

**REGULAR MEETING  
GREATER ASHEVILLE REGIONAL AIRPORT AUTHORITY  
April 13, 2018**

The Greater Asheville Regional Airport Authority ("Authority") met on Friday, April 13, 2018 at 8:30 a.m. in the Conference Room at the Authority's Administrative Offices, Asheville Regional Airport ("Airport"), 61 Terminal Drive, Suite 1, Asheville, NC 28732.

**MEMBERS PRESENT:** Robert C. Roberts, Chair; Matthew C. Burril, Vice-Chair; K. Ray Bailey; William L. Moyer; Stephanie Pace Brown; and David Gantt

**MEMBERS ABSENT:** George H. Erwin, Jr.

**STAFF AND LEGAL COUNSEL PRESENT:** Cindy Rice, Authority Legal Counsel; Lew Bleiweis, Executive Director; Michael Reisman, Deputy Executive Director of Development and Operations; Kevan Smith, Chief of Public Safety; Suzie Baker, Director of Administration; Tina Kinsey, Director of Marketing and Public Relations; Janet Burnette, Director of Finance and Accounting; Shane Stockman, IT Director; John Coon, Director of Operations; and Ellen Heywood, Clerk to the Board

**ALSO PRESENT:** Mike Darcangelo, Avcon; Paul Puckli, CHA Consulting; Vijay Kapoor, Asheville City Council; Ken Moody, Delta Airport Consultants; Victoria Marvco, UNCA

**CALL TO ORDER:** The Chair called the meeting to order at 8:30 a.m.

**SERVICE AWARD PRESENTATION:** The Chair recognized the Director with a service recognition award and gift for his 10 years of service with the Authority.

**FINANCIAL REPORT:** The Director reported on the airport activity for the month of February which included enplanements, aircraft operations, and general aviation activity. Janet Burnette reported on the financial activity for the month of February.

**CONSENT ITEMS:** The Chair stated that Consent Item B, Approval of the Greater Asheville Regional Airport Authority March 9, 2018 Closed Session Minutes, would be pulled for review in Closed Session.

**A. Approval of the Greater Asheville Regional Airport Authority March 9, 2018 Regular Meeting Minutes:**

C. Approval of Insurance Renewals:

D. Approval of Audit Contract with Gould Killian CPA Group, P.A. for Fiscal Year Ending June 30, 2018:

The Director reported that staff was just notified that the Delta Dental renewal was reduced to a 5% increase rather than a 7.5% as indicated in the agenda package.

Mr. Bailey moved to approve Consent Items A, C, and D. Mr. Moyer seconded the motion and it carried unanimously.

**OLD BUSINESS:**

A. Public Hearing and Final Adoption of the Authority's Fiscal Year 2018/2019 Budget: The Chair opened the floor to public comments at 8:40 a.m. There being no public comments, the Chair closed the floor at 8:40 a.m.

Mr. Bailey moved to adopt the following Fiscal Year 2018/2019 Budget Ordinance. Mr. Burril seconded the motion and it carried unanimously:

**GREATER ASHEVILLE REGIONAL AIRPORT AUTHORITY  
2018-2019  
BUDGET ORDINANCE**

**BE IT ORDAINED** by the Greater Asheville Regional Airport Authority that, pursuant to Section 159-13 of the General Statutes of North Carolina, the 2018-2019 Budget Ordinance of the Airport Authority is hereby set forth as follows:

**Section 1.** The following amounts are hereby appropriated for the operation of the Greater Asheville Regional Airport Authority for the fiscal year beginning July 1, 2018 and ending June 30, 2019 in accordance with the following schedules:

[THIS SECTION LEFT BLANK INTENTIONALLY]

## EXPENDITURES

Administration Department	\$ 666,499
Development Department	449,385
Executive Department	763,626
Finance Department	393,458
Guest Services Department	241,863
Information Technology Department	867,978
Marketing Department	727,820
Operations Department	3,579,441
Public Safety Department	1,476,860
Emergency Repair Costs	50,000
Carry-over Capital Expenditures from Prior Year	19,703,096
Capital Improvement	6,400,000
Equipment and Small Capital Outlay	201,727
Renewal and Replacement	393,635
Business Development	300,000
Debt Service	1,686,931
Contingency	100,000
<b>Total Expenditures</b>	<u><u>\$38,002,319</u></u>

**Section 2.** It is estimated that the following revenues will be available for the fiscal year beginning July 1, 2018 and ending June 30, 2019.

## REVENUES

Administration (Interest Income)	\$ 35,000
Terminal	5,035,033
Airfield	1,049,838
General Aviation	1,038,185
Parking Lot	3,694,500
Other	157,157
Passenger Facility Charges	1,850,000
Customer Facility Charges	1,400,000
Federal Grants – AIP Entitlements	1,825,000
Federal Grants – AIP Discretionary Funds	4,700,000
NC Department of Transportation Grants	2,000,000
Transfer from GARAA Cash/Investments	15,217,606
<b>Total Revenues</b>	<u><u>\$38,002,319</u></u>

**Section 3.** The Budget Officer is hereby authorized to transfer appropriations as contained herein under the following conditions:

- a. He may transfer amounts between line item expenditures within a budget ordinance line item without limitation and without a report being required. These changes should not result in increased recurring obligations such as salaries.
- b. He may transfer amounts up to \$60,000 from contingency appropriations to other budget ordinance line items within the same fund. He must make an official report on such transfers at the next regular meeting of the board.

**Section 4.** This Budget Ordinance shall be entered in the minutes of the Greater Asheville Regional Airport Authority and within five (5) days after its adoption copies shall be filed with the Finance Officer, the Budget Officer and the Clerk to the Board of the Greater Asheville Regional Airport Authority as described in G.S. 159-13.

**Section 5.** This ordinance shall become effective on July 1, 2018.

Adopted this 13th day of April, 2018

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Robert C. Roberts, Chair

Attested by:

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Ellen Heywood, Clerk to the Board

**B. Public Hearing and Final Adoption of the Authority's Amended Ordinance 201601 for Airline Rates, Fees and Charges for the Asheville Regional Airport:**

The Chair opened the floor to public comments at 8:42 a.m. There being no public comments, the Chair closed the floor at 8:42 a.m.

Mr. Burril moved to adopt the Amended Ordinance 201601 to implement the Schedule of Airline Rates, Fees and Charges for the Asheville Regional Airport for FY2018/2019. Mr. Bailey seconded the motion and it carried unanimously.

GREATER ASHEVILLE REGIONAL AIRPORT AUTHORITY  
AMENDED ORDINANCE NO. 201601  
AN ORDINANCE TO IMPLEMENT A SCHEDULE OF AIRLINE RATES, FEES AND CHARGES  
FOR THE ASHEVILLE REGIONAL AIRPORT.



IT IS HEREBY ENACTED AND ORDAINED BY THE GREATER ASHEVILLE REGIONAL AIRPORT AUTHORITY AS FOLLOWS:

**Section 1. CITATION.**

1.1 This Ordinance may be cited as the "**Airline Rates, Fees & Charges Ordinance**".

**Section 2: FINDINGS.**

2.1 The Greater Asheville Regional Airport Authority was created by Session Law 2012-121, which was ratified by the General Assembly of North Carolina on June 28, 2012.

2.2 Section 1.6(a)(7) of Session Law 2012-121 gives the Greater Asheville Regional Airport Authority the ability to, among other things: *"[m]ake all reasonable rules, regulations, and policies as it may from time to time deem to be necessary, beneficial or helpful for the proper maintenance, use, occupancy, operation, and/or control of any airport or airport facility owned, leased, subleased, or controlled by the Authority . . . "*

2.3 Section 1.6(a)(6) of Session Law 2012-121 gives the Greater Asheville Regional Airport Authority the authority to: *"[c]harge and collect fees, royalties, rents, and/or other charges, including fuel flowage fees for the use and/or occupancy of property owned, leased, subleased, or otherwise controlled and operated by the Authority or for services rendered in operation thereof."*

2.4 Section 1.6(a)(21) of Session Law 2012-121 gives the Greater Asheville Regional Airport Authority the ability to: *"[e]xercise all powers conferred by Chapter 63 of the General Statutes [of the State of North Carolina] or any successor Chapter or law."*

2.5 North Carolina General Statute Section 63-53(5) further gives the Greater Asheville Regional Airport Authority the authority: *"[t]o determine the charge or rental for the use of any properties under its control and the charges for any services or accommodations and the terms and conditions under which such properties may be used, provided that in all cases the public is not deprived of its rightful, equal, and uniform use of such property."*

2.6 The Greater Asheville Regional Airport Authority is obligated under federal law to maintain an airport user fee and rental structure that, given the conditions of the Airport makes the Airport as financially self-sustaining as possible.

2.7 The Greater Asheville Regional Airport Authority is further obligated under federal law to establish an airport user fee structure that is fair and reasonable to all users, and not unjustly discriminatory.

2.8 In or around Fall 2014, the Greater Asheville Regional Airport Authority contracted with an airport consulting firm, who conducted a comprehensive airline rate and charge study at the Airport, in accordance with the methodology stated in the Rates and Charges Policy promulgated by the Office of the Secretary of the Department of Transportation and by the FAA.

2.9 Since approximately February 2015, the Greater Asheville Regional Airport Authority has consulted with and made repeated, good faith efforts to reach an agreement regarding rates, fees and charges with the Airlines, and to resolve all disputes asserted by the Airlines, and after adequate and timely consultation with the Airlines and with the airport consulting firm, Greater Asheville Regional Airport Authority now desires to implement, by ordinance, the fair, reasonable and not unjustly discriminatory rates and charges structure as proposed by the airport consulting firm.

### **Section 3. PURPOSE AND SCOPE**

3.1 The Greater Asheville Regional Airport Authority finds and determines that it is in the public interest to establish a schedule of Airline rates, fees and charges by ordinance.

3.2 This Airline Rates, Fees & Charges Ordinance shall be applicable to all Airlines utilizing the Asheville Regional Airport.

### **Section 4. EFFECTIVE DATE**

4.1 The Airline Rates, Fees & Charges Ordinance shall take effect as of the 9th day of December, 2016.

### **Section 5. DEFINITIONS**

5.1 "Affiliate" shall mean any airline or other entity designated in writing by Airline as an Affiliate that is operating under the same flight code designator and is: (1) a parent or subsidiary of Airline or is under the common ownership and control with Airline or (2) operates under essentially the same trade name as Airline at the Airport and uses essentially the same livery as Airline or (3) is a contracting ground handling company on behalf of Airline at the Airport.

5.2 "Airline(s)" shall mean each airline providing commercial passenger service to and from the Airport and using the Airport Terminal Building to enplane and deplane passengers or cargo service to and from the Airport.

5.3 [RESERVED]

5.4 "Airlines' Revenue Landed Weight" is for the applicable Fiscal Year the sum of the products determined by multiplying each Revenue Aircraft Arrival by each of the Airlines by the applicable Certified Maximum Gross Landed Weight of the aircraft making the Revenue Aircraft Arrival.

5.6 "Airport" is the Asheville Regional Airport as it presently exists and as it is hereafter modified or expanded.

5.7 "Airport Operating Requirement" for any Fiscal Year, consists of all of the following: (1) Operation and Maintenance Expenses; (2) O&M Reserve Requirement; (3) Depreciation; (4) Amortization; (5) Debt Service; (6) coverage required on any Bonds; (7) fund deposits required under any Bond Ordinance; (8) the net amount of any judgment or settlement arising out of or as a result of the ownership, operation or maintenance of the Airport payable by Authority during any Fiscal Year. This amount would include, but not be limited to, the amount of any such judgment or settlement arising out of or as a result of any claim, action, proceeding or suit alleging a taking of property or an interest in property without just or adequate compensation, trespass, nuisance, property damage, personal injury or any other claim, action, proceeding or suit based upon or relative to the environmental impact resulting from the use of the Airport for the landing and taking off of aircraft; and (9) any and all other sums, amounts, charges or requirements of the Airport to be recovered, charged, set aside, expensed or accounted for during any Fiscal Year, or the Authority's accounting system.

5.8 "Amortization" is the amount determined by dividing the net cost of each Airport non-depreciating asset by an imputed estimated life for the asset as determined by the Authority.

5.9 "Assigned Space" means for each Airline, those areas and facilities in the Terminal Building and those areas adjacent to and outside the Terminal Building which are assigned to such Airline for its Preferential use.

5.10 "Authority" means the Greater Asheville Regional Airport Authority.

5.11 "Bond Ordinance" is any ordinance, resolution or indenture authorizing the issuance of Bonds for or on behalf of the Airport or Authority, including all amendments and supplements to such ordinances, resolutions and indentures.

5.12 "Bonds" are all debt obligations issued for or on behalf of the Airport or the Authority subsequent to July 1, 2009, except obligations issued by or on behalf of the Authority for a Special Facility.

5.13 "Capital Charge or Capital Charges" charges that include Amortization, Depreciation and Debt Service.

5.14 "Capital Outlay" is the sum of one hundred thousand dollars (\$100,000) or as otherwise determined by the Authority.

5.15 "Certified Maximum Gross Landed Weight" or "CMGLW" is, for any aircraft operated by any of the Airlines, the certified maximum gross landing weight in one thousand pound units of such aircraft as certified by the FAA and as listed in the airline's FAA approved "Flight Operations Manual".

5.16 "Debt Service" for any Fiscal Year is the principal, interest and other payments required for or on account of Bonds issued under any Bond Ordinance.

5.17 "Depreciation" is the amount which is the net cost of any Airport asset, except a non-depreciating asset, divided by its estimated useful life as determined by the Authority.

5.18 "Enplaned Passengers" are the originating and on-line or off-line transfer passengers of each of the Airlines serving the Airport enplaning at the Airport.

5.19 "Fiscal Year" is July 1st of any calendar year through June 30th of the next succeeding calendar year, or such other fiscal year as Authority may subsequently adopt for the Airport.

5.20 "Holdrooms" means the gate seating areas currently situated in the Airport Terminal Building, as they now exist or as they may hereafter be modified or expanded or constructed by Authority within or as part of the Terminal Building for use by Airline and the other Airlines for their Joint Use.

5.21 "Joint Use Formula" is, for any Fiscal Year, the formula used for prorating Terminal Building Rentals for Joint Use Space.

5.22 "Joint Use Space" means that common use space not assigned, which Airline uses on a joint use basis with other airline tenants.

5.23 "Landing Fees" are the airfield related charges calculated by multiplying the landing fee rate established in the Schedule of Rates, Fees and Charges for the applicable Fiscal Year by the applicable Certified Maximum Gross Landed Weight ("CMGLW") of Revenue Aircraft Arrivals.

5.24 "Operation and Maintenance Expenses" or "O&M Expenses" are, for any Fiscal Year, the total costs and expenses, incurred or accrued by the Authority for that Fiscal Year, in providing for the administration, operation, maintenance and management of the Airport, including, without limitation, the performance by Authority of any of its obligations related to the Airport.

