

2011 Competition Plan Update

Attachment C

Amended and Restated Scheduled Airline
Operating Agreement and Terminal Building Lease
Albuquerque International Sunport

Prepared for **City of Albuquerque Aviation Department**

June 2011



ALBUQUERQUE INTERNATIONAL SUNPORT
AMENDED AND RESTATED
SCHEDULED AIRLINE OPERATING AGREEMENT AND
TERMINAL BUILDING LEASE

Southwest Airlines Co.

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ALBUQUERQUE INTERNATIONAL SUNPORT

AMENDED AND RESTATED SCHEDULED AIRLINE OPERATING AGREEMENT AND TERMINAL BUILDING LEASE

Southwest Airlines Co.

This Amended and Restated Scheduled Airline Operating Agreement and Terminal Building Lease ("Agreement"), is made and entered into by and between the **City of Albuquerque**, a New Mexico municipal corporation ("City") and **Southwest Airlines, Co.**, a corporation organized and existing under the laws of the state of Texas ("Airline");

In consideration of the rights, privileges, and mutual obligations contained in this Agreement, City and Airline agree as follows:

ARTICLE 1 RECITALS AND DEFINITIONS

Section 1.01. Recitals.

A. City owns and operates through its Aviation Department, the Albuquerque International Sunport ("Airport") as shown in **Exhibit A** located in the County of Bernalillo, State of New Mexico.

B. Airline is engaged in the business of air transportation of persons, property, cargo, small packages, and mail.

C. Airline desires to lease certain premises, use certain facilities, acquire certain rights and privileges from City in connection with its use of the Airport, and Airline does not have any past due debts under any lease or contract with the City when this Agreement is executed by the City, and City is willing to lease and grant the same to Airline upon the terms and conditions hereinafter stated.

D. City and Airline have the power and authority to enter into this Agreement.

Section 1.02. Definitions. The following words and phrases, wherever used in this Agreement, shall, for the purpose of this Agreement, have the following meanings:

1. **"Accommodating Airline"** means those airlines described in Section 4.02.
2. **"Additional Airline Credit"** means fifty percent (50%) of the Additional Credit as defined in this Agreement.
3. **"Additional Credit"** means the total amount of revenue calculated by adding in each Fiscal Year (a) \$1,000,000, which shall be adjusted annually commencing in FY 2007 by the year-to-year percentage change in Rental Car Privilege Fees, plus (b) annual Non-Preferential Gate Use Fee revenue, and subtracting (c) the Annual Space Cost of non-leased Holdrooms.
4. **"Affiliate Airline Qualifying Flights"** means those flights that have been approved by City in writing pursuant to this definition and (1) are flights at the Airport that are operated pursuant to a code-share or capacity purchase agreement with a Signatory Airline, on which all seats sold into and out of the Airport are under the exclusive control of Signatory Airline or (2) are flights by an airline that is wholly owned by Signatory Airline or Signatory Airline's parent company. At least sixty (60) days prior to the start of new Affiliate Airline Qualifying Flights, Signatory Airline shall provide City with written notice designating new Affiliate Airline Qualifying Flights, which designation is subject to City approval solely based on the requirements that the airline providing such Affiliate Airline Qualifying Flights: (1) meets the criteria established above, (2) executes a Non-Signatory Airline Agreement with City and (3) does not have an outstanding notice of default from City. The airline providing Affiliate Airline Qualifying Flights and executing the Non-Signatory Airline Agreement shall (a) pay to City the Signatory Airline Landing Fee Rate calculated pursuant to Section 7.09, and the Miscellaneous Fees pursuant to subsection 6.03.H, of this Agreement, (b) participate in a year-end adjustment of the Signatory Airline Landing Fee Rate similar to the one provided in Section 7.11 of this Agreement, (c) have the right, subject to Section 4.03 of this Agreement, to use the Preferential Use Gate(s) and Assigned Gates of Signatory Airline, (d) have the right to use the Premises of Signatory Airline without the payment of Terminal Building Space Rentals to City for the use of such Premises, and (e) have the right to operate a public transportation system by aircraft for the carriage of persons, property, cargo, and mail, including all activities reasonably necessary to such operation.

In addition, Signatory Airline shall provide City with a thirty (30) day written notice prior to the cancellation of any designation of an Affiliate Airline Qualifying Flight.

5. **"Agreement"** and **"Airline Operating Agreement and Terminal Building Lease"** shall be interchangeable terms and both terms shall mean this Amended and Restated Airline Operating Agreement and Terminal Building Lease.
6. **"Aircraft Arrival"** means any airline aircraft arrival at the Airport other than an unscheduled arrival of an aircraft that, having taken off from the Airport, is required to land at the Airport because of mechanical or operating problems or for any other reason of precaution or emergency.
7. **"Airfield PFC Revenue Offset"** means the use of Annual PFC Revenue to pay Annual Debt Service, excluding twenty percent (20%) coverage, that would otherwise be included in the Landing Fee Rate, which shall be calculated by adding either: (a) \$2,450,000 for any Fiscal Year in which the PFC rate is \$3.00, or (b) an amount equal to the lesser of the additional revenues resulting from an increase in the PFC rate from \$3.00 or the annual debt service allocable to airfield projects for which the City has received PFC Approval, whichever is applicable.
8. **"Airline"** means the entity holding an operating certificate in good standing from the FAA that has executed this Agreement and is identified in the first paragraph of this Agreement.
9. **"Airline Concession Revenue Credit"** means the Excess Concession Revenue multiplied by the ratio of Signatory Airline Rented Space to total Rented Space.
10. **"Airline Rental Car Privilege Fee Credit"** means actual FY 2006 Rental Car Privilege Fee revenue according to the City's audited financial statements multiplied by the ratio of Signatory Airline Rented Space to total Rented Space in FY 2006, less \$1,000,000.
11. **"Airline Terminal Building Rental Credit"** means the Airline Concession Revenue Credit, the Airline Rental Car Privilege Fee Credit, plus the Additional Airline Credit.
12. **"Airline Terminal Building Rental Credit Formula"** means a formula that allocates the Airline Terminal Building Rental Credit as follows: (a) sixty percent (60%) to each Signatory Airline on the basis of the Enplaned Passengers for the Airline and its Affiliate Airline Qualifying Flights to the total amount of Enplaned Passengers for all Signatory Airlines and Affiliate Airline Qualifying Flights and (b) forty percent (40%) to each Signatory Airline on the basis of the Rented Space for the Airline to the total Rented Space of all Signatory Airlines.

13. **"Airport"** means Albuquerque International Sunport, Albuquerque, Bernalillo County, New Mexico, including but not limited to those areas shown on **Exhibit A** attached hereto and incorporated herein as though set forth in full.
14. **"Airport Bonds"** means Airport revenue bonds or other bonds issued under any Bond Ordinance enacted by City.
15. **"Airport Cost Centers"** means direct cost areas to be used in accounting for airport revenues and expenses and for calculating and adjusting certain rates, fees, and charges described herein, as shown in **Exhibit B** (Airport Cost Center Plan) attached hereto and incorporated herein as though set forth in full, as such areas now exist or may hereafter be modified or extended, and as more particularly described below.
- A. **"Terminal Building"** means the passenger terminal building and related facilities at the Airport including but not limited to associated curbside, canopy and landscaped areas, together with any additions and/or changes thereto.
- B. **"Airfield"** means the runways, taxiways, approach and clear zones, safety areas, in-field areas, landing and navigational aids, the aircraft parking apron serving the Terminal Building, and other facilities and land areas at the Airport required by or related to aircraft operations (landings, take-offs, and taxiing).
- C. **"Reliever Airport"** means Double Eagle II Airport, the general aviation airport owned and operated by City.
- D. **"Landside Area"** means the commercial lane and automobile parking areas at the Airport.
- E. **"Other Areas"** means all other building and ground areas at the Airport used for general aviation, hotels, rental cars, cargo, and other aviation- and non-aviation-related activities.
16. **"Airport System"** means the Airport and the Reliever Airport.
17. **"Annual Amortization Charges"** means the estimated annual amortization of any Capital Improvement cost financed by City from sources other than the proceeds of Airport Bonds, PFC revenues, Grants-in-aid, or the Airline Coverage Account and shall be calculated using (a) the "Municipal Bond Index" rate for a

revenue bond with a term most similar to the economic useful life for each capital asset, as published in the Bond Buyer as of the date the asset is placed in service, (b) the economic useful life for each capital asset, as determined by City in accordance with generally accepted accounting practices, and (c) the Substantial Completion Date of each Capital Improvement.

18. **"Annual Debt Service"** means up on the Substantial Completion Date(s) of projects funded with Airport Bonds, the actual total amount scheduled to be deposited in any Fiscal Year to any interest, principal, or sinking fund account established pursuant to the Bond Ordinances, plus twenty percent (20%) of such amounts for Senior Lien Bonds.
19. **"Annual PFC Revenue"** means that amount received by the City in each Fiscal Year from the airlines serving the Airport pursuant to any PFC Approval from the FAA.
20. **"Annual Space Cost"** means the value of any defined area in the Terminal Building determined by multiplying (a) the number of square feet in a defined area or set of areas by (b) the Basic Cost Rate or, where applicable, another rate pursuant to this Agreement.
21. **"Assigned Gates"** means those Gates described in subsection 4.03.C.
22. **"Bad Debt Expense"** means a past due amount that has been classified by City as uncollectible according to generally accepted accounting principles. Bad Debt Expense shall be adjusted by (a) Security Deposit withdrawals and (b) any amounts historically classified as Bad Debt Expense that were subsequently recovered through the rentals, fees, and charges pursuant to this Agreement.
23. **"Basic Cost Rate"** means the per square foot rate defined in Article 7.04 of this Agreement.
24. **"Bond Ordinances"** means the ordinances adopted by City authorizing the issuance and sale of the outstanding Senior Lien Bonds, Subordinate Lien Bonds, and any additional successor bond ordinance(s) that may be enacted by City with respect to future series of Senior Lien Bonds, Subordinate Lien Bonds, or Junior Lien Obligations.
25. **"Capital Improvement"** means (1) the acquisition of land or easements; (2) the purchase of machinery, equipment, or rolling stock; (3) the planning, engineering, design, and construction of new facilities; (4) the performance of

any extraordinary, non-recurring major maintenance of existing facilities that may be acquired, purchased, or constructed by City to improve, maintain, or develop the Airport; or (5) any single item which has a cost of \$100,000 or more and a useful life in excess of one year.

26. **"City"** means the City of Albuquerque, a municipal corporation organized and existing under the laws of the State of New Mexico.
27. **"Common Use Formula"** means a formula that prorates twenty percent (20%) of the cost of a service or an Annual Space Cost equally among those airlines using such services or spaces and eighty percent (80%) of the same costs on the prorated share of each airline's Deplaned Passengers at the Airport in relation to the total number of Deplaned Passengers of all such airlines at the Airport. Each Signatory Airline and its Affiliate Airline Qualifying Flights will be treated as a single entity for purposes of determining Signatory Airline's portion of the twenty percent (20%) share of the service or Annual Space Cost. In addition, the Deplaned Passengers of a Signatory Airline shall also include the Deplaned Passengers of its Affiliate Airline Qualifying Flights when determining the eighty percent (80%) share that is allocated on the basis of Deplaned Passengers.
28. **"Concession Revenue"** means revenue generated where the point of sale and the rental of space by a non-airline tenant is within the Terminal Building and excludes all revenue from points of sale and non-airline rentals outside the Terminal Building. During the term of this 2011 Amendment, Concession Revenue shall not include any Rental Car Privilege Fees owed or paid to the City.
29. **"Departing Flight"** means an aircraft departure of any airline using a loading bridge in the Terminal Building and shall include an aircraft departure for each Affiliate Airline Qualifying Flight.
30. **"Deplaned Passengers"** means all terminating passengers and on-line or off-line transfer passengers deplaned at the Airport, but excluding through passengers and non-revenue passengers.
31. **"Director"** means City's Director of Aviation or such other person designated by City to exercise functions with respect to the rights and obligations of City under this Agreement.
32. **"Effective Date"** means July 1, 1996, the date the existing Agreement was signed by City's Chief Administrative Officer.

33. **"Enplaned Passengers"** means all originating passengers and on-line or off-line transfer passengers boarded at the Airport, but excluding through passengers and non-revenue passengers.
34. **"Environmental Laws"** shall be interpreted in the broadest sense to include any and all federal, state, local statutes, ordinances, regulations, rules or guidelines having the force and effect of law now or hereafter in effect during the term of this agreement, as the same may be amended from time to time, which govern Hazardous Substances or relate to the protection of human health, safety or the environment, and include but are not limited to: the Solid Waste Disposal Act, 42 U.S.C. 3251, et seq.; the Federal Insecticide, Fungicide, and Rodenticide Act/Pesticide Act, 7 U.S.C. Section 13 et seq.; the Safe Drinking Water Act, 42 U.S.C. Section 300(f) et seq.; the Oil Pollution Control Act of 1990, 33 U.S.C. Section 2761 et seq.; Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C., Section 9601 et seq., and as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. Law No. 99-499, 100 Stat. 1613; the Toxic Substances Control Act, 15 U.S.C., Section 2601 et seq.; the Clean Air Act, 42 U.S.C. 7401 et seq.; the Clean Water Act, 33 U.S.C., Section 1251, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C., Section 1801 et seq.; the Resources Conservation and Recovery Act, 42 U.S.C., Section 6901 et seq.; and those substances defined as hazardous waste or as hazardous substances under the laws of New Mexico and/or the United States or in regulations promulgated pursuant to such laws.
35. **"Excess Concession Revenue"** means the amount of revenue remaining after subtracting the Annual Space Cost for non-airline Rentable Space from Concession Revenue.
36. **"Exclusive Control"** means, as used in subsection 1.02.4 above, the ability of Signatory Airline to manage the capacity of, and being at economic risk for, any unused seat inventory of its Affiliate Airline Qualifying Flights.
37. **"FAA"** means the Federal Aviation Administration of the U.S. Government or any federal agencies succeeding to its jurisdiction.
38. **"Federal Inspection Screening Area or FIS Area"** means the area of the Terminal Building designated for use by the Federal Inspection Services of the United States Government, together with any additions and/or changes thereto.

39. **"Fiscal Year"** refers to City's fiscal year and means the twelve (12) month period commencing each July 1 and extending through June 30 of the following year.
40. **"Gates"** means aircraft parking positions at the Terminal Building together with any additions and/or changes thereto.
41. **"Grants-in-aid"** means grants received from the Federal Aviation Administration, the Transportation Security Administration, the State of New Mexico, or other federal, state, or local entities to fund in all or in part Capital Improvements or O&M Expenses.
42. **"Ground Handling Service "** or **"Ground Handling Agreement "** means contracting for services that include any of the following: on and off loading of passengers, baggage, mail or freight, servicing lavatory potable water and preconditioned air, cleaning the interior of aircraft, and emergency or required maintenance of aircraft.
43. **"Hazardous Substances"** shall be interpreted in the broadest sense to include any and all substances, materials, wastes, pollutants, oils or governmental regulated substances or contaminants as defined or designated as hazardous, toxic, radioactive, dangerous, or any other similar term in or under any of the Environmental Laws, including but not limited to asbestos and asbestos containing materials, petroleum products including crude oil or any fraction thereof, gasoline, aviation fuel, jet fuel, diesel fuel, lubricating oils and solvents, urea formaldehyde, flammable explosives, PCBs, radioactive materials or waste, or any other substance that, because of its quantity, concentration, physical, chemical, or infectious characteristics may cause or threaten a present or potential hazard to human health or the environment when improperly generated, used, stored, handled, treated, discharged, distributed, disposed, or released. Hazardous Substances shall also mean any hazardous materials, hazardous wastes, toxic substances, or regulated substances under any Environmental Laws.
44. **"Holdroom"** means those areas of Concourse A and Concourse B in the Terminal Building as shown in **Exhibit C** attached hereto and incorporated herein.
45. **"Joint Use Formula"** means a formula that allocates (a) fifty percent (50%) of the cost of a service or an Annual Space Cost among those airlines, and others using or having the right to use a service or space, on the basis of the share of

each airline's Gates in relation to the total number of Preferential Use and Assigned Gates and (b) fifty percent (50%) of the cost based on each airline's prorated share of Enplaned Passengers in relation to the total number of Enplaned Passengers of all such airlines. Each Signatory Airline and its Affiliate Airline Qualifying Flights will be treated as a single entity for purposes of determining Signatory Airline's portion of the fifty percent (50%) share of Joint Use Formula allocated on the basis of the number of Gates. In addition, the Enplaned Passengers of a Signatory Airline shall include the Enplaned Passengers on its Affiliate Airline Qualifying Flights when determining the fifty percent (50%) prorate share that is allocated on the basis of Enplaned Passengers.

46. **"Junior Lien Obligations"** means Airport Bonds or notes issued by City which have a lien on the Net Revenues of the Airport that is junior and subordinate to the Senior Lien Bonds, Subordinate Lien Bonds, and any future series of Airport revenue bonds or notes issued by City on a parity with or subordinate to the outstanding Junior Lien Obligations.
47. **"Maximum Certificated Gross Landing Weight"** means the FAA certificated maximum gross landing weight in thousand-pound units of each aircraft operated by Airline at the Airport.
48. **"Non-Preferential Gate Use"** means the use of any Gate by an airline when the Gate is not an Assigned Gate or Preferential Use Gate of Signatory Airline.
49. **"Non-Signatory Airline"** means the entity holding an operating certificate in good standing from the FAA that has not executed this Agreement.
50. **"Operation and Maintenance Expenses" or "O&M Expenses"** means all reasonable and necessary current expenses of City, paid or accrued, of operating, maintaining, and repairing the Airport; and the term may include at City's option (except as limited by law), without limiting the generality of the foregoing, legal and overhead expenses of the various City departments directly related and reasonably allocable to the administration of the Airport (which expenses, if so charged as an operation and maintenance expense by City, shall be determined in accordance with City-wide administrative cost allocation plan then in effect), insurance premiums, the reasonable charges of any paying agents and any other depository bank appertaining to the Airport, contractual services, professional services required by the Bond Ordinances, salaries and administrative expenses, labor, and the cost of materials and supplies used for current operation, but shall not include any allowance for depreciation, payments in lieu of taxes, liabilities incurred by City as the result of its negligence or willful

misconduct in the operation of the Airport, or other ground of legal liability not based on contract, and shall not include the costs of improvements, extensions, enlargements or betterments, or any charges for the accumulation of reserves for capital replacements.

- 51. "Overnight Aircraft Parking Fee"** means the fee established in subsection 6.03.D.
- 52. "Passenger Facility Charges" or "PFC"** means the federally approved Passenger Facility Charge pursuant to 49 USC Section 40117 and regulated by 14 CFR Part 158, as such statute and regulation currently exist or as they may be amended during the Term of this Agreement.
- 53. "Passenger Security Screening Fee"** means the fee established in subsection 6.03.G.
- 54. "PFC Approval"** means an approval from the FAA to impose and use a PFC at a certain level and use the revenues collected from the PFC for FAA-approved project, bond financing and interest costs at the Airport.
- 55. "PFC Regulations"** means the regulations under 14 CFR Part 158, as it currently exists or as it may be amended during the Term of this Agreement.
- 56. "Preferential Use Gates"** means those gates described in subsection 4.03.A.
- 57. "Premises"** means the space in the Terminal Building and any other areas leased to or used by Airline under this Agreement, separated into five categories:
- A. "Exclusive Use Space"** means the space leased to Airline for its exclusive use and which is under its direct control.
 - B. "Non-Preferential Use Space"** means the space, if any, leased to Airline on a non-preferential basis.
 - C. "Preferential Use Space"** means the space leased to Airline on a preferential basis.
 - D. "Common Use Space"** means the space used by Airline in common with all other airlines using the space.

- E. **"Joint Use Space"** means the space used jointly by Airline and other airlines using the space.
58. **"Rentable Space"** means the space in the Terminal Building available for lease to airlines, concessionaires, and other rent-paying tenants. Rentable Space shall exclude areas for explosive detection and explosive trace detection systems.
59. **"Rental Car Privilege Fee"** means revenue collected from rental car company lessees in the Airport's consolidated rental car facility that is derived as a percent of gross revenue of such lessees, and excludes all other revenues related to rental car companies including, but not limited to, rent payments, collection of facility use fees from customers, and any other fees, taxes, or reimbursements.
60. **"Rented Gates"** means Preferential Use Gates that are rented by Airline on Concourse A and Concourse B in the Terminal Building.
61. **"Rented Space"** means the space in the Terminal Building actually leased to airlines, concessionaires and other tenants. Rented Space for airlines shall exclude areas for explosive detection and explosive trace detection systems.
62. **"Requesting Airline"** means those airlines described in Section 4.02.
63. **"Rules and Regulations"** means those lawful rules and regulations, pursuant to Section 17.01 of this Agreement.
64. **"Security Deposit"** means the amount reasonably estimated by the City equal to the most recent three (3) months of revenue due to City, for (1) Airline's rentals, fees, and charges pursuant to this Agreement plus (2) Airline's PFC revenues. Notwithstanding the foregoing, upon written notification of City, Airline shall modify the amount of such Security Deposit to a dollar amount equal to three (3) months of the reasonably estimated amount to be invoiced to the Airline plus PFC revenues to be received by Airline in the same Fiscal Year.
65. **"Senior Lien Bonds"** means Airport Bonds issued by City which have a senior lien on the Net Revenues of the Airport and any future series of airport revenue bonds issued by City on a parity with the outstanding Senior Lien Bonds.
66. **"Signatory Airlines"** means airlines providing scheduled air transportation of passengers, property, and/or mail by air to and from the Airport, that have executed an Agreement with the City similar to this Agreement. To qualify as a Signatory Airline, a passenger airline shall lease at least 5,200 square feet of

Terminal Building premises of any rate classification that produces an average rental rate that is equal to or greater than the average rental rate in the Terminal Building, as determined by City, so long as the premises as a package promotes the long-term efficient use of the Terminal Building in City's sole judgment, which shall not be unreasonable or discriminatory.

