



## AIRPORT

**DATE:** October 13, 2016  
**FROM:** Gregory B. Haug, Airport Director   
**ITEM:** Agenda Item for October 25, 2016, American Airlines Agreement

### REQUEST

Consider a Lease and Operating Agreement with American Airlines

### BACKGROUND INFORMATION

On April 25, 2014 the Board approved an Air Service Agreement with American Airlines. The Air Service Agreement specified air service incentives that would be effective October 1, 2014 through September 30, 2016. Among other incentives the agreement waived fees for the effective period of the air service agreement. American Airlines started air service between Bismarck and Chicago and Bismarck and Fort Worth in October of 2014.

In September of 2014 Airport Staff also provided American Airlines with a Lease and Operating Agreement. The standard agreement codified space and facilities negotiated earlier and set rent and charges the same as the Delta, Frontier and United agreements. The agreement term was for three years from October 1, 2014 to September 30, 2017. American Airlines signed the Lease and Operating Agreement on October 3, 2016 following the expiration of the air service agreement. Airport Staff recommends approval of the Lease and Operating Agreement.

### RECOMMENDED CITY COMMISSION ACTION

Airport staff recommends the Board approve the American Airlines Lease and Operating Agreement at Enclosure 1.

### STAFF CONTACT INFORMATION

Greg Haug, Airport Director, 701-355-1808, [ghaug@bismarcknd.gov](mailto:ghaug@bismarcknd.gov)

Enclosure:

1. American Airlines Lease and Operating Agreement

ON OCTOBER 25, 2016  
AGENDA

## CONTRACT REVIEW FORM

### DEPARTMENT

Contract between the City of Bismarck and AMERICAN AIRLINES

Purpose of Contract: LEASE AND OPERATING AGREEMENT

Contract Amount: SEE SCHEDULE 1

Contract Period: OCTOBER 1, 2014 - SEPTEMBER 30, 2017 (THIRTEEN MONTH TO MONTH)

Funding Source: INCOME TO AIRPORT ENTERPRISE FUND

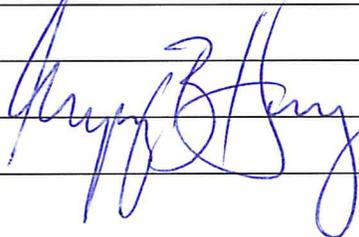
Project Number: (If needed, send copy to Fiscal)

Comments: STANDARD AIRLINE TERMS, SCHEDULE 1 CHANGED (See memo)  
CHARLES, SIGN SIGNATURE PAGE (PK)

After Mayor's Signature, route to: AIRPORT

Date:

Department Head Signature:



Date:

11/12/16

### CITY ATTORNEY

Comments:

OK

City Attorney Signature:



Date:

11-14-16

### FINANCE

Comments:

OK

Director of Finance Signature:

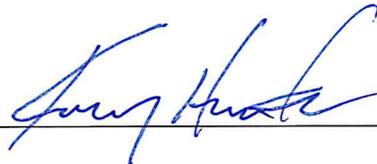


Date:

11-14-16

### ADMINISTRATION

City Administrator Signature:



Date:

10-17-16

Please send copy of completed contracts to Administration.

BIS 4254

LEASE AND OPERATING AGREEMENT

FOR AIRLINE SERVICES

AT

**BISMARCK AIRPORT**

BY

AMERICAN AIRLINES

September 10, 2014

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## AIRLINE LEASE AND OPERATING AGREEMENT

THIS AGREEMENT (the "Agreement"), made and entered into by and between the City of Bismarck, North Dakota, a municipal corporation, hereinafter, the "City", and American Airlines, hereinafter, "Airline", located at 4333 Amon Carter Blvd MD 5317, Fort Worth, TX 76155. Airline's Federal Tax ID # is 13-1502798.

### WITNESSETH THAT:

WHEREAS, the City is the owner and operator of the Bismarck Airport, hereinafter, the "Airport", located in the County of Burleigh, State of North Dakota, and operates the Airport for the accommodation, promotion and development of air commerce and transportation in the Region; and

WHEREAS, Airline desires to operate from a new Terminal funded in part by Passenger Facility Charges, "PFCs" which operation may be conducted directly by Airline or, at Airline's sole option, through an Airline Affiliate, as hereinafter defined; and

WHEREAS, in such Terminals, the FAA in its Order 5500.1 maintains that the use of gates and ticket counters shall be on a preferential rather than an exclusive use basis and "be determined by the Airport Manager based on the physical environment of the Airport and its air service requirements at any given time," and

WHEREAS, Airline has agreed to participate in the City's Air Service Development Incentive Program as presented in the Air Service Agreement between Airline and City dated April 25, 2014; and

WHEREAS, for such reasons the parties hereto desire to enter into a Preferential Lease and Operating Agreement, hereinafter, the "Agreement", granting Airline the use, together with others, of the Airport and its Terminal;

NOW, THEREFORE, in consideration of the space provided herein, the rights and privileges and the mutual covenants and agreements hereinafter contained and other valuable consideration, the parties hereto agree, for themselves, their successors and assigns, as follows:

1. **TERM**

The term of this Agreement shall be for three (3) years, commencing October 1, 2014 and ending September 30, 2017.

2. **SPACE AND FACILITIES**

The City hereby grants to Airline the rights to use and occupy the Preferential Space and Joint Use Space in and adjacent to the Airport Terminal Building as depicted in Exhibits A and B attached hereto, hereinafter, the "Space" and described in Part I of Schedule 1 attached hereto.

Notwithstanding any other provision of this Agreement, the City acknowledges and agrees that Airline shall have the right to **(A)** conduct its operations at the Airport; **(B)** exercise all rights granted under this Agreement and **(C)** fulfill all associated obligations through its Airline Affiliate, as hereinafter defined.

For purposes of this Agreement, (i) Airline shall mean Airline and its Affiliates, (ii) Airline Affiliate shall mean any certificated air carrier that shares an International Air Transport Association (IATA) flight designator code with Airline at the Airport or otherwise operates under substantially the same trade name or livery as Airline.

3. **RENT, FEES AND CHARGES**

Airline shall pay all rents, fees and charges monthly in arrears. All payments must be received by the City not later than the tenth of the month following the month in which the rent, fees and charges were billed. The rents, fees and charges payable by Airline for the Term are subject to the provisions of the Incentive Program:

A. Rent.

For the Space provided herein as set forth in Part I of Schedule 1.

B. Landing Fees.

**(1)** The Airport's landing fee rates per thousand pounds of maximum certified gross landing weight (MCGLW) are set forth in Part II of Schedule 1 and are payable by Airline for each landing at the Airport. Airline hereby acknowledges that it shall base its calculation and payment of landing fees on the Airline's certified

statement, as required in Section 5.B. hereof, and said certified statement shall accompany such payment. Airline's failure to provide such statement or to pay the landing fees as set forth herein, shall be considered a material breach of this Agreement.

- (2) City shall be entitled to collect landing fees at the rates specified in Part II of Schedule 1.

**C. Aircraft Rescue and Fire Fighting (ARFF) Charges.**

Charges for ARFF costs are set forth in Part II of Schedule 1 attached hereto. These charges shall be prorated on the basis of Airline's percentage of total airline landed weights from the previous month based on Airline's report of operations as set forth in Section 5.B. hereof.

**D. Security Charges.**

- (1) Security charges are set forth in Part II of Schedule 1 attached hereto. These charges shall be prorated on the basis of Airline's percentage of total airline enplaned passengers from the previous month based upon Airline's report of operations as set forth in Section 5.B. hereof.

- (2) Airline hereby agrees that the Security Charges stipulated in this Section 3.D. are for the provision of Level I security, in accordance with TSA Regulations. Airline further agrees that, in the event the TSA directs the City to increase security at the Airport above Level I, as provided for in TSAR 1542, it will pay its pro rata share of the cost to the City for such increased security.

**E. Airline shall collect or shall cause to be collected, handled, remitted and reported all Passenger Facility Charges, "PFCs", in accordance with the requirements of Subparts C and D of Part 158 of the Federal Aviation Regulations.**

**F. It is expressly agreed and understood by the Airline and the City that all rents, fees and charges are subject to recalculation during the term of this Agreement, based upon the costs incurred by the City during the term and anticipated for any future term.**

- G. Airline hereby acknowledges and agrees that the City reserves unto itself for use at the Airport all revenues derived from the leasing of terminal building counter and other space to all airlines and concessions at the Airport including, but not limited to, food and beverages, newsstand and gift shop, advertising, telephones, rental cars, ground transportation, etc.
  
