

Dane County Contract Cover Sheet

Revised 01/2022

RES 089

Dept./Division	820/AIRPORT		
Vendor Name	Federal Express Corp	MUNIS #	2639
Brief Contract Title/Description	Establishes the terms and conditions under which FedEx will conduct operations at the Airport, and provides for various fees and charges, including weight-based landing fees.		
Contract Term	07/01/2022 - 11/30/2041		
Contract Amount			

Contract # Admin will assign	14818
Type of Contract	
<input type="checkbox"/>	Dane County Contract
<input type="checkbox"/>	Intergovernmental
<input type="checkbox"/>	County Lessee
<input checked="" type="checkbox"/>	County Lessor
<input type="checkbox"/>	Purchase of Property
<input type="checkbox"/>	Property Sale
<input type="checkbox"/>	Grant
<input type="checkbox"/>	Other

Department Contact Information		Vendor Contact Information	
Name	Adam Ussher	Name	David Fiore
Phone #	608-246-3380	Phone #	908-434-3673
Email	Ussher.Adam@msnairport.com	Email	david.fiore@fedex.com
Purchasing Officer			

Purchasing Authority	<input type="checkbox"/> \$11,000 or under – Best Judgment (1 quote required)
	<input type="checkbox"/> Between \$11,000 – \$40,000 (\$0 – \$25,000 Public Works) (3 quotes required)
	<input type="checkbox"/> Over \$40,000 (\$25,000 Public Works) (Formal RFB/RFP required) RFB/RFP #
	<input type="checkbox"/> Bid Waiver – \$40,000 or under (\$25,000 or under Public Works)
	<input type="checkbox"/> Bid Waiver – Over \$40,000 (N/A to Public Works)
	<input checked="" type="checkbox"/> N/A – Grants, Leases, Intergovernmental, Property Purchase/Sale, Other

MUNIS Req.	Req #	Org:	Obj:	Proj:
	Year	Org:	Obj:	Proj:
		Org:	Obj:	Proj:

Budget Amendment
<input type="checkbox"/> A Budget Amendment has been requested via a Funds Transfer or Resolution. Upon addendum approval and budget amendment completion, the department shall update the requisition in MUNIS accordingly.

Resolution Required if contract exceeds \$100,000 (\$40,000 PW)	<input type="checkbox"/> Contract does not exceed \$100,000 (\$40,000 Public Works)	Res #	089
	<input type="checkbox"/> Contract exceeds \$100,000 (\$40,000 Public Works) – resolution required.	Year	2022
	<input checked="" type="checkbox"/> A copy of the Resolution is attached to the contract cover sheet.		

CONTRACT MODIFICATIONS – Standard Terms and Conditions		
<input checked="" type="checkbox"/> No modifications.	<input type="checkbox"/> Modifications and reviewed by: Adam Ussher	<input type="checkbox"/> Non-standard Contract

APPROVAL
Dept. Head / Authorized Designee
<i>Kimberly Jones</i>

APPROVAL – Contracts Exceeding \$100,000	
Director of Administration	Corporation Counsel

APPROVAL – Internal Contract Review – Routed Electronically – Approvals Will Be Attached			
DOA:	Date In: 8/8/22	Date Out: _____	<input checked="" type="checkbox"/> Controller, Purchasing, Corp Counsel, Risk Management

Goldade, Michelle

From: Goldade, Michelle
Sent: Tuesday, August 9, 2022 8:49 AM
To: Krohn, Margaret; Patten (Purchasing), Peter; Gault, David; Lowndes, Daniel
Cc: Stavn, Stephanie; Oby, Joe
Subject: Contract #14818
Attachments: 14818.pdf

Tracking:	Recipient	Read	Response
	Krohn, Margaret		Approve: 8/9/2022 9:51 AM
	Patten (Purchasing), Peter		Approve: 8/9/2022 9:12 AM
	Gault, David	Read: 8/9/2022 10:22 AM	Approve: 8/9/2022 11:25 AM
	Lowndes, Daniel	Read: 8/9/2022 8:49 AM	Approve: 8/9/2022 9:18 AM
	Stavn, Stephanie	Read: 8/9/2022 10:53 AM	
	Oby, Joe		

Please review the contract and indicate using the vote button above if you approve or disapprove of this contract.

Contract #14818
Department: Airport
Vendor: Federal Express
Contract Description: Cargo Airline Operating Agreement (Res 089)
Contract Term: 7/1/22 – 11/30/41
Contract Amount: \$--

Michelle Goldade

Administrative Manager
Dane County Department of Administration
Room 425, City-County Building
210 Martin Luther King, Jr. Boulevard
Madison, WI 53703
PH: 608/266-4941
Fax: 608/266-4425
TDD: Call WI Relay 711

Please Note: I currently have a modified work schedule...I am in the office Mondays and Wednesdays and working remotely Tuesdays, Thursdays and Fridays in accordance with COVID 19 response guidelines.

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2022 RES-089

**APPROVING CARGO AIRLINE OPERATING AGREEMENT WITH
FEDERAL EXPRESS CORPORATION**

Contract No. DCRA 2021-02

Federal Express Corporation (“FedEx”), a Delaware corporation whose principal place of business is located at 3610 Hacks Cross Road, Memphis, Tennessee 38125, has been operating out of the Dane County Regional Airport (“Airport”) as a signatory commercial air cargo carrier under its Air Cargo Lease with Dane County (Lease No. DCRA 2018-05), which covered both FedEx’s operations and lease of Airport Land. FedEx is now a sublessee of Preferred Development Madison, LLC (“Preferred Development”) (Preferred Development’s lease with Dane County, Lease No. DCRA 2020-03), and seeks to enter into a Cargo Airline Operating Agreement to retain its signatory commercial air cargo carrier status once Lease No. DCRA 2018-05 terminates. The Cargo Airline Operating Agreement establishes the terms and conditions under which FedEx will conduct operations at the Airport, and provides for various fees and charges, including weight-based landing fees. The Cargo Airline Operating Agreement is for a nineteen year term concurrent with its sublease with Preferred Development, and its initial term will expire on November 30, 2041. The estimated revenue the Airport will receive from the Cargo Airline Operating Agreement is approximately \$13,652,000.00. Airport staff has determined that approval of the requested Cargo Airline Operating Agreement is in Dane County’s best interest.

