



## **REVISED AGENDA**

Greater Asheville Regional Airport Authority Regular Meeting  
Friday, June 12, 2015, 8:30 a.m.  
Conference Room at Administrative Offices

NOTICE TO THE PUBLIC: The Airport Authority welcomes comments from the public on any agenda item. Comments are received prior to the Board's discussion of the agenda item. Comments are limited to five minutes. If you wish to comment on an agenda item, please deliver a request card (available in the meeting room) to the Clerk to the Board prior to the agenda item being called by the Chair.

- I. CALL TO ORDER
- II. PRESENTATIONS: None
- III. FINANCIAL REPORT ([document](#))
- IV. CONSENT ITEMS:
  - A. Approval of the Greater Asheville Regional Airport Authority April 10, 2015 Regular Meeting Minutes ([document](#))
  - B. Approval of the Greater Asheville Regional Airport Authority April 10, 2015 Closed Session Minutes
  - C. Approval of Audit Contract with Martin Starnes & Associates, CPAs, P.A. for Fiscal Year Ending June 30, 2015 ([document](#))
- V. OLD BUSINESS:
  - A. Ground Transportation Update



VI. NEW BUSINESS:

- A. Approval of Airline Operating Agreement and Airline Rates & Charges ([document](#))
- B. Approval of Post-Closure Fill Agreement ([document](#))
- C. Update to Budget Supplemental Fees and Charges ([document](#))
- D. Approve Award of Contract for Remote Parking Lot Construction ([document](#))

VII. DIRECTOR'S REPORT:

- A. ART and Apple Country Transportation
- B. DENR Notice
- C. Amended Pay Grade Structure Recommendations
- D. Allegiant Update
- E. Emergency Drill
- F. Strategic Plan Update
- G. Contingency Transfer
- H. Landmark Fly-In
- I. Entrance Road Project Change Order

VIII. INFORMATION SECTION:

(Staff presentations will not be made on these items. Staff will be available to address questions from the Board.)

- A. April 2015 Traffic Report ([document](#))
- B. April 2015 Monthly Financial Report ([document](#))
- C. June 2015 Development/Project Status Report ([document](#))



D. Potential Board Items for the Next Regular Meeting:

- None identified at this time

IX. PUBLIC AND TENANTS' COMMENTS

X. CALL FOR NEXT MEETING

XI. AUTHORITY MEMBER REPORTS

A. Report on ACI-NA Commissioners Conference – Bill Moyer and Stephanie Brown

B. Key Strategic Elements ([document](#))

XII. CLOSED SESSION:

Pursuant to Subsections 143-318.11(a)(3), (4) and (6) of the General Statutes of North Carolina to Consult with Legal Counsel in Order to Preserve the Attorney-Client Privilege, to Discuss Matters Relating to the Location and/or Expansion of Industries or Other Businesses in the Area Served by the Authority, Including Agreement on a Tentative List of Economic Development Incentives that may be Offered by the Authority in Negotiations, and to Consider Personnel Matters.

XIII. ADJOURNMENT

*This agenda of the Greater Asheville Regional Airport Authority is provided as a matter of convenience to the public. It is not the official agenda. Although every effort is made to provide complete and accurate information in this agenda, the Greater Asheville Regional Airport Authority does not warrant or guarantee its accuracy or completeness for any purpose. The agenda is subject to change before and/or during the Board meeting.*

**Asheville Regional Airport  
Executive Summary  
April-15**

**AIRPORT ACTIVITY**

	Month	Variance to Prior Year	Calendar Year to Date	Variance to Prior Year
<b>Passenger Enplanements</b>	30,319	6.7%	106,099	9.3%
<b>Aircraft Operations</b>				
Commercial	1,073	(9.2%)	4,050	(6.1%)
Scheduled Flights	495	(5.0%)		
Flight Cancellations	10			
Seats	38,759	7.7%	140,526	9.2%
Load Factor	78.2%	(1.0%)	75.5%	0.1%
General Aviation	2,724	(21.3%)	10,068	(22.5%)
Military	485	(16.1%)	1,784	(13.3%)

**FINANCIAL RESULTS**

	Month	Variance to Budget	Fiscal Year to Date	Variance to Budget
<b>Operating Revenues</b>	\$ 783,088	10.9%	\$ 7,747,669	10.2%
<b>Operating Expenses</b>	581,684	(13.0%)	5,788,053	(11.9%)
<b>Net Operating Revenues before Depreciation</b>	<u>\$ 201,404</u>	437.9%	<u>\$ 1,959,616</u>	323.0%
<b>Net Non-Operating Revenues</b>	<u>\$ 247,049</u>	36.1%	<u>\$ 2,243,239</u>	22.8%
<b>Grants:</b>				
FAA AIP Grants	\$ (87,508)		\$ 8,698,593	
NC Dept of Transportation Grants	-		-	
Total	<u>\$ (87,508)</u>		<u>\$ 8,698,593</u>	

**CASH**

Restricted	\$ 3,851,957
Designated for O&M Reserve	3,881,467
Designated for Emergency Repair	650,000
Unrestricted, Undesignated	11,196,229
Total	<u>\$ 19,579,653</u>

**RECEIVABLES PAST DUE**

	Total	1-30 Days	31-60 Days	Over 60 Days
Advertising Customers	9,215	1,440	1,590	6,185
Allegiant	3,603	-	3,602	1
Charah	52,053	7,819	44,234	-
Delta Airlines	42,502	34,218	7,109	1,175
Enterprise	1,000	-	-	1,000
US Air	15,629	10,145	5,484	-
Miscellaneous	2,777	447	840	1,490
Total	<u>\$ 126,779</u>	<u>\$ 54,069</u>	<u>\$ 62,859</u>	<u>\$ 9,851</u>
% of Total Receivables	<u>23.90%</u>			

Note: Excludes balances paid subsequent to month-end.

**REVENUE BONDS PAYABLE**

Rental Car Facilities Taxable Revenue Bond, Series 2007	
Original Amount	\$ 4,750,000
Current Balance	\$ 1,678,482

**CAPITAL EXPENDITURES**

Annual Budget	\$ 25,676,196
Year-to-Date Spending	\$ 10,484,321

**REGULAR MEETING  
GREATER ASHEVILLE REGIONAL AIRPORT AUTHORITY  
April 10, 2015**

The Greater Asheville Regional Airport Authority ("Authority") met on Friday, April 10, 2015 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; K. Ray Bailey, Vice-Chair; Jeffrey A. Piccirillo; William L. Moyer; Matthew C. Burril; and Stephanie Brown

**MEMBERS ABSENT:** Andrew T. Tate

**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; Royce Holden, IT Director; Suzie Baker, Director of Administration; Tina Kinsey, Director of Marketing and Public Relations; Janet Burnette, Director of Finance and Accounting; Sherman Stark, Interim Director of Operations; David Nantz, Safety Manager; Mike Miller, Public Safety Captain; and Ellen Heywood, Clerk to the Board

**ALSO PRESENT:** Ken Moody, Delta Airport Consultants; Eric Rysdon, RS&H; James Moose, Avcon; Bill Modlin, Mercury Transportation; Eva Ritchey, Trolley Company

**CALL TO ORDER:** The Chair welcomed everyone in attendance and called the meeting to order at 8:30 a.m.

**PRESENTATIONS:**

**A. Marketing Review:** Tina Kinsey gave a high-level presentation to summarize staff's marketing approach. Goals, demographics, strategies, as well as advertising methods and results were reviewed. Mrs. Kinsey also spoke about the public relations tactics and the events held throughout the year and touched upon air service development efforts. Mrs. Kinsey concluded the presentation by highlighting marketing, public relations, and air service goals for 2015. The Chair thanked Mrs. Kinsey for her presentation.

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

**CONSENT ITEMS:** The Chair remarked that Consent Item B, Approval of the Greater Asheville Regional Airport Authority March 13, 2015 Closed Session Minutes would be reviewed in closed session.

**A. Approval of the Greater Asheville Regional Airport Authority March 13, 2015 Regular Meeting Minutes:**

**C. Approve Grant of Easement to Duke Energy Progress, Inc. a North Carolina Corporation for Navaid Locations:**

**D. Approve Grant of Easement to Duke Energy Progress, Inc. a North Carolina Corporation for Gas Station Site:**

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 2015/2016 Budget:** Janet Burnette reported that a proposed preliminary Fiscal Year 2015-2016 Budget and Budget Ordinance were presented to the Board at the March 13th Board meeting. The budget documents have remained available for public inspection and comment since then and staff has not received any comments. A Public Hearing is required before the final adoption of the 2015-2016 Budget Ordinance.

The Chair opened the floor to public comments at 9:12 a.m.

There being no public comments, the Chair closed the floor at 9:12 a.m.

Mrs. Burnette informed the Board that staff recently learned FAA Entitlement funding for one piece of equipment would not be available in FY2015/2016. Due to the lack of funding, staff decided to remove the airfield broom and snow blower from the FY2015/2016 budget. The equipment, budgeted at \$1,000,000, would have been purchased with \$700,000 in Entitlement funds and \$300,000 in Authority funds. This resulted in a fund balance increase in the amount of \$300,000.

Mrs. Burnette requested the Board resolve to adopt the following Fiscal Year 2015-2016 Budget Ordinance:

**GREATER ASHEVILLE REGIONAL AIRPORT AUTHORITY  
2015-2016  
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 2015-2016 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, 2015 and ending June 30, 2016 in accordance with the following schedules:

**EXPENDITURES**

Administration Department	\$ 647,845
Development Department	409,472
Executive Department	567,861
Finance Department	397,910
Guest Services Department	198,011
Information Technology Department	719,323
Marketing Department	538,695
Operations Department	3,096,287
Public Safety Department	1,387,848
Emergency Repair Costs	75,000
Reimbursable Costs	214,000
Carry-over Capital Expenditures from Prior Year	9,557,678
Capital Improvement	7,798,120
Renewal and Replacement	1,641,521
Business Development	300,000
Debt Service	626,823
Contingency	100,000
<b>Total Expenditures</b>	<b><u><u>\$28,276,394</u></u></b>

**Section 2.** It is estimated that the following revenues will be available for the fiscal year beginning July 1, 2015 and ending June 30, 2016.

**REVENUES**

Administration (Interest Income)	\$ 22,000
Terminal	4,092,542
Airfield	810,753
General Aviation	1,009,468
Parking Lot	2,861,100
Other	157,600
Reimbursable Costs	214,000
Passenger Facility Charges	1,642,500
Customer Facility Charges	1,250,000
Federal Grants – AIP Entitlements	1,800,000
Federal Grants – AIP Discretionary Funds	16,130,548
NC Department of Transportation Grants	0
Transfer to GARAA Cash/Investments	<u>(1,714,117)</u>
<b>Total Revenues</b>	<u><u>\$28,276,394</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, 2015.

Adopted this 10th day of April, 2015.

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Robert C. Roberts, Chair

Attested by:

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Ellen Heywood, Clerk to the Board

Mr. Burril moved to adopt the Fiscal Year 2015/2016 Budget Ordinance as presented by staff. Mr. Moyer seconded the motion and it carried unanimously.

**B. Ground Transportation Update:** The Director advised the Board that staff met with ground transportation providers in March and the meeting was very well attended. Staff is looking into a few items that were discussed at the meeting, one of which is vehicle age. It was suggested to keep the vehicle age limits, but extend the window of opportunity once the vehicle is put in place. This is currently being done in Tampa so staff is researching Tampa airport's policy before a final recommendation is made. Also discussed was inspection of vehicles. A suggestion was made for the Authority to hire or contract with service providers that ground transportation providers can pay for vehicle inspections. Documentation of the inspection can then be brought to the airport and staff would perform an aesthetic inspection of the vehicles. Staff is having discussions with vendors in the community about this option. Permitting fees was also discussed and staff's recommendation is to keep it at the current \$300 per vehicle. Staff will also look into removing some of the exceptions in the policy for passenger vehicles with 12 seats or greater not being subjected to the age requirement. The age limitation would apply to all vehicles with the exception of large motor coaches such as Young's Transportation. The Director further stated that ground transportation providers suggested the Authority set fares. Staff does not recommend this as the airport has an open system with free enterprise and the market place should designate those fares. The Director informed the Board that staff would come back with final recommendations at the June Board meeting. The Director also requested the Board provide any input on the ground transportation policy.

The Director reported that Senate Bill 541, which regulates transportation network companies, is under review by NC General Assembly. The Director stated that he is in favor of this legislation, however there are concerns with Section 20-280.8 that prohibits airports the ability to impose fees, require licenses, or limit the operation of services. The Director sent a letter to the legislators representing western North Carolina requesting removal of this section of the bill.

**NEW BUSINESS:**

**A. Approval of Post-Closure Coal Ash Agreement:** The Director advised the Board that this item was not ready and was pulled from the agenda.

**B. Approval of Consultant Scope of Services No. 3 with Delta Airport Consultants, Inc. for Waterline Extension Design Services:** Michael Reisman informed the Board that Scope of Services No. 3 with Delta Airport Consultants includes the extension of a waterline at the former Public Safety building and the installation of a hydrant servicing station for airline de-icing trucks. Since the new Public Safety building opened last fall, airlines no longer have the ability to fill their de-icing trucks. A metered hydrant is required and there are no metered hydrants readily available for the airlines' use. The project will provide for a minor extension of the existing City of Asheville water line located at the former Public Safety building to an airside location on the terminal apron for use by the de-icing trucks. Mr. Reisman advised the Board that the project will be funded and carried out after the start of the new fiscal year. The cost of the design services is \$16,500 and will be paid from the professional services line item of the Development department FY2015/2016 budget. Staff will obtain bids and quotes on construction of the waterline and hydrant project and will seek Board approval at a later date if necessary.

Mr. Bailey asked if the water line would be metered. Mr. Reisman responded that the hydrant would have to be metered.

Mr. Moyer moved to approve Consultant Scope of Services No. 3 with Delta Airport Consultant, Inc. with a not to exceed cost of \$16,500 and authorize the Executive Director to execute the necessary documents. Mr. Burril seconded the motion and it carried unanimously.

**C. Approval of Consultant Scope of Services No. 4 with Delta Airport Consultants, Inc. for Remote Automobile Parking Lot Design Services:** Michael Reisman reported that the Scope of Services No. 4 with Delta Airport Consultants, Inc. was for design and bidding phase services for two remote parking lots on airport property. The anticipated growth of enplanements beginning in the fall is expected to exceed the

present long term parking supply at the airport. Mr. Reisman stated that staff is considering the need to proceed with the design and construction of a parking garage to address long-term needs. However, the timeline necessary to accomplish construction of a parking garage requires that staff address the potential parking shortfall at the present time. Staff has identified two locations, one is the field in front of the Fairfield Inn and the other is the gravel lot on Wright Brothers Way. Mr. Reisman informed the Board that the not-to-exceed cost for engineering services is \$41,500.00 of which \$26,500.00 will be paid from the existing professional services line item in the Development Department budget. The remaining \$15,000.00 requires the following budget amendment:

BE IT ORDAINED by the Greater Asheville Regional Airport Authority that the following amendment be made to the annual budget ordinance for the fiscal year ending June 30, 2015:

**Section 1.** To amend the appropriations as follows:

**EXPENDITURES:**

	<u>Decrease</u>	<u>Increase</u>
Professional Services	\$0	\$15,000
Totals	<u>\$0</u>	<u>\$15,000</u>

This will result in a net increase of \$15,000 in the appropriations. To provide the additional revenue for the above, revenues will be revised as follows:

**REVENUES:**

	<u>Decrease</u>	<u>Increase</u>
Transfer from GARAA		
Cash/Investments	\$0	\$15,000
Totals	<u>\$0</u>	<u>\$15,000</u>

**Section 2.** Copies of this budget amendment shall be furnished to the Secretary of the Greater Asheville Regional Airport Authority, who for purposes of this ordinance, is designated as the Clerk to the Greater Asheville Regional Airport Authority, and to the Budget Officer and to the Finance Officer for their direction.

Adopted this 10<sup>th</sup> day of April, 2015.

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Robert C. Roberts, Chair

Attested by:

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Ellen Heywood, Clerk to the Board

Mr. Bailey inquired about the number of spaces that will be gained. Mr. Reisman responded that an additional 100 to 150 spaces would be acquired. Mr. Reisman further stated that the parking lots would be used for tenant employees and the current employee parking lot would be converted to a paid parking lot for passengers. Shuttle vans will be used to transport the tenant employees to the terminal and that would be an additional expense that may be brought to the Board at a later date.

Ms. Brown asked if the additional lots would be controlled and if extra people to staff the lots would be necessary. Mr. Reisman responded that staff is considering a ticket in and credit card out option for the lower passenger parking lot. The lot would be automated with proper signage identifying it as a credit card only lot. There are approximately 250 spaces in that lower parking lot and typically only 125 spaces are utilized at any one time. The new gravel lots with 100 to 150 spaces would be able to handle tenant employee parking.

Mr. Bailey moved to approve Consultant Scope of Services No. 4 with Delta Airport Consultants, Inc. with a not to exceed cost of \$41,500.00, authorize the Executive Director to execute the necessary documents, and amend the FY14/15 budget by adopting the budget ordinance amendment as presented by staff. Ms. Brown seconded the motion and it carried unanimously.

**D. Approval of Insurance Renewals:** Suzie Baker advised the Board that staff went to market for the health insurance renewal with several insurance companies. Mrs. Baker called the Board's attention to a spreadsheet that detailed the various quotes received. While United Health Care's quote was lower than the Authority's existing

carrier, Cigna, staff did not recommend changing health insurance carriers and cited a few reasons for this recommendation. Mrs. Baker reported that the Authority's renewal trend with Cigna has been very good the past few years and this is due in part to the level funded plan structure that limits the Authority's large claim responsibility to \$25,000. If the Authority were to leave Cigna, the same plan currently offered by Cigna would not be available in the future. Cigna quoted a 4.9% increase in rates for a total approximate premium of \$814,000.00. Offset by employee contributions of \$67,000.00, the Authority's net cost for health insurance will be approximately \$747,000.00.

Mr. Burril commented that he was not sure if the number limits for the Cadillac plans had been set by the Affordable Care Act, but expressed concern that the Authority's plan may bump into that range and possibly lead to a W2 event to employees. Mrs. Baker assured Mr. Burril that this is constantly watched and that the current plan would not meet the Cadillac plan regulations.

Mrs. Baker stated that dental insurance has been provided by Ameritas Group and after shopping several dental providers, the Authority's broker recommends staying with Ameritas. Ameritas has quoted a flat renewal and the total premiums will be approximately \$45,480.00. Offset by employee contributions of \$4,818.00, the Authority's net cost for dental insurance will be approximately \$40,662.00.

Mrs. Baker further reviewed employee life insurance, accidental death & dismemberment as well as short and long term disability. Mutual of Omaha will provide coverage for all these insurances. The life insurance and accidental death & dismemberment will be in year two of a two-year locked rate and the premiums will approximate \$10,584.00. The short and long-term disability insurance will approximate \$22,197.00.

Mrs. Baker highlighted the business insurance placed through Aviation Risk Consulting and stated that the best quotes were with the Authority's current carriers and detailed that information for the Board. Mrs. Baker stated that the estimated cost for property, general liability, auto, and commercial crime will be \$104,000.00. The worker's compensation insurance will be renewed at an estimated premium of \$77,000.00. Mrs. Baker further reviewed public officials, law enforcement and employment practices liability coverage placed through BB&T at an estimated cost of \$44,500.00. Total business insurance is estimated to cost \$225,500.00 for fiscal year 2015/2016.

Mr. Moyer asked for an understanding of the benefits of Cigna over Blue Cross Blue Shield for health insurance. The Director stated that the Blue Cross Blue Shield quote was basically flat and anticipated through experience and references, Blue Cross could come back the following year with an increase that could be quite high. The trend with Cigna has been consistent the past few years with very manageable increases.

Ms. Brown inquired if the Authority covered the same share for employees' families. The Director responded that the Authority did cover the same share for employees' families. The Director gave a brief background on the Authority's coverage for health insurance and highlighted how employees can participate in the Authority's wellness program to receive discounts on their premiums.

Mr. Moyer moved to approve the renewal of the Authority's insurance coverages as presented by staff and authorize the Executive Director to execute the necessary documents. Mr. Bailey seconded the motion and it carried unanimously.

**E. Approval of Amended Pay Grade Structure:** Suzie Baker reported that a regional airport salary survey was completed in collaboration with three other airports in the region. The survey includes information from 28 airports of similar size as well as county and city governments, local businesses, and a salary survey completed by Airport Council International. Mrs. Baker stated that the FY15-16 Budget previously approved by the Board included \$30,000 for any necessary salary adjustments as a result of the survey, and called the Board's attention to a recommended Pay Grade Structure that was available at their seats. Staff will monitor financial conditions and the aviation industry before making final recommendations for the July 1, 2015 implementation of any increases to the nine or ten employees that would be affected.

Mr. Bailey moved to approve the amended Pay Grade Structure and authorize the Executive Director to implement such changes effective July 1, 2015. Mr. Burril seconded the motion and it carried unanimously.

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

**A. Update on Airline Agreement:** Staff hired a consultant to evaluate the Authority's Airline Agreement and Rates & Charges. A meeting was held recently with the airline representatives to review the agreement and rates and charges. Staff is looking into revising the agreement and rates and charges in the following areas: amount the Authority is subsidizing the airfield cost center to the airlines, the way de-icing chemicals are being treated and paid for by the airlines, and the discrepancies with how the Authority charges airlines that don't operate on a regular basis. The Director intends to have the new agreement on the agenda for approval at the June Authority Board meeting.

**B. Information Articles:** The Director called the Board's attention to two articles that were available at their seats. The PFC article describes the battle between airports and airlines over the increase in PFC's. The second article was about the strike that

Allegiant Airlines' pilots had threatened the previous week. Allegiant filed an injunction to stop the strike. The pilots' union honored the injunction, and mediation is taking place to negotiate a new contract.

**C. Annual Report:** The 2014 Annual Report was available at the Board Members' seats. The Annual Report will be distributed throughout the community.

**D. North Carolina Airport Association:** The Director announced that Tina Kinsey was recently appointed to the Board of Directors of the North Carolina Airport Association.

**E. Western LLC:** The Director advised the Board that staff is entering into a marketing agreement with Western LLC, a third-party developer. The agreement will be non-binding and Western LLC will finance the promotion of the airport as a development area. The Director further stated that if the economic development entities from Buncombe or Henderson County bring a project directly or the Authority receives a call from an interested party seeking to develop on airport property, the agreement with Western LLC will not interfere nor transfer.

**INFORMATION SECTION:** No comments

**PUBLIC AND TENANTS' COMMENTS:** None

**CALL FOR NEXT MEETING:** The Chair stated that the May 15 meeting would not be necessary and the next regular meeting will be held on June 12, 2015.

**AUTHORITY MEMBER REPORTS:**

**A. Strategic Planning Update:** The Chair stated that the strategic focus was reviewed at the last meeting. An updated document was included in the agenda package for the Board's review and any further discussion.

**CLOSED SESSION:** At 10:38 a.m. Mr. Piccirillo moved to go into Closed Session pursuant to Subsections 143-318.11(a)(3), (4) and (6) of the General Statutes of North Carolina to Consult with Legal Counsel in Order to Preserve the Attorney-Client Privilege, 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, and to Consider Personnel Matters. Mr. Moyer seconded the motion and it carried unanimously.