- H. In the event any Signatory Airline does not execute and deliver its Agreement to the City within ninety (90) days of the effective date, such Airline agrees to pay all applicable rents and charges at the Ad-Hoc Charter rate which shall be twenty five percent (25%) above rates and charges shown in Schedule 1 to this Agreement until said Agreement is signed or amended and signed.

**4. FAILURE TO PAY, FEES OR CHARGES**

- A. The Airline shall pay all rent, fees and charges when due. Failure to pay the amounts due or to comply with any other of the Airline's financial obligations to the City under this Agreement, which failure is not remedied within ten (10) business days following Airline's receipt of the City's written notice (hereinafter, "monetary default") shall entitle the City to re-enter and take possession of the Space upon giving the Airline ten (10) days advance written notice of its intention to do so, if said monetary default has not been remedied within the (10) day period. However, the City may extend the time period to correct the default if it determines, in its sole discretion, that due diligence is shown by the Airline in curing the default. All amounts not paid by the Airline when due shall bear interest at the rate of one and a half percent (1.5%) per month and shall be construed as "additional rent".
  
- B. The City's agents or employees shall not be liable for any civil or criminal claim or cause of action because of entering the Space and improvements at reasonable times and in a reasonable manner to carry out the provisions of this Article.

**5. AIRLINE RECORDS AND REPORTS**

**A. Records.**

- (1)** Airline shall, at all times during the term of this Agreement and for three (3) years thereafter, maintain and keep accurate books, ledgers, accounts or other records at Bismarck, North Dakota, reflecting the number of enplaning and deplaning passengers, cargo and mail tonnage enplaned and deplaned, the total number of revenue and training aircraft flights actually arriving at the Airport, and the Certificated Maximum Gross Landing Weight of each such aircraft. Such books, ledgers, accounts and records shall be available for examination by the City or its duly authorized representative at all reasonable business hours. It is understood that these are unaudited records and that audited records shall be available at Airline's corporate office.
- (2)** Airline shall provide, upon request from the City, projected landing weights for its operation at the Airport for the next calendar year or a portion of the present calendar year. Such reports may be utilized by the City, in its sole discretion, in connection with Airport financial and facility planning and budget preparation.

**B. Reports.**

Airline shall provide, as expeditiously as possible, but no later than the fifth business day of each month:

- (1)** A report detailing Airline's aircraft operations and revenue enplaning and deplaning passenger counts for the preceding month.
- (2)** A report on any "handling" of other airlines and provide the airlines billing address, phone contact, flight number, date and time of operation, aircraft MCGLW enplanements and deplanements for the proceeding month.

Such reports shall be in a form approved by the City and include the number and type of aircraft landing at the Airport, the MCGLW of those aircraft and total tonnage of inbound and outbound

cargo and mail.

**6. ADDITIONAL SERVICE BY AIRLINE**

A. In the event Airline elects to provide additional non-stop service to destinations other than its current destination(s), the City may extend to Airline an incentive package in accordance with the Airport's approved Air Service Development as shown in Attachment A hereto.

**7. USE OF PREFERENTIAL AND JOINT USE SPACE**

A. Airline's use of the Space provided herein shall be solely for the conduct of its air transportation business and shall be limited to the use in each area as required for conduct of such business and for no other purpose whatsoever, without the prior written consent of the City. Airline shall not permit the use of its Space for the offering or sale to the public of any other services, including, but not limited to, the sale of food, beverages, insurance or offering of other merchandise or services not directly related to the conduct of its air transportation business.

B. Airline shall have preferential use of those areas so listed as "Preferential" in Part I of Schedule 1 hereof, for use in operating its the air transportation business. Such Preferential Space shall be used for ticket counters, gates offices, and operations functions.

**C. Use of Preferential and Joint Use Space**

Airline shall be a primary user of those areas listed as "Preferential Space" in Part I of Schedule 1. Such Preferential Space shall include the loading bridge(s) and surrounding Airline ramp area from the Terminal Building outwards 150 feet. Airline agrees to accommodate the use of such areas by other carriers in accordance with Section E of this Article and with Article 25 hereof. Such users as used herein shall be defined as "Secondary Users" of the Preferential Space. The City reserves the right to assess reasonable charges to such Secondary Users for use of the loading bridges and Joint Use Space.

It is agreed that any loading bridges leased under separate agreement by Airline from City are subject to the provisions contained herein regarding secondary use and accommodation of new or existing carriers as such provisions pertain to Preferential Space. The City is not required to physically modify any loading bridge(s). If such modification is needed by the "Secondary User's" aircraft, City shall have the sole right to assess reasonable charges to such Secondary Users or new entrant carriers. All Airline charges to other airlines for services at the Airport are subject to prior written approval by the City.

- D. Airline shall share, together with others, that space listed as "Joint Use" on Part I of Schedule 1.
  
- E. It is understood and agreed that the City may limit Airline's use of the aircraft parking position(s) to the time required for loading and unloading of aircraft and related services. Airline shall not do or perform any repair or maintenance work on its aircraft or store its aircraft at aircraft parking position(s) in a manner so as to restrict a Secondary User's rights. Aircraft parking in excess of such loading and unloading time shall only be permitted if such aircraft parking position(s) is (are) not needed by a Secondary User. In the event an aircraft parking position(s) is (are) needed for loading or unloading another aircraft (hereinafter referred to as "Secondary Use") Airline shall accommodate or provide for accommodation of such Secondary Use in accordance with Article 25 hereof. If such accommodation necessitates relocation of Airline's aircraft, such relocation shall be to a location designated by the City. Cost of such relocation shall be borne by the Airline. City agrees that any secondary use by another airline shall be under the same time restrictions as set forth herein and shall not conflict with Airline's scheduled use of such aircraft parking position(s) as such schedule shall change from time to time.
  
- F. All repairs, maintenance and overhaul work, testing, washing or storage of aircraft or other Airline equipment shall be performed only upon those areas designated by the City for such use. Airline may, while its aircraft are parked on the apron or at the aircraft parking position(s), perform customary fueling and servicing of its aircraft.

- G. Airline, its agents, employees, suppliers, passengers, guests and others doing business with Airline shall have the right of ingress and egress to and from the Space and the public use areas/facilities used in connection therewith, over the Airport property and roadways, subject to rules and regulations governing the use of the Airport and as same may be promulgated by the City from time to time.
- H. The City shall make available to Airline's employees, parking in an area designated by the City only during employees working hours. Airline's employee shall park their vehicles only in the employee parking area designated by the City and shall obtain a parking permit from Standard Parking, the City's airport parking concessionaire. Under its agreement with the City, Standard Parking has the right to charge a fee for the parking permit. The fee is subject to approval by the City.
- I. Airline agrees for itself, its agents and employees that it will not perform any acts or carry on any practices which could result in the necessity to repair or replace Airport property, at Airline's expense, normal wear and tear excluded, or be a nuisance or menace to other users of the Airport.
- J. City covenants and agrees that it is in lawful possession of the Space provided and has good and lawful authority to execute this Agreement.