NOW, THEREFORE, BE IT RESOLVED that the Dane County Executive and the Dane County Clerk are authorized to execute on behalf of Dane County a Cargo Airline Operating Agreement under which Federal Express Corporation will conduct operations at the Dane County Regional Airport, as set forth above.

14818

FedEx No: 21-0831-000

CARGO AIRLINE OPERATING AGREEMENT

NO. DCRA 2021-02

DANE COUNTY, WISCONSIN

AND

FEDERAL EXPRESS CORPORATION

Dane County Regional Airport
Madison, Wisconsin

Cargo Airline Operating Agreement No. DCRA 2020-02

This Cargo Airline Operating Agreement (the "Agreement") is made and entered into by and between Dane County, a Wisconsin quasi-municipal corporation ("County") and Federal Express Corporation, a corporation organized under the laws of the State of Delaware ("FedEx"), and shall be effective as of the date it is fully executed by the authorized agents of the Parties (the "Effective Date").

WITNESSETH:

WHEREAS County is the owner of certain lands in the City of Madison, Dane County, Wisconsin, known as the Dane County Regional Airport (the "Airport"), which includes land (identified as "Airport Property" on the Airport Layout Plan) and improvements necessary and useful to the operations of the Airport; and

WHEREAS Preferred Development Madison, LLC ("Preferred"), a limited liability company organized under the laws of the State of Florida and engaged in the real estate development business, has entered into a lease with County under which it leases ramp space for use in air cargo operations, and adjacent vacant land on which it is constructing an air cargo facility and other related improvements; and

WHEREAS FedEx, a corporation engaged in the air cargo business, has entered into a sublease agreement with Preferred (the "Sublease") under which FedEx is granted the use of the entirety of the land and ramp space Preferred leases from County, and the exclusive use of the air cargo facility and related improvements constructed, or to be constructed, by Preferred; and

WHEREAS County deems it advantageous to itself and its operation of the Airport to grant to FedEx the right to engage in Air Cargo Operations (as defined below) at the Airport under the terms and conditions hereinafter set forth;

NOW, THEREFORE, County and FedEx (the "Parties") agree as follows.

- 1. Term.** The term of this Agreement shall commence on July 1, 2022. The Air Cargo Lease between the Parties shall terminate upon the commencement of the term of this Agreement. Thereafter, the term of this Agreement shall be concurrent with the term of the above described Sublease and shall terminate upon the expiration or earlier termination of the Sublease. In the event FedEx elects to exercise its option to extend the Sublease as provided under its terms, FedEx shall provide notice of its intent to extend to County no later than the date such notice is to be provided to Preferred.

2. Permitted Uses.

- A. For the term of this Agreement FedEx is permitted to use the below described Cargo Operations Areas solely for Air Cargo Operations. Air Cargo Operations are defined as (a) the commercial transportation of lawful cargo, freight, documents, mail and merchandise by aircraft, including the receiving, storing, preparing, packing, crating, delivering and transporting by air of such cargo, freight, documents, mail and merchandise; (b) the parking, storage, routine maintenance, minor repair, cleaning and servicing of aircraft, including the deicing of aircraft, operated in connection with the operations authorized hereunder and the maintenance and repair of personal property operated in connection with such activities; (c) the orderly storage of aircraft parts and supplies related to FedEx aircraft used on the Airport; (d) ground activities necessary for the support of the foregoing authorized operations; (e) administrative offices, with customary vending machines with food and beverage services; (f) mobile fueling; and (g) any other activity that County may, in its reasonable discretion, expressly authorize in advance in writing. All Air Cargo Operations permitted hereunder shall be exercised only in compliance with federal, state, and local laws, regulations, policies and rules, including but not limited to Airport security and safety plans, programs and policies, and directives of the Airport Director. Specifications for the fueling operations and equipment used for the mobile fueling of cargo and ground handling equipment, as authorized herein, are subject to the advance written approval of the Airport Director prior to the implementation of such operations. Notwithstanding any other provision herein, fuel of any kind or type shall not be kept or stored on the Cargo Operations Areas, whether in a tank truck, freestanding tank, underground tank, or otherwise. In the event FedEx determines it would be in its best interest to conduct fueling operations for aircraft used in its Air Cargo Operations, any such fueling operations, and the facilities and equipment used therefor, shall be in strict compliance with the minimum standards for fuel farm operations set forth in Section 68.33 of the Dane County Ordinances, and subject to the advance written approval of the Airport Director. FedEx shall not provide passenger air service at the Airport.
- B. Any and all rights and privileges not specifically granted to FedEx pursuant to this Agreement are reserved for and to County.

3. Cargo Operations Areas and Duty to Vacate. At all times subject to the terms and conditions set forth in this Agreement, FedEx shall have the right to conduct Air Cargo Operations at the Airport on the following described Airport Property (collectively, the "Cargo Operations Areas").

- A. Exclusive Use Land. FedEx may conduct its Air Cargo Operations on the 123,730 square feet (2.84 acres) of Exclusive Use Land identified and depicted in Exhibit A attached hereto. FedEx shall maintain an office in a structure located on the Exclusive Use Land.

