



Manchester-Boston Regional Airport
One Airport Road, Suite-300
Manchester, New Hampshire 03103

Addendum No. Three

Date: August 11, 2022

RFP No: FY23-805-07 Full Service Fixed Base Operator

This Addendum # 3 to the Request for Proposals for Full Service Fixed Base Operator (“RFP”) contains the following clarifications, changes, additions, and/or deletions of the RFP:

Appendix A – FBO Ground Lease and Operating Agreement



**GROUND LEASE AND
OPERATING AGREEMENT**

Between

CITY MANCHESTER DEPARTMENT OF AVIATION

and

[ENTER NAME OF CONTRACTOR]

November __, 2022

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GROUND LEASE AND OPERATING AGREEMENT

THIS GROUND LEASE AND OPERATING AGREEMENT (hereinafter referred to as the “Lease”) is made and entered into as of this ____ day of **November, 2022**, (the “Effective Date”) by and between **City Manchester, New Hampshire, acting by and through its Department of Aviation** (“CITY”), being a duly and lawfully constituted municipal corporation having a mailing address of 1 Airport Road, Suite 300, Manchester, New Hampshire 03103 and **[ENTER NAME OF CONTRACTOR]**, (“CONTRACTOR”), a **[state of incorporation]** **[type of business (limited liability company, etc.)]**, having a mailing address of **[insert address]**.

WHEREAS, CITY owns, controls, operates, and manages that certain real property commonly known and described as the Manchester-Boston Regional Airport (the “Airport”), located in the City Manchester, New Hampshire, and the town of Londonderry, New Hampshire; and,

WHEREAS, CITY has the power and authority to enter into this Lease and to grant the rights and privileges conveyed hereby; and,

WHEREAS, CONTRACTOR is duly organized and validly existing as a **[type of business (limited liability company, etc.)]** and is in good standing under the laws of its jurisdiction of incorporation, and is duly qualified to do business and is in good standing in the state of New Hampshire, and has the power and authority to enter into this Lease; and,

WHEREAS, CITY desires that certain facilities be constructed to provide for the operation and management of a Fixed Base Operator at the Airport; and,

WHEREAS, CONTRACTOR desires to lease from CITY certain real property at the Airport and to cause such facilities to be constructed and operated pursuant and subject to the terms and conditions set forth in this Lease; and,

WHEREAS, CONTRACTOR’S PROPOSAL submitted in response to CITY’S public solicitation, Request for Proposals for a Full Service Fixed Base Operator Solicitation Number FY23-805-07, has been selected;

NOW THEREFORE, in recognition, reliance upon, and consideration of the foregoing and the mutual terms, provisions, and covenants contained in this Lease, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, CITY and CONTRACTOR agree as follows:

ARTICLE I – PARTIES AND THIS LEASE

1.1 City’s Authority

CITY warrants and represents that CITY has the right, power, and legal capacity to enter into, and perform CITY’S obligations under the AGREEMENT. The DIRECTOR shall administer the AGREEMENT on behalf of CITY. Unless otherwise provided herein or required by applicable law, the DIRECTOR shall be vested with all rights, powers, and duties of CITY herein.

1.2 Contractor’s Authority

CONTRACTOR warrants and represents that CONTRACTOR has the right, power, and legal capacity to enter into, and perform CONTRACTOR’S obligations under the AGREEMENT. The execution, delivery, and performance of the AGREEMENT by the undersigned CONTRACTOR representatives have been duly authorized by all necessary company action of CONTRACTOR, and the AGREEMENT will constitute a legal, valid, and binding obligation of CONTRACTOR, enforceable in accordance with the terms of the AGREEMENT.

1.3 Binding Effect

Except as otherwise expressly provided herein, the covenants, conditions, and agreements contained in the AGREEMENT shall be binding upon and shall inure to the benefit of CITY and CONTRACTOR and their respective successors, assigns, heirs, and personal representatives.

1.4 Relationship of the Parties

CONTRACTOR is not an employee or agent of CITY by reason of the AGREEMENT, or otherwise. CONTRACTOR shall be solely responsible for CONTRACTOR’S acts and omissions arising from or relating to CONTRACTOR’S operations or activities at the Airport and CONTRACTOR’S lease of the Leasehold. Nothing in the AGREEMENT shall be construed to render CONTRACTOR in any way, or for any purpose, a partner, joint venturer, or associate in any relationship with CITY other than that of landlord and tenant, nor shall the AGREEMENT be construed to authorize either CITY or CONTRACTOR to act as agent for the other.

1.5 Incorporated Documents

This Lease, all Exhibits referenced herein, the RFP, and the PROPOSAL are incorporated into the AGREEMENT.

ARTICLE II – DEFINITIONS

For all purposes of this Lease, capitalized terms shall have the definitions provided in this Article II, except as otherwise expressly stated or as otherwise clearly required by context. Such definitions shall be equally applicable to the singular and plural forms of such defined terms. The words “herein,” “hereunder,” and other words of similar nature refer to this Ground Lease and Operating Agreement as a whole. The word “shall” is mandatory and the word “may” is permissive.

“**100LL**” means aviation fuel known as 100 Octane Low Lead.

“**AGREEMENT**” means, jointly and severally, this Lease, the RFP, and the PROPOSAL, all as may be amended from time to time upon mutual written agreement by and between CITY and CONTRACTOR. In the event of a conflict between this Lease and any of the other documents referenced herein, the terms of this Lease shall control.

“**Airport**” means that certain airport commonly known and described as the Manchester-Boston Regional Airport located in the city Manchester, New Hampshire and the town of Londonderry, New Hampshire.

“**Airport Ticket Counter Use Fee**” has the meaning set forth in Section 5.2(A)(3) herein.

“**Ammon Center**” means the 42,359 square foot two-story building that served the community as a terminal building from the 1960s through the 1990s located in the Phase II Development Area, as such area is defined in the RFP.

“**Assurances**” has the meaning set forth in Section 9.2 herein.

“**Based Aircraft**” has the meaning set forth in the Rules and Regulations.

“**Cargo Airlines**” means an airline in the business of air transportation of property, but not passengers.

“**CITY**” means the City Manchester, New Hampshire, acting by and through its Department of Aviation.

“**CITY’S Agents**” has the meaning set forth in Section 11.4 herein.

“**Construction Period**” means the period beginning upon the expiration of the Due Diligence Period and continuing until the Date of Beneficial Occupancy.

“**CONTRACTOR**” means [Company Name], a [state of incorporation] [type of business (limited liability company, etc.)], and as further defined in Section 18.4 herein.

“**CONTRACTOR’S Agents**” has the meaning set forth in Section 11.3 herein.

“Contract Year” means a period of twelve (12) consecutive calendar months. The first Contract Year shall begin on the Rent Commencement Date and end on the last day of the eleventh (11th) full calendar month following the month in which the Rent Commencement Date occurred.

“Date of Beneficial Occupancy” means the date upon which the Improvements are completed, as certified by an authorized inspector from the town of Londonderry or the city of Manchester, as applicable, and a certificate of occupancy is issued by the Town of Londonderry or the City of Manchester, as applicable.

“DIRECTOR” means the Director of the Manchester-Boston Regional Airport or their designee, as appointed in writing.

“Due Diligence” means all customary due diligence activities regarding the Leasehold as may be reasonably necessary for the purpose of assessing the viability of the Project, including surveys, geo-technical studies (including, but not limited to, soil analysis), environmental studies, title searches, and reviews of local zoning and land use requirements.

“Due Diligence Period” has the meaning set forth in Section 4.2(A) herein.

“Effective Date” means the date referenced in the opening paragraph of this Lease.

“Environmental Laws” means all statutes, laws, regulations, codes, ordinances, rules, orders, decrees, judgments, injunctions, notices, or binding agreements issued, promulgated, or entered into by any governmental authority relating in any way to pollution, the protection of the environment, preservation or reclamation of natural resources, or the management, release, or threatened release of any Hazardous Material, including, but not limited to, those listed in Section 11.1 herein.

“Event of Default” and **“Events of Default”** means those events identified in Article XVI herein.

“FAA” means the United States Federal Aviation Administration and any agency or instrumentality of the United States government succeeding to its functions.

“FAA Contract Provisions” means those provisions required to be included in the AGREEMENT pursuant to federal law and the regulations of the FAA, as further described in Section 9.3 herein.

“Facilities” means the building, the Ammon Center or its replacement, and associated structures, including, but not limited to, fencing and other improvements associated with the operation of the building, metering equipment, service roads, utility interconnections, and all related equipment to be constructed by CONTRACTOR on the Leasehold, the initial concept of which is more particularly outlined in the PROPOSAL.

“**FBO Activity Report**” has the meaning set forth in Section 5.2(C) herein.

“**FBO Fees**” means all fees due and owing to CITY from an FBO operating at the Airport, including, but not limited to, Fuel Flowage Fees, FBO Privilege Fees, Airport Ticket Counter Use Fees, Landing Fees, and those such fees related to FBO Services provided by a sublessee.

“**FBO Privilege Fee**” has the meaning set forth in the Minimum Standards.

“**FBO Services**” means those services required and permitted to be offered by a Full Service Fixed Base Operator, as more fully described in the Minimum Standards.

“**Fuel Flowage Fee**” has the meaning set forth in the Minimum Standards.

“**Full Service Fixed Base Operator**” and “**Fixed Base Operator**” and “**FBO**” has the meaning set forth in the Minimum Standards.

“**Gross Receipts**” means total gross revenue except for the following: a) refunds and discounts to customers; b) sales, use, and excise taxes charged to customers; c) inter-departmental transfer of parts and components; d) proceeds from the sale of new and used engines and complete new or used avionics equipment; e) credits for loss or damage to merchandise; f) fuel sales; and g) cargo handling.

“**Hazardous Materials**” means as any chemical, material or substance which is regulated as toxic or hazardous or exposure to which, or disposition of which, is prohibited, limited or regulated by any federal, state, county, regional, local or other governmental authority, and as further defined in Section 11.2 herein.

“**Improvements**” means any construction upon, modifications to, or additions on, the Leasehold, including, but not limited to, the Facilities, and all structures, fixtures, and equipment affixed thereto in such a manner that they cannot be readily removed without damage to the remainder of the improvements and without substantially changing the character of the improvements.

“**Institutional Lender**” means a saving bank, savings and loan association, commercial bank, commercial finance company, trust company, capital markets entity underwritten or sponsored by a recognized national capital markets financial firm or insurance company, or a similar financial institution.

“**Insurance**” has the meaning set forth in Section 13.1 herein.

“**Jet A**” means aviation jet fuel compliant with the standard specifications issued by the American Society for Testing and Materials.

“**Land Taking Award**” has the meaning set forth in Section 10.5(A) herein.

“**Landing Fees**” has the meaning set forth in Section 5.2(A)(4) herein.

“**Lease**” means this Ground Lease and Operating Agreement and all Exhibits attached hereto.

“**Leasehold**” has the meaning set forth in Article III herein.

“**Leasehold Mortgagee**” has the meaning set forth in Section 12.1 herein.

“**Minimum Standards**” means the Minimum Standards for General Aviation Commercial Operators promulgated by CITY, as may be amended from time to time. The Minimum Standards in effect as of the Effective Date can be found in Appendix B to the RFP.

“**Net Facility Proceeds**” has the meaning set forth in Section 10.5(D)(2) herein.

“**New Tenant**” means an entity or party, other than CONTRACTOR, who leases the Leasehold from CITY, pursuant to Section 16.3(C) herein.

“**Performance Bond**” means the financial security for performance under the AGREEMENT which CONTRACTOR shall obtain pursuant to the terms and conditions set forth in Section 5.6 herein.

“**Plans and Specifications**” means the plans, drawings, and specifications relating to the Improvements, as included in the PROPOSAL and as the same may be altered or modified with the prior written approval of the DIRECTOR and CONTRACTOR.

“**Proceeds**” has the meaning set forth in Section 10.5(D) herein.

“**Project**” means the Facilities, the Improvements, and all other related appurtenances to the Leasehold as set forth in the Plans and Specifications, and as further defined in Section 3.2 herein.

“**PROPOSAL**” means CONTRACTOR’S response to the RFP, including all exhibits, schedules, addenda, appendices, and attachments thereto, and any material representations made by CONTRACTOR, and excluding any portions of said response, documents, and representations as may have been rejected in writing by CITY.

“**Rent**” means the sum which CONTRACTOR shall pay to and deposit with CITY for the rights granted to CONTRACTOR by the AGREEMENT, and as further described in Article V herein.

“**Rent Commencement Date**” means the earlier to occur of (i) the Date of Beneficial Occupancy or (ii) [insert date].

“**RFP**” means CITY’S Request for Proposals for Full Service Fixed Base Operator dated July 22, 2022, Solicitation Number FY23-805-07, and all appendices, attachments, and addenda thereto.

“**Rules and Regulations**” means the rules and regulations promulgated by CITY governing conduct on and operations at the Airport, as may be amended from time to time. The Rules and Regulations in effect as of the publication of the RFP can be found in Appendix B to the RFP.

“**Runway and Taxiway Complex**” means such facilities as now exist or as may, from time to time, be constructed, provided, and maintained by CITY at the Airport for public and common use, including, without limitation thereof, runways, taxiways, apron areas, and facilities incidental thereto.

“**Subcontractor**” means any individual, materialman, supplier, distributor, vendor, or firm at any level below CONTRACTOR who performs any part of the work or other requirement of CONTRACTOR under the AGREEMENT.

“**Sustainability Plan**” means CONTRACTOR’S Sustainability Plan submitted to CITY as part of the PROPOSAL.

“**Taking**” has the meaning set forth in Section 10.5(A) herein.

“**Term**” means the period of time commencing on Effective Date, and terminating at 11:59 p.m. local time on the day preceding the 40th anniversary of the Date of Beneficial Occupancy, unless terminated earlier in accordance with the terms of the AGREEMENT.

“**Total Taking**” has the meaning set forth in Section 10.5(B) herein.

“**Unserviceable**” means the condition of an item that is no longer suitable for use and cannot be safely, efficiently, legally, or economically repaired or serviced.

