FRESNO YOSEMITE INTERNATIONAL AIRPORT

# NON-EXCLUSIVE TRANSPORTATION NETWORK COMPANY AIRPORT PERMIT AND AGREEMENT

BETWEEN

CITY OF FRESNO

AND

UBER TECHNOLOGIES, INC.

A Delaware Corporation

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This NON-EXCLUSIVE TRANSPORTATION NETWORK COMPANY AIRPORT PERMIT AND AGREEMENT (Agreement or Permit) is dated as of July 1, 2019, by and between the City of Fresno, Department of Airports (City), a municipal corporation of the State of California, and Uber Technologies, Inc., a corporation organized and existing under the laws of the state of Delaware (Permittee or Designated TNC).

## RECITALS

**WHEREAS,** City owns, controls, operates and maintains through the Department of Airports a municipal airport known as Fresno Yosemite International Airport, in the City and County of Fresno, California (Airport), with the power to grant rights and privileges with respect thereto; and

**WHEREAS**, Airport is an enterprise of City which is operated to be financially self-sufficient, and contracts with concessionaires, tenants and other parties which are granted rights to operate commercially and provide critical revenues to the Airport which contribute to the City's payment of operating and maintenance expenses and debt service on capital improvements, which are incurred to provide the infrastructure, facilities and air service which make up the terminal area market; and

**WHEREAS**, The California Public Utilities Commission (CPUC) has promulgated rules and regulations regarding licensing and operation of Transportation Network Companies (TNCs), of which Permittee is one; and

**WHEREAS**, the CPUC has prohibited TNCs from operating at airports unless the airport has authorized such TNC to do so by permit and agreement; and

**WHEREAS**, TNCs operate through a computer application-based business model which enables TNCs to communicate and conduct business remotely with potential customers while they are still in the terminal; and

**WHEREAS,** the TNC business model enables it to provide a broad range of current and future branded services beyond those pertaining to commercial ground transportation, which may conflict with existing concession agreements and unfairly compete with those concessions which have made significant capital investments on the airport premises, requiring the City to control the services and products offered within the terminal market in order to protect its contractual obligations to concessionaires, as well as its own revenue generation ability; and

**WHEREAS**, An Airport Access Fee is required to be paid by the Permittee to operate at the Airport; and

**WHEREAS**, the parties desire to enter into an Agreement for the operation by Permittee of a non-exclusive Transportation Network Company at the Airport.

## AGREEMENT

**NOW, THEREFORE,** for and in consideration of the privileges, premises, mutual covenants and agreements herein contained, City and Permittee agree, for themselves, their successors and assigns, as follows:

## ARTICLE I - DEFINITIONS

The following terms and phrases shall have the following meanings for purposes of this Agreement:

A. Agreement. Means this Non-Exclusive Transportation Network Company Permit and Concession Agreement between Permittee and City.

B. Agreement Year. Means the Agreement Year or any subsequent 12 month renewal term of this Agreement.

C. Airport. Means the Fresno Yosemite International Airport, as it currently exists or as it may exist in the future throughout the Term of this Agreement.

D. Airport Access Fee(s). Means fees for operating on the Airport for the term of the Agreement Year, paid in monthly installments at the end of the each month of the Agreement Year.

E. CPUC. Means California Public Utilities Commission, which regulates and licenses transportation providers in California, including TNCs.

F. City. Means the City of Fresno, California, owner of Airport.

G. DBE. Means Disadvantaged Business Enterprise as defined by the FAA.

H. Department. Means City's Airports Department.

I. Director. Means the Director of Aviation for the City of Fresno or designated representative.

J. Drop Off. Means the prearranged drop off of a passenger at the terminal.

K. Effective Date. Means the date on which both 1) this Agreement is duly signed by both parties; and 2) any City Council action/resolution approving this Agreement is effective.

L. FAA. Means the Federal Aviation Administration of the U.S. Department of Transportation.

M. Fiscal Year. Means the City's fiscal year beginning July 1 and ending June 30 each year.

O. Geo-Fence. Means a polygon whose points are geographic coordinates on Airport Property designated by the City (as may be amended by the City from time-to-time) which delineates the area within which Permittee must operate under this Agreement.

P. Ground Transportation Rules and Regulations (Rules & Regs). Means the policy and procedures as set forth in the manual provided by Director of Aviation, which describes the rules and regulations for operating on the Airport and as described therein, which may be updated from time to time. Attached hereto as Exhibit A.

Q. Initial Agreement Year. Means a period during the Term beginning on the Effective Date and ending 12 months thereafter.

R. Mobile App./Mobile Application. Means the computer application for mobile devices used by Permittee to conduct its business model as a CPUC-licensed TNC.

S. Party. Means each of the City and Permittee.

T. Past Due Interest. Means interest accruing at the lesser of (a) the maximum rate allowable by law, or (b) eighteen percent (18%) per annum based on a three hundred sixty-five (365) day year, commencing on the tenth (10th) business day after the date such amount is due and owing and continuing until such amount is paid to the City.

U. Permittee. Means the TNC which is Party to this Non-Exclusive Transportation Network Company Permit/Agreement.

V. Pick Up. Means the prearranged pick up of a passenger from the Terminal Facilities.

W. Security Deposit. Means the deposit as defined and described in Section 5.04 of this Agreement.

X. Term. Means the term of this Agreement.

Y. Terminal Building. Means the passenger terminal building at the Airport and any additional buildings that may be constructed, serving the airlines, together with the adjacent curbs, parking and staging areas and roadways, as now exist or as may hereafter be reconstructed, modified, changed or developed.

Z. Termination Date. Means the date that this Agreement expires.

AA. TNC Application Driver Identification. Means a form of identification assigned to each authorized TNC Driver using Permittee's computer based application.

AA. TNC Driver. An individual who has been approved by the Designated TNC to transport passengers using the Designated TNC's online-enabled application where such driver is within the Airport Geo-Fence by reason of the driver's relationship with the Designated TNC, regardless of whether the driver is carrying a passenger.

BB. TNC Vehicle. Means a vehicle operated by the TNC Driver when providing TNC Services.

CC. TNC Vehicle Trade Dress/ Trade Dress. Means distinctive signage or display on the vehicle when providing TNC Services that is sufficiently large and color contrasted as to be readable during daylight hours at a distance of at least 50 feet. The trade dress shall be sufficient to allow a passenger, government official, or member of the public to associate a vehicle with the Designated TNC. Acceptable forms of trade dress include, but are not limited to, symbols or signs on vehicle doors, roofs, or grills. Magnetic or removable trade dress is acceptable.

DD. TNC Services. Means the provision of ground transportation services by computer application-based networks of drivers to customers possessing the company's mobile application.

EE. Transportation Network Company (TNC) Fee(s). Means fees for each drop off and pick up at the Airport, based upon the monthly certified report submitted through the Tracking and Management Service. Fees shall be paid in monthly installments at the end of the each month of the Agreement Year.

FF. Tracking and Management Service. Means a third party that will establish the Airport Geo-Fence and provide services to manage, track and monitor application-based commercial ground transportation transacting business of TNCs to, on, or from the Airport, and to invoice and collect fees.

GG. Tracking and Management Service Contract. Means City's agreement with Tracking and Management Service, as stated in subsection (EE), as may be updated from time to time.

HH. Transportation Network Company or TNC. Means a company that uses computer application-based networks of drivers to provide ground transportation services for customers possessing the company's mobile application as its primary business model of providing commercial services.

II. Triggering Events. Has the meaning set forth in Section 4.02 hereof.

JJ. TSA. Means the Transportation Security Administration of the U.S. Department of Homeland Security.

KK. Waybill. Means the prearranged reservation made between passenger and TNC Driver on the TNC Application.

## ARTICLE II – PERMITTEE'S RIGHTS, PRIVILEGES AND OBLIGATIONS

### Section 2.01: Representations and Covenants by the Permittee

The Permittee hereby makes the following representations and covenants:

The Permittee is a Corporation in good standing in the State of Delaware, is duly qualified in good standing to do business in/under the laws of the State of California, is not in violation of any provision of its governing documents (e.g., articles of incorporation, by-laws, partnership agreement, etc.), has full power to own its properties and conduct its business, has full legal right, power and authority to enter into this Agreement and to consummate all transactions contemplated hereby and by proper action has duly authorized the execution and delivery of this Agreement.

### Section 2.02: Permittee's Rights, Privileges and Obligations

**A. Rights and Privileges Granted.**

Subject to such terms, covenants, conditions, reservations, limitations, and restrictions as are herein provided, City hereby grants to Permittee the non-exclusive right and privilege to access and use the Airport roadway system within the Airport's Geo-Fence for purposes of conducting commercial ground transportation operations for passengers and other users of the Airport using Permittee's Mobile App.

**B. Expansion of Rights and Privileges Considered.**

City may consider requests by Permittee to expand its rights and privileges to include other related activities involving Permittee Mobile App. City's consideration of such request will include the best interests of the City and its obligations under its other concession agreements, leases and contracts, as well as the appropriate business terms for agreeing to Permittee's request. Such business terms may include compensation by a fee structure or a concession MAG and Percent of Gross Revenue structure. Any expansion of rights and privileges the City grants shall be implemented only by written amendment to this Agreement and not verbally.

**C. Prohibited Uses/Activities/Conduct.**

1. Unless expressly permitted by amendment to this Agreement, Permittee is expressly prohibited from providing any services or merchandise using its Mobile App or any other means, on the Airport or from inside of a TNC Vehicle, or in any other manner, except for the rights and privileges granted in Section 2.02 A. above.

2. The following activities are prohibited while operating under this Permit:

    a. Violating any term or obligation found in the Permit.
    b. Picking up or dropping off passengers or their baggage at any location other than those designated for such purpose.
    c. Leaving the TNC Vehicle unattended.
    d. Operating on Airport property without an activated TNC Application or TNC Vehicle Trade Dress.
    e. Waiting for a passenger match while on Airport property other than designated TNC staging areas, including but not limited to Airport parking lots, free waiting area, parking structures, gas station, or commercial hold lots.
    f. Solicitation of passengers on Airport Property without a prearranged Waybill.
    g. Failing to operate a vehicle in a safe manner as required by the California Vehicle Code.
    h. Any attempt to bypass the TNC Application.
    i. Soliciting cash payments.
    j. Operating a vehicle which is not in a safe mechanical condition or which lacks mandatory safety equipment as defined in the California Vehicle Code.
    k. Engaging in any conduct or activity intended to or apparently intended to ask, implore or persuade a passenger to alter his or her previously chosen mode of ground transportation or specific ground transportation operator, except as otherwise provided by contract or permit with the City of Fresno.

**D. Operating Requirements.**

1. This Permit authorizes Permittee's provision of TNC Services to passengers at Airport.

2. Failure to comply with Permit terms or the Rules and Regulations as detailed in Exhibit A, attached hereto and incorporated by this reference, may be prosecuted as a misdemeanor and may result in citation, fine, and/or termination of this Permit.

3. Passenger drop-offs, in conjunction with provision of TNC Services, shall be made at the locations identified in Exhibit B.

4. Passenger pick-ups, in conjunction with provision of TNC Services, shall be made at the locations identified in Exhibit B.

5. All TNC Driver activity on Airport property shall be documented by a Waybill prepared prior to proceeding to a passenger pick-up. The Waybill shall state the passenger's last name and pick up location.

6. TNC Applications shall be activated at all times while providing TNC Services on Airport property.

7. Upon request from Airport staff or law enforcement, all TNC Drivers will immediately comply with requests, including but not limited to, verifying proof of insurance, license and registration, prearranged Waybill or confirmation that TNC Application is activated.

8. TNC Drivers are prohibited from sharing a vehicle or TNC Application Driver Identification with unauthorized drivers.

9. Permittee's approved operation at Airport is limited solely to passenger pick-up and passenger drop-off on a non-exclusive basis. Permittee is not authorized to perform any other services on Airport Property. The method and arrangements for operating shall be subject to procedures established in Exhibit A, as may be updated from time-to-time. All of Permittee's operations shall be in accordance with the laws of the federal government and the State of California, the ordinances, rules, regulations and procedures of the City of Fresno, the regulations of the Federal Aviation Administration, Transportation Security Administration and the Department of Transportation, and the requirements of any other duly authorized governmental agency with jurisdiction over the Airport.

**Section 2.03: TNC Vehicle Requirements**

1. TNC Vehicles must be in compliance with all current CPUC rules and regulations governing TNCs as well as the Ground Transportation Rules and Regulations.

2. TNC Vehicle Trade Dress must be applied at all times while providing TNC Services on Airport property. Prior to commencement of operation under this Permit, Permittee shall provide City with a photograph of Permittee's TNC Vehicle Trade Dress along with a description of the designated TNC Vehicle Trade Dress location on the TNC Vehicles. Trade dress shall include but not be limited to symbols and/or signs on vehicle doors, windows, roofs, and/or grill. Magnetic removable TNC

Vehicle Trade Dress is acceptable. TNC Vehicle Trade Dress and location must be approved by the Director. TNC Vehicle Trade Dress shall be visible within fifty (50) feet.

**Section 2.04: Space**

This Permit does not allow Permittee to possess any portion of Airport property or rent any space for Permittee's operation.

**Section 2.05: City's Covenant Regarding More Favorable Terms**

During the Term, or during any period of holding over by Permittee pursuant to the provisions hereof, City shall neither enter into any TNC Permit/Agreement with any other TNC, nor amend, change, supplement, or otherwise modify, in writing or otherwise, any such agreement in any manner whatsoever, so as to result in any such agreement's containing any terms, conditions, agreements, or provisions which shall be more favorable to such Permittee than those herein set forth.

## ARTICLE III – TERM

**Section 3.01: Term**

This Agreement shall have a three-year Term beginning on July 1, 2019 and terminating on June 30, 2022. City may grant no more than two extensions of one-year each, subject to City review of all fees. This Agreement shall be subject to earlier termination with or without cause by either Party giving sixty (60) days advance written notice to the other Party.

## ARTICLE IV – AIRPORT GEO-FENCE, TRACKING AND MANAGEMENT OF TNC ACTIVITIES AND TRANSACTIONS

**Section 4.01: Airport Geo-Fence and Tracking**

Permittee shall establish and maintain the Airport Geo-Fence in order to manage, track, and monitor the provision of TNC Services by Permittee to, on, or from the Airport. The exact data to be collected is described in Section 4.02.

Upon execution of this Agreement, the Tracking and Management Service shall manage, track, and monitor the provision of TNC Services by Permittee to, on, or from the Airport, as shall be further detailed in the Tracking and Management Service Agreement. The exact data to be collected is described in Section 4.02.

**Section 4.02: Data Collection and Storage**

A. Data Collection and Storage. For each TNC Driver, the Tracking and Management Service or the Permittee, as applicable under this Article, shall obtain the "Required Data" upon each of the "Triggering Events" (each term as defined below).
    1. Required Data:
        a. Transaction type (i.e., entry, exit, drop-off, pick-up);
        b. TNC identification;

c. Date;
d. Time;
e. Geographical location;

f. Unique driver identifier;
g. Vehicle license plate number; and
h. Number of active rides in the vehicle following the triggering event (based on a value of "0" (no active rides) or "1" (active ride)).

2. Triggering Events:
   a. Upon entry into the Geo-Fence;
   b. Upon completion of a passenger drop-off within the Geo-Fence;
   c. Upon pick-up of a passenger within the Geo-Fence; and
   d. Upon exit of the Geo-Fence

**Section 4.03: TNC Fees Collection and Payment**

Upon execution of this Agreement, the Permittee shall submit all Required Data to the Tracking and Management Service. Required Data shall be submitted to the Tracking and Management Service no later than the fifteenth (15th) calendar day following the end of the month for which the information is being reported.

## ARTICLE V – FEES AND OTHER CHARGES

**Section 5.01: Transportation Network Company (TNC) Fee and Monthly Report**

Permittee shall pay to the City a Transportation Network Company (TNC) Fee for each drop off and pick up at the Airport. The fees shall be based on the Permittee's monthly certified report, as provided to the Tracking and Management Service. The TNC Fees specified in this Section of this Article are published in the Master Fee Schedule of the City of Fresno. The TNC Fees shall be paid to Airport no later than the 15th day following every month of each Agreement Year.

**Section 5.02: Late/Unpaid Fees**

All fees and charges to City hereunder will bear a reasonable service charge per month equal to the Past Due Interest if not paid to and received by City within ten (10) business days following the due date. Permittee shall pay and discharge all reasonable costs and expenses, including reasonable attorneys' fees incurred or expended by City in the collection of delinquent amounts due.

**Section 5.03: Additional Fees and Charges**

Permittee shall pay additional fees and charges only under the following conditions:

A. If City has paid any sum or sums, or has incurred any obligation or expense, which Permittee has agreed to pay to, or to reimburse the City; or

B. If City is required or elects to pay any sum or sums, or incur any obligation or expense, because of Permittee's failure, neglect, or refusal to perform or fulfill any condition of this Agreement.

C. Any payment of the above-described additional fees and charges shall include all interest, costs, damages and penalties incurred in connection with said fees and charges and may be added to any installment of future fees and charges due hereunder. Each and every part of such payment shall be recoverable by City in the same manner and with like remedies as if it were originally a part of the fees or other charge set forth herein.

