

NON-EXCLUSIVE LICENSE AGREEMENT TO OPERATE AN AUTOMATED  
TELLERMACHINE (ATM) INSIDE THE TERMINAL BUILDING AT FRESNO  
YOSEMITE INTERNATIONAL AIRPORT

Issued By

CITY OF FRESNO, CALIFORNIA

To

EDUCATIONAL EMPLOYEES CREDIT UNION  
A California Corporation

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THIS NON-EXCLUSIVE LICENSE AGREEMENT (License) to operate an Automated Teller Machine (ATM) inside the terminal building at Fresno Yosemite International Airport is effective the \_\_\_\_ day of \_\_\_\_ 2022, by and between the City of Fresno, California, a municipal corporation (Licensor), and Educational Employees Credit Union, a California corporation (Licensee).

## RECITALS

**WHEREAS**, Licensor owns and operates Fresno Yosemite International Airport (FAT), formerly and also known as Fresno Air Terminal, a public use airport located at 5175 E. Clinton Way in the City of Fresno, County of Fresno, State of California; and

**WHEREAS**, On February 16, 2021, Licensor began soliciting Letters of Interest from financial institutions to operate a financial institution owned ATM self-service kiosk at FAT. The deadline for submitting Letters of Interest was March 5, 2021; and

**WHEREAS**, Licensee is a credit union that was started in 1934 by teachers and administrators and is now the largest locally-owned financial institution in the Central Valley, with approximately 19 branches and 65 ATMs; and

**WHEREAS**, On March 4, 2021, Licensee responded to Licensor's solicitation for Letters of Interest from financial institutions to operate a financial institution owned ATM self-service kiosk inside FAT's terminal building; and

**WHEREAS**, On July 1, 2021, Licensor and Licensee executed a Temporary Use Permit (TUP) authorizing Licensee to use the subject space as detailed in Exhibit "A" attached hereto and incorporated herein to this License, for a fee, for a specific time-period of six (6) months, until January 31, 2022; and

**WHEREAS**, Licensee desires to occupy the subject space (see, Exhibit A) in FAT's main passenger terminal building beyond the TUP's expiration date of January 31, 2022, for the purposes of continuing to operate an ATM self-service kiosk; and

**WHEREAS**, Under the Surplus Land Act, Government Code Section 54220-54234, surplus land is defined as "land owned in fee simple by any local agency for which the local agency's governing body takes formal action in a regular public meeting declaring that the land is surplus and is not necessary for the agency's use,"; and

**WHEREAS**, Subject space (see, Exhibit A) of the Licensee's ATM is not a disposition of surplus land pursuant to the Surplus Land Act, because no development or demolition will occur; and

**WHEREAS**, Licensor has determined it is in the City's best interest to execute this License with Licensee.

## AGREEMENT

Licensor and Licensee (Parties) agree this License is subject to the terms, covenants, conditions, agreements, warranties, and provisions herein contained and Licensee expressly covenants and agrees, as a material part of the consideration for the License,

that Licensee shall fully and faithfully comply with, keep, perform and/or observe each and every term, covenant, condition, agreement, warranty, and/or provision hereof to be complied with, kept performed, and/or observed by Licensee.

## **ARTICLE I: PROPERTY, TERM, RENT, AND OTHER CHARGES**

### **Section 1.01 Description of Licensed Premises.**

This License will permit the Licensee to operate one (1) ATM kiosk inside FAT's terminal building, specifically in the terminal's pre-security public area (Premises). The Parties acknowledge and agree that Licensee will have the non-exclusive right to install and operate one (1) ATM in the interior of FAT's terminal building during the Term of this License. The ATM kiosk will be installed against the wall, between the main terminal entrance and the concourse leading to the terminal's baggage claim area, see **Exhibit A**, attached hereto and made a part hereof.

### **Section 1.02 Grant of License.**

Licensor grants to Licensee a License for the sole purpose of installing, maintaining, repairing and operating one (1) ATM kiosk and its associated appurtenances thereto (hereinafter referred to as "Equipment") upon the Premises, as pictured in **Exhibit A** attached hereto and incorporated by reference herein, at Licensee's sole cost and expense. Transactions available through the Equipment shall include withdrawals, transfers, and inquiries. Licensee may not use the Premises for any other purpose or business.

### **Section 1.03 Term.**

The Term of this License shall be for five (5) years commencing February 1, 2022, and ending January 31, 2027, unless terminated earlier in the manner and under the conditions herein provided. Either party may terminate this License at any time and without cause by serving written notice upon the other party no less than one hundred-eighty (180) days before such termination is to be effective.

### **Section 1.04 Option to Extend.**

Licensor hereby grants to Licensee one (1) Option to extend the Term of this License for an additional period of five (5) years from the ending date of January 31, 2027. Licensee may exercise the Option by delivering to Licensor notice, in writing, of Licensee's intent to exercise the Option, which notice shall be delivered no less than ninety (90) days prior to the ending date of January 31, 2027. Upon receipt of the notice by Licensor, the License's Term shall thereby be extended for an addition five (5) year period and the Parties hereto shall be bound by all terms, covenants and conditions hereof during said Additional Term.

### **Section 1.05 Rent.**

Definition: "Rent" shall mean all monetary obligations of Licensee to Licensor under the terms of this License.

- A. Net Agreement.

This is a Net Agreement with respect to monthly base rent, fees and charges paid to Licensor by Licensee. Licensee shall, at Licensee's cost and expense, in addition to the Rent, fees and charges set forth herein, pay all costs and expenses associated with Licensee's occupancy and use of the Premises and with the activities and operations conducted thereon/therefrom pursuant to this License, including but not limited to those certain activities and operations described herein.

B. Base Rent.

Amount and Due Date: Commencing February 1, 2022, then continuing monthly thereafter during the Year 1 (February 1, 2022 – January 31, 2023) of this License, Licensee shall pay to Licensor rent in the amount of Four Hundred Dollars and zero cents (\$400.00) per month. Such rent will be due and payable on or before the 1<sup>st</sup> day of the month for which due. The rent due hereunder for any period less than a full calendar month shall be prorated.

C. Base Rent Adjustment.

Commencing February 1, 2023, the Base Rent of this License will increase by One Hundred Dollars and zero cents (\$100.00) to the amount of Five Hundred Dollars and zero cents (\$500.00) per month. Such rent will be due and payable on or before the 1<sup>st</sup> day of the month for which due and will remain in effect for the duration of the License's Term (February 1, 2023, through January 31, 2027). The rent due hereunder for any period less than a full calendar month shall be prorated.

D. Base Rent Adjustment, if Option is Exercised.

If Licensee exercises the Option, no less than ninety (90) days prior to expiration of the License's ending date of January 31, 2027, the License's Base Rent will increase by an additional One Hundred Dollars and zero cents (\$100.00), on February 1, 2027, to the amount of Six Hundred Dollars and zero cents (\$600.00) per month. Such rent will be due and payable on or before the 1<sup>st</sup> day of the month for which due and will remain in effect for the duration of the License's Additional Term (February 1, 2027, through January 31, 2032). The rent due hereunder for any period less than a full calendar month shall be prorated.

1. Place of Payment: All fees/charges due to be paid to Licensor hereunder shall be paid in lawful money of the United States of America, without set off, by check or wire transfer made payable to Licensor and delivered or wired, as applicable, to the following address or account, Licensor by service of written notice upon Licensee, may otherwise direct the payment thereof from time to time during the Term (and possible Additional Term) hereof.

Via Mail/Express  
City of Fresno  
Fresno Yosemite International Airport  
Attn.: Airports Accounting  
4995 East Clinton Way  
Fresno, CA 93727-1504

## **Section 1.06 Other Charges.**

### **A. Airport Use Fees/Charges**

Nothing contained in this License shall be deemed to relieve Licensee, any employee of Licensee, or any one or more of Licensee's customers, invitees, or any other person or entity whomsoever, from payment of such other fees and charges as may legitimately accrue to Licensor pursuant to any Ordinance(s) and/or Resolution(s) of the City Council of Licensor in effect on the start date of the Term hereof or as such may be passed/adopted and placed into effect by said Council, at any time and from time to time, during the Term (and possible Additional Term) of this License, including, without limitation:

1. Miscellaneous fees and/or charges (including, without limitation, fees/charges for Airport security badges, copies of public documents [including extra copies of this License], returned check charges, etc.) as are generally assessed by Licensor or against members of the general public and/or Licensees, tenants, and/or other users of Airport Premises and/or facilities.

### **B. Reimbursement for Insurance and other Licensor Expenses.**

Licensee shall pay and nothing within this License shall be deemed to relieve Licensee, any employee of Licensee, or any one or more of Licensee's customers, invitees, or any other person or entity whomsoever, from payment of such other fees and charges as may legitimately incurred by Licensor pursuant to Licensor's ownership of the Premises including but not limited to the pro-rata portion of the Fire and Extended Coverage insurance policy covering the subject Premises.

### **C. Effect of Failure to Pay Fees/Charges.**

Any failure by Licensee to pay any and all airport use fees, and/or miscellaneous fees and charges to Licensor (as additional rent), as and when due to be paid to Licensor thereby, shall constitute a default on the part of Licensee under this License.

## **Section 1.07 Taxes.**

Permittee agrees to pay, before delinquency, as and when due, any and all lawful taxes, assessments, or charges which, during the life hereof, may be levied by the State, County, City, and/or other tax-levying body on any part or all of the personal property of Licensee and/or upon the Possessory Interest, if any, of Licensee in Airport's premises under this License<sup>1</sup>.

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<sup>1</sup> Any interest in real property which exists as a result of possession, exclusive use, or a right to possession or exclusive use of any real property (land and/or improvements located therein or thereon) which is owned by the City of Fresno (Lessor) is a taxable possessory interest, unless the possessor of interest in such property is exempt from taxation. With regard to any

### **Section 1.08 Late Payment and Other Charges.**

A. Late Payment Charge.

Should any installment of rent or other payment of fees accruing to Licensor under the provisions of this License not be received by Licensor within fifteen (15) calendar days after such shall be due, a late payment charge equal to one and one half percent (1.5%) of the overdue amount added thereto and constituting a part thereof shall be imposed by Licensor each and every month until the entire delinquent amount is received by Licensor.

B. Best Estimate of Damage.

Licensee and Licensor recognize that the damage which Licensor shall suffer as a result of Licensee's failure to pay rent and/or other sums when due is difficult to ascertain, and therefore agree the above said late charge is the best estimate of the damage which Licensor shall suffer in the event of Licensee's late payment.

C. Change to Late Payment Charge.

It is expressly stipulated that the amount of the Late Payment Charge (above) may, at anytime and from time to time during the Term (and possible Additional Term) of this License, be changed by ordinance/ resolution passed/adopted by Licensor's City Council (City Council) when, in said City Council's opinion, economic conditions and/or other relevant facts and/or circumstances may reasonably warrant such action.

D. Non-Relief from Payment.

Nothing within this License contained shall be deemed to relieve Licensee from payment of rent or other sums at the time and in the manner herein provided.

### **Section 1.09 Surety.**

A. Due Date, Type and Amount of Surety.

Within thirty (30) days of the commencement of rental payments hereunder, Licensee shall provide Licensor, and shall thereafter maintain during the Term (and possible Additional Term) of this License, a valid Surety instrument or surety amount, in an amount equal to the next three (3) month's rent, guaranteeing Licensee's fully and faithfully undertaking, observing, keeping and performing any and all of the terms, covenants, conditions, warranties, agreements, undertakings,

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possessory interest to be acquired by Lessee hereunder, Lessee, by its signatures hereunto affixed, warrants, stipulates, confirms, acknowledges and agrees that, prior to its executing this lease, Lessee either took a copy hereof to the office of the Fresno County Tax Assessor or by some other appropriate means, independent of Lessor or any employee, agent, or representative of Lessor, determined, to Lessee's full and complete satisfaction, how much Lessee will be taxed, if at all.



and/or provisions hereof to be observed, kept, performed, and/or undertaken by Licensee.

- A. Form of Surety. The surety instrument shall be in one of the following forms:
1. A Surety Bond issued by an insurance company lawfully admitted and doing business in good standing in the State of California and authorized to write such bonds in said State; or
  2. An Irrevocable Letter of Credit established in favor of Licensor for the account of Licensee by a federally chartered bank located in the State of California and lawfully doing business in said State; or
  3. An Automatically Renewable Certificate of Deposit in the name of Licensor issued by a federally chartered Bank or Savings and Loan Association located in the State of California and lawfully doing business in said State (Interest may accrue to Licensee [Depositor]; or
  4. A Cash Deposit (Licensor shall not be obligated or required to pay and shall not pay any interest whatsoever).
- B. Return/Surrender/Release of Surety by Licensor. Except as provided within this Article, at the end of the Term (or the possible Additional Term) hereof, such surety as shall have been provided by Licensee and which is then currently being held by Licensor shall be returned/ surrendered/released by Licensor, provided that there are no outstanding claims against Licensee.

## **ARTICLE II: OBLIGATIONS OF LICENSOR**

### **Section 2.01 Covenant of Title.**

Licensor warrants and covenants that it has full right and authority to enter this License and that all things have happened and been done to make its granting of said License effective.

### **Section 2.02 Operation of Airport.**

Licensor covenants and agrees during the Term (and possible Additional Term) hereof to operate and maintain Airport and its public airport facilities as a public airport consistent with the Sponsor's Assurances given by Licensor to the United States Government under the Federal Aviation Act, the terms of which are contained in **Exhibit B**.

Licensee shall use the Leased Premises in support of and in connection with the business of operating one (1) ATM self-service kiosk against FAT's terminal building wall, located between the main terminal entrance and the concourse leading to the terminal's baggage claim area, see **Exhibit A**, for the duration of the License's Term (and possible Additional Term). Licensee shall comply with the Minimum Standards for Fresno Yosemite International Airport as set forth in **Exhibit C** and approved by City Council including any future changes/alterations approved by City Council.

### **Section 2.03 Maintenance and Repair.**

- A. Licensors shall be obligated to repair and maintain ONLY the foundation, exterior walls, and exterior roof of the Premises. Provided, however, if the need for such maintenance and repairs is caused, in whole or in part, by the act, neglect, fault or omission of any duty by Licensee, its agents, employees, and/or invitees, or by breaking and entering, in whichever event(s) such maintenance and repairs shall be the obligation of Licensee at Licensee's cost and expense.
- B. Licensors shall not be liable for any failure to make repairs or to perform any maintenance unless such failure shall persist for an unreasonable period of time after written notice of the need of such repairs or maintenance is given Licensors by Licensee. There shall be no abatement of rent and no liability of Licensors by reason of any injury to Licensee's business or any interference with Licensee's uses of the Premises arising from Licensors making any repairs and/or performing any maintenance in/on/to/for either the Premises or any of the improvements located therein/thereon or any appurtenances thereto. Licensors shall not be responsible in any way whatsoever for any acts or omissions on the part of any other third parties.
- C. During the Term (and possible Additional Term) hereof, Licensors shall not, under any circumstances, be obligated to make any alterations, additions, or modifications in, on or to any part or all of the Premises or in, on or to any one or more of the improvement(s) located therein or thereon, or to any of the facilities appurtenant thereto, as said premises, improvements and appurtenant facilities exist(ed) at the time this License was entered into or as such may exist, at any time and from time to time, during the Term (and possible Additional Term) hereof.
- D. Licensors hereby agree to maintain in good repair and in a clean and orderly condition any common areas, public access areas, and other public areas of the Airport essential to Licensee's operations that conform with Licensors' and applicable FAA construction specifications.

### **Section 2.04 Non-Liability of Licensors.**

- A. Without waiver of limitation, Licensors shall not in any event be liable for any acts or omissions of Licensee, its officers, officials, employees, agents, volunteers, invitees, consultants, sub-consultants, contractors, or subcontractors, or for any conditions resulting from the operations or activities of any other Licensee, lessee, tenant, concessionaire, vendor, supplier, consultant, sub-consultant, contractor, subcontractor, or invitee, however caused.
- B. Licensors shall not be liable for Licensee's failure to perform any of the obligations under this License or for any delay in the performance thereof, nor shall any such delay or failure be deemed a default by the City.

## **ARTICLE III – PRIVILEGES, USES, RIGHTS, INTERESTS AND OBLIGATIONS OF LESSEE**

### **Section 3.01 Acceptance of Premises.**

Licensee warrants to Licensor that prior to Licensee's execution hereof, Licensee, by means independent of Licensor or any employee, agent, or representative of Licensor, determined, to Licensee's full and complete satisfaction, the acceptability of the Premises to Licensee for such uses as authorized herein, and that Licensee accepts(ed) said Premises in an "as is" condition as of the commencement date of the Term hereof.

### **Section 3.02 Non-Exclusive Rights.**

In this License, it is expressly provided that the rights and privileges granted hereunder are granted on a non-exclusive basis and allow Licensee the non-exclusive right to install and operate one (1) ATM self-service kiosk against FAT's terminal building wall, located between the main terminal entrance and the concourse leading to the terminal's baggage claim area, see **Exhibit A**, for the duration of the License's Term (and possible Additional Term). In the event, during the Term (and possible Additional Term) of this License, Licensor makes any additional space(s) available, within FAT's terminal building, to operate additional ATM self-service kiosks, besides the Licensee's existing ATM self-service kiosk, Licensor will grant Licensee the right of first refusal to install and operate a similar ATM self-service kiosk, for additional rental considerations, in the contemplated space in the terminal building.

### **Section 3.03 Incidental Rights.**

Subject to the other terms and conditions set forth in this License, the License includes the following incidental rights to use the Premises: (i) Right of access to the Premises and to Licensee's Equipment placed thereon by Licensee, its agents, independent contractors, and employees for the purpose of installation, repair, operation, and maintenance of such Equipment and utility services, provided that Licensee, its agents, independent contractors, and employees shall preserve and protect from damage all existing improvements, equipment, and facilities on or near the Premises and repair or restore any damage to such improvements, equipment, and facilities resulting therefrom; (ii) Right to modify the Premises as may be necessary to accommodate Licensee's Equipment so long as Licensee pays all costs incurred in connection with installation and removal of such modifications.

### **Section 3.04 Alterations/Additions/Modifications/Improvements.**

Neither Licensor nor Licensee shall be obligated to make, nor neither Licensor nor Licensee shall make any alterations, additions, modifications, or improvements in/on/to any part of the Premises, at any time during the Term (and possible Additional Term) hereof, for any purpose whatsoever.

### **Section 3.05 Licensee's Maintenance and Repair Obligations.**

- A. Licensee's Obligations Regarding Repair and Maintenance of the Premises.