The Chair indicated they would break until 10:45 a.m., at which time the Board would resume in closed session.

Open Session resumed at 12:25 p.m.

**GREATER ASHEVILLE REGIONAL AIRPORT AUTHORITY APRIL 10, 2015**

**CLOSED SESSION MINUTES:** Mr. Piccirillo 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. Bailey seconded the motion and it carried unanimously.

**GREATER ASHEVILLE REGIONAL AIRPORT AUTHORITY MARCH 13, 2015**

**CLOSED SESSION MINUTES:** Mr. Piccirillo moved to approve the minutes for the March 13, 2015 Closed Session and to seal and withhold such 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.

**ADJOURNMENT:** Mr. Piccirillo moved to adjourn the meeting at 12:27 p.m. Mr. Bailey seconded the motion and it carried unanimously.

Respectfully submitted,

Ellen Heywood  
Clerk to the Board

Approved:

Robert C. Roberts  
Chair





## **MEMORANDUM**

TO: Members of the Airport Authority

FROM: Janet Burnette, Director of Finance and Accounting

DATE: June 12, 2015

### **ITEM DESCRIPTION – Consent Item C**

Approval of Audit Contract with Martin Starnes & Associates, CPAs, P.A. for Fiscal Year Ending June 30, 2015

### **BACKGROUND**

Four years ago, Authority Staff issued a Request for Proposal for audit services and the Board chose Martin Starnes & Associates, CPAs, P.A. as the Authority's auditors. We are presenting a contract for auditing services with Martin Starnes for the annual audit for the final year of the contract, the fiscal year ended June 30, 2015. Staff will be pursuing proposals over the coming months for audit services into the future.

### **ISSUES**

None

### **ALTERNATIVES**

The Board could elect to reject the current contract being presented by Martin Starnes & Associates, CPAs, P. A. and request staff to seek alternate firms to conduct the fiscal year end audit.

### **FISCAL IMPACT**

The contract fee for services rendered by Martin Starnes is \$14,000. The expense for audit services was anticipated and included in the budget for FY 2016 as presented by Authority Staff.

Consent – Item C



## **RECOMMENDED ACTION**

It is respectfully requested that the Greater Asheville Regional Airport Authority Board resolve to (1) approve the contract for audit services with Martin Starnes & Associates, CPAs, P.A. in the amount of \$14,000, and (2) authorize the Board Chair to execute the necessary documents.

Attachment

CONTRACT TO AUDIT ACCOUNTS

Of Greater Asheville Regional Airport Authority
Governmental Unit and Discretely Presented Component Unit (DPCU) if applicable

On this 15th day of April, 2015,

Auditor: Martin Starnes & Associates, CPAs, P.A. Auditor Mailing Address: 730 13th Avenue Drive SE, Hickory, NC 28602 Hereinafter referred to as The Auditor

and Board of Directors (Governing Board (s)) of

Greater Asheville Regional Airport Authority : hereinafter referred to as the Governmental Unit (s), agree as follows:
Governmental Unit (s)

1. The Auditor shall audit all statements and disclosures required by generally accepted accounting principles (GAAP) and additional required legal statements and disclosures of all funds and/or divisions of the Governmental Unit (s) for the period beginning July 1, 2014, and ending June 30, 2015. The non-major combining, and individual fund statements and schedules shall be subjected to the auditing procedures applied in the audit of the basic financial statements and an opinion will be rendered in relation to (as applicable) the governmental activities, the business-type activities, the aggregate DPCU's, each major governmental and enterprise fund, and the aggregate remaining fund information (non-major government and enterprise funds, the internal service fund type, and the fiduciary fund types).

2. At a minimum, the Auditor shall conduct his/her audit and render his/her report in accordance with generally accepted auditing standards. The Auditor shall perform the audit in accordance with Government Auditing Standards if required by the State Single Audit Implementation Act, as codified in G.S. 159-34. If required by OMB Circular A-133 Audits of States, Local Governments, and Non-Profit Organizations and the State Single Audit Implementation Act, the Auditor shall perform a Single Audit. This audit and all associated workpapers may be subject to review by Federal and State agencies in accordance with Federal and State laws, including the staffs of the Office of State Auditor (OSA) and the Local Government Commission (LGC). If the audit and/or workpapers are found in this review to be substandard, the results of the review may be forwarded to the North Carolina State Board of CPA Examiners (NC CPA Board).

County and Multi-County Health Departments: The Office of State Auditor will designate certain programs that have eligibility requirements to be considered major programs in accordance with OMB Circular A-133 for the State of North Carolina. The LGC will notify the auditor and the County and Multi-Health Department of these programs. A County or a Multi-County Health Department may be selected to audit any of these programs as major.

3. If an entity is determined to be a component of another government as defined by the group audit standards - the entity's auditor will make a good faith effort to comply in a timely manner with the requests of the group auditor in accordance with AU-6 §600.41 - §600.42.

4. This contract contemplates an unqualified opinion being rendered. The audit shall include such tests of the accounting records and such other auditing procedures as are considered by the Auditor to be necessary in the circumstances. Any limitations or restrictions in scope which would lead to a qualification should be fully explained in an attachment to this contract.

5. If this audit engagement is subject to the standards for audit as defined in Government Auditing Standards, 2011 revisions, issued by the Comptroller General of the United States, then by accepting this engagement, the Auditor warrants that he has met the requirements for a peer review and continuing education as specified in Government Auditing Standards. The Auditor agrees to provide a copy of their most recent peer review report regardless of the date of the prior peer review report to the Governmental Unit and the Secretary of the LGC prior to the execution of the audit contract (See Item 22). If the audit firm received a peer review rating other than pass, the Auditor shall not contract with the Governmental Unit without first contacting the Secretary of the LGC for a peer review analysis that may result in additional contractual requirements.

If the audit engagement is not subject to Government Accounting Standards or if financial statements are not prepared in accordance with GAAP and fail to include all disclosures required by GAAP, the Auditor shall provide an explanation as to why in an attachment..

6. It is agreed that time is of the essence in this contract. All audits are to be performed and the report of audit submitted to the State and Local Government Finance Division (SLGFD) within four months of fiscal year end. Audit report is due on: October 31, 2015. If it becomes necessary to amend this due date or the audit fee, an amended contract along with a written explanation of the delay must be submitted to the Secretary of the LGC for approval.

**Contract to Audit Accounts (cont.)**

Greater Asheville Regional Airport Authority

Name of Governmental Unit and Discretely Presented Component Unit's (DPCU) if applicable

7. It is agreed that generally accepted auditing standards include a review of the Governmental Unit's systems of internal control and accounting as same relates to accountability of funds and adherence to budget and law requirements applicable thereto; that the Auditor will make a written report, which may or may not be a part of the written report of audit, to the Governing Board setting forth his findings, together with his recommendations for improvement. That written report must include all matters defined as "significant deficiencies and material weaknesses" in AU-C 265 of the *AICPA Professional Standards (Clarified)*. The Auditor shall file a copy of that report with the Secretary of the LGC.
8. All local government and public authority contracts for audit or audit-related work require the approval of the Secretary of the LGC. This includes annual or special audits, agreed upon procedures related to internal controls, bookkeeping or other assistance necessary to prepare the Governmental Unit's records for audit, financial statement preparation, any finance-related investigations, or any other audit-related work in the State of North Carolina. **Invoices for services rendered under these contracts shall not be paid by the Governmental Unit until the invoice has been approved by the Secretary of the LGC.** (This also includes any progress billings.) [G.S. 159-34 and 115C-447] All invoices for Audit work must be submitted by email in PDF format to the Secretary of the LGC for approval. The invoices must be sent to: [lgc.invoice@nctreasurer.com](mailto:lgc.invoice@nctreasurer.com). Subject line should read "Invoice – [Unit Name]. The PDF invoice marked 'approved' with approval date will be returned by email to the Auditor to present to the Governmental Unit for payment. Approval is not required on contracts and invoices for system improvements and similar services of a non-auditing nature.
9. In consideration of the satisfactory performance of the provisions of this contract, the Governmental Unit shall pay to the Auditor, upon approval by the Secretary of the LGC, the following fee, which includes any cost the Auditor may incur from work paper or peer reviews or any other quality assurance program required by third parties (Federal and State grantor and oversight agencies or other organizations) as required under the Federal and State Single Audit Acts:

**Year-end bookkeeping assistance – [For audits subject to Government Auditing Standards, this is limited to bookkeeping services permitted by revised Independence Standards]** \_\_\_\_\_

**Audit \$11,450** \_\_\_\_\_

**Preparation of the annual financial statements \$2,550** \_\_\_\_\_

Prior to submission of the completed audited financial report, applicable compliance reports and amended contract (if required) the Auditor may submit invoices for approval for services rendered, not to exceed 75% of the total of the stated fees above. If the current contracted fee is not fixed in total, invoices for services rendered may be approved for up to 75% of the prior year audit fee. **The 75% cap for interim invoice approval for this audit contract is \$ 10,500** **\*\* NA if no interim billing**

10. If the Governmental Unit has outstanding revenue bonds, the Auditor shall include documentation either in the notes to the audited financial statements or as a separate report submitted to the SLGFD along with the audit report, a calculation demonstrating compliance with the revenue bond rate covenant. Additionally, the Auditor should be aware that any other bond compliance statements or additional reports required in the authorizing bond documents need to be submitted to the SLGFD simultaneously with the Governmental Unit's audited financial statements unless otherwise specified in the bond documents.
11. After completing the audit, the Auditor shall submit to the Governing Board a written report of audit. This report shall include but not be limited to the following information: (a) Management's Discussion and Analysis, (b) the financial statements and notes of the Governmental Unit and all of its component units prepared in accordance with GAAP, (c) supplementary information requested by the client or required for full disclosure under the law, and (d) the Auditor's opinion on the material presented. The Auditor shall furnish the required number of copies of the report of audit to the Governing Board as soon as practical after the close of the accounting period.
12. If the audit firm is required by the NC CPA Board or the Secretary of the LGC to have a pre-issuance review of their audit work, there must be a statement added to the engagement letter specifying the pre-issuance review including a statement that the Governmental Unit will not be billed for the pre-issuance review. The pre-issuance review must be performed **prior** to the completed audit being submitted to the LGC. The pre-issuance report must accompany the audit report upon submission to the LGC.
13. The Auditor shall electronically submit the report of audit to the LGC when (or prior to) submitting the invoice for services rendered. The report of audit, as filed with the Secretary of the LGC, becomes a matter of public record for inspection, review and copy in the offices of the SLGFD by any interested parties. Any subsequent revisions to these reports must be sent to the Secretary of the LGC. These audited financial statements are used in the preparation of official statements for debt offerings (the Auditors' opinion is not included) by municipal bond rating services to fulfill secondary market disclosure requirements of the Securities and Exchange Commission and other lawful purposes of the Governmental Unit without subsequent consent of the

Auditor. If it is determined by the LGC that corrections need to be made to the Governmental Unit's financial statements, they should be provided within three days of notification unless, another time frame is agreed to by the LGC.

If the OSA designates certain programs to be audited as major programs, as discussed in item #2, a turnaround document and a representation letter addressed to the OSA shall be submitted to the LGC.

The LGC's process for submitting contracts, audit reports and Invoices is subject to change. Auditors should use the submission process in effect at the time of submission. The most current instructions will be found on our website: <https://www.nctreasurer.com/slg/Pages/Audit-Forms-and-Resources.aspx>

14. Should circumstances disclosed by the audit call for a more detailed investigation by the Auditor than necessary under ordinary circumstances, the Auditor shall inform the Governing Board in writing of the need for such additional investigation and the additional compensation required therefore. Upon approval by the Secretary of the LGC, this contract may be varied or changed to include the increased time and/or compensation as may be agreed upon by the Governing Board and the Auditor
15. If an approved contract needs to be varied or changed for any reason, the change must be made in writing, signed and dated by all parties and pre-audited if the change includes a change in audit fee. This document and a written explanation of the change must be submitted by email in PDF format to the Secretary of the LGC for approval. The portal address to upload your amended contract and letter of explanation documents is <http://nctreasurer.slgfd.leapfile.net> No change shall be effective unless approved by the Secretary of the LGC, the Governing Board, and the Auditor.
16. Whenever the Auditor uses an engagement letter with the Governmental Unit, Item #17 is to be completed by referencing the engagement letter and attaching a copy of the engagement letter to the contract to incorporate the engagement letter into the contract. In case of conflict between the terms of the engagement letter and the terms of this contract, the terms of this contract will control. Engagement letter terms are deemed to be void unless the conflicting terms of this contract are specifically deleted in Item #23 of this contract. Engagement letters containing indemnification clauses will not be approved by the LGC.
17. Special provisions should be limited. Please list any special provisions in an attachment. See attached engagement letter.
18. A separate contract should not be made for each division to be audited or report to be submitted. If a DPCU is subject to the audit requirements detailed in the Local Government Budget and Fiscal Control Act and a separate audit report is issued, a separate audit contract is required. If a separate report is not issued and the DPCU is included in the primary government audit, the DPCU must be named along with the parent government on this audit contract. Signatures from the DPCU Board chairman and finance officer also must be included on this contract.
19. The contract must be executed, pre-audited, physically signed by all parties including Governmental Unit and Auditor signatures and submitted in PDF format to the Secretary of the LGC. The current portal address to upload your contractual documents is <http://nctreasurer.slgfd.leapfile.net> Electronic signatures are not accepted at this time. Included with this contract are instructions to submit contracts and invoices for approval as of April, 2014. These instructions are subject to change. Please check the NC Treasurer's web site at [www.nctreasurer.com](http://www.nctreasurer.com) for the most recent instructions.
20. The contract is not valid until it is approved by the LGC Secretary. The staff of the LGC shall notify the Governmental Unit and Auditor of contract approval by email. The audit should not be started before the contract is approved.
21. There are no other agreements between the parties hereto and no other agreements relative hereto that shall be enforceable unless entered into in accordance with the procedure set out herein and approved by the Secretary of the LGC.
22. Municipal & County Contracts: The Auditor acknowledges that any private employer transacting business in this State who employs 25 or more employees in this State must, when hiring an employee to work in the United States, use E Verify to verify the work authorization of the employee in accordance with N.C.G.S. §64 26(a). The Auditor acknowledges further that any such private employer and its subcontractors must comply with all of the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (North Carolina's E-verify law), and that such private employer has a duty under the law to ensure compliance by its subcontractors. The Auditor further acknowledges that this contract is of the type governed by S.L. 2013-418, which makes it unlawful for a local government to enter into certain types of contracts unless the contractor and its subcontractors comply with North Carolina's E-verify law, and that failure to comply with such law could render this contract void. The Auditor hereby covenants, warrants and represents for itself and its subcontractors that with respect to this contract the Auditor and its subcontractors shall comply with the provisions of North Carolina's E-verify law and that failure to comply with such law shall be deemed a breach of this contract and may render this contract void.
23. All of the above paragraphs are understood and shall apply to this contract, except the following numbered paragraphs shall be deleted: (See Item 16 for clarification).

Contract to Audit Accounts (cont.) Greater Asheville Regional Airport Authority  
Name of Governmental Unit and Discretely Presented Component Unit's (DPCU) if applicable

*Communication regarding audit contract requests for modification or official approvals will be sent to the email addresses provided in the spaces below.*

**Audit Firm Signature:**

Martin Starnes & Associates, CPAs, P.A.  
Name of Audit Firm

By Amber Y. McGhinnis, Audit Manager  
Authorized Audit firm representative name: Type or print

  
Signature of authorized audit firm representative

amcghinnis@martinstarnes.com

Email Address of Audit Firm:

Date April 15, 2015

Date

**Governmental Unit Signatures:**

By Bob Roberts, Chairman  
Mayor / Chairperson: Type or print name and title

Signature of Mayor/Chairperson of governing board

Date \_\_\_\_\_

By N/A  
DPCU Chairperson: Type or print name and title

N/A

Signature of Chairperson of DPCU if applicable

Date N/A

**Unit Signatures (continued):**

By N/A  
Chair of Audit Committee - Type or print name

N/A \*\*  
Signature of Audit Committee Chairperson

Date N/A

*\*\* If Governmental Unit has no audit committee, this section should be marked "N/A."*

**PRE-AUDIT CERTIFICATE: Required by G.S. 159-28 (a)**  
This instrument has been preaudited in the manner required by The Local Government Budget and Fiscal Control Act or by the School Budget and Fiscal Control Act. Additionally, the following date is the date this audit contract was approved by the governing body.

By Janet Burnette, Director of Finance and Accounting  
Governmental Unit **Finance Officer:** Type or print name

Finance Officer Signature

jburnette@flyavl.com

Email Address of Finance Officer

Date \_\_\_\_\_  
*(Pre-audit Certificate must be dated.)*

Date Governing Body Approved Audit Contract - G.S. 159-34(a)

Board Approval Date – Primary Government

N/A

Board Approval Date - DPCU



## SYSTEM REVIEW REPORT

May 22, 2012

Martin, Starnes & Associates, CPAs, PA and the  
Peer Review Committee, North Carolina Association  
of Certified Public Accountants

We have reviewed the system of quality control for the accounting and auditing practice of Martin, Starnes & Associates, CPAs, PA (the firm) in effect for the year ended December 31, 2011. Our peer review was conducted in accordance with the Standards for Performing and Reporting on Peer Reviews established by the Peer Review Board of the American Institute of Certified Public Accountants. The firm is responsible for designing a system of quality control and complying with it to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. Our responsibility is to express an opinion on the design of the system of quality control and the firm's compliance therewith based on our review. The nature, objectives, scope, limitations of, and the procedures performed in a System Review are described in the standards at [www.aicpa.org/prsummary](http://www.aicpa.org/prsummary).

As required by the standards, engagements selected for review included engagements performed under the *Government Auditing Standards* and audits of employee benefit plans.

In our opinion, the system of quality control for the accounting and auditing practice of Martin, Starnes & Associates, CPAs, PA, in effect for the year ended December 31, 2011, has been suitably designed and complied with to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. Firms can receive a rating of *pass*, *pass with deficiency(ies)* or *fail*. Martin, Starnes & Associates, CPAs, PA has received a peer review rating of *pass*.

*Koonce, Wooten & Haywood, LLP*

Koonce, Wooten & Haywood, LLP

**Raleigh**  
4060 Barrett Drive  
Post Office Box 17806  
Raleigh, North Carolina 27619

919 782 9265  
919 783 8937 FAX

**Durham**  
3511 Shannon Road  
Suite 100  
Durham, North Carolina 27707

919 354 2584  
919 489 8183 FAX

**Pittsboro**  
10 Sanford Road  
Post Office Box 1399  
Pittsboro, North Carolina 27312

919 542 6000  
919 542 5764 FAX



## **MEMORANDUM**

TO: Members of the Airport Authority

FROM: Lew Bleiweis, A.A.E., Executive Director

DATE: June 12, 2015

### **ITEM DESCRIPTION – New Business Item A**

Approval of Airline Operating Agreement and Airline Rates & Charges

### **BACKGROUND**

The Airport Authority has an agreement and an established method for calculating the fees the airlines pay for operating at the Asheville Regional Airport. The current agreement was approved by the Board in June 2009. Since that time, the industry has changed and the number of airlines have consolidated. As staff has previously mentioned to the Board, negotiations with the airlines for a new agreement have been on-going since last summer. There are three main issues which caused staff to move forward with a new agreement. 1. The amount and transparency of the subsidy being granted to the airlines for the airfield cost center (landing fees); 2. The method of charging the airlines for the use of runway deicing chemicals; and 3. The method of charging those airlines that fly less than 7 flights per week. This new agreement clears up those items and a few other minor discrepancies. Trillion Aviation, our consultant on this matter has done an exemplary job of creating a new agreement and rate method that focuses on these major points of discussion.

### **ISSUES**

The airlines are not fully receptive to this new agreement and minor language changes still may need to be made. The airlines are also taking a hard line, not just here, but across the country on new agreements, how ultra-low cost carriers are being treated, control over decision making, and some other items to name a few. Staff is optimistic the airlines will execute this agreement.

New Business – Item A





## **ALTERNATIVES**

The Authority Board could decide not to implement the new agreement and rate methodology; negotiate different terms for the agreement; or establish rates & charges by ordinance rather than by an agreement.

## **FISCAL IMPACT**

The new airline operating agreement and rate methodology has a neutral impact on airlines rates and has been taken under consideration while working through the annual budget process. The new agreement puts more financial risk on the airlines but at the same time rewards them with an annual reconciliation. The new agreement is also more fair and equitable amongst the airlines whereby no one particular airline benefits over another.

## **RECOMMENDED ACTION**

It is respectfully requested that the Greater Asheville Regional Airport Authority Board resolve to (1) approve the proposed new airline operating agreement and rates & charges methodology; and (2) authorize the Executive Director to execute the necessary documents.

Attachment

**AIRLINE-AIRPORT OPERATING AND SPACE USE AGREEMENT**

**THIS AGREEMENT**, made and entered into this \_\_\_ day of \_\_\_\_\_, 2015, (“Effective Date”) by and between the **GREATER ASHEVILLE REGIONAL AIRPORT AUTHORITY**, a joint governmental agency organized and created by the General Statutes of North Carolina, whose address is 61 Terminal Drive, Suite 1, Fletcher, North Carolina 28732, hereinafter referred to as “Authority”, and

**Name of Airline:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Telephone:** \_\_\_\_\_ **Fax:** \_\_\_\_\_

**Email:** \_\_\_\_\_

**Authorized Representative:**

**Name:** \_\_\_\_\_ **Title:** \_\_\_\_\_

a \_\_\_\_\_ duly organized and existing under the laws of the State of \_\_\_\_\_, and authorized to do business in the State of North Carolina doing business as \_\_\_\_\_ and hereinafter referred to as “Airline.”

**WITNESSETH**

**WHEREAS**, Authority has the right to lease and license the use of property on the Asheville Regional Airport and has full power and authority to enter into this Agreement in respect thereof; and

**WHEREAS**, Airline, as duly authorized by competent governmental authority, is engaged in the business of certificated air transportation with respect to persons, property, cargo and mail at the Airport and elsewhere; and

**WHEREAS**, Airline requires the use of certain premises, facilities, rights and privileges in connection with its use of the Airport and with respect to the passenger Terminal Building and Authority is willing to grant the same to Airline upon the terms and conditions hereinafter stated.

**NOW, THEREFORE**, for and in consideration of the premises and of the mutual covenants hereinafter contained, the parties hereto agree as follows:

**1. Definitions.**

“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. Each Affiliate shall execute an operating agreement with the Authority with terms consistent with the Agreement. Each Affiliate's operations shall be counted and recorded jointly with AIRLINE's and shall be at the same rate.

"Airline(s)" are 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.

"Airline-Airport Operating and Space Use Agreement" or "Agreement" is this or substantially similar agreement to operate at the Asheville Regional Airport.

"Airline Parking Position" is an area adjacent to the Terminal Building for aircraft parking, loading and unloading that may be assigned to an Airline.

"Airline Rentals, Fees and Charges" or "Rentals, Fees and Charges" are the rentals, fees and charges for any Fiscal Year calculated under this Agreement.

"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.

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

"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; provided, however, that the Airport Operating Requirement shall not include any amounts included in (1) through (9) which are chargeable to a Special Facility.

"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.

"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, pursuant to the Agreement, are assigned to such Airline for its Preferential use.

"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.

"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.

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

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

"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".

"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.

"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.

"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.

"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.