“**Utilities Systems**” means any fire alarm, fire protection, sprinkler, sewage, drainage, telephone and telegraph service, including all lines, pipes, mains, wires, conduits and equipment connected with or appurtenant thereto, within the Facilities.

“**Worksite**” means any area of the Leasehold, or any area adjacent to the Leasehold, including, but not limited to, structures, vegetation, utilities, and property, at which work on the Project is to be performed.

ARTICLE III – LEASEHOLD

3.1 Leasehold

A. *Description.* CITY hereby leases to CONTRACTOR, and CONTRACTOR hereby leases from CITY, upon and subject to the terms and provisions of the AGREEMENT, an area of approximately 8.75 acres (or 43,560 square feet), with improvements thereon, located on Green Drive in Londonderry and Manchester, New Hampshire, as more particularly described in Exhibit A attached hereto. As of the Effective Date, the square footage of the Leasehold has not been definitively determined by the parties hereto and is an approximation only. The actual square footage of the Leasehold shall be determined by a professional land survey conducted by a land surveyor licensed in the state of New Hampshire, which survey shall be conducted on behalf of CONTRACTOR and at CONTRACTOR'S sole cost and expense. Upon CONTRACTOR and CITY reaching an agreement as to the actual square footage of the Leasehold, pursuant to CONTRACTOR'S requested survey, the parties hereto shall enter into an addendum to this Lease, which addendum shall specifically describe the Leasehold in terms of square feet and/or acreage.

B. *Condition.* CONTRACTOR has inspected the Leasehold and accepts the Leasehold, "as is, with all faults" in its existing condition, and agrees that no representation, statement, or warranty, express or implied, has been made by or on behalf of CITY as to such condition, or as to the use that may be made of the Leasehold.

3.2 Improvements by Contractor

CONTRACTOR shall, at CONTRACTOR'S sole cost and expense, complete the construction project as described herein and throughout the AGREEMENT (the "Project"). The Project shall include all the Improvements, trade fixtures, signs, and any additional items necessary to the operation of the Facilities.

A. *Ammon Center.* CONTRACTOR hereby agrees to [insert details regarding option chosen for the Ammon Center]

B. *Worksite Maintenance.* In the event that the Project requires the relocation of any fencing and gates associated with CITY'S security fencing, CONTRACTOR shall be responsible for the costs related to such relocation and shall coordinate with CITY prior to any relocation of any security fencing. CONTRACTOR shall take all steps reasonably necessary to preserve and protect the Worksite and all conditions which may affect the Worksite.

C. Licenses and Permits. CONTRACTOR shall obtain and keep current during the Construction Period, all necessary approvals from governmental agencies, at CONTRACTOR'S sole cost and expense, prior to acquiring, constructing, fabricating, equipping, or installing the Project, and such improvements shall be acquired, constructed, fabricated, equipped, or installed in compliance with all federal, state, and local laws, ordinances, and regulations applicable thereto. Upon completion of the Project, CONTRACTOR shall obtain all required occupancy permits and authorizations from appropriate authorities authorizing the occupancy and possession and use of the Leasehold for the purposes contemplated herein. In the event that any portion of the underlying required documentation for the Project is non-compliant in any way, CONTRACTOR shall, at CONTRACTOR'S sole expense, modify the Project and the Plans and Specifications until compliance is achieved.

D. City's Approval Required. CONTRACTOR shall not construct, fabricate, install, erect, place, assemble, or permit any improvements, alterations, or repairs of any kind on the Leasehold without first obtaining written authorization from CITY and the Town of Londonderry, when appropriate. CONTRACTOR shall construct, fabricate, install, and equip the Project, or will cause the same to be constructed, fabricated, installed, and equipped, in accordance with the final Plans and Specifications and the AGREEMENT. If any portion of the underlying required documentation for the Project is non-compliant in any way, CONTRACTOR shall, at CONTRACTOR'S sole expense, modify the Project until compliance is achieved.

E. Plans. The DIRECTOR, at the DIRECTOR'S sole option, may assign a project manager or designate specific personnel from various departments at the Airport to coordinate with CONTRACTOR on all aspects of the Project, including coordination of plan submittals to all Airport departments necessary for Project approval and coordination with all other agencies necessary for the approval and construction of the Project.

1. Preliminary Plans. Within thirty (30) calendar days of the commencement of the Construction Period, the parties shall conduct a pre-project meeting for CONTRACTOR'S presentation of the proposed Project to CITY and to present preliminary site plans. The preliminary site plans shall show the proposed perimeter description of the Leasehold based upon a survey conducted by CONTRACTOR at CONTRACTOR'S expense and the relationship of the proposed Improvements to all adjacent Airport property, public roadways, service roadways, taxiways, and aircraft parking aprons. A minimum of three (3) complete hard copy sets and an electronic copy in Adobe®.pdf of preliminary plans shall be submitted to CITY for approval and to the Town of Londonderry, as appropriate. After receiving CITY approval,

and any necessary approvals from the Town of Londonderry, on the preliminary site plan, the CONTRACTOR shall submit to CITY, and the Town of Londonderry, as appropriate, for site plan review and approval, as necessary.

As CONTRACTOR develops design plans, CONTRACTOR shall provide additional preliminary plans to the DIRECTOR for review and comment. Plans shall be submitted at the 60% and 90% design development stage. At the 60% design development stage, CONTRACTOR shall provide plans showing the full extent of the Project to be constructed including grading, drainage, landscaping, paving, structural details, and utility locations. At the 90% design development stage, CONTRACTOR shall provide, in addition to the plan set, a complete draft set of contract specifications, and an architectural sample board showing the proposed exterior finishes. Civil engineering plans shall include plan drawings submitted on a scale not smaller than one (1) inch equals fifty (50) feet. Architectural plans shall include plan drawings at a suitable scale but in no case shall the scale be smaller than 1/16 inch equals one (1) foot.

The Plans and Specifications shall be in sufficient detail for the DIRECTOR to determine compatibility with CITY'S overall objectives for the aesthetic character and quality of the Improvements, and the Improvements' conformity and compatibility with the existing Airport architectural, design, and exterior lighting features. Architectural features shall include an accurate architectural perspective color rendering including the proposed exterior color, scheme, style, materials, wording, and placement of all signs. CONTRACTOR hereby warrants that CITY may use all of the Plans and Specifications submitted by CONTRACTOR or any other person, for purposes relevant to and consistent with the AGREEMENT.

Within fifteen (15) calendar days of the date of receipt of the preliminary plans, CITY will return two (2) sets of plans to CONTRACTOR with comments. CITY review and comment on the preliminary plans does not mean or imply that the proposed Project has been approved by CITY. Additional plans, specifications, or design features beyond those submitted with the preliminary plans may be required and shall be prepared by CONTRACTOR at the request of CITY.

2. *Final Plans.* A minimum of three (3) copies of the final Plans and Specifications incorporating agreed upon resolution to CITY comments received on the preliminary plans, as described in Section 3.2(E)(1)

herein, and setting forth, in all necessary detail, the requirements for construction of the Project, shall be submitted to CITY for approval prior to submitting plans to other applicable agencies so that CITY may check them for design conformance with the preliminary plans.

F. *Approval of Plans.* Within fifteen (15) calendar days of the date of receipt of the final Plans and Specifications, if such final Plans and Specifications are approved, CITY will return two (2) sets of final Plans and Specifications to CONTRACTOR with CITY approval stamped on the final Plans and Specifications. CITY will retain one (1) full set of the final Plans and Specifications to CONTRACTOR. CITY approval of the final Plans and Specifications shall only mean that the proposed Project is consistent with CITY'S goals and objectives for Airport development projects and does not imply that the proposed Project is approved by any of the permitting entities having jurisdiction over the Project. Any modifications to the approved final Plans and Specifications, including, but not limited to, environmental mitigation measures, modifications imposed or requested by the City of Manchester or the Town of Londonderry, or construction change orders shall be submitted to CITY for approval prior to construction, such approval not to be unreasonably withheld, conditioned, or delayed.

G. *Notice to Commence Construction.* DIRECTOR'S approval of the final Plans and Specifications shall constitute CONTRACTOR'S notice to commence construction of the Project, provided that all of the following requirements have been satisfied:

1. CONTRACTOR has delivered to the DIRECTOR for approval, and the DIRECTOR has approved, certificates of insurance and required endorsements for coverage evidencing CONTRACTOR'S and any Subcontractors' insurance coverage to be in compliance with the applicable insurance provisions detailed herein;
2. CONTRACTOR has submitted to the DIRECTOR a copy of the building permit issued to CONTRACTOR by the City of Manchester and/or Town of Londonderry building inspector(s), as applicable;
3. CONTRACTOR has received all approvals required for the construction of the Project;
4. CONTRACTOR can demonstrate that all necessary environmental requirements, permits, and approvals have been received; and
5. CITY has received CONTRACTOR'S Performance Bond, as further described in Section 5.6 herein.

CONTRACTOR shall notify the DIRECTOR of CONTRACTOR'S intention to commence construction of the Project at least forty-eight (48) hours prior to the commencement of such work or delivery of any material(s) to be used in such work at the Leasehold.

H. Inspections. The parties hereto and their authorized representatives shall have full rights of inspection during the construction, fabrication, equipping, and installation of the Project. CONTRACTOR shall provide and maintain an inspection system covering the Project and acceptable to CITY. CONTRACTOR shall maintain and make available to CITY complete records of all inspections and tests performed by any party performing work on the Project. Any review or approval by the DIRECTOR of the Plans and Specifications and construction schedule, or any inspection by CITY of the Project work or materials, shall not be deemed to constitute a waiver or release by CITY of any obligation or responsibility of CONTRACTOR under the AGREEMENT, or assumption of any risk or liability by CITY with respect thereto, and CONTRACTOR shall make no claim against CITY on account of such review, approval, or inspection. CITY reviews, approvals, and inspections shall not constitute assumption by CITY of any responsibility for the adequacy of the design or the construction.

I. Violations and Hazardous Conditions. In the event that, during the construction of the Project, CITY reasonably determines that a condition on the Leasehold is hazardous or potentially hazardous to persons or property CITY may, either in writing or orally, direct CONTRACTOR to correct the condition, and CONTRACTOR shall immediately comply with such directive pursuant to the requirements further described in Section E.11.2 in Appendix E to the RFP.

J. Costs. CONTRACTOR represents to CITY that it is CONTRACTOR'S good faith estimate that the total direct and indirect costs of the Project shall be in the range of [insert number Dollars (\$#)] to [insert number Dollars (\$#)]. Upon completion of the Project, CONTRACTOR will furnish CITY with a summary of such costs. Notwithstanding the foregoing, nothing herein is intended to prevent or discourage CONTRACTOR from taking reasonable steps to lower the cost of the Project so long as the construction thereof is completed in accordance with the Plans and Specifications and no degradation in quality or appearance of the Project occurs.

K. Title. On the expiration of the Term, title to the Improvements and other improvements constructed by CONTRACTOR on the Leasehold shall revert to CITY without further action of any kind on the part of CITY or CONTRACTOR. All personal property and all property and installations (including trade fixtures) removable without material damage to the Leasehold, which are installed by CONTRACTOR in or on the Leasehold shall be deemed to be and remain the

property of CONTRACTOR. All such property and installations may at CONTRACTOR'S option be removed by CONTRACTOR from the Leasehold at any time during the Term, and, unless otherwise agreed in writing by the parties, shall be removed by CONTRACTOR at or before the expiration or other termination of the Term, provided that any damage to the Leasehold caused by said removal shall be repaired by CONTRACTOR at CONTRACTOR'S sole expense so as to return the Leasehold to CITY in the same or similar condition as when constructed by CONTRACTOR, reasonable wear and tear excepted, and free and clear of any liens or encumbrances incurred by CONTRACTOR. Any such property remaining on the Leasehold beyond thirty (30) calendar days thereafter shall be deemed to be abandoned by CONTRACTOR and shall become the property of CITY.

L. *Parking during construction.* During the Construction Period, vehicular and equipment parking in areas other than the Leasehold by CONTRACTOR or CONTRACTOR'S officers, representatives, agents, employees, guests, patrons, volunteers, contractors, Subcontractors, licensees, suppliers, or other invitees shall be restricted to such areas at Airport as are designated by the DIRECTOR.

M. *Obstruction lights and safety equipment.* CONTRACTOR shall (i) provide and maintain such obstruction lights as CITY may reasonably direct, of the type and design approved by CITY, (ii) install such lights in the locations on the Leasehold designated by CITY, (iii) furnish and install the bulbs for such lights, (iv) furnish the electricity necessary for the operation thereof, and (v) operate the same in accordance with the directions of CITY. In addition, CONTRACTOR shall provide and maintain fire protection and safety equipment and all other equipment of every kind and nature required by any law, rule, order, ordinance, or resolution of any governmental authority having jurisdiction over the Airport.

ARTICLE IV – TERM

4.1 **Effective Date**

The AGREEMENT shall become effective as of the Effective Date, and the rights of use and occupancy granted herein of the Leasehold for construction of the Project shall commence on such date and, subject to the other provisions hereof.

4.2 **Term**

A. *Due Diligence Period.* CONTRACTOR shall have ninety (90) calendar days from the date the DIRECTOR issues the Notice to Proceed to begin performance hereunder to conduct all customary Due Diligence activities regarding the Leasehold as may be reasonably necessary for the purpose of assessing the viability of the Project and establishing preliminary plans therefor (the "Due Diligence Period").

B. Construction Period. Upon expiration of the Due Diligence Period, and upon CONTRACTOR receiving all necessary local, state, and federal approvals, CONTRACTOR shall commence construction of the Project pursuant to the terms and conditions of the AGREEMENT, which construction shall be deemed completed upon the Date of Beneficial Occupancy. Construction shall be completed within two (2) calendar years (730 calendar days) from the beginning of the Construction Period.

C. Duration of Term. The Term of the AGREEMENT shall be a forty (40) year fixed term, commencing upon the Date of Beneficial Occupancy and terminating at 11:59 p.m. local on the day preceding the 40th anniversary of the Date of Beneficial Occupancy, unless terminated earlier in accordance with the terms of the AGREEMENT.

