



REPORT TO THE CITY COUNCIL

AGENDA ITEM NO.	1B
COUNCIL MEETING	05/02/2013
APPROVED BY	
DEPARTMENT DIRECTOR	<i>[Signature]</i>
CITY MANAGER	<i>[Signature]</i>

May 2, 2013

FROM: KEVIN R. MEIKLE
Director of Aviation, Interim

SUBJECT: ADOPT CEQA CATEGORICAL EXEMPTION PURSUANT TO GUIDELINES SECTION 15301 (EXISTING FACILITIES) TO AUTHORIZE A NON-EXCLUSIVE LICENSE AGREEMENT WITH AMERICAN EAGLE AIRLINES, INC., TO CONDUCT COMMERCIAL AVIATION GROUND HANDLING AND SUPPORT SERVICES AT FRESNO YOSEMITE INTERNATIONAL AIRPORT.

1. AUTHORIZE INTERIM DIRECTOR OF AVIATION TO EXECUTE A NON-EXCLUSIVE LICENSE AGREEMENT TO CONDUCT COMMERCIAL AVIATION GROUND HANDLING AND SUPPORT SERVICES BETWEEN AMERICAN EAGLE AIRLINES, INC., AND THE CITY OF FRESNO TO PROVIDE GROUND HANDLING SERVICES AT FRESNO YOSEMITE INTERNATIONAL AIRPORT, FOR A TERM OF THREE YEARS.

RECOMMENDATION

Adopt CEQA Categorical Exemption pursuant to Guidelines Section 15301 (Existing Facilities) to authorize a Non-Exclusive License Agreement with American Eagle Airlines, Inc. (AE) to Conduct Commercial Aviation Ground Handling and Support Services at Fresno Yosemite International Airport.

1. Authorize Interim Director of Aviation to execute a Non-Exclusive License Agreement to Conduct Commercial Aviation Ground Handling and Support Services (Agreement) between AE and the City of Fresno to provide ground handling services at Fresno Yosemite International Airport (FYI), for a term of three years.

EXECUTIVE SUMMARY

The Agreement will enable AE to provide ground handling services to other airlines at FYI. Ground handling services include, but are not limited to operations related to, (i) passenger processing at the ticket counters, (ii) checked baggage (outbound) and baggage claim (inbound) operations, (iii) passenger processing at the airline gates, and, (iv) ground handling of the aircraft.

BACKGROUND

In March 2013, AE was awarded a ground handling contract for Frontier Airlines at FYI with an effective date of May 17, 2013. Although AE provides ground handling services for their own operations, to begin ground handling operations for another airline, AE must enter into a Ground Handling Agreement with the Airports Department for the services they will be providing. Third party ground handling is common at larger airports and this Agreement is consistent with industry standards. Under the Agreement, which has been reviewed and approved as to form by the City Attorney, AE is required to pay a monthly license fee of \$250 or 10% of their monthly gross revenue, whichever is greater.

CEQA EXEMPTION

The proposed Agreement is exempt under CEQA Guideline Section 15301, Class 1, which provides exemption for the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public structures and facilities, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination.

The above exemption is not precluded by Guideline Section 15300.1, which prevents use of categorical exemptions for wholly ministerial projects. The lease project is not wholly ministerial. Nor is the above exemption precluded by Guideline Section 15300.2, which prevents the use of categorical exemptions for projects where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances, or where a project may cause a substantial adverse change in the significance of a historical resource. The Lease is not anticipated to have a significant effect on the environment due to unusual circumstances, nor cause a substantial adverse change in the significance of a historical resource.

FISCAL IMPACT

This is a new revenue source for the Department and is not included in the FY 2014 Budget. Fees collected from this Agreement will be deposited into the FYI Enterprise Fund. There is no impact to the General Fund from this item.

Attachment: Non-Exclusive License Agreement

NON-EXCLUSIVE LICENSE AGREEMENT TO CONDUCT COMMERCIAL AVIATION
GROUND HANDLING AND SUPPORT SERVICES
AT FRESNO YOSEMITE INTERNATIONAL AIRPORT

Issued By

CITY OF FRESNO, CALIFORNIA
A Municipal Corporation

To

AMERICAN EAGLE AIRLINES, INC.
A DELAWARE CORPORATION

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THIS NON-EXCLUSIVE LICENSE AGREEMENT granted this ____ day of April, 2013, by the City of Fresno, California, a municipal corporation (hereinafter "City") and American Eagle Airlines, Inc., a Delaware corporation (hereinafter "Licensee").

RECITALS

WHEREAS, City owns and operates Fresno Yosemite International Airport, ("FYI") which is located in the City of Fresno, County of Fresno, State of California (hereinafter "Airport"); and

WHEREAS, Licensee is engaged in the business of providing commercial aviation ground handling and support services to one or more air carriers who are variously engaged in the transportation by air of persons, property, cargo, and mail to and from Airport; and

WHEREAS, Licensee desires to use the Airport to conduct its commercial aviation ground handling and support services in the air operations area of the Airport and to avail itself of certain privileges, uses and rights in connection therewith; and

WHEREAS, Licensee has indicated a willingness and has an ability to operate in accordance with the rules, regulations and standards established by City if granted a License authorizing it to conduct its business on the Airport; and

WHEREAS, it is in the best interest of the City and to the operation of the Airport to grant this License Agreement to Licensee upon the terms and conditions hereinafter set forth.

NOW THEREFORE, in consideration of the Recitals set forth above, the mutual promises herein contained and in accordance with and subject to all the terms, conditions and limitations of Chapter 5, Article 4, of the Fresno Municipal Code, all of which are incorporated herein by reference, the parties hereto agree as follows:

ARTICLE I: DEFINITIONS

1.01 Definitions

The following words, terms and phrases wherever used in this License Agreement shall have the following meanings:

- A. Aircraft Operations Area. Aircraft Operations Area (AOA) means those portions of the Airport designed and constructed for the landing and takeoff, taxiing, handling, servicing, loading and unloading, and other operations of aircraft, as now exist or hereafter may be developed, extended or improved from time to time.
- B. Airport. Means the Fresno Yosemite International Airport (FYI), as it currently exists or as it may exist during the Term of this License.
- C. Airport Rules for Airlines/Ground Handlers. Means the handbook for rules and regulations at the Airport for all Airlines and Ground Handlers.
- D. Commercial Airline or Airline. Commercial Airline or Airline means a federally certificated air carrier, air charter, commuter, or air taxi engaged in the conduct of scheduled or nonscheduled commercial air transportation of passengers, air cargo or mail at Airport.

- E. Director. Director means the Director of Aviation for the City of Fresno or the Director's duly authorized representative.
- F. FAA. FAA means the United States Department of Transportation, Federal Aviation Administration, created and established under the Federal Aviation Act of 1958, as codified in the United States Code, Title 49, or its successor(s) in function, if any.
- G. Fuel Flowage. Means the purchase or sale of jet fuel, aviation gasoline, aircraft lubricating oil, and other aircraft petroleum products that the Licensee uses as a part of their Operations.
- H. Gross Revenue. Is the amount upon which the percentage license fees shall be based and means all income billed, derived or received resulting from the use or Operations within, at and from the Airport in any manner, whether by Licensee, its subcontractors or concessionaires, or parties operating through Licensee, its subcontractors, or concessionaires, from whatever source derived, and whether for cash or credit. Gross Revenue includes, but is not limited to, all revenues received from ground handling and support services, including the selling of jet fuel, aviation gasoline, aircraft lubricating oil, and other aircraft petroleum products, any manufacturers or importer's excise tax included in the prices of the goods sold, even though the manufacturer or importer is also the retailer thereof. It shall be immaterial whether or not the amount of such excise tax is stated as a separate charge. Bad debt losses shall not be deducted from the determination of Gross Revenue.
- I. License. License refers to this License Agreement and includes all terms and conditions stated herein together with all exhibits and other attachments hereto and incorporated herein by reference. Any and all other documents required hereunder, made in writing, executed by both parties and filed of record with the City, shall be deemed to be part of this License.
- J. Operations. Operations means the Licensee's conducting of its ground handling and support services.
- K. TSA. TSA means the United States Department of Homeland Security, Transportation Security Administration, and its successor(s) in function, if any.
- L. Term Year. Means a 12-month period beginning on the date of this License, and each year thereafter beginning on the anniversary thereof during the Term, and ending 12 months thereafter.

ARTICLE II: TERM OF LICENSE

2.01 Term

- A. Term: The term of this License shall be for three (3) years, commencing May 17, 2013 (the "Effective Date") and ending on May 16, 2016 unless terminated sooner as provided herein.

ARTICLE III: USES, RIGHTS AND PRIVILEGES

3.01 Use of Airport

Subject to the terms, conditions and restrictions of this License, Licensee shall have the right, in common with others so authorized, to use certain common use, public use, and restricted areas of the Airport as designated by the Director, for the sole purpose of conducting its ground handling and support services (hereinafter "Operations") as approved by City and for no other purpose whatsoever.