8. **AIRLINE'S RIGHTS AND OBLIGATIONS**

The parties hereto covenant and agree as follows:

- A. Subject to and in accordance with all applicable laws and ordinances and such reasonable rules and regulations as may be adopted by the City for the regulation thereof, Airline may, together with others, use the Airport and its appurtenances together with all public use areas/facilities for the purpose of conducting its business as a scheduled air carrier and to engage in a prompt, efficient, scheduled air carrier operation at the Airport. The privileges granted hereby shall be non-exclusive, and include, without limiting the generality thereof:

- (1) The use of the Airport and its appurtenances for the purpose of landing, take-off, loading and unloading, taxiing, and parking of its aircraft or support equipment.
  - (2) The sale of Airline's air transportation services for the transport of persons and property at the Airport.
  - (3) The sale, lease or other disposition of the Airline's aircraft or other related property, subject to such reasonable rules as the City may prescribe.
  - (4) The training at the Airport of persons and testing of aircraft and other equipment, such training and testing to be limited to that which is incidental to Airline's air transportation business.
  - (5) The ground training of personnel in the employ of, under the direction, or under a service contract for the Airline.
  - (6) The right to install, operate and maintain the necessary FAA approved security devices to carry out its obligations as specified by the Federal Aviation Administration or other governmental rules and regulations.
- B.** Airline's equipment, including aircraft, used by the Airline at the Airport shall be maintained at Airline's sole expense, in good safe and operational order, and in a clean and neat condition.
- C.** Personnel performing services at the Airport shall be neat, clean and courteous. Airline shall not permit its agents, servants or employees to conduct business in a loud, noisy, boisterous, offensive or objectionable manner. Airline agrees to require its employees to wear suitable attire and to wear or carry badges or other suitable means of identification, which shall be subject to the prior and continuing approval of the City.
- D.** Airline shall observe and comply with any and all applicable Federal, State and local laws, statutes, ordinances and regulations and shall abide by and be subject to all rules, regulations, Minimum Standards and the Airport Security Program now in effect, and which may be amended and promulgated by the City from time to time concerning operation or use of the Airport.
- E.** Airline shall be responsible for all its expenses in connection with its operation at the Airport and the rights and privileges herein granted, including without limitation by reason of enumeration, taxes, permit fees, license fees and assessments lawfully levied

or assessed upon the Airline, and secure all such permits and licenses.

- F. To the extent reasonably feasible, Airline agrees to cooperate with the City and/or any other air carrier in dealing with aircraft or airline related emergencies at the Airport. Airline further agrees to provide the City with a copy of its current emergency procedures and to fully cooperate with the City and assist in implementation of the current Airport Emergency Plan.
- G. Airline may provide support services for another air carrier, subject to all applicable conditions of this Agreement.
- H. This Section shall be subject to the jurisdiction, rules and regulations of the National Transportation Safety Board or its successor agency. Subject to all requisite approvals and clearances of Federal aviation and/or law enforcement authorities with jurisdiction over the matter, Airline or its agents shall coordinate with the City and the control tower and promptly remove any of its disabled aircraft from any part of the Airport, including without limitation, runways, taxiways, aprons and aircraft parking position and place any such aircraft in such storage areas as may be designated by the City. Storage of disabled aircraft may be subject to a storage fee. Should Airline fail to promptly remove its disabled aircraft promptly following the authorization of applicable federal authorities, the City may, but shall not be obligated to, cause the removal and Airline shall reimburse the City for all costs of such removal. Airline hereby releases the City from any and all claims for damages to the disabled aircraft or otherwise from or in any way connected with such removal by the City.
- I. Airline, in providing the services authorized in accordance with this Article 8, does hereby agree:
  - (1) To furnish said service on a fair, equal, and not unjustly discriminatory basis to all users thereof, and
  - (2) To charge fair, reasonable, and not unjustly discriminatory prices for each unit or service; provided that, the Airline may make reasonable nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

- J. The Airline shall take the necessary actions to ensure any improvement it makes to its Space and employment practices are in compliance with the requirements of the Americans with Disabilities Act. Any cost of such compliance shall be the sole responsibility of the Airline.

9. **CITY'S RIGHTS AND OBLIGATIONS**

- A. The provisions of this Agreement are subject to all the rights, responsibilities and creative opportunities afforded airport proprietors under both the FAA Policy Regarding the Establishment of Airport Rates and Charges issued June 14, 1996 and the FAA Policies and Procedures concerning the Use of Airport Revenue issued February 8, 1999, collectively referred to as "the Policies", and wherever and whenever there is a conflict between the terms of this Agreement and the Policies, the interpretation of this Agreement shall be consistent with the provisions of the Policies.
- B. Except as herein provided, the City agrees that it will, with reasonable diligence and in a manner consistent with that of a reasonably prudent operator of an airport of comparable size, develop, operate, maintain and keep in good repair and order the Airport and all common use and public appurtenances, facilities and equipment provided by the City as the same relates to Airline's air transportation business. The City agrees that it will operate the Airport in a manner consistent with standards established by the Federal Aviation Administration, the Transportation Security Administration, or any successor Federal agency exercising similar powers for airports of comparable size and in accordance with rules and regulation of the Federal Aviation Administration and any other governmental agency having jurisdiction thereof.
- C. From time to time, the City may adopt and enforce Rules and Regulations and Minimum Standards pursuant to FAA Advisory Circular 150/5190-7, "Minimum Standards for Commercial Aeronautical Activities", with respect to the occupancy and use of the Airport, hereinafter, "Minimum Standards". Airline agrees to observe and comply with any and all such Rules and Regulations and Minimum Standards and all other Federal, State and municipal rules, regulations and laws and to require its officers, agents, employees, contractors, and suppliers, to observe and obey the same. This provision

will also include compliance with the Airport's Security and Noise Abatement Plans, as promulgated.

- D. The City reserves the right to deny access to the Airport and its facilities to any person, firm or corporation that fails or refuses to obey and comply with such Rules and Regulations, laws, Minimum Standards and Security and Noise Abatement Plans.
- E. With regard to compliance with Title 14, Part 382 of the Code of Federal Regulations, the City shall be responsible for compliance in all the Joint Use Space and Airline shall be responsible for compliance in the Preferential Space and on the Terminal Ramp.

**10. UTILITIES AND MAINTENANCE**

- A. City shall provide all utilities in the terminal, with exceptions for (i) electricity used in Airline's Preferential Space, (ii) air conditioning used in Airline's equipment storage area of the Preferential Space and (iii), electricity used outside of the terminal building including, but not limited to, use for the loading bridge(s), heater(s), and deicer(s). Any electricity use required for such exceptions shall be the responsibility of the Airline. The City may impose additional charges to Airline for extraordinary heat/air conditioning, or pest control charges, if Airline permits exterior access doors to remain open for periods longer than necessary for normal ingress or egress.
- B. City agrees to provide janitorial service in Airline's Preferential Space. Janitorial services in Preferential Space consists of trash removal, floor upkeep, and counter cleaning. Airline shall be responsible for the maintenance of all walls, ceilings, lights, doors, computers and telephones in Airline's Preferential Space and any upkeep in Airline's Preferential Space, normal wear and tear excepted. Airline is also responsible for all striping it requires for parking guidance on the Airline Ramp. In the event that any maintenance and/or repairs to the Airport, the Space, its improvements and/or appurtenances are necessitated by misuse, abuse or neglect by the Airline, its agents or employees, Airline shall be responsible for, and pay directly to the City, its contractor or supplier, the cost of such repairs and/or maintenance. Where the Airline responsible for causing damage cannot be determined, all Airlines shall pay repair costs equally.

- C. The City shall have the right to enter the Space at all reasonable times to carry out its duties in accordance with this Article 10.

11. **CONSTRUCTION, MAINTENANCE AND REPAIR OF AIRLINE'S IMPROVEMENTS/TRADE FIXTURES**

- A. Airline may construct or install, at its own expense, any equipment, improvements and facilities, including communication, meteorological and navigational equipment, and any additions thereto, on all or any part of the Airline's Preferential Space, subject to the conditions hereinafter set forth. Airline shall keep and maintain all such improvements and facilities and additions thereto constructed or installed by it in good condition, reasonable wear and tear excepted.

- (1) No improvements, structures, alterations, or additions shall be made in, to, or upon the Airline's Space without the prior written consent of the City, and all such improvements, structures, alterations, additions and work shall be in accordance with any conditions relating thereto then stated in writing by the City.

- (2) At the time of requesting approval by the City, the Airline shall submit the preliminary plans for such improvements, which shall conform to the general architectural scheme and overall plans adopted by the City for the Airport. Upon approval of said preliminary plans, the Airline shall prepare and obtain the City's approval of working drawings and specifications which shall be a true and accurate reflection of the preliminary plans so approved. All construction shall conform to the approved working drawings and specifications and when such work is commenced, it shall be completed with reasonable dispatch. No substantial change, addition or alteration shall be made in said working plans or specifications or in the construction called therefor without the City's prior written approval. Upon completion of said improvements, the Airline shall furnish the City, at no charge, two (2) complete sets of as built drawings of the improvements on CAD.

