

FRESNO YOSEMITE INTERNATIONAL AIRPORT

LEASE AND AGREEMENT

Between

CITY OF FRESNO, CALIFORNIA

And

FLIGHT SERVICES & SYSTEMS, INC.
an Ohio Corporation

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THIS LEASE AGREEMENT ("Agreement" or "Lease") is made and entered into the March 13, 2018, by and between the City of Fresno, California, a municipal corporation, hereinafter referred to as "City" or "Lessor," and Flight Services & Systems, Inc. (FS&S), hereinafter referred to as "Lessee."

RECITALS

WHEREAS, City owns and operates the Fresno Yosemite International Airport (FAT), which is located in the City of Fresno, County of Fresno, State of California, hereinafter referred to as "Airport", and

WHEREAS, Lessee's current lease at FAT expires on June 30, 2018;

WHEREAS, the Lessee wishes to continue leasing and seeks to enter into a new lease upon the terms and conditions set forth herein;

WHEREAS, City has determined that it is in City's best interest to continue to leasing to Lessee upon the terms and conditions set forth herein; and

NOW THEREFORE, in consideration of the above recitals which recitals are contractual in nature, mutual covenants, agreements, and conditions contained herein and for other valuable consideration the receipt and sufficiency of which are hereby acknowledged the parties hereto agree as follows:

ARTICLE I - GRANT AND DESCRIPTION OF LEASED PREMISES

Section 1.01 Grant And Description Of Leased Premises.

City does hereby lease to Lessee and Lessee does hereby lease from Lessor in "as is" condition, the following property, more specifically identified and described on Exhibit "A", attached hereto and made a part hereof("Leased Premises"):

That certain office area designated as the "Space C124," consisting of approximately 250 square feet of office space located at 5175 E. Clinton Ave. in Fresno, CA, at FAT.

Section 1.02 Authorized Use Of Leased Premises.

A. Authorized Uses of the Leased Premises.

The Leased Premises may be used only for general office use by Lessee in conjunction with Lessee's airport operations, including but not limited to: (i) General Office Administration (ii) Ground Handling Administration Operations; and (iii) Customer Service Ambassador Program.

B. Limitations on Use of Leased Premises.

1. Lessee shall neither use, suffer, nor permit the use of the Leased Premises for any improper, immoral, unlawful (including illegal discrimination), unauthorized, or objectionable purpose(s).

2. Lessee shall neither use, suffer, nor permit the use of the Leased Premises for any purpose nor allow any activity therein which would create a nuisance, or in any way obstruct or interfere with the rights of others at Airport or injure or annoy them; or do or permit the doing of anything in any way tending to injure or reflect unfavorably upon the reputation of City or the appearance of the Airport.
3. Lessee shall not construct improvements upon the Leased Premises or alter, improve or add to any existing structure on such Premises.
4. No used buildings/ structures and no temporary/mobile buildings/structures/trailers may be moved onto the Leased Premises, without the advance written consent by the Lessor.

Section 1.03 Conflict Between "Authorized" And "Unauthorized" Uses.

With respect to any use of the Leased Premises which may be contemplated or undertaken under authority of this Lease, 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 Lease shall, in any and all such cases, prevail, and no "unauthorized" use of the Leased Premises, in whole or in part, shall be undertaken by Lessee or Lessee's successors or assigns 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 1.04 Access Control.

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

ARTICLE II - RENTAL FEES AND OTHER CHARGES

Section 2.01 Monthly Rental Fee and Due Date.

During the term of this Lease, Lessee shall pay to City a Monthly Rental Fee for the Leased Premises in the amount of the current rate set forth in the City's Master Fee Schedule multiplied by 250 square feet shall be the annual amount due in 12 equal payments. Such Monthly Rental Fee being due and payable on or before the 1st day of the month for which due. The Monthly Rental Fees due hereunder for any period less than a full calendar month shall be prorated.

Section 2.02 Rental Adjustments.

The monthly rental fee as reflected in section 2.01 this Article II shall automatically adjust to reflect increases in the Master Fee Schedule used to establish rate per square foot as such Master Fee Schedule rate may be adjusted from time to time.

Section 2.03 Place of Payment.

All fees/charges due to be paid to City by Lessee hereunder shall be paid to City at the address shown below or at such other address to which City, by service of written notice upon Lessee, may direct the payment thereof from time to time during the term hereof.

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

Section 2.04 Late Payment Charge.

Should any installment of Rental Fees or other payments accruing to City under the provisions of this Lease not be received by City within ten (10) calendar days after such shall be due, a late payment charge equal to one and one half percent (1.5%) of the overdue amount shall be added thereto and constituting a part thereof shall be imposed by City each and every month until the entire delinquent amount is received by City.

Section 2.05 Security Deposit.

Lessee shall provide to City a Security Deposit in an amount equal to three (3) times the monthly rental amount due. Such deposit shall be in the form of cash, a Surety Bond issued by an insurance company authorized to do business in the State of California and authorized to write such bonds in said State, or a non-revocable Letter of Credit established in favor of the City for the account of Lessee by a federally chartered bank acceptable to City, guaranteeing the faithful performance of all of the covenants and conditions herein to be performed by Lessee. Upon the expiration or termination of this Lease for any reason (any such event resulting in the end of the life hereof is hereinafter referred to as "termination") and the payment of all fees and charges due to the City for the privileges granted in this Lease, the Security Deposit shall be refunded to Lessee, provide there are no other outstanding claims or charges against the Lessee. City shall not be required to pay, and City shall not pay, any interest on this Security Deposit.

Section 2.06 Additional Fees, Charges and Rentals.

Lessee shall pay to the City additional fees, charges and rentals in the event of any of the following:

- A. If the City has paid any sum or sums or has incurred any obligation or expense for which the Lessee has agreed to pay or reimburse the City, or for which Lessee is otherwise responsible;
- B. If City is required or elects to pay any sum or sums or incurs any obligation or expense because of the failure, neglect or refusal of Lessee to perform or fulfill any of the promises, terms, conditions or covenants required of it hereunder.
- C. Lessee's obligations pursuant to this section shall include all interest, cost, damages, and penalties allowable by law or contract in conjunction with such sums so paid or

expense so incurred by the City. If billed by City, Lessee shall pay City within thirty (30) days following the date of such billing.

Section 2.07 Taxes.

Lessee 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 Lessee and/or upon the possessory interest, if any, of Lessee in Airport's premises under this Lease.¹

ARTICLE III - TERM OF LEASE

Section 3.01 Term.

A. Initial Term of Lease.

The term of this Lease shall be for the period commencing July 1, 2018, and ending June 30, 2021, unless terminated earlier in the manner hereinafter provided unless either party serves written notice of termination not less than 30 day prior to the termination date.

B. Definition.

The phrase, "the life of this Lease", and any and all readily identifiable variations thereof, when used herein, means the full term of this Lease, as specified within Section 3.01(A) of this Article, above, unless this Lease shall be terminated earlier as herein provided, in which event, said phrase and said variations thereof, shall mean the lesser period during which this Lease shall be in full force and effect.

C. Option to Extend.

Lessee shall have two one (1) year options to extend the lease. The lease shall in no event remain in force beyond June 30, 2023. Lessee shall provide City ninety (90) days written notice of intent to extend the agreement under the available options.

