

14-0365



CARGO AIRLINE OPERATING PERMIT

between

**City of Manchester, New Hampshire
Department of Aviation**

and

Federal Express Corporation

March 1, 2016

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EXHIBITS

A	AIRPORT LAYOUT AND COST CENTER PLAN
B	RATE CALCULATION EXAMPLE
C	FISCAL YEAR 2016 RATES AND CHARGES
D	MONTHLY REPORT EXAMPLE
E	FLOW OF FUNDS CALCULATION
F	FLOW OF FUNDS ILLUSTRATION
G	AFFILIATE AIRLINE NOTIFICATION

THIS AGREEMENT (hereinafter "Agreement"), entered into and effective this 1st day of March, 2016, by and between the City of Manchester, Department of Aviation, a municipal corporation of the State of New Hampshire (hereinafter "CITY"), and Federal Express Corporation, a corporation organized under the laws of the State of Delaware, and registered to do business in the State of New Hampshire (hereinafter "AIRLINE");

WITNESSETH:

WHEREAS, CITY controls, operates, and manages an airport known as Manchester-Boston Regional Airport, located in the City of Manchester and the Town of Londonderry, State of New Hampshire (herein after "Airport"); and

WHEREAS, AIRLINE is engaged in the business of Air Transportation; and

WHEREAS, AIRLINE desires to use certain facilities, and acquire certain rights and privileges from CITY in connection with AIRLINE's use of the Airport; and

WHEREAS, CITY has the power and authority to enter into this Agreement and is willing to grant certain rights to AIRLINE upon the terms and conditions hereinafter stated;

NOW, THEREFORE, for and in consideration of the Rentals and Fees and the mutual covenants, agreements, and conditions contained in this Agreement, CITY does hereby grant certain rights and privileges, including the use of certain facilities, to AIRLINE and AIRLINE does hereby hire and take from CITY certain facilities, rights, and privileges in connection with and on the Airport as follows:

ARTICLE 1 DEFINITIONS

- 1.01 Definitions. Unless the context shall clearly indicate some other meaning, the terms defined in this Article 1 shall, for all purposes of this Agreement, have the meanings defined herein. Such meanings shall be equally applicable to both the singular and plural forms of the terms. All words, terms, or phrases that are not specifically defined in this Agreement shall have the meanings set forth in the Bond Documents, unless otherwise indicated.

Additional Revenue Credit shall mean forty percent (40%) of the revenue remaining after satisfying the requirements of the flow of funds established in Bond Documents and in this Agreement.

Affiliate shall mean any non-tenant Air Transportation company that is either a wholly-owned subsidiary of Airline or operates under essentially the same trade name as Airline at the Airport. An Affiliate shall have the rights afforded Airline without incurring any additional charges or premiums so long as Airline remains a Signatory to this Agreement. An Affiliate shall be primarily liable for the payment of Landing Fees and other fees incurred at the Airport; provided, however, that Airline shall be secondarily liable as a guarantor for all unpaid fees or charges incurred by such Affiliate while such Affiliate operates at the Airport. Unless specifically stated otherwise, "Airline" as used in throughout this Agreement shall be deemed to include "Affiliate". Airline shall provide the City with a completed Exhibit G, attached hereto, for each Affiliate active as of the effective date of this Amendment; subsequently Airline shall provide an updated Exhibit G thirty (30) days prior to Airline designating a new Affiliate, which designation is subject to City approval, solely based on a requirement that the proposed Affiliate meets the above criteria.

Agreement shall mean this "Cargo Airline Operating Permit, Manchester-Boston Regional Airport," and as this Agreement may subsequently be amended.

Airfield Cost Center shall mean that cost center representing those areas and facilities that provide for the landing, taking off, and taxiing of aircraft, including, but not limited to, runway approach zones, runways, taxiways, setbacks, infield areas, and navigational aids, but not including the Apron, as illustrated on Exhibit A.

Airfield Requirement is that requirement established in Section 5.04.

AIRLINE shall mean Federal Express Corporation, a corporation organized under the

laws of the state of Delaware and registered to do business in the State of New Hampshire.

Airport shall mean Manchester-Boston Regional Airport, as shown on Exhibit A, "Airport Layout and Cost Center Plan," and as such Airport may subsequently be improved, enlarged, or otherwise modified or developed.

Airport Cost Centers shall mean the cost centers representing the areas and facilities at the Airport, and as such cost centers may be modified, changed, or developed by CITY to be used in accounting for Airport Revenues and expenses and for calculating and adjusting the Rental and Fee Rates.

Airport Director shall mean the Airport Director or such other person designated by the City of Manchester, Board of Mayor and Alderman to exercise authority with respect to the rights and obligations of CITY under this Agreement or the Airport Director's designated representative.

Air Transportation shall mean the transportation by air of Persons, property, cargo, mail, or express mail to or from the Airport and all other activities directly related thereto.

Air Transportation Company shall mean any Person engaged in Air Transportation.

Amortization shall mean the repayment of costs, amortized at the then current CITY cost of borrowed funds when a capital investment is made in substantially equal annual installments over the estimated useful lives of the expenditures, for capital expenditures at the Airport funded by the CITY out of the Capital Improvement Account. Effective FY2014, all outstanding amortization shall be recalculated at an interest rate of 4.0%. Any payments made by the CITY to defease outstanding Series 2008 Bonds shall be amortized at the same interest rate as the loan.

Annual Budget shall mean the Airport capital and operating budget approved by the City of Manchester Board of Mayor and Aldermen.

Approved Maximum Landing Weight shall mean the FAA-approved maximum certificated landing weight for an aircraft as recited in AIRLINE's flight manual governing that aircraft type. If an aircraft is registered in a foreign country and has not been certified by the FAA, the Approved Maximum Landing Weight of such an aircraft shall be the maximum landing weight approved by the counterpart to the FAA in that foreign country.

Apron Cost Center shall mean that cost center representing those areas and facilities on the Airport that provide for the parking, loading, unloading, and servicing of passenger aircraft.

Bond Debt Service shall mean the aggregate amount of principal, interest expense, and any premium required to be paid on all Bonds pursuant to the terms in the Bond Documents.

Bond Documents shall mean the General Airport Revenue Bond Resolution, City of Manchester, dated October 1, 1998, as amended.

Bonds shall mean the debt instruments created as a result of the Bond Documents.

Capital Improvement shall mean (1) the acquisition of land or easements; (2) the planning, design, or construction of new facilities; and (3) the performance of any extraordinary, nonrecurring major maintenance of existing facilities that may be acquired, purchased, or constructed by CITY to improve, maintain, or develop the Airport.

Capital Improvement Account shall mean an account established within the flow of funds prescribed in Article 6 hereof and allowable within the General Fund established in the Bond Documents. After annual deposits to the Capital Improvement Account have reached one million dollars (\$1,000,000) in any one Fiscal Year, the CITY shall then deposit additional revenues in the Revenue Credit Account up to five hundred thousand dollars (\$500,000). Sixty percent (60%) of the revenue remaining after satisfying the requirements of the flow of funds established in the Bond Documents shall be deposited into the Capital Improvement Account. CITY shall use the Capital Improvement Account for any lawful purpose at its sole discretion. Capital Improvements funded from the Capital Improvement Account will be amortized and included in the calculation of rentals and fees as set forth in Article 5.

Coverage shall mean, for any series of Bonds, an amount equal to the requirement set forth in the Bond Documents.

Coverage Account shall mean an account established within the flow of funds prescribed in Article 6 and in accordance with the General Fund established in the Bond Documents to fund twenty-five percent (25%) of the annual Debt Service Requirement. If at any time the balance in the Coverage Account falls below the required amount of twenty-five

percent (25%) of the Debt Service Requirement, the deficiency shall be made up from Revenues.

Customer Facility Charge (CFC) shall mean the charge established under the Automobile Rental Concession Agreements in place at the Airport.

Debt Service Requirement shall mean the total amount required to be deposited in any Fiscal Year to any interest, principal, or sinking fund accounts established by the Bond Documents for any Bonds issued for the Airport; it also includes any and all other debt incurred by other means for the capital improvement of the airport.

FAA shall mean the Federal Aviation Administration of the Department of Transportation of the United States of America or its authorized successor.

Fiscal Year shall mean the twelve-(12) month period beginning on July 1st of any calendar year and ending on June 30th of the following calendar year or such other period adopted by CITY as its Fiscal Year.

General Fund shall mean a fund established pursuant to the flow of funds established in the Bond Documents after satisfying all funds of higher priority.

Government shall mean the government of the United States of America.

Landed Weight shall mean the product obtained by multiplying the Certified Maximum Landing Weight for each aircraft operated by an Air Transportation Company by the number of Landings such aircraft makes at the Airport expressed in one thousand (1,000) pound units.

Landing shall mean any landing at the Airport by an aircraft operated by any Air Transportation Company, but shall not include a landing by an aircraft operated by an Air Transportation Company that returns to the Airport because of weather, mechanical, operational, or other emergency or precautionary reasons without landing at another airport.

Landing Fee shall mean the fee payable by AIRLINE under this Agreement for Landings at the Airport.

Landing Fee Rate shall mean that rate, established in Section 5.04, for each one thousand (1,000) pounds of Certified Maximum Landing Weight payable by AIRLINE under this

Agreement for Landings at the Airport.

Net Airfield Requirement shall mean the Airfield Requirement minus: (1) amounts credited from the Revenue Credit Account; and (2) all Other Airfield Revenues.

Operation and Maintenance Expenses shall mean the current expenses of operation, including administrative expenses, maintenance, and current repair of the Airport. Operation and Maintenance Expenses shall not include any allowance for depreciation, renewals, extensions, or any charges for the accumulation of reserves for capital replacements, renewals, or extensions.

Operation and Maintenance Reserve Account shall mean an account established within the flow of funds prescribed in the Bond Documents to pay for extraordinary or unanticipated Operation and Maintenance Expenses to the extent that other funds are not available for such purposes. During the term of this Agreement, the balance of the Operation and Maintenance Reserve Account shall not be less than the Operation and Maintenance Expenses for the three (3) consecutive months following the next succeeding month in the Annual Budget for that Fiscal Year. Deficiencies in this fund shall be recovered in the Fiscal Year in which such deficiency occurs.

Other Airfield Revenues shall mean all Revenues allocable to the Airfield Cost Center.

Other Buildings and Areas Cost Center shall mean that cost center representing those areas of the Airport not included in the other Airport Cost Centers, including the facilities, installations, and improvements thereon as they now exist, or as they may be modified, changed, or developed, as illustrated on Exhibit A.

Parking and Roadways Cost Center shall mean that cost center representing public and employee parking areas and associated access and circulation roadways, rights-of-way, and landscaped areas of the Airport, as illustrated on Exhibit A.

Person shall mean any association, joint venture, firm, partnership, corporation, public body, or natural person.

Program shall mean the specific program of capital improvements undertaken by CITY.

Rebate Fund shall mean a fund established within the flow of funds prescribed in the Bond Documents for the purpose of compliance with Section 148(f) of the Code.

Renewal and Replacement Account shall be a fund established within the flow of funds prescribed in the Bond Documents to pay for unanticipated or emergency repairs or replacements at the Airport.

Rental and Fee Rates shall mean all rentals and fees payable under the terms of this Agreement.

Rental and Fee Payments shall mean payment of all rentals and fees established under the terms of this Agreement.

Rental Car Expenses shall mean the total of the direct and allocated indirect estimated Operation and Maintenance Expenses, Amortization, and total portion of the Airport's annual Debt Service Requirement and Coverage (if any) allocable to the operations of Rental Car Concessionaires operations at the Airport as determined by the CITY.

