K15-790

SECOND AMENDMENT
AIRLINE-AIRPORT USE AND LEASE AGREEMENT
BETWEEN
THE CITY OF NEW ORLEANS
BY AND THROUGH
THE NEW ORLEANS AVIATION BOARD
AND
FEDERAL EXPRESS CORPORATION

W I T N E S S E T H:

This Second Amendment ("2nd Amendment") to the Airline-Airport Use And Lease Agreement ("Agreement"), dated January 1, 2009, between the City of New Orleans ("City") represented by Mitchell J. Landrieu, its Mayor, by and through the New Orleans Aviation Board represented by Chery Teamer, its Chairwoman ("NOAB") and Federal Express Corporation ("AIRLINE") represented by its authorized representative is entered into between the parties hereto with an effective date of January 1, 2015 ("Effective Date").

WHEREAS, NOAB administers, operates, and manages the Louis Armstrong New Orleans International Airport ("Airport") that is owned by the City; and

WHEREAS, NOAB has the legal and sole responsibility for the operation, maintenance, improvement and promotion of the Airport; and

WHEREAS, NOAB has the right to lease, license, or otherwise provide for the use of land, property and facilities of the Airport and has full power and authority to enter into this 3rd Amendment in respect thereof subject to the approval of the New Orleans City Council; and

WHEREAS, AIRLINE is engaged in the business of transportation by air of persons, property, mail, parcels and/or cargo; and

WHEREAS, AIRLINE and City previously entered into the Airline – Airport Use and Lease Agreement (the "Base Agreement") that granted rights to certain Preferential Use Premises and Common Use Premises (the "Leased Premises"); and certain other rights, services and privileges in connection with the use of the Airport and its facilities; and

WHEREAS, the Signatory Airlines serving the Airport, through the Chair of the Airline - Airport Affairs Committee, unanimously signified their support of the North Terminal Project and business plan outlined in the Airline Use and Lease Agreement Term Sheet dated November 5, 2014 (Term Sheet) via a letter to the Director of Aviation; and

WHEREAS, the parties hereto desire to amend and extend the Base Agreement for a period of one (1) year while a new Airline – Airport Use and Lease Agreement is prepared,

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained, NOAB and AIRLINE do hereby mutually agree to amend and incorporate the Term Sheet by reference and as attached hereto as Exhibit A, and extend the Agreement as set forth below:

1.) Extension. The parties hereby agree to extend the Base Agreement as amended for a period of one (1) year or until the earlier of the execution of a new Airline – Airport Use and Lease Agreement by a simple majority of the Signatory Airlines who together account for a numerical majority of the total passengers served at the Airport in the immediate proceeding twelve month period or the expiration of the extended term of the Agreement on December 31, 2015 unless cancelled as otherwise provided herein.

2.) Amendment to Article 1.14 of the Agreement. Article 1.14 is hereby deleted in its entirety, and replaced with the following:

    Amortization Requirement shall mean the recovery or repayment of capital costs as principal and interest, in substantially equal annual installments over a fixed term for a Capital Expenditure which is not debt financed or financed by a means which is otherwise recovered from rentals, fees and charges. The amortization charge for any such expenditure shall be computed using NOAB's Interest Cost at the time of expenditure, and be fixed for the economic life for such Capital Expenditure, determined in accordance with Generally Accepted Accounting Principles, as the term for such amortization charges. Amortization Requirements for the NOAB's capital project costs incurred since FY 2009 and for the FY 2014 – FY 2019 Airport Capital Improvement Program as set forth in Article 5.05B and Exhibit G and such Capital Expenditure(s) approved by the Signatory Airlines pursuant to a MII as set forth in Articles 5.03, 5.04, and 5.05 will be included in the rentals, fees, and charges for the Air Transportation Companies upon Substantial Completion of such Capital Expenditure(s).

3.) Amendment to Article 1.43 of the Agreement. \$3.0 million is deleted and replaced with \$6.0 million.