"Grants-in-Aid" are the grant funds from the Federal Airport Improvement Program (AIP), any successor Federal program to AIP, the funds from the State of North Carolina Department of Transportation made available to Authority to be used for Airport capital projects and equipment, and funds from any other essentially similar capital funding programs made available to the Authority to be used for Airport capital projects and equipment.

"Holdrooms" means the gate seating areas currently situated in the Airport Terminal Building, as depicted on Attachment B., 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.

"Joint Use Formula" is, for any Fiscal Year, the formula used for prorating Terminal Building Rentals for 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 Signatory 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 Signatory Airlines using Joint Use Space based upon Airline's share of aircraft departures.

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

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

"Non-Signatory Airline" is an Airline that has not executed an Airline-Airport Operating and Space Use Agreement. Such Non-Signatory Airline shall be subject to a premium fee of 125% of rates and charges.

"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 as set forth this Agreement.

"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.

"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.

"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.

"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.

"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.

"Signatory Airline" is an Airline that has executed an Airline-Airport Operating and Space Use Agreement. Further, Airline must lease a minimum amount of Preferential Use Space as prescribed in this Agreement.

"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.

"Statement of Airlines' Annual Rates and Charges" is the statement the rates, fees and charges due by Airline to the Authority and is reestablished each Fiscal Year.

"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.

## **2. Term.**

The term of this Agreement will commence on the Effective Date and unless sooner terminated in accordance with the terms and provisions of this Agreement, shall continue until terminated by either party by giving sixty (60) calendar days' prior written notice to the other party of its intention to terminate.

## **3. Use of the Airport.**

The Authority is the operator of the Asheville Regional Airport ("Airport") located in Asheville, North Carolina; and by executing this Airline-Airport Operating and Space Use Agreement ("Agreement"), Airline evidences its intent to commence or continue the operation of its business of transporting passengers, cargo and/or mail by air ("Air Transportation Business") at the Airport. Airline, and its Affiliates, shall have the right to operate its Air Transportation Business at the Airport, including the right to land and

takeoff its aircraft, park its aircraft and load and unload its passengers, baggage, mail and air cargo at locations in the airport terminal (“Terminal Building”) at the Airport. Airline shall not conduct any business or commercial operation from or on the Airport that is not part of its Air Transportation Business.

#### **4. Use of Terminal Building.**

Airline, and its Affiliates, are authorized to use Preferential Use Space, Joint Use Space, and Airline Parking Positions at the Airport (i) as may be assigned to Airline by Authority, or (ii) as may be otherwise permitted herein.

**(a) Assigned, Preferential Use Space.** The following applies to any space (hereinafter referred to as the “Assigned Space”) assigned to Airline by Authority hereunder. The Assigned Space shall consist of space in the Terminal at the Airport, as more particularly described in the drawing attached hereto as **Exhibit “A”**. All space assigned on a Preferential Use basis is depicted on such **Exhibit “A”**. Airline’s use of such areas shall be limited to its core, travel business (e.g., processing passengers, sale of airline tickets) and not for third party solicitations and advertisements. An Airline must be assigned at least 150 square feet of Preferential Use Space in order to be a Signatory Airline.

**(b) Joint Use Space.** Airline shall have the right, in common with other airlines operating at the Airport, to use the common passenger screening, holdrooms, baggage make-up, baggage claim, loading ramps and bridges, and tug drive areas of the Terminal, as more particularly described in the drawing attached hereto as **Exhibit “B”**. Authority reserves the right to reassign any and all Joint Use Space at the discretion of the Executive Director of the Authority (“Director”). Airline’s use of such areas shall be limited to the enplaning and deplaning of its passengers and their baggage, and cargo in connection with the operation of Airline’s Air Transportation Business at the Airport. Airline agrees that its use of the foregoing areas shall be subject to the reasonable and non-discriminatory rules and regulations established from time to time by the Director, or such other person designated by Authority, to exercise functions with respect to the rights of the Authority under this Agreement.

#### **5. Rate Making Methodology.** Rates and Charges shall be established annually based on the procedure set by the Authority, and which rates and charges may be amended by the Authority, subject to consultation and review with the Airline and other Signatory Airlines.

**(a) Overview.** The rates and charges are developed under a commercial compensatory rate making methodology for the terminal cost center and a modified residual methodology for the airfield cost center. The rates and charges will be calculated and set at the beginning of each Fiscal Year.

**(b) Terminal Building.** The terminal cost center consists 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. It also includes the areas immediately adjacent to the west side of the terminal building utilized for baggage tug drives and baggage tug storage, and all public area, concession and other leasable areas.

(i) Terminal Building operating requirement is calculated 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, and net Depreciation, Amortization, Capital Outlay, and Debt Service ("Capital Charges"). This total is reduced by non-airline revenue credits applied by the Director, which are amounts subtracted from the Terminal Building operating requirement. These credits are reimbursements and offsets to base costs. The net Terminal Building operating requirement is then divided by Rentable Space to obtain the Terminal Building rental rate. The 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.

(ii) Due to the compensatory nature of the Terminal Building Rentals, an annual reconciliation of actual expenses and revenues for the preceding Fiscal Year shall not occur.

**(c) Airfield Area.** The airfield 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. 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 be charged and allocated to the airfield.

- (i) The airfield operating requirement is the sum of O&M Expenses allocated to the airfield area, O&M Reserve Requirement, and net Depreciation, Amortization, Capital Outlay, and Debt Service ("Capital Charges"). The airfield area operating requirement is reduced by non-airline revenue credits applied by the Director. This adjusted amount is the net airfield area operating requirement. This net requirement is then divided by the Certified Maximum Gross Landed Weight (CMGLW) of all Signatory Airlines' Revenue Aircraft Arrivals to determine the Airlines' Landing Fee rate. This Landing Fee rate multiplied by the estimated CMGLW of the Signatory Airlines' Revenue Aircraft Arrivals establishes the Airlines' Landing Fee revenue requirement. At the discretion of the Director, any anticipated and consistent Non-Signatory revenue and landed weight may be included in the requirement.
- (ii) As soon as possible following the close of each Fiscal Year, the actual Signatory Airline Landing Fees shall be ascertained by Authority for the Fiscal Year based on actual Airport expense and actual Airport revenues allocable to the airfield cost center. If the net result in reconciling actual expenses and revenues results in a credit due to Airline, then the amount of such excess attributable to Airline shall be refunded as a direct credit to Airline to be applied to any outstanding invoice. If the net result in reconciling actual expense and revenues results in an amount due to Authority, then Authority shall invoice Airline such deficit attributable to Airline. The Authority shall use good faith efforts to advise Airline in writing prior to the issuance of an impending credit or deficit.

**(d) Other Cost Centers.** All other cost centers are not included as part of Airlines' Rates and Charges. 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.

**(e) Capital Funding and Projects.** The Authority amortizes grants and PFCs received for the construction and acquisition of depreciable assets against the gross annual Depreciation. It also amortizes, as a credit against gross asset cost (to the extent the Authority reasonably anticipates the near-term receipts of PFC funds) future PFC funds anticipated to be received for a portion of the asset cost being depreciated. Land Amortization (the recovery of the cost of land over a period of thirty (30) years) is a second element of the Authority's Capital Charge component. The net annual land cost is calculated after adjusting the gross cost for grants and PFCs in the same manner as Airport assets subject to Depreciation are adjusted. The Authority currently has no outstanding Bonds for which it makes annual

Debt Service payments. Should Bonds be issued in the future, the Debt Service for those Bonds would be included in annual Capital Charges to the Airlines. Any PFCs collected for this Debt Service would appear as a credit against gross Debt Service to calculate the net Debt Service included in the Rentals, Fees and Charges calculations. Local funds are Airport-generated capital funds, Bonds and rental car customer facility charges (CFCs).

**(f) Extraordinary Adjustment.** Under extraordinary circumstances, including but not limited to significant reduction in air service of ten percent (10%) or greater, the Authority does retain the right to implement an adjustment to the rates and charges at any time during the fiscal year.

**(g) Audited Financials.** The Authority will make available to Airline a copy of the Authority's audited annual financial statements each year.

**6. Rentals, Fees, and Charges.** Authority shall establish and formally notify Airline in writing of the Airline Rentals, 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 discuss the Airlines' Rentals, Fees and Charges, expenses and capital charges used in the calculation, and to answer questions of Airline. Airlines' Rentals, Fees and Charges shall be set forth and supported by a document prepared by the Authority known as the "Statement of Airlines' Annual Rates and Charges". So long as Airline has been notified per above, the implementation of the upcoming Airline's Rentals, Fees and Charges will be effective on the first day of the Fiscal Year regardless of meeting and consultation.

Airline shall pay to Authority the following rentals and fees:

- (a) Assigned, Preferential Use Space.** Airline shall pay the Authority for its use of Assigned, Preferential Use Space in the Terminal.
- (b) Joint Use Space.** Airline shall pay the Authority its share of rentals on Joint Use Space used by Airline in common with other airline tenants.
- (c) 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.
- (d) Passenger Facility Charge ("PFC").** 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 PFC 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.
- (e) Other Fees and Charges.** In addition, in accordance with the terms

and conditions of this Agreement, Airline agrees to 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). Such other fees and charges shall be detailed by the Authority at the annual Airline consultation meeting of the Statement of Airlines' Annual Rates and Charges as described above.

**7. Payment of Rentals, Fees and Charges.** In consideration for the rights granted hereunder by the Authority, Airline shall pay Authority monthly rentals, fees and charges as follows:

- (a)** Space Rentals for its 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.
- (b)** On or before the fifteenth (15<sup>th</sup>) day of each month Airline shall pay for its Landing Fees for the immediately preceding month.
- (c)** Airline shall report to Authority on or before the fifteenth (15<sup>th</sup>) day of each and every month Airline's actual operating activity for the prior month by submitting a written report, in the form of and included herein as **Exhibit "C"** or in such other form as the Authority may later require. If Airline fails to furnish Authority with its monthly operating activity by the date specified, Authority shall estimate Airline's operating activity by any reasonable method. Airline shall pay such invoice without deduction or set-off no later than the first (1<sup>st</sup>) day of the month immediately following the month in which Authority issues its invoice. Upon the request of the Director, but not more than annually, Airline agrees to provide the Director with a certification of the then current CMGLW for each aircraft type then operated by Airline. The acceptance by Authority of any payments from Airline shall not preclude Authority from verifying the accuracy of Airline's reports or be construed as a waiver of interest penalty due, if any.
- (d)** 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.
- (e)** Except as provided in subsection (d) above or if such payments or reporting is under dispute by Airline, Airline shall be deemed delinquent if its payments and reporting information required under subsections (a)

through (c) are not received by the Authority on or before the fifteenth (15<sup>th</sup>) day of the month in which they are due. Authority shall be entitled to assess a late payment fee of one and one-half percent (1.5%) per month or fraction thereof for any amounts that are deemed delinquent from the date due until the date payments are received by Authority, plus a late payment administrative charge of five hundred dollars (\$500.00) per late payment.

- (f)** If in the reasonable business discretion of the Authority, it is determined that the financial condition of Airline, if beginning 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. In the event that the Authority determines a security deposit is required, Airline shall deposit such sum with Authority upon execution of this Agreement or 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. 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 the terms of this Agreement, 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. In the event that all or any portion of the security deposit is so applied, Airline shall promptly, upon demand by Authority, remit to Authority the amount of cash required to restore the security deposit to its original sum, and Airline's failure to do so within ten (10) calendar days after its receipt of such demand shall constitute a default under this Agreement. 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 after the termination of this Agreement. The Authority will not pay interest on any security deposit.

In consideration for the rights granted hereunder by the Authority, Airline shall pay 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:

By U.S. Mail,  
Express Mail or  
Overnight Delivery:

Attn: Accounting Department  
Greater Asheville Regional Airport Authority  
61 Terminal Drive, Suite 1  
Fletcher, NC 28732-9442

By Wire Transfer:

Bank of America

Skyland Branch  
1896 Hendersonville Road  
Asheville, NC 28803  
9-digit routing number: 053000196  
To Credit:  
Greater Asheville Regional Airport Authority  
Account Number 000683542370

In the event this Agreement commences or terminates on other than the first or last day of any particular month, the amount due hereunder shall be prorated.

**8. Obligations With Respect to Terminal Building and Assigned Space.** The following applies to any space assigned by Authority to Airline hereunder:

**(a) Cleaning, Maintenance and Damage of Terminal Building and Assigned Space.**

- (i) Airline accepts the Assigned Space in its present condition, "as is". Airline shall, at its own cost and expense, maintain and repair Airline's equipment, fixtures and personal property installed or located at its Assigned Space, including any Airline-installed connections to Authority-installed utility systems and all Airline's equipment attached or connected to Authority's utility systems whether or not any of the same is affixed or attached to such Assigned Space. Airline shall also provide cleaning, lavatory service and disposal from its aircraft to the Airport's triturator facility, the deicing of aircraft from deicing chemicals stored in tanks provided by Airline and located on an Airport-provided deicing storage area, and custodial maintenance and refuse removal services for its aircraft. Airline shall, at all times, preserve and keep Airline's Assigned Space in an orderly, clean, neat and sanitary condition, free from trash and debris resulting from Airline's operations, provided, however, this requirement shall not be construed to mean Airline shall have custodial cleaning responsibilities designated as Authority obligations pursuant to the paragraph below and as designated on **Exhibit "D"**. Airline shall keep, at its own expense, the bag makeup area and Airline Parking Positions free of trash, fuel, oil, debris and other foreign objects.
- (ii) Authority shall operate and maintain the Airport in a prudent manner and shall keep the Airport, including the Terminal Building, in good condition and repair. Authority's obligation with respect to the Terminal Building shall include responsibility for all roof maintenance and all structural maintenance and the maintenance of the heating, ventilating and air conditioning systems, the electrical system and the plumbing and sewage system up to any

Airline improvement made to the Assigned Space or their attachment to Airline's equipment, the Authority's installed passenger loading bridges, including the ground power and conditioned air equipment, if any, attached thereto, except for those parts of the Assigned Space and those maintenance obligations for which Airline is responsible pursuant to paragraph 8(a)(i) above. Authority's maintenance obligation with respect to the Terminal Building shall also include, except as otherwise specifically provided herein, custodial and general maintenance of Airline's Assigned Space.

- (iii) Airline shall repair, replace or rebuild at its cost, or pay Authority the cost of repairing, replacing, or rebuilding, any damages to the Assigned Space or other portions of the Terminal Building caused by the acts or omissions of Airline, its employees or agents, reasonable wear and tear excepted. Any repairs, replacements or rebuilding provided by Airline shall be subject to approval and inspection by Authority.
  - (iv) In the event Airline fails to perform its obligations hereunder, Authority shall have the right upon reasonable notice to Airline, but not the duty, to enter Airline's Assigned Space and perform such cleaning and maintenance activities. If such right is exercised, Airline shall reimburse Authority within thirty (30) calendar days of the date Authority issues its invoice for such service. At the end of the term or upon the earlier termination of this Agreement, Airline shall deliver possession of the Assigned Space and all of the Authority's fixtures and equipment in their original condition in all respects, reasonable wear and tear excepted. Airline agrees to reimburse Authority for the cost of any alterations, replacement, repairs or cleaning required to restore the same to such condition plus a fifteen percent (15%) administrative fee.
- (b) **Airline's Signs.** Airline shall not post any signs in the Assigned Space or at the Airport, which are in public view, without obtaining the Director's prior written approval in each instance.
- (c) **Airline Space Improvements or Modifications.** Airline shall be responsible, at its sole cost and expense, for making any improvements to its Assigned Space. Any improvement or modifications of such area by Airline is subject to prior written approval by the Director, which approval shall not be unreasonably withheld or delayed. Any unauthorized improvements made will constitute a default under the terms of this Agreement and be cause for termination. All space shall, upon expiration or termination of this Agreement, revert to the Authority in its original condition, normal wear and tear excepted.

Airline will retain ownership only of trade fixtures, equipment and other personal property installed and paid for by Airline.

- (d) **Airline Food or Beverage.** Airline shall not permit, maintain or operate in the Terminal Building a gift shop, restaurant, bar or lounge, or in any other manner, provide for the sale or complimentary offering of merchandise, food and beverages at the Airport unless expressly permitted in writing by the Director. Nothing in this Section shall be deemed to prohibit or otherwise restrict Airline from installing one or more vending machines dispensing snacks or drinks so long as such machines are located in Airline's Assigned, Preferential Use Space and is accessible to and for sale only to Airline's employees and not for public consumption. Authority reserves the right to charge a concession fee based on the sales from Airline's vending machines.
- (e) **Airline's Property.** Any and all property belonging to, or brought onto the Airport by Airline, or any of its officers, employees, agents, invitees or licensees shall be at the sole risk of Airline. Subject to the prior approval of the Authority, Airline may place and install trade fixtures and other personal property in the Assigned Space for use in connection with its operations hereunder, and the same shall be and remain the property of Airline, provided however, that Airline shall be responsible for the cost of repairing any damage to the Assigned Space or any other Authority improvements which are caused by the removal of any such trade fixtures and personal property.

Notwithstanding the foregoing, if Airline is at any time in default hereunder, then Authority shall have the benefit of any statutory liens on Airline's property (excluding aircraft) located in the Assigned Space which are available to it under the laws of the State of North Carolina, and Airline shall not remove or agree to the removal of any of such property until all amounts secured by such liens have been paid and all other defaults under this Agreement have been cured.

- (f) **Authority's Communications and Shared Equipment.** Authority shall provide voice, data, and cabling services within the Terminal Building and Airline shall utilize the Authority's installed telephone system, data services, and cabling. Upon the installation of shared terminal equipment for passenger processing at the common-use airside gates, Airline shall be required to use the shared equipment in lieu of airline-provided equipment, and shall pay fees for the use of the shared equipment as the Authority may establish to recover its installation and operating costs.
- (g) **Authority's Right to Enter.** Authority and its designated agents shall have the right upon notice to Airline's local management, unless an

emergency situation, to enter the Assigned Space at any reasonable time for any reasonable purpose.

- (h) **Utilities and Services.** Authority will furnish the Assigned Space and other areas within the Terminal with utilities and services, except that Authority assumes no responsibility for the interruption of such services for any reason whatsoever. The Director reserves the right at any time to charge separately for such services (e.g., due to extraordinary use).
- (i) **Taxes and Assessments.** Airline shall pay, on or before the due date established therefor, all taxes, assessments (including, without limitation, storm water utility charges) and impact fees which are levied against or in connection with the Assigned Space, Airline's interest therein and the property and improvements of Airline for the term hereof or attributable to Airline's activities at the Assigned Space or at the Airport. If the term of this Agreement expires or is earlier terminated prior to the close of the tax year for which any such tax is payable, or if the term of this Agreement commences on a date other than the first day of such tax year, Airline shall be responsible for paying a percentage of the tax calculated by dividing the number of days that this Agreement was in effect during such tax year by the total number of days that the Assigned Space was leased to tenants (excluding any tenant performing a governmental, municipal or public purpose or function or which uses the Assigned Space exclusively for literary, scientific, religious or charitable purposes) during such tax year. If this Agreement is in effect for a period less than any entire period for which an assessment other than a tax is imposed, Airline shall pay a percentage of the assessment calculated by dividing the number of days this Agreement was in effect during that assessment period by the total number of days in the assessment period. Airline's obligations under this paragraph shall survive the expiration or earlier termination of this Agreement. Nothing contained herein shall be construed as a release or waiver on the part of the Authority, as a political subdivision of the State of North Carolina of the right to assess, levy or collect any license, personal, tangible, intangible, occupation or other tax, fee or assessment which may lawfully be imposed on the business or property of Airline.
- (j) **Holding Over.** It is agreed that if Airline shall continue to occupy the Assigned Space or other areas of the Terminal after the *termination* of this Agreement, including a termination under the Default paragraph, and without the prior written consent of Authority, then such tenancy shall be a tenancy-at-sufferance, and the Authority shall be entitled to double the then current monthly rent payable by Airline to the Authority, and acceptance by Authority of any sums after any such



termination shall not constitute a renewal of this Agreement or a consent to such occupancy, nor shall it waive Authority's right of re-entry or any other right available to it under the laws of the State of North Carolina or the provisions of this Agreement.

- (k) Authority's Reserved Rights.** Authority reserves the right for itself and others to utilize and maintain existing utility easements over, under, across and through the Assigned Space, and to run water, electrical, telephone, gas, drainage and other lines over, under, across and through the Assigned Space and to grant necessary utility easements therefor; provided, however, that the use and maintenance of such easements shall not materially adversely impact Airline's use of or operations in its Assigned Space.

**9. Executive Director's Rights of Reassignment, Reallocation and Recapture.** The Director shall have the right from time-to-time and at any time during the term of this Agreement, upon reasonable notice to Airline and other airlines, which notice shall be 60 days prior and in writing, whenever practical, to assign, reassign, reallocate, and recapture space and establish priorities of use and preferences for Airline, or other airline assigned Airline Parking Positions, gates, check-in counter/ticket lift locations, Assigned Space, or assigned facilities and equipment under this Agreement in order to accommodate a new entrant or other airline, or to achieve a more balanced and/or operationally efficient use of Airport space and Airline Parking Positions. If Airline initiates directly or by a change in its activity levels generates the need for a reassignment, reallocation or recapture of space or facilities, then all costs of such reassignment, reallocation and/or recapture of space shall be borne by Airline. Otherwise the costs of such reassignment, reallocation and/or recapture of space may be borne by Authority.

**10. Access.** Airline and its officers, employees, agents and invitees shall, subject to the rules and regulations of the Authority, have the right of ingress and egress to and from the public areas of the Airport and Terminal Building and any Assigned Space. Airline further agrees to observe and comply with any and all federal, state and local statutes, ordinances and regulations applicable to Airline, the Airport, the Terminal Building and any Assigned Space.

**11. Security.** Airline covenants and agrees to observe and comply with all applicable regulations governing security at the Airport which now exist or may hereafter be promulgated from time to time, and shall control the Assigned, Preferential Use Space and Joint Use Space so as to prevent or deter unauthorized persons from obtaining access to the air operations area of the Airport. Airline agrees to pay, or guarantees payment of all lawful fines or penalties as may be assessed by the Authority or against the Authority for violations by Airline, its Affiliates or its employees of federal, state or local security laws, ordinances, rules or regulations, or Airport rules and regulations pertaining to security by Airline, its Affiliates or its employees within thirty (30) days after notice of such fines or penalties; provided that Airline may reasonably contest such fines or

penalties. Authority may terminate security access of any employee of Airline for which Authority has just cause.

## **12. Release and Indemnification.**

**(a) Release.** Airline hereby expressly waives and releases Authority from any cause of action or right of recovery for compensation for any and all loss or damage sustained by reason of any theft, fire, defect, deficiency or impairments of any of the services in or to the premises or the Airport, including, but not limited to, electrical power, gas, telephone service, steam, heating, air conditioning, water supply, drainage or sewage systems, or from wires leading to or inside of any space or structure, or by reason of any loss resulting from the failure of any such system or facility.