- (3) All improvements constructed by the Airline pursuant to this Article 11 shall conform in all respects to all applicable statutes, ordinances, building codes, rules and regulations of all governmental agencies having jurisdiction.
- (4) During the term of this Agreement, title to all improvements, structures, alterations or additions erected or installed in or on the Space by the Airline except Airline's trade fixtures, shall become a part of the realty upon which they are erected and title thereto shall immediately vest in the City at no cost to the City. Alternatively, the City may, at its option, direct the Airline in writing within thirty (30) days of such expiration, termination or renewal to remove any or all such structures, improvements, alterations or additions from the Space. The City may extend the aforesaid thirty (30) day requirement (if any) if, in its sole discretion, it determines due diligence is being shown by the Airline with regard to such removal. All City property damaged by, or as a result of, the removal of Airline's property shall be restored by the Airline without cost to the City expense to the condition existing prior to such damage. Should the airline fail to remove such items as directed by the City within thirty (30) days of the City's notification to do so, the City may proceed to effect such removal at the expense of the Airline, and the Airline agrees to pay the City for such expense within thirty (30) days of its receipt of an invoice therefor.

- B. No trade fixtures shall be installed without the prior written consent of the City and all such installations shall be in accordance with any conditions relating thereto then stated in writing by the City.

**12. INSURANCE, DAMAGE OR DESTRUCTION**

- A. The City shall procure and maintain, throughout the term of this Agreement, insurance protection for fire and extended coverage on the structure and improvements of the Terminal for one hundred percent (100%) of the actual replacement cost thereof to the extent insurable in that amount. Such insurance shall be issued by insurers of recognized financial standing and authorized to conduct business in the State of North Dakota. If said insurers become financially incapable of performing under the terms of

said policy, the City will promptly obtain a new policy issued by a financially responsible carrier and shall submit revised evidence of insurance as previously provided. If the City is, at any time, unable to obtain such insurance to the extent required, the City will maintain insurance to the extent reasonably obtainable and shall notify Airline of its inability to obtain such insurance.

- B. The City shall settle all losses directly with the insurance carrier. The proceeds of all insurance shall be available for the repair and reconstruction of the Terminal.
- C. In the event the Terminal is damaged or destroyed to the extent that it is unusable by Airline for the purposes for which it was used prior to such damage, or same is destroyed, the City shall have the election of repairing or reconstructing the Terminal substantially as it was immediately prior to such casualty or in a new or modified design consistent with Airline's use of the Terminal under the provisions of Article 7 hereof. In the event of damage or destruction to the Terminal, the City shall have no obligation to repair or rebuild any of Airline's fixtures, equipment or other personal property installed by Airline pursuant to this Agreement.
- D. Airline shall, at its expense, replace and repair any and all of Airline's fixtures, equipment and other personal property necessary to properly and adequately continue its business on the Airport, but in no event shall Airline be obligated to provide equipment and fixtures in excess of those existing prior to such damage or destruction except for requirements of construction codes existing at the time of repair or replacement.
- E. During such period of repair or replacement, the rents provided for elsewhere herein shall be proportionately abated from the date of such damage, destruction or loss until the same is repaired, replaced, restored or rebuilt, according to the portions of the Terminal that are used only for repair or rebuilding of same and not for the uses described in Article 8 hereof. Such abatement shall not exceed the actual time required for arranging for and the doing of such work. The proportional amount of reduction of fees shall be reasonably determined by the City.

- F. There shall be no obligation on the part of the City or the contractor to reimburse Airline from the insurance proceeds for the loss or damage to fixtures, equipment or other personal property of Airline unless otherwise agreed by the parties in writing. Airline, for its own protection, may separately insure such fixtures, equipment or other personal property as its interests may appear.
  
- G. In the event of damage or destruction of Airport property caused by the Airline, its agents, employees, aircraft or other equipment, Airline agrees to repair, reconstruct, or replace the affected property to the condition which existed prior to such damage or destruction. Airline further agrees to cause such repair, reconstruction or replacement of affected property with due diligence and to the satisfaction of the City.

**13. PURCHASE OF SUPPLIES AND SERVICES**

- A. Should Airline purchase flight meals or beverages for consumption by its passengers aboard its aircraft or other prepared foodstuffs for consumption within Airline's Space from any local suppliers other than an Airport concessionaire authorized to provide such services, the City shall impose a fee of five percent (5%) upon the Gross Receipts of such suppliers for the privilege of doing business at the Airport. For the purposes of the Agreement, Gross Receipts are defined as all monies due and owing such supplier from Airline for the provision and delivery of such flight meals, beverages and other foodstuffs to Airline at the Airport, net of all taxes, credit or financing charges and credits or refunds due Airline from such vendor.
  
- B. Should the Airline contract with a third party other than an Airline Affiliate to provide maintenance and service upon its aircraft or to furnish ground services which might otherwise be performed by Airline under this Agreement or other aeronautical service providers existing on the Airport, such third party shall be deemed to be conducting a business at the Airport and shall be required to obtain a Commercial Operating Permit from the City. The Airline shall be responsible to the City for any third party performing for or contracted by the Airline, and Airline shall assume all responsibility and liability in connection with such contracting. The City may impose charges and fees and impose

Minimum Standards upon such third parties for services provided and rentals for facilities used.

- C. Subject to the above, Airline may select suppliers, purveyors and furnishers of materials, supplies, equipment and services of its own choosing. Nothing in this Article shall be construed as in any way limiting the general powers of the City to fully exercise its governmental or proprietary functions, or its obligations under any bond covenants, or Federal, state or local laws, rules or regulations.

**14. SECURITY**

- A. Airline recognizes its obligations for security in the Space as prescribed by the FAA and TSA Regulations, particularly TSAR 1542, as it is amended from time to time, and agrees to employ such measures as are necessary to prevent or deter the unauthorized access of persons or vehicles in the Space and the Aircraft Operations Area, "AOA".
- B. Airline further agrees to abide by the Rules and Regulations adopted by the City consistent with this Agreement, including its Airport Security Program, as amended from time to time (provided that no such amendment shall diminish any rights granted to Airline hereunder, nor increase Airline's under this Agreement) in carrying out the State's and City's obligations under the FAA and TSA Rules and Regulations other safety and security measures the City deems necessary from time to time for the proper identification of persons and vehicles entering the Aircraft Operations Area, "AOA".
- C. Airline shall reimburse the City in full for any fines or penalties levied against the City for security violations as a result of any actions or omissions on the part of the Airline, its agents, suppliers, or employees for any violation occurring on Airport property.

**15. CITY'S RIGHT TO ENTER THE SPACE**

The City reserves the right to inspect the Space and improvements at any reasonable time, with prior notice, throughout the term of this Agreement. When, for any reason, an entry is deemed necessary, and Airline is not present to permit such entry, the City, its agents and employees, shall be permitted to enter the Space and improvements. The City's agents or employees shall

not be liable for any civil or criminal claim or cause of action for damage because of entering the Space or improvements at reasonable times and in a reasonable manner.

16. **INDEMNITY AND WAIVER OF DAMAGES**

A. Subject to the provisions for waiver of subrogation and related releases of claims, the Airline shall keep and hold the City of Bismarck, its elected and appointed officials, agents and employees, free and harmless from any and all claims and actions, loss, damage expense or cost, including reasonable attorneys fees (where allowable by law) unless Airline breaches its duty of defense claimed by anyone by reason of injury, or death or damage to persons or property sustained as a result of the Airline's use of the Space and operations at the Airport pursuant to this Agreement, excluding only claims **(A)** involving or resulting from any Pre-Existing Condition; **(B)** arising from use of the Space by any Requesting Airline, as provided in Article 25 of this Agreement; **(C)** caused by the negligence or willful misconduct of the City, its elected and appointed officials, agents and employees, or the negligence of said parties in concert with a third party, or **(D)** resulting from Airline's compliance with any directive or mandate of the City; provided, that, the City shall give the Airline prompt and reasonable notice of any such claim or action made or filed against it, and shall tender the defense thereof to Airline. It is specifically agreed, however, that the City, at its own cost and expense, may participate in the legal defense of any such claim. Any judgment, final beyond all possibility of appeal, rendered against the City for any cause for which the Airline is liable hereunder shall be conclusive against the Airline as to liability and amount upon the expiration of the time for appeal. For purposes of this Agreement, Pre-existing Condition shall mean any condition in, on, or within the Space that **(A)** results from any deferred or failed maintenance by a prior tenant or occupant of the Space; **(B)** on the date of Airline Affiliate's initial entry upon the Space for the purpose of transacting transportation business hereunder (the "Commencement Date"), fails to comply with or violates any applicable law (whether federal, state or local, statutory, regulatory, administrative or decisional), or **(C)** the presence at, on or within the Space of any substance or material that on Commencement Date or at any time thereafter is deemed to be a hazardous substance within the meaning of any environmental law.