Revenues shall mean all rentals, fees, charges, concession revenues, and all other revenues received by or on behalf of CITY in its proprietary capacity as operator of the Airport in connection with the operation, improvement, and enhancement of the Airport or any part thereof, and all income, interest, or revenues resulting from the investment of any Airport funds by CITY. Revenues shall not include any revenue or income from gifts, State or federal grants-in-aid or reimbursement, proceeds of insurance coverage and condemnation awards, proceeds of disposition of assets, restricted funds, or payments received from governmental units or public agencies. Revenues shall also not include any Passenger Facility Charge revenue.

Revenue Credit Account shall mean an account established pursuant to the flow of funds established in the Bond Documents after satisfying the requirements of all funds of higher priority. Balances in the Revenue Credit Account shall be credited to the Airfield Requirement in succeeding years. The initial annual deposit to the Revenue Credit Account shall not exceed Five Hundred Thousand Dollars (\$500,000) in any one Fiscal Year. Any remaining revenue after an initial deposit to the Revenue Credit Account of Five Hundred Thousand Dollars (\$500,000) shall be divided as follows: Sixty percent (60%) to CITY, referred to herein as additional deposit to Capital Improvement Account, and Forty percent (40%) to Signatory Airlines, referred to herein as Additional Revenue Credit.

Revenue Fund shall mean a fund in which all Revenues are deposited for application to various funds and accounts as set forth in the Bond Documents.

Rules and Regulations shall mean those lawful rules and regulations of the Airport, as the same may be amended, modified, or supplemented from time to time, by CITY for the orderly use of the Airport by both AIRLINE and other tenants and users of the Airport to the extent that such rules and regulations are not inconsistent with the provisions and purposes of this Agreement.

Signatory Airline shall mean those Air Transportation Companies providing Air Transportation to and from the Airport that have entered into agreements substantially similar to this Agreement with CITY covering the use and occupancy of the Airport.

State shall mean the State of New Hampshire.

Subordinate Security shall mean bonds or other securities or obligations relating to the Airport, payable from Revenues, and having a lien thereon subordinate and junior to the lien thereon of the Bonds.

Terminal Building shall mean the passenger Terminal Building constructed by CITY as illustrated on Exhibit A and as the passenger Terminal Building may be modified, changed or enlarged.

Terminal Building Cost Center shall mean the Terminal Building and related facilities and as such Terminal Building and related facilities may be modified, changed, enlarged, or developed as illustrated on Exhibit A.

TSA shall mean the Transportation Security Agency of the Department of Homeland Security of the United States of America or its authorized successor.

- 1.02 General. Unless the context clearly indicates otherwise, in this Agreement (1) references to articles, sections, or exhibits are to the respective or corresponding articles, sections, and exhibits of or to this Agreement and (2) the terms "herein," "hereunder," "hereby," "hereto," "hereof," and any similar terms refer to this Agreement as a whole and not to any particular article or section of this Agreement.

ARTICLE 2 TERM

- 2.01 Term. This Agreement shall be effective at 12:00 a.m. March 1, 2016 and shall terminate at 11:59 p.m. on June 30, 2020 subject to early termination as provided for in this Agreement.

**ARTICLE 3
AIRLINE RIGHTS**

3.01 Use of the Airport. AIRLINE shall have the right to use the Airport, including all facilities, improvements, equipment, and services that are or may be provided for common use at or in connection with the Airport in common with other authorized users of the Airport subject to the Rules and Regulations.

3.02 Airline Rights. AIRLINE shall have the following rights at the Airport.

- (A) Air Transportation. The right to provide Air Transportation at the Airport and all activities reasonably incidental to such operations.
- (B) Aircraft Operations. The right to land, take off, fly over, taxi, push, tow, fuel, load, unload, repair, maintain, condition, service, park, and store aircraft or other equipment operated by AIRLINE in designated areas at the Airport; provided, however, such rights shall be limited to those activities incidental to the providing of Air Transportation at the Airport by the AIRLINE for its own use, and shall not include authority to conduct a business separate from its Air Transportation Business by AIRLINE at the Airport, without prior written approval by the Director.

As soon as possible after obtaining all necessary approvals from all appropriate federal, State, and local agencies, AIRLINE shall promptly remove any of its disabled aircraft from any part of the Airport and place such disabled aircraft in AIRPORT-designated storage areas. AIRLINE shall not store disabled aircraft at the Airport except for the length of time and under the reasonable terms and conditions established by the Airport Director.

If AIRLINE fails to remove or store its disabled aircraft as required in this Section 3.02(B), the Airport Director shall have the right, after written notice to AIRLINE, to remove such disabled aircraft at the sole cost of AIRLINE. AIRLINE hereby releases CITY, its Airport Director and its employees and agents from any and all liability for damage to any disabled aircraft operated by AIRLINE or otherwise arising from or in any way connected with any such removal of such aircraft by the Airport Director.

- (C) Ticketing and Loading. The right to sell tickets; document shipments; handle reservations; and load and unload persons, property, cargo, and/or mail at the Airport by such motor vehicles or other means of conveyance as AIRLINE may

wish to use. Said vehicles and operators are subject to the rules and regulations of the Airport.

- (D) Aircraft Servicing. The right to sell, dispose of, and exchange aircraft engines, accessories, equipment, and materials or supplies owned or operated by AIRLINE; provided, however, such rights shall be limited to those activities incidental to the providing of Air Transportation at the Airport and shall not include authority to conduct a separate business by AIRLINE or to store or accumulate new or used aircraft, engines, accessories, equipment, materials, or supplies at the Airport, except as needed for usual maintenance purposes.
- (E) Aircraft Maintenance. The right to service aircraft or equipment operated by AIRLINE with line maintenance or materials or supplies at airport-designated locations. AIRLINE may also service the aircraft and equipment of other AIRLINES serving the AIRPORT.
- (F) Training and Testing. The right to train personnel and test aircraft and other equipment; provided, however, such right shall be limited to those activities incidental to the providing of Air Transportation at the Airport and shall not include authority to conduct a separate business by AIRLINE at the Airport.
- (G) Communications Equipment. The right to install, maintain, and operate such radio, communication, meteorological, aerial navigation, and computer equipment and facilities required for AIRLINE to provide Air Transportation at the Airport; provided, however, that (1) such equipment does not interfere with other Airport communication, meteorological, or aerial navigation systems; and (2) the type, location, and method of installation of such equipment and facilities is approved by the Airport Director in writing prior to the installation of such equipment.
- (H) Ground Handling. The right to ground handle aircraft operated by another Air Transportation Company operating at the Airport; provided, however, AIRLINE shall only ground handle the aircraft operated by an Air Transportation Company that has entered into an operating agreement with the CITY and then only with the prior written approval of the Airport Director.
- (I) Employee Parking Facilities. The right to use designated private vehicle parking facilities for AIRLINE employees, as applicable.

- (J) Access. The nonexclusive right of ingress to and egress from the Airport in such manner and at such locations as CITY may from time to time designate.
- (K) Performance for Others. The right to perform, on a regular basis, any of the activities authorized in this Agreement for Persons other than AIRLINE on the Airport with the prior written approval of the Airport Director. AIRLINE may perform for other Persons only those activities it is currently exercising on its own behalf.
- (L) Purchase of Personal Property. The right to purchase Personal Property and other services and requirements used by AIRLINE from any Person or company of AIRLINE's choice that are necessary or incidental to the AIRLINE providing Air Transportation at the Airport. Nothing herein shall restrict CITY from requiring a permit and levying a reasonable nondiscriminatory concession fee on any Person for conducting a non-Air Transportation business at the Airport.
- (M) Other Rights. The right to engage in any other activity that is reasonably necessary or incidental to AIRLINE providing Air Transportation at the Airport with the prior written approval of the Airport Director, which approval shall not be unreasonably withheld.

3.03 Right to Charge Fees. The CITY shall have the right to assess and collect reasonable fees from third parties operating at the Airport for in-flight catering, vending, ground transportation, and other services or facilities provided by other Persons for AIRLINE.

3.04 Limitations on Airline Rights. The following limitations and restrictions shall apply to AIRLINE on the Airport:

- (A) Airport Operations. AIRLINE shall not make use of the Airport in any manner that might interfere with the landing and taking off of aircraft on the Airport or otherwise constitute a hazard or interfere with the operation of the Airport.

If AIRLINE breaches the covenant in this Section 3.04(A), CITY shall have the right to immediately cure such breach at the sole expense of AIRLINE.

- (B) Airport Systems. AIRLINE shall not do or permit to be done anything on or about the Airport that may interfere with the effectiveness or accessibility of the communications system, drainage and sewage system, electrical system, air

conditioning system, fire protection system, sprinkler system, alarm system, fire hydrants and hoses, or other similar equipment installed or located on the Airport.

- (C) Waste Material. AIRLINE shall not dispose of or permit any other Person to dispose of any waste material taken from or products used (whether liquid or solid) with respect to its aircraft into the sanitary or storm sewers at the Airport unless such waste material or products are first properly treated by, or in equipment installed by CITY for such purposes.
- (D) Food and Beverage Sales. AIRLINE shall not install or operate a bar, cocktail lounge, restaurant, cafeteria or sell food or beverages in any other manner on the Airport to AIRLINE employees or the general public unless authorized in writing by the Airport Director.
- (E) Vending Devices. AIRLINE shall not install or operate any vending device for the use by AIRLINE employees or the general public unless authorized in writing by the Airport Director.
- (F) Public Telephone. AIRLINE shall not install or operate any public telephone for the use by AIRLINE employees or the general public unless authorized in writing by the Airport Director.
- (G) Increased Insurance Risk. AIRLINE shall not do or permit to be done anything on the Airport that will invalidate, conflict with, or increase the premium of Airport insurance policies covering the Airport or any part or aspect thereof. In the event CITY determines, in its reasonable judgment, that AIRLINE has done or permitted to be done anything that shall invalidate, conflict with, or increase the premium of Airport insurance policies, CITY shall notify AIRLINE in writing of the nature of the act or failure to act and AIRLINE shall immediately remedy its act or failure to act and pay to CITY any additional cost incurred by CITY because of AIRLINE's act or failure to act. If such AIRLINE's act or failure to act causes the cancellation of any insurance policy, then AIRLINE shall take such action as is necessary to permit reinstatement of the insurance policy.
- (H) Airfield Capability. AIRLINE shall observe all restrictions that CITY may impose on the use of the airfield area of the Airport by any aircraft operated by AIRLINE which exceeds the design strength or capability of such area as

described in the current FAA-approved airport layout plan or other engineering evaluations performed subsequent to the current airport layout plan.

- 3.05 Persons Other Than Airline. No right granted to AIRLINE under this Agreement shall authorize any other Person to occupy space or provide services on the Airport without first obtaining a permit from CITY allowing such space to be occupied or service to be provided and the payment of all applicable rentals, fees, and charges. CITY shall have the right to charge any Person leasing space or providing services on the Airport appropriate rentals, fees, and charges whether such services are provided to AIRLINE or to other Airport tenants.

ARTICLE 4 RENTALS AND FEES

- 4.01 General. In return for the rights granted in this Agreement, and the undertakings of CITY in this Agreement, AIRLINE agrees to pay CITY during the term of this Agreement, without deduction or set-off, certain rentals and fees as set forth in this article. Fiscal year 2015 (July 1, 2014 through June 30, 2015) rental rates are shown in Exhibit C. The general methodology for their calculation and an example are shown in Exhibit B, which is provided for illustrative purposes only and is in no way intended to show actual Airline Rentals and Fee Rates, nor shall it be construed to represent actual Airline Rentals and Fee Rates over the period shown.