5.25 "O&M Reserve Requirement" is the requirement adopted by the Authority that defines the amount of operating cash reserves to be available within the O&M Reserve Fund. The O&M Reserve Requirement may be revised from time to time and is currently set to equal at least six (6) months of the annual O&M Expenses budgeted for the current Fiscal Year.

5.26 "Passenger Facility Charge (PFC)" is the charge imposed by the Authority pursuant to 49 U.S.C. App. 513, as amended or supplemented from time to time, and 14 CFR Part 158, as amended or supplemented from time to time, or any other substantially similar charge lawfully levied by or on behalf of the Authority pursuant to or permitted by federal law.

5.27 "Preferential Use Space" means that Assigned Space for which Airline holds a preference as to use, and which may be used on a non-preferential basis by another airline or tenant.

5.28 "Rentable Space" is that space within the Airport Terminal Building which has been constructed or designated as rentable space by Authority, including such deletions therefrom and additions thereto as may occur from time-to-time.

5.29 "Revenue Aircraft Arrival" is an airline aircraft landing at Airport, excluding those returning to the Airport due to an emergency, and for which Landing Fees are charged by Authority.

5.30 "Special Facility" is any Airport facility acquired or constructed for the benefit or use of any person or persons, the costs of construction and acquisition of which are paid for (a) by the obligor under a Special Facility agreement, (b) from the proceeds of Special Facility bonds, or (c) both; provided, however, that Airport facilities built by an Airport tenant under a ground lease or any other agreement which by its terms is not indicated to be a Special Facility agreement shall not be considered a Special Facility under this definition.

5.31 "Schedule of Rates, Fees and Charges" is the schedule the rates, fees and charges due by Airline to the Authority and is reestablished each Fiscal Year.

5.32 "Terminal Building Rentals" are the Terminal Building rents calculated by multiplying the Terminal Building Rental Rate times the then-applicable square footage of the Assigned Space in question.

## **Section 6. RATE MAKING METHODOLOGY**

6.1 Rates and charges shall be established annually based on the methodology set by the Authority below and in the Schedule of Rates and Charges referenced in Section 8 below.

6.2 Rates and charges shall be developed under a commercial compensatory rate making methodology.

6.3 Rates and charges shall be calculated and set at the beginning of each Fiscal Year.

#### 6.4 Terminal Building Operating Requirement.

6.4.1 For purposes of this Ordinance, the Terminal Building Cost Center shall consist of the current Terminal Building, including the ticketing wing, the Holdrooms, baggage claim facilities, baggage make-up facilities, and passenger loading bridges/regional boarding ramps, as well as the areas immediately adjacent to the west side of the terminal building utilized for baggage tug drives and baggage tug storage, and all public areas, concession areas, and other leasable areas.

6.4.2 The Terminal Building Operating Requirement shall be calculated as specified in Sections 6.4.2.1 through 6.4.2.4 below:

6.4.2.1 By summing the elements of the Airport Operating Requirement allocated to the Terminal Building Cost Center. Currently, this includes O&M Expenses, O&M Reserve Requirement, net Depreciation, Amortization, Capital Outlay, and Debt Service.

6.4.2.2 By then reducing the total from Section 6.4.2.1 by non-airline revenue credits applied by the Director. These revenue credits are reimbursements and offsets to base costs. This results in the Net Terminal Building Operating Requirement.

6.4.2.3 The Net Terminal Building Operating Requirement calculated in Section 6.4.2.2 is then divided by Rentable Space to obtain the Terminal Building Rental Rate.

6.4.2.4 Finally, each Airlines' share of cost is then derived by multiplying the Terminal Building Rental Rate by the Terminal Building Airlines' rented space (preferential use) and Airlines' share of Joint Use Space as determined by the Joint Use Formula.

#### 6.5 Airfield Area Operating Requirement.

6.5.1 For purposes of this Ordinance, the Airfield Area Cost Center consists of those areas of land and Airport facilities which provide for the general support of air navigation, flight activity and other aviation requirements of the Airport. The airfield includes runways, taxiways, the terminal apron, aircraft service areas and

those ramp areas not included in any other cost center, approach and clear zones, safety areas and infield areas, together with all associated landing navigational aids and Airport facilities, aviation controls, and other systems related to the airfield. It also includes areas of land acquired for buffer requirements for the landing areas of the Airport, all land acquired for Airport expansion until the land is used or dedicated to another cost center, and all Airport noise mitigation facilities or costs. The Airport's triturator facility, storage areas for airline glycol equipment and tanks, and any fueling facilities and equipment provided to serve the airlines on the terminal apron are also included in the airfield cost center.

6.5.2 The Airfield Area Operating Requirement shall be calculated as specified in Sections 6.5.2.1 through 6.5.2.4 below:

6.5.2.1 By summing the elements of the Airport Operating Requirement allocated to the Airfield Area Cost Center. Currently, this includes the O&M Expenses, O&M Reserve Requirement, net Depreciation, Amortization, Capital Outlay, and Debt Service.

6.5.2.2 By then reducing the total calculated in Section 6.5.2.1 above by non-airline revenue credits applied by the Director. These revenue credits are reimbursements and offsets to base costs. This results in the Net Airfield Area Operating Requirement.

6.5.2.3 The Net Airfield Area Operating Requirement calculated in Section 6.5.2.2 is then divided by the estimated Certified Maximum Gross Landed Weight (CMGLW) of all Airlines' Revenue Aircraft Arrivals to determine the Airlines' Landing Fee rate.

6.5.2.4 The Airlines' Landing Fee rate is then multiplied by the estimated CMGLW of the Airlines.

6.5.3 All costs incurred by the Authority for mitigation or damages resulting from noise, environmental incidents or conditions, aircraft fueling, or other Airport aircraft-related conditions or activities will also be charged and allocated to the Airfield Area Operating Requirement.

6.5.4. [RESERVED]

6.5.5 Affiliate. Each Affiliate's operations shall be counted and recorded jointly with Airline's and shall be at the same rate.

6.5.6 Joint Use Space. Airline's share of the Total Terminal Building Rentals for Joint Use Space will be determined as follows: (1) sixty-five percent (65%) of the total rentals due shall be prorated among Airlines using Joint Use Space based

upon Airline's share of Enplaned Passengers, (2) thirty-five percent (35%) of the total rentals due shall be prorated among the Airlines using Joint Use Space based upon Airline's share of aircraft departures.

6.5.7 Other Cost Centers. All other cost centers are not included as part of the Airlines' rates, charges and fees. Authority may apply revenues from the other cost centers to offset expenses at a time, and in an amount, based on the sole discretion of the Director.

6.5.8 Unless otherwise provided herein, all rates, fees and charges are calculated as described in Schedule of Rates, Fees and Charges referenced in Section 8 below.

## **Section 7. RENTALS, FEES AND CHARGES**

7.1 The Authority shall establish the Schedule of Rates, Fees and Charges at the beginning of each Fiscal Year.

7.2 Prior to the establishment of the Schedule of Rates, Fees and Charges each Fiscal Year, the Authority shall formally notify Airline in writing of the anticipated Schedule of Rates, Fees and Charges to be in effect for the upcoming Fiscal Year. Authority's notification to Airline shall include notice of the time and place of a meeting to present the Schedule of Rates, Fees and Charges, expenses and capital charges used in the calculation, and to answer questions of Airline. The anticipated Schedule of Rates, Fees and Charges shall be set forth and supported by a document prepared by the Authority.

7.3 So long as Airline has been notified per above, the implementation of the upcoming Schedule of Rentals and Charges will be effective on the first day of the Fiscal Year.

7.4 Each Airline operating at the Airport shall be responsible for paying those rates and charges itemized below in the amounts specified in the Schedule of Rates, Fees and Charges in Section 8 below:

7.4.1 Preferential Use Space - Each Airline shall pay the Authority for its use of the assigned, Preferential Use Space in the Terminal.

7.4.2 Joint Use Space – Each Airline shall pay the Authority its share of rentals on Joint Use Space used by Airline in common with other airline tenants.

7.4.3 Landing Fees –For its use of the airfield, apron and appurtenant facilities, Airline shall pay a landing fee for each and every aircraft landed by the Airline at the Airport except as otherwise noted herein.



7.4.4 Passenger Facility Charge. Airline shall comply with all of the applicable requirements contained in 14 CFR Part 158 and any amendments thereto. Airline shall pay the Authority the Passenger Facility Charge applicable to all of Airline's revenue passengers enplaning at the Airport imposed by the Authority from time to time pursuant to applicable Federal law and regulations.

7.4.5 Other Fees and Charges. Airline shall also pay all miscellaneous charges assessed to and owed by Airline to the Authority including, but not limited to, the cost of utilities and services, employee parking fees, telecommunications charges, paging system fees, triturator fees, skycap services, preconditioned air and fixed ground power fees, security measures, such as key cards and identification badges and the like, common use fees and common equipment charges, and law enforcement fees (net of TSA reimbursement).

7.4.5.1 Such other fees and charges shall be detailed by the Authority in the Schedule of Rates, Fees and Charges.

## **Section 8. SCHEDULE OF RATES, FEES AND CHARGES**

8.1 The Authority's 2018-2019 Schedule of Rates, Fees and Charges effective July 1, 2018 is attached hereto and incorporated herein by reference as Exhibit A.

## **Section 9. PAYMENT OF RENTALS, FEES AND CHARGES**

9.1 Airlines shall pay for space rentals for Preferential Use Space and Joint Use Space, monthly, without invoice, demand, set-off, or deduction on or before the first (1<sup>st</sup>) day of each calendar month.

9.2 On or before the fifteenth (15<sup>th</sup>) day of each month, Airlines shall pay for their Landing Fees for the immediately preceding month.

9.3 Airlines shall report to the Authority on or before the fifteenth (15<sup>th</sup>) day of each month the Airlines actual operating activity for the prior month by submitting a written report. All such monthly reports shall be submitted on a standardized form provided by the Authority, such form shall act as the actual invoice.

9.4 Payment for all other fees and charges shall be invoiced by the Authority and shall be due upon receipt of the Authority's invoice. Such payments shall be deemed delinquent if not received within thirty (30) calendar days of the date of such invoice.

9.5 Except as provided above, or if such payments or reporting is under dispute by Airline, Airline shall be in violation of this Ordinance if its payments and reporting information required above are not received by the Authority on or before the fifteenth (15<sup>th</sup>) day of the month in which they are due.

9.6 Security Deposit. If in the reasonable business discretion of the Authority, it is determined that the financial condition of Airline, at the beginning of air service at the Airport, or an incumbent Airline that has displayed an irregular payment history, then Airline may be required to submit a cash security deposit in an amount not to exceed the equivalent of six (6) months estimated rentals, fees and charges.

9.6.1 In the event that the Authority determines a security deposit is required, the Airline shall deposit such sum with the Authority within thirty (30) days of being so notified by the Authority, and such sum shall be retained by Authority as security for the faithful performance of Airline's obligation hereunder.

9.6.2 The Authority shall have the right, but not the obligation, to apply said security deposit to the payment of any sum due to Authority which has not been paid in accordance with this Ordinance, including, but not limited to, reimbursement of any expenses incurred by Authority in curing any default of Airline, or to the cost of restoring the Assigned Space or its furnishings, fixtures or equipment to their original condition, reasonable wear and tear excepted.

9.6.3 In the event that all or any portion of the security deposit is so applied, the Airline shall promptly, upon demand by Authority, remit to Authority the amount of cash required to restore the security deposit to its original sum.

9.6.4 An Airline's failure to remit the amount of cash required to restore the security deposit in accordance with Section 9.6.3 above within ten (10) calendar days after its receipt of such demand shall constitute a breach of this Ordinance.

9.6.5 If said deposit shall not have been applied for any of the foregoing purposes, it shall be returned to Airline, without interest, within sixty (60) days of the Airline ceasing operation at the Airport. The Authority will not pay interest on any security deposit.

9.7 Airlines shall pay all rates, fees and charges established herein to the Authority monthly, without set-off, and except as specifically provided above, without invoice or demand therefore, in lawful money of the United States of America, by check payable to Authority delivered or mailed to the Authority or by wire transfer to the Authority.

## **Section 10. PENALTIES AND ENFORCEMENT**

10.1 Unless otherwise specified herein, violation of any provision of this Airline Rates, Fees & Charges Ordinance shall be enforced in accordance with, and subject to the penalties specified in, this Section 10.

10.2 In addition to any civil or criminal penalties set out in this Section 10. or in any other Section or Subsection herein, this Airline Rates, Fees & Charges Ordinance may be enforced by an injunction, order of abatement, or other appropriate equitable remedy issuing from a court of competent jurisdiction.

10.3 This Airline Rates, Fees & Charges Ordinance may be enforced by one, all or a combination of the penalties and remedies authorized and prescribed in this Section 10, or elsewhere herein, except that any provision, the violation of which incurs a civil penalty, shall not be enforced by criminal penalties.

10.4 Except as otherwise specified herein, each day's continuing violation of any provision of the Airline Rates, Fees & Charges Ordinance is a separate and distinct offense.

10.5 A violation this Airline Rates, Fees & Charges Ordinance shall not be a misdemeanor or infraction under N.C. Gen. Stat. §14-4; however, civil penalties shall be assessed and civil citations issued for the administrative violation of any provision in accordance with Section 10.6 through 10.7 below.

10.6 The Executive Director shall authorize specific Authority personnel to enforce all administrative violations of this Airlines Rates, Fees & Charges Ordinance.

10.7 Upon any administrative violation of this Airline Rates, Fees & Charges Ordinance, personnel designated in accordance with Section 10.6 shall cause a civil citation to be issued to the violator.

10.7.1 All civil citations shall be hand-delivered to the violator or shall be mailed by first class mail addressed to the last known address of the violator. The violator shall be deemed to have been served upon hand-delivery or the mailing of the civil citation.

10.7.2 Unless otherwise expressly specified herein the civil penalty associated with each civil citation issued for an administrative violation of this Airline Rates, Fees & Charges Ordinance shall be as follows: By a fine of up to \$500.00.

10.8 Any person may submit, within ten (10) days of receipt of a civil violation, a written request that the Executive Director review the civil citation, in accordance with Sections 10.8.1.1 through 10.8.3 below.

10.8.1 A request to the Executive Director shall be in writing and shall be hand delivered to the Office of the Executive Director and must be signed for by and employee of the Authority, or shall be mailed to the Executive Director by certified mail, return receipt requested.

10.8.2 A request to the Executive Director must specify in detail all of the reasons why the civil citation should be modified or withdrawn and must provide a mailing address for the Executive Director to submit a response to the request.

10.8.3 Within ten (10) days of receipt of a request in accordance with Section 10.8.1, the Executive Director shall mail a written decision to the requesting party at the address provided.

10.8.4 Unless a written request for review in accordance with Section 10.8.1 above, civil penalties issued via civil citation for an administrative violation of any Section of this Airport Rates, Fees and Charges Ordinance shall be due and payable to the Authority within 30 days of receipt.