Licensee shall be solely responsible for and expressly agrees at all times during the Term (and possible Additional Term) of this License, at Licensee's own cost and expense, keep and maintain the Premises, and any improvements constructed and/or installed on said Premises in good order and repair, in a clean, sanitary, sightly and neat condition (Licensor shall have no obligation to provide any services whatsoever in this regard); and at Licensee's sole expense maintain, repair, and/or provide the premises and any and all facilities and other improvements in full compliance with any and all building, fire, safety, and environmental codes, ordinances, statutes, standards, rules, regulations and/or requirements of any and all federal, state, county and/or municipal governmental entities which may, at any time and from time to time during the Term (and possible Additional Term) hereof, be required by law to facilitate the commencement and/or continuation of the use(s) thereof for such purposes as are authorized hereunder.

A. Licensor's Right to Enter.

Licensor's representatives shall have the right to enter upon all or any part of the Premises at any and all reasonable hours on any day of the week for any lawful purpose(s) including:

(i) the purpose of determining whether or not Licensee is complying with the provisions hereof and fulfilling its obligations hereunder; (ii) the purpose of inspecting same; and (iii) the purpose of making any required repairs of an emergency nature to which Licensee cannot adequately respond. Licensee understands that Licensee may be billed by Licensor for the full cost of performing such repairs.

B. Repairs by Licensor at Licensee's Expense.

In the event Licensor deems any repairs required to be made by Licensee necessary and serves Licensee with written notice thereof, if, for any reason whatsoever, Licensee fails to

commence such repairs and complete same with reasonable dispatch, Licensor may then make such repairs or cause such repairs to be made and shall not be responsible to Licensee for any loss or damage that may occur to Licensee's stock or business by reason thereof. If Licensor makes such repairs or causes such repairs to be made, Licensee agrees that the cost thereof shall be payable, as additional rent, along with the next monthly rental installment due hereunder after the completion of such repairs and the submission by Licensor to Licensee of a statement of such cost, or if no further rental installments are then payable, within thirty (30) days following submission by Licensor of any such statement.

C. Contact Information for Licensee's Technical Support.

Licensee shall furnish its technical support's contact information (i.e., company name, telephone number, e-mail address(es), and point of contact) to the Director prior to the start of this License. Licensee, at its sole cost and expense, shall provide for technical support that is available twenty-four (24) hours a day, seven

(7) days a week, in case any technical/repair issues arise with the ATM, and noticeably post the technical support's contact telephone number on the ATM. The contact information shall be delivered to Licensor at the address below or at such address to which Licensor, by service of written notice upon Licensee, may direct the delivery thereof, from time to time:

Via  
Mail/Express  
City of Fresno  
Fresno Yosemite International  
Airport Attn.: Airports Properties  
4995 East Clinton  
Way Fresno, CA  
93727-1504  
Via e-mail at: [FYIProperties@fresno.gov](mailto:FYIProperties@fresno.gov)

### **Section 3.06 Utilities.**

Licensee shall be responsible for making whatever arrangements are necessary to provide electric and telephone utility service to the Premises and paying all costs for the use of such utilities.

### **Section 3.07 Parking.**

Licensee, its officers, employees, agents, contractors, and customers will have the non-exclusiveright to use the parking spaces in any common parking facilities appurtenant to FAT's terminal building.

### **Section 3.08 Access Control.**

Any control over access to/from the Premises shall be the responsibility of Licensee. Licensor shall have no responsibility whatsoever in this matter.

### **Section 3.09 Conflict Between *Authorized* and *Unauthorized* Uses.**

With respect to any use of the Premises which may be contemplated or undertaken under authority of this License, if any such use may, in any way whatsoever, reasonably be deemed to involve a conflict between *authorized* and *unauthorized* uses as set forth herein, the prohibitions, restrictions, and limitations set forth within this License, in any and all such cases, prevail, and no *unauthorized* use of the Premises, in whole or in part, shall be undertaken by Licensee or Licensee's employees, agents, representatives unless and until such use is limited to the degree/extent necessary to eliminate any element/portion thereof giving rise to any such conflict.

### **Section 3.10 Observation of Governmental Regulations.**

- A. Airport Rules and Regulations. Lessor reserves the right to adopt, amend and enforce reasonable rules and regulations governing the Premises and the public areas and facilities used by Licensee in connection therewith. Such rules and

regulations shall be consistent with the safety, security and overall public utility of Airport and with the rules, regulations and orders of the Federal Aviation Administration (FAA) (or such successor agency[ies] as may, at any time and from time to time during the Term (and possible Additional Term) hereof be designated by the Federal Government to perform either similar, new, additional, and/or supplemental functions, powers and/or duties with respect to air transportation, aircraft, Airports, etc.), and such rules and regulations shall NOT be inconsistent with the provisions of this Lease or the procedures prescribed and approved, from time to time, by the FAA with respect to the operation of aircraft at the Airport. Licensee agrees to observe, obey and abide by all such rules and regulations heretofore or hereafter adopted or amended by Licensor, including compliance with FAA, and Airport security rules, regulations and plans.

1. Licensee shall be fully liable to Licensor for any and all claims, demands, damages, fines, and/or penalties of any nature whatsoever which may be imposed upon Licensor by the United States Government as a result of any unauthorized entry by Licensee, Licensee's employees, agents, representatives, contractors, sub-contractors, or any vehicle operated thereby, into any area of the Airport to which access by persons or vehicles is restricted/controlled pursuant to FAA and/or Airport Security Rules/Regulations/Plans.
- B. Other Governmental Regulations. Licensee shall, at all times during the Term (and possible Additional Term) hereof, observe, obey and comply with any and all laws, statutes, ordinances, codes, rules, regulations, and/or orders of any governmental entity(ies) lawfully exercising any control(s) over either the Airport or over any part or all of Licensee's activities/operations thereon and/or therefrom, including, without limitation, any and all local business license and/or permit requirements.
- C. Federal Grant Agreement Assurances. Those certain provisions set forth within Section "B", "Assurances", Of **Exhibit B**, "Assurances Required By The Federal Aviation Administration", attached hereto and made a part hereof, are those specific provisions required by the FAA to be appropriately included within all agreements (including, without limitation, leases, licenses, permits, and contracts) between Licensor and any and all persons and/or entities who use or perform work or conduct activities on Licensor-owned airport Premises for aeronautical or non-aeronautical purposes. Licensee, by its signature(s) hereunto affixed, acknowledges that it has reviewed the aforesaid exhibit, in its entirety, and fully understands the meaning, purpose, and intent thereof. Licensee expressly agrees that, throughout the Term (and possible Additional Term) hereof, it shall fully and faithfully comply with, abide by and/or adhere to, as applicable and appropriate, each and every one of the numbered provisions contained within Section "B", "ASSURANCES", of said Exhibit (as said numbered provisions are reflected therein or assume may be amended, from time to time, during the term hereof, by Lessor, as and when the FAA's requirements thereon imposed may so dictate), which, pursuant to the guidelines established within paragraphs 2 through 4 of Section "A" of said Exhibit, shall either be applicable to Licensee on the start date of the Term hereof or which, as a result of changing facts and/or circumstances, shall subsequently become applicable to Licensee, hereunder, during the Term

(and possible Additional Term) hereof.

- D. **Limitation on Licensor's Liability and Licensee's Right to Terminate.** Licensor shall not be liable to Licensee for any diminution or deprivation of possession or any of Licensee's rights hereunder when such shall result from any exercise by Licensor of any such right or authority as in this Section or within **Exhibit B**, hereto, provided; and Licensee, by reason of the exercise of any such right or authority by Licensor, shall not be entitled to terminate, in whole or in part, the leasehold estate herein created unless the exercise thereof by Licensor shall so interfere with Licensee's use and occupancy of the leasehold estate herein created so as to constitute a termination in whole or in part of this License by operation of law in accordance with the laws of the State of California.

## **ARTICLE IV - TERMINATION, HOLDOVER AND LIQUIDATED DAMAGES**

### **Section 4.01 Early Termination.**

Either party may terminate this License at any time and without cause by serving written notice upon the other party no less than one-hundred eighty (180) days before such termination is to be effective.

A. **Re-delivery.** Upon any termination of this License, Licensee shall have no right(s), title or interest in or to the Premises, and Licensee shall peaceably and quietly discontinue use of the Premises and quit and deliver up such to Licensor. At Licensor's option, the Premises may be left in the condition which exists at the time of the termination of this License, or Licensor may require Licensee to return the Premises to the identical condition as when received. In the event Licensee fails, upon Licensor's request, to return the Premises to Licensor in the identical condition as when received, Licensor shall have the right to make all necessary restoration and invoice Licensee for all related costs incurred. Licensee agrees to pay, upon demand, any and all such charges billed by Licensor pursuant to this subsection. The Licensee will remove its equipment upon termination of this License.

### **Section 4.02 Holding Over.**

- A. **Holding Over.** In the event Licensee shall remain in possession of the Premises following the end of the life of this License, and thus hold over the Term (and possible Additional Term) hereof with or without the express written consent of Licensor, such holding-over occupancy shall be a tenancy from month to month only, terminable by either party hereupon service of a minimum of thirty (30) days advance written notice upon the other party.
- B. **Rent During Holding Over Period:** During the holding-over month-to-month tenancy period, Licensee shall pay to Licensor all rent required by this License at the rates in effect as of the date immediately preceding the date on which such month-to-month tenancy commences.

- C. Applicability of License Provisions: Except as otherwise specifically set forth within this Article, such holding over shall be subject to all of the terms, covenants, conditions, and provisions of this License applicable to a month-to-month tenancy.

### **Section 4.03 Liquidated Damages.**

If this License is terminated early by Licensor pursuant to the Default provisions, hereof, as a result of Licensee's failure to keep, observe, or perform any of the terms, covenants, conditions, warranties, agreements, or provisions hereof to be kept, observed, or performed by Licensee, the entire amount of such surety instrument may be claimed, retained, and used by Licensor as Liquidated Damages.

## **ARTICLE V - INDEMNIFICATION, EXEMPTION OF LESSOR, AND INSURANCE**

### **Section 5.01 Indemnification and Release.**

- A. Except to any extent expressly provided for in this License, and to the furthest extent allowed by law, Licensee shall indemnify, hold harmless and defend Licensor and its officers, officials, employees, agents, and volunteers (hereinafter referred to collectively as "Licensor") from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage, including damage by fire or other casualty) arising or alleged to have arisen directly or indirectly out of the Licensee's: (i) occupancy, maintenance and/or temporary, non-exclusive use of Premises detailed in **Exhibit A**; (ii) use of any Common Use Space, Joint Use Space, Preferential Use Space and Shared Use Space, upon which the Premises is located; or (iii) performance of, or failure to perform, this License. Licensee's obligations under the preceding sentence shall apply regardless of whether Licensor or any of its officers, officials, employees, agents, or volunteers are passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs, or damages caused by the active or sole negligence, or the willful misconduct, of Licensor or any of its officers, officials, employees, agents, or volunteers.
- B. Licensee acknowledges that any and all loss, liability, fines, penalties, forfeitures, costs, and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage, including damage by fire or other casualty) arising out of or in any way connected with releases or discharges of a Hazardous Substance, or the exacerbation of a potential environmental hazard, occurring as a result of or in connection with: (i) Licensee's occupancy, maintenance, and/or use of the Premises; (ii) Licensee's use of any Common Use Space, Exclusive Use Space, Joint Use Space, Preferential Use Space, and Shared Use Space, upon which the Premises is located; (iii) Licensee's activities or the activities of any of Licensee's representatives (including, without limitation, any of Licensee's officers, officials, employees, agents, volunteers, subtenants, consultants, sub-consultants,



contractors, or subcontractors), and all reasonable costs, expenses, and liabilities for environmental investigations, monitoring, containment, abatement, removal, repair, cleanup, restoration, remediation, and other response costs, including reasonable attorney's fees and disbursements and any fines and penalties imposed for the violation of any legal requirements relating to the environment or human health, are expressly within the scope of the indemnity set forth above.

- C. Licensee's occupancy, maintenance, and use of the Premises, and use of all or any part of Airport, including, but not limited to, use of any Common Use Space, Exclusive Use Space, Joint Use Space, Preferential Use Space, and Shared Use Space, upon which the Premises is located, shall be at Licensee's sole risk and expense. Licensee accepts all risk relating to Licensee's: (i) occupancy, maintenance, and/or use of the Premises; (ii) Licensee's use of any Common Use Space, Exclusive Use Space, Joint Use Space, Preferential Use Space, and Shared Use Space, upon which the Premises is located; or (iii) performance of, or failure to perform, this License. Licensee shall not be liable to Licensee and its insurer(s) for, and Licensee and its insurer(s) hereby waive and release Licensor from, any and all loss, liability, fines, penalties, forfeitures, costs, or damages resulting from or attributable to an occurrence on or about the Premises, or all or any part of the Airport, including, but not limited to, use of any Common Use Space, Exclusive Use Space, Joint Use Space, Preferential Use Space, and Shared Use Space, upon which the Premises is located, in any way related to the Licensee's operations and activities. This waiver shall not extend to any and all loss, liability, fines, penalties, forfeitures, costs, or damages caused solely by the gross- negligence, or by the willful misconduct of Licensor.
- D. Licensee shall immediately notify Licensor of any occurrence on Licensee's use of any Common Use Space, Exclusive Use Space, Joint Use Space, Preferential Use Space, and Shared Use Space, upon which the Premises is located, resulting in injury or death to any person or damage to property of any person.
- E. If Licensee should contract any work on the Premises or subcontract any of its obligations under this License, Licensee shall require each consultant, sub-consultant, contractor, and subcontractor to indemnify, hold harmless and defend Licensor and its officers, officials, employees, agents and volunteers in accordance with the terms of this Section.
- F. The provisions of this Section shall survive the termination or expiration of this License.

### **Section 5.02 Exemption.**

Licensee hereby specifically warrants, covenants and agrees that Licensor shall not be liable for injury to Licensee's business or any loss of income therefrom or for damage to the goods, wares, merchandise or other property of Licensee, Licensee's employees, patrons, invitees, or any other person whomsoever, in or about the Premises, nor shall Licensor be liable for injury to the person of Licensee, Licensee's agents, employees, contractors, subcontractors, customers, or invitees, whether or not said damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the leakage, breakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, whether or not the said

damage or injury results from conditions arising in or on any part or all of the Premises or in or on any of the improvement(s) and facilities appurtenant thereto located therein or from other sources or places, and regardless of whether or not the cause of such damage or injury or the means of repairing the same is inaccessible to Licensee, except where such injury, damage, and/or loss shall have been caused solely by the gross negligence or willful misconduct of Licensor. Licensee also covenants and agrees that Licensor shall not be liable for any damages arising from any act or neglect on the part of any third parties.

### **Section 5.03 Insurance.**

- A. Throughout the life of this License, Licensee shall pay for and maintain in full force and effect all insurance as required herein with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in the Best's Insurance Rating Guide, or (ii) as may be authorized in writing by Licensor's Risk Manager or designee at any time and in its sole discretion. The Licensor, its officers, officials, employees, agents, and volunteers (referred to collectively as "Licensor") requires policies of insurance as stated herein shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to Licensor, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the name insured.
- B. If at any time during the life of the License or any extension, Licensee or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this License shall be discontinued immediately until notice is received by Licensor that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to Licensor. Any failure to maintain the required insurance shall be sufficient cause for Licensor to terminate this License. No action taken by Licensor pursuant to this section shall in any way relieve Licensee of its responsibilities under this License. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by Licensor that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.
- C. The fact that insurance is obtained by Licensee shall not be deemed to release or diminish the liability of Licensee, including, without limitation, liability under the indemnity provisions of this License. The duty to indemnify Licensor shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Licensee. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Licensee, vendors, suppliers, invitees, contractors, subcontractors, or anyone employed directly or indirectly by any of them.

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General

Liability policy shall be written on an occurrence form and shall provide coverage for “bodily injury,” “property damage,” and “personal and advertising injury” with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the License) with limits of liability not less than those set forth under “Minimum Limits of Insurance.”

2. The most current version of ISO Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1 – Any Auto). If personal automobile coverage is used, the Licensor, its officers, officials, employees, agents, and volunteers are to be listed as additional insureds.
3. Workers’ Compensation insurance as required by the State of California and Employer’s Liability Insurance.

### **Minimum Limits of Insurance**

Licensee, or any party the Licensee subcontracts with, shall maintain limits of liability of not less than those set forth below. However, insurance limits available to Licensor and each of its officers, officials, employees, agents, and volunteers as additional insureds, shall be greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the name insured:

1. **COMMERCIAL GENERAL LIABILITY:**
  - (i) \$1,000,000 per occurrence for bodily injury and property damage;
  - (ii) \$1,000,000 per occurrence for personal and advertising injury;
  - (iii) \$2,000,000 aggregate for products and completed operations; and
  - (iv) \$2,000,000 general aggregate applying separately to the work performed under the License.
2. **COMMERCIAL AUTOMOBILE LIABILITY:**  
\$1,000,000 per accident for bodily injury and property damage.
3. **WORKERS’ COMPENSATION INSURANCE** as required by the State of California with statutory limits and **EMPLOYER’S LIABILITY** with limits of liability not less than:
  - (i) \$1,000,000 each accident for bodily injury;
  - (ii) \$1,000,000 disease each employee; and,
  - (iii) \$1,000,000 disease policy limit.

4. **PROPERTY:**

Limits of insurance in an amount equal to the full (100%) replacement cost (without deduction for depreciation) of Licensee's business property.

**Subcontractors**

If Licensee subcontracts any or all of the services to be performed under this License, Licensee shall require, at the discretion of the Licensor's Risk Manager or designee, subcontractor(s) to enter into a separate Side Agreement with Licensor to provide required indemnification and insurance protection. Any required Side Agreement(s) and associated insurance documents for the subcontractor must be reviewed and preapproved by Licensor's Risk Manager or designee. If no Side Agreement is required, Licensee will be solely responsible for ensuring that its subcontractors maintain insurance coverage at levels no less than those required by applicable law and is customary in the relevant industry.

**Umbrella or Excess Insurance**

In the event Licensee purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of Licensor and each of its officers, officials, employees, agents, and volunteers.

**Deductibles and Self-Insured Retentions**

Licensee shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and Licensee shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared on the Certificate of Insurance, and approved by, Licensor's Risk Manager or designee. At the option of Licensor's Risk Manager or designee, either:

- (i) The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects Licensor, its officers, officials, employees, agents, and volunteers: or
- (ii) Licensee shall provide a financial guarantee, satisfactory to Licensor's Risk Manager or designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall Licensor be responsible for the payment of any deductibles or self-insured retentions.

**Other Insurance Provisions/Endorsements**

All policies of insurance required herein shall be endorsed to provide that the

coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty calendar days written notice has been given to Licensor, except ten (10) days for nonpayment of premium. Licensee is also responsible for providing written notice to Licensor under the same terms and conditions. Upon issuance by the insurer, broker, or agent of notice to cancellation, non-renewal, or reduction in coverage or in limits, Licensee shall furnish Licensor with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for Licensor, Licensee shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen (15) calendar days prior to the expiration date of the expiring policy.