67. **"Signatory Airline Rentable Space"** means the space in the Terminal Building available for lease to airlines, excluding the ticket counter and Holdroom space adjacent to and serving Concourse C and Concourse D, together with any additions and/or changes thereto.
68. **"Subordinate Lien Bonds"** means Airport Bonds issued by City which have a lien on the Net Revenues of the Airport that is junior and subordinate to the Senior Lien Bonds and any future series of Airport revenue bonds issued by City on a parity with or subordinate to the outstanding Subordinate Lien Bonds.
69. **"Substantial Completion Date"** means the date that a project is ready to be used for its intended purpose, as determined by City.
70. **"Substituted Capital Improvement"** means a Capital Improvement that (1) is being substituted for a previously approved Capital Improvement on **Exhibit F**, as amended from time to time, or (2) is in the same airline cost center as the Capital Improvement being replaced, or (3) has an estimated cost to be included in the airline cost center rate base which is less than or equal to the Capital Improvement being replaced.
71. **"Total Landed Weight"** means the sum of the Maximum Certificated Gross Landing Weight for all Aircraft Arrivals of an airline over a stated period of time. Said sum shall be rounded to the nearest thousand pounds for all landing fees.
72. **"Triggering Event"** means (1) Airline has failed to make payments to City of any rental, fee, or charge, or file with City any report within thirty (30) days after the due date for payment and reporting pursuant to this Agreement, or (2) Airline has failed to pay to City any rental, fee, or charge for its Affiliate Airline Qualifying Flights within thirty (30) days after the due date of such payment pursuant to Section 6.06 of this Agreement.
73. **"2011 Amendment"** means those changes when comparing this Amended and Restated Scheduled Airline Operating Agreement on or after the 2011 Amendment Effective Date to the Amended and Restated Scheduled Airline

Operating Agreement and Terminal Building Lease, and all amendments thereto, existing prior to the 2011 Amendment Effective Date.

74. "2011 Amendment Effective Date" means the date upon which this Amended and Restated Scheduled Airline Operating Agreement and Terminal Building Lease shall be effective. The 2011 Amendment Effective Date shall be July 1, 2011.

ARTICLE 2 TERM

Section 2.01. Term. The Term of this Agreement, as amended, shall begin on July 1, 2011, and end June 30, 2016 (hereafter the "Term"), and the rentals, fees, and charges established in this Agreement shall apply to said Term regardless of the effective date of this Agreement.

Section 2.02. Holding Over. Holding over by Airline following the expiration of the Term, without the consent of City, shall not operate to extend or renew this Agreement. Any such holding over shall be construed as a month-to-month tenancy and shall be on the same terms and conditions in effect on the expiration date of this Agreement; provided, however, that Airline shall not be entitled to Signatory Airline rentals, fees, and charges during said month-to-month tenancy and shall pay the non-signatory rentals, fees and charges established by City.

ARTICLE 3 RIGHTS AND PRIVILEGES OF AIRLINE

Section 3.01. Use of the Airport. Airline, its employees, passengers, guests, patrons, and invitees shall have the right to the use in common with other duly authorized users of the Airport and appurtenances, together with all facilities, improvements, equipment, and services that have been or may hereafter be provided for common use at or in connection with the Airport, subject to the Rules and Regulations.

Section 3.02. Rights of Airline at the Airport.

A. Rights of Airline in Connection with the Operation of its Air Transportation System. Airline shall have the right subject to specific limitations or requirements contained in this Agreement to use the Airport for the following purposes:

1. The operation of a public transportation system by aircraft for the carriage of persons, property, cargo, and mail, including all activities reasonably necessary to such operation.

2. The landing, taking off, flying over, taxiing, pushing, towing, fueling, loading, unloading, repairing, maintaining, conditioning, servicing, parking, and storing of aircraft or other equipment of or operated by Airline. Exterior cleaning of aircraft is limited to instances when special advance written approval of the time and place of such cleaning is given by City.

3. The sale of tickets, documentation of shipments, handling of reservations, and the loading and unloading of persons, property, cargo, and mail at the Airport by such motor vehicles or other means of conveyance as Airline may desire to use in the operation of its air transportation system. However, any ground transportation commercial carrier (including Airline, except for such ground transportation as Airline or its nominee may provide solely for the benefit of its employees) regularly transporting persons to and from the Airport shall first secure and thereafter hold a valid lease, license, or other agreement with City for the right to carry persons to and from the Airport and shall pay City such rentals, fees and/or percentages of the fares of such ground transportation commercial carrier for such right as established by City.

4. The training at the Airport of persons and testing of aircraft and other equipment, such training and testing to be limited to that incidental to Airline's air transportation business at the Airport. Flight training and testing shall be undertaken by Airline only to the extent permitted by, and subject to the conditions of the Rules and Regulations.

5. The purchase of Airline's requirements of personal property or services, including fuel, into-plane fueling services, lubricants, food, beverage, and other passenger supplies, and any other materials and supplies used by Airline from any person or company of Airline's choice, and the making of agreements with any person or company of Airline's choice for services to be performed for Airline that are incidental to the operation of Airline's air transportation system. However, City reserves the right to levy a reasonable concession fee against contractors and suppliers of in-flight food and beverage catering to Airline based on such contractor's gross annual sales to Airline for use or delivery at the Airport. Such contractor shall enter into an operating agreement or lease with City prior to commencing services to Airline. In the event services commence without said operating agreement or lease, Airline shall be primarily responsible for payment of contractor's fees and charges owing to City, and Airline's insurance (as required in Article 11) shall insure contractor's activities at the Airport.

6. The sale, disposal, and exchange of Airline's aircraft, engines, accessories, fuel, oil, lubricants, other equipment, and materials or supplies. Such right shall not be construed as authorizing the conduct of a separate regular business by Airline, but as permitting Airline to perform only such functions as are incidental to the operation of its air transportation system.

7. The servicing by Airline, or by its suppliers of materials or its furnishers of services, of aircraft and other equipment, operated by Airline with line maintenance or other materials or supplies, at its assigned aircraft parking positions or other aircraft parking positions designated by City. City reserves the right to designate other locations reasonably accessible from the Terminal Building for performance of aircraft maintenance and service activities if such activities would interfere with aircraft operations of other airlines in the Terminal Building.

8. The installation and operation of Airline ticket counter back wall treatment and identifying signs in Airline's Premises, subject to the prior written approval of City, which approval shall not be unreasonably withheld or delayed and provided that such signs shall be: (1) substantially uniform in size, type, and location with those of other airlines; and (2) consistent with City's Rules and Regulations or other directives. Signs in areas other than the ticket counter back wall shall not be allowed.

9. The installation, maintenance, and operation of such radio, communication, meteorological, and aerial navigation equipment and facilities at suitable locations on the Airport, including computer equipment at passenger check-in counters in the Terminal Building, as may be necessary or convenient in the opinion of Airline for its operations; provided that such equipment and facilities do not interfere with other Airport communication, meteorological, or aerial navigation systems. The location of such equipment and facilities in areas other than Airline's Premises shall be subject to the prior written approval of City.

10. The installation and operation in Airline's Exclusive Use Space in the Terminal Building of pay telephones or coin vending machines for the sale of cigarettes, soft drinks, foodstuffs, and candy to its employees; however, Airline agrees to allow City's telephone company and vending machine concessionaire the right to submit a bid or proposal to provide such pay telephones and coin vending machines in such Exclusive Use Space at competitive rates.

11. The provision of porter services and such other assistance as Airline may deem necessary for the convenience of airline passengers in checking and transporting baggage at the Terminal Building.

12. The leasing of space in the Terminal Building as Exclusive Use Space for the purpose of maintaining and operating club rooms for its guests, invitees, and passengers and serving alcoholic and non-alcoholic beverages and appetizers therein with and without charge.

B. Right of City to Charge for Facilities Leased to or Used by Airline's Suppliers and Affiliate Airlines Qualifying Flights. It is understood that if Airline's suppliers, contractors, furnishers of services, and Affiliate Airline Qualifying Flights lease for its or for their exclusive use any portion of Airport or facilities from City, except as provided herein, then City may charge appropriate rentals, fees, and charges for such facilities. Affiliate Airline Qualifying Flights using the Premises of Signatory Airline shall not pay to City any rentals, fees, or charges for such Premises.

Section 3.03. Limitations on Use by Airline. In connection with the exercise of its rights under this Agreement, Airline:

A. Use of Facilities. Shall not do or permit to be done anything at or about the Airport that may interfere with the effectiveness or accessibility of the drainage and sewage system, electrical system, air conditioning system, fire protection system, sprinkler system, alarm system, fire hydrants and hoses, if any, installed or located on or within the Premises or the Airport.

B. Insurance Requirements Compliance. Shall not do or permit to be done any act upon the Airport that will invalidate or conflict with any fire or other casualty insurance policies (copies of which, together with premium schedules, shall be furnished to Airline on request) covering the Airport or any part thereof.

C. Waste Disposal. Shall not dispose of or permit any other person to dispose of any waste material taken from or products used (whether liquid or solid) with respect to its aircraft into the sanitary or storm sewers at the Airport unless such waste material or products first be properly treated if required under applicable Environmental Laws, by equipment installed for that purpose or otherwise disposed of pursuant to law. Airline shall also obtain all government agency approvals, which are required under applicable Environmental Laws for disposal of such waste material, and shall immediately notify City's Aviation Department if a governmental agency approval is required for such disposal. All such disposal shall comply with applicable regulations of the United States Department of Agriculture and shall be in compliance with Section 17.03 of this Agreement.

D. Flammable Liquids. Shall not keep or store, during any 24-hour period, flammable liquids within the enclosed portion of the Premises in excess of Airline's

working requirements during said 24-hour period, except in storage facilities especially constructed for such purposes in accordance with standards established by the National Board of Fire Underwriters and approved by a governmental agency with authority to inspect such facilities for safety compliance. Any such liquids having a flash point of less than 100 degrees Fahrenheit shall be kept and stored in safety containers of a type approved by the Underwriters Laboratories.

E. Food/Liquor Sales or Distribution. Airline shall be entitled to provide in-flight catering for its air passengers, either with its own staff or by contract with others. In-flight catering companies serving Airline at the Airport shall enter into an operating agreement or the equivalent thereof with City prior to commencing in-flight catering services to Airline.

The distribution, serving or sale of food and/or drink (including alcoholic beverages) by Airline or its in-flight catering company shall be limited to Airline's passengers who are in the jetway or entrance to the jetway and in the process of boarding Airline's aircraft. Such food and/or drink shall be consumed only on board Airline's aircraft. The provisions of this Section notwithstanding, all distribution of alcoholic beverages shall comply with applicable laws. Except as allowed herein and subsections 3.02.A.10 and 12 above, all other serving, distribution or sales of food or drink by Airline at the Airport is prohibited.

Distribution of food or drink by Airline in passenger Holdrooms shall otherwise be allowed only by a advance written permission of City. Such permission shall not be unreasonably withheld or delayed, but may be conditioned upon requirements that Airline assist City in paying for extra or unusual custodial costs due to such food and drink distribution. All such food and/or drinks shall be purchased only from retail restaurants operating in the Airport Terminal Building, provided, however, that such requirement can be waived in extraordinary circumstances at the discretion of the Director.

ARTICLE 4 PREMISES

Section 4.01. Terminal Building Space. During the Term of this Agreement, Airline shall lease or use the areas in the Terminal Building as shown in **Exhibit C**, the Preferential Use Gates and Assigned Gates as shown in **Exhibit D**, and the Curbside Check-in Space as shown in **Exhibit E**.

Type of Space

Basis of Use

Ticket counter and ticket office	Exclusive
Baggage make-up	Exclusive
Curbside check-in	Exclusive
Covered storage/operations	Exclusive
Unenclosed equipment storage	Exclusive
Bag claim room	Exclusive
Holdroom	Non-Preferential or Preferential
Passenger circulation area	Joint
Baggage claim/inbound baggage	Common

Revisions to **Exhibit C**, **Exhibit D**, or **Exhibit E**, shall be made by City from time to time during the Term of this Agreement and the revised exhibits shall replace the then current exhibits without an amendment to this Agreement. City shall provide Airline with a copy of the revised exhibits within thirty (30) days of such revision.

Section 4.02. Accommodation of Airline and Other Airlines. To maximize the use of all facilities at the Airport and to facilitate the entry of new airlines, as well as the expansion plans of present airlines ("Requesting Airlines"), Airline agrees, upon the request of Director, to accommodate such Requesting Airline in its leased Premises. To ensure compliance with this obligation and to provide open access and uniform treatment for all airline tenants, the following procedure is hereby established.

- A.** In order to secure the use of Terminal Building facilities, a Requesting Airline shall:
- 1.** Contact City to use City-controlled Terminal Building space and Gate(s); or
 - 2.** Contact Airline and other airlines to request the use of such Airline's leased Premises under a sublease or handling arrangement pursuant to Article 12.
- B.** In the event no City controlled Terminal Building space and/or Gates are available and the Requesting Airline has demonstrated to City that it has contacted all airline lessees and has pursued all reasonable efforts to secure accommodations without success, such Requesting Airline shall notify Director of its desire to be accommodated in the Terminal Building.

C. Director shall then notify all airlines in writing that, if Requesting Airline is not accommodated within fifteen (15) days from the receipt of said notice, Director shall select one of the airlines to comply with the request for accommodation.

D. At the end of said fifteen (15) day period, if Requesting Airline has not been accommodated, Director will select Airline and/or another airline ("Accommodating Airline") to accommodate the Requesting Airline, taking into consideration such factors as current utilization of Accommodating Airline's leased Premises, schedule compatibility, union work rules, competitive relationships, etc. In that event, Director shall send written notice to such Accommodating Airline to begin accommodating the Requesting Airline within thirty (30) days from the receipt of said notice. Director shall include in such notice the reason or reasons why such Accommodating Airline was selected.

E. Upon receipt of said notice, the selected Accommodating Airline may submit written comments to Director contesting its selection. However, the decision of Director shall be final.

F. Unless Director rescinds such selection within said thirty (30) day period, the Accommodating Airline shall accommodate the Requesting Airline by sharing its leased Premises, subject to the following conditions:

1. In case of a conflict between schedules of the Accommodating Airline and the Requesting Airline, the Accommodating Airline shall have preferential use of its leased premises.

2. The Accommodating Airline may assess the Requesting Airline reasonable fees and charges under an appropriate agreement for services rendered to, or Premises shared with, Requesting Airline, which fees and charges shall be based on Accommodating Airline's direct and indirect costs plus a reasonable allowance for administration and profit. If so requested by the Accommodating Airline, any such agreement shall provide for appropriate indemnities from Requesting Airline in favor of the Accommodating Airline, to protect, defend, indemnify and make the Accommodating Airline whole from all losses, damages, costs and liabilities resulting from or arising out of the accommodation of the Requesting Airline by the Accommodating Airline. City agrees that the Accommodating Airline shall have no duty to accommodate a Requesting Airline that either (A) refuses to enter into such agreement, or (B) having entered into such agreement, fails to discharge any payment obligation provided thereunder, and which failure is not remedied within ten (10) business days of receipt of Accommodating Airline's written notice.

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

G. A Requesting Airline that does not qualify under Section 4.03 below for preferential use of a gate, may request the use of Accommodating Airline's Assigned Gate(s). However, the Requesting Airline shall not be entitled to use the Accommodating Airline's Assigned Gate(s) at any time such Gate(s) is in use by Accommodating Airline or by its Affiliate Airline Qualifying Flights assigned to such Gate.

Section 4.03. Terminal Building Gates.

A. Preferential Use of Gates. Gates shall be assigned on a preferential use basis only to Signatory Airlines, subject to specific procedures for gate use to be established by City through its Rules and Regulations. In the event Airline has non-scheduled flights, priority will be given to assigning Airline Gate(s) in closest proximity to Airline's Preferential Use Gate.

Airline's preferential use of a Gate shall include preferential use of the podium and associated facilities for the Gate, provided however, that passenger Holdroom seating shall be available to the public regardless of the airline using such Holdroom.

Airline will have priority in using Gates assigned to it on a preferential basis to accommodate its scheduled flights and its scheduled Affiliate Airline Qualifying Flights. However, City may assign such Preferential Use Gate for use by others in periods when not in use by Airline or its Affiliate Airline Qualifying Flights so long as the Preferential Use Gate is scheduled to be vacated to accommodate Airline's scheduled flights or its scheduled Affiliate Airline Qualifying Flights.

City reserves the right to reassign one or more of Airline's Preferential Use Gates to another Signatory Airline if (1) Airline's scheduled average utilization, including its Affiliate Airline Qualifying Flights scheduled utilization, for each such Preferential Use Gate falls below an average of four (4) departing flights per day for the days Monday through Friday, and (2) City determines that there is a reasonable need for the preferential use of each such gate by another Signatory Airline. Such reassignment will be evidenced by written notice from Director transmitting a revised **Exhibit D**. When determining if Airline has met the four (4) departing flights per Preferential Use Gate requirement, City shall calculate Affiliate Airline Qualifying Flights by (1) multiplying the number of departures in jet aircraft with less than seventy (70) seats by fifty percent (50%) and by (2) multiplying the number of departures in jet aircraft with seventy (70) or more seats by one hundred percent (100%).

All departures by Airline, including Affiliate Airline Qualifying Flights, but excluding aircraft subject to Airline's Ground Handling Service, shall be included in the calculation of the four (4) flights per day requirement, even if two (2) or more such departures are using a Gate simultaneously.

B. Use of Preferential Use Gates by Others. In the event Airline authorizes or allows the use of any of its Preferential Use Gates by another airline, whether scheduled or non-scheduled, other than for its Affiliate Airline Qualifying Flights, then Airline shall require such other airline to remit directly to City the Non-Preferential Use Gate Fee. This subsection 4.03.B shall not be applicable in instances where Preferential Use Gate usage by another airline is by a Requesting Airline, pursuant to subsections 4.02.A or 4.02.B above. In the event a Requesting Airline obtains the use of Airline's Preferential Use Gate, the rental for such Gate shall consist of an apportionment of the total costs related to such Gate among all airlines assigned to the Gate. Apportionment shall be based on the number of aircraft using the Gate for each airline.

C. Other Gate Assignments. Signatory Airlines not leasing a Preferential Use Gate pursuant to subsection 4.03.A above, shall use Gates assigned by City for such aircraft ("Assigned Gates"). More than one airline may be assigned to an Assigned Gate by City. Rental for Assigned Gates shall consist of an apportionment of the total costs related to such Gate among all airlines assigned to the Gate. Apportionment shall be based on the number of aircraft using the Gate for each airline.

D. Overnight Aircraft Parking. Airline shall be entitled to park its aircraft overnight at its Preferential Use Gates and/or at its Assigned Gates. City shall determine if Airline's aircraft may be parked overnight in a hard stand position behind an aircraft at a Gate. Aircraft in excess of the number allowed by City at Gates shall be parked overnight at a parking location, if any exist, approved by City. All aircraft parked at a location other than a Gate shall be subject to the Overnight Aircraft Parking Fee established in subsection 6.03.D below. Where Assigned Gates are shared by Signatory Airlines, priority for aircraft parked overnight at each Gate shall be given to the aircraft that departs first the next morning. The Signatory Airline that has been assigned to the Assigned Gate for the longest continuous period of time shall not be subject to the Overnight Aircraft Parking Fee; however, all other airlines shall be subject to such fee. Signatory Airlines shall be entitled to park their aircraft overnight at Gates that are not Preferential Use Gates or Assigned Gates with the advance authorization of City, subject to the Overnight Aircraft Parking Fee established in subsection 6.03.D below. When more than one (1) Signatory Airline requests such use of such Gate, assignment shall be made by City.

Section 4.04. Surrender of Premises. Airline covenants and agrees that on expiration or early termination of this Agreement as hereinafter provided, it will peaceably surrender possession of its leased Premises in good condition, reasonable wear and tear, changes occasioned by condemnation and acts of God, fire, and other casualties excepted, and City shall have the right to take possession of said Premises. City shall not be required to give notice to quit possession at the expiration of this Agreement.

A. Removal of Personal Property. Airline shall have the right, on expiration or earlier termination of this Agreement and within thirty (30) days thereafter, to remove or dispose of all trade fixtures and equipment and other personal property placed by it at its expense, in, on, or about the Airport, subject to any valid lien that City may have thereon for unpaid rentals, fees, and charges provided, however, that City reserves the right to purchase from Airline, ticket counter inserts and baggage conveyors at Airline's book value for such inserts and conveyors as of the date of such expiration or earlier termination. Airline shall not be entitled to remove non-trade fixtures without the advance written consent of City, which consent shall not be unreasonably withheld or delayed.

B. Removal Damages. In the event Airline removes its trade fixtures and equipment and other personal property described in this subsection, and/or is allowed to remove its non-trade fixtures and removes such fixtures, Airline shall repair any damage caused by such removal. Removal shall be at Airline's sole expense.

C. Ownership of Fixtures Not Removed. In the event Airline fails to remove its property, City shall have the options of (1) removing Airline property at Airline's expense, but only in the event Airline takes possession of such property immediately upon such removal; or (2) taking title to Airline property in lieu of removal on behalf of Airline. In the event City takes title to such property, City shall be entitled to all proceeds of sale of such Airline property as liquidated damages for the breach of this covenant to remove.

Section 4.05. Employee Parking Facilities. Airline shall have the right to the use of automobile parking facilities for its employees employed at the Airport in common with other employees. Such facilities shall be located in an area designated by Director.

Section 4.06. Access. Subject to the provisions of this Agreement, the Rules and Regulations, and such restrictions as Airline may impose with respect to its Exclusive Use Premises, City hereby grants to Airline, its agents, suppliers, employees, contractors, passengers, guests, and invitees, the right and privilege of free and unrestricted access, ingress, and egress to Airline's Premises and to public areas and

public facilities of the Terminal Building. However, Airline's ingress and egress privileges shall not be used, enjoyed, or extended to any person engaging in any activity or performing any act or furnishing any service for or on behalf of Airline if that person is not specifically authorized to engage in such activity or perform such act or furnish such service under the provisions of this Agreement or the Rules and Regulations unless expressly authorized in writing by City in advance of such activity.

Section 4.07. Construction and Airport Expansion and Inconvenience. City shall have the right, at such times as may be reasonable under certain circumstances, to close, relocate, reconstruct, change, alter, or modify Airline's Premises and/or the means of access to Airline's Premises pursuant to this Agreement or otherwise, either temporarily or permanently for purposes of maintaining or constructing improvements, modifications, or expansions to the Terminal Building, including construction of Capital Improvements; provided, however, that City shall provide: (1) reasonable notice of the construction activities to Airline and (2) adequate alternative means of ingress and egress for Airline's Premises or, in lieu thereof, alternate premises with adequate means of ingress and egress. In the event that the construction constitutes a substantial obstruction to or impairment of Airline's use of its Premises or such alternate premises provided by City for more than thirty (30) consecutive calendar days, then Airline shall be entitled to an abatement of the rent for the days such obstruction exists. The amount of such abatement shall be the cost Airline incurs in additional expenses in order to continue operating its business at the adversely impacted location in substantially the same manner as it operated prior to such disruption. In the event alternate premises are provided to Airline by City, City shall pay all costs resulting from such relocation and the remaining rent abatement shall be limited to a reduction of rent based on the smaller square footage, should any reduction occur, charged at the same rate per square foot required pursuant to this Agreement for space Airline occupied prior to any move required under this Section. All costs of relocation or additional operating costs described above shall be considered a cost of the Capital Improvement and recovered through rates and charges calculated under the procedures of Article 7 of this Agreement. Such additional expenses shall include, by way of example only, the costs of any additional security services necessary and the costs associated with any additional manpower required to perform the functions of automated equipment that is temporarily unavailable for use by Airline. City agrees further that it shall use its best efforts to ensure that any alternative premises or alternative means of access, ingress and egress is similar in character, condition and utility value to the Premises being vacated by Airline.

