

**OPERATING USE AND TERMINAL
LEASE AGREEMENT**

BETWEEN

THE CITY OF LOS ANGELES

AND

CONCESIONARIA VUELA COMPANIA DE AVIACION SAPI DE C.V.

AT

ONTARIO INTERNATIONAL AIRPORT



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--- Signatures



OPERATING USE AND TERMINAL LEASE AGREEMENT BETWEEN THE CITY OF LOS ANGELES DEPARTMENT OF AIRPORTS AND CONCESIONARIA VUELA COMPAÑÍA DE AVIACIÓN, S.A.P.I. DE C.V. FOR ONTARIO INTERNATIONAL AIRPORT

This USE AND LEASE AGREEMENT (this "Agreement"), made and entered into this ____ day of _____, 20____, by and between the City of Los Angeles, Department of Airports, a municipal corporation ("City"), acting by order of and through its Board of Airport Commissioners ("Board"), and Concesionaria Vuela Compañía de Aviación, S.A.P.I. de C.V., a corporation ("AIRLINE"),

RECITALS

WHEREAS, City is the owner of LA/Ontario International Airport ("Airport") and operates the same for the promotion, accommodation and development of air commerce and transportation; and

WHEREAS, AIRLINE engages in the air transportation business as a certified air carrier between Airport and various destinations, desires to use Airport landing facilities and Premises in connection therewith, and therefore desires to enter into this Agreement with City;

NOW THEREFORE, in consideration of the covenants and conditions hereinafter contained to be kept and performed by the respective parties, IT IS AGREED AS FOLLOWS:

ARTICLE I - DEFINITIONS

Section 1.01 Definitions.

- (a) Agreement. All provisions, terms and conditions of this Operating Use and Terminal Lease Agreement at Airport.
- (b) Aircraft. Any heavier-than-air vehicle used or designed for flight.
- (c) Airfield Cost Center. All areas shown in Exhibit A and identified as a Airfield Cost Center.
- (d) AIRLINE. Airline that has executed this Agreement.
- (e) Airline. Any person, entity, or persons, including corporations, that undertakes, whether directly or indirectly or by lease or any other arrangement, to engage in air commerce, that is certified by the Federal Aviation Administration ("FAA"), and that holds a current FAA certificate to transport air passengers or property for hire.



(f) Airlines' Rented Square Footage. The total for the airlines of their exclusive use space, preferential use space, and joint use space that is rented during such fiscal year at the residual rental rate as such rate is calculated per Article 5 of this Agreement.

(g) Airport. Ontario International Airport, as depicted on the Airport Layout Plan, shown in Exhibit B, as may be revised from time to time.

(h) Airport Discretionary Account. That account created under this Agreement for the purpose of the City's having capital funding available for projects without obtaining Majority-In-Interest approval, pursuant to Section 6.03(a), and which account is funded pursuant to Section 5.05(a)(5) and Section 5.06(a)(5).

(i) Air Transportation. The carriage by aircraft of persons or property as a common carrier for compensation or hire, or the carriage of mail, by aircraft, in commerce, as defined in the Federal Aviation Act of 1958, as amended. Fixed base operators at Airport acting as fixed base operators are not engaged in Air Transportation.

(j) Beneficial Occupancy. Beneficial Occupancy constitutes a use of facilities, or portions of facilities, after the facilities have been completed to the point where they are capable of accommodating their assigned purpose but not completed to the level required by the plans and specifications.

(k) Board. The Board of Airport Commissioners of the Department of Airports, City of Los Angeles.

(l) Airport Cost Center(s). Areas of Airport grouped together for the purpose of accounting for costs and revenues to be used in the calculation of Signatory Airline Rentals. The Cost Centers named in this Agreement, taken together, comprise the entire Airport, and are defined as the Airfield Cost Center and the Terminal Cost Center as both are shown on Exhibit A.

(m) Cost Center Requirement. The sum of the cost elements as detailed in Article V for a given Cost Center.

(n) Department. Department of Airports of the City of Los Angeles managed and controlled by Board of Airport Commissioners.

(o) Exclusive Use Space. The space leased by City to AIRLINE on an exclusive use basis as more fully set forth on Exhibit C, as the same may be amended from time to time.

(p) Executive Director. The General Manager of the City of Los Angeles Department of Airports, or his designated representative.



(q) Joint Use Space. The space leased or used jointly by AIRLINE and one or more other airlines, as more particularly set forth on Exhibit C, as the same may be amended from time to time.

(r) Joint Use Formula. The formula used to prorate eighty percent (80%) of the specified charge for Joint Use Space according to the ratio of the number of each airline's (both Signatory Airlines and Non-signatory Airlines) deplaning passengers at the Airport during the most recent completed quarter for which such information is available to the total number of deplaning passengers of all airline users of the service or space during that same quarter. The remaining twenty percent (20%) is to be prorated equally among all airline users (both Signatory Airlines and scheduled Non-signatory Airlines) of the space.

(s) Landing. The actual landing of an Aircraft at Airport, whether such landing be a planned or an emergency, but shall not refer to an emergency landing immediately made following take-off from Airport.

(t) Maintenance and Operation Expenses. As defined in the Master Trust Indenture, the total operation and maintenance expenses of or allocable to the Airport, as determined in accordance with generally accepted accounting principles, excluding depreciation and amortization.

(u) Ontario Airport Airline Affairs Committee. That committee consisting of one representative from each Signatory Airline, with each representative having the primary responsibility for his Signatory Airline's business affairs at the Airport.

(v) Ontario International Airport Maintenance and Operation Reserve Account (M&O Reserve Account). The account established in accordance with Section 239.8 of the City Charter, from which funds may be transferred to the Revenue Account if there is a shortfall in that account, provided, however, that such sum(s) transferred shall be returned to the M&O Reserve Account from the Revenue Account. The balance in the M&O Reserve Account shall equal not less than 25%, but not more than 50%, of the budgeted Maintenance and Operation Expenses for the then-current Fiscal Year.

(w) Ontario Bond Reserve Fund (Reserve Fund). The fund established pursuant to the Master Trust Indenture, and which shall contain, for each series of revenue bonds issued, a reserve account with a balance equal to the least of (i) the maximum annual debt service for that series, (ii) 10% of the original principal amount of such series, less the amount of original issue discount with respect to that series if such original issue discount exceeds 2% at the time of the original sale, and (iii) 125% of the average annual debt service for such series.

(x) Ontario International Airport Revenue Account (Revenue Account). The account established in accordance with Section 239.8 of the City Charter into which all Revenues shall be deposited.

(y) Master Trust Indenture. The Ontario Master Trust Indenture dated May 15,



1996, as such may be amended collectively with any Supplemental Indentures, not inconsistent with the terms of this Agreement unless otherwise agreed to by an MII.

(z) Maximum Gross Landing Weight (sometimes herein "MGLW"). The FAA Certificated Maximum Gross Landing Weight or actual gross landing weight of an Aircraft if no such specification exists. In computing fees prescribed herein, except for Aircraft weighing less than 25,000 pounds, 500 pounds or any larger part of 1,000 pounds shall be counted as if a whole 1,000 pounds, and any smaller part shall be disregarded.

(aa) MOU. The Memorandum of Understanding executed by airlines and City, dated October 11, 1995, setting forth the agreements and understandings for the use and lease of Airport facilities.

(bb) Net Cost Center Requirement. The Cost Center Requirement less allowable credits as detailed in Article V of this Agreement.

(cc) New Terminal. All new construction of any terminal passenger module.

(1) New Terminal - Phase I. The newly constructed first two module passenger terminals.

(2) New Terminal - Phase II. The new construction of a third module passenger terminal.

(3) New Terminal - Phase III. The new construction of a fourth module passenger terminal.

(dd) Non-Signatory Airline. Any airline providing scheduled or unscheduled service to the Airport which is not a Signatory Airline.

(ee) Preferential Use Space. The space leased or used preferentially by AIRLINE, as more particularly set forth on Exhibit C, as the same may be amended from time to time.

(ff) Preferential Gate. Any gate area intended to be used preferentially by AIRLINE. A Preferential Gate shall consist of a holdroom, its adjacent apron and aircraft parking position and corresponding loading bridge.

(gg) Premise(s). The area of space leased or used by AIRLINE in New Terminal as shown in Exhibit C.

(hh) Public Aircraft Parking Areas. Those areas which are designated by the Executive Director for the public parking of Aircraft as shown in Exhibit D; subject however, to changes therein at the discretion of the Executive Director or Board upon reasonable notice.



(ii) Ontario Airport Revenues. Shall mean, except to the extent specifically excluded herefrom, all income, receipts, earnings and revenues received by the Department from Airport, as determined in accordance with generally accepted accounting principles as in effect from time to time, including, but not limited to; (1) all rates, tolls, fees, rentals, charges and other payments made to or owed to the Department for the use or availability of property or facilities at Airport; (2) all amounts received or owed from the sale or provision of supplies, materials, goods and services provided by or made available by the Department at Airport; (3) all rental or business interruption insurance proceeds and Net Proceeds (subject to the exclusion set forth below) received by or entitled to be received by the Department from the possession, management, charge, superintendence and control of Airport; and (4) all income, receipts and earnings from the investment of amounts held in the Ontario Revenue Account and all earnings credited to the Ontario Bond Reserve Fund. The following, including any investment earnings thereon, are specifically excluded from Ontario Airport Revenues: (A) any amounts received by the Department from the imposition of ad valorem taxes, (B) gifts, grants and other income which are restricted by their terms to purposes inconsistent with the payment of debt service on the Bonds, (C) Net Proceeds and other insurance proceeds, to the extent the use of such Net Proceeds or other proceeds is restricted by the terms of the policy under which they are paid to a use inconsistent with the payment of debt service on the Bonds, (D) except as provided in Section 4.07 of the Ontario Master Trust Indenture, Ontario Special Facilities Revenue, (E) except to the extent specified in any Supplemental Indenture Passenger Facility Charge, and (F) all revenues of the Airport System not related to Ontario International Airport.

(jj) Revenue Landings. All landings of Aircraft at Airport except the following:

(1) Landings of Aircraft owned and operated by agencies of the U.S. Government; and

(2) Ferry Landings. Landings of Aircraft without revenue passengers and/or cargo on board operated by an air carrier other than a non-scheduled or on-demand air taxi operator, at Airport for the purpose of positioning Aircraft to enplane passengers and/or cargo for originating a flight.

(kk) Rules and Regulations. Those nondiscriminatory rules and regulations promulgated by City or the City of Ontario for the use of the Airport as same may be amended, modified, or supplemented from time-to-time.

(ll) Signatory Airline(s). Any Signatory Passenger Carrier or Signatory Cargo Carrier who has executed an Agreement.

(mm) Signatory Cargo Carrier. An Air Transportation company which is primarily in the business of transporting by air property and mail, which company has an agreement to lease appropriate related land or space from Airport, or has executed a substantially similar agreement to this Agreement, which obligates said company to pay rates, fees and charges with respect to the Airfield Cost Center.



(1) If, at the time of execution of this document there is no space available to lease from Airport, Cargo Carrier may pay signatory fees until space becomes available at which time said company must lease appropriate related land or space, or pay non-signatory fees.

(nn) Signatory Passenger Carrier. An Air Transportation company which is primarily in the business of transporting by air passengers, including code sharing or wholly-owned subsidiaries of such airlines, providing Air Transportation to and from the Airport that have executed this Agreement with City covering the lease, use, and occupancy of facilities at the Airport. A Signatory Passenger Carrier Airline (other than a code sharing or wholly-owned subsidiary of a signatory airline or such airline's parent corporation) must lease Exclusive Use Space or Preferential Use Space from Airport in the passenger terminal building.

(1) If, at the time of execution of this document there is no space available to lease from Airport, Passenger Carrier may pay signatory fees until space becomes available at which time said company must lease appropriate related land or space, or pay non-signatory fees.

(oo) Terminal Cost Center. All areas shown in Exhibit A and identified as Terminal Cost Center.

(pp) Majority-In-Interest. (1) With respect to the Airfield Cost Center, any combination of the Signatory Passenger Carriers and Signatory Cargo Carriers who together have landed more than fifty percent (50%) of the combined total of the Signatory Passenger Carriers' and Signatory Cargo Carriers' revenue landed weight at the Airport (as reported by Air Transportation companies, or estimated by the City), during the most recent six (6) full month period for which statistics are available, and which represent more than fifty percent (50%) in number of the combined total of said Signatory Passenger Carriers and Signatory Cargo Carriers with such landed weight; (2) with respect to the Terminal Cost Center, any combination of the Signatory Passenger Carriers who together account for more than fifty percent (50%) of the Enplaned Passengers of the Signatory Passenger Carriers during the most recent six (6) full month period for which statistics are available, and which represent more than fifty percent (50%) in number of said Signatory Passenger Carriers having such Enplaned Passengers.

ARTICLE II – TERM

Section 2.01 Basic Term. The term of this Agreement shall be for the period commencing _____, 2014 and ending September 30, 2024, subject to earlier termination as provided below or in Article XI.

Section 2.02 Early Termination. AIRLINE may elect to cancel this Agreement on October 1, 2014 or October 1, 2019 ("Termination Dates") by giving the Airport at least 6 months prior written notice of such termination and provided AIRLINE discontinues service at the Airport on or before that date. If AIRLINE recommences service at the Airport within 6



months after the Termination Date, this Agreement shall revive retroactively to the extent its Premises were not otherwise leased during that period.

With mutual consent of both AIRLINE and City, this Agreement may be terminated at any time during the term hereof provided that the City can lease the AIRLINE's Premises to another airline(s) on the same terms and conditions.

Section 2.03 Space Reallocation. On October 1, 2014 or October 1, 2019, the City may develop a space reallocation plan, which could include the reassignment of AIRLINE's Exclusive or Preferential Space. If the City intends to develop a space reallocation plan, it must provide all Airlines using passenger terminal with a minimum of six (6) months' prior written notice of its intent and preliminary reallocation proposal. Within 30 days of proposed reallocation notice, City shall convene a meeting of such Airlines to discuss the reallocation proposal. Within ninety days following meeting, Airlines shall review, discuss, and provide comments and recommendations regarding reallocation proposal. If mutual consent is not reached among the City and all the Airlines, City shall have discretion to implement a reallocation plan.

(a) Replacement Space. In the event of reallocation, the Airport will provide any relocated Signatory Airline with a location and facility as comparable as possible to its existing premises.

(b) Reallocation Funding. The full and reasonable costs of relocating AIRLINES and the costs of preparing any space into which a Signatory Airline is to be relocated shall be paid by the City to be recovered from all terminal users through terminal rentals, unless the reallocation is being implemented primarily for the benefit of one or two airlines, in which case such costs shall be the responsibility of that (those) AIRLINE(s). No party shall be liable for any loss of business resulting from any reallocation.

ARTICLE III – PREMISES

Section 3.01 Leased Premises. The City, in consideration of the compensation, covenants and agreements set forth herein to be kept and performed by AIRLINE, hereby leases to AIRLINE, upon the conditions set forth in this Agreement, the Premises as described in Exhibit C. In the event that City and AIRLINE, by mutual agreement, add or delete space to or from, the Premises of AIRLINE, Exhibit C as applicable, shall be revised and amended by the parties with the approval of Board, to accordingly reflect such addition or deletion and the revised exhibits shall be incorporated into the Agreement. Space added to the AIRLINE's Premises shall be subject to all of the terms, conditions, requirements, and limitations of this Agreement and AIRLINE shall pay to City all rentals, fees, and charges applicable to such additional space in accordance with the provisions of this Agreement. Notwithstanding the foregoing, a change in the Agreement with respect to the addition or subtraction of leased space of an amount less than 10,000 square feet, or under 50% of the present leased area, whichever is greater, shall be effective by amendment upon the written consent of the Executive Director.



Section 3.02 Measurement of Space. All measurements to determine the area of space leased or used hereunder, shall be made from the interior of external walls and from centerline to centerline of each interior wall, or, in the absence of such interior wall, the point where said centerline would be located if such interior wall existed. It is furthermore agreed that the Premises, as defined in the Agreement, shall be deemed to exclude (and appropriate deduction shall be made for) (*i.e.*, Airline's rent or other payment obligations shall not be based on) elevator shafts, pipe shafts, vertical ducts with their enclosing ducts, mechanical closets, electrical closets, air conditioning, fan rooms and any portion of public stairs or public restrooms.

ARTICLE IV -- USE OF AIRPORT AND FACILITIES

Section 4.01 New Terminal - Phase I Implementation. Upon completion of the New Terminal - Phase I at Airport, all domestic passenger departures and arrivals will be conducted at the New Terminal - Phase I. The New Terminal will not include, as originally constructed a Federal Inspection Service facility. International departures may be operated at the International Arrivals Terminal or at the New Terminal - Phase I, as determined appropriate by the Executive Director. Until a new Federal Inspection Service facility is constructed all International arrivals except pre- cleared arrivals shall be operated at International Terminal. Following the opening of the New Terminal - Phase 1, the existing terminals at Airport ("Existing Terminals One and Two") may be demolished. If the existing terminals are not demolished, they may be utilized for aviation-related (not including scheduled passenger service), uses or other purposes provided the fee structure is equivalent to that at the New Terminal - Phase 1 for like operations.

Section 4.02 Airfield and Apron. Except as provided elsewhere herein and subject to the Executive Director's consent and applicable laws and ordinances, AIRLINE shall be entitled to the use, for the sole purpose of conducting air transportation in common with others authorized so to do, of Airport together with all facilities, equipment, improvements, and services which have been or may hereafter be provided at or in connection with the Airport from time to time, including without limiting the generality hereof, the landing field, any extensions thereof or additions thereto, roadways, runways, ramps, taxiways, sewage and water facilities, flood lights, landing lights, beacons, control tower, signals, radio aids, and all other conveniences for flying, landings, and takeoffs of Aircraft of AIRLINE. These rights are as follows:

(a) The non-exclusive right to use, in common with others, the access space to the Aircraft loading aprons and the taxiways, runways and air navigation aids of Airport for the purpose of the landing and taking off of its Aircraft.

(b) The non-exclusive right to use, on a secondary use basis with others, such gate position or positions as the Executive Director shall from time to time direct to facilitate the loading and unloading of passengers.

(c) The right to service AIRLINE's Aircraft and other equipment operated by AIRLINE with gasoline, oil, greases, lubricants, and other fuel or propellant, by reasonably necessary or convenient means in areas designated by the Executive Director



for this purpose. AIRLINE may procure all aviation fuels and lubricants which are to be delivered to its Aircraft on Airport from those oil companies and fuel suppliers of AIRLINE's choice, provided such companies, suppliers or into-plane fueling companies are authorized by City to transact business on Airport.

(d) The right to repair, maintain, and park Aircraft and other equipment operated by AIRLINE on the aprons; provided, however, that such repair, conditioning, maintenance shall be limited to those activities commonly considered routine ramp servicing. Nothing contained herein, however, shall be construed to prohibit AIRLINE from doing, performing and carrying on its own maintenance, service, repair, overhaul and/or fueling work upon those locations at Airport leased by it from City for such purpose.

(e) AIRLINE, if an air carrier of cargo, shall have the right to use only those facilities at Airport suitable for cargo operations as may be designated by the Executive Director.

(f) The right to service, by AIRLINE, or its appointed agents or contractors, AIRLINE's Aircraft with foods and beverages or other supplies and materials in areas designated by the Executive Director for this purpose. Said contractors or agents shall conform to performance standards; lease, permit and license requirements; and all Airport rules and regulations established by the Executive Director, Board or City.

(g) The right to conduct ground training at AIRLINE's leased premises of personnel in the service or employ of AIRLINE at Airport in the operation of the AIRLINE's Air Transportation business.

(h) The right to park Aircraft on areas of the apron or other locations as designated from time to time by the Executive Director for such common use.

(i) The right to operate and maintain such mobile communications equipment as may be reasonably necessary or convenient for operation.

(j) The right to conduct any operations or activities other than those enumerated above, reasonably related to the landing, taking-off, flying, moving, loading, unloading, or ramp servicing of Aircraft or the movement of passengers, cargo and/or property which are reasonably necessary or convenient to the conduct by AIRLINE of its Air Transportation business; provided, however, that all such operations and activities shall be subject to the reasonable prior, written approval of the Executive Director and to the securing of such written licenses, permits, or concession agreements as may be required by City.

(k) The right to provide services for other airlines, including ground handling services under a separate ground handling agreement provided that AIRLINE has first



received a permit for ground handling services from the City and so long as such services entail activities and operations permitted with respect to the AIRLINE.

Section 4.03 Premises

(a) Use of Premises

(1) AIRLINE shall not use the Premises, nor any portion thereof, for any purpose other than that set forth in this Agreement without first having had and obtained the written consent of the Executive Director.

(2) There is hereby reserved to City, 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 operating on Airport. AIRLINE agrees not to make any claim or institute legal action against City under any theory of recovery for any interference with AIRLINE's use and enjoyment of the demised Premises which may result from noise emanating from the operation of aircraft to, from, or upon Airport except for claims or actions brought by third parties against AIRLINE arising from City's operation of Airport.