The Commercial General and Automobile Liability policies of insurance shall be endorsed to name Licensor, its officers, officials, employees, agents, and volunteers as additional insureds.

Licensee shall establish additional insured status for Licensor and for all ongoing and completed operations by use of ISO Form CG 20 10 11 85 or both CG 20 10 10 01 and CG 20 37 10 01 or by an executed manuscript insurance company endorsement providing additional insured status as broad as that contained in ISO Form CG 20 10 11 85.

The Commercial General and Automobile Liability policies of insurance shall be endorsed so Licensee's insurance shall be primary and no contribution shall be required of Licensor. The coverage shall contain no special limitations on the scope of protection afforded to Licensor, its officers, officials, employees, agents, and volunteers. If Licensee maintains higher limits of liability than the minimums shown above, Licensor requires and shall be entitled to coverage for the higher limits of liability maintained by Licensee.

Should any of the required policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by any defense costs, then the requirement for the Limits of Liability of these policies will be twice the above stated limits.

The Workers' Compensation insurance policy shall contain, or be endorsed to contain, a waiver of subrogation as to Licensor, its officers, officials, employees, agents, and volunteers.

- a. Licensee shall furnish Licensor with all certificate(s) and applicable endorsements effecting coverage required hereunder. All certificates and applicable endorsements are to be received and approved by the Licensor's Risk Manager or designee prior to Licensor's execution of the License. Such evidence of insurance shall be provided to Licensor at the following address:

City of Fresno  
Airports  
Department 4995  
E. Clinton Way  
Fresno, CA 93727

- b. Upon request of Licensor, Licensee shall immediately furnish Licensor with a complete copy of any insurance policy required under this License, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this License.
- c. Any failure to maintain the required insurance shall be sufficient cause for Licensor to terminate this License. No action taken by Licensor hereunder shall in any way relieve Licensee of its responsibilities under this License.

The fact that insurance is obtained by Licensee shall not be deemed to release or diminish the liability of Licensee, including, without limitation, liability under the indemnity provisions of this License. The duty to indemnify Licensor and its officers, officials, employees, agents, and volunteers shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Licensee. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Licensee.

- d. Licensee and its insurers hereby waive all rights of recovery against Licensor and its officers, officials, employees, agents, and volunteers, on account of injury, loss by or damage to the Licensee or its officers, officials, employees, agents, volunteers, invitees, consultants, sub-consultants, contractors, and subcontractors, or its property or the property of others under its care, custody, and control. Licensee shall give notice to its insurers that this waiver of subrogation is contained in this License. This requirement shall survive termination or expiration of this License.
- e. If Licensee should contract any work on the Premises or subcontract any of its obligations under this License, Licensee shall require such consultant, sub-consultant, contractor, and subcontractor to provide insurance protection in favor of Licensor and its officers, officials, employees, agents, and volunteers in accordance with the terms of each of the preceding paragraphs, except that the consultants', sub-consultants', contractors', or subcontractors' certificates and endorsements shall be on file with Licensee and Licensor prior to the commencement of any work by the consultant, sub-consultant, contractor, or subcontractor.

## **ARTICLE VI - OPERATING STANDARDS**

In doing business(es) at the city's airports, Licensee agrees to comply with each and every one of the minimum standards affecting such business(es) as Licensor may from time to time adopt and promulgate. Moreover, in using Licensor's airports or conducting any operations thereat or thereon, Licensee agrees to comply with all applicable rules and regulations then in effect. Continued failure to comply with any minimum standard, rule, or regulation within a reasonable time after instruction by Licensor to do so will constitute a material breach of this License.

### **Section 6.01 Designation of Local Representative by Licensee.**

Licensee shall, at all times, retain in the local area a qualified, competent and experienced representative to supervise its operations and authorized to represent and act for Licensee in matters pertaining to the day-to-day conduct of Licensee's business operations on the Premises. During any temporary periods of absence by said representative, an alternate representative of Licensee with like authorization must be available. Licensee shall, at all times, keep the Director advised as to who Licensee's authorized representative is and how immediate communication can be established with that representative on a 24-hour basis in the event of an emergency.

### **Section 6.02 Quality of Service.**

In entering this License, Licensor has foremost in mind providing the aviation public with facilities and services of high quality, commensurate with the trade that is accustomed to using contemporary airport facilities, and Licensee agrees to conduct its business in a proper and first-class manner at all times. Licensee further agrees that any and all services provided by Licensee at Airport shall at all times be rendered in a prompt, clean, courteous, efficient, safe, and professional manner and that any and all persons employed by Licensee for the purpose of providing any services shall at all times be professionally qualified and, as and when required, properly trained, certified and/or licensed to so perform, and that the number of such persons shall at all times be available to adequately meet the demand for such services as shall be provided under authority hereof.

### **Section 6.03 Signs.**

- A. **Company Signs.** The location, size, shape, construction, materials, and general appearance of any and all signs to be installed on any portion of the Premises so as to be exposed to public view shall be subject to the prior written approval of Director before installation.
- B. **Within Premises.** Any promotions and advertisements are limited to the ATM's screen only. Licensee may advertise promotions and products associated with their company only. Any additional promotions or advertisements are subject to the Director's approval. No additional promotional signage, screens, or banners will be allowed unless it is through the Licensor's Advertising Concessionaire, Clear Channel Outdoor, Inc. (dba ClearChannel Airports).

C. Conditions Applicable to All Signs: The following shall apply to any and all signs:

- (1) No sign shall be erected/installed or operated until Licensee has first submitted written request, together with descriptions, plans, and drawings of such proposed sign, to Director and has received prior written approval from Director.
- (2) Licensee shall obtain any permits or approvals required for such signs and shall bear all costs and expenses pertaining to the construction, installation, maintenance, repair, and removal of any and all signs.
- (3) Any and all signs desired by or required of Licensee hereunder shall be installed by Licensee at Licensee's cost and expense.
- (4) All such signs and/or displays are to be removed upon expiration or earlier termination of this License, and the Premises otherwise restored to their original condition, all at the sole cost and expense of Licensee.

D. Exterior Signs and Outside Storage: Installation of exterior signs and/or outside storage of any materials, supplies, products, equipment, or other personal property in or about the Premises or elsewhere at FAT, unless expressly permitted by this License, is prohibited.

## **ARTICLE VII - DESTRUCTION OF IMPROVEMENTS**

### **Section 7.01 General.**

In the event that any improvements located in or on the Premises shall be partially or totally destroyed at any time during the Term (and possible Additional Term) hereof, the respective rights and obligations of the parties hereto with respect to reconstructing, re-building, restoring and/or repairing such improvements, and/or with respect to the matter of the continuance or termination of this License following such destruction, shall be controlled by the provisions of this Article, and Licensee shall notify Director of any instance of destruction of or major damage to such improvements immediately upon Licensee's becoming aware of any such occurrence.

### **Section 7.02 Definitions and Remedies.**

For the purposes of this Article of this Lease, the following definitions and remedies shall apply:

- A. "Partial Destruction". The term "partial destruction", as used herein, shall be deemed to mean a destruction of improvements to such an extent that the total costs of reconstructing/restoring/repairing/ replacing the improvements, to as good a condition of habitability and/or usability (for those certain uses herein authorized and intended therefor) as existed immediately prior to the occurrence of any such destruction, shall not exceed fifty percent (50%) of the total replacement cost of all of the improvements located in and on the Premises as of the date immediately preceding the date of such destruction. In the event of Partial Destruction, subject to subsection C below, Licensor may agree to restore the Premises and Licensee



shall remain in possession without abatement of rent, or either party may terminate this License in the manner provided herein.

- B. "Total Destruction". The term "total destruction", as used herein, shall be deemed to mean a destruction of improvements to such an extent that the total costs of reconstructing/restoring/repairing/ replacing the destroyed improvements, to as good a condition of habitability and/or usability (for those certain uses herein authorized and intended therefor) as existed immediately prior to the occurrence of any such destruction, shall exceed fifty percent (50%) of the total replacement cost of all of the improvements located in and on the Premises as of the date immediately preceding the date of such destruction. In the event of Total Destruction, subject to subsection C below, Licensor may agree to restore the Premises and Licensee's rent shall abate for such period, or either party may terminate this License in the manner provided herein.
- C. Partial or Total Destruction as the Result of Willful Misconduct on the Part of Lessee. In the event any or all of the improvements located in or on any part or all of the Premises shall, at any time during the Term (and possible Additional Term) hereof, suffer either partial or total destruction, if such destruction shall be caused by a casualty not covered under any insurance policy(ies) maintained by Licensee, and shall be the result of any willful misconduct on the part of Licensee, this License shall continue in full force and effect, without any abatement of rental, and Licensee shall, at Licensee's cost and expense, promptly commence the reconstruction, restoration, replacement, and/or repair of such improvements and shall diligently prosecute and complete such reconstruction, restoration, replacement, and/or repair, within a reasonable period time, so as to restore said improvements to as good or better condition of habitability and/or usability (for those certain uses herein authorized and intended therefor) as existed immediately prior to the occurrence of any such destruction.

## **ARTICLE VIII - ASSIGNMENT, HYPOTHECATION, TRANSFER AND ASSIGNMENT BY DEED OF TRUST**

### **Section 8.01 General; Non-Transferability.**

This License is Non-Transferable and shall be valid only for the herein named Licensee for and to whom issued; thus, Licensee may not and shall not at any time sell, transfer, or assign this License, in whole or in part, and any attempted or purported sale, transfer or assignment hereof shall be null and void and shall constitute a breach of this License by Licensee. The only exception to this is if the Licensee changes names or merges with another Credit Union.

### **Section 8.02 License Non-Assignable.**

This License is personal to the Licensee and shall not be assigned. Any attempt to assign the License shall automatically terminate it. No legal title or leasehold interest in the Premises is created or vested in Licensee by the grant of this License.

### **Section 8.03 Hypothecation, Transfer and Assignment By Deed Of Trust.**

Nothing within this License contained shall, in any way whatsoever, be deemed to allow Licensee to mortgage, pledge, hypothecate, or otherwise encumber either this License, any part or all of the Premises, or any one or more of the improvements located anywhere in or on said Premises.

## **ARTICLE IX - DEFAULT**

### **Section 9.01 Default by Licensor.**

Licensor shall work to fulfill obligations required of Licensor under the License within a commercially reasonable period of time.

### **Section 9.02 Default by Lessee.**

- A. Defaults. The occurrence of any of the following events shall constitute a material default and breach of this License by Licensee:
1. The vacating or abandonment of the Premises by Licensee.
  2. The failure by Licensee to use the Premises for lawful purposes only and/or failure by Licensee to comply with or observe any statute, law, ordinance, rule, regulation, standard or requirement of any federal, state, or local government entity with respect to Licensee's occupancy(ies) and/or use(s) of any part or all of the Premises, as such statutes, laws, ordinances, rules, regulations, standards or requirements exist(ed) on the commencement date of the term of this Lease or as such may exist at any time and from time to time during the Term (and possible Additional Term) thereof, where any such failure shall be evidenced by either a finding or judgment of any court of competent jurisdiction or where any such shall be admitted by Licensee in any proceeding brought against Licensee by any government entity.
  3. The inability of and/or failure by Licensee to obtain, pay for, and maintain in full force and effect at all times during the Term (and possible Additional Term) of this Licensee, without any lapse in coverage, such insurance as shall be required of Licensee thereunder.
  4. The occurrence of any of the following:
    - a. Licensee's becoming insolvent, or failing in business, or the making by Licensee of any general arrangement or an assignment for the benefit of creditors;
    - b. The filing by or against Licensee of a petition to have Licensee adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (Unless, in the case of a petition filed against Licensee, the same is dismissed within sixty [60] days);
    - c. The appointment of a receiver to take possession of substantially all of Licensee's assets located in or on the Premises or of Licensee's interest in this License, where possession is not restored to Licensee

- within thirty (30) days; or
- d. The attachment, execution or other judicial seizure of substantially all of Licensee's assets located in or on the Premises or of Licensee's interest in this License, where such seizure is not discharged within thirty (30) days.
  5. The discovery by Licensor that any financial statement provided Licensor by Licensee, or any guarantor of Licensee's obligations under this License, and/or any one or more of such persons or entities, was materially false.
  6. Any hypothecation, encumbrance, sale, assignment, or transfer of either this License, in whole or in part; or of any of Licensee's rights, title and interests in or to any part or all of the Premises and/or in or to any part or all of the improvements and appurtenances thereto which exist(ed) therein or thereon at the commencement of the Term of this License where such action(s) shall not be in full conformity with any and all of the provisions of this License applicable thereto; or any attempted/purported renting, subletting or permitting occupancy of any part or all of the Premises by any person or entity other than Licensee.
  7. The failure by Licensee to make any payment of rent or any other required payment, as and when due under this License, where such failure shall continue for a period of ten (10) days following service of notice thereof upon Licensee by Licensor.
  8. The failure by Licensee to keep, observe, undertake, fulfill, or perform any of the terms, covenants, conditions, warranties, agreements, obligations, and/or provisions of this License to be kept, observed, undertaken, fulfilled, and/or performed by Licensee, other than those hereinabove, where such failure shall continue for a period of thirty (30) days following service of written notice thereof upon Licensee by Licensor, pursuant to this License; provided, however, that if the nature of Licensee's default is such that more than thirty (30) days are reasonably required for its cure, then Licensee shall not be deemed to be in default and breach of this License if Licensee commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion as soon as reasonably possible.

B. Licensor's Remedies.

Abandonment: If Licensee abandons the Premises, this License shall continue in effect. Licensor shall not be deemed to terminate this License as a result of such material default and breach other than by written notice of termination served upon Licensee by Licensor, and Licensor shall have all of the remedies available to Licensor under Section 1951.4 of the Civil Code of the State of California so long as Licensor does not terminate Licensee's right to possession of the Premises, and Licensor may enforce all of Licensor's rights and remedies under this License, including the right to recover the rent as it becomes due under this License. After abandonment

of the Premises by Licensee, Licensor may, at any time thereafter, give notice of termination.

1. Termination: Following the occurrence of any material default and breach of this License by Licensee as set forth within this Section, above, Licensor may then immediately, or at any time, thereafter, terminate this License by service of a minimum of ten (10) days advance written notice to such effect upon Licensee and this License shall terminate at 11:59:59 p.m., on the termination date specified within such notice.
2. Such notice shall set forth the following:
  - a. The Default and breach which resulted in such termination by Licensor; and
    - i. A Demand For Possession, which, in the event only ten (10) days advance notice shall be given by Licensor, shall be effective at 12:00:01 A.M., on the eleventh (11th) calendar day following the date on which the notice in which such demand is contained shall be sufficiently served upon Licensee by Licensor in conformity with the "Notice" provisions of this License; or, if more than the minimum number of days advance notice shall be given, at 12:00:01 a.m., on the next day following the date specified within such notice as being the date of termination hereof.
  - b. Such notice may contain any other notice which Licensor shall be required or desire to give under this License.
3. Possession: Following termination of this License by Licensor pursuant to the provisions of this Section, without prejudice to other remedies Licensor may have by reason of Licensee's default and breach and/or by reason of such termination, Licensor may:
  - a. Peaceably re-enter the Premises upon voluntary surrender thereof by Licensee or remove Licensee and/or any other persons and/or entities occupying the Premises therefrom, using such legal proceedings as may be available to Licensor under the laws or judicial decisions of the State of California;
  - b. Repossess the Premises or re-let the Premises or any part thereof for such term (which may be for a term extending beyond the Term of this License) at such rental and upon such other terms and conditions as Licensor in Licensor's sole discretion shall determine, with the right to make reasonable alterations and repairs to the Premises; and
  - c. Remove all personal property therefrom and store all personal property not belonging to Licensor in a public warehouse or elsewhere at the cost of and for the account of Licensee.

4. Recovery: Following termination of this License by Licensor pursuant to the provisions above, Licensor shall have all the rights and remedies available to Licensor under Section 1951.2 of the Civil Code of the State of California. The amount of damages Licensor may recover following such termination of this Lease shall include:
  - a. The worth at the time of award of the unpaid rent which had been earned at the time of termination of this License;
  - b. The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination of this License until the time of award exceeds the amount of such rental loss that Licensee proves could have been reasonably avoided;
  - c. The worth at the time of award of the amount by which the unpaid rent for the balance of the Term (and possible Additional Term) after the time of award exceeds the amount of such rental loss for the same period Licensee proves could be reasonably avoided; and
  - d. Any other amount necessary to compensate Licensor for all the detriment proximately caused by Licensee's failure to perform Licensee's obligations under this License or which in the ordinary course of things would be likely to result therefrom.
5. Additional Remedies: Following the occurrence of any material default and breach of this License by Licensee as set forth within this Article, above, in addition to the foregoing remedies, Licensor may maintain Licensee's right to possession, in which case this License shall continue in effect whether or not Licensee shall have abandoned the Premises and, so long as this License is not terminated by Licensor or by a decree of a court of competent jurisdiction, Licensor shall be entitled to enforce all of Licensor's rights and remedies under this License, including the right to recover the rent as it becomes due thereunder and, during any such period, Licensor shall have the right to remedy any default of Licensee, to maintain or improve the Premises without terminating this License, to incur expenses on behalf of Licensee in seeking a new Licensee, to cause a receiver to be appointed to administer the Premises, and to add to the rent payable hereunder all of Licensor's reasonable costs in so doing, with interest at the maximum reasonable rate then permitted by law from the date of such expenditure until the same is repaid.
6. Other: In the event Licensee causes or threatens to cause a breach of any of the covenants, terms or conditions contained in this License, Licensor shall be entitled to obtain all sums held by Licensee, by any trustee or in any account provided for herein, to enjoin such breach or threatened breach and to invoke any remedy allowed at law, in equity, by statute or otherwise as though re-entry, summary proceedings and other remedies were not

provided for in this License.

7. Cumulative Remedies: Each right and remedy of Licensor provided for in this Article or now or hereafter existing at law, in equity, by statute or otherwise shall be cumulative and shall not preclude Licensor from exercising any other rights or from pursuing any other remedies provided for in this License or now or hereafter available to Licensor under the laws or judicial decisions of the State of California.
8. Indemnification: Nothing contained within this Article affects the right of Licensor to indemnification by Licensee, as elsewhere within this License provided, for liability arising from personal injuries or property damage prior to the termination of this License.

