

Res 260

## Dane County Contract Cover Sheet

<b>Dept./Division</b>	Airport	<b>Contract #</b> <small>Admin will assign</small>	13517
<b>Vendor Name</b>	Sun Country Airlines	<b>Addendum</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>Vendor MUNIS #</b>	28835	<b>Type of Contract</b>	
<b>Brief Contract Title/Description</b>	Under the Operating Agreement and Lease, Sun Country Airlines will lease space in the Airport Terminal Building and initiate Air Service from the Airport	<input type="checkbox"/>	Dane County Contract
<b>Contract Term</b>	through Dec. 31, 2018	<input type="checkbox"/>	Grant
<b>Total Contract Amount</b>	\$ Rent and fees per Dane County Ordinances	<input type="checkbox"/>	County Lessee
		<input checked="" type="checkbox"/>	County Lessor
		<input type="checkbox"/>	Intergovernmental
		<input type="checkbox"/>	Purchase of Property
		<input type="checkbox"/>	Property Sale
		<input type="checkbox"/>	Other

<b>Purchasing Authority</b>	<input type="checkbox"/> \$10,000 or under – Best Judgment (1 quote required)	
	<input type="checkbox"/> Between \$10,000 – \$36,000 (\$0 – \$25,000 Public Works) (3 quotes required)	
	<input type="checkbox"/> Over \$36,000 (\$25,000 Public Works) (Formal RFB/RFP required)	<b>RFB/RFP #</b>
	<input type="checkbox"/> Bid Waiver – \$36,000 or under (\$25,000 or under Public Works)	
	<input type="checkbox"/> Bid Waiver – Over \$36,000 (N/A to Public Works)	
	<input checked="" type="checkbox"/> N/A – Grants, Leases, Intergovernmental, Property Purchase/Sale, Other	

MUNIS Req.	Org Code	Obj Code	Amount	\$
Req #	Org Code	Obj Code	Amount	\$
Year	Org Code	Obj Code	Amount	\$

<b>Resolution</b>	<b>A resolution is required if the contract exceeds \$100,000 (\$40,000 Public Works). A copy of the Resolution must be attached to the contract cover sheet.</b>			
	<input type="checkbox"/> Contract does not exceed \$100,000 (\$40,000 Public Works) – a resolution is not required.			
	<input type="checkbox"/> Contract exceeds \$100,000 (\$40,000 Public Works) – resolution required.	<b>Res #</b>	260	
	<input checked="" type="checkbox"/> A copy of the Resolution is attached to the contract cover sheet.	<b>Year</b>	2018	

Contract Review/Approvals				
Initials	Dept.	Date In	Date Out	Comments
MG	Received by DOA	10/10/18		
ac	Controller		10/12/18	
ac	Purchasing	10/15/18	10/15/18	
	Corporation Counsel	10/12/18	10/12/18	
	Risk Management	10/12/18	10/12/18	
	County Executive			

Dane County Dept. Contact Info		Vendor Contact Info	
<b>Name</b>	Kimberly Jones, Acting Airport Director	<b>Name</b>	R. Brian Davis, VP Ground Operations
<b>Phone #</b>	(608) 246-3390	<b>Phone #</b>	
<b>Email</b>	jones.kimberly@msnairport.com	<b>Email</b>	rbrien.davis@suncountry.com
<b>Address</b>	4000 International Lane Madison, WI 53704	<b>Address</b>	1300 Corporate Center Curve Eagan, MN 55121

<b>Certification:</b> The attached contract is a:	
<input type="checkbox"/>	Dane County Contract <u>without</u> any modifications.
<input type="checkbox"/>	Dane County Contract <u>with</u> modifications. <b>The modifications have been reviewed by:</b> Airport Legal Counsel, Rodney Knight
<input type="checkbox"/>	Non-standard contract.

### Contract Cover Sheet Signature

<b>Department Approval of Contract</b>		
<b>Dept. Head / Authorized Designee</b>	<b>Signature</b>	<b>Date</b>
	<i>Kimberly Jones</i>	10/9/18
	<b>Printed Name</b>	
	Kimberly Jones, Acting Airport Director	

### Contracts Exceeding \$100,000

Major Contracts Review – DCO Sect. 25.11(3)

<b>Director of Administration</b>	<b>Signature</b>	<b>Date</b>
	<b>Comments</b>	
<b>Corporation Counsel</b>	<b>Signature</b>	<b>Date</b>
	<b>Comments</b>	

13517

**SCHEDULED AIRLINE OPERATING AGREEMENT  
AND TERMINAL BUILDING LEASE**

Dane County Regional Airport  
Madison, Wisconsin

**MN Airlines, LLC d/b/a Sun Country Airlines**

**Lease No. DCRA 2018-04**

## TABLE OF CONTENTS

<u>Article</u>		<u>Page</u>
1	DEFINITIONS .....	5
	1.01 Definitions .....	5
	1.02 Cross-References .....	9
2	TERM .....	9
3	RIGHTS AND PRIVILEGES OF AIRLINE .....	9
	3.01 Use of the Airport .....	9
	3.02 Specific Rights of Airline at the Airport .....	9
	3.03 Employee Parking Facilities .....	11
	3.04 Limitations on Use by Airline .....	12
	3.05 Reservation of Rights .....	13
	3.06 Airline's Use of Affiliated Airline Companies .....	13
4	PREMISES .....	13
	4.01 Premises .....	13
	4.02 Reassignment of Preferential Aircraft Parking Positions .....	15
	4.03 Surrender of the Premises .....	16
	4.04 Holding Over .....	16
	4.05 Access .....	16
	4.06 Security Screening Operations .....	17
5	RENTALS, CHARGES, AND FEES .....	17
	5.01 Consideration .....	17
	5.02 Monthly Activity Report .....	17
	5.03 Terminal Building Space Rentals and Other Charges .....	18
	5.04 Landing Fees .....	18
	5.05 Aircraft Parking Surcharge .....	18
	5.06 Security Deposit .....	19
	5.07 Payment Provisions/Interest on Overdue Amounts .....	20
	5.08 Net Agreement .....	20
	5.09 Passenger Facility Charge .....	21
	5.10 Affiliated Airlines .....	21

## CONTENTS

<u>Article</u>		<u>Page</u>
6	RECALCULATION OF RENTALS, FEES, AND CHARGES .....	21
	6.01 General .....	21
	6.02 Accounting Records .....	21
	6.03 Coordination Procedures – Budget Review and Calculation of Rentals, Fees, and Charges .....	21
	6.04 Calculation of Terminal Building Rental Rates .....	22
	6.05 Calculation of Landing Fee Rates .....	23
	6.06 Extraordinary Rate Adjustments of Terminal Building Space Rentals, Landing Fees .....	25
7	MAINTENANCE AND OPERATION OF AIRPORT .....	25
	7.01 General .....	25
	7.02 Terminal Building .....	25
	7.03 County’s Right to Inspect and Make Repairs .....	26
	7.04 Alterations and Improvements .....	26
8	DAMAGE OR DESTRUCTION OF PREMISES .....	27
9	INSURANCE AND INDEMNIFICATION .....	28
	9.01 Insurance .....	28
	9.02 Indemnification .....	28
	9.03 Nonliability of County .....	29
	9.04 Environmental Regulations .....	29
10	ASSIGNMENT OR SUBLEASE .....	31
	10.01 Assignment and Subletting by Airline .....	31
	10.02 Bankruptcy .....	32
	10.03 Relinquishment of Space .....	33
	10.04 Consent .....	33
11	DEFAULT .....	33

## CONTENTS

<u>Article</u>		<u>Page</u>
12	TERMINATION .....	34
	12.01 Events Permitting Termination by Airline .....	34
	12.02 Events Permitting Termination by County .....	34
	12.03 Possession by County .....	34
	12.04 Rights Upon Termination or Reassignment of Leased Premises .....	34
13	GENERAL PROVISIONS .....	35
	13.01 Rules and Regulations .....	34
	13.02 Compliance with Law .....	35
	13.03 Nondiscrimination .....	36
	13.04 Notices .....	36
	13.05 Successors and Assigns Bound .....	37
	13.06 Governing Law .....	37
	13.07 Peaceful Enjoyment .....	37
	13.08 Nonliability of Agents and Employees .....	37
	13.09 Subordination to Agreements with the U.S. Government .....	37
	13.10 Nonwaiver or Rights .....	37
	13.11 Federal Aviation Act, Section 308 .....	37
	13.12 Severability .....	37
	13.13 Force Majeure .....	38
	13.14 Use of Airport Revenues .....	38
	13.15 Headings .....	38
	13.16 Entire Agreement .....	38
14	COUNTY'S DEFAULT; AIRLINES REMEDIES .....	38

## EXHIBITS

<u>Exhibit</u>	
A	Airport Layout and Cost Center Plan
B-1c	Leased Areas in Terminal Building
B-2c	Estimates of Airline Terminal Building Space
C-1	Preferential Aircraft Parking Positions
D	Maintenance Responsibilities

DANE COUNTY REGIONAL AIRPORT  
SCHEDULED AIRLINE OPERATING AGREEMENT AND  
TERMINAL BUILDING LEASE

THIS AGREEMENT AND LEASE (hereinafter, the "Agreement"), is entered into by and between Dane County (hereinafter, "County"), and MN Airlines, LLC, a company organized under the laws of the State of Minnesota, d/b/a Sun Country Airlines (hereinafter, "Airline"), and shall be effective on the date it is fully executed by the authorized representatives of both parties.

WITNESSETH:

WHEREAS County is the owner and operator of Dane County Regional Airport (hereinafter, the "Airport") located in Dane County, Wisconsin; and

WHEREAS Airline is engaged in the business of transportation of persons and property by air and desires to lease from County certain premises and facilities and acquire from County certain rights and privileges in connection with its use of the Airport; and

WHEREAS County has the right to lease property on the Airport upon the terms and conditions hereinafter set forth and has full power and authority to enter into this Agreement in respect thereof; and

NOW, THEREFORE, for and in consideration of the mutual covenants, agreements, and conditions contained herein, the parties hereto agree as follows:

ARTICLE 1  
DEFINITIONS

Section 1.01. Definitions

The following words and phrases, shall for the purpose of this Agreement, have the following meanings:

1. "Affiliated Airline Company" means any domestic air carrier that operates at the Airport under an Affiliated Airline Operating Agreement. Execution of an Affiliated Airline Operating Agreement related to Airline's activities under this Agreement shall be conditioned on Airline's written designation of the air carrier as an "Affiliate" operating on Airline's behalf at the Airport and a showing that when operating at the Airport the air carrier is (a) a parent or subsidiary of Airline, (b) a party to a code share agreement with Airline applicable to flights to and from the Airport, (c) owned in whole or in part by Airline or Airline's parent company, or (d) is under contract with Airline to operate at the Airport using livery substantially similar to Airline's and under trade name(s) the same or similar to the trade name(s) used by Airline. An Affiliated Airline Company shall be treated as a Signatory Airline for the sole purpose of the assessment of fees and charges. In the event of termination of this agreement by Airline or County, an air carrier designated by Airline as an Affiliate shall no longer be considered an Affiliated Airline Company with respect to activities at the Airport related to Airline's operations. As used in this Agreement an Affiliate of Airline shall mean Affiliated Airline Company that Airline has designated as its Affiliate.

2. "Airport Revenue Bonds" means any bonds issued by County secured by a pledge of the revenues of the Airport, but shall not include any special facility revenue bonds.

3. "Aircraft Arrival" means any aircraft arrival at the Airport other than an Emergency Landing.

4. "Air Cargo Facility" means that portion of a privately owned building leased by air carriers for the purpose of receiving, sorting and shipping freight via air carrier aircraft.

5. "Airport Cost Centers" means direct and indirect cost areas to be used in accounting for the Airport revenues and expenses and for calculating and adjusting certain rates, fees, and charges described herein, as shown in Exhibit A, Airport Layout, and Cost Center Plan. Revenues and expenses will be allocated to the most appropriate cost center(s). These cost centers are more particularly described below:

a. Direct cost centers

"Terminal Building" means the passenger terminal building, loading bridges, apron area and associated support facilities.

"Landing Area" means the airfield and related support facilities at the Airport (including runways, taxiways, approach and clear zones, safety areas, and infield areas, CFR facility, together with all associated landing and navigational aids).

"Public Parking Lot" means the public and employee parking areas, rental car parking and service areas; taxi, limousine, and bus areas; access and terminal circulation roads and rights-of-way; and landscaped areas.

"General Aviation" means the hangars, buildings, and apron areas occupied by the Airport's fixed base operators and corporate/private operators.

"Truax Air Park" means the areas designated as industrial park areas in the southeast and southwest corners of the Airport.

b. Indirect cost centers

"Maintenance" means all the Airport maintenance equipment and facilities used to support all the direct cost areas.

"Administration" means all equipment and facilities used to provide administrative support to the Airport.