(3) AIRLINE, by executing this Agreement, agrees for itself and its successors and assigns that it will not make use of the Premises in any manner which might interfere with the landing and taking off of aircraft from Airport or otherwise constitute a hazard to such operations. In the event the aforesaid covenant is breached, City reserves the right to enter upon the Premises hereby leased and cause the abatement of such interference at the expense of AIRLINE's upon notice and failure to cure.

(4) AIRLINE may use its Premises for any and all purposes reasonably necessary, convenient or incidental to the conduct by AIRLINE of its Air Transportation business, including the following purposes:

(a) The installation, maintenance, and operation of customer relations, security, and waiting room facilities and equipment; reservations offices, administrative offices, operations offices, lockers, restrooms, and related facilities; and baggage, cargo and mail-handling and storage facilities and equipment;

(b) AIRLINE, prior to commencing any new construction or improvement to or upon its Premise(s) or on the Airport that will interfere with the operations of telecommunications concessionaires, (i.e., affecting public pay telephones, pre-paid calling card dispensing machines or locations, public facsimile service machines or locations, public cellular telephone rental machines or locations), must first obtain the approval of the Executive Director. If in the opinion of the Executive Director such approval cannot be given, such improvements will be



disapproved. Any telecommunications' interference must be mutually agreed upon between and by the AIRLINE or other tenant and the telecommunications concessionaire affected by the forthcoming construction. Any telecommunications equipment or service damaged during construction by AIRLINE shall be fully reimbursed, replaced, or paid for by AIRLINE directly to the owner of the telecommunications equipment or improvement;

(c) AIRLINE prior to commencing any new construction on its Premises that will interfere with telephones, underground communications cable infrastructure, require radio or other airwave transmission media capability, or requires installation of communications conduit and cable/wire pulling must obtain the prior written approval of the Executive Director (or his authorized representative). Detailed plans and schedules shall be submitted approximately 60 days prior to the proposed construction for review;

(d) The enplaning, deplaning and manifesting of passengers, including the handling of reservations, ticketing, billing, baggage, express cargo, property, and mail;

(e) The installation, maintenance, and operation of radio, communications, information, and data processing equipment;

(f) The location of passenger clubs and lounges upon approval by the Executive Director;

(g) The training of AIRLINE's personnel at Airport in the operation of the AIRLINE's Air Transportation business;

(h) The maintenance and operation of facilities, equipment and other activities reasonably necessary or convenient to carry out any or all of the foregoing;

(i) Nothing in this Agreement shall be construed to permit AIRLINE to conduct, allow, or operate on the Premises the sale of air travel insurance; public restaurants; merchandising operations; shuttle, bus or transportation business; rent-a-car operations; or communication or telephone, facsimile, duty free, or other revenue producing concession or any business other than AIRLINE's Air Transportation business;

(j) AIRLINE may install vending machines for its employees in its non-public exclusive areas when approved by the Executive Director; and

(k) Duty Free Business. City may grant one or more concessionaires the exclusive right to sell and/or deliver duty free merchandise at Airport.



(5) Ownership of Improvements. During the term of this Agreement, title to all structures, improvements, facilities, or alterations constructed or installed by AIRLINE shall remain with AIRLINE. Upon the termination of this Agreement, said structures, improvements, facilities, or alterations, other than machines, equipment, trade fixtures, and similar installations of a type commonly removed without structural damage to the Premises, shall become a part of the land upon which they are constructed, or of the building to which they are affixed, and title thereto shall thereupon vest in City. In the event the removal of any fixture damages any part of the Premises, AIRLINE shall repair such damage and restore the Premises to as good condition as the same was in prior to said damage, reasonable wear and tear excepted.

(6) City's Right of Access and Inspection. Upon a reasonable prior notice to an appropriate AIRLINE official (except in case of emergency), City, by and through its officers, employees, agents, representatives, and contractors, shall have the right at all reasonable times and in a reasonable manner to enter upon the Premises for the purpose of inspecting the same or for doing any act or thing which City may be obligated or have the right to do under this Agreement, or otherwise, and no abatement of rental shall be claimed by or allowed to AIRLINE by reason of the exercise of such rights. In the exercise of its rights, City, its officers, employees, agents, and contractors shall not unreasonably interfere with the conduct of AIRLINE's business on the Premises as herein authorized.

Section 4.04 Communications Equipment

(a) AIRLINE may install, maintain and operate, at no cost to the City, alone or in conjunction with any other airline, radio communication, computer, meteorological and aerial navigation equipment and other similar facilities as may be reasonably necessary or convenient to the conduct by AIRLINE of an Air Transportation business at such location or locations at Airport; provided, however, that such installations shall be subject to prior written approval of the Executive Director. No antenna will be installed without prior, written approval of the Executive Director.

(b) All electrical circuits (high or low voltage) will comply with all applicable building and electrical code requirements.

Section 4.05 Employee Parking. Airport shall provide and AIRLINE shall have the right to the use vehicle parking facilities, for its employees employed at Airport. Such facilities shall be located in an area designated by the City. City reserves the right to charge AIRLINE and/or its employees reasonable fees not to exceed approximate actual net costs, for use of such facilities and to regulate such use.

Section 4.06 Airport Access. AIRLINE shall, subject to approval or regulation of City, have the right and privilege over the roads, ways and public areas of Airport for ingress to and egress from its Premises.



Nothing in this Section or this Agreement shall be construed as in any way limiting the general powers of City to fully exercise its governmental and proprietor functions regarding the granting of any franchise, license, permit or consent to AIRLINE to operate motor coaches, buses, taxicabs or other vehicles carrying persons or property for hire or consideration over the public streets of City, or the roads, ways or public areas of Airport.

Nothing herein shall prohibit City from charging reasonable fees necessary in regulating access.

Section 4.07 Restrictions, Rules and Regulations. The exercise of the use and lease rights under this Agreement shall be subject to:

(a) Any and all applicable rules, regulations, orders and restrictions which are now in force or which may hereafter be adopted by City with respect to the operation of Airport, including City's noise regulations and any and all future noise regulations.

(b) Any and all applicable laws, ordinances, statutes, rules, regulations or orders of any governmental authority, federal, state or local, lawfully exercising authority over Airport or AIRLINE's operations conducted hereunder.

(c) Any and all applicable local, state and federal laws and regulations relative to services, facilities, and accommodations for disabled persons.

(d) Any and all orders, directives, conditions, rules or regulations issued, given or imposed by Executive Director or Board with respect to the use of the roadways, driveways, curbs, sidewalks, buildings, parking areas, terminal facilities, runways and taxiways in and about said Airport.

Nothing herein shall be deemed to impair AIRLINE's right to contest any such rules, regulations, orders, restrictions, directives or conditions as being inconsistent with the terms of this Agreement or federal, state or local law. City shall give AIRLINE reasonable written notice of proposed changes to rules and regulations, and of final adoption of such changes.

Section 4.08 Non-Interference. AIRLINE shall conduct its operations in, on or about Airport in such manner as to reduce as much as is reasonably practicable, considering the nature and extent of said operations, any and all activities which interfere unreasonably with the use of other properties at or near Airport, including, but not limited to, the emanation of noise, vibration, movements of air, fumes and odors.

Section 4.09 Aircraft Washing. AIRLINE shall only wash aircraft and equipment in areas designated by Executive Director.

Section 4.10 Preferential Use of Gates. AIRLINE shall have the priority right to use its Preferential Gate(s), and shall make its Preferential Gate(s), when not in active use, available for secondary use by other airlines. AIRLINE shall have the right to assess approved charges to



such Secondary User. Secondary user shall indemnify primary users for any property damage to loading gate or related facility.

The Signatory Passenger Airlines shall establish a Gate Use Committee to develop any necessary criteria (including gate use fees) for the availability and use of Preferential Gates by Secondary Users and the resolution of any unsatisfied requests for secondary use of Preferential Gate(s). City shall retain the right to make a final decision regarding any Gate Use Committee action.

When an Airline is unable to obtain use of a gate(s) from a Preferential Gate lessee or from City, it shall request use of a gate(s) from the Gate Use Committee. If unsatisfied, it may appeal any decision or indecision of the Gate Use Committee to the Airline Airport Affairs Committee for resolution. If still unsatisfied, it may appeal to the City for final resolution. If the City directs a secondary use, it shall collect the appropriate fees and credit same to the Preferential Gate lessee.

ARTICLE V -- RENTS, FEES AND CHARGES

Section 5.01 General Commitment.

(a) Airline agrees to pay to City, without deduction, all applicable landing fee, rentals, fees, and charges during the term of this Agreement for its use of the facilities, rights, licenses, and privileges granted hereunder.

(b) City will not seek retroactive review of debts and obligations other than that allowed by law.

(c) City agrees that it shall not, without making the same terms, benefits, and concessions available to AIRLINE, enter into a lease for land or facilities within the Airport with another airline on financial terms which, taken as a whole, are more favorable to such other airline than the rates, fees, charges, concessions, and other provisions extended to AIRLINE under the Agreement, or on business or operational terms which, taken as a whole, are more favorable to such other than those contained in the Agreement.

(d) City shall operate Airport in a manner which City believes will produce revenues from concessionaires, tenants, and other users of Airport in amounts which would be produced by a reasonably prudent operator of an airport of substantially similar size, use, and activity, with due regard for the interests of the public.

(e) From time to time the City may construct "special facilities" (for example, tunnels required to accommodate curbside baggage conveyors) in the New Terminal for a certain Signatory Airline(s). The costs of any such special facilities shall be recovered from the Signatory Airline(s) for whom the special facilities were constructed, and the charges assessed by the City to recover the costs shall be considered Ontario Airport Revenues allocable to the Terminal Cost Center.



Section 5.02 Effective Date of Adjustments. The terminal rental rate and the landing fee rate may be adjusted annually, semi-annually, or at other intervals as may be required to meet the rate covenant established by Section 4.04 of the Ontario Master Trust Indenture during the term of this Agreement as hereinafter set forth consistent with the provisions of Section 5.07. Such adjustments, as illustrated in Exhibit E, shall be effective on the first day, or the first day of the seventh month, of the Fiscal Year for which they apply, or on the first day of any month mutually agreed upon by the City and Airlines. If such adjustments are not calculated and imposed prior to the commencement of the Fiscal Year, they may be made retroactively. Such adjustments shall apply without the necessity of formal amendment to this Agreement.

Section 5.03. City/Airline Records.

(a) City shall maintain appropriate accounting records that document the following items for each Airport Cost Center: Revenue, Maintenance and Operation Expenses, and debt service. The allocation of these items to Cost Centers shall be made in accordance with Exhibit E.

(b) City shall further maintain records evidencing the allocation of capital improvement expenditures and capital funding sources (federal grants, PFC's, revenue bond debt, other) to each Airport Cost Center.

(c) Record Keeping. AIRLINE shall, at all times during the term of this Agreement, maintain and keep permanent books, ledgers, accounts or other records wherein are kept all entries accurately reflecting the total number of revenue and non-revenue landings of its Aircraft at Airport, the Maximum Gross Landing Weight of each such Aircraft and the number of Aircraft arrivals at Airport. In addition, AIRLINE shall keep and maintain at Airport a daily log of all revenue and non-revenue Aircraft landings of its Aircraft to and from said Airport, showing the make, type (including model designation), registration and Maximum Gross Landing Weight, arrival and departure time (local time) of each such Aircraft; and daily parking showing the designated area, and time parked. AIRLINE shall also maintain a copy of the appropriate page of the current FAA approved Flight Manual showing the Maximum Gross Landing Weight (MGLW) for each Aircraft operated by AIRLINE at Airport. The Executive Director may from time to time examine, audit and copy any and all of AIRLINE's books, logs, records, reports and accounts of its business authorized herein to be conducted and reasonably related to this Agreement. Said books, logs, records, reports and accounts shall be retained by AIRLINE until the information therein has been audited or examined by City and the results of said audit or examination have been agreed to by both parties or for three (3) years, whichever occurs first.

Required records shall be maintained at a location within Los Angeles County or San Bernardino County and shall be made available to the Executive Director at all reasonable business hours. Airline may elect to maintain required records at a location outside Los Angeles County or San Bernardino County, however, in doing so AIRLINE accepts responsibility for reimbursing City for all travel and incidental expenses incurred in connection with an audit of said books, records, reports and accounts.



It is agreed that examination of books, logs, records, reports and accounts of AIRLINE will be made in accordance with generally accepted auditing standards applicable in the circumstances and that as such, said examinations do not necessarily require a detailed audit of all transactions. Testing and sampling methods may be used in verifying reports submitted by Airline. Deficiencies ascertained by the use of such testing and sampling methods by applying the percentages of error obtained from such testing and sampling to the entire period of reporting under examination will be binding on Airline and to that end shall be admissible in court to prove any amounts due City from Airline, provided, however, this shall not prevent Airline from producing all appropriate records and figures to rebut the sampling and application period or method. In the event any deficiency in the amount of ten percent or greater of the compensation payable to City hereunder is ascertained, AIRLINE agrees to pay City for the entire cost of the audit as well as any other deficiencies, payments and liquidated damages due under this or any other provision of this Agreement within thirty (30) days of receipt of City's invoice.

(d) Invoicing and Reporting. AIRLINE shall furnish to the City on or before the tenth (10th) day of each month, without demand or invoice, an accurate report of AIRLINE's operations at Airport during the preceding month, setting forth all data necessary to calculate the landing fees and other charges due under this Agreement, including: (i) the number(s) of domestic and international Revenue Landings by type of Aircraft and tail number, MGLW for each type of Aircraft, and the total landed weight of revenue and non-revenue landings; (ii) the number(s) of domestic and international enplaned and deplaned revenue passengers; and (iii) the amounts in pounds of domestic and international cargo, freight, and mail enplaned and deplaned. Statistical information supplied shall include such similar information for flights of other airlines ground-handled or otherwise accommodated by AIRLINE if such airlines do not file an activity report directly with the City. AIRLINE shall inform City of any ground-handled or otherwise accommodated airlines which are not reported on AIRLINE's activity report.

(e) Late Reports. If AIRLINE fails to furnish City with the report required in Section 5.06(b), amounts used in the calculation of rates and charges shall be 120 percent of the most recent month for which the data is available. Any adjustment in the rates and charges so computed shall be calculated only after an accurate report is delivered to the City. Adjustments for overpayments or deficiencies shall be reflected in subsequent invoices.

(f) Self-Invoicing of Landing Fees. AIRLINE shall calculate the amount of landing fees due City by multiplying the total MGLW in thousand pounds of AIRLINE's Revenue Landings by the applicable landing fee rate in effect at the time of the Aircraft operations. Landing fees shall be due and payable on the thirtieth (30th) day of each month for the prior month's landings and may be made by electronic transfer.

(g) Verification. The acceptance by City of any payment made by AIRLINE shall not preclude City from verifying the accuracy of AIRLINE's reports or from recovering any deficiencies in payment arising from incorrect reporting by AIRLINE.



(h) Right to Contest. Nothing in this Agreement shall prevent AIRLINE from contesting the validity and/or applicability of City's fees and charges. During the period of any such contest, however, AIRLINE shall pay City all such fees and charges, but may indicate that payment is being made under protest. If any fees and charges as found to be non-valid or non-applicable, City will refund such fees with interest.

Section 5.04. Rates and Charges Forecast.

(a) On or before June 1 of each Fiscal Year, City shall submit to AIRLINE its proposed rates and charges forecast for the succeeding Fiscal Year, including:

- (1) The annual Maintenance and Operation Expense;
- (2) The annual debt service;
- (3) Revenues from all sources other than Signatory Airline landing fees and terminal rentals;
- (4) Any proposed capital improvements proposed to be undertaken;
- (5) The square footage of all Exclusive Use, Preferential Use, and Joint Use Space;
- (6) Estimated Signatory Airline landed weight; and
- (7) A preliminary calculation of the terminal building rental rate and the landing fee rate.

(b) The Executive Director shall then call a meeting of Signatory Airlines to consult with them regarding the proposed rates and charges forecast.

(c) City shall then approve the final rates and charges forecast following consultation with the Signatory Airlines. The Executive Director shall promptly furnish AIRLINE with a copy of the final rates and charges forecast which shall set the terminal building rental rate and the landing fee rate that shall be effective for the applicable Fiscal Year.

(d) If, for any reason, the rates and charges forecast has not been approved within ninety (90) days from the start of any Fiscal Year, the terminal rental rate and landing fee rate in effect during the preceding Fiscal Year shall continue in effect until the new rates and charges forecast has been approved by City and City has calculated the terminal rental rate and the landing fee rate in accordance therewith. The new terminal building rental rate and landing fee rate shall then be made effective retroactive to the first day of such Fiscal Year.



(e) The first Fiscal Year of this Agreement may be only a partial year, depending on the date of beneficial occupancy. In that case, City shall prorate the items of Section 5.04(a) and calculate the terminal rental rate and landing fee rate accordingly.

Section 5.05. Calculation of Terminal Rental Rate.

(a) The Terminal Cost Center Requirement for the succeeding Fiscal Year shall be calculated by totaling the following amounts:

- (1) The Maintenance and Operation Expenses allocated to the Terminal Cost Center;
- (2) The debt service costs allocated to the Terminal Cost Center;
- (3) Fifty percent (50%) of any amount required to be deposited into any reserve account within the Reserve Fund to maintain the required balances in the reserve accounts;
- (4) Debt service coverage, equal to twenty-five percent (25%) of the amount in item (2), less the amount funded for debt service coverage in prior Fiscal Years;
- (5) Fifty percent (50%) of the required deposit to Airport Discretionary Account, which shall be the lesser of \$1.5 million or \$6 million minus the existing balance in the Airport Discretionary Account; subject to the adjustment permitted by Section 6.03(a).
- (6) Fifty percent (50%) of the required deposit to the Maintenance and Operations Reserve Account;
- (7) Amounts allocable to the Terminal Cost Center for capital items;
- (8) The estimated amount of any assessment, judgment, or charge (net of insurance proceeds) to become payable by City relating directly to the Airport or its operation and allocable to the Terminal Cost Center; and
- (9) Any other expenses applicable to the Terminal Cost Center.

(b) The Net Terminal Cost Center Requirement shall equal the Terminal Cost Center Requirement less the following:

- (1) Ontario Airport Revenues, not including Signatory Airline terminal rentals, allocable to Terminal Cost Center; and



(2) Any passenger facility charge receipts that might be used by City to pay revenue bond debt service allocable to the Terminal Cost Center.

(c) The terminal rental rate (per square foot per year) shall then be calculated by dividing the Net Terminal Cost Center Requirement by the total space (Exclusive Use, Preferential Use, and Joint Use Space) leased to the Signatory Airlines.

(d) AIRLINE's terminal rentals shall equal the area of AIRLINE's Premises times the terminal rental rate.

Section 5.06. Calculation of Landing Fee Rate.

(a) The Airfield Cost Center Requirement for the succeeding Fiscal Year shall be calculated by totaling the following amounts:

(1) The Maintenance and Operation Expenses allocated to the Airfield Cost Center;

(2) The debt service costs allocated to the Airfield Cost Center;

(3) Fifty percent (50%) of any amount required to be deposited into any reserve account within the Reserve Fund to maintain the required balances in the reserve accounts;

(4) Debt service coverage, equal to twenty-five percent (25%) of the amount in item (2), less the amount funded for debt service coverage in prior Fiscal Years;

(5) Fifty percent (50%) of the required deposit to the Airport Discretionary Account, which shall be the lesser of \$1.5 million or \$6 million minus the existing balance in the Airport Discretionary Account; subject to the adjustment described in Section 6.03(a).

(6) Fifty percent (50%) of the required deposit to the Maintenance and Operation Reserve Account.

(7) Amounts allocable to the Airfield Cost Center for capital items.

(8) The estimated amount of any assessment, judgment, or charge (net of insurance proceeds) to become payable by City relating directly to the Airport or its operation and allocable to the Airfield Cost Center; and

(9) Any other expenses applicable to the Airfield Cost Center.

(b) The Net Airfield Cost Center Requirement shall equal the Airfield Cost Center Requirement less the following:



(1) Ontario Airport Revenues, not including Signatory Airline landing fees, allocable to the Airfield Cost Center; and

(2) Any passenger facility charge receipts that might be used by City to pay revenue bond debt service allocable to the Airfield Cost Center.

(c) The landing fee rate (per thousand pounds) shall then be calculated by dividing the Net Airfield Cost Center Requirement by the total estimated landed weight of the Signatory Airlines. Unless there is more accurate information available, the total estimated landed weight of the Signatory Airlines will be based on the actual landed weight of the Signatory Airlines for the most recent twelve-month period for which this information is available.

(d) AIRLINE's landing fees shall equal the sum of the Maximum Gross Landing Weights of all AIRLINE's landings times the landing fee rate.

Section 5.07. Mid-Year Adjustment of Rates and Charges. At mid-year, City shall review information concerning the amounts then expected to be received and the budgeted or estimated amounts which were used in calculating the landing fee rate and the terminal rental rate for such Fiscal Year. If there is a variance of plus or minus ten percent (10%) in the amounts, then City may adjust rates for the remainder of such Fiscal Year to ensure the expected amount to be received from all landing fees and terminal rentals for the complete Fiscal Year will approximate the amount reasonably necessary to meet Net Airfield Cost Center Requirement and the Net Terminal Cost Center Requirement.

Section 5.08. Year-End Adjustment of Rates and Charges.