4.02 Activity Report.

- (A) Submission of Activity Report and Audit. AIRLINE shall furnish CITY, on or before the fifteenth (15th) day of each month, with an accurate report of AIRLINE's operations at the Airport during the preceding month, setting forth all data necessary to calculate the Rental and Fee Rates under this Agreement. Such report shall be in a format prescribed by CITY, using the form shown in Exhibit D. Any changes to this form must be approved by the CITY prior to their use. AIRLINE shall maintain records sufficient to provide the above information. The CITY and/or its duly authorized representative shall have the right, at any time during the life of this agreement and for three (3) years after the end of such agreement, upon reasonable notice and during reasonable business hours and in a manner that is not unduly disruptive of the AIRLINE's business, to inspect the AIRLINE's records. The AIRLINE shall, if requested, freely lend its own assistance in making such inspection, and, if such records are maintained in electronic or other machine-readable format, shall provide

the Airport and/or its representative such assistance as may be required to allow complete access to such records including providing such records in electronic read-only format compatible with computers utilized by the CITY if requested by the CITY. Such records shall be available for audit and inspection by CITY on five (5) business days notice during normal business hours. The cost of such audit shall be borne by CITY; provided, however, the cost of such audit shall be borne by AIRLINE if the audit reveals an underpayment of five percent (5%) or more of Rental and Fee Payments payable under this Agreement for any Fiscal Year, as determined by such audit, or AIRLINE has failed to maintain accurate and complete records in accordance with this Section 4.02(A).

- (B) Failure to Submit Activity Report. If AIRLINE fails to submit the required activity report to CITY as required by Section 4.02(A), AIRLINE's Landing Fee shall be determined by assuming that AIRLINE's total Landed Weight for such month was one hundred twenty-five percent (125%) of its total Landed Weight during the most recent month for which such data are available for AIRLINE. Any necessary adjustment in such Landing Fee payment shall be calculated after an accurate report is delivered to CITY by AIRLINE for the month in question. Any resulting surpluses or deficits shall be applied as credits or additional fees to the appropriate invoices in the succeeding month.
- (C) Audit Rights. The CITY shall have the right, upon reasonable notice to the AIRLINE, to make an audit or cause an audit, examination or inspection to be made of the AIRLINE's original books and records and computerized accounting systems relating to the AIRLINE's operations (including, but not limited to, those books and records the AIRLINE is required to maintain under Section 4.02(A), above) in order to determine the correctness of the fees paid by the AIRLINE to the CITY for any term which ended no more than three (3) years prior to the date of commencement of such audit provided that no more than one (1) such audit each year shall be required. Such audit, examination, or inspection may include, but is not limited to, a review of general, input, processing, and output controls of information systems, using read-only access, for all computerized applications used to record financial transactions and information. AIRLINE shall, if requested, freely lend its own assistance in making such audit, examination or inspection, and, if such records are maintained in electronic and other machine-readable format, shall provide the CITY and/or its representative such assistance as may be required to allow complete access to such records within thirty (30) days from the original

request. AIRLINE also shall lend such assistance and support freely to the CITY as the CITY may reasonably request in the conduct of any customer origin/destination or other survey as the CITY deems necessary.

- 4.03 Landing Fee. AIRLINE shall furnish to CITY, on or before the fifteenth (15th) day of each month, an accurate verified report, on forms prescribed by the CITY together with a check in payment of Landing Fees for AIRLINE's operations at the Airport during the preceding month. The Landing Fee payment shall be calculated by multiplying AIRLINE's total Landed Weight for the month by the Landing Fee Rate then in effect. The Landing Fee Rate shall be recalculated annually in accordance with Section 5.04. An example of the methodology used to calculate Airline Rentals and Fee Rates using hypothetical expenses and revenues is provided in Exhibit B. This exhibit is provided for illustrative purposes only and is in no way intended to show actual Airline Rentals and Fee Rates, nor shall it be construed to represent actual Airline Rentals and Fee Rates over the period shown.

The landing fee for signatory carriers for fiscal year 2016 (July 1, 2015 – June 30, 2016) is \$6.75 per 1,000 pounds of landed weight.

- 4.04 Remote Parking of Aircraft on a Daily Basis. AIRLINE shall pay to CITY, on or before the fifteenth (15th) day of each month, a fee of \$50 per jet aircraft and \$25 for all other aircraft, per night for each aircraft remotely parked.
- 4.05 Additional Rent. CITY, after due notice to AIRLINE and a cure period of thirty (30) days, may, but is not obligated to, perform for AIRLINE or cure any default on the part of AIRLINE by taking whatever action is necessary under this Agreement. Any amounts paid or costs incurred by CITY in performing for AIRLINE or curing any such default of AIRLINE shall be additional rent under this Agreement and shall become payable by AIRLINE. All additional rent shall be due and payable within fifteen (15) days after receipt by AIRLINE of an invoice therefore. This Section 4.05 shall not apply in the case of a default where AIRLINE is diligently proceeding in good faith and with reasonable dispatch to cure the default.
- 4.06 Late Payment. Any payment not received by the date it is due shall accrue interest at the highest rate allowed by State law from the date due until paid in full.
- 4.07 Verification of Rental and Fee Payments. The acceptance by CITY of any payment made by AIRLINE under this Agreement shall not preclude CITY from verifying the accuracy

of AIRLINE's report and computations or from recovering any additional payment actually due from AIRLINE.

4.08 Taxes. AIRLINE shall pay all taxes that may be lawfully levied, assessed, or charged by any federal, State, or local governmental entity upon the real property occupied, used, or owned by AIRLINE, or upon AIRLINE's rights or operations under this Agreement. AIRLINE shall have the right, at its sole cost and expense, to contest the amount, validity or applicability to AIRLINE of any tax as may have been or may be levied, assessed, or charged.

4.09 Other Fees and Charges. Except as expressly provided for herein, no further rentals, fees, or charges shall be levied against or collected from AIRLINE, its passengers, shippers, and receivers of freight and express nor its suppliers of material, contractors, or furnishers of services, by CITY for the facilities, rights, licenses, and privileges granted to AIRLINE under this Agreement. However, CITY expressly reserves the right to assess and collect reasonable fees from third parties operating at the Airport for in-flight catering, vending, ground transportation, and other services provided to AIRLINE.

ARTICLE 5 ADJUSTMENT OF AIRLINE RENTAL AND FEE PAYMENTS

5.01 Effective Date of Adjustments. The Landing Fee Rate shall be adjusted annually during the term of this Agreement, as hereinafter set forth. Such rates and fees shall be effective on the first day of the Fiscal Year to which they apply.

5.02 CITY Records.

(A) CITY shall maintain (and make reasonably available for review, inspection and AUDIT by AIRLINE) accounting records that document the following items for each Airport Cost Center:

1. Annual Revenues
2. Operation and Maintenance Expenses
3. Documented expenses of CITY incurred for the improvement, renovation, or enhancement of the Airport

4. All other Airport expenses

- (B) CITY shall further maintain records evidencing the allocation of Bond proceeds or other funding sources to each Airport Cost Center obtained from the proceeds. Included in the allocation to each Airport Cost Center shall be its proportionate share of any Bond issuance expenses and capitalized interest determined with reference to the allocation of costs funded through securities or other funding sources. All State and federal funds (and Passenger Facility Charge revenue, if any) received by CITY with respect to any Program or improvement of the Airport shall be deposited in the appropriate fund or funds.

5.03 Reports.

- (A) On or before the first day of the fifth month prior to the start of each Fiscal Year, AIRLINE shall submit to CITY a written estimate of the total Landed Weight for AIRLINE for the succeeding Fiscal Year. If no estimate is received by the first day of the fourth month prior to the start of each Fiscal Year, the reasonable estimate of CITY may be used.
- (B) Two months prior to the start of the fiscal year, CITY shall submit to AIRLINE at a meeting between the various AIRLINES and the CITY, the following reports:
1. CITY's proposed Annual Budget for the succeeding Fiscal Year, which shall include:
 - a. Estimated Operation and Maintenance Expenses
 - b. Annual Bond Debt Service, lease payments, or other debt installments, if any, and any required Bond fund deposits
 2. A preliminary calculation of the Landing Fee Rate for the succeeding Fiscal Year, calculated in accordance with Section 5.04. An example of the methodology used to calculate Airline Rentals and Fee Rates using hypothetical expenses and revenues is provided in Exhibit B. This exhibit is provided for illustrative purposes only and is in no way intended to show actual Airline Rentals and Fee Rates, nor shall it be construed to represent actual Airline Rentals and Fee Rates over the period shown.

- (C) Each year CITY shall adopt an Annual Budget for the Airport and establish a Landing Fee Rate. Such budget and rates shall take into account CITY's discussions with AIRLINE. CITY shall give consideration to any suggestions, comments, or requests of Signatory Airline, but shall retain the right for CITY to make all final decisions with respect to the Budget and fees.

If, for any reason, the Annual Budget has not been adopted as of the first day of any Fiscal Year, the Rental and Fee Rates in effect during the preceding Fiscal Year shall continue in effect until a new Annual Budget has been adopted by CITY and CITY has calculated the Rental and Fee Rates in accordance therewith. The new Rental and Fee Rates shall then be made effective retroactive to the first day of such Fiscal Year.

- (D) CITY retains the responsibility and expressly reserves the right to make all final decisions with respect to the Annual Budget. Such decisions shall be consistent with the terms and conditions of this Agreement.

5.04 Calculation of Landing Fee Rate. As of the date of this Agreement, the Landing Fee Rate shall be adjusted annually in the following manner. Whenever the adjustment involves an estimate, the estimate of CITY shall be used. The rates established for Fiscal Year 2015 are shown in Exhibit C.

- (A) Each year CITY shall calculate the total Airfield Requirement for the succeeding Fiscal Year by totaling the following amounts, as set forth in CITY's Annual Budget:
1. The total of the direct and allocated indirect estimated Operation and Maintenance Expenses allocable to the Airfield Cost Center and to the Apron Cost Center.
 2. The total portion of the Airport's annual Debt Service Requirement and Coverage (if any) allocable to the Airfield Cost Center.
 3. The portion of the required repayment of any Subordinate Security or loans made by CITY allocable to the Airfield Cost Center.
 4. The estimated amount, if any, for required deposits to funds and accounts established by the Bond Documents allocable to the Airfield Cost Center.

5. The annual Amortization of the total amount of any expenditures made by the City for Capital Improvements in the Airfield Cost Center before January 1 of the adjustment year, and financed by the City from the Capital Improvement Account. Such annual Amortization shall be calculated at the then current City cost of borrowed funds when said capital investment is made and based on the economic life of each Capital Improvement in accordance with generally accepted accounting principles. Total annual expenditures subject to Amortization shall not exceed five million dollars (\$5,000,000) for all Airport Cost Centers combined during any Fiscal Year.
- (B) The total Net Airfield Requirement is calculated by crediting amounts totaled pursuant to Section 5.04(A) by the following:
1. Any and all amounts deposited to the Revenue Credit Account in the preceding Fiscal Year, plus any Additional Revenue Credit.
 2. All Other Airfield Revenues.
- (C) The Landing Fee Rate for the succeeding Fiscal Year shall be calculated by dividing the Net Airfield Requirement computed pursuant to Section 5.04(B), and shown on Exhibit B, by the composite estimate of the total Landed Weight of all Air Transportation Companies at the Airport for the succeeding Fiscal Year as projected by CITY using, in part, the estimates provided by AIRLINE pursuant to Section 5.03(A). The Landing Fee Rate shall be expressed in dollars and cents per thousand pounds of the Approved Maximum Landing Weight of each type of AIRLINE's aircraft and shall be multiplied by the number of Landings by each type of said aircraft at the Airport.
- (D) At the close of each Fiscal Year, actual costs of the operation of the Airfield and associated cost centers and an actual Landing Fee Rate shall be ascertained by the City for such Fiscal Year and any deficit in funds shall be carried over to the following Fiscal Year as an account receivable and be surcharged as an additional charge to the Landing Fee Rate in equal amounts so that the full amount of the deficit is collected by the CITY by the end of the Fiscal Year. Any surplus incurred during the term of this Agreement shall be credited to the Revenue Credit Account.

