flights have the same number of seats scheduled, the flight with the shortest distance between the Airport and its scheduled destination will be provided an Aircraft Parking Spot or Hardstand location over a flight with a longer distance. If two aircraft have the same number of seats scheduled and the same scheduled destination, the Airport will assign the Common Use Gates, Aircraft Parking Spots and Hardstands in a manner that impacts the least number of Signatory Passenger Carriers.

Due to the demand of Gates, Aircraft Parking Spots and Hardstands at the Airport, the Airport reserves the right to assign all aircraft operating Domestic and Precleared flights on Common Use Gates in aircraft with less than 100 seats to utilize Aircraft Parking Spot and Hardstand locations for passenger processing.

The Terminal Management section of Airport Operations will have final approval on flight operations being relocated to Aircraft Parking Spot and Hardstand locations. The

Airport will also provide passenger transportation service between Aircraft Parking Spot and Hardstand positions and the terminal. The Airport is not responsible for transporting flight crew or support staff between the Aircraft Parking Spot and Hardstand positions and the terminal.

Ticket Counter Guidelines

Section - 5.1 Ticket Counter Scheduling and Periods of Use

General information pertaining to the scheduling and allocation of Ticket Counters and Skycap Positions are laid out in Article 6 of the Lease.

The periods of use for Ticket Counters are as follows: from two (2) hours prior to scheduled Departure until scheduled Departure for Domestic flights, and from three (3) hours prior to scheduled Departure until scheduled Departure for International flights.

The Airport shall have the right, upon reasonable notice to Airlines, to schedule at a Preferential Use Ticket Counter departures by a requesting airline at all periods of time other than the Preferential Airline's scheduled Period of Use.

In dealing with off/non-scheduled operations at the Ticket Counters, the Airport will use its best efforts to accommodate said operations so long as they do not impede the operations of on-schedule airlines with Preferential Use Ticket Counters. New flights not on the Advanced Schedule or submitted prior to the 45-day scheduling deadline will be prioritized last by the Airport when assigning Ticket Counter positions.

Section - 5.2 General Rules and Delays at the Ticket Counters

Ticket Counter assignment decisions are binding.

Ticket Counters will be assigned to Airlines by the Airport so as to permit the timely check-in of passengers and baggage for flights in a manner consistent with the Lease.

The Airport will use its best efforts to assign Common Use Ticket Counters at the locations preferred by requesting Airlines. In the case of conflicting requests, the Airport will assign available Ticket Counters so as to minimize delays to passengers and baggage and to minimize operational inconveniences to the requesting Airlines, but in a manner consistent with the Lease.

The CUSSs will be maintained and managed by the Airport.

In the event that an airline is delayed at its assigned Ticket Counter position, that airline will be required to surrender up to 75% of its Ticket Counters to the following airline that uses that position. For example: if an airline is using four Ticket Counters and

experiences a delay that extends into the usage time of the next airline assigned to those Counters, the delayed airline must surrender three of the four Counters to the on-coming airline.

If the delayed airline is using three Ticket Counters or less, they shall surrender all but one (1) of their ticket counters to the on-coming airline.

The delayed airline may coordinate with the Airport in order to utilize any remaining available Ticket Counter space after surrendering their Counters to the on-coming airline. This includes any available Common Use Ticket Counters, curbside Ticket Counters or, if necessary, any available Preferential Use Ticket Counters that are assigned to other Airlines.

EXHIBIT F-1
AFFILIATE DESIGNATION

Date: _____

Airline: _____

Affiliate: _____

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

1. Affiliate is either (i) flying in or out of the Airport solely for the benefit of a Signatory Airline and providing transportation of property or passengers for the Signatory Airline under the name of the Signatory Airline, (ii) if flying under its own name, not selling any seats in its own name and all seats are being sold in the name of the Signatory Airline or (iii) a wholly-owned subsidiary of the Signatory Airline or the Signatory Airline's parent company.
2. Affiliate is a party to a Non-Signatory Airline Operating Agreement with City.
3. Airline shall be responsible for the actions and obligations of Affiliate, including without implied limitation the obligation to pay all charges owed to City on account of Affiliate activities at the Airport and the duty to provide information, insurance and indemnification to City.
4. Airline shall be the financial guarantor of all amounts owed to City by Affiliate.
5. The Airline shall be responsible for ensuring that Affiliate complies with all of the terms and conditions of the Agreement to the same extent that Airline is responsible for compliance, including without implied limitation compliance with the environmental provisions of the with the terms and conditions of the Agreement.