**(b) Indemnity.** Airline releases and shall indemnify, protect, defend and hold completely harmless the Authority, its members, officers, directors, employees and the City of Asheville, Buncombe County, Henderson County, agents, concessionaires, vendors and contractors (“Indemnified Parties”) from and against any and all liabilities (including without limitation, liability under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Sec. 9601, et seq., or any other federal, state or local environmental statute, ordinance, regulation or rule), losses, suits, claims, demands, judgments, fines, penalties, damages, costs and expenses (including all reasonable costs for investigation and defense thereof, including but not limited to court costs, expert fees and reasonable attorneys’ fees prior to or after institution of legal proceedings and at both trial and appellate levels) which may be incurred by, charged to or recovered from any of the foregoing Indemnified Parties, by reason or on account of:

(i) damage to or destruction of the property of the Authority, or any property of, injury to or death of any person, resulting from or arising out of Airline’s operations at the Airport, its use, occupancy, or maintenance of the Assigned Space or any improvements thereto, of Airline’s operations thereon, the areas surrounding the Assigned Space, or the service areas, parking areas, pedestrian areas, pedestrian walks or driveways in or around the Assigned Space, or any environmental matters relating thereto; or

(ii) the acts or omissions of Airline’s officers, agents, Affiliates, employees, contractors, subcontractors, invitees or licensees, regardless of where the damage, destruction, injury or death occurred; or

(iii) actions arising out of the failure of Airline or its Affiliates to keep, observe or perform any of the covenants or agreements contained in this Agreement to be kept, observed or performed by Airline or its Affiliates, except to the extent that such liability, loss, suit, claim, demand, judgment, fine, penalty, cost or expense was proximately caused solely by the negligence or willful misconduct of the Authority, or any person other than Airline, its

Affiliates or its officers, agents, employees, contractors, subcontractors, invitees or licensees.

The Director shall give Airline reasonable notice of any such claims or actions. The provisions of this paragraph shall survive the expiration or earlier termination of the term of this Agreement with respect to any acts or omissions occurring during the term of this Agreement.

**13. Insurance Requirements.** Airline shall, at its own cost and expense, purchase, carry and keep in force during the term of this Agreement, aviation and/or commercial general liability insurance protecting Airline, the Authority, its members, officers, employees and agents of each, each of whom shall be named as additional insureds, but only as respects to operations of the named insured, as their interests may appear, from and against any and all liabilities (except such items that cannot be insured, such as fines or penalties, to which Airline will be solely responsible) arising out of or relating to Airline's operations on the Airport (whether such operations are by Airline or its Affiliates, contractors, or their agents, representatives or employees) and in such form and with such Airline or companies approved for issuance in the State of North Carolina, or companies of sound and adequate financial responsibility as the Authority may reasonably approve, with a combined single limit (or its equivalent) coverage per occurrence in an amount of \$200,000,000, except \$25,000,000 each occurrence and in the annual aggregate with respect to non-passenger Personal Liability, with a deductible reasonably acceptable to the Authority, with a waiver of any right of subrogation that the insurer may have against the Authority, with contractual liability coverage for Airline's obligations to the Authority under this Agreement. This insurance shall provide that it is primary insurance as respects any other valid and collectible insurance the Authority may possess, including any self-insured retention or deductible the Authority may have, and that any other insurance the Authority does possess shall be considered excess insurance only. This insurance shall also provide that it shall act for each insured and each additional insured as though a separate policy has been written for each; provided, however, that this provision shall not operate to increase the policy limits of the insurance.

**(a) Fire and Extended Coverage Insurance - Passenger Terminal.** The Authority agrees to maintain in force during the term of this Agreement fire and extended coverage insurance on the passenger Terminal and any additions, alterations, or modifications thereto and on all contents owned by the Authority usual and incidental to the passenger terminal for an amount of not less than the estimated full replacement value thereof.

Airline shall purchase similar insurance on, or shall self-insure, its contents, improvements, modifications, equipment, furnishings, betterments and other incidental personal property.

The Authority and Airline hereby mutually release and discharge each other from all claims or liabilities arising from or caused by fire or other casualty covered by the aforementioned insurance on the passenger

terminal or contents and personal property in, at or on the passenger Terminal. All such policies shall include a waiver of subrogation with respect to the provisions of this Agreement to the extent permitted by each party's insurance carrier.

Airline shall not do or agree to be done any act or thing upon the Airport which will invalidate or conflict with the above policies.

**(b) Automobile Insurance.** Airline, without expense to Authority, shall obtain and cause to be kept in force at all times during the term of this Agreement, liability insurance in the form of primary and excess, or layered amounts of insurance covering the operation of Airline's automobiles and non-owned and leased vehicles at the Airport, issued by a recognized company or companies of sound and adequate financial responsibility approved by the Authority (which approval shall not be unreasonably withheld) in an amount of \$5,000,000 for bodily injury and property damage liability for any one occurrence.

**(c) Workers' Compensation and Employer's Liability Insurance.** Airline shall also keep in force, at its expense, for the term of this Agreement, workers' compensation and Employer's Liability Insurance or similar insurance with a company or companies acceptable to the Authority affording the required statutory coverage and containing the requisite statutory limits in the case of Workers' Compensation and the following amounts for Employers' Liability - \$1,000,000 - Limit Each Accident, \$1,000,000 - Limit Disease Aggregate, and \$1,000,000 - Limit Disease Each Employee.

**(d) Certificate(s) of Insurance.** Upon commencement and without interruption throughout the term of this Agreement, Airline shall cause its insurer to furnish the Authority with a certificate(s) of insurance, in a form acceptable to the Authority, evidencing all of the insurance coverage required of Airline under the terms of this Agreement. Such certificate(s) shall provide that the policies of insurance referred to therein shall not be subject to cancellation, lapse or adverse material change except after delivery of written notice by certified or registered mail to the Authority at least thirty (30) days prior to the effective date of such cancellation or adverse material change. Airline, no later than thirty (30) days prior to the effective date of such cancellation, lapse or adverse material change shall provide the Authority with substitute certificate(s) of insurance complying with this Agreement.

**(e) Other.** Airline understands and agrees that the minimum limits of the insurance hereunder may become inadequate during the term of this Agreement, and further agrees that the Authority may raise such minimum requirements to then current airport industry standards.

If at any time Airline shall fail to obtain and maintain in force the insurance required herein, the Authority may, but shall have no obligation to, on written notice to Airline, obtain such insurance for Airline's account and obtain reimbursement for the cost thereof thirty (30) days after receipt of Authority's invoice therefor. Notwithstanding the foregoing, the Authority may elect to terminate this Agreement immediately upon such failure by Airline.

#### **14. Assignment and Subletting.**

(a) Airline shall not sell, assign or transfer this Agreement or any of its rights and privileges hereunder or permit any such sale, assignment or transfer to occur by operation of law, without the Authority's prior written approval, which shall not be unreasonably withheld by Authority. No subleasing will be allowed if comparable space is available for lease from the Authority.

(b) For purposes of the paragraph above, an assignment shall include, if the Airline is a corporation (except if Airline is a corporation whose stock is publicly traded), the issuance or the sale, transfer or other disposition of a sufficient number of shares of stock in the Airline to result in a change in control of the Airline or if the airline is a partnership or joint venture, a transfer of an interest in the partnership or joint venture which results in a change in control of such entity.

**15. Default.** In the event that Airline shall fail to remit, timely, any payment due to Authority under this Agreement, or in the event that Airline or any of its officers, employees, agents, invitees or licensees violates any other term, covenant or condition of this Agreement and such violation continues for, or reoccurs, within a period of thirty (30) days after Authority has given written notice thereof to Airline, Authority may elect to terminate this Agreement and resume possession of any space assigned to Airline, thereafter using the same for its own purposes without having to account to Airline therefor. In addition, Authority shall have any and all other rights or remedies available to it as a landlord under the applicable laws of the State of North Carolina by reason of any such default.

**16. Notice.** Any notice permitted or required to be given to Airline hereunder shall be in writing and delivered either by hand to local Airline representative, by nationally recognized overnight courier service or by U.S. Certified Mail, Return Receipt Requested, postage prepaid, or by email (with receiver verification of receipt and/or written copy sent via U.S. mail) to the address contained on Page 1 of this Agreement or such other address as Airline may, by written notice, direct from time to time. Any notice permitted or required to be given to Authority hereunder shall be in writing and delivered either by hand to the office of the Executive Director, by nationally recognized overnight courier service or by U.S. Certified Mail, Return Receipt Requested, postage prepaid, or by email (with receiver verification of receipt and/or written copy sent via U.S. mail) to the address as noted below, or such other address as Authority may request from time to time

Greater Asheville Regional Airport Authority  
 Attention: Executive Director  
 61 Terminal Drive, Suite 1  
 Fletcher, North Carolina 28732  
[pr@flyavl.com](mailto:pr@flyavl.com), with an email copy to the Executive Director

Airline

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**17. Discrimination Not Permitted.** Airline, for itself, its successors in interest and its assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that (a) no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subject to discrimination in the use of the Assigned Space or the Airport under the provisions of this Agreement; (b) that in the construction of any improvements on, over or under the Assigned Space and the furnishing of services thereon, no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination; and (c) that Airline shall use the Assigned Space in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the Department of Transportation-effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

Likewise, Airline shall comply with laws of the State of North Carolina prohibiting discrimination because of race, color, religion, sex, national origin, age, handicap or marital status. Should the Airline authorize another person, with Authority's prior written consent, to provide services or benefits from the Assigned Space or at the Airport, Airline shall obtain from such person a written agreement pursuant to which such person shall, with respect to the services or benefits which it is authorized to provide, undertake for itself the obligations contained in this paragraph. Upon notice from Authority, Airline shall furnish a true copy of the relevant provisions from such agreement to Authority. Authority may from time to time be required by the United States Government, or one or more of its agencies, to adopt additional or amended provisions, including non-discrimination provisions, concerning the use and operation of the Airport, and Airline agrees that it will adopt any such requirement as a part of this Agreement.

If Airline shall furnish any services to the public at the Airport, it shall furnish said services on a fair, equal and not unjustly discriminatory basis to all users thereof and shall charge fair, reasonable and not unjustly discriminatory prices for each unit of service, provided that Airline shall be allowed to make reasonable and non-discriminatory discounts, rebates or other similar types of price reductions to volume purchasers, if any.

In the event of breach of any of the above nondiscrimination covenants, Authority shall have the right to terminate this Agreement and to re-enter and repossess said Assigned Space, and hold the same as if this Agreement had never been made or issued. The right granted to Authority by the foregoing sentence shall not be effective until applicable procedures of Title 49, Code of Federal Regulations, Part 21 are followed and completed, including exercise or expiration of appeal rights.

Further, Airline assures Authority that no person shall be excluded on the grounds of race, creed, color, national origin or sex from participating in or receiving the services or benefits of any program or activity covered by Title 14, Code of Federal Regulations, Part 152, Subpart E, Federal Aviation Administration, Non-discrimination in Airport Aid Program, and that it will be bound by and comply with all other applicable provisions of such Subpart E, as it may be amended. Airline also assures Authority that it will require its covered suborganizations to provide written assurances to the same effect and provide copies thereof to Authority.

Airline assures Authority that it will comply with pertinent statutes, Executive Orders, and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age or handicap be excluded from participating in any activity conducted in connection with its operations under this Agreement. Airline also assures Authority that it will require any contractors and sublessees (to the extent that such sublessees are allowed under other provisions of this Agreement) to provide assurances to the same effect and ensure that such assurances are included in subcontracts at all tiers which are entered into in connection with Airline's operations under this Agreement.

**18. Federal Aviation Administration & Transportation Security Administration Requirements.** Airline shall comply with all applicable regulations of the Federal Aviation Administration relating to Airport security and shall control the Assigned Space so as to prevent or deter unauthorized persons from obtaining access to the air operations area of the Airport.

Authority reserves unto itself, and unto its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft through the airspace above the surface of the Assigned Space, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft now known or hereafter used, and for navigation of or flight in the said airspace, and use of said airspace for landing on, taking off from or operating on the Airport.

Airline expressly agrees, on behalf of itself and its successors and assigns, to restrict the height of structures, objects of natural growth and other obstructions on the Assigned Space in compliance with the requirements of Federal Aviation Regulations, 14 CFR Part 77.

Airline agrees to require any lights in the Assigned Space to be constructed, focused or arranged in a manner that will prevent them from casting their beams in an upward

direction so as to interfere with the vision of pilots in aircraft landing at or taking off from the Airport.

Airline expressly agrees, on behalf of itself and its successors and assigns, to prevent any use of the Assigned Space which would interfere with or adversely affect the operation or maintenance of the Airport, or which would otherwise constitute a hazard or nuisance at the Airport.

Airline agrees that it will not exercise or grant any right or privilege which would operate to prevent any person, firm or corporation operating aircraft on the Airport from performing any service (including, but not limited to maintenance and repair) on its own aircraft with its own employees that it may choose to perform.

## **19. Hazardous Materials.**

**“Definitions”.** As used herein, the following terms shall have the meanings hereinafter set forth:

**“Environmental Laws”** shall mean any federal, state, local or administrative law, rule, regulation, order or requirement relating to industrial hygiene, environmental conditions or Hazardous Materials, whether now in effect or hereafter adopted.

**“Hazardous Materials”** shall mean any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. **“Hazardous Material”** includes, without limitation, any material or substance defined as a “hazardous substance,” or “pollutant” or “contaminant” pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, also commonly known as the “Superfund” law, as amended (42 U.S.C. **Sections** 9601 et seq.) (**“CERCLA”**), or pursuant to the General Statutes of North Carolina; any asbestos and asbestos containing materials; lead based paint; petroleum, including crude oil or any fraction thereof; natural gas or natural gas liquids.

**“Release”** when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or on any property.

**(a) Airline Agreement.** Airline agrees that neither it nor its officers, agents, Affiliates, employees, contractors, subcontractors, sublessees, licensees or invitees shall cause any Hazardous Materials to be brought upon, kept, used, stored, generated or disposed of in, on or about the Airport, or transported to or from the Airport and such use is in strict compliance with all applicable Environmental Laws and the Authority’s rules and regulations.

**(b) Notice to Authority.** AIRLINE shall promptly contact the Authority in the event of any fuel spill or any other environmental spill caused by Airline, its



suppliers or vendors, requiring reporting and containment, clean up or remediation under applicable Environmental Laws.

**(c) Environmental Indemnity.** Airline shall indemnify, defend and hold harmless the Authority from and against any and all loss, damage, cost or expense (including attorney's fees) arising during or after the term of this Agreement as a result of or arising from (i) a breach by Airline of its obligations contained in subparagraph (a) above, or (ii) any Release of Hazardous Materials from, in, or about the Airport caused by the act or omission of Airline, its officers, agents, Affiliates, employees, contractors, subcontractors, sublessees, licensees or invitees.

**(d) Environmental Audit.** Upon reasonable notice to Airline, the Authority may conduct or cause to be conducted, at its expense, through a third party that it selects, an environmental audit or other investigation of Airline's operations to determine whether Airline has materially breached its obligations under subparagraph (a) above. Airline shall pay all costs associated with said audit or investigation if such audit or investigation shall disclose any such material breach by Airline.

**20. Rules and Regulations.** Airline covenants and agrees to observe and comply with the established rules and regulations (which include but are not limited to airport "plans", such as storm water, security, and training requirements), minimum standard requirements for airport aeronautical services ("Minimum Standards") and airport master plans of Authority which now exist or may hereafter be promulgated from time to time governing conduct on and operations at the Airport and the development and use of its facilities, with such rules and regulations, Minimum Standards, and master plans being incorporated in their entirety by reference. Authority shall provide an opportunity for Airline to comment on any substantive proposed change to the rules and regulations, Minimum Standards, and/or master plans. Airline further covenants and agrees to observe and comply with any and all valid and applicable requirements of all duly-constituted public authorities and with all federal, state and local statutes, ordinances and regulations applicable to Airline, the Assigned Space or the Airport. Airline agrees to pay or reimburse Authority for any fines which may be assessed against Authority or which the Authority assesses as a result of the violation by Airline of any applicable security regulation at the Airport, which payment shall be made by Airline within thirty (30) calendar days from receipt of Authority's invoice for such amount and documentation showing that payment of such fine is Airline's responsibility hereunder. Notwithstanding the foregoing to the contrary, no material provision in the rules and regulations shall directly conflict with a material term and condition included in this Agreement.

## **21. Miscellaneous.**

**(a)** Notwithstanding anything herein contained that may appear to be to the contrary, it is expressly understood and agreed that the rights granted

under this Agreement are non-exclusive.

- (b)** In the event that Authority engages the services of an attorney to collect any sums past due hereunder from Airline, or in the event the Authority is the prevailing party in any action to enforce any provision of this Agreement or in any other legal proceeding at law or in equity arising hereunder or in connection herewith, Airline shall reimburse Authority for all reasonable costs, attorneys' fees and all other actual expenses incurred by the Authority in the defense and/or prosecution of such legal proceeding and in any appeals, including, but not limited to, fees and expenses for paralegals, investigators, legal support personnel and expert witnesses.
- (c)** This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina. It is agreed that if any covenant, condition or provision contained herein is held to be invalid by any court of competent jurisdiction, such invalidity shall not affect the validity of any other covenant, condition or provision herein contained.
- (d)** Airline hereby consents to the jurisdiction of the Courts of the State of North Carolina and of the Federal District Court for the District in which the Airport is located with respect to any action instituted by the Authority and arising against Airline under this Agreement, and waives any objection which Airline may have at any time to the laying of venue of any such action brought in any such court, waives any claim that such action has been brought in an inconvenient forum and further waives the right to object, with respect to such action, that such court does not have any jurisdiction over Airline. Airline further irrevocably consents to the service of process by certified or registered mail (airmail if overseas) or the equivalent (return receipt requested), or the service of process in any other manner permitted by law, in any action instituted by the Authority and arising against Airline under this Agreement.
- (e)** Whenever the consent of Authority or Airline is required pursuant to this Agreement, such consent shall not be unreasonably withheld, conditioned or delayed. The written approval of the Director shall be sufficient in those matters where consent of the Authority is required pursuant to this Agreement.
- (f)** Airline shall make and maintain arrangements for ground handling or fueling services with one or more Fixed Base Operators or with an Airline that is permitted to render such services to Airline under existing agreements with the Authority or the Authority; provided, however, that Airline shall have the right to ground handle its own aircraft with its own employees. Airline shall itself, and require its ground handler, to make a diligent effort to comply with reasonable bag delivery standards

promulgated from time to time by Authority and to enter into an operating agreement with the Authority.

- (g)** Airline shall have the right to provide ground handling services for other airlines operating at the Airport.
- (h)** For all regular operations, Airline shall ensure that all checked baggage is delivered to baggage claim within twenty-five (25) minutes of the flight arrival block time. ("Baggage Delivery Time)". The Authority shall notify Airline of failures to meet the established Baggage Delivery Time and Airline shall have thirty (30) days to ensure compliance with the Baggage Delivery Time. Failure by Airline to meet the established Baggage Delivery Time after the thirty (30) day period shall result in a one hundred dollar (\$100.00) fine for each occurrence. The Authority shall be reasonable in its enforcement of the established Baggage Delivery Time. The Baggage Delivery Time and fine may be amended by Authority as necessary to ensure operational efficiencies.
- (i)** Airline covenants and agrees that this Agreement shall be subordinated to the provisions of any existing or future agreement between Authority, the City or the County and the United States of America, relative to the development, operation and maintenance of the Airport, the execution of which has been or will be required as a condition precedent to the granting of federal funds for the development of the Airport or the continued operation and/or certification of the Airport. In the event that the Federal Aviation Administration or its successors shall require any modifications to this Agreement as a condition precedent to the granting of such federal funds, Airline shall promptly consent in writing to such modifications.
- (j)** Waiver by either party of strict performance of any provision of this Agreement shall not be a waiver or prejudice the party's right to require strict performance of the same provision in the future or of any other provision.
- (k)** If any provision of this Agreement is held by final judgment of a court of competent jurisdiction to be invalid, illegal or unenforceable, such invalid, illegal or unenforceable provision shall be severed from the remainder of this Agreement, and the remainder of this Agreement shall be enforced
- (l)** This Agreement represents the entire agreement of the parties concerning the subject matter contained in this Agreement, and upon execution of the parties, terminates, cancels and supersedes all prior agreements between the Authority and Airline regarding such subject matter, except for any payments that may be due the Authority under any such prior agreement. Any representation or statements heretofore made with respect to such subject matter, whether oral or written, are merged herein.

This Agreement may be altered or amended only by written instrument executed by both parties hereto.

**IN WITNESS WHEREOF**, this Agreement has been duly executed by the parties on the day and year first above written and the parties intend to be legally bound by this Agreement.

**GREATER ASHEVILLE REGIONAL AIRPORT AUTHORITY**

ATTEST:

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

\_\_\_\_\_

(Corporate Seal)

Name/Title: \_\_\_\_\_

**AIRLINE**

ATTEST:

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

\_\_\_\_\_

(Corporate Seal)

Name/Title: \_\_\_\_\_

**EXHIBIT A**  
**GREATER ASHEVILLE REGIONAL AIRPORT AUTHORITY**  
**AIRLINE-AIRPORT OPERATING AND SPACE USE AGREEMENT**

**DIAGRAM AND AMOUNT OF ASSIGNED PREFERENTIAL USE SPACE**

**Preferential Use Space:**

Ticket Counter	_____
Queue	_____
Office Space Corridors	_____
Operations Space	_____
Storage Space	_____
Curbside Check-in	_____
Baggage Service Office	_____
E-Ticket Kiosk	_____

**Total Preferential Use Space (Sq. Ft.)** \_\_\_\_\_

**EXHIBIT B**  
**GREATER ASHEVILLE REGIONAL AIRPORT AUTHORITY**  
**AIRLINE-AIRPORT OPERATING AND SPACE USE AGREEMENT**

**DIAGRAM OF JOINT USE SPACE**

**EXHIBIT C**  
**GREATER ASHEVILLE REGIONAL AIRPORT AUTHORITY**  
**AIRLINE-AIRPORT OPERATING AND SPACE USE AGREEMENT**

**MONTHLY AIRLINE TRAFFIC AND VARIABLE FEE REPORT**

**EXHIBIT D**  
**GREATER ASHEVILLE REGIONAL AIRPORT AUTHORITY**  
**AIRLINE-AIRPORT OPERATING AND SPACE USE AGREEMENT**

**MATRIX OF MAINTENANCE AND UTILITY OBLIGATIONS**

	Glycol Storage Area	Lav Cart Facilities	Holdrooms	Ticket Counters	Ticket & Bag Service Offices	Operations Areas	Baggage Makeup	Baggage Claim	Aircraft Aprons	Tug Drives	Inbound Baggage Systems	Outbound Conveyor Systems	Jet Bridges Authority Owned
<b>1. Air Conditioning</b>													
a. Maintenance	N	N	C	C	C	C	N	C	N	N	N	N	N
b. Operations	N	N	C	C	C	C	N	C	N	N	N	N	N
c. Chilled Air Distribution	N	N	C	C	C	C	N	C	N	N	N	N	N
<b>2. Heating</b>													
a. Maintenance	N	N	C	C	C	C	C	C	N	N	N	N	N
b. Operations	N	N	C	C	C	C	C	C	N	N	N	N	N
c. Warm Air Distribution	N	N	C	C	C	C	C	C	N	N	N	N	N
<b>3. Lighting</b>													
a. Bulb Replacement	N	N	C	C	A	A	A	C	C	C	N	N	C
b. Maintenance	N	N	C	C	C	C	C	C	C	C	N	N	C
<b>4. Electrical (Distribution)</b>	N	N	C	C	C	C	C	C	C	C	C	C	C
<b>5. Water</b>													
a. Distribution	N	N	N	N	C	C	N	N	N	N	N	N	N
b. Fixtures (toilets, sinks, faucets, etc.)	N	N	N	N	A	A	N	N	N	N	N	N	N
<b>6. Sewage</b>													
a. Distribution	N	C	N	N	C	C	N	N	N	N	N	N	N
b. Fixtures	N	N	N	N	A	A	N	N	N	N	N	N	N
<b>7. Maintenance</b>													
a. Other than Structure	A	N	C	C	A	A	A	C	C	C	C	A	C
b. Structure	A	C	C	C	C	C	C	C	C	C	C	C	C
c. Tug and Vehicle Doors	N	C	N	N	N	A	A	C	N	B	C	A	N
d. Passenger Hold Room Seats	N	N	C	N	N	N	N	N	N	N	N	N	N
e. Exterior	A	C	C	C	C	C	C	C	C	C	C	A	C
f. Markings	A	C	C	C	C	C	C	C	C	C	C	A	N
<b>8. Custodial Service</b>	N	N	C	C	C	C	A	C	A	C	C	A	C
<b>9. Window Cleaning</b>													
a. Exterior	N	N	C	C	C	C	C	C	C	C	N	N	N
b. Interior	N	N	C	A	A	A	A	C	N	C	N	N	C
<b>10. Repainting</b>	A	C	C	A	A	A	A	C	C	C	N	N	C
<b>11. Floor &amp; Wall Coverings</b>	N	N	C	A	A	A	A	C	N	C	N	N	C
<b>12. Fire Suppression System</b>	N	N	C	C	C	C	C	C	C	C	N	N	N

A - AIRLINE Responsibility  
C - ARAA Responsibility

N - Not Applicable





## MEMORANDUM

TO: Members of the Airport Authority

FROM: Lew Bleiweis, A.A.E., Executive Director

DATE: June 12, 2015

### ITEM DESCRIPTION – New Business Item B

Approval of Post-Closure Fill Agreement

### BACKGROUND

For the past eight years, the Authority has been partnering with Duke Energy Progress, Inc. ("Duke") f/k/a Progress Energy Carolinas, Inc. and Charah, Inc ("Charah") to provide coal combustible byproducts ("CCBs") as structural fill material at various sites within the boundaries of the Asheville Regional Airport ("Airport"). These filled sites have provided reclaimed land for the airfield redevelopment program and future aeronautical development. The permits issued by NC Department of Environmental and Natural Resources ("DENR") to dispose of Duke's CCBs have been in the name of Duke and thereby holds them responsible for the transport and storage of such materials.