- 5.05 Non-Signatory Rates. For any aircraft not owned or operated by a Signatory Airline, CITY shall establish non-Signatory Rates which shall be equal to one hundred twenty-five percent (125%) of the calculated Signatory Airline Rates including, but not limited to Landing Fee Rate.
- 5.06 Extraordinary Adjustments or Special Increases in Rates. If total Landing Fees for any quarter vary by more than five percent (5%) from the projected total Landing Fees for such quarter, the Landing Fee Rates shall, if deemed necessary by CITY, be adjusted for the balance of such Fiscal Year.
- 5.07 Extraordinary Coverage Protection. It is imperative that City generate sufficient Revenues to meet the requirements of the Covenant as to Rates and Charges in the Bond Documents. If the City estimates that it will not meet the requirements of the Covenant as to Rates and Charges in the Bond Documents during any Fiscal Year of the Term hereof, City may adjust the Landing Fee Rate to meet such requirements, upon thirty (30) days prior written notice to the Signatory Airlines. The City will deposit and retain such Extraordinary Coverage Protection payments in the Coverage Account only to the extent necessary to meet requirements of the Covenant as to Rates and Charges in the Bond Documents. Excess Extraordinary Coverage Protection payments shall be credited back to the Signatory Airlines in proportion to the amounts paid by each Airline.

ARTICLE 6 BOND DOCUMENTS AND FLOW OF FUNDS

- 6.01 General. In the event of conflicts between this Agreement and the Bond Documents, the Bond Documents shall govern. It is mutually understood and agreed that, so long as any Bonds secured by the Bond Documents are outstanding, the deposit and application of Revenues shall be governed by the Bond Documents.
- 6.02 Flow of Funds. Subject to the terms and provisions of the Bond Documents, all Revenues shall be deposited, maintained, and paid as set forth in the Bond Documents and as further set forth in this Agreement and illustrated in Exhibits E and F.

Revenues derived from operation of the Airport in each Fiscal Year shall be deposited in the Revenue Fund. After the transfers required under the Prior Bond Indenture and the Prior Bond Guaranty have been made, moneys in the Revenue Fund are then applied monthly for various purposes to funds and accounts in the following priority:

- (A) Operating Fund. Deposit required to pay the following month's Operation and Maintenance Expenses.

- (B) Debt Service Fund. Deposit required to pay debt service on Outstanding Bonds from the applicable Account. This fund contains the following accounts with respect to each Series of Outstanding Bonds: Interest Account, Principal Account, Redemption Account, and Capitalized Interest Account.
- (C) Debt Service Reserve Fund. Deposit one-twelfth (1/12) of the required amount so that amounts on deposit are equal to the Aggregate Debt Service Reserve Fund Requirement.
- (D) Subordinated Debt Service Fund. Deposit required to pay debt service on Outstanding Subordinated Bonds from the applicable account.
- (E) Subordinated Debt Service Reserve Fund. Deposit necessary to pay for amounts required by any Supplemental Resolution securing Subordinated Bonds.
- (F) Operation and Maintenance Reserve Fund. Deposit required so that amounts on deposit shall be equal to the highest three (3) consecutive month period of the Operation and Maintenance Expenses in the current Annual Budget.
- (G) Renewal and Replacement Reserve Fund. Deposit one-twelfth (1/12) of the required amount to maintain the Renewal and Replacement Reserve Requirement, currently \$250,000.
- (H) Insurance Reserve Fund. Deposit one-twelfth (1/12) of the required amount to maintain the Insurance Reserve Fund Requirement for the current Fiscal Year.
- (I) Rebate Fund. Deposit required to maintain the Rebate Fund Requirement.
- (J) General Fund. Deposit all remaining money in the General Fund. This fund is to be used by the CITY for any lawful purpose, and is to contain the Coverage Account and the Revenue Credit Account.

The Airline Agreements establish four sub-accounts in the General Fund: the Capital Improvement Account, the Coverage Account, the Customer Facility Charge (CFC) Reserve Account, and the Revenue Credit Account. According to the Airline Agreements, amounts in the General Fund are to be applied in the following manner:

1. To the Coverage Account an amount equal to twenty-five percent (25%) of the annual Debt Service Requirement.
2. To the CFC Reserve Account, any Customer Facility Charge revenues in excess of Rental Car Expenses, as calculated by the CITY. The annual deposit to the CFC Reserve Account in any one Fiscal Year shall not exceed the Customer Facility Charge collections in that Fiscal Year. Amounts in the CFC Reserve Account shall be used for any lawful Airport purpose at the CITY's discretion.
3. To the Capital Improvement Account, Revenues remaining up to one million dollars (\$1,000,000). Amounts in the Capital Improvement Account shall be used for any lawful purpose including, at the CITY's discretion, payment of the costs of Capital Improvements. Capital Improvements funded from the Capital Improvement Account are to be amortized and included in the calculation of Airline Rental and Fee Payments.
4. To the Revenue Credit Account, Revenues remaining up to \$500,000. The balance in the Revenue Credit Account at the beginning of each Fiscal Year shall be transferred to the Revenue Fund and used as a credit in calculating the Landing Fee Rate for the Signatory Airlines for that Fiscal Year. The initial annual deposits to the Revenue Credit Account shall not exceed five hundred thousand dollars (\$500,000) in any one Fiscal Year.
5. Any remaining Revenues after deposits to the Revenue Credit Account have reached \$500,000 are to be divided as follows: sixty percent (60%) to the Capital Improvement Account and forty percent (40%) to the Revenue Credit Account.

ARTICLE 7 MAINTENANCE, REPAIR, ALTERATIONS, AND IMPROVEMENTS

7.01 CITY's Responsibilities.

- (A) CITY, during the term of this Agreement, shall retain FAA Airport Certification and keep in good repair, or arrange for the operation, maintenance including snow removal, and good repair of, the Airport, including, but not limited to, vehicular parking areas, runways, field lighting, taxiways, aprons, and

roadways and all appurtenances, facilities, equipment, and services now or hereafter connected with the foregoing.

- (B) CITY hereby agrees to consult with AIRLINES on an annual basis, or as otherwise necessary regarding planned Capital Improvements at AIRPORT during the following fiscal year. The decision to proceed with any planned Capital Improvements at the AIRPORT is at the sole discretion of the CITY.

ARTICLE 8 INSURANCE, INDEMNIFICATION, AND RELEASE OF LIABILITY

8.01 Insurance.

- (A) The AIRLINE, at its sole cost and expense, shall throughout the term of this Agreement, keep all of its operations on the Airport, and its obligation to indemnify the CITY pursuant to this Section 8.01, continuously insured in accordance with this section of this Agreement. The minimum amounts and types of insurance coverage required hereunder shall in no event be construed to limit or modify the AIRLINE's obligation to indemnify the CITY as set forth in this Section 8.01.

All insurance shall be in a form and with an insurance company or companies that is reasonably acceptable to the CITY. Said insurance shall be in occurrence form, not claims made.

Each liability insurance policy shall include severability of interest language, specifying that coverage afforded thereunder applies separately to each insured thereunder.

All AIRLINE insurance policies shall name Manchester-Boston Regional Airport and the City of Manchester as additional insureds. All such policies shall provide that such policy may not be materially changed, materially altered, or cancelled by the insurer during its term without first giving at least thirty (30) days written notice to CITY.

Immediately upon execution of this Agreement, AIRLINE shall furnish CITY with evidence of all insurance policies specified in this Section 8.01.

On or before the expiration of any then-current policy of insurance, AIRLINE shall deliver to CITY evidence showing that such insurance coverage has been

renewed. Within fifteen (15) days after the date of written notice from the insurer of cancellation or reduction in coverage, AIRLINE shall deliver to CITY evidence showing reinstatement or other provision for the required insurance. All such evidence shall be in the form of certificates of insurance satisfactory to CITY, evidencing coverage as required by this insurance section. AIRLINE shall be responsible for any additional cost to CITY resulting from or arising out of AIRLINE's failure to obtain and maintain the insurance required by this Section 8.01.

- (B) AIRLINE shall carry and maintain airline liability insurance in respect to all aircraft owned, leased or operated by the AIRLINE for bodily injury or death and property damage liability in a combined single limit amount of not less than one hundred million dollars (\$100,000,000) per occurrence and shall include aircraft liability, airport liability, passenger liability if applicable, and baggage and cargo liability. Provided, however, if the AIRLINE operates at the Airport only as a cargo feeder, the AIRLINE shall maintain aircraft liability insurance in a combined single limit amount of not less than fifty million dollars (\$50,000,000) per occurrence. A twenty-five million dollars (\$25,000,000) per occurrence sub-limit for personal injury, bodily injury (including death) and property damage liability shall cover: premises, operation, medical payments, contractual liability, liability of independent contractors, personal injury, and fire legal liability.
- (C) AIRLINE shall carry and maintain comprehensive automobile liability insurance for all owned, hired, and non-owned vehicles against death, bodily injury, and property damage claims, in a combined single limit amount of not less than five million dollars (\$5,000,000).
- (D) AIRLINE shall carry and maintain workers' compensation and employers' liability insurance in accordance with New Hampshire Statutory Limits with an All States Endorsement and one million dollars (\$1,000,000) in Employer's Liability coverage.
- (E) CITY, in operating the Airport, shall carry and maintain comprehensive liability insurance in such amounts as would normally be maintained by public bodies engaged in carrying on similar activities. Nothing herein shall prevent CITY from self-insuring to the extent CITY deems appropriate.

- (F) The parties understand and agree that the minimum limits of the insurance herein required may become inadequate during the term of this Agreement, and AIRLINE and CITY agree that each will increase such minimum limits by reasonable amounts, if appropriate, on request of the other party.
- (G) If at any time AIRLINE fails to obtain or maintain in force the insurance required herein, CITY may, but is not required to, purchase such insurance for AIRLINE's account. If AIRLINE has not delivered evidence of insurance to CITY before the date on which the current insurance expires, CITY may provide such insurance by taking out policies in amounts no greater than those stipulated herein or as may be in effect from time to time. CITY will provide AIRLINE seven (7) days advance notice of its intent to provide insurance as provided herein. The amount of the premiums paid for such insurance by CITY shall be payable by AIRLINE upon receipt of CITY's bill.
- (H) If at any time AIRLINE fails to obtain or maintain in force the insurance required herein, such failure shall constitute an incurable default permitting CITY, at its option, to immediately terminate this Agreement upon giving the notice specified in Section 11.02. CITY shall have all available remedies specified in Section 11.02 or permitted by law.
- (I) If any claim for damages is filed with AIRLINE or if any lawsuit is instituted against AIRLINE, AIRLINE shall give prompt and timely notice thereof to CITY, provided that claims and lawsuits subject to such notice are only those that arise out of or are in any way connected with AIRLINE's operations or activities in regard to the Airport and that in any way affect or might reasonably affect CITY. Notice shall be deemed prompt and timely if given within thirty (30) days following the date of receipt of a claim or ten (10) days following the date of service of process of a lawsuit. All deductibles above \$1,000 are the sole responsibility of the AIRLINE. Accident or property damage claims in an amount less than one thousand dollars (\$1,000) shall be excluded from the requirements of this Section 8.01(I).
- (J) If any claim for damages is filed with CITY or if any lawsuit is instituted against CITY, CITY shall give prompt and timely notice thereof to AIRLINE, provided that claims and lawsuits subject to such notice are only those that arise out of or are in any way connected with the operation of the Airport by CITY and that in any way affect or might reasonably affect AIRLINE. Notice shall be deemed prompt and timely if given within thirty (30) days following

the date of receipt of a claim or ten (10) days following the date of service of process of a lawsuit. Accident or property damage claims in an amount less than one thousand dollars (\$1,000) shall be excluded from the requirements of this Section 8.01(J).