10.8.5 If a written request for review is appealed and the civil citation is not withdrawn, payment of the civil penalty shall be due and payable to the Authority within 30 days of issuance of the Executive Director's written decision to the violator.

10.8.6 Unless other provided, if the violator fails to respond to a citation within 30 days of issuance and pay the fine prescribed therein, the Authority may institute a civil action in the nature of a debt in the appropriate division of the state general court of justice to collect the fine owed.

## **Section 11. SEVERABILITY**

11.1 If any provision, clause, section, or provision of this the Airline Rates, Fees & Charges Ordinance shall be held by a court of competent jurisdiction to be invalid, illegal or unenforceable, such invalid, illegal or unenforceable provision shall be severed from the remainder of the Airline Rates, Fees & Charges Ordinance, and the remainder of shall be enforced and not be affected thereby.

## **Section 12. AMENDMENT.**

12.1 The Authority reserves the right to amend the Airline Rates, Fees & Charges Ordinance, as well as the attached Schedule of Rates, Fees and Charges, at any time, by ordinance, after due notice and public hearing, in accordance with the Authority's Resolution No. \_\_\_ establishing The Greater Asheville Regional Airport Authority's Policy and Procedure for the Adoption of Ordinances.

ADOPTED THIS the \_\_\_ day of \_\_\_\_\_, 2018, after due notice and a public hearing, by the Greater Asheville Regional Airport Authority.

**GREATER ASHEVILLE REGIONAL  
AIRPORT AUTHORITY**

By: \_\_\_\_\_  
Robert C. Roberts, Chair

**ATTEST:**

\_\_\_\_\_  
Ellen M. Heywood, Clerk to the Board

# **Exhibit A**

Asheville Regional Airport

2018-2019 Fiscal Year

Schedule of Rates, Fees and Charges

**(Proposed)**

**SUMMARY TABLE****RESULTS****GARAA**

(Fiscal Years Ending June 30)

	Budget	Budget
	2018	2019
<u>Signatory Airline Rates &amp; Charges:</u>		
Terminal Building Rental Rate (per s.f.)	\$44.61	\$46.35
Passenger-Related Security Fee (per EP)	\$0.72	\$0.67
Landing Fee (per 1,000-lbs)	\$1.69	\$1.60
Ticket Counter & Queue Fee (per EP-unassigned)	\$0.56	\$0.48
Baggage Make-Up & Claim Fee (per bag)	\$1.12	\$0.93
Baggage Make-Up & Claim Fee (per airline)	\$12,238	\$12,715
Gate Area Charge per (enplaned pax)	\$1.67	\$1.43
Gate Area Fee (per airline)	\$31,262	\$32,481
Loading Bridge Fee (per depart.)	\$9.91	\$10.02
Turn Fees <sup>1</sup>		
Per Turn Fee for Exempt Carriers (0-70 seats)	\$297.00	\$272.00
Per Turn Fee for Exempt Carriers (71-135 seats)	\$354.00	\$324.00
Per Turn Fee for Exempt Carriers (136+ seats)	\$396.00	\$363.00
Average AVL CPE	\$6.61	\$5.92

<sup>1</sup> Includes use of holdroom, bag claim, bag make-up, passenger loading bridge, apron, tug drives,

Source: Airport management records

Compiled by Trillion Aviation, February 2018

**Table 1****AVIATION ACTIVITY****GARAA**

(Fiscal Years Ending June 30)

	Budget	Budget
	2018	2019
<u>Enplaned Passengers:</u>		
Allegiant	144,938	180,000
American <sup>1</sup>	98,575	103,000
Delta	137,241	138,000
United	44,364	95,000
Total	425,118	516,000
<u>Estimated Checked Bags:</u>		
Allegiant	53,627	93,600
American <sup>1</sup>	70,974	55,600
Delta	90,579	109,400
United	31,942	52,100
Total	247,122	310,700
<u>Departures:</u>		
Allegiant	987	1,200
American <sup>1</sup>	2,175	2,262
Delta	2,300	2,389
United	1,024	1,631
Total	6,486	7,482
<u>Landed Weight (1,000-lb units):</u>		
Allegiant	145,059	170,000
American <sup>1</sup>	103,761	125,600
Delta	177,231	161,050
United	46,450	108,373
Total	472,501	565,023

Note: Amounts may not add due to rounding.

<sup>1</sup> Includes US Airways activity prior to the merger of the carriers into American Airlines Group.

Source: Airport management records

Compiled by Trillion Aviation, February 2018



**Table 2**

<b>TERMINAL SPACE (s.f.)</b>		<b>GARAA</b>	
(Fiscal Years Ending June 30)			
		Budget	Budget
		2018	2019
<u>Preferential Space:</u> <sup>1</sup>			
Allegiant		1,153	1,704
American		2,102	2,102
Delta		2,609	2,609
United		1,593	1,593
Total Preferential Space	[A]	7,457	8,008
<u>Joint Use Space:</u>			
Baggage Make-Up		3,192	3,192
Baggage Claim		4,124	4,124
Gates 1-3 Holdroom		8,517	8,517
Gates 4-7 Holdroom		6,751	6,751
Gates 4-7 Secure Enplanement Corridor		3,421	3,421
Total Joint Use Space	[B]	26,005	26,005
Total Airline Rented	[C=A+B]	33,462	34,013
<u>Other Rentable:</u>			
Ticket Counter (unassigned)		103	103
Queue (unassigned)		193	193
Vacant Airline Preferential Space		3,343	2,792
Concession Space		13,553	13,553
FAA Tower & Related Office Space		4,374	4,374
TSA Offices & Breakroom		2,418	2,418
TSA Passenger Security Screening		2,210	2,210
TSA Offices Adjacent to Passenger Screening		396	396
Total	[D]	26,590	26,039
Total Rentable Space	[E=C+D]	60,052	60,052
Public and Other Areas	[F]	47,797	47,797
Total Terminal Space	[G=E+F]	107,849	107,849

Note: Amounts may not add due to rounding.

<sup>1</sup> Includes ticket counter, queue, and office space.

Source: Airport management records  
 Compiled by Trillion Aviation, February 2018

**Table 3**

**DEPRECIATION, AMORTIZATION, & CAPITAL OUTLAY** **GARAA**  
(Fiscal Years Ending June 30)

		Budget	Budget
		2018	2019
<u>Depreciation:</u> <sup>1</sup>			
Gross Depreciation		\$4,700,000	\$4,700,000
Less: Grant & PFC Amortization		(3,200,000)	(3,200,000)
Net Depreciation	[A]	\$1,500,000	\$1,500,000
<u>By Cost Center (%):</u>			
Airfield Area	[B]	14.0%	14.0%
Terminal Building	[C]	30.0%	30.0%
Parking, Roadway, and Ground Trans.	[D]	33.0%	33.0%
General Aviation Area	[E]	16.0%	16.0%
Other Area	[F]	7.0%	7.0%
Total		100.0%	100.0%
<u>By Cost Center:</u>			
Airfield Area	[A*B]	\$210,000	\$210,000
Terminal Building	[A*C]	450,000	450,000
Parking, Roadway, and Ground Trans.	[A*D]	495,000	495,000
General Aviation Area	[A*E]	240,000	240,000
Other Area	[A*F]	105,000	105,000
Net Depreciation	[A]	\$1,500,000	\$1,500,000
<u>Amortization:</u>			
Gross Amortization		\$242,056	\$242,056
Less: Grant & PFC Amortization		(162,475)	(162,475)
Net Amortization	[G]	\$79,581	\$79,581

**Table 3**

**DEPRECIATION, AMORTIZATION, & CAPITAL OUTLAY** **GARAA**  
(Fiscal Years Ending June 30)

		Budget	Budget
		2018	2019
<u>By Cost Center (%):</u>			
Airfield Area	[H]	100.0%	100.0%
Terminal Building	[I]	0.0%	0.0%
Parking, Roadway, and Ground Trans.	[J]	0.0%	0.0%
General Aviation Area	[K]	0.0%	0.0%
Other Area	[L]	0.0%	0.0%
Total		100.0%	100.0%
<u>By Cost Center:</u>			
Airfield Area	[G*H]	\$79,581	\$79,581
Terminal Building	[G*I]	0	0
Parking, Roadway, and Ground Trans.	[G*J]	0	0
General Aviation Area	[G*K]	0	0
Other Area	[G*L]	0	0
Net Amortization	[G]	\$79,581	\$79,581
<u>Capital Outlay:</u>			
Capital Outlay	[M]	\$100,000	\$100,000
<u>By Cost Center (%):</u>			
Airfield Area	[N]	50.0%	50.0%
Terminal Building	[O]	50.0%	50.0%
<u>By Cost Center:</u>			
Airfield Area	[M*N]	\$50,000	\$50,000
Terminal Building	[M*O]	50,000	50,000
Capital Outlay	[M]	\$100,000	\$100,000

Note: Amounts may not add due to rounding.

<sup>1</sup> Depreciation is based on the prior year's actual depreciation

Source: Airport management records

Compiled by Trillion Aviation, February 2018

**Table 4**

<b>OPERATION AND MAINTENANCE EXPENSES</b>		<b>GARAA</b>	
(Fiscal Years Ending June 30)			

		Budget	Budget
		2018	2019
<u>By Category:</u>			
Personnel Services		\$5,283,529	\$5,572,510
Professional Services		368,950	387,450
Utilities		520,817	525,467
Promotional Activities		349,290	317,390
Maintenance and Repairs		251,800	262,200
Contracted Services		884,424	826,723
Insurance Expense		252,700	234,000
Materials and Supplies		452,760	467,425
Other Expenses		503,870	393,905
Total O&M Expenses	[A]	<u>\$8,868,140</u>	<u>\$8,987,070</u>
<u>By Cost Center (%):</u>			
Airfield Area	[B]	26.3%	26.3%
Terminal Building	[C]	47.7%	48.0%
Parking, Roadway, and Ground Trans.	[D]	12.4%	12.0%
General Aviation Area	[E]	9.7%	9.7%
Other Area	[F]	3.9%	4.0%
Total		<u>100.0%</u>	<u>100.0%</u>
<u>By Cost Center:</u>			
Airfield Area	[A*B]	\$2,329,399	\$2,366,072
Terminal Building	[A*C]	4,233,699	4,313,970
Parking, Roadway, and Ground Trans.	[A*D]	1,100,934	1,074,732
General Aviation Area	[A*E]	858,402	872,685
Other Area	[A*F]	345,705	359,611
Total O&M Expenses	[A]	<u>\$8,868,140</u>	<u>\$8,987,070</u>

Note: Amounts may not add due to rounding.

Source: Airport management records  
 Compiled by Trillion Aviation, February 2018

**Table 5**

**LANDING FEE AND REVENUE**

**GARAA**

(Fiscal Years Ending June 30)

		Budget	Budget
		2018	2019
<u>Airfield Requirement:</u>			
O&M Expenses		\$2,329,399	\$2,366,072
Less: Deicing Chemicals		(68,000)	(70,040)
O&M Reserve Requirement		63,007	18,336
Net Depreciation		210,000	210,000
Net Amortization		79,581	79,581
Capital Outlay		50,000	50,000
Debt Service		0	0
Debt Service Coverage (25%)		0	0
Total Requirement	[A]	\$2,663,987	\$2,653,949
<u>Landing Fee Credits:</u>			
Non-Airline Revenue	[B]	\$77,000	\$90,000
Other	[C]	0	0
Total Credits	[D=B+C]	\$77,000	\$90,000
Net Landing Fee Requirement	[E=A-D]	\$2,586,987	\$2,563,949
Airline Landed Weight	[F]	472,501	565,023
Airline Landing Fee (pre-Revenue Share)	[G=E/F]	\$5.48	\$4.54
Revenue Share Credit	[H]	\$1,789,390	\$1,660,376
Adjusted Airline Net Requirement	[I=E-H]	\$797,598	\$903,573
Airline Landing Fee	[J=I/F]	\$1.69	\$1.60
Airline Landing Fee Revenue	[K=F*J]	\$797,598	\$903,573

Note: Amounts may not add due to rounding.

Source: Airport management records

Compiled by Trillion Aviation, February 2018

**Table 6**

**TERMINAL RENTAL RATE AND REVENUE** **GARAA**  
(Fiscal Years Ending June 30)

		Budget	Budget
		2018	2019
<u>Terminal Requirement:</u>			
O&M Expenses		\$4,233,699	\$4,313,970
O&M Reserve Requirement		114,515	40,136
Net Depreciation		450,000	450,000
Net Amortization		0	0
Capital Outlay		50,000	50,000
Debt Service		0	0
Debt Service Coverage (25%)		0	0
Total Requirement	[A]	\$4,848,214	\$4,854,106
<u>Terminal Credits:</u>			
Passenger-Related Security Charges		\$305,873	\$344,750
AirIT Landside Expenses		16,463	16,463
Loading Bridge Fees		64,249	75,000
Total Terminal Credits	[B]	\$386,585	\$436,213
Net Requirement	[C=A-B]	\$4,461,629	\$4,417,893
Rentable Space (s.f.)	[D]	60,052	60,052
Terminal Rental Rate	[E=C/D]	\$74.30	\$73.57
Airline Rented Space (s.f.)	[F]	33,462	34,013
Airline Requirement	[G=E*F]	\$2,486,096	\$2,502,261
Revenue Share Credit	[H]	\$993,487	\$925,880
Adjusted Airline Requirement	[I=G-H]	\$1,492,609	\$1,576,382
Airline Rented Space (s.f.)	[F]	33,462	34,013
Adjusted Airline Terminal Rate	[J=I/F]	\$44.61	\$46.35
Airline Terminal Rentals	[K=F*J]	\$1,492,609	\$1,576,382

Note: Amounts may not add due to rounding.

Source: Airport management records

Compiled by Trillion Aviation, February 2018

**Table 6A****LOADING BRIDGE FEE AND REVENUE****GARAA**

(Fiscal Years Ending June 30)

		Budget	Budget
		2018	2019
<u>Loading Bridge Requirement:</u>			
Operating Expenses		\$64,249	\$75,000
Capital Outlay		0	0
Debt Service		0	0
Debt Service Coverage (25%)		0	0
Total Requirement	[A]	\$64,249	\$75,000
Total Departures	[B]	6,486	7,482
Loading Bridge Fee (per Departure)	[C=A/B]	\$9.91	\$10.02
Total Loading Bridge Revenue	[D=B*C]	\$64,249	\$75,000

Note: Amounts may not add due to rounding.