**Section 5.04: Security Deposit**

A. In order to guarantee the timely payment of any fees and charges due pursuant to this Agreement, Permittee must remit to the City within ten (10) business days prior to the Effective Date, a Security Deposit in the amount of $10,000.00. The Security Deposit must be in the form of (i) a payment bond or an irrevocable letter of credit, renewable annually, from an insurer or bank reasonably acceptable to the City, (ii) cash or (iii) such other form of security as the City may deem reasonably acceptable.

B. At any time that any of the fees or charges owed by Permittee, or any other amounts due hereunder, are more than thirty (30) days past due, the City, upon written notice to Permittee, will be entitled to apply all or any portion of the Security Deposit to the payment of such unpaid amounts, including any reasonable costs the City incurs in collecting the amounts it is owed. In any such event, Permittee must again meet the Security Deposit requirements set forth above within seven (7) business days from its receipt of such written notice.

**Section 5.05: Place and Manner of Payments**

Permittee shall make payment in legal tender of the United States of America to:

City of Fresno - Airports Department
Attn.: Revenue Accounting
4995 E. Clinton Way
Fresno, CA 93727

**Section 5.06: Retention of Records**

In the event Permittee requests and receives Amendment to this Agreement to expand the rights and privileges to include other activities, and upon commencement of the Term, Permittee agrees that it will retain, the books and records of accounts of Permittee for the last three twelve-month periods completed operations and the current Agreement Year, showing the information required under this Article IV or other similar Article(s) contained in any previous agreement(s), relating to business conducted at the Airport, the deductions there from, and other pertinent information required by the provisions of this Article or other similar Articles contained in such previous agreement. Permittee's obligation to retain such books and records is limited to the extent required under this Agreement, and/or previous agreement(s), until the Permittee retains sufficient books and records to meet the retention requirements stated above. Upon the City's prior written notice such books and records of accounts must be accessible to City or its duly authorized agents or auditors, during regular business hours only for the purpose of verifying compliance by Permittee with the terms of this Agreement, and/or previous

agreement. At the City's request, Permittee will pay for the copying and delivery of all records and books requested by the City. In the event the City determines that the auditors need to travel to the Permittee's location where the books and records are kept, Permittee will pay for the reasonable and customary travel and other incidental costs incurred by the City's auditors.

**Section 5.07: Independent Certified Public Accountants**

Wherever the statement of an Independent Certified Public Accountant is required, the parties agree that said CPA must not be an employee or agent of Permittee.

**Section 5.08: City's Right to Audit Statements and Reports**

City shall have the right to audit the statements and reports reflecting Permittee's obligations under this Agreement no more than once (1) a calendar year. The cost of audit shall be borne by City; unless the audit reveals an underpayment of TNC Permit Fees by Permittee of five percent (5%) or greater, or if the audit reveals that the condition of the Permittee's records is such that the revenue due City cannot reasonably be properly determined. In the event of either condition described above, the reasonable cost of the audit, including any applicable travel costs, must be borne by the Permittee and must be paid within five business days of receipt of an invoice.

**Section 5.09: Taxes and Assessments**

In addition to the fees and charges set forth herein, Permittee shall pay, as and when due, but not later than fifteen (15) calendar days prior to the delinquency date thereof any and all taxes and general and special assessments of any and all types or descriptions whatsoever which, at any time and from time to time during the life hereof, may be levied upon or assessed against Permittee[1].

Nothing within this Section shall be deemed to limit any of Permittee's rights to appeal any such levies and/or assessments in accordance with the rules, regulations, laws, statutes, or ordinances governing the appeal process of the taxing authority(ies) making such levies and/or assessments. Upon receipt of notice that any such taxes or general and special assessments are due, Airport shall provide timely notice to Permittee.

**Section 5.10: Late Payment Charges**

Any payment not received by the due date shall be deemed delinquent and shall accrue interest at the lesser of the rate of eighteen percent (18%) per year calculated on a daily basis at the rate of five-hundredths of a percent (0.05%) per day from the due date until paid in full, or the maximum rate allowed by law.

**Section 5.11: City Held Harmless**

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[1] [1] Any interest in real property which exists as a result of possession, exclusive use, or a right to possession or exclusive use of any real property (land and/or improvements located therein or thereon) which is owned by the City of Fresno (City) is a taxable possessory interest unless the possessor of interest in such property is exempt from taxation. With regard to any possessory interest to be acquired by Lessee under this Lease, Lessee, by its signatures hereunto affixed, warrants, stipulates, confirms, acknowledges and agrees that, prior to executing this Lease, Lessee either took a copy of this Lease to the office of the Fresno County Tax Assessors or by some other appropriate means independent of City or any employee, agent, or representative of City determined, to Lessee's full and complete satisfaction, how much Lessee will be taxed, if at all.

Permittee agrees to protect and hold harmless City, from any and all such taxes and assessments provided in this Agreement, including any and all interest, penalties and other expenses which may be imposed thereby or result therefrom, and from any lien therefore or sale or other proceedings to enforce payment thereof.

**Section 5.12: Permittee's Right to Appeal**

Nothing within this section of this article shall be deemed to limit any of Permittee's rights to appeal any such levies and/or assessments in accordance with the rules, regulations, laws, statutes or ordinances governing the appeal process of the taxing authority(ies) making such levies and/or assessments.

## ARTICLE VI - INDEMNIFICATION, EXCEPTION OF CITY, AND INSURANCE

**Section 6.01: Indemnification**

Permittee agrees to indemnify, defend and hold harmless City, its officers, directors, agents and employees, from and against any and all claims, actions, damages, liabilities, and judgments, and losses, costs, fines, penalties, and expenses paid or payable to a third party (including, but not limited to, reasonable attorney's fees, court costs and litigation expenses), with respect to any third party claim solely arising out of or related to: (a) Permittee's performance or exercise of this Agreement and rights granted under this Agreement; (b) an intentional act or a negligent act or omission of any of Permittee's officers, employees and independent contractors related to this Agreement; (c) the failure of Permittee to comply with any applicable laws, ordinances, rules or regulations related to this Agreement; or (d) any breach or default by Permittee of any of its obligations under this Agreement. Notwithstanding the foregoing, Permittee shall have no obligation under this Section for claims arising out of or related to losses caused by an intentional act or a negligent act or omission of City or its officers, directors, agents, and employees. Any indemnification and hold harmless obligations of Permittee under this Agreement shall survive any expiration or termination of this Agreement. The forgoing indemnification obligation is subject to City providing Permittee with (i) written notice of any claim subject to indemnification hereunder, (ii) sole control over the defense and settlement of each such claim (provided that Permittee will not settle or compromise any claim without written consent of City), (iii) reasonable cooperation, at Permittee's expense, in the defense and settlement of a claim, and (iv) City may, at its sole cost and expense, participate in the defense of a claim with counsel of its own choosing.

Permittee shall conduct all defenses at no cost or expense to the City. City shall be reimbursed for all costs and attorney's fees incurred by City in enforcing this obligation. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Permittee. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Permittee and its officials, officers, employees, agents and volunteers.

The provisions of this section of this article shall survive the expiration or early termination of this Agreement.

**Section 6.02: Exemption of City**

Permittee hereby specifically warrants, covenants and agrees that City shall not be liable for injury to Permittee's business or any loss of income therefrom or for damage to the goods, wares, merchandise or other property located in, upon or about the Airport under authority hereof, whether belonging to Permittee, or any employee, agent, contractor, sub-contractor, tenant, sub-lessee of Permittee, or any other person whomsoever. The City shall not be liable for any injury to the person of Permittee or Permittee's employees, agents, contractors, sub-contractors, tenants, sub-lessees, customers, or invitees, whether or not said damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the leakage, breakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, whether or not the said damage or injury results from conditions arising in or on any part or all of the Airport or in or on any of the improvements/ facilities appurtenant thereto located therein or thereon, or from other sources or places, and regardless of whether or not the cause of such damage or injury or the means of repairing the same is inaccessible to Permittee. Permittee also covenants and agrees that City shall not be liable for any damages arising from any act or neglect on the part of any third parties. The above exemption shall not apply and shall in no way relieve the City from any liability, claims, judgments, fines, penalties, forfeitures, damages, demands, liabilities, suits, notices, costs and expenses, or any of these, caused solely by the gross negligence or by the willful misconduct of City or any of its officials, officers, or employees acting within the scope of their duties for City.

**Section 6.03: Insurance**

Permittee shall, at Permittee's expense, obtain and, throughout the Term, maintain in full force and effect all policies of insurance required hereunder, with an insurance company(ies) either (i) eligible to issue insurance policies in the State of California and rated not less than "A-/VII" in Bests Insurance Rating Guide, or (ii) authorized by City's Risk Manager or designee. The following polices of insurance are required and shall maintain limits of liability of not less than those amounts stated below. The following policies of insurance are required:

A. Commercial General Liability insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) form CG 00 01 and shall include insurance for "bodily injury", "property damage" and "personal and advertising injury", including premises and operation, products and completed operations and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability of not less than $1,000,000 per occurrence and $2,000,000 general aggregate for bodily injury and property damage, $1,000,000 per occurrence for personal and advertising injury and $2,000,000 aggregate for products and completed operations.

B. Commercial Automobile Liability insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) form CA 00 01 10 13 and shall include coverage for "non-owned vehicles" with limits of liability of not less than $1,000,000 per accident for bodily and property damage.

C. Workers' Compensation insurance as required under the California Labor Code.

D. Employers' Liability insurance with limits of liability of not less than $1,000,000 each accident, $1,000,000 disease each employee and $1,000,000 disease policy limit.

Permittee shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and Permittee shall also be responsible for payment of any self-insured retentions.

The above-described policies of insurance shall provide an unrestricted thirty day written notice in favor of City, of policy cancellation, or reduction of coverage, except for the Workers' Compensation policy, which shall provide a ten (10) day written notice of such cancellation, or reduction of coverage. Upon issuance by the insurer, broker, or agent of a notice of cancellation, or reduction in coverage, Permittee shall file with City a certified copy of the certificates and endorsements for such policy, and applicable sections of the insurance policy to verify coverages required herein.

The General Liability and Automobile Liability insurance policies shall be written on an occurrence form and shall include the City of Fresno, its officers, officials, employees, agents, and volunteers as an additional insured. Such policy(ies) of insurance shall be endorsed so Permittee's insurance shall be primary and no contribution shall be required of City. Any Workers' Compensation insurance policy shall contain a waiver of subrogation as to City, its officers, officials, agents, employees, and volunteers. Permittee shall furnish City with the certificate(s) and applicable endorsements for ALL required insurance prior to City's execution of this Agreement at the following address:

City of Fresno - Airports Department
Attn.: Properties Division
4995 E. Clinton Way
Fresno, CA 93727

or to such other address as City may, from time to time, provide Permittee in writing during the Term.

Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Agreement provided that the Permittee shall have five (5) business days to provide City with replacement coverage.

Permittee shall have the right to provide the coverage specified in this Article by a program of self-insurance, which has been approved by the State of California. Permittee shall furnish City with a self-insured certificate of insurance and applicable endorsements. Said certificate and applicable endorsements shall document that Permittee's self-insurance program is approved by the State of California; the retention level of such self-insurance program; and that the policy of insurance is primary and no contribution shall be required by City. Permittee shall also supply the name of Permittee's excess insurance carrier at the time the certificate of self-insurance is supplied to City.

**Section 6.04: Delivery to Director of Evidence of Insurance**

Permittee must deliver, without request or demand, to the Director, a certificate of insurance and all applicable endorsements or other evidence of insurance coverage required by this Article in form and content satisfactory to City's Risk Manager or designee. Permittee must update such evidence of insurance not less frequently than annually.

**Section 6.05: Expiration of Insurance Policy**

Promptly following the expiration of any insurance policy required by this Article, Permittee must submit to the Director a certificate of insurance and all applicable endorsements showing that such insurance coverage has been renewed. If such coverage is cancelled, reduced or obtained through another insurer or insurers on at least as broad of terms, Permittee, within five business days following the date of written notice from the insurer of such cancellation or reduction in coverage, must file with the Director a certificate of insurance and all applicable endorsements showing that the required insurance has been reinstated or provided through another insurer or insurers.

**Section 6.06: Adjustment of Claims**

In the event that Permittee agrees to self-insure in accordance with Section 6.03, Permittee must provide for the prompt and efficient handling of all claims for bodily injury, property damage arising out of the activities of Permittee under this Agreement.

## ARTICLE VII - ASSIGNMENT

**Section 7.01: Assignment**

During the Term, neither Party shall assign this Agreement to any other person or entity, whatsoever.

**Section 7.02: Modification**

Unless stated otherwise in this Agreement, no provision of this Agreement may be waived, modified, or amended except by written amendment signed by City and Permittee.

No act, conversation, or communication with any officer, agent, or employee of City, either before or after the execution of this Agreement, will affect or modify any term or terminology of this Agreement and any such act, conversation, or communication will not be binding upon City or Permittee.

## ARTICLE VIII - DEFAULTS AND REMEDIES

**Section 8.01: Default by City**

City has no obligations to perform under this Agreement and therefore shall not be in default.

**Section 8.02: Default by Permittee**

A. Defaults: The occurrence of any of the following events shall constitute a material default and breach of this agreement by Permittee:

   1. The failure by Permittee to use the Airport for lawful purposes only and/or failure by it to comply with or observe any statute, law, ordinance, rule, regulation, standard or requirement of any federal, state, or local government entity with respect to its occupancy(ies) and/or use(s) of any part or all of the Airport, as such statutes, laws, ordinances, rules, regulations, standards or requirements

exist(ed) on the commencement date of the Term or as such may exist at any time and from time to time during the Term, where any such failure shall be evidenced by either a finding or judgment of any court of competent jurisdiction or where any such shall be admitted by Permittee in any proceeding brought against Permittee by any government entity.

2. The inability of and/or failure of Permittee to obtain, pay for, and maintain in full force and effect at all times during the life of this Agreement, without any lapse in coverage, such insurance as shall be required of Permittee hereunder.

3. The occurrence of any of the following:

   (a) Permittee's becoming insolvent or the making by it, of any general arrangement or an assignment for the benefit of creditors;

   (b) The filing by or against Permittee of a petition to have it adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy unless, in the case of a petition filed against Permittee, the same is dismissed within sixty (60) calendar days;

   (c) The appointment of a receiver to take possession of substantially all of Permittee's assets located in, on or about, the Airport, or of its interest in this Agreement, where possession is not restored to Permittee within thirty (30) calendar days; or

   (d) The attachment, execution or other judicial seizure of substantially all of Permittee's assets located in, on or about the Airport, or of Permittee's interest in this Agreement, where such seizure is not discharged within thirty (30) calendar days.

4. The discovery by City that any financial statement provided to the City by Permittee was materially false.

5. Any attempted/purported assignment, of this Agreement, in whole or in part.

6. The failure by Permittee to make any payment of TNC Fees or any other required payment, or to furnish any Security Deposit or instrument, as and when due hereunder, where such failure shall continue for a period of ten (10) days following service of notice thereof upon Permittee by City.

7 The failure of Permittee to keep, observe, undertake, fulfill, or perform any of the material terms, covenants, conditions, warranties, agreements, obligations, and/or provisions of this Agreement.

B. City's Remedies.

1. Termination. Upon the occurrence of any material default and Permittee's failure to cure such default within a reasonable period of time, but in no event later than thirty (30) days after written notice is served upon Permittee by City specifying wherein Permittee has failed to perform any such obligations and breach of this Agreement by Permittee as set forth within this Article, above, City may then

immediately, or at any time thereafter, terminate this Agreement by service of a minimum of ten (10) days advance written notice to such effect upon Permittee and this Agreement shall terminate at 11:59:59 p.m., on the termination date specified within such notice.

(a) Such notice shall, as a minimum, set forth the following the default and breach which resulted in such termination by City.

(b) Such notice may contain any other notice which City may, at its option, desire or be required to give (e.g., "Demand For Payment" of any and all monies due and owing).

3. Recovery. The amount of damages City may recover following such termination of this Agreement shall include: Unpaid fees which had been earned at the time of termination of this Agreement.

**Section 8.03: Additional Terms**

A. Other. In the event Permittee causes or threatens to cause a breach of any of the covenants, terms or conditions contained in this Agreement, City shall be entitled to obtain all sums held by Permittee, by any trustee or in any account provided for herein, to enjoin such breach or threatened breach and to invoke any remedy allowed at law, in equity, by statute or otherwise as though re-entry, summary proceedings and other remedies were not provided for in this Agreement.

B. Cumulative Remedies. Each right and remedy of City provided for in this Article or now or hereafter existing at law, in equity, by statute or otherwise shall be cumulative and shall not preclude City from exercising any other rights or from pursuing any other remedies provided for in this Agreement or now or hereafter available to City under the laws or judicial decisions of the State of California.

C. Indemnification. Nothing contained within this Section of this Article affects the right of City to indemnification by Permittee, as herein provided, for liability arising from personal injuries or property damage prior to the termination of this Agreement.

## ARTICLE IX - NON-DISCRIMINATION

**Section 9.01: Non-Discrimination**

A. To the extent required by controlling federal, state and local law, Permittee shall not employ discriminatory practices in the provision of services, employment of personnel, or in any other respect on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Subject to the foregoing and during the performance of this Agreement, Permittee agrees as follows:

1. Permittee will comply with all applicable laws and regulations providing that no person shall, on the grounds of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age,

sexual orientation, gender identification, ethnicity, status as a disabled veteran or veteran of the Vietnam era be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this Agreement.