6. "Airport Director" means the Director of the Airport. The Airport Director or the Airport Director's designee is authorized to exercise the rights granted to County under this Agreement.

7. "Annual Debt Service Requirement" means the annual total amount of principal and interest payments required to be made in any Fiscal Year on Indebtedness issued by Dane County for the Airport.

8. "Bond Resolution" means any Bond Resolution authorizing bonds of County for the Airport purposes, as the same may from time to time be adopted, amended, or supplemented by a supplemental resolution in accordance with the terms thereof.

9. "Capital Improvement" means (1) the acquisition of land or easements; (2) the purchase of machinery, equipment or rolling stock; (3) the planning, engineering, design, and construction of new facilities; or (4) the performance of any extraordinary, nonrecurring major maintenance of existing facilities that may be acquired, purchased, or constructed by County to improve, maintain, or develop the Airport, any single item of which has a net (of grants-in-aid) cost of One Hundred Thousand Dollars (\$100,000) or more and a useful life of five (5) or more years.

10. "Emergency Landing" means any landing of an aircraft, which after having taken off from the Airport, and without landing at any other airport, shall return to land at the Airport because of weather conditions, mechanical or operating failure or causes, or for any other reason of caution or emergency.

11. "Enplaned Passenger" means any revenue local boarding, interline transfer, or intraline transfer passengers at the Airport.

12. "FAA" means the Federal Aviation Administration or any federal agency succeeding to its jurisdiction.

13. "Fiscal Year" refers to County's fiscal year and means the twelve (12) month period commencing on January 1 and extending to December 31 of the same year.

14. "Hazardous Material" means, whether singular or plural, any hazardous or toxic substances, materials, or wastes, including, but not limited to, those substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) and amendments thereto, or such substances, materials, and wastes that are or become regulated under any applicable local, state or federal law including, without limitation, any material, waste or substance which is petroleum or a petroleum distillate, asbestos, polychlorinated biphenyls, defined as a "hazardous waste" pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. ss6901, et seq. or defined as a "hazardous substance" pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. ss9601, et seq.

15. "Leased Premises" means the space in the terminal building leased to Airline under this Agreement, comprising three categories of space, as follows.

- a. “Common Use Space” – space leased by Airline for use in common with all other airlines.
  - b. “Exclusive Use Space” – space leased to Airline for its exclusive use.
  - c. “Shared Exclusive Use Space” – space leased to Airline that is designated for joint use by Airline and one or more other specified users.
16. “Maintenance and Operating Expenses” means County’s current Fiscal Year expenses of maintaining, repairing, operating, and administering the Airport, as set forth in the approved County budget.
17. “Maximum Certificated Gross Landing Weight” means the maximum weight at which each aircraft operated by Airline at the Airport is authorized by the FAA to land, as specified in Airline’s flight manual governing that aircraft.
18. “Part 135 and 121 Operator” means air transportation companies operating at the Airport under the respective Federal Aviation Regulation certificates.
19. “Personal Property” means the equipment, inventory, fixtures, furniture, or supplies owned or leased by the Airline and installed or used at Dane County Regional Airport in the conduct of Airline’s air transportation business which is removable from Airline’s demised premises.
20. “Rentable Space” means the space in the terminal building available for lease to airlines, concessionaires, and other rent-paying tenants.
21. “Restricted Assets Account” means funds accruing from long-term rentals of land acquired from the federal government which are restricted as to use.
22. “Rules and Regulations” means all federal, state and local laws and regulations applicable to the activities authorized under this Agreement, including plans, standards, programs and policies promulgated by the Airport, as amended, modified or supplemented from time to time.
23. “Scheduled Service” means providing of air transportation for hire of passengers, property, and/or mail to and from the Airport with a minimum of two (2) flights per week.
24. “Signatory Airline” means an airline providing scheduled air transportation of passengers, property, or mail by air to and from the Airport that has executed an agreement with County essentially identical to this Agreement covering the use and occupancy of facilities at the Airport.
25. “Total Landed Weight” means the sum of the Maximum Certificated Gross Landing Weight for all Aircraft Arrivals of an airline over a stated period of time. Said sum shall be rounded to the nearest thousand pounds for all landing fee and apron use fee computations.

26. "TSA" means the Transportation Security Administration or any federal agency succeeding to its jurisdiction.

Section 1.02. Cross-References

References in the text of this Agreement to articles, sections, or exhibits of this Agreement, unless otherwise specified, are for convenience and are not intended to define or limit the scope of any provision of this Agreement.

ARTICLE 2  
TERM

Section 2.01. Term

This Agreement shall be effective September 20, 2018 and continue through December 31, 2018, subject to prior termination or modification as provided herein. If Airline receives a qualified opinion regarding its financial position as a going concern in an interim or annual financial statement (unaudited or audited basis) prepared by its certified public accountants, the term of this Agreement, at the discretion of County shall immediately become month to month and shall continue monthly until such time as Airline receives an unqualified opinion concerning its position as a going concern from its certified public accountants.

ARTICLE 3  
RIGHTS AND PRIVILEGES OF AIRLINE

Section 3.01. Use of the Airport

Airline, its employees, passengers, guests, patrons, and invitees shall have the right to the use (in common with other duly authorized users) of the Airport and appurtenances, together with all facilities, improvements, equipment, and services that have been or may hereafter be provided for common use at or in connection with the Airport, subject to all Rules and Regulations. Prior to Airline employee operation or use of loading bridges or baggage handling systems, written documentation of appropriate training by the County must be provided. Training sessions will be held periodically and individual training for new employees shall be scheduled with the Airport's Director of Facilities and Maintenance.

The Airport shall make available to Airline or its designated provider of ground handling services, on a nonexclusive basis, the use of a FAA approved lifting device required to enable an individual with a disability to board and deplane aircraft from the ground (a "Lift Device"). If Airline elects to utilize aircraft incompatible with the Lift Device provided hereunder, Airline shall be responsible for providing passenger lifting equipment that complies with Federal law and regulation. Title to the Lift Device is and at all times shall remain with the Airport. The Airport shall maintain the Lift Device in proper working condition. Airline acknowledges the possibility that the Lift Device may be temporarily unusable due to unforeseen mechanical problems and, in the event of such an occurrence, has available alternative means of complying with the requirements of 14 CFR Part 382 pending repair of the Lift Device.

**Section 3.02. Specific Rights of Airline at the Airport**

Airline shall have the right, in addition to all rights elsewhere granted in this Agreement, to use the Airport, subject to all Rules and Regulations, for the following purposes:

A. The operation of a public transportation system by Airline for the carriage of persons, property, cargo, and mail, including all activities reasonably necessary to such operation.

B. The landing, taking off, flying over, taxiing, pushing, towing, fueling, loading, unloading, repairing, maintaining, conditioning, servicing, parking, storing, and testing of aircraft or other equipment operated by Airline.

C. The sale of tickets, documentation of shipments, handling of reservations, and the loading and unloading of persons, property, cargo, and mail at the Airport by such motor vehicles or other means of conveyance as Airline may desire to use in the operation of its air transportation system. However, any ground transportation commercial carrier (including Airline, except for such ground transportation as Airline or its nominee may provide solely for the benefit of its employees) regularly transporting persons to and from the Airport shall first secure and thereafter hold a valid lease, license, or other agreement with County for the right to carry persons to and from the Airport and shall pay County such rentals, fees or percentages of the fares of such ground transportation commercial carrier as County may set.

D. The training at the Airport of persons and testing of aircraft and other equipment, such training and testing to be limited to that incidental to Airline's air transportation business at the Airport. Airline shall not provide flight training at the Airport.

E. The purchase of personal property or services that are incidental to operation of Airline's air transportation system.

F. The sale, disposal, and exchange of aircraft, engines, accessories, fuel, oil, lubricants, other equipment, and materials or supplies provided that such items are not otherwise available on the Airport. Such right shall not be construed as authorizing the conduct of a separate regular business by Airline, but as permitting Airline to perform only such functions as are incidental to the activities authorized under this Agreement.

G. The servicing by Airline, or by its suppliers of materials or its furnisher of services, of aircraft and other equipment operated by Airline or by other airlines with which Airline has a handling agreement, at its assigned aircraft parking positions or other aircraft parking positions designated by County. County reserves the right to designate other locations reasonably accessible from the terminal building for performance of Aircraft maintenance and service activities if such activities would interfere with aircraft operations if performed at said parking positions.

The aforesaid right of servicing shall include the right of Airline or its nominee to lease ground from County in the area designated for fuel storage and to install and maintain, at no expense to County, storage facilities for such fuel, oil, or lubricants purchased by Airline for its own use, together with the necessary pipes, pumps, motors, filters and other appurtenances incidental to the use thereof, in accordance with prudent insurance underwriters standards. Such structures and appurtenances shall remain the severable

property of Airline or its nominee. All plans and specifications for said storage facilities, including location of same, shall require the prior written approval of County and shall conform with all applicable federal, state, and local requirements.

H. The installation and maintenance of Airline ticket counter backwall treatment and identifying signs, posters, and graphics, in Airline's Shared Exclusive Use Space; subject to the prior written approval of County; which approval shall not be unreasonably withheld. All such signs shall be: (1) substantially uniform in size, type, and location with those of other airlines; (2) consistent with County's graphics standards; and (3) in compliance with all Rules and Regulations.

I. The installation, maintenance, and operation of such radio, wired or wireless voice or data communication, meteorological, and aerial navigation equipment and facilities at suitable locations on the Airport, including computer equipment at passenger check-in counters in the terminal building, as may be necessary or convenient in the opinion of Airline for its operations; provided that such equipment and facilities do not interfere with other Airport communication, data, telecommunication, meteorological, or aerial navigation systems and comply with the Airport's Electronic Standards. Prior to the installation or operation, a proposal must be submitted to the Airport Director including a site survey, once reviewed by Airport management a written response will be issued to the Airline and, if approved, installation and operation may commence and must conform to all Rules and Regulations.

J. The assessment and collection by Airline of a reasonable charge from air transportation companies for the use of any systems, equipment, or furnishings installed by Airline. Such charges shall be reasonable and based on Airline's cost of providing the systems, equipment, or furnishings. Airline shall provide County a schedule of its charges.

K. In the event Airline's suppliers, contractors, and furnishers of services use any portion of the Airport or facilities of County, not leased to Airline, County may charge reasonable rentals therefore.

L. County reserves the right to charge a permit fee associated with controlling access to restricted areas and to assess and collect reasonable fees from the suppliers of in-flight catering, vending, ground transportation, ground support services, and other services or facilities provided by or for Airline in competition with concessionaires and operators operating under an agreement with County or under County ordinance.

### Section 3.03. Employee Parking Facilities

Airline shall have the right to the use of vehicular parking facilities for its employees employed at the Airport in common with other employees. Such facilities shall be located in an area designated by County as near as practicable to the Terminal Building.

County reserves the right to assess a monthly or annual charge to Airline or Airline employees for such employee parking facilities, which monthly or annual charges shall be consistent with that being charged to other airlines at the Airport.

**Section 3.04. Limitations on Use by Airline**

In connection with the exercise of its rights under this Agreement, Airline:

A. Shall not do or permit to be done anything at or about the Airport that may interfere with the effectiveness or accessibility of the drainage and sewage system, fire protection system, sprinkler system, alarm system, fire hydrants and hoses, heating or ventilating, and air conditioning systems, or other Airport systems, installed or located on the Airport.

B. Shall not engage in or permit any use or activity on the Airport that will invalidate or conflict with any fire or other casualty insurance policies covering the Airport or any part thereof.

C. Shall not dispose of or permit the disposal of any waste material taken from or products used (whether liquid or solid) with respect to its aircraft into the sanitary or storm sewers at the Airport unless such waste material or products are properly treated by equipment installed with the approval of County for that purpose.

D. Shall not keep or store, during any twenty-four (24) hour period, flammable liquids within the enclosed portion of the leased Premises in excess of Airline's working requirements during said twenty-four (24) hour period, except in rooms or tanks especially constructed for such purposes in accordance with standards established by the National Board of Fire Underwriters and approved by County. Any such liquids having a flash point of less than 100°F shall be kept and stored in safety containers of a type approved by the Underwriters Laboratories.

E. Shall meet National Fire Protection Association standards and all other Rules and Regulations applicable to the movement, handling, and storage of hazardous materials whether explosive, biological, radioactive, or other.

F. Shall promptly remove any of its disabled aircraft from any part of the Airport (including, without limitation, runways, taxiways, aprons, and gate positions) and place any such disabled aircraft in such parking areas as may be designated by the Airport Director, consistent with directives of the FAA and the National Transportation Safety Board (NTSB). Airline may store such disabled aircraft only for such length of time and upon such terms and conditions as may be established by County consistent with the directives of the FAA and NTSB. Should Airline fail to remove any of its disabled aircraft in a reasonable and timely manner in accordance with this paragraph, County may, but shall not be obligated to, cause the removal of such disabled aircraft, and Airline agrees to reimburse County for all direct costs of such removal, (excluding any costs already apportioned under terms of this Agreement) plus fifteen percent (15%) administrative fee, and Airline further hereby releases County from any and all claims for damages to the disabled aircraft arising from or in any way connected with such removal by County, except to the extent caused by gross negligence or willful misconduct of County, its agents, or its employees.