3.02 Ingress and Egress

Licensee shall have the lawful right of ingress to and egress from the Airport over the across the public roadways serving the Airport and those designated private roadways on Airport, for Licensee, its agents, employees and contractors; provided, however, that no person shall be authorized to enter a restricted area of the Airport by virtue of such right of ingress and egress.

3.03 Operations and Other Support Space

Licensee shall arrange, at its sole expense, for adequate space, including offices and other facilities, as Licensee may require at the Airport for its Operations. If space is unavailable for separate License directly from City, Licensee agrees to sublease space or facilities from an airline or other tenant having an agreement with City. Any such separate sublease and Licensee's operations thereunder, shall be subordinate to the terms of this License and shall be subject to such terms and conditions as specified by the Director.

3.04 Access Control

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

ARTICLE IV: LICENSE FEES AND OTHER CHARGES

4.01 Monthly Fee and Due Date

Within 5 days of the end of the calendar month commencing with the Effective Date and monthly, on the first day of each month, Licensee agrees to pay to City a Monthly Fee equal to the greater of either two hundred fifty dollars (\$250.00) or the sum of the following:

- A. The sum of ten percent (10%) of Licensee's monthly Gross Revenue from all of its Operations as defined herein; plus
- B. Fuel Flowage Fees.
 1. If Licensee makes a purchase of jet fuel, aviation gasoline, aircraft lubricating oils or other aircraft oils from an off Airport supplier, such purchase is subject to the sum per month calculated and determined on the basis of the number of gallons times the per gallon rate as established in the Master Fee Schedule.

2. If Licensee purchases jet fuel, aviation gasoline, aircraft lubricating oils or other aircraft oils from an on Airport supplier, such purchase shall be calculated into the monthly gross revenue and is subject to the 10% rate as established in section 4.01(A) above.

4.02 Methods of Calculations

Percentage license fees shall be calculated on a monthly basis on all of Licensee's Operations and activities conducted at, on, within or from Airport.

4.03 Reports

On or before the 20th day of each month, Licensee shall render to City, on a form prescribed by City, as shown in Exhibit "A" attached hereto and incorporated herein, a detailed report of Licensee's Gross Revenue for the immediate prior month. Each monthly report shall be signed by a responsible officer of Licensee under penalty of perjury and shall include the following:

- A. The Gross Revenue for the prior month, itemized as to each service category, customer and client.
- B. A statement of the itemized amounts of percentage license fees computed, as herein provided, and the total thereof.

4.04 Annual Certified Statement of Gross Revenues

Within sixty (60) days of the end of each year, the first year being that commencing on the Effective Date described herein, Licensee shall furnish to City a certified statement by an independent certified public accountant or firm of certified public accountants showing the total of Gross Revenues at the Airport for said year and stating that Gross Revenues have been correctly reported in accordance with the terms of this Agreement.

Within sixty days following the termination of any other prior agreement or permit with the City, Licensee must provide, at its sole cost and expense, an audited statement by an independent certified public accountant or firm of certified public accountants, of monthly gross revenues, as defined in any other agreement or permit with the City for the period beginning at the last audited month and ending at the commencement date of this License.

If any certified statement provided by the Licensee to the City indicates that the aggregate payments made for any year were less than the amount due for that year under the terms of this License, then Licensee shall pay the difference at the same time it provides the certified statement to the City. In the event the underpayment is greater than five percent (5%) of the total amount due for that year Licensee shall pay Late Payment Charge hereinafter described on the amount of such difference.

4.05 Place of Payment

All fees/charges due to be paid to City by Licensee hereunder shall be paid in lawful money of the United States of America, without set off, by check or wire transfer made

payable to City and delivered or wired, as applicable, to the following address or account, City by service of written notice upon Licensee, may otherwise direct the payment thereof from time to time during the term hereof.

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

Via Wire Transfer
City of Fresno - Airports
Bank of America
ABA #121000358
Account: 1499610645

4.06 Late Payment Charge

Should any installment of monthly fees accruing to City under the provisions of this License not be received by City within five (5) calendar days after such shall become due, a late payment charge equal to one and one half percent (1.5%) of the overdue amount added thereto and constituting a part thereof shall be imposed by City each and every month until the entire delinquent amount is received by City.

4.07 Employee Parking Facilities

Licensee's employees working at the terminal building shall have the right to the use of vehicular parking facilities in common with other employees. Such facilities shall be located in an area designated by City. City reserves the right to assess a reasonable charge to recover the costs of providing such space to such employees, in common with other Airport/tenant employees, for such parking facilities.

4.08 Security Deposit

Licensee shall provide to City a Security Deposit in an amount equal to three (3) months Fees and Charges. Such deposit shall be in the form of cash, a Surety Bond issued by an insurance company authorized to do business in the State of California and authorized to write such bonds in said State, or a non-revocable Letter of Credit established in favor of City for the account of Licensee by a federally chartered bank acceptable to City, guaranteeing the faithful performance of all of the covenants and conditions herein to be performed by Licensee. Upon the expiration or termination of this License, and the payment of all fees and charges due to the City for the privileges granted in this License, the Security Deposit shall be refunded to Licensee, provided there are no other outstanding claims or charges against Licensee. City shall not be required to pay, and City shall not pay, any interest on this Security Deposit.

4.09 Additional Fees, Charges and Rentals

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

- A. City has paid any sum or has incurred any obligation or expense for which the Licensee has agreed to pay or reimburse the City, or for which Licensee is otherwise responsible;

- B. City is required or elects to pay any sum or sums or incurs any obligation or expense because of the failure, neglect or refusal of Licensee to perform or fulfill any of the promises, terms, conditions or covenants required of it hereunder.
- C. Licensee's obligations pursuant to this section shall include all interest, costs, damages, and penalties allowable by law or contract in conjunction with such sums so paid or expense so incurred by the City. If billed by City, Licensee shall pay City within thirty (30) days following the date of such billing.

4.10 Taxes

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

4.11 Records/Books

Licensee shall, at all times during the term of this License, keep or cause to be kept, accurate and complete records and double entry books of account of all financial transactions in the operation of all business activities, or whatever nature, conducted pursuant to the rights granted herein. The records must be supported by source documents of original entry such as sales invoices, or other pertinent supporting documents. Financial statements (a balance sheet and income/expense statement), based upon the double entry books of account, shall be prepared not less than annually.

4.12 Location of Business Records

All Licensee's books of account, records, financial statements, and documentation related to this License or to the business Operations conducted within or from the Airport, shall be kept in a location within Fresno County or at such other location as may be acceptable to City. City shall have the right to any and all reasonable times and with reasonable notice to examine and audit said books, records, financial statements, and documentation, without restriction, for the purpose of determining the accuracy thereof, the accuracy of the monthly statements of Gross Revenue submitted, and the accuracy of the license fees paid to City. In the event that Licensee's business Operations conducted within or from the Airport are part of a larger operation, and not solely for the business operations within or from Airport, then City shall also have the right to examine and audit that part of said books, records, financial statements, and documentation of the larger business operation.

¹ Any interest in real property which exists as a result of possession, exclusive use, or a right to possession or exclusive use of any real property (land and/or improvements located therein or thereon) which is owned by the City of Fresno (City) is a taxable possessory interest unless the possessor of interest in such property is exempt from taxation. With regard to any possessory interest to be acquired by Licensee under this License, Licensee, by its signatures hereunto affixed, warrants, stipulates, confirms, acknowledges and agrees that, prior to executing this License, Licensee either took a copy of this License to the office of the Fresno County Tax Assessor or by some other appropriate means independent of City or any employee, agent, or representative of City determined, to Licensee's full and complete satisfaction, how much Licensee will be taxed, if at all.

4.13 Failure to Maintain Records

Licensee's failure to keep such books of account, records, financial statements, and documentation and make them available for inspection by City is a breach of this License and cause for termination. The Director shall have the discretion to require the installation of any additional accounting methods or controls deemed necessary, subject to prior written notice. In the event Licensee does not make available the original records and books of account within the limits of City.

ARTICLE V: OPERATIONS, CONDITIONS AND RESTRICTIONS

5.01 Description of Licensee's Operations

- A. Using the form provided in "Exhibit B", attached hereto and incorporated herein by reference, Licensee shall file and at all times maintain with City a current and detailed description of all ground service operations Licensee conducts at the Airport. This detailed description must be filed with and approved by City before Licensee commences operations at the Airport. Whenever the ground service operations conducted by Licensee at the Airport change or the airlines serviced by Licensee change, Licensee shall immediately file a revised "Exhibit B" with the City so that, at all times, the "Exhibit B" on file with City accurately and fully describes licensee's current operations at the Airport. Licensee's failure to maintain a current Exhibit B with City, is a breach of this License and cause for termination hereof.
- B. In addition to filing the detailed description of ground service operations Licensee conducts at the Airport, Licensee shall provide copies of each ground handling service agreement that Licensee has with each airline at the Airport. City reserved the right to review and approve such agreement.