- (K) The time limitations set forth in Sections 8.01(I) and 8.01(J) are discretionary. If the notice required to be given by these sections is late, that is, if notice is not given within the time period set forth therein, the party is not precluded from establishing that the notice actually given was timely under the circumstances of the particular claim or lawsuit, unless by the failure to give such notice within the applicable time period, the other party has been prejudiced in its ability to consider such claim or to respond or to properly defend such lawsuit. If the other party is so prejudiced by a late notice, then the late notice shall not be deemed to be prompt and timely.
- (L) Any and all subcontracting agreements entered into by the AIRLINE for use of the space including, but not limited to, marketing relationships, feeder services, and charter operations must conform to the same insurance and indemnification requirements.
- (M) Waiver of Subrogation; Release of Claims. The CITY and AIRLINE agree to have all fire and extended coverage and material damage insurance carried with respect to the Airport, the property or any portion of either endorsed with a clause which waives all rights of subrogation that the insurer of one party might have against the other party. To that effect, CITY and AIRLINE will employ their respective diligent efforts to cause their insurance companies to endorse the affected property (fire and extended coverage, multiple peril) coverage with the waiver of subrogation; provided that:
 - 1. In the event that the waiver of subrogation is available only upon payment of additional premium, the party for whose benefit the waiver of subrogation is requested will bear the additional cost; and
 - 2. In the event that a waiver of subrogation is not available (even with the payment of additional premium), so that one or both parties are unable to secure the issuance of the waiver of subrogation, the party so unable to procure the waiver of subrogation will immediately cause the other party to be named as an additional insured on its fire and extended coverage policy.

8.02 Indemnification. Subject to the provisions for waiver of subrogation and release of claims set forth in Section 8.01 (M) above, AIRLINE agrees fully to indemnify, defend, and hold CITY harmless from and against all claims and actions (and all expenses incidental to the investigation and defense thereof) based on or arising out of damages or injuries or death to any person or property caused by or arising out of the use, occupancy, or operations of AIRLINE at the Airport pursuant to this Agreement. AIRLINE shall not be liable for any injuries, death, damage, or loss to the extent that such injury, death, damage, or loss is caused by the fault or negligence of CITY, its agents, or employees. CITY shall give to AIRLINE prompt and reasonable notice of any such claims or actions, and such cooperation and assistance as AIRLINE may reasonably require. CITY agrees to indemnify AIRLINE for claims or actions arising from direct negligence on the part of CITY. AIRLINE's indemnity obligations for claims and actions arising under any environmental laws and regulations shall be governed by Article 10 of this Agreement.

8.03 Release of Liability.

- (A) Except as expressly provided in this Section 8.03, CITY shall not be liable for, and is hereby released from, all liability to AIRLINE, to AIRLINE's insurance carrier for bodily injury or for any loss or damage to real or personal property occasioned by flood, fire, earthquake, hurricane, tornado, lightning, windstorm, hail, explosion, riot, strike, civil commotion, smoke, vandalism, malicious mischief, or acts of civil authority other than negligent or intentionally wrongful acts of omission or commission of employees or agents of CITY. This paragraph does not limit the duties, responsibilities, and liability of CITY as landlord, pursuant to the laws of the State of New Hampshire.
- (B) CITY shall not be liable for, and is hereby released from all liability to AIRLINE, to AIRLINE's insurance carrier, or to anyone claiming under or through AIRLINE for any loss or damage whatsoever to the property or effects of AIRLINE resulting from the discharge of water or other substances from pipes, sprinklers or conduits, containers or appurtenances thereof or fixtures thereto, or for any damage resulting from the discharge or failure of electric current, regardless of cause or origin, except to the extent that such damage is caused by the negligence or intentional wrongdoing of CITY, its employees or agents.

ARTICLE 9
ASSIGNMENT OR SUBLEASE

9.01 Assignment and Subletting. AIRLINE shall not assign, transfer, convey, sell, mortgage, pledge, or encumber this Agreement or any part hereof in any manner whatsoever or any of the rights granted in this Agreement without the prior written approval of the Airport Director; provided, however, AIRLINE shall have the right to assign all or any part of its rights and interests under this Agreement to any Airline Affiliate, or any successor to its business through merger, consolidation, voluntary sale, or transfer of substantially all of its assets, and the approval of the Director thereto shall not be required, but due notice of any such assignment shall be given to CITY within thirty (30) days after such assignment.

9.02 Ground Handling Services.

(A) Ground Handling Services by Airline. Airline shall not ground handle another Airport Transportation Company without the prior written approval of the Airport Director. Should Airline wish to handle any portion of the operations of another Air Transportation Company, Airline shall provide City with advance written notice of such proposed activities, including a description of the type and extent of services to be provided. Airline agrees to pay monthly to City, a privilege fee of three percent (3%) of the gross revenues derived from such Ground Handling Services performed for non-Signatory Airlines or non-scheduled airlines, provided however, that no privilege fee shall be required for Ground Handling Services performed for Airline's Affiliate(s) and other Signatory Airlines.

(B) Ground Handling Services by Others. City shall grant Airline the right to contract with other companies, including Signatory Airlines, for Ground Handling Services for Airline's aircraft, provided that, among other considerations: (1) Airline has received advance written consent of City, which consent shall not be unreasonably withheld or delayed; and (2) such other company, unless such company is a Signatory Airline, has entered into a Ground Handling Services operating agreement with City prior to the commencement of such Ground Handling Services.

9.03 Nonwaiver of Responsibility. No assignment, transfer, conveyance, sale, mortgage, pledge, encumbrance, or sublease by AIRLINE shall relieve AIRLINE of its responsibility for the payment of rentals and fees payments and the performance of all other

obligations provided for in this Agreement, without the prior written approval of the Airport Director to such relief.

- 9.04 Assignment by CITY. CITY shall have the right to transfer or assign this Agreement without limitation to another public or quasi-public entity. This entity to which this Agreement is transferred or assigned shall be bound by all of the rights and obligations contained herein. If such public or quasi-public entity either refuses to accept one or more of CITY's obligations or does not recognize one or more of AIRLINE's rights in this Agreement, then AIRLINE may terminate this Agreement pursuant to Article 11.

ARTICLE 10 ENVIRONMENTAL

- 10.01 General Conditions. Notwithstanding any other provisions in this Agreement, and in addition to any and all other requirements of this Agreement or any other covenants, representations, or warranties of AIRLINE, AIRLINE hereby expressly covenants, warrants, and represents to CITY, in connection with AIRLINE's operations under this Agreement (whether identified during the term of the Agreement or after the Agreement has terminated), at AIRPORT the following:

- (C) AIRLINE is knowledgeable of all applicable federal, state, and local environmental laws, ordinances, rules, regulations, and orders which apply to AIRLINE's operations at AIRPORT and acknowledges that such environmental laws, ordinances, rules, regulations, and orders change from time-to-time, and AIRLINE agrees to keep informed of any such future changes.
- (D) AIRLINE agrees to comply with all applicable federal, state, and local environmental laws, ordinances, rules, regulations and orders that apply to AIRLINE's operations. AIRLINE agrees to hold harmless and indemnify CITY for any violation by AIRLINE of such applicable federal, state, and local environmental laws, ordinances, rules, regulations, and orders and for any non-compliance by AIRLINE with any permits issued to AIRLINE pursuant to such environmental laws. Those items for which the CITY shall be held harmless and indemnified shall include, but not be limited to, enforcement actions to assess, abate, remediate, undertake corrective measures or monitor environmental conditions, and for any monetary penalties, costs, expenses, or damages, including natural resource damages, imposed against AIRLINE, its employees, invitees, sublessees, suppliers, or service providers by reason of AIRLINE's violation or non-compliance.

- (E) AIRLINE agrees to cooperate with any investigation, audit or inquiry by CITY or any governmental agency or their designee, regarding possible violation of any environmental law or regulation upon the AIRPORT.
- (F) AIRLINE agrees that all remedies of CITY as provided herein with regard to violation of any federal, state, or local environmental laws, ordinances, rules, regulations, or orders shall be deemed cumulative in nature and shall survive termination of this Agreement.
- (G) AIRLINE agrees that a copy of any notice of violation, notice of non-compliance, or other enforcement action shall be provided to CITY within seven (7) days of receipt by AIRLINE or AIRLINE's agent at the address provided for such notices in Section 12.06 (A). Any violation or notice of violation or non-compliance with federal, state, or local environmental law or ordinance shall be deemed a default under this Agreement. Such default may be cured within thirty (30) days of receipt of notice of default from CITY, or such longer period as may be required to effect a cure provided AIRLINE commences a cure within said thirty (30) days and thereafter diligently prosecutes the cure to completion. Any such default that is not cured shall be grounds for termination of this Agreement.
- (H) In entering this Agreement, CITY expressly relies on the covenants, representations and warranties of AIRLINE as stated herein.
- (I) Should CITY undertake any voluntary programs designed to improve environmental conditions, including, but not limited to, solid waste recycling programs, clean-fuel vehicle programs, etc., AIRLINE agrees to undertake a good faith review of the program and attempt to participate. Should any such programs be mandated by any federal, state, or local governmental agency, AIRLINE agrees to comply with such mandates.

10.02 Storm Water. Compliance with Clean Water Act (33 U.S.C. 1251 et seq.).

- (A) Notwithstanding any other provisions or terms of this Agreement, AIRLINE acknowledges that certain properties within the Airport or on CITY owned land are subject to stormwater rules and regulations. AIRLINE agrees to observe and abide by such stormwater rules and regulations as may be applicable to CITY's properties and uses thereof.

- (B) AIRLINE shall provide CITY a copy of AIRLINE's National Pollutant Discharge Elimination System (NPDES) permit. Contamination to stormwater can result from activities such as, but not limited to, aircraft fueling, aircraft and vehicle maintenance, aircraft and vehicle washing, and aircraft de-icing. Note that under this Agreement aircraft washing is not allowed at Manchester-Boston Regional Airport.
- (C) To ensure compliance with CITY's NPDES permit, the AIRLINE shall utilize Best Management Practices (BMPs) so as to not contaminate the Airport's stormwater system:
1. The AIRLINE is responsible for deicing in designated areas only. AIRLINE must use CITY approved materials only. Propylene glycol-based Aircraft De-icing Fluid (ADF) shall be used by the AIRLINE, unless otherwise approved in writing by CITY. The AIRLINE must utilize best management practices to limit the amount of chemical used.
 2. AIRLINE shall submit monthly reports to the Airport Director during the deicing season that shows the location of its anti-icing/deicing activities, the quantity of deicing fluid applied, the type of material applied, and the manufacturer of the material. These are due to CITY no later than the 10th of the following month.
 3. AIRLINE must comply with CITY's Spill Response Procedure, a copy of which is available by request from the Department of Aviation. AIRLINE is responsible for the containment and clean up of spills from aircraft fueling, vehicle fueling, and leaking vehicles. AIRLINE must properly label and dispose of all contaminated material used to remediate spills including signing hazardous waste manifests. AIRLINE must comply with all reporting requirements of NHDES, and a copy of the written report shall be submitted to the Airport Director.
 4. AIRLINE must provide the Airport Director with copies of all claims, observations, reports, and notices of violation the AIRLINE receives from the NHDES or any environmental regulatory authority relating to its activities at the Airport.
 5. AIRLINE must report all major lavatory spills to the Airport Director. The AIRLINE is responsible for the cleanup and disposal of all lavatory spills

caused by the AIRLINE, its sublessees, agents, employees, contractors or invitees.