G. Except as provided herein or as may subsequently be provided in a separate agreement, Airline shall not maintain or operate in the terminal building or elsewhere at the Airport a cafeteria, restaurant, bar, or cocktail lounge for the purpose of selling or providing free of charge food or beverages to the public or to its employees or passengers; nor shall Airline in any manner otherwise provide for the sale of food and

beverages at the Airport. Airline may install in its leasehold vending machines for the sole benefit of Airline's employees. Airline may, by separate agreement with County, engage in the offer of free, or the sale of food or beverages at any "VIP room" or similar private club at the Airport, to their passengers only, provided, however, that Airline shall then pay a concession fee to County for all food and beverages sold in addition to the rental charge for the space occupied by such club.

H. Airline shall comply with County's Noise Abatement Policy.

I. Notwithstanding Airline's rights in Section 3.02(B), the storage of glycol tanks and ground equipment shall be located in areas designated by Airport Director.

**Section 3.05. Reservation of Rights**

Any and all rights and privileges not granted to Airline by this Agreement are hereby reserved for and to County.

**Section 3.06 Airline's Use of Affiliated Airline Companies**

A. Airline shall identify all air carriers that, in addition to Airline, are operating at the Airport on Airlines behalf and shall provide the Airport with a written designation of each such air carrier as an Affiliate of Airline.

B. Airline shall require each air carrier it designates as an Affiliate of Airline to execute an Affiliated Airline Operating Agreement with County. Execution of the Affiliated Airline Operating Agreement and approval by County shall be required before the Affiliated Airline Company is granted affiliated status.

C. Upon the effective date of an Affiliated Airline Operating Agreement the Affiliated Airline Company named thereon shall be treated as an Affiliated Airline Company of Airline, provided Airline remains signatory to this Agreement. All airlines operating at the Airport shall be treated as non-signatory until all requirements are met to operate as signatory or affiliated airlines.

D. Airline shall be responsible to report monthly activity for each air carrier operating on its behalf at the Airport as set forth in Section 5.02 below and shall be responsible for payment of all landing fees incurred by such air carrier when acting on behalf of Airline.

E. Airline and air carriers it has designated as its Affiliated Airline Companies shall be counted as one airline for purposes of calculating any rentals, charges and fees.

F. Airline shall be responsible for all rentals, charges and fees incurred by each Affiliated Airline Company for activity related to Airline.

**ARTICLE 4  
PREMISES**

**Section 4.01. Premises**

A. Subject to the provisions of Section 4.02 below, Airline leases hereunder Exclusive Use Space, Shared Exclusive Use Space, and Common Use Space in the Terminal Building, as more particularly delineated in Exhibit B-1c. The 69 square feet of

Terminal Building space designated on Exhibit B-1c as Sun Country Exclusive Use Space (Office C) is for use by Airline for office purposes. The area designated on Exhibit B-1c as Shared Exclusive Use Space, including hallways, open areas, a lay down belt, and ticket counters associated with Airline's Exclusive Use Space, is leased to Airline with the intent that it is available to be used jointly by Airline and lessees of the spaces designated on Exhibit B-1c as Office A and Office B. Airline shall pay, at the Exclusive Use Space rent rate, for 366 square feet of Shared Exclusive Use Space. Subject to approval by County, lessee(s) of Offices A and B will be required to enter into an agreement with Airline designating the shared use of signage, counter positions, and other areas subject to joint use in the Shared Exclusive Use Space. In the event Airline and lessee(s) of Office A or B cannot reach agreement as to the designation of the foregoing areas, the areas shall be subject to assignment by County. The square footage of the areas occupied by Airline are set forth in Exhibit B-2c attached hereto. Actual dimensions of the Leased Premises are taken from the center line of walls for interior space and to the inside face of exterior walls. The dimensions shall be the basis for determining the amount of the rentals payable during the term of the lease pursuant to Articles 5 and 6 herein.

B. Aircraft parking positions (gates) and related passenger departure areas in the Terminal Building shall be assigned on a preferential use basis. Airline will have priority in using gates assigned to it on a preferential basis to accommodate its scheduled flights and flights of those airlines with which Airline has an applicable handling agreement. However, County may assign such gate for use by others in periods when not used by Airline, so long as unassigned gates are not available and the gate is to be vacated by others at least thirty (30) minutes before Airline's next scheduled arrival at said gate.

Airline shall have the right and first priority to use those gates to which it is preferentially assigned subject to Section 4.02. In the event Airline's number or schedule of flights changes, County reserves the right to increase or decrease the number of the Airline's preferentially assigned gates. Gates not preferentially assigned to Signatory Airlines may be assigned to non-signatory air carriers at rates established in County's ordinances.

If another air carrier is assigned by County the use of Airline's preferentially assigned aircraft parking position (and related passenger departure area), County shall charge such air carrier reasonable fees for use of the passenger departure area, apron area, and, if applicable, passenger loading bridge.

If Airline, due to its flight configuration, does not use its assigned parking position or when any non-scheduled activity such as diversions or charters occur, Airline shall communicate with County and County will assign appropriate parking positions.

C. Airline shall have the right, subject to prior County approval to install one computer terminal, counter insert, Airline logo, and arrival/departure board in the podium adjacent to Airline's assigned aircraft parking position. Nonpreferential users of aircraft parking positions shall have the right to install a computer terminal in an unused podium or provide portable computer equipment to accommodate its passengers in such podium.



**Section 4.02. Reassignment of Preferential Aircraft Parking Positions**

From time to time, the Airport Director may reassign preferential aircraft parking positions in order to (1) achieve better balance in the overall utilization of the terminal building or aircraft apron, (2) accommodate the needs of airlines serving or formally expressing a desire to serve the Airport, or (3) facilitate the construction or expansion of facilities, subject to the following:

A. The Airport Director shall give Airline written notice of its plan for such reassignment of preferential parking positions.

B. Within thirty (30) days of such notice, Airline shall have the opportunity to present written comments on the proposed reassignment or offer an alternative proposal.

C. The Airport Director shall give due consideration to Airline's comments prior to making a final decision as to the proposed reassignment. The reassignment imposed by the Airport Director shall not require Airline to:

1. Incur any expense to relocate its operation to other premises that it does not agree to incur,
2. Accept premises not reasonably adequate to conduct its activity at the Airport.

D. Reimbursement of expenses associated with a relocation imposed by the Airport Director shall be as follows:

1. All costs necessitated by relocation shall be paid by the air carrier requesting the relocation or whose activities necessitated the relocation.
2. The cost of improvements funded by Airline are to be depreciated over a ten (10) year period from installation or completion of construction of the improvements using straight line depreciation formula. Should Airline be relocated as a result of Airport Director's decision and elect not to receive reasonable, comparable improvements at no expense to it at its new premises, Airline shall be entitled to receive its undepreciated capital cost (calculated as of the time that Airline is required to vacate its existing facilities) of improvements Airline funded at its previous location.
3. With respect to any airline trade fixture and other movable property, if removal from the existing premises is possible and not unreasonable, Airline shall not be entitled to a new fixture or to new property and payment to Airline shall be limited to reimbursement of the cost of relocating the fixture or property.

E. Following a decision by the Airport Director to reassign Airline's preferential aircraft parking position(s), the Airport Director shall give Airline thirty (30) days written notice of the release of Airline's responsibility for, and rights pertaining to,

such aircraft parking position(s) under this Agreement, after which period the Airport Director will take control of such premises for the purpose of reassignment.

**Section 4.03. Surrender of the Premises**

Airline covenants and agrees that on expiration of the term of this Agreement, or earlier termination as hereinafter provided, or on reassignment of premises as heretofore provided, it will peaceably surrender possession of the premises leased hereunder in good condition, reasonable wear and tear, as determined by the Airport Director, and acts of God excepted, and County shall have the right to take possession of said premises.

Airline shall have the right, on expiration or early termination of this Agreement and within thirty (30) days thereafter, to remove or dispose of all trade fixtures and equipment and other personal property installed or placed by it at its expense, in, on, or about the Airport, subject to any valid lien that County may have thereon for unpaid rents or fees. Airline agrees to reimburse County for any net costs incurred by County if County elects to remove or dispose of Airline's property after such thirty (30) day period.

If County elects not to remove or dispose of Airline's property after said thirty (30) day period, any and all property not removed by Airline shall, the option of County, thereupon become a part of the land on which it is located, and title thereto shall thereupon vest in County.

**Section 4.04. Holding Over**

County shall not be required to give Airline notice to quit possession at the expiration date of the term of this Agreement and holdovers shall be considered month to month tenancies, subject to rates and charges applicable to nonsignatory commercial air carriers as set forth in County ordinances, unless otherwise approved in writing by the Airport Director. In such event, County shall have all of the remedies provided under applicable laws, and either party may terminate given at least thirty (30) days written notice.

**Section 4.05. Access**

A. Subject to the provisions hereof, Rules and Regulations, and such restrictions as Airline may impose with respect to the Exclusive Use Space and Shared Exclusive Use Space leased hereunder, County hereby grants to Airline, its agents, suppliers, employees, contractors, passengers, guests, and invitees, the right and privilege of free access ingress, and egress to the Leased Premises and to public areas and public facilities of the terminal building.

B. The ingress and egress provided for in Section 4.05A shall not be used, enjoyed, or extended to any person engaging in any activity or performing any act or furnishing any service for or on behalf of Airline that Airline is not authorized to engage in or perform under the provisions hereof unless expressly authorized by County.

C. County shall have the right at any time or times to close, relocate, reconstruct, change, alter, or modify any means of access provided for Airline's use pursuant to this Agreement or otherwise, either temporarily or permanently; provided that reasonable notice to Airline and a reasonably convenient and adequate means of access, ingress, and egress shall exist or be provided in lieu thereof. County shall suffer

no liability by reason thereof, and such action shall in no way alter or affect any of Airline's obligations under this Agreement.

**Section 4.06 Security Screening Operations**

A. Airline agrees and acknowledges that the TSA has authority over the security screening operation.

B. Airline and other air carriers are responsible to pay any security related expenses as required by TSA or any other federal authority for the operation of the Airport. Any security reimbursements received by County from Federal or State agencies will reduce the security charges to Airline. County will attempt to collect any security fees and rentals directly from TSA.

**ARTICLE 5  
RENTALS, CHARGES, AND FEES**

**Section 5.01. Consideration**

The considerations that Airline agrees to provide County for leasing Exclusive Use Space, Shared Exclusive Use Space, and Common Use Space, and the use of preferentially assigned aircraft parking positions under this agreement are (1) providing Scheduled Service to and from the Airport, and (2) paying the rentals, fees, and charges described in the Agreement. Failure to provide Scheduled Service (except during periods of labor disputes) or to pay rentals, fees, and charges when due will permit County to cancel this Agreement on thirty (30) days advance written notice.

**Section 5.02. Monthly Activity Report**

A. Airline shall furnish to County on or before the tenth (10<sup>th</sup>) day of each month, an accurate report of Airline's operations and those of its Affiliates at the Airport during the preceding month, setting forth all data necessary to calculate the fees and charges due under this Agreement. Said report shall include, but shall not necessarily be limited to: (1) the Airline's total number of Aircraft Arrivals, including diversions and ground handled aircraft for the month by type of aircraft, the Maximum Certificated Gross Landing Weight of each aircraft, and the Total Landed Weight for the month; (2) the total number of enplaning and deplaning passengers handled by Airline, including diversions and ground handled aircraft and (3) the amount of cargo, mail, and express, including diversions and ground handled aircraft for such month. In addition, Airline agrees to notify Airport Director, in advance, of any schedule changes or charter flights to be handled by Airline.

B. If Airline fails to furnish County with the report required by Section 5.02A, Airline's Landing Fee shall be determined by assuming that Airline's Total Landed Weight for such month was one hundred and twenty percent (120%) of its Total Landed Weight during the most recent month for which such data are available for Airline. Any necessary adjustment in such Landing Fee shall be calculated after an accurate report is delivered to County by Airline for the month in question. Resulting surpluses or deficits shall be applied as credits or charges to the appropriate invoices in the next succeeding month.

Section 5.03. Terminal Building Space Rentals and Other Charges

A. Airline shall pay to County for its Exclusive Use Space, Shared Exclusive Use Space, and Common Use Space in the terminal building, as set forth in Section 4.01A, monthly rentals based on annual rental rates, with such rates to be recalculated each Fiscal Year, as set forth in Section 6.04.

Rental for Common Use Space shall be prorated among the Signatory Airlines on the basis of that proportion which the number of each company's Enplaned Passengers bears to the total number of Enplaned Passengers of all Signatory Airlines and other air carriers required to pay common use rental fees per County ordinance, using passenger enplanement statistics for the immediately preceding month.