2. Permittee will not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, gender identification, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Permittee shall ensure that applicants are employed, and the employees are treated during employment, without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, gender identification, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Such requirement shall apply to Permittee's employment practices including, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Permittee agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

3. Permittee will, in all solicitations or advertisements for employees placed by or on behalf of Permittee in pursuit hereof, state that all qualified applicants will receive consideration for employment without regard to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era.

4. Permittee will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising such labor union or workers' representatives of Permittee's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

**Section 9.02: Airport Concession Disadvantaged Business Enterprise (ACDBE) Program**

City has developed and maintains and Permittee at all times hereunder, when applicable, shall comply with the Disadvantaged Business Enterprise Concession Plan for the Airport in accordance with U.S. Department of Transportation regulations 49 CFR Part 23, Subpart F, which plan establishes policies and procedures designed to promote City's interest in establishing Airport concession opportunities for Disadvantaged Business Enterprises and sets lawful, realistic and reasonable goals therefore, as enforceable in the Ninth Circuit.

**Any questions concerning Disadvantaged Business Enterprise (DBE) issues should be directed to DBE Program Coordinator, City of Fresno, Finance; 2600 Fresno St., Room 2156; Fresno, CA 93721; Telephone (559) 621-1163 or Fax (559) 488-1069.**

**Section 9.03: Federal Immigration Reform and Control Act**

As a material part of any permit or concession on a City of Fresno property, every Permittee who has employees who will work on a City of Fresno property is required to comply with all of the provisions of the Federal Immigration Reform and Control Act of 1986 (P.L. 99-603, 100 Stat. 3359), as applicable. This requirement includes compliance with all of the employee documentation provisions. Furthermore, Permittee will make any employee documentation required to comply with such Act immediately available to City, upon its request for each individual employee working on a City of Fresno property.

## ARTICLE X - MISCELLANEOUS PROVISIONS

### Section 10.01: No Personal Liability

No Councilperson, Director, officer, employee or other agent of either Party shall be personally liable under or in connection with this Agreement.

### Section 10.02: Agreements with the United States

This Agreement is subject and subordinate to the provisions of any agreements heretofore made between City and the United States relative to the operation, security or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of federal rights or property to City for airport purposes, or to the expenditure of federal funds for development of the Airport, in accordance with the provisions of the Federal Aviation Act as it has been amended from time to time. This may include rules and regulations promulgated by the TSA and/or Airport security plan/requirements including pursuant to 49 CFR Part 1542, as modified from time to time by legislative/regulatory action. These FAA Grant Assurances attached hereto as Exhibit C are incorporated herein.

### Section 10.03: Modifications for Granting FAA Funds

In the event that the FAA or TSA requires modifications or changes to this Agreement, Permittee agrees to consent to such amendments, modifications, revisions, supplements or deletions of any of the terms, conditions or requirements of this Agreement as reasonably may be required to enable City to obtain FAA funds.

### Section 10.04: Notices

A. All notices required to be served by City or Permittee, one upon the other, under the terms of this Agreement shall be in writing.

B. All notices or demands of any kind which City shall have cause to serve upon Permittee under the terms of this Agreement shall be served upon Permittee by mailing a copy thereof by certified or registered mail, return receipt requested, to Permittee at the address shown below or to such other address as Permittee may, from time to time, specify to City in writing.

   All notices or demands of any kind which Permittee shall have cause to serve upon City under the terms of this Agreement shall be served upon City by mailing a copy thereof by certified or registered mail, return receipt requested, to City at the address shown below or to such other address as City may, from time to time, specify to Permittee in writing.

City of Fresno
Airports Department
4995 E. Clinton Way
Fresno, CA 93727

In the event of any service of notice or demand by mail, as aforesaid, such notice or demand shall be deemed to have been sufficiently served as of 12:00:01 a.m., on the fourth (4th) calendar day following the date of deposit in the United States mail of such certified or registered mail properly addressed and postage prepaid.

**Section 10.05: Amendments**

This Agreement may be amended from time to time by written Amendment, duly authorized and executed by representatives the parties hereto.

**Section 10.06: Headings; Construction of Agreement; Gender**

The headings of each Section of this Agreement are for reference only. Unless the context of this Agreement clearly requires otherwise, all terms and words used herein, regardless of the number and gender in which used, shall be construed to include any other number, singular or plural, or any other gender, masculine, feminine or neuter, the same as if such words had been fully and properly written in that number or gender. Words of any gender in this Agreement will be held and construed to include any other gender.

**Section 10.07: Force Majeure**

Neither City nor Permittee will be deemed in violation of this Agreement if either is prevented from performing any of the obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortages of materials, acts of God, acts of public enemy, acts of superior governmental authority, weather conditions, riots, rebellion, sabotage, or any other circumstances for which it is not responsible or which are not within its control.

**Section 10.08: Exclusiveness of Permittee's Rights**

Nothing herein contained shall be deemed to grant to Permittee any exclusive right or privilege within the meaning of Section 3.08 of the Federal Aviation Act for the conduct of any activity on the Airport.

**Section 10.09: Withholding Required Approvals**

Whenever the approval of City or Director or Permittee is required herein, no such approval shall be unreasonably conditioned, delayed or withheld.

**Section 10.10: Inspection of City Records**

Permittee, at its expense and upon reasonable notice, shall have the right to inspect the books, records and other data of City relating to the provisions and requirements hereof, provided such inspection is made during regular business hours.

**Section 10.11: Successors and Assigns**

Subject to the limitations on assignment contained herein, all of the terms, provisions, covenants, stipulations, conditions and considerations in this Agreement shall extend to and bind the legal representatives, successors and assigns of the respective parties hereto.

**Section 10.12: Accord and Satisfaction**

No payment by Permittee or receipt by City of a lesser amount than the rent, fees and/or charges due to be made by Permittee hereunder shall be deemed to be other than on account of the rent, fees and/or charges due. No endorsement or statement on any check or in any letter accompanying any check or payment as rent; fees and or charges shall be deemed an accord and satisfaction. City may accept such check or payment without prejudice to City's right to recover the balance of such rent, fees and/or charges or to pursue any other remedy provided in this Agreement.

**Section 10.13: Observation of Governmental Regulations**

City's Airport Rules and Regulations: City reserves the right to adopt, amend, and enforce reasonable rules and regulations governing the Airport, including but not lmited to the public areas and any facilities used by Permittee in connection therewith. Such rules and regulations shall be consistent with the safety, security and overall public utility of Airport and with the rules, regulations and orders of the Federal Aviation Administration (FAA) (or such successor agency[ies] as may, at any time and from time to time during the Term be designated by the Federal Government to perform either similar, new, additional, and/or supplemental functions, powers and/or duties with respect to air transportation, aircraft, Airports, etc.), and such rules and regulations shall not be inconsistent with the provisions of this Agreement or the procedures prescribed and approved, from time to time, by the FAA with respect to the operation of aircraft at the Airport. Permittee agrees to observe, obey and abide by all such rules and regulations heretofore or hereafter adopted or amended by City, including compliance with all FAA and Airport security rules, regulations and plans, including any and all measures mandated by the FAA from time to time to provide increased levels of security at Airport, and Permittee shall be fully liable to City for any and all claims, demands, damages, fines and/or penalties of any nature whatsoever which may be imposed upon City by the United States Government as a result of any unauthorized entry by Permittee, Permittee's employees, agents, representatives, servants, tenants, and/or sub-lessees, or vehicle operated by any of these or by a customer of Permittee, into any area of the Airport to which access by persons or vehicles is restricted/controlled pursuant to FAA/Airport Security Rules and Regulations.

Other Governmental Regulations: Permittee shall, at all times during the Term, observe, obey and comply with any and all laws, statutes, ordinances, codes, rules, regulations, and/or orders of any governmental entity(ies) lawfully exercising any control(s) over either the Airport or over any part or all of Permittee's activities/ operations thereon and/or therefrom, including, without limitation, any and all local business license and/or permit requirements.

Increased Levels of Security: In the event City must provide for an increased level of security in the areas occupied or used by any or all of the Permittees as mandated by the TSA, the Permittee agrees that the City shall have the following options:

1. Require Permittee to take whatever steps are necessary to meet the security requirements of the TSA mandate, at its own cost and expense; or

2. Close the Areas for Passenger Drop-offs or Passenger Pick-ups. In the event of closure of any part of such area for Passenger Drop-offs or Passenger Pick-ups (as designated in Exhibit B hereto) the City may at its option provide an alternate location for such area, but shall not be required to do so.

**Section 10.14: Governing Law and Venue**

This Agreement shall be construed and governed in accordance with the laws of the State of California. The parties submit to the jurisdiction of the courts of the State of California, Fresno County.

**Section 10.15: Waiver**

Waiver by City of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or of any other term, covenant or condition. No term, covenant, or condition of this Agreement can be waived except by written consent of City, and forbearance or indulgence by City in any regard whatsoever shall not constitute a waiver of same to be performed by Permittee to which the same may apply and, until complete performance by Permittee of the term, covenant or condition, City shall be entitled to invoke any remedy available to it under this Agreement or by law despite any such forbearance or indulgence.

**Section 10.16: Modification**

Unless stated otherwise in this Agreement, no provision of this Agreement may be waived, modified, or amended except in writing and signed by both Parties hereto.

**Section 10.17: Severability of Provisions**

Except, as specifically provided in this Agreement, all of the provisions of this Agreement shall be severable. In the event that any provision of this Agreement is found by a court of competent jurisdiction to be unconstitutional or unlawful, the remaining provisions of this Agreement shall be valid unless the court finds that the valid provisions of this Agreement are so essentially and inseparably connected with and so dependent upon the invalid provision(s) that it cannot be presumed that the parties to this Agreement could have included the valid provisions without the invalid provision(s); or unless the court finds that the valid provisions, standing alone, are incapable of being performed in accordance with the intentions of the parties.

**Section 10.18: Conflicts of Interest**

Permittee certifies that no officer or employee of City has, or will have, a direct or indirect financial or personal interest in this Agreement, and that no officer or employee of City, or member of such officer's or employee's immediate family, either has negotiated, or has or will have an arrangement, concerning employment to perform services on behalf of Permittee in this Agreement.

**Section 10.19: Entire Agreement**

This Agreement, together with all documents referenced herein and exhibits attached hereto, constitutes the entire Agreement between the Parties. All other representations or statements heretofore made, verbal or written, are merged herein.

**Section 10.20: Confidentiality**

As used herein, "Confidential Information" means all confidential information disclosed by a party (Disclosing Party) to the other party (Receiving Party), whether orally or written, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information shall include, but not be limited to, business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information shall not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, (iv) was independently developed by the Receiving Party or (v) was disclosed with the prior written approval of the Disclosing Party. Except as otherwise permitted in writing by the Disclosing Party, (i) the Receiving Party shall protect the Disclosing Party's Confidential Information by using the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care), and shall not disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of these Terms, and (ii) the Receiving Party shall limit access to Confidential Information of the Disclosing Party to those of its employees, contractors and agents who need such access for purposes consistent with these Terms and who are bound by confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party at least ten (10 days) prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. Where Disclosing Party asserts the records are exempt from disclosure by law, and the Receiving Party agrees, the Receiving Party shall not to disclose Confidential Information as exempt under the law. Except as expressly set forth herein, no license or other rights to Confidential Information are granted or implied hereby by either party. Upon termination of this Agreement, each party shall, within fifteen (15) days promptly return or destroy the other party's Confidential Information except as may be required for backup, disaster recovery or business continuity and in such case the obligations hereunder shall survive until such Confidential Information is destroyed or returned.

Any information that Permittee makes available to City pursuant to this Agreement is deemed to be confidential and proprietary information (Permittee confidential information), regardless of whether the records are marked as such, and shall not be disclosed to anyone without Permittee's express written permission unless required to be disclosed by applicable law or a court order; including without limitation the public records laws, provided that City notifies Permittee of such requirement promptly prior to disclosure, and provided further that City makes diligent efforts to limit disclosure pursuant to any available bases set forth in the Public Records Act or other applicable law. If City is required to release Permittee's confidential information, it nevertheless shall use any available authorities to redact personal or business confidential information from such records to the extent consistent with applicable law and the final judgment.

This provision shall survive any termination of this Agreement.

**Section 10.21: Limitation on Damages**

Notwithstanding anything in this Agreement to the contrary, in no event will either Party be liable to the other Party for any consequential, incidental or special damages, or lost revenues or lost profits.

[Signatures follow on the next page.]

## ARTICLE XI: SIGNATURE

**IN WITNESS WHEREOF,** the parties hereto, for themselves, their successors and assigns, have executed this Agreement, the day and year first above written.

**City of Fresno**
A Municipal Corporation

By: _____
Kevin R. Meikle,
Director of Aviation

APPROVED AS TO FORM:
Douglas T. Sloan
City Attorney

By: _____ 5/17/19
Brandon M. Collet Date
Senior Deputy City Attorney

ATTEST:
Yvonne Spence, MMC CRM
City Clerk

By: _____ 5/17/19
Deputy

Address for Notice:

City of Fresno
Airports Department
4995 E. Clinton Way
Fresno, CA 93727

**UBER TECHNOLOGIES, INC.**
A Delaware Corporation

By: Tom Maguire

Name: Tom Maguire

Title: Director, Head of West US - Rides
(if corporation or LLC, Board Chair, Pres. or Vice Pres.)

By: _____

Name: _____

Title: _____
(if corporation or LLC, CFO, Treasurer, Secretary or Assistant Secretary)

Address for Notice:

_____
_____
_____
_____

Attachments:

| | |
|---|---|
| Exhibit A | Fresno Yosemite International Airport Ground Transportation Rules and Regulations |
| Exhibit B | Ground Transportation Map |
| Exhibit C | FAA Grant Assurances |
| Exhibit D | Disclosure of Conflict of Interest Form |

# EXHIBIT "A"

FRESNO YOSEMITE
INTERNATIONAL AIRPORT

# Fresno Yosemite International Airport
# Ground Transportation Rules and Regulations

Kevin R. Meikle, Director of Aviation

Revision dated March 28, 2019

**Fresno Yosemite International Airport**
**Ground Transportation Rules and Regulations**

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**Fresno Yosemite International Airport**
**Ground Transportation Rules and Regulations**

## OVERVIEW

In 2018, over 1.7 million passengers and hundreds of tons of freight arrived and departed through Fresno Yosemite International Airport (FAT). Each one of those passengers arrived to, or departed from the airport on one of the various forms of ground transportation, including personal vehicles, rental cars, family/friend drop off/pick up, taxi cabs, hotel courtesy shuttles, public bus, limousine service, or ride-share.

In addition to passengers and freight, hundreds of airline, concession, Airports Department, and federal employees arrive and depart their workplace at the airport around the clock, every day of the year, accounting for hundreds of thousands additional trips. The businesses operating at FAT receive supplies, materials, and merchandise from delivery vehicles daily.

Facilitating this magnitude and variety of ground transportation in an orderly and safe manner requires long-range planning and capital investment in roadway systems, specialized circulation systems and facilities, and various types of parking that accommodate the differing needs of parking customers.

As with all capital needs throughout the airport, revenue streams are necessary to provide funding for the improvements directly, or for the debt payments on bonds used to fund construction. Historically, these revenues have been derived from public parking fees, rental car leases, concession fees, and other airport general revenues. As the airport continues to grow, its' general revenues are required for other capital and operating needs. Consequently, this Ground Transportation Program is necessary for two fundamental reasons: 1) to help plan for, and provide the facilities and services needed to ensure safe and orderly services, and; 2) to ensure that all users of ground transportation program pay a fair and reasonable fee representing their proportionate share of the funding needed to provide and maintain the infrastructure.

For these reasons, all vehicles and the owners, operators, and drivers thereof, transporting or offering to transport passengers or goods, shall operate at Fresno Yosemite International Airport (Airport) in compliance with all applicable Rules and Regulations contained herein.

## PURPOSE

The purpose of these ground transportation Rules and Regulations is to establish a fair and reasonable fee structure, and to encourage safe, effective, and efficient use of the Airport roadway and transportation infrastructure to maintain a high level of Airport customer service. The following categories of ground transportation service (also referred to as "Provider") are impacted by these Rules and Regulations:

| | |
|---|---|
| Category 1 | Taxicab services |
| Category 2 | Transportation Charter Party (TCP) carriers including limousines, SUVs, vans, and buses |
| Category 3 | Scheduled or on-call Van Services/Passenger Stage Corporation (PSC) services |
| Category 4 | Hotel Shuttles, Courtesy vehicles |
| Category 5 | Nonprofit services including publicly owned transit |
| Category 8 | Transportation Network Companies / Application-Based Commercial Ground Transportation Providers |
| Category 9 | Pre-arranged Ground Transportation Services |

Except as noted in these Rules and Regulations, in order to operate on the Airport the above categories of ground transportation services are required to obtain all necessary, decals, permits, and pay the required fees.

## AUTHORITY

The provisions set forth herein are promulgated under the authority of Chapter 5, Article 4 of the Fresno Municipal Code (Article 4). These Rules and Regulations are intended to supplement Article 4. Nothing in these Rules and Regulations is intended to replace or revise the Article 4. In any instance where there may be a conflict between these Rules and Regulations and Article 4, Article 4 shall govern.

Words and phrases in these Rules and Regulations have the meanings and definitions as stated in Article 4 unless the context in these Rules and Regulations indicates that a different meaning is intended.