Source: Airport management records

Compiled by Trillion Aviation, February 2018

**Table 6B****JOINT USE CHARGES****GARAA**

(Fiscal Years Ending June 30)

		Budget	Budget
		2018	2019
Adjusted Signatory Airline Terminal Rate	[A]	\$44.61	\$46.35
<u>Joint Use Space (s.f.):</u>			
Baggage Make-Up	[B1]	3,192	3,192
Baggage Claim	[B2]	4,124	4,124
Gates 1-3 Holdroom	[C1]	8,517	8,517
Gates 4-7 Holdroom	[C2]	6,751	6,751
Gates 4-7 Secure Enplanement Corridor	[C23]	3,421	3,421
Joint Use Space		26,005	26,005
Baggage Make-Up & Claim Requirement	[D=A*(B1+B2)]	\$326,338	\$339,071
Gate Areas Requirement	[E=A*(C1+C2+C3)]	833,643	866,169
Total Joint Use Requirement	[G=D+E+F]	\$1,159,981	\$1,205,239
<u>Baggage Make-Up &amp; Claim:</u>			
Baggage Make-Up & Claim Requirement (85%)	[H=D*0.85]]	\$277,387	\$288,210
Checked Bags	[I]	247,122	310,700
Baggage Make-Up & Claim Fee (per bag)	[J=H/I]	\$1.12	\$0.93
Baggage Make-Up & Claim Requirement (15%)	[K=D*0.15]	\$48,951	\$50,861
Number of Airlines	[L]	4	4
Baggage Make-Up & Claim Fee (per airline)	[M=K/L]	\$12,238	\$12,715
<u>Gate Area:</u>			
Gate Area Requirement (85%)	[N=E*85%]	\$708,597	\$736,243
Enplaned Passengers	[O]	425,118	516,000
Gate Area Charge per (enplaned pax)	[P=N/O]	\$1.67	\$1.43
Gate Area Requirement (15%)	[Q=E*15%]	\$125,046	\$129,925
Number of Airlines	[L]	4	4
Gate Area Fee (per airline)	[R=Q/L]	\$31,262	\$32,481
Total Joint Use Revenue	[G]	\$1,159,981	\$1,205,239

Note: Amounts may not add due to rounding.

Source: Airport management records

Compiled by Trillion Aviation, February 2018



**Table 6C****TICKET COUNTER & QUEUE FEES (UNASSIGNED)****GARAA**

(Fiscal Years Ending June 30)

		Budget	Budget
		2018	2019
Adjusted Signatory Airline Terminal Rate	[A]	\$44.61	\$46.35
<u>Ticket Counter and Queue Space (s.f.):</u>			
Ticket Counter		1,755	1,755
Queue Space		3,181	3,181
Ticket Counter and Queue Space	[B]	4,936	4,936
Ticket Counter and Queue Space Requirement	[C=A*B]	\$220,176	\$228,766
AirIT Landside Expenses	[D]	16,463	16,463
Ticket Counter and Queue Requirement	[E=C+D]	\$236,639	\$245,229
Enplaned Passengers	[F]	425,118	516,000
Ticket Counter & Queue Fee (unassigned)	[G=E/F]	\$0.56	\$0.48
Enplaned Passenger Use	[H]	144,938	180,000
Ticket Counter & Queue Fees (unassigned)	[I=G*H]	\$80,679	\$85,545

Note: Amounts may not add due to rounding.

Source: Airport management records

Compiled by Trillion Aviation, February 2018

**Table 7****PASSENGER-RELATED SECURITY CHARGE****GARAA**

(Fiscal Years Ending June 30)

		Budget	Budget
		2018	2019
Personnel-Related Security Cost	[A]	\$1,102,750	\$1,230,700
<u>Officer Deployment Hours:</u>			
Total Hours (12 Officers at 42 hrs/week; 2 officers at 40 hrs/week)		2,169	2,169
Holiday (11 Holidays)		(132)	(132)
Vacation (12 Days)		(144)	(144)
Training (8 hrs per month per officer)		(96)	(96)
Sick Leave (12 Days Allowed; 9 Days Average Used)		(108)	(108)
Available Hours/Officer	[B]	1,689	1,689
Number of Officers	[C]	14	14
Total Available Hours	[D=B*C]	23,648	23,648
Less: Admin Hours Total	[E]	(2,016)	(2,016)
Total Officer Deployment Hours	[F=D-E]	21,632	21,632
Personnel-Related Security Cost per Hour	[G=A/F]	\$50.98	\$56.89
<u>Passenger-Related Security Charge:</u>			
Terminal Airlines (18 hrs/day Security Checkpoint)		\$334,924	\$373,784
Less: TSA Reimbursement		(127,631)	(131,459)
Net Personnel-Related Costs	[H]	\$207,293	\$242,325
TSA Passenger Security Screening Space (s.f.)	[I]	2,210	2,210
Terminal Rental Rate	[J]	\$44.61	\$46.35
Security Checkpoint Space Costs	[K=I*J]	\$98,579	\$102,426
Passenger-Related Security Charges	[L=H+K]	\$305,873	\$344,750
Enplaned Passengers	[M]	425,118	516,000
Passenger-Related Security Charges per Enplaned Passenger	[N=L/M]	\$0.72	\$0.67
Passenger-Related Security Charges	[O=M*N]	\$305,873	\$344,750

Note: Amounts may not add due to rounding.

Source: Airport management records

Compiled by Trillion Aviation, February 2018

**Table 8****COST PER ENPLANED PASSENGER****GARAA**

(Fiscal Years Ending June 30)

		Budget	Budget
		2018	2019
<u>Airline Revenue:</u>			
Terminal Rentals		\$1,492,609	\$1,576,382
Loading Bridge Fees		64,249	75,000
Landing Fees		797,598	903,573
Unassigned Ticket Counter Charges		80,679	85,545
Passenger Related Security Charges		305,873	344,750
Deicing Chemicals		68,000	70,040
Total	[A]	\$2,809,007	\$3,055,290
Enplaned Passengers	[B]	425,118	516,000
Cost Per Enplaned Passenger	[C=A/B]	\$6.61	\$5.92

Note: Amounts may not add due to rounding.

Source: Airport management records

Compiled by Trillion Aviation, February 2018

**Table 9****PER TURN FEE FOR MARKET SHARE EXEMPT CARRIERS****GARAA**

(Fiscal Years Ending June 30)

		Budget	Budget
		2018	2019
<u>Per Turn Requirement:</u>			
Joint Use Cost <sup>1</sup>		\$1,159,981	\$1,205,239
Loading Bridge Cost		64,249	75,000
Unassigned Ticket Counter Cost		236,639	245,229
Passenger Related Security Charge Cost		305,873	344,750
Deicing Chemicals Cost		68,000	70,040
<b>Total</b>	<b>[A]</b>	<b>\$1,834,742</b>	<b>\$1,940,259</b>
<b>Total Departures</b>	<b>[B]</b>	<b>6,486</b>	<b>7,482</b>
<b>Average Per Turn Cost</b>	<b>[C=A/B]</b>	<b>\$282.88</b>	<b>\$259.32</b>
Per Turn Fee for Exempt Carriers (0-70 seats)	[D=C*105%]	\$297.00	\$272.00
Per Turn Fee for Exempt Carriers (71-135 seats)	[E=C*125%]	\$354.00	\$324.00
Per Turn Fee for Exempt Carriers (136+ seats)	[F=C*140%]	\$396.00	\$363.00

Note: Amounts may not add due to rounding.

<sup>1</sup> Includes the cost of baggage areas and gate areas.

Source: Airport management records

Compiled by Trillion Aviation, February 2018

**NEW BUSINESS:** None

**DIRECTOR'S REPORT:** The Director advised the Board that he had a couple of additional items to include that were not on the agenda.

**A. Staff Recognition:** The Director recognized Tina Kinsey's election as President of the North Carolina Airports Association.

**B. FAA Funding Update:** The Director informed the Board that over the years, airports across the country have been asking Congress to raise the PFC's from the current \$4.50. The airlines have a strong lobbyist group that has been fighting an increase. At the end of the omnibus discussions, airports did not receive an increase for PFC's. The Director highlighted some of the measures Congress approved including an additional \$1 billion in airport improvement discretionary funds, leaving TSA's law enforcement officer reimbursement program intact, funding to deploy CT scanners at security checkpoints, reimbursement to airports for past investments in inline baggage systems that were installed in the wake of 9/11, and additional funding for 328 customs and border protection officers at air and land ports of entry. This measure extends the authorization for FAA programs through September 30<sup>th</sup>.

**C. Meeting with TSA:** While attending a conference in Washington, DC in March, the Director met with TSA to discuss the airport's security checkpoint and wait times as well as equipment being removed from the baggage screening operation. Staff was led to believe by the Charlotte office that a third lane and pre-check at the security checkpoint could be in place by the summer. However, there was no commitment from DC and they are still waiting to see if the airport's passenger numbers increase. The Director stated that staff is also working with the airlines to install an elite lane for frequent flyers that will merge into the document checking station. The airlines would be billed for the cost of staffing this lane with a uniformed employee. Staff has had discussions with security firms to gather information and pricing and the hours of staffing are being reviewed to try to narrow down the costs.

**D. Medicine Drop-off:** Public Safety will participate in Operation Medicine Drop-off on April 28<sup>th</sup> from 10:00 a.m. to 2:00 p.m.

**E. NCDOT Grant:** The airport received the \$2 million grant agreement from the NCDOT and staff expects to receive the funds within the next 30 days. This grant will be used for the north apron expansion, south apron environmental assessment, and the terminal assessment study.

F. **Airfield Project**: The Director advised the Board that the Authority had finalized the Takeover Agreement with Travelers. As required by North Carolina General Statutes § 143-318.11(a)(3), the terms of the settlement of the Authority's claim filed with Travelers are hereby made a matter of public record and the Clerk to the Authority is instructed to note such settlement in the official meeting minutes and to incorporate a copy of the Takeover Agreement into said minutes. An update was given on the progress made by Cedar Peaks as well as the concerns staff has on the project.

## TAKEOVER AGREEMENT

This Takeover Agreement (the "Agreement") is made and entered into by and among GREATER ASHEVILLE REGIONAL AIRPORT AUTHORITY ("Owner"), TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA ("Surety") and CEDAR PEAKS ENTERPRISES, INC. ("Principal") (hereinafter collectively the "Parties") on this 3rd day of April, 2018 ("Effective Date").

### W I T N E S S E T H:

**WHEREAS**, Principal entered into a construction contract with Owner (the "Bonded Contract") with respect to certain construction work on a project known as Bid Package 4—Permanent Runway 17-35 Paving, Lighting, and NAVAIDs (the "Project");

**WHEREAS**, Surety issued Performance Bond No. 106674877 (the "Performance Bond") and Payment Bond No. 106674877 (the "Payment Bond") (the Performance Bond and the Payment Bond collectively, the "Bonds") on behalf of Principal in relation to the Bonded Contract in their respective penal limits of \$33,703,095.70;

**WHEREAS**, Surety issued the Bonds on behalf of Principal in the favor of the Owner;

**WHEREAS**, in accordance with the Bonded Contract, on or about September 28, 2017, RS&H Architects-Engineers-Planners, Inc. ("RS&H"), as an Engineer, Project Manager and Resident Project Representative ("RPR") on the Project issued a Notice of Pending Default to Principal;

**WHEREAS**, on or about October 30, 2017 Owner declared Principal to be in default under the Bonded Contract;

**WHEREAS**, Principal disputes that it was in default under the Bonded Contract and asserts that Owner breached the Bonded Contract;

**WHEREAS**, on or about November 7, 2017 Owner terminated the Bonded Contract;

**WHEREAS**, Owner has terminated Principal's right to complete the Project and has requested that Surety perform its obligations under the Performance Bond;

**WHEREAS**, following Owner's termination of the Bonded Contract, remaining and/or remedial work remains to be performed under the Bonded Contract (the "Remaining Work");

**WHEREAS**, Surety has elected to arrange for completion of the Remaining Work by utilizing WK Dickson & Co., Inc. (the "Construction Administrator") for project administration and JS Held, LLC ("Held") for daily oversight and coordination and Principal as the General Contractor;

WHEREAS, the Bonded Contract called for the new permanent runway to be open by December 7, 2017, and the Owner is currently utilizing a temporary runway;

**WHEREAS**, in an effort of cooperation with the Surety, and to expedite the progress of completion of the Remaining Work such that the new permanent runway can be opened in 2018, Owner consents to Surety's arrangement for completion of the Remaining Work, subject to the terms and conditions of the Bonded Contract and this Agreement; and

**WHEREAS**, in an effort of cooperation with Owner, and to expedite the progress of completion of the Remaining Work, and to minimize the costs and inconvenience to those involved, and pursuant to the terms of the Bonds, Surety is willing and desirous of exercising its election to complete the Remaining Work and/or to procure the completion of the Remaining Work, provided it can be assured that in doing so it will receive the total amount payable by Owner to Principal under the Bonded Contract and any amendments thereto, less the amount previously paid by Owner to Principal or to third parties.

**NOW, THEREFORE**, in consideration of the foregoing, other good and valuable considerations, and the mutual covenants set forth herein, the receipt and sufficiency of all of which are hereby acknowledged, the Parties hereto agree as follows:

1. Recitals. The above Recitals and the following terms and conditions are contractual and not merely recitals.

2. Incorporation of the Bonded Contract. The Bonded Contract, which includes all drawings, specifications, Proposal made by Principal, Instructions to Bidders, Mandatory Contract Provisions, Special Conditions, General Provisions, Technical Specifications, and all addenda and modifications to those documents, and all approved Change Orders and backcharges, is incorporated herein by reference into this Agreement. While the Principal will serve as the General Contractor for the completion of the Remaining Work, for purposes of this Agreement the term "Contractor" as used in the Bonded Contract shall be deemed, after the Effective Date of this Agreement, to refer to the Surety rather than the Principal. Except to the extent modified in this Agreement, Owner shall have all of its rights under the Bonded Contract with respect to Surety, to the same extent and effect as if Surety had executed the Bonded Contract initially as the Contractor instead of Principal.

3. Surety to Perform Remaining Work. Surety agrees to arrange for Principal to perform the Remaining Work in accordance with the terms of the Bonded Contract and this Agreement, and pursuant to and subject to Surety's obligations under the Performance Bond and this Agreement. The Remaining Work shall also include, but shall not be limited to, the work identified on **Exhibit B**, which is attached hereto and incorporated herein by reference. Owner acknowledges and agrees that items 1, 2 and 6 on the attached **Exhibit B** are items that are added to the original scope of work under the Bonded Contract and Owner will issue a change order to Surety for the reasonable price for the performance of the additional work. The Owner further acknowledges that some of the work described in **Exhibit B** has been partially completed. The Owner acknowledges that, as the items listed on **Exhibit B** are performed and accepted by



Owner, it will pay sums due for the related work under the Bonded Contract and in accordance with the terms thereof.

Insofar as Owner has any right, title, or interest in and to any subcontract, purchase order, contract, equipment, materials, inventory, and appurtenances furnished or supplied to Principal for the Bonded Contract, however derived, Owner hereby irrevocably assigns all such rights, title, or interest to Surety and/or agrees that Surety and/or Principal shall have the right to utilize the same without charge. However, nothing in this provision will relieve Surety from the obligation to pay for materials, supplies, equipment or personal property to the extent that such is required by the terms of the Bonded Contract.