### **Section 9.03 Force Majeure.**

Neither Licensor nor Licensee shall be deemed in violation of this License if it is prevented from performing any of its obligations hereunder by reasons of Force Majeure. For purposes of this License, "Force Majeure" means contingencies, causes or events beyond the reasonable control of Licensor or Licensee, including acts of nature or a public enemy war, pandemic, riot, civil commotion, insurrection, state, federal, or municipal government or de facto government action (unless caused by acts or omissions of Licensee), fires, explosions, floods, strikes, boycotts, embargoes, or shortages of materials, acts of terrorism, acts of God, casualty losses, unavoidable accidents, floods, fire, explosion, inclement weather, impossibility of performance, any event or action that is legally recognized as a defense to a contract action in the State of California, or other circumstances that are beyond the reasonable control of Licensor or Licensee; provided, however, that this Section 9.03 shall not apply to failure of Licensee to pay rentals, fees, and charges specified under this License. In the event of Force Majeure where Licensee is prevented from performing any of its obligations due to the above stated circumstances, Licensee shall notify Licensor in writing within ten (10) days following such circumstances. Licensor, through its Director, shall notify Licensee within twenty (20) days whether Licensor, in its sole discretion, concurs with the reasons of Licensee's delays.

## **ARTICLE X - NOTICES**

### **Section 10.01 Written Notices Required.**

All notices required to be served by Licensor and Licensee, one upon the other, under the terms of this License shall be in writing.

### **Section 10.02 Licensee's Address for Notices.**

All notices or demands of any kind which Licensor shall have cause to serve upon Licensee under the terms of this License shall be served upon Licensee by mailing a copy thereof by certified or registered mail, return receipt requested, to Licensee at the address shown below or to such other address as Licensee may, from time to time, specify to Licensor in writing:

Educational Employees Credit Union (EECU)  
2222 W. Shaw Avenue  
Fresno, California 93711

**Section 10.03 Licensor's Address for Notices.**

All notices or demands of any kind which Licensee shall have cause to serve upon Licensor under the terms of this License shall be served upon Licensor by mailing a copy thereof by certified or registered mail, return receipt requested, to Licensor at the address shown below or to such other address as Licensor may, from time to time, specify to Licensee in writing.

City Of Fresno  
Airports Department  
4995 East Clinton Way  
Fresno, CA 93727-1525

**Section 10.04 Time and Date of Service.**

In the event of any service of notice or demand by mail, as above said, such notice or demand shall be deemed to have been sufficiently served as of 12:00:01 a.m., on the fourth (4th) calendar day following the date of deposit in the United States mail of such certified or registered mail properly addressed and postage prepaid.

**ARTICLE XI - GENERAL PROVISIONS**

**Section 11.01 Executor's Authority.**

Each individual executing this License on behalf of Licensee, represents and warrants that it is duly authorized to execute and deliver this License on behalf of said Company in accordance with its governing documents including articles of incorporation and bylaws, and that this License is binding upon said Company in accordance with its terms.

**Section 11.02 Interpretation of Agreement.**

Nothing contained within this License shall be construed or interpreted, in any manner whatsoever, as limiting, relinquishing or waiving any of the rights of ownership enjoyed by Licensor in and to Airport property, or in any manner waiving or limiting Licensor's control over the operation, maintenance, etc., of Airport property or in derogation of such governmental rights as Licensor possesses, except as is specifically provided for within this License.

**Section 11.03 Waiver of Breach of Covenants.**

No waiver of any default or breach of any covenant by either party to this License shall be implied from any omission by either party to take action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the waiver, and then said waiver shall be operative only for the time and to the extent therein stated. The waiver by either party hereto of any breach of

any term, covenant, or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same covenant, term or condition or of any other term, covenant or condition contained within this License. The subsequent acceptance of rent, fees and/or other charges hereunder by Licensor shall not be deemed to be a waiver of any preceding breach by Licensee of any term, covenant or condition of this License, other than the failure of Licensee to pay the particular rental, fees and/or other charges so accepted, regardless of Licensor's knowledge of such preceding breach at the time of acceptance of such rent, fees or other charges. The exercise of any right or option or privilege under this License by Licensor shall not prevent Licensor from exercising any and all other rights, privileges and options hereunder, and Licensor's failure to exercise any right, option or privilege under this License shall not be deemed a waiver of said right, option or privilege, nor shall it relieve Licensee from Licensee's obligation to perform each and every covenant and condition on Licensee's part to be performed hereunder, nor from damages or other remedy for failure to perform or meet the obligations of this License. The consent or approval by either party to or of any act by either party requiring further consent or approval shall not be deemed to waive or render unnecessary their consent or approval to or of any subsequent similar acts.

#### **Section 11.04 Venue and Litigation.**

- a. This License, and the rights and obligations of the parties thereto, shall be construed, interpreted, and enforced pursuant to the laws of the State of California and exclusive venue in any and all actions arising under this License shall be laid in the Judicial District of Fresno County, California.
  
- B. In any action or proceeding which Licensor or Licensee may be required to prosecute to enforce its respective rights under this License, the unsuccessful party therein agrees to pay all costs incurred by the prevailing party therein, including reasonable interest and attorneys' fees, to be fixed by the court, and said costs, interest, and attorneys' fees shall be made a part of the judgment in said action.

#### **Section 11.05 Liens and Taxes.**

Licensee shall not permit any liens for labor or materials to attach to the Premises as a result of modifications made or installation of Equipment upon the Premises by Licensee hereunder, and if any such liens do attach, Licensee shall promptly cause them to be discharged of record. Failure of Licensee to discharge such liens within thirty (30) days of their attachment shall be cause for the Licensor to terminate this License. Licensee shall pay any property taxes, including without limitation, possessory use taxes which may be applicable by Licensee's use of the Premises.

#### **Section 11.06 Invalid Provisions.**

In the event any covenant, condition or provision of this License, or the application thereof to any person, entity, or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this License, or the application thereof to any person, entity, or



circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated, provided that such invalidity, voiding or non-enforceability of such covenant, condition or provision does not materially prejudice either party in its respective rights and obligations contained in the then remaining valid covenants, conditions or provisions of this License.

#### **Section 11.07 Captions and Article/Section/Paragraph Numbers.**

The captions, article numbers, section and sub-section numbers, paragraph and sub-paragraph numbers and/or alphabetical identifiers and index appearing in this License are inserted solely for the purpose of convenience in reference and in no way define, limit, construe, or describe the scope or intent of such articles, sections, sub-sections, paragraphs or sub-paragraphs of this License nor in any way whatsoever affect this License.

#### **Section 11.08 Covenants and Conditions.**

Each provision of this License performable by Licensee shall be deemed both a covenant and a condition.

#### **Section 11.09 Consents/Approvals.**

Wherever in this License the consent/approval of one party is required to an act of the other party, such consent/approval shall not be unreasonably withheld or delayed.

#### **Section 11.10 Cumulative Remedies.**

No remedy or election under this License shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

#### **Section 11.11 Prior Agreements.**

Amendments: This License and those certain Exhibits attached hereto and made a part hereof by reference herein contain all agreements of the parties with respect to any matter mentioned herein. No prior agreement or understanding pertaining to any such matter shall be effective. This License may not be amended or otherwise modified in any way whatsoever, except in writing signed by the parties. Except as otherwise stated in this License, Licensee acknowledges that neither Licensor nor Licensor's officers, employees or agents has made any oral or written warranties or representations to Licensee relative to the condition or use by Licensee of the Premises and Licensee acknowledges that Licensee assumes all responsibility regarding the Occupational Safety Health Act, the legal use and adaptability of the Premises, and the compliance thereof with all applicable laws and regulations in effect during the Term (and possible Additional Term) of this License except as otherwise specifically stated in this License.

#### **Section 11.12 Quiet Possession.**

Upon Licensee paying the rental, fees and/or other charges reserved under this License and keeping, observing and/or performing all of the covenants, conditions, warranties,

promises, agreements, and/or provisions on Licensee's part to be kept, observed and/or performed thereunder, Licensee shall have quiet possession of the Premises during the full Term of this License, and any extensions thereto, subject to all of the provisions of this License.

### **Section 11.13 Time of Essence.**

Time is of the essence with respect to this License and matters therein contained.

### **Section 11.14 Review/Examination of License.**

Submission of the instrument by Licensor for review /examination or signature by Licensee does not constitute a reservation of or option to license, and the instrument is not effective as a License or otherwise, unless and until execution and delivery by both Licensor and Licensee.

### **Section 11.15 Accord and Satisfaction.**

No payment by Licensee or receipt by Licensor of a lesser amount than the rent, fees and/or charges payment(s) due to be made by Licensee under this License shall be deemed to be other than on account of the rent, fees and/or charges due, and no endorsement or statement on any check or in any letter accompanying any check or payment as rent, fees and/or charges shall be deemed an accord and satisfaction, and Licensor may accept such check or payment without prejudice to Licensor's right to recover the balance of such rent, fees and/or charges or to pursue any other remedy provided in this License.

### **Section 11.16 National Emergency and Condemnation/Eminent Domain.**

- A. Total Taking/Condemnation of Premises: In the event that the Government of the United States takes over the operation of the Airport, or any part thereof which shall include all of the Premises, by requisition or other unilateral action as the result of a national emergency or otherwise, the License shall terminate as of the effective date of any such taking; or, if all of the Premises shall be taken by public authority pursuant to condemnation actions(s) under the laws of eminent domain, the License shall terminate as of the date of title vesting in such proceeding.
1. Upon termination of this License as a result of either of the events hereinabove described within this Section, the Parties hereto shall be relieved of any and all obligations, one to the other, hereunder, not accrued to the date of such termination and Licensor shall promptly return, on a prorated basis, any then unearned rent theretofore paid by Licensee under this License.
  2. Licensor shall not be liable to Licensee for any injury to Licensee's business or loss of income or any other injury or loss suffered by Licensee as a result of any such taking and/or termination.
- B. Partial Taking/Condemnation of Premises: In the event that only a part of the

Premises shall be taken as a result of any of those actions described in this Section, and if such taking and the reasons therefore shall not constitute a bar to Licensee's continued beneficial occupancy and use of that/those portion(s) of the Premises not so taken, where such taking may reasonably be deemed to not adversely affect Licensee's commercial business operations therein and thereon to a significant extent/degree, this License shall continue in full force and effect and that/those certain parcel(s) of land so taken shall be automatically deleted from the Premises licensed by Licensor to Licensee thereunder, as of the date of such taking and/or title vesting.

- C. Awards: In the event that all or part of the Premises shall be taken as a result of any of those actions described in this Section, above, the rights of the parties hereto with respect to such award(s) as shall be paid for such taking shall be as follows:
1. Licensor shall be entitled to the entire amount of any and all compensation awarded by reason of the taking of the licensed land and any and all Licensor- owned improvements then located therein or thereon and Licensee waives any right or claim to any part thereof from Licensor or the condemning authority.
  2. Subject to the provisions of this Section, below, Licensee shall have the right to claim and recover from the condemning authority such compensation as may be separately awarded or recoverable by Licensee in Licensee's own right on account of:
    - a. Any and all cost or loss (including loss of business) which may be incurred by Licensee as a result of Licensee's having to remove Licensee's personal property (including merchandise, furniture, trade fixtures and equipment) to a new location.
- D. Payments to Encumbrancers: Any compensation which would otherwise be payable to Licensee under this Section, above, shall be paid directly to any known lawful encumbrancer of the leasehold interest, to the extent of such encumbrance.
- E. Notice and Execution: Upon service of process upon Licensor in connection with either any taking over of Airport by the United States Government or any condemnation or potential condemnation, Licensor shall immediately give Licensee notice thereof in writing. Licensee shall immediately execute and deliver to Licensor any and all instruments which may be required to fully effectuate any and all of the provisions of this Article if, as and when any such instruments shall be required of Licensee.

### **Section 11.17 Relationship of Parties.**

Nothing contained in this License shall be deemed or construed by the Parties or by any third persons to create the relationship of principal and agent or of partnership or joint venture between Licensor and Licensee.

### **Section 11.18 Conflict of Interest.**

No officer or employee shall have any financial interest, direct or indirect, in any contract with Licensor or be financially interested, directly or indirectly, in the sale to the Licensor of any land, materials, supplies or services, except on behalf of the Licensor as an officer or employee. No officer or employee shall be in litigation with Licensor or any of its agents at the time this License is executed. Licensee shall complete **Exhibit D** "Disclosure of Conflict of Interest," and update same if/when any responses there to change, so that Licensor may determine whether a conflict exists. Any violation of this section, with knowledge, express or implied, of the person or corporation contracting with Licensor shall render the License involved voidable by the City Manager or the City Council.

### **Section 11.19 Non-Discrimination.**

- A. Licensee, for itself, its successors in interest, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this License for a purpose for which a Department of Transportation (DOT) provisions of similar services or benefits, Licensee shall maintain and operate such facilities and services in compliance with all other requirements pursuant to 49 CFR Part 21. Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.
- B. Licensee, for itself, and its successors in interest, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land that:
  - (i) no person on the grounds of race, color, national origin, or disability shall be excluded from participation in, denied the benefits of or be otherwise subjected to discrimination in the use of said facilities;
  - (ii) 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, national origin or disability shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination;
  - and (iii) Licensee shall use the Premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

Licensee ensures that it will comply with pertinent statutes, executive orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from federal assistance. This provision obligates Licensee for the period during which federal assistance is extended to the airport program, except where federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures of improvements thereon. In these cases, the provision obligates Licensee for the longer of the following periods: (i) the period during which the property is used by the sponsor for a purpose for which federal assistance is extended, or for another purpose involving the provision of similar services or benefits or

(ii) the period during which the airport sponsor retains ownership or possession of the property.

- C. Licensee agrees to ensure that disadvantaged business enterprises as defined in 49 CFR Parts 23 and 26 have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds provided under this License. In this regard, Licensee shall take all necessary and reasonable steps in accordance with 49CFR Parts 23 and 26 to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform such contracts. Licensee shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of DOT-assisted contracts.
- D. As a condition of this License, Licensee covenants that it will take all necessary actions to insure that, in connection with any work under this License, Licensee, its associates and subcontractors, will not discriminate the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, sex or disability unrelated to job performance, either directly, indirectly or through contractual or other arrangements. Licensee shall also comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §12101-12213, as amended. In this regard, Licensee shall keep, retain and safeguard all records relating to this License or work performed hereunder for a minimum period of three (3) years from final License completion, with full access allowed to representatives of Licensor, upon request, for purposes of evaluating compliance with this and other provisions of this License.
- E. In the event of Licensee's breach of any of the above nondiscrimination covenants, Licensor according to the provisions of this License shall have the right to terminate this License and to re-enter and repossess the Premises thereon, and hold the same as if the License had never been made or issued.

### **Section 11.20 Required Accessibility Disclosure.**

A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.

**[Signatures on following page]**

**ARTICLE XII - SIGNATURE**

**IN WITNESS WHEREOF**, Licensor has caused this License to be executed and issued by its Director of Aviation, and Licensee, by the signature(s) of its duly authorized officer(s) hereunto below affixed, has accepted this License and acknowledged and/or agreed to all the terms, covenants, conditions, warranties, agreements, and provisions herein contained, as of the day and year first above written.

**CITY OF FRESNO**  
A Municipal Corporation

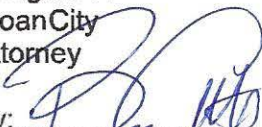
By: \_\_\_\_\_  
Henry Thompson, A.A.E., IAP  
Director of Aviation

Address for Notice:

City of Fresno Airports Department  
4995 E. Clinton Way  
Fresno, CA 93727

APPROVED AS TO FORM:

Douglas T.  
Sloan City  
Attorney

By:  \_\_\_\_\_ 3/7/22  
Brandon M. Collet Date  
Senior Deputy City Attorney

ATTEST:  
Todd Stermer, CMC  
City Clerk

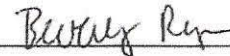
By: \_\_\_\_\_  
Deputy

**EDUCATIONAL EMPLOYEES CREDIT UNION**

A California Corporation

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

Title: CEO  
(If corporation or LLC., must be  
CEO/ President of Board/Vice  
President of Board (circle one))

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

Title: CFO  
(If corporation or LLC.,  
must be  
CFO/Treasurer/Secretary (circle  
one))

Address for Notice:

Educational Employees Credit Union  
(EECU) 2222 W. Shaw Avenue  
Fresno, California 93711

**Attachments:**

- Exhibit A** Description of Premises
- Exhibit B** Assurances Required By the Federal Aviation Administration
- Exhibit C** Fresno Yosemite International Airport Minimum Standards
- Exhibit D** Conflict of Interest Form





## **ASSURANCES AIRPORT SPONSORS**

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### **A. General.**

1. These assurances shall be complied with in the performance of grant agreements for airport development, airport planning, and noise compatibility program grants for airport sponsors.
2. These assurances are required to be submitted as part of the project application by sponsors requesting funds under the provisions of Title 49, U.S.C., subtitle VII, as amended. As used herein, the term "public agency sponsor" means a public agency with control of a public-use airport; the term "private sponsor" means a private owner of a public-use airport; and the term "sponsor" includes both public agency sponsors and private sponsors.
3. Upon acceptance of this grant offer by the sponsor, these assurances are incorporated in and become part of this grant agreement.

### **B. Duration and Applicability.**

#### **1. Airport development or Noise Compatibility Program Projects Undertaken by a Public Agency Sponsor.**

The terms, conditions and assurances of this grant agreement shall remain in full force and effect throughout the useful life of the facilities developed or equipment acquired for an airport development or noise compatibility program project, or throughout the useful life of the project items installed within a facility under a noise compatibility program project, but in any event not to exceed twenty (20) years from the date of acceptance of a grant offer of Federal funds for the project. However, there shall be no limit on the duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport. There shall be no limit on the duration of the terms, conditions, and assurances with respect to real property acquired with federal funds. Furthermore, the duration of the Civil Rights assurance shall be specified in the assurances.

#### **2. Airport Development or Noise Compatibility Projects Undertaken by a Private Sponsor.**

The preceding paragraph 1 also applies to a private sponsor except that the useful life of project items installed within a facility or the useful life of the facilities developed or equipment acquired under an airport development or noise compatibility program project shall be no less than ten (10) years from the date of acceptance of Federal aid for the project.

#### **3. Airport Planning Undertaken by a Sponsor.**

Unless otherwise specified in this grant agreement, only Assurances 1, 2, 3, 5, 6, 13, 18, 25, 30, 32, 33, and 34 in Section C apply to planning projects. The terms, conditions, and assurances of this grant agreement shall remain in full force and effect during the life of the project; there shall be no limit on the duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport.