B. Airline agrees to connect to the County-owned PBX telephone system and agrees to pay all charges and fees as calculated each Fiscal Year based on Airline's actual usage. Each Airline will be provided with four County-owned phones. Additional and replacement phones may be purchased from the County at then current rates.

C. Law Enforcement Charges.

Airline shall pay County its proportionate share of all Law Enforcement Officer (LEO) expenses, on a monthly basis using the following formula:

Ninety percent (90%) of LEO monthly expenses multiplied by Airline's percentage share of enplaned passengers for each month. County shall invoice Airline for its proportionate share of LEO expenses incurred during the preceding month. Airline shall be responsible for payment of LEO expenses incurred by nonscheduled airlines ground handled by Airline.

The remaining ten percent (10%) of LEO costs shall be applied as direct M & O expenses as follows: five percent (5%) in the Parking Lot cost center and five percent (5%) in the Landing Area cost center.

Section 5.04. Landing Fees

Airline shall pay to County monthly Landing Fees to be determined by multiplying the number of one thousand (1000) pound units of Total Landed Weight for Airline during the month by the then current Landing Fee Rate established pursuant to Section 6.05 hereof.

Section 5.05. Aircraft Parking Surcharge

A. In addition to any other charges for which provision is made herein, Airline shall pay for use of other than its preferentially assigned aircraft parking position(s) such charges as may be established by County to prevent aircraft from remaining upon the ramps and aprons adjacent to the terminal building for such lengths of time as to interfere unduly with the use thereof by other air transportation companies providing passenger service, provided that such charges shall be the same for all aircraft using said space and shall not be in excess of Ten Dollars (\$10.00) for each minute or fraction thereof during which an aircraft remains at an aircraft parking position for longer than one (1) hour for an arrival or departure and two (2) hours for a turnaround, if upon expiration of such period, the aircraft remains at such space longer than fifteen (15) minutes after due notice to remove the same is given by the Airport Director to Airline's representative at the Airport. Subject to prior approval of the Airport Director, Airline may use nonpreferentially assigned aircraft parking position(s) for longer than herein

specified without incurring said charges, provided Airline does not exceed the conditions imposed by the Airport Director as part of said approval.

B. Paragraph A of this section shall apply to Airline's preferentially assigned aircraft parking position(s) when:

1. Said aircraft parking position is scheduled for use by another air transportation company providing passenger service and a nonpreferentially assigned aircraft parking position is unavailable or capable of safely providing the desired aircraft parking space and;
2. No prior approval has been granted by the Airport Director for Airline to exceed the time conditions of Paragraph A hereof.

C. Paragraph A of this section shall not apply to Airline's preferentially assigned aircraft parking position(s) if:

1. Airline's departure from the position(s) is delayed by condition(s) beyond the control of the Airline and the Airport Director agrees that because of said condition(s) the aircraft can remain at the parking position(s);
2. If the Airline's aircraft remain overnight for a period of twelve (12) hours or less.

Section 5.06. Security Deposit

Unless Airline has provided regularly scheduled passenger or cargo service, separately or combined, flights to and from the Airport for the twelve (12) months immediately prior to Airline's execution of this Agreement (or immediately prior to the assignment of this Agreement to Airline) without an act or omission having occurred that would have been an event of default under Section 11.01 of this Agreement if this Agreement had been in effect during this period, Airline shall provide to County upon the execution of this Agreement (or upon the assignment of this Agreement to Airline) with one of the following.

A. A performance bond, acceptable to County in an amount equal to the total of three (3) months' estimated rents, fees and charges payable by Airline under Section 5.07 of this Agreement plus three (3) months' estimated Passenger Facility Charge (PFC) collections under Section 5.09 to guarantee the faithful performance by Airline of all of its obligations under this Agreement and the payment of all rents, fees, and charges due hereunder and of all PFCs due to County. Such security deposit shall be in such form and with such company licensed to do business in the State of Wisconsin as shall be acceptable to County within its reasonable discretion; or

B. An irrevocable standby letter of credit in favor of, and acceptable to, County up to an aggregate amount equal to the total of three (3) months' estimated rents, fees and charges payable by Airline under Section 5.07 of this Agreement plus three (3) months' estimated Passenger Facility Charge (PFC) collections under Section 5.09 such funds being available upon County's certification that Airline has defaulted in

the faithful performance of its obligations under this Agreement, including the payment when due of PFC remittances, rents, fees, and charges.

The foregoing security provided by Airline, either a performance bond or an irrevocable standby letter of credit, shall remain effective until the expiration of twelve (12) consecutive months (including any period prior to Airline's execution of this Agreement during which Airline provided regularly scheduled flights to and from the Airport) during which no event of default under Section 11.01 of this Agreement (and for any such prior period, no act or omission that would have been such an event of default hereunder) has occurred. If such performance bond should be canceled, Airline shall provide a renewal or replacement bond for the period required pursuant to this Section. Airline shall provide at least sixty (60) days prior written notice of the date on which any performance bond expires or is subject to cancellation.

If payments required by Airline under the terms of this Agreement are not in accordance with the payment provisions set forth in Section 5.07, herein, County shall have the right, after ten (10) days written notice, to draw upon and apply so much of such performance bond as may be necessary to satisfy such payment obligation in full, and Airline shall immediately thereafter provide County with a replacement performance bond.

To the extent that Airline claims any property interest in PFC funds collected for the benefit of County, Airline hereby pledges to County and grants County a first priority security interest in such funds, and in any and all accounts into which such funds are deposited.

**Section 5.07. Payment Provisions/Interest on Overdue Amounts**

Exclusive Use Space rent, Shared Exclusive Space rent, and other fixed charges shall be due and payable, without invoice, on the first (1<sup>st</sup>) day of each month in advance.

Airline shall furnish Monthly Activity Reports to County as provided in Section 5.02. County shall invoice Airline for the amount of Common Use Space rent and Landing Fees incurred by Airline during each month during the term of this Agreement. The acceptance by County of any payment made by Airline shall not preclude County from verifying the accuracy of Airline's report and computations or from recovering any additional payment actually due from Airline.

Airline shall be billed for and obligated to pay for all Landing Fees and pro rata Common Use terminal rentals related to all chartered flights handled by Airline.

All invoiced charges or fees set forth herein shall be due within thirty (30) days of the date of the invoice therefor.

Any payment not received by the due date shall accrue interest at the rate of one and one-half percent (1.5%) per month from the due date. If payment is not made within one hundred and twenty (120) days after the due date, the total amount shall be recalculated using nonsignatory rates (per County ordinance) including interest of one and one-half percent (1.5%) per month until paid in full.

**Section 5.08. Net Agreement**

This is a net agreement with reference to charges paid to County. Airline shall pay all taxes of whatever character that may be lawfully levied, assessed, or charged by any

governmental entity other than County upon the property, real and personal, occupied, used, or owned by Airline, or upon the rights of Airline to occupy and use the premises and emolument received hereby, or upon Airline's improvements, fixtures, equipment, or other property thereon, or upon Airline's rights or operations hereunder. Airline shall have the right at its sole cost and expense to contest the amount or validity of any tax or license as may have been or may be levied, assessed, or charged.

**Section 5.09. Passenger Facility Charge**

A. County shall have the right to assess airline passengers a PFC for the use of the Airport in accordance with the requirements of 14 CFR Part 158. Airline shall collect on behalf of and remit to County any such charges in accordance with the requirements of 14 CFR Part 158. Any charges collected by the Airline shall, pending remittance to County, be held for the benefit of County. County shall have the right to use all such PFCs collected in any lawful manner.

B. If Airline fails to remit PFC revenue to the County within the time limits established by federal regulation, Airline shall be deemed to be in default pursuant to Section 11.01.

**Section 5.10. Affiliated Airlines**

If Airline has designated an airline as an Affiliate of Airline, Airline hereby unconditionally guarantees all rents, fees and charges including PFCs of any Affiliated Airline Company so designated by Airline, and upon receipt of notice of default by such Affiliated Airline Company (with a copy to Airline), Airline shall pay such amounts to County on demand pursuant to the payment provisions of this Agreement. Airline shall give County thirty (30) days advance written notice in order to designate an airline as its Affiliate or to revoke such status.

**ARTICLE 6  
RECALCULATION OF RENTALS, FEES, AND CHARGES**

**Section 6.01. General**

Rentals, fees, and charges will be reviewed at least annually and recalculated as necessary based on the principles and procedures set forth in this Article 6, to be effective January 1 of each Fiscal Year.

**Section 6.02. Accounting Records**

A. County shall maintain accounting records that will document the following items for each of the Airport Cost Centers: (1) Revenues; (2) Maintenance and Operating Expenses; (3) Equipment and Capital Outlays; (4) Annual Debt Service Requirement; and (5) Amortization of the Cost of Capital Improvements financed by County from other than bonds and grants-in-aid.

B. For purposes of keeping Airline informed, County shall provide to Airline its annual budget to disclose the proposed rates and charges to be established under this Agreement.

**Section 6.03. Coordination Procedures – Budget Review and Calculation of Rentals, Fees, and Charges**

A. On or before September 1 prior to the beginning of each Fiscal Year, County shall submit to Airline the following reports:

1. County's proposed annual Airport budget for the Fiscal Year, including all estimated Maintenance and Operating Expenses, equipment and capital outlays, the Annual Debt Service Requirement, and proposed expenditures for Capital Improvements for the Airport.
2. County's calculation of proposed airline rentals, fees, and charges for the Fiscal Year, based on the procedures set forth in this Agreement

B. Within thirty (30) days after receipt of the reports, a meeting shall be held, if requested by Signatory Airlines or County, between County and the Signatory Airlines, to discuss the proposed budget and the calculation of Signatory Airline rentals, fees, and charges. County shall give due consideration to any comments and suggestions of Airline regarding the proposed annual budgets and the calculations of the proposed rentals, fees, and charges.

C. County shall adopt annual budgets that may include revisions made as a result of County's discussions with Signatory Airlines and as a result of County's budgetary review process. County shall promptly furnish Airline with a copy of such approved annual budget, together with the calculation of rentals, fees, and charges that will become effective as of the first day of the Fiscal Year.

D. If, for any reason, the annual budgets have not been adopted by County as of the first day of any Fiscal Year, the rentals, fees and charges in effect during the preceding Fiscal Year shall continue in effect until (1) the new annual budgets have been adopted by County, and (2) County has calculated the rentals, fees, and charges in accordance therewith. The new rentals, fees, and charges shall then be made effective retroactive to the first day of such Fiscal Year.

**Section 6.04. Calculation of Terminal Building Rental Rates**

Terminal Building rental rates shall be recalculated for each Fiscal Year in the following manner:

A. County's estimated total "Terminal Building Cost" for the Fiscal Year shall be calculated by totaling the following amounts:

1. The total estimated direct and indirect maintenance and Operating Expenses allocable to the Terminal Building.
2. Equipment purchases and capital outlays which cost less than One Hundred Thousand Dollars (\$100,000) each (net of any grants-in-aid received by County for such purchases and outlays) and have a useful life of less than five (5) years allocable to the Terminal Building.
3. The pro rata portion of the Annual Debt Service Requirement allocable to the Terminal Building.
4. The annual amortization of the cost of any Capital Improvements with beneficial occupancy or use occurring before January 1 of



any Fiscal Year and that are allocable to the terminal Building. Such annual amortization shall be computed at interest (equivalent to County's annual interest rate on the most recent Indebtedness at the time the Capital Improvement is occupied or used) using economic lives for each capital item determined by County in accordance with generally accepted accounting practices. No amortization charges will be included in the calculation under this paragraph 4 that are associated with Capital Improvements which have been financed with the proceeds of Indebtedness, or grants-in-aid.

B. Fifty percent(50%) of the following estimated revenues shall be deducted from the estimated Terminal Building Cost to determine the estimated "Net terminal Building Cost" for the Fiscal Year:

1. Concession fees from food and beverage, news and gifts, rental car (other than ground rentals and ready car space rentals), specialty shops, insurance, telephone, and advertising display concessions.
2. Rental income from space leased to all tenants other than airlines.
3. Rental income from Air Freight Facility leased by Airline.

Additionally, one hundred percent (100%) of estimated collections of terminal facility fees (as required by County ordinance) from nonsignatory airline operations shall be deducted from the Terminal Building Cost.

C. Expenses may be offset by an additional allocation of estimated airport revenues at the discretion of the Airport Director.

D. The estimated Net Terminal Building Cost for the Fiscal Year will then be divided by the total amount of Rentable Space to determine Airline's "Basic Cost Rate" per square foot of Rentable Space.

E. As soon as possible following the close of a Fiscal Year, actual Terminal Building Costs and the airline revenue credit attributable to the terminal Building shall be ascertained by County for such Fiscal Year and the difference between the actual Airline rental requirement and the space rentals billed to Airline shall be applied as (or recovered through) direct credits against (or additional charges to) space rental invoices over the remaining months of the current Fiscal Year. County reserves the right to reimburse airline, by direct payment, for excess billings.