4.3 **Termination**

A. Effects of Termination. Unless due to an uncured default under the AGREEMENT, any expiration or termination of the AGREEMENT shall be without prejudice. Any termination of the AGREEMENT shall be subject to the terms and conditions of Article XII herein.

B. Termination for Convenience by City. The DIRECTOR may terminate the AGREEMENT at any time, for any reason, by giving thirty (30) calendar days written notice to CONTRACTOR. CITY'S right to terminate the AGREEMENT for convenience is cumulative of all rights and remedies which exist now or in the future. In the event that CITY terminates the AGREEMENT pursuant to this Section 4.3(B), CITY will, on a straight-line depreciation basis, reimburse CONTRACTOR for CONTRACTOR'S unamortized expenses towards capital investments. TERMINATION OF THE AGREEMENT AND PAYMENT FOR UNAMORTIZED INVESTMENTS ARE CONTRACTOR'S ONLY REMEDIES FOR CITY'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THE AGREEMENT. CONTRACTOR WAIVES ANY CLAIM (OTHER THAN CONTRACTOR'S CLAIM FOR PAYMENT AS SPECIFIED IN THIS SECTION 4.3(B)), CONTRACTOR MAY HAVE NOW OR IN THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM CITY'S TERMINATION FOR CONVENIENCE.

C. For Cause by City. If CONTRACTOR defaults under the AGREEMENT, the DIRECTOR may terminate the AGREEMENT with CONTRACTOR pursuant to the terms and conditions stated in Article XVI herein. In the event that CITY terminates the AGREEMENT pursuant to this Section 4.3(C), CONTRACTOR shall not be entitled to any reimbursements for CONTRACTOR'S unamortized expenses towards capital investments.

D. *For Cause by Contractor.* CONTRACTOR may, without limiting any other rights CONTRACTOR may have hereunder, in law, or in equity, terminate the AGREEMENT upon the events, and pursuant to the terms and conditions, described in Sections 10.4, 10.5(B), and 18.3(B) herein, or by providing CITY with written notice thirty (30) calendar days prior to such termination upon the occurrence of, or at any time thereafter during the continuation of, any one or more of the following events:

1. CONTRACTOR is prevented from conducting FBO operations at the Facilities by reason of CONTRACTOR'S inability to use a substantial part or all of the Runway and Taxiway Complex for a period longer than:
 - a. ten (10) consecutive calendar days, resulting from any condition of the Airport not due to the fault of CONTRACTOR; or
 - b. thirty (30) consecutive calendar days, resulting from a permanent injunction issued by any court of competent jurisdiction; or
 - c. sixty (60) consecutive calendar days, resulting from any order, rule, or regulation of the Federal Aviation Administration, or other governmental agency having jurisdiction over the operations of CONTRACTOR, with which CONTRACTOR is unable to comply at reasonable cost or expense.
2. CONTRACTOR'S right to operate as an FBO at the Airport is revoked.
3. CITY shall fail to perform any of CITY'S obligations under the AGREEMENT for thirty (30) calendars days after receipt of notice of default hereunder from CONTRACTOR (except where fulfillment of CITY'S obligation requires activity over a greater period of time, in which event CITY shall commence to perform whatever may be required for fulfillment within thirty (30) calendar days after the receipt of such notice and shall diligently continue such performance without interruption to completion, except for causes beyond CONTRACTOR'S control).

Any termination made pursuant to this Section 4.3(D) shall be deemed effective upon the date set forth in CONTRACTOR'S notice to CITY regarding such termination, which date shall be not less than thirty (30) calendar days from the date of notice is received by CITY. Any such termination shall be deemed to have

the same effect as if the Term hereof had expired on the date included in such notice.

No waiver by CONTRACTOR of any default on the part of CITY in the performance of any of the terms, covenants, or conditions hereof to be performed, kept, or observed by CITY shall be, or shall be construed to be, a waiver by CONTRACTOR of any other or subsequent default in the performance of any of said terms, covenants, and conditions.

4.4 Continued Occupancy/Holdover

In the event that CONTRACTOR remains in possession of the Leasehold after the expiration or termination of the AGREEMENT, without the execution of a new lease, such holding over shall not be deemed to constitute an extension or renewal of the AGREEMENT, but shall merely create a tenancy from month-to-month which either party hereto may terminate upon thirty (30) calendar days advance written notice to the other. In the event of such holding over, CONTRACTOR shall perform all terms, promises, conditions, and covenants required of it herein, but shall pay Rent to CITY in such amounts as may be designated by the DIRECTOR, which in no case shall be less than that in effect immediately prior to such expiration or earlier termination of the AGREEMENT.

ARTICLE V – FINANCIAL CONSIDERATIONS

5.1 Ground Rent

In addition to all applicable fees associated with an operating permit for a Fixed Base Operator charged at the Airport during the Term, CONTRACTOR hereby agrees to pay to CITY throughout the Term, for the use and occupancy of the Leasehold, an annual ground rent, determined as follows:

A. Base Rent. Commencing on the Rent Commencement Date and continuing through the first Contract Year, CONTRACTOR shall pay to CITY, as Rent for the Leasehold, an annual rate of forty-five cents (\$0.45) per square foot, which Rent shall be paid to CITY in equal monthly payments of [amount to be inserted upon final survey numbers for size of Leased Premises are determined] Dollars (\$[TBD]). All Rent is due and payable in advance, without demand, on the first (1st) day of each calendar month during the Term of the AGREEMENT. Rent for any partial month shall be prorated.

B. Rent Adjustment. For each Contract Year during the Term, commencing with the second Contract Year, Rent shall be increased by two percent (2%).

C. Rent Reset. CITY shall have the right, but not the obligation, to reset the Rent at the beginning of Contract Year six (6), Contract Year eleven (11), Contract Year sixteen (16), Contract Year twenty-one (21), Contract Year twenty-six (26), Contract Year thirty-one (31), and Contract Year thirty-six (36) to an amount that equals the fair market value of the Leasehold (determined as if the land was vacant and unimproved) based upon an appraisal ordered and paid for by CITY, a copy of which will be provided to CONTRACTOR not later than one hundred and twenty (120) calendar days prior to the commencement of the applicable Contract Year for which the reset is requested. In the event that CONTRACTOR disagrees with the results of CITY'S appraisal, CONTRACTOR may, at CONTRACTOR'S sole cost and expense, conduct a second appraisal, a copy of which shall be furnished to CITY no later than sixty (60) calendar days prior to the commencement of the applicable Contract Year for which the reset is requested. If the difference between the two appraisals does not exceed ten percent (10%) of the lower appraisal, then the average of the two appraisals shall be deemed to be the fair market value. If the difference between the two appraisals is greater than ten percent (10%) of the lower appraisal, a third appraiser, to be chosen and mutually agreed upon by both parties, shall be retained to review the two appraisals and determine a fair market value. The costs of the third appraisal shall be paid for evenly by the parties, with each party paying fifty percent (50%) thereof. The third appraiser's decision shall be final. In no event shall the Rent payable under the AGREEMENT decrease as a result of such rent reset.

5.2 FBO Fees & Reporting

A. Fees. CONTRACTOR hereby agrees to pay to CITY designated fees related to CONTRACTOR'S FBO operations and any applicable ground handling of third-party charter flights at the Airport's commercial terminal. FBO Fees shall be included in the Airport's Rates and Charges Schedule, which Schedule is reviewed and adjusted as necessary on an annual basis. All fees are due and payable each month, without demand. FBO Fees as of the Effective Date are as follows:

1. *FBO Privilege Fee:*

Two and one-half percent (2.5%) of Gross Receipts.

2. *Fuel Flowage Fee:*

Collected by CONTRACTOR and passed through to CITY (Fuel Flowage Fee does not apply to fuel for CITY, nor for government aircraft):

\$0.05 per gallon of 100LL sold

\$0.05 per gallon of Jet A sold to FBO users

\$0.025 per gallon of Jet A sold to Cargo Airlines

3. *Airport Ticket Counter Use Fee:*

\$100 per use of Airport commercial terminal ticket counter space used to check in third-party charter passengers.

4. *Landing Fees:*

CONTRACTOR shall collect, on behalf of CITY, applicable landing fees for general aviation aircraft weighing greater than 12,500 pounds maximum takeoff weight. CONTRACTOR shall remit to CITY eighty percent (80%) of the monthly total of such fees collected, and may retain the remaining twenty percent (20%).

B. *Contractor as Agent for City.* CONTRACTOR shall act as an agent for CITY to monitor and record, with CONTRACTOR'S own personnel, all aircraft landings and aircraft parking on the Leasehold or any other apron areas mutually agreed upon between CONTRACTOR and CITY, including, but not limited to, a temporary overflow aircraft parking area. CONTRACTOR shall, at CONTRACTOR'S sole cost and expense, collect any such fees for aircraft utilizing the Leasehold as CITY may require and shall remit to CITY the agreed upon percentage of such fees collected. In the event that CITY determines it is in the CITY'S best interest to modify the system for such fee collection, CITY reserves the right to amend this Section 5.2 to no longer require such fee collection by CONTRACTOR.

C. *Activity Reports.* Beginning with the Date of Beneficial Occupancy, and then continuing monthly thereafter throughout the life hereof, CONTRACTOR shall provide CITY a monthly "FBO Activity Report" prepared in such detail and breakdown to reflect the various services provided by CONTRACTOR, including those services provided by any sublessee, all of which shall be certified by CONTRACTOR'S financial officer. Such monthly FBO Activity Report shall be prepared for the preceding calendar month and submitted by CONTRACTOR to CITY no later than the fifteenth (15th) calendar day following the end of the month for which such FBO Activity Report is being submitted. All such monthly FBO Activity Reports shall be accompanied by CONTRACTOR'S payment in full of all FBO Fees (including those related to FBO Services provided by a sublessee) due to be paid to CITY for the month to which such FBO Activity Report pertains.

5.3 Payment Provisions

A. *Method of Payment.* All payments due by CONTRACTOR to CITY shall be paid to CITY in the form of a check made payable to the Manchester-Boston Regional Airport, and shall be provided at the address specified in Article XI herein.

B. *Late Fees and Partial Payments.* Rent and any other charges due and owing under the AGREEMENT shall be payable without offset or deduction of any nature. In the event that such Rent or any other funds due and owing under the

AGREEMENT is past due for more than thirty (30) calendar days, CITY may charge CONTRACTOR interest on such past due payment, which interest shall accrue at a rate of one and one-half percent (1.5%) per month. In the event that a check tendered to CITY is returned to CITY as uncollectible, CONTRACTOR shall pay CITY a service charge, which, as of the Effective Date is Thirty Dollars (\$30.00), such service charge is subject to change in CITY'S sole discretion. CITY and CONTRACTOR hereby agree that all charges described in this Section 5.3 are a fair and reasonable estimate of the costs to be incurred by CITY by reason of any such late payments. Any payment by CONTRACTOR, or acceptance by CITY, of an amount less than that due under the terms of the AGREEMENT will be treated as a payment on account, regardless of any endorsement appearing on any such check or any statement made by CONTRACTOR to the contrary.

C. Loss of Business. CITY shall not be liable to CONTRACTOR for any loss of business or revenues sustained by CONTRACTOR as a result of any change in the operation or configuration of, or any change in any procedure governing the use of, the aeronautical areas, terminal buildings, or the Airport.

5.4 Records and Audits

A. Record Keeping. With respect to all business done by CONTRACTOR at the Airport pursuant to the AGREEMENT, CONTRACTOR shall keep true and accurate accounts, records, books, and data, in accordance with good and generally recognized and acceptable accounting practices, which shall, at a minimum, show each and every transaction for such service and the fees charged therefor.

B. Maintenance and Retention of Records. CONTRACTOR shall, as part of CONTRACTOR'S accounts, records, books, and data, maintain duplicate copies of invoices and receipts to verify all entries within such records and annual revenue statements as are required to be submitted by CONTRACTOR to CITY pursuant to the provisions of the AGREEMENT. All such accounts, records, books, data, invoices, receipts, order forms, and related documentation shall be subject to inspection and audit by CITY. CONTRACTOR shall retain a copy of all such records for a minimum of three (3) years after termination of the AGREEMENT. At any time during the Term of the AGREEMENT, and during the ninety (90) day period immediately following the date on which the AGREEMENT shall terminate, CONTRACTOR shall make available to CITY all records pertaining to any and all of CONTRACTOR'S operations at the Airport. CONTRACTOR shall make such records available within thirty (30) calendar days of CITY'S submittal of a written request therefor, at such location as may be specified by CITY.

C. Confidentiality. CITY and CONTRACTOR shall use best efforts to maintain the confidentiality of any commercially sensitive information disclosed by such reports and audits.

5.5 **Taxes and Impositions**

CONTRACTOR shall pay, or cause to be paid, when due, and CONTRACTOR'S sole cost and expense, all taxes and impositions for which CONTRACTOR is responsible, pursuant to the terms of the AGREEMENT, or which may be assess against CONTRACTOR. CONTRACTOR shall make and file all applications, reports, and returns as may be required in connection with any such taxes or fees.

A. *Possessory Interest and Property Taxes.* In the event that CONTRACTOR'S interest in the Leasehold is subject to the payment of property taxes, special taxes, or any payments in lieu of taxes levied on such interest, CONTRACTOR shall be solely responsible for the payment of the same and shall pay all taxes, assessments, and other charges of any character or nature that may be levied or charged upon CONTRACTOR'S interest as herein may be created, pertaining to the Improvements, operations, or right to use the Leasehold.

B. *Additional Impositions.* CONTRACTOR be solely responsible for the payment of all levies, taxes, payments in lieu of taxes, assessments, and all other like charges, imposts, or burdens of whatsoever kind and nature, including, but not limited to, any sales or use taxes, license, certification, permit or examination fees, and excises, whether general or special, ordinary or extraordinary, foreseen and unforeseen, which may be created, levied, assessed, imposed, or charged by any governmental authorities having jurisdiction, on CONTRACTOR'S personal property, operations, gross receipts, income, Leasehold interest and any capital investment or fixed improvements thereon, or any public improvements or utility services with respect to the Leasehold, or on the AGREEMENT and the fees payable hereunder, or on the rights and privileges granted to CONTRACTOR pursuant to the AGREEMENT.