5.02 Approved Services That May be Performed by Licensee

- A. Licensee is hereby permitted to use those designated areas of Airport for the sole purpose of conducting its Operations and related activities, as specified herein, and for no other purpose whatsoever. This License shall not be valid unless Licensee demonstrates to the City that it has first entered into a contract to perform the services described hereunder with an Airline or Licensee holding a valid agreement with City. In the event any contract under which Licensee performs services is cancelled or terminated by the aforementioned Airline or Licensee, Licensee shall immediately notify City in writing. Operations hereunder shall be non-exclusive and at Licensee's sole cost, expense and responsibility. Subject to use restrictions, limitations and conditions set forth in this Agreement and as provided by law, Licensee's commercial aviation ground handling service business may only include the following operations, as denoted hereinafter:

1. Ground Handling Ramp Services for Airlines

Guiding aircraft to a parking position for purposes of loading and unloading passengers, baggage, and cargo; furnishing equipment for the safe and efficient loading and unloading of passengers and cargo to and from an aircraft; proving a fire guard equipped with necessary and appropriate firefighting equipment; delivering aircraft cargo packages and mail to appropriate designated locations

on the Airport, including, but not limited to Air Cargo buildings and terminal buildings; repairing, maintaining and refueling all required ramp equipment owned by the Licensee or the Airlines contracting with Licensee, provided that: (i) repair and maintenance must be performed at premises other than at the Airline passenger terminal buildings or the ramps adjacent thereto; (ii) such work shall be performed only at areas designated for such purpose by the Director; and (iii) refueling must be performed only in areas designed by the Director for ground service equipment. The services under this subparagraph must be directly provided by the Licensee and not through a subcontracting agreement.

2. Light Maintenance Services for Airlines

Providing light maintenance to Licensee's Airline customers on the aircraft parking aprons located at or near the Airline passenger terminal buildings to such extent as is (a) provided in the rights and uses stated in the applicable agreement between the respective Airline and the City where it permits the Airline to use said areas and other facilities for such purposes, or (b) provided City ordinances, rules, codes and regulations permit said activities at said location at Airport. The term "light maintenance" means normal airline, overnight flight maintenance and inspections.

3. Into-Plane Fuel Services for Airlines

The right to transfer or deliver fuel to Airline aircraft and to pump the fuel into proper compartments or tanks aboard the aircraft in accordance with the terms of the contracts that the Licensee may, from time to time, enter into with an Airline. However, the services under this subsection do not apply to the sale at Airport of jet fuel, aviation gasoline, aircraft lubricating oils or other aircraft oils; said sales and the fees thereon are covered by other provisions of this License.

4. Waste Disposal Services for Airlines

Maintaining and operating waste disposal services and lavatory cleaning services to the Airlines at Airport.

5. Ground Equipment Rental and/or Operation and/or Maintenance for Airlines

Renting, or operating, or maintaining aircraft ground equipment to Airlines, including but not limited to tugs, aircraft starters, aircraft loading stairs and air-conditioning units in accordance with the terms of the contracts that the Licensee may, from time to time, enter into with the Airlines. Such ground equipment shall not include automobiles, trucks, or other vehicles designed for use on public streets, either into or out of the Airport. Maintenance of ground equipment must be (i) performed at locations other than the Airline's passenger terminal buildings or the ramps adjacent thereto; and (ii) shall be performed only in areas designed for such purpose by the Director.

6. Passenger Services for Airlines.

Providing clearance documents for aircraft passengers, cargo and baggage as may be required by applicable governmental agencies; providing and handling

passenger ticketing and baggage check-in; furnishing linguists for the assistance of passengers speaking a foreign language; and arranging for, but not preparing or selling in-flight meals for passengers departing on aircraft.

7. Porter Services for Airlines

Handling and transporting passenger baggage and other articles of personal property through the Airline passenger terminal buildings and terminal areas, including the United States Federal Inspections area.

8. Security Services for Airlines or City's Licensees

Providing security services at the airline passenger terminal buildings and terminal areas as specified by contractual agreements with an Airline or other City Licensees or Tenants.

9. Baggage Delivery Services for Airlines

Handling and transporting of baggage and other articles of Airline passengers and customers for screening, rerouting, or delivery at Airport.

10. Aircraft Cleaning for Airlines

Cleaning aircraft interiors and exteriors. Notwithstanding anything to the contrary set forth herein, Licensee must seek the City's prior written approval prior to conducting any exterior aircraft cleaning.

11. Sale of Aircraft Fuels and Oils

Selling jet fuel, aviation gasoline, aircraft lubricating oil, and other aircraft petroleum products. The revenues from said sales shall be subject to the percentage of Gross Revenue fee stated in this License if purchased from an on Airport vendor, or if purchased from an off Airport vendor for a fee on each gallon of fuel or oil sold at the rates more clearly specified in the fee provisions of this License.

5.03 Rights of Airlines

Licensee understands and agrees that federally certificated Airlines shall have the right at all times to provide any of the above described services for themselves for their own operations. None of the services which Licensee is authorized to perform under this License shall involve the operation of aircraft by Licensee unless it holds a separate air carrier operating agreement from City.

5.04 Conditions, Limitations and Restrictions

Licensee's use of the Airport shall be subject to the following terms, conditions, limitations, covenants and restrictions.

- A. Licensee agrees that it will not permit any act of omission or commission or any type of condition to exist on the Airport which would in any way create a hazard to

persons or property or would serve to jeopardize or invalidate any policies of insurance or increase the premium rate(s) charged for any insurance covering Airport property, operations, or the premises or operations of any tenant of City.

- B. Licensee may use the Air Operations Area and other restricted areas of the Airport only as specifically authorized and directed by the Director and in accordance with the directives of the federal government issued by and through the FAA or the TSA. If the TSA imposes a penalty or fine on the City for Licensee's acts or omissions, then Licensee shall reimburse and indemnify the City for the entire amount of the penalty or fine.
- C. Licensee shall not use the Airport in any manner that might interfere with the landing and taking off of aircraft from Airport or otherwise constitute a hazard. In the event this covenant is breached, City reserves the right to cause the abatement of such interference at the expense of Licensee and/or to immediately terminate this License, or to place such restrictions on the operations of Licensee, as City deems necessary in the public interest.
- D. Licensee is limited to conducting its ground handling and support services Operations on a nonexclusive basis.
- E. Licensee shall neither use, suffer, license the use of the premises for any improper, immoral, unlawful (including illegal discrimination), unauthorized, nor objectionable purpose(s).
- F. Licensee shall neither use, suffer, license the use of the premises for any purpose nor allow any activity therein which would create a nuisance, or in any way obstruct or interfere with the rights of others at Airport or injure or annoy them; or do or permit the doing of anything in any way tending to injure or reflect unfavorably upon the reputation of City or the appearance of the Airport.
- G. Licensee shall not construct improvements upon the premises or alter, improve or add to any existing structure on such premises.
- H. No used buildings/structures and no temporary/mobile buildings/structures/trailers may be moved onto the premises, without the advance written consent by the City.

5.05 Handling and Storing Hazardous Articles and Materials

- A. Only Airlines, air freight forwarders and airport tenants with Airport Licenses or permits authorizing them to conduct the receiving, storing or transporting of hazardous articles or materials shall be allowed to engage in such activities. Where permitted, the receiving, storing and handling of all such articles or materials will be the sole responsibility of these respective companies and shall comply with current applicable airline handling directives, company manuals, and other applicable laws and regulations. Licensee shall not store, use or dispose of hazardous materials on the Airport nor cause, permit or allow any officer, agent, employee, contractor, permittee or invitee of Licensee to store, use or dispose of hazardous materials on the Airport. Licensee shall be solely and fully responsible for notifying the appropriate public agencies of any hazardous material release which occurs on the Airport, or is caused by or results from activities of Licensee, Licensee's officers, agents, employees,

contractors, permittees or invitees on Airport. Licensee shall immediately notify the City of any hazardous material releases which occurs on the Airport regardless of whether the release was caused by or results from Licensee's activities or is in a quantity that would otherwise be reportable to a public agency.

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

5.06 Parking and Equipment Storage

Licensee's vehicles and equipment, including the vehicles and equipment of Licensee's employees, guests, contractors and clients, if permitted to be operated on Airport property, shall be parked only in those areas approved for such parking, unless specifically authorized in writing by the City to be parked temporarily elsewhere. For any vehicle or equipment owned, Licensed or hired by Licensee and found in an unauthorized area or left unattended in a restricted area, Licensee shall be responsible for any fines or citations for breach of airfield security regulations. Licensee agrees such vehicles or equipment may be immediately removed and stored by City at the expense of Licensee.