ARTICLE 5
CONSTRUCTION OF CAPITAL IMPROVEMENTS

Section 5.01. General. City has undertaken certain Capital Improvements at the Airport and the Reliever Airport and has financed these Capital Improvements in part with the net proceeds of Airport Bonds and may undertake additional Capital Improvements in accordance with the provisions of Section 5.02 below, and finance such additional Capital Improvements in part with the net proceeds of additional Airport Bonds. By execution of this Agreement, Airline evidences its willingness and intent to pay the rentals, fees, and charges established hereunder for use of the Airport and occupancy of Terminal Building facilities or air cargo facilities, with said rentals, fees, and charges to be calculated in accordance with the provisions of Articles 6 and 7 of this Agreement to recover in part Annual Debt Service on Airport Bonds issued to pay the costs of planning, designing, constructing, and financing such Capital Improvements.

Section 5.02. Additional Capital Improvements and Sources of Funding. From time to time during the Term, City may undertake additional Capital Improvements to the Airport System. City intends to finance such additional Capital Improvements, at City's discretion, from (1) the Capital Fund (as defined in subsection 5.02.B below), (2) the Airline Coverage Account (as defined in subsection 5.02.C below), (3) Annual PFC Revenues, (4) Grants-in-aid, and/or (5) the net proceeds of Airport Bonds, subject to the provisions of this Section 5.02 as set forth below. City shall use its best efforts to obtain Grants-in-aid for such additional Capital Improvements.

A. Coordination Procedures for Future Improvements. Except for Capital Improvements approved by the Signatory Airlines prior to the 2011 Amendment Effective Date and those Capital Improvements listed in **Exhibit F**, as part of the annual budget process described in Section 7.03 below, or at such other time during a given Fiscal Year as circumstances may warrant, City shall notify the Signatory Airlines in writing of its intent to undertake additional Capital Improvements. Such notice shall include a general description of the proposed Capital Improvements; general information regarding the need for and benefits to be derived from the Capital Improvements; cost estimates; and the source of financing to be used. If requested by Airline or other Signatory Airlines, City shall convene a meeting to discuss its plans regarding such Capital Improvements. City acknowledges its intent to keep Airline and other Signatory Airlines fully informed with respect to its plans for additional Capital Improvements to the Airport System and to give due consideration to Airline's comments and suggestions regarding such additional Capital Improvements.

B. Capital Fund. City shall maintain a Capital Fund for the deposit of all net revenues of the Airport System remaining after payment of Operation and Maintenance Expenses, Annual Debt Service, and any other payments or fund deposits required by the Bond Ordinances. City shall use the Capital Fund for any lawful Airport System purpose including, at its discretion, payment of the costs of additional Capital Improvements. Amortization of Capital Improvements funded from the Capital Fund will be included in the recalculation of rentals, fees, and charges as set forth in Article 7 below. Interest income on monies on deposit in the Capital Fund shall remain in the Capital Fund.

C. Airline Coverage Account. City shall maintain an Airline Coverage Account within the Capital Fund for the deposit of that portion of the Signatory Airline rentals, fees, and charges paid to City attributable to the funding of twenty percent (20%) Senior Lien Bond debt service coverage by the Signatory Airlines. City shall use the Airline Coverage Account on a priority basis to pay the costs of budgeted equipment purchases and capital outlays in the Terminal Building, Airfield, Reliever Airport and the cargo area of the Other Areas' cost centers -- expenditures that would otherwise be charged to the rate base pursuant to the provisions of Article 7 below. To the extent available, monies on deposit in the Airline Coverage Account may also be used to pay the costs of additional Capital Improvements in said cost centers, or to redeem bonds allocable to, said cost centers. No amortization or other capital charges associated with expenditures from the Airline Coverage Account will be included in the recalculation of Signatory Airline rentals, fees, and charges hereunder. Interest on monies in the Airline Coverage Account shall remain in the Capital Fund.

D. Increase in Passenger Facility Charge Rate to \$4.50 . Airline understands that the City intends to amend PFC Application 06-03-C-01 for authorization under the PFC Regulations to increase the PFC rate from \$3.00 to \$4.50 on or after the 2011 Amendment Date, subject to City Council approval. If the City receives approval from the City Council and the FAA, it will use such additional PFC revenues to fund the Airfield PFC Revenue Offset and other Capital Improvements. Airline agrees to support this amendment, provided, however, that in no event shall Airline have any obligation to make any statement or take any action that it is advised by counsel would constitute a violation of applicable laws. For the avoidance of doubt, this Section does not constitute support of, or approval by, Airline of increases in the PFC rate above \$4.50 should such increase be permitted under the PFC Regulations after the 2011 Amendment Date.

E. Airline Approvals. In the event, in any given Fiscal Year, City decides to fund any additional Capital Improvement not previously approved by the Signatory Airlines prior to the 2011 Amendment Effective Date and not listed in **Exhibit F** from

(1) the net proceeds of additional series of Airport Bonds or (2) the Capital Fund, and in the event such funding and Operation and Maintenance Expenses associated with such Capital Improvement, as estimated by City would cause a projected increase in airline rental rates or landing fee rates of more than ten percent (10%) over and above the rates which would otherwise be projected if the Capital Improvement(s) was not undertaken (as reasonably projected by City for the first full Fiscal Year following completion of said Capital Improvement(s)), the following procedures shall apply:

1. City will notify Signatory Airlines of its intent to issue Airport Bonds or use the Capital Fund for the purpose of financing such Capital Improvement(s), as provided in subsection 5.02.A above. Within sixty (60) days of such notice, the Signatory Airlines shall meet and provide the City with their concurrence or non-concurrence with respect to the proposed Capital Improvement(s) to be financed with such bonds or the Capital Fund. Concurrence shall be deemed to have been received unless, within sixty (60) days of the date given in the original notice, concurrence is specifically withheld, in writing, with explanation by Signatory Airlines that represented sixty-six and seven tenths percent (66.7%) of the Signatory Airline rentals, fees, and charges in the immediately preceding Fiscal Year.

When the Capital Improvement(s) is an Airfield or Reliever Airport Capital Improvement(s), the rentals, fees, and charges used to determine the sixty-six and seven tenths percent (66.7%) referenced above shall consist of only the landing fees of the airlines who have entered into this Agreement and airlines that have entered into the Scheduled Cargo Airline Operating Agreement and Cargo Building Lease ("Signatory Cargo Airlines").

No landing fees of Affiliate Airline Qualifying Flights paid by the operator of such Affiliate Airline Qualifying Flights to the City shall be included in the concurrence process or the written disapproval process of Signatory Airlines under this subsection.

2. If concurrence is specifically withheld, City may at its discretion either abandon or proceed with the Capital Improvement(s). If City proceeds with the Capital Improvement(s), it may issue Airport Bonds or use balances available in the Capital Fund for such Capital Improvement(s). However, if City proceeds with the Capital Improvement(s), City shall not (a) include Annual Debt Service for such Airport Bonds, or (b) include amortization for such Capital Fund balances used to finance the Capital Improvement(s) in the recalculation of Signatory Airline rentals, fees, and charges under Article 7 below.

F. Substitution of Capital Improvements by City. City shall provide the Signatory Airlines with written notification of each Substituted Capital Improvement and

a revised **Exhibit F**, and an opportunity for consultation, if requested by any Signatory Airline within thirty (30) days of the issuance of the written notification.

Each Substituted Capital Improvement shall be considered approved by the Signatory Airlines unless fifty percent (50%) of the Signatory Airlines in number requests in writing to City that a Substituted Capital Improvement be subject to the provisions of subsection 5.02. D above.

G. Capital Improvements Excluded from Signatory Airline Approval Procedures. Notwithstanding anything in this Article 5 to the contrary, the following classes of Capital Improvements are not subject to the procedures outlined in subsection 5.02. D above:

- 1.** Any Capital Improvement required by any agency of the United States government having jurisdiction over activities at the Airport or by federal law or executive order;
- 2.** Any Capital Improvement whose principal purpose is to repair casualty damage at the Airport or to Airport property;
- 3.** Any Capital Improvement required to settle claims, satisfy judgments, or comply with judicial orders against the State or City by reason of ownership, operation, or maintenance of the Airport; and
- 4.** Any Capital Improvement that is of an emergency nature as it relates to operational, security, or safety matters, as determined by City, in its sole and reasonable discretion.

H. Aircraft Rescue Fire Fighting Facilities, Vehicles, Equipment, and Systems. As of the 2011 Amendment Effective Date, Airline acknowledges that Aircraft Rescue Fire Fighting services required by 14 CFR Part 139 are provided at will by the United States Air Force (USAF) at no cost to the City. Airline acknowledges that the USAF could cease provision of some or all of such services during the agreement term, thereby causing the City to assume responsibility for such services. Such assumption of responsibility could result in the City incurring capital expenditures for planning studies, buildings, vehicles, equipment, and/or related systems for the operation by the City, the USAF or other third party. Although Capital Improvements related to meeting requirements described under this subsection shall be excluded from Signatory Airline Approval as provided in subsection 5.02.G above, the City agrees to collaborate with the airlines to determine the most appropriate and cost-effective manner to achieve the services required by 14 CFR Part 139.

ARTICLE 6
REPORTS, RECORDS, RENTALS, FEES AND CHARGES

Section 6.01. General. During the Term of this Agreement, in return for use of the Premises, facilities, rights, licenses, and privileges granted herein, Airline agrees to provide all reports, and retain all records as required hereunder, and to pay to City certain rentals, fees, and charges as set forth herein.

Section 6.02. Monthly Activity Report. Airline shall furnish to City on or before the tenth (10th) day of each month, an accurate report of Airline's operations at the Airport during the preceding month, setting forth all data necessary to calculate the fees and charges due under this Agreement. Said report shall be in a format prescribed by City and shall include, but not necessarily be limited to: (1) Airline's total number of Aircraft Arrivals by Gate for the month by type of aircraft, the Maximum Certificated Gross Landing Weight of each aircraft, and the Total Landed Weight for the month; (2) the total number of enplaning, deplaning, and through passengers with enplaned passengers separated into originating, on-line transfer, and inter-line transfer passengers; and (3) the amount of cargo, mail, and express (in pounds) for such month. Airline agrees to cooperate with City in establishing procedures for electronic submission of the report required in this Section.

A. Failure to Report. For any month Airline fails to furnish City with the report required by Section 6.02 above required to calculate fees pursuant to subsection 6.06.B below, such fees and charges, as provided for hereinafter, shall be determined by assuming that Airline's activity for such month was one hundred percent (100%) of activity during the most recent month for which such data are available for Airline. City shall provide Airline with an invoice for such fees and charges which shall be calculated based on this most recent data, provided however, that any necessary adjustment in such fees and charges shall be calculated after an accurate report is delivered to City by Airline for the month in question. Resulting surpluses or deficits shall be applied as credits or charges to the appropriate invoices in the next succeeding month. Failure to submit reports required in Section 6.02 above shall be a material breach of this Agreement.

B. Inspection and Maintenance of Records. All records, accounts, books and data with respect to Airline's operations at the Airport maintained by Airline shall be subject to inspection and audit by City at all reasonable times. Such records shall be maintained by Airline for a period of not less than three (3) years beyond the end of Airline's fiscal year in which such records were created.

Section 6.03. Rentals, Fees and Charges.

A. Terminal Building Space Rentals. Airline shall pay to City for its Exclusive Use Space, Joint Use Space, Preferential Use Space, Non-Preferential Use Space, and Common Use Space in the Terminal Building as shown in **Exhibits C, D, and E**, monthly rents based on the Basic Cost Rate for each type of space less the Airline Terminal Building Rental Credit, with such amounts recalculated each Fiscal Year in accordance with Section 7.04 below.

Monthly rental fees for Joint Use Space shall be prorated among the Signatory Airlines according to the Joint Use Formula using Enplaned Passengers and Preferential Use Gates and Assigned Gates for the second preceding month. Monthly rental fees for Common Use Space shall be prorated among the Signatory Airlines and other airline tenants and users according to the Common Use Formula using Deplaned Passenger statistics for the second preceding month. If a new airline begins service at the Airport or if an existing airline ceases serving the Airport, the resulting changes in total Enplaned Passengers and Deplaned Passengers, and the changes in the utilization of preferential use gates, and Assigned Gates, shall be used by City to recalculate rentals, fees, and charges.

Airline's Affiliate Airline Qualifying Flights shall not pay to City any Terminal Building Space Rental for the use of Airline's Premises.

B. Baggage Claim Device Surcharge. Airline shall pay monthly to City, a Baggage Claim Device Surcharge, in addition to the Common Use Space rental, recalculated each Fiscal Year, as set forth in Section 7.05 below.

Airline's Affiliate Airline Qualifying Flights shall not pay to City any Baggage Claim Device Surcharge.

C. Loading Bridge Charges. Airline shall pay monthly to City, Loading Bridge Charges consisting of (1) a Loading Bridge Operating Fee per each operation of the Loading Bridge for Airline's aircraft and its Affiliate Airline Qualifying Flights, and (2) a Loading Bridge Fixed Fee per each Rented Gate, with such charges recalculated each Fiscal Year in accordance with Section 7.06 below.

D. Overnight Aircraft Parking Fee. Airline shall pay monthly to City, an Overnight Aircraft Parking Fee for aircraft parked at the Airport, pursuant to subsection 4.03.D above, in the amount of Fifty and 00/100 Dollars (\$50.00) for each night for each aircraft of Airline and its Affiliate Airline Qualifying Flights, except those aircraft that are parked at a Preferential Use Gate or an Assigned Gate, pursuant to subsections

4.03.A and C above. The Overnight Aircraft Parking Fee shall be in addition to the Non-Preferential Gate Use Fee. The Overnight Aircraft Parking Fee rate shall be adjusted in accordance with Section 7.07 below.

E. Non-Preferential Gate Use Fee. Airline shall pay monthly to City, a Non-Preferential Gate Use Fee in the amount of Three Hundred and 00/100 Dollars (\$300.00) for each use of a Non-Preferential Gate by Airline and for each use by its Affiliate Airline Qualifying Flights. Neither Airline nor its Affiliate Airline Qualifying Flights shall be charged a fee for the use of Airline's Preferential Use Gate(s) or its Assigned Gate(s). The Non-Preferential Gate Use Fee shall be adjusted in accordance with Section 7.08 below.

F. Landing Fees. Airline shall pay to City monthly Landing Fees to be determined by multiplying the number of 1,000-pound units of Total Landed Weight for Airline during the month by the then-current Landing Fee Rate. The Landing Fee Rate shall be calculated each Fiscal Year in accordance with Section 7.09 below.

Airline's Affiliate Airline Qualifying Flights shall pay to City the Landing Fee Rate established pursuant to this subsection.

G. Passenger Security Screening Fee. Airline shall pay monthly to City, a Passenger Security Screening Fee for Airline's use of the passenger screening area in the Terminal Building, including such use by airlines operating Affiliate Airline Qualifying Flights, at the per Enplaned Passenger rate established by City. Such fees shall be credited in the calculation of the Basic Cost Rate, as shown in **Exhibit H**.

H. Miscellaneous Fees. Airline and its Affiliate Airline Qualifying Flights shall pay to City reasonable fees for the following services provided by City to Airline, and for those services as described below provided by Airline to other airlines:

1. Airline's use of City's U.S. Agricultural Department incinerator, at the rates established by City as such rates exist at the time of the use.

2. Airline's use of the Federal Inspection Screening Area, at the rates established by City as such rates exist at the time of the use.

3. Airline's subletting and Ground Handling services, except for services provided to its Affiliate Airline Qualifying Flights, as defined in Article 12 and Article 13 below, which fees shall be paid at the rate of five percent (5%) of the gross revenue derived by Airline from such sublease or Ground Handling service, subject to the limitations of Sections 12.01 and 13.01 below.

4. Office services, such as facsimile, photocopying, or telephone provided by City to Airline and all costs for Airport Identification (ID)/Access cards shall be paid to City by Airline upon receipt of invoices sent by City. Charges for such items shall be at the rate customarily charged by City's Aviation Department at the time such services or materials are obtained by Airline.

5. City reserves the right to assess a reasonable monthly charge for employee parking facilities. No free parking privileges or reduced parking rates shall be provided by City to Airline or its employees.

Section 6.04. Fees and Charges for Services Provided by Others. Except as expressly provided for herein, no further rentals, fees, or charges shall be charged against or collected from Airline, its passengers, shippers, and receivers of freight and express, and its suppliers of material, contractors, or furnishers of services, by City for the Premises, facilities, rights, licenses, and privileges granted to Airline in this Agreement. However, City expressly reserves the right to assess and collect reasonable fees from such concessionaires and operators for in-flight catering, vending, ground transportation, and other services provided for Airline by other concessionaires and operators (other than by another Signatory Airline or by its Affiliate Airline Qualifying Flights).

Section 6.05. Passenger Facility Charges. City expressly reserves the right to assess and collect a PFC in accordance with the PFC Regulations. The following shall apply to the collection of PFCs:

A. Airline shall hold in trust for City, the net principal amount of all PFC revenues that are collected by Airline or its agents on behalf of City pursuant to the PFC Regulations. No trust account shall be required except as required by applicable law or as provided in the PFC Regulations. For purposes of this Section, net principal amount shall mean the total principal amount of all PFC revenues that are collected by Airline or its agents on behalf of City, reduced by all amounts that Airline is permitted to retain pursuant to the PFC Regulations.

B. In the event Airline fails to remit PFC revenues to City within the time limits established in the PFC Regulations, such event shall be an event of default subject to Section 15.01 of this Agreement.

Section 6.06. Payment Provisions.

A. Terminal Building Space Rentals pursuant to subsection 6.03.A above, shall be due and payable the first day of each month in advance without invoice from City.

B. Within fifteen (15) days following the last day of each month, Airline shall transmit to City payment for the amount of Loading Bridge Charges pursuant to subsection 6.03.C above, Overnight Aircraft Parking Fees pursuant to subsection 6.03.D above, Non-Preferential Gate Use Fees pursuant to subsection 6.03.E above, Landing Fees pursuant to subsection 6.03.F above, and Passenger Security Screening Fees pursuant to subsection 6.03.G above, as computed by Airline without invoice from City.

C. Within thirty (30) days of the date of invoice from City, Airline shall transmit to City payment for its Baggage Claim Common Use Space Charge and Device Surcharge pursuant to subsection 6.03.B above, and other Fees pursuant to subsection 6.03.H above.

D. The acceptance by City of any payment made by Airline shall not preclude City from verifying the accuracy of Airline's report and computations or from recovering any additional payment actually due from Airline.

E. If the expiration or earlier termination of this Agreement occurs on a date other than the first or last day of a calendar month, rentals, fees, and charges shall be prorated according to the number of days in that month during which all rights and privileges were enjoyed by Airline.

Section 6.07. Place of Payment. Airline shall deliver payments of rentals, fees, and charges to the office of Director, or at such other place as may be designated by City from time to time. Payment shall be made to the order of "City of Albuquerque." Airline agrees to cooperate with City in the development of electronic transfer of funds as the preferred method of payment.

Section 6.08. Late Payment Fees. If rentals, fees, and charges required by this Agreement are not received by City on or before the date specified in this Agreement, Airline shall pay an interest charge to City of one and one-half percent (1½%) per month (18% annually) for each month or partial month that any payment due is not received.

Section 6.09. Charging Non-Signatory Airline Rates and Charges. Sixty (60) days from the date that written notification was sent to Airline of a Triggering Event,

City shall have the right to impose Non-Signatory Airline rates and charges on Airline until the past due amounts owed to City have been received in full and Airline has provided a Security Deposit pursuant to Section 6.11 below.

Section 6.10. Guarantee of Payment. Airline shall guarantee the payment of all rentals, fees, and charges for its Affiliate Airline Qualifying Flights, and shall pay any amounts that are past due to City. Failure of Airline to pay any past due amounts pursuant to this Section shall (1) require Airline to submit a Security Deposit to City pursuant to Section 6.11 below, or (2) be an event of default pursuant to Section 15.01 below.

Section 6.11. Security Deposit. Airline shall be required to submit a Security Deposit in the event that it (1) has operated at the Airport for less than twelve (12) consecutive months from the Effective Date of this Agreement or (2) has received a written notice from City that a Triggering Event has occurred and sixty (60) days have passed since Airline has received such notice, and Airline has not cured the Triggering Event.

Such Security Deposit shall be in the form of a Bond or an irrevocable Letter of Credit ("LOC") issued exclusively to City, in a form substantially the same as **Exhibit G** attached hereto and incorporated herein. The Bond or LOC shall expressly permit partial payment. The Bond or LOC shall be issued exclusively to City. When a bond is provided, such Bond shall be issued with City as obligee by a surety licensed to conduct business in the State of New Mexico and which has sufficient bonding capacity for the amount of the Bond and is named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in the Federal Register by the U.S. Treasury Department or its successor agency.

Document(s) evidencing this deposit shall provide that the same shall remain in full force and effect for a period of sixty (60) days following termination or cancellation of this Agreement as is herein provided. If payments required by Airline under the terms of this Agreement are not made in accordance with the payment provisions set forth in Section 6.06 above, City shall have the right to forfeit, take, and use so much of such Security Deposit as may be necessary to make such payment in full and to exercise any other legal remedies to which it may be entitled. In the event of a partial draw, Airline shall immediately reinstate the Security Deposit to the full amount required herein.

A. Duration of Security Deposit Requirement. If Airline is required to provide a Security Deposit pursuant to Section 6.11 above, this requirement shall remain in effect until the later of (1) twelve (12) months following City's receipt of full

payment of any and all past due amounts from Airline following a Triggering Event, or (2) a twelve (12) month period during which Airline has remained current on all amounts due under this Agreement, as determined by City. In no case shall a Security Deposit requirement be in place for less than twelve (12) months.

Section 6.12. Net Agreement. This is a net agreement with reference to rentals, fees, and charges paid to City. Airline shall pay all taxes of whatever character that may be lawfully levied, assessed, or charged by any governmental entity upon the property, real and personal, occupied, used, or owned by Airline, or upon the rights of Airline to occupy and use the Premises received hereby, or upon Airline's improvements, fixtures, equipment, or other property thereon, or upon Airline's rights or operations hereunder. Airline shall have the right at its sole cost and expense to contest the amount or validity of any tax or license as may have been or may be levied, assessed, or charged.