Owner and Surety agree to extend the dates for completion of designated milestones pursuant to the revised milestones set forth in **Exhibit A** (the "Revised Completion Milestones"). Surety shall be entitled to further extensions of the Revised Completion Milestones in accordance with the procedures set forth in the Bonded Contract and to the extent provided in the Bonded Contract. Surety acknowledges that, as of the Effective Date, no circumstances exist that would be a proper basis for such further extensions.

Any modifications to the Remaining Work must be addressed by a change order executed in accordance with the Bonded Contract. Surety shall not be responsible for any modifications to the Remaining Work that are not reflected in a change order approved by Owner in accordance with the Bonded Contract. Surety shall not unreasonably withhold approval of any change order submitted.

4. Rights of Surety. By Surety's execution of this Agreement, Owner acknowledges that Surety is acting in its capacity as surety for Principal in making arrangements for the performance and completion of the Remaining Work, and not as a completion contractor, and that Surety is not assuming any obligations or liabilities beyond those set forth in the Bonds or the Bonded Contract or this Agreement. As to the completion of the Remaining Work, Surety is entitled to all rights, title, and interest of Principal in and to the Bonded Contract.

5. Completion by Construction Administrator, Held and Principal. Pursuant to Surety's obligations under the Performance Bond, Surety is making arrangements with the Construction Administrator, Held, and Principal for the performance of the Remaining Work. A copy of the contract between Surety and Held is attached hereto as **Exhibit C** ("Held Contract"). A copy of the contract between Surety and the Construction Administrator is attached hereto as **Exhibit D** ("Administration Agreement").

During the progress of the Remaining Work, Owner shall have the right to deal directly with the Construction Administrator and Held, with the exception that neither the Construction Administrator nor Held shall be authorized, without Surety's prior written approval, to execute or enter into any pay estimates, change orders or extensions or reductions of time, relating to any work within the scope of the Bonded Contract. Surety's representative must execute pay estimates, change orders, and extensions or reductions of time, as may be required under the Bonded Contract, on behalf of Surety. All documents pertaining to pay estimates, progress and

final payments, change orders, extensions or reductions of time, and all other notices shall be sent to the Surety as follows:

**SURETY:**

**Travelers Casualty and Surety Company of America**

c/o Ann Marie Donahue  
Claim Counsel  
Construction Services Claim  
Bond & Specialty Insurance  
1500 Market Street  
29<sup>th</sup> Floor West Tower (Mail Code 1166)  
Philadelphia, PA 19102  
ADONAHU2@travelers.com

**with a copy to:**

**Manier & Herod**

ATTN: Jeffrey S. Price  
2200 One Nashville Place  
150 Fourth Avenue North  
Nashville, TN 37219  
JPrice@manierherod.com

Owner's Engineer, Project Manager, and RPR will work with the Construction Administrator and Held; however, the involvement of the Construction Administrator and Held shall not alter the roles of the Owner's Engineer, Project Manager and RPR in connection with the Project.

Surety is solely responsible for seeing that the Remaining Work is completed by the Revised Completion Milestones and in accordance with the Bonded Contract and this Agreement. In connection with such obligation, Surety shall ensure that:

- a. Principal has adequate equipment and adequate, qualified personnel on site to complete the Remaining Work by the Revised Completion Milestones;
- b. Principal, Construction Administrator, Held and representatives for Surety are onsite for a meeting with Owner and RS&H within) three (3) business days of a missed Revised Completion Milestone to discuss how Surety shall make up time lost;
- c. Principal completes the Remaining Work pursuant to the specifications contained in the Bonded Contract and pursuant to the direction and instruction of the Construction Administrator and Surety;
- d. Held is on the Project site daily to observe and coordinate Principal's work and to attend the Project meetings with RS&H, Principal and Owner;

- e. Construction Administrator is on site no less often than weekly to inspect and evaluate the status and quality of the Remaining Work and, when possible, to attend the Project meetings with Held, RS&H, Principal and Owner;
- f. Surety is available for a conference call and/or site meeting if Owner and/or RS&H believe that Principal's work does not comply with the Bonded Contract or the revised project schedule or that Principal's failure to meet a Revised Completion Milestone is likely.
- g. Owner and RS&H are available for a conference call and/or site meeting if Surety believes that Principal's work is being negatively impacted or delayed by Owner and/or RS&H.

6. Principal's Rights & Obligations. Principal agrees to complete the Remaining Work pursuant to the Bonded Contract and this Agreement under the direction and instruction of Surety, the Construction Administrator, and Held. Principal agrees that David Rifenburg shall not be on site at any time or direct Principal's employees regarding completion of the Remaining Work. Principal shall follow the direction of Surety, Construction Administrator and Held in completion of the Remaining Work. Principal will remain responsible for all warranties under the Bonded Contract, which warranties and related obligations are hereby fully ratified by Principal. Surety acknowledges that its financial responsibility for any warranty obligations under the Bonded Contract shall be the same as if the Bonded Contract and Principal were never terminated by Owner. Principal and Owner acknowledge that there are 269 airfield barricades that belong to Owner being used on the Project, as well as airfield barricades that belong to Principal. Principal will leave all of Owner's airfield barricades on the site during the completion of the Project and upon demobilization from the Project.

7. Contract Sum. Owner and Surety acknowledge that the original Bonded Contract sum was in the amount of \$33,703,095.70 and said amount has not been modified by change order. As of the date of this Agreement, Principal has performed, and Owner has approved and accepted work and billings in the amount of \$9,973,049.61, of which the Principal has been paid \$8,343,589.40 and of which \$997,304.96 is presently held as retainage. Pay Application No. 6 in the amount of \$632,155.25 (as revised by the Owner) was submitted pursuant to the Bonded Contract, and will be paid to Surety upon execution of this Agreement (the "Initial Completion Payment"). Owner and Surety further acknowledge that, since termination of the Bonded Contract, Owner has also paid, with the prior authorization of Surety, \$32,275.00 to a third-party and that such payment shall be a credit to Owner and further reduce the contract balance. Owner further acknowledges that the balance of the contract price (after payment of the Initial Completion Payment) available for completion of the Project, including any retainage, is in the amount of \$24,695,076.05, subject to further increases or decreases in accordance with the provisions of the Bonded Contract (the "Balance of the Contract Price"). Surety and Owner acknowledge that the Bonded Contract is based on unit prices and the final amount of the Bonded Contract and, therefore, the Balance of the Contract Price may be adjusted upon a determination of final unit quantities performed and installed in the Project.

8. Payments to Surety. The Balance of the Contract Price shall be paid to Surety as: (i) Principal completes the Remaining Work in accordance with the amounts and procedures of the Bonded Contract, based on the value of the work in place, or stored, calculated in accordance with the unit and/or lump sum prices set forth in the Bonded Contract, less retainage withheld in accordance with the Bonded Contract; and (ii) in a final payment once the Remaining Work is complete, based on Owner's final review, quantification and acceptance of the Remaining Work, in accordance with the procedures of the Bonded Contract and valued in accordance with the unit and/or lump sum prices set forth in the Bonded Contract. In order to meet Federal Aviation Administration ("FAA") requirements, in all pay applications submitted by the Surety to the Owner, whether for the Remaining Work or any change order, the Surety shall invoice the Owner utilizing the unit prices contained in the Bonded Contract. All payments due to Surety shall be sent payable to Travelers Casualty and Surety Company of America and sent to:

**Travelers Casualty and Surety Company of America**  
c/o Ann Marie Donahue  
Claim Counsel  
Construction Services Claim  
Bond & Specialty Insurance  
1500 Market Street  
29<sup>th</sup> Floor West Tower (Mail Code 1166)  
Philadelphia, PA 19102  
ADONAHU2@travelers.com

Surety asserts a right to the Balance of the Contract Price otherwise due from Owner to Principal and makes such assertion by reason of Surety's rights of subrogation as to Principal and Owner, by reason of its contractual assignment contained in a general agreement of indemnity executed by Principal, and pursuant to the Bonds. Owner agrees that it will not acknowledge or honor any claims or charges against the Balance of the Contract Price by Principal and/or its assignees, successors, creditors or transferees, or of any other party making claim to any of such proceeds or balances, without the consent of Surety.

Surety shall submit to Owner whatever information or documentation is required regarding the performance of the Remaining Work in order to conform with the procedures set forth in the Bonded Contract. Owner recognizes that Surety shall be arranging for completion of the Remaining Work through the services of Principal, Construction Administrator, and Held. Accordingly, Surety authorizes Owner to accept the representations and certifications of Principal, Construction Administrator and/or Held (as appropriate and/or applicable) with respect to all aspects of the work, progress of the work, quality of the work, payments to others, warranty and maintenance of the work, and all other matters pertinent to completion of the Remaining Work, as if those representations had been made by Surety.

9. No Offsets. All payments due to Surety pursuant to this Agreement including, without limitation, progress payments, payments for extra work or work performed pursuant to change orders, retention and final payment, for work on behalf of Surety by Principal, shall be made to Surety unconditionally and without offset including, but not limited to, any offset for

claims: (i) made by Principal's creditors; or (ii) made by parties claiming funds due or that may become due in completion of the Remaining Work.

10. Changes in Remaining Work. Owner reserves the right, to the extent appropriate for completion of the Remaining Work, to issue further change orders. The terms of these change orders, including extensions of time and valuation of the change order work, shall be determined as set forth in the Bonded Contract. Surety reserves the right to refuse to perform work pursuant to additional change orders if such work changes the total Bonded Contract cost or the cost of any major Bonded Contract item by more than 25% (total cost being based on unit prices and estimated quantities in the Bonded Contract). Further, in the event Owner seeks the performance of additional work pursuant to change order(s) which is not subject to valuation by application of the unit and/or lump sum prices set forth in the Bonded Contract, Owner and Surety shall negotiate, in good faith, the appropriate, commercially reasonable value for such work.

11. Waiver of Delay Damages. Owner waives all right to assert damages relating to or arising from the failure to timely complete the Project in accordance with the completion dates set forth in the Bonded Contract including, but not limited to, any damages alleged for lost profits, interest, fees assessed by third-parties, and liquidated damages arising prior to the Revised Completion Milestones ("Delay Damages"). Nothing herein is intended to waive any damages for breach of this Takeover Agreement or for liquidated damages arising due to the failure to meet the Revised Completion Milestones.

12. Additional Payments by Surety. Notwithstanding Section 11 above, Surety agrees to reimburse Owner for the actual out of pocket expenses incurred by Owner due to the termination of Principal under the Bonded Contract, which expenses shall include, but shall not be limited to, additional fees for the services of RS&H, additional fees for the services of Avcon, Inc., legal fees incurred by the Owner, and the additional force account expenses and personnel costs of Owner, accruing until the Remaining Work is completed ("Delay Costs"). Surety's payment for Delay Costs shall not exceed the total sum of \$1,800,000. However, in the event the permanent runway is not reopened in 2018 due to inexcusable delay caused by or attributable to Principal and/or Surety, in accordance with the Revised Completion Milestones, the cap on Delay Costs shall be inapplicable (provided that Surety shall be given a credit for any Delay Costs paid against any claims asserted by Owner). Surety shall then be responsible for the full amount of all Delay Costs, subject to the penal limit of the Performance Bond. Surety shall not be liable for any damages it would not be liable for absent the execution of this Agreement. If, and only if, Owner elects to seek damages in addition to the Delay Costs, Principal and Surety reserve all rights and defenses to any such claim including, any and all claims or counterclaims Surety or Principal may have against the Owner including, but not limited to, the right to recoup the Delay Costs paid by the Surety, if it is determined that Owner would not have been entitled to said payment under the Performance Bond.

13. Penal Limit of Bonds and Payments by Surety. Surety shall be solely responsible for all payments to Principal, Construction Administrator, Held and all subcontractors and suppliers for all labor and materials associated with completion of the Remaining Work. To the



extent that Surety expends such of its own funds as may be necessary to pay for completion of the Remaining Work, any and all costs and expenses paid or incurred by Surety in the course of completing the Remaining Work or in the course of paying those sums owed to subcontractors, materialmen and/or suppliers for labor, materials and equipment furnished after Owner's termination of Principal, shall in no event exceed, and it is hereby expressly limited to, the expenditure of the penal amount of the Performance Bond (\$33,703,095.70), which will be further reduced by all amounts expended by Surety including all expenditures made to complete the Remaining Work or to satisfy Surety's obligations under the Performance Bond. A list of sums already paid by Surety and credited against the penal limit of the Bonds, and a list of those sums the Surety forecasts will be paid by Surety and subsequently credited against the penal limit of the Bonds is attached hereto and incorporated herein by reference collectively as **Exhibit E**. The sums listed on **Exhibit E** are estimates based on the information available to Surety at this time and the amounts listed do not represent a cap of the reduction of the penal limit of the Performance Bond.

14. Effect of the Bonds. The Bonds will remain in full force and effect pursuant to the Bonds' terms and conditions, and nothing provided in this Agreement shall waive any right, defense, or obligation the parties may have pursuant to the Bonds or otherwise, other than as set forth herein. Owner acknowledges that Surety's obligations and performance under this Agreement are pursuant to its obligations under the Bonds, and all payments by Surety for labor and/or materials or for the performance of the Remaining Work are in discharge of Surety's obligations under the Bonds. Acceptance of the Remaining Work by Owner in accordance with the Bonded Contract or expenditures by Surety of the penal limit of the Performance Bond, whichever comes first, shall satisfy Surety's performance obligations under the Performance Bond and this Agreement.

15. Payment Bond. Surety agrees to investigate claims made against the Payment Bond, but shall have the right to settle, compromise, defend, appeal, pay, or dispute such claims as it, in its sole and complete discretion, may deem appropriate. In no event shall Owner withhold any portion of the Balance of the Contract Price on account of claims, liens, suits, or demands by persons or entities furnishing or alleging to have furnished labor and/or materials to the Project; provided, however, that Surety shall defend, indemnify, and hold harmless Owner from any loss which may arise by virtue of such claims, liens, suits, and demands, subject to the penal limit of the Bonds, as reduced by the payments made by Surety pursuant thereto.

16. No Third-Party Rights. Nothing in this Agreement shall be deemed to create any rights in favor of, or to inure to the benefit of, any third party or parties, or to waive or release any defense or limitation against third party claims. The Parties each acknowledge that as of the Effective Date of this Agreement there has been no assignment of rights or obligations under the Performance Bond or Bonded Contract to any third party, and the Parties agree that there will be no assignment of rights or obligations under the Performance Bond, Bonded Contract or this Agreement on or after the Effective Agreement, absent the written authorization of all Parties hereto.

17. No Modification Except in Writing. This Agreement contains the entire understanding and agreement among Surety, Owner and Principal with respect to the subject matter contained herein and may not be modified or amended except in writing and signed by all

Parties. As between Principal and Surety, nothing herein supersedes the separate agreements between Surety and Principal including, but not limited to, that certain Term Sheet and that certain General Agreement of Indemnity neither of which are modified by this Agreement.