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

Attention _____

By: _____

Name:

Title:

**EXHIBIT F-2
WITHDRAWAL OF AFFILIATE DESIGNATION**

Date: _____

Airline: _____

Affiliate: _____

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

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

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

By: _____
Name:
Title:

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

CITY OF SAN JOSE

By: _____
Name:
Title:

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

City of San José

Attention _____

EXHIBIT G

Description of Operation and Maintenance Responsibilities

Operation and Maintenance service responsibilities are as noted, except as provided in Article 8 of the Airline-Airport Lease and Operating Agreement.

1. QUICK REFERENCE GUIDE

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

Key: A = Airline
C = City

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

2. TERMINALS: EXTERIOR AND STRUCTURE

City Responsibility:

- Structural building elements
- Roof maintenance and repair
- Exterior building manual and automatic doors
- Exterior signage
- Perimeter walls, windows and exterior metal panels
- Exterior utilities
- Landscaping
- Apron/ramp and aircraft parking areas
- Roadways, walkways and curb fronts. Includes sweeping, trash collection, and removal of gum, oil, spots, and spills
- Busing and Shuttle vehicles and systems
- Parking structures and lots, including revenue control systems

Airline Responsibility:

- Airline owned/provided GSE chargers and associated equipment, including relocation of said equipment during the normal reallocation of gate assignments, or as a result of a requested move by Airline
- Damages caused by Airline or Airline contract personnel through accident, negligence or abuse
- De-icing and Environmental clean-up

3. INTERIOR

City Responsibility, including all operations and maintenance services except as noted for Airline Exclusive Use Premises:

- Electrical:
 - Electrical Distribution Systems
 - Switchboards, panelboards, meters and associated circuit breakers and other protective devices
 - Emergency and Standby generator systems
 - Conductors, conduit, switches, receptacles, and junction boxes
 - Lighting fixtures and ballasts
 - Fire alarm system, including associated devices
- Plumbing:
 - Hot and cold domestic potable water service throughout the Terminal Area
 - Recycled water service throughout the Terminal Area
 - Storm and sewage systems throughout the Terminal Area
 - Plumbing fixtures, including pre-installed kitchen fixtures, restroom fixtures, drinking fountains, and janitorial sinks in the Terminal Area

- Fire suppression (sprinkler) systems in the Terminal Area
- Maintenance, repair and cleaning of sanitary system plumbing blockages and stoppages originating from an exclusive use premises as a result of normal day-to-day use
- Heating, Ventilating and Air Conditioning (HVAC):
 - Hot and chilled water distribution systems
 - Heat exchangers
 - Air handling units, including associated ducting and controls
 - Variable Air Volume (VAV) boxes, including associated ducting and controls
 - Building Management System (BMS)
- Glass / Windows
 - Breakage - Replacement of broken glass in the Terminal Area
 - Washing interior and exterior windows and glass partitions within common areas
- Communication Systems - All systems and associated devices used in common throughout the facility:
 - Flight information display systems
 - Baggage information display systems
 - Public Address Systems
 - Communication and data systems
 - Fire Alarm systems
- Security, Law Enforcement, Fire Protection, and Emergency Medical Services
- Passenger and Baggage Screening and Handling Systems
- Locks, keys and key control
- People conveyance systems (elevators, escalators, passenger transport vehicles and moving sidewalks) in the Terminal Area
- Signage in the common areas of Terminal for Code required and way finding
- Interior finishes, including furnishings and furniture in the Public Terminal Areas
- Custodial Services - Provide facilities for trash disposal and provide custodial services in the Terminal Area (not including concession areas or airline Exclusive Use Premises and except as specified for Airline), including restrooms; elevators; escalators; passenger boarding bridges; circulation space in ticketing, baggage claims, and public waiting areas, drinking fountains; vestibules; corridors, stairwells and other amenities available to the general public; functions to include:
 - Overseeing trash removal from public places
 - Floor cleanings, with regularly scheduled vacuuming, spot cleaning, shampooing, sweeping, scrubbing, mopping, stripping, waxing, and/or sealing as appropriate
 - Wall, ceiling, partition, and fixture cleaning, including dusting, spot cleaning, washing and polishing metal surfaces
 - Telephone and restroom sanitizing, including all fixtures

- Restroom stocking, including soap, paper products, and sanitary napkins

Airline Responsibility within Exclusive Use Premises:

- Utilities—Airlines shall be responsible for the cost of utilities, including electrical power, hot and cold water, and other building utility use, determined by estimate or metering; uses other than normal building functions shall be metered and paid by Airline (Airline to pay cost of meter installation)
- Plumbing:
 - Routine maintenance, repair and cleaning of Airline-installed devices and fixtures
 - Maintenance, repair and cleaning of sanitary system plumbing blockages and stoppages originating from an exclusive use premises as a result of negligence or abuse
- Electrical:
 - Lamp replacements
 - Cleaning of light fixtures
 - Maintenance, repair and cleaning of Airline-installed devices
- Building HVAC:
 - Cleaning of ventilation grates, etc., which provide final delivery and return of conditioned air
 - Thermostats and temperature devices (sensors) - Maintenance of adequate space and clearance from obstructions, and adequate ventilation near heat/cold sources
- Glass/Windows:
 - Replacement of any breakage within or bordering the Exclusive Use Premises due to negligence, whether internal or external to the building.
 - Wash interior windows and glass partitions
- Communications Systems – Operation, maintenance and repair of all dedicated systems installed by Airline for its sole use
- Custodial services:
 - Policing of publicly accessible Exclusive Use premises, such as VIP Clubs, etc., at least once per day; this policing shall include the emptying of trash containers as required
 - Damp mop, scrub, strip, wax, and/or seal terrazzo or tile floors on a routine basis
 - Vacuum, spot clean, and shampoo carpeted areas on a routine basis
 - Dust, damp wipe, and wash furniture, railings, window sills, walls, ceilings, trash containers, counters and fixtures on a routine basis
 - Clean and polish all metal surfaces on furniture, fixtures, and equipment

- Removal of Airline trash from custodial activity in Exclusive Use Premises and from aircraft
- Airline locks, keys and key control
- Interior finishes - Provision, installation, repair and maintenance of all furnishings (including seats, tables, counters, closets, etc.), wall coverings, floor finishes, window coverage (draperies, etc.), authorized signage and logos, and related items
- Mechanical Systems - Operations, maintenance and repair of all mechanical systems (except as noted as City responsibility), including manual and automatic doors, escalators and elevators, and airline equipment
- Any and all damage caused by Airline or Airline contract personnel through accident, negligence or abuse
- Wheel Chair management- provide clean, sanitized and safe inventory at all times.

4. COMMON USE EQUIPMENT

City Responsibility - Maintenance and replacement of Common Use Equipment

- Loading bridges, including 400Hz power, preconditioned air, potable water cabinets, eye wash stations and associated equipment
- Gate podiums and customer service stations, including computer equipment and systems (except those exclusive to Tenant)

Airline Responsibility – Operation of Common Use Equipment

- Operation of loading bridges, including 400Hz power, preconditioned air, potable water cabinets, eye wash stations and associated equipment
- Operation of gate podiums and customer service stations, including computer equipment and systems
- Gate podiums and customer service stations, including computer equipment and systems installed for exclusive use by Tenant
- Damages caused by Airline or Airline contract personnel through accident, negligence or abuse

EXHIBIT H CALCULATION OF RATES AND CHARGES

Illustrative Landing Fee Calculation

Norman Y. Mineta San José International Airport

AIRFIELD REQUIREMENT		Estimated 2020*
Debt Service:		
Revenue Bonds	[A]	\$1,769,025
Commercial Paper	[B]	434,578
Debt Service Coverage:		
Revenue Bonds	[C]	442,256
Commercial Paper	[D]	86,916
Airfield Operating Expenses	[E]	25,624,903
Deposit to Bond Reserve Fund	[F]	-
Airfield Renewal and Replacement Costs	[G]	9,720,000
Airfield Credits:		
Other Airfield Revenues	[H]	(7,475,508)
Bad Debt / Bad Debt Recovery	[I]	-
Debt Service Coverage, prior year:		
Revenue Bonds	[J]	(444,522)
Commercial Paper	[K]	(86,916)
Prior Year Landing Fee True-up	[L]	(1,021,770)
Airfield Revenue Requirement	[M] = sum of [A] through [L]	\$29,048,963
Maximum Gross Landed Weight	[N]	9,065,017
Landing Fee Rate (per 1,000 pound unit)	[O] = [M] / [N]	\$3.20

* FY2019-20 numbers are based on current estimates and projected levels of airport activity and are for illustrative purposes only.

Illustrative Airline Terminal Revenue Requirement Calculation

Norman Y. Mineta San José International Airport

TERMINAL REQUIREMENT		Estimated 2020*
Debt Service:		
Revenue Bonds	[A]	\$30,703,509
Commercial Paper	[B]	1,033,339
Debt Service Coverage:		
Revenue Bonds	[C]	7,675,877
Commercial Paper	[D]	206,668
Terminal Operating Expenses	[E]	50,860,897
Deposit to Bond Reserve Fund	[F]	-
Terminal Renewal and Replacement Costs	[G]	4,939,240
Debt Service Coverage, prior year:		
Revenue Bonds	[H]	(7,611,094)
Commercial Paper	[I]	(206,668)
Basement Rental Revenue	[J]	-
Total Terminal Revenue Requirement	[K] = sum of [A] through [J]	\$87,601,768
Rentable Terminal Space (square feet)	[L]	357,966
Average Cost per Square Foot	[M] = [K] / [L]	\$244.72
Airline Rented Space	[N]	270,129
Airline Terminal Revenue Requirement	[O] = [M] * [N]	\$66,106,216
Bad Debt / Bad Debt Recovery	[P]	-
Airline Terminal Revenue Requirement	[Q] = [O] + [P]	\$66,106,216
Airline Rented Space	[N]	270,129
Airline Terminal Rental Rate per Square Foot	[R] = [Q] / [N]	\$244.72

* FY2019-20 numbers are based on current estimates and projected levels of airport activity and are for illustrative purposes only.