5.07 Responsibility for Use

Licensee is and shall remain an independent contractor responsible to all parties for its acts and omissions and agrees that City shall in no way be responsible Licensee's acts or omissions. Throughout the term of this License, Licensee shall retain sole responsibility, liability and cost for safeguarding all persons and property affected by its Operations and for the conduct of its activities on the Airport. Licensee shall at all times conduct its Operations in a safe, prudent, professional and lawful manner. Licensee agrees that its Operations hereunder shall not unreasonably interfere with or impede the operations of City, other authorized users and tenants of the Airport, or the general public.

5.08 Licenses, Permits and Certifications

Licensee shall at its sole cost and expense (a) obtain and maintain in effect at all times any and all licenses, certificates and permits required for its occupancy, use of and Operations on Airport property; and (b) obtain any and all licenses, permits and other operating, use or safety certifications required by federal, state and/or local regulatory agencies for its use of, operations on, activities at and associated storage on Airport property. Licensee shall

provide City with copies upon request of any and all such licenses, permits, certifications and other documentation evidencing compliance herewith.

5.09 Operating Standards

Licensee covenants and agrees that it shall conduct its Operations and its activities at Airport in a safe, lawful, prudent and professional manner, at all times providing the quality and levels of service necessary to meet the demand for same, in accordance with all applicable regulations currently in effect and as may be amended, and pursuant to directives issued by the Authority in connection therewith. Licensee acknowledges that it has received and agrees to make available to its employees copies of the City's Airport Operations Rules and Regulations, Code, Policy, and other applicable regulatory and procedural information.

5.10 Responsible Manager and Subordinate

Licensee shall at all times retain an active, qualified, competent, experienced and responsive station manager to supervise its Operations and to represent and act for Licensee at Airport. Licensee's manager shall be available during regular business hours and on-call at all other times in the event of an emergency. At all times during the manager's absence a responsible subordinate shall be in charge and available at Airport. Licensee shall provide City and keep current at all times the names of its manager and subordinate, their respective office, cell and emergency home telephone numbers, and their email addresses.

5.11 Personnel, Training, Policies and Procedures

Licensee shall provide for the proper training and for the certification/licensing of all of its employees in all areas of service as duties require. Licensee shall produce copies of employee certification and licensing records upon demand by City. Licensee shall be responsible for the training of all employees in conformity with the Airport Rules for Airlines/Ground Handlers handbook requirements. Licensee shall control the conduct, demeanor and appearance of its employees to ensure the maintenance of a high standard of service at all times.

5.12 Purchase of Supplies and Services

Should Licensee contract with a third party to provide services which might otherwise be performed by Licensee under this License, such third party shall be deemed to be conducting a business at Airport. Prior to said third party engaging in such services, Licensee shall ensure that such third party has secured a valid license agreement from City to operate at Airport. City may impose charges, rentals and fees upon such third parties for facilities used or for services provided. Nothing herein shall be construed as in any way limiting the powers of City to fully exercise its governmental rights, its proprietary functions, its obligations under any bond covenants, or its rights to enforce any federal, state or local law, rule or regulation

5.13 Safety Procedures and Fire Prevention Procedures

Licensee shall comply with all fire safety rules, regulations and procedures at the Airport. Licensee shall install and maintain, at Licensee's sole expense, such extinguishing devices,

signage and fixtures on and in its facilities and equipment and operating areas as may be required by the Aircraft Rescue and Fire Fighting Department (ARFF) or any applicable law or regulation. Combustible and flammable liquid storage shall meet all Uniform Fire Code requirements.

5.14 Security

Licensee shall comply with all rules and regulations of City applicable to the Airport and airfield security. At its sole cost and expense, Licensee shall be responsible for providing its own security (i) for any equipment, vehicles, materials and other personal property brought onto the Airport by or for Licensee, and (ii) for any services or activities provided or conducted by Licensee or by anyone on behalf of Licensee under this License. Licensee agrees to protect the integrity of security of the Airport perimeter and agrees to undertake measures necessary for the prevention of unauthorized access into any restricted area of the Airport. Licensee's responsibilities hereunder expressly include, but shall not be limited to, implementing a security plan to meet the requirements of the TSA and the City.

5.15 No Obligations of City

Licensee acknowledges that City has made no representations or warranties relating to the suitability of the Airport for any particular use. Except as otherwise expressly provided in this License, City shall have no obligation whatsoever to Licensee for the maintenance of the Airport or any improvements, fixtures, furnishings or equipment now or hereafter constructed, installed or used as a part of the Airport. City shall have no liability to Licensee arising out of any defect or deficiency in the Airport.

5.16 City's Right of Inspection

City and its authorized officers, employees, agents, volunteers, contractors, subcontractors and other representatives shall have the right to monitor all activities of Licensee and to inspect Licensee's areas of operation, equipment and conduct of business, including for the following purposes:

- A. To determine Licensee's compliance with the terms and conditions of this License and with City's directives issued in connection herewith; and
- B. To perform maintenance or other remedial work where Licensee is obligated to perform said work, but has failed, to do so, after City's notice of noncompliance, in which case Licensee shall reimburse City for the costs thereof promptly upon demand. and
- C. To gain access to any mechanical, electrical, utility and structural system at the Airport for the purpose of maintaining and repairing said system.

5.17 Exterior Signs and Outside Storage

Installation of exterior signs and /or outside storage of any materials, supplies, products, equipment or other personal property in or about the Airport, unless expressly permitted by this License, is prohibited.

5.18 Alterations/Additions/Modifications/Improvements

Neither City nor Licensee shall be obligated to make, nor shall Licensee shall make any alterations, additions, modifications, or improvements in/on/to any part of the Airport, at any time during the term hereof, for any purpose whatsoever.

5.19 Liability for Damage

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

5.20 Disposable Waste

Licensee agrees to keep all areas covered by this License free and clear of rubbish, debris, and litter. Licensee shall use the outdoor receptacles provided by City for the collection and removal of all trash, garbage and other refuse resulting from the operation of the Passenger Terminal Building, including the activities authorized in this License. Licensee, at its own cost and expense, shall provide and use suitable receptacles for the collection, within all other Airport areas, of all trash and other refuse. Piling of boxes, cartons, barrels or other items in an unsafe or unsightly manner in or about Airport or the premises is prohibited.

5.21 Assignment, Sublicenses and Encumbrances

The Licensee shall not transfer, assign, encumber or mortgage this License, or any part hereof, or interest herein, except with the prior written approval of the City and subject to whatever limitations and conditions that may be required by the City. Any other attempted transfer or assignment shall be void and shall not confer rights upon any third person. No assignment shall relieve the Licensee of any obligation under this License unless otherwise agreed by the City. Licensee shall not grant permission to any other person to occupy any portion of the areas covered by this License without the consent of City. Notwithstanding the foregoing, this section shall not be interpreted to preclude the assignment of this License to Licensee's ultimate parent, a wholly owned subsidiary of Licensee, or a successor by merger, if such parent, subsidiary, or successor by merger assumes all rights to the obligations of this License. Written notice of such assumption shall be provided to the City by parent, subsidiary, or successor by merger not less than thirty (30) days prior to the effective date of such assignment.

5.22. Conflict Between "Authorized" and "Unauthorized" Uses

With respect to any use of the Airport which may be contemplated or undertaken under authority of this License, if any such use may, in any way whatsoever, reasonably be deemed to involve a conflict between "authorized" and "unauthorized" uses as set forth herein, the prohibitions, restrictions and limitations set forth within this License, in any and all such cases, prevail, and no "unauthorized" use of the premises, in whole or in part, shall be undertaken by Licensee or Licensee's employees, agents, representatives

unless and until such use is limited to the degree/extent necessary to eliminate any element/portion thereof giving rise to any such conflict.

ARTICLE VI: DEFAULT AND TERMINATION

6.01 Events of Default

Occurrence of any of the following will be considered a material default:

- A. Non-payment of license fees or any other fees due under this License;
- B. The failure by Licensee to keep, observe, undertake, fulfill, or perform any of the terms, covenants, conditions, warranties, agreements, obligations, and/or provisions of this License to be kept, observed, undertaken, fulfilled, and/or performed by Licensee;
- C. The vacating or abandonment of the premises by Licensee;
- D. The inability of and/or failure by Licensee to obtain, pay for, and maintain in full force and effect at all times during the life of this License, without any lapse in coverage, such insurance and surety as shall be required of Licensee hereunder;

6.02 Termination

In the event this License shall be canceled or terminated pursuant to the provisions of this section, Licensee shall immediately remove all of its personal property from the premises and peacefully vacate and surrender said premises back to City. Upon written request, City may allow additional time for removal of property. Any such allowance may only be given in writing by the Director and said time shall be subject to payment of License fees as herein provided. Termination of this License by City under the provision of this section shall not be construed as a waiver of any claim City may have against Licensee including for default.