4.) Amendment to Article 2.02 of the Agreement. Article 2.02 is hereby deleted in its entirety and replaced with the following:

    2.02 Rates Effective. On January 1, 2015 all prospective Signatory Airlines will begin paying Signatory Airline rates and charges per this Agreement, subject to the following conditions:

A. Any Air Transportation Company executing this Agreement by September 1, 2015 will be eligible to pay rentals, fees, and charges assessed to Signatory Airlines for the entire Fiscal Year 2015 and participate in the Settlement for Fiscal Year 2015 pursuant to Article 8.04.

B. Any Air Transportation Company executing this Agreement after September 1, 2015 will pay Non-Signatory Airline rates, fees, and charges.

5.) Amendment to the Term in Paragraph 1 of the First Amendment to the Agreement. Paragraph 1 of the First Amendment is hereby deleted in its entirety and replaced with the following:

Early Cancellation. This Amendment may be cancelled by either party without cause upon 30 days prior written notice to the other party in accordance with the terms and conditions of Section 18.22 "Notice".

6.) Amendment to Article 5.05 of the Agreement.

Section 5.05B "three-year" is replaced with "five-year".

Section 5.05I is deleted and replaced with the following:

5.05 I MII will not be required for any Airport project less than $3.0 million in any one year and not to exceed a total of $10.0 million for projects over any five-year period.

A new Paragraph 5.05K is added as follows:

5.05 K The design and construction of the $650 million North Terminal Project as described in the Scope of North Terminal Project included as Exhibit A to the Term Sheet attached hereto as Exhibit A.

A new Paragraph 5.05L is added as follows:

5.05 L Projects directly related to the Airport's Competition Plan on file with the FAA.

7.) Amendment to Article 8.05 of the Agreement. $3,000,000 is replaced with $6,000,000.

8.) Exhibits. Exhibit G (Airport Capital Improvement Program) as revised and amended, and included as Exhibit B to the Term Sheet as 2015 – 2019 Airport ACIP, is hereby incorporated into and made a part of this Amendment, and replaces any conflicting, inconsistent or corresponding Exhibit(s) in the original Agreement as amended.

9.) Convicted Felon Statement. AIRLINE swears that it complies with City Code § 2-8(c). No principal, member, or officer of AIRLINE has, within the preceding five (5) years, been convicted of, or pled guilty to, a felony under state or federal statutes for embezzlement, theft of public funds, bribery, or falsification or destruction of public records.

10.) Non-Solicitation Statement. AIRLINE swears that it has not employed or retained any company or person, other than a bona fide employee working solely for him, to solicit or secure the Agreement or this Amendment. AIRLINE has not paid or agreed to pay any person, other than a bona fide employee working for him, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the Agreement or this Amendment.

11.) Audit and Other Oversight. It is agreed that AIRLINE will abide by all provisions of City Code §2-1120, including but not limited to City Code §2-1120(12), which required Consultant to provide the Office of Inspector General with documents and information as requested. Failure to comply with such requests shall constitute a material breach of the contract as amended. In signing this contract, AIRLINE agrees that it is subject to the jurisdiction of the Orleans Parish Civil District Court for purposes of challenging a subpoena.

12.) Non-Waiver. Except as otherwise provided by this Amendment, the terms and conditions of the Agreement remain in full force and effect.

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IN WITNESS WHEREOF the parties hereto have entered into this Agreement effective as of the Effective Date set forth herein.

CITY OF NEW ORLEANS

By: ______________________________ 9/8/15

Mitchell J. Landrieu, Mayor Date

Form and Legality Approved:

Law Department

City of New Orleans

By: ______________________________

Printed Name: ______________________________

Date

[NOAB Signatures Contained on Next Page]

NEW ORLEANS AVIATION BOARD

By: ____________________ 8/20/15
Cheryl Teamer, Chairwoman Date
New Orleans Aviation Board

By: ____________________ 8-19-15
Iftikhar Ahmad, Director of Aviation Date
New Orleans Aviation Board

Reviewed as to form and legality:

MAH

By: ____________________ 8/12/15
Michele Allen-Hart Date
General Counsel and Deputy Director of Legal Affairs
New Orleans Aviation Board

[AIRLINE Signature Contained on Next Page]

FEDERAL EXPRESS CORPORATION

By: Wiley Johnson, Jr. 8.17.15
Federal Express Corporation Date

Print Name: WILEY JOHNSON JR.