D. Termination.

If, at any time during the term of this Lease, Lessee voluntarily or involuntarily seeks protection under federal bankruptcy laws, or fails to fully and faithfully comply with, keep, perform or observe each and every term, by Lessee, such shall be a material default by Lessee and this Lease shall be subject to immediate termination by City upon three (3) days advance written notice to such effect upon Lessee, in which event,

¹ 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 (City) is a taxable possessory interest unless the possessor of interest in such property is exempt from taxation. With regard to any possessory interest to be acquired by Lessee under this Lease, Lessee, by its signatures hereunto affixed, warrants, stipulates, confirms, acknowledges and agrees that, prior to its executing this Lease, Lessee either took a copy of this Lease to the office of the Fresno County tax assessors or by some other appropriate means independent of City or any employee, agent, or representative of City determined, to Lessee's full and complete satisfaction, how much Lessee will be taxed, if at all.

this Lease shall be canceled, or terminated and at an end as of the time and date set forth within the notice. In the event this Lease shall be canceled or terminated by City pursuant to the provision of this section. Lessee shall remove all of its personal property from the Use Premises and peacefully vacate and surrender said premises back to City not later than the termination time and date specified within City's notice. Termination of this Lease by City under the provisions of this section shall not be construed as a waiver of any claim City may have against Lessee for such failure or for any other failure to perform, keep, or observe the same or any other terms, covenants, conditions, warranties, agreements, or provisions of this Lease.

Section 3.02 Re-Delivery.

Upon any termination of this Lease, Lessee shall have no right(s), title or interest in or to the Leased Premises, and Lessee shall peaceably and quietly discontinue use of the Leased Premises and quit and deliver up such to City. At City's option, the Leased Premises may be left in the condition, which exists at the time of the termination of this Lease, or City may require Lessee to return the Leased Premises to the identical condition as when received ordinary wear and tear accepted. In the event Lessee fails, upon City's request, to so restore/return the Leased Premises to City in the identical condition as when received, City shall have the right to make all necessary restoration and invoice Lessee for all related costs incurred. Lessee agrees to pay, upon demand, any and all such charges billed by City pursuant to this subsection and/or City may setoff such charges against the security deposit. The provisions of this subsection shall survive termination of this Lease.

Section 3.03 Holding Over.

- A. In the event Lessee shall remain in possession of the Leased Premises or any part thereof, after the expiration of this Lease, and thus hold over the term hereof, with or without the expressed written consent of City, such holding over occupancy shall be a tenancy from month to month only, terminable by either party hereto upon service of a minimum of thirty (30) days advance written notice upon the other party.
- B. During any such holding over period, Lessee agrees to pay and shall pay to City monthly rental, fees, and charges for the Leased Premises, at the rate in effect at the time of the commencement of the hold over.
- C. Except as otherwise specifically provided within this Article, any such holding over shall be subject to all the terms, covenants, conditions, restrictions, reservations, prohibitions, warranties, agreements, and provisions of this Lease applicable to a month to month tenancy.

Section 3.04 Assignment.

The Lessee shall not transfer or assign this Lease, or any part hereof, or interest herein, except with the prior written approval of the City and subject to whatever limitations and conditions that may be required by City. Any other attempted transfer or assignment shall be void and shall confer no rights upon any third person. No assignment shall relieve the Lessee of any obligation under this Lease unless otherwise agreed by the City. Notwithstanding the foregoing, this section shall not be interpreted to preclude the assignment of this Lease to

Lessee's ultimate parent, a wholly owned subsidiary of Lessee, or a successor by merger, if such parent subsidiary or successor by merger assumes all rights and obligations of this Lease. Written notice of such assumption shall be provided to the City by the parent, subsidiary, or successor by merger not less than thirty (30) days prior to the effective date of such assignment.

ARTICLE IV - OBLIGATIONS OF LESSEE

Section 4.01 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 Leased Premises or elsewhere on Airport, unless expressly permitted by this Lease, shall be prohibited. Lessee may install one sign identifying Lessee's business at the entrance door to the Space C124, which is described as the Office Space.

Section 4.02 Alterations/Additions/Modifications/Improvements.

Except for decorating (i.e. painting, wallpapering, installation of furnishings, etc.) and the installation of office equipment installed at sole cost, expense and risk of Lessee in pursuit of the authorized uses, neither City nor Lessee shall be obligated to make, and in pursuit of the authorized uses, neither City nor Lessee shall not make any alterations, additions, modifications, or improvements in/on/to any part of the Leased Premises, at any time during the term hereof, for any purpose whatsoever.

Section 4.03 Inspection/ Acceptance of Leased Premises.

Lessee expressly warrants, stipulates, acknowledges, agrees, and/or represents to City as set forth within the following sub-paragraphs of this paragraph.

A. Inspection and examination of Leased Premises by Lessee.

Prior to Lessee's affixing its signature(s) hereto, Lessee inspected and examined the Leased Premises and all of the improvements located in and/or on same and the facilities appurtenant thereto and determined and/or was assured, by means independent of City or any employee, agent, or representative of City, to Lessee's full and complete satisfaction, the condition thereof, and Lessee also determined or was assured, to Lessee's full and complete satisfaction, by means independent of City or any employee, agent, or representative of City, of the truth of all facts material to this Lease, and this Lease is/was executed by Lessee as a result of Lessee's inspection and investigation and not as a result of any representations made by City or any employee, agent, or representative of City.

B. Condition of Lease Premises.

At the time of execution of this Lease by Lessee, the Leased Premises was in a clean, safe, habitable, and, for such uses/purposes as are herein expressly authorized, usable condition.

C. Acceptance of Leased Premises by Lessee in "as is" condition.

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

Section 4.04 Liability for Damage.

Lessee shall be liable for and shall promptly repair any damage to the Leased Premises where such damage shall be attributable to any act or omission on the part of Lessee, Lessee's employees, contractors, subcontractors, agents, representatives, associates, guests, and/or invitees. Lessee shall also be liable for and shall promptly repair any damage to other Airport premises/facilities where such damage shall be attributable to any act or omission on the part of Lessee, Lessee's employees, contractors, subcontractors, agents, representatives, associates, guests and/or invitees. Should Lessee fail or be unable to promptly affect any such repairs, City shall have the right to make such repairs, and Lessee agrees to reimburse City for all reasonable costs of such repairs, including reasonable administrative costs.

Section 4.05 Maintenance/Repair.

Lessee, at its sole cost and expense, assumes full responsibility for and shall accomplish all necessary repairs and maintenance, including without limitation cleaning and janitorial service necessary to maintain such Premises and any appurtenant facilities in good condition and repair and neat and clean appearance, it being expressly understood that City will provide only for major structural maintenance and repairs to facility structure, air conditioning /heating unit, roof and outside walls, not necessitated by the acts or omissions of Lessee.

Section 4.06 City's Right To Enter.

City's representatives shall have the right to enter upon all or any part of the Leased 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 Lessee 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 Lessee cannot adequately respond. Lessee understands that Lessee may be billed by City for the full cost of performing such repairs.

Section 4.07 Utilities.