The Director of Aviation (Director) may modify these Rules, Regulations and Fee Schedules as authorized by Article 4.

Reference to all applicable federal, state and local laws or regulations also refers to any amendment to such laws or regulations.

As necessary to comply with direction from the United States Department of Transportation or Transportation Security Administration, or as warranted by unforeseen exigent circumstances, the Director may temporarily suspend or modify any of the rights and privileges set forth herein.

## VIOLATIONS AND INTERPRETATION

### Violation

Any person who violates, disobeys, omits, neglects, or refuses to comply with any of the provisions of these Rules and Regulations or any lawful order issued pursuant thereto may be denied use of the Airport premises for commercial purposes by the Director. Such denial of use is in addition to any fines or other penalties imposed pursuant to Article 4, or federal, state or local law.

**Interpretation**
In the event that an interpretation of any provisions of these Rules and Regulations is required, the Director shall render such an interpretation, and his or her determination shall be considered as final authority on the matter. All applicable federal, state and local laws and regulations and the laws and regulations of any other legal authority having jurisdiction, as now in effect or as may be promulgated in the future, as they may be from time to time amended, are hereby incorporated as part of these Rules and Regulations as though fully set forth herein. Any reference in these Rules and Regulations to a federal, state, or local law or regulation also refers to any amendment to such law or regulation.

**SECTION 1 – DEFINITIONS.**

**There will be no exceptions to these definitions.**

A. Administrative Citation. Means an enforcement citation issued by an authorized City employee for violations of the terms of conditions of this Permit or the Rules and Regulation, among other violations.

   1. First Offense. $100 dollar fine;

   2. Second Offense. $200 dollar fine;

   3. Third Offense. Revocation of Permit.

B. Airport. Means the Fresno Yosemite International Airport (FAT), as it currently exists or as it may exist in the future throughout the Term of this Permit.

C. Airport Customer. Means any user of the Airport who proposes to use a ground transportation provider's services, including, without limitation, for parcel delivery or pick-up.

D. Airport Ground Transportation Rules and Regulations (Rules & Regs) or Rules and Regulations. Means the policy and procedures as set forth in the manual provided by Director of Aviation, which describes the rules and regulations for operating on the Airport and as described therein, which can be updated from time to time.

E. Airport ID. Means an identification badge issued by the Airports Public Safety Office pursuant to background, training and testing requirements established by Airports.

F. Business Day. Means any calendar day except Saturday, Sunday and any other day observed as a legal holiday by the City of Fresno. For purposes of this Permit, if the time in which any act is to be performed falls on a Saturday, Sunday or legal holiday, the time for performance shall be extended to the following business day.

G. CPUC. Means California Public Utilities Commission, which regulates and licenses transportation providers in California, including TNCs.

H. City. Means the City of Fresno, California, owner of Airport.

I. Commencement Date/Effective Date. Means the first operating day of the Permit.

J. Day. Means any calendar day, unless a Business Day is specified.

K. Director. Means the City's Director of Aviation or such person as may be designated to carry out the duties of Director under this Permit.

L. FAA. Means the Federal Aviation Administration of the U.S. Department of Transportation.

M. Fee or Permit Fee. Means the annual cost to the Ground Transportation Provider to operate at the Airport.

N. Fiscal Year. Means the City's fiscal year beginning July 1 and ending June 30 each year.

O. Fresno Municipal Code/Municipal Code. Means Chapter 5, Article 4 of the Fresno Municipal Code.

P. Geo-Fence. Means a polygon whose points are geographic coordinates on Airport Property designated by the City (as may be amended by the City from time-to-time) which delineates the area within which Permittee must operate under this Permit.

Q. Ground Transportation Provider. As defined the CUPC below:

1. Passenger Stage Corporations (PSC): for-hire passenger carrier authorities;

a. "Classic" PSC. Carriers charging individual fares are presumed to be PSC's, except for round-trip sightseeing services. PSC's provide scheduled service, over fixed routes, between fixed termini (points), such as regularly scheduled bus service. However, regularly scheduled bus service operated by a publicly owned transit system is not "passenger stage" service, and is not under CPUC jurisdiction.

b. Door-to-door Shuttle Service. Provides on-call service, for example, door-to-door airport shuttle service where all transportation begins or ends at a single terminus, such as an airport. Many vehicles used in the airport shuttle industry are not owned or operated by a PSC, but are charter-party carriers working as subcarriers (subcontractors) for a PSC.

2. Charter-party carriers (TCP). Transportation is charted by a party (person or group). May also arrange the transportation on behalf of another person or group, such as an employee or client. TCP carriers must charge fares based on vehicle mileage, or time of use, or a combination of the two, and may not charge individual fares. All transportation performed by charter-party carriers must be arranged beforehand, and the driver must have a completed waybill in his or her possession at all times during the trip, showing, among other things, the name and address of the person requesting or arranging the transportation (the chartering party), the time and date when the charter was arranged, and whether it was arranged by telephone or written contract, the number of persons in the charter group, the name of at least one passenger, and the points of origin and destination. A charter-party carrier may not operate as a taxi, or advertise as to indicate that it provides taxicab service.

3. Taxicabs. Means a passenger vehicle for hire, used to transport passengers on public streets. The charge for use of a taxicab is determined by a taximeter. Taxis may provide transportation "at the curb", that is, a customer may "arrange" taxi transportation by simply hailing a cab from the sidewalk. Also, taxis have meters and top lights. Taxis are licensed and regulated by cities and counties, while charter-party carriers operate under authority from the CPUC, subject to the Public Utilities Code and CPUC regulations.

4. Regularly scheduled bus service. Bus service operated by a publicly owned transit system is not "passenger stage" service.

5. "Round-trip Sightseeing." The chartering party has control over the transportation that is, when and where the trip originates and ends, and the itinerary in between.

R. Laws. Means any judicial decision, statute, constitution, ordinance, resolution, regulation, rule, administrative order, or other requirement of any municipal, county, state, federal, or other governmental agency or authority having jurisdiction over the parties in effect either at the time of execution of this Permit or at any time during the term of this Permit, including, without limitation, any regulation or order of a quasi-official entity or body.

S. Manager. Means the Contractor contracted by the City to provide On Demand Ground Transportation Services Management or City employee assigned to Ground Transportation Services.

T. Mobile App./Mobile Application/Application/App. Means the computer application for mobile devices used by Permittee to conduct its business model as a CPUC-licensed Ground Transportation Provider.

U. Municipal Code. Means the City of Fresno Municipal Code, as amended from time to time.

V. Party. Means each of the City and Permittee.

W. Past Due Interest. Means interest accruing at the lesser of (a) the maximum rate allowable by law, or (b) eighteen percent (18%) per annum based on a three hundred sixty-five (365) day year, commencing on the tenth (10th) business day after the date such amount is due and owing and continuing until such amount is paid to the City.

X. Permit or Permit to Operate. Means this Ground Transportation Permit for Ground Transportation Providers coming onto Fresno Yosemite International Airport (FAT).

Y. Permittee. Means the entity defined on page 1 of this Permit. Unless the context requires otherwise, any reference to Permittee shall be construed to include any of Permittee's drivers, employees, representatives, and other agents.

Z. Pre-arranged. Means the providing for hire of commercial ground transportation to or from the Airport, where such transportation was contracted or arranged for by or on behalf of the passenger or parcel customer, in advance of the passenger's arrival or parcel's arrival at the Airport, or after the passenger's arrival at the Airport by communicating with a Ground Transportation Provider. Pre-arranged transportation includes transportation provided for business purposes, even though it is provided as a courtesy and the passenger is not directly charged for such transportation.

AA. Provision. Means any term, agreement, covenant, condition, clause, qualification, restriction, reservation, or other stipulation in this Permit that defines or otherwise controls, establishes, or limits the performance required or permitted by either party. All Provisions, whether covenants or conditions, which are applicable to Permittee, shall be deemed to be both covenants and conditions.

BB. Security Deposit. Means the deposit as defined and described in Section 4.08 of this Permit.

CC. Services. Means all ground transportation services as defined above by the Ground Transportation Provider.

DD. Solicitation. Means the uninvited initiation of a conversation or other uninvited contact by a driver, other employee, representative or agent (whether formal or informal) of any Ground Transportation Provider with any person, for the purpose of enticing or persuading said person to use any service or facilities provided by

the Ground Transportation Provider or any affiliate of any Ground Transportation Provider.

EE. Tax. Means and includes any assessment, license, charge, fee, imposition, or levy imposed by any governmental body.

FF. Taxicab Services Provider. Means a Ground Transportation Provider who transports passengers in a Taxicab.

GG. Term. Means the term of this Permit.

HH. Terminal Building. Means the passenger terminal building at the Airport and any additional buildings that may be constructed, serving the airlines, together with the adjacent curbs, parking and staging areas and roadways, as now exist or as may hereafter be reconstructed, modified, changed or developed.

II. Termination Date. Means the date that the ground transportation permit expires.

JJ. Tracking and Management Service. Means a third party that will establish the Airport Geo-Fence and provide services to manage, track and monitor application-based commercial ground transportation transacting business of Ground Transportation Provider's to, on, or from the Airport, and to invoice and collect fees.

KK. Tracking and Management Service Contract. Means City's Permit with Tracking and Management Service, which will be entered into by Airport on or around the date hereof, as may be updated from time to time.

LL. Trade Dress. Means distinctive signage or display on the vehicle when providing Services that is sufficiently large and color contrasted as to be readable during daylight hours at a distance of at least 50 feet. The trade dress shall be sufficient to allow a passenger, government official, or member of the public to associate a vehicle with the associated Ground Transportation Provider. Acceptable forms of trade dress include, but are not limited to, symbols or signs on vehicle doors, roofs, or grills. Magnetic or removable trade dress is acceptable.

MM. TSA. Means the Transportation Security Administration of the U.S. Department of Homeland Security.

NN. Vehicle(s). Means any automobile, truck, van, bus, limousine, motorcycle, bicycle, and other wheeled conveyances (except aircraft), operated by a Ground Transportation Provider, in which any person or property can be transported upon land.

OO. Vehicle Identification Decal. Means a vehicle identification decal issued or

authorized by the Director to be placed as directed, on or in each ground transportation vehicle registered and permitted to operate on Airport premises, for the purpose of identifying vehicles.

PP. Vehicle Inspection. Means vehicle inspections under the CUPC that must be completed annual or as requested for all Vehicles in the ground transportation providers fleet, within ten (10) days of request.

QQ. Vehicle Inspection Form. Means the inspection form that must be completed annually or as requested for all Vehicles in the Ground Transportation Providers fleet and submitted to the Airport within ten (10) days of request. Form can be found at http://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Licensing/Passenger_Carriers/PL%20668_Vehicle%20Inspection%20Declaration_9.14.16.pdf

RR. Waybill. Means a document or electronic form containing the passenger's name(s), the number of persons in the party, the location of the pickup, and the airline and flight number on which the passenger arrived or will arrive.

## SECTION 2 – GROUND TRANSPORTATION VEHICLES

### 2.1 GENERAL OPERATION OF GROUND TRANSPORTATION VEHICLE.

Every ground transportation Provider shall limit its vehicles and drivers in their activities to stopping at locations, using those designated roads, and using those portions of the Airport premises as specified in these Rules and Regulations, and as otherwise designated by the Director, for the loading and unloading of passengers and baggage, or picking up or delivering parcels.

Every ground transportation Provider shall acquire and maintain such certificates, licenses and other authorizations required by federal, state and local authorities for each of its vehicles and its drivers in order to conduct ground transportation services on the Airport premises.

Every ground transportation Provider shall ensure that its vehicles and drivers comply with all federal, state and local laws and regulations while providing ground transportation services, including, but not limited to, those laws and regulations requiring accommodation for persons with disabilities.

### 2.2 GROUND TRANSPORTATION VEHICLE REQUIREMENTS.

Each ground transportation vehicle operated on the Airport premises must be in compliance with all California Vehicle Codes, CPUC requirements, Fresno Municipal Codes and items listed below, but not limited to these specific items:

A. Have the vehicle registration, where applicable, from the DMV within the vehicle pursuant to California Vehicle Code (CVC) Section 4454;
B. Display an unexpired license plate of the appropriate type;
C. Display, where applicable, the appropriate California Public Utilities Commission (CPUC), ICC, transponder and/or permit to operate, including the applicable certificate or authority number required. CPUC 1031, 5371; CVC 34507.
D. Maintain valid insurance coverage as required in these Rules and Regulations.
E. Display a vehicle fleet number where applicable in accordance with 4.03 General Order 157 CPUC; 4.03 General Order 158.

## 2.3 VEHICLE INSPECTIONS.

A. All ground transportation vehicles shall be subject to inspection under the California Vehicle Code, the Department of Homeland Security, all other local, state and federal laws and any guidelines established by the Director. Any Airport law enforcement personnel, any federal, state or local law enforcement officer, any Airport official, and all agents appointed by the Director who display proper identification shall have the authority to inspect vehicles. Vehicles which fail inspections shall not be used to provide ground transportation services on the Airport until all noted deficiencies are corrected.

B. All vehicle inspections shall be pursuant to the California Public Utilities Code (CPUC) and form PL 668 19-point Vehicle Inspection Declaration, or as modified by the CPUC.

C. All vehicle inspections must be completed by a facility licensed by the California Bureau of Automotive Repair.

## 2.4 VEHICLE APPEARANCE.

All signage of ground transportation vehicles is subject to the Director's approval. Each ground transportation vehicle, except limousines and TNCs, shall have the name of the ground transportation service and telephone number displayed on the exterior of the vehicle and in sharp contrast to the vehicle body color. A vehicle is considered easily identifiable if the company name, phone number, vehicle number or livery plate and CPUC, TCP and ICC numbers, if applicable, can be read from a distance of 50 feet from the vehicle. All ground transportation vehicles shall have professionally lettered identification signs on both sides of the vehicle and a uniform color scheme on all vehicle exteriors

## 2.5 VEHICLE STANDARDS.

A. All vehicles must be maintained in good and safe mechanical condition and otherwise in compliance with the California Vehicle Code and the California Public Utilities Code.
B. All vehicle interiors, trunk space and exteriors shall be kept clean and free of

any damage. All vehicles shall have hubcaps and door handles and all equipment required by the California Vehicle Code and the California Public Utilities Code. Trunks shall be kept adequately clean and empty to accommodate passenger baggage.

C. All vehicles shall be in compliance with all local, state and federal safety and emission requirements.

D. Ground transportation providers are required to maintain the exterior of their vehicles in good condition. Exterior body damage must be repaired in order to continue operating at the Airport.

E. All ground transportation service Providers may be required to verify completion of any required repairs by re-inspection of a vehicle by the Airport. Operators shall have thirty (30) days to repair "minor" damage. Vehicles with "moderate" or "major" damage shall not be allowed to operate on the Airport until such damage is repaired.

F. "Minor" damage shall mean slight damage such as small dents, cracked glass, and
torn seats, etc.

H. "Moderate" damage shall mean more than slight damage to one-fourth or less of the vehicle; for example an entire fender, grill, quarter panel, door, hood, rear deck, etc.

I. "Major" damage shall mean damage to more than one-fourth of the vehicle; such as, entire side rear end, etc.

J. Operators using clean air vehicles shall maintain their vehicles including the fueling system, engine and drive train in good working order at all times. Altering a clean air vehicle to allow it to be operated as a conventional diesel fuel or gasoline-powered vehicle, or substituting conventional diesel fuel or gasoline for an alternative fuel approved by the Director is prohibited.

## SECTION 3 – GROUND TRANSPORTATION DRIVERS.

**3.1 COMPLIANCE WITH LAW.** Drivers of ground transportation vehicles shall strictly comply with these Rules and Regulations and those applicable Rules and Regulations and laws found in the CPUC and Vehicle Codes, Title 11.09, and any other applicable codes or laws. Airport Rules and Regulations, when legally permissible, shall augment any other applicable existing code, rule or regulation.

**3.2 LAWFUL ORDERS.** Drivers of ground transportation vehicles shall obey the lawful orders and directions of all Airport law enforcement personnel, any state or local law enforcement officer, all Airport officials, and all agents appointed by the Director who display proper identification.

**3.3 DRIVER APPEARANCE.** Drivers of ground transportation vehicles shall be clean and neat in appearance.

**3.4 DRIVER REQUIREMENTS.** Every driver of a ground transportation vehicle shall be:

A. In possession of a duly issued Airport ID, for all drivers that stage their vehicles on Airport property. Exempt are drivers who complete drop off and picks ups only. In possession of a valid state driver's license as required under the California Vehicle Code;
B. Either a ground transportation Provider registered with and permitted by the City of Fresno, or a driver under the direct supervision of a ground transportation Provider and listed on a roster of drivers, where applicable, provided to the City;
C. Responsible for knowing and understanding of the Airport Rules and Regulations;
D. Knowledgeable of local geography and/or able to use maps, GPS or other similar resources necessary to efficiently transport passengers to desired locations within Fresno and other local communities served by the airport.
E. Able to communicate with passengers.
F. Courteous to the public at all times. A ground transportation driver shall not use profane language, insult or demean, make a threat of violence or physical harm, or act in a loud and boisterous or otherwise improper manner. Obscene gestures, or language, threats of physical harm, fighting, gambling, public intoxication, lewd or otherwise improper public behavior, or the use of illegal substances on Airport premises are expressly prohibited.
G. Cooperative and communicative with Airport personnel. A driver shall not be verbally abusive toward any Airport representative or another ground transportation representative.
H. No driver shall be under the influence of alcohol or illegal substances while operating ground transportation at Airports facilities.