**Section 6.05. Calculation of Landing Fee Rates**

A landing fee per one thousand (1,000) pound unit of Maximum Certificated Gross Landing Weight shall be calculated for each Fiscal Year in the following manner:

A. County's estimated "Part 135 and 121 Operator Landing Area Cost" for the Fiscal Year shall be calculated by totaling the following amounts:

1. The pro rata Part 135 and 121 Operator share of aircraft rescue and fire fighting capital and operating expenses.
2. The pro rata Part 135 and 121 Operator share of all other estimated direct and indirect Maintenance and Operating Expenses allocable to the Landing Area.
3. The pro rata Part 135 and 121 Operator share of equipment purchases and capital outlays which cost less than One Hundred Thousand Dollars (\$100,000) each (net of any grants-in-aid received by County for such purchases and outlays) and have a useful life of less than five (5) years allocable to the Landing Area.
4. The pro rata Part 135 and 121 Operator share of the Annual Debt Service Requirement allocable to the Landing Area.
5. The pro rata Part 135 and 121 Operator share of the annual amortization of the cost of any Capital Improvements with beneficial occupancy or use occurring before January 1 of any Fiscal Year and that are allocable to the Landing Area. Such annual amortization shall be computed at interest (equivalent to County's annual interest rate on the most recent Indebtedness at the time the Capital Improvement is occupied or used) using economic lives for each capital item determined by County in accordance with generally accepted accounting practices. No amortization charges will be included in the calculation under this paragraph 5 that are associated with Capital Improvements which have been financed with the proceeds of Indebtedness, or grants-in-aid.
6. Expenses may be offset by an allocation of estimated airport revenues at the discretion of the Airport Director.

The pro rata Part 135 and 121 Operator share of the above costs shall be equal to the Total Landed Weight of the Part 135 and 121 Operators divided by the Total Landed Weight of all Aircraft Arrivals for the Fiscal Year, as estimated by County.

B. The Part 135 and 121 Operator Landing Area Cost shall then be divided by the Total Landed Weight of all Aircraft Arrivals of the Part 135 and 121 Operators for the Fiscal Year, as estimated by the County, to determine the "Signatory Airline Landing Fee Rate."

C. As soon as possible following the close of each Fiscal Year, the actual Part 135 and 121 Operator Landing Area Cost shall be ascertained by County for the Fiscal Year based on actual costs and Aircraft Arrivals. The difference between the actual Part 135 and 121 Operator landing fees and the estimated Part 135 and 121 Operator landing fees shall be applied as direct credits against (or recovered through additional charges to) invoices over the remaining months of the current Fiscal Year. County reserves the right to reimburse airline, by direct payment, for excess billings.

Section 6.06. Extraordinary Rate Adjustments of Terminal Building Space Rentals, Landing Fees

In the event that, at any time during a Fiscal Year, any of the components of Terminal Building Cost or the Part 135 and 121 Operator Landing Area Cost or the Total Landing Weight of all Part 135 and 121 Operators, varies upward or downward ten percent (10%) or more from the estimates used in setting Terminal Building Rental Rates or Landing Fee Rates, such rates may be adjusted either up or down for the balance of such Fiscal Year, in the event that such adjustment is deemed necessary by County to ensure that adequate revenues will be available from such fees to cover such estimated costs for the Fiscal Year.

ARTICLE 7  
MAINTENANCE AND OPERATION OF AIRPORT

Section 7.01. General

County agrees that it will, with reasonable diligence, prudently develop, improve, and at all times maintain and operate with adequate, efficient, and qualified personnel and keep the Airport in good repair including, without limitation, the Terminal Building, Landing Area, and all appurtenances, facilities, and services now or hereafter connected therewith as the same relate to Airline's air transportation system; will keep the Airport and its aerial approaches free from obstruction and interference for the safe and proper use thereof by Airline; will not permit any activities, such as air shows or recreational events, to disrupt the delivery of commercial air service; and will develop, maintain, and operate the Airport in all respects in a manner at least equal to the standards or rating established by the FAA and any other governmental agency having jurisdiction thereof, except for conditions beyond the control of County.

Responsibility for maintenance, cleaning, and operation of the Terminal Building and apron facilities shall be as set forth in Exhibit D.

Section 7.02. Terminal Building

A. County shall operate and maintain and keep in good condition and repair the Terminal Building and all additions, improvements, facilities, and equipment now or hereafter provided by County at or in Connection with the Terminal Building, except any improvements, facilities, and equipment constructed or installed by Airline. County shall keep the Terminal Building, except Airline's Exclusive Use Space, in neat, orderly, sanitary, and presentable condition.

B. County shall, at all times, maintain the public area of the Terminal Building so as to provide for reasonable unobstructed use thereof by passengers and invitees, and shall keep such area adequately supplied, equipped (including directional signs), furnished, and decorated.

C. County shall supply or cause to be supplied appropriate and adequate equipment and maintenance for air conditioning, ventilation, heat, water, and sewerage facilities for Terminal Building public use areas, Airline's Exclusive Use Space and Common Use Space; adequate illumination in Common Use Space; and janitorial service in Terminal Building public use areas and Common Use Space (except outbound baggage space).

D. Airline shall, at all times, keep its Exclusive Use Space neat, orderly, sanitary, and presentable. Airline shall pay for all electric power used in its Exclusive Use Space; shall be responsible for relamping such spaces; shall furnish its own janitorial service for such spaces; and shall cause to be removed at Airline's own expense from such spaces all waste, garbage, and rubbish, and agrees not to deposit the same on any part of the Airport, except that Airline may deposit same temporarily in its Exclusive Use Space or in space designated by County in connection with collection for removal.

Should Airline refuse or neglect to maintain its Exclusive Use Space as herein provided, County shall have the right to perform such maintenance on behalf of and for Airline and charge Airline for same as provided in Section 7.03B.

E. Airline shall maintain the apron area contiguous to its preferentially assigned gates in a neat, clean, and orderly condition, free from litter, debris, refuse, petroleum products, or grease that may result from activities of its passengers, employees, agents, or suppliers, and remove all oil and grease spillage that is attributable to Airline's aircraft or equipment from its aircraft parking positions.

F. County shall, with reasonable diligence, remove snow and ice from apron area adjacent to Airline's preferential parking position. However, in the event other priorities conflict with Airline's schedule, Airline may assume that responsibility with no recourse to County.

G. Airline shall perform, at its sole expense, ordinary preventive maintenance and ordinary upkeep and repair of all facilities, personal property, trade fixtures, and equipment located in its Exclusive Use Space including, but not limited to, fixtures, interior and exterior doors and windows, baggage conveyors and belts, floor coverings, and ticket counters.

**Section 7.03. County's Right to Inspect and Make Repairs**

County, by its authorized officers, employees, agents, contractors, subcontractors, and other representatives, shall have the right (at such times as may be reasonable under the circumstances and with as little interruption of Airline's operations as is reasonably practicable), to enter upon the Airline's Exclusive Use Space and Common Use Space, accompanied by an authorized Airline representative, if practicable, for the following purposes:

A. To inspect such space to determine whether Airline has complied and is in compliance with the terms and conditions of this Agreement.

B. Upon reasonable notice, to perform such maintenance, cleaning, or repair as County reasonably deems necessary, if Airline fails to perform its obligations under this Article 7, and to recover the reasonable cost of such maintenance, cleaning, or repair from Airline, plus a fifteen percent (15%) administrative charge from Airline on the next rent date.

**Section 7.04. Alterations and Improvements**

Airline shall make no alterations, additions, improvements to, or installations on the space leased under this Agreement without the prior written approval of County; provided that such approval shall not be unreasonably withheld.

Plans and specifications for such work shall be filed with and subject to the approval of the Airport Director and all work shall be done in accordance with all Rules and Regulations.

All Airline alterations and improvements other than Airline owned signage, movable furniture, personal property, equipment, and trade fixtures shall become part of the realty, and title shall vest with County upon installation or completion of construction.

## ARTICLE 8 DAMAGE OR DESTRUCTION OF PREMISES

### Section 8.01. Damage or Destruction

A. If the Leased Premises or any portions thereof, or buildings or structures of which such space may be a part, be damaged by fire or other casualty, County shall notify Airline within forty-five (45) days whether the space shall be repaired. If the space is to be repaired, it will be repaired with due diligence by County, and the rental allocable to the particular building, rooms, or other portion of the space rendered untenable shall be abated for the period from the occurrence of the damage to the completion of the repairs; provided that County will exert its best effort to provide Airline with temporary substitute space, if available, at such rent as deemed necessary and reasonable by County, until such time as the repairs are completed.

Notwithstanding the foregoing, if the County fails to repair and restore the Leased Premises within one hundred eighty (180) days after the date of such damage or destruction, then Airline may terminate this Agreement after having provided thirty (30) days' prior notice of such termination. If this Agreement is terminated in accordance with this section 8.01A, the County shall refund the fees and rents prepaid beyond the effective date of the termination.

B. If County shall fail to notify Airline of its decision hereunder regarding repair of damage within forty-five (45) days after the damage occurs, County shall be deemed to have elected to terminate this Agreement as to the space damaged or destroyed, and the Agreement shall automatically terminate as to such space as of the date of the damage.

C. Notwithstanding the foregoing paragraphs A and B, in the event the Leased Premises shall be damaged to the extent of more than fifty percent (50%) of the value thereof, as determined on the date of occurrence by an appraiser chosen by the County and approved by Airline, either party may terminate this Agreement by giving notice of such intention not more than thirty (30) days after the date of said occurrence.

D. Airline shall repair, at its cost, or reimburse County for the cost of repairing, replacing or rebuilding any damage to airport buildings or property caused by the acts or omissions of Airline or its officers, employees, agents or invitees. Any repairs made by Airline shall be subject to inspection and approval by the Airport Director.

ARTICLE 9  
INSURANCE AND INDEMNIFICATION

Section 9.01. Insurance

A. Airline shall, without expense to County, and upon commencement of the term hereof, obtain and cause to be kept in force liability insurance coverage, with limits as hereinafter stated, insofar as such coverage is available under policies and endorsements thereto approved by the State of Wisconsin agency regulating insurance, insuring against the liabilities set forth in the indemnification paragraph below.

Such insurance shall include, by way of example but not by way of limitation, comprehensive general liability coverage and automobile liability insurance coverage and shall not be in amounts less than hereinafter stated. Such insurance coverage shall be provided by policies issued by a company or companies of sound and adequate financial responsibility. Such insurance policies shall contain an endorsement providing that County will be given not less than thirty (30) days notice prior to the cancellation or material change of the provisions or coverages affecting the interest of County provided by said policies. The comprehensive general liability policies shall include contractual liability coverage.

Airline shall cause a certificate or certificates of insurance to be furnished to County evidencing such insurance coverage. County shall be listed as certificate holder to receive all notices. If County is notified that any of the coverage required herein is to be cancelled or changed in such a manner as not to comply with the requirements of the Agreement, Airline shall, within thirty (30) days prior to the effective date of such cancellation or change, obtain and provide County with certificates evidencing the re-establishment of the insurance coverage required hereby. If Airline's insurance is underwritten on a Claims-Made basis, the Retroactive Date shall be prior to or coincide with the date of this agreement. Airline shall furnish County, annually, a Certificate of Insurance as evidence of coverage. It is also agreed that either the Airline or County may invoke the tail option on behalf of the other party and that Extended Reporting Period premium shall be paid by Airline.

B. The minimum limits of coverage shall be as follows:

Comprehensive General Liability Insurance, including but not limited to Bodily Injury, Personal Injury, broad form contractual and broad form Property Damage (per occurrence)	\$100,000,000 *
Automobile Liability Insurance	
Bodily Injury (per occurrence)	\$1,000,000
Property Damage (per occurrence)	\$1,000,000

The parties agree to review and modify the limits stated above at five (5) year intervals to ensure that the limits remain within industry standards.

\*Passenger Personal Injury - \$100,000,000 each occurrence.

\*Non-Passenger Personal Injury - \$25,000,000 each offense.

C. Insofar as said insurance provides protection against liability for damages to third parties for personal injury, death, and property damage, County shall be included as an additional insured. Such liability insurance coverage shall also extend to damage, destruction, and injury, to County-owned or County-leased property and County personnel, and caused by or resulting from work, acts, operations, or omissions of Airline, its officers, agents, employees, and independent contractors on the Airport. County shall have no liability for any premiums charged for such coverage, and the inclusion of County as an additional insured is not intended to, and shall not, make County a partner or joint venturer with Airline in its operations on the Airport.