C. *Right to Contest Taxes.* In the event CONTRACTOR shall deem any such tax or imposition, or any aspect thereof, to be paid by CONTRACTOR to be excessive or illegal, CONTRACTOR shall have the right, at CONTRACTOR'S own cost and expense, to contest the same by appropriate proceedings, and nothing contained in this section shall require CONTRACTOR to pay any such imposition as long as the amount or validity thereof shall be contested in good faith and if, in the opinion of counsel for CITY, the Leasehold shall not thereby be in danger of being forfeited nor CITY exposed to any threat of criminal violation.

5.6 **Performance Bond**

A. *Bond Provisions.* CONTRACTOR shall, within ten (10) calendar days of the date the DIRECTOR issues the Notice to Proceed to begin performance hereunder, furnish and maintain a Performance Bond in an amount equal to the estimate of six (6) months' rentals, fees, and charges conditioned on CONTRACTOR'S full and

timely performance of the AGREEMENT (and payment of Subcontractors). CONTRACTOR shall maintain the Performance Bond throughout the Term of the AGREEMENT. CONTRACTOR and CITY shall meet annually, sixty (60) calendar days prior to the close of CITY'S fiscal year to review activity levels at the Airport, including, but not limited to, Based Aircraft population, quantities of fuel sold, and operations per Based Aircraft, for the purpose of determining the value of the Performance Bond for the subsequent fiscal year.

B. *Bond Requirements.* The Performance Bond must be in substantially the form attached as Exhibit B and issued by a corporate surety authorized and admitted to write surety bonds in the state of New Hampshire. The surety of the Performance Bond must be listed on the current list of accepted sureties on federal bonds published by the United States Treasury Department or reinsured for any liability in excess of One Hundred Thousand Dollars (\$100,000) by a reinsurer listed on the U.S. Treasury list.

C. *No Bond Provided.* Without limiting any other remedies available to CITY, in the event that CONTRACTOR fails to provide the Performance Bond within the time set forth above, CONTRACTOR shall pay to CITY, as additional rent, a daily fee equal to the amount of 1/365th of the previous year's Performance Bond for each day CONTRACTOR is not in compliance with this Section 5.6.

ARTICLE VI – PURPOSE AND USE OF LEASEHOLD

6.1 Purpose

CITY hereby grants to CONTRACTOR, and CONTRACTOR hereby accepts from CITY, the right to access and use the Leasehold during the Term of the AGREEMENT specifically for the purpose of constructing thereon the Improvements and related improvements, in accordance with the following:

- i. The Leasehold shall be used and are leased hereunder for all primary and incidental purposes related to the operation of a Full Service Fixed Base Operator and general aviation terminal facility, functionally related to the Airport and made available for general public use by CONTRACTOR on a non-discriminatory and uniform basis, consistent with normal public use of facilities of a similar kind and consistent with and subject to the Minimum Standards and the Rules and Regulations, as such purposes and operations are more fully described in Appendix E of the RFP, and to manage and operate sublessees according to the terms of the AGREEMENT. The Leasehold shall not be utilized for any other purpose without prior written consent of the DIRECTOR.

- ii. The Runway and Taxiway Complex, and utility corridors in the vicinity of the Leasehold, may be used by CONTRACTOR in common with other users. However, the use of the Leasehold by CONTRACTOR shall not impinge upon the ability of other users to freely operate within, or access, via land or air, the Runway and Taxiway Complex.
- iii. CONTRACTOR'S use of the Leasehold shall be conducted in an orderly manner, so as not to annoy, disturb, or be offensive to others.
- iv. CONTRACTOR shall have the right to ground handle third-party charter flights at the Airport's commercial terminal and to use Airport-provided ticket counter space on an "as available" basis for the purpose of check-in of charter passengers.
- v. Upon completion of the Project, parking in areas other than the parking lot(s) located on the Leasehold shall be restricted to such areas at the Airport as are designated by the DIRECTOR, and shall be subject to the payment of such parking fees and charges, as well as any time limitation or other legal restriction, which may from time to time be in effect for such designated areas.
- vi. CONTRACTOR'S use of the Leasehold shall at all times be in accordance with and comply with all applicable federal, state, and local laws, regulations, and ordinances.

6.2 Security

In addition to those requirements stated in Section E.8 of Appendix E in the RFP, CONTRACTOR shall maintain security of the entire Leasehold, including parking areas or other areas, if any, temporarily assigned to CONTRACTOR during the construction of the Project. CONTRACTOR shall be responsible for the conduct and action of CONTRACTOR'S employees, subtenants, Subcontractors, or other personnel conducting business on the Airport related to CONTRACTOR'S operations or Leasehold interests.

6.3 Non-Exclusive Rights

Nothing herein shall be construed to grant or authorize the granting of 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. Provided, however, subject to the terms and provisions of the AGREEMENT, CONTRACTOR shall have the right to exclusive possession of the Leasehold, as described in Section 6.5 herein. The rights and privileges granted under the AGREEMENT are nonexclusive and CITY reserves the right to seek similar or identical services elsewhere if CITY deems such actions to be in CITY'S best interest. By entering into the AGREEMENT, CONTRACTOR acknowledges that CITY may enter into separate agreements for similar aeronautical support services on the Airport under similar terms, and that the AGREEMENT is, as of the Effective Date, for

the management and operation of one (1) FBO at the Airport. CITY, at CITY'S sole discretion, shall determine the number of FBO operations at the Airport.

6.4 Prohibited Activities

A. Noise and Vibration Control. CONTRACTOR shall not conduct any operation or activity on the Leasehold, or elsewhere at Airport, in which the sound or vibrations emitting therefrom is of such volume, frequency, or intensity at such time as to constitute a nuisance. The DIRECTOR shall have the sole and exclusive authority to determine what constitutes a nuisance under the provisions of this Section 6.4(A).

B. Nuisance and Waste. CONTRACTOR shall not erect nor permit to be erected any nuisance on the Leasehold, nor permit any waste thereon.

C. Risk Reduction. CONTRACTOR shall neither use nor permit the use of the Leasehold in such a manner as to increase the CITY'S exposure, which would affect the insurance premiums thereon in excess of that in existence at the commencement of the Term hereof.

D. Business Activities. CONTRACTOR shall not conduct, or permit the conduct, of the following business activities on or from the Leasehold:

1. Automobile parking services, except parking for CONTRACTOR'S customers and employees in areas designated for such by CITY. Parking on the Leasehold shall be solely for business directly related to the activities permitted on the Leasehold by the AGREEMENT. No officer, representative, agent, employee, guest, patron, volunteer, contractor, Subcontractor, licensee, supplier, or other invitee of CONTRACTOR shall be allowed to park any vehicles on the Leasehold and subsequently utilize commercial air service provided at the AIRPORT;
2. Air freight services, except for a very limited small-package service which is incidental to air taxi and air charter operations. Under no circumstances shall CONTRACTOR, or any of CONTRACTOR'S Subcontractors or customers, engage in the consolidating of air freight on the Leasehold; or,
3. Scheduled Part 121 air carrier operations; or,
4. Provision of any for-hire ground transportation services, including taxicab, limousine, transportation network companies, and off-Airport shuttle services, except for those services arranged in advance for the exclusive use of general aviation customers; or,
5. The sale or purchase of food and beverage services.

E. Storage of Unserviceable Equipment. CONTRACTOR shall not use the Leasehold for the storage of any broken or Unserviceable equipment, vehicles, or aircraft. CONTRACTOR shall remove, or cause to be removed, from the Leasehold, any such equipment, unsightly vehicles, parts, tires, or aircraft not required to be held by CONTRACTOR pending completion of an accident investigation or legal proceeding.

F. Additional Prohibitions. CONTRACTOR shall not:

1. Solicit or advertise goods or services that are not authorized by the DIRECTOR pursuant to the terms of the AGREEMENT;
2. Obstruct sidewalks, roadways, or passageways adjacent to the Leasehold or elsewhere on the Airport, unless approved in advance, in writing, by the DIRECTOR;
3. Solicit or distribute materials on the Airport in any manner not otherwise permitted by the AGREEMENT; and
4. Allow any part of the Leasehold to be used for the storing of boats, recreational vehicles, trailers, or other vehicles not associated with CONTRACTOR'S permitted uses under the AGREEMENT.

6.5 Quiet Enjoyment

Upon and subject to the other terms and provisions hereof and unless an Event of Default shall have occurred hereunder, CONTRACTOR shall be suffered and permitted to have peaceful possession and quiet enjoyment of the Leasehold from the Rent Commencement Date. CONTRACTOR shall have the exclusive right to possess, occupy and use the Leasehold on and after the Effective Date, subject to the other provisions hereof, throughout the Term.

6.6 Ingress and Egress

CONTRACTOR and CONTRACTOR'S officers, employees, invitees, guests, and suppliers of materials and furnishers of services, shall have the right of ingress and egress between the Leasehold and any public street or roadway outside the Airport by means of the roadways leading to and from the Airport, and such other points as may be designated by the DIRECTOR, all as the same exist from time to time and all of the same to be used in common with others having right of passage within the Airport, all without any further or additional fees or charges other than the Rent described in Article V herein. The use of such roadways shall be subject to reasonable rules and regulations of CITY now in effect or which may hereafter be promulgated for the safe and efficient operation of the Airport. Notwithstanding the foregoing, CITY may, at any time, temporarily or permanently close or consent to or request the closing of any

such roadway and any other area at the Airport presently or hereafter used as such, so long as a reasonably equivalent means of ingress and egress, as provided above, remains available to CONTRACTOR.

6.7 **City's Right of Access**

A. *Right of Entry.* CITY, and CITY'S officers and employees, shall have the right at reasonable intervals during regular business hours (or at any time in case of emergency) to enter upon the Leasehold for any lawful purpose not inconsistent with the terms and conditions of the AGREEMENT, including, but not limited to, the purpose of determining whether CONTRACTOR is complying with the terms and conditions of the AGREEMENT. Without limiting the generality of the foregoing, CITY shall have the right, for the benefit of CITY, CONTRACTOR, or others at the Airport, to enter upon the Leasehold for the purpose of: (i) furnishing or maintaining existing and future Utilities Systems, or portions thereof, on the Leasehold; (ii) to make such installations, repairs, replacements, or alterations as may, in CITY'S reasonable opinion, be deemed necessary or advisable; and (iii) from time to time, to construct or install over, in, or under the Leasehold, new systems or parts thereof, including, but not limited to, lines, pipes, mains, wires, conduits and equipment.

B. *Impact of Entry.* In connection with the exercise of any rights granted by this Section 6.7, CITY shall not unreasonably interfere with the use and occupancy of the Leasehold by CONTRACTOR and CONTRACTOR'S subtenants, or abridge the rights conferred on CONTRACTOR by the AGREEMENT. Such entry by CITY shall not be deemed to excuse CONTRACTOR'S performance of any promise, term, condition, or covenant required of CONTRACTOR by the AGREEMENT, and shall not be deemed to constitute waiver thereof by CITY.

C. *Entry Due to Emergency.* In the event of any emergency condition affecting the Airport, or of any condition jeopardizing or affecting the safety or convenience of the public, as determined by CITY or the DIRECTOR, in CITY'S or the DIRECTOR'S sole discretion, including, but not limited to, aircraft passing above the Leasehold or any other portion of the Airport, CITY shall have the right, without prior notification to CONTRACTOR, to immediately enter upon the Leasehold and remedy or cure any condition, act, or situation which, in CITY'S sole judgment, contributes to, or is responsible for, such emergency condition or threat to the public safety. CITY'S rights hereunder shall include, without limitation, the right to remove any improvements or other physical items, or radio-emanating items, which CITY determines, in CITY'S sole discretion, are obstructing aircraft passing above the Leasehold or related communications systems.

6.8 Signs

CONTRACTOR shall have the right to install and maintain on the Leasehold any signs or other corporate or trade name identification. The size, type, design, content, color, installation, operation, and location of such signs or other identification shall, however, be subject to the prior written approval of the DIRECTOR. If such prior written approval is not obtained from the DIRECTOR or, if obtained, is not complied with, then CITY shall have the right, upon reasonable notice and opportunity to cure by CONTRACTOR, to enter the Leasehold and remove such signs or corporate identifications and restore the Leasehold to the former condition and charge CONTRACTOR for all costs incurred in so doing. Any amount due from CONTRACTOR to CITY under this subparagraph shall constitute additional rent hereunder.

ARTICLE VII – CONTRACTOR’S OBLIGATIONS

7.1 Care, Maintenance, and Repair of Leasehold

In addition to those requirements stated in Section E.9 of Appendix E to the RFP, CONTRACTOR shall, at CONTRACTOR’S sole cost and expense, maintain the Leasehold in accordance with all applicable laws and regulations, whether now or hereafter enacted, and the terms of the AGREEMENT, including, but not limited to, the following:

- i. CONTRACTOR shall take good care of the Leasehold and improvements constructed thereon by CONTRACTOR, and ensure that the Leasehold is, at all times, kept in a clean, safe, and orderly condition and appearance, including but not limited all commercially reasonable preventive maintenance and all repairs, replacements, rebuilding, and painting necessary to keep such Leasehold in the condition existing at the time of completion of construction of the Project, and shall keep any improvements, additions, and fixtures thereafter made or installed by Lessee during the Term hereof in the condition they were in when made or installed, excepting reasonable wear not adversely affecting the structural integrity, or the efficient and proper utilization, or appearance of such Leasehold;
- ii. CONTRACTOR shall at no time, and under no circumstances, occupy or clutter the Leasehold with supplies, equipment, or other materials not explicitly permitted by the AGREEMENT, nor allow any debris or litter resulting from the uses authorized herein to accumulate on the Leasehold.
- iii. CONTRACTOR shall provide for, at CONTRACTOR’S sole cost and expense, adequate sanitary handling and disposal away from the Airport of all trash, garbage, refuse, and all other material resulting from the use of the Leasehold and the necessary receptacles for all such trash, garbage, and refuse.