## 3.5 GROUND TRANSPORTATION OPERATOR CONDUCT.

A. No driver, representative, employee, or agent of a Provider shall conduct any business on the Airport other than that expressly described in Article 4 of the Fresno Municipal Code, these Rules and Regulations, and in any applicable ground transportation permit or application unless approved by the Director in advance.
B. No driver, employee, representative, or agent shall engage in the solicitation of passengers unless specifically permitted by the Director, in writing, to do so.
C. No driver shall transport passengers in an unsafe manner.
D. No driver, representative, employee, agent or Provider shall sell, promote or otherwise provide any items or services other than ground transportation to its passengers or any other persons upon the Airport premises.
E. Ground transportation operator shall be courteous to the public and to other ground transportation operators and their employees. The ground transportation operator, or their agent, shall be clean, efficient and neat in appearance. Operators shall not allow employees on the airport to use improper language or act in a loud or boisterous or otherwise improper manner. Operators shall not engage in open, notorious and public disputes,

disagreements or conflicts intending to deteriorate the quality of the ground transportation services of commercial operators or their competitors or incompatible with the best interest of the public at the airport. Obscene communications, threats of violence or physical harm, fighting, gambling, public intoxication, and carrying weapons or illegal substances on airport premises are expressly prohibited.

F. Ground transportation operators are prohibited from sleeping inside their vehicles at the ground transportation curb in front of the terminal. Violators will be immediately expelled and subject to suspension and permit revocation.

**3.6 NO UNATTENDED VEHICLES.** Drivers of ground transportation vehicles shall remain in (or with) their vehicles and shall not park or leave a vehicle unattended at any curb, unless the vehicle is a designated delivery vehicle and the driver is making a delivery, or otherwise authorized by the Director. Unattended vehicles may be cited and removed. If drivers must park or leave their vehicles unattended, they shall park in the public parking lot subject to the posted rates.

**3.7 FALSE DOCUMENTS AND TRANSPONDERS.** Ground transportation drivers, representatives, employees, agents or Providers shall not use, display, show, exhibit or transfer any transponder, permit, waybill, decal, receipt, or any other document which is false, invalid, altered, revoked, terminated or expired.

**3.8 DECEPTION OF PUBLIC.** A ground transportation driver, representative, employee, agent or Provider shall not deceive or attempt to deceive the public through false or misleading representations concerning its prices or services or those of other ground transportation service Providers.

**3.9 PASSENGER RECEIPTS.** All drivers of ground transportation vehicles with the exception of TNC's shall have passenger receipts in all their vehicles which are imprinted with the company's name, address, telephone number and CPUC or PSC number, if applicable. The receipt shall provide space for the driver's name, date and time of service and the fare charged. Electronic receipts are acceptable. Each customer shall be offered a receipt following payment by that customer.

**3.10 RATE SCHEDULE AND TIMETABLE INFORMATION.** All ground transportation services shall display timetable and tariff information in accordance with applicable local, state and federal law. Taxicabs shall have rate schedules posted externally, and all other ground transportation vehicles shall have tariff and timetable information (if applicable) available on or in the vehicle or online for TNC's for passenger review.

**3.11 CPUC COMPLAINT ADDRESS.** All ground transportation service vehicles subject to CPUC oversight (except TNCs) must post, in plain view by all passengers, the following information:

CPUC Complaint Intake Unit-Transportation Enforcement Section Consumer

Protection and Safety Division
505 Van Ness Avenue, 2nd Floor
San Francisco, CA 94102-3298
1-800-894-9444

The CPUC website for complaints follows:
http:/www.cpuc.ca.gov/PUC/CEC/e_complaint/d_carrierscomplaint.htm. There is a complaint form that is used to file complaints. It can be found and downloaded from the above link or a complaint can call and ask to be mailed a form by calling 1-800-894-9444 or by emailing ciu_intake@cpuc.ca.gov. The Intake Unit will be happy to answer any questions complainants have about the complaint process.

**3.12 CREDIT CARDS ACCEPTED.** All ground transportation service Providers (except TNCs) shall post the types of credit cards accepted as payment for their services.

**3.13 LUGGAGE ASSISTANCE.** No ground transportation driver or driver's agent shall provide luggage assistance unless the passenger has, without solicitation from the ground transportation operator, requested such assistance; or unless the ground transportation operator is claiming and delivering delayed baggage under contract.

**3.14 GRATUITIES.** While taking passengers to and from the Airport, ground transportation drivers, representatives, employees and agents shall not solicit gratuities or tips, directly or indirectly, from their passengers.

## SECTION 4 – USE OF AIRPORT PREMISES.

**The following Rules and Regulations are applicable to all ground transportation services:**

**4.1 PARKING AND STOPPING OF VEHICLES.** All ground transportation vehicles operated on Airport premises must comply, at all times, with traffic signs, signals, pavement markings and other physical, electrical and mechanical traffic control devices placed and maintained by the Director unless directed otherwise by authorized personnel. Designated loading and unloading areas are subject to change from time to time, as necessary in the judgment of the Director to advance the safety, security and/or convenience of Airport operations. All pick-ups and drop-offs must be made in a designated loading/unloading zone. Traffic control restrictions imposed by the Director may include, without limitation:

A. Designating a parking time limit on any portion of the Airport;
B. Designating any portion of the Airport for specific uses (e.g., for the general public, designated commercial passenger vehicles, a passenger loading/unloading zones, a freight loading zone, or for Airport vehicles only);
C. Designating any portion of the Airport as a NO STOPPING, NO WAITING, or NO PARKING area;
D. Designating where and how vehicles shall be parked by means of parking

space markers; and

E. Designating direction of travel.

**4.2 USE OF AUTHORITY.** The Director may use his or her full authority under federal, state, and Local law, as well as TSA security directives, to direct, remove, or cause to be removed at the owner's expense from any restricted or reserved area, any roadway or right-of-way or other area on the Airport premises, any vehicle which is: disabled, abandoned, illegally or improperly parked, or creating an Airport operational issue. Any such vehicle may be removed or caused to be removed to an official vehicle impound area designated by the Director. Neither the Airport nor the City shall be liable for damage to any vehicle or loss of personal property which might result from the act of removal.

**4.3 DESIGNATED ROUTE.** Drivers of ground transportation vehicles must, upon entering the Airport, proceed along the most direct route to the designated drop-off or pick-up location, hold lot, or other authorized destination unless otherwise instructed by the Director.

**4.4 CRUISING.** Cruising is prohibited. Ground transportation vehicles will be considered to be cruising unless the driver:

A. Has a customer to be discharged at a terminal and is proceeding to this destination by the most direct route;

B. Is in the process of leaving the Airport by the most direct route.

**4.5 PROPER TRAFFIC FLOW.** All ground transportation vehicles shall only be operated on roads and parking areas designated by the Director for use by that particular type of vehicle and ground transportation service. Vehicles are not to be positioned so as to block the flow of traffic or prevent other vehicles from gaining access to, or departing from, ground transportation areas or other areas at the Airport. Additional restrictions may be set forth by the Director through other means, including in a ground transportation permit. No ground transportation service shall use the roads, walkways, sidewalks, or other Airport facilities in such a manner as to hinder or obstruct their proper use, public access, the conduct of proper and approved business activities, or to interfere with the flow of traffic.

## SECTION 5 – INDEMNIFICATION.

### 5.1 INDEMNIFICATION

To the furthest extent allowed by law, Ground Transportation Provider shall hold City completely harmless and indemnify, protect and defend City and each of its officers, officials, employees, agents and volunteers against any and all claims, judgments, fines, penalties, forfeitures, damages, demands, liabilities, suits, notices, costs and expenses [including all reasonable costs and expenses for investigation and defense thereof (including, but not limited to attorney fees, court costs and expert fees)], or any one, more or all of these, of any nature whatsoever, arising or allegedly arising, directly or indirectly,

out of, as a result of, or incident to, or in any way connected with: (1) Ground Transportation Provider's occupancy(ies) and/or use(s) of any part or all of the Airport; (2) Ground Transportation Provider's exercise of any one, more or all of the rights and privileges herein granted; (3) any breach or default in the performance of any obligation on Ground Transportation Provider's part to be performed under the terms of this Agreement; and/or (4) any act(s) or omission(s) on the part of Ground Transportation Provider and/or any officer(s), agent(s), employee(s) or contractor(s),of Ground Transportation Provider during the Term, except for any claims, judgments, fines, penalties, forfeitures, damages, demands, liabilities, suits, notices, costs and expenses, or any of these, caused solely by the gross negligence or by the willful misconduct of City or any of its officials, officers, or employees acting within the scope of their duties for City.

Ground Transportation Provider shall conduct all defenses at no cost or expense to the City. City shall be reimbursed for all costs and attorney's fees incurred by City in enforcing this obligation. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Ground Transportation Provider. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Ground Transportation Provider and its officials, officers, employees, agents and volunteers.

The provisions of this section of this article shall survive the expiration or early termination of this Agreement.

## SECTION 6 – GENERAL INSURANCE REQUIREMENTS.

### 6.1 EXEMPTION OF CITY

Ground Transportation Provider hereby specifically warrants, covenants and agrees that City shall not be liable for injury to Ground Transportation Provider's business or any loss of income therefrom or for damage to the goods, wares, merchandise or other property located in, upon or about the Airport under authority hereof, whether belonging to Ground Transportation Provider, or any employee, agent, contractor, sub-contractor, tenant, sub-lessee of Ground Transportation Provider, or any other person whomsoever. The City shall not be liable for any injury to the person of Ground Transportation Provider or Ground Transportation Provider's employees, agents, contractors, subcontractors, tenants, sub-lessees, customers, or invitees, whether or not said damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the leakage, breakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, whether or not the said damage or injury results from conditions arising in or on any part or all of the Airport or in or on any of the improvements/ facilities appurtenant thereto located therein or thereon, or from other sources or places, and regardless of whether or not the cause of such damage or injury or the means of repairing the same is inaccessible to Ground Transportation Provider. Ground Transportation Provider also covenants and agrees that City shall not be liable for any damages arising from any act or neglect on the part of any third parties.

## 6.2 INSURANCE

Ground Transportation Provider shall, at Ground Transportation Provider's expense, obtain and, throughout the Term, maintain in full force and effect all policies of insurance required hereunder, with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-/VII" in Bests Insurance Rating Guide, or (ii) authorized by City's Risk Manager or his/her designee. Insurance Requirements shall be specified in the Permit and/or Agreement.

Ground Transportation Provider shall have the right to provide the coverage specified in the Permit and/or Agreement by a program of self-insurance, which has been approved by the State of California. Ground Transportation Provider shall furnish City with a self-insured certificate of insurance and applicable endorsements. Said certificate and applicable endorsements shall document that Ground Transportation Provider's self-insurance program is approved by the State of California; the retention level of such self-insurance program; the City and its officials, officers, employees, agents and volunteers are named as additional insureds; and that the policy of insurance is primary and no contribution shall be required by City. Ground Transportation Provider shall also supply the name of Ground Transportation Provider's excess insurance carrier at the time the certificate of self-insurance is supplied to City.

## 6.3 DELIVERY TO DIRECTOR OF EVIDENCE OF INSURANCE

Ground Transportation Provider must deliver, without request or demand, to the Director, a certificate of insurance and all applicable endorsements or other evidence of insurance coverage required by this Article in form and content satisfactory to City's Risk Manager or his/her designee. Ground Transportation Provider must update such evidence of insurance not less frequently than annually.

## 6.4 EXPIRATION OF INSURANCE POLICY

Prior to the expiration of any insurance policy required by this Article, Ground Transportation Provider must submit to the Director a certificate of insurance and all applicable endorsements showing that such insurance coverage has been renewed. If such coverage is cancelled or reduced, Ground Transportation Provider, within five business days following the date of written notice from the insurer of such cancellation or reduction in coverage, must file with the Director a certificate of insurance and all applicable endorsements showing that the required insurance has been reinstated or provided through another insurer or insurers.

## 6.5 ADJUSTMENT OF CLAIMS

Ground Transportation Provider must provide for the prompt and efficient handling of all claims for bodily injury, property damage or theft arising out of the activities of Ground Transportation Provider under the Permit and/or Agreement.

## SECTION 7 – TRANSPORTATION NETWORK COMPANIES (TNCs), OR APPLICATION-BASED COMMERCIAL GROUND TRANSPORTATION PROVIDERS (ABCT-PROVIDERS).

**7.1** This class of Ground Transportation Provider operates under an application-based business model which enables direct communication with customers. This feature enables the customer and TNC Driver to communicate with their respective mobile devices and enables the customer to arrange for personalized ground transportation. Likewise, it enables the TNC Driver to by-pass the airport rules and procedures under which non-application based Ground Transportation Providers are required to operate. This feature creates a privilege for the TNC Providers and the TNC Drivers which is not available to other Ground Transportation Providers and Drivers. Also, because TNCs are able to avoid the rules and procedures that other Providers are subject to, there are special rules and procedures that TNC Drivers must adhere to, as listed in 7.2 below. Finally, the business model of the TNCs enables it to have access to the Passenger while still in the terminal and before the Passenger can be accessed by other Ground Transportation Providers. This business model is more similar to a terminal concession in that it has virtual access to Passengers while still in the terminal that other classes of Ground Transportation Providers do not have. For these reasons, TNC Providers will be offered a Non-Exclusive Transportation Network Company Airport Permit and TNC Drivers will have unlimited access to the various parts of the Airport. The City will utilize a Geo-Fence tracking system as a means to monitor their ingress onto Airport property, their business transactions taking place on the mobile applications, and their egress off Airport property. While providing services at the Airport terminal, TNCs will be required to drop off Passengers at TNC assigned area at the outer curb.

**7.2** While operating at the terminal, TNCs will be subject to the same procedures that private vehicles are while dropping off and picking at the curb, as follows:

A. No vehicles may be left unattended under any circumstance;
B. Parking and waiting are prohibited;
C. The practice of cruising, as defined herein, is prohibited;
D. The Cell Phone Lot has limited parking capacity and is reserved for the public and may not be used by TNC Drivers;
E. TNC Drivers who must park to wait for a Passenger, or enter the terminal for any purpose must use the Public Parking Lot at the posted parking rate.

## SECTION 8 – TAXICAB SERVICES.

**8.1** **REQUIREMENTS FOR TAXICAB SERVICE.** Prior to providing any ground transportation service to or from the Airport, a taxicab service provider and driver is required to obtain a Permit and Vehicle Identification Decal. Taxicab providers and drivers must show proof of appropriate local, state and federal permits and licenses. Taxicab providers must provide FAT with their hours of operation at the Airport.

## SECTION 9 – SPECIAL EVENT TRANSPORTATION.

**9.1 REQUIREMENTS FOR SPECIAL EVENT TRANSPORTATION SERVICES.** Prior to providing any ground transportation service at the Airport, all special event service providers and drivers are required to obtain an Airport ground transportation Special Activity Notice (SAN). Special event Providers and drivers must evidence proof of appropriate local, state and federal permits and licenses and must obtain a transponder and a decal from the Airport.

A. With the prior permission of the Director, drivers and operators of transportation charter party services involving large group movements and the use of multiple vehicles (e.g., tour groups) may use the curbside areas as designated for the Special Event.
B. Use of these areas is available on a first come, first served basis and is subject to all local, state and federal security mandates. Ground transportation services seeking to use these areas must obtain the prior approval of the Director or his designee. Requests may be submitted via telephone.
C. A "Notice of Special Event" form, distributed by the Director upon approval of the service, is to be placed on the dash of each special event vehicle. The notice allows the ground transportation Provider to board or unload passengers at the designated special event curbs.

## SECTION 10 - NO DIVERSION OF PASSENGERS.

**10.1 NO DIVERSION OF PASSENGERS.** Ground transportation operators shall not, through their officers, agents, representatives, or employees divert or cause to be diverted any prospective customer or item to a location off the airport, in order to pick up or drop off said customer or item off the airport and thereby avoid paying the fees and charges that would otherwise be owed to airport hereunder.

## SECTION 11 – DROP OFF AND PICK UP OF PASSENGERS.

**11.1 TERMINAL CURB USAGE FOR DEPARTING PASSENGERS.** Unless otherwise specified, provider vehicles shall use the outside lanes, as shown on the map in Section 24, for unloading of passengers and baggage. Use of these lanes shall be for active unloading only. Drivers shall not stop in the drive lane. The driver shall not leave the vehicle unattended.

**11.2 TERMINAL CURB USAGE FOR ARRIVING PASSENGERS.** Unless otherwise specified, provider vehicles shall use the outside lanes, as shown on the map in Section 24, for pick-up of arriving passengers and their baggage. The driver shall not leave the vehicle unattended. Drivers shall not stop in the drive lane. The driver shall not leave the vehicle unattended.

## SECTION 12 – PUBLIC PARKING.

**12.1 USE OF PUBLIC PARKING LOTS.** Public Parking lots shall be for the use of

Airport passengers only. If any Ground Transportation Provider parks in the public parking lots they shall be responsible for all fees associated with using the lots.