**Section 9.02. Indemnification**

Airline agrees fully to indemnify, defend, and hold harmless County, its agents or employees, officers and officials elected and appointed, Boards and Commissions from any and all claims and actions and all expenses incidental to the investigation and defense thereof, including reasonable attorneys' fees, based upon and arising out of damages and injuries or death to any person or property caused by, or arising out of the use, occupancy, or operations of the Airline at the Airport; provided, however, that Airline shall not be liable for any injuries, death, damage, or loss to the extent that such injury, death, damage, or loss is caused by the fault or negligence of County, its agents, or employees; and provided further that County shall give Airline prompt and reasonable notice of any such claims or actions.

**Section 9.03. Nonliability of County**

County shall not in any event be liable for any acts or omissions of Airline, or its agents, servants, employees, or independent contractors, or for any condition resulting from the operations or activities of Airline, Airline's agents, servants, employees, or independent contractors, or for any conditions resulting from the operations or activities of Airline's agents, servants, employees, or independent contractors to Airline.

County shall not be liable for Airline's failure to perform any of the obligations under this Agreement or for any delay in the performance thereof, nor shall any such delay or failure be deemed a default by County.

Airline agrees to comply with the intent of Transportation Security Regulations (TSR) Parts 1500, 1520, 1540 and 1542 (Airport Security) and the policies of the Airport as outlined in its Master Security Plan. Airline also agrees that any fines levied upon County in the enforcement of TSR Part 1542 because of acts of Airline's employees, agents, suppliers, guests or patrons shall be borne by Airline.

**Section 9.04. Environmental Regulations**

For purposes of Section 9.04 Airline agrees to be legally responsible for not only its activities on the Airport property but also the activities of its subcontractors conducted on behalf of Airline on Airport property. Airline shall comply with the following environmental regulations:

A. Airline shall not cause or permit any Hazardous Materials to be stored or used on or about the Leased Premises by Airline, its agents, or employees, except in compliance with Environmental Laws as described below and as permitted by the County.

B. Airline shall at all times and in all respects comply with all local, state, and federal laws, ordinances, regulations, and orders relating to industrial hygiene, environmental protection, or the use, generation, manufacture, storage, disposal, or transportation of Hazardous Materials on, about, or from the premises (collectively, "Environmental Laws").

C. Airline shall, at its expense, procure, maintain in effect, and comply with all conditions of any permits, licenses, and other governmental and regulatory approvals required for Airline's use of the premises, including, without limitation, discharge of materials or wastes into or through any storm or sanitary sewer serving the premises. Except for discharges into the sanitary sewer, Airline shall cause any and all Hazardous Materials removed from the premises to be removed and transported solely by duly licensed haulers to duly licensed facilities for disposal. Airline shall in all respects handle, treat and manage any and all Hazardous Materials on or about the premises in conformity with all applicable Environmental Laws and prudent industry practices regarding the management of such Hazardous Materials. Upon the expiration or earlier termination of the term of its operating agreement, Airline shall cause all Hazardous Materials to be removed from the premises and to be transported for use, storage, or disposal in accordance and compliance with all applicable Environmental Laws; provided, however, that Airline shall not take any remedial action in response to the presence of any Hazardous Materials in or about the premises, nor enter into any settlement agreement, consent decree, or other compromise with respect to any claims relating to any Hazardous Materials in any way connected with the premises without first notifying the Airport Director of Airline's intention to do so and affording the Airport director ample opportunity to appear, intervene, or otherwise appropriately assert and protect the County's interest with respect thereto.

D. If at any time Airline shall become aware, or have reasonable cause to believe, that any Hazardous material has come to be located on or about the premises in violation or potential violation of Environmental Laws, Airline shall, immediately upon discovering such presence or suspected presence of the Hazardous Material, provide the Airport Director with written notice of that condition. In addition, Airline shall immediately notify the Airport Director in writing of (1) any enforcement, cleanup, removal, or other governmental or regulatory action instituted or threatened pursuant to any Environmental Laws, (2) any claim made or threatened by any person against Airline or the premises relating to damage, contribution, cost recovery, compensation, loss, or injury resulting from or claimed to result from any Hazardous materials, and (3) any reports made to any local, state, or federal environmental agency arising out of or in connection with any Hazardous Materials on or removed from the premises, including any complaints, notices, warnings, or asserted violations in connection therewith. Airline shall also supply to the Airport Director as promptly as possible, and in any event within five (5) business days after Airline first receives or sends the same, copies of all claims, reports, complaints, notices, warnings, or asserted violations relating in any way to the premises or Airline's use thereof Airline shall promptly deliver to the Airport Director copies of hazardous waste manifests reflecting the legal and proper disposal of all Hazardous Materials removed from the premises.

E. Airline shall indemnify, defend and hold harmless County, its officers, employees, successors and assigns, from and against any and all claims, liabilities, penalties, fines judgments, forfeitures, losses, damages, (including damages for the loss or restriction on use of rentable or usable space or of any amenity of the premises)



costs, or expenses (including attorneys' fees, consultant fees, and expert fees) for the death of or injury to any person or damage to the premises or any property whatsoever, arising from or caused in whole or in part, directly or indirectly, by Airline's failure to comply with any Environmental Laws or any covenants, terms or conditions relating to environmental matters in this Agreement. Airline's obligations under this Paragraph E shall include, without limitation, and whether foreseeable or enforceable, any and all costs incurred in connection therewith. Airline's obligations under this Paragraph E shall survive the expiration or earlier termination of the term of the Airline's permit or lease.

F. Notwithstanding any provisions to the contrary, the Airport Director, at his or her sole discretion, shall have the right to enter and inspect the premises, including Airline's business operations thereon, upon reasonable notice and in a manner so as not to unreasonably interfere with the conduct of Airline's business, to investigate the presence of potential presence of Hazardous Materials on the premises in violation of Environmental Laws. During such inspection, the Airport Director shall have the right to visually inspect the premises and to take such soil, sludge or groundwater samples and conduct such tests as it may determine, in its sole discretion, to be necessary or advisable. County shall pay for the costs of such investigations; provided, however, that if the results of such investigation indicate the presence of Hazardous Materials on or about the premises caused by Airline in violation of Environmental Laws, then Airline shall fully reimburse the County for such expenses within thirty (30) days of receiving the County's written request for reimbursement.

## ARTICLE 10 ASSIGNMENT OR SUBLEASE

### Section 10.01. Assignment and Subletting by Airline

A. Airline shall not, directly or indirectly, assign, sell, or otherwise transfer this Agreement, or any portion of Leased Premises, without the prior written consent of County, providing that the foregoing shall not prevent the assignment of this Agreement to any entity with which Airline may merge or consolidate, or which may succeed to the business of Airline. Any such successor entity, no later than thirty (30) days after the date of such merger, consolidation, or succession, shall acknowledge in writing, in form and content satisfactory to County that it has assumed all obligations of Airline and will fully honor all the terms and conditions set forth in this Agreement.

B. Airline shall not, without the prior written consent of County, sublease Leased Premises except to an Affiliated Airline Company designated as an Affiliate of Airline. The parties hereto agree that the Airport Director may withhold such consent if County has substantially similar space available but unleased or if County can make substantially similar space available for lease within a reasonable time. Exclusive use of Leased Premises, or any part thereof, by anyone other than Airline shall be considered a sublease.

C. In the event Airline requests permission to sublease, the request shall be accompanied by a copy of the proposed sublease agreement. In the event such proposed sublease agreement has not been prepared, a written summary of the material terms and conditions to be contained in such sublease agreement shall be included with Airline's request for tentative approval by the Airport Director. The area or space to be subleased and the rental to be charged shall be specified, and all other information reasonably requested by County pertaining to said sublease shall be submitted to the

Airport Director for final review and approval no later than thirty (30) days following occupancy of Leased Premises, or any portion thereof, by the sublessee.

D. In the event of a sublease where the rentals, fees, and charges for the subleased premises exceed the rentals, fees, and charges payable by Airline for said premises pursuant to this Agreement, Airline shall pay to County the excess of the rentals, fees, and charges received from the sublessee over that specified to be paid by Airline herein, provided that Airline may charge a reasonable fee for administrative costs, not to exceed fifteen percent (15%) of the specified sublease rental, and such fifteen percent (15%) shall not be considered excess rentals, fees, and charges. Airline shall also have the right to charge a reasonable fee to others for the use of Airline's capital equipment and to charge for use of utilities and other services being paid for by Airline.

E. In the event Airline agrees to ground handle any portion of the operations of another passenger airline, Airline shall provide the Airport Director advance written notice of such proposed activities, including a description of the type, extent, and services to be provided. Notwithstanding the provisions of the foregoing sentence, Airline shall not agree to ground handle another passenger airline without the prior written permission of the Airport Director if such passenger airline does not have in force an operating agreement with County.

F. No sublease or temporary use agreement shall release Airline from its obligations to pay the rentals, fees, and charges provided herein. Notwithstanding the above, other airlines by prior arrangements with Airline, and subject to the Airport Director's prior written consent, may use its Leased Premises on a temporary basis subject to the provisions of Article 4.

**Section 10.02. Bankruptcy**

Section 10.01 shall not apply to any valid assumption or assignment of this Agreement, the Leased Premises, or any part thereof, by a trustee, or by the Airline as a debtor in possession under Section 365 of the Bankruptcy Code of 1978, as amended; provided that adequate assurance of future performance as provided by Section 365 of Bankruptcy Code of 1978, as amended, is to be provided, in writing, as a condition of the assumption or assignment of this Agreement. Such assurance shall include but shall not be limited to:

- A. Adequate assurance of the reliability of the proposed source for the rental payments due under this Agreement upon the assumption or assignment of this Agreement;
- B. Adequate assurance that all other consideration due under this Agreement shall be forthcoming after the assumption or assignment of this Agreement; and
- C. The procurement of a bond issued by a bonding company duly authorized to do business in the State of Wisconsin covering any costs or damages incurred by County in the event that County, within five (5) years following the assumption or assignment of this Agreement, becomes entitled to and exercises any right to reassign the lease space covered by this Agreement under Article 4.

**Section 10.03. Relinquishment of Space**

If Airline desires to relinquish any of its Exclusive Use Space or any rights to Common Use Space or Shared Exclusive Use Space, Airline shall notify the Airport Director in writing of the space available, and Airport Director shall use best efforts to reassign the space to another airline. No assignment, transfer, conveyance, or sublease by Airline shall relieve Airline of its responsibility for payment of rent and performance of all other obligations provided in this Agreement, without specific written consent by the Airport Director to such relief.

**Section 10.04. Consent**

Consent by County to any type of transfer provided for by this Article 10 shall not in any way be construed to relieve Airline from obtaining further consent for any subsequent transfer or assignment of any nature whatsoever.

**ARTICLE 11  
DEFAULT**

**Section 11.01. Default**

If Airline (1) fails to pay rent, passenger facility charges, or any other payment due hereunder within thirty (30) days after receipt of written notice of a past due account, or (2) fails to commence immediately to keep and perform any of its other covenants and agreements within thirty (30) days after receipt of written notice, or (3) fails to continue to complete any of its covenants and agreements after performance is commenced, or after the filing of any petition, proceedings, or action by or for Airline under any insolvency, bankruptcy, or reorganization act of law, or (4) voluntarily discontinues its Scheduled Service at the Airport (except by reason of strike or causes beyond control of Airline) for a period of thirty (30) days unless otherwise agreed to by County and Airline, or (5) fails to provide the security deposit described in Section 5.06 as and when required thereunder, then at the election of County:

A. Without terminating this Agreement, County may re-enter the space and improve and relet all or any part of it to others, for the account of Airline, including costs of renovation and an administrative fee not to exceed fifteen percent (15%) paid to County for all sublease rentals received, and Airline shall promptly reimburse County for any deficiency in rentals or other payments received under such subletting, as compared to Airline's obligations hereunder.

B. At any time before or after a re-entry and reletting as provided in Section 11.01 A, County may terminate Airline's rights under this Agreement as provided in Section 12.02, without any restriction upon recovery by County for past due rentals and other obligations of Airline.

C. Without terminating this agreement, in the event of default, County may reassign Airline's preferential parking position and related passenger departure area to others without recourse to County. In the event of default, Airline agrees to waive its rights provided in Section 4.02 regarding reassignment of preferential parking positions.

County shall have all additional rights and remedies as may be provided to landlords by law.

ARTICLE 12  
TERMINATION

**Section 12.01. Events Permitting Termination by Airline**

Airline may terminate this Agreement and all of its future obligations hereunder, at any time that Airline is not in default in its payments or other obligations to County hereunder, by giving County thirty (30) days advance written notice only if (1) Airline is prohibited by law from using the Airport for a period exceeding sixty (60) days because of any deficiency of the Airport or an unsafe operating condition existing at the Airport, or in the surrounding airspace; or (2) County is in breach of any of the covenants or agreements contained in this Agreement for a period exceeding sixty (60) days after receipt of written notice of such breach from Airline.