During the term of this Lease, Lessee shall pay as rent all charges for water, sewage, gas, and electricity supplied to and used by the Leased Premises. Lessee shall pay for any other utility service and for all telephone/communication expenses supplied to and used by the Leased Premises, which charges shall be paid before delinquency, and City and such Leased Premises shall be protected and held harmless by Lessee therefrom.

Section 4.08 Disposable Waste.

Lessee shall make proper arrangement for the disposal of any and all solid or liquid waste

which may result from or be incidental to Lessee's use of the Leased Premises.

Section 4.09 Control of Hazards And Nuisances.

Lessee shall, at all times, keep the Leased Premises and each and every part thereof in a neat, clean and orderly condition, and shall prevent the accumulation of, and shall maintain said Premises free from any refuse or waste materials which might be or constitute a potential health, environmental, or fire hazard or public or private nuisance. Lessee shall neither conduct nor suffer or permit the conducting of any activity on the Leased Premises which either directly or indirectly produces objectionable or unlawful amounts or levels of air pollution (gases, particulate matter, odors, fumes, smoke, dust, etc.); water pollution; light, glare, or heat; electronic and/or radio emissions interfering with any navigational or communications facilities/operations associated with the operation of the Airport and/or its use by aircraft; trash or refuse accumulation; or any other activity/operation which is hazardous or dangerous by reason or risk of explosion, fire or harmful emission. Lessee shall not cause or permit to occur any violation of any federal, state, or local law, ordinance, or regulation now or hereafter enacted, related to environmental conditions in, on, under or about the Leased Premises, or arising from Lessee's use(s) or occupancy(ies) thereof, including, but not limited to, soil and ground water conditions.

ARTICLE V - DEFAULT

Section 5.01 Default By Lessor.

Lessor shall not be in default unless Lessor fails to perform obligations required of Lessor under this Lease within a reasonable period of time, but in no event later than thirty (30) days after written notice is served upon Lessor by Lessee specifying wherein Lessor has failed to perform any such obligation; provided, however, that if the nature of Lessor's obligation is such that more than thirty (30) days may reasonably be deemed to be required for performance, then Lessor shall not be in default if Lessor commences performance within such 30-day period and thereafter diligently prosecutes the same to completion.

Section 5.02 Default By Lessee.

A. Defaults.

The occurrence of any of the following events shall constitute a material default and breach of this Lease by Lessee:

1. The vacating or abandonment of the Leased Premises by Lessee.
2. The failure by Lessee to use the Leased Premises for lawful purposes only and/or failure by Lessee 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 Lessee's occupancy(ies) and/or use(s) of any part or all of the Leased Premises, as such statutes, laws, ordinances, rules, regulations, standards or requirements exist(ed) on the commencement date of the term hereof or as such may exist at any time and from time to time during the life hereof, 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 Lessee in any proceeding brought against Lessee by any government entity.

3. The inability of and/or failure by Lessee to obtain, pay for, and maintain in full force and effect at all times during the life of this Lease, without any lapse in coverage, such insurance and surety as shall be required of Lessee hereunder.
4. The occurrence of any of the following:
 - (a) Lessee's becoming insolvent, or failing in business, or the making by Lessee of any general arrangement or an assignment for the benefit of creditors;
 - (b) the filing by or against Lessee of a petition to have Lessee 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 Lessee, the same is dismissed within sixty [60] days);
 - (3) the appointment of a receiver to take possession of substantially all of Lessee's assets located in or on the Leased Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within thirty (30) days; or
 - (4) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located in or on the Leased Premises or of Lessee's interest in this Lease, where such seizure is not discharged within thirty (30) days.
5. Any attempted/purported hypothecation, encumbrance, sale, assignment, or transfer of this Lease, in whole or in part, and/or any of Lessee's rights, title and interests in or to any part or all of the Leased 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 hereof or which may at any time and from time to time be constructed/installed therein or thereon during the life of this Lease, or any attempted/purported sub-letting/renting of any part or all of the Leased Premises by Lessee to any other person or entity whomsoever, or Lessee's following any occupancy/use of the Leased Premises, in whole or in part, by any person/entity, other than Lessee, without Lessor's prior written consent pursuant to and in conformity with the provisions of this Lease.
6. The failure by Lessee to make any payment of rent or any other required payment, as and when due hereunder, where such failure shall continue for a period of ten (10) days following service of notice thereof upon Lessee by Lessor.

7. The failure by Lessee to keep, observe, undertake, fulfill, or perform any of the terms, covenants, conditions, warranties, agreements, obligations, and/or provisions of this Lease to be kept, observed, undertaken, fulfilled, and/or performed by Lessee, other than those herein-above where such failure shall continue for a period of thirty (30) days following service of notice thereof upon Lessee by Lessor; provided, however, that if the nature of Lessee's default is such that more than thirty (30) days are reasonably required for its cure, then Lessee shall not be deemed to be in default and breach of this Lease if Lessee commenced such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion as soon as reasonably possible following service of such notice upon Lessee by Lessor.

B. Lessor's Remedies.

1. Abandonment: If Lessee abandons the Leased Premises, this lease shall continue in effect. Lessor shall not be deemed to terminate this Lease as a result of such material default and breach other than by written notice of termination served upon Lessee by Lessor, and Lessor shall have all of the remedies available to Lessor under Section 1951.4 of the Civil Code of the State of California so long as Lessor does not terminate Lessee's right to possession of the Leased Premises, and Lessor may enforce all of Lessor's rights and remedies under this Lease, including the right to recover the rent as it becomes due under the Lease. After abandonment of the Leased Premises by Lessee, Lessor may, at any time thereafter, give notice of termination.
2. Termination: Upon the occurrence of any material default and breach of this Lease by Lessee as set forth within this Article, Lessor may then immediately, or at any time thereafter, terminate this Lease by service of a minimum of thirty (30) days advance written notice to such effect upon Lessee, in which event this Lease shall terminate at 11:59:59 p.m., on the termination date specified within such notice.
 - (a) Such notice shall, as a minimum, set forth the following:
 - (1) The default and breach which resulted in such termination by Lessor; and
 - (2) a demand for possession, which, in the event only thirty (30) days advance notice shall be given by Lessor, shall be effective at 12:00:01 a.m., on the eleventh (31st) calendar day following the date on which the notice in which such demand is contained shall be sufficiently served upon Lessee by Lessor in conformity with the provisions of, Article VIII, Section 8.11, "Notices," of this Lease; 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 Lessor may, at its option, desire or be required to give (e.g., "Demand For Payment" of any and all monies due and owing).
- 3. Possession: Following termination of this Lease by Lessor pursuant to any of the provisions of this lease, without prejudice to other remedies Lessor may have by reason of Lessee's default and breach and/or by reason of such termination, Lessor may:
 - (a) peaceably re-enter the Leased Premises upon voluntary surrender thereof by Lessee; or
 - (b) remove Lessee and/or any other persons and/or entities occupying the Leased Premises therefrom, and remove all personal property therefrom and store all such property not belonging to Lessor in a public warehouse or elsewhere at the cost of and for the account of Lessee, using such legal proceedings as may be available to Lessor under the laws or judicial decisions of the State of California; or
 - (c) repossess the Leased Premises or re-let the Leased Premises or any part thereof for such term (which may be for a term extending beyond the term of this Lease) at such rental and upon such other terms and conditions as shall be determined solely by Lessor, with the right to make reasonable alterations and repairs to the Leased Premises.
- 4. Recovery: Following termination of this Lease by Lessor pursuant to any of the provisions of this lease, Lessor shall have all the rights and remedies available to Lessor under Section 1951.2 of the Civil Code of the State of California. The amount of damages Lessor may recover following such termination of this Lease shall include:
 - (1) the worth at the time of award of the unpaid rent which had been earned at the time of termination of this Lease;
 - (2) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination of this Lease until the time of award exceeds the amount of such rental loss that Lessee proves could have been reasonably avoided;
 - (3) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss for the same period Lessee proves could be reasonably avoided; and