- B. The City hereby reserves the right to adopt Rules and Regulations not in conflict with Federal rules and regulations pertaining to aircraft operations, noise, vibrations, fumes, dust and particles. The Airline hereby agrees to operate in compliance with said Rules and Regulations so adopted and hereby waives any claims, rights, damages or costs of any kind against the City incurred by Airline in complying with said Rules and Regulations.
- C. In addition to the general indemnity stated above, and as part of it, it is specifically agreed between the parties that Airline shall, in regard to Airline's use of, or Airline's generation of, or release of hazardous substance, be responsible for the environmental response activities including response costs, monitoring, or cleanup of any environmental condition deemed by either the United States Environmental Protection Agency or the North Dakota Department of Health as requiring such environmental response activities to comply with environmental law, except in each case to the extent caused by (1) the negligence or willful misconduct of the City or its officers, directors, agents or employees or (2) any pre-existing conditions (including sub-surface contamination) or (3) acts or omissions of other users of the Airport. The provisions of this Section shall survive the expiration, termination or early cancellation of this Agreement.

**17. WAIVER OF SUBROGATION**

- A. The City and Airline agree that all fire and extended coverage and material damage insurance carried by City and Airline with respect to the Airport or the Space, or any property within either, shall be endorsed with a clause which waives all rights of subrogation that the insurer of one party might have against the other party. It is additionally agreed that the City and Airline shall release and relieve the other and waive their entire claim of recovery for loss or damage to property arising out of or incident to fire, lightning and other perils included in the standard fire and extended coverage endorsement to the extent that said claims, actions, damages, liability and expense are covered by insurance of either party, whether due to negligence of each other their agents, or employees or otherwise so coverable by insurance. The parties agree to cause such release and to endorse such provisions in insurance policies issued for the

respective properties or parties which are the subject of this Agreement.

- B. Except as provided above, Airline further expressly waives any and all claims against the City of Bismarck, their officials, agents and employees of whatever nature, for any and all loss or damage, including defense costs, sustained by Airline, except loss or damage caused by the City's breach of its obligations under this Agreement or the gross negligence or willful misconduct of the City, its officials, agents or employees, including interruption of the Airline's business operations, by reason of any defect, deficiency, failure or impairment of the Space, or any utility service to or in the Space including but not limited to, the water supply system, electrical wires leading to or inside the Space, gas, electric, or telephone service, or any other utility failure occurring during the term of this Agreement as a result of such breach, negligence or willful misconduct.

18. **INSURANCE**

Airline shall, at its expense, maintain insurance in full force and effect during the term of this Agreement in such amounts as to meet the minimum limits of liability specified in Schedule 2 attached hereto, and insurance shall be placed with companies or underwriters of generally recognized financial strength and responsibility and reasonably satisfactory to the City. The insurance policy(ies) shall be the standard comprehensive airline insurance coverage to cover all operations of the Airline and shall include, but not by way of limitation, personal injury, property damage, products liability, automobile, aircraft and contractual coverage. The City of Bismarck, its elected and appointed officials, agents and employees shall be named as additional insured's with respect to Airline's use of Bismarck Airport and the Space which are the subject of this Agreement. Notwithstanding the extent to which Airline assumes liability hereunder, and agrees to indemnify the City, the City shall be named an additional insured in all insurance policies (with the exception of Worker's Compensation, Employer's Liability and two-party property coverage) as its interests may appear and only to the extent that the City is entitled to be indemnified pursuant to this Agreement, with all such insurance being primary to any insurance of the City that may apply to such occurrence, accident or claim. No "other insurance" provision shall be applicable to the City by virtue of having been named an additional insured or loss payee under any policy of insurance. Airline shall furnish to the City, prior to the commencement of any operations pursuant to this Agreement, appropriate certificates of

insurance evidencing coverage affected and to be maintained for the term of this Agreement. The coverage shall not be less than the amounts specified in Schedule 2; such limits are subject to periodic adjustment upward based upon the Airline's own assessment of the risks associated with its operations at the Airport. City shall not, in any event, be liable for any shortfall in Airline's insurance coverage. The insurance policies shall not be subject to cancellation except after notice to the City by registered mail at least thirty (30) days prior to the date of such cancellation or material change. Where any policy(ies) has (have) normal expirations during the term of this Agreement, written evidence of renewal shall be furnished to the City at least thirty (30) days prior to such expiration. "Endeavoring to provide" thirty (30) days notice of cancellation or change in the policy is not acceptable.

**19. SIGNS**

Airline shall have the right, at its own expense, to install and maintain signs for the purpose of identification and advertising. Prior to installation of such signs, the Airline shall submit plans and obtain the written approval of the City / Airport Manager. Said approval shall not be unreasonably withheld. In the event the signs are removed and not replaced, Airline shall repair the area to its former appearance consistent with the existing decor of the Terminal.

**20. TAXES**

Airline agrees to pay all lawful taxes and assessments which, during the term hereof or any extension as provided for herein, may become a lien or which may be levied or charged by the State, County, City or other tax-levying body upon the operations of Airline, its Space herein or upon any taxable interest acquired by the Airline in this Agreement, or any taxable possessory right which the Airline may have in or to the Space or facilities hereby leased or the improvements thereon, by reason of its occupancy thereof, or otherwise, as well as all taxes on the taxable property, real or personal, owned by the Airline in or about the Space. Nothing herein shall prevent the Airline from protesting, through due process, any taxes levied. Upon any termination of this Agreement all taxes then levied, or liens upon any of said property or taxable interest therein, shall be paid in full without proration by the Airline forthwith, or as soon as a statement thereof has been issued by the tax collector, if termination occurs during the interval between the attachment of the lien and issuance of statement.

**21. GOVERNMENT RESERVATIONS AND RESTRICTIONS**

- A. The Space being leased and rights granted by this Agreement shall be subject to all enforced reservations and restrictions, including but not limited to, the following: It is understood and agreed to by Airline that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right forbidden by Section 308 of the Federal Aviation Act of 1958 and as amended.
  
- B. During the time of war or national emergency, City shall have the right to lease the landing area or any part thereof to the United States Government for military or naval use and, if such lease is executed, the provisions of this Agreement, insofar as they are inconsistent with the provisions of the agreement or lease with the Government, shall be suspended.
  
- C. This Agreement shall be subject to the terms of any Sponsor's (City's) assurances and agreements now required or imposed in the future, between the City and the Federal Aviation Administration or any successor Federal agency.
  
- D. This Agreement shall be subordinate to the provisions of any existing or future agreement between the United States Government and the City relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of Federal funds for the development of the Airport. Failure of Airline to comply with the requirements of any existing or future agreement between the City and the United States Government, which failure shall continue after reasonable notice to make appropriate corrections, shall be cause for immediate termination of Airline's rights hereunder, subject to Airline's right of appeal.