**Section 12.02. Events Permitting Termination by County**

County may terminate this Agreement and all of its obligations hereunder upon thirty (30) days written notice and may exercise all rights of entry and re-entry upon the Leased Premises, with or without process of law, if any of the events constituting a default under this Agreement, as set forth in Sections 11.01 and 13.03 hereof, shall have occurred.

**Section 12.03. Possession by County**

In any of the events referenced in Section 12.02 herein, County may take possession of the Leased Premises upon fifteen (15) days notice after the time specified in Section 12.02 and remove Airline's effects, without being deemed guilty of trespassing. Upon said default, all rights of Airline shall be forfeited, provided, however, County shall have and reserve all of its available remedies at law as a result of said breach of this Agreement.

Failure of County to declare this Agreement terminated upon default of Airline for any of the reasons set out shall not operate to bar, destroy, or waive the right of County to cancel this Agreement by reason of the same or any subsequent violation of the terms hereof.

**Section 12.04. Rights Upon Termination or Reassignment of Leased Premises**

A. It is the intent of this Agreement that any leasehold improvements and any alterations thereto shall be and remain the property of County during the entire term of this Agreement and thereafter.

B. Upon termination of this Lease, Airline shall remove all Personal Property including data lines and special wiring from the Leased Premises within thirty (30) days after said termination and restore the demised premises to its original condition ordinary wear and tear excepted. If Airline fails to remove said Personal Property, said property may thereafter be removed by County at Airline's expense. Data lines and wiring installed by Airline outside of the Leased Premises shall be removed only pursuant to the written direction of the Airport Director.

ARTICLE 13  
GENERAL PROVISIONS

**Section 13.01. Rules and Regulations**

A. Airline shall observe and obey all Rules and Regulations governing conduct on and operations at the Airport and use of its facilities. Premises and equipment used by Airline at the Airport shall at all times be maintained and operated by Airline and its employees in full compliance with all Rules and Regulations, including those addressing safety measures and devices, applicable to the operation and maintenance of said premises or equipment, irrespective of whether the premises or equipment is owned, leased or otherwise permissibly used by Airline.

B. Airline shall comply with all applicable requirements of the Americans With Disabilities Act of 1990, Americans With Disabilities Act Amendment Act of 2008, 42 U.S.C., Sec. 12101 et seq., the Air Carrier Access Act, and any related rules or regulations and amendments thereto.

C. Airline shall not violate, nor knowingly permit its agents, contractors, or employees acting on Airline's behalf to violate, any Rules and Regulations.

D. Airline shall restrict over-the-counter air freight handling within the Terminal Building to shipments meeting the following criteria: a) shipment height plus width plus length must not exceed ninety (90) inches; b) shipment weight must not exceed seventy (70) lbs.

All freight exceeding the above restrictions must be handled at the Air Freight Facility or the Terminal Building loading dock.

Notwithstanding the foregoing, Airline shall have a 30 day period within which to comply with any new rules and regulations, except new rules and regulations based on security issues, promulgated by the Airport during the term of this Agreement, provided however, that in the event Airline objects in writing within the aforesaid 30 day period to such rules and regulations on the grounds they adversely affect the operation of Airline's business or unreasonably interfere with Airline's use of the Leased Premises, or both, there shall be a 30 day delay in implementing such rules and regulations. During the delay, the parties may meet to discuss the proposed rules and regulations and amendments thereto. At the Airport Director's sole discretion, new rules and regulations based on security considerations may be implemented immediately upon adoption by the Airport.

**Section 13.02. Compliance with Law**

A. Airline shall not use the Leased Premises or any part of the Airport, or knowingly permit the same to be used by any of its employees, officers, agents, subtenants, invitees, or licensees for any illegal purposes and shall, at all times during the term of this Agreement, comply with all applicable Rules and Regulations.

B. At all times during the term of this Agreement, Airline shall, in connection with its activities and operations at the Airport:

1. Make, at its own expense, all nonstructural improvements, repairs, and alterations to its Exclusive Use Space (subject to prior written approval of the Airport Director), equipment, and personal

property that are required to comply with or conform to any of such statutes and ordinances.

2. Reimburse County for Airline's Proportional share of all nonstructural improvements, repairs, and alterations to its Common Use Space that are required to comply with or conform to any of such statutes and ordinances.
3. Be and remain an independent contractor with respect to all installations, construction, and services performed by it or on its behalf hereunder.

**Section 13.03. Nondiscrimination**

Airline, for itself, its successors and assigns, as part of the consideration hereof, does hereby covenant and agree as a covenant running with the land, that (a) no person on the grounds of race, color, sex, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; (b) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, sex, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; (c) that Airline shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A. Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended. In the event of breach of any of the above nondiscrimination covenants, such breach shall be deemed to constitute an act of default under this Agreement.

**Section 13.04. Notices**

A. Notices required herein may be given by certified mail by depositing the same in the U.S. mail in the continental United States, postage prepaid, return receipt requested. Either party shall have the right, by giving written notice to the other, to change the address at which its notices are to be received. Until any such change is made, notices shall be delivered as follows:

1. County: Dane County Regional Airport  
4000 International Lane  
Madison, Wisconsin 53704
2. Airline: Sun Country Airlines  
R. Brian Davis  
VP of Ground Operations  
1300 Corporate Center Curve  
Eagan, MN 55121

B. If notice is given in any other manner or at any other place, it will also be given at the place and in the manner specified above.

**Section 13.05. Successors and Assigns Bound**

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

**Section 13.06. Governing Law**

This Agreement and all disputes arising hereunder shall be governed by the laws of the State of Wisconsin, with venue in Dane County, Wisconsin.

**Section 13.07. Peaceful Enjoyment**

Airline shall, upon payment of the rentals, fees, and charges required hereunder and upon compliance with the terms, covenants, conditions, and obligations on the part of Airline to be performed and complied with hereunder, peaceably have and enjoy the rights, uses, and privileges of the Airport, its appurtenances, and facilities as granted herein and by the Rules and Regulations.

**Section 13.08. Nonliability of Agents and Employees**

No member, officer, agent, director, or employee of County or Airline shall be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement or because of any breach thereof or because of its or their execution of this Agreement.

**Section 13.09. Subordination to Agreements with the U.S. Government**

This agreement is subject and subordinate to the provisions of any agreements heretofore or hereafter made between County and the United States, relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of federal rights or property to County for the Airport purposes, or to the expenditure of federal funds for the improvement or development of the Airport, including the expenditure of federal funds for the development of the Airport in accordance with the provisions of the Federal Aviation Act of 1958, as it has been and may in the future be amended from time to time.

**Section 13.10. Nonwaiver of Rights**

No waiver of default by either party of any of the terms, covenants, and conditions hereof to be performed, kept, and observed by the other party shall be construed as, or shall operate as, a waiver of any subsequent default of any of the terms, covenants, or conditions herein contained, to be performed, kept, and observed by the other party.

**Section 13.11. Federal Aviation Act, Section 308**

Nothing herein contained shall be deemed to grant to Airline any exclusive right or privilege within the meaning of Section 308 of the Federal Aviation Act for the conduct of any activity on the Airport, except that, subject to the terms and provisions hereof, Airline shall have the right to exclusive possession of the Exclusive Use Space leased to Airline under the provisions of this Agreement.

**Section 13.12. Severability**

If one or more clauses, sections, or provisions of this Agreement shall be held to be unlawful, invalid, or unenforceable, it is agreed that the remainder of the Agreement shall not be affected thereby.

**Section 13.13. Force Majeure**

Notwithstanding anything contained in this Agreement to the contrary, neither County nor Airline shall be deemed in violation of this Agreement if it is prevented from performing any of the obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortage of energy or materials, acts of God, acts of a public enemy, acts of superior governmental authority, weather conditions, riots, rebellion, sabotage, or any other circumstances for which it is not responsible or which are not within its control. However, these provisions shall not excuse Airline from paying the rentals and fees specified in Article 5.

**Section 13.14. Use of the Airport Revenues**

All revenues derived from the operation of the Airport shall be used for lawful purposes of the Airport only, consistent with grant assurances and deed restrictions.

**Section 13.15. Headings**

The headings of the several articles and sections of this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

**Section 13.16. Entire Agreement**

This Agreement, together with all exhibits attached hereto, constitutes the entire agreement between the parties hereto, and all other representations or statements heretofore made, verbal or written, are merged herein, and this agreement may be amended only in writing, and executed by duly authorized representatives of the parties hereto.

**ARTICLE 14  
COUNTY'S DEFAULT; AIRLINE'S REMEDIES**

**Section 14.01. County's Default; Airline's Remedies**

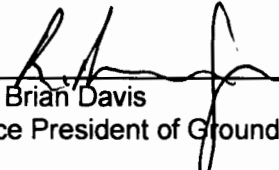
If County shall: (a) fail to carry out any duties imposed by this Agreement, (b) fail to carry out any duties imposed by law, or (c) fail to pay when due any taxes and insurance premiums required to be paid by County under this Agreement, then County shall be in default of this Agreement. Failure of County to cure such default prior to the expiration of any applicable grace period constitutes an Event of Default. Upon the Event of Default, Airline shall have all remedies accorded to lessees under the applicable state common law, including, without limitation the right to declare a constructive eviction and terminate this Agreement abating rent as of the date of such declaration, or payment of rent into escrow pending a determination of County and Airline's rights.

SIGNATURE PAGE FOLLOWS



IN WITNESS WHEREOF, the parties have executed this Agreement on the date indicated below.