- (4) any other amount necessary to compensate Lessor for all the detriment proximately caused by Lessee's failure to perform Lessee's obligations under this Lease 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 Lease by Lessee as set forth within this lease, above, in addition to the foregoing remedies, Lessor may maintain Lessee's right to possession, in which case this Lease shall continue in effect whether or not Lessee shall have abandoned the Leased Premises and, so long as this Lease is not terminated by Lessor or by a decree of a court of competent jurisdiction, Lessor shall be entitled to enforce all of Lessor's rights and remedies hereunder, including the right to recover the rent as it becomes due under this Lease, and, during any such period, Lessor shall have the right to remedy any default of Lessee, to maintain or improve the Leased Premises without terminating this Lease, to incur expenses on behalf of Lessee in seeking a new sub-tenant, to cause a receiver to be appointed to administer the Leased Premises and any new or existing sub-leases and to add to the rent payable hereunder all of Lessor'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 Lessee causes or threatens to cause a breach of any of the covenants, terms or conditions contained in the Lease, Lessor shall be entitled to obtain all sums held by Lessee, 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 Lease.
7. Cumulative Remedies: Each right and remedy of Lessor provided for in this Lease or now or hereafter existing at law, in equity, by statute or otherwise shall be cumulative and shall not preclude Lessor from exercising any other rights or from pursuing any other remedies provided for in this Lease or now or hereafter available to Lessor under the laws or judicial decisions of the State of California.
8. Indemnification: Nothing contained within this Section affects the right of Lessor to indemnification by Lessee as herein elsewhere provided in this Lease.

ARTICLE VI - NATIONAL EMERGENCY AND CONDEMNATION/EMINENT DOMAIN

Section 6.01 Total Taking/Condemnation of Leased Premises.

- A. 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 Leased Premises, by requisition or other unilateral action as the result of a national emergency or otherwise,

this Lease shall terminate as of the effective date of any such taking; or, if all of the Leased Premises shall be taken by public authority pursuant to condemnation actions(s) under the laws of eminent domain, this Lease shall terminate as of the date of title vesting in such proceeding.

- B. Unless otherwise expressly provided in this Lease, upon termination of this Lease as a result of either of the events described within paragraph A of this Section 6.01 of this Article VI, above, 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 Lessor shall promptly return, on a pro rata basis, any then unearned rent theretofore paid by Lessee hereunder.
- C. Lessor shall not be liable to Lessee for any injury to Lessee's business or loss of income or any other injury or loss suffered by Lessee as a result of any such taking and/or termination.

Section 6.02. Partial Taking/Condemnation of Leased Premises.

In the event that only a part of the Leased Premises shall be taken as a result of any of those actions described in Section 6.01 of this Article, above, if such partial taking shall involve land other than that on which any leased building is situated and shall not otherwise constitute a bar to Lessee's continued beneficial occupancy and use of that/those portion(s) of the Leased Premises not so taken, this Lease shall continue in full force and effect and that/those certain parcel(s) of land so taken shall be automatically deleted from the premises leased by Lessor to Lessee hereunder, as of the date of such taking and/or title vesting, and the rent then being paid to Lessor by Lessee shall then be adjusted to an amount which shall be equal to the total rental then being paid by Lessee pursuant to the provisions hereof on the date immediately preceding the date of such taking and/or title vesting resulting in such deletion, less that certain portion of said total rental then being paid for the portion(s) of the Leased Premises then so deleted.

Section 6.03. Awards.

In the event that all or part of the Leased Premises shall be taken as a result of any of those actions described in Section 6.01 of this Article, above, the rights of the parties hereto with respect to such award(s) as shall be paid for such taking shall be as follows:

- A. Lessor shall be entitled to the entire amount of any and all compensation awarded by reason of the taking of the leased land and any and all Lessor-owned improvements then located therein or thereon, and Lessee waives any right or claim to any part of said amount from Lessor or the condemning authority.
- B. Lessee shall have the right to claim and recover from the condemning authority such compensation as may be separately awarded or recoverable by Lessee in Lessee's own right on account of:
 - 1. the taking of or injury to any Lessee-owned improvements then located on the leased land, including the value of the then existing leasehold interest therein and thereto to the extent of Lessee's interest therein,

based on the value of the then remaining unexpired portion of the term of this Lease, as said value shall be determined in the proceedings for the taking of such operations and awarding such compensation; and

2. any and all cost or loss (including loss of business) which may be incurred by Lessee as a result of Lessee's having to remove Lessee's personal property (including merchandise, furniture, industrial improvements, office improvements, trade fixtures and equipment) to a new location.

Section 6.04. Notice and Execution.

Upon service of process upon Lessor in connection with either any taking over of Airport by the United States Government or any condemnation or potential condemnation, Lessor shall immediately give Lessee notice thereof in writing. Lessee shall immediately execute and deliver to Lessor any and all instruments which may be required to fully effectuate any and all of the provisions of this Article VI of this Lease if, as and when any such instruments shall be required of Lessee.

ARTICLE VII - INSURANCE, INDEMNIFICATION, AND EXEMPTION OF CITY

Section 7.01 Insurance.

- A. Throughout the life of this Agreement, Lessee 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 City's Risk Manager or his/her designee at any time and in his/her sole discretion. The City of Fresno and each of its officers, officials, employees, agents and volunteers (hereinafter referred to collectively as "City") 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 CITY, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.
- B. If at any time during the life of the Agreement or any extension, Lessee or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to Lessee shall be withheld 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. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Agreement. No action taken by City pursuant to this section shall in any way relieve Lessee of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by City 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 Lessee shall not be deemed to release or

diminish the liability of Lessee, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify City 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 Lessee. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Lessee, 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 Agreement) 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 CITY, 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 LESSEE

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

1. **COMMERCIAL GENERAL LIABILITY :**
 - (i) \$2,000,000 per occurrence for bodily injury and property damage;
 - (ii) \$2,000,000 per occurrence for personal and advertising injury;
 - (iii) \$4,000,000 aggregate for products and completed operations; and,
 - (iv) \$4,000,000 general aggregate applying separately to the work performed under the Agreement.
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 LESSEE'S business property.