18. Surety's Role as Surety and not Completion Contractor. Owner agrees and acknowledges: (i) Surety is entering into this Agreement not as a contractor, but as a means of satisfying Surety's obligations under the Bonds and (ii) that Owner hereby forever releases any and all claims that Surety is an unlicensed contractor. All Parties agree that Owner is not a party to the contract between Surety and Principal for completion of the Remaining Work and Owner shall look only to Surety for ensuring completion of the Remaining Work in accordance with the terms of this Agreement and the Bonded Contract, subject to the penal limit of the Bonds.

19. No Admission of Liability. Without limiting the obligations of the Parties as set forth in this Agreement, this Agreement shall not be deemed or construed as an admission or concession of liability of any kind or nature by Principal, Surety, or Owner.

20. Release from Liability. Principal and Surety hereby release and waive any rights, claims, actions or damages against Owner in anyway related to the Project, and arising or accruing up through the Effective Date of this Agreement, including, but not limited to, Principal's claims for damages, additional compensation and/or for wrongful termination of the Bonded Contract (the "Released Claims"). However, if, and only if, Owner elects to seek damages in addition to the Delay Costs, as described in Paragraph 12 above, then this waiver shall be void and Surety and Principal fully reserve all rights, claims, actions or damages against the Owner and defenses under the Bonds, the Bonded Contract, at law or in equity in relation to the Released Claims or otherwise.

21. Severability. The invalidity or enforceability of any particular provision of this Agreement shall not affect the other provisions of this Agreement and the Agreement shall be construed as if the invalid or unenforceable provisions were omitted.

22. Counterparts. This Agreement may be executed in any number of counterparts each of which when executed and delivered shall be deemed to an original with all the counterparts constituting but one and the same Agreement. The execution of this Agreement by any Parties hereto will not become effective until all the counterparts hereof have been executed by all the Parties.

23. Construction. Owner, Surety, and Principal have been represented by counsel who have mutually participated in the authorship of this Agreement. With this understanding, Owner, Surety, and Principal agree that the rule of construction that a written agreement is construed against the party drafting or preparing such an agreement shall not apply to the interpretation of this Agreement.

24. Governing Law. This agreement, including its interpretation and enforcement, shall be governed by the laws of the State of North Carolina.

25. Additional Actions that May be Required. The Parties shall execute such documents and other papers and take such further actions as may be reasonably required or desirable to carry out the provisions hereof and the transactions contemplated hereby.

26. Headings. The headings of this Agreement are inserted for convenience only and shall not control or affect the meaning, construction or effect of this Agreement, or any provisions hereof.

27. Authority. Each of the undersigned persons executing this Agreement represents and warrants that: (a) he or she is fully empowered and duly authorized by all necessary action of the respective Parties to execute and deliver this Agreement; (b) he or she has full capacity, power, and authority to enter into and carry out this Agreement; and (c) this Agreement is the legal, valid, and binding obligation of the respective Parties.

28. FAA Approval. The Parties acknowledge that the FAA must approve this Agreement, and that Owner's execution of this Agreement is not effective until such time as FAA approval has been obtained.

**WHEREFORE**, Surety, Owner, and Principal have executed this Agreement by their authorized representatives.

**[SIGNATURE PAGE TO FOLLOW]**



OWNER:

**GREATER ASHEVILLE REGIONAL AIRPORT  
AUTHORITY**

BY: Matt C. Bonif

ITS: Vice Chairman

DATE: April 3, 2018

SURETY:

**TRAVELERS CASUALTY AND SURETY  
COMPANY OF AMERICA**

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

DATE: \_\_\_\_\_

PRINCIPAL:

**CEDAR PEAKS ENTERPRISES, INC.**

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

DATE: \_\_\_\_\_

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

This the 3<sup>rd</sup> day of April, 2018.

Janet Burnette  
Janet Burnette, Finance Officer  
Greater Asheville Regional  
Airport Authority

OWNER:

**GREATER ASHEVILLE REGIONAL AIRPORT  
AUTHORITY**

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

DATE: \_\_\_\_\_

SURETY:

**TRAVELERS CASUALTY AND SURETY  
COMPANY OF AMERICA**

BY:     *Ann Duke*    

ITS:     *claim counsel*    

DATE:     *4/3/18*    

PRINCIPAL:

**CEDAR PEAKS ENTERPRISES, INC.**

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

DATE: \_\_\_\_\_

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

This the \_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Janet Burnette, Finance Officer  
Greater Asheville Regional  
Airport Authority

OWNER:

**GREATER ASHEVILLE REGIONAL AIRPORT  
AUTHORITY**

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

DATE: \_\_\_\_\_

SURETY:

**TRAVELERS CASUALTY AND SURETY  
COMPANY OF AMERICA**

BY: Andrew \_\_\_\_\_

ITS: CLAIM COUNSEL \_\_\_\_\_

DATE: April 2, 2018 \_\_\_\_\_

PRINCIPAL:

**CEDAR PEAKS ENTERPRISES, INC.**

BY: Danny \_\_\_\_\_

ITS: President \_\_\_\_\_

DATE: 4/3/18 \_\_\_\_\_

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

This the \_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Janet Burnette, Finance Officer  
Greater Asheville Regional  
Airport Authority

**EXHIBIT A**

Critical Milestone / Schedule	Liquidated Damages Cost	Allowed Duration
Night Closures	\$1,000 per 30 minute increment (or portion thereof)	12:00 AM – 5:30 AM
Notice of Violation Issued by NCDEQ	\$2,000 per calendar day from issuance of NOV until NOV is formally lifted by NCDEQ in writing	N/A
August 10, 2018 <b>Critical Milestone:</b> Construction of permanent Runway 17-35 and temporary runway markings to allow NAVAIDs flight inspection activities*	\$2,000 per calendar day	N/A
November 8, 2018 <b>Critical Milestone:</b> Runway 17-35 Open, ILS Runway 35 Approach Charted	\$2,000 per calendar day	N/A
November 16, 2018 <b>Critical Milestone:</b> Runway 17 Glide Slope Facility Complete	\$2,000 per calendar day	N/A
January 11, 2019 <b>Critical Milestone:</b> Runway 35 Glide Slope Facility Relocation Complete	\$2,000 per calendar day	N/A
Project Completion	\$2,000 per calendar day	Volume 2 Work: 234 Calendar Days Volume 3 Work: 194 Calendar Days
Project Phases Completion	\$2,000 per calendar day	As shown for on contract phasing plans for each phase.

## EXHIBIT B

### Additional Work to be Completed as Part of the Remedial Work

- 1) Airport Control Cable - Sheet G-12A
- 2) Drainage improvements on North End - Sheet C-42 & Sheet C-57
  - a. Remove Existing FES
  - b. Remove existing riprap
  - c. Backfill slope
  - d. Seed & mat slope
  - e. Install structures S-44 through s-47
  - f. Demo and re-construct concrete apron in ditch for pipe outfall
- 3) Basin L
  - a. Re-excavate soils
  - b. Remove temporary drainage structures (risers)
  - c. Seal existing pipes abandoned under TW A
  - d. Back fill basin with structural fill
  - e. Back fill around pipe
  - f. Install drainage structures
  - g. Seed & mulch stabilization
- 4) Basin K
  - a. Re-excavate soils
  - b. Remove temporary drainage structures (riser)
  - c. Remove existing pipe abandoned under TW A/ TW P
  - d. Seal existing pipe abandoned under TW A
  - e. Back fill basin with structural fill
  - f. Back fill around pipe
  - g. Install drainage structures
  - h. Seed & mulch stabilization
- 5) TW A/A1/A2/B2
  - a. Mill and replace final lift P-401
  - b. Re-mark TW permanent & Temporary markings
  - c. Temporarily remove TW edge lights
  - d. Finish grade & compact TW shoulders
- 6) FAA MH Adjustment,
  - a. RWY 17 MALSR Threshold MH to be raised to proposed pavement grades
  - b. Sheet C-69 & Sheet C-62 for proposed grades
  - c. Remove box top section and install riser to raise structure

## EXHIBIT C



### Travelers Bond & Specialty Insurance Surety Claim CONSULTANT AGREEMENT

Date: 2/28/2018

Consultant: JS Held, LLC  
Address: 135 W Central Blvd 720  
Orlando FL, 32801  
Contact: Richard Sexton, Vice President

Surety: Travelers Casualty & Surety

Legal Counsel for Surety: Manier & Herod, P.C. ("Counsel")

Principal: Cedar Peaks Enterprise, Inc.  
Obligee: Greater Asheville Regional Airport Authority  
Project(s): New Runway 17-35, Bid Package 4 – Paving, Lighting and Nav aids  
Claim No.: **T1711974**  
Bond No.: 106674877

1. This Consultant Agreement, Exhibits A through F and related attachments, constitutes the formal Agreement between Surety and Consultant to perform services and meet requirements as defined herein.
2. Consultant shall, within 21 calendar days after receipt of this Agreement, submit a written Budget for review and approval by Surety. The budget shall include a breakdown of estimated work hours, travel hours, lodging, mileage, meals and other expenses and anticipated costs associated with Consultant's work on the Project and shall be submitted to Surety in a format similar to that provided as Exhibit E "Consultant Budget Format".
3. The execution and completion of Consultant's anticipated work activities, as briefly defined in Exhibit A "Scope of Work" shall be in accordance with normal and accepted construction industry practices and principles. Consultant shall not assign this work scope or subcontract any part thereof, without prior written consent of Surety.
4. All available documents, records, specifications and key personnel, directly related with the work, will be made accessible to Consultant, as requested.
5. Consultant shall communicate their observations of the Contract Work to Surety verbally, and will provide communications in writing (reports, correspondence,

emails, etc.) if directed by Surety. Consultant's written communications shall be transmitted in a format as approved by Surety. Written communication, if directed and approved by Surety, shall be transmitted to street address(s), email address(s) and/or fax number(s) which are provided in Exhibit C "Project Information". In some instances it may be required that Consultant communicates with Surety, Principal and/or Obligee through Counsel.

6. This assignment shall commence on or about March 5, 2018, and shall be completed with due diligence. It is currently anticipated that the initial assignment will last through December 2018.
7. Surety reserves its right to terminate this agreement upon twenty-four (24) hours verbal notice from Counsel or Surety to Consultant. In such case, Surety shall pay Consultant for time and expenses incurred up through the time of effective termination, for work completed in accordance with normal and accepted construction industry practices and principles. Within forty-eight (48) hours after termination, the consultant shall surrender to Counsel any and all documents, records, reports, work papers, etc. which have been developed and obtained during this assignment, and are considered part thereof.
8. Consultant shall indemnify and hold Surety harmless from any loss, cost or expense, including attorneys' fees, arising from consultant's negligence, fraud, or breach of contract occurring in relation to or arising out of this agreement.
9. Payment for professional services rendered in the performance of this assignment will be on a rate basis, as per the following approved fee schedule. This fee schedule will remain firm for one year. Travel time portal to portal shall be billed and reimbursed at 50% of the approved professional fee rate, and shall not be included in the daily maximum rate. Any proposed modification to the travel time policy described herein must be approved by the surety prior to the commencement of the assignment. Surety will not reimburse professional fees to any interoffice conferences and/or duplication of effort.

APPROVED FEE SCHEDULE

<u>Consultant</u>	<u>Rate per hour</u>
Sexton	\$170
Field Personnel	\$155

10. Consultant shall adhere to the requirements of Exhibit D “Travelers Guidelines for Consultant Billings and Expense Reimbursement”.
11. Reasonable, out-of-pocket costs, expenses, etc. incurred by the consultant will be reimbursed at cost and should not include any markups. Any invoiced in-house office charges as denoted on Exhibit B “Office Costs” will be reimbursed at the not to exceed amount as indicated. All invoices submitted for payment must be accompanied with appropriate backup (i.e. time sheets, material receipts, vouchers greater than \$10.00, etc.), and shall be submitted for approval and payment to the Surety with each billing. ALL INVOICES must be accompanied by the form provided in Exhibit F “Consultant Invoice Reconciliation Form” filled out in it’s entirety by the Consultant. Failure to do so will result in the invoice being returned to the Consultant and a delay in payment.
12. STANDARD OF CARE AND WARRANTY: Consulting services provided by Consultant will be performed, findings obtained, and recommendations prepared in accordance with accepted construction industry principles and practices. THIS WARRANTY IS IN ADDITION TO ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED.
13. CERTIFICATE OF INSURANCE: Surety may require consultant to provide proof of insurance coverage under a general liability, professional errors and assignment, or some other instrument. If such is required, Consultant shall submit a copy of the required policy coverage naming Surety as an additional insured, where applicable.
14. RELATIONSHIP: This Agreement creates a relationship and obligations by and between only the Surety, Counsel and Consultant. This Agreement does not in any way establish or intend to establish a relationship or obligations between Consultant and the Oblige, its designers, consultants or other representatives.
15. CONFIDENTIALITY: Consultant agrees that all work product and communications between Consultant and Counsel and/or Surety shall be considered confidential and any such communications, documents, work materials, etc., shall be disclosed by Consultant only at Surety’s request, or pursuant to valid order to judicial process from a properly constituted tribunal, court or administrative entity with full power, authority and jurisdiction to so order such disclosure. Consultant agrees to notify Surety IMMEDIATELY of any such demand upon your receipt of same, so that we may oppose same on behalf of Surety and Consultant as confidential material. Surety agrees to provide or pay for legal representation of Consultant in such event Surety opposes disclosure.



3/2/2018

In order to ensure consistent, accurate delivery of company information and compliance with all applicable laws and regulations, no consulting firm is authorized to speak to the media as a representative of Travelers (or in a circumstance in which the consulting firm might be perceived to be acting in a representative capacity) or disseminate Travelers information to the media, including via online social media forums, without prior approval from Counsel and Travelers Corporate Communications department. This includes requests that may come from partner organizations, associations or companies.

16. If the foregoing is in accordance with Consultant's understanding, please execute and return one original to the Surety address and contact person provided in Exhibit C, "Project Information".

CONSULTANT

TRSP

RICHARD SEXTON - VICE PRESIDENT  
Name & Title

Dated: MARCH 2, 2018

SURETY

Ann Donahue

Ann Donahue - Claim Counsel  
Name & Title

Dated: March 2, 2018

**EXHIBIT A**  
**SCOPE OF WORK**

Travelers's Principal, Cedar Peaks Enterprises ("Principal") entered into a Contract with the Greater Asheville Regional Airport Authority ("Obligee") on January 27, 2017 to perform certain paving and runway lighting work in connection with Greater Asheville Regional Airport Authority's New Runway 17-35 Project (Phase 4). Travelers issued a Performance Bond for the Project in the amount of \$33,703,095.70. On or around October 28<sup>th</sup>, 2017, Obligee formally declared the Principal in default of the Contract and called upon Travelers to perform under the Bond. Travelers opted to complete the Project with Cedar Peaks Enterprises as general contractor.