Illustrative Allocation of Terminal Requirement

Norman Y. Mineta San José International Airport

		<u>Estimated 2020*</u>
Net Airline Terminal Revenue Requirement	[A]	\$66,106,216
Group A space (100% weighting)	[B]	140,007
Group B space (80% weighting)	[C]	77,902
Group C space (50% weighting)	[D]	<u>52,220</u>
Total Terminal Space		270,129
Equivalent Space Calculation		
Group A (100%)	[B]	140,007
Group B (80%)	[E] = [C] * 80%	62,322
Group C (50%)	[F] = [D] * 50%	<u>26,110</u>
Total Equivalent Space	[G] = [B]+[E]+[F]	228,439
Net Airline Terminal Revenue Requirement	[A]	\$66,106,216
Total Equivalent Space	[G]	228,439
Net Airline Terminal Rate per Square Foot	[H] = [A] / [G]	\$289.38
Group A Rate	[H]	\$289.38
Group B Rate	[I] = [H] * 80%	\$231.51
Group C Rate	[J] = [H] * 50%	\$144.69
Breakdown of Terminal Requirement:		
Gate Revenue Requirement		\$28,924,686
Ticket Counter Requirement		11,590,941
VIP Lounge		-
Group A Requirement		<u>\$40,515,627</u>
Baggage Claim Requirement		\$7,029,689
Other Offices Requirement		<u>11,005,114</u>
Group B Requirement		\$18,034,803
Baggage Makeup Requirement		\$6,616,160
Operations Requirement		939,627
Storage Requirement		-
Group C Requirement		<u>\$7,555,787</u>

* FY2019-20 numbers are based on current estimates and projected levels of airport activity and are for illustrative purposes only.

Illustrative Gates and Ticket Counter Requirements

Norman Y. Mineta San José International Airport

		<u>Estimated 2020*</u>
Gate Revenue Requirement		\$28,924,686
Preferential Gates	[A]	25
Common Use Gates		10
Rejected Gates (not reassigned)		-
Total Gates		35
Preferential Gate Requirement	[B]	\$20,660,490
Rate per Preferential Gate	[C] = [B] / [A]	\$826,420
Common Use Gate Requirement	[D]	\$8,264,196
Estimated Common Use Gate Turns	[E]	14,600
Rate per Common Use Gate Turn	[F] = [D] / [E]	\$566
Ticket Counter Revenue Requirement		\$11,590,941
Preferential Ticket Counters	[G]	23
Common Use Ticket Counters		28
Rejected Ticket Counters		-
Non-Active Ticket Counters		2
Total Ticket Counters		53
Preferential Ticket Counter Requirement	[H]	\$5,227,287
Rate per Preferential Ticket Counter	[I] = [H] / [G]	\$227,273
Common Use Ticket Counter Requirement	[J]	\$6,363,654
Estimated Common Use Ticket Counter Hours	[K]	83,000
Rate per Common Use Ticket Counter Hour	[L] = [J] / [K]	\$77

* FY2019-20 numbers are based on current estimates and projected levels of airport activity and are for illustrative purposes only.

Illustrative Charges for Use of Baggage Areas
Norman Y. Mineta San José International Airport

		<u>Estimated 2020*</u>
Baggage Makeup Requirement	[A]	\$6,616,160
20% Share (to be allocated equally among the Airlines)	[B] = [A] * 20%	\$1,323,232
Total Number of Airlines	[C]	<u>14</u>
20% Share per Airline	[D] = [B] / [C]	\$94,517
80% Share (to be allocated <u>on the basis of enplaned PAX</u>)	[E] = [A] * 80%	\$5,292,928
Baggage Claim Requirement	[F]	7,029,689
20% Share (to be allocated equally among the Airlines)	[G] = [F] * 20%	\$1,405,938
Total Number of Domestic Airlines	[H]	<u>10</u>
20% Share per Airline	[I] = [G] / [H]	\$140,594
80% Share (to be allocated <u>on the basis of enplaned PAX</u>)	[J] = [F] * 80%	\$5,623,751

* FY2019-20 numbers are based on current estimates and projected levels of airport activity and are for illustrative purposes only.