### C. Sponsor Certification.

The sponsor hereby assures and certifies, with respect to this grant that:

#### 1. General Federal Requirements.

It will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance and use of Federal funds for this project including but not limited to the following:

- a. Title 49, U.S.C., subtitle VII, as amended.
- b. Davis-Bacon Act - 40 U.S.C. 276(a), et seq.<sup>1</sup>
- c. Federal Fair Labor Standards Act - 29 U.S.C. 201, et seq.
- d. Hatch Act – 5 U.S.C. 1501, et seq.<sup>2</sup>
- e. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 Title 42 U.S.C. 4601, et seq.<sup>1,2</sup>
- f. National Historic Preservation Act of 1966 - Section 106 - 16 U.S.C. 470(f).<sup>1</sup>
- g. Archeological and Historic Preservation Act of 1974 - 16 U.S.C. 469 through 469c.<sup>1</sup>
- h. Native Americans Grave Repatriation Act - 25 U.S.C. Section 3001, et seq.
- i. Clean Air Act, P.L. 90-148, as amended.
- j. Coastal Zone Management Act, P.L. 93-205, as amended.
- k. Flood Disaster Protection Act of 1973 - Section 102(a) - 42 U.S.C. 4012a.<sup>1</sup>
- l. Title 49, U.S.C., Section 303, (formerly known as Section 4(f))
- m. Rehabilitation Act of 1973 - 29 U.S.C. 794.
- n. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- o. Americans with Disabilities Act of 1990, as amended, (42 U.S.C. § 12101 et seq.), prohibits discrimination on the basis of disability).
- p. Age Discrimination Act of 1975 - 42 U.S.C. 6101, et seq.
- q. American Indian Religious Freedom Act, P.L. 95-341, as amended.
- r. Architectural Barriers Act of 1968 -42 U.S.C. 4151, et seq.<sup>1</sup>
- s. Power plant and Industrial Fuel Use Act of 1978 - Section 403- 2 U.S.C. 8373.<sup>1</sup>
- t. Contract Work Hours and Safety Standards Act - 40 U.S.C. 327, et seq.<sup>1</sup>
- u. Copeland Anti-kickback Act - 18 U.S.C. 874.1
- v. National Environmental Policy Act of 1969 - 42 U.S.C. 4321, et seq.<sup>1</sup>
- w. Wild and Scenic Rivers Act, P.L. 90-542, as amended.
- x. Single Audit Act of 1984 - 31 U.S.C. 7501, et seq.<sup>2</sup>
- y. Drug-Free Workplace Act of 1988 - 41 U.S.C. 702 through 706.
- z. The Federal Funding Accountability and Transparency Act of 2006, as amended (Pub. L. 109-282, as amended by section 6202 of Pub. L. 110-252).

## EXECUTIVE ORDERS

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- a. Executive Order 11246 - Equal Employment Opportunity<sup>1</sup>
- b. Executive Order 11990 - Protection of Wetlands
- c. Executive Order 11998 –Flood Plain Management
- d. Executive Order 12372 - Intergovernmental Review of Federal Programs
- e. Executive Order 12699 - Seismic Safety of Federal and Federally Assisted New Building Construction<sup>1</sup>
- f. Executive Order 12898 - Environmental Justice
- g. Executive Order 13788 - Buy American and Hire American
- h. Executive Order 13858 – Strengthening Buy-American Preferences for Infrastructure Projects

## FEDERAL REGULATIONS

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- a. 2 CFR Part180 – OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Non-procurement).
- b. 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. [OMB Circular A-87 Cost Principles Applicable to Grants and Contracts with State and Local Governments, and OMB Circular A-133 - Audits of States, Local Governments, and Non-Profit Organizations].<sup>4,5,6</sup>
- c. 2 CFR Part 1200 – Non-procurement Suspension and Debarment
- d. 14 CFR Part 13 - Investigative and Enforcement Procedures14 CFR Part 16 - Rules of Practice For Federally Assisted Airport Enforcement Proceedings.
- e. 14 CFR Part 150 - Airport noise compatibility planning.
- f. 28 CFR Part 35- Discrimination on the Basis of Disability in State and Local Government Services.
- g. 28 CFR § 50.3 - U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964.
- h. 29 CFR Part 1 - Procedures for predetermination of wage rates.<sup>1</sup>
- i. 29 CFR Part 3 - Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States.<sup>1</sup>
- j. 29 CFR Part 5 - Labor standards provisions applicable to contracts covering federally financed and assisted construction (also labor standards provisions applicable to non-construction contracts subject to the Contract Work Hours and Safety Standards Act).<sup>1</sup>
- k. 41 CFR Part 60 - Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and federally assisted contracting requirements).<sup>1</sup>
- l. 49 CFR Part 18 - Uniform administrative requirements for grants and cooperative agreements to state and local governments.<sup>3</sup>
- m. 49 CFR Part 20 - New restrictions on lobbying.

- n. 49 CFR Part 21 – Nondiscrimination in federally-assisted programs of the Department of Transportation - effectuation of Title VI of the Civil Rights Act of 1964.
- o. 49 CFR Part 23 - Participation by Disadvantage Business Enterprise in Airport Concessions.
- p. 49 CFR Part 24 – Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs.<sup>1,2</sup>
- q. 49 CFR Part 26 – Participation by Disadvantaged Business Enterprises in Department of Transportation Programs.
- r. 49 CFR Part 27 – Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.<sup>1</sup>
- s. 49 CFR Part 28 –Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities conducted by the Department of Transportation.
- t. 49 CFR Part 30 - Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors.
- u. 49 CFR Part 32 –Government-wide Requirements for Drug-Free Workplace (Financial Assistance)
- v. 49 CFR Part 37 –Transportation Services for Individuals with Disabilities (ADA).
- w. 49 CFR Part 41 - Seismic safety of Federal and federally assisted or regulated new building construction.

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#### **SPECIFIC ASSURANCES**

Specific assurances required to be included in grant agreements by any of the above laws, regulations or circulars are incorporated by reference in this grant agreement.

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#### **FOOTNOTES TO ASSURANCE C.1.**

- <sup>1</sup> These laws do not apply to airport planning sponsors.
- <sup>2</sup> These laws do not apply to private sponsors.
- <sup>3</sup> 49 CFR Part 18 and 2 CFR Part 200 contain requirements for State and Local Governments receiving Federal assistance. Any requirement levied upon State and Local Governments by this regulation and circular shall also be applicable to private sponsors receiving Federal assistance under Title 49, United States Code.
- <sup>4</sup> On December 26, 2013 at 78 FR 78590, the Office of Management and Budget (OMB) issued the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR Part 200. 2 CFR Part 200 replaces and combines the former Uniform Administrative Requirements for Grants (OMB Circular A-102 and Circular A-110 or 2 CFR Part 215 or Circular) as well as the Cost Principles (Circulars A-21 or 2 CFR part 220; Circular A-87 or 2 CFR part 225; and A-122, 2 CFR part 230). Additionally it replaces Circular A-133 guidance on the Single Annual Audit. In accordance with 2 CFR section 200.110, the standards set forth in Part 200 which affect administration of Federal awards issued by Federal agencies become effective once implemented by Federal agencies or when any future amendment to this Part becomes final. Federal agencies, including the Department of Transportation, must implement the policies and procedures applicable to Federal awards by promulgating a regulation to be effective by December 26, 2014 unless different provisions are required by statute or approved by OMB.

- <sup>5</sup> Cost principles established in 2 CFR part 200 subpart E must be used as guidelines for determining the eligibility of specific types of expenses.
- <sup>6</sup> Audit requirements established in 2 CFR part 200 subpart F are the guidelines for audits.

**2. Responsibility and Authority of the Sponsor.**

a. Public Agency Sponsor:

It has legal authority to apply for this grant, and to finance and carry out the proposed project; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

b. Private Sponsor:

It has legal authority to apply for this grant and to finance and carry out the proposed project and comply with all terms, conditions, and assurances of this grant agreement. It shall designate an official representative and shall in writing direct and authorize that person to file this application, including all understandings and assurances contained therein; to act in connection with this application; and to provide such additional information as may be required.

**3. Sponsor Fund Availability.**

It has sufficient funds available for that portion of the project costs which are not to be paid by the United States. It has sufficient funds available to assure operation and maintenance of items funded under this grant agreement which it will own or control.

**4. Good Title.**

- a. It, a public agency or the Federal government, holds good title, satisfactory to the Secretary, to the landing area of the airport or site thereof, or will give assurance satisfactory to the Secretary that good title will be acquired.
- b. For noise compatibility program projects to be carried out on the property of the sponsor, it holds good title satisfactory to the Secretary to that portion of the property upon which Federal funds will be expended or will give assurance to the Secretary that good title will be obtained.

**5. Preserving Rights and Powers.**

- a. It will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in this grant agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.
- b. Subject to the FAA Act of 2018, Public Law 115-254, Section 163, it will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the property shown on Exhibit A to this application or, for a noise compatibility program project, that portion of the property upon which Federal funds have been expended, for the duration of the terms, conditions, and assurances in this grant agreement without approval by the

Secretary. If the transferee is found by the Secretary to be eligible under Title 49, United States Code, to assume the obligations of this grant agreement and to have the power, authority, and financial resources to carry out all such obligations, the sponsor shall insert in the contract or document transferring or disposing of the sponsor's interest, and make binding upon the transferee all of the terms, conditions, and assurances contained in this grant agreement.

- c. For all noise compatibility program projects which are to be carried out by another unit of local government or are on property owned by a unit of local government other than the sponsor, it will enter into an agreement with that government. Except as otherwise specified by the Secretary, that agreement shall obligate that government to the same terms, conditions, and assurances that would be applicable to it if it applied directly to the FAA for a grant to undertake the noise compatibility program project. That agreement and changes thereto must be satisfactory to the Secretary. It will take steps to enforce this agreement against the local government if there is substantial non-compliance with the terms of the agreement.
- d. For noise compatibility program projects to be carried out on privately owned property, it will enter into an agreement with the owner of that property which includes provisions specified by the Secretary. It will take steps to enforce this agreement against the property owner whenever there is substantial non-compliance with the terms of the agreement.
- e. If the sponsor is a private sponsor, it will take steps satisfactory to the Secretary to ensure that the airport will continue to function as a public-use airport in accordance with these assurances for the duration of these assurances.
- f. If an arrangement is made for management and operation of the airport by any agency or person other than the sponsor or an employee of the sponsor, the sponsor will reserve sufficient rights and authority to insure that the airport will be operated and maintained in accordance Title 49, United States Code, the regulations and the terms, conditions and assurances in this grant agreement and shall insure that such arrangement also requires compliance therewith.
- g. Sponsors of commercial service airports will not permit or enter into any arrangement that results in permission for the owner or tenant of a property used as a residence, or zoned for residential use, to taxi an aircraft between that property and any location on airport. Sponsors of general aviation airports entering into any arrangement that results in permission for the owner of residential real property adjacent to or near the airport must comply with the requirements of Sec. 136 of Public Law 112-95 and the sponsor assurances.

**6. Consistency with Local Plans.**

The project is reasonably consistent with plans (existing at the time of submission of this application) of public agencies that are authorized by the State in which the project is located to plan for the development of the area surrounding the airport.

**7. Consideration of Local Interest.**

It has given fair consideration to the interest of communities in or near where the project may be located.

**8. Consultation with Users.**

In making a decision to undertake any airport development project under Title 49, United States Code, it has undertaken reasonable consultations with affected parties using the airport at which project is proposed.

**9. Public Hearings.**

In projects involving the location of an airport, an airport runway, or a major runway extension, it has afforded the opportunity for public hearings for the purpose of considering the economic, social, and environmental effects of the airport or runway location and its consistency with goals and objectives of such planning as has been carried out by the community and it shall, when requested by the Secretary, submit a copy of the transcript of such hearings to the Secretary. Further, for such projects, it has on its management board either voting representation from the communities where the project is located or has advised the communities that they have the right to petition the Secretary concerning a proposed project.

**10. Metropolitan Planning Organization.**

In projects involving the location of an airport, an airport runway, or a major runway extension at a medium or large hub airport, the sponsor has made available to and has provided upon request to the metropolitan planning organization in the area in which the airport is located, if any, a copy of the proposed amendment to the airport layout plan to depict the project and a copy of any airport master plan in which the project is described or depicted.

**11. Pavement Preventive Maintenance.**

With respect to a project approved after January 1, 1995, for the replacement or reconstruction of pavement at the airport, it assures or certifies that it has implemented an effective airport pavement maintenance-management program and it assures that it will use such program for the useful life of any pavement constructed, reconstructed or repaired with Federal financial assistance at the airport. It will provide such reports on pavement condition and pavement management programs as the Secretary determines may be useful.

**12. Terminal Development Prerequisites.**

For projects which include terminal development at a public use airport, as defined in Title 49, it has, on the date of submittal of the project grant application, all the safety equipment required for certification of such airport under section 44706 of Title 49, United States Code, and all the security equipment required by rule or regulation, and has provided for access to the passenger enplaning and deplaning area of such airport to passengers enplaning and deplaning from aircraft other than air carrier aircraft.

**13. Accounting System, Audit, and Record Keeping Requirements.**

- a. It shall keep all project accounts and records which fully disclose the amount and disposition by the recipient of the proceeds of this grant, the total cost of the project in connection with which this grant is given or used, and the amount or nature of that portion of the cost of the project supplied by other sources, and such other financial records pertinent to the project. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984.
- b. It shall make available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the recipient that are pertinent to this grant. The Secretary may require that an appropriate audit be conducted by a recipient. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a grant or relating to the project in connection with which this grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United States not later than six (6) months following the close of the fiscal year for which the audit was made.

**14. Minimum Wage Rates.**

It shall include, in all contracts in excess of \$2,000 for work on any projects funded under this grant agreement which involve labor, provisions establishing minimum rates of wages, to be predetermined by the Secretary of Labor, in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5), which contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.

**15. Veteran's Preference.**

It shall include in all contracts for work on any project funded under this grant agreement which involve labor, such provisions as are necessary to insure that, in the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to Vietnam era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns owned and controlled by disabled veterans as defined in Section 47112 of Title 49, United States Code. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

**16. Conformity to Plans and Specifications.**

It will execute the project subject to plans, specifications, and schedules approved by the Secretary. Such plans, specifications, and schedules shall be submitted to the Secretary prior to commencement of site preparation, construction, or other performance under this grant agreement, and, upon approval of the Secretary, shall be incorporated into this grant agreement. Any modification to the approved plans, specifications, and schedules shall also be subject to approval of the Secretary, and incorporated into this grant agreement.

**17. Construction Inspection and Approval.**

It will provide and maintain competent technical supervision at the construction site throughout the project to assure that the work conforms to the plans, specifications, and schedules approved by the Secretary for the project. It shall subject the construction work on any project contained in an approved project application to inspection and approval by the Secretary and such work shall be in accordance with regulations and procedures prescribed by the Secretary. Such regulations and procedures shall require such cost and progress reporting by the sponsor or sponsors of such project as the Secretary shall deem necessary.

**18. Planning Projects.**

In carrying out planning projects:

- a. It will execute the project in accordance with the approved program narrative contained in the project application or with the modifications similarly approved.
- b. It will furnish the Secretary with such periodic reports as required pertaining to the planning project and planning work activities.
- c. It will include in all published material prepared in connection with the planning project a notice that the material was prepared under a grant provided by the United States.
- d. It will make such material available for examination by the public, and agrees that no material prepared with funds under this project shall be subject to copyright in the United States or any other country.
- e. It will give the Secretary unrestricted authority to publish, disclose, distribute, and otherwise use any of the material prepared in connection with this grant.

- f. It will grant the Secretary the right to disapprove the sponsor's employment of specific consultants and their subcontractors to do all or any part of this project as well as the right to disapprove the proposed scope and cost of professional services.
- g. It will grant the Secretary the right to disapprove the use of the sponsor's employees to do all or any part of the project.
- h. It understands and agrees that the Secretary's approval of this project grant or the Secretary's approval of any planning material developed as part of this grant does not constitute or imply any assurance or commitment on the part of the Secretary to approve any pending or future application for a Federal airport grant.

**19. Operation and Maintenance.**

- a. The airport and all facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable Federal, state and local agencies for maintenance and operation. It will not cause or permit any activity or action thereon which would interfere with its use for airport purposes. It will suitably operate and maintain the airport and all facilities thereon or connected therewith, with due regard to climatic and flood conditions. Any proposal to temporarily close the airport for non-aeronautical purposes must first be approved by the Secretary. In furtherance of this assurance, the sponsor will have in effect arrangements for-
  - 1) Operating the airport's aeronautical facilities whenever required;
  - 2) Promptly marking and lighting hazards resulting from airport conditions, including temporary conditions; and
  - 3) Promptly notifying airmen of any condition affecting aeronautical use of the airport. Nothing contained herein shall be construed to require that the airport be operated for aeronautical use during temporary periods when snow, flood or other climatic conditions interfere with such operation and maintenance. Further, nothing herein shall be construed as requiring the maintenance, repair, restoration, or replacement of any structure or facility which is substantially damaged or destroyed due to an act of God or other condition or circumstance beyond the control of the sponsor.
- b. It will suitably operate and maintain noise compatibility program items that it owns or controls upon which Federal funds have been expended.

**20. Hazard Removal and Mitigation.**

It will take appropriate action to assure that such terminal airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

**21. Compatible Land Use.**

It will take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, if the project is for noise compatibility program implementation, it will not cause or permit any change in land use, within its jurisdiction, that will reduce its compatibility, with



respect to the airport, of the noise compatibility program measures upon which Federal funds have been expended.

**22. Economic Nondiscrimination.**

- a. It will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.
- b. In any agreement, contract, lease, or other arrangement under which a right or privilege at the airport is granted to any person, firm, or corporation to conduct or to engage in any aeronautical activity for furnishing services to the public at the airport, the sponsor will insert and enforce provisions requiring the contractor to-
  - 1) furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and
  - 2) charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.
- c. Each fixed-based operator at the airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-based operators making the same or similar uses of such airport and utilizing the same or similar facilities.
- d. Each air carrier using such airport shall have the right to service itself or to use any fixed-based operator that is authorized or permitted by the airport to serve any air carrier at such airport.
- e. Each air carrier using such airport (whether as a tenant, non-tenant, or subtenant of another air carrier tenant) shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rates, fees, rentals, and other charges with respect to facilities directly and substantially related to providing air transportation as are applicable to all such air carriers which make similar use of such airport and utilize similar facilities, subject to reasonable classifications such as tenants or non-tenants and signatory carriers and non-signatory carriers. Classification or status as tenant or signatory shall not be unreasonably withheld by any airport provided an air carrier assumes obligations substantially similar to those already imposed on air carriers in such classification or status.
- f. It will not exercise or grant any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees [including, but not limited to maintenance, repair, and fueling] that it may choose to perform.
- g. In the event the sponsor itself exercises any of the rights and privileges referred to in this assurance, the services involved will be provided on the same conditions as would apply to the furnishing of such services by commercial aeronautical service providers authorized by the sponsor under these provisions.
- h. The sponsor may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.

- i. The sponsor may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.

### **23. Exclusive Rights.**

It will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public. For purposes of this paragraph, the providing of the services at an airport by a single fixed-based operator shall not be construed as an exclusive right if both of the following apply:

- a. It would be unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide such services, and
- b. If allowing more than one fixed-based operator to provide such services would require the reduction of space leased pursuant to an existing agreement between such single fixed-based operator and such airport. It further agrees that it will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities, including, but not limited to charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity, and that it will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under Title 49, United States Code.