**22. CITY'S RIGHT OF TERMINATION**

In addition to any conditions as specified herein and all other remedies available to the City, this Agreement shall be subject to termination by the City should any one or more of the following occur:

- A. If Airline shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking its reorganization or the readjustment of its indebtedness under the Federal bankruptcy laws or any other similar law or statute of the United States or any state, or government, or consent to the appointment of a receiver, trustee or liquidator of all or substantially all of the property of the Airline.
- B. If, by order or decree of a court of competent jurisdiction, Airline shall be adjudged bankrupt or an order shall be made approving a petition seeking its reorganization, or the readjustment of its indebtedness under the Federal bankruptcy laws or any law or statute of the United States or any state, territory, or possession thereof, or under the law of any other state, nation or government; provided, that, if any such judgment or order be stayed or vacated within ninety (90) days after the entry thereof, any notice of cancellation given shall be and become null, void and of no effect.
- C. If, by or pursuant to any order or decree of court or governmental authority, board, agency or officer having jurisdiction, a receiver, trustee, or liquidator shall take possession or control of all or substantially all of the property of Airline for the benefit of creditors, provided, that, if such order or decree be stayed or vacated within sixty (60) days after the entry thereof or during such longer period in which Airline diligently and in good faith contests the same, any notice of cancellation shall be and become null, void and of no effect.
- D. If Airline shall voluntarily abandon or discontinue the conduct and operation of air transportation business at the Airport for a continuous period of ninety (90) days, except when such abandonment is caused by fire, earthquake, war, strike, labor strife or other calamity beyond the Airline's control.
- E. If Airline shall fail to perform, keep and observe any of the applicable covenants and conditions contained in this Agreement, provided that upon the happening of any contingency recited in this Section, Airline shall be given written notice and thirty (30) to correct or cure such default, failure to perform or breach; provided, however, that if the

nature of the default or breach is such that thirty (30) days is insufficient, Airline or Airline Affiliate shall be given an additional period reasonably necessary to effectuate the cure, so long as Airline or Airline Affiliate promptly commencement diligently prosecutes its cure efforts. If, within thirty (30) days from the date of receipt of such notice, or such longer period as may be applicable, the default, breach or complaint shall not have been corrected in a manner satisfactory to the City, then and in such event, the City shall have the right at once to declare this Agreement terminated. The City does, however, reserve the right to extend the time period to correct the default if, in its opinion, due diligence is shown by Airline in curing the default.

- F. If, under any of the foregoing provisions of this Article, the City shall have the right to re-enter and take possession of the Space, the City may enter and eject Airline and those claiming through or under it, and remove their property and effects (without any liability therefor except for liability arising from the negligence of willful misconduct of the City, its employees or agents, without prejudice to any remedies of the City in the event of default by the Airline; and without liability for any interruption of the conduct of the affairs of Airline or those claiming through or under it.

**23. AIRLINE'S RIGHT OF TERMINATION/ABATEMENT**

- A. Airline shall have the right to terminate this Agreement upon four (4) months written notice and shall remain obligated to pay rents, fees and charges which accrue during said four (4) months. In the event Airline fails to give such notice, Airline agrees to continue its obligation to pay rent for the Space and facilities provided herein for a minimum period of four (4) months. If another airline, reasonably acceptable to the City, agrees to assume all or part of Airline's rental payments, such obligations shall be reduced by the amount assumed by such replacement airline(s).
- B. In addition to all other remedies available to the Airline, this Agreement shall be subject to termination by Airline should any one or more of the following occur:
- (1) The permanent abandonment of the Airport as an air carrier airport;

- (2) The issuance of any order, rule or regulation by the Department of Transportation, the Federal Aviation Administration, or its or their successor Federal agency, or the issuance by any court of competent jurisdiction of an injunction, materially restricting for a period of at least ninety (90) days, the use of the Airport for scheduled air transportation; provided, that, none of the foregoing has been initiated, caused or contributed to by the Airline:
- (3) The breach by the City of any covenants, terms or conditions of this Agreement to be kept, performed and observed by the City and the failure to remedy such breach for a period of sixty (60) days after written notice from Airline of the existence of such a breach (other than a breach involving danger to human life or health, in which event City's obligation to cure shall be immediate);
- (4) The assumption by the United States Government or any authorized agent of the same, of the operation, control or use of the Airport and its facilities in such a manner as to substantially restrict Airline from conducting its air transportation business, if such restrictions be continued for a period of ninety (90) days or more;
- (5) The inability of Airline to conduct its business at the Airport in substantially the same manner and to the same extent as theretofore conducted, for a period of at least ninety (90) days, because of (1) any law, or (2) any rule, order, judgment, decree, regulation or other action or non-action of any governmental authority, board, agency or officer having jurisdiction thereof, without fault of the Airline;
- (6) The taking of the whole or any part of the Space by the exercise of any right of condemnation or eminent domain.

C. In the event any of the contingencies described in Article 23, Section B, the rent shall be abated for those portions of Airline's Space which are rendered untenable from the time of such happening until the affected Space is returned for Airline's use.

**24. ASSIGNMENT AND SUBLETTING**

- A. Except in the case of any transfer, whether by an assignment of this lease or subletting of the Space, to an Airline Affiliate, neither Airline nor any successor of Airline shall in any manner, directly or indirectly, by operation of law or otherwise, assign, sublet, transfer or encumber any of Airline's rights in and to this Agreement or any interest therein, nor license or permit the use or the rights herein granted in whole or in part to any party or entity other than an Airline Affiliate without the prior written consent of the City. Such consent shall not be unreasonably withheld, provided, that, any such assignee shall be an FAA certificated air carrier professionally qualified to do business on the Airport, acceptable to the City, and possess sufficient financial security to ensure compliance with all the terms and conditions of this Agreement.
- B. Airline shall have the right to assign all of its rights and interests under this Agreement to any successor to its business through merger, consolidation, or voluntary sale or transfer of substantially all of its assets in which event the consent of the City thereto shall not be required, but due notice of any such assignment shall be given to the City within ten (10) days after such assignment is executed.

**25. ACCOMMODATION OF NEW AND/OR EXISTING AIRLINES**

The parties hereto agree that every reasonable effort will be made to accommodate any other incoming or incumbent airline, such carrier to be referred to hereinafter as "Requesting Airline".

The parties agree that the City will make every effort to accommodate such Requesting Airline through direct lease of space between the City and Requesting Airline. In the event no space which will accommodate the Requesting Airline is available for lease from the City, the parties hereto recognize that it may become necessary to share the use of the Space provided herein with other air carriers so as to reasonably accommodate new and/or additional air transportation service at the Airport, and to afford Requesting Airline the opportunity to share use of Airline's Space (including Preferential Space and Joint Use Space). In determining whether the use by Requesting Airline is reasonable and possible, Airline will have the right to (i) require Requesting Airline to provide such indemnity for the benefit of Airline as Airline may reasonably require, as well as compliance with insurance requirements reasonably specified by Airline, including the designation of Airline as named insured on all liability coverages, other

than Worker's Compensation and Employer Liability coverages and (ii) consider the compatibility of the proposed operations of the Requesting Airline the operations of those with whom Airline has a sublease or handling agreements, Airline's existing and future flight schedules, the need for labor harmony, and the availability of other Space at the Airport. Should Requesting Airline's requirements not be reasonably accommodated by Airline or other scheduled airlines, the Airport's Manager, acting on behalf of the City, shall convene a meeting of all scheduled airlines at the Airport (including, Airline) in an effort to reasonably accommodate the Requesting Airline.

In the event such efforts as outlined above fail to provide reasonable accommodations and facilities for the Requesting Airline, the following provisions with regard to Preferential Use Space will be enacted by the Airport Manager on behalf of the City:

- A.** The City reserves the right to provide Preferential Space to the Requesting Airline; such accommodation(s) to be provided by either reallocating existing space, remodeling and/or new construction. Such decision shall be made after consultation with all tenant scheduled airlines (including Airline).
  - (1)** Remodeling will be treated as a tenant improvement and sole cost will be borne by Requesting Airline and the rent per square foot per annum will be assessed at the same rate as that paid for similar space under lease by other Scheduled Airlines at the Airport.
  - (2)** In the event of new construction, costs involving additions or building modifications (including financing cost, if appropriate) will be allocated according to the per square foot cost of such construction. Requesting Airline will pay this per square foot rate for such Space provided as its base rent plus its share of the Airport's costs. The per square foot cost for increased public areas created as a result of such construction will be included in the rate base paid by all Scheduled Airlines at the Airport, including Requesting Airline.
- B.** In the event that secondary use of Preferential Space cannot be accomplished or is not desirable to the Requesting Airline, it shall be the responsibility of such Requesting

Airline to bear all costs necessary to provide such space through remodeling and/or construction. Such remodeling and/or construction shall be subject to the provisions of Article 11 hereof.

**26. ADVANCES BY THE CITY**

If the Airline should fail to do anything required to be done under the terms and conditions of this Agreement, except for the payment of rents, fees or charges, the City may, at its sole option and after giving thirty (30) days prior written notice to the Airline of its intent to do so, perform such act on behalf of the Airline if such act has not been done by Airline within the thirty (30) day period. Upon notification and documentation to the Airline of the cost thereof by the City, the Airline shall promptly, within thirty (30) days of its receipt of such notification and such reasonable documentation as Airline may require, pay the City the amount due.