- B. Assigned Ramp Space. FedEx may conduct its Air Cargo Operations on the 107,887.5 square feet (2.47 acres) of paved Assigned Ramp Space identified and depicted in Exhibit A attached hereto.
 - C. Preferential Ramp Space. FedEx may conduct its Air Cargo Operations on the 65,837.5 square feet (1.5 acres) of paved Preferential Ramp Space identified and depicted in Exhibit A attached hereto.
 - D. Duty to Vacate. The right of FedEx to use the Preferential Ramp Space for Air Cargo Operations is subject to notice from the Airport Director to FedEx stating that FedEx is required to remove its aircraft, equipment, and other items and materials and vacate the Preferential Ramp Space, or any portion thereof, by a specified deadline not less than 24 hours from the time said notice is provided. Notwithstanding the foregoing, in the event of exigent circumstances involving federal or state branches of the armed services, the United States Secret Service or charter operations, FedEx may be required to vacate the Preferential Ramp Space upon less than 24 hours' advance notice. The notice required under this subsection shall specify the period during which the right to use the Preferential Ramp Space is suspended or rescinded, and shall be sufficient if it is provided to FedEx as set forth in Section 28 below, or if personally delivered to the office of FedEx located on the Cargo Operations Areas.
4. Use of Runways and Taxiways. County grants to FedEx, subject to all applicable laws, regulations, directives of the Airport Director, and Airport operating procedures, the nonexclusive right to use the runways, taxiways and similar common areas of the Airport.
5. No Unauthorized Use. Airport Property is not to be used by FedEx in any manner other than that expressly authorized under this Agreement, or by the advance written approval of the Airport Director. Chapters 67 and 68 of the Dane County Code of Ordinances are fully incorporated into this Agreement and violation by FedEx of any provision thereof shall also be a breach of this Agreement.
6. Right of Ingress and Egress. FedEx's employees, agents, contractors, invitees, and suppliers shall have the right to enter and depart from the Cargo Operations Areas in accordance with applicable laws, regulations, and rules, including but not limited to, Title 49 Code of Federal Regulations Part 1542, Airport security and safety plans, programs and policies, and directives of the Airport Director.
7. Landing Fees. FedEx shall pay landing fees as follows:
- A. Remission of Landing Fees. FedEx shall pay to County landing fees, calculated monthly as set forth below, by check made payable to County of Dane and delivered to the Office of the Airport Director, 4000 International Lane, Madison, Wisconsin, 53704, such that payment is received by the close of business on the date due. Overdue landing fee

payments shall incur interest at a rate equivalent to one and one half percent per month from the due date until paid in full.

- B. Monthly Landed Weight Report. On or before the tenth day of each month during the term of this Agreement and for one month thereafter, FedEx shall furnish to the Airport Director a Landed Weight Report, certified by FedEx as true and correct, setting forth the number of aircraft operated by FedEx that landed at the Airport during the preceding calendar month, together with the manufacturer of each such aircraft, the type of each aircraft, the Maximum Certificated Gross Landing Weight, as prescribed by the Federal Aviation Administration, of each such aircraft, the total landed weight of all aircraft operated by FedEx landing at the Airport during said preceding calendar month, the total weight of cargo, mail, other freight deplaned and enplaned at the Airport during the reporting period by Aircraft operated by FedEx, and such other data related to FedEx's activities at the Airport that the Airport Director may from time to time reasonably request. Each Landed Weight Report furnished to the Airport Director as required herein shall be accompanied by FedEx's remittance of landing fees for the period covered by the report.
- C. Landing Fee Rate. During the term of this Agreement the landing fee rates applicable to FedEx shall be the same as those charged to signatory commercial air carriers operating at the Airport.

8. Affiliated Cargo Carriers.

- A. Affiliated Cargo Carrier Defined. As used in this Agreement, an Affiliated Cargo Carrier is an air cargo carrier that has entered into and maintains an Affiliated Cargo Carrier Operating Agreement permitting it to conduct cargo operations at the Airport on behalf of FedEx, conditioned on FedEx's written designation of the air cargo carrier as an Affiliate and the continued effectiveness of this Agreement. An air cargo carrier may be designated by FedEx as an Affiliate only if the air cargo carrier is owned in whole or in part by FedEx, or is under contract with FedEx to operate at the Airport in support of FedEx's operations as authorized under this Agreement.
- B. Affiliated Cargo Carrier Landing Fees. An Affiliated Cargo Carrier shall be treated as a Signatory Airline for the purpose of the assessment by County of landing fees related to the conduct of cargo operations at the Airport on behalf of FedEx.
- C. Default in Landing Fee Payment. FedEx shall guarantee the payment in full of landing fees incurred by any air cargo carrier it designates as an Affiliate. Upon receipt of notice from the Airport Director that an Affiliated Cargo Carrier is more than 30 days in default in the payment of landing fees, FedEx shall within 30 days pay to County the full amount of the delinquent payment as set forth in the notice. FedEx shall give County 30 days' advance written notice of its withdrawal of the designation of an air cargo carrier as an Affiliated Cargo Carrier.

9. **Agreement Modification and Administration.** This Agreement may be modified or amended only in writing approved by the duly authorized representatives of the Parties, such representative on the part of County being the Airport Director. County's Airport Director shall have authority to grant or deny County approvals required hereunder, interpret and administer the provisions in this Agreement on behalf of County, and to represent County's interest in connection with all matters hereunder.
10. **County Access to Cargo Operations Areas.** County reserves the right to enter upon the Cargo Operations Areas at any time for the purpose of making any inspection it may deem expedient to confirming compliance with the terms and conditions of this Agreement, applicable laws, regulations, rules, directives of the Airport Director, and Airport security, operations, and safety plans, programs and policies.
11. **Airport Improvement.** County reserves the right, in its sole discretion, to develop and improve Airport land and facilities, including all runways, taxiways, ramps, and public areas.
12. **Military Provision.** During time of war or national emergency County shall have the right to lease any part of the Airport to the State of Wisconsin or the United States, or both, for military or governmental use and, if such right is exercised, the provisions of this Agreement insofar as they are inconsistent with the provisions of such lease(s) to the state or federal government shall be suspended during the period of military or governmental use authorized therein.
13. **Subordination.** The provisions of this Agreement shall be subject and subordinate to any agreement now existing or hereafter entered into between County and the United States or the State of Wisconsin affecting regulation, operation, development, use, or maintenance of the Airport, provided County's execution or compliance with the terms of such agreement is a condition of acquisition or retention of property for Airport use, or the expenditure or receipt of federal or state funds for the development or maintenance of Airport Property, facilities or operations. If required by the United States or State of Wisconsin, this Agreement shall be amended to reflect the terms of any such agreement. Should such an agreement hereafter entered into between County and the United States or the State of Wisconsin interfere with the rights granted FedEx under this Agreement and substantially destroy the value of its interests herein, FedEx shall have the right to terminate this Agreement, but shall have no other recourse against County.
14. **Airport Protection Clause.** County reserves and retains at all times for the benefit of County and the public the right to pursue all operations of the Airport, including the right of aircraft to fly in the airspace overlying the Cargo Operations Areas and to cause such noise and vibration as may be inherent in the operation of aircraft on or in the vicinity of an active airport. FedEx shall not use or permit the use of the Cargo Operations Areas in any manner that causes or creates glint, glare or reflectivity that adversely impacts the vision of pilots or air traffic controllers, interference with navigational aids or communication between the Airport and aircraft, difficulty in distinguishing Airport lights and markers, interference with visibility in the vicinity of the Airport, conditions that attract birds or other wildlife that may pose hazards