DEFINITION OF TERMS

Activity Report	Not later than the tenth (10th) day of each month, Airline shall file with the City an "Activity Report" on the attached form. Report includes activity conducted by Airline during said month and activity handled by the Airline for each Passenger Carrier not having an agreement with City. City has the right to rely on monthly Activity Reports to determine rentals and charges due. Airline shall have full responsibility for the accuracy of the reports. If the monthly Activity Reports are not provided on or before the tenth (10th) day of each month as required, Airline shall pay a delinquency fee of \$50 per day for each day that the report is late until such date as the monthly Activity Report is submitted to the Director.
Aircraft Make, Model & Series	Example: B737-300 = Make is Boeing, Model is B737 and Series is 300 List different aircraft on separate lines, for example: list B737-400 on one line, DC8-62 on another line etc. Please use additional sheets if necessary.
MGLW	Maximum gross landing weight shall mean the highest maximum gross certificated landing weight for the aircraft model operated at the Airport by Airline as listed in the manufacturer's Characteristics or Planning Manual.
Total Landed Weight	Multiply landings by the MGLW. Example: 21 revenue landings x 142,500 lbs = 2,299,500.
Landing Fee	The landing fee rate is based on per thousand pounds and varies, if you are unsure call Jennifer You at Accounts Receivable @ 408-392-3665.
Landings	Total number of landings per aircraft make/model and series.
Chargeable Landings	All Revenue Landings and Non- Revenue Landings except for those Non-Revenue Landings which are of an emergency nature. (Non-Revenue Emergency flights include without limitation any flight that after having taken off from the Airport and without making a landing at any other airport returns to land at the Airport because of meteorological conditions, mechanical or operating causes or any other reason of emergency or precaution.)
Deplaned Passenger	Deplaned Passenger shall mean any passenger disembarking an aircraft, including any such passenger that shall subsequently board another aircraft of the same or a different Passenger Carrier or the same aircraft previously operating under a different flight number.
Enplaned Passenger	Enplaned Passenger shall mean any passenger boarding an aircraft, including any such passenger that previously disembarked from another aircraft of the same or a different Passenger Carrier or from the same aircraft previously operating under a different flight number.
Mail	Domestic and International Airmail and First-Class Mail, which includes closed bags handed over by the postal service, loaded and unloaded (arriving or departing) at the Airport.
Express	Express is primarily packages/cargo loaded and unloaded (arriving or departing) at the airport, which is primarily classed as First Flight Specific or First Freight Priority. Measurement data should be in actual pounds.
Cargo/Freight	Cargo and Freight is domestic or international cargo (goods, packages) that is loaded and unloaded (arriving or departing) at the airport. Commercial Carriers provided freight service and Cargo Carriers provide cargo service. Measurement data should be in actual pounds.

EXHIBIT J NEW TERMINAL PROJECT

The City needs to expand the capacity of its passenger terminals to accommodate anticipated growth in the demand for gates at the Airport and to maintain and enhance the passenger experience at the Airport.

The New Terminal Project will be a terminal expansion project adding a maximum of approximately 500,000 square feet to the terminal space at the Airport. The additional terminal space will be connected to the current Terminal B and will include 12 or 13 new gates, to provide a total of 40 gates at the Airport.

The New Terminal Project will include all the facilities needed to support the new gates, such as holdrooms; outbound and inbound baggage systems; ticket counters and bag drop-off space; security checkpoint space; concession space; and other elements required by applicable law. The New Terminal Project will also include a variety of enabling projects and support facilities. One percent of the construction costs will be set aside for public art.

A current concept drawing of the New Terminal Project is attached. Building dimensions and shapes from the concept drawing are for planning purposes only.

Signatory Airlines will be involved in the programming, design and construction phases of the New Terminal Project, as provided in Section 12.04.1.

The City will consult with the Airlines, as provided in Section 12.04.2, before issuing an RFP for the construction of the New Terminal Project.