(a) Within sixty (60) days after the issuance of the annual audit report, City shall furnish the Signatory Airlines with a copy of the City's annual audit report covering the operation of the Airport for the preceding Fiscal Year. At the same time, City shall provide a final accounting of the rentals, fees, and charges in accordance with this Agreement. The actual net Terminal Cost Center Requirement and Net Airfield Cost Center Requirement shall be calculated by City based on actual revenues, Maintenance and Operation Expenses, debt service, total landed weight of Signatory Airlines for the Fiscal Year, and other factors. City shall then calculate the amounts of terminal building rentals and landing fees that should have been billed to each Signatory Airline during the Fiscal Year, based on such actual data, following the procedures of Sections 5.05 and 5.06. Amounts billed in excess of actual requirements shall be credited to each of the Signatory Airlines in the next ensuing month or months, as required, of the then-current Fiscal Year. Actual amounts required in excess of amounts billed shall be invoiced to each of the Signatory Airlines in the next ensuing month or months of the then-current Fiscal Year.

(b) Adjustments to rentals, fees, and charges pursuant to this Article 5 shall apply without the necessity of formal amendment of this Agreement. However, City will notify AIRLINE in writing of all adjustments to rentals, fees, and charges. In accordance with Sections 5.05 and 5.06 herein, a statement showing the calculation of the new rates for rentals, fees, and charges as shown on Exhibit E shall be prepared by City and transmitted to AIRLINE. Said



statement shall then be deemed part of this Agreement, provided such rates and charges are consistent with the terms of this Agreement.

Section 5.09. Other Charges.

(a) In furtherance of achieving regulatory, administrative, or equity goals, reasonable and non-discriminatory charges for miscellaneous items, activities, or services (e.g., badges, employee auto parking, utility usage, motor vehicle operating permit, contract services agreements, into-plane fueling agreements, etc.) may be assessed by City and paid by AIRLINE.

(b) Amounts received from such other charges shall be Revenues and included in the calculation of rentals. The City acknowledges that, if such other charges are instituted, total airline fees and charges will remain unchanged but redistribution of these fees and charges among the airlines could result. Therefore, prior to instituting such other charges, City will meet with AIRLINE well in advance of implementation and provide justification for the new charges, as well as the financial impact on AIRLINE.

Section 5.10 Payment Provisions.

(a) Payments. Payment shall be paid by AIRLINE to City on or before the first day of each month for rent and before the thirtieth (30th) day of the following month for landing fees during the term hereof. In the event the commencement or termination date of this Agreement falls on any date other than the first day of the calendar month, the applicable rental for that month shall be calculated pro rata according to the number of days during which the demised Premises, or any part of same, were occupied by AIRLINE during said month. City shall invoice AIRLINE for terminal rent at least two weeks before the first day of the month.

All payments shall be mailed to the following address:

City of Los Angeles
Department of Airports
Accounts Receivable
Post Office Box 92216
Los Angeles, CA 90009-2216

City may designate an alternate address at any time upon giving AIRLINE a thirty (30) day advance, written notice.

(b) Payment Acceleration. If, during any calendar year of the term hereof, two or more monthly payments are delinquent ten (10) or more business days, City may, at its sole option, require the payment of the rental quarterly in advance. Thereafter, if, during any calendar year of the term hereof, two or more quarterly rental payments are delinquent ten (10) or more business days, City may, at its sole option, require the payment of rental annually in advance. The exercise of one or both of said options, however, shall not constitute an exclusive remedy for City with respect to delinquent rental payments and shall not be construed to affect the term of this Agreement, or abridge City's right to terminate this Agreement as otherwise provided herein.



Payment acceleration shall only be applicable for a one (1) year period at which point monthly payments by AIRLINE shall be reinstated subject to this Section 5.10(b).

Section 5.11 Non-Signatory Fees. Any commercial air carrier not a signatory to this Agreement at the time of landing at Ontario International Airport shall pay a landing fee not less than One Hundred Twenty-Five percent (125%) of the then current signatory rate. A Non-Signatory Airline shall pay terminal costs no less than one hundred ten percent (110%) of the then current terminal cost center rate.

Section 5.12 Minimum Landing Fee. City through its Board will charge a minimum landing fee for aircraft using Ontario International Airport and weighing less than 12,500 pounds.

Section 5.13 End of Agreement Accounting. Within 180 days after the expiration of this Agreement for all Signatory Airlines, the Airport shall provide to the AIRLINES a preliminary final accounting for the Agreement. This accounting will be similar to the reconciliation performed at the end of each year of the Agreement. The Airport shall schedule a meeting with the Signatory Airlines not less than thirty (30) days or not longer than sixty (60) days thereafter to review the accounting with the airlines. Within sixty (60) days after the meeting and after giving due consideration to the airlines' comments, the Airport shall (i) issue its final accounting reflecting the final settlement of this Agreement and in accordance with this Agreement and (ii) shall issue invoices for all monies due (and not otherwise already invoiced) and/or refund all monies then due to the Signatory Airlines under the final accounting.

(a) **Allowances and Reserve Balances at Expiration.** The balances in certain funds and reserve accounts, namely, the Ontario Debt Service Reserve Fund, the M & O Reserve Account, the Airport Discretionary Account, and the Insurance Trust Account shall be retained by the City following expiration of the Agreement.

(b) This Article shall survive the expiration of the Agreement until the final reconciliation has been made.

ARTICLE VI -- CAPITAL EXPENDITURES

Section 6.01 General.

(a) It is contemplated by the parties that from time to time during the term of this Agreement the City may undertake capital improvements to Airport. City shall have the right at any time (subject to the requirements of Section 6.02) to proceed with capital expenditures and to include amounts so expended in the calculation of rentals and fees to be charged to AIRLINE as provided in Article 5.

(b) AIRLINE's views on capital expenditures proposed by City are to be received and considered as an integral part of the continuing consultative planning and programming process through which the City identifies and defines individual projects needed to be undertaken. AIRLINE is urged to participate fully in this planning and programming process so that the City



may have the early benefit of the AIRLINE's views on projects that may be needed throughout the term of this Agreement.

(c) Subject to the exceptions provided in Section 6.03, the procedure outlined in this article is intended to allow timely review and participation by the Signatory Airlines in City's decisions regarding capital expenditures and an approval process for capital expenditures.

Section 6.02 Consultative Review and Approval Process for Capital Expenditures.

(a) By March 1 of each year, City shall transmit for planning purposes to AIRLINE its proposed capital improvement program for the upcoming Fiscal Year. After receiving such information, the Signatory Airlines may meet with City to review and discuss the proposed capital expenditures and may present any comments or objections regarding such program. City will give due consideration to any comments or objections from the Signatory Airlines when finalizing the capital improvement program including recommendations made by the AIRLINE regarding the capitalization of any capital expenditures over \$1,000,000.

(b) City shall then submit to AIRLINE, on or before June 1 in conjunction with the rates and charges forecast information described in Section 5.04, or more often as is reasonably required, a written notice regarding proposed capital expenditures for the Airport that City intends to begin during the Fiscal Year. This notification shall include:

- (1) A description of the proposed improvement(s) or project(s), and the intended use of each;
- (2) The cost estimate of the improvement or project and the City's intended means of funding the project;
- (3) The planned allocation of the costs thereof to the Airport Cost Centers;
- (4) Expected revenues, if any, to be derived from the improvement or project;
- (5) Expected maintenance and operation expenses, if any, resulting from the improvement or project;
- (6) An estimate of the financial impact of the project on the terminal rentals and landing fees paid by AIRLINE;
- (7) Project design and construction schedule.

(c) Within 45 days of notification, the Signatory Airlines will, for those projects requiring Majority-In-Interest approval as determined in Section 6.03, notify the City as to whether or not these projects have been approved. Each capital project shall be deemed approved unless written disapproval is evidenced by a Majority-In-Interest of the Signatory Airlines.



(d) After not less than six months, the City may resubmit any project not approved by a Majority-In-Interest, for consideration to the Signatory Airlines, who must respond within thirty (30) days.

(e) If the Signatory Airlines do not approve a project for the second time, the City may undertake that project after waiting an additional six months.

Section 6.03 Projects Not Subject To Majority-In-Interest Approval.

(a) The City may use any funds available in the Airport Discretionary Account, which is funded pursuant to Sections 5.05(a)(5) and 5.06(a)(5), to fund any capital improvement or project without Majority-In-Interest approval. The Airport Discretionary Account will have a maximum balance of \$6,000,000 exclusive of any previously encumbered funds stated in 1996 dollars; such caps for subsequent Fiscal Years will be the 1996 cap adjusted for changes in the Consumer Price Index (CPI-U) for the Los Angeles-Anaheim-Riverside CMSA, or a similar index if the CPI-U is discontinued, during the intervening period.

(b) Notwithstanding any provision herein, City may proceed with any of the following capital expenditures without a Majority-In-Interest approval, and without being subject to deferral, and include its costs in the calculation of AIRLINE's terminal rentals and landing fees:

(1) Any project which will result in a capital expenditure of not more than \$250,000 net of federal, state, and local grants-in-aid; however, the cumulative cost in the Airfield and Terminal Cost Centers to the Airport in any Fiscal Year for projects resulting in capital expenditures authorized by this Section 6.03(b)(1) shall not exceed \$1,000,000;

(2) Replacements or repairs of existing facilities due to fire, natural disaster, acts of God, or other accidental destruction, provided that the Signatory Airlines are notified, and to the extent that costs that are not covered by insurance proceeds;

(3) Projects or improvements that ensure compliance with a rule, regulation, or order of any federal, state or other governmental body;

(4) Projects or improvements that permit the continued operation and maintenance of the Airport when its operation is affected by unanticipated or unusual circumstances of an emergency nature.

(c) The amounts shown in 6.03(b) are expressed in 1996 dollars. Such amounts for subsequent Fiscal Years will be the Fiscal Year 1996 amounts adjusted for changes in the CPI-U for the Los Angeles-Anaheim-Riverside CMSA, or a similar index in the event the CPI-U is discontinued, during the intervening period.

Section 6.04 Grants-In-Aid. City will use its best efforts to obtain maximum federal, state and local airport development grants-in-aid for Airport.



Section 6.05 New Terminal - Phase II Implementation. City may proceed with a study of the need for the New Terminal - Phase II project when more than 5,000,000 passengers per year enplane during two consecutive calendar years at Airport. Such study shall be conducted according to the criteria shown in Exhibit F. If the study shows the need for the New Terminal - Phase II, City will present the study to the Signatory Airlines as part of this review process as detailed in this article.

ARTICLE VII -- OBLIGATIONS OF AIRLINE

Section 7.01 Maintenance Responsibilities. Except as otherwise expressly stated elsewhere in this Agreement, AIRLINE, solely at its own cost and expense, shall:

- (1) maintain the Exclusive Premises and Preferential Gates in good condition, in compliance with all requirements of law and in accordance with Exhibit G "maintenance schedule" which, if applicable, shall be attached hereto; and
- (2) keep the Exclusive Premises and Preferential Gates, at all times, free and clear of weeds, wastepaper, discarded plastic, graffiti, discarded pallets, and all other trash and debris of any kind.

If AIRLINE fails to so maintain the Premises, City may serve a "Notice to Cure" upon AIRLINE. Said Notice shall prescribe the work to be accomplished by AIRLINE in order to correct the maintenance deficiencies and shall state the number of calendar days AIRLINE shall have to complete the work as prescribed in the Notice. The period of "calendar days" in said Notice shall commence seven (7) days following City's deposit of said Notice in the mail. In addition, a copy of the "Notice to Cure" shall be posted on the demised Premises in a conspicuous place.

If, in the opinion of Executive Director, any default is of such a nature that it cannot physically be corrected within the period originally specified by City, and if the party in default has responded with a course of action and has commenced to remedy such default promptly after the receipt of such Notice, and shall continuously and diligently proceed in good faith to eliminate such default, then the period for correction may be extended at City's sole discretion for such length of time as is reasonably necessary to complete the same.

If the work prescribed in the "Notice to Cure" is not completed by AIRLINE in a manner reasonably satisfactory to Executive Director, and AIRLINE fails to correct such work within the time specified by City in the mailed Notice, City may, at City's sole discretion, and at AIRLINE's sole cost and expense, enter upon the Premises and perform whatever work may, in the opinion of Executive Director, be required to correct the maintenance deficiencies. If City exercises this option, AIRLINE shall pay to City a sum equal to the direct cost of labor and materials expended for said work, plus a surcharge equal to fifteen percent (15%) of said direct cost.

Section 7.02 Maintenance of Aprons, Ramps and Gate Positions. AIRLINE shall require its personnel and employees to maintain and keep those portions of the apron(s), ramp(s)



and gate position(s) used by it in the loading and unloading of passengers or cargo in a neat, clean and orderly condition, free from litter, debris, refuse, liquids, petroleum products or grease that may accumulate thereon as a result of the use of said areas by AIRLINE, its passengers or cargo, or the servicing of its Aircraft thereon by its personnel, employees or contractors. AIRLINE is responsible for the clean up of all oil and fuel spills resulting from its operations.

Section 7.03 Improvements and Alterations.

(a) AIRLINE shall make no structural improvements, additions, or alterations in, to or upon the Premises, nor erect, construct, or place any sign upon said Premises, without the prior written consent of Executive Director being first had and obtained, and any conditions, restrictions, or limitations relating thereto then stated by said Executive Director shall be conditions hereof as if they had been originally stated at length herein. AIRLINE shall not make use of Premises in a manner which would constitute a hazard to aircraft. AIRLINE shall also keep the Premises and any improvements constructed thereon free and clear of liens for labor and material expended by or for AIRLINE or on its behalf (except when such improvement is constructed by City) and shall hold City harmless from liability with respect to any such improvements, additions, or alterations made thereto.

Notwithstanding the foregoing, AIRLINE shall have the right to contest, in good faith and with reasonable diligence, the validity of any lien or claimed lien, if AIRLINE shall give to the Department such security as may be reasonably satisfactory to the Department and the Department's title insurance company to assure payment thereof and any interest thereon and to prevent any foreclosure of the lien or sale of the Premises or the Airport by reason of nonpayment thereof; provided further, however, that on final determination of the lien or claim for lien, AIRLINE shall immediately pay any judgment rendered with all proper costs and charges and shall have the lien released and any judgment satisfied.

(b) Subject to Majority-in-Interest requirements and the provisions of Article VI of the Agreement, City reserves the right to further develop or improve the landing area of Airport as it sees fit, regardless of the desires or view of AIRLINE, and without interference or hindrance. If any such development or improvement interferes substantially with AIRLINE's use and occupancy of the Premises herein, AIRLINE shall be entitled to an appropriate reduction in rental or termination of this Agreement.

(c) AIRLINE agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Administration Regulations in the event any future structure or building is planned for the Premises, or in the event of any planned modification or alteration of any present or future building or structure situated on the Premises.

(d) AIRLINE by accepting this Agreement, 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 without written consent of Executive Director. In the event the aforesaid covenants are breached, City 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 AIRLINE.

(e) All drawings for Airport facilities shall be prepared using the City of Airports CAD Standards and Procedures. Please contact City Engineering for the current standard format for the CAD Standards and Procedures. All drawings submitted by the AIRLINE shall be accompanied by the CAD computer file used to print or plot the drawings. These computer files shall comply with the current City CAD Standards and Procedures and shall contain all drawing data which appears on the drawings. All "As-Built", "As-Constructed" and "Record" drawings shall be submitted to City in CAD format and shall comply with the current City CAD Standards and Procedures.

Section 7.04 Public Address System. AIRLINE shall not install, cause to be installed or use any other public address system without prior approval of Executive Director.

Section 7.05 Employees of AIRLINE. AIRLINE shall require all of its employees, subcontractors, or independent contractors hired by AIRLINE working at Airport to wear neat attire and appropriate identification including airport badges.

Section 7.06 Taxes, Charges and License Fees.

(a) Subject to its rights to contest the validity or applicability of any tax, AIRLINE shall pay all taxes of any character whatsoever that may be levied or charged against any and all types of taxable property, real or personal, that AIRLINE may own or use in connection with the operation of its air transportation business, including, without limitation, AIRLINE's improvements, fixtures, equipment in any real property AIRLINE may occupy under this Agreement or any other lease or contract that AIRLINE may enter into with City for the occupation or use of property or facilities on Airport. AIRLINE shall also pay all regulatory license or permit fees necessary or required by law for the conduct of its operations hereunder.

If a claim is made against City for any of the above charges, City shall promptly notify AIRLINE in writing; provided, however, that failure by City to give such notice shall not constitute a waiver of AIRLINE's obligation to pay such taxes, license and/or permit fees.

In addition, by executing this Agreement and accepting the benefits thereof, a property interest may be created known as a "possessory interest". If such possessory interest is created, Airline, as the party in whom the possessory interest is vested, shall be subject to the payment of the property taxes levied upon such interest.

(b) **Passenger Facility Charges.** AIRLINE agrees to provide City with a full accounting of PFC collections in accordance with acceptable record keeping and reporting standards. Such collection shall be deposited with City in designated account.

The CITY reserves the right to assess and collect Passenger Facility Charges subject to terms and conditions and such methods of collection set forth in the Aviation Safety and



Capacity Expansion Act of 1990, as may be amended from time to time, section 9110 (the "PFC Act"). No Passenger Facility Charges shall be used for that portion of projects for which Airport Improvement Program grants are received by CITY, no depreciation or amortization charges for facility costs funded from the proceeds of a Passenger Facility Charge shall be included in the determination of rates for AIRLINE rentals and fees.

Section 7.07 Business Tax Registration. AIRLINE represents that it has registered its business with the Clerk of the City of Los Angeles and has obtained and presently holds from that Office a Business Tax Registration Certificate or a Business Tax Exemption Number required by City's Business Tax Ordinance (Article 1, Chapter 2, Sections 21.00 and following, of City's Municipal Code). AIRLINE shall maintain, or obtain as necessary, all such Certificates required of it under said Ordinance and shall not allow any such Certificate to be revoked or suspended during the term hereof.

Section 7.08 Disabled and Abandoned Aircraft. Should any Aircraft owned or operated by AIRLINE, through accident or for any other reason, become disabled or be abandoned in any area on Airport which could interfere with the continuous, normal operations of any landing and field facilities, AIRLINE shall:

(a) Immediately remove such Aircraft to such location as shall be designated by Executive Director unless such Aircraft is required to remain in place pending investigation by the appropriate regulatory agencies of the federal government; and

(b) In the event of any accident where federal investigation in place is required, immediately, upon receiving clearance to do so from the appropriate federal agency investigating such accident, remove said Aircraft and any wreckage or debris resulting therefrom to the area(s) designated by the federal agency authorizing such removal; otherwise such Aircraft wreckage and debris shall be immediately removed from Airport and stored at a location approved by Executive Director at cost to AIRLINE.

Should AIRLINE fail to proceed immediately to remove such disabled Aircraft as hereinabove provided, or should Aircraft owned or operated by AIRLINE be abandoned on Airport, City shall have the right to remove such Aircraft by any means City deems necessary under the circumstances, and AIRLINE shall indemnify, defend, keep and hold City, its City, Board, officers, agents, servants and employees free and harmless from any and all costs, liability, damage or expense (including costs of suit and reasonable expenses of legal services) incurred by City or claimed by anyone by reason of removal of said Aircraft, injury to persons or property, or damages to such Aircraft caused by such removal, as well as reasonable and actual storage costs therefor, unless caused by the DOA's negligence or willful misconduct.

Section 7.09 Performance Guarantee. In order to guarantee the payment of all fees and charges associated with this Agreement, AIRLINE shall remit for the benefit of City, a performance guarantee in the amount of Ten Thousand Dollars (\$10,000) or three (3) times the estimated monthly landing fees and rent for said AIRLINE, whichever total amount is greater, as



determined by the Executive Director. The performance guarantee shall not be in cash but shall take the form of a bond, non-revocable letter of credit, or such other form as is deemed acceptable by the Executive Director, all to be approved as to form by the City Attorney's Office. The documents evidencing this deposit must provide that the same shall remain in full force and effect during the term of this Agreement and for a period of sixty (60) days following termination or cancellation. The Executive Director may review the sufficiency of the amount of the performance guarantee on a yearly basis and increase or decrease the required amount to conform to this policy.

AIRLINE shall furnish such performance guarantee in duplicate to the Chief Accounting Officer of the City or designee upon commencement of the term hereof or, if applicable, thirty (30) days following adjustment of the guarantee amount. If, for any reason, said performance guarantee is not provided by AIRLINE and/or is not thereafter maintained in sufficient amount throughout the term hereof, City may terminate this Agreement in accordance with the provisions of Article XI upon giving AIRLINE a thirty (30) day advance, written notice. Upon the expiration or earlier termination of this Agreement, and if AIRLINE has satisfied all of its obligations to City hereunder, City shall relinquish to AIRLINE said performance guarantee not later than sixty (60) days following such expiration or earlier termination.

Section 7.10 Signs. No identification signs pertaining to AIRLINE's operations shall be installed or placed in or on the Premises or Airport until AIRLINE has submitted to Executive Director, for approval in writing, drawings, sketches, design dimensions, and type and character of such signs.

AIRLINE shall not, at any time, under any circumstances, install, place, or maintain any type of advertising on the Premises, without previous written approval of Executive Director.