**FOR MN AIRLINES, LLC d/b/a SUN COUNTRY AIRLINES**

  
\_\_\_\_\_  
R. Brian Davis  
Vice President of Ground Operations

Date: 10/1/2018

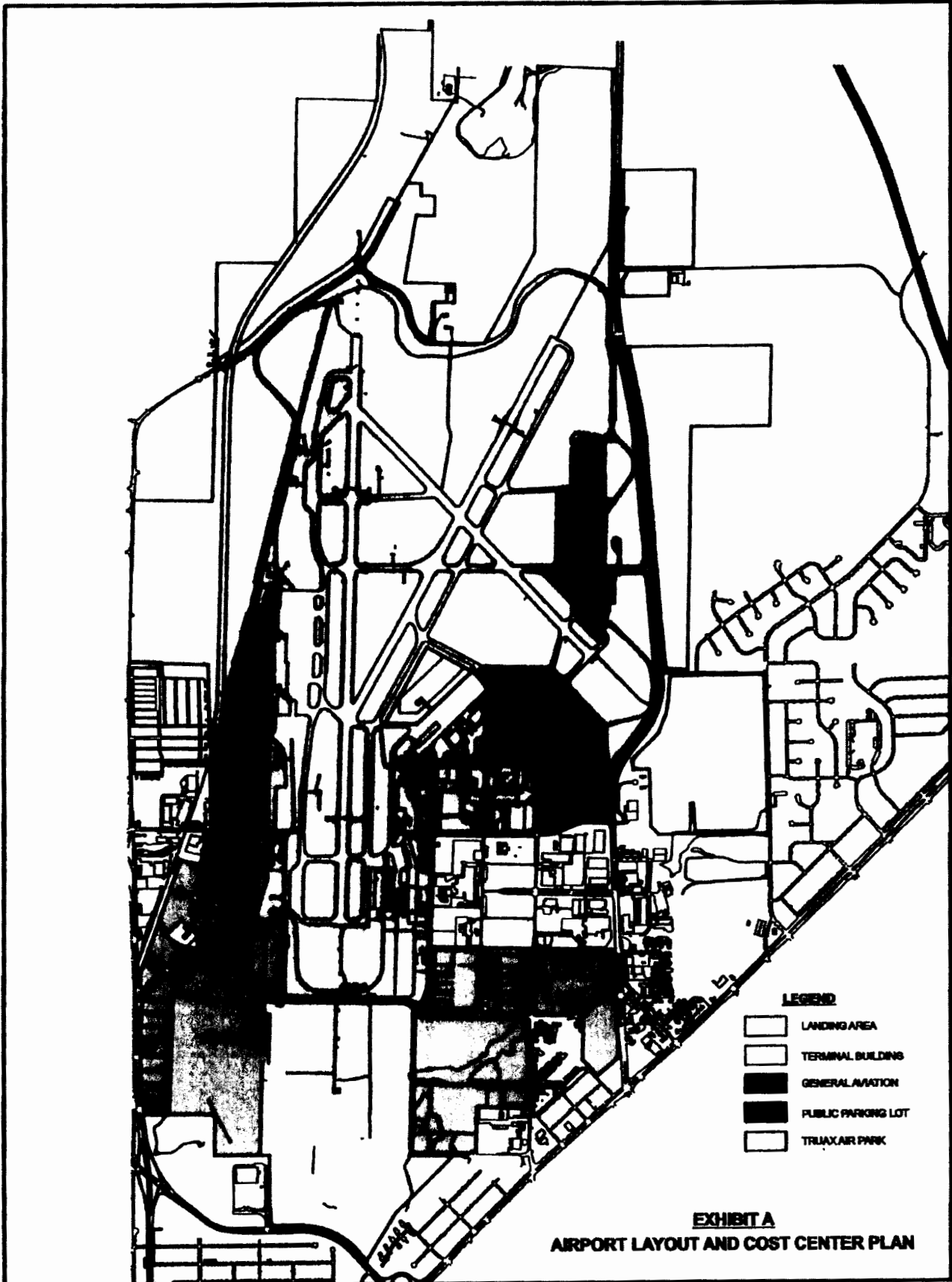
**FOR DANE COUNTY**

\_\_\_\_\_  
Joe Parisi  
Dane County Executive

Date: \_\_\_\_\_

\_\_\_\_\_  
Scott McDonell  
Dane County Clerk

Date: \_\_\_\_\_



**LEGEND**


- LANDING AREA
- TERMINAL BUILDING
- GENERAL AVIATION
- PUBLIC PARKING LOT
- TRIAX AIR PARK

**EXHIBIT A**  
**AIRPORT LAYOUT AND COST CENTER PLAN**



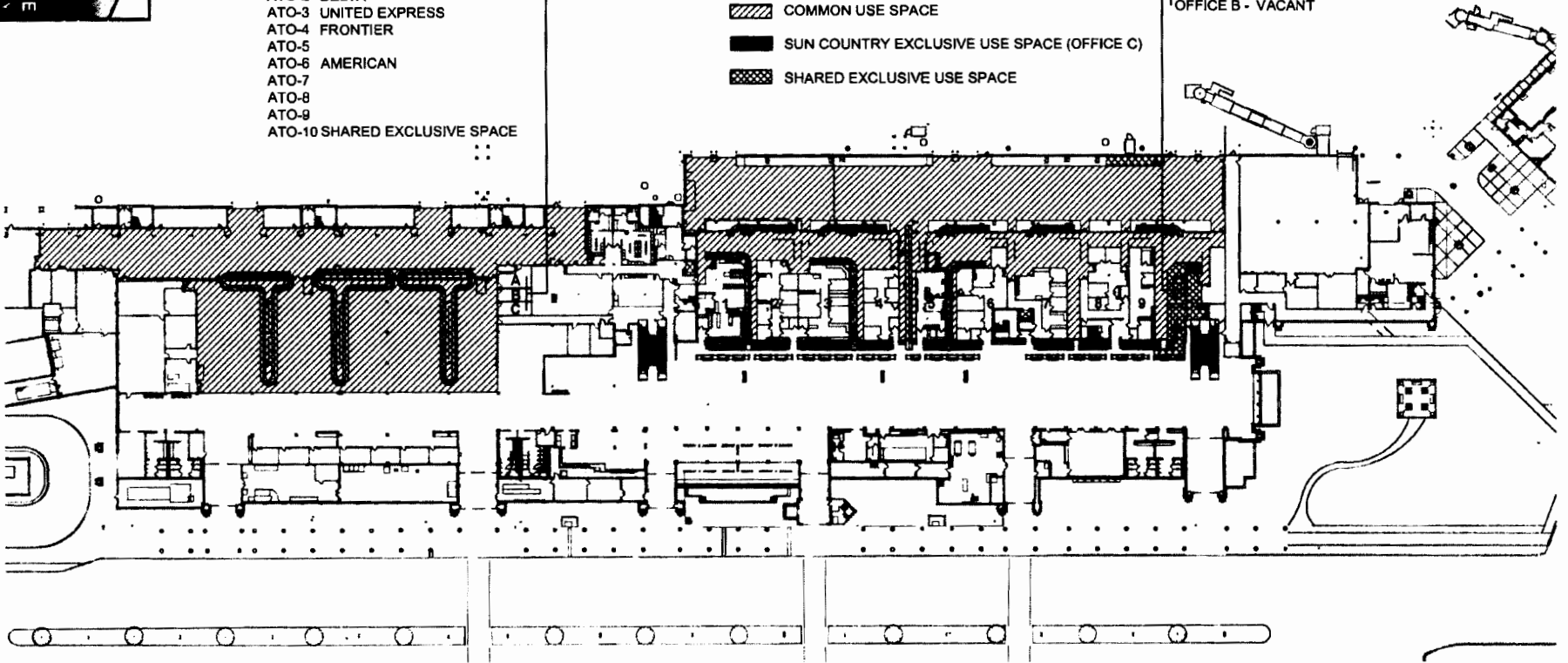
- ATO-1 DELTA
- ATO-2 DELTA
- ATO-3 UNITED EXPRESS
- ATO-4 FRONTIER
- ATO-5
- ATO-6 AMERICAN
- ATO-7
- ATO-8
- ATO-9
- ATO-10 SHARED EXCLUSIVE SPACE

- BSO-A DELTA
- BSO-B G2 SECURE STAFF LLC
- BSO-C UNITED EXPRESS

-  COMMON USE SPACE
-  SUN COUNTRY EXCLUSIVE USE SPACE (OFFICE C)
-  SHARED EXCLUSIVE USE SPACE

- OFFICE A - VACANT
- OFFICE B - VACANT

# EXHIBIT B-1c



**Exhibit B-2c**

**AIRLINE TERMINAL BUILDING SPACE**  
Dane County Regional Airport

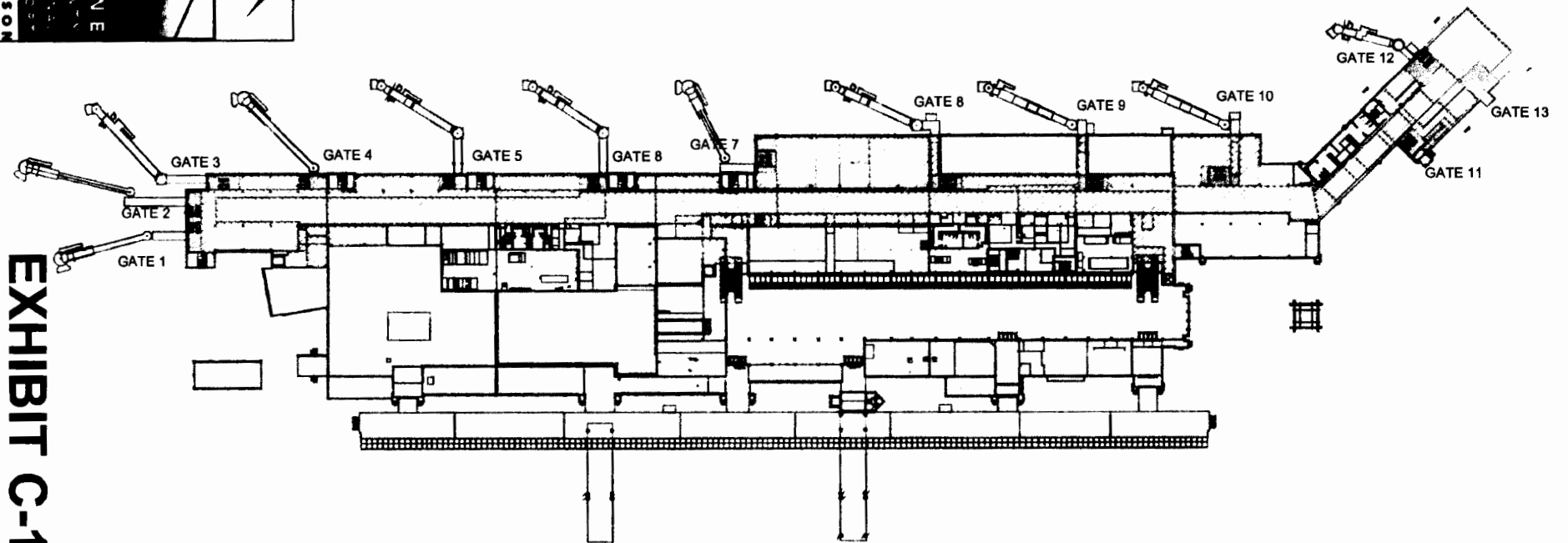
	ATO	Curb-side	Bag Laydown	Storage	BSO	Departure	Bag Claim	Total
<b>Exclusive Use Space</b>								
# Airline								
1 Delta	2,325		419	351	257			3,352
2 Delta	1,707		352					2,059
3 United	2,122		346		191			2,659
4 Frontier	1,508		352					1,860
5 vacant	1,149		366					1,515
6 American	2,078		225					2,303
7 vacant	1,448		300	599				2,347
8 vacant	772		225	595				1,592
9 vacant	1,408		380					1,788
10A vacant	446		75					521
10B vacant	459		75					534
10C Sun Country	360		75					435
	15,782	0	3,190	1,545	448	0	0	20,965
<b>Common Use Space</b>		49	14,736			69,983	26,405	111,173
<b>Total</b>	15,782	49	17,926	1,545	448	69,983	26,405	132,138

5,411

**EXHIBIT B-2c**

updated 8/14/2018

9/5/2018



**EXHIBIT C-1**

COMMON AREA  
BOARDING GATE AREA

- GATE 1 DANE COUNTY
- GATE 2 SUN COUNTRY
- GATE 3 MIDWEST
- GATE 4 CONTINENTAL EXPRESS
- GATE 5 UNITED EXPRESS
- GATE 6 UNITED EXPRESS
- GATE 7 DELTA
- GATE 8 DELTA
- GATE 9 DELTA
- GATE 10 DELTA
- GATE 11 DELTA
- GATE 12 AMERICAN EAGLE
- GATE 13 MIDWEST / AMERICAN CONNECTION

Exhibit D

C = COUNTY  
L = LESSEE

MAINTENANCE RESPONSIBILITIES  
Dane County Regional Airport

	Terminal Building and Ground Level Concourse							
	Ticket Counter (1)	Offices	Baggage Claim Area	Baggage Make-up Area	Airline Hallways	Operations Space	Ramp Service Area (2)	Concourse Second Level
<b>Structural</b>								
Foundation/Floors	C	C	C	C	C	C	C	C
Exterior Walls	C	C	C	C	C	C	C	C
Interior Partitions/Doors/Windows	L	L	C	L	L	L	C	C
Roof and Canopy	C	C	C	C	C	C	C	C
Exterior Doors/Windows	-	-	C	C(5)	-	-	C	C
<b>HVAC</b>	C	C(6)	C	C(6)	C(6)	C(6)	C	C
<b>Electrical</b>								
System Maintenance	C	C	C	C	C	C	C	C
Bulb/Tube/Ballast Replacement	L	L	C	L	L	L	C	C
Fixture Replacement	L	L	C	L	L	L	C	C
Metered Consumption	L	L	C(3)	L	L	L	L	C
<b>Plumbing</b>								
Water Supply	-	L	-	L	L	C	L	C
Sanitary Sewer	-	L	-	L	L	C	-	C
Storm Sewer	-	-	-	C	-	C	C	-
Fixture Maintenance	-	L	-	L	L	L	L	C
Unmetered Consumption	-	L	-	L	L	-	C	C
<b>Painting and Decorating</b>								
Exterior	L	L	C	C	-	C	C	C
Interior Walls and Ceilings	L	L	C	L	L	L	C	C
Floor Coverings	L	L	C	L	L	L	C	C
Directional Signs	L	L	C	L	L	L	C	C
<b>Janitorial</b>								
Interior Cleaning	L	L	C	L	L	L	C(4)	C
Interior Window Washing	L	L	C	L	L	L	C	C
Exterior Window Washing	L	L	C	L	L	L	C	C
Trash to Dumpster	L	L	C	L	L	L	L	C
Exterior Cleaning	L	-	-	L	L	-	C(4)	C
<b>Pavement</b>								
Cleaning/Sweeping	-	-	C	L	-	-	C(4)	-
Grease/Oil Removal	-	-	C	L	-	-	L(4)	-
Maintenance/Repair	-	-	C	L	-	-	C	-
Striping	-	-	C	L	-	-	C	-
<b>Equipment and Furniture</b>								
Loading Bridges	-	-	-	-	-	-	-	C
Outbound Baggage Conveyors	L	L	-	L	-	-	-	-
Baggage Claim Devices	-	-	C(3)	-	-	-	C	-
Tenant Equipment	L	L	L	L	L	L	L	L
County Equipment	-	-	C	-	-	-	C	C
Public Address	C	L	C	L	L	L	C	C
County Telephone Equipment	C	C	C	C	-	C	C	C

Notes:

- (1) Ticket counters/lifts on ground level and second level.
- (2) Non-enclosed areas under concourse; non-public baggage claim/lug area, and exterior ramp equipment storage areas.
- (3) Costs to be allocated back according to Common Use Formula.
- (4) Spills to be cleaned by Lessee responsible.
- (5) Excludes automatic openers.
- (6) Excludes approved tenant-installed systems.

General:

- Lessee is responsible for meeting public sanitary regulations and other code requirements.
- Any damage caused by Lessee, its employees, patrons or guests is to be repaired by Lessee.
- Lessee must obtain written approval from Airport Director prior to making any alterations to County installed equipment or furnishings.

EXHIBIT D