UMBRELLA OR EXCESS INSURANCE

In the event Lessee 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 the City of Fresno and each of its officers, officials, employees, agents and volunteers.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

Lessee shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and Lessee 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, the City's Risk Manager or his/her designee. At the option of the City's Risk Manager or his/her designee, either:

- (i) The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officers, officials, employees, agents and volunteers; or
- (ii) Lessee shall provide a financial guarantee, satisfactory to City's Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall the City 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 (30) calendar days written notice has been given to City, except ten (10) days for nonpayment of premium. Lessee is also responsible for providing written notice to the City under the same terms and conditions. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, Lessee shall furnish City 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 City, Lessee 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 The City of Fresno and each of its officers, officials, employees, agents and volunteers as additional insureds.

Lessee shall establish additional insured status for the CITY 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 Lessee's insurance shall be primary and no contribution shall be required of City. The coverage shall contain no special limitations on the scope of protection afforded to The City of Fresno and each of its officers, officials, employees, agents and volunteers. If Lessee maintains higher limits of liability than the minimums shown above, City requires and shall be entitled to coverage for the higher limits of liability maintained by Lessee.

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 The City of Fresno and each of its officers, officials, employees, agents and volunteers.

The property insurance policy is to contain, or be endorsed to contain, the following provisions:

1. Full replacement value of any permanent improvements on the Leased Premises, with the City named as a Loss Payee.
2. The coverage shall contain:
 - (i) No coinsurance penalty.
 - (ii) No limitations or exclusions for vacancy of any part of the Premises.
 - (iii) No special limitations on the scope of protection afforded to City.

PROVIDING OF DOCUMENTS - Lessee shall furnish City with all certificate(s) and applicable endorsements effecting coverage required herein **All certificates and applicable endorsements are to be received and approved by the City's Risk Manager or his/her designee prior to City's execution of the Agreement and before work commences.** All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon request of City, Lessee shall immediately furnish City with a complete copy of any insurance policy required under this Agreement, 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 Agreement. All

subcontractors working under the direction of Lessee shall also be required to provide all documents noted herein.

Documents shall be sent to the following address:

City of Fresno – Airports Department
Attn.: Properties Division
4995 E. Clinton Way
Fresno, CA 93727

MAINTENANCE OF COVERAGE - If at any time during the life of the Agreement or any extension, Lessee or any of its subcontractors fail to maintain any required insurance in full force and effect, all work under this Agreement 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. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Agreement. No action taken by City hereunder shall in any way relieve Lessee of its responsibilities under this Agreement. The phrase “fail to maintain any required insurance” shall include, without limitation, notification received by City that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

The fact that insurance is obtained by Lessee shall not be deemed to release or diminish the liability of Lessee, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify City 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 Lessee. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Lessee, its principals, officers, agents, employees, persons under the supervision of Lessee, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

SUBCONTRACTORS - If Lessee should subcontract all or any portion of the services to be performed under this Agreement, Lessee shall require, at the discretion of the CITY, their subcontractor to enter into a separate Side Agreement in order to provide indemnification and insurance protection to City. Lessee shall verify that all subcontractors maintain insurance meeting all the requirements stated herein and Lessee shall ensure that City and each of their officers, officials, agents, employees and volunteers are additional insureds. The subcontractors' certificates and endorsements shall be on file with Lessee and City prior to the commencement of any work by the subcontractor.

This section shall survive termination or expiration of this Agreement.

Section 7.02 Waiver of Subrogation

- A. Lessee and its insurers hereby waive all rights of recovery against City and each of its officers, officials, employees, agents and volunteers, on account of injury, loss by or damage to the Lessee, its principals, officers, agents, employees, persons under the supervision of Lessee, vendors, suppliers, invitees, consultants, sub-consultants, contractors, or anyone employed directly or indirectly by any of them, or its property or

the property of others under its care, custody and control, to the extent that such injury, loss or damage is insured against under any insurance policy which may have in force at the time of the injury, loss or damage. Lessee shall, upon obtaining the policies of insurance required under this Concession Agreement, give notice to its insurers insurance carrier or carriers that this waiver of subrogation is contained in this Agreement.

B. This requirement shall survive termination or expiration of this Agreement.

Section 7.03 Indemnification: Indemnification/Defense/Hold Harmless Agreement.

Lessee shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and authorized 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, Lessee 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 performance of this Lease. Lessee's obligations under the preceding sentence shall apply regardless of whether City or any of its officers, officials, employees, agents or authorized volunteers are negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the gross negligence, or caused by the willful misconduct, of City or any of its officers, officials, employees, agents or authorized volunteers.

If Lessee should subcontract all or any portion of the work to be performed under this Lease, Lessee shall require each subcontractor to indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and authorized volunteers in accordance with the terms of the preceding paragraph.

This section shall survive termination or expiration of this Agreement.

Section 7.04 Exemption of City.

Lessee hereby specifically warrants, covenants and agrees that City shall not be liable for injury to Lessee's business or any loss of income therefrom or for damage to the goods, wares, merchandise or other property located in, upon or about the leased Premises or elsewhere on Airport under authority hereof, whether belonging to Lessee, or Lessee's employees, customers, agents, contractors, sub-contractors, tenant, sub-lessee of Lessee, or any other person whomsoever; nor shall City be liable for any injury to the person of Lessee or Lessee's employees, agents, contractors, subcontractors, tenants, sub-lessees, 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 Leased Premises or in or on any of the improvements/facilities appurtenant thereto located therein or thereon, 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 Lessee. Lessee also covenants and agrees that City shall not be liable for any damages arising from any act or neglect on the part of any third parties.

ARTICLE VIII - GENERAL PROVISIONS

Section 8.01 Non-Transferability.

This Lease is non-transferable and shall be valid only for the herein named Lessee for and to whom issued; thus, Lessee may not and shall not at any time sell, transfer, or assign or sublet this Lease, in whole or in part, and any attempted or purported sale, transfer, or assignment or sublease let hereof shall be null and void and shall constitute a breach of this Lease by Lessee.

Section 8.02 Government Requirements.

A. Permits with the United States Government.

This Lease is subject and subordinate to the provisions of any Leases heretofore or hereafter made between the City and the United States Government, the execution of which is required to enable or permit transfer of rights or property to City for Airport purposes or expenditure of federal funds for Airport improvement, maintenance or development. Lessee shall abide by requirements of Leases entered into between the City and the United States Government, and shall consent to amendments and modifications of this Lease if required by such Leases or if required as a condition of City's entry into such Leases, provided however that if any modification to said Lease with the United States Government has a material or adverse impact on the operations of the Lessee, the Lessee shall have the right to terminate this Lease upon ninety (90) days written notice.

Section 8.03 Nondiscrimination And Civil Rights Compliance.

A. General Civil Rights Provisions

The Concessionaire agrees 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 handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the Concessionaire from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

B. Civil Rights Act Of 1964, Title VI

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

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

2. Non-discrimination: The Concessionaire, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractor, including procurements of materials and leases of equipment. The Concessionaire will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the Concessionaire for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Concessionaire of the Concessionaire's obligations under this contract and the Nondiscrimination Acts And Authorities on the grounds of race, color, or national origin.
4. Information and Reports: The Concessionaire will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts And Authorities and instructions. Where any information required of a Concessionaire is in the exclusive possession of another who fails or refuses to furnish the information, the Concessionaire will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance: In the event of a Concessionaire's noncompliance with the Non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - (a.) Withholding payments to the Concessionaire under the contract until the Concessionaire complies; and/or
 - (b.) Cancelling, terminating, or suspending a contract, in whole or in part.
6. Incorporating Provisions: The Concessionaire will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Concessionaire will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Concessionaire becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Concessionaire may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the

Concessionaire may request the United States to enter into the litigation to protect the interests of the United States.