In addition, AIRLINE's ticket counter, ticket lifts, and podiums leased or used hereunder shall be free of all advertising, signs, credit card application dispensing units, posters, and banners, including, but not necessarily limited to, those showing AIRLINE's name, destinations, rates, rent-a-car arrangements, or other services. Noncompliance by AIRLINE with this provision shall result, following a three (3) day written notice by City to AIRLINE, in City's right to remove said unauthorized signs, advertising, or other written materials and to store same at AIRLINE's expense.

Section 7.11 Disabled Access. AIRLINE, within its Exclusive Use Space and Preferential Gates shall be solely responsible for fully complying with any and applicable present and/or future rules, regulations, restrictions, ordinances, statutes, laws, and/or orders of any federal, state, and/or local governmental entity and/or court regarding disabled access to improvements on the leasehold including any services, programs, or activities provided at Airport by AIRLINE. AIRLINE shall be solely responsible for any and all damages caused by, and/or penalties levied as the result of, AIRLINE's noncompliance. Further, AIRLINE agrees to cooperate fully with City in its efforts to comply with all applicable provisions of the Americans With Disabilities Act of 1990 as amended. Department represents and warrants that, to the best of its knowledge, on Date of Beneficial occupancy, there are no violations in any of the laws,



regulations or other legal requirements applicable to the Airport or any portion thereof (including the Premises), and if any such violation is subsequently discovered and shown to have existed on Date of beneficial occupancy. The expense of rectifying same shall be the sole responsibility of City.

Section 7.12 Noise Standards, Aircraft. AIRLINE shall comply with Board Order No. 168853 as amended from time to time regarding the operation and phase out of Stage 2 aircraft at the Airport.

Section 7.13 Air Quality. AIRLINE shall comply with all applicable provisions of the Federal Clean Air Act, and attending regulations, the California Clean Air, California State Implementation Plan (SIP), Rules & Regulations of the South Coast Air Quality Management District (SCAQMD) and Air Quality Management Plan (AQMP) by the SCAQMD, as they pertain to airline and airport operations. AIRLINE shall cooperate with these agencies and with City to provide information necessary for development and implementation of plan elements, policies and programs within the SIP, AQMP and other plans that may be promulgated from the above referenced laws and regulations, such as reenactment of the Federal Implementation Plan.

AIRLINE shall also comply with conditions and requirements of the Air Quality Certificate issued by the State of California or subsequent amendments or reissuance of the Air Quality Certificate. Compliance shall include cooperation with the City in obtaining necessary information to monitor, analyze or implement air quality programs.

Section 7.14 Consortiums. The City and the Signatory Airlines may decide from time-to-time that it would be in their mutual best interest that an AIRLINE consortium be created. When either the Signatory Airlines or the city determine that they would like to create a consortium, the party interested in creating the consortium will notify the other party in writing and a meeting will be held to decide if a consortium is appropriate. The details surrounding the consortium's purpose and funding will be determined by mutual consent of both parties.

Section 7.15 Living Wage Ordinance and Service Contractor Worker Retention Requirement.

(a) **Living Wage Ordinance.** AIRLINE agrees, as a part of its obligations under this Lease, that it shall comply with the terms of the Living Wage Ordinance as set forth in Los Angeles Administrative Code Section 10.37, *et seq.*, including any future amendments, a copy of which is attached hereto and incorporated herein by this reference.

(b) **Service Contractor Worker Retention Ordinance.** AIRLINE agrees, as a part of its obligations under this Lease, that it shall comply with the terms of the Service Contractor Worker Retention Ordinance as set forth in Los Angeles Administrative Code Section 10.36, *et seq.*, including any future amendments, a copy of which is attached hereto and incorporated herein by this reference.



(c) No Retaliation. AIRLINE shall not retaliate against any employee lawfully asserting noncompliance with the provisions of either the Living Wage Ordinance or Service Contractor Workers Retention Ordinance.

(d) City Remedies. AIRLINE 's violation of the Living Wage Ordinance or Service Contractor Worker Retention Ordinance shall be deemed to be a default and the City shall be entitled to pursue all remedies available under such Section, including, but not limited to, terminating this Lease.

(e) Pledge of AIRLINE. AIRLINE hereby pledges, and shall require each of its subcontractors, within the meaning of the Living Wage Ordinance with respect to the demised premises, to pledge to and comply with the terms of federal law proscribing retaliation for union organizing. AIRLINE shall deliver the executed pledges from each such subcontractor to City within ninety (90) days of the full execution of this Lease. AIRLINE's delivery of executed pledges from each such subcontractor shall fully discharge AIRLINE's obligations with respect to such pledges and fully discharge the obligation of the AIRLINE and the subcontractors to comply with the provision in the Living Wage Ordinance, contained in Section 10.37.6(c), concerning compliance with such federal law.

(f) Subcontractor Compliance. AIRLINE agrees to include, in every subcontract or sublease covering the demised premises entered into between AIRLINE and any subcontractor, a provision pursuant to which such subcontractor (A) agrees to comply with the Living Wage Ordinance and the Service Contractor Worker Retention Ordinance with respect to the demised premises; (B) agrees not to retaliate against any employee lawfully asserting noncompliance on the part of the Subcontractor with the provisions of either the Living Wage Ordinance or the Service Contractor Worker Retention Ordinance; and (C) agrees and acknowledges that City, as the intended third-party beneficiary of this provision may (i) enforce the Living Wage Ordinance and Service Contractor Worker Retention Ordinance directly against the subcontractor with respect to the demised premises, and (ii) invoke, directly against the subcontractor with respect to the demised premises, all the rights and remedies available to City under Section 10.37.5 of the Living Wage Ordinance and Section 10.36.3 of the Service Contractor Worker Retention Ordinance, as same may be amended from time to time.

Sec. 7.16 Child Support Ordinance. AIRLINE agrees, as part of its obligations under this Lease, that it shall comply with the terms of the Child Support Assignment Orders Ordinance as set forth in Los Angeles Administrative Code Section 10.10, *et seq.*, Ordinance No. 172,401, a copy of which is attached hereto and incorporated by this reference.

ARTICLE VIII -- OBLIGATIONS OF CITY

Section 8.01 Maintenance and Operations.

(a) The City shall operate, maintain and keep in good repair, (expending such amounts for Maintenance and Operation Expenses as shall be reasonable and necessary



therefore), the airfield, terminal and other facilities at Airport. The City's maintenance responsibilities are further described in Exhibit G.

(b) The City shall operate and maintain Airport in a reasonably prudent manner and in accordance with the rules, regulations and orders of any federal or state agency having jurisdiction with respect thereto.

(c) The City shall supply airfield lighting, including adequate landing lights, flood lights, beacons and other field lighting.

(d) The City may, from time to time, temporarily or permanently close down roadways, ramp and apron areas, doorways and any other areas in the Airport for the purposes of facilitating necessary construction, maintenance, debris removal, or repairs of facilities, so long as reasonable means of ingress and egress to and from the terminal and airfield facilities remain available.

(e) In the event that a hydrant system is constructed and placed into service, AIRLINE agrees to use such hydrant system except for emergency situations or unusual circumstances, such as the incompatibility of certain aircraft with the hydrant system.

ARTICLE IX -- DAMAGES OR DESTRUCTION

Section 9.01 Damage or Destruction of Facilities at Ontario International Airport.

(a) If by reason of any cause the terminal facilities are damaged to such an extent that it is untenable in whole or in substantial part, then:

(1) If the repairs and rebuilding necessary to restore the terminal facilities to its condition prior to the occurrence of the damage can in the reasonable judgment of City be completed within 90 days from the date on which the damage occurred, City shall notify the AIRLINE in writing and shall proceed promptly with such repairs and rebuilding, and in such event the rental for the terminal facilities provided in Article V shall be abated pro rata for the period from the date of the occurrence of such damage to the date upon which such repairs and rebuilding are completed.

(2) If such repairs and rebuilding cannot, in the reasonable judgment of City, be completed within 90 days, City, at its sole discretion, to be evidenced by notice in writing to the AIRLINE, may either; (i) proceed promptly with said repairs and rebuilding, in which event the said rental shall be abated as aforesaid; or (ii) terminate the lease of the terminal facilities, in which event the said rent therefore provided in Article V shall be abated from and after the date of the occurrence of the damage.

(3) In the event such damage to the terminal facilities renders the Premises untenable, the City will make its best efforts to provide substitute facilities, or space which the AIRLINE may occupy. Substitute space within the terminal facilities will be



made available to the AIRLINE in accordance with the schedule of rentals, fees and charges for the use of Airport as then established by the City. Temporary suitable substitute facilities or space outside the terminal facilities will be made available to the AIRLINE in accordance with a schedule of charges to be determined at that time based on the City's cost to provide such temporary facilities or space. AIRLINE will be under no obligation to accept such substitute facilities; if AIRLINE declines to accept such facilities, City shall be under no obligation to provide them. If City is unable to provide substitute space, repair, rebuilding and abatement shall proceed as provided under Section 9.01a1.

(b) The obligations contained hereinabove shall not be construed to impose upon the City any obligations with respect to AIRLINE's personal property or leasehold improvements installed by the AIRLINE.

ARTICLE X – INSURANCE

Section 10.01 Insurance.

(a) AIRLINE shall procure at its expense, and keep in effect at all times during the term of this Agreement, the types and amounts of insurance specified on the Required Insurance page attached hereto, marked Exhibit H, and made a part hereof. The specified insurance shall, either by provisions in the policies, by City's own endorsement form or by other endorsement attached to such policies, include and insure City, its City, Board, and all of officers, employees and agents, their successors and assigns, as additional insureds, against the areas of risk described in Exhibit H hereof as respects AIRLINE's acts or omissions in its operations, use and occupancy of the Premises hereunder or other related functions performed by or on behalf of AIRLINE in, on or about Airport.

(b) Each specified insurance policy (other than workers' compensation and employers' liability and fire and extended coverages) shall contain a Severability of Interest (cross liability) clause which states, "It is agreed that the insurance afforded by this policy shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the company's liability," and a contractual endorsement which shall state, "The insurance afforded applies to each insured against whom a claim is made or suit is brought, except in respect of the limits of liability of the insurers."

All such insurance shall be primary and noncontributing with any other insurance held by City where liability arises out of or results from the acts or omissions of AIRLINE, its agents, employees, officers, assigns or any person or entity acting for or on behalf of AIRLINE.

(c) City shall have no liability for any premiums charged for such coverage(s). The inclusion of City, Board and all of City's officers, employees and agents, their successors and assigns, as additional insureds is not intended to, and shall not, make them, or any of them, a partner or joint venturer with AIRLINE in AIRLINE's operations at Airport. In the event AIRLINE fails to furnish City proper evidence of insurance and maintain the insurance as



required, City, upon thirty (30) day prior, written notice to comply, may (but shall not be required to) procure such insurance at the cost and expense of AIRLINE and AIRLINE agrees to promptly reimburse City for the cost thereof plus fifteen percent (15%) for administrative charges.

At least ten (10) days prior to the expiration date of the above policies, documentation showing that the insurance coverage has been renewed or extended shall be filed with City. If such coverage is canceled or reduced, AIRLINE shall, within fifteen (15) days of such cancellation of coverage, file with City evidence that the required insurance has been reinstated or provided through another insurance company or companies.

(d) AIRLINE shall provide proof of all specified insurance and related requirements to City either by production of the actual insurance policy, by use of City's own endorsement form(s), by broker's letter acceptable to Executive Director in both form and content in the case of foreign insurance syndicates or by other written evidence of insurance acceptable to Executive Director. The documents evidencing all specified coverages shall be filed with City in duplicate and shall be procured and approved in strict accordance with the provisions in Sections 11.47 through 11.56 of the Los Angeles Administrative Code prior to AIRLINE using Airport facilities. They shall contain the applicable policy number, the inclusive dates of policy coverages and the insurance carrier's name, shall bear an original signature of an authorized representative of said carrier and shall provide that such insurance shall not be subject to cancellation or reduction in coverage or nonrenewal except after written notice by certified mail, return receipt requested, to the City Attorney of the City of Los Angeles at least thirty (30) days prior to the effective date thereof. City reserves the right to have submitted to it, upon request, all pertinent information about the agent and carrier providing such insurance.

(e) City and AIRLINE agree that the insurance policy limits specified herein shall be reviewed for adequacy annually throughout the term of this Agreement by Executive Director who may, thereafter, require AIRLINE, on thirty (30) days' prior, written notice, to adjust the amounts of insurance coverage to whatever reasonable amount said Executive Director deems to be adequate.

(f) Submission of insurance from a non-California admitted carrier is subject to the provisions of California Insurance Code Sections 1760 through 1777, and any other regulations and/or directives from the State Commissioner of Insurance or other regulatory board or agency. AIRLINE agrees, except where exempted, to provide City proof of said insurance.

The Department and AIRLINE agree to have all property, fire and extended coverage, all risk and material damage insurance carried with respect to the Airport or any portion thereof endorsed with a clause which waives all rights of subrogation which the insurer of one party might have against the other party. The Department and AIRLINE and all parties claiming under them mutually release and discharge each other from all claims and liabilities arising from or caused by any casualty or hazard covered or required hereunder to be covered in whole or in part by insurance carried with respect to the Airport or any portion thereof, without regard to whether such loss or damage was occasioned by the negligence of the other, its agents or employees.



Section 10.02 City Held Harmless. In addition to the provisions of the previous section, AIRLINE shall indemnify, defend, keep and hold City, its Department, including its Board, and City's officers, agents, servants and employees, harmless from any and all costs, liability, damage or expense (including costs of suit and fees and reasonable expenses of legal services) claimed by anyone by reason of injury to or death of persons, or damage to or destruction of property, including property of AIRLINE, sustained in, on or about Airport, or arising out of AIRLINE's use or occupancy thereof, as a proximate result of the acts or omissions of AIRLINE, its officers, employees or agents, their successors or assigns, or arising out of any activity of AIRLINE, unless liability or costs were due to acting at specific direction of City.

ARTICLE XI -- TERMINATION AND CANCELLATION

Section 11.01 Default and Termination.

(a) **Not Involving Rent.** In the event AIRLINE fails to abide by any of the terms and conditions of this Agreement, not involving the failure to pay rent, City shall give AIRLINE written notice to correct the defect or default and if the same is not corrected, or substantial steps are not taken toward accomplishing such correction, within ten (10) days after City's mailing such notification, City may terminate this Agreement upon giving AIRLINE a thirty (30) day written notice. If compliance cannot reasonably be effected within thirty (30) days, AIRLINE may have an additional period of time reasonably to effectuate compliance, so long as it promptly commences and diligently prosecutes its cure efforts.

(b) **Failure to Pay Rent or Other Payments.** The failure of AIRLINE to pay the rent, landing fee, or other required payments not otherwise in dispute, on time is a breach of this Agreement for which City may terminate or take such other legal action as it deems necessary or appropriate. City expects all rent to be paid on time and AIRLINE agrees to pay on time.

In the event AIRLINE fails to pay the rent, or other required payments, as provided for under the terms and conditions of this Agreement, City shall have the right to give AIRLINE a ten (10) day written notice to pay any and all amounts due or cease to use Airport facilities pursuant to the provisions of California Code of Civil Procedure Section 1161.

(c) **Bankruptcy.** In case of the bankruptcy of AIRLINE, or the appointment of a receiver for AIRLINE, or if a receiver is appointed to take possession of the Premises as a result of any act or omission of AIRLINE, or if AIRLINE makes an assignment of this Agreement for the benefit of creditors, or if possession of the Premises is taken by virtue of any attachment, execution, or the levy of any judicial process, and such appointment or taking is not discharged or terminated within sixty (60) days, City, at its election, may, without notice, terminate this Agreement.

(d) **Liquidated Damages for Delinquent Payment.** Without waiving any rights available under this Agreement or by law, in the event of late or delinquent payments, AIRLINE recognizes that City will incur certain expenses, the amount of which is difficult to ascertain. Therefore, in addition to rental(s) owing, AIRLINE agrees to pay the liquidated damages set forth



below to compensate City for all expenses and/or damages and loss resulting from said late or delinquent payments by AIRLINE.

The liquidated damages for late or delinquent payments shall be ten percent (10%) per annum, or that percent per annum equal to the prevailing rate on the 25th day of the month preceding the execution of this Agreement as established by the Federal Reserve Bank of San Francisco on advances to member banks under Sections 13 and 13a of the Federal Reserve Act plus four and one-half percent (4-1/2%) per annum, whichever is greater, on the balance of the unpaid monthly amount calculated from the date of the delinquency until the close of the business day upon which the delinquency payment is received by City.

(e) Cross-Default. A material default or breach of the terms of lease, license, permit, or contract held by AIRLINE with City shall constitute a material breach of the terms of this Agreement and shall give City the right to terminate this Agreement for cause in accordance with the procedures set forth in this Agreement unless such default or breach is corrected as provided for by the terms of the breached lease, license, permit or contract.

ARTICLE XII -- ASSIGNMENT OR SUBLEASE

Section 12.01 Assignment and Sublease. AIRLINE shall not, in any manner, assign, transfer, or encumber this Agreement, or any portion thereof or any interest therein, without the prior written consent of Board, nor sublet or sublease the whole or any part of the Premises, nor license or permit the use of the same, in whole or in part, without the prior written consent of Executive Director. Consent to one assignment, subletting, use, or occupation shall not be deemed to be a consent to any subsequent assignment, subletting, occupation, or use. This Agreement shall not, nor shall any interest therein, be assignable as to the interest of AIRLINE by operation of law without the prior written consent of Board. A request by AIRLINE for assignment or subletting shall be submitted to City in writing along with a fully executed copy of the proposed assignment or sublease.

When the proper consent has been received, this Agreement shall be binding upon and shall inure to the benefit of the heirs, successors, executors, administrators and assigns of the parties hereto.

AIRLINE shall pay to City fifty percent (50%) of all rent or other consideration less improvement deductions received by AIRLINE from subtenant(s) the value of which collectively exceeds the rent payable by AIRLINE to City under this Agreement. AIRLINE shall make such payments to City on or before the fifteenth (15th) day of each month following receipt of said rent or consideration and shall submit with each payment a report, on a form satisfactory to the Executive Director, of all subtenants and the rents or other consideration received by AIRLINE from the subtenant(s) concerning the premises. Within fifteen (15) days of receipt of a written request from City, AIRLINE shall also provide City with a copy of all records relating to monies or other consideration paid by subtenant(s) to AIRLINE concerning the leased premises and/or services conducted or performed thereon for the purpose of verifying AIRLINE's calculation of the sublease payments due City.



ARTICLE XIII -- GENERAL PROVISIONS

Section 13.01 Waiver. The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of any other term, covenant, or condition, or of any subsequent breach of the same term, covenant, or condition. The subsequent acceptance of payment hereunder by City shall not be deemed to be a waiver of any preceding breach by AIRLINE of any term, covenant, or condition of this Agreement other than the failure of AIRLINE to pay the particular payment so accepted, regardless of City's knowledge of such preceding breach at the time of acceptance of such payment.

Section 13.02 Attorney's Fees. If City shall, without any fault, be made a party to any litigation commenced by or against AIRLINE arising out of AIRLINE's use or occupancy of the Premises or Airport, and as a result of which AIRLINE is finally adjudicated to be liable, then AIRLINE shall pay all costs, expenses, and reasonable attorney's fees incurred by or imposed upon City in connection with such litigation. In any action by City or AIRLINE for recovery of any sum due under this Agreement, or to enforce any of the terms, covenants, or conditions contained herein, the prevailing party shall be entitled to reasonable attorney's fees in addition to costs, expenses, and necessary disbursements incurred in such action. Each party shall give prompt notice to the other of any claim or suit instituted against it that may affect the other party.

Section 13.03 Hazardous and Other Regulated Substances. Except for conditions existing prior to the original occupancy of the Premises by AIRLINE or AIRLINE's predecessors in interest, AIRLINE agrees to accept sole responsibility for full compliance with any and all applicable present and future rules, regulations, restrictions, ordinances, statutes, laws, and/or other orders of any governmental entity having authority regarding the use, storage, handling, distribution, processing, and/or disposal of hazardous wastes, extremely hazardous wastes, hazardous substances, hazardous materials, hazardous chemicals, toxic chemicals, toxic substances, pollutants, contaminants, or other similarly regulated substances (hereinafter referred to as "hazardous substances") regardless of whether the obligation for such compliance or responsibility is placed on the owner of the land, on the owner of any improvements on the leasehold, on the user of the land, or on the user of the improvements. Said hazardous substances shall include, but not be limited to, gasoline, aviation, diesel and jet fuels, lubricating oils, solvents, paints, caustics (acids and alkali), degreasers, and lead batteries. AIRLINE agrees that any damages, penalties, or fines levied on City and/or AIRLINE as a result of noncompliance with any of the above shall be the sole responsibility of AIRLINE. Further, AIRLINE shall indemnify and pay and/or reimburse City for any damages, penalties, or fines that City pays as a result of noncompliance with the above; provided, however, with respect to joint-use space, AIRLINE's responsibility is reduced to the extent, a sublessee or permittee sharing such joint-use space within AIRLINE is legally determined to be responsible therefor.