**27. LEGAL CLAIMS AND ATTORNEY FEES**

A. Each party hereto shall promptly report to the other any claim or suit against it arising out of or in connection with the operation of the Airline's scheduled air carrier service at the Airport. The City and Airline shall each have the right to compromise and defend the same to the extent of its own interest; provided the defense of the same has not been tendered and accepted by the other party. The Airline is an independent contractor in every respect, and not the agent of the City.

B. If any legal action is instituted by the parties hereto to enforce this Agreement, or any part thereof, the prevailing party shall be entitled to recover reasonable attorney's fees and court cost. Any such legal action shall be commenced and maintained in Burleigh County, North Dakota, regardless of Airline's residence or place of business.

**28. LIENS AND ENCUMBRANCES**

Airline agrees that it shall pay directly, or cause to be paid, all costs and expenses for work done and materials delivered to the Space and improvements at Airline's request, during the leasehold term, for improvement to the Space. Airline shall keep the Space free and clear of all mechanic's or materialmen's liens or any other liens on account of any work done on the Space at Airline's request. Airline agrees to and shall indemnify, and hold the City of Bismarck free

from and harmless against all liability, loss, damage, cost, attorney's fees and all other expenses on account of claims of lien of laborers or materialmen, or others, for work performed or materials or supplies furnished to Airline for use in the Space.

**29. CONTRACTING ON EQUITABLE TERMS**

- A. For the purposes of this Article 29, a "Signatory Airline" is defined as a scheduled airline certified by the FAA providing daily service to selected destinations and from the Bismarck Airport which has entered into a lease agreement with the City of Bismarck under which it commits to: (i) providing the scheduled services it advertises either directly or through licensed certificated operators providing air transportation services under its name; and (ii) consistent with FAA Policies, pays the City for the use of the airfield and its related services (ARFF, security, etc.) and for the use and occupancy of preferential space, joint use space and public space in the Terminal for the conduct of its business in transporting passengers, cargo and mail.
- B. Subject to the provisions of Section 9.A of this Agreement, City covenants and agrees that in the event it enters into any lease, contract or any other Agreement with any other signatory airline containing more favorable terms than this Agreement, or grants to any signatory airline rights, privileges, or concessions with respect to the Airport for comparable space or services, which are not accorded Airline hereunder, it shall grant Airline equal terms, rights, privileges, or concessions, provided, the services provided by Airline are comparable in level of service and fare structure to those being made available to the public by the other Signatory Airline.

**30. NON-DISCRIMINATION**

- A. Airline, for it, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that in the event facilities are constructed, maintained, or otherwise operated in the Space, for a purpose for which a United States Government program or activity is extended, Airline shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 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, and as said Regulations may be amended.

- B.** Airline, for itself, its personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the grounds of race, creed, color, sex, national origin, age, disability or marital status shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Space; (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, creed, color, sex, national origin, age, disability or marital status shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that Airline shall use the Space 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, 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.
- C.** Airline assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, sex, age, disability or marital status be excluded from participation in any employment activities covered in 14 CFR Part 152, Subpart E. Airline 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 E. Airline assures that it will require that its covered sub organizations provide assurances to Airline that they similarly will undertake affirmative action program and that they will require assurances from their sub organizations, to the extent required by 14 CFR Part 152, Subpart E, to the same effect.
- D.** In addition, Airline agrees to comply with all pertinent provisions of the American's with Disabilities Act of 1990, P.L. 101-336, July 26, 1990, 42 USC 12101, et seq.; and all pertinent regulations pursuant thereto. Airline shall not discriminate in the use of the

Space or any access thereto if such Space are used as a public accommodation or in connection with a public service. Airline will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability or marital status.

- E.** In this connection, the City reserves the right to take whatever action it might be entitled by law to take in order to enforce this provision. This provision is to be considered as a covenant on the part of Airline, a breach of which, continuing after notice by the City to cease and desist and after a determination that a violation exists made in accordance with the procedures and appeals provided by law, will constitute a material breach of this agreement and will entitle the City, at its option, to exercise its right of termination as provided for herein, or take any action that it deems necessary to enforce compliance herewith.
- F.** Airline shall include the foregoing provisions in every agreement or concession pursuant to which any person or persons, other than Airline, operates any facility on the Space providing service to the public and shall include thereon a provision granting the City a right to take such action as the United States may direct to enforce such covenant.
- G.** Airline shall indemnify and hold harmless the City from any claims and demands of third persons including the United States of America resulting from Airline's noncompliance with any of the provisions of this Section, except to the extent that such noncompliance arises from any Pre-Existing Condition, or as a result of Airline's compliance with any mandate of the City and Airline shall reimburse the City for any loss or expense incurred by reason of such noncompliance.

**31. PRIOR AND COLLATERAL AGREEMENTS**

This Agreement shall constitute the entire Agreement between the parties and no other stipulation, agreement or understanding, written or oral, expressed or implied of the parties hereto or of their agents, relating to the lease and use of the Space demised in Article 2 herein, shall limit or modify its terms. This Agreement shall, as of the commencement date hereof, cancel and supersede all prior agreements, written or oral, expressed or implied, between the

parties for the rights granted herein. This Agreement shall not be subject to modification or change except by written instrument duly signed.

**32. SEVERABILITY**

If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remaining terms and provisions of this Agreement shall not be affected thereby, but each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

**33. NON-WAIVER OF BREACH**

The waiving of any of the covenants of this Agreement by either party shall be limited to the particular instance and shall not be deemed to waive any other breaches of such covenants. The consent by the City to any act by Airline requiring City's consent shall not be deemed to waive consent to any subsequent similar act by Airline.

**34. VENUE**

This Agreement is to be construed in accordance with the applicable laws, rules and regulations of the State of North Dakota and the County of Burleigh.

**35. TIME OF ESSENCE**

It is mutually agreed that time is of the essence in the performance of all covenants and conditions to be kept and performed under the terms of this Agreement.

**36. HOLDOVER POSSESSION OF SPACE BY AIRLINE**

Any holding over at the expiration or termination of the term of this Agreement, with or without the consent of the City, shall constitute a tenancy from month-to-month. The month-to-month tenancy shall be subject to all other terms and conditions of this Agreement, with the exception of rates, charges and fees; which amounts shall be determined prospectively and solely by the City, but which rates, charges and fees shall in no event exceed 125% of the charges payable immediately prior to the termination of this Agreement.

**37. SURRENDER OF POSSESSION**

Upon the expiration of this Agreement or its earlier termination as herein provided, Airline shall remove all of its property from the Airport and surrender entire possession of its rights at the Airport to the City, unless this Agreement is renewed or replaced.

**38. APPROVAL OR DIRECTION BY CITY**

Wherever consent, approval or direction by the City is required under this Agreement, such consent, approval or direction by the City shall be effective if given by the Airport Manager or his or her designee in the manner set forth in this Agreement. Nothing requiring consent, approval or direction from the City shall be unreasonably requested by Airline nor shall such consent, approval or direction be unreasonably withheld by the City.

**39. NOTICES**

All payments, demands and notices required herein shall be deemed to be properly served if hand delivered, or if sent by certified or registered mail, postage prepaid or courier (FedEx, UPS etc.), to the last address previously furnished by the parties hereto. Until hereafter changed by the parties, in writing, notices shall be addressed as follows:

CITY:

AIRLINE:

BY HAND OR COURIER:

GREGORY B. HAUG  
AIRPORT MANAGER  
BISMARCK AIRPORT  
2301 UNIVERSITY DR BLDG 17 SUITE 225B  
BISMARCK, ND 58504

VICE PRESIDENT, Corporate Real Estate   
AMERICAN AIRLINES  
4333 AMON CARTER BLVD MD 5317  
FORT WORTH, TX 76155

US MAIL:

PO BOX 991  
BISMARCK, ND 58502

The date of service of such notice shall be the date such notice is delivered by hand or is deposited in a Post Office of the U.S. Postal Service or with a courier service.

**40. PARAGRAPH HEADINGS**

Paragraph headings contained herein are for convenience in reference only, and are not intended to define or limit the scope of any provisions of this Agreement.