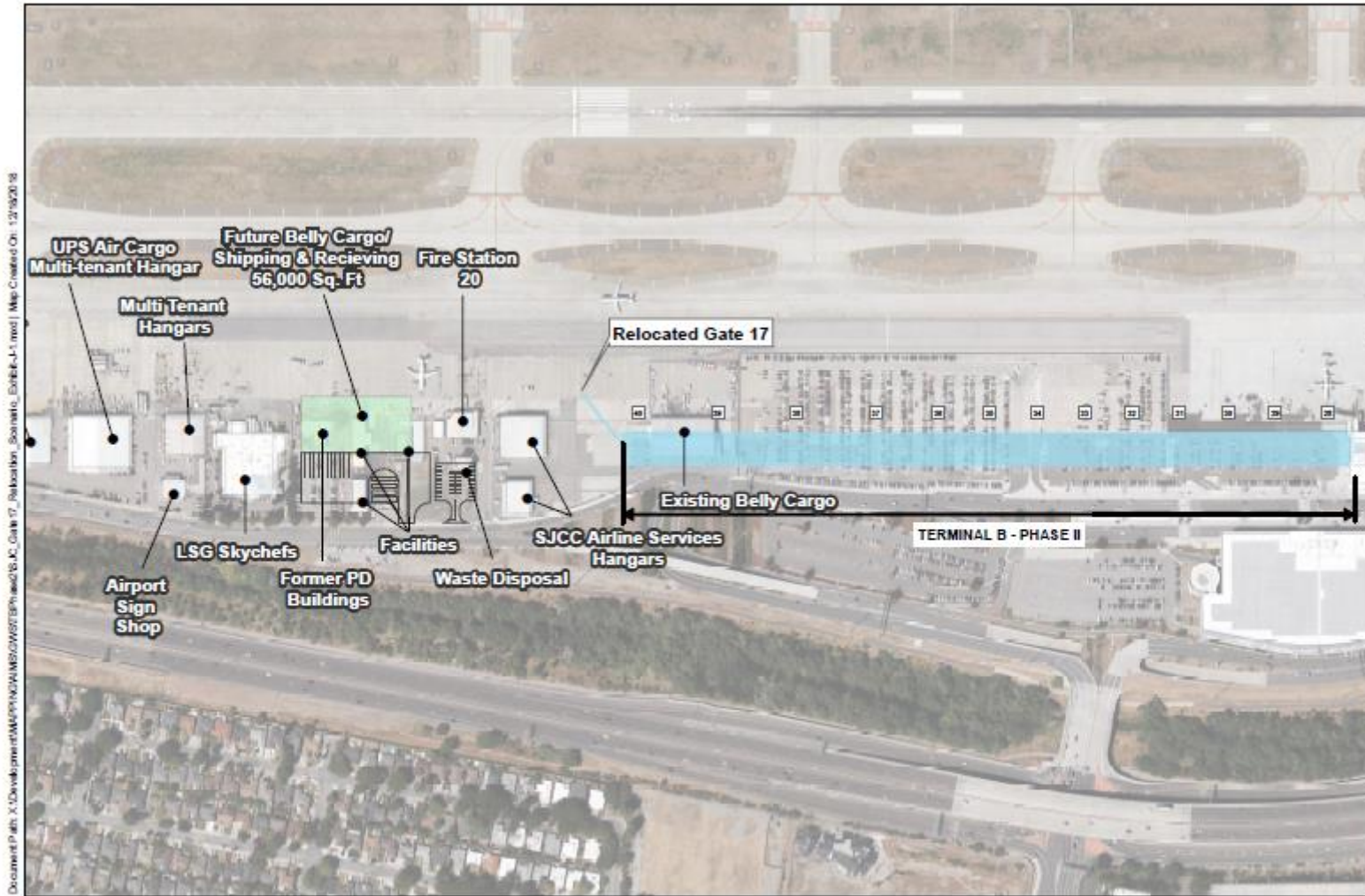
The improvement of existing FIS facilities is needed to accommodate existing and anticipated growth in the numbers of international arriving passengers at the Airport. The City will not proceed to build new FIS facilities, however, until at least an annual rate of 550,000 international deplaning passengers arrive at the Airport for a sustained period of 18 months. If that trigger is met, the New Terminal Project will include an integrated FIS facility to be built within the new terminal space designed to serve all international arriving passengers. Up to 6 of the new gates will have secure access to the new FIS facility, and these gates will be able to accommodate both domestic and international flights. Until construction of the new integrated FIS facility is triggered, the City will continue to invest in improvements to the existing FIS facility to meet aircraft demand and improve passenger queuing, processing and baggage delivery.

The current estimated cost of the New Terminal Project, in July 1, 2018 dollars, is approximately \$1.05 billion, if the Project does not include the build-out of the new FIS facility, and approximately \$1.2 billion if it does include the new FIS facility. If the new FIS facility is triggered after the start of the New Terminal Project, the cost to add the new FIS facility to the New Terminal facility in July 1, 2018 dollars is estimated to be

approximately \$180 million. The current estimated cost of interim improvements to the existing FIS, in July 1, 2018 dollars, is approximately \$60 million. The City anticipates that it will finance the New Terminal Project, the New FIS facility and any interim improvements to the existing FIS facility, through a combination of bonds, commercial paper, grants, Passenger Facility Charges (PFCs) and any other available financing options.

The costs of the New Terminal Project, the new FIS facility and any interim improvements to the existing FIS facility, will be allocated to the Terminal Cost and Revenue Center. The projected annual impact of the New Terminal Project on terminal debt service is approximately \$100 million if it includes the new FIS facility (concurrent construction), at borrowing rates estimated as of September 1, 2018.