- iv. CONTRACTOR shall be solely responsible for provision of all landscaping and snow and ice removal, pest control, and janitorial and cleaning services on the Leasehold, and shall be responsible for snow removal and ice control on the Ramp.
- v. CONTRACTOR shall be responsible for maintaining security of the Leasehold, and for all costs associated with maintaining the Leasehold in compliance with local, state, and federal laws, rules and regulations applicable to the current use of the Leased Leasehold at any given time during the Term of the Agreement.
- vi. CONTRACTOR is response for taking all reasonable actions necessary to protect CONTRACTOR'S supplies, materials, and equipment, and the personal property of CONTRACTOR'S employees, agents, guests, invitees, subtenants, and Subcontractors from loss, damage, or theft.

In the event of any damage to the Leasehold, Airport property, or any other tenant's property caused by CONTRACTOR'S use of the Leasehold, CONTRACTOR shall promptly take all actions reasonably necessary to abate, remove, and clean up, or otherwise cure any damage caused thereby. CONTRACTOR shall make all repairs and replacements in quality and class not inferior to the original material and workmanship; and shall pay promptly the costs and expenses of such repairs, replacements, and maintenance. CONTRACTOR'S failure to cure such damage as described in this Section 7.1 within a reasonable period of time shall be deemed an Event of Default pursuant to the terms of the AGREEMENT and CITY may terminate the AGREEMENT immediately, or take any other action authorized under the AGREEMENT.

7.2 Alterations and Improvements

Except as otherwise provided in the AGREEMENT, no improvements, structures, or alterations of any kind, shall be erected, placed, assembled, constructed, or permitted on the Leasehold without the prior written approval of CITY. The requirement of CITY approval shall not apply to any additions, improvements, repairs, or replacements reasonably necessary due to an emergency.

7.3 Maintenance and Payment of Utilities

Unless otherwise provided herein, and as further described in Section E.9.3 of Appendix E to the RFP, CONTRACTOR shall maintain and repair all utility service lines located upon the Leasehold to the extent used by CONTRACTOR exclusively, except to the extent that such maintenance or repair is the obligation of the utility company providing such utility service. CONTRACTOR shall establish direct accounts providing for direct payment by CONTRACTOR to service providers for the provision of heat, hot water, air conditioning, light, power, security systems, telephone, water and sewer, and other utilities CONTRACTOR requires for its use and occupancy of the Leasehold. No failure to furnish, nor delay or interruption in, any service or services shall relieve or be

construed to relieve CONTRACTOR of any of CONTRACTOR'S obligations hereunder, or shall be construed to be an eviction by CITY, or shall constitute grounds for any diminution or abatement of Rent or any other fees payable under the AGREEMENT, or grounds for any claim by CONTRACTOR for damages, consequential or otherwise. CITY shall not guarantee the uninterrupted provision of utilities and their service to CONTRACTOR'S Leasehold. CITY shall not be liable for any damages to CONTRACTOR arising from such interruptions in utility services, including, but not limited to, loss of revenue or profits.

7.4 Liens

CONTRACTOR shall not permit a lien or liens to become attached to the remaining interests of CITY in the Leasehold, or upon the Leasehold interest of CONTRACTOR, without the prior written consent of CITY, or suffer or permit a lien or liens for taxes to be imposed or attached thereto, unless CONTRACTOR is contesting in good faith the tax or claim that is the basis of the lien, in which event CONTRACTOR shall dissolve the lien or stay or prevent its foreclosure by bond or other appropriate legal procedure. Notwithstanding the foregoing prohibition, CONTRACTOR may pledge, assign, mortgage or otherwise encumber CONTRACTOR'S rights under the AGREEMENT to a Leasehold Mortgagee in accordance with the provisions of Article XII herein.

7.5 Compliance with 49 CFR 21 and Title VI of Civil Rights Act of 1964

Without limiting the generality of any of the provisions of the AGREEMENT, CONTRACTOR, in its operations at the Airport, and also as a part of the consideration hereof, shall maintain and operate its facilities and provide its services in compliance with and pursuant to Title 49, Part 21, Code of Federal Regulations, Nondiscrimination in federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended; and shall not on the grounds of race, creed, color, or national origin discriminate or permit discrimination against any person or group of persons in any manner whatsoever. In addition, CONTRACTOR assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to ensure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. CONTRACTOR assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this Subpart.

7.6 Sustainability Plan

CONTRACTOR shall adhere to the measurable goals and milestones outlined in the Sustainability Plan submitted as part of the PROPOSAL. During the Term of the AGREEMENT, CITY may, at CITY'S sole discretion, require CONTRACTOR to provide a detailed update on the goals and milestones outlined in the Sustainability Plan.

CONTRACTOR shall provide such an update to CITY within fifteen (15) day of CITY'S written request therefore.

7.7 Claims

CONTRACTOR shall give CITY prompt and timely written notice of any personal injury or other accident claims and of any lawsuit coming to its knowledge when either such claim or lawsuit arises out of or is in any way connected with the operations of CONTRACTOR herein, or the construction or operation of Airport by CITY, which in any way, directly, indirectly, contingently or otherwise, might reasonably affect the parties' relationship under the AGREEMENT. Such notice shall be deemed prompt and timely if given within thirty (30) calendar days following the date of receipt of such claim by an officer, agent, or employee of CONTRACTOR, and if given within ten (10) calendar days following the date of service of process upon CONTRACTOR with respect to any such lawsuit.

7.8 Subcontractors

CONTRACTOR shall remain fully liable and responsible for the performance of any Subcontractors and shall ensure compliance with all applicable requirements of the AGREEMENT and any contract between CONTRACTOR and such Subcontractors. In accordance with the AGREEMENT, CONTRACTOR shall make timely payments to all persons and entities supplying labor, materials, services, or equipment for the performance of the AGREEMENT. CONTRACTOR SHALL DEFEND AND INDEMNIFY CITY FROM ANY CLAIMS OR LIABILITY ARISING OUT OF CONTRACTOR'S FAILURE TO MAKE TIMELY PAYMENTS TO ALL SUBCONTRACTORS.

7.9 City Rules and Regulations

During the Term of the AGREEMENT, CONTRACTOR and CONTRACTOR'S officers, employees, contractors, guests, invitees, and agents shall observe and obey all ordinances, rules, and regulations promulgated by CITY governing conduct on and operations at the Airport, including, but not limited to, the Rules and Regulations and the Minimum Standards, provided that such rules and regulations do not conflict with the terms and conditions of the AGREEMENT. In addition to the foregoing, CONTRACTOR shall comply immediately with all directives issued by the DIRECTOR.

7.10 Maintenance of Existence

CONTRACTOR, from the Effective Date hereof and throughout the Term hereof, shall maintain its existence, and will not dissolve or otherwise dispose of all or substantially all of its assets; provided, that CONTRACTOR may, without violating the agreement contained in this section, sell or otherwise transfer to another person all or substantially all of its assets as an entirety and thereafter dissolve, provided the transferee (i) assumes in writing all of the obligations of CONTRACTOR herein, (ii) qualifies to do

business in New Hampshire, and (iii) can demonstrate its capability, financial and otherwise, to perform CONTRACTOR'S obligations under the AGREEMENT to the reasonable satisfaction of CITY. In no event will a sale or transfer be permitted until the Facilities are fully constructed and accepted by CITY in accordance with the provisions of Article III herein.

ARTICLE VIII – CITY'S OBLIGATIONS

8.1 Conduct of Airport Operations

CITY agrees to operate, maintain, and keep in good repair or cause to be maintained and kept in good repair, the areas and facilities provided by CITY for the public and CONTRACTOR in accordance with the practices of reasonably prudent airport operators.

CITY agrees to use best efforts reasonably necessary for the safe, convenient, and proper use of the Airport by those who are authorized to use the same and to maintain and operate the Airport in accordance with all applicable standards, rules, and regulations of the Federal Aviation Administration, and any other regulatory authority having jurisdiction.

CITY shall maintain directional signs in public areas of the Airport. CONTRACTOR acknowledges that the type, number, and quality of all such signs shall be at the sole discretion of CITY.

CITY does not warrant that the Airport will continue to be used as an airport during the Term of the Agreement. In the event that such airport use is terminated, whether temporarily or permanently, CONTRACTOR shall neither claim, nor have entitlement to, any damages whatsoever from CITY under the AGREEMENT.

8.2 Special City Representations

CITY represents and warrants for the benefit of CONTRACTOR that, as of the date hereof:

- i. CITY does not have any knowledge of, or reason to believe that there are, grounds for the filing by any third party any lien against the Leasehold;
- ii. CITY does not have any knowledge of any pending condemnation or similar proceeding affecting the Leasehold or any portion thereof;
- iii. CITY does not have knowledge of any legal actions, suits or other legal or administrative proceedings, pending or threatened against the Leasehold nor of any such action, suit, proceeding or claim which has been threatened or asserted against CITY or the Leasehold;

- iv. CITY does not have any knowledge of parties in possession of any portion of the Leasehold as trespassers;
- v. CITY does not have knowledge of any uncured violations of federal, state, or municipal laws, ordinances, orders, regulations or requirements affecting any portion of the Leasehold;
- vi. The Leasehold shall have legal access to abutting public ways as shown in in the Plans and Specifications;
- vii. CITY does not have knowledge of any pending or threatened governmental or private proceedings which would impair or result in the termination of access from the Leasehold to abutting public ways; and
- viii. CITY does not have knowledge that the Leasehold now is or has been the site of any place of business engaged in operations which involve the generation, manufacture, refining, transportation, treatment, storage, handling, or disposal of Hazardous Materials on-site, above or below ground, except to the extent disclosed in the NEPA review and the Preliminary Engineering Report attached to the RFP, and any other such disclosure provided as part of the RFP.

8.3 Maintenance of Leasehold

Throughout the Term of the Agreement, CITY, at CITY'S sole cost and expense, shall provide maintenance and repair of common use taxi lanes, airfield, and any public access roads that connect the Leasehold to the common areas of the Airport or to public rights-of-way outside of the Airport for which CITY has maintenance and repair responsibilities.

ARTICLE IX – GOVERNMENT REQUIREMENTS

9.1 Compliance

CONTRACTOR shall comply with any applicable Federal Aviation Administration Regulations, as the same may be amended from time to time (including without limitation such rules and regulations of the Federal Aviation Administration or Transportation Security Administration as may be in effect from time to time with respect to airport security), and any other present or future laws, rules, regulations, orders or directions of the United States of America or the State of New Hampshire which from time to time may be applicable to CONTRACTOR'S operations hereunder. CONTRACTOR shall procure from all governmental authorities having jurisdiction over the operations of CONTRACTOR hereunder, all licenses, franchises, certificates, permits or other authorizations which may be necessary for the conduct of such operations, and it shall comply with all laws and lawful ordinances, and governmental rules, regulations, and

orders during the Term of the AGREEMENT which from time to time may be applicable to CONTRACTOR'S operations hereunder.

9.2 Grant Assurances

CONTRACTOR shall, at all times during the Term of the AGREEMENT, comply with the provisions of the FAA Airport Sponsor Assurances (the "Assurances") and any subsequent revisions, updates, or amendments thereto. A copy of the current Assurances is attached hereto as Exhibit C. The provisions of the Assurances may change during the Term of the AGREEMENT, and those changes will be incorporated into the AGREEMENT without the necessity of a formal amendment. CITY is not responsible for notifying CONTRACTOR of any changes to the Assurances. CONTRACTOR is required to contact the FAA for any updates or revisions. The Assurances document is available on the FAA's website. [Please see [http://www.faa.gov/airports/aip/grant assurances/media/airport-sponsor-assurances- aip.pdf](http://www.faa.gov/airports/aip/grant%20assurances/media/airport-sponsor-assurances-aip.pdf)].

9.3 FAA Contract Provisions

CONTRACTOR shall, at all times, during the Term of the AGREEMENT, comply with the provisions of the FAA Contract Provisions and any subsequent amendments thereto, applicable to the activities, rights, and duties contemplated under the AGREEMENT. CONTRACTOR shall include compliance with the FAA Contract Provisions in all other agreements CONTRACTOR enters into with third parties, pertaining to, referencing, or otherwise related to the activities regarding the subject matter of the AGREEMENT. The FAA Contract Provisions regarding the AGREEMENT are the following:

General Civil Rights.

CONTRACTOR agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If CONTRACTOR transfers its obligation to another, the transferee is obligated in the same manner as CONTRACTOR.

This provision obligates CONTRACTOR for the period during which the property is owned, used or possessed by CONTRACTOR and the airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

Transfer of Real Property Acquired or Improved Under the Airport Improvement Program.

- A. CONTRACTOR for themselves, their heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:
1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this AGREEMENT for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the CONTRACTOR will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Nondiscrimination covenants, the **City of Manchester** will have the right to terminate the AGREEMENT and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the AGREEMENT had never been made or issued.
- C. With respect to a deed, in the event of breach of any of the above Nondiscrimination covenants, the **City of Manchester** will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will thereupon revert to and vest in and become the absolute property of the **City of Manchester** and its assigns.

Construction/Use/Access to Real Property Acquired under the Activity, Facility, or Program.

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

- B. With respect to the AGREEMENT, in the event of breach of any of the above nondiscrimination covenants, **City of Manchester** will have the right to terminate the AGREEMENT and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said the AGREEMENT had never been made or issued.
- C. With respect to deeds, in the event of breach of any of the above nondiscrimination covenants, **City of Manchester** will thereupon revert to and vest in and become the absolute property of **City of Manchester** and its assigns.

Title VI List of Pertinent Nondiscrimination Acts and Authorities.

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

- i. Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- ii. 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- iii. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- iv. Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- v. The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- vi. Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- vii. The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- viii. Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain

- testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- ix. The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
 - x. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
 - xi. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
 - xii. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).