In December 2014, the Board approved an amendment to the Structural Fill Agreement dated 2007 between the Authority and Charah to fill a new area on the Airport designated as Area 2. This new fill site provides a repository for Duke's CCBs but does not provide much benefit to the Authority. The Authority is willing to accept the CCBs on behalf of Duke for the mutual benefit of the environment and the community believing that this is the best alternative for the long term disposal and storage of the fill material.

### ISSUES

The Permit between Duke and DENR has expired for additional fill locations on the Airport. A new permit is being sought, but in lieu of being in the name of Duke, it may be issued directly to Charah. The Authority has concerns, and is seeking protection for long term liability issues and is therefore requiring both Duke and Charah enter into an agreement with the Authority to provide liability protection for the CCBs placed at the Airport for the

New Business – Item B



long term exposure. Without this agreement in place, the Authority will not allow Duke and Charah to place CCBs in Area 2.

## **ALTERNATIVES**

The Authority Board could decide not to approve the agreement and accept full future liability. It could also decide not to approve the agreement and proceed to terminate the Amendment for Area 2 that was approved in December.

## **FISCAL IMPACT**

None

## **RECOMMENDED ACTION**

It is respectfully requested that the Greater Asheville Regional Airport Authority Board resolve to (1) approve the proposed Post-Closure Agreement; and (2) authorize the Executive Director to execute the necessary documents.

Attachment



## **MEMORANDUM**

TO: Members of the Airport Authority

FROM: Lew Bleiweis, A.A.E., Executive Director

DATE: June 12, 2015

### **ITEM DESCRIPTION – New Business Item C**

Update to Budget Supplemental Fees and Charges

### **BACKGROUND**

Each year during the budget process, the Board approves the budget which includes supplemental fees and charges. These fees and charges are for services and/or products the airport provides to its various tenants, customers, and passengers. Such items include equipment use, labor rates for certain services, Identification Badges, ground transportation rates, and parking rates.

Supplemental fees and charges for the upcoming fiscal year were approved by the Board with the FY 2015/216 Budget. However, the Transportation Security Administration (TSA) recently issued a new directive which requires a change in the manner airports renew Identification Badges for employees with access to the Security Identification Display Area (SIDA). Renewals now must include the submittal of fingerprint records which were not previously required. As a result, the cost associated with this directive has increased the airport cost from \$37 to \$70 for each annual SIDA badge renewal. As a result of this action, a revision to the supplemental fees and charges is necessary to include a new line item for SIDA badge renewals. This will be separate from badge renewals for general aviation pilots, which are not affected by this action and will remain at \$37 annually.

### **ISSUES**

None

New Business – Item C



## **ALTERNATIVES**

None.

## **FISCAL IMPACT**

None. The increased fee will cover the increased cost at a break-even for the airport.

## **RECOMMENDED ACTION**

It is respectfully requested that the Greater Asheville Regional Airport Authority Board resolve to (1) approve the amended changes to the FY 2015/2016 Annual Budget Supplemental Fees and Charges Schedule for the inclusion of an annual SIDA badge renewal fee; and (2) authorize the Executive Director to implement the necessary changes.

**GREATER ASHEVILLE REGIONAL AIRPORT AUTHORITY  
SUPPLEMENTAL FEES AND CHARGES  
FY 2015/2016 ANNUAL BUDGET**

	FY 2014/2015 Current Fees		FY 2015/2016 Proposed Fees	
	Cost	Per	Cost	Per
<b><u>Maintenance</u></b>				
Scissor Lift	\$ 100.00	day	\$ 100.00	day
Large ADA Ramp Rental	\$ 100.00	use	\$ 100.00	use
Air Stair Rental	\$ 100.00	use	\$ 100.00	use
Volvo Wheel Loader	\$ 150.00	use	\$ 150.00	use
Fork-lift	\$ 100.00	use	\$ 100.00	use
Pallet Jack	\$ 50.00	use	\$ 50.00	use
Tenant Sweeper	\$ 125.00	hour	\$ 125.00	hour
Service Truck	\$ 50.00	hour	\$ 50.00	hour
Backhoe	\$ 100.00	hour	\$ 100.00	hour
Lighted X	\$ 200.00	day	\$ 200.00	day
Light Tower	\$ 150.00	day	\$ 150.00	day
Paint Stripper	\$ 100.00	hour	\$ 100.00	hour
Large Aircraft Removal Dolly	\$ 200.00	day	\$ 200.00	day
Small Aircraft Removal Dolly	\$ 100.00	day	\$ 100.00	day
Aircraft Jack	\$ 100.00	use	\$ 100.00	use
Cores	\$ 40.00	each	\$ 40.00	each
Keys	\$ 12.00	each	\$ 12.00	each
Large Dump Truck	\$ 200.00	hour	\$ 200.00	hour
Small Broom	\$ 200.00	hour	\$ 200.00	hour
Large Broom	\$ 300.00	hour	\$ 300.00	hour
Pressure Washer	\$ 125.00	hour	\$ 125.00	hour
Maintenance Labor Rate (1)	\$ 45.00	hour	\$ 45.00	hour
Security Escort Rate (1)	\$ 45.00	hour	\$ 45.00	hour
<b><u>Department of Public Safety</u></b>				
ARFF Apparatus for 1500 gal. or greater	\$ 250.00	hour	\$ 250.00	hour
ARFF Apparatus for less than 1500 gal.	\$ 150.00	hour	\$ 150.00	hour
Command, Police, and Ops support vehicles	\$ 100.00	hour	\$ 100.00	hour
Aircraft recover dolly	\$ 150.00	day	\$ 150.00	day
Maintenance Labor Rate (1)	\$ 45.00	hour	\$ 45.00	hour
Mutual Aid Agencies collected on their behalf		as incurred		as incurred
Replacement charges for AVL equipment/supplies		as incurred		as incurred
<b><u>Information Technology (IT) Department</u></b>				
IT Labor Rate - Non-Network (1)	\$ 40.00	hour	\$ 40.00	hour
IT Labor Rate - Network Related (1)	\$ 60.00	hour	\$ 60.00	hour
Cable Television (CATV) Signal Transport Fee	\$ 10.00	month	\$ 10.00	month
Cable Television-150+ Channels (2 & 3)	\$ 45.00	month	\$ 45.00	month
Dark Fiber per strand per 0-1000 ft	\$ 20.00	month	\$ 20.00	month
Dark Fiber per strand per 0-2000 ft	\$ 22.00	month	\$ 22.00	month
Dark Fiber per strand per 0-3000 ft	\$ 24.00	month	\$ 24.00	month
WiFi & SSID (required for WiFi Access) (2)	\$ 70.00	month	\$ 70.00	month
Internet Bandwidth-Not Dedicated (2 MB) (2)	\$ 50.00	month	\$ 50.00	month
Internet Bandwidth-Not Dedicated (5 MB) (2)	\$ 70.00	month	\$ 70.00	month
Internet Bandwidth-Not Dedicated (10 MB) (2)	\$ 125.00	month	\$ 125.00	month

**Notes:**

- (1) One Hour Minimum, Minimum of 3 hours charged after regular business hours.
- (2) Add \$120 for 2 hours of IT Labor for Setup & Configuration. Fees may be reduced when bundled with other services.
- (3) Add additional upgrades at cost.

<b>Identification Badge Fees and Charges</b>	<b>FY 2014/2015 Current Fees</b>		<b>FY 2015/2016 Proposed Fees</b>	
	<b>Cost</b>	<b>Per</b>	<b>Cost</b>	<b>Per</b>
Initial Badge Issuance				
SIDA Badge	\$ 70.00		\$ 70.00	
Non-SIDA Badge	\$ 37.00		\$ 37.00	
Renewal of Badge				
SIDA Badge	\$ 37.00		\$ 70.00	
Non-SIDA Badge	\$ 37.00		\$ 37.00	
Lost Badge Replacement				
SIDA Badge (4)	\$ 85.00 / \$ 100.00		\$ 85.00 / \$ 100.00	
Non-SIDA Badge (5)	\$ 60.00 / \$ 75.00		\$ 60.00 / \$ 75.00	
Damaged Badge				
SIDA Badge (6)	\$ 37.00 / \$ 45.00		\$ 37.00 / \$ 45.00	
Non-SIDA Badge (6)	\$ 37.00 / \$ 45.00		\$ 37.00 / \$ 45.00	
Security Escort Training	\$ 25.00		\$ 25.00	
Lock-out Service (7)	\$ 25.00		\$ 25.00	

**Notes:**

- (4) \$85.00 for the first replacement badge, \$100.00 for the second replacement badge.  
(5) \$60.00 for the first replacement badge, \$75.00 for the second replacement badge.  
(6) \$37.00 for a damaged badge, \$45.00 if badge damaged due to negligence.  
(7) \$25.00 Lock-out Service Charge applies after the first 2 free service calls.

**Parking**

Long term	\$ 1.50	0 - 1 hour	\$ 1.50	0 - 1 hour
	\$ 1.50	each add'l hour	\$ 1.50	each add'l hour
	\$ 8.00	day	\$ 8.00	day
	\$ 48.00	week	\$ 48.00	week
Short term	\$ 1.00	1/2 hour	\$ 1.00	1/2 hour
	\$ 12.50	day	\$ 12.50	day
Employee Parking Rate	\$ 60 / \$50	new/renewal	\$ 60 / \$50	new/renewal
Commuter Parking Rate	\$ 290 / \$275	new/renewal	\$ 290 / \$275	new/renewal
Fines	up to \$1,000	day	up to \$1,000	day

**Ground Transportation**

Airport Ground Transportation Permit (8)	\$ 300	annual	\$ 300	annual
Off-Airport Rental Car Fee	7.50%	of gross revenue	7.50%	of gross revenue

**Notes:**

- (8) Flat fee of \$4,000 for companies with a vehicle fleet inclusive of a minimum of 5 charter coach vehicles with seating capacity greater than 20 seats



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## MEMORANDUM

TO: Members of the Airport Authority

FROM: Michael A. Reisman, A.A.E.  
Deputy Executive Director, Development and Operations

DATE: June 12, 2015

### ITEM DESCRIPTION – New Business Item D

Approve Award of Contract for Remote Parking Lot Construction

### BACKGROUND

Current plans for increases in air service expected to start later this calendar year have heightened concerns over the number of parking spaces available to the travelling public. Presently, there are several times each year in which less than 50 long term parking spaces are available to the public. The additional service to be introduced will place the airport into a parking availability deficit. While a long term permanent resolution will take several years to complete, a more immediate short term solution is needed. For that reason, the construction of a temporary remote parking lot is proposed on the east side of NC280 on property owned by the Authority between the Fairfield Inn and the highway. Additionally, an existing gravel parking lot on Wright Brothers Way adjacent to the airport maintenance facility will also be improved. Both of these lots will accommodate employee parking, which will be relocated from the existing lower (south) employee lot, making that lot available for public parking. Shuttle/van service will run to and from the NC280 lot, the scope and cost of which will be addressed at a future board meeting. At its April 10, 2015 meeting, the Airport Board approved a contract with Delta Airport Consultants for design associated with this program, which included a 60 day design schedule in order to bid the project by mid-June.

### ISSUES

Construction of the temporary remote lot needs to be underway this summer in an effort to ensure that adequate parking is available this fall when it is expected to be needed. Documents have been finalized and are presently out for bid. An award is anticipated to be made in early July. Since the Airport Board typically does not hold a July meeting,

New Business – Item D



staff desires that the board approve the award of a contract for its construction, provided a responsive low bid is received within the limits of the project funding.

## **ALTERNATIVES**

The airport has limited property that could be used for this purpose on a temporary basis. Without creating additional parking on property, the travelling public will be forced to find parking alternatives elsewhere or not use our parking facilities at all which will result in lost revenue opportunities to support the operation of the airport. Additionally, the Board could elect to hold its approval for award of contract until the next board meeting. This could result in a delay in the availability of parking spaces when they may be needed later this year.

## **FISCAL IMPACT**

Based upon the engineer's estimated cost of construction and other considerations staff feels are warranted, staff recommends an overall construction budget for this project not to exceed \$250,000.00.

## **RECOMMENDED ACTION**

It is respectfully requested that the Greater Asheville Regional Airport Authority Board resolve to (1) approve the award of contract for remote parking lot construction to the responsive low bidder in an amount not to exceed \$250,000.00; (2) authorize the Executive Director sign any necessary documents; and (3) to amend the FY15/16 budget by adopting the following budget ordinance amendment:

BE IT ORDAINED by the Greater Asheville Regional Airport Authority that the following amendment be made to the annual budget ordinance for the fiscal year ending June 30, 2016:





**Section 1.** To amend the appropriations as follows:

**EXPENDITURES:**

	<u>Decrease</u>	<u>Increase</u>
Equipment and Small Capital Outlay	\$0	\$250,000
Totals	<u>\$0</u>	<u>\$250,000</u>

This will result in a net increase of \$250,000 in the appropriations. To provide the additional revenue for the above, revenues will be revised as follows:

**REVENUES:**

	<u>Decrease</u>	<u>Increase</u>
Transfer from GARAA Cash/Investments	<u>\$0</u>	<u>\$250,000</u>
Totals	<u>\$0</u>	<u>\$250,000</u>

**Section 2.** Copies of this budget amendment shall be furnished to the Secretary of the Greater Asheville Regional Airport Authority, who for purposes of this ordinance, is designated as the Clerk to the Greater Asheville Regional Airport Authority, and to the Budget Officer and to the Finance Officer for their direction.

Adopted this 12<sup>th</sup> day of June, 2015.

\_\_\_\_\_  
 Robert C. Roberts, Chairman

Attested by:

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



Asheville Regional Airport

# Asheville Regional Airport

## Temporary Remote Parking Lots



6/5/2015



# AIA® Document A101™ – 2007

## **Standard Form of Agreement Between Owner and Contractor** where the basis of payment is a Stipulated Sum

**AGREEMENT** made as of the    day of    in the year  
*(In words, indicate day, month and year.)*

**BETWEEN** the Owner:  
*(Name, legal status, address and other information)*

and the Contractor:  
*(Name, legal status, address and other information)*

for the following Project:  
*(Name, location and detailed description)*

The Architect:  
*(Name, legal status, address and other information)*

The Owner and Contractor agree as follows.

### **ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™–2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

## TABLE OF ARTICLES

1	THE CONTRACT DOCUMENTS
2	THE WORK OF THIS CONTRACT
3	DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
4	CONTRACT SUM
5	PAYMENTS
6	DISPUTE RESOLUTION
7	TERMINATION OR SUSPENSION
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9	ENUMERATION OF CONTRACT DOCUMENTS
10	INSURANCE AND BONDS

### ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

### ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

### ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

*(Insert the date of commencement if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)*

If, prior to the commencement of the Work, the Owner requires time to file mortgages and other security interests, the Owner's time requirement shall be as follows:

§ 3.2 The Contract Time shall be measured from the date of commencement.

§ 3.3 The Contractor shall achieve Substantial Completion of the entire Work not later than ( ) days from the date of commencement, or as follows:

*(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)*

**Portion of Work**

**Substantial Completion Date**

, subject to adjustments of this Contract Time as provided in the Contract Documents.  
*(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)*

**ARTICLE 4 CONTRACT SUM**

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor’s performance of the Contract. The Contract Sum shall be (\$ ), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

*(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)*

§ 4.3 Unit prices, if any:

*(Identify and state the unit price; state quantity limitations, if any, to which the unit price will be applicable.)*

Item	Units and Limitations	Price Per Unit (\$0.00)
------	-----------------------	-------------------------

§ 4.4 Allowances included in the Contract Sum, if any:

*(Identify allowance and state exclusions, if any, from the allowance price.)*

Item	Price
------	-------

**ARTICLE 5 PAYMENTS**

**§ 5.1 PROGRESS PAYMENTS**

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the day of the month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than ( ) days after the Architect receives the Application for Payment.

*(Federal, state or local laws may require payment within a certain period of time.)*

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor’s Applications for Payment.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of percent ( %). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201™–2007, General Conditions of the Contract for Construction;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of percent ( %);
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201–2007.

§ 5.1.7 The progress payment amount determined in accordance with Section 5.1.6 shall be further modified under the following circumstances:

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Architect shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and  
*(Section 9.8.5 of AIA Document A201–2007 requires release of applicable retainage upon Substantial Completion of Work with consent of surety, if any.)*
- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201–2007.

§ 5.1.8 Reduction or limitation of retainage, if any, shall be as follows:

*(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections 5.1.6.1 and 5.1.6.2 above, and this is not explained elsewhere in the Contract Documents, insert here provisions for such reduction or limitation.)*

§ 5.1.9 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

## § 5.2 FINAL PAYMENT

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201–2007, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

## ARTICLE 6 DISPUTE RESOLUTION

### § 6.1 INITIAL DECISION MAKER

The Architect will serve as Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2007, unless the parties appoint below another individual, not a party to this Agreement, to serve as Initial Decision Maker.

*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*

#### § 6.2 BINDING DISPUTE RESOLUTION

For any Claim subject to, but not resolved by, mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:

*(Check the appropriate box. If the Owner and Contractor do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)*

- Arbitration pursuant to Section 15.4 of AIA Document A201–2007
- Litigation in a court of competent jurisdiction
- Other *(Specify)*

#### ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2007.

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007.

#### ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201–2007 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.  
*(Insert rate of interest agreed upon, if any.)*

%

§ 8.3 The Owner's representative:  
*(Name, address and other information)*

§ 8.4 The Contractor's representative:  
*(Name, address and other information)*

§ 8.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days written notice to the other party.

§ 8.6 Other provisions:

#### ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 9.1.1 The Agreement is this executed AIA Document A101-2007, Standard Form of Agreement Between Owner and Contractor.

§ 9.1.2 The General Conditions are AIA Document A201-2007, General Conditions of the Contract for Construction.

§ 9.1.3 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
----------	-------	------	-------

§ 9.1.4 The Specifications:

*(Either list the Specifications here or refer to an exhibit attached to this Agreement.)*

Section	Title	Date	Pages
---------	-------	------	-------

§ 9.1.5 The Drawings:

*(Either list the Drawings here or refer to an exhibit attached to this Agreement.)*

Number	Title	Date
--------	-------	------

§ 9.1.6 The Addenda, if any:

Number	Date	Pages
--------	------	-------

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 9.

§ 9.1.7 Additional documents, if any, forming part of the Contract Documents:

- .1 AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed by the parties, or the following:
- .2 Other documents, if any, listed below:  
*(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201-2007 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents)*

Init.

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User Notes:

(1229866344)



*unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)*

**ARTICLE 10 INSURANCE AND BONDS**

The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A201-2007.

*(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201-2007.)*

<b>Type of insurance or bond</b>	<b>Limit of liability or bond amount (\$0.00)</b>
----------------------------------	---

This Agreement entered into as of the day and year first written above.

\_\_\_\_\_  
**OWNER** *(Signature)*

\_\_\_\_\_  
**CONTRACTOR** *(Signature)*

\_\_\_\_\_  
*(Printed name and title)*

\_\_\_\_\_  
*(Printed name and title)*

## **Additions and Deletions Report for AIA<sup>®</sup> Document A101<sup>™</sup> – 2007**

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 10:08:39 on 06/24/2011.

*There are no differences.*

## **Certification of Document's Authenticity**

**AIA® Document D401™ – 2003**

I, \_\_\_\_\_, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 10:08:39 on 06/24/2011 under Order No. 1608199382\_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A101™ – 2007, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

\_\_\_\_\_  
*(Signed)*

\_\_\_\_\_  
*(Title)*

\_\_\_\_\_  
*(Dated)*

 **AIA<sup>®</sup> Document A201<sup>™</sup> – 2007****General Conditions of the Contract for Construction**

for the following PROJECT:  
(Name and location or address)  
Greenville-Spartanburg

**THE OWNER:**  
(Name and address)

**THE ARCHITECT:**  
(Name and address)

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**ADDITIONS AND DELETIONS:**  
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Init.

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## **ARTICLE 1 GENERAL PROVISIONS**

### **§ 1.1 BASIC DEFINITIONS**

#### **§ 1.1.1 THE CONTRACT DOCUMENTS**

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.