- A. Default. In the event of default as described above and said default is not cured within ten (10) days after City's service of written notice of default, this License shall immediately terminate and Licensee shall have no further rights hereunder and shall immediately vacate any and all areas covered by this License; and City shall immediately thereupon, without recourse to the courts, have the right to reenter and take possession of said areas. City further shall have all other rights and remedies as provided by law, including without limitation the right to recover damages from Licensee in the amount necessary to compensate City for all the detriment and injury proximately caused by Licensee's failure to perform its obligations under this License or which in the ordinary course would be likely to result therefrom.
- B. Bankruptcy. City acknowledges that Licensee is a debtor in possession under chapter 11 of the United States Bankruptcy Code in the cases styled "In re AMR Corporation, et al" pending in the United States Bankruptcy Court for the Southern District of New York, case no. 11-15643 (SHL) (Jointly Administered). Other than that proceeding, filing by or against Licensee (i) in any bankruptcy or other insolvency proceeding; (ii) seeking any relief under any state or federal debtor relief law; (iii) for the appointment of a liquidator or receiver for all or substantially all of the

Licensee's property or for Licensee's interest in this License; or (iv) for the reorganization or modification of Licensee's capital structure, this License shall at the option of City immediately terminate and all rights of Licensee hereunder shall immediately cease and terminate.

- C. Voluntary Termination Rights. Either may terminate this License at any time by serving written notice of not less than sixty (60) days upon the other party.
- D. Police Powers. In the event the operation of the Airport or any part thereof is taken over by the United State Government or any other public authority by requisition or any other unilateral action due to a national emergency or otherwise, this License shall terminate as of the date of vesting of the interest of said U.S. Government or other public authority.

6.03 Survival of Indemnification:

Nothing contained within this Section affects the right of City to indemnification by Licensee as hereinafter provided.

ARTICLE VII: INSURANCE, INDEMNIFICATION, AND EXEMPTION OF CITY

7.01 Insurance Requirements

Prior to engaging in any operation authorized by this License and continuing throughout the life hereof, Licensee shall pay for and maintain in full force and effect all policies of insurance required hereunder with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A- VII" in Best's Insurance Rating Guide, or (ii) authorized by City's Risk Manager. The following policies of insurance are required:

(i) AVIATION LIABILITY insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form and include insurance for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, hangar keepers liability and contractual liability (including, without limitation, indemnity obligations under the Contract) with limits of liability of not less than the following:

- \$10,000,000 per occurrence for bodily injury and property damage
- \$1,000,000 per occurrence for personal and advertising injury
- \$10,000,000 aggregate for products and completed operations
- \$10,000,000 general aggregate

(ii) COMMERCIAL AUTOMOBILE LIABILITY insurance which shall be at least as broad as the most current version of Insurance Service Office (ISO) Business Auto Coverage Form CA 00 01, and include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1 - Any Auto) with limits of liability of not less than \$10,000,000 per accident for bodily injury and property damage.

(iii) WORKERS' COMPENSATION insurance as required under the California Labor Code.

(iv) EMPLOYERS' LIABILITY insurance with limits of liability of not less than \$1,000,000 each accident, \$1,000,000 disease policy limit and \$1,000,000 disease each employee.

In the event Licensee purchases an Umbrella or Excess insurance policy(ies) to meet the minimum limits of insurance set forth above, this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies).

Licensee shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and Licensee shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to, and approved by, the City's Risk Manager or his/her designee. At the option of the City's Risk Manager or his/her designee, either (i) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officers, officials, employees, agents and volunteers; or (ii) Licensee shall provide a financial guarantee, satisfactory to City's Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall City be responsible for the payment of any deductibles or self-insured retentions.

All policies of insurance required hereunder shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after 30 calendar day written notice has been given to City. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, Licensee shall furnish City with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for City, Licensee shall provide a new certificate, and applicable endorsements, within a reasonable time upon renewal.

The Aviation Liability and Automobile Liability insurance policies shall be written on an occurrence form and shall name City, its officers, officials, agents, employees and volunteers as an additional insured. Such policy(ies) of insurance shall be endorsed so Licensee's insurance shall be primary and no contribution shall be required of City. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, officials, employees, agents and volunteers. Any Workers' Compensation insurance policy shall contain a waiver of subrogation as to City, its officers, officials, agents, employees and volunteers.

Licensee shall furnish City with all certificate(s) and applicable endorsements effecting coverage required hereunder. **All certificates and applicable endorsements are to be received and approved by the City's Risk Manager or his/her designee prior to City's execution of the Contract and before work commences.** Upon 15 days prior written request from City to Licensee, A City representative shall be allowed to review Licensee's insurance policy(ies) at Licensee's headquarters located at Forth Worth, Texas. An American Eagle Risk Management member shall at all times be allowed to supervise said review of Licensee's insurance policy(ies) will in no event be allowed off company premises and no copies of any policy(ies) shall be allowed. This requirement shall survive expiration or termination of this Agreement.

If at any time during the life of the Agreement or any extension, Licensee fails to maintain any required insurance in full force and effect, all Licensee activities hereunder shall be discontinued immediately, until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a

period satisfactory to City. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Contract. No action taken by City hereunder shall in any way relieve Licensee of its responsibilities under this License.

The fact that insurance is obtained by Licensee shall not be deemed to relicense or diminish the liability of Licensee, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify City shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Licensee. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Licensee, its principals, officers, agents, employees, persons under the supervision of Licensee, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

If Licensee should be authorized by City to sublicense all or any portion of the premises Licensee shall require each sublicense to provide insurance protection in favor of City, its officers, officials, employees, agents and volunteers in accordance with the terms of each of the preceding paragraphs, except that the sublicense's certificates and endorsements shall be on file with Licensee and City prior to the commencement of any sublicense.

7.02 Indemnification

Licensee shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and authorized volunteers from any and all loss, liability fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by City, Licensee or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of performance of this License. Licensee's obligations under the preceding sentence shall apply regardless of whether City or any of its officers, officials, employees, agents or authorized volunteers are negligent, but this section shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the gross negligence, or caused by the willful misconduct, of City or any of its officers, officials, employees, agents or authorized volunteers.

If Licensee should be authorized by City to sublicense all or any portion of the premises, Licensee shall require each sublicense to indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and authorized volunteers in according with the terms of the preceding paragraph.

This section shall survive termination or expiration of this License.

7.03 Exemption of City

Licensee hereby specifically warrants, covenants and agrees that City shall not be liable for injury to Licensee's business or any loss of income therefrom or for damage to the goods, wares, merchandise or other property located in, upon or about the Airport under authority hereof, whether belonging to Licensee, or Licensee's employees, customers, agents, contractors, sub-contractors, tenant, sub-Licensee of Licensee, or any other person whomsoever; nor shall City be liable for any injury to the person of Licensee or

Licensee's employees, agents, contractors, sub-contractors, tenants, sub-Licensees, customers, or invitees, whether or not said damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the leakage, breakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, whether or not said damage or injury results from conditions arising in or on any part or all of the Airport or in or on any of the improvements/facilities appurtenant thereto located therein or thereon, or from other sources or places, and regardless of whether or not the cause of such damage or injury or the means of repairing the same is inaccessible to Licensee. Licensee also covenants and agrees that City shall not be liable for any damages arising from any act or neglect on the part of any third parties.

ARTICLE VIII: GENERAL PROVISIONS

8.01 Non-Transferability

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

8.02 Government Requirements

A. Permits with the United States Government:

This License is subject and subordinate to the provisions of any agreements heretofore or hereafter made between the City and the United States Government, the execution of which is required to enable or permit transfer of rights or property to City for Airport purposes or expenditure of federal funds for Airport improvement, maintenance or development. Licensee shall abide by requirements of agreements entered into between the City and the United States Government, and shall consent to amendments and modifications of this License if required by such agreements or if required as a condition of City's entry into such agreements, provided however that if any modification to said License with the United States Government has a material or adverse impact on the operations of the Licensee, the Licensee shall have the right to terminate this License upon sixty (60) days written notice.

B. Nondiscrimination:

Licensee shall not employ discriminatory practices in the provision of services, employment of personnel, or in any other respect on the basis of race, color, creed, religion, sex, national origin, ancestry, ethnicity, age, marital status, status as a disabled veteran or veteran of the Vietnam era, medical condition, or physical or mental disability. During the entire term and performance of this License, Licensee agrees as follows:

1. Licensee will comply with all laws and regulations, as applicable, including without limitation applicable portions of Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted Programs of the Department of

Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, as amended from time to time. Licensee assures that it will undertake an Affirmative Action Program, if required by 14 CFR Part 152, Subpart E, to ensure that no person in the United States shall, on the grounds of race, color, creed, religion, sex, national origin, ancestry, ethnicity, age, marital status, status as a disabled veteran or veteran of the Vietnam era, medical condition, or physical or mental disability be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this License.