Occupational Safety and Health Act of 1970

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

ARTICLE X – DAMAGE AND DESTRUCTION OF IMPROVEMENTS

10.1 Repair by Contractor

In the event that, during the Term of the AGREEMENT, the Improvements, or any substantial part thereof, are damaged or destroyed by fire or other occurrence, (including an occurrence for which insurance coverage was not obtained, or unobtainable), of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, CONTRACTOR, at CONTRACTOR’S sole cost and expense, and whether or not the insurance proceeds, if any, shall be sufficient for the purpose, shall proceed with reasonable diligence (subject to a reasonable time allowance for the purpose of adjusting the insurance loss), to repair,

alter, restore, replace, or rebuild the same as nearly as possible to its value, condition, and character immediately prior to such damage or destruction (including temporary repairs and work necessary to protect the Improvements from further damage), subject to such changes or alterations as may be approved by CITY in conformity with the provisions of the AGREEMENT. The repair or restoration of the Improvements shall be in accordance with the Plans and Specifications, together with alterations or modifications made or agreed upon prior to the casualty, or, at the option of CONTRACTOR, in accordance with new or modified Plans and Specifications approved in advance in writing by CITY and CONTRACTOR. In the event that such insurance proceeds are in excess of the amount necessary for such purposes, any such excess shall be retained by CONTRACTOR, except that any excess insurance proceeds retained by CONTRACTOR shall be deemed to be available for the repair or rebuilding of the Improvements necessitated by any subsequent casualty or casualties during the Term.

10.2 Failure to Commence Repairs

In the event that the work required by Section 10.1 herein shall not have been commenced within one hundred eighty (180) calendar days after the damage or destruction has occurred or if the work, after commencement, shall not proceed expeditiously, such failure to commence or proceed expeditiously shall be deemed a default by CONTRACTOR. Upon any such termination, the insurance proceeds received by or payable to CONTRACTOR shall first be paid to CONTRACTOR'S Leasehold Mortgagee, if applicable, in an amount equal the debt owing to the Leasehold Mortgagee by CONTRACTOR in connection with the Improvements on the Leasehold, and then, after deducting the costs related to site restoration payable to CITY, any remaining proceeds shall be prorated between CITY and CONTRACTOR based on the number of Contract Years remaining in the Term. For example, the CITY'S prorated share is the product of the of the insurance proceeds, after being reduced by the payment to any Leasehold Mortgagee and the site restoration costs, multiplied by a fraction, the numerator of which is the Contract Year during which such termination occurs, and the denominator of which is the total Term of the AGREEMENT. CONTRACTOR'S prorated share is the product of the insurance proceeds multiplied by a fraction the numerator of which is the number of full Contract Years remaining in the Term after the Contract Year in which the termination occurs, and the during which such termination occurs, and the denominator of which is the total Term of the AGREEMENT.

10.3 Continued Obligations

In no event shall CONTRACTOR be entitled to any abatement, allowance, reduction, or suspension of Rent because part or all of the Improvements upon the Leasehold shall be untenable or unusable owing to the partial or total damage or destruction thereof. No such damage or destruction shall affect in any way the obligation of CONTRACTOR to pay Rent and other charges herein reserved or required to be paid,

nor release CONTRACTOR from any obligation imposed upon CONTRACTOR herein, except as otherwise provided in the AGREEMENT.

10.4 Termination due to Damage or Destruction

In the event that the Leasehold or any substantial part(s) thereof are damaged or destroyed and, in the good faith judgment of CONTRACTOR the insurance proceeds therefrom are insufficient to repair or rebuild the Leasehold so that the same will be suitable for the uses contemplated by the AGREEMENT, CONTRACTOR may, with the written consent of the Leasehold Mortgagee (if any), terminate the AGREEMENT by written notice to CITY given within sixty (60) calendar days after such casualty. Subject to the rights of the Leasehold Mortgagee, if any, with respect to any such termination of the AGREEMENT, such termination shall also be subject to the approval of CITY, which approval will not be unreasonably withheld, or delayed, provided that nothing in this Section 10.4 or elsewhere in the AGREEMENT shall be deemed to require CONTRACTOR to repair or rebuild the Leasehold if the insurance proceeds from the damage or destruction thereof are insufficient for such purpose.

In the event of any such termination by CONTRACTOR, the insurance proceeds from such casualty shall be first applied to the outstanding indebtedness, if any, owed to the Leasehold Mortgagee and the balance, if any, shall be apportioned and paid over to CITY and CONTRACTOR in the manner provided in Section 10.5(D) herein. For the purposes of determining the sufficiency of insurance proceeds in respect of any casualty, any excess insurance proceeds retained by CONTRACTOR in respect of any prior casualty or casualties pursuant to the last sentence of Section 10.1 herein shall be deemed to be available for the repair or rebuilding of the Leasehold necessitated by any subsequent casualty or casualties.

10.5 Condemnation

A. CITY to Give Notice. In the event that title to or use of all of the Leasehold shall be taken or condemned in any eminent domain, condemnation, compulsory acquisition or like proceeding or by any competent authority or conveyed under the threat thereof, for any public or quasi-public use or purpose (hereinafter called a “Taking”), or in the event of the commencement of any proceedings or negotiations which might result in a Taking, CITY will promptly give written notice thereof to CONTRACTOR, generally describing the nature and extent of such Taking known to it or the nature of such proceedings and negotiations and the nature and extent of the Taking which might result therefrom, as the case may be. CITY and CONTRACTOR may each file and prosecute their respective claims for an award, but all awards and other payments on account of a Taking, other than a Land Taking Award (as hereinafter defined), shall be held in trust by the recipient thereof for application as set forth below. CITY shall be entitled to receive and retain all Land Taking Awards. As used herein, the term “Land Taking Award” shall mean all awards and other payments on account of a Taking which are clearly and

expressly allocable to the value of the Leasehold (determined as if the Leasehold was then vacant and unimproved).

B. Total Taking. In case of a Taking (other than for temporary use) of the fee of the entire Leasehold, the AGREEMENT shall terminate as of the date of such Taking. In case of a Taking (other than for temporary use) of (a) such perpetual easement on the entire Leasehold, or (b) such a substantial part of the Leasehold, as shall result, in the good faith judgment of CONTRACTOR, in the portion of the Leasehold remaining after such Taking (even if restoration were made) being unsuitable for the uses contemplated in the AGREEMENT, CONTRACTOR may terminate the AGREEMENT by written notice to CITY given within sixty (60) calendar days after such Taking, as of a date specified in such notice within ninety (90) calendar days after such Taking. Subject to the rights of the Leasehold Mortgagee, if any, with respect to any such termination of the AGREEMENT, such termination shall also be subject to the approval of CITY, which approval will not be unreasonably withheld or delayed, provided that nothing in this Section 10.5(B) or elsewhere in this Lease or in the AGREEMENT shall be deemed to prevent CONTRACTOR from terminating the AGREEMENT if the portion of the Leasehold remaining after any Taking is unsuitable for the uses contemplated in the AGREEMENT. Any Taking of the Leasehold of the character referred to in this Section 10.5(B), which results in the termination of the AGREEMENT, is referred to as a “Total Taking”.

C. Partial Taking. In case of a Taking of the Leasehold, other than a Total Taking, the AGREEMENT shall remain in full force and effect with regard to the portion of the Leasehold left intact and useable, as determined and agreed upon by both CITY and CONTRACTOR immediately after such Taking. Ground Rent shall be reduced in an amount proportionate to the amount of the total Leasehold which is removed or rendered unusable in the Taking. Ground Rent for the remaining Leasehold shall be calculated according to Section 5.1 herein, and all other applicable fees payable hereunder shall remain intact.

D. Application of Awards and Other Payments. Awards and other payments on account of a Taking (total or partial) of the Facilities (collectively, the “Proceeds”), shall be applied as follows:

1. Proceeds which are allocable to the value of the Leasehold (determined as if the Leasehold was then vacant and unimproved) shall be paid to CITY.
2. Proceeds which are allocable to the Improvements, including parking lots and roadways constructed by CONTRACTOR (taking into account the value of such facilities and improvements as income producing properties), but less any costs, fees and expenses incurred by CITY

and/or CONTRACTOR in the collection thereof (collectively, the “Net Facility Proceeds”), shall be apportioned as follows:

- a. In the event CONTRACTOR shall elect to restore, rebuild, or reconstruct the damaged or taken Leasehold or portion thereof, all Net Facility Proceeds shall be paid in full to CONTRACTOR, subject to the right of the Leasehold Mortgagee, if there be one, to receive all or a portion of such Net Facility Proceeds.
- b. If CONTRACTOR shall not elect to restore, rebuild, or reconstruct the damaged or taken Leasehold or portion thereof, the Net Facility Proceeds shall be first applied to the outstanding indebtedness, if any, owed to the Leasehold Mortgagee and the balance, if any, shall be applied and paid over as set forth in subparagraph (c) below;
- c. Any Net Facility Proceeds not otherwise allocated and paid over pursuant to subparagraph (a) or (b) above, shall be apportioned between CITY and CONTRACTOR as follows:

<u>If Taking Occurs in Contract Year:</u>	<u>CITY’S Interest Shall Be:</u>	<u>CONTRACTOR’S Interest Shall Be:</u>
1 through 5	5%	95%
6 through 10	20%	80%
11 through 15	35%	65%
16 through 20	50%	50%
21 through 25	65%	35%
26 through 30	80%	20%
31 through 35	95%	5%

ARTICLE XI – ENVIRONMENTAL PROVISIONS

11.1 Applicable Environmental Laws

CONTRACTOR shall comply with all federal, state, and local statutes, ordinances, regulations, rules, policies, codes, or guidelines now or hereafter in effect, as they may be amended from time to time, that govern Hazardous Materials or relate to the protection of human health, safety, or the environment, including but not be limited to:

- i. The Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. Section 136 et seq.;
- ii. The Safe Drinking Water Act, 44 U.S.C. Section 300(f) et seq.;
- iii. The Oil Pollution Control Act of 1990, 33 U.S.C. Section 270 et seq.;
- iv. the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C., Section 9601 et seq., and as amended by

- the Superfund Amendments and Reauthorization Act of 1986, Pub. Law No. 99-499, 100 Stat. 1613;
- v. The Toxic Substances Control Act, 15 U.S.C., Section 2601 et seq.;
 - vi. The Clean Air Act as amended, 42 U.S.C. 7401 et seq.;
 - vii. The Clean Water Act, 33 U.S.C., Section 1251, et seq.;
 - viii. The Hazardous Materials Transportation Act, 49 U.S.C., Section 1801 et seq.;
 - ix. The Resources Conservation and Recovery Act, 42 U.S.C., Section 6901 et seq.; and
 - x. those substances defined as “hazardous waste” or as “hazardous substances” under the laws of the state of New Hampshire, the United States, and in any regulations promulgated under these laws.

11.2 Hazardous Materials

CONTRACTOR shall not possess, use, generate, release, discharge, store, dispose of, or transport any Hazardous Materials on, under, in, above, to, or from the Airport, or any other areas or facilities subject to the AGREEMENT, except in strict compliance with the Environmental Laws. “Hazardous Materials” include:

- i. all substances, materials, wastes, pollutants, oils, or governmentally regulated substances or contaminants defined or designated as hazardous, toxic, radioactive, dangerous, or any other similar term in or under any of the Environmental Laws;
- ii. asbestos and asbestos-containing materials, petroleum products including crude oil or any fraction thereof, gasoline, aviation fuel, jet fuel, diesel fuel, lubricating oils and solvents, urea formaldehyde, flammable explosives, polychlorinated biphenyls (PCBs), or radioactive materials or waste; or
- iii. any other substance that, because of such substance’s quantity, concentration, physical, chemical, or infectious characteristics may cause or threaten a present or potential hazard to human health or the environment when improperly generated, used, stored, handled, treated, discharged, distributed, disposed of, or released.

CONTRACTOR shall not dump any solid or liquid waste matter of any nature on the Leasehold or permit contamination from entering stormwater inlets, sewers inlets, or the Airport’s drainage control systems. CONTRACTOR shall handle, store, transport, and dispose of Hazardous Materials in accordance with any applicable federal, state, and local statutes, ordinances, and regulations and CITY’S approved Stormwater Pollution Prevention Plan and Spill Prevention and Countermeasures Control Plan.

11.3 Contractor's Environmental Compliance

Prior to bringing any airplane fuel, hydraulic fluid, motor oil, and those Hazardous Materials that CONTRACTOR knowingly uses in the customary operations of CONTRACTOR'S business onto the Leasehold, CONTRACTOR must receive prior written approval from CITY, which CONTRACTOR shall request by submitting to CITY a Material Safety Data Sheet. CONTRACTOR shall comply, and shall cause CONTRACTOR'S employees, agents, and invitees (collectively, the "CONTRACTOR'S Agents") to comply, with all Environmental Laws in CONTRACTOR'S and CONTRACTOR'S Agents' operations, processes, use, and occupation of the Leasehold. CONTRACTOR will promptly take all actions as may be necessary to abate, remove, and clean up, or otherwise cure any violation of Environmental Laws caused by any Hazardous Materials originated, generated or disposed of on the Leasehold by CONTRACTOR or any of CONTRACTOR'S Agents, including any damage caused to other leasehold(s) at the Airport as a result of such violation. CONTRACTOR shall indemnify and hold CITY harmless from any failure to comply with the foregoing provisions of this Article XI.

Within ten (10) calendar days of receipt of an invoice, CONTRACTOR shall reimburse CITY for any fines or penalties that may be levied against CITY by the United States Environmental Protection Agency, the New Hampshire Department of Environmental Services, or any other governmental agency for CONTRACTOR'S or CONTRACTOR'S designees', agents', employees', or Subcontractors' failure to comply with the Environmental Laws.

ARTICLE XII – LEASEHOLD MORTGAGEES' RIGHTS

12.1 Leasehold Mortgage

CONTRACTOR may, from time to time, and with the prior written consent of CITY (which consent will not be unreasonably withheld or delayed), mortgage, pledge, or assign by way of leasehold mortgage (which term, as used herein, shall include a deed of trust or similar instrument) and/or grant a security interest or interests in CONTRACTOR'S rights under the AGREEMENT to one or more Institutional Lender (collectively, a "Leasehold Mortgagee"). In the event of, and from and after, a foreclosure by the Leasehold Mortgagee of a leasehold mortgage, or in the event of an assignment in lieu of foreclosure given to the Leasehold Mortgagee or the Leasehold Mortgagee's nominee, the restrictions against assignment and subletting set forth in Article XV herein shall not apply, provided that such assignee, subcontractor, or person claiming under the Leasehold Mortgagee can demonstrate, to the reasonable satisfaction of CITY, that such assignee, subcontractor, or person has the capability, financial and otherwise, to perform CONTRACTOR'S obligation under the AGREEMENT.