Section 6.13. Non-Waiver. The acceptance of rentals, fees, and charges by City for any period or periods after a default of any of the terms, covenants, and conditions herein contained to be performed, kept, and observed by Airline, shall not be deemed a waiver of any right on the part of City to terminate this Agreement for failure by Airline to perform, keep, or observe any of the terms, covenants, or conditions of this Agreement, and shall not be construed to be or act as a waiver by City of any subsequent default of any of the terms, covenants, and conditions herein contained to be performed, kept, and observed by Airline, and shall not be deemed a waiver of the right of City to terminate this Agreement pursuant to Article 16 of this Agreement.

ARTICLE 7 RECALCULATION OF RENTALS, FEES AND CHARGES

Section 7.01. General. Effective July 1, 2011, for Fiscal Year 2012, and for each Fiscal Year thereafter, rentals, fees, and charges will be reviewed and recalculated based on the principles and procedures set forth in this Article.

Section 7.02. Accounting Records.

A. City shall establish and maintain accounting records that will document the following items for each of the Airport Cost Centers: (1) Revenues, (2) Operation and Maintenance Expenses, (3) Annual Debt Service on Airport Bonds, (4) Annual Amortization Charges for the cost of Capital Improvements financed by City from sources other than Bonds, Grants-in-aid or Annual PFC Revenues, and (5) any other annual funding requirements pursuant to the Bond Ordinances.

B. For purposes of keeping Airline informed as to the financial performance of the Airport, City shall provide to Airline appropriate financial data to assess the adequacy of rentals, fees, and charges established under this Agreement.

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

A. On or before March 1 prior to the beginning of each Fiscal Year, and if requested by the Signatory Airlines, City will submit to Airline a copy of its preliminary operating budget for the Airport for the next Fiscal Year. Airline will submit any comments it may have with respect to the preliminary operating budget on or before April 1 prior to the beginning of each Fiscal Year in order for City to give consideration to such comments in the course of City's annual budget process.

B. On or before April 1 prior to the beginning of each Fiscal Year, Airline will submit to City its forecast Maximum Gross Landing Weight for the next Fiscal Year. If such forecast is not submitted by Airline, City will develop its own forecast of Airline's Maximum Gross Landing Weight for use in the process of calculating rentals, fees, and charges for the next Fiscal Year.

C. On or before June 1 prior to the beginning of each Fiscal Year, City shall submit to Airline a report containing the following:

1. City's estimates for the next Fiscal Year of Operation and Maintenance Expenses; Annual Debt Service; equipment purchases, capital outlays and allowances for unscheduled maintenance; proposed expenditures for Capital Improvements and sources of funding for such Capital Improvements; and estimated revenues from sources other than airline rentals, fees, and charges (collectively the "Rate Base Elements"), all allocated to Airport Cost Centers on a consistent basis from year to year.

2. City's calculations of proposed airline rentals, fees, and charges for each Fiscal Year, shall be based on the procedures set forth in this Agreement.

3. City's calculations of the Reliever Airport Deficit calculated in accordance with subsection 7.09B below plus information in the report. In addition, the City will also include in the report (1) material changes in tenancy at the Reliever Airport; and (2) a description of, justification for, and projected effect, if any, on the Landing Fee Rate of any Capital Improvements expected to be undertaken in the upcoming Fiscal Year, provided however, that all such Capital Improvements shall remain subject to the provisions of the preceding Article 5.

D. Within fifteen (15) days after receipt of City's report, if requested by a representative of the Signatory Airlines, a meeting shall be held between City and the Signatory Airlines to review and discuss the proposed rentals, fees and charges. City shall give due consideration to any comments or suggestions of Airline and the other Signatory Airlines regarding the estimated Rate Base Elements and the calculation of the proposed rentals, fees and charges, recognizing however that it will probably not be possible to make changes in the Airport's annual operating budget at this point in City's overall budget process.

E. City shall adopt an annual budget, pursuant to City's budget process, which shall be the basis for the estimates of Operation and Maintenance Expenses used in the final calculation of airline rentals, fees and charges for the next Fiscal Year. City shall promptly furnish Airline with a copy of such approved annual budget, together with the final calculation of airline rentals, fees and charges to become effective as of the first day of the next Fiscal Year.

F. If, for any reason, the annual budget has not been adopted by City as of the first day of any Fiscal Year, airline rentals, fees, and charges for that Fiscal Year will be initially established based on the estimates provided by City in subsection 7.03.C above (or, as may be adjusted based on comments and suggestions provided by Airline or other Signatory Airlines under subsection 7.03.D above). Such rentals, fees, and charges will continue in effect until the annual budget has been adopted by City, at which time such rentals, fees, and charges will be recalculated, if necessary, based on the approved annual budget of City and made retroactive to the first day of such Fiscal Year.

Section 7.04. Calculation of Terminal Building Space Rental Rates. Terminal Building Space Rental Rates shall be calculated in the following manner, as illustrated in **Exhibit H**, entitled "Illustrative Calculation of Airline Rentals, Fees, and Charges," attached hereto and incorporated herein as though set forth in full.

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

- 1.** The total of estimated direct and allocated indirect Operation and Maintenance Expenses allocable to the Terminal Building.
- 2.** The estimated costs of any equipment purchases, capital outlays, and unscheduled maintenance (net of any Grants-in-aid or PFC revenues received by City for such purposes) allocable to the Terminal Building to the extent such costs are not otherwise funded from the Airline Coverage Account.

3. An amount equal to Annual Debt Service on Airport Bonds allocable to the Terminal Building.

4. An amount equal to the Annual Amortization Charges allocable to the Terminal Building.

5. An amount equal to the Bad Debt Expense, if any, allocable to the Terminal Building.

B. The estimated revenue from Passenger Security Screening Fees and FIS Area Fees will be deducted from the estimated Terminal Building Cost to determine the estimated "Net Terminal Building Cost" for the next Fiscal Year.

C. The estimated Net Terminal Building Cost for the next Fiscal Year will then be divided by the total amount of Rentable Space to determine the "Basic Cost Rate" per square foot of Rentable Space.

D. The Basic Cost Rate will then be multiplied by the amount of Rentable Space leased to all airlines and the resulting quantity will then be reduced by the amount of Non-Signatory Airline Terminal Building Space Rentals, if any, to determine the "Basic Signatory Airline Rental Requirement."

E. The Airline Terminal Building Rental Credit will be subtracted from the Basic Signatory Airline Rental Requirement to obtain the "Net Signatory Airline Rental Requirement."

F. The Net Signatory Airline Rental Requirement will be divided by the amount of Signatory Airline Rentable Space in the Terminal Building to determine the required airline Terminal Building Space Rental Rate per square foot.

G. The rental rate for Baggage Claim Common Use Space shall be increased by the amount of the Baggage Claim Device Surcharge calculated in accordance with Section 7.05 below.

Section 7.05. Calculation of Baggage Claim Device Surcharge. The Baggage Claim Device Surcharge shall be calculated in the following manner and as illustrated in **Exhibit H.**

A. City's estimated total "Baggage Claim Device Cost" for each Fiscal Year shall be calculated by totaling the following amounts:

1. The total of estimated direct Operation and Maintenance Expenses allocable to the baggage claim devices.

2. An amount equal to Annual Debt Service on Airport Bonds allocable to the baggage claim devices.

3. An amount equal to the Annual Amortization Charges allocable to the baggage claim devices.

B. The total Baggage Claim Device Cost will then be divided by the amount of baggage claim/inbound baggage area space to determine the Baggage Claim Device Surcharge per square foot of baggage claim/inbound baggage area space.

Section 7.06. Calculation of Loading Bridge Charges. Loading Bridge Charges shall consist of a "Loading Bridge Operating Fee" and a "Loading Bridge Fixed Fee" and will be calculated in the following manner and as illustrated in **Exhibit H**.

A. **Loading Bridge Operating Cost.** City's estimated total Loading Bridge Operating Cost for each Fiscal Year shall include total estimated direct Operation and Maintenance Expenses allocable to the loading bridges and an amount equal to the Bad Debt Expense, if any, allocable to the Loading Bridge.

B. **Loading Bridge Operating Fee.** The Loading Bridge Operating Fee shall be determined by dividing the Loading Bridge Operating Cost by the estimated number of Departing Flights.

C. **Loading Bridge Fixed Fee.** City's estimated total Loading Bridge Fixed Cost for each Fiscal Year shall be calculated by totaling the following amounts:

1. An amount equal to Annual Debt Service on Airport Bonds allocable to the loading bridges.

2. An amount equal to the Annual Amortization Charges allocable to the loading bridges.

The total Loading Bridge Fixed Cost will then be divided by the number of Rented Gates to determine the Loading Bridge Fixed Fee per Rented Gate for each Fiscal Year.

Section 7.07. Adjustment to the Overnight Aircraft Parking Fee. The Signatory Airline Overnight Aircraft Parking Fee shall be adjusted by City at the beginning of each

Fiscal Year according to the percent change in the Landing Fee Rate for the budgeted Fiscal Year when compared to the rate in use for the then-current Fiscal Year.

Section 7.08. Adjustment to the Non-Preferential Gate Use Fee. The Non-Preferential Gate Use Fee shall be adjusted by City at the beginning of each Fiscal Year according to the percent change in the Basic Cost Rate for the budgeted Fiscal Year when compared to the rate in use for the then-current Fiscal Year.

Section 7.09. Calculation of Landing Fee Rates. Landing Fee Rates shall be calculated in the following manner and as illustrated in **Exhibit H**.

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

1. The total of estimated direct and allocated indirect Operation and Maintenance Expenses allocable to the Airfield.

2. The cost of any equipment purchases, capital outlays, and unscheduled maintenance (net of any Grants -in-aid or PFC revenues received by City for such purposes) allocable to the Airfield to the extent such costs are not otherwise funded from the Airline Coverage Account.

3. An amount equal to Annual Debt Service on Airport Bonds allocable to the Airfield less the amount of the Airfield PFC Revenue Offset.

4. An amount equal to the Annual Amortization Charges allocable to the Airfield.

5. The Reliever Airport Deficit calculated in accordance with subsection 7.09.B below.

6. The amount of any fine, assessment, judgment, settlement or extraordinary charge (net of insurance proceeds) required to be paid by City in connection with airline operations at the Airport, to the extent not otherwise covered by Section 11.02 and to the extent that such amounts do not result from the negligence or willful misconduct of City; provided, however, that if such charge to the Airfield rate base would result in a material increase in landing fee rates, City will use its best efforts to finance such amount from the Capital Fund or the net proceeds of additional Airport Bonds and recover through amortization charges or debt service, as appropriate.

7. The amounts required to be deposited to reserve accounts established under the Bond Ordinances.

8. The allocable portion of the Air Cargo Apron used as a taxi lane.

9. An amount equal to the Bad Debt Expense, if any, allocable to the Airfield.

B. The Reliever Airport Deficit shall be calculated by first totaling the following amounts ("Reliever Airport Costs"):

1. The total of estimated direct and allocated indirect Operation and Maintenance Expenses allocable to the Reliever Airport.

2. The cost of any equipment purchases, capital outlays, and unscheduled maintenance (net of any Grants-in-aid or PFC revenues received by City) allocable to the Reliever Airport to the extent such costs are not otherwise funded from the Airline Coverage Account.

3. An amount equal to Annual Debt Service on Airport Bonds allocable to the Reliever Airport.

4. An amount equal to the Annual Amortization Charges allocable to the Reliever Airport.

The Reliever Airport operating revenue will then be deducted from the Reliever Airport Costs to determine the Reliever Airport Deficit for each Fiscal Year, subject to the following additional provisions in this Section 7.09B:

5. Reliever Airport Costs shall not include those costs pursuant to Section 7.09.B.1 through Section 7.09.B.4 that are directly allocable to the commercial development of the aerospace technology park and/or the midfield area of the Reliever Airport ("Excluded Reliever Airport Costs").

6. Reliever Airport operating revenue shall not include the revenue received by City from the development of the aerospace technology park or the midfield area of the Reliever Airport ("Excluded Reliever Airport Revenue").

7. To the extent that the annual Excluded Reliever Airport Revenue is equal to or greater than the annual Excluded Reliever Airport Costs for the current fiscal year or the most recent historical year during the Term of this Agreement, City and

Signatory Airlines mutually agree to discuss revisions to the calculation of the Reliever Airport Deficit to include the Excluded Reliever Airport Revenue and Excluded Reliever Airport Costs for the then remaining Term of the Agreement.

C. The total Airfield Cost shall be reduced by Non-Signatory Airline Airfield revenues (comprised of general aviation fuel flowage fees, non-scheduled airline flight fees, and U.S. Air Force flight fees) to determine the "Net Airfield Cost."

D. The Net Airfield Cost shall then be divided by the estimated Total Landed Weight of the Signatory Airlines and of Affiliate Airline Qualifying Flights to determine the Landing Fee Rate per 1,000 pounds of aircraft weight for each Fiscal Year.

Section 7.10. Extraordinary Rate Adjustments of Terminal Building Space Rentals, and Landing Fees. In the event that, at any time during a Fiscal Year, any of the components of Net Airline Rental Requirement or Net Airfield Cost, or the aggregate Total Landed Weight of all Signatory Airlines and Affiliate Airline Qualifying Flights, is estimated by City to vary ten percent (10%) or more from the estimates used in setting Terminal Building Space Rental Rates or Landing Fee Rates, such rates may be adjusted either up or down for the balance of such Fiscal Year, provided that such adjustment is deemed necessary by City to ensure that adequate revenues will be available from such fees to cover the estimated Net Airline Rental Requirement or Net Airfield Cost for each Fiscal Year.

Section 7.11. Year-End Adjustments of Terminal Building Space Rentals, Baggage Claim Device Surcharge, Loading Bridge Charges, and Landing Fees to Reflect Actual Costs and Revenues. As soon as practical following the close of each Fiscal Year, City shall furnish Airline with an accounting of the costs actually incurred, and revenues and other credits actually realized, during such Fiscal Year with respect to each of the components of the calculation of Terminal Building Space Rentals, Baggage Claim Device Surcharge, Loading Bridge Charges, and Landing Fees in this Article 7.

The rentals, fees, and charges associated with Affiliate Airline Qualifying Flights that were paid by Signatory Airline to City shall be included in the calculation of the year-end adjustment pursuant to this Section 7.11. Signatory Airline Landing Fees paid by that airline providing the Affiliate Airline Qualifying Flights shall be subject to the provisions of this Section 7.11 and such airline shall receive the year-end credit pursuant to subsection 7.11.A below or pay to City the year-end deficit pursuant to subsection 7.11.B below.

A. Year-End Credit. In the event that Airline's rentals, fees, and charges billed during the Fiscal Year exceed the amount of Airline's rentals, fees, and charges required (as recalculated based on actual costs and revenues), such excess amount shall be credited to Airline in equal monthly installments over the remaining months of the then-current Fiscal Year. Airline shall receive the credit under this subsection unless (1) there is a past due amount of Airline as determined by the City or (2) Airline has not provided a Security Deposit to City pursuant to Section 6.11 above of this Agreement. Airline shall receive its year-end credit following payment of the past due amount to City or Airline has provided the Security Deposit, as determined by City.

B. Year-End Deficit. In the event that Airline's rentals, fees, and charges billed during the Fiscal Year are less than the amount of Airline's rentals, fees, and charges required (as recalculated based on actual costs and revenues), such deficiency shall be charged to Airline in equal monthly installments over the remaining months of the then-current Fiscal Year.

ARTICLE 8 AUTHORIZING LEGISLATION FOR SALE OF BONDS

Section 8.01. General. In the event of conflicts between this Agreement and the Bond Ordinances, the Bond Ordinances shall govern.

Subject to the terms and provisions of the Bond Ordinances, it is mutually understood and agreed that, so long as any Bonds secured by the Bond Ordinances are outstanding, the deposit and application of Airport Revenues shall be governed by the Bond Ordinances.

ARTICLE 9 OPERATION AND MAINTENANCE OF AIRPORT

Section 9.01. General. City agrees that it will, with reasonable diligence, prudently develop, improve, and at all times maintain and operate with adequate, efficient, and qualified personnel and keep the Airport in good repair including, without limitation, the Terminal Building, Terminal Apron and Airfield, and all appurtenances, facilities, and services now or hereafter connected therewith as the same relate to Airline's air transportation system; will keep the Airport and its aerial approaches free from obstruction and interference for the safe and proper use thereof by Airline; and will develop, maintain, and operate the Airport in all respects in a manner at least equal to the standards or rating established by the FAA and any other governmental agency having jurisdiction thereof, except for conditions beyond the control of City. City further agrees that it is responsible to maintain equipment that conveys potable water to Airline

in good repair and such potable water will at all times be sanitary and suitable for human consumption as determined by City.

Section 9.02. Terminal Building.

A. City shall operate and maintain and keep in good condition and repair the Terminal Building and all additions, improvements, facilities, and equipment now or hereafter provided by City at or in connection with the Terminal Building, except any improvements, facilities, and equipment constructed or installed by Airline.

B. City shall at all times maintain the public area of the Terminal Building in a neat, orderly, sanitary, and presentable condition, and shall keep such area adequately supplied, equipped (including directional signs), furnished, and decorated.

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

D. Airline shall at all times keep its Exclusive Use Space, Joint Use Space, and Common Use Space neat, orderly, sanitary, and presentable. Airline shall pay for all electric power used in its Exclusive Use Space; and shall be responsible for relamping such Exclusive Use Space; Airline shall furnish its own janitorial service for such Exclusive Use Space and shall cause to be removed at Airline's own expense from such Exclusive Use Space all waste, garbage, and rubbish, and agrees not to deposit the same on any part of the Airport, except that Airline may deposit same temporarily in its Exclusive Use Space or in space designated by City in connection with collection for removal. Airline shall, at its own expense, transport all refuse from temporary storage to central depositories at locations designated by City.

E. Airline shall maintain the terminal apron contiguous to its Rented Gates and such other apron areas used by Airline from time to time in a neat, clean, and orderly condition, free from litter, debris, refuse, petroleum products, or grease that may result from activities of its passengers, employees, agents, or suppliers, and remove all oil and grease spillage, as is reasonably possible, that is attributable to Airline's aircraft or equipment from its aircraft parking positions.

F. Airline shall perform, at its sole expense, ordinary preventive maintenance and ordinary upkeep and repair of all facilities, personal property, trade fixtures, and

equipment located in its Exclusive Use Space, including, but not limited to, fixtures, interior doors and windows, baggage conveyors and belts, floor coverings, and ticket counters.

Section 9.03. City's Right to Inspect and Make Repairs. City, by its authorized officers, employees, agents, contractors, subcontractors, and other representatives, shall have the right, at such times as may be reasonable under the circumstances and with as little interruption of Airline's operations as is reasonably practicable, to enter upon the Airline's Exclusive Use Space, accompanied by an authorized Airline representative, if practicable, for the following purposes:

A. City shall have the right but not the obligation to inspect such space to determine whether Airline has complied and is in compliance with the terms and conditions of this Agreement. Such inspections shall not constitute an inspection for safety, fire protection or security purposes. Inspection for safety, fire protection or security purposes shall be governed by Section 9.03 above

B. Upon thirty (30) days notice, but subject to force majeure delays pursuant to Section 10.04 below, to perform such maintenance, cleaning, or repair as City reasonably deems necessary, if Airline fails to perform its obligations under this Article 9. City shall be entitled to recover the reasonable cost of such maintenance, cleaning, or repair from Airline, plus a fifteen percent (15%) administrative charge by providing an invoice to Airline for such services.

Section 9.04. Alterations, Improvements, Payment Bond.

A. Alterations and Improvements. Airline shall make no alterations, additions, improvements to, or installations on its Premises under this Agreement without the prior written approval of City; provided that such approval shall not be unreasonably withheld or delayed. Airline shall be solely responsible for payment for all such alterations, additions, improvements, or installations made by Airline.

Plans and specifications for such work shall be filed with and subject to the approval of Director and all work shall be done in accordance with local ordinances and state law.

All alterations, additions, improvements, or installations other than trade fixtures, equipment and other personal property shall become part of the realty and title shall vest with City upon completion of the installation or construction of such alterations, additions, improvements, or installations. Removal of trade fixtures, equipment, and other personal property shall be allowed only pursuant to subsections 4.04.A, B, and C above.

B. Payment Bond. Airline shall, prior to erecting or placing improvements on its Premises, execute and deliver to City a payment bond with good and sufficient surety to be approved by City in a sum equal to the full contractual amount for such improvements, to insure City against loss by reason of any lien or liens that may be filed against the Premises or Airport property for the construction of such improvements.

Section 9.05. Debts, Liens, Mortgages. Airline shall pay promptly when due, all bills, debts and obligations incurred by Airline in connection with its operations or activities on its Premises, and shall not permit the same to become delinquent. Except as expressly approved by City, Airline shall not permit any mechanics' lien, materialman's lien, or any other lien to be attached to or to be foreclosed upon the Premises or improvements thereto. Airline shall suffer no lien, mortgage, judgment, or execution to be filed against the Premises or improvements thereon. Notwithstanding the foregoing, Airline will have the right to contest, in good faith and with reasonable diligence, the validity of any lien or claimed lien, if Airline shall give to City such security as may be reasonably satisfactory to City to assure payment thereof and any interest thereon and to prevent any foreclosure of the lien or sale of the Premises or the Airport by reason of nonpayment thereof; provided further, however, that on final determination of the lien or claim for lien, Airline shall immediately pay any judgment rendered with all proper costs and charges and shall have the lien released and any judgment satisfied.

Section 9.06. Lengthy Tarmac Delays. City agrees to assist Airline with minimizing passenger discomfort, inconvenience, and other hardships related to lengthy tarmac delays and to make all reasonable efforts to assist and support the implementation of the Airline's FAA-approved Contingency Plan for Lengthy Tarmac Delays and Customer Service Plan as required by 14 CFR Part 259.

ARTICLE 10 DAMAGE OR DESTRUCTION OF PREMISES

Section 10.01. Damage or Destruction. If, for any reason Airline's Premises are damaged to such an extent that they are untenable in whole or in substantial part, then:

A. Minor Damage. If the repairs, rebuilding, or construction necessary to restore the Premises to its condition prior to the occurrence of the damage can, in the reasonable judgment of City, be completed within ninety (90) consecutive calendar days from the date on which the damage occurred (including time required for design, bidding, and award of a construction contract pursuant to City procedures), City shall so

notify Airline, in writing, consult with Airline, and shall proceed promptly with such repairs, rebuilding, or construction at City's sole cost and expense, provided that Airline shall be responsible for, and bear the cost of, replacing and rebuilding all Airline improvements. In such event, Airline shall receive a pro rata abatement of the rentals for the Premises under subsection 6.03.A above, based only on the reduction of usable square feet in Airline's Premises. If applicable, this abatement shall be allowed only for the period from the date of the occurrence of such damage to the date upon which repairs, rebuilding, or construction is completed. Thereafter, the rentals due under subsection 6.03.A above, shall be calculated without regard for the period such rentals were reduced.