**12.2 CELL PHONE LOT.** The Cell Phone Lot is for the purpose to accommodate customers that are at the Airport for the sole purpose of picking up a traveler and do not wish to park and leave their car. Ground Transportation Providers are not allowed to stage in the Cell Phone parking lot.

## SECTION 13 – REFUSAL OF FARES.

### 13.1 REFUSAL OF FARES.

Ground transportation providers may only refuse a fare as follows:

A. A voucher offered by the airlines.
B. If the passenger(s) luggage exceeds the capacity of the vehicle.
C. Any other right of refusal as stipulated in the Rules & Regulations set forth by the Public Utilities Commission.

## SECTION 14 - TRANSPORTATION OF DISABLED PASSENGERS AND SERVICE ANIMALS.

**14.1 TRANSPORTATION OF DISABLED PASSENGERS AND SERVICE ANIMALS.** Ground Transportation Providers and their drivers shall comply with City, State, and Federal regulations concerning the transportation of disabled passengers, and shall agree to transport service animals accompanying airline passengers.

## SECTION 15– MISCELLANEOUS SERVICE.

**15.1 PERMITS AND DOCUMENTS REQUIRED.** All miscellaneous ground transportation service Providers are required to obtain Vehicle Identification Decals prior to providing any ground transportation service at the Airport, with the Director's review and approval. Ground Transportation service drivers in this category shall exhibit evidence of all applicable local, state and federal permits or licenses, and any other items determined by Director.

## SECTION 16 – TRANSPORTATION CHARTER PARTY SERVICES

**16.1 REQUIREMENTS FOR TRANSPORTATION CHARTER PARTY SERVICES.** Prior to providing any ground transportation service at the Airport, all transportation charter party service providers and drivers are required to obtain a Vehicle Identification Decal. Transportation charter party service Providers and drivers must evidence proof of appropriate local, state and federal permits and licenses.

**16.2 WAYBILL REQUIRED.** Transportation charter party carrier drivers are required to have a waybill for each passenger for whom they are providing ground transportation services and shall present this waybill on demand to any APSO,

traffic enforcement officer, Fresno Police Officer, State of California or federal law enforcement officer, or any person authorized by the Director to demand presentation of a waybill. An electronic waybill is acceptable.

## SECTION 17 – PREARRANGED GROUND TRANSPORTATION SERVICES.

**17.1** "Prearranged ground transportation service" means transportation for one or more passengers that is arranged in advance or operated on a regular route between specified points and is provided in a motor vehicle with a seating capacity that does not exceed 15 passengers (including the driver).

**17.2** If any Provider has an agreement with a third party, such as an airline, for prearranged ground transportation services, that Provider must inform the Airport in writing with a current copy of the third party agreement.

## SECTION 18 – ENFORCEMENT.

**18.1 VIOLATIONS.** Violations of these Rules and Regulations may lead to the temporary suspension or permanent revocation of the ground transportation service and the driver's permit to operate on the Airport, as well as fines and criminal prosecution pursuant to these Rules and Regulations and the Fresno Municipal Code.

## SECTION 19 – GROUND TRANSPORTATION PERMITS AND DECALS.

### 19.1 GROUND TRANSPORTATION DECALS.

Every ground transportation vehicle, other than TNC vehicles, on the Airport premises must display a current and valid ground transportation decal unless otherwise exempted pursuant to Chapter 5, Article 4 of the Fresno Municipal Code, or these Rules and Regulations.

### 19.2 APPLICATION FOR GROUND TRANSPORTATION PRIVILEGES AND DECAL.

A. The Director has determined that it is warranted that each company shall enter into a Permit to operate at FAT and payment of all fees pursuant to Sections 22 and 23 of these rules and regulations.
   1. Provider Fees will be collected by Airport staff upon the successful passing of the initial vehicle inspection, and then annually on each July 1st.
   2. TNC Fees are to be submitted on a monthly basis with required reports as stated in the TNC Operating Permit.

B. Airport Administration shall issue permits and decals. Permits shall have terms and conditions as the Director determines to be necessary for the protection of the safety, convenience, and welfare of the City and the general public. All providers must provide all information required by the Director, including, but not limited to,

the following information:

1. Provider's name, street and mailing address, telephone and fax numbers, e-mail address (if available), and a copy of the applicant's driver's license.
2. Business/operating name, if different than Provider's name.
3. Type of ground transportation business as described in Chapter 5, Article 4, of the Fresno Municipal Code.
4. For each vehicle to be permitted, a copy of the current vehicle DMV registration, the vehicle description, license number, year, make, body type, and number of passenger seats
5. Detailed and complete description of the ground transportation service(s) to be provided, including primary service area.
6. Copy of applicable approvals (e.g. TCP/PSC certificate or City taxicab permit) for each vehicle to be permitted.
7. If Provider is seeking permission for multiple drivers under his/her supervision to provide ground transportation service applicant must provide a current roster of Drivers under provider's direct supervision together with a copy of each driver's license.
8. No ground transportation driver other than those individually granted ground transportation badges may use a Vehicle Identification Decal at FAT.
9. Insurance declaration sheet evidencing current and valid insurance in the amounts and types set forth in these Rules and Regulations.

## SECTION 20 – BADGING REQUIREMENTS.

### 20.1 BADGING PROCEDURES, RULES AND REQUIREMENTS.

A. Badging Process

Drivers for ground transportation operators must possess an Airport ID Badge. Badge issuance with SIDA/Restricted access is limited to those individuals who have cleared the FBI-based Criminal History Records Check All Badge applicants must provide documentation that establishes identity and employment eligibility. Badging process requires two separate trips to the badging office.

1. First Visit in the Badging Office:

a. The applicant must pay $69 in fees and present ORIGINAL government issued documents that establish the applicant's identity and legal authority to work in the United States. (I-9 documentation. This is most commonly done by a driver's license and a social security card but various other documents are acceptable – see http://www.uscis.gov/portal/site/uscis ).

Foreign born individuals must also bring other documentation. Contact the Badging Office for specifics.

b. Applicants will be live-scan finger printed and information will be received for submittal of their TSA security threat assessment.

c. When FBI and TSA clearances are received (currently around two weeks), applicants will be scheduled for a badging class.

2. Second Visit in the Badging Office:

a. Applicants will attend the badging class where they will learn about local security and, if applicable, driving and escorting procedures.

b. At the conclusion of the class, they will be issued their FAT Security I.D. (badge) with the authorized access levels.

c. The second trip usually takes approximately 1 1/2hrs. at the badging office.

| Documents that establish identity: | Documents that establish employment eligibility: |
|---|---|
| Valid State Driver's License | Birth Certificate |
| Valid State ID Card | Social Security Card |
| US Passport | U.S. Passport |
| Military ID | Permanent Resident Alien Card |
| Active Issued ID | U.S. Citizen ID Card |
| Resident Alien Card | Certification of Naturalization |
| | Native American Tribal Document |

B. Authorizing Signature Form

Each company that requests Airport ID Badges must identify one or more responsible company employees as "Authorizing Signers". Only Badge Application Forms signed by an "Authorizing Signer" will be accepted for processing. Names of individuals authorized to sign Badge Application Forms for a particular company are on file in the Airport Badging Office. Each Badge Application submitted for processing will be checked to ensure that it is authorized by one of the authorized signers. The signature of an Authorized Signer on a Badge Application Form certifies that the applicant is an employee of the particular company, and that the Application has been reviewed for completeness. The Authorizing Signer is also responsible for indicating on the Badge Application that the employee will have a need to access the ground transportation queuing area.

C. Security Training

Badge applicants must be able to comprehend the Airport's security rules, guidelines, regulations and procedures and possess the ability to perform the responsibilities associated with unescorted access privileges. To fulfill this requirement, all individuals applying for an Airport photo ID Badge with access to the ground transportation queueing area must first undergo security training. Employees will undergo a class instructed security training program. Applicants will need to come in for processing / fingerprinting before attending the training.

D. Renewal

It is the responsibility of each individual to renew his or her Badge. Airport ID Badges are issued with an expiration date that is no more than 2 years from the issue date. All individuals are required to undergo Ground Transportation Refresher Training upon renewal. Failure to renew the Airport ID Badge prior to the expiration date will result in loss of airport access privileges.

E. Badge Replacement

It is the responsibility of the individual to whom an Airport Badge is issued to secure and properly care for that card. Any expired, damaged or defaced badges will be confiscated and possibly suspended. Badges that have been lost or stolen must be reported immediately to the Badging Office. This notification will allow the "revocation" of lost or stolen Badges in the Security Card Access System, so if found, the Badge cannot be used to gain access.

Individuals who require a replacement Badge must complete a "Badge Application Form" before a replacement may be issued. This Form must be signed by the Authorizing Signer for the company. Badge Application Forms are available in the Badging Office. Replacement cost is $25.

Badges will only be issued a maximum of three (3) times before they are permanently revoked. After a badge is lost or revoked for the third time the individual must report to a Badge Appeal Board in order to get their badge reissued. This appeal process does not guarantee reissuance of an Airport Badge.

F. Return of Airport ID Badges

It is the responsibility of each company to maintain accountability of all Airport ID Badges issued to their employees. Badges must be retrieved and returned to the Airport when an individual is no longer providing ground transportation services at the airport, or is no longer employed by a ground transportation provider. Badges must be returned to Airport Public Safety within 3 days (72 hours) of the separation. If an individual voluntarily separates from a company under good terms, and the badge cannot be returned within 72 hours, the individual will have 30 days to return the badge to the airport. Notification must still be made to Airport Public Safety immediately so the badge can be deactivated.

In cases where an employee is terminated, laid off or on strike, and the company does not have the ID Badge, notification must be made to Airport Public Safety immediately. Upon this notification, the Airport Public Safety will "revoke" the individual's access authority in the Security Card Access System, to prevent them from accessing the AOA, Restricted or Secured Areas. All Badges issued to your company must be accounted for. Failure to notify the Airport about any ID Badge that you can no longer account for is a violation of the Airport Security Plan and may result in administrative sanctions and/or civil penalties.

H. ID Badge Audits

The Transportation Security Administration requires that the Airport regularly audit ID Badge records to ensure accuracy and accountability. Paper Audits will include a listing of all Airport ID Badges issued to a particular company. Companies will be required to review the list, ensuring that all individuals are still employed by them, still require Airport access, and are in possession of their Airport ID Badge. Physical Audits, in addition to a review and certification of the employee listing by each company, may require each badge holder to report to a specific location for a physical inspection of their ID Badge. Failure to complete Audits as requested will result in the suspension of Airport ID Badge issuance privileges.

J. Record Keeping

Companies are required to maintain records pertaining to ID Badge Issuance for all employees. These records must be maintained for the duration of time that the employee is with the company, and up to 180 days from the date of termination/separation. It is recommended that companies keep this documentation in a separate file; remember, it is subject to audit by the Airport or TSA. Records must be made available to the Airport for inspection to determine compliance with all security requirements. The records shall include, but not be limited to the following:

1. A copy of the Badge Application
2. A copy of the Separation Form
3. Any other information as required by the Airport

Each company must provide the Airport with the location the records will be stored and the name or title and phone number of the individual who maintains the records.

## SECTION 23 – GROUND TRANSPORTATION FEES

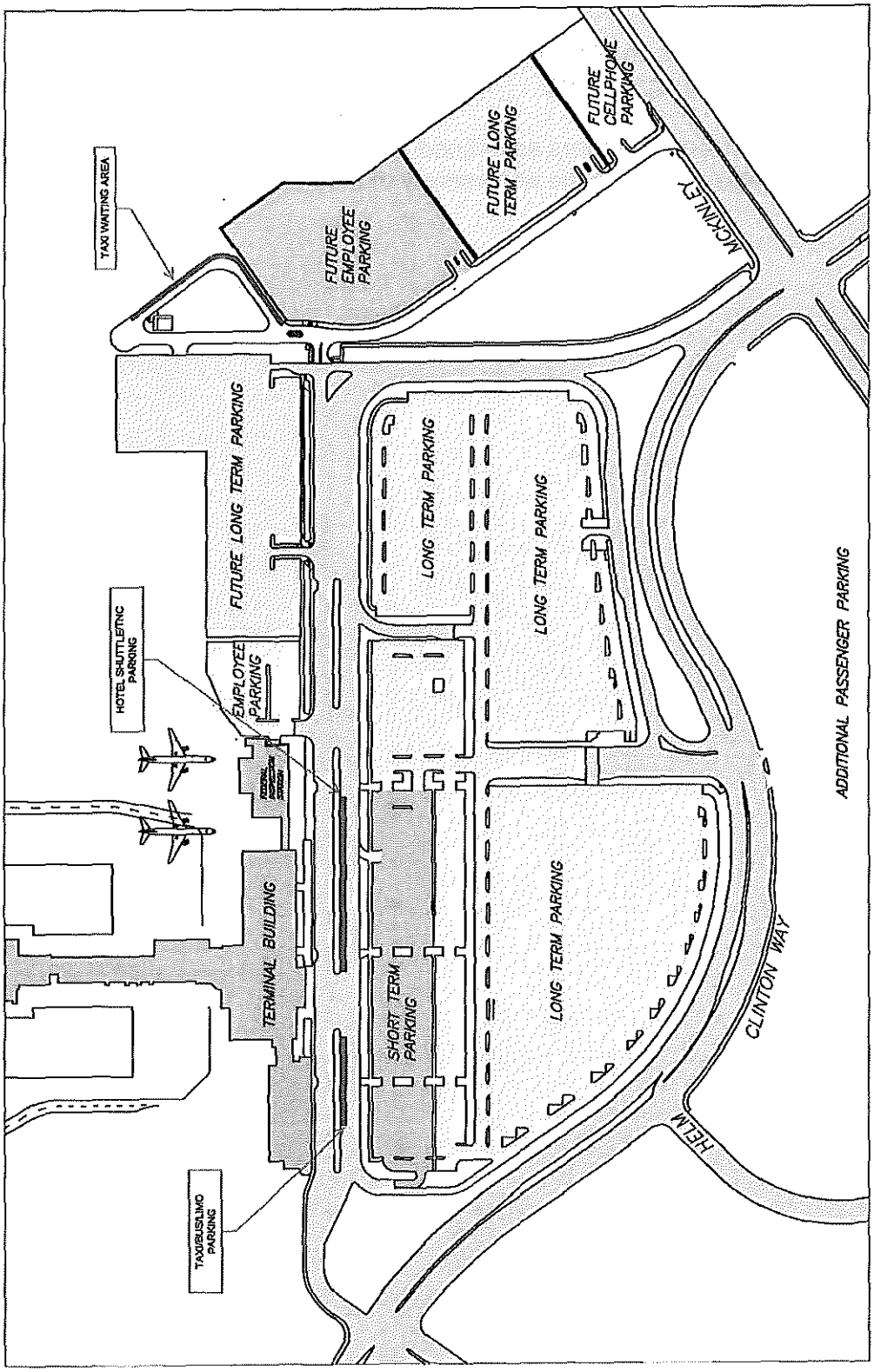
**23.1 FEES.** These fees are listed in the Master Fee Schedule for the City of Fresno and can be updated from time to time.

**23.2 PAYMENT OF TRIP FEES.** Payment of Airport use fees shall be made in accordance with the following procedures:

A. TNC Payments shall be made on a monthly basis consistent with the provisions of the operating agreement.

B. Transportation Providers as defined in the CPUC and in this agreement shall be paid annually, in full, on the anniversary of their Permit.

## SECTION 24 - MAP OF TERMINAL - GROUND TRANSPORTATION



# EXHIBIT "B"

# EXHIBIT "C"

FAA
Airports

# ASSURANCES

## Airport Sponsors

### A. General.

1. These assurances shall be complied with in the performance of grant agreements for airport development, airport planning, and noise compatibility program grants for airport sponsors.
2. These assurances are required to be submitted as part of the project application by sponsors requesting funds under the provisions of Title 49, U.S.C., subtitle VII, as amended. As used herein, the term "public agency sponsor" means a public agency with control of a public-use airport; the term "private sponsor" means a private owner of a public-use airport; and the term "sponsor" includes both public agency sponsors and private sponsors.
3. Upon acceptance of this grant offer by the sponsor, these assurances are incorporated in and become part of this grant agreement.

### B. Duration and Applicability.

1. **Airport development or Noise Compatibility Program Projects Undertaken by a Public Agency Sponsor.**

   The terms, conditions and assurances of this grant agreement shall remain in full force and effect throughout the useful life of the facilities developed or equipment acquired for an airport development or noise compatibility program project, or throughout the useful life of the project items installed within a facility under a noise compatibility program project, but in any event not to exceed twenty (20) years from the date of acceptance of a grant offer of Federal funds for the project. However, there shall be no limit on the duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport. There shall be no limit on the duration of the terms, conditions, and assurances with respect to real property acquired with federal funds. Furthermore, the duration of the Civil Rights assurance shall be specified in the assurances.

2. **Airport Development or Noise Compatibility Projects Undertaken by a Private Sponsor.**

   The preceding paragraph 1 also applies to a private sponsor except that the useful life of project items installed within a facility or the useful life of the facilities developed or equipment acquired under an airport development or noise compatibility program project shall be no less than ten (10) years from the date of acceptance of Federal aid for the project.

3. **Airport Planning Undertaken by a Sponsor.**

Unless otherwise specified in this grant agreement, only Assurances 1, 2, 3, 5, 6, 13, 18, 25, 30, 32, 33, and 34 in Section C apply to planning projects. The terms, conditions, and assurances of this grant agreement shall remain in full force and effect during the life of the project; there shall be no limit on the duration of the assurances regarding Airport Revenue so long as the airport is used as an airport.