Title: Managing Director, Real Estate And Airport Development

Tax ID #: __

WP

Approved
Legal Department
ABynd 8/13/2015
RESUBMITTAL

EXHIBIT A

AIRLINE-AIRPORT USE AND LEASE AGREEMENT TERM SHEET

AIRLINE-AIRPORT USE AND LEASE AGREEMENT TERM SHEET

1. **North Terminal Project**. The NAOB and Signatory Airlines (Airline(s)) agree in principal to the Airport's completion of the North Terminal Project. In general, the parties agree in good faith to the following:

   a. The parties agree that the North Terminal Project will not exceed the budget amount of $650 million. The scope of North Terminal Project is identified in Exhibit A-1, attached hereto and incorporated herein.

   b. As part of the improvements described on Exhibit A-1, the following Airline requested operational elements will be included in the North Terminal Project if cost effective within the $650 million budget:

      i. Curb Front - The curb front design should be adequate in terms of size, effective curb length, and functionality in order to meet the needs of the terminal as projected to 2028 (as forecasted for 42 gate scenario), as shown through traffic flow analysis and simulation studies. Canopies to protect passengers from inclement weather should be included within the $650 million budget.

      ii. Ticketing Lobby- The ticketing lobby will include sufficient lobby space as follows:

         1. Depth should be sufficient in size to allow a two-step passenger check-in process.

         2. Width should allow flexibility to accommodate future changes to self-tagging and new passenger processing methods / technologies.

      iii. Airline Offices - The office space for Airlines will be provided as follows:

         1. Ticket Counter- Ticketing offices will be provided adjacent to the ticket counter. Office space located at the ticket counter is requested by Airlines in order to securely manage cash and to accommodate a safe.

         2. Ramp Level - Lower-level Airline operations and ramp space will be provided for each Airline, to be finished or unfinished as each Airline may reasonably require.

         3. Baggage Service Offices- Sufficient space should be provided for baggage offices in a location approximate to bag claim operations to allow for efficient Airline operations.

      iv. Checked Bag Inline System (CBIS) – Funding from the Transportation Security Administration (TSA) is planned to fund the CBIS. The Project will, to the extent TSA funding is received, include an appropriately sized (as projected to 2028) and operationally functional CBIS to meet forecast demand. Should the CBIS require expansion, sufficient area should be identified for inclusion in any future terminal expansion.

v. Security Checkpoint – The NAOB will provide space necessary for a single consolidated security checkpoint to allow efficiencies in TSA staffing, as well as providing sufficient space for various types of dedicated lanes (e.g., pre-Check, frequent flyer lanes). The security checkpoint area should be appropriately sized with area available to provide necessary queue space and devices to accommodate projected growth through 2028 (as forecasted for 42 gate scenario).

vi. Conveyors, Carousels, Loading Bridges - Conveyors, carousels, and 30 loading bridges will be included and all operational on opening of the terminal.

vii. Skycap Podiums - Skycap podiums (6 positions) with at least 2 centralized locations for baggage drop with connection to in-line CBIS bag system (if CBIS is funded by the TSA) will be included.

viii. Federal Inspection Service (FIS) – The NAOB will provide space for FIS facilities sized to meet the forecast demand.

ix. Airline Club(s) – The NAOB should identify available space for Airline(s) to be able to offer proprietary and/or common premium services or club facilities. Airline shall lease such space and be financially responsible for the build-out and fit-out of such space.

x. Concession Space – The NAOB will ensure the terminal contains adequate and economically feasible space for retail and food/beverage concession development and support a model that maximizes concession opportunities. The space will be identified by the Airport and concessionaires will complete all build out at their own cost.