To that end, Travelers is engaging JS Held, LLC to assist in overseeing the work of the Project to completion. Although the schedule for resumption of the work has not yet been finalized, it is anticipated that two (2) 11-hour shifts will be employed, seven days a week. Travelers anticipates, as a minimum, the following tasks will be required:

- Preliminary visit with completing contractor's personnel for familiarization and discussion;
- Review Project documents for familiarity;
- Provide daily full-time observations of the Contract Work;
- Maintain daily reports and logs;
- Assist in preparation of Project correspondence and Project documentation as required at the request of Travelers;
- Attend weekly Project progress meetings;
- Provide verbal and/or written updates to Travelers as circumstances dictate, but not less than weekly;
- Consultant shall be prepared to provide any additional technical assistance, as requested and/or required by Travelers.

**EXHIBIT B**  
**OFFICE COSTS**

- |    |                                   |   |
|----|-----------------------------------|---|
| 1. | Photocopy:                        | \$0.10 per page   |
| 2. | Mileage:                          | \$0.515 per mile  |
| 3. | Telephone:                        | Actual long distance telephone line charges local telephone charges are reimbursable.               |
| 4. | Postage:                          | Reimbursable, at cost   |
| 5. | Facsimile Charges:                | Reimbursable. The Surety is to be charged only the actual telephone line charge for outgoing faxes. |
| 6. | Federal Express/Express Mail/etc. | At invoiced cost  |
| 7. | Messenger/Courier Services:       | Reimbursable, at cost   |
| 8. | Office Supplies:                  | Non-reimbursable  |
| 9. | Plans / Specifications:           | At invoiced cost  |

3/2/2018

**EXHIBIT C**  
**PROJECT INFORMATION**

**Principal:** Cedar Peaks Enterprise  
**Obligee:** Greater Asheville Regional Airport Authority.

**Project:** New Runway 17-35, Phase 4 – Paving, Lighting and Nav aids  
**Project Address:** 61 Terminal Drive Suite 1  
Fletcher, NC 28732

**Claim No.:** T1711974  
**Bond No.:** 106674877

**Surety:** Travelers Casualty & Surety  
**Surety Contact:** Kevin J. Kreitzer  
**Address:** 1500 Market Street  
West Tower  
Philadelphia, PA 19102  
**Telephone No.:** 267-675-3059  
**Mobile No.:** 267-438-9626  
**Fax No.:** 267-675-3107  
**Email Address:** kkreitze@travelers.com

**Surety Claim Manager:** Ann Marie Donahue  
**Address:** 1500 Market Street  
West Tower  
Philadelphia, PA 19102  
**Telephone No.:** 267-675-3084  
**Mobile No.:** 215-687-8175  
**Fax No.:** 267-675-3107  
**Email Address:** adonahu2@travelers.com

**Legal Counsel for Surety:** Manier & Herod, P.C.  
**Contact:** Jeffrey S. Price  
**Address:** 1201 Demonbreun Street  
Suite 900  
Nashville, TN 37203  
**Telephone No.:** 615-742-9358  
**Email Address:** jprice@manierherod.com

**Principal:**  
**Contact:** Brian Birdsall, P.E.  
**Address:** 2717 Kearney Road  
Wake Forest, NC 27587

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Telephone No.: (919)623-6014  
Email Address: BIRDSALL.CEDARPEAKS@gmail.com

**Obligee:** **Greater Asheville Regional Airport Authority**  
Contact: Michael Reisman, Deputy Executive Director  
Address: 61 Terminal Drive, Suite 1  
Fletcher, NC, 28732  
Telephone No.: 828-654-3253

## EXHIBIT D

### Guidelines for Consultant Billings and Expense Reimbursement

The following guidelines pertain to Consultant expenses, which are or are not considered appropriate for reimbursement:

Air travel is limited to coach class of service. Airport departure taxes paid in connection with the business travel are reimbursable. Excess baggage fees are not reimbursable unless the excess is specifically required for the business equipment. Consultant may retain frequent flier mileage. Airline club memberships are not reimbursable.

Mileage allowance for use of a personal vehicle is as noted in Exhibit B. Incidental expenses (gas, oil, etc.) are not reimbursable; they are factored into the mileage allowance.

Car rentals should be appropriately sized for the number of people to be transported. For 1-2 people, an Intermediate car, or 3-4 people, a Full-Size car. Gas and oil are reimbursable.

Meals are reimbursable in conjunction with overnight stays. Meal expenses cannot be reimbursed when business travel does not require an overnight stay. Spending guidelines are \$45/day. Suggested amounts are breakfast and lunch, \$10 each; dinner, \$25. Beverages are reimbursable only when consumed with meals or directly preceding a meal. Reasonable tips are reimbursable and should be included with the cost of meals on the expense account.

Lodging is reimbursable for a standard room (e.g., non-concierge floor, and suite) Room service is reimbursable, but only at the cost of a normal hotel meal. Mini-bars, health clubs, and movies are not reimbursable. Reasonable tips are reimbursable.

Required attachments to expense billings include:

- Air/train ticket passenger receipts
- Itemized hotel bills marked paid. If not marked paid, submit evidence of payment (e.g., charge card receipt) with the itemized hotel bill
- Car rental agreements
- Original receipts for expenses of \$10 and more

Photography expense, (e.g., film, development, CDs/DVDs) are reimbursable.

Photocopying "in house" is not to exceed \$0.10 a copy. Outside photocopying where necessary is reimbursable at cost.

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Fax transmittals are reimbursable at actual telephone line costs.

No mark up on any expense item is reimbursable.

Any expenses, which are not addressed in the above listing, should be discussed with Surety Contact prior to incurring the expense, if at all possible.

### Consultant Billings

The following principles are to be followed in preparing and submitting an Invoice:

Invoices shall be submitted once each month. ALL INVOICES must be accompanied by the form provided in Exhibit F "Consultant Invoice Reconciliation Form" filled out in its entirety by the Consultant. Failure to do so will result in the invoice being returned to the Consultant and a delay in payment. (Note – This form is an example and may be modified with the approval of the Surety Contact).

Invoices' hourly billings shall be in 1/2 hour increments. Time billed should be recorded contemporaneously with the tasks performed. Time billed should not be reconstructed or "reverse engineered" at the end of the day.

Each task and its associated time must be listed separately on the statement (no standard or block billing).

Individual time sheets (including the time and tasks required for other clients' work) and pre-bills, both handwritten and computer generated, must be retained for at least one year after the closure of the matter. Computer reports of daily, monthly and annual total hours billed by firm personnel must also be retained. Surety reserves the right to conduct audits of the firm's records to assure compliance with these requirements. By accepting assignment of matter, the firm agrees to cooperate with any audit and provide the auditor with access to the above mentioned records.

Surety will not pay for preparation of invoices/billings, secretarial work, word processing, file organization or other overhead costs. Time for individuals assigned to a matter without prior approval by the Surety Contact will not be recompensed. Any reassignment of work must be pre-approved.

No duplicative tasks will be reimbursed. If two or more individuals perform the same task, (e.g., attendance at job meetings) without prior approval of the Surety Contact, the task will be recompensed for only one individual.

**EXHIBIT E**  
**CONSULTANT BUDGET FORMAT**

**Consultant Budget**

**Date:**

**Consultant:**

**Principal:**

**Claim No.:**

**Bond No.:**

**Project:**

<b><u>Task</u></b>	<b><u>Original</u></b>	<b><u>Revisions</u></b>	<b><u>Revised</u></b>
	<b><u>Budget</u></b>		<b><u>Budget</u></b>
Site Visits, Site Investigations			
Attend Meetings			
Review of documents			
Prepare Cost To Complete			
Prepare Bid Packages, Relet Projects, Inventories			
Monitor Project Status, Status Reports			
Drawing Analysis			
Schedule Analysis			
Payment Bond Claim Analysis, Ratifications			
Travel, meals, hotel, telephone, comm.			
Fuel for travel, meals, rental			
Duplication			
<b>TOTALS</b>	<input type="text"/>	<input type="text"/>	<input type="text"/>



Exhibit F  
Consultant Invoice Reconciliation

**Consultant Invoice Reconciliation**

Consultant: Your Company Name  
Obligee Name: Obligee  
Principal Name: Principal  
Project Name: The Project  
Claim File Number: TXXXXXXXXXX  
Invoice #: 123456789  
Invoice Period through: December 25, 2011

Submitted Consulting Fees:	\$100.00
Submitted Consulting Expenses:	\$50.00
Total Submitted Invoice (A):	<hr/> \$150.00
Previously Submitted and Not Paid Invoice Amounts (B):	\$250.00
<b>Total Outstanding Amount Due (A+B):</b>	<hr/> <b><u><u>\$400.00</u></u></b>
Total Amount Invoiced to Date:	\$1,500.00
Estimated Budget:	\$6,000.00
Percent Invoiced to date:	25%

Comments:

3/2/2018

Cc: Brian Fern  
Ann Marie Donahue  
Kevin Kreitzer  
File

## EXHIBIT D

### **CONSTRUCTION ADMINISTRATION AGREEMENT Bid Package 4—Permanent Runway 17-35 Paving, Lighting and NAVAIDs Bond No. 106674877**

This Construction Administration Agreement (hereinafter "Agreement") is entered into this \_\_\_\_\_ day of March, 2018 by and between Travelers Casualty & Surety Company of America (hereinafter "Surety"), a corporation organized and existing under the laws of the State of Connecticut, and WK Dickson & Co., Inc. (hereinafter "Construction Administrator"), a corporation organized and existing under the laws of the State of North Carolina \_.

WHEREAS, the Greater Asheville Regional Airport Authority (hereinafter "Obligee" or "Owner") awarded a Contract (hereinafter the "Construction Contract"), for the performance of certain construction work known as Bid Package 4—Permanent Runway 17-35 Paving, Lighting and NAVAIDs (the "Project") to Cedar Peaks Enterprises, Inc. (hereinafter the "Principal" or "Contractor"). As required by the Construction Contract, and pursuant to the request of the Principal, Surety issued a Performance Bond and a Payment Bond with Principal as principal and Owner as obligee in the penal sum of \$33,703,095.70. By letter dated November 7, 2017, Principal was declared in default and subsequently terminated and Owner called upon Surety to perform under the Performance Bond as Surety. Surety has agreed with Owner to complete certain work at the Project (hereinafter the "Remaining Work" or "Work") utilizing Principal. In turn, the Construction Administrator has agreed to administer the completion of the Remaining Work for the Surety subject to the terms and conditions of this Agreement.

WHEREAS, it is the intent of the parties hereto to provide for the prompt and orderly completion of the Construction Contract and the Remaining Work in accordance with the Construction Contract and the Takeover Agreement executed between Surety and Owner.

NOW, THEREFORE, in consideration of the promises and covenants set forth herein and intending to be legally bound thereby, Surety and Construction Administrator agree as follows:

#### ARTICLE I

#### Relationship, Duties and Responsibilities

1.1 The Construction Administrator shall furnish its services in a manner consistent with that degree of skill, effort, care and judgment ordinarily exercised by practicing design professionals performing similar services in the same locality and under the same or similar circumstances and conditions in administering the completion of the Construction Contract. The Construction Administrator makes no other representations or warranties, whether express or implied, with respect to the services rendered hereunder.

1.2 The Construction Administrator shall perform the scope of services set forth in the attached Exhibit A, which are hereafter referred to as the "Services."

1.3 All payments from Owner under the Construction Contract shall be paid directly to Travelers, and Construction Administrator shall not have any responsibility relating to the receipt, processing or distribution of any such payments and shall have no obligation to Principal or any of Principal's subcontractor or suppliers regarding payment for their labor, materials or other services.

1.4 Construction Administrator shall be responsible for preparing weekly progress reports and shall attend and participate in weekly Project status meetings as required under the Construction Contract during the completion of the Project.

1.5 The Construction Administrator shall review Contractor's submittals, shop drawings, requests for information and other administrative paperwork required by the Construction Contract for completeness and compliance with the Construction Contract prior to Surety's review and submission to the Owner.

1.6 The Construction Administrator acknowledges its expertise in construction administration and agrees to work with Surety, Principal, and the Surety's scheduling consultant to monitor the project schedules utilized to complete the Construction Contract. Construction Administrator does not assume any responsibility or liability for any liquidated damages or other delay damages arising from Principal's failure to maintain the Project schedule or meet Project milestones or deadlines.

1.7 In consideration for the performance by the Construction Administrator of its obligations hereunder, Surety agrees to pay the Construction Administrator in accordance with the provisions of this Agreement.

1.8 The Construction Administrator and the Surety acknowledge that this Agreement is solely between the signatory parties and in no way creates or intends to create an agreement with the Owner.

## ARTICLE II Payment

2.1 Surety shall pay the Construction Administrator its "Fee," which is defined as the sum of (i) the actual hours spent and travel expenses incurred and charged at the rates set forth on **Exhibit B** and (ii) a lump sum (the "Lump Sum") intended to compensate the Construction Administrator for its Costs of Services, as defined below. The Fee will be billed by Construction Administrator to Surety on a monthly basis and paid by Surety within thirty (30) days of receipt of the monthly billing. The Lump Sum shall be due and owing to Construction Administrator upon execution of this Agreement by all parties, regardless of whether either party later terminates this Agreement. Notwithstanding the foregoing, Construction Administrator will invoice Surety for the Lump Sum in two equal shares on the first two invoices.

2.2 The term "Cost of the Services" refers to those out-of-pocket costs necessarily incurred by the Construction Administrator in the proper performance of the Services.

ARTICLE III  
Miscellaneous

3.1 Indemnity. To the fullest extent permitted by applicable law, the Construction Administrator shall hold harmless and indemnify Surety for claims by third parties for damage (including purely economic loss) or injury of any nature (including death) to persons and property, to the extent arising out of or related to Construction Administrator's breach of its obligations under this Agreement and/or breach of its obligations relating to the Project.

3.2 Insurance. The Construction Administrator shall obtain, pay for and maintain in full force and effect the insurance coverages and limits set forth below:

Employer's Liability	\$1,000,000	Limit Each Accident
	\$1,000,000	Limit Disease Policy Aggregate
	\$1,000,000	Limit Disease Each Employee
General Liability	\$2,000,000	Bodily Injury & Property Damage Liability (Combined Single Limit Each Occurrence and Aggregate)
Automobile Liability	\$2,000,000	Bodily Injury & Property Damage Liability (Combined Single Limit Each Accident)
Umbrella Liability	\$5,000,000	Bodily Injury & Property Damage Liability (Combined Single Limit Each Occurrence and Aggregate)

The Construction Administrator shall provide Surety with insurance certificates demonstrating coverage complying therewith. The Construction Administrator shall add Surety as an additional insured under all applicable policies (except Workers Compensation and Professional Liability) for the purpose of this Project.

3.3 Termination. This Agreement also may be terminated in whole or in part by either party at any time for convenience, provided the terminating party provides the other party no less than seven (7) calendar days written notice of intent to terminate and an opportunity for consultation prior to termination. Upon receipt of a termination notice, the Construction Administrator shall promptly discontinue all Services (unless the notice directs otherwise) and deliver or otherwise make available to the Surety all data, drawings, specifications, reports, estimates, summaries, and such other information and materials that may have been accumulated by the Construction Administrator related to the Project. The termination of the Agreement for any reason, whether for convenience or for cause, shall not relieve the either party of its responsibilities under the Agreement for the Services performed and materials supplied.