Except for conditions existing prior to the original occupancy of the Premises by AIRLINE, or its predecessors in interest, as determined by a Phase I and Phase II environmental assessment, in the case of any hazardous substance spill, leak, discharge, or improper storage on the leasehold or contamination of the leasehold by AIRLINE or its agents, AIRLINE agrees to make or cause to be made any necessary repairs or corrective actions as well as to clean up and



remove any leakage, contamination, or contaminated ground and remediate contaminated ground water or surface water bodies. Clean up will comply with all governmental oversight agencies' standards. In the case of any hazardous substance spill, leak, discharge, or contamination by AIRLINE or its employees, servants, agents, contractors, or subcontractors on AIRLINE's Premises or as may be discharged in, on or under adjacent property which affects other property of City or its tenants' property, AIRLINE agrees to make or cause to be made any necessary corrective actions to clean up and remove any spill, leakage, or contamination. If AIRLINE fails to repair, clean up, properly dispose of, or take any other corrective actions as required herein, City may (but shall not be required to) take all steps it deems necessary to properly repair, clean up, or otherwise correct the conditions resulting from the spill, leak, or contamination. Any such repair, cleanup, or corrective actions taken by City shall be at AIRLINE's sole cost and expense and AIRLINE shall indemnify and pay for and/or reimburse City for any and all costs (including any administrative costs) City incurs as a result of any repair, cleanup, or corrective action it takes.

If AIRLINE installs or uses already installed underground storage tanks, pipelines, or other improvements on the Airport for the storage, distribution, use, treatment, or disposal of any hazardous substances, AIRLINE agrees, upon the expiration and/or termination of this Agreement, to remove and/or clean up, at the sole option of Executive Director, the above-referred-to improvements. Said removal and/or cleanup shall be at AIRLINE's sole cost and expense and shall be undertaken and completed in full compliance with all federal, state, and local laws and regulations, as well as with the reasonable directions of Executive Director.

AIRLINE shall promptly supply City with copies of all notices, reports, correspondence, and submissions made by AIRLINE to any governmental entity regarding any hazardous substance spill, leak, discharge, or clean-up including all test results.

This Section 13.03 and the obligations herein shall survive the expiration or earlier termination of this Agreement.

The Department shall provide upon request to AIRLINE all relevant data, assessments, studies, permits and certificate relating to the Premises which are in Department's possession or reasonably available to it. Department moreover agrees to cooperate with AIRLINE as AIRLINE may reasonably require to effectuate its own compliance with applicable environmental requirements.

Section 13.04 Airfield Security. AIRLINE and the City, to the extent of their respective control, shall be responsible for fully complying with any and all applicable present and/or future rules, regulations, restrictions, ordinances, statutes, laws, and/or orders of any federal, state, and/or local governmental entity regarding airfield security. AIRLINE shall be responsible for the maintenance and repair of that portion of the Airport perimeter fence, including gates and doors, that are located on the Premises or controlled by AIRLINE. AIRLINE shall comply fully with applicable provisions of the Federal Aviation Administration Regulations, 14 CFR, Parts 107 and 108, including the establishment and implementation of procedures acceptable to Executive Director to control access from the Premises to air operation areas in accordance with



the Airport Security Program required by Parts 107 and 108. Further, AIRLINE shall exercise and have exclusive security responsibility for the demised Premises pursuant to AIRLINE's Federal Aviation Administration approved Air Carrier Standard Security Program used in accordance with 14 CFR, Part 129 and other applicable federal rules, regulations and agreements.

In addition to the foregoing, gates and doors located on the Premises which permit entry into restricted areas at Airport shall be kept locked by AIRLINE at all times when not in use or under AIRLINE's constant security surveillance. Gate or door malfunctions which permit unauthorized entry into restricted areas shall be reported to the City without delay and shall be maintained under constant surveillance by AIRLINE until repairs are affected by AIRLINE or City and/or the gate or door is properly secured.

All civil penalties levied by the Federal Aviation Administration for violation of Federal Aviation Regulations pertaining to security gates or doors located on the Premises or otherwise controlled by AIRLINE shall be the sole responsibility of AIRLINE. AIRLINE agrees to indemnify City for any federal civil penalties amounts City must pay due to any security violation arising from the use of AIRLINE's leasehold or the breach of any obligation imposed by this Section.

AIRLINE shall cooperate in the City's installation, operation and maintenance of security measures and systems required in conjunction with FAA, federal, state and local requirements.

Section 13.05 Recycling and Source Reduction. AIRLINE shall cooperate with City in complying with California Public Resource Code Article 3, Section 47180 and any other municipal ordinance.

Section 13.06 Venue. In the event of litigation concerning the terms or interpretation of this Agreement, the venue shall be in the County of San Bernardino, State of California or Los Angeles County.

Section 13.07 Interpretation.

(a) **Fair Meaning.** The language of this Agreement shall be construed according to its fair meaning, and not strictly for or against either City or AIRLINE.

(b) **Subordination.** This Agreement and all rights of AIRLINE hereunder are expressly subordinate and subject to the terms, provisions, and requirements of the Master Trust Indenture. Interpretation of this Agreement shall be such that the requirements and covenants of the Master Trust Indenture are not violated.

(c) **Section Headings.** The section headings appearing herein are for the convenience of City and AIRLINE, and shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning, or intent of the provisions of this Agreement.



(d) Void Provisions. If any provision of this Agreement is determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision of this Agreement, and all such other provisions shall remain in full force and effect.

(e) Two Constructions. It is the intention of the parties hereto that if any provision of this Agreement is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

(f) Laws of California. This Agreement shall be construed and enforced in accordance with the laws of the State of California.

(g) Gender. The use of any gender herein shall include all genders, and the use of any number shall be construed as the singular or the plural, all as the context may require.

(h) Section 308 Exclusivity. 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 308 of the Federal Aviation Act [49 USC 40103 (Public Law 103-272; 108 STAT. 1102)].

(i) Rights of United States Government. This Agreement shall be subordinate to the provisions and requirements of any existing or future agreement between City and the United States relative to the development, operation, or maintenance of Airport.

(j) War or National Emergency. This Agreement 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 Airport or the exclusive or nonexclusive use of Airport by the United States during the time of war or national emergency.

(k) Time. Time shall be of the essence in complying with the terms, conditions, and provisions of this Agreement.

Section 13.08 Notices. Written notices to City hereunder and to the City Attorney of the City of Los Angeles shall be given by registered or certified mail, postage prepaid, or overnight delivery service or facsimile and addressed to said parties at City of Los Angeles, Department of Airports, 1 World Way, Post Office Box 92216, Los Angeles, CA 90009-2216, or to such other address as these parties may designate by written notice to AIRLINE.

Written notices to AIRLINE hereunder shall be given by registered or certified mail, postage prepaid, or overnight mail or facsimile and addressed to Concesionaria Vuela Compañía de Aviación S.A.P.I. de C.V., Av. Antonio Dovali Jaime No.70 Torre B, Piso 13, Col. Zedec Santa Fe, Del. Alvaro Obregon C.P. 01210 Mexico D.F. or to such other address as AIRLINE may designate by written notice to City.



The execution of any such notice by Executive Director shall be as effective as to AIRLINE as if it were executed by Board or by Resolution or Order of said Board, and AIRLINE shall not question the authority of Executive Director to execute any such notice.

All such notices, except as otherwise provided herein, may either be delivered personally to Executive Director or to the City Attorney, Airport Division, in the one case, or to AIRLINE in the other case, or may be deposited in the United States mail, properly addressed as aforesaid with postage fully prepaid by certified or registered mail, return receipt requested, and shall be effective five (5) days after deposit in the mail.

Section 13.09 Surrender of Possession. Upon 30 days after the expiration of this Agreement, or its earlier termination as herein provided, AIRLINE shall remove all of its property from Airport and shall surrender entire possession of the operating rights at Airport to City.

Section 13.10 Nondiscrimination and Affirmative Action Program.

(a) AIRLINE, in its operations at Airport, for itself, its personal representatives, successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree that: (1) no person on the grounds of race, color or national origin shall be excluded from participation, denied the benefits of or be otherwise subjected to discrimination in the use of the facilities covered by this Agreement; (2) that in the construction of any improvements on, over or under the Premises authorized to be utilized herein and the furnishing of services thereon, no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of or otherwise be subjected to discrimination; and (3) that AIRLINE shall use said Premises in compliance with all other requirements imposed or pursuant to Title 49, Code of Federal Regulations, City of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the City of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended. AIRLINE agrees that City has the right to take such action against AIRLINE as the United States Government may direct to enforce this covenant.

(b) In addition, AIRLINE agrees not to discriminate in its employment practices against any employee or applicant for employment because of the employee's or applicant's race, religion, national origin, ancestry, sex, age or physical handicap. AIRLINE further agrees to abide by the provisions of Section 10.8.4 of City's Administrative Code, a copy of which is printed on the CERTIFICATION FOR CONTRACTS OF MORE THAN \$5,000, which Certification City acknowledges AIRLINE has previously submitted along with a copy of its Affirmative Action Plan. Said Plan, having been approved by City, shall remain valid for one (1) year from the date of approval and, with said Certification shall be incorporated by reference in and become part of this Agreement. AIRLINE agrees that prior to the expiration of said Plan, AIRLINE will again submit to City its revised and/or updated Affirmative Action Plan for approval as well as another completed Certification.



(c) AIRLINE assures that it will undertake an affirmative action program if required by 14 CFR, Part 152, Subpart E, to ensure that no person shall on the grounds of race, creed, color, national origin or sex be excluded from participating in any employment activities covered in 14 CFR, Part 152, Subpart E. 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. AIRLINE assures that it will require that its covered suborganizations provide assurances to AIRLINE that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 CFR, Part 152, Subpart E, to the same effect.

(d) AIRLINE 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 AIRLINE shall be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar type of price reductions to volume purchasers.

(e) Noncompliance with the provisions of this Section shall constitute a material breach thereof and, in the event of such noncompliance, City shall have the right to terminate this Agreement hereby created without liability therefor, or at the election of City or the United States, either or both said governments shall have the right to judicially enforce the provisions in said paragraphs. Said termination, however, shall not take place until after AIRLINE has received written notice of such noncompliance as well as an opportunity to be heard regarding same and to correct the practice causing noncompliance.

(f) AIRLINE agrees that it shall insert the provisions found in paragraphs (a), (d) and (e) above in any agreement by which said AIRLINE grants a right or privilege to any person, firm or corporation to render accommodations and/or services to the public on the Premises of the Airport.

Section 13.11 Open and Operational Airport. City shall use its best efforts to keep Airport open and in operation for landings and take-offs of Aircraft. In such regard, City shall employ or cause to be employed construction, reconstruction and repair techniques which will minimize Airport operational delays or disruption reasonably expected to result from such construction, reconstruction or repair.

Section 13.12 Force Majeure.

(a) Neither the City nor the AIRLINE shall be deemed to be in breach of this Agreement by reason of failure to perform any of its obligations hereunder to the extent that such failure is due to strikes, boycotts, labor disputes, embargoes, shortages of energy or materials, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, floods, riots, rebellion, sabotage or any other circumstances for which it is not responsible and which are not within its control. This provision shall not apply to failures by AIRLINE to pay rents, fees, or charges, to make any other money payments, to complying with security safety or insurance requirements required this Agreement. This provision shall not



prevent either party from exercising its rights of termination under Section 10.01 of this Agreement.

(b) Any party claiming Force Majeure shall notify the other in writing of the existence of the claimed Force Majeure event, of the probable duration of that event, of any efforts it is making to fulfill its obligations under this Agreement in spite of that event, and shall confirm in writing its intention to resume performance when reasonably possible.

[signature page follows]



IN WITNESS WHEREOF, City has caused this Agreement to be executed by the Executive Director and AIRLINE has caused the same to be executed by its duly authorized officers and its corporate seal to be hereunto affixed, all as of the day and year first hereinabove written.

APPROVED AS TO FORM:

CITY OF LOS ANGELES

Michael N. Feuer,
City Attorney

By: _____
Executive Director
Department of Airports

Date: 7/14/15
By: [Signature]
Deputy/Assistant City Attorney

AIRLINE:

ATTEST:

CONCESIONARIA VUELA COMPAÑIA DE
AVIACION, S.A.P.I. DE C.V.

By: _____
Name:
Title:

By: [Signature] [Signature]
Name: Holger Blankenstein Fernando Suarez Gerard
Title: chief commercial chief financial officer

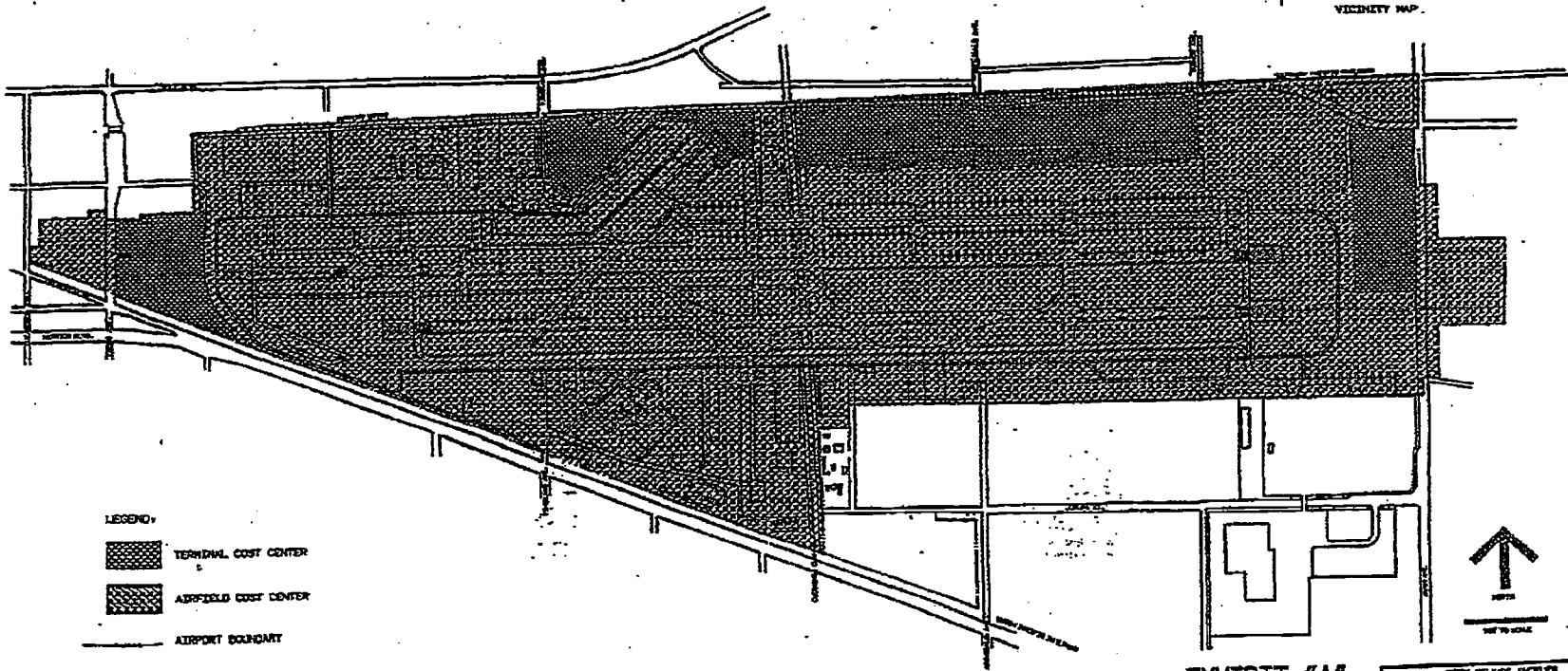
[Corporate Seal]



EXHIBIT A



AIRFIELD AND TERMINAL COST CENTERS






- LEGEND:
-  TERMINAL COST CENTER
 -  AIRFIELD COST CENTER
 -  AIRPORT BOUNDARY

EXHIBIT "A"

CITY OF LOS ANGELES	
DEPARTMENT OF AIRPORTS	
CHICAGO INTERNATIONAL AIRPORT	
AIRFIELD & TERMINAL COST CENTERS	
DATE	1954
BY	...
SCALE	1" = 100'
PROJECT NO.	97324-42

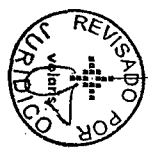


EXHIBIT B



EXHIBIT C



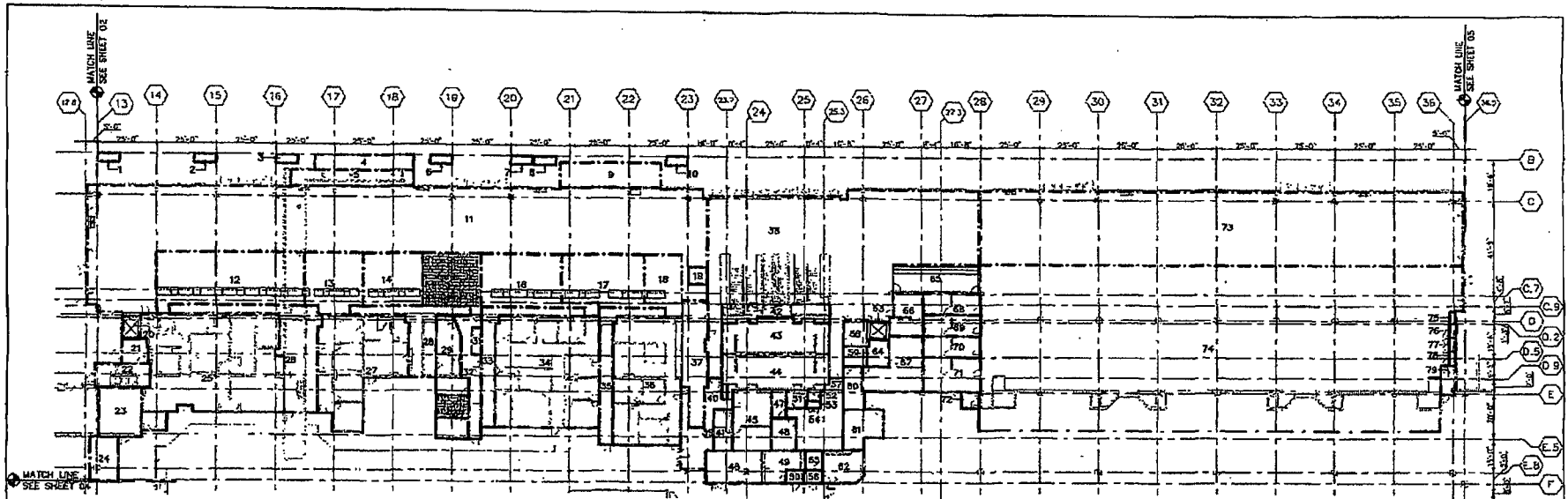
**Concessionaria Vuela Compania de Aviacion SAPI deCV
Dba - Volaris**

Exhibit "C"

Terminal 2 – Sheet 3, Space 15 – 597 Sq Ft (Queue/Ticket Counters)

Terminal 2 – Sheet 3, Space 30 – 117 Sq Ft (Office)

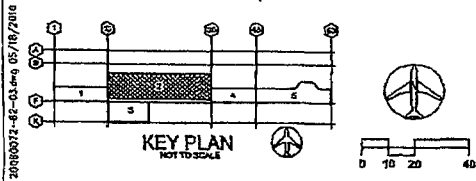




SPACE DESCRIPTION	COMPANY NAME	AREA	SPACE DESCRIPTION	COMPANY NAME	AREA	SPACE DESCRIPTION	COMPANY NAME	AREA	SPACE DESCRIPTION	COMPANY NAME	AREA
0001 Unassigned Podium	N/A	216	0025 Vestibule	LAWA - ONT	125	0041 Maintenance	LAWA - ONT	142	0081 Telephone Room	LAWA - ONT	263
0002 Unassigned Podium	N/A	216	0026 Stair	LAWA - ONT	255	0042 Hold	LAWA - ONT	337	0082 Restroom, Women	LAWA - ONT	255
0003 Unassigned Podium	N/A	216	0027 Electrical Room	LAWA - ONT	305	0043 Restroom, Women	LAWA - ONT	059	0083 Restroom, Men	LAWA - ONT	75
0004 Baggage Area	LAWA - ONT	277	0028 IT Classroom Room	LAWA - ONT	238	0044 Restroom, Men	LAWA - ONT	728	0084 Pump Room	LAWA - ONT	710
0005 Baggage Belt Enclosure	LAWA - ONT	370	0029 Office	UNITED AIR LINES INC	2,418	0045 Office	N/A	449	0085 Information Counter	LAWA - ONT	448
0006 Unassigned Podium	N/A	216	0030 Conveyer	LAWA - ONT	1,023	0046 Electrical Room	LAWA - ONT	345	0086 Baggage Service	CONTINENTAL AIRLINES INC	267
0007 Podium	Delta Airlines Inc	416	0031 Office	N/A	1,497	0047 Police Office	LAWA - ONT	79	0087 Office	U S GENERAL SERVICES	203
0008 Podium	Continental Airlines Inc	328	0032 Conveyer	LAWA - ONT	221	0048 Police Office	LAWA - ONT	101	0088 Baggage Service	ALASKA AIRLINES INC	238
0009 Baggage Area	N/A	481	0033 Office	Aeromex De Mexico S A B E C Y	391	0049 Restroom, Men	LAWA - ONT	222	0089 Baggage Service	DELTA AIRLINES INC	221
0010 Unassigned Podium	LAWA - ONT	216	0034 Storage	CONTINENTAL AIRLINES INC	203	0050 Vestibule	LAWA - ONT	48	0090 Baggage Service	N/A	221
0011 Public Lobby	United Air Lines Inc	1,485	0035 Corridor	LAWA - ONT	31	0051 Restrooms	LAWA - ONT	78	0091 Baggage Service	UNITED AIR LINES INC	375
0012 Queue / Ticket Counter	N/A	6,653	0036 Office	LAWA - ONT	350	0052 Vestibule	LAWA - ONT	08	0092 Vestibule	LAWA - ONT	38
0013 Queue / Ticket Counter	Aeromex De Mexico S A B E C Y	633	0037 Corridor	LAWA - ONT	250	0053 Vestibule	LAWA - ONT	15	0093 Public Lobby - Joint Use	LAWA - ONT	8,712
0014 Queue / Ticket Counter	N/A	530	0038 Conveyer	Delta Airlines Inc	2,218	0054 Police Office	LAWA - ONT	472	0094 Baggage Claim - Joint Use	LAWA - ONT	16,748
0015 Queue / Ticket Counter	Continental Airlines Inc	597	0039 Office	LAWA - ONT	451	0055 Restroom	LAWA - ONT	62	0095 Vail	LAWA - ONT	18
0016 Queue / Ticket Counter	Delta Airlines Inc	81	0040 Conveyer	ALASKA AIRLINES INC	1,674	0056 Vestibule	LAWA - ONT	67	0096 Storage	UNITED AIR LINES INC	18
0017 Queue / Ticket Counter	Delta Airlines Inc	840	0041 Conveyer	LAWA - ONT	535	0057 Vestibule	LAWA - ONT	39	0097 Unassigned - Storage	N/A	18
0018 Unassigned Queue/Ticket Counter	N/A	308	0042 Public Lobby	LAWA - ONT	8,599	0058 Restroom	LAWA - ONT	118	0098 Storage	N/A	18
0019 TSA - Security Screening	LAWA - ONT	80	0043 Vestibule	LAWA - ONT	445	0059 Vestibule	LAWA - ONT	81	0099 Vestibule	LAWA - ONT	89
0020 Elevator	LAWA - ONT	89	0044 U.S. Mail	LAWA - ONT	15	0060 Vestibule	LAWA - ONT	167	TOTAL		43,411

FIRST FLOOR LEVEL SECTOR 2 TERMINAL 2

- NOTES: 1. The areas noted above are to be considered planning data and were redrawn using the Location Management Application from existing Saylor & Associates Architects prepared drawing Eas, available information and re-calculated using the new LAWA modified BOMA standards. Comments, revisions, verifications and approvals from Property and Construction Divisions through July, 2009 have been incorporated.
2. Dimensions, geometry and layout have not been field verified and may not reflect the current conditions. This data should be field verified prior to use.