6. AIRLINE shall maintain its vehicles to prevent discharges to stormwater.
7. CITY may require AIRLINE to remove vehicles that leak from service. The AIRLINE shall place drip pans under leaking vehicles, promptly clean up all leaks and spills, and properly dispose of all material used to clean up spills, in accordance with appropriate regulations. CITY may require AIRLINE to remove vehicles that leak or are in disrepair should such vehicles reasonably be deemed by CITY to be an environmental concern.
8. AIRLINE shall allow the Airport Director access to its facilities, with reasonable prior notice and during regular business hours (except in cases of emergency).
9. AIRLINE agrees to allow CITY to visit vehicle maintenance facilities with reasonable prior notice and during regular business hours (except in cases of emergency), to determine opportunities to reduce possible pollution.
10. Washing of aircraft is not allowed at the Airport. Washing of vehicles is allowed outside of the Airport Operating Area (AOA) and within the confines of the AIRLINE leasehold, or other area designated by CITY. AIRLINE must use BMPs to prevent runoff from vehicle washing activities from entering the stormwater system. Specifically, wash water must be contained in some fashion and subsequently removed and disposed of properly, if the outflow is not directly into a sewer or through an oil/water separator.
11. AIRLINE shall comply with all applicable governmental, environmental, health and safety laws and regulations.
12. If AIRLINE owns or operates above-ground storage tanks, drums, and containers at the Airport, it shall comply with all applicable governmental environmental, health and safety laws and regulations.
13. AIRLINE shall be liable to and indemnify CITY for payment of any fines or penalties levied against CITY for alleged violations of any applicable governmental environmental, health or safety laws or regulations arising out

of the actions or inactions of AIRLINE that cause the violation of such laws or regulations and shall be liable to and indemnify CITY for the reasonable and necessary cost, plus fifteen percent (15%) administrative fee, of any cleanup or remediation incurred by CITY related thereto, if AIRLINE does not perform the necessary cleanup or remediation in a timely manner.

(D) Termination of Agreement/Vacating of Airport

1. AIRLINE shall notify the Airport Director when Agreement expires and Airline intends to vacate Airport. The Airport Director shall determine when any and all contamination caused by the AIRLINE in conducting operations under this Agreement (whether identified during the term of the Agreement or after the Agreement has terminated), has been cleaned up, or assigned to AIRLINE for further clean up. AIRLINE shall not be released from its responsibilities under Agreement until the Airport Director has performed an assessment of the conditions of all space leased by the AIRLINE under Agreement.
2. AIRLINE shall immediately remove all Hazardous Materials and Hazardous Wastes from leased areas at the termination of Agreement, unless otherwise approved in writing by CITY.
3. Any contamination caused by AIRLINE in violation of applicable law shall be AIRLINE's responsibility to remediate.

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

requirements for which it has received written notice from CITY, AIRLINE agrees that it will hold harmless and indemnify CITY for any violations or non-compliance with any such permit requirements.

10.03 Solid and Hazardous Waste.

(A) Hazardous Material Definitions.

1. Hazardous Material, whenever used herein, includes the definitions of hazardous substance, hazardous material, toxic substance, and regulated substance as defined within all applicable governmental environmental laws and regulations, including but not limited to:
 - a. Comprehensive Environmental Response Compensation and Liability Act (42 U.S.C. Section 9601 et seq.);
 - b. Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.);
 - c. Hazardous Materials Transportation Act (49 U.S.C. Section 1801 et seq.);
 - d. Department of Transportation Table (49 C.F.R. Section 172, 101);
 - e. Environmental Protection Agency (40 C.F.R. Part 302);
 - f. New Hampshire Department of Environmental Services (NHDES) Hazardous Waste Rules;
 - g. All substances, materials, and wastes that are, or become, regulated under, or that are classified as hazardous or toxic under any other applicable governmental environmental laws or regulations.
2. In addition to the laws listed above, AIRLINE will comply with the governmental environmental laws and regulations of the jurisdiction where the Airport is located that relate to health, safety, wastes, Hazardous Material, contamination or protection of the environment.
3. Hazardous Materials as used in this Agreement also include, but are not limited to, the following substances: Jet fuel, gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides,

volatile solvents, materials containing solvents, materials containing asbestos or urea formaldehyde, polychlorinated biphenyls and radioactive materials.

(B) Compliance with Hazardous Material, Governmental Laws and Regulations.

1. AIRLINE shall not cause or permit the presence, use, discharge, disposal, storage, release or threatened release of any Hazardous Material, pollutants or contaminants on or in property at the Airport except in compliance with applicable laws and regulations and in quantities necessary to its operations. AIRLINE shall not do anything affecting the Airport that is in violation of any applicable governmental environmental law or regulation; nor shall AIRLINE allow its sublessees, agents, employees, contractors, or invitees to do anything in violation of any applicable governmental environmental law or regulation.
2. At the discretion of the Airport Director and based upon reasonable belief that AIRLINE has caused an environmental violation at the Airport and upon request by the Airport Director, AIRLINE will conduct such testing and analysis as necessary to ascertain whether AIRLINE is operating in compliance with applicable governmental environmental laws and regulations. Any such tests will be conducted by qualified independent experts chosen by AIRLINE and approved by CITY; such approval shall not unreasonably be withheld. Copies of such testing and analytical results from any such testing will be provided to the Airport Director.
3. After any initial emergency response involving spills or leaks of Hazardous Materials, AIRLINE shall promptly provide the Airport Director, and the Airport Director shall provide AIRLINE, notification of any spills or leaks of Hazardous Materials and written notice of any investigation, and copies of all notices, reports (except for all reports subject to attorney-client privilege), claims, demands or actions arising out of the release or threatened release of Hazardous Material or special wastes to the environment in violation of law, caused or permitted by the AIRLINE and affecting the Airport, of which AIRLINE or CITY has knowledge.

(C) Contamination of Airport.

1. If AIRLINE learns, or is notified by any governmental regulatory authority, that any removal or other remediation of any Hazardous Material

contamination caused or permitted by AIRLINE in conducting operations under this Agreement (whether identified during the term of the Agreement or after the Agreement has terminated) and affecting the Airport is necessary, AIRLINE shall promptly take all necessary remedial actions in accordance with applicable governmental environmental law or regulation, at AIRLINE's sole cost.

2. If the presence of any Hazardous Material on, under, or about the Airport caused or permitted by AIRLINE in conducting operations under this Agreement (whether identified during the term of the Agreement or after the Agreement has terminated) results in any contamination of the Airport in violation of law, AIRLINE, at its sole cost and expense, will take steps to remedy and remove any such Hazardous Material and any other environmental contamination caused by AIRLINE, its sublessees, agents, employees, contractors or invitees as is presently or subsequently discovered on or under the Airport as are necessary to protect the public health and safety and the environment laws and regulations. In performing any such remedial actions, AIRLINE, to the extent authorized by any governmental authority, shall rely upon industrial/commercial standards and objectives and applicable risk-based cleanup methodologies, use restrictions and other controls. Such procedures are subject to prior approval of the Airport Director, which approval will not be unreasonably withheld if the procedures meet environmental laws and regulations, and the cleanup procedures will not interfere with operations at the property. AIRLINE will submit to the Airport Director a written plan for completing all remediation work. The Airport Director retains the right to review and inspect all such work at any time using consultants and/or representatives of his/her choice. Such actions of remediation by the AIRLINE shall be conducted in such manner that they will not potentially have any material adverse long-term effect on property at the AIRPORT in the sole, but reasonable, judgment of the Airport Director.
3. In all cases where Hazardous Waste is generated by the activities of AIRLINE, its sublessees, agents, employees, contractors, or invitees, AIRLINE shall sign hazardous waste manifests for the removal of said waste and provide copies to CITY.
4. The requirements of Section 10.03(C) shall apply to all conditions of this Agreement that require cleanup or remediation.

(D) Compliance with All Government Authorities.

1. AIRLINE will promptly make all submissions to, provide all information to, and comply with all requirements of all appropriate governmental authorities under all applicable governmental environmental laws and regulations.
2. Should any governmental entity determine that a site characterization, site assessment, etc., and/or cleanup should be undertaken by AIRLINE because of any spills or discharges of Hazardous Waste at the Airport caused or permitted by AIRLINE that occur during the term of this Agreement, the AIRLINE shall (at its own expense) prepare and submit required plans and financial assurances, and carry out the approved plans. At no cost or expense to CITY, AIRLINE will promptly provide information requested by the Airport Director to determine the applicability of the government's environmental laws or regulations to the Airport, to respond to any governmental investigation or to respond to any claim of liability by third parties that is related to environmental contamination or permitted by AIRLINE.
3. AIRLINE's obligations and liabilities under this provision will continue so long as AIRLINE bears any responsibility under applicable governmental environmental laws or regulations for any action that occurred at the Airport during the term of this Agreement.
4. AIRLINE shall be liable to and indemnify CITY, without limitation, for costs incurred in connection with any investigation of site conditions or any cleanup required by applicable law; and remedial, removal, or restoration work required by any appropriate federal, State or local governmental agency or political subdivision having jurisdiction because of Hazardous Material located on the Airport or present in the soil or groundwater on, under or about the Airport as a result of AIRLINE's operations under this Agreement (whether identified during the term of the Agreement or after the Agreement has terminated).
5. The parties agree that CITY's right to enforce AIRLINE's promise to indemnify is not an adequate remedy at law for AIRLINE's violation of any provision of this Agreement. CITY will also have the right to terminate this Agreement for a material violation of governmental environmental laws or

regulations if AIRLINE does not promptly correct such violation after notice, except that if AIRLINE's violation is egregious in nature and was caused by AIRLINE's gross negligence or willful misconduct, CITY may immediately terminate this Agreement upon giving the notice specified in Section 11.02.

- 10.04 Limitations. Notwithstanding any other provision of this Agreement, AIRLINE shall not be responsible to the extent a claim or expense arises out of: (A) conditions existing prior to AIRLINE's use of the Airport, or (B) the negligence or willful misconduct of CITY or its employees, invitees, sublessees, suppliers or service providers.

ARTICLE 11 TERMINATION

- 11.01 Termination by AIRLINE. AIRLINE shall have the right to terminate this Agreement at any time AIRLINE is not in default in its Rental and Fee Payments or other obligations under this Agreement by giving CITY thirty (30) days advance written notice on or after the occurrence of any one of the following events:

- (A) The breach by CITY of any of the covenants or agreements contained in this Agreement for a period exceeding sixty (60) days after receipt of written notice of such breach from AIRLINE.
- (B) Action by CITY or such other Federal, State, or local entity having proper jurisdiction prohibiting AIRLINE from using the Airport for a period exceeding sixty (60) days because of any deficiency of the Airport or an unsafe operating condition existing at the Airport or in the surrounding airspace.