Section 8.04 Title VI List Of Pertinent Nondiscrimination Acts And Authorities

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

1. 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);
2. 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
3. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
4. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
5. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
6. Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
7. The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
8. Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
9. The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
10. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

11. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
12. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

Section 8.05 Federal Fair Labor Standards Act (Minimum Wage).

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

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

Section 8.06 Occupational Safety And Health Act Of 1970.

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

Section 8.07 Disadvantaged Business Enterprise.

The Lessee agrees that it shall at all times comply with FAA Regulation 49 CFR Part 23, Subpart F, or as superseded by CFR Part 26 to the extent that such obligation applies to Lessee in accordance with Federal Regulations and the City's DBE Program for Federally Assisted Projects supplied herewith or available from the City.

Section 8.08 Federal Aviation Act, Section 308.

Nothing herein contained shall be deemed to grant the Lessee any exclusive right or privilege within the meaning of Section 308 of the Federal Aviation Act or the conduct of any activity on Airport, except that, subject to the terms and provisions hereof, Lessee shall have the right to conduct operations at the Airport under the provisions of this Lease.

Section 8.09 Airport Safety/Security.

- A. Lessee shall observe all safety/security requirements of Federal Aviation Regulations, Transportation Security Regulations and Airport Security Program, applicable parts, as the same may be from time-to-time amended, which will be furnished to Lessee as approved by the Federal Aviation Administration and/or Transportation Security Administration, and to take such steps as may be necessary or directed by City to ensure that employees, invitees, and guests observe these requirements.
- B. If City incurs any fines and/or penalties imposed by the Federal Aviation Administration, Transportation Security Administration, or any other federal, state, or local agency, or any expense in enforcing the regulations of Federal Aviation Regulations, Transportation Security Administration and/or Airport Security Program, as a result of the acts or omissions of Lessee, Lessee agrees to pay and/or reimburse all such costs and expense. Lessee further agrees to rectify any security deficiency as may be determined as such by City or the Federal Aviation Administration or Transportation Security Administration. City reserves the right to take whatever action necessary to rectify any security deficiency, in the event Lessee fails to remedy the security deficiency.

Section 8.10 Federal Grant Agreement Assurances.

Those numbered provisions set forth within Section "B", "Assurances", of Exhibit "B", "Assurances Required by the Federal Aviation Administration" (FAA), attached hereto and made a part hereof, are specific provisions required by the FAA to be appropriately included within all licenses (including, without limitation, leases, licenses, permits, and contracts) between the City of Fresno, California and any and all entities who use or perform work or conduct activities on City-owned airport premises for aeronautical or non-aeronautical purposes. Lessee, 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. Lessee hereby expressly agrees that, throughout the 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 as same may be amended, from time to time, during the term hereof, by City, as 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 Lessee on the start date of the term hereof or which, as a result of changing facts and/or circumstances, shall subsequently become applicable to Lessee hereunder, during the term hereof.

Section 8.11 Liens And Claims.

Lessee shall not suffer or permit to be enforced against Lessor's title to the Leased Premises, or any part thereof, any lien, claim or demand arising from any work of construction, repair, restoration, maintenance or removal as herein provided, or otherwise arising (except liens, claims or demands suffered by or arising from the actions of Lessor), and Lessee shall pay all such liens, claims and demands before any action is brought to enforce same against said Premises; and Lessee agrees to hold Lessor and said Premises free and harmless from all liability for any and all such liens, claims or demands, together with all costs and expenses in connection therewith. Lessor shall have the right at any time to post and maintain on said Premises such notices as may be necessary to protect Lessor against liability for all such liens,

claims and demands. This paragraph shall survive expiration or termination of this Lease.

Section 8.12 Independent Contractor.

Lessee is and throughout this Lease shall be an independent contractor and not an employee, partner or agent of the City. Neither party shall have any right to control, supervise or direct the manner or method or choice by which the other party or its contractors shall perform its or their work or function. However, each party shall retain the right to verify that the other is performing its respective obligations in accordance with the terms hereof.

Neither the Lessee, nor any of its officers, associates, agents or employees shall be deemed an employee of the City for any purpose. Lessee shall not be entitled to nor shall it receive any benefit normally provided to employees of the City such as, but not limited to, vacation payment, retirement, health care or sick pay. The City shall not be responsible for withholding income or other taxes from the payments made to Lessee. Lessee shall be solely responsible for filing all returns and paying any income, social security or other tax levied upon or determined with respect to the payments made to Lessee pursuant to this Lease.

Section 8.13 Inability Of Lessor To Perform.

This Lease and the obligations of Lessee hereunder shall not be affected or impaired because Lessor is unable to fulfill any of its obligations hereunder or is delayed in doing so, if such inability or delay is caused by reason of strike, labor troubles, acts of God, or any other cause beyond the reasonable control of Lessor.

Section 8.14 Partnership/Joint Venture.

This Lease does not evidence a partnership or joint venture between Lessee and City. Except the any extent expressly provided for in this Lease, (i) the City does not grant, convey, or delegate to Lessee any tangible or intangible property interest or express or implied agency, license, right or authority, (ii) Lessee shall have no authority to bind the City absent its express written consent, (iii) either Party shall be free from obligations or liabilities under contracts entered by the other, and (iv) each Party shall bear its own costs/expenses in pursuit hereof.

Section 8.15 Review/Examination Of Lease.

Submission of this instrument by City for review, examination and/or execution by or on behalf of Lessee does not constitute a reservation of or option to obtain a Lease and this instrument is not effective as a Lease or otherwise, unless and until authorized and executed and delivered by both City and Lessee.

Section 8.16 Interpretation Of Provisions.

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

Section 8.17 Invalid Provisions.

In the event any term, covenant, condition or provision of this Lease, 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 Lease, 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 unenforceability 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 Lease.

Section 8.18 Captions and Paragraph Numbers.

The captions, paragraph and sub-paragraph numbers and/or alphabetical identifiers appearing in this Lease 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 sections, paragraphs or subparagraphs of this Lease nor in any way whatsoever affect this Lease.

Section 8.19 Notices.

Any notice or other communication to City or Lessee pursuant hereto shall be deemed validly given, serviced or delivered upon deposit in the United States mail, certified, and with proper postage and fees prepaid, addressed to City or Lessee, respectively, at the addresses hereinafter shown or at the address hereafter in writing:

City of Fresno
Airports Department
4995 East Clinton Way
Fresno, CA 93727

Flight Services & Systems, Inc
5005 Rockside Road, Suite 940
Independence, Ohio 44131

Section 8.20 Personal Service.

Personal service, as aforesaid, shall be deemed served and effective upon delivery thereof. Service by mail, as aforesaid, shall be deemed to be sufficiently served and effective 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 registered or certified mail, properly addressed and postage prepaid.

Section 8.21 Rules and Regulations.