### **24. Fee and Rental Structure.**

It will maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection. No part of the Federal share of an airport development, airport planning or noise compatibility project for which a grant is made under Title 49, United States Code, the Airport and Airway Improvement Act of 1982, the Federal Airport Act or the Airport and Airway Development Act of 1970 shall be included in the rate basis in establishing fees, rates, and charges for users of that airport.

### **25. Airport Revenues.**

- a. All revenues generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport. The following exceptions apply to this paragraph:
  - 1) If covenants or assurances in debt obligations issued before September 3, 1982, by the owner or operator of the airport, or provisions enacted before September 3, 1982, in governing statutes controlling the owner or operator's financing, provide for the use of the revenues from any of the airport owner or operator's facilities, including the airport, to support not only the airport but also the airport owner or operator's general debt obligations or other facilities, then this limitation on the use of all revenues generated

by the airport (and, in the case of a public airport, local taxes on aviation fuel) shall not apply.

- 2) If the Secretary approves the sale of a privately owned airport to a public sponsor and provides funding for any portion of the public sponsor's acquisition of land, this limitation on the use of all revenues generated by the sale shall not apply to certain proceeds from the sale. This is conditioned on repayment to the Secretary by the private owner of an amount equal to the remaining unamortized portion (amortized over a 20-year period) of any airport improvement grant made to the private owner for any purpose other than land acquisition on or after October 1, 1996, plus an amount equal to the federal share of the current fair market value of any land acquired with an airport improvement grant made to that airport on or after October 1, 1996.
- 3) Certain revenue derived from or generated by mineral extraction, production, lease, or other means at a general aviation airport (as defined at Section 47102 of title 49 United States Code), if the FAA determines the airport sponsor meets the requirements set forth in Sec. 813 of Public Law 112-95.
  - b. As part of the annual audit required under the Single Audit Act of 1984, the sponsor will direct that the audit will review, and the resulting audit report will provide an opinion concerning, the use of airport revenue and taxes in paragraph (a), and indicating whether funds paid or transferred to the owner or operator are paid or transferred in a manner consistent with Title 49, United States Code and any other applicable provision of law, including any regulation promulgated by the Secretary or Administrator.
  - c. Any civil penalties or other sanctions will be imposed for violation of this assurance in accordance with the provisions of Section 47107 of Title 49, United States Code.

## 26. Reports and Inspections.

It will:

- a. submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request and make such reports available to the public; make available to the public at reasonable times and places a report of the airport budget in a format prescribed by the Secretary;
- b. for airport development projects, make the airport and all airport records and documents affecting the airport, including deeds, leases, operation and use agreements, regulations and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request;
- c. for noise compatibility program projects, make records and documents relating to the project and continued compliance with the terms, conditions, and assurances of this grant agreement including deeds, leases, agreements, regulations, and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request; and
- d. in a format and time prescribed by the Secretary, provide to the Secretary and make available to the public following each of its fiscal years, an annual report listing in detail:
  - 1) all amounts paid by the airport to any other unit of government and the purposes for which each such payment was made; and
  - 2) all services and property provided by the airport to other units of government and the amount of compensation received for provision of each such service and property.

## **27. Use by Government Aircraft.**

It will make available all of the facilities of the airport developed with Federal financial assistance and all those usable for landing and takeoff of aircraft to the United States for use by Government aircraft in common with other aircraft at all times without charge, except, if the use by Government aircraft is substantial, charge may be made for a reasonable share, proportional to such use, for the cost of operating and maintaining the facilities used. Unless otherwise determined by the Secretary, or otherwise agreed to by the sponsor and the using agency, substantial use of an airport by Government aircraft will be considered to exist when operations of such aircraft are in excess of those which, in the opinion of the Secretary, would unduly interfere with use of the landing areas by other authorized aircraft, or during any calendar month that –

- a. Five (5) or more Government aircraft are regularly based at the airport or on land adjacent thereto; or
- b. The total number of movements (counting each landing as a movement) of Government aircraft is 300 or more, or the gross accumulative weight of Government aircraft using the airport (the total movement of Government aircraft multiplied by gross weights of such aircraft) is in excess of five million pounds.

## **28. Land for Federal Facilities.**

It will furnish without cost to the Federal Government for use in connection with any air traffic control or air navigation activities, or weather-reporting and communication activities related to air traffic control, any areas of land or water, or estate therein, or rights in buildings of the sponsor as the Secretary considers necessary or desirable for construction, operation, and maintenance at Federal expense of space or facilities for such purposes. Such areas or any portion thereof will be made available as provided herein within four months after receipt of a written request from the Secretary.

## **29. Airport Layout Plan.**

- a. Subject to the FAA Reauthorization Act of 2018, Public Law 115-254, Section 163, it will keep up to date at all times an airport layout plan of the airport showing:
  - 1) boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the sponsor for airport purposes and proposed additions thereto;
  - 2) the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars and roads), including all proposed extensions and reductions of existing airport facilities;
  - 3) the location of all existing and proposed non-aviation areas and of all existing improvements thereon; and
  - 4) all proposed and existing access points used to taxi aircraft across the airport's property boundary. Such airport layout plans and each amendment, revision, or modification thereof, shall be subject to the approval of the Secretary which approval shall be evidenced by the signature of a duly authorized representative of the Secretary on the face of the airport layout plan. The sponsor will not make or permit any changes or alterations in the airport or any of its facilities which are not in conformity

with the airport layout plan as approved by the Secretary and which might, in the opinion of the Secretary, adversely affect the safety, utility or efficiency of the airport.

- b. Subject to the FAA Reauthorization Act of 2018, Public Law 115-254, Section 163, if a change or alteration in the airport or the facilities is made which the Secretary determines adversely affects the safety, utility, or efficiency of any federally owned, leased, or funded property on or off the airport and which is not in conformity with the airport layout plan as approved by the Secretary, the owner or operator will, if requested, by the Secretary (1) eliminate such adverse effect in a manner approved by the Secretary; or (2) bear all costs of relocating such property (or replacement thereof) to a site acceptable to the Secretary and all costs of restoring such property (or replacement thereof) to the level of safety, utility, efficiency, and cost of operation existing before the unapproved change in the airport or its facilities except in the case of a relocation or replacement of an existing airport facility due to a change in the Secretary's design standards beyond the control of the airport sponsor.

### 30. **Civil Rights.**

It will promptly take any measures necessary to ensure that no person in the United States shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in any activity conducted with, or benefiting from, funds received from this grant.

- a. Using the definitions of activity, facility and program as found and defined in §§ 21.23 (b) and 21.23 (e) of 49 CFR § 21, the sponsor will facilitate all programs, operate all facilities, or conduct all programs in compliance with all non-discrimination requirements imposed by, or pursuant to these assurances.
- b. **Applicability**
  - 1) **Programs and Activities.** If the sponsor has received a grant (or other federal assistance) for any of the sponsor's program or activities, these requirements extend to all of the sponsor's programs and activities.
  - 2) **Facilities.** Where it receives a grant or other federal financial assistance to construct, expand, renovate, remodel, alter or acquire a facility, or part of a facility, the assurance extends to the entire facility and facilities operated in connection therewith.
  - 3) **Real Property.** Where the sponsor receives a grant or other Federal financial assistance in the form of, or for the acquisition of real property or an interest in real property, the assurance will extend to rights to space on, over, or under such property.

- c. **Duration.**

The sponsor agrees that it is obligated to this assurance for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the assurance obligates the sponsor, or any transferee for the longer of the following periods:

- 1) So long as the airport is used as an airport, or for another purpose involving the provision of similar services or benefits; or
- 2) So long as the sponsor retains ownership or possession of the property.

- d. Required Solicitation Language. It will include the following notification in all solicitations for bids, Requests For Proposals for work, or material under this grant agreement and in all proposals for agreements, including airport concessions, regardless of funding source:

“The **(Name of Sponsor)**, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises and airport concession disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.”

- e. Required Contract Provisions.

- 1) It will insert the non-discrimination contract clauses requiring compliance with the acts and regulations relative to non-discrimination in Federally-assisted programs of the DOT, and incorporating the acts and regulations into the contracts by reference in every contract or agreement subject to the non-discrimination in Federally-assisted programs of the DOT acts and regulations.
- 2) It will include a list of the pertinent non-discrimination authorities in every contract that is subject to the non-discrimination acts and regulations.
- 3) It will insert non-discrimination contract clauses as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a sponsor.
- 4) It will insert non-discrimination contract clauses prohibiting discrimination on the basis of race, color, national origin, creed, sex, age, or handicap as a covenant running with the land, in any future deeds, leases, license, permits, or similar instruments entered into by the sponsor with other parties:
  - a. For the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
  - b. For the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
- f. It will provide for such methods of administration for the program as are found by the Secretary to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the acts, the regulations, and this assurance.
- g. It agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the acts, the regulations, and this assurance.

### 31. Disposal of Land.

- a. For land purchased under a grant for airport noise compatibility purposes, including land serving as a noise buffer, it will dispose of the land, when the land is no longer needed for such purposes, at fair market value, at the earliest practicable time. That portion of the proceeds of such disposition which is proportionate to the United States' share of acquisition of such land will be, at the discretion of the Secretary, (1) reinvested in another project at the airport, or (2) transferred to another eligible airport as prescribed by the Secretary. The Secretary shall give preference to the following, in descending order, (1)

- reinvestment in an approved noise compatibility project, (2) reinvestment in an approved project that is eligible for grant funding under Section 47117(e) of title 49 United States Code, (3) reinvestment in an approved airport development project that is eligible for grant funding under Sections 47114, 47115, or 47117 of title 49 United States Code, (4) transferred to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport, and (5) paid to the Secretary for deposit in the Airport and Airway Trust Fund. If land acquired under a grant for noise compatibility purposes is leased at fair market value and consistent with noise buffering purposes, the lease will not be considered a disposal of the land. Revenues derived from such a lease may be used for an approved airport development project that would otherwise be eligible for grant funding or any permitted use of airport revenue.
- b. For land purchased under a grant for airport development purposes (other than noise compatibility), it will, when the land is no longer needed for airport purposes, dispose of such land at fair market value or make available to the Secretary an amount equal to the United States' proportionate share of the fair market value of the land. That portion of the proceeds of such disposition which is proportionate to the United States' share of the cost of acquisition of such land will, (1) upon application to the Secretary, be reinvested or transferred to another eligible airport as prescribed by the Secretary. The Secretary shall give preference to the following, in descending order: (1) reinvestment in an approved noise compatibility project, (2) reinvestment in an approved project that is eligible for grant funding under Section 47117(e) of title 49 United States Code, (3) reinvestment in an approved airport development project that is eligible for grant funding under Sections 47114, 47115, or 47117 of title 49 United States Code, (4) transferred to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport, and (5) paid to the Secretary for deposit in the Airport and Airway Trust Fund.
  - c. Land shall be considered to be needed for airport purposes under this assurance if (1) it may be needed for aeronautical purposes (including runway protection zones) or serve as noise buffer land, and (2) the revenue from interim uses of such land contributes to the financial self-sufficiency of the airport. Further, land purchased with a grant received by an airport operator or owner before December 31, 1987, will be considered to be needed for airport purposes if the Secretary or Federal agency making such grant before December 31, 1987, was notified by the operator or owner of the uses of such land, did not object to such use, and the land continues to be used for that purpose, such use having commenced no later than December 15, 1989.
  - d. Disposition of such land under (a) (b) or (c) will be subject to the retention or reservation of any interest or right therein necessary to ensure that such land will only be used for purposes which are compatible with noise levels associated with operation of the airport.

### **32. Engineering and Design Services.**

Engineering and Design Services. If any phase of such project has received Federal funds under Chapter 471 subchapter 1 of Title 49 U.S.C., it will award each contract, or sub-contract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping or related services in the same manner as a contract for architectural and engineering services is negotiated under Chapter 11 of Title 40 U. S. C., or an equivalent qualifications-based requirement prescribed for or by the sponsor of the airport.

### **33. Foreign Market Restrictions.**

It will not allow funds provided under this grant to be used to fund any project which uses any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.

### **34. Policies, Standards, and Specifications.**

It will carry out the project in accordance with policies, standards, and specifications approved by the Secretary including, but not limited to, the advisory circulars listed in the Current FAA Advisory Circulars for AIP projects, dated \_\_\_\_\_, and included in this grant, and in accordance with applicable state policies, standards, and specifications approved by the Secretary.

### **35. Relocation and Real Property Acquisition.**

- a. It will be guided in acquiring real property, to the greatest extent practicable under State law, by the land acquisition policies in Subpart B of 49 CFR Part 24 and will pay or reimburse property owners for necessary expenses as specified in Subpart B.
- b. It will provide a relocation assistance program offering the services described in Subpart C and fair and reasonable relocation payments and assistance to displaced persons as required in Subpart D and E of 49 CFR Part 24.
- c. It will make available within a reasonable period of time prior to displacement, comparable replacement dwellings to displaced persons in accordance with Subpart E of 49 CFR Part 24.

### **36. Access By Intercity Buses.**

The airport owner or operator will permit, to the maximum extent practicable, intercity buses or other modes of transportation to have access to the airport; however, it has no obligation to fund special facilities for intercity buses or for other modes of transportation.

### **37. Disadvantaged Business Enterprises.**

The sponsor shall not discriminate on the basis of race, color, national origin or sex in the award and performance of any DOT-assisted contract covered by 49 CFR Part 26, or in the award and performance of any concession activity contract covered by 49 CFR Part 23. In addition, the sponsor shall not discriminate on the basis of race, color, national origin or sex in the administration of its Disadvantaged Business Enterprise (DBE) and Airport Concessions Disadvantaged Business Enterprise (ACDBE) programs or the requirements of 49 CFR Parts 23 and 26. The sponsor shall take all necessary and reasonable steps under 49 CFR Parts 23 and 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts, and/or concession contracts. The sponsor's DBE and ACDBE programs, as required by 49 CFR Parts 26 and 23, and as approved by DOT, are incorporated by reference in this agreement. Implementation of these programs is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the sponsor of its failure to carry out its approved program, the Department may impose sanctions as provided for under Parts 26 and 23 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1936 (31 U.S.C. 3801).

### **38. Hangar Construction.**

If the airport owner or operator and a person who owns an aircraft agree that a hangar is to be constructed at the airport for the aircraft at the aircraft owner's expense, the airport owner or



operator will grant to the aircraft owner for the hangar a long term lease that is subject to such terms and conditions on the hangar as the airport owner or operator may impose.

**39. Competitive Access.**

- a. If the airport owner or operator of a medium or large hub airport (as defined in section 47102 of title 49, U.S.C.) has been unable to accommodate one or more requests by an air carrier for access to gates or other facilities at that airport in order to allow the air carrier to provide service to the airport or to expand service at the airport, the airport owner or operator shall transmit a report to the Secretary that-
  - 1) Describes the requests;
  - 2) Provides an explanation as to why the requests could not be accommodated; and
  - 3) Provides a time frame within which, if any, the airport will be able to accommodate the requests.
- b. Such report shall be due on either February 1 or August 1 of each year if the airport has been unable to accommodate the request(s) in the six month period prior to the applicable due date.

CITY OF FRESNO, CALIFORNIA –  
DEPARTMENT OF AIRPORTS

**MINIMUM STANDARDS FOR  
FRESNO YOSEMITE INTERNATIONAL AIRPORT**

**SECTION 1. PURPOSES OF MINIMUM STANDARDS AND APPLICABILITY**

The City of Fresno, California recognizes the prohibition imposed by Section 308 of the Federal Aviation Act against granting an exclusive right to conduct any aeronautical activity at a Public Airport, and recognizes the City has agreed to the same prohibition in its acceptance of airport improvement grants from the Federal Aviation Administration. Moreover, the City wishes that there be healthy competition at the Fresno Yosemite International Airport conducted on a level playing field, and wishes that a broad array of high-quality products and services be available at the Airport. The City is publishing these Minimum Standards so that any Entity interested in engaging in any Revenue Generating Aviation Activity at the Airport may know the principles that apply and the requirements that must be met and maintained. Note, however, that it is not the intention of the City to create any private right of action to enforce these Minimum Standards.

These Minimum Standards do not apply to Entities previously authorized to offer or conduct specific Revenue Generating Aviation Activities at, on or from the Airport. The standards each such previously authorized Entity has been meeting shall comprise that Entity's minimum standards and must be maintained by that Entity. However, should any previously authorized Entity be granted authority to engage in additional Revenue Generating Aviation Activities, then, as a condition of such additional authorization, these Minimum Standards shall apply to each and every Business authorized, including the Revenue Generating Aviation Activities previously authorized. Further, these Minimum Standards shall apply to each and every authorized Business, upon any renewal or extension of a previously authorized Entity's Agreement or Lease.

**SECTION 2. DEFINITIONS**

The following terms shall have the meanings indicated:

**Agreement or Lease** – a written, enforceable contract, regardless of its duration or term, between the City and an Entity, which authorizes that Entity to engage in some Revenue Generating Aviation Activity at the Airport and/or which may cover that entity's use or occupancy of space at the Airport.

**Aircraft** – are aeronautical vehicles or devices including, but not limited to, powered fixed wing airplanes, rotorcraft, dirigibles and blimps, and non-powered gliders, rotorcraft and balloons.

**Aircraft Operation** – is any arrival or departure of an Aircraft at the Airport or any Aircraft movement on the AOA. .

**Aircraft Operations Area or AOA** – all the runways, taxiways, helipads, Ramps, hold areas and any other area used or intended to be used for the take off or landing or surface maneuvering of Aircraft, or any clear areas within the perimeter fence and adjacent to surface maneuvering areas.

**Airline** – an Entity operating Aircraft pursuant to Part 121 or Part 135 of the FARs.

**Airport** – the Fresno Yosemite International Airport (**FYI**), unless the context indicates Fresno Chandler Executive Airport (**FCH**) as well.

**Airport Layout Plan or ALP** – a plan view of the Airport, drawn to scale and showing all the Airport’s aeronautical and other Improvements and projected future Improvements – as amended from time-to-time, and as approved by the FAA and adopted by the Fresno City Council

**Airport Master Plan or Master Plan** – a comprehensive document that considers the Airport’s history, regional demographic changes, and other relevant factors and trends; then projects traffic and use for the future, then examines the probable noise, environmental and other impacts of same; and, finally, programs an orderly and balanced plan of Airport development to accommodate anticipated demand while minimizing adverse impacts. The major airport land use allocations are illustrated in a complementary ALP (see above).