- 11.02 Termination by CITY. CITY shall have the right to terminate this Agreement and all of its obligations hereunder immediately upon written notice, without forfeiture, waiver, or release of CITY's rights to any sum of money payable by AIRLINE, immediately upon or after the occurrence of any one of the following events:

- (A) The failure of AIRLINE to pay Rentals and Fees when due under this Agreement for a period of fifteen (15) days after receipt of written notice of such breach from CITY; a default notice shall be issued within five (5) days of default.
- (B) The breach by AIRLINE of any of the terms, covenants, agreements, or conditions contained in this Agreement for a period exceeding thirty (30) days after receipt of written notice of such breach from CITY; provided that, if the

breach is of such a nature that it cannot be cured within thirty (30) days, a reasonable period shall be allowed.

- (C) The cessation by AIRLINE of cargo service at the Airport for a period of thirty (30) consecutive days unless such cessation of service is directly attributable to circumstances for which AIRLINE is not responsible and which are not within AIRLINE's control.
- (D) AIRLINE becomes insolvent; fails to pay its debts as they mature; takes the benefit of any present or future federal or State insolvency statute; makes a general assignment for the benefit of creditors; files a voluntary petition in bankruptcy or a petition or answer seeking an arrangement of its indebtedness under the Federal Bankruptcy Code or under any other law or statute of the United States or of any state thereof; consents to the appointment of a receiver, trustee, custodian, liquidator, or other similar official, of all or substantially all of its property; or an order for relief shall be entered by or against AIRLINE under any chapter of the Federal Bankruptcy Code.
- (E) AIRLINE is adjudged a debtor or bankrupt by order or decree of a court, or an order is made approving a petition filed by any of AIRLINE's creditors or by any of its stockholders, seeking its reorganization or the restructuring of its indebtedness under the Federal Bankruptcy Code or under any other law or statute of the United States or any state thereof, and such order or decree shall not be stayed or vacated within sixty (60) days of its issuance.
- (F) A petition under any chapter of the Federal Bankruptcy Code or an action under any federal or State insolvency law or statute shall be filed against AIRLINE and is not dismissed or stayed within sixty (60) days after the filing thereof.
- (G) A receiver, trustee, custodian, liquidator, or other similar official takes possession or control of all or substantially all of the property of AIRLINE by or pursuant to, or under CITY of any legislative act, resolution, or rule, or any order or decree of any court or governmental board, agency, or officer, and such possession or control continues in effect for a period of sixty (60) days.
- (H) AIRLINE becomes a corporation in dissolution.

- (I) The transfer, passing, or devolving of any interests or rights of AIRLINE hereunder, by operation of law or otherwise, to any other Person, by, in connection with, or as a result of any bankruptcy, insolvency, trusteeship, liquidation, or other proceedings or occurrence described in this Section 11.02.
- (J) The failure of AIRLINE to maintain the minimum insurance levels required in Section 8.01.
- (K) The failure of AIRLINE to comply with the terms and conditions of Section 5.06, Extraordinary Adjustments or Special Increases in Rates.
- (L) The conduct of any business, practice, or performance of any act at the Airport that is not specifically authorized by this Agreement, or by any other agreement between CITY and AIRLINE, if said business or act does not cease permanently within fifteen (15) days of receipt of CITY's written notice to cease said business, practice, or act.
- (M) The failure by AIRLINE to comply with environmental regulations in accordance with Section 10.03(D)(5).

11.03 Nonwaiver of Rights. No waiver by either party of any of the terms, conditions, covenants, or agreements in this Agreement shall be deemed or taken as a waiver at any time there-after of the same of any other term, condition, covenant, or agreement in this Agreement, or of the strict and prompt performance thereof. No delay, failure, or omission of CITY, and no subsequent acceptance by CITY of rent then or thereafter accrued, and no delay, failure, or omission of either party to exercise any right, power, privilege, or option arising from any default, shall impair any such right, power, privilege, or options, or be construed to be a relinquishment thereof, or a waiver of such default or acquiescence therein; and no notice by either party shall be required to restore or revive any option, right, power, remedy, or privilege after waiver by such party of default in one or more instances. No option, right, power, remedy, or privilege of either party shall be construed as being exhausted or discharged by the exercise thereof in one or more instances. All rights provided by this Agreement shall be cumulative, and no one of them shall be exclusive of the other or exclusive of any other remedies provided by law, and the exercise of one right, power, option, or remedy by either party shall not impair its rights to exercise any other right, power, option, or remedy.

ARTICLE 12
GENERAL PROVISIONS

- 12.01 Rules and Regulations. AIRLINE and its agents, contractors, and employees shall observe and obey during the term and any extension of this Agreement the Rules and Regulations promulgated by CITY governing conduct on and operations at the Airport to the extent such Rules and Regulations do not conflict with this Agreement. CITY agrees that all Rules and Regulations so promulgated shall not be inconsistent with any current or future legally authorized rule or regulation of the FAA or any other federal or State agency having authority over AIRLINE and that AIRLINE will be provided an opportunity to comment on proposed Rules and Regulations potentially affecting its operations. CITY agrees to provide AIRLINE with notice of any new rules promulgated within a reasonable time of their enactment.
- 12.02 Compliance with Law. AIRLINE and CITY shall not use the Airport or any part thereof, or knowingly permit the Airport to be used by any of its employees, officers, agents, subtenants, invitees, or licensees, for any illegal purposes and shall, at all times during the term of this Agreement, comply with all applicable federal, State, and local laws and regulations.
- 12.03 Permits and Licenses. AIRLINE shall obtain and pay for all licenses, permits, or other authorization that may be required under all applicable federal, State, or local laws and regulations insofar as they are necessary to comply with the requirements of and the privileges extended under this Agreement.
- 12.04 Nondiscrimination.
- (A) General. AIRLINE and CITY shall not discriminate against any person or class of persons by reason of race, color, religion, sex, national origin or ancestry, age, or physical or mental handicap in the use or occupancy of the Airport.
 - (B) Civil/Human Rights Laws. AIRLINE and CITY shall not, on the grounds of race, color, religion, sex, national origin or ancestry, or age, discriminate or permit discrimination against any person or group of persons in any manner prohibited by Part 21 of the Federal Aviation Regulations, the Civil Rights Act of 1964, as amended, the Equal Pay Act of 1963, and the Rehabilitation Act of 1973 in the use or occupancy of the Airport. Without limiting the generality of the foregoing, AIRLINE agrees to not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin or ancestry, or age. AIRLINE agrees to take action to ensure that applicants are

employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin or ancestry, age, or physical handicap. Such action shall include, but not be limited to: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; selection for training; and disciplinary actions and grievances.

12.05 Granting of More Favorable Terms. CITY shall not enter into any agreement with any other Air Transportation Company containing substantially more favorable terms than this Agreement or grant to any scheduled Air Transportation Company rights or privileges with respect to the Airport that are not accorded AIRLINE in this Agreement unless the same rights, terms, and privileges are concurrently made available to AIRLINE.

12.06 Notices.

(A) General. Notices required by this Agreement shall be given by registered or certified mail by depositing the same in the U.S. mail in the continental United States, postage prepaid, return receipt requested or by FedEx Express overnight delivery. Either party shall have the right, by giving written notice to the other, to change the address at which its notices are to be delivered. Until any such change is made, notices shall be delivered as follows:

1. CITY:
Airport Director
Manchester-Boston Regional Airport
1 Airport Road, Suite 300
Manchester, New Hampshire 03103
2. AIRLINE:
Manager, Airport Relations & Development
Federal Express Corporation
3680 Hacks Cross Rd., Bldg. H, 3rd Fl. (#14-0365)
Memphis, Tennessee 38125
3. With a copy to:
Federal Express Corporation
Legal Department
3620 Hacks Cross Road

Building B, 3rd Floor
Attn: Managing Director, Business Transactions Group (#14-0365)
Memphis, Tennessee 38125

- (B) Other Notice. If notice is given in any other manner or at any other place, it shall also be given at the place and in the manner specified in Section 12.06(A).
- (C) Effective Date of Notice. The effective date of such notice shall be the date of the receipt as shown by the U.S. Postal Service return receipt or when refused by recipient.
- 12.07 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of CITY and AIRLINE.
- 12.08 Governing Law. This Agreement and all disputes arising under it shall be governed by the laws of the State of New Hampshire.
- 12.09 Quiet Enjoyment. AIRLINE shall, upon payment of the Rental and Fee Payments required under this Agreement and upon compliance with the terms and conditions of this Agreement, peaceably have and enjoy the rights, uses, and privileges of the Airport, its appurtenances, and facilities as granted in this Agreement and by the Rules and Regulations.
- 12.10 Incorporation of Required Provisions. AIRLINE and CITY by this reference incorporate all applicable provisions lawfully required to be contained in this Agreement by any governmental body or agency.
- 12.11 Nonliability of Agents and Employees. No member, officer, agent, Airport Director, or employee of CITY or AIRLINE shall be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement or because of any breach thereof or because of its or their execution or attempted execution.
- 12.12 Security. In order to maintain the security of restricted areas on the Airport, AIRLINE shall implement and maintain security measures with respect to access control to and from AIRLINE's aircraft and with respect to the use of restricted areas of the Airport as required by TSA and FAA regulations, and the rules and procedures promulgated by AIRPORT pursuant to those TSA and FAA regulations. The Airport Director shall periodically evaluate compliance with this Section 12.12. Failure of AIRLINE to fully comply with the requirements set forth in this Section 12.12 shall be sufficient grounds

for the Airport Director to immediately take any and all necessary corrective measures until security that is acceptable to the Airport Director is restored. AIRLINE shall be responsible for any costs the Airport Director might incur as a result of such corrective measures plus a fifteen percent (15%) administrative charge. AIRLINE shall also reimburse CITY for any and all fines that may be levied against CITY by the TSA and FAA due to AIRLINE's failure to observe any applicable security regulation.

- 12.13 Subordination of Agreement. This Agreement is subject and subordinate to the provisions of any agreements heretofore or hereafter made between CITY and the United States of America relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of federal rights or property to CITY for Airport purposes or to the expenditure of federal funds for the improvement or development of the Airport.
- 12.14 Federal Aviation Act, Section 308. Nothing in this Agreement shall be deemed to grant to AIRLINE any exclusive right or privilege within the meaning of Section 308 of the Federal Aviation Act for the conduct of any activity on the Airport.
- 12.15 Generally Accepted Accounting Principles. Whenever any report or disclosure referred to in this Agreement consists, either in whole or in part, of actual, year-end financial information, such financial information shall be prepared in accordance with generally accepted accounting principles consistently applied.
- 12.16 Severability. If one or more clauses, sections, or provisions of this Agreement shall be held to be unlawful, invalid, or unenforceable, the remainder of the Agreement shall not be affected thereby.
- 12.17 Headings. The headings of the articles and sections of this Agreement are included only as a matter of convenience and for reference and in no way define, limit, or describe the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions of this Agreement or the interpretation or construction of such terms and provisions.
- 12.18 Entire Agreement. This Agreement, together with all exhibits to this Agreement, constitutes the entire agreement between AIRLINE and CITY concerning the subject matter of this Agreement, and all other representations or statements heretofore made, verbal or written, are merged herein, and this Agreement may be amended only in writing and must be executed by duly authorized representatives of AIRLINE and CITY.