**41. ENTIRE AGREEMENT**

**A.** This Agreement consists of Articles 1 to 41, inclusive, Schedules 1 and 2 and Exhibits A and B.

**B.** It constitutes the entire agreement of the parties hereto and may not be changed, modified, discharged or extended except by written instrument duly executed by the City and Airline. The parties agree that no representations or warranties shall be binding upon the City or Airline unless expressed in writing in this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year written below.

RECOMMENDED APPROVAL  
TERMS AND CONDITIONS BY:

  
\_\_\_\_\_  
Gregory B. Haug  
Airport Manager

APPROVED AS TO FORM AND LEGALITY BY:

  
\_\_\_\_\_  
Charles C. Whitman, Esq.  
City Attorney

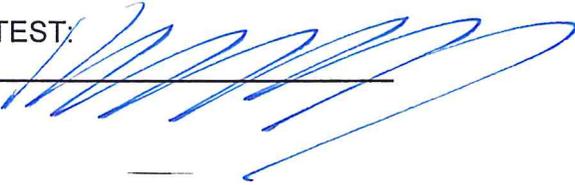
ATTEST:

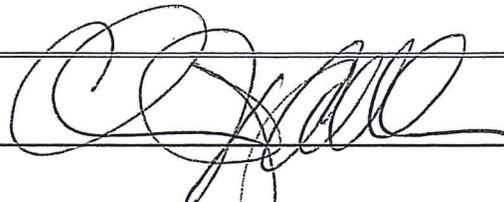
CITY OF BISMARCK, NORTH DAKOTA

~~William C. Wocken~~ *KEITH J. HUNKE*  
\_\_\_\_\_  
City Administrator

\_\_\_\_\_  
Michael C. Seminary  
President, Board of Commissioners  
Date: \_\_\_\_\_

ATTEST:

  
\_\_\_\_\_

  
\_\_\_\_\_  
Christopher J. Collison  
Director Real Estate  
\_\_\_\_\_

American Airlines  
Date: Oct. 3, 2016

Schedule 1  
8/17/16

American Airlines

Part I - Preferential and Joint Use Space

<u>Airline's Preferential Terminal Space</u>	<u>Sq. Ft.</u>	<u>Rental Rate</u>	<u>Annual Rent</u>
Counter/Operations	293	\$23.40 psf.	\$6,856.20
Equipment Storage	600	\$23.40 psf.	\$14,040.00
Outdoor Covered Storage	0	\$8.20 psf	0
Office	197	\$23.40 psf.	\$4,609.80
<b>Total:</b>	<b>1,090</b>		<b>\$25,506.00</b>

Loading Bridges

Actual Operations & Maintenance cost look-back for previous month prorated by percentage of use

Airline's Joint Use Terminal Space (1)

Baggage/Freight	5,780	\$21.06 psf.	\$121,726.80
Departure Lounge	10,762	\$21.06 psf.	\$226,647.72
<b>Total</b>	<b>16,542</b>		<b>\$348,374.52</b>

(1) Rental for joint use space shall be pro-rated among the Signatory airlines using said space, on the following basis: the total charge shall be billed to each airline equally in the proportion that its enplaned passengers bears to the total number of enplaned passengers using said space at the Airport for the month being billed.

Part II – Landing Fee, ARFF Fee and Security Charges

Landing Fees –\$1.10 per thousand pounds of maximum certificated gross landing weight (MCGLW).

ARFF Fees per annum 2008 - \$402,932

ARFF fees shall be prorated on the basis of Airline's percentage of total airline landed weights from the previous month based upon Airline's report of operations, as required in Section 5.B of this Agreement.

Security Charges per annum 2008 - \$84,663

Security charges shall be prorated on the basis of Airline's percentage of total airline enplaned passengers from the previous month based upon Airline's report of enplaned revenue passengers, as required in Section 5.B of this Agreement.

Part III - Communications Site

Communications Site - \$1,258.00

Lease of approximately four (4) sq. ft. of space plus such ancillary space as required for antenna, antenna transmission lines and control cables. Located in Bismarck Commercial Terminal Building 17, room 206. Commencing on September 1, 2015 and during the remainder of the term of this agreement, the annual rent payable for the Communications Site shall be adjusted each year by multiplying the annual rent payable in the next preceding year by a fraction, the numerator of which shall be the CPI (U) not

seasonally adjusted, published for the month of July of the year such agreement is made and the denominator shall be the CPI (U) not seasonally adjusted, published for the month of July of the calendar year in which the last preceding adjustment is made. The adjustment in September 2016 shall use the CPI (U) not seasonally adjusted, published for July 2015.

**Note:** During the period of air service October 1, 2014 – September 30, 2016 City will waive all landing, jet bridge, and terminal fees generated by the air service at Bismarck.

## SCHEDULE 2

### MINIMUM INSURANCE REQUIREMENTS

The Airline shall keep and hold the City of Bismarck, its elected and appointed officials, agents and employees, free and harmless from any and all claims and actions, loss, damage expense or cost including reasonable attorneys fees incidental to the investigation and defense thereof claimed by anyone by reason of injury, or death or damage to persons or property sustained as a result of the Airline's use of the Space and operations at the Airport, excluding only claims caused by the gross negligence or willful misconduct of the City, its elected and appointed officials, agents and employees, or the negligence of said parties in concert with a third party, provided, that, the City shall give the Airline prompt and reasonable notice of any such claim or action made or filed against it, and shall tender the defense thereof to Airline. It is specifically agreed, however, that the City at its own cost and expense, may participate in the legal defense of any such claim. Any judgment, final beyond all possibility of appeal, rendered against the City for any cause for which the Airline is liable hereunder shall be conclusive against the Airline as to liability and amount upon the expiration of the time for appeal.

Airline shall, at its own cost and expense, take out and maintain such insurance for the term of this Agreement as the Airline is required under the Workers' Compensation Act; and also take out and maintain such public liability as will protect the Airline, the City and its Contractors from any claims for damage to persons, property, etc., arising out of, occurring or caused by operations under this Agreement by the Airline or otherwise arising out of this Agreement. The policy will provide the amounts of insurance specified in this Schedule 2. Upon execution of this Agreement, certificates of insurance shall be provided by the City in a form acceptable to the City. Each certificate shall have endorsed thereon:

- A clause naming the City of Bismarck, its elected and appointed officials, agents and employees as additional insureds under the policies with respect to Airline's use of Bismarck Airport and the Space which are the subject of this Agreement.
- "No cancellation or change in the policy shall become effective until after thirty (30) days notice by registered mail to the Airport Manager, Bismarck Municipal Airport, P.O. Box 991, Bismarck, ND 58502." "Endeavoring to provide" thirty (30) days notice of cancellation or change in the policy is not acceptable.

Upon failure of Airline to furnish, deliver and maintain such insurance as provided for herein, the City

may obtain such insurance and charge Airline as additional rental, the cost of the insurance plus all appropriate administrative charges and incidental expenses associated with the transaction. Failure of Airline to take out and/or maintain, or the taking out and/or maintenance of any required insurance shall not relieve Airline from any liability under this Agreement, nor shall the minimum insurance requirements be construed to conflict with the obligations of Airline concerning indemnification. All insurance must be in effect and so continue during the life of this Agreement in not less than the following amounts:

- A. Workers' Compensation Unlimited - Statutory - in compliance with the Compensation Law of the State of North Dakota.
- B. Employer's Liability Coverage (Stop Gap) in the amount of \$1,000,000 per occurrence.
- C. Comprehensive Commercial Liability Insurance with a combined single limit of \$250,000,000 per occurrence. This insurance shall indicate on the Certificate(s) of Insurance the following coverages:

Commercial General Liability consisting of:

- Space/Operations
- Contractual Liability
- Independent Contractors
- Products and Completed Operations
- Broad Form Property Damage
- Personal Injury

- D. Disability Benefits: The Contractor shall provide proof of compliance with applicable disability benefits laws.
- E. Auto Liability Insurance with a combined single limit of \$25,000,000 per occurrence for all owned, non-owned and hired vehicles.

Location of operation shall be "Bismarck Airport, City of Bismarck, County of Burleigh, North Dakota".

Nothing herein contained shall prevent the Airline from taking out any other insurance for protection of its interest which it deems advisable or necessary.