to aviation, or other hazards to the operation of aircraft at or in the vicinity of the Airport. FedEx shall restrict the height of objects of any kind on the Cargo Operations Areas to a height that is in compliance with Title 14, Code of Federal Regulations, Part 77 and Chapter 78 of the Dane County Code of Ordinances. County reserves the right to take any action it considers necessary to protect users of the Airport from any condition that may be hazardous to aviation, and may remove, or prevent FedEx from constructing, keeping, placing, or permitting to be constructed, kept or placed, any object, material, device or equipment on the Cargo Operations Areas which the Airport Director determines would constitute a hazard to aviation, limit the efficiency of Airport operations, or violate FAA regulation, rule, order or advisory. In the event FedEx is notified by the Airport Director or the FAA that it is non-compliant with the provisions of this Section 14 or any FAA regulation, rule, order or advisory, FedEx shall immediately implement and maintain measures to eliminate the non-compliance and any reoccurrence thereof.

15. Approval and Removal of Improvements in the Ramp Areas.

- A. Installation of Improvements. FedEx may apply install, place, construct or remove ramp markings, aircraft support systems or other improvements on or in the Assigned Ramp Area or the Preferential Ramp Area only upon submittal to County of detailed plans therefor and FedEx's receipt of County's advance written approval of the plans and a schedule for completion of the work specified in the plans.

- B. Removal of Improvements in the Preferential Ramp Area. Unless otherwise agreed in writing signed by the Parties, within 60 days after receipt of County's written notice requesting removal of any ramp markings, aircraft support system or other improvement ("Improvements") applied, placed, installed or constructed ("Installed") in the Preferential Ramp Area by or for FedEx, FedEx shall remove any Improvements and associated equipment and structures identified in such written notice, and shall return all areas of the Preferential Ramp Area affected by removal of said Improvements to the condition such areas were in prior to Installation of the Improvement, normal wear and tear excepted. County grants FedEx reasonable access to and from the Preferential Ramp Area for 30 days following FedEx's receipt of the written notice referenced in the preceding sentence for the sole purpose of performing, without interference with other ramp users, the removal and restoration work required hereunder.

- C. Removal of Improvements Upon Agreement Termination. Unless otherwise agreed in writing signed by the Parties, FedEx shall within 30 days of expiration or earlier termination of this Agreement remove all Improvements, including all associated equipment and structures, Installed on or in the Assigned Ramp Area and the Preferential Ramp Area by or for FedEx, and shall return all areas of the Assigned Ramp Area and the Preferential Ramp Area affected by removal of said Improvements to the condition such areas were in prior to Installation of the Improvement, normal wear and tear accepted. County grants FedEx reasonable access to and from the Assigned Ramp Area and the Preferential Ramp Area during said 30 day period for the sole purpose of performing, without

interference with other ramp users, removal and restoration work required hereunder. Notwithstanding the foregoing, County, at its sole discretion, may, by written notice provided to FedEx, waive fully or in part, its right to require FedEx to perform removal and restoration work as set forth in this Subsection C and, in the event of such waiver, FedEx shall upon expiration or earlier termination of this Agreement convey to County unencumbered ownership of any Improvements, including associated equipment and structures, that are the subject of said notice of waiver. The provisions of this Subsection C are not applicable to the Preferential Ramp Area if Improvements thereon have been removed pursuant to the immediately preceding Subsection B.

16. **Maintenance.** FedEx shall keep the Cargo Operations Areas in orderly, clean, neat, and sanitary condition, free from trash and debris. Should FedEx fail to keep the Cargo Operations Areas in the condition required herein and remedial action is not undertaken by FedEx within 10 days after receipt of County's written notice of such failure, County shall have the right to enter on the Cargo Operations Areas and perform the necessary maintenance or repair and charge to FedEx the cost thereof, plus a 15 percent administrative fee.
17. **Signs and Illumination.** FedEx shall secure County's advance written approval before placing or maintaining exterior lighting or exterior signs on the Cargo Operations Areas, unless the lighting or signage is present on the Effective Date of this Agreement pursuant to County's prior approval.
18. **Utilities.** County shall have the right, without cost to FedEx and without reimbursement to FedEx for any inconvenience, to install and maintain in or upon the Cargo Operations Areas, sewer, water, fiber optic, gas, electric, steam, telecommunication or data lines, and other equipment and installations necessary to the efficient operation of the Airport or to service Airport tenants. County shall carry out such work and locate any above-ground structures or installations in a manner so as not to unreasonably interfere with FedEx's use of the Cargo Operations Areas.
19. **Discrimination Prohibited.** FedEx, for itself, its representatives, successors and assigns, does hereby covenant and agree that (a) no person on the basis of age, race, ethnicity, religion, color, gender, disability, marital status, sexual orientation, national origin, cultural differences, ancestry, physical appearance, arrest record, conviction record, political beliefs, military participation, or membership in the national guard, state defense force or any other reserve component of the military forces of the United States shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Cargo Operations Areas or any improvement thereon; (b) that in the construction of any improvements on, over, or under the Cargo Operations Areas and the furnishing of services thereon, no person shall be subjected to discrimination on the basis of age, race, ethnicity, religion, color, gender, disability, marital status, sexual orientation, national origin, cultural differences, ancestry, physical appearance, arrest record, conviction record, political beliefs, military participation, or membership in the national guard, state defense force or any other reserve component of the military forces of the United States; (c) that FedEx shall

conduct its operations in compliance with all 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, as said regulations may be amended; and (d) that FedEx shall conduct its operations as required by all applicable federal, state, and local laws and regulations addressing accommodations for persons with disabilities. The provisions herein prohibiting discrimination are subject to applicable exceptions and special cases as set forth in Wisconsin Statutes.