Notwithstanding the above provisions, if the damage is caused by the intentional or negligent act or omission of Airline, its officers, agents, employees, contractors, subcontractors, licensees or invitees, Airline shall be responsible for reimbursing City for the cost and expense incurred in such repair, rebuilding, or construction. In order to expedite such repair, rebuilding, or construction, Airline shall apply all insurance proceeds paid on account of such damage or destruction under the policies of insurance required in Article 11 below. If the insurance proceeds are not sufficient to pay the entire cost of such repairs, rebuilding, or construction, Airline shall pay the amount of any such deficiency and shall apply the same to the payment of the cost of the repairs, rebuilding, or construction. In the event the cause of the damage or destruction is by risk, which is or was uninsurable, then Airline shall have the same responsibility to provide the funds necessary to pay the cost of the repairs, rebuilding, or construction. In the event of such minor damage, there shall be no abatement of the rentals payable by Airline to City under this Agreement.

B. Extensive Damage. If such repairs, rebuilding, or construction cannot, in the reasonable judgment of City, be completed within ninety (90) consecutive calendar days from the date on which the damage occurred (including time required for design, bidding, and award of a construction contract pursuant to City procedures), City, at its option, to be evidenced by notice in writing to Airline, may:

1. Seek Airline's consent and cooperation, and proceed promptly with said repairs, rebuilding, or construction at City's sole cost and expense, in which event abatement of rentals shall be allowed, as described in subsection 10.01.A above.

Notwithstanding the above provision, in the event the Premises are destroyed or so damaged and rendered untenable as a result of the intentional or negligent act or omission of Airline, its officers, agents, servants, employees, contractors, subcontractors, licensees, or invitees, City may repair, rebuild, or construct the Premises, and Airline shall be responsible for reimbursing City for the costs and expenses incurred in such repair, rebuilding, or construction. In order to expedite such repair, rebuilding, or construction, Airline shall apply all insurance proceeds paid on

account of such damage or destruction under the policies of insurance required in Article 11 below. If the insurance proceeds are not sufficient to pay the entire cost of such repairs, rebuilding, or construction, Airline shall pay the amount of any such deficiency and shall apply the same to the payment of the cost of the repairs, rebuilding, or construction. In the event the cause of the damage or destruction is by risk, which is or was uninsurable, then Airline shall have the same responsibility to provide the funds necessary to pay the cost of the repairs, rebuilding, or construction. In the event of such extensive damage, there shall be no abatement of the rentals payable by Airline to City under this Agreement.

2. Terminate the letting of the Premises, in which event the rentals due under subsection 6.03.A above, shall be eliminated beginning from the date of the occurrence of the damage. City shall not be deemed in default under this Agreement in the event it elects to terminate the letting of the damaged or destroyed Premises.

Section 10.02. Alternative Space. In the event repairs, rebuilding, or construction is required pursuant to Section 10.01 above, City shall use reasonable efforts to provide Airline with alternative space, if necessary, during any repairs, rebuilding, or construction of the Premises. City shall advise Airline as soon as may be practicable regarding City's intention with respect to any necessary repairs, rebuilding, or construction.

In the event City provides alternative space to Airline, City shall be responsible for those costs directly associated with moving Airline to the temporary space and back to its restored Premises, except in the event where such repair, rebuilding, or construction is required as a result of the intentional or negligent act or omission of Airline, its officers, agents, employees, contractors, subcontractors, licensees, or invitees, in which case Airline shall bear entire cost of moving. Should smaller square footage space be provided by City to Airline, the rentals due under subsection 6.03.A above, shall be reduced pro rata to the reduction of square footage of the alternative space. All reductions of rentals shall be allowed only for the period from the date of the occurrence of such damage to the date repairs and rebuilding are completed. Thereafter, the rentals due under subsection 6.03.A above, shall be calculated without regard for the period such rentals were reduced.

Section 10.03. Limits of City's Obligations Defined. In the application of the provisions of Sections 10.01 and 10.02 above, City shall in no event be obligated to repair, rebuild, or construct the Premises to an extent greater than its original obligation to provide facilities and service to the Premises as set forth in this Agreement.

Section 10.04. Force Majeure. Except as expressly provided in this Agreement, neither City nor Airline shall be deemed to be in default hereunder if either party is prevented from performing any of the obligations, other than payment of rentals, fees

and charges hereunder, by reason of strikes, boycotts, labor disputes, embargoes, shortages of energy or materials, acts of the public enemy, terrorism or threats of terrorism, weather conditions and the results of acts of nature, riots, rebellion, sabotage, or any other similar circumstances for which it is not responsible or which are not within its control.

ARTICLE 11 INSURANCE AND INDEMNIFICATION

Section 11.01. Insurance.

A. General Requirements. Airline shall, at its own cost and expense, procure and maintain in full force and effect during the Term of this Agreement, such insurance as is required in this Agreement. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico. When requested by City, Airline shall allow City to review in the presence of Airline's insurance representatives any or all policies of insurance for the insurance coverage required in this Section 11.01. Policies of insurance shall be procured for all insurance required and coverage limits of such policies of insurance shall not be reduced or replaced in part or in whole by self-insurance, including self-insurance retention amounts, except as provided in subsection 11.01.I below.

Airline shall not violate the terms or prohibitions of insurance policies required to be furnished by Airline. Airline shall promptly notify City of any claim or loss at the airport exceeding the amount of the deductible under such insurance policies, and certify that proper notice has been given the appropriate insurance carrier.

Airline shall furnish City with certificates of insurance and shall deliver said certificates to the Director of Aviation, Albuquerque International Sunport, P.O. Box 9948, Albuquerque, New Mexico 87119-1048. All insurance certificates shall provide that thirty (30) days written notice be given to the Director of Aviation before a policy is canceled, materially changed, or not renewed. Various types of required insurance may be written in one or more policies. The form of certificates of insurance shall be substantially the same as **Exhibit I**, attached hereto and incorporated herein as though set forth in full.

B. Approval of Insurance. Even though a "notice to proceed" may have been given, neither Airline nor any contractors, assignees or other transferees of Airline shall begin any operations pursuant to this Agreement until the required insurance has been obtained and proper certificates of insurance delivered to the Director. Neither approval nor failure to disapprove insurance certificates of insurance by City shall

relieve Airline or any transferees of full responsibility to maintain the required insurance in full force and effect.

C. Commercial General Liability Including Automobile. Airline shall procure and maintain policies of insurance for commercial general liability insurance of One Million Dollars (\$1,000,000.00) multiplied by the largest number of available passenger and airline crew seats on any single aircraft operated by Airline at the Airport, but no less than One Hundred Million Dollars (\$100,000,000.00) single limit liability for bodily injury, including death, and property damage in any one occurrence. Airline shall also procure and maintain policies of insurance for vehicle liability insurance for all vehicles used in its operation at the Airport in amounts not less than Five Million Dollars (\$5,000,000.00) single limit liability for bodily injury, including death, and property damage in any one occurrence. Said policies of insurance shall include coverage for premises (if applicable), operations, and Airline's contractual liability to City hereunder. Contractual liability coverage shall specifically insure the Indemnification provision of this Agreement. The insurance policies shall contain "products" and "completed operations" coverage (if applicable) and shall not be written on a "claims made" form. The insurance policies shall include coverage for all use of, activities on, or operations with respect to Airport premises, coverage for the use of all owned, no-owned, hired automobiles, vehicles, and other equipment, both on and off work. City reserves the right to review and modify the limits stated above at one-year intervals to give effect to the changing risk management environment and inflationary trends.

D. Workers' Compensation and Employers Liability Insurance as required by New Mexico Law. Airline shall comply with the provisions of the New Mexico Workers' Compensation Act, the Subsequent Injury Act, and the New Mexico Occupational Disease Disablement Law. Airline shall procure and maintain during the term of this Agreement complete Workers' and Employer's Liability Insurance in accordance with New Mexico laws and regulations. Such insurance shall include coverage permitted under Section 52-1-10, NMSA 1978, for safety devices. With respect to Workers' Compensation Insurance, if Airline elects to be self-insured, Airline shall comply with the applicable requirements of law. If any portion of the work is to be sublet, Airline shall require the subtenants similarly to provide such coverage (or qualify as a self-insured) for all the latter's employees to be engaged in such work. Airline hereby covenants and agrees that City, its officers, or employees will not be liable or responsible for any claims or actions occasioned by Airline's failure to comply with the provisions of this subparagraph and that the Indemnification provision of this Agreement shall apply to this paragraph. It is expressly agreed that the employees of Airline are not City employees for any purpose.

E. Additional Insured. The City of Albuquerque shall be named as an additional insured on each insurance policy required in subsection 11.01.C above.

F. Increased Limits. If, during the Term, the legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act (Sections 41-4-1 through 41-4-27, NMSA 1978) to an amount greater than the amounts required in subsection 11.01.C above, City may require Airline to increase the limits of any insurance required herein to an amount equal to such increased Tort Claims Act maximum limits of liability.

G. Contents Insurance. Airline shall be solely responsible for obtaining insurance policies that provide coverage for losses of Airline owned property. City shall not be required to provide such insurance coverage or be responsible for payment of Airline's cost for such insurance.

H. Builders Risk Insurance. During any period of construction or reconstruction for which Airline contracts, Airline shall carry, or shall require its contractor or contractors to carry, a policy of Builders Risk Insurance in an amount sufficient to insure the value of the work.

I. Self-Insurance Retention. In the event any of the insurance policies required in this Section (except as allowed by New Mexico law regarding Workers' Compensation) contain a self-insurance retention provision, for each such amount, Airline shall post a bond or an irrevocable letter of credit made exclusively for the benefit of City and held by a bank authorized to do business in New Mexico which is acceptable to City, or provide City with evidence that its net worth (as shown by independently audited financial statements) is in excess of the amount of the total of such self-insurance retentions.

J. Additional Requirements. Insofar as said insurance provides protection against liability for damages to third parties for personal injury, death, and property damage, City shall be included as an additional insured; provided such liability insurance coverage shall also extend to damage, destruction, and injury to City-owned or City-leased property and City personnel, and caused by or resulting from work, acts, operations, or omissions of Airline, its officers, agents, employees, and independent contractors on the Airport. City shall have no liability for any premiums charged for such coverage, and the inclusion of City as an additional insured is not intended to, and shall not, make City a partner or joint venturer with Airline in its operations on the Airport.

Section 11.02. Indemnification. Airline covenants that it and all of its agents, servants, and employees will use due care and diligence in all of its or their activities and operations at the Airport.

A. General Indemnification. Airline agrees to defend, indemnify and hold harmless City and its officers, employees, and agents from and against all suits, actions, claims, demands, penalties, fines, liabilities, damages, costs and expenses (including but not limited to consultants' fees, reasonable fees of attorneys, court costs and litigation expenses) of whatever kind or nature, known or unknown, contingent or otherwise, brought against City because of any injury, including death at any time resulting from bodily injury, damages for care and loss of services, or damage received or sustained by any person, persons or property arising out of or resulting from any negligent act, error, or omission of Airline, its agents or its employees arising out of the operations of Airline under this Agreement, all except to the extent caused by the negligence, error, omission, or willful misconduct on the part of City, its officers, employees, or agents.

B. Environmental Harm - Indemnity. Without limiting any provisions of this Agreement, Airline shall also defend, indemnify and hold City and its officers and employees harmless from and against all suits, actions, claims, demands, penalties, fines, liabilities, damages, costs and expenses (including but not limited to reasonable attorneys' and consultants' fees, court costs and litigation expenses) of whatever kind or nature, known or unknown, contingent or otherwise, brought against City arising out of or in any way related to the operations under this Agreement, all except to the extent caused by the negligence, error, omission, or willful misconduct on the part of the City, its officers, employees, or agents as follows:

1. any actual or alleged contamination by Hazardous Substances of the Premises or the Airport by Airline or its agents;
2. the presence, disposal, or release of Hazardous Substances by Airline or its agents at the Airport that is on, from or affects the soil, air, water, vegetation, buildings, personal property, persons, animals or otherwise;
3. any bodily injury (including wrongful death), property damage, or personal injury arising out of or related to the use of Hazardous Substances by Airline at the Airport;
4. any violation by Airline of any Environmental Laws.

Airline's obligations and liabilities under this subsection shall survive the termination of this Agreement and the transactions contemplated in this Agreement.

C. Limitations. To the extent, if at all, Section 56-7-1, NMSA 1978, is applicable to this Agreement, this indemnification agreement shall not extend to or be construed to require Airline to, defend, indemnify and hold harmless City, its officers, employees, and agents from and against liability, claims, damages, losses or expenses, including attorneys fees, arising out of bodily injury to persons or damage to or contamination of property caused by, resulting from, or arising out of the negligence, error, omission, or willful misconduct of City, its officers, employees, or agents.

D. Scope of Indemnification. In addition, with respect to any claims, actions, suits, damages or judgments caused by or resulting from the negligent acts, omissions or operations of Airline, its agents, servants, or employees, Airline shall (1) investigate or cause the investigation of accidents involving such injuries; (2) negotiate or cause to be negotiated all claims made as may be deemed expedient by Airline, and defend, or cause to be defended, suits for damages, even if groundless, false or fraudulent, brought on account of such injuries or damages, in the name and on behalf of City; (3) pay and satisfy judgments finally establishing the liability of City in all actions defended by Airline pursuant to this Section 11.02; (4) resolve claims by performing remediation activities, to the extent authorized and required by applicable Environmental Laws, utilizing commercial/ industrial cleanup standards and other engineered barriers and institutional controls; and (5) pay or cause to be paid: a) all costs taxed against City in any legal proceeding defended or caused to be defended by Airline as aforesaid; b) any interest accruing up to the date of payment by Airline; c) all premiums charged upon appeal bonds required in such proceedings; and d) all expenses incurred by City for investigation, negotiation, and defense, including but not limited to reasonable expert witnesses' and attorneys' fees incurred, should Airline fail to provide the defense and indemnification required herein.

By way of further clarification, these requirements do not apply to the extent the claims, actions, suits, damages, or judgments are caused by the negligence, error, omission, or willful misconduct on the part of City, its officers, employees, or agents to the extent the limitations in Section C or E apply.

E. Miscellaneous. City shall, promptly upon receipt, give Airline every demand, notice, summons, or other process received in any claim or legal proceeding contemplated herein. In the event City shall fail to give Airline notice of any such demand, notice, summons, or other process received by City and such failure to give notice shall result in prejudice to Airline in the defense of any action or legal proceeding contemplated herein, such failure or delay shall release Airline of its liability as set forth

in this paragraph insofar as only the particular claim or legal proceeding is concerned, and only to the extent of such prejudice. Nothing in this Article 11 shall be deemed a change or modification in any manner whatsoever of the method or conditions of preserving, asserting, or enforcing any claim or legal liability against City. This Section 11.02 shall not be construed as a waiver of City's immunity. The provisions of this Section 11.02 shall not be construed to prohibit Airline from seeking contribution or indemnity from any third party which may have caused or contributed to the event for which Airline indemnified City.

Section 11.03. Non-liability of City. City shall not in any event be liable for any acts or omissions of Airline, or its agents, servants, employees, or independent contractors, or for any condition resulting from the operations or activities of Airline, Airline's agents, servants, employees, or independent contractors working for, or on behalf of, Airline.

City shall not be liable for Airline's failure to perform any of its obligations under this Agreement or for any delay in the performance thereof, nor shall any such delay or failure be deemed a default by City.

ARTICLE 12 TRANSFER OF PREMISES BY ASSIGNMENT OR SUBLETTING

Section 12.01. General. Airline shall not assign, transfer, convey, sell, mortgage, pledge or encumber (hereinafter collectively referred to as "Assignment") or sublet its Premises without the advance written approval of City, which approval shall not be unreasonably withheld or delayed, and except as provided herein for Affiliate Airline Qualifying Flights.

If Airline fails to obtain advance written approval of any such Assignment or sublease, City, in addition to the rights and remedies set forth in Article 15 below, shall have the right to refuse to recognize such Assignment or sublease, and the assignee or sublessee shall acquire no interest in this Agreement or any rights to use the Premises.

Notwithstanding the foregoing and the following, this shall not be interpreted to preclude the assignment of this Agreement to a parent, subsidiary, or merged company of Airline if such parent, subsidiary, or merged company conducts an air transportation business at the Airport at which Airline is a Signatory Airline and such parent, subsidiary, or merged company assumes all rights and obligations hereunder. Written notice of such assignment shall be provided by Airline to City, for City's approval, at least thirty (30) days prior to the effective date of such assignment.

Section 12.02. City Approval of Assignments . City shall grant Airline the authority to assign its Premises, rights, and obligations hereunder, provided that, among other considerations:

A. The Assignment is not for less than the entire leased Premises and is not for less than the full remainder of the Term; and

B. The Assignment must require the assignee to accept and comply with all provisions of this Agreement, including but not limited to accepting Signatory Airline status; and

C. City, in its sole discretion, determines that the proposed assignee is substantially as creditworthy as Airline.

Section 12.03. City Approval of Subleases. City shall grant Airline the authority to sublease a portion of its Premises to a Requesting Airline (not including Airline's Affiliate Airline Qualifying Flights, for which no consent is required), provided that, among other considerations:

A. The Requesting Airline is willing to become a Signatory Airline; and

B. The Requesting Airline is willing to take such Premises on substantially the same terms and conditions as proposed in the sublease and is willing to provide Airline with a reasonable security deposit not to exceed three (3) month's rentals, fees, and charges; and

C. City has determined that there is no available space and/or Gates for lease directly from City by the Requesting Airline and if the sublease contains a provision which permits the sublease to be terminated upon notice from City to the parties thereto of the availability of City controlled space; and

D. Airline agrees to pay monthly to City an administrative fee of five percent (5%) of the gross revenue derived from such sublease pursuant to subsection 6.03.H.3 above.

Section 12.04. Assignment or Sublease Approval Process . Airline, when requesting an approval of an Assignment or sublease pursuant to Sections 12.02 and 12.03 above, shall include with its written request, a copy of the proposed Assignment or sublease. Any proposed Assignment or sublease shall provide, at a minimum, the following information: (1) the Premises to be assigned or sublet; (2) if a sublease, the rentals, fees, and charges required, provided however, that Airline may charge no more

than one hundred fifteen per cent (115%) of Airline's rentals for such portion of the Premises to be sublet; and (3) all other material terms and conditions of the Assignment or sublease. If approved by City, Airline shall submit a fully executed copy of such Assignment or sublease to City within thirty (30) days prior to the commencement of the Assignment or sublease.

Section 12.05. Airline to Remain Liable. Although City may approve Airline's request to sublease, Airline shall remain fully liable during the Term for the payment of all rentals, fees, and charges due and payable to City for the subleased Premises, and fully responsible for the performance of all other obligations hereunder, unless otherwise agreed to by City.

ARTICLE 13 GROUND HANDLING SERVICES

Section 13.01. Ground Handling Services by Airline. City shall grant Airline the authority to provide Ground Handling Services for its own aircraft, for its Affiliate Airline Qualifying Flights, for other Signatory Airlines and their Affiliate Airline Qualifying Flights, for Non-Signatory Airlines, and for non-scheduled airlines, provided that, among other considerations:

A. Airline has received prior written consent of City to provide such services, which consent shall not be unreasonably withheld or delayed, provided however, that no consent shall be required from City for Airline to provide Ground Handling Services to its Affiliate Airline Qualifying Flights; and

B. Airline agrees to pay monthly to City, pursuant to 6.03.H.3 above, an administrative fee of five percent (5%) of the gross revenues derived from such Ground Handling Services performed for Non-Signatory Airlines or non-scheduled airlines, provided however, that no administrative fee shall be required for Ground Handling Services performed for Airline's Affiliate Airline Qualifying Flights or for other Signatory Airlines and their Affiliate Airline Qualifying Flights; and

C. Airline guarantees payment of all Fees and Charges established by City for the aircraft operations of the Non-Signatory Airlines and non-scheduled airlines for which it provides Ground Handling Services at the Airport

In the event Airline provides Ground Handling Services to an aircraft without advance written consent of City, then Airline's insurance, as required in this Agreement, shall provide insurance coverage for all such aircraft operations, and such event shall constitute a material breach of this Agreement, and City shall have the right to

terminate this Agreement based upon such breach, pursuant to the requirements of Article 16 of this Agreement.

Section 13.02. Ground Handling Services by Others. City shall grant Airline the right to contract with other companies, including Signatory Airlines, for Ground Handling Services for Airline's aircraft, provided that, among other considerations:

A. Airline has received advance written consent of City, which consent shall not be unreasonably withheld or delayed; and

B. Such other company, unless such company is a Signatory Airline, has entered into a Ground Handling Services operating agreement with City prior to the commencement of such Ground Handling Services.

ARTICLE 14 RELINQUISHMENT OF PREMISES

Section 14.01. Notice of Intent to Relinquish Premises. In the event Airline desires to relinquish any of its Premises, Airline shall provide written notice to City thirty (30) days in advance of such relinquishment and shall identify in such notice all areas it wishes to relinquish. City shall use its best efforts to lease such areas to another airline, to the extent the proposed relinquished Premises is suitable for another Airline, and subject to the limitations of Article 12 above.

Section 14.02. Non-Waiver of Responsibility. Airline shall continue to be solely responsible pursuant to this Agreement for the payment of all rentals, fees, and charges related to the relinquished Premises pursuant to Section 14.01 above, until such time that another airline commences payment for Premises pursuant to Section 14.03 below.

Section 14.03. Reduction of Rentals, Fees and Charges. Airline's rentals, fees, and charges related to that portion of Airline's Premises taken by another airline, pursuant to such other airline's agreement with City, shall be reduced in the amount of the rentals, fees, and charges paid by such other airline. This reduction shall begin only when such other airline begins payment for the relinquished portion of Airline's Premises.

ARTICLE 15 DEFAULT BY AIRLINE

Section 15.01. Default by Airline: Fifteen (15) Day Cure Period. This Section shall govern Airline's failure to comply with the following provisions (hereafter "Events of Default"):

- A.** Payment of Airline's Rentals, Fees, and Charges pursuant to Article 6 above;
- B.** Payment of Rentals, Fees, and Charges for Airline's Affiliate Airline Qualifying Flights, if applicable, pursuant to Article 6 above;
- C.** Payment of Airline's PFC revenue pursuant to Article 6 above;
- D.** Provide the Reports required in Article 6 above;
- E.** Provide and maintain the Security Deposit, if applicable, pursuant to Article 6 above;
- F.** Provide and maintain Insurance pursuant to Article 11 above.