CARGO AIRLINE OPERATING PERMIT
Manchester-Boston Regional Airport

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- 12.19 Incorporation of Exhibits. All exhibits referred to in this Agreement are intended to be and are hereby specifically made a part of this Agreement.
- 12.20 Force Majeure. Except as herein provided, neither CITY nor AIRLINE shall be deemed to be in default under this Agreement if either party is prevented from performing any of the obligations of this Agreement, other than the payment of Rental and Fee Payments, by reason of strikes, boycotts, labor disputes, embargoes, shortages of energy or materials, acts of God, acts of the public enemy, riots, rebellion, or sabotage.
- 12.21 General Revenue Bond Documents. In the event of conflicts between this Agreement and the General Revenue Bond Documents, the General Revenue Bond Documents shall govern.
- 12.22 Time of the Essence. Time is of the essence of this Agreement.
- 12.23 Approvals. Approvals of the CITY or Airport Director shall not be reasonably withheld.

CITY OF MANCHESTER
DEPARTMENT OF AVIATION

By: _____

Mark Brewer, Airport Director

Date

FEDERAL EXPRESS CORPORATION

By: _____

Print Name, Title

VP. PROPERTIES AND FACILITIES

Date

Attest

Attest

ASSISTANT SECRETARY

Approved

Legal Department

RESUBMITTAL

EXHIBIT B

EXAMPLE CALCULATION OF AIRLINE RENTAL AND FEE PAYMENTS

City of Manchester, Department of Aviation

For Fiscal Years Ending June 30

	200X
	Budget
LANDING FEE RATE	
Operation and Maintenance Expenses	\$ 7,276,732
+ Operation and Maintenance Reserve Fund deposit	166,828
+ Net Debt Service requirement	1,278,963
+ Required deposit to Coverage Account	319,741
+ Amortization of City-funded assets	-
+ Additional airfield improvements	-
= Airfield Requirement	\$ 9,042,264
- Revenue credit from prior year	2,540,000
- Other Airfield revenues	276,650
= Net Airfield Requirement	\$ 6,225,614
Calculated Landing Fee Rate	
/ Airline aircraft landed weight (1,000 pound units)	3,100,000
= Calculated Landing Fee Rate per 1,000 pound unit	\$2.01
APRON FEE RATE	
Net Debt Service requirement	\$ 476,440
+ Required deposit to Coverage Account (e)	119,110
= Apron Requirement	\$ 595,549
Calculated Apron Fee	
/ Apron space (square feet)	874,057
= Apron Fee Rate per square foot	\$0.68
TERMINAL BUILDING RENTAL RATE	
Terminal Building Operation and Maintenance Expenses	\$ 8,919,865
+ Operation and Maintenance Reserve Fund deposit	204,498
+ Net Debt Service requirement	3,723,914
+ Required deposit to Coverage Account	930,979
+ Amortization of City-funded assets	-
= Terminal Building Requirement	\$ 13,779,256
Calculated Terminal Building Rental Rate	
/ Usable Space (square feet)	308,778
= Terminal Building Rental Rate per square foot	\$44.63

EXHIBIT C

**MANCHESTER-BOSTON REGIONAL
AIRPORT**

**FY 2015 Airline Rates & Charges
(Effective 7/1/2014)**

	Rates & Charges	FY 2015
1)	Terminal Building Rental Rate	\$57.21/square foot
2)	Signatory Landing Rate	\$6.61/1000#
3)	Non-signatory Landing Fee	\$8.26/1000#
4)	Overnight Parking Fee	\$50.00
5)	Apron Rate	\$0.55/square foot
6)	Jet Bridge/Departure Lounge Per Use Fee (turnaround)	\$225/use
7)	Termination (off load only) / Origination (load only)	\$135/use
8)	Ticket Counter Per Use Fee	\$100/use

EXHIBIT D

AIR CARRIER ACTIVITY REPORT EFFECTIVE JULY 1, 2014

Manchester-Boston Regional Airport

Manchester, New Hampshire

Attn: Joni Pitman

Fax: (603) 666-4101 or Email: jpitman@flymanchester.com

A. Carrier Name:

--

B. Activity Month:

--

C. Landings:

Aircraft Type	Maximum Certified	Number of Landings	Total Landed Weight
	Landing Weight of Aircraft	During Month	by Aircraft Type
1			0
2			0
3			0
4			0
5			0
6			0
Total Landed Weight		0	0

D. Landing Fees Due

Total Landed Weights/1000lbs x \$6.61 Signatory Rate =		\$	-
Total Landed Weights/1000lbs x \$8.26 Non-Signatory Rate =		\$	-
Total		\$	-

E. Casual (Ad Hoc) Use of Overnight Parking on Unleased Terminal Ramp or Remote Parking Apron
(Attach Supporting Documentation)

	# of Uses	Fee	Amount Due
All Aircraft		\$50	\$ -
Total			0

F. Casual (Ad Hoc) Use of Unleased Jet Bridge/Departure Lounge
(Attach Supporting Documentation)

	# of Uses	Fee per Use	Amount Due
Turnaround (Arrival & Departure)		\$225	\$ -
Arrival Only		\$135	\$ -
Departure Only		\$135	\$ -
Total			\$ -

TOTAL DUE WITH REPORT (D+E+F)	\$ -
-------------------------------	------

G. Passengers (including non-revenue passengers):

	Enplaned	Deplaned	Total
Domestic			0
International			0

H. Freight:

	Enplaned(outbound)	Deplaned (inbound)	Total
Domestic			0
International			0

I. Air Mail:

	Enplaned(outbound)	Deplaned (inbound)	Total
Domestic			0
International			0

J.

Signature

Date

EXHIBIT E

EXAMPLE FLOW OF FUNDS City of Manchester, Department of Aviation Fiscal Years Ending June 30

	200X
Revenues	
Airline revenues	
Landing fees	\$ 5,000,000
Terminal building rentals	5,000,000
Apron	400,000
	<u>\$ 10,400,000</u>
Nonairline revenues	
Airfield revenues	\$ 300,000
Terminal Building revenues	7,000,000
Parking and Roadways revenues	18,000,000
Other Buildings and Areas revenues	1,000,000
Other revenues	1,000,000
	<u>\$ 27,300,000</u>
Transfer from Revenue Credit Account	<u>\$ 2,000,000</u>
Total Revenues	<u>\$ 39,700,000</u>
Coverage Amount	2,500,000
Total Revenues and transfer from Coverage Account	<u><u>\$ 42,200,000</u></u>
Application of Revenues	
Operation and Maintenance Expenses	\$ 20,300,000
Prior Bonds Debt Service Fund	-
Debt Service Fund	10,000,000
Debt Service Reserve Fund	-
Operation and Maintenance Reserve Fund	400,000
Renewal and Replacement Reserve Fund	-
Insurance Reserve Fund	-
Rebate Fund	-
General Fund	
Coverage Account	2,500,000
CFC Reserve Account	500,000
Capital Improvement Account	1,000,000
Revenue Credit Account	500,000
Subtotal	<u>\$ 35,200,000</u>
Remaining revenues	<u>\$ 7,000,000</u>
Additional deposit to Capital Improvement Account (60%)	\$ 4,200,000
Additional deposit to Revenue Credit Account (40%)	2,800,000
Total additional deposits	<u>\$ 7,000,000</u>

EXHIBIT F

FLOW OF FUNDS

City of Manchester, Department of Aviation

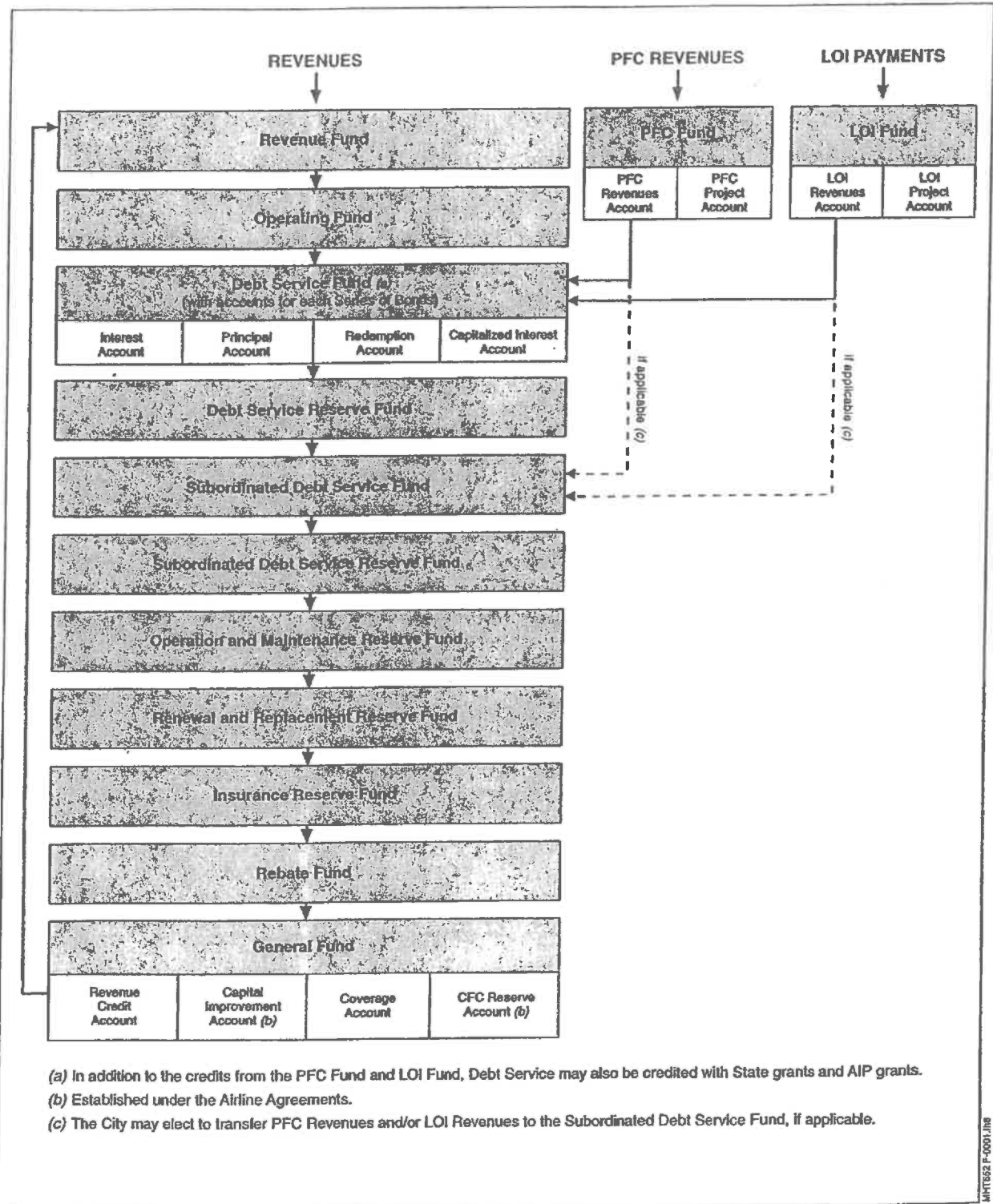


EXHIBIT G

AFFILIATE IDENTIFICATION AND REQUIREMENTS

"AIRLINE": _____

"AFFILIATE": _____ d/b/a _____

AFFILIATE ADDRESS: _____

AFFILIATE POINT OF CONTACT: _____

Telephone: _____

Fax: _____

Email: _____

Date Start of Service: _____

Date of Termination: _____

AIRLINE and AFFILIATE acknowledge and agree that AFFILIATE will comply with all terms, conditions, covenants, and obligations as set forth in the Cargo Airline Operating Permit dated July 1, 2015.

AIRLINE

By: _____

AFFILIATE

By: _____