20. Compliance with Security Regulation and Plan. FedEx shall at all times comply with Federal Transportation Security Regulation Part 1542, and County's security and safety policies and plans, as such regulation, policies and plans may be amended from time to time. Any forfeitures or fines levied upon County or the Airport through enforcement of any federal, state or local regulation due to the acts or omissions of FedEx, FedEx's employees, agents, suppliers, invitees or guests shall be timely paid by FedEx. FedEx shall, pursuant to applicable federal regulations and Airport policy, conduct an annual self-audit of Airport access badges used by FedEx, FedEx's employees, agents, suppliers, invitees, sublessees or guests. FedEx shall annually provide County with a written report of said audits and provide to County any other requested security related information. FedEx shall bear the cost of replacing or resetting, as appropriate, all affected Airport area access locks or devices whenever missing, lost or stolen access media exceed five percent of the total access media issued to FedEx, FedEx's employees, agents, suppliers, invitees or guests for the affected lock or device.

21. Access Control Responsibility. FedEx shall maintain a written policy outlining its Airport access control program, and shall maintain Airport security awareness among its employees, agents, contractors, suppliers and invitees. FedEx shall immediately report to the Airport Director or Airport Law Enforcement any unauthorized or suspicious individuals, activities, or items in or on the Cargo Operations Areas. FedEx shall be responsible for the conduct of its employees, agents, contractors, suppliers and invitees while they are on the Cargo Operations Areas.

22. Indemnification and Insurance.

A. **General Indemnification.** FedEx is and shall be deemed for all purposes under this Agreement to be an independent contractor exclusively responsible for its own acts or omissions. FedEx shall indemnify, hold harmless and defend County, County's agents, representatives, appointees and employees from and against all claims for losses, costs, attorney fees, expenses, and damages arising out of, resulting from or relating to any loss of or damage to any property or business or any injury to or death of any person, where such loss, damage, injury, or death actually or allegedly arises, whether directly or indirectly, wholly or in part, from (i) any action or omission of FedEx, FedEx's employees, agents, contractors, suppliers or invitees while on Airport Property; or (ii) the conduct of operations and activities authorized herein by FedEx, FedEx's employees, agents,

contractors, suppliers or invitees. FedEx's obligation of indemnification, as set forth herein, shall not apply to damages or liability resulting from the acts or omissions of County. The obligations of FedEx under this paragraph shall survive the expiration or termination of this Agreement.

- B. Environmental Protection and Indemnification. FedEx covenants and agrees that it will not use, store, maintain, generate, discharge, release, transport or dispose of any "Hazardous Materials" (hereinafter defined), whether intentionally or unintentionally, in, on or about the Airport in violation of any applicable federal, state, county, or local statutes, laws, regulations, rules, ordinances, codes, standards, orders, licenses, or permits relating to environmental matters (being hereafter collectively referred to as "Environmental Laws") including, by way of illustration and not by way of limitation, the Clean Air Act, the Federal Water Pollution Control Act of 1972, the Resource Conservation and Recovery Act of 1976, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and the Toxic Materials Control Act, including any amendments or extensions thereof, and existing or hereafter promulgated rules, regulations, standards, or guidelines issued pursuant to any Environmental Laws. For purposes of this Agreement, Hazardous Materials shall mean any material or substance that, because of its quantity, concentration, or physical or chemical characteristics, is deemed by any federal, state, or local government authority having jurisdiction over FedEx's operations hereunder to pose a present or potential hazard to the environment, or to human health or safety. Hazardous Materials include, by way of illustration and not by way of limitation, any substance defined as a "Hazardous Substance", "Pollutant" or "Contaminant" pursuant to any Environmental Law; any asbestos and asbestos-containing materials; petroleum, including crude oil or any fraction thereof, natural gas, or natural gas liquids; glycol and formulations of glycol and other deicing or anti-icing chemicals addressed under any state or federal pollutant discharge elimination system permit applicable to the Airport during the term of this Agreement; and any other toxic, dangerous, or hazardous chemical, material, substance or waste. The term "Release" as used herein shall mean any emission, spill, discharge, disposal, leak, leaching, migration, or dispersal of Hazardous Materials not permitted or authorized under Environmental Laws, whether or not a response action is triggered thereunder. FedEx shall not permit its employees, agents, contractors, subcontractors, or invitees to use, store, maintain, generate, discharge, release, transport or dispose of any Hazardous Materials in, on, or about the Airport unless such action is done in compliance with all Environmental Laws. FedEx shall indemnify, defend, and hold County harmless from and against any and all losses, damages, costs and fees (including the fees of attorneys, engineers and environmental consultants), expenses, claims, suits, actions, proceedings, judgments, awards, liabilities, obligations, debts, fines, penalties, charges, costs of remediation, amounts paid in settlement, litigation costs and fees, and investigation costs (including but not limited to costs for sampling, testing and analysis of soil, water, air, and other materials and substances whether solid, liquid or gas), of whatever kind or nature, and whether or not incurred in connection with any judicial or administrative proceedings, actions, claims, suits, judgments or awards, resulting or

arising from a breach by FedEx of its covenants and obligations under this Section 22. Notwithstanding the foregoing, FedEx does not undertake any obligation to remediate, or any liability for the cost of remediating, any part of the Airport to a level of contamination that is lower than the level required as a condition for discontinuing enforcement of remedial actions by the governmental authorities having jurisdiction over the remediation. The foregoing obligates FedEx only to take actions that are consistent with the planned use of any contaminated portion of the Airport such that remediation to industrial or commercial standards, or to such other standards as may be required by the governmental authorities having jurisdiction over the required remediation, shall be sufficient to satisfy FedEx's obligations hereunder and FedEx shall not be required to remediate to more stringent standards that would otherwise be applicable if the planned use of the contaminated portion of the Airport was more environmentally sensitive, such as residential use. Moreover, if the governmental authorities having jurisdiction over the required remediation will reduce the scope of the removal, containment, and remedial actions that FedEx must take in order for those authorities to discontinue enforcement of such remedial actions provided only that deed restrictions that will not impair operation of the Airport as a commercial airport are recorded, County shall permit the recordation of those deed restrictions and, to the extent required by the governmental authorities enforcing remedial actions, shall join in the execution of such deed restrictions. Notwithstanding anything to the contrary in this Agreement, FedEx shall not have any obligations, responsibilities, or liabilities under the terms of this Agreement with respect to Pre-Existing Contamination on, in or about the Airport. For the purposes of this Agreement "Pre-Existing Contamination" shall be defined as any Hazardous Materials present on, at, or about the Airport that were (i) introduced prior to the Effective Date and (ii) not brought or released in, on or about the Airport by FedEx, or its employees, agents, contractors, suppliers or invitees.