**Airworthy** – an Aircraft that is compliant with the FARs and safe to fly.

**Business** - a Revenue Generating Aviation Activity

**City** - The City of Fresno, California, a municipal corporation.

**Core FBO Services** - see FBO below

**Department of Airports or Department** - The City’s Department of Airports.

**Derelict Aircraft** – an Aircraft: that has not been Airworthy for six months or more and: (1) is not in the process of being made Airworthy; or (2) is not in the process of rehabilitation for public display; or (3) has not been specially prepared, treated and preserved for future rehabilitation. An Aircraft will be presumed a Derelict Aircraft if it has not been Airworthy for six months or more and is

obviously deteriorating (tires flat and/or drying out or cracking; or rubber drying out and losing resiliency; or paint oxidizing, crazing and/or flaking off; or Plexiglas discoloring, cracking or crazing; or metal corroding or rusting; or fabric fraying; etc.).

**Director of Aviation** or **Director** - the individual filling the position of the City's Director of Aviation, or an individual authorized to represent him/her.

**Entity** - an individual or a company, firm, corporation, partnership, joint venture or other legal person.

**Equipment** – all tools, tooling and machinery, together with the supplies and apparatus necessary to properly conduct the Revenue-Generating Aviation Activity authorized.

**FAA** – the Federal Aviation Administration.

**FAR** or **FARs** – the then current Federal Air Regulations.

**Fixed Base Operator** or **FBO** – is an Entity authorized and required to offer, at a minimum, to the operators of based and transient/itinerant personal or business Aircraft: (1) retail sales and delivery into-plane of Aircraft fuels, lubricants and additives; (2) overnight tie-down and hangarage; (3) minor Aircraft maintenance, servicing and repair; (4) tire “airing”, air starts and battery “boosts”; (5) pilot and passenger waiting lounge with restrooms and public phones and direct-access to the most current aviation weather information; (6) airplane-to-ground radio communications; (7) removal of disabled Aircraft from the AOA (these activities 1–7 are, collectively, the “**Core FBO Services**”). FBOs may be authorized to engage in Revenue-Generating Aviation Activities in addition to, but not in substitution of, the Core FBO Services. An FBO may enter a Subcontract with a third party to provide Core FBO Service no. 3, minor Aircraft and powerplant servicing, maintenance and repair, and/or additional, non-Core FBO Services, provided such Subcontractor holds or enters a complementary Agreement with the City.

**Note: Only FBOs will be authorized to offer retail sales and/or delivery into-plane of Aircraft fuels. City also retains its right to offer retail sales and/or delivery into-plane of Aircraft fuels.**

**Improvements** – all buildings, structures, and facilities including, but not limited to, pavement, fencing, signs and landscaping constructed, installed or placed on, under or above any leased area by, or with the concurrence of, a Lessee of Airport property.

**Lease, Lease Agreement** or **Agreement** -- A written and legally enforceable document covering business privileges and/or real property at or on the Airport.

**Leased Premises or Premises** – real property at the Airport covered by a Lease.

**Lessee or Operator or Tenant** – an Entity that has entered a Lease with the Department.

**Lessor or Landlord** – the Department

**Mobile Service Provider or MSP** - an Entity that conducts one or more authorized Revenue Generating Aviation Activities on, at or from the Airport, but does not operate out of Leased or Subleased Premises. Examples of MSPs include, but are not limited to, Aircraft mechanics, flight instructors, Aircraft detailers, and oil recyclers.

**On Demand Air Transportation** - is unscheduled commercial air transportation for hire operated under FAR parts 119 and 135.

**Operator** -- A Lessee or Sublessee

**Preventive Aircraft Maintenance** - maintenance that is not considered a major aircraft alteration or repair and does not involve complex assembly operations listed in FAR Part 43.

**Public Airport** - an airport used or intended to be used for public purposes (A) that is under the control of a public agency and (B) of which the area used or intended to be used for the landing, taking off, or surface maneuvering of Aircraft is publicly owned.

**Ramp** – paved areas suitable for maneuvering and/or parking Aircraft.

**Repair Facility** – a facility (sometimes called a shop) that is used for repairing Aircraft or Aircraft systems, components or accessories including, without limitation thereto, engines, powerplants, propellers, radios, navigational aids and instruments

**Revenue-Generating Aviation Activity** – any commercial activity which relates to the fabrication, operation, maintenance, modification, repair, cleaning [exterior and/or interior], refurbishing, restoration, overhaul, painting, plating or refinishing of Aircraft; or of the airframes, powerplants, components, equipment, systems or accessories of Aircraft Revenue-Generating Aviation Activities include, but are not limited to, pilot training; demonstration flights; “dog-fighting”; Aircraft rental; sightseeing flights; glider towing; parachuting; “sky diving”; aerial ambulance; aerial firefighting; aerial photography or surveying; aerial advertising; aerial traffic or news reporting; powerline, pipeline or other aerial patrolling; aerial application; weather modification; air taxi or charter; Aircraft sales, including fractional

ownership; commercial flying clubs; management of Aircraft owned by others; Aircraft scheduling; passenger handling; ground handling; passenger security screening; baggage, mail or freight loading/unloading and/or transportation on the Airport; Aircraft marshalling and push-back; receipt and/or storage on the Airport of mail, baggage or freight; flight dispatch; loading bridge operation; the sale and/or delivery or installation of Aircraft components, parts, systems or accessories, and the sale and/or delivery of products used by or in Aircraft, including fuel, lubricants, additives, oxygen and flight meals.

Revenue Generating Aviation Activities do not include any of the above activities if conducted by a governmental unit or agency in support of its governmental functions; nor do Revenue-Generating Aviation Activities include Airline operations or any of the above activities conducted by an Airline with its own employees in support of its Airline operations; nor do Revenue Generating Aviation Activities include Aircraft Operations by transient or itinerant Aircraft, or non-commercial Aircraft operations by personal or business aircraft based at the Airport in a Leased hangar or tie-down space.

**Specialized Aviation Service Operator or SASO** – an Entity that is authorized to engage in one or more Revenue Generating Aviation Activities, but is not an FBO or an Airline.

**Sublease or Subcontract** - a written agreement consented to in writing by the Director, stating the terms and conditions under which a third party Entity (the **Sublessee** or **Subcontractor**) rents space (**Subleased Premises**) at the Airport from a Lessee, and/or conducts a Revenue Generating Aviation Activity from a Lessee's Premises. A Sublease or Subcontract can not authorize the Sublessee or Subcontractor to conduct any Business at the Airport: business privileges can be authorized only by the City, in a complementary Agreement between the Subcontractor or Sublessee and the City

**Through-the-Fence Business Operation** - An aviation-related business activity located in the immediate vicinity of the Airport, but not on Airport property, which activity would be a Revenue Generating Aviation Activity if located at or on Airport property; and which requires some entrance upon Airport property by the business operator for the business activity to be accomplished. A Through-the-Fence Business Operation relies upon Airport users as a continuous and significant source of its business. An example would be an Aircraft inspection and/or repair or refurbishment business where the Aircraft or a major Aircraft component is ground transported off the Airport for the inspection and/or repair or refurbishment and returned to the Airport upon completion.

### **SECTION 3. STATEMENT OF POLICY - PRINCIPLES APPLYING**

It is the policy of the City to operate and develop FYI as the primary airport for Airline services and operate FCH as a reliever airport primarily serving general aviation Aircraft. Both Airports will be operated and developed by the Department as a financially self-supporting, complementary system of airports serving the entire range of airport users safely, securely and efficiently, offering reliable, high quality aviation products and services to meet the air transportation needs and desires of the region's citizens, visitors, commerce and economy in an environmentally friendly manner and as a good neighbor.

To meet these policy goals, the Department shall be guided by the following principles:

1. No Entity may regularly engage in any Revenue Generating Aviation Activity at, on or from the Airport without first entering an Agreement with the City which will prescribe the Revenue Generating Aviation Activity or Activities authorized and/or required to be offered.
2. Entities so authorized will be required to make a financial investment in Improvements and/or Equipment sufficient to satisfy the reasonably anticipated demand for the Business(es) authorized.
3. The rents, fees and/or charges charged to their clients and customers by authorized Entities shall not be higher than are reasonable and customary in that trade or business in Central California.
4. The rents, fees and/or charges charged by the Department shall be fair and not unduly discriminatory, taking into consideration the Department's direct and indirect costs of providing, maintaining, servicing and keeping secure the Airport, including the rented or Subleased Premises, the market value of same, the revenue potential of the Revenue Generating Aviation Activities authorized and their relative importance to the region. Before commencing Business operations, authorized Entities shall post and maintain security equivalent to not less than three months' of the anticipated rents, fees and/or charges payable to the Department.
5. The term of any Agreement shall be no longer than required to reasonably amortize the investment in those Improvements to the Leased Premises required by the Lease of those Premises.
6. In addition to compliance with all applicable building, zoning and hazard codes and the Airport Master Plan, all Improvements must be approved by the Department as to architectural suitability, location and height with respect to other Airport facilities. No Improvement will be permitted that in any way interferes with or derogates Airport operations, or other Airport facilities, or encroaches into or conflicts with any FAR part 77 imaginary

surface or with any building restriction line or safety area depicted on the then current ALP.

7. The then effective Airport Master Plan shall control the types, placement and sizing of all future facilities at the Airport. No extant facility that does not conform with the then current Airport Master Plan shall be used or leased on terms that might impede or delay the timely development of the Airport in conformity with the then current Airport Master Plan, nor shall any Improvements to such facility be allowed if it might impede or delay timely subsequent development of the Airport in conformity with the said Master Plan.
8. The highest and best use shall be made of the limited Airport premises so as to maximize the capacity of the airports system to meet the air transportation needs and desires of the Airports' region. Lower or lesser uses may be authorized on an interim basis to provide interim revenues to the Department, but any such lower or lesser use(s) shall be on bases that will not impede or delay the eventual highest and best use. Hangars shall be used for the storage of Aircraft that are Airworthy or in the process of being made Airworthy and Aircraft associated support materials, AND/OR in the case of authorized FBOs or SASOs for the conduct of their authorized Business(es). Without limiting the generality of the foregoing, no hangar may be used primarily for storing or inventorying personal property that is not closely associated with the servicing, maintenance and/or care of Airworthy Aircraft or Aircraft actively in process of being made Airworthy, or being prepared for public display, or being specially prepared, treated and preserved for future rehabilitation.
9. Through-the-Fence Business Operations shall be authorized in extreme cases only, where the Director considers the products or services to be offered significant for Airport users and they are not already available on the Airport and there is no possibility of accommodating them on the Airport within a reasonable time. The City's policy does not favor Through-the-Fence Business Operations.

#### **SECTION 4. GENERAL LEASE PROVISIONS/OBLIGATIONS; INCORPORATION BY REFERENCE**

All Agreements authorizing any Revenue Generating Aviation Activity at the Airport shall incorporate by reference the then effective Minimum Standards, including the following provisions -- the extent each such standard or provision is not in conflict with any express provision of the Agreement. In the case of any conflict, the Agreement shall control.

1. Employee Conduct and Customer Service Emphasis



- A. Management Control and Supervision - Each authorized Operator is required to employ the necessary quantity of trained management and supervisory personnel to provide for the safe, secure, and timely compliance with its Lease obligations.
  - B. Personnel Training and Certification - All authorized Operator personnel shall be fully qualified and trained to provide a high quality standard of courteous, efficient, and safe service to the public and customers. Personnel shall meet all Federal, State, and local certification and licensing requirements applicable to their individual duties.
2. Facilities for the storage and disposal of toxic materials and contaminants must comply with all applicable governmental rules, regulations, standards and requirements. Operator will obtain all necessary permits for storage and disposal and will provide Lessor with copies of such permits and evidence of compliance with the terms and conditions thereof. Improper storage or disposal of toxic materials or contaminants shall be grounds for termination of the lease. Operator shall be liable for the costs of correcting any contamination or damage to the Leased Premises and/or adjacent areas caused by improper storage, disposal or use of any such materials, which liability shall survive the expiration or earlier termination of the Lease.
  3. Nothing contained in the Lease shall be construed to grant or authorize the granting of an exclusive right to provide aeronautical services to the public as prohibited by Section 308 (a) of the Federal Aviation Act of 1958, as amended, and the City reserves the right to grant to others the privilege and right of conducting any one or all activities of an aeronautical nature, so long as they meet the Minimum Standards.
  4. The City reserves the right to, but shall not be obligated to the Operator to, maintain and keep in repair the landing area of the Airport and all publicly owned facilities of the Airport, together with the right to direct and control all use of said landing area and facilities, including Operator's use.
  5. The City reserves the right to further develop or improve the AOA as it deems necessary, regardless of the desires or view of the Operator, and without interference or hindrance by or from the Operator.
  6. During the time of war or national emergency, the City shall have the right to Lease the landing area or any part thereof to the United States Government for military use, and if such Lease is executed, the provisions of the Operator's Lease insofar as they are inconsistent with the provisions of the Government's Lease, shall be suspended.

7. The City reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstruction together with the right to prevent the Operator from erecting, or permitting to be erected any building or other structure on or adjacent to the Airport which, in the opinion of the City, would limit the usefulness of the Airport or constitute a hazard to Aircraft.
8. The Lease shall be subordinate to the provisions of any existing or future agreement between the City and the United States relative to the operation or maintenance of the Airport, the execution of which agreement has been or may be required as a condition precedent to the receipt or expenditure of Federal funds for the development of the Airport.
9. The Operator shall not assign or otherwise transfer any interest in Operator's Lease, nor shall Operator Sublease or assign any interest in its Leased Premises or any portion thereof without the express, written consent of the City.
10. No Airport facilities, including hangars, Ramps and vehicular parking areas, shall be used for the storage of cars, trucks, recreational vehicles, boats, trailers, mobile homes, household furnishings or any other personal property not associated with the conduct of the Business or use authorized. Without limiting the generality of the foregoing, Operator shall not store at the Airport any Derelict Aircraft, nor shall Operator allow its Premises at the Airport to be used for the storage of Derelict Aircraft.
11. Operator shall submit on an annual basis all information deemed by the Department to be relevant to Operator's creditworthiness and financial stability. Operator is required to satisfy the Director that it is financially able to perform the services authorized in its Agreement. This shall include the responsibility to demonstrate continued financial solvency and business ability by submitting an annual financial statement, credit references, and any other proof the Director may require from time to time. Information provided shall be in a format determined by and acceptable to the Director. The Director shall be the final judge as to the qualifications and financial ability of Operator. Operator agrees that the Director may undertake such investigation and inspection as it deems necessary and appropriate.
12. The use of any Airport Premises shall conform to all applicable Airport /local/ state/ federal rules and regulations including but not limited to; building and fire codes; E.P.A. regulations and storm water discharge permit restrictions.

13. During Operator's activity at the Airport, the Operator shall pay for and maintain in full force and effect all policies of insurance required hereunder with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VII" in Best's Insurance Rating Guide, or (ii) authorized by CITY'S Risk Manager or his/her designee. The following policies of insurance are required:
- (i) COMMERCIAL GENERAL LIABILITY insurance which shall be at least as broad as Insurance Services Office (ISO) form CG 00 01 and shall include coverage for "bodily injury", "property damage" and "personal and advertising injury", including premises and operation, products and completed operations, contractual liability and hangar keepers liability (if applicable) with limits of liability of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate for bodily injury and property damage, \$1,000,000 per occurrence for personal and advertising injury and \$2,000,000 aggregate for products and completed operations.
  - (ii) COMMERCIAL AIRCRAFT LIABILITY insurance which shall include coverage for "bodily injury" (including passengers) and "property damage", including aircraft personal injury liability, newly acquired aircraft liability, non-owned aircraft liability, hangar keepers liability and contractual liability with limits of liability of not less than \$10,000,000 per occurrence for bodily injury and property damage [required only if Operator's activity includes the operation of aircraft].
  - (iii) COMMERCIAL AUTOMOBILE LIABILITY insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) form CA 00 01 and shall include coverage for "any auto" with limits of liability of not less than \$1,000,000 per accident for bodily injury and property damage.
  - (iv) Fire and Extended Coverage Insurance against loss or damage to the building or structure, including improvements and betterments, by fire and lightning, with extended coverage insurance for vandalism and malicious mischief insurance and sprinkler system

leakage insurance. Such extended coverage insurance will, as nearly as practicable, cover loss or damage by explosion, windstorm, riot, aircraft, vehicle damage, smoke and such other hazards as are normally covered by such insurance. Such insurance will be in an amount equal to the full replacement cost (without deduction for depreciation) of the building or structure, including improvements and betterments, with no coinsurance penalty.

- (v) WORKERS' COMPENSATION insurance as required under the California Labor Code.
- (vi) EMPLOYERS' LIABILITY insurance with minimum limits of \$1,000,000 each accident, \$1,000,000 disease each employee and \$1,000,000 disease policy limit [required only if Operator has employees].

All policies of insurance required hereunder shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar day written notice by certified mail, return receipt requested, has been given to the City. Upon issuance by the insurer, broker or agent of a notice of cancellation, non-renewal or reduction in coverage or limits, Operator shall furnish City with a new certificate and applicable endorsements meeting all the above coverage and limits requirements not less than 15 calendar days prior to the effective date of the cancellation, non-renewal or reduction in coverage or limits.

The General Liability, Automobile Liability and Aircraft Liability insurance policies shall name City of Fresno, its officers, officials, agents, employees and volunteers as additional insureds. Operator's insurance shall be primary as respects to the City, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents and volunteers shall be excess of the Operator's insurance and not contribute with it. Any Workers' Compensation insurance policy shall contain a waiver of subrogation as to CITY, its officers, officials, agents, employees and volunteers. Operator shall have furnished CITY with the certificate(s) and applicable endorsements for ALL required insurance before conducting any activity at the Airport.

Operator shall furnish City with copies of the actual policies upon the request of CITY'S Risk Manager or his/her designee and this requirement shall survive the use of City grounds and facilities.

If at any time during Operator's activity at the Airport, Operator fails to maintain the required insurance in full force and effect, the Operator's activity at the Airport shall be discontinued immediately until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to CITY.

The City reserves the right to change the required insurance coverage at any time by letter and the Operator shall comply within thirty (30) days from date of notice.

14. Operator shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by City, Operator or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of the activity of the Operator, its principals, officers, agents, employees, persons under the supervision of Operator, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable or any or all of them at the Airport.
15. Lessee, or Lessee's personal representative, its successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that (1) no person on the grounds of race, gender, religion or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction in the use of any improvements on, over or under such land and the furnishing of services thereon, no person on the grounds of race, gender, religion or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Lessee, shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, office of the Secretary, Part 21 nondiscrimination federally-assisted programs of the U.S. Department of Transportation - effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended. In the event of breach of any of the above nondiscrimination covenants, the Department shall have the right to terminate the Lease and to re-enter and repossess said land and the facilities thereon, and hold the same as if said Lease had never been made or issued.

Lessee agrees to furnish services on a fair, equal and not unjustly discriminatory basis to all users thereof, and to charge fair, reasonable and not unjustly discriminatory prices for each unit or service; provided, that the Lessee may be allowed to make reasonable and nondiscriminatory discount, rebate or other similar types or price reductions to volume purchasers.