xi. Common Use Technology – The North Terminal Project does not include common use technology. The NAOB and the Airlines will jointly agree on any implementation of common use technology and appropriate funding outside of the $650M project budget.

xii. Future Expansion – The NAOB will identify space for a potential future terminal expansion that can be constructed in a cost efficient manner.

xiii. Airline Technical Representative – At the Airlines' request, the NAOB will continue to engage the services of an Airline Technical Representative (currently, J.A. Watts or its successor) to coordinate with the Airlines and to serve as the Airlines' single point of contact throughout the North Terminal Project until the new terminal opens.

xiv. Level of Service for Design - The NAOB should design for Level of Service "C" as indicated in IATA and/or ACRP 55 for all passenger processing functions at the Airport.

xv. Tenant Finishes – Airline will be responsible for non-infrastructure finishes needed for its operational space. The NAOB will fund up to $5M for tenant finishes that will be included in the $650 million Project budget, which will be apportioned among all signatory Airlines based on rented square footage. The same allowance per square foot will be available for all signatory Airlines. The Airline Technical Representative will work with each individual Airline to complete the space needed for such Airline's operations.

xvi. Airline Space and Access – Airlines will be provided access to the North Terminal approximately ninety (90) days prior to opening of the terminal to install tenant finishes and proprietary equipment.

2. **Agreement General Terms**. The parties agree in principal to the following terms and conditions to be negotiated in good faith to be included in the written agreement:

   a. The form of agreement will be a "residual" rate base agreement.

   b. The term of the agreement will be approximately 10 years, expiring on December 31, 2025, with reservation of right for term extension if agreed to by NAOB and Airlines. There will be a mid-term checkpoint (12/31/2020) at which time the Airport and Airlines will analyze the agreement to be sure the business deal is meeting mutual expectations and meets the intent when signed.

   c. On December 31, 2020, each Airline will be granted a one-time opportunity to return no more than 25% of total leased space. At any time during the term of the agreement, an Airline may add additional leased space up to the extent such space is available and operationally required.

   d. The North Terminal Project will be considered approved by the airlines and will be included in the airline rate base. The Airport's 2015-2019 ACIP projects (see Exhibit B) will be considered approved and included in the airline rate base.

   e. All gates and terminal space leased to Airlines will be leased on a preferential basis. Gates will be subject to an Airline utilization requirement provision of a minimum of four scheduled turns per day for each gate. All un-leased gates will be Airport controlled for common use.

   f. The agreement will provide a Majority in Interest (MII) provision, but in no case shall MII rights interfere with the NAOB's Competition Plan. The parties agree that such MII provision will be consistent with the Federal Aviation Administration's intent and guidance provided to the Airport in connection with the approval of the Airport's Competition Plan. MII will not be required for any NAOB project less than $3 million in any one year and not to exceed a total $10 million for projects over any five year period.

g. The NAOB and Airlines will review and agree upon updated insurance, indemnification, and environmental provisions.

3. **Agreement Financial Terms**. The parties agree in principal to the following terms and conditions to be negotiated in good faith to be included in the written agreement:

   a. As a good faith effort, the NAOB will develop and share with the Airlines a 10-year financial plan forecasting rates and charges and cost per enplanement. The NAOB will target a CPE of no more than $10.00 in any given year through the term of the Agreement, based on the assumption of 2.1% compounded annual passenger growth during the agreement period.

   b. Airline supported cost centers will be the airfield, apron, and the terminal.

   c. The Agreement will be based upon a financial plan structured to obtain the necessary funding in the most cost-effective manner to minimize debt service.

   d. The NAOB intends to apply general purposes account deposits to fund Deposit Rollover Coverage associated with new GARB debt issuance for the North Terminal Project.

   e. The use of PFCs will be maximized to off-set PFC eligible debt service for the North Terminal Project.

   f. The NAOB will use its best efforts to maximize funding from the FAA, TSA and State for the North Terminal Project.

   g. The NAOB will use its best efforts to roll annual debt service coverage to meet the bond rate covenants.