2. Licensee will not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, national origin, ancestry, ethnicity, age, marital status, and status as a disabled veteran or veteran of the Vietnam era, medical condition, or physical or mental disability. Licensee shall take affirmative action to ensure that applicants are employed, and the employees are treated during employment, without regard to their race, color, creed, religion, sex, national origin, ancestry, ethnicity, age, marital status, status as a disabled veteran or veteran of the Vietnam era, medical condition, or physical or mental disability. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Licensee agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.
3. Licensee will, in all solicitations or advertisements for employees placed by or on behalf of Licensee, state that all qualified applicants will receive consideration for employment without regard to race, color, creed, religion, sex, national origin, ancestry, ethnicity, age, marital status, status as a disabled veteran or veteran of the Vietnam era, medical condition, or physical or mental disability.
4. Licensee will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising such labor union or workers' representatives of Licensee's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

C. Disadvantaged Business Enterprise:

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

D. Federal Aviation Act, Section 308:

Nothing herein contained shall be deemed to grant the Licensee any exclusive right or privilege within the meaning of Section 308 of the Federal Aviation Act or the conduct of any activity on Airport, except that, subject to the terms and provisions

hereof, Licensee shall have the right to conduct operations at the Airport under the provisions of this License.

E. Airport Safety/Security:

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

F. Federal Grant Agreement Assurances

Those certain sixteen (16) numbered provisions set forth within Section "B", "Assurances", of Exhibit "C", "Assurances Required by the Federal Aviation Administration" (FAA), attached hereto and made a part hereof, are specific provisions required by the FAA to be appropriately included within all agreements (including, without limitation, Licenses, permits, and contracts) between the City of Fresno, California and any and all entities who use or perform work or conduct activities on City-owned Airport premises for aeronautical or non-aeronautical purposes. Licensee, by its signature(s) hereunto affixed, acknowledges that it has reviewed the aforesaid Exhibit, in its entirety, and fully understands the meaning, purpose, and intent thereof. Licensee hereby expressly agrees that, throughout the term hereof, it shall fully and faithfully comply with, abide by and/or adhere to, as applicable and appropriate, each and every one of the numbered provisions contained within Section "B", "Assurances", of said Exhibit (as said numbered provisions are reflected therein or as same may be amended, from time to time, during the term hereof, by City, as the FAA's requirements thereon imposed may so dictate), which, pursuant to the guidelines established within paragraphs 2 through 4 of Section "A" of said Exhibit, shall either be applicable to Licensee on the start date of the term hereof or which, as a result of changing facts and/or circumstances, shall subsequently become applicable to Licensee, hereunder, during the term hereof.

8.03 Liens And Claims

Licensee shall not suffer or permit to be enforced against City's title to the Airport, or any part thereof, any lien, claim or demand arising from any work of construction, repair,

restoration, maintenance or removal as herein provided, or otherwise arising (except liens, claims or demands suffered by or arising from the actions of City), and Licensee shall pay all such liens, claims and demands before any action is brought to enforce same against Airport; and Licensee agrees to hold City and said Airport free and harmless from all liability for any and all such liens, claims or demands, together with all costs and expenses in connection therewith. City shall have the right at any time to post and maintain on said Airport such notices as may be necessary to protect City against liability for all such liens, claims and demands. This paragraph shall survive expiration or termination of this License.

8.04 Independent Contractor

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

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

8.05 Inability Of City To Perform

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

8.06 Partnership/Joint Venture

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

8.07 Holding Over

If the Licensee holds over after expiration of the Term, thereafter the Licensee shall be deemed a month-to-month License. The License Fees that the Licensee shall pay the City shall be calculated on a daily basis as follows: (i) the most recent annual fee, (ii) plus all other fees due under this License as of the last year of the Term, (iii) divided by

three hundred sixty-five (365) and (iv) multiplied by one and one-half (1.5). The additional rent per day shall remain in effect until any new agreement is negotiated with the City, approved by City Council, and fully executed by the Licensee and City. Otherwise, excepting holdover rent, the Company shall be bound by the terms and conditions of this License. Nothing herein shall be construed to give the Licensee the right to hold over at any time, and the City may exercise any remedy at law or in equity to recover possession of premises, as well as any damages incurred by the City.

8.08 Peaceable Surrender

Upon the termination, expiration or cancellation of this License, Licensee shall peaceably surrender and return the areas covered by this License to City in as good condition as at the commencement of this License, subject to normal and ordinary wear and tear resulting from the use of such areas as herein provided.

8.09 Warranties and Guarantees

City makes no warranty, guarantee or covenant, including but not limited to covenants of title and quiet enjoyment, or averment of any nature whatsoever, concerning the condition of the areas covered by this License, including the physical condition thereof, or any condition which may affect the areas covered by this Licensee. Licensee agrees that City shall not be responsible for any loss or damage or costs which may be incurred by Licensee by reason of any such condition or conditions.

8.10 Review/Examination of License

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

8.11 Interpretation of Provisions

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

8.12 Invalid Provisions

In the event any term, covenant, condition or provision of this License, or the application thereof to any person, entity, or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this License, or the application thereof to any person, entity, or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated, provided that such invalidity, voiding or unenforceability of such covenant, condition or provision does not materially prejudice either party in its respective rights and obligations contained in the then remaining valid covenants, conditions or provisions of this License.

8.13 Captions and Paragraph Numbers

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

8.14 Notices

Any notice required or intended to be given to either party under the terms of this License shall be in writing and shall be deemed to be duly given if delivered personally or deposited into the United States mail, by registered or certified mail, return receipt requested with postage prepaid, addressed to the party to which notice is to be given at the party's address set forth on the signature page of this License or at such other address as the parties may from time to time designate by written notice.

A. Personal service, as aforesaid, shall be deemed served and effective upon delivery thereof. Service by mail, as aforesaid, shall be deemed to be sufficiently served and effective as of 12:00:01 A.M., on the fourth (4th) calendar day following the date of deposit in the United States mail of such registered or certified mail, properly addressed and postage prepaid.

8.15 Laws, Rules and Regulations

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

8.16 Amendment

This License may not be changed, amended, or otherwise modified in any way whatsoever, except in writing, signed by both City and Licensee.

8.17 Acknowledgment by Licensee

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

8.18 Interpretation

The parties acknowledge that this License in its final form is the result of the combined efforts of the parties and that, should any provision of this License be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this License

in favor or against any party, but rather by construing the terms in accordance with their generally accepted meaning.

8.18 Attorney's Fees

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

8.19 Exhibits

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

8.20 Precedence of Documents

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

8.21 Cumulative Remedies

Each right and remedy of City provided for in this License or now or hereafter existing at law, in equity, by statute or otherwise shall be cumulative and shall not preclude City from exercising any other rights or from pursuing any other remedies provided for in this License or now or hereafter available to City under the laws or judicial decisions of the State of California.

8.22 Non-Solicitation

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

8.23 Waiver

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

8.24 Assigns/Successors

Subject to this License and section 9.01 hereof, all rights, benefits, duties, liabilities and obligations hereunder shall inure to the benefit of, and be binding upon the parties, signatories, and their respective principals, successors, transferees, agents, servants, representatives and assigns.

8.25 Governing Law and Venue

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

8.26 Final Agreement

Each party acknowledges that they have read and fully understand the contents of this License. This License and any documents, instruments and materials referenced and incorporated herein represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral, including that certain Temporary Use Permit above referenced, entered by and between the parties. . This License may be modified only by written instrument duly authorized and executed by both City and Licensee.