SUPERSEDES DWG. NO. 20080034-82-02

Los Angeles World Airports
MASTER LEASE EXHIBIT
TERMINAL 2
ONTARIO INTERNATIONAL AIRPORT

APPROVED BY: [Signature] DATE: 03-08-2009

PROJECT: 20080072-82-03

DATE: 03-08-2009

NO. OF SHEETS: 03 OF 10

PROJECT NO.: 20080072-82

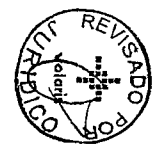
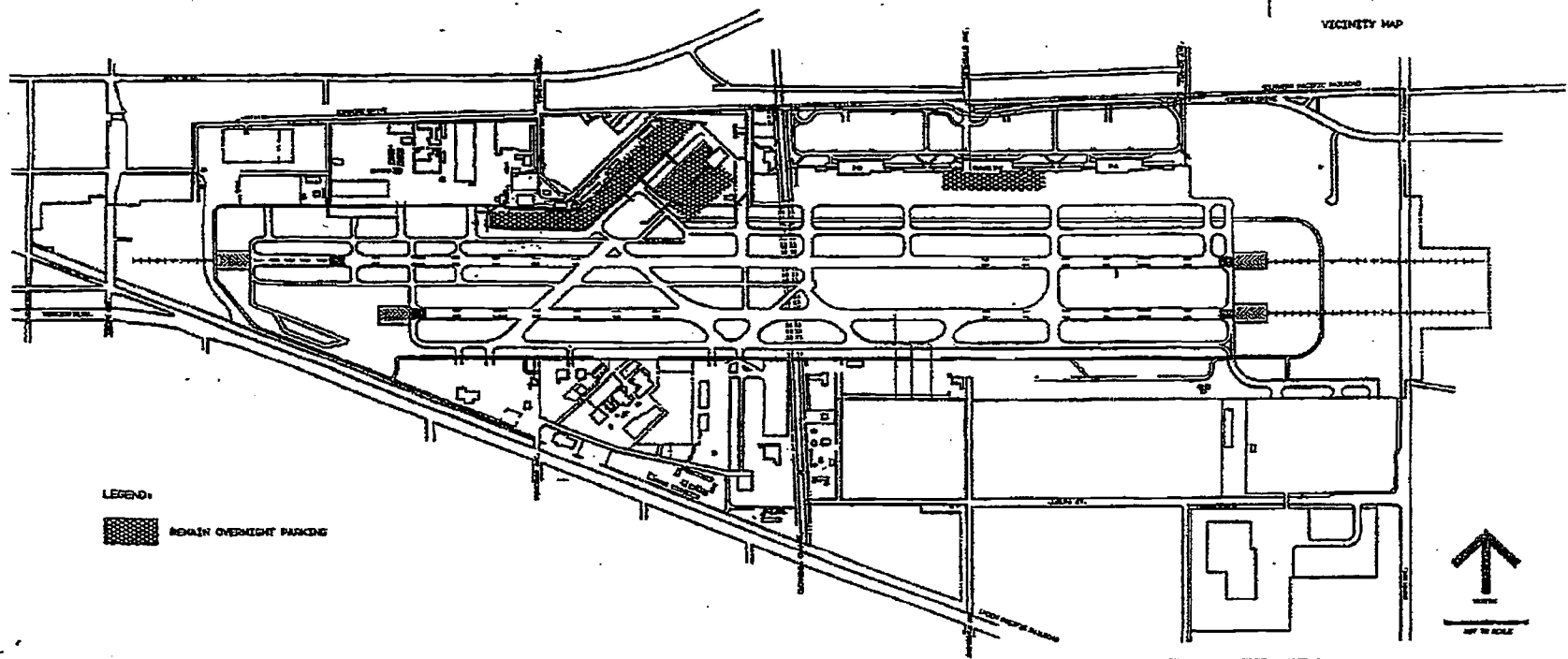


EXHIBIT D



REMAIN OVERNIGHT PARKING



LEGEND:
[Cross-hatch pattern] REMAIN OVERNIGHT PARKING



EXHIBIT "D"

CITY OF LOS ANGELES
DEPARTMENT OF AIRPORTS
ONTARIO INTERNATIONAL AIRPORT
REMAIN OVERNIGHT PARKING



EXHIBIT E



ATTACHMENT A

LOS ANGELES WORLD AIRPORTS						Table 1
LAX/Ontario International Airport						5/29/2013
Calculation of Landing Fee and Terminal Rental Rates						
Budget FY 2014						
Description	Ref	FY 2014 Budget			FY 2013	
		Airfield	Terminal	Total	Budget	
(1) M&O Expenses	Table 2	\$ 15,891,982	\$ 38,467,609	\$ 54,159,571	\$ 60,925,122	
(2) Debt Service Expense	Table 9	-	6,155,349	6,155,349	6,130,245	
(3) Reserve Fund Deposit		-	-	-	-	
(4) Debt Service Coverage	Table 9	-	6,644	6,644	2,850	
(5) Airport Discretionary Account Deposit	Table 7	146,038	146,038	292,076	497,241	
(6) M&O Reserve Account Deposit	Table 7	(720,802)	(720,802)	(1,441,605)	(2,835,893)	
(7) Capital Costs	Table 8	481,815	675,873	1,137,689	1,210,764	
(8) Assessment, Judgment, charge, net of Insurance proceeds		-	-	-	-	
(9) Other Expenses		-	-	-	-	
Cost Center Requirements		\$ 15,579,013	\$ 44,730,711	\$ 60,309,724	\$ 65,930,529	
Cost Center Revenues	Table 3	(4,754,921)	(27,664,220)	(32,419,140)	(32,498,014)	
Net Cost Center Requirements		\$ 10,824,092	\$ 17,066,492	\$ 27,890,584	\$ 33,432,515	
Airlines Area Square Footage	Table 5		155,007		154,093	
RATE PER SQUARE FOOT PER YEAR			\$110.10		\$144.11	
Landing Units	Table 1.1	4,611,765			4,790,355	
LANDING FEE RATE PER 1,000 LBS. (calculated rate)		\$2.35			calculated at \$2.34	
LANDING FEE RATE PER 1,000 LBS. (recommended to BOAC)		\$2.32			adopted rate \$2.32	
Non-Signatory		\$2.94	\$121.11			



Summary of LA/ONT Rates and Charges	FY 2014 Rates
Landing Fees	
Aircraft over 25,000 pounds	
Signatory-Passenger/Cargo (per 1,000 lbs)	\$2.32
Non Signatory-Passenger/Cargo (per 1,000 lbs)	\$2.94
Aircraft 25,000 pounds or less	
Signatory Airlines	
Aircraft 12,500 pounds or less (per landing)	\$30.00
Aircraft over 12,500 up to 25,000 pounds (per landing)	\$68.00
Non-Signatory Airlines	
Aircraft 12,500 pounds or less (per landing)	\$38.00
Aircraft over 12,500 up to 25,000 pounds (per landing)	\$73.00
Terminal Rates and Use Fees	
Terminal Rental Rates	
Signatory Airlines (per square foot)	\$110.10
Non-Signatory Airlines and Non-Airline Tenant (per square foot)	\$121.11
Terminal Use Fees	
Non-preferential Gate Use Fee (per operation)	\$280.00
Jet Bridge Utility Use Fee (per operation)	\$185.00
Ticket Counter/Queuing Use Fee (per operation - signatory)	\$15.00
Ticket Counter/Queuing Use Fee (per operation - non-signatory)	\$18.50
Signatory New Entrant Joint Use Fee (per arriving passenger)	\$4.50
Non-Signatory Joint Use Fee (per arriving passenger)	\$5.00
Ramp, Apron and Remote Area Charges	
Each 15-minute period or fraction thereof after airline has been given notice that airport operations require that the aircraft leave the area	\$100.00
Each 10-minute period or fraction when aircraft is double-parked or in a position other than a regular gate position and the airline has been given notice to leave the area	\$100.00
Each 15-minute period or fraction thereof in excess of 30 minutes for the cleanup of fuel spills	\$100.00
Aircraft Parking Charges	
For the first three (3) hours of the first 24 hours of parking regardless of the number of continuous days parked:	no charge
Daily charge, per 1,000 lbs of maximum gross landed weight	\$0.40
Minimum charge per day	\$10.00



EXHIBIT F



(F)

Criteria for Need for Phase II Facilities - ONT

Once annual enplanements at Ontario International Airport exceed 5,000,000 passengers for two consecutive calendar years, a study of the need for Phase II facilities (a third terminal module and any facilities not constructed as part of Phase I) shall proceed as follows:

- The LADOA will select a consulting company that specializes in airport planning, or that has a group within it specializing in airport planning, through the standard LADOA Request for Proposals (RFP) process in effect at that time. The LADOA will be responsible for preparing, issuing, and distributing the RFP. The team that will review the submittals will be made up of LADOA staff, including LADOA Facilities Planning staff, and other city and governmental agency staff as deemed appropriate by the LADOA. The review will be used for recommendations to LADOA executive level management and to the Board of Airport Commissioners (BOAC), who may conduct additional reviews of the submittals. The BOAC will make the final selection and award the consulting contract.

- A contract will be prepared by the LADOA to define the study in more detail, to delineate the costs, and to bind the consultant and the LADOA.

- The consultant study will focus on any and all issues that relate to airport capacity at ONT. Areas covered will be various aspects of the terminals (ticketing, arrival areas, holdrooms, queuing spaces, concessions, walkways, etc.), aircraft gates, ground access, and automobile parking. The issues addressed in these areas may include, but will not be limited to, passenger and access peaking characteristics, passenger flows within the terminal, types of aircraft operations (including distances traveled, which affect aircraft dwell time), fleet mix (aircraft size affects peaking characteristics), mode of travel to and from the airport, roadway capacity and traffic patterns, and curb space and usage. The consultant shall employ such study methodologies as simulation, queuing theory, and standard airport capacity measurements and ratios. Prior to presentation of the study to the BOAC, the consultant will be required to review the study findings with LADOA staff and the ONT AAAC.

- If the study clearly demonstrates that a significant deficiency in airport capacity exists or will occur within three (3) years of the study date, the BOAC may elect to proceed with construction of the Phase II facilities. If the BOAC elects to proceed with the project, the results of the study and the BOAC decision will be presented to the Carriers. The majority-in-interest provision will then be in effect.



EXHIBIT G



Terminal Cost Center Maintenance Responsibilities

		Exclusive Space	All Other Space
1.	Heating/Air Conditioning		
a.	Heating, ventilation, air conditioning and associated controls	C*	C
2.	Electrical System		
a.	Primary electric service, to include main conduit, wiring, electric meters, power and lighting panels	C	C
b.	Secondary power distribution, to include secondary conduit and wiring, power outlets, switches, interior lamps and bulb/tube replacement, and fixtures	A	C
c.	All exterior lighting and power distribution	C	C
d.	Primary power distribution to the subpanels	C	C
3.	Water System		
a.	Storm sewers, sanitary sewers, potable water, natural gas, and other site utilities	C	C
b.	Utility fixtures, to include sinks, toilets, fountains, etc.	A	C
c.	Plumbing system to include hot/cold water supply piping, hot water heater and DWV piping	A	C
4.	Structure		
a.	Exterior to include roofs, sidings, gutters, drains and walkways	C	C
b.	Exterior doors, exterior walls, exterior wall windows and associated door operators	C	C
c.	Interior doors, interior walls, interior wall windows and associated door operators and locks	A	C
d.	Ceilings	C	C
e.	Furniture maintenance	C*	C



Terminal Cost Center Maintenance Responsibilities

	Exclusive Space	All Other Space
5. Area/Grounds		
a. Pavement and pavement markings	C	C
b. Landscaping	C*	C
c. Sweeping, to include ramps, roads vehicular parking areas and sidewalks	C	C
6. Fire System		
a. Sprinklers (heads and piping)	C*	C
b. Alarm and detection system units	C*	C
7. Communications Systems		
a. Telephone cable and wiring	C*	C
b. FAX cable and wiring	C*	C
c. Computer cable and wiring	C*	C
d. Public address system operation, cable and wiring	C*	C
8. Custodial Service		
a. Interior windows	C*	C
b. Exterior windows	C	C
c. Carpets	A	C
d. Restrooms	A	C
e. Walls, ceilings, floors (non-carpet)	A	C
f. Trash collection	A	C
g. Trash hauling	C	C
9. Signage		
a. Regulatory/traffic control	C*	C
b. Non-regulatory/traffic control	C*	C
c. Building and directory	C*	C
10. Special Facilities	SF	SF

Note: C = City; A = Airline; C* = City, unless installed by Airline;
 SF = As agreed during facilities construction and implementation



EXHIBIT H



INSURANCE REQUIREMENTS FOR LOS ANGELES WORLD AIRPORTS

NAME: CONCESSIONARIA VUELA COMPANIA DE AVIACION S.A.P.I. DE C.V.
dba VOLARIS
AGREEMENT / ACTIVITY: Use and License Agreement at ONT.
TERM: Expires 09/30/24
LAWA DIVISION: Commercial Development Group

The insured must maintain insurance coverage at limits normally required of its type operation; however, the following coverage noted with an "X" is the minimum required and must be at least the level of the limits indicated. All limits are per occurrence unless otherwise specified.

	<u>LIMITS</u>
<input checked="" type="checkbox"/> Workers' Compensation (Statutory)/Employer's Liability	<u>Statutory</u>
<input checked="" type="checkbox"/> Voluntary Compensation Endorsement	
<input checked="" type="checkbox"/> Waiver of Subrogation, specifically naming LAWA (See supplement)	
<input checked="" type="checkbox"/> Automobile Liability - covering owned, non-owned & hired auto	<u>\$10,000,000 CSL</u>
<input checked="" type="checkbox"/> Aviation/Airport or Commercial General Liability, including the following coverage:	<u>\$10,000,000*</u>
<input checked="" type="checkbox"/> Premises and Operations	
<input checked="" type="checkbox"/> Contractual (Blanket/Schedule)	
<input checked="" type="checkbox"/> Independent Contractors	
<input checked="" type="checkbox"/> Personal Injury	
<input checked="" type="checkbox"/> Hangarkeepers Legal Liab. (At least at a limit of liability of \$ 1 million)	
<input checked="" type="checkbox"/> Additional Insured Endorsement, specifically naming LAWA (See supplement).	
<input checked="" type="checkbox"/> Aircraft Liability (including passenger liability)*	
*Limit of Liability must meet Federal Requirements or as follows, whichever is greater:	
Commuters with 60 or fewer passengers or Cargo only, with payload less than 18,000 lbs. _____	\$ 50,000,000 CSL
Air Carriers with more than 60 passengers or Cargo only, With payload greater than 18,000 lbs. _____	\$ 200,000,000 CSL
<input checked="" type="checkbox"/> Property Insurance	
90% Co-ins. () Actual Cash Value (X) Replacement Value () Agreed Amt.	
<input checked="" type="checkbox"/> Covering company's improvements, w/waiver of subrogation (Including building structure, if applicable) (Department does not insure company's improvements)	<u>Value of Improvements</u>
<input checked="" type="checkbox"/> All Risk Coverages	
<input checked="" type="checkbox"/> Fire & Basic Causes of Loss Form, including sprinkler leakage	
<input checked="" type="checkbox"/> Vandalism and Malicious Mischief	
<input checked="" type="checkbox"/> Debris Removal	
<input checked="" type="checkbox"/> Builder's Risk Insurance - (All Risk Coverage) Required if property or building ultimately revert to City	
Coverage for Hazardous Substances	<u>\$ ***</u>
*** Must meet contractual requirements	

INSURANCE COMPANIES MUST HAVE AN AMBEST RATING OF A- OR BETTER, WITH A MINIMUM FINANCIAL SIZE OF AT LEAST 4.

PLEASE RETURN THIS FORM WITH EVIDENCE OF INSURANCE



D

**INSURANCE REQUIREMENTS FOR LOS ANGELES WORLD AIRPORTS
(SUPPLEMENT)**

The only evidence of insurance accepted will be either a Certificate of Insurance and/or a True and Certified copy of the policy. The following items must accompany the form of evidence provided:

- **Endorsements:**

1. Workers Compensation Waiver of Subrogation Endorsement
(WC 04 03 08 or similar)
2. General Liability Additional Insured Endorsement
(Applicable ISO Standard Endorsement)

****All endorsements must specifically name in the schedule:

The City of Los Angeles, Los Angeles World Airports, its Board, and all of its officers, employees and agents.

**A BLANKET/AUTOMATIC ENDORSEMENT AND/OR LANGUAGE ON A
CERTIFICATE OF INSURANCE IS NOT ACCEPTABLE.**

- A typed legible name of the Authorized Representative must accompany the signature on the Certificate of Insurance and/or the True and Certified copy of the policy.



ORDINANCES



LOS ANGELES ADMINISTRATIVE CODE

Div. 10, Ch. 1, Art. 11

LIVING WAGE ORDINANCE

Sec. 10.37 Legislative Findings.

The City awards many contracts to private firms to provide services to the public and to City government. Many lessees or licensees of City property perform services that affect the proprietary interests of City government in that their performance impacts the success of City operations. The City also provides financial assistance and funding to others for the purpose of economic development or job growth. The City expends grant funds under programs created by the federal and state governments. Such expenditures serve to promote the goals established for those programs by such governments and similar goals of the City. The City intends that the policies underlying this article serve to guide the expenditure of such funds to the extent allowed by the laws under which such grant programs are established.

Experience indicates that procurement by contract of services has all too often resulted in the payment by service contractors to their employees of wages at or slightly above the minimum required by federal and state minimum wage laws. Such minimal compensation tends to inhibit the quantity and quality of services rendered by such employees to the City and to the public. Underpaying employees in this way fosters high turnover, absenteeism, and lackluster performance. Conversely, adequate compensation promotes amelioration of these undesirable conditions. Through this article the City intends to require service contractors to provide a minimum level of compensation that will improve the level of services rendered to and for the City.

The inadequate compensation typically paid today also fails to provide service employees with resources sufficient to afford life in Los Angeles. It is unacceptable that contracting decisions involving the expenditure of City funds should foster conditions placing a burden on limited social services. The City, as a principal provider of social support services, has an interest in promoting an employment environment that protects such limited resources. In requiring the payment of a higher minimum level of compensation, this article benefits that interest.