   h. The NAOB intends and Airlines agree to accelerate rate-based amortization on the Southside terminal facilities. The total amount of accelerated amortization between 2014 and 2018 is estimated at $34 million. The amount collected from the accelerated amortization will be applied to retire GO Zone Loan. The NAOB intends to retire the existing GO Zone Loan by the end of 2017. Currently, scheduled payments of the loan are included within the rate base at $3.4 million each year for the years 2014 through 2017. These scheduled payments would remain as airline-supported costs in the rates and charges, but would be supplemented by an estimated $8 million annual amount derived from accelerated amortization of the Southside terminal facilities to be included in the rate base.

i. Non-signatory airlines will be subject to paying a reasonable premium (that the parties will negotiate in good faith) over signatory airline rates and will not be included in the settlement process. Terminal use charges will be established for non-signatory airlines that reflect the beneficial use of gates and ticket counters, with low risk of being non-signatory airlines.

j. Airlines will be subject to a minimum leased space requirement. Joint-Use Space (bag claim, baggage makeup, tug roads) will be allocated a 10% of the cost of the facility to be divided equally among the signatory airlines using the facility and 90% on the basis of each signatory Airline's percentage of total signatory Airline enplaned passengers.

k. The Airlines agree to $6 million in annual general purposes account deposits and $1 million in equipment and capital outlays allowance (to be divided equally between airfield and terminal cost centers) and these amounts will be included in the airline rates and charges, each year of the 10-year agreement period.

l. If operationally efficient and in the best financial interest to deliver the lowest cost for the Airlines, the Airlines will form a consortium tasked with maintenance of jet bridges, all conveyor systems including baggage claim carousels, bag makeup areas and in-line EDS system (portion of which is not maintained by TSA and subject to funding by TSA to include such system in the North Terminal Project), and triturator/blue water dump system. The parties may agree to add such other systems provided it is aligned with the purposes of delivering the lowest cost and operational efficiencies. Airlines' will be responsible for meeting the Level of Service "C" requirements in the maintenance of these items.

m. The Airlines may establish a consortium to construct and operate an efficient fueling facility to serve aircraft needs. Capital costs for this facility are outside of the scope of the North Terminal Project.

n. The Airlines may establish a consortium to construct and maintain multi-user passenger boarding kiosks. If no such consortium is established, the Airlines, should they so choose, agree to place kiosks at their own expense in such remote areas identified by the NAOB to improve passenger flow and operational efficiencies.

o. The NAOB will retain the right to be a member of any consortium.

EXHIBIT A-1

SCOPE OF NORTH TERMINAL PROJECT

The North Terminal Project (Project) involves the development and construction of a new passenger terminal on the north side of Airport. Based on the current progression of design, the Project generally includes, among other elements, the following:

1. Terminal of approximately 650,000 sq. ft. of space, with two (2) concourses, thirty (30) airline gates with associated jet-bridges
2. Apron, Taxiways and ten (10) remote overnight aircraft parking spaces
3. Parking Garage of approximately 2,000 spaces
4. On-airport roadway systems and associated ground transportation facilities
5. FAA navigational equipment (e.g., ASR-9, LLWAS, RTR) relocations
6. Airfield lighting vault
7. Central utility plant

Related to the Project, but to be funded and completed by third parties, are the following components:

1. On-site hotel
2. Interstate 10 (I-10)/Loyola "fly over" interchange ramps

EXHIBIT B

2015 - 2019 AIRPORT ACIP

NEW ORLEANS AIRPORT CAPITAL PLAN (ACIP) 2015 - 2019
Airfield Electrical Rehabilitation
Drainage Pumping Station (1992-2013)
Taxiway Rehabilitation - E&S
Airfield Rehabilitation Program - Rwy. 1-19
Airfield Rehabilitation Program - Rwy. 10-28
ALP Update
Energy (Solar) Project *

* This project is approved provided the Airport receives funding from third parties and not more than 10% of the total cost is included in the airline rates and charges and the Airlines are shown that the cost of the project to the Airlines does not exceed the reciprocal benefit in the reduction of energy utility costs.