8.27 Counterparts

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

///
///
///

ARTICLE IX: SIGNATURE

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

CITY OF FRESNO, CALIFORNIA
A Municipal Corporation

AMERICAN EAGLE AIRLINES, INC.
A Delaware Corporation

By: _____
Kevin R. Meikle
Director of Aviation, Interim

By: _____

(Printed Name)

Address for Notice:
City of Fresno
Airports Department
4995 E. Clinton Way
Fresno, CA 93727

Title: _____

Address for Notice:

ATTEST:
Yvonne Spence, CMC
City Clerk

American Eagle Airlines, Inc.
P.O. Box 619616
DFW Airport, TX 75261-9616

By: _____
Deputy

APPROVED AS TO FORM:
Douglas T. Sloan
City Attorney

By: _____
Robert Abrams, Deputy

- 3 Attachments -
Exhibit "A" - Monthly Report
Exhibit "B" - Listing of Airlines Serviced and Services Provided at Airport
Exhibit "C" - Assurances Required by The Federal Aviation Administration

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EXHIBIT “A”

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MONTHLY OPERATIONS REPORT

GROUND HANDLER – FRESNO YOSEMITE INTERNATIONAL AIRPORT

(SUBMIT THIS REPORT BY THE 20TH DAY OF EACH MONTH FOR THE PRECEDING MONTH)

TO: **CITY OF FRESNO – AIRPORTS ADMINISTRATION**
4995 E. CLINTON WAY, FRESNO, CA 93727 PHONE (559) 621-4500; FAX (559) 251-4825

ATTN.: SHIRLEY TSUTSUI

SUBMITTED BY: _____ FOR PERIOD: _____
 (Name of Operator) (Month and Year)

PART I: GROSS REVENUE – GROUND HANDLING SERVICES

AIRLINE	SERVICE PROVIDED	GROSS REVENUE

Total Gross Revenue		Rate		Total Amount Due
	x	10%	=	

PART II: AVIATION FUEL FLOWAGE*
--

AVAIATION FUEL DELIVERY RECORD				
DATE FUEL DELIVERED	TYPE OF FUEL/OIL DELIVERED	NAME OF FUEL SUPPLIER MAKING DELIVERY	LOCATION OF TANK(S) TO WHICH DELIVERY MADE	NUMBER OF GALLONS DELIVERED

TOTAL GALLONS DELIVERED THIS MONTH:

Total Fuel Deliveries		Rate p/gallon		Total Amount Due
	x	\$0.10	=	

* If Fuel and Oils are purchased by Ground Handler from an on airport supplier, the total amount sold to Airline shall be added into the Gross Revenue in Part I and is subject to the 10% fee.

** If Fuel and Oils are purchased by Ground Handler from an off airport supplier, the rate is per gallon per the Master Fee Schedule.

MONTHLY OPERATIONS REPORT

GROUND HANDLER – FRESNO YOSEMITE INTERNATIONAL AIRPORT

PART III: PAYMENT RECAP

*TOTAL GROSS REVENUE
(Includes Fuel Sales)

**TOTAL GROSS REVENUE
(Does not include Fuel Sales)

TOTAL FUEL FLOWAGE FEES DUE
(TOTAL FEE GALLONS MULTIPLIED BY \$0.10)

.....
REMARKS

OTHER REMARKS:

.....
REPORT PREPARED BY: _____
(SIGNATURE)

TYPED/PRINTED NAME: _____
TITLE: _____
DATE: _____

Encl: Check (Fuel Flowage Fee Payment for the Month Covered by this Report)

EXHIBIT "B"

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EXHIBIT "B"
TO
NON-EXCLUSIVE LICENSE AGREEMENT TO CONDUCT COMMERCIAL
AVIATION GROUND HANDLING AND SUPPORT SERVICES AT
FRESNO YOSEMITE INTERNATIONAL AIRPORT (FYIA)

1. CONTACT INFORMATION

FULL NAME OF LICENSEE: _____

CURRENT AS OF THIS DATE: _____

LICENSEE CONTACT INFORMATION:

NAME: _____ E-mail ADDRESS: _____

EMERGENCY PHONE: (____) ____ - _____

WORK PHONE: (____) ____ - _____

MAIL ADDRESS: _____

**2. SCHEDULE OF ALL VEHICLES AND MOBILE EQUIPMENT OPERATED ON,
PLACED AT, OR BROUGHT ONTO SIDA BY LICENSEE.**

1. VEHICLE DESCRIPTION: _____

a. LOCATION ON SIDA: _____

2. VEHICLE DESCRIPTION: _____

a. LOCATION ON SIDA: _____

3. VEHICLE DESCRIPTION: _____

a. LOCATION ON SIDA: _____

4. VEHICLE DESCRIPTION: _____

a. LOCATION ON SIDA: _____

5. VEHICLE DESCRIPTION: _____

a. LOCATION ON SIDA: _____

6. VEHICLE DESCRIPTION: _____

a. LOCATION ON SIDA: _____

7. VEHICLE DESCRIPTION: _____

a. LOCATION ON SIDA: _____

8. VEHICLE DESCRIPTION: _____

a. LOCATION ON SIDA: _____

9. VEHICLE DESCRIPTION: _____

a. LOCATION ON SIDA: _____

_____ **CHECK IF LISTING CONTINUED ON SEPARATE PAGE**

3. LISTING OF AIRLINES SERVICED AND SERVICES PROVIDED

NAME OF AIRLINE SERVICED: _____

A. CONTRACT: COMMENCEMENT DATE: _____
TERMINATION DATE: _____
DATE A COPY PROVIDED TO CITY: _____

B. SERVICES PROVIDED (check each that applies to the above airline):

- ___ GROUND HANDLING RAMP SERVICE
- ___ LIGHT MAINTENANCE SERVICE
- ___ INTO-PLANE FUEL SERVICE
- ___ WASTE DISPOSAL SERVICE
- ___ GROUND EQUIPMENT RENTAL
- ___ PASSENGER SERVICES
- ___ PORTER SERVICES
- ___ SECURITY SERVICES
- ___ BAGGAGE DELIVERY SERVICES
- ___ AIRCRAFT CLEANING
- ___ SALE OF AIRCRAFT FUELS AND OILS

NAME OF AIRLINE SERVICED: _____

A. CONTRACT: COMMENCEMENT DATE: _____
TERMINATION DATE: _____
DATE A COPY PROVIDED TO CITY: _____

B. SERVICES PROVIDED (check each that applies to the above airline):

- ___ GROUND HANDLING RAMP SERVICE
- ___ LIGHT MAINTENANCE SERVICE
- ___ INTO-PLANE FUEL SERVICE
- ___ WASTE DISPOSAL SERVICE
- ___ GROUND EQUIPMENT RENTAL
- ___ PASSENGER SERVICES
- ___ PORTER SERVICES
- ___ SECURITY SERVICES
- ___ BAGGAGE DELIVERY SERVICES
- ___ AIRCRAFT CLEANING
- ___ SALE OF AIRCRAFT FUELS AND OILS

PAGE NO. ____

NAME OF AIRLINE SERVICED: _____

A. CONTRACT: COMMENCEMENT DATE: _____
TERMINATION DATE: _____
DATE A COPY PROVIDED TO CITY: _____

B. SERVICES PROVIDED (check each that applies to the above airline):

- GROUND HANDLING RAMP SERVICE
- LIGHT MAINTENANCE SERVICE
- INTO-PLANE FUEL SERVICE
- WASTE DISPOSAL SERVICE
- GROUND EQUIPMENT RENTAL
- PASSENGER SERVICES
- PORTER SERVICES
- SECURITY SERVICES
- BAGGAGE DELIVERY SERVICES
- AIRCRAFT CLEANING
- SALE OF AIRCRAFT FUELS AND OILS

NAME OF AIRLINE SERVICED: _____

A. CONTRACT: COMMENCEMENT DATE: _____
TERMINATION DATE: _____
DATE A COPY PROVIDED TO CITY: _____

B. SERVICES PROVIDED (check each that applies to the above airline):

- GROUND HANDLING RAMP SERVICE
- LIGHT MAINTENANCE SERVICE
- INTO-PLANE FUEL SERVICE
- WASTE DISPOSAL SERVICE
- GROUND EQUIPMENT RENTAL
- PASSENGER SERVICES
- PORTER SERVICES
- SECURITY SERVICES
- BAGGAGE DELIVERY SERVICES
- AIRCRAFT CLEANING
- SALE OF AIRCRAFT FUELS AND OILS

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EXHIBIT "C"

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ASSURANCES REQUIRED BY THE FEDERAL AVIATION ADMINISTRATION
(August 1998 Edition)

SECTION A
PURPOSE, CLASSES OF ACTIVITIES, APPLICABILITY OF ASSURANCES
AND
DEFINITION OF TERMS

1. PURPOSE:

The City of Fresno, California, an airport owner subject to both Federal Grant Agreement obligations and terms, covenants and conditions of Surplus Property Instruments of Disposal at the Fresno Yosemite International Airport (FYI) and Federal Grant Agreement obligations at Fresno-Chandler Downtown Airport (FCH), is required by the Federal Aviation Administration (FAA) to include specific provisions, addressing, among other things, the requirements of Title VI of the Civil Rights Act of 1964, Exclusive Rights prohibitions, and Affirmative Action items contained in Title 14 Code of Federal Regulations Part 152, within all agreements (including, without limitation, leases, licenses, permits, and contracts) between said City and any and all entities who use or perform work or conduct activities on City-owned airport premises for aeronautical or non-aeronautical purposes; therefore, the purpose of this Exhibit is to appropriately incorporate within the "Agreement," to which it is attached and made a part of by reference therein, the sixteen (16) numbered provisions contained within Section "B", "ASSURANCES," below.