In the event Airline fails to comply with any or all of the above provisions for a period of fifteen (15) days after receipt from City of written notice of an Event of Default, City may, without terminating this Agreement, enter upon Airline's Premises and shall have the right to improve and relet all or any part of it to others. Airline shall continue to be responsible for and shall pay all rentals, fees, and charges required pursuant to this Agreement, provided, however, that Airline shall receive a credit for rentals, fees, and charges received by City for the relet premises after first deducting all cost incurred by City for renovations and administrative fees not to exceed fifteen percent (15%) of all rentals, fees, and charges received for the relet premises.

Section 15.02. City's Right of Recovery. At any time before or after City's entry upon Airline's Premises and the reletting of such Premises pursuant to Section 15.01 above, City may terminate Airline's rights under this Agreement pursuant to Section 16.01 below, without any restriction upon recovery by City of or past due rentals, fees, and charges or other obligations of Airline. City shall have all additional rights and remedies as may be provided to City by law.

ARTICLE 16
TERMINATION OF AGREEMENT

Section 16.01. Termination by City: Forty-five (45) Day Cure Period. City shall be entitled to terminate this Agreement for Airline's failure to cure the following:

- A.** Events of Default pursuant to Article 15 above;
- B.** Default by Airline in the performance of any covenant, agreement, or condition contained in this Agreement;
- C.** The cessation by Airline of the conduct of scheduled air service at the Airport unless such cessation of service is directly attributable to circumstances for which Airline is not responsible, and which are not within its control.

If Airline fails to cure any or all of the above provisions for a period of forty-five (45) days after receipt from City of written Notice to Cure, City shall have the right to terminate this Agreement by sending Airline written Notice of Termination. Termination of this Agreement shall take effect immediately upon Airline's receipt of the Notice of Termination, unless stated otherwise in the Notice of Termination. If, however, Airline shall have cured the deficiencies identified in City's Notice to Cure prior to Airline's receipt of City's Notice of Termination, then such Notice of Termination shall be of no force or effect.

Section 16.02. Right of Termination by Airline. Airline shall be entitled to terminate this Agreement at any time that Airline is not in default in its payments or other obligations to City hereunder, upon or after the occurrence of any of the following events, by sending City a written Notice of Termination:

- A.** Default by City in the performance of any covenant or agreement herein required to be performed by City and the failure of City to remedy such default for a period of sixty (60) days following receipt of Airline's written Notice of Termination for same;
- B.** The issuance by any court of competent jurisdiction of an injunction in any way preventing or restraining Airline's use of the Airport or any part thereof, for a period exceeding sixty (60) consecutive calendar days;
- C.** Abandonment of Airport for all scheduled airline service for the remaining Term.

ARTICLE 17 GENERAL PROVISIONS

Section 17.01. Rules and Regulations. Airline shall observe and obey all lawful Rules and Regulations promulgated, from time to time during the Term hereof, by City governing conduct on and operations at the Airport and use of its facilities; provided, however, that all such Rules and Regulations shall be reasonable, and shall not be inconsistent with or contravene or limit any of the rights granted to Airline under this Agreement. City will provide Airline a reasonable opportunity to comment on new or revised Rules and Regulations prior to final promulgation. Copies of the Rules and Regulations, as adopted, shall be forwarded to Airline's properties representative. City additionally agrees that all Rules and Regulations so promulgated shall not be inconsistent with any legally authorized rule or regulation of the FAA, or any other Federal or State agency, which is binding in law on Airline, as the same now are or may from time to time be amended or supplemented. City shall not unjustly discriminate against Airline in the enforcement of its Rules and Regulations.

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

Nothing in this section or Section 17.02 below shall require Airline to comply with a local or state regulation, law, or other provision having the force and effect of law which is preempted by the federal Airline Deregulation Act, with the understanding that such preemption, if any, would not limit the City from carrying out its proprietary powers and rights as indicated in 49 U.S.C. §41713(b)(3).

Section 17.02. Compliance with Law. Airline shall not use the Airport or any part thereof, or knowingly permit the same to be used by any of its employees, officers, agents, sublessees, invitees, or licensees for any illegal purposes and shall, at all times during the Term of this Agreement, comply with all applicable regulations, ordinances, and laws of any City, County, or State government or of the U.S. Government, and of any political division or subdivision or agency, authority, or commission thereof which may have jurisdiction to pass laws or ordinances or to make and enforce rules or regulations with respect to the uses hereunder or the Premises.

Airline shall comply with and conform to all present and future statutes and ordinances, and regulations promulgated thereunder, of all Federal, State, and other government bodies of competent jurisdiction that apply to or affect, either directly or indirectly, Airline or Airline's operations and activities under this Agreement. Airline shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 (42 U.S.C.

Section 12101) and federal regulations promulgated thereunder (28 CFR Parts 35, 36, and 37).

Section 17.03. Compliance with Environmental Laws . In connection with its operations or any other activity at the Airport, Airline shall at all times and in all respects comply with all Environmental Laws including Federal, State and local laws, ordinances and regulations pertaining to Hazardous Substances, which are applicable to the Premises and Airline's operations at the Airport. Upon expiration or earlier termination of this Agreement, Airline shall cause all Hazardous Substances introduced to the Premises and the Airport by Airline or its agents or invitees to be removed from the Premises and the Airport as required by and in compliance with applicable environmental laws, and transported for use, storage, or disposal in accordance and in compliance with all applicable Environmental Laws.

Section 17.04. Federal Stormwater Regulations.

A. Notwithstanding any other provisions or terms of this Agreement, Airline acknowledges that the Airport is subject to all applicable Federal, state, and local stormwater regulations. Airline further acknowledges that it is familiar with these stormwater regulations; that it may conduct or operate from time to time "vehicle maintenance" (including vehicle rehabilitation, mechanical repairs, painting, fueling and lubrication), equipment cleaning operations, and/or deicing activities as defined in the federal stormwater regulations; and that it is aware that there are significant penalties for submitting false information, including fines and imprisonment for knowing violations.

B. Notwithstanding any other provisions or terms of this Agreement, including Airline's right to quiet enjoyment, City and Airline both acknowledge that close cooperation is necessary to ensure compliance with any stormwater discharge permit terms and conditions, as well as to ensure safety and to minimize costs. Airline acknowledges that it may be necessary to undertake measures to minimize the exposure of stormwater to significant materials generated, stored, handled or otherwise used by Airline as defined in the federal stormwater regulations, by implementing and maintaining best management practices.

C. Airline acknowledges that City's stormwater discharge permit ("Stormwater Permit") is incorporated by reference into this Agreement and any subsequent renewals. Airline agrees to be bound by all applicable portions of said permit. The City agrees to utilize its best efforts to obtain reasonable and cost-effective terms and conditions, provide an opportunity for Airline to participate in the

development of the terms of the Stormwater Permit and follow the procedures provided below in subsection 17.04.D.

D. City shall provide Airline with written notice of those Stormwater Permit requirements that Airline shall be obligated to perform from time to time, including, but not limited to: certification of non-stormwater discharges; preparation of stormwater pollution prevention or similar plans; implementation of "good housekeeping" measures or Best Management Practices; and maintenance of necessary records. Such written notice shall include applicable deadlines. Airline within twenty (20) days of receipt of such written notice, 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, it is deemed to assent to undertake such requirements. If Airline provides City with written notice, as required above, that it disputes such Stormwater Permit requirements, City and Airline agree to negotiate a prompt resolution of their differences. Airline warrants that it will not object to City notices required pursuant to this paragraph for purposes of delay or avoiding compliance.

E. Subject to the dispute resolution provision of subsection 17.04.D above, 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. Airline warrants that it shall meet any and all deadlines that may be imposed on or agreed to by City and Airline. Airline agrees that time is of the essence.

F. City and Airline agree to provide each other upon request with any non-privileged information collected and submitted to any government entity(ies) pursuant to applicable stormwater regulations.

G. Airline agrees that the terms and conditions of City's Stormwater Permit may change from time to time. City will notify Airline and provide Airline with an opportunity to confer with City on any proposed changes to City's Stormwater Permit.

H. Airline agrees to participate, to the extent reasonably possible, in any City organized task force or other work group established to coordinate stormwater activities at the Airport.

I. All such remedies of City with regard to environmental requirements as set forth herein shall be deemed cumulative in nature and shall survive termination of this Agreement.

Section 17.05. Non-Discrimination.

A. General. In the use and occupation of the Airport, Airline shall not discriminate against any person or class of persons by reason of race, color, religion, sex, national origin or ancestry, age, or physical or mental handicap.

B. Civil/Human Rights Laws. In its operations at the Airport and in its use of the Airport, Airline shall not, on the grounds of race, color, religion, sex, national origin or ancestry, or age, discriminate or permit discrimination against any person or group of persons in any manner prohibited by Part 21 of the Federal Aviation Regulations, the Civil Rights Act of 1964, as amended, the Equal Pay Act of 1963, the Rehabilitation Act of 1973, the New Mexico Human Rights Act, and the Albuquerque Human Rights Ordinance.

Without limiting the generality of the foregoing, Airline agrees to not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin or ancestry, or age. Airline agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, national origin or ancestry, age, or physical or mental handicap. Such action shall include, but not be limited to: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; selection for training; and disciplinary actions and grievances. Airline agrees to post, in conspicuous places available to employees and applicants for employment, notices to be provided setting forth the provisions of this non-discrimination clause.

C. Airline, for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration of this Agreement, does hereby covenant and agree that, in the event improvements are constructed, maintained, or otherwise operated on the Airport for a purpose for which a United States Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, Airline shall maintain and operate such improvements and services in compliance with all other requirements imposed pursuant to 49 CFR, Part 211 (Non-discrimination in Federally Assisted Programs of the Department of Transportation), as said regulations may be amended.

D. Airline, for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration of this Agreement, does hereby covenant and agree that: (1) no person on the grounds of race, color, religion, sex, national origin or ancestry, or age, shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of said improvements;

(2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, religion, sex, national origin or ancestry, or age, shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; (3) that Airline shall use the Airport facilities in compliance with all other requirements imposed by, or pursuant to, the New Mexico Human Rights Act, the Albuquerque Human Rights Ordinance, and 49 CFR, Part 21 (Non-discrimination in Federally Assisted Programs of the Department of Transportation), as said regulations may be amended; and

Airline assures that it will undertake an affirmative action program to the extent required by 14 CFR, Part 152, Subpart E, Non-discrimination Airport in Aid Program, to ensure that no person shall on the grounds of race, color, religion, national origin or ancestry, sex, age, or physical or mental handicap be excluded from participating in any employment activities covered in 14 CFR, Part 152, Subpart E, or such employment activities covered in the New Mexico Human Rights Act, or the Albuquerque Human Rights Ordinance. Airline assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this Section. Airline assures that it will require that any covered suborganization similarly will undertake affirmative action programs and that the suborganization will require assurance from the suborganization's suborganization, to the extent required by 14 CFR, Part 152, Subpart E, to the same effect.

Section 17.06. Granting of More Favorable Terms . City covenants and agrees not to enter into any lease, contract, or any other agreement with any other air transportation company providing scheduled service at the Airport containing substantially more favorable terms than this Agreement, or to grant to any tenant engaged in scheduled air transportation, rights or privileges with respect to the Airport that are not accorded Airline hereunder, unless the same rights, terms, and privileges are concurrently made available to Airline; provided, however, that (1) City reserves the right to permit non-scheduled itinerant aircraft operators to use Terminal Building facilities on a charge-per-use basis which charges may equate to less than Airline's effective cost per use; and provided further, however, that this Section shall not apply with respect to any air transportation company operating aircraft of less than 25,000 pounds gross landing weight, and (2) City reserves the right to reduce or waive fees and rentals for flights that provide air service between the Airport and another airport in the State of New Mexico and to offer air service incentive programs for air service to points not in the State of New Mexico, subject to a requirement that such incentives are offered equally to all airlines serving the Airport, and funds for such incentives will be provided by City through its Capital Fund.

Section 17.07. Economic Non-Discrimination. In connection with the conduct of any aeronautical activity that involves furnishing services to the public at the Airport, Airline agrees: (1) to furnish said services on a fair, equal and not unjustly discriminatory basis to all users, and (2) to charge fair, reasonable and not unjustly discriminatory prices for each unit or service, provided that Airline may make reasonable and non-discriminatory discounts, rebates or other similar price reductions to volume purchasers.

Section 17.08. Consents, Approvals, and Notices. All consents, approvals, and notices required by this Agreement shall be in writing and shall be given by registered or certified mail by depositing the same in the U.S. mail in the continental United States, postage prepaid, return receipt requested, or by personal delivery, or by facsimile transmission to the "FAX" number given below, provided that the completed transmission is electronically verified. Either party shall have the right, by giving written notice to the other, to change the address at which its notices are to be received. Until any such change is made, notices shall be delivered as follows:

City:	Director of Aviation Albuquerque International Sunport
Certified Mail:	PO Box 9948 Albuquerque, New Mexico 87119-1048
Personal Delivery:	2200 Sunport Blvd. SE, 3rd Floor Albuquerque, NM 87106
Airline:	Southwest Airlines Co.
Certified Mail and Personal Delivery:	2702 Love Field Drive <u>HDQ-4PF</u> Dallas, TX 75235

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

The effective date of such consent, approval, or notice shall be the date of the receipt as shown by the U.S. Postal Service Return Receipt, or the date personal delivery is certified, or the date of electronic verification of the facsimile transmission, unless provided otherwise in this Agreement.

Section 17.09. Contract Interpretation.

A. Severability. In the event any covenant, condition or provision herein is held to be invalid, illegal, or unenforceable by any court of competent jurisdiction, such covenant, condition or provision shall be deemed amended to conform to applicable laws so as to be valid or enforceable or, if it cannot be so amended without materially altering the intention of the parties, it shall be stricken. If stricken, all other covenants, conditions and provisions of this Agreement shall remain in full force and effect provided that the striking of such covenants, conditions or provisions does not materially prejudice either City or Airline in its respective rights and obligations contained in the valid covenants, conditions or provisions of this Agreement.

B. Waiver. No provision of this Agreement shall be deemed to have been waived by either party unless such waiver is in writing, signed by the party making the waiver and addressed to the other party, nor shall any custom or practice which may evolve between the parties in the administration of the terms of this Agreement be construed to waive or lessen the right of either party to insist upon the performance of the other party in strict accordance with the terms of this Agreement.

C. Gender, Singular/Plural. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

D. Captions and Section Headings. The captions, section headings, and table of contents contained in this Agreement are for convenience of reference only, and in no way limit, define, or enlarge the terms, scope, and conditions of this Agreement.

E. Entire Agreement. This Agreement represents the entire contract between the parties and, except as otherwise provided herein, may not be amended, changed, modified, or altered without the written consent of the parties hereto. This Agreement incorporates all of the conditions, agreements, and understandings between the parties concerning the subject matter of this contract, and all such conditions,

understandings and agreements have been merged into this written Agreement. No prior condition, agreement, or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this written Agreement.

F. Relationship of Contract Documents. All documents attached to this Agreement or incorporated into this Agreement are complementary, and any requirement of one contract document shall be as binding as if required by all.

G. Exhibits, Certificates, Documents Incorporated and Attachments. Incorporation by Reference: All certificates, documents, exhibits, attachments, riders, and addenda referred to in this Agreement, including but not limited to the exhibits referred to in this Agreement, are hereby incorporated into this Agreement by reference and made a part hereof as though set forth in full in this Agreement to the extent they are consistent with its conditions and terms.

H. Applicable Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New Mexico, and the laws, rules and regulations of the City of Albuquerque.

I. Successors. All covenants, stipulations and agreements in this Agreement shall extend to and bind the legal representatives, successors, and assigns of the respective parties hereto.

J. Governmental Rights and Powers. Nothing in this Agreement shall be construed or interpreted as limiting, relinquishing or waiving any rights of ownership enjoyed by City in the Airport property, or waiving or limiting City's control over the management, operations or maintenance of property, except as specifically provided in this Agreement, or impairing, exercising, waiving, or defining governmental rights and the police powers of City.

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

Section 17.10. Inspection. City shall have the right, but not the obligation or duty, to inspect Airline's operations at all reasonable times for any purpose connected with this Agreement, in the exercise of City's governmental functions, and for fire protection, safety or security purposes.

The failure of City to inspect or monitor or give Airline notice of a default or a notice of a hazardous or unsafe condition with respect to Airline's operations under this

Agreement shall not release Airline from its liability to perform its obligations under this Agreement or impose any liability on City.

Section 17.11. Quiet Enjoyment. Airline shall, upon payment of the rentals, fees, and charges required hereunder and upon compliance with the terms, covenants, conditions, and obligations on the part of Airline to be performed and complied with hereunder, peaceably have and enjoy the rights, uses, and privileges of the Airport, its appurtenances, and facilities as granted herein and by the Rules and Regulations.

Section 17.12. Non-liability of Agents and Employees. 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 any term or provision of this Agreement or because of any breach thereof or because of its or their execution or attempted execution.

Section 17.13. No Partnership or Agency. Nothing contained in this Agreement is intended or shall be construed in any respect to create or establish any relationship other than that of lessor and lessee, and nothing herein shall be construed to establish any partnership, joint venture or association or to make Airline the general representative or agent of City for any purpose whatsoever.

Section 17.14. Security. Prior to Airline and City entering into this Agreement, Airline's personnel employed at the Airport must pass an FBI fingerprint-based Criminal History Records Check ("CHRC"). Unescorted access may be authorized for Airline's personnel via cardreader-controlled doors to the Airport's Security Identification Display Area ("SIDA") and to the Sterile Area(s) of the Terminal Building. Access to these areas is not granted simply for convenience, but must be justified by Airline for legitimate and required purposes. Airline's personnel who have passed the FBI fingerprint-based CHRC and have completed the Airport Security Training will be issued an Airport Identification ("ID")/Access card. However, individuals who have been convicted of a certain category of crimes during the past ten (10) years **will not** be issued an Airport ID/Access card. In addition, individuals who have been charged with one of these crimes will not be issued an ID/Access card until the charges have been resolved.

Airline agrees to implement and maintain, at a minimum, the following security measures with regard to access control to and from the secured areas of the Airport:

17.14.1 During all hours, access points to secure areas of the airport shall be secured and locked.

17.14.2 Airline's personnel shall challenge any person in the SIDA not properly displaying an Airport ID/Access card.

17.14.3 Airline shall restrict the activities of its personnel who are authorized to be in the SIDA or Sterile Area to that portion of those areas in which Airline is authorized to operate.

17.14.4. Airline is responsible for ensuring that all of its personnel attend Airport Security Training, that they comply with all airport security rules and regulations outlined in the training, and, because security requirements and access control procedures change, that Airline's personnel are made aware of, and comply with, all changes to airport security rules and regulations of which the Airline is made aware.

17.14.5 Airline shall not allow any unauthorized person under its control to enter the SIDA or Sterile Area unless that person is properly escorted at all times.

17.14.6 Airline shall participate in the Airport's Security Program and comply with applicable security procedures including, but not limited to, the wearing of Airport ID/Access cards by Airline's personnel.

17.14.7 Airline shall immediately notify the Aviation Police of any suspicious activity observed in the SIDA or Sterile Area of the Airport.

17.14.8 Any unresolved questions concerning Airport security shall be directed to the Aviation Department's Associate Director of Operations.

17.14.9 Airline further agrees to reimburse City for any and all penalties or fines levied against City by the Federal Aviation Administration, Transportation Security Administration, or successor agency due to Airline's failure to abide by the security measures described herein, provided however, Airline shall have the right, to the extent allowed pursuant to federal regulations, to defend against such agency action.

Director or his designated representative will periodically evaluate the procedures set forth in this Section, and make revisions as required to comply with federal regulations. Failure of Airline or Airline's personnel to fully comply with the procedures set forth in this Section or as later revised, shall be sufficient grounds for City to immediately take any necessary corrective measures until security acceptable to City is restored.

Section 17.15. Prudent Operation. City shall operate the Airport with due regard for the interests of the public and in such a manner as to produce revenues from concessionaires, other tenants, public parking operations, and other commercial users of the Airport of a nature and amount as would reasonably be produced by a prudent operator of an Airport of similar size, use and activity, consistent with sound management principles and applicable law, in the interest of protecting the financial integrity of the Airport. City hereby acknowledges its obligation under the Bond Ordinances to apply and use all Airport revenues for the operation, maintenance, administration, development, financing, and retirement of debt of the Airport System.

Section 17.16. Subordination to Agreements with the U.S. Government. This Agreement is subject and subordinate to the provisions of any agreements heretofore or hereafter made between City and the United States, relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of federal rights or property to City for Airport purposes, or to the expenditure of federal funds for the improvement or development of the Airport, including the expenditure of federal funds for the development of the Airport in accordance with the provisions of the Federal Aviation Act of 1958, as amended, or in accordance with successive airport development acts. City covenants that it has no existing agreements with the United States in conflict with the express provisions hereof.

Section 17.17. Other Subordination. The Premises are, and this Operating Agreement is, subject to and subordinate to the terms of that certain deed from the United States of America dated December 15, 1962, and filed for record on December 19, 1962 in Volume 672 of Records, Folio 469 with the records of the County Clerk of the County of Bernalillo, New Mexico, wherein City agreed to hold title to certain property upon certain terms and which also provides that the United States may regain title should City not cure any default within sixty (60) days of notice thereof.

This Agreement is subject to and subordinate to any and all Bond Ordinances pertaining to Airport Bonds.

Section 17.18. Non-waiver of Rights. No waiver of default by either party of any of the terms, covenants, and conditions hereof to be performed, kept and observed by the other party shall be construed as, or shall operate as, a waiver of any subsequent default of any of the terms, covenants, or conditions herein contained, to be performed, kept and observed by the other party.

Section 17.19. Federal Aviation Act, Section 308. Nothing herein contained shall be deemed to grant to Airline any exclusive right or privilege within the meaning of

Section 308 of the Federal Aviation Act for the conduct of any activity on the Airport, except that, subject to the terms and provisions hereof, Airline shall have the right to exclusive possession of the Exclusive Use Space leased to Airline under the provisions of this Agreement.

Section 17.20. Generally Accepted Accounting Principles. Whenever any report or disclosure referred to in this Agreement consists, either in whole or in part, of actual, year-end financial information, said financial information shall be prepared in accordance with generally accepted accounting principles consistently applied, if applicable

Section 17.21. Concerning Depreciation and Investment Credit. Neither Airline nor any successor of Airline under this Agreement may claim depreciation or an investment credit under the Internal Revenue Code of 1954, as amended, with respect to the Premises. Airline represents that it has made an election under Proposed Treasury Regulations Sections 1.103(n)-1 T through 1.103(n)-6T not to claim such depreciation or investment credit with respect to the Premises and agrees that it will retain copies of said election in its records and will not claim any such depreciation or investment credit. City acknowledges receipt of a copy of said election and agrees that it will retain copies of said election in its records.