16. Lessee, if applicable, must provide a plan meeting all local, state and federal regulations for the storage, containment and disposal of contaminants and toxic waste.
17. Lessee agrees to comply with airport rules and regulations as established and revised from time to time by the Director.
18. Lessee agrees to engage only in the Business or activity authorized by its Agreement. Failure to actively engage in one or more of the Businesses authorized for a period of 90 days or more, shall be grounds for termination by the City of the authority to engage in that or those Businesses, or termination of the Lease.

Lessee shall notify the Director of every instance where Lessee has knowledge of, or suspects that, another Entity is using Lessee's Premises for a Revenue-Generating Aviation Activity not authorized by the Department. Failure to timely take reasonable means to determine if a particular activity constitutes an unauthorized Revenue-Generating Aviation Activity shall make Lessee liable to the City for the fees and charges pertinent to the unauthorized Revenue-Generating Aviation Activity as if it had been authorized. Further, Lessee shall forthwith take steps to terminate the unauthorized Revenue-Generating Aviation Activities.

19. Operator shall abide by all provisions of the then current, approved Airport Security Plan. Without limiting the generality of the foregoing, Operator shall not provide airport gate codes or keys to any member of the general public AND Operator assumes responsibility for the conduct of its employees, officers, directors, agents, customers, clients and business invitees at the Airport. If violations of the Airport Security Plan by the Operator or any of the people for whom the Operator has assumed responsibility result in fines being levied against the City by any federal or state agency, Operator will reimburse the Department for the full cost of such fines within thirty (30) days of payment. Any conduct which the Director deems to constitute a violation of the approved Airport Security Plan or a threat to public safety, health or security must be discontinued immediately and may not be re-commenced until specifically authorized in writing by the Director.

20. Operator and/or Operator's employees must possess all the licenses, certificates and ratings necessary to lawfully engage in the businesses and activities authorized and/or required.
21. Operator shall keep the Leased or Subleased Premises neat, clean and appropriately supplied and shall conduct the lawful, sanitary, and timely handling and disposal of all solid waste, regulated waste, and other materials including, but not limited to, sump fuel, used oil, solvents, and other regulated waste. The piling and storage of crates, boxes, barrels, containers, refuse, and surplus property is not permitted upon the Leased Premises.
22. Operator shall provide and properly locate about the Leased Premises the proper number, types, and sizes of fire extinguishers, and other safety equipment, in accordance with the Uniform Fire Code. All fire extinguisher certifications must be kept current.
23. Operator acknowledges that owners of Aircraft are entitled to use the AOA and may tie-down, adjust, repair, refuel, clean, and otherwise service their own aircraft, provided the service is performed by the Aircraft owner him/herself. Any unreasonable restrictions imposed on owners or operators or Aircraft by the Operator will be construed as a violation of City policy.

## **SECTION 5. MINIMUM FACILITIES, EQUIPMENT, HOURS OF OPERATION, STAFFING, AND MORE**

1. Application of this Section 5

All Entities authorized to conduct any Revenue Generating Aviation Activity at the Airport shall comply with ALL the requirements set forth in this Section 5 that are applicable to the Business(es) authorized UNLESS expressly waived or modified in writing by the Director. The mere omission of any particular minimum requirement in a Lease shall not constitute a waiver or modification of the minimum requirement.

The Director may expressly waive or modify, in writing, any portion of these Section 5 minimum requirements for any Entity upon Director's determination that such waiver or modification is in the best interest of the public and will not result in undue discrimination against other Entities authorized to engage in the same or similar Business(es) at the Airport.

When an Agreement authorizes multiple Revenue Generating Aviation Activities, the authorized Entity shall comply with the minimum

requirements established for each separate Business authorized, but the space or capacity requirements need not be cumulated if the Operator can demonstrate, to the satisfaction of the Director, that the facilities will be adequate to allow all the authorized Businesses to be conducted simultaneously. In such cases, the minimum requirement that is most strict or imposes the highest standard shall apply, as a minimum.

Revenue Generating Aviation Activities not currently being offered or provided at the Airport, and for which minimum requirements have not yet been established, will be addressed by the Director as and when applications to offer or engage in such Businesses are received.

## 2. FBOs

### Buildings

Each FBO shall lease or construct a public use building complex including:

- A customer service counter/office of not less than 500 square feet, with operating two-way air-to-ground radio, current aviation charts for sale, and facilities for obtaining rental cars or the use of a courtesy car
- A well lighted, comfortably heated and air conditioned waiting lounge of not less than 1000 square feet, furnished with comfortable seating for not less than twenty-five people
- A discreet flight planning area within or adjacent to the lounge, properly equipped with appropriate wall charts, NOTAMs board, local-access telephone to contact Flight Service, and a computer to access current aviation weather information.
- Men's and Ladies' rooms accessible from the lounge.
- A public use phone with posted list of numbers to call for after-hours FBO services, overnight accommodation, and ground transportation.
- A free-span hangar of not less than 40,000 square feet
- Paved parking as required by code, but not less than sufficient to park fifty automobiles
- Above-ground, double-walled fuel storage tank(s) with not less than 20,000 gallons capacity of jet A and not less than 5,000 gallons of aviation gasoline
- Storage for not less than 144 quarts of the most popular grades of aviation oil and 144 quarts of jet A additives

### Equipment

Each FBO shall provide:

- A tug capable of towing aircraft of up to 40,000 # gross weight



- Tow bars to fit common GA aircraft up to at least 40,000# maximum take off weight.
- An air start cart or vehicle
- An electric “boost” cart or vehicle with 1600 amps capacity at both 14 and 28 volts, with adapters to fit common GA aircraft [all the foregoing may be combined in one or more vehicles]
- An air compressor capable of compressing air to not less than 125 psi for landing gear strut and/or tire inflation
- Bottled nitrogen for inflating Aircraft landing gear struts and/or tires
- Dollies and other equipment for use with the tug in removing disabled aircraft of not less than 40,000 # gross weight from the AOA
- Aviation grade oxygen re-fills

### Hours of Operation

Each FBO shall be open for business and attended twenty-four (24) hours per day, seven (7) days per week. Any deviations from this schedule must be requested in advance and approved in writing by the Director.

During all daylight hours, each FBO shall promptly provide Equipment and trained personnel to remove disabled Aircraft from the AOA – at the request of, and with an appropriate release of liability or indemnification from, the owner or operator of the disabled aircraft or the Director.

Outside regular business hours, each FBO shall be on-call to provide the same Equipment and trained personnel within thirty (30) minutes. If multiple FBOs are obligated to provide aircraft removal services on the Airport, they may agree among themselves as to which shall be on-call and when, provided that a copy of their written agreement is supplied to the Director and kept current thereafter

Each FBO shall have on duty a quantity of personnel sufficient to meet the Minimum Standards for the Core FBO Services and for each additional authorized business, if any. However, multiple responsibilities may be assigned to employees where practical.

### Qualifications of Fuel Handling Personnel

All FBO fuel handling personnel shall be trained in the safe and proper handling, dispensing, and storage of aviation fuels. The FBO shall develop and maintain Standard Operating Procedures (SOP) for refueling and ground handling operations and shall ensure compliance with standards set forth in the Uniform Fire Code and FAA Advisory Circular 00-34A, Aircraft Ground Handling and Servicing. The SOP shall address bonding and fire protection, public protection, control of access to the fuel storage area, and marking and

labeling of fuel storage tanks and fuel dispensing equipment, and shall be submitted to the Director no later than thirty (30) days prior to the FBO commencing fueling activities.

Additionally, the FBO shall comply with FAA Advisory Circular 150/5230-4, Aircraft Fuel Storage, Handling, and Dispensing on Airports, Airport rules and regulations, and all other applicable laws related to aircraft fuel handling, dispensing and storage. Each FBO shall obtain all applicable fueling certifications and permits, and receive periodic refresher training as required. The Director and/or the FAA may periodically conduct inspections of the FBO activities and facilities to ensure compliance with laws, regulations, and Minimum Standards.

#### Additional Requirements for FBOs

Each FBO shall furnish good, prompt, courteous and efficient services, adequate to meet all reasonable demands, on a fair, reasonable and non-discriminatory basis. Each FBO shall operate its business in a first-class manner and shall, at all times, keep its premises at the Airport in a safe, clean and orderly condition consistent with the Business activities authorized, and satisfactory to the Director. Each FBO shall accept not less than three major credit cards and at least one oil company credit card.

Each FBO shall select and appoint a full-time manager of its operations at the Airport. Such manager shall be properly qualified and experienced and shall be vested with full power and authority to act in the name of the FBO in respect to the method, manner and conduct of the authorized Business. Such manager or a duly authorized subordinate shall be present and available at the Airport during regular business hours. Each FBO shall provide the Director, and keep current, a typed list of the names, addresses, and contacts for all personnel responsible for the operation and management of the FBO. In addition, the Director shall be provided a point-of-contact with phone numbers for emergency situations.

All FBO personnel who have regular contact with the public or customers of the FBO (except the FBO's pilots, office personnel, marketing personnel and offsite sales persons) shall wear attractive uniforms with appropriate insignia and nameplate so they may be readily identified.

Each FBO shall control the conduct, demeanor and appearance of its employees and representatives. Upon receiving a reasonable and specific complaint from the Director concerning the conduct, demeanor or appearance of any employee, the FBO shall forthwith take all steps necessary to remove the cause of the complaint.

### 3. SASOs

#### A. General Requirements for all SASOs

##### Operating hours

Eight daylight hours per day, on the same five continuous days each week, exclusive of a two week period when a SASO may, by prior notice, be closed for vacation. The operating hours shall be posted near the door to the Operator's Leased or Subleased Premises.

##### Leased Space

Each SASO shall operate out of a building located on the Airport. The Leased or Subleased Premises shall be of an appropriate size to accommodate the services being offered, be accessible to the public, and be marked with appropriate external signage. Each SASO shall provide paved auto parking appropriate for the needs of the business.

##### Responsible Personnel

Each SASO shall provide the Director, and keep current, a typed list of names, addresses, and contacts of all personnel responsible for the operation and management of the SASO.

#### B. Additional Requirements for Specific SASOs

##### 1. Flight Training SASOs

SASOs providing aircraft dual and solo ground and flight instruction necessary to complete the written examination and flight check for any category of pilot certificate or rating shall, as a minimum:

- a. Provide at least two (2) or more FAA certified flight instructors as necessary to meet the flight training demand and schedule requirements.
- b. Provide at least four (4) properly licensed and maintained fixed wing aircraft and/or at least two (2) helicopters equipped to accomplish the services offered. If only helicopter instruction is offered, no fixed wing aircraft will be required.
- c. Provide air-conditioned classroom space of not less than 200 square feet.

## 2. Airframe and Power Plant Maintenance SASOs

SASOs providing major or minor airframe and/or power plant servicing, maintenance, overhaul, repairs or modifications shall:

- a. Operate from a ventilated shop space large enough to accommodate one or more GA Aircraft of 40,000# gross take off weight.
- b. Have on-duty at least one (1) FAA-certified technician who possesses an airframe and/or powerplant certificate, with inspection authorization, or operate pursuant to an FAR Part 145 repair station certificate.
- c. Provide equipment, supplies and parts required to inspect, maintain and repair GA Aircraft of 40,000# gross takeoff weight or more, and their power plants and Aircraft operating systems.

## 3. On-Demand SASOs

SASO's providing On-Demand Air Transportation shall:

- a. Provide at least one (1) person who is appropriately licensed and rated to permit the flight activity offered by the SASO.
- b. Provide one properly maintained and equipped, turbine powered aircraft to accomplish the services offered.

An On-Demand SASO shall have and display, a current FAR Part 135 Certificate.

## 4. Aircraft Rental SASOs

SASOs renting aircraft to be flown by third-party, licensed pilots shall:

- a. Have at least one (1) qualified person available to meet customers' needs.
- b. Have available for rental, a minimum of four (4) owned or leased fixed wing aircraft and/or two helicopters, all of them

certified and Airworthy. These may be the same aircraft used for flight instruction if the Aircraft Rental SASO is also a Flight Training SASO.

#### 5. Avionics Maintenance and Sales SASOs

SASOs providing avionics services, which includes the maintenance, repair, and installation of aircraft avionics, radios instruments, and accessories, and includes the sale of such equipment, shall:

- a. Operate in ventilated office or shop space on the Airport that is able to accommodate at least one fixed wing Aircraft of not less than 40,000# gross take off weight.
- b. Have at least one (1) trained and FAA certified technician.
- c. Hold the appropriate FAA certificates required for the types of services offered.

#### 6. Aircraft Hangar Rental SASOs

An Aircraft hangar rental SASO leases or rents hangars or hangar space to third-party aircraft owners or operators solely for those third-parties' storage of their owned or operated Aircraft. An Aircraft hangar rental SASO shall:

- a. Lease or construct hangars sufficient to store, in complete security, not less than five GA Aircraft, each of 40,000# gross take off weight or more. Each hangar shall meet all applicable fire safety codes, shall be lighted and equipped with a mens room and a ladies room. SASO shall also provide trash bins. SASO shall keep the rest rooms clean and supplied and shall empty all trash as often as required but not less than once each week, appropriately disposing of same at SASO's expense at a location off the Airport.
- b. Lease or construct so much paved automobile parking area as required by code but in no event less than three (3) parking stalls for each Aircraft that could be accommodated.
- c. Post a contact name and phone number for SASO, including hangar availability, and rental rates.

- d. Provide the Director with keys for all rental hangars for immediate access in emergency situations.
- c. Provide the Director a list of all Operator's hangar renters, with their names addresses and phone numbers and the make, model and "N" number of their stored Aircraft, plus a list of Aircraft owners, if any, waiting for a hangar to become available for rental. This list shall be updated no less frequently than quarterly.
- d. SASO shall rent hangars for aircraft storage purposes only. Without limiting the generality of the foregoing, no hangar may be used primarily for storing or inventorying personal property that is not closely associated with the servicing, maintenance and/or care of an Airworthy Aircraft stored in the hangar. or Aircraft actively in process of being made Airworthy in the hangar, or an Aircraft being prepared for public display, or being specially prepared, treated and preserved for future rehabilitation in the hangar. Extensive storage of personal property in any hangar, except as an incident of the hangar's primary use as aforesaid, shall constitute a breach of the SASO's Agreement with the City.
- e. Hangar tenants may perform only Preventive Aircraft Maintenance in accordance with 14 CFR Part 43 within their rented hangars. Any other aircraft maintenance must be performed by an authorized FBO, SASO, MSP, or by the tenant in accordance with 14 CFR Part 43.3(d). Experimental aircraft construction and maintenance is allowed in accordance with 14 CFR Parts 21 and 65. Any type of hazardous or combustible material storage shall be permitted within the hangar property only in amounts allowed under the Uniform Fire Code. The piling and storage of crates, boxes, barrels, and containers, refuse, and surplus property shall not be permitted either inside or outside the hangar. All activity in or about the hangars shall be in accordance with the requirements of the Uniform Fire Code.

## 7. Aircraft Sales SASOs

SASOs providing new and/or aircraft sales and aircraft brokerage services shall:

- a. Operate from an exclusively occupied office on the Airport and have at least one (1) qualified aircraft salesperson who

holds a current commercial pilot certificate with appropriate aircraft type ratings

#### 8. Aircraft Restoration, Painting, and Refurbishing SASOs

SASOs providing the restoration, painting and refurbishing of aircraft structures, propellers, accessories, interiors, exteriors, and components, shall:

- a. Operate from a ventilated shop space large enough to accommodate one Aircraft of 40,000# gross take off weight.
- b. Have at least one (1) qualified person that has certificates appropriate for the work performed.
- c. Meet all requirements of the Uniform Fire Code.
- d. If painting is to be performed on the Airport, holds any and all the air quality and other permits required for same.

#### 9. Specialized Flying Services SASOs

SASOs providing specialized commercial flying services such as sightseeing tours, aerial photography or surveying, power line or pipeline patrol, weather modification, firefighting or fire patrol, air ambulance, airborne mineral exploration, banner towing, and other air transportation operations specifically excluded from FAR Part 135 shall:

- a. Provide at least one (1) person who holds a current FAA appropriate pilot certificate and medical certificate with ratings appropriate for the operator's aircraft.
- b. Own or lease at least one (1) Airworthy Aircraft.

#### 10. Mobile Service Providers.

If the Director shall determine that any significant need of the owner's of Aircraft based at the Airport is not being adequately met by the authorized, on-airport SASOs, he may, in his discretion, authorize Mobile Service Providers who shall meet at least the following general requirements:

Each MSP shall hold a City issued Commercial Aviation Operator Permit.

Each MSP shall ensure compliance with the Airport Security Access Plan.

Each MSP shall provide sufficient qualified personnel necessary to meet the Minimum Standards for each aeronautical service authorized. However, multiple responsibilities may be assigned to employees where feasible.

Each MSP shall provide the Director, and keep current, a written statement of names, addresses, and contacts of all personnel responsible for the operation and management of the MSP.

#### 11. Operations NOT Authorized

- a. Since the Airport is located in FAA Class C airspace, no sport parachuting or skydiving is authorized.
- b. Aerial application operations are not authorized.
- c. Glider towing is not authorized.
- d. Banner towing operations are not authorized.
- e. Free balloon operations are not authorized.
- f. Operations by aircraft qualifying as "ultralight" by the FAA are not authorized.
- g. Operations by powered parachutes are not authorized.

**1/27/06 version**



**EXHIBIT D  
DISCLOSURE OF CONFLICT OF INTEREST**

Non-Exclusive License to Operate ATM at FAT between City of Fresno ("Fresno")  
Educational Employees Credit Union (" Licensee ")

		<b>YES*</b>	<b>NO</b>
1	Are you currently in litigation with the City of Fresno or any of its agents?	<input type="checkbox"/>	<input type="checkbox"/>
2	Do you represent any firm, organization or person who is in litigation with the City of Fresno?	<input type="checkbox"/>	<input type="checkbox"/>
3	Do you currently represent or perform work for any clients who do business with the City of Fresno?	<input type="checkbox"/>	<input type="checkbox"/>
4	Are you or any of your principals, managers or professionals, owners or investors in a business which does business with the City of Fresno, or in a business which is in litigation with the City of Fresno?	<input type="checkbox"/>	<input type="checkbox"/>
5	Are you or any of your principals, managers or professionals, related by blood or marriage to any City of Fresno employee who has any significant role in the subject matter of this service?	<input type="checkbox"/>	<input type="checkbox"/>
6	Do you or any of your subcontractors have, or expect to have, any interest, direct or indirect, in any other contract in connection with this Project?	<input type="checkbox"/>	<input type="checkbox"/>
* If the answer to any question is yes, please explain in full below.			

Explanation: \_\_\_\_\_

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Additional page(s) attached.

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Signature

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Date

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(city state zip)