EXHIBIT J-1



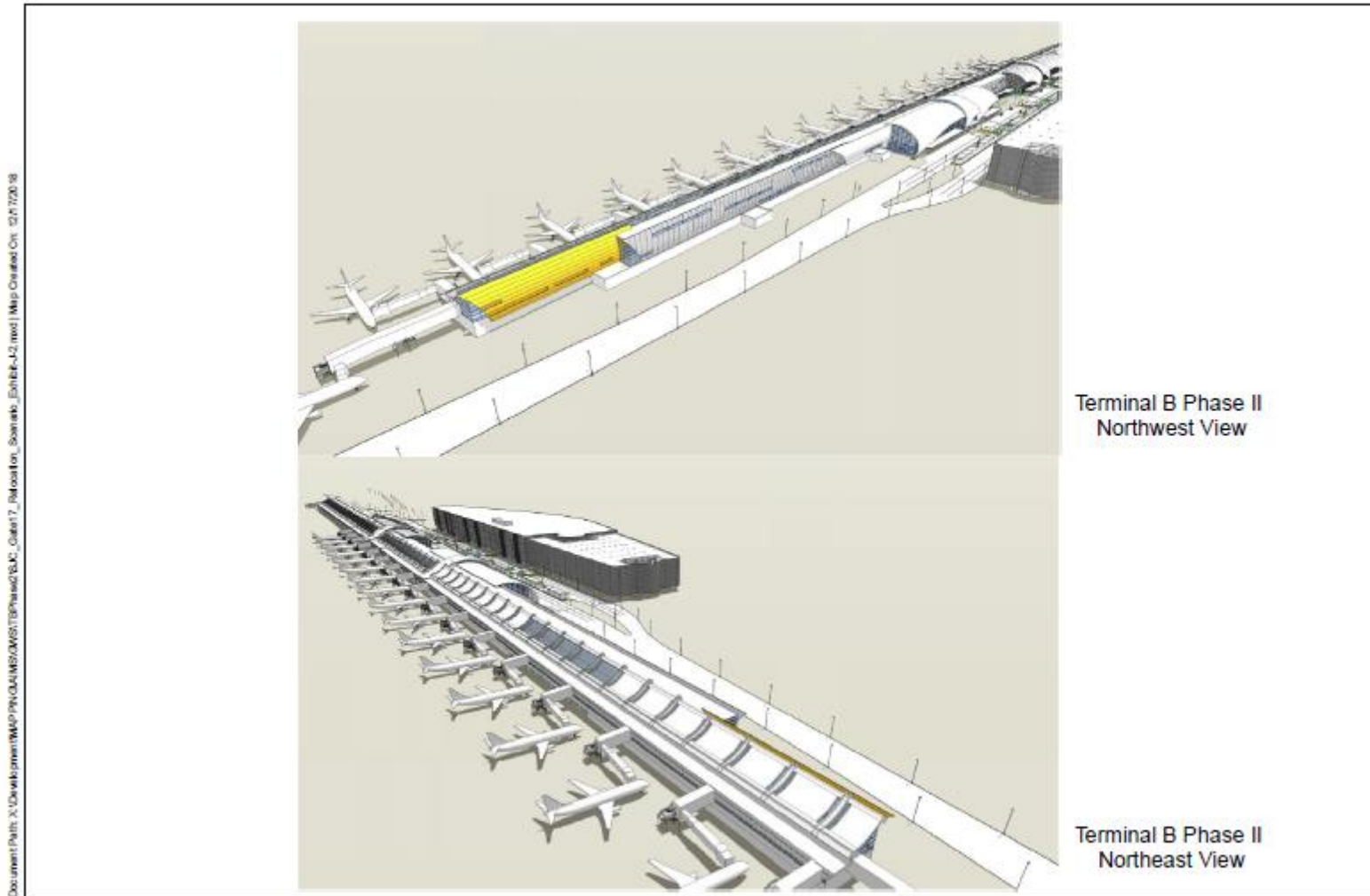
Document Path: X:\Development\Map\PH\N\MS\GWS\B\Phase II\JC_OA-21_Relocation_SanJose_Intl_Airport_Exit-1-1.mxd | Map Created On: 12/18/2018