## C. Sponsor Certification.

The sponsor hereby assures and certifies, with respect to this grant that:

1. **General Federal Requirements.**

It will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance and use of Federal funds for this project including but not limited to the following:

**Federal Legislation**

a. Title 49, U.S.C., subtitle VII, as amended.
b. Davis-Bacon Act - 40 U.S.C. 276(a), et seq.[1]
c. Federal Fair Labor Standards Act - 29 U.S.C. 201, et seq.
d. Hatch Act – 5 U.S.C. 1501, et seq.[2]
e. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 Title 42 U.S.C. 4601, et seq.[1 2]
f. National Historic Preservation Act of 1966 - Section 106 - 16 U.S.C. 470(f).[1]
g. Archeological and Historic Preservation Act of 1974 - 16 U.S.C. 469 through 469c.[1]
h. Native Americans Grave Repatriation Act - 25 U.S.C. Section 3001, et seq.
i. Clean Air Act, P.L. 90-148, as amended.
j. Coastal Zone Management Act, P.L. 93-205, as amended.
k. Flood Disaster Protection Act of 1973 - Section 102(a) - 42 U.S.C. 4012a.[1]
l. Title 49, U.S.C., Section 303, (formerly known as Section 4(f))
m. Rehabilitation Act of 1973 - 29 U.S.C. 794.
n. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
o. Americans with Disabilities Act of 1990, as amended, (42 U.S.C. § 12101 et seq.), prohibits discrimination on the basis of disability).
p. Age Discrimination Act of 1975 - 42 U.S.C. 6101, et seq.
q. American Indian Religious Freedom Act, P.L. 95-341, as amended.
r. Architectural Barriers Act of 1968 -42 U.S.C. 4151, et seq.[1]
s. Power plant and Industrial Fuel Use Act of 1978 - Section 403- 2 U.S.C. 8373.[1]
t. Contract Work Hours and Safety Standards Act - 40 U.S.C. 327, et seq.[1]
u. Copeland Anti-kickback Act - 18 U.S.C. 874.1
v. National Environmental Policy Act of 1969 - 42 U.S.C. 4321, et seq.[1]
w. Wild and Scenic Rivers Act, P.L. 90-542, as amended.
x. Single Audit Act of 1984 - 31 U.S.C. 7501, et seq.[2]
y. Drug-Free Workplace Act of 1988 - 41 U.S.C. 702 through 706.

z. The Federal Funding Accountability and Transparency Act of 2006, as amended (Pub. L. 109-282, as amended by section 6202 of Pub. L. 110-252).

**Executive Orders**

a. Executive Order 11246 - Equal Employment Opportunity[1]
b. Executive Order 11990 - Protection of Wetlands
c. Executive Order 11998 – Flood Plain Management
d. Executive Order 12372 - Intergovernmental Review of Federal Programs
e. Executive Order 12699 - Seismic Safety of Federal and Federally Assisted New Building Construction[1]
f. Executive Order 12898 - Environmental Justice

**Federal Regulations**

a. 2 CFR Part 180 - OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement).
b. 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. [OMB Circular A-87 Cost Principles Applicable to Grants and Contracts with State and Local Governments, and OMB Circular A-133 - Audits of States, Local Governments, and Non-Profit Organizations].[4, 5, 6]
c. 2 CFR Part 1200 – Nonprocurement Suspension and Debarment
d. 14 CFR Part 13 - Investigative and Enforcement Procedures14 CFR Part 16 - Rules of Practice For Federally Assisted Airport Enforcement Proceedings.
e. 14 CFR Part 150 - Airport noise compatibility planning.
f. 28 CFR Part 35- Discrimination on the Basis of Disability in State and Local Government Services.
g. 28 CFR § 50.3 - U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964.
h. 29 CFR Part 1 - Procedures for predetermination of wage rates.[1]
i. 29 CFR Part 3 - Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States.[1]
j. 29 CFR Part 5 - Labor standards provisions applicable to contracts covering federally financed and assisted construction (also labor standards provisions applicable to non-construction contracts subject to the Contract Work Hours and Safety Standards Act).[1]
k. 41 CFR Part 60 - Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and federally assisted contracting requirements).[1]
l. 49 CFR Part 18 - Uniform administrative requirements for grants and cooperative agreements to state and local governments.[3]
m. 49 CFR Part 20 - New restrictions on lobbying.
n. 49 CFR Part 21 – Nondiscrimination in federally-assisted programs of the Department of Transportation - effectuation of Title VI of the Civil Rights Act of 1964.
o. 49 CFR Part 23 - Participation by Disadvantage Business Enterprise in Airport Concessions.

p. 49 CFR Part 24 – Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs.[1 2]
q. 49 CFR Part 26 – Participation by Disadvantaged Business Enterprises in Department of Transportation Programs.
r. 49 CFR Part 27 – Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.[1]
s. 49 CFR Part 28 – Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities conducted by the Department of Transportation.
t. 49 CFR Part 30 - Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors.
u. 49 CFR Part 32 – Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)
v. 49 CFR Part 37 – Transportation Services for Individuals with Disabilities (ADA).
w. 49 CFR Part 41 - Seismic safety of Federal and federally assisted or regulated new building construction.

**Specific Assurances**

Specific assurances required to be included in grant agreements by any of the above laws, regulations or circulars are incorporated by reference in this grant agreement.

**Footnotes to Assurance C.1.**

[1] These laws do not apply to airport planning sponsors.

[2] These laws do not apply to private sponsors.

[3] 49 CFR Part 18 and 2 CFR Part 200 contain requirements for State and Local Governments receiving Federal assistance. Any requirement levied upon State and Local Governments by this regulation and circular shall also be applicable to private sponsors receiving Federal assistance under Title 49, United States Code.

[4] On December 26, 2013 at 78 FR 78590, the Office of Management and Budget (OMB) issued the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR Part 200. 2 CFR Part 200 replaces and combines the former Uniform Administrative Requirements for Grants (OMB Circular A-102 and Circular A-110 or 2 CFR Part 215 or Circular) as well as the Cost Principles (Circulars A-21 or 2 CFR part 220; Circular A-87 or 2 CFR part 225; and A-122, 2 CFR part 230). Additionally it replaces Circular A-133 guidance on the Single Annual Audit. In accordance with 2 CFR section 200.110, the standards set forth in Part 200 which affect administration of Federal awards issued by Federal agencies become effective once implemented by Federal agencies or when any future amendment to this Part becomes final. Federal agencies, including the Department of Transportation, must implement the policies and procedures applicable to Federal awards by promulgating a regulation to be effective by December 26, 2014 unless different provisions are required by statute or approved by OMB.

[5] Cost principles established in 2 CFR part 200 subpart E must be used as guidelines for determining the eligibility of specific types of expenses.

[6] Audit requirements established in 2 CFR part 200 subpart F are the guidelines for audits.

2. **Responsibility and Authority of the Sponsor.**

   a. Public Agency Sponsor:

   It has legal authority to apply for this grant, and to finance and carry out the proposed project; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

   b. Private Sponsor:

   It has legal authority to apply for this grant and to finance and carry out the proposed project and comply with all terms, conditions, and assurances of this grant agreement. It shall designate an official representative and shall in writing direct and authorize that person to file this application, including all understandings and assurances contained therein; to act in connection with this application; and to provide such additional information as may be required.

3. **Sponsor Fund Availability.**

   It has sufficient funds available for that portion of the project costs which are not to be paid by the United States. It has sufficient funds available to assure operation and maintenance of items funded under this grant agreement which it will own or control.

4. **Good Title.**

   a. It, a public agency or the Federal government, holds good title, satisfactory to the Secretary, to the landing area of the airport or site thereof, or will give assurance satisfactory to the Secretary that good title will be acquired.

   b. For noise compatibility program projects to be carried out on the property of the sponsor, it holds good title satisfactory to the Secretary to that portion of the property upon which Federal funds will be expended or will give assurance to the Secretary that good title will be obtained.

5. **Preserving Rights and Powers.**

   a. It will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in this grant agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.

b. It will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the property shown on Exhibit A to this application or, for a noise compatibility program project, that portion of the property upon which Federal funds have been expended, for the duration of the terms, conditions, and assurances in this grant agreement without approval by the Secretary. If the transferee is found by the Secretary to be eligible under Title 49, United States Code, to assume the obligations of this grant agreement and to have the power, authority, and financial resources to carry out all such obligations, the sponsor shall insert in the contract or document transferring or disposing of the sponsor's interest, and make binding upon the transferee all of the terms, conditions, and assurances contained in this grant agreement.

c. For all noise compatibility program projects which are to be carried out by another unit of local government or are on property owned by a unit of local government other than the sponsor, it will enter into an agreement with that government. Except as otherwise specified by the Secretary, that agreement shall obligate that government to the same terms, conditions, and assurances that would be applicable to it if it applied directly to the FAA for a grant to undertake the noise compatibility program project. That agreement and changes thereto must be satisfactory to the Secretary. It will take steps to enforce this agreement against the local government if there is substantial non-compliance with the terms of the agreement.

d. For noise compatibility program projects to be carried out on privately owned property, it will enter into an agreement with the owner of that property which includes provisions specified by the Secretary. It will take steps to enforce this agreement against the property owner whenever there is substantial non-compliance with the terms of the agreement.

e. If the sponsor is a private sponsor, it will take steps satisfactory to the Secretary to ensure that the airport will continue to function as a public-use airport in accordance with these assurances for the duration of these assurances.

f. If an arrangement is made for management and operation of the airport by any agency or person other than the sponsor or an employee of the sponsor, the sponsor will reserve sufficient rights and authority to insure that the airport will be operated and maintained in accordance Title 49, United States Code, the regulations and the terms, conditions and assurances in this grant agreement and shall insure that such arrangement also requires compliance therewith.

g. Sponsors of commercial service airports will not permit or enter into any arrangement that results in permission for the owner or tenant of a property used as a residence, or zoned for residential use, to taxi an aircraft between that property and any location on airport. Sponsors of general aviation airports entering into any arrangement that results in permission for the owner of residential real property adjacent to or near the airport must comply with the requirements of Sec. 136 of Public Law 112-95 and the sponsor assurances.

6. **Consistency with Local Plans.**

   The project is reasonably consistent with plans (existing at the time of submission of this application) of public agencies that are authorized by the State in which the project is located to plan for the development of the area surrounding the airport.

7. **Consideration of Local Interest.**

   It has given fair consideration to the interest of communities in or near where the project may be located.

8. **Consultation with Users.**

   In making a decision to undertake any airport development project under Title 49, United States Code, it has undertaken reasonable consultations with affected parties using the airport at which project is proposed.

9. **Public Hearings.**

   In projects involving the location of an airport, an airport runway, or a major runway extension, it has afforded the opportunity for public hearings for the purpose of considering the economic, social, and environmental effects of the airport or runway location and its consistency with goals and objectives of such planning as has been carried out by the community and it shall, when requested by the Secretary, submit a copy of the transcript of such hearings to the Secretary. Further, for such projects, it has on its management board either voting representation from the communities where the project is located or has advised the communities that they have the right to petition the Secretary concerning a proposed project.

10. **Metropolitan Planning Organization.**

    In projects involving the location of an airport, an airport runway, or a major runway extension at a medium or large hub airport, the sponsor has made available to and has provided upon request to the metropolitan planning organization in the area in which the airport is located, if any, a copy of the proposed amendment to the airport layout plan to depict the project and a copy of any airport master plan in which the project is described or depicted.

11. **Pavement Preventive Maintenance.**

    With respect to a project approved after January 1, 1995, for the replacement or reconstruction of pavement at the airport, it assures or certifies that it has implemented an effective airport pavement maintenance-management program and it assures that it will use such program for the useful life of any pavement constructed, reconstructed or repaired with Federal financial assistance at the airport. It will provide such reports on pavement condition and pavement management programs as the Secretary determines may be useful.

12. **Terminal Development Prerequisites.**

    For projects which include terminal development at a public use airport, as defined in Title 49, it has, on the date of submittal of the project grant application, all the safety equipment required for certification of such airport under section 44706 of Title 49, United States Code, and all the security equipment required by rule or regulation, and

has provided for access to the passenger enplaning and deplaning area of such airport to passengers enplaning and deplaning from aircraft other than air carrier aircraft.

13. **Accounting System, Audit, and Record Keeping Requirements.**

    a. It shall keep all project accounts and records which fully disclose the amount and disposition by the recipient of the proceeds of this grant, the total cost of the project in connection with which this grant is given or used, and the amount or nature of that portion of the cost of the project supplied by other sources, and such other financial records pertinent to the project. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984.

    b. It shall make available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the recipient that are pertinent to this grant. The Secretary may require that an appropriate audit be conducted by a recipient. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a grant or relating to the project in connection with which this grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United States not later than six (6) months following the close of the fiscal year for which the audit was made.

14. **Minimum Wage Rates.**

    It shall include, in all contracts in excess of $2,000 for work on any projects funded under this grant agreement which involve labor, provisions establishing minimum rates of wages, to be predetermined by the Secretary of Labor, in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5), which contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.

15. **Veteran's Preference.**

    It shall include in all contracts for work on any project funded under this grant agreement which involve labor, such provisions as are necessary to insure that, in the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to Vietnam era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns owned and controlled by disabled veterans as defined in Section 47112 of Title 49, United States Code. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

16. **Conformity to Plans and Specifications.**

    It will execute the project subject to plans, specifications, and schedules approved by the Secretary. Such plans, specifications, and schedules shall be submitted to the Secretary prior to commencement of site preparation, construction, or other performance under this grant agreement, and, upon approval of the Secretary, shall be incorporated into this grant agreement. Any modification to the approved plans,

specifications, and schedules shall also be subject to approval of the Secretary, and incorporated into this grant agreement.

17. **Construction Inspection and Approval.**

    It will provide and maintain competent technical supervision at the construction site throughout the project to assure that the work conforms to the plans, specifications, and schedules approved by the Secretary for the project. It shall subject the construction work on any project contained in an approved project application to inspection and approval by the Secretary and such work shall be in accordance with regulations and procedures prescribed by the Secretary. Such regulations and procedures shall require such cost and progress reporting by the sponsor or sponsors of such project as the Secretary shall deem necessary.

18. **Planning Projects.**

    In carrying out planning projects:

    a. It will execute the project in accordance with the approved program narrative contained in the project application or with the modifications similarly approved.

    b. It will furnish the Secretary with such periodic reports as required pertaining to the planning project and planning work activities.

    c. It will include in all published material prepared in connection with the planning project a notice that the material was prepared under a grant provided by the United States.

    d. It will make such material available for examination by the public, and agrees that no material prepared with funds under this project shall be subject to copyright in the United States or any other country.

    e. It will give the Secretary unrestricted authority to publish, disclose, distribute, and otherwise use any of the material prepared in connection with this grant.

    f. It will grant the Secretary the right to disapprove the sponsor's employment of specific consultants and their subcontractors to do all or any part of this project as well as the right to disapprove the proposed scope and cost of professional services.

    g. It will grant the Secretary the right to disapprove the use of the sponsor's employees to do all or any part of the project.

    h. It understands and agrees that the Secretary's approval of this project grant or the Secretary's approval of any planning material developed as part of this grant does not constitute or imply any assurance or commitment on the part of the Secretary to approve any pending or future application for a Federal airport grant.

19. **Operation and Maintenance.**

    a. The airport and all facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable Federal,

state and local agencies for maintenance and operation. It will not cause or permit any activity or action thereon which would interfere with its use for airport purposes. It will suitably operate and maintain the airport and all facilities thereon or connected therewith, with due regard to climatic and flood conditions. Any proposal to temporarily close the airport for non-aeronautical purposes must first be approved by the Secretary. In furtherance of this assurance, the sponsor will have in effect arrangements for-

1) Operating the airport's aeronautical facilities whenever required;
2) Promptly marking and lighting hazards resulting from airport conditions, including temporary conditions; and
3) Promptly notifying airmen of any condition affecting aeronautical use of the airport. Nothing contained herein shall be construed to require that the airport be operated for aeronautical use during temporary periods when snow, flood or other climatic conditions interfere with such operation and maintenance. Further, nothing herein shall be construed as requiring the maintenance, repair, restoration, or replacement of any structure or facility which is substantially damaged or destroyed due to an act of God or other condition or circumstance beyond the control of the sponsor.

b. It will suitably operate and maintain noise compatibility program items that it owns or controls upon which Federal funds have been expended.

20. **Hazard Removal and Mitigation.**

It will take appropriate action to assure that such terminal airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

21. **Compatible Land Use.**

It will take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, if the project is for noise compatibility program implementation, it will not cause or permit any change in land use, within its jurisdiction, that will reduce its compatibility, with respect to the airport, of the noise compatibility program measures upon which Federal funds have been expended.