#### **§ 1.1.2 THE CONTRACT**

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

#### **§ 1.1.3 THE WORK**

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

#### **§ 1.1.4 THE PROJECT**

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

#### **§ 1.1.5 THE DRAWINGS**

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

#### **§ 1.1.6 THE SPECIFICATIONS**

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

#### **§ 1.1.7 INSTRUMENTS OF SERVICE**

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

#### **§ 1.1.8 INITIAL DECISION MAKER**

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

### **§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS**

**§ 1.2.1** The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

### § 1.3 CAPITALIZATION

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

### § 1.4 INTERPRETATION

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

### § 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

### § 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

## ARTICLE 2 OWNER

### § 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

### § 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or

the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

### § 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

### § 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

## ARTICLE 3 CONTRACTOR

### § 3.1 GENERAL

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

### § 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

### § 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

### § 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other



facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

### § 3.5 WARRANTY

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

### § 3.6 TAXES

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

### § 3.7 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 **Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume

the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

### § 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

### § 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

### § 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

### § 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

### § 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be

required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

### **§ 3.13 USE OF SITE**

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

### **§ 3.14 CUTTING AND PATCHING**

**§ 3.14.1** The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

**§ 3.14.2** The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

### **§ 3.15 CLEANING UP**

**§ 3.15.1** The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

**§ 3.15.2** If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

### **§ 3.16 ACCESS TO WORK**

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

### **§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS**

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

### § 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

## ARTICLE 4 ARCHITECT

### § 4.1 GENERAL

§ 4.1.1 The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

### § 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate For Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

#### § 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

### § 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

### § 5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may

be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

#### § 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

### ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

#### § 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

#### § 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that



the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner, separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

### § 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

### § 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

### § 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

.4 As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

#### § 7.4 MINOR CHANGES IN THE WORK

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

## ARTICLE 8 TIME

### § 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

### § 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

### § 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 CONTRACT SUM

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

### § 9.2 SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

### § 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2., for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

#### § 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

#### § 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;

- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

#### § 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

#### § 9.7 FAILURE OF PAYMENT

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Architect,

stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

#### **§ 9.8 SUBSTANTIAL COMPLETION**

**§ 9.8.1** Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

**§ 9.8.2** When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

**§ 9.8.3** Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

**§ 9.8.4** When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

**§ 9.8.5** The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

#### **§ 9.9 PARTIAL OCCUPANCY OR USE**

**§ 9.9.1** The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

**§ 9.9.2** Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

**§ 9.9.3** Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

#### **§ 9.10 FINAL COMPLETION AND FINAL PAYMENT**

**§ 9.10.1** Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the

Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

**§ 9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

**§ 9.10.3** If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

**§ 9.10.4** The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

**§ 9.10.5** Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

## **ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY**

### **§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS**

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

### **§ 10.2 SAFETY OF PERSONS AND PROPERTY**

**§ 10.2.1** The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

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§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

#### § 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

#### § 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.



§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

#### § 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

### ARTICLE 11 INSURANCE AND BONDS

#### § 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction

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of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's Consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

#### § 11.2 OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

#### § 11.3 PROPERTY INSURANCE

§ 11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

§ 11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or

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otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

#### § 11.3.2 BOILER AND MACHINERY INSURANCE

The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

#### § 11.3.3 LOSS OF USE INSURANCE

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

#### § 11.3.7 WAIVERS OF SUBROGATION

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the

Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

#### § 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

### ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

#### § 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

#### § 12.2 CORRECTION OF WORK

##### § 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

##### § 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

### § 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

### § 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

### § 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

### § 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

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## § 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

## § 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

## § 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

## ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

### § 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;

- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

#### § 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

#### § 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

#### § 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

### ARTICLE 15 CLAIMS AND DISPUTES

#### § 15.1 CLAIMS

##### § 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

##### § 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

##### § 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

##### § 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

##### § 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.



#### § 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

#### § 15.2 INITIAL DECISION

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

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§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

### § 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

### § 15.4 ARBITRATION

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

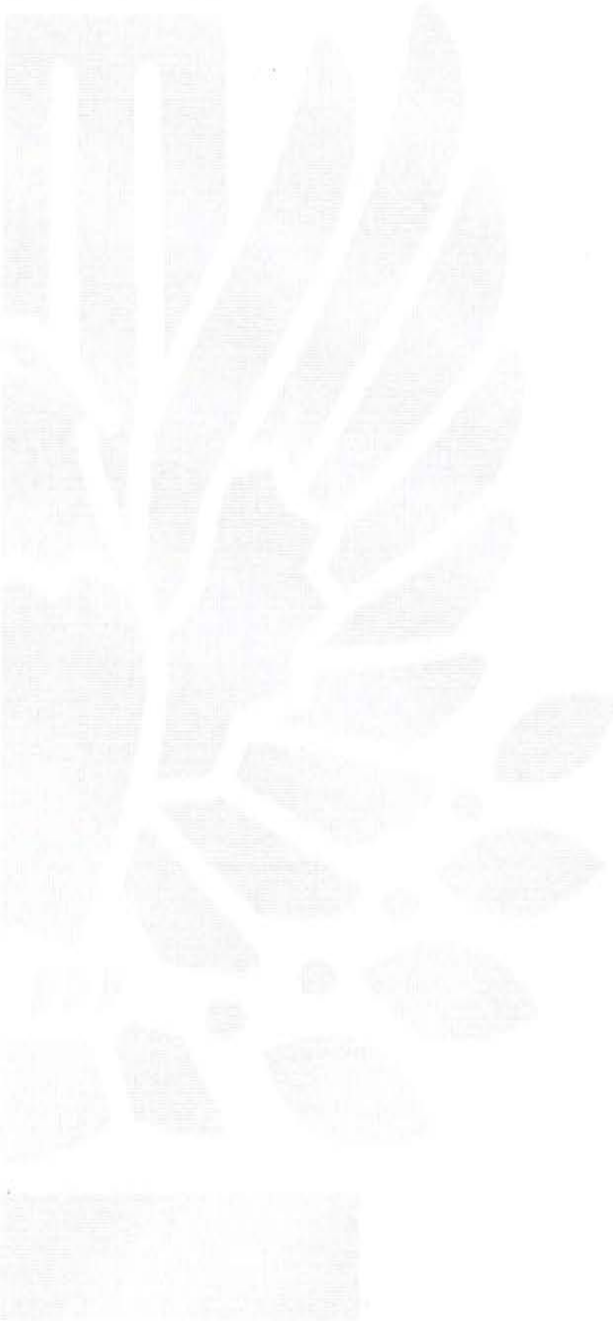
### § 15.4.4 CONSOLIDATION OR JOINDER

§ 15.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an

additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.



Init.

## **Additions and Deletions Report for** **AIA<sup>®</sup> Document A201<sup>™</sup> – 2007**

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### **PAGE 1**

#### Greenville-Spartanburg

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***AIA® Document D401™ – 2003***

I, Stephen G. Harrill, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 15:36:43 on 02/08/2008 under Order No. 1000302574\_5 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2007 - General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

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*(Signed)*

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*(Title)*

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*(Dated)*



## MEMORANDUM

TO: Members of the Airport Authority

FROM: Lew Bleiweis, A.A.E., Executive Director

DATE: June 12, 2015

### **ITEM DESCRIPTION – Information Section Item A**

April, 2015 Traffic Report – Asheville Regional Airport

### **SUMMARY**

April 2015 overall passenger traffic numbers were up 8.0% compared to the same period last year. Passenger traffic numbers reflect a 6.7% increase in passenger enplanements from April 2014. Enplanements for Fiscal Year to Date total 324,317 which is a 9.9% increase over the same period last year.

### **AIRLINE PERFORMANCE**

Allegiant Airlines: Year over Year passenger enplanements for Allegiant in April 2015 were up by 30.1%. There were no flight cancellations for the month.

Delta Airlines: Delta's April 2015 enplanements decreased by 4.7% compared to April 2014. There was one (1) flight cancellation for the month.

United Airlines: In April 2015, United Airlines saw an increase in enplanements by 15.9% over the same period last year. There were no flight cancellations for the month.

US Airways: US Airways' April 2015 passenger enplanements represent a 3.0% increase over the same period last year. There were nine (9) flight cancellations for the month.

# Monthly Traffic Report Asheville Regional Airport

April 2015



Category	Apr 2015	Apr 2014	Percentage Change	*CYTD-2015	*CYTD-2014	Percentage Change	*MOV12-2015	*MOV12-2014	Percentage Change
<b>Passenger Traffic</b>									
Enplaned	30,319	28,419	6.7%	106,099	97,056	9.3%	387,167	350,694	10.4%
Deplaned	<u>31,702</u>	<u>29,027</u>	9.2%	<u>106,614</u>	<u>97,019</u>	9.9%	<u>387,896</u>	<u>351,141</u>	10.5%
<b>Total</b>	<b>62,021</b>	<b>57,446</b>	<b>8.0%</b>	<b>212,713</b>	<b>194,075</b>	<b>9.6%</b>	<b>775,063</b>	<b>701,835</b>	<b>10.4%</b>
<b>Aircraft Operations</b>									
Airlines	441	428	3.0%	1,703	1,402	21.5%	6,069	5,038	20.5%
Commuter /Air Taxi	<u>632</u>	<u>754</u>	-16.2%	2,347	2,912	-19.4%	9,720	11,558	-15.9%
<b>Subtotal</b>	<u>1,073</u>	<u>1,182</u>	-9.2%	<u>4,050</u>	<u>4,314</u>	-6.1%	<u>15,789</u>	<u>16,596</u>	-4.9%
General Aviation	2,724	3,461	-21.3%	10,068	12,995	-22.5%	42,987	43,992	-2.3%
Military	<u>485</u>	<u>578</u>	-16.1%	<u>1,784</u>	<u>2,057</u>	-13.3%	<u>6,620</u>	<u>5,443</u>	21.6%
<b>Subtotal</b>	<u>3,209</u>	<u>4,039</u>	-20.5%	<u>11,852</u>	<u>15,052</u>	-21.3%	<u>49,607</u>	<u>49,435</u>	0.3%
<b>Total</b>	<b>4,282</b>	<b>5,221</b>	<b>-18.0%</b>	<b>15,902</b>	<b>19,366</b>	<b>-17.9%</b>	<b>65,396</b>	<b>66,031</b>	<b>-1.0%</b>
<b>Fuel Gallons</b>									
100LL	8,441	11,804	-28.5%	33,073	41,943	-21.1%	143,271	156,381	-8.4%
Jet A (GA)	74,736	89,717	-16.7%	254,220	299,704	-15.2%	1,175,674	1,154,672	1.8%
<b>Subtotal</b>	<u>83,177</u>	<u>101,521</u>	-18.1%	<u>287,293</u>	<u>341,647</u>	-15.9%	<u>1,318,945</u>	<u>1,311,053</u>	0.6%
Jet A (A/L)	<u>207,949</u>	<u>184,377</u>	12.8%	<u>656,825</u>	<u>635,057</u>	3.4%	<u>2,505,074</u>	<u>2,422,535</u>	3.4%
<b>Total</b>	<b>291,126</b>	<b>285,898</b>	<b>1.8%</b>	<b>944,118</b>	<b>976,704</b>	<b>-3.3%</b>	<b>3,824,019</b>	<b>3,733,588</b>	<b>2.4%</b>

\*CYTD = Calendar Year to Date and \*Mov12 = Moving Twelve Months.

Wednesday, May 20, 2015

# Airline Enplanements, Seats, and Load Factors

## Asheville Regional Airport

April 2015



	Apr 2015	Apr 2014	Percentage Change	*CYTD-2015	*CYTD-2014	Percentage Change
<b>Allegiant Air</b>						
Enplanements	7,811	6,004	30.1%	28,713	20,509	40.0%
Seats	9,172	6,817	34.5%	33,082	24,114	37.2%
Load Factor	85.2%	88.1%	-3.3%	86.8%	85.1%	2.0%
<b>Delta Air Lines</b>						
Enplanements	11,313	11,872	-4.7%	40,012	38,565	3.8%
Seats	13,969	14,874	-6.1%	53,446	50,889	5.0%
Load Factor	81.0%	79.8%	1.5%	74.9%	75.8%	-1.2%
<b>United Airlines</b>						
Enplanements	3,023	2,608	15.9%	7,967	7,242	10.0%
Seats	3,600	2,950	22.0%	9,650	8,950	7.8%
Load Factor	84.0%	88.4%	-5.0%	82.6%	80.9%	2.0%
<b>US Airways</b>						
Enplanements	8,172	7,935	3.0%	29,407	30,740	-4.3%
Seats	12,018	11,343	6.0%	44,348	44,766	-0.9%
Load Factor	68.0%	70.0%	-2.8%	66.3%	68.7%	-3.4%
<b>Totals</b>						
Enplanements	30,319	28,419	6.7%	106,099	97,056	9.3%
Seats	38,759	35,984	7.7%	140,526	128,719	9.2%
Load Factor	78.2%	79.0%	-1.0%	75.5%	75.4%	0.1%

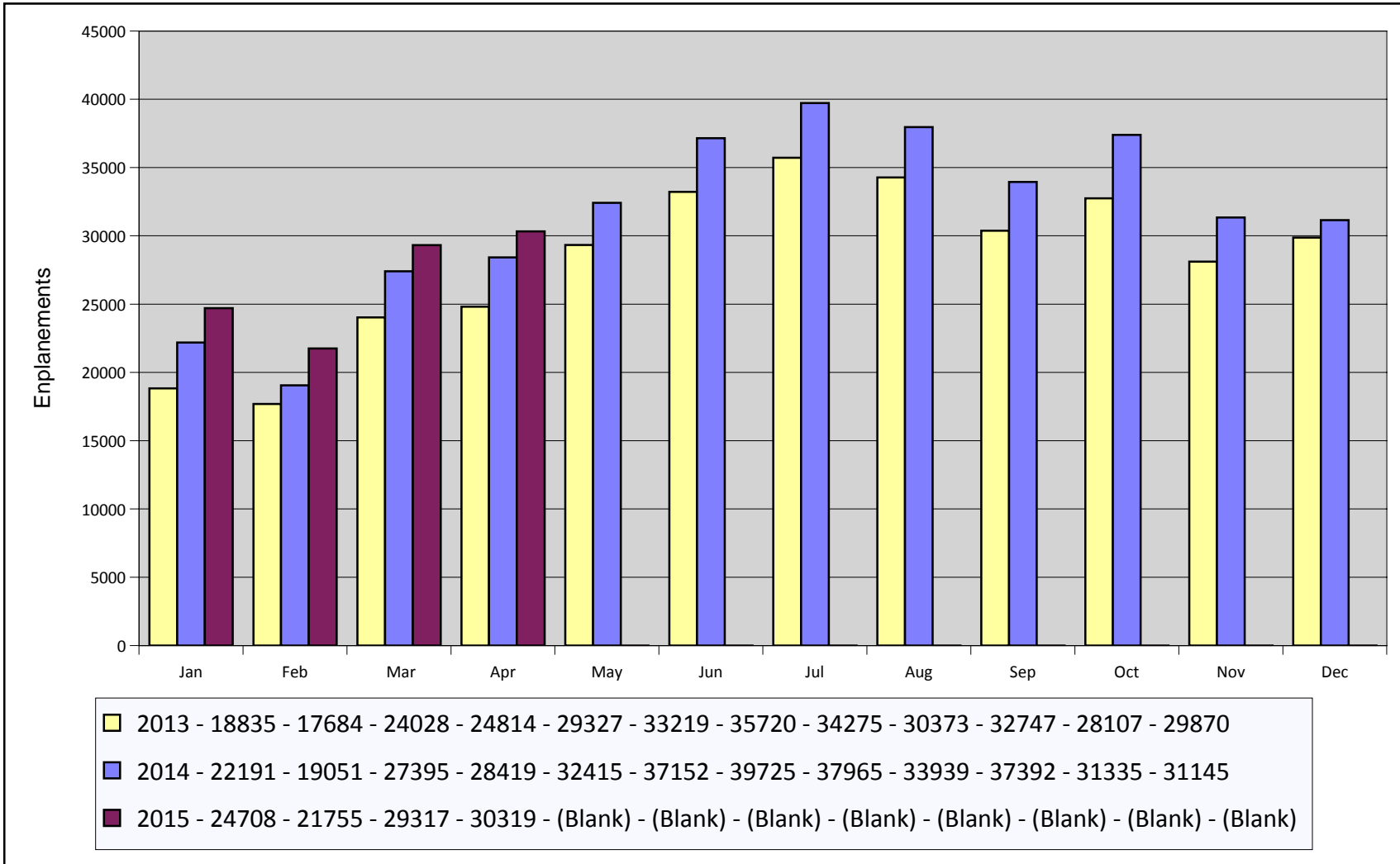


# Airline Flight Completions Asheville Regional Airport April 2015

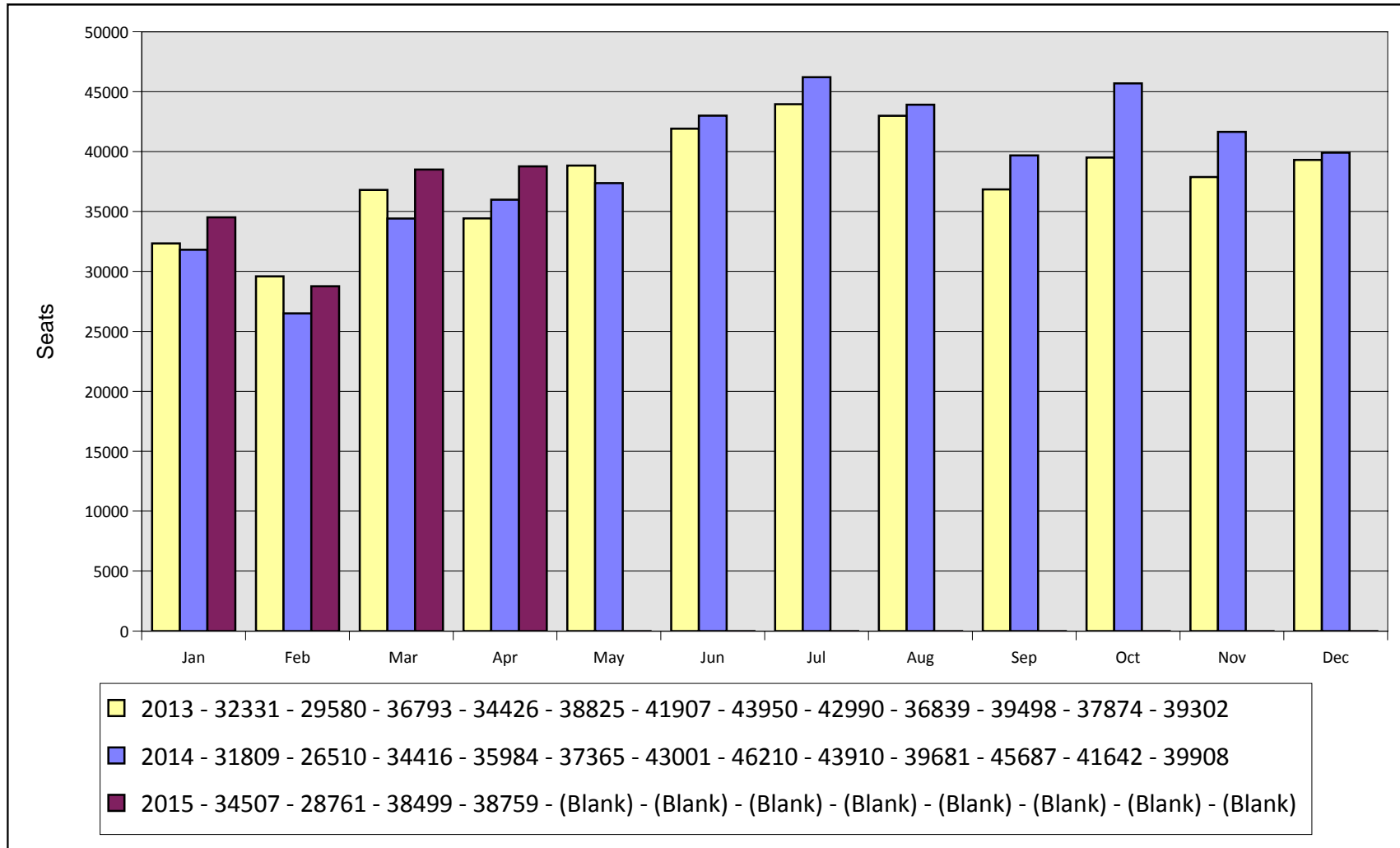


Airline	Scheduled Flights	Field	Cancellations Due To			Total Cancellations	Percentage of Completed
			Mechanical	Weather	Other		
Allegiant Air	53	0	0	0	0	0	100.0%
Delta Air Lines	162	0	0	1	0	1	99.4%
United Airlines	72	0	0	0	0	0	100.0%
US Airways	208	0	5	4	0	9	96.6%
<b>Total</b>	495	0	5	5	0	10	98.0%

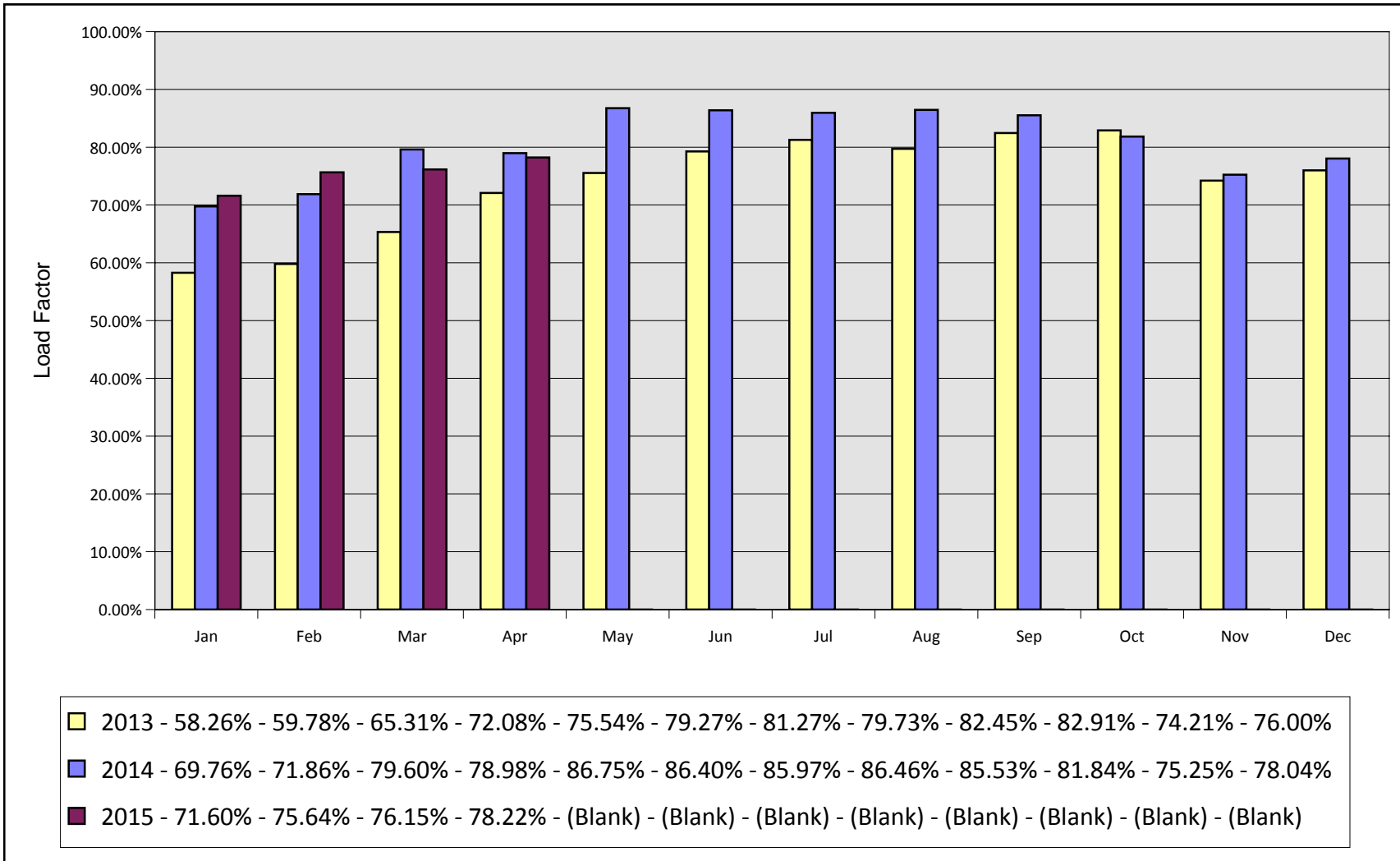
# Monthly Enplanements By Year Asheville Regional Airport