Section 17.22. Ethics and Campaign Practices. Airline agrees to provide the Board of Ethics and Campaign Practices of the City of Albuquerque or its investigator (the "Board") with any records or information pertaining in any manner to this Agreement, whenever such records or information are within Airline's custody, are germane to an investigation authorized by the Board, and are requested by the Board. Airline further agrees to appear as a witness before the Board as required by the Board in hearings concerning ethics or campaign practices charges heard by the Board. Airline agrees to require that all subcontractors employed by Airline for services performed for this Agreement shall agree to comply with the provisions of this Section. Airline and its subcontractors shall not be compensated under this Agreement for its time or any costs incurred in complying with this Section.

Section 17.23. Forum Selection. Any cause of action, claim, suit, demand, or other case or controversy arising from or related to this Agreement shall only be brought in a state district court located in Bernalillo County, New Mexico or in a federal district court located in New Mexico. The parties irrevocably admit themselves to, and consent to, the jurisdiction of either or both of said courts. The provisions of this Section shall survive the termination of this Agreement and Terminal Building Lease.

Section 17.24. Fair Dealing. Airline covenants and warrants that the only person or firm interested in this Agreement as principal or principals is named in this Agreement and that no other person or firm has any interest in this Agreement, and this Agreement is entered into by Airline without collusion on the part of Airline with any person or firm, without fraud and in good faith. Airline also covenants and warrants that no gratuities, in the form of entertainment, gifts or otherwise, were, or during the Term of this Agreement, will be, offered or given by Airline, or any agent or representative of Airline, to any officer or employee of City with a view towards securing this Agreement or for securing more favorable treatment with respect to making any determinations with respect to performing this Agreement.

Section 17.25. Conflict of Interest. Upon execution of this Agreement, or within five (5) days after the acquisition of any interest described in this Section during the Term, Airline shall disclose in writing to City whether any City Councilor, Albuquerque Airport Advisory Board member, officer or employee of City has or hereafter acquires any direct, indirect, legal, or beneficial interest in Airline (not including stock ownership in Airline if Airline is a publicly traded company) or in any contract, lease, or agreement between City and Airline, or in any franchise, concession, right, or privilege of any nature granted by City to Airline in this Agreement or otherwise.

Section 17.26. Administration of Agreement. The Chief Administrative Officer or his authorized representative, shall administer this Agreement for City.

Section 17.27. Approval of Agreement . This Agreement shall not become effective or binding until signed by City's Chief Administrative Officer.

Section 17.28. Savings. City and Airline acknowledge that they have thoroughly read this Agreement, including all exhibits thereto, 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. City and Airline further acknowledge that this Agreement is the result of extensive negotiations between them and that this Agreement shall not be construed against either party by reason of that party's preparation of all or part of this Agreement.

{INTENTIONALLY LEFT BLANK}

IN WITNESS WHEREOF, City has caused this Agreement to be executed by its Chief Administrative Officer, and Airline has caused the same to be executed by its appropriate and authorized officers.

CITY OF ALBUQUERQUE:

By: _____
Robert J. Perry
Chief Administrative Officer

Date: _____

Recommended:

By: _____
James D. Hinde, C.M.
Director of Aviation

Date: _____

AIRLINE: Southwest Airlines Co.

By: _____
Bob Montgomery
Vice-President, Properties

Date: _____

Exhibit A
Albuquerque International Sunport (“Airport”)

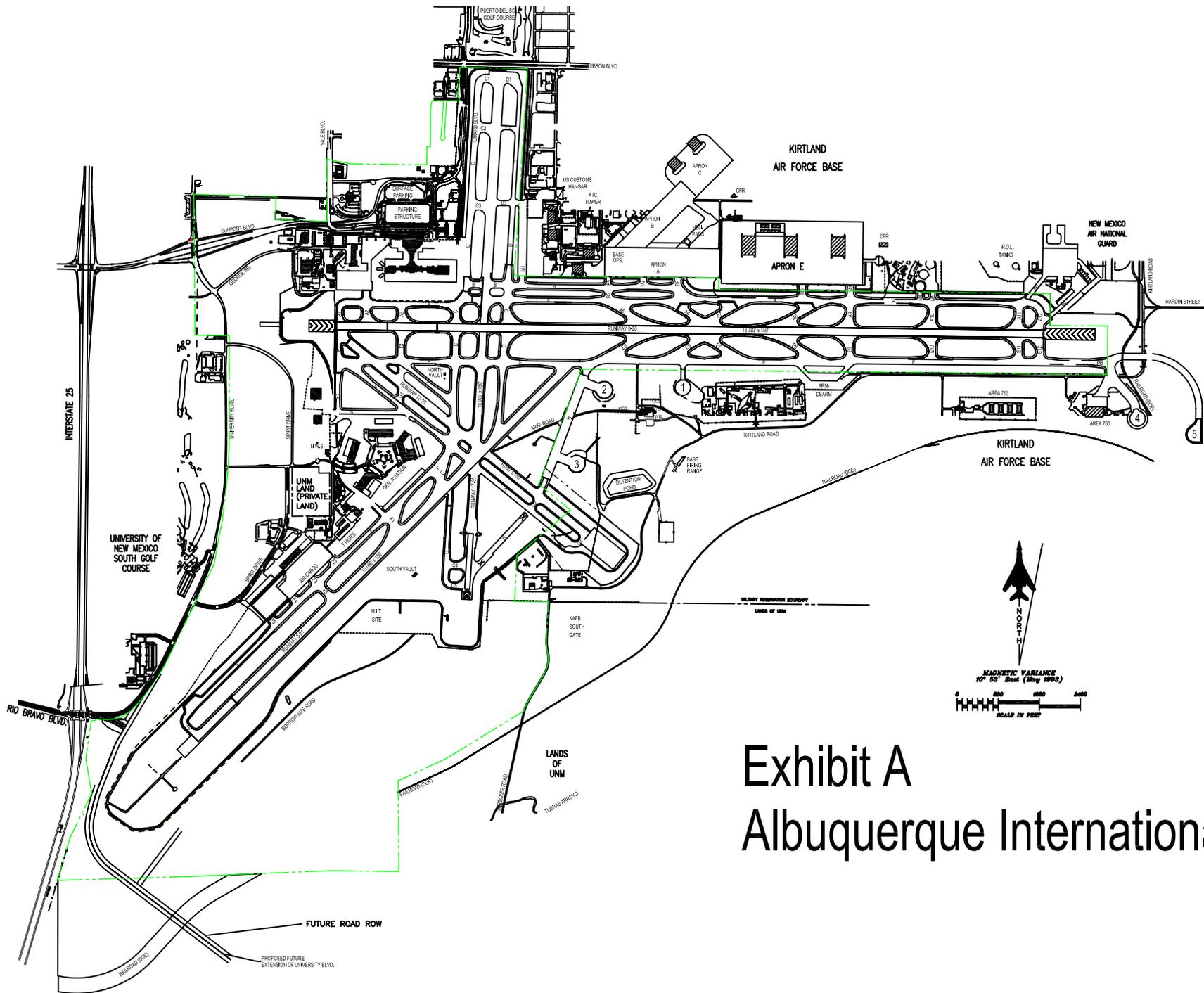
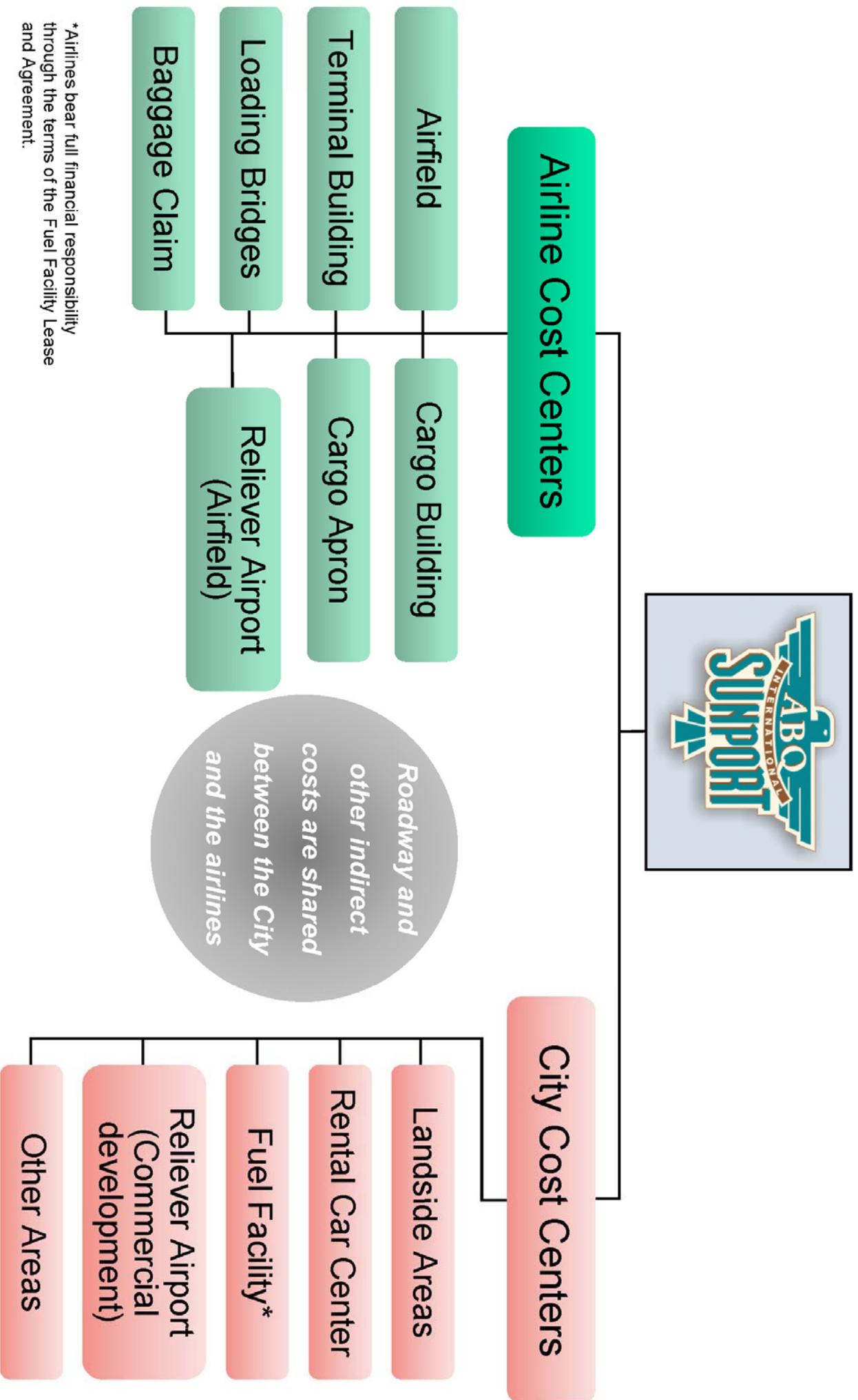


Exhibit A
 Albuquerque International Sunport

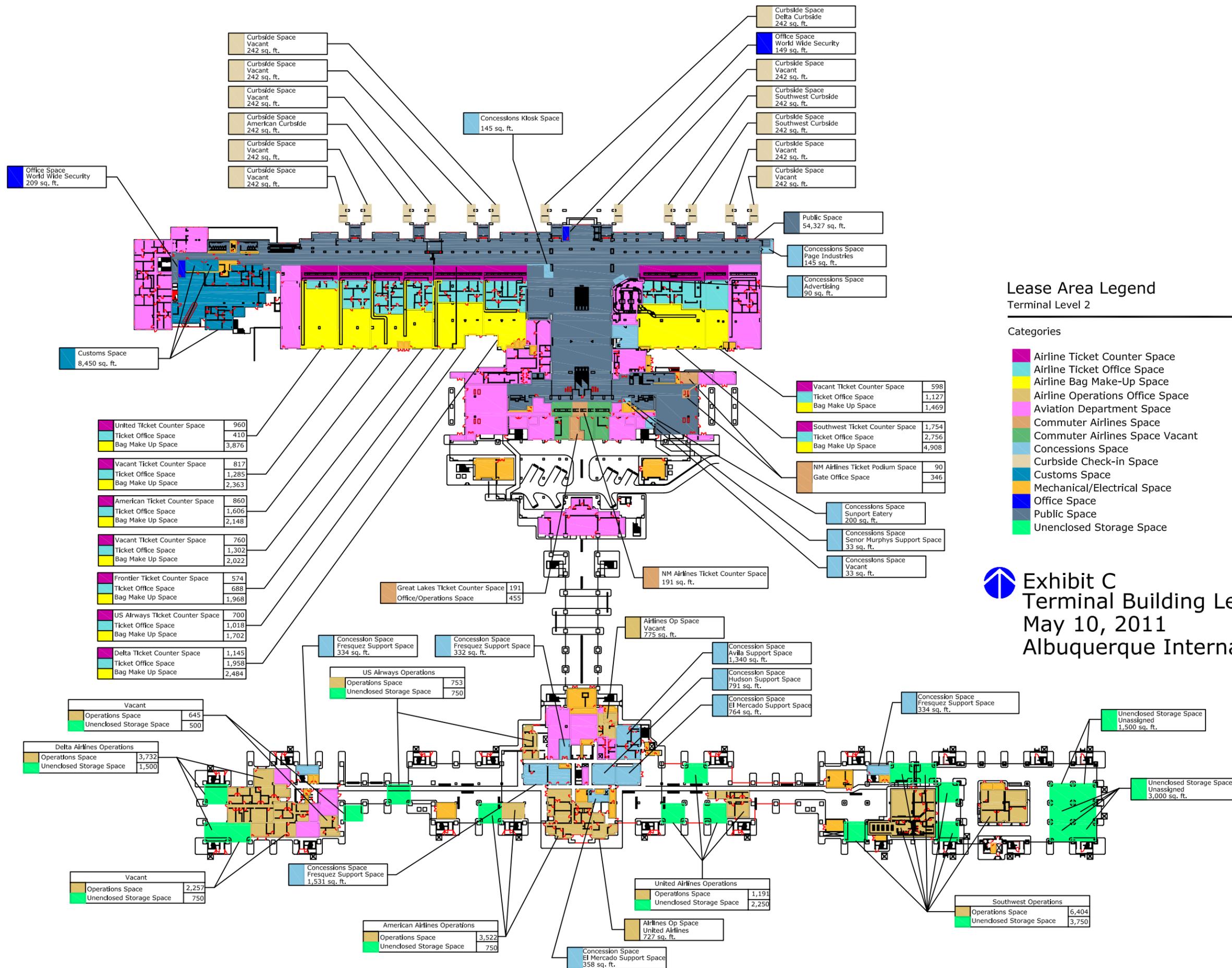
Exhibit B
Airport Cost Center Plan

Exhibit B



*Airlines bear full financial responsibility through the terms of the Fuel Facility Lease and Agreement.

Exhibit C
Terminal Building Space



Lease Area Legend

Terminal Level 2

Categories

Airline Ticket Counter Space	8168 sq. ft.
Airline Ticket Office Space	12,151 sq. ft.
Airline Bag Make-Up Space	22,940 sq. ft.
Airline Operations Office Space	20,006 sq. ft.
Aviation Department Space	39,994 sq. ft.
Commuter Airlines Space	1,273 sq. ft.
Commuter Airlines Space Vacant	2,748 sq. ft.
Concessions Space	7,306 sq. ft.
Curbside Check-in Space	2,904 sq. ft.
Customs Space	8,450 sq. ft.
Mechanical/Electrical Space	9,051 sq. ft.
Office Space	358 sq. ft.
Public Space	53,770 sq. ft.
Unenclosed Storage Space	14,750 sq. ft.

Exhibit C Terminal Building Level 2 May 10, 2011 Albuquerque International Sunport

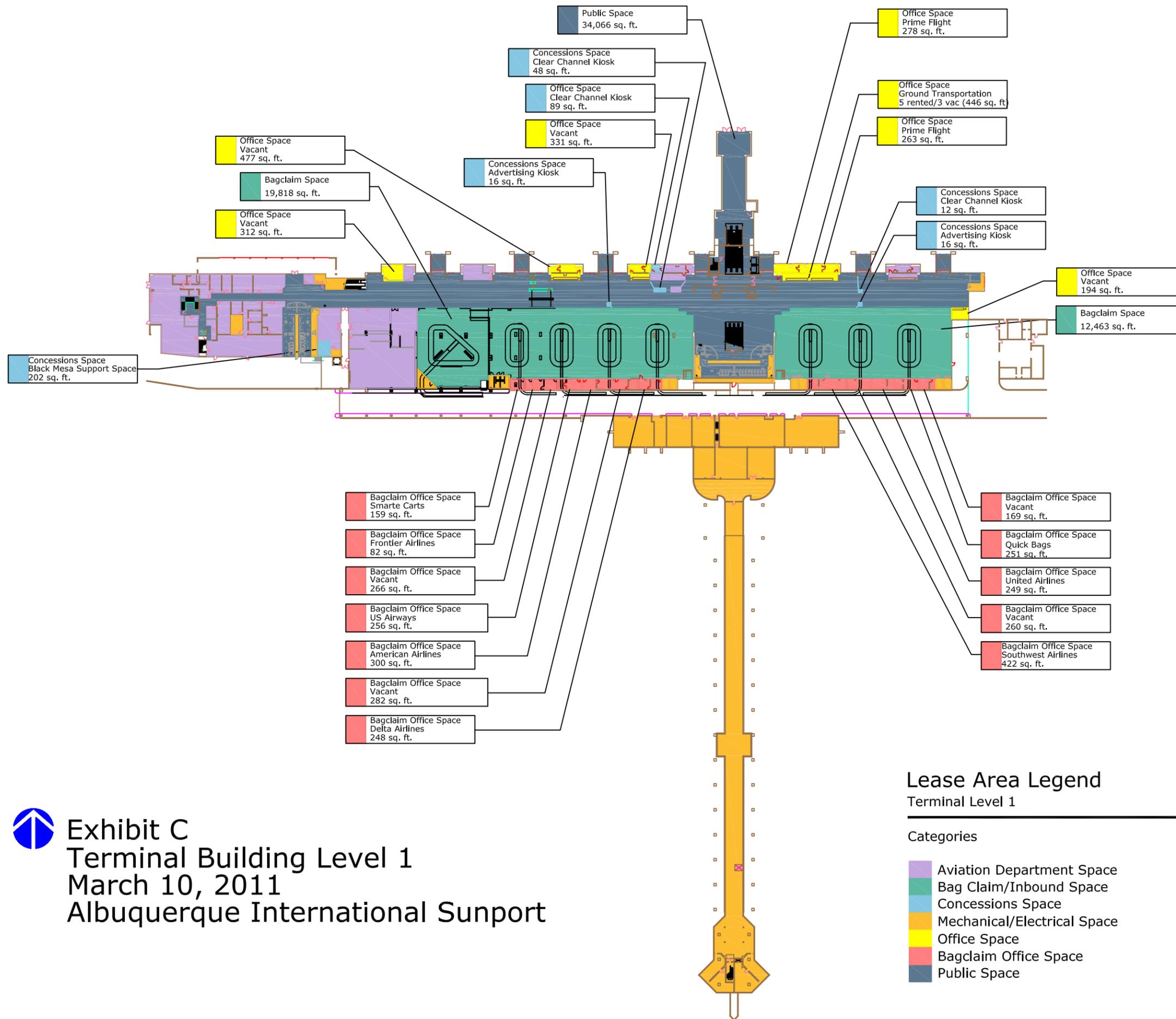


Exhibit C
Terminal Building Level 1
March 10, 2011
Albuquerque International Sunport

Lease Area Legend

Terminal Level 1

Categories

Aviation Department Space	16,819 sq. ft.
Bag Claim/Inbound Space	32,281 sq. ft.
Concessions Space	383 sq. ft.
Mechanical/Electrical Space	24,797 sq. ft.
Office Space	2,301 sq. ft.
Bagclaim Office Space	2,944 sq. ft.
Public Space	34,120 sq. ft.