Nothing less than the living wage should be paid by the recipients of City financial assistance themselves. Whether they be engaged in manufacturing or some other line of business, the City does not wish to foster an economic climate where a lesser wage is all that is offered to the working poor. The same adverse social consequences from such inadequate compensation emanate just as readily from manufacturing, for example, as service industries. This article is meant to protect these employees as well.

The City holds a proprietary interest in the work performed by many employees employed by lessees and licensees of City property and by their service contractors and subcontractors. In a very real sense, the success or failure of City operations may turn on the success or failure of these enterprises, for the City has a genuine stake in how the public perceives the services rendered for them by such businesses. Inadequate compensation of these employees adversely impacts the performance by the City's lessee or licensee and thereby does the same for the success of City operations. By the 1998 amendment to this article, recognition is given to the prominence of this interest at those facilities visited by the public on a frequent basis, including but not limited to, terminals at Los Angeles International Airport, Ports O'Call Village in San Pedro, and golf courses and recreation centers operated by the Department of Recreation and Parks. This article is meant to cover all such employees not expressly exempted.

Requiring payment of the living wage serves both proprietary and humanitarian concerns of the City. Primarily because of the latter concern and experience to date regarding the failure of some employers to honor their obligation to pay the living wage, the 1998 amendments introduce additional enforcement mechanisms to ensure compliance with this important obligation. Non-complying employers must now face the prospect of paying civil penalties, but only if they fail to cure non-compliance after having been given formal notice thereof. Where non-payment is the issue, employers who dispute determinations of non-compliance may avoid civil penalties as well by paying into a City holding account the monies in dispute. Employees should not fear retaliation, such as by losing their jobs, simply

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because they claim their right to the living wage, irrespective of the accuracy of the claim. The 1998 amendments strengthen the prohibition against retaliation to serve as a critical shield against such employer misconduct.

SECTION HISTORY

*Article and Section Added by Ord. No. 171,547, Eff. 5-5-97.
Amended by: In Entirety, Ord. No. 172,336, Eff. 1-14-99.*

Sec. 10.37.1 Definitions.

The following definitions shall apply throughout this article:

(a) "Airport" means the Department of Airports and each of the airports which it operates.

(b) "Airport Employer" means an Employer, as the term is defined in this section, at the Airport.

(c) "Airport Employee" means an Employee, as the term is defined in this section, of an Airport Employer.

(d) "Awarding authority" means that subordinate or component entity or person of the City (such as a department) or of the financial assistance recipient that awards or is otherwise responsible for the administration of a service contract or public lease or license, or, where there is no such subordinate or component entity or person, then the City or the City financial assistance recipient.

(e) "City" means the City of Los Angeles and all awarding authorities thereof, including those City departments which exercise independent control over their expenditure of funds, but excludes the Community Redevelopment Agency of the City of Los Angeles ("CRA"). The CRA is urged, however, to adopt a policy similar to that set forth in this article.

(f) "City financial assistance recipient" means any person who receives from the City discrete financial assistance for economic development or job growth expressly articulated and identified by the City, as contrasted with generalized financial assistance such as through tax legislation, in accordance with the following monetary limitations. Assistance given in the amount of one million dollars

(\$1,000,000) or more in any twelve-month period shall require compliance with this article for five years from the date such assistance reaches the one million dollar (\$1,000,000) threshold. For assistance in any twelve-month period totaling less than one million dollars (\$1,000,000) but at least one hundred thousand dollars (\$100,000), there shall be compliance for one year if at least one hundred thousand dollars (\$100,000) of such assistance is given in what is reasonably contemplated at the time to be on a continuing basis, with the period of compliance beginning when the accrual during such twelve-month period of such continuing assistance reaches the one-hundred thousand dollar (\$100,000) threshold.

Categories of such assistance include, but are not limited to, bond financing, planning assistance, tax increment financing exclusively by the City, and tax credits, and shall not include assistance provided by the Community Development Bank. City staff assistance shall not be regarded as financial assistance for purposes of this article. A loan shall not be regarded as financial assistance. The forgiveness of a loan shall be regarded as financial assistance. A loan shall be regarded as financial assistance to the extent of any differential between the amount of the loan and the present value of the payments thereunder, discounted over the life of the loan by the applicable federal rate as used in 26 U.S.C. Sections 1274(d), 7872(f). A recipient shall not be deemed to include lessees and sublessees.

A recipient shall be exempted from application of this article if: (1) it is in its first year of existence, in which case the exemption shall last for one (1) year, (2) it employs fewer than five (5) employees for each working day in each of twenty (20) or more calendar weeks in the current or preceding calendar year, or (3) it obtains a waiver as provided herein. A recipient - who employs the long-term unemployed or provides trainee positions intended to prepare employees for permanent positions, and who claims that compliance with this article would cause an economic hardship - may apply in writing to the City department or office administering such assistance, which department or office which shall forward such application and its recommended action on it to the City Council. Waivers shall be affected by Council resolution.

(g) "Contractor" means any person that enters into: (1) a service contract with the City, (2) a

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service contract with a proprietary lessee or licensee or sublessee or sublicensee, or (3) a contract with a City financial assistance recipient to assist the recipient in performing the work for which the assistance is being given. Vendors, such as service contractors, of City financial assistance recipients shall not be regarded as contractors except to the extent provided in Subsection (i).*

*Technical correction due to re-lettering of subsections: "Subsection (f)" corrected to "Subsection (i)".

(h) **"Designated Administrative Agency (DAA)"** means the Department of Public Works, Bureau of Contract Administration, who shall bear administrative responsibilities under this article.

(i) **"Employee"** means any person - who is not a managerial, supervisory, or confidential employee and who is not required to possess an occupational license - who is employed (1) as a service employee of a contractor or subcontractor on or under the authority of one or more service contracts and who expends any of his or her time thereon, including but not limited to: hotel employees; restaurant, food service or banquet employees; janitorial employees; security guards; parking attendants; nonprofessional health care employees; gardeners; waste management employees; and clerical employees; (2) as a service employee - of a public lessee or licensee, of a sublessee or sublicensee, or of a service contractor or subcontractor of a public lessee or licensee, or sublessee or sublicensee - who works on the leased or licensed premises; (3) by a City financial assistance recipient who expends at least half of his or her time on the funded project; or (4) by a service contractor or subcontractor of a City financial assistance recipient and who expends at least half of his or her time on the premises of the City financial assistance recipient directly involved with the activities funded by the City.

(j) **"Employer"** means any person who is a City financial assistance recipient, contractor, subcontractor, public lessee, public sublessee, public licensee, or public sublicensee and who is required to have a business tax registration certificate by Los Angeles Municipal Code §§ 21.00 - 21.198 or successor ordinance or, if expressly exempted by the Code from such tax, would otherwise be subject to the tax but for such exemption; provided, however,

that corporations organized under §501(c)(3) of the United States Internal Revenue Code of 1954, 26 U.S.C. §501(c)(3), whose chief executive officer earns a salary which, when calculated on an hourly basis, is less than eight (8) times the lowest wage paid by the corporation, shall be exempted as to all employees other than child care workers.

(k) **"Person"** means any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity that may employ individuals or enter into contracts.

(l) **"Public lease or license"**.

(a) Except as provided in (l)(b)*, **"Public lease or license"** means a lease or license of City property on which services are rendered by employees of the public lessee or licensee or sublessee or sublicensee, or of a contractor or subcontractor, but only where any of the following applies:

*Technical correction due to re-lettering of subsections: "(i) (b)" corrected to "(l) (b)".

(1) The services are rendered on premises at least a portion of which is visited by substantial numbers of the public on a frequent basis (including, but not limited to, airport passenger terminals, parking lots, golf courses, recreational facilities); or

(2) Any of the services could feasibly be performed by City employees if the awarding authority had the requisite financial and staffing resources; or

(3) The DAA has determined in writing that coverage would further the proprietary interests of the City.

(b) A public lessee or licensee will be exempt from the requirements of this article subject to the following limitations:

(1) The lessee or licensee has annual gross revenues of less than the annual gross revenue threshold, three hundred fifty thousand dollars (\$350,000), from business conducted on City property;

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(2) The lessee or licensee employs no more than seven (7) people total in the company on and off City property;

(3) To qualify for this exemption, the lessee or licensee must provide proof of its gross revenues and number of people it employs in the company's entire workforce to the awarding authority as required by regulation;

(4) Whether annual gross revenues are less than three hundred fifty thousand dollars (\$350,000) shall be determined based on the gross revenues for the last tax year prior to application or such other period as may be established by regulation;

(5) The annual gross revenue threshold shall be adjusted annually at the same rate and at the same time as the living wage is adjusted under section 10.37.2 (a);

(6) A lessee or licensee shall be deemed to employ no more than seven (7) people if the company's entire workforce worked an average of no more than one thousand two-hundred fourteen (1,214) hours per month for at least three-fourths (3/4) of the time period that the revenue limitation is measured;

(7) Public leases and licenses shall be deemed to include public subleases and sublicenses;

(8) If a public lease or license has a term of more than two (2) years, the exemption granted pursuant to this section shall expire after two (2) years but shall be renewable in two-year increments upon meeting the requirements therefor at the time of the renewal application or such period established by regulation.

(m) "Service contract" means a contract let to a contractor by the City primarily for the furnishing of services to or for the City (as opposed to the purchase of goods or other property or the leasing or renting of property) and that involves an expenditure in excess of twenty-five thousand dollars (\$25,000) and a contract term of at least three (3) months; but only where any of the following applies: (1) at least some of the services rendered are rendered by employees whose work site is on property owned by the City, (2) the services could feasibly be performed by City employees if the awarding authority had the requisite financial and staffing

resources, or (3) the DAA has determined in writing that coverage would further the proprietary interests of the City.

(n) "Subcontractor" means any person not an employee that enters into a contract (and that employs employees for such purpose) with (1) a contractor or subcontractor to assist the contractor in performing a service contract or (2) a contractor or subcontractor of a proprietary lessee or licensee or sublessee or sublicensee to perform or assist in performing services on the leased or licensed premises. Vendors, such as service contractors or subcontractors, of City financial assistance recipients shall not be regarded as subcontractors except to the extent provided in Subsection (i).*

*Technical correction due to re-lettering of subsections: "Subsection (f)" corrected to "Subsection (i)".

(o) "Willful violation" means that the employer knew of his, her, or its obligations under this article and deliberately failed or refused to comply with its provisions.

SECTION HISTORY

Added by Ord. No. 171,547, Eff. 5-5-97.

Amended by: In Entirety, Ord. No. 172,336, Eff. 1-14-99; Subsec. (e), Ord. No. 176,155, Eff. 9-22-04; Subsec. (e), Ord. No. 176,283, Eff. 12-25-04, Oper. 9-22-04; Subsecs. (a) through (l) re-lettered (d) through (o), respectively and new Subsecs. (a), (b), and (c) added, Ord. No. 180,877, Eff. 10-19-09.

Sec. 10.37.2 Payment of Minimum Compensation to Employees.

(a) Wages. Employers shall pay Employees a wage of no less than the hourly rates set under the authority of this article. The initial rates were seven dollars and twenty-five cents (\$7.25) per hour with health benefits, as described in this article, or otherwise eight dollars and fifty cents (\$8.50) per hour without health benefits. With the annual adjustment effective July 1, 2009, together with all previous annual adjustments as provided by this subsection, such rates are ten dollars and thirty cents (\$10.30) per hour with health benefits or, if health benefits are not provided, then fourteen dollars and eighty cents (\$14.80) per hour for Airport Employees and eleven dollars and fifty-five cents (\$11.55) per hour for all other Employees. The hourly rate with

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health benefits to be paid to all Employees and the hourly rate without health benefits to be paid to Airport Employees shall be adjusted annually to correspond with adjustments, if any, to retirement benefits paid to members of the Los Angeles City Employees Retirement System (LACERS), made by the CERS Board of Administration under § 4.1040. The Office of Administrative and Research Services shall so advise the DAA of any such change by June 1 of each year and of the required new hourly rates, if any. On the basis of such report, the DAA shall publish a bulletin announcing the adjusted rates, which shall take effect upon such publication.

(b) **Compensated Days Off.** Employers shall provide at least twelve (12) compensated days off per year for sick leave, vacation, or personal necessity at the employee's request. Employers shall also permit employees to take at least an additional ten (10) days a year of uncompensated time to be used for sick leave for the illness of the employee or a member of his or her immediate family where the employee has exhausted his or her compensated days off for that year.

SECTION HISTORY

*Added by Ord. No. 171,547, Eff. 5-5-97.
Amended by: In Entirety, Ord. No. 172,336, Eff. 1-14-99; Subsec. (a), Ord. No. 173,285, Eff. 6-26-00, Oper. 7-1-00; Subsec. (a), Ord. No. 180,877, Eff. 10-19-09.*

Sec. 10.37.3 Health Benefits.

(a) **Health Benefits.** The health benefits required by this article shall consist of the payment of at least four dollars and fifty cents (\$4.50) per hour by Airport Employers and at least one dollar and twenty-five cents (\$1.25) per hour by all other Employers towards the provision of health care benefits for Employees and their dependents. Proof of the provision of such benefits must be submitted to the awarding authority to qualify for the wage rate in Section 10.37(a) for Employees with health benefits. Airport Employees cannot waive the health benefits offered by an Airport Employer when the Airport Employer does not require an out-of-pocket contribution by the Airport Employee. Consistent with and as shall be reflected in the hourly rates payable to Airport Employees as provided in 10.37.2(a) above, the amount of payment for health benefits by Airport Employers shall be adjusted annually to correspond with adjustments, if any, to retirement benefits paid to members of the Los

Angeles City Employees Retirement System (LACERS), made by the CERS Board of Administration under § 4.1040. The Office of Administrative and Research Services shall so advise the DAA of any such change by June 1 of each year and of the required new hourly payments, if any. On the basis of such report, the DAA shall publish a bulletin announcing the adjusted payment, which shall take effect upon such publication.

(b) **Periodic Review.** At least once every three years, the Office of Administrative and Research Services shall review the health benefit payment by Airport Employers set forth in 10.37.3(a) to determine whether the payment accurately reflects the cost of health care and to assess the impacts of the health benefit payment on Airport Employers and Airport Employees and shall transmit a report with its findings to the Council.

SECTION HISTORY

*Added by Ord. No. 171,547, Eff. 5-5-97.
Amended by: In Entirety, Ord. No. 172,336, Eff. 1-14-99; In Entirety, Ord. No. 180,877, Eff. 10-19-09.*

Sec. 10.37.4 Notifying Employees of their Potential Right to the Federal Earned Income Credit.

Employers shall inform employees making less than twelve dollars (\$12) per hour of their possible right to the federal Earned Income Credit ("EIC") under § 32 of the Internal Revenue Code of 1954, 26 U.S.C. § 32, and shall make available to employees forms informing them about the EIC and forms required to secure advance EIC payments from the employer.

SECTION HISTORY

*Article and Section Added by Ord. No. 171,547, Eff. 5-5-97.
Amended by: In Entirety, Ord. No. 172,336, Eff. 1-14-99.*

Sec. 10.37.5 Retaliation Prohibited.

Neither an employer, as defined in this article, nor any other person employing individuals shall discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the City with regard to the employer's compliance or anticipated compliance with this article, for opposing any practice proscribed by this article, for participating in proceedings related to this article, for seeking to enforce his or her rights under this article by any lawful means, or for otherwise asserting rights under this article.

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SECTION HISTORY

*Article and Section Added by Ord. No. 171,547, Eff. 5-5-97.
Amended by: In Entirety, Ord. No. 172,336, Eff. 1-14-99.*

Sec. 10.37.6 Enforcement.

(a) An employee claiming violation of this article may bring an action in the Municipal Court or Superior Court of the State of California, as appropriate, against an employer and may be awarded:

(1) For failure to pay wages required by this article - back pay for each day during which the violation continued.

(2) For failure to pay medical benefits - the differential between the wage required by this article without benefits and such wage with benefits, less amounts paid, if any, toward medical benefits.

(3) For retaliation - reinstatement, back pay, or other equitable relief the court may deem appropriate.

(4) For willful violations, the amount of monies to be paid under (1) - (3) shall be trebled.

(b) The court shall award reasonable attorney's fees and costs to an employee who prevails in any such enforcement action and to an employer who so prevails if the employee's suit was frivolous.

(c) Compliance with this article shall be required in all City contracts to which it applies, and such contracts shall provide that violation of this article shall constitute a material breach thereof and entitle the City to terminate the contract and otherwise pursue legal remedies that may be available. Such contracts shall also include a pledge that there shall be compliance with federal law proscribing retaliation for union organizing.

(d) An employee claiming violation of this article may report such claimed violation to the DAA which shall investigate such complaint. Whether based upon such a complaint or otherwise, where the DAA has determined that an employer has violated this article, the DAA shall issue a written notice to the employer that the violation is to be corrected within

ten (10) days. In the event that the employer has not demonstrated to the DAA within such period that it has cured such violation, the DAA may then:

(1) Request the awarding authority to declare a material breach of the service contract, public lease or license, or financial assistance agreement and exercise its contractual remedies thereunder, which are to include, but not be limited to, termination of the service contract, public lease or license, or financial assistance agreement and the return of monies paid by the City for services not yet rendered.

(2) Request the City Council to debar the employer from future City contracts, leases, and licenses for three (3) years or until all penalties and restitution have been fully paid, whichever occurs last. Such debarment shall be to the extent permitted by, and under whatever procedures, may be required by, law.

(3) Request the City Attorney to bring a civil action against the employer seeking:

(i) Where applicable, payment of all unpaid wages or health premiums prescribed by this article; and/or

(ii) A fine payable to the City in the amount of up to one hundred dollars (\$100) for each violation for each day the violation remains uncured.

Where the alleged violation concerns non-payment of wages or health premiums, the employer will not be subject to debarment or civil penalties if it pays the monies in dispute into a holding account maintained by the City for such purpose. Such disputed monies shall be presented to a neutral arbitrator for binding arbitration. The arbitrator shall determine whether such monies shall be disbursed, in whole or in part, to the employer or to the employees in question. Regulations promulgated by the DAA shall establish the framework and procedures of such arbitration process. The cost of arbitration shall be borne by the City, unless the arbitrator determines that the employer's position in the matter is frivolous, in which event the arbitrator shall assess the employer for the full cost of the arbitration. Interest earned by the City on monies held in the holding account shall be added to the principal sum deposited, and the monies shall be disbursed in accordance with the

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arbitration award. A service charge for the cost of account maintenance and service may be deducted therefrom.

(e) Notwithstanding any provision of this Code or any other ordinance to the contrary, no criminal penalties shall attach for violation of this article.

SECTION HISTORY

*Added by Ord. No. 171,547, Eff. 5-5-97.
Amended by: In Entirety, Ord. No. 172,336, Eff. 1-14-99; Subsec. (d), Para. (1), Ord. No. 173,747, Eff. 2-24-01.*

Sec. 10.37.7 Administration.

The City Council shall by resolution designate a department or office, which shall promulgate rules for implementation of this article and otherwise coordinate administration of the requirements of this article ("designated administrative agency" - DAA). The DAA shall monitor compliance, including the investigation of claimed violations, and shall promulgate implementing regulations consistent with this article. The DAA shall also issue determinations that persons are City financial assistance recipients, that particular contracts shall be regarded as "service contracts" for purposes of Section 10.37.1(j), and that particular leases and licenses shall be regarded as "public leases" or "public licenses" for purposes of Section 10.37.1(i), when it receives an application for a determination of non-coverage or exemption as provided for in Section 10.37.13. The DAA shall also establish employer reporting requirements on employee compensation and on notification about and usage of the federal Earned Income Credit referred to in Section 10.37.4. The DAA shall report on compliance to the City Council no less frequently than annually.

During the first, third, and seventh years of this article's operation since May 5, 1997, and every third year thereafter, the Office of Administrative and Research Services and the Chief Legislative Analyst shall conduct or commission an evaluation of this article's operation and effects. The evaluation shall specifically address at least the following matters: (a) how extensively affected employers are complying with the article; (b) how the article is affecting the workforce composition of affected employers; (c) how the article is affecting productivity and service quality of affected employers; (d) how the additional costs of the article have been distributed among workers, their

employers, and the City. Within ninety days of the adoption of this article, these offices shall develop detailed plans for evaluation, including a determination of what current and future data will be needed for effective evaluation.

SECTION HISTORY

*Added by Ord. No. 171,547, Eff. 5-5-97.
Amended by: In Entirety, Ord. No. 172,336, Eff. 1-14-99; Ord. No. 173,285, Eff. 6-26-00, Oper. 7-1-00; Ord. No. 173,747, Eff. 2-24-01.*

Sec. 10.37.8 Exclusion of Service Contracts from Competitive Bidding Requirement.

Service contracts otherwise subject to competitive bid shall be let by competitive bid if they involve the expenditure of at least two-million dollars (\$2,000,000). Charter Section 372 shall not be applicable to service contracts.

SECTION HISTORY

*Added by Ord. No. 171,547, Eff. 5-5-97.
Amended by: In Entirety, Ord. No. 172,336, Eff. 1-14-99; Ord. No. 173,285, Eff. 6-26-00, Oper. 7-1-00.*

Sec. 10.37.9 Coexistence with Other Available Relief for Specific Deprivations of Protected Rights.

This article shall not be construed to limit an employee's right to bring legal action for violation of other minimum compensation laws.