Map Created On: 12/18/2018



EXHIBIT J-2



Terminal B Phase II
Northwest View

Terminal B Phase II
Northeast View



Map Created On: 12/17/2018



EXHIBIT K TEN-YEAR LOCKBACK AND RATE STABILIZATION FUND DISTRIBUTIONS

Total Settlement	\$7,266,296										
Enplanements	\$3,633,148										
Terminal Rent	\$3,633,148										
Enplanements - FY15											
	Southwest	Alaska	American	Delta	United	Hawaiian	JetBlue	Volaris	ANA	Hainan	Total
Enplanements	2,420,333	750,673	604,952	463,746	186,656	161,707	71,577	51,185	47,560	1,849	4,760,238
% of Total	50.84%	15.77%	12.71%	9.74%	3.92%	3.40%	1.50%	1.08%	1.00%	0.04%	
\$ Allocation	\$1,847,266	\$572,935	\$461,716	\$353,944	\$142,461	\$123,419	\$54,630	\$39,066	\$36,299	\$1,411	\$3,633,148
Terminal Rent - FY15											
	Southwest	Alaska	American	Delta	United	Hawaiian	JetBlue	Volaris	ANA	Hainan	Total
Terminal Rent	12,275,240	6,137,776	6,595,449	4,480,609	3,581,281	1,288,525	1,075,454	924,437	765,761	41,069	37,165,602
% of Total	33.03%	16.51%	17.75%	12.06%	9.64%	3.47%	2.89%	2.49%	2.06%	0.11%	
\$ Allocation	\$1,199,974	\$600,002	\$644,743	\$438,005	\$350,090	\$125,961	\$105,132	\$90,369	\$74,858	\$4,015	\$3,633,148
Total Ten Year	\$3,047,241	\$1,172,937	\$1,106,459	\$791,949	\$492,552	\$249,380	\$159,761	\$129,435	\$111,157	\$5,426	\$7,266,296
	41.94%	16.14%	15.23%	10.90%	6.78%	3.43%	2.20%	1.78%	1.53%	0.07%	

RATE STABILIZATION FUND

Total Settlement	\$9,000,000										
Enplanements - FY15											
	Southwest	Alaska	American	Delta	United	Hawaiian	JetBlue	Volaris	ANA	Hainan	Total
Enplanements	2,420,333	750,673	604,952	463,746	186,656	161,707	71,577	51,185	47,560	1,849	4,760,238
% of Total	50.84%	15.77%	12.71%	9.74%	3.92%	3.40%	1.50%	1.08%	1.00%	0.04%	
Total Rate Stabilization	\$4,576,031	\$1,419,269	\$1,143,760	\$876,787	\$352,903	\$305,733	\$135,328	\$96,774	\$89,920	\$3,496	\$9,000,000
TOTAL	\$7,623,272	\$2,592,206	\$2,250,219	\$1,668,736	\$845,455	\$555,113	\$295,089	\$226,208	\$201,077	\$8,922	\$16,266,296

CORPORATE SECRETARY CERTIFICATE

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

I, KATIE BAILEY certify that I
Name of Secretary or Assistant Secretary

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

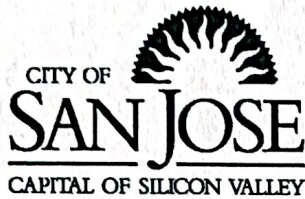
attached agreement; that Richard Mendles
Name of Person that Signed Agreement

signed the agreement on behalf of the corporation as the General Counsel Americas + Officer
Title of Person that Signed the Agreement

of the corporation; and that the agreement was duly signed for and on behalf of the corporation by authority of its Board of Directors, and is within the scope of its corporate powers.

KBailey

Signature of Secretary or Assistant Secretary




- FOR YOUR ELECTRONIC SIGNATURE
- FULLY EXECUTED COPY TO FOLLOW

CITY STAFF: Martin Bagnyuk
STAFF EMAIL: MBagnyuk@sjc.org

SCANNED SIGNATURE AUTHORIZATION

DATE: 6/1/2022 TOTAL PAGES: (INCLUDING THIS PAGE) 155
COMPANY NAME: British Airways
EMAIL: richard.mendles@ba.com
PHONE: 917 565 0963

I agree to use electronic signatures

SIGNATURE OF COMPANY: 

DIRECTIONS:

REVIEW THE ENCLOSED DOCUMENT, IF IT IS ACCEPTABLE:

1. SIGN THE DOCUMENT IN **BLUE** INK
2. IN **BLUE** INK COMPLETE THE SCANNED SIGNATURE AUTHORIZATION FORM AND CHECK THE BOX BELOW YOUR NAME AND SIGN AGREEING TO THE USE OF ELECTRONIC SIGNATURES
3. SCAN YOUR SIGNED DOCUMENT TOGETHER WITH THIS COVER PAGE IN **COLO**
4. EMAIL THE ENTIRE DOCUMENT TO (CITY STAFF EMAIL ADDRESS): HTRUONG@SJC.ORG

TO BE COMPLETED BY CITY STAFF:

ALTERNATIVE METHODS OF VERIFICATION:

- USE OF A PASSWORD PROTECTED WEBSITE
- CONFIRMED BY A KNOWN TELEPHONE NUMBER / EMAIL
- PERSONALLY KNOWN TO CITY STAFF