12.2 Pledge of Subleases

With the prior written consent of CITY (which consent will not be unreasonably withheld or delayed), CONTRACTOR may, from time to time, mortgage, pledge, and/or grant a security interest in CONTRACTOR'S rights as sublessor under any sublease to a Leasehold Mortgagee and CONTRACTOR'S rights as sublessor to the rent, income, and profits from such subleases, subject to CITY's rights under Article V herein.

12.3 Leasehold Mortgagee's Right to Take Possession

The Leasehold Mortgagee, during the term of the Leasehold Mortgagee's leasehold mortgage or security interest in CONTRACTOR'S rights under the AGREEMENT and CONTRACTOR'S rights as sublessor under any sublease, shall have the right to enter upon and take possession of the Leasehold upon the happening of any Event of Default hereunder or for any default in or breach of CONTRACTOR'S obligations to the Leasehold Mortgagee. Entry upon and taking possession of the Leasehold by the Leasehold Mortgagee may be made by actual entry and possession, with notice by certified mail to CITY, or by written notice served personally upon, or sent by certified mail to, CITY and CONTRACTOR, as the Leasehold Mortgagee may elect.

12.4 Right of Leasehold Mortgagee to Cure Defaults

CITY agrees that during the term of any such leasehold mortgage or security interest:

- i. CITY will give copies to Leasehold Mortgagee of all notices of default sent to CONTRACTOR at the time such notice or notices are given to CONTRACTOR, and no notice of default hereunder shall be effective unless and until such notice is received by Leasehold Mortgagee;
- ii. CITY does hereby grant, and as an inducement to any Leasehold Mortgagee to act as such, a continuing and irrevocable offer to grant to Leasehold Mortgagee a right to cure for the account of CONTRACTOR any default committed by CONTRACTOR during a period equal to the grace period with respect to the named default and commencing on the next day following the last day of such grace period in which CONTRACTOR could have effected such cure;
- iii. CITY will not, for any reason, terminate or cancel the AGREEMENT (even though, under the provisions of the AGREEMENT, CITY has the right to terminate or cancel the AGREEMENT by reason of a default by CONTRACTOR) unless and until CITY has given the Leasehold Mortgagee written notice of its intention to terminate or cancel the AGREEMENT, and unless and until thirty (30) calendar days expire after the receipt of such notice without the Leasehold Mortgagee having cured or commenced action to effect such cure and diligently pursued such action to cure any default or

breach of covenant or condition which may have existed and have been cited by CITY as the expressed reason for said notice of termination or cancellation.

- iv. CITY will not, for any reason, terminate or cancel the AGREEMENT pursuant to Article X herein (even though, under the provisions of the AGREEMENT, CITY has the right so to terminate or cancel) during the pendency of any action by Leasehold Mortgagee to foreclose upon its leasehold mortgage of this Lease, which action is being maintained by Leasehold Mortgagee with diligence and continuity, and CITY agrees that upon any such foreclosure, any prior, non-monetary default or breach of covenant or condition which may have existed as grounds for such termination or cancellation by CITY which, by its nature, is not then susceptible of cure by the Leasehold Mortgagee, shall be waived, provided that nothing herein shall excuse or waive performance by Leasehold Mortgagee with the provisions of Section 12.5 herein.

12.5 Obligations and Rights of Leasehold Mortgagee in Possession

If the Leasehold Mortgagee enters upon and takes possession of the Leasehold, it shall be bound thereafter to keep and observe all the duties and covenants and agreements of CONTRACTOR under the AGREEMENT, but not otherwise; provided, however, that such entry and possession shall not affect CITY'S rights against CONTRACTOR on account of any prior default or breach of covenant or other condition by CONTRACTOR, and provided further, that if any default, breach of covenant, or other condition justifying termination or cancellation by CITY shall have been cured within the periods provided in this Lease or within such further time as the parties may agree, and CONTRACTOR shall resume possession and shall not then be in default under the AGREEMENT, the Leasehold Mortgagee, upon restoring CONTRACTOR to full possession of the Leasehold and its rights under the AGREEMENT, shall thereafter not be so bound; and provided further, however, that if after such entry upon and taking possession of the Leasehold, CITY and the Leasehold Mortgagee shall accept, in writing, another tenant in place of CONTRACTOR or if after such entry and taking possession Leasehold Mortgagee shall assign its leasehold mortgage, the indebtedness secured thereby and its possession of the Leasehold to another entity or person, which has been approved by CITY, in place of Leasehold Mortgagee, the Leasehold Mortgagee shall not thereafter be so bound. Further, Leasehold Mortgagee may enter upon the Leasehold, but not take possession thereof, for the sole purpose of curing a default by CONTRACTOR under the AGREEMENT, and, in such event, CONTRACTOR (but not Leasehold Mortgagee) shall be and remain bound to keep and observe its duties and covenants and agreements under the AGREEMENT.

12.6 No Termination by Contractor During Leasehold Mortgage

During the term of any such leasehold mortgage or security interest, the AGREEMENT shall not be terminated by CONTRACTOR hereunder, or by the giving of any notice by CONTRACTOR hereunder, unless such termination or cancellation is assented to in writing by the Leasehold Mortgagee, nor shall the AGREEMENT be

modified or amended unless the Leasehold Mortgagee shall have assented thereto in writing.

12.7 **Extension of Grace Periods**

If, having entered upon and taken possession of the Leasehold, the Leasehold Mortgagee is prevented from curing any default or breach of covenant hereunder by action of CONTRACTOR or by act of God or other cause beyond its reasonable control, Leasehold Mortgagee shall have such further time to cure said default or breach of covenant as may be reasonable under the circumstances and as may be approved by CITY (which approval will not be unreasonably withheld or delayed).

ARTICLE XIII – INSURANCE

13.1 **Required Insurance**

Beginning on the Effective Date and continuing throughout the Term of the AGREEMENT, CONTRACTOR shall maintain or cause to be maintained, at CONTRACTOR’S sole cost and expense, appropriate insurance for the activities contemplated by the AGREEMENT, including, but not limited to, the following minimum amounts and types of insurance coverages required by this Section 13.1 (collectively, the “Insurance”):

A. *During Construction.* Beginning on the Effective Date and continuing through the Date of Beneficial Occupancy:

INSURANCE TYPE	MINIMUM LIMIT REQUIRED
Builder’s Risk as to all items of construction	Amounts sufficient to cover all risks of loss for completed value of the Project
Commercial General Liability	\$1,000,000 per occurrence \$6,000,000 aggregate
Excess Liability Coverage, or Umbrella Coverage, for Commercial General Liability	\$5,000,000
Workers’ Compensation, including Employer’s Liability	New Hampshire Statutory Requirements \$1,000,000 bodily injury per accident \$1,000,000 bodily injury by disease (each employee) \$1,000,000 bodily injury by disease (policy limit)
Automobile Liability	\$1,000,000

B. *Remaining Term.* Beginning with the Date of Beneficial Occupancy and continuing throughout the Term of the AGREEMENT:

INSURANCE TYPE	MINIMUM LIMIT REQUIRED
Commercial General Liability	\$1,000,000 per occurrence \$6,000,000 aggregate
Excess Liability Coverage, or Umbrella Coverage, for Commercial General Liability	\$5,000,000
Workers' Compensation, including Employer's Liability	New Hampshire Statutory Requirements \$1,000,000 bodily injury per accident \$1,000,00 bodily injury by disease (each employee) \$1,000,000 bodily injury by disease (policy limit)
Automobile Liability	\$1,000,000
Hangar Keeper's and Property Damage Liability	\$100,000,000 per occurrence
Environmental Liability	\$5,000,000 per occurrence
Aircraft Liability	\$100,000,000 per occurrence

ALL INSURANCE TYPES AND MINIMUM LIMITS REQUIRED BY CITY ARE SUBJECT TO RE-EVALUATION AND REVISION, AS CITY DEEMS REASONABLY NECESSARY, IN CITY'S SOLE DISCRETION, AT ANY TIME DURING THE TERM OF THE AGREEMENT.

13.2 Insurance Coverage and Additional Insureds

CONTRACTOR shall obtain the Insurance from an insurance company authorized to do business in the state of New Hampshire and reasonably acceptable to CITY. The Insurance shall be in occurrence form, including bodily injury, death, and property damage liability, insurance against all claims, including all legal liability to the extent insurable and imposed upon CITY, and all court costs and attorneys' fees and expenses arising out of or connected with the activities contemplated by the AGREEMENT. Where applicable, City of Manchester, Town of Londonderry, and the Manchester-Boston Regional Airport shall be named as additional insureds on the Insurance, all of which must be primary and noncontributory with respect to these additional insureds.

13.3 Evidence of Insurance and Material Changes

Certificates evidencing coverage types and amounts equal to or greater than the Insurance levels prescribed in Section 13.2 herein shall be delivered to CITY by

CONTRACTOR prior to CONTRACTOR'S, or CONTRACTOR'S employees', contractors', or agents' entry onto the Leasehold and as further required by Section 1.7 of the RFP. CONTRACTOR shall provide CITY with annual updated certificates evidencing the then-required Insurance coverage types and amounts no later than thirty (30) calendar days prior to the expiration of current policies. CONTRACTOR SHALL PROVIDE CITY WITH THIRTY (30) CALENDAR DAYS WRITTEN NOTICE OF ANY SUBSTANTIAL OR MATERIAL CHANGES TO, OR CANCELLATION OF, ANY OF THE INSURANCE.

13.4 Failure to Maintain Insurance

CONTRACTOR shall not violate, nor allow CONTRACTOR'S employees, contractors, or agents to violate any of the terms, conditions, and provisions of the Insurance. If CONTRACTOR fails to maintain and deliver to CITY the certificates of insurance for the Insurance required by the AGREEMENT, or if the Insurance required by the AGREEMENT are cancelled prior to the end of the Term, CITY may, but is not obligated to, procure such insurance, or pay any outstanding premiums at CONTRACTOR'S sole cost and expenses. Procurement of the Insurance or payment of premiums by CITY will not be deemed a waiver or release by City of a default under the terms of the AGREEMENT, nor of any action CITY may take under the AGREEMENT as a result of CONTRACTOR 's default. Failure of CONTRACTOR to comply with the required coverage, terms, and conditions outlined in this Article VII will not limit CONTRACTOR'S liability or responsibility. In the event of an uncured default under the AGREEMENT, all right, title, and interest of CONTRACTOR in and to the Insurance then in effect and all proceeds payable thereunder shall thereupon vest in CITY. It shall not be a default under this Section 13.4 if CITY, at the request of CONTRACTOR agrees to provide in a separate instrument a portion of the Insurance required pursuant to this Article XIII under CITY'S blanket coverage policy at the Airport.

13.5 Waiver of Subrogation

CONTRACTOR hereby agrees to waive, and to require CONTRACTOR 's insurers to waive, any right of subrogation against CITY under all the Insurance for any loss arising from or relating to the AGREEMENT.

ARTICLE XIV – LIABILITY AND INDEMNITY

14.1 Limitation of City's Liability

EXCEPT FOR CITY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, CONTRACTOR AGREES TO AND SHALL RELEASE CITY, CITY'S AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THE AGREEMENT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY

CITY'S SOLE OR CONCURRENT NEGLIGENCE AND/OR THE CITY'S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY.

14.2 Indemnification

CONTRACTOR AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD CITY, CITY'S AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THE AGREEMENT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:

(A) CONTRACTOR'S AND/OR CONTRACTOR'S AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS; AND

(B) CITY'S AND CONTRACTOR'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT; AND CITY'S AND CONTRACTOR'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT.

CONTRACTOR SHALL REQUIRE ALL OF ITS SUBCONTRACTORS AND THIRD-TIER SUBCONTRACTORS TO RELEASE AND INDEMNIFY CITY TO THE SAME EXTENT AND IN SUBSTANTIALLY THE SAME FORM AS ITS RELEASE AND INDEMNITY TO CITY.

14.3 Survival of Indemnity

THE PROVISIONS UNDER THIS ARTICLE XIV SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THE AGREEMENT.

ARTICLE XV – ASSIGNABILITY

15.1 No Assignment

Except as provided in Article XII herein, CONTRACTOR shall not, voluntarily, by operation of law, or otherwise, assign, transfer, mortgage, pledge, or encumber the AGREEMENT or any portion thereof or interest therein, nor shall CONTRACTOR grant, permit, or otherwise authorize the use of, in whole or in part, the rights granted by the AGREEMENT to any party other than CONTRACTOR or CONTRACTOR'S employees, contractors, or agents, without the prior written consent of CITY, which consent will not be unreasonably withheld or delayed, except CONTRACTOR may assign to an affiliate,

subsidiary, or parent of CONTRACTOR, provided that: (i) any such agreement between CONTRACTOR and subtenant shall in no way affect, modify, or supersede any of the terms and conditions of the AGREEMENT, (ii) all payment arrangements set forth in the AGREEMENT shall remain intact and CONTRACTOR shall remain responsible for all payments to CITY in the manner prescribed in the AGREEMENT; and (iii) in the event that any subtenant(s) declares bankruptcy or otherwise becomes unable to pay fees and/or rents assigned by CONTRACTOR, CONTRACTOR shall remain ultimately responsible for all sums owed to CITY under the AGREEMENT, for any repairs to the Leasehold caused by subtenant, and for the total cure of any violation of Environmental Laws. Any attempts by CONTRACTOR to do any of the foregoing without such written consent shall be null and void and of no effect, and shall further constitute a default under the AGREEMENT. CITY may transfer or assign the AGREEMENT to any successor in interest to CITY to whom the Airport may be sold or assigned, and CITY shall thereupon be released from any further liability hereunder; provided, however, that the successor in interest shall execute and deliver to CITY, with a copy to CONTRACTOR, an instrument assuming the lawful obligations of CITY under the AGREEMENT.