22. **Economic Nondiscrimination.**

a. It will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.

b. In any agreement, contract, lease, or other arrangement under which a right or privilege at the airport is granted to any person, firm, or corporation to conduct or

to engage in any aeronautical activity for furnishing services to the public at the airport, the sponsor will insert and enforce provisions requiring the contractor to-

1) furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and

2) charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

c. Each fixed-based operator at the airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-based operators making the same or similar uses of such airport and utilizing the same or similar facilities.

d. Each air carrier using such airport shall have the right to service itself or to use any fixed-based operator that is authorized or permitted by the airport to serve any air carrier at such airport.

e. Each air carrier using such airport (whether as a tenant, non-tenant, or subtenant of another air carrier tenant) shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rates, fees, rentals, and other charges with respect to facilities directly and substantially related to providing air transportation as are applicable to all such air carriers which make similar use of such airport and utilize similar facilities, subject to reasonable classifications such as tenants or non-tenants and signatory carriers and non-signatory carriers. Classification or status as tenant or signatory shall not be unreasonably withheld by any airport provided an air carrier assumes obligations substantially similar to those already imposed on air carriers in such classification or status.

f. It will not exercise or grant any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees [including, but not limited to maintenance, repair, and fueling] that it may choose to perform.

g. In the event the sponsor itself exercises any of the rights and privileges referred to in this assurance, the services involved will be provided on the same conditions as would apply to the furnishing of such services by commercial aeronautical service providers authorized by the sponsor under these provisions.

h. The sponsor may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.

i. The sponsor may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.

23. **Exclusive Rights.**

It will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public. For purposes of this paragraph, the providing of the services at an airport by a single fixed-based operator shall not be construed as an exclusive right if both of the following apply:

a. It would be unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide such services, and

b. If allowing more than one fixed-based operator to provide such services would require the reduction of space leased pursuant to an existing agreement between such single fixed-based operator and such airport. It further agrees that it will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities, including, but not limited to charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity, and that it will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under Title 49, United States Code.

24. **Fee and Rental Structure.**

It will maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection. No part of the Federal share of an airport development, airport planning or noise compatibility project for which a grant is made under Title 49, United States Code, the Airport and Airway Improvement Act of 1982, the Federal Airport Act or the Airport and Airway Development Act of 1970 shall be included in the rate basis in establishing fees, rates, and charges for users of that airport.

25. **Airport Revenues.**

a. All revenues generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport. The following exceptions apply to this paragraph:

1) If covenants or assurances in debt obligations issued before September 3, 1982, by the owner or operator of the airport, or provisions enacted before September 3, 1982, in governing statutes controlling the owner or operator's financing, provide for the use of the revenues from any of the airport owner or

operator's facilities, including the airport, to support not only the airport but also the airport owner or operator's general debt obligations or other facilities, then this limitation on the use of all revenues generated by the airport (and, in the case of a public airport, local taxes on aviation fuel) shall not apply.

2) If the Secretary approves the sale of a privately owned airport to a public sponsor and provides funding for any portion of the public sponsor's acquisition of land, this limitation on the use of all revenues generated by the sale shall not apply to certain proceeds from the sale. This is conditioned on repayment to the Secretary by the private owner of an amount equal to the remaining unamortized portion (amortized over a 20-year period) of any airport improvement grant made to the private owner for any purpose other than land acquisition on or after October 1, 1996, plus an amount equal to the federal share of the current fair market value of any land acquired with an airport improvement grant made to that airport on or after October 1, 1996.

3) Certain revenue derived from or generated by mineral extraction, production, lease, or other means at a general aviation airport (as defined at Section 47102 of title 49 United States Code), if the FAA determines the airport sponsor meets the requirements set forth in Sec. 813 of Public Law 112-95.

b. As part of the annual audit required under the Single Audit Act of 1984, the sponsor will direct that the audit will review, and the resulting audit report will provide an opinion concerning, the use of airport revenue and taxes in paragraph (a), and indicating whether funds paid or transferred to the owner or operator are paid or transferred in a manner consistent with Title 49, United States Code and any other applicable provision of law, including any regulation promulgated by the Secretary or Administrator.

c. Any civil penalties or other sanctions will be imposed for violation of this assurance in accordance with the provisions of Section 47107 of Title 49, United States Code.

26. **Reports and Inspections.**

It will:

a. submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request and make such reports available to the public; make available to the public at reasonable times and places a report of the airport budget in a format prescribed by the Secretary;

b. for airport development projects, make the airport and all airport records and documents affecting the airport, including deeds, leases, operation and use agreements, regulations and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request;

c. for noise compatibility program projects, make records and documents relating to the project and continued compliance with the terms, conditions, and assurances of this grant agreement including deeds, leases, agreements, regulations, and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request; and

d. in a format and time prescribed by the Secretary, provide to the Secretary and make available to the public following each of its fiscal years, an annual report listing in detail:

   1) all amounts paid by the airport to any other unit of government and the purposes for which each such payment was made; and

   2) all services and property provided by the airport to other units of government and the amount of compensation received for provision of each such service and property.

27. **Use by Government Aircraft.**

It will make available all of the facilities of the airport developed with Federal financial assistance and all those usable for landing and takeoff of aircraft to the United States for use by Government aircraft in common with other aircraft at all times without charge, except, if the use by Government aircraft is substantial, charge may be made for a reasonable share, proportional to such use, for the cost of operating and maintaining the facilities used. Unless otherwise determined by the Secretary, or otherwise agreed to by the sponsor and the using agency, substantial use of an airport by Government aircraft will be considered to exist when operations of such aircraft are in excess of those which, in the opinion of the Secretary, would unduly interfere with use of the landing areas by other authorized aircraft, or during any calendar month that –

a. Five (5) or more Government aircraft are regularly based at the airport or on land adjacent thereto; or

b. The total number of movements (counting each landing as a movement) of Government aircraft is 300 or more, or the gross accumulative weight of Government aircraft using the airport (the total movement of Government aircraft multiplied by gross weights of such aircraft) is in excess of five million pounds.

28. **Land for Federal Facilities.**

It will furnish without cost to the Federal Government for use in connection with any air traffic control or air navigation activities, or weather-reporting and communication activities related to air traffic control, any areas of land or water, or estate therein, or rights in buildings of the sponsor as the Secretary considers necessary or desirable for construction, operation, and maintenance at Federal expense of space or facilities for such purposes. Such areas or any portion thereof will be made available as provided herein within four months after receipt of a written request from the Secretary.

29. **Airport Layout Plan.**

a. It will keep up to date at all times an airport layout plan of the airport showing

   1) boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the sponsor for airport purposes and proposed additions thereto;

   2) the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars and

roads), including all proposed extensions and reductions of existing airport facilities;

3) the location of all existing and proposed nonaviation areas and of all existing improvements thereon; and

4) all proposed and existing access points used to taxi aircraft across the airport's property boundary. Such airport layout plans and each amendment, revision, or modification thereof, shall be subject to the approval of the Secretary which approval shall be evidenced by the signature of a duly authorized representative of the Secretary on the face of the airport layout plan. The sponsor will not make or permit any changes or alterations in the airport or any of its facilities which are not in conformity with the airport layout plan as approved by the Secretary and which might, in the opinion of the Secretary, adversely affect the safety, utility or efficiency of the airport.

b. If a change or alteration in the airport or the facilities is made which the Secretary determines adversely affects the safety, utility, or efficiency of any federally owned, leased, or funded property on or off the airport and which is not in conformity with the airport layout plan as approved by the Secretary, the owner or operator will, if requested, by the Secretary (1) eliminate such adverse effect in a manner approved by the Secretary; or (2) bear all costs of relocating such property (or replacement thereof) to a site acceptable to the Secretary and all costs of restoring such property (or replacement thereof) to the level of safety, utility, efficiency, and cost of operation existing before the unapproved change in the airport or its facilities except in the case of a relocation or replacement of an existing airport facility due to a change in the Secretary's design standards beyond the control of the airport sponsor.

30. **Civil Rights.**

It will promptly take any measures necessary to ensure that no person in the United States shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in any activity conducted with, or benefiting from, funds received from this grant.

a. Using the definitions of activity, facility and program as found and defined in §§ 21.23 (b) and 21.23 (e) of 49 CFR § 21, the sponsor will facilitate all programs, operate all facilities, or conduct all programs in compliance with all non-discrimination requirements imposed by, or pursuant to these assurances.

b. Applicability

1) Programs and Activities. If the sponsor has received a grant (or other federal assistance) for any of the sponsor's program or activities, these requirements extend to all of the sponsor's programs and activities.

2) Facilities. Where it receives a grant or other federal financial assistance to construct, expand, renovate, remodel, alter or acquire a facility, or part of a facility, the assurance extends to the entire facility and facilities operated in connection therewith.

3) Real Property. Where the sponsor receives a grant or other Federal financial assistance in the form of, or for the acquisition of real property or an interest in real property, the assurance will extend to rights to space on, over, or under such property.

c. Duration.

The sponsor agrees that it is obligated to this assurance for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the assurance obligates the sponsor, or any transferee for the longer of the following periods:

1) So long as the airport is used as an airport, or for another purpose involving the provision of similar services or benefits; or

2) So long as the sponsor retains ownership or possession of the property.

d. Required Solicitation Language. It will include the following notification in all solicitations for bids, Requests For Proposals for work, or material under this grant agreement and in all proposals for agreements, including airport concessions, regardless of funding source:

"The **(Name of Sponsor)**, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises and airport concession disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award."

e. Required Contract Provisions.

1) It will insert the non-discrimination contract clauses requiring compliance with the acts and regulations relative to non-discrimination in Federally-assisted programs of the DOT, and incorporating the acts and regulations into the contracts by reference in every contract or agreement subject to the non-discrimination in Federally-assisted programs of the DOT acts and regulations.

2) It will include a list of the pertinent non-discrimination authorities in every contract that is subject to the non-discrimination acts and regulations.

3) It will insert non-discrimination contract clauses as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a sponsor.

4) It will insert non-discrimination contract clauses prohibiting discrimination on the basis of race, color, national origin, creed, sex, age, or handicap as a

covenant running with the land, in any future deeds, leases, license, permits, or similar instruments entered into by the sponsor with other parties:

a) For the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and

b) For the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.

f. It will provide for such methods of administration for the program as are found by the Secretary to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the acts, the regulations, and this assurance.

g. It agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the acts, the regulations, and this assurance.

31. **Disposal of Land.**

a. For land purchased under a grant for airport noise compatibility purposes, including land serving as a noise buffer, it will dispose of the land, when the land is no longer needed for such purposes, at fair market value, at the earliest practicable time. That portion of the proceeds of such disposition which is proportionate to the United States' share of acquisition of such land will be, at the discretion of the Secretary, (1) reinvested in another project at the airport, or (2) transferred to another eligible airport as prescribed by the Secretary. The Secretary shall give preference to the following, in descending order, (1) reinvestment in an approved noise compatibility project, (2) reinvestment in an approved project that is eligible for grant funding under Section 47117(e) of title 49 United States Code, (3) reinvestment in an approved airport development project that is eligible for grant funding under Sections 47114, 47115, or 47117 of title 49 United States Code, (4) transferred to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport, and (5) paid to the Secretary for deposit in the Airport and Airway Trust Fund. If land acquired under a grant for noise compatibility purposes is leased at fair market value and consistent with noise buffering purposes, the lease will not be considered a disposal of the land. Revenues derived from such a lease may be used for an approved airport development project that would otherwise be eligible for grant funding or any permitted use of airport revenue.

b. For land purchased under a grant for airport development purposes (other than noise compatibility), it will, when the land is no longer needed for airport purposes, dispose of such land at fair market value or make available to the Secretary an amount equal to the United States' proportionate share of the fair market value of the land. That portion of the proceeds of such disposition which is proportionate to the United States' share of the cost of acquisition of such land will, (1) upon application to the Secretary, be reinvested or transferred to another

eligible airport as prescribed by the Secretary. The Secretary shall give preference to the following, in descending order: (1) reinvestment in an approved noise compatibility project, (2) reinvestment in an approved project that is eligible for grant funding under Section 47117(e) of title 49 United States Code, (3) reinvestment in an approved airport development project that is eligible for grant funding under Sections 47114, 47115, or 47117 of title 49 United States Code, (4) transferred to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport, and (5) paid to the Secretary for deposit in the Airport and Airway Trust Fund.

c. Land shall be considered to be needed for airport purposes under this assurance if (1) it may be needed for aeronautical purposes (including runway protection zones) or serve as noise buffer land, and (2) the revenue from interim uses of such land contributes to the financial self-sufficiency of the airport. Further, land purchased with a grant received by an airport operator or owner before December 31, 1987, will be considered to be needed for airport purposes if the Secretary or Federal agency making such grant before December 31, 1987, was notified by the operator or owner of the uses of such land, did not object to such use, and the land continues to be used for that purpose, such use having commenced no later than December 15, 1989.

d. Disposition of such land under (a) (b) or (c) will be subject to the retention or reservation of any interest or right therein necessary to ensure that such land will only be used for purposes which are compatible with noise levels associated with operation of the airport.

32. **Engineering and Design Services.**

It will award each contract, or sub-contract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping or related services with respect to the project in the same manner as a contract for architectural and engineering services is negotiated under Title IX of the Federal Property and Administrative Services Act of 1949 or an equivalent qualifications-based requirement prescribed for or by the sponsor of the airport.

33. **Foreign Market Restrictions.**

It will not allow funds provided under this grant to be used to fund any project which uses any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.

34. **Policies, Standards, and Specifications.**

It will carry out the project in accordance with policies, standards, and specifications approved by the Secretary including but not limited to the advisory circulars listed in the Current FAA Advisory Circulars for AIP projects, dated _____ (the latest approved version as of this grant offer) and included in this grant, and in accordance

with applicable state policies, standards, and specifications approved by the Secretary.

35. **Relocation and Real Property Acquisition.**

    a. It will be guided in acquiring real property, to the greatest extent practicable under State law, by the land acquisition policies in Subpart B of 49 CFR Part 24 and will pay or reimburse property owners for necessary expenses as specified in Subpart B.
    b. It will provide a relocation assistance program offering the services described in Subpart C and fair and reasonable relocation payments and assistance to displaced persons as required in Subpart D and E of 49 CFR Part 24.
    c. It will make available within a reasonable period of time prior to displacement, comparable replacement dwellings to displaced persons in accordance with Subpart E of 49 CFR Part 24.

36. **Access By Intercity Buses.**

    The airport owner or operator will permit, to the maximum extent practicable, intercity buses or other modes of transportation to have access to the airport; however, it has no obligation to fund special facilities for intercity buses or for other modes of transportation.

37. **Disadvantaged Business Enterprises.**

    The sponsor shall not discriminate on the basis of race, color, national origin or sex in the award and performance of any DOT-assisted contract covered by 49 CFR Part 26, or in the award and performance of any concession activity contract covered by 49 CFR Part 23. In addition, the sponsor shall not discriminate on the basis of race, color, national origin or sex in the administration of its DBE and ACDBE programs or the requirements of 49 CFR Parts 23 and 26. The sponsor shall take all necessary and reasonable steps under 49 CFR Parts 23 and 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts, and/or concession contracts. The sponsor's DBE and ACDBE programs, as required by 49 CFR Parts 26 and 23, and as approved by DOT, are incorporated by reference in this agreement. Implementation of these programs is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the sponsor of its failure to carry out its approved program, the Department may impose sanctions as provided for under Parts 26 and 23 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1936 (31 U.S.C. 3801).

38. **Hangar Construction.**

    If the airport owner or operator and a person who owns an aircraft agree that a hangar is to be constructed at the airport for the aircraft at the aircraft owner's expense, the airport owner or operator will grant to the aircraft owner for the hangar a long term lease that is subject to such terms and conditions on the hangar as the airport owner or operator may impose.

39. **Competitive Access.**

a. If the airport owner or operator of a medium or large hub airport (as defined in section 47102 of title 49, U.S.C.) has been unable to accommodate one or more requests by an air carrier for access to gates or other facilities at that airport in order to allow the air carrier to provide service to the airport or to expand service at the airport, the airport owner or operator shall transmit a report to the Secretary that-

   1) Describes the requests;

   2) Provides an explanation as to why the requests could not be accommodated; and

   3) Provides a time frame within which, if any, the airport will be able to accommodate the requests.

b. Such report shall be due on either February 1 or August 1 of each year if the airport has been unable to accommodate the request(s) in the six month period prior to the applicable due date.

# EXHIBIT “D”

**Exhibit "D"**
**DISCLOSURE OF CONFLICT OF INTEREST**

_____ between City of Fresno ("Fresno")
Uber Technologies, Inc. ("Uber")

| | | YES* | NO | N/A |
|---|---|---|---|---|
| 1 | Are you currently in litigation with the City of Fresno or any of its agents? | | X | |
| 2 | Do you represent any firm, organization or person who is in litigation with the City of Fresno? | | | X |
| 3 | Do you currently represent or perform work for any clients who do business with the City of Fresno? | | | X |
| 4 | Are you or any of your principals, managers or professionals, owners or investors in a business which does business with the City of Fresno, or in a business which is in litigation with the City of Fresno? | | X | |
| 5 | Are you or any of your principals, managers or professionals, related by blood or marriage to any City of Fresno employee who has any significant role in the subject matter of this service? | | X | |
| 6 | Do you or any of your subcontractors have, or expect to have, any interest, direct or indirect, in any other contract in connection with this Project? | | X | |

* If the answer to any question is yes, please explain in full below.

Explanation: _____

☐ Additional page(s) attached.

Tom Maguire
Signature

May 1, 2019
Date

Tom Maguire
(name)

Uber Technologies, Inc.
(company)

1455 Market Street, 4th Floor
(address)

San Francisco, CA 94103
(city state zip)