SECTION HISTORY

*Article and Section Added by Ord. No. 171,547, Eff. 5-5-97.
Amended by: In Entirety, Ord. No. 172,336, Eff. 1-14-99.*

Sec. 10.37.10 Expenditures Covered.

This article shall apply to the expenditure -- whether through aid to City financial recipients, service contracts let by the City, or service contracts let by its financial assistance recipients -- of funds entirely within the City's control and to other funds, such as federal or state grant funds, where the application of this article is consonant with the laws authorizing the City to expend such other funds.

SECTION HISTORY

Article and Section Added by Ord. No. 171,547, Eff. 5-5-97.

LIVING WAGE ORDINANCE



Amended by: In Entirety, Ord. No. 172,336, Eff. 1-14-99.

Sec. 10.37.11 Timing of Application.

(a) Original 1997 Ordinance. The provisions of this article as enacted by City Ordinance No.171,547, effective May 5, 1997, shall apply to (1) contracts consummated and financial assistance provided after such date, (2) contract amendments consummated after such date and before the effective date of the 1998 ordinance which themselves met the requirements of former Section 10.37.1(h) (definition of "service contract") or which extended contract duration, and (3) supplemental financial assistance provided after May 5, 1997 and before the effective date of the 1998 ordinance which itself met the requirements of Section 10.37.1(c).

(b) 1998 Amendment. The provisions of this article as amended by the 1998 ordinance shall apply to (1) service contracts, public leases or licenses, and financial assistance agreements consummated after the effective date of such ordinance and (2) amendments, consummated after the effective date of such ordinance, to service contracts, public leases or licenses, and financial assistance agreements that provide additional monies or which extend term.

(c) 2000 amendment. The provisions of this article as amended by the 2000 ordinance shall apply to (1) service contracts, public leases or public licenses and City financial assistance recipient agreements consummated after the effective date of such ordinance and (2) amendments to service contracts, public leases or licenses and City financial assistance recipient agreements which are consummated after the effective date of such ordinance and which provide additional monies or which extend the term.

(d) 2009 Amendment. The provisions of this article as amended by the 2009 ordinance shall become operative ninety (90) days following the effective date of the 2009 ordinance.

SECTION HISTORY

Added by Ord. No. 171,547, Eff. 5-5-97.
Amended by: In Entirety, Ord. No. 172,336, Eff. 1-14-99; Subsec. (b), Subsec. (c) Added, Ord. No. 173,747, Eff. 2-24-01; Subsec. (d) Added, Ord. No. 180,877, Eff. 10-19-09.

Sec. 10.37.12 Snpersession by Collective Bargaining Agreement.

Parties subject to this article may by collective bargaining agreement provide that such agreement shall supersede the requirements of this article.

SECTION HISTORY

Article and Section Added by Ord. No. 171,547, Eff. 5-5-97.
Amended by: In Entirety, Ord. No. 172,336, Eff. 1-14-99.

Sec. 10.37.13 Liberal Interpretation of Coverage; Rebuttable Presnption of Coverage.

The definitions of "City financial assistance recipient" in Section 10.37.1(c), of "public lease or license" in Section 10.37.1(i), and of "service contract" in Section 10.37.1(j) shall be liberally interpreted so as to further the policy objectives of this article. All recipients of City financial assistance meeting the monetary thresholds of Section 10.37.1(c), all City leases and licenses (including subleases and sublicenses) where the City is the lessor or licensor, and all City contracts providing for services that are more than incidental, shall be presumed to meet the corresponding definition just mentioned, subject, however, to a determination by the DAA of non-coverage or exemption on any basis allowed by this article, including, but not limited to, non-coverage for failure to satisfy such definition. The DAA shall by regulation establish procedures for informing persons engaging in such transactions with the City of their opportunity to apply for a determination of non-coverage or exemption and procedures for making determinations on such applications.

SECTION HISTORY

Added by Ord. No. 172,336, Eff. 1-14-99.
Amended by: Ord. No. 173,747, Eff. 2-24-01.

Sec. 10.37.14 Severability

If any provision of this article is declared legally invalid by any court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

SECTION HISTORY

Article and Section Added by Ord. No. 171,547, Eff. 5-5-97.
Amended by: In Entirety, Ord. No. 172,336, Eff. 1-14-99

**LIVING WAGE
ORDINANCE**



**LIVING WAGE
ORDINANCE**



LOS ANGELES ADMINISTRATIVE CODE

Div. 10, Ch. 1, Art. 10

SERVICE CONTRACTOR WORKER RETENTION ORDINANCE

Sec. 10.36 Findings and Statement of Policy.

The City awards many contracts to private firms to provide services to the public and to City government. The City awards many contracts to private firms to provide services to the public and to City government. The City also provides financial assistance and funding to others for the purpose of economic development or job growth. At the conclusion of the terms of a service contract with the City or with those receiving financial assistance from the City, competition results in the awarding of a service contract to what may be a different contractor. These new contracts often involve anticipated changes in different managerial skills, new technology or techniques, new themes or presentations, or lower costs.

The City expends grant funds under programs created by the federal and state governments. Such expenditures serve to promote the goals established for those programs by such governments and similar goals of the City. The City intends that the policies underlying this article serve to guide the expenditure of such funds to the extent allowed by the laws under which such grant programs are established.

Despite desired changes through the process of entering into new contracts, it is the experience of the City that reasons for change do not necessarily include a need to replace workers presently performing services who already have useful knowledge about the workplace where the services are performed.

Incumbent workers have already invaluable knowledge and experience with the work schedules, practices, and clients. The benefits of replacing these workers without such experiences decreases efficiency and results in a disservice to City and City financed or assisted projects.

Retaining existing service workers when a change in contractors occurs reduces the likelihood of labor disputes and disruptions. The reduction of the likelihood of labor disputes and disruptions results in the assured continuity of services to citizens who receive services provided by the City or by City financed or assisted projects.

It is unacceptable that contracting decisions involving the expenditure of City funds should have any potential effect of creating unemployment and the consequential need for social services. The City, as a principal provider of social support services, has an interest in the stability of employment under contracts with the City or by those receiving financial assistance from the City. The retention of existing workers benefits that interest.

SECTION HISTORY

*Article and Section Added by Ord. No. 170,784, Eff. 1-13-96.
Amended by: Article and Section, Ord. No. 171,004, Eff. 5-18-96.*

Sec. 10.36.1. Definitions.

The following definitions shall apply throughout this article:

(a) "**Awarding authority**" means that subordinate or component entity or person of the City (such as a department) or of the financial assistance recipient that awards or is otherwise responsible for the administration of a service contract or, if none, then the City or the City financial assistance recipient.

(b) "**City**" means the City of Los Angeles and all awarding authorities thereof, including those City departments which exercise independent control over their expenditure of funds, but excludes the Community Redevelopment Agency of the City of Los Angeles.

(c) "**City financial assistance recipient**" means any person that receives from the City in any twelve-month period discrete financial assistance for economic development or job growth expressly articulated and identified by the City totaling at least one hundred thousand dollars (\$100,000); provided, however, that corporations organized under Section § 501(c)(3) of the United States Internal Revenue Code of 1954, 26 U.S.C. § 501(c)(3), with annual operating budgets of less than five million dollars (\$5,000,000) or that regularly employ homeless persons, persons who are chronically unemployed, or persons receiving public assistance, shall be exempt.

Categories of such assistance include, but are not limited to, bond financing, planning assistance, tax increment financing exclusively by the City, and tax



credits, and shall not include assistance provided by the Community Development Bank. City staff assistance shall not be regarded as financial assistance for purposes of this article. A loan shall not be regarded as financial assistance. The forgiveness of a loan shall be regarded as financial assistance. A loan shall be regarded as financial assistance to the extent of any differential between the amount of the loan and the present value of the payments thereunder, discounted over the life of the loan by the applicable federal rate as used in 26 U.S.C. Sections 1274(d), 7872(f). A recipient shall not be deemed to include lessees and sublessees. Service contracts for economic development or job growth shall be deemed such assistance once the \$100,000 threshold is reached.

(d) **"Contractor"** means any person that enters into a service contract with the City or a City financial assistance recipient.

(e) **"Employee"** means any person employed as a service employee of a contractor or subcontractor earning less than fifteen dollars (\$15.00) per hour in salary or wage whose primary place of employment is in the City on or under the authority of a service contract and including but not limited to: hotel employees, restaurant, food service or banquet employees; janitorial employees; security guards; parking attendants; nonprofessional health care employees; gardeners; waste management employees; and clerical employees; and does not include a person who is (1) a managerial, supervisory, or confidential employees, or (2) required to possess an occupational license.

(f) **"Person"** means any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity that may employ individuals or enter into contracts.

(g) **"Service contract"** means a contract let to a contractor by the City or a City financial assistance recipient primarily for the furnishing of services to or for the City or financial assistance recipient (as opposed to the purchase of goods or other property) and that involves an expenditure or receipt in excess of twenty-five thousand dollars (\$25,000) and a contract term of at least three months.

(h) **"Subcontractor"** means any person not an employee that enters into a contract with a contractor to assist the contractor in performing a service contract and that employs employees for such purpose.

(i) **"Successor service contract"** means a service contract where the services to be performed are substantially similar to a service contract that has been recently terminated.

SECTION HISTORY

Added by Ord. No. 170,784, Eff. 1-13-96.

Amended by: Ord. No. 171,004, Eff. 5-18-96; Subsec. (c), Ord. No. 172,843, Eff. 11-4-99.

Sec. 10.36.2. Transition Employment Period.

(a) Where an awarding authority has given notice that a service contract has been terminated, or where a service contractor has given notice of such termination, upon receiving or giving such notice, as the case may be, the terminated contractor shall within ten (10) days thereafter provide to the successor contractor the name, address, date of hire, and employment occupation classification of each employee in employment, of itself or subcontractors, at the time of contract termination. If the terminated contractor has not learned the identity of the successor contractor, if any, by the time that notice was given of contract termination, the terminated contractor shall obtain such information from the awarding authority. If a successor service contract has not been awarded by the end of the ten (10)-day period, the employment information referred to earlier in this subsection shall be provided to the awarding authority at such time. Where a subcontract of a service contract has been terminated prior to the termination of the service contract, the terminated subcontractor shall for purposes of this article be deemed a terminated contractor.

(1) Where a service contract or contracts are being let where the same or similar services were rendered by under multiple service contracts, the City or City financial aid recipient shall pool the employees, ordered by seniority within job classification, under such prior contracts.

(2) Where the use of subcontractors has occurred under the terminated contract or where the use of subcontractors is to be permitted under the successor contract, or where both circumstances arise, the City or City financial assistance recipient shall pool, when applicable, the employees, ordered by seniority within job classification, under such prior contracts or subcontracts where required by and in accordance with rules authorized by this article.



(b) A successor contractor shall retain, for a ninety (90)-day transition employment period, employees who have been employed by the terminated contractor or its subcontractors, if any, for the preceding twelve (12) months or longer. Where pooling of employees has occurred, the successor contractor shall draw from such pools in accordance with rules established under this article. During such ninety (90)-day period, employees so hired shall be employed under the terms and conditions established by the successor contractor (or subcontractor) or as required by law.

(c) If at anytime the successor contractor determines that fewer employees are required to perform the new service contract than were required by the terminated contractor (and subcontractors, if any), the successor contractor shall retain employees by seniority within job classification.

(d) During such ninety (90)-day period, the successor contractor (or subcontractor, where applicable) shall maintain a preferential hiring list of eligible covered employees not retained by the successor contractor (or subcontractor) from which the successor contractor (or subcontractor) shall hire additional employees.

(e) Except as provided in subsection (c) of this section, during such ninety (90)-day period the successor contractor (or subcontractor, where applicable) shall not discharge without cause an employee retained pursuant to this article. "Cause" for this purpose shall include, but not be limited to, the employee's conduct while in the employ of the terminated contractor or subcontractor that contributed to any decision to terminate the contract or subcontract for fraud or poor performance.

(f) At the end of such ninety (90)-day period, the successor contractor (or subcontractor, where applicable) shall perform a written performance evaluation for each employee retained pursuant to this article. If the employee's performance during such ninety (90)-day period is satisfactory, the successor contractor (or subcontractor) shall offer the employee continued employment under the terms and conditions established by the successor contractor (or subcontractor) or as required by law. During such ninety (90)-day period, the successor contractor shall maintain a preferential hiring list of eligible covered employees not retained by the successor contractor from which the successor contractor shall hire additional employees.

(g) If the City or a City financial assistance recipient enters into a service contract for the performance of work that prior to the service contract was performed by the City's or the recipient's own service employees, the City or the recipient, as the case may be, shall be deemed to be a "terminated contractor" within the meaning of this section and the contractor under the service contract shall be deemed to be a "successor contractor" within the meaning of this section and section 10.36.3.

SECTION HISTORY

Added by Ord. No. 170,784, Eff. 1-13-96.

Amended By: Ord. No. 171,004, Eff. 5-18-96; Subsec. (g) Added, Ord. No. 172,349, Eff. 1-29-99.

Sec. 10.36.3. Enforcement.

(a) An employee who has been discharged in violation of this article by a successor contractor or its subcontractor may bring an action in the Municipal Court or Superior Court of the State of California, as appropriate, against the successor contractor and, where applicable, its subcontractor, and may be awarded:

(1) Back pay for each day during which the violation continues, which shall be calculated at a rate of compensation not less than the higher of:

(A) The average regular rate of pay received by the employee during the last 3 years of the employee's employment in the same occupation classification; or

(B) The final regular rate received by the employee.

(2) Costs of benefits the successor contractor would have incurred for the employee under the successor contractor's (or subcontractor's, where applicable) benefit plan.

(b) If the employee is the prevailing party in any such legal action, the court shall award reasonable attorney's fees and costs as part of the costs recoverable.

(c) Compliance with this article shall be required in all City contracts to which it applies, and such contracts shall provide that violation of this article shall entitle the City to terminate the contract and otherwise pursue legal remedies that may be available.



(d) Notwithstanding any provision of this Code or any other ordinance to the contrary, no criminal penalties shall attach for any violation of this article.

SECTION HISTORY

*Added by Ord. No. 170,784, Eff. 1-13-96.
Amended By: Ord. No. 171,004, Eff. 5-18-96.*

Sec. 10.36.4. Exemption for Successor Contractor or Subcontractor's Prior Employees.

An awarding authority shall upon application by a contractor or subcontractor exempt from the requirements of this article a person employed by the contractor or subcontractor continuously for at least twelve (12) months prior to the commencement of the successor service contract or subcontract who is proposed to work on such contract or subcontract as an employee in a capacity similar to such prior employment, where the application demonstrates that (a) the person would otherwise be laid off work and (b) his or her retention would appear to be helpful to the contractor or subcontractor in performing the successor contract or subcontract. Once a person so exempted commences work under a service contract or subcontract, he or she shall be deemed an employee as defined in Section 10.36.1(e) of this Code.

SECTION HISTORY

*Added by Ord. No. 170,784, Eff. 1-13-96.
Amended By: Ord. No. 171,004, Eff. 5-18-96.*

Sec. 10.36.5. Coexistence with Other Available Relief for Specific Deprivations of Protected Rights.

This article shall not be construed to limit an employee's right to bring legal action for wrongful termination.

SECTION HISTORY

*Added by Ord. No. 170,784, Eff. 1-13-96.
Amended By: Ord. No. 171,004, Eff. 5-18-96.*

Sec. 10.36.6. Expenditures Covered by this Article.

This article shall apply to the expenditure, whether through service contracts let by the City or by its financial assistance recipients, of funds entirely within the City's control and to other funds, such as federal or state grant funds, where the application of this article is consonant with the laws authorizing the

City to expend such other funds. City financial assistance recipients shall apply this article to the expenditure of non-City funds for service contracts to be performed in the City by complying themselves with § 10.36.2(g) and by contractually requiring their service contractors to comply with this article. Such requirement shall be imposed by the recipient until the City financial assistance has been fully expended.

SECTION HISTORY

*Added by Ord. No. 171,004, Eff. 5-18-96.
Amended by: Ord. No. 172,337, Eff. 1-14-99; Ord. No. 172,843, Eff. 11-4-99*

Sec. 10.36.7. Timing of Application of Ordinances Adding and then Amending this Article.

The provisions of this article as set forth in City Ordinance No. 171,004 shall apply to contracts consummated and financial assistance provided after May 18, 1996 (the effective date of City Ordinance No. 171,004). As for contracts consummated and financial assistance provided after the original version of this article took effect on January 13, 1996 (by City Ordinance No. 170,784) and through May 18, 1996, the City directs its appointing authorities and urges others affected to use their best efforts to work cooperatively so as to allow application City Ordinance No. 171,004 rather than City Ordinance No. 170,784 to service contracts let during such period. No abrogation of contract or other rights created by City Ordinance No. 170,784, absent consent to do so, shall be effected by the retroactive application of City Ordinance No. 171,004.

SECTION HISTORY

*Added by Ord. No. 171,784, Eff. 1-13-96.
Amended by: Ord. No. 171,004, Eff. 5-18-96; Ord. No. 172,337, Eff. 1-14-99.*

Sec. 10.36.8. Promulgation of Implementing Rules.

The City Council shall by resolution designate a department or office, which shall promulgate rules for implementation of this article and otherwise coordinate administration of the requirements of this article.

SECTION HISTORY

Added by Ord. No. 171,004, Eff. 5-18-96.



Sec. 10.36.9. Severability.

If any severable provision or provisions of this article or any application thereof is held invalid, such invalidity shall not affect other provisions or applications of the article that can be given effect notwithstanding such invalidity.

SECTION HISTORY

Added by Ord. No. 171,004, Eff.5-18-96.

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LOS ANGELES ADMINISTRATIVE CODE

Div. 10, Ch. 1, Art. 1

CHILD SUPPORT

Sec. 10.10. Child Support Assignment Orders.

a. Definitions.

1. **Awarding Authority** means a subordinate or component entity or person of the City (such as a City department or Board of Commissioners) that has the authority to enter into a contract or agreement for the provision of goods or services on behalf of the City of Los Angeles.

2. **Contract** means any agreement, franchise, lease or concession including an agreement for any occasional professional or technical personal services, the performance of any work or service, the provision of any materials or supplies, or the rendering of any service to the City of Los Angeles or to the public which is let, awarded or entered into with, or on behalf of, the City of Los Angeles or any awarding authority thereof.

3. **Contractor** means any person, firm, corporation, partnership or any combination thereof which submits a bid or proposal or enters into a contract with any awarding authority of the City of Los Angeles.

4. **Subcontractor** means any person, firm, corporation, partnership or any combination thereof who enters into a contract with a contractor to perform or provide a portion of any contract with the City.

5. **Principal Owner** means any person who owns an interest of 10 percent or more in a contractor or subcontractor as defined herein.

b. Mandatory Contract Provisions.

Every contract that is let, awarded or entered into with or on behalf of the City of Los Angeles shall contain a provision obligating the contractor or subcontractor to fully comply with all applicable State and Federal employment reporting requirements for the contractor or subcontractor's employees. The contractor or subcontractor will also be required to certify that the principal owner(s) thereof are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally, that the contractor or subcontractor will

fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments in accordance with California Family Code §§ 5230 *et seq.* and that the contractor or subcontractor will maintain such compliance throughout the term of the contract.

Failure of a contractor or subcontractor to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignments or Notices of Assignment or failure of the principal owner(s) to comply with any Wage and Earnings Assignments or Notices of Assignment applicable to them personally shall constitute a default under the contract. Failure of the contractor or subcontractor or principal owner thereof to cure the default within 90 days of notice of such default by the City shall subject the contract to termination.

c. Notice to Bidders.

Each awarding authority shall be responsible for giving notice of the provisions of this ordinance to those who bid on, or submit proposals for, prospective contracts with the City.

d. Current Contractor Compliance.

Within 30 days of the operative date of this ordinance, the City, through its operating departments, shall serve upon existing contractors a written request that they and their subcontractors (if any) comply with all applicable State and Federal employment reporting requirements for the contractor and subcontractor's employees, that they certify that the principal owner(s) of the contractor and any subcontractor are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally, that the contractor and subcontractor will fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments in accordance with California Family Code § 5230 *et seq.* and that the contractor and subcontractor will maintain such compliance throughout the term of the contract.

e. City's Compliance with California Family Code.

The City shall maintain its compliance with the provisions of California Family Code §§ 5230 *et*



seq. and all other applicable law regarding its obligations as an employer to implement lawfully served Wage and Earnings Assignments and Notices of Assignment.

f. Report of Employees' Names to District Attorney.

1. The City shall maintain its current practice of assisting the District Attorney's support enforcement activities by annually reporting to the Los Angeles County District Attorney the names of all of its employees and retirees so that the District Attorney may identify those employees and retirees subject to Wage and Earnings Assignment Orders and Notices of Assignment and may establish court orders for support, where appropriate. Should the District Attorney so request it, the City will provide such information on a more frequent basis.

2. All applicants for employment with the City of Los Angeles will be asked to acknowledge their responsibility to comply with any court ordered support obligations and will be advised of the City's practice of assisting the District Attorney as described in the provisions of Subsection f.1., above.

SECTION HISTORY

Added by Ord. No. 172,401, Eff. 2-13-99.

CHILD SUPPORT

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