Exhibit D
Preferential Use Gates and Assigned Gates

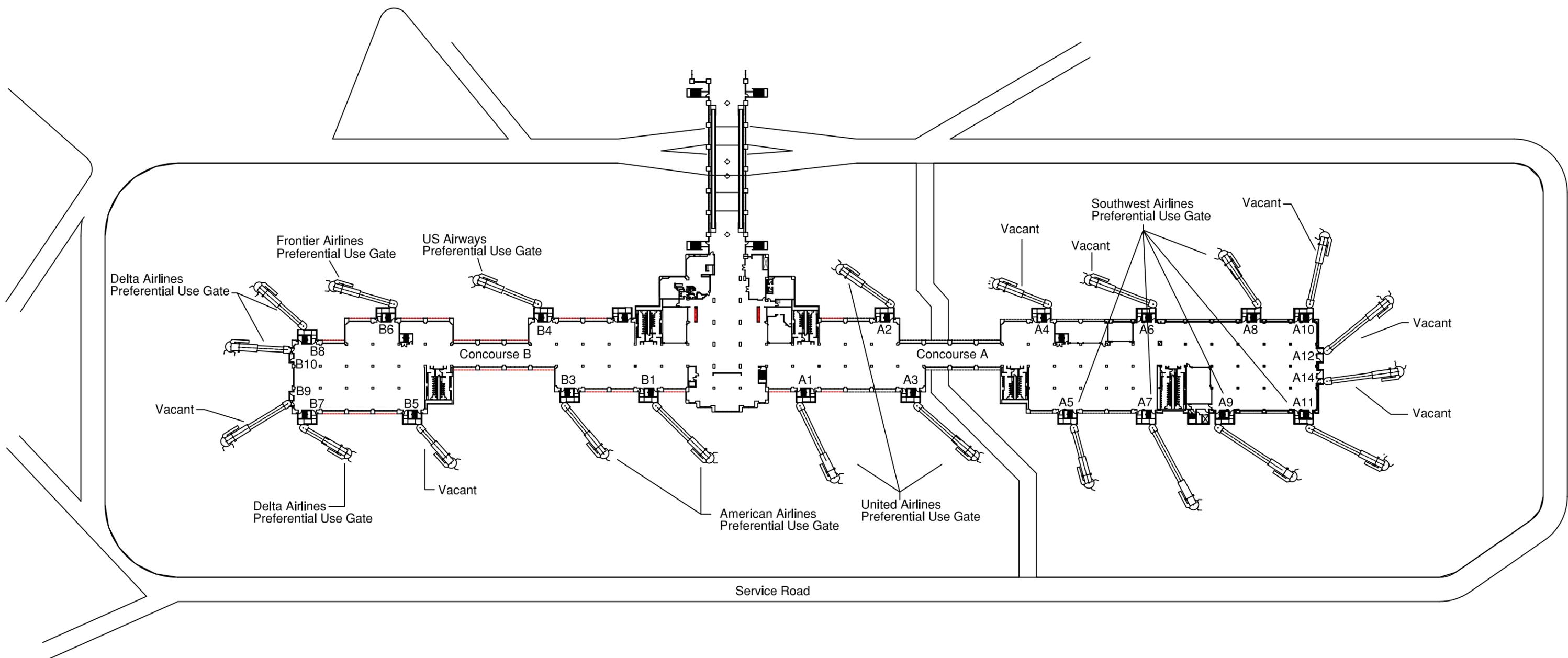


Exhibit D
Assigned Gates and Preferred Use Gates
January 2011
Albuquerque International Sunport

Exhibit E
Curbside Check-In Space

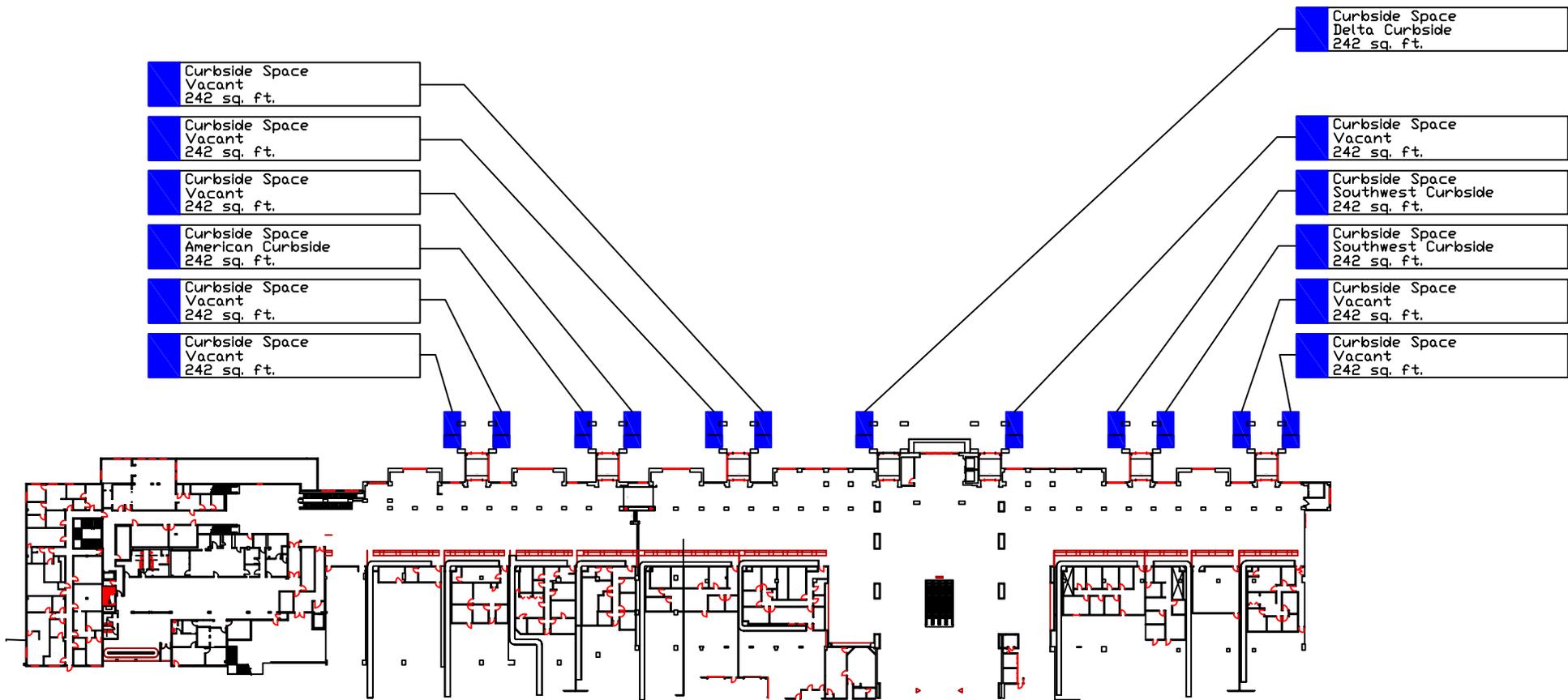


Exhibit E
 Curbside Check In
 January 2011
 Albuquerque International Sunport

Exhibit F
Capital Improvements

Exhibit F

CAPITAL IMPROVEMENT PLAN Albuquerque International Sunport FY 2012 - FY 2016

Project justification	Project cost (escalated) (a)	Estimated funding sources			
		Capital Fund (b)	Other (c)	Total	
SUNPORT PROJECTS					
Airfield					
Runway 17-35 and Taxiway C closure	Airfield capacity	\$5,361,000	\$0	\$5,361,000	\$5,361,000
Taxiways A and B reconstruction	Replace aging infrastructure	32,857,000	-	32,857,000	32,857,000
Taxiway E reconstruction phase II	Replace aging infrastructure	18,751,000	-	18,751,000	18,751,000
Runway 21 high-speed taxiway	Airfield capacity	2,936,000	-	2,936,000	2,936,000
NW terminal apron	Replace aging infrastructure	6,905,000	1,085,000	5,820,000	6,905,000
East RON parking and Pad 35	Airfield capacity	5,305,000	5,305,000	-	5,305,000
Other projects (d)		1,501,000	1,501,000	-	1,501,000
		<u>\$73,616,000</u>	<u>\$7,891,000</u>	<u>\$65,725,000</u>	<u>\$73,616,000</u>
Terminal building					
Terminal building reroof	Replace aging infrastructure	\$2,705,000	\$2,705,000	\$0	\$2,705,000
Mechanical and electrical upgrades phase II	Infrastructure modernization	9,905,000	-	9,905,000	9,905,000
Access control system	Infrastructure modernization	3,672,000	3,672,000	-	3,672,000
Curb modernization	Terminal capacity	4,560,000	4,560,000	-	4,560,000
Other projects (d)		387,000	387,000	-	387,000
		<u>\$21,229,000</u>	<u>\$11,324,000</u>	<u>\$9,905,000</u>	<u>\$21,229,000</u>
Other airline cost centers					
Baggage tunnel restoration coating	Replace aging infrastructure	\$75,000	\$75,000	\$0	\$75,000
Loading bridge renovation (B6, A14, A1, B1)	Infrastructure modernization	478,000	478,000	-	478,000
		<u>\$553,000</u>	<u>\$553,000</u>	<u>\$0</u>	<u>\$553,000</u>
Sunport subtotal		<u>\$95,398,000</u>	<u>\$19,768,000</u>	<u>\$75,630,000</u>	<u>\$95,398,000</u>
		=====	=====	=====	=====
RELIEVER AIRPORT PROJECTS					
Airfield					
Master plan update and crosswind runway EA	Airfield improvement	\$2,026,000	\$2,026,000	\$0	\$2,026,000
Aircraft parking apron reconstruction	Replace aging infrastructure	1,030,000	1,030,000	-	1,030,000
Runway extension to the north and ILS/MALSR replacement	Airfield improvement	7,402,000	370,000	7,032,000	7,402,000
Runway extension to the south	Airfield improvement	1,773,000	1,773,000	-	1,773,000
Other projects (d)		556,000	556,000	-	556,000
Reliever Airport subtotal		<u>\$12,787,000</u>	<u>\$5,755,000</u>	<u>\$7,032,000</u>	<u>\$12,787,000</u>
TOTAL		\$108,185,000	\$25,523,000	\$82,662,000	\$108,185,000

(a) Project costs are escalated at 3.0% to the year of scheduled completion.

(b) Revenues used from the Capital Fund, following project completion, are amortized back to airlines. This summary assumes a term of 25 years and a 5.50% rate.

(c) "Other" funding sources are Passenger Facility Charges (PFCs) and FAA grants. This summary assumes a \$4.50 PFC level.

(d) "Other projects" are comprised of capital projects that individually cost less than \$1.0m.

ASSUMES A \$4.50 PFC LEVEL

Exhibit G
Bond and LOC Format

PERFORMANCE BOND

(sample format)

Bond No. _____

KNOW ALL MEN BY THESE PRESENTS, that we _____, as Principal, and _____, as Surety, are held and firmly bound unto the **City of Albuquerque**, New Mexico, in the penal sum of _____ **Dollars (\$_____)** lawful money of the United States, to the payment of which well and truly to be made we bind ourselves and our heirs, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the above bonded Principal has signed a _____ ("Agreement") with the City of Albuquerque, dated _____.

NOW, THEREFORE, the condition of this obligation is such that, if the above bonded Principal shall faithfully perform each and every provision of the Agreement, then this obligation shall be void; otherwise, to remain in full force and effect.

This Performance Bond is to remain in force and to be binding upon Surety for a period of _____ year(s) from the date hereof, but may be continued from year to year by delivery of Continuation Certificate signed by Attorney-in-Fact and under seal of said Surety. City of Albuquerque is allowed to make a partial draw on this Bond, pursuant to Section ___ of the above-referenced Agreement. Further, this Performance Bond shall remain in full force and effect for a period of sixty (60) days following termination or cancellation of the above-referenced Agreement. The Surety shall have the right to terminate their liability upon giving the City of Albuquerque thirty (30) days notice by registered mail of its intention to so terminate, but said Surety shall remain liable for all sums due under the provision of this Bond up to and including the effective date of such termination and liability.

IN WITNESS WHEREOF, the Principal and Surety have hereunto set their Bonds and seals this _____ day of _____, _____.

ATTEST: Principal

By: _____
Title: _____

ATTEST: Surety

By: _____
Title: _____

Irrevocable Letter Of Credit
(sample format)

Letter of Credit No. _____
Date: _____
Amount: \$ _____

City of Albuquerque
Aviation Department
Albuquerque International Sunport
P. O. Box 9948
Albuquerque, NM 87119-1048

We hereby establish an Irrevocable Letter of Credit in your favor in the amount of _____ Dollars (\$ _____) for the account of _____ (name of Airline) available by your draft at sight when accompanied by:

A certificate signed by the Director of Aviation of the City of Albuquerque to the effect that _____ (name of Airline) has failed to perform the terms, covenants and conditions to be performed as required by the _____ (exact title of the agreement) ("Agreement") dated _____.

This Letter of Credit shall remain in full force and effect for a period of sixty (60) days following termination or cancellation of the Agreement.

Drafts under this credit must bear upon their face the words:

Drawn under _____ Bank
Letter of Credit No. _____ Dated _____.

We hereby agree with drawers, endorsers and bona fide holders of drafts negotiated under and in compliance with the terms of this credit that the same will be duly honored upon presentation to Drawee if drawn and negotiated on or before _____.

This credit is subject to the "Uniform Customs and Practice for Documentary Credits" as established by the International Chamber of Commerce, and such revisions thereof as are in effect as of the date of issuance.

[name of bank]

By: _____
Authorized Signature

Exhibit H
Illustrative Calculation of Airline Rentals, Fees and Charges

ILLUSTRATIVE CALCULATION OF TERMINAL BUILDING SPACE RENTAL RATES

Albuquerque International Sunport

Fiscal Years ending June 30

	2012	2013	2014	2015	2016
O&M Expenses	\$16,310,000	\$16,669,000	\$17,171,000	\$17,686,000	\$18,217,000
Equipment and capital outlays (a)	-	-	-	-	-
Annual Debt Service:					
Senior Lien Bonds (b)	4,115,000	3,519,000	3,502,000	3,497,000	3,461,000
Subordinate Lien Bonds	4,785,000	4,861,000	4,734,000	-	-
plus: Allocated Roadways Annual Debt Service	1,067,000	1,070,000	1,058,000	659,000	657,000
Annual Amortization Charges	2,754,000	2,783,000	3,508,000	3,286,000	2,914,000
Terminal Building Cost	\$29,031,000	\$28,902,000	\$29,973,000	\$25,128,000	\$25,249,000
less: Passenger Security Screening Fees	(581,000)	(594,000)	(612,000)	(630,000)	(649,000)
less: FIS Area Fees	-	-	-	-	-
Net Terminal Building Cost	\$28,450,000	\$28,308,000	\$29,361,000	\$24,498,000	\$24,600,000
/ Rentable Space (square feet)	259,614	259,614	259,614	259,614	259,614
= Basic Cost Rate	\$109.59	\$109.04	\$113.09	\$94.36	\$94.76
x Airline Rentable Space (square feet)	195,910	195,910	195,910	195,910	195,910
= Airline Rental Revenue Requirement	\$21,469,000	\$21,362,000	\$22,156,000	\$18,487,000	\$18,564,000
less: Non-Signatory Airline Terminal Building Space Rentals	(65,000)	(65,000)	(65,000)	(65,000)	(65,000)
= Basic Signatory Airline Rental Requirement	\$21,404,000	\$21,297,000	\$22,091,000	\$18,422,000	\$18,499,000
less: Airline Terminal Building Rental Credit (see below)	(3,383,000)	(3,339,000)	(3,224,000)	(4,111,000)	(4,319,000)
= Net Signatory Airline Rental Requirement	\$18,021,000	\$17,958,000	\$18,867,000	\$14,311,000	\$14,180,000
/ Signatory Airline Rentable Space (square feet)	194,637	194,637	194,637	194,637	194,637
= Average Signatory Airline Terminal Building Space Rental Rate	\$92.59	\$92.26	\$96.93	\$73.53	\$72.85
Airline Terminal Building Rental Credit					
Concession and non-airline Terminal Building space (square feet)	63,704	63,704	63,704	63,704	63,704
x Basic Cost Rate	\$109.59	\$109.04	\$113.09	\$94.36	\$94.76
= Annual Space Cost of concession and non-airline space [A]	\$6,981,000	\$6,946,000	\$7,205,000	\$6,011,000	\$6,036,000
Concession Revenues [B]	\$4,607,000	\$4,677,000	\$4,748,000	\$4,823,000	\$4,899,000
Less: Annual Space Cost of concession and non-airline space [B]	(6,981,000)	(6,946,000)	(7,205,000)	(6,011,000)	(6,036,000)
Excess Concession Revenue [B-A]	(\$2,374,000)	(\$2,269,000)	(\$2,457,000)	(\$1,188,000)	(\$1,137,000)
x Signatory Airline Rented Space as a percentage of total Rented Space	71.5%	71.5%	71.5%	71.5%	71.5%
= Airline Concession Revenue Credit	(\$1,698,000)	(\$1,623,000)	(\$1,758,000)	(\$850,000)	(\$813,000)
+ Additional Airline Credit (50% of Additional Credit) (b) (c)	(286,000)	(405,000)	(385,000)	(406,000)	(235,000)
+ Airline Rental Car Privilege Fee Credit	5,367,000	5,367,000	5,367,000	5,367,000	5,367,000
= Airline Terminal Building Rental Credit	\$3,383,000	\$3,339,000	\$3,224,000	\$4,111,000	\$4,319,000

(a) Net of airline coverage Account funds.

(b) Net of PFC contribution. See Exhibit D.

(c) The Additional Credit is equal to the following amount:

(\$572,000)	(\$810,000)	(\$770,000)	(\$811,000)	(\$470,000)
-------------	-------------	-------------	-------------	-------------

ILLUSTRATIVE CALCULATION OF LOADING BRIDGE CHARGES AND BAGGAGE CLAIM DEVICE SURCHARGE

Albuquerque International Sunport

Fiscal Years ending June 30

	2012	2013	2014	2015	2016
LOADING BRIDGE CHARGES					
Loading Bridge Fixed Fee					
Annual Debt Service	\$481,000	\$384,000	\$385,000	\$387,000	\$387,000
Annual Amortization Charges	90,000	36,000	36,000	36,000	36,000
	<u>\$571,000</u>	<u>\$420,000</u>	<u>\$421,000</u>	<u>\$423,000</u>	<u>\$423,000</u>
/ Total Rented Gates	15	15	15	15	15
= Loading Bridge Fixed Fee per Rented Gate	<u>\$38,000</u>	<u>\$28,000</u>	<u>\$28,000</u>	<u>\$28,000</u>	<u>\$28,000</u>
Loading Bridge Operating Fee					
O&M Expenses	\$665,000	\$685,000	\$706,000	\$727,000	\$749,000
/ Departing Flights (b)	37,000	37,000	37,000	37,000	37,000
= Loading Bridge Operating Fee per Departing Flight	<u>\$17.97</u>	<u>\$18.51</u>	<u>\$19.08</u>	<u>\$19.65</u>	<u>\$20.24</u>
BAGGAGE CLAIM DEVICE SURCHARGE					
O&M Expenses (a)	\$116,000	\$120,000	\$123,000	\$127,000	\$131,000
Annual Debt Service	199,000	175,000	172,000	170,000	167,000
Annual Amortization Charges	12,000	18,000	18,000	18,000	18,000
= Baggage Claim Device Cost	<u>\$327,000</u>	<u>\$313,000</u>	<u>\$313,000</u>	<u>\$315,000</u>	<u>\$316,000</u>
/ Bag claim/inbound baggage area (square feet)	32,281	32,281	32,281	32,281	32,281
= Baggage Claim Device Surcharge per square foot	<u>\$10.13</u>	<u>\$9.70</u>	<u>\$9.70</u>	<u>\$9.76</u>	<u>\$9.79</u>

Source: City of Albuquerque Aviation Department.

(b) Departing Flights for Signatory Airlines, Affiliate Airline Qualifying Flights, and passenger Non-Signatory Airlines.

ILLUSTRATIVE CALCULATION OF LANDING FEE RATES

Albuquerque International Sunport

Fiscal Years ending June 30

	2012	2013	2014	2015	2016
O&M Expenses	\$6,280,000	\$6,410,000	\$6,600,000	\$6,800,000	\$7,004,000
Equipment and capital outlays	-	-	-	-	-
Annual Debt Service:					
Senior Lien Bonds	4,074,000	4,037,000	4,037,000	4,039,000	4,030,000
Subordinate Lien Bonds	925,000	940,000	916,000	-	-
less: Airfield PFC Revenue Offset	(3,249,000)	(3,247,000)	(3,247,000)	(3,248,000)	(3,240,000)
Annual Amortization Charges	782,000	777,000	1,163,000	1,186,000	1,170,000
Reliever Airport Deficit	1,056,000	1,189,000	1,380,000	1,413,000	1,550,000
O&M Reserve Account deposit	126,000	166,000	171,000	176,000	181,000
less: Amount funded thru CFCs	(12,000)	(16,000)	(16,000)	(16,000)	(17,000)
Air Cargo Apron taxilane costs	9,000	9,000	9,000	9,000	-
Total Airfield Cost	\$9,991,000	\$10,265,000	\$11,013,000	\$10,359,000	\$10,678,000
less:					
Non-signatory airline landing fees	(\$103,000)	(\$106,000)	(\$114,000)	(\$107,000)	(\$110,000)
U.S. Air Force flight fees	(50,000)	(50,000)	(50,000)	(50,000)	(50,000)
General aviation fuel flowage fees	(141,000)	(145,000)	(149,000)	(154,000)	(159,000)
Commuter apron fees	(12,000)	(12,000)	(12,000)	(12,000)	(12,000)
	(\$306,000)	(\$313,000)	(\$325,000)	(\$323,000)	(\$331,000)
Net Airfield Cost	\$9,685,000	\$9,952,000	\$10,688,000	\$10,036,000	\$10,347,000
Total Signatory Landed Weight (1,000 lb. units) (a)	4,634,000	4,634,000	4,634,000	4,634,000	4,634,000
Signatory Airline Landing Fee Rate (per 1,000 lb. units)	\$2.09	\$2.15	\$2.31	\$2.17	\$2.23
Non-Signatory Airline Landing Fee Rate @ 115%	\$2.40	\$2.47	\$2.65	\$2.49	\$2.57

Source: City of Albuquerque Aviation Department.

(a) Includes Landed Weight for Affiliate Airline Qualifying Flights.

Exhibit I
Insurance Certificate Format

**City of Albuquerque
Aviation Department
PO Box 9948
Albuquerque, NM 87119-1048
Phone (505) 244-7716
FAX (505) 244-7793**

Requirements for Certificates and Policies of Insurance -- This sheet should be provided to your insurance agent for purposes of preparing Certificates of Insurance:

- Airline shall furnish City with "original" Certificates of Insurance and shall mail or hand-deliver said certificates to the Aviation Department, at the above address. Please also send a copy by FAX to (505) 244-7793.

- Certificate holder should read:

**City of Albuquerque
Director of Aviation
Albuquerque International Sunport
PO Box 9948
Albuquerque, NM 87119-1048**

- All certificates of insurance shall provide thirty (30) days written notice be given to the Director of Aviation before a policy is canceled, materially changed, or not renewed.

- Types and Limits of Coverage per Article 11 of the Airline Operating Agreement and Terminal Building Lease**
 - Workers' Compensation: \$1,000,000 and NM Statutory Limits

NOTE: All certificates of insurance shall include the City of Albuquerque as additional insured except for Workers Compensation and Employers' Liability.

CERTIFICATE OF INSURANCE

PRODUCER	THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.
	COMPANIES AFFORDING COVERAGE
	COMPANY LETTER A
	COMPANY LETTER B
INSURED	COMPANY LETTER C
	COMPANY LETTER D
	COMPANY LETTER E

COVERAGES THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
	GENERAL LIABILITY* <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR. <input type="checkbox"/> OWNER'S & CONTRACTOR'S PROTECT. <input type="checkbox"/> SELF-INSURANCE RETENTION				GENERAL AGGREGATE \$ PRODUCTS- COMP/OP AGG. \$ PERSONAL & ADV. INJURY \$ EACH OCCURRENCE \$ FIRE DAMAGE (Any one fire) \$ MED. EXPENSE (Any one person) \$ SELF INSURANCE AMOUNT \$
	AUTOMOBILE LIABILITY * <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS <input type="checkbox"/> GARAGE LIABILITY <input type="checkbox"/> SELF-INSURANCE RETENTION				COMBINED SINGLE LIMIT \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per Accident) \$ PROPERTY DAMAGE \$ \$ \$ SELF INSURANCE AMOUNT \$
	EXCESS LIABILITY * <input type="checkbox"/> UMBRELLA FORM <input type="checkbox"/> OTHER THAN UMBRELLA FORM				EACH OCCURRENCE \$ AGGREGATE \$
	WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY				STATUTORY LIMITS EACH ACCIDENT DISEASE-POLICY LIMIT DISEASE-EACH EMPLOYEE
	OTHER				

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS
 * CITY OF ALBUQUERQUE IS ADDED AS AN ADDITIONAL INSURED

CERTIFICATE HOLDER

CITY OF ALBUQUERQUE
 DIRECTOR OF AVIATION
 ALBUQUERQUE INTERNATIONAL SUNPORT
 P.O. BOX 9948
 ALBUQUERQUE, NEW MEXICO 87119-1048

MODIFICATION/CANCELLATION:

SHOULD ANY OF THE ABOVE IDENTIFIED POLICY (POLICIES) OF INSURANCE BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL THIRTY (30) DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, ~~BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.~~

AUTHORIZED REPRESENTATIVE