C. Insurance Coverage. FedEx shall by the Effective Date obtain insurance, through insurers authorized to do business in the State of Wisconsin and approved by County, providing, at a minimum, the following coverage.

(1) Workers Compensation and Employer's Liability Insurance shall be maintained by FedEx during the term of this Agreement for all employees engaged in operations authorized under this Agreement. The limits of coverage shall not be less than:

Workers' Compensation	As Required by Wisconsin Statute
Employer's Liability	\$1,000,000 Limit Each Accident
	\$1,000,000 Limit Disease Aggregate
	\$1,000,000 Limit Disease Each Employee

(2) Commercial General Liability Insurance shall be maintained by FedEx during the term of this Agreement and for one year thereafter. Coverage shall include, but not be limited to Environmental Impairment Liability (Pollution Liability) providing coverage for

FedEx's obligations under the foregoing environmental indemnification provision. The limits of coverage shall not be less than \$100,000,000 Combined Single Limit Each Occurrence and Aggregate.

(3) Airport Liability Insurance shall be maintained by FedEx during the term of this Agreement and for one year thereafter. Coverage shall include, but not be limited to, Premises and Operations, Personal Injury, Contractual Liability, Independent Contractors, Broad Form Property Damage, Products and completed Operations Coverage and shall not exclude the (XCU) Explosion, Collapse and Underground Property Damage Liability Coverage. Coverage shall be applicable to the operation of all mobile and ground equipment used by FedEx at the Airport. The limits of coverage shall not be less than \$100,000,000 Combined Single Limit Each Occurrence and Aggregate.

(4) Aircraft Liability Insurance shall be maintained by FedEx during the term of this Agreement and for one year thereafter covering all owned, non-owned, leased or hired aircraft, including passenger coverage. The limits of coverage for Bodily and Personal Injury and Property Damage Liability shall not be less than \$100,000,000 Combined Single Limit Each Occurrence and Aggregate.

(5) Business Automobile Liability Insurance shall be maintained by FedEx during the term of this Agreement and for one year thereafter covering the ownership, maintenance, and use of all owned, non-owned, leased or hired vehicles. The limits of coverage for Bodily and Personal Injury and Property Damage Liability shall not be less than \$5,000,000 Combined Single Limit Each Occurrence and Aggregate.

(6) Umbrella Liability Insurance or Excess Liability Insurance may be used to reach the limits of liability required for the Commercial General Liability Policy, Airport Liability Policy, Aircraft Liability Policy, and the Business Automobile Policy.

D. Insurance Policy Terms Generally. With the exception of Workers' Compensation and Employer's Liability policies, all insurance policies required under this Agreement shall be primary and shall name County as an additional insured. FedEx shall, within 10 days of the Effective Date of this Agreement and annually thereafter during the term hereof, provide County with certificates of insurance evidencing the insurance coverage required under this Agreement. Each insurance policy obtained hereunder shall contain a provision that FedEx's insurer shall send to County written notice of cancellation or any material change in said policy at least 10 days in advance of the effective date thereof. In the event insurance is underwritten on a claims-made basis, the retroactive date shall be prior to or coincide with the Effective Date and the certificate of insurance provided therefore shall state that coverage is claims-made and indicate the retroactive date. FedEx shall maintain all insurance coverage required hereunder for the duration of this Agreement and for one year following the termination or expiration hereof.

D. County and FedEx understand and agree that the coverage and limits of the insurance herein required may from time to time become inadequate. FedEx agrees that, if County reasonably determines that higher limits or additional or different coverage are prudently

required at other airports and County requires other entities operating aircraft at the Airport to maintain comparable coverage and limits, FedEx shall, upon the written request of County, modify its coverage and limits of insurance accordingly. FedEx shall furnish County, within 60 days of receipt of such a request from County, certificate(s) of insurance evidencing that FedEx has the requested insurance coverage and limits in force

23. Assignment. Except as expressly permitted below, FedEx shall not at any time assign any privileges or rights granted by this Agreement without the written approval of County, which approval will not be unreasonably withheld, conditioned or delayed. FedEx may assign all or any part of its rights, or delegate its duties, under this Agreement to an entity that controls, is controlled by, or is under common control with, FedEx, to the surviving corporation in a merger, consolidation or other reorganization involving FedEx, or to the purchaser of all or substantially all of FedEx's assets, without first obtaining County's written consent. No assignment of rights or delegation of duties that FedEx may make without first obtaining County's written consent will relieve FedEx from liability for the performance of the obligations FedEx undertakes under the terms of this Agreement.

24. Taxes, Fees, and Charges. FedEx shall pay as they become due any and all taxes, fees, or charges of any type levied by any governmental entity based upon, resulting from, or related to FedEx's property, activities or operations of any kind on the Airport.

25. Report Forms. County shall have the right to prescribe and furnish forms for the making of all reports required of FedEx under this Agreement or Airport policy, and FedEx shall use only such forms as may be prescribed.

26. Termination by FedEx. FedEx may terminate this Agreement by giving to County 30 days' advance written notice thereof.

27. Termination by County. Upon default by FedEx of any of its obligations under the terms of this Agreement, and FedEx's failure to cure the default within 30 days after County gives FedEx written notice specifying the default, County shall be entitled to terminate this Agreement, and to enforce its rights and remedies as provided at law, equity, and this Agreement.