15.2 **Subletting**

CONTRACTOR shall not sublease all or any part of the Leasehold without the prior written consent of CITY, which consent will not be unreasonably withheld or delayed. Any approved sublease shall expressly provide that it is subject to all the terms and conditions of the AGREEMENT, and CONTRACTOR shall remain responsible for the observance of all such terms and conditions. CONTRACTOR may not assign the right to conduct any of the activities listed in the *Minimum Standards*, nor may CONTRACTOR sublet space for the conduct of any other commercial activity on the Airport unless:

- i. The assignee or sublessee is, in the reasonable judgment of CITY, competent to provide the proposed service with a high degree of skill and competence; and,
- ii. The assignment or sublease includes all required federal contract provisions contained in Section 9.3 herein, and;
- iii. The assignment or sublease is, in the sole judgment of CITY, in the best interests of CITY; and
- iv. The assignment or sublease contains the following provision:
“This agreement and all rights, privileges, and obligations hereunder shall be terminated upon the termination of the Agreement between the [name of the sublessee or assignee] and [name of CONTRACTOR]”; and,
- v. CITY has provided CITY’S prior written approval of the assignment or sublease.

Any attempted assignment or sublease by CONTRACTOR which does not comply fully with the above requirements shall be void and of no effect.

15.3 Continuing Liability of Contractor

CONTRACTOR shall, regardless of any assignment, remain directly and primarily liable to CITY for the performance of all covenants, duties, and obligations of CONTRACTOR hereunder, and CONTRACTOR shall assume and be liable to CITY for all acts and omissions of all assignees. CITY shall be permitted to enforce the provisions of the AGREEMENT against CONTRACTOR or any assignee without demand upon or proceeding in any way against any other party.

ARTICLE XVI – DEFAULT

16.1 Events of Default

The following shall be “Events of Default” as to CONTRACTOR under the AGREEMENT, and the term “Events of Default” shall mean, whenever it is used herein, any one or more of the following events:

- i. CONTRACTOR defaults in the performance or observance of any covenants or conditions of the AGREEMENT and such default remains unremedied for ten (10) calendar days after written notice thereof has been given or sent to CONTRACTOR by CITY;
- ii. Any material warranty or representation made by CONTRACTOR to CITY as an inducement to enter into the AGREEMENT or as made herein proves to be false or misleading;
- iii. CONTRACTOR fails to make any payments due and owing to CITY hereunder in full within thirty (30) calendar days after the same is due and payable;
- iv. The dissolution or liquidation of CONTRACTOR, or CONTRACTOR voluntarily files a petition of bankruptcy or insolvency in any federal court, a receiver is appointed to take possession of CONTRACTOR’S business operations as a result of any act or omission of CONTRACTOR, or CONTRACTOR makes an assignment for the benefit of creditors, or CONTRACTOR is dissolved or liquidated; or
- v. The Leasehold is abandoned, deserted, or vacated by CONTRACTOR or any lien shall be filed against the Leasehold or any part thereof in violation of the AGREEMENT and which remain in effect for a period of sixty (60) calendar days from the date of such filing, unless within said period CONTRACTOR is contesting in good faith the validity of such lien and while such lien is appropriately bonded off.

16.2 Remedies Upon Default

Upon the occurrence of any Event of Default, CITY may, but shall not be obligated to, take any one or more of the following remedial steps as against CONTRACTOR:

A. *Possession Without Termination.* CITY may re-enter and take possession of the Leasehold without terminating the AGREEMENT and use reasonable efforts to sublease (or operate as sublessee) the Improvements thereon for the account of CONTRACTOR, holding CONTRACTOR liable for the difference between the Rent and other amounts payable by CONTRACTOR hereunder and the rent and other amounts payable by such sublessee in such subleasing or, if operated by CITY, the difference between the net revenues received from such operations and the rent and other amounts payable by CONTRACTOR hereunder. For purposes of this Section 16.2(A), CITY shall be entitled (without duplication) to charge a reasonable fee for, and to be reimbursed CITY'S reasonable expenses incurred in connection with, the management of the Leasehold for the account of CONTRACTOR.

B. *Termination.* CITY will be entitled to, subject to any Leasehold Mortgagee's rights pursuant to Article XII herein, immediately, or at any time thereafter, with or without notice or demand, terminate the AGREEMENT, exclude CONTRACTOR from possession of the Leasehold, and use reasonable efforts to lease the same to another party for the account of CONTRACTOR, holding CONTRACTOR liable for all Rent and other amounts due under the AGREEMENT and not paid by such other party.

C. *All Other Remedies.* CITY may take whatever other action at law or in equity may appear necessary or desirable to collect the Rent and other fees then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement, or covenant of CONTRACTOR under the AGREEMENT.

16.3 Effects of Default

A. *No Remedy Exclusive.* No remedy herein conferred upon or reserved to CITY is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under the AGREEMENT or hereafter existing under law or in equity. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle CITY to exercise any remedy reserved to it in this Article XVI, it shall not be necessary to give any notice, unless such notice is herein expressly required or is required by law.

B. No Additional Waiver. CITY'S election to terminate the AGREEMENT shall not be construed as a waiver of any claim CITY may have against CONTRACTOR hereunder. In the event any covenant contained in the AGREEMENT should be breached by either party and thereafter waived by the other party, such waiver shall be in writing and shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

C. Contractor Remains Liable. CONTRACTOR shall pay all costs and expenses incurred by CITY in enforcing the terms and conditions of the AGREEMENT. If the AGREEMENT is terminated under this Article XVI, CONTRACTOR shall remain liable (in addition to accrued liabilities) to the extent legally permissible for the amounts that CONTRACTOR would have been required to pay to CITY under the AGREEMENT had the AGREEMENT not been terminated. CONTRACTOR shall pay, as damages, the difference between amounts obtained by adding the amounts owed to CITY plus CITY'S expense in reentering or repossessing the Leasehold, putting the Leasehold in proper repair, altering the assigned Leasehold for a New Tenant, protecting the Leasehold, and contracting expenses to obtain a New Tenant, minus the revenue to be paid to CITY by a New Tenant occupying the Leasehold for the remainder of the Term. In addition, CONTRACTOR shall pay to CITY such sums as the court which has jurisdiction there over may adjudge as reasonable attorney's fees with respect to any lawsuit or action instituted by CITY to enforce the provisions of the AGREEMENT. The percentage of Gross Receipts owed after a default shall be based upon the average of CONTRACTOR'S Gross Receipts under the AGREEMENT during the last twelve (12) months of the AGREEMENT.

D. Cure by City. If CONTRACTOR is in default under the AGREEMENT, CITY may cure the default at any time through any action deemed appropriate by CITY for the account and at the expense of CONTRACTOR. Contractor shall reimburse CITY for any amounts expended by CITY in connection with the cure. Such cure shall not constitute a waiver of CITY'S rights with respect to that or any other default, unless otherwise expressly stated in writing by CITY.

E. Right of City to Lien. The right to lien on the inventory and other property of CONTRACTOR is expressly granted to CITY in any case where CONTRACTOR fails to pay amounts due to CITY under the AGREEMENT.

F. No City Liability for Damage. CITY shall not be liable for any damage, including, but not limited to, loss of profit, and CONTRACTOR shall not make a claim of any kind whatsoever against CITY or CITY'S agents or representatives, by reason of any action taken pursuant to this Article XVI.

ARTICLE XVII – NOTICES

Any written notice, request, or demand required or permitted by the AGREEMENT will, until either party notifies the other in writing of a different address, be properly given if (i) hand delivered; (ii) sent by certified mail, return receipt requested; (iii) registered first class mail, postage prepaid; or (iv) delivered by a nationally recognized overnight delivery service, and addressed as follows:

To CITY at: Manchester-Boston Regional Airport
One Airport Road, Suite 300
Manchester, New Hampshire 03103

To CONTRACTOR at: _____

All such notices shall be deemed effective as of the date of delivery if hand-delivered or sent by overnight delivery service, or three (3) calendar days after such notice is deposited in the U.S. mail if sent by certified or registered mail.

ARTICLE XVIII – GENERAL PROVISIONS

18.1 Applicable Law

CONTRACTOR shall comply with all applicable municipal, county, state, and federal laws, ordinances, rules, and regulations. CONTRACTOR, to the extent CONTRACTOR may legally do so, hereby consents to the jurisdiction of the courts of the State of New Hampshire and the United States District Court of the State of New Hampshire, as well as to the jurisdiction of all courts from which an appeal may be taken from such courts for the purposes of any suit, action, or other proceedings arising out of any of the obligations hereunder or with respect to the transactions contemplated hereby, and expressly waives all objections CONTRACTOR may have to venue in any such courts.

18.2 Severability

The determination by a court of competent jurisdiction and venue that any one or more of the terms, clauses, or provisions of the AGREEMENT is unenforceable or invalid shall not affect the enforceability or validity of any other term, clause, or provision of the AGREEMENT.

18.3 Entire Agreement

A. *Modifications.* This Lease, the RFP, and the PROPOSAL submitted by CONTRACTOR, all incorporated herein shall constitute the entire agreement between the parties hereto and no part hereof may be changed, altered, amended, modified, limited, or extended orally or by agreement between the parties unless such agreement is expressed in writing and signed by CITY and CONTRACTOR or their respective assigns. Any other previous agreement, assertion, statement, understanding, or other commitment before the Effective Date of this Lease, whether written or oral, shall have no force or effect.

B. *FAA Required Amendments.* The AGREEMENT may be amended without further consideration for the purpose of satisfying FAA requirements or any federal agency succeeding to its respective jurisdiction; provided that if any such amendment has a material adverse impact on CONTRACTOR or any of CONTRACTOR'S subtenants', ability to use, occupy, or access the Leasehold for the purposes permitted herein, CONTRACTOR shall be entitled to terminate the AGREEMENT upon not less than thirty (30) calendar days prior written notice to CITY.

18.4 Interpretation

The captions of the Sections of this Lease are to assist the parties in the reading of this Lease and are not a part of the terms or provisions of the AGREEMENT. Whenever required by the context of this Lease, the singular shall include the plural and the plural shall include the singular. The masculine, feminine, and neuter genders shall each include the other. In any provision relating to the conduct, acts, or omissions of CONTRACTOR, the term "CONTRACTOR" shall include CONTRACTOR'S agents, employees, contractors, or successors. This Lease shall not be construed more strictly against one party than against the other merely by virtue of the fact that the AGREEMENT was prepared by one party, it being recognized that CITY and CONTRACTOR have had the opportunity to consult with counsel prior to executing the AGREEMENT.

18.5 Counterparts

The AGREEMENT may be executed in any number of counterparts, or counterpart signature pages, with the same effect as if all of the signatures on such counterparts appeared on one document, and each such counterpart shall be deemed to be an original document.

18.6 Force Majeure

Neither CITY nor CONTRACTOR shall be deemed in violation of the AGREEMENT if it is prevented from performing any of its obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortage of materials, acts of God,

acts of the public enemy, acts of superior governmental authority, weather conditions, floods, riots, rebellion, sabotage, globally recognized and declared pandemics, or any other circumstances for which it is not responsible or which is not in its control, and the time for performance shall be automatically extended by the period the party is prevented from performing its obligations hereunder.

18.7 Brokerage

CONTRACTOR and CITY each to the other represents and warrants that no brokers have been concerned on their behalf in the negotiation of the AGREEMENT and that there are no such brokers who are or may be entitled to be paid commissions in connection therewith. CONTRACTOR and CITY shall indemnify and save harmless each other of and from any claim for commission or brokerage made by any such brokers when such claims are based in whole or in part upon any acts or omissions of the other.

18.8 Right to Develop or Improve

CITY reserves the right to further develop or improve the landing area and all publicly owned air navigation facilities of the Airport as CITY deems fit, regardless of the desires or views of CONTRACTOR and without interference or hindrance from CONTRACTOR, provided, that, in exercising such rights, CITY will not unreasonably interfere with the operation of the Facilities or abridge the rights conferred on CONTRACTOR by the AGREEMENT.

18.9 No Rights of First Refusal

First rights of refusal will not be granted to any portion of the Leasehold, as CONTRACTOR will assume the entire 8.75-acres of land in the Leasehold upon execution of this Lease.

18.10 Subordination

The AGREEMENT is subject and subordinate to: (1) easements, conditions, and restrictions of record; (ii) the Intermunicipal Agreement, dated June 16, 1981, and amended March 9, 1992 and June 16, 2003, between the City of Manchester and Town of Londonderry, New Hampshire; (iii) the provisions of any existing or future agreement between CITY and the United States of America, or any board, agency, or commission thereof, relative to the operation and maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport; and (iv) any license of permit of entry which may be granted by the United States Secretary of Defense. In the event the United States government or its agencies (including the Federal Aviation Administration or its successors) require modifications or changes to the AGREEMENT as a condition precedent to the granting of funds for the improvement of the Airport, CONTRACTOR

hereby agrees to consent to such modifications or changes, revisions, supplements, or deletions of any of the terms, conditions, or requirements of the AGREEMENT as may be reasonably required to obtain such funds; provided, however, that in no event will CONTRACTOR be required pursuant to this Section 18.10 to agree to an increase in any Rent or a decrease in the Term provided for herein, to change the use of the Leasehold (provided that such use is permitted hereunder), to suffer any material interference with the operation of the Facilities, or suffer any material abridgement or impairment of the rights conferred on CONTRACTOR by the AGREEMENT.

[Signature Page Follows]

SAMPLE

IN WITNESS WHEREOF, the parties hereto have caused this Ground Lease and Operating Agreement to be duly executed as of the day and year fully executed by all parties, but effective as of the Effective Date.

**MANCHESTER-BOSTON
REGIONAL AIRPORT**

[CONTRACTOR]

Mr. Theodore Kitchens, A.A.E.
Director of Aviation

Date

[Signatory's Name]
[Signatory's Title]

Date

Attest

Date

Attest

Date

EXHIBIT A – LEASEHOLD DESCRIPTION

SAMPLE

EXHIBIT B – PERFORMANCE BOND

SAMPLE

EXHIBIT C – GRANT ASSURANCES

SAMPLE