Lessee shall observe and obey and require its officers, employees, agents and invitees to obey and observe the duly enacted and lawful rules and regulations of the City, and the duly enacted and lawful rules and regulations now in existence or hereafter promulgated by City, by the Federal Aviation Administration, or by any other local, state, or federal agency of competent jurisdiction. Lessee shall comply with all federal, state and municipal laws, regulations and ordinances, including all promulgated which may apply to the operations of business at the Airport.

Section 8.22 Amendment.

This Lease may not be changed, amended, or otherwise modified in any way whatsoever, except in writing, authorized by the City and signed by both City and Lessee.

Section 8.23 Acknowledgment By Lessee.

By its signature(s) hereunto affixed, Lessee expressly acknowledges that Lessee clearly understands that neither this Lease, itself, nor the issuance of this Lease by City to Lessee nor acceptance of this Lease by Lessee constitutes, in any way whatsoever, any Lease by or on behalf of City to enter into any further/other Lease, permit, lease, or other arrangement of any type whatsoever, beyond the term of or in addition to this Lease.

Section 8.24 Interpretation.

The parties acknowledge that this Lease in its final form is the result of the combined efforts of the parties and that, should any provision of this Lease be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Lease in favor or against any party, but rather by construing the terms in accordance with their generally accepted meaning.

Section 8.25 Attorney's Fees.

If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Lease the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses in addition to any other relief to which such party may be entitled.

Section 8.26 Exhibits.

Each exhibit and attachment referenced in this Lease is, by the reference, incorporated into and made a part of this Lease.

Section 8.27 Precedence Of Documents.

In the event of any conflict between the body of this Lease and any Exhibit or Attachment hereto, the terms and conditions of the body of this Lease shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment. Furthermore, any terms or conditions contained within any Exhibit or Attachment hereto which purport to modify the allocation of risk between the parties, provided for within the body of this Lease, shall be null and void.

Section 8.28 Cumulative Remedies.

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

Section 8.29 Non-Solicitation.

Lessee represents and warrants that it has not paid or agreed to pay any compensation, contingent or otherwise, to solicit or procure this Lease or any rights/benefits hereunder.

Section 8.30 Waiver.

- A. The waiver by either party of a breach by the other of any provision of this Lease shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Lease.
- B. No provisions of this Lease may be waived unless in writing and signed by all parties to this Lease.

Section 8.31 Assigns/Successors.

Subject to section 3.04 above, this Lease and all rights, benefits, duties, liabilities and obligations hereunder shall inure to the benefit of, and be binding upon the parties, signatories, and their respective principals, successors, transferees, agents, servants, representatives and assigns.

Section 8.32 Governing Law And Venue.

This Lease shall be governed by, and construed and enforced in accordance with, the laws of the State of California. Venue for purposes of the filing of any case, controversy or proceeding regarding the enforcement or interpretation of this Lease and any rights and duties hereunder shall be Fresno County, California.

Section 8.33 Final Lease.

Each party acknowledges that they have read and fully understand the contents of this Lease. This Lease and any documents, instruments and materials referenced and incorporated herein represents the entire and integrated Lease between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or Leases, either written or oral. This Lease may be modified only by written instrument duly authorized and executed by both City and Lessee.

Section 8.34 Counterparts.

This Lease may be executed in any number of counterparts and any party may execute any counterpart, each of which when executed and delivered will be deemed to be an original and all of which counterparts taken together will be deemed to be but one and the same instrument. The execution of this Lease by any party hereto will not become effective until counterparts hereof have been executed by all parties hereto.

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SECTION IX - SIGNATURES

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

City of Fresno
A Municipal Corporation

By: _____
Kevin R. Meikle,
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: Amanda B. Freeman
Amanda B. Freeman, Date
Deputy City Attorney

3/14/18

ATTEST:
Yvonne Spence, CMC
City Clerk

By: _____
Deputy

FLIGHT SERVICES AND SYSTEMS, INC.
An Ohio Corporation

By: Robert A. Weitzel
Name: ROBERT A. WEITZEL
Title: CEO 3/8/18

(if corporation or LLC, must be
CEO/President of Board/Vice President
of Board (circle one))

By: Dia Ray
Name: Dia Ray
Title: V.P., Administration

(if corporation or LLC, must be
CFO/Treasurer/Secretary (circle
one))

Address for Notice:
Flight Services and Systems Inc.
5005 Rockside Road, Suite 940
Independence, Ohio

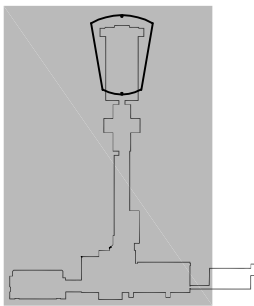
LIST OF EXHIBITS

EXHIBIT A: Depiction of Premises
EXHIBIT B: Assurances Required By The Federal Aviation Administration
EXHIBIT C: Conflict of Interest Form

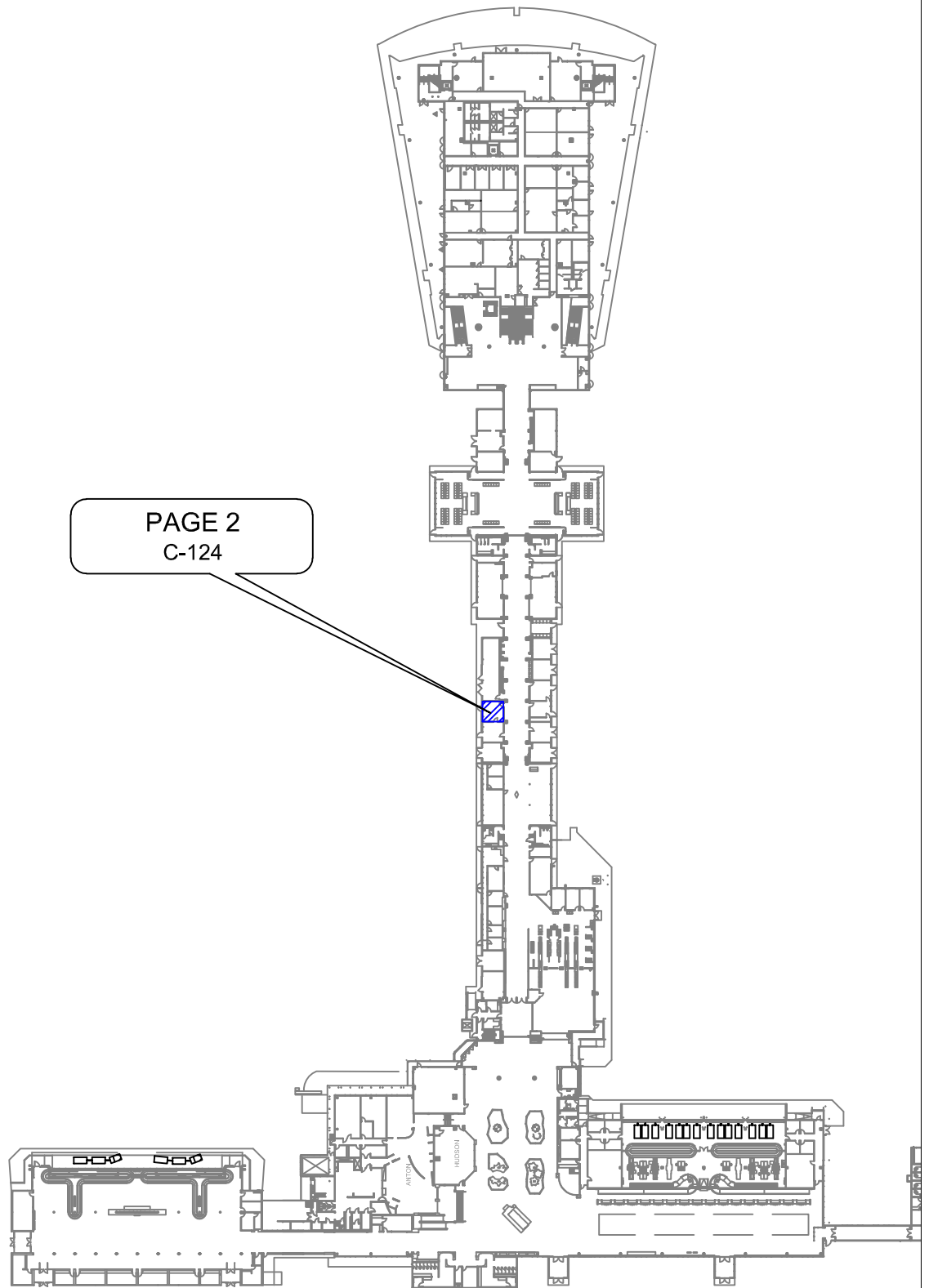
EXHIBIT “A”