28. Notices. All notices, and other communications given as required or permitted under the terms of this Agreement must be in writing and, unless otherwise provided herein or approved by the Parties, shall be hand-delivered, sent by email, sent by FedEx overnight service, or sent by United States mail with proof of delivery requested. Notice by email shall be sufficient only if the addressee party affirmatively responds to the sending party or otherwise acknowledges receipt of the email. Other modes of notice authorized hereunder shall be deemed given when delivered or when delivery is refused. The Parties shall address notices as follows:

TO COUNTY: Airport Director
 Dane County Regional Airport

4000 International Lane
Madison, WI 53704
Email: Jones.kimberly@msnairport.com

With a copy to:
Airport Counsel
Dane County Regional Airport
4000 International Lane
Madison, WI 53704
Email: Knight@msnairport.com

TO FEDEX: Federal Express Corporation
3680 Hacks Cross Road Building H, 3rd Floor
Memphis TN 38125
Attention: Manager, Airport Relations & Development (21-0831)

With an additional copy to:
Federal Express Corporation
3680 Hacks Cross Road Building B, 3rd Floor
Memphis, TN 38125
Attention: Managing Director, Real Estate Transactions (21-0831)

A Party may change the address to which it wishes notices to be sent by delivering notice of the change of address to the other Party in accordance with the terms of this Section 28.

29. NPDES Discussions. County may engage in discussions with the State of Wisconsin agency (the "Agency") responsible for National Pollution Discharge Elimination System ("NPDES") permits (the "Permit") regarding the Permit currently in effect for the Airport and any renewal of such Permit. It being understood and acknowledged by County that FedEx's operations at the Airport could be affected by requirements or conditions imposed by the Agency under the Permit, County shall give FedEx notice that County will be discussing with the Agency the imposition of requirements or conditions that may affect FedEx's operations and shall permit reasonable participation by FedEx in such discussions to the extent that the Agency permits FedEx's participation. Before agreeing to any Permit requirements in connection with any renewal of the Permit during the term of this Agreement, where such Permit requirements will or might be applicable to FedEx and its operations at the Airport, County shall provide FedEx with a reasonable opportunity to review such requirements and provide comments to County and to the Agency, to the extent that the Agency allows or is required to accept comments from FedEx. FedEx shall at all times conduct its operations at the Airport in full compliance with all Permit terms and conditions applicable to FedEx, and shall not conduct operations at the Airport in a manner that causes County or the Airport to be non-compliant with Permit terms and conditions.

30. **Misrepresentation and Invalid Provisions.** All terms and conditions with respect to the subject matter of this Agreement are contained herein, and each party hereto agrees that it has not relied upon any representation or promise with respect to this Agreement that is not expressly contained herein. In the event any term or condition in this Agreement is held to be invalid by a court of competent jurisdiction, such invalidity shall not affect any other term or condition in the Agreement.
31. **Time is of the Essence.** With respect to performance of all the terms and conditions in this Agreement, time is of the essence. The terms and conditions set forth in this Agreement are meant to be binding upon the Parties and are not to be construed as mere recitals.
32. **Headings and Construction.** The headings of the sections contained in this agreement are for convenience only and shall not be deemed to control or affect the meaning or construction of any provision of this agreement. The Parties have had full opportunity to negotiate the terms of this Agreement, and neither Party intends that this Agreement be construed for or against either Party because of that Party's role in drafting this Agreement.
33. **Counterparts and Copies.** The Parties may evidence their agreement to be bound by the terms of this Agreement upon one or several counterparts of this document, which together shall constitute a single instrument. A photocopy, facsimile, or electronic copy of this Agreement shall have the same effect for all purposes as an original.

SIGNATURES ON NEXT PAGE

IN WITNESS WHEREOF, the Parties have by their duly authorized representatives executed this Cargo Airline Operating Agreement as of the dates so indicated.

FOR DANE COUNTY

Joe Paris
Dane County Executive

Date: _____

Scott McDonell
Dane County Clerk

Date: _____

FOR FEDERAL EXPRESS CORPORATION



Date: 6/21/22

Name: _____
Title: **Donna W. Cook**
VP Properties & Facilities

#1640582v1mcm

Approved by FedEx Legal: MCM 6/16/2022

EXHIBIT A



Madison Regional Office
161 Horizon Drive, Suite 101
Verona, WI 53593
608.848.5060

EXHIBIT A
1 OF 3

EXCLUSIVE USE LAND
Legal Description

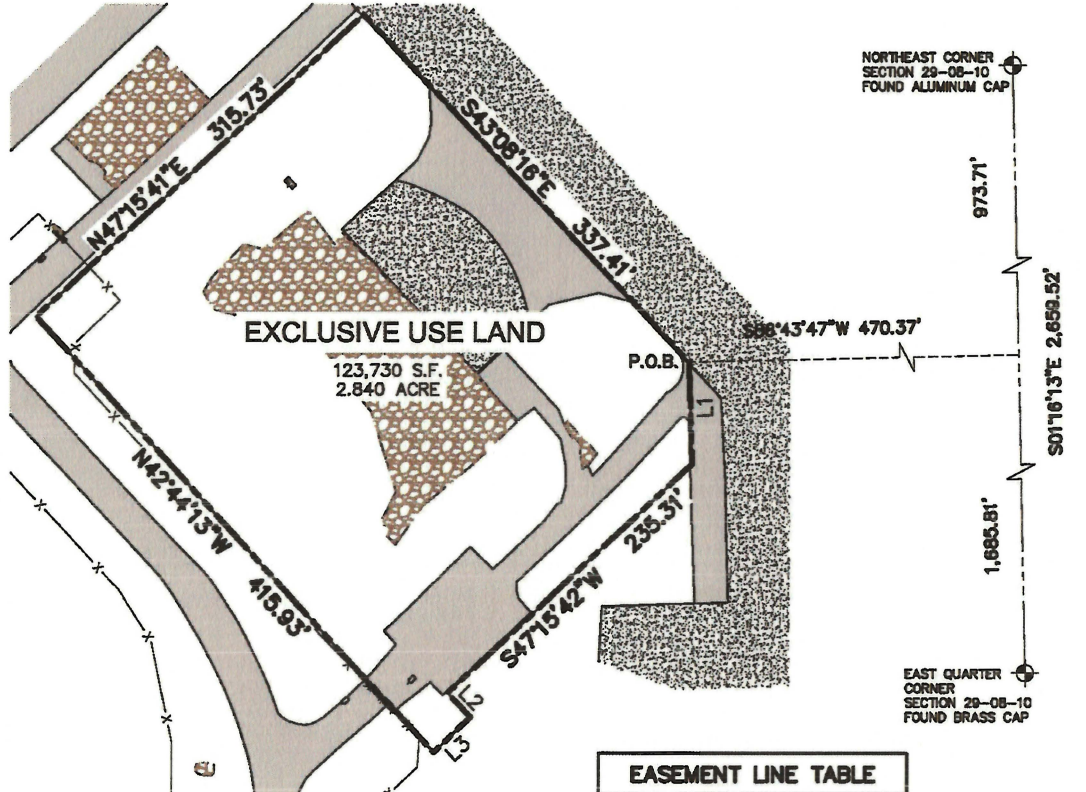
Part of the Northeast Quarter of the Northeast Quarter of Section 29, Township 08 North, Range 10 East, City of Madison, Dane County, Wisconsin, more particularly described as follows:

Commencing at the Northeast Corner of Section 29, aforesaid; thence South 01 degree 16 minutes 13 seconds East along the East line of the Northeast Quarter of Section 29, aforesaid, 973.71 feet; thence South 88 degrees 43 minutes 47 seconds West, 470.37 feet to the Point of Beginning; thence South 01 degree 44 minutes 51 seconds East, 71.66 feet; thence South 47 degrees 15 minutes 42 seconds West, 235.31 feet; thence South 43 degrees 47 minutes 30 seconds East, 23.78 feet; thence South 46 degrees 12 minutes 31 seconds West, 36.23 feet; thence North 42 degrees 44 minutes 13 second West, 415.93 feet; thence North 47 degrees 15 minutes 41 seconds East, 315.73 feet; thence South 43 degrees 08 minutes 16 seconds East, 337.41 feet to the Point of Beginning.

Said lease area contains 123,730 square feet or 2.840 acres.

EXHIBIT A

2 OF 3



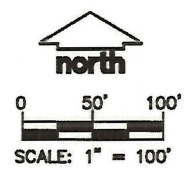
EASEMENT LINE TABLE		
LINE	BEARING	DISTANCE
L1	S01°44'51"E	71.66'
L2	S43°47'30"E	23.78'
L3	S46°12'31"W	36.23'

LEGEND

- GOVERNMENT CORNER
- LEASE BOUNDARY
- SECTION LINE
- EDGE OF PAVEMENT
- EDGE OF GRAVEL
- FENCE LINE
- BITUMINOUS PAVEMENT
- CONCRETE PAVEMENT
- GRAVEL

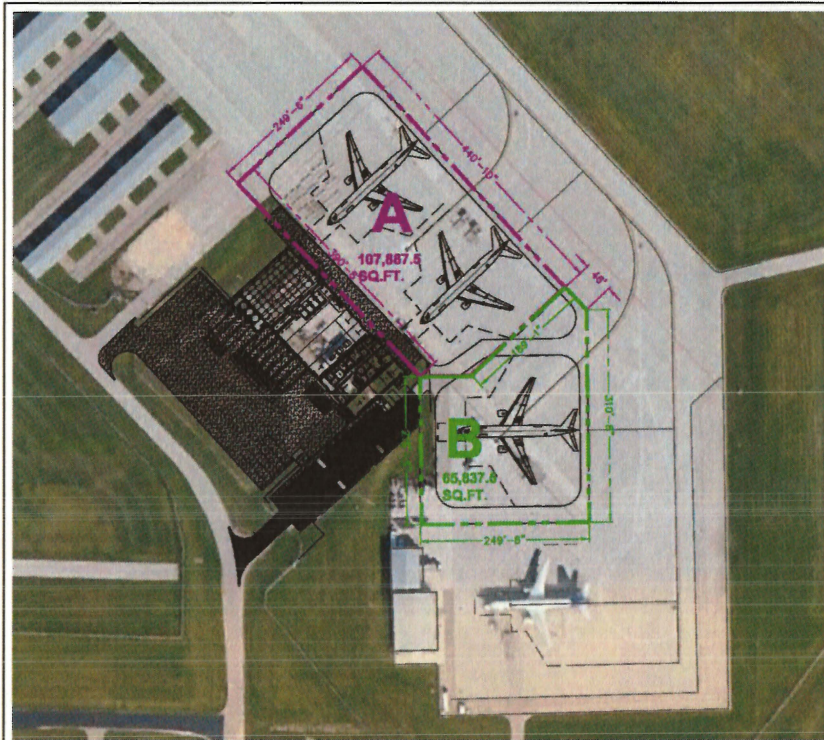
NOTES

1. FIELD WORK PERFORMED ON DECEMBER 17, 2019.
2. BEARINGS FOR THIS SURVEY AND MAP ARE REFERENCED TO THE WISCONSIN COUNTY COORDINATE SYSTEM, DANE COUNTY. THE EAST LINE OF THE NORTHEAST QUARTER OF SECTION 29-08-10, RECORDED AS S01°16'13"W.



File: I:\2019\199100\DWG\Survey\199100 Exhibit - Exclusive Use Land.dwg Layout: E11-Exclusive Use Land User: kyvika Plotdate: Apr 23, 2020 - 8:09pm

<p>JSD Professional Surveying, Inc. Madison Regional Office 181 Horizon Drive, Suite 101 Verona, Wisconsin 53593 P. 608.848.8080</p>	<p>PROJECT: FedEx AIRPORT FACILITY WAREHOUSE/ DISTRIBUTION CENTER CITY OF MADISON, WI</p>	<p>SHEET TITLE: PREFERRED DEVELOPMENT MADISON, LLC. LEASE BOUNDARY EXHIBIT</p>	<p>JSD PROJECT NUMBER: 19-9100</p>	<p>SHEET NUMBER: 2</p>
	<p>DRAWN BY: BCK CHECKED BY: CJO</p>	<p>DATE: 20 FEBRUARY 2020</p>		



**Assigned
Ramp Space
A = 107,887.5
SQ.FT
(2.47 Acres)**

**Preferential
Ramp Space
B = 65,837.5
SQ.FT
(1.5 Acres)**



Date: Jul 28, 2010 11:51:00 AM
 User: P:\GIS\GISData\GIS\Projects\MSNR_Airport_Parking_Plan\Map_Series_3_10.dwg



MSNR AIRPORT
DANE COUNTY REGIONAL

LEASE EXHIBIT
PARKING PLAN
STRIPING PLAN

02-2010	
11/15	2008
3 of 3	
0	