3.4 The Construction Administrator represents to Surety that it has the power and authority to execute, deliver and perform this Agreement, and that this Agreement represents its valid, legal and binding obligation to provide the construction services set forth herein. The Construction Administrator represents that it has the financial and technical capacity and ability to fulfill all of the requirements under this Agreement.

3.5 The Construction Administrator represents that it has reviewed all data made available to it related to this Agreement or the Construction Contract. Construction Administrator shall be entitled to rely, without liability, on the accuracy and completeness of any and all information provided by Surety, Oblige, or either of their consultants and contractors, and information from public records, without the need for independent verification.

3.6 Each of the parties hereto is commercially and legally sophisticated regarding construction contracting. Each has been independently advised by counsel and each has cooperated and participated in the drafting and preparation of this Agreement. Accordingly, the parties hereby acknowledge and agree that this Agreement shall not be construed or interpreted in favor of or against any party by virtue of the identity of any alleged preparer.

3.7 Surety and Construction Administrator agree that all disputes of any kind whatsoever relating directly or indirectly to this Agreement or to its execution by either party, whether such a dispute arises in tort, contract(s) or otherwise, including all statutorily based claims of any kind, may, at the discretion of the parties, be submitted to binding arbitration.

3.8 Surety and Construction Administrator waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement, the Services or the Project. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement.

3.9 Surety and Construction Administrator agree that the services provided pursuant to this Agreement involve risks of liability which cannot be adequately compensated for by the payments Surety will make under this Agreement, and without this limitation of liability, Construction Administrator would not be willing to enter into this Agreement. Therefore, notwithstanding the policy limits of any insurance carried by Construction Administrator, its total cumulative liability for this Project, the Services and this Agreement shall be limited to the coverage provided under Construction Administrator's errors and omissions policy for damages due to its negligent acts, errors, omissions, breach of contract, or any other cause related to or arising from the Services, this Agreement or the Project.

3.10 The parties hereto agree to execute such other documents and to enter into such other agreements as may be reasonably necessary to carry out the terms of this Agreement.

3.11 All notices, or demands hereunder shall be in writing and shall be addressed to the party of such notice or demand at the address set forth herein and such other addresses as such parties shall furnish in writing:

Travelers Casualty & Surety Company of America  
Travelers Bond & Specialty Insurance  
1500 Market Street, West Tower  
Suite 2900  
Philadelphia, PA 19102  
Attention: Kevin J. Kreitzer, Senior Construction Manager  
Copy to: Ann Marie Donahue, Claims Counsel

WK Dickson  
W.K. Dickson & Co., Inc.  
720 Corporate Center Drive  
Raleigh, NC 27607  
Attention: Paul Smith, Vice President  
Copy to: David Peeler, President/CEO

3.12 This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina.

3.13 The failure of either party hereto to insist upon strict performance of any of the terms or conditions of this Agreement shall not constitute a waiver of any of its rights hereunder.

3.14 The Construction Administrator may not assign any of its rights, obligations or duties hereunder without the prior written consent of Surety.

3.15 This Agreement binds, inures to the benefit of, and is enforceable by and against any successors of either party.

3.16 This Agreement is not intended nor shall it be deemed to confer any rights upon any person or entity other than the parties hereto, including specifically, but without limitation, any obligee under Surety bonds, or any party to the Construction Contracts.

3.17 This agreement may be executed in any number of counterparts, all of which taken together, shall constitute one instrument.

3.18 Any materials, tools, equipment, parts and supplies purchased by Construction Administrator on behalf of Surety during the course of the Services for which the cost thereof is reimbursed by Surety are the property of Surety. The Construction Administrator will assist Surety with any necessary relocation, shipment, sale or disposal of such items.

IN WITNESS WHEREOF, intending to be legally bound, the parties have signed this Agreement on the \_\_ day of March, 2018.

**Construction Administrator**

**Surety**

By: David Peeler

By: \_\_\_\_\_

Its: PRESIDENT/CEO

Its: \_\_\_\_\_

Date: 3-1-18

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



## **Exhibit A – Scope of Work**

### **to CONSTRUCTION ADMINISTRATION AGREEMENT Bid Package 4 – Permanent Runway 17-35 Paving, Lighting and NAVAIDS Bond No. 106674877**

The CONSTRUCTION ADMINISTRATOR shall provide the following services:

1. Make weekly visits to the site to observe as an experienced and qualified professional the progress and quality of the executed work of Contractor(s) and to determine in general if such work is proceeding in accordance with the contract documents. CONSTRUCTION ADMINISTRATOR shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of such work. CONSTRUCTION ADMINISTRATOR shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by Contractor(s) or the safety precautions and programs incident to the work of Contractor(s). CONSTRUCTION ADMINISTRATOR's efforts will be directed toward providing a greater degree of confidence for SURETY that the completed work of Contractor(s) will conform to the contract documents, but CONSTRUCTION ADMINISTRATOR shall not be responsible for the failure of Contractor(s) to perform the work in accordance with the contract documents. During such visits and on the basis of on-site observations, CONSTRUCTION ADMINISTRATOR shall keep SURETY informed of the progress of the work, shall endeavor to guard SURETY against defects and deficiencies in such work and may disapprove or reject work failing to conform to the contract documents.
2. Recommend to SURETY change orders and/or supplemental agreements to the construction contract incidental to existing field conditions or improvements in the project design. Prepare estimates of cost or savings from proposed order(s), prepare change order(s) along with basis for recommendation and negotiate on behalf of SURETY with the Contractor to arrive, if possible, at an appropriate compensation resulting from the proposed revisions. The CONSTRUCTION ADMINISTRATOR is not required by this provision to accomplish extensive design revisions and drawings resulting from a change in project scope or major changes in design concept previously accepted by the SURETY where changes are due to causes beyond the CONSTRUCTION ADMINISTRATOR's control.
3. Advise the SURETY of any needed special services and assist the SURETY in acquisition of such services as appropriate.
4. Based upon CONSTRUCTION ADMINISTRATOR's on site observations as an experienced and qualified professional and on review of applications for payment and the accompanying data and schedules, determine the amounts owing to Contractor(s) and recommend in writing payments to Contractor(s) in such amounts; such recommendations of payment will constitute a representation to SURETY, based on such observation and review, that the work has progressed to the point indicated, that, to the best of CONSTRUCTION ADMINISTRATOR's knowledge, information and belief, the quality of such work is in accordance with the contract documents (subject to an evaluation of such work as a functioning project upon substantial completion, to the results of any subsequent tests called for in the contract documents, and to any qualifications stated in his recommendation),



and that payment of the amount recommended is due Contractor(s); but by recommending any payment CONSTRUCTION ADMINISTRATOR will not thereby be deemed to have represented that continuous or exhaustive examinations have been made by CONSTRUCTION ADMINISTRATOR to check the quality or quantity of the work or to review the means, methods, sequences, techniques or procedures of construction or safety precautions or programs incident thereto or that CONSTRUCTION ADMINISTRATOR has made an examination to ascertain how or for what purposes any Contractor has used the monies paid on account of the contract price, or that title to any of the work, materials or equipment has passed to SURETY free and clear of any lien, claims, security interests or encumbrances, or that Contractor(s) have completed their work exactly in accordance with the contract documents.

5. Conduct an inspection to determine if the Project is substantially complete and a final inspection to determine if the work has been completed in accordance with the contract documents and if each Contractor has fulfilled all of his obligations thereunder so that CONSTRUCTION ADMINISTRATOR may recommend, in writing, final payment to each Contractor and may give written notice to SURETY and the Contractor(s) that the work is acceptable (subject to any conditions therein expressed), but such recommendation and notice shall be subject to the limitations expressed herein.
6. The CONSTRUCTION ADMINISTRATOR shall not be responsible for the acts of omissions of any Contractor, or subcontractor, or any of the Contractor(s) or subcontractor(s)' agents or employees or any other persons (except CONSTRUCTION ADMINISTRATOR's own employees and agents) at the site or otherwise performing any of the contractor(s)' work; however, nothing contained herein shall be construed to release the CONSTRUCTION ADMINISTRATOR from liability for failure to perform properly duties undertaken by the CONSTRUCTION ADMINISTRATOR under this Contract.

**Exhibit B - CONSTRUCTION ADMINISTRATOR AND RATES**

**to CONSTRUCTION ADMINISTRATION AGREEMENT  
Bid Package 4 – Permanent Runway 17-35 Paving, Lighting and NAVAIDS  
Bond No. 106674877**

**PERSONNEL**

Principal	Paul Smith, PE David Peeler, PE	\$250/hour
Senior Project Manager	Mick Metcalf, PE	\$200/hour
Admin Support	Theresa Bill	\$65/hour

**ESTIMATED FEE**

Based on 30 weeks of service:

Principal	2 hours/week	\$15,000
Sr Project Manager	10 hours/week	\$60,000
Admin Support	2 hours/week	\$3,900
	<b>Subtotal - Estimated</b>	<b>\$78,900</b>
Expenses (travel)		
	Mileage	\$.545/mile
	Meals	at cost
	<b>Subtotal – Estimated</b>	<b>\$6,000</b>
Cost of Services	<b>Lump Sum</b>	<b>\$9,000</b>
	<b>Estimated Fee</b>	<b>\$93,900</b>

Note: Construction Administrator travel time to be billed at 50% of above rates with the maximum not to exceed 8 hours total (including travel & regular hours) for any individual on any given day without prior approval by the Surety.

**EXHIBIT E**

<b>Category</b>		<b>Amount</b>
CPE Job Cost To Complete (Excluding Equipment)	\$	23,223,025.00
WK Dickson & JS Held Budget	\$	1,200,000.00
Equipment Costs	\$	3,300,000.00
Material Supplier Costs (Paid to Date)	\$	2,750,000.00
CPE Overhead and Miscellaneous	\$	2,250,000.00
Less Contract Balance	\$	(\$ 24,695,076.05)
Max. Delay Costs	\$	1,800,000.00
<b>Net</b>	<b>\$</b>	<b>\$9,827,948.95</b>

**G. PA System:** The Director advised the Board that staff did not move forward with the PA system upgrade project that was included in the FY16/17 budget for \$130,000. The funds were rolled over into the FY17/18 budget, however, a consultant has given a full assessment and determined that there are a lot of problems with the wiring. Staff's original estimate for the whole project is low and the project is likely to be in the \$300,000 range. Staff does not want to make a lot of changes to wiring until more information is learned from the terminal assessment study. The Director reported that staff will enter into a new service contract with the current PA system vendor and will also purchase some new pieces that will be able to adapt to the new PA system when it is installed. Staff will delay this project until more decisions are made for the terminal building.

**H. Ground Transportation Update:** The Director reported that the new ground transportation lot became operational in mid-March resulting in reduced congestion on the curb in front of the terminal. Although the airport welcomes and wants TNC's to operate at the airport, the TNC's have elected not to work with the airport's system as they do not want to comply with the badge requirement for their drivers to access the ground transportation lot. The TNC's have an electronic geo-fence system that can report the number of vehicles and trips, however, there is some national concern with under-reporting by 10-15%. The Director reported that he has personally met with Uber and Uber has stated that they have thousands of drivers and do not want to inconvenience the drivers by obtaining a badge to access the ground transportation lot. Uber is proposing staging in the cell phone lot and using the two spots in front of the ground transportation lot for use to pick up passengers. Staff does not feel this is an adequate amount of space, will create congestion and lead to drivers picking up the passengers in front of the terminal. The Director highlighted some of the technology used by the TNC's and reviewed how it could potentially be used in Asheville. Uber also has issue with the pick-up fee and staff is working with Uber to come to an equitable fee arrangement. The Director advised the Board that there is a local TNC operator in Asheville with approximately 70 drivers that operates similar to Uber and Lyft and is willing to operate out of the ground transportation lot. The Director advised the Board that staff will continue discussions with Uber to hopefully reach an agreement.

**I. Passenger Parking:** Staff has received some complaints regarding the lack of available spaces in the long-term surface lot with passengers being forced to park in the parking garage and pay a higher fee. The Director updated the Board on some of the issues and stated that staff is obtaining quotes for electronic car counters to display available parking spaces in the surface lots. Staff will also analyze the parking revenue to see if the cost for the parking garage can be lowered while still supporting bond payments.

**INFORMATION SECTION:** No comments

**PUBLIC AND TENANTS COMMENTS:** None

**CALL FOR NEXT MEETING:** It was determined that the meeting of the Authority Board scheduled for May 18, 2018 was not necessary, and therefore cancelled. The next regular meeting of the Authority Board will be held on June 8, 2018.

**CLOSED SESSION:** At 10:03 a.m. Ms. Brown moved to go into Closed Session Pursuant to Subsections 143-318.11 (a) (3) and (4) of the General Statutes of North Carolina to Consult with Legal Counsel Regarding, Among Other Things, That Lawsuit Entitled Tricor Construction, Inc. vs. RS&H Architects-Engineers-Planners, Inc., Thalle Construction Co., Inc. and Liberty Mutual Insurance Company and vs. Defendant & Third-Party Plaintiff, Greater Asheville Regional Airport Authority, vs. Third-Party Defendant, Avcon, Inc. d/b/a Avcon Engineers and Planners, Inc. in Order to Preserve the Attorney-Client Privilege, and to Discuss Matters Relating to the Location and/or Expansion of Industries or Other Businesses in the Area Served by the Greater Asheville Regional Airport Authority, Including Agreement on a Tentative List of Economic Development Incentives that may be Offered by the Greater Asheville Regional Airport Authority in Negotiations. Mr. Moyer seconded the motion and it carried unanimously.

The Chair indicated they would break for five minutes at which time the Board would resume in closed session.

Open Session resumed at 10:50 a.m.

**GREATER ASHEVILLE REGIONAL AIRPORT AUTHORITY APRIL 13, 2018**

**CLOSED SESSION MINUTES:** Ms. Brown moved to seal the minutes for the Closed Session just completed and to withhold such Closed Session minutes from public inspection so long as public inspection would frustrate the purpose or purposes thereof. Mr. Moyer seconded the motion and it carried unanimously.

**GREATER ASHEVILLE REGIONAL AIRPORT AUTHORITY MARCH 9, 2018**

**CLOSED SESSION MINUTES:** Ms. Brown moved to approve the minutes for the March 9, 2018 Closed Session, and to seal and withhold the minutes for the March 9, 2018 Closed Session from public inspection so long as public inspection would frustrate the purpose or purposes thereof. Mr. Bailey seconded the motion and it carried unanimously.

**ADJOURNMENT:** Mr. Moyer moved to adjourn the meeting at 10:51 a.m. Ms. Brown seconded the motion and it carried unanimously.

Respectfully submitted,



Ellen Heywood  
Clerk to the Board

Approved:



Robert C. Roberts  
Chair