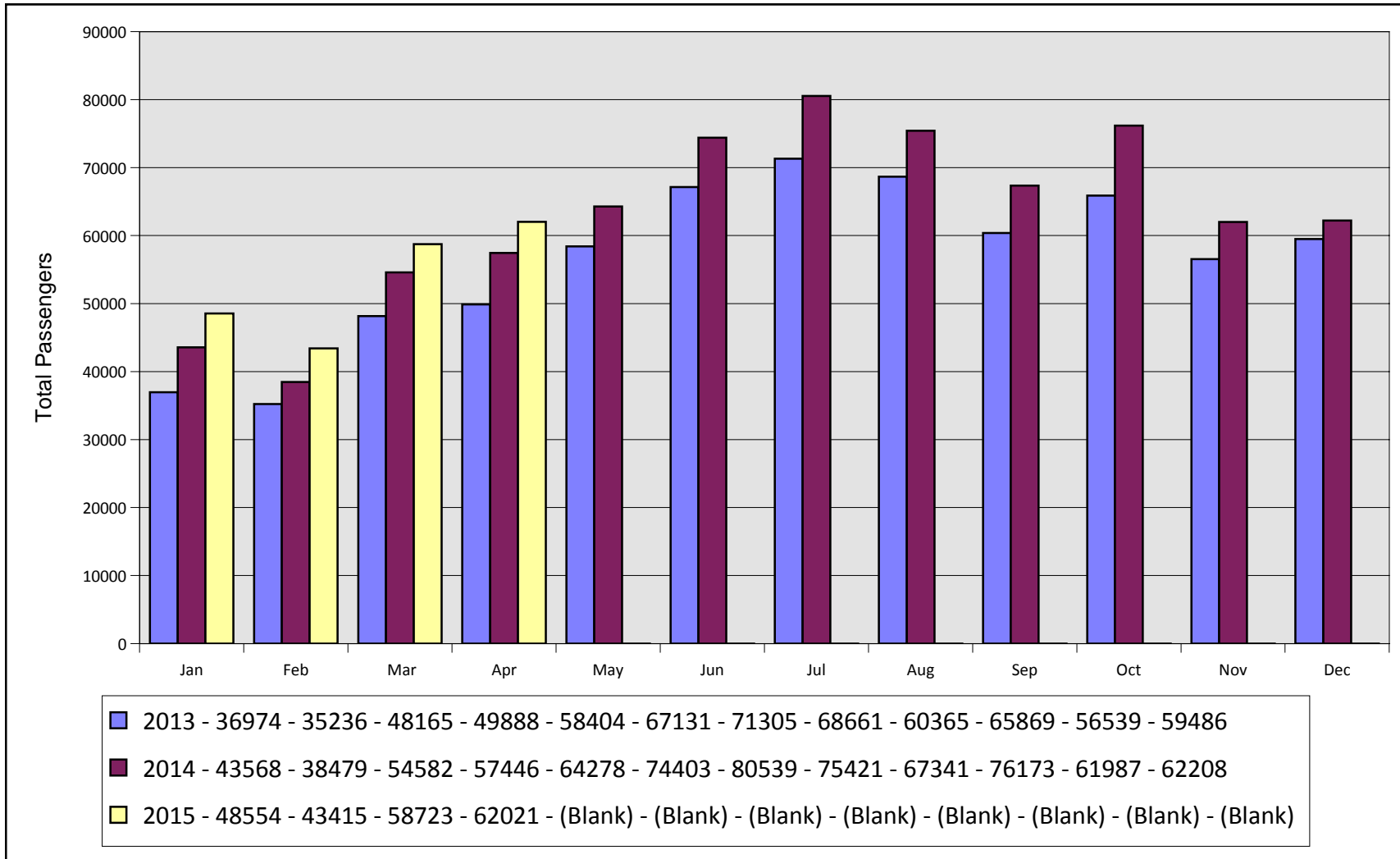
# Monthly Seats By Year Asheville Regional Airport



# Monthly Load Factors By Year Asheville Regional Airport

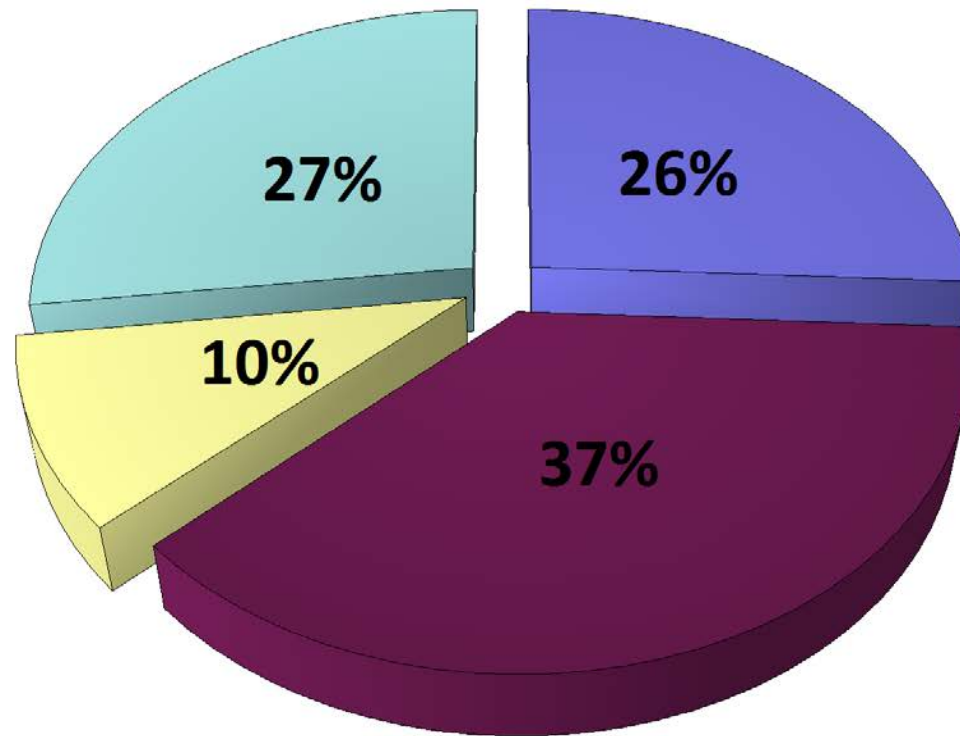


# Total Monthly Passengers By Year Asheville Regional Airport



# Airline Market Share Analysis (Enplanements) Asheville Regional Airport

Report Period From April 2015 Through April 2015



Schedule Weekly Summary Report for nonstop Passenger (All) flights from AVL for travel June 2015 vs. June 2014

Mktg Al	Travel Period		Jun 2015		Jun 2014		Diff		Percent Diff	
	Orig	Dest	Ops/Week	Seats	Ops/Week	Seats	Ops/Week	Seats	Ops/Week	Seats
DL	ATL	AVL	50	3,735	45	3,119	5	616	11.1%	19.7%
DL	AVL	ATL	50	3,735	45	3,119	5	616	11.1%	19.7%
DL	AVL	DTW	0	0	7	350	(7)	(350)	(100.0%)	(100.0%)
DL	AVL	LGA	1	50	7	350	(6)	(300)	(85.7%)	(85.7%)
DL	DTW	AVL	0	0	7	350	(7)	(350)	(100.0%)	(100.0%)
DL	LGA	AVL	1	50	7	350	(6)	(300)	(85.7%)	(85.7%)
G4	AVL	FLL	4	708	2	332	2	376	100.0%	113.3%
G4	AVL	PBI	4	664	2	354	2	310	100.0%	87.6%
G4	AVL	PGD	4	664	2	332	2	332	100.0%	100.0%
G4	AVL	PIE	5	885	4	708	1	177	25.0%	25.0%
G4	AVL	SFB	4	686	3	531	1	155	33.3%	29.2%
G4	FLL	AVL	4	708	2	332	2	376	100.0%	113.3%
G4	PBI	AVL	4	664	2	354	2	310	100.0%	87.6%
G4	PGD	AVL	4	664	2	332	2	332	100.0%	100.0%
G4	PIE	AVL	5	885	4	708	1	177	25.0%	25.0%
G4	SFB	AVL	4	686	3	531	1	155	33.3%	29.2%
UA	AVL	EWR	7	350	7	350	0	0	0.0%	0.0%
UA	AVL	ORD	22	1,100	16	800	6	300	37.5%	37.5%
UA	EWR	AVL	7	350	7	350	0	0	0.0%	0.0%
UA	ORD	AVL	22	1,100	16	800	6	300	37.5%	37.5%
US	AVL	CLT	48	2,682	49	2,803	(1)	(121)	(2.0%)	(4.3%)
US	CLT	AVL	48	2,682	49	2,803	(1)	(121)	(2.0%)	(4.3%)
			298	23,048	288	20,058	10	2,990	3.5%	14.9%

Schedule Weekly Summary Report for nonstop Passenger (All) flights from AVL for travel July 2015 vs. July 2014

Mktg Al	Travel Period		Jul 2015		Jul 2014		Diff		Percent Diff	
	Orig	Dest	Ops/Week	Seats	Ops/Week	Seats	Ops/Week	Seats	Ops/Week	Seats
DL	ATL	AVL	50	3,777	47	3,199	3	578	6.4%	18.1%
DL	AVL	ATL	50	3,777	47	3,199	3	578	6.4%	18.1%
DL	DTW	AVL	0	0	7	350	(7)	(350)	(100.0%)	(100.0%)
DL	LGA	AVL	1	50	7	350	(6)	(300)	(85.7%)	(85.7%)
DL	AVL	DTW	0	0	7	350	(7)	(350)	(100.0%)	(100.0%)
DL	AVL	LGA	1	50	7	350	(6)	(300)	(85.7%)	(85.7%)
G4	AVL	FLL	4	708	2	332	2	376	100.0%	113.3%
G4	AVL	PBI	4	664	2	354	2	310	100.0%	87.6%
G4	AVL	PGD	4	664	2	332	2	332	100.0%	100.0%
G4	AVL	PIE	6	1,062	4	697	2	365	50.0%	52.4%
G4	AVL	SFB	5	863	4	697	1	166	25.0%	23.8%
G4	FLL	AVL	4	708	2	332	2	376	100.0%	113.3%
G4	PBI	AVL	4	664	2	354	2	310	100.0%	87.6%
G4	PGD	AVL	4	664	2	332	2	332	100.0%	100.0%
G4	PIE	AVL	6	1,062	4	697	2	365	50.0%	52.4%
G4	SFB	AVL	5	863	4	697	1	166	25.0%	23.8%
UA	AVL	EWR	8	400	7	350	1	50	14.3%	14.3%
UA	AVL	ORD	22	1,100	23	1,150	(1)	(50)	(4.3%)	(4.3%)
UA	EWR	AVL	8	400	7	350	1	50	14.3%	14.3%
UA	ORD	AVL	22	1,100	23	1,150	(1)	(50)	(4.3%)	(4.3%)
US	AVL	CLT	48	2,690	48	2,753	0	(63)	0.0%	(2.3%)
US	CLT	AVL	48	2,690	48	2,753	0	(63)	0.0%	(2.3%)
			304	23,956	306	21,128	(2)	2,828	(0.7%)	13.4%

Schedule Weekly Summary Report for nonstop Passenger (All) flights from AVL for travel August 2015 vs. August 2014

Mktg Al	Travel Period		Aug 2015		Aug 2014		Diff		Percent Diff	
	Orig	Dest	Ops/Week	Seats	Ops/Week	Seats	Ops/Week	Seats	Ops/Week	Seats
DL	ATL	AVL	47	3,627	48	3,223	(1)	404	(2.1%)	12.5%
DL	AVL	ATL	47	3,627	48	3,223	(1)	404	(2.1%)	12.5%
DL	AVL	DTW	0	0	7	350	(7)	(350)	(100.0%)	(100.0%)
DL	AVL	LGA	1	50	7	350	(6)	(300)	(85.7%)	(85.7%)
DL	DTW	AVL	0	0	7	350	(7)	(350)	(100.0%)	(100.0%)
DL	LGA	AVL	1	50	7	350	(6)	(300)	(85.7%)	(85.7%)
G4	AVL	FLL	4	708	2	332	2	376	100.0%	113.3%
G4	AVL	PBI	3	498	2	354	1	144	50.0%	40.7%
G4	AVL	PGD	4	664	2	332	2	332	100.0%	100.0%
G4	AVL	PIE	5	885	3	531	2	354	66.7%	66.7%
G4	AVL	SFB	3	498	2	354	1	144	50.0%	40.7%
G4	FLL	AVL	4	708	2	332	2	376	100.0%	113.3%
G4	PBI	AVL	3	498	2	354	1	144	50.0%	40.7%
G4	PGD	AVL	4	664	2	332	2	332	100.0%	100.0%
G4	PIE	AVL	5	885	3	531	2	354	66.7%	66.7%
G4	SFB	AVL	3	498	2	354	1	144	50.0%	40.7%
UA	AVL	EWR	8	400	7	350	1	50	14.3%	14.3%
UA	AVL	ORD	22	1,100	23	1,150	(1)	(50)	(4.3%)	(4.3%)
UA	EWR	AVL	8	400	7	350	1	50	14.3%	14.3%
UA	ORD	AVL	22	1,100	23	1,150	(1)	(50)	(4.3%)	(4.3%)
US	AVL	CLT	48	2,690	48	2,753	0	(63)	0.0%	(2.3%)
US	CLT	AVL	48	2,690	48	2,753	0	(63)	0.0%	(2.3%)
			290	22,240	302	20,158	(12)	2,082	(4.0%)	10.3%



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## MEMORANDUM

TO: Members of the Airport Authority

FROM: Janet Burnette, Director of Finance & Accounting

DATE: June 12, 2015

### ITEM DESCRIPTION – Information Section Item B

Greater Asheville Regional Airport – Explanation of Extraordinary Variances  
Month of April, 2015 (Month 10 of FY2015)

### SUMMARY

Operating Revenues for the month of April were \$783,088, 10.93% over budget. Operating Expenses for the month were \$581,684, 12.99% under budget. As a result, Net Operating Revenues before Depreciation were \$163,961 over budget. Net Non-Operating Revenues were \$247,049, 36.10% over budget.

Year-to-date Operating Revenues were \$7,747,669, 10.18% over budget. Year-to-date Operating Expenses were \$5,788,053, 11.89% below budget. Year-to-date Net Operating Revenues before Depreciation were \$1,496,324 over budget. Net Non-Operating Revenues for the year were \$2,243,239, 22.78% over budget.

### REVENUES

Significant variations to budget for April were:

Concessions	\$17,768	74.56%	Enplanements over budget.
Auto Parking	\$55,195	26.04%	Enplanements over budget.





## **EXPENSES**

Significant variations to budget for April were:

Other Contractual Services	(\$18,543)	(36.67%)	Timing of Contractual Services
Travel & Training	(\$6,866)	(36.10%)	Timing of Travel and Training
Utility Services	(\$6,429)	(15.49%)	Natural gas costs less than anticipated
Promotional Activities	(\$7,771)	(76.79%)	Timing of Promotional Activities
Emergency Repair	\$8,098	129.57%	First Emergency Repair during fiscal year

## **STATEMENT OF NET ASSETS**

Significant variations to prior month were:

Cash and Cash Equivalents – Cash and Cash Equivalents increased by \$1,531k mainly due to the receipt of Federal funding for the Airfield Redevelopment project.

Grants Receivable – Grants Receivable decreased by \$1,793k due to the receipt of Federal funds.

Construction in Progress – Construction in Progress increased by \$210k due to spending on the Airfield Redevelopment project.

Property and Equipment, Net – Property and Equipment, Net decreased by \$383k for the current month's depreciation.

**ASHEVILLE REGIONAL AIRPORT  
INVESTMENT AND INTEREST INCOME SUMMARY  
As of April 30, 2015**

<b><u>Institution:</u></b>	<b><u>Interest Rate</u></b>	<b><u>Investment Amount</u></b>	<b><u>Monthly Interest</u></b>
Bank of America - Operating Account	0.20%	\$ 6,311,490	935
First Citizens - Money Market Account	0.05%	6,386,257	263
NC Capital Management Trust - Cash Portfolio		17,174	0
NC Capital Management Trust - Term Portfolio		3,012,574	248
Petty Cash		200	
 <b><u>Restricted Cash:</u></b>			
Wells Fargo - CFC Revenue Account	0.00%	516,391	0
Bank of America - PFC Revenue Account	0.20%	3,335,567	539
 <b>Total</b>		 <b><u>\$ 19,579,653</u></b>	 <b><u>\$ 1,985</u></b>

**Investment Diversification:**

Banks	85%
NC Capital Management Trust	15%
Commercial Paper	0%
Federal Agencies	0%
US Treasuries	0%
	<u>100%</u>

**ASHEVILLE REGIONAL AIRPORT**  
**STATEMENT OF CHANGES IN FINANCIAL POSITION**  
**For the Month Ended April 30, 2015**

	<b>Current Month</b>	<b>Prior Period</b>
<b>Cash and Investments Beginning of Period</b>	<b>\$ 18,048,025</b>	<b>\$ 17,997,593</b>
Net Income/(Loss) Before Capital Contributions	65,412	(87,747)
Depreciation	383,041	383,041
Decrease/(Increase) in Receivables	1,693,843	(131,498)
Increase/(Decrease) in Payables	(286,830)	(13,681)
Decrease/(Increase) in Prepaid Expenses	18,354	18,354
Decrease/(Increase) in Fixed Assets	(210,759)	(428,649)
Principal Payments of Bond Maturities	(43,925)	(43,714)
Capital Contributions	(87,508)	354,326
<b>Increase(Decrease) in Cash</b>	<b>1,531,628</b>	<b>50,432</b>
<b>Cash and Investments End of Period</b>	<b>\$ 19,579,653</b>	<b>\$ 18,048,025</b>

**Asheville Regional Airport**  
**Detailed Statement of Revenue, Expenses and Changes in Net Assets**  
**For the Month Ending April 30, 2015**

	Current Month Actual	Current Month Budget	Variance \$	Variance %	YTD Actual	YTD Budget	Variance \$	Variance %	Annual Budget
<b>Operating Revenue:</b>									
Terminal Space Rentals - Non Airline	\$18,179	\$18,178	\$1	0.01%	\$191,727	\$180,826	\$10,901	6.03%	\$217,195
Terminal Space Rentals - Airline	107,925	104,833	3,092	2.95%	1,113,817	1,061,130	52,687	4.97%	1,300,000
Concessions	41,597	23,829	17,768	74.56%	328,998	241,290	87,708	36.35%	300,965
Auto Parking	267,195	212,000	55,195	26.04%	2,547,343	2,072,225	475,118	22.93%	2,519,725
Rental Car - Car Rentals	111,769	112,240	(471)	(0.42%)	1,127,660	1,122,400	5,260	0.47%	1,346,884
Rental Car - Facility Rent	50,916	51,952	(1,036)	(1.99%)	493,910	502,518	(8,608)	(1.71%)	604,289
Commercial Ground Transportation	1,200	450	750	166.67%	28,029	16,450	11,579	70.39%	37,700
Landing Fees	46,071	43,125	2,946	6.83%	479,363	473,250	6,113	1.29%	566,500
FBO'S	80,157	80,874	(717)	(0.89%)	813,353	811,640	1,713	0.21%	978,105
Building Leases	12,280	13,171	(891)	(6.76%)	113,857	133,034	(19,177)	(14.42%)	159,341
Land Leases	2,156	2,126	30	1.41%	21,480	21,179	301	1.42%	25,438
Other Leases/Fees	43,643	43,182	461	1.07%	488,132	396,100	92,032	23.23%	491,800
<b>Total Operating Revenue</b>	<b>\$783,088</b>	<b>\$705,960</b>	<b>\$77,128</b>	<b>10.93%</b>	<b>\$7,747,669</b>	<b>\$7,032,042</b>	<b>\$715,627</b>	<b>10.18%</b>	<b>\$8,547,942</b>
<b>Operating Expenses:</b>									
Personnel Services	\$355,985	\$402,241	(\$46,256)	(11.50%)	\$3,505,054	\$3,868,976	(\$363,922)	(9.41%)	\$4,731,849
Professional Services	18,874	14,865	4,009	26.97%	137,791	177,280	(39,489)	(22.27%)	227,400
Accounting & Auditing	-	3,175	(3,175)	(100.00%)	7,600	9,375	(1,775)	(18.93%)	15,000
Other Contractual Services	32,019	50,562	(18,543)	(36.67%)	611,319	578,148	33,171	5.74%	685,198
Travel & Training	12,151	19,017	(6,866)	(36.10%)	114,313	136,706	(22,393)	(16.38%)	164,695
Communications & Freight	6,932	5,764	1,168	20.26%	65,957	57,640	8,317	14.43%	69,166
Utility Services	35,087	41,516	(6,429)	(15.49%)	351,011	412,098	(61,087)	(14.82%)	487,648
Rentals & Leases	946	976	(30)	(3.07%)	9,705	9,760	(55)	(0.56%)	11,716
Insurance	16,352	18,808	(2,456)	(13.06%)	167,552	188,080	(20,528)	(10.91%)	225,700
Repairs & Maintenance	38,815	36,291	2,524	6.95%	213,965	322,614	(108,649)	(33.68%)	366,050
Advertising, Printing & Binding	23,583	27,822	(4,239)	(15.24%)	108,401	146,820	(38,419)	(26.17%)	205,650
Promotional Activities	2,349	10,120	(7,771)	(76.79%)	54,555	66,050	(11,495)	(17.40%)	99,515
Other Current Charges & Obligations	6,196	6,415	(219)	(3.41%)	69,965	68,150	1,815	2.66%	81,000
Office Supplies	488	833	(345)	(41.42%)	7,126	8,330	(1,204)	(14.45%)	10,000
Operating Supplies	16,380	22,320	(5,940)	(26.61%)	205,402	288,369	(82,967)	(28.77%)	326,336
Books, Publications, Subscriptions & Meml	1,179	1,542	(363)	(23.54%)	32,457	36,710	(4,253)	(11.59%)	40,010
Contingency	0	0	-	0.00%	0	44,444	(44,444)	(100.00%)	56,000
Emergency Repair	14,348	6,250	8,098	129.57%	14,348	62,500	(48,152)	(77.04%)	75,000
Business Development	-	-	-	100.00%	111,532	86,700	24,832	28.64%	300,000
<b>Total Operating Expenses</b>	<b>\$581,684</b>	<b>\$668,517</b>	<b>(\$86,833)</b>	<b>(12.99%)</b>	<b>\$5,788,053</b>	<b>\$6,568,750</b>	<b>(\$780,697)</b>	<b>(11.89%)</b>	<b>\$8,177,933</b>