PAGE 2
C-124



TERMINAL KEY



REVISIONS/REFERENCE
REV NO.

XX/XX/20XX JSG



CITY OF FRESNO
AIRPORTS DEPARTMENT
4995 EAST CLINTON WAY
FRESNO, CALIFORNIA 93727
PHONE: 559-621-4500

FRESNO YOSEMITE INTERNATIONAL AIRPORT

EXHIBIT "A"
TERMINAL CONCOURSE ROOM C-124
FS&S LEASE

J:\ARCHIVE\25A\25A00457.DWG

KRA NO. _____
FUND NO. _____
ORG NO. _____
ACTIVITY _____
PROJECT I.D. _____

AIRPORTS DEPARTMENT

DIRECTOR OF AVIATION
KEVIN R. MEIKLE, ARCHITECT

APPROVED

CONST. ENG. _____ OFFICE ENG. _____
CITY DESIGN ENG. _____

DR. BY: JSG
CH. BY: MGP
DATE: 01/30/18
SCALE: N/A

CITY DRAWING NO. 25-A-457
SHEET NO. 1

OF 2 SHEETS

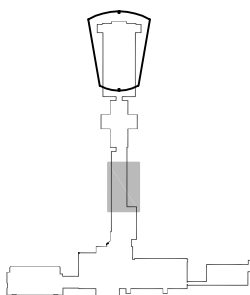


C-124
250 SQ.FT.

LEGEND



FS&S
LEASE



TERMINAL KEY

REVISIONS/REFERENCE
REV NO.

XX/XX/XX JSG



CITY OF FRESNO
AIRPORTS DEPARTMENT
4995 EAST CLINTON WAY
FRESNO, CALIFORNIA 93727
PHONE: 559-621-4500

FRESNO YOSEMITE INTERNATIONAL AIRPORT

EXHIBIT "A" TERMINAL CONCOURSE ROOM C-124 FS&S LEASE

J:\ARCHIVE\25A\25A00457.DWG

KRA NO. _____
FUND NO. _____
ORG NO. _____
ACTIVITY _____
PROJECT I.D. _____

AIRPORTS DEPARTMENT

DIRECTOR OF AVIATION
KEVIN R. MEIKLE, ARCHITECT

APPROVED

CONST. ENG. _____ OFFICE ENG. _____
CITY DESIGN ENG. _____

DR. BY: JSG
CH. BY: MGP
DATE: 01/30/18
SCALE: 1"=20'

CITY DRAWING NO. 25-A-457
SHEET NO.

2

OF 2 SHEETS

EXHIBIT “B”



ASSURANCES

Airport Sponsors

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 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:

Federal Legislation

- a. Title 49, U.S.C., subtitle VII, as amended.
- b. Davis-Bacon Act - 40 U.S.C. 276(a), et seq.¹
- c. Federal Fair Labor Standards Act - 29 U.S.C. 201, et seq.
- d. Hatch Act – 5 U.S.C. 1501, et seq.²
- e. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 Title 42 U.S.C. 4601, et seq.^{1 2}
- f. National Historic Preservation Act of 1966 - Section 106 - 16 U.S.C. 470(f).¹
- g. Archeological and Historic Preservation Act of 1974 - 16 U.S.C. 469 through 469c.¹
- 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.¹
- 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.¹
- s. Power plant and Industrial Fuel Use Act of 1978 - Section 403- 2 U.S.C. 8373.¹
- t. Contract Work Hours and Safety Standards Act - 40 U.S.C. 327, et seq.¹
- 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.¹
- 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.²
- 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

- a. Executive Order 11246 - Equal Employment Opportunity¹
- 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 Construction¹
- f. Executive Order 12898 - Environmental Justice

Federal Regulations

- a. 2 CFR Part 180 - OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement).
- 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].^{4, 5, 6}
- c. 2 CFR Part 1200 – Nonprocurement Suspension and Debarment
- d. 14 CFR Part 13 - Investigative and Enforcement Procedures 14 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.¹
- 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.¹
- 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).¹
- k. 41 CFR Part 60 - Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and federally assisted contracting requirements).¹
- l. 49 CFR Part 18 - Uniform administrative requirements for grants and cooperative agreements to state and local governments.³
- 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.^{1 2}
- 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.¹
- 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 – Governmentwide 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.

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.

Footnotes to Assurance C.1.

¹ These laws do not apply to airport planning sponsors.

² These laws do not apply to private sponsors.

³ 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.

⁴ 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.

⁵ Cost principles established in 2 CFR part 200 subpart E must be used as guidelines for determining the eligibility of specific types of expenses.

⁶ 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. 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. 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 nonaviation 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. 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.

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 with respect to the project in the same manner as a contract for architectural and engineering services is negotiated under Title IX of the Federal Property and Administrative Services Act of 1949 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 _____ (the latest approved version as of this grant offer) 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 DBE and 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.

EXHIBIT “C”

Exhibit "C"
DISCLOSURE OF CONFLICT OF INTEREST

Lease & Agreement between City of Fresno ("Fresno")
Flight Services & Systems, INC ("FSS")

| | | YES* | NO |
|---|---|--------------------------|-------------------------------------|
| 1 | Are you currently in litigation with the City of Fresno or any of its agents? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 2 | Do you represent any firm, organization or person who is in litigation with the City of Fresno? | <input type="checkbox"/> | <input checked="" 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 checked="" 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 checked="" 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 checked="" 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 checked="" type="checkbox"/> |

* If the answer to any question is yes, please explain in full below.

Explanation: _____

☐ Additional page(s) attached.

Mullins
Signature

4/21/18
Date

Dia Ray V.P. Admin.
(name)

Flight Services & Systems
(company)

5005 Rockside Rd, Ste 940
(address)

Cleveland, OH 44131
(city state zip)