2. CLASSES OF ACTIVITIES:

The applicability of each of the sixteen (16) numbered provisions contained within Section "B," "ASSURANCES," below, to that certain "Agreement" to which this Exhibit is attached and made a part of by reference therein, is, among other things, dependent upon the type of work to be performed and/or the type of activities to be conducted at the airport(s) by the Lessee, Permittee, Licensee, Operator, etc., named therein, pursuant to and in accordance with those certain rights, privileges, uses, and operations, expressly granted and/or authorized thereunder; therefore, the following activity classifications, as established by the FAA, are provided for the information and guidance of all concerned:

a. **Direct and Supportive Aeronautical:** The following activities, commonly conducted on airports, are AERONAUTICAL ACTIVITIES:

- (1) Air Carrier
- (2) Charter Operations
- (3) Pilot Training
- (4) Aircraft rental and sightseeing
- (5) Aerial Photography
- (6) Crop dusting
- (7) Aerial Advertising and Surveying
- (8) Aircraft Sales and Services
- (9) Sale of Aviation Petroleum products (whether or not conducted in conjunction with other included activities)
- (10) Repair and Maintenance of Aircraft
- (11) Sale of Aircraft Parts

- (12) Any other activities which, because of their direct relationship to the operation of an aircraft, can appropriately be regarded as an "aeronautical activity."

b. **Complimentary Aeronautical:** The following activities, when conducted on airports, are COMPLIMENTARY AERONAUTICAL ACTIVITIES:

- (1) Ground Transportation (taxis, car rentals, limousines)
- (2) Restaurants
- (3) Barber Shops
- (4) Auto Parking Lots
- (5) Recreational Facilities
- (6) Any other commodities, services or accommodations made available to the general public.

c. **Non-Aeronautical:** The following activities, when conducted on airports, being neither "Direct and Supportive Aeronautical" nor "Complimentary Aeronautical," as defined above, are NON-AERONAUTICAL ACTIVITIES.

- (1) Manufacturing
- (2) Agriculture
- (3) Any other activity not appropriately falling within the abovesaid "Direct and Supportive Aeronautical" and/or "Complimentary Aeronautical" classifications.

3. APPLICABILITY OF NUMBERED PROVISIONS WITHIN SECTION "B," "ASSURANCES," BELOW TO CLASS(ES) OF ACTIVITIES SPECIFIED WITHIN PARAGRAPH 2, ABOVE:

The applicability of the numbered provisions within Section "B," "Assurances," below, to the respective classes of activities specified within subparagraphs 2a, b, and c, of this Section "A," above, is as follows:

<u>ACTIVITY CLASS</u>	<u>NUMBERED PROVISIONS APPLICABLE TO CLASS</u>	
	<u>FYI AGREEMENTS</u>	<u>FCH AGREEMENTS</u>
Direct and Supportive Aeronautical	1 thru 16	1 thru 15
Complimentary Aeronautical	1 thru 14 & 16	1 thru 14
Non-Aeronautical	1 thru 14 & 16	1 thru 14

4. DEFINITION OF TERMS USED WITHIN SECTION "B," "ASSURANCES," BELOW

In order to facilitate ease of fulfillment of the requirement specified within paragraph 1 of this Section "A," this Exhibit is designed to be attached to and made a part of all City of Fresno Airport's "Agreements," including, without limitation, leases, licenses, permits, contracts, etc.; therefore, in the event the "Agreement" to which this Exhibit is attached and made a part of by reference therein shall be other than a lease or be a lease within which the parties thereto are therein called or referred to other than "Lessor" and "Lessee," then, where the terms "LESSOR," "LESSEE," and "LEASE" appear, as shown, within the sixteen (16) numbered "ASSURANCES" listed within Section "B," below, said terms shall be deemed to mean "CITY OF FRESNO, CALIFORNIA," "THE OTHER PARTY TO THE PARTICULAR AGREEMENT" (e.g., Licensee, Permittee, Concessionaire, Operator, etc.), and the "AGREEMENT" itself (regardless of title, type and/or description, including, without limitation, Leases, Agreements, Licenses, Permits, and Contracts) respectively; and where the terms "LAND LEASE" and "LEASED PREMISES"

(and all the terms "LAND LEASED" and "LEASED PREMISES" (and all reasonably readily identifiable derivations thereof) appear, said terms shall be deemed to mean the land(s) and/or premises specifically identified within the "Agreement" as being that/those to which leasehold interests are expressly granted and/or those in, upon, to and/or from which tenancies, occupancies, use(s), operation(s), and/or access(es) by the Lessee, Permittee, Licensee, Operator, Concessionaire, etc., are expressly authorized. In all cases, where the term "AIRPORT" appears, as shown, it shall be deemed to mean the particular airport(s) (i.e., either the Fresno Yosemite International Airport or the Fresno-Chandler Downtown Airport, or both) as identified within the "Agreement" between the parties as being the Airport(s) to which the "Agreement" pertains.

SECTION B **ASSURANCES**

1. The "LESSEE," for itself, its 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 if the "Agreement" to which this Exhibit is attached is a lease) that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this "LEASE" for a purpose for which a U.S. Department of Transportation (DOT) program or activity is extended or for another purpose involving the provision of similar services or benefits, the "LESSEE" shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, DOT, Sub-title A, Office of the Secretary, Part 21, 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.

2. The "LESSEE," for itself, its 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 if the agreement to which this Exhibit is attached is a lease) that: (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services there on, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination, (3) that the "LESSEE" shall use the "premises" in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination 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.

3. That in the event of breach of any of the above nondiscrimination covenants, "LESSOR" shall have the right to terminate the "LEASE" and to reenter and repossess said land and the facilities thereon, and hold the same as if said "LEASE" had never been made or issued. This provision does not become effective until the procedures of 49 CFR Part 21 are followed and completed including expiration of appeal rights.

4. "LESSEE" shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service; PROVIDED, THAT the "LESSEE" may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar type of price reductions to volume purchasers.

5. Non-compliance with Provision 4 above shall constitute a material breach thereof and in the event of such non-compliance the CITY OF FRESNO, CALIFORNIA ("LESSOR") shall have the right to terminate this "LEASE" and the estate hereby created without liability therefor or at the election of the "LESSOR" or the United States either or both said Governments shall have the right to judicially enforce Provisions 1, 2, 3 and 4 above.

6. "LESSEE" agrees that it shall insert the above five (5) provisions in any lease, agreement, contract, etc., by which "LESSEE" grants a right or privilege to any person, firm or corporation to render accommodations and/or services to the public on the "premises" herein "LEASED."

7. The "LESSEE" 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, Sub-part E. The "LESSEE" 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. The "LESSEE" assures that it will require that its covered suborganizations provide assurances to the "LESSEE" that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 CFR 152, Subpart E, to the same effect.

8. The "LESSOR" reserves the right to further develop or improve the landing area of the "Airport" as it sees fit, regardless of the desires or view of the "LESSEE" and without interference or hindrance.

9. The "LESSOR" reserves the right, but shall not be obligated to the "LESSEE" to maintain and keep in repair the landing area of the "Airport" and all publicly-owned facilities of the "Airport," together with the right to direct and control all activities of the "LESSEE" in this regard.

10. This "LEASE" shall be subordinate to the provisions and requirements of any existing or future agreement between the "LESSOR" and the United States, relative to the development, operation or maintenance of the "Airport."

11. There is hereby reserved to the "LESSOR," its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the "premises" herein "LEASED." This public right of flight shall include the right to cause in said airspace any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from or operation on the "Airport."

12. "LESSEE" agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event future construction of a building is planned for the "LEASED PREMISES," or in the event of any planned modification or alteration of any present or future building or structure situated on the "LEASED PREMISES."

13. The "LESSEE," by accepting this "LEASE," expressly agrees for itself, its successors and assigns that it will not erect nor permit the erection of any structure or object, nor permit the growth of any tree on the "land leased" hereunder which would exceed the height limits of Part 77 of the Federal Aviation Regulations. In the event the aforesaid covenants are breached, "LESSOR" (the owner) reserves the right to enter upon the "land leased" hereunder and to

remove the offending structure or object and cut the offending tree, all of which shall be at the expense of the "LESSEE."

14. The "LESSEE," by accepting this "LEASE," agrees for itself, its successors and assigns, that it will not make use of the "LEASED PREMISES" in any manner which might interfere with the landing and/or taking off of aircraft at and/or from the "AIRPORT" (either the Fresno Yosemite International Airport or the Fresno-Chandler Downtown Airport, or both, as applicable) or otherwise constitute a hazard. In the event the aforesaid covenant is breached, the "LESSOR" (owner) reserves the right to enter upon the "premises hereby leased" and cause the abatement of such interference at the expense of the "LESSEE."

15. It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308a of the Federal Aviation Act of 1958 (49 U.S.C. 1349a).

16. This "LEASE" and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of said "AIRPORT" or the exclusive or non-exclusive use of the "AIRPORT" by the United States during the time of war or national emergency.

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