**Asheville Regional Airport  
Detailed Statement of Revenue, Expenses and Changes in Net Assets**

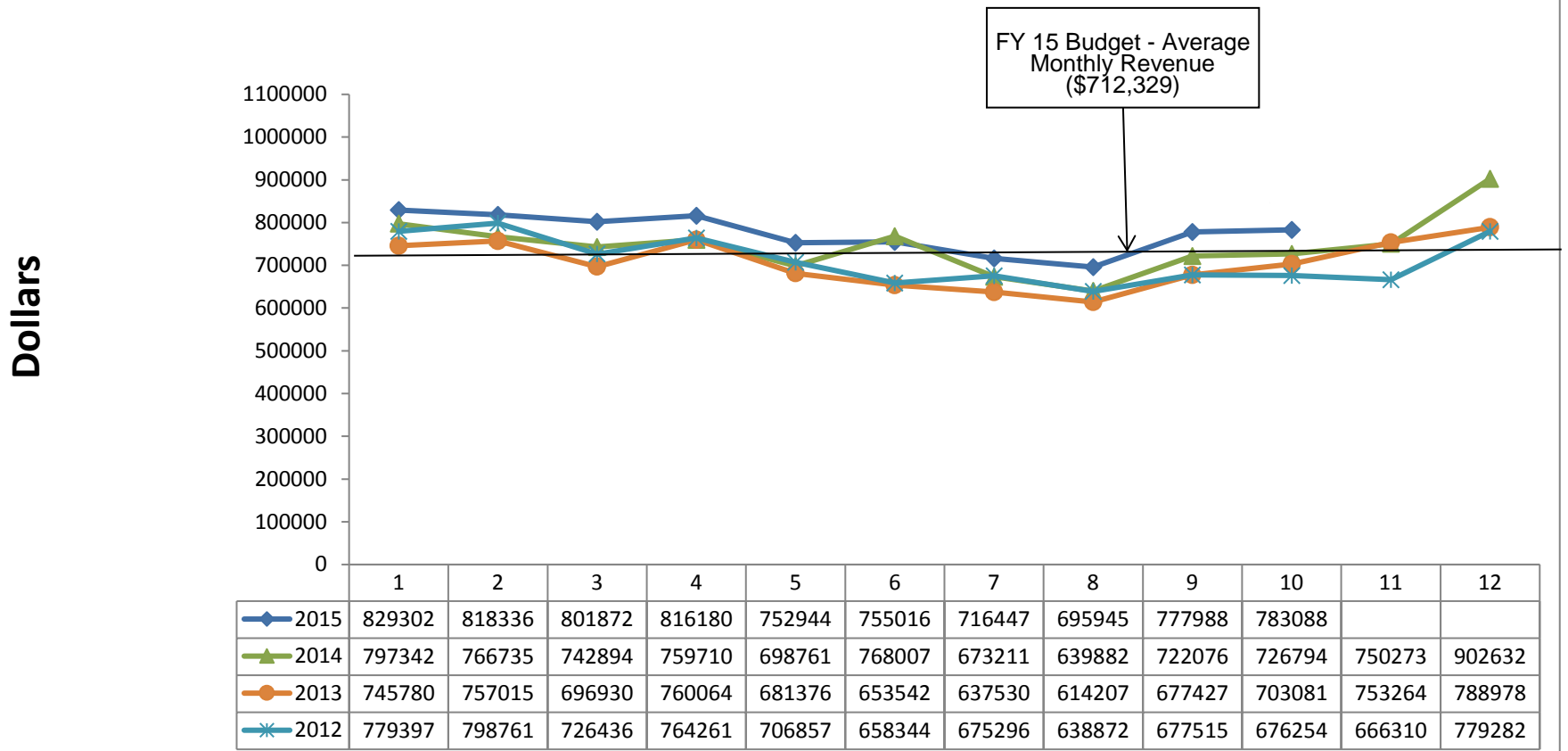
**For the Month Ending April 30, 2015**

	<u>Current Month Actual</u>	<u>Current Month Budget</u>	<u>Variance \$</u>	<u>Variance %</u>	<u>YTD Actual</u>	<u>YTD Budget</u>	<u>Variance \$</u>	<u>Variance %</u>	<u>Annual Budget</u>
<b>Operating Revenue before Depreciation</b>	\$201,404	\$37,443	\$163,961	437.90%	\$1,959,616	\$463,292	\$1,496,324	322.98%	\$370,009
Depreciation	383,041	-	\$383,041	100.00%	3,830,410	-	\$3,830,410	100.00%	-
<b>Operating Income(Loss) Before Non-Operating Revenue and Expenses</b>	(\$181,637)	\$37,443	(\$219,080)	(585.10%)	(\$1,870,794)	\$463,292	(\$2,334,086)	(503.80%)	\$370,009
<b>Non-Operating Revenue and Expense</b>									
Customer Facility Charges	\$105,307	\$81,000	\$24,307	30.01%	\$1,033,286	\$862,750	\$170,536	19.77%	\$ 1,075,000
Passenger Facility Charges	148,068	107,000	41,068	38.38%	1,289,563	1,038,500	251,063	24.18%	1,325,000
Interest Revenue	1,985	1,833	152	8.29%	18,129	18,330	(201)	(1.10%)	22,000
Interest Expense	(8,311)	(8,311)	-	0.00%	(92,477)	(92,477)	-	0.00%	(108,461)
Reimbursable Cost Revenues	-	17,833	(17,833)	(100.00%)	153,443	178,330	(24,887)	(13.96%)	214,000
Reimbursable Cost Expenses	-	(17,833)	17,833	(100.00%)	(153,443)	(178,330)	24,887	(13.96%)	(214,000)
Gain/Loss on Disposal of Assets	-	0	(0)	0.00%	(5,262)	0	(5,262)	0.00%	-
<b>Non-Operating Revenue-Net</b>	\$247,049	\$181,522	\$65,527	36.10%	\$2,243,239	\$1,827,103	\$416,136	22.78%	\$2,313,539
<b>Income (Loss) Before Capital Contributions</b>	\$65,412	\$218,965	(\$153,553)	(70.13%)	\$372,445	\$2,290,395	(\$1,917,950)	(83.74%)	\$2,683,548
<b>Capital Contributions</b>	(\$87,508)	\$0	(\$87,508)	100.00%	\$8,698,592	\$0	\$8,698,592	100.00%	\$0
<b>Increase in Net Assets</b>	<u>(\$22,096)</u>	<u>\$218,965</u>	<u>(\$241,061)</u>	<u>(110.09%)</u>	<u>\$9,071,037</u>	<u>\$2,290,395</u>	<u>\$6,780,642</u>	<u>296.05%</u>	<u>\$2,683,548</u>

**ASHEVILLE REGIONAL AIRPORT  
STATEMENT OF FINANCIAL POSITION  
As of April 30, 2015**

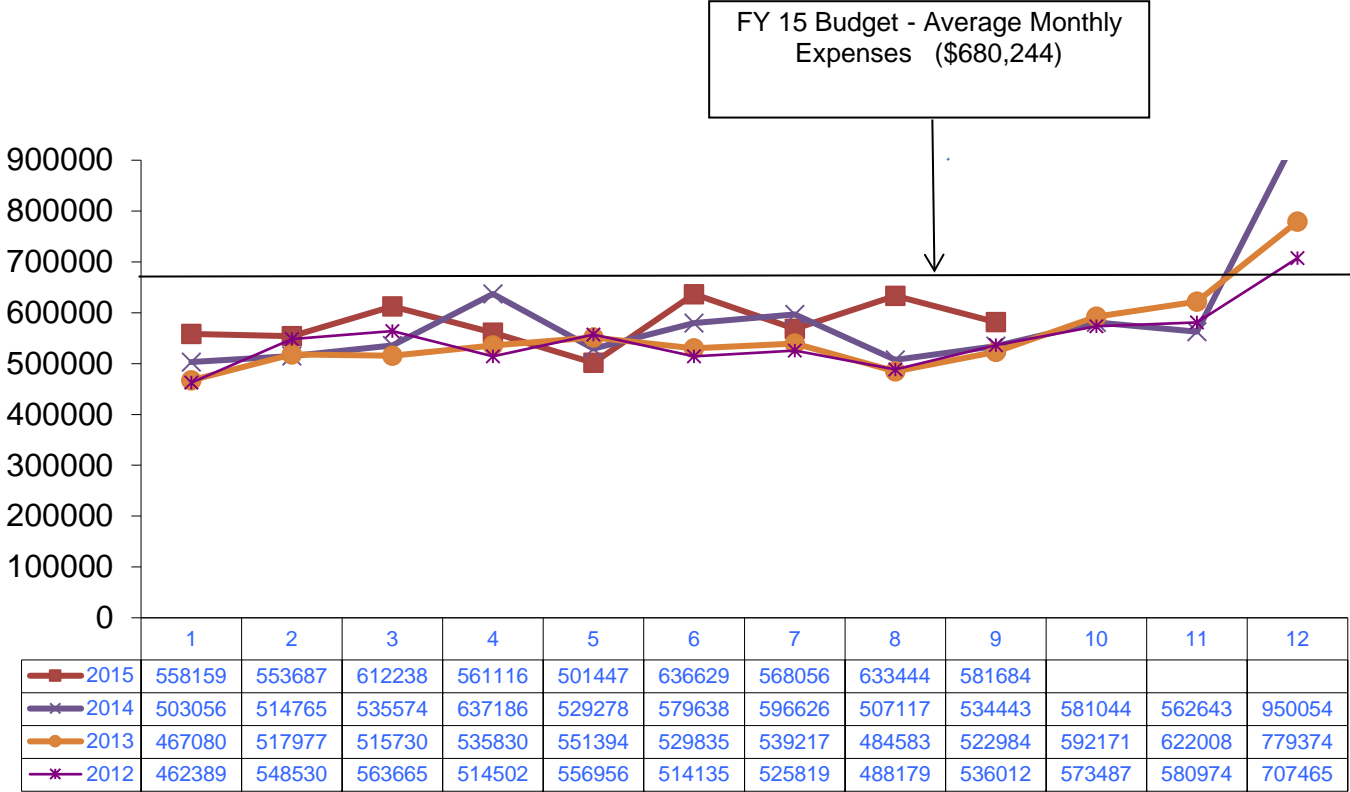
	<u>Current Month</u>	<u>Last Month</u>
<b><u>ASSETS</u></b>		
<b>Current Assets:</b>		
<b>Unrestricted Net Assets:</b>		
Cash and Cash Equivalents	\$15,727,696	\$14,383,645
Accounts Receivable	307,755	270,006
Passenger Facility Charges Receivable	210,000	155,000
Refundable Sales Tax Receivable	221,881	214,771
Grants Receivable	3,490,967	5,284,670
Prepaid Expenses	36,858	55,213
Total Unrestricted Assets	19,995,157	20,363,305
<b>Restricted Assets:</b>		
Cash and Cash Equivalents	3,851,957	3,664,380
Total Restricted Assets	3,851,957	3,664,380
Total Current Assets	23,847,114	24,027,685
<b>Noncurrent Assets:</b>		
Construction in Progress	19,504,899	19,294,140
Property and Equipment - Net	55,568,275	55,951,316
Total Noncurrent Assets	75,073,174	75,245,456
	\$98,920,288	\$99,273,141
<b><u>LIABILITIES AND NET ASSETS</u></b>		
<b>Current Liabilities:</b>		
<b>Payable from Unrestricted Assets:</b>		
Accounts Payable & Accrued Liabilities	\$875,063	\$1,004,603
Customer Deposits	10,425	10,425
Unearned Revenue	427,365	400,735
Construction Contract Retainages	27,532	211,456
Revenue Bond Payable - Current	543,922	541,310
Total Payable from Unrestricted Assets	1,884,307	2,168,529
Total Current Liabilities	1,884,307	2,168,529
<b>Noncurrent Liabilities:</b>		
Other Postemployment Benefits	927,340	927,340
Compensated Absences	401,620	401,620
Net Pension Obligation-LEO Special Separation Allowance	(28,163)	(28,163)
Revenue Bond Payable - Noncurrent	1,134,560	1,181,096
Total Noncurrent Liabilities	2,435,357	2,481,893
Total Liabilities	4,319,664	4,650,422
<b>Net Assets:</b>		
Invested in Capital Assets	73,394,692	73,523,050
Restricted	3,851,957	3,664,380
Unrestricted	17,353,975	17,435,289
Total Net Assets	94,600,624	94,622,719
	\$98,920,288	\$99,273,141

# ASHEVILLE REGIONAL AIRPORT Annual Operating Revenue by Month April 2015



# ASHEVILLE REGIONAL AIRPORT Annual Operating Expenses by Month April 2015

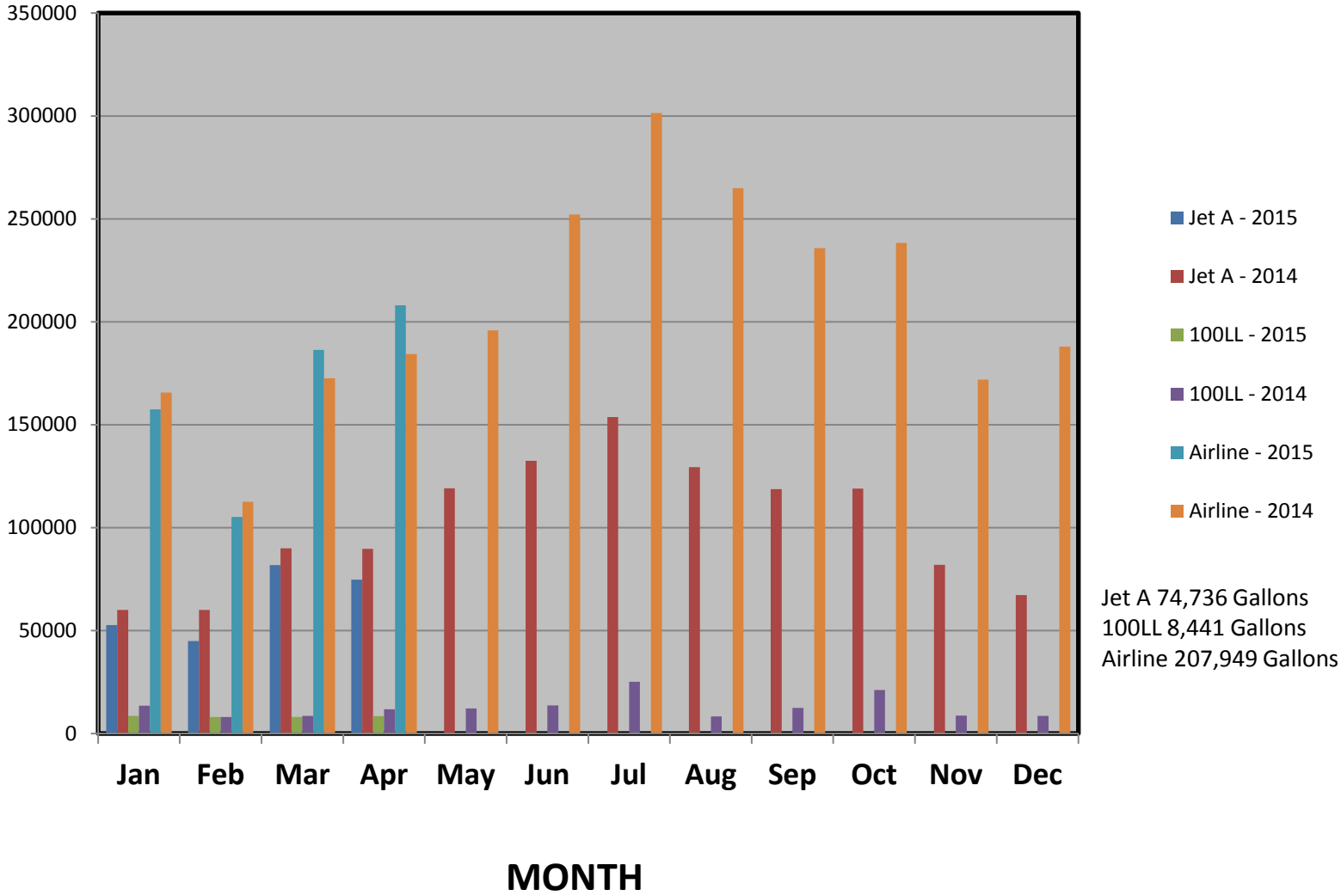
Dollars





**ASHEVILLE REGIONAL AIRPORT  
FUEL SALES - GALLONS  
April 2015**

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Jet A 74,736 Gallons  
100LL 8,441 Gallons  
Airline 207,949 Gallons

Design Phase														
Project Number	Project Name	Project Description	Professional Services Consultant	Professional Services Contract	General Contractor	Original Construction Contract	Change Orders (thru 06/01/2015)	Percent of Original Contract	Board Approved Project Cost	Percent Complete	Expensed to Date (thru 06/01/2015)	Start Date	End Date	Current Project Status (as of 06/01/2015)
1	Airfield Re-Development Project	Budget for the complete project							\$64,000,000.00	20.7%	\$13,305,375.07			All Engineer contracts and expenses will be inclusive of budget.
1A	Airfield Re-Development Project	Phase I - Design Services	RS&H	\$447,983.00	N/A	N/A	\$0.00	0.00%	<i>(Overall total included in above number)</i>	75%	\$335,582.73	Dec-12	Sep-14	Bid Package 2 work continues to be monitored and directed.
1B	Airfield Re-Development Project	Phase II - Design Services and Project Management.	RS&H	\$1,842,318.00	N/A	N/A	\$0.00	0.00%	<i>(Overall total included in above number)</i>	45.9%	\$959,208.84	Jun-13	Dec-15	Project Management work continues.
1C	Airfield Re-Development Project	Phase III and IV - Design Services and Project Management.	RS&H	\$2,399,826.00	N/A	N/A	\$0.00	0.00%	<i>(Overall total included in above number)</i>	0.02%	\$4,760.36	Dec-14	May-18	60% plans for BP3 are in review.
1D	Airfield Re-Development Project	New Runway Design	Michael Baker Engineering Inc.	\$397,257.94	N/A	N/A	\$0.00	0.00%	<i>(Overall total included in above number)</i>	100%	\$397,257.94	Mar-13	Sep-14	Contract is completed.
1E	Airfield Re-Development Project	Temporary Runway/Taxiway Design	AVCON	\$1,837,826.00	N/A	N/A	\$0.00	0.00%	<i>(Overall total included in above number)</i>	91.0%	\$1,674,256.77	Mar-13	Dec-15	Design complete. Construction support services continue.
1F	Airfield Re-Development Project	New Runway Design	AVCON	\$1,902,676.06	N/A	N/A	\$0.00	0.00%	<i>(Overall total included in above number)</i>	0.0%	\$0.00	Mar-13	Dec-17	60% plans for BP3 are in review.
1G	Airfield Re-Development Project	Miscellaneous and Administrative Expenses			N/A	N/A	\$0.00	0.00%	<i>(Overall total included in above number)</i>		\$2,354,714.56	Jan-13	Dec-17	Misc., Admin., \$642K FAA Reimbursable expenses and land acquisition costs of 1.5M are included in this figure.
2	Water Hydrant Service Station	Install deicing truck refill station	Delta Airport Consultants	\$16,500.00	N/A	N/A	\$0.00	0.00%	\$16,500.00	0.00%	\$0.00	Jul-15	Sep-15	Design will begin July 1, 2015.
3	Additional Remote Parking	Gravel Parking Lots	Delta Airport Consultants	\$41,500.00	N/A	N/A	\$0.00	0.00%	\$41,500.00	0.00%	\$0.00	Apr-15	Jun-15	Design is near completion and ready for bid package to be submitted for review.

Construction Phase														
Project Number	Project Name	Project Description	Professional Services Consultant	Professional Services Contract	General Contractor	Original Construction Contract	Change Orders (thru 05/01/2015)	Percent of Original Contract	Board Approved Project Cost	Percent Complete	Expensed to Date (thru 05/01/2015)	Start Date	End Date	Current Project Status (as of 05/01/2015)
1	Westside Area 3	Construction for the Westside Project to level land utilizing engineered ash to fill and top with soil embankment/cap for future development.	AVCON	\$278,060.00	Charah	N/A	\$0.00	0.00%	\$278,060 * <i>(project expenses are being reimbursed by Charah through a separate agreement)</i>	92.7%	\$257,870.19	Mar-13	Jul-15	Ash placement continues in Subcells 5 and 7 with liner and topsoil placement by mid-June if no delays for rain. Subcell 6 is complete.
2	Area 2	Construction for the Ash Fill on the NE for future development.	AVCON	\$466,140.00	Charah	N/A	\$0.00	0.00%	\$466,140 * <i>(project expenses are being reimbursed by Charah through a separate agreement)</i>	13%	\$59,891.53	Dec-14	May-17	Charah is developing the schedule for work and start date.

**Asheville Regional Airport  
Project Report - June 2015**

Project Number	Project Name	Project Description	Professional Services Consultant	Professional Services Contract	General Contractor	Original Construction Contract	Change Orders (thru 06/01/2015)	Percent of Original Contract	Board Approved Project Cost	Percent Complete	Expensed to Date (thru 06/01/2015)	Start Date	End Date	Current Project Status (as of 06/01/2015)
3	Temporary Runway 17-35 Site Preparation and Grading	Site preparation, drainage and retaining wall construction for new temporary runway/taxiway.	RS&H and AVCON, Inc.	Amount included in Phase 1 Design Fees	Thalle Construction Company, Inc.	\$8,856,193.00	\$34,119.73	0.38%	\$9,741,812.30	85.7%	\$7,579,593.87	Jun-14	Dec-14	Work is completed and contractor has demobilized. Close out process in progress.
4	Temporary Runway 17-35 Paving, Lighting and NAVAIDS	Construction of new temporary runway - parallel taxiway B	RS&H and AVCON, Inc.	Amount included in Phase 3 Design Fees	Harrison Construction Company	\$12,435,884.00	\$0.00	0.00%	\$13,057,678.00	0%	\$0.00	Mar-15	Dec-15	Temporary Runway grading continues with drainage work near completion and conduit placement.
5	Entryway Improvements	Replacement entrance sign, landscaping and road sign placement due to NCDOT project in front of airport.	Delta Airport Consultants Inc.	\$84,507.00	Young and McQueen Construction	\$414,725.00	-\$4,865.00	0.00%	\$84,507.00 (Design) & \$434,725.00 (Construction)	98%	\$475,207.58	Nov-14	May-15	Overall work is completed. Few punch list items remain and final payment to be submitted soon.

*\*\*Amounts are based on invoices received and processed through Development.\*\**

# Key strategic priorities

**Governance vs. Management** : Focus on setting governing direction (“guard rails”) for the organizational and holding management accountable for the execution of operational tactics. Pursue continuous educational opportunities for Authority Member development.

1. **Organizational Relevance**: Remaining relevant in an era of airport consolidation
2. **Financial Stewardship**: Sustainability/Operating Performance/Audit & Compliance
3. **Municipal Relations**: Positive relationships with all municipalities surrounding the airport
4. **Stakeholder Relations**: Positive relationships with neighbors and other community organizations
5. **Community Image**: Public Perception/Public Relations/Customer Service/Legal Entity
6. **Facilities Stewardship**: Future Master Facilities Plan
7. **Environmental Stewardship**: Accountability/Awareness of Environmental Issues
8. **Economic Development**: Engage Community Partners/Airline Service Development
9. **Vendor-Partner Relations**: General Aviation/Rental Car Agencies/Vendors
10. **Public Safety**: Airport Emergency Safety/TSA Relations/Municipal Partners
11. **Organizational Accountability**: Executive Director Supervision